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Vol. 59 No. 30

federal register

Monday
February 14, 1994

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WHO: The Office of the Federal Register.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AD24

1994 Marketing Quota and Price Support for Flue-Cured Tobacco

AGENCIES: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1994 crop of flue-cured tobacco. In accordance with the Agricultural Adjustment Act of 1938 (1938 Act), as amended, the Secretary determined the 1994 marketing quota for flue-cured tobacco to be 802.6 million pounds. In accordance with the Agricultural Act of 1949 (1949 Act), as amended, the Secretary determined the 1994 price support level to be 158.3 cents per pound.

EFFECTIVE DATE: December 15, 1993.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Tobacco and Peanuts Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3736, South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–8839.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by USDA, it has been determined that this final rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Final Regulatory Impact Analysis

A final regulatory impact analysis describing the impact of the established quota and support level is available on request from Robert L. Tarczy.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither ASCS nor the Commodity Credit Corporation is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain any new or revised information collection requirements that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Statutory Background

This rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act. Section 1108(c) of Public Law 99–272 provides that the determinations made in this rule are not subject to the provisions for public participation in rule making contained in 5 U.S.C. 553 or in any directive of the Secretary.

On December 15, 1993, the Secretary announced the national marketing quota and price support level for the 1994 crop of flue-cured tobacco.

Marketing Quota

Section 317(a)(1)(b) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

Section 317(a)(1)(c) further provides that, with respect to the 1990 through 1994 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. The reserve stock level is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more

than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1994 crop of flue-cured tobacco by December 1, 1993. Six such manufacturers were required to submit such a statement for the 1994 crop and the total of their intended purchases for the 1994 crop is 288.0 million pounds. The three-year average of exports is 391.3 million pounds.

The national marketing quota for the 1993 crop year was 891.8 million pounds (58 FR 11960). Thus, in accordance with section 301 (b)(14)(C), the reserve stock level for use in determining the 1994 marketing quota for flue-cured tobacco is 133.8 million pounds.

As of December 6, 1993, the Flue-Cured Tobacco Stabilization Corporation had in its inventory 316.8 million pounds of flue-cured tobacco (excluding pre-1985 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment to maintain loan stocks at the reserve supply level is a decrease of 183.0 million pounds.

The total of the three marketing quota components for the 1994–95 marketing year is 496.3 million pounds. However, the 1994 national marketing quota cannot be less than 90 percent of 1993's quota. Accordingly, the national marketing quota for the marketing year beginning July 1, 1994, for flue-cured tobacco is 802.6 million pounds.

Section 317(a)(2) of the 1938 Act provides that the national average yield goal be set at a level that the Secretary determines will improve or ensure the useability of the tobacco and increase the net return per pound to the growers. Yields in crop year 1993 did not change significantly from the previous year. Accordingly, the national average yield goal for the 1994–95 marketing year will be 2,088 pounds per acre, the same as last year's level.

In accordance with section 317(a)(3) of the 1938 Act, the national acreage allotment for the 1994 crop of flue-cured tobacco is determined to be 384,386.97 acres, derived from dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve of 744 acres is adequate for these purposes.

In accordance with section 317(a)(4) of the 1938 Act, the national acreage factor for the 1994 crop of flue-cured tobacco for uniformly adjusting the acreage allotment of each farm is determined to be 0.90, which is the result of dividing the 1994 national allotment (384,386.97 acres) minus the national reserve (744 acres) by the total of allotments established for flue-cured tobacco farms in 1993 (426,268.80 acres).

In accordance with section 317(a)(7) of the 1938 Act, the national yield factor for the 1994 crop of flue-cured tobacco is determined to be 0.9255, which is the result of dividing the national average yield goal (2,088 pounds) by a weighted national average yield (2,256 pounds).

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1994 crop of flue-cured tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1994 crop of flue-cured tobacco shall be:

(1) The level, in cents per pound, at which the 1993 crop of flue-cured tobacco was supported, plus or minus, respectively,

(2) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than:

(II) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by the tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

The difference between the two 5-year averages (i.e., the difference between (A) (I) and (II)) is 0.5 cents per pound. The difference in the cost index from January 1 to December 31, 1993, is 1.6 cents per pound. Applying these components to the price support formula (0.5 cents per pound, two-thirds weight; 1.6 cents per pound, one-third weight) results in a weighted total of 0.9 cents per pound. As indicated, section 106 provides that the Secretary may, on the basis of supply and demand conditions, limit the change in the price support level to no less than 65 percent of that amount. In order to remain competitive in foreign and domestic markets, the Secretary used his discretion to limit the increase to 65 percent of the maximum allowable increase. Accordingly, the 1994 crop of flue-cured tobacco will be supported at 158.3 cents per pound, 0.6 cents higher than in 1993.

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1464

Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, Tobacco, Warehouses.

Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314c, 1314d, 1314f, 1314h, 1315, 1316, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

2. Section 723.111 is amended by:

A. Redesignating existing text as paragraph (a), and

B. Adding paragraph (b) to read as follows:

§ 723.111 Flue-cured (types 11–14) tobacco.

* * * * *

(b) The 1994-crop national marketing quota is 802.6 million pounds.

PART 1464—TOBACCO

3. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b and 714c.

4. Section 1464.12 is amended by:

A. Redesignating existing text as paragraph (a), and

B. Adding paragraph (b) to read as follows:

§ 1464.12 Flue-Cured (types 11–14) tobacco.

* * * * *

(b) The 1994 crop national price support level is 158.3 cents per pound.

Signed at Washington, DC, on February 7, 1994.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–3369 Filed 2–11–94; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 967

[Docket No. FV93–967–1FIR]

Celery Grown in Florida; Decreased Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an amended interim final rule that decreased the level of authorized expenses and reduced the assessment rate that generates funds to pay those expenses. Authorization of this budget enables the Florida Celery Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1993, through July 31, 1994.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or William G. Pimental, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 149 and Order No. 967, both as amended (7 CFR part 967), regulating the handling of celery grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Florida celery is subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable celery handled during the 1993–94 fiscal year, from August 1, 1993, through July 31, 1994. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven producers of Florida celery under this marketing order, and approximately seven handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Florida celery producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal year was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Florida celery. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida celery. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 9, 1993, and unanimously recommended a 1993–94 budget of $90,000 and an assessment rate of $0.02 per crate. The expenses and assessment rate were published in the **Federal Register** as an interim final rule July 16, 1993 (58 FR 38277). That interim final rule added § 967.228, authorizing expenses and establishing an assessment rate for the Committee, and provided that interested persons could file comments through August 16, 1993. No comments were filed.

The Committee budgeted $45,000 to the American Celery Council for promotional and merchandising activities. However, the Council is no longer in business. The Committee subsequently met on October 6, 1993, and unanimously recommended a decrease of $45,000 for promotion, merchandising, and public relations; reducing funding for the category to $15,000. This action reduces the total Committee budget for fiscal year 1993–94 to $45,000.

The Committee also unanimously recommended reducing the assessment rate by $0.01, for a total of $0.01. This rate, when applied to anticipated shipments of 4,500,000 crates, will yield $45,000 in assessment income. Funds in the Committee's authorized reserve as of

July 31, 1992, were $27,853, which is within the maximum permitted by the order of one marketing year's expenses.

An amended interim final rule was published in the **Federal Register** on November 24, 1993 (58 FR 62033). That interim final rule amended § 967.228 to decrease the level of authorized expenses and reduce the assessment rate for the Committee. That rule provided that interested persons could file comments through December 27, 1993. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1993–94 fiscal year began on August 1, 1993. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable celery handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an amended interim final rule.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 967 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

Accordingly, the amended interim rule revising § 967.228 which was published at 58 FR 62033 on November 24, 1993, is adopted as a final rule without change.

Dated: February 7, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–3326 Filed 2–11–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1007

[DA–93–04]

Milk in the Georgia Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends for the months of July and August 1994 provisions of the Georgia Federal milk marketing order that provide for payments to producers on the basis of a base and excess payment plan.

EFFECTIVE DATE: July 1, 1994, through August 31, 1994.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued December 7, 1993; published December 13, 1993 (58 FR 65135).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action will encourage milk production during the months of July and August, which are months of declining milk production.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule also has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Notice of proposed rulemaking was published in the **Federal Register** on December 13, 1993 (58 FR 65135), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Three comment letters were received in response to the proposed suspension.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of July and August 1994 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1007.32, paragraph (a).
2. In § 1007.61(a), the words "of September through January".
3. In § 1007.61, paragraph (b).

Statement of Consideration

This suspension removes the requirement that producers be paid on the basis of the base and excess plan for the months of July and August 1994. The proposal was submitted by Carolina/Virginia Milk Producers Association, Inc., Dairymen, Inc., and Southern Milk Sales, Inc. These cooperative associations have a substantial amount of milk pooled on the Georgia milk market. In support of their proposal, the cooperative associations state that the suspension is needed because in recent years milk in this area has been in short supply during July and August. Without the suspension, the cooperatives contend the market's base and excess plan would discourage production in those months. They further state that it is necessary to take this action well before the proposed suspension takes effect to address the desire of individual dairy farmers to have knowledge of the base payment period prior to any base purchases.

Several producers in Georgia filed comments in opposition to the proposed suspension. The producers state that the proposed suspension would force them to be paid on the blend price which would reduce the price they receive for their milk.

Under the order's base and excess plan, producers establish "base" on the basis of their production during the months of September through January and are paid on the basis of their "base" and "excess" milk during the following months of February through August. The plan was suspended during August 1993, the most recent base-paying month.

With the suspension of the base and excess payment plan in July and August, producers would be paid a blend price for all of their milk during those months. In July 1993, the last month the base and excess payment plan was operative, there was a 24-cent difference between the blend price and the base price. The difference between the blend price and the excess price however, was $3.96. Thus, while it is true that, without the plan, producers would receive somewhat less for their base milk, this difference is far less than the $3.96 difference between the blend price and the excess price, which is a major impediment to keeping milk that is in excess of base milk on the market. It is also a major obstacle to fluid milk handlers in attracting supplemental milk supplies on a direct-shipped basis from producers in nearby markets. Under the plan, such producers would be only entitled to the excess price for all of their milk shipped to the market because they had not earned base in the Georgia market.

During the past two years, the Class I utilization of producer milk tightened markedly during the months of July and August. For example, the Class I utilization in 1992 increased from 74.9 percent in June to 75.5 percent in July and to 79.7 percent in August. In 1993, the Class I utilization similarly increased from 77.6 percent in June to 89.7 percent in July and to 84.4 percent in August. These figures indicate that the market is extremely tight during the months of July and August and that there is merit to the request to remove any disincentive producers may have to increasing production or shipping supplemental milk to the market.

The suspension will increase the amount of milk available for fluid use in the Georgia market. It will allow fluid milk handlers to attract supplemental milk supplies from producers in nearby markets. Additionally, producers with excess milk will not be encouraged to shift off the market in July and August and thereby detract from the basic function of the order in assuring an adequate supply of milk.

The benefits of having an adequate supply of milk available to meet fluid needs outweigh the benefits which would accrue to producers who would receive higher prices. Accordingly, the proposal to suspend the base and excess payment plan during July and August 1994 is adopted.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

For the reasons set forth in the preamble, title 7, part 1007, is amended as follows effective July 1, 1994 through August 31, 1994:

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. The authority citation for 7 CFR Part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1007.32 [Temporarily suspended in part]

2. In § 1007.32, paragraph (a) is suspended.

§ 1007.61 [Temporarily suspended in part]

3. In § 1007.61(a), the words "of September through January" are suspended.

4. In § 1007.61, paragraph (b) is suspended.

Dated: February 2, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–3323 Filed 2–11–94; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

7 CFR Parts 1924, 1930, and 1944

RIN 0575–AB08

Cost Containment and Vulnerability

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the processing of preapplications for Rural Rental Housing (RRH) assistance. This action is necessary to decrease costs associated with the program and to reduce program vulnerability. The intended effect is to improve credit quality and to make our regulations more responsive to the prudent development of RRH complexes in rural America.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Gail McCowan, Senior Loan Specialist, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, Room 5337—South Agriculture Building, Washington, DC 20250, telephone (202) 720–1608.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this final rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this final rule:

(1) Would have an effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1949, Public Law 91–90, an Environmental Impact Statement is not required.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 2015, subpart V, programs 10.415 Rural

Rental Housing Loans and 10.427—Rural Rental Assistance Payments are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0575–0042 and 0575–0033 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The information collection contained in 0575–0047 will not become effective until approved by OMB. Please send written comments to the Office of Information Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, FmHA, AG Box 0743, Washington, DC 20250.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Numbers 10.415, Rural Rental Housing Loans and 10.427, Rural Rental Assistance Payments.

Background

During its audits of FmHA's identity of interest construction cost certification process, the Office of Inspector General found many instances where borrowers were taking advantage of loopholes in FmHA regulations. This resulted in the loss of Government funds through excess profit being paid to paper contractors, failure of the borrowers to reveal identities of interest with related parties, failure on the part of CPA's to adequately perform cost certifications, and numerous other discrepancies of varying severity, all of which have had detrimental effects on the program. OIG reviewed the proposed changes to the regulations and voiced its support for the proposed changes as a mean for reducing fraud, waste, and abuse in the 515 program.

Discussion of Comments

The proposed rule, published in the Federal Register (57 FR 27379–27394) on June 19, 1992, provided for a 60-day comment period ending August 18, 1992. One hundred and twenty-one comments were received during the comment period from the public and from FmHA field employees.

Comments

Implementation Proposal

FmHA has stated that all preapplications and applications on hand will be subject to the final rule with the exception of applications whose plans and specifications have been finalized.

Several persons agreed that preapplications and applications not be "grandfathered" except for those which have received an AD–622 and which are within the District's 150 percent loan approval authority. Other persons objected to not "grandfathering" because of the expense already incurred in developing an application.

Since applicants have already invested substantial sums of money in the development of building plans, FmHA has reconsidered this position. Building plans included with preapplications which have been issued an AD–622 inviting a formal application will not be affected; all other material associated with preapplications will be subject to the provisions of the final rule.

FmHA Instruction 1924–A

1. Section 1924.10 (c)(2)(i)

Comment: Comments were received concerning the requirement that all transfers of funds between line items would require the approval of the servicing official using Form FmHA 1924–7. The general feeling is that estimates are merely estimates and will fluctuate during the construction period. To require the servicing official to approve change orders for every line item change would cause a major paperwork burden on both the contractor and FmHA.

FmHA response: The Agency recognizes the volume of paperwork and delay involved with this requirement. FmHA will, instead, implement a means to flag significant variances in line item costs. Increases or decreases at or above a 15 percent threshold will require documentation from the borrower to justify the differences. The State Director will also have the authority to require documentary justification for less than 15 percent variances if he/she deems it necessary. The documentation will be required at the time the project is cost certified so that construction will not be delayed.

2. Section 1924.13(a)(3).

Comment: Most persons agreed that architectural fees should be reduced when less than full architectural services are provided. It was suggested that it would be appropriate to establish a range of fees covering a range of similar services. It was also pointed out that an acceptable design in one place can involve a redraw in others due to local code interpretations.

FmHA response: The intent of this requirement is for those instances where the applicant uses a set of plans that has previously been used. Even if a new site requires some modification to adapt the building to the site, it will not require a complete redraw of the building. While there can be no hard and fast rules set by Washington as to the degree of revision needed to qualify the architect for full services, this can be determined at the State level. Compensation is expected to reasonably represent the value of the architect's services to the owner.

3. Section 1924.13(e)(1)(iii)(B)(*3*) and 1924.13(e)(2)(i)(D)

Comment: A number of persons suggested that more training be provided to FmHA field staff in analyzing the financial statement to determine whether there is sufficient "financial strength to carry out all phases of construction." Another suggestion was that FmHA require a performance and payment bond from all contractors, in which case the credit worthiness will have been determined by a surety company. Several persons pointed out the fact that credit reports do not reflect the financial strength of the contractor.

FmHA response: FmHA has completed phase one of a two phase training program in the proper analysis of financial reports. The training is being conducted by an outside accounting firm and involves State, District, and National Office personnel. We recognize that requiring a payment and performance bond from all contractors would probably eliminate the small yet qualified contractor from participating in the 515 program. Based on the comments that a credit report is not the vehicle through which financial strength can be determined, FmHA will require that each contractor provide a financial statement of its operations. The financial statement will be analyzed to determine if the contractor has the financial strength to pay construction bills prior to obtaining draws from the lender. Language relating to the submission of a financial statement has been added to this section. A credit report will still be required from all contractors.

4. Section 1924.13(e)(1)(iv) and 1924.13(e)(2)(i)(G)

Comment: There was some opposition to eliminating the price of cost certifications from the contract.

FmHA response: FmHA deleted this cost from this section because it intended to contract for cost certifications itself. This would have eliminated the need for including the cost in the construction contract since they would be paid from Agency funds. It has now been determined that the Agency will be unable to contract for all cost certifications, so the previous language pertaining to cost certification expenses has been restored to this section to cover those situations where the borrower will be required by FmHA to obtain the certification.

5. Section 1924.13(e)(1)(v) and 1924.13(e)(1)(v)(E)

Comment: Several persons agreed with the proposal that FmHA contract directly for cost certifications. The most consistently expressed concern was about the delay in the Government contracting process, resulting in increased interim interest expense. There was also some concern about the burden this proposal would place on FmHA. There was a suggestion to have FmHA contract with a CPA to review and/or audit a certain percentage of the cost certifications within the State each year. Also, one person suggested that FmHA allow contracts between the CPA and the contractor when the CPA can certify that he/she has no other relationship with the contractor except for the cost certification. Comments from other persons stated that the ongoing working relationship between the borrower and the CPA is a definite advantage since the CPA is familiar with the accounting system and procedures of the borrower. They felt that having full-time access to the CPA who is responsible for monitoring the construction cost recording process would allow for timely maintenance of records. An FmHA-contracted auditor would not have this familiarity with the borrower's books. One respondent suggested that FmHA publish a guide to tell CPA's how FmHA wants the cost certifications performed and reported. One suggestion is that instead of contracting for cost certifications directly, FmHA should strengthen its ability to debar an incompetent CPA. Another respondent suggested that FmHA establish a list of CPA's who have been designated as acceptable for cost certification. One suggestion was that FmHA make a judgment of whether the borrower's cost certification is satisfactory instead of hiring the CPA directly.

FmHA response: FmHA has worked with the Office of Inspector General to develop an audit program which CPA's will follow in performing cost certification audits. During recent OIG audits of cost certifications prepared on FmHA-financed rental housing projects, it was discovered that many CPA's were not maintaining the independence required by generally accepted auditing standards. It is obvious from some of the comments that some CPA's who are cost certifying construction costs have also been involved in the maintenance of the borrowers' construction records. FmHA will not have sufficient contracting funds to cover the cost of all certifications; therefore, it anticipates contracting for all certifications on loans of $1.5 million and over and a random sampling of all other loans. Details will have to be worked out in the contracting process to prevent undue delay in closing loans. In the event FmHA does contract for a cost certification, the borrower will not be responsible for providing a certification since that would duplicate energies and expenses. Any funds earmarked in the loan for cost certification but which are not needed because of an FmHA-contracted certification will be returned on the loan and may not be used for any other purpose.

6. Section 1924.13(e)(1)(v)(A)

Comment: There was some confusion about whether FmHA would be contracting with the CPA who examines the borrower's accounting system or just with the CPA who performs the cost certification. A suggestion was offered that the borrower provide a written assertion that it has an accounting system which complies with the regulations. The cost certification CPA would then report on the validity of the assertion.

FmHA response: It was the intent of this proposal that the borrower's CPA be responsible for verifying that the borrower's accounting system meets the requirements of the regulation so that this responsibility can be removed from FmHA field personnel. Since the Agency does not have accountants on staff, we do not feel we have the expertise to adequately check the borrower's accounting system. We agree with the suggestion that the borrower be allowed to provide a written assertion on the accounting system and that the cost certification CPA report on its validity. This section has been rewritten to incorporate that suggestion.

7. Section 1924.13(e)(1)(v)(B), 1924.13(e)(2)(iv), and 1924.13(e)(2)(viii)(B)

Comment: There was a question as to whether FmHA intends to reduce builder's profit when costs of line item are increased. Another respondent wondered if it is the intent of FmHA to restrict the amount of each line item to the estimated amount. Several persons objected to the restriction of general requirements to the estimated amount. One respondent recommended that any cost savings from project construction be returned on the loan and that the loan be reamortized to reflect a decrease in tenant rent.

FmHA response: FmHA intends that builder's profit be reduced when the total costs of the line item costs exceed their estimates and would result in an increase in the contract amount. The amounts for general overhead, profit, and general requirements will be restricted to their estimated amounts, not the line items to their estimated amounts. FmHA believes that the estimates for general requirements can be accurately determined prior to the start of construction and not deviate significantly thereafter. We do not feel this would result in an undue burden on the borrower. A refund of loan funds can be used to reamortize the loan if it can be shown that the amount refunded will reduce the rents and an exception to the 10 percent requirement has been granted by the National Office.

8. Section 1924.13(e)(1)(v)(C) and 1924.13(e)(2)(viii)(A)

Comment: There was some objection to requiring the borrower to agree that the tests conducted will include FmHA audit requirements. One respondent has recommended that the language be changed to refer to FmHA 1924–A instead of "FmHA regulations" and has provided FmHA with suggested language for this section.

FmHA response: Because of the problems with how cost certifications are conducted, as revealed by OIG, FmHA felt it necessary to institute additional instructions to the CPA/LPA's which are intended to provide uniformity in the examination of construction costs. FmHA sought advice and assistance from the American Institute of Certified Public Accountants in developing the additional instructions referred to as the Audit Program. The Audit Program will be available in FmHA offices. It is FmHA's intent that the borrower recognize the Audit Program and to ensure that the auditor include its requirements in the cost certification process. The language

of this section has been reworded as recommended by AICPA. FmHA has changed the reference from FmHA regulations to FmHA Instruction 1924–A.

9. Section 1924.13(e)(1)(v)(D)

Comment: One respondent objects to the auditor having to certify that he/she has no financial interest in or with the applicant/owner-builder, architect, engineer, attorney, contractor, etc., since Government Auditing Standards prohibit such an identity of interest. Two respondents pointed out an inconsistency in the suggested CPA opinion letter since one paragraph refers to Generally Accepted Government Auditing Standards (GAGAS) and another refers to General Accepted Accounting Principles (GAAP).

FmHA response: Even though the Government Auditing Standards prohibits identities of interest between CPA's and the applicant, architect, engineer, attorney, contractor, etc., OIG audits have revealed apparent close relationships exist between some CPA's and borrowers. Certain CPA's have not maintained an independence from the borrower as required by Government Auditing Standards. There is no inconsistency in the suggested opinion letter since GAGAS pertains to the audit of the construction costs and GAAP pertains to the accounting system which the borrower uses in recording construction costs. OIG has submitted a sample auditor's report which is incorporated in the Audit Program and available in any FmHA office.

10. Section 1924.13(e)(1)(v)(F)

Comment: The opinion was expressed that the CPA who reviews the borrower's accounting system be allowed to cost certify. Also, costs will be duplicated if the borrower has to hire a CPA in addition to FmHA contracting for CPA services. There was objection to denying the right of a CPA to cost certify when that CPA is currently handling the contractor's accounting.

FmHA response: It was originally FmHA's intent that the CPA who reviews the borrower's accounting system not cost certify the project after construction. This was primarily due to the fact that OIG audit findings revealed a lack of independence between CPA's and borrowers. We have reconsidered this prohibition and will allow the same CPA who sets up or examines the borrowers accounting system to certify construction costs. However, the CPA who provides any accounting services to the borrower during construction will not be allowed to cost certify the project. To do so would be a violation of rules of independence set forth in Government Auditing Standards.

11. Section 1924.13(e)(1)(v)(G)

Comment: There was one objection to using the new forms since the respondent felt FmHA already has an identity of interest statement in use.

FmHA response: The purpose of the new forms is twofold; one to require all borrowers to disclose all identities of interest and the other to identify "paper companies." The identity of interest statement itself has been changed to also include other related parties. The forms also provide notification to all affected parties of the penalty for falsifying the documents. FmHA feels these forms are needed.

12. Section 1924.13(e)(1)(v)(H)

Comment: One respondent objected to having to report a discount or rebate when the original line item costs were based on the discounted amount. Another person offered the rationale that rebates and discounts are incentives to buy "right" and to pay bills on time and that FmHA is attempting to remove these incentives. One respondent requested clarification of the next to last sentence in this section. The general objection was voiced about reducing profit to agree with the reduction in line item costs of construction. One person felt that contractors would use the pretext of obtaining a rebate or discount in order to not contribute additional funds to cover the increase in line item costs. One respondent supported this section.

FmHA response: After due consideration, FmHA has decided that this section more appropriately pertains to multiple advance loans where payments are made by FmHA and the amount of any discounts or rebates will be deducted before invoices are paid. If discounts or rebates are given after the invoices are paid, the funds will be returned to the supervised bank account. Therefore, this section has been amended to delete reference to discounts and rebates.

13. Section 1924.13(e)(1)(v)(I)

Comment: The reference to the HUD regulatory language apparently has caused some confusion since it was merely referenced. One respondent wanted to know if the general contractor has to hammer nails in order to be performing work. Another respondent felt that subcontracting out all or nearly all of the work is a typical and accepted practice. One respondent suggested that this provision be waived if it can be demonstrated that it is to the benefit of the property. One person questioned whether this provision will pertain to everyone or just in those cases where an identity of interest exists; if it pertains to everyone, then this section should be taken from the cost certification portion of the regulation. One respondent requested that we provide a definition of "actual construction." Two respondents requested that a distinction be made between work on new construction and work on a rehabilitation. One respondent agreed with this section.

FmHA response: To eliminate confusion, the reference to the HUD regulation has been removed from this section. OIG audits have found repeatedly that persons who identified themselves as the construction contractor were not qualified to build the project or, for some reason, did not build the project. They, instead, subcontracted out all or most of the construction and still took a full builder's profit. FmHA adamantly opposes the payment of profit to anyone who does not perform the full range of duties of a general contractor. This section does not prohibit a contractor from subcontracting out any or all of the work as long as that contractor does not receive a builder's profit. The Agency has no objection to the contractor being paid for services rendered. FmHA does not foresee any situation where waiver of this provision will benefit the property. This section pertains only to identity of interest borrowers and will remain in this location. For purposes of clarification, we are defining "actual construction" to mean "work" as defined in A.I.A. documents: "* * * labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations." Irrespective of whether the project is new construction or rehabilitation, the general contractor should not expect to receive a builder's profit if he/she has not performed the full ranges of responsibilities of a general contractor.

14. Section 1924.13(e)(1)(v)(J)

Comment: There was agreement that FmHA implement these new forms. One respondent suggested that more specific requirements be added such as years in business, work performed other than on FmHA-financed.

FmHA response: The new Form FmHA 1944–31 will require the entity to disclose number of years in business. We do not feel that identification of the work performed on other than FmHA-financed projects is necessary since the entity is certifying that it is an on-going business.

15. Section 1924.13(e)(1)(vii)(B)(*1*) and 1924.13(e)(2)(iii)(A)

Comment: One respondent expressed an opinion that this section will eliminate the smaller developers. There was some feeling that this would discourage the participation of owner-builders or that it will cause undue delay in the processing of the preapplication. One respondent recommended that the determination of whether to grant an exception to competitive bidding be made at the application stage rather than at the preapplication stage. One respondent misinterpreted this section to mean competitive bids would be granted rather than the negotiated contracts.

FmHA response: The only new language added to this section requires that FmHA document, in writing, the examination required prior to the State Director granting an exception to competitive bidding. We do not feel that small developers are any more at risk now than before the change since the requirement is not new to this revision. FmHA agrees that the determination of whether to grant an exception to competitive bidding be made during the application stage and have changed the language to reflect this requirement. The correct meaning of this section is that negotiated contracts may be allowed once the State Director has determined all requirements for granting an exception to competitive bidding have been met.

16. Section 1924.13(e)(2)(i)(G)

Comment: One respondent wanted to know under what circumstances will cost estimation services be required and asked where else in the regulation this subject is discussed. Another respondent raised issues which appear to be unrelated to this section and we could not determine to which section the comment referred. Other comments pertain to the deletion of cost certification fees which was previously discussed under § 1924.13(e)(1)(iv).

FmHA response: The existing regulation contained a provision for cost estimation services to be used if FmHA did not agree with the owner-builder's estimate. This was seldom, if ever, imposed. Our recent test of using estimating services proved to be unreliable and inconsistent. The reference to cost estimation has been removed from the regulation.

17. Section 1924.13(e)(2)(iv)

Comment: One respondent suggested that allowances for general overhead, general requirements, and a builder's profit be based on a regional cost rather than on a State average.

FmHA response: This section states that the amounts may be determined by local investigation and also from HUD data for the area. It does not mention a State average.

18. This Respondent Refers to 1924.13(e)(1)(vii)(D)

There is no such section in FmHA Instruction 1924–A.

19. Section 1924.13(e)(2)(viii)

Comment: One respondent asked if the requirement that projects have their costs "audited by FmHA" refers to cost certification contracted by FmHA, OIG or other FmHA audit. Another respondent points out that this section contains a cost certification cutoff for projects of $350,000 or more and expresses an opinion that there should be no difference between identity of interest and owner-builder. One respondent points out that a FmHA 1924–13 is mandatory for all loans of over $350,000 and that if the loan is publicly bid this form should not be mandatory.

FmHA response: The reference to "audited by FmHA" falls within the same provision that was discussed earlier concerning FmHA contracting for all cost certifications. The respondent is correct in his observation concerning the $350,000 cutoff for owner-builders. All owner-builders are identity of interest entities which automatically require a cost certification. The reference to $350,000 has been removed from this section. FmHA regulation 1944–E now requires that all applicants submit Form FmHA 1924–13 to facilitate the tracking of line item costs in the Agency's upcoming computerized cost tracking system. This applies to all applicants regardless of whether or not an identity of interest is involved.

20. Section 1924.13(e)(2)(viii)(B)

Comment: One respondent suggested that further clarification be added to the section regarding amounts for general overhead, general requirements, and builder's profit as being treated as individual and separate line items amounts or whether all three should be combined, thus eliminating the need for Administrative Notice explanation. Another comment did not appear to pertain to this section.

FmHA response: The Administrative Notice issued on this subject addressed the percentages for establishing separate amounts for general overhead, general requirements, and builder's profit; this section refers to the dollar amounts which are established as a result of the percentage calculation. The FmHA 1924–13 requires that these three items be listed separately. This section refers to establishing dollar amounts for general overhead, general requirements, and builder's profit and that actual costs for those three items will not exceed their dollar estimates. Language addressing the allowable percentages for general overhead, general requirements, and builder's profit has been added to § 1944.215(a)(1) of subpart E of part 1944.

21. Section 1924.13(e)(2)(viii)(C)

There was one comment and the respondent expressed agreement with this section.

22. Section 1924.13(e)(2)(viii)(D)

Comment: One respondent expressed agreement with this section. Another respondent requested clarification of the reference to HUD regulation.

FmHA response: The reference to the HUD regulations has been dropped from this section as discussed under § 1924.13(e)(1)(v)(I), above.

1944–E

1. Section 1944.211(a)(3)

Comment: A number of objections were expressed to limiting the number of preapplications to five. Several respondents supported this proposal. The reasons were many and too numerous to list. One respondent suggested that the limitation be based on applications and not preapplications and that the number be controlled on a State basis. Many persons suggested that the number of preapplications be based on the financial capacity of the applicant and not on the number of preapplications. Other recommendations include a limit of from 3 to 15 preapplications; 5 preapplications and a nationwide limit of 10; 10 preapplications per District; 15 or 20 with no more than 5 funded and/or under construction at one time; and 10 preapplications nationwide except for preapplications accompanied by a deposit equal to 1 percent of the loan. Other respondents recommended no limit be set for preapplications or applications. Several persons recommended returning preapplications which cannot be funded within a set period of months.

To illustrate his objection to limiting the number of preapplications, one respondent sent several photographs of FmHA-financed apartment complexes which were not being properly managed. The respondent alleged that these apartments were owned by small developers and the photographs serve as an example of what would happen to the section 515 program if only small developers could participate.

FmHA response: The majority of comments were overwhelmingly opposed to restricting the number of preapplications. Therefore, the Agency is not undertaking any changes to this section at this time.

FmHA was concerned over the photographs and investigated the respondent's claim. In all cases, FmHA was taking action to correct the management deficiencies. In almost all cases, the developers of the subject apartments were not small developers. In the one case where the developer would be considered a small developer, the State did not feel the management problems were due to the fact the developer was not a large entity. Therefore, we do not consider this particular objection to the proposed rule to have merit.

2. Section 1944.211(a)(5)

Comment: One respondent expressed an opinion that requiring evidence that the borrower has or can obtain the 3 percent borrower contribution at the preapplication stage is premature and should not be required until prior to obligation.

FmHA response: The ability of the borrower to furnish the contribution is a criterion of eligibility. The Agency feels that eligibility must be established at preapplication stage. If that requirement were to be delayed until the loan is ready to be obligated, the applicant and FmHA would have invested far too much time and money to have the applicant determined not eligible. The 3 percent contribution was increased to 5 percent by the Community Development Act of 1992 for all projects whose members will receive benefits from Low Income Housing Tax Credits. The regulation has already been changed to reflect the increase in the equity contribution requirement.

3. Section 1944.211 (a)(5)

Comment: Two respondents expressed the opinion that applicants should be required to furnish the 3 percent borrower contribution from its own resources.

FmHA response: Currently, borrowers have no personal financial obligation to serve as an impetus to seeing that the project operates successfully. We agree that such an obligation will encourage continued interest in overseeing the well-being of the project and it makes sense from a business standpoint. Therefore, FmHA agrees that applicants should furnish the 3 or 5 percent contribution from their own resources and have changed this section to reflect that requirement.

4. Section 1944.211(a)(7)(i)

Comment: Several comments were received concerning the requirement that the applicant provide sufficient cash to cover start-up costs and that a list of such materials and equipment be provided. It was felt that this was an attempt to disallow the use of letters of credit to cover the O&M expenses.

FmHA response: Currently, regulations allow borrowers to provide a letter of credit to cover the total amount needed for operating and maintenance expenses. FmHA has experienced a reluctance on the part of borrowers to draw on the letters of credit since doing so will incur interest expenses for which they are liable. Thus, there have been many instances where there were insufficient funds to cover needed start-up costs. Requiring the borrower to provide the requirement in cash will ensure the availability of adequate funds with which to cover these expenses. The Housing Act of 1949, as amended, states that "The Secretary may require that the initial operating reserve under this section may be in the form of an irrevocable letter of credit * * *". This language provides the Agency the option of whether to require letters of credit or to require the initial O&M in cash. FmHA has determined that more benefits will be derived by projects if cash is furnished for the operating reserves and, for this reason, has decided not to accept letters of credit.

5. Section 1944.212(b)

Comment: A number of comments were received concerning restricting rehabilitation loans to no more than 5 percent of the loan for new construction. Several of the respondents expressed their support for placing this limit on rehabilitation loans. Also, a couple of respondents suggested that FmHA eliminate purchase and rehabilitation of historic buildings altogether. Several respondents did not favor this proposal and misconstrued its intent as an attempt to eliminate rehabilitation of historic buildings.

FmHA response: The cost for purchasing and rehabilitating existing buildings has increased noticeably within the recent past and has, in some cases, exceeded the amount needed for constructing new units. FmHA feels it appropriate to establish a ceiling to ensure maximum use of loan funds. The excess cost of rehabilitation would be better spent to finance more units in other areas of need. Therefore, the Agency feels that a limit should be placed on the amount of Government funds being expended for rehabilitating historic buildings. While the Agency does not wish to prohibit the purchase and rehabilitation of historic buildings, it feels that a ceiling is needed to prevent unlimited funds from being used for this purpose. The proposed regulation does not prohibit the borrower from infusing additional cash from its or other sources in order to fully fund the purchase and rehabilitation. FmHA's first consideration must be to providing rental units to its beneficiaries at the lowest cost to the tenants.

6. Section 1944.212(c)(1)

Comment: One respondent expressed an opinion that this section limits the basis of FmHA's maximum loan being 97 percent of total development cost or appraised value. Another respondent stated it does not appear there is a specific provision to accomplish what is required in this section. One respondent suggested adding clarification that FmHA can lend the present market value of the site "as improved" and that the cost of the improvements could not be released until all improvements were in place. One respondent recommended the section be revised to state the lower of the appraised value or purchase price will be used to determine total development cost and the applicant's initial investment. Another respondent recommended we restore the original language of this section. One respondent agreed that loan funds used to purchase land may not exceed the estimated market value as established by an appraisal.

FmHA response: The only changes made to this section are the reference to FmHA Instruction 1922–B and deletion of the words "in excess of estimated market value" in the last sentence. These changes do not alter how the loan is calculated. The purchase price of land is not the basis for establishing the applicant's initial investment. The FmHA loan is limited to the development cost or the security value of the project, whichever is less; the applicant is responsible for the equity contribution whether it is in the form of land, cash, or a combination of both. After considering the comments, we feel that this section is confusing as written since it should be addressing the amount of loan funds which can be used to purchase land and should not include discussion of how the purchase price affects the applicant's initial investment. The last sentence has been removed.

7. Section 1944.212(c)(2)

Comment: One respondent suggested that the existing language be restored to this section.

FmHA response: The first sentence of the existing paragraph was removed because it already exists under § 1944.213(c)(10).

8. Section 1944.212(c)(3)

Comment: One respondent voiced the opinion that the density requirements referred to in § 1944.215(a)(5) are not definitive. Another respondent suggested that FmHA define excess land. Another respondent felt that this section is in conflict with § 1944.215(a)(6) and should be deleted. One respondent agreed with the section as long as consideration is given to local zoning requirements.

FmHA response: FmHA feels that excess land is adequately defined in this section and in § 1944.215(a)(6). We do not agree that this section conflicts with § 1944.215(a)(6). Section 1944.215(a)(6) states that local zoning ordinances and, in extreme cases, the site size, shape, or condition will be the determining factors in arriving at site density.

9. Section 1944.212(d)

Comment: There were a number of suggestions concerning the establishment of a range of costs for offsite facilities. One respondent recommended that all offsite costs be eliminated from the loan. It was pointed out by several respondents that States have not approved any off-site facility costs. It was also suggested that each situation is unique and should be judged on its own merits and not be compared with past performance. One respondent felt this would place an undue burden on FmHA and that establishing a range would not prove anything since the bottom line must be the actual "as developed" value of the site.

FmHA response: FmHA agrees that every situation has to be judged on its own merit and that it would be impractical to try to establish a range of costs for offsite facilities. The language has been changed to delete this requirement.

10. Section 1944.212(g)

Comment: There was generally an expression of agreement with the addition of blinds as an eligible loan purpose. One respondent, however, suggested that we also include shades with this provision. One respondent wanted to know if individual washer/dryer hookups could be interpreted to mean "laundry facility." Another respondent voiced an opinion that washer/dryer hookups in addition to a central laundry facility increases marketability of rental units.

FmHA response: FmHA has no objection to including shades in this provision and has amended the language accordingly. Laundry facilities are defined as the actual washers and dryers facilities available to all of the tenants and not just washer and dryer hookups. Washers and dryers owned by individual tenants are not available to all tenants and cannot be considered as "laundry facilities." FmHA stands by its previous position regarding the prohibition of placing washers and dryers in individual units when a central laundry facility is provided unless it is customary for the area for the size of project and type of housing involved. Washer and dryer hookups are an additional expense to overall project costs and, in the majority of cases, are not used by the tenants. Additionally, there have been problems with the hookups leaking and causing water damage to the units.

11. Section 1944.212(i)

Comment: There were numerous objections to disallowing certain fees when the borrowing entity will receive low income housing tax credits, primarily because the end result will be an increase in the borrower's contribution. Other respondents felt that if certain items were required by FmHA, then those items should be funded. One respondent suggested that FmHA automatically increase the equity requirement for low income housing tax credit projects to 5 percent rather than to eliminate certain fees and charges. One respondent suggested that the intent be clarified to mean the legal fees associated with closing the FmHA loan and not the interim lender loan. Another person suggested that all non-low income housing tax credit projects receive an additional 10 points in the rating criteria. One respondent felt that this provision would reduce loan costs and thereby maximize the State's funding allocation.

FmHA response: The Community Development Act of 1992 increased the equity contribution to 5 percent for borrowers whose members will receive benefits from Low Income Housing Tax Credits. The regulation has already been changed to reflect this increase. The original language pertaining to related costs has been restored. Legal fees pertain to the costs associated with the FmHA loan closing only; clarification has been added to the section. FmHA does not agree with the suggestion to allow an additional 10 points for non-low income housing tax credit projects. The purpose of the priority points is to direct funding to the areas of greatest need and the lack of tax credits is not an indication of need.

12. Section 1944.212(j)

Comment: There were several respondents who expressed opposition to allowing payment for assistance to nonprofit groups because of the inequity in handling profit vs. nonprofit applicants.

FmHA response: FmHA published this section to correct a typographical error in the original section; however, the Agency feels that the payment for technical assistance is appropriate for nonprofits since they must rely on their own resources which, in some cases, are slim or nonexistent.

13. Section 1944.213(b)(1)

Comment: One respondent understood this section to mean the nonprofit organization may provide the initial operating capital and/or relocation costs incurred and suggested that the section be revised to include relocation costs in the loan.

FmHA response: This section states that the loan may provide for the development cost or the security value of each project, whichever is less, plus the 2 percent O&M and/or the relocation costs. This provision allows for the inclusion of relocation costs in the loan.

14. Section 1944.213(b)(2)

Comment: While 3 respondents agreed with the proposed computation of the loan amounts, numerous others disagreed. Most felt that the Agency was attempting to increase the borrower's equity contribution.

FmHA response: FmHA has removed the examples from this section and, instead, will provide instructions to its staff in how loans should be calculated in a new Exhibit A–12. The Exhibit provides administrative guidance only and is not being published with this document. A copy is available in any FmHA office.

15. Section 1944.213(c)(10)

Comment: One respondent expressed an opinion that there should be an exception to this provision which allows the person who has owned land for a period of at least 3 years to recover costs associated with the increase in value and betterment of the site. Another respondent suggested the restriction be expanded to provide that there be no common interest for at least 3 years and that the option be with the owner of public record; an exception could be made for subsequent loans on adjacent property.

FmHA response: FmHA does not agree with this suggestion. Regulations, except in the case of a broadly-based nonprofit organization, prohibit the use of loan funds to purchase land from the applicant or a member of the applicant organization. In the case of a nonprofit organization, the appraisal will determine the value which can be included in the loan. We think the suggestion concerning common interest has merit and have changed this section to add a 3-year provision.

16. Section 1944.213(c)(12)

Comment: One respondent felt that this section is no longer needed in light of the provisions of § 1944.211(a)(7) (i) and (ii) which would require the applicant to put up in cash the amount necessary for the initial 2 percent O&M.

FmHA response: FmHA agrees with this comment and the section has been deleted.

17. Section 1944.213(d)

Comment: A few respondents expressed their opinion that this provision would be burdensome and time-consuming. One respondent pointed out that the expense of a market study is always incurred prior to the applicant's filing a preapplication. Another respondent pointed out the language of this section does not allow for predevelopment loans from nonprofit organizations as was originally intended.

FmHA response: Since most borrowers are familiar with the process and are aware of what must be done during the preapplication and application phase, obtaining written verification from FmHA should pose no undue delay. OIG strongly recommended that FmHA be aware of the applicant's intention to incur debts before they are actually incurred to preclude the appearance of giving blanket approval for all such expenses. We agree that the language does not allow for predevelopment loans from nonprofit organizations and the language has been amended to correct this omission. We have also exempted market studies from the prior written approval requirement since they must be completed prior to filing a preapplication.

18 Section 1944.213(e)(1)

Comment: Several persons objected to this section because of the delay it would cause during the construction process. Some suggested that FmHA require post-approval instead of pre-approval to avoid such delays.

FmHA response: The Agency feels that obtaining pre-approval from the District Office will not sufficiently hamper the construction process if the contractor and borrower react in a timely manner. The only two occurrences which will allow an increase in per unit cost is design changes by FmHA or State or local jurisdictions or changes in financing approved by FmHA. Neither of these events would be construed as an emergency.

19. Section 1944.215(a)

Comment: Two respondents expressed agreement with this section. Another respondent voiced an opinion that to require more expensive building materials and, even though maintenance costs will be less, is contradictory to cost containment goals.

FmHA response: The Agency has witnessed what happens when cheaper building materials are used to initially control costs. The results have been high maintenance costs over the life of the materials and the ultimate replacement of the materials. While construction costs may be lower using the cheaper building materials, these savings are more than overshadowed by the high maintenance costs necessary to prolong the use of the materials. FmHA strongly advocates the use of low maintenance and long life materials in its construction.

20. Section 1944.215(a)(1)

Comment: There were several comments expressed about the costs being "locked in" to either our cost tracking system or to the Marshall & Swift estimates, thereby not allowing any inflation increases. It was also noted that projects with abnormally high or low costs should not be entered into the system and that only newer (one year old) projects be tracked. It was felt that the borrower should not be responsible for resolving differences between a proposed project's costs and those costs in the FmHA tracking system or in the Marshall & Swift estimates. Another respondent suggested that the tracking system allow for a comparison of bedroom sizes rather than project to project comparison. One respondent felt that the tracking system should provide for a distinction between new construction and rehabilitation.

FmHA response: The new cost tracking system will allow FmHA to track by line item the costs of construction. For instance, the final estimated cost of concrete for a proposed project will be recorded in the system at the time the loan is obligated. Once the project has been built and the costs are certified (identity of interest projects), the certified cost of concrete will also be recorded in the system and will become the basis for establishing a benchmark on costs. This should take into consideration the inflationary escalation of costs during the construction period. Thereafter, the line item costs for each new proposal will be compared with the amounts recorded in the tracking system. Local FmHA offices will allow for future inflationary increases just as they do now. Only the projects received and processed after the tracking system comes on line will be entered. We intended that significant differences between an applicant's cost estimates and the estimates of our established tracking costs or Marshall & Swift be resolved since FmHA will not arbitrarily accept any estimates which appear out of line or unreasonable. We foresee the borrower's responsibility for resolving the differences in cost as either providing justification for the differences or taking whatever action is required to ensure the best estimates are being considered in the construction. This method of tracking construction costs will make no distinction between numbers of bedrooms or new construction vs. rehabilitation; costs will be tracked on a line item basis and not on a project basis.

21. Section 1944.215(a)(2)

Comment: A few respondents suggested that FmHA establish timeframes for District and State Offices to follow during preapplication and application review processing. Another respondent suggested that the AD–622 cover only the authorization to develop plans and specifications and that the balance of the application not be pursued until receipt of the plans and specifications and after the appraisal is completed. It was felt that this would reduce the time between signing of the construction documents and the start of construction.

FmHA response: From periodic assessments made of the multi-family housing program by FmHA's National Office, it is apparent that the field staff's time is being utilized to its fullest extent. The large volume of preapplications being filed has placed a considerable burden on the field, particularly when those preapplications which will not continue to be processed because of their rating must still receive some degree of attention. To place timeframes on the field for each step of processing would be unrealistic since they would most likely be impossible for the staff to meet. We do not agree that authorizing just the completion of plans and specifications would reduce the time between signing of the construction contract and the actual start of construction, since there are many other items needed to complete the application and these could not be addressed until we authorized the applicant to proceed to a full application. The cost estimates should be updated at the time the construction contract is signed so that the most up-to-date estimates are obtained prior to approving the loan.

22. Section 1944.215(a)(3)

Only one comment was received and the respondent agreed with this section.

23. Section 1944.215(a)(4)

Only one comment was received and the respondent agreed with this section.

24. Section 1944.215(a)(5)

Comment: There were numerous objections to establishing a set number of units per acre because of the size, shape, and condition of sites.

FmHA response: FmHA feels that more diligent efforts could be expended by applicants in locating more viable sites. Sites which have sections unsuitable for building should be avoided. However, if a situation exists where the only available site is of a size, shape, or condition which makes a portion unsuitable for building and the only alternative is to not provide units, then a request to the State Office for an exception to this density requirement may be considered. Such language has been added to the section.

25. Section 1944.215(a)(6)

Comment: Several respondents expressed the opinion that hiring construction inspectors is unrealistic at a time when FmHA staff is being reduced. They also pointed out that delay in obtaining timely construction inspections by FmHA has been a problem and suggested including language in the regulation that would require necessary inspections within a reasonable timeframe.

FmHA response: The hiring of construction inspectors is a suggestion which may or may not be possible to follow. If not, it may be possible for States to contract for these services. The comment about not having timely construction inspections by FmHA provides an appropriate case-in-point for adequate inspection coverages. This subject will be discussed at future training meetings with the field staff. FmHA feels that the proposed language is appropriate as proposed.

26. Section 1944.215(a)(7)

Comment: There were several comments that the restriction of building design will result in all buildings being shaped like a box.

FmHA response: FmHA feels this is an overreaction and that this section will not lead to the construction of boxes. We have observed, in many States, how a simple yet attractive design is an asset to the community. These types of simple designs do not deter potential tenants from seeking residency. The Agency feels that the design of some of the housing units now in existence have gone beyond what is necessary to provide decent, safe, and sanitary living units. The Housing Act of 1949, as amended, specifies that "no loan shall be made or insured * * * unless the Secretary finds that the construction involved will be undertaken in an economical manner and will not be of elaborate or extravagant design or materials."

27. Section 1944.215(a)(8)

Comment: Two respondents recommended against setting the building roof slope limits proposed in this section, one because of the snow loads in the northern States and the other because they could result in a building which lacks interest.

FmHA response: FmHA agrees with the argument against setting the lower slopes in cases where there are heavy snow loads. The wording has been changed to allow the State Director to authorize a higher slope if needed to accommodate severe weather conditions. The Agency disagrees with the opinion that these slopes will result in a lack of building interest.

28. Section 1944.215(a)(9)

Comment: Several respondents expressed agreement with this section. Several others felt that the use of repetitive designs would result in "cloned" projects.

FmHA response: FmHA does not feel that the use of repeat designs will have any detrimental effect on the aesthetic value of FmHA-financed units. In fact, several States now require the use of repeat designs without detrimental effects. The National Office assesses the 515 program in multiple States each year, which includes a visual inspection of the rental stock. We have not found the use of repeat designs to be offensive or boring in any State. FmHA feels that the submission of new designs for all projects needlessly increases the amount of Government funds needed since the amount of architectural fees is based on the level of services provided. Repeat designs will decrease the amount being paid for architectural fees since the use of "shelf" plans will reduce the detailed architectural services needed.

29. Section 1944.215(a)(10)

Comment: Several respondents stated that community room furniture should be included as an eligible loan expense; one respondent supported the inclusion of dining room furniture in congregate housing. Another respondent supported the inclusion of community rooms in family projects and garbage disposals. A few respondents suggested allowing sliding glass doors where patios/balconies are permitted. One respondent suggested adding whirlpools to developmentally disabled housing. Two respondents supported the inclusion of bay/box/picture windows. One respondent voiced support for prohibiting fire places, garages and covered parking. Two respondents supported this section.

FmHA response: Community and congregate dining room furniture is the responsibility of the borrower and its expense should be covered by the initial O&M funds. Outdoor recreation facilities for family projects are allowable loan expenses and are intended to substitute for community room facilities allowed in elderly projects. The Agency considers community rooms to be an essential part of the daily living requirement for those elderly projects which can support the additional expense of the facilities. The obvious reason for not allowing community rooms in family projects is that family activities are not necessarily curtailed by age or climate and they are more mobile than elderly residents, which means their choice of entertainment can extend beyond their living accommodations. FmHA does not feel that garbage disposals are necessary and has recommended against financing them in the past. In addition to the initial cost of the disposal units, too often problems develop because of lack of care in what is processed through them, resulting in additional expense of the repairs. FmHA does not agree that sliding glass doors are necessary even when patios/balconies are customary for the area. FmHA contends that if a developmentally disabled person requires whirlpool therapy, then it should fall within the responsibility of a professional to provide the service at a therapist's facility. Some of the States which were previously allowing bay/box/picture windows have discontinued this practice in accordance with the efforts to contain costs, an action which we support.

30. Section 1944.215(a)(11)

Comment: One respondent supported the inclusion of individual patios for the elderly as a means for increasing

socialization. Two respondents supported washer and dryer hookups for all types of units.

FmHA response: FmHA views the community room as instrumental in encouraging elderly tenant socialization. In a recent survey conducted by the National Association of Home Builders, tenants were asked to list amenities in order of their desirability. This survey showed that balconies were ranked by the tenants at number 15 out of a list of 16 amenities. We place individual patios in the same category with balconies. See discussion of washer and dryer hookups under § 1944.212(g), above.

31. Section 1944.215(a)(12)

Comment: One respondent voiced support for allowing outdoor recreation for elderly projects for those occasions where there are minor children in the unit and where grandchildren come to visit. There was support expressed for the allowance for garbage disposals and community rooms for family projects.

FmHA response: Playground equipment would either stand idle in the case where there were no minors living with the elderly or would attract children from outside the project. The noise generated as a result of playgrounds would not be viewed as a welcome addition by some of the elderly residents who enjoy peaceful surroundings. FmHA response to community rooms for family projects and garbage disposals has already been discussed under § 1944.215(a)(10) above.

32. Section 1944.215(a)(13)

Comment: Several respondents objected to the number of parking spaces for elderly since more persons now keep their cars for a longer period of time, particularly since those persons reside in rural areas with no other means of transportation. One respondent recommended that spaces for visitors and health care workers not be included in the calculation. One respondent suggested that this limit be recommended and not mandated. One respondent recommended the limit be set at 1.5 to 2 for family and .5 to 1.25 for elderly; another respondent recommended .75 to 1.25 for elderly. One respondent supported this section.

FmHA response: A 1990 congregate housing study revealed that only 21 percent of congregate tenants owned cars. The proposed allowance for congregate parking spaces is based on that percentage. In order to accommodate the additional cars owned by persons in elderly projects, we have changed the language of this section to allow for additional spaces for visitors and staff.

33. Section 1944.215(a)(14)

Comment: A number of respondents objected to establishing a range of acceptable allowances for earthwork. A couple of respondents mistakenly interpreted this section to mean that the allowance cover the combination of landscaping and earthwork.

FmHA response: FmHA's cost tracking system will allow us to capture landscaping and earthwork costs; therefore, the section has been amended to delete the requirement that ranges be established.

34. Section 1944.215(a)(15)

Comment: One respondent recommended that congregate projects where an expanded meal service is designed to provide meals to all of the community's elderly citizen be exempted from the limitations of the Manual of Acceptable Practices (MAP). The same respondent pointed out that the MAP is a supplement to an obsolete minimum property standards. Another respondent pointed out that the MAP is not available in any FmHA office. One respondent agreed with this section.

FmHA response: The MAP is no longer in print. Guidance pertaining to the size of these facilities can be found in Guide 2 of FmHA Instruction 1924–A. This section has been changed to reflect the proper reference.

35. Section 1944.215(b)(1)

Comment: Several respondents objected to this way of measuring square footages. Two others objected to restricting congregate units to 110 percent of the minimum square footages since this dimension may not allow sufficient square footages to meet the requirements of the Americans with Disabilities Act. One respondent voiced the opinion that setting the square foot limits will lead to a drop to the minimum footages and adversely impact the rentability. One respondent recommended a lower maximum square footage. One respondent recommended eliminating the reference to "related facilities" since their inclusion will distort the square footage of "living area."

FmHA response: The methodology described in this section for calculating living area is consistent with common industry practices. Congregate living units are not affected by the Americans with Disabilities Act. We do not understand the concern that setting the square foot limit will lead to a drop to the minimum footages since these ranges have been in existence for some time and have not resulted in an automatic drop in square feet. We see no reason to lower the maximum square footage since the size of the unit can be controlled within the allowable ranges. The section has been changed to eliminate "related facilities" from being included in the computation of living area.

36. Section 1944.215(e)

Two comments were received and the respondents supported this section.

37. Section 1944.215(w)(3)

Comment: A number of respondents objected to FmHA's requiring the applicant to reveal the percentage of tax credits it will seek. Several persons appeared to misinterpret the intent of the section. A few of the respondents felt that FmHA is attempting to make the determination of the number of tax credit units the project will receive. One respondent suggested that the section be amended to state that the "market study" will be subject to further examination and not the preapplication itself. One respondent points out that if the project is requesting rental assistance, the affordability of basic rent is irrelevant. One person recommended that the word "percentage" to changed to "number" to avoid confusion. Several persons supported this section.

FmHA response: FmHA regulations require that the Agency determine whether a proposed project is feasible. In order for a project to be feasible, there must be persons of sufficient incomes to support the expenses and to amortize the loan. The market for 515 projects depends on the existence of persons with a lower level of incomes in those cases where tax credits are awarded to the borrower. Many market analysts are still determining need based on incomes up to the moderate level. This becomes an issue when there is not sufficient rent subsidy for all units. In order to make a proper analysis of feasibility, we must determine the level of incomes which will be required to support the project. Even if the applicant requests 100 percent rental assistance and there is sufficient subsidy to cover all of the units, FmHA is not absolved of its responsibility of examining feasibility. FmHA feels that it is imperative that we are aware of the number of tax credit units anticipated so that the appropriate level of incomes can be studied. In no way does FmHA intend to become involved in the determination of the number of tax credits assigned to a project by the State Agencies. We will, however, provide information to the State Agencies as to the amount of financial assistance granted to the

borrower by FmHA. The word "percentage" has been changed to "amount" and the words "percentage of units targeted for tax credit eligible persons" have been added.

38. Section 1944.231(a)(2)

Comment: A number of respondents supported this section with the stipulation that no other preapplication be authorized until the second market study has been completed and a determination made on the original preapplication. Two respondents pointed out that the 45-day period in which to respond to the applicant is not sufficient to accomplish the necessary processing.

FmHA response: FmHA agrees that the preapplication hold its position in the ranking and has amended the section to state that no other preapplication will move ahead of the preapplication in question until the feasibility issue has been resolved. The contracts will be similar to those used by the Agency in obtaining appraisals in that the State will let one contract under which the market studies will be prepared by one or more market analysts. This will eliminate the need for contracting for each individual study, thus saving processing time.

39. Section 1944.235(a)(1)

Comment: Two respondents suggested that closing instructions be furnished to the borrower within a certain timeframe.

FmHA response: The issuance of the closing instructions involves coordination and input from another Government Agency. While FmHA may request more expeditious issuance of the closing instructions, it has no control over when the instructions will be furnished. Additionally, we have no way of knowing how the process is impacted by that Agency's workload.

40. Section 1944.235(a)(2)

Comment: One respondent supported this section. Another respondent stated that this section does not agree with the earlier requirement concerning what amount needs to be furnished to cover the initial O&M amount discussed in § 1944.211(a)(7)(i).

FmHA response: This issue was discussed under § 1944.211(a)(7)(i), above.

41. Section 1944.235(b)(3)

Comment: One respondent suggested that an appeal process be included for co-general partners. One respondent suggested that another provision be added to allow transfer of an obligation when the applicant is unable to continue for legitimate reasons and the transferee is eligible for 515 assistance. Another respondent suggested consideration be given to who is responsible for the default so that a co-general partner who is innocent of the default will not be penalized by being denied access to the program for 5 years.

FmHA response: We interpret the first and last respondent comments to pertain to the same concern. FmHA does not agree that a co-general partner be exempt from these provisions since the loan was made to the entity and it is up to the entity to maintain its financial integrity. The regulations already contain provisions for handling cases where the entity chooses to transfer an obligation without monetary default. There would be no penalty in that case.

42. Section 1944.235(c)(1)

Comment: One respondent suggests that the language be changed to allow interim lenders who are now making loans to only FmHA-financed projects. Another suggested that the language be changed to state "other than identity of interest companies." Another respondent felt that the record of providing financing to non-FmHA projects be on a national basis and not limited to the State in which a particular loan is made. A respondent suggested that the language be changed to state the lender be "authorized" to do business in a State since not all States require the lender to be licensed. Two respondents suggested that FmHA provide the interim financing to eliminate the expense connected with outside interim financing. Two other respondents voiced their objection to this section. Two respondents supported this section.

FmHA response: FmHA feels strongly that the borrower not provide its own interim financing. The interim lender is responsible for inspecting each stage of construction. If borrowers are allowed to provide their own interim financing they, in essence, would also be allowed to inspect their own construction. FmHA feels that inspections by arms-length third parties will provide a more objective assessment of construction standards and quality. The language has been changed to state that the lender be "authorized" to do business in a State rather than "licensed." As long as interim financing can be secured at reasonable rates, fees, and terms, FmHA does not feel that the wholesale use of Government funds for interim financing is in keeping with the intent that local lenders be given the opportunity of furnishing the interim financing.

43. Section 1944.236

Comment: Two respondents objected to nonprofit borrowers being able to use an attorney who is a member of their organization while limited profit borrowers are prohibited from doing the same.

FmHA response: The only change being made to this section is to correspond to a recent wording change in FmHA's closing regulation. The use of member attorneys by nonprofit groups has been allowed by the regulation for some time. FmHA does not consider the relationship between a nonprofit borrower and its attorney in any way resembles the relationship between a profit-motivated borrower and its attorney. The nonprofit attorney has no financial interest in the nonprofit whereas the reverse can be true of the attorney who is a member of the limited profit.

44. Section 1944.237(a)

Comment: One respondent suggested that this section be amended to make clear that subsequent loans to existing borrowers for rehabilitation do not have to go through the preapplication process. Another respondent felt that this will adversely affect developers who acquired land for a future second phase. Another respondent recommended that this section show what types of paperwork are needed for a subsequent loan or that the information be contained in an exhibit to the regulation. Two respondents expressed their opinion that the language which states that subsequent loans made on or after December 15, 1989, cannot be prepaid is contrary to prior interpretations by the National Office. Another person suggested that this section be revised to permit the addition of office, laundry, maintenance, or other community space not be subject to rating and ranking. One respondent agreed with this section.

FmHA response: This section states that subsequent loans to develop additional units must be rated and ranked. All other subsequent loans which do not fall within this definition are excluded, including rehabilitation of existing FmHA-financed units. It was always FmHA's intention that subsequent loans to develop additional units be subject to the rating system; this section merely clarifies that intention. FmHA agrees that some guidance be added to the regulation which better defines what types of paperwork are required for subsequent loans. The types of paperwork needed for subsequent loans has been added to the regulation as Exhibit A–14.

Prepayment is covered by proposed changes now being incorporated in FmHA regulations. Office, laundry, maintenance, and other community space facilities are not considered living units and do not fall under this definition.

45. Exhibit A

Paragraph IV.B.6

Comment: Two respondents expressed their opinion that no new AD–622 be issued until the market question is resolved.

FmHA response: This was discussed under section 1944.231(a) above.

46. Exhibit A–2

Comment: One respondent felt that a new column "housing condition" be added to this exhibit.

FmHA response: The respondent did not make known whether the reference to housing condition refers to the overall condition or to the interior condition of the units. If the latter, we have deliberately not required this type of information since it would be almost impossible for a market analyst to inspect the inside of the units. In the case of the overall exterior condition of the property, FmHA feels this analysis is subject to the personal feelings of the analyst and would not be based on any uniform means for ranking the physical condition. FmHA does require the analyst to give an opinion as to the upkeep of the existing stock in accordance with Exhibit A–8, "Outline of Professional Market Study."

47. Exhibit A–7

Paragraph I.A

Comment: There were many objections raised to this section that requires an audited financial statement. It was pointed out that, even if individual financial statements could be audited, the cost for providing the original and updates during the processing period would be prohibitive. These same individuals objected to providing a copy of their prior year income tax return because it is deemed an invasion of privacy. One respondent pointed out the hardship this would create for nonprofit applicants and proposed that they be able to provide their most recent audited statement. One respondent supported this section but suggested that "current" be defined as the end of the company's last fiscal year and that updates be unaudited. One respondent suggested that instead of requiring audited financial statements, a good review of financial statements by FmHA personnel would ensure financial security. Several persons pointed out the fact that most applicants are newly established organizations which have no financial record to audit. One respondent representing a Certified Public Accounting firm stated that it is often impracticable to conduct an examination of personal financial records in accordance with generally accepted accounting principles and to express an unqualified opinion. That respondent recommended the section be changed to require that the personal financial statements either be compiled or reviewed and stated that a detailed and complete underwriting of creditworthiness can be performed on compiled or reviewed personal financial statements that are comprehensively prepared. Two respondents supported this section.

FmHA response: In light of the difficulty in obtaining audited financial statements of individuals, FmHA will continue with the requirements currently in existence and has eliminated the word "audited" from this section. The Agency also feels that a proper analysis of a financial statement will provide a better understanding of an applicant's creditworthiness than would an individual's income tax statement. FmHA maintains the position that a financial statement not be more than 6 months old when the preapplication is filed.

48. Exhibit A–7

Paragraph I.H

Respondents agreed with this section.

49. Exhibit A–7

Paragraph II.A

Comment: One respondent recommended that FmHA establish a percentage of elderly homeowners that could be considered as potential tenants. Two respondents disagreed with the use of a checklist in evaluating market studies. A few respondents disagreed with limiting the area of consideration to 20 percent of the substandard rental units. Two respondents objected to the use of professional market studies in the analysis of need and suggested that personal contact with possible tenants, talking with other apartment owners, or conducting a newspaper questionnaire would provide a more credible means for determining need. One respondent suggested that we include a definition of "substandard units." Also, that respondent pointed out that the same persons who reside in "overcrowded" units are being doublecounted, first from the substandard category and second from the new households category. One respondent agreed with this section.

FmHA response: FmHA does not agree that elderly homeowners should be considered in the need for units. That is not to say these elderly homeowners cannot live in the FmHA-financed unit. We do not feel that the general market can absorb the sale of multiple homes at one time. Exhibit A–8 does state that if the economic conditions reflect normal selling times for homes in the market area, then elderly homeowners may be considered as a secondary market. FmHA has had in use a checklist for analyzing market studies for some time; this regulation now requires its use to enhance internal control over administration of the program. The purpose of the checklist is to enable the reviewer to determine if all segments of Exhibit A–8 have been addressed by the study.

Market demand and feasibility is created by several factors. One of those factors is the demand created by persons who are living in substandard units and seeking decent, safe and sanitary housing which can be financed by FmHA. Currently, there is no limit on the percentage of substandard units which an analyst can project in determining market demand. For example, if there are 100 units of substandard housing in a given market, analysts can and have stated that 80, or any other arbitrary, percentage of the families living in these units create a portion of the demand. We have found that the percentage of units projected as a result of substandard housing varies significantly from study to study. In addition, without any boundaries, it provides the market analyst with a contingency to justify demand. The 20 percent limitation was offered based upon previous experience with market analysis. Without a threshold, FmHA is defenseless in challenging a professional market analyst. It is reasonable to set a limit since there is no objective methodology in which to actually determine how many people residing in substandard units will move to a newly completed Section 515 complex. The Agency will, however, allow a higher number if the analyst can clearly document that the occupants of more than 20 percent of the occupied substandard rental units are willing and able to relocate to the proposed housing. The documentation will be in the form of signed survey sheets prepared expressly to capture such information.

The use of market studies does not prohibit anyone from doing more to assess the market, such as making local contacts. Placing a questionnaire in a newspaper does not ensure the return of any responses. A definition of substandard has been added.

FmHA feels it necessary to standardize the way need is calculated in order to provide some uniformity in market studies. The revised Exhibit A–8 outlines the sources of demand which will be accepted by the Agency. There was a discrepancy between this section and the Exhibit A–8 language in delineating sources of need. This section of the regulation has been changed to agree with the language of Exhibit A–8.

Paragraph II.F

Comment: One respondent suggested that the tax credit income information be provided with the application and not with the preapplication.

FmHA response: Feasibility must be determined during the preapplication stage and the ranges of local incomes must be established at that time. For this reason, the Agency cannot change this requirement. Other discussions concerning tax credit incomes is found under § 1944.215(w)(3).

50. Exhibit A–7

Paragraph III.C

Comment: One respondent suggested adding a provision that the option to buy be with the current owner of public record.

FmHA response: We agree with this suggestion and have added that provision.

51. Exhibit A–7

Paragraph IV.F

Comment: One respondent objected to applicants who publicly bid their projects having to submit a Form FmHA 1924–13. One respondent felt that requesting this much detail information at the preapplication stage would not prove useful since cost estimates change markedly between preapplication and application. One respondent supported this section.

FmHA response: FmHA's new cost tracking system will track the trade item costs of each project. The Form FmHA 1924–13 provides a breakdown of trade item costs which will readily facilitate the use of the cost tracking system. Otherwise, the value of the tracking system will be diminished, thus not allowing the Agency to establish cost data comparisons. Persons submitting bids must have prepared extensive cost estimates in preparing the bid. Therefore, we do not feel this will cause an undue burden on the contractor.

52. Exhibit A–8

Comment: One respondent suggested that a definition of substandard be included. One respondent asked if FmHA intends to prepare and distribute special tabulations of substandard units by its definition, by occupancy, tenure, income, and household size. Several respondents expressed objection to FmHA not considering elderly homeowners as a basis of need. Several respondents objected to the 20 percent ceiling on substandard units which FmHA will accept in the determination of need. One respondent raised the question of who is responsible for determining if the analyst is qualified and what the qualifications are for preparing a study. That person also wanted to know if the study is incomplete, is the preapplication determined incomplete and returned to the applicant. Two respondents felt that requiring the market analyst to make an on-site visit was a significant improvement in this exhibit. One respondent suggested that the exhibit be used as a guide only and not mandated. One respondent asked if FmHA intended to exclude rentoverburden households from rentup demand estimates. That respondent also expressed an opinion that the listing of small businesses in the Site section of the exhibit would be construed to mean those businesses must be available in order for a community to be considered eligible for FmHA financing. Other comments and suggestions offered on the technical content of the exhibit are too numerous to list here.

FmHA response: A definition for substandard has been included. HUD furnished FmHA with information pertaining to occupancy in substandard units based on the 1980 census. That information was disseminated to our field staff for distribution to market analysts. We are in the process of coordinating with HUD to obtain this same data when it becomes available. (See discussion of elderly homeowners under Exhibit A–7, Paragraph II.A. and a discussion of substandard housing under Exhibit A–7, Paragraph II.A). The qualifications of a market analyst and the responsibility for determining whether an analyst is qualified are iterated in Exhibit A–7 of this instruction. If a market study is incomplete, the applicant may furnish additional information to complement the market study without the necessity of returning the entire preapplication. This will inevitably delay the processing of the preapplication. The requirement that a market analyst visit the site of the proposed project was not introduced with this revision; it has always been a requirement. The purpose of the exhibit is to require enough information on which a feasibility decision can be based and to establish uniformity in the content of studies. Prior to FmHA issuing the exhibit, the market studies varied greatly and all did not contain the most basic types of information. We have seen a marked improvement in the studies because of the issuance of the exhibit. While FmHA originally allowed applicants to consider the exhibit as a guideline, we did not feel it prudent to continue this practice. The exhibit is, therefore, required in order for the study to be acceptable to the Agency; market studies which do not contain Exhibit A–8 requirements will not be acceptable. We understand that the HUD information on rentoverburdened households is not yet available. In the interim, language has been added to the exhibit which invites the analyst to include this type of information where available. While this exhibit is not the proper vehicle for establishing policies concerning required community services and facilities, the Site section has been reworded to state that the businesses listed are an example of the types of business which may be located in the community.

Many of the proposed changes are based on comments and recommendations submitted from market analysts over the past two years. Market analysts have expressed differing opinions concerning the content of this exhibit. We have considered all of these differing opinions and have amended the exhibit to include what we consider a rational and understandable basis for a market study. We have attempted to correct the original exhibit requirements where it lacked sufficient statistics to make a determination for elderly and congregate projects. Other changes made to the exhibit will standardize the types of information market studies will contain and provide the uniformity heretofore missing. We have considered all comments and the exhibit now reflects those changes which FmHA has determined appropriate for inclusion.

53. Exhibit A–9

Paragraph 2

Comment: One respondent suggested a rewrite of this section to include other items of construction.

FmHA response: This section has been reworded to further define what types of information on related costs must be submitted in addition the Form FmHA 1924–13.

Paragraph 5

Comment: A few respondents recommended that the market information be updated after 12 months rather than requiring a new study.

FmHA response: FmHA feels this is reasonable and has changed the wording to reflect an update rather than a new study.

54. Exhibit A–10 is Amended to Include Language Implementing Section 515(x)(2) of the Housing Act of 1949, as Amended, to Provide for Cooperation between FmHA and State Agencies in Developing a Comprehensive Housing Affordability Strategy (CHAS)

Other comments: Other comments were received which were general in nature and did not pertain to any specific issues. These comments have not been addressed by FmHA.

List of Subjects

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Low and moderate income housing.

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low- and moderate-income housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

Accordingly, parts 1924, 1930, and 1944, chapter XVIII, title 7, Code of Federal Regulations are amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

2. Section 1924.4 is amended by redesignating paragraphs (i)(4) through (i)(7) as (i)(5) through (i)(8), respectively, and by adding paragraphs (i)(4) and (i)(9) to read as follows:

§ 1924.4 Definitions.

* * * * *

(i) * * *

(4) Between the spouse, significant other, relatives, and step-relatives of the principal owners of the party of the first part and its management, such as Grandmother, Aunt, Daughter, Granddaughter, Grandfather, Uncle, Son, Grandson, Mother, Sister, Niece, Cousin, Father, Brother, Nephew;

* * * * *

(9) An identity of interest will also exist when another party can significantly influence the management or operating policies of the transacting parties or if it has an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

* * * * *

3. Section 1924.13 is amended by revising paragraphs (a)(3), (e)(1)(iii)(B)(*2*), (e)(1)(iv), (e)(1)(v), (e)(1)(vii)(B)(*1*), (e)(2)(i)(B), (e)(2)(i)(G), (e)(2)(i)(H), (e)(2)(ii)(C), (e)(2)(iii)(A), (e)(2)(iv), (e)(2)(v), and (e)(2)(viii) to read as follows:

§ 1924.13 Supplemental requirements for more complex construction.

* * * * *

(a) * * *

(3) *Architectural fees.* Fees for architectural services shall not exceed the fee ordinarily charged by the profession for similar work when FmHA financing is not involved. The fee should cover only the architectural services rendered by the architect. The reduction or elimination of any services described in paragraph (a)(5) of this section shall be directly reflected in the fee. Fees for special services rendered by the architects, such as the packaging of the loan application or additional nonarchitectural services, will not be authorized to be paid with loan funds.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(B) * * *

(*2*) A current, dated and signed financial statement of the contractor's operations indicating the payment status of accounts and any contingent liabilities that may exist. FmHA personnel will be responsible for analyzing the financial statement as to the sufficiency of the contractor's financial capability to carry out construction. The financial strength must demonstrate the ability of the contractor to pay all bills prior to receiving periodic draws of funds from the lender.

* * * * *

(iv) *Contract cost breakdown.* In any case where the loan approval official feels it appropriate, and prior to the award or approval of any contract in which there is an identity of interest as defined in § 1924.4 (i) of this subpart, the contractor and any subcontractor, material supplier or equipment lessor sharing an identity of interest must provide the applicant and FmHA with a trade-item cost breakdown of the proposed contract amount for evaluation. The cost of any surety as required by § 1944.222 (h) and (i) of subpart E of part 1944 of this chapter and § 1924.6 (a)(3) of this subpart, or cost certification as required by paragraph (e)(1)(v) of this section, will be included in the proposed contract amount and shown under General Requirements on Form FmHA 1924–13, which is available in all FmHA offices. FmHA personnel will be responsible for reviewing the estimates on Form FmHA 1924–13 to determine if the dollar amounts total correctly, to assure that costs are categorized under their appropriate columns, and to confirm that the estimated costs for all line items are reasonable and customary for the State.

(v) *Cost certification.* Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in § 1924.4 (i) of this subpart, the borrower, contractor and any subcontractor, material supplier, or equipment lessor having an identity of interest must each provide certification using Form FmHA 1924–13 as to the actual cost of the work performed in connection with the construction contract. The construction costs, as reported on Form FmHA 1924–13, must also be audited, in accordance with Government Auditing Standards, by a CPA, or LPA licensed on or before December 31, 1970. In addition, certain agreed upon procedures (available in any FmHA office) will be performed in accordance with Attestation Standards. In some cases, FmHA will contract directly with a CPA or LPA for the cost certification. In that event, documentation necessary to have the costs of construction certified by an FmHA contractor that they were the actual costs of the work performed, as reported on Form FmHA 1924–13, will be provided. Funds which were included in the loan for cost certification and which are ultimately not needed because FmHA contracts for the cost certification will be returned on the loan. FmHA personnel will utilize Exhibit M of this subpart (available in any FmHA office) and Form FmHA 1924–26, "Cost Certification Worksheet," to assist in the evaluation of the cost certification process.

(A) Prior to the start of construction, the borrower, contractor and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must submit, to the CPA or LPA, the accounting system that the borrower, contractor, subcontractor, material supplier or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable, the borrower must provide a written assertion that it has an accounting system that is suitably designed to provide for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted on Form FmHA 1924–13. Costs pertaining to a specific line item will be set up in the accounting system for that particular account. For instance, only costs of materials, supplies, equipment, and labor associated with concrete will be shown in the concrete account. The accounting system must also restrict costs to those pertaining to a specific project so that costs from multiple projects will not be co-mingled. The independent CPA or LPA shall report on the borrower's assertion in accordance with the Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA). The borrower's and the CPA or LPA's reports on the accounting system shall be provided to FmHA by the borrower.

(B) Prior to final payment to anyone required to cost certify, a trade-item breakdown showing the actual cost compared to the estimated cost must be provided to the owner and FmHA. Form FmHA 1924–13 is the form of comparative breakdown that must be used, and contains the certifications required of the applicant and contractor prior to final payment. The amounts for builder's general overhead, builder's profit, and general requirements, respectively, shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(1)(iv) of this section for any contractor, subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the borrower. The amounts for general overhead, builder's profit, and general requirements must be established prior to FmHA approving the construction contract and will not be changed during the course of construction. This applies to all contractors, subcontractors, material suppliers, or equipment lessors having or sharing an identity of interest with the applicant. Contract change orders will be processed to adjust the contract amount downward prior to the final payment to the contractor, if necessary, to assure that the amounts shown in the certificate of actual costs do not exceed the amounts represented in the contract cost breakdown. Reduction in the builder's profit, and general overhead if needed, will counterbalance any increase reflected in the contract costs. Any funds remaining as a result of hard cost savings will be applied to the account as an extra payment or used for eligible loan purposes approved by FmHA as long as the improvements are genuinely needed and will enhance marketability of the project. All increases or decreases of 15 percent or more in line item costs will require documentation as to the reason for the increases and/or decreases. The State Director may require documentation for increases and/or decreases of less than 15 percent, if he/she determines it necessary. This information will be required with the cost certification.

(C) The CPA or LPA audit, performed in accordance with Government Auditing Standards, will include such tests of the accounting records and such other auditing procedures of the borrower and the contractor (and any subcontractor, material supplier or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in accordance with the construction contract he/she considers necessary to express an opinion on the construction costs as reported on Form FmHA 1924–13. The CPA or LPA shall also perform the additional agreed upon procedures specified by FmHA (available in any FmHA office), performed in accordance with Attestation Standards, for the applicant and the contractor (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in accordance with the construction contract.

(D) Upon completion of construction and prior to final payment, the CPA or LPA will provide an opinion concerning whether the construction costs, as reported on Form FmHA 1924–13, present fairly the costs of construction in conformity with eligible construction costs as prescribed in FmHA regulations.

(E) In some cases, cost certification will be obtained by FmHA through direct contract with the CPA or LPA. The borrower and his/her CPA or LPA will cooperate fully with the contract CPA or LPA by providing all documentation necessary to conduct the certification. FmHA reserves the right to determine, upon receipt of the certified Form FmHA 1924–13 and the auditor's report, whether they are satisfactory to FmHA. If not satisfactory to FmHA, the borrower will be responsible for providing additional information.

(F) There will exist no business relationship between the CPA or LPA and the borrower except for the performance of the examination of the cost certification, accounting systems work, and tax preparation. Any CPA or LPA who acts as the borrower's accountant (performing manual or automated bookkeeping services or maintains the official accounting records) will not be the same CPA or LPA who cost certifies the project.

(G) Forms FmHA 1944–30, "Identity of Interest (IOI) Disclosure Certificate" and FmHA 1944–31, "Identity of Interest (IOI) Qualification Form," provide written notification to the borrower that willful and intentional falsification of cost certification documents will result in debarment of all violators in accordance with the provisions of FmHA Instruction 1940–M (available in any FmHA office). These forms require the disclosure of all identities of interest associated with project construction, certify the entity's ability to provide the contracted service, and cite the penalties for failure to disclose or falsify such certification. Each applicant/borrower will be required to complete and sign the forms (available in any FmHA office).

(H) Subcontracting development work.

(*1*) Contractors will not be allowed to obtain a profit and overhead unless they are performing actual construction. "Actual construction" means "work" as defined in American Institute of Architects (AIA) documents: "* * * labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations." Under this definition, contractors who choose to subcontract out construction of the project to another contractor will not obtain a builder's fee (general overhead and profit) when:

(*i*) More than 50 percent of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor, and/or

(*ii*) Seventy-five percent or more with three or fewer subcontractors, material suppliers and/or equipment lessors.

(*2*) Note: If two or more subcontractors have common

ownership, they are considered as one subcontractor.

(3) How to apply rule:

(i) The 50 percent rule will apply when division of the amount of the largest subcontract by the contract sum of the construction contract results in more than 50 percent.

(ii) The 75 percent rule will apply when division of the sum of the amounts of the three largest subcontracts by the contract sum of the construction contract results in 75 percent or more.

(l) Qualified contracting entities. Contractors, subcontractors, material suppliers, and any other individual or organization sharing an identity of interest and providing materials or services for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract. Form FmHA 1944–31 will be prepared and executed by the contracting entities. The form provides notification to the entities of the penalty, under law, for erroneously certifying to the statements contained therein. Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of FmHA Instruction 1940–M (available in any FmHA office).

* * * * *

(vii) * * *

(B) * * *

(1) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the costs are reasonable, an exception to competitive bidding may be granted. Written documentation of the State Office review results will be placed in the application file.

* * * * *

(2) * * *

(i) * * *

(B) Dated and signed financial statements on the owner-builder's operation (including balance sheets and statements of income and expense) from current and prior years indicating the payment status of the owner-builder's accounts and any contingent liabilities that may exist. FmHA personnel will be responsible for analyzing the financial statement as to the sufficiency of the owner-builder's financial capability to carry out construction. The financial strength must demonstrate the ability of the owner-builder to pay all bills prior to receiving periodic draws of funds from the lender.

* * * * *

(G) A current, dated, and signed trade-item cost breakdown of the estimated total development cost of the project which has been prepared by the applicant/owner-builder. Form FmHA 1924–13 will be used for this purpose. If cost certification services are required by FmHA, the cost of such services may be included in the total development cost of the project. Any subcontractor, material supplier, or equipment lessor sharing an identity of interest with the applicant/owner-builder as defined in § 1924.4(i) of this subpart must also provide a trade-item cost breakdown of the proposed amount.

(H) Prior to the start of construction, the owner-builder and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must submit, to the CPA or LPA, the accounting system that the owner-builder, subcontractor, material supplier or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable, the owner-builder must provide a written assertion that it has an accounting system that is suitably designed to provide for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted on Form FmHA 1924–13. Costs pertaining to a specific line item will be set up in the accounting system for that particular account. For instance, only costs of materials, supplies, equipment, and labor associated with concrete will be shown in the concrete account. The accounting system must also restrict costs to those pertaining to a specific project so that costs from multiple projects will not be co-mingled. The independent CPA or LPA shall report on the owner-builder's assertion in accordance with the Standards for Attestation Engagements of the AICPA. The owner-builder's and the CPA or LPA's reports on the accounting system shall be provided to FmHA by the owner-builder.

* * * * *

(ii) * * *

(C) The total development cost of the project does not exceed that which is typical for similar type projects in the area. The total development cost recognized by FmHA for each individual case will be determined by the MFH Coordinator with the advice of the State Architect.

* * * * *

(iii) * * *

(A) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the construction cost is reasonable, an exception to competitive bidding may be granted. Written documentation of the State Office review results will be placed in the application file.

* * * * *

(iv) The development cost of the project may include a typical allowance for general overhead, general requirements and a builder's profit. These amounts may be determined by local investigation and also from HUD data for the area. The applicant/owner-builder and any subcontractors, material suppliers and equipment lessors having or sharing an identity of interest with the applicant/owner-builder may not be permitted a builder's profit, general overhead, and general requirements which exceed the amounts represented on their cost breakdown.

(v) Under no circumstances will loan funds be used to pay the owner/builder or its stockholders, members, directors or officers, directly or indirectly, any profits from the construction of the project except a typical builder's fee for performing the services that would normally be performed by a general contractor under the contract method of construction. Discounts and rebates given the owner-builder in advance must be deducted before the invoices are paid. If discounts or rebates are given after the invoices are paid, the funds must be returned to the supervised bank account or applied on the interim construction loan, as appropriate. Under no circumstances will the dollar amount be placed in the reserve account.

* * * * *

(viii) The applicant/owner-builder and any subcontractor, material supplier, or equipment lessor sharing an identity of interest as defined in § 1924.4(i) of this subpart must each provide certification as to the actual cost of the work performed in connection with the construction of the project on Form FmHA 1924–13 prior to final payment. The construction costs, as reported on Form FmHA 1924–13, must be audited by a CPA, or LPA licensed on or before December 31, 1970, in accordance with Government Auditing Standards, and certain agreed upon procedures (available in any FmHA office) performed in accordance with Attestation Standards. In some cases, FmHA will contract directly with a CPA or LPA for the cost certification. In that event, documentation necessary to have the costs of construction certified by an FmHA contractor that they were the actual costs of the work performed, as reported on Form FmHA 1924–13, will

be provided. Funds which were included in the loan for cost certification and which are ultimately not needed because FmHA contracts for the cost certification will be returned on the loan.

(A) The CPA or LPA's audit, performed in accordance with Government Auditing Standards, will include such tests of the accounting records and such other auditing procedures of the applicant/owner-builder (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in connection with the construction of the project he/she considers necessary to express an opinion on the construction costs as reported on Form FmHA 1924–13. Upon completion of construction and prior to final payment, the CPA or LPA will provide an opinion as to whether the construction costs as reported on Form FmHA 1924–13 present fairly the costs of construction in conformity with eligible construction costs as prescribed in FmHA regulations. FmHA reserves the right to determine, upon receipt of the certified Form FmHA 1924–13 and the auditor's report, whether they are satisfactory to FmHA. At a minimum, the CPA or LPA shall also perform any additional agreed upon procedures (available in any FmHA office) specified by FmHA, performed in accordance with Attestation Standards, of the owner-builder (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in connection with the construction. There will exist no business relationship between the CPA or LPA and the borrower except for the performance of the examination of the cost certification, accounting systems work, and tax preparation. Any CPA or LPA who acts as the borrower's accountant (performing manual or automated bookkeeping services or maintains the official accounting records) will not be the same CPA or LPA who cost certifies the project.

(B) Prior to final payment to anyone required to cost certify, FmHA must be provided with a certification and a trade-item breakdown showing the actual cost compared to the estimated cost furnished in accordance with paragraph (e)(2)(i)(G) of this section. Form FmHA 1924–13 is the form of comparative breakdown that must be used, and contains the certification required of the applicant/owner-builder prior to final payment. The amounts for builder's general overhead, general requirements, and builder's profit shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(2)(i)(G) of this section for the owner-builder or any subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the applicant/owner-builder. Final payment to the owner-builder will be adjusted, if necessary, to assure that the amounts shown on the certificate of actual cost do not exceed the amounts represented on the cost breakdown. Any funds remaining as a result of hard cost savings will be applied to the account as an extra payment or used for eligible loan purposes approved by FmHA as long as the improvements are genuinely needed and will enhance marketability of the project. All increases or decreases of 15 percent or more in line item costs will require documentation as to the reason for the increases or decreases. The State Director may require documentation for increases or decreases of less than 15 percent, if he/she determines it necessary. This information will be required with the cost certification.

(C) Subcontracting development work.

(1) Owner-builders will not be allowed to obtain a profit and overhead unless they are performing actual construction. "Actual construction" means "work" as defined in AIA documents: "* * * labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations." Under this definition, owner-builders who choose to subcontract out construction of the project to another contractor will not obtain a builder's fee (general overhead and profit) when:

(i) More than 50 percent of the total cost of the building construction is subcontracted to one subcontractor, material supplier, or equipment lessor, and/or

(ii) Seventy-five percent or more with three or fewer subcontractors, material suppliers, and/or equipment lessors.

(2) **Note:** If two or more subcontractors have common ownership, they are considered as one subcontractor.

(3) How to apply rule:

(i) The 50 percent rule will apply when division of the amount of the largest subcontract by the total amount of the building cost results in more than 50 percent.

(ii) The 75 percent rule will apply when division of the sum of the amounts of the three largest subcontracts by the total building cost results in 75 percent or more.

(D) Qualified contracting entities. Contractors, subcontractors, material suppliers, and any other individual or organization sharing an identity of interest and providing materials or services for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract. Form FmHA 1944–31 will be prepared and executed by the contracting entities. The form provides notification to the entities of the penalty, under law, for erroneously certifying to the statements contained therein. Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of FmHA Instruction 1940–M (available in any FmHA office).

* * * * *

4. Section 1924.50 is revised to read as follows:

§ 1924.50 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0042. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 4 hours per response, with an average of 37 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0042), Washington, DC 20503.

PART 1930—GENERAL

5. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

§ 1930.123 [Amended]

6. Section 1930.123 is amended by revising in the first column of paragraph (l) the words "Identity of Interest Disclosure Certification Memorandum"

to read "Forms FmHA 1944–30, Identity of Interest (IOI) Disclosure Certificate, and FmHA 1944–31, Identity of Interest (IOI) Qualification Form."

7. Exhibit B of subpart C is amended by redesignating paragraphs V B 2 a and V B 2 b as paragraphs V B 2 b and V B 2 d, respectively, by revising newly redesignated paragraph V B 2 b, and by adding paragraphs V B 2 a and V B 2 c; by removing paragraph XIII B 2 a (1)(iii), by redesignating paragraph XIII B 2 a (1)(iv) as XIII B 2 a (1)(iii), and by revising paragraphs XIII B 2 a (1)(i), XIII B 2 a (1)(ii), and the introductory text of newly redesignated paragraph XIII B 2 a (1)(iii) to read as set forth below; and by revising in the first column of paragraph XIII C 2 f (3) the words "Identity of Interest Disclosure Certification Memorandum" to read "Identity of Interest (IOI) Disclosure Certificate, Form FmHA 1944–30 and Identity of Interest (IOI) Qualification Form, Form FmHA 1944–31".

Exhibit B of Subpart C—Multiple Housing Management Handbook

* * * * *

V * * *
B * * *
2 * * *

a FmHA Forms 1944–30, "Identity of Interest (IOI) Disclosure Certificate," and FmHA 1944–31, "Identity of Interest (IOI) Qualification Form," (available in any FmHA Servicing office) will be completed and submitted as part of the management plan. Management agents will sign either form as "applicant."

b The initial disclosure shall be in effect for a period of 3 years and renewed every 3 years thereafter, except if there are any changes in the business practices of the applicant/borrower and/or management entity during the interim years that include identity of interest concerns, the entity must file amended Forms FmHA 1944–30 and FmHA 1944–31.

c The forms provide notification to the entities of the penalty, under law, for erroneously certifying to the statements contained therein.

* * * * *

XIII * * *
B * * *
2 * * *
a * * *
(1) * * *

(i) The initial operating capital must be in the form of cash as set forth in § 1944.211 (a)(6) of subpart E of part 1944 of this chapter.

(ii) The borrower will have deposited the required initial operating cash into the general operating account by the time of the FmHA loan closing or when interim financing funds are obtained, whichever occurs first. These funds will blend with other revenue that accrues to the account to cover budgeted expenditures including payment of return to owner.

(iii) After 2, but before 5 full (12 month) borrower fiscal years of project operation, the borrower may request (in writing) the State Director's authorization to make a one-time withdrawal of the initial operating capital, or a part of it. The one-time withdrawal can never exceed the initial operating capital as described in the loan agreement or loan resolution. The withdrawal can be approved provided that:

* * * * *

8. Exhibit B–3 of subpart C is amended by revising paragraph I D and the list of Attachments at the end of this exhibit to read as follows:

Exhibit B–3 of Subpart C—Sample Management Agreement for Farmers Home Administration (FmHA) Financed Multiple Family Housing (MFH) Projects

* * * * *

I * * *

D *Identity of interest.* The Agent discloses to the Owner and FmHA any and all identities of interest that exist or will exist between the Agent and the Owner, suppliers of material and/or services, or vendors in any combination of relationship. Forms FmHA 1944–30, "Identity of Interest (IOI) Disclosure Certificate," and FmHA 1944–31, "Identity of Interest (IOI) Qualification Form," completed by the Agent as "applicant," are attached and made part of this agreement.

* * * * *

Attachments: Management plan, Loan resolution or agreement, Identity of Interest Disclosure Certificate, Identity of Interest Qualification Form.

Exhibit B–8 of Subpart C [Amended]

9. Exhibit B–8 of subpart C is amended by revising in the first column the words "Identity of Interest (IOI) Disclosure Certificate Memorandum" to read "Forms FmHA 1944–30, 'Identity of Interest (IOI) Disclosure Certificate,' and FmHA 1944–31, 'Identity of Interest (IOI) Qualification Form'."

PART 1944—HOUSING

10. The authority citation for part 1944 continues to read as follows:

Authority: 7 U.S.C., 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

11. Section 1944.205 is amended by removing the definition for "Irrevocable letter of credit;" by adding the definitions for "Servicing office" and "Servicing official;" and by revising the definition for "Initial operating capital" to read as follows:

§ 1944.205 Definitions.

* * * * *

Initial operating capital. Cash to pay for costs such as property and liability insurance premiums, fidelity coverage premiums if an organization, utility hookup deposits, maintenance equipment, movable furnishings and equipment, printing lease forms, and other initial operating expenses. The initial operating capital will be at least 2 percent of the total development cost of the project.

* * * * *

Servicing office. FmHA servicing office or other place designated by the FmHA State Director where loan requests are processed.

Servicing official. FmHA servicing official or other FmHA staff member designated by the State Director to be responsible for processing loan requests.

* * * * *

12. Section 1944.211 is amended by removing paragraph (a)(6)(iii); by redesignating paragraph (a)(6)(iv) as paragraph (a)(6)(iii); and by revising paragraphs (a)(4), (a)(6)(i) and (a)(6)(ii) to read as follows:

§ 1944.211 Eligibility requirements.

(a) * * *

(4) With the exception of a nonprofit organization, consumer cooperative or public body, provide from its own resources the borrower contribution required by § 1944.213 (b) of this subpart. This contribution must be in the form of cash, land, or a combination thereof.

* * * * *

(6) * * *

(i) The applicant will provide a detailed list of all materials and equipment needed to be funded by the initial operating capital including, but not limited to, property and liability insurance premiums, fidelity bond premiums when the applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction, purchase of office equipment and furniture, community room furnishings, other movable equipment and furnishings, congregate items referenced in § 1944.224 of this subpart, advertising expenses, management fees, etc. The list will be approved by the servicing office based upon similar projects in the State. The initial 2 percent operating and maintenance (O&M) expenses, plus any amounts needed for these items above the 2 percent, must be provided in cash.

(ii) The O&M cash will be deposited into the general operating account in accordance with the provisions of the loan agreement or loan resolution. FmHA will be provided with documentation of the deposit prior to the start of construction or loan closing (whichever is first) and such funds will be used for authorized purposes only.

* * * * *

13. Section 1944.212 is amended by adding paragraph (c)(3)(iii) and by revising the introductory text of paragraph (b), paragraphs (c)(1), (c)(2), (c)(3)(ii), (g), (i), and the introductory text of paragraph (j) to read as follows:

§ 1944.212 Loan and grant purposes.

* * * * *

(b) Purchase and rehabilitate existing buildings only when the loan for such rehabilitation does not exceed by 5 percent the loan for new construction in the same area and when moderate or substantial modifications, repairs or improvements to the structures are necessary to meet the requirements of decent, safe, and sanitary living units.

* * * * *

(c) * * *

(1) Loan funds used to purchase land may not exceed the estimated market value of the site in its present condition as shown by a current appraisal in accordance with FmHA Instruction 1922–B (available in any FmHA office).

(2) With prior written approval of the State Director, loan funds may be used to buy land from a member of a broadly-based nonprofit applicant/organization.

(3) * * *

(ii) The cost of the excess land is a reasonable portion of the loan; and

(iii) The site density requirements of § 1944.215(a)(6) of this subpart are met.

* * * * *

(g) Purchase and install ranges, refrigerators, drapes, blinds/shades, drapery rods, and clothes washers and dryers. Laundry facilities are required in all projects and clothes washers and dryers should be provided in a central laundry room. Normally, a minimum of one washer and dryer should be provided for every 8 to 12 units in a project. Clothes washers and dryers may not be installed in individual units if the installation is not customary in the area for the size of project and type of housing involved. In any case, both central and individual laundry facilities will not be provided in a single project.

* * * * *

(i) Pay related costs such as fees and charges for market studies, tax credit application, legal (costs pertaining to the closing of the FmHA loan only), archeological, architectural, engineering, environmental, and other appropriate technical and professional services. The fees and charges may be paid to an applicant or officer, director, trustee, stockholder, member, or agent of the applicant provided those fees and charges are reasonable and typical for the area and are earned and the identity of interest is disclosed. Legal, technical, and professional fees do not include the costs incurred in the formation or incorporation of the limited profit applicant, costs of syndication, or the payment of a loan packaging or development fee.

(j) Provide loan funds to enable a nonprofit group or public body to pay fees for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist it in the formation or incorporation and development and packaging of its loan docket and project, as well as legal, technical and professional fees incurred in the formation or incorporation of the applicant entity.

* * * * *

14. Section 1944.213 is amended by removing paragraph (c)(12); by redesignating paragraphs (b)(4), (b)(5), and (b)(6) as paragraphs (b)(5), (b)(6), and (b)(7), respectively; by adding paragraph (b)(4); and by revising paragraphs (c)(6), (c)(10), the introductory text of paragraph (d), paragraph (d)(1)(ii), and the introductory text of paragraph (e)(1) to read as follows:

§ 1944.213 Limitations.

* * * * *

(b) * * *

(4) The examples set forth in Exhibit A–13 of this subpart (available in any FmHA office) provide clarity in determining the proper loan amount for various types of loans.

* * * * *

(c) * * *

(6) Facilities contrary to cost containment measures defined in § 1944.215 (a) of this subpart.

* * * * *

(10) Land which the applicant or a member of an applicant/organization owns or land which is owned by any other organization in which any member of the applicant/organization has an interest, or has had an interest within the last 3 years, including any commission due on the sale thereof, except as authorized in § 1944.212(c)(2) of this subpart.

* * * * *

(d) *Obligations incurred before loan closing.* When an applicant files a preapplication for a loan, the servicing official will advise the applicant not to start construction or incur any indebtedness until the loan is closed, except for those cases involving interim financing; the guidelines outlined in § 1944.235(c)(1) of this subpart will then apply. During the period of preapplication review and processing, applicants will not take any actions with respect to their applications which would have an adverse impact on the environment or limit the choice of reasonable alternatives. This requirement does not preclude the applicant from developing preliminary plans or designs or performing other work necessary to support an application for Federal, State, or local permits or assistance. If the applicant incurs debts for work, materials, land purchase, or other authorized fees and charges before the loan is closed, the State Director may authorize the use of loan funds to pay the debts when all of the following conditions exist and debts were authorized in writing by FmHA prior to their being incurred (market studies will be exempt from this requirement):

(1) * * *

(ii) Prior to the date of preapplication as part of a predevelopment loan specifically intended as temporary financing from a public agency or nonprofit organization and the State Director secures prior concurrence from the National Office; or

* * * * *

(e) * * *

(1) No increase in per unit development cost will be approved, whether the circumstance causing the cost increase occurs before, during, or after the construction period, unless these conditions were unforeseen factors beyond the owner's control and the increase in cost was approved by FmHA in writing before the expense was incurred. (In case of an emergency, the requirement that the cost be approved by FmHA in writing before the expense is incurred is waived as long as the servicing official is notified by the next working day.) Such costs are:

* * * * *

15. Section 1944.215 is amended in paragraph (b)(1)(iii) by adding the words "(available in any FmHA office)" at the end of the paragraph; by revising in paragraph (h)(1) the words "What is Cooperative Housing?" to read "A Guide to Cooperative Housing"; and by revising paragraph (a), the introductory text of paragraphs (b) and (b)(1), paragraph (b)(1)(i), and the introductory text of paragraph (e) and by adding paragraph (w)(3) to read as follows:

§ 1944.215 Special conditions.

(a) *Cost containment.* To achieve affordable rents and occupancy rates (not considering rental assistance or similar subsidies), all development costs

will be economical in nature and not include costs for unnecessary or elaborate design features. Cost containment is not to be interpreted as accepting poor design or cheap construction. Projects must provide the features and amenities necessary for the lifestyles of the tenants and members. Consideration must be given to the cost/benefit ratio when evaluating, recommending, or requiring specific design features or construction techniques. Life cycle cost analysis will be employed to determine the types of materials which will reduce operation/maintenance costs even though their initial costs are higher. Operation and maintenance costs factored into proposed operating budgets will be adjusted accordingly. The following guidelines are to be followed when developing projects:

(1) Each State architect/engineer (A/E) will compile and maintain data on costs of all projects. Total project estimates will be compared with estimates available through the Marshall & Swift computer program. These estimates, along with the line item costs recorded in FmHA's Automated Multi-Housing Accounting System (AMAS) cost tracking system, will be used to establish a benchmark for future project costs. Any proposal that exceeds these costs must be carefully evaluated for possible cost reductions. The borrower will be responsible for resolving the differences in cost to bring the project into line with the lesser of the cost tracking system or Marshall & Swift estimates. Final determinations must be realistic, interrelated to maintenance and operation costs, and based upon local conditions and common sense. The State will consider circumstances such as high land costs, remote rural areas, etc., which could present a problem in achieving such an alignment of costs. The AMAS cost tracking system will be used to record both estimates and actual line item costs. At the time the preapplication estimates are being examined by FmHA, the percentages for builder's profit, general overhead, and general requirements will be calculated to determine if they are within the allowable percentages established in this paragraph. They will again be calculated at the time the final estimates are submitted to FmHA. Estimated amounts in excess of the allowable percentages will be reduced to the appropriate percentage. Once the final estimates are approved by FmHA, payment of builder's profit, general overhead, and general requirements will not exceed the estimated amounts. Allowable percentages for builder's profit, general overhead, and general requirements will not exceed 10 percent, 4 percent, and 7 percent, respectively. This will not be interpreted to mean that, if historical percentages for these costs were below 10, 4, and 7, respectively, FmHA will allow the costs to be increased automatically. Adequate justification and documentation will be required to approve an increase to 10, 4, or 7 percent for cases where any of the costs were previously below those levels.

(2) The elimination or reduction of unnecessary delays in application processing can contribute to cost containment through lower interest and other business expenses on land, inventory, tests, design studies, etc. When reasonable processing timeframes are established, known and followed, appropriate time can be planned for preparing quality application and construction documents. This can result in better instructions to the builder, fewer errors and lower construction costs.

(3) Most materials and systems are available in a range of qualities and prices. The construction documents will be carefully reviewed for specifications that require qualities or grades higher than necessary. These specifications will be accepted only if fully justified and no reasonable alternatives are available.

(4) Designs which employ standard building material dimensions and reduce waste will be used.

(5) Sites will require a minimum amount of site development work. The State Director may authorize a site requiring higher than normal site development costs only if:

(i) The proposed site and site development costs are less than the cost of the normal site and site development costs; or

(ii) There are no other sites available in the market area with a lower combined cost.

(6) All project site densities (units per acre) will be within the following ranges, regardless of site conditions unless local zoning requirements dictate otherwise:

	Minimum	Maximum
One-story buildings	10	14
Two-story buildings	14	18
Three or more story buildings	18	22

(i) For example: A 24-unit project composed of two-story buildings must have a site of at least 1.3 acres. FmHA will finance the purchase and development of larger sites, but not more than 1.7 acres. Ranges for projects with a mixture of building heights can be interpolated.

(ii) An exception may be made to this provision only if the site in question is the only site available in the market area and its size, shape, or condition makes a portion of the site unsuitable for building. An exception to this requirement must be granted by the State Director or a designee. The applicant must provide written documentation that no other sites are available.

(7) Sound judgment and common sense must also be used in construction inspections and final acceptance of projects. Field staff involved in these activities must be careful not to impose additional or unreasonable requirements on the builder that will increase construction costs. States should consider hiring enough construction inspectors to provide more than the required inspections and to allow multiple unscheduled and unannounced visits. The State Office may also, with National Office authorization, contract for inspection services to deter deviations from the FmHA-accepted construction documents. Prefinal and final inspections must be conducted by qualified FmHA personnel.

(8) Buildings will not include numerous wall and roof breaks, unusual designs requiring excessive corners and foundation off-sets, or that require more exterior entrances than absolutely necessary. Designs will not be considered acceptable that place dining facilities in structures attached to the main building when these amenities can be less expensively included within the main structure.

(9) Buildings will not include roof slopes less than 3/12 nor greater than 6/12 unless otherwise required by local authorities or in order to accommodate severe weather conditions.

(10) The use of repeat designs will be required from applicants whose architects have designed projects previously approved by FmHA. This does not mean "cloned" projects are required throughout the State and/or region. When a repeat design is being used in the same community, the exterior facade (such as color, siding material, etc.) must be noticeably changed except in the case of subsequent phases. The State Office architect will ensure that sufficient differences are included in the proposed plans which will preclude the appearance of "cloned" designs. "Predesigned" buildings must fit the basic existing contours of the proposed site.

(11) The following facilities are considered nonessential and will not be included in the loan unless required by local codes or ordinances:

(i) Garages/covered parking;

(ii) Bay/box/picture or similar type windows;

(iii) Fireplaces;

(iv) Community room furniture;

(v) Sliding glass/atrium or similar type doors;

(vi) Materials atypical for the area;

(vii) Atriums/solariums;

(viii) Saunas;

(ix) Whirlpools;

(x) Gyms (facilities to accommodate physical exercises may be included in elderly projects without regard to this restriction); and

(xi) Swimming pools.

(12) Other design features which will only be accepted if determined customary for the area are:

(i) Patios/balconies (minimum size which will accommodate handicapped accessibility);

(ii) Washer and dryer hookups in individual units; and

(iii) Washers and dryers in individual units.

(13) The following is a list of allowable amenities according to the type of units:

	Family	Elderly	Congregate	Group home
Active outdoor recreation	Yes	No	No	Yes.
Carpet	Yes	Yes	Yes	Yes.
Central laundry facilities	Yes	Yes	Yes	Yes.
Community rooms	No	Yes	Yes	Yes.
Dishwashers	No	Yes	Yes[1]	[1] Yes.
Drapes/blinds/shades	Yes	Yes	Yes	Yes.
Elevators for 2-story elderly	No	Yes	Yes	No.
Garbage disposals	No	No	Yes[1]	[1] Yes.
Lawn sprinklers—financing will depend on geographic area.				

[1] In central kitchens only.

(14) Total on-site parking spaces per living unit will be within the following ranges unless otherwise required by local authorities:

Note: Additional spaces for visitors, staff, or health care workers may be provided.

Family		Elderly		Congregate		Group	
Min	Max	Min	Max	Min	Max	Min	Max
1.0	1.5	0.5	1.0	0.25	1.0	0.25	0.5

(15) Management, maintenance, and community rooms should be in accordance with Guide 2 of subpart A of part 1924 of this chapter (available in any FmHA office). Laundry rooms should be no larger than necessary to accommodate equipment, circulation (including handicapped accessibility) and areas for sorting and folding clothes.

(b) *Type of housing.* All housing will be designed to:

(1) Be economically constructed and not of elaborate design or materials. All new construction will conform with the applicable development standards of § 1924.5(d)(1) of subpart A of part 1924 of this chapter. The gross square foot living area of new units will be within the ranges listed below. Living area is defined as: All enclosed space for the unit (except unfinished storage space for outdoor items and space needed for heating and/or cooling equipment) and measured from the exterior surface of the framing of exterior walls and the center line of interior party or corridor walls. States should establish ranges within these dimensions to be commensurate with unit sizes in the local market. For example, when conventional units in the market are at the low end of FmHA's range scale, FmHA will also build a comparably smaller unit.

Type of unit	Minimum/maximum living area (sq. ft.)
0-Bedroom Unit	350–500
1-Bedroom Unit	500–650
2-Bedroom Unit	650–800
3-Bedroom Unit	800–950
4-Bedroom Unit	950–1100

(i) An additional 100 to 120 square feet of living area may be added to the 4-bedroom unit guideline for each bedroom in excess of four. Floor areas for living and dining rooms should comply with Guide 2 of subpart A of part 1924 of this chapter (available in any FmHA office). The maximum square footage in congregate housing units will not exceed 110 percent of the minimum square footages listed above.

* * * * *

(e) *Loan resolution or loan agreement.* The loan resolution or loan agreement contains provisions of policy and procedure which should be carefully read, fully understood by the applicant, and executed by the applicant prior to loan approval. If any provisions are not appropriate to a particular case, proposed substitute language must be approved by FmHA and OGC. Subpart C of part 1930 of this chapter provides for the maintenance of certain accounts and the pledge of housing income as security. It contains regulatory provisions governing and giving FmHA power to impose requirements regarding the housing and related operations of the applicant. All sections and requirements determined applicable by OGC will form part of any other loan resolution or agreement that may be submitted by the applicant. These are:

* * * * *

(w) * * *

(3) Feasibility for projects receiving tax credits will require a more extensive examination since tax credits are predicated on renting to very-low income persons. Applicants choosing to

apply for tax credits will be responsible for identifying the amount of tax credits it anticipates requesting from the State, as well as the income percentage on which the credits will be based, and the percentage of units targeted for tax credit eligible persons. The market study must substantiate the presence of persons whose incomes would qualify for tax credits who cannot afford the basic rent and those persons whose incomes are tax credit eligible but who are still able to afford the basic rent.

* * * * *

§ 1944.222 [Amended]

16. Section 1944.222 is amended in paragraph (g) by adding the words "from the current owner of public record" at the end of the first sentence.

§ 1944.224 [Amended]

17. Section 1944.224 is amended in paragraph (a)(3)(i) by revising the reference to "§ 1944.211 (a)(6)(ii)" to read "§ 1944.211 (a)(6)(i)."

18. Section 1944.231 is amended by removing the definitions for "District Director" and "District Office" in paragraph (a), by redesignating paragraphs (e)(2) through (e)(4) as paragraphs (e)(3) through (e)(5), respectively, by adding a paragraph (e)(2), and by revising the introductory text of paragraph (e) to read as follows:

§ 1944.231 Processing preapplications.

* * * * *

(e) *Determining eligibility and feasibility.* After rating the preapplication, if the priority processing point score is sufficient to potentially authorize issuance of an AD–622 inviting a formal application within the next 24 months (except for RCH preapplications), the servicing official will review the proposal to determine eligibility, feasibility, and compliance with loan purposes, policies, and regulations. Eligibility/feasibility reviews will be completed in priority point score order. Where a tie in priority point score exists, the order of review will be determined in accordance with paragraph (c)(5) of this section. In cases where the market study is incomplete or not in accordance with Exhibit A–8 of this subpart, applicants will be required to have the study supplemented to agree with FmHA requirements. The time involved in supplementing the market study will cause the preapplication to be delayed in determining feasibility.

* * * * *

(2) In those cases where the need for new rental units is questioned by the servicing official, another market study may be obtained by the servicing office at its discretion through contract with a market analyst. The same market analyst who provided an assessment for the applicant will not be used. Issuance of all AD–622s in that market area will be delayed until the FmHA market study has been completed and its contents reviewed by FmHA.

* * * * *

19. Section 1944.235 is amended by removing paragraph (a)(1); by redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(1) through (a)(4), respectively; by revising newly redesignated paragraph (a)(2) and the introductory text of paragraph (c)(1); and by adding paragraphs (b)(3) and (c)(1)(viii) to read as follows:

§ 1944.235 Actions subsequent to loan approval.

(a) * * *

(2) Ensure that the servicing office has on file evidence that a deposit has been made to the general operating account of an amount of initial operating capital sufficient to cover the expected start-up costs.

* * * * *

(b) * * *

(3) Monetary default by original applicant/entity. An obligation may be transferred to any person or applicant eligible to receive an RRH loan when the original applicant/entity is in monetary default which has or may result in foreclosure by the interim lender, and:

(i) The applicant/entity assuming the obligation, or the interim lender, removes any liens filed against the property;

(ii) There have been no deviations from the FmHA approved plans and specifications;

(iii) The transferee will not be composed of any principals of the transferor;

(iv) The transfer will be in the best interest of the FmHA and prospective tenants;

(v) The applicant/entity and all members thereof whose obligations are transferred will not be considered eligible for further participation in the RRH program for at least 5 years from the date of the transfer of the FmHA loan obligation; and

(vi) Prior approval is obtained from the National Office.

(c) * * *

(1) *Interim financing.* When the amount of the loan exceeds $50,000, the applicant may obtain interim financing from commercial or public sources for the construction period if it can be obtained at reasonable interest rates, fees, and terms, and in the best financial interests of the Government. Interim financing will be obtained to preclude the necessity for multiple advances of FmHA funds. The interim lender must be authorized to operate in the State in which the project will be located and must have an established record of providing financing to entities other than FmHA-financed projects. Since the interim lender is responsible for inspecting construction along with FmHA, the borrowing entity (including any of its identity of interest entities) cannot provide interim financing to its own project. Interim financing will be used subject to the following:

* * * * *

(viii) Because interest rates can fluctuate between the time construction estimates are finalized and completion of construction, any excess funds remaining from interim financing will be returned on the FmHA loan. Also, interim funds remaining because of early completion of construction will be returned. The leftover interest may be used for certain other eligible loan purposes critical to the completion of the project which were unknown to the applicant and contractor at the time the loan was approved, provided prior National Office concurrence is obtained.

* * * * *

§ 1944.236 [Amended]

20. Section 1944.236 is amended in paragraph (c)(3) by revising the reference "§ 1944.215 (d)" to read "§ 1944.215 (c)."

21. Section 1944.237 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 1944.237 Subsequent loans.

(a) A subsequent loan is made to an applicant/borrower to complete, improve, repair, and/or make modifications to the project initially financed by FmHA, or for equity and/or other purposes when authorized by the provisions of subpart E of part 1965 of this chapter to avert prepayment. A subsequent loan to develop additional units must be rated and ranked in accordance with the priority point system contained in § 1944.231 of this subpart. Other subsequent loan requests do not have to compete for funding under the priority point system.

* * * * *

(c) * * *

(2) If the initial investment and 2 percent O and M amounts are sufficient to cover only the initial FmHA loan, the applicant/borrower must provide the additional respective amounts to cover the subsequent loan. The 2 percent O and M amounts must be in the form of cash as described in § 1944.211 (a)(6) of this subpart. The required amount of the initial investment is described in § 1944.213 (b) of this subpart.

* * * * *

22. Exhibit A of subpart E is amended by revising paragraph VIII to read as follows:

Exhibit A of Subpart E—How To Bring Rental and Cooperative Housing to Your Town

* * * * *

VIII Exhibits

The following exhibits may be used when applicable and, if necessary, adapted to meet the specific needs of applicants.

Exhibit

A–1 Legal Services Agreement
A–2 Survey of Existing Rental Housing
A–3 Rental Housing Survey
A–4 Cooperative Housing Survey
A–5 Housing Survey Summary
A–6 Housing Allowances for Utilities and Other Public Services
A–7 Information to be Submitted with Preapplication for a Rural Rental Housing (RRH) or a Rural Cooperative Housing (RCH) Loan
A–8 Outline of Professional Market Study
A–9 Information to be Submitted with Application for Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) Loans
A–10 Administrative Process for Combining Farmers Home Administration (FmHA) Assistance with Low-Income Housing Tax Credits
A–11 Processing Guidelines for Loans for Equity to Avert Prepayment
A–12 Market Study Checklist (available in any FmHA office)
A–13 Work Sheet for Loan Calculation (available in any FmHA office)
A–14 Information to be Submitted for Subsequent Loans (available in any FmHA office)

23. Exhibit A–7 of subpart E is amended by adding the words "subpart V," after the words "part 3015," in paragraph VII; by adding paragraph II.J; and by revising the introductory text of paragraph I.A., and paragraphs I.A.(3), I.A.(6), the introductory text of paragraph I.A.(7), I.H., II.A., the introductory text of paragraph II.B., paragraphs II.C., II.F., the last sentence of paragraph II.G, III.C., and IV.F to read as follows:

Exhibit A–7 of Subpart E—Information to be Submitted With Preapplication for a Rural Rental Housing (RRH) or a Rural Cooperative Housing (RCH) Loan

* * * * *

I. * * *

A. Financial Statements for Rental Projects—Each applicant must submit a current, signed, and dated financial statement. The financial statement must reflect sufficient financial capacity to meet the applicant's equity capital and initial operating capital requirements. Applicants may contribute cash, free and clear title to the building site, or a combination of both as an equity contribution. The initial operating capital must be furnished in cash.

* * * * *

(3) A financial statement will be required for limited partners in a limited partnership who will have 10 percent or more ownership.

* * * * *

(6) When the applicant and/or general partner(s) have multiple applications pending and/or when the State Director is uncertain of the applicant's ability to provide the necessary borrower contribution required by § 1944.213 (b) of this subpart, 2 percent initial capital contribution and/or other assets needed for a sound loan, the State Director may request the applicant to submit additional financial information relative to its financial position. This information may be obtained from 6- to 12-month projected pro forma statements with supporting schedules.

(7) All financial statements submitted must contain the following statement immediately preceding the signature line:

* * * * *

H. Farmers Home Administration (FmHA) requires that applicants disclose identities of interest that will exist in the development of the proposed housing. Forms FmHA 1944–30, "Identity of Interest (IOI) Disclosure Certificate," and 1944–31, "Identity of Interest (IOI) Qualification Form," (available in any FmHA office) will be completed and submitted as part of the preapplication package.

* * * * *

II. * * *

A. Economic justification and project size should be based on the housing need and demand from eligible prospective tenants or members who are permanent residents of the community and its surrounding trade area. Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, temporary residents of a community (such as college students in a college town, military personnel stationed at a military installation within the trade area, or others not claiming their current residence as their legal domicile) should be discounted in determining need and project size. The market study will reflect the types and sizes of units which are needed in the market area. For example, if the full market analysis shows a need for one-bedroom, two-bedroom; three-bedroom, and four-bedroom units, the preapplication must contain a percentage of three- and four-bedroom units to correspond to the need expressed by the market study in order to accommodate the larger families. The need will not be based on persons who own their own homes but will be derived from:

(1) Persons migrating into the area;

(2) Persons dwelling in family units who desire to move into their own units (elderly persons living with family members will only be considered if evidence of their interest in moving into the project is furnished with the market study);

(3) Conservative estimate (not to exceed 20 percent) of households living in substandard rental housing (lacking complete plumbing facilities or 1.01 or more persons per room). (A higher percentage will be allowed only if it can be clearly documented by signed survey sheets, developed expressly for this purpose, that occupants of more than 20 percent of the occupied substandard rental units are willing and able to move into the proposed project.);

(4) Demolition of rental stock;

(5) Allowance for a 5 percent vacancy rate in the growth of households since the last census; and

(6) Conservative estimate (not to exceed 20 percent) of households experiencing rent overburden provided the analyst has made a determination there are sufficient households in the market area to occupy any rental units vacated by those lower income persons who choose to move into the proposed project from the existing units.

B. A detailed study based upon data obtained from census reports, State or county data centers, individual employers, industrial directories, or chambers of commerce is required. FmHA personnel will utilize the market study checklist found at Exhibit A–12 of this subpart (available in any FmHA office) as a means for measuring market study credibility. The study will include:

* * * * *

C. Exhibit A–8 of this subpart outlines the information which professional rental market studies will be required to follow. The qualifications of the person preparing the market study should include some housing or demographic experience. The market study will be used by FmHA in evaluating market feasibility but will not be the sole factor in such a determination. The data and information provided in the market study will be used to supplement FmHA's knowledge of the market area and to facilitate rational judgment concerning the need for new rental units. Other considerations will be FmHA's experience with the housing market in the State and local area and U. S. Department of Housing and Urban Development's (HUD's) analysis of market feasibility for the proposed units.

* * * * *

F. The analyst must affirm that he/she actually made an on-site visit to the market area and that failure to do so may result in denial of further participation in the section 515 program by the analyst.

G. * * * The Cooperative Housing Survey form located at Exhibit A–4 of this subpart and in "A Guide to Cooperative Housing" may be used for this purpose.

* * * * *

J. Identification of the amount of tax credit units anticipated to be requested from the State Agency, the income percentage on which the credits will be based, and the percentage of project units targeted for tax credit eligible persons. This information is needed to determine the levels of incomes in the market area which will support the basic rents while also qualifying the borrower for tax credits.

III. * * *

C. The applicant will provide evidence of having control of the proposed site either by

ownership or by executing an option to buy with the current owner of public record.

IV. * * *

F. A detailed cost breakdown of the project on Form FmHA 1924–13, "Estimate and Certificate of Actual Cost," will be prepared and submitted by all applicants. In addition to completing the individual line items, the cost of items such as rights-of-way, equipment, and utility connections must be included and identified with the Form FmHA 1924–13. Off-site improvements and the method of prorating the cost between eligible and noneligible loan items must be provided with the Form FmHA 1924–13. The cost breakdown must also separately show items not included in the loan, such as furnishings, equipment, and the noneligible off-site improvements. The trade item cost breakdowns must be updated just prior to loan approval.

* * * * *

24. Exhibit A–8 of subpart E is revised to read as follows:

Exhibit A–8 of Subpart E—Outline of Professional Market Study

Market studies which do not address all segments of this outline will not be considered acceptable and may adversely affect the processing of preapplications. Preapplications with unacceptable market studies may be returned, deferred, or rejected, as determined appropriate by the servicing office.

The following information is to be used by analysts in the preparation of market studies for the Section 515 housing program. It generally contains the type and depth of information which Farmers Home Administration (FmHA) requires for evaluating the feasibility of prospective housing developments. The analyst will be expected to provide sufficient quantitative data (such as census tables), primary data (such as survey of existing comparables), and qualitative data (such as local contacts in the community) to support the conclusions reached. The analyst may present any other discussions and/or data which will help support the complete analysis of the market.

The outline provides for the demonstration of historical trends and allows the analyst to project into the 2 years beyond the last actual year of record. Additional guidance is offered in individual segments of the outline. You will need to provide a statement of your experience and why you think you are qualified to prepare such a study.

Determination of need and demand will be derived for prospective rental tenants only from: (1) Persons migrating into the area, (2) persons dwelling in family units who desire to move into their own units (elderly living with family members will only be considered if evidence of their interest in moving into the project is furnished with the market study), (3) conservative estimate (not to exceed 20 percent) of households living in substandard rental housing, (4) demolition of rental stock, (5) allowance for a 5 percent vacancy rate, and (6) conservative estimate (not to exceed 20 percent) of households experiencing rent overburden provided the analyst has made a determination there are sufficient households in the market area to occupy any rental units vacated by those lower income persons who choose to move into the proposed project from the existing units. Substandard is defined as (1) Units lacking complete plumbing and (2) overcrowded (1.01 or more persons per room).

For proposed congregate projects, the analyst will be responsible for researching the current need for, and usage of, services in the market area. The types of services being used, the provider of the services, and their location will be included.

Homeowners will not be included in the determination of need and demand for rental units. The analyst will discuss the current market for single family houses and how sales, or the lack of, will affect the demand for elderly rental units. If the economic conditions reflect a trend toward normal selling times for houses in the market area, then the discussion should point to how elderly homeowners may reinforce the need, but only as a secondary market and not as the primary market.

A statement, with signature, certifying that the analyst (including an individual under contract to the analyst's company) actually traveled to and physically surveyed the community where the proposed project will be located is also required.

I. Market Area—General

The market area will be the community where the project will be located and only those outlying rural areas which will be impacted by the project (excluding all other established communities). Except in specific cases of congregate housing projects where an expanded market may be justified, the market area will not include the entire county (or parish, township, or other subdivision). Any deviation from this definition must be coordinated with the servicing office. The market area must be realistic. The criteria for selection should be described by the analyst. A map showing the market area will be required. The following is an example of a market area description:

A. Based on an analysis of population and housing development patterns, major employers and commuting patterns, the effective market area for the subject proposal is defined to include all of (Name), 35 percent of (Name) and 25 percent of (Name) census divisions. This area is shown on Map 2 following Table 4 (page 11) in Section II of this report. In 1980, this geographic market area contained an estimated 6,350 persons (6.1 percent of the county total of 103,829 persons). During the 1970's decade, the overall market area experienced growth of 1,253 persons (representing 13.5 percent of total gains in the county). In 1990, the (Name) market area population of 7,603 represented 6.7 percent of the county population of 113,086. (See Table 4 and Map 2 in Section II for details.)

B. The effective market area for the subject proposal includes the town of (Name) and a portion of the unincorporated areas to the east and south. The (Name) River forms a natural barrier restricting development to the west. Housing development and population growth have occurred along major transportation corridors, particularly Interstate 81 and U.S. 11 between (Name) and (Name). Secondary growth has occurred along State Roads 63 and 68 to the northwest and southeast of (Name). The Interstate Industrial Park, with 16 employers providing 999 jobs, is centrally located within the market area.

II. Site

This section will contain a full description of the site, its position in the community and location with respect to residential support services.

A. The proposed site is located in the eastern section of (Town) on (Major Thoroughfare). The area surrounding the site is predominantly comprised of modest single family dwellings. The terrain is gently sloped, with grass, oak trees, and some shrubs.

B. The site is currently zoned for commercial business and is currently owned by a local car dealer.

C. The site is approximately .3 mile east of the heart of town which contains a grocery store, drugstore, restaurants, banking facilities, the post office, and town hall. Other shopping is available .2 mile south at (Town) Plaza.

D. The medical clinic, which provides services of an osteopath, X-ray technician, a physician's assistant, and a nurse, is approximately .8 mile north of this site. This clinic is open daily and also provides 24-hour emergency service. The nearest hospitals are (Large Town) and (Town).

E. All public services are available at the site.

F. Photographs of the site are required.

G. Communities suitable for multi-family projects may have certain smaller businesses necessary for the day-to-day living convenience of the tenants and to supplement the employment base. For example, these may include, but not be limited to, pharmacy, restaurants and fast food establishments, grocery and department stores, hardware and sundries, etc. A representative number of these businesses are to be listed (by name) and location with respect to the proposed site.

Name of business and street address

_____

_____

_____

III. Demographic Characteristics

A. *Economic profile.*

1. *Labor force and employment trends between 1980 and the present year.* This will provide current year estimates and projected changes at the county level.

Civilian Labor Force and Employment Trends and Forecasts, _____ County, 1980–19____

	1990	19__[1]	19__
Civilian Labor Force[2].			
Unemployment.			
Rate of Unemployment.			
Employment.			
Change in Total Employment.			
Number			
Percent			

	Total	Annual	Total	Annual
1980–1990.				
1990–19__.				
19__–19__ (2-year projection).				

[1] Preliminary—based on monthly data through _____

[2] Data based on place of residence.

Source:

2. *Employment data.* In order to determine how employment affects the market area, it will be necessary to show the number of employed persons for a 3-year period up to the current year, the increase and/or decrease and the percentage of unemployed at the county level. The employment figures can be obtained from the State Employment Commission.

Example

County

Year	Number	Change	Unemployment %
19__.			
19__.			
19__.			
19__ (through current year).			

Source

3. *Major employers.* This section will contain information pertinent to an analysis of the economic stability of the town. The major employers within the town and market area, the product or service offered by each employer, location of employer, and year each employer was established are types of data FmHA will need to evaluate. It is also important to know if the larger employers intend to increase or decrease number of employees in the immediate future or if there have been any significant recent changes in number of employees.

Example

Employer	Product/Service	Location	Year Established
Washington Aircraft.	Crop Dusting.	Town	1957

In addition, the study will include the number of employees and average weekly salary listed in the place of work employment data for the classification groups of manufacturing; construction; trade; services; transportation, communications, and utilities (TCU); finance, insurance, and real estate (FIRE); and government.

4. *Employment outside of county.* The analyst will give the percentage of persons employed inside the county and driving times, if appropriate.

Source

B. *Demographic profile.*

1. *Population.* The analyst will need to show population changes between 1980 and 1990, the reasons for the changes, the current year estimate and projected change. This information will be provided for the town, the market area, and the county. Any change in the County subdivisions (CCD, Township, Election District, etc.) between census years will have to be explained. These are to be shown in numeric characters as well as percentages.

Example

Year	Total			Annual	
	No.	Change	%	Change	%
1980.					
1990.					
19__ (current estimate).					

Projected: 19__ (2 years)

2. *Age characteristics.*

Age	Town, 1980–1990			County, 1980–1990		
	1980	1990	Change	1980	1990	Change
Under 18.						
19–34.						
35–54.						
55–61.						
62–74.						
75–84.						
85+.						

3. *Households.* A breakdown by town, market area, and county for last 2 census years, a current year estimate and a projection to the year the housing would be built (24 months) will have to be illustrated so that household formations can be tracked. This data will tell us what portion of a housing demand is being created by an increase in numbers of new households.

Year[a]	In group			Persons per household
	Population	Quarters	Households	
1980.				
1990.				
19__.				

Projected: 19__ (2 years)

4. *Households by Size/Type/Age of Members (elderly and congregate projects).*

	Market		
	Town	Area	County
Households with:			
1 or more age 60 years and over.			
1 person household.			
2 or more persons (family).			
2 or more persons (nonfamily).			
1 or more age 65 and over.			
1 person household.			
2 or more persons (family).			
2 or more persons (nonfamily).			

5. *Household type and relationship—Persons 65+ (elderly and congregate projects).*

	Market		
	Town	Area	County
Total.			
In Households.			
In Family Households.			
Householder.			
Spouse.			
Other Relatives.			
Nonrelatives.			
In Nonfamily Households.			
Male Householder.			
Living Alone.			
Not Living Alone.			
Female Householder.			
Living Alone.			
Not Living Alone.			
Nonrelatives.			
In Group Quarters.			
Institution (persons).			
Other Persons in Group Quarters.			

6. *Households by tenure.* This section is one of the more important aspects of the market analysis. This information will enable FmHA to more closely pinpoint the number of households which would comprise the target group of its evaluation. If the projected percentage of renters exceeds the historic percentage of renters, the analyst will have to explain why there is an increase. The information will be provided for town, market area, and county.

Example

Year	Total households	Owner	Percent	Renter	Percent
1980.					
1990.					
Estimate: 19__.					
Projected: 19__ (2 years).					

7. *Households by size.* The study will provide number of households by household size for the town, market area, and county.

8. *Tenure by age.* Tenure by age of householder for town, market area, and county (elderly and congregate projects).

	Owner	Renter	Total
55–64.			
65–74.			
75 years +.			

9. *Households by income group.* With the advent of Low Income Housing Tax Credits (LIHTC), we have found that more emphasis must be placed on analyzing persons whose incomes qualify for LIHTC. This means families who earn 60 percent or less of the median income as established by the U. S. Department of Housing and Urban Development (HUD). Therefore, feasibility for projects expecting to receive tax credits will also be based on the incomes required to support the tax credits. This could mean a level of incomes either slightly lower or higher than FmHA very low-incomes. For those tax credit units occupied by low-income families, the monthly gross rent cannot exceed 30 percent of the family income. Gross rent includes utilities, but excludes payments of rental assistance by Federal, State, and local entities. The applicant will be responsible for notifying FmHA and the market analyst of the amount of tax credits being requested, the income percentage on which the credits will be based, and the percentage of project units targeted for tax credit eligible persons. In those cases where less than 100 percent of the units will be designated for tax credit eligible persons, the incomes needed to support the non-LIHTC units will need to be analyzed. Income data will be shown for total and renter households. This information will be presented as follows: (It is recommended that decile distribution of incomes be obtained from HUD. Other sources are acceptable and must be identified.)

Incomes Needed to Support Proposed Rents + Utilities (without LIHTC):

1–Bedroom	2–Bedroom	3–Bedroom	4–Bedroom
$_____	$_____	$_____	$_____

Number of Tax Credit Units Requested for Project:

Percentage of Units to be Designated for Tax Credit Eligible Persons:

_____ _____ _____ _____

Tax Credit Eligible Incomes: (based on 50% [ ] or 60% [ ] of income)

$_____ $_____ $_____ $_____

Tax Credit Eligible Rents:

$_____ $_____ $_____ $_____

Proposed Project Rents:

$_____ $_____ $_____ $_____

Town or Market Area

Household income groups	All households		Renter households	
	Number	Percent	Number	Percent
Less than $000.				
$000–$000.				
$000–$000.				
$000–$000.				
$000–$000.				
Total.				
Median.				
Elderly Household Income Groups:				
Less than $.				
$000–$000.				

Household income groups	All households		Renter households	
	Number	Percent	Number	Percent
$000–$000.				
$000–$000.				
$000–$000.				
Total.				

Incomes of those eligible to live in the proposed project, considering tax credits and availability of rental assistance (RA):
$000–$000

$000–$000
Source:
County

Household income groups	All households		Renter households	
	Number	Percent	Number	Percent
Less than $000.				
$000–$000.				
$000–$000.				
$000–$000.				
$000–$000.				
Total.				
Median.				
Elderly Household Income Groups:				
Less than $.				
$000–$000.				
$000–$000.				
$000–$000.				
$000–$000.				
Total.				

Incomes of those eligible to live in the proposed project, considering tax credits and availability of RA:
$000–$000
$000–$000

Source:

C. *Housing supply profile*

1. *Building permits issued for the last 10 years.* The Housing Units Authorized by Building Permits and Public Contracts (C–40 Construction Report), furnished by the Bureau of the Census, provides a list of permits issued in all reporting jurisdictions. This publication is printed monthly and annually. If available, the number of units which have been demolished over the last 5 years will be needed.

Example:

Year	Town			County		
	Single family	Multifamily	Demol.	Single family	MultiFamily	Demol.
19_____.						
19_____.						
19_____.						
19_____.						
Through current year.						

2. *Housing stock.* The study must include the number of units within the town and county (where available), both single family and multi-family, the number of mobile homes by tenure, along with the number of substandard units by tenure, based on the most recent census data. Occasionally, a situation will exist within a community where a number of detached single family homes are standing vacant. How this condition may affect the rental market must be evaluated and discussed.

Example:

Inventory Change Profile

	Single family	Multifamily	Mobile home	
			Own	Rent
1980 Stock				
1990 Stock				

	Annual	Percent
Change in Number of Units.		

3. *Existing rental housing.* The analyst must determine where the proposed project will fit into the present housing stock. To accomplish this, the analyst will survey the existing units and will discuss how they (a) would be comparable with the proposed project in overall appeal; (b) are less than desirable because of the age factor or upkeep; (c) are inconveniently located; (d) do not provide the appropriate bedroom mix for the community need, etc.

4. *Details of existing stock.*

a. Additional narrative which describes the rental stock and provides tenant characteristics may be included. The survey will include both subsidized and nonsubsidized rentals. In those communities containing too many rental properties to list, all subsidized and a representative number of conventional projects will be included. Those conventional projects which have rent levels comparable to the proposed project will be listed. Because elderly persons may reside in family designated projects, the analyst will need to list all existing units and not just the existing elderly units. Photographs of the comparables are required.

b. The analyst will explore the availability of individual Section 8 certificates with the local housing authority since they can be used on any project to bring the existing rents into an affordable range. For instance, 10 to 15 available Section 8 certificates in a community could have an influence on the determination for new units and the number should be reduced to correspond to this availability. However, before automatically reducing the number of proposed units to match the number of available Section 8 units, the reason the certificates are available must be explored, (e.g., owners of non-Government subsidized units will not accept the certificates). (The bedroom sizes which the certificates cover must match the prospective bedroom sizes in the proposed project bedroom mix.)

c. The information needed in the survey must include the characteristics shown below. In conjunction with the survey, the analyst is expected to discuss the reasons for extended vacancies, either in individual developments or in the community in general. The data needed are:

Name of Project
No. of Units
Bedroom Mix
Amenities: (if available)
Drapes
Carpet
Type (i.e., family, elderly)
Year Built
Rent levels
Vacancies
Location
Central Cooling
Dishwasher
Garbage Disposal
TV Cable

IV. *Housing demand forecasts.*

The analyst must give a projection of the housing needs for a specified forecast period. The information should include the following as a minimum:

Sources of demand	Town	Market area
	Renter	Renter
New Households (from the most recent census year plus 2-year projection)	_____	_____
.20 of Persons Living in Substandard Rental Units	+_____	+_____
Plus Demolition of Rental Stock	+_____	+_____
.20 of Persons Experiencing Rent Overburden	+_____	+_____
Plus Vacancy (.05 of New Household Growth)	+_____	+_____
Total Demand	_____	_____
Number of Total Demand Determined Income Eligible (tax credit eligible, if applicable)	_____	_____
Less Number of Units in Planning Stage (FmHA/HUD) and Comparable Rental Units	–_____	–_____
Net Demand	_____	_____

If a penetration percentage is used in the study analysis, explain how that particular percentage was chosen.

Recommended Number By Unit Size:

One _____
Two _____
Three _____
Four _____

Names and positions of individuals in the community who provided information for the study:

_____
_____
_____
_____

I affirm that I, or an individual under contract to my company, have made a physical inspection of the market area and that information has been used in the full assessment of the need and demand for new rental units. I understand that misrepresentation of this statement may result in denial of further participation in the FmHA Section 515 program.

_____
Market Analyst

25. Exhibit A–9 of subpart E is amended in the introductory text of paragraph 9 by revising the words "Statement of Budget and Cash Flow" to read "Multiple Family Housing Project Budget" and by revising the exhibit heading and paragraphs 2 and 5 to read as follows:

Exhibit A–9 of Subpart E—Information To Be Submitted With Application for Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) Loans

* * * * *

2. Updated cost estimates on Form FmHA 1924–13, "Estimate and Certificate of Actual Cost," will be submitted by all applicants, along with the updated estimates of associated costs specified in Exhibit A–7 of this subpart.

* * * * *

5. If more than 12 months have transpired since the applicant submitted the market analysis, the State Director may require that it be updated if he/she determines it necessary.

* * * * *

26. Exhibit A–10 of subpart E is amended by adding paragraph II C to read as follows:

Exhibit A–10 of Subpart E—Administrative Process for Combining Farmers Home Administration (FmHA) Assistance With Low-Income Housing Tax Credits

* * * * *

II * * *

C. The State Director or designee will cooperate with the State Agency in the development of the Comprehensive Housing Affordability Stategy (CHAS) plan to ensure that, to the extent possible, resources available from FmHA are coordinated with the CHAS plan to maximize the use of housing funds in rural areas. This cooperation may include, but is not limited to, the sharing of Census data and priority point scores throughout the State, providing information on funding levels, preapplications and applications, and rural area designations made by FmHA.

§§ 1944.222, 1944.231, 1944.235, 1944.246, Exhibit A–6 [Amended]

27. 7 CFR chapter XVIII, part 1944, subpart E is amended by revising the words "District Office" to read "servicing office" in the following places:

a. Section 1944.222 (a)

b. Section 1944.231 (b), (c)(6), introductory text of (d), and (i)(1)(vi)

c. Section 1944.235 (f)(1)

d. Section 1944.246 (b)(3)

e. Exhibit A–6, paragraph IV

§§ 1944.235, 1994.236, 1944.239 [Amended]

28. 7 CFR chapter XVIII, part 1944, subpart E is amended by revising the words "district office" to read "servicing office" in the following places:

a. Section 1944.235 (e)(1)

b. Section 1944.236 (e)(2)

c. Section 1944.239 (introductory text)

§§ 1944.205, 1944.212, 1944.215, 1944.222, 1944.231, 1944.232, 1944.235, 1944.236, 1944.246, Exhibits A, A–6, and B [Amended]

29. 7 CFR chapter XVIII; part 1944, subpart E is amended by revising the words "District Director" to read "servicing official" in the following places:

a. Section 1944.205, the definition of "Dealer-contractor"

b. Section 1944.212 (l)(1)

c. Section 1944.215 (r)(6) (v) and (u)

d. Section 1944.222 (g)

e. Section 1944.231—the heading of (c), (c)(1)—3 times, (c)(3), (c)(4), introductory text of (c)(5)—2 times, (c)(6)—2 times, (c)(8), newly designated (e) (4) and (5), (f)(2), (i)(1)(i), (l)(1)(viii), (i)(5)(iv), (j)(3)—2 times

f. Section 1944.232 (c)—2 times

g. Section 1944.235 (c)(1)(v), introductory text of (c)(1)(vii), (c)(2)(ii), (d)—2 times, (e)(1), (e)(2), (f)(1), introductory text of (h), (h)(1)—2 times, (h)(2), and (h)(3)—2 times

h. Section 1944.236 (d)

i. Section 1944.246 (b)(2)(ii)

j. Exhibit A—paragraphs II. A., II. B., III. C., the undesignated paragraph following paragraph III. C.—2 times, IV. A.—3 times, IV. B. 1. b.—2 times, IV.B.6.a., IV.B.7.b., the introductory text of IV.B.8.b., IV.B.9.c., IV.B.12., the introductory text of IV.B.18.a., IV.B.22.—2 times, V. A.—2 times, V. C., V. D., VI. A. 1.

k. Exhibit A–6, paragraph IV

l. Exhibit B, at the end of the undesignated paragraph beginning "FmHA has required the applicant".

§ 1944.231 and Exhibit A [Amended]

30. 7 CFR chapter XVIII, part 1944, subpart E is amended by revising the words "District Director's" to read "servicing official's" in the following places:

a. Section 1944.231 (i)(1)(iv)

b. Section 1944.231 (i)(1)(v)

c. Section 1944.231 (k)(3)

d. Exhibit A, paragraph III.A.

Dated: January 19, 1994.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–3117 Filed 2–11–94; 8:45 am]

BILLING CODE 3410–07–U

Food Safety and Inspection Service

9 CFR Part 320

[Docket No. 86–041C]

RIN 0583–AA81

Heat-Processing Procedures, Cooking Instructions, and Cooling, Handling and Storage Requirements for Uncured Meat Patties

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Food Safety and Inspection Service is correcting a numbering error in its final regulation for Heat-Processing Procedures, Cooking Instructions, and Cooling, Handling and Storage Requirements for Uncured Meat Patties, which was published on Monday, August 2, 1993, (58 FR 41138).

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse W. Majkowski, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2383.

SUPPLEMENTARY INFORMATION: On August 2, 1993, the Food Safety and Inspection Service published a final rule (58 FR 41138) which amended part 318 of the Federal meat regulations by adding a new § 318.23 (9 CFR 318.23) which prescribes heat-processing procedures, cooking instructions, and cooling, handling, and storage requirements for uncured meat patties. The rule also amended part 320 of the Federal meat inspection regulations (9 CFR 320) by adding a new § 320.1(b)(7) (9 CFR 320.1(b)(7)) which prescribes the records to be kept by establishments. There was one numbering error in that section. The section number is corrected as follows:

§ 320.1 [Corrected]

On page 41152, in the third column, in part 320 under "4." the "(b)(7)" in the second line should read "(b)(9)."

Done at Washington, DC on: February 7, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–3368 Filed 2–11–94; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–09–AD; Amendment 39–8828; AD 93–16–06 R1]

Airworthiness Directives; Canadair Model CL–215–1A10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Canadair Model CL–215–1A10 series airplanes, that currently requires modification of the right aileron and aileron tab. That AD was prompted by an updated flutter analysis performed by the manufacturer, which revealed a potential flutter condition on these airplanes. The actions specified in that AD are intended to prevent potential flutter of the rudder-aileron interconnect tab, which could result in reduced controllability of the airplane. This amendment revises the applicability of the rule by adding additional airplanes that are subject to the addressed unsafe condition.

DATES: March 1, 1994.

The incorporation by reference of Canadair Alert Service Bulletin 215–A435, dated August 14, 1990, listed in the regulations, was approved previously by the Director of the Federal Register as of October 4, 1993 (58 FR 46766, September 3, 1993).

Comments for inclusion in the Rules Docket must be received on or before April 15, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–09–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeff Casale, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: On August 13, 1993, the FAA issued AD 93–16–06, Amendment 39–8663 (58 FR 46766, September 3, 1993), applicable to certain Canadair Model CL–215–1A10 series airplanes, to require installing weights to the aileron balance weight mounting channel and installing washers to the interconnect tab mass balance arms. That modification will maintain an aileron control surface mass balance within specified limits. That action was prompted by an updated flutter analysis, performed by Canadair during the development of the Model CL–215–6B11 turboprop airplane, which revealed that a potential flutter condition affecting the rudder-aileron interconnect tab could occur on certain Canadair Model CL–215–1A10 series airplanes. (The Model CL–215–6B11 is a Model CL–215–1A10 that has been converted from piston engine power to turbopropeller power.) This flutter analysis further revealed that, if the rudder-aileron interconnect mechanism fails, a flutter condition could occur at pressure altitudes above 10,000 feet. The actions required by that AD are intended to prevent potential flutter of the rudder-aileron interconnect tab, which could result in reduced controllability of the airplane.

AD 93–16–06 is applicable only to Canadair Model CL–215–1A10 series airplanes that are not equipped with powered ailerons. Since issuance of that AD, however, Transport Canada Aviation, which is the airworthiness authority for Canada, has advised that additional airplanes may be subject to the same unsafe condition addressed by the previous AD action. Further analysis has indicated that the flutter problems associated with the rudder-aileron interconnect tab may occur on all Canadair Model CL–215–1A10 series airplanes, including those equipped with powered ailerons.

Transport Canada Aviation revised Canadian AD CF–90–11, dated June 26, 1990, to require installation of the aileron modification on all Model CL–215–1A10 series airplanes, thereby assuring the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent potential flutter of the rudder-aileron interconnect tab, which could result in reduced controllability of the airplane. This AD expands the applicability of the current rule to include all Model CL–215–1A10 series airplanes. The requirements of the current rule remain unchanged. (The AD requires modification of the right aileron and aileron tab.)

There currently are no Model CL–215–1A10 series airplanes on the U.S. Register. All airplanes included in the revised applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that the revision to the applicability of the rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 20 work hours to accomplish the required actions, at an average labor charge of $55 per work hour. Based on these figures, the total cost impact of this AD would be $1,100 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–09–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8663 (58 FR 46766, September 3, 1993), and by adding a new airworthiness directive (AD), amendment 39–8826, to read as follows:

93–16–06 R1 Canadair: Amendment 39–8826. Docket 94–NM–09–AD. Revises AD 93–16–06, Amendment 39–8663.

Applicability: All Model CL–215–1A10 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent potential flutter of the rudder-aileron interconnect tab, which could result in reduced controllability of the airplane, accomplish the following:

(a) For Model CL–215–1A10 series airplanes; serial numbers 1001 through 1125 inclusive, not equipped with powered ailerons: Within 12 months after October 4, 1993 (the effective date of AD 93–16–06, amendment 39–8663), on the right wing install weights to the aileron balance weight mounting channel and washers to the interconnect tab mass balance arms, in accordance with Canadair Alert Service Bulletin 215–A435, dated August 14, 1990.

(b) For all other airplanes not subject to paragraph (a) of this AD: Within 12 months after the effective date of this AD, on the right wing install weights to the aileron balance weight mounting channel and washers to the interconnect tab mass balance arms, in accordance with Canadair Alert Service Bulletin 215–A435, dated August 14, 1990.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The installation shall be done in accordance with Canadair Alert Service Bulletin 215–A435, dated August 14, 1990. The incorporation by reference of this document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of October 4, 1993 (58 FR 46766, September 3, 1993). Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York ACO, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 1, 1994.

Issued in Renton, Washington, on February 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3349 Filed 2–11–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 900

[Docket No. 93N–0351]

Requirements for Accrediting Bodies of Mammography Facilities and Quality Standards and Certification Requirements for Mammography Facilities; Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim rules with request for comments; corrections.

SUMMARY: The Food and Drug Administration (FDA) is correcting two interim rules that appeared in the **Federal Register** of December 21, 1993 (58 FR 67558 and 67565). These documents were published to implement the Mammography Quality Standards Act of 1992. The documents were published with some errors. This document corrects those errors.

DATES: These regulations are effective February 22, 1994. Written comments by January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia M. Dubill, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

In FR Doc. 93–30992, appearing on page 67558, and in FR Doc. 93–30991, appearing on page 67565, in the **Federal Register** of Tuesday, December 21, 1993, the following corrections are made:

§ 900.2 [Corrected]

1. On page 67563, in the 1st column, in § 900.2 *Definitions*, in paragraph (f), in the last line, the reference to "§ 900.14(a)(1)" is corrected to read "§ 900.12(a)(1)."

§ 900.12 [Corrected]

2. On page 67572, in the 1st column, in § 900.12 *Quality Standards*, in paragraph (d)(1), in the last line, the word "insurance" is corrected to read "assurance".

Dated: February 8, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–3345 Filed 2–11–94; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AA56

National Archives at College Park, MD; Location of Records and Hours of Use

AGENCY: National Archives and Records Administration.

ACTION: Interim final rule.

SUMMARY: The National Archives and Records Administration is updating its regulations on location of records and hours of use to add the National Archives at College Park (Archives II) facility which has opened in College Park, MD, and to delete the Pickett Street facility in Alexandria, VA, which is no longer open for research. The rule is being issued as an interim final rule so that the new facility hours will be established on the same date as the revised research room hours in the National Archives Building. This rule will affect the public.

DATES: The effective date of this rule is March 16, 1994. Comments on the interim rule must be received by April 15, 1994.

ADDRESSES: Submit comments to Director, Policy and Program Analysis Division (NAA), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001. Comments may also be faxed to (301) 713–7270.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on (301) 713–6730.

SUPPLEMENTARY INFORMATION: The National Archives at College Park research complex opened to the public on January 3, 1994. Records will continue to be moved into the facility over the next two years as NARA completes a massive relocation of archival records from its facilities in the Washington, DC, area. Upon completion of the move, NARA will operate two archival research facilities in the Washington, DC, area: The National Archives Building and the National Archives at College Park, also known as Archives II. The Pickett Street facility in Alexandria, VA, which housed the Nixon Presidential materials and Cartographic research rooms, has closed; the Suitland Research Room will close for archival records research in 1996 when all archival records are relocated.

NARA is adopting the National Archives Building Central Research Room and Microfilm Research Room hours at Archives II. Uniform hours at the two facilities will allow adequate coverage in the research rooms. We considered selecting different days for the Archives II complex to have extended hours; however, we concluded that such an action would complicate staffing the research rooms during extended hours without providing significant benefit to most researchers. With the allocation of records between the National Archives Building and Archives II based on grouping of related records in one facility, most researchers will use either the National Archives Building or Archives II, but not both.

This rule is being issued as an interim final rule without prior notice of proposed rulemaking as permitted by the Administrative Procedures Act (5 U.S.C. 553(b)(B)) when the agency for good cause finds that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest. NARA finds that the public interest would be served by early establishment of extended research room hours at the new Archives II facility. Because NARA wishes to establish uniform hours for the Archives II research complex and the National Archives Building principal research rooms, NARA was unable to begin the rulemaking process for the Archives II facility until its rulemaking amending research room hours in the National Archives Building was completed. The final rule establishing hours for the National Archives Building is published elsewhere in today's **Federal Register**.

NARA will issue a final rule confirming or amending the Archives II research complex hours at the close of the comment period for this interim rule.

This rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR 1253

Archives and records.

For the reasons set forth in the preamble, chapter XII of title 36, Code of Federal Regulations, is amended as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Section 1253.2 is revised to read:

§ 1253.2 National Archives at College Park.

The National Archives at College Park is located at 8601 Adelphi Road, College Park, MD 20740–6001. Research complex hours are 8:45 a.m. to 5 p.m., Monday and Wednesday; 8:45 a.m. to 9 p.m., Tuesday, Thursday, and Friday; and 8:45 a.m. to 4:45 p.m. Saturday.

Dated: February 7, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–3361 Filed 2–11–94; 8:45 am]

BILLING CODE 7515-01-P

36 CFR Part 1253

RIN 3095–AA56

NARA Research Room Hours

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is modifying the hours that the Central Research Room, the Microfilm Research Room, and the Motion Picture, Sound and Video Research Room in the National Archives Building are open for research use. This rule affects researchers who use these research rooms in the evening. NARA is taking this action so that resources will be available for staffing the research rooms at the new National Archives at College Park (Archives II) facility.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on 301–713–6730.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on September 22, 1993 (58 FR 49251) proposing that certain research rooms in the National Archives Building that were open weekday evenings and on Saturday close at 8 p.m. instead of 10 p.m., Monday through Friday, and at 5 p.m. instead of 5:15 p.m. on Saturdays. Over 70 comments were received, most opposing the proposed change. Many of these commenters noted that the reduction in evening hours would adversely impact local researchers who conduct their research in the evening after their workday as well as visiting researchers who want to maximize their research time in as short a period as possible and local evening classes who visit the National Archives on night-time field trips. Commenters who use the Microfilm Research Room noted that the reduced hours would further limit access to microfilm readers, for which there is frequently a waiting period. Several commenters offered alternative research room schedules, such as a 9 p.m. weekday closing, later opening, or closing early on selected days of the week.

Commenters who favored the proposed change were primarily audiovisual archives researchers. Most of these commenters stated that extending the research hours for still pictures, cartographic, electronic and Nixon holdings at the National Archives at College Park facility (Archives II) would compensate for shortened hours in other research rooms.

After carefully considering all comments, NARA has developed a revised research room schedule that would accommodate the concerns of the commenters and provide adequate staff coverage in the research rooms. NARA held a public meeting on December 13, 1993, to discuss the comments received on the proposed rule and to solicit comments on the revised schedule. Notice of the meeting was provided individually to each commenter and a notice of the meeting was published in the **Federal Register** on November 30, 1993 (58 FR 63133). Twenty-one persons, including members of the public and NARA staff, attended the meeting. In addition, NARA received seven letters and three telephone calls from individuals who could not attend the meeting. These comments were also considered in the preparation of this final rule.

In this final rule, NARA is modifying research room hours in the Central Research Room and Microfilm Research Room in the National Archives Building to be 8:45 a.m. to 5 p.m., Monday and Wednesday; 8:45 a.m. to 9 p.m., Tuesday, Thursday, and Friday; and 8:45 a.m. to 4:45 p.m., Saturday. The hours for the Motion Picture, Sound, and Video Research Room have been deleted from this final rule because that research room will close for relocation to Archives II before the effective date of this final rule. (That research room will be covered by a separate rulemaking on research room hours at Archives II.)

The days for 9 p.m. closing of the research rooms were chosen to include days when other research facilities, including the Library of Congress, do not have evening hours. To further minimize the impact of the changed hours on researchers in the Central and Microfilm Research Rooms, NARA will not invoke the 36 CFR 1254.12(a) provision that researchers must return records up to 15 minutes before closing time in those research rooms.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993 and it has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1253

Archives and records.

For the reasons set forth in the preamble, chapter XII of title 36, Code of Federal Regulations, is amended as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Section 1253.1 is revised to read as follows:

§ 1253.1 National Archives Building.

The National Archives Building is located at Seventh Street and Pennsylvania Avenue, NW., Washington, DC 20408. Hours: For the Central Research Room and Microfilm Research Room, 8:45 a.m. to 5 p.m., Monday and Wednesday; 8:45 a.m. to 9 p.m., Tuesday, Thursday, and Friday; 8:45 a.m. to 4:45 p.m. on Saturday. For other research rooms, 8:45 a.m. to 5 p.m., Monday through Friday.

Dated: February 7, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–3362 Filed 2–11–94; 8:45 am]

BILLING CODE 7515-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG28

Procedural Due Process and Appellate Rights

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulations concerning procedural due process and appellate rights. The change adds three exceptions to the general requirement that a pretermination/reduction notice must be sent to a claimant prior to accomplishing an action adversely affecting benefit payments. The intended effects of the change are to allow earlier adjudicative response in certain situations and to reduce the amount of potential overpayments.

EFFECTIVE DATE: The effective date is March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.103(b)(3) in the **Federal Register** of July 15, 1993 (58 FR 38104–06). Interested persons were invited to submit written comments on or before August 16, 1993. No comments were received, and the amendments are adopted as proposed.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: January 12, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.103 [Amended]

2. Section 3.103(b)(3)(i) is amended by adding the words "to VA" after the word "provided."

3. In § 3.103 remove the word "or" at the end of paragraph (b)(3)(ii); remove the "." at the end of paragraph (b)(3)(iii) and add in its place a ";"; and add paragraphs (b)(3)(iv), (b)(3)(v), (b)(3)(vi), and an authority citation to read as follows:

§ 3.103 Procedural due process and appellate rights.

* * * * *

(b) * * *

(3) * * *

(iv) An adverse action is based upon a written and signed statement provided by the beneficiary to VA renouncing VA benefits (see § 3.106 on renouncement),

(v) An adverse action is based upon a written statement provided to VA by a veteran indicating that he or she has returned to active service, the nature of that service, and the date of reentry into service, with the knowledge or notice that receipt of active service pay precludes concurrent receipt of VA compensation or pension (see § 3.654 regarding active service pay), or

(vi) An adverse action is based upon a garnishment order issued under 42 U.S.C. 659(a).

(Authority: 38 U.S.C. 501(a))

* * * * *

[FR Doc. 94–3065 Filed 2–11–94; 8:45 am]

BILLING CODE 8320-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–266; FCC No. 94–33]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an Order extending the freeze of regulated cable service revenues from February 15, 1994 until May 15, 1994. This Order will provide affected parties a sufficient amount of time to familiarize themselves with any modifications to the Commission's cable rate regulations before the freeze is lifted.

EFFECTIVE DATE: This document is effective February 14, 1994, and extends the effectiveness of § 76.1090 until May 15, 1994.

FOR FURTHER INFORMATION CONTACT: Lawrence A. Walke, (202) 416–0847.

SUPPLEMENTARY INFORMATION: The text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239) 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Order

In the matter of implementation of sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation.

Adopted: February 8, 1994.
Released: February 8, 1994.

By the Commission: Commissioner Barrett issuing a separate statement.

I. Introduction

1. In this Order, on our own motion, we reconsider the expiration date of the freeze of regulated cable service revenues, and extend the expiration date of the freeze from February 15, 1994 until May 15, 1994. Later this month, the Commission will consider pending petitions to reconsider various aspects of its rate regulations. In considering the petitions for reconsideration and other issues outstanding in the rate regulation proceedings, the Commission will address, among other issues, the benchmark/price cap methodology, relief for small systems and so-called "going forward issues." The Commission also plans to adopt cost of service rules. This short extension of the freeze is the minimum amount of time required to enable affected parties to familiarize themselves with any modifications to the cable rate regulations before the freeze is lifted.

II. Background

2. In the Rate Order issued in May 1993, we established a comprehensive regulatory framework providing for rate regulation of the basic service tier by local franchising authorities and of cable programming services tiers by the Commission as required under the Cable Act of 1992. We established June 21, 1993 as the effective date of our new rate regulations. At the same time, we were concerned that during the period between adoption of our rules and the earliest practical opportunity for local franchising authorities to establish regulation of the basic service tier, and for consumers to file complaints with the Commission concerning rates for cable programming services tiers, cable operators could raise rates, effectively undermining the statutory mandate that rates for cable services remain reasonable. In particular, we were concerned that cable operators could raise rates to potentially unreasonable levels, as determined under the rate regulations ultimately adopted. We determined that a freeze of regulated cable service revenues until August 3, 1993 would provide a reasonable opportunity for local franchise authorities to become certified to regulate the basic service tier and for consumers to invoke by complaint the Commission's regulatory oversight over cable programming services tiers. Accordingly, we established a freeze until that date of revenues for cable services subject to regulation under the Cable Act of 1992. Under the freeze, the average monthly subscriber bill for cable services and associated equipment subject to rate regulation under the Cable Act of 1992 may not increase above the level determined under rates in effect on April 5, 1993. The Commission provided for waivers of the rate freeze in particular cases where a cable operator can demonstrate that the freeze would impose severe economic hardship or threaten the viability of continued cable service.

3. Subsequently, the Commission reexamined the feasibility of implementing rate regulation by June 21, 1993 in view of the significant additional responsibilities imposed on the Commission by the Cable Act of 1992 and a severe funding shortfall faced by the Commission at that time. We extended the freeze until November 15, 1993. Our regulations establishing rate regulation of cable service became effective September 1, 1993. However, those regulations were subject to reconsideration. Because the rate regulations were pending reconsideration, by early November, 1993, the Commission had received applications for certification from local franchising authorities representing less than 20 percent of communities that may regulate the basic service tier. Accordingly, on November 10, 1993, the Commission further extended the freeze on regulated revenues until February 15, 1994. We stated that, where local governments already have initiated rate regulation of the basic tier, we were not concerned that rates for the tier could raise to unreasonable levels after November 15, 1993. We noted that in the initial freeze order, we determined that a freeze on rates for the cable programming services tier was necessary to prevent operators from evading the freeze by moving programming from the basic to the cable programming service tier. We concluded in the Nov. 10 Extension Order that it was unnecessary to continue the freeze for cable programming service tiers where the basic tier has become subject to rate regulation. Accordingly, we amended the rule to make clear that the freeze would no longer apply to regulated cable services provided by cable operators whose basic cable service has become subject to rate regulation by a local franchising authority or the Commission. As a result, the number of cable systems subject to the freeze decreases as franchising authorities become certified.

III. Discussion

4. As of January 31, 1994, the Commission had received 4,896 applications for certification from local franchising authorities covering approximately 7,534 communities served by cable. Although these figures for certifications are significant increases from the last time we extended the freeze, they still represent only a small percentage of the nearly 30,000 communities that are potentially eligible to regulate the basic service tier. We continue to believe that it is important to provide franchising authorities and other affected parties sufficient time to become familiar with any modifications to our rate regulations before the freeze is lifted. We expect to act on reconsideration by the end of this month, and we believe that it is important that the statutory goal of ensuring reasonable rates not be undermined in the interim.

5. The Administrative Procedure Act requires that new substantive rules be published in the **Federal Register** at least 30 days prior to their effective date. In the event that we adopt any substantive changes to our rules on reconsideration, we anticipate that such revised rules would be released approximately 30 days after adoption and that these regulations would be published in the **Federal Register** within 15 days thereafter. In addition, we will be adopting rules addressing issues raised in the Third Notice of Proposed Rulemaking, 58 FR 46737 (Sep. 2, 1993). Thus, under this schedule, any new regulations adopted would become effective approximately 75 days after adoption. Extension of the freeze for that period of time is the minimum amount of time required to enable the Commission to adopt modified rules, should it choose to do so, and for such rules to become effective before the freeze is lifted.

6. We believe that this brief extension of the freeze will ensure that local regulators have been afforded a sufficient opportunity to file for certification and prepare for rate regulation under any modified rules that may be adopted. This extension should provide sufficient time for local regulators to become familiar with their rights and obligations under any such new regulations before cable operators are free to raise rates absent regulation. We emphasize that we will continue to provide cable operators the opportunity to file petitions for relief which demonstrate, in individual cases, that the freeze is causing severe economic hardship or threatens the viability of continued provision of cable service. Throughout the duration of the rate freeze, we have received only five such petitions for relief. Thus, we conclude that only a small percentage of cable operators believe that the freeze has imposed hardship sufficient to compel them to seek relief from the freeze.

7. We also note that the Commission has acted expeditiously in addressing petitions for reconsideration of its rate regulation rules. In adopting rate regulations for the cable television industry, the Commission recognized that the rules would require further refinement based on survey data of the cable television industry to be gathered and analyzed by the Commission. Shortly after the new rules became effective, the Commission conducted a survey to collect the data necessary to help it assess the rate regulations. The Commission has analyzed this survey data and is now in a position to resolve the pending petitions for reconsideration by the end of this month. In addition to analyzing the survey data during the period since adoption of the rate rules, the Commission has accommodated the requests of numerous cable operators, franchise authorities, programmers and many other interested parties, to meet with the Commission's new Chairman, who assumed office on November 29, 1993, for the purpose of expressing their views on the issues which the Commission will address on reconsideration of the rate rules.

8. We find good cause under the Administrative Procedure Act to make this freeze effective with less than 30 days advance publication in the **Federal Register**. As explained, an extension of the freeze from February 15, 1994 until May 15, 1994 is necessary to afford local franchising authorities a sufficient period in which to familiarize themselves with any revised regulations governing regulated cable service rates that the Commission may adopt on reconsideration later this month. We will make this *Order* and implementing rule changes effective upon publication in the **Federal Register** to prevent an expiration of the freeze that would otherwise occur with 30 days advance publication in the **Federal Register**. Such a result would seriously undermine the statutory goals of cable rate regulation and would be contrary to the public interest.

IV. Ordering Clauses

9. Accordingly, *it is ordered*, Pursuant to sections 4(i), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 543, that the freeze of cable service rates established in *Order*, 8 FCC Rcd 2921, 58 FR 17530 (April 5, 1993), *clarified*, 8 FCC Rcd 2917, 58 FR 21929 (April 26, 1993), *extended*, FCC 93–304 (released June 15, 1993), 58 FR 33560 (June 18, 1993), *extended*, FCC 93–494 (released November 10, 1993), 58 FR 60141, is extended until May 15, 1994.

10. *It is further ordered*, That § 76.1090 of the Commission's rules, 47 CFR 76.1090, is amended as set forth below.

11. *It is further ordered*, That this Order is effective February 14, 1994.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended, 106 Stat. 1460.

2. The effectiveness of section 76.1090 is extended until May 15, 1994, and the section is amended by revising paragraph (a) to read as follows:

§ 76.1090 Temporary Freeze of Cable Rates.

(a) The average monthly subscriber bill for services provided by cable operators subject to regulation under section 623 of the Communications Act shall not increase above the average monthly subscriber bill determined under rates in effect on April 5, 1993, until May 15, 1994.

* * * * *

[FR Doc. 94–3355 Filed 2–11–94; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–17; Notice 2]

RIN 2127–AE77

Federal Motor Vehicle Safety Standards; Air Brake Systems; Air Applied, Mechanically Held Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends Standard No. 121, Air Brake Systems, with respect to the requirements related to the application and holding of parking brake systems and the requirements related to the supply line pressure retention for trailer brakes. NHTSA initiated rulemaking to respond to concerns raised by International Transquip Industries (ITI) which manufactures air-applied, mechanically held parking brakes. These amendments provide regulatory relief by removing unnecessary restrictions to facilitate the use of alternative brake systems, without adversely affecting safety.

DATES: *Effective Date:* The amendments in this notice become effective March 16, 1994.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than March 16, 1994.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 93–17; Notice 2 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5274).

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Notice Of Proposed Rulemaking And Comments On The Proposal
III. Agency Decision
A. Grade Holding Requirements
1. Background Considerations
2. Diaphragm Failure Modes
3. Test Procedure
B. Supply Line Pressure Requirements for Trailers
IV. Leadtime
V. Rulemaking Analyses and Notices
1. Executive Order 12688 (Federal Regulation) and DOT Regulatory Policies and Procedures
2. Regulatory Flexibility Act
3. Executive Order 12612 (Federalism)
4. National Environmental Policy Act
5. Civil Justice Reform

I. Introduction

Manufacturers typically comply with the parking brake requirements in Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, by equipping their air-braked vehicles with spring brake systems. With these brake systems, air pressure holds the spring in the released position when a vehicle is being driven. Upon parking, the air pressure is vented, allowing the springs to apply the parking brakes. Consistent with NHTSA's policy to issue Federal safety standards that are not unnecessarily design restrictive, the agency has conducted a number of rulemakings to ensure that the standard does not unnecessarily prevent the manufacture of parking brake systems other than conventional spring brake systems (e.g., air-applied, mechanically held parking brake systems). See 44 FR 46850, August 9, 1979; 51 FR 10641, March 28, 1986; 56 FR 26927, June 12, 1991.

In 1992, International Transquip Industries, Inc. (ITI), a manufacturer of an air-applied, mechanically held parking brake system, informed NHTSA that it believed two of Standard No. 121's current requirements are unnecessarily design restrictive or otherwise inappropriate for its brake system design. One of these requirements specifies that a vehicle must meet parking brake grade holding requirements on a 20 percent grade (or other equivalent requirements), with "any single leakage-type failure" of certain parts, including a failed diaphragm. See S5.6 of Standard No. 121. ITI argued that this requirement is unnecessarily restrictive with respect to its air-applied, mechanically held single diaphragm brake system. That company argued that its brake system is designed so that the diaphragm will never experience a major failure, and that vehicles equipped with its brake system can be parked on a 20 percent grade in the presence of the types of diaphragm failures that typically occur.

The other requirement that ITI believed is inappropriate for its brake design is the supply line pressure requirement for trailers. See S5.8.2. This requirement addresses brake drag. According to ITI, it is inappropriate for its brake system, which is designed so that its brakes are either fully applied or fully released.

II. Notice of Proposed Rulemaking and Comments on the Proposal

After considering ITI's arguments, NHTSA issued a notice of proposed rulemaking (NPRM) that proposed certain changes to Standard No. 121. (58 FR 13437, March 11, 1993). Specifically, the agency proposed to amend the requirements related to the application and holding of parking brake systems and the requirements related to the supply line pressure retention for trailer brakes. In that notice, the agency tentatively concluded that these amendments would remove unnecessary restrictions, thus facilitating the use of air-applied, mechanically held parking brake systems. The agency further explained that the Standard should not unnecessarily prevent parking brake systems that are different than conventional spring brake systems. The agency believed that this proposal would provide regulatory relief by removing a restriction affecting the use of non-spring brake systems, while continuing to ensure appropriate grade holding performance of air braked heavy vehicles.

NHTSA received twelve comments on the proposal. Among the commenters were ITI, which commented twice; the Motor Equipment Manufacturers Association (MEMA), a trade association that represents heavy duty brake manufacturers; spring brake manufacturers and spring brake rebuilders, including Midland-Grau, MGM Brakes, Neway Anchorlok, Allied Signal, TSE Brakes, and Ferodo America; heavy vehicle manufacturers including GM/Volvo White and Freightliner; and the American Trucking Associations (ATA). There was no consensus among the commenters about whether the proposal should be adopted. While ITI favored the proposal which it believed would eliminate an unnecessary design restriction, the manufacturers of spring brake systems opposed it. The spring brake manufacturers would experience increased competition from the additional use of air-applied, mechanically held systems, which, according to ITI currently represent 2 percent of the air brake chamber market. The ITI system would provide weight savings but would cost an additional $28 more per axle than spring brake chambers. The spring brake manufacturers argued that the proposal poses significant safety problems since they believe that brake diaphragms can and do experience rapid catastrophic failures. The commenters also addressed specific issues about the proposed test procedure for air-applied, mechanically held parking brake systems and the need to retain the supply line pressure requirement for vehicles equipped with these systems. The agency has analyzed the comments and responds to the significant ones below.

III. Agency Decision

A. Grade Holding Requirements

1. Background Considerations

Standard No. 121 currently requires an air-braked vehicle to have a parking brake system that enables it to meet certain grade holding requirements. Manufacturers have the option of complying with either a 20 percent grade holding test or an equivalent static drawbar pull test. The purpose of the parking brake requirement is to ensure that an air-braked vehicle has adequate parking brake performance on a grade.

The standard provides that the parking brake grade holding requirements must be met with "any" single leakage-type failure of certain parts, including service brake diaphragms. The purpose of this provision is to ensure that a driver can safely park a vehicle in the event of a leakage-type failure in the service brake system. The standard specifies "any" failure because leakage-type failures of many types, sizes, and locations can occur in vehicle brake systems. To ensure that a vehicle has adequate grade holding performance regardless of the specific nature or extent of a leakage-type failure, the agency intentionally did not limit the size or location of such failures.

In the NPRM, NHTSA explained that most brake systems are designed with two diaphragms, one for the service brake function and one for the parking brake function. Further, most brake systems incorporate a spring brake for parking. These brake systems can easily meet the parking brake holding requirements with a failure in the service brake diaphragm, because a failure in that diaphragm does not adversely affect parking brake performance. In contrast, the ITI air-applied, mechanically held brake system has only one diaphragm that provides both the parking brake and service brake functions. A hole in that diaphragm can therefore affect both parking brake and service brake performance.

According to ITI, it is inappropriate to require vehicles to meet grade holding requirements with "any" failure in the common diaphragm of its brake system, because its system is designed so that a hole in the diaphragm with not get any larger than ⅛ inch during real-world use. ITI further stated that a vehicle equipped with its brake system will hold on a 20 percent grade and can never be driven with a failure larger than ⅛ inch. This is because, according to ITI, diaphragm failures begin as very small holes, develop very slowly, and its brakes will not release once the hole gets larger than ⅛ inch. Thus, once a hole gets that large and the driver parks the vehicle at the end of the day, it will not be possible to drive the vehicle without repairing the brakes.

As explained in the NPRM, NHTSA evaluated the issues raised by ITI through tests of the air-applied, mechanically held system conducted at the agency's Vehicle Research and Test Center (VRTC). (See, Evaluation of Mini-Max Parking Forces with Chamber Diaphragm Failures, December 17, 1992, which has been placed in Docket No. 93–17, Notice 1.) That testing confirmed that vehicles equipped with the ITI system could not be unparked in the presence of a relatively small failure.

In the NPRM, NHTSA sought comment on two primary issues related to air-applied, mechanically held brake systems: (1) Whether the current requirement is appropriate for an air-applied, mechanically held brake system like ITI's system and (2) whether it is possible to develop a test procedure that will identify the "worst case" diaphragm failure that might be experienced in the real world.

2. Diaphragm Failure Modes

In the NPRM, NHTSA discussed whether air-applied, mechanically held brake systems only experience small, gradual failures or whether they can experience catastrophic failures.[1] If diaphragms do in fact experience catastrophic failures, then the proposed requirement would not ensure the safety of air-braked vehicles. However, based on information provided by ITI and the agency's analysis of that information, NHTSA assumed, for purposes of this rulemaking, that diaphragm failures begin small and develop very slowly. Accordingly, the proposed test procedure was designed to evaluate the small, gradual leakage-type failures that, according to ITI, occur with its system. Notwithstanding NHTSA's decision to propose requirements that would be appropriate only if diaphragms only experience small, gradual leakage-type failures, the agency sought comment about whether catastrophic diaphragm failures occur in the real world.

The commenters expressed conflicting views about the nature of diaphragm failures. On the one hand, ITI reiterated its view that diaphragm failures begin small and develop very slowly because the diaphragms use a rip stop nylon fabric. This led ITI to conclude that long before a hole becomes large enough to affect parking capabilities, it is no longer possible to release the parking brakes. ITI accordingly requested that diaphragms be excluded from failure testing. On the other hand, the spring brake manufacturers (Midland-Grau, MGM Brakes, Neway Anchorlok, Allied Signal, MEMA, and Ferodo) stated that diaphragms can and do experience rapid massive failure in addition to the gradual failure discussed by ITI. The spring brake manufacturers alleged that there were several catastrophic failure modes, including: (1) The piston plate wearing a hole through the diaphragm, (2) air permeating between the rubber or neoprene compound causing it to balloon out and then blow, (3) the effects of exposing the diaphragm to oil which causes the compound to delaminate from the fabric, (4) broken springs or piston plates cutting into the diaphragm, (5) and manufacturing defects in the nylon fabric. Neway Anchorlok believed that because these catastrophic failure modes can occur between parking brake applications, they may significantly and suddenly impair the service brake's capabilities. The potential for catastrophic failures led the spring brake manufacturers to recommend that the agency retain the "any leakage" requirements.

After reviewing the conflicting comments, NHTSA decided to examine further the failure modes experienced by diaphragms. To this end, the agency visually inspected failed diaphragms submitted by Bendix, Ferodo, and MGM. In addition, the agency contacted diaphragm manufacturers. In its examination of diaphragms submitted by various manufacturers, NHTSA found no evidence of catastrophic failure; rather, the agency found that failures typically involved slow deterioration through extended use. The only time the agency found a catastrophic failure was when there was a rapid air loss resulting from a spring puncture or a pull-out from the clamp band area. Spring puncture failures are not relevant to the present rulemaking about air-applied, mechanically held systems which do not have springs. With respect to possible pull-out, ITI has stated that if, in servicing its units, the diaphragm is installed improperly, the brakes cannot be released upon air-up of the system. The agency has placed the findings of its inspection of failed diaphragms in the docket.

In response to agency inquiries, Longwood Elastomers and Goodyear, two large diaphragm manufacturers, stated that diaphragms do not fail catastrophically. While they acknowledge that some failure modes mentioned by the spring brake manufacturers do occur (e.g., spring puncture, plate chaff, unseating, flex cracking in the bead area, accelerated degradation caused by exposure to oil), they contended that such failures either happen so infrequently that they do not raise safety concerns or would not happen with an air-applied, mechanically held brake system (e.g., a single diaphragm brake system has no heavy spring brake that can pierce the diaphragm after failing from fatigue). With respect to failure rates, one diaphragm manufacturer informed the agency that it had returns of about 20 units from an annual production of between 2,000,000 to 2,500,000 units. This failure rate translates to a reliability of about 99.999 percent. These reliability figures are for the useful lifecycle before wearout begins. All diaphragms would eventually wear out. Therefore, diaphragms in air-applied, mechanically held systems and in the service side of spring brake systems are typically replaced after between four and five years of service. The diaphragm manufacturers further stated that they have never encountered a catastrophic failure during cycle testing of their production runs.

Based on NHTSA's review of the failed diaphragms, contacts with diaphragm manufacturers and other available information, the agency has concluded that diaphragms used with air-applied, mechanically held parking

[1] By "catastrophic failure," the agency means one in which a service brake application is made and the diaphragm fails, for any reason, to an extent that the brake chamber will not generate sufficient torque to add significantly to the vehicle's braking. Types of catastrophic failures include puncturing the diaphragm with a broken spring, pulling the diaphragm loose from the air brake chamber clamp ring, or blowing a large hole in the diaphragm.

brake systems do not fail catastrophically. Rather, the typical failure mode with these systems is a gradual deterioration through extended use. The agency further notes that GM/Volvo White and Freightliner, which use ITI air brake chambers as original equipment on their vehicles when ordered by a customer, have not experienced any catastrophic failures with these systems. Accordingly, the agency concludes that the current requirement to require vehicles to meet the parking brake requirements with "any" single leakage type failure is unnecessarily design-restrictive with respect to air-applied, mechanically held air brake systems.

ITI requested that NHTSA exclude diaphragms entirely from failure testing with respect to the parking brake requirements. However, NHTSA has decided that an exclusion would be inappropriate. A diaphragm is an integral part of the parking brake system, and the failure of a diaphragm can have adverse safety consequences. Therefore, excluding diaphragms from such testing would be inconsistent with the safety purposes of the standard. Such an exclusion would be inconsistent with the underlying purpose of the parking brake requirements which serve to ensure that a driver can safely park a vehicle in the event of a leakage-type failure in the service brake system. Because diaphragms do fail, as ITI readily admits, it would be inconsistent with the parking brake requirements to exclude such an important component in the brake system from the relevant test requirements.

3. Test Procedure

In the NPRM, NHTSA proposed a test procedure that it tentatively concluded would identify the "worst case" leakage-type diaphragm failure that is likely to occur with brake systems using common diaphragms. Under the proposed procedure, the first step would be to determine the threshold level of diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which the vehicle's parking brakes become unreleasable. A measurement would then be taken of the leakage rate associated with that level of failure. The proposal explained that the "threshold maximum reservoir leakage rate" is the rate of reservoir air pressure decrease, for whichever of the vehicle's reservoirs that is experiencing the most rapid decrease in pressure level, that results from that threshold level of leakage. The agency proposed that a vehicle would be required to meet grade holding requirements with a level of diaphragm leakage-type failure that results in a reservoir leakage rate that is three times the threshold maximum reservoir leakage rate. This "three times" safety factor was included to account for the possibility that a small diaphragm failure could grow larger between parking brake applications.

Midland-Grau, ITI, and Allied Signal believed that the proposed test procedure was unnecessarily complex. Midland-Grau stated that the procedures were difficult to follow and could be interpreted in many ways. Midland-Grau requested that NHTSA modify the test procedure so that it could be easily followed. Moreover, it stated its preference for testing parameters that are concise, and lead to consistent test results that allow easy assessment of whether the system passes or fails. ITI requested that the agency simplify the test to make it less complicated. Allied Signal criticized the proposal for being overly complex, claiming that multiple attempts would be necessary to establish the size of diaphragm failure for both release and application.

After reviewing the proposal in light of the comments, NHTSA believes that the proposed test procedure, with minor adjustments, is appropriate to evaluate brake systems that incorporate a common diaphragm. The agency further believes that the test procedure is not unreasonably complicated. In particular, the agency's experience at VRTC in running the tests indicates that the tests are not overly burdensome and that with a valving meter in place, various pressure levels of leakage can be obtained relatively quickly and without much difficulty. The agency notes that to simplify testing, it could have specified a fixed orifice size to be used for all systems. However, such an approach would have prevented certain parking brake systems and thus have been unnecessarily design restrictive, since the size of leak at which sufficient force is generated to park the vehicle varies for different systems. In contrast, the variable leak rate procedure that the agency is adopting in this final rule may be used to evaluate any brake system regardless of its design.

In response to specific comments and further analysis of the regulatory text, NHTSA has made some minor changes to the proposed test procedures applicable to air-applied, mechanically held brake systems. For instance, in response to criticisms by Midland-Grau of terminology that it believed was ambiguous, NHTSA has deleted reference to "certain level" of failure as proposed in S5.6(b). In addition, as explained below, the agency has modified the terminology related to the concept of parking brake "release."

Nevertheless, NHTSA has decided to retain the following terms that Midland-Grau criticized: "Increasing or decreasing," "threshold level of diaphragm leakage," "threshold maximum reservoir leakage associated with that level of failure," and "threshold of allowable leakage." With respect to finding the leakage rate at which the parking brake system becomes unreleasable, the agency believes it is necessary for the test evaluator to find the appropriate threshold level with "progressively increasing or decreasing levels" of failure because each brake configuration is different. While this procedure will require some searching for the leakage rate at which the system becomes unreleasable, the agency believes the appropriate level of failure can be ascertained without too much difficulty by using metering valves. NHTSA notes that in VRTC's testing to develop this rule's requirements and procedures, the agency installed an adjustable metering valve in the brake chamber housing to simulate a leak in the brake chamber diaphragm. The "threshold level of common diaphragm leakage type failure" at which the parking brakes become unreleasable was determined by increasing the leakage rate, by "opening" the metering valve, from one test to the next in relatively large increments until the parking brakes would not release. Then, the metering valve was "closed," to decrease the leakage rate, in smaller increments until the parking brakes would release. The leakage rate was then increased by even smaller increments until the parking brakes were again unreleasable. The precision with which the final determination of the "threshold level of common diaphragm leakage-type failure" at which the parking brakes become unreleasable is determined by the number of times the direction of leakage rate change, e.g., from increasing to decreasing and vice versa, and the magnitude of the increments by which the leakage rate is increased or decreased.

With respect to various references to the concept of the "threshold," the agency has modified these provisions slightly to use just two terms: "Threshold level of common diaphragm leakage-type failure" in S5.6.7.1.1 and S5.6.7.2.1 and the "threshold maximum reservoir leakage rate" in S5.6.7.1.2 and S5.6.7.2.2. NHTSA, nevertheless, disagrees with Midland-Grau's more general concern that the term "threshold" is ambiguous. The agency notes that the dictionary defines "threshold" to mean "a level, point, or value above which something is true or will take place and below which it is not or will not."[2] Applying this definition to the parking brake test for systems with common diaphragms, the agency believes that "threshold level of common diaphragm leakage-type failure" is an objective term that means the initial level at which the parking brake can no longer be released. Similarly, the meaning of the phrase "threshold maximum reservoir leakage rate" was discussed in the NPRM and means the rate of reservoir air pressure decrease that results at that threshold level of leakage.

With respect to the concept of "release," NHTSA has decided to clarify the term so that it covers brake applications that involve a vehicle being parked on a grade or a drawbar pull test. NHTSA notes that in addressing a similar issue in an earlier rulemaking about what was meant by "release," the agency stated that "NHTSA considers a brake to be released at the point where it no longer exerts any torque." (37 FR 12495, June 24, 1972). The agency believes that this discussion of release is pertinent to the procedure set forth in S5.6(b). Accordingly, in the final rule, the agency has specified that the relevant consideration is when the parking brakes "become unreleasable." Since the final rule specifies the criteria in terms of "becom(ing) unreleasable," Midland-Grau's concerns about when the released condition exists or about the status of a partial release are no longer relevant.

Midland-Grau requested that the agency provide an acceptable leakage value for each brake component. It further stated that statements about "compressor shut-off points" and "air flow" should be pinned down to definitive values.

NHTSA disagrees with Midland-Grau's request to provide a specific level of leakage for each brake component. The agency's goal in this rulemaking is to establish a performance test for the entire brake system, because the agency's concern is to test for and prohibit system-wide failures that may pose safety problems. The agency therefore is not concerned with the leakage level of any particular component. Nor does the agency believe it is necessary or appropriate to specify definitive values for the compressor shut-off points. Such an action might be unnecessarily design restrictive and serve to prohibit some manufacturers from selecting a higher cut off value than would be appropriate for its system.

Allied and Midland-Grau expressed concern that the rate of reservoir pressure drop is influenced by valving, plumbing, and air supply capability. NHTSA acknowledges that these variables exist; however, the agency believes that they are not large enough to adversely affect the test results. Specifically, as long as testing is done at three times the leak rate, the actual numerical value of the leak rate is not overly important, because the value for the safety factor is measured in the same way, which results in factoring out most of the variability. The agency further notes that these variables are part of the manufacturing process and thus, if necessary, they can be controlled by the brake system manufacturer. Moreover, alternative methods of testing would have necessitated using expensive flow meters that would not significantly reduce the level of variability or otherwise improve the test results. NHTSA notes that while the rate of air flow through the system may be affected by slight variations in air hose lengths from vehicle to vehicle, internal size variations in the castings used in the hose fittings, and differences in valve tolerances; the leak rates at issue are not sufficiently large to be significantly affected by this type of variability from vehicle to vehicle. Internal drag on air flow does not become a factor until the flow rates become substantially higher than those being measured here.

In the NPRM, NHTSA proposed that a vehicle would be required to meet grade holding requirements with the level of diaphragm leakage failure of three times the threshold maximum reservoir leakage rate. The agency reasoned that a safety factor was necessary to address the situation when a small diaphragm failure grows larger between parking brake applications, prior to the time the vehicle is parked (at which point the parking brakes would be unreleasable.

Midland-Grau, ITI, and Allied objected to including a safety factor "three times the threshold maximum reservoir leakage." Midland-Grau stated that the rationale for this test is not easily visualized and is questionable as to why it was selected as a test parameter. ITI stated that the safety factor should be eliminated to avoid additional time and cost in compliance testing. Allied stated that it was not aware of any information or data that the agency used to establish the three times reservoir pressure drop rate as being a "worst case" type of failure for a brake chamber diaphragm.

After reviewing the comments, NHTSA continues to believe that it is necessary to include a safety factor in the application and holding requirements for air-applied, mechanically held parking brake systems. The agency notes that including the provision for grade holding at "three times the failure rate" is essential to ensure the brake system's safety since the hole associated with a diaphragm failure grows larger during the day. In addition, including a safety factor serves to prevent marginal systems from being manufactured. The agency selected a safety factor of three based on general engineering principles and the agency's testing at VRTC. In general, a safety factor needs to be as large as possible to ensure safety, while not be too large to make it unreasonable, impracticable, and unaffordable. In agency tests at VRTC, NHTSA determined that the ITI system would still produce sufficient parking force with a diaphragm leak over ten times larger than the system would detect and still not release the parking brakes. Based on its understanding of diaphragm failures associated with air-applied, mechanically held braking systems, NHTSA determined that a safety factor of three was the most appropriate level of safety for inclusion in a FMVSS. The agency believes that this level of safety will not require manufacturers to "over-design" their parking brake systems, but will ensure appropriate brake system performance. NHTSA disagrees with ITI's comment that inclusion of a safety factor would add needless complexity to the requirement. Agency testing at VRTC indicates that inclusion of a safety factor will not significantly add to the time and cost of compliance testing. Essentially, as a result of the safety factor, a test evaluator needs to establish the threshold value for the maximum reservoir leakage rate and then triple it. Based on its experience at VRTC, the agency believes that this will add only five to ten minutes to the compliance testing (at only nominal additional cost.)

B. Supply Line Pressure Requirements for Trailers

Section S5.8.2 of Standard No. 121 currently requires that any single leakage type failure in the service brake system must not result in the pressure in the supply line falling below 70 p.s.i., measured at the forward trailer supply coupling. (See 56 FR 50666, October 8, 1991). The purpose of this provision is to prevent brake drag caused by the automatic application of trailer parking brakes while the minimum trailer supply line pressure is maintained.

[2] Webster's Ninth New Collegiate Dictionary, 1988.

In a June 5, 1992 letter to the agency, ITI requested that the agency "exempt" its brake system from S5.8.2. It argued that this provision relates to problems caused by brake drag, a situation that it contends is not applicable to ITI's brake system, which, by design, can only be in the fully applied or fully released positions.

After considering ITI's arguments, NHTSA, in the NPRM, tentatiyely concluded that no safety purpose would be served to apply this provision to non-towing trailers using air-applied, mechanically held parking brakes that use a common diaphragm. The agency noted that these vehicles do not use spring brakes and thus the requirement which addresses the safety problem of brake drag is not relevant to them. Accordingly, the agency proposed to amend section S5.8.2 to clarify that this provision would not apply to non-towing trailers equipped with air-applied, mechanically held parking brakes that use a common diaphragm. Nevertheless, NHTSA emphasized that section S5.8.2 would continue to apply to towing trailers, since the 70 psi requirements may be necessary for other vehicles in the train.

Midland-Grau, ITI, ATA, and Allied Signal addressed the issue of whether the 70 psi supply line pressure requirement should be retained for trailers, particularly towing trailers, equipped with air-applied, mechanically held parking brakes. Midland-Grau stated that making the 70 psi requirement optional for towing trailers with air-applied mechanically hold brake systems introduces a detriment to the couple vehicles in the event of system failure. This led Midland-Grau to conclude that it is necessary to apply failure. This led Midland-Grau to conclude that it is necessary to apply the supply line pressure requirements to trailers since a towing trailer will experience brake degradation if it is not properly protected from towed trailer system failures.

In contrast, ITI stated that this requirement should not be applied to either towing or non-towing vehicles equipped with air-applied, mechanically held vehicles since they do not experience brake drag. This led ITI to state that S5.8.4 was not necessary, because it claimed that partial application or brake drag is not an issue with its brake systems. Thus, it requested that towing trailers with air-applied, mechanically held systems be permitted without the 70 psi supply line protection feature, even though it acknowledge that this may result in some mismatches. In response to Midland-Grau's comment, ITI stated that trailers equipped with spring brakes manufactured before and after the October 1992 rule that specified these requirements (56 FR 50666, October 8, 1991) will experience compatibility problems. Therefore, ITI believed that the problem raised by Midland-Grau will exist with spring brake equipped trailers as well as trailers equipped with air-applied, mechanically held equipped trailers.

ATA commented that the existing 70 psi supply line requirement is inappropriate and prevents tractor low air pressure warning systems from warning drivers of the loss of service pressure in trailers. Therefore, it requested that the agency either exempt all trailers from the 70 psi supply line requirement or modify the requirement. Allied Signal similarly stated that the 70 psi requirement has undermined the effectiveness of the low pressure warning system, especially for doubles and triples.

After reviewing the comments, NHTSA has decided not to apply the supply lone pressure requirements to single trailers equipped with air-applied, mechanically held brake systems. Such trailers, which do not experience brake drag, also do not affect the braking of any other vehicle because they are not connected to other trailers. Therefore, as discussed in the NPRM, this requirement would not benefit this type of trailer.

Nevertheless, the agency has decided that the supply line pressure requirements are relevant to air-applied, mechanically held brake systems on towing trailers used in double and triple trailer combinations.[3] The agency is not convinced by ITI's argument that trailers equipped with their system should not have to comply with the 70 psi requirement because there are older spring brake-equipped trailers that will pose similar compatibility problems. The agency believes that there would be a safety problem if it were to apply the supply line pressure requirements to certain vehicles in double or triple combinations but not others. Specifically, if ITI's request were adopted, a trailer being towed by a trailer equipped with air-applied, mechanically held brakes would not necessarily receive adequate air pressure and therefore could experience brake drag. The agency's decision to apply these requirements to towing trailers is consistent with recent legislation and the efforts of the agency, manufacturers, and end-users to standardize operating conditions to improve compatibility. Specifically, section 4012 of the Intermodal Surface Transportation Efficiency Act (ISTEA) directs the agency to initiate rulemaking to improve compatibility of truck tractors, trailers, and their dollies. The agency further notes that a specialized trailer protection valve could be developed for ITI's system that would permit compliance with the requirements of S5.8.2 and S5.8.3.

With respect to concerns expressed by ATA and Allied about the 70 psi supply line pressure requirement, NHTSA notes that it is reviewing this provision in the context of a rulemaking petition submitted by the California Highway Patrol. The agency anticipates issuing another notice addressing the supply line pressure requirements in 1994.

[3] A towing trailer is one that is equipped with a pintle hook and air line connections at the rear to tow another air braked trailer. In doubles and triples operations, nearly all trailers are so equipped, regardless of the position they may occupy in any particular trailer train.

IV. Leadtime

Section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. NHTSA has determined that there would be "good cause" not to provide the 180 day lead-in period given that this amendment will not impose any mandatory requirements on manufacturers. The public interest will also be served by not delaying the introduction of the requirement. Based on the above, the agency has determined that there is good cause to have an effective date 30 days after publication in the final rule.

V. Rulemaking Analyses and Notices

1. Executive Order 12688 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this rulemaking and determined that it is neither "significant" within the meaning of the Department of Transportation's regulatory policies and procedures nor "significant" within the meaning of Executive Order 12688. This rulemaking document was not reviewed under E.O. 12688, "Regulatory Planning, and Review." A full regulatory evaluation is not required because the rule will have no mandatory effects. Rather, the rule will provide regulatory relief to facilitate the introduction of alternative brake systems. Therefore, the agency does not believe that this rulemaking will result in significant additional costs or cost savings.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically will not qualify as small entities. This amendment will also affect small businesses, small organizations, and small governmental units to the extent that these entities purchase air-braked vehicles. As discussed above, the agency's assessment is that this amendment will have no significant cost impact to the industry. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles will not be significantly effected by the requirements. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule will not significantly affect the human environment.

5. Civil Justice Reform

This rule will not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, title 49 part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.121 is amended by revising S4 to add a new definition; revising S5.6; removing S5.6.3.5; adding a new S5.6.7 through S5.6.7.2.3; revising S5.8.2; and adding a new S5.8.4. The revised and added paragraphs read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S4 *Definitions.*

* * * * *

Common diaphragm means a single brake chamber diaphragm which is a component of the parking, emergency, and service brake systems.

* * * * *

S5.6 *Parking brake system.*

(a) Except as provided in S5.6(b) and S5.6(c), each vehicle other than a trailer converter dolly shall have a parking brake system that under the conditions of S6.1 meets the requirements of:

(1) S5.6.1 or S5.6.2, at the manufacturer's option, and

(2) S5.6.3, S5.6.4, S5.6.5, and S5.6.6.

(b) At the option of the manufacturer, for vehicles equipped with brake systems which incorporate a common diaphragm, the performance requirements specified in S5.6(a) which must be met with any single leakage-type failure in a common diaphragm may instead be met with the level of leakage-type failure determined in S5.6.7. The election of this option does not affect the performance requirements specified in S5.6(a) which apply with single leakage-type failures other than failures in a common diaphragm.

(c) At the option of the manufacturer, the trailer portion of any agricultural commodity trailer, heavy hauler trailer, or pulpwood trailer may meet the requirements of § 393.43 of this title instead of the requirements of S5.6(a).

* * * * *

S5.6.7 *Maximum level of common diaphragm leakage-type failure/ Equivalent level of leakage from the air chamber containing that diaphragm.* In the case of vehicles for which the option in S5.6(b) has been elected, determine the maximum level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) according to the procedures set forth in S5.6.7.1 through S5.6.7.2.3.

S5.6.7.1 *Trucks and buses.*

S5.6.7.1.1 According to the following procedure, determine the threshold level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which the vehicle's parking brakes become unreleasable. With an initial reservoir system pressure of 100 psi, the engine turned off, no application of any of the vehicle's brakes, and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the supply line coupling, introduce a leakage-type failure of the common diaphragm (or equivalent leakage from the air chamber containing that diaphragm). Apply the parking brakes by making an application actuation of the parking brake control. Reduce the pressures in all of the vehicle's reservoirs to zero, turn on the engine and allow it to idle, and allow the pressures in the vehicle's reservoirs to rise until they stabilize or until the compressor shut-off point is reached. At that time, make a release actuation of the parking brake control, and determine whether all of the mechanical means referred to in S5.6.3.2 continue to be actuated and hold the parking brake applications with sufficient parking retardation force to meet the minimum performance specified in either S5.6.1 or S5.6.2. Repeat this procedure with progressively decreasing or increasing levels (whichever is applicable) of leakage-type diaphragm failures or equivalent leakages, to determine the minimum level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which all of the mechanical means referred to in S5.6.3.2 continue to be actuated and hold the parking brake applications with sufficient parking retardation forces to meet the minimum performance specified in either S5.6.1 or S5.6.2.

S5.6.7.1.2 At the level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) determined in S5.6.7.1.1, and using the following procedure, determine the threshold maximum reservoir rate (in psi per minute). With an initial reservoir system pressure of 100 psi, the engine turned off, no application of any of the vehicle's brakes and, if the vehicle is designed to tow a vehicle equipped with

air brakes, a 50 cubic inch test reservoir connected to the supply line coupling, make an application actuation of the parking brake control. Determine the maximum reservoir leakage leakage rate (in psi per minute), which is the maximum rate of decrease in air pressure of any of the vehicle's reservoirs that results after that parking brake application.

S5.6.7.1.3 Using the following procedure, introduce a leakage-type failure of the common diaphragm (or equivalent leakage from the air chamber containing that diaphragm) that results in a maximum reservoir leakage rate that is three times the threshold maximum reservoir leakage rate determined in S5.6.7.1.2. With an initial reservoir system pressure of 100 psi, the engine turned off, no application of any of the vehicle's brakes and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the supply line coupling, make an application actuation of the parking brake control. Determine the maximum reservoir leakage rate (in psi per minute), which is the maximum rate of decrease in air pressure of any of the vehicle's reservoirs that results after that parking brake application. The level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) associated with this reservoir leakage rate is the level that is to be used under the option set forth in S5.6(b).

S5.6.7.2 *Trailers.*

S5.6.7.2.1 According to the following procedure, determine the threshold level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which the vehicle's parking brakes become unreleasable. With an initial reservoir system and supply line pressure of 100 psi, no application of any of the vehicle's brakes, and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the supply line coupling, introduce a leakage-type failure of the common diaphragm (or equivalent leakage from the air chamber containing that diaphragm). Make a parking brake application by venting the front supply line coupling to the atmosphere, and reduce the pressures in all of the vehicle's reservoirs to zero. Pressurize the supply line by connecting the trailer's front supply line coupling to the supply line portion of the trailer test rig (Figure 1) with the regulator of the trailer test rig set at 100 psi, and determine whether all of the mechanical means referred to in S5.6.3.2 continue to be actuated and hold the parking brake applications with sufficient parking retardation forces to meet the minimum performance specified in either S5.6.1 or S5.6.2. Repeat this procedure with progressively decreasing or increasing levels (whichever is applicable) of leakage-type diaphragm failures or equivalent leakages, to determine the minimum level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which all of the mechanical means referred to in S5.6.3.2 continue to be actuated and hold the parking brake applications with sufficient parking retardation forces to meet the minimum performance specified in either S5.6.1 or S5.6.2.

S5.6.7.2.2 At the level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) determined in S5.6.7.2.1, and using the following procedure, determine the threshold maximum reservoir leakage rate (in psi per minute). With an initial reservoir system and supply line pressure of 100 psi, no application of any of the vehicle's brakes and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the rear supply line coupling, make a parking brake application by venting the front supply line coupling to the atmosphere. Determine the maximum reservoir leakage rate (in psi per minute), which is the maximum rate of decrease in air pressure of any of the vehicle's reservoirs that results after that parking brake application. The level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) associated with this reservoir leakage rate is the level that is to be used under the option set forth in S5.6(b).

* * * * *

S5.8.2 *Supply Line Pressure Retention.* Any single leakage type failure in the service brake system (except for a failure of the supply line, a valve directly connected to the supply line or a component of a brake chamber housing) shall not result in the pressure in the supply line falling below 70 p.s.i., measured at the forward trailer supply coupling. A trailer shall meet the above supply line pressure retention requirement with its brake system connected to the trailer test rig shown in Figure 1, with the reservoirs of the trailer and test rig initially pressurized to 100 p.s.i. and the regulator of the trailer test rig set at 100 p.s.i.; except that a trailer equipped with an air-applied, mechanically-held parking brake system and not designed to tow a vehicle equipped with air brakes, at the manufacturer's option, may meet the requirements of S5.8.4 rather than those of S5.8.2 and S5.8.3.

* * * * *

S5.8.4 *Automatic Application of Air-Applied, Mechanically Held Parking Brakes.* With its brake system connected to the supply line portion of the trailer test rig (Figure 1) and the regulator of the trailer test rig set at 100 psi, and with any single leakage type failure in the service brake system (except for a failure of the supply line, a valve directly connected to the supply line or a component of a brake chamber, but including failure of any common diaphragm), the parking brakes shall not provide any brake retardation as a result of complete or partial automatic application of the parking brakes.

* * * * *

3. Figure 1 of § 571.121 is revised to appear as follows:

BILLING CODE 4910-59-M

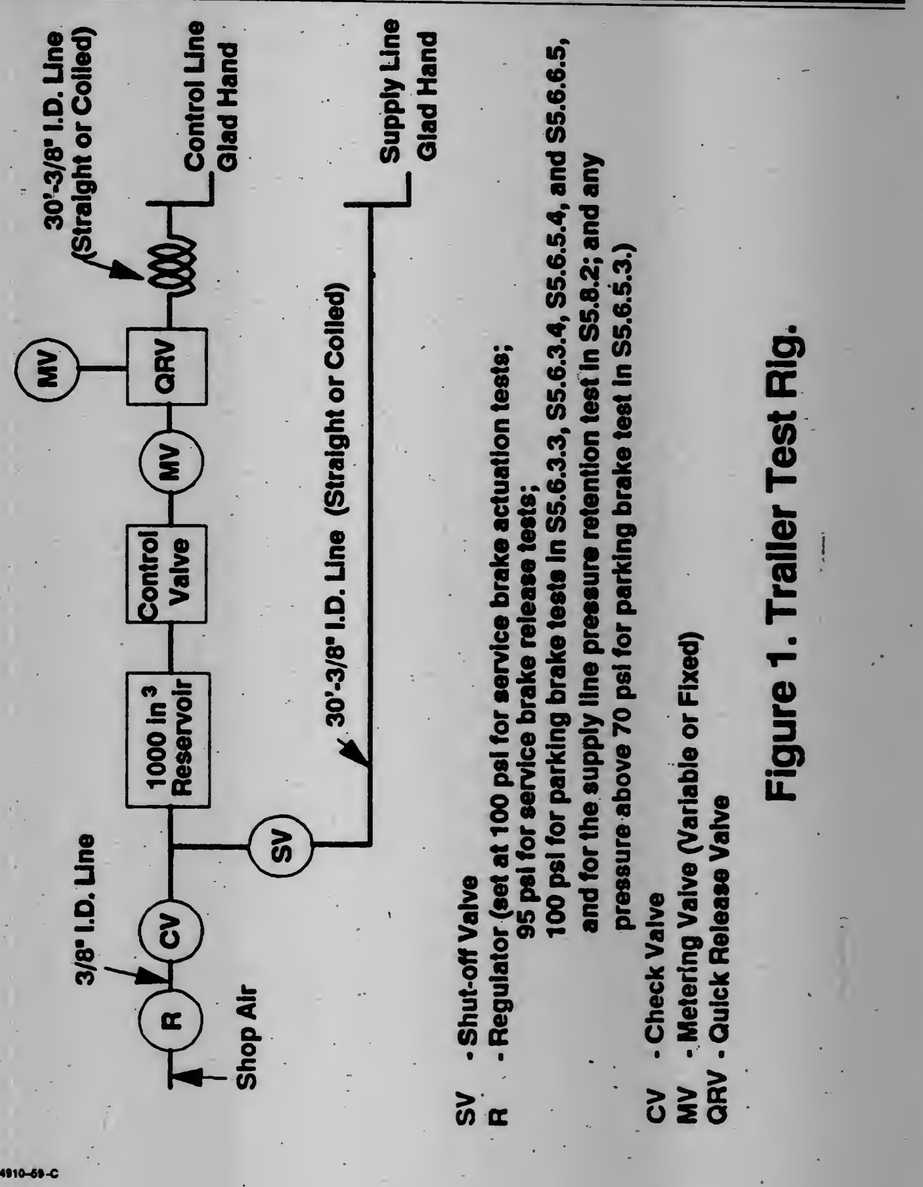


Figure 1. Trailer Test Rig.

BILLING CODE 4910-59-C

Issued on: February 9, 1994.
Howard M. Smolkin,
Executive Director.
[FR Doc. 94-3364 Filed 2-9-94 3:11 pm]
BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199-3299; I.D. 020994A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 9, 1994, until the second quarter's allowance becomes available.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The interim specification of pollock in Statistical Area 62 was established by interim specifications (58 FR 60575, November 17, 1993) as 4,563 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1994 interim specification of pollock in Statistical Area 62 soon will be reached. The Regional Director established a directed fishing allowance of 4,163 mt, and has set aside the remaining 400 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 62, effective from 12 noon, A.l.t., February 9, 1994, until the second quarter's allowance becomes available.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 9, 1994.

David S. Crestin,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 94-3352 Filed 2-9-94; 12:06 pm]
BILLING CODE 3510-22-M

50 CFR Part 681

[Docket No. 940237-4037; ID. 010594A]

Western Pacific Crustacean Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: 1994 initial quota for crustaceans; request for comments.

SUMMARY: NMFS announces a 1994 initial quota of 200,000 lobsters for the Northwestern Hawaiian Islands (NWHI) crustacean fishery. The quota was calculated according to the formula contained in Amendment 7 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). The final quota for the 1994 fishing year, which begins July 1, 1994, will be announced after the first month of fishing.

DATES: Effective July 1, 1994, through December 31, 1994, inclusive. Comments are invited until March 16, 1994.

ADDRESSES: Comments should be sent to Gary Matlock, Acting Regional Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213. Copies of Amendment 7 and the associated background material for determining the quota may be obtained from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, 310-980-4034; Alvin Z. Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii 808-955-8831; or Kitty Simonds, address above, 808-523-1368.

SUPPLEMENTARY INFORMATION: The crustacean fisheries of the NWHI are managed by the Secretary of Commerce (Secretary) according to the FMP, which was prepared by the Western Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations affecting the U.S. fishery are at 50 CFR part 681.

The annual quota for the crustacean fishery is announced in two steps. First, based on previous years' fishery data, sampling during research cruises, and other available data, the Regional Director determines an initial quota, which is announced in the **Federal Register** by the Assistant Administrator for Fisheries, NOAA. A population model by which the quota is determined is described in Amendment 7 to the FMP. The final quota for the year is then determined based on actual commercial fisheries data collected during the first month of fishing. This actual catch and effort data, in conjunction with the previous information, provides a more reliable indicator of the status of the lobster stocks in the NWHI.

Amendment 7 provides that an annual quota be set at a level permitting an average catch per unit of effort (CPUE) of 1.0 for the fleet. In 1992, the initial quota was set at 750,000 lobsters, which was subsequently reduced to 438,000 lobsters following an analysis of data obtained from the fishery. In 1993, there was no quota, and the fishery was closed for the entire year.

The Regional Director has used the formula in Amendment 7 to set an initial quota for 1994 of 200,000 lobsters (spiny and slipper lobsters combined). Data collected during NMFS survey cruises indicate that recruitment to the fishery remained at about 840,000 lobsters during the 1992-93 period, and there were no removals of lobster by the fishery in 1993; therefore, there is a net addition to the stock to support a fishery in 1994. The model projects a commercial CPUE of 1.0 at the start of the fishing year with an initial quota of 200,000 lobsters. The final quota, to be announced in the **Federal Register** as soon as practicable after August 15, 1994, may increase or decrease substantially from the initial quota. The Southwest Region, NMFS, will monitor landings against the quota and issue timely reports of summary data. The Southwest Region also will attempt to promptly notify participants in the fishery of any changes in the fishery; however, participants are advised to contact the Southwest Region (see **ADDRESSES**) periodically to stay of changes in the quota and progress of the fishery toward attaining the quota. Announcement of a closure of the fishery due to reaching the quota will follow the procedures set forth in 50 CFR 681.31(c).

Classification

This action is authorized by 50 CFR part 681.

This rule is not subject to review under Executive Qrder 12866.

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 8, 1994.

Rolland A. Schmitten,
Assistant Administrator for Fisheries, National Marine Fisheries Service.
[FR Doc. 94-3370 Filed 2-11-94; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 59, No. 30
Monday, February 14, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 61

[CN–93–004]

RIN 0581–AB05

Revision of Cottonseed Sampler License Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to restructure the procedures for licensing cottonseed samplers to draw, prepare and submit cottonseed samples for USDA's official cottonseed grading program. The proposed revision would significantly reduce the paperwork burden involved in the licensing of official cottonseed samplers by eliminating the bonding requirement and the license fee, and extending the license period from 1 to 5 years. Under the proposed revision, official cottonseed samplers would still be required to obtain a license from USDA, and sampling equipment and procedures would continue to receive the same level of supervision from AMS Cotton Division personnel.

DATES: Comments must be received by April 15, 1994.

ADDRESSES: Comments and inquiries should be addressed to Lee Cliburn, Cotton Division, AMS, USDA, room 2641–S, P.O. Box 96456, Washington, D.C. 20090–6456. Comments will be available for public inspection during regular business hours at the above office in rm. 2641–South Building, 14th & Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: The Department is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The proposed changes in licensing procedures will decrease the cottonseed sampler's paperwork burden; (2) the proposed change in licensing procedures will not affect competition in the marketplace; and (3) participation in USDA's official cottonseed grading program is voluntary.

The information collection requirements for cottonseed sampler licenses contained in this proposed rule have been previously approved by the Office of Management and Budget and assigned OMB control number 0581–0008 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This proposed revision, if adopted, would significantly reduce the information collection requirements for 34 licensed cottonseed samplers.

The cottonseed sampler license form CN–248 requires an estimated 0.17 hours or 10.2 minutes to complete. The paperwork burden for the 34 cottonseed samplers' license renewal each year amounts to 5.78 hours. This proposed rule, by requiring that licenses be renewed every 5 years, will reduce the paperwork burden to 1.16 hours, an 80 percent reduction.

It is anticipated that the simplification of licensing procedures for cottonseed samplers, if adopted, would become effective on July 1, 1994, so that implementation could be coordinated with the start of the 1994 cotton harvest.

USDA provides official grading of cottonseed under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1624), which requires USDA to supervise the drawing, preparation, and handling of samples submitted for official grading. Current regulations require that applications for initial and renewal cottonseed sampler's licenses, both of which expire in 1 year, be accompanied by proof that the sampler is bonded by an approved surety company, including a power of attorney, and a small fee ($20.00 for new licenses and $18.00 for renewals). These requirements are unnecessary for the maintenance of an acceptable level of supervision of cottonseed sampling by USDA. In addition, the licensing process would be simplified if these requirements were eliminated and the license period extended to 5 years. The licensing procedures for cotton samplers were revised similarly 15 years ago with no adverse effects to the level of supervision provided by AMS, and this revision would make the procedures for cottonseed sampler licensing consistent with those for cotton samplers.

Under the proposed regulations, official cottonseed samplers would still be required to obtain a license, and sampling equipment and procedures would continue to receive the same level of supervision from Agricultural Marketing Service, Cotton Division personnel. The expected effects of this proposed revision would be to: (1) Decrease both the applicant's expense and paperwork burden required for licensing; and (2) simplify the procedures and reduce the time required by the Cotton Division employees to process the applications and maintain license records. While the effects on the cottonseed industry are expected to be nominal in both cases, justification for continuing the bonding requirement, license fee, and 1-year license period cannot be supported by experience in the supervision of USDA's official cottonseed grading program in recent years.

Accordingly, §§ 61.26 and 61.28, which detail the bonding requirements for both newly issued and renewal cottonseed sampling licenses, would be deleted.

In § 61.27, the period of new and renewal licenses would be extended from 1 to 5 years.

Sections 61.29 and 61.43, which set forth the designation of bond approval authority and the fees for new and renewal licenses, respectively, would be deleted.

List of Subjects in 7 CFR Part 61

Cottonseed, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 61 is proposed to be amended as follows:

PART 61—[AMENDED]

1. The authority citation for subpart A of part 61 is revised to read as follows:

Authority: 7 U.S.C. 1624.

§ 61.26 [Removed]

2. Section 61.26 would be removed.

3. Section 61.27 would be revised to read as follows:

§ 61.27 Period of license; renewals.

The period for which a license may be issued under the regulations in §§ 61.25 through 61.42 shall be from the first day of August following receipt of the application, and shall continue for 5 years, ending on the 31st of July in the fifth year. Renewals shall be for 5 years also, beginning with the first day of August and ending on the 31st day of July in the fifth year: *Provided*, That licenses or renewals issued on and after June 1 of any year shall be for the period ending July 31 of the fifth year following.

§§ 61.28, 61.29, and 61.43 [Removed]

4. Sections 61.28, 61.29, and 61.43 would be removed.

Dated: February 7, 1994.

Lon Hatamiya,
Administrator.

[FR Doc. 94–3324 Filed 2–11–94; 8:45 am]

BILLING CODE 3410–22–P

7 CFR Part 1106

[DA–94–08]

Milk in the Southwest Plains Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend certain provisions of the Southwest Plains Federal milk marketing order (Order 106) for the months of February 1994 through August 1996. The proposal would suspend a portion of the supply plant shipping requirement and the touch-base requirement during the months of February through August of each year. The action was requested by Kraft General Foods (Kraft), which contends the suspension is necessary to prevent the uneconomical and inefficient movement of milk and to ensure that producers historically associated with the market will continue to have their milk pooled under Order 106.

DATES: Comments are due no later than February 22, 1994.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this rule in conformance with Executive Order 12866.

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing; the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of February through August of 1994 through 1996, effective upon publication in the Federal Register:

In § 1106.6, the words "during the month".

In § 1106.7(b)(1), beginning with the words "of February through August" and continuing to the end of the paragraph.

In § 1106.13, paragraph (d)(1) in its entirety.

All persons who wish to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would suspend the requirement that producers "touch-base" at a pool plant with at least one day's production during the month before their milk is eligible for diversion to a nonpool plant. By suspending the touch-base provision, producer milk would not be required to be delivered to pool plants before going to unregulated manufacturing plants.

Additionally, the proposed suspension would allow a supply plant that has been associated with the Southwest Plains order during the months of September through January of each year to qualify as a pool plant without shipping any milk to a pool distributing plant during the following months of February through August. Without the suspension, a supply plant would be required to ship 20 percent of its producer receipts to pool distributing plants to qualify as a pool plant during each of the months of February through August.

According to Kraft's letter requesting the suspension, supplemental milk supplies will not be needed to meet the fluid needs of distributing plants. Kraft

anticipates that there will be an adequate supply of direct-ship producer milk located in the general area of distributing plants available to meet the Class I needs of the market. Consequently, it states, there is no need to require producers located some distance from pool distributing plants to touch-base when their milk can more economically be diverted directly to manufacturing plants in the production area.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: February 7, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–3327 Filed 2–11–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1131

[Docket No. AO–271–A32; DA–92–24]

Milk in the Central Arizona Marketing Area; Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rule.

SUMMARY: This notice extends the time for filing exceptions to a recommended decision issued December 15, 1993, concerning proposed amendments to the Central Arizona milk marketing order. Counsel for United Dairymen of Arizona (UDA), a cooperative association in the market, requested additional time to complete exceptions to the recommended decision.

DATES: Exceptions now are due on or before February 25, 1994.

ADDRESSES: Exceptions (four copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior documents in the proceeding:

Notice of Hearing: Issued December 21, 1992; published December 30, 1992 (57 FR 62241).

Recommended Decision: Issued December 15, 1993; published December 22, 1993 (58 FR 67703).

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the marketing area which was issued December 15, 1993, is hereby extended from January 21 to February 25, 1994.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: February 4, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–3325 Filed 2–11–94; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1499

Foreign Donation of Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations governing the donation of agricultural commodities by Commodity Credit Corporation for distribution in foreign countries pursuant to section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985.

DATES: Comments on the proposed rule must be submitted by March 16, 1994.

ADDRESSES: Comments should be submitted to: Director/PAD, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Ave., SW., room 4079–S, Washington, DC 20250–1000.

All comments will be available for public inspection during regular business hours in room 4079–S, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Director/PAD, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250–1000; telephone (202) 720–3573.

SUPPLEMENTARY INFORMATION: This proposed rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this proposed rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

This proposed rule deals primarily with requirements imposed upon foreign governments and non-profit entities distributing relief supplies overseas. Therefore, the proposed rule does not have a significant impact upon a substantial number of small business entities and Regulatory Impact Statement was not prepared. A copy of this proposed rule has been sent to the Chief Counsel, Office of Advocacy, U.S. Small Business Administration.

Paperwork Reduction Act

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The sections requiring information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Section	Estimated annual number of respondents	Annual frequency	Estimated burden per response (hours)	Estimated annual burden (hours)
7 CFR 1499.5:				
Existing [1]	35	N/A	56	1960
Incl. proposed rule	30	N/A	40	1200
7 CFR 1499.8:				
Existing	25	N/A	1	25
Incl. proposed rule	25	N/A	1	25
7 CFR 1499.9:				
Existing	25	N/A	8	200
Incl. proposed rule	25	N/A	8	200
7 CFR 1499.11:				
Existing	21	N/A	4	84
Incl. proposed rule	21	N/A	4	84
7 CFR 1499.14:				
Existing	5	N/A	2	10
Incl. proposed rule	5	N/A	2	10
7 CFR 1499.16:				
Existing	25	2	24	1200
Incl. proposed rule	25	2	24	1200
Total Burden Hours Including Proposed Rule=2719				
Total Existing Burden Hours=3479				
Net Change in Burden Hours=(760)				

[1] Existing reporting and recordkeeping burdens refer to those requirements that appear in the current standard form section 416(b) and Food for Progress agreements.

As required by Section 3504(h) of the Paperwork Reduction Act of 1980, FAS has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burdens, should direct them to the Acting General Sales Manager, FAS, USDA, at the address above, and to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Washington, DC 20503, Attention: Desk Officer for the Foreign Agricultural Service.

This rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

This proposed rule has been reviewed under the Executive Order 12778, Civil Justice Reform. The proposed rule would have pre-emptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The proposed rule would not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this Proposed Rule.

This proposed rule would govern the donation of agricultural commodities overseas pursuant to section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)) and the Food for Progress Act of 1985 (7 U.S.C. 1736o). These regulations contain many provisions that have been standard terms of agreements with recipients, i.e., Cooperating Sponsors, for a number of years. As of October 1, 1991, the Agency for International Development no longer is a signatory to section 416(b) program agreements and pursuant to E.O. 12752, 56 FR 8255, the Secretary of Agriculture was delegated the President's responsibilities under the Food for Progress Act. Accordingly, it is appropriate for the Department of Agriculture to promulgate regulations to govern operations under these two programs.

Generally, the regulatory provisions herein would apply equally to both programs; however, certain provisions dealing with the sale of commodities and the use of local currencies generated from such sales apply only to the section 416(b) program.

Interested parties should carefully read the full proposed rule. Of particular note are the following points:

1. Nominations of shipping agents for Cooperating Sponsors participating in the Food for Progress Act will be made to USDA in conformity with the conflict of interest provisions currently applicable only to section 416(b) and of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480). This will place all USDA concessional export programs on the same basis regarding conflict of interest reviews in connection with shipping agents. In this regard, the proposed regulations include limitations on commissions that may be paid to shipping agents that follow the limitations currently proposed for

shipping agents participating in the title I, Public Law 480 program. See 57 FR 53607, November 12, 1992. Comments received regarding these limitations are presently being reviewed and will also be considered in relation to this proposed rule. These proposed rules, however, would also limit the agents commission to a percentage of the gross freight attributable to the ocean segment of any movement that may be contracted on a through bill of lading or involve obligations at discharge such as bagging grain. This limitation is included because freight charges attributed to inland movements to many destinations receiving section 416(b) and Food for Progress commodities are relatively high due to various difficult conditions in these countries. CCC does not have an effective mechanism to determine the reasonableness of these charges.

2. These regulations apply only to agreements for the donation of agricultural commodities and not to any sales to Cooperating Sponsors.

3. Specific criteria are established to govern the approval of agreements or of activities under such agreements. Detailed information is required in the Plan of Operation submitted in connection with a section 416(b) agreement.

4. The proposed rule contains detailed procedures for the procurement of ocean transportation including requirements for competitive bidding in the fixture of vessels on charter terms.

5. The regulations include specific guidance for ocean carrier and inland claims and for disposing of commodities unfit for intended use. In this regard, the regulations would adopt procedures similar to those in effect for title II, Public Law 480 shipments and should be familiar to many Cooperating Sponsors.

6. Responsibility for section 416(b) program oversight in recipient countries falls to the resident or regional Agricultural Attache/Counselor or, in the absence thereof, a representative designated by the United States Department of Agriculture.

List of Subjects in 7 CFR Part 1499

Agricultural commodities, Exports, Foreign aid.

Accordingly, title 7 of the Code of Federal Regulations is proposed to be amended by adding a new part 1499 to read as follows:

PART 1499—FOREIGN DONATION PROGRAMS

Sec.

1499.1 Definitions.
1499.2 General purpose and scope.
1499.3 Eligibility requirements for cooperating sponsor.
1499.4 Availability of commodities from CCC inventory.
1499.5 Program agreements.
1499.6 Criteria for entering into program agreements.
1499.7 Apportionment of costs.
1499.8 Ocean transportation.
1499.9 Restrictions on commodity use and distribution.
1499.10 Agreement between Cooperating Sponsor and Recipient Agencies.
1499.11 Liability of the Cooperating Sponsor.
1499.12 Sales, barter, and use of monetized proceeds and program income.
1499.13 Usual marketing requirements.
1499.14 Processing, packaging and labeling of section 416(b) commodities in the foreign country.
1499.15 Arrangements for entry and handling in the foreign country.
1499.16 Disposition of commodities unfit for authorized use.
1499.17 Liability for loss, damage, or improper distribution of commodities—claims and procedures.
1499.18 Records and reporting requirements.
1499.19 Termination of program.
1499.20 Sample documents/guidelines for developing proposals and reports.

Authority: 7 U.S.C. 1431(b); 7 U.S.C. 1736o; E.O. 12752.

§ 1499.1 Definitions.

Activity—An action undertaken by a Cooperating Sponsor involving the use of agricultural commodities donated under Program Agreements or the use of monetized proceeds.

Agricultural Counselor or Attache—A United States Department of Agriculture representative stationed abroad responsible for the country where agricultural commodities donated under Program Agreements are to be distributed.

CCC—The Commodity Credit Corporation.

Commodities—Agricultural commodities or products donated under Program Agreements.

Cooperating Sponsor—An entity with which CCC enters into a Program Agreement, including both foreign government and private nongovernment entities.

Director, P.L. 480–OD—The Director, Pub. L. 83–480 Operations Division, Foreign Agricultural Service, USDA.

Director, PAD—The Director, Program Analysis Division, Foreign Agricultural Service, USDA.

Director, PDD—The Director, Program Development Division, Foreign Agricultural Service, USDA.

Food for Progress Program—The donation of commodities under the authority of the Food for Progress Act of 1985.

General Sales Manager—General Sales Manager and Associate Administrator, Foreign Agricultural Service, USDA, who is the Vice President, CCC.

KCCO—Kansas City Commodity Office, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 419205, Kansas City, Missouri, 64141–6205.

KCFMO—Kansas City Financial Management Office, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 419205, Kansas City, Missouri, 64141–6205.

Monetization—The sale of commodities by Cooperating Sponsors.

Monetized proceeds—The local currency proceeds generated from monetization.

Plan of Operation—A description of the activities the Cooperating Sponsor will undertake utilizing the donated commodities or monetized proceeds.

Program income—Money received by the Cooperating Sponsor as a result of carrying out approved activities, including voluntary contributions from recipients of agricultural commodities in the importing country or interest received on monetized proceeds.

Program Agreement—A foreign donation agreement entered into between CCC and Cooperating Sponsors.

Recipient agency—An entity located in the importing country which receives commodities or monetized proceeds from a Cooperating Sponsor for the purpose of carrying out responsibilities of the Cooperating Sponsor under a Program Agreement.

Shipping Agent—Any person engaged by a Cooperating Sponsor to arrange for transportation services.

Section 416(b) program—The donation of agricultural commodities under the authority of section 416(b) of the Agricultural Act of 1949.

USDA—The United States Department of Agriculture.

§ 1499.2 General purpose and scope.

This part contains the general terms governing agreements between CCC and Cooperating Sponsors providing for the donation of agricultural commodities to carry out programs of assistance outside the United States under the authority of section 416(b) of the Agricultural Act of 1949, or support of developing countries and countries that have made commitments to introduce or expand free enterprise elements in their agricultural economies under the authority of the Food for Progress Act of 1985. Program Agreements may contain other provisions when CCC determines that such provisions are necessary to effectively carry out a particular Program Agreement. Except as otherwise specified herein, these regulations apply to only donations to Cooperating Sponsors under both the section 416(b) and Food for Progress programs. However, these regulations do not apply to donations to intergovernmental agencies (such as the World Food Program) or organizations unless CCC and such intergovernmental agency or organization enters into a Program Agreement incorporating this part.

§ 1499.3 Eligibility requirements for Cooperating Sponsor.

All entities registered with the Agency for International Development under 22 CFR part 203, are eligible to be Cooperating Sponsors. Other entities may be requested to furnish CCC evidence sufficient to demonstrate their capabilities to implement proposed activities prior to entering into a Program Agreement.

§ 1499.4 Availability of commodities from CCC inventory.

CCC will, to the extent practicable, announce prior to the beginning of each fiscal year the types and quantities of agricultural commodities available for donation from CCC inventory. The quality of agricultural commodities donated by CCC and packaging will be in accordance with the specifications set forth in the Program Agreements.

§ 1499.5 Program Agreements.

(a) *Agreements.* The Cooperating Sponsor must enter into a written Program Agreement with CCC which will incorporate by reference the terms and conditions set forth in this Part.

(b) *Section 416(b) Plan of Operation.* Prior to entering into a section 416(b) Program Agreement, each Cooperating Sponsor shall submit to the Agricultural Counselor or Attache, and to the Director, PDD, a Plan of Operation describing the activities it proposes to undertake. When approved by CCC, the Plan of Operation will be incorporated into the section 416(b) Program Agreement as Attachment A. In case of a conflict between the approved Plan of Operation and other terms of the Program Agreement, such other terms in the Program Agreement will prevail. The Plan of Operation must follow the format and provide the information as follows:

Appendix I to § 1499.5—Section 416(b) Program Plan of Operation (Attachment A)

1. Name and Address of Applicant:
2. Country:
3. Kind and Quantity of Commodities Requested:
4. Delivery Schedule:
5. Program Description:

a. Program objectives and expected outcomes, including a description of opportunities and constraints to achieving program objectives and criteria for measuring progress toward these objectives.

b. Program recipients or participants and how they were chosen.

c. Detailed description of program methodology and approaches, including, as appropriate:

—plans for distribution, selling commodities, how local currencies will be spent, and administrative of technical persons involved in each phase;
—transportation and storage systems that will be used to move the agricultural products from the receiving port to the point of distribution, or to where the product is reprocessed, packaged or sold;
—any reprocessing or repackaging or the commodity;
—logistics plan demonstrating the adequacy of port, transportation, and storage facilities to deliver commodities to recipients or to sell the commodities, without undue risk of spoilage or waste.

d. Governmental or nongovernmental institutions and entities involved in the program and the extent to which the program will strengthen or increase the capabilities of institutions or entities in the recipient country.

e. Method of educating recipients or participants of donation source, program requirements, and, where appropriate, preparation and use of the commodity.

f. Describe records, accountability methods and supervisory activities for controlling and monitoring distribution of products, sales of commodities, and use of generated proceeds. Describe plans for evaluating program outcome.

g. Information indicating that the host or local government supports the program.

h. Detailed budget for program, including costs that will be covered by the applicant, other organizations or local governments; which activities monetized proceeds will cover; and any request for USDA administrative funds. The budget should include how costs of administration, storage, transportation, processing and repackaging will be financed.

6. Use of Funds or Goods and Services Generated:

When the activity involves the use of monetized proceeds, the receipt of goods or services from the barter of commodities, or program income, the following information must be provided:

a. The quantity and type of commodities to be sold or bartered;

b. The amount of monetized proceeds anticipated to be generated from the same, or the value of the goods or services anticipated to be generated from the barter, of the donated agricultural commodities; except that where such amount or value cannot be estimated, the Cooperating Sponsor will describe the method to be used to ensure that a fair return of cash, goods or services will be received for the commodities;

c. The steps taken to use the private sector in the process of selling commodities;

d. The amount of program income expected to be generated;

e. The specific uses of sale proceeds or program income and a timetable for their expenditure;

f. Procedures for assuring the receipt and deposit of monetized proceeds and program income into a separate special account and for the disbursement of the proceeds and program income;

g. Information concerning the extent to which any sale or barter of the donated agricultural commodities would displace or interfere with any sales that may otherwise be made; and

h. The recipient agency, if any, that will be involved in the program and a description of each recipient agency's capability to perform its responsibilities as stated in the Plan of Operation.

7. Distribution Methods:

a. A thorough description of the transportation and storage system which will be used to move the agricultural commodities from the receiving port to the point at which distribution is made to the recipient;

b. A thorough description of any reprocessing or repackaging of the commodities that will take place; and

c. A logistics plan that demonstrates the adequacy of port, transportation, storage, and warehouse facilities to handle the flow of commodities to recipients without undue spoilage or waste.

8. Duty Free Entry:

Information indicating that commodities to be directly distributed to recipients will be imported and distributed free from all customs, duties, tolls, and taxes.

9. Economic Impact:

Information indicating that the commodities can be imported and distributed without negative impact upon domestic production, prices and marketing of same or like products.

§ 1499.6 Criteria for entering into Program Agreements.

(a) *Section 416(b).* (1) In determining whether to enter into a section 416(b) Program Agreement, CCC will give priority consideration to the donation of commodities to support activities designed to meet emergency situations, followed by non-emergency humanitarian feeding activities, and, finally, activities using monetized proceeds. Within this prioritization, CCC will consider the following evaluation criteria:

(i) Applicant Capability

(A) Organizational experience and current institutional capacity to implement and manage the type of program proposed (targeted food distribution, targeted food distribution and monetization, or monetization for economic and other development activities).

(B) Experience working in the targeted country.

(C) Experience and capability level of personnel who will be responsible for implementing and managing the program.

(ii) Quality and technical soundness of proposal

(A) Assessment of need and rationale are well presented and demonstrate actual need.

(B) Program objectives and expected outcomes are reasonable and realistic and show an understanding of the opportunities and constraints to achieving the program objectives.

(C) Plan for achieving program objectives is completely and clearly described and is logical for the type of program being implemented and includes, where appropriate, the following:

(*1*) Description of transportation mechanisms, facilities, storage and warehousing plans, distribution methods, recipients or participants, and local institutions or entities involved with the project.

(*2*) Description of how the commodity will be sold and any reprocessing or repackaging.

(*3*) For the use of monetized proceeds, description of activities or costs that will be paid for by the generated local currencies.

(*4*) Appropriateness and adequacy of organizational structure for the management of the agreement, including the clear articulation of lines of authority and relationships between the applicant and the various institutions and entities it proposes to involve.

(D) Records and accountability methods for monitoring the program, including the distribution of commodities or use of local currencies, and the method by which the Cooperating Sponsor intends to evaluate the success of the proposal are clearly described and appropriate.

(E) Demonstrates that the program will contribute to strengthening institutions, entities, or capabilities in the recipient country.

(iii) USDA Management responsibilities

USDA assessment of commodity need and acceptability in terms of cost, storability, acceptability, and nutritional impact of proposed commodities.

(b) *Food for Progress.* In determining whether to enter into a Food for Progress Foreign Donation Agreement, CCC will consider the extent to which the recipient country is committed to carry out, or is carrying out, policies that promote economic freedom, private domestic production of food commodities for domestic consumption, and the creation and expansion of efficient private domestic markets for the purchase and sale of such commodities. CCC shall require Cooperating Sponsors to submit a Plan of Operation similar to the Plan of Operation described in § 1499.5(b) when CCC determines such would be necessary to identify specific activities to be undertaken by the Cooperating Sponsor in order to accomplish the purposes of the Food for Progress program. In such case, proposed activities will be evaluated in accordance with the criteria set forth at § 1499.6(a)(2).

§ 1499.7 Apportionment of costs.

(a) CCC will pay that costs of processing, packaging, transporting, handling, and other incidental charges incurred in making commodities available to Cooperating Sponsors.

(b)(1) Title to all commodities shall pass to the Cooperating Sponsor at the time and place of delivery f.o.b. vessel at U.S. port in the case of bulk grain shipments, or f.a.s. vessel at U.S. port or at the intermodal point for all other commodities.

(2) The Cooperating Sponsor shall bear all costs and expenses incurred subsequent to the transfer of title, except that, when specifically provided in the Program Agreement or upon the determination by CCC that it is the best interest of the program to do so, CCC may pay or make reimbursement for all or a portion of the reasonable transportation costs from U.S. ports to designated ports or points of entry abroad, and in the case of urgent and extraordinary relief requirements, all or a portion of the reasonable transportation costs from designated points of entry abroad to storage and distribution sites, and reasonable associated storage and distribution costs.

(3) (i) In the case of countries receiving commodities under the Food for Progress Program, CCC may agree to make payments to Cooperating Sponsors to assist in the administration, sale, and monitoring of food assistance programs to strengthen private sector agriculture in such countries. The Program Agreement will specify the maximum dollar amount of funding that CCC will pay the Cooperating Sponsor for such costs. Payment of the above funds will only be made to the Cooperating Sponsor in such amounts, and for such purposes, as may be specifically approved in writing by the Controller, CCC and the General Sales Manager.

(ii) CCC may, at its option, advance to the Cooperating Sponsor not more than 85 percent of the total dollar amount specified in the Program Agreement for the costs identified in paragraph (b)(3)(i) of this section. Funds committed but not advanced will be paid on a reimbursement basis. Prior to the advance of any funds by CCC, the Cooperating Sponsor shall submit to the Director, PAD and to the Controller, CCC, a Program Operations Budget detailing all storage, distribution, monitoring and administrative costs to be incurred. The budget line items must represent reasonable costs, for which written approval from the Controller, CCC and the General Sales Manager was obtained prior to program implementation. Any revisions of these expenditures must also be approved by the Controller, CCC and the General Sales Manager.

(iii) Unless otherwise specifically permitted by CCC, CCC will not advance funds for expenditures by the Cooperating Sponsor that have been incurred prior to the date of the Program Agreement, that will be incurred earlier than 60 days following the date of any previous advance, or that will be incurred after a date specified in the Program Agreement.

(iv) The Cooperating Sponsor must submit to the Controller, CCC, invoices supporting the charges incurred against the advance, or for which reimbursement is claimed, within 60 days from the date the service is received. All charges must be reasonable and foreign currency transactions must be supported by evidence of the specific exchange rate incurred. A delay in receipt, or non-receipt, of supporting documentation by the Controller, CCC, may result in CCC's refusal to release future advances. The Cooperating Sponsor shall promptly refund to CCC all funds advanced, together with all interest earned on such funds, if either not utilized within 180 days after the advance for purposes for which the funds were advanced, or for which documentation supporting the expenditure is not supplied to CCC.

(v) All CCC advances must be deposited in an interest bearing account with interest earned on the funds advanced used for the purpose for which the funds were advanced. The Cooperating Sponsor shall submit a monthly Federal Funds Cash Report (SF–272) and a quarterly financial statement to the Controller, CCC, 10 working days past the end of the month or quarter, respectively, detailing the use and status (including interest earned on funds not yet utilized) of all funds advanced by CCC to Cooperating Sponsor.

(4) If the Program Agreement specifies that CCC will finance only the ocean

freight differential ("OFD") on U.S. flag vessels, the Director, Public Law 480–OD will compute OFD as follows:

(i) when non-U.S.-flag vessels are offered, the OFD will be the difference between the weighted average freight rate(s) of non-U.S. flag vessel(s) fixed or offered that could carry the quantity of cargo absent the requirement to use U.S.-flag vessels, and the rate for the U.S. flag vessel(s) fixed; or the rate(s) offered (including any lower rates negotiated) by U.S.-flag vessels(s) which could have carried the required tonnage and represents the lowest land cost (U.S. flag basis).

(ii) When non U.S. flag vessels are not offered, or when offered, have specifications which preclude their use, the rate to be used in computing OFD will be determined by using any market data deemed relevant.

(iii) When the recipient country employs its own flag vessels or other flag vessels under its control, the non-U.S. flag rate to be used in computing OFD will be determined using any market data deemed relevant.

§ 1499.8 Ocean transportation.

(a) *Cargo Preference.* Shipments of commodities donated under the section 416(b) and Food for Progress programs are subject to the requirements of sections 901(b) and 901b of the Merchant Marine Act, 1936, regarding carriage on U.S.-flag vessels. CCC will endeavor to meet these requirements separately for each program for each 12-month compliance period.

(b) *Coordination between CCC and the Cooperating Sponsor.* When the Program Agreement specifies that the Cooperating Sponsor will arrange ocean transportation:

(1) KCCO will furnish the Cooperating Sponsor with a Notice of Commodity Availability (Form CCC–512) which will specify the receiving country, commodity, quantity, and date at U.S. port or intermodal delivery point.

(2) The Cooperating Sponsor will arrange ocean transportation in accordance with the procedures specified in paragraph (c) of this section and shall comply with the instructions of CCC regarding the quantity of commodities that must be carried on U.S. flag vessels. U.S. ports of export will be selected on the basis of the lowest cost to CCC.

(3) The Cooperating Sponsor will complete the Form CCC–512 indicating name of steamship company, vessel name, vessel flag and estimated time of arrival at U.S. port, sign and return the completed form to KCCO, with a copy to the Director, Public Law 480–OD. For liner cargoes, if CCC has agreed to pay any part of the ocean transportation, the Form CCC–512 must also contain the ocean freight rate as stated in the Federal Maritime Commission tariff, with tariff identification.

(4) KCCO will issue instructions to have the commodity shipped f.a.s. or f.o.b. vessel, U.S. port of export, or to an intermodal delivery point, and consigned to the Cooperating Sponsor specified in the Form CCC–512.

(b) *Shipping agents.* (1) The Cooperating Sponsor may appoint a shipping agent to assist in the procurement of ocean transportation. If a shipping agent is to be used, the Cooperating Sponsor must nominate the shipping agent in writing to the General Sales Manager, room 4071–S, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000. The written nomination shall specify the period of time to be covered by the nomination. A copy of the proposed agency agreement must also be provided. A Cooperating Sponsor may submit a single written nomination for a shipping agent for more than one program or may submit separate written nominations for each program.

(2) The shipping agent must submit the information and certifications required by 7 CFR 17.5.

(3) A person may not act as shipping agent for a Cooperating Sponsor unless the Assistant General Sales Manager has notified the Cooperating Sponsor in writing that the nomination is accepted.

(c) *Freight procurement requirements.* The following requirements apply when the Cooperating Sponsor arranges ocean transportation and CCC is financing any portion of the ocean freight.

(1) Freight invitations for bids must be issued for the solicitation of freight offers through the Transportation News Ticker (TNT), New York, plus at least one other means of communication, to assure the broadest possible market coverage and adequate notice to interested parties.

(2) The Cooperating Sponsor must obtain approval of all invitations for bids as specified in the Program Agreement prior to their issuance.

(3) Freight invitations for bids must provide: (i) That offers have a canceling date no later than the last contract layday specified in the invitation for bids;

(ii) that offered rates be quoted in U.S. dollars per metric ton, and if destination bagging or transportation to a point beyond the discharge port is required, offered rates shall separately state the total rates and the portion of the rates attributable to the ocean segment of the movement;

(iii) that any non-liner U.S. flag vessel 15 years or older must furnish, in addition to any other offered rate, a one way rate to be applicable in the event the vessel is scrapped or transferred to foreign flag registry prior to the end of the return voyage to the United States;

(iv) specify the procedures for payment of freight, including the party responsible for the freight payments;

(v) require, in the case of packaged commodities, that U.S. flag carriers specify whether delivery will be direct breakbulk shipment, container shipment, or breakbulk transshipment and identify whether transshipment (including container relays) will be via U.S. or foreign flag vessel;

(vi) provide that vessels offered subject to Maritime Administration approval will not be accepted; and

(vii) specify a closing time for the submission of offers and state that late offers will not be accepted.

(4) In the case of shipments of bulk commodities, the Cooperating Sponsor shall open offers in public in the United States at the time and place specified in the invitation for bids and consider only offers that are responsive to the invitation for bids without negotiation, clarification, or submission of additional information. All responsive offers received for both U.S. flag and foreign flag service must be presented to KCCO which will determine the extent to which U.S.-flag vessels will be used.

(5) The Director, Public Law 480–OD, or another official specified in the Program Agreement, must approve all vessel fixtures. The Cooperating Sponsor may fix vessels subject to that approval of the Director, Public Law 480–OD, or such other official. The Cooperating Sponsor shall not confirm a vessel fixture until the Director, Public Law 480–OD, or such other official, advises the Cooperating Sponsor of the required approval and the results of the Maritime Administration's guideline rate review. The Cooperating Sponsor shall not request guideline rate advice from the Maritime Administration.

(6) Non-Vessel Operating Common Carriers may not be employed to carry U.S.-flag shipments.

(d) *Commissions.* (1) Total commissions earned on U.S. and foreign flag bookings by all parties arranging vessel fixtures, when any portion of the ocean freight is paid by CCC, shall not exceed 2½ percent of that portion of the gross freight attributable to the ocean segment of the cargo movement.

(2) Total commissions to a shipping agent shall not exceed ⅔ of 2½ percent of that portion of the gross freight attributable to the ocean transportation segment of the movement.

(3) The Cooperating Sponsor shall require liner carriers to assure that tariffs on file at the Federal Maritime Commission reflect the maximum commissions payable under this paragraph.

(4) Address commissions are prohibited.

(e) *Contract terms.* (1) The Cooperating Sponsor shall assure that, when CCC is paying any portion of the ocean freight, charter parties and liner booking contracts contain clauses that implement the following paragraphs:

(i) packaged commodities on liner vessels shall be shipped on the basis of full berth terms with no demurrage or despatch;

(ii) bulk commodities shall be shipped on the basis of vessel load, free out, with demurrage and despatch applicable at load and discharge ports. Laytime accounts are to be settled between the ocean carrier and export elevators at load port and between the ocean carrier and charterers at discharge ports. CCC is not responsible for resolving disputes involving the calculation of laytime or the payment of demurrage or despatch.

(iii) if the Program Agreement requires the Cooperating Sponsor to open an irrevocable letter of credit for ocean freight, the Cooperating Sponsor shall be liable for detention of the vessel for loading delays attributable solely to the decision of the ocean carrier not to commence loading because of the failure of the Cooperating Sponsor to establish such letter of credit. Charter parties and liner booking contracts may not contain a specified detention rate. The ocean carrier shall be entitled to reimbursement, as damages for detention, all time so lost, for each calendar day or any part of the calendar day, including Saturdays, Sundays and holidays. The period of such delay shall not commence earlier than upon presentation of the vessel at the designated loading port within the laydays specified in the charter party or liner booking contract, and upon notification of the vessel's readiness to load in accordance with the terms of the applicable charter party or liner booking contract. The period of such delay shall end at the time that operable irrevocable letters of credit have been established for ocean freight or the time the vessel begins loading, whichever is earlier. Time calculated as detention shall not count as laytime. Reimbursement for such detention shall be payable no later than upon the vessel's arrival at the first port of discharge.

(iv) charges attributable to the failure of the vessel to present before the canceling date including, but not limited to inspection, fumigation, and carrying charges, will be for the account of the ocean carrier.

(v) ocean freight is earned under a charter party when the vessel and cargo arrive at the first port of discharge, Provided, That if a force majeure as described in paragraph (f)(3) below prevents the vessels arrival at the first port of discharge, 95% of the ocean freight is payable or, if the charter party provides for completing additional requirements after discharge such as bagging, stacking, or inland transportation, 85% of the ocean freight is payable, at the time the General Sales Manager determines that such force majeure was the cause of nonarrival; and

(vi) when the ocean carrier offers delivery to destination ports on U.S.-flag vessels, but foreign-flag vessels are used for any part of the voyage to the destination port, without first obtaining the approval of the Cooperating Sponsor, KCCO, and any other approval that may be required by the Program Agreement, the ocean freight rate will be reduced to the lowest responsive foreign-flag vessel rate offered in response to the same invitation for bids and the carrier agrees to pay CCC the difference between the contracted ocean freight rate and the freight rate offered by such foreign-flag vessel.

(f) *Freight Payment by CCC.* When the Program Agreement provides that CCC will pay any portion of the ocean freight:

(1) 100% of the ocean freight is payable upon receipt of the documents specified in paragraph (g) of this section, unless the charter party or liner booking note provides for completing additional requirements after discharge such as bagging, stacking, or inland transportation, in which case 85% of the ocean freight is payable. The balance of freight remaining will be paid upon receipt of notification from the Cooperating Sponsor that the vessel has fulfilled all the requirements of the charter party or liner booking contract in a successful manner.

(2) Demurrage will not be paid or reimbursed by CCC.

(3) CCC will waive the requirement in paragraph (g) of this section for a notice of arrival if the General Sales Manager determines upon submission of evidence on the part of the ocean carrier that the vessel is lost or unable to proceed to destination after completion of loading as a result of one or more of the following causes (force majeure): Damage caused by perils of the sea or other waters; collisions; wrecks; stranding without the fault of the carrier; jettison; fire from any cause; Act of God; public enemies or pirates; arrest or restraint of princes, rulers, or peoples without the fault of the ocean carrier; wars; public disorders; captures; or detention of public authority in the interest of public safety. If the General sales Manager determines that a force majeure prevents the vessels arrival at the first port of discharge, 95% of the ocean freight is payable or, if the charter party provides for completing additional requirements after discharge such as bagging, stacking, or inland transportation, 85% of the ocean freight is payable upon submission of the documents specified in paragraph (g) of this section, except that the notice of arrival need not be submitted. The balance of ocean freight shall not be due or payable.

(g) *Documentation required for payment or reimbursement of freight charges by CCC.*

(1) One copy of completed Form CCC–512;

(2) Three copies of "on board" bills of lading indicating the freight rate and signed by originating carrier;

(3) National Cargo Bureau vessel hold inspection and certificate of loading as applicable;

(4) Two signed copies of liner booking note or charter party covering ocean transportation of cargo;

(5) For charter movements, a notice of arrival at first discharge point, to be submitted by the Cooperating Sponsor;

(6)(i) Request by the Cooperating Sponsor for reimbursement of ocean freight indicating amount due, accompanied by a certification from the ocean carrier that payment has been made;

(ii) Request for direct payment of ocean freight to the ocean carrier, indicating amount due; or

(iii) Request for direct payment of ocean freight differential to the ocean carrier, accompanied by a certification from the carrier that payment of the Cooperating Sponsor's portion of the ocean freight has been received.

§ 1499.9 Restrictions on commodity use and distribution.

(a) The Cooperating Sponsor may use the donated commodities only in accordance with the terms of the Program Agreement.

(b) Donated commodities may not be distributed within the importing country on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identify or affiliations of the potential consumers or recipients.

(c) Donated commodities may not be distributed, handled or allocated by military forces except where such activities are specifically authorized by CCC.

§ 1499.10 Agreement between Cooperating Sponsor and Recipient Agency(ies).

(a) The Cooperating Sponsor shall, prior to the transfer of any donated commodities, monetized proceeds or program income, enter into and formally execute an agreement with each recipient agency engaged for the purpose of the distribution of commodities or for the implementation of any other approved activity. Copies of such agreements shall be provided to the appropriate Agricultural Counselor or Attache. Such agreements shall include the following terms:

(1) a requirement that the recipient agency pay the Cooperating Sponsor the value of any commodities, monetized proceeds or program income that is used for purposes not expressly permitted under the Plan of Operation;

(2) a requirement that the recipient agency pay the Cooperating Sponsor for any commodities, monetized proceeds or program income that is lost, damaged, or misused as result of the recipient agency's failure to exercise reasonable care;

(3) a provision expressly incorporating the terms and conditions of this part which govern the implementation of the approved Plan of Operation, the use of funds, record keeping, inspection and audit.

(b) Upon request, CCC may, within its sole discretion, elect to waive the requirement of paragraph (a) of this section where it determines that such an agreement is not feasible or appropriate for any reason, including the nature of the recipient agency, or the amount of commodities, monetized proceeds or program income that may be transferred to the recipient agency. In any case where waiver is granted, however, such waiver shall not otherwise affect or diminish the Cooperating Sponsor's obligations or responsibilities with respect to program commodities, monetized proceeds or program income.

§ 1499.11 Liability of the Cooperating Sponsor.

(a) The Cooperating Sponsor shall be required to reimburse CCC for all costs incurred by CCC, including the cost of acquisition of the donated commodity where such Cooperating Sponsor has either:

(1) Failed to export the commodities from the United States;

(2) Been responsible for the reentry of the commodity into the United States; or

(3) Used the commodities, monetized proceeds or sale profits in a manner inconsistent with program requirements.

(b) [Reserved]

§ 1499.12 Sales, barter, and use of monetized proceeds and program income.

(a) *Section 416(b).* (1) Except as provided in paragraph (a)(3) of this section, commodities donated under a section 416(b) Program Agreement may be sold or bartered only in accordance with an approved Plan of Operation. Such sales or barters may be approved by CCC on a case-by-case basis for the following purposes only:

(i) to finance the distribution, handling or processing costs of the donated commodities in the importing country or in a country through which the commodities must be transshipped, or other activities in the importing country that are consistent with providing food assistance to needy people;

(ii) in the case of sales of commodities furnished to nonprofit and voluntary agencies, or cooperatives, to generate proceeds to be used to transport, store, distribute and otherwise enhance the effectiveness of the use of commodities, and to implement income generating community development, health, nutrition, cooperative development, agricultural program, and other development activities;

(iii) to cover expenses of the type identified in section 406 of the Agricultural Trade Development and Assistance Act of 1954; or

(iv) for any other use specifically authorized by statute.

(2) Commodities may be sold or bartered only in the importing country or other country specifically approved by CCC. Monetized proceeds must be expended within either the country of origin or in other countries as necessary to expedite transportation of commodities, or in countries which generally accept the type of currency generated by the sale. Monetized proceeds must be expended within one year of acquisition unless CCC specifically agrees that a longer period is necessary to achieve the purposes of paragraph (a)(1)(i) and (ii) of section.

(3) Notwithstanding paragraphs (a) (1) and (2) of this section, commodities may be sold or bartered without prior approval of CCC where damage has occurred to the commodity rendering it unfit for the intended program purposes, and sale or barter is necessary to mitigate the loss of the value of the damaged commodity.

(4) Cooperating Sponsors who sell or barter commodities must enter into a written agreement with the other party to the sale transaction. A copy of the executed agreement must be provided to the Agricultural Counselor or Attache.

(5) All monetized proceeds shall be deposited into a special interest bearing account for control and monitoring unless interest bearing accounts are prohibited by the laws or customs of the importing country or such requirement would impose an undue burden on the Cooperating Sponsor. Any accrued interest shall be used only for approved activities.

(6) Cooperating Sponsors shall not be required to monitor, manage, report on, or account for the distribution or use of such sold or bartered commodities after all sales proceeds have been fully deposited in a special account and title to the commodities has passed to buyers or other third parties pursuant to a sale or barter transaction. The sales proceeds and the uses thereof, however, must be monitored, managed, reported and accounted for as provided in the relevant sections of this part 1499.

(7) Commodities approved for sale or barter need not be imported and sold free of all duties and taxes, but nongovernmental Cooperating Sponsors may negotiate agreements with the host government permitting the duty and tax-free import and sale of such commodities. Even where the Cooperating Sponsor negotiates such exempt status, the prices at which the Cooperating Sponsor sells the commodities to the purchaser shall reflect prices that would be obtained in a competitive commercial transaction, i.e., the prices would include the cost of duties and taxes, so that the amounts normally paid for duties and taxes would accrue for the benefit of the Cooperating Sponsor's approved program.

(8) No part of the proceeds or services realized from sales or barters may be used for operating and overhead expenses, other than for personnel and administrative costs of local cooperatives. Operating and overhead expenses are costs attributable to the overall administration and management expenses of the Cooperating Sponsor in its regional, national, or U.S. offices, including rent, taxes, insurance, utilities, telephone, office supplies, and depreciation, and in the case of nonprofit private and voluntary agencies and cooperatives, costs of monitoring, evaluation, auditing, and travel within the host country except where such costs are directly related to a specific activity and essential to the effective implementation of the activity.

(9) The Cooperating Sponsor shall use commercially reasonable procurement practices in purchasing goods or services and in construction activities

using monetization proceeds or program income, and shall employ procedures that prevent fraud, self-dealing, and conflicts of interest and provide for free and open competition to the maximum extent practicable. Title to real and personal property acquired with monetization proceeds and program income shall be vested in the Cooperating Sponsor, with the Cooperating Sponsor providing the Controller, CCC with an inventory list of all assets valued at one thousand dollars (USD) or more. The Cooperating Sponsor shall dispose of such property as directed by the Agricultural Counselor or Attache in the event the program terminates or is transferred to another Cooperating Sponsor.

(10) Monetized proceeds and program income may not be used to acquire, develop, construct, alter or upgrade land, buildings or other real property improvements or structures that are either:

(i) owned or managed by a church or other organization engaged exclusively in religious activity, or

(ii) used in whole or in part for sectarian purposes. Notwithstanding the preceding sentence, monetized proceeds or program income may be used to finance repair or rehabilitation of an existing structure owned or managed by a church or organization engaged exclusively in religious activity to the extent necessary to avoid spoilage or loss of donated commodities, provided that the structure is not used in whole or in part for any sectarian purpose while donated commodities are stored in it. The use of monetized proceeds or program income to finance construction of such a structure may be approved in the operational plan or by the Agricultural Counselor or Attache if the structure is needed and will be used for the storage of donated commodities for a sufficient period of time to warrant the expenditure of monetized proceeds or program income and the structure will not be used for any sectarian purpose during this period.

(b) *Food for Progress.* Unless the Food for Progress Program Agreement provides otherwise, commodities donated under Food for Progress may be sold within the recipient country without restriction or special procedural requirements.

§ 1499.13 Usual marketing requirements.

A foreign government Cooperating Sponsor shall provide data showing commercial and non-commercial imports of the types of agricultural commodities requested for the past five years, by country of origin, and an estimate of expected imports of such commodities during the current year. A Program Agreement with a foreign government may include a usual marketing requirement and shall prohibit the re-export of donated commodities, as well as of other related commodities specified in the Program Agreement.

§ 1499.14 Processing, packaging and labeling of section 416(b) commodities in the foreign country.

(a) Cooperating Sponsors may arrange for the processing of commodities donated under a section 416(b) Program Agreement and for packaging or repackaging prior to distribution. When a third party provides such processing, packaging, or repackaging, the Cooperating Sponsor shall enter into written agreements for such services. The agreement shall require that the provider of such services (1) shall fully account to the Cooperating Sponsor for all commodities delivered or otherwise be liable for the value of all unaccounted commodities and (2) shall maintain adequate records and submit periodic reports pertaining to performance under the agreements. Copies of the executed agreements shall be provided to the Agricultural Counselor or Attache.

(b) If, prior to distribution, the Cooperating Sponsor arranges for packaging or repackaging commodities donated under section 416(b), the cartons, sacks, or other containers in which the commodities are packed shall be plainly labeled in the language of the country in which the commodities are to be distributed with the name of the commodity and, except where the donated commodities are to be sold or bartered pursuant to an approved Plan of Operation after processing, packaging or repackaging, that the commodity is furnished by the people of the United States of America and not to be sold or exchanged. If the commodities are not packaged, to the extent practicable, the Cooperating Sponsor shall display banners, posters or other media and provide individual identification cards containing the information prescribed in this paragraph.

(c) If the packages of commodities donated under section 416(b) are discharged from vessel in a damaged condition, and are repackaged to ensure that the commodities arrive at the distribution point in wholesome condition, CCC will reimburse Cooperating Sponsors who are nonprofit private voluntary organizations and cooperatives for approved expenses incurred for such repackaging. No prior approval is required for such expenses equaling $500 or less. If such expense is estimated to exceed $500, the authority to repackage and incur such expense must be approved by the Agricultural Counselor or Attache in advance of repackaging.

§ 1499.15 Arrangements for entry and handling in the foreign country.

(a) The Cooperating Sponsor shall make all necessary arrangements for receiving the donated commodities in the recipient country, including obtaining appropriate approvals for entry and transit, and shall ensure that agricultural commodities which are to be distributed to recipients in direct feeding programs shall be admitted duty free and exempt from all taxes. The Cooperating Sponsor shall be responsible for storing and maintaining the commodities from time of delivery at port of entry or point of receipt from originating carrier in such manner as to ensure that the commodities remain in good condition until their distribution, sale or barter.

(b) The Cooperating Sponsor may use either of the following methods to arrange for the transport, storage, and distribution from designated points of entry or ports of entry when CCC has agreed to pay costs of such services:

(1) Through bill of lading; or

(2) Contract directly with suppliers of services, and submit a billing, with supporting documentation, to CCC indicating actual costs incurred. All supporting documentation must be sent to the Director, Public Law 480–OD. Payment will be made, at the option of CCC, in dollars at the exchange rate as of the date of payment by CCC, or in foreign currency.

§ 1499.16 Disposition of commodities unfit for authorized use.

(a) *Prior to delivery to Cooperating Sponsor at discharge port or point of entry.* If the commodity is damaged prior to delivery to a governmental Cooperating Sponsor at discharge port or point of entry overseas, the Agricultural Counselor or Attache, or CCC designated representative, shall immediately arrange for inspection by a public health official or other competent authority. A nongovernmental Cooperating Sponsor shall arrange for such inspection of commodities damaged prior to delivery. If the commodity is determined to be unfit for the use authorized in the Program Agreement, the commodities shall be disposed of in accordance with the priority set forth in paragraph (b) of this section. Expenses incidental to the handling and disposition of the damaged commodity shall be paid by CCC from the sales proceeds or from an appropriate CCC account as determined by CCC. The net proceeds of sales shall be deposited with the U.S. Disbursing Officer American Embassy, for the credit of CCC in an appropriate CCC account as determined by CCC. However, if the commodities were donated for monetization programs, the net sales proceeds, after deducting expenses incidental to handling and disposition of the damaged commodity, shall be deposited to the special account established for monetized proceeds, and the Cooperating Sponsor is responsible for documenting the amount of the sales proceeds from the sale of damaged commodities deposited to the special account. The Cooperating Sponsor shall seek guidance from CCC regarding sales proceeds in the event the Cooperating Sponsor executed a sales agreement under which title passed to the purchaser prior to delivery.

(b) *After delivery to Cooperating Sponsor.* If after arrival in a foreign country it appears that the commodity, or any part thereof, may be unfit for the use authorized in the Program Agreement, the Cooperating Sponsor shall immediately arrange for inspection of the commodity by a public health official or other competent authority approved by the Agricultural Counselor or Attache. If no competent local authority is available, the Agricultural Counselor or Attache may determine whether the commodities are unfit for the use authorized in the Program Agreement, and, if so, may direct disposal in accordance with paragraphs (b) (1) through (4) of this section. The Cooperating Sponsor shall arrange for the recovery for authorized use of that part designated during the inspection as suitable for authorized use. If, after inspection, the commodity (or any part thereof) is determined to be unfit for authorized use, the Cooperating Sponsor shall notify the Agricultural Counselor or Attache of the circumstances pertaining to the loss or damage. With the concurrence of the Agricultural Counselor or Attache, the commodity determined to be unfit for authorized use shall be disposed of in the following order of priority:

(1) By transfer to an approved section 416(b) program for use as livestock feeding feed. CCC shall be advised promptly of any such transfer so that shipments from the United States to the livestock feeding program can be reduced by an equivalent amount;

(2) Sale for the most appropriate use, i.e., animal feed; fertilizer, or industrial use, at the highest obtainable price. When the commodity is sold, all U.S. Government markings shall be obliterated or removed;

(3) By donation to a governmental or charitable organization for use as animal feed or for other non-food use; or

(4) If the commodity is unfit for any use or if disposal in accordance with paragraph (b)(1), (2) or (3) of this section is not possible, the commodity shall be destroyed under the observation of a representative of the Agricultural Counselor or Attache, if practicable, in such manner as to prevent its use for any purpose.

Expenses incidental to the handling and disposition of the damaged commodity shall be paid by the Cooperating Sponsor unless it is determined by the Agricultural Counselor or Attache that the damage could not have been prevented by the Cooperating Sponsor under the terms of the Program Agreement. Actual expenses incurred, including third party costs, in effecting any sale may be deducted from the sales proceeds and, except for monetization programs, the net proceeds shall be deposited with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to an appropriate CCC account as determined by CCC. In monetization programs, the gross proceeds shall be deposited in the special interest bearing account and after approved costs related to the handling and disposition of damaged commodities are paid, remaining funds used for purposes of the approved program. The Cooperating Sponsor shall promptly furnish to the Agricultural Counselor or Attache a written report of all circumstances relating to the loss and damage. The report and any supplemental report shall include a certification by a public health official or other competent authority of the exact quantity of the damaged commodity disposed of because it was determined to be unfit for the use authorized in the Program Agreement. A report must also be provided to the Chief, Debt Management Division, KCFMO, of action taken to dispose of commodities unfit for authorized use.

§ 1499.17 Liability for loss, damage, or improper distribution of commodities—claims and procedures.

(a) *Fault of Cooperating Sponsor prior to loading on ocean vessel.* If the Cooperating Sponsor fails to have a vessel for loading at the U.S. port of export in accordance with the agreed shipping schedule, the Cooperating Sponsor shall immediately notify KCCO, Chief, Export Operations Division. CCC will determine whether the commodity shall be: Moved to another available outlet; stored at the port for delivery to the Cooperating Sponsor when a vessel is available for loading; or disposed of as CCC may deem proper. The Cooperating Sponsor shall take such action as directed by CCC and shall reimburse CCC for expenses incurred.

(b) *Fault of others prior to loading on ocean vessel.* When any damage or loss to the commodity occurs which is attributable to a warehouseman, carrier, or other person between the time title is transferred to a Cooperating Sponsor and the time the commodity is loaded on board vessel at designated port of export, the Cooperating Sponsor shall immediately notify KCFMO, Chief, Debt Management Office. The Cooperating Sponsor shall promptly assign to CCC any rights to claims which may accrue as a result of such loss or damage and shall promptly forward to CCC all documents pertaining thereto. CCC shall have the right to initiate, prosecute, and retain the proceeds of all claims for such loss or damage.

(c) *Survey and outturn reports.* (1) Unless the Program Agreement provides otherwise, CCC shall arrange for an independent cargo surveyor to attend the discharge of the cargo and to report on the quantity and condition of the commodities discharged and the probable cause of any damage. All cargoes provided under an agreement shall be surveyed. If practicable, the examination of the cargo shall be conducted jointly by the surveyor, the consignee, and the ocean carrier, and the survey report shall be signed by all parties.

(2) (i) If the Cooperating Sponsor arranges for an independent cargo surveyor, the Cooperating Sponsor shall obtain a certification by a public health official or similar competent authority as to the condition of the commodity in any case where a damaged commodity appears to be unfit for the use authorized in the Program Agreement; and a certificate of disposition in the event the commodity is determined to be unfit for its intended use. Such certificates shall be obtained as soon as possible after discharge of the cargo. The Cooperating Sponsor shall forward any narrative chronology or other commentary it can provide to assist in the adjudication of ocean transportation claims and shall prepare such a narrative in any case where the loss is estimated to be in excess of $5,000.00. The Cooperating Sponsor may, at its option, also engage the independent surveyor to supervise clearance and delivery of the cargo from customs or port areas to the Cooperating Sponsor or its agent and to issue delivery survey reports thereon.

(ii) In the event of cargo loss and damage, the Cooperating Sponsor shall

provide the names and addresses of individuals who were present at the time of discharge and during survey and who can verify the quantity lost or damaged. For bulk grain shipments, in those cases where the Cooperating Sponsor is responsible for survey and outturn reports, the Cooperating Sponsor shall obtain the services of an independent surveyor to:

(A) Observe the discharge of the cargo and report on discharging methods including scale type, calibrations and any other factor which may affect the accuracy of scale weights, and if scales are not used, the reason should be stated and the method of weight determination fully described;

(B) Estimate the quantity of cargo, if any, lost during discharge through carrier negligence;

(C) Advise on the quality of sweepings;

(D) Obtain copies of port or vessel records, if possible, showing quantity discharged; and

(E) Provide immediate notification to the Cooperating Sponsor if additional services are necessary to protect cargo interests of if surveyor has reason to believe that the correct quantity was not discharged. In the case of shipments arriving in container vans, Cooperating Sponsors shall require the independent surveyor to list the container van numbers and seal numbers shown on the container vans, and indicate whether the seals were intact at the time the container vans were opened, and whether the container vans were in any way damaged. To the extent possible, the independent surveyor should observe discharge of container vans from the vessel to ascertain whether any damage to the container van occurred and arrange for surveying the contents as soon as possible after opening.

(iii) Cooperating Sponsors shall send copies to KCFMO, Chief, Debt Management Office of all reports and documents pertaining to the discharge of commodities.

(iv) CCC will reimburse the Cooperating Sponsor for incurred costs upon receipt of the survey report and the surveyor's invoice or other documents that establish the survey cost. CCC shall not reimburse a Cooperating Sponsor for the costs of only a delivery survey, in the absence of a discharge survey, or for any other survey not taken contemporaneously with the discharge of the vessel, unless such deviation is justified to the satisfaction of CCC.

(3) Survey contracts shall be let on a competitive bid basis unless CCC determines that the use of competitive bids would not be practicable. CCC may preclude the use of certain surveyors because of conflicts of interest or lack of demonstrated capability to properly carry out surveying responsibilities.

(d) *Ocean carrier loss and damage.* (1) Notwithstanding transfer of title to the Cooperating Sponsor, the CCC shall have the right to file, pursue, and retain the proceeds of collection from claims arising from ocean transportation cargo loss and damage, including loss and damage occurring between the time of transfer of title and loading aboard a vessel. CCC assumes general average contributions and all valid general average incidents which may arise from the movement of commodity to the destination ports. CCC shall receive and retain all allowances in general average. Where the Cooperating Sponsor pays the ocean freight or a portion thereof, it shall be entitled to pro rata reimbursement received from any claims related to ocean freight charged.

(2) The Cooperating Sponsor shall: File notice with the ocean carrier immediately upon discovery of any cargo loss or damage, promptly initiate claims against the ocean carriers for such loss and damage, take all necessary action to obtain restitution for losses, and provide CCC copies of all such claims. Notwithstanding the foregoing, the Cooperating Sponsors need not file a claim when the cargo loss is less than $100, or in any case when the loss is between $100 and $300 and the Cooperating Sponsors determine that the cost of filing and collecting the claim will exceed the amount of the claim. Cooperating Sponsors shall transmit to KCFMO, Chief, Debt Management Office information and documentation on such lost or damaged shipments when no claim is to be filed. When General Average has been declared, Cooperating Sponsors need not file or collect claims for loss of, or damage to, commodities.

(3) Amounts collected by Cooperating Sponsors on claims against ocean carriers which are less than $200 may be retained by the Cooperating Sponsor. On claims involving loss of damage of $200 or more the Cooperating Sponsors may retain from collections received by them, either $200 plus 10 percent of the difference between $200 and the total amount collected on the claim, up to a maximum of $500; or the actual administrative expenses incurred in collection of the claim, provided retention of such administrative expenses is approved by CCC. Allowable collection costs shall not to include attorneys fees, fees of collection agencies, and similar costs. In no event will CCC pay collection costs in excess of the amount collected on the claim.

(4) The Cooperating Sponsors also may retain from claim recoveries remaining after allowable deductions for administrative expenses of collection, the amount of any special charges, such as handling and packing costs, which the Cooperating Sponsor has incurred on the lost or damaged commodity and which are included in the claims and paid by the liable party.

(5) The Cooperating Sponsor may redetermine claims on the basis of additional documentation or information not considered when the claims were originally filed when such documentation or information clearly changes the ocean carrier's liability. Approval of such changes by CCC is not required regardless of amount. However, copies of redetermined claims and supporting documentation or information shall be furnished to CCC.

(6) The Cooperating Sponsor may negotiate compromise settlements of claims of any amount, provided that proposed compromise settlements of claims having a value of $5,000 or more shall require prior approved in writing by CCC. When a claim is compromised, the Cooperating Sponsor may retain from the amount collected, the amounts authorized in paragraph (d)(3) of this section, and in addition, an amount representing such percentage of the special charges described in paragraph (d)(4) of this section as compromised amount is to the full amount of the claim. When a claim is less than $600, the Cooperating Sponsor may terminate collection activity when it is determined that pursuit of such claims will not be economically sound. Approval for such termination by CCC is not required; however, the Cooperating Sponsor shall notify KCFMO, Chief, Debt Management Division when collection activity on a claim is terminated.

(7) All amounts collected in excess of the amounts authorized herein to be retained shall be remitted to CCC. For the purpose of determining the amount to be retained by the Cooperating Sponsor from the proceeds of claims filed against ocean carriers, the word "claim" shall refer to the loss and damage to commodities which are shipped on the same voyage of the same vessel to the same port destination, irrespective of the kinds of commodities shipped or the number of different bills of lading issued by the carrier.

(8) If a Cooperating Sponsor is unable to effect collection of a claim or negotiate an acceptable compromise settlement within the applicable period of limitation or any extension thereof granted in writing by the liable party or parties, the rights of the Cooperating Sponsor to the claim shall be assigned

to CCC in sufficient time to permit the filing of legal action prior to the expiration of the period of limitation or any extension thereof. Generally, the Cooperating Sponsor shall assign claim rights to CCC no later than 60 days prior to the expiration of the period of limitation or any extension thereof. In all cases, the Cooperating Sponsor, shall keep CCC informed of the progress of its collection efforts and shall promptly assign their claim rights to CCC upon request. Subsequently, if CCC collects on or settles the claim, CCC shall, except as indicated below, pay to the Cooperating Sponsor the amount to which it would have been entitled had it collected on the claim. The additional 10 percent on amounts collected in excess of $200 will be payable, however, only if CCC determines that reasonable efforts were made to collect the claim prior to the assignment, or if payment is determined to be commensurate with the extra efforts exerted in further documenting the claim. If documentation requirements have not been fulfilled and the lack of such documentation has not been justified to the satisfaction of CCC, CCC will deny payment of all allowances to the Cooperating Sponsor.

(9) When a Cooperating Sponsor fails to file a claim, permit a claim to become time-barred, or fail to take timely actions to insure the right of CCC to assert such claims, and CCC determines that the Cooperating Sponsor failed to properly exercise its responsibilities under the Agreement, the Cooperating Sponsor shall be liable to the United States for the cost and freight value of the commodities lost to the program.

(e) *Fault of Cooperating Sponsor in country of distribution.* The Cooperating Sponsor shall pay to CCC the value of the commodities, proceeds or program income lost, damaged, or misused (or may, with prior Agricultural Counselor or Attache approval, replace such commodities with similar commodities of equal value). If the Cooperating Sponsor:

(1) improperly distributed a commodity;

(2) uses a commodity, monetized proceeds from the sale thereof or program income for purposes not permitted under the Program Agreement, the approved Plan of Operation or this part 1499;

(3) causes loss or damage to a commodity or loss of monetized proceeds or program income through any act or omission; or

(4) fails to provide proper storage, care, and handling. The Cooperating Sponsor may be excused of its obligations for such payment or replacement if it is determined by CCC that such improper distribution or use, or such loss or damage, could not have been prevented by proper exercise of the Cooperating Sponsor's responsibility under the terms of the Program Agreement. Normal commercial practices in the country of distribution shall be considered in determining whether there was a proper exercise of the Cooperating sponsor's responsibility. Payment by the Cooperating Sponsor shall be made in accordance with paragraph (g) of this section.

(f) *Fault of others in country of distribution and in intermediate country.* (1) In addition to survey or outturn reports to determine ocean carrier loss and damage, the Cooperating Sponsor shall, in the case of landlocked countries, arrange for an independent survey at the point of entry into the recipient country and make a report as set forth in paragraph (c)(1) of this section. CCC will reimburse the Cooperating Sponsor for the costs of survey as set forth in paragraph (c)(2)(iv) of this section.

(2) Where any damage to or loss of the commodity or any loss of monetized proceeds or program income is attributable to a warehouseman, carrier or other person, the Cooperating Sponsor shall make every reasonable effort to pursue collection of claims for such loss or damage. The Cooperating Sponsor shall furnish a copy of the claim and related documents to the Agricultural Counselor or Attache. Cooperating Sponsors who fail to file or pursue such claims shall be liable to CCC for the value of the commodities or loss of monetized proceeds or program income is attributable to a warehouseman, carrier or other person, the Cooperating Sponsor shall make every reasonable effort to pursue collection of claims for such loss or damage. The Cooperating Sponsor shall furnish a copy of the claim and related documents to the Agricultural Counselor or Attache. Cooperating Sponsors who fail to file or pursue such claims shall be liable to CCC for the value of the commodities or monetized proceeds or program income lost, damaged, or misused: Provided, however, that the Cooperating Sponsor may elect not to file a claim if the loss is less than $500. The Cooperating Sponsor may retain $150 of any amount collected on an individual claim. In addition, Cooperating Sponsors may, with the written approval of the Agricultural Counselor or Attache, retain amounts to cover special costs of collection such as legal fees, or pay such collection costs with monetized proceeds or program income. Any proposed settlement for less than the full amount of the claim requires prior approval by the Agricultural Counselor or Attache. When the Cooperating Sponsor has exhausted all reasonable attempts to collect a claim, it shall request the Agricultural Counselor or Attache to provide further instructions.

(3) At a minimum, the Cooperating Sponsor shall pursue any claim by initial billings and with three progressively stronger demands at not more than 30 day intervals. If these efforts fail to elicit a satisfactory response, legal action in the judicial system of the cooperating country shall be pursued unless:

(i) Liability of the third party is not provable,

(ii) The cost of pursuing the claim would exceed the amount of the claim,

(iii) The third party would not have enough assets to satisfy the claim after a judicial decision favorable to the cooperating sponsor, or

(iv) Maintaining legal action in the country's judicial system would seriously impair the Cooperating Sponsor's ability to conduct an effective program in the country.

A Cooperating Sponsor's decisions not to take legal action, and reasons therefore, must be submitted in writing to the Agricultural Counselor or Attache for review and approval, and the Agricultural Counselor or Attache may require the Cooperating Sponsor to obtain the opinion of competent legal counsel to support its decision. A Cooperating Sponsor may request approval to terminate legal action after it has commenced for any of the exceptions described above or if CCC determines that it is otherwise appropriate to terminate legal action prior to judgment. In each instance the Agricultural Counsel or Attache must provide the Cooperating Sponsor with a written explanation of its decision. If the Agricultural Counselor or Attache approves a Cooperating Sponsor's decision not to take further action on the claim for reasons described in paragraph (f)(3)(iv) of this section, the Cooperating Sponsor shall assign the claim to CCC and shall provide to CCC all documentation relating to the claim.

(4) As an alternative to legal action in the judicial system of the country with regard to claims against a public entity of the government of the cooperating country, the Cooperating Sponsor and the cooperating country may agree in writing to settle disputed claims by an appropriate administrative procedure or arbitration.

(g) *Determination of value.* When payment is to be made for commodities

misused, lost or damaged, the value shall be determined on the basis of the domestic market price at the time and place the misuse, loss or damage occurred. When it is not feasible to determine such market price, the value shall be the f.o.b. or f.a.s. commercial export price of the commodity at the time and place of export, plus ocean freight charges and other costs incurred by the U.S. Government in making delivery to the Cooperating Sponsor. When the value is determined on a cost basis, the Cooperating Sponsor may add to the value any provable costs it has incurred prior to delivery by the ocean carrier. In preparing the claim statement, these costs shall be clearly segregated from costs incurred by the Government of the United States. With respect to claims other than ocean carrier loss or damage claims, the value of misused, lost or damaged commodities may be determined on some other justifiable basis, at the request of the Cooperating Sponsor or upon the recommendation of the Agricultural Counselor or Attache or CCC designated representative. When replacement is made, the value of commodities misused, lost or damaged shall be their value at the time and place the misuse, loss, or damage occurred and the value of the replacement commodities shall be their value at the time and place replacement is made.

(h) *Reporting losses to the Agricultural Counselor or Attache or CCC designated representative.* (1) The Cooperating Sponsor shall promptly notify the Agricultural Counselor or Attache or CCC designated representative, in writing, of the circumstances pertaining to any loss, damage, or misuse of commodities valued at $500 or more occurring within the country of distribution or intermediate country. The report shall be made as soon as the Cooperating Sponsor has adequately investigated the circumstances, but in no event more than ninety (90) days from the date the loss became known to the Cooperating Sponsor. The report shall identify the party in possession of the commodities and the party responsible for the loss, damage or misuse; the kind and quantities of commodities; the size and type of containers; the time and place of misuse, loss, or damage; the current location of the commodity; the Program Agreement number, the CCC contract numbers, or if unknown, other identifying numbers printed on the commodity containers; the action taken by the Cooperating Sponsor with respect to recovery or disposal; and the estimated value of the commodity. The Cooperating Sponsor shall explain the unavailability of any of the above information. The Cooperating Sponsor shall also report the details regarding any loss or misuse of monetized proceeds or program income.

(2) The Cooperating Sponsor shall report quarterly to the Agricultural Counselor or Attache any loss, damage to or misuse of commodities resulting in loss of less than $500. The Cooperating Sponsor shall inform the Agricultural Counselor or Attache or CCC designated representative if it has reason to believe there is a pattern or trend in the loss, damage, or misuse of such commodities and submit a report on the basis described in paragraph (h)(1) of this section together with such other information as the Cooperating Sponsor has available to it. The Agricultural Counselor or Attache may require additional information about any commodities lost, damaged or misused if it believes such information is necessary in order to maintain the integrity of the program.

(i) *Handling claims proceeds.* Claims against ocean carriers shall be collected in U.S. dollars (or in currency in which freight is paid, or a pro data share of either) and shall be remitted (less amounts authorized to be retained) by Cooperation Sponsors to CCC. Claims against Cooperating Sponsors shall be paid to CCC in U.S. dollars. With respect to commodities lost, damaged or misused, amounts paid by Cooperating Sponsors and third parties in the country of distribution shall be deposited with the U.S. Disbursing Officer, American Embassy, preferably, in U.S. dollars with instructions to credit the deposit to an appropriate CCC account as determined by CCC, or in local currency at the official exchange rate applicable to dollar imports at the time of deposit with instructions to credit the deposit to an appropriate CCC account as determined by CCC. With respect to monetized proceeds and program income, amounts recovered may be deposited in the same account as the monetized proceeds and may be used for purposes of the program.

§ 1499.18 Records and reporting requirements.

(a) *Records and reports—general requirements.* (1) The Cooperating Sponsor shall maintain records and documents in a manner which accurately reflects all transactions pertaining to the receipt, storage, distribution sale, inspection and use of commodities and the receipt and disbursement of any monetized proceeds and program income, including interest and fees. Such records shall be retained for a period of three years from the close of the U.S. fiscal year to which they pertain. The Cooperating Sponsor shall provide CCC with any records, or copies thereof, requested by CCC.

(2) The Cooperating Sponsor shall cooperate with and assist to U.S. government representatives to enable examination of any activities, facilities or records of the Cooperating Sponsor pertaining to the receipt, storage, distribution, sale, inspection and use of commodities and the receipt and disbursement of any monetized proceeds and program income, including interest and fees.

(b) *Evidence of export.* The Cooperating Sponsor shall, within thirty (30) days after export, furnish evidence of export of the agricultural commodities to the Director, P.L. 480–OD. If export is by sea or air, two copies of the on board carrier's bill of lading or consignee's receipt authenticated by a representative of the U.S. Customs Service shall be furnished. The evidence of export must show the kind and quantity of agricultural commodities exported, the date of export, and the destination country.

(c) *Special reports required under section 416(b).* (1) The Cooperating Sponsor shall submit a semiannual Logistics Report to the Director, PAD, and to the Agricultural Counselor or Attache or CCC designated representative. The first logistics report shall be submitted on or before the date specified in the section 416(b) Program Agreement and shall cover the full period since the date of that agreement. Subsequent reports shall be made at six month intervals during the period in which commodities received are being distributed by the Cooperating Sponsor. The logistics report shall contain the following information:

(i) Receipts of agricultural commodity including the name of each vessel, discharge ports, the date discharge was completed, the condition of the commodities on arrival, any significant loss or damage in transit; advice of any claim for, or recovery of, or reduction of freight charges due to loss or damage in transit on U.S. flag vessels;

(ii) Estimated commodity inventory at the end of the reporting period;

(iii) Quantity of commodity on order and in transit during the reporting period;

(iv) Status of claims for commodity losses both resolved and unresolved during the reporting period; and

(v) Quantity of commodity damaged or declared unfit during the reporting period.

(2) In the event that an approved program calls for the monetization of all, or any portion of the donated agricultural commodities, the Cooperating Sponsor shall also submit a semiannual monetization report to the Director, PAD, containing the information specified below, and a quarterly report to the Controller, CCC, containing the information specified in paragraphs (c)(2)(i) through (iv) of this section. The first monetization report shall be submitted by the date specified in the section 416(b) Program Agreement and shall cover the full period from the date of that agreement. Reports thereafter should cover each subsequent semiannual or quarterly period in which commodities received are being distributed, or monetized proceeds are being held or disbursed, by the Cooperating Sponsor. The monetization report must contain the following data:

(i) The quantity of each type of commodity furnished for the purpose of sale or barter, and the actual amount sold or bartered;

(ii) The amount of funds and value of services generated from sales and barter of the commodities, in both local currency and U.S. dollar equivalent.

(iii) Deposits into and disbursements from the special account, the total amount of funds used to date, and balance in special account, in both local currencies and U.S. dollar equivalents.

(iv) The amount of generated currencies not yet programmed that will be used and an estimate of when they will be disbursed.

(v) A thorough description of how the funds and services generated were or will be used, including information regarding project goals, accomplishments, and the number of beneficiaries.

(vi) Quantity of commodities as yet unsold, and an estimate of when sales and barter will be completed.

(vii) A thorough description of the effectiveness of sales and barter provisions in facilitating the distribution of commodities and products to targeted recipients.

(viii) A description of the extent, if any, that sales, barter or use of section 416(b) commodities:

(A) affected the usual marketing of the United States;

(B) displaced or interfered with commercial sales of the United States;

(C) disrupted world commodity prices or normal patterns of trade with friendly countries; and

(D) discouraged local production and marketing of commodities in the recipient country;

(ix) An explanation of the extent to which agreement objectives were achieved.

(x) Recommendations for improving sale, barter, or use provisions of future section 416(b) programs.

§ 1499.19 Termination of program.

All or any part of the assistance provided under a Program Agreement, including commodities in transit, may be suspended or terminated by CCC if:

(a) The Cooperating Sponsor fails to comply with the provisions of the Program Agreement or this part;

(b) It is determined by CCC that the continuation of such assistance is no longer necessary or desirable; or

(c) CCC determines that storage facilities are inadequate to prevent spoilage or waste or that distribution of commodities will result in substantial disincentive to, or interfere with, domestic production or marketing in the recipient country.

§ 1499.20 Sample documents and guidelines for developing proposals and reports.

To assist with effective reporting on program logistics and monetization, etc., guidelines have been developed. Examples of these guidelines may be obtained from the Director, PAD.

Signed this 7th day of February 1994, in Washington, DC.

Christopher E. Goldthwait,

General Sales Manger, FAS, and Vice President, Commodity Credit Corporation.

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Food Safety and Inspection Service

9 CFR Parts 306, 318 and 381

[Docket No. 92–022P]

RIN 0583–AB62

Procedures for Appealing Product Retentions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations to require appeals above the circuit supervisor level that are related to disposition of retained meat and poultry product to be made in writing; provide that an establishment has 20 calendar days to appeal a retention, recondition or rework product, or properly dispose of the product; and establish procedures to ensure appropriate disposition of product immediately after a decision has been reached on an appeal. The proposal also would allow establishments to accumulate retained product for the purpose of re-examination with specialized detecting equipment provided written procedures for such activity are approved by the Regional Director. This proposal rule responds to recommendations from USDA's Office of Inspector General.

DATES: Comments must be received on or before March 16, 1994.

ADDRESSES: Written comments to Policy Office, Attn: Diane Moore, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also COMMENTS under SUPPLEMENTARY INFORMATION.)

FOR FURTHER INFORMATION CONTACT: Robert D. Murphy, Director, Processing Operations Staff, Inspection Management Program, Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–3491.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this action. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket No. 92–022P. Any person desiring opportunity for oral presentation of views, as provided under the Poultry Products Inspection Act, must make such request to Mr. Murphy so that arrangements may be made for such views to be orally presented. A record will be made of all views orally presented. All comments submitted in response to this notice will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Executive Order 12866

This proposed rule is in conformance with Executive Order 12866. This proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients

thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking or packaging requirements on federally inspected meat or poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat or poultry inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA and PPIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

This proposed rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. However, the administrative procedures specified in Part 335 of Federal meat inspection regulations and Part 381, Subpart W of the poultry products inspection regulations, must be exhausted prior to any judicial challenge to the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA and PPIA.

Effects on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposal provides a time limit of 20 calendar days to appeal a decision to retain meat or poultry products that was made by the in-plant inspector and concurred in by the circuit supervisor, recondition or rework product, or properly dispose of the product. FSIS has determined that a 20-day time period provides ample time for the establishment to research and evaluate the situation and make a decision on whether to recondition or rework the product or request that the product be condemned by the inspector. In addition, the proposal would require that establishment management make such appeals in writing. The proposal would exempt establishments from the 20-day time limit for reconditioning and reworking product when establishments intend to accumulate product for re-examination by mechanical detecting devices. Because of the expense to establishments of renting mechanical detecting equipment and employing technicians to operate the equipment, some establishments may elect to store product suspected of being adulterated until a sufficient amount is accumulated to justify the cost of the detection equipment and technicians. However, the Agency would allow the accumulation of suspect product beyond the 20 days only if the establishment has written procedures on file that provide information to assure that the identity, location and security of suspect product is maintained.

The Agency has determined that the additional paperwork burden associated with this proposed rule is necessary to maintain control of and assure proper disposition of product that may be adulterated. The Agency has reviewed the recordkeeping requirements and has determined that they do not impose a significant burden on small entities.

Paperwork Requirements

This proposal would require that establishments electing to accumulate product for re-examination with mechanical detection devices submit written procedures to the Regional Director for prior approval. Approval of the written procedure will be based on the establishment's ability to provide the physical space to store the accumulated product and its ability to assure that the identity and security of the product is maintained. These procedures would describe how the establishment will maintain the identity of the suspect product, where the suspect product will be stored, how long the product will be stored, and what measures will be taken to secure the product. The proposal would also require that appeals above the circuit supervisor's level be made in writing. These paperwork requirements will be submitted to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) require the Secretary of Agriculture to administer an inspection program that assures consumers that meat and poultry products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged.

During processing, there are a number of ways that meat and poultry products may become adulterated or misbranded. When product is suspected of being adulterated or misbranded, FSIS inspectors place a "U.S. Retain" tag on the suspect product at the time of reinspection at the official establishment and the product is held for further inspection. Upon further inspection, if the product is found to be adulterated, it is subject to condemnation. However, the inspector may permit product to be reconditioned or reworked so it will not be misbranded or adulterated under certain conditions (9 CFR 318.2 and 381.99).

Once product is retained, an establishment must recondition or rework the retained product, properly dispose of the product, or appeal the inspector's/circuit supervisor's decision to his/her immediate supervisor.

Currently, there is no time limit on actions to be taken by the establishment when product is retained by FSIS. At times, retained product is accumulated from different lots and held in storage for several months or more with no action taken or planned by the establishment.

The proposed regulations are intended to prevent incidents such as one recently investigated by USDA's Office of Inspector General involving the release of beef trimmings containing plastic shavings from plastic cutting boards. The investigation disclosed that about 160,000 pounds of beef trimmings containing plastic shavings had been produced at different times at two different establishments of the same corporation.

Suspect product was retained by FSIS in April and September 1991. FSIS allowed the release of all of the trimmings in December 1991 after examining a sample of product produced at one of the establishments.

The Office of Inspector General (OIG) provided a report [1] of the investigation to the Secretary of Agriculture on July 30, 1992. Although the investigation disclosed that FSIS's inspection process ensures a safe and wholesome product, the report recommended, among other things, that FSIS strengthen its regulations with regard to documenting appeals, providing procedures for reconsidering retention decisions, and handling and disposition of retained product.

[1] A copy of the report is available from the FSIS Hearing Clerk, Room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FSIS is proposing to amend the Federal meat and poultry products inspection regulations to: (1) Require establishments to submit written appeals above the circuit supervisor's level when the appeal relates to disposition of retained meat or poultry product, (2) provide that an establishment has 20 calendar days to: (a) Appeal a retention, (b) recondition or rework product, or (c) properly dispose of the product, and (3) establish procedures to ensure appropriate disposition of product immediately after a decision has been reached on an appeal.

FSIS has determined that a 20-day time period provides ample time for the establishment to research and evaluate the situation and make a decision on whether to recondition or rework the product or request that the product be condemned by the inspector. The time limit would not apply, however, for retained product that is accumulated for re-examination using mechanical detecting devices. Frequently, when contamination (plastic, metal or other foreign material capable of detection with approved specialized detection equipment) occurs during processing, it is difficult to visually determine the precise amount of product affected. Therefore, FSIS permits the use of approved mechanical detection devices, such as X-ray equipment, to be used by establishments to detect such contamination and to salvage the portions of the product that are not contaminated. The mechanical detection equipment must be approved as prescribed in §§ 308.5 and 381.53 of the meat and poultry inspection regulations. Because of the expense to establishments of renting mechanical detection equipment and employing technicians to operate the equipment, some establishments may elect to store product suspected of being contaminated until a sufficient amount is accumulated to justify the cost of the detection equipment and technicians.

Under the proposed regulations, FSIS would allow the accumulation of suspect product beyond 20 calendar days only if the product is intended for further examination by mechanical detection equipment and only when the establishment has written procedures on file that provide information to assure that the identity, location and security of suspect product are maintained.

However, if the Administrator or his/her designee determines that the establishment's written procedures for accumulating product are unacceptable, FSIS would not permit the establishment to accumulate suspect product beyond 20 calendar days and would formally notify the establishment in writing of the basis for this decision. The establishment would then be afforded an opportunity to modify the procedure in accordance with the formal notification by submitting a written statement in response to the denial notification. The establishment would also be afforded a right to request a hearing with respect to the merits or validity of the denial. If the establishment requests a hearing and the Administrator or his/her designee, after review of the answer, determines the initial determination to be correct, he/she would file the notification, answer and the request for hearing, which shall constitute the complaint and answer in the proceeding, with the Hearing Clerk of the Department. The proceeding would be conducted in accordance with Rules of Practice which shall be adopted for this proceeding.

In addition, the footnotes in §§ 318.2 and 381.145 of the Federal meat and poultry products inspection regulation would be revised to reflect that the Agency is authorizing field office personnel to develop sampling plans for specific products.

List of Subjects

9 CFR Part 306

Appeals, Meat inspections, Retentions.

9 CFR Part 318

Appeals, Meat inspection, Retentions.

9 CFR Part 381

Appeals, Poultry products inspection, Retentions.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR parts 306, 318 and 381 of the Federal meat and poultry products inspection regulations to read as follows:

PART 306—ASSIGNMENT AND AUTHORITIES OF PROGRAM EMPLOYEES

1. The authority citation for part 306 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 306.5 would be revised as follows:

§ 306.5 Appeals.

Any person receiving inspection service, may if dissatisfied with any decision of an inspector relating to any inspection, file an appeal from such decision: Provided, That such appeal is filed within 48 hours from the time the decision was made. Any such appeal from a decision of an inspector shall be made to his/her immediate supervisor having jurisdiction over the subject matter of the appeal, and such superior shall determine whether the inspector's decision was correct. Review of such appeal determination, when requested, shall be made by the immediate superior of the employee of the Department making the appeal determination. Appeals above the circuit supervisor level of decisions related to product retentions shall be made in writing by the establishment within a period of twenty (20) calendar days from the date of the retention. Denial of a labeling application by the inspector-in-charge shall not constitute a basis for an appeal under this section.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

3. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450; 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Section 318.2 (c), footnote 1, and (d) would be revised as follows:

§ 318.2 Reinspection, retention, and disposal of meat and poultry products at official establishments.

* * * * *

(c) Reinspection may be accomplished through use of statistically sound sampling plans that assure a high level of confidence. The circuit supervisor shall designate the type of plan and the program employee shall select the specific plan to be used in accordance with instructions issued by the Administrator.[1]

(d) A U.S. retained tag shall be placed by a Program employee at the time of reinspection at any official establishment on all products which are suspected on such reinspection of being adulterated or misbranded, and such products shall be held for further

[1] Further information concerning sampling plans which have been adopted for specific products may be obtained from the circuit supervisors of program circuits. These sampling plans are developed for individual products and will be distributed for field use as they are developed. The type of plan applicable depends on factors such as whether the product is in containers, stage of preparation, and procedure followed by the establishment operator. The specific plan applicable depends on the kind of product involved, such as liver, oxtail, etc.

inspection. Such tag shall be removed only authorized Program employees.

(1) Reinspection determinations regarding adulteration may be deferred:

(i) For up to twenty (20) calendar days, if a product has become soiled or unclean by falling on the floor or in any other accidental way, an the inspector determines the condition can be corrected, in which case the product shall be cleaned (including trimming if necessary) or otherwise handled in a manner approved by the inspector to assure that it will not be adulterated or misbranded and shall then be presented for final reinspection and disposal in accordance with this section within a period of twenty (20) calendar days, or

(ii) When the Regional Director grants prior approval of an establishment's written procedures for storing at the official establishment product suspected of adulteration with metal, plastic, or other material capable of detection by the use of approved specialized mechanical detection devices prior to final reinspection. These written procedures shall describe how the establishment will maintain the identity of the suspect product, where the suspect product will be stored, how long the product will be stored, and what measures will be taken to secure the product.

(A) Approval of an establishment's written procedures for accumulating product will be based on the establishment's ability to provide the physical space to store the accumulated product and its ability to assure that the identity and security of the product is maintained.

(B) In any situation where the establishment's written procedure for accumulating product is found by the Administrator or his/her designee to be unacceptable, formal written notification shall be given to the establishment of the basis for the denial. The establishment will be afforded an opportunity to modify the procedure in accordance with the notification. The establishment shall be afforded an opportunity to submit a written statement in response to this notification of denial and a right to request a hearing with respect to the merits or validity of the denial. If the establishment requests a hearing and the Administrator or his/her designee, after review of the answer, determines the initial determination to be correct, he/she shall file with the Hearing Clerk of the Department the notification, answer and the request for hearing, which shall constitute the complaint and answer in the proceeding, which shall hereafter be conducted in accordance with Rules of Practice which shall be adopted for this proceeding.

(C) Specialized mechanical detection devices shall be approved in accordance with the provisions of § 308.5 of this subchapter.

(2) Upon final reinspection, the product shall be disposed of as follows:

(i) If the inspector determines that the product is not adulterated or misbranded, the inspector shall remove the U.S. retained tag;

(ii) If the inspector determines that the product is adulterated, it shall be condemned as prescribed in § 310.5 of this subchapter;

(iii) If the inspector determines that the product is misbranded, it shall be held under a U.S. retained tag, or a U.S. detention tag as provided in part 329 of this subchapter, pending correction of the misbranding or issuance of an order under section 7 of the Act to withhold from use the labeling or container of the product, or the institution of a judicial seizure action under section 403 of the Act or other appropriate action.

(iv) The inspector shall make a record of each transaction under paragraph (d)(2) of this section and shall report actions taken by the inspector to the area supervisor.

(3) Immediately after an establishment is notified of a final Agency decision denying an appeal regarding retained product, all such retained product shall be condemned and destroyed under the inspector's supervision.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

5. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

6. Section 381.35 would be amended by adding a new sentence after the third sentence to read as follows:

§ 381.35 Appeal inspections; how made.

* * * Appeals above the circuit supervisor level of decisions related to product retentions shall be made in writing by the establishment within a period of twenty (20) calendar days from the date of the retention. * * *

7. Section 381.145(b) would be revised and the undesignated paragraph following paragraph (b) would be removed as follows:

§ 381.145 Poultry products and other articles entering or at office establishments; examination and other requirements.

* * * * *

(b)(1) All poultry products and all carcasses, parts thereof, meat and meat products of cattle, sheep, swine, goats, or equines which enter any official establishment shall be identified by the operator of the official establishment at the time of receipt at the official establishment. All poultry products, and all carcasses, parts thereof, meat and meat food products of such animals, which are processed or otherwise handled at any official establishment shall be subject to examination by an inspector at the official establishment in such manner and at such times as may be deemed necessary by the inspector-in-charge to assure compliance with the regulations. Such examination may be accomplished through use of statistically sound sampling plans that assure a high level of confidence. The circuit supervisor shall designate the type of plan and the Program employee shall select the specific plan to be used in accordance with instructions issued by the Administrator.[1] Upon such examination, if any such article or portion thereof is found to be adulterated by the inspector, such article or portion shall, in the case of poultry products, be condemned and disposed of as prescribed in § 381.95, except that a determination regarding adulteration may be deferred by the inspector and such product retained as prescribed in § 381.77 and § 381.99 of this subchapter if:

(i) By reprocessing, the product may be made not adulterated, and shall, in the case of such articles be presented for reinspection and disposal in accordance with this section within a period of twenty (20) calendar days. In this case, the procedures in § 381.77 and § 381.99 regarding retained product shall apply.

(ii) Prior approval is granted by the Regional Director of an establishment's written procedures for storing at the official establishment product suspected of adulteration with metal, plastic, or other material capable of detection by the use of approved specialized mechanical detection devices prior to final reinspection. These written procedures shall describe how the establishment will maintain the identity of the suspect product, where the suspect product will be stored, how long the product will be stored, and what measures will be taken to secure the product.

[1] Further information concerning sampling plans which have been adopted for specific products may be obtained from the circuit supervisor of program circuits. These sampling plans are developed for individual products and will be distributed for field use as they are developed. The type of plan applicable depends on factors such as whether the product is in containers, state of preparation, and procedures followed by the establishment operator. The specific plan applicable depends on the kind of product involved, such as whole birds, parts, etc.

(A) Approval of an establishment's written procedures for accumulating product will be based on the establishment's ability to provide the physical space to store the accumulated product and its ability to assure that the identity and security of the product is maintained.

(B) In any situation where the establishment's written procedure for accumulating product is found by the Administrator or his/her designee to be unacceptable, formal written notification shall be given to the establishment of the basis for the denial. The establishment will be afforded an opportunity to modify the procedure in accordance with the notification. The establishment shall be afforded an opportunity to submit a written statement in response to this notification of denial and a right to request a hearing with respect to the merits or validity of the denial. If the establishment requests a hearing and the Administrator or his/her designee, after review of the answer, determines the initial determination to be correct, he/she shall file with the Hearing Clerk of the Department the notification, answer and the request for hearing, which shall constitute the complaint and answer in the proceeding, which shall hereafter be conducted in accordance with Rules of Practice which shall be adopted for this proceeding.

(C) Specialized mechanical detection devices shall be approved in accordance with the provisions of § 381.53 of this subchapter.

(2) If upon final inspection, the product is found by the inspector to be not adulterated or misbranded, the inspector shall remove the U.S. Retained tag. If the product is found to be adulterated by the inspector, it shall be condemned as prescribed in § 381.95 of this subchapter. If a product is found upon reinspection to be misbranded, it shall be held under a U.S. Retained tag, or a U.S. detention tag as provided in § 381.210 and § 381.211 of this subchapter, pending correction of the misbranding or issuance of an order under section 8 of the Poultry Products Inspection Act to withhold from use the labeling or container of the product, or the institution of a judicial seizure action under section 20 of the Act or other appropriate action. The inspector shall make a record of each transaction under this paragraph and shall report actions taken by the inspector to the area supervisor.

(3) Immediately after an establishment is notified of a final Agency decision denying an appeal regarding retained product all such product shall be disposed of, in accordance with § 381.95, under the inspector's supervision.

* * * * *

Done at Washington, DC, on: February 7, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–3367 Filed 2–11–94; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–198–AD]

Airworthiness Directives; Jetstream Aircraft Limited Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This proposal would require installation of new fairlead assemblies and P-clips; inspection to detect damage of the wiring harness at the wing rear spars; repair or replacement of any damaged wiring harness with a new wiring harness assembly; and verification of the position of the currently installed P-clips, and repositioning, if necessary. This proposal is prompted by a report of abrasion of an electrical power cable in the wiring harness at the wing rear spar. The actions specified by the proposed AD are intended to prevent abrasion of electrical power cables in the wiring harnesses at the wing rear spars, which could lead to a dormant failure of emergency fuel and hydraulic shutoff services.

DATES: Comments must be received by April 11, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–193–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that the manufacturer found an abraded electrical power cable in the wiring harness at the wing rear spar on one

airplane. The cause of this abrasion has been attributed to insufficient clearance between the electrical cable loom and the flap mechanism. Abrasion of these cables, if not corrected, could result in dormant failure of emergency fuel and hydraulic shutoff services.

Jetstream Aircraft Limited has issued Service Bulletin J41–57–003, dated October 13, 1993, that describes procedures for installation of new fairlead assemblies and P-clips; visual inspection to detect damage of the wiring harnesses at the wing rear spars; verification of the positioning of the currently installed P-clips; and repositioning of improperly installed P-clips. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of new fairlead assemblies and P-clips; visual inspection to detect damage of the wiring harnesses at the wing rear spars; verification of the positioning the of currently installed P-clips, and repositioning improperly installed P-clips. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The proposal would also require that operators repair or replace damaged wiring harnesses.

The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,320, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited: Docket 93–NM–198–AD.

Applicability: Model 4101 airplanes having constructor numbers 41004 through 41016 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent abrasion of the electrical power cables in the wiring harnesses at the wing rear spars, which could lead to a dormant failure of emergency fuel and hydraulic shutoff services, accomplish the following:

(a) Within 3 months after the effective date of this AD, install new fairleads and P-clips, perform a visual inspection to detect damage of the wiring harness at the left and right wing rear spar, and verify that the currently installed P-clips are properly positioned; in accordance with Jetstream Series 4100 Service Bulletin J41–57–003, dated October 13, 1993.

(1) If any wiring harness is found to be damaged, prior to further flight, accomplish the requirements of either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Replace the damaged wiring harness with a new wiring harness assembly in accordance with Jetstream Series 4100 Aircraft Maintenance Manual. Or

(ii) Repair the damaged wiring harness in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) If any currently installed P-clip is found to be improperly positioned, prior to further flight, reposition the P-clip in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3350 Filed 2–11–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 94N–0002]

Regulations Review Program Under Executive Order 12866; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Plan for periodic review; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the Federal Register of January 20, 1994 (59 FR 3043). The document announced the agency's plan to review significant regulations pursuant to Executive Order 12866, which requires all Federal agencies to develop a program for periodically reviewing existing significant regulations. The document was published with an error. This document corrects that error.

DATES: Written comments by May 20, 1994.

ADDRESSESS: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Regulations Policy and Management Staff (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

In FR Doc. 94–1162, appearing on page 3043 in the Federal Register of Thursday, January 20, 1994, the following correction is made:

1. On page 3044, in the 2d column, in the 2d full paragraph, in line 3 the year "1982" is corrected to read "1987".

Dated: February 8, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–3344 Filed 2–11–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 872

[Docket No. 93N–0470]

Medical Devices; Classification of Temporomandibular Joint Implants

AGENCY: Food and Drug Administration, HHS.

ACTION: Reproposed rule.

SUMMARY: The Food and Drug Administration (FDA) is reproposing to classify two temporomandibular joint (TMJ) implants, the Mandibular Condyle Prosthesis and the Glenoid Fossa Prosthesis, into class III (premarket approval). The agency is issuing this reproposal to reflect the recommendation of the Dental Products Panel with respect to the classification of these devices. All comments received on the original proposal remain part of the record for this proposal. These actions are being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the amendments) and the Safe Medical Devices Act of 1990 (the SMDA).

DATES: Written comments by April 15, 1994. The Commissioner of Food and Drugs proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

The act, as amended by the amendments (Pub. L. 94–295) and the SMDA (Pub. L. 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are: Class I, general controls; class II, special controls; and class III, premarket approval.

Devices that were in commercial distribution before May 28, 1976 (the amendments) are classified under section 513 of the act after FDA has done the following: (1) Received a recommendation from a device panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. A device that is first offered in commercial distribution after May 28, 1976, and is substantially equivalent to a device classified under this scheme, is also classified into the same class as the device to which it is substantially equivalent.

A device that was not in commercial distribution prior to May 28, 1976, and that is not substantially equivalent to a preamendments device, is classified by statute into class III without any FDA rulemaking proceedings. The agency determines whether new devices are substantially equivalent to previously offered devices by means of the premarket notification procedure in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

Based upon the recommendations of FDA's Dental Device Classification Panel, the agency published a final regulation classifying 110 preamendments dental devices on August 12, 1987 (52 FR 30082). The TMJ prostheses were inadvertently omitted from the dental devices considered for reclassification by the panel and the agency. Based upon the recommendations of the Dental Products Panel, following its April 21, 1989 meeting, FDA proposed on September 18, 1992 (57 FR 43165), to classify the Interarticular Disc Prosthesis, the Mandibular Condyle Prosthesis, the Glenoid Fossa Prosthesis, and the Total Temporomandibular Prosthesis into class III.

At the April 1989 meeting of the Dental Products Panel, the Panel did not make a recommendation regarding the classification of the glenoid fossa prosthesis or the mandibular condyle prosthesis. The Panel noted, however, that an implanted glenoid fossa should not be used with a naturally occurring mandibular condyle, and an implanted mandibular condyle should not be used with a naturally occurring glenoid fossa. At the February 11, 1993 meeting, the Dental Products Panel recommended that the mandibular condyle prosthesis and the glenoid fossa prosthesis be classified into class III. Based upon these recommendations, FDA is reproposing the classification of these two devices into class III.

The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application (PMA) by a date to be set in a future regulation under section 515(b) of the act (21 U.S.C. 360e(b)). Each application must include sufficient valid scientific evidence to provide reasonable assurance that the device is safe and effective under the conditions of use prescribed, recommended, or suggested in its proposed labeling. PMA's for class III preamendments devices must be submitted within 30 months after final classification, or 90 days after the agency publishes a final regulation under 21 U.S.C. 360e(b) requiring PMA's for the device, whichever is later.

FDA advises manufacturers of the devices being classified that, if the devices are classified into class III, the agency intends to require PMA's to be filed for these devices at the earliest date allowed under the statute. Therefore, PMA's (or approved investigational device exemptions) would be required for these devices on the last day of the 30th month following final classification into class III.

II. The Dental Products Panel Recommendations

A. Glenoid Fossa Prosthesis

The Dental Products Panel, an FDA advisory committee, made the following

recommendation regarding the classification of the glenoid fossa prosthesis:

1. *Identification:* A glenoid fossa prosthesis is a device that is intended to be implanted in the temporomandibular joint to augment a glenoid fossa, and provide an articulation surface for the head of a naturally occurring mandibular condyle.

2. *Recommended classification:* Class III (premarket approval). The Dental Products Panel recommended that premarket approval of the glenoid fossa prosthesis be high priority.

3. *Summary of reasons for recommendation:* The Dental Products Panel recommended that the glenoid fossa prosthesis be classified into class III because the Panel believed that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device. The Panel also believed that the device presents a potential unreasonable risk of illness or injury to the patient and that insufficient information exists to determine that general controls, either alone or in combination with the special controls applicable to class II devices, are sufficient to provide reasonable assurance of the safety and effectiveness of the device. Therefore, the device should be subject to premarket approval to ensure that each manufacturer of this device develop sufficient information to provide reasonable assurance that it is safe and effective.

4. *Summary of data on which the recommendation is based:* The Dental Products Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and presentations by Panel members and interested parties (Ref. 1).

5. *Risks to health:* The following risks are associated with the glenoid fossa prosthesis: (a) Implant loosening or displacement. The screws used to anchor the implant may loosen, resulting in implant loosening or displacement causing changes in bite, difficulty in chewing, limited joint function, and unpredictable wear on implant components (Refs. 2 through 5); (b) Degenerative changes to the natural articulating surfaces. Implant breakdown may result in erosion or resorption of the head of the mandibular condyle or the glenoid fossa. The erosion or resorption may result in intense pain, changes in bite, difficulty in chewing, limited joint function, and perforation into the middle cranial fossa (Refs. 2 through 5); (c) Foreign body reaction. Implant deterioration and migration may result in a foreign body reaction characterized by multinucleated giant cells (Refs. 2 through 5); (d) Infection. If the implant cannot be properly sterilized, infection may result; (e) Loss of implant integrity. If the implant materials are unable to withstand mechanical loading, the implant can be torn, perforated, delaminated, fragmented, fatigued, or fractured, resulting in failure of the device to function properly (Refs. 2 through 5); (f) Corrosion. If the implant materials are subject to corrosion, toxic elements may migrate to various parts of the body; (g) Chronic pain. Degenerative changes within the articular surfaces and components of the temporomandibular joint due to implant breakdown may result in chronic pain (Refs. 2 through 5); (h) Changes to the contralateral joint. Unilateral placement of the implant may result in deleterious effects to the contralateral joint; and (i) Malocclusion. Placement of the device may produce an improper occlusal relationship.

FDA agrees with the Dental Products Panel's classification recommendation and is proposing that the glenoid fossa prosthesis be classified into class III (premarket approval). FDA believes that insufficient information exists to identify the proper materials or design for the glenoid fossa prosthesis. Therefore, FDA is proposing that premarket approval of the glenoid fossa prosthesis be given high priority.

The act requires the agency to classify into class III a device that presents a potential unreasonable risk of illness or injury unless it determines that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to ensure the safe and effective use of the device. The agency believes that general controls, either alone or in combination with the special controls applicable to class II devices, are insufficient to provide reasonable assurance of safety and effectiveness of the device.

B. Mandibular Condyle Prosthesis

The Dental Products Panel, an FDA advisory committee, made the following recommendations regarding the classification of the mandibular condyle prosthesis:

1. *Identification:* A mandibular condyle prosthesis is a device that is intended to be implanted in the human jaw to replace the mandibular condyle and to articulate within a naturally occurring glenoid fossa.

2. *Recommended classification:* Class III (premarket approval). The Dental Products Panel recommended that premarket approval of the mandibular condyle prosthesis be high priority.

3. *Summary of reasons for recommendation:* The Dental Products Panel recommended that the mandibular condyle prosthesis be classified into class III because the Panel believed that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device. The Panel also believed that the device presents a potential unreasonable risk of illness or injury to the patient and that insufficient information exists to determine that general controls, either alone or in combination with the special controls applicable to class II devices, are sufficient to provide reasonable assurance of the safety and effectiveness of the device. Therefore, the device should be subject to premarket approval to ensure that each manufacturer of this device develop sufficient information to provide reasonable assurance that it is safe and effective.

4. *Summary of data on which the recommendation is based:* The Dental Products Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and presentations by Panel members and interested parties (Ref. 1).

5. *Risks to health:* The following risks are associated with the mandibular condyle prosthesis: (a) Implant loosening or displacement. The screws used to anchor the implant may loosen, resulting in implant loosening or displacement causing changes in bite, difficulty in chewing, limited joint function and unpredictable wear on implant components (Refs. 2 through 5); (b) Degenerative changes to the natural articulating surfaces. Implant breakdown may result in erosion or resorption of the head of the mandibular condyle or the glenoid fossa. The erosion or resorption may result in intense pain, changes in bite, difficulty in chewing, limited joint function, and perforation into the middle cranial fossa (Refs. 2 through 5); (c) Foreign body reaction. Implant deterioration and migration may result in a foreign body reaction characterized by multinucleated giant cells (Refs. 2 through 5); (d) Infection. If the implant cannot be properly sterilized, infection may result; (e) Loss of implant integrity. If the implant materials are unable to withstand mechanical loading, the implant can be torn, perforated, delaminated, fragmented, fatigued, or fractured, resulting in failure of the device to function properly (Refs. 2 through 5); (f) Corrosion. If the implant materials are subject to corrosion, toxic elements may migrate to various parts of the body; (g) Chronic pain. Degenerative changes within the articular surfaces and components of the temporomandibular joint due to implant breakdown may result in chronic pain (Refs. 2 through 5); (h) Changes to the contralateral joint. Unilateral placement of the implant may result in deleterious effects to the contralateral joint; and (i) Malocclusion. Placement of the device may produce an improper occlusal relationship.

FDA agrees with the Dental Products Panel's classification recommendation and is proposing that the mandibular condyle prosthesis be classified into class III (premarket approval). FDA believes that insufficient information exists to identify the proper materials or design for the mandibular condyle prosthesis. Therefore, FDA is proposing that premarket approval of the mandibular condyle prosthesis be given high priority.

The act requires the agency to classify into class III a device that presents a potential unreasonable risk of illness or injury unless it determines that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA believes that the device presents a potential unreasonable risk of illness or injury to the patient if there are not adequate data to ensure the safe and effective use of the device. The agency believes that general controls, either alone or in combination with the special controls applicable to class II devices, are insufficient to provide reasonable assurance of safety and effectiveness of the device.

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Transcripts of the Dental Products Panel meeting, February 11, 1993.

2. Fontenot, M. G., and J. K. Kent, "In-Vitro and In-Vivo Wear Performance of TMJ Implants," abstract, International Association of Dental Research, 1991.

3. Kent, J. N., and M. S. Block, "Comparison of FEP and UPE Glenoid Fossa Prosthesis," abstract, International Association of Dental Research, 1991.

4. "Clinical Information on the Vitek TMJ Interpositional (IPI) Implant and the Vitek-Kent (VK) and Vitek-Kent 1 (VK–1) TMJ Implants" in "Vitek Patient Notification Program," FDA Publication, 1991.

5. Kent, J. N., "VK Partial and Total Joint Reconstruction," Current Concepts of TMJ Total Joint Replacement, University of Medicine and Dentistry of New Jersey, pp. 1–8, March 1992.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

FDA has examined the costs and benefits of this proposed rule to classify two TMJ implants into class III in accordance with Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). The proposed rule would not impose any new requirements. Therefore, FDA concludes that the proposed rule is not a significant rule as defined by Executive Order 12866. In accordance with the Regulatory Flexibility Act, the agency certifies that the proposed rule will not have a significant impact on a substantial number of small businesses.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 872 be amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. New §§ 872.3950 and 872.3960 are added to subpart D to read as follows:

§ 872.3950 Glenoid fossa prosthesis.

(a) *Identification.* A glenoid fossa prosthesis is a device that is intended to be implanted in the temporomandibular joint to augment a glenoid fossa, and provide an articulation surface for the head of a naturally occurring mandibular condyle.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* The effective date of the requirement for the premarket approval has not been established. See § 872.3.

§ 872.3960 Mandibular condyle prosthesis.

(a) *Identification.* A mandibular condyle prosthesis is a device that is intended to be implanted in the human jaw to replace the mandibular condyle and to articulate within a naturally occurring glenoid fossa.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* The effective date of the requirement for the premarket approval has not been established. See § 872.3.

Dated: February 8, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–3399 Filed 2–11–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

42 CFR Part 405

[BPD–766–P]

RIN 0938–AG21

Medicare Program; Standards for Quality of Water Used in Dialysis and Revised Guidelines on Reuse of Hemodialysis Filters for End-Stage Renal Disease Patients

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the conditions for coverage of suppliers of end-stage renal disease services to incorporate by reference standards for monitoring the quality of water used in dialysis as published by the Association for the Advancement of Medical Instrumentation (AAMI) in "Hemodialysis Systems" (2nd Edition). It would also update an existing incorporation by reference to refer to the 1993 edition of AAMI's voluntary guidelines on "Recommended Practice for Reuse of Hemodialyzers". These standards and guidelines contain recognized benchmarks for high quality dialysis procedures. Section 1881(b)(1)(A) of the Social Security Act authorizes the Secretary to limit Medicare payment for ESRD services to facilities meeting the requirements prescribed in regulations.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 15, 1994.

ADDRESSES: Mail an original and three copies of written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–766–P, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–766–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Jacqueline Sheridan, (410) 966–4635

SUPPLEMENTARY INFORMATION:

I. Background

Section 1881 of the Social Security Act (the Act) authorizes Medicare coverage and payment for the treatment of end-stage renal disease (ESRD) in approved facilities that provide dialysis and transplantation services to ESRD patients. The Health Care Financing Administration (HCFA) grants approval of ESRD facilities after a State survey agency determines that the facility is in compliance with conditions for coverage of suppliers of ESRD services in 42 CFR part 405, subpart U. Since their initial publication on June 3, 1976 (41 FR 22502), the conditions for coverage have undergone several revisions as a result of legislation, as well as operating experience, to reflect evolving medical standards and techniques.

The regulations contain conditions and standards prescribing the services that must be provided and the qualifications of staff who provide those services. The decision as to whether a facility complies with a particular condition for coverage depends on the manner and degree to which the supplier satisfies the various standards within each condition. A supplier is not in compliance if, after completion of a survey, a State survey agency determines that the supplier fails to comply with one or more of the standards within the conditions for coverage, and the deficiencies are of such character as to limit substantially the supplier's capacity to furnish adequate care or to affect adversely the health and safety of patients.

II. Quality of Water Used in Dialysis

Our current regulation governing the quality of water used in dialysis at § 405.2140(a)(5) requires that water used for dialysis must be analyzed periodically and treated as necessary to maintain a continuous supply that is biologically and chemically compatible with acceptable dialysis techniques. Records of test results and equipment maintenance are maintained at the facility. This standard was developed in 1976 and has never been modified.

State agency surveyors have difficulty measuring facility compliance with the standard due to its lack of specificity. Surveyors favor a standard that includes specific biological and chemical water purity levels and user monitoring guidelines that can be applied consistently during each survey.

Water quality is one of the most important aspects of health and safety in dialysis. Contaminants in water used to make the dialysis solution (dialysate) may cause adverse reactions when they enter the patient's bloodstream. Some chemical contaminants are not normally harmful when present in usual physiological fluids but can become dangerous if their concentrations are increased by contaminants in the water used to make dialysate. If water supplies are biologically or chemically contaminated, such contaminates may be passed into the patient during the dialysis session, leading to infection or other adverse consequences. Limits on bacterial growth in dialysate are necessary to prevent high bacterial counts associated with pyrogenic reaction.

After consultation with the Public Health Service and a variety of professionals in the dialysis industry, we have concluded that establishing specific, measurable standards regarding the quality of water used in dialysis would better ensure the health and safety of Medicare beneficiaries. We propose to incorporate by reference the water quality standard approved by the Association for the Advancement of Medical Instrumentation (AAMI) and published in "Hemodialysis Systems" (2nd edition). According to the Public Health Service's Centers for Disease Control and Prevention, the AAMI standard on water quality is the only standard available, is accepted by the medical community, and is already utilized by most facilities. We assume that using this water quality standard will reduce patient risk. However, we specifically solicit public comments on the validity of this assumption. We are also seeking comments on the assumption that the majority of facilities are already using this standard.

III. AAMI Standard on Hemodialysis Systems

The 1992 AAMI standard, "Hemodialysis Systems," reflects the collective expertise of a committee of health care professionals, in conjunction with device manufacturers and government representatives, to develop a standard of performance for manufacturers that will, at a minimum, ensure the effective, safe performance of hemodialysis systems, devices, and related materials. Included in the standard are specific water quality requirements, including maximum levels of bacteriological and chemical contamination. Additionally, a guideline for the device user, with specific emphasis on water purity assurance and monitoring, is appended to the standard. The standard is outcome-oriented in that it stipulates only specific biological and chemical water purity levels and does not restrict the methods used by facilities to attain and maintain the acceptable levels. We are interested in comments on whether the outcome measures are appropriate and whether our assumption that most facilities can meet these requirements is reasonable.

Each AAMI standard or recommended practice is reviewed at least every 5 years. These reviews are required because of the constant changes in medical technology and to clarify or improve existing guidelines. The AAMI Renal Disease and Detoxification Committee initiated a thorough review of the standard "Hemodialysis Systems" in 1986, recognizing that the technology of hemodialysis had changed in a number of respects since the standard was originally published in 1982. Task groups were established in those areas that the committee felt needed most careful review. As a result of the work of these task groups and of review by the full committee, a proposed revision of the standard was prepared. (The allowable levels of chemical contaminants in dialysis water were not changed.) Following committee balloting and public review, the second edition of "Hemodialysis Systems" was approved March 16, 1992.

Because AAMI guidelines represent medically acceptable standards and techniques developed in collaboration with health professionals and industry representatives, we believe manufacturers and users already have access to, and are familiar with, the standard. However, "Hemodialysis Systems" (2nd Edition) (ANSI/AAMI RD5) may be purchased from AAMI, 3300 Washington Boulevard, suite 400, Arlington, Virginia 22201–4598. Upon final approval of the incorporation by reference, the publication will be available for inspection at the HCFA Information Resource Center, 6325 Security Boulevard, Room G–10–A East High Rise Building, Baltimore, MD or the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

We propose to adopt the water quality requirements contained in sections 3.2.1—Water Bacteriology and 3.2.2—Maximum Level of Chemical Contamination, as well as the guidelines for monitoring water purity contained in sections B1 through B5 of Appendix B of AAMI's standard "Hemodialysis Systems". The requirements of these sections are summarized below.

3.2.1 Water Bacteriology

- The water used to prepare dialysate should not have a total viable microbial count exceeding 200/ml. The manufacturer or supplier recommends a method of cleaning the equipment to meet this requirement. The user monitors the water bacteriology of the system following installation.
- The total viable microbial count for the dialysate should not exceed 2000/ml. The supplier of the dialysate supply system recommends a method of cleaning the equipment that results in a device capable of meeting this requirement. The user is responsible for monitoring the purity of the dialysate.

3.2.2 Maximum Level of Chemical Contaminants

- This section includes a table listing the maximum allowable chemical contaminant levels for the water used to prepare dialysate. The manufacturer or supplier of the water treatment device is responsible for recommending a system capable of meeting the requirements of this section. The physician in charge of dialysis has the ultimate responsibility for selecting the water treatment system and is also responsible for monitoring the water.

Appendix B, Sections B1 Through B5: Guideline for Monitoring Purity of Water Used for Hemodialysis

- Appendix B outlines the responsibilities of users of hemodialysis systems to ensure purity of water used for hemodialysis. Sections B1 through B5 delineate committee recommendations with respect to frequency of monitoring water used in dialysis to ensure that the maximum levels of contaminants specified in section 3.2.1 and 3.2.2 are not exceeded. These recommendations include:

+ The bacteriology of water and dialysate should be sampled at least monthly or more frequently to define, solve, and control problems.

+ The frequency of sampling for chemical contaminants varies from 3 months to 12 months depending on the method of water treatment. Because chemical contamination can vary widely from month to month, monthly testing is recommended initially to develop a data base for determining optimum frequency of testing for each facility. When chloramines are added municipally to the water supply, the water used to prepare dialysate should be checked for the presence of chloramines at least once a day.

+ Maximum levels of organic chemicals, pesticides, herbicides, and radioactive material cannot be specified at present, therefore, frequency of testing for these materials cannot be established.

+ Frequency of disinfection of the water treatment and disinfection system, dialysis machines, and equipment used to distribute and prepare dialysate should be determined by the results of microbiological monitoring, by any requirements to meet AAMI standards and/or guidelines, and by the manufacturer's recommendations.

IV. Reuse of Hemodialyzers

Section 1881(f)(7) of the Act requires the Secretary to establish protocols for reuse of hemodialyzers for those facilities that voluntarily elect to reuse the filters. In the process of hemodialysis, the patient's blood is cleansed of impurities by passing the blood through the filter (hemodialyzer) of a hemodialysis machine. Various techniques exist that allow these filters to be reused. Reuse involves cleaning, disinfecting, and preparing disposable hemodialysis devices for subsequent use for the same patient. Although the potential exists for adverse patient outcomes from reuse, reprocessing and reuse of dialyzers are safe when done properly.

On October 2, 1987, through a Federal Register publication (52 FR 36926), final regulations were issued specifying the performance requirements for reuse of hemodialyzers and other dialysis supplies (§ 405.2150). Section 405.2150 requires ESRD facilities reusing hemodialyzers to meet the voluntary guidelines and standards adopted by AAMI and issued in July 1986 as "Recommended Practice for Reuse of Hemodialyzers".

Unlike AAMI "standards" which are directed to manufacturers, "recommended practices" are directed to health professionals and provide guidelines for the use, care, and processing of a medical device or system. The AAMI guidelines on reuse of hemodialyzers are based on the national consensus of physicians, other health care professionals, government representatives, patients, and industry. They describe the details of reprocessing dialyzers and address various areas such as personnel qualifications and training, patient considerations, equipment, reprocessing supplies, monitoring during dialysis, quality assurance, and quality control.

Since the publication of the 1986 edition of the "Recommended Practice for Reuse of Hemodialyzers" and HCFA's adoption of the recommended practice, users of the guidelines have asked numerous questions. As a result of the AAMI review of the 1986 guidelines, the Hemodialyzer Reuse Subcommittee of the AAMI Renal Disease and Detoxification Committee developed a 1993 edition. The subcommittee consists of representatives from the manufacturing, governmental (including HCFA), physician, dialysis facility, and patient consumer communities.

The preliminary revisions underwent concurrent public review and committee balloting which lasted 2 months. The final revisions also underwent public review and committee balloting and were approved May 3, 1993. A quorum of two-thirds of the subcommittee was necessary to vote the document's approval.

The announcement of the 1993 edition of "Recommended Practice for Reuse of Hemodialyzers" was made in the "AAMI News", the "American National Standards Institute Reporter", and in press releases to 500 trade journals. The 1993 edition (ANSI/AAMI RD47) may be purchased from AAMI, 3300 Washington Boulevard, suite 400, Arlington, Virginia 22201–4598. Upon final approval of the incorporation by reference, the 1993 edition will be available for inspection at the HCFA Information Resource Center, 6325 Security Boulevard, Room G–10–A East High Rise Building, Baltimore, MD 21207, or the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

The 1993 edition is directed to the physician in charge of hemodialyzer reprocessing by either the manual or automated method and describes the essential elements of good practices for reprocessing dialyzers to help assure device safety and effectiveness. Some of the salient changes included in the document are:

- New Occupational Safety and Health Administration (OSHA) recommended environmental exposure limits of chemicals;
- Significant simplification and clarification of the process of validating indirect performance measurements;
- A new section on equipment safety that recommends testing the function of the reprocessing system after repair of automated equipment unless a system has an autotest mode;
- A definition for "rebound" that describes the disinfectant rebound effect;
- Revisions regarding use, testing, and removal of chemical germicide and more detailed specifications on germicides involved in reuse;
- An expanded section on safety monitoring of clinical test results;
- Several new bibliographical references;
- Appendices that list the rationales for the revised sections and include a new basic formaldehyde assay test method; and
- Revised requirements for personnel qualifications and training, patient considerations, water and reprocessing equipment.

V. Provisions of the Proposed Regulations

We propose to revise § 405.2140(a)(5) to require that ESRD facilities meet the AAMI standards on water quality found in sections 3.2.1, 3.2.2, and B1–B5 of Appendix B of "Hemodialysis Systems" (2nd Edition) which would be incorporated by reference. We would indicate that copies of this publication may be purchased from AAMI and are available for inspection at the HCFA Information Resource Center or the Office of the Federal Register.

In § 405.2150(a)(1), we propose to require ESRD facilities reusing hemodialyzers to meet the 1993 edition of the AAMI guidelines on "Recommended Practice for Reuse of Hemodialyzers" which we propose to incorporate by reference. We would indicate that copies of the 1993 edition may be purchased from AAMI and are available for inspection at the HCFA Information Resource Center or the Office of the Federal Register.

We would remove § 405.2150(a)(2) concerning staff exposure to chemical germicides, paragraph (a)(3)(iii) concerning reporting adverse patient reactions to the manufacturer; and paragraph (b) concerning the standard for dialyzer caps. These topics are covered in the following sections of the revised 1993 AAMI guidelines which would be incorporated by reference:

- Section 8—Physical plant and environmental safety considerations
- Section 11—Reprocessing
- Section 13—Monitoring
- Annex A—Section A11.4—Germicide.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the **DATES** section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

VII. Collection of Information Requirements

This rule contains no information collection requirements. Consequently, this rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VIII. Regulatory Impact Statement

A. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all ESRD facilities are considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

In accordance with the provisions of Executive Order 12866 this proposed rule was reviewed by the Office of Management and Budget.

B. Water Quality Standards

The proposed rule would incorporate into regulations existing industry standards on the quality of water used in dialysis to enable surveyors to accurately assess a facility's compliance with the standard on water quality. The AAMI standards are the result of a collaborative effort by health professionals and industry representatives to respond to clinical needs and to help ensure patient health and safety. It is our understanding that AAMI's recommended maximum levels for water contaminants have been clearly defined and supported by scientific literature and developed through industry consensus. Under the AAMI water standard, the supplier/manufacturer of dialysis water treatment equipment is responsible for assuring that the water produced by the system routinely does not exceed the maximum allowable chemical contaminant levels. Because AAMI's acceptable contamination levels have been in effect since 1982 and are recognized as medically acceptable standards, we believe that manufacturers have been producing, and facilities purchasing, equipment capable of meeting these requirements. We understand that technology is in place for all facilities to meet the AAMI water standard and solicit comments on this understanding. While variations in water quality do typically occur, any changes that occur will be handled through consultation with State and local water authorities and safe purity levels ensured through continued monitoring by the physician in charge of dialysis. Although contaminants in water used in dialysate may cause adverse patient reactions, actual documented adverse incidents are rare when water is monitored properly. Because the AAMI water quality standard represents long-standing acceptable medical practice, we believe the vast majority of facilities already comply with this standard. Incorporation of the AAMI standard into regulations will help ensure patient health and safety by providing surveyors with a measurable standard with which they may assess facility compliance, especially in the few facilities that do not voluntarily conform to the water quality guidelines adopted by the industry.

C. Reuse of Hemodialyzers

The AAMI "Recommended Practice on Reuse" does not promote either single use or reuse of dialyzers. The guidelines were developed to acknowledge the widespread practice of reprocessing and provide recommendations for optimal hemodialyzer reprocessing. In January 1993, HCFA's Health Standard and Quality Bureau canvassed the 2,345 Medicare certified ESRD facilities to determine if they practiced reuse, and if so, the disinfecting protocols used. Sixty-five percent (1,532) of the facilities reported practicing reuse. Of these facilities, approximately 51 percent use renalin as the germicide, with two-thirds of these facilities using an automated disinfecting system. Approximately 40 percent of the facilities reported using formalin/formaldehyde as the germicide, with manual and automated systems receiving equal use. Approximately 9 percent of the facilities practicing reuse reported using glutaraldehyde as the germicide, with the majority of these facilities using an automated disinfecting system. Less than 1 percent of the facilities use other disinfecting methods.

Because the 1993 AAMI guidelines do not differ significantly from the 1986 guidelines (which all Medicare participating facilities practicing reuse already must meet), we believe that the great majority of the facilities practicing reuse would be in compliance with the new standards proposed in this regulation. The 1993 AAMI standards were developed through a public forum and their adoption was well publicized. They reflect the most up-to-date reuse procedures already practiced by many of the facilities, and we do not believe that incorporating the 1993 guidelines into our regulations, in and of itself, would prompt any facility to begin or discontinue reuse.

We expect that each facility would respond to these new standards based on the relationship of these standards to its current reuse practices and to factors such as whether or not a facility presently meets the standards or can meet them without extensive changes, and whether or not the facility can buy new filters in quantity less expensively than it can upgrade its reuse practices. As we said above, 65 percent of the facilities are already reusing dialyzers. The major effect of this proposed rule would be to assure that Medicare standards for reuse reflect safe and effective practices.

D. Conclusion

Because we are unable to predict the decisions facilities would make in response to this regulation, we are unable to quantify the potential effect it would have. Some beneficiaries may be reassured that HCFA has adopted specific water quality standards and updated its standards for reuse of hemodialyzers to ensure their health and safety. However, we expect that there would be a negligible effect on most beneficiaries and facilities since we believe these revisions would make no major changes in current facility operation or patient experience. This proposed rule is not expected to result directly in any increases or reductions in Medicare program expenditures.

For these reasons, we have determined, and the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities and would not have a significant economic impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Incorporation by reference, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR chapter IV, part 405, subpart U would be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. The authority citation for part 405, subpart U continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a), unless otherwise noted.

B. In § 405.2140, the heading of paragraph (a) is republished, and paragraph (a)(5) is revised to read as follows:

§ 405.2140 Condition: Physical environment.

* * * * *

(a) *Standard: Building and equipment.* * * *

(5)(i) The ESRD facility must employ the water quality requirements listed in paragraph (a)(5)(ii) of this section developed by the Association for the Advancement of Medical Instrumentation (AAMI) and published in "Hemodialysis Systems" (2nd edition) which is incorporated by reference.

(ii) Required water quality requirements are those listed in sections 3.2.1, Water Bacteriology; 3.2.2, Maximum Level of Chemical Contaminants; and in Appendix B: Guideline for Monitoring Purity of Water Used for Hemodialysis as B1 through B5.

(iii) Incorporation by reference of the Association for the Advancement of Medical Instrumentation's "Hemodialysis Systems" (2nd edition) (ANSI/AAMI RD5–1992) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This publication is available for inspection at the HCFA Information Resource Center, 6325 Security Boulevard, Room G–10–A East High Rise Building, Baltimore, MD 21207 and the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies may be purchased from AAMI, 3300 Washington Boulevard, suite 400, Arlington, VA 22201–4598. If any changes in "Hemodialysis Systems" (2nd edition) are also to be incorporated by reference, a document to that effect will be published in the **Federal Register.**

* * * * *

C. In § 405.2150, the undesignated introductory text and paragraph (a) are revised, paragraph (b) is removed, paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively, and redesignated paragraph (c)(1) is revised to read as follows:

§ 405.2150 Condition: Reuse of hemodialyzers and other dialysis supplies.

An ESRD facility that reuses hemodialyzers and other dialysis supplies meets the requirements of this section. Failure to meet any of paragraphs (a) through (c) of this section constitutes grounds for denial of payment for the dialysis treatment affected and termination from participation in the Medicare program.

(a) *Standard: Hemodialyzers.* If the ESRD facility reuses hemodialyzers, it conforms to the following:

(1) *Reuse guidelines.* Voluntary guidelines adopted by the Association for the Advancement of Medical Instrumentation (A.A.M.I.) 1993 edition (i.e., "Recommended Practice for Reuse of Hemodialyzers"). Incorporation by reference of the Association for the Advancement of Medical Instrumentation 1993 edition of the "Recommended Practice for Reuse of Hemodialyzers" (ANSI/AAMI RD47) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This publication is available for inspection at the HCFA Information Resource Center, 6325 Security Boulevard, Room G–10–A East High Rise Building, Baltimore, MD 21207 and the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies may be purchased from AAMI, 3300 Washington Boulevard, Suite 400, Arlington, VA 22201–4598. If any changes in the "Recommended Practice for Reuse of Hemodialyzers" are also to be incorporated by reference, a document to that effect will be published in the **Federal Register.**

(2) *Procedure for chemical germicides.* To prevent any risk of

dialyzer membrane leaks due to the combined action of different chemical germicides, dialyzers are exposed to only one chemical germicide during the reprocessing procedure. If a dialyzer is exposed to a second germicide, the dialyzer must be discarded.

(3) *Surveillance of patient reactions.* In order to detect bacteremia and to maintain patient safety when unexplained events occur, the facility—

(i) Takes appropriate blood cultures at the time of a febrile response in a patient; and

(ii) If pyrogenic reactions, bacteremia, or unexplained reactions associated with ineffective reprocessing are identified, terminates reuse of hemodialyzers in that setting and does not continue reuse until the entire reprocessing system has been evaluated.

(b) * * *

(c) * * *

(1) Limit the reuse of bloodlines to the same patient;

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 23, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: October 23, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–3307 Filed 2–11–94; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 871

RIN–2900–AG65

VA Acquisition Regulation: Loan Guaranty and Vocational Rehabilitation and Counseling Programs

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend the VA Acquisition Regulation (VAAR) to increase the amount which property holders and management brokers may spend for emergency property repairs. Advance blanket authorization to management brokers is also being increased. Additionally, the dollar amount that Regional Office Directors, Loan Guaranty Officers, and Assistant Loan Guaranty Officers are authorized to approve for the repair of VA property, acquired under Chapter 37, Title 38, United States Code, is being increased to conform with the current statutory authority.

DATES: Comments must be received by April 15, 1994. All comments received will be available for public inspection until April 25, 1994. This amendment is proposed to be effective on the date of publication of the Final rule.

ADDRESSES: Comments should be sent to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420. All written comments received will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Patricia Viverette, Acquisition Policy Division (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420, (202) 233–5001.

SUPPLEMENTARY INFORMATION:

I. Background

Purchase of supplies and services for the repair to any VA property is authorized by Chapter 37, Title 38, United States Code (U.S.C.). The dollar limit for management brokers' blanket advance authority to incur routine charges in connection with the management of properties acquired by VA under Chapter 37, Title 38, U.S.C., was increased from $75 to $200 in 1981. Since that time, costs associated with services for which management brokers routinely incur expenses have increased. Because of this, an increase to $500 is being implemented for both the management brokers' blanket authority to incur expenses and the property holders' emergency repair threshold. Also, because of the increased costs of repairs, Regional Office Directors, Loan Guaranty Officers, and Assistant Loan Guaranty Officers are authorized to approve repair programs, (i.e., the aggregate amount of the proposed contracts to purchase supplies and services as contemplated in a property analysis by the Loan Guaranty activity), where the estimated cost does not exceed $25,000.

These changes will further promote the efficient management of VA's acquired property inventory. Additionally, VAAR Sections 871.103 and 871.106 are being removed because they are duplicative of the Federal Acquisition Regulation (FAR). Technical amendments are being made to reflect the current organizational titles.

II. Regulatory Flexibility Act (RFA)

The Secretary certifies that this change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. The increase in the amount for routine charges or emergency repairs in connection with the management of properties will reduce the economic burden placed on management brokers or property holders by reducing the administrative approval process. The remaining proposed changes are VA internal procedures and will not directly affect any small entity.

III. Paperwork Reduction Act

This amendment does not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subject in 48 CFR Part 871

Government procurement.

Approved: December 10, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR part 871 is proposed to be amended as set forth below:

1. The authority citation for part 871 is revised to read as follows:

Authority: 38 U.S.C. 501, 40 U.S.C. 486(c), 38 CFR 36.4320, 38 U.S.C. Chs. 30, 31, 32, 35, 36, and 37, 10 U.S.C. Chs. 106 and 107, and Pub. L. 102–16.

PART 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND COUNSELING PROGRAMS

Subpart 871.1—[Amended]

2. Section 871.101 is revised to read as follows:

871.101 Policy.

All acquisitions for the repair and maintenance of VA property acquired under Chapter 37, Title 38, United States Code, shall be made in accordance with those regulations as set forth in (FAR) 48 CFR parts 14, 15, and 16, and (VAAR) 48 CFR parts 814, 815, 818, and 871.

871.102 [Amended]

3. Section 871.102, paragraph (a) is amended by adding the comma and words ", Loan Guaranty Officers, and Assistant Loan Guaranty Officers" after the word "Directors"; by removing the words, "purchase supplies and services for the repair to" and adding, in their place, the words "approve a repair program for"; by removing the figure "$5,000" and adding, in its place, the figure "$25,000"; and is amended by removing the title "Chief Benefits Director" and adding, in its place, the title "Under Secretary for Benefits"; the second sentence in paragraph (c) is amended by removing the title "Chief Benefits Director" and adding, in its place, the title "Under Secretary for Benefits"; paragraph (d) is amended by removing the figure "$200" and adding, in its place, the figure "$500"; the first sentence in paragraph (e) is amended by removing the word "listed" and adding, in its place, the word "assigned" and by removing the words "with him/her"; the second sentence in paragraph (e) is amended by removing the figure "$200" and adding, in its place, the figure "$500" and by removing the words "his/her" and adding, in their place, the word "the"; the third sentence in paragraph (e) is amended by removing the figure "$200" and adding, in its place, the figure "$500".

871.103 [Removed]

4. Section 871.103 is removed.

871.105 [Removed]

5. Section 871.105 is removed.

871.106 [Amended]

6. Section 871.106, paragraph (b) is amended by removing the words "his/her" and adding, in their place, the word "the subcontractor's".

Subpart 871.2—[Amended]

7. Section 871.200 is revised to read as follows:

871.200 Scope of subpart.

This subpart establishes policy and procedures for the vocational rehabilitation and counseling program as it pertains to contracts for training and rehabilitation services, approval of institutions (including rehabilitation facilities), training establishments, and employers under Chapter 31, Title 38, United States Code, contracts for counseling services under Title 38, United States Code, Chapters 30, 31, 32, 35, and 36; Title 10, United States Code, Chapters 106 and 107; and Public Law 102–16, Veterans Education and Employment Amendments.

871.201–3 [Amended]

7. Section 871.201–3 is amended by removing the words "Veterans Health Services and Research Administration" and adding, in their place, the words "Veterans Health Administration."

871.207 [Amended]

8. Section 871.207, paragraph (b)(2) is amended by removing the words "Veterans Administration" and adding, in their place, the words "Department of Veterans Affairs".

[FR Doc. 94–3287 Filed 2–11–94; 8:45 am]

BILLING CODE 8320-01-P

Notices

Federal Register
Vol. 59, No. 30
Monday, February 14, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program, Aquaculture Research; Solicitation of Applications; Correction

AGENCY: Cooperative State Research Service, USDA.

ACTION: Notice of correction of application submission deadline.

SUMMARY: In notice document 94–1730 in the issue of Thursday, January 27, 1994 (59 FR 3974), two different dates were given as the application submission deadline. This notice corrects all application submission deadline dates to read April 18, 1994 as follows:

On page 3976 in the second column in the third paragraph, the regular mail postmarked date was specified as March 14, 1994. The date should be changed to April 18, 1994. On the same page and same column in the fourth paragraph, the hand-delivered proposal submission date was specified as March 14, 1994. The date should be changed to April 18, 1994.

Dated: February 8, 1994.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 94–3313 Filed 2–11–94; 8:45 am]
BILLING CODE 3410–22–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–508–604]

Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty changed circumstances review.

SUMMARY: On November 5, 1993, the Department of Commerce published the preliminary results of its changed circumstances review concerning its examination of whether Rotem Fertilizers, Ltd. (Rotem) is the successor to Negev Phosphates, Ltd. (Negev). The review covers one manufacturer/exporter of this merchandise to the United States, Negev, and its merger with Rotem. We have now completed this review and determine that, for purposes of applying the antidumping duty law, Rotem is the successor to Negev and, as such, is subject to the revocation which applied to Negev.

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1993, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its antidumping duty changed circumstances review on industrial phosphoric acid from Israel (58 FR 59010). We have now completed this changed circumstances review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA). This product is currently classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, Negev, and its merger with Rotem.

Successorship

In December 1991, Rotem and Negev, two companies within the Israeli Chemicals, Ltd. (ICL) group, merged to become one corporate entity, Rotem. Subsequent to the merger, Negev was revoked from the antidumping duty order. (See Final Results of Antidumping Duty Administrative Review and Revocation In Part of the Antidumping Duty Order (57 FR 10008; March 23, 1992).) Before the merger, Rotem was not a producer of the subject merchandise and was never reviewed under this order.

Negev notified the Department in a March 30, 1992 letter that the company had merged with Rotem. The merger, which was finalized December 31, 1991, was effective retroactively to January 1, 1991. During verification, the Department examined Rotem's sales and found no evidence of industrial phosphoric acid sales prior to the merger. In the March 30, 1992 letter, Negev also identified Rotem as its successor and requested that the Department issue a determination applying Negev's revocation to Rotem. Rotem began to ship the subject merchandise to the United States on January 1, 1992. Its shipments have entered under the "all other" rate applicable to companies that had never been reviewed under the order.

The Department has determined that Rotem is the successor to Negev for purposes of applying the antidumping duty law. For a complete discussion of the basis for this decision see Industrial Phosphoric Acid From Israel; Preliminary Results of Antidumping Duty Changed Circumstances Review, November 5, 1993, (58 FR 59010).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioners, FMC Corporation and Monsanto, and from Rotem, the manufacturer/exporter covered by this review.

Comment 1: Petitioners argue that the legal test for determining successorship with respect to an antidumping duty order is that "the Department will consider the acquiring company to be a successor if its resulting operation is essentially similar to that of its predecessor." Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review, (57 FR 5128, 5129; February 12, 1992). Petitioners maintain that after the merger, Rotem's operation was not essentially similar to either that of Rotem or the former Negev because, after the merger, Rotem became a fully integrated producer of both fertilizer and industrial grade acid, as well as a producer of rock phosphate. Thus, the newly merged operations of Rotem constitute a company with a more integrated and expanded phosphoric acid production.

Petitioners also claim that in the preliminary results of the changed circumstances review, the Department failed to consider Rotem as a new business entity because the Department was only looking at industrial phosphoric acid. Petitioners argue that the proper legal standard for determining successorship is whether the "resulting operation" of the acquiring company is essentially similar to its predecessor." See Brass Sheet and Strip preliminary results. Therefore, the merged Rotem should be examined with respect to its overall operations, not just its operations with respect to the subject merchandise. Petitioners argue that since Rotem's operations are not the same as they were prior to the merger with respect to all types of merchandise, Rotem should not be treated as a successor to Negev.

In response to petitioners' argument that Rotem has become an integrated producer of phosphoric acid, respondent claims that Negev's production of the subject merchandise was in fact fully integrated before the merger. Although the merger further integrated the production of fertilizer grade acid, no changes have occurred with regard to the production of the subject merchandise.

Department's Position: We disagree with petitioners' assertion that the proper legal standard for determining successorship is whether the acquiring company is similar to its predecessor with respect to its overall operations. In the preliminary results for Brass Sheet and Strip, the Department found that "concerning production and sales of brass sheet and strip," the acquiring company was operating essentially as the same business entity as its predecessor. See Brass Sheet and Strip from Canada; Preliminary Results of Antidumping Duty Administrative Review, (57 FR 5128, 5129; February 12, 1992). Moreover, in the final results for Brass Sheet and Strip, the Department agreed that since respondent's business operation was essentially the same as that of its predecessor "with regard to the production of brass sheet and strip," the acquiring company was essentially the same operation as its predecessor. See Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, (57 FR 20460, 20462; May 13, 1992). Thus, in this review, the Department has applied the same standard for determining successorship as the standard which was applied in the preliminary and final results of Brass Sheet and Strip.

Insofar as no explicit legal standard for determining successorship is provided by the statute or the Department's regulations, the Department has discretion in deciding how to determine whether one company is a successor to another for purposes of the antidumping duty law. In Brass Sheet and Strip, the Department examined the described factors in terms of the operations which produce the subject merchandise. This has continued to be our approach in the instant review. The operation producing the subject merchandise is the appropriate level at which to focus our analysis because under the antidumping duty laws, we are examining pricing practices with respect to the subject merchandise. For example, in this case, the antidumping duty order applies only to industrial phosphoric acid and reviews are conducted only on sales of this merchandise. Thus it follows that an inquiry into the validity of a claim of successorship to a respondent company should focus on that company's sales and production of the merchandise encompassed by the order.

Comment 2: Petitioners claim that when examining the four elements for determining successorship: (1) Management, (2) production facilities, (3) supplier relationships, and (4) customer base, Rotem's operations are not a continuation of Negev's operations.

With regard to management, petitioners argue that with the resulting changes in the board of directors and the production management, there is a new and different management team in charge. Petitioners claim that there has not been a continuation of the former Negev management in the new Rotem.

Petitioners also claim that since Rotem acquired Negev's production facilities, Rotem's total production facilities are much more extensive than Negev's were. As a result of the merger, Rotem is a larger full-service phosphate and related products producer and is not the same company that Negev was before the merger.

Petitioners further maintain that supplier relationships have also changed as a result of the merger. The former Negev obtained important raw material inputs from Rotem, which was then a separate company. Since the merger, raw material input for the production of the subject merchandise is now supplied by captive internal production, which petitioners argue constitutes a significant change in supplier relationships.

As a result of the merger, petitioners also argue that Rotem now has a much larger and more diverse customer base than Negev had. Furthermore, prior to the merger, Rotem, as a fertilizer producer, had no customers in the United States and made no sales to the United States. Therefore, the merger opened up an entirely new market for Rotem.

In contrast, the respondent maintains that the petitioners have presented no arguments that had not already been taken into account in the preliminary results. Therefore, the Department has no grounds for reversing the preliminary determination.

With regard to changes in management, the respondent maintains that personnel changes as the result of the merger are minimal. Furthermore, respondent argues that sales staff for the subject merchandise remained the same and most of management, including top management in the company, retained their positions.

Respondent claims that when addressing changes in production facilities, petitioners focus, as when addressing other factors to determine successorship, on the production of non-subject merchandise. Prior to the merger, Negev and Rotem formed a part of the same parent company. These two companies were both located at the same plant site and shared some infrastructure. Moreover, products that were transferred from one company to another were transferred on special intra-company terms. According to the respondent, these elements demonstrate that there was no change in production facilities with regard to the subject merchandise.

Respondent argues that petitioners' premise regarding supplier relationships is completely erroneous. Respondent maintains that the raw material inputs obtained by Negev from Rotem are not essential or even necessary in the production of the subject merchandise. Furthermore, when these raw materials were obtained from Rotem prior to the merger, they were purchased under an intra-company pricing formula determined by the parent company. Therefore, there has been no change in suppliers.

With regard to customer base, respondent claims that the customer base for the subject merchandise did not change. Respondent argues that petitioners are focusing on sales of non-subject merchandise, as illustrated by their example of sales to new customer groups such as the farming community. According to the respondents, the farming community does not have a

need for the subject merchandise, industrial phosphoric acid.

Department's Position: We do not agree with petitioners assertion that Rotem's operations are not essentially similar to Negev's operations prior to the merger in terms of: (1) Management, (2) production facilities, (3) supplier relationships, and (4) customer base, with regard to sales and production of the subject merchandise.

With regard to executive personnel, Negev and Rotem's board of directors consists of seven and five members, respectively. The president and three members of the board of directors, including the chairman of the board, are the same for both Negev and Rotem. Therefore, Rotem's five member board of directors includes three members that were also on Negev's board.

An examination of production management shows that production management was consolidated after the merger. Before the merger, there were two site managers and two operations managers, one set for Negev operations and the other for Rotem operations. Now there is one site manager and one operations manager for Rotem's industrial phosphoric acid and fertilizer acid facilities. After the merger, Negev's former vice-president became a Rotem executive vice-president. The Negev plant manager prior to the merger left the company, and Rotem's plant manager became the plant manager for both the Rotem and Negev plant facilities. Negev's former industrial phosphoric acid site manager remained with Rotem for about six months after the merger and was then replaced by Rotem's operations manager whose responsibilities became the management of both industrial phosphoric acid and fertilizer acid facilities. See Verification of the Questionnaire Response—Antidumping Duty Order on Industrial Phosphoric Acid from Israel— Changed Circumstances Review; October 6, 1993.

The Department has considered these changes in Rotem's management and finds that the differences are minimal. The changes in Rotem's personnel are well within the normal range of personnel changes that one would expect over time within the same operation. For example, in the final results of Brass Sheet and Strip, the Department found one company to be the successor of another despite the fact that the successor company had replaced the two top managers at the acquired plant. See Brass Sheet and Strip Final Results of Antidumping Duty Administrative Review, (57 FR 20462; May 13, 1992).

With regard to production facilities, we agree with respondents that petitioners improperly focus on the production of non-subject merchandise to support their claim that Rotem's total production is more extensive and diverse. Rotem did not alter production or the production facilities of the subject merchandise at the time of the merger. Moreover, the subject merchandise continued to be manufactured in the former company's plant facilities. Furthermore, eleven months after the merger, the Department verified that Rotem had not altered production or production facilities for the subject merchandise subsequent to the merger.

When reviewing supplier relationships, petitioners argue that as a result of the merger, Rotem now has a captive source of supply for certain raw material inputs necessary for production of the subject merchandise. During verification, the Department carefully examined supplier relationships for all raw material inputs in the production of the subject merchandise and found that the source of supplies for these inputs did not change after the merger. As respondents point out, before the merger Negev purchased raw material inputs from Rotem at intra-company prices and, after the merger, Rotem continued to supply these inputs.

Finally, in their discussion of changes in customer base, petitioners submit that as a result of the merger, Rotem has a larger and more diverse customer base. As in their evaluation of other factors, petitioners focus on the inclusion of Rotem's customers for non-subject merchandise. As stated in our response to comment one, the appropriate focus of our analysis is the subject merchandise. We agree with the respondents that the customer base for Rotem's sales of the subject merchandise did not change after the merger.

Finally, as requested, Rotem has submitted an agreement as set forth at § 353.25(a)(2)(iii) to be reinstated in the order should the Secretary conclude under § 353.22(f) that the company, subsequent to revocation, sold industrial phosphoric acid at less than foreign market value.

In conclusion, after reviewing all comments, the Department determines that Rotem is the successor to Negev.

Final Results of Review

After reviewing the comments received, we determine that Rotem is successor to Negev and, accordingly, is not subject to the antidumping duty order. We will instruct customs to liquidate all entries of this merchandise produced by Rotem, exported to the United States and entered, or withdrawn from warehouse, for consumption, on or after January 1, 1991. In addition, the Department will instruct the Customs Service to terminate suspension of liquidation on entries from Rotem and to liquidate, without regard to antidumping duties, merchandise exported by Rotem on or after January 1, 1991.

This changed circumstances review and notice are in accordance with section 751(b)(1) of the Act (19 U.S.C. 1675(b)(1)) and 19 CFR 353.22(f).

Dated: February 8, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–3393 Filed 2–11–94; 8:45 am]

BILLING CODE 3510–DS–P

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: By a decision dated January 28, 1994, the Binational Panel reviewing the redetermination on remand of the final affirmative material injury determination made by the U.S. International Trade Commission respecting Certain Softwood Lumber Products from Canada (Secretariat File No. USA–92–1904–02) affirmed in part and remanded in part the redetermination to the Commission for further action. A copy of the complete panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules.

Panel Decision

On January 28, 1994, the Binational Panel affirmed in part and remanded in part the final affirmative injury redetermination made by the U.S. International Trade Commission on October 25, 1993.

The Panel affirmed the Commission's remand determination with regard to imports from Quebec.

The Panel remanded the Commission's redetermination in the following respects:

(1) With respect to the Commission's causation determination, the Panel found that the information and analysis regarding the role of SPF in the U.S. softwood lumber market, and the regional price and import penetration comparisons, do not constitute substantial evidence of price suppression by reason of imports of softwood lumber from Canada or are not otherwise in accordance with law.

(2) As to the Commission's price trends analysis, the Panel found that the analysis, in its present form, did not contitute substantial evidence and is otherwise not in accordance with law.

The Panel further found that, should the Commission on remand rely on price trends data to support an affirmative determination, the Commission is to provide a full analysis and explanation of the underlying data and the methodology employed in the creation and presentation of the price trends analysis.

The Binational Panel instructed The Commission to provide its determination on remand within 45 days of the panel decision (by March 14, 1994).

Dated: February 8, 1994.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 94–3342 Filed 2–11–94; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

[ID. #013194C]

Pacific Coast Groundfish Fishery; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings on Amendment 8 to the Fishery Management Plan for Pacific Coast Groundfish.

SUMMARY: The Pacific Fishery Management Council is holding hearings on a proposed Amendment 8 to its Pacific Coast Groundfish fishery management plan (FMP). The amendment would establish an individual quota (IQ) program to cover the harvest of sablefish by vessels with groundfish limited entry permits for longline and fishpot (trap) gear. Harvest of sablefish by: (1) Trawl gear in the limited entry fishery, or (2) longline, fishpot (trap) and exempted gear by unlicensed vessels in the open access fishery, would not be covered by the proposed IQ program.

DATES: Written comments on the IQ proposal must be received by March 28, 1994. See **SUPPLEMENTARY INFORMATION** for dates and times of hearings.

ADDRESSES: Written comments should be sent to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW First Avenue, suite 420, Portland, OR; telephone: (503) 326–6352. See **SUPPLEMENTARY INFORMATION** for locations of hearings.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW First Avenue, suite 420, Portland, OR; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The fixed gear sablefish IQ program designed by the Council would allocate sablefish QS (quota share—a percentage of the total annual harvest guideline) to persons based primarily on catch history. Each year, holders of QS would be allocated an amount of sablefish IFQ (individual fishing quota—an amount of sablefish pounds for the year based on the amount of QS held) that could be taken anytime during the fishing season.

A recent participation requirement would require at least one landing of sablefish or groundfish (to be determined) with longline or fishpot gear between August 1, 1988, and November 13, 1991, in order for a person to qualify for an initial allocation of QS. There may also be a minimum amount of sablefish landings which must be made between January 1, 1984, and November 13, 1991. QS would be allocated to owners of "A" permits for longline or fishpot (trap) gear based at least in part on one of the following catch histories: (1) The catch history of the permit owned at the time QS is issued, (2) the catch history of the person as a vessel owner, or (3) some combination of the two. Confidentiality issues may affect the choice among these options and the ability of National Marine Fisheries Service (NMFS) to implement this program. Catch history occurring between January 1, 1984, and November 13, 1991, would be counted in determining the amount of QS issued. Under allocation formulas being considered, between 75 and 100 percent of the quote shares would be allocated on the basis of the best five of eight years of catch history. Up to 25 percent might be allocated primarily on the basis of an equal allocation concept.

The Council is considering a number of optional provisions for the program including: (1) Caps on the amount of QS/IFQ that may be issued to or accumulated by, a single person and the amount that may be used with a single vessel, and (2) requirements that the QS/IFQ owner be on board the vessel when the IFQ is used. The latter of these provisions implies that leasing would not be allowed. The provision may be combined with restrictions on the acquisition of QS/IFQ by corporations, partnerships and other non-individual entities that do not receive an initial allocation.

All hearings will start at 7 p.m. The following are the dates and locations:

February 28, 1994

Phoenix B and C Rooms, Radisson Hotel Seattle Airport, 17001 Pacific Highway, South, Seattle, WA 98188

Peninsula Room, Clarion Hotel, 401 East Millbrae Avenue, Millbrae, CA 94030

March 1, 1994

PreMarq Centre, 2065 Highway 101, Warrenton, OR 97146

Travelodge Hotel Resort and Marina, 700 Queens Way Drive, Long Beach, CA 90802

March 2, 1994

Evergreen Room, Red Lion Inn, 1929 Fourth Street, Eureka, CA 95501

March 3, 1994

Captain John's, 8061 King Fisher Drive, Charleston, OR 97420

This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the hearing date.

Dated: February 8, 1994.

Richard H. Schaefer,

Director of Office of Fisheries; Conservation and Management; National Marine Fisheries Service.

[FR Doc. 94–3371 Filed 2–11–94; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 020894B]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council), will hold a 2-day meeting on February 16 and 17, 1994, to consider actions affecting the New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Wednesday, February 16, 1994, at 10 a.m., and on Thursday, February 17, 1994, at 8:30 a.m.

ADDRESSES: The meeting will take place at King's Grant Inn, Rt. 128 at Trask Lane, Danvers, MA 01923, telephone: 508–774–6800.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906, telephone: 617–231–0422.

SUPPLEMENTARY INFORMATION: The Council meeting will begin on February 16 with reports from the Council Chairman and Executive Director, the NMFS Regional Director, NMFS Northeast Fisheries Science Center liaison, Mid-Atlantic Council liaison, and representatives from the Coast Guard, Fish and Wildlife Service and Atlantic States Marine Fisheries Commission (ASMFC). The Lobster Oversight Committee Chair will report on the formation of the Effort Management Teams as described in Amendment 5 to the American Lobster Fishery Management Plan (FMP).

During the afternoon session, the Sea Scallop Oversight Committee Chair will report on the framework measure initiation explained later in this notice.

The Wednesday session will conclude with a report from the Council Vice Chairman on the recommendations of an ad hoc committee for the upcoming Magnuson Fishery Conservation and Management Act reauthorization hearings in Congress.

On Thursday, the meeting will begin at 8:30 a.m. with an Enforcement Oversight Committee report on its recommendations on scallop management measures and on the winter flounder exception. The Marine Mammal Oversight Committee will report on time/area closures to reduce the take of harbor porpoise. This will be followed by a report from the Groundfish Oversight Committee on framework measure initiation discussed below.

The Groundfish Committee will conclude its report in the afternoon session of the second day of the Council meeting. The meeting will conclude with a discussion of the petition from the National Fisheries Association to prohibit the use of nets for large pelagic species in special management areas.

Abbreviated Rulemaking Actions—Atlantic Sea Scallops

The Council will consider framework adjustments to management measures under the framework for abbreviated rulemaking described in the final rule for Amendment 4 to the FMP for Atlantic Sea Scallops (59 FR 2757, January 19, 1994). The Council will determine whether adjustments, or additional management measures are necessary to protect small scallops in the Mid-Atlantic region. The Council will receive findings and recommendations from its Plan Development Team for Atlantic Sea Scallops, which met on February 4, 1994. Additionally, the Council will determine whether adjustments or additional management measures are necessary to address possible problems with double-linking of rings in the dredge bags, the availability of 5½ inch (13.97 cm) twine tops and the increase of at-sea freezing of scallops.

The Council's recommendation on adjustments to, or addition of, management measures must come from one or more of the following categories:

1. Days at sea changes (total or average);
2. Shell height;
3. Offloading window re-instatement;
4. Effort monitoring;
5. Data reporting;
6. Trip limits;
7. Gear restrictions;
8. Permitting restrictions;
9. Crew limits;
10. Small mesh line;
11. On board observers;
12. Any other management measures currently included in the FMP.

Abbreviated Rulemaking Actions—Northeast Multispecies

Winter Flounder Component of the 500-Pound Possession Limit

The Council will consider an adjustment to the Multispecies (Groundfish) FMP under the framework for abbreviated rulemaking (50 CFR 651.40) contained in Amendment 5 to the FMP which was approved on January 3, 1994. The proposed rule for Amendment 5 was published on October 27, 1993 (58 FR 57774); a final rule is expected to be effective on March 1, 1994, and published before that date.

At the request of the ASMFC Winter Flounder Board, the Council will discuss and accept public comment on a proposal to limit the winter flounder component of the 500-pound (226.8 kg) groundfish possession to 100 pounds (45.3 kg). The final rule discussed above, when implemented, will allow vessels to keep up to 500 pounds (226.8 kg), combined weight, of the 10 large-mesh groundfish species while fishing with mesh smaller than the regulated minimum size.

The ASMFC is concerned that a 500-pound (226.8 kg) limit is an incentive to target winter flounder with small mesh that may result in the discarding of unacceptable numbers of winter flounder that are under the currently legal minimum fish size of 12 inches (30.48 cm). The ASMFC is urging the Council to take this action to protect a moderately strong 1992 year class of winter flounder, which will be susceptible to the small-mesh fishing gear before reaching the minimum legal size.

Adjustment of Closure of Area I To Gillnetting

The Council will also consider an adjustment to the closure of Area I to gillnetting in the Multispecies FMP under the framework for abbreviated rulemaking contained in the proposed rule published on October 27, 1993. At the request of a number of sink gillnet fishermen, the Council will discuss and take public comment on a proposal to shift the time of the closure of Area I to gillnetting. The final rule implementing Amendment 5 to the Multispecies FMP will open Area I to all fishing gear types except sink gillnets. Unless modified by a framework measure, gillnetting will be prohibited from February through May.

The Council proposed to open Area I to all gears except sink gillnets because haddock spawning has not been observed in the area in recent years. At the recommendation of the NMFS Regional Director, the Council proposed retaining the closure of Area I to gillnetting because of the potential interaction with endangered whales, which are known to feed in the area during the spring. The February through May closure period was originally set to protect aggregations of spawning haddock and does not coincide with the observed presence of the whales, which the gillnetting closure is intended to protect. The Council proposes to begin the closure of Area I in the middle of March and extend it to the middle of July.

Time/Area Closures To Reduce the Take of Harbor Porpoise In the Gulf of Maine Sink Gillnet Fishery

At the request of the NMFS and the Council's Marine Mammal and Endangered Species Committee, the Council has developed proposals to reduce the take of harbor porpoise in the Gulf of Maine sink gillnet fishery by the end of year 4 of implementation of the Northeast Multispecies FMP to a level not to exceed 2 percent of the porpoise population, based on the best available estimates of abundance and catch.

Under the framework for abbreviated rulemaking (50 CFR 651.40, to be published in March 1994) the Council has requested its Harbor Porpoise Review Team (HPRT) to evaluate "reduction of take measures" for the harbor porpoise bycatch in the Gulf of Maine sink gillnet fishery. Those measures, which include closures in the Gulf of Maine by area and time, any recommendations made by the HPRT, and public comments, will be discussed at the February 16 and 17 Council meeting in order to initiate the framework process.

At the February 16–17 Council meeting, the Council will determine whether the requested adjustment to the regulations for sea scallops and groundfish are necessary and will initiate a public comment period. The Council staff will analyze the proposals and announce the availability of analysis documents prior to the second Council meeting (April 6–7, 1994). The public will have the opportunity to comment on the proposal(s) prior to and at the April Council meeting. After developing management actions and receiving public testimony, the Council will make a recommendation to the Regional Director. The Regional Director may publish the action as a final rule or as a proposed rule, as described in § 651.40.

Dated: February 8, 1994.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–3308 Filed 2–11–94; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 020894C]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of change of public meeting dates.

SUMMARY: The dates for the meeting of the Pacific Fishery Management Council's Groundfish Permit Review Board, as published February 8, 1994 (59 FR 5755), have been changed from February 22–24, 1994, to February 21–23, 1994. Start times and location remain the same.

FOR FURTHER INFORMATION CONTACT: Thomas Bigford, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; telephone: (206) 526–5140.

Dated: February 8, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–3372 Filed 2–11–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 020794D]

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application to modify Permit No. 867 (P540).

SUMMARY: Notice is hereby given that Dr. Frank Cipriano, Kewalo Marine Laboratory, 13 Ahui Street, Honolulu, HI 96813, has requested a modification to Permit No. 867.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Southwest Region, NMFS, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4015);

Northwest Region, NMFS, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115;

Alaska Region, NMFS, Federal Annex, P.O. Box 13668, Juneau, AK 99802 (907/586–7221);

Southeast Region, NMFS, 9540 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141); and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 867, issued on July 20, 1993 (58 FR 40114) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended 16 U.S.C. 1361 et seq.), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–222).

Permit No. 867 authorizes the Permit Holder to import samples from dusky dolphin *L. obscurus* and Pacific white-sided dolphin *L. obliquidens*, samples from each of white-beaked dolphin *L. albirostris*, Atlantic white-sided dolphin *L. acutus*, hourglass dolphin *L. cruciger*, and Peale's dolphin *L. australis*. The samples would be obtained opportunistically, from existing collections and museums; captive dolphins, Permitted researchers, and/or imported from Peru, Chile, Argentina, New Zealand, and South Africa.

The Holder requests authorization to include an additional 54 odontocete species in his research. A small quantity (5 grams) of skin, heart, muscle or liver tissue will be obtained for genetic analysis. The samples may be obtained from available collections and museums in the United States, Argentina, Canada, Chile, France, Peru, New Zealand, South Africa, the United Kingdom. The additional samples are needed in the ongoing molecular-genetic study for outgroup analysis of relationships

within *Lagenorhynchus* and assessment of the relationship of *Lagenorhyncyhus* to other dolphins.

February 7, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–3346 Filed 2–11–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Army Department, Office of the Secretary

Availability for the Final Programmatic Environmental Impact Statement for Joint Training Exercise Roving Sands at Fort Bliss, Texas and New Mexico and White Sands Missile Range, New Mexico

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: Interested parties are hereby notified that the District Engineer, U.S. Army Corps of Engineers, Fort Worth District, has prepared a Final Programmatic Environmental Impact Statement (FPEIS) for the U.S. Army Forces Command (FORSCOM) regarding Joint Training Exercise Roving Sands (RS) proposed to be conducted at Fort Bliss and White Sands Missile Range. This EIS addresses the next five RS exercises as well as potential uses of RS sites by 3rd Armored Cavalry Regiment and 11th Air Defense Artillery (ADA) Brigade.

Proposed action: Roving Sands is an annual training exercise coordinated by the Chairman, Joint Chiefs of Staff, sponsored by FORSCOM, and executed by the 11th ADA Brigade. The exercise will take place at Fort Bliss, Texas and New Mexico; White Sands Missile Range, Holloman Air Force Base, and Roswell, New Mexico. Most of the ground activity will occur on established Fort Bliss training areas. As many as 10,000 Army, Air Force, Navy, and Marine personnel will participate in the exercise, with about 200 aircraft and 3,000 wheeled vehicles. Roving Sands is scheduled to be conducted during the April-June time period each year. The exercise will last approximately three weeks. Actual force employment and field training will be approximately 11 days. This action does not involve a discharge of dredged or fill material into waters of the United States or wetlands and no evaluation into Section 404(b)(1) of the Clean Water Act is required. Cultural and biological surveys have been conducted to satisfy pertinent statutory and regulatory requirements pertaining to historical and archaeological resources as well as threatened and endangered species and critical habitats. No threatened or endangered species or cultural resources would be affected by this action. Advance planning has been used to avoid any sites which are environmentally sensitive.

ADDRESSES: The public is encouraged to comment on the FPEIS. Copies of the FPEIS are available upon written request to the U.S. Army Corps of Engineers, Fort Worth District, Planning Division, Post Office Box 17300, Fort Worth, Texas 76102–0300, or at the Environmental Resources Branch Office, Room 13A20, 819 Taylor Street, Fort Worth, TX 76102–0300.

DATES: Written comments will be accepted and considered for 30 days after the Environmental Protective Agency has published this Notice of Availability in this publication.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposal may be directed to Mr. Arver Ferguson, Jr., telephone (817) 334–3246, CESWF–PL–RE, 819 Taylor Street Box 17300, Fort Worth, Texas 76102–0300.

Dated: February 7, 1994.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety & Occupational Health) OASA(I,L&E).

[FR Doc. 94–3384 Filed 2–11–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–189–000, et al.]

New York State Electric & Gas Corp., et al.; Electric Rate and Corporate Regulation Filings

February 4, 1994.

Take notice that the following filings have been made with the Commission:

1. New York State Electric & Gas Corporation

[Docket No. ER94–189–000]

Take notice that on January 12, 1994, New York State Electric & Gas Corporation (NYSEG) tendered for filing an amendment to its November 26, 1993, filing in this docket. The amendment consists of additional information concerning the November 26, 1993, filing of an agreement with the Delaware County Electric Cooperative, Inc. (Cooperative). The agreement provides for the Cooperative's payments to NYSEG associated with NYSEG's efforts to operate, maintain, repair, and replace Substation Facilities required by the Cooperative and owned by NYSEG within the Axtell Road Substation. NYSEG has requested waiver of notice requirements so that the Rate Schedule can be made effective as of June 1, 1977. NYSGE states that a copy of the amendment has been served by mail upon the Cooperative and upon the Public Service Commission of the State of New York.

Comment date: February 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Colorado

[Docket No. ER94–561–000]

Take notice that on January 31, 1994, Public Service Company of Colorado (Public Service) filed with the Commission a complete version of the "Hayden-Blue River Participation Agreement for Construction, Use, Operation, Maintenance and Replacement of the Hayden-Blue River Transmission Association, Inc.; Platte River Power Authority; Colorado-Ute Electric Association, Inc.; the United States Department of Energy, Western Area Power Administration; and Public Service Company of Colorado", an incomplete copy of which had previously been filed on December 29, 1993. Also submitted was a letter agreement dated November 21, 1985, which had been inadvertently omitted from the December 29th filing, and a more legible copy of the September 12, 1985, letter agreement filed in this docket on December 29, 1993.

Public Service states that copies of the agreement have been served on the parties to the Participation Agreement, the Colorado Office of Consumer Counsel, and the Colorado Public Utilities Commission.

Comment date: February 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of New Mexico

[Docket No. ER94–938–000]

Take notice that on January 31, 1994, Public Service Company of New Mexico (PNM) submitted for filing a contract between PNM and United States Department of Energy, Western Area Power Administration, Salt Lake City Area Integrated Projects (Western) for purchase of energy. Under the terms of the agreement, PNM will provide Western with 388 Gwh of energy over the term of the agreement (April 1, 1994, through March 31, 1999).

Copies of the filing have been served upon Western and the New Mexico Public Utility Commission.

Comment date: February 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–939–000]

Take notice that on January 31, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing proposed supplements to its Rate Schedules FERC No. 92 and FERC No. 96.

The proposed supplement No. 2 supplement No. 6 to Rate Schedule FERC No. 96 increases the rates and charges for electric delivery service furnished to public customers of the New York Power Authority (NYPA) by $3,938,000 annually based on the 12-month period ending March 31, 1995.

The proposed Supplement No. 2 to Supplement No. 5 to Rate Schedule FERC No. 96, applicable to electric delivery service to NYPA's non-public, economic development customers, and the proposed Supplement No. 2 to Supplement No. 3 to Rate Schedule FERC No. 92, applicable to electric delivery service to commercial and industrial economic development customers of the County of Westchester Public Service Agency (COWPUSA) or the New York City Public Utility Service (NYCPUS), decrease the rates and charges for the service by $542,000 annually based on the 12-month period ending March 31, 1995.

The proposed increases are a part of a Company-wide general electric rate increase application which Con Edison filed to implement rates for the third year of a three-year rate plan previously approved by the New York Public Service Commission (NYPSC) and which is pending before the NYPSC.

Although the proposed supplements bear a nominal effective date of April 1, 1994, Con Edison will not seek permission to make these effective until the effective date, estimated to be April 1, 1994 of the rate changes authorized by the NYPSC.

A copy of this filing has been served on NYPA, COWPUSA, NYCPUS, and the New York Public Service Commission.

Comment date: February 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER94–940–000]

Take notice that on January 31, 1994, New England Power Company (NEP), tendered for filing amendments to the Transmission Agreements for the Connecticut Yankee, Maine Yankee and Vermont Yankee generating units. NEP submitted the filing in accordance with 18 CFR 35.1. This permits, where two or more public utilities are parties to the same rate schedule, one such utility to file the appropriate rate schedule with the Commission and permits the other parties to the rate schedule file certificates of concurrence as provided in 18 CFR 131.52. NEP also tendered the Certificates of Concurrence executed by certain parties to the amendments.

Comment date: February 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Company

[Docket No. ER94–941–000]

Take notice that on January 31, 1994, Pacific Gas and Electric Company (PG&E), tendered for filing an Agreement No. 93–SAO–00018, among PG&E, the federal Western Area Power Administration (Western), and the U.S. Department of Energy, San Francisco Operations Office (DOE/SF). This Agreement provides for the firming services needed for Western to serve the Department of Energy Lawrence Livermore National Laboratory with power from the Pacific Northwest imported via the California-Oregon Transmission Project. This agreement also provides for accounting of the several services to be provided to DOE/SF by PG&E, Western and possibly third parties.

Copies of this filing have been served upon Western, DOE/SF and the California Public Utilities Commission.

Comment date: February 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. The Cincinnati Gas & Electric Company

[Docket No. ER94–942–000]

Take notice that on January 31, 1994, The Cincinnati Gas and Electric Company (CG&E), tendered for filing a Short Term Transmission Service Agreement (Agreement) with the City of Hamilton, Ohio. During the term of the Agreement, Hamilton, will receive 25 MW of firm service from CG&E to enable Hamilton to receive economic power and energy purchased from a third party source during 1994.

CG&E requests waiver of the Commission's notice requirements and an effective date of February 1, 1994.

Copies of the filing were served upon the City of Hamilton, Ohio and the Public Utilities Commission of Ohio.

Comment date: February 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Robert J. Brown

[Docket No. ID–2817–000]

Take notice that on February 1, 1994, Robert J. Brown (Applicant) tendered for filing a supplemental application under Section 305(b) of the Federal Power Act to hold the following positions:

Director, Duke Power Company.

Director, First Union Corporation.

Comment date: February 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. ER&L White Sulphur Springs, Inc.

[Docket No. QF94–70–000]

On January 28, 1994, ER&L White Sulphur Springs, Inc. of 550 Water Street, Jacksonville, Florida 32202, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in White Sulphur Springs, West Virginia, and will consist of a diesel engine/generator and heat recovery equipment. Thermal energy recovered from the facility will be used by The Greenbrier Hotel for heating and cooling purposes. The net electric power production capacity of the facility will be 3.15 MW. The primary energy source will be fuel oil. Installation of the facility is expected to commence in May 1994.

Comment date: Thirty days after publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3338 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG94–15–000]

2322117 Nova Scotia Limited; Errata to Determination of Exempt Wholesale Generator Status

February 8, 1994.

On January 25, 1994, a notice entitled "Determination of Exempt Wholesale Generator Status" was issued in the above-referenced docket. That notice should have been entitled "Notice of Application For Determination of Exempt Wholesale Generator Status." (59 FR 4912, February 2, 1994).

In addition, the date for comments is being extended from February 14, 1994 to February 21, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3330 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–672–000]

Natural Gas Pipeline Company of America; Intent To Prepare an Environmental Assessment for Proposed Amarillo Upgrade Project and Request for Comments

February 8, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of new facilities and the abandonment of existing facilities proposed in the Amarillo Upgrade Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is required and whether or not to approve the project.

Summary of the Proposed Project

Natural Gas Pipeline Company of America (Natural) wants Commission authorization to:

- Abandon about 490 miles of the Amarillo No. 1 mainline between Compressor Station 111 in Hutchinson County, Texas, and Compressor Station 198 in Marion County, Iowa;
- Abandon one 12,000-horsepower (hp) compressor engine at Compressor Station 195 in Washington County, Kansas;
- Construct and operate about 9.41 miles of new 30-inch-diameter pipeline in Hutchinson County, Texas (Segment 1);
- Construct and operate about 5.1 miles of new 36-inch-diameter pipeline in Ford County, Kansas (Segment 2);
- Construct and operate about 4.1 miles of new 36-inch-diameter pipeline in Lincoln County, Kansas (Segment 3);
- Construct and operate about 9.46 miles of new 36-inch-diameter pipeline in Otoe County, Nebraska (Segment 4); and
- Add 2,500 hp of compression by retrofitting an existing 12,500-hp engine at Compressor Station 195, in Washington County, Kansas.

The general location of these facilities is shown in appendix 1.[2]

Land Requirements for Construction

Natural proposes to abandon about 490 miles of 24-inch-diameter Amarillo No. 1 mainline and to remove it over a 4- to 5-year period. Natural proposes to leave the pipe in place in sensitive areas (such as waterbody crossings, wetland crossings, and areas of cultural and sensitive biological resources) where it believes removal activities could result in significant environmental impacts.

The Amarillo No. 1 mainline is next to the Amarillo No. 4 mainline. The segments of proposed new pipeline would loop[3] the Amarillo No. 4 mainline. The segments of proposed new pipeline would generally be placed in the same trench as the Amarillo No. 1 mainline after the segments of that pipeline are removed.

Natural proposes to use a 75-foot-wide to 100-foot-wide construction right-of-way, at least partly within existing rights-of-way. Areas of steep slope, staging areas, and other areas where additional right-of-way would be needed to permit safe construction would be identified on a site-specific basis. No new permanent right-of-way would be required. Abandonment of all 490 miles of pipe by removal and construction of the replacement pipeline would disturb about 5,900 acres. Most of the acreage disturbed would consist of existing pipeline right-of-way.

One storage yard, about 4 acres in size, would be required for each of the four segments of new pipeline. Storage yards, about 6 acres in size, would be required about every 50 miles for the removal of the abandoned Amarillo No. 1 mainline. Private roads/lanes would be used to access the pipeline during construction and removal. These roads may require repair and upgrading to support increased traffic.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By the Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction, operation, and abandonment of the proposed project facilities under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings. A comment period will be allotted for review if the EA is published. We will then consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Natural. Keep in mind that this is a preliminary list; the list of issues will be added to, subtracted from, or changed based on your comments and our own analysis. The currently identified issues are:

- The removal of abandoned pipeline and construction of new pipeline could affect 30.42 acres of wetlands.
- The project could cross habitat of the least tern, bald eagle, and whooping crane (federally listed endangered species) and of the piping plover (a federally listed threatened species).
- The project could cross habitat of the Arkansas darter, Arkansas river shiner, snowy plover, and eastern spotted skunk (Federal candidate species).
- Pipeline would be abandoned within the Fort Larned National Historic Site (a National Historic Landmark).
- The abandoned pipe may be coated with materials that contain asbestos.

Public Participation

You can make a difference by sending a letter with your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes for the loops), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426;
- Reference Docket No. CP93–672–000;
- Send a copy of your letter to: Mr. Mark Jensen, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before March 10, 1994.

If you wish to receive a copy of the EA, you should request one from Mr. Mark Jensen of the Commission staff at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor, you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. In certain cases environmental issues have been viewed as good cause for late intervention. Section 385.214(d) applies to grants of late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Mark Jensen, EA Project Manager, at (202) 208–1121.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3354 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2561–003 Missouri]

Sho-Me Power Corp.; Availability of Draft Environmental Assessment

February 8, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Niangua Hydroelectric Project, located on the Niangua River in Camden County, Missouri near the city of Camdenton, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the DEA are available for the review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix "Niangua Hydroelectric Project, FERC No. 2561–003" to all comments. For further information, contact Joe Davis, Environmental Coordinator, at (202) 219–2865.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3332 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11124–000 Maine]

Lawrence E. and Veronica P. Smith; Availability of Final Environmental Assessment

February 8, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license for the Upper Kezar Falls Hydroelectric Project located on the Ossipee River, in York and Oxford Counties, Maine, and has prepared an Environmental Assessment (EA) for the project.

On September 24, 1993, staff issued and distributed to all parties a draft EA, and requested that comments on the draft EA be filed within 30 days. All comments that were filed have been considered in the EA.

In the EA, the Commission's staff has analyzed the environmental effects of the project and has concluded that approval of the project, with appropriate mitigation and enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104 of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3331 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–M

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[1] Natural Gas Pipeline Company of America's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the pipeline system at the location in which the loop is installed.

[Docket No. CP94–183–000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

February 4, 1994.

Take notice that the following filings have been made with the Commission.

1. El Paso Natural Gas Co.

[Docket No. CP94–183–000]

Take notice that on January 14, 1994, El Paso Natural Gas Company ("El Paso"), a Delaware corporation, whose mailing address is Post Office Box 1492, El Paso, Texas, 79978, filed an application at Docket No. CP94–183–000, pursuant to section 7(b) of the Natural Gas Act ("NGA") and § 157.5 et seq., of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the NGA, for an order granting abandonment authority effective January 1, 1996, and terminating certain certificates of public convenience and necessity in effect on such date to the extent such certificates apply to El Paso's gas gathering, dehydration, purification, and products extraction facilities, with appurtenances.

El Paso states that it intends, effective January 1, 1996, to complete a major corporate restructuring in which all of El Paso's gas gathering, treating, and processing functions will be transferred to and assumed by El Paso Field Services Company ("Field Services"), El Paso's wholly-owned subsidiary. After facility transfer, El Paso will no longer perform any gathering, dehydration, purification, or products extraction activities, nor will it own any facilities for that purpose.

El Paso states that, first, it desires abandonment authorization only with respect to those facilities that the Commission finds constitute nonjurisdictional gathering or processing facilities under section 1(b) of the NGA. Second, Field Services requires and, in its Petition for Declaratory Order filed concurrently with El Paso's abandonment application, requests a determination that it may establish the rates, terms, and conditions for the nonjurisdictional services it provides through negotiations with the parties requesting such services. With respect to gathering facilities that were certificated, El Paso seeks and order: (1) Determining that the facilities are not jurisdictional facilities; and (2) upon said determination, granting abandonment authority with respect to any certificate that would otherwise be in the effect on January 1, 1996, to the extent such certificate applies to a nonjurisdictional facility. All of the certificated facilities for which abandonment is sought constitute nonjurisdictional gathering or processing facilities under the primary function test developed in Farmland Industries Inc., 23 FERC ¶ 61,063 (1983), it is asserted.

El Paso states that the certificated facilities which constitute part of El Paso's gathering systems, and for which abandonment is requested represent only $77.418,883 of gross plant out of a total of $519,464,972 of gross plant for all facilities to be transferred to Field Services and, on a net plant basis, only $43,151,458 out of the $221,296,764 of total gathering system net plant (as of November 30, 1993).

In addition, El Paso states that although it will cease to provide gathering and related services currently being rendered under its part 284 Transportation Service Agreements ("TSA"), Field Services, as described in its Petition for Declaratory Order, intends to offer to provide all of such services on an open-access basis. Thus, there will be no interruption of the services available to any party currently receiving service under such a TSA.

In addition to its part 284 transactions, El Paso sets forth that in a few instances El Paso provides transportation services pursuant to arrangements that are filed as "special rate schedules" in Volume No. 2 of El Paso's FERC Gas Tariff. Special Rate Schedule Z–8 is a Gathering Agreement between El Paso and TOC-Rocky Mountain Inc., as successor to Tenneco Oil Company, dated May 9, 1984, providing for gathering services in the San Juan Basin. Special Rate Schedule Z–9 is a similar Gathering Agreement between El Paso and Conoco Inc. also dated May 9, 1984, and providing for gathering services in the San Juan Basin. Inasmuch as all of the facilities required for performance under the Agreements will be transferred to Field Services, El Paso intends to assign the two Agreements to Field Services effective January 1, 1996. El Paso requested Commission authorization to cancel special Rate Schedules Z–8 and Z–9 and for such abandonment authorization as may be necessary for that purpose.

El Paso also requests such authorization as may be necessary to abandon services under special Rate Schedule T–14 (Volume No. 2 Combination Agreement with Natural Gas Pipeline Company of America) insofar as it provides for gathering or related services utilizing the facilities to be transferred to Field Services. In addition, with respect to certain exchange arrangements contained in El Paso's Volume No. 2 Tariff which provides for El Paso to redeliver gas received on its mainline system to delivery points on its gathering system, El Paso intends to enter into appropriate arrangements with Field Services to accomplish the redeliveries required and thus does not request any Commission authorization with respect to such arrangements. El Paso sets forth that Field Services will provide service as an open-access transporter and specifically intends to provide any necessary gathering services.

El Paso states that the conveyance of El Paso's gathering facilities to Field Services on January 1, 1996, will not have any impact on El Paso's existing gas sales obligations and arrangements, nor will it affect El Paso's performance under any existing gas purchase contract.

El Paso avers that all mainline services currently provided by El Paso will continue to be provided in accordance with El Paso's FERC Gas Tariff. No material rate issues are raised by the transfer of these facilities. Finally, there will be no adverse environmental effects from the abandonment proposed herein.

Comment date: February 25, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission

[Docket No. CP94–202–000]

Take notice that on January 28, 1994, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–202–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to install a new point of delivery for interruptible transportation service to Commonwealth Gas Services, Inc. (Commonwealth), as existing customer, under its blanket certificate issued in Docket No. CP86–240–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gas states that Commonwealth has requested the new point of delivery. Columbia Gas indicates that the estimated maximum daily quantity and the estimated annual quantity of natural gas that it will provide through the new delivery point is 55,000 Dth and 20,075,000 Dth, respectively. Columbia Gas further states that the quantities to be provided through the new delivery point will be provided on an interruptible basis and therefore, there is no impact on Columbia Gas' existing design day and annual obligations to its customers as a result of the construction and operation of the new point of delivery for interruptible transportation service.

Comment date: March 21, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP94–205–000]

Take notice that on January 31, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed a prior notice request with the Commission in Docket No. CP94–205–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate three existing delivery point facilities (which were constructed under Section 311(a) of the Natural Gas Policy Act of 1978) under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Tennessee proposes to operate the Franklin Gas Lift delivery point in St. Mary Parish, Louisiana; the Hurricane Sales delivery point in Putnam County, West Virginia; and the Plymouth Sales delivery point in San Patricio County, Texas, under its blanket certificate. Tennessee asserts that since it now renders significant transportation service under its Subpart G blanket certificate, operation of the delivery points would provide more flexibility in using its facilities to the benefit of all customers on Tennessee's system. Tennessee states that the delivery of natural gas volumes through these existing delivery points would not impact Tennessee's peak day and annual deliveries; that its tariff permits the proposed activity; and that it has sufficient capacity to accommodate the proposed changes without detriment or disadvantage to Tennessee's other customers.

Comment date: March 21, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Eastern Transmission Corporation

[Docket No. CP94–206–000]

Take notice that on January 31, 1994, Texas Eastern Transmission Corporation (Texas Eastern) 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP94–206–000, a request pursuant to Sections 157.205 and 157.211 of Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a new delivery point in order to deliver natural gas to Kentucky Utilities Company (KUC) under the blanket certificate issue in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas states that it proposes to install a new delivery in order to deliver natural gas under the agreement covering service for KUC under Rate Schedule IT–1. Texas Eastern states that the peak and average day deliveries at the point will be 100,000 Dth/d.

Texas Eastern also states that the installation of the delivery point will have no effect on Texas Eastern's peak day or annual deliveries. Texas Eastern submits that its proposal will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

The delivery point will be located on Texas Eastern's 30-inch Line Nos. 10 and 15 at M.P. 438–28 in Garrard County, Kentucky. The facilities will include two 12-inch taps to be installed by Texas Eastern on Texas Eastern's Line Nos. 10 and 15. KUC will cause to be installed approximately 11 miles of 20-inch pipeline from Mete Station No. 72926 to its existing facilities in Mercer County, Kentucky. The approximate cost of such facilities 109,000 and will be 100% reimbursable by KUC.

Comment date: March 21, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Southern California Gas Co.

[Docket No. CP94–207–000]

Take notice that on February 1, 1994, Southern California Gas Company (SoCalGas), 555 West Fifth Street, Los Angeles, California 90013–1011, filed an application in Docket No. CP94–207–000. The application requests authorization under Section 3 of the Natural Gas Act, and the issuance of a Presidential Permit under Executive Order 10485, as amended by Executive Order 12038. SoCalGas seeks the Section 3 authorization and the Presidential Permit so that it may construct, connect, operate, and maintain certain natural gas pipeline and metering export facilities. The export facilities will be located in Imperial County, California, near the International Boundary between the United States and the Republic of Mexico.

SoCalGas proposes to construct and operate the following export facilities:

(1) One metering station consisting of one 8-inch turbine meter run and one 12-inch turbine meter run; and,

(2) Either approximately:

(a) 900 feet of 16-inch diameter pipeline, with appurtenances, connecting the meter station to the border, (Bowker Road Alternative); or,

(b) 4,800 feet of 16-inch diameter pipeline, with appurtenances, connecting the meter station to the border, (Calzada Justo Sierra Alternative).

SoCalGas says that it will notify the Commission of the particular site of the border crossing no later than May 1, 1994. The export facilities will have a capacity of 40,000 Mcf per day. SoCalGas estimates the cost of the Bowker Road Alternative to be about § 350,000 and the cost of the Calzada Justo Sierra Alternative to be about § 590,000.

SoCalGas says that the export facilities will be used to provide natural gas transportation service from receipt points on the SoCalGas systems to the United States—Mexico border. The rates for this service will be rates on file with, and approved by, the California Public Utilities Commission. Any third-party shippers or exporters will be required to obtain the proper export authorization from the United States Department of Energy, Office of Fossil Energy.

A connecting pipeline to receive the exported natural gas will be built on the Mexican side of the border and operated by Petroleos Mexicanos. SoCalGas also describes certain other related facilities which are scheduled to be built by it in Imperial County. SoCalGas says that these facilities, (about 31 miles of pipeline, with appurtenances), are under the jurisdiction of the California Public Utilities Commission. SoCalGas says that they will be used to serve native California natural gas load, in conjunction with the export transportation service.

SoCalGas says that this overall project will permit the export of natural gas to the City of Mexicali, Mexico, to serve both the existing local distribution system in Mexicali and industrial end-users in the Mexicali area. SoCalGas says that these customers presently use propane-air, liquefied petroleum gas, diesel fuel, high sulfur fuel oil and other petroleum products. SoCalGas says that the replacement of these products by natural gas will result in a reduction in air pollution in the U.S.-Mexico border area.

SoCalGas requests that approval of this application be granted no later than June 1, 1994.

Comment date: February 25, 1994, in accordance with Standard Paragraph F at the end of this notice.

6. Northern Natural Gas Company

[Docket No. CP94–209–000]

Take notice that on February 1, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP94–209–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate new facilities to provide additional natural gas deliveries to Peoples Natural Gas Company, a Division of UtiliCorp United Inc. (Peoples), under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install a small volume measuring station and appurtenant facilities as a new delivery point to accommodate a new service by Peoples to Dodge City Cooperative Exchange, a commercial end-user. Northern indicates that the delivery point would be located at an existing farm tap in Section 34, T27S, R25W, Ford County, Kansas, and states that the gas would be provided to Peoples under Northern's currently effective transportation service agreement and rate schedules. Northern advises that the peak day and annual volumes are expected to be 24 Mcf per day and 5,000 Mcf, respectively. Northern estimates that the facilities would cost $1,890 which would be paid by Peoples as a contribution in aid of construction.

Comment date: March 21, 1994, in accordance with Standard Paragraph G at the end of this notice.

7. El Paso Field Services Company

[Docket No. CP94–184–000]

February 7, 1994.

Take notice that on January 14, 1994, El Paso Field Services Company (Field Services), El Paso Natural Gas Company's (El Paso) wholly-owned subsidiary, filed a petition for declaratory order in Docket No. CP94–184–000, pursuant to 18 CFR 385.207, requesting that the Commission declare that certain gathering and production area services proposed to be transferred from El Paso and assumed by Field Services will no longer be subject to the Natural Gas Act and the Commission's jurisdiction, as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Specifically, Field Services seeks a declaratory order from the Commission finding that the rates, terms, and conditions applicable to gas gathering and other production area services to be rendered by Field Services commencing January 1, 1996, will not be affirmatively regulated by the Commission but instead may be established through negotiations between Field Services and the shippers receiving such services, consistent with the Commission's decision in Northwest Pipeline Corp., 59 FERC ¶ 61,115 (1992).

Field Services states that El Paso is filing concurrently with its petition an application under Section 7(b) of the Natural Gas Act to abandon, effective January 1, 1996, certain certificated facilities which are used to perform the gathering and production area services.

Field Services asserts that it has been established and organized to provide, on a stand-alone basis, non-jurisdictional production area services and upon the transfer of the facilities described in its petition, will effectively step into El Paso's shoes with respect to gathering and other production area services now being provided by El Paso and will continue to provide these services on an uninterrupted basis.

Comment date: February 25, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to § 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3339 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–917–000]

EEA I, L.P.; Filing

February 8, 1994.

Take notice that on December 23, 1993, EEA I, L.P. filed, on behalf of Public Service Electric & Gas Company (PSE&G), a notice of cancellation of its Transmission and Interconnection Agreement with PSE&G.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3353 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–180–000]

El Paso Natural Gas Co.; Request Under Blanket Authorization

January 21, 1994.

Take notice that on January 12, 1994, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP94–180–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon segments of the Hayden Line and the San Manuel to Hayden Line, under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to to abandon segments of the Hayden Line and the San Manuel to Hayden Line, in Pinal and Gila Counties, Arizona, because of damage due to floods. It is stated that the customers served by these lines are being served by the Hayden Crossover Line. Also, El Paso relocated and replaced about 7,300 feet of the line pursuant to § 157.208(a) of the Regulations.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–3340 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–174–000]

Florida Gas Transmission Co.; Request Under Blanket Authorization

January 21, 1994.

Take notice that on January 7, 1994, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP94–174–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon, in place, approximately 5 miles of existing 8-inch lateral line in Levy County, Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to abandon this portion of the lateral due to the installation of approximately 5 miles of 30-inch pipeline initiated in a previously filed application. The 5-mile segment of pipeline lateral proposed to be abandoned is currently used as line-pack facilities, but to insure safety during the installation of parallel pipeline facilities, FGT proposes to abandoned the 5-mile segment herein.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFT 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–3328 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–175–000]

Gas Transport, Inc.; Application

January 21, 1994.

Take notice that on January 7, 1994, Gas Transport, Inc. (GTI), P.O. Box 1323, Parkersburg, West Virginia 26101, filed in Docket No. CP94–175–000 an application pursuant to Sections 7 (b) and (c) of the Natural Gas Act for permission and approval to abandon a 360-horsepower compressor and to replace it with a 180-horsepower compressor in Washington County, Ohio, and to install a 360-horsepower compressor and appurtenant facilities in Wood County, West Virginia, all as more fully set forth in the application on file with the Commission and open to public inspection.

GTI proposes to replace the existing compressor in Ohio to permit more efficient operation of its system along with lower operating costs. It is estimated that the cost of replacing the compressor would be $31,000. GTI proposes to install the compressor in West Virginia in order to provide gas supplies currently supplied by transportation by Columbia Gas Transmission Corporation. It is stated that this compressor would permit GTI to utilize its system more efficiently and to reduce the cost of service for its customers by avoiding transportation costs. It is estimated that the cost of installing the compressor would be $30,000. It is stated that the costs associated with both compressors would be recovered from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 11, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval

to abandon are required by the public convenience and necessity. If a motion for leave to intervene is timely file, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for GTI to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–3329 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–83–000]

KN Interstate Gas Transmission Co.; Technical Conference

February 8, 1994.

In the Commission's order issued on January 31, 1994, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Thursday, March 3, 1994, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3334 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–172–000]

Mojave Pipeline Co.; Request Under Blanket Authorization

January 21, 1994.

Take notice that on January 6, 1994, Mojave Pipeline Company (Mojave), 5001 E. Commercenter Drive, Bakersfield, California 93309, filed in Docket No. CP94–172–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a sales tap under Mojave's blanket certificate issued in Docket Nos. CP89–1–000 and CP89–2–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Mojave proposes to construct a connection between its existing 30-inch line and the All American Gas Pipeline Company's (All American) gas supply pipeline to its Cadiz pump-station in San Bernardino California.

Mojave states that it would transport the gas on behalf of All American pursuant to its existing blanket transportation certificate under existing rate schedules. Mojave states further because All American's firm entitlement is less than the previously uncommitted capacity on Mojave, service to Mojave's other customers should not be affected by transportation on behalf of All American.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–3341 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR93–3–000]

Montana Power Co.; Informal Settlement Conference

February 8, 1994.

Take notice that an informal settlement conference in the above-captioned proceeding will be held on Wednesday, February 23, 1994, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Attendance will be limited to the parties and staff. For additional information, please contact Mark Hegerle at (202) 208–0927.

Lois D. Cashell,

Secretary

[FR Doc. 94–3335 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–36–007, RS92–45–011, and RP94–86–000.

Natural Gas Pipeline Company of America; Technical Conference

February 8, 1994.

Take notice that on Tuesday, March 1, 1994, at 10 a.m., the Commission's staff will convene a technical conference to allow the parties to address the issues outlined in the Commission's January 21, 1994, order in the above-captioned proceedings.[1] The technical conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3333 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–6–59–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 8, 1994.

Take notice that on February 4, 1994, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Seventh Revised Sheet No. 53.

Northern states that Seventh Revised Sheet No. 53 is being filed to establish the January 1994 Index Price for determining the dollar/volume equivalent for any transportation imbalances that may exist on contracts between Northern and its Shippers.

Northern states that copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 15, 1994. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3337 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RS92–53–005 and RP93–40–009 (Not Consolidated)

Western Gas Interstate Co.; Tariff Filing

February 8, 1994.

Take notice that on January 24, 1994, Western Gas Interstate Company (Western) tendered a limited compliance filing composed of certain tariff sheets for its FERC Gas Tariff, Third Revised Volume No. 1. Western states that the filing is pursuant to the Federal Energy Regulatory Commission's (Commission's) order issued June 18, 1993 in Docket Nos. RS92–53–000 and 001 and Docket No. RP93–40–003 (Not Consolidated), approving an offer of Settlement.

Western states that Section 3.2 of the Offer of Settlement required it to adjust its reservation surcharge within 90 days of a final sale of any production and gathering facilities. Western states that the instant tariff filing is in compliance with this settlement provisions.

Western states that copies of the document were served upon all interstate pipeline system transportation and sales customers of Western and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 15, 1994. Protests will be considered by the Commission in determining to appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3336 Filed 2–11–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00151; FRL–4761–3]

Forum on State and Tribal Toxics Action (FOSTTA); Coordinating Committee and Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meetings.

SUMMARY: The Coordinating Committee and the four Projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings at the time and place listed below in this notice. The meetings are open to the public.

DATES: The meetings are scheduled as follows:

1. The Coordinating Committee and all the Projects will hold meetings on February 28 and March 1, 1994.

2. The Projects will meet on February 28 from 8 a.m. to 5 p.m. and March 1 from 8 a.m. to noon. On February 28 at 1 p.m. there will be a plenary session with a presentation by the EPA Associate Administrator for Regional Operations and State/Local Relations. The Coordinating Committee will meet on March 1 from noon to 3 p.m.

ADDRESSES: The meetings will be held at: The Holiday Inn, 480 King St., Alexandria VA.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley Pate, Office of Compliance Monitoring (7202), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 260–8318, or Jim King, Office of Pollution Prevention and Toxics (7408), at the same address, telephone: (202) 260–6581.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states/tribes and between the states/tribes and U.S. EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS). FOSTTA currently consists of the Coordinating Committee and four issue-specific Projects. The Projects are: (1) The Chemical Information Management Project; (2) The State and Tribal Enhancement Project; (3) The Chemical Management Project; and (4) The Lead (Pb) Project.

List of Subjects

Environmental protection.

Dated: February 10, 1994.

Connie S. Musgrove,

Acting Director, Office of Compliance Monitoring.

[FR Doc. 94–3492 Filed 2–11–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Workshop on Community Involvement in Public Health Service Activities and Research at Department of Energy Sites

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC), and the Agency for Toxic Substances and Disease Registry (ATSDR), announce the following workshop.

NAME: Workshop on Community Involvement in Public Health Service Activities and Research at Department of Energy Sites.

TIMES AND DATES: 8:30 a.m.–5:30 p.m., February 25, 1994. 8:30 a.m.–6 p.m., February 26, 1994. 9 a.m.–12 noon, February 27, 1994.

PLACE: Northeast Atlanta Hilton Hotel, 5993 Peachtree Industrial Boulevard, Norcross, Georgia 30092.

STATUS: Open to the public for observation and comment, limited only by space available. The meeting room will accommodate approximately 200 people.

PURPOSE: Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE), the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research,

emergency response, and preparation of toxicological profiles.

Community involvement is a critical part of the HHS energy-related research and activities. The availability of a formal site-specific advisory committee composed of citizens of certain affected areas to provide consensus advice to CDC and ATSDR regarding these activities is necessary. CDC and ATSDR are currently taking steps to obtain authorization for a "Citizens' Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites" to be chartered under the Federal Advisory Committee Act.

The purpose of this workshop is to provide interested parties an opportunity to give individual advice and recommendations regarding: (1) Community involvement between representatives of affected populations, Native American Nations, and CDC and ATSDR; (2) the principles and process of public involvement given the diversities of interests and needs of affected and potentially affected populations and Native American Nations; (3) the concerns and needs which may be common to all; and, (4) provide a public forum for citizens of affected populations. A copy of the proposed "Citizens' Advisory Committee on Public Health Service Activities and Research at DOE Sites" draft charter is available upon request from the contact person listed below.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Leeann S. Denham, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., (F-35), Atlanta, Georgia, 30341-3724, telephone 404/488-7040, FAX 404/488-7044.

Dated: February 8, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-3459 Filed 2-11-94; 8:45 am]

BILLING CODE 4160-18-M

Idaho National Engineering Laboratory Environmental Dose Reconstruction Project; Public Meetings

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC), and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meetings.

Date: Wednesday, February 16, 1994.
Time: 10 a.m.-4 p.m.
Place: Best Western-Ameritel Inn, 900 Lindsay Boulevard, Idaho Falls, Idaho 83402.

Date: Wednesday, March 2, 1994.
Time: 10 a.m.-4 p.m.
Place: Best Western-Cotton Tree Inn, 1415 Bench Road, Pocatello, Idaho 83201.

Date: Wednesday, March 23, 1994.
Time: 10 a.m.-4 p.m.
Place: Red Lion Inn-Riverside, 2900 Chinden Boulevard, Boise, Idaho 83714.

STATUS: Open to the public for observation and comment, limited only by space available. The meeting room will accommodate approximately 100 people.

PURPOSE: Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE), the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Community involvement is a critical part of the HHS energy-related research and activities. With an environmental dose reconstruction for DOE's Idaho National Engineering Laboratory near Idaho Falls, Idaho, as well as a worker study at the same site, the availability of a formal site-specific advisory committee composed of Idaho citizens to provide consensus advice regarding these projects is necessary. CDC and ATSDR are currently taking steps to obtain authorization for a "Citizens' Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites" to be chartered under the Federal Advisory Committee Act. The draft charter for this proposed committee states, "Because of the varying concerns within communities at each DOE site, operational guidelines at each site must be developed separately to clarify the scope of activities and the responsibilities of the Committee members and agencies." Therefore, CDC and ATSDR are holding a series of public meetings to begin developing operational guidelines at specific DOE sites. The purpose of these public meetings is to update the public on the status of CDC's and ATSDR's community involvement plans and to seek individual advice and recommendations from interested parties concerning operational guidelines. A copy of the proposed "Citizens' Advisory Committee on Public Health Service Activities and Research at DOE Sites" draft charter is available upon request from the contact person listed below.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Leeann S. Denham, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., (F-35), Atlanta, Georgia, 30341-3724, telephone 404/488-7040, FAX 404/488-7044.

Dated: February 7, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination; Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-3458 Filed 2-10-94; 11:44 am]

BILLING CODE 4160-18-M

Advisory Council for the Elimination of Tuberculosis; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting:

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and dates: 8:30 a.m.-5 p.m., March 15, 1994; 8:30 a.m.-12 Noon, March 16, 1994.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be discussed: Update on federal tuberculosis activities; update on hospital surveys; update on MDR-TB hospital outbreaks and tuberculosis guideline revision; BCG status report; model tuberculosis program; update on Prevention Effectiveness studies Unit; evaluating tuberculosis programs/program management reports; review of corrections statement; and tuberculosis screening guidelines.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Dixie E. Snider, Jr., M.D., Acting Deputy Associate Director for Science, CDC, and Executive Secretary, ACET, 1600 Clifton Road NE., Mailstop A-20, Atlanta, Georgia 30333, telephone 404/639-3812.

Dated: February 8, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-3348 Filed 2-11-94; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS) subcommittee on Health Statistics for Minority and Other Special Populations: Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting:

Name: NCVHS Subcommittee on Health Statistics for Minority and Other Special Populations.

Time and date: 8:30 a.m.-12 noon, March 8, 1994.

Place: Room 503A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of the subcommittee meeting is to consider the implications of health care reform for the collection of minority health data within the Federal government, including the Social Security Administration, the Bureau of the Census, and CDC, in order to better understand these issues and to serve as a basis for future recommendations.

Contact person for more information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050.

Dated: February 7, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC)

[FR Doc. 94-3347 Filed 2-11-94; 8:45 am]

BILLING CODE 4160-18-M

Substance Abuse and Mental Health Services Administration

Suspension Lifted; Laboratory Again Meets Minimum Standards to Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal Agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. The following laboratory's certification to engage in urine drug testing for Federal agencies was suspended on April 8, 1993 (58 FR 19835, April 16, 1993) and was reinstated effective February 2, 1994: Eagle Forensic Laboratory, Inc., 950 North Federal Highway, suite 308, Pompano Beach, FL 33062, 305-946-4324.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, room 13-A-54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443-6014.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94-3420 Filed 2-11-94; 8:45 am]

BILLING CODE 4160-20-U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27(c); 50 CFR part 18, subpart I), notice is hereby given that Letters of Authorization to take polar bears and Pacific walruses incidental to oil and gas industry activities (exploration (E), development (D), and production (P)) have been issued to the following companies:

Company	Activity	Date issued
Schlumberger Geco-Prakla.	E	1/10/94
Amerada Hess Corporation.	E	1/10/94
BP Exploration (Alaska) Inc.	E	1/13/94
BP Exploration (Alaska) Inc.	E	1/13/94
BP Exploration (Alaska) Inc.	E, D, P	1/13/94
Western Geophysical Company.	E	1/13/94
BP Exploration (Alaska) Inc..	E, D, P	1/18/94
ARCO Alaska, Inc	E, D, P	1/18/94
ARCO Alaska, Inc	E	1/19/94
ARCO Alaska, Inc	E	1/21/94
ARCO Alaska, Inc	E	1/21/94
ARCO Alaska, Inc	E	1/21/94

FOR FURTHER INFORMATION CONTACT: John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 4230 University Drive, suite 310, Anchorage, AK 99508, (800) 362-5148 or (907) 271-2394.

SUPPLEMENTARY INFORMATION: All Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities" (58 FR 60402, November 16, 1993).

Dated: February 1, 1994.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 94-3135 Filed 2-11-94; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[UT-020-04-4333-03]

Box Elder Resource Management Plan, Bear River Resource Area, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) is proposing to amend the Box Elder Resource Management Plan (RMP) and prepare the associated Environmental Assessment (EA), which includes public lands in Box Elder County, Utah.

DATES: The comment period for this proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Leon Berggren, Bear River Resource Area Manager, Bureau of Land

Management, Salt Lake District, 2370 South 2300 West, Salt Lake City, Utah 84119, telephone (801) 977–4300.

SUPPLEMENTARY INFORMATION: This notice is intended to inform the public of the planning effort and to invite public participation in the identification of the planning issues and planning criteria. Public comment will be solicited throughout the planning process. The amended Box Elder RMP will be prepared under 43 CFR, part 1610 to meet the requirements of section 202 of the Federal Land Policy and Management Act. Decisions generated during this planning process will supersede the decisions in the 1986 Box Elder RMP.

The RMP amendment and EA will address the general planning issue of management prescriptions for numerous scattered tracts of land (approximately 42,350 acres) which have been acquired and to address management of future land acquisitions. Specific items to be addressed include the possible designation of Areas of Critical Environmental Concern (ACEC) in the Salt Wells Wildlife Area (WHA), Blue Springs WHA, and the inclusion of additional public lands within the Central Pacific Railroad Grade ACEC and the Donner Creek/Bettridge Creek ACEC. Other topics will include livestock grazing, oil and gas, off-road-vehicle use, wilderness, and land tenure adjustments and any other planning issues that may need to be addressed.

Tentative planning criteria to be used are those identified in the existing Box Elder RMP.

Public participation is being sought at this initial stage in the planning process to ensure the RMP amendment addresses all issues, problems, and concerns from those interested in the management of lands within the Bear River Resource Area. Necessary amendments to the approved plan will keep the document current and viable.

G. William Lamb,

Acting State Director.

[FR Doc. 94–3311 Filed 2–11–94; 8:45 am]

BILLING CODE 4310–DQ–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–409 (Sub-No. 1X); Docket No. AB–52 (Sub-No. 75X)]

Los Angeles County Metropolitan Transportation Authority—Abandonment Exemption—Between Arcadia and Los Angeles, CA, et al.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by the Los Angeles County Metropolitan Transportation Authority and discontinuance of service by The Atchison, Topeka and Santa Fe Railway Company, over 15.97 miles of rail line extending between milepost 124.2 near Arcadia Station, and milepost 140.05 near Mission Tower, in Los Angeles County, CA., subject to environmental and standard labor protective conditions. The transactions were also exempted from the offer of financial assistance and public use procedures of 49 U.S.C. 10905 and 10906, respectively.

DATES: This exemption will be effective on February 14, 1994. Petitions to reopen must be filed by March 11, 1994.

ADDRESSES: Send pleadings referring to Docket Nos. AB–409 (Sub-No. 1X) and AB–52 (Sub-No. 75X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, (2) David J. Marchant, One Maritime Plaza, San Francisco, CA 94111, and (3) Dennis W. Wilson, The Atchison, Topeka and Santa Fe Railway Company, 1700 East Golf Road, Schaumburg, IL 60173–5860.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 7, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–3365 Filed 2–11–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–43 (Sub-No. 165X)]

Illinois Central Railroad Company; Abandonment Exemption; in Perry and Randolph Counties, IL

Illinois Central Railroad Company (IC) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—Exempt Abandonments to abandon its Sparta District line between milepost 576.28 (V.S. 30435+31) and milepost 579.30 (V.S. 30594+96) near Willisville, IL, a distance of approximately 3.0 miles, in Perry and Randolph Counties, IL.[1]

IC states that, in a related Notice of Exemption filed January 21, 1994, Missouri Pacific Railroad Company seeks discontinuance of trackage rights and lease termination regarding the Sparta District line in Docket No. AB–3 (Sub-No. 114X).

IC has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (c) no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report); 49 CFR 1105.8 (historic report); 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 13, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by February 21, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 3, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Myles L. Tobin, 455 North Cityfront Plaza Dr., 20th Fl., Chicago, IL 60611.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

IC has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 16, 1994. Interested persons may obtain a copy of the EA by writing to SEA (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 3, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–3366 Filed 2–11–94; 8:45 am]

BILLING CODE 7035–01–P

[1] IC states that it plans to consummate this abandonment on March 12, 1994. However, because the notice must be filed with the Commission at least 50 days before the abandonment/discontinuance is to be consummated, consummation cannot take place here before March 15, 1994. See 49 CFR 1152.50(d)(2).

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29, 104]

Electrode Corp. Chardon, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Electrode Corporation, Chardon, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29, 104; Electrode Corporation, Chardon, Ohio (February 3, 1994).

Signed at Washington, DC this 7th day of February, 1994.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 94–3390 Filed 2–11–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29, 319]

Koch Gathering Systems, Inc., (KGSI) Duncan, OK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Koch Gathering Systems, Inc., (KGSI), Duncan, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29, 319; Koch Gathering Systems, Inc., (KGSI), Duncan, Oklahoma (February 3, 1994).

Signed at Washington, DC this 7th day of February, 1994.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 94–3391 Filed 2–11–94; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the worker's firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased import did not contribute importantly to worker separations at the firm.

TA–W–29,090; McMurry Oil Tools, Inc., Huntsville, TX

TA–W–29,210; Aluminum Co of America, Lafayette, IN

TA–W–29,205; Dyna Turn of Oklahoma, Inc., Elk City, OK

TA–W–29,209; Beaver Precision Products, Troy, MI

TA–W–29,217; Northrop Electronics Systems Div., Hawthorne, CA

TA–W–29,326; Rockwell International (NAAD), El Segundo, CA

TA–W–29,326A; Rockwell Autonetics Electronics Systems, Anaheim, CA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–28,339; Tuboscope Pipeline Service, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,373; Human Resource Technologies, Inc., (HRT), Oklahoma City, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,335; Restaura, Inc., Wentzville, MO

The worker's firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,120; John Roberts/Act II, Inc., Biddeford, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,216; Synergy Consultants, Inc., Denver, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,321; Frigidaire Co., Connersville, IN

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA–W–29,237; Uniroyal Goodrich Tire Co., Woodburn, IN

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA–W–29,241; Armco Advanced Materials Co., Buttler, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA–W–29,265; Smith & Wesson, Springfield, MA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA–W–29,292; Sandvik Special Metals Corp., Kennewick, WA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA–W–29,279, TA–W–29,280, TA–W–29,281; Champion Int'l Corp, Milltown, MT, Bonner, MT, Libby, MT (Plant)

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA–W–29,282, TA–W–29,283, TA–W–29,284; Champion Int'l Corp, Libby, MT (Office), Missoula, MT (Plant), Missoula, MT (Office)

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

Affirmative Determinations for Workers Adjustment Assistance

TA–W–29,303; Doe Spun, Inc., Emigsville, PA

A certification was issued covering all workers separated on or after October 20, 1992.

TA–W–29,161; Barbee Mill Co., Inc., Renton, WA

A certification was issued covering all workers separated on or after October 12, 1992.

TA–W–29,290; Stevens Sportswear Co., Inc., Taylorsville, PA

A certification was issued covering all workers separated on or after November 17, 1992.

TA–W–29,202; Sargent-Fletcher Co., El Monte, CA

A certification was issued covering all workers separated on or after October 26, 1992.

TA–W–29,234; Molycorp., Inc., Louviers, CO

A certification was issued covering all workers separated on or after November 8, 1992.

TA–W–29,316, TA–W–29,316A; SIRI Brothers Nursery, Inc., East Palo Alto, CA and Watsonville, CA

A certification was issued covering all workers separated on or after November 30, 1992.

TA–W–29,343; Philips Lighting Co., Fairmont, WV

A certification was issued covering all workers separated on or after December 9, 1992.

TA–W–29,219; O'Bryan Brothers, Inc., Bedford, IA

A certification was issued covering all workers separated on or after October 28, 1992.

TA–W–29,154; Seagate Technology, Bloomington, MN

A certification was issued covering all workers separated on or after October 6, 1992.

TA–W–29,204; Wean Industries, Inc., Youngstown, OH

A certification was issued covering all workers separated on or after October 27, 1992.

TA–W–29,323; Digital Equipment Corp., Albuquerque, MN

A certification was issued covering all workers separated on or after November 9, 1992.

TA–W–29,313; Thom McAnn Manufacturing, Inc., Wilkesboro, NC

A certification was issued covering all workers separated on or after November 1, 1992.

TA–W–29,307; Akers Manufacturing, Berwick, PA

A certification was issued covering all workers separated on or after November 29, 1992.

TA–W–29,162; Alaska Pulp Corp., Sitka Pulp Mill, Sitka, AK

A certification was issued covering all workers separated on or after October 15, 1992.

TA–W–29,224; J.I. Case Co., Schofield, WI

A certification was issued covering all workers separated on or after November 3, 1992.

TA–W–28,951; Torrington Co., Newington, CT

A certification was issued covering all workers separated on or after July 13, 1992.

TA–W–28,223; Fortifiber Corp., Clackamas, OR

A certification was issued covering all workers separated on or after November 2, 1992.

TA–W–29,183; Tooling Systems Div., Devlieg Bullard, Inc., Frankenmuth, MI

A certification was issued covering all workers separated on or after October 15, 1992.

TA–W–29,137; Santa Barbara Applied Optics, Ventura, CA

A certification was issued covering all workers separated on or after October 5, 1992.

TA–W–29,349; Tommorrow Today Corp., Enesco Corp., Westfield, MA

A certification was issued covering all workers separated on or after November 23, 1992.

TA–W–29,136; Schott Glass Technologies, Inc., Duryea, PA

A certification was issued covering all workers separated on or after October 5, 1992.

TA–W–29,114; R.E. Phelon Co., Inc., East Longmeadow, MA

A certification was issued covering all workers separated on or after August 17, 1992.

TA–W–29,193; Vertical Apparel, New York, NY

TA–W–29,194; Vertical Apparel (Addiction), New York, NY

TA–W–29,195; Vertical Apparel (George Simonton), New York, NY

A certification was issued covering all workers separated on or after October 15, 1992.

TA–W–29,288; Chevron USA, Inc., Chevron Information Technology Co, Headquartered in San Ramon, CA & Other Operations in the Following States: A; CA, B; CO, C, LA, D; MS, E; NM, F; OK, G; PA, H, TX, I; UT, J; WY

A certification was issued covering all workers separated on or after November 19, 1992.

TA–W–29,267; Nicole Fashions, Inc., Larksville, PA

TA–W–29,275, USA Manufacturing, Larksville, PA

A certification was issued covering all workers separated on or after November 17, 1992.

TA–W–28,250; Isratex, Inc., Winfield, AL

A certification was issued covering all workers separated on or after October 29, 1992.

TA–W–29,246; General Glass Industries Corp., Jeannette, PA

A certification was issued covering all workers separated on or after November 8, 1992.

TA–W–29,238; Slyter Chair, Inc., Tacoma, WA

A certification was issued covering all workers separated on or after November 5, 1992.

TA–W–29,235; Natural Casing Co., Pishtigo, WI

A certification was issued covering all workers separated on or after November 2, 1992.

TA–W–29,276; Worcester Knitting Co., Worcester, MA

TA–W–29,277; Worcester Spinning & Finishing, Cherry Valley, MA

TA–W–29,278; Nanagansett Knitting Mills, Woonsocket, RI

A certification was issued covering all workers separated on or after November 16, 1992.

Also, pursuant to Title V of the North Amerıcan Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00001; American Marketing Industries, Inc., Swingster Co., Ocean Springs, MS

The investigation revealed that criterion: (1) Has not been met in conjunction with the requirements of Section 506(b)(2) of the Act. Workers at the subject firm were not separated from employment on or after December 8, 1993, the earliest date for which certification under NAFTA–TAA applies.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00006; Nintendo of America, Inc., Redmond, WA

A certification was issued covering all workers, engaged in the assembly of electronic games for the Mexican and Latin American markets, separated on December 8, 1993 and before September 30, 1994.

I hereby certify that the aforementioned determinations were issued during the month of February, 1994. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: February 3, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–3388 Filed 2–11–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 24, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 24, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 31st day of January, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Tirabarsso enterprises (Workers)	New York, NY	01/31/94	01/04/94	29,440	Wedding Dresses.
Worzalla-East, Inc. (Workers)	Eatontown, NJ	01/31/94	01/12/94	29,441	Paperback and Hard Cover Books.
Simmons Upholstered Furniture (Co.)	Vancouver, WA	01/31/94	01/19/94	29,442	Upholstered Furniture.
Posner Laboratories (UAW)	South Plainfield, NJ	01/31/94	01/05/94	29,443	Cosmetics & Hair Products.
Lehigh Portland Cement Co. (Workers)	Cementon, NY	01/31/94	01/14/94	29,444	Cement.
Panhandle Eastern Pipeline (Workers)	Alva, OK	01/31/94	01/21/94	29,445	Natural Gas.
Key Tronic Corp. (Co.)	Spokane, WA	01/31/94	01/06/94	29,446	Keyboards.
Key Tronic Corp. (Co.)	Cheney, WA	01/31/94	01/06/94	29,447	Keyboards.
Ingersoll-Dresser Pump Co. (USWA)	Phillipsburg, NJ	01/31/94	12/21/94	29,448	Engineered Pumps.
Hrubetz Oil Co. (Workers)	Dallas, TX	01/31/94	01/06/94	29,449	Crude Oil.
Gandalf Corp. (Workers)	Cherry Hill, NJ	01/31/94	01/11/94	29,450	Printed Circuit Boards.
Houston Data Center (Workers)	Houston, TX	01/31/94	01/13/94	29,451	Data Entry Services.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
DELTA-X (Workers)	Midland, TX	01/31/94	01/14/94	29,452	Pump Off Controllers.
Berenergy Corp. (Workers)	Denver, CO	01/31/94	01/18/94	29,453	Crude Oil.
Anchor Motor Freight (IBT)	Champlain, NY	01/31/94	01/05/94	29,454	Haul Automobiles to Dealers.
Amerada Hess (Workers)	Purvis, MS	01/31/94	01/17/94	29,455	Gasoline, Diesel, Heating Oil, Etc.
Stoltze-Conner Lumber Co. (Workers)	Darby, MT	01/31/94	01/10/94	29,456	Softwood Dimensional Lumber.
Allied Signal Aerospace (Workers)	Eatontown, NJ	01/31/94	01/14/94	29,457	A.C. Rotor & Stator Winding Assemblies.
Phillsbury Co. (The) (Workers)	East Greenville, PA	01/31/94	01/25/94	29,458	Prepared Dough Products.

[FR Doc. 94-3387 Filed 2-11-94; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Supersedeas Decisions to General Wage Determination Decisions

The number of the decisions being superseded and their date of notice in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

Volume I

Connecticut
- CT93-1 (Feb. 19, 1993) (CT94-1)
- CT93-2 (Feb. 19, 1993) (CT94-2)
- CT93-3 (Feb. 19, 1993) (CT94-3)
- CT93-4 (Feb. 19, 1993) (CT94-4)
- CT93-5 (Feb. 19, 1993) (CT94-5)
- CT93-6 (Feb. 19, 1993) (CT94-6)
- CT93-7 (Feb. 19, 1993) (CT94-7)
- CT93-8 (Feb. 19, 1993) (CT94-8)
- CT93-9 (Feb. 19, 1993) (CT94-9)
- CT93-10 (Feb. 19, 1993) (CT94-10)
- CT93-11 (Feb. 19, 1993) (CT94-11)
- CT93-12 (Feb. 19, 1993) (CT94-12)

Massachusetts
- MA93-1 (Feb. 19, 1993) (MA94-1)
- MA93-2 (Feb. 19, 1993) (MA94-2)
- MA93-3 (Feb. 19, 1993) (MA94-3)
- MA93-4 (Feb. 19, 1993) (MA94-4)
- MA93-5 (Feb. 19, 1993) (MA94-5)
- MA93-6 (Feb. 19, 1993) (MA94-6)
- MA93-7 (Feb. 19, 1993) (MA94-7)
- MA93-8 (Feb. 19, 1993) (MA94-8)
- MA93-9 (Feb. 19, 1993) (MA94-9)
- MA93-10 (Feb. 19, 1993) (MA94-10)
- MA93-11 (Feb. 19, 1993) (MA94-11)
- MA93-12 (Feb. 19, 1993) (MA94-12)
- MA93-13 (Feb. 19, 1993) (MA94-13)
- MA93-14 (Feb. 19, 1993) (MA94-14)
- MA93-15 (Feb. 19, 1993) (MA94-15)
- MA93-16 (Feb. 19, 1993) (MA94-16)

Maine
- ME93-1 (Feb. 19, 1993) (ME94-1)
- ME93-2 (Feb. 19, 1993) (ME94-2)
- ME93-3 (Feb. 19, 1993) (ME94-3)
- ME93-4 (Feb. 19, 1993) (ME94-4)
- ME93-5 (Feb. 19, 1993) (ME94-5)
- ME93-6 (Feb. 19, 1993) (ME94-6)
- ME93-7 (Feb. 19, 1993) (ME94-7)
- ME93-8 (Feb. 19, 1993) (ME94-8)
- ME93-9 (Feb. 19, 1993) (ME94-9)
- ME93-10 (Feb. 19, 1993) (ME94-10)
- ME93-11 (Feb. 19, 1993) (ME94-11)
- ME93-12 (Feb. 19, 1993) (ME94-12)
- ME93-13 (Feb. 19, 1993) (ME94-13)
- ME93-14 (Feb. 19, 1993) (ME94-14)
- ME93-15 (Feb. 19, 1993) (ME94-15)
- ME93-16 (Feb. 19, 1993) (ME94-16)
- ME93-17 (Feb. 19, 1993) (ME94-17)
- ME93-18 (Feb. 19, 1993) (ME94-18)
- ME93-19 (Feb. 19, 1993) (ME94-19)
- ME93-20 (Feb. 19, 1993) (ME94-20)
- ME93-21 (Feb. 19, 1993) (ME94-21)
- ME93-22 (Feb. 19, 1993) (ME94-22)
- ME93-23 (Feb. 19, 1993) (ME94-23)
- ME93-24 (Feb. 19, 1993) (ME94-24)
- ME93-25 (Feb. 19, 1993) (ME94-25)
- ME93-26 (Feb. 19, 1993) (ME94-26)

New Hampshire
- NH93-1 (Feb. 19, 1993) (NH94-1)
- NH93-2 (Feb. 19, 1993) (NH94-2)
- NH93-3 (Feb. 19, 1993) (NH94-3)
- NH93-4 (Feb. 19, 1993) (NH94-4)
- NH93-5 (Feb. 19, 1993) (NH94-5)
- NH93-6 (Feb. 19, 1993) (NH94-6)
- NH93-7 (Feb. 19, 1993) (NH94-7)
- NH93-8 (Feb. 19, 1993) (NH94-8)
- NH93-9 (Feb. 19, 1993) (NH94-9)
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- NH93-11 (Feb. 19, 1993) (NH94-11)
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- NH93-15 (Feb. 19, 1993) (NH94-15)
- NH93-16 (Feb. 19, 1993) (NH94-16)
- NH93-17 (Feb. 19, 1993) (NH94-17)
- NH93-18 (Feb. 19, 1993) (NH94-18)
- NH93-19 (Feb. 19, 1993) (NH94-19)
- NH93-20 (Feb. 19, 1993) (NH94-20)
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Georgia

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Kentucky

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Minnesota

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Ohio

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Wisconsin

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Iowa

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Kansas

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Louisiana

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Missouri

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Nebraska

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New Mexico

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Oklahoma

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Colorado

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Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Date of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 4th day of February, 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94-2974 Filed 2-11-94; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Pittsburg and Midway Coal Mining Company

[Docket No. M-94-06-C]

Pittsburg and Midway Coal Mining Company, P.O. Box 6518, Englewood, Colorado 80155 has filed a petition to modify the application of 30 CFR 77.1304 (blasting agents; special provisions) to its McKinley Mine (I.D. No. 29-00096) located in McKinley County, New Mexico. The petitioner requests a modification of the standard to permit the use of fuel oil, blended with recycled oil as a blasting agent. The petitioner proposes to blend recycled oil with No. 2 fuel oil to use in the ANFO blasting media; to use a 10,000 gallon recycled oil/diesel fuel blend tank, transfer pump, valves, flow meter, filter housing, and necessary piping; to isolate the 10,000 gallon tank from the 250,000 gallon tank to eliminate the possibility of fuel contamination; and to visually inspect the filter element bypass each time the system is used. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Interstate Thermal Energy Conversion Corporation (ITEC)

[Docket No. M-94-07-C]

Interstate Thermal Energy Conversion Corporation, 50 West Main Street, P.O. Drawer 1187, Uniontown, Pennsylvania 15401 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Clyde Mine (I.D. No. 36-00967) located in Washington County, Pennsylvania. The petitioner proposes to maintain proper ventilation in the return air course by traveling the right 1 West Main return airway to the piping overcast in order to view through, then enter the adjacent entry by a man door in the stopping wall to examine the entry the piping goes through, and exit the entry by a man door into the next adjacent entry and look back through the piping for that examination with the other return pipe overcasts. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. SBM Coal Company

[Docket No. M-94-08-C]

SBM Coal Company, R.D. #2, Box 97A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its M&R Slope (I.D. No. 36-05495) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. SBM Coal Company

[Docket No. M-94-09-C]

SBM Coal Company, R.D. #2, Box 97A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100-2(a)(2) (quantity and location of firefighting equipment) to its M&R Slope (I.D. No. 36-05495) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. SBM Coal Company

[Docket No. M-94-10-C]

SBM Coal Company, R.D. #2, Box 97A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its M&R Slope (I.D. No. 36-05495) located in Northumberland County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. SBM Coal Company

[Docket No. M-94-11-C]

SBM Coal Company, R.D. #2, Box 97A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its M&R Slope (I.D. No. 36-05495) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. SBM Coal Company

[Docket No. M-94-12-C]

SBM Coal Company, R.D. #2, Box 97A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200(i) (mine map) to its M & R Slope (I.D. No. 36-05495) located in Northumberland County, Pennsylvania. The petitioner proposes to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Gatliff Coal Company

[Docket No. M-94-13-C]

Gatliff Coal Company, P.O. Box 39, Nevisdale, Kentucky 40754 has filed a petition to modify the application of 30 CFR 75.360(b)(6) (preshift examination) to its Blue Gem #6 Deep Mine (I.D. No. 15-12475) located in Whitley County, Kentucky. Due to adverse roof conditions in the parallel intake air course, the area cannot be traveled safely. The petitioner states that the area involved was driven off a parallel pure intake air course prior to the new ventilation regulation of November 1992, that even with extensive cribbing the intake area has developed adverse roof conditions, and that to perform preshift examinations of the room necks would be unsafe. The petitioner proposes to install methane detecting sensors at the areas of approach in the parallel intakes and an additional methane detecting sensor where the air which has coursed by these room necks, driven in excess of 20 feet deep, joins with the main mine intake. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Arclar Company

[Docket No. M-94-14-C]

Arclar Company, 29 West Raymond, P.O. Box 444, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 18.41 to its Big Ridge Mine (I.D. No. 11-02879) located in Saline County, Illinois. The petitioner proposes to use fabricated metal locking devices with a locking screw threaded through a steel bracket to lock battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines instead of using padlocks; and to submit a training plan for all operators of this equipment concerning this proposed alternate method to the Agency and District Manager.

10. AKZO Salt, Inc.

[Docket No. M-94-05-M]

AKZO Salt, Inc., P.O. Box 6920, Cleveland, Ohio 44101 has filed a petition to modify the application of 30 CFR 57.19109 to its Cleveland Mine (I.D. No. 33-01994) located in Cuyahoga County, Ohio. The petitioner proposes to install pairs of cables approximately 4 feet above and parallel to the divider timbers to enhance the function of the timbers; to cover the sides of each divider timber with ultra-high

molecular weight polyethylene material to reduce abrasion to the timbers; in addition to water slicing, to inspect the shaft prior to conducting any work on the platform to ensure that there are no loose material on the sides of the shaft; to place barricades around the shaft at both the collar and mine level prior to doing work on the platform; and to provide training to all personnel working on the platform. The petitioner states that to place boards across the shaft at the mine level when personnel are required to work on the dividers would result in a diminution of safety and would expose miners to hazardous conditions. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1994. Copies of these petitions are available for inspection at that address.

Dated: February 8, 1994

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–3389 Filed 2–11–94; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis in Biological Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following three meetings of the Special Emphasis Panel in Biological Sciences (1754).

Date and Time: March 14–16, 1994; 8:30 a.m. to 5 p.m.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Contact Person: Dr. Eve Barak (703) 306–1442 and Dr. Jerry Johnson (703) 306–1439, Program Managers, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Agenda: To review and evaluate Research Planning and Career Advancement proposals for Women Scientists and Engineers as part of the selection process for awards.

Date and Time: April 13–15, 1994; 8:30 a.m. to 5 p.m.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Contact Person: Dr. DeLill Nasser (703) 306–1439 and Dr. Ann Sakai (703) 306–1481, Program Managers, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Agenda: To review and evaluate Postdoctoral Research Fellowships in Molecular Evolution proposals as part of the selection process for awards.

Date and Time: April 18–20, 1994; 8:30 a.m. to 5 p.m.

Place: Rooms 360 and 360–2, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Contact Person: Dr. DeLill Nasser (703) 306–1439 and Dr. Gary Cecchini (703) 306–1443, Program Managers, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Agenda: To review and evaluate NSF Young Investigator proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 9, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–3383 Filed 2–11–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following three meetings of the Special Emphasis Panel in Mathematical Sciences.

Date and Time: February 28–March 1, 1994; 8:30 a.m. to 5 p.m.

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia.

Contact Person: Dr. H. Jean Thiebaux, Program Director, Division of Mathematical Sciences, Room 1025, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1883.

Agenda: To review and evaluate Mathematical Sciences Postdoctoral Industrial Research Fellowship proposals as part of the selection process for awards.

Date and Time: March 13–14, 1994; 8:30 a.m. to 5 p.m.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia.

Contact Person: Dr. Joseph Jenkins, Program Director, Division of Mathematical Sciences, Room 1025, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870 ext. 1978.

Agenda: To review and evaluate proposals concerning Lie Groups and their representations as part of the selection process for awards.

Date and Time: March 25, 1994; 8:30 a.m. to 5 p.m.

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia.

Contact Person: Dr. John V. Ryff, Program Director, Division of Mathematical Sciences, Room 1025, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1879.

Agenda: To review and evaluate Research Planning Grants and Career Advancement Awards for Women Scientists and Engineers proposals as part of the selection process for awards.

Type of Meetings: Closed

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 9, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–3382 Filed 2–11–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel; Renewal

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Licensing Support System Advisory Review Panel (LSSARP).

SUMMARY: The Licensing Support System Advisory Review Panel was established by the Nuclear Regulatory Commission as a Federal Advisory Committee in 1989. Its purpose is to provide advice to (1) the Department of Energy on the fundamental issues of design and development of an electronic information management system to be used to store and retrieve documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste, and (2) the Nuclear Regulatory Commission on the operation and maintenance of the system. This electronic information management system is known as the Licensing Support System (LSS).

Membership on the Panel is drawn from those interests that will be affected by the use of the LSS, including the Department of Energy, the NRC, the State of Nevada, Tribal interests, affected units of local governments in Nevada, and the nuclear industry. Federal agencies with expertise and experience in electronic information management systems also participate on the Panel.

The Nuclear Regulatory Commission has determined that renewal of the charter for the LSSARP until December 19, 1994 is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration.

FOR FURTHER INFORMATION CONTACT: John Hoyle, Office of the Secretary, NRC, Washington, DC 20555; telephone: (301) 504–1968.

Dated: February 8, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–3374 Filed 2–11–94; 8:45 am]

BILLING CODE 7590–01–M

Renewal of Charter for Nuclear Safety Research Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Renewal of the Nuclear Safety Research Review Committee.

SUMMARY: The Nuclear Safety Research Review Committee was established by the Nuclear Regulatory Commission as a Federal Advisory Committee in February 1988 to provide advice to the Director, Office of Nuclear Regulatory Research, on matters relating to NRC's nuclear safety research programs. The committee is composed of experts capable of providing a wide variety of technical and managerial viewpoints drawn from industrial national laboratory, university and not-for-profit research organizations.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the General Services Administration, the Nuclear Regulatory Commission has determined that there is a continuing need for the Nuclear Safety Research Review Committee and that renewal of the committee for a two year period beginning February 9, 1994 is in the public interest.

FOR FURTHER INFORMATION CONTACT: Mr. George Sege, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated: February 8, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–3373 Filed 2–11–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341; FERM 2]

Detroit Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirement of 10 CFR part 50, Appendix J, Paragraph III.A.6(b) to Detroit Edison Company (the licensee), for operation of the Fermi 2 Plant, located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the accelerated Type A integrated leak rate test frequency requirement of Appendix J, Paragraph III.A.6(b) of 10 CFR part 50. On May 24, 1993, the licensee requested an exemption from paragraph III.A.6(b) which requires that if two consecutive Type A tests fail to meet the acceptance criteria, a Type A test shall be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria. The licensee identified the cause of the Type A failures as Type C local leakage which has subsequently been corrected. The licensee reference NRC Information Notice (IN) 85–71, "Containment Integrated Leak Rate Tests," for guidance concerning the requested exemption. IN 85–71 states that "if Type B and C leakage rates constitute an identified contributor to this failure of the as-found condition for the CILRT [Type A containment integrated leak rate test], the general purpose of maintaining a high degree of containment integrity might be better served through an improved maintenance and testing program for containment penetration boundaries and isolation valves. In this situation, the licensee may submit a Corrective Action Plan with an alternative leakage test program proposal as an exemption request for NRC staff review." If this submittal is approved, the licensee is allowed to implement the corrective actions in lieu of the required increased in Type A test frequency.

The Need for the Proposed Action

The proposed exemption is needed because compliance to paragraph III.A.6(b) of 10 CFR part 50, Appendix J, would result in increased costs, extended outage time and additional personnel radiation exposure in order to comply with the increased Type A test frequency. The establishment of a Corrective Action Plan meets the underlying purpose of the regulations for maintaining overall containment integrity. This action is similar to that approved for several other facilities.

Environmental Impact of the Proposed Action

The proposed exemption would allow the substitution of a Corrective Action Plan in lieu of an increased test frequency for containment Type A leakage tests. The purpose of Type A testing is to ensure that the leakage through the primary reactor containment would not exceed the maximum allowable leakage during a design basis accident. It also provides assurance that the Local Leak Rate Test (LLRT) Program adequately identifies and corrects containment penetrations requiring repair. The licensee has implemented a Corrective Action Plan to correct LLRT deficiencies which have been attributed as the cause for previous Type A failures which have led to the increased testing frequency. The approved Corrective Action Plan will provide equivalent assurance of containment integrity, and will not alter the method of operation of the facility. The only change will be, on a one-time basis, the frequency for conducting the Type A CILRT. Therefore, post-accident radiological releases will not exceed previously determined values as a result of the proposed action. Further, the exemption is not expected to have an impact on plant radiological effluent releases. The proposed action does have the potential to reduce occupational exposure by reducing the amount of time personnel are required to spend in a radiologically restricted area.

With regard to potential non-radiological impacts, the proposed action and related change to the Technical Specifications involve a change in the surveillance requirements and will not affect non-radiological

plant effluents nor does it have any other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption and amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility and greater occupational exposure to plant personnel.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement, dated August 1981, for Fermi 2.

Agencies and Persons Consulted

The staff consulted with the State of Michigan regarding the environmental impact of the proposed action. The State had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's application and request for exemption dated May 24, 1993. This document is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 8th day of February 1994.

For the Nuclear Regulatory Commission.

A. Randolph Blough,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–3378 Filed 2–11–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Co.; Donald C. Cook Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirement of 10 CFR 55.59(a)(1) to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 55.59)a)(1), which requires that a requalification program for operator licensees and senior operator licensees be conducted for a continuous period not to exceed 24 months in duration. The licensee has requested an exemption which would allow it to administer the operating portion of the annual operator requalification examination in the May–June, 1994 timeframe rather than at the end of the 24-month requalification cycle in February 1994. The licensee's request for exemption and the bases are contained in its letter dated October 4, 1993.

The Need for the Proposed Action

The proposed exemption is from 10 CFR 55.59(a)(1), which requires that a requalification program for operator licensees and senior operator licensees be conducted for a continuous period not to exceed 24 months in duration. In addition, an annual requalification examination must be passed. The licensee requested an exemption in order to administer the operating portion of the requalification examination from the current 24-month cycle approximately 4 months into the next cycle due to installation of control room modifications. This would be a one-time exemption and the next examination would be administered on schedule in January 1995, which is consistent with the annual examination requirement cited in 10 CFR 55.59(a)(2).

Environmental Impacts of the Proposed Action

The proposed action would allow rescheduling of a portion of the operator license requalification examinations from the current 24-month requalification cycle into the next cycle. This exemption would not increase the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect the quantity of radiological plant effluents, nor result in any significant increase in occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Commission's Final Environmental Statement related to operation of D.C. Cook, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

The staff consulted with the State of Michigan regarding the environmental impact of the proposed action. The State had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated October 4, 1993. This letter is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW. Washington, DC 20555 and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 8th day of February 1994.

For the Nuclear Regulatory Commission.

A. Randolph Blough,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–3377 Filed 2–11–94; 8:45 am]

BILLING CODE 7590–01–M

Final Memorandum of Understanding Between the Nuclear Regulatory Commission and the State of Kansas

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Kansas. The MOU provides the basis for mutually agreeable procedures whereby the State of Kansas may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Kansas. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the **Federal Register** Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective January 24, 1994.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Kansas to provide data related to plant conditions during emergencies at commercial nuclear power plants in Kansas.

Dated at Rockville, Maryland, this 7th day of February, 1994.

For the Nuclear Regulatory Commission.

Edward L. Jordan,

Director, Office for Analysis and Evaluation of Operational Data.

Agreement Pertaining to the Emergency Response Data System Between the State of Kansas and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Kansas enter into this Agreement under the authority of Section 274i of the Atomic Energy Act of 1954, as amended.

Kansas recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NCR) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Kansas fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Kansas Department of Health and Environment(KDHE) and the Kansas Division of Emergency Preparedness(KDEP) of the Adjutant General's Department.

III. Scope

A. This Agreement defines the way in which NRC and KDHE and KDEP will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants in the State of Kansas.

B. It is understood by the NRC and the State of Kansas that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Kansas, or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Kansas on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Kansas authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not take any action. Authority for all such actions is reserved exclusively to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Kansas during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of Kansas. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. Kansas General Responsibilities

A. KDHE will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, KDHE will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. KDHE agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC.

VI. Implementation

KDHE, KDEP, and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. KDHE, KDEP, and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC, KDHE and KDEP agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC, KDHE and KDEP will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to KDHE by the NRC. KDHE may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, KDHE will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Chief, Environmental Radiation and Emergency Preparedness Section, Bureau of Air and Radiation and the Technological Hazards Administrator, Technological Hazards Program, Kansas Division of Emergency Preparedness, Adjutant General's Department. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC, KDHE and KDEP staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC, KDHE and KDEP will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission,

Dated: December 29, 1993.

James M. Taylor,

Executive Director for Operations.

For the State of Kansas,

Dated: January 19, 1994.

Harold L. Spiker,

Chief, Environmental Radiation & Emergency, Preparedness Section, KDHE.

Dated: January 20, 1994.

Frank Moussa,

Technical Hazards Administrator, Kansas Division of Emergency Preparedness.

Dated: January 24, 1994.

Robert C. Harder,

Secretary, KDHE.

[FR Doc. 94-3375 Filed 2-11-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-259 and 50-296]

Tennessee Valley Authority; Browns Ferry Nuclear Plant Units 1 and 3

Exemption

I

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating License Nos. DPR-33 and DPT-68, which authorize operation of the Browns Ferry Nuclear Plant (BFN) Units 1 and 3. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

These facilities are two boiling water reactors located at the licensee's site in Limestone County, Alabama. One other boiling water reactor at this site is not affected by this exemption.

II

Title 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), in part, states: "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

Containment access controls specified by 10 CFR 73.55(d)(8) require that any time frequent access to the containment is required, positive controls are maintained by a guard or watchman to assure only authorized personnel or materials are permitted into the containment.

BFN Units 1 and 3 have been shut down since March 1985 for modifications required to put the units in compliance with applicable regulatory requirements. A substantial number of the required modifications require frequent containment access. Therefore, the licensee has maintained a guard at a controlled access location to fulfill the requirements of 10 CFR 73.55(d)(8).

BFN Units 1 and 3 have been defueled since September 1985 and February 1987, respectively. In a defueled condition, the potential radiological hazard associated with postulated accidents for these reactors is very low. Therefore, on September 2, 1993, the licensee requested an exemption from 10 CFR 73.55(d)(8) to eliminate the positive containment access controls until the reactors are refueled. In response to a request for additional information dated December 2, 1993, on December 17, 1993, the licensee provided information verifying the small radiological hazard for the defueled reactors.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternate measures for protection against radiological sabotage provided the licensee demonstrates that the alternate measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

The licensee asserts that these criteria are satisfied and an exemption from 10 CFR 73.55(d)(8) requirements can be granted, give the unique status of BFN Units 1 and 3 and the other controls which are or will be exercised to ensure the reactors are returned to service in a safe manner. Presently, the reactors are defueled, which reduces the radiological hazard potential within the containment such that sabotage could not create a substantial public radiation dose. The licensee notes that it will perform extensive return-to-service testing on all safety-related systems. This testing ensures that plant components can properly perform their intended design functions. After modifications are completed, the licensee will also perform security inspections to detect sabotage or introduction of foreign material which may have occurred during the recovery effort.

The licensee's application also discusses measures such as access authorization controls, criminal background checks, and fitness for duty verification. However, the staff has found that these measures are consistent with minimum compliance with the regulations, and do not constitute compensatory actions which justify granting the exemption.

IV

As documented in the staff's safety evaluation, given the fact that the Browns Ferry Nuclear Plant Units 1 and 3 are defueled for the duration of this exemption, and the licensee's plans for security inspections and return-to-service testing of equipment provide the same high assurance, meet the general performance requirements, and provide an overall level of radiological sabotage protection equivalent to continued conformance to the regulation. Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense or security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 73.55(d)(8) for positive containment access controls on BFN Units 1 and 3 during periods of frequent access until immediately before fuel is loaded. Provisions of 10 CFR 73.55(d)(8) pertaining to other containment access controls shall remain in effect.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not result in any significant adverse environmental impact (59 FR 3881, January 27, 1994).

This exemption is effective upon issuance. This exemption expires for the Browns Ferry Nuclear Plant Unit 1 when the licensee begins to load nuclear fuel in that reactor, and expires for the Browns Ferry Nuclear Plant Unit 3 when the licensee begins to load nuclear fuel in that reactor.

Dated at Rockville, Maryland, this 1st day of February 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-3376 Filed 2-11-94; 8:45 am]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Parcel A/North Ranch at Ken Caryl, Jefferson County, CO, et al.

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Parcel A/North Ranch at Ken Caryl, Jefferson County, Colorado, and Galveston East Beach, located on Galveston Island, Galveston County, Texas, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until May 16, 1994.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Rick Zinn, Resolution Trust Corporation, Denver Field Office, 1515 Arapahoe Street, Tower III, suite 800, Denver, CO 80202, (303) 556-6938; Fax (303) 556-6987.

SUPPLEMENTARY INFORMATION: The Parcel A/North Ranch at Ken Caryl property is located southwest of the City of Denver, in Jefferson County, Colorado. The site has recreational value, a potential for archaeological resources, and is adjacent to lands managed for open space conservation by the Ken Caryl Ranch Metropolitan District. The Parcel A/North Ranch at Ken Caryl property consists of approximately 120 acres of undeveloped land and is located in the hilly transition zone between the foothills and the eastern plains of Colorado at an elevation of 6,000 to 6,200 feet. The site lies in a narrow valley and contains tall-grass prairie with patches of shrubby hardwoods and an occasional pine and juniper on upper slopes and ridges. There are several confirmed archaeological sites surrounding the property, including a winter home of the Ute Indians.

The Galveston East Beach property is located approximately three (3) miles southeast of the Galveston Central Business District at the terminus of East Beach Road and along the south line of Apfell Park Boulevard between Seawall Boulevard (FM 3005) and the Gulf of Mexico. The site is situated within an undeveloped coastal zone and floodplain, contains wetlands and habitat for federally-listed endangered species, has a high potential for archaeological resources, and is adjacent

to the historic Old Fort San Jacinto. The Galveston East Beach property consists of approximately 51.6 acres of undeveloped land. The site is irregular in shape with 2,446 square feet of frontage on the Gulf of Mexico. These properties are covered properties within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a-3).

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before May 16, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]
Federal Register Publication Date: _____
[insert Federal Register publication date]

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).
3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price and method of financing).
4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.
5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: February 9, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–3379 Filed 2–11–94; 8:45 pm]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by the Office of Management and Budget

Agency Clearance Officer: John J. Lane, (202) 942–8800.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Revisions

Rule 203–1 and Form ADV—File No. 270–39.
Rule 204–1—File No. 270–41.
Rule 204–3—File No. 270–42.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed amendments to rule 203–1 and Form ADV, rule 204–1, and rule 204–3 under the Investment Advisers Act of 1940 ("Advisers Act"). The amendments pertain to disclosure by investment advisers that sponsor "wrap fee programs," services under which investment advice and brokerage services are paid for in a single "wrap" fee.

The proposed amendments to rule 203–1 and Form ADV would require sponsors of wrap fee programs to prepare and file with the Commission new Schedule H to Form ADV discussing important information about the wrap fee program. It is estimated that approximately 300 investment advisers would be required to amend their Form ADVs to include Schedule H in the first year after the schedule's adoption, and that each adviser completing Schedule H would incur six burden hours in its preparation. The increase in burden resulting from this amendment will be reflected in the burden associated with rule 204–1.

In addition, it is estimated that each year approximately thirty investment advisers will be required to complete Schedule H as part of an initial application for registration on Form ADV, and that each adviser required to complete Schedule H would incur six burden hours in addition to the time currently necessary to complete Form ADV. This increase in burden will be reflected in the burden associated with rule 203–1 (Form ADV).

The burden hours associated with rule 204–1 are likely to decline after the amendments' first year. In future years, each adviser amending its Form ADV would merely need to make any necessary changes to its existing wrap fee brochure. The Commission estimates that the changes will take significantly less than six hours necessary to prepare the brochure initially.

The amendments to rule 204–3 would require an adviser to deliver its Schedule H to prospective clients of the wrap fee program, and offer to deliver it annually to existing clients of the program, in lieu of the disclosure document required by the rule to be delivered to the adviser's other clients. Because the amendments to rule 204–3 would merely require the delivery of a specific wrap fee disclosure document to certain clients in lieu of the delivery of a more general disclosure document, the Commission estimates that the amendments to rule 204–3 will not increase the burden on advisers in complying with the rule.

General comments may be directed to Gary Waxman at the address below. Comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Paperwork Reduction Act numbers 3235–0049; 3235–0048, and 3235–0047, Office of Management and Budget, room 3228, New Executive Office Building, Washington, DC 20543.

Dated: January 24, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3316 Filed 2–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33584; File No. SR–Amex–93–45]

Self-Regulatory Organizations; Filing and Order Granting Partial Temporary Accelerated Approval to Proposed Rule Change by American Stock Exchange, Inc. Relating to a Pilot Program for Execution of Odd-lot Market Orders

February 7, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 27, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On February 4, 1994, the Amex submitted Amendment No. 1 to the proposed rule change in order to clarify the duration of this pilot extension.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to implement on a permanent basis its existing pilot procedures under Exchange Rule 205 requiring execution of odd-lot market orders at the prevailing Amex quote with no differential charged. In order to permit the pilot program to continue without interruption, the Exchange also requests that the existing program be extended for an additional six month period in order to provide the Commission with the further opportunity, if necessary, to assess the operation of the program beyond February 8, 1994.[2]

The complete text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be exchanged at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved, on a pilot basis extending to February 8, 1994, amendments to Exchange Rule 205 to require the execution of odd-lot market orders at the prevailing Amex quote with no odd-lot differential.[3] These procedures initially were approved by the Commission on a pilot basis,[4] and subsequently were extended seven times.[5]

Under the pilot procedures, odd-lot market orders with no qualifying notations are executed at the Amex quotation at the time the order is represented in the market, either by being received at the trading post or through the Exchange's Post Execution Reporting ("PER") System. Enhancements to the PER system have been implemented to provide for the automatic execution of odd-lot market orders entered through PER. For purposes of the pilot program, odd-lot limit orders that are immediately executable based on the Amex quote at the time order is received, at the trading post or through PER, are executed in the same manner as odd-lot market orders.

The Exchange proposes that the pilot program applicable to odd-lot execution procedures be approved on a permanent basis. The Exchange believes that current odd-lot execution procedures under the pilot program have resulted in superior customer executions, in terms of price and time of execution, compared to previous odd-lot procedures under Rule 205.[6] Odd-lot market orders as well as executable odd-lot limit orders, entered in the Exchange's PER system or directly with the specialist after a regular opening or a reopening following a trading halt, receive an immediate automatic execution at the displayed Amex bid or offer; odd-lot market orders entered before the opening or reopening are accumulated and automatically executed at the price of the opening or reopening transaction without a differential.

Because, except for odd-lot market orders entered prior to the opening, execution of such orders is not based on a subsequent round-lot transaction, as previous market order procedures under Rule 205 required, the Amex believes odd-lot market orders (as well as odd-lot limit orders executable at the time entered) are executed without delay at prices reflecting market conditions at the time the order is entered, with the customer receiving a report more quickly. This is particularly important with respect to odd-lot orders in less frequently traded issues, which, under former Rule 205 procedures, could have been subject to significant execution delays.

The added system efficiencies and greater timeliness of executions provided by the pilot procedures, together with the opportunity for improved price executions, have resulted in significant customer benefits compared to prior procedures.

In order to permit the pilot program to continue without interruption, the Exchange also requests that the existing program be extended for an additional six month period in order to provide the Commission with further opportunity, if necessary, to assess the operation of the program beyond February 8, 1994.

2. Basis

The proposed rule change is consistent with sections 6(b) and

[1] See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated February 4, 1994 ("Amendment No. 1").

[2] The Amex original requested that this pilot program be extended for an additional three months. However, at the Commission's request, the Amex has agreed to extend the pilot until August 8, 1994, in order to provide the Commission with further opportunity to review the Exchange's request for permanent approval of the pilot procedures. See Amendment No. 1, *supra*, note 1. The Exchange seeks accelerated approval of the six month extension included in the proposed rule change in order to allow the pilot program, which expires on February 8, 1994, to continue without interruption. See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated February 1, 1994.

[3] See Securities Exchange Act Release No. 32726 (August 9, 1993), 58 FR 43394 (August 16, 1993) (approving File No. SR–Amex–93–24).

[4] See Securities Exchange Act Release No. 26445 (January 10, 1989), 54 FR 2248 (January 19, 1989) (approving File No. SR–Amex–88–23).

[5] See Securities Exchange Act Release Nos. 32726 (August 9, 1993), 58 FR 43394 (August 16, 1993) (approving File No. SR–Amex–93–24); 31828 (February 5, 1993) 58 FR 8434 (February 12, 1993) (approving File No. SR–Amex–93–06); 30305 (January 30, 1992), 57 FR 4653 (February 6, 1992) (approving File No. SR–Amex–92–04); 29922 (November 8, 1991), 56 FR 58409 (November 19, 1991) (approving File No. SR–Amex–91–30); 29168 (May 9, 1991), 56 FR 22488 (May 15, 1991) (approving File No. SR–Amex–91–09); 28758 (January 10, 1991), 56 FR 1656 (January 16, 1991) (approving File No. SR–Amex–90–39); and 27590 (January 5, 1990), 55 FR 1123 (January 11, 1990) (approving File No. SR–Amex–89–31).

[6] The Commission notes that, prior to approval of the current procedures on a pilot basis, see *supra* note 4, odd-lot market orders were executed at the price of a subsequent round-lot transaction, plus or minus an odd-lot dealer differential.

11A(a)(1) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it facilitates the economically efficient execution of odd-lot transactions, and is intended to result in improved execution of customer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-93-45 and should be submitted by March 7, 1994.

IV. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

In regard to the six month extension of the Amex's odd-lot execution pilot program, the Commission, for the same rationale discussed in its previous orders regarding these procedures,[7] finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular with the requirements of sections 6(b)[8] and 11A(a)(1)[9] of the Act and the rules and regulations thereunder. The Commission believes that the revised procedures, which provide for pricing of odd-lot market orders at the prevailing Amex quote rather than at the execution price of a subsequent transaction, should provide investors with more timely execution of these orders. Moreover, these orders should receive less costly executions than under the former procedures because no differential will be charged. In addition, the Exchange has implemented enhancements to its PER system for the automatic execution of odd-lot market orders, as set forth in the Commission's order approving the use of the pilot program procedures.[10]

In its previous orders,[11] the Commission asked the Amex to analyze the difference in executions between using the Intermarket Trading System ("ITS") consolidated best bid or offer as compared with the Amex quote without the differential. Specifically, the Commission expressed interest in whether customers are receiving the best execution, both in terms of price and time, using the new Amex system. The Commission was also interested in the feasibility of implementing an odd-lot pricing system using the ITS best bid or offer and no differential.[12]

In response, the Amex submitted the requested information with respect to the difference in executions between the ITS best bid or offer and the Amex quote to the Commission on January 9, 1991, April 22, 1991, October 25, 1991, February 4, 1993, August 3, 1993 and November 16, 1993.[13] The Amex data indicated that the pilot procedures provide a superior execution for a substantial majority of odd-lot executions. Accordingly, the Commission believes that it is reasonable to extend the pilot for an additional six months to enable the Commission to review fully the Amex reports and to enable the pilot to continue without interruption during the Commission's review. The Commission, however, remains concerned that some odd-lot orders could receive executions at less than the best available price since the Exchange's pricing formula does not include quotations from other markets.[14] Nevertheless, due to the relatively low number of odd-lot market orders on the Amex,[15] the percentage of Amex quotes that are worse than the ITS best bid or offer, and the benefits to customers under the pilot program procedures as compared to the former pricing procedures, the Commission believes that it is acceptable to continue the pilot's current pricing procedures for an additional six months. During that period, the Commission requests that the Exchange continue to monitor the pilot and provide data on the number of Amex quotes executed that are worse than the ITS consolidated best bid and offer and on the number of odd-lots as a percentage of total Exchange share volume and of the total number of trades. Moreover, the Commission remains interested in the feasibility of implementing an odd-lot pricing system using the ITS best bid and offer and no differential. Accordingly, the Commission requests that the Amex include in its monitoring report the feasibility and cost of developing such a plan, along with a projected time frame for potential implementation. The Commission requests that the Amex submit its report on these matters by May 8, 1994.

The Commission finds good cause for granting partial temporary approval of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[16]

[7] See *supra*, note 5.

[8] 15 U.S.C. 78f (1988).

[9] 15 U.S.C. 78k–1(a) (1988).

[10] See Securities Exchange Act Release No. 26445, *supra* note 4, for a description of the Exchange's odd-lot procedures and the Commission's rationale for approving those procedures on a pilot basis. The discussion in the aforementioned order is incorporated by reference into this order.

[11] See supra, note 5.

[12] The Commission has approved amendments to the New York Stock Exchange's ("NYSE") rules which incorporate the ITS quote into the NYSE odd-lot pricing procedures through the use of the Best Pricing Quote ("BPQ"). See Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19409 (May 9, 1990) (File No. SR–NYSE–90–06).

[13] See letters from Arne G. Michelson, Senior Vice President, Total Quality- Floor Members, Amex, to Beth A. Stekler, Attorney, Division of Market Regulation, SEC, dated November 16, 1993, and to Sharon M. Lawson, Assistant Director, Division of Market Regulation, SEC, dated August 3, 1993; letter from Michael Cavalier, Assistant General Counsel, Regulatory, Legal & Regulatory Policy Division, Amex, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated February 3, 1993; letters from Jules L. Winters, Executive Vice President, Operations, Amex, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated January 8, 1991, April 19, 1991 and October 23, 1991.

[14] See supra, note 12.

[15] See footnote 9 of Securities Exchange Act Release No. 29922 (November 8, 1991), 56 FR 58409.

[16] No comments were received in connection with the proposed rule change which implemented these procedures. See supra note 4.

It is therefore ordered, Pursuant to section 19(b)(2)[17] of the Act, that the proposed rule change (SR–Amex–93–45) is approved for a six month period ending on August 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3320 Filed 2–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33587; File No. SR–BSE–93–19]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Insider Trading and Securities Fraud Enforcement Act of 1988

February 7, 1994

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 8, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. On January 13, 1994, the BSE submitted to the Commission Amendment No. 1 to the proposal.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks to amend its rules to supplement the provisions of the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to supplement section 15(f) of the Securities Exchange Act of 1934 ("Act") and the ITSFEA, by requiring every member organization of the Exchange to establish maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such member and any person associated with the member. In addition, it requires that all members who are required to file SEC Form X–17A–5 ("FOCUS Reports") with the Exchange on an annual basis must submit with their FOCUS Reports a signed statement of compliance with this rule. Finally, it establishes minimum standards for compliance with the record-keeping requirements of this rule, and requires disclosure by members and associated persons to the Exchange's Surveillance Department of any securities transaction that the firm reasonably believes may have involved the misuse of material, non-public information.

Supplementary Material .02 defines conduct that would constitute the misuse of material, non-public information, including, but not limited to, (1) trading in any securities, or in any related securities, options or other derivative securities of a corporation while in possession of material non-public information concerning that corporation; (2) trading in any underlying security or related options or other derivative securities concerning imminent transactions in the underlying security or related securities; and (3) disclosing to another person or entity information described in (1) or (2) above for the purpose of facilitating the misuse of such material, non-public information.

The scope of the aforementioned definition is intended to be consistent with the goal of section 15(f) of the Act and ITSFEA to prevent the misuse of material, non-public information. This definition should be broad enough to encompass frontrunning, trading on the basis of material corporate inside information, tipping and misappropriating material corporate inside information.

Supplementary Material .02 defines the term "associated person" or "person associated with a member" as any partner, officer, director, or branch manager of a member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a member, or any employee of a member.

Supplementary Material .03 requires members to establish, maintain and enforce certain policies and procedures pursuant to this rule. Specifically, members would be required to (1) advise all associated persons in writing of the prohibition against the misuse of material, non-public information; (2) maintain for at least three years, the first two years in an easily accessible place, signed statements from the member and all associated persons of the member, affirming their awareness of and agreement to abide by the above mentioned prohibitions; (3) maintain for at least three years, the first two years in an easily accessible place, account statements of all brokerage accounts (excluding mutual fund and money market accounts) in which an associated person either has a direct or indirect interest or makes investment decisions; (4) periodically review all such brokerage accounts for the purpose of detecting those securities transactions that the firm reasonably believes may have involved the misuse of material, non-public information; and (5) identify and document business dealings the member may have with publicly traded corporations that may result in the member receiving material, non-public information.

The standards contained in .03 are intended to be minimum standards for compliance with the record-keeping requirements of the Act and this rule. Adherence to these standards will not necessarily constitute compliance with the Act and the rule for all members. The adequacy of any one member's policies and procedures will depend on the nature of that member's business.

Supplementary Material .04 and the member bulletin (see Exhibit 3) describe a set of forms, denominated as the

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1).

[2] See letter from Karen A. Aluise, Assistant Vice President, BSE to Sandra Sciole, Branch Chief, Exchange Regulation, Division of Market Regulation, Commission, dated January 13, 1994. The BSE submitted a letter to the Commission adding language to the proposal and its corresponding exhibits which clarifies that the BSE's insider trading rules are designed to require members and associated persons to attempt to detect securities transactions which they reasonably believe may have involved the misuse of material, non-public information. In this regard, this letter amendment makes nine changes to the proposal and its exhibits. This letter amendment deleted the last sentence in paragraph 1 of Exhibit 4 which stated, "This list shall be updated as associated persons leave or join the firm." It also added "trade confirmations and" after the word "duplicate" in the first sentence in Exhibit 4, paragraph 1a, and it changed the date in Exhibit 3, the Sample Membership Bulletin, from March 31, 1994 to April 30, 1994.

"Sample ITSFEA Compliance Procedures," which may be used by "eligible members" to satisfy the record-keeping and filing requirements of the Act and this rule. "Eligible members," are member organizations and sole Exchange members that do not carry or introduce customer accounts and for whom the Exchange is the designated examining authority ("DEA").

Specifically, the Sample ITSFEA Compliance Procedures require: (1) All associated persons to disclose each securities account in which they have a direct or indirect financial interest, or make investment decisions; (2) all associated persons to disclose whether they are an officer, director or 10% shareholder in a company whose shares are publicly traded: (3) acknowledgement by all associated persons that they understand and will abide by the prohibition against the misuse of material, non-public information; (4) written statement by a senior officer, partner or sole proprietor that such person ensures that all of the ITSFEA compliance procedures are being followed, including the periodic review of all accounts and trading activities of associated persons.

The Sample ITSFEA Compliance Procedures are intended to constitute the minimum policies and procedures required by the Act and this rule; their use does not ensure compliance with the record-keeping and filing requirements.

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade through the prevention of fraudulent and manipulative acts and practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-93-19 and should be submitted by March 7, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-3319 Filed 2-11-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33585; File No. SR-CHX-94-05]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Extend a Credit Against Dues Given to Registered Market Makers for Trading the Chicago Stock Basket

February 7, 1994

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 3, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a credit against dues given to registered Market Makers in the Chicago Stock Basket ("CXM"), for trading the CXM through March 31, 1994.[1] Proposed new language is italicized and deleted language is bracketed:

Membership Dues and Fees

Member Dues (all members): $3,200 per annum, payable monthly in equal installments

Through [January] *March* 31, 1994, registered Market Makers in the CXM will be given a credit towards their monthly installment of their dues at the rate of $1 for each contract of CXM that they trade. The maximum credit given to any registered Market Maker in the CXM pursuant to the preceding sentence shall be $15 per day up to a maximum of $266 per month.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[1] This credit became effective in Securities Exchange Act Release No. 33380 (December 23, 1993), 58 FR 69416 (December 30, 1993) (File No. SR-CHX-93-32). According to the CHX, the credit applies only to CXM trades for a registered Market Maker's proprietary market making account. Telephone conversation between David T. Rusoff, Foley & Lardner, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on December 14, 1993.

For further discussion of the market structure for trading the CXM and, in particular, of the rule of registered Market Makers, see Securities Exchange Act Release No. 33053 (October 15, 1993), 58 FR 54610 (October 22, 1993) (File No. SR-CHX-93-18).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to encourage more trading and participation in the CXM product by registered Market Makers. This filing will extend the credit towards dues for trading in the CXM to March 31, 1994, from its current January 31, 1994 expiration date.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among members using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Act

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-94-05 and should be submitted by March 7, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-3321 Filed 2-11-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33593; File No. SR-CHX-94-2]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Establish a Temporary Policy Relating to the Automatic Execution Feature of the Midwest Automated Execution System.

February 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 26, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On February 3, 1994, the CHX submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] See letter from J. Craig Long, Foley & Lardner, to Louis A. Randazzo, Attorney, Commission, dated February 2, 1994. Amendment No. 1 modifies the CHX's proposal to provide for a "sunset" provision whereby the effectiveness of the filing will terminate sixty days from the release date of this notice.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX has published to its members a temporary policy[2] relating to the automatic execution feature of the Midwest Automated Execution ("MAX") System which, *inter alia*, automates The Exchange's Guaranteed Execution System ("BEST System") pursuant to Article XX, Rule 37 of the CHX Rules.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule charge. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, the Exchange has experienced an abnormal influx of orders through the MAX system at the same time that a certain analyst' report is broadcast on cable T.V. Because of the near instantaneous automatic execution feature of the MAX system, the executions of those orders are taking place before the quotes for those stocks can be updated to reflect the analyst's comments.

The MAX system automates the requirements of Rule 37 of Article XX which guarantees executions at the best market up to a certain size for agency orders. Paragraph 7 under Rule 37

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[2] The effectiveness of the proposal will terminate on April 9, 1994. See Amendment No. 1, *supra* note 1.

[3] The temporary policy states that in an effort to ensure accurate executions to the customers, the Committee on Floor Procedures has decided that once the analyst's report is broadcast, the auto-execution system will be turned off and all issues will be executed manually. After the issue is named, and two members from the Committee on Floor Procedure agree that there is no longer an influx of orders in this issue, the system will be set back to automatic execution. All specialists are reminded that during the period that the system is set to manual, it is their responsibility to properly price all orders within the context of the CHX rules. The Committee on Floor Procedure and Surveillance will review all trades in the affected issues to insure that proper reports are given to the customers. This will be on a trial procedure only.

allows specialists and floor brokers to seek relief from the requirements of the BEST system in unusual trading situations.[4] The Committee on Floor Procedures has determined that the broadcast of the above described report creates unusual trading situations that warrant relief from the automatic execution feature for a short period of time so that proper quotes can be entered. As a result, the purpose of the proposed rule change is to published the Committee on Floor Procedure's determination to all trading floor members.[5]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change has been endorsed by the Exchange's Floor Procedures Committee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–2 and should be submitted by March 7, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3360 Filed 2–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33586; File No. SR–PSE–93–03]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Relating to Waiver of Maximum Bid/Ask Differentials in Individual Equity Options

February 7, 1994

On February 9, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit two Floor Officials to waive, on a case-by-case basis, the required maximum bid/ask differentials for options when the bid/ask differential in the security underlying an options contract is greater than one-half of a point. Notice of the proposed rule change appeared in the **Federal Register** on December 23, 1993.[3] No comments were received on the proposed rule change. On February 7, 1994, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposal.

The Exchange proposes to amend its rule establishing the maximum bid/ask differentials that may be created in making a market in options contracts. Rule 6.37(b)(1) currently provides, for example, that a Market Maker may bid and/or offer so as to create differences of no more than one-quarter of a point between the bid and the offer when the bid is less than $2. The current rule also provides, however, that the Exchange's Options Floor Trading Committee ("Committee")[5] may establish maximum spreads other than those specified. Additionally, Rule 6.37(b)(1) also currently provides that in the event the bid/ask differential in the underlying security is greater than the bid/ask differential contained in the rule, the permissible price differential for any in-the-money option series may be identical to those in the underlying security market.

Under the proposal, the last sentence from Rule 6:37(b)(1), which provides an exemption from the maximum specified bid/ask differentials for in-the-money options series in certain circumstances, would be moved to Rule 6.37(b)(3).[6] Additionally, new language is proposed to be added to Rule 6.37(b)(3) which would allow two Floor Officials to waive the requirements of Rule 6.37(b)(1) for at-the-money and out-of-the-money options series, on a case-by-case basis, when the bid/ask differential for the underlying security is greater than one-half of a point. In such instances, the spreads for at-the-money and out-of-the-money options series may be, at most, one-half as wide as the bid/ask differential in the underlying security in the primary market. The proposed rule also provides that exemptions granted pursuant to the rule are subject to Committee review.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[7] In particular, the Commission believes that the proposed rule change is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to promote just and equitable principles of trade. Specifically, by incorporating objective standards into the rule and providing Floor Officials with the discretion to grant exemptions when those standards are met, the proposal will give Market Makers more flexibility to apply to alter the maximum bid/ask differential when quoting options where the market in the underlying security is illiquid and therefore has wider spreads. The Commission notes that under the current rule, Market Makers may already obtain approval to alter the spreads specified in the rule for any options series. Such approval, however, must be obtained from the Committee at either a regular or special meeting of the Committee.[8] The proposal would alleviate any potential delay in granting Market Makers requests to adjust their spreads by permitting such relief to be granted by two Floor Officials rather than the full Committee.

Although the Commission recognizes that the proposal could result in more requests by Market Makers to obtain permission to increase maximum spreads because such requests could be granted by two Floor Officials as opposed to the full Committee, the Commission believes that the rule ensures that exemptions can only be granted in limited circumstances. First, an exemption can only be granted for at-the-money and out-of-the-money options series where the spread in the underlying security is greater than one-half of a point. Second, even with the exemption for the bid/ask differentials for at-the-money and out-of-the-money options series, the maximum spread for those series can be at most, one-half as wide as the spread in the underlying security. Finally, any exemption granted by the Floor Officials will be subject to Committee review. This review authority will allow the full Committee to monitor the use of the exemptions and to detect any situations where, for example, exemptions have been improperly granted by certain Floor Officials, and to take appropriate steps to prevent subsequent abuses of the rule.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** Amendment No. 1 merely clarifies that the intent of the proposed rule change is to provide objective standards for allowing Floor Officials to grant exemptions from Rule 6.37(b)(1) for at-the-money and out-of-the-money options series, not to change the current rule with respect to the exemption for in-the-money options series. Moreover, the Commission notes that this proposal was published for the full 21-day comment period and no comments were received by the Commission. Therefore, the Commission believes it is consistent with sections 6(b)(5)[9] and 19(b)(2)[10] of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All written submissions should refer to File No. SR–PSE–93–03 and should be submitted by March 7, 1994.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PSE–93–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3322 Filed 2–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33594; File No. SR–Phlx–93–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Regarding Unbundling of PACE Orders

February 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 3, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On February 1, 1994, the Phlx submitted Amendment No. 1 to the proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to adopt Commentary .19 to Phlx Rule 229[2] to prohibit the unbundling of orders entered for execution through the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE").[3] Specifically, Commentary .19 would read as follows:

Orders received by a member from a customer may not be unbundled for the purpose of availing upon PACE volume and size execution guarantees, nor may a firm solicit a customer to unbundle an order the purpose of availing upon PACE volume and size execution guarantees.

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[4] CHX Rule 37, Paragraph 7 states that in unusual trading situations, a specialist or floor broker may seek relief from the requirements of Rule 37. Paragraphs 1 through 6 from two members of the Committee on Floor Procedure or a designated member of the Exchange staff who would have authority to set execution prices.

[5] As noted above, the proposal is in effect for a temporary sixty day period. By that time the Commission expects that CHX to develop systems capability to implement manual execution on a stock-by-stock basis.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] See Securities Exchange Act Release No. 33351 (December 16, 1993), 58 FR 66185 (December 23, 1993).

[4] In Amendment No. 1, the Exchange proposes to: (1) Move the last sentence from Rule 6.37(b)(1) to Rule 6.36(b)(3); and (2) delete the references to in-the-money options series from the language originally proposed to be added to Rule 6.37(b)(3). Letter from Michael Pierson, Senior Attorney, Market Regulation, PSE, to Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, Commission, dated February 7, 1994 ("Amendment No. 1").

[5] The Committee is comprised of the Exchange's 14 Floor Officials: (1) Seven Floor brokers, and (2) seven Market Makers or Lead Market Makers. Telephone conversation between Michael Pierson, Senior Attorney, Market Regulation, PSE, and Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, Commission, on February 2, 1994.

[6] See Amendment No. 1, *supra* note 4.

[7] 15 U.S.C. 78f(b)(5) (1982).

[8] Telephone conversation between Michael Pierson, Senior Attorney, Market Regulation, PSE, and Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, Commission, on February 2, 1994.

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 CFR 200.30–3(a)(12) (1993).

[1] See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Sandy Sciole, Branch Chief, Commission, dated February 1, 1994. The amendment clarified the language of the rule to prohibit any such action for the purpose of attaining PACE guarantees by removing the word "primary" which originally preceded "purpose".

[2] Rule 229 details the execution guarantees due a PACE order. See Philadelphia Stock Exchange Rules, Rule 229.

[3] PACE is the Phlx's small order entry execution system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to adopt Commentary .19 to Phlx Rule 229 in order to prohibit the unbundling of certain types of orders. PACE is the Exchange's automated order routing, delivery and execution system for equity securities. Pursuant to Phlx Rule 229, customer orders entered through PACE are entitled to certain execution guarantees. For example, limit orders for less than 600 shares become due an execution once 1,000 shares of that security prints at the limit price or better on the New York Stock Exchange ("primary market guarantee").[4]

Unbundling occurs when a member organization or its agent splits a larger sized order into two or more small-sized orders to take advantage of PACE execution guarantees for orders of less than 600 shares. The Phlx proposal would prohibit members from soliciting their customers to unbundle orders for the purpose of taking advantage of these guarantees. However, the proposed prohibition against unbundling does not extend to any orders broken up by a non-member customer at his or her own discretion as long as the customer was not solicited to do so by the Phlx member firm for the aforementioned purpose.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest, consistent with section 6(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Phlx has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–49 and should be submitted by March 7, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3359 Filed 2–11–94; 8:45 am]

BILLING CODE 8010–01–M

[4] See Phlx Rule 229, Supplementary Material .10(a).

[Rel. No. IC–20061; File No. 812–8684]

First Transamerica Life Insurance Company, et al.; Application for Exemption

February 7, 1994

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: First Transamerica Life Insurance Company ("First Transamerica" or the "Company"), Separate Account VA–5 of First Transamerica Life Insurance Company (the "Separate Account"), and Charles Schwab & Co., Inc. ("Schwab") (collectively referred to herein as "Applicants").

RELEVANT 1940 ACT SECTION: Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Separate Account of a mortality and expense risk charge imposed under certain individual and group flexible purchase payment deferred variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on November 17, 1993 and amended on January 31, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on March 4, 1994, and should be accompanied by a proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o James W. Dederer, Esq., First Transamerica Life Insurance Company, 575 Fifth Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Attorney, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. First Transamerica is a stock life insurance company incorporated under te laws of New York in 1986.

2. The Separate Account was established by First Transamerica on November 10, 1993. Schwab will serve as the distributor and principal underwriter of the Contracts.

3. The Contract is a flexible purchase payment deferred variable annuity which can be purchased on a non-tax qualified basis or used as a funding vehicle in connection with certain retirement plans which qualify for favorable income tax treatment. Purchase payments under the Contracts will be allocated to one or more sub-accounts of the Separate Account. The initial purchase payment under a Contract must be at least $5,000. Additional purchase payments of at least $1,000 each may be made at any time before the annuity date.

4. Each Contract contains death benefit provisons that provide a benefit equal to the greatest of (a) the sum of all purchase payments, less the sum of all withdrawals and any applicable premium or similar taxes, or (b) the account value, as of the end of the valuation period during which the later of (1) due proof of death is received and (2) the receipt of a written notice of the method of settlement elected by the beneficiary.

5. A Transfer fee of $10 will be deducted under the Contract for each transfer in excess of 10 per Contract year. First Transamerica will also deduct an annual Contract charge of $25 for each Contract at the end of each Contract Year for administrative services. While First Transamerica does not currently impose an Administrative Expense Charge, it reserves the right to deduct such a charge on a daily basis in the future from the assets of the Separate Account. However, the Administrative Expense Charge is guaranteed not to exceed an effective annual rate of 0.15% of the average net assets held in each sub-account. First Transamerica does not anticipate any profit from these charges. First Transamerica will deduct the administrative charges in reliance upon and in compliance with Rule 26a–1 under the 1940 Act.

6. First Transamerica will deduct any premium taxes related to a particular Contract from purchase payments, upon surrender, or upon annuitization, in reliance on Rule 26a–2 under the 1940 Act. No charges are currently made for federal, state, or local taxes other than premium taxes. However, First Transamerica may deduct such taxes in the future.

7. There are no charges or deductions for sales load from purchase payments, Separate Account assets, or upon withdrawal of surrender of a Contract. First Transamerica will incur expenses relating to the sale of the Contracts which will be paid from its general assets.

8. For assuming certain mortality and expenses risks under the Contracts, First Transamerica will assess a mortality and expense risk charge at an annual rate of 0.85% of the value of net assets in the Separate Account. Of this amount, approximately 0.30% represents mortality risk and approximately 0.55% is estimated to be attributable to expense risks. This charge will not increase. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on First Transamerica. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to First Transamerica. First Transamerica currently anticipates a profit from this charge. According to Applicants, the mortality risk borne by First Transamerica arises from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Contract) regardless of how long all annuitants or any individual annuitant may live. This undertaking assures that neither an annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the periodic annuity payments. First Transamerica also assumes a risk in connection with the payment of death benefits, since the death benefit could be higher than the account value. The expense risk assumed by First Transamerica is the risk that administrative costs will be greater than anticipated, or exceed the amount recovered through the administrative charges.

Applicants' Legal Analysis

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act require that all payments received under a periodic payment plan certificate be held by a qualified trustee or a custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except for the payment of a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services. Applicants request exemptions from those Sections to the extent necessary to permit the assessment of the charge for mortality and expenses risks in the manner described in the application.

2. Applicants submit that First Transamerica is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the mortality and expense risk charge under the Contracts is consistent with the protection of investors because it is a reasonable and proper insurance charge. As described above, in return for this amount First Transamerica assumes certain risks under the Contracts. The mortality and expense risk charge is a reasonable charge to compensate First Transamerica for the risk that annuitants under the Contracts will live longer than has been anticipated in setting the annuity rates guaranteed in the Contracts, for the risk that death benefit proceeds will be greater than the Account Value, and for the risk that administrative expenses will be greater than anticipated or exceed amounts derived from the administrative charges.

3. First Transamerica represents that the mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon First Transamerica's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, death benefit guarantees, guaranteed annuity rates and other policy options. First Transamerica will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

4. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses. First Transamerica represents that there is a reasonable likelihood that the proposed

distribution financing arrangements will benefit the Separate Account and the Contract owners. Applicants also represent that the basis for this conclusion is set forth in a memorandum which will be maintained by First Transamerica at its administrative offices and will be available to the Commission.

5. First Transamerica represents that the Separate Account will only invest in management investment companies which undertake, in the event any such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b–1.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, their request for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margarate H. McFarland,

Deputy Secretary.

[FR Doc. 94–3315 Filed 2–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20060; File No. 812–8680]

Lincoln Benefit Life Co., et al.; Application for Exemption

February 7, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Lincoln Benefit Life Company ("Lincoln Benefit"), Lincoln Benefit Life Variable Annuity Account (the "Account") and Lincoln Benefit Financial Services, Inc. ("Lincoln Financial") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Amended order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an amended order permitting them to deduct a daily charge from the assets of the Account for mortality and expense risks in connection with the offering of certain variable annuity contracts.

FILING DATE: The application was filed on November 17, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 4, 1994 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Carol S. Watson, General Counsel, Lincoln Benefit Life Company, 134 South 13th Street, Lincoln, Nebraska 68508.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Attorney, or Wendell M. Faria, Deputy Chief, both at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. By order dated September 29, 1993 (Investment Company Act Release No. 19747) (the "Order"), the Commission, pursuant to section 6(c) of the 1940 Act, provided Applicants exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act. The exemptions were granted, to the extent necessary, to allow Applicant to deduct from the Account the mortality and expense risk charge imposed under certain flexible premium individual deferred variable annuity contracts (the "Contracts") funded through the Account.

2. Applicants request that the Order be amended. Specifically, Applicants propose modification of the death benefit under the Contracts. Currently, the death benefit provides for, among other things, interest accumulations at four percent prior to the Contract owner's attained age 80. Applicants propose that the death benefit be modified to provide instead for such accumulations prior to the Contract anniversary next following the Contract owner's 75th birthday. Applicants request that the Order be amended to the extent necessary to recognize the proposed modification to the Contracts.

3. Lincoln Benefit, a stock life insurance company organized under the laws of Nebraska, is a wholly owned subsidiary of Allstate Life Insurance Company. Allstate Life Insurance Company is an Illinois corporation wholly owned indirectly by The Allstate Corporation. Approximately 80.1 percent of the common stock of The Allstate Corporation is indirectly owned by Sears, Roebuck & Co.

4. The Account, established by Lincoln Benefit on August 3, 1992 as a segregated asset account under Nebraska law, serves as a funding medium for the Contracts. The application states that the Account meets the definition of a "separate account" under the federal securities laws. The Account is registered with the Commission under the 1940 Act as a unit investment trust. The application incorporates by reference the registration statement, currently on file with the Commission (File No. 33–66786), for the Account.

5. Lincoln Financial, a wholly owned subsidiary of Lincoln Benefit, is the distributor of the Contracts. Lincoln Financial is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the National Association of Securities Dealers, Inc.

6. The Contracts are available for retirement plans which qualify for federal tax advantages under the Internal Revenue Code and for those plans which do not qualify for advantageous treatment. The Contracts require a minimum initial premium payment of $1,200. Additional premium payments must be in amounts of at least $100.

7. If the owner of a Contract dies prior to the annuity date and the Contract is in force, Lincoln Benefit will, upon receipt of due proof of death, pay a death benefit. At a minimum, the death benefit is equal to the greater of: (a) All purchase payments less prior withdrawals, accumulated at 4% per year prior to the Contract anniversary next following the Contract owner's 75th birthday, and at 0% per year thereafter (the "Floor Value"); or (b) the Contract value less applicable premium tax.[1] If the Contract value on the seventh Contract anniversary is greater than the Floor Value, the Floor Value will be increased to the level of the Contract value. If this increase occurs, Floor Value for the eighth Contract year and for subsequent years will then be calculated using the increased value. The Contract owner may select the form of annuity from four annuity options described in the registration statement for the Account.

[1] The death benefit upon which the Order was based provided for interest accumulations at 4% per year prior to the Contract owner's attained age 80.

8. One transfer among subaccounts is permitted monthly without charge. For each transfer among subaccounts in excess of once monthly, a transfer fee of $25 is assessed. The transfer fee is deducted from Contract values which remain in the subaccount or subaccounts from which the transfer is made. Applicants represent that the transfer fee is designed to be at cost with no margin included for profit. Lincoln Benefit is currently waiving this fee.

9. Applicants impose an annual Contract maintenance charge of $25 per Contract year. Applicants guarantee that this charge will not increase and state that the charge reimburses Lincoln Benefit for expenses incurred in maintaining the Contracts. This charge will be deducted on each Contract anniversary prior to the annuity date, but is not imposed during the annuity period. If a Contract is surrendered, the charge is assessed as of the surrender date without proration.

10. Lincoln Benefit deducts an administrative expense charge equal to an annual effective rate of .15% of the net asset value of the subaccount. The application states that this charge will compensate Lincoln Benefit for administering the Contracts and the Account. This charge is assessed during both the accumulation and the annuity periods. Applicants state that the Contract maintenance charge and the administrative expense charge are designed, in the aggregate, to be at cost with no margin included for profit.

11. A contingent deferred sales charge (the "Sales Charge") of up to 7% of the amount withdrawn is imposed on certain surrenders or withdrawals of Contract value. No Sales Charge is applied on annuitization or on the payment of a death benefit unless the settlement option chosen is payment over a period certain of less than five years. The Sales Charge is deducted from the Contract value remaining after withdrawal so that the reduction in Contract value as a result of a withdrawal will be greater than the withdrawal amount requested. Amounts obtained from imposition of the Sales Charge will be used to pay sales commissions and other promotional or distribution expenses associated with the marketing of the Contracts. To the extent that the Sales Charge does not cover all sales commissions and other promotional or distribution expenses, Applicants state that Lincoln Benefit may use any of its corporate assets, including potential profit from the mortality and expense risk charge, to make up the shortfall.

12. Lincoln Benefit will impose a daily charge equal to an annual effective rate of 1.25% of the value of the net assets of the Account to compensate Lincoln Benefit for bearing certain mortality and expense risks in connection with the Contracts. Approximately .85% of the 1.25% charge is attributable to mortality risk, and approximately .40% is attributable to expense risk. Applicants represent that the charge for mortality and expense risks will not increase. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risk, Lincoln Benefit will bear the loss. Conversely, if the charge exceeds costs, this excess will be profit to Lincoln Benefit. If Lincoln Benefit realizes a gain from the charge for mortality and expense risks, the amount of such gain may be used in the discretion of Lincoln Benefit.

13. Applicants state that the mortality risk borne by Lincoln Benefit consists of: (a) Bearing the risk that the life expectancy of an annuitant will be greater than that assumed in the guaranteed annuity purchase rates; (b) waiving the Sales Charge upon the death of a Contract owner; and (c) providing a death benefit prior to the annuity date. Applicants state that the expense risk assumed by Lincoln Benefit is the risk that the costs of administering the Contracts and the Account will exceed amounts received by Lincoln Benefit through imposition of the Contract maintenance charge and the administrative expense charge.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to section 6(c) of the 1940 Act, issue an amended order granting exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for the mortality and expense risk. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

2. Applicants assert that the charge for mortality and expense risks is reasonable in relation to the risks assumed by Lincoln Benefit under the Contracts.

3. Applicants represent that the charge of 1.25% for the mortality and expense risks assumed by Lincoln Benefit is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon their analysis of publicly available information about similar industry practices, taking into consideration such factors as: Current charge levels; charge level guarantees; benefits provided; and guaranteed annuity rates. Applicants represent that Lincoln Benefit will maintain at its home office, available to the Commission, a memorandum setting forth in detail the methodology used in determining that the level of risk charge is within the range of industry practice.

4. Applicants represent that Lincoln Benefit has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Lincoln Benefit and will be made available to the Commission.

5. Lincoln Benefit also represents that the Account will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by the company's board of directors, a majority of whom are not interested persons of such company within the meaning of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3314 Filed 2–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20058; 812–8600]

Smith Barney Shearson Income Trust, et al.; Application for Exemption

February 7, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Smith Barney Shearson Income Trust (formerly Shearson Lehman Brothers Income Trust) (the "Trust"), and Smith Barney Shearson Inc. ("Smith Barney Shearson").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would amend a prior order that permitted the Trust to impose a contingent deferred sales charge ("CDSC") on certain redemptions of Trust shares. The prior order was granted to the Trust and Shearson Lehman Brothers Inc. ("Shearson"), the Trust's former sponsor and distributor. Since the order was granted, Shearson's assets were sold to Primerica Corporation and its subsidiary Smith Barney Shearson, and Smith Barney Shearson became the sponsor and underwriter of the Trust. Applicants request to continue the relief granted in the prior order and to extend the relief to Smith Barney Shearson and certain investment companies for which Smith Barney Shearson serves as investment adviser or principal underwriter.

FILING DATE: The application was filed on October 4, 1993, and amended on January 14, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 4, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Senior Attorney, at (202) 272–2190, or Robert A. Robertson, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company that was organized as a business trust under the laws of the Commonwealth of Massachusetts on October 17, 1991. To date, the Trust consists of four series: Smith Barney Shearson Limited Maturity Treasury Fund, Smith Barney Shearson Limited Maturity Municipals Fund, Smith Barney Shearson Intermediate Maturity California Municipals Fund, and Smith Barney Shearson Intermediate Maturity New York Municipals Fund (the "Funds").

2. On March 12, 1993, American Express Company and its indirect wholly-owned subsidiary, Shearson, entered into an asset purchase agreement with Primerica Corporation and its indirect wholly-owned subsidiary Smith Barney, Harris Upham & Co. Inc. (as renamed, Smith Barney Shearson). Under the agreement, American Express sold substantially all of the assets of Shearson and the Asset Management Divisions of Shearson to Smith Barney Shearson and its designated affiliates. Upon the closing of the sale on July 31, 1993, Smith Barney Shearson became the sponsor and distributor of the Trust and Greenwich Street Advisers Division of Mutual Management Corporation, an affiliate of Smith Barney Shearson, replaced Shearson Lehman Advisors as the Trust's investment adviser.

3. Prior to the sale transaction, investment companies sponsored by Shearson, including the Trust, received orders of exemption from various provisions of the Act. At the request of Shearson and Smith Barney, the Commission's Division of Investment Management informed Shearson and Smith Barney that the Division would not recommend that the Commission take any enforcement action against them if the Funds operate under the terms of a prior order until the earlier of (a) the date the prior order is renewed by the Commission pursuant to a renewal order specifying Smith Barney and its subsidiaries or affiliates as applicants or (b) June 8, 1994.[1] This application is being filed pursuant to that no-action letter to continue and renew an order that permitted the Trust to assess a CDSC on redemptions of the Trust's shares (the "Income Trust Order").[2]

4. Applicants further request that any relief granted extend to Smith Barney Shearson and any future series of the Trust or any other open-end investment company for which Smith Barney Shearson, or any entity controlled by, or under common control with Smith Barney Shearson, serves as investment adviser or principal underwriter that issues shares that are identical in all material respects to those described in the application.

5. Under the Income Trust Order, the Trust (a) offers shares subject to a maximum sales charge upon purchase of 1.25% (the "Upfront Charge") that is reduced on purchases of $50,000 or more; (b) has instituted a shareholder servicing plan in accordance with rule 12b–1 under the Act; and (c) assesses a 1% CDSC on certain redemptions of shares made within one year of their purchase. Under the amended order, the CDSC would continue to be imposed on that portion of a redemption that causes the current value of Fund shares to fall below the total dollar amount of payments for the purchase of those shares (less any applicable Upfront Charge) made by the shareholder during the preceding year.

6. No CDSC would be imposed to the extent that the net asset value of the shares redeemed does not exceed (a) the current net asset value of shares purchased more than one year prior to the redemption ("Old Shares Value"), plus (b) the current net asset value of shares purchased through reinvestment of dividends or capital gains distribution ("Reinvestment Shares Value"), plus (c) increases in the net asset value of the shares above purchase payments (less any applicable Upfront Charge) made during the preceding year ("Appreciation Value").

7. In effecting a particular redemption request of shares made by a shareholder, the Trust would continue first to redeem an amount that represents Appreciation Value. The Trust next would redeem an amount that represents Reinvestment Shares Value, and then an amount that represents Old Shares Value. The amount by which a redemption exceeds the total of Appreciation Value, Reinvestment Shares Value, and Old Shares Value would be subject to the CDSC.

8. In no event would the maximum amount of the CDSC assessed upon the redemption of shares plus the amount of any Upfront Charge paid with respect to the shares exceed the maximum sales charge that could have been imposed at the time the shares were purchased under Article III, section 26(d) of the Rules of Fair Practice adopted by the National Association of Securities Dealers, of which Smith Barney Shearson is a member.

9. Under the amended order, the CDSC would be waived with respect to: (a) Automatic cash withdrawals by a shareholder in amounts equal to or less than 2% per month of the value of the shareholder's shares at the time that the shareholder's participation in the withdrawal plan commences; (b) redemptions in connection with: (i) lump-sum or other distributions from a qualified corporate or self-employed retirement plan following retirement, termination of employment, death, disability or following attainment of age 59½ of a plan participant, (ii) the hardship of a plan participant to the extent permitted under the Internal Revenue Code of 1986 (the "Code"), (iii) a loan made by a qualified corporate or self-employed retirement plan to a participating employee, (iv) distributions and withdrawals from retirement plans or individual retirement accounts ("IRAs") or custodial accounts under section 403(b)(7) of the Code following attainment of age 59½; and (v) a tax-free return of an excess contribution to an IRA; (c) redemptions of shares that are acquired as a result of an exchange into any Fund from any fund in the same "group of investment companies" as defined in rule 11a–3 under the Act as the Trust and that are sold subject to a sales charge upon purchase (the "Exchange Group of Funds"); (d) involuntary redemptions; and (e) redemptions by (i) employees of Travelers Inc. (formerly known as Primerica Corporation) and its subsidiaries (including Smith Barney Shearson), American Express and its subsidiaries, and The Boston Company, Inc. and its subsidiaries, IRAs for those employees, employee benefit plans for those employees, and the spouses and minor children of those employees, (ii) accounts managed by investment advisory subsidiaries of Travelers registered under the Investment Advisers Act of 1940, and (iii) directors, trustees or general partners of any investment company for which Smith Barney Shearson serves as distributor. In accordance with rule 11a–3 under the Act, a CDSC will not be imposed on exchanges between a Fund and any fund in the Exchange Group of Funds.

10. Under the amended order, a shareholder who has redeemed shares of a Fund and who reinvests all or part of the redemption proceeds in shares of any other Fund within 180 days of the redemption will continue to receive a proportionate credit (in the form of additional shares of the Fund into which the reinvestment is being made) for the CDSC imposed on the prior redemption. Also, a shareholder who has redeemed shares of a Fund and who reinvests all or part of the redemption proceeds within 30 days of the redemption in shares of any fund in the Exchange Group of Funds will continue to receive a proportionate credit (in the form of additional shares of the fund into which the reinvestment is being made) for any CDSC imposed on the prior redemption. In each case, the amount of the credit would be funded by Smith Barney Shearson out of a "house" account into which Smith Barney Shearson would maintain, on an ongoing basis, a portion of the proceeds from CDSCs assessed to shareholders. The account will at all times be maintained in an amount sufficient to provide all credits to which shareholders are entitled.

Applicant's Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to permit the Funds to continue to assess a CDSC on certain redemptions of the shares as described above and to permit the Funds to waive the CDSC with respect to certain types of redemptions. Applicants believe that the contingent nature of the proposed charge places the purchaser in a better position than if a sales load were imposed at the time of sale, since in the case of the CDSC the shareholder enjoys the possibility that he or she will have to pay only a reduced sales charge, or no sales charge at all. Applicants further believe that the imposition of the CDSC permits the Funds' shareholders to have the advantage of greater investment dollars working for them from the time of their purchase of shares of the Funds than if a sales load were imposed at the time of purchase.

Applicant's Condition

As a condition of the requested relief, applicants will comply with the provisions of proposed rule 6c–10 under the Act, as currently proposed and as it may be reproposed, adopted or amended.

[1] See Shearson Lehman Brothers Inc. (pub. avail. June 8, 1993).

[2] Investment Company Act Rel. Nos. 18565 (Feb. 24, 1992) (notice) and 18623 (Mar. 23, 1992) (order).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3317 Filed 2–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20059; File No. 812–8686]

Transamerica Occidental Life Insurance Co., et al.; Application for Exemption

February 7, 1994.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Transamerica Occidental Life Insurance Company ("Transamerica" or the "Company"), Separate Account VA–5 of Transamerica Occidental Life Insurance Company (the "Separate Account"), and Charles Schwab & Co., Inc., ("Schwab") (collectively referred to herein as "Applicants").

RELEVANT 1940 ACT SECTION: Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Separate Account of a mortality and expense risk charge imposed under certain individual and group flexible purchase payment deferred variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on November 17, 1993 and amended on January 31, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on March 4, 1994, and should be accompanied by a proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Applicants, c/o James W. Dederer, Esq., Transamerica Life Insurance Company, 1150 South Olive, Los Angeles, CA 90015.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Attorney, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Transamerica is a stock life insurance company incorporated under the laws of California in 1906.

2. The Separate Account was established by Transamerica on September 28, 1993. Schwab will serve as the distributor and principal underwriter of the Contracts.

3. The Contract is a flexible purchase payment deferred variable annuity which can be purchased on a non-tax qualified basis or used as a funding vehicle in connection with certain retirement plans which qualify for favorable income tax treatment. Purchase payments under the Contracts will be allocated to one or more sub-accounts of the Separate Account. The initial purchase payment under a Contract must be at least $5,000. Additional purchase payments of at least $1,000 each may be made at any time before the annuity date.

4. Each Contract contains death benefit provisions that provide a benefit equal to the greatest of (a) the sum of all purchase payments, less the sum of all withdrawals and any applicable premium or similar taxes, or (b) the account value, as of the end of the valuation period during which the later of (1) due proof of death is received and (2) the receipt of a written notice of the method of settlement elected by the beneficiary.

5. A Transfer fee of $10 will be deducted under the Contract for each transfer in excess of 10 per Contract year. Transamerica will also deduct an annual Contract charge of $25 for each Contract at the end of each Contract Year for administrative services. While Transamerica does not currently impose an Administrative Expense Charge, it reserves the right to deduct such a charge on a daily basis in the future from the assets of the Separate Account. However, the Administrative Expense Charge is guaranteed not to exceed an effective annual rate of 0.15% of the average net assets held in each sub-account. Transamerica does not anticipate any profit from these charges. Transamerica will deduct the administrative charges in reliance upon and in compliance with Rule 26a–1 under the 1940 Act.

6. Transamerica will deduct any premium taxes related to a particular Contract from purchase payments, upon surrender, or upon annuitization, in reliance on Rule 26a–2 under the 1940 Act. No charges are currently made for federal, state, or local taxes other than premium taxes. However, Transamerica may deduct such taxes in the future.

7. There are no charges or deductions for sales load from purchase payments, Separate Account assets, or upon withdrawal or surrender of a Contract. Transamerica will incur expenses relating to the sale of the Contracts which will be paid from its general assets.

8. For assuming certain mortality and expenses risks under the Contracts, Transamerica will assess a mortality and expense risk charge at an annual rate of 0.85% of the value of net assets in the Separate Account. Of this amount, approximately 0.30% represents mortality risk and approximately 0.55% is estimated to be attributable to expense risks. This charge will not increase. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on Transamerica. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to Transamerica. Transamerica currently anticipates a profit from this charge. According to Applicants, the mortality risk borne by Transamerica arises from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Contract) regardless of how long all annuitants or any individual annuitant may live. This undertaking assures that neither an annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the periodic annuity payments. Transamerica also assumes a risk in connection with the payment of death benefits, since the death benefit could be higher than the account value. The expense risk assumed by Transamerica is the risk that administrative costs will be greater than anticipated, or exceed the amount recovered through the administrative charges.

Applicants' Legal Analysis

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act require that all payments received under a periodic payment plan certificate be held by a qualified trustee or a custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except for the payment of a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services. Applicants request exemptions from those Sections to the extent necessary to permit the assessment of the charge for mortality and expenses risks in the manner described in the application.

2. Applicants submit that Transamerica is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the mortality and expense risk charge under the Contracts is consistent with the protection of investors because it is a reasonable and proper insurance charge. As described above, in return for this amount Transamerica assumes certain risks under the Contracts. The mortality and expense risk charge is a reasonable charge to compensate Transamerica for the risk that annuitants under the Contracts will live longer than has been anticipated in setting the annuity rates guaranteed in the Contracts, for the risk that death benefit proceeds will be greater than the Account Value, and for the risk that administrative expenses will be greater than anticipated or exceed amounts derived from the administrative charges.

3. Transamerica represents that the mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon Transamerica's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, death benefit guarantees, guaranteed annuity rates and other policy options. Transamerica will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

4. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses. Transamerica represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the Contract owners. Applicants also represent that the basis for this conclusion is set forth in a memorandum which will be maintained by Transamerica at its administrative offices and will be available to the Commission.

5. Transamerica represents that the Separate Account will only invest in management investment companies which undertake, in the event any such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b–1.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, their request for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3316 Filed 2–11–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Legal Adviser

[Public Notice 1948]

Property Claims Against the Government of Hungary

The Department of State has recently received the following information from the Government of Hungary about filing claims for property restitution or compensation under Hungary's domestic laws remedying illegal expropriation.

The Hungarian Parliament has reopened the period within which claims for property restitution or compensation may be filed with the Government of Hungary under existing Hungarian property restitution laws. Persons who did not recover under these laws because of their failure to file by the previous deadlines may now file a claim for compensation or restitution with appropriate Hungarian authorities. These claims must be filed between February 15, 1994 and March 15, 1994.

Apart from the new filing period, Hungary's property restitution laws remain unchanged. They continue to provide only partial compensation or restitution in the form of property coupons, and eligibility remains limited to persons who meet certain citizenship requirements.

Persons desiring further information about these developments or assistance relating to the filing of a claim under Hungary's domestic laws should contact the Hungarian Embassy, 3910 Shoemaker Street, NW., Washington, DC 20008.

Dated: February 7, 1994.

Ronald J. Bettauer,

Assistant Legal Adviser for International Claims and Investment Disputes.

[FR Doc. 94–3470 Filed 2–11–94; 8:45 am]

BILLING CODE 4710–08–M

UNITED STATES INFORMATION AGENCY

Advisory Panel on Radio Marti and TV Marti; Meetings

AGENCY: United States Information Agency.

ACTION: Correction Notice for the Federal Register.

This notice amends the announcement that appeared in the **Federal Register** at page 5667 on February 7, 1994. The Advisory Panel on Radio Marti and TV Marti will conduct meetings on February 18, 1994, in room 330, FEMA Building, 301 4th Street, SW., Washington, DC, and in room 840, 301 4th Street, SW., Washington, DC Below is the intended agenda.

Friday, February 18, 1994.

Agenda

Part One—Closed to Public.

9:45 a.m.–10:45 a.m.

1. Discussion based on the Rand draft report for the Under Secretary of Defense for Policy.

Room 330, FEMA Building, 301 4th Street, SW.

Part Two—Open to Public

11 a.m.–5 p.m.

1. Current U.S. Government broadcasters.
2. Members of Congress.
3. Technical experts.
4. Cuba experts.
5. Experts on international broadcasting.

Room 840, 301 4th Street, SW.

The discussion of item one of part one, from 9:45 a.m. to 10:45 a.m. on Friday, February 18, 1994, will be closed to the public. Discussion of item one of part one will include sensitive information and information which, if disclosed, would significantly inhibit the Advisory Panel on Radio Marti and TV Marti from carrying out its mission. 5 U.S.C. 522b(c)(9)(B).

In accordance with established Panel guidelines for public participation, the Panel will only be hearing testimony from invited parties; however, any written statements from members of the public are welcomed and will be considered by the Panel.

Because of federal building security measures, anyone interested in attending the open portion of the meeting should call Tammi Thompson at (202) 475–2204 for further information.

Dated: February 8, 1994.

Joseph Duffey,

Director.

[FR Doc. 94–3312 Filed 2–11–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 30
Monday, February 14, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 17, 1994, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

1. Chief Examiner's Quarterly Report

C. New Business

1. Policy Statements

a. Proposed Policy Statement on Regulatory Philosophy.

b. Proposed Policy Statement for Comment Concerning System Institution Activities Involving the Potential for Non-Exclusive Territories.

2. Regulations

a. Referral of Crimes and Suspected Crimes (Final).

b. Conflict of Interest Rules for Farmer Mac (Final).

Closed Session*

A. New Business

1. Enforcement Actions

Dated: February 10, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–3551 Filed 2–10–94; 3:54 pm]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–3304.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, February 17, 1994 at 10:00 a.m.—Meeting Open to the Public.

The following item was added to the Agenda:

Eligibility of Lyndon H. LaRouche, Jr. to Receive Presidential Primary Matching Funds for the 1992 Election.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–3535 Filed 2–10–94; 3:13 pm]

BILLING CODE 6715–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting; Advance Notice

TIME AND DATE: The Legal Services Corporation Board of Directors will hold a series of meetings during the period of March 10–12, 1994. The meetings will be held at the location reflected below. The tentative meeting schedule is as follows. Agenda for each meeting will be announced at a later date.

March 10, 1994

—Provision for the Delivery of Legal Services Committee Meeting (1:00 p.m.); and

—Audit and Appropriations Committee Meeting (3:00 p.m.).

March 11, 1994

—Operations and Regulations Committee Meeting (9:00 a.m.); and

—Board of Directors Meeting (1:00 p.m.).

March 12, 1994

—Presidential Search Committee Meeting (9:00 a.m.).

PLACE: San Francisco Hilton & Towers, 333 O'Farrell Street, The Imperial "A" Ballroom, San Francisco, CA 94102, (415) 771–1400.

STATUS OF MEETING(S): Open.

HOTEL ACCOMMODATIONS: The San Francisco Hilton & Towers hotel has agreed to hold fifteen (15) sleeping rooms until February 20, 1994 for members of the public at the rate being offered to the Corporation. The block of rooms is being held under the name of the Legal Services Corporation and will be made available to the public on a first come, first serve basis. Please contact the hotel directly at the telephone number given above to make reservations. Please be advised the Corporation can not increase the number of rooms after those in the public block have been reserved. You are encouraged, therefore, to make reservations as soon as is possible.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: February 10, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–3550 Filed 2–10–94; 3:55 pm]

BILLING CODE 7050–01–M

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8), (9) and (10)

federal register

Monday
February 14, 1994

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Federal Property Suitable as Facilities to Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–70]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, and HUD's regulations at 24 CFR part 581, HUD is publishing this Notice to identify Federal buildings and other real property that HUD reviewed in 1993 for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

Under 24 CFR 581.3(b), landholding agencies are required to notify HUD by December 31, 1993, the current availability status and classification of each property controlled by the Agencies that were published by HUD as suitable and available which remain available for application for use by the homeless.

Under 24 CFR 581.8(d), HUD publishes a list of those properties reported by the Agencies and a list of suitable/unavailable properties including the reasons why they are not available.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; Corps of Engineers: Bob Swieconek, Headquarters, Army Corps of Engineers, Attn: CERE–MC, Room 4224, 20 Massachusetts Ave. NW., Washington, DC 20314–1000; (202) 272–1750; Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW., Rm. 4133, Washington, DC 20314–1000; (202) 272–0520; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: Bob Menke, Air Force Real Estate Agency (Area/MI), Bolling AFB, 172 Luke Avenue, Suite 104, Washington, DC 20332–5113; (202) 767–6235; U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; GSA: Leslie Carrington, Federal Property Resources Service, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 208–0619; Dept. of Veterans Affairs: Michael Reynolds, Management Analyst, Dept. of Veterans Affairs, room 414 Lafayette Bldg., 811 Vermont Ave. NW., Washington, DC 20420; (202) 233–5026; Dept. of Agriculture: Marsha Pruitt, Realty Officer, USDA, South Bldg. Rm. 1566, 14th and Independence Ave. SW., Washington, DC 20250; (202) 447–3338; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586–1191, (These are not toll-free numbers).

Dated: February 11, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V Properties Reported in Year 93 Which are Suitable and Available

Agriculture

Minnesota

Buildings

Eric & Laura Brittain—Cabin, Property #:159320004, Fed Reg Date: 12/04/93
Section 18
MN, Co: Itasca, Zip:
Status: Unutilized
Comment: 708 sq. ft., 2-story, needs repair, most recent use—recreation cabin, endangered species habitat, off-site use only

Kenneth Krienke—House, Property #: 159320005, Fed Reg Date: 12/04/93
Govt Lots 7, 8, 9 & 10
MN, Co: Itasca, Zip:
Status: Unutilized
Comment: 2288 sq. ft., 2-story, most recent use—residence, endangered species habitat, off-site use only

Kenneth Krienke—Garage/Shed, Property #: 159320006, Fed Reg Date: 12/04/93
Govt Lots 7, 8, 9 & 10
MN, Co: Itasca, Zip:
Status: Unutilized
Comment: 3840 sq. ft., 1-story pole bldg., earth flooring, endangered species habitat, off-site use only

Kenneth Krienke—Shed, Property #: 159320007, Fed Reg Date: 12/04/93
Govt Lots 7, 8, 9 & 10
MN, Co: Itasca, Zip:
Status: Unutilized
Comment: 126 sq. ft., 1-story, needs repair, most recent use—fish cleaning shed, endangered species habitat, off-site use only

Lundeen—House, Property #: 159320008, Fed Reg Date: 12/04/93
Govt Lot 14
MN, Co: Itasca, Zip:
Status: Unutilized
Comment: 1440 sq. ft., 2-story, wood frame, needs roof replaced, eagle habitat, most recent use—summer residence, off-site use only

Lundeen—Shed, Property #: 159320009, Fed Reg Date: 12/04/93
Govt Lot 14
MN, Co: Itasca, Zip:
Status: Unutilized
Comment: 64 sq. ft., 1-story, eagle habitat, most recent use—fish cleaning shed, off-site use only

Lundeen—Garage, Property #: 159320010, Fed Reg Date: 12/04/93
Govt Lot 14
MN, Co: Itasca, Zip:
Status: Unutilized
Comment: 192 sq. ft., 1-story, needs repair, eagle habitat, most recent use—garage, off-site use only

Lundeen—Cabin (North), Property #: 159320011, Fed Reg Date: 12/04/93
Govt Lot 14
MN, Co: Itasca, Zip:
Status: Unutilized
Comment: 960 sq. ft., 2-story, eagle habitat, most recent use—summer residence, off-site use only

Lundeen—Cabin, Property #: 159320012, Fed Reg Date: 12/04/93
Govt Lot 14
MN, Co: Itasca, Zip:
Status: Unutilized
Comment: 960 sq. ft., 2-story, eagle habitat, most recent use—summer residence, off-site use only

Air Force

Arizona

Buildings

Facility 80002, Property #: 189340052, Fed Reg Date: 12/23/93
Holbrook Radar Site
1313 North 8th Avenue
Holbrook, AZ, Co: Navajo, Zip: 86025–
Status: Unutilized
Comment: 1352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93

Facility 80003, Property #: 189340053, Fed Reg Date: 12/23/93
Holbrook Radar Site
1313 North 8th Avenue
Holbrook, AZ, Co: Navajo, Zip: 86025–
Status: Unutilized
Comment: 1352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93

Facility 80004, Property #: 189340054, Fed Reg Date: 12/23/93
Holbrook Radar Site
1313 North 8th Avenue
Holbrook, AZ, Co: Navajo, Zip: 86025–
Status: Unutilized
Comment: 1096 sq. ft., wood frame, most recent use—2 bedroom residence, scheduled to be vacant 12/93

Facility 80005, Property #: 189340055, Fed Reg Date: 12/23/93
Holbrook Radar Site
1313 North 8th Avenue
Holbrook, AZ, Co: Navajo, Zip: 86025–
Status: Unutilized
Comment: 1096 sq. ft., wood frame, most recent use—2 bedroom residence, scheduled to be vacant 12/93

Facility 80006, Property #: 189340056, Fed Reg Date: 12/23/93
Holbrook Radar Site
1313 North 8th Avenue
Holbrook, AZ, Co: Navajo, Zip: 86025–
Status: Unutilized
Comment: 1352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93

Facility 80007, Property #: 189340057, Fed Reg Date: 12/23/93
Holbrook Radar Site
1313 North 8th Avenue
Holbrook, AZ, Co: Navajo, Zip: 86025–
Status: Unutilized
Comment: 1352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93

Facility 80008, Property #: 189340058, Fed Reg Date: 12/23/93
Holbrook Radar Site
1313 North 8th Avenue
Holbrook, AZ, Co: Navajo, Zip: 86025–
Status: Unutilized
Comment: 1096 sq. ft., wood frame, most recent use—2 bedroom residence, scheduled to be vacant 12/93

Facility 80009, Property #: 189340059, Fed Reg Date: 12/23/93
Holbrook Radar Site
1313 North 8th Avenue
Holbrook, AZ, Co: Navajo, Zip: 86025–
Status: Unutilized
Comment: 1096 sq. ft., wood frame, most recent use—2 bedroom residence, scheduled to be vacant 12/93

Facility 80010, Property #: 189340060, Fed Reg Date: 12/23/93
Holbrook Radar Site
1313 North 8th Avenue
Holbrook, AZ, Co: Navajo, Zip: 86025–
Status: Unutilized
Comment: 1352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93

Facility 80011, Property #: 189340061, Fed Reg Date: 12/23/93
Holbrook Radar Site
1313 North 8th Avenue
Holbrook, AZ, Co: Navajo, Zip: 86025–
Status: Unutilized
Comment: 1352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93

Facility 80012, Property #: 189340062, Fed Reg Date: 12/23/93
Holbrook Radar Site
1313 North 8th Avenue
Holbrook, AZ, Co: Navajo, Zip: 86025–
Status: Unutilized
Comment: 1096 sq. ft., wood frame, most recent use—2 bedroom residence, scheduled to be vacant 12/93

California

Land

60 ARG/DE, Property #: 189010189, Fed Reg Date: 12/04/93
Project Name: Travis Air Force Base
Travis ILS Outer Marker Annex
Rio-Dixon Road
Travis AFB, CA, Co: Solano, Zip: 94535–5496
Location: State Highway 113
Satus: Excess
Comment: .13 acres; most recent use—location for instrument landing systems equipment.

Buildings

Bldg. 604, Property #: 189010237, Fed Reg Date: 12/04/93
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 605, Property #: 189010238, Fed Reg Date: 12/04/93
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 612, Property #: 189010239, Fed Reg Date: 12/04/93
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 611, Property #: 189010240, Fed Reg Date: 12/04/93
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 613, Property #: 189010241, Fed Reg Date: 12/04/93
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 614, Property #: 189010242, Fed Reg Date: 12/04/93
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95648–5000
Status: Unutilized
Comment 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 615, Property #: 189010243, Fed Reg Date: 12/04/93
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 616, Property #: 189010244, Fed Reg Date: 12/04/93
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 617, Property #: 189010245, Fed Reg Date: 12/04/93
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000

Status: Unutilized
Comment 1232 sq. ft.; stucco-wood frame; most recent use—housing.
Bldg. 618, Property #: 189010246, Fed Reg Date: 12/04/93
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment 1232 sq. ft.; stucco-wood frame; most recent use—housing; needs rehab.

Guam

Land

Annex 1, Property #: 189010427, Fed Reg Date: 12/04/93
Project Name: Andersen Communication Anderson Communications
Dededo, GU, Co: Guam, Zip: 96912–
Location: In the municipallity of Dededo.
Status: Underutilized
Comment: 862 acres; subject to utilities easements.

Annex 2, (Partial), Property #: 189010428, Fed Reg Date: 12/04/93
Project Name: Andersen Petroleum Storage
Anderson Petroleum Storage
Dededo, GU, Co: Guam, Zip: 96912–
Location: In the municipality of Dededo.
Status: Underutilized
Comment: 35 acres; subject to utilities easements.

Buildings

Anderson VOR, Property #: 189010267, Fed Reg Date: 12/04/93
Project Name: Andersen VOR
In the Municipality of Dededo
Dededo, GU, Co: Guam, Zip: 96912–
Location: Access is through Route 1 and Route 3, Marine Drive.
Status: Unutilized
Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.

Anderson Radio Beacon Annex, Property #: 189010268, Fed Reg Date: 12/04/93
Project Name: Anderson Radio Beacon Annex
In the municipality of Dededo
Dededo, GU, Co: Guam, Zip: 96912–
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.
Status: Unutilized
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.

Annex No. 4, Property #: 189010545, Fed Reg Date: 12/04/93
Project Name: Anderson Family Housing
Anderson Family Housing
Municipality of Dededo
Dededo, GU, Co: Guam, Zip: 96912–
Location: Access is through Route 1, Marine Drive
Status: Underutilized
Comment; various sq. ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam.

Hamon VOR site (Portion) (AJKZ), Property #: 189120234, Fed Reg Date: 12/04/93
Municipality of Dededo
Dededo, GU, Co: Guam, Zip: 96912–
Location: Approx. 12 miles southwest of Anderson AFB proper
Status: Unutilized Comment: 550 sq. ft. bldg., needs rehab on 82 acres.

Iowa

Buildings

Bldg. 00627, Property #: 189310001, Fed Reg Date: 12/04/93
Sioux Gateway Airport
Sioux City, IA, Co: Woodbury, Zip: 51110–
Status: Unutilized
Comment: 1932 sq. ft., 1-story concrete block bldg., most recent use—storage, pigeon infested
Bldg. 00669, Property #: 189310002, Fed Reg Date: 12/04/93
Sioux Gateway Airport
Sioux City, IA, Co: Woodbury, Zip: 51110–
Status: Unutilized
Comment: 1113 sq. ft., 1-story concrete block bldg., contamination clean-up in process
Bldg. 00106, Fort Dodge, Property #: 189310051, Fed Reg Date: 12/04/93
Ft Dodge, IA, Co: Webster, Zip: 50501–
Status: Unutilized
Comment: 200 sq. ft., 1-story wood frame, needs rehab, most recent use—storage

Idaho

Buildings

Bldg. 121, Property #: 189030007, Fed Reg Date: 12/04/93
Project Name: Mountain Home Air Force Base
Mountain Home Air Force Base
Main Avenue
(See County), ID, Co: Elmore, Zip: 83648–
Status: Excess
Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.

Louisiana

Buildings

Barksdale Radio Beacon Annex, Property #: 189010269, Fed Reg Date: 12/04/93
Project Name: Barksdale Radio Beacon Annex
Barksdale Radio Beacon Annex
Curtis, LA, Co: Bossier, Zip: 71111–
Location: 7 miles south of Bossier City on highway 71 south; left 1¼ miles on highway C1552.
Status: Unutilized
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Maine

Buildings

31 Capehart Family Houses, Property #: 189310052, Fed Reg Date: 12/04/93
Charleston Family Housing Annex, Union St.
Bangor, ME, Co: Penobscot, Zip:
Status: Excess
Comment: 2916–7097 sq. ft., 1–2 story wood, 3-duplexes, 27-four plexes totaling 114 units with garages
GSA No.: 2–D–ME–526G

Michigan

Land

Calumet Air Force Station, Property #: 189010862, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 34 acres; potential utilitities.
Calumet Air Force Station, Property #: 189010863, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Section 31, T58N, R30W
Houghton Township
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 3.78 acres; potential utilitities.

Buildings

Bldg. 30, Property #: 189010779, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.
Bldg. 46, Property #: 189010786, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.
Bldg. 51, Property #: 189010791, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 52, Property #: 189010792, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 53, Property #: 189010793, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 54, Property #: 189010794, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 55, Property #: 189010795, Fed Reg Date: 12/04/93

Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 56, Property #: 189010796, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 57, Property #: 189010797, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 58, Property #: 189010798, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 59, Property #: 189010799, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 60, Property #: 189010800, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 61, Property #: 189010801, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 62, Property #: 189010802, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station.
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 63, Property #: 189010803, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1306 sq. ft., 1 story wood frame residence with garage; possible asbestos.
Bldg. 64, Property #: 189010804, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 65, Property #: 189010805, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 66, Property #: 189010806, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 67, Property #: 189010807, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 68, Property #: 189010808, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 70, Property #: 189010809, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1394 sq. ft.; 1 story concrete block; possible asbestos; most recent use—youth center.
Bldg. 72, Property #: 189010811, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 73, Property #: 189010812, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 74, Property #: 189010813, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 75, Property #: 189010814, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 76, Property #: 189010815, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 77, Property #: 189010816, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 78, Property #: 189010817, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 79, Property #: 189010818, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 80, Property #: 189010819, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 81, Property #: 189010820, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 82, Property #: 189010821 Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 83, Property #: 189010822, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station

Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 84, Property #: 189010823, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 85, Property #: 189010824, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 86, Property #: 189010825, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 87, Property #: 189010826, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 88, Property #: 189010827, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 89, Property #: 189010828, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 97, Property #: 189010829, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.
Bldg. 98, Property #: 189010830, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 114 sq. ft.; 1 floor; potential utilities; most recent use—pump house.
Bldg. 10, Property #: 189010836, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.
Bldg. 216, Property #: 189010847, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 217, Property #: 189010848, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 218, Property #: 189010849, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 219, Property #: 189010850, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 220, Property #: 189010851, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 221, Property #: 189010852, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 222, Property #: 189010853, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 223, Property #: 189010854, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 224, Property #: 189010855, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 215, Property #: 189010856, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 390 sq. ft.; 1 story wood frame housing garage.
Bldg. 212, Property #: 189010859, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 214, Property #: 189010861, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 23, Property #: 189010865, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldg. 24, Property #: 189010866, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldg. 36, Property #: 189010872, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 37, Property #: 189010873, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 201, Property #: 189010879, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Montana

Buildings

Bldg. 00007, Property #: 189330066, Fed Reg Date: 12/04/93

Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 992 sq. ft., 1-story metal, most recent use—auto/hobby shop
Bldg. 00008, Property #: 189330067, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 2640 sq. ft., 1-story metal, most recent use—vehicle parking
Bldg. 00016, Property #: 189330068, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 3604 sq. ft., 1-story cinder block, most recent use—storage
Bldg. 00023, Property #: 189330069, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 3315 sq. ft., 1-story wood, most recent use—fire station
Bldg. 00024, Property #: 189330070, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 5016 sq. ft., 1-story brick, most recent use—dormitory
Bldg. 00027, Property #: 189330071, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 14280 sq. ft., 1-story cinder block, most recent use—recreation center and commissary store
Bldg. 00029, Property #: 189330072, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 63 sq. ft., 1-story metal
Bldg. 00031, Property #: 189330073, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 3130 sq. ft., 1-story cinder block, most recent use—maintenance shop and admin.
Bldg. 00032, Property #: 189330074, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 64 sq. ft., metal, most recent use—storage
Bldg. 00035, Property #: 189330075, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 2252 sq. ft., 4-story metal, most recent use—storage
Bldg. 00039, Property #: 189330076, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 21824 sq. ft., 1-story masonry, most recent use—storage
Bldg. 00040, Property #: 189330077, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 874 sq. ft., 1-story masonry, most recent use—storage
Bldg. 00041, Property #: 189330078, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 108 sq. ft., 1-story masonry
Bldg. 00042, Property #: 189330079, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 760 sq. ft., 1-story masonry, most recent use—warehouse
Bldg. 00044, Property #: 189330080, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 3298 sq. ft., 1-story metal, most recent use—wood hobby shop
Bldgs. 51, 52, 56, 58, Property #: 189330081, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 1352 sq. ft. each, 1-story wood, most recent use—residential
Bldgs. 53–55, 57, 59, 61, 63, 65, 67, 69, 71, Property #: 189330082, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 1152 sq. ft. each, 1-story wood, most recent use—residential
Bldgs. 60, 62, 64, 66, 68, Property #: 189330083, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 1361 sq. ft. each, 1-story wood, most recent use—residential
Bldgs. 70, 72, 74, 78, Property #: 189330084, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 1455 sq. ft. each, 1-story wood, most recent use—residential
Bldgs. 76, 80, Property #: 189330085, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 1343 sq. ft. each, 1-story wood, most recent use—residential
Bldg. 82, Property #: 189330086, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 1553 sq. ft., 1-story wood, most recent use—residential
Bldgs. 150, 152, 154, 156, 158, 160, 162, 164, 168, 170, 172, 174, 176, 178, 180, 182, 184, Property #: 189330087, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 1247 sq. ft. each, 1-story wood, most recent use—residential
Bldgs. 106–109, 112–113, Property #: 189330088, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 36 sq. ft. each, most recent use—fire hose house
Bldgs. 202, 204, 206, 212, 214, 216, 218, Property #: 189330089, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 72 sq. ft. each, most recent use—storage units
Bldgs. 208, 210, Property #: 189330090, Fed Reg Date: 12/04/93
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Comment: 36 sq. ft. each, most recent use—storage

South Dakota

Buildings

West Communications Annex, Property #: 189340051, Fed Reg Date: 12/23/93
Ellsworth Air Force Base
Ellsworth AFB, SD, Co: Meade, Zip: 57706–
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage

Air Force—BC

Arizona

Land

14 Recreation Facilities, Property #: 199210101, Fed Reg Date: 12/04/93
Williams Air Force Base
Williams AFB, AZ, Co: Maricopa, Zip: 85240–5000
Status: Excess
Comment: baseball, softball and soccer fields, tennis courts, track, golf course and driving range, and a camp; scheduled to be vacated 9/30/93

Buildings

700 Units of Family Housing, Property #: 199210096, Fed Reg Date: 12/04/93
Williams Air Force Base
Williams AFB, AZ, Co: Maricopa, Zip: 85240–5000
Status: Excess
Comment: 1-story, 2 to 5 bedrooms, military family housing, scheduled to be vacated 9/30/93
Temporary Living Quarters, Property #: 199210097, Fed Reg Date: 12/04/93
Williams Air Force Base
Williams AFB, AZ, Co: Maricopa, Zip: 85240–5000
Status: Excess
Comment: 1, 2, and 3-story, concrete block and stucco structures including dorms and lodging, scheduled to be vacated 9/30/93

5 Support & Service Facilities, Property #: 199210098, Fed Reg Date: 12/04/93
Williams Air Force Base
Williams AFB, AZ Co: Maricopa, Zip: 85240–5000
Status: Excess
Comment: one 3-story fire station, one 1-story brick chapel, a gate house, post office and education center, scheduled to be vacated 9/30/93

24 Miscellaneous Facilities, Property #: 199210099, Fed Reg Date: 12/04/93
Williams Air Force Base
Williams AFB, AZ, Co: Maricopa, Zip: 85240–5000
Status: Excess
Comment: 1 and 2-story structures including a library, gymnasium, a theater, commissary, stores, and bowling, youth and recreation centers, scheduled to be vacated 9/30/93

6 Recreation Facilities, Property #: 199210100, Fed Reg Date: 12/04/93
Williams Air Force Base
Williams AFB, AZ, Co: Maricopa, Zip: 85240–5000
Status: Excess
Comment: 1-story structures including golf club bldgs., bathhouses, and swimming pools, scheduled to be vacated 9/30/93

6 Medical Facilities, Property #: 199210102, Fed Reg Date: 12/04/93
Williams Air Force Base
Williams AFB, AZ, Co: Maricopa, Zip: 85240–5000
Status: Excess
Comment: 1-story, block and concrete structures including a hospital, clinics and pharmacy, scheduled to be vacated 9/30/93

9 Laboratories, Property #: 199210103, Fed Reg Date: 12/04/93
Williams Air Force Base
Williams AFB, AZ, Co: Maricopa, Zip: 85240–5000
Status: Excess
Comment: eight 1-story and one 3-story metal and concrete/block structures, scheduled to be vacated 9/30/93

36 Training & Admin Facilities, Property #: 199210104, Fed Reg Date: 12/04/93
Williams Air Force Base
Williams AFB, AZ, Co: Maricopa, Zip: 85240–5000
Status: Excess
Comment: 1, 2, and 3-story, concrete block, wood and metal structures including law centers, offices, classrooms and flight training facilities, scheduled to be vacated 9/30/93

12 Warehouse/Stor. Facilities, Property #: 199210105, Fed Reg Date: 12/04/93
Williams Air Force Base
Williams AFB, AZ, Co: Maricopa, Zip: 85240–5000
Status: Excess
Comment: 1-story, concrete, wood and steel structures including warehouses and storage bldgs., scheduled to be vacated 9/30/93

52 Support/Maint. Facilities, Property #: 199210106, Fed Reg Date: 12/04/93
Williams Air Force Base
Williams AFB, AZ, Co: Maricopa, Zip: 85240–5000
Status: Excess
Comment: 1-story, concrete/steel, concrete/block and steel structures including hangars, maintenance and jet engine shops scheduled to be vacated 9/30/93

14 Hazardous/Explosive Storage, Property #: 199210107, Fed Reg Date: 12/04/93
Williams Air Force Base
Williams AFB, AZ, Co: Maricopa, Zip: 85240–5000
Status: Excess
Comment: 1-story concrete and concrete/metal structures, scheduled to be vacated 9/30/93

Colorado

Land

NTMU—Partial Area, Property #: 189010254, Fed Reg Date: 12/04/93
Project Name: Lowry Air Force Base
Lowry Air Force Base
Denver, CO, Co: Denver, Zip: 80230–5000
Location: West of Aspen Terr. housing area and South of (AFAFC) along the base boundary.
Status: Excess
Comment: Approximately 20 acres; sloping parts in Area.

42 Community/Recreation Facs., Property #: 199320012, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Comment: Includes playgrounds, running track, soccer, baseball & softball fields, tennis & basketball courts, scheduled to be vacated 9/30/94.

Buildings

15 Dormitories, Property #: 199320010, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Comment: 4382 to 188923 sq. ft., brick or wood frame, 1, 2, or 3 story, poss. asbestos, some need rehab, incs. dorm housing, motels, ofcrs qtrs., hotel hsg., sched to be vacated 9/30/94.

21 Recreational Facilities, Property #: 199320013, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Comment: brick, wood or cinderblock frame, some need rehab, possible asbestos, incs. gyms, theater, bowling alleys, swimming pools, youth cntrs, museums, sched to be vacated 9/30/94.

18 Administration Bldgs., Property #: 199320014, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Comment: 1143 to 337588 sq. ft., wood, brick, metal or cinderblock, poss. asbestos, some need rehab, incs. correct. fac., hdqtrs bldg, admin services, etc., sched. to be vacated 9/30/94.

30 Training Facilities, Property #: 199320015, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Comment: 1026 to 97442 sq. ft., brick, metal, or cinderblock frame, 1 to 4 story, incs. tech. training labs, TV studio, classrooms, scheduled to be vacated 9/30/94.

20 Commercial Bldgs, Property #: 199320016, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Comment: 64 to 84860 sq. ft., 1 & 2 story, some need rehab, poss. asbestos, incs., child care cntrs, stores, gas station bldgs, chapels, garages, med. clinics, sched to be vacated 9/30/94.

21 Industrial Facilities, Property #: 199320017, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Comment: 757 to 37832 sq. ft., metal, brick, wood or cinderblock, poss. asbestos, some need rehab, incs. vehicle maint., training aid, industrial bldgs, sched to be vacated 9/30/94.

30 Storage/Warehouses, Property #: 199320018, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Comment: 169 to 50363 sq. ft., wood, brick, metal or cinderblock, some need rehab, poss. asbestos, scheduled to be vacated 9/30/94.

10 Covered Storage Facilities, Property #: 199320019, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Comment: 264 to 9433 sq. ft., wood, metal or brick frame, needs rehab, possible asbestos, scheduled to be vacated 9/30/94.

Florida

Land

Land, Property #: 199340001, Fed Reg Date: 12/30/93
Homestead Air Force Base
Miami, FL, Co: Dade, Zip 33218–0001
Status: Excess
Comment: 843 acres, scheduled to be vacant 3/31/94.

Land—underlying housing, Property #: 199340009, Fed Reg Date: 12/04/93
Homestead Air Force Base
Miami, FL, Co: Dade, Zip 33218–0001
Status: Excess
Comment: 428 acres—housing on land scheduled for demolition, scheduled to be vacated 3/31/94.

Buildings

9 Industrial Storage Bldgs., Property #: 199340003, Fed Reg Date: 12/30/93
Homestead Air Force Base
Miami, FL, Co: Dade, Zip 33218–0001
Status: Excess
Comment: 792 to 23415 sq. ft., 1 story, needs rehab, scheduled to be vacant 3/31/94.

17 Administrative Bldgs., Property #: 199340004, Fed Reg Date: 12/30/93
Homestead Air Force Base
Miami, FL, Co: Dade, Zip: 33218–0001
Status: Excess
Comment: 960 to 25653 sq. ft., 1–3 story, needs rehab, scheduled to be vacant 3/31/94.

13 Dormitories, Property #: 199340005, Fed Reg Date: 12/30/93
Homestead Air Force Base
Miami, FL, Co: Dade, Zip: 33218–0001
Status: Excess
Comment: 13426 to 26034 sq. ft., 2–3 story, needs rehab, scheduled to be vacant 3/31/94.

9 Miscellaneous Bldgs., Property #: 199340006, Fed Reg Date: 12/30/93
Homestead Air Force Base
Miami, FL, Co: Dade, Zip: 33218–0001
Status: Excess
Comment: 1344 to 93202 sq. ft., 1–2 story, needs rehab, scheduled to be vacant 3/31/94, includes dining hall, stores, child care center, dental clinic, classroom.

8 Recreational Facilities, Property #: 199340007, Fed Reg Date: 12/30/93
Homestead Air Force Base
Miami, FL, Co: Dade, Zip: 33218–0001
Status: Excess
Comment: 384 to 27953 sq. ft., 1–2 story, needs rehab, scheduled to be vacant 3/31/94, includes bathhouse, gymnasium, bowling center, officers club, golf club house.

6 Warehouses, Property #: 199340008, Fed Reg Date: 12/30/93
Homestead Air Force Base
Miami, FL, Co: Dade, Zip: 33218–0001
Status: Excess
Comment: 3600 to 90683 sq. ft., 1 story, needs rehab, scheduled to be vacant 3/31/94.

Indiana

Land

Land, Property #: 199330001, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: 13 parcels totalling 839 acres, easement restrictions, scheduled to be vacated 9/30/94.

18 Recreational Facilities, Property #: 199330015, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: Includes softball/baseball fields, tennis courts, recreation courts, golf course and range, scheduled to be vacated 9/30/94.

Buildings

378 Multifamily Housing, Property #: 199330002, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: 1410 to 2826 sq. ft., 2–4 bedrooms, 1 and 2 unit bldgs., attached garages or carports, scheduled to be vacated 9/30/94.

168 Multifamily Housing, Property #: 199330003, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: 1619 to 3960 sq. ft., 3–4 bedrooms, 1 and 2 unit bldgs., scheduled to be vacated 9/30/94.

44 Multifamily Housing, Property #: 199330004, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: 5256 to 7430 sq. ft., 2–4 bedrooms, w/detached carports, 4 and 6 unit bldgs., scheduled to be vacated 9/30/94.

10 Dormitories, Property #: 199330005, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: 1984 to 26739 sq. ft., presence of asbestos, includes dorms, scheduled to be vacated 9/30/94.

6 Temporary Living Facilities, Property #: 199330006, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: 1984 sq. ft., includes temporary facilities w/attached carports, scheduled to be vacated 9/30/94.

Bldg. 162, Property #: 199330007, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: 2160 sq. ft., presence of asbestos, most recent use—reserved forces training, scheduled to be vacated 9/30/94.

11 Administration Bulldings, Property #: 199330008, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: 1226 to 55797 sq. ft., includes law centers/admin, presence of asbestos, 3 near airport clear zone, scheduled to be vacated 9/30/94.

22 Support Facilities, Property #: 199330009, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: 784 to 55267 sq. ft., presence of asbestos, includes snack bar, library, commissary, animal clinic, credit union, base exchange, chapel, scheduled to be vacated 9/30/94.

2 Communication Facilities, Property #: 199330010, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: 3098 to 6832 sq. ft., presence of asbestos, scheduled to be vacated 9/30/94.

12 Maintenance Facilities, Property #: 199330011, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: 323 to 130492 sq. ft., presence of asbestos, 3 in airport clear zone, incs. sheds, hangars, BE maintenance, covered storage, scheduled to be vacated 9/30/94.

11 Storage Facilities, Property #: 199330012, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: 587 to 21214 sq. ft., presence of asbestos, 2 in airport clear zone, includes warehouses, open storage, scheduled to be vacated 9/30/94.

2 Medical Facilities, Property #: 199330013, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: 5573 to 58291 sq. ft., presence of asbestos, includes dental clinic, medical clinic, scheduled to be vacated 9/30/94.

5 Recreational Facilities, Property #: 199330014, Fed Reg Date: 12/04/93
Grissom Air Force Base
Grissom, IN, Co: Miami, Zip: 46971–5000
Status: Excess
Comment: Includes hay barn, bowling, swimming pool, golf clubhouse, and storage, scheduled to be vacated 9/30/94.

Maine

Land

Land—On Base, Property #: 199320045, Fed Reg Date: 12/04/93
Loring Air Force Base
Limestone, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 5233 acres of which 3583 is unimproved; improved land includes aprons, roads, runways, parking, etc.

Land—Off Base, Property #: 199320046, Fed Reg Date: 12/04/93
Loring Air Force Base
Limestone, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 4517 acres of which 4047 is unimproved; improved land includes roads, runways, parking, etc.

Buildings

Bldg. 1, Property #: 189010590, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.

Bldg. 2, Property #: 189010591, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.

Bldg. 3, Property #: 189010592, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–

Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
Bldg. 4, Property #: 189010593, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
Bldg. 5, Property #: 189010594, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
Bldg. 6, Property #: 189010595, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
Bldg. 7, Property #: 189010596, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
Bldg. 8, Property #: 189010597, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
Bldg. 9, Property #: 189010598, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
Bldg. 10, Property #: 189010599, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
Bldg. 11, Property #: 189010600, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
Bldg. 12, Property #: 189010601, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
Bldg. 13, Property #: 189010602, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
Bldg. 14, Property #: 189010603, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
Bldg. 15, Property #: 189010604, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story wood frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
Bldg. 16, Property #: 189010605, Fed Reg Date: 12/04/93
Project Name: Family Housing Annex
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook, Zip: 04750–
Status: Excess
Comment: 1116 sq. ft.; 1 story wood frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.
71 Wherry Family Housing, Property #: 199320033, Fed Reg Date: 12/04/93
Loring Air Force Base
Caribou, ME, Co: Aroostook, Zip: 04736–
Status: Excess
Comment: 1894 to 22302 sq. ft., 1 & 2 story wood frame residence, scheduled to be vacated 9/30/94.
29 Capehart Family Housing, Property #: 199320034, Fed Reg Date: 12/04/93
Loring Air Force Base
Caribou, ME, Co: Aroostook, Zip: 04736–
Status: Excess
Comment: 7748 to 7989 sq. ft., 2 story shingles frame residences, scheduled to be vacated 9/30/94.
26 Family Housing, Property #: 199320035, Fed Reg Date: 12/04/93
Loring Air Force Base
Caribou, ME, Co: Aroostook, Zip: 04736–
Status: Excess
Comment: 1420 to 10800 sq. ft., 1, 2 & 3 story aluminum and wood frame residences, scheduled to be vacated 9/30/94.
3 Officer's Quarters, Property #: 199320036, Fed Reg Date: 12/04/93
Loring Air Force Base
Caribou, ME, Co: Aroostook, Zip: 04736–
Status: Excess
Comment: 3688 to 38058 sq. ft., 1 & 2 story aluminum and wood frame, scheduled to be vacated 9/30/94.
117 Housing Garages, Property #: 199320037, Fed Reg Date: 12/04/93
Loring Air Force Base
Caribou, ME, Co: Aroostook, Zip: 04736–
Status: Excess
Comment: wood/cedar frame, 1 story, various sq. ft., scheduled to be vacated 9/30/94.
12 Storage Bldgs., Property #: 199320038, Fed Reg Date: 12/04/93
Loring Air Force Base
Caribou, ME, Co: Aroostook, Zip: 04736–
Status: Excess
Comment: 288 to 3729 sq. ft., wood frame, 1 story, incs. storage & maintenance shops, scheduled to be vacated 9/30/94.
42 Admin/Community Support, Property #: 199320039, Fed Reg Date: 12/04/93
Loring Air Force Base
Caribou, ME, Co: Aroostook, Zip: 04736–
Status: Excess
Comment: 900 to 145877 sq. ft., 1 to 3 story, brick, concrete or wood frame, incs., chapel, post ofc., dining hall, library, child care cntrs., theater, pool, sched to be vacated 9/30/94.
18 Compound/Vehicle Maint., Property #: 199320040, Fed Reg Date: 12/04/93
Loring Air Force Base
Caribou, ME, Co: Aroostook, Zip: 04736–
Status: Excess

Comment: wood, metal or concrete structures, incs. storage facs., vehicle maint., maint. shops, dry cleaners, auto shop, water supply, scheduled to be vacated 9/30/94.
59 Nose Docks/Hangers, Property #: 199320041, Fed Reg Date: 12/04/93
Loring Air Force Base
Caribou, ME, Co: Aroostook, Zip: 04736–
Status: Excess
Comment: concrete, metal or brick structures, incs., fuel bldgs., pump stations, vehicle parking, storage sheds & bldgs, security operations, scheduled to be vacated 9/30/94.
22 Flightline Support, Property #: 199320042, Fed Reg Date: 12/04/93
Loring Air Force Base
Caribou, ME, Co: Aroostook, Zip: 04736–
Status: Excess
Comment: concrete/metal/wood/brick structures, incs. fire stations, correction facility, avionics shop, maint. shops, vehicle parking, utility vault, scheduled to be vacated 9/30/94.
86 Weapons Storage Area, Property #: 199320043, Fed Reg Date: 12/04/93
Loring Air Force Base
Caribou, ME, Co: Aroostook, Zip: 04736–
Status: Excess
Comment: concrete/metal/wood/brick structures, incs. inspection bldgs., igloos storage, munitions storage, warehouses, police bldg., storage magazines, scheduled to be vacated 9/30/94.

Michigan

Land

5 Recreational Fields, Property #: 199240022, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 1 to 5 acres, scheduled to be vacated 6/30/93, includes softball, baseball, football, and soccer fields.
Recreation Courts, Property #: 199240023, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: Approx. 1 acre, asphalt, scheduled to be vacated 6/30/93.
Camping Area, Property #: 199240024, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: Approx. 1 acre, scheduled to be vacated 6/30/93.
Tract 7257, Property #: 199240025, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: Approx. 1 acre, scheduled to be vacated 6/30/93, most recent use—asphalt running track.
Air Force Land, Property #: 199240026, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: Approx. 56 acres, scheduled to be vacated 6/30/93, portion located in airport runway area.

Buildings

Bldg. 1101, Housing, Property #: 199240001, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 1073 sq. ft., 1 story wood frame, scheduled to be vacated 6/30/93.
300 SF Housing, Manufactured, Property #: 199240002, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 1170 sq. ft. each, 1 story, (10000 area), scheduled to be vacated 6/30/93.
948 Family Housing, Capehart, Property #: 199240003, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 3502 to 14363 sq. ft., 1,2,4,6 & 8 unit buildings, (8000 and 9000 area), scheduled to be vacated 6/30/93.
100 Family Housing, Appr 50–69, Property #: 199240004, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 1192 to 7574 sq. ft., 1,2,6 & 7 unit buildings, (1700 and 1800 area), scheduled to be vacated 6/30/93.
13 Dormitories, Property #: 199240005, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 3025 to 90501 sq. ft., 1,2,3 & 4 story, single military housing, scheduled to be vacated 6/30/93.
4 Recreation Pavilions, Property #: 199240006, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 668 to 2398 sq. ft., most recent use—recreational activities, scheduled to be vacated 6/30/93.
3 Recreational Facilities, Property #: 199240007, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 4317 to 13162 sq. ft., scheduled to be vacated 6/30/93, includes youth center, child care, recreation center.
3 Dining Facilities, Property #: 199240008, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 13388 to 15062 sq. ft., scheduled to be vacated 6/30/93, includes open mess.
4 Retail Outlets, Property #: 199240009, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 4208 to 40701 sq. ft., scheduled to be vacated 6/30/93, includes service outlet exchange, sales store, exchange branch, base package store.
4 Warehouses, Property #: 199240010, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 7856 to 104213 sq. ft., scheduled to be vacated 6/30/93, includes commissary, supply & equipment base, traffic facility.
4 Storage facilities, Property #: 199240011, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 384 to 960 sq. ft., needs rehab, scheduled to be vacated 6/30/93, includes open mess.
3 Office Trailers, Property #: 199240012, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 480 to 1400 sq. ft., scheduled to be vacated 6/30/93, includes child care center, admin offices, petroleum ops bldg.
11 Office Buildings, Property #: 199240013, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 596 to 30154 sq. ft., scheduled to be vacated 6/30/93, includes personnel offices, environmental health, bdtrs group, maintenance, family hsg management ofc.
6 Maintenance Buildings, Property #: 199240014, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 928 to 26933 sq. ft., scheduled to be vacated 6/30/93, includes vehicle operations, vehicle maintenance shops, arts & crafts center.
Bldg. 440, Theatre, Property #: 199240015, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 5825 sq. ft., 1 story, scheduled to be vacated 6/30/93, masonry and concrete frame.
Bldg. 1135, Property #: 199240016, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 569 sq. ft., 1 story, scheduled to be vacated 6/30/93, most recent use—swimmers bath house.
Bldg. 420, Property #: 199240017, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 14522 sq. ft., 1 story, scheduled to be vacated 6/30/93, most recent use—bowling alley.
Bldg. 418, Property #: 199240018, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 8210 sq. ft., 1 story, concrete frame, scheduled to be vacated 6/30/93, most recent use—library.

Bldg. 445, Property #: 199240019, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 19977 sq. ft., 1 story, concrete/masonry frame, roof leaks, scheduled to be vacated 6/30/93, most recent use—chapel.
Bldg. 228, Property #: 199240020, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 14946 sq. ft., 1 story, concrete & masonry frame, scheduled to be vacated 6/30/93, most recent use—education facility.
Bldg. 7295, Property #: 199240021, Fed Reg Date: 12/04/93
Wurtsmith Air Force Base
Oscoda, MI, Co: Iosco, Zip: 48753–
Status: Excess
Comment: 1911 sq. ft., 2 story, octagon shaped, corrugated metal frame, scheduled to be vacated 6/30/93, most recent use—radar bldg.

Missouri

Buildings

Facility 918, Property #: 199320022, Fed Reg Date: 12/04/93
Richards-Gebaur Air Force Base
15360 Hangar Road
Kansas City, MO, Co: Jackson, Zip: 64147–
Status: Excess
Comment: 68767 sq. ft., 1 story concrete block, most recent use—aircraft hangar, scheduled to be vacated 9/30/94.
1 Medical Clinic, Property #: 199320025, Fed Reg Date: 12/04/93
Richards-Gebaur Air Force Base
Kansas City, MO, Co: Jackson, Zip: 64147–
Status: Excess
Comment: 9099 sq. ft., 1 story block/wood frame, (Facility # 604), scheduled to be vacated 9/30/94.
12 Offices, Property #: 199320026, Fed Reg Date: 12/04/93
Richards-Gebaur Air Force Base
Kansas City, MO, Co: Jackson, Zip: 64147–
Status: Excess
Comment: 856 to 67816 sq. ft., 1 & 2 story, wood, concrete block, prefab steel or corrugated metal, incs. ofc clinics, base exchange, ofcs., maint shop, sched to be vacated 9/30/94.
Facility 1049, Property #: 199320028, Fed Reg Date: 12/04/93
Richards-Gebaur Air Force Base
Kansas City, MO, Co: Jackson, Zip: 64147–
Status: Excess
Comment: 611 sq. ft., 1 story concrete block, most recent use—office/storage/small arms range, scheduled to be vacated 9/30/94.
Facility 924, Property #: 199320029, Fed Reg Date: 12/04/93
Richards-Gebaur Air Force Base
Kansas City, MO, Co: Jackson, ZIP: 64147–
Status: Excess
Comment: 569 sq. ft., 1 story wood frame, most recent use—grounds shop, scheduled to be vacated 9/30/94.
3 Community Support Facilities, Property #: 199320030, Fed Reg Date: 12/04/93
Richards-Gebaur Air Force Base
Kansas City, MO, Co: Jackson, Zip: 64147–
Status: Excess
Comment: 308 to 10417 sq. ft., wood & concrete block, incs. fire station, communications support, control tower (7 story), scheduled to be vacated 9/30/94.
10 Maintenance Shops/Hangars, Property #: 199320031, Fed Reg Date: 12/04/93
Richards-Gebaur Air Force Base
Kansas City, MO, Co: Jackson, Zip: 64147–
Status: Excess
Comment: 1812 to 23404 sq. ft., 1 story corrugated metal or concrete block, scheduled to be vacated 9/30/94.
28 Storage Facilities, Property #: 199320032, Fed Reg Date: 12/04/93
Richards-Gebaur Air Force Base
Kansas City, MO, Co: Jackson, Zip: 64147–
Status: Excess
Comment: 141 to 97400 sq. ft., wood, concrete block or steel beams, incs. covered open storage, offc/storage and sheds, scheduled to be vacated 9/30/94.

Ohio

Buildings

Bldg. 812, Property #: 199330019, Fed Reg Date: 12/04/93
Rickenbacker Air National Guard
Columbus, OH, Co: Franklin, Zip: 43217–
Status: Excess
Comment: 13988 sq. ft., 1 story, secured area w/alternate access, most recent use—base exchange, cinderblock/brick frame, asbestos present, scheduled to be vacated 9/30/94.
4 Recreational Facilities, Property #: 199330021, Fed Reg Date: 12/04/93
Rickenbacker Air National Guard
Columbus, OH, Co: Franklin, Zip: 43217– 12/04/93
Status: Excess
Comment: 800 to 23510 sq. ft., secured area w/alternate access, bldgs need repairs, includes swimming pools, consolidated club, bath house, scheduled to be vacated 9/30/94.

Texas

Buildings

9 Military Family Housing, Property #: 199210108, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 1203 sq. ft., 1-story wood frame residences, scheduled to be vacated 9/30/93
51 Military Family Housing, Property #: 199210109, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 1204 sq. ft., 1-story wood frame residences, scheduled to be vacated 9/30/93
56 Military Family Housing, Property #: 199210110, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 1209 sq. ft., 1-story wood frame residences, scheduled to be vacated 9/30/93
11 Military Family Housing, Property #: 199210111, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 1348 sq. ft., 1-story wood frame residences, scheduled to be vacated 9/30/93.
21 Military Family Housing, Property #: 199210112, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 1387 sq. ft., 1-story wood frame residences, scheduled to be vacated 9/30/93.
49 Military Family Housing, Property #: 199210113, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 1397 sq. ft., 1-story wood frame residences, scheduled to be vacated 9/30/93.
19 Military Family Housing, Property #: 199210114, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 1489 sq. ft., 1-story wood frame residences, scheduled to be vacated 9/30/93.
33 Military Family Housing, Property #: 199210115, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 1493 sq. ft., 1-story wood frame residences, scheduled to be vacated 9/30/93
17 Military Family Housing, Property #: 199210116, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 1581 sq. ft., 1-story wood frame residences, scheduled to be vacated 9/30/93
9 Military Family Housing, Property #: 199210117, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 1655 sq. ft., 1-story wood frame residences, scheduled to be vacated 9/30/93
10 Military Family Housing, Property #: 199210118, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 2450 sq. ft., 1-story concrete residences, scheduled to be vacated 9/30/93
9 Military Family Housing, Property #: 199210119, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 2450 sq. ft., 1-story concrete residences, scheduled to be vacated 9/30/93
5 Military Family Housing, Property #: 199210120, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 5601 sq. ft., 2-story concrete residences, scheduled to be vacated 9/30/93
12 Military Family Housing, Property #: 199210121, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 5601 sq. ft., 2-story concrete residences, scheduled to be vacated 9/30/93
41 Military Family Housing, Property #: 199210122, Fed Reg Date: 12/04/93
Carswell Air Force Base
Ft. Worth, TX, Co: Tarrant, Zip: 76127–
Status: Excess
Comment: 1-story brick and wood residences, scheduled to be vacated 9/30/93

Army

Alabama

Buildings

Bldg. T00221, Property #: 219110042, Fed Reg Date: 12/04/93
Project Name: Fort McClellan
Fort McClellan
Fort McClellan, AL, Co: Calhoun, Zip: 36205–5000
Location: Take left turn off Baltzell Gate Road.
Status: Underutilized
Comment: 4125 sq. ft.; one story wood frame; needs major rehab; termite infested, presence of asbestos; off-site use only.
Bldg. T00796, Property #: 219110043, Fed Reg Date: 12/04/93
Project Name: Fort McClellan
Fort McClellan
Fort McClellan, AL, Co: Calhoun, Zip: 36205–5000
Location: Intersection of 19th and 20th Streets.
Status: Underutilized
Comment: 1340 sq. ft.; one story wood frame; needs major rehab; presence of asbestos; off-site use only.
Bldg. T00883, Property #: 219110044, Fed Reg Date: 12/04/93
Project Name: Fort McClellan
Fort McClellan
3rd Avenue
Fort McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Underutilized
Comment: 760 sq. ft.; one story wood frame; needs major rehab; presence of asbestos; off-site use only.
Bldg. T01121, Property #: 219110048, Fed Reg Date: 12/04/93
Project Name: Fort McClellan
Fort McClellan
MacArthur Avenue
Fort McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Underutilized
Comment: 2400 sq. ft.; two story wood frame; needs rehab; presence of asbestos; off-site use only.
Bldg. T01123, Property #: 219110049, Fed Reg Date: 12/04/93
Project Name: Fort McClellan
Fort McClellan
MacArthur Avenue
Fort McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Underutilized
Comment: 2400 sq. ft.; two story wood frame; needs rehab; presence of asbestos; off-site use only.
Bldg. T01124, Property #: 219110050, Fed Reg Date: 12/04/93
Project Name: Fort McClellan
Fort McClellan
MacArthur Avenue
Fort McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Unutilized.
Comment: 2400 sq. ft.; two story wood frame; needs rehab; presence of asbestos; off-site use only.
Bldg. 8913, Property #: 219140025, Fed Reg Date: 12/04/93
Fort Rucker
7th Avenue
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized.
Comment: 3100 sq. ft., 1 story wood, most recent use—chaplain's conference room, off-site use only.
Bldg. 8914, Property #: 219140026, Fed Reg Date: 12/04/93
Fort Rucker
7th Avenue
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized.
Comment: 2250 sq. ft., 1 story wood, most recent use—chaplain headquarters, off-site use only.
Bldg. T03202, Fort Rucker, Property #: 219210001, Fed Reg Date: 12/04/93
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized.
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.
Bldg. T03203, Fort Rucker, Property #: 219210002, Fed Reg Date: 12/04/93
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized.
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.
Bldg. T03206, Fort Rucker, Property #: 219210003, Fed Reg Date: 12/04/93
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized.
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.
Bldg. T03207, Fort Rucker, Property #: 219210004, Fed Reg Date: 12/04/93
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized.
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.
Bldg. T03208, Fort Rucker, Property #: 219210005, Fed Reg Date: 12/04/93
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized.
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.
Bldg. T03211, Fort Rucker, Property #: 219210006, Fed Reg Date: 12/04/93
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized.
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.
Bldg. T03213, Fort Rucker, Property #: 219210007, Fed Reg Date: 12/04/93
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized.
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.
Bldg. T03216, Fort Rucker, Property #: 219210008, Fed Reg Date: 12/04/93
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized.
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.
Bldg. T03214, Fort Rucker, Property #: 219230001, Fed Reg Date: 12/04/93
Cowboy & Crusader Streets
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized.
Comment: 3306 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only.
Bldg. T03215, Fort Rucker, Property #: 219230002, Fed Reg Date: 12/04/93
Cowboy & Crusader Streets
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized.
Comment: 3452 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only.

Arizona

Buildings

Bldg. 70117—Fort Huachuca, Property #: 219120306, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess.
Comment: 3434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—general instructional, off-site use only.
Bldg. 70118—Fort Huachuca, Property #: 219120307, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess.
Comment: 3434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—general instructional, off-site use only.
Bldg. 70119—Fort Huachuca, Property #: 219120308, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—general instructional, off-site use only
Bldg. 70120—Fort Huachuca, Property #: 219120309, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess

Comment: 3434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only
Bldg. 70225—Fort Huachuca, Property #: 219120310, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3813 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only
Bldg. 83006—Fort Huachuca, Property #: 219120311, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 2062 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only
Bldg. 83007—Fort Huachuca, Property #: 219120312, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 2000 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only
Bldg. 83008—Fort Huachuca, Property #: 219120313, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 2192 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only
Bldg. 83015—Fort Huachuca, Property #: 219120314, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 2325 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only
Bldg. 81001, Property #: 219240720, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only
Bldg. 81017, Property #: 219240721, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2269 sq. ft., 1 story wood frame, possible asbestos, most recent use—classroom, scheduled to become vacant in 6 months, off-site use only
Bldg. 81020, Property #: 219240722, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only
Bldg. 67204, Property #: 219240723, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 4332 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only
Bldg. 81010, Property #: 219240724, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1955 sq. ft., 1 story wood fra,e, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only
Bldg. 81013, Property #: 219240725, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1955 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only
Bldg. 81024, Property #: 219240726, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1265 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only
Bldg. 81025, Property #: 219240727, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1265 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only
Bldg. 66151, Property #: 219240728, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 4194 sq. ft., 2 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only
Bldg. 72219, Property #: 219240729, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2730 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only
Bldg. 72220, Property #: 219240730, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2879 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only
Bldg. 72221, Property #: 219240731, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 3736 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only
Bldg. 85007, Property #: 219240732, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 4385 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only
Bldg. 67108, Property #: 219240733, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2403 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only
Bldg. 70226, Property #: 219240734, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1868 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only
Bldg. 71116, Property #: 219240735, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 3470 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only
Bldg. 71215, Property #: 219240736, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 4854 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only
Bldg. 70110, Property #: 219240739, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2675 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only
Bldg. 70111, Property #: 219240740, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only
Bldg. 70113, Property #: 219240741, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only
Bldg. 70114, Property #: 219240742, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized

Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only
Bldg. 70115, Property #: 219240743, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only
Bldg. 70123, Property #: 219240744, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only
Bldg. 70124, Property #: 219240745, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 3298 sq. ft.; 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only
Bldg. 70128, Property #: 219240746, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 3343 sq. ft.; 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only
Bldg. 70210, Property #: 219240747, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 3258 sq. ft.; 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only
Bldg. 70211, Property #: 219240748, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2966 sq. ft.; 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only
Bldg. 70221, Property #: 219240749, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2526 sq. ft.; 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only
Bldg. 70222, Property #: 219240750, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1627 sq. ft.; 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only
Bldg. 71214, Property #: 219240751, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 3779 sq. ft.; 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only
Bldg. 82013, Property #: 219240752, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2193 sq. ft.; 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only
Bldg. 90327, Property #: 219240753, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 279 sq. ft.; 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only
Bldg. 71213, Property #: 219240754, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 3379 sq. ft.; 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only
Bldg. 82007, Property #: 219240755, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 4386 sq. ft.; 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only
Bldg. 82009, Property #: 219240756, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2444 sq. ft.; 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only
Bldg. 70216, Property #: 219310287, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3725 sq. ft.; 1 story wood frame, presence of asbestos, most recent use—admin. off-site use only
Bldg. 70215, Property #: 219310288, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3706 sq. ft.; 1 story wood frame, presence of asbestos, most recent use—admin., off-site use only
Bldg. 70214, Property #: 219310289, Fed Reg Date: 12/04/93
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3142 sq. ft.; 1 story wood structure, pressence of asbestos, most recent use—admin., off-site use only
Bldg. 70212, Fort Huachuca, Property #: 219310290, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3534 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 70220, Fort Huachuca, Property #: 219310291, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 1249 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 70218, Fort Huachuca, Property #: 219310292, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3475 sq. ft., 1-story wood, presence of asbestos, most recent use—classroom, off-site use only.
Bldg. 70217, Fort Huachuca, Property #: 219310293, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 304 sq. ft., 1-story concrete block, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 80010, Fort Huachuca, Property #: 219310294, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 2318 q. ft , 1-story wood, presence of asbestos, most recent use—admin.
Bldg. 84103, Fort Huachuca, Property #: 219310296, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 984 sq. ft., 1-story, presence of asbestos and lead paint, most recent use—admin.
Bldg. 67101, Fort Huachuca, Property #: 219310297, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 2216 sq. ft., 1-story wood, presence of asbestos and lead paint, most recent use—classroom.
Bldg. 30012, Fort Huachuca, Property #: 219310298, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage.
Bldg. 90328, Fort Huachuca, Property #: 219310299, Fed Reg Date: 12/04/93
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 144 sq. ft., 1-story wood, most recent use—storage.
Bldg. S–120, Property #: 219320202, Fed Reg Date: 12/04/93
Yuma Proving Ground
Yuma, AZ, Co: Yuma/LaPaz, Zip: 85365–9104
Status: Unutilized
Comment: 6845 sq. ft., 1 story wood frame, presence of asbestos, most recent use—

bowling center, scheduled to be vacated 11/15/93.
Bldg. 67221, Property #: 219330235, Fed Reg Date: 12/04/93
U.S. Army Intelligence Center, Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1068 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only.
Bldg. 83102, Property #: 219330236, Fed Reg Date: 12/04/93
U.S. Army Intelligence Center, Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 984 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only.
Bldg. 84010, Property #: 219330237, Fed Reg Date: 12/04/93
U.S. Army Intelligence Center, Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2147 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only.
Bldg. 82008, Property #: 219330238, Fed Reg Date: 12/04/93
U.S. Army Intelligence Center, Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2193 sq. ft., 2-story wood, presence of asbestos, most recent use—barracks, off-site use only.

Colorado

Buildings

Bldg. T–3449, Property #: 219320205, Fed Reg Date: 12/04/93
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 7528 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—storage.
Bldg. T–6010, Property #: 219320206, Fed Reg Date: 12/04/93
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 2830 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—storage.
Bldg. T–6034, Property #: 219320208, Fed Reg Date: 12/04/93
Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Status: Unutilized
Comment: 1328 sq ft., 1 story concrete frame, needs rehab, off-site removal only, most recent use—offices.

Georgia

Buildings

Bldg. 5390, Property #: 219010137, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2432 sq ft.; most recent use—dining room; needs rehab.
Bldg. 5362, Property #: 219010147, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 5559 sq ft.; most recent use—service club; needs rehab.
Bldg. 5392, Property #: 219010151, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2432 sq ft.; most recent use—dining room; needs rehab.
Bldg. 5391, Property #: 219010152, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2432 sq ft.; most recent use—dining room; needs rehab.
Bldg. 4605, Property #: 219011493, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 915 sq ft., buildings in poor condition, major construction needed to be made habitable.
Bldg. 4487, Property #: 219011681, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1868 sq ft.; most recent use—telephone exchange bldg.; needs substantial rehabilitation; 1 floor.
Bldg. 4319, Property #: 219011683, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2584 sq ft.; most recent use—vehicle maintenance shop; needs substantial rehabilitation; 1 floor.
Bldg. 3400, Property #: 219011694, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2570 sq ft.; most recent use—fire station; needs substantial rehabilitation; 1 floor.
Bldg. 2285, Property #: 219011704, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4574 sq ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.
Bldg. 4092, Property #: 219011709, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 336 sq ft.; most recent use—inflammable materials storage; needs substantial rehabilitation; 1 floor.
Bldg. 4089, Property #: 219011710, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 176 sq ft.; most recent use—gas station; needs substantial rehabilitation; 1 floor.
Bldg. 5276, Property #: 219012376, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2124 sq ft.; 2 story; most recent use—barracks; poor condition; needs major rehab.
Bldg. 1235, Property #: 219014887, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9367 sq ft.; 1 story building; needs rehab; most recent use—General Storehouse.
Bldg. 1236, Property #: 219014888, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.
Bldg. 1251, Property #: 219014889, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 18385 sq. ft.; 1 story building; needs rehab; most recent use—Arms Repair Shop.
Bldg. 2591, Property #: 219014906, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1663, sq. ft.; 1 story building; needs rehab; most recent use—General storehouse.
Bldg. 4491, Property #: 219014916, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 18240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.
Bldg. 4633, Property #: 219014919, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.
Bldg. 4649, Property #: 219014922, Fed Reg Date: 12/04/93
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–

Status: Unutilized
Comment: 2250 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.
Bldg. 1234, Property #: 219120254, Fed Reg Date: 12/04/93
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Untilized
Comment: 16148 sq. ft., 2 story, most recent use—officer's club needs rehab.
Bldg. 2150, Property #: 219120258, Fed Reg Date: 12/04/93
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3909 sq. ft.; 1 story building; needs rehab, most recent use—general inst. bldg.
Bldg. 2409, Property #: 219120263, Fed Reg Date: 12/04/93
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9348 sq. ft.; 1 story, needs rehab, most recent use—general purpose warehouse.
Bldg 2548, Property #: 219120264, Fed Reg Date: 12/04/93
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2337 sq. ft.; 1 story, needs rehab, most recent use—clinic w/o beds.
Bldg. 2590, Property #: 21912065, Fed Reg Date: 12/04/93
Fort Benning
Ft. Benning, GA. Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3132 sq. ft.; 1 story, needs rehab, most recent use—vehicle maintenance shop.
Bldg. 3828, Property #: 21912066, Fed Reg Date: 12/04/93
Ft Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 628 sq. ft.; 1 story, needs rehab, most recent use—general storehouse.
Bldg. 3086, Fort Benning, Property #: 219220688, Fed Reg Date: 12/04/93
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2 story most recent use—barracks, needs major rehab, off-site removal only
Bldg. 3089 Fort Benning, Property #: 219220689, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—barracks, needs major rehab, off-site removal only.
Bldg. 3092, Fort Benning, Property #: 219220690, Fed Reg Date: 12/04/93
Ft Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—barracks, needs major rehab, off-site removal only.
Bldg. 1252, Fort Benning, Property #: 219220694, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.
Bldg. 1678, Fort Benning, Property #: 219220697, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9342 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.
Bldg. 1733, Fort Benning, Property #: 219220698, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9375 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.
Bldg. 3083, Fort Benning, Property #: 219220699, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1372 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.
Bldg. 3856, Fort Benning, Property #: 219220703, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4111 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.
Bldg. 4881, Fort Benning, Property #: 219220707, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.
Bldg. 4963, Fort Benning, Property #: 219220710, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.
Bldg. 2396, Fort Benning, Property #: 219220712, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.
Bldg. 3085, Fort Benning, Property #: 219220715, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2253 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.
Bldg. 2537, Fort Benning, Property #: 219220726, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 820 sq. ft., 1 story, most recent use—storage, needs major rehab, off-site removal only.
Bldg. 4882, Fort Benning, Property #: 219220727, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.
Bldg. 4967, Fort Benning, Property #: 219220728, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.
Bldg. 1230, Fort Benning, Property #: 219220729, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4386 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.
Bldg. 1231, Fort Benning, Property #: 219220730, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4386 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.
Bldg. 5396, Fort Benning, Property #: 219220734, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 10944 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.
Bldg. 247, Fort Benning, Property #: 219220735, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1 story, most recent use—offices, needs major rehab, off-site removal only.
Bldg. 4977, Fort Benning, Property #: 219220736, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only.
Bldg. 4978, Fort Benning, Property #: 219220737, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only.
Bldg. 1240, Fort Benning, Property #: 219220741, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1197 sq. ft., 1 story, most recent use—recreation, needs major rehab, off-site removal only.
Bldg. 4944, Fort Benning, Property #: 219220747, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.
Bldg. 4960, Fort Benning, Property #: 219220752, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.
Bldg. 4969, Fort Benning, Property #: 219220753, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized

Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.
Bldg. 1724, Fort Benning, Property #: 219220754, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 7873 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.
Bldg. 1758, Fort Benning, Property #: 219220755, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 7817 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.
Bldg. 1680, Fort Benning, Property #: 219220756, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9243 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.
Bldg. 1682, Fort Benning, Property #: 219220757, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9250 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.
Bldg. 3817, Fort Benning, Property #: 219220758, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4000 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.
Bldg. 4884, Fort Benning, Property #: 219220762, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.
Bldg. 4964, Fort Benning, Property #: 219220763, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.
Bldg. 4966, Fort Benning, Property #: 219220764, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.
Bldg. 4679, Fort Benning, Property #: 219220767, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 8657 sq. ft., 1 story, most recent use—supply bldg., needs major rehab, off-site removal only.
Bldg. 4883, Fort Benning, Property #: 219220768, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2600 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.
Bldg. 4965, Fort Benning, Property #: 219220769, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.
Bldg. 2513, Fort Benning, Property #: 219220770, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9483 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.
Bldg. 2526, Fort Benning, Property #: 219220771, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 11855 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.
Bldg. 2589, Fort Benning, Property #: 219220772, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 146 sq. ft., 1 story, most recent use—training bldg., needs major rehab, off-site removal only.
Bldg. 4976, Fort Benning, Property #: 219220776, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—gas station, need repairs, off-site removal only.
Bldg. 4945, Fort Benning, Property #: 219220779, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.
Bldg. 4979, Fort Benning, Property #: 219220780, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only.
Bldg. 2601, Fort Benning, Property #: 219220784, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—indoor firing range, needs major rehab, off-site removal only.
Bldg. 4627, Fort Benning, Property #: 219220786, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 1676 sq. ft., 1 story, most recent use—sentry station, needs major rehab, off-site removal only.
Bldg. 517, Fort Gillem, Property #: 219310314, Fed Reg Date: 12/04/93
Forest Park, GA, Co: Clayton, Zip: 30051–
Status: Underutilized
Comment: 455 sq. ft., 1 story concrete frame, needs rehab, most recent use—dispatch office, off-site use only
Bldg. 629, Fort Gillem, Property #: 219310316, Fed Reg Date: 12/04/93
Forest Park, GA, Co: Clayton, Zip: 30051–
Status: Underutilized
Comment: 600 sq. ft., 1 story concrete frame, needs rehab, most recent use—storage, off-site use only
Bldg. 4114, Fort Benning, Property #: 219310407, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4117, Fort Benning, Property #: 219310408, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4118, Fort Benning, Property #: 219310409, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4125, Fort Benning, Property #: 219310410, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4126, Fort Benning, Property #: 219310411, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4129, Fort Benning, Property #: 219310412, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-sita use only
Bldg. 4130, Fort Benning, Property #: 219310413, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4137, Fort Benning, Property #: 219310414, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4138, Fort Benning, Property #: 219310415, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4140, Fort Benning, Property #: 219310416, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4002, Fort Benning, Property #: 219310417, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4004, Fort Benning, Property #: 219310418, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized

Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4008, Fort Benning, Property #: 219310419, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4009, Fort Benning, Property #: 219310420, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutillzed
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4010, Fort Benning, Property #: 219310421, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4012, Fort Benning, Property #: 219310422, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4015, Fort Benning, Property #: 219310423, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4020, Fort Benning, Property #: 219310424, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4106, Fort Benning, Property #: 219310425, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4115, Fort Benning, Property #: 219310426, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4116, Fort Benning, Property #: 219310427, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4127, Fort Benning, Property #: 219310428, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4128, Fort Benning, Property #: 219310429, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4139, Fort Benning, Property #: 219310430, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4149, Fort Benning, Property #: 219310431, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4150, Fort Benning, Property #: 219310432, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4017, Fort Benning, Property #: 219310435, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 7700 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only
Bldg. 4112, Fort Benning, Property #: 219310436, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only
Bldg. 4119, Fort Benning, Property #: 219310437, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only
Bldg. 4124, Fort Benning, Property #: 219310438, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only
Bldg. 4141, Fort Benning, Property #: 219310439, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only
Bldg. 4136, Fort Benning, Property #: 219310440, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.
Bldg. 4131, Fort Benning, Property #: 219310441, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.
Bldg. 4108, Fort Benning, Property #: 219310442, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1171 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.
Bldg. 1835, Fort Benning, Property #: 219310443, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1712 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.
Bldg. 4013, Fort Benning, Property #: 219310444, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1884 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.
Bldg. 4007, Fort Benning, Property #: 219310445, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1884 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.
Bldg. 4107, Fort Benning, Property #: 219310446, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—day room, off-site use only.
Bldg. 3072, Fort Benning, Property #: 219310447, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 479 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.
Bldg. 4001, Fort Benning, Property #: 219310448, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1635 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.
Bldg. 4103, Fort Benning, Property #: 219310449, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1635 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.
Bldg. 3004, Fort Benning, Property #: 219310450, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.
Bldg. 4019, Fort Benning, Property #: 219310451, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.
Bldg. 4018, Fort Benning, Property #: 219310452, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.
Bldg. 3003, Fort Benning, Property #: 219310453, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.
Bldg. 3002, Fort Benning, Property #: 219310454, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized

Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.
Bldg. 4109, Fort Benning, Property #: 219310455, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2235 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.
Bldg. 4014, Fort Benning, Property #: 219310456, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.
Bldg. 4006, Fort Benning, Property #: 219310457, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3023 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.
Bldg. 4135, Fort Benning, Property #: 219310458, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3755 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.
Bldg. 4123, Fort Benning, Property #: 219310459, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3755 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.
Bldg. 4111, Fort Benning, Property #: 219310460, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3755 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.
Bldg. 4023, Fort Benning, Property #: 219310461, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.
Bldg. 4024, Fort Benning, Property #: 219310462, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.
Bldg. 4040, Fort Benning, Property #: 219310463, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1815 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only.
Bldg. 4026, Fort Benning, Property #: 219310464, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2330 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only.
Bldg. 4067, Fort Benning, Property #: 219310465, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only.
Bldg. 4025, Fort Benning, Property #: 219310466, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—admin. off-site use only.
Bldg. 4110, Fort Benning, Property #: 219310467, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only
Bldg. 4122, Fort Benning, Property #: 219310468, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only
Bldg. 4134, Fort Benning, Property #: 219310469, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only
Bldg. 4021, Fort Benning, Property #: 219310470, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only
Bldg. 2501, Fort Benning, Property #: 219310471, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4073 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only
Bldg. 4113, Fort Benning, Property #: 219310473, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—storehouse, off-site use only
Bldg. 10439, Fort Benning, Property #: 219310474, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only
Bldg. 10304, Fort Benning, Property #: 219310475, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1040 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only
Bldg. 10847, Fort Benning, Property #: 219310476, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1056 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only
Bldg. 10768, Fort Benning, Property #: 219310477, Fed Reg Date: 12/04/93
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1230 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only
Bldg. 2683, Fort Benning, Property #: 219310478, Fed Reg Date: 12/04/93
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1816 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only
Bldg. 2504, Fort Benning, Property #: 219310479, Fed Reg Date: 12/04/93
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 729 sq. ft., 1-story, needs rehab, most recent use—snack bar, off-site use only
Bldg. 2422, Fort Benning, Property #: 219310484, Fed Reg Date: 12/04/93
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3328 sq. ft., 1-story, needs rehab, most recent use—fire station, off-site use only
Bldg. 4121, Fort Benning, Property #: 219310487, Fed Reg Date: 12/04/93
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only
Bldg. 4133, Fort Benning, Property #: 219310488, Fed Reg Date: 12/04/93
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only
Bldg. 4143, Fort Benning, Property #: 219310489, Fed Reg Date: 12/04/93
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only
Bldg. 4105, Fort Benning, Property #: 219310490, Fed Reg Date: 12/04/93
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only
Bldg. 4005, Fort Benning, Property #: 219310491, Fed Reg Date: 12/04/93
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only
Bldg. 13503, Property #: 219320209, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 7036 sq. ft., 2 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—residential.
Bldg. 14502, Property #: 219320210, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized

Comment: 7036 sq. ft., 2 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—residential.
Bldg. 481, Property #: 219320211, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1325 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.
Bldg. 10417, Property #: 219320212, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2668 sq. ft., 1 story wood frame, presence of asbestos, needs repairs, off-site use only, most recent use—offices.
Bldg. 10502, Property #: 219320213, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1580 sq. ft., 1 story wood frame, presence of asbestos, needs repairs, off-site use only, most recent use—offices.
Bldg. 10503, Property #: 219320214, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2516 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.
Bldg. 10602, Property #: 219320215, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.
Bldg. 14503, Property #: 219320216, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1075 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—offices.
Bldg. 25304, Property #: 219320223, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—office/storage.
Bldg. 26306, Property #: 219320225, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1272 sq. ft., 1 story wood frame, possible asbestos, need repairs, off-site use only, most recent use—storage.
Bldg. 29503, Property #: 219320226, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2456 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—offices.
Bldg. 33406, Property #: 219320227, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 3456 sq. ft., 1 story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use—offices.
Bldg. 33436, Property #: 219320228, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2632 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use—offices.
Bldg. 33438, Property #: 219320229, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2668 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—storage.
Bldg. 39502, Property #: 219320230, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1316 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.
Bldg. 45308, Property #: 219320231, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 6044 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—community center.
Bldg. 26301, Property #: 219320234, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use—storage.
Bldg. 27301, Property #: 219320235, Fed Reg Date: 12/04/93
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—storage.
Bldg. 354, Fort Gordon, Property #: 219320259, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1 story wood, possible termite damage, needs repair, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 355, Fort Gordon, Property #: 219320260, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1 story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 356, Fort Gordon, Property #: 219320261, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1 story wood, possible termite damage, needs repair, most recent use—offices, off-site use only.
Bldg. 376, Fort Gordon, Property #: 219320262, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1 story wood, possible termite damage, needs repair, most recent use—offices, off-site use only.
Bldg. 377, Fort Gordon, Property #: 219320263, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4768 sq. ft., 1 story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 13501, Fort Gordon, Property #: 219330264, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2516 sq. ft., 1-story wood, needs rehab, presence of asbestos, most recent use—offices, off-site use only
Bldg. 18704, Fort Gordon, Property #: 219330265, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—offices, off-site use only
Bldg. 18717, Fort Gordon, Property #: 219330266, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only
Bldg. 19601, Fort Gordon, Property #: 219330268, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2132 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—offices, off-site use only
Bldg. 19602, Fort Gordon, Property #: 219330269, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1555 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only
Bldg. 24501, Fort Gordon, Property #: 219330270, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 3580 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only
Bldg. 25103, Fort Gordon, Property #: 219330271, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2100 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only
Bldg. 25105, Fort Gordon, Property #: 219330272, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip 30905–
Status: Unutilized
Comment: 1025 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only

Bldg. 25503, Fort Gordon, Property #: 219330273, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 6816 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only
Bldg. 31504, Fort Gordon, Property #: 219330274, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 7036 sq. ft., 2-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only
Bldg. 33415, Fort Gordon, Property #: 219330275, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2036 sq. ft., 1-story wood, needs rehab, presence of asbestos, most recent use—offices, off-site use only
Bldg. 34502, Fort Gordon, Property #: 219330276, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 7036 sq. ft., 2-story wood, needs rehab, most recent use—offices, off-site use only
Bldg. 35503, Fort Gordon, Property #: 219330277, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2500 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only
Bldg. 37505, Fort Gordon, Property #: 219330278, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 17370 sq. ft., 2-story wood, needs rehab, possible asbestos, most recent use—offices, off-site use only
Bldg. 39503, Fort Gordon, Property #: 219330279, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1316 sq. ft., 1-story wood, needs rehab, possible asbestos, most recent use—offices, off-site use only
Bldg. 18707, Fort Gordon, Property #: 219330280, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only
Bldg. 18708, Fort Gordon, Property #: 219330281, Fed Reg Date: 1204/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 8772 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only
Bldg. 18718, Fort Gordon Property #: 219330282, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only
Bldg. 18720, Fort Gordon, Property #: 219330283, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2632 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only
Bldg. 18721, Fort Gordon, Property #: 219330284, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—classrooms, off-site use only
Bldg. 18722, Fort Gordon, Property #: 219330285, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—classrooms, off-site use only
Bldg. 18723, Fort Gordon, Property #: 219330286, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—classrooms, off-site use only
Bldg. 18724, Fort Gordon, Property #: 219330287, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4524 sq. ft., wood, presence of asbestos, most recent use—classrooms, off-site use only
Bldg. 18712, Fort Gordon, Property #: 219330288, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 15,500 sq. ft., 1-story concrete block, needs rehab, presence of asbestos, most recent use—gymnasium, off-site use only
Bldg. 332, Fort Gordon, Property #: 219330289, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—laboratory, off-site use only
Bldg. 333, Fort Gordon, Property #: 219330290, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only
Bldg. 334, Fort Gordon, Property #: 219330291, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4279 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—medical admin., off-site use only
Bldg. 335, Fort Gordon, Property #: 219330292, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4300 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only
Bldg. 353, Fort Gordon, Property #: 219330293, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 5157 sq. ft., 1-story wood, presence of asbestos, most recent use—laboratory, off-site use only
Bldg. 352, Fort Gordon, Property #: 219330294, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 560 sq. ft., 1-story metal, presence of asbestos, most recent use—equip. storage, off-site use only
Bldg. 18703, Fort Gordon, Property #: 219330295, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—storage, off-site use only
Bldg. 18705, Fort Gordon, Property #: 219330296, Fed Reg Date: 12/04/93
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2632 sq. ft., 1-story wood, presence of asbestos, off-site use only

Hawaii

Buildings

p–88, Property #: 219030324, Fed Reg Date: 12/04/93
Project Name: Aliamanu Military Reservation
Aliamanu Military Reservation
Honolulu, HI, Co: Honolulu, Zip: 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Status: Unutilized
Comment: 45,216 sq. ft., underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations
Bldg. 302, Property #: 219320236, Fed Reg Date: 12/04/93
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96818–
Status: Unutilized
Comment: 39 sq. ft., most recent use—sentry station, off-site use only.

Indiana

Buildings

Bldg. 703–1C, Property #: 219013761, Fed Reg Date: 12/04/93
Project Name: Indiana Army Ammo. Plant
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark, Zip:
Location: Gate 22 off Highway 22
Status: Underutilized
Comment: 4000 sq. ft.; 2 story brick frame; possible asbestos; most recent use—exercise area.
Bldg. 1011 (Portion of), Property #: 219013762, Fed Reg Date: 12/04/93
Project Name: Indiana Army Ammo. Plant
Indiana Army Ammunition Plant
End of 3rd Street
Charlestown, IN, Co: Clark, Zip:
Location: East of State Highway 62 at Gate 3
Status: Underutilized
Comment: 4040 sq. ft.; 1 story concrete block frame; possible asbestos; secured area with alternate access; most recent use—office.
Bldg. 1001 (Portion of), Property #: 219013763, Fed Reg Date: 12/04/93
Project Name: Indiana Army Ammu. Plant
Indiana Army Ammunition Plant

Charlestown, IN, Co: Clark, Zip:
Location: South end of 3rd Street, East of Highway 62 at entrance gate.
Status: Underutilized
Comment: 55630 sq. ft.; 1 story concrete block; possible asbestos; secured area with alternate access; most recent use—cloth bag manufacturing.
Bldg. 2542, Property #: 219240717, Fed Reg Date: 12/04/93
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark, Zip: 47111–
Status: Unutilized
Comment: 1954 sq. ft., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—heating facility.
Bldg. 2531, Property # 219240718, Fed Reg Date: 12/04/93
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark, Zip: 47111–
Status: Unutilized
Comment: 119746 sq. ft., 1 story concrete block, secued area w/alternate access, asbestos, most recent use—storage.
Bldgs. 7215, 7216, Property #: 219330297, Fed Reg Date: 12/04/93
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark, Zip: 47111–
Status: Unutilized
Comment: roadside shelters, no utilities, located on Indiana State Highway Right of Way.

Kansas

Land

Parcel 1, Property #: 219012333, Fed Reg Date: 12/04/93
Project Name: Fort Leavenworth
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth, Zip: 66027–5020
Status: Underutilized
Comment: 14.4+ acres.
Parcel 3, Property #: 219012336, Fed Reg Date: 12/04/93
Project Name: Fort Leavenworth
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth, Zip: 66027–5020
Status: Underutilized
Comment: 261+ acres; heavily forrested; no access to a public right-of-way; selected periods are reserved for military/training exercises.
Parcel 4, Property #: 219012339, Fed Reg Date: 12/04/93
Project Name: Fort Leavenworth
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth, Zip: 66027–5020
Status: Underutilized
Comment: 24.1+ acres; selected periods are reserved for military/training exercises; steep/wooded area.
Parcel 6, Property #: 219012340, Fed Reg Date: 12/04/93
Project Name: Fort Leavenworth
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth, Zip: 66027–5020
Location: Extreme north east corner of installation in Flood Plain of the Missouri River.
Status: Underutilized
Comment: 1280 acres; selected periods are reserved for military/training exercises.
Parcel F, Property #: 219012552, Fed Reg Date: 12/04/93
Project Name: Fort Leavenworth
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth, Zip: 66027–5020
Status: Unutilized
Comment: 33.4 acres; area is land locked; heavily wooded; periodic flooding.

Buildings

Bldg. T–2549, Fort Riley, Property #: 219310251, Fed Reg Date: 12/04/93
Ft. Riley, KS, Co: Geary, Zip: 66442–
Status: Unutilized
Comment: 3082 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Louisiana

Buildings

Bldg. 1805, Fort, Polk, Property #: 219320279, Fed Reg Date: 12/04/93
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–7100
Status: Unutilized
Comment: 9294 sq. ft., 1-story, needs rehab, most recent use—admin.

Maryland

Buildings

Bldg. E5878, Property #: 219012652, Fed Reg Date: 12/04/93
Project Name: Aberdeen Proving Ground
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Hartford, Zip: 21010–5425
Status: Unutilized
Comment: 213 sq. ft.; structural deficiencies; possible asbestos; and contamination.
Bldg. E5879, Property #: 219012653, Fed Reg Date: 12/04/93
Project Name: Aberdeen Proving Ground
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Hartford, Zip: 21010–5425
Status: Unutilized
Comment: 213 sq. ft.; possible asbestos and contamination; no utilities; most recent use—igloo storage.
Bldg. 10302, Property #: 219012666, Fed Reg Date: 12/04/93
Project Name: Aberdeen Proving Ground
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Hartford, Zip: 21010–5425
Status: Unutilized
Comment: 42 sq. ft.; possible asbestos; most recent use—pumping station.
Bldg. E5975, Property #: 219012677, Fed Reg Date: 12/04/93
Project Name: Aberdeen Proving Ground
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Hartford, Zip: 21010–5425
Status: Unutilized
Comment: 650 sq. ft.; possible contamination; structural deficiencies most recent use—training exercises/chemicals and explosives; potential use—storage.
Bldg. 6687, Property #: 219220446, Fed Reg Date: 12/04/93
Fort George G. Meade
Mapes and Zimbroski Roads
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Comment: 1150 sq. ft., presence of asbestos, wood frame, most recent use—veterinarian clinic, off-site removal only, sched. to be vacated 10/1/92.
Bldgs. 303–308, 323–328, Property #: 219320293, Fed Reg Date: 12/04/93
333–337
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Comment: 4720 sq. ft. each, 2-story wood frame, possible asbestos, most recent use—barracks/classrooms, fair to good condition, off-site use only
Bldg. 309, Property #: 219320294, Fed Reg Date: 12/04/93
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Comment: 2324 Sq. ft., 1-story wood frame, possible asbestos, fair to good condition, off-site use only
Bldgs. 312, 319, Property #: 219320295, Fed Reg Date: 12/04/93
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Comment: 2594 sq. ft., 1-story wood frame, possible asbestos, most recent use—storage, fair condition, off-site use only
Bldgs. 313–314, 317–318, Property #: 219320296, Fed Reg Date: 12/04/93
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Comment: 1144 sq. ft., 1-story wood frame, possible asbestos, most recent use—storage, fair to good condition, off-site use only
Bldgs. 302, 329, 332, 339, Property #: 219320297, Fed Reg Date: 12/04/93
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Comment: 2208 sq. ft., 1-story wood frame, possible asbestos, most recent use—storage, fair condition, off-site use only
Bldg. 2239, Property #: 219320298, Fed Reg Date: 12/04/93
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Comment: 24528 sq. ft., 1-story concrete block, possible asbestos, most recent use—mess hall, needs rehab, off-site use only
Bldg. 2175, Property #: 219320300, Fed Reg Date: 12/04/93

Aberdeen Proving Ground
MD, Co: Harford, Zip: 21005–5001
Status: Underutilized
Comment: 2879 sq. ft., 1-story, needs rehab, most recent use—storehouse
Bldg. 2176, Property #: 219320301, Fed Reg Date: 12/04/93
Aberdeen Proving Ground
MD, Co: Harford, Zip: 21005–5001
Status: Unutilized
Comment: 4425 sq. ft., 1-story, needs rehab, most recent use—admin.
Bldg. 3036, Property #: 219320302, Fed Reg Date: 12/04/93
Aberdeen Proving Ground
MD, Co: Harford, Zip: 21005–5001
Status: Unutilized
Comment: 11016 sq. ft., 1-story, needs rehab, most recent use—gym, presence of asbestos
Bldg. E4890, Property #: 219330434, Fed Reg Date: 12/04/93
Aberdeen Proving Ground
MD, Co: Harford, Zip: 21005–5001
Status: Unutilized
Comment: 6250 sq. ft., 1-story, needs rehab, presence of asbestos

Michigan

Buildings

Bldg. 300, Arsenal Acres, Property #: 219220448, Fed Reg Date: 12/04/93
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 52 sq. ft. sentry station, secured area with alternate access
Bldg. 301, Arsenal Acres, Property #: 219220449, Fed Reg Date: 12/04/93
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 3125 sq. ft. 2-story colonial style home, secured area with alternate access
Bldg. 302, Arsenal Acres, Property #: 219220450, Fed Reg Date: 12/04/93
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 2619 sq. ft., 2-story colonial style home, secured area with alternate access
Bldg. 303, Arsenal Acres, Property #: 219220451, Fed Reg Date: 12/04/93
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 2619 sq. ft., 2-story colonial style home, secured area with alternate access
Bldg. 304, Arsenal Acres, Property #: 219220452, Fed Reg Date: 12/04/93
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 2443 sq. ft., 2-story colonial style home, secured area with alternate access
Bldg. 305, Arsenal Acres, Property #: 219220787, Fed Reg Date: 12/04/93
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 2443 sq. ft., 2-story colonial style home, secured area with alternate access

Minnesota

Land

Land, Property #: 219120269, Fed Reg Date: 12/04/93
Twin Cities Army Ammunition Plant
New Brighton, MN, Co: Ramsey, Zip: 55112–
Status: Underutilized
Comment: Approx. 25 acres, possible contamination, secured area with alternate access.

Missouri

Buildings

Bldg. T3057, Property #: 219220580, Fed Reg Date: 12/04/93
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 2650 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible.
Bldg. T2383, Property #: 219230228, Fed Reg Date: 12/04/93
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 9267 sq. ft., 1-story, presence of asbestos, most recent use—general purpose facility, off-site use only
Bldg. T1376, Property #: 219230237, Fed Reg Date: 12/04/93
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of asbestos, most recent use—Hqts. bldg., off-site use only
Bldg. T599, Property #: 219230260, Fed Reg Date: 12/04/93
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 18270 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only
Bldg. T1311, Property #: 219230261, Fed Reg Date 12/04/93
Fort Leonard Wood.
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 2740 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only
Bldg. T1333, Property #: 219230263, Fed Reg Date 12/04/93
Fort Leonard Wood.
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only
Bldg. T1270, Property #: 219320307, Fed Reg Date 12/04/93
Fort Leonard Wood.
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., 1-story, most recent use—admin., possible asbestos, off-site use only
Bldg. T427 Property #: 219330299, Fed Reg Date 12/04/93
Fort Leonard Wood.
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 10245 sq. ft., 1-story, presence of asbestos, most recent use—post office, off-site use only
Bldg. T1329, Property #: 219330300, Fed Reg Date 12/04/93
Fort Leonard Wood.
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of asbestos, most recent use—hdqts bldg., off-site use only
Bldg. T1688, Property #: 219330301, Fed Reg Date 12/04/93
Fort Leonard Wood.
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. T2206, Property #: 219330302, Fed Reg Date 12/04/93
Fort Leonard Wood.
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 1440 sq. ft., 1-story, presence of asbestos, and contamination, most recent use—storehouse, off-site use only
Bldg. T2209, Property #: 219330303, Fed Reg Date 12/04/93
Fort Leonard Wood.
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 288 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. T2357, Property #: 219330304, Fed Reg Date 12/04/93
Fort Leonard Wood.
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of asbestos, most recent use—hdqts. bldg., off-site use only
Bldgs. T2360, T2364 Property #: 219330305, Fed Reg Date 12/04/93
Fort Leonard Wood.
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 1144 sq. ft. each, 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. T2368, Property #: 219330306, Fed Reg Date 12/04/93
Fort Leonard Wood.
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of asbestos, off-site use only

Bldg. T3005, Property #: 219330307, Fed Reg Date 12/04/93
Fort Leonard Wood.
Ft. Leonard Wood, MO, Co: Pulaski, Zip: , 65473–5000
Status: Underutilized
Comment: 2220 sq. ft., 1-story, presence of asbestos, most recent use—motor repair shop, off-site use only

Mississippi

Buildings

Bldg. VB201, Property #: 219330308, Fed Reg Date 12/04/93
Vicksburg Reserve Center
Vicksburg, MS, Zip: 39180–0055
Status: Unutilized
Comment: 15444 sq. ft., 1 story, metal frame, most recent use—army reserve center, off-site use only
Bldg. VB202, Property #: 21933030, Fed Reg Date 12/04/93
Vicksburg Reserve Center
Vicksburg, MS, Zip: 39180–0055
Status: Unutilized
Comment: 800 sq. ft., 1-story, mental, most recent use-admin., off-site use only
Bldg. VB213, Property #: 219330310, Fed Reg Date 12/04/93
Vicksburg Reserve Center
Vicksburg, MS, Zip: 39180–0055
Status: Unutilized
Comment: 180 sq. ft., 1-story, concrete block, most recent use—storehouse, off-site use only

North Carolina

Buildings

Bldg. A–4625, Fort Bragg, Property #: 219320308, Fed Reg Date: 12/04/93
Ft. Bragg, NC, Co.: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 2794 sq. ft., 1-story, most recent use—mess, needs repair, off-site use only
Bldg. A–4628, Fort Bragg, Property #: 219320309, Fed Reg Date: 12/04/93
Ft. Bragg, NC, Co.: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 2794 sq. ft., 1-story wood, most recent use—recreation bldg., off-site use only
Bldg. C–4731, Fort Bragg, Property #: 219320310, Fed Reg Date: 12/04/93
Ft. Bragg, NC, Co.: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 780 sq. ft., concrete block press box, off-site use only
Bldg. A–5425, Fort Bragg, Property #: 219330311, Fed Reg Date: 12/04/93
Ft. Bragg, NC, Co.: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood, needs repair, most recent use—storage, off-site use only
Bldg. O–9710, Fort Bragg, Property #: 219330312, Fed Reg Date: 12/04/93
Ft. Bragg, NC, Co.: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 974 sq. ft., metal trailer, needs repair, most recent use—living quarters, off-site use only
Bldg. O–9711, Fort Bragg, Property #: 219330313, Fed Reg Date: 12/04/93
Ft. Bragg, NC, Co.: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 403 sq. ft., 1-story wood cabin, needs repair, most recent use—living quarters, off-site use only
Bldg. O–9712, Fort Bragg, Property #: 219330314, Fed Reg Date: 12/04/93
Ft. Bragg, NC, Co.: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 730 sq. ft., wood garage, needs repair, off-site use only

Nebraska

Buildings

Bldg. RG–1, Property #: 219210292, Fed Reg Date: 12/04/93
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island, NE, Co: Hall, Zip: 68803–
Status: Unutilized
Comment: 1080 sq. ft., 1 story garage, possible asbestos, secured area with alternate access
Bldg. RG–2, Property #: 219210293, Fed Reg Date: 12/04/93
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island, NE, Co: Hall, Zip: 68803–
Status: Unutilized
Comment: 576 sq. ft., 1 story garage, secured area with alternate access
Bldg. RG–3, Property #: 219210294, Fed Reg Date: 12/04/93
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island, NE, Co: Hall, Zip: 68803–
Status: Unutilized
Comment: 936 sq. ft., 1 story garage, possible asbestos, secured area with alternate access
Bldg. RG–4, Property #: 219210295, Fed Reg Date: 12/04/93
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island, NE, Co: Hall, Zip: 68803–
Status: Unutilized
Comment: 1040 sq. ft., 1 story garage, possible asbestos, secured area with alternate access
Bldg. RG–5, Property #: 219210296, Fed Reg Date: 12/04/93
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island, NE, Co: Hall, Zip: 68803–
Status: Unutilized
Comment: 490 sq. ft., 1 story garage, possible asbestos, secured area with alternate access
Bldg. RG–6, Property #: 219210297, Fed Reg Date: 12/04/93
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island, NE, Co: Hall, Zip: 68803–
Status: Unutilized
Comment: 510 sq. ft., 1 story garage, possible asbestos, secured area with alternate access

New Jersey

Land

Land—Camp Kilmer, Property #: 219230357, Fed Reg Date: 12/04/93
Plainfield Avenue
Edison, NJ, Co: Middlesex, Zip: 08817–2487
Status: Underutilized
Comment: approx. 10 acres in the center portion of site, most recent use—ballfields/recreation.
Land—Camp Kilmer, Property #: 219230358, Fed Reg Date: 12/04/93
Plainfield Avenue
Edison, NJ, Co: Middlesex, Zip: 08817–2487
Status: Underutilized
Comment: approx. 10 acres in the southwest corner of site, most recent use—reserve training, wooded area.

Buildings

Bldg. 421, Fort Monmouth, Property #: 219330435, Fed Reg Date: 12/04/93
Ft. Monmouth, NJ, Co: Monmouth, Zip: 07703–
Status: Unutilized
Comment: 4,720 sq. ft., 2-story, most recent use—office
Bldg. 2529, Fort Monmouth Property #: 219330436, Fed Reg Date: 12/04/93
Charles Wood Area
Ft. Monmouth, NJ, Co: Monmouth, Zip: 07703–
Status: Unutilized
Comment: 4,413 sq. ft., 2-story, needs rehab, most recent use—admin.

New Mexico

Buildings

Bldg. 108, Property #: 219330327, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3,561 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 109, Property #: 219330328, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3,561 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 117, Property #: 219330329, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1,688 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 118, Property #: 219330330, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3,561 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 119, Property #: 219330331, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3,561 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 148, Property #: 219330332, Fed Reg Date: 12/04/93

White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3,570 sq. ft., 2-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only
Bldg. 149, Property #: 219330333, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3,570 sq. ft., 2-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only
Bldg. 150, Property #: 219330334, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3,750 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 357, Property #: 219330335, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3,600 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 1758, Property #: 219330336, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1,620 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 1768, Property #: 219330337, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 15,333 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 28281, Property #: 219330338, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1,856 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 28282, Property #: 219330339, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1,850 sq. ft., 3-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only
Bldg. 32980, Property #: 219330340, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 451 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 34252, Property #: 219330341, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 418, Property #: 219330342, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3690 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 420, Property #: 219330343, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 2407 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 890, Property #: 219330344, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 9011 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 1948, Property #: 219330345, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 720 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—storage, off-site use only
Bldg. 1738, Property #: 219330346, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1500 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 1765, Property #: 219330347, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 600 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 21542, Property #: 219330348, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 945 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 22118, Property #: 219330349, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1341 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 22253, Property #: 219330350, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 216 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 28267, Property #: 219330351, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 617 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 29195, Property #: 219330352, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 56 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 34219, Property #: 219330353, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 34221, Property #: 219330354, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 145, Property #: 219330355, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 2954 sq. ft., 1-story, presence of asbestos, most recent use—chapel, off-site use only
Bldg. 1754, Property #: 219330356, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 6974 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only

Bldg. 19242, Property #: 219330357, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only
Bldg. 34227, Property #: 219330358, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 675 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only
Bldg. 34244, Property #: 219330359, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only
Bldg. 21105, Property #: 219330360, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 239 sq. ft., presence of asbestos, most recent use—veterinarian facility, off-site use only
Bldg. 21106, Property #: 219330361, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 405 sq. ft., 1-story, presence of asbestos, most recent use—veterinarian facility, off-site use only
Bldg. 21310, Property #: 219330362, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1006 sq. ft., 1-story, presence of asbestos, most recent use—transmitter bldg., off-site use only
Bldg. 29890, Property #: 219330363, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—frequency monitoring station, off-site use only
Bldg. 1868, Property #: 219330364, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 41 sq. ft., 1-story, presence of asbestos, most recent use—scale house, off-site use only
Bldg. 528, Property #: 219330365, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 225 sq. ft., 1-story, presence of asbestos, most recent use—decontamination shelter, off-site use only
Bldg. 1834, Property #: 219330366, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 150 sq. ft., 1-story, presence of asbestos, most recent use—animal kennel, off-site use only
Bldg. 1300, Property #: 219330367, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1500 sq. ft., 1-story, presence of asbestos, most recent use—indoor small arms range, off-site use only
Bldg. 23100, Property #: 219330368, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 40 sq. ft., 1-story, presence of asbestos, most recent use—sentry station, off-site use only
Bldg. 29196, Property #: 219330369, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 38 sq. ft., 1-story, presence of asbestos, most recent use—power plant bldg., off-site use only
Bldg. 30774, Property #: 219330370, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 176 sq. ft., 1-story, presence of asbestos, off-site use only
Bldg. 33136, Property #: 219330371, Fed Reg Date: 12/04/93
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 18 sq. ft., off-site use only

Nevada

Land

Parcel A, Property #: 219012049, Fed Reg Date: 12/04/93
Project name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.
Parcel B, Property #: 219012056, Fed Reg Date: 12/04/93
Project name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Status: Unutilized
Comment: 1920 acres, road and utility easements; no utility hookup; possible flooding problem.
Parcel C, Property #: 219012057, Fed Reg Date: 12/04/93
Project name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Status: Unutilized
Comment: 85 acres, road and utility easements; no utility hookup.
Parcel D, Property #: 219012058, Fed Reg Date: 12/04/93
Project name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: South-southwest of Hawthorne along HWAAP'S South Magazine Area at western edge of State Route 359.
Status: Unutilized
Comment: 955 acres, road and utility easements; no utility hookup.

Buildings

Bldg. 00425, Property #: 219011946, Fed Reg Date: 12/04/93
Project name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00426, Property #: 219011947, Fed Reg Date: 12/04/93
Project name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00427, Property #: 219011948, Fed Reg Date: 12/04/93
Project name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00428, Property #: 219011949, Fed Reg Date: 12/04/93
Project name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized

Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00429, Property #: 219011950, Fed Reg Date: 12/04/93
Project name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00430, Property #: 219011951, Fed Reg Date: 12/04/93
Project name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00431, Property #: 219011952, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00432, Property #: 219011954, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00433, Property #: 219011958, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00434, Property #: 219011959, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00435, Property #: 219011961, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00436, Property #: 219011964, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00437, Property #: 219011968, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00438, Property #: 219011970, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00439, Property #: 219011974, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00440, Property #: 219011976, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.
Bldg. 00441, Property #: 219011977, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq. ft., one floor residential, semi/wood construction, good condition.
Bldg. 00442, Property #: 219011978, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq. ft., one floor residential, semi/wood construction, good condition.
Bldg. 00443, Property #: 219011980, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq. ft., one floor residential, semi/wood construction, good condition.
Bldg. 00444, Property #: 219011982, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq. ft., one floor residential, semi/wood construction, good condition.
Bldg. 00445, Property #: 219011984, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq. ft., one floor residential, semi/wood construction, good condition.
Bldg. 00446, Property #: 219011987, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq. ft., one floor residential, semi/wood construction, good condition.
Bldg. 00447, Property #: 219011990, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq. ft., one floor residential, semi/wood construction, good condition.
Bldg. 00448, Property #: 219011994, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq. ft., one floor residential, semi/wood construction, good condition.
Bldg. 00449, Property #: 219011996, Fed Reg Date: 12/04/93
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq. ft., one floor residential, semi/wood construction, good condition.

Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: Schweer Drive
Status: Unutilized
Comment: 1310–1640 sq. ft., one floor residential, semi/wood construction, good condition.

New York

Buildings

Bldg. 503, Property #: 219012564, Fed Reg Date: 12/04/93
Project Name: Fort Totten
Fort Totten
Ordnance Road
Bayside, NY, Co: Queens, Zip: 11357–
Status: Underutilized
Comment: 510 sq. ft., 1 floor, most recent use-storage, needs major rehab/no utilities.
Bldg. 323, Property #: 219012567, Fed Reg Date: 12/04/93
Project Name: Fort Totten
Fort Totten
Story Avenue
Bayside, NY, Co: Queens, Zip: 11359–
Status: Underutilized
Comment: 30000 sq ft., 3 floors, most recent use—barracks & mess facility, needs major rehab.
Bldg. 304, Property #: 219012570, Fed Reg Date: 12/04/93
Project Name: Fort Totten
Fort Totten
Shore Road
Bayside, NY, Co: Queens, Zip: 11359–
Status: Underutilized
Comment: 9610 sq ft., 3 floors, most recent use—hospital, needs major rehab/utilities disconnected.
Bldg. 211, Property #: 219012573, Fed Reg Date: 12/04/93
Project Name: Fort Totten
Fort Totten
211 Totten Avenue
Bayside, NY, Co: Queens Zip: 11359–
Status: Underutilized
Comment: 6329 sq ft., 3 floors, most recent use—family housing, needs major rehab, utilities disconnected.
Bldg. 332, Property #: 219012578, Fed Reg Date: 12/04/93
Project Name: Fort Totten
Fort Totten
Theater Road
Bayside, NY, Co: Queens, Zip: 11359–
Status: Underutilized
Comment: 6288 sq ft., 1 floor, most recent use—theater w/stage, needs major rehab, utilities disconnected.
Bldg. 504, Property #: 219012580, Fed Reg Date: 12/04/93
Project Name: Fort Totten
Fort Totten
Ordnance Road
Bayside, NY, Co: Queens, Zip: 11359–
Status: Underutilized
Comment: 490 sq ft., 1 floor, most recent use—storage, no utilities, needs major rehab.
Bldg. 322, Property #: 219012583, Fed Reg Date: 12/04/93
Project Name: Fort Totten
Fort Totten
322 Story Avenue
Bayside, NY, Co: Queens, Zip: 11359–
Status: Underutilized
Comment: 30000 sq ft., 3 floors, most recent use—barracks, mess & administration, utilities disconnected, needs rehab.
Bldg. 326, Property #: 219012586, Fed Reg Date: 12/04/93
Project Name: Fort Totten
Fort Totten
326 Pratt Avenue
Bayside, NY, Co: Queens, Zip: 11359–
Status: Underutilized
Comment: 6000 sq ft., 2 floors, most recent use—storage, offices & residential, utilities disconnected/needs rehab.
23 Residential Apartment Bldgs, Property #: 219330315, Fed Reg Date: 12/04/93
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor, NY, Co: Orange, Zip: 12553–
Location: Y and Garden Loop Streets
Status: Unutilized
Comment: 2-story family housing, concrete block/wood, needs rehab, off-site use only
12 Detached Garages, Property #: 219330316, Fed Reg Date: 12/04/93
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor, NY, Co: Orange, Zip: 12553–
Location: Y and Garden Loop Streets
Status: Unutilized
Comment: 1-story garages, concrete block/wood, needs rehab, off-site use only
30 Storage Sheds, Property #: 219330317, Fed Reg Date: 12/04/93
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor, NY, Co: Orange, Zip: 12553–
Location: Y and Garden Loop Streets
Status: Unutilized
Comment: 1-story aluminum/wood storage sheds, good condition, off-site use only
Bldg. 1202, Property #: 219330318, Fed Reg Date: 12/04/93
Stewart Army Subpost
D Street
New Windsor, NY, Co: Orange, Zip: 12553–
Status: Unutilized
Comment: 1453 sq. ft., 1-story concrete/wood, needs rehab, presence of asbestos, most recent use—office, off-site use only
Bldg. 1204, Property #: 219330319, Fed Reg Date: 12/04/93
Stewart Army Subpost
D Street
New Windsor, NY, Co: Orange, Zip: 12553–
Status: Unutilized
Comment: 4349 sq. ft., 2-story concrete/wood, needs rehab, presence of asbestos, most recent use—barracks, off-site use only
Bldg. 1206, Property #: 219330320, Fed Reg Date: 12/04/93
Steward Army Subpost
D Street
New Windsor, NY, Co: Orange, Zip: 12553–
Status: Unutilized
Comment: 4349 sq. ft., 2-story concrete/wood, needs rehab, presence of asbestos, most recent use—barracks, off-site use only
Bldg. 1208, Property #: 219330321, Fed Reg Date: 12/04/93
Steward Army Subpost
D Street
New Windsor, NY, Co: Orange, Zip: 12553–
Status: Unutilized
Comment: 4349 sq. ft., 2-story concrete/wood, needs rehab, presence of asbestos, most recent use—barracks, off-site use only
Bldg. 1404, Property #: 219330322, Fed Reg Date: 12/04/93
Steward Army Subpost
Bruenig Road
New Windsor, NY, Co: Orange, Zip: 12553–
Status: Unutilized
Comment: approx. 8776 sq. ft., 2-story concrete/wood, needs major rehab, presence of asbestos, off-site use only
Bldg. 2500, Property #: 219330323, Fed Reg Date: 12/04/93
Stewart Army Subport
4th Street
New Windsor, NY, Co: Orange, Zip: 12553–
Status: Unutilized
Comment: approx. 4350 sq. ft., 2-story concrete/wood/brick veneer, needs major rehab, presence of asbestos, off-site use only
Bldg. 709, Property #: 219330324, Fed Reg Date: 12/04/93
U.S. Military Academy
709 Worth Place
West Point, NY, Co: Orange, Zip: 10996–
Status: Unutilized
Comment: approx. 1400 sq. ft., 2-story, needs repair, most recent use—storage, off-site use only
Bldg. 621, Property #: 219330325, Fed Reg Date: 12/04/93
U.S. Military Academy
North Athletic Field
West Point, NY, Co: Orange, Zip: 10996–
Status: Unutilized
Comment: 1478 sq. ft., 1-story, concrete/aluminum, most recent use—storage shed, offsite use only
Bldg. 623, Property #: 219330326, Fed Reg Date: 12/04/93
U.S. Military Academy
North Athletic Field
West Point, NY, Co: Orange, Zip: 10996
Status: Unutilized
Comment: 200 sq. ft., 1-story, concrete/aluminum, most recent use—storage shed, off-site use only
Bldg. 1848, Property #: 219330437, Fed Reg Date: 12/04/93
U.S. Military Academy
Lake Frederick Road
Woodbury, NY, Co: Orange, Zip: 10996–1592
Status: Unutilized
Comment: 2866 sq. ft., 2-story, needs major repairs, presence of asbestos and lead base paint, most recent use—storage/office, off-site use only

Ohio

Land

5 acres, Property #: 219320313, Fed Reg Date: 12/04/93
Doan U.S. Army Reserve Center
Portmonth, OH, Co: Scioto, Zip: 45662–
Status: Unutilized
Comment: 5 acres including paved roads, parking, sidewalks, etc.
3 acres, Property #: 219320316, Fed Reg Date: 12/04/93
U.S. Army Reserve Center

Fremont, OH, Co: Sandusky, Zip: 43420–
Status: Unutilized
Comment: 3 acres including paved roads, parking, sidewalks, etc.

Buildings

15 Units, Property #: 2192303540, Fed Reg Date: 12/04/93
Military Family Housing
Ravenna Army Ammunition Plant
Ravenna, OH, Co: Portage, Zip: 44266–9297
Status: Unutilized
Comment: 3 bedroom (7 units)—1,824 sq. ft. each, 4 bedroom 8 units)—2,430 sq. ft. each, 2-story wood frame, presence of asbestos, off-site use only
7 units, Property #: 219230355, Fed Reg Date: 12/04/93
Military Family Housing Garages
Ravena Army Ammunition Plant
Ravena, OH, Co: Portage, Zip: 44266–9297
Status: Unutilized
Comment: 1–4 stall garage and 6–3 stall garages, presence of asbestos, off-site use only
Bldg. P–3, Property #: 219320311, Fed Reg Date: 12/04/93
Doan U.S. Army Reserve Center
Portsmonth, OH, Co: Scioto, Zip: 45662–
Status: Unutilized
Comment: 10752 sq. ft., 1-story brick, most recent use—office, possible asbestos
Bldg. P–4, Property #: 219320312, Fed Reg Date: 12/04/93
Doan U.S. Army Reserve Center
Portmonth, OH, Co: Scioto, Zip: 45662–
Status: Unutilized
Comment: 2508 sq. ft., 1-story brick, most recent use—vehicle maint. shop
Bldg. P–2, Property #: 219320314, Fed Reg Date: 12/04/93
Hayes U.S. Army Reserve Center
Fremont, OH, Co: Sandusky, Zip: 43420–
Status: Unutilized
Comment: 3956 sq. ft., 1-story brick, most recent use—office, possible asbestos.
Bldg. P–3, Property #: 219320315, Fed Reg Date: 12/04/93
Hayes U.S. Army Reserve Center
Fremont, OH, Co: Sandusky, Zip 43420–
Status: Unutilized
Comment: 1259 sq. ft., 1-story brick, most recent use—vehicle maint. shop, possible asbestos.

Oklahoma

Buildings

Bldg. T–2545, Property #: 219011255, Fed Reg Date: 12/04/93
Project Name: Fort Sill
Fort Sill
2545 Sheridan Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1994 sq. ft.; asbestos; wood frame; 2 floors; No operating sanitary facilities; most recent use—enl. barracks basic.
Bldg. T–2606, Property #: 219011273, Fed Reg Date: 12/04/93
Project Name: Fort Sill
Fort Sill
2606 Currie Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2722 sq. ft.; possible asbestos; one floor wood frame; most recent use—Headquarters Bldg.
Bldg. T–3507, Property #: 219011315, Fed Reg Date: 12/04/93
Project Name: Fort Sill
Fort Sill
3507 Sheridan Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2904 sq. ft.; possible asbestos; potential heavy metal contamination; wood frame; most recent use—chapel.
Bldg. T–4919, Property #: 219014842, Fed Reg Date: 12/04/93
Project Name: Fort Sill
Fort Sill
4919 Post Road
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 603 sq. ft.; 1 story mobile home trailer; possible asbestos; needs rehab.
Bldg. T–4523, Property #: 219014933, Fed Reg Date: 12/04/93
Project Name: Fort Sill
Fort Sill
4523 Wilson Road
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 1639 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; most recent use—storage.
Bldg. T–283, Fort Sill, Property #: 219220608, Fed Reg Date: 12/04/93
83 Knox Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2419 sq. ft., wood frame, 2 story, off-site removal only, most recent use—classroom.
Bldg. T–838, Fort Sill, Property #: 219220609, Fed Reg Date: 12/04/93
838 Macomb Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).
Bldg. T–3621, Fort Sill, Property #: 219220613, Fed Reg Date: 12/04/93
3621 Scott Street
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2265 sq. ft., wood frame, 1 story, off-site removal only, most recent use—storage.
Bldg. T–2702, Fort Sill, Property #: 219240655, Fed Reg Date: 12/04/93
2702 Thomas Street
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5520 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.
Bldg. T–3311, Fort Sill, Property #: 219240656, Fed Reg Date: 12/04/93
3311 Naylor Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1468 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.
Bldg. T–954, Fort Sill, Property #: 219240659, Fed Reg Date: 12/04/93
954 Quinette Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.
Bldg. T–1050, Property #: 219240660, Fed Reg Date: 12/04/93
1050 Quinette Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 6240 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.
Bldg. T–1051, Fort Sill, Property #: 219240661, Fed Reg Date: 12/04/93
1051 Quinette Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 6240 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.
Bldg. T–2703, Fort Sill, Property #: 219240667, Fed Reg Date: 12/04/93
2703 Thomas Street
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5520 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.
Bldg. T–2704, Fort Sill, Property #: 219240668, Fed Reg Date: 12/04/93
2704 Thomas Street
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5520 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.
Bldg. T–2740, Fort Sill, Property #: 219240669, Fed Reg Date: 12/04/93
2740 Miner Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 8210 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.
Bldg. T–2745, Fort Sill, Property #: 219240670, Fed Reg Date: 12/04/93
2745 Miner Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 8288 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.
Bldg. T–2633, Fort Sill, Property #: 219240672, Fed Reg Date: 12/04/93
2633 Miner Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 19455 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—enlisted mess.
Bldg. T–2701, Fort Sill, Property #: 219240673, Fed Reg Date: 12/04/93
2701 Thomas Street
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5520 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—storage.
Bldg. T–2907, Fort Sill, Property #: 219240674, Fed Reg Date: 12/04/93
2907 Marcy Road
Lawton, OK, Co: Comanche, Zip: 73503–5100

Status: Unutilized
Comment: 3861 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.
Bldg. T–2928, Fort Sill, Property #: 219240675, Fed Reg Date: 12/04/93
2928 Custer Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2315 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.
Bldg. T–4050, Fort Sill, Property #: 219240676, Fed Reg Date: 12/04/93
4050 Pitman Street
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.
Bldg. P–3032, Fort Sill, Property #: 219240678, Fed Reg Date: 12/04/93
3032 Haskins Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 101 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—general storehouse.
Bldg. T–3325, Fort Sill, Property #: 219240681, Fed Reg Date: 12/04/93
3325 Naylor Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.
Bldg. T–260, Fort Sill, Property #: 219240776, Fed Reg Date: 12/04/93
260 Corral Road
Lawton, OK, Co: Comanche, Zip: 73503–5000
Status: Unutilized
Comment: 4838 sq. ft., 2 story wood frame, off-site use only, possible asbestos, most recent use—admin.
Bldg. T–228, Fort Sill, Property #: 219240777, Fed Reg Date: 12/04/93
228 Corral Road
Lawton, OK, Co: Comanche, Zip: 73503–5000
Status: Unutilized
Comment: 4884 sq. ft., 2 story wood frame, off-site use only, possible asbestos, most recent use—storage.
Bldg. T–2933, Fort Sill, Property #: 219240778, Fed Reg Date: 12/04/93
2933 Marcy Road
Lawton, OK, Co: Comanche, Zip: 73503–5000
Status: Unutilized
Comment: 13546 sq. ft., 1 story wood frame, off-site use only, possible asbestos, most recent use—theatre w/stage.
Bldg. T–3641, Fort Sill, Property #: 219320324, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 1255 sq. ft., 1 story wood frame, possible asbestos, most recent use—day room, needs rehab, off-site use only.
Bldg. T–3644, Fort Sill, Property #: 219320327, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 1-story wood frame, possible asbestos, off-site use only
Bldg. T–4722, Fort Sill, Property #: 219320333, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 13500 sq. ft., 2-story wood frame, possible asbestos, most recent use—band training facility, off-site use only
Bldg. T–5122, Fort Sill, Property #: 219320334, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 1-story wood frame, possible asbestos, off-site use only
Bldg. P–6220, Fort Sill, Property #: 219320335, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 848 sq. ft., 1-story metal frame, possible asbestos, most recent use—construction bldg., off-site use only
Bldg. S–6228, Fort Sill, Property #: 219320336, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 352 sq. ft., 1-story wood frame, possible asbestos, most recent use—range house, off-site use only
Bldg. P–6601, Fort Sill, Property #: 219320339, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 1606 sq. fit., possible asbestos, most recent use—boy scout bldg., off-site use only
Bldg. P–2610, Fort Sill, Property #: 219330372, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 512 sq. ft., 2-story, possible asbestos, most recent use—classroom, off-site use only
Bldg. 4722, Fort Sill, Property #: 219330373, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3375 sq. ft., 2-story, possible asbestos, most recent use—admin., off-site use only
Bldg. T5015, Fort Sill, Property #: 219330374, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1412 sq. ft., 2-story wood, possible asbestos, most recent use—admin/supply, off-site use only
Bldg. T5014, Fort Sill, Property #: 219330375, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2418 sq. ft., 2-story, possible asbestos, most recent use—barracks, off-site use only
Bldg. T5017, Fort Sill, Property #: 219330376, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1176 sq. ft., 2-story, possible asbestos, most recent use—day room, off-site use only
Bldg. T232, Fort Sill, Property #: 219330377, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2868 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T236, Fort Sill, Property #: 219330378, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2868 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T312, Fort Sill, Property #: 219330379, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1970 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T1652, Fort Sill, Property #: 219330380, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T1665, Fort Sill, Property #: 219330381, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1305 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T2034, Fort Sill, Property #: 219330383, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 401 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T2705, Fort Sill, Property #: 219330384, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1601 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T2706, Fort Sill, Property #: 219330385, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2156 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T2707, Fort Sill, Property #: 219330386, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2148 Sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T2708, Fort Sill, Property #: 219330387, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2153 sq. ft., 2-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T2709, Fort Sill, Property #: 219330388, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2112 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T2713, Fort Sill, Property #: 219330389, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized

Comment: 114 sq. ft., iron/metal bldg., possible asbestos, most recent use—storage, off-site use only
Bldg. T2756, Fort Sill, Property #: 219330390, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5172 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T2757, Fort Sill, Property #: 219330391, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5172 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only
Bldg. T3026, Fort Sill, Property #: 219330392, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2454 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T3651, Fort Sill, Property #: 219330393, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2770 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T3706, Fort Sill, Property #: 219330394, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1947 sq. ft., 2-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T3710, Fort Sill, Property #: 219330396, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1176 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T3712, Fort Sill, Property #: 219330397, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1021 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T3713, Fort Sill, Property #: 219330398, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1013 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T3714, Fort Sill, Property #: 219330399, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1159 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T3718, Fort Sill, Property #: 219330400, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1195 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T4035, Fort Sill, Property #: 219330401, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 867 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T4474, Fort Sill, Property #: 219330402, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1159 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T5011, Fort Sill, Property #: 219330403, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1556 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T5016, Fort Sill, Property #: 219330404, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2825 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only
Bldg. T5120, Fort Sill, Property #: 219330405, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1471 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5123, Fort Sill, Property #: 219330406, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1 story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5124, Fort Sill, Property #: 219330407, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1287 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5125, Fort Sill, Property #: 219330408, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2101 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5126, Fort Sill, Property #: 219330409, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1108 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5245, Fort Sill, Property #: 219330410, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3081 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5246, Fort Sill, Property #: 219330411, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3081 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5247, Fort Sill, Property #: 219330412, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3081 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5248, Fort Sill, Property #: 219330413, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3081 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5249, Fort Sill, Property #: 219330414, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2920 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5250, Fort Sill, Property #: 219330415, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3257 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5251, Fort Sill, Property #: 219330416, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3257 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5252, Fort Sill, Property #: 219330417, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3081 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5628, Fort Sill, Property #: 219330418, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2016 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5637, Fort Sill, Property #: 219330419, Fed Reg Date: 12/04/93
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1606 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.

Tennessee

Land

Milan Army Ammunition Plant, Property #: 219010547, Fed Reg Date: 12/04/93
Project Name: Milan Army Ammunition Plant
Milan, TN, Co: Carroll, Zip: 38358–
Location: Plant boundary in the northeast corner of the plant & housing area
Status: Excess
Comment: 17.2 acres; right of entry legal constraint
Holston Army Ammunition Plant, Property #: 219012338, Fed Reg Date: 12/04/93

Project Name: Holston Army Ammunition Plant
Kingsport, TN, Cc: Hawkins, Zip: 61299–6000
Status: Unutilized
Comment: 8 acres; unimproved; could provide access; 2 acres unusuable; near explosives.
Land; Property #: 219240780; Fed Reg Date: 12/04/93
Milan Army Ammunition Plant
Ne Corner of plant & housing area
Milan, TN, Co: Carroll, Zip: 38358–
Status: Untilized
Comment: 17.2 acres, secured area w/ alternate access, most recent use–buffer zone.

Texas

Land

Vacant Land, Fort Sam Houston, Property #: 219220438, Fed Reg Date: 12/04/93
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 244.47 acres, 85% located in floodplain, possibility of unexploded ordance

Buildings

Harlingen USARC, Property #: 219120304, Fed Reg Date: 12/04/93
1920 East Washington
Harlingen, TX, Co: Cameron, Zip: 78550–
Status: Excess
Comment: 19440 sq. ft., 1 story brick, needs rehab, with approx. 6 acres including parking areas, most recent use—Army Reserve Training Center
Bldg. P–3824, Fort Sam Houston, Property #: 219220398, Fed Reg Date: 12/04/93
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 2232 sq. ft., 1-story concrete structure, within National Landmark Historic District, off-site removal only.
Bldg. 7180, Fort Bliss, Property #: 219310394, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 645 sq. ft., 1-story, needs rehab, most recent use—auto garage, off-site use only
Bldg. 7193, Fort Bliss, Property #: 219310395, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 645 sq. ft., 1-story, needs rehab, most recent use—auto garage, off-site use only
Bldg. 7183, Fort Bliss, Property #: 219310396, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, candidate for Nat. Reg. of Historic Places, off-site use only
Bldg. 7184, Fort Bliss, Property #: 219310397, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only
Bldg. 7185, Fort Bliss, Property #: 219310398, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only
Bldg. 7186, Fort Bliss, Property #: 219310399, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only
Bldg. 7187, Fort Bliss, Property #: 219310400, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only
Bldg. 7188, Fort Bliss, Property #: 219310401, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only
Bldg. 7189, Fort Bliss, Property #: 219310402, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only
Bldg. 7190, Fort Bliss, Property #: 219310403, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only
Bldg. 7191, Fort Bliss, Property #: 219310404, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only
Bldg. 7192, Fort Bliss, Property #: 219310405, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only
Bldg. 7194, Fort Bliss, Property #: 219310406, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 1593 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only.
Bldg. 441, Fort Hood, Property #: 219320345, Fed Reg Date: 12/04/93
Ft. Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 6033 sq. ft., 2-story wood frame, most recent use—offices, needs rehab, off-site use only.
Bldg. 442, Fort Hood, Property #: 219320346, Fed Reg Date: 12/04/93
Ft. Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 6033 sq. ft., 2-story wood frame, most recent use—offices, needs rehab, off-site use only.
Bldg. 4168, Fort Hood, Property #: 219320350, Fed Reg Date: 12/04/93
Ft. Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 2100 sq. ft., 1-story steel frame, most recent use—vehicle wash platform, needs rehab, off-site use only.
Bldg. 440, Fort Bliss, Property #: 219320355, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip 79916–
Status: Unutilized
Comment: 1651 sq. ft., 1-story brick, most recent use—education facility, off-site use only.
Bldg. 1164, Fort Bliss, Property #: 219330420, Fed Reg Date: 12/04/93
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 2054 net sq. ft., 1 story wood, most recent use—admin. bldg., needs rehab, off-site use only.
Bldg. 512, Fort Hood, Property #: 219330421, Fed Reg Date: 12/04/93
Ft. Hood, TX, Co: Coryell, Zip: 76544–
Status: Unutilized
Comment: 6733 sq. ft., 1 story wood, most recent use—commissary, off-site use only.
Bldg. 7040, Fort Hood, Property #: 219330425, Fed Reg Date: 12/04/93
Ft. Hood, TX, Co: Coryell, Zip: 76544–
Status: Unutilized
Comment: 100 sq. ft., most recent use—oil storage bldg., off-site use only.
Bldg. P–293, Fort Sam Houston, Property #: 219330441, Fed Reg Date: 12/04/93
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 442 sq. ft., 1-story brick, needs rehab, within National Landmark Historic District, off-site use only.
Bldg. P–298, Fort Sam Houston, Property #: 219330442, Fed Reg Date: 12/04/93
San Antonio, TX, Co: Bexar, Zip: 782234–5000
Status: Unutilized
Comment: 3200 sq. st., 1-story hollow tile, needs rehab, within National Landmark Historic District, off-site use only.
Bldg. P–371, Fort Sam Houston, Property #: 219330443, Fed Reg Date: 12/04/93
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 18387 sq. ft., 2-story structural; tile, most recent use—vehicle maintenance shop, off-site use only.
Bldg. P–377, Fort Sam Houston, Property #: 219330444, Fed Reg Date: 12/04/93
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 74 sq. ft., 1-story brick, needs rehab, most recent use—scale house, located in National Historic District, off—site use only.
Bldg. S–1164, Fort Sam Houston, Property #: 219330445, Fed Reg Date: 12/04/93
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized

Comment: 8629 sq. st., 1-story metal, needs rehab, most recent use—classroom, off-site use only.
Bldg. T–374, Property #: 219330480, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 8640 sq. ft., 1-story wood frame, needs rehab, located in National Historic District, off-site use only.
Bldg. T–1170, Property #: 219330481, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 1144 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only.
Bldg. T–1468, Property #: 219330482, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 1144 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only.
Bldg. T–1492, Property #: 219330483, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 2284 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only.
Bldg. T–2066, Property #: 219330484, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood frame, needs rehab, most recent use—admin., off-site use only
Bldg. T–2509, Property #: 219330485, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3147 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only
Bldg. T–5901, Property #: 219330486, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 742 sq. ft., 1-story wood frame, most recent use—admin., off-site use only
Bldg. T–1464, Property #: 219330487, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3778 sq. ft., 1-story wood frame, needs rehab, most recent use—t-shirts and frame shop, off-site use only
Bldg. T–1874, Property #: 219330488, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3108 sq. ft., 1-story wood frame, needs rehab, off-site use only
Bldg. T–2011, Property #: 219330489, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 150 sq. ft., 1-story wood frame, needs rehab, most recent use—storehouse, off-site use only
Bldg. T–2193, Property #: 219330490, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 1800 sq. ft., 1-story wood frame, needs rehab, most recent use—storage shed, off-site use only
Bldg. T–2507, Property #: 219330491, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 224 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only
Bldg. T–2510, Property #: 219330492, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3210 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only
Bldg. T–4044, Property #: 219330493, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 263 sq. ft., 1-story brick, needs rehab, most recent use—storage, off-site use only
Bldg. T–2511, Property #: 219330494, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 18,260 sq. ft., 1-story wood frame, needs rehab, most recent use—vehicle maintenance shop, off-site use only
Bldg. T–2512, Property #: 219330495, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 18,260 sq. ft., 1-story wood frame, needs rehab, most recent use—vehicle maintenance shop, off-site use only
Bldg. T–2513, Property #: 219330496, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 13,603 sq. ft., 1-story wood frame, needs rehab, most recent use—repair shop, off-site use only
Bldg. T–2516, Property #: 219330497, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3008 sq. ft., 1-story steel, most recent use—paint stripping plant, lead contaminants present, off-site use only
Bldg. T–2520, Property #: 219330498, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 31,296 sq. ft., 1-story wood frame, needs rehab, most recent use—physical fitness, off-site use only
Bldg. T–2183, Property #: 219330499, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3000 sq. ft., 1-story wood frame, needs rehab, most recent use—stable, off-site use only
Bldg. T–6231, Property #: 219330500, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 600 sq. ft., 1-story wood frame, most recent use—firing range, off-site use only
Bldg. T–6232, Property #: 219330501, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 401 sq. ft., 1-story wood frame, most recent use—firing range, off-site use only
Bldg. T–6236, Property #: 219330502, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 401 sq. ft., 1-story wood frame, needs rehab, most recent use—firing range, off-site use only
Bldg. T–2508, Property #: 219330503, Fed Reg Date: 12/04/93
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 224 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only

Virginia

Buildings

Bldg. T–6015, Property #: 219012376, Fed Reg Date: 12/04/93
Project Name: U.S. Army Logistics Center
U.S. Army Logistics Center & Fort Lee Shop Road
Fort Lee, VA, Co: Prince George, Zip: 23801–
Status: Unutilized
Comment: 2124 sq. ft. 2 story; most recent use—barracks; poor condition; needs major rehab.

Washington

Buildings

Reserve Center, Longview, Property #: 219320368, Fed Reg Date: 12/04/93
14 Port Way
Longview, WA, Co: Cowlitz, Zip: 98632–
Status: Unutilized
Comment: 17,304 sq. ft., 1-story training facility, scheduled to be vacated 9/93

Wisconsin

Buildings

Bldg. 7174, Fort McCoy, Property #: 219320372, Fed Reg Date: 12/04/93
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized

Comment: 8466 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse
Bldg. 7176, Fort McCoy, Property #: 219320373, Fed Reg Date: 12/04/93
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized
Comment: 5415 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse
Bldg. 7261, Fort McCoy, Property #: 219320374, Fed Reg Date: 12/04/93
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized
Comment: 4800 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse
Bldg. 457, Fort McCoy, Property #: 219320380, Fed Reg Date: 12/04/93
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized
Comment: 573 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—officer's quarters
Bldg. 1365, Fort McCoy, Property #: 219320382, Fed Reg Date: 12/04/93
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized
Comment: 2688 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—maintenance shop
Bldg. 556, Fort McCoy, Property #: 219320386, Fed Reg Date: 12/04/93
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized
Comment: 3748 sq. ft., 2-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—unit chapel
Bldg. 455, Fort McCoy, Property #: 219320390, Fed Reg Date: 12/04/93
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—admin/supply
Bldg. 1734, Fort McCoy, Property #: 219320393, Fed Reg Date: 12/04/93
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized
Comment: 13620 sq. ft., 2-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—admin/supply
Bldg. 352, Fort McCoy, Property #: 219320397, Fed Reg Date: 12/04/93
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized
Comment: 7428 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—exchange branch
Bldg. 553, Fort McCoy, Property #: 219320398, Fed Reg Date: 12/04/93
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized
Comment: 7200 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—exchange branch

COE

Alabama

Buildings

Bldg. TU–22, Property #: 319011551, Fed Reg Date: 12/04/93
Project Name: Selden Lock and Dam
Selden Lock and Dam
Route 1
Sawyerville, AL, Co: Hale, Zip: 36776–
Status: Unutilized
Comment: 1080 sq. ft., 1-story frame residence, needs minor repair, most recent use—lock tender's dwelling
Bldg. TU–21, Property #: 319011552, Fed Reg Date: 12/04/93
Project Name: Selden Lock and Dam
Selden Lock and Dam
Route 1
Sawyerville, AL, Co: Hale, Zip: 36776–
Status: Unutilized
Comment: 1080 sq. ft., 1-story frame residence, needs minor repair, most recent use—lock tender's dwelling
Bldg. TU–23, Property #: 319011553, Fed Reg Date: 12/04/93
Project Name: Selden Lock and Dam
Selden Lock and Dam
Route 1
Sawyerville, AL, Co: Hale, Zip: 36776–
Status: Unutilized
Comment: 1080 sq. ft., 1-story frame residence, needs minor repair, most recent use—lock tender's dwelling
Bldg. TU–24, Property #: 319011554, Fed Reg Date: 12/04/93
Project Name: Selden Lock and Dam
Selden Lock and Dam
Route 1
Sawyerville, AL, Co: Hale, Zip: 36776–
Status: Unutilized
Comment: 1080 sq. ft., 1-story frame residence, needs minor repair, most recent use—lock tender's dwelling

Arkansas

Land

Parcel 01, Property #: 319010071, Fed Reg Date: 12/04/93
Project Name: DeGray Lake
DeGray Lake
Section 12
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 77.6 acres
Parcel 02, Property #: 319010072, Fed Reg Date: 12/04/93
Project Name: DeGray Lake
Degray Lake
Section 13
Aakadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 198.5 acres
Parcel 03, Property #: 319010073, Fed Reg Date: 12/04/93
Project Name: DeGray Lake
Degray Lake
Section 18
Aakadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 50.46 acres
Parcel 04, Property #: 319010074, Fed Reg Date: 12/04/93
Project Name: DeGray Lake
Degray Lake
Sections 24, 25, 30 and 31
Aakadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 236.37 acres
Parcel 05, Property #: 319010075, Fed Reg Date: 12/04/93
Project Name: DeGray Lake
Degray Lake
Section 16
Aakadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 187.30 acres
Parcel 06, Property #: 319010076, Fed Reg Date: 12/04/93
Project Name: DeGray Lake
Degray Lake
Section 13
Aakadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 13.0 acres
Parcel 07, Property #: 319010077, Fed Reg Date: 12/04/93
Project Name: DeGray Lake
Degray Lake
Section 34
Aakadelphia, AR, Co: Hot Spring 71923–9361
Status: Unutilized
Comment: 0.27 acres
Parcel 08, Property #: 319010078, Fed Reg Date: 12/04/93
Project Name: DeGray Lake
Degray Lake
Section 13
Aakadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 14.6 acres
Parcel 09, Property #: 319010079, Fed Reg Date: 12/04/93
Project Name: DeGray Lake
Degray Lake
Section 12
Aakadelphia, AR, Co: Hot Spring, Zip: 71923–9361
Status: Unutilized
Comment: 6.60 acres
Parcel 10, Property #: 319010080, Fed Reg Date: 12/04/93
Project Name: DeGray Lake
Degray Lake
Section 12
Aakadelphia, AR, Co: Hot Spring, Zip: 71923–9361
Status: Unutilized
Comment: 4.5 acres
Parcel 11, Property #: 319010081, Fed Reg Date: 12/04/93
Project Name: DeGray Lake
Degray Lake
Section 19
Aakadelphia, AR, Co: Hot Spring, Zip: 71923–9361
Status: Unutilized
Comment: 19.50 acres
Lake Greeson, Property #: 319010083, Fed Reg Date: 12/04/93
Project Name: Lake Greeson
Section 7, 8 and 18
Murfreesboro, AR, Co: Pike, Zip: 71958–9720
Status: Unutilized
Comment: 46 acres

California

Land

Lake Mendocino, Property #: 319011015, Fed Reg Date: 12/04/93

Project Name: Lake Mendocino
1160 Lake Mendocino Drive
Ukiah, CA, Co: Mendocino, Zip: 95482–9404
Status: Unutilized
Comment: 20 acres, steep, dense brush; potential utilities.

Florida

Buildings

Bldg. CN–3, Property #: 319130006, Fed Reg Date: 12/04/93
1651 S. Franklin Lock Road
Alva, FL, Co: Lee, Zip: 33920–
Status: Unutilized
Comment: 1500 sq. ft., 1 story concrete block residence, off-site use only

Bldg. SF–97, Property #: 319340001, Fed Reg Date: 11/12/93
Port Mayaca Lock & Spillway
9 miles north of Canal Point
Port Mayaca, FL, Co: Martin, Zip: 33438–
Status: Unutilized
Comment: 1700 sq. ft., 1-story concrete block/stucco, most recent use—laboratory, off-site use only

Iowa

Buildings

Bldg—Prairie Ridge, Property #: 319340002, Fed Reg Date: 11/12/93
Rathbun Lake Project, R.R. #3
Centerville, IA, Co: Appanoose, Zip: 52544–
Status: Unutilized
Comment: water storage tower, off-site use only

Bldg—Bridgeview, Property #: 319340003, Fed Reg Date: 11/12/93
Rathbun Lake Project, R.R. #3
Centerville, IA, Co: Appanoose, Zip: 52544–
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only

Bldg.—Island View, Property #: 319340004, Fed Reg Date: 11/12/93
Rathbun Lake Project, R.R. #3
Centerville, IA, Co: Appanoose, Zip: 52544–
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only

Bldg.—Rolling Cove, Property #: 319340005, Fed Reg Date: 11/12/93
Rathbun Lake Project, R.R. #3
Centerville, IA, Co: Appanoose, Zip: 52544–
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only

Illinois

Land

Lake Shelbyville, Property #: 319240004, Fed Reg Date: 12/04/93
Shelbyville, IL, Co: Shelby & Moultrie, Zip: 62565–9804
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and s small access road, easement restrictions.

Buildings

Bldg. 7, Property #: 319010001, Fed Reg Date: 12/04/93
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 6, Property #: 319010002, Fed Reg Date: 12/04/93
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 5, Property #: 319010003, Fed Reg Date: 12/04/93
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 4, Property #: 319010004, Fed Reg Date: 12/04/93
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 3, Property #: 319010005, Fed Reg Date: 12/04/93
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame.

Bldg. 2, Property #: 319010006, Fed Reg Date: 12/04/93
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 1, Property #: 319010007, Fed Reg Date: 12/04/93
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Indiana

Land

Tracts 903, 905, 905–C, Property #: 319030003, Fed Reg Date: 12/04/93
Project Name: Patoka Lake Project
Patoka Lake Project
Taswell, IN, Co: Crawford, Zip: 47527–
Location: From French Lick, IN, take SR 145S for 10 miles to intersection with SR 164, property lies east and adjacent to highway 145.
Status: Excess
Comment: 22.35 acres; limited utilities.

Tracts 142–A, 143, Property #: 319030004, Fed Reg Date: 12/04/93
Project Name: Patoka Lake Project
Patoka Lake Project
Dubois, IN, Co: Dubois, Zip: 47527–9661
Location: From French Lick, IN take SR 145 S. for 20 miles to SR 164, go west on 164 for 7 miles to Celestine Road, go North on Celestine for 5 miles to Dubois Co. Road 475, then right for ¼ mile to property.
Status: Excess
Comment: 21.30 acres; limited utilities; subject to periodic flooding.

Tract 142–B, Property #: 319030005, Fed Reg Date: 12/04/93
Project Name: Patoka Lake Project
Patoka Lake Project
Dubois, IN, Co: Dubois, Zip: 47527–9661
Location: From French Lick, IN take SR 145 S for 20 miles to SR 164, go west on 164 for 7 miles to Celestine Road, go North on Celestine for 5 miles to Dubois Co. Road 475, then right for ¼ miles to property
Status: Excess
Comment: 4.74 acres; limited utilities; subject to periodic flooding.

Tract 601, , Property #: 319030006, Fed Reg Date: 12/04/93
Project Name: Patoka Lake Project
Patoka Lake Project
French Lick, IN, Co: Orange, Zip: 47527–
Location: IN. State Highway 145 south to Jordan Branch Road, Property abuts east right-of-way for Jordan Road.
Status: Excess
Comment: 0.41 acre; limited utilities.

Portion of Tract 1219, Property #: 319310002, Fed Reg Date: 12/04/93
Salamonie Lake, SR 9
Huntington, IN, Co: Huntington, Zip: 46750–
Status: Unutilized.
Comment: 0.88 acre, potential utilities.

Portion of Tract No. 1220, Property #: 319310003, Fed Reg Date: 12/04/93
Salamonie Lake, SR 9
Huntington, IN, Co: Huntington, Zip: 46750–
Status: Unutilized
Comment: 0.30 acre, potential utilities.

Portion of Tract No. 1207, Property #: 319310004, Fed Reg Date: 12/04/93
Salamonie Lake, SR 9
Huntington, IN, Co: Huntington, Zip: 46750–
Status: Unutilized
Comment: 0.28 acre, potential utilities.

Portion of Tract No. 116, Property #: 319320001, Fed Reg Date: 12/04/93

Huntington Lake
Huntington, IN, Co: Huntington, Zip: 46750–
Status: Excess
Comment: 3.41 acres with road easement.

Buildings

Bldg. 01, Monore Lake, Property #: 319140002, Fed Reg Date: 12/04/93
Monroe Cty. Road 37 North to Monroe Dam Rd.
Bloomington, IN, Co: Monroe, Zip: 47401–8772
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only.

Bldg. 02, Property #: 319140003, Fed Reg Date: 12/04/93
Monroe Cty. Rd. North to Monroe Dam Rd.
Bloomington, IN, Co: Monroe, Zip: 47401–8772
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only.

Kanasas

Land

Parcel 1, Property #: 319010064, Fed Reg Date: 12/04/93
Project Name: El Dorado Lake
El Dorado Lake
Section 13, 24, and 18
(See County), KS, Co: Butler, Zip:
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Kentucky

Land

Tract 2625, Property #: 319010025, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: Adjoining the village of Rockcastle.
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2, Property #: 319010026, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1, Property #: 319010027, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800, Property #: 319010028, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915, Property #: 319010029, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 6½ miles west of Cadiz.
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702, Property #: 319010031, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318, Property #: 319010032, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek.
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502, Property #: 319010033, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611, Property #: 319010034, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 5 miles south of Canton, KY.
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619, Property #: 319010035, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817, Property #: 319010036, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 6½ miles south of Canton, KY.
Status: Excess
Comment: 1.75 acres; wooded

Tract 1217, Property #: 319010042, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: On the north side of the Illinois Central Railroad.
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906, Property #: 319010044, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907, Property #: 319010045, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY.
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1, Property #: 319010046, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2, Property #: 319010047, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005, Property #: 319010048, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307, Property #: 319010049, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403, Property #: 319010050, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504, Property #: 319010051, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: 9 miles southeasterly of Eddyville, KY.

Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.
Tract 214, Property #: 319010052, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: South of Illinois Central Railroad, 1 mile east of the Cumberland River.
Status: Excess
Comment: 5.5 acres; wooded; no utilities.
Tract 215, Property #: 319010053, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: 5 miles southwest of Kuttawa.
Status: Excess
Comment: 1.40 acres; wooded; no utilities.
Tract 241, Property #: 319010054, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.
Tracts 306, 311, 315 and 325, Property #: 319010055, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.
Tracts 2305, 2306, and 2400–1, Property #: 319010056, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.
Tract 500–2, Property #: 319010057, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Kuttawa, KY, Co: Lyon, Zip: 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.
Tracts 5203 and 5204, Property #: 319010058, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Linton, KY, Co: Trigg, Zip: 42212–
Location: Village of Linton, KY state highway 1254.
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.
Tract 5240, Property #: 319010059, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Linton, KY, Co: Trigg, Zip: 42212–
Location: 1 mile northwest of Linton, KY.
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.
Tract 4628, Property #: 319011621, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.
Tract 4619–B, Property #: 319011622, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.
Tract 2403–B, Property #: 319011623, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Status: Unutilized
Comment: 0.70 acres; wooded; subject to utility easements.
Tract 241–B, Property #: 319011624, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.
Tract 212 and 237, Property #: 319011625, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.
Tract 215–B, Property #: 319011626, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.
Tract 233, Property #: 319011627, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.
Tract B—Markland Locks & Dam, Property #: 319130002, Fed Reg Date: 12/04/93
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw, KY, Co: Gallatin, Zip: 41095–
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding
Tract A—Markland Locks & Dam, Property #: 319130003, Fed Reg Date: 12/04/93
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw, KY, Co: Gallatin, Zip: 41095–
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding
Tract C—Markland Locks & Dam, Property #: 319130005, Fed Reg Date: 12/04/93
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw, KY, Co: Gallatin, Zip: 41095–
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding
Tract N–819, Property #: 319140009, Fed Reg Date: 12/04/93
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart, KY, Co: Clinton, Zip: 42601–
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements
Portion of Lock & Dam No. 1, Property #: 319320003, Fed Reg Date: 12/04/93
Kentucky River
Carrolton, KY, Co: Carroll, Zip: 41008–0305
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored
Portion of Lock & Dam No. 2, Property #: 319320004, Fed Reg Date: 12/04/93
Kentucky River
Lockport, KY, Co: Henry, Zip: 40036–9999
Status: Underutilized
Comment: approx. 13.14 acres (sloping), access monitored
Buildings
Green River Lock & Dam #3, Property #: 319010022, Fed Reg Date: 12/04/93
Project Name: Green River Lock & Dam #3
Rochester, KY, Co: Butler, Zip: 42273–
Location: SR 70 west from Morgantown, KY.. approximately 7 miles to site.
Status: Unutilized
Comment: 980 sq. ft., 2-story wood frame; two story residence; potential utilities; needs major rehab.
Kentucky River Lock and Dam 3, Property #: 319010060, Fed Reg Date: 12/04/93
Project Name: Kentucky River Lock & Dam 3
Pleasureville, KY, Co: Henry, Zip: 40057–
Location: SR 421 North from Frankfort, KY to highway 561, right on 561 approximately 3 miles to site.
Status: Unutilized
Comment: 897 sq. ft., 2-story wood frame; structural deficiencies.
Bldg. 1, Property #: 319011628, Fed Reg Date: 12/04/93
Project Name: Kentucky River Lock and Dam
Kentucky River Lock and Dam
Carrolton, KY, Co: Carroll, Zip: 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Status: Unutilized
Comment: 1530 sq. ft., 2-story wood frame house; subject to periodic flooding; needs rehab.

Bldg. 2, Property #: 319011629, Fed Reg Date: 12/04/93
Project Name: Kentucky River Lock and Dam
Kentucky River Lock and Dam
Carrolton, KY, Co: Carroll, Zip: 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to highway 320, then left for about 1.5 miles to site.
Status: Unutilized
Comment: 1530 sq. ft., 2-story wood frame house; subject to periodic flooding; needs rehab.
Utility Bldg, Nolin River Lake, Property #: 319320002, Fed Reg Date: 12/04/93
Moutardier Recreation Site
KY, Co: Edmonson, Zip:
Status: Unutilized
Comment: 541 sq. ft., concrete block, off-site use only

Louisiana

Land

Wallace Lake Dam and Reservoir, Property #: 319011009, Fed Reg Date: 12/04/93
Project Name: Wallace Lake Dam and Reservoir
Shreveport, LA, Co: Caddo, Zip: 71103–
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.
Bayou Bodcau Dam and Reservoir, Property #: 319011010, Fed Reg Date: 12/04/93
Project Name: Bayou Bodcau Dam and Reservoir
Haughton, LA, Co: Caddo, Zip: 71037–9707
Location: 35 miles Northeast of Shreveport, La.
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Minnesota

Land

Parcel D, Property #: 319011038, Fed Reg Date: 12/04/93
Project Name: Pine River
Pine River
Cross Lake, MN, Co: Crow Wing, Zip: 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Status: Excess
Comment: 17 acres; no utilities.
Trac 92, Property #: 319011040, Fed Reg Date: 12/04/93
Project Name: Sandy Lake
Sandy Lake
McGregor, MN, Co: Aitkins, Zip: 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Status: Excess
Comment: 4 acres; no utilities.
Tract 98, Property #: 319011041, Fed Reg Date: 12/04/93
Project Name: Leech Lake
Leech Lake
Benedict, MN, Co: Hubbard, Zip: 56641–
Location: 1 mile from city of Federal Dam, Mn.
Status: Excess
Comment: 7.3 acres; no utilities.

Missouri

Land

Harry S Truman Dam & Reservoir, Property #: 319030014, Fed Reg Date: 12/04/93
Project Name: Harry S Truman Dam & Reservoir
Warsaw, MO, Co: Benton, Zip: 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Mississippi

Land

Parcel 7, Property #: 319011019, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Sections 22, 23, T24N
Grenada, MS, Co: Calhoun, Zip: 38901–0903
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.
Parcel 8, Property #: 319011020, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 20, T24N
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.
Parcel 9, Property #: 319011021, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 20 T24N, R7E
Grenada, MS, Co: Calhoun, Zip: 38901–0903
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.
Parcel 10, Property #: 319011022, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Sections 16, 17, 18 T24N R8E
Grenada, MS, Co: Calhoun, Zip: 38901–0903
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.
Parcel 2, Property #: 319011023, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 20 and T23N, R5E
Grenada, MS, Co: Grenada, Zip: 38901–0903
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.
Parcel 3, Property #: 319011024, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 4, T23N, R5E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).
Parcel 4, Property #: 319011025, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 2 and 3. T23N, R5E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.
Parcel 5, Property #: 319011026, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 7, T24N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).
Parcel 6, Property #: 319011027, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 9, T24N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38903–0903
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.
Parcel 11, Property #: 319011028, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 20, T24N, R8E
Grenada, MS, Co: Calhoun, Zip: 38901–0903
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.
Parcel 12, Property #: 319011029, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 25, T24N, R7E
Grenada, MS, Co: Yalobusha, Zip: 38390–10903
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.
Parcel 13, Property #: 319011030, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 34, T24N, R7E
Grenada, MS, Co: Yalobusha, Zip: 38903–0903
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).
Parcel 14, Property #: 319011031, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 3, T23N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.
Parcel 15, Property #: 319011032, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 4, T24N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903

Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.
Parcel 16, Property #: 319011033, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 9, T23N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.
Parcel 17, Property #: 319011034, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 17, T23N, R7E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.
Parcel 18, Property #: 319011035, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 22, T23N, R7E
Grenada, MS, Co: Yalobusha, Zip: 28902–0903
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.
Parcel 19, Property #: 319011036, Fed Reg Date: 12/04/93
Project Name: Grenada Lake
Grenada Lake
Section 9, T22N, R7E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Montana

Land

120 acres, Fort Peck Lake Proj, Property #: 319220005, Fed Reg Date: 12/04/93
MT, Co: McCone, Zip:
Location: Twp 21 north, RNG 43 east, Section 34, N/2NE/4, Section 35, NW/4NW/4
Status: Unutilized
Comment: 120.00 acres, rough & rugged terrain
GSA No.: 7–D–MT–4137–FF

Ohio

Land

Hannibal Locks and Dam, Property #: 319010015, Fed Reg Date: 12/04/93
Project Name: Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal, OH, Co: Monroe, Zip: 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Status: Underutilized
Comment: 22 acres; river bank

Buildings

Barker Historic House, Property #: 319120018, Fed Reg Date: 12/04/93
Willow Island Locks and Dam
Newport, OH, Co: Washington, Zip: 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Status: Unutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only
William H. Harsha Lake Bldg., Property #: 319240011, Fed Reg Date: 12/04/93
3782 Williamsburg-Bantam Road
Batavia, OH, Co: Clermont, Zip: 45106–
Status: Unutilized
Comment: 1568 sq. ft., wood frame residence, needs major repairs, off-site use only

Oklahoma

Land

Pine Creek Lake, Property #: 319010923, Fed Reg Date: 12/04/93
Project Name: Pine Creek Lake
Section 27
(See County), OK, Co: McCurtain, Zip:
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Buildings

Govt. Quarters #1, Property #: 319330001, Fed Reg Date: 12/04/93
Fort Supply Lake
Section 16, T 24 N, R 22 E
Ft. Supply, OK, Co: Woodward, Zip: 73841–0248
Status: Excess
Comment: 1568 sq. ft., 1-story steel frame, most recent use—residential, off-site use only
Govt. Quarters #2, Property #: 319330002, Fed Reg Date: 12/04/93
Fort Supply Lake
Section 16, T 24 N, R 22 E
Ft. Supply, OK, Co: Woodward, Zip: 73841–0248
Status: Excess
Comment: 1568 sq. ft., 1-story wood frame, most recent use—residential, off-site use only

Pennsylvania

Land

Mahoning Creek Lake, Property #: 319010018, Fed Reg Date: 12/04/93
Project Name: Mahoning Creek Lake
New Bethlehem, PA, Co: Armstrong, Zip: 16242–9603
Location: Route 28 north to Belknap, Road #4
Status: Excess
Comment: 2.58 acres; steep and densely wooded.
Tracts 610, 611, 612, Property #: 319011001, Fed Reg Date: 12/04/93
Project Name: Shenango River Lake
Shenango River Lake
Sharpsville, PA, Co: Mercer, Zip: 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Status: Excess
Comment: 24.09 acres; subject to flowage easement
Tracts L24, L26, Property #: 319011011, Fed Reg Date: 12/04/93
Project Name: Crooked Creek Lake
Crooked Creek Lake
(See County), PA, Co: Armstrong, Zip: 03051–
Location: Left bank—55 miles downstream of dam.
Status: Unutilized
Comment: 7.59 acres; potential for utilities.

Buildings

Mahoning Creek Reservoir, Property #: 319210008, Fed Reg Date: 12/04/93
New Bethlehem, PA, Co: Armstrong, Zip: 16242–
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only

South Carolina

Buildings

Bldg. 1, Property #: 319011544, Fed Reg Date: 12/04/93
Project Name: J.S. Thurmond Dam & Reservoir
J. S. Thurmond Dam and Reservoir
Clarks Hill, SC, Co: McCormick, Zip: 29821–
Location: ½ mile east of Resource Managers Office.
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage, off-site removal only.
Bldg. 2, Property #: 319011545, Fed Reg Date: 12/04/93
Project Name: J.S. Thurmond Dam & Reservoir
J. S. Thurmond Dam and Reservoir
Clarks Hill, SC, Co: McCormick, Zip: 29821–
Location: ½ mile east of Resource Managers Office.
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage, off-site removal only.
Bldg. 3, Property #: 319011546, Fed Reg Date: 12/04/93
Project Name: J.S. Thurmond Dam & Reservoir
J. S. Thurmond Dam and Reservoir
Clarks Hill, SC, Co: McCormick, Zip: 29821–
Location: ½ mile east of Resource Managers Office.
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage, off-site removal only.
Bldg. 4, Property #: 319011547, Fed Reg Date: 12/04/93
Project Name: J.S. Thurmond Dam & Reservoir
J. S. Thurmond Dam and Reservoir
Clarks Hill, SC, Co: McCormick, Zip: 29821–
Location: ½ mile east of Resource Managers Office.
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage, off-site removal only.
Bldg. 5, Property #: 319011548, Fed Reg Date: 12/04/93
Project Name: J.S. Thurmond Dam & Reservoir
J. S. Thurmond Dam and Reservoir
Clarks Hill, SC, Co: McCormick, Zip:
Location: ½ mile east of Resource Managers Office.
Status: Excess

Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage, off-site removal only.

Tennessee

Land

Tract 6827, Property #: 319010927, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart, Zip: 37058–
Location: 2½ miles west of Dover, TN.
Status: Excess
Comment: .57 acres; subject to existing easements.
Tracts 6002–2 and 6010, Property #: 319010928, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart, Zip: 37058–
Location: 3½ miles south of village of Tabaccoport.
Status: Excess
Comment: 100.86 acres; subject to existing easements.
Tract 11516, Property #: 319010929, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake
Ashland City, TN, Co: Dickson, Zip: 37015–
Location: ½ mile downstream from Cheatham Dam
Status: Excess
Comment: 26.25 acres; subject to existing easements.
Tract 2319, Property #: 319010930, Fed Reg Date: 12/04/93
Project Name: J. Percy Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37130–
Location: West of Buckeye Bottom Road
Status: Excess
Comment: 14.48 acres; subject to existing easements.
Tract 2227, Property #: 319010931, Fed Reg Date: 12/04/93
Project Name: J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37103–
Location: Old Jefferson Pike
Status: Excess
Comment: 2.27 acres; subject to existing easements.
Tract 2107, Property #: 319010932, Fed Reg Date: 12/04/93
Project Name: J. Percy Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37130–
Location: Across Fall Creek near Fall Creek camping area.
Status: Excess
Comment: 14.85 acres; subject to existing easements.
Tracts 2601, 2602, 2603, 2604, Property #: 319010933, Fed Reg Date: 12/04/93
Project Name: Cordell Hull Lake & Dam Pro.
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro, TN, Co: Jackson, Zip: 38562–
Location: TN Highway 56
Status: Unutilized
Comment: 11 acres; subject to existing easements.
Tract 1911, Property #: 319010934, Fed Reg Date: 12/04/93
Project Name: J. Percy Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37130–
Location: East of Lamar Road
Status: Excess
Comment: 15.31 acres; subject to existing easements.
Tract 2321, Property #: 319010935, Fed Reg Date: 12/04/93
Project Name: J. Percy Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37130–
Location: South of Old Jefferson Pike
Status: Excess
Comment: 12 acres; subject to existing easements.
Tract 7206, Property #: 319010936, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart, Zip: 37058–
Location: 2½ miles SE of Dover, TN
Status: Excess
Comment: 10.15 acres; subject to existing easements.
Tracts 8813, 8814, Property #: 319010937, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake
Cumberland, TN, Co: Stewart, Zip: 37050–
Location: 1½ miles East of Cumberland City.
Status: Excess
Comment: 96 acres; subject to existing easements.
Tract 8911, Property #: 319010938, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake
Cumberland City, TN, Co: Montgomery, Zip: 37050–
Location: 4 miles east of Cumberland City.
Status: Excess
Comment: 7.7 acres; subject to existing easements.
Tract 11503, Property #: 319010939, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake
Ashland City, TN, Co: Cheatham, Zip: 37015–
Location: 2 miles downstream from Cheatham Dam.
Status: Excess
Comment: 1.1 acres; subject to existing easements.
Tracts 11523, 11524, Property #: 319010940, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake
Ashland City, TN, Co: Cheatham, Zip: 37015–
Location: 2½ miles downstream from Cheatham Dam
Status: Excess
Comment: 19.5 acres; subject to existing easements.
Tract 6410, Property #: 319010941, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake
Bumpus Mills, TN, Co: Stewart, Zip: 37028–
Location: 4½ miles SW. of Bumpus Mills.
Status: Excess
Comment: 17 acres; subject to existing easements.
Tract 9707, Property #: 319010943, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake
Palmyer, TN, Co: Montgomery, Zip: 37112–
Location: 3 miles NE of Palmyer, TN. Highway 149
Status: Excess
Comment: 6.6 acres; subject to existing easements.
Tract 6949, Property #: 319010944, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart, Zip: 37058–
Location: 1½ miles SE of Dover, TN.
Status: Excess
Comment: 29.67 acres; subject to existing easements.
Tracts 6005 and 6017, Property #: 319011173, Fed Reg Date: 12/04/93
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart, Zip: 37058–
Location: 3 miles south of Village of Tobaccoport.
Status: Excess
Comment: 5 acres; subject to existing easements.
Tracts K–1191, K–1135, Property #: 319130007, Fed Reg Date: 12/04/93
Old Hickory Lock and Dam
Hartsville, TN, Co: Trousdale, Zip: 37074–
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation.
Tract A–102, Property #: 319140006, Fed Reg Date: 12/04/93
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina, TN, Co: Clay, Zip: 38551–
Status: Underutilized
Comment: 351 acres most recent use—hunting, subject to existing easements.
Tract A–120, Property #: 319140007, Fed Reg Date: 12/04/93
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina, TN, Co: Clay, Zip: 38551–
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.
Tracts A–20, A–21, Property #: 319140008, Fed Reg Date: 12/04/93
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina, TN, Co: Clay, Zip: 38551–
Status: Underutilized
Comment: 821 acres, most recent ue—recreation, subject to existing easements.
Tract D–185, Property #: 319140010, Fed Reg Date: 12/04/93
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston, TN, Co: Clay, Zip: 38570–
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Texas

Land

Parcel #222, Property #: 319010421, Fed Reg Date: 12/04/93
Project Name: Lake Texoma
Lake Texoma
(See County), TX, Co: Grayson, Zip:
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Status: Excess
Comment: 52.80 acres; most recent use—recreation.

Buildings

Cabin, Texoma Lake, Property #: 319330003, Fed Reg Date: 12/04/93
Lot 100, Tract 673, Mill Creek Estates
TX, Co: Grayson, Zip:
Status: Excess
Comment: 975 sq. ft., 1-story wood frame with asbestos and masonite wall, most recent use—residential, off-site use only.

House, Texoma Lake, Property #: 319330004, Fed Reg Date: 12/04/93
Lot 102, Tract 669, Mill Creek Estates
TX, Co: Grayson, Zip:
Status: Excess
Comment: 1296 sq. ft., 1-story brick veneer, most recent use—residential, off-site use only.

Washington

Land

Portion of Tract 905, Property #: 319320005, Fed Reg Date: 12/04/93
Lower Monumental Lock & Dam
½ mi SE of Lyons Ferry Marina
WA, Co: Whitman, Zip:
Status: Excess
Comment: 3.788 acres with encroaching private well.

Buildings

Residence—Tract 1500–1, Property #: 319320006, Fed Reg Date: 12/04/93
LSRFWCP Area, Hwy 12
Walla Walla, WA, Co: Walla Walla, Zip: 99362–
Status: Excess
Comment: 1176 sq. ft., 1-story frame residence, need roadway easement, off-site use only.

Wisconsin

Buildings

Former Lockmaster's Dwelling, Property #: 319011524, Fed Reg Date: 12/04/93
Project Name: Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton, WI, Co: Outagamie, Zip: 54911–
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling, Property #: 319011525, Fed Reg Date: 12/04/93
Project Name: Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton, WI, Co: Outagamie, Zip: 54911–
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling, Property #: 319011527, Fed Reg Date: 12/04/93
Project Name: Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna, WI, Co: Outagamie, Zip: 54131–
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling, Property #: 319011531, Fed Reg Date: 12/04/93
Project Name: Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton, WI, Co: Outagamie, Zip: 54911–
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling, Property #: 319011533, Fed Reg Date: 12/04/93
Project Name: Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown, WI, Co: Outagamie, Zip: 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling, Property #: 319011535, Fed Reg Date: 12/04/93
Project Name: Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence, WI, Co: Brown, Zip: 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling, Property #: 319011536, Fed Reg Date: 12/04/93
Project Name: Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute, WI, Co: Outagamie, Zip: 54140–
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities, needs rehab; secured area with alternate access.

West Virginia

Buildings

House—Stonewall Jackson Lake, Property #: 319320007, Fed Reg Date: 12/04/93
Entrance to State Park off Route 19
Roanoke Bay, WV, Co: Lewis, Zip: 26452–
Status: Excess
Comment: 2367 sq. ft., 1-story frame residence, off-site use only.

COE—BC

California

Land

Land—2.5 acres Property #: 329310001, Fed Reg Date: 12/04/93
Hamilton Army Airfield
Novato, CA Co: Marin, Zip: 94945–
Status: Excess
Comment: 2.5 acres, potential utilities, access restriction, subject to flooding, wetlands and storm water runoff, potential for contamination from adjourning areas

Land Property #: 329320015, Fed Reg Date: 12/04/93
Sacramento Army Depot
Sacramento, CA Zip: 95813–5053
Status: Excess
Comment: approx. 485 acres including swimming pools, tennis courts, baseball and softball field, golf course, roads, open areas, etc., scheduled to be vacated 10/94

Buildings

1215 Houses, Property #: 329210039, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Concrete family housing, majority are 2-story, scheduled to be vacated 9/95

254 Temporary Living Quarters, Property #: 329210040, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Wood, concrete and concrete block structures including barracks, scheduled to be vacated 9/95

304 Office/Admin. Bldgs., Property #: 329210041, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Wood, concrete, concrete block and steel structures including personnel bldgs. and general purpose bldgs., scheduled to be vacated 9/95

52 Recreation Facilities, Property #: 329210042, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Facilities including bowling center, guest houses, community and youth centers, library, gym and recreational bldgs., scheduled to be vacated 9/95

18 Aircraft/Airport Facilities, Property #: 329210043, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Facilities including hangars, runway, taxiways, aprons, fire station, maintenance bldgs. and control tower, scheduled to be vacated 9/95

24 Maintenance/Eng. Facilities, Property #: 329210044, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Wood, concrete block and steel structure, scheduled to be vacated 9/95

95 Mess/Dining Halls, Property #: 329210045, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Wood, concrete and concrete block dining facilities, scheduled to be vacated 9/95

6 Child Care Facilities, Property #: 329210046, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Wood and concrete child care centers, scheduled to be vacated 9/95

22 Stores and Services, Property #: 329210047, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Wood, concrete, concrete block and steel structures including stores, snack bars, commissary and service station exchange, scheduled to be vacated 9/95

10 Hospital Facilities, Property #: 329210048, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Wood, concrete, concrete block structures including a hospital, clinics and vet. facilities, scheduled to be vacated 9/95

10 Chapels, Property #: 329210049, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Wood, concrete, concrete block chapels and chapel center facilities, scheduled to be vacated 9/95

2 Fire Facilities, Property #: 329210050, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Fire stations, scheduled to be vacated 9/95

8 Audio Visual Facilities, Property #: 329210051, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Wood, concrete and steel structures including photo labs and training centers, scheduled to be vacated 9/95

6 Communications Facilities, Property #: 329210052, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Concrete, concrete block and steel structures including a communication center and radio bldgs., scheduled to be vacated 9/95

216 Warehouses, Property #: 329210053, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Wood, concrete, concrete block and steel structures including storage bldgs. and sheds, scheduled to be vacated 9/95

82 Vehicle Shops, Property #: 329210054, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Wood, concrete, concrete block and steel structures including maintenance shops and oil storage bldgs., scheduled to be vacated 9/95

438 Miscellaneous Facilities, Property #: 329210055, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Facilities including hdqts. bldgs., reserve centers classrooms, day rooms, roads, vehicle parks and training areas, scheduled to be vacated 9/95

27 Multi-Purpose Facilities, Property #: 329210056, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Facilities used for multi-purposes, scheduled to be vacated 9/95

31 Fuel Facilities, Property #: 329210057, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Concrete, concrete block and steel structures including gas station bldgs., scheduled to be vacated 9/95

6 Hazardous Storage Facilities, Property #: 329210058, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, ZIP: 93941–5000
Status: Excess
Comment: Concrete block, concrete and steel structures, scheduled to be vacated 9/95

31 Explosives Facilities, Property #: 329210059, Fed Reg Date: 12/04/93
Fort Ord
Ft. Ord, CA, Co: Monterey, Zip: 93941–5000
Status: Excess
Comment: Concrete and steel structures including igloo storages and magazine storages, scheduled to be vacated 9/95

3 Housing Buildings, Property #: 329320004, Fed Reg Date: 12/04/93
Sacramento Army Depot
Sacramento, CA, Zip: 95813–5053
Status: Excess
Comment: ranging in size from 1320 sq. ft. to 2343 sq. ft. including garages, scheduled to be vacated 10/94

7 Office/Admin. Buildings, Property #: 329320005, Fed Reg Date: 12/04/93
Sacramento Army Depot
Sacramento, CA, Zip: 95813–5053
Status: Excess
Comment: ranging in size from 192 sq. ft. to 109,655 sq. ft., scheduled to be vacated 10/94

20 Recrea/Stores/Svcs Bldgs., Property #: 329320006, Fed Reg Date: 12/04/93
Sacramento Army Depot
Sacramento, CA, Zip: 95813–5053
Status: Excess
Comment: ranging in size from 100 sq. ft. to 9871 sq. ft. including community and fitness centers, snack bars, scheduled to be vacated 10/94

23 Warehouses/Storage Bldgs., Property #: 329320007, Fed Reg Date: 12/04/93
Sacramento Army Depot
Sacramento, CA, Zip: 95813–5053
Status: Excess
Comment: ranging in size from 119 sq. ft. to 261,360 sq. ft., scheduled to be vacated 10/94

13 Communication/Elec. Bldgs., Property #: 329320008, Fed Reg Date: 12/04/93
Sacramento Army Depot
Sacramento, CA., Zip: 95813–5053
Status: Excess
Comment: electronic maintenance shops and equipment facilities ranging in size from 756 sq. ft. to 163,961 sq. ft., scheduled to be vacated 10/94

1 Hospital Building, Property #: 329320009, Fed Reg Date: 12/04/93
Sacramento Army Depot
Sacramento, CA, Zip: 95813–5053
Status: Excess
Comment: 6622 sq. ft. clinic without beds, scheduled to be vacated 10/94

1 Dining Hall Building, Property #: 329320010, Fed Reg Date: 12/04/93
Sacramento Army Depot
Sacramento, CA, Zip: 95813–5053
Status: Excess
Comment: 12,550 sq. ft. post restaurant, scheduled to be vacated 10/94

14 Miscellaneous Buildings, Property #: 329320011, Fed Reg Date: 12/04/93
Sacramento Army Depot
Sacramento, CA, Zip: 95813–5053
Status: Excess
Comment: ranging in size from 120 sq. ft. to 5612 sq. ft. including sentry stations, gen. inst. bldgs. and waste treatment facilities, scheduled to be vacated 10/94

6 Maint/Engineering Bldgs., Property #: 329320012, Fed Reg Date: 12/04/93
Sacramento Army Depot
Sacramento, CA, Zip: 95813–5053
Status: Excess
Comment: ranging in size from 437 sq. ft. to 8707 sq. ft., scheduled to be vacated 10/94

2 Vehicle Shop Buildings, Property #: 329320013, Fed Reg Date: 12/04/93
Sacramento Army Depot
Sacramento, CA, Zip: 95813–5053
Status: Excess
Comment: ranging in size from 600 sq. ft. to 48,363 sq. ft., scheduled to be vacated 10/94

18 Hazardous Storage Buildings, Property #: 329320014, Fed Reg Date: 12/04/93
Sacramento Army Depot
Sacramento, CA, Zip: 95813–5053
Status: Excess
Comment: flammable material storehouses ranging in size from 72 sq. ft. to 4100 sq. ft., scheduled to be vacated 10/94

Indiana

Land

1 Aircraft/Airport Facility, Property #: 329210077, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 469 sq. yds., scheduled to be vacated 9/95.

Buildings

46 Family Housing Residences, Property #: 329210068, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 46—four and six unit residential family housing, 3–4 bedrooms, 1–2 story brick frame w/siding, scheduled to be vacated 9/95.

73 Temporary Living Quarters, Property #: 329210069, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 44 family residences, 1-2 story brick frame, 29 temporary living quarters (barracks), brick or concrete frame, scheduled to be vacated 9/95.

26 Office/Administration Bldgs, Property #: 329210070, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 1210 to 789018 sq. ft., wood, brick, concrete or concrete block frame, scheduled to be vacated 9/95, includes personnel bldgs, general purpose bldgs.
24 Recreational Facilities, Property #: 329210071, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 152 to 31439 sq. ft., wood, brick, concrete or concrete block frame, scheduled to be vacated 9/95, includes canteen, gym, golf course, swimming pool, riding stable, tennis court.
2 Child Care Centers, Property #: 329210072, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 5818 to 14457 sq. ft., brick frame, scheduled to be vacated 9/95.
4 Dining Halls, Property #: 329210073, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 11075 to 31439 sq. ft., brick frame, scheduled to be vacated 9/95.
12 Stores/Service Facilities, Property #: 329210074, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 140 to 68899 sq. ft., brick, wood, concrete or concrete block frame, scheduled to be vacated 9/95, inc. restaurant, commissary, sales store, exchange branch, service outlet.
2 Chapels, Property #: 329210076, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 3747 to 16587 sq. ft., brick and aluminum frame, scheduled to be vacated 9/95
2 Fire Facilities, Property #: 329210078, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 2243 to 3835 sq. ft., scheduled to be vacated 9/95, includes fire station, hose house.
2 Vehicle Shops, Property #: 329210079, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 3470 sq. ft., concrete/asbestos frame, scheduled to be vacated 9/95.
6 Maintenance Engineering Facs., Property #: 329210080, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 168 to 14074 sq. ft., wood, brick or concrete block frame, scheduled to be vacated 9/95.
4 Explosives/Munitions Bldgs., Property #: 329210081, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 135 to 1138 sq. ft., concrete frame, inc. ammo magazines scheduled to be vacated 9/95.
6 Hazardous Storage Buildings, Property #: 329210082, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 103 to 480 sq. ft., brick, steel, wood frame, inc. flammable materials storage, scheduled to be vacated 9/95.
1 Fuel Facility, Property #: 329210083, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 327 sq. ft., gas station building, scheduled to be vacated 9/95.
23 Warehouses, Property #: 329210084, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 960 to 56650 sq. ft., concrete, brick or steel frame, scheduled to be vacated 9/95
150 Miscellaneous Buildings, Property #: 329210085, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: 31 to 211364 sq. ft., wood, concrete block, concrete, brick, or steel frame, scheduled to be vacated 9/95, inc. hdqtrs. and gen. instruction bldgs, training cntrs, detached garages.
5 Multi-purpose Buildings, Property #: 329210086, Fed Reg Date: 12/04/93
Fort Benjamin Harrison
Lawrence, IN, Co: Marion, Zip: 46216–5000
Status: Excess
Comment: scheduled to be vacated 9/95.

Kentucky

Buildings
17 Housing Units, Property #: 329330001, Fed Reg Date: 12/04/93
Lexington-Blue Grass Army Depot
Lexington, KY, Co: Fayette/Bourbon, Zip: 20509–
Status: Excess
Comment: ranging in size from approximately 2500 sq. ft. to 9000 sq. ft., brick or aluminum frame, scheduled to be vacated 9/94.
8 Office/Administration Bldgs, Property #: 329330002, Fed Reg Date: 12/04/93
Lexington-Blue Grass Army Depot
Lexington, KY, Co: Fayette/Bourbon, Zip: 20509–
Status: Excess
Comment: ranging in size from approximately 570 sq. ft. to 11,000 sq. ft., concrete or aluminum frame, scheduled to be vacated 9/94.
6 Recreation Areas, Property #: 329330003, Fed Reg Date: 12/04/93
Lexington-Blue Grass Army Depot
Lexington, KY, Co: Fayette/Bourbon, Zip: 20509–
Status: Excess
Comment: including a 9-hole golf course, swimming pool, clubhouse, tennis courts, softball field and playground, scheduled to be vacated 9/94.
2 School/Child Care Facilities, Property #: 329330004, Fed Reg Date: 12/04/93
Lexington-Blue Grass Army Depot
Lexington, KY, Co: Fayette/Bourbon, Zip: 20509–
Status: Excess
Comment: scheduled to be vacated 9/94.
Hospital, Property #: 329330005, Fed Reg Date: 12/04/93
Lexington-Blue Grass Army Depot
Lexington, KY, Co: Fayette/Bourbon, Zip: 20509–
Status: Excess
Comment: scheduled to be vacated 9/94.
3 Mess/Dining Halls, Property #: 329330006, Fed Reg Date: 12/04/93
Lexington-Blue Grass Army Depot
Lexington, KY, Co: Fayette/Bourbon, Zip: 20509–
Status: Excess
Comment: scheduled to be vacated 9/94.
2 Communications/Elec. Bldgs., Property #: 329330007, Fed Reg Date: 12/04/93
Lexington-Blue Grass Army Depot
Lexington, KY, Co: Fayette/Bourbon, Zip: 20509–
Status: Excess
Comment: concrete frame, scheduled to be vacated 9/94.
41 Warehouses, Property #: 329330008, Fed Reg Date: 12/04/93
Lexington-Blue Grass Army Depot
Lexington, KY, Co: Fayette/Bourbon, Zip: 20509–
Status: Excess
Comment: various sizes, concrete or brick frame, scheduled to be vacated 9/94.
40 Miscellaneous Facilities, Property #: 329330009, Fed Reg Date: 12/04/93
Lexington-Blue Grass Army Depot
Lexington, KY, Co: Fayette/Bourbon, Zip: 20509–
Status: Excess
Comment: including fire department, restaurant, gas station, motor pool, stores/services, heating and sewer plants, scheduled to be vacated 9/94.
1 Hazardous Storage Facility, Property #: 329330010, Fed Reg Date: 12/04/93
Lexington-Blue Grass Army Depot
Lexington, KY, Co: Fayette/Bourbon, Zip: 20509–
Status: Excess
Comment: scheduled to be vacated 9/94.

Massachusetts

Buildings
54 Office/Administration Bldgs, Property #: 329210012, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 1174 to 71781 sq. ft., wood, brick, or concrete/block frame, e.g. personnel bldgs., general purpose, support services, scheduled to be vacated 10/95.
25 Recreational Facilities, Property #: 329210013, Fed Reg Date: 12/04/93

Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 155 to 30000 sq. ft., wood, brick, steel or concrete/brick frame, e.g. gym, library, swimming pool, golf clubhouse, bowling center, etc., scheduled to be vacated 10/95.
Child Care Facility, Property #: 329210014, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 6012 sq. ft., wood frame, scheduled to be vacated 10/95.
150 Temp. Living Quarters, Property #: 329210015, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 1028 to 19120 sq. ft., wood, concrete block or brick frame, e.g. barracks, scheduled to be vacated 10/95.
Aircraft/Airport Facillty, Property #: 329210016, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: Scheduled to be vacated 10/95.
16 Maintenance Eng. Facilities, Property #: 329210017, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 960 to 16699 sq. ft., wood, brick, or steel frame, e.g. maintenance shops, entomology facility, scheduled to be vacated 10/95.
11 Stores/Service Buildings, Property #: 329210018, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 271 to 107208 sq. ft., wood, concrete block or brick frame, e.g. commissary, sales store, exchange service station, exchange retail store, scheduled to be vacated 10/95.
4 Hospital Facilities, Property #: 329210019, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 493 to 126835 sq. ft., wood, concrete, brick or concrete block frame, e.g. clinics, hospital, veterinarian facility, dental clinic, scheduled to be vacated 10/95.
15 Vehicle Shops, Property #: 329210021, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 120 to 20310 sq. ft., wood, concrete block or steel frame, e.g. vehicle maintenance shops, oil storage bldgs, scheduled to be vacated 10/95.
4 Audio Visual/Photo Labs, Property #: 329210022, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 480 to 10612 sq. ft., wood or concrete block frame, scheduled to be vacated 10/95.
8 Hazardous Storage Buildings, Property #: 329210023, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 64 to 6000 sq. ft., concrete, steel or concrete block frame, scheduled to be vacated 10/95, e.g. oxygen storage facility and flammable materials storage.
2 Communications Buildings, Property #: 329210024, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 1322 to 1749 sq. ft., concrete block or brick frame, scheduled to be vacated 10/95, e.g. communication center.
5 Fuel Facilities, Property #: 329210025, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 121 to 226 sq. ft., wood, concrete block or steel frame, scheduled to be vacated 10/95, e.g. gas station bldgs. and pump stations.
86 Warehouses, Property #: 329210026, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 49 to 85790 sq. ft., wood, concrete block, concrete or steel frame, scheduled to be vacated 10/95, e.g. sheds, general purpose bldgs., vehicle storage, medical supply, storehouse.
24 Mess/Dining Halls, Property #: 329210027, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 2403 to 2717 sq. ft., wood frame, e.g. enlisted personnel dining, scheduled to be vacated 10/95.
168 Miscellaneous Facilities, Property #: 329210028, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 320 to 114000 sq. ft., wood, concrete block, brick or steel frame, scheduled to be vacated 10/95, e.g. general purpose training fac., RG houses, reserve centers, garages.
259 Housing Units, Property #: 329210029, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: 1200 to 4380 sq. ft., wood or brick frame, e.g. single and multifamily bldgs., scheduled to be vacated 10/95.
4 Multi-purpose Buildings, Property #: 329210030, Fed Reg Date: 12/04/93
Fort Devens
Ft. Devens, MA, Co: Worcester, Zip: 01433–5000
Status: Excess
Comment: Scheduled to be vacated 10/95.

Pennsylvania

Buildings
3 Supply Facilities, Property #: 329320001, Fed Reg Date: 12/04/93
Tacony Warehouse
Located at 7071 Wissonoming St. & Milnor St.
Philadelphia, PA, Co: Philadelphia, Zip:
Status: Excess
Comment: ranging in size from 31,723 sq. ft. to 162,074 sq. ft. steel, framed masonry structures, need roof replacement.
Bldg. C—Admin. Facility, Property #: 329320002, Fed Reg Date: 12/04/93
Tacony Warehouse
Located at 7071 Wissonoming St. & Milnor St.
Philadelphia, PA, Co: Philadelphia, Zip:
Status: Excess
Comment: 17,843 sq. ft. wood frame structure, needs major rehab.
7 Utility Facilities, Property #: 329320003, Fed Reg Date: 12/04/93
Tacony Warehouse
Located at 7071 Wissonoming St. & Milnor St.
Philadelphia, PA, Co: Philadelphia, Zip:
Status: Excess
Comment: auxilary bldgs. ranging in size from 53 sq. ft. to 13,308 sq. ft. including a heat plant.

Rhode Island

Buildings
16 Bldgs., Slaterville Housing, Property #: 329240004, Fed Reg Date: 12/04/93
Pound Hill Street
N. Smithfield, RI, Co: Providence, Zip: 02895–
Status: Surplus
Comment: 1100 sq. ft. each, 1-story wood frame residences, scheduled to be vacated 8/93.

Washington

Buildings
28 Bldgs., Youngslake Housing, Property #: 329240006, Fed Reg Date: 12/04/93
Near 116th St., SE & 192nd St.
Renton, WA, Co: King, Zip:
Status: Excess
Comment: 1184–1392 sq. ft., 3-bedroom residences, scheduled to be vacated 6/95.

DOT

North Carolina

Buildings
Dwelling 1, Property #: 879120083, Fed Reg Date: 12/04/93
USCG Coinjock Housing
Coinjock, NC, Co: Currituck, Zip: 27923–
Status: Unutilized

Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.
Dwelling 2, Property #: 879120084, Fed Reg Date: 12/04/93
USCG Coinjock Housing
Coinjock, NC, Co: Currituck, Zip: 27923–
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.
Dwelling 3, Property #: 879120085, Fed Reg Date: 12/04/93
USCG Coinjock Housing
Coinjock, NC, Co: Currituck, Zip: 27923–
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

New Jersey

Buildings

Sandy Hook Light, Property #: 879340001, Fed Reg Date: 12/30/93
Middletown, NJ, Co: Monmouth, Zip: 07732–
Location: Adjacent to Gateway National Recreation Area
Status: Unutilized
Comment: Brick 29' base diameter lighthouse, historic structure, needs major rehab.

Virginia

Buildings

Housing, Property #: 879120082, Fed Reg Date: 12/04/93
Rt. 637—Gwynnville Road
Gwynn Island, VA, Co: Mathews, Zip: 23066–
Status: Unutilized
Comment: 929 sq. ft., one story residence.

Energy

Wyoming

Buildings

Glendale Microwave Bldg., Property #: 419220001, Fed Reg Date: 12/04/93
Section 1
Cody, WY, Co: Park, Zip: 82414–
Status: Excess
Comment: 223 sq. ft., metal frame, communication equipment bldg., limited utilities, off-site removal only.

GSA

California

Land

Receiver Site, Property #: 549010044, Fed Reg Date: 12/04/93
Project Name: Delano Relay Station
Delano Relay Station
Route 1, Box 1350
Delano, CA, Co: Tulare, Zip: 93215–
Location: 5 miles west of Pixley, 17 miles north of Delano.
Status: Surplus
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities, environmental restrictions
GSA No.: 9–2–CA–1308
(P) Camp Elliott, Property #: 549310008, Fed Reg Date: 12/04/93
Rosedale Tract
San Diego, CA, Co: San Diego, Zip:
Status: Surplus
Comment: Parcel 1—0.15 acre, Parcel 2—0.17 acre, located in the narrow median strip between Murphy Canyon Rd. and State Highway 15, previously leased by homeless provider
GSA No.: 9–GR(6)–CA–694A
Dixon Relay Station, Property #: 549320002, Fed Reg Date: 12/04/93
7514 Radio Road
Dixon, CA, Co: Solano, Zip: 95620–9653
Status: Surplus
Comment: 787.53 acres with 7 bldgs., most recent use—transmitter site.
GSA No.: 9–Z–CA–1162B

Colorado

Buildings

Former AF Finance Center, Property #: 549310011, Fed Reg Date: 12/04/93
3800 York Street
Denver, CO, Co: Denver, Zip: 80205–
Status: Excess
Comment: 293,932 sq. ft., 1-story timber frame with masonry exterior, fair condition, most recent use—storage, office, rehab
GSA No.: 7–GR–CO–468–D

Massachusetts

Land

Por. of Former Navy Ammo. Plt., Property #: 549010017, Fed Reg Date: 12/04/93
Project Name: Fort Hill
Fort Hill Street
Hingham, MA, Co: Plymouth, Zip: 02043–
Location: Across from Bus Company Parking Garage.
Status: Excess
Comment: 1.129 acres, gravel pavement, most recent use—parking lot
GSA No.: 2–GR–MA–591B

Minnesota

Buildings

Coast Guard Family Housing, Property #: 549210007, Fed Reg Date: 12/04/93
404 East Hamilton Avenue
Baudette, MN, Co: Lake of the Woods, Zip: 56623–
Status: Excess
Comment: 1333 sq. ft., 1-story wood frame residence
GSA No.: 2–U–MN–503–E
Coast Guard Family Housing, Property #: 549210008, Fed Reg Date: 12/04/93
406 East Hamilton Avenue
Baudette, MN, Co: Lake of the Woods, Zip: 56623–
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA No.: 2–U–MN–503–E
Coast Guard Family Housing, Property #: 549210009, Fed Reg Date: 12/04/93
408 East Hamilton Avenue
Baudette, MN, Co: Lake of the Woods, Zip: 56623–
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA No.: 2–U–MN–503–E
Coast Guard Family Housing, Property #: 549210010, Fed Reg Date: 12/04/93
418 East Hamilton Avenue
Baudette, MN, Co: Lake of the Woods, Zip: 56623–
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA No.: 2–U–MN–503–E

Ohio

Land

Portion, Camp Sherman Range, Property #: 549310004, Fed Reg Date: 12/23/93
Approximately 1 mile north of Chillicothe
Springfield, OH, Co: Ross, Zip:
Status: Excess
Comment: 4.674 acres, potential utilities, previously leased by non-profit for homeless assistance use
GSA No.: 2–GR–OH–433B

Oklahoma

Land

Parcel 7, Property #: 319010869, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 6
OK, Co: Cherokee, Zip: 74434
Status: Surplus
Comment: 16.31 acres; potential utilities; most recent use—recreational and development.
GSA No.: 7–D–OK–0442E–0001
Parcel 14, Property #: 319010870, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 20
OK, Co: Cherokee, Zip: 74434
Status: Surplus
Comment: 52.09 acres; potential utilities; subject to haying/grazing leases; most recent use—recreational and development.
GSA No.: 7–D–OK–0442E–0002
Parcel 15, Property #: 319010871, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 22
OK, Co: Cherokee, Zip: 74434
Status: Surplus
Comment: 7.51 acres; potential utilities; most recent use—recreational.
GSA No.: 7–D–OK–0442E–0003
Parcel 28, Property #: 319010877, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 35
OK, Co: Mayes, Zip: 74434
Status: Surplus
Comment: 36.59 acres; potential utilities; most recent use—recreational.
GSA No.: 7–D–OK–0442E–0005
Parcel 75, Property #: 319010887, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 16
OK, Co: Mayes, Zip: 74434
Status: Surplus
Comment: 45 acres; potential utilities; subject to haying lease and flowage easement; most recent use—recreational.
GSA No.: 7–D–OK–0442E–0009

Parcel 88, Property #: 319010899, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 7
OK, Co: Wagoner, Zip: 74434
Status: Surplus
Comment: 14 acres; potential utilities; subject to grazing lease; most recent use—recreational.
GSA No.: 7–D–OK–0442E–0010
Parcel 89, Property #: 319010900, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 7
OK, Co: Wagoner, Zip: 74434
Status: Surplus
Comment: 16, acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational
GSA No.: 7–D–OK–0442E–0011
Parcel 95, Property #: 319010906, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 33
OK, Co: Wagoner, Zip: 74434
Status: Surplus
Comment: 8 acres; potential utilities; most recent use—recreational
GSA No.: 7–D–OK–0442E–0012
Parcel 43, Property #: 319011371, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 11
OK, Co: Mayes, Zip: 74434
Status: Surplus
Comment: 125 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA No.: 7–D–OK–0442E–0006
Parcel 49, Property #: 319011377, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 15
OK, Co: Mayes, Zip: 74434
Status: Surplus
Comment: 26.94 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA No.: 7–D–OK–0442E–0007
Parcel 61, Property #: 319011389, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 13
OK, Co: Mayes, Zip: 74434
Status: Surplus
Comment: 54 acres; potential utilities; subject to flowage easement; most recent use—recreation.
GSA No.: 7–D–OK–0442E–0008
Parcel 99, Property #: 319011400, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 21
OK, Co: Wagoner, Zip: 74434
Status: Surplus
Comment: 5 acres; small creek on land; most recent use—recreation.
GSA No.: 7–D–OK–0442E–0013
Parcel 102, Property #: 319011403, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 33
OK, Co: Wagoner, Zip: 74434
Status: Excess
Comment: 7 acres; subject to grazing lease; most recent use—recreation.
GSA No.: 7–D–OK–0442E–0014

Washington

Land

Asotin Quarry—Lower Lock & Dam, Property #: 549340001, Fed Reg Date: 12/10/93
West of Upriver Road
Asotin, WA, Co: Asotin, Zip: 99402
Status: Excess
Comment: 39.42 acres, access easement, most recent use—rock quarry
GSA No.: 9–D–WA–824K

Navy

California

Land

NAVAIR Manor, Property #: 779240020, Fed Reg Date: 12/04/93
Naval Air Station, Off-site component
Moffett Field
Sunnyvale, CA, Co: Santa Clara, Zip: 94035–
Status: Excess
Comment: 7.19 acres, improved w/paved streets and sidewalks.

Buildings

Bldg. 9001, Property #: 779320001, Fed Reg Date: 12/04/93
Long Beach Naval Hospital
Long Beach, CA, Co: Los Angeles, Zip: 90822–5199
Status: Excess
Comment: 435,000 sq. ft., 4-story, concrete, most recent use—hospital/clinic, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.
Bldg 9002, Property #: 779320002, Fed Reg Date: 12/04/93
Long Beach Naval Hospital
Long Beach, CA, Co: Los Angeles, Zip: 90822–5199
Status: Excess
Comment: 13500 sq. ft., 2-story, concrete, most recent use—barracks, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.
Bldg. 9003, Property #: 779320003, Fed Reg Date: 12/04/93
Long Beach Naval Hospital
Long Beach, CA, Co: Los Angeles, Zip: 90822–5199
Status: Excess
4980 sq. ft., 1-story, concrete, most recent use—barracks, presence of asbestos, possible seismical upgraded needed, scheduled to be vacated 4/1/94.
Bldg. 9004, Property #: 779320004, Fed Reg Date: 12/04/93
Long Beach Naval Hospital
Long Beach, CA, Co: Los Angeles, Zip: 90822–5199
Status: Excess
Comment: 1023 sq. ft., 1-story, metal, most recent use—carpentry shop, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.
Bldg. 9005, Property #: 77932005, Fed Reg Date: 12/04/93
Long Beach Naval Hospital
Long Beach, CA, Co: Los Angeles, Zip: 90822–5199
Status: Excess
Comment: 1120 sq. ft., 1-story, concrete, most recent use—weight room, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.
Bldg. 9006, Property #: 779320006, Fed Reg Date: 12/04/93
Long Beach Naval Hospital
Long Beach, CA, Co: Los Angeles, Zip: 90822–5199
Status: Excess
Comment: 1200 sq. ft., 1-story, metal, most recent use—warehouse, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.
Bldg. 9023, Property #: 779320007, Fed Reg Date: 12/04/93
Long Beach Naval Hospital
Long Beach, CA, Co: Los Angeles, Zip: 90822–5199
Status: Excess
Comment: 1531 sq. ft., 1-story, metal, most recent use—metal shop, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.
Bldg. 9024, Property #: 779320008, Fed Reg Date: 12/04/93
Long Beach Naval Hospital
Long Beach, CA, Co: Los Angeles, Zip: 90822–5199
Status: Excess
Comment: 3630 sq. ft., 1-story, concrete, most recent use—minimart, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.
Bldg. 9025, Property #: 779320009, Fed Reg Date: 12/04/93
Long Beach Naval Hospital
Long Beach, CA, Co: Los Angeles, Zip: 90822–5199
Status: Excess
Comment: 8079 sq. ft., 1-story, metal, most recent use—warehouse, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.
Bldg. 9026, Property #: 779320010, Fed Reg Date: 12/04/93
Long Beach Naval Hospital
Long Beach, CA, Co: Los Angeles, Zip: 90822–5199
Status: Excess
Comment: 2240 sq. ft., 1-story, metal, most recent use—gas station, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.
Bldg. 50, Annex Area, Property #: 779320022, Fed Reg Date: 12/04/93
Naval Postgraduate School
Monterey, CA, Co: Monterey, Zip: 93943–
Status: Underutilized
Comment: 252 sq. ft., 1-story wood frame, needs rehab, secured area w/alternate access, 5% in airport runway, most recent use—storage.
Bldg. 25, Annex Area, Property #: 779320023, Fed Reg Date: 12/04/93
Naval Postgraduate School
Monterey, CA, Co: Monterey, Zip: 93943–
Status: Unutilized

Comment: 1512 sq. ft., 1-story wood frame, most recent use—child care center, secured area w/alternate access

Georgia

Land

Naval Submarine Base, Property #: 779010229, Fed Reg Date: 12/04/93
Project Name: Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay, GA, Co: Camden, Zip: 31547–
Status: Unutilized
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Hawaii

Buildings

Bldg. S87, Radio Trans. Fac., Property #: 779240011, Fed Reg Date: 12/04/93
Lualualei, Naval Station, Eastern Pacific
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. 466, Radio Trans. Fac., Property #: 779240012, Fed Reg Date: 12/04/93
Lualualei, Naval Station, Eastern Pacific
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Unutilized
Comment: 100 sq. ft., 1-story, needs rehab, most recent use—gas station, off-site use only
Bldg. 5, Radio Trans. Facility, Property #: 779310001, Fed Reg Date: 12/04/93
Naval Computer & Telecommunications Area
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Unutilized
Comment: 12046 sq. ft., one story, needs rehab, access restrictions, most recent use—offices, off-site use only.
Bldg. 31, Radio Trans Facility, Property #: 779310002, Fed Reg Date: 12/04/93
Naval Computer & Telecommunications Area
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Unutilized
Comment: 640 sq. ft., 1 story, access restrictions, need repairs, most recent use—storage, off-site use only.
Bldg. 33, Radio Trans. Facility, Property #: 779310003, Fed Reg Date: 12/04/93
Naval Computer & Telecommunications Area
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Unutilized
Comment: 1536 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.
Bldg. 64, Radio Trans Facility, Property #: 779310004, Fed Reg Date: 12/04/93
Naval Computer & Telecommunications Area
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Unutilized
Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.
Bldg. 429, Radio Trans Facility, Property #: 779310006, Fed Reg Date: 12/04/93
Naval Computer & Telecommunications Area
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Unutilized
Comment: 13950 sq. ft., 3 story, access restrictions, needs rehab, most recent use—barracks, off-site use only.
Bldg. 430, Radio Trans Facility, Property #: 779310007, Fed Reg Date: 12/04/93
Naval Computer & Telecommunications Area
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Unutilized
Comment: 2680 sq. ft., 1 story, access restrictions, needs rehab, most recent use—dining facility, off-site use only.

Maine

Buildings

Naval Air Station, Property #: 779010110, Fed Reg Date: 12/04/93
Project Name: Transmitter Site
Transmitter Site
Old Bath Road
Brunswick, ME, Co: Cumberland, Zip: 04053–
Status: Underutilized
Comment: 7,270 sq. ft., 1 story bldg, most recent use—storage, structural deficiences.
Parcel No. 3, Property #: 779120001, Fed Reg Date: 12/04/93
Naval Air Station Topsham Annex
Topsham, ME, Co: Sagadahoc, Zip: 04086–
Status: Demolished
Comment: 1900 sq. ft. abandoned storage facility, poor condition on 4.31 acres.
Bldg. 332, Naval Air Station, Property #: 779240013, Fed Reg Date: 12/04/93
Topsham Annex
Brunswick, ME, Co: Sagadahoc, Zip:
Status: Excess
Comment: 1248 sq. ft., 1-story, most recent use—office building, off-site use only
Bldg. 333, Naval Air Station, Property #: 779240014, Fed Reg Date: 12/04/93
Topsham Annex
Brunswick, ME, Co: Sagadahoc, Zip:
Status: Excess
Comment: 12672 sq. ft., 2-story, most recent use—office building, off-side use only

Oklahoma

Land

Parcel No. 18, Property #: 219013808, Fed Reg Date: 12/04/93
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 12
Wagoner Co., OK, Co: Wagoner, Zip:
Status: Surplus
Comment: 8.77 acres; subject to grazing lease; most recent use—recreation.
GSA No.: 7–D–OK–0442E–0004

Rhode Island

Buildings

Parcel 2 (Portion—51 Bldgs.), Property #: 779310030, Fed Reg Date: 12/04/93
Naval Construction Battalion Center
Davisville, RI, Co: Kent, Zip: 02854–1161
Status: Excess
Comment: 1–4 story, presence of asbestos, on 90 acres, portion u/superfund cleanup site, incs. theater, admin, barracks, storage, chapel, warehouses, scheduled to be vacated 3/94.
Parcel 5 (1 bldg.), Property #: 779310032, Fed Reg Date: 12/04/93
Naval Construction Battalion Center
Davisville, RI, Co: Kent, Zip: 02854–1161
Status: Excess
Comment: 1 story, telephone exchange bldg., fair condition, presence of asbestos, scheduled to be vacated 3/94.

Texas

Land

Peary Point #2, Property #2: 779030001, Fed Reg Date: 12/04/93
Project Name: Naval Air Station
Naval Air Station
Corpus Christi, TX, Co: Nueces, Zip: 78419–5000
Status: Excess
Comment: 43.48 acres; 60% of land under lease until 8/93.
GSA No.: 7–N–TX–402–V

VA

Alabama

Land

VA Medical Center, Property #: 979010053, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
VAMC
Tuskegee, AL, Co: Macon, Zip: 36083–
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

Buildings

Bldg. 19, VA Medical Center, Property #: 979220006, Fed Reg Date: 12/04/93
Tuskegee, AL, Co: Macon, Zip: 36083–
Status: Underutilized
Comment: Portion of a 5320 sq. ft. 4-story structure.

California

Land

Land, Property #: 979240001, Fed Reg Date: 12/04/93
4150 Clement Street
San Francisco, CA, Co: San Francisco, Zip: 94121–
Status: Underutilized
Comment: 4 acres; landslide area.

Buildings

Bldg. 20—VA Medical Center, Property #: 979210003, Fed Reg Date: 12/04/93
Wilshire and Sawtelle Blvds.
Los Angeles, CA, Co: Los Angeles, Zip: 90073–
Status: Unutilized
Comment: 8758 gross sq. ft., one story wooden, requires complete restoration meeting standards of national preservation laws and guidelines
Bldg. 13, VA Medical Center, Property #: 979220001, Fed Reg Date: 12/04/93
Wilshire and Sawtelle Blvds.
Los Angeles, CA, Co: Los Angeles, Zip: 90073–
Status: Underutilized
Comment: portion of 66,165 sq. ft. bldg., needs major rehab., no util.., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby.
Bldg. 156, VAMC, Property #: 979230015, Fed Reg Date: 12/04/93
Wilshire and Sawtelle Blvds.
Los Angeles, CA, Co: Los Angeles, Zip: 90073–
Status: Underutilized
Comment: portion of 39,454 sq. ft. bldg., presence of asbestos, needs rehab, seismic reinforcement deficiencies, in his. district, potentially hazardous due to nearby radioactive material.

Indiana

Buildings

Bldg. 140, VAMC, Property #: 979230007, Fed Reg Date: 12/04/93
East 38th Street
Marion, IN, Co: Grant, Zip: 46952–
Status: Underutilized
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house, access restrictions.

Louisiana

Land

Land—8.27 acres, Property #: 979010009, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
VA Medical Center
Alexandria, LA, Co: Rapides, Zip: 71301–
Status: Unutilized
Comment: 8.27 acres, heavily wood with natural drainage ravine across property, most recent use—recreation/buffer area.

Maryland

Land

VA Medical Center, Property #: 979010020, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
9500 North Point Road
Fort Howard, MD, Co: Baltimore, Zip: 21052–
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—Dump site for leaves.

Pennsylvania

Buildings

Bldg. 25—VA Medical Center, Property #: 979210001, Fed Reg Date: 12/04/93
Delafield Road
Pittsburgh, PA, Co: Allegheny, Zip: 15215–
Status: Unutilized
Comment: 3215 sq. ft., 3-story wood frame residence, needs repair, subject to historic preservation requirements

Texas

Land

Land, Property #: 979010079, Fed Reg Date: 12/04/93
Project Name: Olin E. Teague Veterans Center.
Olin E. Teague Veterans Center
1901 South 1st Street
Temple, TX, Co: Bell, Zip: 76504–
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.
VA Medical Center, Property #: 979010081, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
4800 Memorial Drive
Waco, TX, Co: McLennan, Zip: 76711–
Status: Underutilized
Comment: 2.3 acres, negotiating lease w/ Owens-Illinois Glass Plant, most recent use—parking lot.

Wisconsin

Land

VA Medical Center, Property #: 979010054, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
County Highway E
Tomah, WI, Co: Monroe, Zip: 54660–
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Buildings

Bldg. 8, Property #: 979010056, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
VA Medical Center
County Highway E
Tomah, WI, Co: Monroe, Zip: 54660–
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Air Force

California

Land

Camp Kohler Annex, Property #: 189010045, Fed Reg Date: 12/04/93
Project Name: McClellan AFB
McClellan AFB
Sacramento, CA, CO: Sacramento, Zip: 95652–5000
Status: Unutilized
Reason: Change in AF mission.
Norton Com. Facility Annex, Property #: 189010194, Fed Reg Date: 12/04/93
Project Name: Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland, CA, Co: San Bernardino, Zip: 92409–5045
Status: Excess
Reason: Leased by "Baseline Little League".

Buildings

Hawes Site (KHGM), Property #: 189010084, Fed Reg Date: 12/04/93
Project Name: Hawes Site
March AFB
Hinckley, CA, Co: San Bernardino, Zip: 92402–
Status: Unutilized
Reason: Contamination being cleaned up.

Michigan

Buildings

Bldg. 20, Property #: 189010775, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 21, Property #: 189010776, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913
Status: Excess
Reason: Renewal of lease
Bldg. 22, Property #: 189010777, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 28, Property #: 189010778, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 40, Property #: 189010780, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 41, Property #: 189010781, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 42, Property #: 189010782, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 43, Property #: 189010783, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 44, Property #: 189010784, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 45, Property #: 189010785, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 47, Property #: 189010787, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 48, Property #: 189010788, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 49, Property #: 189010789, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 50, Property #: 189010790, Fed Reg Date: 12/04/93

Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 14, Property #: 189010833, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 16, Property #: 189010834, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 9, Property #: 189010835, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 11, Property #: 189010837, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 12, Property #: 189010838, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 13, Property #: 189010839, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 5, Property #: 189010840, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 6, Property #: 189010841, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 7, Property #: 189010842, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 8, Property #: 189010843, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 4, Property #: 189010844, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 3, Property #: 189010845, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 1, Property #: 189010846, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 159, Property #: 189010857, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 15, Property #: 189010864, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 31, Property #: 189010867, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 32, Property #: 189010868, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 33, Property #: 189010869, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 34, Property #: 189010870, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 35, Property #: 189010871, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 39, Property #: 189010874, Fed Reg Date: 12/04/93
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 202, Property #: 189010880, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 203, Property #: 189010881, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 204, Property #: 189010882, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 205, Property #: 189010883, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 206, Property #: 189010884, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 207, Property #: 189010885, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 153, Property #: 189010886, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 154, Property #: 189010887, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 157, Property #: 189010888, Fed Reg Date: 12/04/93
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease

Missouri

Buildings

Jefferson Barracks ANG Base, Property #: 189010081, Fed Reg Date: 12/04/93
Project Name: Missouri National Guard
Missouri National Guard
1 Grant Road
St. Louis, MO, Co: St. Louis, Zip: 63125–4118
Status: Underutilized
Reason: Vehicle fuel stations/fuel storage, Flooded area

Nebraska

Buildings

Bldg. 4, Hastings Family Hsg., Property #: 189320059, Fed Reg Date: 12/04/93
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 500, Property #: 189320060, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 502, Property #: 189320061, Fed Reg Date: 12/04/93

Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 504, Property #: 189320062, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 506, Property #: 189320063, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 507, Property #: 189320064, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 509, Property #: 189320065, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 511, Property #: 189320066, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 512, Property #: 189320067, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 515, Property #: 189320068, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 517, Property #: 189320069, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 519, Property #: 189320070, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 521, Property #: 189320071, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 523, Property #: 189320072, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 525, Property #: 189320073, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 526, Property #: 189320074, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 529, Property #: 189320075, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 531, Property #: 189320076, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 533, Property #: 189320077, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 534, Property #: 189320078, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 536, Property #: 189320079, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 538, Property #: 189320080, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 541, Property #: 189320081, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 542, Property #: 189320082, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 544, Property #: 189320083, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 546, Property #: 189320084, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 549, Property #: 189320085, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 550, Property #: 189320086, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 552, Property #: 189320087, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 553, Property #: 189320088, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 555, Property #: 189320089, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 557, Property #: 189320090, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 558, Property #: 189320091, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 560, Property #: 189320092, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation

27 Detached Garages, Property #: 189320093, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 17, Property #: 189320094, Fed Reg Date: 12/04/93
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 16, Property #: 189320095, Fed Reg Date: 12/04/93
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 18, Property #: 189320096, Fed Reg Date: 12/04/93
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 6, Property #: 189320097, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 547, Property #: 189320098, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 604, Property #: 189320099, Fed Reg Date: 12/04/93
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation

New Hampshire

Buildings

Bldg. 114, Property #: 189320055, Fed Reg Date: 12/04/93
New Boston Air Force Station
Amherst, NH, Co: Hillsborough, Zip: 03031–1514
Status: Excess
Reason: Ongoing installation mission consideration
Bldg. 115, Property #: 189320056, Fed Reg Date: 12/04/93
New Boston Air Force Station
Amherst, NH, Co: Hillsborough, Zip: 03031–1514
Status: Excess
Reason: Ongoing installation mission consideration
Bldg. 127, Property #: 189320057, Fed Reg Date: 12/04/93
New Boston Air Force Station
Amherst, NH, Co: Hillsborough, Zip: 03031–1514
Status: Excess
Reason: Ongoing installation mission consideration

Texas

Buildings

Bldg. 605, Property #: 189110090, Fed Reg Date: 12/04/93
Project Name: Brooks Air Force Base
Brooks Air Force Base
San Antonio, TX, Co: Bexar, Zip: 78235–
Status: Unutilized
Reason: change in agency mission
Bldg. 696, Property #: 189110091, Fed Reg Date: 12/04/93
Project Name: Brooks Air Force Base
Brooks Air Force Base
San Antonio, TX, Co: Bexar, Zip: 78235–
Status: Unutilized
Reason: change in agency mission
Bldg. 697, Property #: 189110092, Fed Reg Date: 12/04/93
Project Name: Brooks Air Force Base
Brooks Air Force Base
San Antonio, TX, Co: Bexar, Zip: 78235–
Status: Unutilized
Reason: change in agency mission
Bldg. 698, Property #: 189110093, Fed Reg Date: 12/04/93
Project Name: Brooks Air Force Base
Brooks Air Force Base
San Antonio, TX, Co: Bexar, Zip: 78235–
Status: Unutilized
Reason: change in agency mission
Bldg. 699, Property #: 189110094, Fed Reg Date: 12/04/93
Project Name: Brooks Air Force Base
Brooks Air Force Base
San Antonio, TX, Co: Bexar, Zip: 78235–
Status: Unutilized
Reason: change in agency mission

Air Force-BC

Arkansas

Land

20 Outdoor Recreation Areas, Property #: 199210047, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Record of decision on disposal
Land, Property #: 199210079, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community

Buildings

818 (Capehart) Family Housing, Property #: 199210040, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
10 (Capehart) SF Housing, Property #: 199210041, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Lease to the local community
100 (Appropriated) Family Hsg., Property #: 199210042, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
13 Security Related Facilities, Property #: 199210044, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
26 Office/Admin. Buildings, Property #: 199210045, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
8 Indoor Recreation Facilities, Property #: 199210046, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Record of decision on disposal
Bldg. 701A/B, Property #: 199210048, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Record of decision on disposal
Bldg. 702, Property #: 199210049, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Record of decision on disposal
Bldg. 703, Property #: 199210050, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Record of decision on disposal
Bldg. 704, Property #: 199210051, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Record of decision on disposal
Bldg. 608, Dormitory, Property #: 199210052, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Record of decision on disposal
Bldg. 609, Dormitory, Property #: 199210053, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Record of decision on disposal
Bldg. 619, Dormitory, Property #: 199210054, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess

Reason: Record of decision on disposal
Bldg. 620, Dormitory, Property #: 199210055, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Record of decision on disposal
36 Warehouses/Multi-use Bldgs, Property #: 199210056, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
Bldg. 650, Hospital Facility, Property #: 199210057, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
Bldg. 234, Hospital Facility, Property #: 199210058, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
Bldg. 436, Hospital Facility, Property #: 199210059, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
Bldg. 502, Child Care Center, Property #: 199210060, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
Bldg. 527, Child Care Center, Property #: 199210061, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
Bldg. 558, Child Care Center, Property #: 199210062, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
Bldg. 160, Property #: 199210063, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
Bldg. 552, Property #: 199210064, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
Bldg. 560, Property #: 199210065, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
9 Airfield Related Bldgs., Property #: 199210066, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
3 Vehicle Maintenance Fac., Property #: 199210068, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
33 Fuels/Related Storage Fac., Property #: 199210069, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
4 Hazardous Storage Bldgs., Property #: 199210070, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
10 Munitions Facilities, Property #: 199210071, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Leased to local community
Bldg. 435, Property #: 199210072, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Being leased
Bldg. 556, Property #: 199210073, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Record of decision on disposal
Bldg. 100, Fire Station, Property #: 199210074, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Being leased
Bldg. 525, Chapel, Property #: 199210075, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317–5000
Status: Excess
Reason: Record of decision on disposal
Bldg. 805, Property #: 199210076, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317-5000
Status: Excess
Reason: Leased to Local community
Bldg. 150, Property #: 199210077, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317-5000
Status: Excess
Reason: Leased to local community
Bldg. 517, Property #: 199210078, Fed Reg Date: 12/04/93
Eaker Air Force Base
Blytheville, AR, Co: Mississippi, Zip: 72317-5000
Status: Excess
Reason: Leased to local community

California

Land

Fac. # 170, Property #: 199120496, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA; Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Fac. # 525, Property #: 199120497, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Fac. # 544, Property #: 199120498, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Fac. # 1161, Property #: 1991200499, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Fac. # 1162, Property #: 199120500, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Fac. # 1164, Property #: 199120501, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Fac. # 1180, Property #: 199120502, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Fac. # 50177, Property #: 199120503, Fed Reg Date: 12/04/93

George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Fac. # 1145, Property #: 199120504, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1143, Property #: 199120505, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Land, Property #: 199210039, Fed Reg Date: 12/04/93
26 Recreation Areas and Airfield Properties
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655-5000
Status: Excess
Reason: Public or negotiated sale, or thru public benefit transfer
Recreation Areas, Property #: 199320055, Fed Reg Date: 12/04/93
Norton Air Force Base
San Bernardino, CA, Co: San Bernardino, Zip: 92409–
Status: Excess
Reason: Record of decision on disposal
Airfield, Property #: 199330023, Fed Reg Date: 12/04/93
Norton, Air Force Base
San Bernardino, CA, Co: San Bernardino, Zip: 92409–
Status: Excess
Reason: Record of decision on disposal

Buildings

Bldg. 5063, Property #: 199120001, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5064, Property #: 199120002, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5066, Property #: 199120003, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5067, Property #: 199120004, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5069, Property #: 199120005, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5072, Property #: 199120006, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5074, Property #: 199120007, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5077, Property #: 199120008, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5078, Property #: 199120009, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5079, Property #: 199120010, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5081, Property #: 199120011, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5083, Property #: 199120012, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5084, Property #: 199120013, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5086, Property #: 199120014, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5087, Property #: 199120015, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394-5000
Status: Excess
Reason: Disposal process
Bldg. 5088, Property #: 199120016, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5090, Property #: 199120017, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5096, Property #: 199120018, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5097, Property #: 199120019, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5098, Property #: 199120020, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5100, Property #: 199120021, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5102, Property #: 199120022, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5104, Property #: 199120023, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5107, Property #: 199120024, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5065, Property #: 199120025, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5070, Property #: 199120026, Fed Reg Date: 12/04/93

George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5071, Property #: 199120027, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5073, Property #: 199120028, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5075, Property #: 199120029, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5076, Property #: 199120030, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5082, Property #: 199120031, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5085, Property #: 199120032, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5089, Property #: 199120033, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5093, Property #: 199120034, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5101, Property #: 199120035, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5105, Property #: 199120036, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5106, Property #: 199120037, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5068, Property #: 199120038, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5103, Property #: 199120039, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5108, Property #: 199120040, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5080, Property #: 199120041, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5091, Property #: 199120042, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5092, Property #: 199120043, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5094, Property #: 199120044, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5095, Property #: 199120045, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5099, Property #: 199120046, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5109, Property #: 199120047, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5110, Property #: 199120048, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5111, Property #: 199120049, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5112, Property #: 199120050, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5113, Property #: 199120051, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5114, Property #: 199120052, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5115, Property #: 199120053, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5116, Property #: 199120054, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5117, Property #: 199120055, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5118, Property #: 199120056, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5119, Property #: 199120057, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process

Bldg. 5120, Property #: 199120058, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5121, Property #: 199120059, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5122, Property #: 199120060, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5123, Property #: 199120061, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5124, Property #: 199120062, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5125, Property #: 199120063, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5126, Property #: 199120064, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5127, Property #: 199120065, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5128, Property #: 199120066, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5129, Property #: 199120067, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5130, Property #: 199120068, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5131, Property #: 199120069, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5132, Property #: 199120070, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5133, Property #: 199120071, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5144, Property #: 199120072, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5145, Property #: 199120073, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5146, Property #: 199120074, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5147, Property #: 199120075, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5148, Property #: 199120076, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5149, Property #: 199120077, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5160, Property #: 199120078, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5161, Property #: 199120079, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5171, Property #: 199120080, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5172, Property #: 199120081, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5186, Property #: 199120082, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5187, Property #: 199120083, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5205, Property #: 199120084, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5206, Property #: 199120085, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5207, Property #: 199120086, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5208, Property #: 199120087, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5209, Property #: 199120088, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5210, Property #: 199120089, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process

Bldg. 5211, Property #: 199120090, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5212, Property #: 199120091, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5213, Property #: 199120092, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5214, Property #: 199120093, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5215, Property #: 199120094, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5216, Property #: 199120095, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5220, Property #: 199120096, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5221, Property #: 199120097, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5217, Property #: 199120098, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5218, Property #: 199120099, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5219, Property #: 199120100, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5150, Property #: 199120101, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5155, Property #: 199120102, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5156, Property #: 199120103, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5157, Property #: 199120104, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5162, Property #: 199120105, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5163, Property #: 199120106, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5164, Property #: 199120107, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5173, Property #: 199120108, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5174, Property #: 199120109, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5175, Property #: 199120110, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5188, Property #: 199120111, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5189, Property #: 199120112, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5190, Property #: 199120113, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5191, Property #: 199120114, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5192, Property #: 199120115, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5199, Property #: 199120116, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5200, Property #: 199120117, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5222, Property #: 199120118, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5223, Property #: 199120119, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5141, Property #: 199120120, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5142, Property #: 199120121, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000

Status: Excess
Reason: Disposal process
Bldg. 5134, Property #: 199120122, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5135, Property #: 199120123, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5158, Property #: 199120124, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5159, Property #: 199120125, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5165, Property #: 199120126, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5166, Property #: 199120127, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5169, Property #: 199120128, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5170, Property #: 199120129, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5177, Property #: 199120130, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5178, Property #: 199120131, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5181, Property #: 199120132, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5182, Property #: 199120133, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5184, Property #: 199120134, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5185, Property #: 199120135, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5187, Property #: 199120136, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5188, Property #: 199120137, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6056, Property #: 199120138, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6058, Property #: 199120139, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6059, Property #: 199120140, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6060, Property #: 199120141, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6062, Property #: 199120142, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6057, Property #: 199120143, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6061, Property #: 199120144, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6063, Property #: 199120145, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6064, Property #: 199120146, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6065, Property #: 199120147, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6066, Property #: 199120148, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6086, Property #: 199120149, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6087, Property #: 199120150, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6088, Property #: 199120151, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6089, Property #: 199120152, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6091, Property #: 199120153, Fed Reg Date: 12/04/93
George Air Force Base

George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6067, Property #: 199120155, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6069, Property #: 199120156, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6070, Property #: 199120157, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6071, Property #: 199120158, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6072, Property #: 199120159, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6073, Property #: 199120160, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6074, Property #: 199120161, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6075, Property #: 199120162, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6076, Property #: 199120163, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6077, Property #: 199120164, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5136, Property #: 199120165, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5137, Property #: 199120166, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5138, Property #: 199120167, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5139, Property #: 199120168, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5140, Property #: 199120169, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5143, Property #: 199120170, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5151, Property #: 199120171, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5152, Property #: 199120172, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5153, Property #: 199120173, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5154, Property #: 199120174, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5167, Property #: 199120175, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5168, Property #: 199120176, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5171, Property #: 199120177, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5172, Property #: 199120178, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5176, Property #: 199120179, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5179, Property #: 199120180, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5180, Property #: 199120181, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5183, Property #: 199120182, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5193, Property #: 199120183, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5194, Property #: 199120184, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5195, Property #: 199120185, Fed Reg Date: 12/04/93
George Air Force Base

George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5196, Property #: 199120186, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5201, Property #: 199120187, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5202, Property #: 199120188, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5203, Property #: 199120189, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5204, Property #: 199120190, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5224, Property #: 199120191, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5225, Property #: 199120192, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5226, Property #: 199120193, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5227, Property #: 199120194, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5228, Property #: 199120195, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5229, Property #: 199120196, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7021, Property #: 199120197, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7022, Property #: 199120198, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7030, Property #: 199120199, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6078, Property #: 199120200, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6079, Property #: 199120201, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6080, Property #: 199120202, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6081, Property #: 199120203, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6082, Property #: 199120204, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6083, Property #: 199120205, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6084, Property #: 199120206, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6085, Property #: 199120207, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6090, Property #: 199120208, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6093, Property #: 199120209, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6094, Property #: 199120210, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7000, Property #: 199120211, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7001, Property #: 199120212, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7002, Property #: 199120213, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7003, Property #: 199120214, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7014, Property #: 199120215, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7015, Property #: 199120216, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7016, Property #: 199120217, Fed Reg Date: 12/04/93

George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7017, Property #: 199120218, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7020, Property #: 199120219, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7023, Property #: 199120220, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7029, Property #: 199120221, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7031, Property #: 199120222, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7039, Property #: 199120223, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7040, Property #: 199120224, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7042, Property #: 199120225, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7043, Property #: 199120226, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7045, Property #: 199120227, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7046, Property #: 199120228, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7048, Property #: 199120229, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7049, Property #: 199120230, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7052, Property #: 199120231, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7053, Property #: 199120232, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7004, Property #: 199120233, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7006, Property #: 199120234, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7007, Property #: 199120235, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7009, Property #: 199120236, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7010, Property #: 199120237, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7011, #: Property #: 199120238, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7012, Property #: 199120239, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7013, Property #: 199120240, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7019, Property #: 199120241, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7024, Property #: 199120242, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7025, Property #: 199120243, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7032, Property #: 199120244, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7033, Property #: 199120245, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7034, Property #: 199120246, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7035, Property #: 199120247, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7036, Property #: 199120248, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process

Bldg. 7038, Property #: 199120250, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7044, Property #: 199199120251, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7026, Property #: 199199120252, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7027, Property #: 199120253, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7028, Property #: 199120254, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7005, Property #: 199120255, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7008, Property #: 199120256, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7041, Property #: 199120257, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7047, Property #: 199120258, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7050, Property #: 199120259, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7051, Property #: 199120260, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7054, Property #: 199120261, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7055, Property #: 199120262, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7301, Property #: 199120263, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7302, Property #: 199120264, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7305, Property #: 199120265, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7306, Property #: 199120266, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7309, Property #: 199120267, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7310, Property #: 199120268, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7311, Property #: 199120269, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7312, Property #: 199120270, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7313, Property #: 199120271, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7318, Property #: 199120272, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7319, Property #: 199120273, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7356, Property #: 199120274, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7358, Property #: 199120275, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7172, Property #: 199120276, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7389, Property #: 199120277, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7320, Property #: 199120278, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7328, Property #: 199120279, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7336, Property #: 199120280, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7399, Property #: 199120281, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess

Reason: Disposal process
Bldg. 7407, Property #: 199120282, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7419, Property #: 199120283, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7324, Property #: 199120284, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7332, Property #: 199120285, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7344, Property #: 199120286, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7352, Property #: 199120287, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7359, Property #: 199120288, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7367, Property #: 199120289, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7373, Property #: 199120290, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7377, Property #: 199120291, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7381, Property #: 199120292, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7385, Property #: 199120293, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7391, Property #: 199120294, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7395, Property #: 199120295, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7403, Property #: 199120296, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7411, Property #: 199120297, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7415, Property #: 199120298, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7423, Property #: 199120299, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7427, Property #: 199120300, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7314, Property #: 199120301, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7315, Property #: 199120302, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7316, Property #: 199120303, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7317, Property #: 199120304, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7340, Property #: 199120305, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7348, Property #: 199120306, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 7363, Property #: 199120307, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6046, Property #: 199120308, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6041, Property #: 199120309, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6043, Property #: 199120310, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6044, Property #: 199120311, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6045, Property #: 199120312, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6049, Property #: 199120313, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000

Status: Excess
Reason: Disposal process
Bldg. 6050, Property #: 199120314, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6051, Property #: 199120315, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6052, Property #: 199120316, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6039, Property #: 199120317, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6040, Property #: 199120318, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6042, Property #: 199120319, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6047, Property #: 199120320, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6048, Property #: 199120321, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6053, Property #: 199120322, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6054, Property #: 199120323, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6038, Property #: 199120324, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6003, Property #: 199120325, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6004, Property #: 199120326, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6035, Property #: 199120327, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6037, Property #: 199120328, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6002, Property #: 199120329, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6006, Property #: 199120330, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6012, Property #: 199120331, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6014, Property #: 199120332, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6023, Property #: 199120333, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6024, Property #: 199120334, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6028, Property #: 199120335, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6001, Property #: 199120336, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6021, Property #: 199120337, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6029, Property #: 199120338, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6030, Property #: 199120339, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6034, Property #: 199120340, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6007, Property #: 199120341, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6008, Property #: 199120342, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6009, Property #: 199120343, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6010, Property #: 199120344, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6011, Property #: 199120345, Fed Reg Date: 12/04/93
George Air Force Base

George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6013, Property #: 199120346, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6015, Property #: 199120347, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6016, Property #: 199120348, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6017, Property #: 199120349, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6018, Property #: 199120350, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6019, Property #: 199120351, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6020, Property #: 199120352, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6022, Property #: 199120353, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6025, Property #: 199120354, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6026, Property #: 199120355, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6027, Property #: 199120356, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6031, Property #: 199120357, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6032, Property #: 199120358, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6033, Property #: 199120359, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6036, Property #: 199120360, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6055, Property #: 199120361, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 6037, Property #: 199120362, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5035, Property #: 199120363, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5036, Property #: 199120364, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5038, Property #: 199120365, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5042, Property #: 199120366, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5021, Property #: 199120367, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5024, Property #: 199120368, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5029, Property #: 199120369, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5032, Property #: 199120370, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5022, Property #: 199120371, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5023, Property #: 199120372, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5025, Property #: 199120373, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5026, Property #: 199120374, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5027, Property #: 199120375, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5028, Property #: 199120376, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5030, Property #: 199120377, Fed Reg Date: 12/04/93

George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5031, Property #: 199120378, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5016, Property #: 199120379, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5006, Property #: 199120380, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5004, Property #: 199120381, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5005, Property #: 199120382, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5010, Property #: 199120383, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5011, Property #: 199120384, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5015, Property #: 199120385, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5046, Property #: 199120386, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5047, Property #: 199120387, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5051, Property #: 199120388, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5062, Property #: 199120389, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5053, Property #: 199120390, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5057, Property #: 199120391, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5058, Property #: 199120392, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5059, Property #: 199120393, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5001, Property #: 199120394, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5008, Property #: 199120395, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5013, Property #: 199120396, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5019, Property #: 199120397, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5033, Property #: 199120398, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5040, Property #: 199120399, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5043, Property #: 199120400, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5048, Property #: 199120401, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5055, Property #: 199120402, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5062, Property #: 199120403, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5002, Property #: 199120404, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5003, Property #: 199120405, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5007, Property #: 199120406, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5009, Property #: 199120407, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5012, Property #: 199120408, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process

Bldg. 5014, Property #: 199120409, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5018, Property #: 199120410, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5020, Property #: 199120411, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5034, Property #: 199120412, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5039, Property #: 199120413, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5041, Property #: 199120414, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5044, Property #: 199120415, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5045, Property #: 199120416, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5049, Property #: 199120417, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5050, Property #: 199120418, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5054, Property #: 199120419, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 5056, Property #: 199120420, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 94, Property #: 199120421, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 686, Property #: 199120422, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 717, Property #: 199120423, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 718, Property #: 199120424, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 720, Property #: 199120425, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 727, Property #: 199120426, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 728, Property #: 199120427, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 737, Property #: 199120428, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 763, Property #: 199120429, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 190, Property #: 199120430, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 707, Property #: 199120431, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 196, Property #: 199120432, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 317, Property #: 199120433, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 356, Property #: 199120434, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 641, Property #: 199120434, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 694, Property #: 199120436, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 747, Property #: 199120437, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 748, Property #: 199120438, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000

Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 285, Property #: 199120439, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 299, Property #: 199120440, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 208, Property #: 199120441, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 321, Property #: 199120442, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 323, Property #: 199120443, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 651, Property #: 199120444, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 421, Property #: 199120445, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 605, Property #: 199120446, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 658, Property #: 199120447, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 510, Property #: 199120448, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 667, Property #: 199120449, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 674, Property #: 199120449, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 697, Property #: 199120451, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 698, Property #: 199120452, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 701, Property #: 199120453, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 771, Property #: 199120454, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 765, Property #: 199120455, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 766, Property #: 199120456, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 793, Property #: 199120457, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 794, Property #: 199120458, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1055, Property #: 199120459, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1110, Property #: 199120460, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1122, Property #: 199120461, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 558, Property #: 199120462, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 565, Property #: 199120463, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 762, Property #: 199120464, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 763, Property #: 199120465, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 391, Property #: 199120466, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000

Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 723, Property #: 199120467, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 344, Property #: 199120468, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 414, Property #: 199120469, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 514, Property #: 199120470, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1057, Property #: 199120471, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 422, Property #: 199120472, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 7018, Property #: 199120473, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 240, Property #: 199120474, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 210, Property #: 199120475, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 59, Property #: 199120476, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 61, Property #: 199120477, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 288, Property #: 199120478, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 357, Property #: 199120479, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 15, Property #: 199120480, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 27–29, Property #: 199120481, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 18, Property #: 199120482, Fed Reg Date: 12/04/93
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 381, Property #: 199120483, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 411, Property #: 199120484, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1118, Property #: 199120485, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1160, Property #: 199120486, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1139, Property #: 199120487, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1140, Property #: 199120488, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1141, Property #: 199120489, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1146, Property #: 199120490, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 450, Property #: 199120491, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 182, Property #: 199120492, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 585, Property #: 199120493, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 183, Property #: 199120494, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000

Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 586, Property #: 199120495, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 456, Property #: 199120506, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 470, Property #: 199120507, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal
Bldg. 162, Property #: 199120508, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 457, Property #: 199120509, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Demolition is planned.
Bldg. 458, Property #: 199120510, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Demolition is planned.
Bldg. 163, Property #: 199120511, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 252, Property #: 199120512, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 253, Property #: 199120513, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 254, Property #: 199120514, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 255, Property #: 199120515, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 256, Property #: 199120516, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 257, Property #: 199120517, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 262, Property #: 199120518, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 264, Property #: 199120519, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 267, Property #: 199120520, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 335, Property #: 199120521, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Demolition is planned.
Bldg. 336, Property #: 199120522, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Demolition is planned.
Bldg. 412, Property #: 199120523, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Demolition is planned.
Bldg. 413, Property #: 199120524, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Demolition is planned.
Bldg. 416, Property #: 199120525, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Demolition is planned.
Bldg. 417, Property #: 199120526, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Demolition is planned.
Bldg. 423, Property #: 199120527, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 427, Property #: 199120528, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 497, Property #: 199120529, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 498, Property #: 199120530, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 499, Property #: 199120531, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 500, Property #: 199120532, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 501, Property #: 199120533, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 502, Property #: 199120534, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 588, Property #: 199120535, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process

Bldg. 590, Property #: 199120536, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 593, Property #: 199120537, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 246, Property #: 199120538, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 247, Property #: 199120539, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 249, Property #: 199120540, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 250, Property #: 199120541, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 248, Property #: 199120542, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 251, Property #: 199120543, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 454, Property #: 199120544, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 263, Property #: 199120545, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 265, Property #: 199120546, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 266, Property #: 199120547, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Disposal process
Bldg. 559, Property #: 199120548, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit sale
Bldg. 652, Property #: 199120549, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 756, Property #: 199120550, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 672, Property #: 199120551, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 683, Property #: 199120552, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 691, Property #: 199120553, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 731, Property #: 199120554, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 734, Property #: 199120555, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 761, Property #: 199120556, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 744, Property #: 199120557, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 700, Property #: 199120558, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 671, Property #: 199120559, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 675, Property #: 199120560, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 677, Property #: 199120561, Fed Reg. Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 640, Property #: 199120562, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 643, Property #: 199120563, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 764, Property #: 199120564, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 789, Property #: 199120565, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000

Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 560, Property #: 199120566, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 710, Property #: 199120567, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 842, Property #: 199120568, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 822, Property #: 199120569, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 860, Property #: 199120570, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 875, Property #: 199120571, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 895, Property #: 199120572, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 568, Property #: 199120573, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 685, Property #: 199120574, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 682, Property #: 199120575, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 642, Property #: 199120576, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 645, Property #: 199120577, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 755, Property #: 199120578, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 879, Property #: 199120579, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 570, Property #: 199120580, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 534, Property #: 199120581, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 566, Property #: 199120582, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 799, Property #: 199120583, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 507, Property #: 199120584, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 719, Property #: 199120585, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 768, Property #: 199120586, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 564, Property #: 199120587, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 571, Property #: 199120588, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 635, Property #: 199120589, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 810, Property #: 199120590, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1138, Property #: 199120591, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 513, Property #: 199120592, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 540, Property #: 199120593, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000

Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 670, Property #: 199120594, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 784, Property #: 199120595, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 835, Property #: 199120596, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 999, Property #: 199120597, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 96, Property #: 199120598, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 648, Property #: 199120599, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 659, Property #: 199120600, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 661, Property #: 199120601, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 725, Property #: 199120602, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 666, Property #: 199120603, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 673, Property #: 199120604, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 679, Property #: 199120605, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 688, Property #: 199120606, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 689, Property #: 199120607, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 997, Property #: 199120608, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 163, Property #: 199120609, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 320, Property #: 199120610, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 120, Property #: 199120611, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 196, Property #: 199120612, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 753, Property #: 199120613, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 320, Property #: 199120614, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 348, Property #: 199120615, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 683, Property #: 199120616, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 720, Property #: 199120617, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 310, Property #: 199120618, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 12, Property #: 199120619, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 14, Property #: 199120620, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 23, Property #: 199120621, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000

Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 283, Property #: 199120622, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 60, Property #: 199120623, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 64, Property #: 199120624, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 58, Property #: 199120625, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 158, Property #: 199120626, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 211, Property #: 199120627, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 70, Property #: 199120628, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 655, Property #: 199120629, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 72, Property #: 199120630, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 290, Property #: 199120631, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 97, Property #: 199120632, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1155, Property #: 199120633, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 724, Property #: 199120634, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 873, Property #: 199120635, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 107, Property #: 199120636, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 350, Property #: 199120637, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 353, Property #: 199120638, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 527, Property #: 199120639, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 533, Property #: 199120640, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 550, Property #: 199120641, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 555, Property #: 199120642, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 569, Property #: 199120643, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 552, Property #: 199120644, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 55800, Property #: 199120645, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 560, Property #: 199120646, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 157, Property #: 199120647, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 115, Property #: 199120648, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 185, Property #: 199120649, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000

Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 451, Property #: 199120650, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 160, Property #: 199120651, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 591, Property #: 199120652, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 167, Property #: 199120653, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 289, Property #: 199120654, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 1163, Property #: 199120655, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 280, Property #: 199120656, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 324, Property #: 199120657, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 386, Property #: 199120658, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 389, Property #: 199120659, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 415, Property #: 199120660, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 600, Property #: 199120661, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 757, Property #: 199120662, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 760, Property #: 199120663, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 800, Property #: 199120664, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 805, Property #: 199120665, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 806, Property #: 199120666, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 518, Property #: 199120667, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 520, Property #: 199120668, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 633, Property #: 199120669, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 653, Property #: 199120670, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 732, Property #: 199120671, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 733, Property #: 199120672, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 738, Property #: 199120673, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 739, Property #: 199120674, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 538, Property #: 199120675, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 539, Property #: 199120676, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 657, Property #: 199120677, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000

Status: Excess
Reason: Negotiated sale or thru public benefit transfer
Bldg. 656, Property #: 199120678, Fed Reg Date: 12/04/93
George Air Force Base
George AFB, CA, Co: San Bernardino, Zip: 92394–5000
Status: Excess
Reason: Negotiated sale or thru public benefit transfer
207 Buildings/414 Units, Property #: 199210017, Fed Reg Date: 12/04/93
Wherry Duplexes
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale, or public benefit transfer
336 (Wherry) Family Houses, Property #: 199210018, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale, or public benefit transfer
450 (Capehart) Family Houses, Property #: 199210019, Fed Reg Date: 12/04/93
Project Name: Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale, or public benefit transfer
71 Family Houses, Property #: 199210020, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale, or public benefit transfer
18 Temporary Living Quarters, Property #: 199210021, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Negotiated sale, or thru public benefit transfer
60 Office/Admin. Buildings, Property #: 199210022, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Disposal process
32 Recreation Facilities, Property #: 199210023, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale, or thru public benefit transfer
33 Airport Related Buildings, Property #: 199210024, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Disposal process
36 Maint. & Engineering Bldgs., Property #: 199210025, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Disposal process
15 Training Buildings, Property #: 199210026, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale, or public benefit transfer
7 Store & Service Buildings, Property #: 199210027, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Disposal process
2 Chapels, Property #: 199210028, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Disposal process
4 Fire Buildings, Property #: 199210029, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Disposal process
3 Audio Visual Buildings, Property #: 199210030, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Disposal process
6 Miscellaneous Buildings, Property #: 199210031, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale, or thru public benefit transfer
61 Storage Buildings, Property #: 199210032, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale, or public benefit transfer
7 Warehouses, Property #: 199210033, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale, or thru public benefit transfer
6 Vehicle Shops, Property #: 199210034, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale, or thru public benefit transfer
Traffic Check House #1550, Property #: 199210035, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale or thru public benefit transfer
8 Fuel Buildings/Facilities, Property #: 199210036, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale or thru public benefit transfer
5 Explosives & Munitions Bldgs, Property #: 199210037, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale or thru public benefit transfer
11 Hazardous Storage Buildings, Property #: 199210038, Fed Reg Date: 12/04/93
Mather Air Force Base
Mather, CA, Co: Sacramento, Zip: 95655–5000
Status: Excess
Reason: Public or negotiated sale or thru public benefit transfer
30 Dormitories, Property #: 199320048, Fed Reg Date: 12/04/93
Norton Air Force Base
San Bernardino, CA, Co: San Bernardino Zip: 92409–
Status: Excess
Reason: Record of decision on disposal
35 Administrative Bldgs., Property #: 199320049, Fed Reg Date: 12/04/93
Norton Air Force Base
San Bernardino, CA, Co: San Bernardino, Zip: 92409–
Status: Excess
Reason: Record of decision on disposal
4 Training Facilities, Property #: 199320050, Fed Reg Date: 12/04/93
Norton Air Force Base
San Bernardino, CA, Co: San Bernardino, Zip: 92409–
Status: Excess
Reason: Record of decision on disposal
53 Warehouses, Property #: 199320051, Fed Reg Date: 12/04/93
Norton Air Force Base
San Bernardino, CA, Co: San Bernardino, Zip: 92409–
Status: Excess
Reason: Record of decision on disposal
28 Commercial Bldgs., Property #: 199320052, Fed Reg Date: 12/04/93
Norton Air Force Base
San Bernardino, CA, Co: San Bernardino, Zip: 92409–
Status: Excess
Reason: Record of decision on disposal
21 Maintenance Facilities, Property #: 199320053, Fed Reg Date: 12/04/93
Norton Air Force Base
San Bernardino, CA, Co: San Bernardino, Zip: 92409–
Status: Excess
Reason: Record of decision on disposal

8 Recreation Bldgs., Property #: 199320054, Fed Reg Date: 12/04/93
Norton Air Force Base
San Bernardino, CA, Co: San Bernardino, Zip: 92409–
Status: Excess
Reason: Record of decision on disposal

Colorado

Buildings

15 Family Housing—Duplexes, Property #: 199320001, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Reason: Homeless interest and City interest expressed
16 Housing Storage/Garages, Property #: 199320002, Fed Reg Date: 12/04/93
Lowry Air Force base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Reason: Homeless interest and City interest expressed
Bldg. 251, Family Housing, Property #: 199320003, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Reason: Homeless interest and City interest expressed
42 Wherry Family Housing, Property #: 199320004, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Reason: Homeless interest and City interest expressed
7 Wherry Family Housing, Property #: 199320005, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Reason: Homeless interest and City interest expressed
7 Wherry Family Housing, Property #: 199320006, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Reason: Homeless interest and City interest expressed
22 Family Housing (PFY 50), Property #: 199320007, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Reason: Homeless interest and City interest expressed
23 Family housing (PFY 70A), Property #: 199320008, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Reason: Homeless interest and City interest expressed
75 Family Housing (PFY 70A), Property #: 199320009, Fed Reg Date: 12/04/93
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver, CO, Co: Denver, Zip: 80230–5000
Status: Excess
Reason: Homeless interest and City interest expressed

Illinois

Buildings

Bldg. 1380, Property #: 189010232, Fed Reg Date: 12/04/93
Project Name: Chanute Air Force Base
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Unutilized
Reason: Chemicals (GAS) present.
Bldg. 106, Property #: 189010255, Fed Reg Date: 12/04/93
Project Name: Chanute Air Force Base
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Unutilized
Reason: Unsafe for any use
Bldg. 1220, Property #: 189010259, Fed Reg Date: 12/04/93
Project Name: Chanute Air Force Base
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Unutilized
Reason: Unsafe for any use
Bldg. 1221, Property #: 189010260, Fed Reg Date: 12/04/93
Project Name: Chanute Air Force Base
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Unutilized
Reason: Unsafe for any use
463 Residential Buildings, Property #: 199210139, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal
24 Temporary Living Quarters, Property #: 199210140, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal
2 Medical Facilities, Property #: 199210141, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal
28 Storage/Warehouses, Property #: 199210142, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal
15 Maintenance Bldgs., Property #: 199210143, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal
2 Engine Test Cells/Warehouse, Property #: 199210144, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal
2 Gas Stations, Property #: 199210145, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal
22 Training Facilities, Property #: 199210146, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal
5 Retail Stores, Property #: 199210147, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal
3 Chapel/Chapel Center, Property #: 199210148, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal
1 Fire Station, Property #: 199210149, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal
27 Recreation Facilities, Property #: 199210150, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal
26 Administration Facilities, Property #: 199210152, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal
Bldg. 386/Band Bldg., Property #: 199210153, Fed Reg Date: 12/04/93
Chanute Air Force Base
Rantoul, IL, Co: Champaign, Zip: 61868–
Status: Excess
Reason: Record of decision on disposal

Louisiana

Land

10 Recreation Areas, Property #: 199210084, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess
Reason: Leased to the local community
25 Land, Airfield, Runways, Property #: 199210094, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess
Reason: Record of decision on disposal

Buildings

93 (Appropriated) Family Hsg., Property #: 199210080, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess

Reason: Record of decision on disposal
201 (Capehart) Family Housing, Property #: 199210081, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess
Reason: Record of decision on disposal
3 Office/Admin. Buildings, Property #: 199210082, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess
Reason: Record of decision on disposal
18 Recreation Facilities, Property #: 199210083, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess
Reason: Leased to the local community
14 Dorms/Dining Rooms, Property #: 199210085, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess
Reason: Leased to the local community
14 Education/Training Bldgs., Property #: 199210086, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess
Reason: Leased to the local community
3 Hospital Related Facilities, Property #: 199210087, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess
Reason: Leased to the local community
6 Business/Commercial Bldgs, Property #: 199210088, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess
Reason: Lease to the local community.
38 Storage/Warehouses, Property #: 199210089, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess
Reason: Leased to the local community.
20 Shops and Maintenance, Property #: 199210090, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess
Reason: Leased to the local community
36 Airfield Related Facilities, Property #: 199210091, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess
Reason: Leased to local community
Bldg. 500, Property #: 199210092, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Rapides, Zip: 71311–5000
Status: Excess
Reason: Leased to the local community
Bldg. 1801, Chapel, Property #: 199210093, Fed Reg Date: 12/04/93
England Air Force Base
Alexandria, LA, Co: Radides, Zip: 71311–5000
Status: Excess
Reason: Leased to the local community

Missouri

Buildings

3 Dormitories, Property #: 199320023, Fed Reg Date: 12/04/93
Richards-Gebaur Air Force Base
Elmwood Street
Kansas City, MO, Co: Jackson, Zip: 64147–
Status: Excess
Reason: Marine Corps has expressed an interest
Facility 248, Property #: 199320024, Fed Reg Date: 12/04/93
Richards-Gebaur Air Force Base
Kansas City, MO, Co: Jackson, Zip: 64147–
Status: Excess
Reason: Marine Corps has expressed an interest
2 Recreation Facilities, Property #: 199320027, Fed Reg Date: 12/04/93
Richards-Gebaur Air Force Base
Kansas City, MO, Co: Jackson, Zip: 64147–
Status: Excess
Reason: Marine Corps has expressed an interest

New Hampshire

Buildings

Bldg. 8, Property #: 189010534, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Newington Road
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 94, Property #: 189010535, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base, Temp. Lodging Facility
Rockingham Drive
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 600, Property #: 189040059, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 601, Property #: 189040060, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 602, Property #: 189040061, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 603, Property #: 189040062, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 604, Property #: 189040063, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 605, Property #: 189040064, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason:
Bldg. 606, Property #: 189040065, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 607, Property #: 189040066, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 608, Property #: 189040067, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 609, Property #: 189040068, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 610, Property #: 189040069, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 611, Property #: 189040070, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 612, Property #: 189040071, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 613, Property #: 189040072, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 614, Property #: 189040073, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 615, Property #: 189040074, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 616, Property #: 189040075, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 617, Property #: 189040076, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 618, Property #: 189040077, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 619, Property #: 189040078, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 620, Property #: 189040079, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 621, Property #: 189040080, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 622, Property #: 189040081, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 623, Property #: 189040082, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 624, Property #: 189040083, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 625, Property #: 189040084, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 626, Property #: 189040085, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 627, Property #: 189040086, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 628, Property #: 189040087, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 629, Property #: 189040088, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 630, Property #: 189040089, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 631, Property #: 189040090, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 632, Property #: 189040091, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 633, Property #: 189040092, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 634, Property #: 189040093, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 635, Property #: 189040094, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 636, Property #: 189040095, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 637, Property #: 189040096, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 638, Property #: 189040097, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 639, Property #: 189040098, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 640, Property #: 189040099, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 641, Property #: 189040100, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 642, Property #: 189040101, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 643, Property #: 189040102, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 644, Property #: 189040103, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 645, Property #: 189040104, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 646, Property #: 189040105, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 647, Property #: 189040106, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 648, Property #: 189040107, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 649, Property #: 189040108, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 650, Property #: 189040109, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 651, Property #: 189040110, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 652, Property #: 189040111, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 653, Property #: 189040112, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 654, Property #: 189040113, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 655, Property #: 189040114, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 656, Property #: 189040115, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 657, Property #: 189040116, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 658, Property #: 189040117, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 659, Property #: 189040118, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–

Status: Excess
Reason: Disposal process
Bldg. 660, Property #: 189040119, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 661, Property #: 189040120, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 662, Property #: 189040121, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 663, Property #: 189040122, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 664, Property #: 189040123, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 665, Property #: 189040124, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 666, Property #: 189040125, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 667, Property #: 189040126, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 668, Property #: 189040127, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 669, Property #: 189040128, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 670, Property #: 189040129, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 671, Property #: 189040130, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 672, Property #: 189040131, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 673, Property #: 189040132, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 674, Property #: 189040133, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 675, Property #: 189040134, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 676, Property #: 189040135, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 677, Property #: 189040136, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 678, Property #: 189040137, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 679, Property #: 189040138, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 680, Property #: 189040139, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 681, Property #: 189040140, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Bldg.
Status: Excess
Reason: Disposal process
Bldg. 682, Property #: 189040141, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 683, Property #: 189040142, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 684, Property #: 189040143, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base

Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Disposal process
Bldg. 685, Property #: 189040144, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 686, Property #: 189040145, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 687, Property #: 189040146, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 688, Property #: 189040147, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 689, Property #: 189040148, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 902, Property #: 189040305, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 904, Property #: 189040306, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 905, Property #: 189040307, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 906, Property #: 189040308, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 907, Property #: 189040309, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 908, Property #: 189040310, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 909, Property #: 189040311, Fed Reg Date 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 910, Property #: 189040312, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 911, Propery #: 189040313, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 912, Property #: 189040314, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 913, Property #: 189040315, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Airforce Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Comment: Disposal process
Bldg. 915, Property #: 189040316, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 921, Property #: 189040317, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 922, Property #: 189040318, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 923, Property #: 189040319, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 46, Property #: 189040321, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 60, Property #: 189040322, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 99, Property #: 189040323, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 96, Property #: 189040326, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 89, Property #: 189040327, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base

Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reasaon: Disposal process
Bldg. 93, Property #: 189040328, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 35, Property #: 189040330, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 36, Property #: 189040331, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 88, Property #: 189040332, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 74, Property #: 189040333, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 76, Property #: 189040334, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 62, Property #: 189040335, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 63, Property #: 189040352, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 47, Property #: 189040387, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 49, Property #: 189040388, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 50, Property #: 189040389, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 56, Property #: 189040390, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 58, Property #: 189040391, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 80, Property #: 189040392, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 81, Property #: 189040393, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 84, Property #: 189040394, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 500, Property #: 189040395, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 501, Property #: 189040396, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 502, Property #: 189040397, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 503, Property #: 189040398, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 504, Property #: 189040399, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 505, Property #: 189040400, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 506, Property #: 189040401, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 507, Property #: 189040402, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 508, Property #: 189040403, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 509, Property #: 189040404, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 510, Property #: 189040405, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 511, Property #: 189040406, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 512, Property #: 189040407, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 513, Property #: 189040408, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 514, Property #: 189040409, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 515, Property #: 189040410, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 516, Property #: 189040411, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 517, Property #: 189040412, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 518, Property #: 189040413, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 519, Property #: 189040414, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 520, Property #: 189040415, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 521, Property #: 189040416, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 522, Property #: 189040417, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 523, Property #: 189040418, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 524, Property #: 189040419, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 525, Property #: 189040420, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 526, Property #: 189040421, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 527, Property #: 189040422, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 528, Property #: 189040423, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 529, Property #: 189040424, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 530, Property #: 189040425, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 531, Property #: 189040426, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 532, Property #: 189040427, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 533, Property #: 189040428, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 534, Property #: 189040429, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Status: Excess
Reason: Disposal Process

Bldg. 535, Property #: 189040430, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 536, Property #: 189040431, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Peaase Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal Process

Bldg. 537, Property #: 189040432, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 538, Property #: 189040434, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 539, Property #: 189040435, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 540, Property #: 189040436, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 541, Property #: 189040437, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 542, Property #: 189040438, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 543, Property #: 189040439, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 544, Property #: 189040440, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 545, Property #: 189040441, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 546, Property #: 189040442, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 547, Property #: 189040443, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 548, Property #: 189040444, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 549, Property #: 189040445, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 550, Property #: 189040446, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 552, Property #: 189040447, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 553, Property #: 189040448, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 554, Property #: 189040449, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 555, Property #: 189040450, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 556, Property #: 189040451, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 557, Property #: 189040452, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 558, Property #: 189040453, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 559, Property #: 189040454, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 560, Property #: 189040455, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base Capehart Family Housing

Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 561, Property #: 189040456, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 562, Property #: 189040457, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 563, Property #: 189040458, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 564, Property #: 189040459, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 565, Property #: 189040460, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 566, Property #: 189040461, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 900, Property #: 189040462, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 903, Property #: 189040463, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 914, Property #: 189040464, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 917, Property #: 189040465, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 920, Property #: 189040466, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 925, Property #: 189040467, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 916, Property #: 189040468, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 918, Property #: 189040469, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 919, Property #: 189040470, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 924, Property #: 189040471, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16000, Property #: 189040472, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16010, Property #: 189040473, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16020, Property #: 189040474, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16030, Property #: 189040475, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16040, Property #: 189040476, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16050, Property #: 189040477, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16060, Property #: 189040478, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16070, Property #: 189040479, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16080, Property #: 189040480, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16090, Property #: 189040481, Fed Reg Date: 12/04/93

Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16100, Property #: 189040482, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16110, Property #: 189040483, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16120, Property #: 189040484, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16130, Property #: 189040485, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16140, Property #: 189040486, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16150, Property #: 189040487, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16160, Property #: 189040488, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16170, Property #: 189040489, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16180, Property #: 189040490, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16190, Property #: 189040491, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16200, Property #: 189040492, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16210, Property #: 189040493, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16220, Property #: 189040494, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16230, Property #: 189040495, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16240, Property #: 189040496, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16250, Property #: 189040497, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16260, Property #: 189040498, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16270, Property #: 189040499, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16280, Property #: 189040500, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16290, Property #: 189040501, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16300, Property #: 189040502, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16310, Property #: 189040503, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16320, Property #: 189040504, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16330, Property #: 189040505, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16340, Property #: 189040506, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16350, Property #: 189040507, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16360, Property #: 189040508, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

Bldg. 16370, Property #: 189040509, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16380, Property #: 189040510, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16390, Property #: 189040511, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16400, Property #: 189040512, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16410, Property #: 189040513, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16420, Property #: 189040514, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16430, Property #: 189040515, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16440, Property #: 189040516, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16450, Property #: 189040517, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16460, Property #: 189040518, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16470, Property #: 189040519, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16480, Property #: 189040520, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16490, Property #: 189040521, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16500, Property #: 189040522, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16510, Property #: 189040523, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16520, Property #: 189040524, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16530, Property #: 189040525, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16540, Property #: 189040526, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16550, Property #: 189040527, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16560, Property #: 189040528, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16570, Property #: 189040529, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16580, Property #: 189040530, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16590, Property #: 189040531, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16600, Property #: 189040532, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16610, Property #: 189040533, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16620, Property #: 189040534, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16630, Property #: 189040535, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16640, Property #: 189040536, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16650, Property #: 189040537, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16660, Property #: 189040538, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16670, Property #: 189040539, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16680, Property #: 189040540, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16690, Property #: 189040541, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16700, Property #: 189040542, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16710, Property #: 189040543, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16720, Property #: 189040544, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16730, Property #: 189040545, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16740, Property #: 189040546, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16750, Property #: 189040547, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16760, Property #: 189040548, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16770, Property #: 189040549, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16780, Property #: 189040550, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16790, Property #: 189040551, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16800, Property #: 189040552, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16810, Property #: 189040553, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16820, Property #: 189040554, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16830, Property #: 189040555, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16840, Property #: 189040556, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16850, Property #: 189040557, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16860, Property #: 189040558, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16870, Property #: 189040559, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16880, Property #: 189040560, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 16890, Property #: 189040561, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 37, Property #: 189040737, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 38, Property #: 189040738, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 61, Property #: 189040739, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base

Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 85, Property #: 189040740, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 48, Property #: 189040763, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 59, Property #: 189040764, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 77, Property #: 189040765, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 78, Property #: 189040766, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 79, Property #: 189040767, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 86, Property #: 189040768, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 91, Property #: 189040770, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 95, Property #: 189040771, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 66, Property #: 189040774, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 67, Property #: 189040775, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 82, Property #: 189040777, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 104, Property #: 189040778, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process
Bldg. 265, Property #: 189040787, Fed Reg Date: 12/04/93
Project Name: Pease Air Force Base
Pease Air Force Base
Pease AFB, NH, Co: Rockingham, Zip: 03803–
Status: Excess
Reason: Disposal process

South Carolina

Land

Recreational Areas, Property #: 199210007, Fed Reg Date: 12/04/93
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Record of decision on disposal
Golf Course & Driving Range, Property #: 199210008, Fed Reg Date: 12/04/93
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Leased to local community
Land, Property #: 199210013, Fed Reg Date: 12/04/93
Airfield and Related Properties
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Leased to local community
Land, Property #: 199210014, Fed Reg Date: 12/04/93
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Record of decision on disposal
Forest, Property #: 199210015, Fed Reg Date: 12/04/93
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Record of decision on disposal

Buildings

448 Buildings/800 Units, Property #: 199210001, Fed Reg Date: 12/04/93
Military Family Housing
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Record of decision on disposal
13 Dormitories/Quarters, Property #: 199210002, Fed Reg Date: 12/04/93
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Record of decision on disposal
12 Miscellaneous Buildings, Property #: 199210003, Fed Reg Date: 12/04/93
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Record of decision on disposal
Medical Sup. Bldg., Property #: 199210004, Fed Reg Date: 12/04/93
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Leased to local community
44 Administrative Type Bldgs, Property #: 199210005, Fed Reg Date: 12/04/93
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Record of decision on disposal
12 Recreation Buildings, Property #: 199210006, Fed Reg Date: 12/04/93
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Record of decision on disposal
36 Utility Type Buildings, Property #: 199210009, Fed Reg Date: 12/04/93
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Record of decision on disposal
3 Security Police Buildings, Property #: 199210010, Fed Reg Date: 12/04/93
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Record of decision on disposal
15 Ammunition Storage Bldgs., Property #: 199210011, Fed Reg Date: 12/04/93
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Record of decision on disposal
15 Airfield Support Bldgs., Property #: 199210012, Fed Reg Date: 12/04/93
Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Leased to local community

Myrtle Beach Air Force Base
Myrtle Beach, SC, Co: Horry, Zip: 29579–5000
Status: Excess
Reason: Leased to local community

Army

Colorado

Buildings

Bldg. T–1445, Property #: 219320204, Fed Reg Date: 12/04/93
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Reason: Will be utilized.

Georgia

Buildings

Bldg. 2500, Fort Benning, Property #: 219310483, Fed Reg Date: 12/04/93
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Reason: Safety problem.

Maryland

Buildings

Bldgs. TMA4, TMA5, TMA8, TMA9, Property #: 219320292, Fed Reg Date: 12/04/93
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Reason: To be demolished.

Texas

Buildings

Bldg. P–2000, Fort Sam Houston, Property #: 219220389, Fed Reg Date: 12/04/93
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Underutilized
Reason: Area programmed for future use.
Bldg. P–2001, Fort Sam Houston, Property #: 219220390, Fed Reg Date: 12/04/93
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Underutilized
Reason: Area programmed for future use.
Bldg. P–2007, Fort Sam Houston, Property #: 219220391, Fed Reg Date: 12/04/93
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Underutilized
Reason: Area programmed for future use.
Bldg. T–189, Fort Sam Houston, Property #: 219220402, Fed Reg Date: 12/04/93
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Underutilized
Reason: Area programmed for future use.
Bldg. T–2066, Fort Sam Houston, Property #: 219220424, Fed Reg Date: 12/04/93
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Underutilized
Reason: Utilized for mission purposes.

Virginia

Buildings

Bldg. T–3004, Fort Pickett, Property #: 219310317, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Unutilized
Reason: Needed for training activities.
Bldg. T–3022, Fort Pickett, Property #: 219310318, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3023, Fort Pickett, Property #: 219310319, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3024, Fort Pickett, Property #: 219310320, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3026, Fort Pickett, Property #: 219310321, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3025, Fort Pickett, Property #: 219310322, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3040, Fort Pickett, Property #: 219310323, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3041, Fort Pickett, Property #: 219310324, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3049, Fort Pickett, Property #: 219310325, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3050, Fort Pickett, Property #: 219310326, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Unutilized
Reason: Needed for training activities.
Bldg. T–3029, Fort Pickett, Property #: 219310327, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3030, Fort Pickett, Property #: 219310328, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3037, Fort Pickett, Property #: 219310329, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3038, Fort Pickett, Property #: 219310330, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3039, Fort Pickett, Property #: 219310331, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3042, Fort Pickett, Property #: 219310332, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3043, Fort Pickett, Property #: 219310333, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3044, Fort Pickett, Property #: 219310334, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3045, Fort Pickett, Property #: 219310335, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T–3046, Fort Pickett, Property #: 219310336, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T3047, Fort Pickett, Property #: 219310337, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3048, Fort Pickett, Property #: 219310338, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3051, Fort Pickett, Property #: 219310339, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3052, Fort Pickett, Property #: 219310340, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3053, Fort Pickett, Property #: 219310341, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3054, Fort Pickett, Property #: 219310342, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3027, Fort Pickett, Property #: 219310343, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3028, Fort Pickett, Property #: 219310344, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3031, Fort Pickett, Property #: 219310345, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3032, Fort Pickett, Property #: 219310346, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3033, Fort Pickett, Property #: 219310347, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–

Status: Underutilized
Reason: Needed for training activities
Bldg. T3034, Fort Pickett, Property #: 219310348, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3035, Fort Pickett, Property #: 219310349, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3036, Fort Pickett, Property #: 219310350, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3057, Fort Pickett, Property #: 219310351, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. T3055, Fort Pickett, Property #: 219310352, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. TT3001, Fort Pickett, Property #: 219310353, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. TA3002, Fort Pickett, Property #: 219310354, Fed Reg Date: 12/04/93
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities
Bldg. 178, Fort Monroe, Property #: 219320357, Fed Reg Date: 12/04/93
Ft. Monroe, VA, Zip: 23651–
Status: Underutilized
Reason: Currently utilized

Coe

California

Buildings

Santa Fe Flood Control Basin, Property #: 319011298, Fed Reg Date: 12/04/93
Project Name: Santa Fe Flood Control Basin
Irwindale, CA, Co: Los Angeles, Zip: 91706–
Status: Unutilized
Reason: Needed for contract personnel

Florida

Buildings

Bldg. CN7, Property #: 319010012, Fed Reg Date: 12/04/93
Project Name: Ortona Lock Reservation
Ortona Lock Reservation, Okeechobee Waterway
Ortona, FL, Co: Glades, Zip: 33471–
Status: Unutilized
Reason: Disposal actions have been initiated.
Bldg. CN8, Property #: 319010013, Fed Reg Date: 12/04/93
Project Name: Ortona Lock Reservation
Ortona Lock Reservation, Okeechobee Waterway
Ortona, FL, Co: Glades, Zip: 33471–
Status: Unutilized
Reason: Disposal actions have been initiated.
Bldg. SF–83, Property #: 319310006, Fed Reg Date: 12/04/93
Moore Haven Lock & Dam
Okeechobee Waterway
Moore Haven, FL, Co: Glades, Zip: 33471–
Status: Unutilized
Reason: Will be removed from site

Idaho

Buildings

Bldg., Property #: 319110028, Fed Reg Date: 12/04/93
Project Name: Albeni Falls Dam
Albeni Falls Dam
U.S. Highway 2, Priest River
Bonner, ID, Co: Bonner, Zip: 83856–
Status: Unutilized
Reason: Off-site removal

Kentucky

Land

Carr Fork Lake, Property #: 319240003, Fed Reg Date: 12/04/93
5 miles SE of Hindman, Ky., Hwy. 60
Hindman, KY, Co: Knott, Zip:
Status: Unutilized
Reason: Used as drainage field

Montana

Land

0.01 acre, Fort Peck Lake Proj, Property #: 319220002, Fed Reg Date: 12/04/93
MT, Co: Valley, Zip:
Status: Excess
Reason: Compelling Federal need
0.05 acre, Fort Peck Lake Proj, Property #: 319220003, Fed Reg Date: 12/04/93
MT, Co: Valley, Zip:
Status: Excess
GSA No.: 7–D–MT–4137–FF
Reason: Compelling Federal need
122.60 acres, Property #: 319220004, Fed Reg Date: 12/04/93
Fort Peck Lake Project
MT, Co: McCone, Zip:
Status: Excess
GSA No.: 7–D–MT–4137–FF
Reason: Compelling Federal need

Oklahoma

Land

45 acre parcel, Sardis Lake, Property #: 319140004, Fed Reg Date: 12/04/93
SE¼ NE¼ Section 4, T 2 N, R 18 E
OK, Co: Pushmataha, Zip: 74521–
Status: Excess
Reason: Fully utilized

Pennsylvania

Land

East Branch Clarion River Lake, Property #: 319011012, Fed Reg Date: 12/04/93
Project Name: East Branch Clarion River Lake
Wilcox, PA, Co: Elk, Zip:
Status: Underutilized
Reason: Location near damsite

Tennessee

Buildings

Transient Quarters, Property #: 319140005, Fed Reg Date: 12/04/93
Dale Hollow Lake and Dam Project
Dale Hollow Resource Mgr Office, Rt. 1, Box 64
Celina, TN, Co: Clay, Zip: 38551–
Status: Unutilized
Reason: Fully utilized

Texas

Land

Part of Tract A–10, Property #: 319010390, Fed Reg Date: 12/04/93
Project Name: Part of Tract A–10
(See County), TX, Co: Tarrant, Zip:
Status: Excess
Reason: Encroachment by an adjoining landowner
Part of Tract 340, Property #: 319010400, Fed Reg Date: 12/04/93
Project Name: Joe Pool Lake
Joe Pool Lake
(See County), TX, Co: Dallas, Zip:
Status: Unutilized
Reason: Incorporated into a park lease

Wisconsin

Buildings:

Former Lockmaster's Dwelling, Property #: 319011526, Fed Reg Date: 12/04/93
Project Name: Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere, WI, Co: Brown, Zip: 54115
Status: Unutilized
Reason: In negotiation for transfer to the State

Coe—BC

Connecticut

Buildings

Portland CT 36, Property #: 319011218, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
1 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland
Portland CT 36, Property #: 319011219, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
1 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland
Portland CT 36, Property #: 319011220, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
1 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland
Portland CT 36, Property #: 319011221, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
1 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland
Portland CT 36, Property #: 319011222, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
1 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland

Portland CT 36, Property #: 319011223, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
1 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland
Portland CT 36, Property #: 319011224, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
7 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland
Portland CT 36, Property #: 319011225, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
8 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland
Portland CT 36, Property #: 319011226, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
9 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland
Portland CT 36, Property #: 319011227, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
10 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland
Portland CT 36, Property #: 319011228, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
11 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland
Portland CT 36, Property #: 319011229, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
13 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland
Portland CT 36, Property #: 319011230, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
14 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland
Portland CT 36, Property #: 319011231, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
15 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland
Portland CT 36, Property #: 319011232, Fed Reg Date: 12/04/93
Project Name: Family Housing
Family Housing
16 Freedom Street
Portland, CT, Co: Middlesex, Zip: 06484–
Status: Excess
Reason: Negotiated sale to City of Portland

Illinois

Buildings

12 Addison Family Houses, Property #: 329210001, Fed Reg Date: 12/04/93
Fort Sheridan
Addison, IL, Co: DuPage, Zip: 60101–
Status: Excess
Reason: Received an offer to purchase
12 Worth Family Houses, Property #: 329210002, Fed Reg Date: 12/04/93
Fort Sheridan
Worth, IL, Co: Cook, Zip: 60482–
Status: Excess
Reason: Land lease terminated 6/30/93—transfer to lessor

Massachusetts

Buildings

12 Bldgs., Burlington Housing, Property #: 329240005, Fed Reg Date: 12/04/93
Project Name:
South Bedford
Burlington, MA, Co: Middlesex, Zip: 01803–
Status: Surplus
Reason: In negotiations w/the City

Michigan

Buildings

Pontiac Storage Facility, Property #: 329240001, Fed Reg Date: 12/04/93
871 East South Boulevard
Pontiac, MI, Co: Oakland, Zip: 48054–
Status: Excess
Reason: Negotiations with City

New Jersey

Land

2 Recreational Facilities, Property #: 329220011, Fed Reg Date: 12/04/93
Kennedy Courts Family Housing
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Env. study underway re: waste water treatment facility
2 Recreational Facilities, Property #: 329220019, Fed Reg Date: 12/04/93
Sheridanville Family Housing
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Approved homeless provider application

Buildings

Bldg. 0201, Property #: 319010734, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0202, Property #: 319010735, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0203, Property #: 319010736, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0204, Property #: 319010737, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0205, Property #: 319010738, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0206, Property #: 319010739, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0207, Property #: 319010740, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0208, Property #: 319010741, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0209, Property #: 319010742, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0210, Property #: 319010743, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess

Reason: Approved app. by HHS
Bldg. 0211, Property #: 319010744, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0212, Property #: 319010745, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0213, Property #: 319010746, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0214, Property #: 319010747, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0215, Property #: 319010748, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0216, Property #: 319010749, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0217, Property #: 319010750, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0218, Property #: 319010751, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0219, Property #: 319010752, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0220, Property #: 319010753, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0221, Property #: 319010754, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0222, Property #: 319010755, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0223, Property #: 319010756, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0224, Property #: 319010757, Fed Reg Date: 12/04/93
Project Name: Franklin Lakes Family Housing
Franklin Lakes Family Housing
Patrick Brems Court
Mahwah, NJ, Co: Bergen, Zip: 07430–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0201, Property #: 319010758, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livingston Family Housing
Harmony Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0202, Property #: 319010759, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livingston Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0203, Property #: 319010760, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0204, Property #: 319010761, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0205, Property #: 319010762, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0206, Property #: 319010763, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0207, Property #: 319010764, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0208, Property #: 319010765, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0209, Property #: 319010766, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0210, Property #: 319010767, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0211, Property #: 319010768, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0212, Property #: 319010769, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS

Bldg. 0213, Property #: 319010770, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0214, Property #: 319010771, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0215, Property #: 319010772, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0216, Property #: 319010773, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0217, Property #: 319010774, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0218, Property #: 319010775, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0219, Property #: 319010776, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0220, Property #: 319010777, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0221, Property #: 319010778, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0222, Property #: 319010779, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0223, Property #: 319010780, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livington Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0224, Property #: 319010781, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livingston Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0225, Property #: 319010782, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livingston Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0226, Property #: 319010783, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livingston Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0227, Property #: 319010784, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livingston Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0228, Property #: 319010785, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livingston Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0230, Property #: 319010786, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livingston Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 231, Property #: 319010787, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livingston Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0232, Property #: 319010788, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livingston Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. 0229, Property #: 319010789, Fed Reg Date: 12/04/93
Project Name: Livingston Family Housing
Livingston Family Housing
Hornung Court
East Hanover, NJ, Co: Morris, Zip: 07936–
Status: Excess
Reason: Approved app. by HHS
Bldg. PO5605, Fort Dix, Property #: 329210064,, Fed Reg Date: 12/04/93
8th Street and Doughboy Loop
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Unutilized
Reason: Leased to the State of New Jersey
Bldg. PO5602, Fort Dix, Property #: 329210065,, Fed Reg Date: 12/04/93
8th Street
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Unutilized
Reason: Leased to the State of New Jersey
Bldg. PO5603, Fort Dix, Property #: 329210066,, Fed Reg Date: 12/04/93
8th Street
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Leased to the State of New Jersey
Bldg. PO5604, Fort Dix, Property #: 329210067,, Fed Reg Date: 12/04/93
8th Street & Doughboy Loop
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Leased to the State of New Jersey
4 Miscellaneous Buildings, Property #: 3292200013,, Fed Reg Date: 12/04/93
Kennedy Courts Family Housing
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Env. study underway re: waste Water treatment facility
25 Family Housing References, Property #: 329220014,, Fed Reg Date: 12/04/93
Sheridanville Family Housing
Ft. Dix, NJ Co: Burlington, Zip: 08640–
Status: Excess
Reason: Negotiated sale to housing authority
1 Family Housing Residence, Property #: 329220015,, Fed Reg Date: 12/04/93
Sheridanville Family Housing
Ft.Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Approved homeless provider application
11 Family Housing Residences, Property #: 329220017,, Fed Reg Date: 12/04/93
Sheridanville Family Housing
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Negotiated sale to housing authority
33 Detached Sheds, Property #: 329220018,, Fed Reg Date: 12/04/93
Sheridanville Family Housing
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Negotiated sale to housing authority
3 Maintenance Eng. Buildings, Property #: 329220020,, Fed Reg Date: 12/04/93
Sheridanville Family Housing
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess

Reason: Approved homeless provider application
1 Store/Service, Property #: 329220021,, Fed Reg Date: 12/04/93
Sheridanville Family Housing
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Approved homeless provider application
3 Miscellaneous Buildings, Property #: 329220022,, Fed Reg Date: 12/04/93
Sheridanville Family Housing
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Negotiated sale to housing authority
11 Office/Administration Bldgs., Property #: 329220023,, Fed Reg Date: 12/04/93
5700 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
3 Recreational Facilities, Property #: 329220024,, Fed Reg Date: 12/04/93
5700 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal needed—Bureau of Prisons
4 Maintenance Eng. Buildings, Property #: 329220025,, Fed Reg Date: 12/04/93
5700 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal needed—Bureau of Prisons
1 Service Store, Property #: 329220026,, Fed Reg Date: 12/04/93
5700 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal needed—Bureau of Prisons
1 Hospital, Property #: 329220027, Fed Reg Date: 12/04/93
5700 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
1 Chapel, Property #: 329220028, Fed Reg Date: 12/04/93
5700 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
5 Vehicle Shops, Property #: 329220029, Fed Reg Date: 12/04/93
5700 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
1 Fuel Facility, Property #: 329220030, Fed Reg Date: 12/04/93
5700 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
4 Dining Halls, Property #: 329220031, Fed Reg Date: 12/04/93
5700 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
11 Housing Buildings, Property #: 329220032, Fed Reg Date: 12/04/93
5700 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
3 Miscellaneous Buildings, Property #: 329220033, Fed Reg Date: 12/04/93
5700 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
10 Office/Administration Bldgs., Property #: 329220035, Fed Reg Date: 12/04/93
5800 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
2 Recreational Facilities, Property #: 329220036, Fed Reg Date: 12/04/93
5800 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
1 Service Store, Property #: 3292200327, Fed Reg Date: 12/04/93
5800 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
1 Hospital, Property #: 329220038, Fed Reg Date: 12/04/93
5800 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
1 Chapel, Property #: 329220039, Fed Reg Date: 12/04/93
5800 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
4 Dining Halls, Property #: 329220040, Fed Reg Date: 12/04/93
5800 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
11 Housing Buildings, Property #: 329220041, Fed Reg Date: 12/04/93
5800 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
1 Miscellaneous Building, Property #: 329220042, Fed Reg Date: 12/04/93
5800 Area, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons
20 Office/Administration Bldgs., Property #: 329220043, Fed Reg Date: 12/04/93
6500 thru 6900 Areas, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—DOA
7 Recreational Facilities, Property #: 329220044, Fed Reg Date: 12/04/93
6500 thru 6900 Areas, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—DOA
1 Maintenance Eng. Building, Property #: 329220045, Fed Reg Date: 12/04/93
6500 thru 6900 Areas, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—DOA
1 Service Store, Property #: 329220046, Fed Reg Date: 12/04/93
6500 thru 6900 Areas, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—DOA
3 Vehicle Shops, Property #: 329220047, Fed Reg Date: 12/04/93
6500 thru 6900 Areas, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—DOA
3 Hazardous Storage Buildings, Property #: 329220048, Fed Reg Date: 12/04/93
6500 thru 6900 Areas, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—DOA
2 Communications/Elec. Bldgs., Property #: 329220049, Fed Reg Date: 12/04/93
6500 thru 6900 Areas, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—DOA
1 Fuel Facility, Property #: 329220050, Fed Reg Date: 12/04/93
6500 thru 6900 Areas, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—DOA
3 Warehouses, Property #: 329220051, Fed Reg Date: 12/04/93
6500 thru 6900 Areas, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—DOA
18 Miscellaneous Buildings, Property #: 329220052, Fed Reg Date: 12/04/93
6500 thru 6900 Areas, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—DOA
Area Confinement Fac. #8401, Property #: 329220053, Fed Reg Date: 12/04/93
Range Road, Fort Dix
Ft. Dix, NJ, Co: Burlington, Zip: 08640–
Status: Excess
Reason: Federal need—Bureau of Prisons

New York

Buildings

Nike, Property #: 319011049, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
402 Lafayette Street
Tappan, NY, Co: Rockland, Zip:
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011070, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
424 Bogart Place
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked-Offer to purchase by Orangetown
Nike, Property #: 319011071, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
423 Bogart Place

Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011072, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
422 Western Highway
Tappan, NY, Co: Rockland, Zip: 10983-
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011073, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
421 Western Highway
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011074, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
420 Western Highway
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011075, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
419 Western Highway
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011076, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
418 Western Highway
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011077, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
430 Greenbush Road
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011078, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
429 Greenbush Road
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011079, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
428 Greenbush Road
Tappan, NY, Co: Rockland, Zip: 1093-
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011080, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
436 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 31901181, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
435 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011082, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
434 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011083, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
433 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011084, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
432 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011085, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
431 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011086, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
427 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011087, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
426 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011088, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
425 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011089, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
417 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011090, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
416 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011091, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
415 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011092, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
414 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011093, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
413 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011094, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
412 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011095, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
411 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011096, Fed Reg Date: 12/04/93

Project Name: New York 01 Housing
New York 01 Housing
410 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011097, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
409 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011098, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
408 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011099, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
407 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011100, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
404 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011101, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
406 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011102, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
405 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011103, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
402 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011104, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
403 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Nike, Property #: 319011105, Fed Reg Date: 12/04/93
Project Name: New York 01 Housing
New York 01 Housing
401 Lafayette Street
Tappan, NY, Co: Rockland, Zip: 10983–
Status: Excess
Reason: Homeless application revoked—Offer to purchase by Orangetown
Bldg. P–232, Property #: 319030015, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 232
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–233, Property #: 319030016, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 233
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–234, Property #: 319030017, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 234
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–235, Property #: 319030018, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 233
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–236, Property #: 319030019, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 236
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–237, Property #: 319030020, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 237
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–238, Property #: 319030021, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 238
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–239, Property #: 319030022, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 239
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–240, Property #: 319030023, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 240
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–241, Property #: 319030024, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 241
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–242, Property #: 319030025, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 242
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–243, Property #: 319030026, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 243
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–244, Property #: 319030027, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 244
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–245, Property #: 319030028, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 245
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–246, Property #: 319030029, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 246
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons

Bldg. P–247, Property #: 319030030, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 247
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–248, Property #: 319030031, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 248
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–249, Property #: 319030032, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 249
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–250, Property #: 319030033, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 250
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–251, Property #: 319030034, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 251
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–252, Property #: 319030035, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 252
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–253, Property #: 319030036, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 253
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–254, Property #: 319030037, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 254
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–255, Property #: 319030038, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 255
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–256, Property #: 319030039, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 256
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–257, Property #: 319030040, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 257
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons
Bldg. P–258, Property #: 319030041, Fed Reg Date: 12/04/93
Project Name: Dry Hill Family Housing
Dry Hill Family Housing
Route 3, Box 258
Watertown, NY, Co: Jefferson, Zip: 13601–
Status: Excess
Reason: Negotiating transfer to Bureau of Prisons

Rhode Island

Buildings

62 Bldgs., Davisville Housing, Property #: 329240003, Fed Reg Date: 12/04/93
Navy Drive
Davisville, RI, Co: Kingston, Zip: 02852–
Status: Surplus
Reason: Approved applicant

Virginia

Buildings

3 Communications Facilities, Property #: 329210060, Fed Reg Date: 12/04/93
Harry Diamond Laboratories
Woodbridge Facility
Woodbridge, VA, Co: Prince William, Zip: 22191–
Status: Excess
Reason: To be transferred to Federal agencies
1 Warehouse, Property #: 329210061, Fed Reg Date: 12/04/93
Harry Diamond Laboratories
Woodbridge Facility
Woodbridge, VA, Co: Prince William, Zip: 22191–
Status: Excess
Reason: To be transferred to Federal agencies
3 Miscellaneous Facilities, Property #: 329210062, Fed Reg Date: 12/04/93
Harry Diamond Laboratories
Woodbridge Facility
Woodbridge, VA, Co: Prince William, Zip: 22191–
Status: Excess
Reason: To be transferred to Federal agencies
2 Multi-Purpose Facilities, Property #: 329210063, Fed Reg Date: 12/04/93
Harry Diamond Laboratories
Woodbridge Facility
Woodbridge, VA, Co: Prince William, Zip: 22191–
Status: Excess
Reason: to be transferred to Federal agencies
Bldg. 4, DMA Herndon, Property #: 329240002, Fed Reg Date: 12/04/93
925 Springvale Rd.
Great Falls, VA, Zip: 22066–
Status: Surplus
Reason: Public benefit conveyance to Fairfax Co., VA

DOT

Florida

Land

Parcel A & B, Property #: 879010009, Fed Reg Date: 12/04/93
Project Name: U.S. Coast Guard Light Station
U.S. Coast Guard Light Station
Lots 1, 8 & 11, Section 31
Jupiter Inlet, FL, Co: Palm Beach, Zip: 33420–
Status: Unutilized
Reason: Awaiting response from Bureau of Land Mgmt. for disbursement

Guam

Buildings

Bldg. 99, Loran Station—C, Property #: 879220002, Fed Reg Date: 12/04/93
Barrigada, GU, Zip: 96913–
Status: Excess
Reason: Located on antenna plane

Massachusetts

Buildings

Keepers Dwelling, Property #: 879240024, Fed Reg Date: 12/04/93
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport, MA, Co: Essex, Zip: 01966–
Status: Unutilized
Reason: Under a license agreement
Assistant Keepers Dwelling, Property #: 879240025, Fed Reg Date: 12/04/93
U.S. Coast Guard
Rockport, MA, CO: Essex, Zip: 01966–
Status: Unutilized
Reason: Under a license agreement

Maine

Buildings

Mount Desert Rock Light, Property #: 879240023, Fed Reg Date: 12/04/93
U.S. Coast Guard
Southwest Harbor, ME, Co: Hancock, Zip: 04679–
Status: Unutilized
Reason: No electrical service
Little River Light, Property #: 879240026, Fed Reg Date: 12/04/93
U.S. Coast Guard
Cutler, ME, Co: Washington, Zip:
Status: Unutilized
Reason: Well contamination
Burnt Island Light, Property #: 879240027 Fed Reg Date: 12/04/93
U.S. Coast Guard
Southport, ME, Co: Lincoln, Zip: 04576–
Status: Unutilized
Reason: Under a historic lease

Texas

Buildings

Brownsville Urban System, Property #: 879010003, Fed Reg Date: 12/04/93
Project Name: Brownsville Urban System (Grantee)
700 South Iowa Avenue
Brownsville, TX, Co: Cameron, Zip: 78520–
Status: Unutilized
Reason: City of Brownsville needs the property.

GSA

California

Land

Receiver Site, Property #: 549010042, Fed Reg Date: 12/04/93
Project Name: Dixon Relay Station
Dixon Relay Station
7514 Radio Station Road
Dixon, CA, Zip: 95620–9653
Status: Excess
GSA No.: 9–2–CA–1162–A
Reason: Interest expressed

Colorado

Buildings

3 Bldgs., Property #: 549330002, Fed Reg Date: 12/04/93
Former U.S. Forest Service Admin. Site
Fox Lane
Beaulah, CO, Co: Pueblo, Zip: 81023–
Status: Excess
GSA No.: 7–GR–CO–525
Reason: Interest expressed

Florida

Land

Former US Army Reserve Center, Property #: 549310005, Fed Reg Date: 12/04/93
Belvedere Rd. and Clubhouse Dr.
West Palm Beach, FL, Co: Palm Beach, Zip: 33409–
Status: Unutilized
GSA No.: 4–GR–FL–682A
Reason: Interest expressed

Iowa

Land

C BAR J Ranch, Property #: 159230002, Fed Reg Date: 12/04/93
¼ mile south of River Rd. on Stagecoach Rad.
Ames, IA, Co: Story, Zip:
Status: Unutilized
GSA No.: 7–A–IA–493
Reason: Interest expressed

Idaho

Land

Portion, Property #: 549230004, Fed Reg Date: 12/04/93
Former Farragut Naval Training Center
Athol, ID, Co: Kootenai, Zip: 83801–
Status: Excess
GSA No.: 9–GR(2)–ID–421C
Reason: Interest expressed

Indiana

Land

Portion, Cannelton Locks & Dam, Property #: 549240008, Fed Reg Date: 12/04/93
Adjacent to Middle Creek Boat Launching Ramp
IN, Co: Floyd, Zip:
Status: Excess
GSA No.: 2–D–IN–569–C
Reason: Funds expended for public sale

Kansas

Buildings

Federal Building, Property #: 549320005, Fed Reg Date: 12/04/93
412–418 South Main St.
Wichita, KS, Co: Sedgwick, Zip: 67202–
Status: Excess
GSA No.: 7–G–KS–0512
Reason: Interest expressed

Massachusetts

Buildings

Lowell Federal Building, Property #: 549320003, Fed Reg Date: 12/04/93
50 Kearny Square
Lowell, MA, Co: Middlesex, Zip: 01854–
Status: Excess
GSA No.: 2–G–MA–778
Reason: Interest expressed

Minnesota

Land

Bike Trail, Property #: 549330005, Fed Reg Date: 12/04/93
Minneapolis, MN, Co: Hennepin, Zip: 55417–
Status: Excess
GSA No.: 2–I–MN–544–A
Reason: Interest expressed

Buildings

Army Reserve Center, Property #: 549330003, Fed Reg Date: 12/04/93
301 Lexington Ave. South
New Prague, MN, Co: LeSueur, Zip: 56071–
Status: Excess
GSA No.: 2–D–MN–558
Reason: Negotiating sale

Mississippi

Land

Jackson Installation Waterway, Property #: 549340002, Fed Reg Date: 12/04/93
Loflin Street
Jackson, MS, Co: Hinds, Zip: 39209–
Status: Excess
GSA No.: 4–GR(1)–MS–478B
Reason: Advertising for public sale

North Carolina

Buildings

Portion VA Reservation, Property #: 549320006, Fed Reg Date: 12/04/93
Nurses Quarters
Oteen, NC, Co: Buncombe, Zip:
Status: Excess
GSA No.: 4–GR–NC–481B
Reason: Compelling Federal Need

New Mexico

Land

Western Perimeter Tract, Property #: 549310010, Fed Reg Date: 12/04/93
Los Alamos, NM, Co: Los Alamos, Zip:
Status: Surplus
GSA No.: 7–B–NM–504–G, 7–GR(1)–NM–504–L
Reason: Interest expressed

Buildings

Former Post Office, Property #: 549230005, Fed Reg Date: 12/04/93
4th & Mitchell
Clovis, NM, Co: Curry, Zip: 88101–
Status: Excess
GSA No.: 7–GR–NM–478
Reason: Interest expressed

New York

Buildings

Former Damtender's House, Property #: 319210007, Fed Reg. Date: 12/04/93
East Sidney Lake
Franklin, NY, Co: Delaware, Zip: 13775–
Status: Surplus
GSA No.: 2–D–NY–814
Reason: Advertised for public sale

(P) Form. Alex Bay CG Station, Property #: 549310006, Fed Reg Date: 12/04/93
Landon Road, Wellesley Island
Alexandria, NY, Co: Jefferson, Zip:
Status: Excess
GSA No.: 2–GR–NY–0730A–000Z
Reason: Federal transfer pending

Oklahoma

Land

Parcel No. 100/GSA No. 13, Property #: 319010440, Fed Reg Date: 12/04/93
Project Name: Lake Texoma
Lake Texoma
Section 25, T7S, R5E
Enos, OK, Co: Marshall, Zip:
Status: Excess
GSA No.: 7–D–OK–507–H
Reason: Interest expressed

Parcel No. 58/GSA No. 7, Property #: 319010460, Fed Reg Date: 12/23/93
Project Name: Lake Texoma
Lake Texoma
Section 34 and Section 3
OK, Co: Marshall, Zip:
Status: Surplus
GSA No.: 7–D–OK–507–H
Reason: Expended funds for advertisement for public sale

Parcel No. 44/GSA No. 4, Property #: 319010475, Fed Reg Date: 12/04/93
Project Name: Lake Texoma
Lake Texoma
Section 15, T5S, R7E
OK, Co: Johnston, Zip:
Status: Excess
GSA No.: 7–D–OK–507–H
Reason: Interest expressed

Parcel No. 46/GSA No. 5, Property #: 319010477, Fed Reg Date: 12/04/93
Project Name: Lake Texoma
Lake Texoma
Section 15 and Section 16, T5S, R7E
OK, Co: Johnston, Zip:
Status: Excess
GSA No.: 7–D–OK–507–H
Reason: Interest expressed

Parcel No. 13/GSA No. 1, Property #: 319011345, Fed Reg Date: 12/04/93
Project Name: Lake Texoma
Lake Texoma
Section 7, T7S, R8E
OK, Co.: Bryan, Zip:
Status: Excess
GSA No.: 7–D–OK–507–H
Reason: Interest expressed

Parcel No. 21/GSA No. 2, Property #: 319011352, Fed Reg Date: 12/04/93
Project Name: Lake Texoma

Lake Texoma
Section 3, T7S, R7E
OK, Co: Bryan, Zip:
Status: Excess
GSA No.: 7–D–OK–507–H
Reason: Interest expressed

Parcel No. 23/GSA No. 3, Property #: 319011354, Fed Reg Date: 12/04/93
Project Name: Lake Texoma
Lake Texoma
Section 34, T7S, R7E
OK, Co.: Bryan, Zip:
Status: Excess
GSA No.: 7–D–OK–507–H
Reason: Interest expressed

Parcel No. 54/GSA No. 6, Property #: 549210007, Fed Reg Date: 12/04/93
Lake Texoma
OK, Co.: Marshall, Zip: 73439
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Interest expressed

Parcel No. 63/GSA No. 8, Property #: 549210008, Fed Reg Date: 12/04/93
Lake Texoma
OK, Co: Marshall, Zip: 73439–
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Interest expressed

Parcel No. 66/GSA No. 9, Property #: 549210009, Fed Reg Date: 12/04/93
Lake Texoma
OK, Co: Marshall, Zip: 73439–
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Interest expressed

Parcel No. 78/GSA No. 11, Property #: 549210010, Fed Reg Date: 12/04/93
Lake Texoma
Section
OK, Co: Marshall, Zip: 73439
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Interest expressed

Parcel No. 86/GSA No. 12, Property #: 549210011, Fed Reg Date: 12/04/93
Lake Texoma
OK, Co: Marshall, Zip: 73439–
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Interest expressed

Parcel No. 125/GSA No. 14, Property #: 549210012, Fed Reg Date: 12/04/93
Lake Texoma
OK, Co: Marshall, Zip: 73439–
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Interest expressed

Parcel No. 150/GSA No. 15, Property #: 549210013, Fed Reg Date: 12/04/93
Lake Texoma
OK, Co: Marshall, Zip: 73439–
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Interest expressed

Parcel No. 164/GSA No. 16, Property #: 549210014, Fed Reg Date: 12/04/93
Lake Texoma
OK, Co: Love, Zip: 73441–
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Interest expressed

Parcel No. 165/GSA No. 17, Property #: 549210015, Fed Reg Date: 12/04/93
Lake Texoma
OK, Co: Love, Zip: 73441–
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Interest expressed

Parcel No. 166/GSA No. 18, Property #: 549210016, Fed Reg Date: 12/04/93
Lake Texoma
OK, Co: Love, Zip: 73441–
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Interest expressed

Parcel No. 68/GSA No. 10, Property #: 549240010, Fed Reg Date: 12/04/93
Lake Texoma, Sect. 11 T6S, R6E
Cumberland, OK, Co: Marshall, Zip:
Status: Excess
GSA No.: 7–D–OK–507–H
Reason: Interest expressed

Pennsylvania

Buildings

Storage & Maint. Facility, Property #: 549330004, Fed Reg Date: 12/04/93
1200 Airport Road
Hopewell, PA, Co: Beaver, Zip: 15001–
Status: Excess
GSA No.: 4–L–PA–766
Reason: Interest expressed

South Carolina

Land

Land—7.28 acres, Property #: 549330007, Fed Reg Date: 12/04/93
Georgetown Wayside Park
Georgetown, SC, Co: Georgetown, Zip: 29440–
Status: Excess
GSA No.: 5–GR–SC–521A
Reason: Interest expressed

South Dakota

Land

Ree Heights Communication Site, Property #: 549310015, Fed Reg Date: 12/04/93
2 miles south of Ree Heights
SD, Co: Hand, Zip: 57371–
Status: Excess
GSA No.: 7–B–SD–512
Reason: Advertising for public sale

Land—1.28 acre,, Property #: 549320004, Fed Reg Date: 12/04/93
Arlington, SD, Co: Brookings, Zip: 57212–
Status: Excess
GSA No.: 7–B–SD–495–A
Reason: Advertising for public sale

Texas

Land

Parcel #185/GSA No. 19, Property #: 319010405, Fed Reg Date: 12/04/93
Project Name: Lake Texoma
Lake Texoma
TX, Co: Cooke, Zip:
Status: Excess
GSA No.: 7–D–OK–507–H
Reason: Interest expressed

Parts of Tracts, Property #: 319140015, Fed Reg Date: 12/04/93
B–143, B–144, B–146, B–148, B–179
Downstream of Lewisville Dam embankment
Lewisville, TX, Co: Denton, Zip: 75067–
Status: Underutilized
GSA No.: 7–D–TX–0510K
Reason: Interest expressed

Parcel No. 201, Property #: 549320007, Fed Reg Date: 12/04/93
Lake Texoma
TX, Co: Grayson, Zip:
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Advertising for public sale

Parcel No. 203, Property #: 549320008, Fed Reg Date: 12/04/93
Lake Texoma
TX, Co: Grayson, Zip:
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Advertising for public sale

Parcel No. 205, Property #: 549320009, Fed Reg Date: 12/04/93
Lake Texoma
TX, Co: Grayson, Zip:
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Advertising for public sale

Parcel No. 209, Property #: 549320010, Fed Reg Date: 12/04/93
Lake Texoma
TX, Co: Grayson, Zip:
Status: Excess
GSA No.: 7–D–OK–0507–H
Reason: Advertising for public sale

Buildings

Bldg. 2, Property #: 219014815, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Unutilized
GSA No.: 7–D–TX–897A
Reason: Interest expressed

Bldg. 4, Property #: 219014816, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed

Bldg. 17, Property #: 219014817, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed

Bldg. 29, Property #: 219014818, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed

Bldg. 30, Property #: 219014819, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed

Bldg. 18, Property #: 219014820, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant

Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 6, Property #: 219014821, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 7, Property #: 219014822, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 8, Property #: 219014824, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 16, Property #: 219014825, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 19, Property #: 219014826, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 31, Property #: 219014827, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 9, Property #: 219014828, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 25, Property #: 219014829, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 10, Property #: 219014830, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 26, Property #: 219014831, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 21, Property #: 219014832, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 22, Property #: 219014833, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 27, Property #: 219014834, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Bldg. 32, Property #: 219014835, Fed Reg Date: 12/04/93
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed
Del Rio Federal Building, Property #: 549310001, Fed Reg Date: 12/04/93
Main at Broadway
Del Rio, TX, Co: Val Verde, Zip: 78840–
Status: Excess
GSA No.: 7–G–TX–1034
Reason: Interest expressed

Washington

Buildings

Vancouver Substations, Property #: 549240004, Fed Reg Date: 12/04/93
Vancouver, WA, Co: Clark, Zip: 98661–
Status: Excess
GSA No.: 9–B–WA–1019–1028
Reason: Interest expressed

Wyoming

Land

Wind Site A, Property #: 419030010, Fed Reg Date: 12/04/93
Project Name: Wind Site A
Medicine Bow, WY, Co: Carbon, Zip: 82329–
Status: Excess
Reason: Advertised for public sale

Interior

Arizona

Land

Land—640 acres, Property #: 619340001, Fed Reg Date: 12/10/93
Ave. B—County 23 St.
Yuma, AZ, Co: Yuma, Zip: 85364–
Status: Unutilized
Reason: Reported to GSA for sale
Tract No. APO–SRP–JL–4 Property #: 619340002, Fed Reg Date: 12/10/93
West of 91st Ave. & South of Indian School Rd
AZ, Co: Maricopa, Zip:
Status: Unutilized
Reason: Reported to GSA for sale

California

Land

Folsom South Canal, Property #: 619310002, Fed Reg Date: 12/04/93
SW corner of Whiterock Rd. & Folsom S Canal
Rancho Cordova, CA., Co: Sacramento, Zip: 95670–
Status: Excess
Reason: Will be reported to GSA for sale

Buildings

Quarters 1, TV 0001, Property #: 619320002, Fed Reg Date: 12/04/93
950 Tennessee Valley Road
Mill Valley, CA, Co: Marin, Zip: 94941–
Status: Unutilized
Reason: In disposal process

Navy

California

Buildings

199 Military Family Housing, Property #: 779240001, Fed Reg Date: 12/04/93
Savannah Project
Long Beach Naval Station
Los Angeles, CA, Co: Los Angeles, Zip: 90801–
Status: Excess
Reason: Approved homeless application
Utility Bldg, Property #: 779240002, Fed Reg Date: 12/04/93
Savannah Project
Long Beach Naval Station
Los Angeles, CA, Co: Los Angeles, Zip: 90801–
Status: Excess
Reason: Approved homeless application
100 Military Family Housing, Property #: 779240003, Fed Reg Date: 12/04/93
Cabrillo Project
Long Beach Naval Station
Los Angeles, CA, Co: Los Angeles, Zip: 90801–
Status: Excess
Reason: Approved homeless application
49 Detached Carports, Property #: 779240004, Fed Reg Date: 12/04/93
Cabrillo Project
Long Beach Naval Station
Long Beach, CA, Co: Los Angeles, Zip: 90801–
Status: Excess
Reason: Approved homeless application and other Federal interest
Convenience Store, Property #: 779240005, Fed Reg Date: 12/04/93
Cabrillo Project
Long Beach Naval Station
Long Beach, CA, Co: Los Angeles, Zip: 90801–
Status: Excess

Reason: Approved homeless application and other Federal interest
Youth Center, Property #: 779240006, Fed Reg Date: 12/04/93
Cabrillo Project
Long Beach Naval Station
Long Beach, CA, Co: Los Angeles, Zip: 90801–
Status: Excess
Reason: Approved homeless application and other Federal interest
Utility Bldg, Property #: 779240007, Fed Reg Date: 12/04/93
Cabrillo Project
Long Beach Naval Station
Long Beach, CA, Co: Los Angeles, Zip: 90801–
Status: Excess
Reason: Approved homeless application and other Federal interest
Child Care Center & Storage, Property #: 779240008, Fed Reg Date: 12/04/93
Cabrillo Project
Long Beach Naval Station
Long Beach, CA, Co: Los Angeles, Zip: 90801–
Status: Excess
Reason: Approved homeless application and other Federal interest
Maintenance Bldg., Property #: 779240009, Fed Reg Date: 12/04/93
Cabrillo Project
Long Beach Naval Station
Long Beach, CA, Co: Los Angeles, Zip: 90801–
Status: Excess
Reason: Approved homeless application and other Federal interest
Laundromat, Property #: 779240010, Fed Reg Date: 12/04/93
Cabrillo Project
Long Beach Naval Station
Long Beach, CA, Co: Los Angeles, Zip: 90801–
Status: Excess
Reason: Approved homeless application and other Federal interest
24 Bldgs., Property #: 779240021, Fed Reg Date: 12/04/93
San Pedro Complex, Taper Avenue
Long Beach Naval Station
Long Beach, CA, Co: Los Angeles, Zip: 90801–
Status: Excess
Reason: Approved homeless application and other Federal interest
23 Bldgs., Property #: 779240022, Fed Reg Date: 12/04/93
San Pedro Complex, Taper Avenue
Long Beach Naval Station
Long Beach, CA, Co: Los Angeles, Zip: 90801–
Status: Excess
Reason: Approved homeless application and other Federal interest
16 Detached Carports, Property #: 779240023, Fed Reg Date: 12/04/93
San Pedro Complex, Taper Avenue
Long Beach Naval Station
Long Beach, CA, Co: Los Angeles, Zip: 90801–
Status: Excess
Reason: Approved homeless application and other Federal interest

Florida

Land

Naval Public Works Center, Property#: 779010157, Fed Reg Date: 12/04/93
Project Name: Naval Base
Naval Air Station
Pensacola, FL, Co: Escambia, Zip: 32508–
Status: Unutilized
Reason: Prop. reverts to grantor when no longer needed by military.

Georgia

Land

Naval Submarine Base, Property #: 779010255, Fed Reg Date: 12/04/93
Project Name: Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay, GA, Co: Camden, Zip: 31547–
Status: Underutilized
Reason: Buffer area for an explosive safety arc.

Maryland

Buildings

Bldg. 230, Property #: 779330010, Fed Reg Date: 12/04/93
Naval Communication Detachment
9190 Commo Road
Cheltenham, MD, Co: Prince Georges, Zip: 20397–5520
Status: Unutilized
Reason: Federal need expressed

Maine

Buildings

Bldg. 376, Naval Air Station, Property #: 779320011, Fed Reg Date: 12/04/93
Topsham Annex
Topsham, ME, Co: Sagadahoc, Zip:
Status: Unutilized
Reason: Federal need

Ohio

Buildings

Naval & Marine Corps Res. Cntr, Property #: 779320012, Fed Reg Date: 12/04/93
315 East LaClede Avenue
Youngstown, OH, Zip:
Status: Unutilized
Reason: Returning property to the City.

Pennsylvania

Land

North East Plot (K13), Property #: 779310019, Fed Reg Date: 12/04/93
Former Naval Hospital
1701 Pattison Avenue
Philadelphia, PA, Zip: 19145–5199
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law.
North West Plot (K12), Property #: 779310020, Fed Reg Date: 12/04/93
Former Naval Hospital
1701 Pattison Avenue
Philadelphia, PA, Zip: 19145–5199
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law.

Buildings

Bldg. 1, Former Naval Hospital, Property #: 779310008, Fed Reg Date: 12/04/93
Former Naval Hospital
1701 Pattison Avenue
Philadelphia, PA, Zip: 19145–5199
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law.
3 Enlisted Quarters, Property #: 779310009, Fed Reg Date: 12/04/93
Former Naval Hospital
1701 Pattison Avenue
Philadelphia, PA, Zip: 19145–5199
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law.
5 Officer's Quarters, Property #: 779310010, Fed Reg Date: 12/04/93
Former Naval Hospital
1701 Pattison Avenue
Philadelphia, PA, Zip: 19145–5199
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law.
16 Administrative Bldgs., Property #: 779310011, Fed Reg Date: 12/04/93
Former Naval Hospital
1701 Pattison Avenue
Philadelphia, PA, Zip: 19145–5199
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law.
9 Support Bldgs., Property #: 779310012, Fed Reg Date: 12/04/93
Former Naval Hospital
1701 Pattison Avenue
Philadelphia, PA, Zip: 19145–5199
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law.
6 Entry Shelters, Property #: 779310013, Fed Reg Date: 12/04/93
Former Naval Hospital
1701 Pattison Avenue
Philadelphia, PA, Zip: 19145–5199
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law.
4 Support Bldgs., Property #: 779310014, Fed Reg Date: 12/04/93
Former Naval Hospital
1701 Pattison Avenue
Philadelphia, PA, Zip: 19145–5199
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law.
3 Secured Bldgs., Property #: 779310015, Fed Reg Date: 12/04/93
Former Naval Hospital
1701 Pattison Avenue
Philadelphia, PA, Zip: 19145–5199
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law.
6 Utility Structures, Property #: 779310016, Fed Reg Date: 12/04/93
Former Naval Hospital
1701 Pattison Avenue
Philadelphia, PA, Zip: 19145–5199
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law.
Staff Lounge, Property #: 779310017, Fed Reg Date: 12/04/93
Former Naval Hospital
1701 Pattison Avenue
Philadelphia, PA, Zip: 19145–5199
Status: Excess

Reason: Expressions of interest consistent with existing Fed. law.
Bldg. 8, Warehouse, Property #: 779310018, Fed Reg Date: 12/04/93
Former Naval Hospital
1701 Pattison Avenue
Philadelphia, PA, Zip: 19145–5199
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law.

Rhode Island

Buildings

Parcel 1 (7 bldgs.), Property #: 779310029, Fed Reg Date 12/04/93
Naval Construction Battalion Center
Davisville, RI, Co: Kent, Zip: 02854–1161
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law
Parcel 4 (92 bldgs.), Property #: 779310031, Fed Reg Date 12/04/93
Naval Construction Battalion Center
Davisville, RI, Co: Kent, Zip: 02854–1161
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law
Parcel 6 (7 bldgs.), Property #: 779310033, Fed Reg Date 12/04/93
Naval Construction Battalion Center
Davisville, RI, Co: Kent, Zip: 02854–1161
Status: Excess
Reason: Federal request for transfer.
Parcel 7, 9, 10 (28 bldgs.), Property #: 779310034, Fed Reg Date: 12/04/93
Naval Construction Battalion Center
Davisville, RI, Co: Kent, Zip: 02854–1161
Status: Excess
Reason: Expressions of interest consistent with existing Fed. law.
Parcel 8 (23 bldgs.), Property #: 779310035, Fed Reg Date: 12/04/93
Naval Construction Battalion Center
Davisville, RI, Co: Kent, Zip: 02854-1161
Status: Excess
Reason: Expressions of interest consistent with existing Fed. Law

Texas

Land

H.A.L.F. Goliad, Property #: 779320013, Fed Reg Date: 12/04/93
Hwy. 59, 6 miles NE of Berclair
Berclair, TX, Co: Goliad, Zip: 78107–
Status: Excess
Reason: To be acquired by County

Buildings

Bldg. 2435, Property #: 779010161, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2436, Property #: 779010162, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2460, Property #: 779010163, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2462, Property #: 779010164, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2464, Property #: 779010165, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2466, Property #: 779010166, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2467, Property #: 779010167, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2468, Property #: 779010168, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2472, Property #: 779010169, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2476, Property #: 779010170, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2482, Property #: 779010171, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2495, Property #: 779010172, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2514, Property #: 779010173, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2518, Property #: 779010174, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2520, Property #: 779010175, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2522, Property #: 779010176, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2526, Property #: 779010177, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2423, Property #: 779010178, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2427, Property #: 779010179, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2431, Property #: 779010180, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2424, Property #: 779010181, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area

NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2433, Property #: 779010182, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2428, Property #: 779010183, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2429, Property #: 779010184, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2454, Property #: 779010185, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2477, Property #: 779010186, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2485, Property #: 779010187, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2499, Property #: 779010188, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2503, Property #: 779010189, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2507, Property #: 779010190, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2513, Property #: 779010191, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2521, Property #: 779010192, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2451, Property #: 779010193, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2458, Property #: 779010194, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2461, Property #: 779010195, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2473, Property #: 779010196, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2478, Property #: 779010197, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2480, Property #: 779010198, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2484, Property #: 779010199, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2486, Property #: 779010200, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2487, Property #: 779010201, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2488, Property #: 779010202, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2494, Property #: 779010203, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2500, Property #: 779010204, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2502, Property #: 779010205, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2506, Property #: 779010206, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2508, Property #: 779010207, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2525, Property #: 779010208, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2452, Property #: 779010209, Fed Reg Date: 12/04/93

Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2475, Property #: 779010210, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2479, Property #: 779010211, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2497, Property #: 779010212, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2501, Property #: 779010213, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2505, Property #: 779010214, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2515, Property #: 779010215, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2517, Property #: 779010216, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2519, Property #: 779010217, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2523, Property #: 779010218, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2465, Property #: 779010219, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2493, Property #: 779010220, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2510, Property #: 779010221, Fed Reg Date: 12/04/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2474, Property #: 779010222, Fed Reg Date: 12/4/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2481, Property #: 779010223, Fed Reg Date: 12/4/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2509, Property #: 779010224, Fed Reg Date: 12/4/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2511, Property #: 779010225, Fed Reg Date: 12/4/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2512, Property #: 779010226, Fed Reg Date: 12/4/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2527, Property #: 779010227, Fed Reg Date: 12/4/93
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
208 Off-base Capehart Housing, Property # 779210001, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County
54 Off-base Family Housing, Property # 779210002, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County
19 On-base Capehart Housing, Property # 779210003, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County
3 Recreational Facilities, Property # 779210004, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County
4 Dining Facilities, Property # 779210005, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County
5 Bachelor Quarters, Property # 779210006, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County
9 Administration Buildings, Property # 779210007, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County
Hospital (clinic), Property # 779210008, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County
4 Miscellaneous Facilities, Property # 779210009, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County
4 Warehouse, Property # 779210010, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County
16 Industrial Facilities, Property # 779210011, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County
3 Fire/Security Facilities, Property # 779210012, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County

5 Air Traffic Control Facs., Property # 779210013, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County
3 Aircraft Related Facilities, Property # 779210014, Fed Reg Date: 12/4/93
Naval Air Station, Chase Field
Beeville, TX, Co: Bee, Zip: 78103–
Status: Excess
Reason: To be acquired by County

Virginia

Land

Naval Base, Property # 779010156, Fed Reg Date: 12/4/93
Project Name: Naval Base
Norfolk, VA, Co: Norfolk, Zip: 23508–
Status: Unutilized
Reason: Identified for use in developing admin. office space.

Buildings

Naval Medical Clinic, Property # 779010109, Fed Reg Date: 12/4/93
Project Name: Naval Medical Clinic
6500 Hampton Blvd.
Norfolk, VA, Co: Norfolk, Zip: 23508–
Status: Unutilized
Reason: Planned for expansion space.

Washington

Buildings

Naval Station Puget Sound, Property # 779120002, Fed Reg Date: 12/4/93
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 330, Property #: 779310050, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 331, Property #: 779310051, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 332, Property #: 779310052, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 333, Property #: 779310053, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 334, Property #: 779310054, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 9, Property #: 779310055, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 224, Property #: 779310056, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 11, Property #: 779310057, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 30, Property #: 779310058, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 67, Property #: 779310059, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 192, Property #: 779310060, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 222, Property #: 779310061, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 223, Property #: 779310062, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 25, Property #: 779310063, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 195, Property #: 779310064, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 138, Property #: 779310065, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 41, Property #: 779310066, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 18, Property #: 779310067, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 2, Property #: 779310068, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 27, Property #: 779310069, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 38, Property #: 779310070, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 401, Property #: 779310071, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 6, Property #: 779310072, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess

Reason: Potential transfer to other Federal agencies
Bldg. 15, Property #: 779310073, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies
Bldg. 31, Property #: 779310074, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies.
Bldg. 275, Property #: 779310075, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies.
Bldg. 47, Property #: 779310076, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies.
Bldg. 40, Property #: 779310077, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies.
Bldg. 115, Property #: 779310078, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies.
Bldg. 299, Property #: 779310079, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies.
Bldg. 29, Property #: 779310080, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies.
Bldg. 5, Property #: 779310081, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies.
Bldg. 12, Property #: 779310082, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies.
Bldg. 406, Property #: 779310084, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies.
Bldg. 26, Property #: 779310085, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies.
Bldg. 26A, Property #: 779310087, Fed Reg Date: 12/04/93
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
Reason: Potential transfer to other Federal agencies.

West Virginia

Buildings

Naval & Marine Corps Res. Ctr., Property #: 779310077, Fed Reg Date: 12/04/93
Project Name: Naval & Marine Corps Res. Ctr.
N. 19th St & Ohio River
Wheeling, WV, Co: Ohio, Zip: 26003–
Status: Excess
Reason: Government leased

VA

California

Land

Land, Property #: 979010077, Fed Reg Date: 12/04/93
VA Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles, CA, Co: Los Angeles, Zip: 90073–
Status: Underutilized
Reason: Restoration project underway.

Buildings

Bldg. 116, Property #: 979110009, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
VA Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles, CA, Co: Los Angeles, Zip: 90073–
Status: Underutilized
Reason: Use negotiations underway with New Directions, Inc.
Bldg. 263, Property #: 979110010, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
VA Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles, CA, Co: Los Angeles, Zip: 90073–
Status: Underutilized
Reason: Use negotiations are underway with Westside Food Bank.

Florida

Land

Buffer Zone, VAMC, Property #: 979230016, Fed Reg Date: 12/04/93
10,000 Bay Pines Blvd.
Bay Pines, FL, Co: Pinellas, Zip: 33504–
Status: Underutilized
Reason: Construction in process.
Compound, VAMC, Property #: 979230017, Fed Reg Date: 12/04/93
10,000 Bay Pines Blvd.
Bay Pines, FL, Co: Pinellas, Zip: 33504–
Status: Underutilized
Reason: Construction staging site.

Buildings

Bldg. 24, VAMC, Property #: 979230008, Fed Reg Date: 12/04/93
10,000 Bay Pines Blvd.
Bay Pines, FL, Co: Pinellas, Zip: 33504–
Status: Underutlilzed
Reason: Dedicated to patient care purposes.
Bldg. 36, VAMC, Property #: 979230009, Fed Reg Date: 12/04/93
10,000 Bay Pines Blvd.
Bay Pines, FL, Co: Pinellas, Zip: 33504–
Status: Underutilized
Reason: Dedicated to patient care purposes.
Bldg. 37, VAMC, Property #: 979230010, Fed Reg Date: 12/04/93
10,000 Bay Pines Blvd.
Bay Pines, FL, Co: Pinellas, Zip: 33504–
Status: Underutilized
Reason: Dedicated to patient care purposes.

Illinois

Land

VA Medical Center, Property #: 979010082, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
3001 Green Bay Road
North Chicago, IL, Co: Lake, Zip: 60064–
Status: Underutilized
Reason: Fully used as a staging area for major construction project.

Indiana

Buildings

Bldg. 24, VAMC, Property #: 979230005, Fed Reg Date: 12/04/93
East 38th Street
Marion, IN, Co: Grant, Zip: 46952–
Status: Underutilized
Reason: Currently utilized.
Bldg. 105, VAMC, Property #: 979230006, Fed Reg Date: 12/04/93
East 38th Street
Marion, IN, Co: Grant, Zip: 46952–
Status: Underutilized
Reason: Integral part of the security system.

Michigan

Land

VA Medical Center, Property #: 979010015, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
5500 Armstrong Road
Battle Creek, MI, Co: Calhoun, Zip: 49016–
Status: Underutilized
Reason: Being used for patient and program activities.

Minnesota

Land

Bldg. 43 Land Site, Property #: 979010005, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
VA Medical Center
54th Street & 48th Avenue South
Minneapolis, MN, Co: Hennepin, Zip: 55417–
Status: Underutilized
Reason: Used as parking areas for employees of the medical center.
Bldg. 227–229 Land, Property #: 979010006, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
VA Medical Center
Fort Snelling
St. Paul, MN, Co: Hennepin, Zip: 55111–
Status: Underutilized
Reason: Used for recreation and parking for occupants of bldg.
VA Medical Center, Property #: 979010024, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN, Co: Hennepin, Zip: 55417–
Status: Underutilized
Reason: Used as parking for employees working in buildings on-site.
Land—12 acres, Property #: 979010031, Fed Reg Date: 12/04/93
Project Name: VAMC
VAMC
Near 5629 Minnehaha Avenue
Minneapolis, MN, Co: Hennepin, Zip: 55417–
Status: Underutilized
Reason: Licensed to Minnesota Dept. of Natural Resources.

Buildings

Bldg. 43, Property #: 979010032, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
VA Medical Center
Minneapolis, MN, Co: Hennepin, Zip: 55441–7
Status: Unutilized
Reason: Consideration for enhanced use.
Bldg. 227, Property #: 979010033, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
VA Medical Center
Fort Snelling
St. Paul, M, Co: Hennepin, Zip: 55111–
Status: Undutilized
Reason: Plans to use for housing medical center staff.

New York

Land

VA Medical Center, Property #: 979010017, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
Fort Hill Avenue
Canadaigue, NY, Co: Ontario, Zip: 14424–
Status: Underutilized
Reason: 13 acres/Canandaigua School Dist., 14.5 acres landlocked.

Buildings

Bldg. 5, Property #: 979030001, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
V.A. Medical Center
Redfield Parkway
Batavia, NY, Co: Genesee, Zip: 14020–
Status: Underutilized
Reason: Bldg. will be used for ADHC (Child Care Program).
Bldg. 144, VAECC, Property #: 979210004, Fed Reg Date: 12/04/93
Linden Blvd. and 179th St.
St. Albans, NY, Co: Queens, Zip: 11425–
Status: Unutilized
Reason: Construction in process
Bldg. 143, VAECC, Property #: 97910005, Fed Reg Date: 12/04/93
Linden Blvd. and 179th St.
St Albans, NY , Co: Queens, Zip: 11425–
Status: Unutilized
Reason: Construction in process
Bldgs. 142/146, VAECC, Property #: 979210006, Fed Reg Date: 12/04/93
Linden Blvd. and 179th St.
St Albans, NY, Co: Queens, Zip: 11425–
Status: Unutilized
Reason: Construction in process

Pennsylvania

Land

VA Medical Center, Property #: 97910016, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
New Castle Road
Butler, PA, Co: Butler, Zip 16001–
Status: Underutilized
Reason: Used as natural drainage for facility property.
Land No. 645, Property #: 979010080, Fed Reg Date: 12/04/93
Project Name: VA Medical Center
VA. Medical Center
Highland Drive
Pittsburgh, PA, Co: Allegheny, Zip: 15206–
Status: Unutilized
Reason: Property is essential to security and safety of patients.

Buildings

Bldg. 3—VA Medical Center, Property #: 979210002, Fed Reg Date: 12/04/93
University Drive C
Pittsburgh, PA, Co: Allegheny, Zip 15240–
Status: Unutilized
Reason: Part of a renovation project.
Bldg. 2, VAMC, Property #: 979230011, Fed Reg Date: 12/04/93
1700 South Lincoln Avenue
Lebanon, PA, Co: Lebanon, Zip: 17042–
Status: Unutilized
Reason: Construction projects in progress.
Bldg. 3, VAMC, Property #: 979230012, Fed Reg Date: 12/04/93
1700 South Lincoln Avenue
Lebanon, PA, Co: Lebanon, Zip: 17042–
Status: Unutilized
Reason: Construction in progress.
Bldg. 27, VAMC, Property #: 979230013, Fed Reg Date: 12/04/93
1700 South Lincoln Avenue
Lebanon, PA, Co: Lebanon, Zip: 17042–
Status: Unutilized
Reason: Construction in progress.
Bldg. 103, VAMC, Property #: 979230014, Fed Reg Date: 12/04/93
1700 South Lincoln Avenue
Lebanon, PA, Co: Lebanon, Zip: 17042–
Status: Unutilized
Reason: Construction in progress.

Wyoming

Buildings

Bldg. 13, Property #: 979110001, Fed Reg Date: 12/04/93
Project Name: Medical Center
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY, Co: Sheridan, Zip: 82801–
Status: Unutillized
Reason: Planned for future use—currently used for storage.
Bldg. 79, Property #: 979110003, Fed Reg Date: 12/04/93
Project Name: Medical Center
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY, Co: Sheridan, Zip: 82801–
Status: Unutilized
Reason: VA uses as a filtration plant.

[FR Doc. 94–3190 Filed 2–11–94; 8:45 am]
BILLING CODE 4210–29–M

federal register

Monday
February 14, 1994

Part III

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

Implementation of Public Law 103–159, Including the Brady Handgun Violence Prevention Act; Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF-354; (93F-057P)]

RIN: 1512-AB23

Implementation of Public Law 103-159, Including the Brady Handgun Violence Prevention Act

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements the provisions of Public Law 103-159, including the Brady Handgun Violence Prevention Act. These regulations implement the law by imposing a waiting period of 5 days before a licensed firearms importer, manufacturer, or dealer may lawfully transfer a handgun to a nonlicensed individual. Regulations are also prescribed with regard to reporting requirements for multiple handgun sales, labeling of packages containing a firearm, theft of firearms from firearms licensees, and increased license fees for dealers in firearms. The temporary rule will remain in effect until superseded by final regulations. In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period following the publication date of this temporary rule.

EFFECTIVE DATES: The temporary regulations are effective on February 28, 1994, except for §§ 178.31 (b) and (d), 178.33a, 178.42(c), and 178.126a, which were effective on November 30, 1993.

ADDRESSES: Send written comments to: Chief, Revenue Programs Division; Bureau of Alcohol, Tobacco and Firearms; Washington, DC 20091-0221.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1993, Public Law 103-159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). Title I of Public Law 103-159, cited as the "Brady Handgun Violence Prevention Act" (hereinafter, "the Act"), provides for a national waiting period of 5 days before a licensed importer, manufacturer, or dealer may lawfully transfer a handgun to a nonlicensed individual (interim provision), and for the establishment of a national instant criminal background check system to be queried by firearms licensees before transferring any firearm to nonlicensed individuals (permanent provision). The permanent system will be effective on November 30, 1998. Violations of either the interim or permanent provision are punishable by a fine or imprisonment for not more than 1 year, or both.

Titles II and III of Public Law 103-159 relate to reporting requirements for multiple handgun sales, labeling of packages containing a firearm, thefts of firearms from licensed firearms dealers, and increased license fees for dealers in firearms. Regulations implementing these provisions are also part of this Treasury decision.

Waiting Period (Interim Provision)

The Act provides that the waiting period provisions of the law become effective on February 28, 1994, and cease to apply on November 30, 1998. The Act imposes a waiting period of 5 business days (defined in the statute as days on which State offices are open) before a licensee may sell or deliver a handgun. As defined in the Act, the term "handgun" means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and (B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

Basically, the waiting period provision makes it unlawful for any licensed firearms importer, manufacturer, or dealer to sell, deliver, or transfer a handgun to a nonlicensed individual (transferee), unless the licensee—

(1) Obtains a statement of the transferee's intent to obtain a handgun containing the transferee's name, address, and date of birth appearing on a valid photo identification, a description of the identification document, a statement that the transferee is not a felon, under indictment, or otherwise prohibited from receiving or possessing the handgun under Federal law, and the date the statement is made;

(2) Verifies the identity of the transferee by examining the identification document presented;

(3) Within 1 day after the transferee furnishes the statement, contacts the chief law enforcement officer of the place of residence of the transferee and advises such officer of the contents of the statement;

(4) Within 1 day after the transferee furnishes the statement, transmits to the chief law enforcement officer of the place of residence of the transferee a copy of the statement; and

(5) Waits 5 business days from the date the licensee furnished notice of the contents of the statement to the chief law enforcement officer before transferring the handgun to the transferee (during which period the licensee has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of law); or receives notice from the chief law enforcement officer of the place of residence of the transferee that the officer has no information that the transferee's receipt or possession of the handgun would violate the law.

In addition to the items in (1) above, the regulations request certain additional optional information about the transferee to facilitate the transfer of a handgun and assist law enforcement officials in verifying the transferee's eligibility to possess a handgun. This optional information includes the social security number, height, weight, sex, and place of birth of the transferee. The optional information will help minimize the misidentification of handgun purchasers as felons or other prohibited persons whose receipt and possession of firearms violate the law. For example, this information would distinguish the transferee from a prohibited buyer having the same name and date of birth as the transferee and, therefore, help expedite the transfer.

Subsequent to the sale or transfer of the handgun, the law requires a licensee, who receives a report from the chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law, shall within 1 day communicate any information the licensee has concerning the transfer to the chief law enforcement officer of the place of business of the licensee and to the chief law enforcement officer of the place of residence of the transferee.

As provided in the Act, the term "chief law enforcement officer" means "the chief of police, the sheriff, or an equivalent officer or the designee of any such individual." The law requires that the chief law enforcement officer within 5 business days make a reasonable effort to determine whether the transferee is prohibited by law from receiving or possessing the handgun sought to be purchased. Except for records relating to a proposed handgun sale that would violate the law, law enforcement officers are required to destroy within 20 days the purchaser's statement, any record containing information derived from the statement, and any record created as a result of the notice referred to in (3) above. Furthermore, these records may only be used to carry out the purposes of the Act, and no information in the records may be conveyed to any person for purposes other than complying with the Act.

The Act also provides that an individual who is determined to be ineligible to purchase a handgun under the waiting period provision may request that the chief law enforcement officer who made the determination provide reasons for that determination. The officer must provide such reasons to the individual in writing within 20 business days after receipt of the request.

Alternatives to the Waiting Period

The statute provides the following alternatives to the waiting period provision:

(1) The transferee provides a written statement issued within the last 10 days by the chief law enforcement officer of the transferee's place of residence that the transferee requires a handgun because of a threat to the life of the transferee or any member of the transferee's household;

(2) The transferee presents to the licensee a permit issued by the State within the past 5 years to possess a handgun and the law of the State requires verification that the transferee is not prohibited by law from possessing the handgun;

(3) Purchases in States which require that, before any licensee transfers a handgun to an individual, an authorized government official has verified that possession of the handgun by the transferee would not violate the law (e.g., a background check);

(4) Purchases of handguns which are subject to the National Firearms Act and which have been approved for transfer under 27 CFR part 179 (Machine Guns, Destructive Devices, and Certain Other Firearms);

(5) Purchases of handguns for which the Secretary has certified that compliance with the 5-day waiting period procedure is impracticable because the purchaser resides in a rural area, the premises of the licensee are remote in relation to the chief law enforcement officer of the area, and there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

Additional Provisions of Public Law 103-159

Titles II and III of Public Law 103-159 provide additional amendments to the GCA. These provisions, which became effective on November 30, 1993, are as follows:

(1) *Multiple sales reports.* In addition to furnishing reports of multiple handgun sales to ATF, licensees are required to submit such reports to the "department of State police or State law enforcement agency of the State or local law enforcement agency of the jurisdiction in which the sale or other disposition took place."

(2) *Common carriers.* Common or contract carriers are prohibited from requiring or causing any label or other written notice to be placed on the outside of any package, luggage, or other container indicating that such package contains a firearm. In addition, common or contract carriers who deliver firearms in interstate or foreign commerce are required to obtain written acknowledgement of receipt from the recipient of the package or other container.

(3) *Theft of firearms.* It is unlawful for any person to steal from the person or premises of a Federal firearms licensee any firearm in the licensee's business inventory which has been shipped or transported in interstate or foreign commerce.

(4) *License fees.* License fees for all dealers in firearms (other than destructive devices), including pawnbrokers, have been increased to $200 for 3 years, except that the fee for renewal of a license is $90 for 3 years.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, it is found that this temporary rule is not likely to (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Administrative Procedure Act

Because this document merely implements the law and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. § 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this temporary rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1512-0520. The estimated average annual burden associated with the collection of information in this regulation is 2.52 hours per respondent or recordkeeper.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, refer to the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Drafting Information

The author of this document is James P. Ficaretta, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

27 CFR Part 178—Commerce in Firearms and Ammunition is amended as follows:

Paragraph 1. The authority citation for 27 CFR part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

Par. 2. Section 178.1(a) is revised to read as follows:

§ 178.1 Scope of regulations.

(a) *General.* The regulations contained in this part relate to commerce in firearms and ammunition and are promulgated to implement Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99–308 (100 Stat. 449), Pub. L. 99–360 (100 Stat. 766), Pub. L. 99–408 (100 Stat. 920), and Pub. L. 103–159 (107 Stat. 1536).

* * * * *

Par. 3. Section 178.11 is amended by revising the definition for "handgun," and by adding definitions for "chief law enforcement officer" and "identification document," to read as follows:

§ 178.11 Meaning of terms.

* * * * *

Chief law enforcement officer. The chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

* * * * *

Handgun. (a) Any firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(b) Any combination of parts from which a firearm described in paragraph (a) can be assembled.

Identification document. A document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

* * * * *

Par. 4. Section 178.31 is amended by redesignating paragraph (b) as paragraph (c), and by adding new paragraphs (b) and (d), to read as follows:

§ 178.31 Delivery by common or contract carrier.

* * * * *

(b) No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container indicating that such package, luggage, or other container contains a firearm.

* * * * *

(d) No common or contract carrier shall deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

Par. 5. Section 178.33a is added to Subpart C to read as follows:

§ 178.33a Theft of firearms.

No person shall steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

Par. 6. Section 178.42 is amended by revising the introductory text, and by revising paragraph (c) to read as follows:

§ 178.42 License fees.

Each applicant shall pay a fee for obtaining a firearms license or ammunition license, a separate fee being required for each business or collecting activity at each place of such business or activity, as follows:

* * * * *

(c) For a dealer:

(1) In destructive devices—$1,000 per year.

(2) Who is not a dealer in destructive devices—$200 for 3 years, except that the fee for renewal of a valid license shall be $90 for 3 years.

* * * * *

Par. 7. Section 178.96(b) is amended by revising the first sentence to read as follows:

§ 178.96 Out-of-State and mail order sales.

* * * * *

(b) A licensed importer, licensed manufacturer, or licensed dealer may sell a rifle, shotgun, or handgun that is not subject to the waiting period provisions of § 178.102(a) to a nonlicensee who does not appear in person at the licensee's business premises if the nonlicensee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee furnishes to the licensee the firearms transaction record, Form 4473, required by § 178.124. * * *

* * * * *

Par. 8. Section 178.102 is added to subpart F to read as follows:

§ 178.102 Sales or deliveries of handguns after February 27, 1994, and before November 30, 1998.

(a) *Waiting period.* Except as provided in paragraph (b), a licensed importer, licensed manufacturer, or licensed dealer shall not sell, deliver, or transfer a handgun to any individual who is not licensed under this part.

(1) The licensee shall:

(i) Receive from the transferee a statement of intent to obtain a handgun on Form 5300.35 in accordance with § 178.130;

(ii) Verify the identity of the transferee by examining the identification document presented, and noting on Form 5300.35 the type of identification used;

(iii) Within 1 day after the transferee furnishes the statement, provide notice of the contents of the statement on Form 5300.35, in the manner prescribed by paragraph (a)(3) of this section, to the chief law enforcement officer of the place of residence of the transferee; and

(iv) Within 1 day after the transferee furnishes the statement to the licensee, transmit a copy of Form 5300.35 to the chief law enforcement officer of the place of residence of the transferee.

(2)(i) The licensee shall not sell, deliver, or transfer a handgun to any individual unless 5 business days (meaning days on which State offices are open) have elapsed from the date the licensee furnished actual notice of the contents of the statement to the chief law enforcement officer, during which period the licensee has not received information from such officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(ii) The licensee has received notice from the chief law enforcement officer within the 5 business days that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law.

Example 1. A licensee furnishes actual notice of the contents of the statement to the chief law enforcement officer on Tuesday. If State offices are not open on Saturday and Sunday, 5 business days would have elapsed on the following Tuesday. The licensee may deliver the handgun on the next day, Wednesday.

Example 2. A licensee furnishes actual notice of the contents of the statement to the chief law enforcement officer on Saturday. If State offices are not open on Saturday and Sunday, 5 business days would have elapsed on the following Friday. The licensee may deliver the handgun on the next day, Saturday.

(3) The notice required by paragraph (a)(1)(iii) of this section shall be actual notice and shall be given in a manner acceptable to such officer. For example, if the chief law enforcement officer will only accept notice in writing and not by telephone, notice shall be given by the licensee to the chief law enforcement officer in writing. In that case, the 5-day waiting period prescribed by paragraph (a)(2)(i) of this section begins at the time such written notice is received by the chief law enforcement officer. If the licensee sends notice to such officer by mail, the licensee shall send the notice by registered or certified mail (return receipt requested).

(4) The law requires that notice of the contents of the transferee's statement of intent to obtain a handgun and the statement be provided by the licensee to the chief law enforcement officer of the place of residence of the transferee. Under the law, the chief law enforcement officer means "the chief of police, the sheriff, or an equivalent officer or the designee of any such individual." Where the State or local law enforcement officials have notified the licensee that a particular official has been designated to receive the notice and statement specified in paragraphs (a)(1) (iii) and (iv) of this section, the licensee shall provide the information to that designated official.

(b) *Alternatives to waiting period.* The provisions of paragraph (a) of this section shall not apply if—

(1) The transferee has presented to the licensee a written statement, issued by the chief law enforcement officer of the transferee's place of residence, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee. The written statement must have been issued by the chief law enforcement officer during the 10-day period ending on the date that the transferee has informed the licensee of the transferee's intention to obtain a handgun. The written statement shall be on a letter bearing the letterhead of the chief law enforcement officer and shall be signed by the officer and dated;

(2) The transferee has presented to the licensee a permit or license that—

(i) Allows the transferee to possess or acquire a handgun;

(ii) Was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(iii) The law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of Federal, State, or local law;

(3) The law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under this part, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(4) The handgun is subject to the provisions of the National Firearms Act and has been approved for transfer under 27 CFR part 179; or

(5) On application of the licensee, in accordance with the provisions of § 178.150, the Director has certified that compliance with paragraph (a) of this section is impracticable.

(6) The documents referred to in paragraphs (b) (1) and (2) of this section shall be retained in the records of the licensee in accordance with the provisions of § 178.131.

(c) *Disclosure of information.* (1) Any licensed importer, licensed manufacturer, or licensed dealer who, after the transfer of a handgun to a nonlicensee, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day (meaning a day on which State offices are open) after receipt of the report, communicate any information the licensee has concerning the transfer and the transferee, including a copy of Form 4473 required by § 178.124, to the chief law enforcement officer of the place of business of the licensee and to the chief law enforcement officer of the place of residence of the transferee. The licensee may also provide this information to the local ATF office.

(2) Any licensed importer, licensed manufacturer, or licensed dealer who receives information from a chief law enforcement officer regarding the transfer of a handgun to a nonlicensee, not otherwise available to the public, shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(Approved by the Office of Management and Budget under control number 1512–0520)

Par. 9. Section 178.126a is amended by revising the second sentence to read as follows:

§ 178.126a Reporting multiple sales or other disposition of pistols and revolvers.

* * * The report shall be prepared on Form 3310.4, Report of Multiple Sale or Other Disposition of Pistols and Revolvers. Not later than the close of business on the day that the multiple sale or other disposition occurs, the licensee shall forward two copies of Form 3310.4 to the ATF office specified thereon and one copy to the State police or to the local law enforcement agency in which the sale or other disposition took place. Where the State or local law enforcement officials have notified the licensee that a particular official has been designated to receive Forms 3310.4, the licensee shall forward such forms to that designated official.

* * * * *

Par. 10. Section 178.129(b) and the parenthetical text at the end of the section are revised to read as follows:

§ 178.129 Record retention.

* * * * *

(b) *Firearms transaction record and statement of intent to obtain a handgun.* Licensees shall retain each Form 4473 and Form 4473(LV) for a period of not less than 20 years after the date of sale or disposition. Licensees shall retain each Form 5300.35 for a period of not less than 5 years after notice of the intent to obtain the handgun was forwarded to the chief law enforcement officer.

* * * * *

(Paragraph (b) approved by the Office of Management and Budget under control number 1512–0520; all other recordkeeping approved by the Office of Management and Budget under control number 1512–0129.)

Par. 11. Sections 178.130 and 178.131 are added to Subpart H to read as follows:

§ 178.130 Statement of intent to obtain a handgun after February 27, 1994, and before November 30, 1998.

(a)(1) Except as provided in §§ 178.102(b) and 178.131, a licensed importer, licensed manufacturer, or licensed dealer shall not sell, deliver, or transfer a handgun unless the licensee has received from the transferee a statement of intent to obtain a handgun on Form 5300.35 in duplicate. The statement shall contain the transferee's name, address, and date of birth. The transferee must date and execute the sworn statement contained on the form showing that the transferee is not under indictment for a crime punishable by imprisonment for a term exceeding 1 year; has not been convicted in any court of such a crime; is not a fugitive from justice; is not an unlawful user of or addicted to any controlled substance; has not been adjudicated as a mental defective or been committed to a mental institution; is not an alien who is illegally or unlawfully in the United States; has not been discharged from the Armed Forces under dishonorable conditions; and is not a person who,

having been a citizen of the United States, has renounced such citizenship.

(2) In order to facilitate the transfer of a handgun and enable the chief law enforcement officer to verify the identity of the person acquiring the handgun, Form 5300.35 requests certain additional optional information. This information includes the social security number, height, weight, sex, and place of birth of the transferee. Such information may help avoid the possibility of the transferee being misidentified as a felon or other prohibited person.

(b) Upon receipt of Form 5300.35 from the transferee, the licensee shall:

(1) Verify the identity of the transferee by examining the identification document presented and note on Form 5300.35 the type of identification used; and

(2) Complete Form 5300.35 to show that notice of the transferee's statement of intent to obtain a handgun and a copy of the form have been provided to the chief law enforcement officer in compliance with § 178.102(a).

(c) The licensee shall retain the original Form 5300.35 as part of the records required to be kept under this subpart. If the sale, delivery, or transfer of the handgun to the transferee is made, Form 5300.35 shall be attached to the firearms transaction record, Form 4473, executed upon delivery of the handgun as provided in § 178.124. If the sale, delivery, or transfer is not made, the licensee shall retain Form 5300.35 as part of the records required to be kept under this subpart. Forms 5300.35 with respect to which a sale, delivery, or transfer did not take place shall be retained in alphabetical (by name of transferee) or chronological (by date of transferee's sworn statement) order.

(d) The requirements of this section shall be in addition to any other recordkeeping requirements contained in this part.

(e) A licensee may obtain, upon request, an emergency supply of Forms 5300.35 from any regional director (compliance).

(Approved by the Office of Management and Budget under control number 1512–0520)

§ 178.131 Handgun transactions not subject to the waiting period.

(a)(1) A licensed importer, licensed manufacturer, or licensed dealer whose sale, delivery, or transfer of a handgun is made pursuant to the alternative provisions of § 178.102(b) and is not subject to the waiting period prescribed by § 178.102(a) shall maintain the records required by this paragraph (a).

(2) If the transfer is pursuant to a written statement of the chief law enforcement officer in accordance with § 178.102(b)(1), the licensee shall retain such statement and attach it to the firearms transaction record, Form 4473, executed upon delivery of the handgun.

(3) If the transfer is pursuant to a permit or license in accordance with § 178.102(b)(2), the licensee shall retain a copy of such permit or license and attach it to the firearms transaction record, Form 4473, executed upon delivery of the handgun.

(4) If the transfer is pursuant to a verification of eligibility to possess a handgun (e.g., an instant record check) by a government official in accordance with § 178.102(b)(3), the licensee shall attach to the firearms transaction record, Form 4473, executed upon delivery of the handgun, a statement showing the date of verification, any identifying number assigned to the transaction by the official, and the name, location, and title of the official.

(5) If the transfer is pursuant to a certification by ATF in accordance with §§ 178.102(b)(5) and 178.150, the licensee shall maintain the certification as part of the records required to be kept under this subpart and for the period prescribed for the retention of Form 5300.35 in § 178.129(b).

(b) The requirements of this section shall be in addition to any other recordkeeping requirements contained in this part.

(Approved by the Office of Management and Budget under control number 1512–0520)

§ 178.150 [Redesignated as § 178.151.]

Par. 12. Section 178.150 of Subpart I is redesignated as § 178.151, and new § 178.150 is added to read as follows:

§ 178.150 Alternative to handgun waiting period in certain geographical locations.

(a) The provisions of § 178.102(b)(5) shall be applicable when the Director has certified that compliance with the waiting period provisions of § 178.102(a) is impracticable because:

(1) The ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(2) The business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(3) There is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(b) A licensee who desires to obtain a certification under this section shall submit a written request to the Director. Each request shall be executed under the penalties of perjury and contain information sufficient for the Director to make such certification. Such information shall include statistical data, official reports, or other statements of government agencies pertaining to the ratio of law enforcement officers to the number of square miles of land area of a State and statements of government agencies and private utility companies regarding the absence of telecommunications facilities in the geographical area in which the licensee's business premises are located.

Signed: January 21, 1994.

Daniel R. Black,

Acting Director.

Approved: January 27, 1994.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–3227 Filed 2–11–94; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[Notice No. 789; (93F–057P)]

RIN: 1512–AB23

Implementation of Public Law 103–159, Including the Brady Handgun Violence Prevention Act

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rulemaking cross referenced to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations regarding the implementation of Public Law 103–159, including the Brady Handgun Violence Prevention Act, enacted November 30, 1993. These regulations implement the law by imposing a 5-day waiting period before a Federally licensed firearms importer, manufacturer, or dealer may lawfully transfer a handgun to a nonlicensed individual. Regulations are also prescribed with regard to reporting requirements for multiple handgun sales, labeling of packages containing a firearm, theft of firearms from firearms licensees, and increased license fees for dealers in firearms. The temporary regulations also serve as the text of this notice of proposed rulemaking for final regulations.

DATES: Written comments must be received on or before May 16, 1994.

ADDRESSES: Send written comments to: Chief, Revenue Programs Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; ATTN: Notice No. 789.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Revenue Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866, because the economic effects flow directly from the underlying statute and not from this notice of proposed rulemaking. Accordingly, this proposal is not subject to the analysis required by this Executive order.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute.

Paperwork Reduction Act

The collection of information contained in this notice has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1512–0520, Washington, DC 20503, with copies to the Chief, Information Programs Branch, room 3110, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

The collection of information in this proposed regulation is in 27 CFR 178.130. This information is required by the Bureau of Alcohol, Tobacco and Firearms to comply with the provisions of Public Law 103–159 (107 Stat. 1536). This information will be used to prevent the purchase of handguns by convicted felons and other persons who are prohibited by law from receiving or possessing firearms, which is the purpose of Public Law 103–159. The likely respondents and recordkeepers are individuals and small businesses. Estimated total annual reporting and recordkeeping burden: 516,750 hours. Estimated number of respondents and recordkeepers: 8,213,450. Estimated annual frequency of responses: on occasion.

Public Participation

ATF requests comments on the temporary regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR part 178. For the text of the temporary regulations, see T.D. ATF–354 published in the Rules and Regulations section of this issue of the **Federal Register**.

Drafting Information

The author of this document is James P. Ficaretta, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms.

Signed: January 21, 1994.

Daniel R. Black,

Acting Director.

Approved: January 27, 1994.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–3228 Filed 2–11–94; 8:45 am]

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federal register

Monday
February 14, 1994

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 139

Airport Certification; Amendment of the Compliance Date for Signs Identifying Taxiing Routes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. 24812; Amdt. No. 139–20]

RIN 2120–AF26

Airport Certification; Amendment of the Compliance Date for Signs Identifying Taxiing Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends a final rule issued without notice based upon comments received in response to that final rule. This final rule amends the compliance date for certain sign requirements required under the Federal Aviation Regulations (FAR) for airports certificated under 14 CFR part 139. The compliance date for these sign requirements expired on January 1, 1994. This amendment will provide the time necessary for industry to manufacture and airport operators to install the required signs.

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. William DeLoach, Safety and Compliance Division (AAS–300), Office of Airport Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8723.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1987, the FAA published a final rule (52 FR 44276) revising and reorganizing 14 CFR part 139 that became effective on January 1, 1988. The revision included modified requirements, as contained in § 139.311, pertaining to markings and lighting. On October 18, 1988, 14 CFR 139 was amended (53 FR 40842) to, among other things, establish January 1, 1991 as the compliance date for the marking and lighting requirements in § 139.311. After the amendment establishing the 1991 compliance date for § 139.311, however, the FAA decided to revise the guidance material on one aspect of the marking requirements. The FAA undertook to revise the advisory circular (AC) related to signs identifying taxiing routes on the movement area (§ 139.311(a)(3)). The FAA wanted to resolve the controversies regarding the types and design of airfield signs, applications, colors, and other matters. In addition, because of the global nature of aviation, the FAA wanted its sign standards to be consistent with the ones being considered by the International Civil Aviation Organization (ICAO) for installation at airports throughout the world.

Operators of certificated airports were informed of this revision and encouraged to wait for publication of the revised AC before attempting to comply with the requirements of § 139.311(a)(3). This was to preclude installation of signs identifying taxiing routes on the movement area where significant changes were being considered.

The process of revising the sign standards was further complicated by the involvement of the International Civil Aviation Organization (ICAO). As noted above, ICAO was developing international airport sign standards during the period the AC was being revised. To make sure the United States was in conformity internationally, the FAA met with the ICAO to help develop standardization and consistency of airport signs. This precluded the FAA from issuing its revised AC on sign standards until after the ICAO working group made recommendations for revised airport sign standards.

The ICAO working group did not make its recommendations until May of 1991, months after the January 1, 1991 compliance date set out in § 139.311(f). Prior to the deadline, however, the FAA began issuing exemptions to those airport operators requesting them, and advised airport operators against installing signs solely for the purposes of complying with § 139.311(a)(3). Airport operators were urged to wait until the FAA issued the revised AC.

On July 31, 1991, the FAA issued its revised AC entitled "Standards for Airport Sign Systems." The FAA estimated that it would take several years at a minimum for certificated airports to comply with § 139.311(a)(3) because of the lead time required to produce and install the new sign systems. Hence, certificated airports, through no fault of their own, would not be able to meet the requirements of § 139.311(a)(3) for several years. The FAA decided that instead of issuing approximately 600 exemptions, the appropriate response was to revise the regulations to extend the compliance date for § 139.311(a)(3). The 1991 date for compliance for the other marking and lighting requirements was retained.

On April 24, 1992, the FAA issued a final rule (57 FR 15162) extending the compliance date with § 139.311(a)(3) to January 1, 1994. The FAA knew that this was a very ambitious target date. Therefore, in this final rule, which was issued without a prior notice of proposed rulemaking, the FAA requested comments from the public as to the reasonableness of the new deadline. This was done to allow the FAA the opportunity to further extend the compliance date if necessary. The FAA received two comments; one from the Air Line Pilots Association (ALPA) and one from the State of Alaska Department of Transportation and Public Facilities (Alaska). ALPA supported the extension and encouraged the FAA to remain steadfast in its implementation of § 139.311(a)(3). Alaska had several concerns with the established compliance date of January 1, 1994. First, Alaska stated that they had 27 certificated airports that needed to be brought into compliance. Due to the high demand for signs across the country, manufacturers would not be able to provide the materials to these 27 airports in a time frame which would allow them to meet the new deadline. Alaska also was concerned with securing the funding necessary to install new signs by January 1, 1994. Because they rely almost entirely on federal Airport Improvement Program (AIP) funds for all capital improvement projects, they would have to defer other, more critical, safety related projects in order to meet the new signage installation timeframe. Therefore, Alaska recommended that, at the earliest, the installation timeframe be January 1, 1996.

The FAA agrees substantially with both commenters. While it is important that every reasonable effort be made to come into compliance with § 139.311(a)(3), a realistic date is necessary to adequately provide time for industry to manufacture, and applicable operators to install, sign system on their airports consistent with the revised AC.

The FAA has determined that the very ambitious January 1, 1994, compliance deadline was unrealistic. Despite the extraordinary efforts by both the FAA and operators of part 139 certificated airports, full compliance has not been possible. An extensive survey by the FAA in the fall of 1993 indicates that approximately 60% of certificated airports will be in compliance with § 139.311(a)(3) on January 1, 1994. The other 40% of certificated airports are working hard towards compliance. The first step that an airport must do is develop a sign plan in conjunction with airport users and submit it to the FAA for review and approval. This process has been completed and all certificated airports now have approved signs plans.

The FAA has concluded that a combination of factors has prevented airports from full compliance. First, there are only a handful of manufacturers of airport signs. As a result, these manufacturers have order backlogs. Once the signs are ordered, it takes approximately 12–16 weeks for sign delivery.

Second, implementing the new sign system requirements typically involves much more than just ordering and erecting the new signs. Installation at many of the certificated airports requires electrically rewiring circuits for the runways, taxiways, and signs because the existing systems cannot handle the increased electrical loads. In some cases new electrical vaults need to be constructed. In other cases, electric lines have to be installed where none now exist. This wiring can encompass significant construction; frequently the wires have to be installed across runways, taxiways, and other paved areas. This signage and electrical work is further complicated by the need to keep the runways and taxiways operational during construction to the maximum extent possible. An additional factor is the varying construction seasons from region to region. In some areas the traditional construction season has been affected by unusual weather disasters, such as the major flooding that occurred during the summer of 1993 in the midwest.

Finally, many airports have had to redesignate taxiways that previously had nonstandard designations. All taxiways on airports certificated under part 139 will now be designated by a letter(s) of the alphabet or alpha numeric(s). The process of renaming taxiways increases the scope of the signage work and requires additional time to phase in to assure that users have adequate time to familiarize themselves with the new designations.

The FAA has concluded that a further extension until January 1, 1995, for compliance with the sign installation requirements of § 139.311(a)(3) is necessary and reasonable. The time extension will obviate the need for numerous exemptions to airport operators. This extension is not expected or intended to delay the date by which the actual signage work will be completed. The FAA does not intend to grant any further extension to the rule deadline.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because this rule merely extends the compliance date of an earlier final rule that incorporated the recommendations and standards proposed by ICAO for new sign systems through Advisory Circular 150/5340–18C entitled "Standards for Airport Sign Systems."

Paperwork Reduction Act Approval

This final rule will not change the reporting requirements. Therefore, in accordance with the Paperwork Reduction Act of 1980, (Pub. L. 96–511), there are no additional requirements for information collection associated with this final rule.

Economic Evaluation

The FAA has determined that this rule is not significant as defined by Executive Order 12866. Therefore, no Regulatory Impact Analysis is required. Nevertheless, in accordance with Department of Transportation policies and procedures, the FAA has evaluated the economic and technical feasibility of this final rule, which is summarized below.

This final rule amendment would amend the compliance date for certain airport signs required by the FAA from January 1, 1995. The current rule has a deadline of January 1, 1994. Approximately 40% of the certificated airports are still not able to comply for reasons beyond their control.

This rule will not impose any costs on society by extending the compliance date. There will be no incremental costs associated with this final rule since only the date for compliance is being extended. The FAA has concluded that there will be no degradation of safety as all certificated airports have installed the more critical safety-related signs required under part 139. In addition, the 40% of certificated airports that have not yet installed the remaining required signs are working on an expedited basis to remedy the situation.

The FAA has concluded that the rule change will be cost beneficial because unquantifiable benefits in the form of less disruption and more opportunities for minimizing compliance costs for airport operators can be achieved without compromising airport safety.

International Trade Impact Analysis

This rule will affect domestic airport operators, primarily. The rule will have no impact on trade for U.S. firms doing business overseas or for foreign firms doing business in the United States. There are no expected additional annual costs associated with this rule and, therefore, it should not create an economic disadvantage to either domestic or foreign air carriers operating in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The FAA's criterion for a "substantial number" is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. The size threshold annualized cost level in December 1983 dollars is $5,400 for airports. Using the GNP Price deflator and adjusting to 1990 values, this threshold becomes $7,387.

The rule is of a cost-relieving nature and would therefore afford cost savings to small airport sponsors. The impact of the cost of complying with the sign requirements are expected to be quite small, however, since operators will still be expected to meet the same requirements.

Federalism Impact

The final rule adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this final rule is not significant under Executive Order 12866; nor is it significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). It is certified that under the criteria of the Regulatory Flexibility Act this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because of the negligible costs resulting from this rule, the FAA has determined that the expected impact of these regulations is so minimal that they do not warrant a full regulatory evaluation.

Reason for Immediate Adoption

This rule is being adopted immediately in response to comments received on an earlier issued final rule without prior public notice and comment. This rule requires immediate adoption to amend and expired

regulatory compliance date, which has been an unintended burden on airport operators. By immediately adopting this amendment, the FAA alleviates the burden and cost to airport operators to request, and the FAA to process, petitions for exemption. As stated above, an amendment of the compliance date is necessary to adequately provide time for industry to manufacture and applicable airports to install sign systems.

List of Subjects in 14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

Accordingly, the FAA amends part 139 of the Federal Aviation Regulations (14 CFR part 139) as follows:

PART 139—[AMENDED]

1. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a) and 1432; 49 U.S.C. 106(g).

2. Part 139 is amended by revising § 139.311(f) to read as follows:

§ 139.311 Marking and Lighting.

* * * * *

(f) Notwithstanding paragraph (a) of this section, a certificate holder is not required to provide the identified signs in paragraph (a)(3) of this section until January 1, 1995. Each certificate holder shall maintain each marking system that meets paragraph (a)(3) of this section.

David R. Hinson,

Administrator.

[FR Doc. 94–3241 Filed 2–11–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
February 14, 1994

Part V

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one revised deferral of budget authority, totaling $1.6 billion, three revised rescission proposals, and 27 new proposed rescissions of budget authority. The total of the rescission proposals included in this special messages is $1.6 billion. When combined with rescissions that went to the Congress on November 1, 1993, there are $3.2 billion in rescissions pending before the Congress.

The details of the revised deferral, which affects International Security Assistance, are contained in the attached report. The proposed rescissions affect International Security Assistance Programs; the Departments of Agriculture, Defense, Energy, Housing and Urban Development, State, Transportation, and the Treasury; the General Services Administration; the National Aeronautics and Space Administrtion; the Board for International Broadcasting; the National Science Foundation; and the Nuclear Regulatory Commission.

William J. Clinton,

The White House, February 7, 1994.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D94-1B	Economic support fund	1,582,463

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
R94-1A	Foreign military financing grants	65,562
R94-38	Military assistance	438
	Department of Agriculture: 1/	
	Rural Development Administration and Farmers Home Administration:	
R94-41	Rural housing insurance fund program account	15,645
R94-39	Agricultural credit insurance program account	5,094
	Rural Electrification Administration:	
R94-40	Rural electrification and telephone loans program account	5,688
	Foreign Assistance Programs:	
	Public Law 480 program account:	
R94-42	Public Law 480 Grants (OFD), II, and III	49,600
R94-43	Loan subsidy	35,400
	Department of Defense:	
	Procurement:	
R94-44	Missile procurement, Army	48,000
R94-45	Aircraft procurement, Navy	51,700
R94-46	Shipbuilding and conversion, Navy	50,000
R94-47	Aircraft procurement, Air Force	105,600

1/ The FY 1995 Budget proposes to reorganize the account structure of the Department of Agriculture. The numbering of the rescission proposals is based on the reorganization proposal. The order of the rescission proposal in this special message is the same as the order in the FY 1994 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act.

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Research, Development, Test, and Evaluation:	
	Research, development, test, and	
R94-48	evaluation, Defense-wide	50,000
	Department of Energy:	
	Energy Programs:	
	Energy supply, research and development	
R94-49	activities	10,000
	Department of Housing and Urban Development:	
	Housing Programs:	
	Homeownership and opportunity for people	
R94-50	everywhere grants (HOPE grants)	66,000
	Department of State:	
	Administration of Foreign Affairs:	
R94-51	Buying power maintenance	8,800
	Department of Transportation:	
	Federal Highway Administration:	
R94-32A	Highway demonstration projects	174,969
	Federal Railroad Administration:	
R94-55	Railroad research and development	17,000
	Federal Aviation Administration:	
R94-56	Grants-in-aid for airports (Airport and airway trust fund)	488,200
	Coast Guard:	
R94-57	Operating expenses	5,000
R94-58	Acquisition, construction, and improvements	2,000
	Office of the Secretary:	
R94-59	Rental payments	1,781
R94-60	Payments to air carriers (Airport and airway trust fund)	10,067

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Department of the Treasury:	
	Financial Management Service:	
R94-61	Biomass energy development	16,275
	General Services Administration:	
	Public Buildings Service:	
R94-33A	Federal buildings fund	127,691
	National Aeronautics and Space Administration:	
R94-62	Research and development	88,000
R94-63	Space flight, control, and data communications	32,000
R94-64	Construction of facilities	25,000
	Other Independent Agencies:	
	Board for International Broadcasting:	
R94-65	Israel relay station	1,700
	National Science Foundation:	
R94-66	Academic research infrastructure	10,000
	Nuclear Regulatory Commission:	
R94-67	Salaries and expenses	12,700
	Total, rescissions	**1,579,910**

Deferral No. D94-1B

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D94-1A, which was transmitted to Congress on November 19, 1993.

This revision increases by $23,725,457 the previous deferral of $1,558,737,203 in the Economic support fund, resulting in a total deferral of $1,582,462,660. The increase results from the deferral of funds made available by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994, and a correction in the unobligated funds being carried forward from FY 1993.

Deferral No. 94-1B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... • 2,364,562,000 (P.L. 103-87)
BUREAU: International Security Assistance	Other budgetary resources..... • 418,050,660
Appropriations title and symbol: Economic support fund 1/ 113/41037 • 114/51037 11X1037 •	Total budgetary resources..... • 2,782,612,660
	Amount to be deferred: Part of year..... • 1,582,462,660 2/ Entire year..... _____
OMB identification code: 11-1037-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [X] Multi-year: September 30, 1994 / September 30, 1995 (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund.....	11X1037	11-1037-0-1-152	• 74,812,507
Economic support fund.....	113/41037	11-1037-0-1-152	• 343,088,153
Economic support fund.....	114/51037	11-1037-0-1-152	1,164,562,000
			• 1,582,462,660

JUSTIFICATION: This account provides economic and counternarcotics assistance to selected countries in support of U.S. efforts to promote stability and U.S. security interests in strategic regions of the world. This account also includes contributions to the International Fund for Ireland. This action defers funds pending review and approval of specific loans and grants to eligible countries. This interagency review process will ensure that each approved transaction is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

• Revised from previous report.
1/ This account was the subject of a similar deferral in FY 1993 (D93-1A).
2/ This deferred amount has been reduced to $1,448,272,111 due to subsequent releases.

Rescission No. 94-1A

Supplemental Report
Report Pursuant to Section 1012 of Public Law 93-344

This report updates Rescission Proposal No. D94-1, which was transmitted to Congress on November 1, 1993.

This revision affects Funds Appropriated to the President, International Security Assistance, Foreign military financing grants and increases the amount previously reported from $40,000,000 to $65,562,000. This increase of $25,562,000 reflects an increase in savings due to further streamlining of the military assistance program.

R94-1A

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL SECURITY ASSISTANCE

Foreign military financing grants

Of the funds made available (including earmarked funds) under this heading in Public Law 102-391 and prior appropriations acts, $65,562,000 are rescinded.

Rescission Proposal No. R94-1A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $ 3,149,279,000 (P.L. 103-87)
BUREAU: International Security Assistance	Other budgetary resources.. $ ____
Appropriations Title and Symbol: Foreign military financing grants 1141082	Total budgetary resources... $ 3,149,279,000
	Amount proposed for rescission..... * $ 65,562,000
OMB identification code: 11-1082-0-1-152	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other ____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multi-year: ____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other ____

JUSTIFICATION: * This account provides grant funds to finance sales of defense articles, defense services, and design and construction services to foreign countries and international organizations. It also provides funds for the military assistance program and for counter-narcotics activities. The Administration proposes to streamline the foreign assistance program, including the termination of outmoded and ineffective activities. The budgetary resources proposed for rescission will be derived from recoveries of obligations of prior year appropriations.

ESTIMATED PROGRAM EFFECT: This proposal would reduce assistance programs in certain recipient countries by rescinding amounts from unexpended balances.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
4,112,362	4,051,840	-60,522	-4,032	-504	-504	---	---

* Revised from the previous report.

R94-38

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL SECURITY ASSISTANCE

Military assistance

Of the funds made available (including earmarked funds) under this heading in Public Law 102-391 and prior appropriations acts, $438,000 are rescinded.

Rescission Proposal No. R94-38

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $
BUREAU: International Security Assistance	Other budgetary resources.. $
Appropriations Title and Symbol: Military assistance 1141080	Total budgetary resources... $
	Amount proposed for rescission..... $ 438,000
OMB Identification code: 11-1080-0-1-152	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multi-year: (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: This account reflects transactions from prior year obligations for grants to finance sales of defense articles, defense services, and design and construction services to foreign countries and international organizations. The Administration proposes to streamline the foreign assistance program, including the termination of outmoded and ineffective activities. The budgetary resources proposed for rescission will be derived from recoveries of obligations of prior year appropriations.

ESTIMATED PROGRAM EFFECT: This proposal would reduce assistance programs in certain recipient countries by rescinding amounts from unexpended balances.

OUTLAY EFFECT: (in thousands of dollars)

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
24,052	24,052	---	---	---	---	---	---

R94-41

DEPARTMENT OF AGRICULTURE

RURAL DEVELOPMENT ADMINISTRATION AND FARMERS HOME ADMINISTRATION

Rural housing insurance fund program account

Of the amounts provided under this heading in Public Law 103-111, the following amounts are rescinded: for the cost of low-income housing section 502 direct loans, $1,515,000; for the cost of section 515 rental housing loans, $12,443,000; for the cost of section 504 housing repair loans, $1,204,000; for the cost of section 514 farm labor housing loans, $483,000.

Rescission Proposal No. R94-41

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... 1,169,524,000 (P.L. 101-508 and 103-111)
BUREAU: Rural Development Administration and Farmers Home Administration	Other budgetary resources.. 0
Appropriations title and symbol: Rural housing insurance fund program account 1242081	Total budgetary resources... $ 1,169,524,000
	Amount proposed for rescission..... $ 15,645,000
OMB identification code: 12-2081-0-1-371	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation funds the Rural housing insurance fund (RHIF) program account. As required by the Federal Credit Reform Act of 1990, this account records, for this program, the subsidy costs associated with direct loans obligated and loan guarantees committed in FY 1992 and beyond (including credit sales of acquired property), as well as administrative expenses of this program.

This proposal reflects the fact that the subsidy budget authority appropriated for FY 1994 is in excess of amounts necessary to fund estimated loan levels included in the appropriations act due to the re-estimate of subsidy rates for the first quarter of FY 1994. In some cases, subsidy rates are nearly half of those assumed in the April 1993 budget. The current forecast of Treasury (discount) rates for the remainder of FY 1994 is for little change in the rates.

ESTIMATED PROGRAM EFFECT: Even after this proposed rescission, total RHIF loan obligations should be greater than those estimated in the FY 1994 appropriations act.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
1,106,414	1,102,349	-4,065	-9,000	-1,660	-570	-263	—

R94-39

DEPARTMENT OF AGRICULTURE

RURAL DEVELOPMENT ADMINISTRATION AND FARMERS HOME ADMINISTRATION

Agricultural credit insurance fund program account

Of the amounts provided under this heading for the cost of credit sales of acquired property direct loans in Public Law 103-111, $5,094,000 are rescinded.

Rescission Proposal No. R94-39

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture **BUREAU:** Rural Development Administration and Farmers Home Administration	New budget authority..... $ 492,103,000 (P.L. 101-506 and 103-111) Other budgetary resources.. $ 0 Total budgetary resources... $ 492,103,000
Appropriations title and symbol: Agricultural credit insurance program account 1241140	Amount proposed for rescission..... $ 5,094,000
OMB identification code: 12-1140-0-1-351	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation funds the Agricultural credit insurance fund (ACIF) program account. As required by the Federal Credit Reform Act of 1990, this account records, for this program, the subsidy costs associated with the direct loans obligated and loan guarantees committed in FY 1992 and beyond (including credit sales of acquired property), as well as administrative expenses of this program.

This proposal reflects the fact that the subsidy budget authority appropriated for FY 1994 is in excess of amounts necessary to fund estimated loan levels included in the appropriations act due to the re-estimate of subsidy rates for the first quarter of FY 1994. In some cases, subsidy rates are nearly half of those assumed in the April 1993 budget. The current forecast of Treasury (discount) rates the remainder of FY 1994 is for little change in the rates.

ESTIMATED PROGRAM EFFECT: Even after this proposed rescission, total ACIF loan obligations should be greater than those estimated in the FY 1994 appropriations act. However, credit sales of acquired property would be decreased by $31 million, resulting in a program level of $93 million, which would still exceed the expected program level of $80 million.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
490,030	485,482	-4,548	—	—	—	—	—

R94-40

DEPARTMENT OF AGRICULTURE

RURAL ELECTRIFICATION ADMINISTRATION

Rural electrification and telephone loans program account

Of the amounts provided under this heading in Public Law 103-111, the following amounts are rescinded: for the cost of 5 percent rural electrification direct loans, $3,388,000; for the cost of 5 percent rural telephone direct loans, $2,300,000.

Rescission Proposal No. R94-40

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... (P.L. 101-508 and 103-111)	120,920,000
BUREAU: Rural Electrication Administration	Other budgetary resources..	0
Appropriations title and symbol: Rural electrication and telephone loans program account 1/ 1241230	Total budgetary resources... $	120,920,000
	Amount proposed for rescission..... $	5,688,000
OMB identification code: 12-1230-0-1-271	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____	
Grant program: ☐ Yes ☒ No		
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____	

JUSTIFICATION: This appropriation funds the Rural electrication and telephone loans account. As required by the Federal Credit Reform Act of 1990, this account records, for this program, the subsidy costs associated with direct loans obligated and loan guarantees committed in FY 1992 and beyond (including credit sales of acquired property), as well as administrative expenses of this program.

This proposal reflects the fact that the subsidy budget authority appropriated for FY 1994 is in excess of amounts necessary to fund estimated loan levels included in the appropriations act due to the re-estimate of subsidy rates for the first quarter of FY 1994. In some cases, subsidy rates are nearly half of those assumed in the April 1993 budget. The current forecast of Treasury (discount) rates the remainder of FY 1994 is for little change in the rates.

ESTIMATED PROGRAM EFFECT: Even after this proposed rescission, total REA direct loan obligations should be greater than those estimated in the FY 1994 appropriations act, except for 5 percent telephone direct loans. The remaining loan level for this category of direct loans should be sufficient to meet expected demand ($30 million). The 1993 REA loan program reforms, enacted after the appropriations act, significantly changed eligibility requirements.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
158,043	157,521	-522	-1,271	-1,121	-764	-505	-751

1/ A separate rescission proposal (R94-11) is pending for this account.

R94-42

DEPARTMENT OF AGRICULTURE

FOREIGN ASSISTANCE PROGRAMS

Public Law 480 Program account

Of the funds made available under this heading in Public Law 103-111 for Title III, $45,000,000 are rescinded, and of the amounts made available for ocean freight differential costs, $4,600,000 are rescinded.

Rescission Proposal No. R94-42

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... (P.L. 103-111)	$ 1,147,580,000
BUREAU: Foreign Assistance Programs	Other budgetary resources..	$ _____
Appropriations Title and Symbol: Public Law 480 grants - Titles I (OFD), II, and III 12X2278	Total budgetary resources...	$ 1,147,580,000
	Amount proposed for rescission.....	$ 49,600,000
OMB identification code: 12-2278-0-1-151	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____	
Grant program: ☒ Yes ☐ No		
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____	

JUSTIFICATION: This account includes the non-credit components of Public Law 480: Title I ocean freight differential (OFD), Title II, and Title III. Under Title II, the Department of Agriculture provides concession loans (30 year terms, 7 year grace) to developing countries that have market development potential.

Under Title III, the Agency for International Development provides food grants to least developed countries to promote economic development. This proposal would reduce $45 million of the available funds for Title III, and $4.6 million of Title I OFD funds.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
1,282,019	1,276,019	-16,120	-30,500	-2,976	—	—	—

R94-43

DEPARTMENT OF AGRICULTURE

FOREIGN ASSISTANCE PROGRAMS

Public Law 480 Program account

Of the funds made available under this heading in Public Law 103-111 for the cost of direct credit agreements, including the cost of modifying credit agreements, $35,400,000 are rescinded.

Rescission Proposal No. R94-43

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 349,425,000 (P.L. 103-111)
BUREAU: Foreign Assistance Programs	Other budgetary resources.. $ _____
Appropriations Title and Symbol: Loan subsidy 12X2277	Total budgetary resources... $ 349,425,000
	Amount proposed for rescission..... $ 35,400,000
OMB identification code: 12-2277-0-1-151	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: As required by the Federal Credit Reform Act of 1990, this account records, for the P.L. 480 program, the subsidy costs associated with the direct loans obligated in FY 1992 and beyond (including modifications of direct loans that resulted from obligation in any year), as well as administrative expenses of this program.

Under Title I, the Department of Agriculture provides concession loans (30 year terms, 7 year grace, 2 to 3 percent interest) to developing countries that have agricultural market development potential. The proposal would reduce a portion of the subsidy costs available to support Title I loans.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
437,958	417,780	-20,178	-13,098	-2,120	—	—	—

R94-44

DEPARTMENT OF DEFENSE

PROCUREMENT

Missile procurement, Army

Of the funds made available under this heading in Public Law 103-139, $48,000,000 are rescinded.

Rescission Proposal No. R94-44

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 1,094,009,000 (P.L. 103-139)
BUREAU: Procurement	Other budgetary resources.. $ 194,900,000
Appropriation title and symbol: Missile procurement, Army 214/62032	Total budgetary resources... $ 1,288,909,000
	Amount proposed for rescission..... $ 48,000,000
OMB identification code: 21-2032-0-1-051	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1996 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This account provides for procurement and modification of missiles, including spare parts and accessories.

The FY 1994 Defense Appropropriations Act provided $48 million for TOW2 missiles. The Army already has sufficient TOW2 missiles to meet projected combat and training requirements well into the next century.

ESTIMATED PROGRAM EFFECT: The ability of the Army to accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
1,508,428	1,504,348	-4,080	-15,120	-19,728	-5,760	-2,592	-288

R94-45

DEPARTMENT OF DEFENSE

PROCUREMENT

Aircraft procurement, Navy

Of the funds made available under this heading in Public Law 103-139, $51,700,000 are rescinded.

Rescission Proposal No. R94-45

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 5,694,420,000 (P.L. 103-139)
BUREAU: Procurement	Other budgetary resources.. $ 7,100,000
Appropriation title and symbol: Aircraft procurement, Navy 174/61506	Total budgetary resources... $ 5,701,520,000
	Amount proposed for rescission..... $ 51,700,000
OMB identification code: 17-1506-0-1-051	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1996 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This account provides for procurement and modification of aircraft, including spare parts and accessories.

The Department has determined that its inventory of SH-60B helicopters will be sufficient to support Navy requirements without procuring additional helicopters in FY 1995 and subsequent years. The $27.2 million appropriated in FY 1994 for advance procurement of long lead time material for SH-60B helicopters in FY 1995 is no longer required.

The FY 1994 Defense Appropriations Act also provided $24.5 million for advance procurement of long lead time material for the FY 1995 procurement of SH-60F helicopters. The Navy plans to convert all of its SH-60Fs to SH-60Rs or HH-60Hs to reduce the number of helicopters types. No further SH-60Fs will be procured, and the advance procurement funds are no longer required.

ESTIMATED PROGRAM EFFECT: The ability of the Navy to accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
6,257,269	6,250,806	-6,463	-16,079	-16,389	-7,341	-2,895	-1,293

R94-46

DEPARTMENT OF DEFENSE

PROCUREMENT

Shipbuilding and conversion, Navy

Of the funds made available under this heading in Public Law 103-139, $50,000,000 are rescinded.

Rescission Proposal No. R94-46

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... (P.L. 103-139)	$ 4,183,775,000
BUREAU: Procurement	Other budgetary resources..	$ 745,991,119
Appropriation title and symbol: Shipbuilding and conversion, Navy 174/81611	Total budgetary resources...	$ 4,929,766,119
	Amount proposed for rescission.....	$ 50,000,000
OMB identification code: 17-1611-0-1-051	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____	
Grant program: ☐ Yes ☒ No		
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1998 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____	

JUSTIFICATION: This account provides for the procurement and modification of ships and submarines, including spare parts and accessories.

The FY 1994 Defense Appropriations Act provided $50 million for advance procurement for a seventh LHD amphibious ship. However, the FY 1995 budget does not fund the LHD-7. As a result, the $50 million appropriated in FY 1994 is not needed.

ESTIMATED PROGRAM EFFECT: The ability of the Navy to accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
9,766,865	9,764,365	-2,500	-7,750	-10,200	-9,700	-7,600	-6,300

R94-47

DEPARTMENT OF DEFENSE

PROCUREMENT

Aircraft procurement, Air Force

Of the funds made available under this heading in Public Law 102-396, $105,600,000 are rescinded.

Rescission Proposal No. R94-47

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 0 (P.L. 102-396)
BUREAU: Procurement	Other budgetary resources.. $ 6,002,953,499
Appropriation title and symbol: Aircraft procurement, Air Force 573/53010	Total budgetary resources... $ 6,002,953,499
	Amount proposed for rescission..... $ 105,600,000
OMB identification code: 57-3010-0-1-051	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1995 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This account provides procurement and modification of aircraft, including spare parts and accessories.

The FY 1993 Defense Appropriations Act provided $12.8 million for procurement of the Advanced Tactical Airborne Reconnaissance System (ATARS). The ATARS program was terminated during FY 1993. These funds are no longer required.

The FY 1993 Defense Appropriations Act provided $92.8 million for C-135 modifications--either re-engining RC-135 or KC-135 aircraft. The KC-135 and RC-135 re-engine programs were terminated in FY 1993 because they were not cost effective. These funds are excess to program requirements.

ESTIMATED PROGRAM EFFECT: The ability of the Air Force to accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
10,492,161	10,488,565	-3,696	-24,394	-39,178	-19,853	-10,454	-4,224

R94-48

DEPARTMENT OF DEFENSE

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Research, development, test, and evaluation, Defense-wide

Of the funds made available under this heading in Public Law 103-139, $50,000,000 are rescinded.

Rescission Proposal No. R94-48

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... 8,760,050,000 (P.L. 103-139)
BUREAU: Research, Development, Test, and Evaluation	Other budgetary resources.. 266,380,000
Appropriation title and symbol: Research, development, test, and evaluation, Defense-wide 974/50400	Total budgetary resources... 9,026,430,000
	Amount proposed for rescission..... 50,000,000
OMB identification code: 97-0400-0-1-051	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1995 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This account provides for the research and development requirements of the Department of Defense that are not funded by the Army, Navy, or Air Force.

The FY 1994 Defense Appropriations Act provided $60 million for the Advanced Research Projects Agency to continue development of medium launch vehicles, of which $50 million is proposed for rescission. The FY 1995 budget request does not include any funding to continue medium launch vehicle development.

ESTIMATED PROGRAM EFFECT: The Department's ability to accomplish its mission successfully will not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

Without Rescission	With	Outlay Changes					
		FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
9,474,316	9,450,716	-23,600	-19,400	-4,950	-750	-750	-200

R94-49

DEPARTMENT OF ENERGY

ENERGY PROGRAMS

Energy supply, research and development activities

Of the funds made available under this heading in Public Law 103-126, $10,000,000 are rescinded.

Rescission Proposal No. R94-49

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Energy	New budget authority..... $ 3,219,410,000 (P.L. 103-126)
BUREAU: Energy Programs	Other budgetary resources.. $ 1,657,675,341
Appropriation title and symbol: Energy supply, research and development activities 1/ 89X0224	Total budgetary resources... $ 4,877,085,341
	Amount proposed for rescission..... $ 10,000,000
OMB identification code: 89-0224-0-1-271	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: The Energy supply, research and development activities account provides funds for operating expenses, capital equipment, and construction projects associated with research and development of various energy technologies. The purpose is to develop new energy technologies and improve existing energy technologies.

This proposal would eliminate funding for the large-scale Superconducting Magnetic Energy Storage (SMES) program, for which funds were added in FY 1994 in the Energy Storage activity within the Solar and Renewable Energy program. The SMES program would continue technology efforts previously funded within the Defense Nuclear Agency to develop SMES as part of a DOD "Star Wars" directed-energy weapon system. DOD has not requested funds for the SMES activity in recent years. The program is presented as a dual-use technology with defense and utility applications, but the current program has no commercially viable prospects in the utility industry.

ESTIMATED PROGRAM EFFECT: The Department of Energy's ability to accomplish its mission successfully would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
3,102,836	3,098,336	-4,500	-4,000	-1,499	—	—	—

1/ A separate rescission proposal (R94-25) is pending for this account.

R94-50

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING PROGRAMS

Homeownership and opportunity for people everywhere grants (HOPE grants)

Of the funds made available under this heading in Public Law 102-389 and Public Law 102-139, $66,000,000 are rescinded; of which $34,000,000 shall be from amounts earmarked for the HOPE for Public and Indian Housing Homeownership Program and $32,000,000 shall be from the amounts earmarked for the HOPE for Homeownership of Multifamily Units Program.

Rescission Proposal No. R94-50

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $ 109,190,000 (P.L. 103-124)
BUREAU: Housing Programs	Other budgetary resources.. $ 178,339,078
Appropriation title and symbol: Homeownership and opportunity for people everywhere grants (HOPE grants) 86X0196	Total budgetary resources... $ 287,529,078
	Amount proposed for rescission..... $ 66,000,000
OMB identification code: 86-0196-0-1-604	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: The Homeownership and Opportunity for People Everywhere (HOPE) program provides homeownership opportunities that are affordable for low-income families. Units would be converted to homeownership from public and Indian housing properties in HOPE 1, from FHA-insured and government-owned or held single-family properties in HOPE 3. HOPE grants would be used for property acquistion where appropriate, rehabilitation, mortgage subsidies, security measures, operating reserves, and technical assistance.

Unreserved balances of FY 1993 and prior year funding is proposed for rescission from the HOPE for Public and Indian Housing Homeownership Program and the HOPE for Homeownership of Multi-family Units Program.

ESTIMATED PROGRAM EFFECT: Availability of funds is reduced for the HOPE program.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
68,037	68,037	---	-13,200	-16,500	-13,200	-13,200	-9,900

R94-51

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

Buying power maintenance

Of the balances in the Buying power maintenance account, $8,800,000 are rescinded.

Rescission Proposal No. R94-51

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of State	New budget authority..... $ ____
BUREAU: Administration of Foreign Affairs	Other budgetary resources.. $ 18,828,000
Appropriations title and symbol: Buying power maintenance 19X0524	Total budgetary resources... $ 18,828,000
	Amount proposed for rescission..... $ 8,800,000
OMB identification code: 19-0524-0-1-153	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other ____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: ____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other ____

JUSTIFICATION: This account is available to offset losses due to exchange rate and overseas wage and price fluctuations unanticipated in the budget. Any gains due to fluctuations will be merged with this account to be available to offset future losses. This proposed rescission would reduce accumulated balances in the account.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
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Rescission No. 94-32A

Supplemental Report
Report Pursuant to Section 1012 of Public Law 93-344

This report updates Rescission Proposal No. D94-32, which was transmitted to Congress on November 1, 1993.

This revision to a rescission of the Department of Transportation, Federal Highway Administration, Highway demonstration projects decreases the amount previously reported from $187,827,288 to $174,969,000. This decrease of $12,858,288 reflects projects that were obligated before the funds could be withheld from obligation.

R94-32A

DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

Of the funds made available for highway projects that are not under construction, and that were funded pursuant to an appropriation act and that at no time have been separately authorized, $174,968,734 are rescinded; Provided, That this rescission shall not apply to any emergency relief project funded under section 125 of title 23, United States Code; Provided further, That the term "not under construction" refers to a project for which a construction contract for physical construction has not been awarded by the State, local government, or other contracting authority having responsibility for the project, regardless of whether other obligations such as preliminary engineering or environmental studies have been incurred.

Rescission Proposal No. R94-32A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority..... $ 153,302,040 * (P.L. 103-122)
BUREAU: Federal Highway Administration	Other budgetary resources.. $ 882,726,763 *
Appropriations title and symbol: Highway demonstration projects 69X9972 69X9911	Total budgetary resources... $ 1,036,028,803 *
	Amount proposed for rescission..... $ 174,968,734 *
OMB identification code: 69-9972-0-7-401 69-9911-0-1-401	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Rescission Amount Proposed
Miscellaneous highway trust funds.....	69X9972	69-9972-0-7-401	$ 42,148,000
Miscellaneous appropriations..	69X9911	69-9911-0-1-401	$ 132,820,734
			$ 174,968,734

*JUSTIFICATION: This proposal would rescind all unobligated balances for unauthorized highway demonstration projects that are not under construction. Such highway projects should compete for funds through the normal allocation and planning processes within the Federal-aid highways grants program.

In its reports, GAO has found project completion costs will greatly exceed authorized Federal and State contributions, and that State officials are uncertain where they will find more funding. No Federal provisions allow for canceling or redirecting funds, nor can the States redirect demonstration funds to other transportation projects. The proposed rescission of these funds is in accordance with the recommendations of the Vice President's National Performance Review.

* Revised from the previous report.

Rescission Proposal No. R94-32A

ESTIMATED PROGRAM EFFECT: If the States choose to pursue these projects, the projects must compete for funding at the State level for available State and Federal highway funding allocations.

* OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
338,022	326,357	-11,665	-30,328	-44,325	-39,660	-25,662	-13,997

* Revised from the previous report.

R94-55

DEPARTMENT OF TRANSPORTATION

FEDERAL RAILROAD ADMINISTRATION

Railroad research and development

Of the funds made available under this heading in Public Law 103-122, $17,000,000 are rescinded.

Rescission Proposal No. R94-55

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority..... (P.L. 103-122)	$ 37,613,000
BUREAU: Federal Railroad Administration	Other budgetary resources..	$ 8,549,739
Appropriations title and symbol: Railroad research, and development 69X0745	Total budgetary resources...	$ 46,162,739
	Amount proposed for rescission..... ...	$ 17,000,000
OMB identification code: 69-0745-0-1-401	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____	
Grant program: ☐ Yes ☒ No		
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____	

JUSTIFICATION: This appropriation funds the Railroad research and development (R&D) program to provide science and technology support for rail safety rulemaking and enforcement and to stimulate technological advances in conventional railroads and new high-speed guided ground transportation technology, including magnetic levitation (maglev).

This proposal would rescind $17 million of $20 million appropriated for maglev research and analysis. The National Maglev Initiative has completed its study of the technical and market feasibility of maglev, and the Administration is proposing a new program in FY 1995 in Next Generation High-Speed Rail. In light of this new program, $17 million is not needed in FY 1994 for maglev research and analysis. Remaining balances will be used to initiate a market feasibility study of high-speed ground transportation called for in ISTEA and to continue study of relevant maglev issues.

ESTIMATED PROGRAM EFFECT: The proposed rescission would reduce research in maglev in FY 1994.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
45,289	35,089	-10,200	-3,400	-1,700	-1,700	—	—

R94-56

DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

Grants-in-aid for airports
(Airport and airway trust fund)

Of the available balances under this heading, $488,200,000 are rescinded.

Rescission Proposal No. R94-56

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority..... (P.L. 103-122) $ 1,690,000,000
BUREAU: Federal Aviation Administration	Other budgetary resources.. $ 1,092,409,673
Appropriation title and symbol: Grants-in-aid for airports (Airport and airway trust fund) 69X8106	Total budgetary resources... $ 2,782,409,673
	Amount proposed for rescission..... $ 488,200,000
OMB identification code: 69-8106-0-7-402	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☐ Appropriation ☒ Contract authority ☐ Other _____

JUSTIFICATION: The Airport and Airway Improvement Act of 1982, P.L. 97-248, as amended, provides for airport improvement grants that emphasize capacity development, safety, and security needs. This proposal would rescind a portion of the unobligated contract authority that is not available for obligation due to limitations on obligations in annual appropriation acts.

This rescission assumes that the Congress will enact the necessary reauthorization legislation prior to action on this proposal.

ESTIMATED PROGRAM EFFECT: The proposed rescission would not affect the Federal Aviation Administration's ability to accomplish its mission.

OUTLAY EFFECT: (in thousands of dollars): None.

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
1,850,200	1,850,200	—	—	—	—	—	—

R94-57

DEPARTMENT OF TRANSPORTATION

COAST GUARD

Operating expenses

Of the funds made available under this heading in Public Law 102-368, $5,000,000 are rescinded.

Rescission Proposal No. R94-57

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority..... $ 2,534,520,000 (P.L. 103-122 and 103-139)
BUREAU: Coast Guard	Other budgetary resources.. $ 150,918,420
Appropriation title and symbol: Operating expenses 693//40201 6940201 69X0201	Total budgetary resources... $ 2,685,438,420
	Amount proposed for rescission..... $ 5,000,000
OMB identification code: 69-0201-0-1-999	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☒ Multi-year: September 30, 1994 (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: Funds were provided to this account under a supplemental appropriation (P.L. 102-368) for an additional amount for Operating expenses to cover the incremental costs arising from the consequences of Hurricane Iniki. Actual costs have been below the amount expected to be needed at the time of enactment of the supplemental appropriations, resulting in this rescission proposal.

ESTIMATED PROGRAM EFFECT: The proposed rescission would not affect the U.S. Coast Guard's ability to accomplish its mission.

OUTLAY EFFECT: (in thousands of dollars): None.

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
2,605,716	2,605,716	—	—	—	—	—	—

R94-58

DEPARTMENT OF TRANSPORTATION

COAST GUARD

Acquisition, construction, and improvements

Of the funds made available under this heading in Public Law 102-368, $2,000,000 are rescinded.

Rescission Proposal No. R94-58

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority..... $ 287,500,000 (P.L. 103-122)
BUREAU: Coast Guard	Other budgetary resources.. $ 311,857,402
Appropriations title and symbol: Acquisition, construction, and improvement 692/40240 693/70240 693/50240 692/60240 694/80240 694/60240 691/50240 690/40240 69X0240	Total budgetary resources... $ 599,357,402
OMB identification code: 69-0240-0-1-999	Amount proposed for rescission..... $ 2,000,000
Grant program: ☐ Yes ☒ No	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Type of account or fund: ☐ Annual: September 30, 1994 / September 30, 1995 / September 30, 1996 / September 30, 1997 ☒ Multi-year: September 30, 1998 (expiration dates) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation funds the Acquisition, construction, and improvements (AC&I) account, which provides for the major acquisition, construction, and improvement of vessels, aircraft, information management resources, shore units, and aids-to-navigation. Funds were provided to this account under the FY 1992 Supplemental Appropriations Act (P.L. 102-368) for an additional $11,500,000 to cover the damages from the consequences of Hurricane Andrew and Hurricane Iniki. Actual costs have been below the amount expected to be needed at the time of enactment of the supplemental appropriations, resulting in this proposal to rescind the unobligated balances. The remaining balances would be adequate to carry out the purposes for which they were provided.

ESTIMATED PROGRAM EFFECT: This proposed rescission would not affect the Coast Guard's ability to accomplish its mission.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
316,929	316,929	—	—	—	—	—	—

R94-59

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Rental payments

Of the funds made available under this heading in Public Law 103-122, $1,781,000 are rescinded.

Rescission Proposal No. R94-59

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority..... $ 109,054,000 (P.L. 103-122)
BUREAU: Office of the Secretary	Other budgetary resources.. $ 62,730,700
Appropriations title and symbol: Rental payments 6940117	Total budgetary resources... $ 171,784,700
	Amount proposed for rescission..... $ 1,781,000
OMB identification code: 69-0117-0-1-402	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation funds the Rental payments account to provide payments to the General Services Administration (GSA) for headquarters and field space rental and related services for all modes except for the Maritime Administration. This proposed rescission reflects revised requirements for for GSA space rental and related services.

ESTIMATED PROGRAM EFFECT: This proposed rescission would not affect the Office of the Secretary's ability to accomplish its mission.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
105,584	103,802	-1,781	—	—	—	—	—

R94-60

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Payments to air carriers
(Airport and airway trust fund)

Of the funds made available for essential air services by section 419 of the Federal Aviation Act of 1958, as amended, $10,067,000 are rescinded.

Rescission Proposal No. R94-60

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority..... (49 U.S.C. 1389)	$ 38,600,000
BUREAU: Office of the Secretary	Other budgetary resources..	$ 4,891,320
Appropriations title and symbol: Payments to air carriers (Airport and airway trust fund) 69X8304	Total budgetary resources...	$ 43,491,320
	Amount proposed for rescission.....	$ 10,067,000
OMB identification code: 69-8304-0-7-402	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____	
Grant program: ☐ Yes ☒ No		
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☐ Appropriation ☒ Contract authority ☐ Other _____	

JUSTIFICATION: This account funds the Payments to air carriers account for compensation fixed and determined under section 419 of the Federal Aviation Act of 1958 as amended (49 U.S.C. 1389) payable by the Department of Transportation. The Secretary of Transportation, through powers of delegation and review, now administers the section 419 subsidy program, which was added as part of the Airline Deregulation Act of 1978. Subsidies under this program are paid to airlines--primarily commuter carriers for specified service to designated communities. Beginning in FY 1992, this program has been funded out of the Airport and Airway Trust fund.

In FY 1994, eligibility requirements eliminated communities that are within 70 miles of a large or medium hub airport, or that require a subsidy per passenger rate in excess of $200. Hence, an obligation limitation of $33,423 thousand was enacted for FY 1994. This rescission proposal includes contract authority in excess of the FY 1994 obligation limitation ($5,176 thousand), and unobligated balances of contract authority from prior year appropriations ($4,891 thousand).

ESTIMATED PROGRAM EFFECT: This proposed rescission would not affect the Office of the Secretary's ability to accomplish its mission.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
25,933	25,933	---	---	---	---	---	---

R94-61

DEPARTMENT OF THE TREASURY

FINANCIAL MANAGMENT SERVICE

Biomass energy development

Of the balances available under this heading, $16,275,000 are rescinded.

Rescission Proposal No. R94-61

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Treasury	New budget authority.....	$ 0
BUREAU: Financial Management Service	Other budgetary resources..	$ 32,520,000
Appropriation title and symbol: Biomass energy development 20X0114	Total budgetary resources...	$ 32,520.000
	Amount proposed for rescission.....	$ 16,275.000
OMB identification code: 20-0114-0-1-271	**Legal authority (in addition to sec. 1012):** [/] Antideficiency Act [ ] Other _____	
Grant program: [ ] Yes [X] No		
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____	

JUSTIFICATION: This account finances programs to aid commercial production of alcohol and other fuels from crops and crop waste, timber and timber waste, animal waste, and other forms of biomass and urban waste activities, as authorized under Title II of the Energy Security Act.

This proposal would rescind funds in excess to the needs of the program. Funds are derived from prior year appropriations and revenues credited to the account.

ESTIMATED PROGRAM EFFECT: The proposed rescission would not affect the Department of the Treasury's ability to accomplish its mission.

OUTLAY EFFECT: (in thousands of dollars): None.

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
600	600	---	---	---	--	---	---

Rescission No. 94-33A

Supplemental Report
Report Pursuant to Section 1012 of Public Law 93-344

This report updates Rescission Proposal No. R94-33, which was transmitted to Congress on November 1, 1993.

This revision to a rescission of the General Services Administration, Public Buildings Service, Federal buildings fund increases the amount proposed for rescission from $126,022,000 to $127,691,000. This increase of $1,669,000 reflects a level of savings consistent with completed "time out and review" actions.

R94-33A

GENERAL SERVICES ADMINISTRATION

PUBLIC BUILDINGS SERVICE

Federal buildings fund

Of the funds made available under this heading for construction and repairs and alterations, in Public Law 103-123 and in prior years, $127,691,000 are rescinded.

Rescission Proposal No. R94-33A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: General Services Administration	New budget authority..... * $ 341,105,042 (P. L. 103-123)
BUREAU: Public Buildings Service	Other budgetary resources.. * $ 8,743,564,035
Appropriation title and symbol: Federal buildings fund 47X4542	Total budgetary resources... * $ 9,084,669,077
	Amount proposed for rescission..... * $ 127,691,000
OMB identification code: 47-4542-0-4-804	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: The Federal Buildings Fund finances the activities of the Public Buildings Service, which provides space and services for Federal agencies in a relationship similar to that of landlord and tenant. The proposed rescission would reduce funding to a level consistent with completed "time out and review" actions.

ESTIMATED PROGRAM EFFECT: This proposed rescission would not affect the General Services Administration's ability to accomplish its mission.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
6,288,512	6,235,212	-53,300	-34,497	-18,692	-16,136	-4,866	—

* Revised from the previous report.

R94-62

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Research and development

Of the funds made available under this heading in Public Law 103-124, $88,000,000 are rescinded.

Rescission Proposal No. R94-62

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: National Aeronautics and Space Administration	New budget authority..... $ 7,529,300,000 (P.L. 103-124)
BUREAU:	Other budgetary resources.. $ 619,000,000
Appropriations title and symbol: Research and development 804/50108	Total budgetary resources... $ 8,148,300,000
	Amount proposed for rescission..... $ 88,000,000
OMB identification code: 80-0108-0-1-999	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1995 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for research, development, and operations activities of the National Aeronautics and Space Administration (NASA). This proposal would affect a variety of programs such as the space station, life and microgravity research, aeronautical research and technology, and advanced space communications.

ESTIMATED PROGRAM EFFECT: The ability of NASA to accomplish its mission successfully would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
7,261,879	7,209,043	-52,836	-29,608	-4,249	-1,307	—	—

R94-63

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Space flight, control, and data communications

Of the funds made available under this heading in Public Law 103-124, $32,000,000 are rescinded.

Rescission Proposal No. R94-63

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: National Aeronautics and Space Administration	**New budget authority.....** $ 4,853,500,000 (P.L. 103-124)
BUREAU:	**Other budgetary resources..** $ 225,000,000
Appropriations title and symbol: Space flight, control, and data communications 804/50105	**Total budgetary resources...** $ 5,078,500,000
	Amount proposed for rescission..... $ 32,000,000
OMB identification code: 80-0105-0-1-252	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1995 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for production, operations, and support activities for the Space Transportation System, which includes the Space Shuttle and expendable launch vehicles; and for tracking, telemetry, command, and data acquisition support of all NASA flight projects.

This proposal would affect a variety of programs such as expendable launch vehicle upgrades, single engine centaur, and space communications operations.

ESTIMATED PROGRAM EFFECT: The ability of NASA to accomplish its mission successfully would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
4,764,036	4,746,966	-17,070	-11,001	-2,529	-861	-539	—

R94-64

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Construction of facilities

Of the funds made available under this heading in Public Law 103-124, $25,000,000 are rescinded.

Rescission Proposal No. R94-64

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: National Aeronautics and Space Administration	New budget authority..... $ 517,700,000 (P.L. 103-124)
BUREAU:	Other budgetary resources.. $ 324,557,878
Appropriations title and symbol: Construction of facilities 804/60107 80X0107	Total budgetary resources... $ 842,257,878
	Amount proposed for rescission..... $ 25,000,000
OMB identification code: 80-0107-0-1-999	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1996 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for contractual services for the design, repair, rehabilitation, and modification of facilities; the construction of new facilities; the purchase of land and equipment related to construction and modification; environmental compliance activities agency-wide; and advance design related to future facilities.

ESTIMATED PROGRAM EFFECT: This proposal would affect a variety of construction activities, including aeronautical research and technology facilities; and facility repair, rehabilitation, modification, and planning.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
540,846	536,196	-4,650	-12,975	-3,750	-2,375	-1,250	—

R94-65

BOARD FOR INTERNATIONAL BROADCASTING

Israel radio relay station

Of the balances available under this heading, $1,700,000 are rescinded.

Rescission Proposal No. R94-65

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Board for International Broadcasting	New budget authority..... $ ____
BUREAU:	Other budgetary resources.. $ 4,492,132
Appropriations title and symbol: Israel relay station 95X1146	Total budgetary resources... $ 4,492,132
	Amount proposed for rescission..... $ 1,700,000
OMB identification code: 95-1146-0-1-154	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other ____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: ____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other ____

JUSTIFICATION: Funds in this account were provided for the construction of a new radio relay station in Israel. The joint Board for International Broadcasting and Voice of America transmitter project in Israel has been cancelled, and $180,000,000 was rescinded in FY 1993. The proposed rescission is derived from remaining balances on the project not now needed for administrative expenses and termination costs.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
10,895	9,195	-1,700	—	—	—	—	—

R94-66

NATIONAL SCIENCE FOUNDATION

Academic research infrastructure

Of the funds made available under this heading in Public Law 103-124, $10,000,000 are rescinded.

Rescission Proposal No. R94-66

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: National Science Foundation	New budget authority..... $ 110,000,000 (P.L. 103-124)
BUREAU:	Other budgetary resources.. $ 619,955
Appropriations title and symbol: Academic research facilities and instrumentation 494/50150	Total budgetary resources... $ 110,619,955
	Amount proposed for rescission..... $ 10,000,000
OMB identification code: 49-0150-0-1-251	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1995 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This account funds the activities of the National Science Foundation (NSF) Academic research facilities and instrumentation program. It is designed to improve the research infrastructure by funding, on a cost-sharing basis, the development and acquisition of major instruments and the repair and renovation of academic research facilities.

This proposed rescission would affect facilities and instrumentation improvements, primarily at universities. Fewer grant proposals would be funded.

ESTIMATED PROGRAM EFFECT: The ability of the NSF to accomplish its mission successfully would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
96,788	93,788	-3,000	-4,000	-3,000	—	—	—

R94-67

NUCLEAR REGULATORY COMMISSION

Salaries and expenses

Of the funds made available under this heading in Public Law 103-126, $12,700,000 are rescinded.

Rescission Proposal No. R94-67

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Nuclear Regulatory Commission	New budget authority..... $ 520,900,000 (P.L. 103-126)
BUREAU:	Other budgetary resources.. $ 69,680,220
Appropriations title and symbol: Salaries and expenses 31X0200	Total budgetary resources... $ 590,580,220
	Amount proposed for rescission..... $ 12,700,000
OMB identification code: 31-0200-0-1-276	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation funds the Nuclear Regulatory Commission (NRC) Salaries and expenses account. This account provides for:

1) Reactor safety and safeguards regulation;
2) Reactor special and independent reviews, investigations, and enforcement;
3) Reactor safety research;
4) Nuclear material and low-level waste safety and safeguards regulation; and
5) High-level nuclear waste regulation.

This proposed rescission reflects savings in the various projects due to actions being taken by the Commission to streamline the agency and to reduce the cost of operations.

ESTIMATED PROGRAM EFFECT: The ability of the Commission to accomplish its mission successfully would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1994 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
529,029	519,504	-9,525	-3,175	—	—	—	—

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Note: The list of Public Laws for the first session of the 103d Congress has been completed and will resume when bills are enacted into law during the second session of the 103d Congress, which convenes on January 25, 1994.

A cumulative list of Public Laws for the first session of the 103d Congress was published in Part IV of the Federal Register on January 3, 1994.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
5 Parts:			
1–699	(869–019–00004–6)	21.00	Jan. 1, 1993
700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

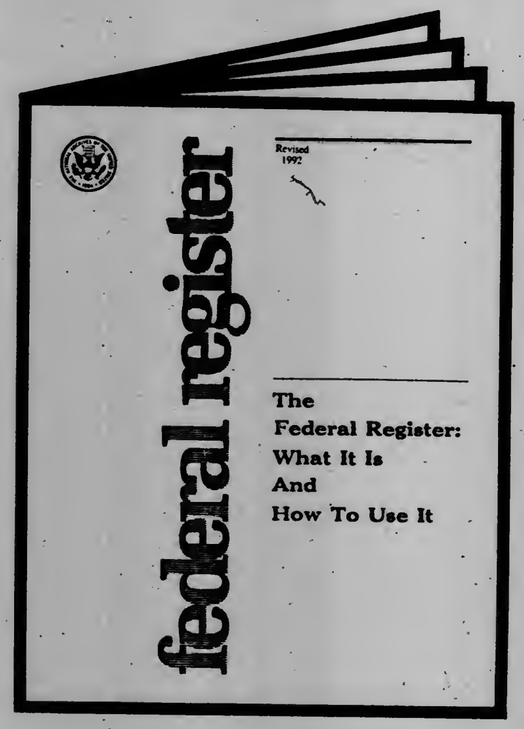
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[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1944

Technical and Supervisory Assistance Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending the Agency's policies and procedures governing the administering of Technical and Supervisory Assistance (TSA) Grants to expand the definition of organizations eligible to receive grants. This action is necessary to comply with Section 525(a) of the Housing Act of 1949, 42 U.S.C. 1490e(a), which provides funds to eligible applicants to conduct programs of TSA for low-income rural residents to obtain and/or maintain occupancy of adequate housing. The intended effect of this action is to update FmHA regulations to incorporate language which expands the definition of organizations eligible to receive a TSA grant.

EFFECTIVE DATE: February 15, 1994.

FOR FURTHER INFORMATION CONTACT: Walter B. Patton, Senior Loan Specialist, Single Family Housing Processing Division, FmHA, USDA, room 5338, South Agriculture Building, Washington, DC 20250, Telephone: (202) 720–0099.

SUPPLEMENTARY INFORMATION: This action is not subject to the provisions of Executive Order 12866 since it involves only internal Agency management. It is the policy of this Department to publish, for comments, rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is clearly defined in the law; therefore, it has been determined that this change should be implemented as a final rule. This action is not expected to affect the budget outlay or affect more than one Agency or be controversial. The net effect is to comply with Section 525(a) of the Housing Act of 1949 as amended.

Intergovernmental Consultation

This activity is not listed in the Catalog of Federal Domestic Assistance but is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not needed.

Civil Justice Reform

This document has been reviewed in accordance with EO 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court Systems in that it meets all applicable standards provided in section 2 of the EO.

Programs Affected

The Catalog of Federal Domestic Assistance programs affected by this action are:

10.405 Farm Labor Housing Loans and Grants
10.410 Low-Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.433 Housing Preservation Grants

Background

Presently, FmHA has defined only those organizations that are (1) A State or political subdivision or public nonprofit corporation (including Indian Tribes or tribal corporations), or (2) A private nonprofit corporation with local representation from the area being served that is owned and controlled by private persons or interests and is organized and operated by private persons or interests for purposes other than making gains or profits for the corporation and is legally precluded from distributing any gains or profits to its members as authorized to receive and administer TSA funds. However, Section 525(a) of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to make grants with public or private nonprofit corporations, agencies, institutions, organizations, Indian tribes, and other associations approved by him, to pay part or all of the cost of developing, conducting, administering or coordinating effective and comprehensive programs of Technical and Supervisory Assistance which will aid needy low-income individuals and families in benefiting from Federal, State, and local housing programs in rural areas.

List of Subjects in 7 CFR Part 1944

Grant programs—Housing and community development, Nonprofit organizations, Reporting requirements, Rural Housing.

Therefore, part 1944, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1980; 42 U.S.C. 1490e; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart K—Technical and Supervisory Assistance Grants

2. Section 1944.506 is amended by revising paragraph (e)(1) to read as follows:

§ 1944.506 Definitions.

* * * * *

(e) * * *

(1) Public or private nonprofit corporations, agencies, institutions, Indian tribes, and other associations.

* * * * *

Dated: February 1, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–3118 Filed 2–14–94; 8:45 am]
BILLING CODE 3410–07–U

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AB34

Notice of Mutual-to-Stock Conversions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule with request for comments.

SUMMARY: The interim rule requires FDIC-insured state-chartered savings banks that are not members of the Federal Reserve System (State Savings Banks) that apply to their applicable state banking regulator to convert from the mutual to stock form of ownership to provide the FDIC with a notice of the proposed conversion and a copy of the application and related disclosure materials. The interim rule also requires that State Savings Banks not finalize a mutual-to-stock conversion until either they receive a notice of the FDIC's intention not to object to the proposed conversion or 60 days pass after a complete notice and copy of the application materials are filed with the FDIC. A conversion may not be completed if the FDIC objects to the proposed conversion.

The intended effect of the interim rule is to provide the FDIC with the opportunity to review proposed mutual-to-stock conversions of FDIC-regulated mutual savings banks to determine whether the proposed conversion would engender concerns about the safety and soundness of the institution, the institution's compliance with applicable law, and/or insider abuse.

DATES: Effective date: The interim rule is effective February 15, 1994. Written comments must be received by the FDIC on or before March 17, 1994.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in room 7118, 550 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Associate Director, Division of Supervision (202/898–6918), Garfield Gimber, III, Examination Specialist, Division of Supervision (202/898–6913), Claude A. Rollin, Senior Counsel, Legal Division (202/898–3985) or Joseph A. DiNuzzo, Counsel, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this interim final rule has been submitted to the Office of Management and Budget (OMB) for review and approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments regarding the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to the Office of Management and Budget, Paperwork Reduction Project (3064–AB34), Washington, DC 20503, with copies of such comments sent to Steven F. Hanft, Assistant Executive Secretary (Administration), room F–400, FDIC, 550 17th St. NW., Washington, DC 20429.

The collection of information in this interim final rule is found in § 303.15 and takes the form of copies of preexisting materials and other materials related to a State Savings Bank's proposed conversion from the mutual to stock form of ownership. The information will be used to enable the FDIC to identify and address issues involved in the proposed conversion relating to the safety and soundness of the bank, any abusive management practices and potential violations of applicable law.

The estimated annual reporting burden for the collection of information requirement in this interim final rule is summarized as follows:

Number of Respondents: 50.
Number of Responses per Respondent: 1.
Total Annual Responses: 50.
Hours per Response: 2.
Total Annual Burden Hours: 100.

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required in connection with the adoption of this interim rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Background

The Proposed Policy Statement

Recently, the FDIC issued for public comment a proposed policy statement on the conversions of State Savings Banks from mutual to stock ownership (Proposed Policy Statement). 59 FR 4712 (February 1, 1994). As explained in the proposal, in recent years a number of mutually owned State Savings Banks have converted to stockholder-owned State Savings Banks. In some cases, the conversion results in an acquisition by or merger into another institution (generally known as merger/conversions), with depositors/members obtaining the right to purchase stock in the acquiring institution and not the converting savings bank. Many of the institutions that converted from mutual to stock form first converted from federal or state mutual savings associations regulated by the Office of Thrift Supervision (OTS) to State Savings Banks.

One consequence of these conversions to State Savings Banks is that the FDIC replaces the OTS as the institution's primary federal regulator. The mutual-to-stock conversion process is subject to the rules and protections of state law.[1] Conversion rules under state law are not identical to and in some cases are less stringent than OTS regulations. The absence of consistent treatment under state laws or some federal oversight over State Savings Bank conversions to stock form presents an opportunity for inconsistency and abuse. In addition, the FDIC understands that the OTS is in the process of reviewing the adequacy of its own regulations and policies.

The areas of particular concern for potential abuse in conversions are: (1) Properly appraising the institution to be sold; (2) Pricing the stock sold in the conversion; (3) Apportioning the stock subscription rights; (4) Disclosure of information needed to make an informed investment decision; and (5) Compensation and benefits provided to insiders.

The improper valuation of the institution and/or under-pricing of conversion stock, among other things, may unjustly enrich the purchasers, increase the temptation by insiders to acquire more shares than they are fairly entitled to, and deny the institution the additional capital it should receive to protect depositors and the insurance fund. The over-pricing of conversion stock, among other things, may result in poor investment decisions by depositors/members who may lack investment expertise.

In some conversion transactions insiders may appear to have received (and, in some cases, have received) preferential treatment over the interests of depositors/members. In addition, mutual savings banks that convert to stock form undertake a major restructuring that possibly can lead to significant changes in the nature or volume of business conducted. In the recent past, some institutions, in leveraging capital raised through a conversion and reaching for a return on equity, have vigorously competed for loans and liberalized underwriting standards—activities which led to loan losses that in many instances depleted more capital than was raised through the mutual-to-stock conversion and, in some cases during the past ten years, resulted in failure of the converted thrift.

The general purpose of the Proposed Policy Statement is to solicit public comment on the issues involved in mutual-to-stock conversions and whether and how the FDIC should regulate this activity.

Need for the Interim Rule

The Board of Directors of the FDIC (Board) has subsequently determined that during the pendency of the Proposed Policy Statement it is necessary for the FDIC to review applications filed by State Savings Banks with their respective state banking regulator and any other applicable state and federal banking and/or securities regulators to determine whether the proposed conversions contain any safety and soundness issues and/or issues of insider abuse that reflect on the integrity and competence of the management of the converting institution. The Board's concerns are caused by several recent and pending mutual-to-stock conversions of State Savings Banks that (as discussed below) have given rise to questions related to management abuse and excessive enrichment of insiders, fairness to depositors and general safety and soundness concerns. These conversions have been and currently are the subject of congressional hearings and numerous news articles and reports. The FDIC also has received (and continues to receive) direct complaints from depositors of State Savings Banks about unfair treatment and insider abuse in mutual-to-stock conversions.

On January 26, 1994, Senator Riegle (the Chairman of the Senate Banking Committee) and Senator D'Amato (the ranking minority member of the Senate Banking Committee) introduced a bill (S. 1801, the "Mutual Depository Institution Conversion Protection Act of 1994") to "combat abuses by management and insiders" in mutual-to-stock conversions of depository institutions. In his statement accompanying the introduction of the bill, Senator Riegle noted that, "[t]his self-dealing should stop, and stop now. These outrageous conversions are not victimless crimes. To the extent that management and insiders are skimming off the net worth of the institution through a conversion, they are doing so at the expense of the institution and its account holders. Significantly, such transactions also siphon capital that ultimately protects the deposit insurance system".

In January 1994, the Financial Institutions Subcommittee of the House Banking Committee held two hearings on mutual-to-stock conversions. At the first hearing, held in Winston-Salem, North Carolina, several depositors of recently converted State Savings Banks testified. One group of depositors characterized the conversion of their bank as providing "astronomical benefits" to officers and directors of the bank and accused such insiders of treating the assets of the bank as their "own personal property". They also contended that "fraudulent intent" had been involved in determining the value of the institution. A depositor of another converted State Savings Bank stated that he has done business with the bank since 1951 and had retirement deposits in the bank over the insured limit. He said that he "will receive no compensation for my ownership interest in [the bank]. On the other hand, the officers and directors—who are not at risk and have no ownership interest by reason of their offices—will be paid millions of dollars * * * [S]omebody who is not at risk is getting rich—and quite rich." A depositor of another recently converted State Savings Bank stated at the hearing that the applicable state mutual-to-stock conversion rules are a "legalized formula to abscond with the assets of a mutual savings bank".

A spokesman for the Consumer Federation of America testified at the Subcommittee's second hearing, held in Washington, D.C. He stated that "[t]he Banking Committee can take justifiable pride in the work it performed in 1989 to reform the regulation of the savings and loan industry * * * [b]ut the job is not complete. One area of abuse—the conversion of mutual institutions into stock companies—was left untouched by reforms and this oversight—however accidental—has turned into a wonderful, fur-lined play pen for S&L insiders, conversion law firms and stock manipulating Wall Street fast-buck artists. And, once again, it is the depositor-consumer who is left out in the cold". He also emphasized the immediacy of the situation in noting that "[w]e are in the middle of a feeding frenzy".

A law school professor also submitted a written statement to the Subcommittee. He wrote that "[b]y converting their institutions to the stock form of ownership, and granting themselves generous stock and option awards, trustees and managers can make millions of dollars in conversions. While the conversion form is beneficial, because it will infuse new capital and subject these institutions to market discipline, the decision about whether to convert is left solely in the hands of incumbent management. It is not uncommon for employees and trustees to own as much as 30 percent of the stock after the offering and the exercise of stock options. The stock is free, and—by pricing the options very low, with the help of cooperative regulators and appraisal firms—management can buy stock options at the offering price, secure in the knowledge that pervasive underpricing will enable them to make millions when share prices adjust to true market value".

Moreover, the primary federal regulator of state-chartered and federally chartered savings and loan associations has felt the need to take immediate action to stop abuses. On January 31, 1994, the OTS suspended the acceptance of applications involving merger conversions of mutual savings associations under its supervision. The press release announcing the moratorium noted that "[the] OTS has grown increasingly troubled over the apparent advantages management of the mutual and the acquirer have in a merger conversion to the detriment of the depositors of the mutual. The moratorium * * * will provide an opportunity for the OTS to re-examine the conversion process".

In light of these frequent expressions of public and governmental concern, and the numerous reports of abusive insider practices, the Board has determined that, until the FDIC completes the "rulemaking" process in relation to the Proposed Policy Statement, there is a need to review all pending and new mutual-to-stock conversion applications. The Board believes that, without the immediate implementation of the interim rule, additional conversions will be completed that may entail abusive management action and unsafe and unsound practices. In order to properly fulfill its supervisory role over State Savings Banks, it is necessary that the FDIC have an early opportunity to review banks' conversion plans. As discussed below, if the FDIC identifies a safety-and-soundness concern, a breach of fiduciary duty by an institution's management or possible violation under applicable law, the FDIC will issue a notice of objection which, among other things, will advise the institution that the conversion shall

[1] Some federal laws may still apply, such as the anti-fraud provisions of the federal securities law. E.g., 15 U.S.C. 78j.

not be consummated unless and until the FDIC rescinds the letter of objection. The enforcement actions available to the FDIC are discussed below.

For the above-noted reasons, the Board of Directors has determined that the notice and public participation that are ordinarily required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date. Nevertheless, the Board desires to have the benefit of public comment before adoption of a permanent final rule on this subject, and so invites interested persons to submit comments during a 30-day comment period. In adopting a final regulation, the Board will make such revisions to the interim rule as may be appropriate based on the comments received on the interim rule and the Proposed Policy Statement.

In the past, some State Savings Banks have provided the FDIC with copies of conversion documentation and application materials. This process has been voluntary, inconsistent and, thus, undependable. The interim rule requires State Savings Banks to provide such materials to the FDIC. As discussed below, the FDIC intends to review the conversion documentation and application materials to determine whether there are any issues involving the continued safe-and-sound operation of the bank, whether the proposal contains any potential abuses by management and whether the transaction involves any potential violation of applicable law. The FDIC's authority under section 8 of the FDI Act (12 U.S.C. 1818) includes, among other things, the ability to take action against a State Savings Bank and/or its management that is engaged, or about to engage, in an unsafe or unsound practice in conducting the business of the bank.

In order to determine whether a State Savings Bank, in the course of its proposed mutual-to-stock conversion, is about to engage in an activity with safety and soundness implications, the FDIC must be aware of the details of the proposed conversion at an early date; for example, it is important that the FDIC know the bank's business plan for post-conversion operation, growth and investment of any newly injected capital. A mutual-to-stock conversion can be viewed as a material change in the operation of the institution for two reasons. First, substantially increasing the capitalization from the sale of stock can lead to new and additional risks in investing the funds. Secondly, management becomes susceptible to market discipline for the first time with shareholders who demand and expect a reasonable return on their investment—factors which also can lead to additional risks in investing funds.

Because of the safety and soundness concerns inherent in the potential for new risks, a comprehensive and realistic business plan is needed for post conversion operations. That information typically is provided in conversion applications required by the state regulators. In the past, certain State Savings Banks that raised substantial capital in mutual-to-stock conversions either failed or became financially troubled because of imprudent use of funds raised through the sale of stock. The Board believes it is necessary for the FDIC to obtain information, as soon as possible, on an institution's intended use of funds generated by the conversion.

In one proposed conversion transaction, a state mutual savings bank applied to convert to stock form via a mutual holding company reorganization in which all the non-holding company shares would be obtained only by bank insiders. In that situation, not only would the depositors be denied the opportunity to purchase any shares, but the institution reportedly would end up with less capital as a result of the conversion. This would result because the proceeds of the stock issuance would be less than the cost of the transaction. This particular contemplated transaction not only appears to be unfair to depositors but also raises safety and soundness concerns since capitalization would decline.

Section 8(e) of the FDI Act also empowers the FDIC to bring an enforcement action against bank insiders who have committed or are engaged in any act, omission or practice that constitutes a breach of fiduciary duty. In a recent highly publicized case, the Superintendent of Banks of the State of New York (Superintendent) found that a bank's board of trustees breached its fiduciary duty by failing to assure themselves that the bank was properly valued prior to the initiation of the proxy solicitation process.[2] Specifically, the Superintendent determined that the board of trustees did not, prior to the solicitation of proxies: "(1) Inform or seek to inform itself about the factors that would be significant in valuing the Bank; (ii) inform or seek to inform itself about the methods by which the appraiser determined the value of the Bank; (iii) seek or receive any in-depth analysis of the Appraisal". Consequently, the Superintendent found that the trustees violated a provision of New York Banking Law requiring them to exercise a duty of care to ensure the fairness of the conversion by informing themselves about the appraisal and exercising their judgment to determine the reasonableness of the appraisal.

The Superintendent also determined that the adequacy of certain disclosures in the original proxy statement issued by the bank was questionable. For example, the Superintendent found that the proxy statement contained no disclosures regarding another bank's interest in a merger conversion transaction, the trustees' response to that proposed merger and the reasons for the trustees' response. The Superintendent concluded that "failure to provide depositors with such information about alternate proposals in the Proxy could deprive depositors of the information necessary to evaluate the Trustee's decision to convert, and therefore was misleading". The Superintendent also found that disclosures in the proxy statement concerning certain stock awards to management and the trustees failed to state the actual dollar value of those benefits and thus were inadequate. In addition, the Superintendent found that the proxy materials did not contain an adequate discussion of the reasons for the conversion and that depositors should have been provided with all of the material factors which led to the trustees' decision to pursue the conversion transaction.

Finally, the Superintendent sought and obtained a "substantial reduction in the stock-based compensation awarded to management and the trustees in connection with the conversion and cancellation of all stock subscriptions at the initial offering price by such individuals and related parties". As further stated in that Order, those modifications served "to reduce the opportunities for self-enrichment that could influence the Board's review of the valuation of the Bank".

In this situation, the Superintendent interceded to ensure that the bank's trustees considered and reviewed the reasonableness of the bank's appraisal, provided adequate disclosure to the depositors via a supplemental proxy statement and limited the stock-based compensation awarded to management and the trustees in connection with the conversion transaction. Although state regulation worked in this case to prevent insider windfalls, the FDIC cannot assume that such intervention will occur in every state and in every conversion transaction involving possible insider abuses.

[2] See, Order Pursuant to Section 39 of the New York Banking Law—In the Matter of The Green Point Savings Bank, Page 18.

The duties and obligations of trustees and officers of mutual savings banks, as illustrated in the foregoing case, are identical to the responsibilities the FDIC has historically enunciated and enforced concerning directors and officers of commercial banks.[3] The two principal duties of care and loyalty that directors and officers of commercial banks must exercise on behalf of the institution and its constituencies (*i.e.*, depositors, creditors and shareholders) also obligate trustees of depositor-owned mutual savings banks. Both duties have long antecedents in the common law of corporations and financial institutions.[4]

Trustees (as well as officers) of mutual savings institutions are held to the same standard of care and loyalty as directors and officers of commercial banks. Thus the trustees must fulfill their duty of loyalty to the institution by administering its affairs with the utmost candor, personal honesty and integrity. They are prohibited from advancing their own personal or business interests or those of others at the expense of the bank. This general fiduciary duty has been frequently interpreted to include an element of fairness and good faith which, in the context of mutual-to-stock conversions, affords protection to the depositors/owners of mutual savings banks. Through this interim rule, the FDIC seeks to protect these depositor/owners in a consistent manner.

The FDIC, through the interim rule, also requires the trustees of mutual savings banks to adhere to the same standards of loyalty and care that are required of directors and officers of commercial banks in order to prevent insider abuse. Publicized insider abuse (and the lawsuits that such abuses may engender) may have a sufficiently significant impact upon the reputation of a bank to affect its continued viability and, thus, its safety and soundness, resulting in a regulatory violation.

In addition, section 39 of the FDI Act (12 U.S.C. 1831p–1(c)) provides that excessive compensation, or compensation that could lead to a material financial loss for an institution, is an unsafe and unsound practice.[5] As noted above, excessive profits to insiders is a troubling aspect of some recent State Savings Bank conversions to stock form.

[3] See e.g., Statement Concerning the Responsibilities of Bank Directors and Officers (FDIC Legal Division, December 3, 1992); Pocket Guide for Directors (FDIC 1988).

[4] *Greenfield Savings Bank* v. *Abercrombie*, 21 Mass. 252, 97 N.E. 897, 39 L.R.A.n.s. 173 (1912) provides a detailed discussion of liability of trustees of a savings bank.

[5] Proposed regulations on section 39 of the FDI Act have been published. 58 FR 60819 (November 18, 1993).

Explanation of the Interim Rule

The interim rule adds a new section to part 303 of the FDIC's regulations (12 CFR 303.15) prohibiting State Savings Banks from converting to stock form without complying with the requirements of the section. The interim rule requires State Savings Banks that propose to convert to stock ownership to file with the FDIC a notice of intent to convert to stock form consisting of a description of the proposed conversion accompanied by a copy of all documentation and application materials filed with the applicable state and federal regulators. The notice may be in letter form and must be provided to the FDIC (along with copies of the application materials) at the same time the application materials are filed with the institution's primary state regulator.

State Savings Banks that already have filed conversion applications and disclosure materials with the applicable state and federal banking and/or securities regulators (or otherwise have initiated a proposed mutual to stock conversion) prior to the effective date of the interim rule should contact their applicable FDIC Regional Office as soon as possible and provide that office with the conversion notice and application and disclosure materials as soon as practicable. The FDIC intends to review such materials expeditiously so as not to interfere with the completion of proposed conversions to which the FDIC would not object.

The FDIC will review all conversion materials with a special interest in: The use of the proceeds from the sale of stock, as described in the business plan; the adequacy of the disclosure materials; the participation of depositors in approving the transaction; the form of the proxy statement required for the vote of the depositors/members on the conversion[6]; any increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be obtained by officers and directors/trustees of the bank in connection with the conversion; the adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold; the process by which the bank's trustees approved the appraisal, the pricing of the stock and the compensation arrangements for insiders; the nature and apportionment of stock subscription rights; and the extent of any existing and planned contributions to or investments in the community. In a merger/conversion, the FDIC will pay particular attention to the value offered to depositors of the converting institution and the compensation packages offered to management.

The FDIC generally expects proposed conversions to substantially satisfy the standards found in the mutual-to-stock conversions regulations of the OTS (12 CFR part 563b). Any variance from those regulations will be closely scrutinized. Compliance with OTS requirements will not, however, necessarily be sufficient for FDIC regulatory purposes.

In imposing the requirements of the interim rule the Board does not intend to discourage State Savings Banks from converting to stock form for legitimate business purposes. The FDIC recognizes that stock conversions can be very effective and beneficial in raising capital, particularly for banks whose capital does not meet regulatory standards. In particular, the FDIC does not intend to impede the completion of supervisory conversions, which entail the capitalization of undercapitalized institutions and thereby minimize costs to the FDIC insurance funds. In such situations, the FDIC intends to act as quickly as reasonable in reviewing the proposed conversion materials and might not object to a conversion transaction that does not come within the parameters of the OTS' regulations, provided that the transaction likely would prevent a loss to the applicable deposit insurance fund.

Under the interim rule, a bank's notice to the FDIC will not be deemed complete until the State Savings Bank provides the materials required by the interim rule, including any materials specifically requested by the FDIC after the bank's initial submission. The FDIC will notify the institution when the notice is complete. The FDIC will issue to the converting bank a notice of intent not to object to the proposed conversion, if the FDIC determines that the proposed conversion would not pose a risk to the safety and soundness of the bank, violate any law or regulation or present a breach of fiduciary duty. Such notice of non-objection shall be provided within 60

[6] One issue would be whether the applicable state law and/or the plan of conversion requires a special proxy for the conversion or whether management expects to use an existing general proxy to vote for the depositor/member on the conversion.

days after the FDIC receives a complete notice of the proposed conversion and a copy of all documentation and application materials. If the FDIC does not provide a non-objection letter within 60 days after the FDIC receives a complete notice of the proposed conversion, the bank may consummate the conversion; however, the FDIC has the discretion to extend the initial 60-day period an additional 60 days.

In situations where the FDIC identifies a safety and concern, violation of any law or regulation or breach of fiduciary duty, the FDIC will issue to the institution a letter of objection to the proposed conversion. Under the interim rule, the State Savings Bank may not consummate the conversion until the FDIC has rescinded such a letter. The FDIC intends to use its administrative authority, if necessary, to correct the concerns expressed in the letter of objection and to enforce compliance with the interim rule.

Violations of regulations can result in, among other things, the FDIC's issuance of a cease and desist order and/or temporary cease and desist order under 12 U.S.C. 1818(b) and/or (c). The order could not only prohibit conduct, but also require affirmative action. In addition, the FDIC could remove and/or prohibit a party from participating in the conduct of the affairs of a bank under section 8(e) of the FDI Act (12 U.S.C. 1818(e)). Moreover, anyone involved in a conversion transaction, not just the officers, directors and employees of the bank, could be subject to a cease and desist order under section 8(b) and/or (c) of the FDI Act (12 U.S.C. 1818(b), (c)), or a removal and prohibition order under section 8(e) of the FDI Act (12 U.S.C. 1818(e)). In addition, the FDIC could impose civil money penalties under section 8(i) of the FDI Act (12 U.S.C. 1818(i)). The FDIC also could terminate the deposit insurance of the bank under section 8(a)(2) of the FDI Act (12 U.S.C. 1818(a)(2)). Finally, the FDIC also could issue a directive based on noncompliance with section 39 of the FDI Act.

Request for Public Comment

The FDIC is issuing this interim rule in response to the immediate need to review proposed mutual-to-stock conversions of State Savings Banks. The FDIC is, however, hereby requesting comment during a 30-day comment period on all aspects of the interim rule.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings associations.

For the reasons set out in the preamble, part 303 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(a)(2)(b), 1817(j), 1818, 1819 ("Seventh" "Eighth" and "Tenth"), 1828, 1831e, 1831o, 1831p-1(a); 15 U.S.C. 1607.

2. A new § 303.15 is added to read as follows:

§ 303.15 Mutual-to-stock conversions of mutually owned state-chartered savings banks.

(a) *Requirement for mutual-to-stock conversion.* An insured state-chartered mutually owned savings bank shall not convert to stock form, except as provided for in this section.

(b) *Prior notice requirement.* An insured state-chartered mutually owned savings bank that proposes to convert from mutual to stock form shall file with the FDIC a notice of intent to convert to stock form and copies of all documents filed with state and federal banking and/or securities regulators in connection with the proposed conversion. An institution that is in the process of converting to stock form that has filed a proposed stock conversion application with the applicable state and federal regulators (or otherwise has initiated a stock conversion) prior to the effective date of this section shall file the required materials with the FDIC as soon as practicable. An insured mutual savings bank chartered by a state that does not require the filing of application materials to convert from mutual to stock form that proposes to convert to the stock form shall notify the FDIC of the proposed conversion and provide the materials requested by the FDIC.

(c) *Content and filing of notice*—(1) *Content of notice.* The notice required to be filed under paragraph (b) of this section shall provide a description of the proposed conversion and include a copy of all notices or applications concerning the proposed conversion, including all attachments or appendices thereto, that have been filed with any state and federal banking and/or securities regulators. Copies of all agreements entered into as part of the mutual-to-stock conversion between the institution, its officers, directors/trustees and any other institution and/or its successors also must be provided.

(2) *Filing of notice.* Notices shall be filed with the regional director (Division of Supervision) in the region in which the institution seeking to convert is headquartered at the same time as the conversion application materials are filed with the institution's primary state regulator.

(d) *Review by FDIC.* (1) The FDIC shall review the materials submitted by the institution seeking to convert from mutual to stock form. The FDIC, in its discretion, may request any additional information it deems necessary to evaluate the proposed conversion and the institution shall provide such information to the FDIC expeditiously. Among the factors to be reviewed by the FDIC are:

(i) The use of the proceeds from the sale of stock, as described in the business plan;

(ii) The adequacy of the disclosure materials;

(iii) The participation of depositors in approving the transaction;

(iv) The form of the proxy statement required for the vote of the depositors/members on the conversion;

(v) Any increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be obtained by officers and directors/trustees of the bank in connection with the conversion;

(vi) The adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold;

(vii) The process by which the bank's trustees approved the appraisal, the pricing of the stock and the compensation arrangements for insiders;

(viii) The nature and apportionment of stock subscription rights; and

(ix) The extent of any existing and planned contributions to or investments in the community.

(2) In reviewing the materials required to be submitted under this section, the FDIC will take into account the extent to which the proposed conversion conforms with the various provisions of the mutual-to-stock conversion regulations of the Office of Thrift Supervision (12 CFR Part 563b), as currently in effect at the time the FDIC reviews the required materials related to the proposed conversion. Any non-conformity with those provisions will be closely scrutinized. Conformity with the OTS requirements, however, will not be sufficient for FDIC regulatory purposes if the FDIC determines that the proposed conversion would pose a risk to the institution's safety and soundness, violate any law or regulation or present a breach of fiduciary duty.

(e) *Notification of completed filing of materials.* The FDIC shall notify the institution when all the required materials related to the proposed conversion have been filed with the FDIC and the notice is thereby complete for purposes of computing the time periods designated in paragraphs (f) and (h) of this section.

(f) *Notice of intent not to object.* If the FDIC determines, in its discretion, that the proposed conversion would not pose a risk to the institution's safety and soundness, violate any law or regulation or present a breach of fiduciary duty, then the FDIC shall issue to the bank seeking to convert, within 60 days of receipt of a complete notice of proposed conversion, a notice of intent not to object to the proposed conversion. The FDIC may, in its discretion, extend by written notice to the institution the initial 60-day period by an additional 60 days.

(g) *Letter of objection.* If the FDIC determines, in its discretion, that the proposed conversion poses a risk to the institution's safety and soundness, violates any law or regulation or presents a breach of fiduciary duty, then the FDIC shall issue a letter to the institution stating its objection(s) to the proposed conversion and advising the institution that the conversion shall not be consummated until such letter is rescinded. A copy of the letter of objection shall be furnished to the institution's primary state regulator and any other state or federal banking and/or securities regulator involved in the conversion. The letter of objection shall advise the institution of its right to petition the FDIC for reconsideration under § 303.6(e) of the FDIC's regulations. Such action shall not, in any way, prohibit the FDIC from taking any other action(s) that it may deem necessary.

(h) *Consummation of the conversion.* An institution may consummate the proposed conversion upon either:

(1) the receipt of a notice of intent not to object; or

(2) the expiration of the 60-day period following acceptance of a complete notice by the FDIC, unless the FDIC issues a notice of objection before the end of that period and, in which case, the conversion shall not be consummated until such letter is rescinded. The FDIC may, in its discretion, extend by written notice to the institution the initial 60-day period by an additional 60 days.

(i) *Delegation of authority.* The authority to issue notices of intent not to object or letters of objection, to rescind such letters, to determine and to issue letters of non-objection, to determine the adequacy of the information submitted, to determine when the time periods prescribed in this section begin to run and whether to extend the time periods under paragraphs (f) and (h) of this section, and to notify institutions of the completion of the filing of the required materials is delegated to the Executive Director of Supervision and Resolutions, the Director of the Division of Supervision, and, where confirmed in writing by the Director of Supervision, to an associate director of the Division of Supervision or the regional director(s) (Division of Supervision) or deputy regional director(s) (Division of Supervision).

By the order of the Board of Directors.

Dated at Washington, D.C., this 8th day of February, 1994.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–3527 Filed 2–14–94; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–90; Special; Conditions No. 25–ANM–79]

Special Conditions; Cessna Aircraft Company, Model 560 Block Point Change, S.N. 560–0260 and on, Airplanes, Lightning and High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company (Cessna), Model 560 Block Point Change, S.N. 560–0260 and on, airplanes. These new airplanes will utilize new avionics/electronic systems that perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATES: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–13, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington, 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1992, Cessna Aircraft Company (Cessna), applied for an amended type certificate in the transport airplane category for the Model 560 Block Point Change, S.N. 560–0260 and on, airplanes. The Cessna Model 560 Block Point Change is a modified Cessna Model 560. The two Pratt and Whitney, Canada JT15D–5A engines will be replaced will be replaced with JT15D–5D turbo fans which will have an increase of approximately 5 percent thrust. One 8x7-inch primary flight instrument display (PFD) will be installed at each pilot's station and an 8x7-inch Multifunction Display (MFD) (without engine indication and crew alerting system (EICAS)) will be installed in the center panel as standard equipment. Copilot's standard instruments will be an electro-mechanical attitude system driven by the VG–14 gyro and an electro-mechanical horizontal situation indicator (HSI) driven by the C–14D gyro. An option is offered to replace these copilot instruments with a copilot's 8x7-inch display. A Honeywell Primus 1000, digital autopilot/flight director system will be installed. This system will operate in conjunction with a suite of Collins radios (dual Com, Dual Nav, dual distance measuring equipment (DME), dual Mode S Transponder, and automatic direction finder (ADF)). Optional available avionics will be a second ADF, emergency locator transmitter (ELT) and cockpit voice recorder (CVR).

The Cessna 560 Block Point Change will also include adhesive bonded cabin side stringers, rather than riveting. Other structural, thermal and acoustic improvements will be installed. The zero fuel weight will increase from 11,200 pounds (lbs.) to 11,700 lbs., the ramp weight will increase from 16,100 lbs. to 16,500 lbs. and the takeoff weight will increase from 15,900 lbs. to 16,300 lbs.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, except as provided in § 25.2, the certification basis of the Model 560 Block Point Change, S.N. 560–0260 and on, will include the applicable provisions of Part 25, as amended by

Amendments 25–1 through 25–17; §§ 25.251(e), 25.934, and 25.1091(d)(2) as amended through Amendment 25–23; § 25.1401 as amended through Amendment 25–27; § 25.1387 as amended through Amendment 25–30; §§ 25.787, 25.789, 25.791, 25.853, 25.855, 25.857, and 25.1359 as amended through Amendment 25–32; §§ 25.1303(a)(2) and 25.1385(c) as amended through Amendment 25–38; § 25.305 as amended through Amendment 25–54; § 25.1001 as amended through Amendment 25–57; Part 34 of the FAR; Part 36 of the FAR as amended by Amendments 36–1 through 36–18. Also included in the certification basis are Special Conditions 25–25–CE–4 and 25–ANM–21, and the special conditions issued herewith.

For the Honeywell Primus 1000, compliance will be shown with the following regulations: §§ 25.1301, 25–1303(b), 25.1322 as amended through Amendment 25–38, §§ 25–1309, 25.25.1321 (a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335 as amended through Amendment 25–41.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 560 Block Point Change because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Features

The Model 560 Block Point Change, S.N. 560–0260 and on, incorporates new avionic/electronic installations, including one 8x7-inch PFD at each pilot's station, and 8x7-inch MFD (without EICAS) in the center panel, an optional copilot's 8x7-inch display, a Honeywell Primus 1000 digital autopilot/flight director system to operate in conjunction with a suite of Collins radios (dual Com, Dual Nav, dual DME, and ADF) and optional second ADF. These systems may be vulnerable to lightning and high-intensity radiated fields external to the airplane.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new technology avionic systems. There are two regulations that specifically pertain to lightning protection: one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning could prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions are issued for the Cessna Model 560 Block Point Change, S.N. 560–0260 and on, which require that new technology electronic systems, such as the primary instrument flight displays, multifunction display, digital autopilot/flight director, etc., be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these special conditions, clarification of the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition, with the exception of the multiple burst environment, which has been changed to agree with the latest recommendation from the Society of Automotive Engineers (SAE) AE4L lightning committee.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard that is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depends upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike-Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses that represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of repetitive Component H waveforms in 3 sets of 20 pulses each. The minimum time between individual Component H pulses within a burst is 50 microseconds, the maximum is 1,000 microseconds. The 3 bursts are distributed according to the following constraints: (1) The minimum period between subsequent bursts is 30ms, and (2) the maximum period between subsequent bursts is 300ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t) = I_o (e^{-at} - e^{-bt})$$

where:

t = time in seconds,

i = current in amperes, and

		Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec.$^{-1}$	=	11,354	22,708	22,708	187,191
b, sec.$^{-1}$	=	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

i_{peak}	=	200 KA	100 KA	50 KA	10 KA
and,					
$(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11} @t = O+sec	1.4×10^{11} @t = O+sec	0.7×10^{11} @t = O+sec	2.0×10^{11} @t = O+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t = .5μs	1.0×10^{11} @t = .25μs	0.5×10^{11} @t = .25μs	
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	@0.625 × 10^6	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–93–6–NM for the Cessna Aircraft Company, Model 560 Block Point Change, S.N. 560–0260 and on, Airplanes, was published in the **Federal Register** on November 24, 1993 (58 FR 62051). One comment was received. The commenter (Cessna Aircraft Company) called to our attention that the description of the avionics system is different than the configuration being presented for type certification. They stated that the standard equipment configuration will have an 8x7-inch PFD at each pilot's station vs the **Federal Register** publication description of two PFD's at the pilots station with an optional copilot PFD. This change was noted and incorporated in these final special conditions.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Cessna Aircraft

Company, Model 560 Block Point Change, S.N. 560–0260 and on, Airplanes.

1. *Lightning Protection:* (a) Each new or modified electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

(b) Each essential function of new or modified electronic systems or installations must be protected to ensure that the essential function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* (a) Each new or modified electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. For the purpose of these special conditions, the following definitions apply:

Critical Function. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on January 31, 1994

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 94–3448 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 25

[Docket No. NM–89; Special Conditions No. 25–ANM–80]

Special Conditions; Cessna Aircraft Company, Model 750 (Citation X) Airplane, High Altitude Operation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company (Cessna), Model 750 (Citation X) airplane. This new airplane will have a novel and unusual design feature associated with an unusually high operating altitude (51,000 feet), for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1991, Cessna Aircraft Company (Cessna), 6030 Cessna Blvd., P.O. Box 7704, Wichita, KS 67277–7704, applied for a new type certificate in the transport airplane category for the Model 750 (Citation X) airplane. The Cessna Model 750 is a T-tail, low swept wing, medium sized business jet powered by two GMA–3007C turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 6,000 pounds thrust. The flight controls will be powered and capable of manual reversion. The type design of the Cessna Model 750 series airplanes contains a number of novel and unusual design features for an airplane type certificated under the applicable provisions of part 25 of the FAR. Those features include the relatively small passenger cabin volume and a high operating altitude.The applicable airworthiness requirements do not contain adequate or appropriate safety standards for the Cessna 750 series airplanes; therefore, special conditions are necessary to establish a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Cessna must show, except as provided in § 25.2, that the Model 750 (Citation X) meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–74. In addition, the certification basis for the Model 750 includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of certification. No exemptions are anticipated. These special conditions will form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 750 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Feature

The Cessna Model 750 will incorporate an unusual design feature in that it will be certified to operate up to an altitude of 51,000 feet.

The FAA considers certification of transport category airplanes for operation at altitudes greater than 41,000 feet to be a novel or unusual feature because current part 25 does not contain standards to ensure the same level of safety as that provided during operation at lower altitudes. Special conditions have therefore been adopted to provide adequate standards for transport category airplanes previously approved for operation at these high altitudes, including certain Learjet models, the Boeing Model 747, Dassault-Breguet Falcon 900, Canadair Model 600, Cessna Model 650, Israel Aircraft Industries Model 1125, and Cessna Model 560. The special conditions for the Cessna Model 650 are considered the most applicable to the Model 750 and its proposed operation and are therefore used as the basis for the special conditions described below.

Damage tolerance methods are proposed to be used to assure pressure vessel integrity while operating at the higher altitudes, in lieu of the ½-bay crack criterion used in some previous special conditions. Crack growth data are used to prescribe an inspection program that should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, as amended by Amendment 25–72. The cabin altitude after failure must not exceed the cabin altitude/time curve limits shown in Figures 3 and 4.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at high altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above the 37,000-foot limit depicted in Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilots with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilots receive oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. This special condition therefore requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Discussion of Comments

Notice of proposed special conditions No. SC–93–5–NM was published in the **Federal Register** on November 10, 1993 (14 CFR 59689). No comments were received.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Cessna Model 750 (Citation X) series airplanes:

Operation to 51,000 Feet

1. *Pressure Vessel Integrity.* (a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

(c) With regard to the fuselage structural design for cabin pressure capability above 45,000 feet altitude, the pressure vessel structure, including doors and windows, must comply with § 25.365(d), using a factor of 1.67 instead of the 1.33 factor prescribed.

2. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system that could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

3. *Air Conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

(a) After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

4. **Pressurization.** In addition to the requirements of § 25.841, the following apply:

(a) The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system, combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

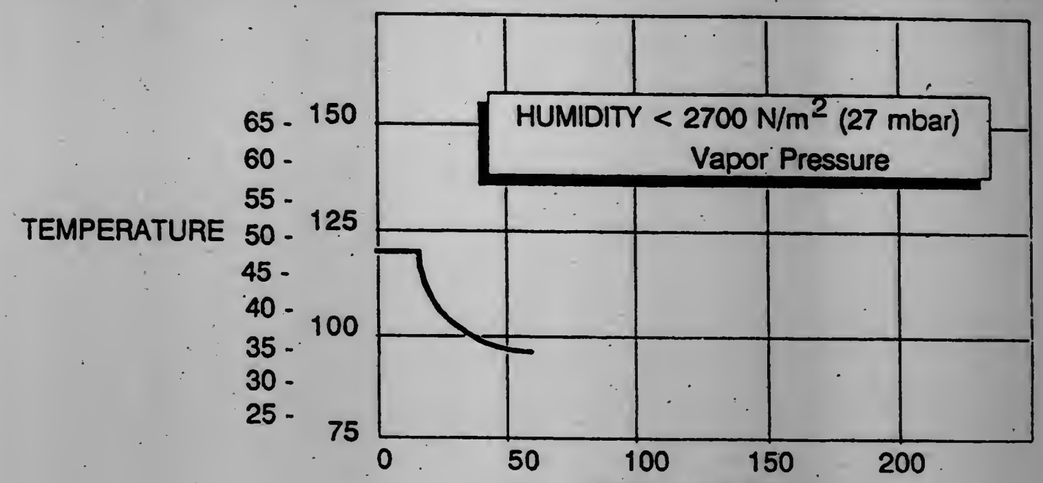
(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs 4(a) and 4(b) of these special conditions (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

Note: For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Cessna must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

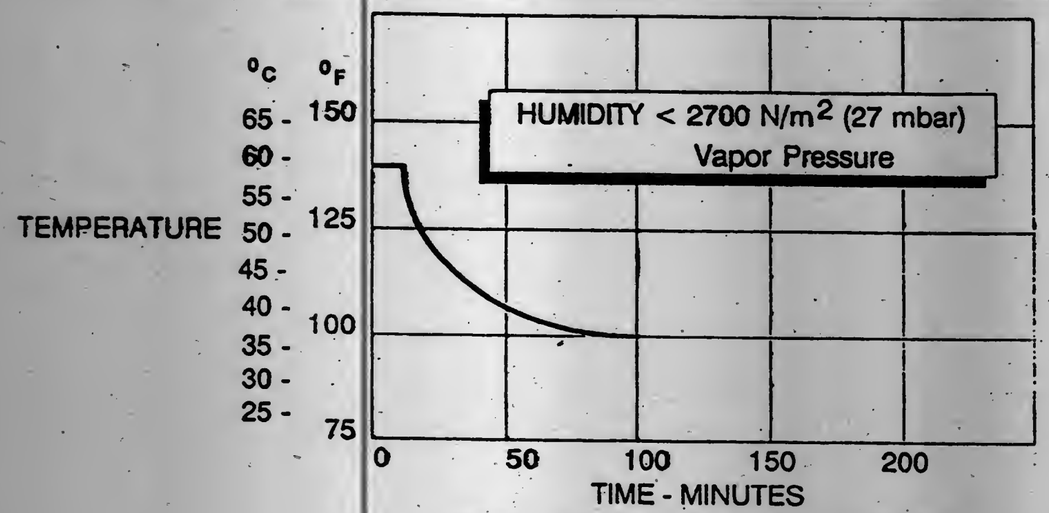
5. *Oxygen Equipment and Supply.* (a) A continuous flow oxygen system must be provided for the passengers.

(b) A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.



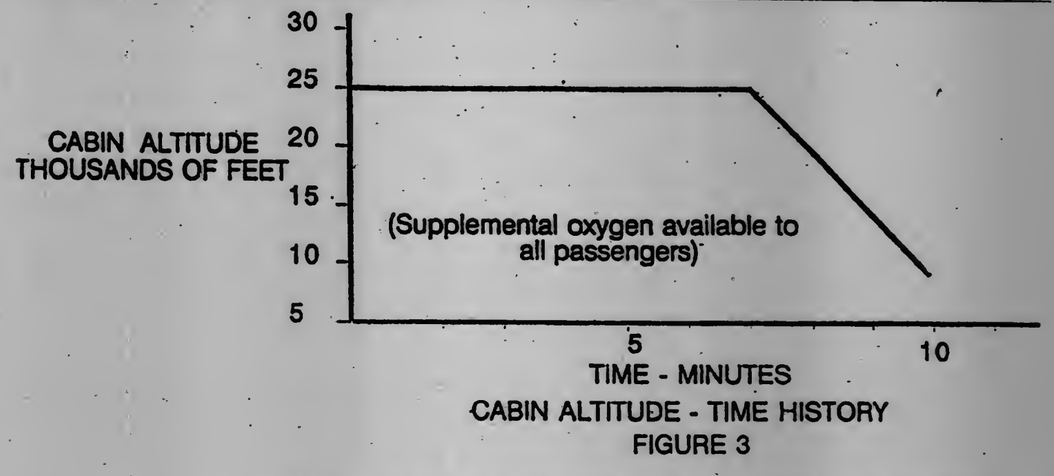
TIME - TEMPERATURE RELATIONSHIP

FIGURE 1



TIME - TEMPERATURE RELATIONSHIP

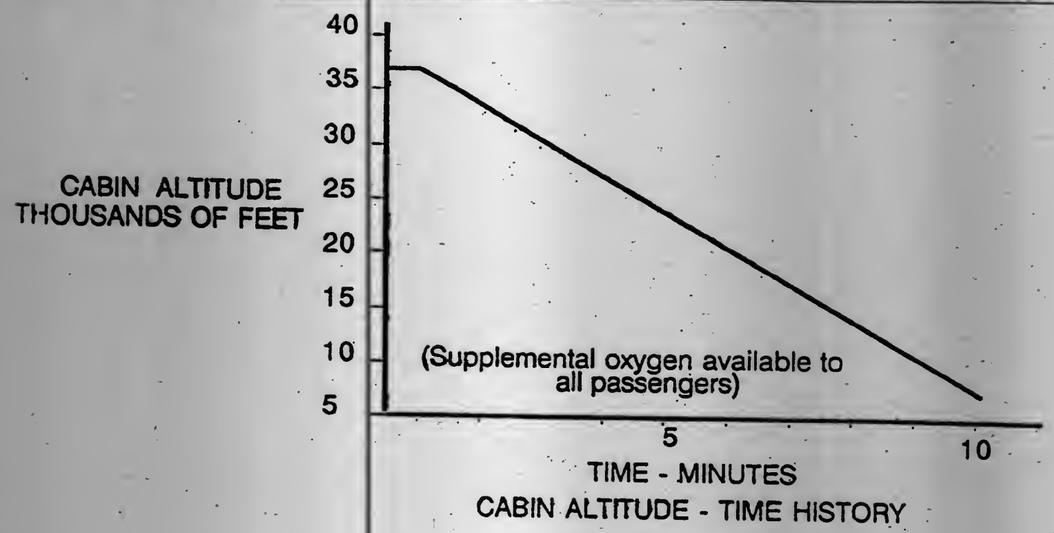
FIGURE 2



CABIN ALTITUDE - TIME HISTORY

FIGURE 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet



CABIN ALTITUDE - TIME HISTORY

FIGURE 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Issued in Renton, Washington, on January 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service, ANM–100.

[FR Doc. 94–3449 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 94–NM–10–AD; Amendment 39–8823; AD 94–04–05]

Airworthiness Directives; Airbus Industrie Models A300, A310, and A300–600 Series Airplanes Equipped With Dowty Ram Air Turbines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Models A300, A310, and A300–600 series airplanes. This action requires repetitive deployment tests of the ram air turbine (RAT) and checks of the adjustment of the locking rod. This amendment is prompted by reports of failure of the RAT to rotate when necessary, due to maladjustment of the locking rod. The actions specified in this AD are intended to ensure the availability of the RAT in case of need.

DATES: Effective March 2, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 1994.

Comments for inclusion in the Rules Docket must be received on or before April 18, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–10–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France recently notified the FAA that an unsafe condition may exist on Airbus Models A300, A310, and A300–600 series airplanes equipped with certain Dowty ram air turbines (RAT). The DGAC advises that there has been a report of a RAT failing to rotate during an in-flight deployment test. The locking rod did not move sufficiently to release the turbine and, consequently, no rotation of the spinner was possible. Initial investigations revealed that this situation was caused by a combination of: (1) Corrosion inside of the spring housing located at the upper part of the leg, where the upper part of the locking rod goes through; and (2) probable maladjustment of the locking rod itself. Further investigation revealed that the lubricating grease in this area had decomposed into solid particles, and the resulting friction appeared high enough to contribute to the stiff movement of the locking rod assembly. This condition, if not corrected, could result in the unavailability of the RAT in case of need.

In response to this situation, Airbus Industrie issued an All Operator Telex (AOT) in July 1993, recommending that operators perform repetitive ground extension tests of the RAT to ensure that it was in proper working condition, and repetitive checks of the locking rod for proper movement. That AOT instructed operators to adjust the locking rod at 5 to 10 degrees from full travel of the leg extended position. (By adjusting to that point, alignment with the surface of the lock plate was expected to be reached.) The AOT also recommended that operators apply additional lubricating grease at the top and bottom of the spring housing, so that the area would be sealed against moisture and corrosion would be inhibited.

Subsequent to the issuance of that AOT, a report was received indicating that, during an in-flight deployment test on a Model A300 series airplane, one of the blades of the RAT was damaged. Investigation of this incident revealed that the RAT locking rod had been adjusted to 10 degrees from full travel of the leg in extended position, as was recommended in the previously-issued AOT. Consequently, this had allowed the RAT blades to start to rotate too early and contact the RAT door. Potential contact between the RAT blades and RAT doors is not readily detectable during a normal RAT ground functional test, since the RAT does not rotate during the extension phase of the test. If this latent failure occurs, it can lead to damage of the RAT blades and subsequent reduced performance of the RAT during times when its use is needed.

In order to address this situation, Airbus Industrie issued All Operator Telex 29–09, dated November 16, 1993, which recommends similar inspection, adjustment, and lubrication actions to those called for in the previous AOT, but reduces the tolerances for adjustment of the RAT locking rod to 5 (+0.5 to −1.0) degrees. This reduction of the adjustment tolerances will prevent the previously described situation from occurring and thereby preclude the problems associated with the RAT blades rotating too early. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 93–136–146(B)R1, dated December 22, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent reduced performance of the RAT in case of need. This AD requires repetitive ground extension test of the RAT to ensure that it is in proper working condition, and repetitive checks of the locking rod for proper movement and adjustment, if necessary. This AD also requires application of additional lubricating grease at the top and bottom of the spring housing. The actions are required to be accomplished in accordance with Airbus AOT 29–09, described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–10–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation

under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-04-05 Airbus: Amendment 39-8823. Docket 94-NM-10-AD.

Applicability: Models A300, A310, and A300-600 series airplanes, certificated in any category; equipped with the following Dowty ram air turbines (RAT), part numbers:

RAT 16C 100 VG
RAT 16C 101 VG
RAT 16C 102 VG
RAT 16C 103 VG
RAT 16C 104 VG
RAT 16C 105 VG
RAT 16C 109 VG
RAT 16C 110 VG
RAT 16C 116 VG
RAT 16C 117 VG

Compliance: Required as indicated, unless accomplished previously.

To ensure the availability of the ram air turbine (RAT) in case of need, accomplish the following:

(a) Within 60 days after the effective date of this AD, or prior to accumulation of 500 hours time-in-service after the effective date of this AD, whichever occurs first, perform a deployment test of the RAT and check the adjustment of the locking rod, in accordance with Airbus All Operator Telex (AOT) 29-09, dated November 16, 1993. Repeat the deployment test and adjustment check thereafter at intervals not to exceed 10 months.

(1) If no discrepancy is found, prior to further flight, apply grease to the RAT leg at the entry and exit positions of the locking rod spring housing, in accordance with the AOT.

(2) If any discrepancy is found, prior to further flight correct it and apply grease to the RAT leg at the entry and exit positions of the locking rod spring housing, in accordance with the AOT.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Airbus All Operator Telex (AOT) 29-09, dated November 16, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 17, 1994.

Issued in Renton, Washington, on February 7, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-3286 Filed 2-14-94; 8:45 am]

BILLING CODE 4910-13-U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in March 1994, and to multiemployer plans with valuation dates in March 1994. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: March 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the March 1994 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during March 1994 and multiemployer plans that have undergone mass withdrawal and have valuation dates during March 1994.

For annuity benefits, the interest rates will be 5.80% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.50% for the period during which benefits are in pay status and 4.0% during the period preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums under $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 are restricted to 120% of the PBGC interest assumptions).) The above annuity interest assumptions represent a decrease (from those in effect for February 1994) of .10 percent for the first 25 years following the valuation date and are otherwise unchanged; the lump sum interest assumptions are unchanged from the February 1994 interest assumptions.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during March 1994, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during March 1994, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a section of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans, and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 5 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form v^{n} (as defined in § 2619.43(b)(1) for purposes of applying the formulas set forth in § 2619.43(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump sum valuations]

Rate set	For plans with a valuation date: On or after	For plans with a valuation date: Before	Immediate annuity rate (percent)	Deferred annuities (percent): i_1	i_2	i_3	n_1	n_2
5	3-1-94	4-1-94	4.50	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{(x)}_{x+n}$ (as defined in § 2619.49(b)(1) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates denoted by $i_1, i_2, \ldots$, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II
[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are: i_t	for t =	i_t	for t =	i_t	for t =
March 1994	.0580	1-25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 5 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{(x)}_{x+n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump sum valuations]

Rate set	For plans with a valuation date: On or after	For plans with a valuation date: Before	Immediate annuity rate (percent)	Deferred annuities (percent): i_1	i_2	i_3	n_1	n_2
5	3-1-94	4-1-94	4.50	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{(x)}_{x+n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by $i_1, i_2, \ldots$, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II
[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are: i_t	for t =	i_t	for t =	i_t	for t =
March 1994	0.580	1-25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 10th day of February 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94-3526 Filed 2-14-94; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 254

Teacher and Teacher's Aide Placement Assistance Program

AGENCY: Department of Defense.

ACTION: Interim final rule.

SUMMARY: This program provides stipends to Service members and eligible individuals losing Defense jobs and provides grants to local educational agencies who hire separated military members, terminated Department of Defense and Department of Energy employees, and displaced defense contractor scientists and engineers as teachers and teacher aides. The intent of this program is to relieve shortages of elementary and secondary school teachers and teacher's aides through placement of qualified separating military, terminated Department of Defense and Department of Energy employees, and displaced contractor employees in schools that serve a concentration of children from low-income families.

EFFECTIVE DATE: February 22, 1994.

DATES: Comments: Comments must be received by April 18, 1994.

ADDRESSES: Forward comments to Department of Defense, Office of the Assistant Secretary of Defense (Personnel and Readiness) (PSF&E) (DoDEA), The Pentagon, room 3E784, Washington, DC 20301-4000.

FOR FURTHER INFORMATION CONTACT: Mr. Otto Thomas (703) 696-4384.

SUPPLEMENTARY INFORMATION:

Background

This program allows local educational agencies that serve a concentration of children from low-income families to receive a salary subsidy from the Department of Defense for up to five years to offset a portion of the basic salary of a teacher or teacher's aide hired under this program. Local educational agencies that qualify for this program may inform the Defense Activity for Non-Traditional Support (DANTES) of their interest to participate and can advertise an opening on the DoD Transition Bulletin Board and receive a listing of interested personnel from an automated listing called the DoD Public and Community Service Registry.

Executive Order 12866, "Regulatory Planning and Review"

It has been certified that this interim final rule, in conformance with Executive Order 12866, does not:

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of entitlements, grants, user fees or, loan programs or the rights and obligations of recipients thereof; or Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

This interim final rule is necessary to initiate the program and benefit as many personnel as otherwise eligible. This program is time-sensitive and is authorized upon publication in the **Federal Register** until October 1, 1997. Comments will be considered in determining whether to amend this interim final rule.

Public Law 96-354, "Regulatory Flexibility Act"

This interim rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) and does not have a significant impact on a substantial number of small business. The primary target for this program will be local educational agencies that are entitled to chapter 1 funds pursuant to title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 et seq). The program also will provide those contract employees whose DoD contract has been terminated as a result of completion or termination of a defense contract or program in defense spending.

Public Law 96-511, "Paperwork Reduction Act"

This interim rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

List of Subjects in 32 CFR Part 254

Elementary and secondary education, Military personnel.

Accordingly, title 32, chapter I, subchapter M, is amended to add part 254 to read as follows:

PART 254—TEACHER AND TEACHER'S AID PLACEMENT ASSISTANCE PROGRAM

Sec.
254.1 Purpose.
254.2 Definitions.
254.3 Responsibilities.
254.4 Procedures.

Authority: Pub. L. 102-484, sections 4441, 4442, and 4443 (10 U.S.C. 1151, 1598, 2410c).

§ 254.1 Purpose.

It is Department of Defense policy to establish programs to assist personnel affected by the downsizing of the Department of Defense and to contribute to efforts to relieve shortages of elementary and secondary school teachers and teacher's aids.

§ 254.2 Definitions.

(a) *Alternative certification.* State or local teacher certification or licensure requirements that permit a demonstrated competence in appropriate subject areas gained in careers outside of education to be substituted for traditional teacher training course work.

(b) *Eligible defense contractors or subcontractors.* Those defense contractors or subcontractors that have applied and been selected using criteria established in "National Defense Authorization Act for Fiscal Year 1993," Public Law 102–484, 106 stat. 2725 and meet the following criteria:

(1) Produce goods or services for the Department of Defense pursuant to a defense contract or operate nuclear weapons manufacturing facilities for the Department of Energy; and

(2) Have recently reduced operations, or are likely to reduce operations, due to the completion or termination of a defense contract or program or by reductions in defense spending.

(3) The Defense Activity for Non-Traditional Support (DANTES) shall give special consideration to defense contractors who are located in areas that have been impacted particularly hard by reductions in defense spending.

(c) *Eligible local educational agency.* A local school jurisdiction that normally hires teachers, is located in a state offering an alternative program for teacher certification, is receiving money under chapter 1 of title I, "Elementary and Secondary Education Act of 1965" (20 U.S.C. 2701 et seq.) as a result of having within its jurisdiction a concentration of children from low income families, has been identified by its state as experiencing a shortage of qualified teachers. Priority for grants under this program will be given to those local education agencies which receive concentration grant funds under chapter 1 of title I, or are eligible to receive such funding. The local school shall be willing to enter into an agreement with the Department of Defense to employ a certified program participant for not less than five consecutive years in a school within its jurisdiction having a concentration of children from low income families.

(d) *Eligible personnel.* Service members, civilian employees of the Department of Defense and the Department of Energy, and defense contractor employees who during the time period beginning with the effective date of DoD guidance and ending October 1, 1997, meet the specific requirements identified in paragraphs (d) (1) through (3) of this section. All persons selected shall have a baccalaureate or advanced degree (associate degree or higher for teacher's aide applicants) from an accredited institution of higher learning and, if selected, are willing to agree to obtain certification or licensure as an elementary or secondary school teacher or teacher's aide and to accept an offer of full-time employment as an elementary or secondary school teacher or teacher's aide for not less than five school years in a school which serves a concentration of low-income families.

(1) *Eligible Service members.* Members of the armed forces who are discharged or released from active duty, and apply not later than one year after the date of discharge or release from active duty, have served on active duty for at least six continuous years immediately before discharge, and are honorably discharged or released from active duty. Service members who are not educationally qualified at the time of discharge will have up to five years to meet educational qualifications and may apply for participation within one year after the date of becoming educationally qualified. A member discharged or released from Service under other than honorable conditions shall not be eligible to participate in this program. A member who is entitled to benefits under 10 U.S.C. 1174a (Special Separation Benefits) or 10 U.S.C. 1175 (Voluntary Separation Incentive) or is given early retirement under "National Defense Authorization Act for Fiscal Year 1993," section 4403, Public Law 102–484, 106 stat. 2702 shall not be paid a stipend.

(2) *Eligible employees.* Civilian employees of the Department of Defense or the Department of Energy who apply after receipt of a notice of termination but not later than 60 days following termination, and who are terminated from government employment as a result of reductions in defense spending or the closure or realignment of a military installation as determined by the Secretary of Defense or the Secretary of Energy, as the case may be. A stipend will not be paid to any civilian employee selected to participate in the placement program who voluntarily retires from the Federal Government, having met either early or optional retirement criteria, after receiving separation pay under 5 U.S.C. 5597.

(3) *Eligible contractor employees.* Scientists or engineers whose employment is terminated (or who have received notice of termination) as a result of the completion or termination of a defense contract or program or reductions in defense spending. The individuals must have been employed for not less than five years as a scientist or engineer with a private defense contractor that has entered into a cooperative agreement with Department of Defense to help support the program including payment of 50 percent of the stipend provided to the contractor employee selected for assistance.

(e) *Grant.* Funding to be provided to a local education agency to offset the basic salary of a program participant during five consecutive years of employment. Assuming employment begins at the beginning of a school year, a grant shall be paid in five installments in accordance with the following schedule:

First Year—50 percent of basic salary not to exceed $25,000
Second Year—40 percent of basic salary not to exceed $10,000
Third Year—30 percent of basic salary not to exceed $7,500
Fourth Year—20 percent of basic salary not to exceed $5,000
Fifth Year—10 percent of basic salary not to exceed $2,500

(1) Installments shall be payable after the end of each school year within 30 days after the local education agency certifies to the Department of Defense the basic salary paid to the employee during the past school year is consistent with the written agreement between the local educational agency and the Department of Defense.

(2) If employment begins other than at the beginning of a school year, the grant shall be payable in up to six installments. The grant payments shall be based on the total teacher pay days equivalent to a full school year. Payments will be made so that reimbursement does not exceed the percentage and dollar amounts for any one equivalent full school year.

(f) *Stipend.* The lesser of $5,000 or the total costs of the type described in "Higher Education Act of 1965," section 472 (20 U.S.C. 1087*ll*), incurred by a selected program participant while obtaining certification.

§ 254.3 Responsibilities.

(a) The Assistant Secretary of Defense (Personnel and Readiness) shall:

(1) Monitor compliance with this part and the responsibilities of the Secretary of Defense as authorized by "National Defense Authorization Act for Fiscal Year 1993," sections 4441, 4442, 4443, Public Law 102–484 (10 U.S.C. 1151, 1598, 2410c).

(2) The Director of Education, as the representative for the ASD(P&R), shall:

(i) Identify program needs and provide program direction.

(ii) Provide liaison and coordination with educational agencies, and school officials.

(iii) Oversee the funding of this program and ensure compliance with this memorandum.

(iv) Conduct a survey of States to identify those States that have alternative certification or licensure requirements for teachers, including those States that grant credit for service in the armed forces towards satisfying certification or licensure requirements for teachers.

(b) The Secretaries of the Military Departments shall:

(1) Ensure that separating Service members are informed about the subject program during preseparation counseling provided by Transition Assistance Offices.

(2) Ensure that installation Education Centers can, upon request, provide information and counseling on teacher training and certification, including alternative certification requirements.

(3) Ensure that separating employees are informed about this program during preseparation counseling by installation and activity Civilian Personnel Officers.

(4) Ensure that personnel management offices inform noncommissioned officers who will reach ten years of service during the current fiscal year (until September 30, 1997), who have the potential to perform as elementary or secondary school teachers, but who do not satisfy the minimum educational requirements to qualify for the program of the opportunity to obtain those qualifications within five years after discharge or release from active duty and apply for placement assistance within one year thereafter.

(c) The Secretary of the Navy shall, as executive agent for the Defense Activity for Non-Traditional Education Support (DANTES), ensure DANTES is provided assistance and support in meeting its responsibilities in support of this program.

§ 254.4 Procedures.

(a) The Secretary of the Navy, as executive agent for DANTES, shall ensure DANTES executes the program, by:

(1) Issuing procedural guidance implementing this part, as necessary.

(2) Preparing and distributing information, forms and publications.

(3) Selecting participants based upon criteria established by "National Defense Authorization Act for Fiscal Year 1993," Public Law 102–484, 106 stat. 2725, as amended by "National Defense Authorization Act for Fiscal Year 1994," section 1331, Public Law 103–160, 107 stat. 1791 and those stated in paragraph (e) of this section.

(4) Receiving and evaluating applications for stipends and making awards based on criteria consistent with "National Defense Authorization Act for Fiscal Year 1993," sections 4441, 4442, and 4443, Public Law 102–484, 106 stat. 2725 as amended by "National Defense Authorization Act for Fiscal Year 1994," section 1331, Public Law 103–160, 107 stat. 1791 and "Higher Education Act of 1965," section 472, (20 U.S.C. 1087*ll*).

(5) Receiving and evaluating applications for grants and making awards, based on criteria consistent with reference to "National Defense Authorization Act for Fiscal Year 1993," Public Law 102–484, 106 stat. 2725 as amended by "National Defense Authorization Act for Fiscal Year 1994, section 1331, Public Law 103–160, 106 stat. 2725, and title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 et seq.) to eligible local educational agencies that agree to employ program participants pursuant to this part.

(6) As necessary and authorized, entering into agreements with other governmental and non-governmental entities, stipend awardees, and local educational agencies eligible to participate in the program.

(7) Establishing and maintaining a file on each applicant and tracking actions taken with regard to each applicant.

(8) Establishing and maintaining a file on each local educational agency or private defense contractor who seeks to enter into an agreement with the Department of Defense in connection with this program.

(9) Collecting debts owed the Department of Defense resulting from failure to comply with agreements made regarding the use of stipends given to program participants or grants made to local educational agencies.

(i) DANTES shall collect from local educational agencies an amount that bears the same ratio to the total amount already paid under the agreement as the unserved portion of required service bears to the five years of required service for participants that leave the employment of the local educational agency before the end of the five years of required service.

(ii) DANTES shall collect from personnel participating in this program, if the participant in the placement program fails to obtain teacher certification or licensure or employment as an elementary or secondary school teacher or as a teacher's aide or is terminated for cause, during the five years of required service. The participant shall be required to reimburse the Secretary of Defense for any stipend paid to the participant in the same ratio to the amount of the stipend as the unserved portion of required service bears to the five years of required service, except as provided in paragraph (f) of this section.

(10) Maintaining data on this program and provide reports to the Assistant Secretary of Defense (Personnel and Readiness) through the Navy, as executive agent, quarterly.

(b) Information about the program and those States that have alternative certification or licensure requirements for teachers shall be provided to members and employees as part of preseparation counseling.

(c) Eligible Service members shall apply, under procedures established by DANTES and published in the **Federal Register**, for participation in the program within one year after they are separated. Service members may make preliminary application to the program by registering in the Public Community Service (PACS) Registry and expressing an interest in pursuing employment as an elementary or secondary school teacher or teacher's aide.

(d) Eligible Department of Defense or Department of Energy civilian employees shall apply under procedures established by DANTES and published in the **Federal Register**, after they have received notice of termination but not later than 60 days following termination. DANTES shall provide program information to civilian personnel offices that will allow civilian personnel offices to make an initial determination of eligibility and refer interested employees to installation Education Centers for program information and to DANTES for selection purposes.

(e) Applications will be screened upon receipt and grouped for either immediate evaluation or deferred evaluation. Those applications screened for immediate evaluation will be evaluated as soon as possible after receipt to determine if selection is justified. If so, applicants will be notified that they have been selected to become participants in the program. An application initially marked for deferred evaluation will be reviewed at the end of each calendar month to determine if it should be accepted for immediate evaluation, further deferred pending receipt of additional information, or rejected. Criteria to be used in selecting participants shall include the following:

(1) Is the applicant willing to work as a teacher or teacher's aide in an elementary or secondary school which serves a concentration of children from low income families?

(2) Does the applicant have educational or military experience in science, mathematics or engineering and

agree to seek employment teaching science, mathematics or engineering?

(3) Is the applicant particularly likely to serve as a positive role model in the kinds of schools that are eligible to participate in this program?

(4) Does the applicant have educational or military experience in English, history, geography, foreign language, the arts or special education and agree to seek employment teaching these subjects or working with special education students?

(f) Selected participants, if eligible, may be provided a stipend to offset costs of the type described in Higher Education Act of 1965, section 472 (20 U.S.C. 1087*ll*) which are incurred by the participant while obtaining alternative certification or licensure to teach or necessary credentials to serve as a teacher's aide. A stipend will not be paid to any Service member who is entitled to the Special Separation Benefit (SSB) under 10 U.S.C. 1174a, or the Voluntary Separation Incentive (VSI) under 10 U.S.C. 1175, or who is given early retirement under "National Defense Authorization Act for Fiscal Year 1993," section 4403, Public Law 102–484, 106 stat. 2702.

(1) A stipend will not be paid to any civilian employee selected to participate in the placement program who receives separation pay under 5 U.S.C. 5597.

(2) If a participant fails to obtain certification or employment as a teacher or teacher's aide, or voluntarily leaves or is terminated for cause from employment during the five years of required service, the participant shall reimburse the Department of Defense for any stipend paid in an amount that is a prorated share based on the unserved portion of required service as provided in this paragraph. A participant may be excused from the reimbursement requirement under certain circumstances provided for in "National Defense Authorization Act for Fiscal Year 1993, Public Law 102–484, 106 stat. 2702. A participant shall be excused from the reimbursement requirement under the following circumstances. The participant:

(i) Is pursuing a full-time course of study related to the field of teaching at an eligible institution;

(ii) Is serving on active duty as a member of the armed forces;

(iii) Is temporarily totally disabled for a period of time not to exceed three years as established by sworn affidavit of a qualified physician;

(iv) Is unable to secure employment for a period not to exceed 12 months by reason of the care required by a spouse who is disabled; or

(v) Is seeking and unable to find full-time employment as a teacher or teacher's aide in an elementary or secondary school for a single period not to exceed 27 months.

(g) Participants will seek employment as elementary or secondary school teachers or teacher's aides in eligible local educational agencies identified by the Department of Defense.

(h) The Department of Defense through it's executive agent, DANTES, will offer to enter into an agreement with the first eligible local educational agency that employs the participant as a full-time elementary or secondary school teacher or teacher's aide after the participant obtains necessary credentials. Under such agreements, DANTES will provide a grant to local educational agencies that agree to hire program participants for not fewer than five consecutive school years in a school of the local educational agency serving a concentration of children from low-income families. If employment is terminated by either the participant or the local educational agency before the end of the five years of required service, the grant will be adjusted as described in this part and any excess paid will be reimbursed to the government under guidance prescribed by DANTES.

(i) Participants may not be accepted to receive stipends nor agreements made with local educational agencies to provide grants unless sufficient appropriations are available to support the obligations which may be incurred.

Dated: February 9, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–3403 Filed 2–14–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS LABOON (DDG 58) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Rossi, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400 Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS LABOON (DDG 58) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the ship in the athwartship direction; without interfering with its special function as a naval ship. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§706.2 [Amended]

2. Table Four of 706.2 is amended by:

a. Adding the following vessel to Paragraph 15:

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS Laboon.	DDG 58	1.90 meters.

b. Adding the following vessel to Paragraph 16:

Vessel	Number	Obstruction angle relative ship's headings
USS Laboon.	DDG 58	102.8 thru 112.5 degree.

3. Table Five of 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light Annex I, sec. 3(a)	Percentage horizontal separation attained
USS Laboon	DDG 58	X	X	X	13.8

Dated: January 5, 1994.

Approved:

H.E. Grant,

Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 94–3495 Filed 2–14–94; 8:45 am]

BILLING CODE 3810–AE–P

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS STOUT (DDG 55) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 14, 1994.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400,Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS STOUT (DDG 55) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the ship in the athwartship direction; without interfering with its special function as a naval ship. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§706.2 [Amended]

2. Table Four of 706.2 is amended by:

a. Adding the following vessel to Paragraph 15:

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction.
USS STOUT.	DDG 55	1.90 meters

b. Adding the following vessel to Paragraph 16:

Vessel	Number	Obstruction angle relative ship's headings
USS STOUT.	DDG 55	90.94 thru 108.19 degree.

3. Table Five of 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light Annex I, sec. 3(a)	Percentage horizontal separation attained
USS STOUT	DDG 55	X	X	X	13.0

Dated: January 14, 1994.

Approved:

J.E. Dombroski,

CAPT, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 94–3496 Filed 2–14–94; 8:45 am]

BILLING CODE 3810–AE–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN26–1–6056; FRL–4820–7]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On November 26, 1991, and August 31, 1992, and November 13, 1992, the State of Minnesota submitted revisions to its State Implementation Plans (SIPs) for particulate matter. These SIP revisions were submitted by the State of Minnesota for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter for the Saint Paul and Rochester nonattainment areas, and for the purpose of satisfying certain Federal requirements for SIPs for such areas. USEPA proposed to approve these SIP revisions on June 25, 1993. One commenter commented on this proposal, and Minnesota provided further submittals on February 3, 1993, April 30, 1993, and October 15, 1993. USEPA is granting full approval of the particulate matter SIP revisions for both areas.

EFFECTIVE DATE: This action is effective March 17, 1994.

ADDRESSES: Copies of the State's submittals, the public comment letter, and USEPA's technical support document of September 28, 1993, are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this revision to the Minnesota SIP is available for inspection at:

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987, USEPA promulgated revised air quality standards for particulate matter, replacing the former standard based on a broad range of particle size (known as total suspended particulate matter) with a standard based on finer particles. Specifically, the revised standard is based on particles having a nominal aerodynamic diameter of 10 microns or less. Upon enactment of the Clean Air Act Amendments of 1990, certain areas were designated nonattainment for particulate matter and classified as moderate under sections 107(d)(4)(B) and 188(a) of the amended Clean Air Act (Act). See 56 FR 56694 (November 6, 1991) and 57 FR 13498, 13537 (April 16, 1992). The amended Act required that States submit SIP revisions by November 15, 1991, for such areas satisfying specified planning requirements which are delineated below. In Minnesota, portions of the Saint Paul and Rochester areas were designated nonattainment and were thus the subject of planning requirements pursuant to the amended Act.

The State submitted SIP revisions intended to meet these planning requirements on November 26, 1991, August 31, 1992, and November 13, 1992. Technical support documents reviewing the adequacy of these submittals were completed November 16, 1992, and April 8, 1993. Based on these reviews, a notice of proposed rulemaking was published on June 25, 1993, at 58 FR 34397, proposing to approve the State's submittal as satisfying applicable requirements, provided suitable limitations for one company were adopted and submitted. The State provided further submittals on February 3, 1993, April 30, 1993, and October 15, 1993. A technical support document in support of this notice of final rulemaking was completed September 28, 1993.

Pursuant to section 189 of the amended Clean Air Act ("Plan provisions and schedules for plan submissions"), those States containing initial moderate particulate matter nonattainment areas were required to submit by November 15, 1991, an implementation plan that includes:

1. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable (section 189(a)(1)(B));
2. Provisions to assure that reasonably available control measures (RACM) (including such reductions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993 (section 189(a)(1)(C));
3. Control requirements applicable to major stationary sources of particulate matter precursors except where the Administrator determines that such sources do not contribute significantly to particulate matter levels which exceed the NAAQS in the area (section 189(e)); and
4. Miscellaneous related provisions of section 172(c); for example, quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994.

Some submissions are due at a later date. By November 15, 1993, States must supplement their particulate matter nonattainment area SIPs by submitting contingency measures which become effective without further action by the State or USEPA, upon a determination by USEPA that the area has failed to achieve RFP or to attain the particulate matter NAAQS by the applicable statutory deadline (section 172(c)(9) and 57 FR 13543–44). Nevertheless, Minnesota submitted contingency measures with its August 31, 1992, submittal. Therefore, the contingency measure requirement is addressed in this rulemaking. States with initial moderate particulate matter nonattainment areas were also required

to submit a permit program for the construction and operation of new and modified stationary sources of particulate matter by June 30, 1992 (section 189(a)(1)(A)). Minnesota addressed this requirement in a separate submittal. USEPA is conducting separate rulemaking with respect to this requirement.

Additional discussion of these requirements is provided in prior notices published in the **Federal Register**. An extensive discussion is provided in a "General Preamble," published on April 16, 1992 (57 FR 13498), that describes USEPA's preliminary positions on how USEPA would review SIP revisions submitted under Title I of the Act. The notice of proposed rulemaking on Minnesota's submittals discusses these requirements further, with a focus on the application of USEPA's interpretations of Act requirements to the specific factual situation presented in Minnesota. Today's action merely summarizes these other more extensive discussions.

II. Summary of Proposed Rulemaking

The June 25, 1993, notice of proposed rulemaking (58 FR 34397) included discussion of several issues pertinent to Minnesota's submittals. The first section of the notice discussed the requirements that the plan was intended to satisfy, as summarized above. The second section reviewed the State's submittal with respect to section 189, including subsections concerning the State's attainment demonstration, reasonably available control measures, and the significance of particulate matter precursors. The third section reviewed whether the State's submittal satisfied other requirements, particularly the requirements of section 172(c). The final section of the notice of proposed rulemaking identified the proposed action.

A. Attainment Demonstrations

Section 189(a)(1)(B) requires a demonstration that the plan will provide for attainment (or a demonstration that timely attainment is infeasible). The principal guidance for such demonstrations is the Guideline on Air Quality Models, which specifies the criteria for selection of dispersion models and for estimation of emissions and other model inputs. In accordance with that guidance, Minnesota used the Industrial Source Complex Short Term (ISCST) model for its analyses. These analyses used urban dispersion coefficients, five years of National Weather Service meteorological data (using surface data from Minneapolis-Saint Paul for the Saint Paul analysis and from Rochester for the Rochester analysis and in both cases using Saint Cloud upper air data), regulatory default parameters, and receptors spaced 100 meters apart in the key impact areas. The emissions inputs to the model reflect appropriate emissions estimates for the various sources in the two areas.

The Saint Paul area includes thirteen industrial facilities. USEPA's proposed rulemaking is based on Minnesota's original submittals, which include Administrative orders specifying limits for eight of these facilities. In general, the stack limits specify a total emission rate and an exit gas concentration limit based on test methods that measure fine particulate matter and condensible particulate matter (i.e., methods known as Method 201/201A and Method 202), and are supplemented by opacity limits which permit more continuous compliance monitoring. A few sources with process fugitive sources have opacity limits limiting these emissions. Emissions from roadways and storage piles at these sources are typically limited by means of specific work practice requirements identifying required quantities and rates at which these sources must be watered. Based on USEPA's concerns, Minnesota subsequently adopted and submitted an administrative order for a ninth facility, Harvest States Cooperatives. The other four, less significant facilities are subject only to the emission limits in generic State regulations. The Rochester area includes only one significant source, which was subject to an administrative order providing limits similar to the limits on Saint Paul sources.

Applicable guidance provides that the emissions estimates for significant sources shall reflect maximum allowable emissions rates. The proposed rulemaking concluded that this guidance was met for the Rochester source and for twelve of the thirteen sources in Saint Paul but was not met for the Harvest States Cooperatives facility. In response to this concern, the State adopted and submitted an administrative order for this facility. This order is discussed in a later section of this action.

Other elements of the attainment demonstration include minor area sources, growth, and background concentrations. Minnesota used a dispersion model that is appropriate for modeling stack sources, process fugitive sources, and area sources such as private and public roadways. In Saint Paul, the State compiled a comprehensive inventory of public area source emissions as well as emissions from the above noted thirteen industrial facilities, and input all of these emissions in its dispersion modeling runs. Minnesota then added background concentrations of 24 micrograms per cubic meter ($\mu g/m^3$) to the 24-hour average modeled concentrations and 12 $\mu g/m^3$ to the annual average modeled concentrations. In Rochester, the State did not inventory public area sources but compensated by using the same background concentrations as were used for Saint Paul, in effect arguing that local plus nonlocal sources in the Rochester area create the same background concentrations as nonlocal sources surrounding Saint Paul. In Saint Paul, an explicit growth margin for one source was included in the modeling analysis. Otherwise, growth was not explicitly addressed in Minnesota's submittal, but major source growth will be covered by new source permitting requirements (including requirements that assure no new violations), and minor source growth is unlikely to be sufficient to consume the entire margin between the modeled concentrations and the air quality standards.

For analyses using 5 years of meteorological data, the sixth highest 24-hour average concentration at any receptor must not exceed 150 $\mu g/m^3$, and no annual average concentration may exceed 50 $\mu g/m^3$. The results of Minnesota's analyses based on controlled emissions in Saint Paul was a highest sixth highest concentration of approximately 140 $\mu g/m^3$ and a highest annual average concentration of 48 $\mu g/m^3$. For the Rochester area, the modeling provided by Minnesota indicates a highest sixth highest 24 hour average concentration of 106 $\mu g/m^3$ and a highest annual average concentration of 32 $\mu g/m^3$. Based on these results and USEPA's review of the State's inventory and modeling procedures, USEPA proposed that once the State submitted an administrative order limiting Harvest States Coop emissions to the modeled emission rates, the State plan would then have satisfied the attainment demonstration requirements of section 189(a)(1)(B) for the Saint Paul area.

B. RACM

Sections 172(c)(1) and 189(a)(1)(C) require that States submit provisions to assure that RACM (including RACT) are implemented in initial moderate particulate matter nonattainment areas no later than December 10, 1993. The General Preamble contains a detailed discussion of USEPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

Minnesota's administrative orders require immediate compliance for most sources. The only extended compliance

date is for the electric arc furnace at North Star Steel, which provides for installation of a new baghouse by November 26, 1993, and for 75 percent closure of the roof monitor by December 31, 1993. The limitations effective November 26, 1993, require this source to achieve the control normally representing RACT as identified in an August 7, 1980, memorandum and attached table entitled "Steel Industry Particulate Emission Limitations Generally Achievable on a Retrofit Basis." In addition, the State has required adequate measures to provide for attainment shortly after the December 10, 1993, RACT deadline, and no control options are known to be available that would provide for attainment any more quickly. Therefore, USEPA proposed to conclude that Minnesota's submittal satisfies the requirement for RACT.

C. Other Provisions

Section 189(e) specifies that "control requirements * * * for major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area." Particulate matter precursors are pollutants emitted as gases that undergo chemical transformations to become particulate, and principally include sulfates and nitrates. Minnesota's submittals document receptor modeling results that demonstrate that secondary particulate matter is a small fraction of monitored concentrations in Minnesota. For this and other reasons, USEPA proposed to conclude that precursors do not contribute significantly to particulate matter concentrations in either of Minnesota's nonattainment areas.

In addition to the requirements in section 189, particulate matter nonattainment area plans must also meet the requirements of subpart 1 of part D of title I of the Clean Air Act, particularly section 172(c). Section 172(c) imposes several requirements which all nonattainment area SIPs, including particulate matter nonattainment area SIPs, must meet. Most notable among these requirements is the requirement of section 172(c)(9) that the State submit a contingency plan comprised of measures which would be implemented upon failure to achieve timely attainment without the need for any further planning or adoption effort by the State. The notice of proposed rulemaking included a discussion of each of these requirements and why USEPA believed that each requirement was satisfied.

III. Comments and Responses

In response to the request for public comments on the proposed rulemaking, USEPA received one set of comments. These comments were received from the Metropolitan Waste Control Commission (MWCC) in a letter dated August 6, 1993. The following discussion summarizes the three comments made by MWCC and USEPA's responses. It is noteworthy that two of these comments address the State SIP development and one comment addresses a statement in the proposed rulemaking, but none of the comments address or object to USEPA's proposed action.

Comment: MWCC expressed an understanding that the administrative orders included in the State's SIP submittal would terminate upon USEPA approval of Minnesota's forthcoming operating permit program.

Response: This understanding is incorrect. The operating permit program regulations that Minnesota is developing indeed are intended to provide for permits that could replace preexisting administrative orders such as the order for MWCC. However, actual termination of the administrative order would not occur unless and until the State grants a permit that could replace the order, requests a SIP revision to replace the administrative order with a substitute permit, and USEPA approves the SIP revision.

Comment: MWCC notes that area sources are not "relatively minor," insofar as area sources (emitting 496 tons per year) emit more emissions than all but one industrial source (emitting 552 tons per year).

Response: MWCC's figures are approximately correct. However, these area sources, by their very distribution, have a relatively minor impact as compared to the impact of the concentrated emissions from industrial sources. More importantly, the impact of industrial sources is sufficiently significant relative to the impact of area sources that the choice of dispersion models used by the State is appropriate.

Comment: MWCC expresses the concern that the development of administrative orders was less effective and efficient than use of State permits would have been.

Response: The State submitted administrative orders to address a USEPA concern that permit limits could be unenforceable after permit expiration. In any case, MWCC does not appear to disagree with USEPA's proposed conclusion, which is that the administrative orders submitted by the State should be approved.

IV. New State Submittals

This final rulemaking must also consider three State submittals which were not considered in the proposed rulemaking. The first submittal, dated February 3, 1993, provides an administrative order for Harvest States Cooperatives, in response to USEPA's concern that emissions at this facility be limited to levels that would provide for attainment. This administrative order was adopted after proper public notice and opportunity for comment, and enforceably limits emissions from this facility. Although the allowable emission rates under this order are slightly higher than the actual emission rates used in the State's attainment demonstration, the differential is small relative to the margin of attainment near this facility. Therefore, USEPA now finds that the State's modeling analyses demonstrate, in accordance with applicable guidance, that attainment is assured in both nonattainment areas even if all sources emit their full allowable emissions.

A second State submittal, dated April 30, 1993, provided a replacement administrative order for North Star Steel. In most respects this administrative order is the same as the earlier order on which USEPA proposed action, and is equally as enforceable as the prior order. Although the new order reflects a new furnace configuration, replacing a two furnace system with a system involving one larger furnace and a ladle metallurgy station, these new operations emit through the same emission points and have similar allowable emissions as the prior order.

The changes in allowable emissions include a lower allowable emissions rate for the existing baghouse (essentially implementing one of the source's contingency measures) and an enlarged growth margin that takes credit for the lesser emissions that will be caused by the new system. Thus, attainment is equally as well assured with the new order as with the prior order. Although the new order reduces the quantity of emissions reductions provided in the contingency plan (by implementing one of the contingency measures), the remaining contingency plan is adequate to meet USEPA's criteria for contingency plan adequacy.

A third submittal, dated October 15, 1993, makes only a minor amendment to the administrative order for Rochester Public Utilities, namely to defer the date for required testing for emission points which are currently shut down. This amendment does not alter the prior conclusion that the administrative order in particular and the Rochester SIP in general are approvable.

V. Final Action

On June 25, 1993, USEPA proposed to approve the State's plans for the Saint Paul and Rochester nonattainment areas as meeting the requirements of sections 189(a)(1)(B) and 189(a)(1)(C) as well as various provisions of section 172(c) (specifically subsections (1), (2), (3), (4), (6), (7), (8), and (9)), provided the State adopted and submitted the intended administrative order for Harvest States Coop. USEPA further proposed to determine pursuant to section 189(e) that secondary particulate matter formed from particulate matter precursors does not contribute significantly to exceedances of the NAAQS.

Minnesota submitted the requested administrative order for Harvest States Cooperatives on February 3, 1993, thereby satisfying the condition for fully providing for attainment. A second submittal, a replacement administrative order for North Star Steel submitted April 30, 1993, and a third submittal, an amendment to the administrative order for Rochester Public Utilities submitted October 15, 1993, do not alter the plan's approvability. Although USEPA received one set of comments on the proposed rulemaking, these comments did not object to USEPA's proposed action or its underlying rationale. Therefore, USEPA is taking final action to approve Minnesota's submittals as satisfying applicable requirements for the Saint Paul and Rochester particulate matter nonattainment areas. Specifically, USEPA concludes that these submittals fully satisfy the attainment demonstration requirement in section 189(a)(1)(B), the reasonably available control measures requirement in section 189(a)(1)(C), the contingency plan requirement in section 172(c)(9), and other applicable requirements of subsections (1), (2), (3), (4), (6), (7), and (8) of section 172, which by reference also includes the requirements of section 110(a)(2). In addition, USEPA is making a determination pursuant to section 189(e) that secondary particulate matter formed from particulate matter precursors does not contribute significantly to exceedances of the NAAQS. The State has made separate submittals to address the permit program requirements specified in section 189(a)(1)(A), section 172(c)(5), and section 173, which will be addressed in separate rulemaking.

As noted previously, the enforceable element of the State's submittals are the administrative orders for nine facilities in Saint Paul and one facility in Rochester. The codification portion of this action identifies the dates of the administrative orders and the names and locations of the facilities covered. In brief, this final action incorporates into the SIP and makes Federally enforceable the administrative orders for (1) Ashbach Construction Company, (2) Commercial Asphalt, (3) Great Lakes Coal & Dock, (4) Harvest States Cooperatives, (5) LaFarge Corporation, (6) Metropolitan Waste Control Commission and the Metropolitan Council, (7) North Star Steel, (8) PM Ag Products, (9) Rochester Public Utilities, and (10) J.L. Shiely.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action makes final the action proposed at 57 FR 34397. As noted elsewhere in this action, USEPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table One to Table Two under the processing procedures established at 54 FR 2214, January 19, 1989. On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of section 6 of Executive Order 12866 for a period of 2 years. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 18, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by Reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 7, 1993.

William H. Sanders III,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding new paragraph (c)(29) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(29) On November 26, 1991, August 31, 1992, November 13, 1992, February 3, 1993, April 30, 1993, and October 15, 1993, the State of Minnesota submitted revisions to its State Implementation Plans (SIPs) for particulate matter for the Saint Paul and Rochester areas.

(i) Incorporation by reference.

(A) An administrative order for Ashbach Construction Company, dated August 25, 1992, submitted August 31, 1992, for the facility at University Avenue and Omstead Street.

(B) An administrative order for Commercial Asphalt, Inc., dated August 25, 1992, submitted August 31, 1992, for the facility at Red Rock Road.

(C) An administrative order for Great Lakes Coal & Dock Company dated August 25, 1992, submitted August 31, 1992, for the facility at 1031 Childs Road.

(D) An administrative order for Harvest States Cooperatives dated January 26, 1993, submitted February 3, 1993, for the facility at 935 Childs Road.

(E) An administrative order for LaParge Corporation dated November 30, 1992, submitted in a letter dated November 13, 1992, for the facility at 2145 Childs Road.

(F) An administrative order for the Metropolitan Waste Control Commission and the Metropolitan Council dated November 30, 1992, submitted in a letter dated November 13, 1992, for the facility at 2400 Childs Road.

(G) An administrative order for North Star Steel Company dated April 22, 1993, submitted April 30, 1993, for the facility at 1678 Red Rock Road.

(H) An administrative order for PM Ag Products, Inc., dated August 25, 1992, submitted August 31, 1992, for the facility at 2225 Childs Road.

(I) An administrative order for Rochester Public Utilities dated November 30, 1992, submitted in a letter dated November 13, 1992, for the facility at 425 Silver Lake Drive.

(J) An amendment to the administrative order for Rochester Public Utilities, dated October 14, 1993, submitted October 15, 1993, for the facility at 425 Silver Lake Drive.

(K) An administrative order for J.L. Shiely Company dated August 25, 1992, submitted August 31, 1992, for the facility at 1177 Childs Road.

(ii) Additional materials.

(A) A letter from Charles Williams to Valdas Adamkus dated November 26, 1991, with attachments.

(B) A letter from Charles Williams to Valdas Adamkus dated August 31, 1992, with attachments.

(C) A letter from Charles Williams to Valdas Adamkus dated November 13, 1992, with attachments.

(D) A letter from Charles Williams to Valdas Adamkus dated February 3, 1993, with attachments.

(E) A letter from Charles Williams to Valdas Adamkus dated April 30, 1993, with attachments.

(F) A letter from Charles Williams to Valdas Adamkus dated October 15, 1993, with attachments.

3. Section 52.1230 is amended by revising paragraph (a) to read as follows:

§ 52.1230 Control strategy and rules: Particulates.

(a) *Part D.* (1) *Approval.* The State of Minnesota has satisfied the requirements of sections 189(a)(1)(B) and 189(a)(1)(C) and paragraphs 1, 2, 3, 4, 6, 7, 8, and 9 of section 172(c) for the Saint Paul and Rochester areas. The Administrator has determined pursuant to section 189(e) that secondary particulate matter formed from particulate matter precursors does not contribute significantly to exceedances of the NAAQS.

(2) *No Action.* USEPA takes no action on the alternative test method provision of Rule 7005.2910.

* * * * *

[FR Doc. 94–2169 Filed 2–14–94; 8:45 am]

BILLING CODE: 6560–50–P

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40 CFR Part 52

[OR–29–1–6248; FRL–4833–6]

Approval and Promulgation of State Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the state of Oregon. This revision establishes and requires the implementation of an oxygenated gasoline program in the Clackamas, Jackson, Multnomah, Washington and Yamhill counties, and an eleven by twelve mile area surrounding Klamath Falls and a nine mile by nine mile area surrounding Grants Pass. This SIP revision was submitted to satisfy the requirement of section 211(m) of the Clean Air Act, as amended (CAA), which requires all carbon monoxide nonattainment areas with a design value of 9.5 parts per million (ppm) or greater based generally on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. The intended effect of this action is to approve the oxygenated gasoline program. This action is being taken under Section 110 of the CAA.

EFFECTIVE DATE: This rule will become effective on March 17, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at: Air and Radiation Branch (Docket # OR–29–1–6248), United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; Department of Environmental Quality, Vehicle Inspection Program, 1301 SE Morrison St., Portland, Oregon 97214; and Jerry Kurtzweg ANR–443, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christi Lee, Air and Radiation Branch (AT–082), United States Environmental Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION:

On October 20, 1993 (58 FR 54086–54089), EPA published a notice of proposed rulemaking (NPR) for the state of Oregon. The NPR proposed approval of an oxygenated gasoline program. The formal SIP revision was submitted by the state of Oregon on November 16, 1992. The revision included revisions to Oregon's Administrative Rules (OAR) 340–20–136 and 340–22–440 through 340–22–640, adopted as part of the state of Oregon Clean Air Act Implementation Plan through OAR 340–20–047. These regulatory revisions were adopted by the Oregon Environmental Quality Commission on October 16, 1992 and went into effect on November 1, 1992. A more detailed analysis of the state submittal was prepared as part of the NPR action and is contained in a Technical Support document (TSD) dated July 1, 1993, which is available from the Region 10 office listed in the **Addresses** section of this document.

Other specific requirements of the oxygenated gasoline program and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No substantial public comments were received on the NPR.

I. Final Action

EPA is approving the amendments to Oregon's Administrative Rules (OAR) 340–20–136 and 340–22–440 through 340–22–640, and adopted as part of the state of Oregon Clean Air Act Implementation Plan through OAR 340–20–047.

II. Administrative Review

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the

Acting Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions from the requirements of section 3 of Executive Order 12291 for a period of two years (54 FR at 2222). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request is continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)) (See 42 U.S.C. 7607 (b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Ozone, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: January 21, 1994.

Gerald A. Emison,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (104) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(104) On November 16, 1992, the Oregon State Department of Environmental Quality submitted the formal SIP revision to Oregon's Administrative Rules (OAR) 340–20–136 and 340–22–440 through 340–22–640, adopted as part of the state of Oregon Clean Air Act Implementation Plan through OAR 340–20–047. This revision establishes and requires the implementation of an oxygenated gasoline program in the Clackamas, Jackson, Multnomah, Washington and Yamhill counties, and an eleven by twelve mile area surrounding Klamath Falls and a nine mile by nine mile area surrounding Grants Pass.

(i) Incorporation by reference.

(A) The November 16, 1992 letter from the Director of the Oregon State Department of Environmental Quality to EPA Region 10 submitting revisions to the Oregon SIP.

(B) Revisions to the Oregon SIP: Rules on Oxygenated Fuels, OAR 340–20–136 and 340–22–440 through 340–22–640, adopted as part of the State of Oregon Clean Air Act Implementation Plan through OAR 340–20–047, effective November 1, 1992.

[FR Doc. 94–3524 Filed 2–14–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[IN27–2–6226; FRL–4837–3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 24, 1993, the United States Environmental Protection Agency (USEPA) proposed to approve a State Implementation Plan (SIP) request for Vermillion County, Indiana. The request was submitted by the State of Indiana for the purpose of attaining the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM), and to satisfy Clean Air Act (Act) requirements for an approvable nonattainment area PM SIP for Vermillion County, Indiana. Public comments were solicited on the proposed SIP revision, and on USEPA's proposed rulemaking action. No public comments were received. This rulemaking action approves in final the Vermillion County, Indiana SIP revision as requested by Indiana.

EFFECTIVE DATE: This final rulemaking action becomes effective on March 17, 1994.

ADDRESSES: Copies of the State's submittal and other materials relating to this rulemaking action are available at the following address for review: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. The docket may be inspected between the hours of 8:30 a.m. and 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by USEPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–3299. Anyone wishing to visit the Region 5 offices should first contact David Pohlman.

SUPPLEMENTARY INFORMATION:

Background

In 1988, several exceedances of the ambient air quality standard for PM were recorded in Vermillion County at monitoring sites located downwind of Peabody Coal Company's Universal Mine, Blanford East Area. As a result of these exceedances, and pursuant to section 107(d)(A)(B) of the Act, part of Clinton Township, in Vermillion County, was classified as moderate nonattainment for PM. See 56 FR 56752 (November 8, 1991) and 40 CFR 81.315. Section 189 of the Act requires State submission of a PM SIP for moderate nonattainment areas by November 15, 1991.

On January 13, 1993, Indiana submitted the required PM SIP revision for the Vermillion County PM nonattainment area. Additional information in support of the request was submitted on February 22, 1993 and April 8, 1993. In these materials, the Indiana Department of Environmental Management (IDEM) stated that mining operations at the Peabody Coal Company's Blanford mining area ceased permanently in early 1992. The entire nonattainment area is now used exclusively for agricultural purposes.

IDEM has also stated that the operating permit issued to Peabody Coal Company for it's mining operations expired on April 1, 1992, and will not be renewed. This facility has been deleted from the State's emissions inventory, and there are no other permitted or registered PM sources located in the Vermillion County nonattainment area.

The State also submitted a summary of air quality monitoring data for the nonattainment area. This data shows that there have been no violations of the NAAQS since 1988. It can be seen that the annual average PM concentration has decreased significantly from 45 micrograms per cubic meter ($\mu g/m^3$) in 1988 to 29 $\mu g/m^3$ in 1992 (the NAAQS is 50 $\mu g/m^3$). The monitored 24 hour PM concentrations have also decreased greatly in the last 5 years. The highest monitored concentration in 1988 was 202 $\mu g/m^3$ compared to 84 in 1992 (the NAAQS is 150 $\mu g/m^3$). The most significant improvement is seen between the years 1991 and 1992 when mining operations in the nonattainment area ceased.

On November 24, 1993, USEPA proposed to approve the State'ssubmission (58 FR 62067). In this proposal, USEPA identified the PM SIP elements required by the Act, including the requirement that the State must submit a demonstration showing that the plan will provide for attainment as expeditiously as practicable, but not later than December 31, 1994. See section 189(a)(1)(B) of the Act. USEPA's proposal to approve the Vermillion County SIP request was based on the State's having met this requirement; which, in turn, was based on both the permanent cessation of all mining operations and the low monitored concentrations of PM since 1988 in the Vermillion County area. In the proposal, USEPA also discussed the inapplicability of certain other PM SIP requirements due to the absence of industrial PM sources in the county. [1]

The public comment period for the notice of proposed rulemaking closed on December 27, 1993. No public comments were received.

Rulemaking Action

USEPA approves the requested Vermillion County nonattainment area PM SIP revision which was submitted on January 13, 1993, as supplemented on February 22, 1993, and April 8, 1993. Among other things, the State of Indiana has demonstrated that the Vermillion County moderate PM nonattainment area will attain the PM NAAQS by December 31, 1994.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19. 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future notice will inform the general public of these tables. Under the revised tables this action is remains classified as a Table 3. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continued in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant to statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 18, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

Dated: January 31, 1994.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.776 is amended by adding paragraph (p) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(p) Approval–On January 13, 1993 the State of Indiana submitted a particulate matter State Implementation Plan revision for the Vermillion County nonattainment area. Additional information was submitted on February 22, 1993 and April 8, 1993. These materials demonstrate that the plan will provide for attainment of the National ambient air quality standards for particulate matter by December 31, 1994, in accordance with section 189(a)(1)(B) of the Clean Air Act.

[FR Doc. 94–3523 Filed 2–14–94; 8:45 am]

BILLING CODE 6560–60–F

[1] As noted in the proposal, the State must still submit provisions related to contingency measures under section 172(c)(9) of the Act. The USEPA will address this issue in a future rulemaking action.

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40 CFR Part 63

[FRL–4837–6]

National Emission Standards for Hazardous Air Pollutants; Compliance Extensions for Early Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of complete enforceable commitments received.

SUMMARY: This notice provides a list of companies that have submitted "complete" enforceable commitments to the EPA under the Early Reductions Provisions [section 112(i)(5)] of the Clean Air Act (CAA) as amended in 1990. The list covers commitments determined by the EPA to be complete through December 8, 1993, and includes the name of each participating company, the associated emissions source location, and the EPA Regional Office which is the point of contact for further information. This is one of a series of notices of this type. The most recent notice listed twenty-five sources which have had commitments deemed complete by the EPA. The EPA will publish additional lists of complete submittals on a monthly basis, as needed.

FOR FURTHER INFORMATION CONTACT: David Beck (telephone: 919–541–5421), Rick Colyer (telephone: 919–541–5262), or Mark Morris (telephone: 919–541–5416), Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 for general information on the Early Reductions Program. For further information on specific submittals received under the Early Reductions Program contact the appropriate EPA Regional Office representative listed below:

Region I—Janet Beloin (617) 565–2734

Region II—Umesh Dholakia or Harish Patel (212) 264–6676

Region III—Alice Chow (215) 597–6550

Region IV—Anthony Toney (404) 347–2864

Region V—Aurelio Alvarez (312) 353–8657

Region VI—Tom Driscoll (214) 655–7549

Region VII—Pete Fulweiler (913) 551–7320

Region VIII—Cory Potash (303) 293–1886

Region IX—Ed Pike (415) 744–1248

Region X—Chris Hall (206) 553–1949

SUPPLEMENTARY INFORMATION: Under section 112(i)(5) of the Clean Air Act (CAA) as amended in 1990, an existing source of hazardous air pollutant emissions may obtain a 6-year extension of compliance with an emission standard promulgated under section 112(d) of the CAA, if the source achieves sufficient reductions of hazardous air pollutant emissions prior to certain dates. The final rule was published in the **Federal Register** on December 29, 1992, (57 FR 61970).

Sources choosing to participate in the Early Reductions Program must document base year emissions and post-reduction emissions to show that sufficient emission reductions have been achieved to qualify for a compliance extension. As a first step toward this demonstration, some sources may be required to submit an enforceable commitment containing base year emission information, or if not required, may voluntarily submit such emission information to the EPA for approval. As stated in the proposed Early Reductions rule, the EPA will review these submittals to verify emission information, and also will provide the opportunity for public review and comment. Following the review and comment process and after sources have had the chance to revise submittals (if necessary), the EPA will approve or disapprove the base year emissions.

To facilitate the public review process for program submittals, the proposed rule contains a commitment by the EPA to give public notice of submittals received which have been determined to be complete and which are about to undergo technical review within the EPA. Members of the public wishing to obtain more information on a specific submittal then may contact the appropriate EPA Regional Office representative listed above.

Thirty-eight enforceable commitments and base year submittals are currently being reviewed by EPA for completeness and thirty-three have been determined to be complete to date. Some of the early reductions submittals received actually contain multiple enforceable commitments; that is, some companies have decided to divide their particular plant sites into more than one early reductions source. Each of these sources must achieve the required emissions reductions individually to qualify for a compliance extension. The purpose of today's notice is to add the following commitments to the previously published list of twenty-five complete commitments: Aristech, Ironton, Ohio; BP Oil, Belle Chase, Louisiana; DuPont, Camden, South Carolina; Hoechst Celanese, Bishop, Texas; Miles, Baytown, Texas; Miles, New Martinsville, WV; and Shell, Franklin, Kentucky. As the remaining submittals are determined to be complete, they will appear in subsequent notices. Also appearing in today's notice is a table listing enforceable commitments that have been approved by EPA to date.

Table 1 below lists companies that have made complete enforceable commitments or base year emissions submittals that have been approved by EPA as of December 8, 1993. Table 2 below lists those companies that have made complete enforceable commitments or base year emission submittals under the Early Reductions Program through December 8, 1993. These submittals are undergoing technical review within the EPA at this time.

TABLE 1.—APPROVED ENFORCEABLE COMMITMENTS AND BASE YEAR EMISSIONS SUBMITTALS AS OF DECEMBER 8, 1993

Company	Location	EPA region
1. Dow Corning	Midland, MI	V
2. Johnson & Johnson	Sherman, TX	VI
3. Wyeth-Ayerst	Rouses Point, NY	II

TABLE 2.—COMPLETE ENFORCEABLE COMMITMENTS AND BASE YEAR EMISSIONS SUBMITTALS AS OF DECEMBER 8, 1993

Company	Location	EPA region
1. Amoco Chemical Co. (first source)	Texas City, TX	VI
2. Amoco Chemical Co. (second source)	Texas City, TX	VI
3. PPG Industries	Lake Charles, LA	VI
4. Allied-Signal (first source)	Baton Rouge, LA	VI
5. Allied-Signal (second source)	Baton Rouge, LA	VI
6. Allied-Signal (third source)	Baton Rouge, LA	VI
7. Allied-Signal (first source)	Ironton, OH	V
8. Allied-Signal (second source)	Ironton, OH	V
9. Monsanto	Sauget, IL	V
10. Allied-Signal	Philadelphia, PA	III
11. Texaco-Neches	Port Neches, TX	VI
12. Marathon Oil	Garyville, LA	VI
13. Monsanto	Springfield, MA	I
14. Polyken	Franklin, KY	IV
15. Occidental Chemical	Belle, WV	III
16. Dayco	Waynesville, NC	IV
17. Dow	Dalton, GA	IV
18. First Chemical	Pascagoula, MS	IV
19. Hoechst Celanese	Bishop, TX	VI
20. Monsanto (first source)	St. Louis, MO	VII

TABLE 2.—COMPLETE ENFORCEABLE COMMITMENTS AND BASE YEAR EMISSIONS SUBMITTALS AS OF DECEMBER 8, 1993—Continued

Company	Location	EPA region
21. Monsanto (second source)	St. Louis, MO	VII
22. PPG	New Martinsville, WV	III
23. Aristech	Ironton, OH	V
24. BP Oil	Belle Chase, LA	VI
25. DuPont	Camden, SC	IV
26. Hoechst Celanese	Bishop, TX	VI
27. Miles	Baytown, TX	VI
28. Miles (first source)	New Martinsville, WV	III
29. Miles (second source)	New Martinsville, WV	III
30. Shell	Franklin, KY	IV

At a later time (most likely within one to three months of today's date), the EPA Regional Offices will provide a formal opportunity for the public to comment on the submittals added to the list of "complete" commitments by today's notice. To do this, the Regional Office will publish a notice in the source's general area announcing that a copy of the source's submittal is available for public inspection and that comments will be received for a 30 day period.

Dated: February 8, 1994.

Mary Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–3430 Filed 2–14–94; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7028

[OR–943–4210–06; GP4–014; OR–46603 (WASH)]

Partial Revocation of Executive Order No. 7693 Dated August 19, 1937; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects 11,725.30 acres of lands withdrawn for the Department of Agriculture for the Northeast Washington Project, LA–WA 2. The lands are no longer needed for the purpose for which they were withdrawn. The lands have been conveyed out of Federal ownership and will not be restored to surface entry.

EFFECTIVE DATE: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7162.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 7693 dated August 19, 1937, which withdrew public lands for reforestation, forestation, and soil erosion control purposes, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

Colville National Forest

T. 33 N., R. 40 E.,
Sec. 11, S½NE¼ and N½SE¼;
Sec. 20, E½;
Sec. 21, SW¼.
T. 37 N., R. 40 E.,
Sec. 4, lots 1 and 3;
Sec. 6, lots 3 and 4, and N½SE¼;
Sec. 21, S½SW¼;
Sec. 28, N½NW¼ and SW¼NW¼.
T. 31 N., R. 41 E.,
Sec. 12, SE¼.
T. 33 N., R. 41 E.,
Sec. 18, lots 6 to 12, inclusive, and E½;
Sec. 21, W½W½SW¼NW¼.
T. 36 N., R. 41 E.,
Sec. 29, N½SW¼.
T. 37 N., R. 41 E.,
Sec. 7, SE¼SE¼SE¼NW¼, E½NE¼SW¼, S½NW¼NE¼SW¼, SW¼NE¼SW¼, NW¼NE¼SE¼SW¼, and N½NW¼SE¼SW¼.
T. 38 N., R. 41 E.,
Sec. 4, SW¼SE¼;
Sec. 9, W½NE¼, SE¼NE¼, E½NW¼, and S½.
T. 31 N., R. 42 E.,
Sec. 5, N½NW¼ and SW¼NW¼;
Sec. 6, lots 1, 2, 3, and 4, E½, and E½W½;
Sec. 7, lot 4, SE¼SW¼, and SE¼;
Sec. 8, lots 1, 2, 3, and 4, and E½SW¼;
Sec. 18, lots 1, 2, 3, and 4, E½, and E½W½;
T. 33 N., R. 42 E.,
Sec. 19, lot 2 and W½SE¼NW¼.
T. 37 N., R. 42 E.,
Sec. 12, E½W½ and SW¼SE¼.
T. 38 N., R. 43 E.,
Sec. 19, lot 8.
T. 40 N. R. 43 E.,
Sec. 3, lots 4 and 9.

Kaniksu National Forest

T. 31 N., R. 42 E.,
Sec. 4, lots 1, 2, 3, and 4, S½N½, and S½;
Sec. 12, NE¼NE¼;
Sec. 14;
Sec. 17, E½SW¼;
Secs. 22 and 24;
Sec. 26, NE¼NE¼ and SE¼NW¼;
Sec. 28, N½;
Sec. 29;
Sec. 30, lots 1, 2, 3, and 4, E½, and E½W½;
Sec. 31, lots 1 and 2, NE¼, and E½NW¼;
Sec. 34, lots 1 and 2, lots 7 to 12, inclusive, SW¼NE¼, and S½NW¼.
T. 34 N., R. 42 E.,
Sec. 11, N½NE¼ and SE¼SE¼;
Sec. 13, lots 1 and 2, W½NE¼, N½NW¼, and SW¼NW¼;
Sec. 14, NE¼;
Sec. 22;
Sec. 25, lots 3 and 4, NE¼NW¼, NE¼SW¼, and NW¼SE¼.
T. 31 N., R. 43 E.,
Sec. 19, lots 1, 2, and 3, E½NW¼, and NE¼SW¼.
T. 33 N., R. 43 E.,
Sec. 10, those lands in Patent No. 46690025 in NW¼SW¼.

Colville and Kaniksu National Forests

T. 31 N., R. 42 E.,
Sec. 5, SE¼SW¼;
Sec. 8, E½ and E½NW¼.

The areas described aggregate 11,725.30 acres in Stevens and Pend Oreille Counties.

2. The lands have been conveyed out of Federal ownership and will not be restored to operation of the public land laws.

Dated: January 26, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–3409 Filed 2–14–94; 8:45 am]

BILLING CODE 4310–33–M

Proposed Rules

Federal Register
Vol. 59, No. 31
Tuesday, February 15, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS No. 1392–93]

RIN 1115–AA30

Immigration User Fee; Remittance Requirements

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking publishes changes to requirements related to the Immigration User Fee Account (IUFA). This document proposes to amend existing regulations to comply with the 1991 and 1994 Department of Justice Appropriations Acts and with a nomenclature change. In addition, this proposed rule establishes a change to where remittances shall be sent; a requirement for additional information in the remittance and statement procedures for fees; a clarification as to how remittances must be paid; and an extension to the length of time records must be maintained.

Important and necessary information not currently available to the Immigration and Naturalization Service (INS) would improve INS management of the IUFA. Budgetary estimates based upon projected fee collections would be more precise thereby improving the allocation of funds among programs. In addition, collections activities would be enhanced since the information provided with a remittance would ensure proper recording of the fees collected.

DATES: Written comments must be submitted on or before April 18, 1994.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1392–93 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Michael Natchuras, Budget Analyst, Fee Analysis and Operations Branch, Office of Finance, Office of Budget, Immigration and Naturalization Service, 425 I Street NW., room 6307, Washington, DC 20536, telephone (202) 616–2754.

SUPPLEMENTARY INFORMATION: The Department of Justice Appropriations Act, 1994, (Pub. L. 103–121, October 27, 1993,) increased the Immigration User Fee from $5.00 to $6.00 per individual. In addition, the Department of Justice Appropriations Act, 1991, (Pub. L. 101–515, November 5, 1990,) made other changes to the Immigration and Nationality Act. This proposed rule reflects those changes in 8 CFR 286. The requirements for fee collection data, remittance information, and records maintenance are required to improve financial management processes including budgeting, collection and debt management, and auditing functions. Lastly, this proposed rule implements a nomenclature change throughout 8 CFR 286 to remove the word "Comptroller" and to add in its place the words "Associate Commissioner, Finance."

More specifically, this proposed rule changes the current regulation in the following ways. A new requirement is established for the monthly submission of a summary report showing the user fees collected in the preceding month and the associated number of ticket sales. In addition, the remittance depository cited in the current regulation is changed from one of specific identification to that of a "designated Treasury depository." Further, a requirement is added to require the quarterly remittance statement to separately identify interest and penalty payments from the actual user fee remittance. Finally, the record retention period is changed from 2 years to 5 years. These changes are being made to improve financial management of the user fee account. Also, these changes are responsive to recommendations in Department of Justice, Office of Inspector General audits of the account.

In compliance with 5 U.S.C. 605(b), the Commissioner of INS certifies that the proposed rule would not have a significant adverse economic impact on a substantial number of small entities. The Government does not collect the user fees directly from passengers, but from the air and vessel carriers or their agents. Each entity that issues a document or ticket to an individual for transportation by a commercial aircraft or commercial vessel into the United States is required to collect the immigration user fee at the time the ticket is issued, and if the issuer fails to collect the fee at the time of issuance, the entity providing the transportation collects the user fee when the passenger departs the United States. The information required under this rule should be readily available from business records which must be maintained as a routine business practice.

This proposed rule is not considered by the Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866 § 3(f), Regulatory Planning and Review, and the Office of Management and Budget (OMB) has waived its review process under section 6(a)(3)(A).

The information collection requirements contained in this proposed rule have been cleared by the OMB, under the provisions of the Paperwork Reduction Act. The OMB clearance number is 1115–0142.

List of Subjects in 8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, part 286 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 286—IMMIGRATION USER FEES

1. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1356; 8 CFR part 2.

2. Section 286.2 is revised to read as follows:

§ 286.2 Fee for arrival of passengers aboard commercial aircraft or commercial vessels.

(a) Under the provisions of section 286(b) of the Act a $6.00 fee per individual is charged and collected by the Commissioner for the immigration inspection of each passenger aboard a commercial aircraft or commercial vessel, arriving at a Port-of-Entry in the United States, or for the preinspection of a passenger in a place outside the United States prior to such arrival, except as provided in $286.3.

(b) Twenty business days after the end of each calendar month, each commercial aircraft and vessel carrier or ticket selling agent shall submit to the Immigration and Naturalization Service, Associate Commissioner, Finance, a summary statement showing the amount of user fees collected in the preceding month. The summary information shall include the fees expected to be remitted to INS and the number of tickets sold. This information should be forwarded to the Immigration and Naturalization Service, Chief, Fee Analysis and Operations Branch, 425 I Street, NW., room 6307, Washington, DC 20536.

3. In § 286.3 paragraph (a) is revised to read as follows:

§ 286.3 Exceptions.

* * * * *

(a) Persons, other than aircraft passengers, whose travel originated in Canada, Mexico, the adjacent islands, and territories or possessions of the United States;

* * * * *

4. In § 286.5 paragraphs (b), (c) and (d) are revised to read as follows:

§ 286.5 Remittance and statement procedures.

* * * * *

(b)(1) Fee remittances shall be sent to the Immigration and Naturalization Service, at a designated Treasury depository, for receipt no later than 31 days after the close of the calendar quarter in which the fees are collected, except the fourth quarter payment for fees collected shall be made on the date that is ten days before the end of the U.S. Government's fiscal year, and the first quarter payment shall include any collections made in the preceding quarter that were not remitted with the previous payment. The fiscal year referenced is the U.S. Government's fiscal year which begins on October 1 and ends on September 30.

(2) Late payments will be subject to interest, penalty, and handling charges as provided in the debt Collection Act of 1982 (31 U.S.C. 3717). Refunds by a remitter of fees collected in conjunction with unused tickets or documents for transportation should be netted against the next subsequent remittance.

(c) Along with the remittance, as set forth in paragraph (b) of this section, each remitter making such remittance shall attach a statement which sets forth the following:

(1) Name and address;
(2) Taxpayer identification number;
(3) Calendar quarter covered by the payment;
(4) Interest and penalty charges; and
(5) Total amount collected and remitted.

(d) Remittances in U.S. dollars must be made by check or money order through a U.S. bank, to Associate Commissioner, Finance, INS.

* * * * *

5. Section 286.6 is revised to read as follows:

§ 286.6 Maintenance of records.

Each collector and remitter shall maintain records necessary for the Service to verify the accuracy of fees collected and remitted and to otherwise determine compliance with the applicable statutes and regulations. Such records shall be maintained for a period of five years from the date of fee collection. Each remitter shall advise the Associate Commissioner, Finance, of the name, address, and telephone number of a responsible officer who shall have the authority to verify and produce any records required to be maintained under this part. The Associate Commissioner, Finance, shall be promptly notified of any changes of the responsible officer.

§ 286.1(e), 286.4(c), 286.5(d), 286.5(e), and 286.6 [Amended]

6. In §§ 286.1(e), 286.4(c), 286.5(d), 286.5(e), and 286.6, remove the word "Comptroller" and add in its place "Associate Commissioner, Finance" wherever it appears.

Dated: January 14, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94-3395 Filed 2-14-94; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-227-AD]

Airworthiness Directives; Airbus Industrie Model A300, A300-600, A310, and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300, A300-600, A310, and A320 series airplanes. This proposal would require that certain landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this proposal are not met, and that the specified wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes; and the subsequent review of allowable brake wear limits for all transport category airplanes. The actions specified by the proposed AD are intended to prevent the loss of brake effectiveness during a high energy RTO.

DATES: Comments must be received by April 11, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-227-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-227-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-227-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

In 1988, a McDonnell Douglas Model DC-10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of allowable wear limits for all brakes installed on transport category airplanes. The FAA and the Aerospace Industries Association (AIA) jointly developed a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. It should be noted that this worn brake accountability determination validates brake wear limits with respect to brake energy capacity only and is not meant to account for any reduction in brake force due solely to the wear state of the brake. The guidelines for validating brake wear limits allow credit for use of reverse thrust with a critical engine inoperative to determine the energy level absorbed by the brake during the dynamometer test.

The FAA has requested that airframe manufacturers of transport category airplanes: (1) determine required adjustments in allowable wear limits for all of its brakes in use, (2) schedule dynamometer testing to validate wear limits as necessary, and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

Airbus Industrie has conducted worn brake rejected takeoff (RTO) dynamometer testing and analyses on various brakes installed on certain Model A300, A300-600, A310, and A320 series airplanes. Based on the results of that testing and analyses, the FAA has determined that the maximum brake wear limits currently recommended in the Component Maintenance Manual for Model A300, A300-600, A310, and A320 series airplanes equipped with brakes manufactured by Messier-Bugatti, BFGoodrich, Allied Signal (ALS) Aerospace Company (Bendix), or Aircraft Braking Systems (ABS) are acceptable as they relate to the effectiveness of the brakes during a high energy RTO. Consequently, the FAA has determined that the brake wear limits for Model A300, A300-600, A310, and A320 series airplanes must be incorporated into the FAA-approved maintenance inspection program.

The FAA has determined that, in order to prevent loss of brake effectiveness during a high energy RTO, the following maximum brake wear limits are necessary for Model A300, A300-600, A310, and A320 series airplanes equipped with Messier-Bugatti, BFGoodrich, ALS Aerospace Company (Bendix), or ABS brakes.

AIRBUS INDUSTRIE MODEL A300, A300-600, A310, AND A320 SERIES AIRPLANES EQUIPPED WITH MESSIER-BUGATTI, BFGOODRICH, ALLIED SIGNAL (ALS) AEROSPACE COMPANY (BENDIX), OR AIRCRAFT BRAKING SYSTEMS (ABS) BRAKES

Airplane model/series	Brake manufacturer	Brake part No.	Maximum brake wear limit (inch/mm)
A300-B2-100	Messier-Bugatti	286349-115	0.98" (25.0 mm).
A300-B2-100	Messier-Bugatti	286349-116	0.98" (25.0 mm).
A300-B2-100	BFGoodrich	2-1449	1.4" (35.6 mm).
A300-B2-100	BFGoodrich	2-1449	1.1" (27.9 mm) S.C.[1]
A300-B4-100	Messier-Bugatti	A21329-41-7	1.1" (28.0 mm).
A300-B4-100	Messier-Bugatti	A21329-41-17	1.1" (28.0 mm).
A300-B4-100	ALS (Bendix)	2606802-3/-4/-5	0.9" (22.9 mm).
A300-B4-100	ALS (Bendix)	2606802-3/-4/-5	1.48" (37.6 mm) S.C.[1]
A300-B4-100	BFGoodrich	2-1449	1.4" (35.6 mm).
A300-B4-100	BFGoodrich	2-1449	1.1" (27.9 mm) S.C.[1]
A300-B4-200 & A300-600	Messier-Bugatti	C20060-100	1.1" (28.0 mm).
A300-B4-200 & A300-600	ALS (Bendix)	2607932-1	0.9" (22.9 mm).
A300-B4-200 & A300-600	ALS (Bendix)	2607932-1	1.48" (37.6 mm) S.C.[1]
A300-B4-600R	Messier-Bugatti	C20210000	1.97" (50.0 mm).
A300-B4-600R	Messier-Bugatti	C20210200	1.97" (50.0 mm).
A310-200	Messier-Bugatti	C20089000	1.1" (28.0 mm).
A310-200	ALS (Bendix)	2606822-1	1.26" (32.0 mm).
A310-200	ALS (Bendix)	2606822-1	1.5" (38.2 mm) S.C.[1]
A310-300	Messier-Bugatti	C20194000	1.97" (50.0 mm).
A310-300	Messier-Bugatti	C20194200	1.97" (50.0 mm).
A310-300	ABS	5010995	1.97" (50.0 mm).
A320	Messier-Bugatti	C20225000	1.97" (50.0 mm).
A320	Messier-Bugatti	C20225200	1.97" (50.0 mm).
A320-220	BFGoodrich	2-1526-2	1.97" (50.0 mm).
A320-200	BFGoodrich	2-1526-3/-4	2.68" (68.0 mm).

S.C. represents "Service Configured" brakes, which are marked according to the instructions provided in the brake manufacturer's Component Maintenance Manual.

These airplanes are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require

that certain landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this proposal are not met, and that the specified wear limits be incorporated into the FAA-approved maintenance inspection program.

The FAA estimates that 101 Model A300, A300–600, A310, and A320 series airplanes of U.S. registry and 5 U.S. operators would be affected by this proposed AD. The FAA estimates that it would take approximately 20 work hours per operator, at an average labor rate of $55 per work hour, for each operator to incorporate the proposed revision of its FAA-approved maintenance inspection program. The total cost impact of that proposed requirement on U.S. operators of Model A300, A300–600, A310, and A320 series airplanes is estimated to be $5,500, or $1,100 per operator.

The FAA also estimates that it would take 15 work hours per airplane, at an average labor rate of $55 per work hour, to accomplish the proposed inspection. The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) would be approximately $2,236 per airplane. The FAA estimates that 28 of the 101 affected airplanes of U.S. registry would be required to accomplish the proposed inspection. Based on these figures, the total cost impact of that proposed requirement on U.S. operators of these airplanes is estimated to be $85,708, or $3,061 per airplane.

These total cost figures assume that no operator has yet accomplished the requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 93–NM–227–AD.

Applicability: Model A300, A300–600, A310, and A320 series airplanes equipped with Messier-Bugatti, BFGoodrich, Allied Signal (ALS) Aerospace Company (Bendix), or Aircraft Braking Systems (ABS) brakes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of brake effectiveness during a high energy rejected takeoff (RTO), accomplish the following:

(a) Within 180 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Inspect main landing gear brakes having the brake part numbers listed below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within that limit.

AIRBUS INDUSTRIE MODEL A300, A300–600, A310, AND A320 SERIES AIRPLANES EQUIPPED WITH MESSIER-BUGATTI, BFGOODRICH, ALLIED SIGNAL (ALS) AEROSPACE COMPANY (BENDIX), OR AIRCRAFT BRAKING SYSTEMS (ABS) BRAKES

Airplane model/series	Brake manufacturer	Brake part No.	Maximum brake wear limit (inch/mm).
A300–B2–100	Messier-Bugatti	286349–115	0.98" (25.0 mm).
A300–B2–100	Messier-Bugatti	286349–116	0.98" (25.0 mm).
A300–B2–100	BFGoodrich	2–1449	1.4" (35.6 mm).
A300–B2–100	BFGoodrich	2–1449	1.1" (27.9 mm). S.C.[1]
A300–B4–100	Messier-Bugatti	A21329–41–7	1.1" (28.0 mm).
A300–B4–100	Messier-Bugatti	A21329–41–17	1.1" (28.0 mm).
A300–B4–100	ALS (Bendix)	2606802–3/-4/-5	0.9" (22.9 mm).
A300–B4–100	ALS (Bendix)	2606802–3/-4/-5	1.48" (37.6 mm). S.C.[1]
A300–B4–100	BFGoodrich	2–1449	1.4" (35.6 mm).
A300–B4–100	BFGoodrich	2–1449	1.1" (27.9 mm). S.C.[1]
A300–B4–200 & A300–600	Messier-Bugatti	C20060–100	1.1" (28.0 mm).
A300–B4–200 & A300–600	ALS (Bendix)	2607932–1	0.9" (22.9 mm).
A300–B4–200 & A300–600	ALS (Bendix)	2607932–1	1.48" (37.6 mm). S.C.[1]
A300–B4–600R	Messier-Bugatti	C20210000	1.97" (50.0 mm).
A300–B4–600R	Messier-Bugatti	C20210200	1.97" (50.0 mm).
A310–200	Messier-Bugatti	C20089000	1.1" (28.0 mm).
A310–200	ALS (Bendix)	2606822–1	1.26" (32.0 mm).
A310–200	ALS (Bendix)	2606822–1	1.5" (38.2 mm). S.C.[1]
A310–300	Messier-Bugatti	C20194000	1.97" (50.0 mm).
A310–300	Messier-Bugatti	C20194200	1.97" (50.0 mm).
A310–300	ABS	5010995	1.97" (50.0 mm).
A320	Messier-Bugatti	C20225000	1.97" (50.0 mm).
A320	Messier-Bugatti	C20225200	1.97" (50.0 mm).
A320–220	BFGoodrich	2–1526–2	1.97" (50.0 mm).

AIRBUS INDUSTRIE MODEL A300, A300–600, A310, AND A320 SERIES AIRPLANES EQUIPPED WITH MESSIER-BUGATTI, BFGOODRICH, ALLIED SIGNAL (ALS) AEROSPACE COMPANY (BENDIX), OR AIRCRAFT BRAKING SYSTEMS (ABS) BRAKES—Continued

Airplane model/series	Brake manufacturer	Brake part No.	Maximum brake wear limit (inch/mm).
A320–200	BFGoodrich	2–1526–3/–4	2.68" (68.0 mm).

[1] S.C. represents "Service Configured" brakes, which are marked according to the instructions provided in the brake manufacturer's Component Maintenance Manual.

Note 1: Measuring instructions that must be revised to accommodate the new brake wear limits specified above can be found in Chapter 32–42–27 of the Airplane Maintenance Manual (AMM), in Chapter 32–32–( ) or 32–44–( ) of the brake manufacturer's Component Maintenance Manual (CMM), or in certain service bulletins (SB), as listed below:

Brake manufacturer	Part No.	Document/chapter	Date/revision (or later revisions)
For model A300–B2–100 series airplanes:			
Messier-Bugatti	286349–115	CMM 32–42–27	April 1991.
Messier-Bugatti	286349–116	CMM 32–42–27	April 1991.
BFGoodrich	2–1449 & S.C.	CMM 32–44–37	January 1993.
		SB 567 (2–1449–32–4)	January 30, 1993
For model A300–B4–100 series airplanes:			
ALS (Bendix)	2606802–3	CMM 32–42–02	September 1993.
	2606802–4	SB 2606802–32–003	March 31, 1993.
	2606802–5 & S.C.		
BFGoodrich	2–1449 & S.C.	CMM 32–44–37	January 1993.
		SB 567 (2–1449–32–4)	January 30, 1993.
For model A300–B4–200 and A300–600 series airplanes:			
ALS (Bendix)	2607932–1 & S.C.	CMM 32–42–27	September 1993.
		SB 2607932–32–002	March 31,1993 & Revision 1, dated October 1, 1993.
For model A300–B4–600R Series Airplanes:			
Messier-Bugatti	C20210000 & C20210200	Airbus SB 470–32–675	April 6, 1990.
For model A310–200 series airplanes:			
ALS (Bendix)	2606822–1 & S.B.	CMM 32–42–03	September 1993.
		SB 2606822–32–002	March 31, 1993.
For model A310–300 Series Airplanes:			
Messier-Bugatti	C20225000 & C20225200	Airbus SB 470–32–675	April 6, 1990.

(2) Incorporate into the FAA-approved maintenance inspection program the maximum brake wear limits specified in paragraph (a)(1) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 9, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3461 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–228–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require dye penetrant inspection and proof pressure testing to detect cracks or ruptures of the crossover pneumatic duct, and repair or replacement, as necessary. This proposal would also require stress relieving of the crossover pneumatic duct assembly. This proposal is prompted by several reports of ruptured engine bleed air crossover ducts. The actions specified by the proposed AD are intended to prevent failure of the engine bleed air crossover duct, which could result in loss of pneumatics and damage to adjacent structure.

DATES: Comments must be received by April 11, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this

location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S; Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2670; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–228–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 14, 1993, the FAA issued AD 93–14–11, Amendment 39–8635 (58 FR 43350, August 17, 1993), applicable to Boeing Model 767 series airplanes, line position 001 through 307, inclusive. That AD requires a dye penetrant inspection and proof pressure testing to detect cracks or ruptures of the crossover pneumatic ducts, and repair or replacement, as necessary. That action was prompted by several reported incidents of ruptured engine bleed air crossover ducts on certain Boeing Model 767 series airplanes. The duct ruptures resulted in a loss of cabin pressure, loss of bleed air to the air driven hydraulic pump, loss of wing thermal anti-ice capabilities, and damage to the air conditioning panels. These duct ruptures were caused by cracking, which started and progressed around the circumferential welds. These cracks formed in the heat affected zones of the duct welds because of hydrogen oxide (hydride) concentration. The hydrides have an embrittling effect on the duct material, which may initiate the cracking.

Duct ruptures, if not corrected, could result in loss of pneumatics for cabin pressurization, air conditioning, air driven hydraulic pump, wing thermal anti-ice, hydraulic reservoir pressurization, engine cross starting ability, and cargo heating, and could also damage air conditioning panels.

Since the issuance of AD 93–14–11, the manufacturer has discovered that stress relieving of one of the four crossover ducts was incorporated during production on airplanes starting at line number 322 instead of line number 308. The manufacturer has informed the FAA that 14 airplanes did not receive stress relieving of the crossover duct. Therefore, these 14 airplanes would be subject to the same unsafe condition as addressed by AD 93–14–11.

The FAA has reviewed and approved Boeing Service Bulletin 767–36A0041, Revision 2, dated October 28, 1993, that describes procedures for conducting dye penetrant inspections and proof pressure tests of the crossover pneumatic duct. This service bulletin also describes procedures for repairing or replacing this duct, and stress relieving this duct. Stress relieving this duct will eliminate the residual stress and local stress concentration. A dye penetrant inspection, proof pressure test, and stress relieving will reduce the possibility of engine bleed air crossover duct rupture caused by cracking due to hydride formation. The effectivity listing of this service bulletin includes the 14 airplanes on which the stress relieving procedure was not accomplished during production.

Since an unsafe condition has been identified that is likely to exist on other products of this same type design, the proposed AD would require conducting dye penetrant inspections and proof pressure tests of the crossover pneumatic duct on 14 specific airplanes. This proposed AD would also require repairing or replacing this duct, and stress relieving this duct. The actions would be required to be accomplished in accordance with the service bulletin described previously.

(Note: The FAA's normal policy is that, when an AD requires a substantive change, such as a change in its applicability, the "old" AD is superseded by being removed from the system and a new AD added. In the case of this AD action, the FAA normally would have proposed superseding AD 93–14–11 to expand its applicability to include the 14 additional airplanes. However, in reconsideration of the entire fleet size that would be affected by such a supersedure action, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to the 14 airplanes. This AD does not supersede AD 93–14–11; airplanes listed in the applicability of AD 93–14–11 continue to be required to comply with the requirements of that AD. This proposed AD is a separate AD action, and is applicable only to airplanes having line numbers 308 through 321, inclusive.)

There are 14 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 18 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,208 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $19,188, or $3,198 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–228–AD.

Applicability: Model 767 series airplanes, line position 308 through 321 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Inspections, testing, and repair or replacement accomplished prior to the effective date of this amendment in accordance with Boeing Alert Service Bulletin 767–36A0041, dated July 2, 1992; or Revision 1, dated February 25, 1993; are considered acceptable for compliance with the applicable action specified in this amendment.

To prevent failure of the engine bleed air crossover duct, which could result in loss of pneumatics and damage to adjacent structure, accomplish the following:

(a) *OPTION 1:* As an alternative to the requirements of paragraph (b) of this AD, accomplish the following:

(1) Within 6 months after the effective date of this AD, or prior to the accumulation of 7,000 total flight cycles, whichever occurs later, conduct a dye penetrant inspection and proof pressure test of the crossover pneumatic duct, in accordance with Boeing Service Bulletin 767–36A0041, Revision 2, dated October 28, 1993.

(i) If cracks or ruptures are detected, prior to further flight, repair or replace the crossover pneumatic duct in accordance with the service bulletin.

(ii) Stress relieving of the duct, in accordance with the service bulletin, may be accomplished in conjunction with the initial dye penetrant inspection and proof pressure test required by this paragraph. Such action constitutes terminating action for the requirements of paragraph (a)(2) of this AD.

(2) Within 3,000 flight cycles after accomplishing the initial dye penetrant inspection and proof pressure test required by paragraph (a)(1) of this AD, conduct an additional dye penetrant inspection and proof pressure test of the crossover pneumatic duct, and stress relieve the crossover pneumatic duct assembly, in accordance with Boeing Service Bulletin 767–36A0041, Revision 2, dated October 28, 1993. If cracks or ruptures are detected, prior to further flight, repair or replace the crossover pneumatic duct in accordance with the service bulletin.

(b) *OPTION 2:* As an alternative to the requirements of paragraph (a) of this AD, accomplish the following:

(1) Within 18 months after the effective date of this AD, or prior to the accumulation of 7,000 total flight cycles, whichever occurs later, conduct a dye penetrant inspection and proof pressure test of the crossover pneumatic duct and stress relieve the crossover pneumatic duct assembly, in accordance with Boeing Service Bulletin 767–36A0041, Revision 2, dated October 28, 1993.

(2) If cracks or ruptures are detected, prior to further flight, repair or replace the crossover pneumatic duct in accordance with the service bulletin.

(c) Replacement of the crossover pneumatic duct with a stress relieved duct in accordance with Boeing Service Bulletin 767–36A0041, Revision 2, dated October 28, 1993, constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 9, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3460 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–156–AD]

Airworthiness Directives; McDonnell Douglas Model DC–8, DC–9, and DC–9–80 Series Airplanes; Model MD–88 Airplanes; and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8, DC–9, and DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) airplanes, that would have required inspection of the center and side windshields, and replacement of discrepant windshields. That proposal was prompted by reports that the core ply of certain windshields were incorrectly tempered during the manufacturing process. This action revises the proposed rule by adding another windshield to the list of suitable replacement windshields and referencing the part number for the left side windshield. The actions specified by this proposed AD are intended to prevent failure of the windshield.

DATES: Comments must be received by March 17, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: David Hempe, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach,

California 90806–2425; telephone (310) 988–5224; fax (310) 988–5210; or Mike Lee, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–156–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8, DC–9, and DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 13, 1993 (58 FR 52932). That NPRM would have required inspection of the center and side windshields, and replacement of discrepant windshields. That NPRM was prompted by reports that the core ply of certain windshields were incorrectly tempered during the manufacturing process. That condition, if not corrected, could result in failure of the windshield.

Since the issuance of that NPRM, the FAA has received several comments from the manufacturer that have caused the FAA to reconsider its position on certain aspects of the proposed rule.

McDonnell Douglas points out that Revision 2 of McDonnell Douglas Alert Service Bulletins A56–16, dated December 13, 1993 (for Model DC–8 series airplanes), and A56–15, dated November 9, 1993 (for Model DC–9 series airplanes), lists another alternative for a suitable windshield replacement. McDonnell Douglas requests that paragraphs (a)(2) and (b)(2) of the proposal be revised to include windshields manufactured by Pilkington Aerospace after October 1993 as suitable replacement windshields. The FAA concurs. The FAA has verified that Pilkington Aerospace has revised its manufacturing process that previously produced incorrectly tempered core plies in these windshields. Therefore, the FAA has determined that center and side windshields manufactured by Pilkington Aerospace after September 30, 1993, are acceptable replacements for discrepant windshields. Paragraphs (a)(2)(iii) and (b)(2)(iii) have been added to this supplemental NPRM to include this third alternative to the list of acceptable replacement windshields.

The FAA has reviewed and approved Revision 2 of McDonnell Douglas Alert Service Bulletins A56–16, dated December 13, 1993 (for Model DC–8 series airplanes), and A56–15, dated November 9, 1993 (for Model DC–9 series airplanes), that describe procedures to inspect and replace center windshields (for Model DC–8 series airplanes), and center and side windshields (for Model DC–9 series airplanes) that were manufactured by Pilkington Aerospace. The service bulletins list the following windshields as acceptable replacement windshields:

1. Windshields that have not been manufactured by Pilkington Aerospace.
2. Windshields that have been manufactured by Pilkington, but have been recertified and re-identified.
3. Windshields that have been manufactured by Pilkington after September 30, 1993.

Paragraphs (a) and (b) of this supplemental NPRM have been revised to reference this revision of the service bulletins as the appropriate source of service information. Additionally, a note has been added to the compliance section of this supplemental NPRM to indicate that accomplishment of the requirements contained in previous revisions of these service bulletins would constitute compliance with the requirements of this AD.

Further, the manufacturer indicates that paragraphs (b) and (c) of the proposal only list the part number for the right side windshield for the inspection and replacement requirements. McDonnell Douglas requests to revise the rule by including the left side windshield, part number 5912290–502, for inspection and replacment. The FAA concurs. References to inspection and replacement of the left side windshield were inadvertently omitted from the NPRM; therefore, paragraphs (b) and (c) of this supplemental NPRM have been revised to add these requirements and part number references.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 235 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 140 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators of Model DC–8 series airplanes is estimated to be $3,850, or $27.50 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

There are approximately 1,978 Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,079 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators of Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes is estimated to be $29,673, or $27.50 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

Based on the figures discussed above, the total cost impact of the proposed inspection actions on U.S. operators is estimated to be $33,523. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

Should an inspection reveal that a discrepant windshield was installed, the replacement of that windshield would require approximately 10 addltional work hours to accomplish, at an average labor rate of $55 per work hour. Required replacement parts would be provided at no cost to operators. Based on these figures, the total cost impact for the replacement of discrepant windshields for U.S. operators would be $550 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 93–NM–156–AD.

Applicability: Model DC–8–60 and –70 series airplanes on which the center windshield has been replaced after February 1992; and Model DC–9–10, –20, –30, –40, and –50 series airplanes, Model DC–9–81, –82, –83, and –87 airplanes, Model MD–88 airplanes, and C–9 (military) airplanes, on which the center and/or side windshield(s) has been replaced after February 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Replacement of any subject windshield that has been accomplished prior to the effective date of this amendment in accordance with McDonnell Douglas DC–8 Service Bulletin A56–16, dated June 15, 1993, or Revision 1, dated July 1, 1993 (for Model DC–8 series airplanes); or McDonnell Douglas DC–9 Alert Service Bulletin A56–15, dated June 15, 1993, or Revision 1, dated September 15, 1993; is considered acceptable for compliance with the applicable action specified in this amendment.

To prevent failure of the windshield, accomplish the following:

(a) For Model DC–8–60 and –70 series airplanes: Within 30 days after the effective date of this AD, perform a visual inspection of the center windshield to determine the manufacturer.

(1) If the windshield was not manufactured by Pilkington Aerospace: No further action is required by this AD.

(2) If the center windshield, part number 5887275–501, was manufactured by Pilkington Aerospace: Prior to further flight, replace the center windshield with one of the windshields specified in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this AD, in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A56–16, Revision 2, dated December 13, 1993.

(i) A center windshield that was not manufactured by Pilkington Aerospace; or

(ii) A center windshield that has been manufactured by Pilkington Aerospace, but recertified and re-identified by Pilkington Aerospace.

(iii) A center windshield that was manufactured by Pilkington Aerospace after September 30, 1993.

(b) For Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 airplanes; Model MD–88 airplanes; and C–9 (military) airplanes: Within 30 days after the effective date of this AD, perform a visual inspection of the center windshield and side windshield to determine the manufacturer.

(1) If the center and side windshields were not manufactured by Pilkington Aerospace: No further action is required by this AD.

(2) If the center windshield, part number 5887275–501, or side windshields, part numbers 5912290–501 and 5912290–502, were manufactured by Pilkington Aerospace: Prior to further flight, replace the center and/or side windshield(s) with one of the windshields specified in paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this AD, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A56–15, Revision 2, dated November 9, 1993.

(i) A center and/or side windshield(s) that was not manufactured by Pilkington Aerospace; or

(ii) A center and/or side windshield(s) that has been manufactured by Pilkington Aerospace, but recertified and re-identified by Pilkington Aerospace.

(iii) A center and/or side windshield(s) that was manufactured by Pilkington after September 30, 1993.

(c) As of the effective date of this AD, no person shall install on any airplane a center windshield, part number 5887275–501, or side windshields, part numbers 5912290–501 and 5912290–502, that have been manufactured by Pilkington Aerospace between February 1, 1992 and September 30, 1993. Those windshields must be recertified and re-identified by Pilkington Aerospace before use.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 9, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3462 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 123 and 1240

Food Safety Initiative; Notice of Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meetings.

SUMMARY: The Food and Drug Administration's (FDA) is announcing that it is sponsoring nine public meetings that are intended to promote understanding of FDA's recently announced food safety initiative. This

initiative includes the Food Code and the proposal to require that domestic seafood processors, importers, and foreign processors who export seafood to the United States establish hazard analysis critical control point (HACCP) systems to ensure the safety of their products. FDA is holding these meetings to facilitate informed public comment on the seafood HACCP proposal.

DATES: For meeting dates, see Table 1 in "**Supplementary Information.**"

ADDRESSES: For meeting addresses, see Table 1 in "**Supplementary Information.**"

FOR FURTHER INFORMATION CONTACT: Edward A. Steele (or the local contact person listed in Table 2 in "**Supplementary Information**"), Office of Seafood, Center for Food Safety and Applied Nutrition (HFS–405), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–3885.

SUPPLEMENTARY INFORMATION: FDA's food safety initiative was announced by Donna E. Shalala, Secretary of Health and Human Services, on January 21, 1994. This initiative includes the proposal to require that domestic seafood processors, importers, and foreign processors who export seafood to the United States employ hazard analysis critical control point (HACCP) systems in their processing of food to ensure the safety of their products to consumers (59 FR 4142, January 28, 1994).

To promote understanding of the food safety initiative, FDA is holding nine public meetings. At each meeting, the proposed HACCP regulation will be explained, and time will be provided to answer questions from the public about the proposal. By holding these public meetings, the agency is hoping to facilitate the development of public comments for consideration in the development of the HACCP final rule. The purpose of these meetings is not, however, to receive comments.

The food safety initiative also includes the issuance of the Food Code, which provides a model for those Federal, State, and local jurisdictions that have regulatory responsibility for food service, retail, and vending operations. The Food Code provides a framework for the application of HACCP at the retail level. Agency personnel will be present at these meetings to provide an overview of the Food Code.

The meetings will be held at the addresses and on the dates listed in Table 1 as follows:

TABLE 1

Meeting addresses	Dates
Stouffer Harbor Place Hotel, 202 East Pratt St., Baltimore, MD	February 22, 1994
Wyndham Hamilton Hotel, 400 Park Blvd., Itasca, IL	February 25, 1994
The LaGuardia Marriott, 102–05 Ditmars Blvd., East Elmhurst, NY	March 2, 1994
Radisson Mart Plaza Hotel, 711 NW., 72d Ave., Miami, FL	March 3, 1994
Westin Hotel, 100 Iberville St., New Orleans, LA	March 4, 1994
Hyatt Regency Hotel, 6225 W. Century Blvd., Los Angeles, CA	March 7, 1994
Seattle Center, Olympic Room, 305 Harrison St., Seattle, WA	March 8, 1994
Regal Alaskan Hotel, 4800 Stenard Rd., Anchorage, AK	March 10, 1994
The Hynes Convention Center, rm. 100, 900 Boylston St., Boston, MA	March 16, 1994

Meetings will be held from 1 p.m. to 4:30 p.m. Evening sessions, which will be held from 7 p.m. to 8:30 p.m., are scheduled in all cities, except Chicago (Itasca), Anchorage, and Boston. The evening sessions in Baltimore, New York, Miami, New Orleans, Los Angeles, and Seattle are being scheduled to accommodate those unable to attend the afternoon sessions. Evening sessions will be limited to questions and answers only.

There is no charge to attend these meetings. Advance registration is requested. Early registration is suggested because space is limited. The deadline for registering is 1 week before each meeting. Late registration will be accepted pending availability of space. Those persons interested in attending should fax their name, organization, address, telephone number, and session of interest (afternoon or evening) to the local contact persons listed in Table 2 as follows:

TABLE 2

Meeting location	Contact person
Baltimore	Alexander A. Ondis, Baltimore District Office, FDA, 900 Madison Ave., Baltimore, MD 21201, 410–962–3590 or FAX 410–962–2307.
Chicago	Maxine Aubert, Chicago District Office, FDA, 300 South Riverside Plaza, suite 550 South, Chicago, IL 60606, 312–353–7379 or FAX 312–886–3280.
New York	Joseph C. Famulare, New York District, FDA, Long Island Resident Post, 6800 Jericho Turnpike, suite 109E, Syosset, New York 11791, 516–921–2869 or FAX 516–921–3025.
Miami	Lynne C. Issacs, Orlando District Office, FDA, 7200 Lake Ellenor Dr., suite 120, Orlando, FL 32809, 407–648–6922 or FAX 407–648–6221.
New Orleans	Tura King, New Orleans District Office, FDA, 4298 Elysian Fields, New Orleans, LA 70122, 504–589–4334 or FAX 504–589–4365.
Los Angeles	Yvonne Banegas, Los Angeles District Office, FDA, 1521 West Pico Blvd., Los Angeles, CA 90015, 213–252–7586 or FAX 213–251–7148.
Seattle	Sue Hutchcroft, Seattle District Office, FDA, 22201 23d Dr. SE., Bothell, WA 98041, 206–483–4999 or FAX 206–483–4996.

TABLE 2—Continued

Meeting location	Contact person
Anchorage	Sue Hutchcroft, Seattle District Office, FDA, 22201 23d Dr. SE., Bothell, WA 98041, 206–483–4999 or FAX 206–483–4996.
Boston	Alyson L. Saben, Boston District Office, FDA, One Montvale Ave., Stoneham, MA 02180, 617–279–1675, ext. 118 or FAX 617–279–1742.

Dated: February 10, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–3570 Filed 2–11–94; 9:37 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151, 154, and 155

[CGD 85–026]

RIN 2115–AC11

Pollution Prevention; Implementation of Amendments to Annex I of MARPOL 73/78

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: The Coast Guard is terminating all rulemaking under docket number CGD 85–026. It published a notice of proposed rulemaking (NPRM) that proposed to amend the oil pollution prevention regulations for ships in order to implement the amendments to and interpretations of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978 ("MARPOL 73/78"). It is now terminating that rulemaking because of intervening developments, but it will continue to evaluate the need for another such rulemaking.

FOR FURTHER INFORMATION CONTACT: LCDR M. McEwen, Project Manager, Marine Environmental Protection Division, U.S. Coast Guard Headquarters, (202) 267–6714.

SUPPLEMENTARY INFORMATION: On February 7, 1986 (51 FR 4768), the Coast Guard published an NPRM concerning the oil pollution prevention regulations for ships. The NPRM proposed to implement the amendments to and interpretations of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978. The protocol was adopted at the 29th session of the Marine Environmental Protection Committee of the International Maritime Organization (IMO). The NPRM also proposed to correct the final rulemaking of October 6, 1983 [48 FR 45704], implementing MARPOL 73/78.

The Coast Guard received three comments in response to the proposed rule. In general, all three supported the stated goals of the NPRM: to implement the interpretations of MARPOL 73/78, Annex I. Two comments felt that the Coast Guard should issue oil pollution prevention regulations beyond those required by MARPOL 73/78, Annex I, while one comment took issue with a statement made in the NPRM, that the Coast Guard "strongly discourages the discharge of oil into bilges." (The comment asserted that there is no place for that type of statement in a rulemaking. The Coast Guard notes that it has been a long-standing policy of the Coast Guard to discourage the discharge of oil into bilges.)

Since publishing the NPRM, the Coast Guard has issued numerous oil pollution prevention regulations. Of particular note are those implementing the Oil Pollution Act of 1990 (OPA 90) [Pub. L. 101–380]. The Coast Guard has determined that, in the view of regulatory and statutory activity since the publication of the NPRM, it is appropriate to terminate the rulemaking and evaluate the need for another like it. Subsequent rulemakings have accomplished many of the changes called for by MARPOL 73/78. In addition, legislation, such as OPA 90, has required oil pollution prevention regulations that exceed those in the NPRM; these have been or are being implemented by separate rulemakings.

The Coast Guard will continue to track changes made to all annexes of MARPOL 73/78 to which the United States is a party. It will initiate separate rulemakings, as needed, to bring domestic regulations implementing MARPOL 73/78 into conformance with the Convention.

Dated: February 8, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–3520 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–3, RM–8384]

Radio Broadcasting Services; Silverton, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Caren Lacy, permittee of Station KWXA (FM), Channel 259C2, Durango, Colorado, seeking the substitution of Channel 224A for Channel 247A, which is vacant and unapplied for, at Silverton, Colorado, to accommodate her application at an electronics site designated by the Forest Service for communications installations. (In the event applications are filed for Channel 257A during the comment period, the applicants will retain cut-off protection and will be permitted to specify the new Class A channel. If no applications are filed, and no interest is expressed in retaining a Class A channel at Silverton, Channel 257A will be deleted at Silverton and no substitute allotment will be made to the community.) Coordinates used for channel 224A at Silverton are 37–48–43 and 107–39–50.

DATES: Comments must be filed on or before April 1, 1994, and rely comments on or before April 18, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, D.C. 20554 In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Caren Lacy, 1885 Ponder Heights Drive, Colorado Springs, CO 80906–5888.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–3, adopted January 14, 1994, and released February 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's

Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3471 Filed 2–14–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–4, RM–8413]

Radio Broadcasting Services; Walker, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Roger Paskvan proposing the allotment of Channel 270A to Walker, Minnesota, as that community's second FM broadcast service. Canadian concurrence has been requested for this allotment at coordinates 47–07–08 and 94–33–22. There is a site restriction 3 kilometers (2 miles) northeast of the community.

DATES: Comments must be filed on or before April 1, 1994, and reply comments on or before April 18, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry F. Cole, Bechtel & Cole, Chartered, 1901 L Street, NW., suite 250, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–4, adopted January 14, 1994, and released February 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rule governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3469 Filed 2–14–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–2, RM–8415]

Radio Broadcasting Services; Hazlehurst, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by PDB Broadcasting proposing the allotment of Channel 282A to Hazlehurst, Mississippi, as the community's second local commercial FM transmission service. Channel 282A can be allotted to Hazlehurst in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.9 kilometers (8.6 miles) southwest in order to avoid a short-spacing with the allotment coordinates for Channel 283C3 at Tallulah, Louisiana. The coordinates for Channel 282A at Hazlehurst are North Latitude 32–45–57 and West Longitude 90–29–35.

DATES: Comments must be filed on or before April 1, 1994, and reply comments on or before April 18, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard M. Riehl, Esq., Haley, Bader & Potts, 4350 North Fairfax Drive, suite 900, Arlington, Virginia 22203–1633 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–2, adopted January 14, 1994, and released February 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3473 Filed 2–14–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 93–61; DA No. 94–129]

Regulations for Automatic Vehicle Monitoring Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The notice of Proposed Rule Making (NPRM), 58 FR 21276 (April 20, 1993), in this docket proposes regulations for licensing Automatic Vehicle Monitoring (AVM) systems. AVM systems are used to locate and track vehicles and are currently licensed in accordance with interim rules adopted in 1974. The comment and reply comment periods for the NPRM expired in 1993. This Public Notice is necessary to seek additional comment on new matters raised by ex parte presentations related to the licensing of wideband, multilateration AVM systems.

DATES: Comments must be filed on or before February 25, 1994, and reply comments must be filed on or before March 7, 1994.

ADDRESSES: Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, (202) 632–7125.

SUPPLEMENTARY INFORMATION: Public notice.

Additional Comment Sought on Ex Parte Presentations

February 9, 1994.

The Commission has received written memoranda to the Secretary from PacTel Teletrac (PacTel) on January 26, 1994, and from Southwestern Bell Mobile Systems, Inc. (SBMS) on February 2, 1994 and February 7, 1994, summarizing ex parte presentations made concerning the licensing of Automatic Vehicle Monitoring (AVM) systems, currently under consideration in PR Docket No. 93–61. The Commission also has received a written memorandum to the Secretary from MobileVision on February 1, 1994, summarizing an ex parte presentation responding to PacTel's January 26, 1994 ex parte presentation.

It has been determined that PacTel's and SBMS's ex parte presentations raise new issues that warrant giving interested parties an additional opportunity for comment. Specifically, these presentations address alternatives for the licensing of wideband multilateration AVM systems. PacTel espouses the use of Rand McNally Basic Trading Area (BTAs)[1] as Commission-defined service areas for such systems and proposes a licensing procedure using these service areas. SBMS, on the other hand, suggests the use of Metropolitan Statistical Areas (MSAs) and Rural Statistical Areas (RSAs) as licensing boundaries.

Pursuant to Sections 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j) and 303(r), we are hereby soliciting additional comment in PR Docket No. 93–61 on these issues. The filings addressed above that include these issues are available for inspection as part of the record in PR Docket No. 93–61 during normal business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC. All or part of the text of these filings may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, NW., room 246, Washington, DC 20554, telephone (202) 337–1433.

Comments on these additional issues must be filed on or before February 25, 1994. Reply Comments must be filed on or before March 7, 1994. To file formally in this proceeding, you must file an original and four copies of all comments and reply comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments in this proceeding, including those filed in response to this Public Notice, are available for public inspection during regular business hours in the FCC Reference Center.

By the Chief, Private Radio Bureau.

For additional information about this matter contact John Borkowski, Rules Branch, Private Radio Bureau, FCC, telephone (202) 632–7125.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–3396 Filed 2–14–94; 8:45 am]

BILLING CODE 6712–01–M

[1] See Rand-McNally Commercial Atlas and Marketing Guide 36–39 (123d ed. 1992).

Notices

Federal Register
Vol. 59, No. 31
Tuesday, February 15, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93–170–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of November 1993. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.)* shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.)* shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of November 1993. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 10th day of February 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–3504 Filed 2–14–94; 8:45 am]

BILLING CODE 3410–34–P

Farmers Home Administration

Technical and Supervisory Assistance Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces that it is soliciting competitive applications in a pilot project under its Technical and Supervisory Assistance (TSA) Grants program. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart K which require the Agency to announce the opening and closing dates for receipt of preapplications for TSA grants from eligible applicants. The intended effect of this Notice is to provide public and private nonprofit corporations, agencies, institutions, organizations, Indian tribes, and other associations notice of these dates. This TSA grant program will be available to provide funds to eligible applicants to conduct programs of technical and supervisory assistance for low-income rural residents to obtain and/or maintain occupancy of adequate housing.

DATES: FmHA hereby announces that it will begin receiving preapplications on February 15, 1994. The closing date for acceptance by FmHA of preapplications is March 17, 1994. This period will be the only time during the current fiscal year that FmHA accepts preapplications. Preapplications must be received by or postmarked on or before March 17, 1994.

ADDRESSES: Submit preapplications to FmHA field offices; applicants must contact their FmHA State Office for this information.

FOR FURTHER INFORMATION CONTACT: Walter B. Patton, Senior Loan Officer, Single Family Housing Processing Division, USDA, FmHA, room 5334, South Agriculture Building, Washington, DC 20250, telephone (202) 720–0099 (This is not a toll free number).

SUPPLEMENTARY INFORMATION: 7 CFR part 1944, subpart K provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the FmHA State Office to receive further information and copies of the application package.

Eligible entities for these competitively awarded grants include public and private nonprofit corporations, agencies, institutions, organizations, Indian tribes, and other associations.

In accordance with 7 CFR § 1944.525(a), the FmHA Administrator has targeted a total of 55 Counties in nine States to participate in this pilot project. The States and Counties selected to participate in the pilot project are listed below. The FmHA Administrator, using data provided in the 1990 Census, targeted a State from each of the nine Census Regions (as defined by the United States Census Bureau) for participation in the pilot project. The targeted States had the highest degree of substandard housing and the highest number of persons living in poverty in rural areas who are eligible to receive FmHA housing assistance. The balance of TSA funds will be available for national competition at a later date and under separate notice.

This program is not listed in the Catalog of Federal Domestic Assistance but is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V; 48 FR 29115, June 24, 1983). Applicants are also referred to 7 CFR part 1944, Sections 1944.506(e)(1) and 1944.506(e)(2) for specific guidance on these requirements relative to the TSA grant program. In addition, FmHA is currently in the process of developing the FmHA Home Buyer's Handbook and upon completion will provide copies as needed at no cost to grantees. The FmHA Home Buyer's Handbook may be used by grantees to provide TSA.

The funding instrument for the TSA Grant program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. The maximum grant amount for this pilot project is $15,000 per County served per year. Each FmHA State Office will submit to the FmHA National Office no more than one preapplication per County served. Notices of action on the preapplications should be made no earlier than 66 days prior to the closing date.

Following is a list of States and Counties selected to participate in the Home Buyer's Education Pilot Program:

State and County	District	Number of loans made during FY 93
New Mexico:		
1. San Juan	01	52
2. Santa Fe	02	50
3. Dona Ana	03	42
4. Luna	03	27
5. Taos	02	28
6. Valencia	01	57
Mississippi:		
1. Copiah	01	36
2. Yazoo	02	34
3. Sunflower	04	53
4. DeSota	05	38
5. Neshoba	08	73
6. Pearl River	10	27
Louisiana:		
1. Caddo	01	27
2. Avoyelles	03	28
3. Lafayette	04	33
4. Ascension	05	43
5. St. Bernard	05	47
6. Morehouse	06	14
California:		
1. Shasta	01	75
2. Merced	02	88
3. Sacramento	02	80
4. Mendocino	03	40
5. Tulare	04	105
6. Imperial	05	126
7. Riverside	05	176
Pennsylvania:		
1. Venango	01	26
2. Centre	02	75
3. Chester	03	44
4. Butler	04	31
5. Berks	03	36
6. Union	02	19
Ohio:		
1. Ottawa	01	53
2. Fayette	02	48
3. Crawford	03	44
4. Guernsey	04	36
5. Clark	05	127
6. Madison	05	45
West Virginia:		
1. Harrison	01	63
2. Berkeley	02	59
3. Raleigh	03	20
4. Putnam	04	52
5. Wood	05	31
6. Kanawha	04	43
South Dakota:		
1. Codington	01	39
2. Lincoln	02	27
3. Meade	06	58
4. Pennington	06	43
5. Beadle	04	20
6. Brookings	01	26
Maine:		
1. Penobscot (020)	02	94
2. Cumberland	03	110
3. York	03	128
4. Knox	04	63
5. Penobscot (060)	01	32
6. Washington	04	41

Dated: January 26, 1994.

Michael V. Dunn,

Administrator, Farmers Home Administration.

[FR Doc. 94–2778 Filed 2–14–94; 8:45 am]

BILLING CODE 3410–07–V

Forest Service

Bear Environmental Impact Statement; Bitterroot National Forest, Ravalli County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement (EIS).

SUMMARY: The Forest Service will prepare an environmental impact statement for the Bear assessment area located on the Darby Ranger District of the Bitterroot National Forest in Montana. The proposals listed in the Supplementary Information section are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

DATES: Public comments concerning the scope of the analysis should be submitted by March 4, 1994. Comments that were received during preparation of the Bear Environmental Assessment will be considered during preparation of this EIS and will not need to be resubmitted. No public scoping meetings are scheduled at this time. The Draft EIS is expected to be available to the public in April, 1994 and the Final EIS and Record of Decision is expected to be available to the public in June, 1994.

ADDRESSES: Send written comments to District Ranger, Darby Ranger District, P.O. Box 388, Darby MT 59829.

FOR FURTHER INFORMATION CONTACT: Questions about the EIS should be directed to Rick Floch, Darby Ranger District, Phone: (406) 821–3913.

SUPPLEMENTARY INFORMATION: The EIS will include the following proposed actions:

(1) Vegetation Management—There is a need to improve health and productivity, and to reduce the risk of high intensity wildfire and its associated potential impacts in ponderosa pine stands in the Bear area. To do this, a combination of selection harvesting concentrating on removal of Douglas-fir, underburning and thinning on approximately 580 acres is proposed. This will change species composition over time to one more representative of what occurred naturally, reintroduce fire back into the ecosystem, improve tree health and growth, and sustain the ecosystem.

A combination of harvesting techniques is also proposed on about 400 acres of lodgepole pine stands. Fire suppression in these stands has resulted in a variety of unfavorable conditions. In some stands, overstory lodgepole pine trees have died, leaving

understories of subalpine fir and Douglas-fir that are heavily damaged by spruce budworm and infected by root pathogens. Lodgepole pine in these understories is also infected with dwarf mistletoe and many of the dead overstory trees have fallen, creating high fuel loads that will result in intense future wildfires. Harvesting in these stands would reduce this fire risk, salvage dead and dying trees, and sustain these ecosystems by perpetuating new stands of lodgepole pine. In other stands, understory lodgepole is healthy and overstory trees need to be removed to allow this next generation of trees to continue growing and perpetuating the ecosystem.

(2) Watershed/Fisheries Rehabilitation—Major streams in the area include Two Bear, Bear Gulch, Lower Sleeping Child, Hog Trough, Railroad, Weasel and Skalkaho Creeks. A course filter analysis of watersheds has identified a range of different watershed conditions in the Bear area. A site-specific inventory of watershed improvement needs for the Upper Skalkaho, Railroad Creek, and Two-Bear areas was done during the 1992 field season. From this inventory, numerous rehabilitation activities were identified and are proposed in this EIS. They include culvert cleanout or removal, grass seeding, road obliteration, riparian vegetation re-establishment, road closing, and road reconstruction.

(3) Houselog Salvage—Infrequent fire in the Bear area has resulted in some areas with an abundance of recently dead and dying lodgepole pine trees. The proposal includes the salvage of these trees over 275 acres using over-the-snow type logging equipment.

(4) Underburning—To restore fire back into the ecosystem, underburning over the next 3 years is proposed. To assess cumulative effects, underburning over a 10 year period on approximately 2,380 acres will be analyzed. Many of these areas are on southern exposures where underburning will begin to regenerate more fire-tolerant species, reduce high natural fuel loadings and improve browse for wildlife.

(5) Precommercial Thinning—Past timber harvesting in some areas has resulted in overstocked plantations that need thinning to improve productivity. Approximately 475 acres of existing plantations are proposed for precommercial thinning.

(6) Transportation Management Road densities for several 3rd order drainages in the Bear area are not meeting Forest Plan standards for elk habitat effectiveness. Approximately 33 miles of road are proposed to be closed in order to meet or exceed Forest Plan standards for road densities. Some of these road sections are included in the road closures for watershed rehabilitation.

Alternatives to this proposed action will include No Action; an alternative that does not propose timber harvesting in any roadless area; two alternatives that treat the Bear area at differing landscape level intensities; an alternative that models 1987 Forest Plan outputs; and an alternative that includes only the watershed/fisheries rehabilitation projects.

Preliminary issues that the EIS will address include:

(a) How will the proposal affect ecosystem health and productivity?

(b) Can houselogs be salvaged from the area and what would the effect be?

(c) How will the proposal impact roadless areas?

(d) What will be the impacts of this proposal on wildlife?

(e) What effect will the proposal have on water and fishery resources:

(f) What affect will the proposal have on old growth?

(h) What are the cumulative impacts of private land logging in the area?

Management activities under consideration would occur in an area encompassing approximately 43,000 acres and include all National Forest land between Sleeping Bear/Two Bear Creeks, and all of the upper part of the Skalkaho Creek drainage. A portion of the assessment area being considered for harvest is within the Sleeping Child roadless area (X1074). None of the activities proposed would build any new or temporary road.

The scope of the proposed action is limited to the associated activities and analysis area identified above.

The responsible official, who is Thomas G. Wagner, Darby District Ranger, will consider the comments and responses received concerning both the Bear Environmental Assesssment and this EIS, as well as all applicable laws, regulations, and policies in making a decision regarding the Bear proposal.

The responsible official will document the decision and reasons for the decision in the Record of Decision. The decision will be subject to review under applicable Forest Service Regulations.

The Draft EIS is expected to be available to the public in April, 1994 and the Final EIS and Record of Decision is expected to be available to the public in June, 1994. The comment period on the draft will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: January 31, 1994.

Thomas G. Wagner,

District Ranger, Bitterroot National Forest.

[FR Doc. 94–3411 Filed 2–14–94; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below are stockyards as defined by Section 302(a). Notice was given to the stockyard owners and to the public as required by Section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards are subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard	Date of posting
LA–144 Avoyelles Cattle Co., Inc., Avoyelles Parish, Louisiana.	Jan. 04, 1994.
NC–164 Vale Horse Auction, Vale, North Carolina.	Nov. 26, 1993.
NC–166 Mountain Livestock Auction, Murphy, North Carolina.	Jan. 06, 1994.
TN–189 Middle Tennessee Horse Sales, Decherd, Tennessee.	July 17, 1993.

Done at Washington, DC this 8th day of February 1994.

Harold W. Davis,

Director, Livestock Marketing Division, Packers and Stockyards Administration.

[FR Doc. 94–3419 Filed 2–14–94; 8:45 am]

BILLING CODE 3410–KD–P

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
CA–171 Ramona Auction, Ramona, California.	May 01, 1976.
CT–104 M & M Sales, Ledyard, Connecticut.	Sept. 19, 1991.
NY–127 Empire Livestock Marketing, Cooperative, Inc.—Little Falls Stockyards, Little Falls, New York.	July 15, 1960.
MN–112 Top Livestock Company, Edgerton, Minnesota.	Dec. 26, 1970.
PA–103 Tri County Livestock Auction, Inc., Brockway, Pennsylvania.	Feb. 02, 1960.
PA–121 Wayne County Auction Barn, Inc., Honesdale, Pennsylvania.	Nov. 04, 1959.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register.**

Done at Washington, D.C. this 8th day of February, 1994

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 94–3418 Filed 2–14–94; 8:45 am]

BILLING CODE 3210–KD–P

ARCTIC RESEARCH COMMISSION

Meeting

February 7, 1994.

Notice is hereby given that the Arctic Research Commission will hold its 34th Meeting in Arlington, Virginia, on March 9–10, 1994. On Wednesday, March 9, 1994, a Business Session open to the public will convene at 9 a.m. in the Wilson Room of the Holiday Inn at Ballston, 4610 N. Fairfax Drive, Arlington, Virginia. Agenda items include: (1) Chairman's Report; (2) Status of NSF Polar Programs Organization; (3) Arctic System Science Program Progress (ARCSS); (4) National Science and Technology Council Status and Plan; (5) International Arctic Activities; (6) Initial Analyses of Radioactive Materials in the Kara Sea Region; and (7) Progress Report on Interagency Coordination Mechanisms. The Business Session will reconvene at 9 a.m. Thursday, March 10. Agenda items for this session include (1) Plan for Visit to Canada; and (2) Other Business. An Executive Session for Members of the Commission will be held following the Business Session on March 10.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: Philip L. Johnson, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Philip L. Johnson,

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 94–3446 Filed 2–14–94; 8:45 am]

BILLING CODE 7555–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will be held on Thursday, March 10, 1994, at the Best Western Heritage Inn, 1700 Fox Farm Road, Great Falls, Montana 59404. The purpose of the meeting is to discuss current issues, review current projects and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Donald D. Dupuis or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 8, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–3494 Filed 2–14–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Census of Governments—Property Values Survey.

Form Number(s): GP–31.

Agency Approval Number: 0607–0741.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 13,333 hours.

Number of Respondents: 40,000.

Avg Hours Per Response: 20 minutes.

Needs and Uses: The Census Bureau is requesting a six month extension of OMB approval of the Form GP–31 "Property Values Survey" to provide sufficient time for completing work on the Taxable Property Values Phase of the 1992 Census of Governments. We will use the GP–31 to collect information on sales price and other sales characteristics from buyers or sellers of real property. From this data and information on assessed values,

which we will obtain from public records of transfers available from recording, assessing, or other offices in the local area, we will develop assessment–sales price ratios, which will in turn be used to produce estimates of real property values. This extension is necessary because delays in receipt and processing of essential property assessment roles from state government offices has delayed mail-out of the GP–31. Data on estimated market value of real property and on assessment–sales price ratios are used by many National associations. State and local officials use the data to compare assessment performance of and between jurisdictions within their states. The data will be presented as a major component of the Census Bureau's report, Taxable Property Values and Assessment/Sales Price Ratios.

Affected Public: Individuals or households.

Frequency: Every 5 years.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 10, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–3525 Filed 2–14–94; 8:45 am]

BILLING CODE 3510–07–F

Changes in Organization and Functions During Calendar Year 1993

AGENCY: Office of the Secretary, Department of Commerce

SUMMARY: Following is a summary of Department of Commerce officials and units affected by major changes in authority, title, function, or structure during the past calendar year. Specific information on each action can be obtained by requesting a copy of the applicable Department Organization Order (DOO), also listed below.

Department Officials

Assistant Secretary for Administration:

DOO 10–5, Amendment 7, 1–15–93

Under Secretary For Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration:

DOO 10–15, Amendment 5, 1–15–93

DOO 10–15, Amendment 6, 1–21–93

Director for Procurement and Administrative Services:

DOO 20–1, Revision, 11–16–93

Office of Administrative Law Judge:

DOO 20–19, Revocation Notice, 1–15–93

Director for Federal Assistance and Management Support:

DOO 20–28, Revision, 12–1–93

Minority Business Development Agency:

DOO 25–4B, Amendment 3, 11–3–93

National Oceanic and Atmospheric Administration:

DOO 25–5, Amendment 7, 1–15–93

DOO 25–5, Amendment 8, 11–16–93:

National Telecommunications and Information Administration:

DOO 25–7, Amendment 1, 12–1–93

National Institute of Standards and Technology:

DOO 30–2B, Amendment 2, 7–2–93

Patent and Trademark Office:

DOO 30–3, Amendment 1, 7–2–93

FOR FURTHER INFORMATION CONTACT: Sherry M. Cage, Office of Management and Organization, Department of Commerce, Room 5317, Washington, DC 20230, Telephone (202) 482–5481.

Stephen C. Browning,

Director, Office of Management and Organization

[FR Doc. 94–3405 Filed 2–14–94; 8:45 am]

BILLING CODE 3510–DK–F

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of opening meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, March 23, 1994, and Thursday, March 24, 1994, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on March 23 and 24, 1994, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

Agenda

—Welcome and Update

—Overview of Meeting

—Overview of February 4 Cryptographic Issues Announcements

—Briefing on Escrow Procedures & Operations

—Medical Systems Privacy Issues

—Digital Signature Update

—Internet Security Issues

—Public Participation

—Board Discussion

—Pending Business

—Close

Public Participation

The Board agenda will include a period of time, not exceed one hour, for oral comments and questions from the public. Each speaker will be limited to ten minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by March 1, 1994. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: February 10, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–3529 Filed 2–14–94; 8:45 am]

BILLING CODE 3510–CN–M

[Docket No. 900820–3141]

Federal Information Processing Standards (FIPS) Publication 140–1, Security Requirements for Cryptographic Modules; Correction

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Final notice; correction.

SUMMARY: In FR Doc. 94–539, appearing on pages 1520–1524 in the issue of Tuesday, January 11, 1994, make the following correction:

On page 1520, the effective date should read as follows: "**EFFECTIVE DATE:** This standard is effective June 30, 1994."

FOR FURTHER INFORMATION CONTACT: Mr. Miles E. Smid, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2938.

Dated: February 9, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–3528 Filed 2–14–94; 8:45 am]

BILLING CODE 3510–CN–M

THE COMMISSION OF FINE ARTS

Commission of Fine Arts; Notice of Meeting

The Commission of Fine Arts' meeting scheduled for 17 February has been cancelled. The next meeting is scheduled for 17 March 1994 at 10 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 8 February 1994.

Charles H. Atherton,

Secretary.

[FR Doc. 94–3412 Filed 2–14–94; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Myanmar

February 8, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: February 16, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States has decided to establish restraint limits for cotton and man-made fiber skirts in Categories 342/642 and cotton and man-made fiber nightwear and pajamas in Categories 351/651, produced or manufactured in Myanmar and exported during the twelve-month period which began on February 1, 1994 and extends through January 31, 1995 at levels of 25,383 dozen (Categories 342/642) and 39,893 dozen (Categories 351/651).

Summary market statements concerning Categories 342/642 and 351/651 follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 342/642 and 351/651 or to comment on domestic production or availability of products included in Categories 342/642 and 351/651, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Myanmar

Category 342/642 Cotton and Man-Made Fiber Skirts

January 1994

Import Situation and Conclusion

U.S. imports of cotton and man-made fiber skirts, Category 342/642, from Myanmar reached 25,383 dozen during the year ending October 1993, nearly twelve times the 2,150 dozen imported from Myanmar in the year ending October 1992. In the first ten months of 1993, imports of Category 342/642 from Myanmar reached 25,048 dozen, over eleven and one half times the January-October 1992 level, and ten times Myanmar's total calendar year 1992 Category 342/642 imports.

The sharp and substantial increase of Category 342/642 imports from Myanmar is causing disruption in the U.S. market for cotton and man-made fiber skirts.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton and man-made fiber skirts fell from 7,444 thousand dozen in 1989 to 7,181 thousand dozen in 1992, a decrease of 4 percent. This decline continued in 1993, with U.S. production falling to 3,555 thousand dozen in the first half of 1993, a decline of 8 percent from the January-June 1992 level. In contrast, U.S. imports of Category 342/642 increased from 6,396 thousand dozen in 1989 to 6,884 thousand dozen in 1992, an 8 percent increase. Category 342/642 imports continued to increase in 1993, reaching 6,341 thousand dozen during the first ten months of 1993, 8 percent above the January-October 1992 level.

The ratio of imports to domestic production increased from 86 percent in 1989 to 96 percent in 1992. The ratio of imports to domestic production continued to increase in 1993, reaching 118 percent in the first half of 1993. The domestic manufacturers' share of the

cotton and man-made fiber skirt market dropped from 54 percent in 1989 to 51 percent in 1992, and declined to 46 percent in the first half of 1993.

Duty-Paid Value and U.S. Producers' Price

Approximately 90 percent of Category 342/642 imports from Myanmar during the year ending in October 1993 entered the U.S. under HTSUSA 6204.52.2030—Women's cotton skirts of blue denim; and HTSUSA 6204.52.2070—Women's cotton skirts of other than corduroy and blue denim. These skirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable skirts.

Market Statement—Myanmar

Category 351/651 Cotton and Man-Made Fiber Pajamas and Other Nightwear

January 1994

Import Situation and Conclusion

U.S. imports of cotton and man-made fiber pajamas and other nightwear, Category 351/651, from Myanmar reached 39,893 dozen during the year ending October 1993. There were no Category 351/651 imports from Myanmar in 1992 or 1991.

The sharp and substantial increase of Category 351/651 imports from Myanmar is causing disruption in the U.S. market for cotton and man-made fiber pajamas and other nightwear.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton and man-made fiber pajamas and other nightwear fell from 14,235 thousand dozen in 1989 to 10,649 thousand dozen in 1992, a decline of 25 percent. Production continued to decline in 1993, falling to 4,734 thousand dozen during the first six months of 1993, 11 percent below the January-June 1992 level. In contrast, U.S. imports of Category 351/651 increased from 7,289 thousand dozen in 1989 to 9,347 thousand dozen in 1992, an increase of 28 percent. This increase continued during 1993, as imports of Category 351/651 reached 9,313 thousand dozen in the first ten months of 1993, 16 percent above the January-October 1992 level.The ratio of imports to domestic production increased from 51 percent in 1989 to 88 percent in 1992. This increase continued in the first six months of 1993, as the ratio of imports to production reached 97 percent. The domestic manufacturers' share of this market declined from 66 percent in 1989 to 53 percent in 1992, and fell to 51 percent during the first half of 1993.

Duty-Paid Value and U.S. Producers' Price

Approximately 79 percent of Category 351/651 imports from Myanmar during the year ending in october 1993 entered the U.S. under HTSUSA 6207.21.0030—Men's cotton nightshirts and pajamas with one color in the warp and/or filling. This nightwear entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable nightwear.

Committee for the Implementation of Textile Agreements

February 8, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 16, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Myanmar and exported during the period beginning on February 1, 1994 and extending through January 31, 1995, in excess of the following restraint levels:

Category	Twelve-month limit [1]
342/642	25,383 dozen.
351/651	39,893 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1994.

Textile products in Categories 342/642 and 351/651 which have been exported to the United States prior to February 1, 1994 shall not be subject to the limits established in this directive.

Textile products in Categories 342/642 and 351/651 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–3445 Filed 2–14–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Telecommunications Advisory Committee; Meetings

AGENCY: National Communications System.

ACTION: Notice of meeting.

A meeting of the National Security Telecommunications Advisory Committee will be held on Wednesday, March 2, 1994. The business session of the meeting will be held at the Department of Commerce. An executive session of the meeting will be held at the Old Executive Office Building. The agenda is as follows:

Business Session

—Call to Order
—Network Security Steering Committee
—National Information Infrastructure Task Force
—Industry Executive Subcommittee/ Manager's Report
—Adjournment

Executive Session

—Call to Order
—Remarks by National Security Advisor
—Remarks by Executive Agent
—Adjournment

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (703) 692–9274 or write the Manager, National Communications System, 701 S. Court House Road., Arlington, VA 22204–2198.

Dated: February 9, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–3402 Filed 2–14–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Acquiring Defense Software Commercially

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Acquiring Defense Software Commercially will meet in open session on March 10–11, 1994 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, suite 175, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will review current DoD software acquisition regulations, DoD acquisition experiences with selected software-intensive systems, and contractor acquisition experiences with DoD and commercial software-intensive systems.

Persons interested in further information should call Ms. Virginia Castor at (703) 614–0212.

Dated: February 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–3400 Filed 2–14–94; 8:45 am]

BILLING CODE 5000–04–M

Total Asset Visibility Government-Industry Conference

AGENCY: Deputy Under Secretary of Defense, Logistics.

ACTION: Notice of conference.

SUMMARY: The Deputy Under Secretary of Defense (Logistics) (DUSD/L) is sponsoring a Total Asset Visibility (TAV) Government-Industry Conference on March 9–10, 1994 in Springfield, Virginia. TAV is DoD's program for implementing comprehensive improvements to its logistics processes and systems to track material throughout the pipeline, from procurement to disposal. The lack of asset visibility has hampered support of military operations during all previous conflicts. DUSD/L has established TAV as one of DoD's highest priority tasks. DUSD/L recognizes that the commercial sector has been aggressively streamlining inventory, eliminating obsolescence, utilizing new technologies and reducing support costs; DUSD/L wants to capitalize on the most successful practices in government and commercial sectors. This conference will feature five panels made up of government and industry executives who will evaluate and recommend most successful TAV practices. Their discussions will focus on: (1) TAV technologies, (2) industry practices, (3) overall DOD practices, (4) management/tracking by commodity/ class and (5) management/tracking by weapon system. This event is part of a continuing process to develop and deploy a road map for downsizing and improving management of logistics. Prospective government and industry panel participants and conference attendees are encouraged to quickly contact Sam Baker or Mary Claire Murphy at the American Defense Preparedness Association in Arlington, Virginia. Phone: (703) 522–1820. Please refer to ADPA Event # 478. Those in Industry with relevant table-top demonstrations/exhibits are strongly encouraged to present their displays.

DATES: March 9–10, 1994.

ADDRESSES: The Springfield Hilton, 6550 Loisdale Rd., Springfield, VA 22150.

CONTACT: For further information contact Sam baker or Mary Claire Murphy at the American Defense Preparedness Association. Phone: (703) 522–1820. Please refer to ADPA event number 487.

Dated: February 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–3401 Filed 2–14–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Availability for Licensing of U.S. Patent Application Concerning the Rapid and Accurate Quantitation of HIV–1 Nucleic Acids in Large Numbers of Human Clinical Samples

AGENCY: U.S. Army Medical Research and Development Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Application Serial No. 08/154,416 entitled "High Through-Put Quantitative Polymerase Chain Reaction for HIV Clinical Specimens" fined November 19, 1993 for licensing. This invention has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander U.S. Army Medical Research and Development Command, ATTN: Staff Judge Advocate, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: John F. Moran, Patent Attorney, (301) 619–2065 or telefax (301) 619–7714.

SUPPLEMENTARY INFORMATION: The invention involves methods and kits for the rapid and accurate quantitation of HIV–1 nucleic acids in large numbers of human clinical specimens. Cloned, standard internal controls for both HIV–1 and cellular sequences are used for parallel amplification and compared with test samples. A universal HIV–1 gag primer permits detection and quantitation of sequences from every known HIV–1 gag gene while liquid hybridization detection greatly reduces processing time, error, and cost.

Kenneth L. Denton,

Army Federal Register, Liaison Officer.

[FR Doc. 94–3408 Filed 2–14–94; 8:45 am]

BILLING CODE 3710–08–M

Notice of Open Meeting

AGENCY: Board of Visitors, United States Military Academy, DOD.

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 1 March 1994.

Place of Meeting: Rayburn House Office Building, Room B–352, Washington, DC.

Start Time of Meeting: Approximately 9 a.m.

Proposed Agenda: Election of officers; selection of Executive Committee; scheduling of meetings for remainder of year; and identification of areas of interest for 1994.

All proceedings are open. For further information contact Lieutenant Colonel Stephen R. Furr, United States Military Academy, West Point, New York 10996–5000, telephone: (914) 938–5078.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–3406 Filed 2–14–94; 8:45 am]

BILLING CODE 3710–08–M

Army Corps of Engineers

Patents Available for Licensing

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, the Department of the Army, U.S. Army Corps of Engineers announces the availability of the following U.S. patents for non-exclusive, exclusive or partially exclusive licensing:

Patent No. and title	Issue date
5,256,908 Facility Space Data Logging Device	10/26/93
5,268,032 Method for the Controlled Hardening of Acid-Setting Binders and Cements	12/07/93
5,268,548 Microwave Assisted Paint Stripping	1/04/94
5,277,517 Mobile Cofferdam	1/11/94

ADDRESSES: Director, Humphreys Engineer center Support Activity, Office of Counsel, Kingman Building, Fort Belvoir, Virginia 22060–5580.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland or Alease J. Berry, (703) 355–2160.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–3413 Filed 2–14–94; 8:45 am]

BILLING CODE 3710–92–M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet March 2-3, 1994, from 9:00 a.m. to 4:15 p.m., on March 2, 1994, and 9:00 a.m. to 4:30 p.m., on March 3, 1994, at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to conduct review and discussions of key areas regarding current intelligence, fleet operations, future task forces and current defense issues. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Telephone: (703) 756-1205.

Dated: January 31, 1994

Michael P. Rummel

LCDR, JAGC, Federal Register Liaison Officer.

FR Doc. 94-3493 Filed 2-14-94; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

Office of Human Resources and Administration: Availability of Data Acquisition Activities

AGENCY: Department of Education.

ACTION: Notice of availability of data acquisition activities approved prior to February 15, 1994.

SUMMARY: The Secretary publishes this notice to advise interested persons that they may obtain information regarding a list of approved education-related data acquisition activities that Federal agencies will use to collect data during school year 1994–95. The list includes all data acquisition activities approved before February 15, 1994.

DATES: The listing of approved data acquisition activities will be available February 15, 1994.

FOR FURTHER INFORMATION CONTACT: For information about this list or copies of the list, contact Joyce C. Smith, U.S. Department of Education, Information Management and Compliance Division, 400 Maryland Avenue, SW., room 5624, ROB–3, Washington, DC 20202–4651. Telephone: (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Dual Party Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Under section 400A of the General Education Provisions Act, the Secretary of Education is responsible for reviewing and coordinating the collection of information and data acquisition activity of Federal agencies:

(a) Whenever the respondents are primarily educational agencies or institutions; or

(b) Whenever the purpose of the activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

Section 400A also requires that the Secretary inform the public of data acquisition activities approved for the 1994–95 school year by February 15, 1994. These data acquisition activities are considered information collection requests under the Paperwork Reduction Act of 1980. Under that Act and Office of Management and Budget (OMB) implementing regulations, proposed information collection requests must be published in the **Federal Register** on or before submission to OMB for final approval. Thus, the list announced by this notice includes each data acquisition activity for which the following requirements have been met prior to February 15, 1994: Approval by the Secretary for use in the 1994–95 school year; publication in the **Federal Register** as a proposed information collection request; and approval by OMB.

Interested persons may obtain a copy of the list of approved information collection requests, or information regarding that list from Joyce C. Smith at the address and telephone number listed at the beginning of this notice.

Dated February 10, 1994.

Veronica D. Trietsch,

Acting Assistant Secretary for Human Resources and Administration.

[FR Doc. 94–3490 Filed 2–14–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.180T1]

Technology, Educational Media and Materials for Individuals With Disabilities Program; Inviting Applications for New Awards

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for-profit organizations.

Applications Available: March 18, 1994.

Deadline for Transmittal of Applications: May 18, 1994.

Deadline for Intergovernmental Review: July 18, 1994.

Available Funds: $1,000,000.

Estimated Average Size of Awards: $200,000 for the first 12 months of the projects. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

Estimated Number of Awards: 5. Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 333.

Priority: Under 34 CFR 75.105(c)(3), 34 CFR 333.1, and 34 CFR 333.3, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this program only applications that meet this absolute priority:

Absolute Priority—Technology, Educational Media, and Materials Projects that Create Innovative Tools for Students with Disabilities

This priority provides support for development projects that design and/or adapt technology, assistive technology, educational media, and/or materials to improve the education of children and youth with disabilities.

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

The Secretary is particularly interested in projects that—

(a) *Create Innovative Tools*—by encouraging development of varied and integrated technologies, media, and materials which open up and expand the lives of those with disabilities. This work should enable individuals with disabilities to achieve the outcomes expected of all students such as independence, productivity, and a quality of life that promotes equity in opportunity; or

(b) *Enable the Learner Across Environments*—by fostering the creation of state-of-the-art instructional environments both in and out of school. These environments should use technology, educational media, and materials to enable students with disabilities to access knowledge, develop skills and problem-solving strategies, and engage in educational experiences necessary for their success as adults who are fully included in our society.

For Technical Information Contact: For technical information please contact Dr. David Malouf, U.S. Department of Education, 400 Maryland Avenue, SW., room 3521, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8111. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Darlene Crumblin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone (202) 205–8953. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1461.

Dated: February 9, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–3423 Filed 2–14–94; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following notice of meetings is provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Monday, February 21, 1994 at the Shiroyama Kanko Hotel in Kagoshima, Japan, beginning at 9:15 a.m. The agenda for the meeting is as follows:

1. Introductory Comments
2. Approval of Agenda
3. Approval of IAB Record Notes for Meetings on February 25, 1993, March 11, 1993, June 14, 1993, and October 27, 1993
4. Emergency Management Manual
5. Industry/Secretariat Operations Manual
6. Emergency Operations Reference Guide
7. Emergency Data System
8. Industry Supply Advisory Group Manager's Report
9. Anti-trust Clearances
   —Renewal of the Commission of the European Communities Decision of December 12, 1983 (IV/30.525)
   —Extension of Section 252 of the Energy Policy and Conservation Act
10. Preparations for Stockholding Workshop
11. IAB Administrative Issues
12. Future Work

II. A meeting of the IEA's Group of Reporting Companies will be held on February 22–24, 1994 at the Shiroyama Kanko Hotel in Kagoshima, Japan, beginning at 9 a.m. on February 22. The purpose of this meeting is to permit attendance by representatives of U.S. Reporting Companies at a "Workshop on Stockdraw and Emergency Response Policies and Management" which is to be held by the IEA at the aforesaid location on the aforesaid dates. The Agenda for the meeting is under the control of the IEA. It is expected that the following draft Agenda will be followed:

I. Opening of the Workshop by Japanese Administration, Standing Group on Emergency Questions (SEQ) Chairman and the IEA Secretariat
II. First Session: Stockholding
1. Administration
Introduction by the Session Chairman
(a) The organization and administration of emergency reserves of the U.K.
(b) The financing, ownership and management of emergency reserves
—Government emergency reserves
—Organization and administration of emergency reserves: A company-view
(c) Some aspects of storage contracts: A stockholding agency view
Discussion
2. Operations
Introduction by the Session Chairman
(a) Structure of emergency stocks
—Structure of emergency stocks: The EBV case
—Balance between stocks of individual products: The case of Denmark
—Use of emergency stocks held in other IEA countries
(b) Types of storage of emergency stocks
—Salt cavern storage at Manosque and related facilities
—Rock cavern storage
—Floating storage
(c) Quality control of crude oil and product stocks
—Storage in salt caverns and quality prediction
—Some technical considerations: The solution of product obsolescence problems in Denmark
—Issues resulting from deterioration of oil products in long-term storage
(d) Technical problems arising from stockholding

—Gas infiltration and heating problems in salt dome storage
—Safety management
Discussion
3. Establishment and Re-Organization of Emergency Response and Stockdraw Systems
Introduction by the Session Chairman
(a) The establishment of emergency stockholding organizations and procedures to meet International Energy Program (IEP) requirements: Centralization, decentralization and other issues
(b) Reorganization of an administration responsible for emergency stock management: A case history of Finland
Discussion
Summary by the Session Chairman
III. Second Session: Stockdraw
1. Policy Issues and Stockdraw Potential
Introduction by the Session Chairman
(a) Stockdraw organization and its procedures including the legal framework and the monitoring of the compliance by stockholders
(b) Overview of member countries' legislation and policies for emergency stocks
(c) Stockdraw capabilities of emergency stocks
—Logistics of stockdraw: The case of Canada
(d) Stockdraw policy of member countries
—The Netherlands
—Finland
—USA
(e) Lessons from stockdraw experience
—Lessons from test release and training
—Experience of the Gulf crisis: Practical stockdraw lessons
(f) Stockdraw in overall emergency response measures
—Coordination with demand restraint measures
—Coordination with fuel switching: The case of natural gas in Italy
Discussion
2. Market Impacts
Introduction by the Session Chairman
(a) Commercial stock management in uncertain market
(b) Timing, quantity and kinds of government emergency stockdraw
Discussion
Summary by the Session Chairman
IV. Third Session: The Outlook
Introduction by the Session Chairman

PANEL 1

1. The situation outside the IEA Area
(a) Emergency response programs and experiences of Thailand
(b) Stockpile and Stockdraw Scheme in Korea
(c) Emergency response programs and experience of Hungary
(d) Emergency response programs and experience of Czech Republic
Panel discussion
Summary by the Session Chairman
IV. Third Session: The Outlook (continued)
Introduction by the Session Chairman

PANEL 2

2. Future IEA Stock Requirements and Policies
(a) The outlook for IEA net imports of oil and implications for emergency reserve requirements and response policies
(b) Stockdraw, the capacity and flexibility of the refining sector
(c) Current and future refining issues in the United States
(d) Oil refining and trade prospects in the Asia Pacific Area
Panel discussion
Summary by the Session Chairman
V. Overall Summary/Closing Remarks by the SEQ Chairman and the Secretariat

As permitted by 10 CFR 209.32, the usual 7-day period for publication of the notice of these meetings in the **Federal Register** has been shortened because unanticipated circumstances pertaining to the IEA's scheduling of these meetings delayed the issuance of this notice.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings are open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, participants in the Stockholding Workshop, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the Commission of the European Communities, and invitees of the IAB or the IEA.

Issued in Washington, DC, February 9, 1994.

Eric Fygi,

Deputy General Counsel.

[FR Doc. 94–3501 Filed 02–14–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM94–1–117–001]

KN Wattenberg Transmission Limited Liability Co.; Proposed Changes in FERC Gas Tariff

February 9, 1994.

Take notice that on February 7, 1994, KN Wattenberg Transmission Limited Liability Company, (KN Wattenberg) tendered for filing proposed changes in its FERC Gas Tariff.

KN Wattenberg states that such adjustment effects the removal of the Annual Charge Adjustment (ACA) from its Schedule of Rates for Transportation effective April 1, 1993 pursuant to the Commission's letter order dated January 21, 1994 in Docket No. TM94–1–117.

KN Wattenberg states that copies of this filing were served upon the company's jurisdictional customers, and interested public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3442 Filed 2–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–117–001]

KN Wattenberg Transmission Limited Liability Co.; Proposed Changes in FERC Gas Tariff

February 9, 1994.

Take notice that on February 7, 1994, KN Wattenberg Transmission Limited Liability Company, (KN Wattenberg) tendered for filing proposed changes in its FERC Gas Tariff.

KN Wattenberg states that the filing updates the Schedule of Rates for Transportation to include a minimum surcharge of zero for the Gas Research Institute Charge (GRI) and adds GRI funding mechanism provisions, effective January 1, 1994 pursuant to the Commission's letter order dated January 21, 1994 in Docket No. TM94–2–117.

KN Wattenberg states that copies of this filing were served upon KN Wattenberg's jurisdictional customers, and interested public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3443 Filed 2–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–7–006]

Sabine Pipe Line Co.; Proposed Changes in FERC Gas Tariff

February 9, 1994.

Take notice that on February 1, 1994, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet:

First Revised Sheet No. 289.

Sabine states that the revised tariff sheet reflects a change in operating personnel shared by Sabine and its affiliated marketing company.

Sabine states that copies of the filing were served upon the Sabine's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3438 Filed 2–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–60–004]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 9, 1994.

Take notice that on February 7, 1994 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

Effective January 1, 1994
1st Revised Sheet No. 5E(viii)

On November 30, 1993 Transwestern filed tariff sheets in which it sought to modify its take-or-pay, buy-out and buy-down mechanism ("Transition Cost Recovery" or "TCR" mechanism) in order to recover certain take-or-pay, buy-out, buy-down, and contract reformation costs. Transwestern states that the purpose of this filing is to correct one of the tariff sheets included in the November 30 filing. In Original Sheet No. 5E(viii), the total amount to be amortized was incorrectly stated as $2,884,909.29. The correct amount, $2,163,681.97, is shown on the sheet in the current filing.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3440 Filed 2–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF86–1014–006 and EL94–27–000]

Newark Bay Cogeneration Partnership, L.P.; Filing

February 9, 1994.

Take notice that on February 3, 1994, Newark Bay Cogeneration Partnership, L.P. (Newark Bay), of 1200 E. Ridgewood Avenue, Ridgewood, New Jersey 07450, tendered for filing a Petition For Temporary Waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Newark Bay requests the Commission to temporarily waive the operating and efficiency standards for qualifying cogenerating facilities as set forth in § 292.205, 18 CFR 292.205 of the Commission's Regulations implementing Section 201 of PURPA, as amended, with respect to its cogeneration facility located in Newark, New Jersey. Specifically, Newark Bay requests waiver of the operating and efficiency standards for the calendar year 1993, during which the facility was undergoing start-up and testing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed within 30 days after the publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3439 Filed 2–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–103–001]

Williston Basin Interstate Pipeline Co.; Compliance Tariff Filing

February 9, 1994.

Take notice that on February 7, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of the its FERC Gas Tariff, Second Revised Volume No. 1, following revised tariff sheets:

First Revised Sheet No. 344
First Revised Sheet No. 345
Original Sheet No. 358A

The proposed effective date of the above-referenced tariff sheets is December 30, 1993.

Williston Basin notes that the tariff sheets contain the amounts of the Account No. 191 balance refunded to each affected customer and related required tariff language revisions. These revisions were made in accordance with the Commission's January 26, 1994 Letter Order issued in Docket No. RP94–103–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of practice and Procedure (18 CFR

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385.211). All such protests should be filed on or before February 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3441 Filed 2–14–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4837–5]

Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Sierra Pacific Industries, Inc. (EPA Project Number SAC 88–01)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on July 8, 1993 the Environmental Protection Agency issued a permit under EPA's Federal Prevention of Significant Deterioration (PSD) regulations to the applicant: Sierra Pacific Industries, Inc. The PSD permit grants approval to Sierra Pacific Industries to construct and operate two wood-fired boilers at their existing lumber mill in Lincoln, California.

DATES: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act in the Ninth Circuit Court of Appeals. A petition for review must be filed by April 18, 1994.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address the request to: Robert Baker (A–5–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1258.

SUPPLEMENTARY INFORMATION: The PSD permit requires the application of Best Available Control Technology (BACT) for all subject pollutants. BACT requirements for this permit include multiclones and an electrostatic precipitator for control of particulate emissions and a urea injection system for control of NO_x emissions. In addition, the permit is subject to certain conditions, including allowable emission rates as follows: NOx, the more stringent of 46 lbs/hr or 115 ppm, 3-hour average, or 40 lbs/hr or 100 ppm, 24-hour average; CO, the more stringent of 360 lbs/hr or 1500 ppm, 8-hour average, or 240 lbs/hr or 1000 ppm, 24-hour average; particulate matter (PM–10), the more stringent of 7.25 lbs/hr or 0.015 gr/dscf.

Dated: January 31, 1994.

David P. Howekamp,

Director, Air and Toxics Division, Region 9.

[FR Doc. 94–3433 Filed 2–14–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4837–7]

Review of Lake Superior Lakewide Management Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This document provides opportunity for comment on the proposed Stage 1 Lakewide Management Plan (LaMP) for Lake Superior. This Stage 1 LaMP, when finalized, will serve to satisfy the obligations of the United States Environmental Protection Agency (EPA or Agency) under Section 118 of the Clean Water Act (CWA). It also serves as a report on progress under the Binational Program to Restore and Protect Lake Superior. This proposed LaMP was developed through a binational process involving EPA, Environment Canada, the Province of Ontario, and the States of Michigan, Minnesota and Wisconsin under the ongoing implementation of the Binational Program. EPA puts forward this proposed LaMP for public comment in the United States on behalf of the agencies involved in the Binational Program.

The proposed Lake Superior LaMP describes a selected list of Critical Pollutants causing or contributing to adverse impacts on the Lake Superior ecosystem based on information available as of January 1, 1991, and informs the public of the variety of actions that Federal, State, Provincial, Tribal, and local governments and private organizations are taking, will take, or could take to reduce the amount of these pollutants entering the waters of the Lake Superior System. In addition, the proposed Lake Superior LaMP proposes candidate Critical Pollutants for evaluation in future revisions of the LaMP. Due to its length and format, the proposed Lake Superior LaMP is summarized in this notice, rather than published in full. As described in this notice, EPA is making copies of the entire LaMP available to the public. Furthermore, EPA is soliciting comments on all aspects of the proposed LaMP. In particular, EPA seeks comments regarding the proposed list of Critical Pollutants for Lake Superior, the proposed list of causal pollutants (candidate Critical Pollutants) and the actions available to Federal, State, and local agencies, as well as the public, to reduce the release of Critical Pollutants from all sources and the presence of these substances in the waters of the Lake Superior System.

DATES: EPA will accept comment on the proposed Lake Superior LaMP until May 16, 1994. Comments received after this date may not be considered. In addition, EPA has considered materials submitted by the public prior to today's notice in the development of the proposed LaMP. These materials contain comments on draft elements that have been superseded by today's proposal and EPA will not consider them in the development of the final LaMP. Further, EPA cannot ensure consideration of comments submitted to other agencies or entities other than EPA in the development of the final LaMP. Accordingly, EPA advises the public that for the purposes of exhaustion of administrative remedies, all comments must be submitted to EPA based on today's notice.

ADDRESSES: To obtain a copy of the proposed Lake Superior LaMP please contact Jeanette Morris-Collins, Environmental Protection Assistant, Water Quality Branch, U.S. EPA, Region 5 (WQ–16J), 77 West Jackson Blvd., Chicago, Illinois, 60604, (telephone: 312–886–0152). Copies of the proposed Lake Superior LaMP may also be obtained from the following offices: Jean Hude, Michigan DNR, Surface Water Quality Division, P.O. Box 30273, Lansing, Michigan, 48909, Telephone: 517–335–6970; Carrie Losi-Hansen, Minnesota PCA, Division of Water Quality, 520 Lafayette Road, St. Paul, MN, 55155, Telephone: 612–296–9134; Danielle Valvasorri, Wisconsin DNR, Bureau of Water Resources, P.O. Box 7021, Madison, WI, 53707, Telephone: 608–266–9276.

The proposed Lake Superior LaMP will also be available for viewing by the public at the following locations:

U.S. Environmental Protection Agency, Region 5 Library, 77 W. Jackson Blvd., Chicago, Illinois, 60604 (312–886–9056).

Michigan: Library of Michigan, Government Documents Service, 717 West Allegan, Lansing, Michigan, 48909 (517–373–1300); Detroit Public Library, Sociology and Economics Department, 5201 Woodward Avenue, Detroit, Michigan, 48902 (313–833–1440).

Minnesota: Minnesota Pollution Control Agency, Library, 320 Lafayette, St. Paul, Minnesota (612–296–7719).

Wisconsin: Water Resources Center, University of Wisconsin-Madison, 2nd floor, 1975 Willow Drive, Madison, Wisconsin (608–2620–3069).

FOR FURTHER INFORMATION CONTACT: Susan M. Gilbertson, Project Manager, Water Quality Branch, U.S. EPA, Region 5 (WQ–16J), 77 W. Jackson Blvd., Chicago, Illinois, 60604 (telephone: 312–353–2190).

SUPPLEMENTARY INFORMATION:

I. Background

In Article VI, Annex 2 of the Great Lakes Water Quality Agreement (GLWQA), as amended in 1987, the United States and Canadian Governments agreed to develop and implement Lakewide Management Plans (LaMPs) for each of the five Great Lakes. EPA interprets LaMPs as management tools designed to: (1) Integrate Federal, State and local programs to reduce loadings of toxic substances (including discharges from point and nonpoint sources); (2) assess whether these programs will ensure attainment of water quality standards and beneficial uses; and (3) recommend any media-specific program enhancements necessary to reduce toxic loadings in waters currently not attaining water quality standards and/or beneficial uses. LaMPs provide an opportunity for regulatory authorities to design cost-effective approaches for meeting water quality standards and/or beneficial uses.

EPA believes the primary goal of LaMPs is to reduce both point and nonpoint source loadings and ambient levels of critical pollutants, those pollutants which are causing, or have the potential to cause, exceedances of water quality standards or impairments of beneficial uses of the Great Lakes. By addressing pollutants that might impair waters that currently meet water quality standards and/or beneficial uses, LaMPs incorporate a pollution prevention approach. Traditional regulatory programs, as well as non-traditional voluntary programs, are considered in the LaMP process.

EPA intends to periodically update LaMPs to reflect progress in implementing media-specific programs and attendant reductions in loadings of Critical Pollutants, to incorporate advances in the understanding of the Great Lakes ecosystem based on new data and information, and to include any necessary program specific adjustments.

When finalized, EPA intends the Lake Superior LaMP to serve as the basis for development and submission of State Water Quality Management Plans (WQM Plans) developed in accordance with sections 208 and 303(b) of the CWA, as implemented through the requirements of 40 CFR 130.6. These WQM plans establish a process for continuing water quality planning which focuses on priority issues and geographic areas and on the development of water quality controls leading to implementation measures. Such plans draw on water quality assessments to identify priority point and nonpoint water quality problems, consider alternative solutions and recommend control measures. In this way, EPA and the States will ensure reasonable progress in the overall improvement of Great Lakes water quality and attainment of water quality standards and beneficial uses. Further, EPA expects any new loadings data obtained during the development of LaMPs to be incorporated by the States when establishing or revising Total Maximum Daily Loads (TMDLs) and Waste Load Allocations (WLAs) for waters of the Great Lakes System.

LaMP development for Lake Superior began as a component of the Bi-National Program to Restore and Protect the Lake Superior Basin. Lake Superior has not experienced the intense development, urbanization and pollution characteristic of the lower Great Lakes and has remained relatively pristine. The Program recognizes the unique, relatively pristine nature of the Lake Superior ecosystem and the commitment of the Federal, State and Provincial governments to developing new and innovative approaches to pollution prevention and zero discharge of certain persistent, bioaccumulative toxic pollutants. The focus of the Lake Superior LaMP, therefore, is on using Lake Superior as a demonstration area for new and innovative approaches to pollution prevention and zero discharge.

II. Binational Program to Restore and Protect Lake Superior

On September 30, 1991, the United States Environmental Protection Agency, Environment Canada, the States of Michigan, Minnesota and Wisconsin, and the Province of Ontario announced the "Binational Program to Restore and Protect the Lake Superior Basin". This program represents the response of the Federal, State and Provincial governments to the recommendation of the International Joint Commission that "* * * [Lake Superior be designated] as a demonstration area where no point source discharge of any persistent toxic substance be permitted".

This Binational Program encompasses two major areas. The first is a zero discharge demonstration program devoted to the goal of achieving zero discharge or emission of nine designated persistent toxic substances. The second is a broader program of identifying beneficial use impairments, and restoring and protecting the Lake Superior Basin ecosystem. The ultimate goal of the Lake Superior Binational Program is to protect, and where necessary, restore the integrity of Lake Superior's ecosystem through pollution prevention, enhanced regulatory measures, and remedial programs.

The goal of the Lake Superior zero discharge demonstration program is "to achieve zero discharge and zero emission of certain designated persistent bioaccumulative toxic substances, which may degrade the ecosystem of the Lake Superior Basin". This goal is to be pursued through actions in three key areas—waters of the Lake Superior Basin will be designated for special protection and antidegradation requirements, and reductions in existing loadings will be achieved through both voluntary pollution prevention actions and enhanced control and regulatory efforts.

In the United States, the Binational Program commits the State Governments of Michigan, Minnesota and Wisconsin to designate appropriate areas of the Lake Superior Basin as Lake Superior Outstanding International Resource Waters (LS-OIRW), or as Lake Superior Outstanding National Resource Waters (LS-ONRW). Under the LS-OIRW designation, increased discharges of designated persistent bioaccumulative toxic pollutants will not be allowed without an adequate antidegradation demonstration which includes application of best technology for process and treatment. Under the LS-ONRW designation, any new or increased discharges of designated persistent bioaccumulative pollutants from point sources will be prohibited. EPA included provisions for the LS-ONRW and LS-OIRW designations in the proposed Great Lakes Water Quality Guidance (58 FR 20803) on behalf of the Lake Superior States. EPA anticipates publishing the final Guidance in the **Federal Register** by March 13, 1995.

In the United States, it is the goal of the Clean Water Act that the discharge of pollutants to the waters of the nation be eliminated. (Pub. L. 92–500, as amended by Pub. L. 100–4) Further, it is national policy that the discharge of toxic pollutants in toxic amounts be prohibited, and that programs be developed and implemented to meet the goals of the Act through the control of

both point and nonpoint sources of pollution. Over the last twenty years, tremendous progress has been made in improving the water quality of the Great Lakes System, and encouraging continued progress towards zero discharge of pollutants to the waters of the Great Lakes System.

To ensure such progress continues, the United States commits to improved point source and nonpoint source controls through upgraded technology based requirements and water quality standard requirements, implementation of best management practices; and application of technology based air emission standards to ensure achievement of water quality criteria, including air emission standards for Great Lakes pollutants of concern.

Pollution prevention measures are the preferred approach to eliminate or further reduce persistent bioaccumulative toxic substances at their sources. In the United States, the Pollution Prevention Act of 1990 declares as national policy that pollution prevention is the preferred approach to environmental protection (United States Public Law 101–508). When preventing pollution is not feasible, recycling in an environmentally safe manner is the next preferred option, followed by treatment. Disposal or other release into the environment should be the management option of last resort, and should only be done in an environmentally protective manner.

A comprehensive multi-media pollution prevention strategy has been developed by EPA and Michigan, Minnesota and Wisconsin. The strategy focuses on the nine designated zero discharge pollutants and identifies sources and pollution prevention alternatives for reducing loadings from these sources. Implementation of the strategy encompasses technical assistance, education, special programs, legislative and regulatory recommendations, and financial incentives.

EPA views LaMPs as dynamic, action-oriented processes encompassing a number of components. These include an evaluation of beneficial use impairments and pollutants contributing to those impairments; a summary of sources and loads of these critical pollutants; identification of ongoing prevention, control and remediation actions as well as additional efforts needed to reduce pollutant loads and restore beneficial uses; and monitoring activities to evaluate the effectiveness of program actions. This approach for developing and implementing LaMPs is an evolutionary and iterative process for identifying and reducing loadings of Critical Pollutants from all sources.

While the focus of a LaMP is on toxic pollutants, the Federal, State and Provincial agencies participating in the LaMPs recognize that issues associated with beneficial use impairments, such as habitat quality and quantity, and endangered or threatened species, are significant factors in addressing the overall ecological health of the Great Lakes System. As the Lake Superior LaMP develops, participating Agencies will identify opportunities for addressing these issues in conjunction with toxic load reduction activities. In this manner the LaMP for Lake Superior will further the broader goal of the Binational Program of identifying beneficial use impairments, and restoring and protecting the Lake Superior Basin ecosystem.

Certain elements of this broader program are already underway, including a Binational Habitat Project to identify and rank critical habitat sites for protection and restoration, and special designations establishing protected management areas such as parks, reserves, and wildlife refuges.

III. Management Process

The development and implementation of LaMPs is an enormous undertaking in terms of the technical complexity of the issues, the geographic scope encompassed by the LaMP, and the extensive coordination required amongst Federal, Provincial, State, Tribal and local governments, and the public. EPA and the participating agencies believe LaMPs should be developed with full participation by all interested parties.

The Binational Program management structure serves as the management framework for the Lake Superior LaMP. The Binational Program is directed by the Lake Superior Task Force, a steering committee comprised of senior managers of Federal, Provincial, State and Tribal agencies. The Task Force is responsible for: (1) Providing overall policy direction to the program, defining program priorities and ensuring program implementation through application of all relevant programmatic and statutory authorities; (2) convening technical work groups composed of Federal, State, Provincial and other representatives as necessary to develop recommendations for actions; (3) reviewing and approving the LaMP or specific elements of it, technical workgroup products, and recommendations; (4) ensuring public participation and review; and (5) securing resources to support LaMP development and implementation.

The Lake Superior Workgroup (SWG), comprised of technical and scientific staff, reports to the Task Force and is responsible for program implementation.

The Lake Superior Forum is a public participation group consisting of 22 U.S. and Canadian members from academia, industry, municipalities, environmental organizations and concerned citizens representative of basin stakeholders.

Public participation in the development and implementation of the Binational Program is accomplished through three tiers of activity: (1) General public education through workshops, public presentations, and the distribution of fact sheets and other written materials, (2) public notices to provide the opportunity for broad public review of the LaMP and progress on implementation on an ongoing basis; and (3) the Lake Superior Forum. Representatives of the Forum are invited to: (1) Participate as observers in both Task Force and technical-level committee meetings; (2) develop recommendations for Task Force and Workgroup consideration; and, (3) comment on recommendations and documents of the Binational Program. The Forum does not substitute for the activities described in tiers 1 or 2. Forum members are encouraged to be representative of various constituencies within the Basin, and to provide the Task Force with their views and concerns on Binational Program activities.

IV. Lake Superior Lakewide Management Plan

The proposed Lake Superior LaMP embodies a process for implementing an ecosystem-focussed approach to environmental protection. The process consists of the following steps:

(1) Monitoring the environment and reviewing available data to determine existing ecological or use impairments and any potential threats to the Lake Superior System;

(2) Identifying the pollutants associated with impairments or threats;

(3) Identifying the sources of these pollutants;

(4) Measuring or estimating the quantity of pollutants being released by those sources and the amount reaching the waters of the Lake Superior System (i.e., the "loading" of the pollutants);

(5) Establishing load reduction targets that will allow for the restoration and protection of the ecological health of the Lake Superior ecosystem;

(6) Developing and implementing specific strategies to reduce the levels of pollutant loadings and/or ambient levels in the waters of the Lake Superior System;

(7) Monitoring reductions from pollutant sources;

(8) Evaluating ecosystem response, through monitoring of ecosystem indicators, in order to measure progress towards restoration of beneficial uses and ecosystem health and integrity, and to detect emerging problems; and,

(9) Revising the LaMP to reflect the results of load reduction actions, incorporate additional data on the status of beneficial use impairments and identify the next series of priority actions.

The development and implementation of a Lakewide Management Plan is an iterative process, a series of actions leading to environmental improvements and protection and restoration of beneficial uses. EPA and the binational partners view the LaMP as a series of dynamic, interrelated actions, rather than a static document. As more information becomes available, additional load reduction activities will be initiated by the participating agencies. As the effectiveness of ongoing efforts are evaluated, EPA and the participating agencies will establish new priorities as appropriate. The Agency believes development and implementation of the LaMP will enhance the ability of participating agencies to respond to emerging environmental problems quickly and effectively. Activities underway through the LaMP are not necessarily sequential; activities specific to each step likely will be ongoing simultaneously.

Acquisition of more complete information regarding the association between critical pollutants and beneficial uses, sources and loads of pollutants, and achievement of ecosystem objectives will be a long-term process. The binational partners intend to move forward by reducing pollutant loads while simultaneously improving their understanding of the relationships between beneficial use impairments and pollutant loadings and sources. This refinement will be realized through more comprehensive data management, research, and monitoring efforts.

Finally, the LaMP will improve the environmental protection efforts of the participating agencies by:

- Providing a lakewide context for activities undertaken in support of the Great Lakes program in order to facilitate efforts focussed on the entire basin or on specific tributary subbasins;
- Coordinating Federal, Provincial, State, local, and tribal activities to avoid duplication of effort, ensure that ongoing activities are complimentary, and identify opportunities to add value to ongoing efforts;
- Communicating information among all levels of government and the public in order to keep the public informed of ongoing and proposed activities and provide a forum for public input and comment;
- Providing a vehicle for linking agency pollution control activities to environmental results; and
- Identifying and evaluating gaps in existing programs and authorities which represent impediments to complete restoration of Lake Superior, and making recommendations on how to fill those gaps.

V. Critical Pollutants

Critical Pollutants are defined by Annex 2 of the Great Lakes Water Quality Agreement as substances that persist at levels that, singly or in synergistic or additive combination, are causing, or are likely to cause, impairment of beneficial uses despite past application of regulatory controls due to their: (1) Presence in open lake waters; (2) ability to cause or contribute to a failure to meet Agreement objectives through their recognized threat to human health and aquatic life; or (3) ability to bioaccumulate.

As discussed above, the Lake Superior Binational Program has designated nine chemicals for zero discharge. The SWG proposes these nine pollutants be designated as Critical Pollutants in the Lake Superior LaMP: chlordane, DDT and metabolites, dieldrin, hexachlorobenzene, octachlorostyrene, PCBs, 2,3,7,8–TCDD, toxaphene and mercury.

The SWG has evaluated pollutants which are causally linked to lakewide impairments of beneficial uses, exceedances of chemical criteria, standards or objectives, or impairments of ecosystem objectives. The SWG proposes these pollutants as candidate Critical Pollutants. These causal pollutants (candidate Critical Pollutants) are:

Organics	*Metals*	*Others*
alpha-BHC	arsenic	bark
heptachlor epoxide	cadmium	BOD
PAH's	chromium	fibre
furans & dioxins	copper	phosphorous
	lead	pulp mill effluent
	iron	
	manganese	
	nickel	
	zinc	

The Superior Workgroup will evaluate the list of causal pollutants for evidence of point or nonpoint discharges of these pollutants to the waters of the Lake Superior System. In addition, the causal pollutants will be evaluated on the basis of their potential to cause significant damage to the health of the Lake Superior ecosystem. This evaluation will form the basis for designating Critical Pollutants which currently impact Lake Superior.

The Lake Superior Forum has developed a list of pollutants which the Forum believes should be subject to preventative measures in the basin. The Forum believes that identifying these substances as critical pollutants will enhance the level of protection afforded the Lake Superior ecosystem, and is consistent with the goals of the Binational Program. EPA puts forward these Forum proposals to further public discussion on this issue, and request comments on the scope and adequacy of the Forum proposal.

The SWG proposes that Critical Pollutants will be targeted for: (1) Zero discharge; (2) lakewide load reductions; and/or, (3) preventative measures, based upon their characteristics, such as persistence, bioaccumulative potential, toxicity and potential for future introduction to the basin. Using such a categorization process will strengthen the ability of Federal, Provincial and State agencies to develop and apply appropriate environmental protection strategies.

EPA finds merit with these proposals of the SWG and puts them forth in the United States in today's notice on behalf of the binational partners. EPA requests specific comments on the proposal to designate the substances listed above as Critical Pollutants for Lake Superior. EPA requests proposals for pollutants other than those listed above to be added to the Critical Pollutant list. EPA further requests any information on the ambient concentrations of a pollutant in the water or sediments of Lake Superior, or in the tissues of the aquatic life, wildlife, or humans that are dependent on Lake Superior for food or water, which suggests that a substance should be considered a critical pollutant for Lake Superior. In addition, EPA requests any additional information on any sources and loadings of these and any other substances that may currently cause, or have the potential to cause, impairments of beneficial uses of the Lake Superior ecosystem.

VI. Source Identification and Load Quantification

Today's proposed Lake Superior LaMP focuses on the nine designated zero discharge pollutants which have been designated as Critical Pollutants. As of January 1, 1991, 43 major surface water dischargers to the waters of the Lake Superior System have been

identified. Existing industrial sources include 27 facilities, including forest products manufacturers, mines and metals processing facilities, electrical generating stations, a wood preserving industry, an oil refinery, and a food processor. Sixteen municipal wastewater treatment facilities were evaluated. Of these 43 sources, available data indicate that 16 discharged detectable levels of TCDD, OCS, HCB, PCBs and mercury. The most commonly detected pollutant was mercury, identified in 14 of the 43 sources. Detailed descriptions for these 43 sources are included in Appendix 5 and detailed loadings estimates in Appendix 6. Available loadings and process information were used to assess each source against a proposed blueprint for zero discharge. The results of this assessment are included in Appendix 7. In only a few cases could loads be estimated by direct measurement of pollutant concentration multiplied by total flows.

EPA requests comments on the accuracy and completeness of these source evaluations. EPA further requests any additional information on the discharges of critical pollutants, or other pollutants which may adversely affect beneficial uses, to the waters of Lake Superior System from these or any other point or nonpoint sources.

EPA and the binational partners recognize that no direct method of measuring zero discharge exists due partly to the limits of analytical science as well as the lack of an authoritative definition of zero. Therefore, to assess the progress of the zero discharge demonstration program and the LaMP, today's proposed LaMP includes a framework, or blueprint, for assessing zero discharge. This blueprint utilizes an approach of assessing chemical use, production, or potential for release in contrast to solely utilizing analytical detection. Such a staged approach accommodates evaluation of sources within as well as outside of the Lake Superior basin which cause or have the potential to cause impairments of beneficial uses.

EPA concurs with this proposed approach for Lake Superior, and puts forward this proposed blueprint for public review and comment in the United States on behalf of the binational partners. EPA requests comments on the suitability of such an approach in assessing progress towards zero discharge in Lake Superior, as well as other alternatives for assessing progress.

VII. Ecosystem Objectives and Indicators

In Annex 1 of the Great Lakes Water Quality Agreement, the U.S. and Canadian governments, in consultation with State and Provincial governments, agreed to develop ecosystem objectives for the waters of the Great Lakes System, as the state of knowledge permits. In addition, the Agreement specifies the following objective for Lake Superior - "the Lake should be maintained as a balanced and stable oligotrophic ecosystem with lake trout as the top aquatic predator of a cold water community and the *Pontoporeia* hoyi as a key organism in the food chain."

EPA views ecosystem principles and objectives as an integral component of LaMPs consistent with the general principles of Annex 2 of the Agreement that LaMPs embody a systematic and comprehensive ecosystem approach to restoring and protecting beneficial uses. EPA intends to incorporate ecosystem principles and objectives, and ultimately, ecosystem indicators, into the Lake Superior LaMP. The public will be provided opportunities to participate in the development of ecosystem indicators for Lake Superior, including review and comment on proposed ecosystem indicators. When finalized and adopted into the Lake Superior LaMP. EPA believes ecosystem principles, objectives and indicators will serve to further the goals of the Binational Program as well as the broader goals of the Agency's Great Lakes program.

The proposed Lake Superior ecosystem principles and objectives were drafted by representatives of Federal, State and Provincial agencies in consultation with the Lake Superior Forum. EPA puts forward the proposed Lake Superior ecosystem principles and objectives for public review and comment in the United States on behalf of the binational partners. Comments received from the public on todays proposal will be considered by the binational partners in finalizing and adopting Lake Superior ecosystem principles and objectives. EPA requests comments on all aspects of todays proposal, including: (1) A Vision for Lake Superior adopted by the Lake Superior Forum; (2) general objectives; (3) aquatic community objectives; (4) terrestrial wildlife objectives; (5) habitat objectives; (5) human health objectives; and, (6) objectives for sustainable development. In addition, EPA requests comments on the proposed framework for developing ecosystem indicators for Lake Superior.

The Great Lakes Water Quality Guidance, when finalized, will establish water quality criteria and goals to protect aquatic life, wildlife, and human health in the Great Lakes Basin. The water quality criteria and values proposed in the Guidance apply to all the ambient United States waters of the Great Lakes System, regardless of the source of pollutants to those waters. In this manner, the proposed water quality criteria and values provide the basis for integrating actions carried out under the range of environmental programs available to both Federal, State and Tribal regulators to protect and restore the Great Lakes ecosystem. EPA intends to use the water quality criteria and values, when finalized, as indicators of the health of the Lake Superior ecosystem. EPA requests comments on this approach.

VIII. Management Strategies and Actions

A wide range of actions are being undertaken by Federal, Provincial and State agencies through the Binational Program. These include specific actions intended to reduce pollutant loadings to the Lake Superior System, and further the goals of zero discharge. These include:

- Implementation of a comprehensive pollution prevention strategy for the nine designated zero discharge pollutants.
- Assessment and analysis of financial/economic tools and incentives to encourage virtual elimination and sustainable development throughout the Lake Superior Basin as mechanisms to achieve zero discharge.
- Basinwide educational programs to raise consumer consciousness regarding hazardous wastes and the impact of such wastes on the water quality.
- Load reductions through existing and expanded environmental programs at the Federal, Provincial and State levels.
- Development of specific procedures for LS-OIRW and LS-ONRW designations including candidate lists of waters.
- Investigation and remediation of contaminated sediments in targeted sites
- Public workshops and meetings throughout the Lake Superior Basin to discuss both the proposed LaMP and the Binational Program.
- Development of a comprehensive monitoring program designed to quantify loads and identify sources of critical pollutants on a priority basis.

EPA Requests public comment on the scope, adequacy, and timing of the actions described in the proposed Lake Superior LaMP. EPA requests proposals or information from the public on local actions to reduce loads of toxic pollutants to the waters of the Lake Superior System, on any other action which may reduce loads of toxic pollutants to the waters of the Lake Superior System, support the zero discharge demonstration program, further public participation and involvement in the Binational Program, or in any other way serve to protect and restore the Lake Superior ecosystem.

Dated: February 1, 1994.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 94–3432 Filed 2–14–94; 8:45 am]

BILLING CODE 6560–60–P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, February 24, 1994 from 9:00 A.M. to 4:30 P.M. in room *7313* of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting includes discussions on (1) Accounting Liability concepts, (2) Cost Accounting issues and proposed concepts, (3) an Accounting Concepts draft paper, (4) an Entity and Display draft ED, and (5) Physical Property.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., NE., room 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: February 9, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94–3437 Filed 2–14–94; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on March 3–4, 1994. The meeting will be held in Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on March 3 and from 9 a.m. to adjournment on March 4 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 9 a.m. to approximately noon on March 3, 1994 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Ms. Carole A. Frank, Committee Management Officer, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, National Institutes of Health, Building 31, Room 11A06, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other special accommodations, should contact Dr. David McB. Howell, (301) 496–6927, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support. 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: February 8, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3507 Filed 2–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of the National Kidney and Urologic Diseases Advisory Board and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board, National Institute of Diabetes and Digestive and Kidney Diseases, and its Subcommittees on March 6–7, 1994.

The National Kidney and Urologic Diseases Advisory board is also sponsoring a National Workshop on barriers to Rehabilitation of Persons with End-Stage Renal Disease and Chronic Urinary Infection on March 7–9.

All meetings will be held, as listed below, at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland, and will be open to the public, with attendance limited to space available.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, two weeks prior to the meeting date. In addition, his office will provide a roster of the Board members and a summary of the meetings, upon request.

Name of Committee: National Kidney and Urologic Diseases Advisory Board.

Date of Meeting: March 7, 1994.

Open: 1:30 p.m.–3:30 p.m.

Agenda: Discuss future activities/1994 Annual Report.

Name of Committee: Research Subcommittee.

Date of Meeting: March 6–7.

Open: March 6–7 p.m. to recess; March 7–8 a.m. to 12 noon.

Agenda: Discuss future kidney related activities.

Name of Committee: Health Care Issues Subcommittee.

Date of Meeting: March 6–7.
Open: March 6–7 p.m. to recess; March 7–8 a.m. to 12 noon.
Agenda: Discuss future kidney related activities.

National Workshop: Barriers to Rehabilitation of Persons with End-Stage Renal Disease and Chronic Urinary Infection.
Date of Meeting: March 7–9.
Open: March 7–7 p.m. to 9 p.m.; March 8–8 a.m. to recess; March 9–8 a.m. to 10 a.m.
Agenda: Participants will divide into preassigned workgroups.
Open: March 9–10:30 a.m. to adjournment (approximately 3:30 p.m.).
Agenda: Workgroup reports and general discussion.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: February 8, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3509 Filed 2–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for March 1994.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Office, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301–496–7301, FAX: 301–402–0224, will provide a summary of the meeting and a roster of committee members.

Individualls who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Ann Dieffenbach.

Substantive program information may be obtained from each scientific review administrator whose name, room number, and telephone number are listed below each committee.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.
Scientific Review Administrator: Dr. Carole Latker, Room 9A10, Westwood Building, Telephone: 301–594–7758.
Dates of Meeting: March 2, 1994.
Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.
Open: March 2, 8 a.m.–9 a.m.
Closed: March 2, 9 a.m.–adjournment.

Name of Committee: Minority Access to Research Careers Review Subcommittee.
Scientific Review Administrator: Dr. Richard Martinez, Room 9A18, Westwood Building, Telephone: 301–594–7803.
Dates of Meeting: March 10–12, 1994.
Place of Meeting: March 10–11, 1994, Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.
Place of Meeting: March 12, 1994, Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.
Open: March 10, 8:30 a.m.–9:30 a.m.
Closed: March 10, 9:30 a.m.–5 p.m.; March 11, 8:30 a.m.–5 p.m.; March 12, 8:30 a.m.–12 p.m.

Name of Committee: Pharmacological Sciences Review Committee.
Scientific Review Administrator: Dr. Irene Glowinski, Room 9A18, Westwood Building, Telephone: 301–594–7741.
Dates of Meeting: March 15, 1994.
Place of Meeting: 5333 Westbard Avenue (TELEPHONE CONFERENCE), Room 9A18, National Institutes of Health, Bethesda, Maryland 20892.
Open: March 15, 1 p.m.–1:30 p.m.
Closed: March 15, 1:30 p.m.–3 p.m.

Name of Committee: Minority Biomedical Research Support Review Subcommittee.
Scientific Review Administrator: Dr. Jean Flagg-Newton, Room 9A13, Westwood Building, Telephone: 301–594–7708.
Dates of Meeting: March 17–18, 1994.
Place of Meeting: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Open: March 17, 8:30 a.m.–9:30 a.m..
Closed: March 17, 9:30 a.m.–5 p.m; March 18, 8:30 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862, 93.863, 93.880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: February 8, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3506 Filed 2–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute of Mental Health for March 1994.

These meetings will be open to the public as indicated below for the discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public will be limited to space available.

All meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the contact person indicated.

Committee Name: Child Psychopathology and Treatment Review Committee.
Contact: Tammye M. Cross, Room 9C–14, Parklawn Building, Telephone: 301, 443–1367.
Meeting Date: March 2–4, 1994.
Place: Sheraton Washington Hotel, 2500 Woodley Road, NW., Washington, DC 20008.
Open: March 2, 1994, 9 a.m.–10 a.m.
Closed: March 2, 1994, 10 a.m.–5 p.m.; March 3, 1994, 9 a.m.–5 p.m.; March 4, 1994, 9 a.m.–adjournment.

Committee Name: Epidemiology Review Committee.
Contact: Tammye M. Cross, Room 9C–14, Parklawn Building, Telephone: 301, 443–1367.
Meeting Date: March 7–9, 1994.
Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.
Open: March 7, 1994, 9 a.m.–10 a.m.
Closed: March 7, 1994, 10 a.m.–5 p.m.; March 8, 1994, 9 a.m.–5 p.m.; March 9, 1994, 9 a.m.–adjournment.

Committee Name: Behavioral, Clinical, and Psychosocial Subcommittee, Mental Health AIDS and Immunology Review Committee.
Contact: Regina M. Thomas, room 9C–15, Parklawn Building, Telephone: 301, 443–6470.

Meeting Date: March 8–9, 1994.
Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.
Open: March 8, 1994, 8:30 a.m.–9 a.m.
Closed: March 8, 1994, 9 a.m.–5 p.m.; March 9, 1994, 8:30 a.m.–adjournment.

Committee Name: Psychobiological, Biological, and Neuroscience Subcommittee, Mental Health AIDS and Immunology Review Committee.
Contact: Rehana A. Chowdhury, Room 9C–15, Parklawn Building, Telephone: 301, 443–6470.
Meeting Date: March 10–11, 1994.
Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.
Open: March 10, 1994, 8:30 a.m.–9 a.m.
Closed: March 10, 1994, 9 a.m.–5 p.m.; March 11, 1994, 8:30 a.m.–adjournment.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: February 8, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3508 Filed 2–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Cancellation of Meeting

Notice is hereby given of the cancellation of one meeting of the National Institute of Mental Health which was published in the **Federal Register** on January 14, 1994 (59 FR 2414): The Services Research Review Committee, February 16–18, 1994, Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland.

The meeting was cancelled due to prior commitments of several members.

Dated: February 8, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3511 Filed 2–14–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

Meeting To Review Individuol Grant Applications.

Scientific Review Administrator: Ms. Carol Campbell (301) 594–7165.
Date of Meeting: March 14, 1994.
Place of Meeting: OMNI Shoreham, DC.
Time of Meeting: 9 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3510 Filed 2–14–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings To Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. Jane Hu (301) 594–7269.
Date of Meeting: March 7, 1994.
Place of Meeting: Holiday Inn, Chevy Chase, MD.
Time of Meeting: 8:30 a.m.
Scientific Review Administrator: Dr. Joseph Kimm (301) 594–7257.
Date of Meeting: March 28, 1994.
Place of Meeting: Hyatt Regency, Bethesda, MD.
Time of Meeting: 9 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3512 Filed 2–14–94; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Co-Exclusive License: Type Alpha Platelet-Derived Growth Factor (PDGF) Receptor Gene

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a co-exclusive world-wide license to practice the invention embodies in U.S. Patent Applications SN 07/308,282 and SN 07/915,884, both entitled "Type Alpha Platelet-Derived Growth Factor Receptor Gene" to Targeted Genetics Corporation, of Seattle, Washington. The patent rights in this invention have been assigned to the United States of America.

The prospective license will be royalty-bearing, will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7, and is expected to be co-exclusive with one other party, COR Therapeutics, Inc. It is anticipated that this license will be limited to gene therapy treatment of cardiovascular disease. Publication of this notice should be considered a modification of an earlier notice "Prospective Grant of Exclusive License: Type Alpha Platelet-Derived Growth Factor" (Vol. 58, No.

16, Wednesday, January 17, 1993, page 6287).

This prospective co-exclusive license may be granted unless, within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The patent application describes novel DNA segments that encode platelet-derived growth factor (PDGF) receptors that may be useful in therapies for conditions involving abnormal processes involving PDGF and its receptors. In particular, bioassay methods for detecting the expression of genes related to these DNA segments are effective in the identification of various classes of tumor cells, genetic defects in connective tissue growth, or in the healing response.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH within sixty (60) days of this notice will be considered.

Dated: February 7, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–3505 Filed 2–14–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise a notice describing a Departmentwide system of records managed by the Office of Information Resources Management. Except as noted below, all changes are editorial in nature, clarify and update existing statements, and reflect organization, address and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the **Federal Register.** The notice being revised, which is published in its entirety below, is: "Telephone Call Detail Records—Interior, DOI–36," previously published on November 9, 1988 (53 FR 45394) as "Interior, Office of the Secretary-36."

In this notice, the existing system name has been revised to more adequately convey the Departmentwide extent of the scope-of-system coverage. Additionally, the existing system location statement and the existing system manager(s) and address statement are revised to reflect changes in addresses of system managers, and the existing retention and disposal statement has been revised to incorporate the Department's approved records management plan for this system.

Since these changes do not involve any new or intended use of the information in the system of records, the notice shall be effective on publication in the **Federal Register** (February 15, 1994). Additional information regarding this action may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, 1849 "C" Street NW., Mail Stop 5412 MIB, Washington, DC 20240; telephone (202) 208–6045.

Dated: February 8, 1994.

Albert C. Camacho,

Director, Office of Administrative Services.

INTERIOR/DOI–36

SYSTEM NAME:

Telephone Call Detail Records Interior, DOI–36.

SYSTEM LOCATION:

(1) U.S. Department of the Interior, Office of Information Resources Management, Telecommunications Systems Division, m.s. 7355, 1849 C St. NW, Washington, DC 20240.

(2) U.S. Geological Survey, Information Systems Division, m.s. 7355, 1849 C St. NW, Washington, DC 20240.

(2) U.S. Geological Survey, Information Systems Division, m.s 809, 809 National Center, Reston, Virginia 22092.

(3) Offices of Bureau System Managers.

(4) Bureau offices nationwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally Department, bureau/office, and contractor employees) who make long distance telephone calls and individuals who receive long distance telephone calls placed from or charged to DOI telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of DOI telephone systems to place long distance calls; records indicating assignment of telephone numbers of employees; and records relating to the location of telephones.

Note: Records of telephone calls made to the Department's Office of Inspector General Hotline number are excluded from the records maintained in this system pursuant to the provisions of 5 U.S.C., Appendix 3 Section 7(b) (Inspector General Act of 1978).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 1348(b), which prohibits agencies from using appropriated funds to pay for personal calls; 44 U.S.C. 3101, which authorizes agencies to create and preserve records documenting agency organizations, functions, procedures and transactions; and 43 CFR 201–38.007, which limits the use of Government telephone systems to the conduct of official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures within the Department of the Interior may be made to employees of the Department to determine responsibility for long distance telephone calls, and to resolve disputes and facilitate the verification of discrepancies relating to the billing, payment, or reconciliation of telephone operational or accountability records.

Disclosures outside the Department of the Interior may be made: (1) To representatives of a telecommunications company providing telecommunications support to permit the servicing of the account; (2) To representatives of the General Services Administration or the National Archives and Records Administration to conduct records management inspections under authority of 44 U.S.C. 2904 and 2906; (3) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (4) Of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (5) To a Federal agency that has requested information necessary or relevant to the hiring, firing, or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter; and (6) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING AND ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Official records are stored in electronic form (at the U.S. Geological Survey.) Paper reference copies of official records are stored in file cabinets.

RETRIEVABILITY:

Records are retrieved by employee name, telephone number, identification number, or by account code.

SAFEGUARDS:

Access to the records is limited to Departmental employees who have an official need to use the records in the performance of their duties. Records are stored in a controlled area and maintained with safeguards meeting the requirements of 43 CFR 2.51 for computer and paper records. Automated records are protected from unauthorized access through password identification procedures and other system-based protection methods.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration's General Records Schedule 12, Item 4, official (electronic) records are retained for three (3) years and then destroyed. Paper reference copies are destroyed when no longer needed or, if not before, when three (3) years old.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Chief, Telecommunications Systems Division, Office of Information Resources Management, m.s. 7355 MIB, 1849 C St. NW., Washington , DC 20240.

(2) Chief, Information Systems Division, U.S. Geological Survey, m.s. 809, 809 National Center, Reston, Virginia 22092.

(3) a. Telecommunications Manager, Office of Facilities Management, Bureau of Indian Affairs, P.O. Box 1248, Albuquerque, New Mexico 87103.

b. Chief, Branch of Telecommunications, Bureau of Land Management, m.s. 1620–L, 1620 L St. NW., Washington, DC 20236.

c. Telecommunications Manager, Property and General Services, Bureau of Mines, m.s. 2150, 810 7th St. NW., Washington, DC 20241.

d. Telecommunications Manager, Bureau of Reclamation, Denver Federal Center, m.s. D–7140, P.O. Box 25007, Denver, Colorado, 80225.

e. Telecommunications Manager, U.S. Fish and Wildlife Service, IRM/TFO, P.O. Box 25207, Denver, Colorado 80225.

f. Chief, Branch of Telecommunications Services, U.S. Geological Survey, m.s. 809, 809 National Center, Reston, Virginia 22092.

g. Chief, Safety and Facilities Management Branch, Minerals Management Service, 381 Elden Street (MS 2000), Herndon, Virginia 22070.

h. Telecommunications Manager, Information and Telecommunications Division, National Park Service, m.s 270, P.O. Box 37127, NW., Washington, DC 20013–7127.

i. Telecommunications Administrator, Office of Inspector General, m.s. 124 SIB, 1849 C St. NW., Washington, DC 20240.

j. Chief, Branch of Telecommunications Management, Office of Administrative Services, Office of the Secretary, m.s. 1445 MIB, 1849 C St. NW., Washington, DC 20240.

k. Telecommunications Manager, Office of Surface Mining Reclamation and Enforcement, m.s. 10 SIB, 1849 C St. NW., Washington, DC 20240.

NOTIFICATION PROCEDURE:

A request for notification of the existence of records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Telephone assignment records, call detail listings, and results of administrative inquires relating to assignment of responsibility for placement of specific long distance calls.

[FR Doc. 94–3498 Filed 2–14–94; 8:45 am]

BILLING CODE 4310–RH

Bureau of Land Management

[CO–920–94–4120–03; COC 54623]

Colorado; Notice of Invitation for Coal Exploration License Application, Consol Inc.

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Consol Inc., in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Gunnison County, Colorado:

T. 13 S., R. 90 W., 6th P.M.
Sec. 11, lots 9, and 12;
Sec. 12, lots 7 to 9, inclusive, and NW¼SW¼.

The area described contains approximately 221.89 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 54623 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401.

Written Notice of Intent to participate should be addressed to the attention of the following persons an must be received by them within 30 days after publication of the Notice of Invitation in the **Federal Register:**

James E. Edwards, Jr., Chief, Branch of Mining Law and Solid Minerals, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street. Lakewood, Colorado 80215 and

Randy B. Stockdale, Consol Inc., Central Shop, Second Floor, P.O. Box 159, Pinckneyville, Illinois 62274.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: February 3, 1994.

James E. Edwards,

Chief, Branch of Mining, Law and Solid Minerals.

[FR Doc. 94-3407 Filed 2-14-94; 8:45 am]

BILLING CODE 4310-JB-M

[MT-020-04-4120-01; MTM 80697]

Availability of Draft Environmental Impact Statement for Western Energy Company's Coal Lease Application (MTM 80697) and Request for Public Comment; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, Miles City District, Powder River Resource Area Office has produced a draft environmental impact statement (EIS) for the Western Energy Company Federal Coal Lease Application MTM 80697. By this notice the public is informed that the draft EIS is available, and that interested individuals may obtain copies by request. Notice is also given that public meetings will be held on Monday, March 7, 1994, at the Dull Knife College, Lame Deer, Montana, and on Tuesday, March 8, 1994, at the Bicentennial Library of Colstrip, Montana.

This environmental impact statement addresses the socioeconomic and environmental impacts that would likely result from leasing these federal coal lands, the cumulative impacts of the coal lease application, and the irreversible and irretrievable commitment of resources involved with this action. The environmental impact statement provides a sound basis for public review, decisionmaking, and is in compliance with the National Environmental Policy Act.

On January 29, 1992, the Western Energy Company filed a coal lease application (MTM 80697) for federal coal resources within the Powder River Coal Production Region in conjunction with their existing mine near Colstrip, Montana. The company holds existing federal coal leases in this area and has been mining since 1968. This coal lease application was filed with the Bureau of Land Management, the administrative agency for federal minerals.

In accordance with 43 CFR 3425 and the Powder River Regional Coal Team Operational Guidelines for Coal Lease-by-Applications, management decided to prepare an environmental impact statement using the following rationale:

1. Concern over the cultural, religious, and spiritual values of the Northern Cheyenne and Crow Tribes that may be associated with these lands.

2. The Bureau of Land Management's trust responsibility to the Tribes to insure that the socioeconomic impacts, as well as the cultural, religious, and spiritual values are fully addressed.

3. Concerns that these values and others could not be fully addressed with an environmental assessment.

4. Concern expressed by the public at scoping meetings and from telephone calls regarding cultural and hydrology issues, and the opinion that an environmental impact statement was necessary to address these issues.

5. The amount of work, scope, and effort needed to document the environmental analysis process.

The land included in coal lease application (MTM-80697) is located in Rosebud County, Montana, approximately 10 miles west of Colstrip, Montana, and is described as follows:

Principal Meridian, Montana

T. 1 N., R. 39 E.,
Sec. 2, S½NW¼, N½NE¼SE¼.
T. 1 N., R. 40 E.,
Sec. 6, lots 1, 2, 3, 4, S½N½, S½;
Sec. 8, E½, N½NW¼;
Sec. 14, S½SW¼, SE¼.
T. 2 N., R. 40 E.,
Sec. 32, all.

The 2,061 acre tract contains an estimated 35.6 million tons of recoverable reserves. The lands involved are all private surface/federal coal lands within Area C, except for one parcel in Area B.

EFFECTIVE DATE: Written comments will be accepted through April 25, 1994. Public meetings will be held at the following locations and times:

1. Monday, March 7, 1994; Dull Knife College Auditorium, Lame Deer, Montana, from 7–9 p.m.

2. Tuesday, March 8, 1994; Conference Room of the Bicentennial Library of Colstrip, 415 Willow Avenue, Colstrip, Montana, from 7–9 p.m.

FOR FURTHER INFORMATION CONTACT: Mary Alice Spencer, BLM Powder River Resource Area, Miles City Plaza, Miles City, Montana 59301, 406–232–7000 or TDD 406–232–1939.

SUPPLEMENTARY INFORMATION: Western Energy Company is lessee and operator of several federal coal leases at the Rosebud Mine near Colstrip, Montana. The area applied for is within an existing approved life-of-mine plan, with the exception of a portion of section 14 in T. 1 N., R. 40 E., which is included within the Area B extension mine application now under final stages of review by the Montana Department of State Lands and the Office of Surface Mining.

No additional exploration and/or exploratory drilling is anticipated for these areas prior to leasing. Exploration and drilling was conducted in the 1980 to 1985 era in preparation for the submittal of the Area C amendment permit application and the Area B extension permit application.

The mining production sequence for the proposed lease tracts will be incorporated into the existing mine plan for Area C and the proposed mine plan for Area B extension.

Three alternatives are addressed in the environmental impact statement:

Alternative 1—Preferred (Proposed Action)—Lease the 2,061 acres of federal coal lands to Western Energy Company as applied for in the coal lease application.

Alternative 2—(No action)—Reject or deny the coal lease application. The federal coal lands would not be offered for lease.

Alternative 3—(Cultural Resource Avoidance)—The coal lease application would be partially approved. Two cultural properties with values as traditional cultural properties and sites with intangible spiritual attributes would be avoided by excluding federal coal lands in and around these two sites from the coal lease application.

Under Alternatives 1 and 3, the coal lease, as described in the respective alternative, would be offered under a competitive bid process with the lease going to the highest qualified bidder for the prospective coal lease.

For Alternative 1—Preferred (Proposed Action)—The Bureau of Land Management would offer a lease sale for 2,061 acres of federal coal reserves as applied for in the coal lease application. Assuming Western Energy Company is the successful bidder for this lease; these lands, which are incorporated into the company's existing mine plans, would be mined accordingly. Of the 2,061 acres offered for lease, 914 acres would be mined and 1,327 would be disturbed. Approximately 734 acres would not be disturbed. Additional mitigation measures for traditional lifeway values, such as a 160-foot buffer zone to protect cultural properties, planting trees to screen the cultural properties from intrusions, or removal of the petroglyph panels could be incorporated as special stipulations to the lease and amended to the existing mine plan permit.

For Alternative 2—(No Action)—The Bureau of Land Management would deny or reject the coal lease application. The federal coal lands would not be offered for lease at this time. The Western Energy Company would continue mining other federal, state, and private coal lands instead. Impacts associated with mining these federal coal lands would be avoided and shifted to the other federal, state, and private coal lands that Western Energy Company would mine. The federal coal lands in this application would likely be bypassed for mining.

For Alternative 3—(Cultural Resource Avoidance)—The coal lease application would be partially approved. Two cultural properties in T. 2 N., R. 40 E., section 32, which have values as traditional cultural properties and sites with intangible spiritual attributes would be avoided by excluding 70 acres of federal coal lands in and around these two sites from the coal lease application. Since it would not be feasible to mine other areas in a strip mine operation, a total of 152 acres and 6.5 million tons of recoverable coal reserves would be excluded. Existing approved mitigation measures which were included as part of the mine plan permits by the Montana Department of State Lands and special coal lease stipulations would apply, and Western Energy Company would be required to comply with these mitigation measures.

Dated: February 3, 1994.

Robert H. Lawton,

State Director.

[FR Doc. 94-3497 Filed 2-14-94; 8:45 am]

BILLING CODE 4310-DN-M

[CA-010-01-4210; CA 31772; 4-00160-GP4-010-005]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Kern County, California have been examined and found suitable for classification for lease or conveyance to the South Fork Union School District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

Mount Diablo Meridian

T. 26 S., R. 34 E.,
Sec. 24: SE¼ SE¼
Containing 40 acres.

AP # 426-072-37 to 426-072-44 and AP # 426-072-53 to 426-072-60

The South Fork Union School District has filed an application for lease with the option to purchase a 40-acre parcel of public land to construct a new school campus. The school will house a 1,000-student facility for children attending Grades K–8 within the South Fork Union School District.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Caliente Resource Area, 4301 Rosedale Highway, Bakersfield, California.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, until April 1, 1994 interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Area Manager, Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, CA 93308.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a school campus. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a school campus.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: December 14, 1993.

James Wesley Abbott,

Caliente Resource Area Manager.

[FR Doc. 94-18 Filed 2-14-94; 8:45 am]

BILLING CODE 4310-40-M

Bureau of Land Management

[CA-010-03-4332-01; 4-00160-GP4-010-007]

Temporary Vehicle Use Restriction Order for Caliente Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of temporary vehicle use restriction in the Case Mountain/Milk Ranch Peak Management Area within Tulare County in the Caliente Resource Area, Bakersfield District, California.

SUMMARY: This emergency action restricts vehicle use on BLM-administered public land in the Case Mountain/Milk Ranch Management Area due to the acquisition of public lands which have yet to be addressed in a Resource Management Plan. Vehicle use on roadways is restricted to "Administrative Access Only" and shall be limited to persons specifically designated by the Area Manager to drive on said roadways. The public lands affected by this category of road closure are located in portions of S½S½ Section 9; NE¼, SE¼NW¼, S½ Section 16; NE¼SW¼NE¼, S½SW¼NE¼, SE¼SE¼NW¼, N½SW¼, SE¼SW¼, SE¼ Section 17, all in Township 17 South, Range 29 East, Mount Diablo Base and Meridian, in the County of Tulare, State of California. This restriction will apply from the date of publication in the **Federal Register** and remain in effect until an amendment thereof or until publication of a Resource Management Plan which adequately addresses public access on these lands.

SUPPLEMENTARY INFORMATION: This emergency road closure is intended to control vehicle use on public lands for protection of the Sequoia Redwood grove, the maintenance of the critical winter range of deer, and fuels management. Authority for this restriction order is contained in CFR Title 43, Chapter II, 8364.1(a).

DATES: This order will be effective on February 15, 1994.

FOR FURTHER INFORMATION CONTACT: James Abbott, Caliente Resource Area Manager, Caliente Resource Area, Bureau of Land Management, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861–4236.

Dated: January 31, 1994.

James Wesley Abbot,

Caliente Resource Area Manager.

[FR Doc. 94–3128 Filed 2–14–94; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Arizona Cliffrose for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Arizona cliffrose (*Purshia subintegra*), which the Service listed as an endangered species on May 29, 1984 (49 FR 22329). The plant, Arizona cliffrose, is known only from four disjunct populations that occur on the northern edge of the Sonoran Desert in Central Arizona. All four populations are found within a total distance of 200 miles. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before April 18, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3616 West Thomas Road, suite 6, Phoenix, Arizona 85019. Written comments and materials regarding the plan should be addressed to the State Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Susan Rutman, U.S. Fish and Wildlife Service Botanist; telephone (602) 379–4720, or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site-specific management actions considered necessary for conservation and survival of the species, establish objectives and measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment prior to approval of each new or revised recovery plan. The Service, and other Federal agencies, will take these comments into account in the course of implementing approved recovery plans.

The Arizona cliffrose (*Purshia subinteqra*) is a rare edaphic endemic, restricted to nutrient deficient calcareous soils in central Arizona. The disjunct distribution of this species is unique. No other plant species occurs only in the same four sites as the Arizona cliffrose. Each population has unique biological/ecological characteristics and is faced with a variety of threats. These threats include: livestock, wildlife, and burro grazing; mineral exploration and development; construction and maintenance of roads and utility right-of-ways; recreation; poor reproduction; off-road vehicle use; urbanization; pesticides; and inundation. The relative importance of each threat varies among the four populations. The recovery plan addresses each population as an individual recovery unit, believed necessary for the survival and recovery of the species.

The Arizona cliffrose recovery plan has been reviewed by the appropriate Service staff in Region 2 and selected experts on the biology of the species. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: February 2, 1994.

John G. Rogers,

Regional Director.

[FR Doc. 94–3488 Filed 2–14–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 5, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 2, 1994.

Patrick Andrus,

Acting Chief of Registration, National Register.

ARKANSAS

Izard County

Pine Ridge School Building (Public Schools in the Ozarks MPS), Izard Co. Rd. 237 W of Brockwell, Brockwell vicinity, 94000161

Lincoln County

Lincoln County Courthouse, 300 S. Drew St., Star City, 94000141

Pulaski County

Booz, Bishop Hiram A., House, 22 Armistead Rd., Little Rock, 94000142

Washington County

Bank of Fayetteville Building, Old, 100 W. Center St., Fayetteville, 94000144

Bean Cemetary, N. side US 62, about 2.2 mi. W of the jct. with AR 45, Lincoln, 94000152

Cane Hill Battlefield, Area surrounding AR 45 and Co. Rds. 291, 8, 284, and 285, Cane Hill vicinity, 94000132

Twin Bridges Historic District, (Historic Bridges of Arkansas MPS), Washington Co. Rd. 3412 across unnamed cr. and Old Washington Co. Rd. 11 across Baron Fork, Morrow vicinity, 94000162

COLORADO

Denver County

Larimer Square Historic District (Boundary Increase), 1404 Larimer St., Denver, 94000143

FLORIDA

Palm Beach County

Boynton School,, 141 E. Ocean Ave., Boynton Beach, 94000139

Polk County

Central Grammar School, Old (Haines City MPS),, 801 Ledwith Ave., Haines City, 94000160

Downtown Haines City Commercial District (Haines City MPS), Roughly bounded by Hinson end Ingraham Aves., and by 4th and 7th Sts., Haines City, 94000150

Haines City National Guard Armory, Old (Haines City MPS), 226 S. 6th St., Haines City, 94000158

Polk Hotel (Haines City MPS). 800—810 Hinson Ave., Haines City, 94000151

St. Mark's Episcopal Church (Haines City MPS). 102 N. 9th St., Haines City, 94000159

GEORGIA

Richmond County

Tubman High School, 1740 Walton Way, Augusta, 94000154

IDAHO

Fremont County

Big Falls Inn, W bank of Henrys Fork at Upper Mesa Falls in Targhee NF, Island Park vicinity, 94000131

KENTUCKY

Jefferson County

Clifton Historic District (Boundary Increase) (Louisville and Jefferson County MRA), Roughly bounded by CSX RR tracks, Ewing Ave. alley, I–64 and Mellwood Ave. Louisville, 94000157

MISSISSIPPI

Jasper County

Jasper County Jail, Old, MS 503, Paulding, 94000147

Madison County

Smith, Charles F., House, 140 Semmes Ave., Canton, 94000145

Warren County

Lassiter, W.W., Wholesale Grocery Warehouse, 1308 Levee St., Vicksburg, 94000149

MONTANA

Beaverhead County

Clark's Lookout, August 13, 1805, W side US 91, 500 ft. N of Beaverhead R., Dillon vicinity, 94000136

Madison County

Rossiter, H. D., Building, 115 S. Main St., Sheridan, 94000138

Meagher County

Wellman Block, 206 E. Main St., White Sulphur Springs, 94000140

NEW MEXICO

Bernalillo County

Nob Hill Business Center, 3500 Central Ave. SE., Albuquerque, 94000148

NORTH CAROLINA

Alamance County

Johnston Hall, 103 Antioch St., Elon College, 94000130

Mecklenburg County

Parks—Cramer Company Complex, Former, 2000 South Blvd., Charlotte, 94000146

Pasquotank County

Elizabeth City Historic District (Boundary Increase) (Elizabeth City MPS), Roughly bounded by W. Church, W. Ehringhaus, Elliott, Cedar and Ashe Sts., Elizabeth City, 94000163

Riverside Historic District (Elizabeth City MPS), Roughly, along Riverside Ave. from Morgan St. to Rivershore Rd. and Raleigh St. from Fairfax Ave. to Riverside, Elizabeth City, 94000165

Shepard Street—South Road Street Historic District (Elizabeth City MPS), Roughly bounded by Enringhaus and Edge Sts., Brooks and Boston Aves. and Charles Cr., Elizabeth City, 94000164

SOUTH DAKOTA

Harding County

Archeological Site No. 39HN18 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000088

Archeological Site No. 39HN162 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000091

Archeological Site No. 39HN167 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000092

Archeological Site No. 39HN165 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000093

Archeological Site No. 39HN207 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000094

Archeological Site No. 39HN205 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000095

Archeological Site No. 39HN487 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000096

Archeological Site No. 39HN205 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000097

Archeological Site No. 39HN484 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000098

Archeological Site No. 39HN485 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000099

Archeological Site No. 39HN234 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000100

Archeological Site No. 39HN232 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000101

Archeological Site No. 39HN219 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000102

Archeological Site No. 39HN218 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000103

Archeological Site No. 39HN217 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000104

Archeological Site No. 39HN213 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000105

Archeological Site No. 39HN210 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000106

Archeological Site No. 39HN209 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000107

Archeological Site No. 39HN1 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000108

Archeological Site No. 39HN5 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000109

Archeological Site No. 39HN199 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000110

Archeological Site No. 39HN227 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000111

Archeological Site No. 39HN228 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000112

Archeological Site No. 39HN160 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000113

Archeological Site No. 39HN150 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000114

Archeological Site No. 39HN155 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000115

Archeological Site No. 39HN159 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000116

Archeological Site No. 39HN121 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000117

Archeological Site No. 39HN53 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000118

Archeological Site No. 39HN50 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000119

Archeological Site No. 39HN54 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000120

Archeological Site No. 39HN30 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000121

Archeological Site No. 39HN26 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000122

Archeological Site No. 39HN22 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000123

Archeological Site No. 39HN21 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000124

Archeological Site No. 39HN198 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000125

Archeological Site No. 39HN177 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000126

Archeological Site No. 39HN174 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000127

Archeological Site No. 39HN171 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000128

Archeological Site No. 39HN168 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Ludlow vicinity, 94000129

VIRGINIA

Richmond Independent City

West of Boulevard Historic District, Roughly bounded by Colonial Ave., W. Grace St., Cutshaw Ave., Thompson St., and Ellwood Ave., Richmond, 94000153

WISCONSIN

Chippewa County

Chippewa Shoe Manufacturing Company, 28 W. River St., Chippewa Falls, 94000133

Milwaukee County

Newberry Boulevard Historic District, 1802—3000 E. Newberry Blvd., Milwaukee, 94000137

Racine County

Northside Historic District of Cream Brick Workers' Cottages (Racine Workers' Cottages MPS), Roughly bounded by Goold, Erie, English, Main, Yout and Chatham Sts. and Lakeview Community Center, Racine, 940000155

Vilas County

Mayo School, 2301 Townhall Rd., Eagle River, 94000135

Winnebago County

Chicago and Northwestern Railroad Depot, 500 N. Commercial St., Neenah, 94000134

Irving—Church Historic District, Roughly bounded by W. Irving Ave., Franklin St., Church Ave., Wisconsin St. and Amherst Ave., Oshkosh, 94000156

[FR Doc. 94–3447 Filed 2–14–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 347 (Sub-No. 2)]

Rate Guidelines; Non-Coal Proceedings

In a petition filed January 14, 1992, the Association of American Railroads (AAR) proposed a simplified stand-alone cost (SSAC) method for determining maximum rate reasonableness in small shipper complaint proceedings. SSAC employs a computer program which the AAR claims estimates stand-alone cost.[1] On February 25, 1993, the Commission's staff and AAR conducted a workshop to explain their respective proposals for simplified maximum rate methodologies. The Commission's staff presented a briefing on its Revenue Shortfall Allocation Method (RSAM) and AAR; and its consultants, discussed the mechanics and theory of SSAC.

On April 28, 1993, the AAR conducted a second technical demonstration of SSAC. At that demonstration the AAR applied their model to three hypothetical rail movements developed by the Commission's staff. The results, produced by the SSAC model, did not appear to set a meaningful limit on rates.

In a decision served December 17, 1993, the Commission asked the AAR to explain why the SSAC method should receive further consideration, given its apparent infirmities. On January 14, 1994, the AAR filed a petition requesting a waiver of that written explanation and proposed instead to make an oral presentation before the full Commission. The AAR indicates that representative railroad CEO's and their economic experts will explain why, "in light of the logic of CMP and in the context of circumstances facing the railroads, shippers and the Commission, SSAC is a sound tool for developing probative evidence" in maximum rate reasonableness proceedings.

Several shipper interests[2] filed a joint response (dated January 26, 1994) to the AAR's request. Although the shippers do not oppose AAR's petition, they request an opportunity to respond to any AAR presentation. The shippers suggest that AAR be directed to present in writing the evidence it intends to present orally to the Commission, with service upon all parties and that the Commission allow shippers to reply. On February 1, 1994 the AAR replied.

Given the importance of the non-coal rate guidelines, the time and effort AAR has put into developing its SSAC method, and the concerns expressed by the Commission's staff and shippers about the infirmities of SSAC, we believe an oral presentation would be helpful as we consider what action to take in this area. While we understand the theory underlying CMP and the need to develop simplified rate guidelines consistent with that theory, we need to understand how the SSAC results can produce a realistic limit on rates. Therefore, the railroads should explain their position with a written statement prior to their oral presentation as directed below. However, we do not believe that it is necessary at this time to schedule a hearing for all parties to present evidence on the same date. The Commission will schedule a second hearing for shippers if deemed necessary.

Due to the nature and importance of this proceeding, the Commission finds it necessary to modify its current service list as directed below.

For further information contact Thomas A. Schmitz (202) 927–5720). TDD for the hearing impaired: (202) 927–5721.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Persons already on our current service list, as well as those persons not already on the list, but who wish henceforth to participate must advise the Commission, in writing, of their intent to do so, on or before February 25, 1994. Persons must indicate whether they intend to actively participate as a party of record, or wish only to receive copies of Commission decisions. An original and 10 copies of these mailings referencing Ex Parte 347 (Sub-No. 2), *supra*, must be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

2. AAR's comments, originally ordered in our decision dated December 17, 1993, are now due March 17, 1994.

3. In its comments explaining why SSAC should receive further consideration, the AAR is requested, among other things, to address the results produced by their SSAC model. Specifically, the AAR should discuss the reasonableness of the results, as opposed to the theoretical underpinnings of their model, and describe why they believe such output provides a useable constraint on rail rates in the context of a small shipper rate reasonableness proceeding. AAR's comments should also provide a schedule for their oral presentation including a list of speakers, the time required for each speaker, and a synopsis of the topics to be discussed by each. AAR should serve upon each party of record all evidence filed with the Commission based on the revised service list which we will provide as soon as possible after the service list is modified.

4. AAR's oral presentation will be held between 10 a.m. and noon, March 30, 1994, in Hearing room A, Interstate Commerce Commission, 12th Street and Constitution Avenue, NW., Washington, DC.

5. Other interested persons may file comments addressing the AAR's written and oral presentations by April 30, 1994. Those persons may indicate whether, in addition to their written comments, they wish to make an oral presentation to the Commission.

Decided: February 7, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–3472 Filed 2–14–94; 8:45 am]

BILLING CODE 7035–01–P

[1] Stand-alone cost is the Constrained Market Pricing (CMP) constraint most often used to evaluate rail rate reasonableness. See, *Coal Rate Guidelines—Nationwide*, 1 I.C.C.2d 520 (1985).

[2] The Society of The Plastics Industry, Inc., The National Industrial Transportation League, Edison Electric Institute, and Western Coal Traffic League.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Apache Nitrogen Products, Inc.*, Civil Action No. CIV 92–382 TUC, was lodged on February 7, 1994, with the United States District Court for the District of Arizona. That action was brought against defendant pursuant to Sections 111(e) and 114 of the Clean Air Act (the "Act"), 42 U.S.C. 7411(e) and 7414, for civil penalties and injunctive relief in connection with defendant's operation of a nitric acid production facility. The decree requires the defendant to pay a civil penalty of $55,000 for alleged past violations of the Act, and to comply with specific emissions limits applicable to oxides of nitrogen ("NO_X").

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Apache Nitrogen Products, Inc.*, DOJ Ref. # 90–5–2–1–1438.

The proposed consent decree may be examined at the Office of the United States Attorney, 110 South Church Street, Tucson, Arizona; at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–3415 Filed 2–14–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

In accordance with the policy of the Department of Justice, notice is hereby given that on February 2, 1994 a proposed Modification of Consent Decree ("Modification") in *United States* v. *Kurdziel Industries, Inc.* was lodged with the United States District Court for the Western District of Michigan. The proposed Modification will resolve the Motion of the United States to Enforce Consent Decree filed with the court on July 31, 1991. In that Motion, the United States alleged that Kurdziel Industries, Inc. ("KII") had violated certain provisions of an existing consent decree, entered by the court on July 7, 1987, pursuant to the Resource Conservation and Recovety Act ("RCRA"), 42 U.S.C. 6901 *et seq.* regarding the closure of areas containing hazardous wastes located at its foundry in Rothbury, Michigan.

Under the Modification, KII will complete closure of those areas containing hazardous waste at its facility according to a closure plan approved by the Michigan Department of Natural Resources and pay the United States $600,000 in stipulated penalties for alleged violations of the existing consent decree. The consent decree also requires Kurdziel to make monthly payments to a trust fund and three of the primary shareholders of Kurdziel to sign personal guaranties to provide financial assurance for Kurdziel's completion of its obligations under the closure plan.

The Department of Justice will receive comments relating to the proposed Modification of Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Kurdziel Industries, Inc.*, DJ Ref. # 90–7–1–358A.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Michigan, 399 Federal Building, 110 Michigan NW., Grand Rapids, Michigan 49503 and at the Region V Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604. Copies of the proposed consent decree may also be examined at the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclosed a check in the amount of $9.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–3417 Filed 2–14–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Vertac Chemical Corp., et al.*, Civil Action No. LR–C–80–109, was lodged on January 21, 1994 with the United States District Court for the Eastern District of Arkansas. The proposed consent is a *de minimis* settlement with The Dow Chemical Company under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9622(g). The settlement resolves the Dow Chemical Company's liability with respect to the Vertac Site located in Jacksonville, Arkansas.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Vertac Chemical Corp., et al*, DOJ Ref. #90–7–1–18B.

The proposed consent decree may be examined at the office of the United States Attorney, 425 W. Capital, 5th floor, Little Rock, Arkansas 72201; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of

$6.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–3416 Filed 2–14–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; CAD Framework Initiative, Inc.

Notice is hereby given that, on November 1, 1993, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, these changes are as follows: (1) Hughes Aircraft Company/GM-Delco has changed its name to Hughes Aircraft; (2) GE Aerospace, an existing Corporate Member, is now listed as Martin Marietta (General Electric); (3) Corporate Members, Bull, S.A., Computervision Corporation, Data General Corporation, EEsof, Inc., Object Design, Inc., and Zycad Corporation, have not renewed their membership in CFI; (4) Associate Members, Applied Physics Laboratory, CNET-Grenoble, CPQD-Telebras, Gesellschaft Fur Mathematik und Datenverarbeitung mbH (GMD), INESC, Nanyang Technological University, Semiconductor Research Corporation, Earl F. Ecklund, Jr., Steve Evanczuk, John Granacki, John Hardin, Peter Haynes, Wolfgang Herden, Ushio Kobayashi, Hitoshi Nishimura, Patrick Offers, Bora Prazic, Hira Ranga, Otto Schiebel, Mark Schuette, Alan Smith, and Tuomo Tikkanen have not renewed their membership in CFI.

On December 30, 1988, CFI filed its original notification pursuant to section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice concerning the amended filing in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456). A correction notice was published on April 20, 1989 (54 FR 16013).

The last notification was filed with the Department on March 23, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 22, 1993 (58 FR 21597).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–3414 Filed 2–14–94; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Professional Training/Career Development Section) to the National Council on the Arts will be held on March 1–2, 1994 from 9 a.m. to 5:30 p.m. This meeting will be held in room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506.

A portion of this meeting will be open to the public from 3:30 p.m. to 5:30 p.m. on March 2, 1994 for a policy discussion and guideline review.

The remaining portions of this meeting from 9 a.m. to 5:30 p.m. on March 1, 1994 and from 9 a.m. to 3:30 p.m. on March 2, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: February 7, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–3428 Filed 2–14–94; 8:45 am]

BILLING CODE 7537–01–M

Amended Notice of Meeting; Arts in Education Advisory Panel; Scheduling of Open Sessions for Arts in Education Partnership Panel Meeting: Correction

ACTION: Notice of correction to agenda.

SUMMARY: This notice corrects the scheduling of opening sessions for the Arts in Education Advisory Panel (Arts in Education Partnership Section) previously published in the **Federal Register** on January 28, 1994 (59 FR 4117).

The open sessions will be held from 9 a.m. to 9:15 a.m. on February 16, 1994 for welcome and introductions and from 9 a.m. to 10 a.m. and 1 p.m. to 2 p.m., on February 18, 1994 for policy discussions. The meeting location, the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506, in room M–07, remains unchanged.

The date and times for the meeting also remain unchanged: February 16–18, 1994, from 9 a.m. to 6:15 p.m. on February 16, 1994; from 9 a.m. to 8:30 p.m. on February 17, 1994; and from 9 a.m. to 4 p.m. on February 18, 1994.

Dated: February 9, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–3429 Filed 2–14–94; 8:45 am]

BILLING CODE 7537–01–M

Performance Review Board

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: This notice announces membership in the Performance Review Board of the National Endowment for the Humanities.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Personnel, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Effective January 27, 1994, the new members of the National Endowment for the Humanities SES Performance Review Board who will serve until December 31, 1996 are: George Farr, Director, Division of Preservation and Access—Board Chairman, Carole Watson, Director, Division of State Programs, and James Herbert, Director, Division of Education Programs. Michael S. Shapiro, General Counsel, and Gary Krull, Director, Publications and Public Affairs will serve until replaced.

Sheldon Hackney,

Chairman.

[FR Doc. 94–3466 Filed 2–14–94; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolfe Creek Nuclear Operating Corporation; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards; Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42, for the Wolf Creek Generating Station located near Burlington, Kansas, operated by the Wolf Creek Nuclear Operating Corporation (the licensee).

The proposed amendment would allow an increase in reactor coolant temperature in order to support operation at the rated thermal power of 3565 megawatts thermal (MWt). The proposed amendment would change reactor protection system setpoints by increasing the nominal reactor coolant average temperature from 581.2°F to 586.5°F, changing the axial flux difference penalties, and setpoint uncertainty allowances. The proposed amendment also increases the maximum indicated reactor coolant system average temperature from 585.°F to 586.5°F, changing the axial flux difference penalties, and setpoint uncertainty allowances. The proposed amendment also increases the maximum indicated reactor coolant system average temperature from 585.0°F to 590.5°F.

The NRC issued Amendment No. 69 to the Wolf Creek Generating Station Facility Operating License on November 10, 1993. The amendment increased the rated thermal power for Wolfe Creek from 3411 MWt to 3565 MWt. The amendment also included changes in reactor coolant temperature specifications to reflect the planned operation of Wolf Creek at the higher power level and reduced operating temperatures. Upon attempting to implement the power increase, the licensee discovered that the unit was unable to achieve 3565 MWt at the reduced operating temperatures. The reduced operating temperature specifications have resulted in an effective derating of the unit. Considering that the unit is being limited to less than the allowable licensed power level, the staff is issuing this notice under exigent circumstances.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence and the consequences of an accident evaluated previously in the USAR [Updated Safety Analysis Report] are not increased due to the proposed technical specification change. Plant operation at 3565 MWt with the revised temperatures does not affect any of the mechanisms postulated in the USAR to cause LOCA [Loss of Coolant Accident] or non-LOCA designs basis events. Analyses, evaluations, and minimum DNBR [Departure from Nucleate Boiling Ratio] calculations confirm that the USAR conclusions remain valid for the proposed changes. On these bases it is concluded that the probability and consequences of the accidents previously evaluated in the USAR are not increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed technical specification changes do not increase the probability of occurrence of a malfunction of equipment important to safety or increase the consequences of a malfunction of equipment evaluated in the USAR. The technical specification changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the change in operating T_{hot} will not impose a new operating configuration that would create new failure scenario. The proposed changes do not change the plant configuration in a way that introduces a new potential hazard to the plant and do not involve a significant reduction in the margin of safety. No new failure modes will be created by the proposed changes for any plant equipment. Operation with a 0°—5°F T_{hot} reduction is bounded by the analyses performed previously for the power rerate and approved by the NRC in Amendment No. 69 to the WCGS (Wolf Creek Generating Station) Technical Specifications on November 10, 1993, and does not create a new or unanalyzed condition. For these reasons, the possibility of a new accident which is different from any already evaluated in the USAR is not created.

3. The proposed change does not involve a significant reduction in the margin of safety.

The analyses and evaluations discussed in the safety evaluation demonstrate that all applicable safety analysis acceptance criteria continue to be met for the proposed operating conditions. The change in operating T_{hot} does not involve a significant reduction in a margin of safety because the operating temperature is one of the inherent assumptions that determines the safe operating range defined by the accident analyses, which are in turn protected by the technical specifications. The acceptance criteria for the accident analyses are conservative with respect to the operating conditions defined by the technical specifications. The analyses performed for the power rerate and this proposed change confirm that the accident analyses criteria are met at the revised configuration. Therefore, it is concluded that the proposed change does not involve a reduction in a margin of safety described in the bases to any technical specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of

publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazardous consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 17, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas 66621. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Suzanne C. Black, Director, Project, Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 7, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document rooms, located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 8th day of February 1994. for the Nuclear Regulatory Commission.

William D. Reckley,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV/V; Office of Nuclear Reactor Regulation.

[FR Doc. 94–3464 Filed 2–14–94; 8:45 am]

BILLING CODE 7590–01–M

Draft NUREG: Issuance, Availability

On May 21, 1991, the Nuclear Regulatory Commission (NRC) published a revision to 10 CFR part 20, "Standards for Protection Against Radiation." The rule became effective in June 1991, and licensees are required to implement the regulations on or before January 1, 1994.

The revised 10 CFR part 20 is based upon the recommendations of the International Commission on Radiological Protection (ICRP) in Publication 26 (ICRP 1977). In 1991, the ICRP published revised recommendations in Publication 60. These recommendations were based upon revised dosimetry and epidemiology, including the information presented in reports such as the 1988 United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR). The new recommendations include a revised occupational dose limitation approach of 100 mSv (10 rem) in 5 years, with the additional limitation that no more than 50 mSv (5 rem) be received in any one year.

In 1991, the National Council on Radiation Protection and Measurements (NCRP) recommended a lifetime limit of 10 mSv (1 rem) times age in years (NCRP Report 91). This recommendation was continued in recommendations published in 1993 (NCRP Report 116).

In anticipation of these recommendations, and as a result of the epidemiological and dosimetric information available in the last 5 years, the NRC staff initiated a study by Brookhaven National Laboratory (BNL) to analyze the potential impacts of reduced dose limits on its licensees. The results of this study are contained in this draft NUREG/CR. During the study period, a relatively small number of licensees responded to questionnaires and surveys, thereby limiting the extent to which the survey results can be assumed to be an accurate representation of the potential impacts of changed dose limits.

The NRC staff has decided to publish these results in draft form, and to solicit further comments from interested parties regarding the impacts of the different possible dose limits discussed in the NUREG/CR. These limits could take the form of annual limits, similar to those presently employed in 10 CFR part 20; long term average values, such as recommended by the ICRP; lifetime limits, such as suggested by the NCRP; or some combination of the above. The NRC staff is particularly interested in comments on the impacts of such possible approaches, and comments on the preliminary information presented in this NUREG/CR.

Licensees, Agreement States, and all other interested parties are encouraged to submit comments and relevant data on this draft report.

Comment and data are solicited in particular in the following areas:

—Identification of safety related jobs that might be difficult to do at the reduced dose limits considered in NUREG/CR–6112.

—Identification of worker groups that currently exceed the reduced dose limits considered in NUREG/CR–6112.

—Costs in terms of increased workforce, increased collective dose, facility modification, etc., that would be needed to operate under reduced dose limits.

NUREG/CR–6112 is not a substitute for NRC regulations, and compliance is not required. The approaches and/or methods described in this NUREG/CR are provided for information only. Publication of the report does not necessarily constitute NRC approval or agreement with the information cited therein.

A free single copy of draft NUREG–6112, may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Comments on the draft report should be sent to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Mail Stop P–223, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the comments received may be examined at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC. Comments will be most helpful if they are received by June 30, 1994.

For further information contact George E. Powers, Radiation Protection and Health Effects Branch, Mail Stop NL/S–139, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3747.

Dated at Rockville, Maryland, this 18th day of January, 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 94–3463 Filed 2–14–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane, (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filing, Information, and Consumer Services, 450 5th Street, NW., Washington, DC 20549.

Revision

Mutual Funds Focus Group: File No. 270–386.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval on revisions to currently approved focus group sessions.

The purpose of these sessions are to obtain information regarding the public's understanding of the risks involved when purchasing mutual funds from a bank. The results will be used by the agency to get a sense from the public on their understanding of the level of risk involved when purchasing mutual funds sold through banks. The focus group sessions are estimated to

require 3.15 burden hours per participant.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs (Paperwork Reduction Act number 3235–0440), Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 7, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3424 Filed 2–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33597; File No. SR–DTC–93–10]

Self-Regulatory Organizations; The Deposit Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Foreign Currency Redemption Service

February 8, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 12, 1993, The Depository Trust Company ("DTC") filed with the Securities Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–93–10) as described in Items I, II, and III below, which items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of enhancements to DTC's foreign currency payment service to provide for a foreign currency redemption service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's current foreign currency payment service enables participants to elect to receive periodic interest payments on certain foreign currency denominated issues either through DTC in U.S. dollars or directly from the paying agent in the currency in which the issue is denominated. The purpose of the proposed rule change is to enable participants to make the same election for maturity or redemption payments on those foreign currency denominated issues for which the foreign currency redemption service is made available with the agreement of the paying agent.

When a participant wishes to receive maturity or redemption proceeds in foreign currency on all or part of its position in a foreign currency denominated issue, the participant will utilize DTC's Participant Terminal System to submit instructions to DTC (including an instruction on where to wire the foreign currency proceeds). DTC will forward the instructions to the paying agent. DTC will pay the appropriate amount of U.S. currency proceeds to the participant, and the paying agent will pay the appropriate amount of foreign currency proceeds directly to the participant or its customer. A participant that wishes to be paid the maturity or redemption proceeds on its entire position in U.S. currency will not have to take any action.

The proposed rule change is consistent with the requirements of the Act, particularly section 17A of the Act,[2] and the rules and regulations thereunder applicable to DTC because the proposed rule change will encourage the immobilization of foreign currency denominated issues in DTC. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the proposed rule change will enhance DTC's existing services for foreign currency denominated issues.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC has neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[3] and subparagraph (e)(4) of Securities Exchange Act Rule 19b–4[4] because the proposed rule change effects changes in existing services of DTC that (i) do not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) do not significantly affect the respective rights or obligations of DTC or persons using the services.

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78q–1 (1988).

[3] 15 U.S.C. 78s(b)(3)(A) (1988).

[4] 17 CFR 240.19b–4(e)(4) (1993).

office of DTC. All submissions should refer to File No. SR–DTC–93–10 and should be submitted by March 8, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3479 Filed 2–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33602; File No. SR–DTC–94–02]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Pledge of Government Securities as Collateral

February 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 26, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons..

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing the proposed rule change to provide for a procedure to allow participants to pledge government securities to DTC to cover outstanding Next-Day Funds Settlement ("NDFS") short positions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to provide an alternate means for participants to satisfy their obligation to provide DTC with a short position penalty. When a participant incurs a short position, DTC now imposes a cash penalty of 130% of the market value of the short securities. The cash DTC receives is invested and earns interest. The interest earned is returned to participants at periodic intervals during the year as part of the general refund.[2] Under the proposed rule change, interest earned on pledged securities will be automatically credited to participants' accounts (as is currently the procedure for all pledged securities positions). The proposed rule change thereby will provide participants with a more efficient method to receive interest income. By allowing participants to pledge government securities to DTC to replace cash deposits, the proposed rule change will improve participants' cash management abilities.

Under the proposal, participants could pledge government securities residing in their DTC "free" accounts to DTC as collateral to replace cash deposits to cover outstanding NDFS short positions. Only short positions aged thirty calendar days or more will be considered eligible for collateralizaion. Initially, only DTC-eligible[3] U.S. Treasury issues (Treasury bills, bonds, and notes) which are fully guaranteed by the U.S. government will be accepted as collateral.

Each day, DTC will inform each participant of its short positions aged thirty days or older as of the close of the previous business day. The participant could then enter a request over DTC's Participant Terminal System ("PTS") to pledge government securities to a newly established DTC pledge account in order to have its short charges reversed. The pledge system will verify that the securities being pledged are eligible for collateralization before the pledge is allowed to update into DTC's system.

The value of participants' securities short positions and pledged securities will be marked to the market on a daily basis, and short charges will be adjusted accordingly. Participants may pledge additional securities to cover an increase in their aggregate short charges or request a release of pledged securities which are no longer needed to cover their aggregate short charges.

A participant may request a release of collateral. In that instance, the securities would be returned to the "free" account at the end of the processing day, and the short charges would be reinstated the following day. The participant may also substitute pledged securities. After inputting the new pledge and the release request, the participant would contact the Reconciliation Department prior to 12:30 p.m. to request a release approval.

If pledged securities are redeemed, DTC will hold the redemption proceeds in a suspense account until the pledged securities are released and moved to the participant's "free" account. At that time, the redemption proceeds are credited to participants' settlement accounts. If pledged government securities are called for redemption, the participant must release the pledge and move the securities to a "free" account. Interest earned on pledged securities will be automatically credited to participants' accounts.

(b) The proposal is consistent with the requirements of Section 17A the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will give DTC participants greater flexibility in collateralizing their short positions. At the same time the proposal will continue to provide DTC with high quality collateral for short positions.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC's Short Position Advisory Committee, composed of members representing DTC participants, has reviewed the proposed rule change and supports its approval. No official comments have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds

[5] 17 CFR 200.30–3(e)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The general refund allocates back to participants excess operating revenues and interest earned calculated by activity levels.

[3] "Eligible securities" refers to government securities that are eligible for DTC services. DTC may hold such securities through its account at the Federal Reserve Bank of New York.

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–DTC–94–2 and should be submitted by March 8, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3483 Filed 2–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33595; File No. SR–MCC–94–1]

Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Processing of Basket Trades

February 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 7, 1994, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MCC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Midwest Clearing Corporation ("MCC") proposes to amend its rules relating to the processing of trades in the Chicago Basket ("CXM"). A detailed description of the CXM is contained in File No. SR–CHX–93–18,[2] and a detailed description of the current procedure for processing CXM trades is contained in File No. SR–MCC–93–3.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend MCC's rules relating to the processing of trades in the CXM. The CXM is a basket of stocks that is comprised of the stocks included in the Chicago Mercantile Exchange's MMI stock index futures contract and is comprised of a fixed quantity of twenty-five shares of each of the stocks included in that futures contract.

Basket trades are defined by MCC as trades in a group of securities that an exchange or market place Self-Regulatory Organization ("SRO") has designated as eligible for execution in a single trade. MCC's current rules relating to basket trades permit MCC to accept from an exchange or market place SRO locked-in basket trade data. On T+1, MCC reports the locked-in basket trades to participants on a basket purchase and sales report. MCC separately combines, by participant, all basket buy transactions and all basket sell transactions. Aggregate buy side and aggregate sell side basket transactions are then "burst" into their component securities for clearance and settlement. The continuous net settlement ("CNS") system nets all component securities. This results in an individual participant being either a net buyer or a net seller in each of a basket's component securities.

The component securities are CNS eligible and are reflected on the appropriate CNS purchase and sales report. "Burst" basket trades are netted with all other transactions in the same component security having the same settlement.

The proposed rule will provide an alternative clearing process for trades in the CXM. The alternative must be elected on an account-by-account basis (as opposed to a trade-by-trade basis). Under this alternative, rather than aggregating all buy transactions and all sell transactions in one account prior to the separation of the CXM into its component stocks, MCC will separate each basket transaction, as executed, into its component securities, by lot, without the aggregation process. MCC will report this information to the electing participant instead of the participant's aggregate net buy and aggregate net sell basket information. This new alternative will make it easier for participants to allocate the correct number of shares to customers and will make it easier to identify trades for cancellation and correction.

Because the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, it is consistent with the requirements of Section 17A of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of MCC. All submissions should refer to File No. SR–MCC–94–1 and should be submitted by March 8, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3477 Filed 2–14–94; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33053 (October 15, 1993), 58 FR 54610.

[3] Securities Exchange Act Release No. 33054 (October 15, 1993), 58 FR 54620.

[4] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33601; File No. SR–MCC–93–10]

Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Waiver of Certain Fees Associated With the Chicago Basket

February 8, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 23, 1993, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by MCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MCC proposes to amend a portion of its Services and Schedule of Charges by extending the waiver of certain fees for trades in the Chicago Basket product[2] through March 31, 1994.[3] The text of the proposed rule changed is as follows with additions underlined and deletions bracketed:

ACCOUNT MAINTENANCE

	Charge/ Month
Participant Account Maintenance Fee:	
(Local and Our of Town Accounts)	$170.00
(Specialist, Trading and Market Maker Accounts)	160.00
Secondary Account:	
(Specialist, Trading and Market Maker Accounts)	125.00
MCC Only Settlement Fee	200.00

Secondary Account Maintenance Fees for market maker accounts opened for trading in the Chicago Basket ("CXM") shall be waived through [December 31, 1993] *March 31, 1994.*

Trade Recording

In addition, a discount of $0.15 per trade side recorded will be applied to the trade recording fees for trades of 1,000 shares and larger when a participant exceeds 10,000 recorded trade sides each month (excluding inbound RIO trades).

All trade recording fees shall be waived for trades in the Chicago Basket ("CXM") through [December 31, 1993] *March 31, 1994.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the commission, MCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to extend the waiver of account maintenance and trade recording fees for trades in the Chicago Basket through March 31, 1994. The proposed rule change is consistent with Section 17A of the Act in that it provides for the equitable allocation of reasonable fees and other charges among participants using MSTC's facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition.

MCC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii)[4] of the Act and subparagraph (e)(2) of Rule 19b–4[5] thereunder because it establishes or changes a due, fee, or other charge of the self-regulatory organization. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33053 (October 15, 1993), 58 FR 54610 [File No. SR–CHX–93–18] (order approving proposal to allow for and govern the trading of standardized baskets and to trade the Chicago Basket).

[3] Securities Exchange Act Release No. 33156 (November 4, 1993), 58 FR 60075 [File No. SR–MCC–93–06] (notice of filing and immediate effectiveness of a proposed rule change to waive certain fees for basket trades through December 31, 1993).

[4] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[5] 17 CFR 240.19b–4(e)(2) (1993).

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to File No. SR–MCC–93–10 and should be submitted by March 8, 1994.

For the Commission by the Division of Market Regulation, Pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3482 Filed 2–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33596; File No. SR–NSCC–93–15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Reduction of NSCC's Trade Comparison and Trade Recording Service Fees

February 8, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 28, 1993, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by NSCC. NSCC amended the proposal on December 19, 1993.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change reduces NSCC's trade comparison and trade recording service fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposal, NSCC is reducing its trade comparison and trade recording service fees and the associated minimum and maximum fees participants will be charged. Currently, the trade comparison and trade recording fees are $.025 and $.020 per 100 shares, respectively. Under the revised fee structure, the fees will be $.018 and $.015, respectively. The minimum trade comparison fee is reduced from $.10 to $.072 and the minimum trade recording from $.08 to $.06. The maximum trade comparison fee is reduced from $1.875 to $1.35 and the minimum trade recording from $1.50 to $1.125. All fee changes became effective January 1, 1994. Higher trading volumes have resulted in significantly increased discounts being paid by NSCC to members. NSCC's discount has been averaging 41.6%. With the foregoing changes, the expected discount will be approximately 32.2%.

The proposed rule change relates to the equitable allocation of reasonable dues, fees, and other charges among members and is therefore consistent with the Act and in particular with Section 17A thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change became effective pursuant to section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(e)(2)[4] thereunder because it establishes or changes a due, fee, or other charge of the self-regulatory organization. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of NSCC. All submissions should refer to file number SR–NSCC–93–15 and should be submitted by March 8, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegate authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3478 Filed 2–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33606; File No. SR–NASD–93–69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Guidelines Regarding the Use of Rankings in Mutual Fund Advertisements and Sales Literature

February 9, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 22, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to adopt Guidelines Regarding the Use of Rankings in Mutual Fund Advertisements and Sales Literature. Below is the text of the proposed rule change. Proposed new language is italicized.

Guidelines for the Use of Rankings in Mutual Fund Advertisements and Sales Literature

I. Definition of "Ranking Entity"

For purposes of these guidelines, the term "Ranking Entity" refers to any entity that provides general information about mutual funds to the public, that is independent of the mutual fund and its affiliates, and whose services are not procured by the mutual fund or any of its affiliates to assign the fund a ranking. Examples of "Ranking Entities" include services such as Morningstar and Lipper and financial publications such as Money and Barron's.

II. Required Disclosures

A. Headlines/Prominent Statements.

1. A headline or other prominent statement must not state or imply that a mutual fund is the best performer in a category unless it is actually ranked first in the category.

2. Prominent disclosure of the mutual fund's ranking, the total number of mutual funds in the category, the name of the category, and the period on which the ranking is based (i.e., the length of the period and the ending date; or, the first day of the period and the ending date), must appear in close proximity to any headline or other prominent statement that refers to a ranking.

B. All advertisements and sales literature containing a mutual fund ranking must disclose, with respect to the ranking:

1. the name of the category (e.g., growth funds);

2. the number of funds in the category;

3. the name of the Ranking Entity;

4. the length of the period and the ending date, or, the first day of the period and the ending date;

5. criteria on which the ranking is based;

6. for load funds, whether the ranking takes into account sales charges;

7. if fees have been waived or expenses advanced during the period on which the ranking is based, and the waiver or advancement had a material effect on the ranking, a statement to that effect; and

8. the publisher of the ranking data (e.g., "ABC Magazine, June 1993").

The disclosure required by B1, B2 and B3 must be set forth prominently in the body of the advertisement or sales literature.

C. If the mutual fund ranking consists of a symbol (e.g., a star system) rather than a number, the advertisement or sales literature also must disclose the meaning of the symbol (e.g., a four-star ranking indicates that the fund is in the top 30% of all mutual funds).

D. All advertisements and sales literature containing a mutual fund ranking must disclose that past performance is no guarantee of future results.

III. Time Periods

A. Any mutual fund ranking set forth in an advertisement or sales literature must be, at a minimum, current to the most recent calendar quarter ended prior to the submission for publication.

B. Except for money market mutual funds;

1. advertisements and sales literature must not use any ranking based on a period of less than one year.

2. a mutual fund ranking based on total return must be accompanied by rankings based on total return for the one, five and ten year periods (or life of the fund) supplied by the same Ranking Entity in the category and based on the same time period; and,

3. a mutual fund ranking based on the current SEC standardized yield must be accompanied by rankings based on total return for the one, five and ten year periods (or life of the fund) supplied by the same Ranking Entity in the category and based on the same time period.

IV. Categories

A. The choice of category (including a subcategory of a broader category) on which the mutual fund ranking is based must be one that provides a sound basis for evaluating the performance of the fund.

B. Subject to the standards below, a mutual fund ranking must be based only on (1) a published category or subcategory created by a Ranking Entity or (2) a category or subcategory created by a fund or a fund affiliate, but based on the performance measurements of a Ranking Entity.

C. When the mutual fund ranking is based on a subcategory, the advertisement or sales literature must disclose the name of the full category and the fund's ranking and the number of funds in the full category. This requirement does not apply if the subcategory is (1) based solely on the investment objectives of the funds included and (2) created by a Ranking Entity. This disclosure could be included in a footnote.

D. The advertisement or sales literature must not use any category or subcategory that is based upon the mutual funds' asset size (whether or not it has been created by a Ranking Entity).

E. If an advertisement uses a category created by the mutual fund or a fund affiliate, including a "subcategory" of a category established by a Ranking Entity, the advertisement must prominently disclose:

1. the fact that the fund or its affiliate has created the ranking category;

2. the number of funds in the category;

3. the basis for selecting the category; and

4. the Ranking Entity that developed the research on which the ranking is based.

E. An advertisement or sales literature containing a headline or other prominent statement that proclaims a mutual fund ranking created by a fund or its affiliate must indicate, in close proximity to the headline or statement, that the mutual fund ranking is based upon a category created by the fund or its affiliate.

V. Multiple Class/Two-Tier Funds

Mutual Fund rankings for more than one class or fund with the same portfolio must be accompanied by prominent disclosure of the fact that the funds or classes have a common portfolio.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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[6] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Susan J. Miller, Associate Counsel, NSCC, to Jerry Carpenter, Branch Chief, Division of Market Regulation, Commission (December 28, 1993).

[3] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[4] 17 CFR 240.19b–4(e)(2) (1993).

[5] 17 CFR 200.30–3e(e)(12) (1993).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Ranking entities, mutual funds and fund affiliates categorize and rank mutual funds in various ways such as, for example, according to fund type, performance over a given period of years, total return, SEC standardized yield, with and without sales charges and risk/reward. Article III, Section 35(d)(2)(M) of the NASD Rules of Fair Practice[1] sets forth the specific standard in communications with the public that a member who makes investment comparisons, directly or indirectly, must ensure that the purpose of the communication is clear and that the comparison is fair and balanced, including any material differences between the subjects of the comparisons. The use of mutual fund rankings prepared by ranking entities, mutual funds and fund affiliates to demonstrate mutual fund performance qualifies as such a comparison.

As the number of mutual funds has increased substantially in recent years, so have the number of mutual fund ranking entities. As the number of ranking entities has increased, the NASD has observed an increased reference to mutual fund rankings in fund advertisements and sales literature. In response to the increasing reference by mutual fund groups to such mutual fund rankings in mutual fund advertisements and sales literature, the NASD determined to provide guidance on the use of fund rankings and is proposing a comprehensive set of guidelines to be used when mutual fund advertisements and sales literature include references to mutual fund rankings.

Guidelines for Use of Rankings in Advertising and Sales Literature

Definition of Ranking Entity

The term "Ranking Entity," for purposes of the Guidelines, refers to an entity that provides general mutual fund information to the public, is independent of the fund and its affiliates[2] and whose services are not used by the fund or its affiliates to assign the fund a ranking. The definition encompasses entities formed specifically to provide such information as well as financial publications and periodicals which include such a service in their publications.

Required Disclosures

The Guidelines contain certain required disclosures. All advertisements and sales literature containing a ranking must disclose the name of the mutual fund category, the number of funds in the category, the name of the Ranking Entity, the period on which the ranking is based, the criteria on which the fund is ranked, whether, for load funds, the ranking takes into account sales charges, a statement as to the material effect, if any, of fees waived or expenses advanced during the period on which the ranking is based, and the publisher of the ranking data. Disclosure of the publisher allows the reader to obtain further information, if desired.

Additionally, because prominent statements often command the same attention as headlines, the name of the mutual fund category, the total number of funds in the category, and the period on which the ranking is based must be disclosed in close proximity to any headline or prominent statement. Such statement or headline may not state or imply that a fund is ranked first in a category when it is not.

All advertising or sales literature using a ranking system consisting of a symbol must disclose the meaning of the symbol. Finally, all advertising and sales literature containing a ranking must disclose that past performance is no guarantee of future results.

Time Periods

The NASD believes that the use of rankings which are current reduces the possibility that such rankings will be deceptive or misleading. The NASD recognizes that different Ranking Entities provide rankings with varying frequencies, but believes that the industry should be provided with a minimum standard of what is current. Therefore, rankings should be at least current to the most recent calendar quarter, though use of more current ranking data would be permissible. The NASD believes that the current standard of the most recent calendar quarter is reasonable and not misleading.

The NASD is concerned about a member's ability to select a ranking based on a time period that would show the fund in the best light without providing balancing information. Thus, the NASD believes that, for all mutual funds except money market mutual funds, rankings based on a period of less than one year are not meaningful, could be misleading and, therefore, should not be used. Additionally, rankings based on either total return or the SEC standardized yield must be accompanied by rankings based on the total return for the one, five and ten year (or mutual fund life) periods supplied by the same Ranking Entity and must be based on the same time period. This requirement parallels the SEC requirement that performance information must be accompanied by one, five and ten year (or mutual fund life) total return performance figures.

Categories

Recognizing the many ways in which data on mutual fund performance can be presented, the NASD believes it is important to set standards for methods of fund categorization which provide a sound basis for evaluating the performance of a fund. Generally, advertisements and sales literature must use only categories or subcategories created by the Ranking Entities. Advertisements or sales literature using rankings based only on a subcategory must disclose the name of the full category, the fund's ranking and the number of funds in the full category, unless the subcategory is based solely on the investment objectives of the funds and is created by a Ranking Entity.

However, categories or subcategories created by a fund or fund affiliate may be used as long as performance is measured by the performance measurements of a Ranking Entity. Additionally, categories or subcategories created by a fund or its affiliate must also prominently disclose the fact that the fund or its affiliate has created the ranking category, the number of funds in the category, the basis for selecting the category, and the identity of the Ranking Entity that developed the research on which the ranking is based. Headlines and prominent statements using a ranking created by a fund or its affiliate must also disclose in close proximity to the headline or prominent statement that the ranking is based on a category created by the fund or its affiliate.

Finally, advertisements or sales literature may not use any ranking category based on the fund's asset size since such information would not provide a meaningful basis upon which the fund's performance could be evaluated.

Multiple Class/Two-Tier Funds

Advertisements or sales literature containing rankings for more than one class or fund with the same portfolio must disclose the fact that the funds or classes have a common portfolio.

[1] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 35(d)(2)(M), (CCH) ¶ 2195.

[2] With respect to any fund, a Ranking Entity will be deemed to be independent of that fund and its affiliates for the purposes of these Guidelines only if it is not an "affiliated person" of that fund and its affiliates as such term is defined in Section 2(a)(3) of the Investment Company Act of 1940, 15 U S C 80a–2(a)(3) (1988).

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[3] in that the guidelines will work to protect investors and the public interest by establishing a baseline of standards to guide the use of mutual fund rankings in advertising and sales literature in promoting the sale of mutual funds and by preventing the misleading use of such rankings.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Guidelines, which are not subject to NASD member vote, were circulated to members in NASD Notice to Members 93–76 (November 1993). Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are field with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–93–69 and should be submitted by March 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3425 Filed 2–14–94; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. § 78o-3.

[Release No. 34–33067; File No. SR–NASD–94–2]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Guidelines for Communications to the Public About Variable Life and Annuity Products

February 9, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 6, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") and amended on February 8, 1994,[1] the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to adopt Guidelines Regarding Communications With the Public About Variable Life and Annuity Products. Below is the text of the proposed rule change. Proposed new language is italicized.

Guidelines for Communications With the Public About Variable Life Insurance and Variable Annuities

The standards governing communications with the public are set forth in Article III, Section 35 of the NASD Rules of Fair Practice. In addition to those standards, these guidelines must be considered in preparing advertisements and sales literature about variable life insurance and variable annuities. The guidelines are applicable to advertisements and sales literature as defined in Section 35, as well as individualized communications such as personalized letters and computer generated illustrations, whether printed or made available on screen.

I. General Considerations

A. Product Identification

In order to assure that investors understand exactly what security is being discussed, all communications must clearly describe the product as either a variable life insurance policy or a variable annuity, as applicable. Member firms may use proprietary names in addition to this description. In cases where the proprietary name includes a description of the type of security being offered, there is no requirement to include a generalized description. For example, if the material includes a name such as the "XYZ Variable Life Insurance Policy," it is not necessary to include a statement indicating that the security is a variable life insurance policy.

Considering the significant differences between mutual funds and variable products, the presentation must not represent or imply that the product being offered or its underlying account is a mutual fund.

B. Liquidity

Considering that variable life insurance and variable annuities frequently involve substantial charges and/or tax penalties for early withdrawals, there must be no representation or implication that these are short-term, liquid investments. Presentations regarding liquidity or ease of access to investment values must be balanced by clear language describing the negative impact of early redemptions. Examples of this negative impact may be the payment of contingent deferred sales loads and tax penalties, and the fact that the investor may receive less than the original invested amount.

With respect to variable life insurance, discussions of loans and withdrawals must explain their impact on cash values and death benefits.

C. Claims About Guarantees

Insurance companies issuing variable life insurance and variable annuities provide a number of specific guarantees. For example, an insurance company

[1] See letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated February 8, 1994. The NASD made technical changes to its proposed rule in response to comments reised by the staff of the Commission.

may guarantee a minimum death benefit for a variable life insurance policy or the company may guarantee a schedule of payments to a variable annuity owner. Variable life insurance policies and variable annuities may also offer a fixed investment account which is guaranteed by the insurance company. The relative safety resulting from such a guarantee must not be overemphasized or exaggerated as it depends on the claims-paying ability of the issuing insurance company. There must be no representation or implication that a guarantee applies to the investment return or principal value of the separate account. Similarly, it must not be represented or implied that an insurance company's financial ratings apply to the separate account.

II. Specific Considerations

A. Fund Performance Predating Inclusion in the Variable Product

In order to show how an existing fund would have performed had it been an investment option within a variable life insurance policy or variable annuity, communications may contain the fund's historical performance that predates its inclusion in the policy or annuity. Such performance may only be used provided that no significant changes occurred to the fund at the time or after it became part of the variable product. However, communications may not include the performance of an existing fund for the purposes of promoting investment in a similar, but new, investment option (i.e., clone fund or model fund) available in a variable contract.

The presentation of historical performance must conform to applicable NASD and SEC standards. Particular attention must be given to including all elements of return and deducting applicable charges and expenses.

B. Product Comparisons

A comparison of investment products may be used provided the comparison complies with applicable requirements set forth under Article III, Section 35 of the NASD Rules of Fair Practice. Particular attention must be paid to the specific standards regarding "comparisons" set forth in subsection (d)(2)(M).

C. Use of Rankings

A ranking which reflects the relative performance of the separate account or the underlying investment option may be included in advertisements and sales literature provided its use is consistent with the standards contained in the Guidelines for the Use of Rankings in Mutual Fund Advertisements and Sales Literature.

D. Discussions Regarding Insurance and Investment Features of Variable Life Insurance

Communications on behalf of single premium variable life insurance may emphasize the investment features of the product provided an adequate explanation of the life insurance features is given. Sales material for other types of variable life insurance must provide a balanced discussion of these features.

E. Hypothetical Illustrations of Rates of Return in Variable Life Insurance Sales Literature and Personalized Illustrations

(1) Hypothetical illustrations using assumed rates of return may be used to demonstrate the way a variable life insurance policy operates. The illustrations show how the performance of the underlying investment accounts could affect the policy cash value and death benefit. These illustrations may not be used to project or predict investment results as such forecasts are strictly prohibited by the Rules of Fair Practice. The methodology and format of hypothetical illustrations must be modeled after the required illustrations in the prospectus.

An illustration may use any combination of assumed investment returns up to and including a gross rate of 12%, provided that one of the returns is a 0% gross rate. Although the maximum assumed rate of 12% may be acceptable, members are urged to assure that the maximum rate illustrated is reasonable considering market conditions and the available investment options. The purpose of the required 0% rate of return is to demonstrate how a lack of growth in the underlying investment accounts may affect policy values and to reinforce the hypothetical nature of the illustration.

The illustrations must reflect the maximum (guaranteed) mortality and expense charges associated with the policy for each assumed rate of return. Current charges may be illustrated in addition to the maximum charges.

Preceding any illustration there must be a prominent explanation that the purpose of the illustration is to show how the performance of the underlying investment accounts could affect the policy cash value and death benefit. The explanation must also state that the illustration is hypothetical and may not be used to project or predict investment results.

(2) In sales literature which includes hypothetical illustrations, member firms may provide a personalized illustration which reflects factors relating to the individual customer's circumstances. A personalized illustration may not contain a rate of return greater than 12% and must follow all of the standards set forth in Section II, E, 1.

(3) In general, it is inappropriate to compare a variable life insurance policy with another product based on hypothetical performance as this type of presentation goes beyond the singular purpose of illustrating how the performance of the underlying investment accounts could affect the policy cash value and death benefit. It is permissible, however, to use a hypothetical illustration in order to compare a variable life insurance policy to a term policy with the difference in cost invested in a side product. The sole purpose of this type of illustration would be to demonstrate the concept of tax-deferred growth as a result of investing in the variable product. The following conditions must be met in order to make this type of comparison balanced and complete:

(a) the comparative illustration must be accompanied by an illustration which reflects the standards outlined in Section II, E, 1;

(b) the rate of return used in the comparative illustration must be no greater than 12%;

(c) the rate of return assumed for the side product and the variable life policy must be the same;

(d) the same fees deducted from the required prospectus illustration must be deducted from the comparative illustration;

(e) the side product must be illustrated using gross values which do not reflect the deduction of any fees; and,

(f) the side product must not be identified or characterized as any specific investment or investment type.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As the number of variable life insurance and annuity products has increased substantially in recent years, so has the variety of ways in which information about such products is communicated to the public. Because the use of such communications is proliferating, and because what is being described in such communications is, in some cases, a complicated hybrid product containing both insurance and securities elements, the NASD has determined to provide guidance by proposing a comprehensive set of guidelines ("Guidelines") for the preparation and use of communications with the public regarding variable life insurance and variable annuities. The Guidelines incorporate past positions on variable products communications taken by the NASD, as well as certain positions taken by the staff of the SEC.

The Guidelines govern the preparation of, and communication with the public through, advertising and sales literature of variable products. The Guidelines are intended to provide a level of disclosure sufficient to assist investors in making fair and informed investment decisions.

Guidelines for Communications With the Public About Variable Products

The Guidelines of the proposed rule change set forth standards that must be considered, along with the standards set forth in Article III, Section 35 to the Rules of Fair Practice,[2] in the preparation of advertising and sales literature about variable life insurance and annuities. For the purposes of these Guidelines, the terms "advertisements and sales literature" include not only the definitions of those terms as found in section 35, but also individualized communications such as personalized letters and printed or on-screen computer illustrations.

General Considerations

Communications concerning variable products must clearly identify the product as either a variable life insurance policy or a variable annuity. Where product type is identified in a proprietary name, it is not necessary to include a generalized statement identifying product type. Since variable products are not mutual funds, no such statement or presentation may indicate or imply that the product offered or its underlying account is a mutual fund (See Part I, A).

As products with potentially substantial tax penalties and charges for early withdrawal, variable products must not be presented by members as short-term, liquid investments. Any discussions or presentations concerning liquidity or accessibility to investment values must be balanced by the impact of early withdrawal, such as sales loads, tax penalties and potential loss of principal. Additionally, regarding variable life insurance products, a balanced presentation requires a discussion of the impact of loans and withdrawals on cash values and death benefits (See Part I, B).

Guarantees by insurance companies, such as a minimum death benefit, a schedule of annuity payments, or a fixed return on the investment account, all depend on the claims-paying ability of the issuing insurance company, and thus must not be exaggerated. Members are prohibited from representing or implying that the investment return or principal value of the separate investment account is guaranteed, or that an insurance company's financial ratings apply to the separate account (See Part I, C).

Specific Considerations

Prior Fund Performance

The proposed rule allows for variable product communications to the public to contain the historic performance of an existing fund that pre-dates the fund's inclusion in the variable policy or annuity, provided no significant changes occurred to the fund at the time of, or after, the inclusion. Communications to the public are prohibited for a variable product which contains a new, or "clone" fund as the underlying investment vehicle, but which promotes the performance history of an existing fund after which the new fund was modeled. All historic performance in communications to the public must conform to applicable NASD and SEC standards, including, in particular, elements of return and deduction of applicable charges and expenses (See Part II, A).

Product and Performance Comparisons

Product comparisons which are fair allow investors to make informed investment decisions. Article III, Section 35 (d) (2) (M) of the NASD Rules of Fair Practice sets forth the specific standard in communications with the public which requires a member who makes investment comparisons, directly or indirectly, to ensure that the purpose of the communication is clear and that the comparison is fair and balanced, including any material differences between the subjects of the comparisons. A comparison using variable products is permissible so long as the comparison meets the standards set forth under Subsection (d) (2) (M) (See Part II, B).

Use of Rankings

The use of variable products rankings prepared by ranking entities, variable products issuers and variable products issuer affiliates to demonstrate variable product performance also qualifies as a comparison under Subsection (d) (2) (M). A ranking which reflects the performance of the separate account or the underlying investment option is permissible in variable products advertising and sales literature so long as the use of such ranking meets the standards contained in the Guidelines for the Use of Rankings in Mutual Fund Advertisements and Sales Literature [3] (See Part II, C).

Hybrid Variable Products

Variable life insurance allows purchasers to combine life insurance coverage and tax-deferred accumulation of excess premium payments in one contract. Because such products are designed to equally serve both insurance and investing needs, communications to the public on behalf of variable life insurance products must provide a balanced discussion of these features. However, since single premium variable life insurance is predominantly designed to meet investment needs, communications to the public regarding single premium variable life insurance may emphasize the investment features of the product so long as an adequate explanation of the life insurance features is given (See Part II, D).

Hypothetical and Personalized Illustrations of Variable Life Products

Hypothetical illustrations of variable life insurance products using assumed rates of return are permissible to show how the underlying investment accounts could affect the policy cash value and death benefit, but may not be used to predict or project investment results. Such illustrations must follow the methodology and form requirements for such illustrations in the prospectus.

All illustrations must show a hypothetical 0% gross rate of return, and may show any additional

[2] *NASD Manual*, Rules of Fair Practice, Article III, Section 35, (CCH) ¶ 2195.

[3] See Securities Exchange Act Release No. 33606 (February 9, 1994), noticing for comment File No. SR–NASD–93–69 (proposing Guidelines for the Use of Rankings in Mutual Fund Advertisements and Sales Literature).

combinations of rates of return up to and including a gross rate of 12%, though members are cautioned to choose a rate that is reasonable given current market conditions. The gross rate is the chosen, hypothetical rate of return applied to all excess premiums invested after deduction for maximum guaranteed mortality and expense charges. All illustrations of rates of return must reflect such maximum charges, though illustrations may reflect current charges in addition to maximum charges.

Sales literature which contains hypothetical illustrations may also provide a personalized illustration reflecting factors relating to the circumstances of an individual customer.

It is generally inappropriate and potentially misleading to compare a variable life insurance policy with another product, including a variable annuity, since the purpose of such a comparison would exceed the purpose of illustrating how underlying investment account performance affects the policy cash value and death benefit. However, it is permissible to use a hypothetical illustration comparing a variable life policy to a term policy with the difference in premium invested in a side fund, where the sole purpose of such a comparison would be to demonstrate the concept of tax-deferred growth as a result of investing in the variable product. In order for such a comparison to be balanced and complete, the comparative illustration must: reflect the standards in Section II, E, 1 of the proposed rule; use a rate of return no greater than 12% use the same rate of return for the variable product and the side fund; deduct the same fees from the required prospectus illustration; illustrate the side fund product using gross values which do not reflect the deduction of any fees; and, not characterize the side product as any specific investment or investment type (See Part II, E).

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[4] in that the Guidelines will work to protect investors and the public interest by establishing a baseline of standards to guide the use of communications with the public concerning variable life insurance and variable annuities in promoting the sale of variable products and by preventing the misleading use of such communications.

[4] 15 U.S.C. 78*o*-3 (1988).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number in the caption above and should be submitted by March 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-3426 Filed 2-14-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33603; File No. SR-NASD-93-66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Filing Requirements for Use of Mutual Fund Rankings and Elimination of Sunset Provisions in Pre-Filing Requirements of Advertising and Government Securities Rules

February 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 4, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission"), and amended on February 7, 1994,[1] the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article III, Section 35 of the NASD Rules of Fair Practice to require filing of advertisements and sales literature relating to investment companies, to make the pre-filing requirement of Article III, Subsection 35(c)(2) of the Rules of Fair Practice and in Subsection 8(c)(1)(B) of the Government Securities Rules permanent, and to properly reference the "Advertising Regulation Department" throughout Article III, Section 35 of the Rules of Fair Practice and the Government Securities Rules. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rules of Fair Practice

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Communications With the Public

Sec. 35

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[1] Amendment No. 1 superseded the original rule filing.

(c) Filing Requirements and Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) *not included within the requirements of Subsection (c)(2) of this Section*, and public direct participation programs (as defined in Article III, Section 34 of the Rules of Fair Practice) shall be filed with the Association's Advertising *Regulation* Department within 10 days of first use or publication by any member. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. *Any member filing any investment company advertisement or sales literature pursuant to this Subsection that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.*

(2) Advertisements concerning collateralized mortgage obligations registered under the Securities At of 1933, *and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate*, shall be filed with the Association's Advertising *Regulation* Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed or expressly disapproved by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, in the event of disapproval, until the advertisement has been refiled for, and has received, Association approval. *Any member filing any investment company advertisement or sales literature pursuant to this Subsection shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.* [This subsection (c)(2) shall remain in effect for one year from November 16, 1993 unless modified or extended prior thereto by the Board of Governors.]

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Government Securities Rules

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Communications With the Public

Sec. 8

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(c) Filing Requirements and Review Procedures

(1) Members shall file advertisements for review with the Association's Advertising *Regulation* Department as follows:

* * * * *

(B) advertisements concerning collateralized mortgage obligations shall be filed with the Association's Advertising *Regulation* Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed or expressly disapproved by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, in the event of disapproval, until the advertisement has been refiled for, and has received, Association approval. [This subsection (c)(1)(B) shall remain in effect for one year from November 16, 1993 unless modified or extended prior thereto by the Board of Governors.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As the number of mutual funds has increased substantially in recent years, so has the number of mutual fund ranking entities ("Ranking Entities"). Ranking Entities, as well as mutual funds and fund affiliates, categorize and rank mutual funds by, for example, fund type, performance over a given period of years, total return, standardized yield calculated pursuant to Commission rules, the variations in sales charges, and risk/reward. References to such rankings in mutual fund advertisements and sales literature have also increased substantially in recent years as members have attempted to boost the sale of fund shares by touting the performance of various mutual funds.

The NASD Board of Governors believes that it is important for the Association to be able to review and regulate the use of ranking materials and the development of customized rankings in order to prevent the misleading use of such rankings. The NASD is, therefore, proposing to amend Article III, Section 35(c) of the NASD Rules of Fair Practice to require that copies of mutual fund rankings and the data on which the rankings are based be submitted to the Association's Advertising Regulation Department review. The proposed rule change requires members filing advertisements or sales literature for review which use or incorporate mutual fund rankings to include in the filing a copy of the ranking or comparison. The NASD also has proposed Guidelines for the Use of Rankings in Mutual Fund Advertisements and Sales Literature ("Guidelines") on which the NASD review will be based.[2]

Subsection 35(c)(1) is proposed to be amended to require that any member that files any investment company advertisements or items of sales literature pursuant to Subsection 35(c)(1) which include or incorporate rankings or comparisons of the investment company with other investment companies, shall include a copy of the ranking or comparison used in the advertising or sales literature. The requirements of this provision will permit the staff to immediately determine whether the use of the ranking complies with the Guidelines, and avoid the need for the NASD staff to research the ranking or attempt to obtain a copy of the source information in order to verify the accuracy of the material.

Subsection 35(c)(2), which currently requires certain advertisements to be filed by members 10 days prior to use, is proposed to be amended to require such pre-use filing for all investment company advertisements or items of sales literature which incorporates

[2] On November 4, 1993, the NASD submitted a proposed rule change with the Commission File No. SR-NASD-93-66) for Commission approval. The Commission intends to publish notice of the Guidelines in the **Federal Register** concurrently with notice of the instant proposed rule change.

of which extended PTC's registration until March 31, 1994.[4]

PTC provides depository facilities for mortgaged-backed securities, primarily securities guaranteed by the Government National Mortgage Association ("GNMA"). PTC services include certificate safekeeping, book entry deliveries, an automated facility for the pledge or segregation of securities and other services related to the immobilization of securities certificates.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application within twenty-one days of the date of publication of this notice in the **Federal Register**. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the application and all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. all submissions should refer to File No. 600–25 and should be submitted by March 8, 1994.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3484 Filed 2–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33509; File No. SR–SCCP–93–06]

Self-Regulatory Organization; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Recording Fees for PACE Trades

February 8, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 21, 1993, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by SCCP, a self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends SCCP's trade recording fees for PACE trades.[2] The current PACE recording fees consist of a sliding scale with volume discounts. The proposed charge, effective January 3, 1994, is a flat fee of $0.30 per trade side with no volume discounts. SCCP has stated that the purpose of the fee change is to simplify its billing and to reflect more accurately its operating expenses in recording PACE trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

SCCP seeks to simplify its billing schedule by amending its trade recording fees for PACE trades by SCCP participants to a flat $0.30 per trade side. The new fee schedule is to become effective upon the monthly billing cycle that commences January 3, 1994. The current PACE recordation fees are $0.30 per side for participants with 1 to 1,000 PACE trades per month, $0.27 per side for participants with 1,001 to 3,000 PACE trades per month, $0.24 per side for participants with 3,001 to 5,000 PACE traces per month, and $0.20 per side for participants with 5,001 or more PACE trades per month. SCCP states that the elimination of the discount schedule will simplify its fee structure and billing process and that it will reflect more accurately the operating expenses of the recording service.

SCCP states that the proposed rule change is consistent with section 17A of the Act[3] and particularly with Section 17A(b)(3)(D) of the Act[4] in that it provides for the equitable allocations of reasonable dues, fees, and other charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP believes that the proposed rule change will neither have any impact on competition nor impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

SCCP has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(e)(2) thereunder[6] because the proposal establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–93–06 and should be submitted by March 8, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3480 Filed 2–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33600; File No. SR-SCCP–93–05]

Self-Regulatory Organization; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide for a Thirty-Three Percent Discount on Service Fees for the Period of November 29, 1993, to December 31, 1993

February 8, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 21, 1993, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by SCCP, a self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change form interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides a discount of thirty-three percent for SCCP service fees for the billing period of November 29, 1993, to December 31, 1993. The discount applies to all SCCP service fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

SCCP seeks to discount by thirty-three percent all service fees charged by SCCP to its participants for the period of November 27, 1993, to December 31, 1993, which is SCCP's final billing cycle for 1993. The discount is being provided in anticipation of continued record trading volume and related net revenues being achieved by SCCP through December.

The proposed thirty-three percent discount will apply to all service fees billable in December 1993, which will include all transaction related fees. The discount will not apply to fees that are not service related such as margin account interest, draft fees, and fees associated with the signature guarantee program or the lost and stolen securities program.

SCCP states that the proposed rule change is consistent with section 17A of the Act[2] and particularly with Section 17A(b)(3)(D) of the Act[3] in that it provides for the equitable allocations of reasonable dues, fees, and other charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP believes that the proposed rule change will neither have any impact nor impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

SCCP has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(e)(2) thereunder[5] because the proposal establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR-SCCP–93–05 and should be submitted by March 8, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3481 Filed 2–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC-20065; 811–6630]

Dynamic America Growth Fund, Inc.; Application

February 8, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "ACT").

APPLICANT: Dynamic America Growth Fund, Inc. (the "Fund").

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 28, 1993, and amended on February 3, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

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[4] Securities Exchange Act Release Nos. 27858 (March 28, 1990), 55 FR 12844; 29024 (March 28, 1991), 56 FR 13648; 30537 (April 9, 1992), 57 FR 12351; and 32040 (March 23, 1993) 58 FR 18902.

[5] 17 CFR 200.30–3(a)(59) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] PACE, an acronym for the Philadelphia Stock Exchange Automated Communication and Execution System, is a real-time order routing and execution system.

[3] 15 U.S.C. 78q–1 (1988).

[4] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[6] 17 CFR 240.19b–4(e)(4) (1993).

[7] 17 CFR 200.30–3(a) (12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78q-1 (1988).

[3] 15 U.S.C. 78q-1(b)(3)(D) (1988).

[4] 15 U.S.C. 78s(b)(A)(ii) (1988).

[5] 17 CFR 240.19b–4(e)(4) (1993).

[6] 17 CFR 200.30–3(a)(12) (1993).

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 4, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 7100 West Center Road, Suite 500, Omaha, Nebraska 68106.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 272–3030, or Barry D. Miller, Senior Special Counsel, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Maryland corporation, and an open-end, diversified, management investment company. On April 10, 1992, applicant registered under the Act and filed a registration statement pursuant to section 8(b) under the Act. On that same date, applicant registered one billion shares under the Securities Act of 1933. Applicant's registration statement became effective on October 1, 1992.

2. The sale by Mutual of Omaha Insurance Company of the Fund's adviser, Mutual of Omaha Fund Management Company ("FMD"), to The Pioneer Group, Inc. ("Pioneer"), precipitated the liquidation of applicant. Since Pioneer indicated it had no interest in serving as successor investment advisor to applicant, or in performing any of the other duties and responsibilities then being performed by FMC, applicant's board of directors determined that it was in the best interest of the Fund's shareholders to liquidate the Fund. As started in applicant's proxy statement, dated September 28, 1993 ("Proxy Statement"), the board also based its decision on the lack of interest by other advisers comparable to FMC because of the Fund's small size and its expenses relative to its income. The Proxy Statement also states that another important factor in the directors' decision was FMC's and the Fund's underwriter, Securities America, Inc.'s, willingness to absorb the Fund's organizational costs, and FMC's willingness to reimburse each of the Fund's shareholders the difference between the liquidation value of the Fund shares owned by the shareholder and the amount the shareholder originally invested in the Fund.

3. Pursuant to the Plan of Complete Liquidation and Dissolution (Appendix "A" to the Proxy Statement) (the "Plan"), the shareholders would receive the "Liquidation Value" of the shares of the Fund's issued and outstanding common stock they owned on the date of distribution. The Liquidation Value means, as of the distribution date, the aggregate value of all the assets of the Fund on such date, less the aggregate amount of all the liabilities of the Fund on such date, divided by the total number of shares of common stock of the Fund on such date. The Plan also stated that each shareholder of the Fund will be reimbursed by FMC for the amount of the difference between the Liquidation Value and the amount the shareholder originally invested in the Fund.

4. Applicant filed with the SEC, on September 1, 1993, preliminary proxy material for the shareholders meeting to approve the Plan. The proxy materials were distributed to applicant's shareholders on September 17, 1993. As stated in the "Certificate of Votes Cast," attached as part of Exhibit "D" to the application, on September 28, 1993, a majority of the outstanding voting securities of applicant approved the Plan, by a vote of 28,903.101 for and 0 against (with 404.716 abstentions).

5. All of applicant's assets were converted to cash before dissolution and were distributed out as such. Immediately prior to liquidation, there was one class of common stock, with a net asset value per share of $8.82, and an aggregate value of $337,018.00 as of September 28, 1993, when applicant distributed all its assets to its shareholders at net asset value. Additional amounts were paid by FMC to certain shareholders if their cost basis (using FIFO) was greater than net asset value on September 28, 1993. Shareholders thus received total distributions of the greater of current net asset value or their cost basis.

6. Applicant's investment adviser paid applicant's up front organizational costs of $50,000.00 upon liquidation, and applicant's principal underwriter paid $3,566.00 of those costs. Applicant's underwriter is incurring any other expenses, primarily legal and accounting review, relating directly to the dissolution. The investment adviser has incurred any type of routine expenses, such as proxy solicitation, by its agreement to make each record-date shareholder whole upon the dissolution.

7. At the time of filing the application, applicant had no assets, outstanding debts or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant intends to file for a Certificate of Dissolution with the State of Maryland after it receives the relief requested herein, declaring that applicant has ceased to be an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3486 Filed 2–14–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1947]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: Executive Order 12862 dated September 11, 1993, aims at ensuring that the Federal Government provides the highest quality service possible to the American people and requires survey tasks as steps in establishing and implementing customer service standards. The Department of State will be using customer surveys in the areas of consular, business, security, public information and authentication services, and such others as may be identified in order to improve services to the public and to provide them more efficiently. The following summaries the information collection proposal submitted to OMB:

Type of request—New.

Originating office—Office of National Performance Review.

Title of information collection—Voluntary Customer Surveys to Implement Executive Order 12862.

Frequency—Annual.

Respondents—Recipients of services in the areas of consular, business interests, security, public information and authentication of documents.

Estimated number of respondents—11,680.

Average hours per response—15 minutes.

Total estimated burden hours—1,652.

44 U.S.C. 3504(h) does not apply, as no rulemaking is being conducted in connection with this information collection.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: February 3, 1994.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 94–3421 Filed 2–14–94; 8:45 am]

BILLING CODE 4710–24–M

[Public notice 1945]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 a.m. on April 27, 1994, and June 15, 1994. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950.

The purpose of these meetings is to prepare for the 40th Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications which is scheduled for early 1995, at the IMO headquarters in London, England.

Agenda items include preparation for the 40th Session, primarily related to the implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend these meetings up to the seating capacity of the room.

For further information and meeting room number, contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G–TTM), 2100 Second Street, SW., Washington, DC 20593–0001. Telephone: (202) 267–1389.

Dated: January 13, 1994.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 94–3499 Filed 2–14–94; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1946]

Shipping Coordinating Committee, International Maritime Organization (IMO) Legal Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m., on Tuesday, March 1, 1994, in room 4315 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The primary purpose of this meeting is to prepare for the 70th Session of the International Maritime Organization (IMO) Legal Committee to be held March 21 through 25, 1994, in London.

To facilitate the attendance of those participants who may be interested in only certain aspects of the public meeting, the first subject addressed will be the draft International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention). The second major subject, which will be considered at approximately 11:30 a.m., will be a discussion on revisions to the 1976 Convention on Limitation of Liability for Maritime Claims ('76 LLMC).

The draft HNS Convention would impose strict liability upon the shipowner for damages arising from hazardous substances up to a yet-to-be-determined limit of liability with a second-tier international fund available to provide compensation for catastrophic damages or when the shipowner, for one reason or another, could not pay. The second-tier international fund, modeled after the International Oil Pollution Compensation Fund, may be financed by levies imposed upon hazardous cargo shipments or by postincident collections.

The draft convention would provide compensation for environmental damage as well as personal injury and property damage from a broad range of substances including oils (those not covered under the oil regimes), bulk liquid cargo, bulk solid cargo, bulk gases, packaged cargo, and flammable residues.

At the 69th Session, the Legal Committee decided to recommend that a Diplomatic Conference be scheduled for early 1996. The Committee also began to distinctly lean towards certain features in the draft convention: a simplified two-tier structure with the second tier split into a few independent accounts entirely funded by postincident contributions from the bulk chemical industry (and perhaps some large volume types of container cargos) and definition of HNS by reference to existing IMO codes. However, final decisions on these issues have not been made. Other important questions remain to be answered which include:

(1) Whether to proceed with a two tier convention for the 1996 Diplomatic Conference or to concentrate on a single tier convention for the Conference and start on the second immediately after;

(2) How to define the entities responsible for making payments to the second tier international fund;

(3) Which substances would be included within the scope of the convention's coverage for purposes of both compensating damage as well as for financing of the second-tier fund; and

(4) Whether postincident funding of the second-tier fund is appropriate for all types of HNS cargo.

The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested.

The Legal Committee began work on the '76 LLMC at the 69th Session. The Committee focused discussion on a draft protocol, submitted by the United Kingdom, which provides for raising the limits of liability and a streamlined tacit amendment procedure. Some delegations expressed interest in working on provisions to allow state parties to adopt their own limits, or opt out of limits altogether in cases of personal injury and death or for claims of passengers. Discussion on these topics and a decision on an accelerated work timetable are expected at the 70th session in March.

Although the United States has not ratified this convention, interests within the United States—such as owners of foreign flag vessels and passengers on foreign flag vessels—may be affected by changes to this convention. The views of the public are requested.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information or to submit views concerning the subjects of discussion, contact either Captain David J. Kantor or Lieutenant Lee A. Handford, U.S. Coast Guard (G–LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527, telefax (202) 267–4496.

Dated: February 1, 1994.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 94–3500 Filed 2–14–94; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 4, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 45723.

Date filed: February 1, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 1, 1994.

Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests the Department of Transportation to amend its foreign air carrier permit to the extent necessary to authorize it to engage in daily scheduled air transportation of persons, property and mail on the Mexico-U.S. scheduled combination route; the terminal point Morelia, Mexico, on the one hand, and the coterminal points Chicago, Il; Los Angeles, CA; San Jose, CA; Ontario, CA; and Oakland, CA, on the other hand.

Docket Number: 46528.

Date filed: February 4, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 4, 1994 .

Description: Supplement to the Application of Northwest Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests the Department to grant it an amended certificate of public convenience and necessity for Route 129 to authorize Northwest to provide service between the United States and Vietnam.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–3453 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ended February 4, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49388.

Date filed: January 31, 1994.

Parties: Members of the International Air Transport Association.

Subject: MV/PSC/094 dated December 14, 1994, Mail Vote S063—Assignment of Airline Code Numbers.

Proposed Effective Date: March 23, 1994.

Docket Number: 49389.

Date filed: January 31, 1994.

Parties: Members of the International Air Transport Association.

Subject: TC31 Telex Mail Vote 669, Sendai-Honolulu fares r-1 to r-14.

Proposed Effective Date: March 1, 1994.

Docket Number: 49390.

Date filed: January 31, 1994.

Parties: Members of the International Air Transport Association.

Subject: TC23 Reso/P 0633 dated January 28, 1994, Europe-Southeast Asia Expedited Resos.

Proposed Effective Date: March 1, 1994.

Docket Number: 49394.

Date filed: February 2, 1994.

Parties: Members of the International Air Transport Association.

Subject: TC1 Telex Mail Vote 665, Excursion Fares within South America, Telex—Amending Mail Vote.

Proposed Effective Date: February 15, 1994.

Docket Number: 49402.

Date filed: February 4, 1994.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Mail Vote 670, Delete cities from Add-On Tables, Telex-Amending Mail Vote .

Proposed Effective Date: March 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–3454 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Wet Lease Approvals Under Part 207

The Department has recently become aware of instances in which U.S. air carriers may have violated the requirements of part 207 of the Department's rules (14 CFR part 207) regarding the prior approval of long-term wet leases to foreign carriers.

Section 207.10 of the Department's rules (14 CFR 207.10) requires that U.S. carriers obtain a statement of authorization prior to performing service for a foreign air carrier pursuant to a long-term wet lease. A long-term wet lease is defined as a lease under which the lessor provides aircraft and crews for a term that "either (a) lasts more than 60 days, or (b) is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days."

Confusion has arisen over when extensions or renewals of non-exclusive, short-term leases, resulting in terms of longer than 60 days, trigger the approval requirements of section 207.10. While the original intention of the lessor or lessee may not be to engage in a lease of extended duration, a variety of unfore-seen circumstances, such as delays in new aircraft delivery to the lessee, may result in continuation of leases beyond the 60- day short-term limit. In other instances, the desire on the part of the lessee to maintain flexibility may preclude a long-term agreement.

For purposes of clarifying the Department's enforcement policy under part 207, we wish to take this opportunity to state that U.S. carriers must submit wet leases with foreign carrier lessees, whether or not they are exclusive, to the Department for prior approval under § 207.10 whenever it becomes apparent that the combined term of the original wet lease and any extensions or renewals will exceed 60 days. The Department's Office of Aviation Enforcement and Proceedings has advised us that, while instances in the recent past involving a series of leases violating § 207.10 have resulted in warning letters to the carriers, future violations may be grounds for formal enforcement action including the assessment of civil penalties. If you have questions regarding this matter, please contact the U.S. Air Carrier Licensing Division, Office of International Aviation at (202) 366–2390, or the Office of Aviation Enforcement and Proceedings, Office of the General Counsel at (202) 366–9349.

We will serve a copy of this notice on all U.S. and foreign air carriers and will publish a copy in the **Federal Register.**

Issued in Washington, D.C., on February 9, 1994.

Paul L. Gretch,

Director, Office of International Aviation.

[FR Doc. 94–3513 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Noise Exposure Map Notice; Mansfield Lahm Municipal Airport; Mansfield, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Mansfield for Mansfield Lahm Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is January 11, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara A. Hammes, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–670.7, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7298.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Mansfield Lahm Municipal Airport are in compliance with applicable requirements of part 150, effective January 11, 1994.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), and airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the City of Mansfield for Mansfield Lahm Municipal Airport. The specific maps under consideration are the noise exposure maps: "Mansfield Lahm Municipal Airport—Existing Noise Exposure Map" and "Mansfield Lahm Municipal Airport—Future (1994) Noise Exposure Map" following Chapters IV and V, respectively, of the submission. The FAA has determined that these maps for Mansfield Lahm Municipal Airport are in compliance with applicable requirements. This determination is effective on January 11, 1994. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration; Great Lakes Region; Airports Division Office, 2300 East Devon Avenue, room 269, Des Plaines, Illinois 60018

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111

Mansfield Lahm Municipal Airport, 2000 Harrington Memorial Road, Mansfield, Ohio 44903

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, on January 11, 1994.

Dean C. Nitz,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 94–3450 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–13–M

Receipt of Noise Compatibility Program and Request for Review; Kalamazoo/Battle Creek International Airport, Kalamazoo, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Kalamazoo/Battle Creek International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by Kalamazoo County Board of Commissioners. This program was submitted subsequent to a determination by the FAA that associated noise exposure maps submitted under 14 CFR part 150 for Kalamazoo/Battle Creek International Airport were in compliance with applicable requirements effective March 1, 1993. The proposed noise compatibility program will be approved or disapproved on or before May 17, 1994.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the noise compatibility program is November 18, 1993. The public comment period ends March 18, 1994.

FOR FURTHER INFORMATION CONTACT:

Ernest P. Gubry, Community Planner, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Kalamazoo/Battle Creek International Airport which will be approved or disapproved on or before May 17, 1994. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for Kalamazoo/Battle Creek International Airport, effective on November 18, 1993. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 17, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses. Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

Kalamazoo/Battle Creek International Airport, 5235 Portage Road, Kalamazoo, Michigan 49002.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, on November 18, 1993.

Dean C. Nitz,

Manager, Detroit Airports District Office, FAA Great Lakes Region.

[FR Doc. 94–3451 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee; Flight Service Technology Subcommittee

Pursuant to Section 10(A) (2) of the Federal Advisory Committee Act (Pub. L. 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Flight Service Technology Subcommittee of the Federal Aviation Administration Research, Engineering and Development Advisory Committee to be held on Tuesday, March 8, 1994, at 9:30 a.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, in the MacCracken Room on the tenth floor.

The agenda for this meeting will include a review and discussion of current and future technology associated with pre-flight weather, flight plan filing, and in-flight information services, and a discussion of technological options for providing these services in the year 2000 and beyond. The Subcommittee will consider recommendations relating to the provisioning of these services by government and industry.

Attendance is open to the interested public but limited to space available. With the approval of the Subcommittee Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to access the building to attend the meeting should contact Mr. Carl McCullough, ASE–10, at (202) 287–8595, or Ms. Jan Peters, ASD–3, at (202) 287–8543 in the Office of the Associate Administrator for System Engineering and Development, 800 Independence Avenue, SW., Washington, DC 20591.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on February 10, 1994.

Martin T. Pezesky,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 94–3452 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 94–2]

Request for Public Participation in the Development of an Intelligent Vehicle-Highway Systems (IVHS) National Program Plan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Reopening of comment period.

SUMMARY: The Department of Transportation published a notice in the **Federal Register** on December 16, 1993 (58 FR 65814), in which the agency sought public participation in the development of the National Intelligent Vehicle-Highway Systems (IVHS) Program Plan (the Plan). The comment period closed on January 31, 1994. In response to a request for an extension of the comment period, the FHWA is reopening the comment period until February 25, 1994.

DATES: Comments on the October 1993 draft of the National IVHS program Plan are due February 25, 1994. Comments received after that date will be considered to the extent possible.

ADDRESSES: Comments should be sent (preferably four copies) to: Docket Clerk, Docket No. 94–2, room 4232, United States Department of Transportation, Federal Highway Administration, HCC–10, 400 Seventh Street, SW, Washington, DC 20590. To obtain a copy of the October 1993 draft IVHS National Program Plan, please provide a self-addressed label to: Federal Highway Administration, HTV–10, 400 Seventh Street, SW., room 3400, Washington, DC 20590. When requesting a copy of the Plan, please submit a brief outline including your name, the name of your organization (if applicable), a statement of your primary interest in the National IVHS Program Plan, a telephone number, and a fax number.

FOR FURTHER INFORMATION CONTACT: Gary Euler, Chief, Program Management and Systems Engineering Division, Federal Highway Administration, HTV–10, 400 Seventh Street, SW., room 3400, Washington, DC 20590, Ph: (202) 366–2196, Fax: (202) 366–8712. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: The Plan will describe the systematic development of a set of IVHS user services, including the research, development, operational testing, and commercial product development that need to be accomplished to reach deployment of these services. Because the Plan is being developed with the user as the focus, the Department is interested in participation from a broad range of individuals and organizations including, but not limited to, public officials from State and local governments, consumer groups, vehicle manufacturers and other private sector entities, transit authorities, toll authorities, small businesses, academic institutions, associations, and individual citizens.

An incomplete working first draft of the Plan (October 1993) is now available. The second draft is scheduled to be available in May 1994. The final Plan is scheduled to be available in November 1994. In developing the second and final drafts of the Plan, the Department of Transportation will be working cooperatively with other organizations, including IVHS AMERICA.

The development of the IVHS Program Plan is an open process, and the Department is also interested in improving its overall outreach activities on the program planning effort. The success of the IVHS program depends on the active participation of the stakeholders—public officials from State and local governments, consumer groups, private sector entities, transit authorities, metropolitan planning organizations, toll authorities, small businesses, academic institutions, public advocacy groups, associations, and individual citizens.

To facilitate stakeholder participation, the Department intends to hold forums to facilitate the direct and interactive participation of the public in the development of the IVHS Program Plan. The Department is also requesting suggestions on the most appropriate, effective means for conducting these forums. Recommendations for additional outreach activities may be included in comments on the October 1993 working draft or may be submitted separately to the Docket.

The FHWA received a request from the Advocates for Highway and Auto Safety dated January 3, 1994, requesting an extension to the comment period because it encompassed the holiday season when staff availability for review was very limited. After carefully considering the request, the FHWA decided to allow additional time for comments in order to receive greater public participation in the development of the National IVHS Plan.

The comment period is hereby reopened and extended to February 25, 1994.

Authority: 23 U.S.C. 315; 49 CFR 1.48; Pub. L. 102–240, Secs. 6051–6059, 105 Stat. 2189–2195.

Issued on: February 9, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–3569 Filed 2–11–94; 9:26 am]

BILLING CODE 4910–22–P

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications to Become a Party To an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "p" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before March 2, 1994.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No. and Applicant	Modification of exemption
7835–X Air Products and Chemicals, Inc., Allentown, PA (See Footnote 1)	7835
9758–X Camping Gaz International, Paris, France (See Footnote 2)	9758
9758–X Watson & Company, San Diego, CA (See Footnote 3)	9758
10048–X Air Products and Chemicals, Inc., Allentown, PA (See Footnote 4)	10048
10256–X Comdyne I, Inc., West Liberty, OH (See Footnote 5)	10256
10441–X ETSS of Ohio, Inc., Tipp City, OH (See Footnote 6)	10441
10739–X Hill Brothers Chemical Co., Phoenix, AZ (See Footnote 7)	10739
10878–X Tankcon FRP Inc., Boisbriand, Que, CN (See Footnote 8)	10878
10911–X The Pallet Reefer Company, Houma, LA (See Footnote 9)	10911
10913–X Aco-Assmann of Canada Ltd., Pickering, Ontario, Canada (See Footnote 10)	10913
11073–X E.I. du Pont de Nemours and Company, Wilmington, DE (See Footnote 11)	11073

(1) To modify exemption to authorize Poisonous Gases, Zone A, Division 2.3 to be shipped in enclosed trailer with Division 2.1, 5.1 and Class 3 and 8 material.

(2) To modify the exemption to provide for additional cartridge designed with minimum wall thickness of 0.010 inch for use in transporting Division 2.1 material.

(3) To modify exemption to provide for additional cartridges identical to those authorized except they are equipped with a thinner wall thickness.

(4) To modify the exemption to provide for additional classes of hazardous materials authorized to be shipped in non-DOT specification cargo tanks.

(5) To modify exemption to provide for additional cylinders for use in transporting flammable gas, n.o.s., Division 2.1.

(6) To authorize party status and modify exemption to provide for various classes of hazardous waste for shipment in lab pack quantities overpacked with DOT specification containers.

(7) To modify exemption to eliminate monitoring requirement of tank cars during unloading of chlorine, Division 2.3.

(8) To modify exemption to remove 12 year service life limitation for non-DOT specification fiberglass cargo tanks designed for shipment of corrosive material.

(9) To authorize certain hazardous materials requiring temperature control to be shipped in refrigerated units by highway only.

(10) To modify exemption to provide for additional design changes to non-DOT specification portable tank for use in transporting Division 5.1 and Class 8.

(11) To reissue exemption originally issued on an emergency basis to offer for transportation DOT Class 112 tank cars with a rated tank test pressure of 340 psi or greater, containing chlorosulfonic acid, Class 8 PIH.

Application No. and applicant	Parties to exemption
4338–P Hoechst Celanese Corp., Charlotte, NC	4338
4453–P Dyno Nobel, Inc., Salt Lake City, UT	4453
6610–P Aztec Peroxides, Inc., Elyria, OH	6610
6626–P Portland Welding Supply, Portland, ME	6626
6691–P Trinity Welding Supply, Inc., Dallas, TX	6691
6971–P SPI Supplies Division of Structure Probe, Inc., West Chester, PA	6971
8214–P Howard Temes Packaging Company, Redford, MI	8214
8278–P CITGO Pipeline Company, Lake Charles, LA	8278
8396–P Aztec Peroxides, Inc., Elyria, OH	8396
8451–P MESC Electronic Systems, Inc., Fort Wayne, IN	8451
8554–P Brandywine Explosives & Supply, Inc. Paris, KY	8554
8554–P Dyno Nobel, Inc., Salt Lake City, UT	8554
8582–P Toledo, Peoria and Western Railway Corporation, East Peoria, IL	8582
8723–P Dyno Nobel, Inc., Salt Lake City, UT	8723
8932–P Aztec Peroxides, Inc., Elyria, OH	8932
9248–P Advertising Unlimited, Inc., Red Wing, MN	9248
9723–P Allwaste Transportation & Remediation, Inc., San Martin, CA	9723
9723–P Dahlen Transport, Inc., Newport, MN	9723
9723–P Rock Transfer & Storage, Inc., Milwaukee, WI	9723
10247–P Mine Safety Appliances Company, Pittsburgh, PA	10247
11151–P Pollution Control Industries, East Chicago, IN	11151
11153–P Pollution Control Industries, East Chicago, IN	11153
11169–P Corning Incorporated, Corning, NY	11169
11187–P Corning Incorporated, Corning, NY	11187
11189–P TRW Vehicle Safety Systems, Inc. Washington, MI	11189
11189–P Breed Technologies, Inc., Lakeland, FL	11189
11189–P Mercedes-Benz of North America, Inc., Montvale, NJ	11189
11189–P TRW Vehicle Safety Systems, Inc., Washington, MI (See Footnote 1)	11189

(1) To authorize party status and provide for seat belt pretensioners, Class 9 as an additional commodity.

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 9, 1994.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 94–3475 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before March 17, 1994.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No. and applicant	Regulation(s) affected	Nature of exemption thereof
11202–N Newport News Shipbuilding and Dry Dock Company, Newport News, VA.	49 CFR 173, 49 CFR 172	To authorize the intra-plant transportation across a public street, of various classes of hazardous materials in quantities not to exceed 55 gallons to be transported as non-regulated. (mode 1)
11203–N McDonnell Douglas Aerospace, Huntington Beach, CA.	49 CFR 173.61, 177.848	To authorize the transportation of third stage components of space craft containing one or more hazardous materials in specially designed non-DOT specification containers. (mode 1)
11204–N Vulcan Chemicals, Birmingham, AL.	49 CFR 174.67(j)	To authorize tank cars equipped with 2" valve hose under 30 psig pressure to remain connected during unloading of hydrochloric acid, Class 8. (mode 2)
11206–N Western Atlas International, Houston, TX.	49 CFR 173.62, Packing Method E–124, PPR–33.	To authorize the transportation of detonating cord, Class 1, in plastic bags as alternative inner packaging overpacked as specified in CFR. (modes 1, 3, 4, 5)

Application No. and applicant	Regulation(s) affected	Nature of exemption thereof
11207–N Duke Power Company, Charlotte, NC.	49 CFR 173.202	To authorize the transportation of gasoline and gasoline/engine oil mixtures, Class 3, not to exceed five gallons in non-DOT specification metal or plastic safety cans in service vehicles. (mode 1)
11208–N U.S. Department of Defense, Falls Church, VA.	49 CFR 173.32c(j)	To authorize the transportation of a hazardous material, Class 9, in a 5,300 gallon bulktainer loaded at less than the required 80 percent filling density. (modes 1, 2)
11209–N National Propane Gas Association, Arlington, VA.	49 CFR 173.315	To authorize transportation of propane in non-DOT specification tanks used as an implement of husbandry for various agriculture-related applications. (mode 1)
11210–N Owl Scientific, Inc., Woburn, MA.	49 CFR 173.4(a)(2)(ii)	To authorize the manufacture, mark and sell of a specially designed packaging incorporating an inner receptacle, which is thinner than required, for shipment of approximately 16.11 grams of a 5.1 material as non regulated. (modes 1, 2, 4)
11211–N Citergaz SA, Civray, France.	49 CFR 178.245–1(b)	To manufacture, mark and sell IMO-Type 5 tank containers equipped with manhole near safety devices for use in transporting various commodities classed as Division 2.1, 2.2, and 2.3. (modes 1, 2, 3)
11212–N Temple-Inland Forest Products Corporation, Diboll, TX.	49 CFR 174.67(i)&(j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (mode 2)
11213–N T.O.T.E. Plastics, Inc., Brampton, Ontario, Canada.	49 CFR 173 Subparts D & F, 173.118a, 173.119, 173.125, 173.266, 178.19, 178.253.	To authorize the transportation of Division 5.1, 6.1, Class 3 and 8 material in non-DOT specification polyethylene intermediate bulk containers. (modes 1, 2, 3)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 9, 1994.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 94–3476 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–60–M

[Notice No. 94–1]

Safety Advisory: Service Life of Composite Cylinders Used In a Self-Contained Breathing Apparatus (SCBA) or In Other Services

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice, correction.

SUMMARY: This document makes a correction to a safety advisory notice published in the **Federal Register** on November 18, 1993 [Notice No. 93–22; 58 FR 60899], by adding two DOT Exemptions, which were inadvertently omitted from the list of affected exemptions. Beginning with the summary, the notice is reprinted as follows:

This is to notify persons using composite cylinders manufactured and authorized under DOT exemptions that those cylinders have a 15-year service life limit. The service life limitation applies to cylinders based on RSPA's fiber-reinforced-plastic (FRP) cylinder standards for metal-lined fiber-reinforced-composite cylinders which form part of an SCBA or are used in other services. The cylinders typically have service pressures of between 2,000 and 4,500 psig. Composite cylinders marked with a DOT exemption number that are older than 15 years should be removed from service. Such cylinders may have reduced strength without any visual indication of damage.

FOR FURTHER INFORMATION CONTACT: James K. O'Steen or Charles H. Hochman, telephone (202) 366–4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC.20590–0001. Office hours are: 8:30 a.m. to 5 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: RSPA has recently received numerous letters concerning the service life of certain cylinders used in Self-Contained Breathing Apparatuses (SCBAs). The letters express the concerns of fire departments and others with the 15-year service life limitation on FRP composite cylinders which form part of an SCBA. Commenters are particularly concerned with the cost of replacing the cylinders after 15 years. These cylinders are manufactured and authorized for transportation under DOT exemptions.

An FRP composite cylinder is composed of an inner metallic liner over-wrapped with fiber filaments, most commonly fiberglass or kevlar, bonded together with a plastic resin. The large forces produced by the high pressure inside such a cylinder are restrained by the inner liner and the thousands of fiber filaments windings around the inner vessel. In a composite cylinder used for an SCBA, a large portion of the strength of the cylinder is provided by the fiber filaments.

Because fiber filaments provide much of the strength of an FRP cylinder, the useful life of an SCBA cylinder is greatly dependent on the properties of fiber filaments. Two of these properties are susceptibility to brittle fracture and stress rupture.

Brittle fracture. Fiber filaments are very strong but brittle. Once a crack starts in a filament, the crack continues to grow until the filament breaks. Unfortunately, filaments cannot be manufactured without some microscopic cracks. Cracks are also caused by in-service damage and pressure cycling. As cracks in a filament grow and a filament breaks, the filament's load is transferred to adjacent filaments. With increasing load, cracks in other filaments grow faster, additional filaments break, and load transfer increases. As the process accelerates with time, the bursting strength of the cylinder may be reduced and the cylinder could rupture in service.

Stress rupture is an actual reduction of fiber strength that occurs with time when the fiber is under load. Stress rupture varies greatly with material type; fiberglass is more susceptible to stress rupture than carbon fiber. In structures made of a material subject to stress rupture, such as fiberglass, the load level on filaments eventually exceeds their strength and the cylinder may rupture at the marked service pressure with potentially lethal consequences.

Because brittle fracture damage and stress rupture may occur without any visual indication of damage, cannot be

found by available non-destructive tests, and produce a general reduction in a cylinder's strength over time, a maximum life was established to prevent cylinder rupture in service. The 15-year restriction was based on technical data presented by the cylinder manufacturers in support of their exemption requests, and is consistent with the service life limitation found in a position paper, "Basic Considerations for Composite Cylinders," developed and published by the Compressed Gas Association.

Only one manufacturer of SCBA has requested that DOT amend its exemption to extend the cylinder service life from 15 years to 18 years. RSPA technical staff performed an extensive technical review of the manufacturer's information that resulted in a denial of the request. RSPA concluded that the test data presented in support of an increased service life indicated a trend toward accelerated loss in cylinder burst strength and an increasing probability of cylinder failure, and did not support a service life extension.

RSPA is aware of, and concerned about, the financial burden associated with limiting the service life of composite cylinders, but RSPA must weigh this burden against the safety risk of a cylinder failure to firefighters and other users. For example, a Coram, New York firefighter was killed earlier this year (1993) by the rupture of a composite cylinder which was more than 15 years old. While the cause of that rupture was neither brittle fracture nor stress rupture, it is an example of the severe consequences of a composite cylinder failure.

Based on the above information, RSPA has retained the 15-year service life limitation on composite cylinders. At a minimum, persons finding composite cylinders that are older than 15 years should remove those cylinders from service. Composite cylinders are authorized for SCBA and other services under the following exemptions:

DOT–E 7218	DOT–E 8391	DOT–E 9716
DOT–E 7235	DOT–E 8487	DOT–E 10019
DOT–E 7277	DOT–E 8718	DOT–E 10147
DOT–E 7769	DOT–E 8725	DOT–E 10256
DOT–E 8023	DOT–E 8814	DOT–E 10345
DOT–E 8059	DOT–E 8965	DOT–E 10637
DOT–E 8115	DOT–E 9634	DOT–E 10905
DOT–E 8162	DOT–E 9659	DOT–E 11005

Issued in Washington, DC on February 10, 1994.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94–3474 Filed 2–14–94; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 7, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0046.
Form Number: CF 3485.
Type of Review: Reinstatement.
Title: Lien Notice.
Description: The lien notice is used by carriers, cartmen and similar businesses to enable them to notify Customs that a lien exists against an individual/business for non-payment of freight, charges, etc., so that Customs will not permit delivery of the merchandise from public stores or a bonded warehouse until the lien is satisfied.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 8,497 hours.
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW.,Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–3434 Filed 2–14–94; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

February 8, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0023.
Form Number: OTS Form 1313; Monthly Cost of Funds Survey Systems Worksheet; Officer's Certification.
Type of Review: Revision.
Title: Thrift Financial Report (TFR).
Description: The Office of Thrift Supervision (OTS) collects financial data from insured institutions and their subsidiaries in order to assure their safety and soundness as depositories of the personal savings of the general public. The OTS monitors financial positions and interest-rate risk so that adverse conditions can be remedied properly. The respondents are savings institutions.
Respondents: Businesses or other for-profit, Savings Institutions.
Estimated Number of Respondents/Recordkeepers: 1,788.
Estimated Burden Hours Per Respondent/Recordkeeper: 20 hrs., 41 mins.
Frequency of Response: Monthly, Quarterly.
Estimated Total Reporting/Recordkeeping Burden: 365,215 hours.
Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–3435 Filed 2–14–94; 8:45 am]

BILLING CODE 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

February 8, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0973.
Form Number: IRS Form 8569.
Type of Review: Extension.
Title: Availability Statement.
Description: The data collected from this form is used by the executive panels responsible for screening internal and external applicants for the Senior Executive Service (SES) Candidate Development Program, and other executive positions.
Respondents: Individuals or households, Federal agencies or employees.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 167 hours.
OMB Number: 1545–1368.
Form Number: IRS Form 9513.
Type of Review: Extension.
Title: Self Assessment—SES Candidate Development Program.
Description: The data collected from this form is used by the executive panels responsible for screening internal and external applicants for the SES Candidate Development Program.
Respondents: Individuals or households, Federal agencies or employees.
Estimated Number of Respondents: 300.
Estimated Burden Houses Per Respondent: 4 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,200 hours.
OMB Number: 1545–1369.
Form Number: IRS Form 9514.
Type of Review: Extension.
Title: Supervision Assessment—SES Candidate Development Program..
Description: The data collected from this form is used by the executive panels responsible for screening internal and external applicants for the SES Candidate Development Program.
Respondents: Individuals or households, Federal agencies or employees.
Estimated Number of Respondents: 300.
Estimated Burden Hours Per Respondent: 5 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,500 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–3436 Filed 2–14–94; 8:45 am]

BILLING CODE 4830–01–P

Customs Service

Tariff Classification of Camera Lenses Imported in Same Shipment With Camera Bodies

AGENCY: U.S. Customs Service, Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning the proposed change of position regarding the classification of different sized camera lenses imported in the same shipment with an equal number of 35mm camera bodies under the Harmonized Tariff Schedule of the United States (HTSUS). The comment period is being extended another 30 days.

DATES: Comments are requested on or before March 7, 1994.

ADDRESSES: Comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229 and inspected at Franklin Court, 1099 14th Street, NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Office of Regulations and Rulings (202) 482–7030.

SUPPLEMENTARY INFORMATION: A document was published in the Federal Register (58 FR 64423) on December 7, 1993, proposing to change the position of the Customs Service regarding the classification of different sized camera lenses imported in the same shipment with an equal number of 35mm camera bodies under the Harmonized Tariff Schedule of the United States (HTSUS). Customs solicited comments on the proposal and comments were due on February 7, 1994.

Customs has received a request to extend the comment period so that adequate time is allowed to properly address this issue which could have a serious economic impact on the camera and lens buying public. The request is granted. The comment period is extended 30 days.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9 a.m. and 4:30 p.m. on normal business days, at the address stated above.

Dated: February 8, 1994.

Harvey B. Fox,

Director, Office of Regulations & Rulings.

[FR Doc. 94–3491 Filed 2–14–94; 8:45 am]

BILLING CODE 4820–02–P

Federal Law Enforcement Training Center

Notice of Meeting

AGENCY: Advisory Committee to the National Center for State and Local Law Enforcement Training.

SUMMARY: The agenda for this meeting includes: the introduction of new members end special guests and opening remarks by the Director of the Federal Law Enforcement Training Center and Committee Co-chairs; updates on the GREAT program, Airborne Counterdrug Operations Training, Medicaid Fraud, Rural Drug Training Program, Advanced Drug Operations Training Program, and Hate/Bias Crime; discussion of Sub-committees formed at the last meeting; and presentations on Office of Justice Programs, BJA Community Policing Consortium, and the National Center Fellowship.

DATES: February 16, 1994.

ADDRESSES: Department of Justice, Room 1627, Tenth & Constitution Avenue Northwest, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Hobart M. Henson, Director, National Center for State and Local Law Enforcement Training, Federal Law

Enforcement Training Center, Glynco, GA 31524.

Hobart M. Henson,

Director, National Center for State and Local Law Enforcement Training.

[FR Doc. 94–3404 Filed 2–14–94; 8:45 am]

BILLING CODE 4810–32–M

Fiscal Service

[Dept. Circ. 570, 1993 Rev., Supp. No. 8]

Surety Companies Acceptable on Federal Bonds; The Great Lakes Reinsurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code effective December 31, 1993. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, on page 35824 to reflect this addition: *The Great Lakes Reinsurance Company.* Business Address: Wall Street Plaza, 88 Pine Street, New York, NY, 10005–1894. Phone: (212) 809–1061. Underwriting Limitation *b/*: $5,362,000.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6507.

Dated: February 9, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 94–3455 Filed 2–14–94; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Cir. 570, 1993 Rev., Supp. No. 9]

Surety Companies Acceptable on Federal Bonds Change of Name; North Star Reinsurance Corp.

North Star Reinsurance Corporation, a Delaware corporation, has formally changed its name to Signet Star Reinsurance Company, effective August 30, 1993. The Company was last listed as an acceptable surety on Federal bonds at 58 FR 35808, July 1, 1993.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to Signet Star Reinsurance Company, New Castle, Delaware. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $11,539,000 established for the Company as of July 1, 1993, remains unchanged until June 30, 1994.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, at page 35815 to reflect this change.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6507.

Dated: February 10, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 94–3489 Filed 2–14–94; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1993 Rev., Supp. No. 7]

Surety Companies Acceptable on Federal Bonds; Mutual Service Casualty Insurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code, effective December 31, 1993. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, on page 35805 to reflect this addition:

Mutual Service Casualty Insurance Company. Business Address: P.O. Box 64035, St. Paul, MN, 55164–0035. Phone: (612) 631–7000. Underwriting Limitation *b/*: $7,476,000.

Surety Licenses *c/*: AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. Incorporated in: Minnesota.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6602.

Dated: February 10, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 94–3456 Filed 2–14–94; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of determination for reestablishment for the Art Advisory Panel.

SUMMARY: It is in the public interest to continue the existence of the Art Advisory Panel.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS, 901 D Street, SW., room 224, Box 68, Washington, DC 20024, telephone: (202) 401–4128 (not a toll free number).

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (1982), the Commissioner of Internal Revenue announces the reestablishment of the following advisory committee:

Title. The Art Advisory Panel of the Commissioner of Internal Revenue.

Purpose. The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by the taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue code of 1986.

In order for the Panel to perform this function, Panel records and discussions must include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552(b)(c) (3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue Code.

Statement of Public Interest. It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of the Treasury, with the concurrence of the General Services Administration, has approved reestablishment of the Panel. The membership of the Panel is balanced between museum directors and art dealers to afford differing points of view in determining fair market value.

Fifteen days after publication of this notice in the **Federal Register**, the Department of the Treasury, will file a copy of the committee's charter with the Senate Finance Committee and the Committee Ways and Means Committee of the U.S. House of Representatives. The Department of the Treasury will also furnish a copy of the charter to the Library of Congress and the General Services Administration.

Authority for this panel will expire two years from the date the charter is filed with the appropriate congressional committees unless, prior to the expiration of its charter, the Panel is renewed.

The Assistant Secretary (Management) has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Dated: February 10, 1994.

George Muñoz,

Assistant Secretary (Management).

[FR Doc. 94–3467 Filed 2–14–94; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 31
Tuesday, February 15, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on February 7, 1994, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for March 7, 1994, in Washington, DC. The members will discuss preparations for the rate case filing.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Mackie, Pace, Setrakian and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39, United States Code; and section 7.3 (c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,
Secretary.

[FR Doc. 94–3567 Filed 2–10–94; 4:58 pm]
BILLING CODE 7710–12–M

federal register

Tuesday
February 15, 1994

Part II

Department of Transportation

Federal Aviation Administration
Federal Highway Administration
Federal Railroad Administration
Federal Transit Administration
Research and Special Programs Administration

Limitation on Alcohol Use by Transportation Workers; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Federal Highway Administration

Federal Railroad Administration

Federal Transit Administration

Research and Special Programs Administration

RIN Nos. 2120–AE43; 2125–AC85; 2130–AA43; 2132–AA38; 2137–AC21.

Limitation on Alcohol Use by Transportation Workers

AGENCIES: The Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA) and the Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rules; common preamble.

SUMMARY: This document is a common preamble to five alcohol misuse prevention program final rules being published by several operating administrations (OAs) of the Department of Transportation (FAA, FHWA, FRA, FTA, and RSPA) elsewhere in today's issue of the **Federal Register**. Four of these rules are required by the Omnibus Transportation Employee Testing Act of 1991. All of them will enhance the overall safety of the transportation industry and the public.

DATES: Effective March 17, 1994. See separate operating administration rules for specific effective and compliance dates.

FOR FURTHER INFORMATION CONTACT: Gwyneth Radloff, Office of the General Counsel, Department of Transportation, (202) 366–9305, 400 7th Street, SW., Washington, DC 20590, with respect to the overall Departmental effort. For information concerning a particular operating administration rule, contact the individual(s) listed under the **FOR FURTHER INFORMATION CONTACT** section for that rule.

SUPPLEMENTARY INFORMATION:

Summary

FAA, FHWA, FRA, and FTA are promulgating rules to implement the Omnibus Transportation Employee Testing Act of 1991 ("the Act"), which requires alcohol and drug testing programs in the aviation, motor carrier, rail, and transit industries in the interest of public safety; FAA, FHWA and FRA also are relying on their other general safety authority as a basis for issuing these rules. RSPA is applying similar, but more limited, requirements to the safety-sensitive employees in the pipeline transportation industry using existing statutory authority.

The five rules generally have the same requirements and common language to the extent possible, in recognition of the common elements of the statute and the problem being addressed. This will ease compliance for those companies, employers and third-party service providers that may be subject to, or performing testing under, the rules of more than one of the OAs. Intended substantive differences (where industry-specific differences are necessary or to comport with existing regulatory format or statutory requirements) are explained in the preambles to the individual OA rules.

In general, the rules prohibit covered employees from performing safety-sensitive functions: (1) When test results indicate an alcohol concentration of 0.04 or greater; (2) Within four hours after using alcohol; (3) While using alcohol on the job; (4) During the 8 hours following an accident if their involvement has not been discounted as a contributing factor in the accident or until they are tested; and (5) If they refuse to submit to required alcohol tests. Employers have to remove from a safety-sensitive function any covered employee who violates any of these prohibitions until he or she has met the conditions for returning to a safety-sensitive function. If an employee is found to have an alcohol concentration of 0.02 or greater but less than 0.04 or if the employee is under the influence of or impaired by alcohol, as indicated by behavior, speech and performance indicators of alcohol misuse, and a reasonable suspicion alcohol test result cannot be obtained, the employee will have to be removed from safety-sensitive duties for 8 hours or until a test result below 0.02 is obtained. Four of the rules require employers to conduct pre-employment, reasonable suspicion (the term used in the Act, which is comparable to the term "reasonable cause" testing used in the DOT OAs' existing drug rules and in the DOT advance notice of proposed rulemaking (ANPRM) on alcohol testing discussed below), post-accident, random, return-to-duty and follow-up alcohol testing. These rules also establish a performance standard for adjusting the initial 25 percent random alcohol testing rate for each transportation industry (except RPSA).

RSPA's rule requires only reasonable suspicion, post-accident, return-to-duty and follow-up testing. Most of RSPA's commenters opposed the proposed alcohol prevention program; others supported it with various modifications tailored to the specific needs of the pipeline industry. Those in opposition noted that RSPA is not covered by the Act and that we do not have data indicating that there is a problem in the pipeline industry to support the costly imposition of the proposed program. They also perceived pipeline safety risks as different from those in other forms of public transportation, since pipelines do not carry people. Some commenters urged that we conduct a pilot program until we obtain sufficient data to make a decision on whether imposition of the program is justified.

The lack of data cited by some commenters could result as easily from the lack of testing and industry alcohol prevention programs as from the absence of an alcohol problem in the pipeline industry. Our primary job in these rules is to implement the Act, which we have done in the other four OA rules. But to be sure we are providing a margin of safety where the Act does not extend, we are establishing an alcohol prevention program, including reasonable suspicion and post-accident testing, for the pipeline industry. Pipeline safety, obviously, is very important. While pipelines do not carry people, they carry dangerous materials that could do tremendous damage to people and property if someone affected by alcohol makes mistakes. Therefore, for safety reasons, we have decided to impose an alcohol misuse prevention program on the pipeline industry. We will monitor the data from the testing that is conducted to determine whether any further action is warranted. The rule will still ensure that pipeline employees are subject to the same alcohol misuse prohibitions, consequences and educational efforts that apply to other transportation industry employees. Pipeline operators can, of course, conduct other types of alcohol testing under their own authority.

The rules will provide more flexibility to use different testing technologies for screening tests than we proposed in the OA notices of proposed rulemaking (NPRMs). When, in the future, we evaluate and approve a device as meeting NHTSA model specifications and we have established rules setting forth the procedures for its use, employers may use the device. However, at the present time, only evidential breath testing (EBT) devices on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL), including those without printers, meet these specifications and will have procedures in place at the time the five OA final rules take effect. (58 FR 48705, September 17, 1993). The CPL is a list of alcohol breath testing devices that have been found to conform to NHTSA's Model Specifications for EBTs. The CPL serves as a guide to State and local governments when they make purchasing decisions about these devices. (NHTSA develops programs relating to motor vehicle and highway safety, some of which are designed to reduce alcohol and other drug use among drivers.) NHTSA has published elsewhere in today's **Federal Register** proposed model specifications for additional alcohol screening devices, which could lead to their approval for future use in conducting screening tests under these rules.

We also are considering requiring the employer to conduct a blood test in reasonable cause and post-accident situations where an EBT is not readily available. The blood alcohol testing proposal, including testing procedures, is addressed in a separate NPRM published elsewhere in today's **Federal Register**. Before we issue a final rule, we need to resolve specimen collection issues and determine how to identify those laboratories that we can rely on to accurately analyze blood samples for alcohol concentration.

All of the OA alcohol misuse prevention final rules also impose reporting and recordkeeping requirements and provide for dissemination of alcohol misuse information to employees, supervisor training, and referral of employees to substance abuse professionals (SAPs) for evaluation.

This document is a common preamble jointly issued by each of the five OAs and provides the background for and an overview of the general, common elements of their rules. It is incorporated as part of the preamble for each individual OA's rule; additional modal-specific preambles have been issued by each of the OAs to provide an explanation of any differences from, or additions to, the common language. The following related documents appear in today's **Federal Register**:

(1) This common preamble;

(2) An Office of the Secretary (OST) final rule on alcohol testing procedures and conforming changes to the existing drug testing procedures that is incorporated by reference into the OA alcohol misuse prevention final rules;

(3) An Office of the Secretary (OST) NPRM proposing blood alcohol testing requirements and procedures that would be incorporated by reference into the OA alcohol misuse prevention final rules, i they become final;

(4) The modal-specific OA alcohol misuse prevention final rules for: FAA; FHWA (also includes changes to its existing drug rule mandated by the Act, including extension of its rule to persons required to hold a commercial drivers license (CDL), including intrastate truck and motor coach operations); FRA (also includes changes to its existing drug rule); FTA; and RSPA;

(5) FAA and FHWA NPRMs seeking public comment on application of alcohol and drug testing requirements to foreign operators in the United States in the aviation and motor carrier industries. A similar FRA ANPRM issued December 15, 1992, is being withdrawn by a notice published elsewhere in today's **Federal Register**. Foreign railroad operators have very limited operations in the U.S. and already comply with FRA's existing substance abuse requirements;

(6) An FTA final rule that imposes on recipients of Federal funding in the transit industry drug testing requirements similar to those in the other transportation industries (it also contains MIS requirements discussed below);

(7) An FAA NPRM proposing conforming changes to its existing drug testing rule to implement the requirements of the Act and for other purposes; and

(8) A DOT-wide common preamble with rule language from 6 OAs that proposes a performance standard for adjusting the random drug testing rate for the current random drug testing programs in the aviation, motor carrier, rail, pipeline and maritime industries and the new drug testing program for the transit industry. The proposals contain safeguards that would ensure maintenance of an adequate level of deterrence and detection of illegal drug use.

Related Management Information System (MIS) final rules issued by FAA, FHWA, FRA, RSPA and the U.S. Coast Guard (USCG) that require employers to submit annual drug testing program information (USCG rule also contains alcohol requirements) were published December 23, 1993 (58 FR 68194 *et seq.*). FTA's final drug testing rule contains its MIS requirements. Similar MIS programs for alcohol are established in the OA alcohol rules.

Regulatory assessments that analyze the costs and benefits of and the alternatives considered for each of the final rules and NPRMs published in today's **Federal Register** have been placed in the individual rulemaking dockets.

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Background

The Omnibus Transportation Employee Testing Act of 1991

On October 28, 1991, President Bush signed the Omnibus Transportation Employee Testing Act of 1991 ("the Act"). (Pub. L. 102–143, Title V). The Act requires the Department to prescribe regulations within one year that require testing of safety-sensitive employees in the aviation, highway, rail, and transit industries and in the Federal Aviation Administration for use, in violation of law or Federal regulation, of alcohol and drugs listed in the Controlled Substances Act. The Act preempts inconsistent State and local laws, except certain State criminal laws, in the aviation, highway, and transit industries and requires that the regulations be consistent with U.S. international obligations. It specifically mandates, among other things, privacy in collection techniques, incorporation of the Department of Health and Human Services' (DHHS) mandatory guidelines for drug testing and comparable safeguards for alcohol testing, quantified confirmation of any positive screening result, collection of split samples of body fluid specimens, confidentiality of test results, and scientifically-random selection of employees to be tested. It requires pre-employment, random, post-accident, and reasonable suspicion testing; periodic testing is discretionary. Regulations prescribed under the Act must include provisions for the identification of, and opportunity for treatment for, covered employees in need of assistance due to misuse of alcohol or illegal use of controlled substances. The Act states that current Federally-mandated programs are unaffected by the new statutory requirements.

At the time of enactment of the Act, several OAs already had implemented programs designed to address the use and misuse of drugs and alcohol by transportation workers, and the Department had published an ANPRM to explore whether additional steps were warranted concerning alcohol misuse by employees in the DOT-regulated transportation industries (54 FR 46326, November 2, 1989). In 1988, six of the Department's OAs—FAA; FHWA; FRA; FTA (formerly the Urban Mass Transportation Administration, (UMTA)); USCG; and RSPA—issued drug testing rules for members of their regulated industries (53 FR 47002 et. seq., Nov. 21, 1988). (The FTA rule was vacated by a Federal appellate court in January 1990 on the grounds that the agency lacked statutory authority to issue nationwide standards requiring drug testing.) The drug testing rules generally apply to persons performing safety-sensitive functions in commercial transportation operations. The Department also published in 1988, and revised in 1989, a Department-wide drug testing procedures rule (49 CFR part 40) that governs testing under all the OA rules (53 FR 47002, Nov. 21, 1988; 54 FR 49854, Dec. 1, 1989). As noted above, the Act requires certain changes to the existing drug testing rules (e.g., it requires split samples and extends coverage to persons requires to obtain a CDL, generally intrastate truck and motorcoach operations under the FHWA rule). It also directs FTA to issue a drug testing rule.

In addition to the requirements discussed above, the Act requires alcohol and drug testing for safety-sensitive FAA employees. Air traffic controllers are the largest group of employees subject to this testing (they are already subject to drug testing under an existing DOT policy). In addition, DOT employees and other Federal agency employees in positions requiring a CDL are subject to coverage under the FHWA rule. The Department will issue a DOT Order (an internal program document) to conform the Department's drug testing program for its own employees to the requirements of the Act and to implement a similar alcohol misuse prevention program.

Regulatory History

ANPRM

During the drug testing rulemakings, we noted that, although alcohol is a drug, the solution to the alcohol problem may be very different from that concerning other drugs, such as cocaine or marijuana, and we would address it in a separate rulemaking. For that reason, with one exception, the OAs did not include alcohol among the list of substances to be tested for under the drug testing regulations. (The Coast Guard, which is not covered by this rulemaking, has mandatory post-accident alcohol testing and authorized reasonable cause (suspicion) alcohol testing. FRA had previously included alcohol in its post-accident testing mandate and had authorized alcohol testing for reasonable cause.)

On November 2, 1989, the Department published an advance notice of proposed rulemaking (ANPRM) to solicit public comment on whether the Department's existing regulatory requirements and programs were sufficient to respond to the hazards of alcohol misuse in DOT-regulated transportation industries and to determine what additional action, if any, should be taken. The ANPRM set forth a number of options for reducing alcohol misuse in DOT-regulated industries, if further action was deemed necessary. Over 225 comments were filed in response to the ANPRM; these comments were considered in developing the NPRMs.

The Public Hearing on Breath Test Device Capability

After the enactment of the Act, to enable better evaluation and comparison of the capabilities of different alcohol testing methods, the Department of Transportation conducted a public hearing on November 18, 1991, to obtain specific information from the manufacturers of breath test devices. Our purpose was to examine the current or feasible capabilities of equipment to handle the problems of testing in the transportation industry, particularly verification of the identity of tested individuals and the validity of the test result. At the hearing, the Department noted that attempts to tamper with the test and refusals to acknowledge the test result may be problems because an immediate result is available.

The Department also indicated that it would need to ensure accurate test results without adding prohibitive costs to any proposed program. Representatives of eight manufacturers assured DOT officials that existing technology can keep adequate, verifiable records of tests. They claimed that they could incorporate safeguards against tampering with adjustments to hardware and software, such as the assignment of a serial number to each test. They pointed out, however, that currently available equipment alone cannot provide an indisputable verification procedure or replace trained human supervision of the testing process.

The Department believes that the testing procedures set forth in the separate final rule establishing new alcohol testing procedures for 49 CFR part 40 published in today's Federal Register provide adequate safeguards for breath testing in response to the above concerns.

The NPRMs

On December 15, 1992, the Department published eighteen separate documents, including fourteen NPRMs and four ANPRMS, that proposed programs in several DOT-regulated transportation industries to reduce alcohol misuse and to amend existing industry drug testing programs (57 FR 59382 *et. seq.*, December 15, 1992). These included: A common preamble and an OST NPRM on alcohol testing procedures and conforming drug testing changes (part 40), both of which were incorporated by reference into the FAA, FHWA, FRA (also included drug changes), FTA, and RSPA NPRMs proposing alcohol misuse prevention programs; FAA, FRA, and FHWA ANPRMs on application of these requirements to foreign operators in the United States; an FTA NPRM proposing an anti-drug program for the transit industry; FAA, FHWA, FRA, RSPA, and USCG NPRMs proposing the new MIS (FTA drug NPRM included its MIS proposal); an FHWA NPRM proposing statutorily-mandated changes to its existing drug rule, including extending coverage to intrastate truck and motorcoach operations; and a DOT-wide ANPRM that sought comment on less costly alternatives to the current industry random drug testing requirements, particularly changes to the random drug testing rate. The alcohol misuse prevention NPRMs proposed prohibitions on alcohol misuse, related consequences, several types of alcohol testing, reporting and recordkeeping requirements, dissemination of alcohol information, supervisor training and referral of employees to a substance abuse professional (SAP) for evaluation.

Summary of Comments

Since there are common requirements, bases and purposes for the rules, each DOT organization (term includes OAs and OST) involved may have relied upon comments submitted to the dockets of the other participating DOT organizations in developing its final rule. Where a DOT organization has relied upon a comment directed to the docket of another DOT organization, it will make available a copy of that comment. Comments addressing issues common to all of the OAs' alcohol prevention programs generally are addressed throughout this common preamble. Comments on OA-specific issues and the draft economic analyses have been addressed in the preambles to the OA rules. Comments on testing procedures, foreign application, drug testing rules and the drug testing random ANPRM have been addressed in the preambles to those documents.

Approximately 700 comments were filed in response to the NPRMs in the various OA alcohol misuse prevention rule dockets. (Some commenters filed identical comments to more than one DOT organization.) Commenters included local, State and Federal governmental agencies, trade associations, employers, employees, labor unions, consortia, medical professionals, substance abuse professionals and individuals. Most of the comments were filed by employers, followed by trade associations and governmental bodies. The majority of the commenters had a mixed reaction to the proposed alcohol misuse prevention programs and suggested changes on a variety of issues. Some commenters applauded the efforts of Congress and the Department to reduce accidents and save lives by removing from our nation's transportation systems employees in safety-sensitive positions who misuse alcohol. However, approximately one-third of the commenters opposed the specific proposals and only a small percent (less than 5 percent) were enthusiastic about them. A significant number of those in opposition to this effort cited its high cost unsupported by data indicating that there is a serious problem in their industry. Other commenters did not believe that mandatory alcohol testing will effectively deter or eliminate alcohol use among covered employees. As discussed below, many of the requirements of these rules are mandated by the Act and the Department has no authority to modify or ignore them.

In addition to soliciting written comments, the Department held three public hearings on part 40 and the OA alcohol misuse prevention and anti-drug rules in Washington, DC; Chicago; and San Francisco in February and March 1993. OST and all OAs, except USCG, which proposed only MIS requirements, participated in these hearings. The hearings, which ran for two days in each location, consisted of one day of testimony on part 40 and general issues and a second day for breakout sessions on OA concerns. Approximately eighty people presented testimony at those hearings. (Some commenters made presentations at more than one hearing.) Transcripts of all the hearings and any written materials submitted at the hearings are available in the appropriate rulemaking dockets. All comments received at those hearings have been fully considered in developing the final rules.

The Public Meeting

In February 1993, the Department held a public meeting to facilitate presentation and discussion of relevant information on workplace random testing and its impact on drug use deterrence. Over 20 participants presented papers and sparked discussions that ranged from mathematical models of drug testing rates and their impact on drug use to program data from corporations using random drug testing as part of a drug-free workplace strategy. The results of the meeting were inconclusive. The participants presented no definitive data that identified optimal random testing rates for achieving maximum deterrence of drug use. Many corporate representatives expressed views that favored reducing required random testing rates; however, they did not support their views with specific data on the causal or correlative relationship between random testing rates and drug use deterrence. The discussions also covered the corollary issue of detection of drug abusers who are not deterred by workplace drug prevention policies or programs. These issues also are relevant to alcohol random testing rates discussed later in this document.

The National Airline Commission

In April 1993, President Clinton established the National Commission to Ensure a Strong Competitive Airline Industry (also known as the National Airline Commission). Its charter was to review the financial condition of the airline industry and to make recommendations to assist the industry in recovering from the financial and operational difficulties it had faced during the last several years. The National Airline Commission met with industry, labor, and government representatives in a number of public meetings before drafting its final recommendations. Specific to this rulemaking, the Commission stated that "[n]ew pre-employment alcohol testing rules do not need to be adopted, and any random alcohol testing of airline employees should be at no more than a 10 percent rate."

The Existing Safety Problem

General Information and Definitions

Throughout this document, we have generally relied on or referred to the results of many studies concerning alcohol. Parenthetical references to these studies are included in the text; their full names are listed alphabetically in a bibliography in Appendix A. Copies of these studies have been placed in OST rulemaking docket 46574. It is important to note that the test data we have are not complete; often the database includes only those tests that were performed. Post-accident tests are conducted after some accidents, but not others, depending upon current regulatory requirements, the availability of testing personnel, and location and timing of accidents. When they are conducted, they may occur hours after the accident (e.g., in the railroad industry it takes an average of 5 hours before the post-accident tests can be conducted). Also, data are not comparable among the transportation modes, because of differences in reporting requirements, databases, and time periods. In addition, the referenced studies generally used different parameters and are therefore not comparable to each other.

Many of the words relating to alcohol are used interchangeably in our society, which may cause some confusion. In this document, we use the terms "driving while intoxicated" (DWI) and "driving under the influence" (DUI) to refer to the same thing: Violation of State and/or Federal alcohol concentration standards defining intoxication. "Zero tolerance" refers to an alcohol concentration standard of 0.00, or in some cases, 0.01 or 0.02. Limits on current testing technology establish the limit of detection at 0.02 concentration for accuracy and precision. "Impairment" and "under the influence" refer to the effect of alcohol ingestion on the performance of a safety-sensitive function, without regard to a specific alcohol concentration.

The Effects of Alcohol

The potential effects of alcohol misuse are substantial in terms of lives lost, injuries and environmental and property damage. Alcohol misuse claims at least 100,000 lives annually, 25 times as many as all illegal drugs combined. In 1992, 39,235 deaths occurred on our nation's highways, of which 36 percent involved a legally intoxicated driver or non-occupant (e.g., pedestrian), and another 9 percent involved a driver or non-occupant with at least some alcohol (with an alcohol concentration over 0.01). Alcohol is involved in 45 percent of total highway fatalities. (National Highway Traffic Safety Administration, "Traffic Safety Facts 1992—Alcohol").

Ethanol (the psychoactive component of alcoholic beverages) is a central nervous system depressant. It has been widely recognized for years that consumption of alcohol can degrade performance of demanding or delicate tasks. There is less agreement, however, about how much alcohol must be ingested before a significant degradation of performance occurs. Studies have indicated that the effects of alcohol vary among individuals, and, even for a given individual, alcohol will have varying effects depending on such factors as motivation, fatigue, and previous experience with alcohol (Zero Alcohol, 1987; Ryder, 1981; Landauer, 1983; Lister, 1983). One reason for the substantial variation among individuals is that ingestion of a specified quantity of alcohol by two people will not necessarily produce the same alcohol concentration in each, even if they have the same body weight (Zero Alcohol, 1987).

In one study, for example, it was found that a given body-weight-adjusted dose of ethanol could produce a range of alcohol concentrations of 0.036 to 0.095 (O'Neill, 1983). In addition, alcohol appears to enter the blood stream at different rates in different people (Zero Alcohol, 1987). In another study, subjects were given controlled doses and had equal amounts of food in their system. Nevertheless, the time required to reach the peak alcohol concentration varied from 15 to 90 minutes after ingestion (Wilson, 1984).

There also are performance differences between individuals that are unrelated to their blood alcohol concentration. It appears that highly skilled professionals may be better able to compensate for the physiological effects of alcohol than persons who are less skilled, particularly at lower alcohol concentrations. In two studies comparing the effect of alcohol on the performance of racing drivers and ordinary drivers on a closed track, the skill of the ordinary drivers showed some degradation at an alcohol concentration of 0.05, while the racing drivers showed no impairment until they reached substantially higher alcohol concentrations (Forney, 1961). Similarly, in a comparison of nonprofessional and professional pilots at alcohol concentrations of 0.04, 0.08, and 0.12, the nonprofessionals made numerous errors in tracking, while the professionals' tracking ability did not decrease even at the highest alcohol concentration (Billings, 1972). The study noted, however, that the professional pilots committed more procedural errors than normal after alcohol consumption. Compounding factors, such as fatigue and unexpected challenges, also are likely to affect results in a real-world situation.

Most States have adopted an alcohol concentration of 0.10 as the definition of intoxication in connection with laws imposing civil or criminal penalties for driving under the influence for non-commercial as well as for commercial operators. Some use it as a rebuttable presumption of a violation; others as a *per se* violation. Ten states have lowered their alcohol concentration standards to 0.08; and a number of states have adopted or are in the process of considering adoption of the existing 0.04 FHWA alcohol concentration standard for commercial drivers established by previous rulemaking. States with alcohol concentration standards for operating recreational vessels or aircraft typically use 0.10.

As indicated above, however, a number of laboratory studies have shown that performance on some tasks can begin to degrade at alcohol concentrations well under 0.10 (Moskowitz, 1973; Drew, 1959; Landauer, 1983; NHTSA, 1988). Some studies have suggested that performance degrades in a linear fashion, beginning with the lowest levels tested (Moskowitz, 1985; Drew, 1959). Blood alcohol concentrations (BAC) lower than 0.05 have been associated with increases in errors in tasks requiring divided attention, and it appears that cognitive performance is decreased for most individuals at BAC's of 0.04 or less (Zero Alcohol, 1987; Evans, 1974). Low alcohol concentrations have also been shown to affect a driver's stopping distance and to increase errors in steering (Laurell, 1977). There is no definitive answer to how much the risk of accident occurrence increases as a result of the performance deficit, but some relationship can be assumed. Those OAs in the Department that have set existing alcohol concentration standards for transportation workers (FAA, FHWA, FRA and Coast Guard) generally have used 0.04 as the prohibited concentration.

In its most recent edition of "Fatality Facts," the Insurance Institute for Highway Safety notes that "even at BACs as low as 0.02%, alcohol affects driving ability and crash likelihood. The probability of a crash begins to increase significantly at 0.05% BAC and climbs rapidly after about 0.08%. For drivers with BACs above 0.15% on weekend nights, the likelihood of being killed in a single-vehicle crash is more than 380 times higher than it is for nondrinking drivers."

The Alcohol Problem—Generally

The National Institute on Alcohol Abuse and Alcoholism (NIAAA) reported in 1987 that two of every three adults in the United States drink, but 10 percent of those drinkers consume half of the nation's beer, wine and liquor. The National Institute on Drug Abuse (NIDA) reported that an estimated 17 million U.S. adults are alcoholics, which is about six times higher than the number of cocaine users. (NIDA study, 1989). While it is difficult to estimate the precise cost to society from alcohol misuse, there is no doubt that the cost is enormous. The potential effects of alcohol misuse are substantial in terms of lives lost, personal injuries, property damage, business losses (lost productivity, absenteeism, increased health care costs, etc.) and environmental damage.

According to a Research Triangle Institute study performed for the Department of Health and Human Services, the overall economic cost to American society from alcohol misuse was $89.5 billion in 1980. This amount represents direct costs, such as medical treatment, and indirect costs, such as lost wages and reduced productivity. In 1987, the NIAAA estimated the economic costs to society of alcohol misuse to be nearly $117 billion a year, including $18 billion from premature deaths, $66 billion in lost productivity, and $13 billion for rehabilitation. Assuming the base numbers are still the same, inflation presumably has increased the cost in current dollars.

The National Academy of Sciences (NAS) recently released a study of drug use in the American workforce. The study reviewed the existing research literature on (1) the effects of drug and alcohol use on workplace performance and productivity, (2) the effectiveness of workplace interventions, and (3) the scope of alcohol and other drug use. The study concluded that more epidemiological and longitudinal research is needed and that the current research literature does not provide definitive conclusions about the scope of use, the specific effects of drug and alcohol use on work performance tasks, and the effectiveness of workplace interventions such as drug and alcohol testing and employee assistance programs. We believe that the existing research literature supports the actions that we are taking here and that data gathered as a result of these rules will provide useful additional information concerning these issues.

National Health Care Reform

Secretary of Transportation Federico Peña recently set a goal of reducing alcohol-related highway fatalities from 45 percent to 43 percent of total highway fatalities by 1997. He noted that alcohol-related traffic fatalities decreased by 20 percent between 1990 and 1992 due to increased alcohol awareness among teenagers and tougher enforcement measures that reduced impaired driving by repeat offenders. Motor vehicle accidents are a major health problem. They are the primary cause of death for the American population between 5 and 34 years of age, and account for half the total of injury deaths. More people are injured or die in motor vehicle-related accidents each year than from heart disease, cancer, and strokes combined. Alcohol involvement is the single largest factor in motor vehicle deaths and injuries, which as a whole cost the nation $14 billion in health care costs each year; any reduction in impaired driving would directly contribute to reducing health care and other economic costs. The Department estimates that reducing highway alcohol-related fatalities to 43 percent of total fatalities and reducing related injuries by a proportionate amount would save 1,200 lives annually and save U.S. taxpayers $282 million in health care costs annually. Obviously, reducing alcohol-related fatalities and injuries in other transportation industries would further reduce these costs.

The measures contained in these rules and the Department's partnership with industry and State and local governments to educate the public about impaired driving are part of a broad Department effort to reduce accidents and injuries resulting from alcohol misuse in each of the transportation industries, which will, in turn, reduce health care costs under President Clinton's health care reform initiative. Increased detection of alcohol misusers and their diversion into the health care system could increase health care costs in the short term, since individuals with serious alcohol problems tend to neglect health care until intervention. This increase would be mitigated to a certain extent by a decrease in alcohol-related absenteeism. However, long term health care costs should decrease because early intervention prevents more serious and more costly health problems later.

Alcohol Misuse in the Transportation Industry

General

The Department's previous alcohol misuse prevention efforts have developed unevenly and vary across the transportation industries. The existing OA rules focus on alcohol in terms of: Its effect on an individual's medical qualifications; prohibitions against on-duty use; operating while under the influence; use during defined pre-duty periods; and sanctions for violations of the Federal regulatory scheme, as well as sanctions for violations of State alcohol laws. Alcohol testing, with limited exceptions, has been left to State enforcement. (Current FRA rules require post-accident and authorize reasonable cause testing. The FAA requires crewmembers to submit to tests upon request by State and local officials and to furnish the results to the Administrator. The Coast Guard also has existing requirements concerning alcohol misuse, including some testing.) Each of the following sections briefly describes the existing OA rules on alcohol and contains available Departmental data on the alcohol problem in each segment of the transportation industry.

Aviation

The current FAA regulations prohibit a person from acting or attempting to act as an aircraft crewmember if he or she is under the influence of alcohol, has consumed any alcoholic beverage within the prior 8 hours, or has an alcohol concentration of 0.04 or greater. The FAA may medically disqualify a pilot with a history of drug dependence, alcoholism, or mental problems.

In 1987, the Department's Inspector General checked the National Driver Register (NDR) against records in the Florida Department of Motor Vehicles; it found that nearly 8,000 FAA-certified pilots in Florida had been convicted of drunk-driving offenses. Recent legislation allowed FAA and the rail industry to use the NDR to locate and review individual driving records to screen qualifications of airline pilots and locomotive engineers. The FAA was unaware of these DUI convictions because the pilots had not reported them to the FAA as required. The FAA then issued a DUI enforcement policy and a rule that includes, among other matters, a process for examining driving records. Pilots with 2 or more drug- or alcohol-related driving offenses within 3 years are subject to FAA certificate revocation action.

In 1991, the FAA began checking the NDR to identify pilot certificate holders who had drunk-driving convictions. Of pilots seeking medical recertification during the period May 1991 through May 1993, 5.79 percent had at least one DWI conviction reported. The total number of pilots (for scheduled and

non-scheduled airlines) who had one or more DWI's was 4,386, or 6.4 percent. There is no research that directly links impaired driving behavior to commercial aviation performance; however, impaired driving behavior is often associated with alcohol abuse and/or alcoholism.

There has never been an accident involving a large U.S. passenger airline in which the probable cause was attributed to alcohol use. However, in 1990, three Northwest Airlines pilots were convicted of flying while intoxicated between Fargo, ND, and Minneapolis, MN. Two hours after the flight ended, the crew captain's alcohol concentration was found to be 0.13; he testified that he drank 20 rum and cokes the night before the 6 a.m. flight. Starting in the early 1970's, the Air Line Pilots Association and the major airlines, in cooperation with the FAA, developed a program to identify alcoholic pilots, so that they could be treated and, as appropriate, returned to duty. More than 1,500 pilots have been through this program, with a relapse rate of approximately 10 percent. Since the program provides for stringent surveillance of treated pilots, there has been no compromise of safety. Nevertheless, the existence of such an extensive program and the occurrence of the Northwest pilots incident demonstrate that the air carrier industry is not immune to the problem of alcohol misuse.

The National Transportation Safety Board (NTSB) has collected the following data concerning the relationship between alcohol and aviation accidents: From 1975 through 1986, eleven part 135 carriers (all except one were commercial air taxi cargo planes; the exception was a non-scheduled charter carrier with a foreign crew) were involved in accidents in which alcohol was determined to be a factor. As noted above, there have been no part 121 or part 135 (large or air taxi/commuter air carrier) accidents in which alcohol has been determined to be a cause.

Virtually all commenters to the FAA docket claimed that, in light of the current financial state of the airline industry, DOT should not mandate an overzealous random alcohol testing program that is not statistically justified. As we noted above, we are constrained by the requirements of the Act. To the extent possible, we have tried to provide flexibility to employers that will enable them to make cost-conscious decisions for their specific circumstances. With respect to our lack of data, it is difficult to know whether the lack of a large U.S. passenger aircraft accident caused by alcohol is due to the fact that it has never happened or because we have no required testing and could not determine that alcohol was involved.

Motor Carriers

Currently, drivers found to be under the influence of alcohol or drugs are disqualified from operating a commercial motor vehicle (CMV). FHWA regulations prohibit the use of alcoholic beverages within four hours of reporting to work and also prohibit a driver from driving while having any measurable alcohol concentration or any detected presence of alcohol in his or her system. This effectively amounts to a zero alcohol limitation for CMV operators. In addition, a driver will not be considered physically qualified to drive a motor vehicle if, among other things, the driver has no current clinical diagnosis of alcoholism.

Accident statistics indicate that nearly half of the fatally injured noncommercial motor vehicle drivers had a measurable amount of alcohol in their blood (usually 0.10 or more) compared with about 15 percent of fatally injured drivers of medium and heavy trucks. Moreover, as the chart below indicates, for those truck drivers who had been drinking before an accident, the highest accident rate was among those consuming the most alcohol. Drivers of heavy and medium trucks with measurable alcohol concentrations are involved in about 750 fatal crashes annually, along with another 7,700 crashes resulting in personal injuries and 4,750 crashes involving only property damage (Zero Alcohol, 1987).

	Percentage of all fatal truck accidents	Percentage of the 15% of truck drivers who had alcohol in their blood
No Truck Driver Use of Alcohol	85.0	N/A
AC=0.10 or more	9.1	60
AC=0.04–0.10	2.7	18
AC=.03 or less	3.2	21

(Zero Alcohol, 1987) (FARS data tapes, 1982–1985) (AC means alcohol concentration)

In 1990, the NTSB published the results of a study of alcohol (and other drugs) used by CMV operators in fatal-to-the-driver, heavy truck accidents. Thirteen percent of the fatally injured drivers tested positive for alcohol. (Another 20 percent of the drivers tested positive for other drugs.) We also know that the cost of accidents to employers is substantial, over and above the lives lost, whether CMV accidents are caused by alcohol or something else. The National Safety Council estimates that an on-the-job accident is four times more costly than one that occurs in a personal vehicle, with an average cost to employers of $168,000 for a fatal accident and $6,900 for a non-fatal accident. The impact of on-the-job accidents caused by alcohol on employer costs is quite significant.

FHWA Pilot Project. The Act required the Secretary of Transportation to conduct a pilot program for the purpose of testing drivers on a random basis to determine if a driver has used alcohol or a controlled substance in violation of law or federal regulation. The pilot testing program was administered as part of the FHWA's Motor Carrier Safety Assistance Program (MCSAP) and implemented in four States for a period of one year. At the completion of the pilot program, the Department will issue a report of the program, including recommendations concerning the desirability and implementation of a MCSAP-administered random testing program. FHWA began the implementation of the required pilot project in Fiscal Year 1993 (October 1, 1993–September 30, 1994). (N.B.: the Fiscal Year for the Federal government may differ from that used by other entities.) Preliminary data from the pilot program show 88 breath test results of 0.02 alcohol concentration or greater out of 43,170 tests conducted (0.2 percent). However, in two States (Minnesota and New Jersey) submitting to the breath test was voluntary and from 5 to 10 percent of drivers randomly selected declined to take a breath test.

Rail

Current FRA regulations prohibit on-the-job use of, possession of, or impairment by, alcohol, or having an alcohol concentration of 0.04 or more, for employees covered by the Hours of Service Act. Workers who report for duty under the influence can be identified, removed from the workplace, and referred for assistance under Operation RedBlock or other similar peer prevention substance abuse programs operated by the railroad industry. The covered employee can be referred for assistance by a peer, a supervisor or himself/herself.

As part of the post-accident testing conducted under its current rules, FRA has gathered the following data. From February 1986, when mandatory FRA post-accident blood testing for alcohol began, through December 1992, 23 employees tested positive for alcohol (0.5 percent of employees tested). However, the number of positive findings has declined from 6 (1.0 percent of all persons tested) in 1989, to 1 (0.3 percent of all persons tested) in 1992. Since 1986, alcohol appears to have played a causal role in 11 accidents/incidents involving four deaths, three injuries, and property damage in excess of $3.3 million. In one, the engineer tested positive at an alcohol concentration of 0.16, and alcohol was found by the NTSB to be a contributing factor to the accident. The incident caused $1.58 million damage and the death of the engineer. In another accident, eight injuries and $194,000 in damages resulted, and a dispatcher tested positive at 0.15 alcohol concentration. In a 1990 accident, an engineer tested positive with an alcohol concentration of 0.05 after his train passed a stop signal and collided with another train, resulting in one injury and nearly $500,000 in property damage. In 1991, two brakemen were killed, one by a train when struck during a switching operation and the other when he fell from the side of a train. Post-mortem toxicology revealed alcohol concentrations of 0.04 and 0.08, respectively.

Reasonable cause breath testing under the FRA program or pursuant to railroad authority (triggered by rule violations, less serious accidents and injuries, or reasonable suspicion) has produced the following results: 11 of 348 persons so identified tested positive in 1986 (3.2 percent); 24 of 593 tested positive in 1987 (4.0 percent); 46 of 1005 tested positive in 1988 (4.6 percent); 31 of 973 tested positive in 1989 (3.2 percent); 32 of 2662 tested positive in 1990 (1.2 percent); 37 of 2798 tested positive in 1991 (1.32 percent); and 30 of 2850 tested positive in 1992 (1.2 percent). FRA regulations define a "positive" breath test as one indicating an alcohol concentration of 0.02 or above. The significance of these results with respect to measuring prevalence in the population is difficult to determine. It should be expected that a higher percentage of reasonable suspicion tests will be positive, since prohibited use or impairment had already been identified or suspected.

Transit

FTA does not have any existing regulations concerning alcohol. Its primary mission is to provide grants for the financing and improvement of transportation systems. Many of FTA's grantees, however, are subject to other Federal requirements on alcohol use. All commuter rail operations funded by FTA, for example, are subject to FRA regulations. Ferry operations that receive FTA funds are subject to USCG safety, drug and alcohol regulations, as well as the FTA drug and alcohol testing rules published today.

The need for alcohol testing of transit employees was highlighted by a December 28, 1990, accident in Boston, Massachusetts, where a transit operator, with an alcohol concentration above 0.10, crashed a trolley car, injuring 33 people. In addition, the Senate Committee on Commerce, Science, and Transportation's report on S. 676, No. 102–54 (May 2, 1991), noted that, in Philadelphia alone, transit operators have tested positive for drug or alcohol use in six major accidents between 1986 and 1990, involving at least 183 injuries and three deaths. (Separate figures for drug and alcohol involvement were not provided.) On August 28, 1991, a New York City Transit Authority motorman later found to have an alcohol concentration of 0.21 crashed a subway train resulting in 5 deaths and 171 injuries; this accident led to the prompt passage of the Act. Following issuance of the 1988 FTA anti-drug rulemaking, some industry members indicated that alcohol is a more serious problem than drugs.

An FTA document entitled, "Substance Abuse in the Transit Industry," November 1991, was based upon a transit agency survey and an employee survey. It revealed that responding transit managers perceived alcohol as the major substance of misuse and that 58 percent of the transit systems test for alcohol. Employee knowledge of coworker alcohol misuse was extensive; about 70 percent of employees surveyed had some knowledge, either through hearsay or by direct observation, of alcohol impairment of colleagues in the workplace during the previous year. About six percent of the safety-sensitive employees reported alcohol use during or just before duty. Another 15 percent of the safety-sensitive employees reported less frequent alcohol consumption, but at a nearly similar volume as those employees noted above. When comparing these data with those contained in the "National Household Survey on Drug Abuse: Population Estimates 1988" and the comparable 1990 NIDA survey, it appears that reported alcohol use in the transit industry is slightly lower than that reported for the general population.

Pipeline

RSPA has no specific regulations on alcohol. It does have a general regulation on health of pipeline workers at liquefied natural gas plants. Pipeline operators must look for any physical condition that would impair performance, including any observable disorder or condition that is discoverable by a professional examination.

We have no specific data on alcohol-related accidents or lost productivity data in this area; however, a number of the commenters in the anti-drug rulemaking seemed to believe that alcohol is a more pervasive problem than drugs in the pipeline industry. We also are aware that many companies in the pipeline industry are known to have alcohol prevention programs. We do not have statistics or data on the prevalence of the problem in the industry, but we cannot assume that pipeline workers are immune from the problem and must err on the side of safety. The largest single cause of pipeline accidents is excavation damage by people digging into pipelines (people not regulated by RSPA).

Legal Authority/Issues

Background

The following legal analysis was included in the common preamble to the proposed DOT alcohol testing rules published in the **Federal Register** of December 15, 1992, (See 57 FR 59389–59391) and is republished with this document for ease of reference. Since that time, there have been no significant case law developments to raise any doubts concerning the Department's stated belief that existing legal precedents support this rulemaking. To the contrary, the case law addressing the constitutionality of alcohol and drug testing is even more settled. Of particular note in this regard is a recent Federal district court ruling that random testing of commercial motor vehicle operators for alcohol and controlled substances pursuant to a one-year pilot study in four States, as mandated by section 5(b) of the Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102–143, title V, codified at 49 U.S.C. app. 2717 note, comports with the Fourth Amendment of the U.S. Constitution and is not an unreasonable search and seizure. *Owner-Operator Independent Drivers Association, Inc.* v. *Peña*, No. 93–1427, U.S. District Court for the District of Columbia, November 1, 1993.

General

The Omnibus Transportation Employee Testing Act of 1991 is a direct statutory mandate for alcohol testing in the aviation, motor carrier, rail, and transit industries. In addition to this authority, the general safety authority relied on for issuing the drug testing rules described above also provides a

basis for issuing alcohol misuse prevention rules by FAA, FHWA, FRA, and RSPA. Although the existing case law addressing the constitutionality of employee alcohol testing programs remains more sparse than that for drug testing, the existing legal precedents support this rulemaking effort to require alcohol testing in the regulated transportation industries.

Consistent with court findings in the area of government-mandated drug testing of employees, alcohol testing mandated by the government is considered a search within the meaning of the Fourth Amendment to the U.S. Constitution. See, *Schmerber* v. *California*, 384 U.S. 757, 767–768 (1966) ("compelled intrusions into the body for blood to be analyzed for alcohol content" must be considered a Fourth Amendment search); Skinner v. *Railway Labor Executives' Association*, 489 U.S. 616–617 (1989) ("Subjecting a person to a breathalyzer test, which generally requires the production of alveolar or 'deep lung' breath for chemical analysis * * * implicates * * * concerns about bodily integrity and, like the blood-alcohol test * * * considered in *Schmerber*, should also be deemed a search.")

In deciding whether a particular search comports with Fourth Amendment protections, courts must determine that under all the particular circumstances the search itself is "reasonable." As the leading case on bodily fluid testing, *Skinner*, makes clear, issuance of a warrant or the existence of probable cause or individualized suspicion is not a minimum essential requirement in establishing the reasonableness of a search under an administrative testing program.

In *Skinner*, the Supreme Court upheld regulations issued by the Federal Railroad Administration governing drug and alcohol post-accident and reasonable cause testing of railroad employees (49 CFR part 219). The Court concluded that the testing procedures and methods of procuring blood, breath, or urine for testing as set forth in subparts C and D of the FRA regulations "pose only limited threats to the justifiable expectations of privacy of covered employees." 489 U.S. at 628. In specifically focusing on the privacy implications of breath alcohol tests, the Court also pointed out that:

> The breath tests authorized by subpart D of the regulations [testing for reasonable cause] are even less intrusive than the blood tests prescribed by subpart C [post-accident toxicological testing]. Unlike blood tests, breath tests do not require piercing the skin and may be conducted safely outside a hospital environment and with a minimum of inconvenience or embarrassment. Further, breath tests reveal the level of alcohol in an employee's bloodstream and nothing more. Like the blood-testing procedures mandated by Subpart C, which can be used only to ascertain the presence of alcohol or controlled substances in the bloodstream, breath tests reveal no other facts in which the employee has a substantial privacy interest. * * * In all the circumstances, we cannot conclude that the administration of a breath test implicates significant privacy concerns. *Id.* at 625–626.

While the Court indicated that the collection of urine samples requires employees "to perform an excretory function traditionally shielded by great privacy, [thus] rais[ing] concerns not implicated by blood or breath tests[,]" it pointed out that the FRA collection procedures significantly reduced the degree of personal privacy intrusion. *Id.* at 626. The Court also examined the overall privacy expectations of covered railroad workers subject to the FRA testing requirements. It concluded that these expectations "are diminished by reason of ['covered employees'] participation in an industry that is regulated pervasively to ensure safety * * *" *Id.* at 627.

By contrast, the Court found that the government's interests in seeking to determine the cause of an accident or incident, deterring alcohol and illegal drug use by rail employees, and safeguarding the general public are compelling. Under these circumstances, the Court held that alcohol and drug testing pursuant to the FRA regulations are reasonable within the meaning of the Fourth Amendment. Also, the Court found that the government's justification in testing for misuse of alcohol—a legal substance—was entitled to no less weight than its justification for testing for drugs, the possession of which is unlawful. Thus, as the Court pointed out, the FRA-prescribed toxicological tests were not designed "to assist in the prosecution of employees, but rather to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs." Id. at 621–622, 633 (quoting FRA regulations at 49 CFR 219.1(a)).

The alcohol testing requirements for transportation industry workers published by each of the OAs in today's Federal Register are consistent with the Court's views in Skinner. Given the overwhelming public safety considerations associated with alcohol testing programs and the limited degree of intrusion into individual privacy interests engendered by the tests, the required testing programs would be constitutionally permissible under the Fourth Amendment.

Also, the requirement that an employer perform random alcohol testing that is performance-related, i.e., related closely in time to an employee's actual performance of safety-related duties, further demonstrates the reasonableness of the rules for Fourth Amendment purposes by ensuring that testing for misuse of alcohol is clearly related to the employee's performance of these duties. With respect to use of particular testing devices or methods, we note that, as a number of courts have pointed out, the reasonableness of a testing program does not necessarily turn on the existence of other alternatives that might be less intrusive. See *American Federation of Government Employees* v. *Skinner*, 885 F.2d 884, 897 (1989), *cert. denied*, 495 U.S. 923–924 (1990).

The lack of a demonstrated substance abuse problem among the workforce in a particular industry should not, of itself, pose insurmountable constitutional impediments to a testing program for that workforce. This point was made clear by the Supreme Court in *National Treasury Employees Union* v. *Von Raab*, 489 U.S. 656, 674–675 (1989), which was decided the same day as *Skinner*. In *Von Raab*, the Court upheld urinalysis testing for illegal drugs of U.S. Customs Service employees slated for promotions into positions that involved either interdicting illegal drugs or carrying a firearm. Despite the Commissioner of Customs' stated belief that "Customs is largely drug-free," the Court concluded that there was little reason to suspect that the Customs Service was "immune" from society's pervasive drug abuse problem and held that the testing program was constitutionally defensible as a means to ensure that employees promoted to these sensitive positions are drug-free. Id., at 660, 674. It stated that the government does not have to first establish that a specific industry has a problem. ("It is sufficient that the government have a compelling interest in preventing an otherwise pervasive societal problem from spreading through the particular context.") *Id.* note 3 at 675.

Skinner and *Von Raab* established the analytical framework for courts to resolve constitutional challenges to various employee substance abuse testing programs. Not surprisingly, Federal courts reviewing anti-drug abuse regulations issued by the Department have relied extensively on these two decisions in upholding drug testing of safety- and security-sensitive workers in industries regulated by the Department. See, *Bluestein* v. *Skinner*, 908 F.2d 451 (9th Cir. 1990), *cert. denied*, 111 S.Ct. 954 (1991) (upholding constitutionality of Federal Aviation Administration regulations requiring random drug testing of flightcrew members, maintenance personnel, and other categories of employees in the commercial aviation industry); *International Brotherhood of Teamsters* v. *Department of Transportation*, 932 F.2d 1292 (9th Cir. 1991) (upholding constitutionality of Federal Highway Administration regulations requiring random, biennial, pre-employment and post-accident drug testing of commercial motor vehicle drivers operating in interstate commerce); *Railway Labor Executives' Association* v. *Skinner*, 934 F.2d 1096 (9th Cir. 1991) (upholding constitutionality of Federal Railroad Administration's regulations requiring random drug testing of railroad workers in safety-sensitive positions); *International Brotherhood of Electrical Workers* v. *Skinner*, 913 F.2d 1454 (9th Cir. 1990), and *United Steelworkers of America* v. *Skinner*, 768 F. Supp 30 (D. RI 1991)(upholding constitutionality of Research and Special Programs Administration's regulations requiring random, pre-employment, and post-accident drug testing of safety-sensitive employees engaged in natural gas, liquefied natural gas, and hazardous liquid pipeline operations.) See also, *Transportation Institute* v. *Coast Guard*, 727 F. Supp. 648 (D.D.C. 1989) (upholding constitutionality of Coast Guard regulations requiring pre-employment, periodic, post-casualty, and reasonable cause drug testing for merchant marine personnel; however, regulations requiring random drug testing of all vessel crewmembers were found to violate the Fourth Amendment because the safety-sensitive duties performed by this entire class of employees was not evident. Although the court noted that random testing for employees could be constitutionally acceptable, it held that the Coast Guard had not adequately described the safety-sensitive functions of the covered employees to allow the court to establish the necessary nexus. The missing safety nexus was established in a subsequent Coast Guard final rule reimplementing random drug testing). Even pre-*Skinner* and *Von Raab* court decisions addressing the constitutionality of various employee alcohol testing programs have concluded that such testing comports with the Fourth Amendment. Thus, a State regulation requiring jockeys to submit to mandatory warrantless breath alcohol tests on each racing day was found to be constitutionally permissible. *Shoemaker* v. *Handel*, 795 F.2d 1136 (3d Cir.), *cert. denied*, 479 U.S. 986 (1986). Similarly, alcohol and drug testing during a pre-employment physical examination, work-related examination, return to work after unscheduled absence, or on the basis of reasonable suspicion or involvement in an accident or incident was upheld in the case of transit employees directly involved in the operation, maintenance, and decisionmaking of a public transit system. *Amalgamated Transit Union, Local 933* v. *City of Oklahoma City*, 710 F. Supp. 1321 (W.D. Okla. 1988). *Accord, Amalgamated Transit Union, Division 1279* v. *Cambria County Transit Authority*, 691 F. Supp. 898 (W.D. Pa. 1988) (mandatory drug and alcohol testing during annual physical examination does not violate Fourth Amendment).

Also, several more recent Federal court decisions upheld employee alcohol testing in the wake of *Skinner*. Thus, in *Transport Workers Union, Local 234* v. *Southeastern Pennsylvania Transportation Authority*, 863 F.2d 1110 (3d Cir. 1988), *vacated and remanded*, 492 U.S. 902 (1989), *off'd on remand sub nom. United Transportation Union* v. *Southeastern Pennsylvania Transportation Authority*, 884 F.2d 709 (1989), the U.S. Court of Appeals for the Third Circuit upheld, inter alia, random breath testing of transit operating employees. See also, *Tanks* v. *Greater Cleveland Regional Transit Authority*, 930 F.2d 475 (6th Cir. 1991) and *Holloman* v. *Greater Cleveland Regional Transit Authority*, 741 F. Supp. 677 (N.D. Ohio 1990), *aff'd*, 930 F.2d 918 (6th Cir. 1991) (upholding transit authority's drug and alcohol testing program requiring testing of blood, saliva, and urine in the face of challenges by two bus drivers subjected to random, post-accident, and periodic testing); *Moxley* v. *Regional Transit Services*, 722 F. Supp. 977, 980 (W.D. NY 1989) (upholding constitutionality of transit authority's drug and alcohol testing program and noting that "the Government's interest in the efficient and proper operation of the workplace is at a zenith where public's [sic] lives depend on the reliable and sober performance of Government employees").

Consistent with the Supreme Court's analysis in *Skinner* and *Von Raab* and lower court decisions, if the Congress determines that there is a need for properly-administered alcohol testing to ensure that employees in transportation industries are not adversely affected by alcohol while performing safety-sensitive functions, that need would outweigh the privacy interests of these employees and, thus, would be constitutionally permissible.

The Americans with Disabilities Act and DOT Drug and Alcohol Testing

The Americans with Disabilities Act of 1990 (ADA) (Pub. L. 101–36) does not, in any way, preclude or interfere with employers' compliance with the Department's new or existing drug and alcohol testing regulations. However, title I of the ADA, which prohibits discrimination against a "qualified individual with a disability," may affect the personnel actions an employer might wish to take with respect to some individuals who test positive for alcohol or drugs or otherwise violate the prohibitions of the Department's drug and alcohol rules.

Title I covers employers who have fifteen or more employees for more than 20 calendar weeks in a year (section 101(5)(A)). (Until July 26, 1994, only employers with 25 or more such employees are covered.) Covered employers may not discriminate against a qualified individual with a disability with respect to applications, hiring, advancement, discharge, compensation, or other terms, conditions or privileges of employment (section 102(a)).

Before discussing the effect title I may have on employer personnel actions following a positive DOT-mandated drug or alcohol test or other violations of DOT drug and alcohol rules, it is important to note the specific ADA provisions that address DOT drug and alcohol rules. The ADA specifically authorizes employers covered by DOT regulations to require their employees to comply with the standards established in those regulations, including complying with any rules that apply to employment in safety-sensitive positions as defined in the DOT regulations. (section 104(c)(5)(C)). By authorizing employers to require employees to comply with the standards in DOT rules, this provision authorizes compliance not only with testing provisions of the rules but also of other drug and alcohol-related provisions that affect safety-sensitive employees (e.g., pre-duty abstinence, on-the-job use). The legality under the ADA of employer compliance with DOT drug and alcohol requirements other than those concerning testing is underlined by several other provisions of title I. An employer may prohibit the use of drugs and alcohol in the workplace, may require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs in the workplace, and may require that employees conform to the requirements of the

Drug-Free Workplace Act (Pub. L. 100–690, title V, subtitle D) (section 104(c)(1–3)).

Concerning drug and alcohol testing and its consequences, the statute further provides that nothing in Title I shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to (1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and (2) remove such persons who test positive for illegal use of drugs and on duty-impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c). (Subsection (c) includes the statutory language cited above.) (section 104(e)). These ADA provisions clearly specify that the ADA does not interfere with the compliance by covered employers with DOT regulations concerning drug and alcohol use, including requirements for testing and for removing persons who test positive from safety-sensitive functions. Under the ADA, an employer is not viewed as "discriminating" for following the mandates of DOT drug and alcohol rules.

In considering the effects on the personnel actions that employers choose to take after a safety-sensitive employee tests positive for drugs or alcohol or otherwise violates DOT drug or alcohol rules, it is important to note that the ADA's prohibition of employment discrimination applies only with respect to a "qualified individual with a disability." The ADA specifically provides that an employee or applicant who is currently engaging in the illegal use of drugs is not a "qualified individual with a disability" (section 104(a)). The ADA does not protect such an employee from adverse personnel actions. For purposes of the ADA, the drugs that trigger this provision are those the use, possession or distribution of which is prohibited by the Controlled Substances Act (section 101(6)). The five drugs for which DOT mandates tests fit this definition (alcohol is not a drug covered by the Controlled Substances Act).

What does "currently engaging" in the illegal use of drugs mean? According to the Equal Employment Opportunity Commission (EEOC), whose rules carry out Title I, the term "currently engaging" is not intended to be limited to the use of drugs on the day of, or within a matter of days or weeks of, the employment action in question. Rather, the provision is intended to apply to the illegal use of drugs that has occurred recently enough to indicate that the individual is actively engaged in such conduct. (56 FR 35745–46, July 26, 1991). It is clear that an individual who has a positive result on a DOT-mandated drug test is currently engaging in the illegal use of drugs. Therefore, under Title I, an employer may discharge or deny employment to an individual who has a positive result on a DOT-mandated drug test.

This provision that an individual who is currently engaging in the illegal use of drugs is not a "qualified individual with a disability" does not apply, of course, if the individual is erroneously regarded as engaging in the illegal use of drugs. In addition, if an individual, even a former user of illegal drugs, is not currently engaging in the illegal use of drugs and (1) has successfully completed a supervised rehabilitation program or otherwise has been successfully rehabilitated, or (2) is participating in a supervised rehabilitation program, the individual can continue to be regarded as a "qualified individual with a disability," if the individual is otherwise entitled to this status (section 104(b)). An employer may seek reasonable assurance that an individual is not currently engaging in the illegal use of drugs (including requiring a drug test) or is in or has completed rehabilitation. Some employers (EEOC uses the example of a law enforcement agency) may also be able to impose a job qualification standard that would exclude someone with a history of drug abuse if it can show that the standard is job-related and consistent with business necessity (56 FR 35746, July 26, 1991).

Unlike the situation with respect to the current use of illegal drugs, the use of alcohol contrary to law, Federal regulation, or employer policy does not deprive an individual of status as a "qualified individual with a disability" that he or she would otherwise have under title I. An individual is protected by title I, however, only if the individual has a disability in the first place. (This is also true with respect to a former drug user or any other individual who seeks the protection of the ADA.) To have a disability, an individual must have a "physical or mental impairment that substantially limits one or more major life activities of such individual, a record of such impairment, or being regarded as having such an impairment" (section 1(2)). While, as the EEOC notes in its title I regulation, "individuals disabled by alcoholism are accorded the same protections accorded other individuals with disabilities" (56 FR 35752, July 26, 1991), not all individuals who use alcohol in violation of law, Federal regulation, or employer policy are "disabled by alcoholism."

The courts interpreting section 504 of the Rehabilitation Act of 1973 (with which ADA employment provisions are intended to be consistent) have concluded that alcoholism can be a disability which may call for reasonable accommodation. See, e.g., *Walker* v. *Weinberger*, 600 F. Supp. 757 (D.D.C., 1985); *Tinch* v. *Walters*, 765 F.2d 599 (6th Cir., 1985); *McKelvey* v. *Walters*, 596 F. Supp. 1317 (D.D.C., 1984); *Anderson* v. *University of Wisconsin*, 665 F. Supp. 1372 (W.D. Wis., 1987), *aff'd* 841 F.2d 737 (7th Cir., 1988); *Richardson* v. *Postal Service*, 613 F. Supp. 1213 (D.D.C., 1985); *Sullivan* v. *City of Pittsburgh*, 811 F.2d 171 (3rd Cir., 1987).

The logic of the ADA, and EEOC's regulatory provisions implementing the statute, suggest that, in determining whether an employee or applicant who has a positive result on a DOT-mandated alcohol test or otherwise violates a DOT alcohol rule is disabled by alcoholism, the employer would answer two questions. First, does the individual have a physical or mental impairment; e.g., is the individual an alcoholic? (People who test positive for alcohol are not necessarily alcoholic.) This question would probably have to be answered with the assistance of a physician or substance abuse professional. Second, if the individual is an alcoholic, does this impairment substantially limit a major life activity or is it (even erroneously) regarded as substantially limiting a major life activity? This question would be answered on a case-by-case basis, following EEOC's guidance (see 56 FR 35740–44, July 26, 1991). Under DOT's alcohol prevention rules, these determinations will be made by or in cooperation with the substance abuse professional that the rules require to be involved following a positive test or rule violation.

The determination of whether an individual is a qualified individual with a disability is made in two steps: (1) Whether the individual has the appropriate education, experience, skills, and licenses, and meets the other prerequisites of the position; and (2) whether the individual can perform the essential functions of the job desired or held with or without reasonable accommodation. Essential functions are the functions that the individual holding the position must be able to perform unaided or with reasonable accommodation. Several factors are considered in determining whether a job function is essential, including whether the employer actually requires employees in this position to perform the function, whether the position exists to perform the function, whether there are other employees who could perform the function, and whether there is a high degree of expertise or skill required to perform the function.

If the individual is qualified and determined to be disabled by alcoholism, then the employer may not discriminate against the individual on the basis of his or her disability and, if job performance and behavior are not affected by alcoholism, must make "reasonable accommodations" to the individual's known physical or mental limitations, unless the employer can demonstrate that doing so would impose an "undue hardship" on the employer's business.

The selection of an appropriate "reasonable accommodation" is done on a case-by-case basis, as EEOC guidance provides (see 56 FR 35744, July 26, 1991). Reasonable accommodation for an individual disabled by alcoholism could include such actions as referral to an Employee Assistance Program or other rehabilitation program, provision of rehabilitation services, and giving an employee sufficient time to demonstrate that rehabilitation had been successful. See, e.g., *Washington* v. *Department of the Navy*, 30 M.S.P.R. 323 (1986); *Swafford* v. *Tennessee Valley Authority*, 18 M.S.P.R. 481 (1983).

Even when an individual is disabled by alcoholism, however, the employer is not required to provide a reasonable accommodation that creates an "undue hardship." Undue hardship involves significant difficulty or expense in, or resulting from, providing an accommodation. EEOC describes an undue hardship as "an accommodation that would be unduly costly, extensive, substantial or disruptive, or that would fundamentally alter the nature or operation of the business." (*Id.*) This concept takes into account the financial resources of the employer (e.g., an accommodation that would be reasonable for a large business may be an undue hardship for a small business). But the concept is not limited to financial difficulty. For example, if a small trucking company determined that the accommodation that one of its drivers needed for an alcoholism-related disability was lengthy in-patient rehabilitation, the company not only might find the accommodation beyond its financial resources but also too disruptive of its operations (i.e., a temporary replacement would have to be hired or the work of the firm be reduced significantly).

Under title I, an employer may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance or behavior as it holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee (Section 104(c)(4)). For example, if, as the result of alcoholism, an employee is chronically late or absent, or makes frequent job errors, the employee would be subject to personnel action on the same basis as any other employee who exhibited similar behavior for other reasons. (However, if the alcoholic employee were subjected to personnel actions that were not used against non-alcoholic employees who were chronically late or absent, or made frequent job errors, then the alcoholic employee might have a cause of action under the ADA.) The employer is not precluded from accommodating this alcoholic employee, but is not required to do so.

It should also be pointed out that the ADA does not preclude an employer from disciplining or dismissing an employee who commits a violation of the employer's conduct and performance standards, even if the individual is an alcoholic or has another disability. For example, a violation of a DOT operating administration's alcohol misuse rules (e.g., a test demonstrating a prohibited alcohol concentration) could be a violation of the employer's performance and conduct rules, for which the employer's policy could call for the employee's dismissal. This result would not violate the ADA.

There are also situations in which meeting qualification standards of DOT safety rules, or having a valid license or certificate from a DOT operating administration, is an essential job qualification. If a truck driver does not meet FHWA qualification standards to obtain a Commercial Driver's License from a State, or if a pilot does not qualify for an FAA medical certificate, that individual is not a "qualified" individual with a disability, even if the reason for the failure to meet DOT qualifications is a condition that an employer might be required to accommodate under the ADA. The legislative history of the ADA specifically recognizes this special status for DOT qualification standards (see Senate Report 101–116 at 27, August 30, 1989).

Another issue that has been raised in context of the relationship between the ADA and alcohol testing concerns whether an alcohol test is a "medical examination." Non-regulatory guidance issued by the EEOC suggests that "a test to determine an individual's blood alcohol level would be a 'medical examination' and only could be required by an employer in conformity with the ADA." It should be pointed out that this statement does not, on its face, apply to breath testing (or other methods that do not involve blood samples) for alcohol. The EEOC has not determined whether it views breath testing for alcohol as a "medical examination."

The Department of Transportation takes the position that alcohol testing under the program required by these rules is not properly viewed as a required medical examination. It is not the collection of a breath or body fluid sample that makes a test "medical" in nature. The tests in question are solely for the purpose of determining whether an employee has violated a DOT-mandated safety requirement. The tests are not used for any diagnostic or therapeutic purpose. They are not intended to ascertain whether an employee has any medical condition, and they will not be used for such a purpose. Under these circumstances, the policies underlying the ADA provisions on medical examinations do not apply. Because of the uncertainty that may be created by the EEOC guidance, however, it is useful to consider the implications of regarding alcohol tests as "medical examinations." (The Department is working with the EEOC to resolve this uncertainty.)

Even if alcohol tests are considered to be "medical examinations" for ADA purposes, the effects on compliance with DOT-mandated alcohol testing would be minimal. "Medical examinations" are permitted by the ADA if made after a conditional offer of employment. The pre-employment testing approach set forth in the rules clearly fits this model. For this reason as well as for reasons of efficiency, the Department believes that conducting pre-employment testing after an offer of employment, but before the first performance of a safety-sensitive function, has much to recommend it. In addition, EEOC has stated to the Department that, because of the statutory requirement in the Omnibus Transportation Employee Testing Act of 1991 for pre-employment testing, EEOC does not object to pre-offer alcohol testing under the DOT rules mandated by the statute. Other types of testing mandated by these rules, such as reasonable suspicion, post-accident, and random testing, are likewise acceptable under the ADA. (See 29 CFR 1630.15(e), which makes compliance with the requirements of Federal law or

regulation a defense to an allegation of discrimination under Title I of the ADA.) Congress passed the Omnibus Act more than a year after it passed the ADA, and the former statute's specific mandates for various types of testing clearly, as a matter of statutory interpretation, would prevail over any contrary inferences anyone would attempt to draw from the more general provisions of the latter.

A related issue concerns the confidentiality of the records of alcohol tests. To the extent that an alcohol test is regarded as a medical examination, the records of the test would be "treated as a confidential medical record" under the ADA (see Section 102(c)(3)(B) of the ADA). Under this provision, records of a medical examination are required to be kept in a separate medical file. The purpose of any requirement for confidentiality of a medical record is to safeguard the employee's right of privacy with respect to personal medical information. An employee may, of course, waive such a right. (As a general matter, medical confidentiality provisions allow a patient to permit medical information to be provided to third parties.) The DOT rules, by requiring the employee to consent, in writing, to the provision of test records to subsequent employers or third parties, are fully consistent with normal medical confidentiality waiver practices and with the ADA. It would clearly be anomalous to view a medical records confidentiality provision as prohibiting an employee from voluntarily agreeing that a previous employer, or physician, could send a medical record to a current employer or physician.

The Family and Medical Leave Act of 1993

The Family and Medical Leave Act of 1993 (FMLA) provides certain protections for employees with "serious health conditions." These protections include time off for treatment of these conditions and reinstatement in the employee's position or an equivalent position. Under Department of Labor (DOL) regulations implementing FMLA, "treatments for * * * substance abuse are serious health conditions if all conditions of the regulation are met" (29 CFR 825.114(c)). The inclusion of substance abuse treatment under the DOL regulations has raised some concerns about the potential effect of FMLA requirements on DOT drug and alcohol testing requirements.

As is the case with the ADA, the FMLA does not conflict with DOT drug and alcohol rules. FMLA requirements do not prevent an employer from testing employees as required by DOT rules; nor do they excuse employees from testing requirements or prohibitions on the use of drugs or the misuse of alcohol. They do not interfere with DOT's requirement that an individual who tests positive may not perform safety-sensitive functions again until the conditions established by DOT rules have been met. (We would point out that, just as every employee who tests positive for alcohol or drugs does not necessarily have a "disability" for ADA purposes, such an employee does not necessarily have a "serious health condition" for FMLA purposes.)

DOT drug and alcohol rules do not prescribe what personnel actions, if any, an employer may take with respect to an individual who tests positive. In certain circumstances, Federal law (e.g., the ADA), State law, or labor-management agreements may constrain the discretion that employers would otherwise exercise with respect to such personnel actions. The FMLA may create additional constraints in some situations.

The scope of additional constraints on employer personnel actions stemming from the FMLA is limited. The statute applies only to employers with 50 or more employees. The statute's protections apply only to employees who work for such an employer at least 1250 hours during a 12-month period. DOL's rules establish a number of procedural requirements that employees must meet to avail themselves of the FMLA's protections. DOL also sets some substantive limits on the applicability of FMLA protections to treatment for substance abuse:

> Treatment of substance abuse may also be included, such as where a stay in an inpatient treatment facility is required. On the other hand, absence because of the employee's use of the substance, without treatment, does not qualify for leave. It should be pointed out that the inclusion of substance abuse as a "serious health condition" does not prevent an employer from taking employment action against an employee who is unable to perform the essential functions of the job—provided the employer complies with the ADA and does not take action against the employee who has exercised his or her right to take FMLA leave for treatment of that condition. (58 FR 31799; June 4, 1993).

The Department will work with DOL to resolve any questions that arise concerning the relationship of DOT drug and alcohol testing requirements and FMLA requirements.

Overview of the Operating Administrations' Final Rules

Purpose

The OAs covered by the Act and RSPA are establishing alcohol misuse prevention programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform safety-sensitive functions in their industries. Generally, the OA rules prohibit any alcohol misuse that could affect performance of a safety-related function, including (1) Use on the job; (2) Use during the four hours (in most cases) before performance of a safety-sensitive function; (3) Having prohibited concentrations of alcohol in the system while performing safety-sensitive functions; (4) Use during the 8 hours following an accident if the employee's involvement has not been discounted as a contributing factor in the accident or until the employee tests below 0.02; and (5) Refusal to take a required alcohol test. The rules require pre-employment (except for RSPA), reasonable suspicion, random (except for RSPA), post-accident, return-to-duty and follow-up testing for alcohol. The rules also establish a performance standard for adjusting the initial 25 percent random alcohol testing rate for each transportation industry (except for RSPA). Published elsewhere in today's **Federal Register** is a proposal to establish a somewhat different performance standard for adjusting the random drug testing rate for each transportation industry.

The part 40 procedural final rule published elsewhere in this **Federal Register** provides for two tests to ensure accuracy: A screening and a confirmation test. It provides more flexibility to use different testing technologies for screening tests than we had proposed. However, until additional devices can be evaluated and approved as meeting DOT precision and accuracy criteria and procedures for their use are established, the screening tests must be conducted using breath testing devices on the NHTSA CPL, which includes devices with and without printers. Evidential breath testing devices that provide printed results and sequential numbering of tests must be used for confirmation tests. We are separately proposing to permit blood testing in reasonable cause and post-accident situations where an EBT is not readily available. The primary purpose of the testing provisions is to deter and detect misuse of alcohol.

Following a finding that an employee has misused alcohol, as determined through testing or other means, the rules generally require the employee's removal from safety-related functions and provide a bifurcated system of consequences:

(1) Following a determination that the employee has violated prohibitions in these rules, the employer must remove the employee from and cannot return the employee to a safety-sensitive function until, at a minimum,

(a) The employee undergoes evaluation, and where necessary, treatment,

(b) A substance abuse professional determines that the employee has successfully complied with any recommended course of treatment, and

(c) The employee tests at less than 0.02 on a return-to-duty test.

(2) An employee with an alcohol concentration of 0.02 or greater but less than 0.04 is not permitted to perform safety-sensitive functions for

(a) A minimum of eight hours (except FHWA), or

(b) Until a retest shows that the employee's alcohol concentration has dropped below 0.02.

The rules also impose reporting and recordkeeping requirements and provide for alcohol misuse information for employees, supervisor training, and referral of employees to a substance abuse professional (SAP) for evaluation.

There are some differences among the OA final rules. For example, some OAs have regulatory authority over employers/companies only; others have regulatory authority over employees. Also, employees holding a license or certificate may be subject to agency action against their license or certificate under other rules in addition to the consequences established for violations of these rules. See the individual OA rule preambles for an explanation of any differences from the general requirements discussed above.

Applicability

The existing OA drug rules generally cover persons who perform safety-sensitive functions in commercial transportation. Initially, they affected approximately 4 million persons and include, for example, commercial truck/bus drivers, pilots, pipeline employees, licensed and documented mariners and others serving on board a vessel with a licensed operator, and railroad workers subject to the Hours of Service Act. An FTA final rule published elsewhere in today's Federal Register adds drug testing for such workers already in bus and subway operators. In accordance with the mandates of the Act, the FHWA rule adopting the alcohol provisions described in this notice preamble extends their coverage as well as the coverage of the existing FHWA drug rules to persons required to obtain a CDL, including intrastate truck and motor coach operators. This includes drivers and employers not currently covered by the Federal Motor Carrier Safety Regulations (FMCSRs) such as: Federal, State and local government agencies, and church and civic organizations. As a result, the total number of persons covered by the alcohol and drug testing rules has increased to over 7 million. (Maritime industry personnel are covered by the drug rules, but not by these alcohol rules (other than certain ferry boat personnel), although USCG does have some alcohol testing requirements and intoxication standards already in effect.)

In the common preamble to the NPRMs, we asked whether there is any rationale for covering a different population for alcohol testing than drug testing; no one provided such a rationale. The same employees who would cause safety problems if they are using illegal drugs would cause problems if they misuse alcohol. Consequently, the Department continues to believe that the basis for imposing alcohol misuse prevention requirements should be the performance of safety-sensitive functions. Each OA rule defines "covered employee" with respect to its industry and generally covers the same population under its alcohol prevention program. Numerous commenters addressed the categories included in the OAs' definitions of "covered employee." Please refer to the specific OA preamble for the OA's disposition of those comments. Although the term "security" is used with respect to aviation passenger and baggage screeners, that term is redundant and unnecessary; these persons are performing what the FAA defines as safety-sensitive functions—maintaining aircraft security—as opposed to simply having a security clearance (which results in coverage of many Federal employees under government drug testing programs).

The OA rules focus on function rather than a defined job or position. An individual's job may encompass several different functions, some of which are not safety-sensitive. Since alcohol is a legal substance, alcohol use is relevant only to the extent it affects performance of a safety-related function. As a safety regulatory matter, for example, we are not concerned if an aircraft mechanic has a drink before or while performing functions that are not safety-related (as long as no other rule is violated); if the mechanic is receiving all-day training on retirement planning along with non-safety employees and the other employees can have a drink at lunch, the mechanic may also.

Alcohol Testing Procedures

Each of the OA final rules requires employers to ensure that all alcohol testing conducted under these rules complies with the procedures for alcohol testing contained in the amended 49 CFR part 40 entitled "Procedures for Transportation Workplace Drug and Alcohol Testing" issued by DOT elsewhere in today's Federal Register. Each OA final rule incorporates the new 49 CFR part 40 by reference. Since all of those OAs publishing final rules today require alcohol testing conducted by their covered employers to comply with the part 40 testing procedures, the DOT is issuing these procedures separately in order to avoid their unnecessary duplication in each OA rule.

Part 40 requires both screening and confirmation tests for alcohol. The rules require that screening tests with a result of 0.02 alcohol concentration or greater be confirmed by an EBT listed on the NHTSA CPL, which also is capable of printing out each test result and air blank (test of ambient air), and sequentially numbering each test. This provides an immediate confirmed result, which enables immediate removal of the employee who has misused alcohol and also provides a printed record of the result that will prevent disputes about the accuracy and integrity of the testing process. EBTs are reliable and highly accurate at detecting low alcohol concentrations and their use is possible in all transportation settings envisioned in those industries for which the OAs are issuing rules today.

Breath testing devices have been in use a long time; all States accept evidential breath test device results as credible evidence of an individual's violation of a law establishing a *per se* prohibited blood alcohol concentration, so long as the devices are properly calibrated and operated by trained personnel. Each device on the NHTSA CPL, with or without printed results, has been accepted by at least one State for use in court proceedings in that State. (Acceptance by a State of a particular device is not, however, necessary for the use of that device in that State for purposes of the DOT testing program.) In addition, part 40 establishes training requirements for breath alcohol technicians (BATs), maintenance and calibration requirements in a quality assurance plan for EBTs, and additional testing

procedures to protect the integrity of the process.

In response to the comments received, the Department believes that greater flexibility to use different testing technologies would benefit employers, especially for testing in remote locations and tests for which employers do not control the timing or "triggering" event—reasonable suspicion and post-accident. At the same time, the Department believes that any devices used in the testing program must meet the precision and accuracy criteria established by part 40 that the Department has determined are necessary to the integrity and success of these programs and to ensure protection for employees. Only EBTs on the CPL, including those without printers, currently meet these criteria; those without printers can be used for screening tests but part 40 requires that a logbook be kept with each such device to provide a crosscheck for the occurrence of a test and its result.

In addition to the changes concerning EBTs without printers, part 40 will, in the near future, provide more flexibility to use different testing technologies for screening tests than we proposed in the OA NPRMs. NHTSA will develop model specifications (using precision and accuracy criteria), evaluate additional screening devices against them and periodically publish a conforming products list of those additional screening devices (not exclusively breath testing devices) that meet the model specifications. We expect that publication of the model specifications will encourage manufacturers to develop products that meet them. NHTSA will approve those devices that meet its criteria for use in our alcohol testing programs. Please note that the Department also will have to undertake separate rulemaking proceedings to establish procedures for the use of any devices after they are approved. The proposed NHTSA model specifications are published elsewhere in today's **Federal Register**. NHTSA expects to begin evaluation of screening devices after the final model specifications are published. The device manufacturers also would have to certify that they meet existing Food and Drug Administration (FDA) good manufacturing practices and labeling requirements. The timing for the NHTSA approval of screening devices will depend on the volume of devices submitted for approval. The Department is continuing to coordinate with the FDA and other appropriate agencies to determine if additional product evaluations for alcohol screening devices will be necessary.

We also are considering requiring blood alcohol testing in those reasonable cause and post-accident situations where an EBT is not readily available. It would provide increased flexibility to employers to use blood testing where an EBT is available, but would be difficult or expensive to transport to the test site. One benefit of requiring blood alcohol testing in these limited situations is that employers would not have to make EBTs available in as many locations as otherwise would have been necessary. This would also mean that an employer must conduct a blood test where a test would otherwise not occur because an EBT is unavailable. The blood alcohol testing proposal, including blood alcohol testing procedures, is addressed in a separate NPRM published elsewhere in today's **Federal Register**. Before we issue a blood alcohol testing final rule, we need to resolve specimen collection issues and determine how to identify those laboratories that we can rely on to test blood samples accurately. The NPRM also seeks comment on other issues, such as safeguards for employees and procedures for shipping and documentation of blood samples.

Please refer to the part 40 preamble for discussion of other testing methods that are not appropriate for use in these programs at this time, such as urine, saliva, or non-alcohol-specific devices for "performance" or "fitness-for-duty" testing. The flexibility provided by part 40 will enable reconsideration of alcohol-specific testing devices for future use if the device or method meets our precision and accuracy standards and other requirements.

Definitions

Some of the definitions, such as those defining *accident, covered employee, and safety-sensitive function*, among others, will be different in each OA final rule based on differences in the individual regulated industries. Other definitions, such as *alcohol*, are identical in all of the OA final rules. In response to comments, we have changed the definition of *alcohol* to include other low molecular weight alcohols, such as methyl and isopropyl alcohols that could be used as intoxicants, in addition to ethyl alcohol. This will avoid arguments that a positive reading on a testing device could reflect the presence of other non-prohibited alcohols. They also should be prohibited since they have the same adverse effect. *Alcohol concentration* in all of the rules means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under these rules. For example, a breath alcohol concentration of 0.04 means 0.04 grams (four one-hundredths of one gram) of alcohol in 210 liters of expired deep lung air. This breath standard is analogous to a blood alcohol concentration of 0.04.

The definition of *alcohol use* means consumption of any beverage, mixture, or preparation, including any medication, containing alcohol. Some commenters suggested an exception for medication if the employee notifies the employer and the employee's alcohol concentration never reaches 0.02; others strongly opposed such an exception. (See FAA preamble to its alcohol prevention rule for discussion of this issue in the context of the more severe consequences for certain aviation employees imposed by the Act.) Alcohol-based drugs could be used to satisfy alcohol needs rather than medical needs, if permitted. Since ingestion of a given amount of alcohol produces the same alcohol concentration in an individual whether the alcohol comes from a mixed drink or cough syrup, the Department is applying the prohibitions in these rules to the use of any substance containing alcohol, such as prescription or over-the-counter medication or liquor-filled chocolates. Allowing an exception for medication would make it very difficult, if not impossible, to enforce the rules. We believe there are now non-alcohol alternatives for all non-prescription medications. In addition, prescription medications containing alcohol may have a greater impairing effect due to the presence of other elements, e.g., antihistamines. We are not aware of prescription medications used (over a long term) that cannot be formulated in an aqueous preparation and that would themselves be safe to use while at work. Therefore, we have decided to prohibit the use of all medications containing alcohol during, and in the four hours prior to (eight hours for FAA), the performance of a safety-sensitive function. Several commenters opposed a prohibition on the possession of medication containing alcohol. We do not impose such a prohibition in these rules. However, some DOT agencies already have existing regulations tailored to their industries that prohibit or impose conditions on the possession of medications containing alcohol while on the job.

The definition of *substance abuse professional* (SAP), as proposed, encompassed licensed physicians, limited to medical doctors and doctors of osteopathy; as well as licensed or certified psychologists, social workers and employee assistance professionals; we had asked commenters who else should be included. In response to comments, we have included alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC), a national organization that imposes qualification standards that we believe are necessary to perform a SAP's functions. We rejected suggestions that the definition include State-certified counselors, because the standards vary dramatically by State; in some States, certified counselors do not have what we consider the necessary experience and/or training. All of the categories listed in the definition must have knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders in order to become a SAP.

We have added a definition of *violation rate*, which each OA will use in annually determining whether covered employees in a particular industry meet the performance standard for adjusting the random alcohol testing rate for that industry. The violation rate represents the total of the number of covered employees as reported in OA MIS data annually found during required random tests to have an alcohol concentration of .04 or greater plus the number of employees who refuse a random alcohol test, divided by the total of the number of employees in the industry given random alcohol tests plus the number of those who refused a random alcohol test.

Preemption of State and Local Laws

The Act contains an express preemption of State and local requirements that are inconsistent with the Federal alcohol rules applicable to the aviation, highway, and transit industries. Through its implementation of the Hazardous Materials Transportation Act (HMTA), the Department has long interpreted statutory preemption under an inconsistency standard by using a two-pronged test. The test was derived from Supreme Court decisions on preemption under the Constitution, has been followed successfully by the Department, and has been upheld by court decisions on preemption under the HMTA. In 1990, at the request of the Department, Congress recognized this long-standing interpretation by incorporating it into the statutory preemption provision of the HMTA. (49 U.S.C. App. 1804) The final rules adopt this interpretation of the inconsistency standard for preemption by incorporating the two-pronged test.

Generally, the OA rules preempt any State or local requirement if it is not possible to comply with both the Federal and the State or the local requirements, or if compliance with the State or the local requirement will frustrate the Federal requirement. For example, a State requirement prohibiting the alcohol testing of transit employees is preempted. Also a local requirement for a blood test (outside the limited exception proposed elsewhere in today's **Federal Register**—assuming the proposal will be adopted) to confirm alcohol use by a commercial truck driver is preempted since it will frustrate accomplishment of the Federal rule by adding additional complicated procedures that may make it difficult to fully and accurately comply with the DOT procedures and by adding costs that may make compliance impossible for many companies. The rules do not preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the rule applies specifically to transportation employees or employers or to the general public. One commenter asked whether a State could adopt and enforce the same alcohol prevention requirements as those we establish here. Since the same rules would not burden or conflict with the Federal program, a State would be free to do so.

The purpose of preemption is to avoid the confusion and expense of inconsistent requirements for employers or testing entities that operate in several States and to prevent interference with the functioning of the Federal program by extraneous, burdensome requirements that may defeat its purpose and benefits by making effective implementation difficult or impossible (e.g., by requiring that employers pay for any rehabilitation or requiring confirmation tests beyond those required by DOT). Because of the nationwide application of the Federal program and the interstate nature of the operations covered, even minor requirements in the aggregate may become unduly burdensome. For this reason, we intend to scrutinize closely State and local requirements under this preemption authority. Comments on preemption are specifically addressed in the OA preambles.

Other Requirements Imposed by Employers

Some employers commented that they want to be free to impose stricter requirements on their workforce. Except as provided in the OA rules, employers retain their existing authority with respect to alcohol testing and termination or rehabilitation of their employees and employees retain their rights with respect to the use or possession of alcohol. An employer may continue to conduct alcohol testing under his/her own authority in addition to meeting the requirements of these rules and provide or support alcohol rehabilitation programs. Employees are free to consume alcohol on their own time so long as that consumption does not violate any of the provisions of these rules or other applicable rules. Some commenters asked us to preserve their right to collectively bargain certain testing requirements. The rules contemplate that many aspects of the employer/employee relationship with respect to these programs will be subject to collective bargaining. For example, who pays for assessment and evaluation is one area we explicitly do not regulate. However, employers and employees are not free to bargain away any of the requirements of these rules. Whatever rights they may have to bargain collectively or otherwise agree on employer-employee relations, they cannot change or ignore Federal safety standards.

Requirement for Notice

Before performing an alcohol test under these rules, the employer must notify the employee being tested that the alcohol test being administered is required by these rules. The notice can be oral, written or as specifically provided in an OA regulation. An employer shall not falsely represent that a test administered under other authority is being administered under Federal rules. The few comments that we received on this issue were evenly divided between those that supported the requirement and those that opposed it. Generally, we think the required alcohol testing form is sufficient to constitute adequate notice.

Starting Date for Alcohol Testing Programs

Most commenters seemed satisfied with the proposed implementation schedule. Several larger employers requested additional time to develop their programs, enter into service provider contracts and to complete collective bargaining; some large employers believed that it would be fairer if all employers had to implement their programs in one year. The attached OA final rules establish the specific implementation schedules for each industry. The schedules are similar to those proposed in the NPRMs and those used in the DOT drug testing rules.

Generally, large employers will have the better part of one year from the

effective date of the final rules in which to implement the requirements and small employers have nearly two years. To accommodate the annual reporting requirements, large employers must implement these programs on January 1, 1995 and small employers must implement these programs on January 1, 1996. Each OA final rule defines employer size and notes variations justified by industry differences; FAA and FRA have a three tier phase-in for covered employers and contractors. The timetables generally allow smaller employers to join alcohol misuse programs already established by larger employers or consortia, which should reduce their costs. Consideration and appropriate mitigation of the rules' impacts on smaller employers is required by the Regulatory Flexibility Act and Executive Order 12866, "Regulatory Planning and Review." We believe it appropriate for small employers to have more time since their size alone may make it more difficult to implement an alcohol misuse prevention program within one year (lack of expertise, resources, etc.). Our experience in the drug testing area shows that these implementation schedules provide sufficient time for larger employers to establish their programs.

All employers must have an alcohol misuse program in place January 1, 1996. Thus, employers that begin to operate after the effective date of these rules must have their programs in place by the deadline according to size or by the time they initiate their operation, whichever is later. These timetables also take into account the time needed by the manufacturers to produce the required modifications to breath test devices or to develop alternative devices. In addition, they will allow time to develop conforming products lists (CPLs) for other screening devices and to complete the blood alcohol testing rulemaking.

Prohibitions

The OAs are establishing the following combination of prohibitions designed to prevent any adverse alcohol effect on a covered employee during performance of safety-sensitive functions.

Alcohol Concentration

Unlike some other drugs, alcohol is a legal substance with legally and socially acceptable uses for persons 21 years of age and older. The Department already has some prohibitions on alcohol misuse. Those OAs that traditionally have regulated employee safety-related conduct in commercial transportation (FAA, FHWA, FRA and USCG) have selected a 0.04 alcohol concentration as the *per se* standard for determining whether an individual is under the influence of alcohol, and prohibit any use of alcohol on the job. Some OA's (FAA, FHWA and USCG) subject certain persons to pre-duty abstinence periods. FHWA rules require that commercial vehicle operators with any measurable amount or detectable presence of alcohol be placed out-of-service for a 24-hour period. Until adoption of these rules, RSPA and FTA did not have alcohol concentration prohibitions, primarily because neither directly regulates employees.

Today's final rules prohibit covered employees from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. It is not possible to relate a given alcohol concentration definitively to impairment in specific individuals. However, as noted earlier, the presence of any alcohol can have an adverse effect on an individual. As a result, the rules define alcohol concentration in terms of breath testing measurement and specifically relate a violation of this prohibition to the alcohol concentration as indicated on the breath testing device. In addition, no employer who actually knows that an employee has that concentration can permit the employee to perform or continue to perform safety-sensitive functions.

Commenters addressing the proposed breath alcohol concentration standard generally supported one of three choices: a 0.04 alcohol concentration standard that triggers the full sanctions of the rule with no consequences attached to lower levels; a similar 0.02 standard; or the proposed 0.02/0.04 standard with its bifurcated consequences.

Most commenters supported a 0.04 alcohol concentration standard. These commenters noted that this standard has been in place in aviation, maritime, and railroad regulations for a number of years, and is the standard that the States are required to adopt for commercial motor vehicle drivers. Many commenters also noted that the evidence of impairment below 0.04 was equivocal, with as many or more studies finding no impairment below that concentration as those that identified some impairment. Commenters further stated that the bifurcated system would be difficult to implement and hard for employees to understand. Finally, both labor organizations and employers stated that a likely consequence of a test result between 0.02 and 0.039 would be termination of employment under company authority. Labor organizations stated that this consequence would be unfair and that, if the final rules imposed a standard lower than 0.04, employers should be prohibited from terminating employees based on such a result.

We agree with commenters that an alcohol concentration of 0.04 represents the point at or above which impairment for most individuals rises dramatically, thus justifying its use as the standard for commercial transportation employees and for imposing full sanctions under the rules issued today. However, adoption of a "bright line" 0.04 alcohol concentration standard, while consistent with current regulations, does not address what to do with an employee who tests below 0.04.

The existing rules that impose a 0.04 standard generally do not require testing unless there is a triggering event, so the problem of what to do with lower alcohol concentrations is not faced. In addition, when individuals exceed the standard, action is generally taken against a license or some other significant sanction is imposed. Under the rules the OAs are issuing today, we face the problem of whether a person who tests below 0.04 should be permitted to continue performing safety-sensitive functions. Studies about the effects of any alcohol raise our concern about the effects of lower alcohol concentrations on transportation employees. For example, the National Academy of Sciences (NAS) noted that several credible studies measuring task performance at low blood alcohol concentrations indicate that, "[a]lthough individual reactions to alcohol vary depending on * * * (various) factors * * *, sensory and cognitive performance is significantly reduced at or below 0.04 percent BAC." (Zero Alcohol, 1987) The study concluded that "across broad populations of drivers, BACs exceeding about 0.04 to 0.05 clearly increase the probability of causing a crash. * * * [W]hen the driver's age and experience with alcohol are controlled for statistically, the risk of crash involvement increases at any recorded BAC above zero."

A recent NHTSA report to Congress stated that "[a]lthough the effects of alcohol on impairment and crash risk appear more dramatically above 0.05 or 0.08, for some drivers, any measurable alcohol puts them at increased risk." (Alcohol Limits, 1991) It noted that relatively few studies have looked at alcohol concentrations below 0.04; therefore, only a small number of studies have found clearly impairing effects for alcohol concentrations below 0.04 (commenters noted this as well).

NHTSA noted that individuals performing more complex tasks (especially those involving a subsidiary task requiring time-sharing or divided attention) often show evidence of impairment at alcohol concentrations as low as 0.02. NHTSA concluded that one cannot specify an alcohol concentration above which all drivers are dangerous and below which they are safe or at "normal" risk.

The Transportation Research Board, in a study performed for the FHWA during its Commercial Driver's License rulemaking, recommended a 0.04 BAC as the concentration where the serious penalties should apply to commercial motor vehicle drivers, but it noted that some degree of impairment such as slowed reaction time, loss of coordination, and deterioration in judgment begins with any BAC above zero. (Zero Alcohol, 1987) FHWA, in fact, adopted this recommendation in promulgating its existing rules, from which we derived the bifurcated alcohol concentration standard proposed in the NPRMs. The FHWA rule imposes full sanctions for alcohol tests results of 0.04 and over. It requires removal of the employee from service for 24 hours for any alcohol test result between 0.00 and 0.04. Commercial motor vehicle operators engaged in interstate commerce have understood and complied with this bifurcated standard for several years, so other transportation industry employees should not have trouble understanding the standard. We do not believe that it is necessary to adopt a "bright line" 0.02 or 0.04 alcohol concentration standard to avoid confusion.

Commenters who supported a 0.02 standard generally favored a "zero tolerance" policy, and believed that the rules should set the standard at the lowest level of accurate detection. Many of these commenters stated that any person who would use alcohol sufficiently close in time to the performance of safety-sensitive duties to have any measurable alcohol concentration was acting in a manner contrary to safety and should be appropriately sanctioned. Additionally, like those commenters supporting a 0.04 standard, many commenters believed that a single standard would be easier to implement, understand, and enforce. We believe that the imposition of the relatively severe rule sanctions at the 0.02 "bright line" alcohol concentration proposed by some commenters is not justified. Although the available studies support removing the employee from safety-sensitive functions, the level of impairment or adverse effect does not warrant the additional actions required for concentrations of 0.04 and above. Employers will likely review employee test results between 0.02 and 0.04 on a case-by-case basis to determine any appropriate action under their own authority.

A few commenters supported one of two other positions: absolute zero tolerance, with anything over 0.00 resulting in a rule violation, or a standard similar to those used by the States for driving while intoxicated (0.08 or 0.10). They presented the former position as being most consistent with safety. The NAS and the National Transportation Safety Board (NTSB) have favored setting an explicit policy of zero BAC. The NTSB said that "[i]t should be absolutely clear that no alcohol is acceptable in commercial transportation because research has demonstrated that low blood alcohol levels can produce impairment." Its comments on these rules reiterate this position. As several commenters who favored an 0.02 standard noted, adoption of an absolute zero standard is not possible, as discussed below, because of the current limits on testing technology. Commenters supporting the latter standard based on State law believed that it would sufficiently protect safety without unnecessarily infringing on employees' rights. Adoption of either the 0.08 or 0.10 standard would be a step back from the current requirements imposed on commercial operators. In light of the studies referred to above, it also would be inconsistent with ensuring public safety.

Those commenters who favored the proposed bifurcated system believed it would provide employers with the greatest flexibility in ensuring that alcohol use at very low levels did not adversely affect safety while not requiring the more significant costs (evaluation, replacement, etc.) or stigma associated with a rule violation. These commenters did not believe that the provision would be difficult to understand or enforce. We agree with them.

Having any standard other than 0.00 raises troubling questions about whether an employer should allow an employee whose test shows an alcohol concentration between 0.00 and 0.04 to continue performing a safety-sensitive function. Clearly, the Department's concern about public safety and an employer's additional concern about liability are raised in a situation in which an employee "passed" a test with an indicated alcohol concentration below 0.04 and then begins or resumes performing safety-sensitive functions. The likelihood of being involved in an accident when performing safety-sensitive functions with a measurable alcohol concentration is increased. Therefore, we are adopting the 0.02–0.04 standard, as proposed, with the two-tiered system of consequences. The covered employee must be removed from a safety-sensitive position at any alcohol concentration of 0.02 or greater. If the employee's alcohol concentration is 0.02 or greater but less than 0.04, the employee will not be allowed to perform safety-sensitive functions until (1) the next scheduled duty period (usually the next day), if at least eight hours has elapsed (24 hours for those regulated by FHWA), or (2) a retest shows the alcohol concentration has fallen below 0.02. If the employee has an alcohol concentration of 0.04 or greater, the employee cannot return to a safety-sensitive function until (1) evaluated, (2) treated, if required by a SAP, and (3) retested with a result below 0.02. In either case, the employee will be prevented from posing any danger to the public. An employer can take more serious action for the presence of alcohol at any concentration if it has authority to do so independent of DOT regulations.

The Department has used the 0.02 alcohol concentration as the lower standard rather than 0.00, because it represents the lowest level at which a scientifically accurate alcohol concentration can be measured given the limitations of any current technology (e.g., blood, breath). Results below 0.02 cannot be verified as indicating consumption of alcohol (could represent natural ketosis) and would be forensically insufficient to support consequences under these rules. We cannot be sure if such results indicate if the employee really has any alcohol in his or her system. In essence, use of a 0.02 standard represents a zero tolerance standard for alcohol.

Some commenters raised questions about relying on the NHTSA CPL for testing devices that must measure as low as 0.02. NHTSA's model specifications for devices on the CPL were developed for police use under criminal laws prohibiting alcohol concentrations of 0.10 and above. Although all of the EBTs on the CPL exceed existing requirements, on September 17, 1993, NHTSA published a notice modifying the model specifications for evidential breath testing devices to be consistent with the requirements of these rules and updating the list of conforming products (58 FR 48705). The new specifications establish evaluations for precision and accuracy of devices at the 0.0, 0.02, 0.04, 0.08 and 0.16 alcohol

concentrations. When the OAs proposed the rules being issued in final today, we were aware that NHTSA was going to take this action to respond to the ongoing efforts of States to lower prohibited alcohol concentrations to 0.08 in general and to 0.02 for drivers under 21 and to the prohibition on 0.04 alcohol concentration or greater for commercial drivers.

On-duty Use

The rules also prohibit a covered employee from using alcohol while performing safety-related functions and prohibit an employer who actually knows of such use from allowing the employee to perform or continue to perform safety-sensitive functions. The need for this prohibition is self-evident. Some commenters suggested an exception for medication if the employee notifies the employer and the employee's alcohol concentration never reaches 0.02; others strongly opposed such an exception. As discussed above under the discussion on the definition of alcohol use, we have decided not to allow a medication exception in these rules.

Pre-duty Use

Commenters had a mixed reaction to the pre-duty use prohibition. Several opposed it as unnecessary due to the on-duty prohibition, intrusive on an employee's private life (and legitimate use of a legal substance), unfair to "on-call" employees and unenforceable. Others supported the prohibition, but several of them wanted it extended from the proposed four hours to a range of five to 12 hours; eight hours proved to be the most popular and the choice of the NTSB for all OAs. One commenter wanted a clearer definition of what actual knowledge means. Some commenters wanted a medication exception for pre-duty use.

Drinking during off-duty periods may impinge upon a person's ability to function safely on the job. Although the alcohol was consumed during the employee's private or off-duty time, it may still be in the employee's system when he or she reports for work. We do not and cannot effectively require the testing of all employees when they report to work, so the existence of testing is not in itself sufficient. Setting a pre-duty abstinence period also provides clear instructions to an employee who might not otherwise appreciate or understand that drinking before coming to work could result in a positive test. Therefore, we believe that we need to retain a pre-duty abstinence period in addition to the on-duty prohibition to avoid the possibility of adverse effects from alcohol in the system due to pre-duty ingestion.

The OA rules generally prohibit a covered employee from using alcohol within the four hours preceding the performance of safety-sensitive functions. Four hours is sufficient to ensure that an employee is alcohol-free in most situations, without unduly intruding upon the employee's private life; a longer period would be more intrusive. The rules also prohibit an employer, who actually knows that the employee has used alcohol within that period of time, from allowing the employee to perform or continue to perform safety-sensitive functions. An employer cannot always be aware of an employee's pre-duty behavior, but actual knowledge can come from the employer's direct observation of the employee, a reliable witness or the employee's admission of alcohol use. Generally, this prohibition is enforceable vis-a-vis the employer only in "actual knowledge" situations.

The FAA's long-standing eight-hour pre-duty use prohibition for crewmembers will remain in effect. The applicability of the four-hour prohibition to "on-call" employees varies by industry. Please refer to the specific OA rules on this issue. Because duty tours often are not predictable in the rail industry, the four-hour period is shortened for unscheduled assignments to the interval between being "called to duty" and "reporting for duty." RSPA's rule provides an emergency exception to the prohibition on pre-duty use. For example, the only qualified employee in the area, who has used alcohol within the previous four hours, can be called to respond to an emergency call to perform the simple act of turning the valve to shut down a ruptured pipeline. The rule prohibits alcohol use after the employee has been notified to report for emergency duty. The exception does not support the employee's continued performance of the safety-sensitive functions once safety is achieved or if a replacement employee is readily available. As discussed above under the discussion on the definition of alcohol use, we have decided not to allow a medication exception in these rules.

Use Following an Accident

Most commenters had problems with this prohibition, although many supported the concept. Several noted that it would be unenforceable because the employer often does not have control over the employee and is unnecessary where the employee is in "on-duty" status, since the on-duty prohibition applies. Numerous commenters pointed out that the prohibition is too difficult to apply to employees who do not know about the accident or to mechanics who may have worked on the vehicle involved in the accident. Those comments on mechanics are specifically addressed in the OA preambles.

Since it is important to determine whether alcohol is implicated in an accident, a covered employee who has actual knowledge of an accident in which his or her performance of a safety-sensitive function has not been discounted by the employer as a contributing factor to the accident is prohibited from using alcohol for eight hours following the accident. The prohibition ends eight hours after the accident (when a test is no longer required), once the covered employee has taken a post-accident test under these rules, or once the employer has determined that the employee's performance could not have contributed to the accident.

While we recognize that there are some situations where it may be difficult to enforce, the prohibition is important. The Department is aware of accidents in which employees, who should have been tested, left the scene and then, when they were brought in for testing, alleged that they consumed alcohol after the accident. This rule prevents employees who know they are subject to testing from explaining "positive" findings on an alcohol test by alleging they had a drink after the accident, since such action also constitutes a rule violation. It also is useful for employees who may not know whether or not they remain in "on-duty" status after an accident to be aware of this prohibition. We are imposing an "actual knowledge" requirement, because, in some situations, the employee involved in an accident may not know of the accident. For example, a mechanic makes a mistake that causes an accident a couple of hours later or half a continent away. If the mechanic is unaware of the accident, we agree with those commenters that do not believe a ban on drinking can be effectively enforced. However, if it is established that the mechanic did know of the accident and his or her potential involvement (e.g., was told by a supervisor) and performance of the safety-sensitive function was not too removed in time to make conducting a test futile, the mechanic would be prohibited from drinking. See the specific OA rules that limit the application of this prohibition to performance of a safety-sensitive function at or near the time of the accident or on the vehicle or aircraft involved. Also, the FRA rule does not include this requirement because under current FRA rules the employees involved remain in on-duty status after an accident.

Refusal to Submit to a Required Alcohol Test

The rules prohibit a covered employee from refusing to submit to required post-accident, random, reasonable suspicion or follow-up alcohol tests. The RSPA rule provision applies only to those types of tests it requires. This, in effect, provides that the employee must take those tests when required. The consequences for a refusal to submit to a required test are the same as if the employee had tested at 0.04 or greater or had violated any of the other prohibitions in these rules. Failure to provide adequate breath for testing when required without a valid medical explanation, engaging in conduct that clearly obstructs the testing process, or failure to sign the alcohol testing form (if the employee did not take test) constitute a refusal to submit to testing. For further discussion of these points, see the preamble to part 40. A covered employee subject to a post-accident test who leaves the scene of the accident before being tested (except, for example, when necessary to receive medical treatment) and is not reasonably available for a test is deemed to have refused to submit to a required test. A refusal also can occur where an employee, who screens positive for alcohol, decides to admit alcohol misuse in violation of the rules and refuses the confirmation test. This situation is different from allowing employees to voluntarily "mark off" from duty when not threatened with a test under these rules, if they feel that they are unable to perform their jobs due to alcohol misuse. The employer must still confirm the positive screen to protect the integrity of the process and to comply with the statutory requirement for a confirmation test. In the absence of the confirmation test result, the employee could later disavow the admission and challenge the screen test result. The rules prohibit an employer from permitting an employee who refuses to submit to testing to perform or continue to perform safety-sensitive functions. In addition, the FRA rule prohibits anyone refusing a required test from engaging in covered service for nine months.

Some commenters, including the NTSB, wanted the penalty for a refusal to test to be removal from safety-sensitive functions for 24 hours. We disagree and intend to apply the full consequences of these rules to an employee's refusal to take required alcohol tests. Failure to treat a refusal as a positive has two major shortcomings: it eliminates deterrence since these misusing alcohol can simply refuse the test if caught and get only a "minor" penalty; in addition, simply removing them from safety-sensitive duties for 24 hours does not help fix the problem—the employee should be evaluated by a SAP before returning to a safety-sensitive function.

An applicant's or employee's refusal to submit to a pre-employment test or a return-to-duty test does not trigger consequences under the rules that result in the need for evaluation. In those cases, the applicant or employee is not in a safety-sensitive position and does not have to be removed from a safety-sensitive position. Since those tests are a condition precedent to starting or returning to safety-sensitive functions, the applicant or employee simply could not be hired or returned to duty.

Tests Required

General

The Act requires that the industry alcohol misuse prevention programs provide for pre-employment, reasonable suspicion, post-accident and random testing. Periodic tests, which generally are performed as part of required physical examinations for certification of some employees, are discretionary under the Act. The OA rules require the forms of testing mandated by the Act, as well as return-to-duty and follow-up testing; however, the Department has decided not to require periodic testing for alcohol. We agree with the commenter who questioned the value of periodic alcohol testing if the employee knows when the test is to be conducted.

The testing programs are designed for the deterrence and detection of alcohol misuse, which, in turn, promote our compelling interest in ensuring transportation safety. Whether conducted by breath, blood or other method, alcohol testing is considered a Federally-mandated "search", under the Fourth Amendment. Accordingly, we are limiting alcohol testing to the specific time periods surrounding the performance of safety-related functions. That limitation provides the requisite nexus to ensuring proper performance of safety-related functions that is our primary concern and the principal purpose of these rules. The tests required by these rules will be conducted after a triggering event (pre-employment, post-accident, reasonable suspicion, return-to-duty, follow-up) and just before, during or just after performance of a safety-sensitive function (random). The determination (triggering event) that a reasonable suspicion test is necessary must occur during the time surrounding the performance of a safety-sensitive function. Many commenters raised practical and policy concerns about at least one of the different types of testing. These concerns are specifically addressed below in the discussions relating to each type of testing.

Pre-employment Testing

A substantial number of commenters were concerned about the costs of pre-employment tests and considered them silly "intelligence" tests and a waste of time. The National Airline Commission specifically recommended that "[a]ew pre-employment alcohol testing rules do not need to be adopted * * *" The Act explicitly requires pre-employment testing for covered transportation industry employees, so we do not have the discretion to eliminate it from these programs. We recognize that, as the commenters noted, drinking off duty generally is legal and that alcohol remains in the body for only a short period of time. Often, a test result indicating alcohol use may only indicate bad judgment or bad timing (e.g., one notices an employment advertisement after having beer and a hamburger for lunch, immediately applies, and is tested) instead of alcohol misuse.

To make such a test more meaningful, we are requiring a covered employee to undergo alcohol testing any time prior to the first time the employee performs safety-sensitive functions for an employer. This could occur the first time that the employee performs a safety-sensitive function after being hired or after a transfer within the employer's organization. Some commenters suggested that such tests only be required upon a conditional offer of employment. The rules give the employer the flexibility to test at any time during the hiring process, including before or after the employee receives a conditional offer of employment, or before (preferably just before) the employee starts performing safety-sensitive functions. (Please refer to earlier ADA section for discussion of treatment of alcohol testing as a medical test, which would have to be done after a conditional offer.) The latter choice will enable the employer to avoid the cost of testing several applicants for each job, tie pre-employment tests to the performance of safety-sensitive funotions and accommodate the statutory language requiring a pre-employment test for an "employee", rather than an applicant. The former option will permit identification of

someone with alcohol in his/her system before incurring additional hiring expenses. For the above reasons, the definition of "covered employee" used in these rules includes applicants for a safety-sensitive function as well as current employees applying to move into a safety-sensitive function. Many commenters thought that the rules would require every employee to report for work early every day for a regularly scheduled or randomly-conducted pre-duty test. The pre-employment testing requirement does not apply each time the employee reports for safety-sensitive duties, only the first time. Some commenters were confused by the use of term "pre-duty" in "pre-employment/pre-duty" testing and to describe the prohibition on using alcohol during a time period before performing a safety-sensitive function. For that reason, we have changed the name of the test to "pre-employment", but note that it covers both new and transferring employees.

The rules prohibit an employer from allowing an employee to perform safety-sensitive functions unless that employee has been pre-employment tested with a resulting alcohol concentration less than 0.04. If the pre-employment test result indicates an alcohol concentration of 0.02 or greater but less than 0.04, the employee cannot perform or be allowed to perform safety-sensitive functions until the alcohol concentration falls below 0.02 on a subsequent test or until the next scheduled duty period, if it is not less than eight hours following the test. Nothing in the rules prohibits an employer from later retesting an applicant with a positive result. The rules do not confer any rights or consequences upon applicants or employees who have a positive result on a pre-employment test.

Under the rules, an employer may elect not to administer a pre-employment test if the employee has had an alcohol test conducted under any OA alcohol misuse rule following part 40 procedures with a result less than 0.04 within the previous six months and the employer ensures that no prior employer of whom the employer has knowledge has records showing a violation of these rules within the previous six months. Generally, this means that, when checking with a prior employer to verify that the applicant had "passed" a previous alcohol test, the new employer also must verify that the prior employer has no records of a violation of a OA alcohol misuse rule. If the new employer knows the applicant had other employers within the last six months, the new employer must check them too. This option provides the greatest flexibility for avoiding the constant retesting and related costs involved in an industry, such as trucking, which has a high employee turnover rate. Some commenters did not approve of the requirement to release previous test results to a new employer. We believe that it is important to include this option in these programs; therefore, we do not intend to allow employers to refuse to provide information on a former employee, so long as the request meets the requirements of these rules. Since the information can only be released with the employee/applicant's permission, we do not believe there is a sound basis for the former employer refusing to release the information. An employer, of course, can choose to conduct pre-employment tests in lieu of reviewing information on past employment authorized by the employee and provided by a former employer.

One commenter asked that the proposed exception to pre-employment testing be extended to include negative test results from the previous 12 months, instead of the previous six months. We have decided not to extend the exception period to 12 months; we are trying to provide some flexibility, but beyond 6 months it does not seem to us that it would be a reasonable assumption that the employee continues to be free of alcohol misuse.

In the common preamble to the NPRMs, we asked whether we should require employers to give notice that a pre-employment test will be conducted. We have decided not to impose such a requirement, because it would be too time-consuming and burdensome on the hiring process, particularly in those industries where hiring occurs on the spot. The fairness issue (testing positive after a beer at lunch) is likely to diminish over time as more and more employers conduct these tests and applicants become more aware of their use.

Post-accident Testing

Post-accident alcohol testing already is required by Federal regulation in some transportation modes and is used as a valuable accident investigation and enforcement tool. States also conduct post-accident tests, depending upon the circumstances and their authority to test.

Effective post-accident testing for alcohol at remote locations can be more difficult to accomplish than drug testing, because alcohol passes from the blood and breath more quickly than most drugs. Also, delays in transporting trained personnel and testing equipment to an accident site can result in negative tests.

The OA rules generally require that as soon as practicable during the 8 hours following an accident, each employer shall test each surviving covered employee for alcohol, if that employee's performance of a safety-sensitive function either contributed to an accident or cannot be discounted as a contributing factor to the accident. The need for testing is presumed; any decision not to administer a test must be based on the employer's determination, using the best information available at the time the determination is made, that the employee's performance could not have contributed to the accident. The definitions of accidents or occurrences that will trigger a post-accident test vary by industry and are discussed in each OA's final rule. They generally are the same as the triggering events for post-accident drug testing. See the OA final rules for modifications to the general approach or for disposition of comments on the events that trigger post-accident testing. For example, under the FTA rule, post-accident testing is mandatory if there is a fatality.

Any employee subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing; such a refusal is treated as if the employee recorded a test result of 0.04 or greater. Where possible, employers should make every effort under the circumstances surrounding the accident to ensure that the employee, even one who has been permitted to leave—or has had to leave—the site, is available for a post-accident test. This, of course, does not mean that necessary medical treatment for injured people should be delayed or that an employee cannot leave the scene of an accident for the period necessary to obtain assistance in responding to the accident, materials to secure the accident site, or necessary emergency medical care.

A number of commenters believed that conducting a post-accident test within eight hours is unrealistic; they wanted a 32-hour maximum limit as required in most OA drug rules. Because alcohol is eliminated from the body much faster than drugs are, using a 32-hour limit for alcohol testing is inappropriate. We chose an eight-hour maximum time limit for post-accident alcohol tests, because if a test is not administered within eight hours following the accident, there is little likelihood of finding a meaningful alcohol concentration resulting from use preceding the accident. Some commenters, including the NTSB, wanted the post-accident time limit shortened to two to four hours because no alcohol is likely to be detected after eight hours. Although shorter time limits may result in a more useful test result, they may not be reasonable; they ignore the likelihood that additional time may be needed for those accidents that occur in remote areas or are not discovered right away.

It is important that the employer administer a post-accident test as soon as possible to determine whether there was any alcohol misuse. If a post-accident test is not administered within two hours following the occurrence of the accident, the employer must prepare and maintain on file a record stating why the test was not promptly administered. Some commenters wondered if the time ran from the accident or from the time the site was secured. One commenter suggested that the two hours should begin after the determination that the employee may have caused the accident. Because alcohol metabolizes so rapidly, we disagree that the two hours should run from the determination that an employee may have caused the accident or after the site has been secured; those actions could take several hours.

After eight hours has passed, the employer then shall cease attempts to administer the test and record why the employer was unable to administer a test. Some commenters grumbled about the record requirements. We believe that recording this information is necessary for program oversight and to encourage employers to make the maximum effort to conduct any necessary post-accident tests in a timely manner. The Department recognizes there may be valid reasons for not conducting the tests in these time frames, but every effort must be made to do so. We have tried to ease the reporting burden by dropping the proposed requirement that employers submit these post-accident reports to the appropriate OA. Instead, rules now require only that the employer maintain records on why a post-accident test could not be conducted and make the records available to the appropriate Department officials upon request. It is important to note that this test is not meant to be a full toxicological workup for the purpose of determining accident causation. The primary purpose of the test is to determine whether the employee(s) involved should be removed from safety-sensitive functions.

Most commenters who addressed the issue of who should be required or permitted to perform the post-accident test supported OA acceptance of tests conducted by law enforcement officers, even if the testing does not comply with part 40 in every respect; a couple of commenters opposed this idea. One commenter pointed out that most States have implied consent laws; once the police test the employee and place him or her in jail (presumably after a positive test), the employer will not have access to the employee during the critical eight hours and must be able to use the police test as a substitute, if made available. Generally, we believe that employers should conduct their own post-accident testing under these rules. However, as commenters have pointed out, the nationwide highway transportation system presents difficult post-accident testing problems. Motor vehicle operators can range far beyond the control of their employers, who may not be informed of the occurrence of an accident for an extended period. We agree that breath or blood alcohol tests conducted by on-site State and local law enforcement or public safety officials should be acceptable in lieu of post-accident testing by FHWA employers in situations where that test can be administered earlier than the employer can get to the scene or when an alcohol test cannot be conducted by the employer within eight hours. These local authorities often are first to arrive at an accident site, particularly if the accident occurs in a remote area, and sometimes are equipped to conduct tests. Such tests must meet State standards that would already make them acceptable in court. Although commenters to other OA rules expressed support of acceptance of such tests in their industries, only the FHWA rule will provide for the exception because the need is most acute for motor vehicle operations. Other OAs, e.g., FAA, have separate rules that would enable them to obtain the results of these tests, if necessary, or face fewer difficulties in finding out about or locating an accident. We recognize that we cannot always ensure cooperation in getting test reports from the police. However, where such results are made available, they would be acceptable under the FHWA program and part 40, provided that breath testing is conducted with an EBT on the CPL and by a law enforcement officer certified on that EBT, and that blood testing is conducted in compliance with State-approved procedures. Please refer to the FHWA preamble for additional discussion.

Numerous commenters believed that post-accident testing is necessary, but that it is unreasonable and impracticable without the option to use other methodologies, such as blood, saliva and urine. As stated earlier, we are considering permitting the use of post-accident blood testing and the possible use of other devices for screening tests. Until more is done, we cannot ensure the reliability and integrity of other devices. FRA has its own preexisting procedures for conducting a full toxicological analysis following an accident; see the FRA rule for its post-accident testing requirements.

Random Testing

A significant number of commenters opposed random testing, citing its costs and burdens in comparison to the perceived lack of significant problems in their industries. Several viewed training, educational efforts and employee assistance programs as better investments than random testing. Some commenters supported the need for random testing. The Act requires random alcohol testing of safety-sensitive employees in the aviation, rail, motor carrier and transit industries. It is the only type of testing not triggered by or conducted in reaction to another event; its primary objective is deterrence. Although we agree that investment in education and employee assistance efforts will deter some employees from alcohol misuse and contribute to the overall success of the alcohol misuse prevention programs, some employees will only be deterred by the existence of random testing. The additional deterrence provided by random testing is critical to ensuring public safety. Court decisions have indicated that the lack of good data indicating a specific problem in a particular industry is not a bar to our taking action to prevent or address the spread of a societal problem to that industry. Moreover, the lack of data may be due to the fact that currently there is little or no testing. Finally, and most importantly, the Act provides no discretion; we must require random testing. The rule does provide, however, that two consecutive years of very low industry positive random alcohol rates will result in a lowering of the random alcohol testing rate for that industry, thereby reducing employers' costs.

The OA rules (except RSPA) require each employer to randomly select a number of covered employees at various times during each year for unannounced alcohol testing. The number of employees selected must be sufficient to equal an annual rate of not less than 25 percent (initially) of the total number of employees subject to alcohol testing under a particular OA's rules. Thereafter, the industry's random alcohol rate will be adjusted based on a performance standard related to its

random alcohol violation rate. Because of safety concerns, two years of data are necessary to justify lowering the random alcohol testing rate; one year of data is sufficient to raise it. (See more specific random rate discussion below.)

The employer must select covered employees for testing through a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. One commenter believed that in-house random selection is discriminatory in practice and employers need to use the services of an outside firm. Each covered employee must have an equal chance of being tested under the random selection process used. A system using random number table or random number generator would not be discriminatory because the employer could not designate particular employees for testing. The dates for administering random tests must be spread reasonably throughout the year (the deterrent effect would disappear if employees know that the employer had completed all required random tests for the year) and should not be predictable (e.g., every Monday or the first week of each month). To achieve this, many employers may find it best to join a consortium. Because of the randomness of the testing, some employees may be tested more than once during the year, while others will not be tested at all.

In the view of some commenters, random testing would provide few safety benefits since it is limited in time to performance of safety-sensitive functions. A few commenters suggested removing those limitations and applying the requirement to all employees at any time. As stated above, we believe that the deterrence provided by random testing will increase safety. To ensure their reasonableness for Constitutional purposes (discussed earlier in this document), the rules provide that an employee can be tested for alcohol only while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. Obviously, the best time to test is before the employee begins to perform the safety-sensitive function. Detection at that point will prevent the employee from actually performing the function while he or she had alcohol in his or her system. However, if the employee understands that a random test can be administered only before he or she begins work and there is an opportunity to drink during work, deterrence is limited. The ability to test just before, during or just after performance increases the deterrent effect and may enable detection of employees who use alcohol on the job. Although it may be easier to test at any time if the test is not tied to safety, we do not believe there would be a sufficient basis under the Constitution to conduct the test.

One commenter wanted a better explanation of "just before, during and just after" performance of safety-sensitive functions. The purpose of the concept of "just before" and "just after" is to avoid the problem that some safety-sensitive functions cannot be interrupted for the performance of a test (e.g., piloting an aircraft). We have not defined the concept in terms of a specific time, but it is intended to be close enough to the actual performance of the safety-sensitive function that the test results will clearly indicate that the employee would be or was at 0.04 or above (or 0.02 or greater but less than 0.04) at the time when performing those functions. To accomplish this, employers should ensure that each covered employee selected for random testing proceeds to the testing site immediately. In the event the employee is performing a safety-sensitive function when notified, the employer must ensure that the employee ceases the function consistent with safety and proceeds to the site as soon as possible. See discussion in the specific OA preambles on what the OAs expect "immediately" to mean in the context of reporting for a random test.

Consortia/Random Testing Pools

To promote efficiency and reduce costs, particularly for smaller employers and employers subject to more than one OA rule, we generally permit the combination of geographically-proximate employees covered by different OA rules into one random testing pool. To maintain fairness and the equal chance of each type of employee for selection, certain conditions apply. For example, employees in any industry who travel most of the time could constitute one pool; others who remain in the vicinity of the testing site would be in another. However, if the testing method chosen required testing of employees immediately upon selection or whenever they arrived at the testing location after their selection (but still unannounced), there would be no need for separate pools. Any acceptable method must ensure that each employee has an equal chance of being selected for testing. Although multi-modal pools are permitted, they must meet any other specific OA requirements, such as possible differing industry random testing rates.

If the employer joins a consortium, the rules permit the calculation of the annual rate (where the rates are the same) on either the total number of covered employees for each individual employer or the total number of covered employees subject to random testing by the consortium's pool covering the employer. This means that a consortium member could have less than its required number of random tests conducted if the overall consortium rate equals the required rate. Thus, if Employer A has twenty covered employees and the consortium has 500 covered employees in the pool covering Employer A, and a 25 percent rate applies, if Employer A chooses to have the rate based on the consortium, the consortium must conduct at least 125 tests even if none of the covered employees of Employer A are actually tested. So long as each employee has an equal chance of being tested each time the consortium conducts random tests, the requisite deterrence factor exists. Membership in a consortium should improve deterrence for small companies because their employees would continue to perceive an equal chance of being selected throughout the year.

Random Alcohol Rate Performance Standard

In the NPRMs, we requested comment on what annual rate to require for random alcohol testing within a 10 to 50 percent range. Most commenters, particularly employers, wanted a 10 percent random alcohol testing rate beginning the first year; although substantial numbers selected 25 percent or a range between 10 and 25 percent and several wanted to use 50 percent as currently required in the drug testing rules. Many commenters expressed a greater preference for having the same testing rate (and the lower the better) for both drugs and alcohol, because combining the programs would save more money than just lowering the testing rate. They argued that, with drug testing, studies have shown that lowering the testing rate did not affect deterrence. (At least one commenter argued, candidly, that since in its view random alcohol testing is worthless but the Act required it, we should set the lowest random rate possible to reduce employer costs.) According to commenters, lower random alcohol testing rates are appropriate because alcohol use has declined, and many employers have strong employee assistance programs in place, which did not exist when drug testing was phased in. Finally, most noted that it is easier to detect alcohol misuse through supervisor or co-worker observation. Specific to this rulemaking, the National Airline Commission stated that

"* * * any random alcohol testing of airline employees should be at no more than a 10 percent rate."

We note that in July 1991, the FRA initiated a comparative study of random drug testing rates and the impact on deterrence, as measured by the positive rate. The study compared 4 railroads testing at 50 percent (control group) with 4 railroads testing at 25 percent (experimental group). The positive rate for the control group when the study was initiated was 1.1 percent; for the experimental group it was 0.89 percent. In the first year (July 1991 through June 1992), the control group's positive rate was 0.90 percent; the experimental group's was 0.87 percent. For the period July 1992 through June 1993, these groups had positive rates of 0.80 percent and 0.94 percent, respectively. Statistically, the differences in the positive rates between the control and experimental groups are not significant.

Many would argue that the higher the random testing rate, the greater the likelihood of getting "caught" and, therefore the greater the likely deterrence. Detection is also higher at higher rates. However, if the likelihood of detection is small (e.g., because alcohol metabolizes so quickly), testing may result in little deterrence unless very high rates are used. But costs also rise as the number of tests increases. The concern is whether extra deterrence is worth the extra cost.

The Department agrees with commenters that, since alcohol symptoms are somewhat better known and easier to detect, more alcohol misusers than drug users are likely to be caught by observation, which justifies a lower random alcohol testing rate. (Of course, observation alone will not always detect employees with very low alcohol concentrations, unless they have an open bottle of liquor.) The deterrent effect of random alcohol testing may not equal that provided by random drug testing because the window for detection is limited by the rapid elimination of alcohol from the body. An individual who has alcohol in his or her system while performing safety-sensitive functions may be "negative" by the time he or she gets to the testing site and the testing is completed. In addition, there are many more programs in place to handle alcohol misuse problems than there were to handle drug use problems when we issued the drug rules. There is also no indication that alcohol is a growing problem; drug use was, and there is still much evidence that strong steps must continue to prevent drug use from increasing. Consequently, we believe that a lower initial random testing rate is appropriate for alcohol.

For the above reasons, we believe we can permit the alcohol random testing rate to drop to 10 percent if performance criteria in our rules are met, but cannot permit a comparable drop in the drug testing random rate for a similar performance. In view of the small window of opportunity for detecting alcohol misuse, we agree with commenters that the added cost could be more useful if applied to other areas of the alcohol prevention program, such as training and employee assistance. On balance, we believe that an initial 25 percent random alcohol testing rate will best achieve deterrence and detection at a reasonable cost.

Many employers commented that they wanted performance-adjusted rates, where the random testing rate would be set according to each employer's random positive rate for the preceding year. These commenters stated that testing based on measures of results would provide an incentive for employers to try alternative deterrence methods. Labor agreed with employers on this issue. Adjusted-rate testing could be used to reward those employers who have adopted rehabilitation and treatment programs or who have low positive rates. A few preferred adjusted-rate testing by industry. Other commenters noted that providing flexibility with respect to the random testing rate would be extremely difficult to administer.

We agree that there is merit in using a random alcohol testing rate that is adjusted annually based on industry performance. To provide more incentive and flexibility, the rules allow those industries that demonstrate a very low positive alcohol random rate over two years, due to few employee alcohol misuse problems or the success of the alcohol prevention programs, to lower their random alcohol testing rate to 10 percent. Ten percent would be insufficient to protect public safety, at least as an initial testing rate. The number of tests conducted at a ten percent rate and the visibility of testing to employees, especially in medium and small companies, would be insufficient to obtain data about prevalence or deterrence of alcohol misuse. We could not reliably make decisions on data gathered with such a rate—at least not for a number of years. If those who say usage is extremely low are correct, when the data gathered at the initial 25 percent rate verifies this, the testing rate can be lowered.

The OA rules require employers to use an initial random alcohol testing rate of 25 percent. They provide that, after all employers have implemented the rules and industry-wide data for the first year is available, the OA Administrator will annually announce in the **Federal Register** the minimum required annual percentage rate for random alcohol testing applicable in that OA's covered industry during the calendar year following publication of the notice. Thereafter, each OA will determine the annual random alcohol testing rate for the industry regulated by the OA rule based on the reported violation rate (number of random alcohol tests results equal to or greater than 0.04 plus refusals-to-take random alcohol tests divided by the total random alcohol tests conducted plus refusals-to-take random alcohol tests) for the industry. The random rate adjustment indicated by industry performance will occur at the beginning of the next calendar year. (Thus, during calendar year 1997, an OA will receive results from its industry for calendar years 1995 and 1996 (the first year that industry-wide data will be available), evaluate them and publish in the **Federal Register** a determination of the need for the industry to adjust the random rate. Any such change would take effect on January 1, 1998. Please note that, once employers of all sizes are reporting data, a decrease in the rate would require two years of qualifying data and an increase in the rate would require only one year of data.) A refusal to take a random alcohol test will count as a positive for the purpose of calculating the industry random testing rate and count toward the number of random alcohol tests required to be conducted.

Determination of the violation rate is based on data obtained from employers through the annual Management Information System (MIS) reports they must submit by the following March 15th. We envision that each OA and the OST Drug Office will review the MIS data and that the OA Administrator will issue a determination within a few months. We believe that covered entities need approximately one-half year of lead time to adjust their procedures, make changes in any contracts and take other necessary action to adjust to an increase or decrease.

To make a decision, each OA will compare the violation rate to two specific criteria: 1 percent and 0.5 percent, respectively, to determine if the industry must change or maintain the random alcohol testing rate. If the

industry violation rate is 1 percent or greater during a given year, the random alcohol testing rate will be 50 percent for the calendar year following the OA Administrator's announcement that the rate must change. If the industry violation rate is less than 1 percent but greater than 0.5 percent during a given year (for two years if currently at 50 percent), the random alcohol testing rate will be 25 percent for the calendar year following the OA Administrator's announcement that the rate must change. If the industry violation rate is less than 0.5 percent during a given year (for two years if testing at a higher rate), the random alcohol testing rate will be 10 percent for the next calendar year. For example, an industry testing at a 50 percent random rate for alcohol can drop the rate to 10 percent if its violation rate drops below 0.5 percent for two consecutive years. Because of safety concerns, two years of data are necessary to justify lowering the rate and one year of data is sufficient to raise it. The two years cannot be averaged; a violation rate of 0.07 one year and a 0.11 violation rate the next year will not allow a drop in the random alcohol testing rate.

We selected 1.0 percent and 0.5 percent as appropriate performance standards. We would prefer zero positives but recognize this may be impossible. These levels represent a balance, permitting cost savings when usage remains very low, while ensuring that if deterrence is not maintained, the rates will increase. We selected the 1 percent violation rate as the rate adjustment standard based on the experience that the military and other workplace programs have had with deterrence-based drug testing. Their results reveal that no matter what rate is used for random testing, the testing programs will never achieve zero positives. There always is a constant group of "hard-core" individuals representing a fraction of 1 percent of the population who are detected positive over a period of time; these individuals are unaffected by deterrence-based testing because of addiction or belief in their invincibility. We also believe that a positive rate of 0.5 percent is achievable based on our limited data from the random roadside alcohol testing project, where rates below 0.5 percent were obtained, and our experience with DOT Federal employee drug testing where positive rates have decreased to 0.25 percent.

We recognize that because the reported violation rate is obtained from data whose precision is eroded by sampling variance and measurement error, and whose accuracy is diminished by non-response bias, there is a greater risk that it diverges from the actual violation rate in the population. Each OA will be using MIS data collection and sampling methods that address these issues to the extent possible and make sense in the context of its particular industry. Where not all employers are included in the reported data, the OA will decide how many covered employers must be required to report or be sampled; this decision will be based on the number of employers (not otherwise required to report) that must be sampled to ensure that the reported data from the sampled employers reliably reflects the data that would have been received if all were required to report. However, we retain for our discretion the decision on whether the reported data reliably support the conclusion (e.g., based on audits of company records that show significant falsification of reports). If the reported data are not sufficiently reliable, the OA will not permit the random rate adjustment to occur.

We have decided to use industry violation rates (positive tests and refusals to test) as the performance benchmark rather than the employer violation rates urged by commenters. Company-by-company rates would be extremely difficult to implement and enforce, extremely difficult to apply to small companies, would require reports from all companies, could encourage cheating (especially in areas of heavy competition) and could excessively complicate the use of consortia. Although an individual company may have reduced incentive to lower its positive rate, industry organizations may pressure it to work toward a more favorable industry random alcohol testing rate. Industry-wide rates should be much easier to implement and enforce.

Implementation Issues. The lower random alcohol testing rates will create implementation problems, particularly for small employers and consortia (see discussion below). Small companies that do not participate in a consortium may have to test at a higher effective rate even after the industry rate has been lowered to meet other requirements. A very low number of dates on which tests are conducted will have a detrimental effect on deterrence. Therefore, to promote deterrence (and as required under the Department's drug testing rules), an employer must spread alcohol tests throughout the year. A very small company (e.g., one that has to test two covered employees) will not be permitted to only test employees once every few years. Rather, it will have to test at least once a year and establish a program that will ensure that there is no period of time during which employees know testing "is done for the year". For example, if an employer is required to conduct only one to four tests and that number are completed by mid-summer, the employer's program must ensure that more tests could be conducted before the end of the calendar year. For example, such an employer could conduct random testing every quarter or could randomly select the month within the next 12 months for conducting the next test(s). Depending upon the month selected, the employer may in fact test more than once in a calendar year. For example, using a revolving calendar, the first selection is May 1994 for the year January 1994 to December 1994; the next selection must be for the 12 months from May 1994 to April 1995.

Another alternative is for small employers to join a consortium so that their employees are always subject to random testing. Although we have in a number of ways eased the burden on small employers, these restrictions that may raise the effective annual random rate are necessary to achieve deterrence in random testing in the context of allowing random rate adjustments. A small employer, of course, can achieve the benefits of a lower random rate without the higher costs of meeting the deterrence requirements if it joins a consortium. If the company is in a consortium, the employee is always subject to testing because he or she is part of a much larger pool and the necessary deterrence exists.

Under the Department's current drug testing rules, employers must conduct random drug tests at a 50 percent annualized rate; that is, the number of annual random tests conducted must equal half the number of the covered population. Elsewhere in today's **Federal Register**, the Department is publishing a separate NPRM that seeks comment on a proposed industry performance standard to adjust the random testing rate for the current drug testing programs. The proposal is designed to lower costs and maintain an equivalent level of deterrence of illegal drug use. The NPRM proposes to allow each OA Administrator to lower the random drug testing rate to 25 percent if its industry has a positive testing rate of less than 1.0 percent for two consecutive years (while testing at 50 percent); the rate will increase back to 50 percent, if the industry random violation rate is 1 percent or higher in any year. The Department is not proposing a system to adjust the drug random rates identical to that established for alcohol random testing for the opposite of the reasons stated above. It is more difficult to justify a possible lowering of the testing rate to 10 percent because the symptoms of drug usage are less well known and more difficult to detect by observation than symptoms of alcohol misuse. Moreover, random drug testing is a more effective deterrent than random alcohol testing because the window of opportunity for detection is greater; drug metabolites are present in the body far longer than alcohol. However, we agree with commenters that we still should provide an incentive for each industry to achieve a low random drug positive rate and reduce testing costs.

The random alcohol rate adjustments will have an impact on other aspects of random alcohol testing. If a given covered employee is subject to random alcohol testing under the alcohol misuse rules of more than one OA for the same employer, the employee shall be subject to random alcohol testing at the percentage rate established for the calendar year by the OA regulating more than 50 percent of the employee's safety-sensitive functions (or those that take the greatest percentage of the employee's time). If the employee's time is equally divided, the employer may choose the OA rule with the lowest random testing rate. If an employer is required to conduct random alcohol testing under the alcohol misuse prevention rules of more than one OA, the employer may (1) establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at a different OA required rate; or (2) randomly select from all employees for testing at the highest percentage rate established for the calendar year by any OA to which the employer is subject. Consortia could meet different required random testing rates by setting up separate pools.

Many commenters, particularly employers, supporting random testing claimed that it would be less burdensome if they could combine their drug and alcohol random testing programs. They noted that using the same employee selection for both alcohol testing and drug testing would allow flexibility and be more cost effective, by minimizing the impact on an employer's operations. Labor supported combination testing, where an employee would not know in advance whether he or she was being tested for alcohol, drugs, or both, as the most effective type of program. The rules do not prohibit employers from combining random drug and alcohol testing. However, the possibility of different testing rates for drug and alcohol random testing may cause difficulties for employers interested in combining their random testing programs. Differences in the testing rate for each program can be accommodated; for example, where an employer must use a 25 percent alcohol random rate and a 50 percent drug random rate, half (randomly selected) of the employees chosen for testing would be tested for both drugs and alcohol while the rest could be tested only for drugs. Other methods are possible so long as they meet the requirements of both programs. Of course, combined testing must occur around the time of performance of a safety-sensitive function to meet the requirements of the alcohol misuse prevention rules.

Reasonable Suspicion Testing

The vast majority of commenters supported the need for reasonable suspicion testing, although one commenter opposed it as unnecessary in view of existing company policies. We agree that this type of testing may be more valuable for alcohol than for illegal drugs. People are more familiar with the symptoms of alcohol intoxication than with those of illegal drug use. The presence of alcohol is easier to detect (at least at higher consumption amounts) from physical symptoms (e.g., odor of breath) or behavior (e.g., inability to walk a straight line) and more research has been done on how to train people to make these observations. Supervisor observation is not a complete solution, however; "practiced" drinkers often can mask symptoms (e.g., they use a breath spray or can walk a straight line) and avoid detection. Also, supervisors may have reasons to overlook employee alcohol use (e.g., sympathy for the employee, the desire to avoid confrontation, or the lack of a readily available replacement). The U.S. Army has found that supervisors have a tendency to underreport alcohol involvement in accidents (The Alcohol and Accidents Guide, February 1987).

The OA rules require employers to test covered employees for alcohol when the employer has reasonable suspicion to believe that the employee has violated the prohibitions in these rules or if the employee's behavior and appearance indicate alcohol misuse. The employer's determination that reasonable suspicion exists to require an alcohol test must be based on specific, contemporaneous, articulable observations by a trained supervisor concerning the appearance, behavior, speech, or body odors of the employee. Reasonable suspicion testing under these rules is authorized only if the required observations are made during, just preceding or just after the period of the work day that the covered employee is performing a safety-sensitive function.

Several commenters wanted supervisors to be able to use long-term performance factors, such as abuse of sick leave, in making their reasonable suspicion testing decisions. In addition, they believed that requiring the observation to occur close to or during the performance of a safety-sensitive function is too restrictive. Some commenters thought that use of long-term factors would be appropriate only in conjunction with short-term indications of alcohol misuse; others opposed any use of long-term factors. The factors set out for determining when reasonable suspicion exists in the drug and alcohol rules are short-term in the sense that they focus on what a supervisor sees at the time of performance of safety-sensitive duties. The Department believes that this restriction is appropriate because it accommodates Fourth Amendment concerns by relating the determination of the need for testing to factors indicating possible alcohol involvement that may affect the employee's present ability to safely perform required safety-related tasks. For example, even if the supervisor does not smell alcohol, he or she legitimately could decide to test an employee who cannot hit the correct buttons to operate a vehicle (a required safety-related task), but should not test an employee simply because he or she comes in late that day. Constant lateness, for example, may result from an alcohol problem, but it is not a reasonable basis for suspicion of alcohol misuse; there are too many other possible explanations. The rules do not interfere with the supervisor's own authority to take appropriate action in response to longer-term factors (e.g., a long-term decline in work performance, patterns of absenteeism, lateness, or abuse of sick leave) that may violate company policies.

A covered employee is required to undergo reasonable suspicion testing for alcohol as soon as possible, because the body rapidly eliminates alcohol. Therefore, if a reasonable suspicion test is not conducted within two hours following the determination of reasonable suspicion, the employer shall prepare and maintain on file a record stating the reasons why the test was not conducted. If the test is not conducted within eight hours after the determination of reasonable suspicion, the employer shall cease attempts to conduct the test and shall state in the record the reasons for not administering the test. These records must be submitted to the appropriate

Department officials upon request. This record requirement and the reasons we are imposing it are similar to those for post-accident testing discussed above. (Please note this is a change from the NPRMs.)

A number of commenters expressed concerns that supervisors might abuse reasonable suspicion tests to harass unpopular employees and wanted strict requirements to prevent this possibility. Many wanted us to require that two supervisors make the decision to test (as in the existing drug testing rules) to limit possible harassment and to support management's case during future grievance and arbitration procedures. Others noted that a two-supervisor requirement would be impracticable because alcohol metabolizes so quickly and because in certain locations, many employees have only one supervisor available.

The alcohol final rules generally require a single supervisor trained in detecting the symptoms of alcohol misuse to make the required observations and determine the existence of reasonable suspicion. We agree with several commenters that alcohol testing is too time-sensitive to incorporate as a general rule the time it takes to consult a second supervisor before making the testing decision, which also is difficult or impossible in some transportation industry locations. In addition, symptoms of alcohol use are more widely-known and easier to detect than those of drug use so there is less need for corroboration. To protect against possible harassment of a specific employee, the supervisor who makes the determination that reasonable suspicion exists generally is prohibited from conducting the reasonable suspicion test on that employee. Comments were mixed on whether we should allow supervisors to base their decisions to conduct reasonable suspicion tests on third-party reports of alcohol misuse. We decided not to permit a supervisor to base such a decision on reports by a third person who has made the observations, because of that person's possible credibility problems or lack of appropriate training.

A few commenters suggested that supervisors document within two hours and annually report their reasons for conducting a reasonable suspicion test so that the OAs can check for harassment. We believe that the possibility that a review of company records would show whether particular individuals were harassed—i.e., tested without positive result too often—should help deter harassment. A couple of commenters envisioned holding supervisors liable for damages if the results of the test did not confirm their suspicions. We believe it inappropriate to require action against a supervisor for ordering a test where the results are negative. Reasonable suspicion is not a guarantee of a positive result on an alcohol test. Other factors can result in behavior or appearance that can reasonably cause one to suspect alcohol misuse; that is why we require a test before requiring action for a rule violation. In addition, the supervisor may have been correct, but, by the time a test can be conducted, the alcohol may have passed through the employee's system.

Behavior and Appearance

Numerous commenters wanted to eliminate the proposed prohibition on employee behavior and appearance characteristic of alcohol misuse, because it is conceptually part of the reasonable suspicion prohibition and because it is so subjective. They noted that it would not be useful because managers do not always have daily contact with their employees. However, some commenters stated that they wanted the authority to remove an employee on behavior and appearance grounds when a reasonable suspicion test is not possible.

We agree that simple "behavior and appearance" of alcohol misuse involves a subjective determination and should not be considered prohibited conduct that triggers the full consequences of violating these rules without confirmation of such misuse by a positive test. As a result, the final rules have been changed from the NPRMs: under the reasonable suspicion testing provisions, an employer who observes such behavior and appearance must conduct a test; however, when it is infeasible or impossible to conduct a reasonable suspicion test in a timely manner (e.g., an EBT is unavailable or broken), the employee is not permitted to perform safety-sensitive functions for eight hours (or until obtaining a result below 0.02 on a test if an EBT subsequently becomes available within the 8-hour period).

The OA rules prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while the employee is under the influence of or impaired by alcohol, as indicated by behavior, speech and performance indicators of alcohol misuse. They also prohibit an employer from allowing such an employee to perform or continue to perform safety-sensitive functions. However, since alcohol-related behavior tends to become apparent to persons without extensive training (such as that provided by police) only at alcohol concentrations well above 0.04, it is unlikely that misuse would be detected in this manner at alcohol concentrations in the 0.02–0.04 range. Thus, there are important safety reasons for requiring that an employee be removed from his or her safety-sensitive function based on behavior and/or appearance alone if no testing devices are available. Another reason that we decided not to eliminate this provision entirely as requested by many commenters is because some employers do not believe that they otherwise have the authority to remove an employee who appears to be under the influence of alcohol in the absence of a test. We do not want an employer to allow a safety-sensitive employee to remain on duty for that reason.

Some commenters, particularly in the aviation industry, wanted to retain existing prohibitions on operating "under the influence" and while "impaired". To the extent some existing OA rules already permit removal of an employee based on observation alone, the employee has a right to an evidentiary hearing (e.g., as part of a certificate revocation action). The rules we have published today do not provide for a right to a hearing. For that reason, and because removal from a safety-sensitive function in the absence of a reasonable suspicion test involves a subjective determination, unverified by a test, and may provide an opportunity for the employer to harass an employee, we believe that lesser consequences should apply, i.e., removal from the safety-sensitive function until the next regularly scheduled duty period if at least 8 hours has passed. Removal for this reason does not require a SAP evaluation. Existing consequences in other OA rules that have "under the influence" or "impaired" language will continue in effect; any consequences that attach as a result of those rules could be imposed in addition to removing the employee from safety-sensitive function for eight hours. An employer's separate existing authority to remove employees is not affected by this provision.

Return-to-Duty Testing

The commenters split over whether return-to-duty testing should be mandated by regulation or left solely to the discretion of the employer; one commenter noted that it really is another "intelligence" test. Commenters who believed that the test should be discretionary disagreed whether the decision to test should rest with the employer (in consultation with the SAP) or the SAP alone. Some commenters stated that using a 0.02 standard is too stringent. Others liked the provision as proposed.

The OA rules require each employer to ensure that a covered employee, who has violated any of these alcohol misuse rules, has been evaluated, treated (where indicated) and tested with a result indicating an alcohol concentration of less than 0.02 before returning to a safety-sensitive function. We disagree with those commenters who thought return-to-duty testing should be left solely to the discretion of the employer. We believe that compelling concerns about safety and possible recidivism justify imposing a return-to-duty test requirement for those employees returning to safety-sensitive functions after they already have demonstrated problems with alcohol. Similar concerns justify use of a stricter 0.02 standard for return-to-duty tests. In any event, under other provisions of the rules, employees could not perform safety-sensitive functions until they have a result lower than 0.02; since this test is specifically for return-to-duty, the application of the 0.02 standard is logical. A positive result on a return-to-duty test indicates a problem that has not been resolved; the employee cannot come back the next day to retake the test without seeing the SAP again. The decision to return the employee to safety-sensitive functions and to conduct the test ultimately belongs to the employer. The SAP's function is to advise the employer as to whether the employee has complied with any recommended program of treatment.

Given the potential for poly-drug misuse, the rules permit employers to conduct return-to-duty drug tests on an employee, when the SAP has reason to suspect drug involvement and recommends such testing. Any such testing must conform to the requirements of part 40. The opposite would be true as well. Employers would have similar authority to test for alcohol where an employee tested positive for drugs and the SAP had reason to suspect alcohol misuse. (The OA drug rules have been drafted or are being changed to permit this.)

Follow-Up Testing

Commenters disagreed as to whether follow-up testing should be required or discretionary. As with return-to-duty testing, they divided over leaving the follow-up testing decision to the employer or to the SAP. Several commenters thought that a requirement for follow-up testing would be too costly and burdensome for employers and might cause them to fire the employee instead. Others thought that the concept had merit, but that the rules should require fewer tests over a shorter period of time, especially since the employee is also subject to random testing.

After identification of an employee's alcohol problem, there is a strong chance of recidivism and a need to ensure continued disassociation from alcohol misuse through periodic unannounced follow-up testing. We believe that a minimum number of follow-up tests is necessary to ensure public safety in view of various disincentives for imposing them, such as cost, the customary SAP preference for informal follow-up, and FRA's experience in its drug testing program (see below). In making the decision whether to return the employee to safety-sensitive duties, we assume the employer would determine whether, in its particular circumstances, the cost of hiring and training (and testing) a new employee would exceed that of testing a returned employee to ensure continued disassociation from alcohol. We agree with commenters that it is appropriate for the SAP to determine the employee's need for an individualized rehabilitation (if any) or follow-up program beyond the minimum specified here.

The OA rules require that each covered employee, who has been identified by a SAP as needing assistance in resolving problems with alcohol misuse and who has returned to duty involving the performance of a safety-sensitive function, shall be subject to a minimum of 6 unannounced, follow-up alcohol tests administered by the employer over the following 12 months. The SAP can direct additional testing during this period or for an additional period up to a maximum of 60 months from the date the employee returns to duty. The SAP can terminate the requirement for the follow-up testing in excess of the minimum at any time, if the SAP determines that the testing is no longer necessary. We believe that fewer follow-up alcohol tests over a shorter period would not provide sufficient deterrence of (or opportunity for detection of) alcohol misuse by an employee who has demonstrated a previous problem.

The FRA's experience under its drug testing rules with required follow-up testing for employees who tested positive for prohibited drugs illustrates the need for a minimum number of required follow-up tests. In 1991, FRA conducted a compliance review on a large railroad company and found that 9 of ten employees who had tested positive and were returned to service had received no follow-up tests during the next year. One employee received one follow-up test six months after returning to work. One of the employees who had received no follow-up testing later tested positive on an FRA-required random drug test. The Department's Office of Inspector General (OIG) recently completed a review of the FRA's alcohol and drug program. The OIG reviewed follow-up testing practices on several railroads and found inconsistent procedures and a lack of follow-up tests. Its report recommends prescribing procedures for follow-up tests, including a minimum number of tests and a minimum period for follow-up testing. For the above stated reasons, we believe that we must require a minimum amount of follow-up testing.

The rules provide that the evaluation and treatment services may be furnished by the employer, by a SAP under contract with the employer or by a SAP not affiliated with the employer. In view of the "gatekeeper" function that the SAP has under the rules, we believe that the employer should designate the SAP. Experts note that, due to training and the profession's normal employee orientation, the SAP may be eager to place the employee back into the normal work environment, i.e., the safety-sensitive function, but reluctant to require testing by the employer. The SAP may prefer to conduct any necessary follow-up testing as part of an after-care or follow-up treatment program. While we recognize that placement of the employee back on the job as soon as possible without follow-up testing may help the employee, it could put public safety at risk. The SAP's customary professional loyalty to the employee "patient" would directly conflict with the safety responsibility of the employer. In order for this program to work and to ensure public safety, the SAP must recognize his or her obligations to be cognizant of the employer's responsibilities and need for a fair evaluation of the employee.

Given the potential for poly-drug misuse, the rules permit employers to conduct follow-up drug tests on an employee during the follow-up alcohol testing period, when the SAP has reason to suspect drug involvement. Any such testing must conform to the requirements of part 40. The opposite would be true as well. Employers would have similar authority to test for alcohol where an employee tested positive for drugs and the SAP had reason to suspect alcohol misuse. (The OA drug rules have been drafted or are being changed to permit this.)

The rules do not use the stricter 0.02 alcohol concentration standard imposed on return-to-duty tests for follow-up tests, even though the employee has previously demonstrated problems with

alcohol. In either case, the employee cannot perform safety-sensitive functions with an alcohol concentration of 0.02 or above. Unannounced follow-up tests of employees back on the job are similar to random tests. Because employers may find it convenient to conduct some follow-up testing at the same time as random tests, the consequences for follow-up test results must be the same as those for random tests. This will enable employers to conduct unannounced testing and combine follow-up testing with other types of testing, but avoid imposing total abstinence from alcohol on returned employees whose follow-up programs do not require it. We note that, under the Act, an aviation employee who has a second violation under the FAA alcohol misuse prevention rule will be forever barred from the employee's safety-sensitive function. Please see the preamble to the FAA rule for a more comprehensive discussion of this consequence.

Retesting of Covered Employees With an Alcohol Concentration of 0.02 or Greater, but Less Than 0.04

Some commenters disagreed that there is any need to provide for retesting. Others used this issue as an opportunity to reiterate their opposition to the lesser consequences for test results indicating alcohol concentrations between 0.02–0.039.

The rules provide that if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an OA-required alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04, the employer must first retest the employee. The employee can return to the safety-sensitive function if the retest results in an alcohol concentration of less than 0.02. However, the FHWA rule does not contain a retesting provision because of a statutory requirement that drivers found to have a measurable amount of alcohol in their systems must be removed for 24 hours. The FRA rule also does not contain this provision because it would conflict with its existing rules. Eliminating this option from the other OA rules would impose a hardship on some employers; the employer will make the decision whether retesting is necessary to accommodate its employment circumstances.

Handling of Test Results, Record Retention and Confidentiality

Retention of Records

We received very few comments directed to handling of alcohol recordkeeping requirements. Generally, those commenters wanted to shorten the record retention periods (the most popular option would reduce the proposed 5 years to 3 years and the proposed 2 years to 1 year).

To facilitate Department oversight and effective enforcement of the alcohol testing programs and to protect employee confidentiality, we are requiring each employer to maintain records of its alcohol misuse prevention program in a secure location with controlled access. One commenter wanted to know what that really means. The employer should lock the location (room, cabinet, or, if on computer, control access by password or other protections) and allow access only to persons with a legitimate need to see the records under these rules. The OA rules require employers to retain, for a minimum of five years, records of any employee alcohol test results indicating an alcohol concentration of 0.02 or greater; documentation of refusals to take required alcohol tests; equipment calibration documentation; and documentation of employee evaluations and referrals. They require employers to retain for a minimum of two years any records related to the collection process (except equipment calibration documentation) and training. Records of negative test results must be retained for a minimum of one year.

Generally, the rules require each employer to maintain the following specific records:

(1) Records related to the collection process, including: Collection logbooks, if used; documents relating to the random selection process; EBT equipment calibration documentation; documentation of BAT training; documents generated in connection with decisions to administer reasonable suspicion and post-accident tests; and documents verifying existence of a medical explanation of an employee's inability to provide adequate breath for testing;

(2) Records related to test results, to the refusal of any covered employee to submit to a required alcohol test and to an employee dispute over the result of an alcohol test;

(3) Records related to other violations of these rules;

(4) Records related to evaluations and return to duty; and

(5) Records related to education and training.

We have decided to retain the retention periods as proposed because, considering the serious potential consequences of alcohol misuse, we believe it is important to be able to identify repeat offenders. In addition, the FAA has a need to track the number of repeated violations under its rule for mandatory permanent disqualification of an employee under the Act.

In the common preamble to the NPRMs, we asked whether we should require documentation of reasonable suspicion determinations. Very few commenters addressed this issue; some favored the requirement because such documentation might deter harassment of employees, but others opposed it as burdensome and a violation of employee privacy. The rules do not require documentation of reasons for determinations made to conduct reasonable suspicion tests, but if employers generate them, they must maintain the records. We are not requiring that employers report the specific test results of individuals—just aggregate numbers for reasonable suspicion tests conducted and resulting positives. This requirement should not burden employers and will protect employee privacy. Employers may want to monitor their reasonable suspicion testing positive rate to determine if their supervisors need additional training.

Reporting of Results in a Management Information System

For oversight purposes, each employer generally is required to compile for the OA that regulates it, at a minimum, an annual report summarizing the results of its alcohol misuse prevention program for each calendar year. This information will allow the Department to track progress in the programs and later make changes, if justified, that could reduce costs, ease implementation and enforcement, provide better employee protection, and/or increase benefits. Some OA rules require that all employers submit the data to the OA; others require a representative sampling of employers to submit the reports or a mix of required reports from some and a sampling of others. The OAs will rely on this data for program evaluation and enforcement purposes, as well as to adjust the random testing rates for alcohol. As noted earlier, FAA, FRA, FHWA, RSPA, and USCG separately published MIS rules on December 23, 1993, that describe the particular OA requirements for reporting information on drug testing (and alcohol testing for USCG). FTA's drug MIS requirements are in its final drug testing rule published elsewhere in today's **Federal Register**.

Generally, employers subject to more than one DOT OA alcohol rule must identify each employee covered by the regulations of more than one OA and report the total number of such employees broken down by category of covered function and by the OA. Before conducting any alcohol test on an employee regulated by more than one OA, the employer must determine which OA rule requires the test and then include the test result in the appropriate OA MIS report. Pre-employment and random testing data must be reported to the OA that covers more than 50 percent of the employee's function. Post-accident and reasonable suspicion testing results, however, must be reported to the OA that covers the function the employee was performing at the time of the accident or determination of reasonable suspicion. Finally, return-to-duty and follow-up results must be reported to the same OA that received the initial results that led to the employee's removal from the safety-sensitive function. In response to one commenter's concerns about confidentiality of employee results, we note that the employer must provide aggregated, not individual, information under the MIS.

Most of the comments addressed the drug MIS requirements; we received very few concerning the alcohol MIS proposal. Since the MIS requirements for drugs and alcohol are essentially similar, the Department's responses to specific comments on the drug MIS requirements, which are addressed in the preamble to the drug MIS rules published December 23, 1993 (FTA's MIS comments are addressed in the preamble to its final drug rule), also apply to the alcohol MIS requirements.

Commenters generally expressed concerns about ensuring unimpeded access to employee testing information kept by third-party providers, e.g., consortia. The employer is responsible for the accuracy and timeliness of each report submitted by it or a third-party service provider acting on the employer's behalf. If necessary, the employer should ensure by contract or other means access to employee testing information held by a third-party provider.

Employers required to submit the annual reports must do so no later than March 15 of each year for the preceding calendar year on the specified form. Each report will contain a number of information items relevant to program evaluation or enforcement. Eventually, we plan to merge the alcohol and drug testing reporting requirements where practical to permit one annual report and to eliminate any duplicative information items. The Department is committed to developing the capability for processing electronic submission of these reports where such capability is not currently available.

Access to Facilities and Records

To preserve employee confidentiality, the rules generally prohibit employers from releasing information pertaining to an alcohol test of a covered employee or any violation of these rules, except as required by law. They provide, however, that the employee is entitled, upon written request, to obtain copies of any records concerning the employee's use of alcohol, including alcohol test records. The rules permit the employer to disclose information arising from the results of an alcohol test administered under these rules or from the employer's determination that the employee violated any prohibitions in these rules to the employee or in the context of a proceeding relating to: (1) An employee benefit; (2) DOT agency action against the employee (e.g., an action to revoke a certificate); or (3) an NTSB safety investigation. Employers must promptly provide any records requested by the employee, but cannot make access to an employee's records contingent upon payment for records other than those specifically requested. The bundling of requested records with unrequested material at much higher cost has been a problem under the drug rules. Employers also will have to release information as required by law, including court orders or subpoenae. Please refer to part 40 for additional discussion.

The rules generally require an employer to permit access to all facilities involved in its alcohol testing program and make available copies of all test results and any other alcohol program records, upon request, to the Secretary of Transportation or any OA with regulatory authority over the employer or any of its covered employees. In addition, upon request by the NTSB as part of an accident investigation, employers are required to disclose information related to the employer's administration of a post-accident alcohol test following the accident under investigation. FTA's rule requires the employer to disclose test results to States to be consistent with obligations placed on States under FTA's State Safety Oversight rule. See the preamble to the FTA rule for a further discussion of this. RSPA's rule requires the employer to permit access to facilities and make available test results and records to a representative of a State agency with regulatory authority over the employer.

Several commenters raised questions about the reporting of confidential information on individuals and opposed mandatory release of employee test results to subsequent employers and other parties because of unspecified liability concerns. Some commenters expressed their support for employer provision of test results in appropriate circumstances; a few others opposed allowing employers to require employees to authorize the release of previous test results as a condition of employment.

Generally, the rules require an employer to release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release to an identified person. In view of the fact that these rules permit employers to rely upon negative pre-employment alcohol tests conducted by other employers within the preceding six months, we believe that it is appropriate to require a prior employer, upon written request from the employee, to make records available to a subsequent employer. This pre-employment exception, which can significantly reduce hiring costs for some employers, might not otherwise be available to them. Since the previous employer would release the records only with the written consent of the employee for a specific limited purpose, commenters' liability concerns appear to be unfounded. To preserve the employee's confidentiality, the rules prohibit the identified person or recipient employer from subsequently disclosing the records, except as expressly authorized by the terms of the employee's written request. Please refer to part 40 for additional discussion.

These rules do not prohibit employers from using their own authority to require applicants to release previous test results. We believe that employers should be able to protect themselves from alcohol misusers who move from job to job as they are detected. A prudent employer can ask an applicant to request this information from former covered employers as a condition of employment and not hire the applicant until satisfactory information has been received. If the applicant does not provide this consent, the employer simply could choose not to hire the applicant for a safety-sensitive position. Of course, an employer must conduct a pre-employment test when a previous employer does not respond (e.g., had gone out of business, could not be located, failed or refused to provide the requested information).

Consequences for Employees Engaging in Alcohol-Related Conduct

Removal From Safety-Sensitive Function/Required Evaluation and Testing

In general, the OA rules prohibit a covered employee who has engaged in conduct prohibited by any of the OA rules from performing safety-sensitive functions until he or she has met the conditions for returning to such work, which include a SAP evaluation, compliance with any required treatment program, and a successful return-to-duty test with a result below 0.02. The rules require employers, if they have determined that the employee has violated these rules, to ensure that the employee does not perform or continue to perform safety-sensitive functions.

Some commenters expressed the opinion that employers should determine the appropriate consequences for a violation of these rules. We disagree; there may be situations where a conflict exists between protecting public safety and an employer's strong economic incentive to keep an employee who misuses alcohol on the job. We believe that we need to establish the appropriate consequences for violation of these rules to protect public safety and to ensure their uniform application to similarly-situated employees to the extent possible. The rules do not prohibit an employer with authority independent of these rules from taking any other action against an employee.

A few commenters stated that employers who remove an employee from a safety-sensitive function should not be obligated to place that employee in another position or compensate the employee. All these rules require is removal from safety-sensitive functions. We leave the specific conditions under which an employee is removed, such as whether or not the employee is paid or moved to another non-safety-sensitive position, to employer policies or collective bargaining.

A few commenters wanted the consequences to be the same for all of the OA rules. Some of the OA rules do impose different consequences; these result from differing statutory requirements and the need to place these programs within the frameworks of the OA's existing safety regulations. The Act mandates harsher treatment of certain aviation employees that violate these rules. FHWA had to fit its rule within a statutorily-required system of consequences for violations of its safety requirements. (See the FAA and FHWA rules for a specific discussion of these differences.)

Other Alcohol-Related Conduct

Continuing the argument over the appropriate prohibited alcohol concentration, some commenters on this section wanted to eliminate the lesser consequences for a 0.02–0.039 alcohol concentration and impose the full consequences under these rules on any test result at 0.02 or above, while others believed that no action should be taken against an employee with a result below 0.04. We disagree with commenters who want no action taken against an employee at alcohol concentrations below 0.04. Although the Department is not making alcohol concentrations below 0.04 a violation of the rules requiring removal from safety-sensitive functions until evaluation and, if necessary, treatment, we are concerned about employees whose alcohol test indicates some alcohol in their system. As noted earlier in this preamble, an alcohol concentration of .039 may not warrant evaluation and treatment, but it may have an adverse effect on that individual's abilities to perform safety-sensitive functions. Alternatively, the individual's blood alcohol curve may be rising, (i.e., the individual may have just consumed enough to ultimately produce an alcohol concentration of 0.04 or greater, but the alcohol is just entering the bloodstream and, at the time of testing, the alcohol concentration is below 0.04 and rising). Permitting such an employee to continue performing safety-sensitive functions, when we know there is alcohol in his or her system, would violate our (and the employer's and employee's) safety responsibility.

Therefore, in addition to the 0.04 alcohol concentration prohibition, the rules require removal of covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04 from safety-sensitive functions, until the employee is retested with a result below 0.02, or until the start of the employee's next regularly scheduled duty period, if it occurs at least eight hours following administration of the test. If the retest result is above 0.04, the employee has violated the prohibition against having an alcohol concentration greater than 0.04. The employee will then be required to meet the conditions for returning to safety-sensitive functions. The rules do not prohibit the employer with authority independent of these rules from taking any other action against an employee based solely on test results showing an alcohol concentration greater than 0.02.

The OA rules and the part 40 alcohol testing procedures treat any indicated alcohol concentration reading of less than 0.02 on an evidential breath testing device (EBT) as "negative." Given the limits of technology for measuring alcohol concentration in body fluids or breath, the rules use 0.02 as the threshold for establishing any measured alcohol concentration. Below this level, we can not be certain an individual actually has alcohol in his or her system. Readings below 0.02, therefore, have no significance for any purpose under our rules.

Use of Back Extrapolation

Most commenters opposed allowing the use of back extrapolation because of its difficulty and uncertainty in application and because it could infringe upon an employee's legal use of alcohol. Back extrapolation is the calculation used to determine alcohol concentrations over time based on an average rate of alcohol metabolism. It is most generally used to determine whether the alcohol concentration during the performance of the safety-sensitive functions (e.g., at the time of the accident) was actually greater than a specific concentration obtained at a later time. The OA rules require action only based on actual readings on the EBTs. They do not permit back extrapolation because, given the wide individual variations in alcohol metabolism, it creates too many uncertainties in the context of these programs. This prohibition would not prevent an OA from making use of back extrapolation in certain situations. Some existing OA rules permit the use of back extrapolation through expert scientific testimony in reasonable cause and post-accident cases conducted with appropriate due process protections. The rules that we are publishing today do not provide such protections. Those situations are different from the use of back extrapolation by employers in interpreting the results of tests conducted under part 40.

The rationale for back extrapolation is based on studies that show that the average rate of elimination of alcohol from the bloodstream is approximately .015 percent per hour, though this rate may well decline at low concentrations (0.02 and below). Individuals' rates of alcohol elimination are very often not "average," however. Further, it is ordinarily not known when the individual last ingested alcohol or how much alcohol he or she consumed. All of these factors make back extrapolation subject to substantial inaccuracy. Such analysis requires a number of "assumptions." Some of the assumptions relate to the individual subject (e.g., whether there is healthy liver function, whether food was ingested before consuming alcohol, or other metabolic differences), some to facts or claims that may be supplied by the individual (e.g., no on-duty consumption, no consumption during the pre-duty abstinence period), and others to data that can be supplied by the employer (e.g., when the event occurred that triggered the test, when the test occurred). It is not only desirable but necessary for such analysis to be conducted by an expert in forensic toxicology.

We have decided not to permit back extrapolation of alcohol test results under these rules, because it would base serious consequences on the variable and uncertain results of this type of analysis. However, the requirement that employers remove persons with indicated alcohol concentrations of 0.02 or greater and less than 0.04 from safety-sensitive functions for a period of not less than 8 hours or until they retest below 0.02 will achieve some of the goals of back extrapolation.

Alcohol Misuse Information, Training, and Referral

Employer Obligation to Promulgate a Policy on Alcohol Misuse

The rules require each employer to ensure that each employee receives educational materials that explain these alcohol misuse prevention requirements and the employer's policies and procedures with respect to meeting those requirements prior to the start of alcohol testing. Each employer is required to provide written notice to every covered employee and to representatives of employee organizations concerning the availability of this information. Under the rules, the materials must include: the identity of a contact person knowledgeable about the materials; factual information on the effects of alcohol misuse on personal life, health, and safety in the work environment; signs and symptoms of alcohol misuse (the employee's or coworker's), particularly at low concentrations; where help can be obtained; available intervention methods, including referral to an employee assistance program (EAP), other SAPs and/or management; categories of employees subject to testing; what period of the workday or what functions would be covered by the rules; a description of prohibited conduct and the circumstances that trigger testing; testing procedures and safeguards; an explanation of what constitutes a refusal to submit to testing and the attendant consequences; and the consequences of violating the rules (as well as lesser consequences for employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.)

Many commenters believed that simply providing the above information is not sufficient to ensure that employees understand the requirements of these rules and their consequences. This and other comments on this provision related to employee training are addressed below.

Self-Identification/Peer-Referral Programs

Since our primary purpose is to deter alcohol misuse and keep employees who have alcohol in their systems from performing safety-sensitive functions, employees should be able to identify themselves as unfit to work. A few commenters wanted to be able to "mark-off". Some segments of the transportation industry already have self-identification programs that allow an employee to decline without penalty to perform or continue to perform his or her job if the employee knows that he or she is or may be impaired by alcohol. We do not require such programs, because we believe that they are a matter more appropriate for collective bargaining and employer policy. The successful implementation of such programs depends upon joint labor-management commitment to an alcohol/drug-free work environment. However, we encourage employers to establish self-identification or peer-referral programs and encourage employees to use them.

However, such programs cannot interfere with the conduct of the alcohol tests required by these rules. Employers who have set up such programs must ensure that employees are not allowed to self-identify after they know that they have been selected for testing. This would compromise safety and frustrate the goals of these programs. The rules do not interfere with an employer's discretion to impose its own sanctions against self-identifying employees, so long as the sanctions are not premised on our rules. Such a program could permit a covered employee to take a voluntary alcohol test to determine whether the employee would be in violation of these rules if the employee were to perform safety-sensitive functions (but not after the employee has been selected for DOT-required testing); there would be no Federal consequences or requirements pertaining to the test or its results, however, since that kind of test is not required by DOT rules.

In addition to program information, the materials also may describe any peer-identification or self-identification programs or procedures that employers offer or are associated with under which a covered employee may decline to perform or continue to perform safety-sensitive functions without penalty when he or she may be in violation of these rules, including any limits on the programs. The employer also may include information on additional employer policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol concentration, that are based on the employer's authority independent of these rules. These additional policies must be clearly communicated and identified as based on the employer's independent authority.

Training for Supervisors

Commenters who addressed the issue of supervisor training or education requirements proposed in the OA rules generally supported one or a mix of the following: the necessity for annual or other recurrent supervisory training; the necessity for 2 hours or more of supervisory training; the adequacy of one hour of supervisory training; or a mandatory requirement for supervisory training with the amount or length of training left unspecified. For example, those who preferred a particular amount of time for training split between a one-time training requirement and an annual or other recurring training requirement.

Those commenters who supported recurrent or annual supervisory training requirements expressed the belief that supervisory personnel need refresher or ongoing education to maintain and improve skills and knowledge necessary to making effective decisions regarding reasonable suspicion alcohol testing. These commenters cited experience with one-time training for supervisors that did not provide sufficient exposure to the problems associated with confronting and identifying problem employees. Other commenters cited anecdotal information that reasonable suspicion testing was more appropriately and frequently used when supervisory training was part of an annual or periodic training program.

The OA rules require employers to ensure that persons designated to determine whether reasonable suspicion exists to require an alcohol test receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse, particularly those associated with lower concentrations of alcohol. We believe that this amount of training time is adequate for this specific purpose and in view of the fact

that the symptoms of alcohol misuse are commonly known and recognized. We believe that retaining the one-hour training requirement best balances the benefits of supervisor training with its high costs to employers. Additional supervisor training beyond a mandatory one-time, one-hour minimum may be desirable, but requiring it would significantly increase the costs imposed by these rules. At this time, we lack definitive information to corollate the cost of additional training with quantifiable benefits that would justify imposition of those additional costs on the transportation industries. Employers may, of course, provide additional information or annual (or other recurrent) training if they desire.

Several commenters requested that the rules combine drug and alcohol training for supervisors. These commenters argued that training would be more effective if viewed in the context of all substance abuse rather than divided into separate courses for drug and alcohol abuse. Employers are free to combine supervisor training for alcohol misuse detection with the comparable training for drug use detection currently required by the OA drug testing rules for a total of two hours to minimize costs and inconvenience. Please note that FRA will retain its existing combined three-hour requirement for alcohol and drug abuse training for supervisors.

A few commenters suggested that the requirements for supervisory training should be content- rather than time-specific. These commenters recommended that the rules specify core or essential components of the curriculum and employers would develop the supervisory courses accordingly. This approach reflects a preference for criterion or performance standard training requirements, rather than training based on a "classroom hours" concept. We have decided not to establish mandatory performance-based training because of the difficulty of developing meaningful specific core course components that cover various different industry situations and the administrative burden of evaluating whether or not employers have met the performance standards. We would rather allow employers the flexibility of tailoring supervisor training to their particular industry and programs. We do, however, take this approach with required BAT training, because that is much more technical and specific and must be the same for part 40 testing in all transportation industries.

Employee Training

Commenters presented many of the same arguments on the issue of mandatory employee training as they did regarding supervisory training. Various commenters suggested that mandatory recurrent or periodic employee training would be advantageous and more effective as a prevention or deterrent strategy than testing. Commenters also suggested that the rules should combine alcohol awareness education with drug abuse education to address the total substance abuse problem. Some commenters opposed mandatory employee training because of cost concerns.

Most comments on the issue of employee education criticized the lack of specific proposed requirements for mandatory employee education and training on alcohol misuse. These commenters argued that the proposals to provide employees printed literature and information were inadequate and, according to some, a waste of time and money. They expressed the belief that structured, "classroom" type training is more effective in presenting information about drug and alcohol abuse and to increase awareness and prevention of alcohol misuse. A few commenters argued that it is irresponsible and unnecessarily punitive to impose a comprehensive alcohol testing program with specific prohibitions on alcohol misuse, without requiring training for employees to be certain they understand the prohibited conduct and the consequences of misconduct.

We believe motivating employees about safety in the workplace and good health is important to making an alcohol misuse prevention program work. Because the primary objective of any effective alcohol misuse program is deterrence rather than detection, it is especially important that, before any testing is begun, employers make their employees fully aware of the dangers of alcohol misuse in their jobs, advise them where help can be obtained if they have a problem with alcohol use, and alert them to the potential consequences for people who violate these rules.

These rules require that employers give covered employees alcohol misuse information, but do not require classroom training for nonsupervisory employees. Although such training may be desirable, industry-wide mandatory employee classroom training would be prohibitively expensive. In the highway area alone, a one-time, one-hour training requirement for approximately 6.3 million employees, with a large amount of turnover, at an average hourly wage of $14.50 plus travel time, cost of materials, etc., would cost in excess of $100 million. At this time, we lack definitive information to corollate the cost of training with quantifiable benefits that would justify imposition of these costs. Because of the large number of employees covered by these rules, the widely varying relationships between employer and employee, and the difficulty in ensuring the effectiveness of such wide-spread training, we believe it appropriate to allow employers the discretion to determine the best means of educating their employees beyond the minimum requirement to distribute informational materials.

Some researchers claim that education is more effective in preventing alcohol misuse than sanctions or enforcement initiatives. For example, a Boston University researcher concluded that social pressure and publicity "may be as important as government regulations in reducing impaired driving and fatal crashes." (quoted in "USA Today," Wednesday, August 3, 1988.) In the area of impaired driving deterrence, NHTSA believes that the most effective programs are those that combine education and enforcement. Information and education programs, in the absence of enforcement activities or sanctions, have never been shown to have an impact on reducing alcohol-related fatal crashes. Conversely, scores of studies have found that programs involving enhanced enforcement, roadside sobriety checkpoints, and the use of sanctions such as license suspensions frequently have resulted in significant reductions of alcohol-related fatalities. Although there is disagreement on the effectiveness of education alone, it appears that using education as an adjunct to other deterrent measures, such as those in these rules, will make both more effective.

We recognize that it may be difficult to get the attention and support of workers by handing them literature or displaying various materials on a bulletin board. In conjunction with the implementation of the rules, the Department also plans to distribute educational materials and conduct seminars designed to help employers increase employee awareness of the risks of alcohol misuse by those who perform safety-sensitive functions. The Department took similar action in the drug area.

Referral, Evaluation, and Treatment

Numerous commenters expressed concern that the NPRMs did not go far enough in ensuring that employees would get access to needed assistance and treatment. They felt that even

though the proposed rules require "evaluation and assessment" by a SAP, they do not protect employees who violate the alcohol misuse provisions from termination, and, therefore, the access to treatment via the SAP evaluation is a sham; a paperwork exercise. Several commenters favored mandatory employer-provided or paid rehabilitation, citing our proposals as a cynical violation of the Congressional mandate to provide an opportunity for rehabilitation. Some commenters, particularly labor and union groups, expressed the view that the rules should specifically guarantee that employees who violate the regulations are evaluated by a SAP and provided access to treatment, regardless of personnel actions taken by the employer. Many commenters, however, opposed mandatory employer-provided or paid rehabilitation.

The Act requires that an opportunity for treatment be made available to covered employees. To implement this mandate, these rules require an employer to advise a covered employee, who engages in conduct prohibited under these rules, of the available resources for evaluation and treatment of alcohol problems, including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs. They also provide for SAP evaluation to identify employees with alcohol misuse problems. The employer has no similar obligation to applicants who refuse to submit to or have a positive result on a pre-employment test; this obligation runs only to current employees. The rules do not require employers to provide or pay for rehabilitation or to hold a job open for an employee with or without salary; the costs of such requirements could be prohibitive and could jeopardize the success of this program. In the drug testing rules, the Department decided that it was inappropriate to establish a Federal role in mandating that employers provide for rehabilitation and that it should be left for management/employee negotiation. The same logic applies here and the Department has decided not to require employer-provided rehabilitation in these rules. We believe that the rules' provisions concerning evaluation adequately address the Act's requirements.

Many commenters noted that EAPs have proven successful in offering employees with alcohol problems an avenue to non-punitive resolution of their problems and in offering employers the ability to return employees to the workforce who might otherwise have been fired. Aviation employers pointed to the FAA-supported Human Intervention and Motivational Study (HIMS) as a particularly effective program, with its combination of alcohol awareness training for supervisors and peers, rehabilitation, return to duty/medical certification process, and intensive follow-up monitoring of recovery. Overall, the success rate for alcoholic pilots identified through the HIMS or related programs has been about ninety percent. Some transportation employers have established similar programs for all of their employees. A number of these commenters also expressed their concerns that resources currently dedicated to EAPs would have to be shifted to support the new alcohol testing requirements, resulting in the reduction or elimination of existing EAP services.

We recognize that these programs will be costly and that, in specific circumstances, employers may decide that they have to divert funds from an EAP to conduct the required alcohol testing and prevention programs. The primary safety objective of these rules is to prevent, through deterrence and detection, alcohol misusers from performing safety-sensitive functions. The necessary resources must be provided to accomplish this objective. We hope that employers do not have to divert resources from EAPs to achieve this. We recognize the value of rehabilitation and encourage those employers who can afford to provide it to do so through established health insurance programs, since it helps their employees, benefits morale, is often cost-effective and ultimately contributes to the success of both their business and their testing programs. Please note that repeated provision of access to rehabilitation services after "positive" testing, followed by repeated reinstatement and repeated violations, may raise public safety and liability concerns for employers. It also could dilute the deterrent value of testing programs and encourage further misuse of alcohol.

Commenters also addressed the issue of the role of the SAP in return-to-duty determinations. Many of these commenters felt that the NPRMs were not clear in delineating how and by whom the decision of an employee's return to safety-sensitive function would be made. Some of these commenters believe that the SAP should play a crucial role in advising or recommending return-to-duty actions to employers.

The rules provide that the evaluation may be provided by a SAP employed by the employer, by a SAP under contract with the employer, or by a SAP not affiliated with the employer. A SAP will evaluate each covered employee who violates these rules to determine whether the employee needs assistance resolving problems associated with alcohol misuse and refer the employee for any necessary treatment. Before returning to duty, each employee identified as needing assistance must (1) Be evaluated again by a SAP to determine whether the employee has successfully complied with the treatment program prescribed following the initial evaluation, (2) Undergo an alcohol test with a result of less than 0.02 alcohol concentration, and (3) Be subject to a minimum of six (6) unannounced, follow-up alcohol tests over the following twelve (12) months. Compliance with the prescribed treatment and passing the return-to-duty alcohol test do not guarantee a right of reemployment or return to safety-sensitive duties; they are preconditions the employee must meet in order to perform safety-sensitive functions. The decision on whether to return the employee to his or her job we leave to the employer. The choice of SAP and assignment of costs should be made in accordance with employer/employee agreements and/or employer policies.

In the common preamble to the NPRMs, we proposed categories of persons eligible to be SAPs and asked if other categories should be included. Numerous commenters complained that the proposed definition was too restrictive. The National Association of Alcoholism and Drug Abuse Counselors (NAADAC) organized a widespread effort for its membership to send comments supporting the position that certified addiction counselors were the most qualified professional or occupational group to serve as SAPs. These comments tended to emphasize NAADAC standards and certification requirements, especially in counseling, treatment and rehabilitation of alcoholics and addicts. Many commenters certified by other State or local boards also presented arguments for their inclusion in the definition of a SAP. A few commenters suggested that physicians, social workers, and psychologists do not generally have training or skills specific to alcohol and drug abuse diagnosis or treatment.

The final rules define the SAP, as proposed, to include a licensed physician (with a Medical Doctor or Doctor of Osteopathy degree) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders (the degrees alone do not confer this knowledge), or a licensed or certified psychologist, social worker,

or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders. In response to comments, we also have included in the definition alcohol and drug abuse counselors certified by the NAADAC Certification Commission, a national organization that imposes qualification standards for treatment of alcohol-related disorders. The commenters provided information showing that the training and experience necessary to meet NAADAC standards are sufficient for participating as a SAP in our alcohol misuse prevention programs. We rejected commenters' suggestions that the definition include State-certified counselors, because the qualification standards vary dramatically by State; in some States, certified counselors do not have the experience or training we deem necessary to implement the objectives of our rules. State-certified addiction counselors can, of course, take the NAADAC competency examination to become a certified alcoholism and drug abuse counselor. The rules require that all persons in the categories listed in the definition must have knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders to qualify.

A few commenters expressed concern about the relationship of the SAP to the treatment or rehabilitation staff or facility. These commenters specifically addressed potential conflicts of interest, a "referral-to-self" practice, and the objectivity of return-to-duty evaluations. Many of these commenters believed that the rules should establish specific parameters that outline the SAP's duty or obligation to the employer as well as protections for employees against unscrupulous or unethical SAPs who would use the evaluation and assessment process to foster their own practice or treatment facilities.

Professional organizations, such as the Employee Assistance Professionals Association, prohibit their members from making referrals for treatment to their own practice or to agencies from which they receive financial remuneration. We want to avoid conflict-of-interest problems that could arise where the SAP is involved in both the evaluation and treatment phases of employee assistance, which could lead to recommendations for inadequate or inappropriate treatment for the employee and/or the imposition of unnecessary costs on both employers and employees. For example, a SAP might recommend a one-time misuser for a 30-day treatment program in which the SAP has a financial interest or send an alcoholic through the SAP's own outpatient treatment program. Therefore, the rules generally require the employer to ensure that a SAP who determines that a covered employee requires assistance in resolving problems with alcohol misuse does not refer the employee to the SAP's private practice or to a person or organization from which the SAP receives remuneration or in which the SAP has a financial interest. However, this requirement could impose hardship and the unnecessary costs of requiring two different sources of assessment and treatment on employers in remote areas or in situations where employee assistance (including assessment and treatment) is provided by contract or through a health insurance program. Therefore, the rules do not prohibit a SAP from referring an employee for assistance provided through (1) a public agency; (2) the employer; (3) a person under contract to provide treatment for alcohol problems on behalf of the employer; (4) the sole source of therapeutically appropriate treatment under the employee's health insurance program; or (5) the sole source of therapeutically appropriate treatment reasonably accessible to the employee.

Some commenters wanted a medical review officer (MRO) to review and interpret alcohol test results. Since the determination made in alcohol tests required by these rules is whether there is a prohibited concentration of alcohol in an individual's system, regardless of the source, there is no need to require an MRO to interpret positive test results, as required by the DOT drug testing rules. There is no "alternative medical explanation" for the prohibited alcohol concentration, so there is no role for an MRO. The mental health and/or medical professionals to whom the employee is referred can evaluate the employee's problems, if any, associated with the alcohol misuse. A SAP will then determine whether the employee has complied with any recommended treatment program. In some OA rules, where the employee operates under a certificate or license, a licensed physician must certify, in conjunction with a medical examination, whether the employee can return to work.

Other Issues

Flexible Approaches

As in the drug testing rules, we want to provide program flexibility to allow employers to carry out their programs in a more efficient, cost-effective manner and to ease the compliance burden on small businesses. Testing, for example, can be conducted by the employer, an outside contractor or program administrator, a consortium, a union, or any other entity. The use of consortia has worked well in the drug testing area; in fact, it is the predominant method of compliance in some industries, particularly among smaller employers. We have delayed implementation of the alcohol rules for smaller employers by an additional year to enable them to join established consortia or large employer testing programs, rather than have to establish their own programs.

The OA rules have specific provisions to make it easier for smaller employers; FRA is retaining its existing exemption from its drug and alcohol rules for railroads with 15 or fewer employees that do not engage in joint operations. (These entities are not considered sufficiently safety-sensitive to be subject to testing, since they tend to operate on private track at slow speeds.) FRA, which requires covered employers to submit plans for their alcohol misuse programs, imposes significantly reduced plan requirements on smaller employers.

Employers may find it more cost-effective and convenient to conduct alcohol testing, particularly random testing, at the same time they conduct drug testing. Because we require alcohol testing at or near the time of performance, however, all random and reasonable suspicion drug testing also would have to occur at such times. In addition, the testing would have to take into account differences in the alcohol and drug random testing rates for the employer's industry. For random testing, employers can randomly choose the employee's number and then test the employee for both drugs and alcohol the next time he or she performs safety-sensitive functions. As described earlier, we are allowing performance-based random alcohol testing rate adjustments and initiating additional rulemaking to provide for greater flexibility in testing methods.

Motor Carrier Safety Assistance Program (MCSAP Option)

In the OA NPRMs, we sought public comment on whether the post-accident and random (or other) roadside testing could be conducted by state and local law enforcement officials under the FHWA Motor Carrier Safety Assistance Program (MCSAP), which is a Federal/State cost reimbursement and matching grant-in-aid program to increase commercial motor vehicle safety, or a similar program. The FHWA NPRM specifically proposed this option. Under the MCSAP, participating States would have to submit a random (or other) alcohol testing plan as part of their application for FHWA MCSAP funding. The random alcohol testing plan component would conform to the requirements of these rules.

Recognizing that statutory changes to implement the MCSAP option would be necessary, we sought public comment on whether involving State and local authorities in alcohol testing would work for the various types of testing in the different transportation industries. Since States already have some equipment and their law enforcement officials already are trained in using that equipment, overall costs might be less; user fees could be imposed on covered employers to cover State costs. As neutral, third-party testers, their tests might be better accepted by employees. Due to the fact that local officials may reach an accident first, they could help in determining who was involved in the accident and also conduct tests sooner.

Commenters were divided on this proposal. Most employers, particularly motor carriers, liked the option because it would impose testing costs on State and local authorities, rather than on individual motor carriers, especially independent owner-operators. They opposed the proposed imposition of user fees to support this program. One commenter suggested that the Federal government should pay local or State governments to perform alcohol testing. A few employers noted that roadside testing would be too time-consuming and would disrupt their closely-timed shipment and travel schedules; they prefer employer-based testing where they have more control over scheduling. They also noted that the proposal would reduce training costs because the law enforcement officers already are trained in conducting alcohol tests. The States and local authorities, including MCSAP agencies, opposed this option because of the costs (another unfunded mandate imposed on States by the Federal Government), diversion of law enforcement personnel from traditional functions, and lack of legal authority to conduct alcohol tests under their existing statutes without the requisite probable cause. They believed that without additional appropriations, the expenses of such a testing program would lessen the financial resources available for other congressionally-mandated MCSAP programs, i.e., roadside vehicle safety inspections.

We have decided not to adopt the MCSAP option at this time for several reasons. On October 28, 1993, President Clinton issued Executive Order 12875, "Enhancing the Intergovernmental Partnership," which prohibits executive departments from promulgating regulations that impose an unfunded mandate on State, local and tribal governments, unless the mandate is required by statute, direct costs are funded by the Federal Government, or the executive department justifies the need for the mandate to the Office of Management and Budget (OMB) after appropriate consultation with the affected governments. The costs of State-operated random alcohol testing would exceed the total annual MCSAP funding allocation of $65 million. With current limited budgetary resources, it is unlikely that the MCSAP program or any other Federal program will obtain additional appropriations to fund State testing. Legislation would be needed to collect user fees and use those fees to cover any additional, necessary MCSAP funding. Moreover, the MCSAP option could never completely replace employer-based programs; it could cover only three of the types of testing (random, reasonable suspicion and post-accident) and only on certain roads. Furthermore, in some States, the MCSAP program is directed through agencies other than the police, who would be the likely candidates to do the testing. Before it could be implemented, this option would require numerous changes to existing State statutes or constitutions to permit State and local officials to test without probable cause.

Multi-Agency Coverage

Multi-Agency Coverage In some transportation industries, a significant percentage of employees are subject to the testing rules of more than one DOT OA; some are subject to the testing rules of more than one Federal agency (e.g., employee drivers covered by the Department of Energy (DOE) may also be covered by FHWA). This is one reason we have tried to make the DOT OA rules as uniform as possible (and why we have also consulted closely with other Federal agencies). Where it does not compromise the effectiveness of the testing program or other requirements, one DOT OA will defer to another or recognize the validity of the other's requirements. For example, FHWA defers to FTA for CDL holders employed by FTA grantees, and FTA defers to FRA for grantees that are part of the general railroad system of transportation.

There are different situations in which multi-agency coverage can occur:

(1) An employee may perform different modal functions for the same employer. For example, an employee may act as both a pipeline inspector and a truck driver for a single employer, activities regulated by RSPA and FHWA, respectively. Such an employee would be designated by the employer as either a pipeline worker or driver for purposes of random testing based on which function he or she performs the majority of the time. The employee would be subject to reasonable suspicion and post-accident testing under RSPA or FHWA rules while performing either pipeline or driving functions.

(2) An employee may have two employers. For example, an employee may fly for one employer and drive for another. That employee will be subject to two OA random testing requirements and will generally be in two different pools. As discussed above, however, the employee can be covered by one random testing pool, e.g., one run by a consortium; in both situations, the employee will be subject to random testing in either job at the appropriate industry rate.

The rules require that employees cease safety-sensitive functions in every mode of transportation, once determined to be in violation of any one of the OA rules. We note that the Act clearly prohibits the performance of safety-sensitive functions in the aviation, rail, motor carrier, or transit industries by an employee who has used alcohol in violation of any law or any Federal regulation.

We also have continued to consult with other Federal agencies that are considering developing similar programs during this rulemaking proceeding in an attempt to make Federal government rules as consistent as possible.

International Issues

The Act mandates that the requirements for pre-employment, reasonable suspicion, random and post-accident tests for alcohol (and drugs) be applied to foreign operators in the aviation, rail and motor carrier industries to the extent those requirements are consistent with our international obligations. We must also "take into consideration any applicable laws and regulations of foreign countries." Because of the many questions raised about the implementation of this statutory mandate, we issued advance notices of proposed rulemaking on these issues. Published elsewhere in today's **Federal Register** are FHWA, and FAA NPRMs that propose to cover foreign operators in the U.S., but would defer implementation until January 1, 1996. During this period, we will be working through international organizations or bilateral agreements to achieve programs comparable to DOT's for alcohol and drugs; if we are unsuccessful at making progress, the

rules will go into effect. Because in their very limited foreign operations in the U.S., foreign railroad employers already are complying with FRA's existing alcohol and drug testing requirements, the FRA has published a notice withdrawing its advance notice of proposed rulemaking elsewhere in today's **Federal Register**.

Regulatory Analyses and Notices

General

Each of the OA preambles separately addresses a number of administrative matters concerning compliance with administrative requirements in statutes, executive orders and Departmental policies and procedures. Readers should refer to the individual OA rules for statements specific to each rule. This common preamble and all the associated rulemakings published in today's **Federal Register** have been classified as significant under Executive Order 12866 and the Department's regulatory policies and procedures and have been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

The proposed information collection requirements contained in the notices of proposed rulemaking were reviewed by the Office of Management and Budget (OMB) under section 3504(H) of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). Revisions of the information collection requirements contained in the final rules have been submitted to OMB for final approval. A **Federal Register** notice will be published when that approval has been obtained.

Appendix A to Common Preamble—Bibliography

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Issued on January 25, 1994, in Washington, DC.

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Part III

Department of Transportation

Office of the Secretary
National Highway Traffic Safety Administration

49 CFR Part 40
Procedures for Transportation Workplace Drug and Alcohol Testing Programs and Proposed Model Specifications for Screening Devices To Measure Alcohol in Bodily Fluids; Final Rule, Proposed Rule, Notice

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket 48513]

RIN 2105–AB95

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Under the Omnibus Transportation Employee Testing Act of 1991, the Department of Transportation is required to implement alcohol testing programs in various transportation industries. This rule establishes uniform testing procedures that would be used by all Department of Transportation operating administrations conducting alcohol testing programs under the Act or conducting alcohol testing programs modeled on those required by the Act. This rule also implements changes required by the statute in the Department's drug testing procedures.

DATES: Effective Dates: This rule is effective March 17, 1994, except § 40.25(f)(10)(i)(B), which is effective August 15, 1994. Compliance Date: Compliance with § 40.25(f)(10)(i)(B) is authorized beginning March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Donna Smith, Acting Director, Department of Transportation Office of Drug Enforcement and Program Compliance, 400 7th Street, SW., Washington DC, 20590, room 9404, 202–366–3784; or Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., room 10424. 202–366–9306.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Transportation Employee Testing Act of 1991, enacted October 28, 1991, directed significant changes in the Department of Transportation's substance abuse-related programs for most transportation industries that the Department regulates. These changes are discussed in detail in the Common Preamble published in today's **Federal Register**. With respect to drug testing procedures, the Act added a requirement for using the "split sample" approach to testing, which Congress believed would provide an additional safeguard for employees. The Act also imposes a variety of requirements for alcohol testing procedures, which this regulation also implements. The Coast Guard is not amending its existing alcohol testing regulations (33 CFR part 95 and 46 CFR part 4), and will continue to use separate procedures for that testing.

The Department's drug testing procedures, 49 CFR part 40, have governed drug testing under all six operating administration drug testing rules since 1988. Likewise, this rule governs alcohol testing procedures for the five modes affected (the Coast Guard is not covered by the alcohol testing procedures of this part). Under the rule, the existing drug testing procedures become a separate subpart of the regulation, and we are adding new subpart containing the alcohol testing procedures.

Having all the Department's uniform drug and alcohol testing procedures in a single regulation will simplify compliance for covered parties and avoid confusion by permitting all parties to look to one source for information on these issues. This should be particularly helpful to those employers who have employees covered by more than one DOT operating administration. However, employers regulated solely by the Coast Guard should continue to refer to 33 CFR part 95 and 46 CFR part 4 for alcohol testing requirements and procedures.

The Department published the Notice of Proposed Rulemaking (NPRM) for this rule on December 15, 1992, at the same time as the operating administrations (OAs) published their proposed alcohol and, in some cases, drug testing rules. We received over 250 comments to the part 40 docket. In addition, the OAs' dockets received some comments on the testing procedure issues raised by the part 40 NPRM. The Department considered all these comments.

Comments and Responses

Split Sample Procedures for Drug Testing

This discussion concerns how we will carry out a statutory requirement to use the "split sample" method for collecting and analyzing urine samples for purposes of the Department's drug testing program. The Act requires split samples to be used for testing under the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), Federal Transit Administration (FTA), and Federal Railroad Administration (FRA) rules.

Mandatory Use of Split Sample Method

The NPRM proposed to implement the statutory requirement for split samples in drug testing by making mandatory the optional split sample procedure in the existing part 40. The procedure would remain optional under the Research and Special Programs Administration (RSPA) and Coast Guard drug testing rules, which are not affected by the Act. Several commenters wanted the split sample procedure to remain optional in all modes. Because the statute requires the use of split samples in the four OAs mentioned above, the Department cannot adopt this comment. In order to give employers time to prepare to use the split sample collection method, the rule does not require affected employers to begin using this method until 6 months from the date of this rule's publication. Employers, who under the existing rule have the option of using this approach, may begin using the split sample method at any time.

Sample Volume

The NPRM proposed that the total amount of urine collected be 45 ml (30 ml for the primary specimen and 15 ml for the split specimen). The existing rule calls for a 60 ml collection; the Department believed that this was a greater quantity than is needed. Eighteen comments supported the NPRM proposal; two commenters opposed the proposal, one of whom supported collecting 60 ml each for the primary and split specimens. Based on information about laboratory testing needs gained over the course of four years of implementing a drug testing program, the Department is persuaded that 45 ml (30 ml for the primary specimen and 15 ml for the split specimen) is sufficient. This reduction from the current 60 ml minimum should also reduce "shy bladder" situations in which a test is canceled for lack of sufficient specimen volume.

Time Period for Requesting Test of Split Specimen

Another subject of interest to commenters was the time frame in which employees could request a test of a split specimen. The NPRM proposed a 72-hour period, following the employee's being informed of a verified positive test, during which he or she could request a test of the split specimen. Twenty commenters favored this approach, saying that this period was sufficient to allow an employee to make a choice about whether to request the test of the split specimen. Some of these commenters also asserted that allowing the much longer times permitted under some OA regulations (e.g., 60 days) could lead to tests of deteriorated samples and unreasonably postpone employer disciplinary actions. Seven commenters suggested a longer time frame (e.g., a week, 20 days, 30 days, or 60 days). One of these comments asserted that employees needed a longer time to become aware of their rights, study their options, and seek representation. Three commenters favored a uniform time frame applicable to all OA rules, while one favored allowing each OA to set its own time frame. One commenter asked whether medical review officers (MROs) were required to inform employees of the time period available to request a test of a split specimen.

The Department will adopt, on a uniform basis, the 72-hour time period. The Act requires the Department's procedures to provide for a test of the split specimen "if the individual requests the independent test within 3 days of being advised of the results of the confirmation test." To comply with the statute, the Department is not required to provide a time period longer than 72 hours.

Moreover, the Department has not seen a persuasive rationale for permitting a longer time period. Nothing prevents an employee who is told of a verified positive test from deciding in a very short time to seek a test of the split specimen. For example, some employees testing positive admit that they used drugs. Such employees may well not believe that testing the split specimen is necessary. If the employee concedes that the test was accurate, but contends that the MRO should have verified the test negative based on information concerning legitimate use of a drug, the employee is likely to seek redress other than a test of the split specimen. If, on the other hand, the employee is adamant that he or she never used a prohibited substance, or believes that the laboratory erred, the employee may well seek a test of the split specimen. None of these decisions on the employee's part need take more than 72 hours. Decisions concerning legal options, representation etc. can be made in the time frames appropriate to the processes involved: the decision on whether to seek a test of a split specimen need not wait on a decision about whether or how to make use of a grievance procedure, for example.

By saying that the 72-hour time period for requesting a test of the split specimen is a uniform requirement, we mean that any time an employee makes a request for a split specimen test within 72 hours of being informed of a verified positive test, the split specimen must be tested. Except in the limited circumstances discussed below, employers or MROs are not required by part 40 to provide for a test of a split specimen if the employee makes the request more than 72 hours after being informed of a verified positive test. There is no information in the rulemaking record to support the need of employees in any particular industry for a longer time period. Nothing in this provision prohibits an employer from voluntarily (e.g., as part of a labor-management agreement) honoring a request for a test of a split specimen made after 72 hours.

The suggestion that MROs inform employees of this time period is a good one. To make the 72-hour period for making a choice on testing a split specimen meaningful, it is necessary to ensure that the employee knows about the timeframe. For this reason, we have added to the final rule a requirement that the MRO notify each employee about this choice. We have inserted parallel language concerning requests for the reanalysis of the primary specimen in situations (i.e., under the Coast Guard and RSPA drug rules) where the split sample collection method is not used.

Under the final rule, when the MRO tells the employee that he or she has a confirmed positive test, the MRO must also tell the employee that he or she will have 72 hours following notice of a verified positive test in which to request a test of the split specimen. This notification is required in all cases of confirmed positive laboratory results, except in those situations in which an employee has effectively waived the opportunity to talk to the MRO. The 72-hour clock does not start to run until the time when the employee is notified, whether by the MRO or the employer, that the test result is a verified positive.

The employee is not required to wait until after a verified positive test in order to request an analysis of the split specimen. An employee could, if he or she chose, ask the MRO at the time of the notification of a confirmed positive test to initiate the test of the split specimen. The MRO would satisfy this request. The verification process would continue, and the MRO would notify the employer of the verified result in the usual way. The verification and notification processes would not be on hold pending the result of the analysis of the split specimen. Such a delay in removing from performance of a safety-sensitive function an individual with a verified positive test could not be justified on safety grounds. Once a test is verified as positive, the employee must be removed from safety-sensitive functions. The employee may not again perform safety-sensitive duties until he or she has met the conditions of the applicable operating administration rule for return to duty, pending the result of the test of the split specimen.

In any situation in which the MRO does not personally notify the employee of a verified positive test, we advise the MRO, upon receipt of a request from an employee to test the split specimen, to contact the employer or other party for verification of the time the employee was notified of the verified positive test. This should help to avoid potential questions about whether the employee has made a timely request.

In addition, to ensure that employees are not unfairly deprived of the opportunity to request a test of the split specimen, the Department is adding a provision to allow an employee who fails to request this test within 72 hours to present information to the MRO that the failure to make a timely request was caused by circumstances beyond the employee's control. This provision is similar to one in the existing rule concerning an employee's opportunity to convince the MRO that there was a good reason for the employee's failure to contact the MRO for verification purposes (see § 40.33(c)(6)). If the employee persuades the MRO, the MRO would initiate a test of split specimen, even though the employee's request had been made after the 72-hour period ended.

Number of Collection Containers

With respect to the collection itself, the NPRM proposed that the employee provide the specimen into a collection container, which would, in most cases, be subdivided and poured into two separate specimen bottles. One commenter favored the proposed approach; six others said that a two-container, rather than three-container approach, made more sense. That is, in all situations—not just unusual situations, as the NPRM proposed—the employee should urinate into a specimen bottle, which would become one specimen. The collection site person would then pour an amount of the urine from that bottle into a second bottle, which would become the other specimen. Commenters said this approach would save time and money.

The Department believes that these comments have merit, and the final rule permits either approach. The employer could use a collection container with the specimen subdivided and poured into two specimen bottles. Alternatively, the employer could use a specimen bottle capable of holding at least 60 ml, into which the employer would urinate. The specimen would then be subdivided, with 30 ml being poured into a second specimen bottle, which becomes the primary specimen

for testing purposes. The original specimen bottle, into which the employee had urinated, would become the split specimen.

This latter point may seem counter-intuitive, but there is a reason for it. We want to make sure that there is a 30 ml primary specimen. Pouring 30 ml of the void into the second specimen bottle insures that this will be the case. If the instructions were to pour 15 ml of the void into the second bottle, to be used for the split specimen, the primary specimen might wind up with less than 30 ml of urine if the collection site person overpoured. Laboratories have informed the Department that they intend to provide only 60 ml bottles to collection sites, because of the economies of mass producing a single size container and to avoid confusion by collection site personnel. For this reason, the final rule's procedure should not result in extra costs.

Storage of Split Specimens

Three commenters recommended that employers be authorized to store split specimens at the collection site rather than send them to the laboratory, in order to reduce shipping costs. The Department is not adopting this suggestion. Generally, laboratories have better, more secure storage facilities than many collection sites. The chances of loss, deterioration, tampering, etc. of a specimen are likely to increase in non-laboratory locations. A uniform procedure for storage and re-shipment of split specimens is likely to reduce opportunities for error in the system. The rule also addresses the issue of how long the split specimen should remain in storage. As noted above, the employee must notify the MRO within 72 hours of being informed of a verified positive test to trigger a requirement for a test of the split specimen. Consequently, it is not necessary for the laboratory to retain the split specimen for a prolonged period. In the Department's view, it is sufficient to require the split specimen to be stored 60 days from the date it arrives at the laboratory, if a request for testing it has not been received. (The primary specimen would remain in storage for one year, as under the existing rule.)

Choice of Alcohol Testing Methods and Devices

NPRM Proposal

The NPRM for alcohol testing procedures proposed that both the initial and confirmation tests would be done on an evidential breath testing device (EBT). An EBT is a breath testing device that is on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL), a list of breath testing devices that NHTSA has approved for use by law enforcement agencies in drunk driving cases. In addition, the EBTs would have to print out results and assign a sequential number to tests, to ensure that test results were preserved in a way that minimized the chances for human error or collusion (e.g., the disregarding of an initial positive test by an employer who did not want to lose an employee's services).

The NPRM also proposed training requirements for breath alcohol technicians (BATs), who would administer the tests, and maintenance and calibration requirements for EBTs. In requiring EBTs for all testing, DOT proposed that other testing methods—blood, saliva, urine, non-evidential breath, performance testing—could not be used for either screening or confirmation tests. In summary, the Department made this proposal because EBTs are a well-established, reliable, and accurate testing method; EBTs are minimally intrusive; EBTs can provide an on-the-spot result that allows employers to take action that prevents potential safety risks; and EBTs can produce a printed record of the test result that will prevent disputes about the accuracy and integrity of the testing process.

Comments

Overview

This proposal generated more comments than any other feature of the NPRM. Approximately 190 of the comments to part 40 addressed some aspect of testing methodology. These comments came from a variety of sources, including employers in all the industries covered by the proposed regulations, unions, laboratories, manufacturers of testing equipment and products, and consortia and third-party testing service providers. The most consistent theme among comments on this subject was a desire for greater flexibility in the choice of testing methodology than the NPRM proposed.

Support for NPRM Proposal

Twenty-six comments, representing employers in several industries, unions, third-party testing services, manufacturers of breath testing equipment, state police agencies, and the National Transportation Safety Board, supported the NPRM proposal. They cited as reasons for their support the non-invasiveness of breath testing, its long acceptance by courts and employees, its provision of a quantitative readout, simplicity compared to blood or urine testing, and the relatively low operating costs involved. Some of these commenters qualified their support of the NPRM proposal by saying that breath testing, while a good method, should be one of an array of options available to employers, or required only for certain types of testing (e.g., pre-employment and random) where the employer has control over the time and place of testing.

Concerns About Cost of NPRM Proposal

Eighty commenters, representing principally employers in all the regulated industries, third-party testing service providers, and manufacturers of other testing devices that compete with EBTs, said using EBTs for both screening and confirmation tests was too expensive. They quoted capital costs per EBT between $2–10 thousand (some EBT manufacturers who commented agreed with the lower end of this range). This cost would be multiplied, they believe, by a need to obtain EBTs for all the locations in which employers operate. For example, a trucking association cited a motor carrier that would have to buy an EBT for each of its 600 locations, at an estimated cost of $1.2 million. In addition, there would be BAT training, maintenance, and calibration costs. Commenters who talked in cost per test terms cited estimates of between $20–100 per test, which they said was much higher than for competing methods. Railroad industry employers (who now use breath testing for alcohol) said that, to reduce capital costs, EBTs should not be required to have the sequential numbering and printout capabilities proposed in the NPRM (which they said would add $1500 to the cost of an EBT).

Concerns About Difficulty in Implementing NPRM Proposal

Some commenters feared that there would be insufficient numbers of EBTs, BATs, and testing sites available to implement the proposal. There would be a rapid expansion of the need for EBTs (one commenter estimated a 3000–4000 percent increase in the market) that manufacturers may be unable to fulfill, as well as a rapid training need for thousands of BATs that would take substantial time to meet. Seventeen commenters (including a number of third-party service providers and employers) said that the cost of obtaining EBTs and training BATs, the unfamiliarity of many third-party testing sites with breath testing, and liability concerns would deter many potential third-party service providers from participating. This would particularly be a problem in small towns and rural areas, where the low volume of testing would make the needed investment too costly.

Concern About Confrontations

Twenty-eight commenters (principally third-party service providers and employers) expressed concern about the possibility of confrontations between BATs and employees. These confrontations would occur, commenters said, because the BAT—not an employer representative with supervisory authority over the employee—would be the messenger of bad news about a test result. Several commenters cited the image of a 90-pound female BAT having to deal with an angry (and perhaps intoxicated) 300-pound truck driver who had just been told he had failed an alcohol test.

Other Comments About NPRM Proposal

Commenters expressed other concerns about the EBT–EBT approach. Some found the process too time-consuming. Others pointed out that the collection site is commonly recognized as the weak point of the drug testing process, and that conducting the alcohol testing process there increased the chance of error. Other comments said that there were too many opportunities for human and mechanical error in the breath testing process, which, together with what they regarded as the unreliability of EBTs at low alcohol concentrations, created numerous opportunities for litigation. Some commenters also said that, if all screening and confirmation testing were done on EBTs, the two tests should be run on different machines.

Legal Issues

Several commenters raised legal challenges to the proposal. Nine commenters (primarily manufacturers of competing devices and unions) said that the statute requires split samples (i.e., the subdivision and retention of a portion of a sample for an additional test at a laboratory as a safeguard for the accuracy of the process) in all cases. Generally, EBTs do not retain breath samples. Therefore, these comments said, methods that permitted split samples (e.g., blood, urine, saliva) must be used. Thirty-one comments said that the statute contemplated the use of different methods for the screening and confirmation test, respectively. Eleven comments said that, since the results of EBT tests would be used to refer persons for rehabilitation or treatment, they would be considered medical devices subject to Department of Health and Human Services (DHHS) regulation. Since DHHS had not approved EBTs as medical devices, their use could be blocked.

Desire for More Flexibility

Seventy-five commenters (representing a wide variety of equipment manufacturers, employers, and third-party service providers) favored allowing employers to choose the best testing method for them. In addition to the virtue of flexibility, this approach would permit each employer to choose the most cost-effective method of compliance in its own circumstances.

Most of these commenters appeared to favor testing methods that would use two different testing methods (e.g., non-evidential breath or saliva screening test, blood test for confirmation). Ten commenters disagreed on this point, saying that non-evidential screening tests should never be permitted. Their primary concern was about the accuracy of these testing methods. Several commenters who favored using non-evidential screening tests conceded that it would probably be necessary to suspend an employee's performance of safety sensitive functions pending a confirmation test of a positive non-evidential screening test. Most commenters who addressed confirmation procedures in a two-method system said that confirmation tests (of whatever body fluid) should be done on GC (gas chromatography, the same highly accurate method used for confirmation tests under the drug testing program).

Specific Comments on Other Testing Methods

Non-Evidential Breath Testing Devices

(e.g., tubes filled with materials that turn a certain color when alcohol-laden breath is blown into them or small, hand-held electronic devices that register the presence or absence of alcohol concentration in breath)

Twenty-nine commenters, including a variety of employers and manufacturers of the devices, supported using non-evidential breath testing devices. Most commenters cited cost (estimated at between $90–550 for various models of non-evidential breath testing machines, and about $2–4 each for disposable devices) and convenience as reasons. A few opponents of non-evidential breath testing devices said their accuracy was questionable, both with respect to false positives and false negatives.

Saliva Testing

(i.e., a device which registers a particular alcohol concentration when a swab with saliva from the employee's mouth is inserted into it)

Forty-five commenters favored the use of saliva testing. These commenters included a variety of employers, third-party service providers, equipment manufacturers; and others. Commenters claimed several advantages for use of screening saliva tests: modest cost (estimated at between $5–20 per test); simplicity of use, little need for training; existing "approvals" from NHTSA and Food and Drug Administration (FDA) for some devices (though in contexts other than a workplace testing program); non-invasive nature of the devices; sufficient accuracy for screening tests. Two commenters also said that, while it was most typical to use blood testing for confirmation after a saliva screen, saliva specimens could also be used for confirmation, as laboratories could run a gas chromatography analysis on saliva.

A few commenters expressed concerns about saliva testing devices. A union provided data that it said showed that saliva devices had a mixed record for accuracy. Other commenters said saliva remained an unproven method, that saliva devices were not ethanol-specific, and that saliva alcohol and blood alcohol results may differ. Proponents of saliva testing devices conceded that chain of custody forms would be needed and that there was no method of automatically generating permanent records of test results that positively identified a particular employee with a particular result. They said that keeping paper records was adequate for this purpose, however.

Blood Testing

Forty-eight commenters (again representing a variety of employers, plus third-party providers, laboratories and others) favored allowing the use of blood testing as a confirmation test method. The advantages cited for this method included well-established scientific and legal acceptance for accuracy, the availability almost anywhere of technicians trained in drawing blood, and utility for post-accident testing on employees who are unconscious. Some of these commenters said that, while blood testing is admittedly more invasive than other methods, employees accept it because of its reputation for accuracy. Also, they said, the low expected positive rates on screening tests will mean that few blood confirmation tests would have to be performed. Commenters estimated costs to be in the $20–60 range per test.

Seven commenters opposed the use of blood testing, primarily on the ground that it is too invasive. In addition, a few commenters said that DHHS or DOT

would have to develop laboratory certification standards for blood testing. Some comments said that employees might have to be required to "stand down" during the interval between the blood collection and the return of the test result from the laboratory.

Urine Testing

Eight commenters favored allowing the use of urine testing, including some employers who now use this approach to their satisfaction and laboratories that do urine testing. One advantage cited for this approach is that alcohol could simply be added to the list of substances for which urine samples taken for drug testing are tested, at a low incremental cost. Commenters said that DOT or DHHS should develop laboratory certification procedures and cutoff levels. Some commenters also noted that detailed collection procedures would have to be developed, since urine testing for alcohol is more complicated than urine testing for drugs (e.g., two voids, twenty minutes apart, are recommended to measure alcohol concentration in urine).

Performance Testing

Five commenters, most of whom were manufacturers of the devices, supported the use of performance tests for the screening or screening test. (A performance test does not measure alcohol concentration; it measures deviations from a personal norm of reaction time, motor coordination, etc.) One commenter opposed performance testing devices as inappropriate for this program.

Responses to Comments on Testing Methods

Legal Issues

The Act provides, with respect to confirmation testing, that all tests * * * shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol * * *

Some comments asserted that this provision requires that a different testing method be used for the screen and confirmation tests, respectively. The statute says no such thing, stating only that the confirmation test must use a "scientifically recognized" method that can provide "quantitative data" regarding alcohol. As long as the method of confirmation meets these criteria, the statutory requirement is satisfied. Breath testing is scientifically and legally recognized as a method for accurately testing alcohol concentration, and devices meeting the Department's requirements provide quantitative data. (Blood testing, of course, also meets the statutory criteria.)

The ability of a method of confirmation testing to pass these statutory tests is not dependent on the choice of a method of screening testing. Testing of breath for confirmation, as provided in this rule, is equally valid under the statute whether evidential breath testing, non-evidential breath testing, or saliva is used for the screening test. Testing of blood for confirmation is equally valid under the statute whether blood, breath, saliva or urine is used for the screening test. All that matters is that the confirmation testing method meet the statutory criteria in its own right.

With respect to split samples, the Act requires the Department's regulations to provide that each specimen sample be subdivided * * * and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation tests results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within 3 days after being advised of the result of the confirmation test * * *

Some commenters asserted that this language should be read to require that split samples be used in all alcohol testing, with the implication that a method that did not permit the use of split samples could not be used. Since most EBTs—including those proposed by the Department in the NPRM—do not retain a sample that could theoretically be subdivided and preserved for testing of a split specimen, some of these commenters asserted not only that blood or other liquid-based testing methods were required, but that breath testing was prohibited.

This interpretation is flatly contrary to the statute, which specifically contemplates the use of breath testing (*see, e.g.*, sec. 3(a) of the Act, adding section 614(d)(6) to the Federal Aviation Act). Breath testing is a well-recognized form of alcohol testing, and there is no evidence that Congress had any intention of prohibiting its use, either indirectly by requiring split samples or otherwise. The legislative history makes clear that the Senate sponsors of the legislation intended that breath testing be used and that split samples were not mandated for breath testing. In the floor debate, during a colloquy between Senators Danforth and Hollings, Senator Hollings stated

[t]here are also requirements for split samples, primarily included in the legislation to allow urine samples to be retested. DOT would have the authority to determine that blood samples should be similarly handled. This specific requirement is not relevant in the case of breath testing for alcohol, but DOT is directed by this legislation to provide necessary safeguards in this area to ensure the validity of test results.

137 Cong. Rec S 14764, 14770.

There is also internal evidence in the wording of the statutory provision that supports the reasonable interpretation that the split sample requirement is intended to apply to liquid body fluids like urine and blood, but not to breath. The statute uses the word "samples" in ways that refer primarily to samples of liquid body fluids. For example, section 614(d)(1) of the amended Federal Aviation Act refers to the need for "privacy in the collection of specimen samples." Privacy is very important with respect to collection of urine samples for drug testing. Because elimination functions are not involved, privacy is not as important in breath collections. In paragraph (d)(6) of the same section, the statute refers to detecting and quantifying "alcohol in breath and body fluid samples, including urine and blood." In this language, the phrase "including urine and blood" is best understood as modifying "body fluid samples," as opposed to "breath." Given the way that the term "sample" is used in these portions of the statute, the use in paragraph (d)(5) of "sample" should also be used to refer to liquid body fluid samples (i.e., urine and blood). When this paragraph speaks of the "specimen sample be[ing] subdivided," then, it is imposing a split sample requirement on blood and urine, not on breath.

Some commenters argued that the language mentioned above from paragraph (d)(6), requiring the Department to "ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood * * *," creates a right for employees to have a screening test confirmed by blood testing. This language, on its face, does not create such a requirement, since it does not specify any particular sort of test for either screening or confirmation purposes. There is ambiguous legislative history on the point, with the Senate report on the Act saying both that "an employee testing positive for alcohol using a specimen other than blood shall be entitled, at that employees [sic] option, to a blood test" and that "the Committee has not specified the type of test to be used in either the screening or confirmation test." Given that the statute does not explicitly require blood testing for confirmation, and that the portion of the statute that mandates confirmation testing requires only a "scientifically recognized" confirmation test that can produce "quantitative data" (criteria that breath testing clearly meets), the Department does not believe it would be reasonable to view this ambiguous legislative history as a mandate for the availability of blood confirmation testing in all cases.

The Department does not believe that regulations of the Food and Drug Administration (FDA) would interfere with the implementation of breath testing under this rule. FDA does regulate the safety, labeling, etc. of medical devices. It is our understanding that FDA may be considering initiatives to regulate EBTs used as medical devices in medical settings. FDA does not, however, regulate or certify the precision or accuracy of EBTs that are currently used for law enforcement purposes or that would be used under the DOT alcohol testing program. (These would not be viewed as medical devices used in medical settings.) We believe that current FDA rules are, and future FDA rules would be, consistent with NHTSA certification of EBTs.

Flexibility and Cost

Many commenters made flexibility in testing methods a high priority. The Department agrees that flexibility is desirable. However, the Department also believes that any testing system should meet a series of criteria, each of which is necessary to execute the statute faithfully and to ensure that the safety and accuracy goals of the program are met. The Department cannot emphasize too strongly the importance of ensuring accuracy and reliability of testing devices and methods, at both the screening and confirmation test stages. This is needed, among other reasons, to protect employees from even temporarily being identified as misusers of alcohol. In the context of drug testing litigation, the courts, in upholding the Department's program, relied to a substantial extent on the reliability and accuracy safeguards in that program.

Within these constraints, our objective is to provide maximum flexibility and minimum cost. The Department's criteria for carrying out its objectives in this area are the following:

- As required by the statute, the method used for confirmation should be scientifically recognized and able to produce a quantitative result. The method should meet NHTSA Conforming Products List (CPL) standards at 0.02 and higher alcohol concentrations.
- The confirmation method should be alcohol-specific (i.e., does not produce a reading for acetone).
- The confirmation method should generally provide documentation of quality control/calibration and be admissible as forensic evidence in administrative proceedings.
- The testing method used for confirmation should provide a result at the time and place of the test, so that an employee whose continued performance of a safety sensitive function may present a safety risk can be removed from performing that function.
- The testing method used for the screening test should minimize the occurrence of false positives and false negatives and should meet stringent standards for precision and accuracy (e.g., +/− .005 at 0.02 alcohol concentration).
- The testing method used for screening tests should provide a result at the time and place of the test and be specific for measuring alcohol concentration.
- The testing methods used for confirmation tests should provide a printed, permanent record of the test number and test result, in order to avoid uncertainty about whether this employee took this test with this result. The testing methods used for screening tests should provide either this kind of record or be used in conjunction with procedures that provide a record of the test result linked to the individual tested through some form of permanent documentation. The purpose of this criterion is to prevent collusion and cheating.
- The testing methods used for screening and confirmation tests should, as a policy matter, be as non-invasive as possible.

At the present time, only evidential breath testing methods meet all these criteria for screening and confirmation tests. Applying these criteria strictly would result in a final rule that, like the NPRM, permitted only evidential breath testing for both tests. The points made by commenters favoring the NPRM approach further support using evidential breath testing for both tests.

The Department, to achieve a reasonable balance between the legal and policy goals on which the criteria are based and commenters' desire for greater flexibility, is modifying the approach proposed in the NPRM. First, the final rule will permit EBTs that are on the NHTSA CPL, but that do not meet the additional requirements for confirmation EBTs (e.g., sequential numbering and print-out capability), to be used for any screening test. While these EBTs may be used for screening tests at this time, because NHTSA has determined them to meet appropriate accuracy and precision standards, non-evidential breath screening devices (e.g., "breath tubes") may not be used at this time.

Second, in an NPRM published in today's **Federal Register**, the Department will propose to permit blood testing to be used in limited circumstances. In the case of a reasonable suspicion test or a post-accident test, where an EBT meeting the requirements of part 40 is not readily available, the employer could use blood testing for the confirmation test. Blood alcohol testing would also be available as an option in "shy lung" situations. This NPRM also proposes blood testing procedures to be used in these circumstances. The rationale for allowing this limited use of blood testing is discussed in the preamble to the NPRM.

Third, the Department is also publishing in today's **Federal Register** a notice proposing to adopt criteria and procedures that would permit additional alcohol screening devices to be used for screening tests in the program. This proposal would be intended to result in the adoption of model specifications for a conforming products list for alcohol screening devices. Under this proposal, manufacturers of devices could submit their products to DOT for evaluation and, if their devices met the model specifications, the Department would authorize their use as screening devices in DOT-mandated alcohol testing. This approach will permit greater flexibility in the use of screening devices that are not now appropriate for use, including those supported by their manufacturers and others in comments to the part 40 docket, if they are able to meet DOT model specifications.

With respect to costs, commenters had three basic concerns. First, commenters believed that EBTs meeting all the NPRM's requirements would be too expensive. Some commenters believed that adding features such as a sequential numbering and printout capability would add considerably to the cost of the devices. The Department's information, included in our regulatory evaluations, and based on data obtained from manufacturers, suggests that the list price per unit of an EBT meeting all the NPRM criteria for use in confirmation tests is about $2000. (There are some indications that prices may be lower for purchases in quantity.) There are other EBTs on the CPL, available under the final rule to be used for screening tests, that list for about

$1000, again with the possibility of lower prices for purchases in quantity.

Because the Department is proposing to permit blood testing in post-accident and reasonable suspicion situations where a breath testing unit is not readily available, the numbers of EBTs that any employer would have to obtain may be reduced significantly from earlier estimates, lowering many commenters' estimated capital costs of the program. This is because employers would not have to provide an EBT at all its work sites against the contingency of a reasonable suspicion or post-accident test happening there, as a number of employers' estimates assumed. Commenters identified having to pre-position EBTs at all work sites, even the small and remote ones, as a major cost of compliance with the NPRM (even though the NPRM would not have imposed this requirement). In addition making blood testing available means that the time workers would be held out of service pending a test would be reduced significantly, resulting in further savings. We refer commenters to today's NPRM on blood alcohol testing for further information.

Second, commenters expressed concern about the costs of training personnel and maintaining and calibrating the instruments. While training can be expensive, we believe that these costs are difficult to avoid if the accuracy and integrity of the testing program are to be protected. As other devices are approved under the Department's forthcoming procedures, employers will have the opportunity to determine if use of other methods will reduce their overall costs.

Third, some commenters (especially from the railroad industry) who already use EBTs expressed concern about the costs of the additional features that the NPRM would have required (e.g., sequential numbering capacity, print-out capability). The final rule responds to these concerns by allowing EBTs without these features to be used for screening purposes. A railroad could use its existing EBTs (assuming they are on the NHTSA CPL) for screening tests, while obtaining only as many of the machines with the additional features as it needed for confirmation testing. This would reduce the additional costs that these employers would have to incur.

When the Department issues a broad mandate for employee testing, the overall effect is likely to be the creation of additional opportunities for professionals, manufacturers, and other businesses to serve the markets created by the DOT requirements. These opportunities can fairly be expected to lead to an influx of participants into the market. There is ample evidence that this has been the case in the Department's drug testing program, and it is reasonable to expect that similar economic opportunities will draw businesses and professionals into the alcohol testing market. The Department believes that this factor is likely to outweigh, by a substantial margin, any deterrent effects on participation in the program related to equipment or training costs, the newness of the procedures, liability, or the willingness of businesses and professionals to participate.

Comments that potential participants would be deterred for these reasons were, for the most part, speculative. Given the market's response to the drug testing rules since 1988, it is fairer to assume that the market's response to the even larger-scale alcohol testing program will not be timid. With respect to the issue of sufficient EBTs being available, the Department has contacted EBT manufacturers, and we do not anticipate any serious shortage of devices as the program begins operation. If, at any time, the Department learns that there are inadequate supplies, the Department could postpone or otherwise modify its rules.

While the image of a large, angry, intoxicated employee confronting a 90-pound female BAT over a positive result is a graphic one, the speculation and spotty anecdotal evidence provided by commenters to back up their concern on this matter is not sufficient to cause the Department to retreat from its position that immediate results are needed. (This concern goes to any testing method that provides an immediate result, not just to breath testing. It might appear even more strongly in a situation in which an individual is told, as the result of a non-evidential screen, that he is to "stand down" and not work for three days while a laboratory test result is obtained.)

The point of getting an immediate result is safety: if an employee, of whatever size, has a higher alcohol concentration than the Department's rules permit, the individual should not be performing a safety-sensitive function. In the interest of safety, we need to stop the individual's performance of that function now, not two or three days later when a laboratory test result becomes available. We also want to prevent the unnecessary cost of holding an employee out of service for two or three days pending laboratory results following a non-evidential screen. BATs are not given the responsibility of taking a driver's keys away. The DOT alcohol testing form includes a statement, to be signed by the employee, that persons who test positive should not drive or perform other safety-sensitive functions. Employers have a responsibility, as part of their alcohol education for employees, to emphasize that employees must cease performing safety sensitive functions if they test positive.

The Department does not believe that it is necessary to use two separate EBTs in order to have a valid, defensible result. EBTs on the NHTSA CPL are designed for accuracy, and the internal and external calibration checks built into the Department's procedures are sufficient insurance against error. (Where employers choose to use an EBT without the additional features for screening tests, of course, the employer will necessarily use a different machine for the confirmation test.) The Department is convinced that EBTs meeting its requirements are sufficiently accurate and reliable, at the alcohol concentrations that will be tested for, and that excessive invalidations of tests or successful lawsuits or grievances will not occur. Similarly, the likelihood of extensive errors by testing personnel should be diminished by the BAT training requirements.

Manufacturers of alternative testing devices, and some other commenters as well, advocated various other methods of testing, particularly for screening tests. As noted above, the Department intends to take action that could result in decisions to authorize use of other screening devices and to authorize the use of blood testing in some circumstances. The Department has decided not to permit the use of these alternative methods until they can meet the criteria we believe are necessary for accurate testing meeting the requirements of the statute. The following paragraphs summarize the Department's reasons for not permitting the use, at this time, of other testing methods:

Blood Testing

- This is the most invasive form of testing.
- Employees may fear needles or fear infection from improper medical procedures.
- Additional collection procedures, chain of custody procedures, and equipment requirements would be needed, making regulatory requirements more complex.
- Laboratory certification standards and testing protocols would need to be established. As noted in the accompanying NPRM, this poses potentially significant problems even in the limited context in which the Department is proposing to permit the use of blood testing.
- Results would not be available for at least 24 hours, and could take 3–4 days to arrive. Confirmed results would, therefore, not be available at the time the employee was affected by alcohol, which would reduce the safety benefits of the program.

Urine Testing

- Present laboratory certification standards and testing protocols do not cover urine testing for alcohol. There would have to be additional laboratory certification procedures and testing protocols developed for urine testing.
- Urine testing for alcohol (as distinct from drugs) requires a complex collection process, involving two separate voids with an interval between them. Addition of a preservative to prevent the creation of alcohol by microbial fermentation is also recommended. We would need to add new collection procedures to accommodate these requirements, as well as new training requirements for collection site personnel. These additional procedures would make the collection process more complex and multiply the chances for errors.
- Urine testing is regarded as the least accurate method currently available for determining the amount of alcohol in the body.
- A blood to urine ratio has not been definitively established, making it difficult to equate a urine test result for alcohol to a particular blood or breath alcohol level.
- There are greater costs of employee "downtime," for transporting the employee to a collection site for testing and for the longer collection procedure.
- Testing of urine specimens would have to take place in a laboratory. Results would not be available for at least 24 hours, and could take 3–4 days to arrive. Confirmed results would, therefore, not be available at the time the employee was affected by alcohol, which would reduce the safety benefits of the program.

Saliva Testing

- Especially at low alcohol levels, saliva devices are likely to have a higher rate of false positives and negatives than EBTs on the CPL.
- Some saliva devices do not provide quantitative results.
- Because saliva screening testing devices are disposable, and do not generate a record of the test, ascertaining whether a particular employee took a particular test and had a particular result, or that the test took place at all, would be difficult. (The use of a log book, which helps to address this concern where EBTs without sequential numbering or printout capabilities are used, would be difficult in the case of disposable devices. The log book would accompany the EBT wherever it went, which would not be possible with disposable devices.)
- There are different saliva-based technologies, each requiring the establishment of criteria for accuracy, reliability, etc. Until NHTSA criteria are established for these technologies, it is premature to permit their use in the DOT program.
- If laboratory confirmation methods (e.g., blood) are used in combination with saliva screens, confirmation results would not be available for at least 24 hours, and could take 3–4 days to arrive. Confirmed results would, therefore, not be available at the time the employee was affected by alcohol, which would reduce the safety benefits of the program.

Non-evidential Breath Testing

- Non-evidential breath devices (i.e., disposable devices and others not on the CPL) have a higher rate of false positives and negatives than evidential EBTs.
- Non-evidential breath screening testing devices do not generate a record of the test, so that ascertaining whether e particular employee took a particular test and had a particular result, or that the test took place at all, would be difficult. (The use of a log book, which helps to address this concern where EBTs without sequential numbering or printout capabilities are used, would be difficult in the case of disposable devices. The log book would accompany the EBT wherever it went, which would not be possible with disposable devices.)
- If laboratory confirmation methods (e.g., blood) are used in combination with non-evidential breath screens, confirmation results would not be available for at least 24 hours, and could take 3–4 days to arrive. Confirmed results would, therefore, not be available at the time the employee was affected by alcohol, which would reduce the safety benefits of the program. If breath testing confirmation is used, cost savings claimed for the use of disposable devices over the use of breath testing for both screening and confirmation testing would be reduced substantially.
- The Department would have to establish additional procedures, training requirements, quality control requirements, etc. for saliva testing, adding further complexity to the program.

Non-evidential Breath Testing

- Non-evidential breath devices (i.e., disposable devices and others not on the CPL) have a higher rate of false positives and negatives than evidential EBTs.
- Non-evidential breath screening testing devices do not generate a record of the test, so that ascertaining whether e particular employee took a particular test and had a particular result, or that the test took place at all, would be difficult. (The use of a log book, which helps to address this concern where EBTs without sequential numbering or printout capabilities are used, would be difficult in the case of disposable devices. The log book would accompany the EBT wherever it went, which would not be possible with disposable devices.)
- If laboratory confirmation methods (e.g., blood) are used in combination with non-evidential breath screens, confirmation results would not be available for at least 24 hours, and could take 3–4 days to arrive. Confirmed results would, therefore, not be available at the time the employee was affected by alcohol, which would reduce the safety benefits of the program. If breath testing confirmation is used, cost savings claimed for the use of non-evidential devices over the use of evidential breath testing for both screening and confirmation testing would be reduced substantially.
- Non-evidential EBTs on the market appear to vary greatly in type of technology used, quality, and accuracy. Until NHTSA criteria are established for these devices, it is premature to permit their use in the DOT program.
- The Department would have to establish additional procedures, training requirements, quality control requirements, etc. for non-evidential breath testing, adding further complexity to the program.

Performance Testing

- The statute requires testing for alcohol concentration, not diminished performance. A test for performance appears not to meet this statutory requirement.
- Performance tests are very unspecific, which could result in positives caused by a wide variety of things other than alcohol use (e.g., illness, prescription or over-the-counter medication, fatigue, emotional distress). This would lead to many unnecessary confirmation tests and could result in employees being taken off the job while awaiting confirmation test results, adding extra costs for employers and employees.
- The accuracy of many performance testing devices is unproven.
- Many performance testing devices do not generate a record of the test. Ascertaining whether a particular employee took a particular test and had a particular result, or that the test took place at all, could be difficult.
- Most performance testing devices require the establishment of individual baseline data for each employee, which can be a time-consuming and costly procedure.
- In many systems, performance evaluation must relate to critical job skills, measures of which have not been established for many occupations.
- Performance testing devices or systems on the market appear to vary greatly in quality and accuracy. Until NHTSA criteria are established for these devices, it is premature to permit their use in the DOT program.
- The Department would have to establish additional procedures, training requirements, quality control requirements, etc. for performance testing, adding further complexity to the program.

This discussion is in the context of an extensive, multi-modal testing program, including pre-employment and random testing as well as reasonable suspicion and post-accident testing. Greater protections are needed in such a program, particularly in the absence of procedural protections present in some existing programs that may use non-evidential testing in some circumstances. For example, the Coast Guard post-accident alcohol testing program can involve administrative proceedings in which the employee has the opportunity to challenge test results before a license is revoked or an investigative inquiry at which further evidence could be introduced.

Breath Alcohol Technicians

The NPRM proposed that breath alcohol technicians (BATs) be trained to proficiency in using EBTs and in DOT alcohol testing procedures, using a NHTSA- or state-approved course. The competence of the BAT would have to be documented. Additional (i.e., refresher) training would be required, as needed, to maintain proficiency. An employee's supervisor could not act as the BAT for that employee unless allowed by a DOT rule and no other qualified BAT were available.

Commenters spoke to several provisions of this section. Six commenters favored, and 15 opposed, requiring BATs to be tested to ensure that they are alcohol free (an issue about which the Department had asked a question in the NPRM preamble). A number of the opponents said that this issue should be decided by the BATs' employers. The Department is not adopting this idea, which we believe to be unnecessary to the program.

Forty-nine comments addressed the training and qualification of BATs. All these commenters favored training,

though two mentioned that training might be very costly or difficult, especially for smaller companies. Sixteen comments said that it was not necessary for the regulation to specify that BATs be trained in the pharmacology and physiology of alcohol, about which the NPRM preamble had asked a question. Three commenters took the opposite position. The Department agrees that this training is not needed for BATs, whose training should be focused on the proper operation of testing devices.

Seventeen commenters supported the NPRM approach (including the concept of "training to proficiency"), while two thought the NPRM too vague. Eleven favored specific numbers of hours of training, ranging from 4 to 40, with most of the comments suggesting something between 4 and 8 hours. Two expressed support of recurrent training, one asking for a more specific requirement than the NPRM proposed. The Department believes it is most relevant to ensure the BATs' proficiency. Our goal is to ensure that BATs are able to use the testing devices that they will operate. The Department believes that the best way to make sure that BAT training results in proficient operators is to require that BAT training include a course that is equivalent to the DOT Model Course. Courses followed by state law enforcement agencies and other organizations appear to vary substantially from one another, and may be focused on breath testing in other contexts (e.g., enforcement of DUI laws). NHTSA will review training courses and issue determinations concerning whether they are equivalent to the NHTSA Model Course.

Who should be a BAT? Twenty-two of 23 commenters supported permitting a trained law enforcement officer to act as a BAT. The Department agrees that it is appropriate to authorize trained law enforcement officers to act as BATs (e.g., off-duty officers under contract to an employer), as long as they have been certified by a state or local law enforcement agency. The officers would have to follow DOT testing requirements, including this part, and to be certified to operate the EBT used in the DOT-mandated test. The officers could perform any type of DOT test. Except for the FHWA rule, the OA rules do not permit the substitution of law enforcement tests for tests conducted under DOT procedures.

There was less consensus on the issue of supervisors as BATs. Sixteen commenters favored allowing properly trained supervisors to act as BATs, pointing out that, particularly in reasonable suspicion or post-accident testing, or at remote sites, supervisors may be the most readily available, or perhaps the only available, trained BATs. Eleven other commenters disagreed, most saying that an employee's supervisor should never be the employee's BAT. These commenters appeared concerned about the appearance or reality of a conflict of interest between the supervisor's managerial role and his objectivity as a BAT. The Department believes that, when possible, someone other than an employer's supervisor must act as a BAT for the employee's test. However, a supervisory BAT is better than no BAT at all. To enable a test to go forward when no other BAT is available in a timely manner, the Department will permit a BAT-trained supervisor to conduct the test. However, if a DOT operating administration regulation prohibits the use of a supervisor in this role (e.g., in reasonable suspicion testing), the supervisor may not act as the BAT even in this circumstance.

EBT Technology

The NPRM required EBTs used for screening and confirmation testing to be on the NHTSA CPL, have the capacity to print out triplicate (or three consecutive identical) results, assign a sequential number to each test, distinguish alcohol from acetone at the 0.02 alcohol concentration level, and have the capability for performing both air blanks and external calibration checks. Commenters addressed a number of points concerning EBT technology.

Some commenters pointed to what they viewed as shortcomings of the CPL itself, particularly that it did not require EBTs to be accurate at the 0.02 level. This was true of the CPL at the time the NPRMs were issued; however, NHTSA has since modified the model specifications for the CPL to require accuracy and precision at the 0.02 level. Other commenters said that since inclusion on the CPL is based on testing of a prototype, rather than testing of each device, the CPL was an inadequate assurance of accuracy. The final rule does not rely on the CPL alone to ensure accuracy, however. The rule requires there to be a quality assurance plan (QAP) for the instrument as well as air blanks and external calibration checks.

As noted above, a number of commenters criticized the requirement for printing results and sequential numbering capability, saying that these features were unnecessarily costly. Any device on the CPL should be able to be used, one of these commenters said. The final rule responds to these comments by allowing any device on the CPL to be used for screening tests, with the additional features required only on those machines used for confirmation testing. This should reduce the number of the more expensive models employers will have to obtain.

Some commenters expressed concern about radio frequency interference (RFI) affecting the results of some types of EBTs. The concern is that, in airports and other locations where communications or other electronic equipment is operating, alcohol concentration readings could be distorted. DOT asked manufacturers about this issue, who said that most models of EBTs are shielded to avoid this problem. NHTSA tested three models of EBTs at Washington National Airport and detected no RFI effects on their readings. In addition, NHTSA plans, as part of its process for reviewing quality assurance plans (see discussion below), to have manufacturers establish operational guidelines to avoid RFI problems. The Department believes that it is not necessary to modify the regulatory text to address the commenters' concerns.

Commenters also expressed concern that some EBTs might not be able to distinguish acetone from some alcohols. Commenters also questioned the suitability of the CPL for instruments measuring alcohol concentrations at the 0.02/0.04 levels, since the CPL, at the time of the NPRM, did not address testing at these levels. As noted above, NHTSA has revised the model specifications on which CPL listing of devices is based. The revised specifications address both issues, and EBTs on the CPL will distinguish acetone from alcohol and be accurate at the 0.02/0.04 levels.

A few comments raised other technical issues about the use of EBTs. One issue was the effect of altitude on external calibration standards. Altitude affects gas aerosol standards; NHTSA will address this problem by requiring gas aerosol standards on its CPL for calibration devices to be criterion-referenced for various altitudes.

Another concern was based on the belief that EBTs that display results to only two, rather than three, decimal places would round up. That is, commenters were concerned that someone whose actual alcohol concentration was .036 would be reported as a 0.04, subjecting the individual to heavier sanctions. EBTs on the CPL provide three-digit displays, so this problem does not arise for these devices.

Finally, some commenters expressed concern that defining alcohol concentration in terms of grams of alcohol per 210 liters of breath was not as accurate as desirable (or as accurate as a blood alcohol reading), because this ratio could vary among individuals. The Department's information is that any variation is very minor and unlikely to affect the results of a breath test or its consequences under these rules. In addition, EBTs are typically calibrated to account for any variation by slightly undercounting alcohol concentration.

Quality Assurance Plans

The NPRM proposed that EBT manufacturers would develop a quality assurance plan (QAP) for each EBT model. The plan would cover such matters as external calibration methods, tolerances and intervals and inspection and maintenance requirements. The manufacturer would have to obtain NHTSA approval of the QAP, and employers would have to comply with it. This compliance includes making external calibration checks as called for in the QAP and taking EBTs out of service if they "flunk" an external calibration check. In addition, the employer would have to ensure that inspection, calibration and maintenance of EBTs is done by the manufacturer, a representative certified by the manufacturer, or an appropriate state agency.

On the basic concept of the QAP, five commenters supported the NPRM's approach, while another eight said that NHTSA, rather than the manufacturer, should establish the standards. Some of the latter commenters appeared concerned that manufacturers may have incentives to establish requirements for their devices that were not optimal. The Department believes that NHTSA approval of the QAPs should be sufficient to ensure that the manufacturer's standards are adequate and that the manufacturers are better positioned than we are to establish model-specific requirements for individual EBTs. For this reason, we are retaining the proposed approach. QAPs would be required for all EBTs on the NHTSA CPL that would be used in DOT-required alcohol testing, whether or not a particular EBT met the additional requirements of this part for use in confirmation testing.

Commenters suggested a wide variety of requirements concerning how frequently an external calibration test must be performed. Some of the ideas included performing such checks before and/or after every test, after every positive test, before, during and after the testing shift, every day, after every five tests, every thirty days, or before disciplinary action is taken on the basis of a positive test. All these comments respond to a basic point: if an EBT "flunks" an external calibration check, positive tests conducted on that device since the last previous successful external calibration check must be regarded as invalid. This fact provides a strong incentive to employers and BATs to conduct these checks frequently enough to avoid retroactive invalidations of positive tests. In conjunction with the manufacturer's instructions on the QAP, this incentive should be sufficient to induce employers acting in good faith and testers to conduct these checks at appropriate intervals. A generally applicable regulatory requirement for external checks of calibration at a stated interval, on the other hand, would provide less flexibility and might not fit a variety of situations well.

A few commenters suggested specific types of calibration solutions or obtaining such solutions from certified laboratories. Others suggested that the Department establish particular standards for external calibration devices, or allow use of only those external calibration devices that are on the NHTSA CPL. Others suggested particular tolerance standards (e.g., +/− .005). The Department does agree that the employers should use external calibration devices that are on the NHTSA CPL, and this requirement has been incorporated into the final rule. The Department does not certify laboratories for production of external calibration solutions, so we could not reasonably require employers to obtain solutions from certified laboratories. For the types of solution that work best with a particular machine, or for the tolerance standard that is most relevant, we believe that reliance on the QAP, based on the manufacturer's knowledge of the behavior of its product, makes the most sense.

On the subject of maintenance, most commenters supported the NPRM's proposal for maintenance by manufacturers, or their representatives, and careful documentation of this activity. These provisions have been retained.

Testing Location

The NPRM called for a testing site that afforded visual and aural privacy to the employee, though in unusual circumstances a test could be conducted elsewhere. The site would have to be secured. A mobile facility (e.g., a van) that met the requirements could be used. At the site, the BAT was to supervise only one employee's use of an EBT at a time, and the BAT could not leave the site when testing was in progress. The Department, with some modifications, is adopting this provision in the final rule. In our view, privacy in the context of breath alcohol testing is primarily for the purpose limiting other persons' access to information about the employee's test result. In contrast to urine drug testing, where private elimination functions are involved, privacy need not be as strict for breath alcohol testing. We have also eliminated references to the site being "secured," as such, because this term could lead to confusion. Our concern is that unauthorized persons not be in a position to see or overhear test results. We are not requiring that testing take place behind locked doors, in a totally enclosed space, or in a dedicated facility that is not used for other purposes.

There were few comments on this provision. Two commenters noted that privacy could be hard to achieve at a remote site. The NPRM already made allowance for this problem, however, by saying that a testing location did not have to provide full privacy in unusual circumstances such as a post-accident or reasonable suspicion test in a remote location. Other comments included a concern that privacy be protected adequately, that too much privacy could sharpen the concern about confrontations between BATs and employees, and that privacy requirements should not exclude a witness (e.g., a union representative) from the testing site. The provision establishes a general performance standard for privacy of the physical site: It does not address the issue of whether a witness may be present (that is a matter for labor-management negotiation). It does not require a site that is so isolated that a BAT could not find assistance if needed. One commenter asked for a DOT-operated national inspection program for test sites, analogous to the DHHS laboratory certification program. The Department believes that such a system would not be practicable, given the very high number of testing sites likely to be involved with the program.

Testing Form and Log Book

The NPRM proposed to require the use of a standard form for DOT-mandated testing, which employers could not modify. It would be a triplicate form, with copies for the BAT, employer, and employee. The colors of each copy of the form are intended to be consistent with the colors of the Department's drug testing form. The Department has decided to adopt this provision with minor modifications.

Seven commenters supported the NPRM provision as drafted. Thirteen commenters favored having space on

the form for recording a repeat of a test, in order to reduce paperwork. The Department believes that adding space for this purpose would result in a longer, more complicated form. Moreover, it is likely to be only in a minority of cases that a test will have to be repeated, meaning that the extra complexity of the form would not serve a useful purpose in most cases. For this reason, the Department is not adopting this comment.

Two commenters suggested that a combined drug/alcohol form be developed. The Department responds that, because of the differences between drug and alcohol testing, it would be difficult to develop a combined form that would not be too cumbersome and would work in both situations.

Two commenters asked that employers be able to modify the form. The Department's experience with the drug testing program, where some modification of the form has been permitted, is that the resulting variety of forms leads to confusion, errors, and difficulty in completing the form by collection site personnel. The Department believes that an unvarying, standard form will minimize these problems. Employers would have to use the form exactly as presented in Appendix A to this regulation (though a form directly generated by an EBT could be smaller and would not need a space to affix a separate printed result.) One commenter suggested that DOT provide the forms to employers free of charge. The Department does not believe that this is an appropriate use of Federal funds.

Two commenters asked that the form specify that the test is being conducted under the authority of DOT regulations. The Department's experience under the drug testing program is that, for lack of such a statement, some employees have been confused about whether a particular test was being conducted under DOT authority or simply under the employer's policy. The form being published with this rule includes such a statement. The result of including such a statement is that employers are not permitted to use the "DOT form" for a test not conducted under DOT authority.

Two commenters questioned the option to have the EBT or printer print results directly on the form, preferring to use a separate form. The regulation's requirements for EBTs used in confirmation testing provides this option, which is appropriate to provide flexibility. An employer who is uncomfortable with one approach can use the other.

This section of the rule includes a new provision requiring the use of a log book with EBTs, used for screening tests, that do not have the sequential numbering and printing capabilities required for devices used for confirmation tests. This section spells out the requirement for the log book and what it must contain; the rationale for the log book requirement is discussed below.

Preparation for Testing

The NPRM proposed that the BAT and the employee provide identification to one another and that the BAT explain the testing procedure to the employee. A commenter suggested that written information be provided to the employee, so that the briefing could be more detailed and the BAT had less verbal work to perform. The employer may provide the information in this fashion, though the regulation will not require it. Other comments were few and supportive. The NPRM provisions have been retained. Some provisions of this NPRM section, concerning filling out of forms and refused or incomplete tests, have been moved to the next section.

Initial Breath Test Procedures

The NPRM proposed to require an air blank before and after the screening test, which the machine had to pass in order to stay in service. The NPRM also included proposed requirements concerning completing the test paperwork.

Fifteen commenters addressed the issue of air blanks. Seven commenters agreed with the NPRM that air blanks should be required before and after each screening test. Two said that air blanks are not technically relevant with some types of EBTs. Six commenters said that an air blank should not be required after a test when the result was less than 0.02, as this was a waste of time. Some of these commenters favored pre-test air blanks, however. One commenter supported only pre-test air blanks.

The Department has decided that it will not require air blanks either before or after a screening test. First, most screening test results will be below 0.02, making post-test air blanks of limited value in those cases. Second, pre-test air blanks, at the screening stage, are not crucial in preventing "false positives" for employees, since no action against an employee may be taken without a confirmation test. Third, the Department will require air blanks before confirmation tests, which will build this protection into the testing process where it matters most. Fourth, the Department is permitting all EBTs on the NHTSA CPL to be used in screening tests, and some of these instruments would not provide any durable record of an air blank, even if they were able to perform air blanks. Finally, the absence of a requirement for air blanks on the more frequent screening tests will result in some cumulative savings of BAT and employee time and wear on the machines.

The NPRM called for a 15–20 minute waiting period before the confirmation test; no such waiting period was proposed for before the screening test. Seven commenters favored a waiting period before the screening test, eight opposed it, and two favored employer discretion. Because the confirmation testing procedures do provide for a waiting period, and since action against an employee can be taken only on the basis of a confirmation test, we believe that requiring an additional waiting period before the screening test would be superfluous.

The NPRM provision addressed situations in which the printed and displayed results did not match, proposing that such tests would be invalid. The final rule modifies this provision, since it is irrelevant concerning instruments that do not print out a result. The NPRM provision remains in effect for EBTs that do print out.

The additional flexibility the Department has provided in screening testing procedures, by permitting the use of EBTs that do not have sequential numbering and result printing capabilities, makes it more difficult to determine that a test of a particular employee, with a particular result, has taken place, raising the possibility of cheating by employers. To mitigate this potential problem, the final rule will require a log book to be kept with each EBT used for screening that does not have the sequential numbering and printout capabilities. (This requirement does not apply to EBTs meeting the requirements for devices used for confirmation testing.) The BAT will fill out a log book entry for each test in addition to completing the alcohol testing form. The log book entries are intended to serve as a cross-check on the performance and result of a test.

There were several comments both to this section and the next section concerning whether the cutoff level for a test to which consequences for the employee would attach should be 0.02, 0.04, or, as the NPRM proposed, a bifurcated 0.02/0.04 standard, with different consequences at each level. The rule takes the latter approach, for reasons discussed in the common preamble to the OA rules.

The employee is told to sign the form after the test has been taken. If the employee does not do so, it is not regarded as a refusal to take the test. Obviously, it would be silly to regard as a refusal to take the test a refusal to sign the form after the test had already been successfully conducted. In this situation, the BAT is required to not the failure to sign in the remarks section of the form.

Confirmation Breath Test Procedures

The NPRM instructed the BAT to tell the employee to avoid eating, drinking, etc. during a 15–20 minute interval between the screening and confirmation test, though the test would continue even if the employee did not follow the directions. The BAT would also give the employee a notice not to drive or perform other safety-sensitive functions if the employee's alcohol concentration were 0.04 or greater. After performing the same steps as with the screening test, the BAT would note the alcohol concentration reading and transmit the results to the employer in a confidential manner. The lower of the two readings—screening and confirmation—would control the result.

There were 29 comments concerning the waiting period before the confirmation test, fifteen of which supported the 15-minute minimum time proposed in the NPRM. Four comments wanted a shorter interval (e.g., two or five minutes) and four supported a longer interval (e.g., 20 or 30 minutes). Two comments opposed any requirement concerning an interval. Six comments either wanted no maximum waiting time or preferred to rely on the employer's or EBT manufacturer's discretion.

The waiting period is important. It is intended to give the employee the opportunity to ensure that any residual mouth alcohol does not influence the result of the confirmation test. According to the Department's information, fifteen minutes is the minimum period after which one can be confident that any residual mouth alcohol has disappeared. A shorter interval is not feasible for this reason. At the same time, waiting a long period between tests can be costly in terms of lost employee time and could influence the outcome of the confirmation test. In order to guard against lengthy delays in the performance of confirmation tests, which can allow alcohol concentration levels to fall, the final rule retains the 20-minute maximum. It should be pointed out that failing to observe the minimum 15-minute period is a "fatal flaw" (see § 40.79 (a)), automatically invalidating a test. This is because the Department believes it is important to prevent artificially high readings due to mouth alcohol residue. However, taking longer than 20 minutes between tests is not a "fatal flaw." The Department is aware that circumstances may sometimes result in stretching the time between tests for a few additional minutes.

Another issue addressed by commenters in a variety of ways was that of whether the screening or confirmation test result prevails when one is higher than the other. Eighteen commenters believed that the confirmation test should prevail in all cases. Two commenters supported using the higher of the two results, while three supported using the lower of the two results. The Department believes that it is more understandable, and less potentially confusing, for the confirmation test result to determine the outcome of the test. The confirmation test will always have to be performed using the most reliable methods. Also, alcohol concentration can still be rising at the time of the screening test. Although it is also possible for alcohol concentration to have dropped since the screening test, the Department's requirement for the confirmation test to be conducted a short time after the screening test should minimize any problem. Finally, this approach is consistent with that the Department takes in drug testing. Consequently, in situations in which a confirmation test is needed, the final rule will attach consequences only to the confirmation test result.

Nine commenters asked that the final rule, unlike the NPRM, provide for medical review officer (MRO) review of the confirmation test result, as the Department requires in drug testing. Among their reasons were that there could be valid medical or food-related reasons for alcohol concentrations, that there could be inadvertent alcohol consumption, that someone should review results for procedural errors, that an MRO should play the role assigned to the substance abuse professional (SAP) by the proposed rules, or that the alcohol rules should mirror the drug rules as much as possible.

In the drug testing context, an MRO determines whether there is a legitimate medical explanation for an individual having in his or her system a substance which is otherwise illegal. The alcohol rules are different in this respect. They prohibit safety sensitive employees from having alcohol concentrations above certain levels, regardless of the source of the alcohol. An alcohol concentration of 0.04 resulting from drinking beverage alcohol has the same consequences under the rules as an alcohol concentration of 0.04 resulting from ingesting medication. Both uses of alcohol are legal (as long as they do not violate OA rules concerning on-duty use, pre-duty abstinence, etc.); the resulting alcohol concentration is prohibited by DOT regulations equally in both cases. In this context, there is nothing for an MRO to decide. Inserting an MRO into the process without this key function would add to the complexity and cost of the system without providing any benefits. For these reasons, the Department will not require MRO review of alcohol testing results.

The NPRM proposed that employers could use the same EBT for both the screening and confirmation tests. Fifteen commenters objected to this proposal. Some said that an entirely different methodology should be used for the two tests. The legal issues section of the preamble discusses this point. Others said that a different EBT should be used for each test, some making the argument that using the same machine for both tests constituted "repetition," but not "confirmation." This semantic argument is not persuasive: The statute does not require different machines to be used, as long as the machine used for the second test meets statutory requirements. (Of course, where an employer chooses to use a preliminary EBT for the screening device, it will necessarily use two different machines.) Because of the reliability of EBTs meeting the requirements of this rule, we believe it would be unnecessarily expensive to require a second device to be used, which could have the effect of roughly doubling the capital equipment costs of the program.

Twelve of thirteen commenters opposed requiring a second confirmation test after the first confirmation test had been positive, a matter about which the NPRM preamble asked a question. The Department does not see a basis for requiring a second confirmation test, and we are not adding this requirement to the final rule.

A few commenters suggested getting rid of the requirement for the BAT to notify someone testing positive that he or she should not drive. The Department has decided to include a notice to this effect on the alcohol testing form, making direct participation by the BAT unnecessary.

Two commenters suggested that the rule be clarified to indicate that an employer could have more than one representative to whom results are transmitted. The Department has done so.

Two comments supported, and two opposed, the practice of back extrapolation to obtain a result. The Department's NPRMs proposed that the consequences of test results attach only to employees whose EBT readings were in fact at the stated levels. The Department did not propose to attach these consequences to inferences from EBT readings about what an employee's alcohol concentration might have been at an earlier point. For example, if an employee's EBT test result were .03, the requirement that the individual not again perform safety-sensitive functions until he or she was evaluated by a substance abuse professional (SAP) and had passed a return-to-duty test, and the requirement that the individual be subject to follow-up testing, would not apply because the employer, SAP, or other party believed that the individual's alcohol concentration had been 0.04 or greater prior to the test. Given the wide individual variations in alcohol metabolism among individuals, such inferences involve considerable uncertainty. The Department is retaining the NPRM provision on this point. This would not prevent an OA from making use of back extrapolation in certain situations (e.g., FRA makes some use of back extrapolation in its existing toxicological testing program, in a context involving the use of samples of two different body fluids; inquiries into accident causation or proceedings to revoke DOT-issued certificates or licenses held by employees, where expert testimony can be produced with the protection of the due process procedures of a hearing). These situations are different from the use of back extrapolation by employers in interpreting the results of tests conducted under part 40, however.

There will be some cases in which the BAT who conducts the screening test and the BAT who conducts the confirmation test are different people. For example, BAT #1 conducts a screening test, using an EBT not having sequential numbering or printout capabilities, in location A. The confirmation test, using a device that has these features, happens subsequently in location B, and is conducted by BAT #2. In such a case, to minimize the possibility of lost forms or other errors, the final rule provides that BAT #1 would complete the form for the screening test and give the employee his or her copy of the form. BAT #2 would then start a new form. The sections of the rule concerning screening and confirmation testing procedures have been modified to this effect.

Refused and Incomplete Tests

The final rule, in § 40.67, picks up paragraphs from the NPRM that do not fit conveniently in other sections. The first provides that employee refusals to take certain actions (e.g., complete and sign Step 2 of the form, provide breath) constitute a refusal to be tested. Such refusals, under the operating administration rules, have the same consequences as a test result of 0.04 or greater. The NPRM provision on which this paragraph is based was not the subject of comment. The second paragraph provides that if a test cannot be completed, or an event occurs that would invalidate the test, the BAT would, if practicable, run a retest. All seventeen comments on the subject favored this approach, and the Department is including it in the final rule.

Inability to Provide Sufficient Breath

The NPRM proposed that if an employee were unable to provide enough breath for an adequate sample, the BAT would ask the employee to try again. If the same result occurred, then the employee would be referred to a doctor for a medical evaluation. If the doctor determined that the inability to provide breath was due, or probably due, to a medical condition, the failure to provide the sample would be excused. If not, it would be treated as a refusal.

Four comments supported the NPRM provision. Three others thought that this situation was unlikely to arise, since only an employee who was seriously disabled, unconscious, or dead would be unable to provide the modest quantity of breath required to complete a test. We agree that this situation should not occur frequently, but we believe it is sensible to have a procedure in place to handle the occasional occurrence.

Nine commenters suggested that, if the employee cannot provide sufficient breath, the employee should be required to provide a sample of a body fluid (e.g., blood, urine). Two comments urged employer discretion in these cases. Ten commenters said that there should be a medical evaluation in all cases where an employee cannot produce sufficient breath, though these commenters disagreed with each other about whether the employee should be held out of safety-sensitive functions pending the result of the evaluation.

Under the final rule, the employer is required to direct the employee to be medically evaluated in "shy lung" cases. The final rule directs the employer to ensure that this evaluation occurs as soon as possible. Employers, under their own authority, could choose to "stand down" an employee pending the result of a medical evaluation, but the rule does not require this step.

In addition, the accompanying NPRM proposes that blood testing may be used in post-accident and reasonable suspicion testing when an EBT is not readily available. Since blood testing, and procedures for it, may become part of the rule for these purposes, the Department is responding to these comments by proposing blood testing as an option (regardless of the type of testing involved) when an employee cannot provide a sufficient breath sample. If the NPRM's proposal is made part of a final rule, the employer would have discretion concerning which alternative (blood alcohol testing or a medical evaluation) to select. Persons interested in this issue are asked to comment to the NPRM docket.

Invalid Tests

The original NPRM listed nine "fatal flaws" that would invalidate breath tests. An invalid test is neither positive nor negative, and it has no consequences for an employee. The NPRM being published today proposes a similar list of fatal flaws for blood tests.

The NPRM proposed that failure to observe the 15-minute minimum waiting period before the confirmation test would be a fatal flaw; going over the 20-minute maximum would not. Comments generally agreed with this approach, some noting that if exceeding a maximum waiting time were to be a fatal flaw, the outer limit should be 30 or 60 minutes rather than 20. One commenter opposed making observance of the minimum a fatal flaw. The Department is retaining the NPRM provision on this point.

The Department is changing the provision concerning air blanks to reflect the final rule's requirement of an air blank before only the confirmation test. Likewise, the NPRM provision making the device's failure to print out a result a fatal flaw has been changed to apply only to confirmation tests. The provision on disagreement between the printout and the machine display concerning sequential test numbers or alcohol concentration has been modified for the same reason. If the employee fails to sign Step 4 of the form, that is not a fatal flaw; the BAT's failure to note the employee's failure to sign that portion of the form would be a fatal flaw, however.

The NPRM proposed that if an EBT fails an external calibration check, every test performed on the device since the last valid external calibration test would be invalidated. Ten commenters opposed this provision, pointing out that it would cause numerous problems for employers if they had to invalidate tests after the fact, and perhaps had to reverse personnel actions as well. Four commenters supported the proposed requirement. The Department is well aware that after-the-fact invalidations of tests can create serious problems for employers. The Department does not see a workable alternative, however. If a valid external calibration check was performed after test A, and an invalid external calibration test was performed after test K, all we know for certain is that the machine went out of kilter somewhere between tests B and K. We cannot say for certain that test B or C was valid, or assume that the error occurred only on test K. Since we cannot determine that these tests were valid, we must, in fairness to the employees involved, treat them as invalid. Tests with results of 0.02 and above would be deemed invalid in this situation. This is surely incentive for employers to conduct frequent external calibration checks, particularly after positive tests.

One commenter suggested additional fatal flaws, such as failure to use a clean mouthpiece, inadequate grounds for reasonable suspicion, etc. One commenter suggested that all flaws should be regarded as fatal. The Department believes that only certain serious problems in the process, that directly affect the integrity of the test or accuracy of the result, should automatically invalidate the test. Other errors, particularly in combination with one another, could form the basis for a determination that a test is invalid (i.e., the listed fatal flaws are not intended to be the only possible grounds for invalidation). The Office of Drug Enforcement and Program Compliance is charged with providing, on behalf of the Department, definitive guidance on issues concerning the invalidation of tests.

Availability of Testing Information

The NPRM proposed provisions on alcohol test information availability parallel to the existing provisions on the availability of drug testing information, as the Department has interpreted them. Employers could release information to a third party only with the specific written consent of the employee, must keep confidential information secure, but may make the information available in certain litigation situations. Employers must make information available to DOT or, under some circumstances, to the National Transportation Safety Board (NTSB). Employers must also make information about an employee's test available to that employee.

Seven commenters, most of whom were from the motor carrier industry, asked that employers be authorized or required to make testing information available to third parties without the employee's consent. In this industry, the commenters said, there was a high turnover rate. Employees move rapidly from employer to employer. In the absence of authorization or requirement for a former employer to provide testing information to a potential new employer, either the hiring process would be slowed or important information about positive tests in the employee's past would be unavailable to the new employer.

In response, the Department points out that an employer may, without authorization from DOT, require an applicant, as a condition of employment, to give written consent to the disclosure of this information by a former employer. The Department is adding a sentence to this provision of the rule telling employers that they must provide the information when the employee consents to its transmission to a third party. However, in order to maintain the confidentiality of sensitive information, in which employees have a significant privacy interest, the Department will not authorize the transmission of this information among employers or potential employers without written employee consent.

The Department emphasizes that the consent involved must be a specific written consent for information to be sent from one named party to another named party. Blanket consents (i.e., a consent for testing information to be sent to all present or future employers or members of a consortium) are not permitted. Each consent must pertain to one specific employer providing the information about a particular employee to another specific employer.

Two commenters suggested that an employee should not have to pay for obtaining information in his or her own file concerning alcohol tests. The Department believes that this is a matter better left to employer-employee agreements. As the Department interprets this provision, employers may impose reasonable charges to cover the cost of retrieval, copying, and transmission of the records requested. The employer is also expected only to provide copies within its possession or control (including documents that may be maintained by a consortium or third-party provider that conducted testing for the employer).

Records Concerning BATs and EBTs

The NPRM proposed that the employer maintain various records concerning EBTs and BATs for five years. One commenter suggested that consortia and third-party providers be authorized to keep the records instead of the employer. The Department agrees that this is reasonable, and the final rule requires the employer or its agent to maintain the records. The employer retains ultimate responsibility for producing the records, however. Two commenters suggested we reduce the record retention period to two years, while one commenter said that the recordkeeping requirements in the NPRM were not burdensome. Consistent with the OA rules, the final part 40 rule establishes a 5-year retention period for calibration records and a two-year retention period for other records.

Other Issues

A number of commenters asked that we modify the definition of alcohol to include alcohols other than ethanol (e.g., methanol, isopropanol), in order to avoid loopholes in the program that would allow an employee to claim that his or her alcohol concentration reading was the result of ingesting a non-ethanol substance. The Department agrees that the definition should be broadened to avoid any potential problems with the use of non-ethanol alcohols, and the final rule includes a modified definition to this effect. This revised definition is consistent with that used by NHTSA in its model specifications for evidential EBTs. We have also added a companion definition of alcohol use, which emphasizes that any consumption of a preparation including alcohol (e.g., beverages, medicines) counts as alcohol use.

A few commenters asked that, for convenience, we centralize all the definitions in part 40 in one section. We have done so, and all the definitions are now in § 40.3.

The NPRM preamble asked for suggestions on how to deal with situations in which an arbitrator overturns an employer's personnel action based on an alcohol test result. Employers had expressed concern about perceived conflicts between the arbitrator's decisions and DOT regulations, and several commenters echoed these concerns. The Department is not convinced, however, that this problem is either frequent enough or serious enough to warrant a mandate in the regulatory text. Such a mandate, because it could not anticipate all the nuances of the factual situations involved, might interfere with

reasonable resolutions of particular disputes.

However, it is clear that employers are obligated to comply with DOT safety regulations, which have the force and effect of law. As a matter of law, no decision by an employer, employee organization, or individual or group appointed by those or other parties, can have the effect of excusing noncompliance by an employer with a provision of a DOT safety regulation. If a violation of DOT rules has occurred, then the consequences prescribed by DOT rules must follow (e.g., the employee must be removed from performing a safety-sensitive function).

In the NPRM preamble, the Department included a discussion of handling of perceived conflicts between part 40 and operating administration regulations, exemptions, and the obligations of consortia and third-party providers (57 FR 59410; December 15, 1992). This discussion applies to the implementation of the final part 40 as well. The relevant language is reprinted below:

> Although implementation of part 40 generally would be done through an operating administration, part 40 is an Office of the Secretary of Transportation (OST) regulation. As such, requests for exemption would be processed under 49 CFR part 5, an existing regulation covering requests for exemption from or amendment to all OST rules, rather than through separate operating administration exemption procedures. This would add an additional element of consistency. This approach is consistent with the existing part 40 drug testing procedures, from which exemptions would also be granted under part 40. (See 54 FR 49863; December 1, 1989).
>
> The grant of an exemption under part 40 must be based on special or exceptional circumstances. It is not appropriate to carve out a generally applicable exception to a rule. Also, an exemption must be based on circumstances not contemplated as part of the rulemaking. The exemption process is not designed to revisit issues settled in the rulemaking process.
>
> Section 40.1 would also emphasize that other parties involved in the testing process—such as consortia, contractors, and agents—"stand in the shoes" of the employer. They are, therefore, subject to the same obligations and requirements as the employer. If an employer is required to do something, so is the consortium that is conducting testing for the employer. If the consortium fails to do something correctly, the employer is in noncompliance.

Since, as noted above, part 40 is a regulation of the Office of the Secretary of Transportation, the source of definitive interpretations of the rule is the Office of the Secretary. Interpretations have been and will continue to be made in close coordination among the OAs, the Office of Drug Enforcement and Program Compliance (DEPC), and the Office of General Counsel.

Regulatory Analyses and Notices

Because of substantial public interest and substantial impacts on a wide range of private and public sector organizations, the Department has determined that this rule—in conjunction with the operating administration alcohol and drug testing rules—is significant under Executive Order 12866. The rule has been reviewed under this Order. It is also significant under the Department's regulatory policies and procedures. The Department has prepared a regulatory evaluation for part 40, which we have included in the docket. The costs of the application of part 40 procedures to the programs of the various OAs are estimated in each of the OAs' regulatory evaluations for their drug and alcohol rules being published today.

This rule, in conjunction with the operating administration drug and alcohol testing rules, is likely to have a significant economic impact on a substantial number of small entities. These impacts are assessed in the OAs' regulatory evaluations. The Federalism impacts of this rule are either minimal or required by statute; for these reasons, we have not prepared a Federalism assessment.

This rule also contains collection of information requirements. The Department has submitted these requirements to the Office of Management and Budget for review and approval under the Paperwork Reduction Act (44 U.S.C. 350, *et. seq.*). Please see the Common Preamble on the status of Paperwork Reduction Act approvals.

List of Subjects in 49 CFR Part 40

Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

Issued This 25th day of January, 1994, at Washington, D.C.

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Acting Administrator, Research and Special Programs Administration.
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Commandant, United States Coast Guard.

For the reasons set forth in the preamble, the Department of Transportation amends Title 49, Code of Federal Regulations, part 40, as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

1. The authority citation for Part 40 is revised to read as follows:

Authority: 49 U.S.C. 102,301,322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

2. §§ 40.1 through 40.19 are designated as subpart A and revised to read as follows:

Subpart A—General

40.1 Applicability.
40.3 Definitions.
40.5–40.19 [Reserved]

Subpart A—GENERAL

§ 40.1 Applicability.

This part applies, through regulations that reference it issued by agencies of the Department of Transportation, to transportation employers, including self-employed individuals, required to conduct drug and/or alcohol testing programs by DOT agency regulations and to such transportation employers' officers, employees, agents and contractors (including, but not limited to, consortia). Employers are responsible for the compliance of their officers, employees, agents, consortia and/or contractors with the requirements of this part.

§ 40.3 Definitions.

The following definitions apply to this part:

Air blank. A reading by an EBT of ambient air containing no alcohol. (In EBTs using gas chromatography technology, a reading of the device's internal standard.)

Alcohol. The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

Alcohol concentration. The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.

Alcohol use. The consumption of any beverage, mixture or preparation, including any medication, containing alcohol.

Aliquot. A portion of a specimen used for testing.

Blind sample or blind performance test specimen. A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

Breath Alcohol Technician (BAT). An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

Canceled or invalid test. In drug testing, a drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither a positive nor a negative test. For purposes of this part, a sample that has been rejected for testing by a laboratory is treated the same as a canceled test. In alcohol testing, a test that is deemed to be invalid under § 40.79. It is neither a positive nor a negative test.

Chain of custody. Procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. With respect to drug testing, these procedures shall require that an appropriate drug testing custody form (see § 40.23(a)) be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account(s) for the sample or sample aliquots within the laboratory.

Collection container. A container into which the employee urinates to provide the urine sample used for a drug test.

Collection site. A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection site person. A person who instructs and assists individuals at a collection site and who receives and makes a screening examination of the urine specimen provided by those individuals.

Confirmation (or confirmatory) test. In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.) In alcohol testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

DHHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

DOT agency. An agency of the United States Department of Transportation administering regulations related to drug or alcohol testing, including the United States Coast Guard (for drug testing purposes only), the Federal Aviation Administration, the Federal Railroad Administration, the Federal Highway Administration, the Federal Transit Administration, the Research and Special Programs Administration, and the Office of the Secretary.

Employee. An individual designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. As used in this part "employee" includes an applicant for employment. "Employee" and "individual" or "individual to be tested" have the same meaning for purposes of this part.

Employer. An entity employing one or more employees that is subject to DOT agency regulations requiring compliance with this part. As used in this part, *employer* includes an industry consortium or joint enterprise comprised of two or more employing entities.

EBT (or evidential breath testing device). An EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

Medical Review Officer (MRO). A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

Screening test (or initial test). In drug testing, an immunoassay screen to eliminate "negative" urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.

Secretary. The Secretary of Transportation or the Secretary's designee.

Shipping container. A container capable of being secured with a tamper-evident seal that is used for transfer of one or more urine specimen bottle(s) and associated documentation from the collection site to the laboratory.

Specimen bottle. The bottle that, after being labeled and sealed according to the procedures in this part, is used to transmit a urine sample to the laboratory.

§§ 40.5—40.19 [Reserved]

2. §§ 40.21 through 40.39 are designated subpart B.

Subpart B—Drug Testing

40.21 The drugs.
40.23 Preparation for testing.
40.25 Specimen collection procedures.
40.27 Laboratory personnel.
40.29 Laboratory analysis procedures.
40.31 Quality assurance and quality control.
40.33 Reporting and review of results.
40.35 Protection of employee records.
40.37 Individual access to test and laboratory certification results.
40.39 Use of DHHS—certified laboratories.

Authority: 49 U.S.C. 102, 301, 322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

3. In § 40.25, paragraph (f)(10) is revised to read as follows:

§ 40.25 Specimen collection procedures.

* * * * *

(f) * * *

(10) The collection site person shall instruct the employee to provide at least 45 ml of urine under the split sample method of collection or 30 ml of urine under the single sample method of collection.

(i)(A) Employers with employees subject to drug testing only under the drug testing rules of the Research and Special Programs Administration and/or Coast Guard may use the "split sample" method of collection or may collect a single sample for those employees.

(B) Employers with employees subject to drug testing under the drug testing rules of the Federal Highway Administration, Federal Railroad

Administration, Federal Transit Administration, or Federal Aviation Administration shall use the "split sample" method of collection for those employees.

(ii) Employers using the split sample method of collection shall follow the procedures in this paragraph (f)(10)(ii):

(A) The donor shall urinate into a collection container or a specimen bottle capable of holding at least 60 ml.

(B) If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30) ml shall be poured into one bottle, to be used as the primary specimen. At least 15 ml shall be poured into the other bottle, to be used as the split specimen.

(C) If a single specimen bottle is used as a collection container, the collection site person shall pour 30 ml of urine from the specimen bottle into a second specimen bottle (to be used as the primary specimen) and retain the remainder (at least 15 ml) in the collection bottle (to be used as the split specimen).

(D) Both bottles shall be shipped in a single shipping container, together with copies 1,2, and the split specimen copy of the chain of custody form, to the laboratory.

(E) If the test result of the primary specimen is positive, the employee may request that the MRO direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of a verified positive test result.

(F) When the MRO informs the laboratory in writing that the employee has requested a test of the split specimen, the laboratory shall forward, to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the MRO request, and the split specimen copy of the chain of custody form with appropriate chain of custody entries.

(G) The result of the test of the split specimen is transmitted by the second laboratory to the MRO.

(H) Action required by DOT agency regulations as the result of a positive drug test (e.g., removal from performing a safety-sensitive function) is not stayed pending the result of the test of the split specimen.

(I) If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test, and report the cancellation and the reasons for it to the DOT, the employer, and the employee.

(iii) Employers using the single sample collection method shall follow the procedures in paragraph:

(A) The collector may choose to direct the employee to urinate either directly into a specimen bottle or into a separate collection container.

(B) If a separate collection container is used, the collection site person shall pour at least 30 ml of the urine from the collection container into the specimen bottle in the presence of the employee.

(iv) In either collection methodology, upon receiving the specimen from the individual, the collection site person shall determine if it has at least 30 milliliters of urine for the primary or single specimen bottle and, where the split specimen collection method is used, an additional 15 ml of urine for the split specimen bottle. If the individual is unable to provide such a quantity of urine, the collection site person shall instruct the individual to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container. The original insufficient specimen shall be discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the employer so notified. The MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to test. (In preemployment testing, if the employer does not wish to hire the individual, the MRO is not required to make such a referral.) Upon completion of the examination, the MRO shall report his or her conclusions to the employer in writing.

* * * * *

4. In § 40.29, paragraph (b)(2) is revised and paragraph (b)(3) is added, as follows:

§ 40.29 Laboratory analysis procedures.

* * * * *

(b) * * * * *

(2) In situations where the employer uses the split sample collection method, the laboratory shall log in the split specimen, with the split specimen bottle seal remaining intact. The laboratory shall store this sample securely (see paragraph (c) of this section). If the result of the test of the primary specimen is negative, the laboratory may discard the split specimen. If the result of the test of the primary specimen is positive, the laboratory shall retain the split specimen in frozen storage for 60 days from the date on which the laboratory acquires it (see paragraph (h) of this section). Following the end of the 60-day period, if not informed by the MRO that the employee has requested a test of the split specimen, the laboratory may discard the split specimen.

(3) When directed in writing by the MRO to forward the split specimen to another DHHS-certified laboratory for analysis, the second laboratory shall analyze the split specimen by GC/MS to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen. Such GC/MS confirmation shall be conducted without regard to the cutoff levels of § 40.29(f). The split specimen shall be retained in long-term storage for one year by the laboratory conducting the analysis of the split specimen (or longer if litigation concerning the test is pending).

* * * * *

6. In § 40.33 paragraphs (e), (f) and (g) are revised; paragraph (h) is redesignated as paragraphs (i), and a new paragraph (h) is added, as follows:

§ 40.33 Reporting and review of results.

* * * * *

(e) In a situation in which the employer has used the single sample method of collection, the MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a reanalysis of the original specimen, if the test is verified positive. If requested to do so by the employee within 72 hours of the employee's having been informed of a verified positive test, the Medical Review Officer shall direct, in writing, a reanalysis of the original sample. The MRO may also direct, in writing, such a reanalysis if the MRO questions the accuracy or validity of any test result. Only the MRO may authorize such a reanalysis, and such a reanalysis may take place only at laboratories certified by DHHS. If the reanalysis fails to reconfirm the presence of the drug or drug metabolite, the MRO shall cancel the test and report the cancellation and the reasons for it to the DOT, the employer and the employee.

(f) In situations in which the employer uses the split sample method of collection, the MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a test of the split specimen, if the test is verified as positive. If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the DOT, the employer, and the employee.

(g) If an employee has not contacted the MRO within 72 hours, as provided in paragraphs (e) and (f) of this section, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO shall direct that the reanalysis of the primary specimen or analysis of the split specimen, as applicable, be performed.

(h) When the employer uses the split sample method of collection, the employee is not authorized to request a reanalysis of the primary specimen as provided in paragraph (e) of this section.

* * * * *

7. A new subpart C is added to part 40, to read as follows:

Subpart C—Alcohol Testing

40.51 The breath alcohol technician.
40.53 Devices to be used for breath alcohol tests.
40.55 Quality assurance plans for EBTs.
40.57 Locations for breath alcohol testing.
40.59 The breath alcohol testing form and log book.
40.61 Preparation for breath alcohol testing.
40.63 Procedures for screening tests.
40.65 Procedures for confirmation tests.
40.67 Refusals to test and uncompleted tests.
40.69 Inability to provide an adequate amount of breath.
40.71 [Reserved]
40.73 [Reserved]
40.75 [Reserved]
40.77 [Reserved]
40.79 Invalid Tests.
40.81 Availability and disclosure of alcohol testing information about individual employees.
40.83 Maintenance and disclosure of records concerning EBTs and BATs.

Appendix A—The Breath Alcohol Testing Form

Authority: 49 U.S.C. 102, 301, 322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

§ 40.51 The breath alcohol technician.

(a) The breath alcohol technician (BAT) shall be trained to proficiency in the operation of the EBT he or she is using and in the alcohol testing procedures of this part.

(1) Proficiency shall be demonstrated by successful completion of a course of instruction which, at a minimum, provides training in the principles of EBT methodology, operation, and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required in this part for obtaining a breath sample, and interpreting and recording EBT results.

(2) Only courses of instruction for operation of EBTs that are equivalent to the Department of Transportation model course, as determined by the National Highway Traffic Safety Administration (NHTSA), may be used to train BATs to proficiency. On request, NHTSA will review a BAT instruction course for equivalency.

(3) The course of instruction shall provide documentation that the BAT has demonstrated competence in the operation of the specific EBT(s) he/she will use.

(4) Any BAT who will perform an external calibration check of an EBT shall be trained to proficiency in conducting the check on the particular model of EBT, to include practical experience and demonstrated competence in preparing the breath alcohol simulator or alcohol standard, and in maintenance and calibration of the EBT.

(5) The BAT shall receive additional training, as needed, to ensure proficiency, concerning new or additional devices or changes in technology that he or she will use.

(6) The employer or its agent shall establish documentation of the training and proficiency test of each BAT it uses to test employees, and maintain the documentation as provided in § 40.83.

(b) A BAT-qualified supervisor of an employee may conduct the alcohol test for that employee only if another BAT is unavailable to perform the test in a timely manner. A supervisor shall not serve as a BAT for the employee in any circumstance prohibited by a DOT operating administration regulation.

(c) Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATs. In order for a test conducted by such an officer to be accepted under Department of Transportation alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT that was used for the test.

§ 40.53 Devices to be used for breath alcohol tests.

(a) For screening tests, employers shall use only EBTs. When the employer uses for a screening test an EBT that does not meet the requirements of paragraphs (b) (1) through (3) of this section, the employer shall use a log book in conjunction with the EBT (see § 40.59(c)).

(b) For confirmation tests, employers shall use EBTs that meet the following requirements:

(1) EBTs shall have the capability of providing, independently or by direct link to a separate printer, a printed result in triplicate (or three consecutive identical copies) of each breath test and of the operations specified in paragraphs (b) (2) and (3) of this section.

(2) EBTs shall be capable of assigning a unique and sequential number to each completed test, with the number capable of being read by the BAT and the employee before each test and being printed out on each copy of the result.

(3) EBTs shall be capable of printing out, on each copy of the result, the manufacturer's name for the device, the device's serial number, and the time of the test.

(4) EBTs shall be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level.

(5) EBTs shall be capable of the following operations:

(i) Testing an air blank prior to each collection of breath; and

(ii) Performing an external calibration check.

§ 40.55 Quality assurance plans for EBTs.

(a) In order to be used in either screening or confirmation alcohol testing subject to this part, an EBT shall have a quality assurance plan (QAP) developed by the manufacturer.

(1) The plan shall designate the method or methods to be used to perform external calibration checks of the device, using only calibration devices on the NHTSA "Conforming Products List of Calibrating Units for Breath Alcohol Tests."

(2) The plan shall specify the minimum intervals for performing external calibration checks of the device. Intervals shall be specified for different frequencies of use, environmental conditions (e.g., temperature, altitude, humidity), and contexts of operation (e.g., stationary or mobile use).

(3) The plan shall specify the tolerances on an external calibration check within which the EBT is regarded to be in proper calibration.

(4) The plan shall specify inspection, maintenance, and calibration

requirements and intervals for the device.

(5) For a plan to be regarded as valid, the manufacturer shall have submitted the plan to NHTSA for review and have received NHTSA approval of the plan.

(b) The employer shall comply with the NHTSA-approved quality assurance plan for each EBT it uses for alcohol screening or confirmation testing subject to this part.

(1) The employer shall ensure that external calibration checks of each EBT are performed as provided in the QAP.

(2) The employer shall take an EBT out of service if any external calibration check results in a reading outside the tolerances for the EBT set forth in the QAP. The EBT shall not again be used for alcohol testing under this part until it has been serviced and has had an external calibration check resulting in a reading within the tolerances for the EBT.

(3) The employer shall ensure that inspection, maintenance, and calibration of each EBT are performed by the manufacturer or a maintenance representative certified by the device's manufacturer or a state health agency or other appropriate state agency. The employer shall also ensure that each BAT or other individual who performs an external calibration check of an EBT used for alcohol testing subject to this part has demonstrated proficiency in conducting such a check of the model of EBT in question.

(4) The employer shall maintain records of the external calibration checks of EBTs as provided in § 40.83.

(c) When the employer is not using the EBT at an alcohol testing site, the employer shall store the EBT in a secure space.

§ 40.57 Locations for breath alcohol testing.

(a) Each employer shall conduct alcohol testing in a location that affords visual and aural privacy to the individual being tested, sufficient to prevent unauthorized persons from seeing or hearing test results. All necessary equipment, personnel, and materials for breath testing shall be provided at the location where testing is conducted.

(b) An employer may use a mobile collection facility (*e.g.*, a van equipped for alcohol testing) that meets the requirements of paragraph (a) of this section.

(c) No unauthorized persons shall be permitted access to the testing location when the EBT remains unsecured or, in order to prevent such persons from seeing or hearing a testing result, at any time when testing is being conducted.

(d) In unusual circumstances (*e.g.*, when it is essential to conduct a test outdoors at the scene of an accident), a test may be conducted at a location that does not fully meet the requirements of paragraph (a) of this section. In such a case, the employer or BAT shall provide visual and aural privacy to the employee to the greatest extent practicable.

(e) The BAT shall supervise only one employee's use of the EBT at a time. The BAT shall not leave the alcohol testing location while the testing procedure for a given employee (see §§ 40.61 through 40.65) is in progress.

§ 40.59 The breath alcohol testing form and log book.

(a) Each employer shall use the breath alcohol testing form prescribed under this part. The form is found in appendix A to this subpart. Employers may not modify or revise this form, except that a form directly generated by an EBT may omit the space for affixing a separate printed result to the form.

(b) The form shall provide triplicate (or three consecutive identical) copies. Copy 1 (white) shall be retained by the BAT. Copy 2 (green) shall be provided to the employee. Copy 3 (blue) shall be transmitted to the employer. Except for a form generated by an EBT, the form shall be 8½ by 11 inches in size.

(c) A log book shall be used in conjunction with any EBT used for screening tests that does not meet the requirements of § 40.53(b) (1) through (3). There shall be a log book for each such device, that is not used in conjunction with any other device and that is used to record every test conducted on the device. The log book shall include columns for the test number, date of the test, name of the BAT, location of the test, quantified test result, and initials of the employee taking each test.

§ 40.61 Preparation for breath alcohol testing.

(a) When the employee enters the alcohol testing location, the BAT will require him or her to provide positive identification (*e.g.*, through use of a photo I.D. card or identification by an employer representative). On request by the employee, the BAT shall provide positive identification to the employee.

(b) The BAT shall explain the testing procedure to the employee.

§ 40.63 Procedures for screening tests.

(a) The BAT shall complete Step 1 on the Breath Alcohol Testing Form. The employee shall then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test.

(b) An individually-sealed mouthpiece shall be opened in view of the employee and BAT and attached to the EBT in accordance with the manufacturer's instructions.

(c) The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained.

(d)(1) If the EBT does not meet the requirements of § 40.53(b)(1) through (3), the BAT and the employee shall take the following steps:

(i) Show the employee the result displayed on the EBT. The BAT shall record the displayed result, test number, testing device, serial number of the testing device, time and quantified result in Step 3 of the form.

(ii) Record the test number, date of the test, name of the BAT, location, and quantified test result in the log book. The employee shall initial the log book entry.

(2) If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (*e.g.*, tamper-evident tape).

(3) If the EBT prints the test results directly onto the form, the BAT shall show the employee the result displayed on the EBT.

(e)(1) In any case in which the result of the screening test is a breath alcohol concentration of less than 0.02, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.

(2) If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.

(3) If a test result printed by the EBT (see paragraph (d)(2) or (d)(3) of this section) does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. In accordance with § 40.79, the test is invalid and the employer and employee shall be so advised.

(4) No further testing is authorized. The BAT shall transmit the result of less than 0.02 to the employer in a confidential manner, and the employer shall receive and store the information so as to ensure that confidentiality is maintained as required by § 40.81.

(f) If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test shall be performed as provided in § 40.65.

(g) If the confirmation test will be conducted by a different BAT, the BAT who conducts the screening test shall complete and sign the form and log book entry. The BAT will provide the employee with Copy 2 of the form.

§ 40.65 Procedures for confirmation tests.

(a) If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall follow the procedures of § 40.61.

(b) The BAT shall instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test, and shall not be less than 15 minutes. The confirmation test shall be conducted within 20 minutes of the completion of the screening test. The BAT shall explain to the employee the reason for this requirement (*i.e.*, to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with this instruction, the BAT shall so note in the "Remarks" section of the form.

(c) (1) If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The BAT shall complete Step 1 on the form. The employee shall then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test. The BAT shall note in the "Remarks" section of the form that a different BAT conducted the screening test.

(2) In all cases, the procedures of § 40.63 (a), (b), and (c) shall be followed. A new mouthpiece shall be used for the confirmation test.

(d) Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using that instrument. However, testing may proceed on another instrument.

(e) Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is conducted and the EBT is found to be within tolerance limits.

(f) In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action under operating administration rules shall be based.

(g) (1) If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (*e.g.*, tamper-evident tape).

(2) If the EBT prints the test results directly onto the form, the BAT shall show the employee the result displayed on the EBT.

(h) (1) Following the completion of the test, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.

(2) If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.

(3) If a test result printed by the EBT (see paragraph (g)(1) or (g)(2) of this section) does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. In accordance with § 40.79, the test is invalid and the employer and employee shall be so advised.

(4) The BAT shall conduct an air blank. If the reading is greater than 0.00, the test is invalid.

(i) The BAT shall transmit all results to the employer in a confidential manner.

(1) Each employer shall designate one or more employer representatives for the purpose of receiving and handling alcohol testing results in a confidential manner. All communications by BATs to the employer concerning the alcohol testing results of employees shall be to a designated employer representative.

(2) Such transmission may be in writing, in person or by telephone or electronic means, but the BAT shall ensure immediate transmission to the employer of results that require the employer to prevent the employee from performing a safety-sensitive function.

(3) If the initial transmission is not in writing (e.g., by telephone), the employer shall establish a mechanism to verify the identity of the BAT providing the information.

(4) If the initial transmission is not in writing, the BAT shall follow the initial transmission by providing to the employer the employer's copy of the breath alcohol testing form. The employer shall store the information so as to ensure that confidentiality is maintained as required by § 40.81.

§ 40.67 Refusals to test and uncompleted tests.

(a) Refusal by an employee to complete and sign the breath alcohol testing form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The testing process shall be terminated and the BAT shall immediately notify the employer.

(b) If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number (in the case of a screening test conducted on an EBT that meets the requirements of § 40.53(b) or in the case of a confirmation test).

§ 40.69 Inability to provide an adequate amount of breath.

(a) This section sets forth procedures to be followed in any case in which an employee is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition.

(b) The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the employer.

(c) If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the breath alcohol testing form and immediately inform the employer.

(d) If the employee attempts and fails to provide an adequate amount of breath, the employer shall proceed as follows:

(1) [Reserved]

(2) The employer shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's medical ability to provide an adequate amount of breath.

(i) If the physician determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The physician shall provide to the employer a written statement of the basis for his or her conclusion.

(ii) If the licensed physician, in his or her reasonable medical judgment, is unable to make the determination set forth in paragraph (d)(2)(i) of this section the employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The licensed physician shall provide a written statement of the basis for his or her conclusion to the employer.

§§ 40.71–40.77 [Reserved]

§ 40.79 Invalid tests.

(a) A breath alcohol test shall be invalid under the following circumstances:

(1) The next external calibration check of an EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this event, every test result of 0.02 or above obtained on the device since the last valid external calibration check shall be invalid;

(2) The BAT does not observe the minimum 15-minute waiting period prior to the confirmation test, as provided in § 40.65(b);

(3) The BAT does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to or after the administration of the test, as provided in § 40.65;

(4) The BAT does not sign the form as required by §§ 40.63 and 40.65;

(5) The BAT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result;

(6) An EBT fails to print a confirmation test result; or

(7) On a confirmation test and, where applicable, on a screening test, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

(b) [Reserved]

§ 40.81 Availability and disclosure of alcohol testing information about individual employees.

(a) Employers shall maintain records in a secure manner, so that disclosure of information to unauthorized persons does not occur.

(b) Except as required by law or expressly authorized or required in this section, no employer shall release covered employee information that is contained in the records required to be maintained by this part or by DOT agency alcohol misuse rules.

(c) An employee subject to testing is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The employer shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(d) Each employer shall permit access to all facilities utilized in complying with the requirements of this part and DOT agency alcohol misuse rules to the Secretary of Transportation, any DOT agency with regulatory authority over the employer, or a state agency with regulatory authority over the employer (as authorized by DOT agency regulations).

(e) When requested by the Secretary of Transportation, any DOT agency with regulatory authority over the employer, or a state agency with regulatory authority over the employer (as authorized by DOT agency regulations), each employer shall make available copies of all results for employer alcohol testing conducted under the requirements of this part and any other information pertaining to the employer's alcohol misuse prevention program. The information shall include name-specific alcohol test results, records and reports.

(f) When requested by the National Transportation Safety Board as part of an accident investigation, an employer shall disclose information related to the employer's administration of any post-accident alcohol tests administered following the accident under investigation.

(g) An employer shall make records available to a subsequent employer upon receipt of a written request from a covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.

(h) An employer may disclose information required to be maintained under this part pertaining to a covered employee to that employee or to the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under the requirements of this part, or from the employer's determination that the employee engaged in conduct prohibited by a DOT agency alcohol misuse regulation (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(i) An employer shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information is permitted only in accordance with the terms of the employee's consent.

§ 40.83 Maintenance and disclosure of records concerning EBTs and BATs.

(a) Each employer or its agent shall maintain the following records for two years:

(1) Records of the inspection and maintenance of each EBT used in employee testing;

(2) Documentation of the employer's compliance with the QAP for each EBT it uses for alcohol testing under this part;

(3) Records of the training and proficiency testing of each BAT used in employee testing;

(4) The log books required by § 40.59(c).

(b) Each employer or its agent shall maintain for five years records pertaining to the calibration of each EBT used in alcohol testing under this part, including records of the results of external calibration checks.

(c) Records required to be maintained by this section shall be disclosed on the same basis as provided in § 40.81.

Appendix A to Subpart C of Part 40—The Breath Alcohol Testing Form

BILLING CODE 4910-62-U

U.S. Department of Transportation (DOT) Breath Alcohol Testing Form

[THE INSTRUCTIONS FOR COMPLETING THIS FORM ARE ON THE BACK OF COPY 3]

▸ STEP 1: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN

A. Employee Name _____
(PRINT) (First, M.I., Last)

B. SSN or Employee ID No. _____

C. Employer Name, Address, & Telephone No. _____

_____

_____ ( )
Telephone Number

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post-accident ☐ Return to Duty ☐ Follow-up

▸ STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to breath alcohol testing required by U.S. Department of Transportation regulations and that the identifying information provided on this form is true and correct.

_____ ___/___/___
Signature of Employee Date Month Day Year

▸ STEP 3: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN

I certify that I have conducted breath alcohol testing on the above named individual in accordance with the procedures established in the U.S. Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing devices identified, and that the results are as recorded.

Screening test: Complete only if the testing device is not designed to print the following

Test No.	Testing Device Name	Testing Device Serial Number	Time AM PM	Result

Confirmation test: Confirmation test results MUST be affixed to the back of each copy of this form.

Remarks: _____

_____

_____

(PRINT) Breath Alcohol Technician's Name (First, M.I., Last)	Signature of Breath Alcohol Technician	Date	Month	Day	Year

▸ STEP 4: TO BE COMPLETED BY EMPLOYEE

I certify that I have submitted to breath alcohol testing and the results are as recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment if the results are 0.02 or greater.

_____ ___/___/___
Signature of Employee Date Month Day Year

COPY 1 - ORIGINAL - BREATH ALCOHOL TECHNICIAN RETAINS

OMB No. 2105-0529

AFFIX SCREENING TEST RESULTS HERE (IF APPLICABLE) USE TAMPER-EVIDENT TAPE	AFFIX CONFIRMATION TEST RESULTS HERE USE TAMPER-EVIDENT TAPE

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

Public reporting burden for this collection of information is estimated for each respondent to average: 1 minute/employee, 4 minutes/Breath Alcohol Technician. Individuals may send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to U.S. Department of Transportation, Drug Enforcement and Program Compliance, Room 9404, 400 Seventh St., SW, Washington, D.C. 20590 or Office of Management and Budget, Paperwork Reduction Project, Room 3001, 725 Seventeenth St., NW, Washington, D.C. 20503.

COPY 1 - ORIGINAL - BREATH ALCOHOL TECHNICIAN RETAINS

U.S. Department of Transportation (DOT) Breath Alcohol Testing Form

[THE INSTRUCTIONS FOR COMPLETING THIS FORM ARE ON THE BACK OF COPY 3]

▸ **STEP 1: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN**

A. Employee Name _____
(PRINT) (First, M.I., Last)

B. SSN or Employee ID No. _____

C. Employer Name, Address, & Telephone No. _____

_____

_____ ( )
Telephone Number

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post-accident ☐ Return to Duty ☐ Follow-up

▸ **STEP 2: TO BE COMPLETED BY EMPLOYEE**

I certify that I am about to submit to breath alcohol testing required by U.S. Department of Transportation regulations and that the identifying information provided on this form is true and correct.

_____ ___/___/___
Signature of Employee Date Month Day Year

▸ **STEP 3: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN**

I certify that I have conducted breath alcohol testing on the above named individual in accordance with the procedures established in the U.S. Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing devices identified, and that the results are as recorded.

Screening test: Complete only if the testing device is not designed to print the following.

Test No.	Testing Device Name	Testing Device Serial Number	Time	AM PM	Result

Confirmation test: Confirmation test results MUST be affixed to the back of each copy of this form.

Remarks: _____

_____

_____

(PRINT) Breath Alcohol Technician's Name (First, M.I., Last)	Signature of Breath Alcohol Technician	Date Month Day Year
		___/___/___

▸ **STEP 4: TO BE COMPLETED BY EMPLOYEE**

I certify that I have submitted to breath alcohol testing and the results are as recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment if the results are 0.02 or greater.

_____ ___/___/___
Signature of Employee Date Month Day Year

COPY 2 - EMPLOYEE RETAINS

OMB No. 2105-0529

AFFIX SCREENING TEST RESULTS HERE (IF APPLICABLE)	AFFIX CONFIRMATION TEST RESULTS HERE
USE TAMPER-EVIDENT TAPE	USE TAMPER-EVIDENT TAPE

Privacy Act Statement

(applicable in those cases where completed Breath Alcohol Testing Forms are retained in a Federal Privacy Act system of records)

Except for your Social Security Number (SSN), submission of the information on the front side of this form is mandatory. Incomplete submission of the information, failure to provide an adequate breath specimen for testing without a valid medical explanation, engaging in conduct that clearly obstructs the testing process, or failure to sign the certification statements on the front side of this form may result in delay or denial of your application for employment/appointment, your inability to resume performing safety-sensitive duties, removal from a safety-sensitive position, or other disciplinary action.

The authority for obtaining the breath specimen required by the U.S. Department of Transportation is the Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102-143, Title V. The principal purpose for which the information sought is to be used is to ensure that you have submitted to breath alcohol testing and to ensure that you are promptly notified in the event of noncompliance with the U.S. Department of Transportation breath alcohol testing requirements.

Submission of your SSN is not required by law and is voluntary. If you object to the use of your SSN in this form, you will not be denied any right, benefit, or privilege provided by law; a substitute number or other identifier will be assigned.

The information provided in this form may be disclosed, as a routine use, to a Federal, State, or local agency for authorized investigative or enforcement purposes or to a court or an administrative tribunal when the Government or one of its agencies is a party to a judicial proceeding before the court or involved in administrative proceedings before the tribunal.

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

Public reporting burden for this collection of information is estimated for each respondent to average 1 minute/employee, 4 minutes/Breath Alcohol Technician. Individuals may send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to U.S. Department of Transportation, Drug Enforcement and Program Compliance, Room 9404, 400 Seventh St., SW, Washington, D.C. 20590 or Office of Management and Budget, Paperwork Reduction Project, Room 3001, 725 Seventeenth St., NW, Washington, D.C. 20503.

COPY 2 - EMPLOYEE RETAINS

U.S. Department of Transportation (DOT) Breath Alcohol Testing Form

[THE INSTRUCTIONS FOR COMPLETING THIS FORM ARE ON THE BACK OF COPY 3]

▸ **STEP 1: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN**

A. Employee Name _____
(PRINT) (First, M.I., Last)

B. SSN or Employee ID No. _____

C. Employer Name, Address, & Telephone No. _____

_____

_____

( ) _____
Telephone Number

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post-accident ☐ Return to Duty ☐ Follow-up

▸ **STEP 2: TO BE COMPLETED BY EMPLOYEE**

I certify that I am about to submit to breath alcohol testing required by U.S. Department of Transportation regulations and that the identifying information provided on this form is true and correct.

_____ Date ___/___/___
Signature of Employee Month Day Year

▸ **STEP 3: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN**

I certify that I have conducted breath alcohol testing on the above named individual in accordance with the procedures established in the U.S. Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing devices identified, and that the results are as recorded.

Screening test: Complete **only if** the testing device is not designed to **print** the following.

Test No.	Testing Device Name	Testing Device Serial Number	Time AM PM	Result

Confirmation test: Confirmation test results **MUST** be affixed to the back of each copy of this form.

Remarks: _____

_____

_____

_____ _____ Date ___/___/___
(PRINT) Breath Alcohol Technician's Name (First, M.I., Last) Signature of Breath Alcohol Technician Month Day Year

▸ **STEP 4: TO BE COMPLETED BY EMPLOYEE**

I certify that I have submitted to breath alcohol testing and the results are as recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment if the results are 0.02 or greater.

_____ Date ___/___/___
Signature of Employee Month Day Year

COPY 3 - FORWARD TO THE EMPLOYER

OMB No. 2105-0529

AFFIX SCREENING TEST RESULTS HERE (IF APPLICABLE)	AFFIX CONFIRMATION TEST RESULTS HERE
USE TAMPER-EVIDENT TAPE	USE TAMPER-EVIDENT TAPE

INSTRUCTIONS FOR COMPLETING THE U.S. DEPARTMENT OF TRANSPORTATION BREATH ALCOHOL TESTING FORM

NOTE: Use a ballpoint pen, press hard, and check all copies for legibility.

STEP 1 The Breath Alcohol Technician (BAT) completes the information required in this step. Be sure to print the employee's name and check the box identifying the reason for the test.

NOTE: If the employee refuses to provide SSN or I.D. number, be sure to indicate this in the remarks section in STEP 3. Proceed with STEP 2.

STEP 2 Instruct the employee to read, sign, and date the employee certification statement in STEP 2.

NOTE: If the employee refuses to sign the certification statement, do not proceed with the alcohol test. Contact the designated employer representative.

STEP 3 The Breath Alcohol Technician (BAT) completes the information required in this step. After conducting the alcohol screening test, do the following (as appropriate):

If the breath testing device used in conducting the screening test is not capable of printing the screening test information located on the front of this form (test number, testing device name, testing device serial number, time of test and results), complete this information in the space provided on the front of this form.

NOTE: Be sure to enter the result of the test exactly as it is indicated on the breath testing device, i.e., 0.00, 0.02, 0.04, etc.

OR, If the breath testing device used in conducting the screening test is capable of printing the screening test information located on the front of this form, affix the printed information in the spaces provided above. Be sure to use tamper-evident tape.

If the results of the screening test are less than 0.02, print, sign your name, and enter today's date in the space provided. Go to STEP 4.

If the results of the screening test are 0.02 or greater, a confirmation test must be administered in accordance with DOT regulations. An EVIDENTIAL BREATH TESTING device that is capable of printing confirmation test information must be used in conducting this test.

After conducting the alcohol confirmation test, affix the printed information in the space provided above. Be sure to use tamper-evident tape.

Print, sign your name, and enter the date in the space provided. Go to STEP 4.

STEP 4 Instruct the employee to read, sign, and date the employee certification statement in STEP 4.

NOTE: If the employee refuses to sign the certification statement in STEP 4, be sure to indicate this in the remarks section in STEP 3.

Retain Copy 1 (white page) for BAT records.
Give Copy 2 (green page) to the employee.
Forward Copy 3 (blue page) to the employer.

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

Public reporting burden for this collection of information is estimated for each respondent to average: 1 minute/employee, 4 minutes/Breath Alcohol Technician. Individuals may send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to U.S. Department of Transportation, Drug Enforcement and Program Compliance, Room 9404, 400 Seventh St., SW, Washington, D.C. 20590 or Office of Management and Budget, Paperwork Reduction Project, Room 3001, 725 Seventeenth St., NW, Washington, D.C. 20503.

COPY 3 - FORWARD TO THE EMPLOYER

[FR Doc. 94–2030 Filed 2–3–94; 1:00 pm]
BILLING CODE 4910–62–C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket 49384, Notice 94–3]

RIN 2105–AB95

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under the Omnibus Transportation Employee Testing Act of 1991, the Department of Transportation is required to implement alcohol testing programs in various transportation industries. This proposed rule would establish circumstances in which blood alcohol testing could be used in these programs and procedures that would be used for blood alcohol testing.

DATES: Comments on this notice of proposed rulemaking should be received by May 16, 1994. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Att: Docket No. 49384, Department of Transportation, 400 7th Street, SW., room 4107, Washington DC, 20590. For the convenience of persons wishing to review the docket, it is requested that comments be sent in duplicate. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comment. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9 a.m. through 5:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Donna Smith, Acting Director, Department of Transportation Office of Drug Enforcement and Program Compliance, 400 7th Street, SW., , Washington DC, 20590, room 9404, 202–366–3784; or Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., room 10424. 202–366–9306.

SUPPLEMENTARY INFORMATION: Department published in today's **Federal Register** a final rule (49 CFR part 40) establishing testing procedures for the Department's new alcohol testing rules. The Department's December 1992 NPRM for these procedures did not propose to permit blood alcohol testing. Therefore, it did not include any proposed blood alcohol testing procedures. Today's NPRM proposes limited circumstances in which blood alcohol testing would be permitted for the covered operating administrations and procedures that would be used for this purpose. We seek comments on these proposed procedures and on any additions, deletions, or modifications we should make to them. In addition, we seek comment on the broader question of whether the Department should adopt blood alcohol testing at all.

Section-by-Section Analysis

Section 40.71 Authorized Uses for Blood Alcohol Testing

We propose to allow blood alcohol testing only in a limited set of circumstances. Blood alcohol testing could be used in reasonable suspicion and post-accident testing, where an evidential breath testing device (EBT) is not readily available, and in place of a medical evaluation in "shy lung" situations. If breath testing were not readily available for a reasonable suspicion or post-accident test, employers would have to use blood alcohol testing to meet their regulatory obligations.

We are aware of certain advantages to blood alcohol testing. It is accurate, does not require expenditures for expensive new equipment, and can be conducted by qualified personnel who are generally readily available even in remote locations. At the same time, blood alcohol testing has a number of disadvantages, all of which are exacerbated with extensive use. It is the most intrusive form of testing, it does not provide an immediate confirmed result, and it necessitates additional procedural complexities such as collection, laboratory, and chain of custody requirements. There could be additional costs and litigation. Nevertheless, because we are aware that, in some circumstances the unavailability of EBTs meeting part 40 requirements may make breath testing impracticable, we believe that it may be useful to allow some flexibility. We think it better, in these circumstances, to allow testing using a method with some disadvantages than to be unable to complete a test at all.

Reasonable suspicion and post-accident tests are more likely than other kinds of test to happen at unpredictable times and in remote locations. (The time and, to some extent, place of random and pre-employment testing are more likely to be under the employer's control.) Consequently, as commenters suggested, unless an employer incurs the expense of having EBTs in all of its locations, or has an extensive rapid-deployment capability, it may be substantially easier and less costly to arrange for a blood alcohol test in these circumstances. In some cases, it may be impossible to get an EBT to a remote location in time to conduct a meaningful test.

Particularly in remote locations, there could be situations in which the only person trained to conduct alcohol tests is the supervisor of an employee subject to a post-accident or reasonable suspicion test. Our current rules permit a supervisor to conduct breath alcohol tests, if the supervisor is a trained BAT and another BAT is not available, as long as operating administration rules do not prohibit this action by the supervisor. In the case of reasonable suspicion tests, the operating administration rules prohibit the supervisor who has made the reasonable suspicion determination from conducting either the screening or confirmation test. The purpose of this NPRM is to increase flexibility in post-accident and reasonable suspicion testing in circumstances in which testing would otherwise be difficult to accomplish. With that purpose in mind, would it make sense to permit supervisors to conduct screening tests in these situations? Should blood testing be treated any differently from breath testing for these purposes?

Moreover, the number of post-accident and reasonable suspicion tests is likely to be substantially lower than the numbers of pre-employment and random tests. This means that the disadvantages of blood alcohol testing noted above will occur in a limited number of cases. (The Department estimates that there will be around 2500 blood alcohol tests per year under this proposal and seeks comment on whether this estimate is reasonable.) If employers "stand down" employees on the basis of the event leading to the test, the safety impact of the lack of an immediate result may be further reduced.

One of the key conditions for allowing the use of blood alcohol testing is that EBTs not be "readily available." Because of its greater invasiveness and because it does not produce an immediate result, the use of blood alcohol testing is intended to be used only in those reasonable suspicion and post-accident testing circumstances where it is not practicable to use breath testing. Blood alcohol testing is not intended, under the proposal, to be an equal alternative method that an employer can choose as a matter of preference.

We seek comment on when the final rule should regard an EBT as being "readily available." For example, if a

breath test can be arranged within a given time (e.g., two hours) of the event requiring the test, should breath testing be regarded as readily available? What should the time frame be? What if the cost of obtaining an EBT and bringing it to the site for testing is a certain multiple of the cost of conducting blood alcohol testing in that case? What if it were simply more convenient or less expensive to use a blood alcohol test rather than breath testing in a particular case? Are there other criteria that could be used to determine when breath testing was readily available? Should this be left to the judgment of the employer? If so, how would the Department judge when this discretion had been exercised properly? Should the Department require the employer to document the facts that led to a decision to use blood alcohol testing?

In context of this discussion of "readily available," we would point out that the EBT involved need not be one that the employer owns. It could also be a device that is owned by another employer or a third-party provider. We do not think that it should be necessary for an employer to pre-position an EBT (or enter into a contract) at every possible testing location. However, we do believe it is fair to expect employers to make arrangements for the use of EBTs either through purchase, lease or contract, assuming normal deployment to do routine random and pre-employment testing. The Department seeks comment on whether, and how, these expectations should be made part of the text of the final rule.

The NPRM proposes that, if no EBT were readily available for even the screening test, a blood sample would be collected and sent to the laboratory, where two tests would be conducted on the primary specimen. Alternatively, if an EBT were available for the screening test, but an EBT meeting part 40 requirements for use in a confirmation test were not available, a blood confirmation test could be performed. Some questions arise about the former situation. Would this provision discourage employers from obtaining the less expensive alcohol screening devices permitted by part 40? Would employers be deterred from using blood as a collection method by fear of confrontations with or litigation by employees who resented the intrusiveness of blood alcohol testing all the more for the absence of a breath screening test? Would additional supervisor training be needed? On the other hand, would the majority of situations in which blood could be used under this proposal likely be situations in which no EBTs at all were available, so that using blood for both screening and confirmation testing would be necessary in order to make the proposal meaningful?

The NPRM also proposes that employers could use blood alcohol testing for an employee covered under the "shy lung" provision of the Department's new alcohol testing procedures. If an employee was unable to provide sufficient breath for a breath test, the employer could choose either to refer the employee for a medical evaluation or to draw a blood sample as provided in this NPRM.

Whether for liability reasons or on the basis of the events leading to a post-accident or reasonable suspicion test, many employers might prefer to "stand down" the employee pending the receipt of the laboratory result of the blood alcohol test. Is it necessary for the Department's regulations to address this subject? If so, what should the rules provide?

Section 40.73 Collection Procedures for Blood Alcohol Tests

We think it will not be necessary to establish extensive new procedures for collecting blood samples, given the limited circumstances in which use of this method would be authorized. (The situation would probably be different if blood testing were being proposed for pre-employment and random testing as well.) Collection of blood specimens for forensic purposes such as law enforcement is considered standard procedure at many medical facilities. For these reasons, we believe that we should depend, to the extent possible, on existing resources and programs. We propose that anyone who is licensed, certified, or otherwise authorized under state law to draw blood could do so in the State for purposes of the DOT program. In most states, physicians, nurses, phlebotomists, and sometimes other medical personnel, have this authority.

It is our understanding that states, for law enforcement and other forensic purposes, have approved procedures for collecting blood specimens for the purpose of alcohol testing. Except to the extent that DOT rules specify certain requirements, the NPRM would allow a blood specimen to be collected for purposes of the DOT program in accordance with these existing state procedures. As with personnel qualifications and specimen collection procedures, chain of custody requirements would follow state requirements for law enforcement and other forensic blood collections. The Department seeks comment on whether reliance on state requirements would produce too much confusion or inconsistency, such that nationwide, uniform DOT procedures would be preferable. On the other hand, would such uniform DOT procedures make it too difficult to operate a blood testing program for a relatively small number of samples, reducing flexibility that this proposal is designed to permit?

The NPRM would require 20 ml of blood to be drawn for the test. As explained in the preamble to the final rule for part 40 published today, there is a statutory requirement for collecting split samples of body fluids in FAA, FTA, FRA, and FHWA programs. In this situation, the sample would be subdivided into two 10 ml tubes. Collections under the RSPA rule, where split samples are not required, would require only 10 ml of blood, placed in one tube. The NPRM would require certain standard testing materials to be used, which would be provided by testing laboratories in a sealed kit. The kit would include the blood tubes, labels, chain of custody form, blood extraction device, and swab. We seek comment on whether it is advisable to require the inclusion of blood extraction devices. That is, is including these materials needed, in light of the resources available at testing sites? Would including them give rise to concerns about theft? We also seek comment on whether the kit should also include standardized collection instructions. The employer would be responsible for ensuring the kit was available at the testing location.

Section 40.75 Laboratories for Blood Alcohol Testing

The regulatory text of this proposed section is a place-holder. One of the most difficult questions facing the Department is how to ensure that appropriately well-qualified laboratories test blood specimens for alcohol. Absent a satisfactory answer to this question, the viability of this proposed rule is in question.

One approach the Department could take, which is consistent with the approach of using existing resources to the extent practicable, is to rely on those laboratories—whether state-operated or private—that conduct forensic blood alcohol tests for law enforcement and other purposes in each state. The final rule would assume, in effect, that a laboratory whose findings were deemed sufficient under state law to act as the basis for criminal or civil penalties against persons in DUI or similar cases was adequate for DOT workplace testing program purposes. In order for this approach to work, there would have to be state or state-approved laboratories in a sufficient number of states that had the willingness and capacity to accept and process "DOT" blood specimens. We see no reason why laboratories in every state would necessarily have to participate. Since we expect few blood alcohol tests, large numbers of laboratories would not be necessary, and specimens could be sent to a laboratory in any state that accepts commercial business. The Department seeks comments on the capacity and suitability of such laboratories.

A second approach would be to construct a system based on the laboratories certified by the Department of Health and Human Services (DHHS) for urine drug testing. DHHS has carefully reviewed the overall proficiency and forensic capability of these laboratories, and they are available to users throughout the country. Many DHHS-certified laboratories currently perform blood alcohol testing, but there is no blood alcohol testing proficiency requirement involved with DHHS certification. Under this approach, the Department, in cooperation with DHHS, could develop a proficiency requirement for blood alcohol testing. Such a requirement could be implemented through a DOT-DHHS agreement calling for DHHS certification and inspection for blood alcohol testing purposes.

This approach would require DOT and DHHS to work out an agreement. The cost of the certification program—both to the Department and to laboratories—is not yet known, though the Department is working with DHHS to develop this information. The cost to the Federal government of this certification program would have to be recovered from the laboratories via user fees. Given the small number of tests, it is questionable whether laboratories would find it cost-effective to become certified for blood alcohol testing, though there could be some pressure from customers to process blood as well as urine samples. The Department seeks comments on the advantages and disadvantages of this approach.

There are other possibilities. For example, the Department could use laboratories certified by private certifying bodies, though the Department has expressly declined to do so in its drug testing program. DOT and DHHS both believe that the DHHS approval process for laboratories provides a more thorough and intense review of laboratory quality than existing private certification programs. The Department could also contract with one or more laboratories to conduct the needed tests. It is likely that user fees would be needed to fund such an approach. The Department seeks comment on any additional approaches that commenters believe have merit.

This discussion of the need for laboratory certification is in the context of a testing program that does not provide for evidentiary proceedings in which an individual could challenge test results. Existing Coast Guard alcohol testing regulations provide for post-accident blood testing in some situations. The validity of these proceedings is subject to evidentiary hearings, has long been recognized in administrative and court decisions, and is not brought into question by the Department's proposals concerning laboratory certification.

Section 40.77 Testing of Blood Specimens

The basic scheme of this provision is similar to the process the laboratory uses for drug testing. An aliquot of the primary specimen is tested by gas chromatography (GC) or enzyme assay. (Because testing for alcohol is simpler chemically than testing for drug metabolites, mass spectrometry is not needed.) If the alcohol concentration is less than 0.04, the laboratory reports a negative test to the employer. If the result is 0.04 or above, then the laboratory conducts a GC test on a second aliquot of the primary specimen. If the alcohol concentration is less than 0.04, the laboratory reports a negative test to the employer. If the result is 0.04 or above, the laboratory reports the quantitative (positive) result to the employer.

The split sample procedure also operates in an analogous way to the drug testing procedures. If the employee requests a test of the split specimen within 72 hours of being informed of the positive result, the employer tells the laboratory to send the split specimen to a second laboratory, which runs a single GC test on the split specimen. As under the drug testing procedures, the employee would have the opportunity to present evidence that he or she had been unable to make the request within the 72-hour time frame. If the result is 0.04 or above, the positive test result stands. If the result is less than 0.04, the test result is invalid. The consequences of the test result would not be stayed pending the test of the split specimen; the employee would remain barred from performing safety-sensitive functions pending the receipt of the analysis of the split specimen, unless the employee had met the conditions in the applicable operating administration rule for return to duty.

Because the time when one could gain a safety benefit from removing from safety-sensitive functions an employee testing between 0.02 and .039 will long since have passed, these procedures do not call for taking any action with respect to a test result in this range. The Department seeks comment on whether this approach makes sense and on whether there are any reasons to report such results to the employer. The Department also notes that the proposed procedure calls for two tests to be conducted on the primary specimen even if there has been a screening test on a preliminary EBT. The reason for this requirement is to avoid confusion at the laboratory by requiring a standard procedure in all cases, even where one of the two tests is, strictly speaking, unnecessary. The Department also seeks comment on this proposal.

Section 40.79(b) Invalid Tests

This paragraph would be added to the existing list of fatal flaws for breath alcohol tests. It would spell out those actions that would automatically cause a test to be deemed invalid. The paragraph is intended to provide protections for the accuracy of the process equivalent to those provided for breath alcohol testing and urine drug testing.

We seek comment on whether it should be a fatal flaw if an unauthorized person has succeeded in drawing a blood sample from an employee. Once the sample has been drawn, does the lack of authorization of the individual drawing the sample affect its accuracy? Should this be a fatal flaw simply as a means of ensuring that appropriately qualified people draw blood, regardless of the effects on sample accuracy?

In some circumstances, it may be unclear to the personnel involved what state a test occurs in (e.g., a post-accident test on a bridge between two states). The procedures of the two states may differ. Should the rule be modified to avoid the invalidation of a test just because the procedures used turned out to pertain to the wrong state?

Regulatory Analyses and Notices

Because of substantial public interest and substantial impacts on a wide range of private and public sector organizations, the Department has determined that this proposed rule—in conjunction with the operating administrations' alcohol and drug testing rules and the remainder of the alcohol testing portion of part 40—is significant under Executive Order 12866. OMB has reviewed this NPRM under that Order. The NPRM is also significant under the Department's regulatory policies and procedures.

The Department has prepared a regulatory evaluation for the alcohol portion of part 40, which we have included in the docket. The costs of the application of part 40 procedures to the programs of the various operating administrations are estimated in each of the operating administrations' regulatory evaluations for their final alcohol rules being published today. At the time of a final rule based on this NPRM, the covered operating administrations will supplement their part 40 alcohol testing rule regulatory evaluations as needed with respect to blood alcohol testing.

The Department expects that this proposal, if implemented, will lower costs to employers by providing more flexibility and decreasing the number of EBTs needed. As noted above, the Department estimates that there would be about 2500 blood alcohol tests annually, under all five affected operating administration rules. The Department expects that the amount of employee time involved in drawing blood would be about the same time involved in breath testing. We seek comment on these matters.

This NPRM, in conjunction with the operating administration drug and alcohol testing rules, is likely to have a significant economic impact on a substantial number of small entities. These impacts are assessed in the operating administrations' supplements to their alcohol testing rule regulatory evaluations. The Federalism impacts of this rule are either minimal or required by statute; for these reasons, we have not prepared a Federalism assessment.

List of Subjects in 49 CFR Part 40

Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 25th day of January 1994, at Washington, DC.

Federico Peña,
Secretary of Transportation.

David R. Hinson,
Administrator, Federal Aviation Administration.

Rodney E. Slater,
Administrator, Federal Highway Administration.

Jolene M. Molitoris,
Administrator, Federal Railroad Administration.

Gordon J. Linton,
Administrator, Federal Transit Administration.

Ana Sol Gutiérrez,
Acting Administrator, Research and Special Programs Administration.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend title 49, Code of Federal Regulations, part 40, as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

1. The authority for part 40 is proposed to continue to read as follows:

Authority: 49 U.S.C. 102,301,322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

§ 40.3 [Amended]

2. In § 40.3 of part 40, the period following the end of the definition of "alcohol concentration" in section 40.3 is proposed to be removed, and the following words added: "or the blood alcohol concentration indicated by a blood alcohol test under this part. " In the definition of "screening test," the words "(or, where authorized, blood)" are proposed to be added between the word "breath"and the word "specimen."

3. A new paragraph (d)(1) is proposed to be added to section 40.69, to read as follows:

§ 40.69 Inability to provide an adequate amount of breath.

* * * * *

(d) * * *

(1) The employer may direct the employee to submit to a blood alcohol test in accordance with the procedures of § § 40.71 through 40.77; or

* * * * *

4. and 5. New sections §§ 40.71 through 40.77 are proposed to be added to subpart C of part 40, to read as follows:

§ 40.71 Authorized uses of blood alcohol testing.

Blood alcohol testing is authorized only in the following circumstances:

(a) When operating administration rules require a post-accident or reasonable suspicion test, and an EBT is not readily available for either screening or confirmation tests, blood alcohol testing shall be used for both screening and confirmation test purposes.

(b) When operating administration rules require a post-accident or reasonable suspicion test, and an EBT is readily available for the screening test but an EBT suitable for confirmation testing is not readily available, blood alcohol testing shall be used for confirmation test purposes.

(c) When the employee attempts and fails to provide an adequate amount of breath, blood alcohol testing may be used for both screening and confirmation test purposes

§ 40.73 Collection procedures for blood alcohol tests.

(a) Personnel who conduct blood alcohol tests shall be licensed, certified, or otherwise authorized under state law to draw blood in the State in which the test takes place.

(b) The drawing of blood shall be conducted using a blood alcohol test kit containing the following items:

(1) Two evacuated gray-capped glass tubes (except that for a kit to be used only for testing under the Research and Special Programs Administration (RSPA) rule, there is required to be only one such tube);

(2) A chain of custody form;

(3) A label for each tube;

(4) A sterile, non-alcohol swab; and

(5) An appropriate, disposable blood extraction device.

(c) The employer shall use only a blood alcohol test kit obtained from a laboratory meeting the requirements of § 40.75. Employers shall use kits in accordance with the supplier's instructions, and shall not use a kit after its expiration date. Employers shall not re-use a blood extraction device.

(d) The drawing of blood shall be conducted in accordance with forensic blood alcohol collection procedures approved in the State in which the test takes place.

(e) (1) Except as provided in this paragraph, at least 20 ml of venous blood shall be drawn and subdivided into two equal portions of 10 ml each. The collector shall place each portion in a separate evacuated gray-capped tube, and label and seal the tubes. The collector shall designate one of the tubes as the primary specimen and the other as the split specimen.

(2) Blood samples collected pursuant to the RSPA alcohol testing rule are not required to be subdivided. For tests required by only the RSPA alcohol testing rule, the collector shall draw 10 ml of venous blood and place it in an evacuated gray-capped tube, and label and seal the tube.

(f) Blood specimens shall be shipped to the laboratory, together with documentation of the chain of custody meeting forensic standards acceptable under the law of the State in which the test takes place.

§ 40.75 Laboratories for blood alcohol testing.

Blood alcohol testing under this part shall be conducted only in laboratories where such testing is authorized by Department of Transportation regulations.

§ 40.77 Testing of blood specimens.

(a) When the split sample method has been used, the laboratory shall retain the tube designated as the split specimen in secure refrigerated storage, with the seal intact. If the seal on the tube designated as the primary specimen has been broken, or the primary specimen is otherwise unavailable for testing, the laboratory shall use the tube designated as the split specimen in its place.

(b) The laboratory shall analyze an aliquot of the primary (or sole) specimen for its alcohol concentration, using gas chromatography or an enzyme assay, at a cutoff level of 0.04. If the result of this analysis is an alcohol concentration of less than 0.04, the laboratory shall report the result of the test to the employer as negative. In this case, the laboratory may discard the split specimen. If the alcohol concentration is 0.04 or greater, the laboratory shall analyze a second aliquot of the primary specimen, using gas chromatography.

(c) If the result of the analysis of the second aliquot is an alcohol concentration of less than 0.04, the laboratory shall report the result of the test to the employer as negative. In this case, the laboratory may discard the split specimen.

(d) If the result of the analysis of the second aliquot is an alcohol concentration of 0.04 or greater, the laboratory shall report the quantitative result to the employer. In this case, where the split sample collection method has been used, the laboratory will retain the split specimen in secure refrigerated or frozen storage, with the seal intact, for 60 days from the date the laboratory acquires the sample.

(e) (1) At the time the employer informs the employee that the employee's test result is 0.04 or greater, the employer shall inform the employee that the employee has 72 hours in which to request a test of the split specimen. If the employee requests a test of the split specimen within 72 hours, the employer shall direct the laboratory to release the split specimen for testing.

(2) If an employee has not contacted the employer within 72 hours, as provided in paragraph (e)(1) of this section, the employee may present to the employer information documenting that serious illness, injury, inability to contact the employer, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the employer. If the employer concludes that there is a legitimate explanation for the employee's failure to contact the employer within 72 hours, the employer shall direct that the analysis of the split specimen be performed.

(3) Pending receipt of the result of the analysis of the split specimen, the employee shall not perform safety-sensitive functions, unless the employee has met conditions in the applicable operating administration rule for return to safety-sensitive functions following a test result of 0.04 or greater.

(4) The laboratory shall ship the split specimen, with seal intact, and with appropriate chain of custody documentation, to a second laboratory meeting the requirements of § 40.75. The second laboratory shall analyze the split specimen for its alcohol concentration, using gas chromatography, at a cutoff level of 0.04.

(5) If the result of the analysis of the split specimen is an alcohol concentration of 0.04 or above, the laboratory shall report to the employer that the result of the test of the primary specimen has been reconfirmed.

(6) If the result of this test is an alcohol concentration of less than 0.04, or if any of the circumstances set forth in § 40.79(b)(8) occur, the laboratory shall report to the employer that the result of the test of the primary specimen has not been reconfirmed, and therefore, the test is invalid.

6. A new paragraph (b) is proposed to be added to § 40.79, to read as follows:

§ 40.79 Invalid tests.

* * * * *

(b) A blood alcohol test shall be invalid under the following circumstances:

(1) The person who draws the blood sample from the employee is not authorized to do so under the law of the State in which the sample is drawn;

(2) The test was not conducted in accordance with forensic blood alcohol collection procedures approved in the State in which the test takes place;

(3) The chain of custody does not meet forensic standards acceptable under the law of the State in which the blood is drawn or there is a break in the chain of custody;

(4) The volume of the specimen used for the primary blood alcohol test (i.e., as distinct from the split specimen) is less than 10 ml; except that if, upon arrival at the laboratory, the specimen volume is not less than 8 ml, the laboratory may accept the specimen if the laboratory can ensure that sufficient volume will be available for testing and any necessary reanalyses for quality control;

(5) The seal on both specimens (or the only specimen) is broken or shows evidence of tampering;

(6) The test did not take place in a laboratory meeting the requirements of § 40.75.

(7) The testing methods prescribed in § 40.77(b) are not used;

(8) If, after an employee makes a timely request for a test of the split specimen under § 40.77(e)—

(i) The split specimen is unavailable for testing;

(ii) There is insufficient blood to permit a valid reconfirmation test to be conducted;

(iii) The seal on the tube containing the split specimen has been broken prior to testing at the second laboratory, or otherwise shows evidence of tampering;

(iv) The split specimen has not been retained in secure and refrigerated storage prior to being transmitted to the second laboratory;

(v) The inter-laboratory chain of custody is incomplete; or

(vi) The test of the split specimen fails to reconfirm the presence of alcohol at a level of at least 0.04.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. 94–004; Notice 1]

Highway Safety Programs; Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice; Request for comments.

SUMMARY: This notice proposes Model Specifications for the performance and testing of alcohol screening devices. These devices test for the presence of alcohol, and may use breath or other bodily fluids, such as saliva, to do so. NHTSA is proposing these specifications to support State laws that target youthful offenders (i.e., "zero tolerance" laws) and the Department of Transportation's regulations on Alcohol Misuse Prevention, and in recognition of industry efforts to develop new technologies (i.e., non-breath devices) that measure alcohol content from bodily fluids.

A Conforming Products List (CPL) will be published identifying the devices that meet NHTSA's Model Specifications. The CPL can serve as a guide for those interested in purchasing devices that screen for the presence of alcohol.

DATES: Comments must be received no later than April 18, 1994.

ADDRESSES: Comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to the Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Ms. Lori A. Miller, Office of Alcohol and State Programs, NTS–21, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–9835.

SUPPLEMENTARY INFORMATION: On December 14, 1984 (49 FR 48854), the National Highway Traffic Safety Administration (NHTSA) issued a notice converting the mandatory standards for breath alcohol testing devices (38 FR 30459) to Model Specifications. The notice indicated that the agency would continue to test evidential breath testing devices (EBTs) and would release its findings by publishing a Conforming Products List (CPL) to provide States that choose not to conduct their own testing with adequate information upon which to base their purchasing decisions. These Model Specifications provided for EBTs to be tested at alcohol concentration levels of 0.000, 0.050, 0.101 and 0.151.

Since 1984, a number of States have amended their laws by lowering the alcohol level at which drivers are deemed to be impaired or enacted new laws targeting youthful offenders, including "zero tolerance" laws, which provide that it is an offense for a person under the age of 21 to drive with any alcohol concentration level above 0.00 (or in some cases above 0.01 or 0.02).

On December 15, 1992 (57 FR 59382), the U.S. Department of Transportation (DOT) published a Notice of Proposed Rulemaking (NPRM) proposing rules to implement the "Omnibus Transportation Employee Testing Act of 1991," which requires alcohol testing programs in the aviation, motor carrier, rail, and mass transit industries, in the interest of public safety. The Research and Special Programs Administration (RSPA) proposed similar regulations for the pipeline industry. In general, the NPRM proposed to prohibit covered employees from performing safety-sensitive functions when test results indicate alcohol concentration levels of 0.04 or greater. The NPRM proposed to apply slightly different consequences to employees having alcohol concentration levels of 0.02 or greater but less than 0.04.

To determine alcohol concentration, the NPRM proposed to use breath as measured by only those EBTs listed on NHTSA's CPL which are capable of providing a printed result, sequentially numbering the tests conducted, and distinguishing alcohol from acetone at the 0.02 BAC level.

DOT received comments in response to this rulemaking action recommending that if NHTSA's Model Specifications are to be used for the transportation workplace alcohol testing programs, the Model Specifications should be consistent with the requirements of the rules. They suggested, for example, that the Model Specifications which test devices at 0.000, 0.050, 0.101 and 0.151 BAC should be amended to test devices at the 0.020 and 0.040 BAC levels.

In light of the trend in the States toward lowering alcohol levels and to address the comments received in response to DOT's NPRM, NHTSA amended its Model Specifications for EBTs on September 17, 1993 (58 FR 48705), by changing the alcohol concentration levels at which instruments are evaluated. The amended Model Specifications provide for devices to be tested at 0.000, 0.020, 0.040, 0.080 and 0.160 BAC. Tests for the presence of acetone were also added in the revised Model Specifications. In addition, the agency tested EBTs against the new Model Specifications and updated the CPL.

On October 15, 1993, Enzymatics, Inc., submitted a petition for reconsideration to NHTSA regarding the Notice published on September 17, 1993. The petitioner, a manufacturer of a saliva alcohol test, argued that NHTSA should establish a procedure for the inclusion on the CPL of devices other than breath alcohol devices. More specifically, the petitioner objected to the "exclusive reliance on EBTs" in DOT's proposed rules.

In a final rule published elsewhere in today's **Federal Register**, DOT amends its procedures for conducting urine drug testing and adds procedures for conducting alcohol testing in transportation workplaces (49 CFR Part 40). This final rule differs from the NPRM in a number of key respects. The final rule does require the use of breath testing devices listed on the CPL for EBTs. However, the final rule permits the use of portable EBTs that are on NHTSA's CPL as screening tests, provided confirmation tests are conducted using EBTs that are capable of providing a printed result, sequentially numbering the tests conducted and distinguishing alcohol from acetone at the 0.02 BAC level. In addition, the final rule indicates that NHTSA is publishing a separate notice in today's **Federal Register** proposing to adopt Model Specifications and a CPL that would permit additional alcohol testing devices to be used for screening purposes.

This **Federal Register** notice is the one to which the final rule refers. It proposes to establish Model Specifications for alcohol screening devices, which differ from the Model Specifications for Evidential Breath Testing devices in a number of important respects. These proposed Model Specifications are designed to test whether devices are suitable for screening, not evidential, purposes. In addition, they are designed to test the performance of devices that may use bodily fluids other than breath (such as saliva) to determine the presence of alcohol.

Under these proposed Model Specifications, an alcohol screening device is defined as a device that is used to detect the presence of 0.020 or more BAC. The Model Specifications propose that the test result may be indicated by numerical read-out or by other means, such as by the use of lights or color changes.

The Model Specifications propose that the device may measure any bodily fluid, but the output must be in blood alcohol concentration (BAC) units. Further, the relationship between the bodily fluid being measured and BAC must be properly established so that a means for evaluating the device can be devised. The relationship between breath alcohol concentration (BrAC) and blood alcohol concentration (BAC) is well established, and several studies have been published establishing a relationship between BAC and saliva alcohol concentration [1]. Accordingly, the proposed Model Specifications specifically provide that blood, breath or saliva may be used.

In addition, these Model Specifications identify the proposed conversion factors for devices that use these bodily fluids. The conversion factors between blood and breath are commonly accepted. Based on the available literature, NHTSA believes it is appropriate to use a one-to-one conversion factor between blood and saliva, and has included this factor in these proposed Model Specifications. We request comments on the proposed use of this conversion factor.

NHTSA proposes that if a manufacturer intends to use any bodily fluid other than blood, breath, or saliva to determine the presence of alcohol, the relationship between that fluid's alcohol concentration and blood alcohol concentration must be established according to scientifically acceptable standards.

Under these proposed Model Specifications, alcohol screening devices would be tested at 0.008 and 0.032 BAC under normal laboratory conditions to determine their precision and accuracy at detecting the presence of 0.020 or more BAC (Test 1), and at 0.000 BAC to determine the performance of these devices when providing blank readings (Test 2). The .008 and .032 BAC levels were selected based on criteria for precision and accuracy that are equivalent to those used for EBTs. They require that devices perform at a level of accuracy within ±0.005 of 0.020 BAC (thereby establishing target values within 0.015 and 0.025 BAC), and a level of precision which yields a standard deviation not greater than 0.0042. To achieve a confidence rate of 95% in the results of these 20 tests, we propose to establish measurement points at 1.73 standard deviations (or 0.007 BAC) below and above the lower and upper values, respectively (i.e., 0.015 − 0.007 = 0.008 BAC and 0.025 + 0.007 = 0.032 BAC).

NHTSA proposes to use a Breath Alcohol Sample Simulator (BASS), non-alcoholic human breath, and a calibrating unit to test breath devices. The agency proposes to use preparations of bodily fluids or scientifically acceptable substitutes for non-breath devices. For example, the agency proposes to use aqueous alcohol test solutions equivalent to blood or saliva on a one-to-one basis to test saliva devices.

The agency proposes to conduct 40 trials under Test 1 (20 at .008 BAC and 20 at .032 BAC) and 20 trials under Test 2 (at .000 BAC). For reusable devices, these 60 trials would be conducted using a single unit. For disposable devices, these 60 trials would be conducted using 60 separate units.

Some alcohol screening devices indicate the presence of alcohol in a manner that is unambiguous and requires no interpretation, such as by the use of a light or numerical reading. For these devices, NHTSA proposes that Tests 1 and 2 (at .008, .032 and .000 BAC) would be performed by an investigator at the DOT Volpe National Transportation Systems Center (VNTSC). To conform with the Model Specifications, the device must perform with no positive results at .000 BAC, not more than one positive result at .008 BAC and not more than one non-positive result at .032 BAC. If the device is capable of providing a reading of greater than 0.000 BAC and less than 0.020 BAC, the device must perform with not more than one such result at .000 BAC.

Other devices indicate the presence of alcohol in a manner that requires interpretation and may involve some ambiguity, such as by the use of color changes. For these devices, NHTSA proposes that Tests 1 and 2 (at .008, .032 and .000 BAC) would be performed by ten individuals who have no knowledge of test BACs and qualify as test interpreters. VNTSC would select these individuals using manufacturer's restrictions, if any. These individuals would be asked to read the manufacturer's instructions for the interpretation of the device's read-out, and interpret the test results independently. To conform with the Model Specifications, the device must perform, with each interpreter, with no positive results at .000 BAC, not more than one positive result at .008 BAC and not more than one non-positive result at .032 BAC. If the device is capable of providing a reading of greater than 0.000 BAC and less than 0.020 BAC, the device must perform, with each interpreter, with not more than one such result at .000 BAC.

Through the independent interpretation of ten individuals, NHTSA believes the Model Specifications would ensure that the results of tested devices are visible and will remain so for a reasonable period of time (the tests require approximately two hours to run), and are likely to be interpreted in a consistent manner. NHTSA requests comments on this aspect of the proposed Model Specifications.

To NHTSA's knowledge, no reusable devices use interpretive readings. Typically, these readings are produced using a chemical reaction, which results in a color change, a method which lends itself more readily to a single use device. For this reason, the agency believes it is unlikely that manufacturers would begin to use such interpretive readings in reusable devices. Accordingly, NHTSA has not proposed a methodology for testing reusable interpretive devices. We request comments on this aspect of the agency's proposal.

For disposable devices that use interpretive readings, the Model Specifications propose to combine Tests 1 and 2, and number the units and expose them to the three BAC levels using a methodology that would not reveal to the person interpreting the test the dosage received by any particular unit. NHTSA requests comments on this proposed methodology.

Devices would also be tested to determine whether acetone or, in the case of breath or saliva devices, cigarette smoke affects the functioning of the instruments. NHTSA requests comments on whether devices should be tested for interference from other substances. In addition, high (40°C) and low (10°C) ambient temperature and vibration tests would be conducted for these devices to determine their ability to function under a range of environmental conditions. NHTSA proposes that these tests (3.1, 3.2, 4.1, 4.2 and 5) would be performed by an investigator at VNTSC. Five trials would be conducted at .000 BAC under Test 3.2. Forty trials (including 20 at .008 and 20 and .032 BAC) would be conducted under each of these other tests.

To conform with the Model Specifications, the device must perform

[1] Jones, A.W., "Distribution of ethanol between saliva and blood in man," Clinical and Experimental Pharmacology and Physiology, 1979a, 6(1), 53–59.

Jones, A.W., "Inter- and Intra-individual variations in the saliva/blood alcohol ratio during ethanol metabolism in man," Clinical Chemistry, 1979b, 25(8), 1394–1398.

Jones, A.W., "Quantitative relationships among ethanol concentrations in blood, breath, saliva and urine during ethanol metabolism in man," In Goldberg, L. (Ed.) Alcohol Drugs and Traffic Safety, Vol. II. Proceedings, 8th International Conference on Alcohol, Drugs and Traffic Safety, June 15–19, 1980, Stockholm, Sweden: Almqvist & Wiksell International, 1981, pp. 550–569.

with no positive results at each test performed at .000 BAC, not more than one positive result at each test performed at .008 BAC and not more than one non-positive result at each test performed at .032 BAC. If the device is capable of providing a reading of greater than 0.000 BAC and less than 0.020 BAC, the device must perform with not more than one such result at .000 BAC.

When devices such as these are used for medical purposes, the manufacturers of the devices are required to obtain marketing clearance from the Food and Drug Administration (FDA), in accordance with FDA regulations that address issues such as quality assurance in manufacturing, shelf-life and labeling. Currently, FDA does not assert jurisdiction (provide marketing clearance) for alcohol screening devices used for law enforcement purposes and workplace testing.

However, because of the nature of alcohol screening devices and the conditions under which they are to be used, NHTSA believes it is important for manufacturers of these devices to conform with certain requirements, imposed by FDA on devices used for medical purposes, prior to the inclusion of the devices on NHTSA's CPL.

Accordingly, NHTSA proposes to require that each device submitted for testing under the Model Specifications must be accompanied by a self-certification from the manufacturer, certifying that it meets the requirements contained in FDA'a Good Manufacturing Practices regulations for devices used for medical purposes (21 CFR Part 820), and that the device's label meets the requirements contained in FDA's Labeling regulations for devices used for medical purposes (21 CFR Part 809.10), even if the devices are not to be used for medical purposes. By requiring a self-certification, NHTSA is not requiring that manufacturers obtain FDA marketing clearance, but simply that they self-certify that they believe that they have met the above-referenced requirements. (For technical assistance or a copy of the Device Good Manufacturing Practices Manual for Medical Devices, manufacturers should contact FDA's Division of Small Manufacturers by calling toll free at 1–800–638–2041.)

This notice includes, as an Appendix, a proposed set of Labeling Instructions for Alcohol Screening Devices that has been prepared in consultation with FDA to assist manufacturers of alcohol screening devices in developing a label that conforms to 21 CFR Part 809.10. The template addresses issues such as restrictions that may apply to operators of the device and conditions under which the device should or should not be operated.

These Model Specifications are not regulations. Organizations and agencies may adopt these Model Specifications and rely on NHTSA's test results or may conduct their own tests according to their own procedures and specifications. It should be noted, however, that transportation employers covered by 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, are required to use only alcohol testing devices that meet the criteria established by that regulation. See DOT's final rule published elsewhere in today's Federal Register.

Once the Model Specifications for Alcohol Screening Devices are finalized and a CPL of conforming devices is published, DOT will issue procedural rules for using approved alcohol screening devices in transportation workplaces, including provisions for how and where such devices could be used and the steps that must be taken to collect bodily fluids.

Procedures

NHTSA proposes that testing of products submitted by manufacturers to these Model Specifications would be conducted by the DOT Volpe National Transportation Systems Center (VNTSC), DTS 75, Kendall Square, Cambridge, MA 02142. Tests would be conducted semiannually, or as necessary. Manufacturers would be required to apply to NHTSA for a test date by writing to the Office of Alcohol and State Programs (OASP), NTS–21, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Normally, at least 30 days would be required from the date of notification until the test could be scheduled.

One week prior to the scheduled initiation of the test program, a manufacturer would be required to deliver its devices to VNTSC. If the devices are disposable, the manufacturer would be required to deliver 300 such devices; if the devices are reusable, the manufacturer would be required to submit only a single device. If a manufacturer wishes to submit a duplicate, backup instrument, however, it may do so. The manufacturer would be responsible for ensuring that the devices operate properly and are packaged correctly. The manufacturer would also be required to deliver the operator's manual (or instructions) and the maintenance manual (if any) supplied with the purchase of the device, as well as specifications and drawings which fully describe these devices. Proprietary information would be respected. (See 49 CFR Part 512, regarding the procedure by which NHTSA will consider claims of confidentiality.)

In addition, the manufacturer would be required to submit a self-certification, certifying that the manufacturer meets the requirements in FDA's Good Manufacturing Practices regulations for devices used for medical purposes (21 CFR Part 820), and that the device's label meets the requirements in FDA's Labeling regulations for devices used for medical purposes (21 CFR 809.10) even if the devices are not to be used for medical purposes. See Appendix to this notice.

NHTSA proposes that the manufacturer would have the right to check its devices between the time of their arrival at VNTSC and the start of the tests, but would have no access to the devices during the tests. Any malfunction of a device which results in failure to complete any of the tests satisfactorily would result in a determination that the device does not conform to the Model Specifications. If a device is found not to conform, it may be resubmitted for the next testing series after appropriate corrections have been made.

Following publication of this notice and the public comment period, NHTSA plans to publish a second notice in the Federal Register containing the final Model Specifications. After the second notice is published, NHTSA plans to begin testing of alcohol screening devices to determine whether they comply with the performance criteria included in the Model Specifications.

A Conforming Products List (CPL) will be published and updated periodically. It will include a list of alcohol screening devices that were submitted with the proper certifications and found to meet or exceed the proposed Model Specifications.

NHTSA proposes to modify and improve these Model Specifications as new data and test procedures become available and to alter the test procedures, if necessary, to meet unique design features of a specific device. For each such modification, NHTSA would provide notification in the Federal Register and would retest devices when necessary.

OASP would be the point of contact for information about acceptance testing and field performance of devices. NHTSA requests that users of these devices provide both acceptance and field performance data to OASP when such data are available. Information from users would help NHTSA monitor whether alcohol screening devices are performing according to the NHTSA Model Specifications.

If information gathered indicates that a device on the CPL is not performing in accordance with the Model Specifications, NHTSA would direct VNTSC to conduct a special investigation. An investigation may include visits to users and additional tests of the device obtained from the open market. If the investigation indicates that the devices actually sold on the market are not meeting the Model Specifications, the manufacturer would be notified that the device may be removed from the list. In this event, the manufacturer would have 30 days from the date of notification to reply. Based on the VNTSC investigation and any data provided by the manufacturer, NHTSA would decide whether the device should remain on the list. If the device is removed from the list, the manufacturer would be permitted to resubmit an improved device to VNTSC for testing when it believes the problems causing its failure have been resolved. Upon resubmission, the manufacturer would be required to submit a statement describing what has been done to overcome the problems which led to failure of the device.

If information gathered indicates that the manufacturer of a device on the CPL does not comply with the requirements in FDA's Good Manufacturing Practices regulations for devices used for medical purposes or that the device's label does not comply with the requirements in FDA's Labeling regulations for devices used for medical purposes, NHTSA would investigate the matter in consultation with FDA and would notify the manufacturer that the device may be removed from the list. The manufacturer would have 30 days from the date of notification to reply. Based on any data provided by the manufacturer and investigative findings, NHTSA would decide whether the device should remain on the list. If the device is removed from the list, the manufacturer would be permitted to resubmit a self-certification, certifying that the manufacturer complies with these FDA requirements when it believes the problems causing its non-compliance have been resolved. Upon resubmission, the manufacturer would be required to submit a statement describing what has been done to overcome the problems which led to non-compliance.

Comments

Interested persons are invited to comment on this proposal. Comments are sought on the proposed conversion factors included in these proposed Model Specifications, particularly for saliva, and what may constitute acceptable criteria for bodily fluids other than saliva, blood and breath.

Related issues regarding screeners that are of interest include the potential of interfering substances (i.e. nicotine and acetone) to affect results, and whether the Model Specifications should test for additional potentially interfering substances.

NHTSA also requests comments, particularly from manufacturers or users (and potential users) of these devices, regarding problems that have occurred or could arise due to insufficient labeling or manufacturing practices. Commentors should identify issues they believe need to be addressed by NHTSA's notice regarding manufacturing practices and labeling requirements, and indicate whether they believe FDA regulations are most appropriate to address these issues. Alternatively, if commentors believe there is not a need to apply manufacturing practices and labeling requirements to alcohol screening devices when used for law enforcement and workplace testing purposes, they should submit comments to this effect and include the reasons for their belief.

It is requested but not required that 10 copies be submitted. Comments must not exceed 15 pages in length (49 CFR 553.221). Necessary attachments may be appended to those submissions without regard to the 15 page limit. This limitation is intended to encourage commentors to detail their primary arguments in a concise fashion.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address, both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the Model Specifications may be published at any time after that date, and any comments received after the closing date and too late for consideration with regard to the action will be treated as suggestions for future revisions to the specifications. NHTSA will continue to file relevant material in the docket after the closing date as it becomes available. It is recommended that interested persons continue to examine the docket for new material.

Those persons who desire to be notified upon receipt of their comments in the docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that it has no federalism implication that warrants the preparation of a federalism assessment.

In accordance with the foregoing, the proposed Model Specifications for performance testing of alcohol screening devices are set forth below.

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.

Michael B. Brownlee,

Associate Administrator for Traffic Safety Programs.

Model Specifications for Alcohol Screening Devices

1. Purpose and Scope

These specifications establish performance criteria and methods for testing of alcohol screening devices. Alcohol screening devices use bodily fluids to detect the presence of 0.020 or more BAC with sufficient accuracy for screening purposes. These specifications are intended primarily for use in the conformance testing of alcohol screening devices.

2. Classification

2.1 Disposable Alcohol Screening Devices

Alcohol screening devices designed for a single use.

2.2 Reusable Alcohol Screening Devices

Alcohol screening devices designed to be reused.

3. Definitions.

3.1 Alcohol

The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

3.2 Alcohol Screening Device

A device that is used to detect the presence of 0.020 or more BAC. The device may measure any bodily fluid for this purpose, but shall provide output in BAC units. Test results may be indicated by numerical read-out or by other means, such as by the use of lights or color changes.

3.3 Blood alcohol concentration (BAC)

Grams alcohol per 100 milliliters of blood or grams alcohol per 210 liters of breath in accordance with the Uniform Vehicle Code, Section 11–903(a)(5) [2] (BrAC is often used to indicate that the

[2] Available from the National Committee on Traffic Laws and Ordinances, 405 Church Street, Evanston IL 60201.

measurement is a breath measurement); or grams alcohol per 100 milliliters of saliva.

3.4 Calibrating Unit

A device that produces an alcohol-in-air test sample of known concentration that meets the NHTSA Model Specifications for Calibrating Units (49 FR 48865).

3.5 Breath Alcohol Sample Simulator (BASS)

A device that provides an alcohol-in-air test sample with known and adjustable alcohol concentration profile, flow rate, and air composition at 34° centigrade. (See NBS Special Publication 480–41, July 1981 [3] for a description of a BASS unit suitable for use in the required testing.)

3.6 Bodily Fluid

Any bodily fluid capable of being used to estimate alcohol concentration, provided the relationship between such bodily fluid and BAC has been established according to scientifically acceptable standards. Such fluids include but are not limited to blood, exhaled deep lung breath and saliva.

3.7 Scientifically Acceptable Substitutes

Fluids that have been scientifically accepted as equivalent to bodily fluids for testing purposes, such as aqueous alcohol test solutions on a one-to-one basis for blood or saliva.

4. Test Methods and Requirements

Testing will be performed according to the instructions which normally accompany the submitted device and under the conditions specified in the tests below.

4.1 Test 1. Precision and Accuracy.

Perform 40 trials under normal laboratory conditions, including 20 trials at 0.008 BAC and 20 trials at 0.032 BAC. Use the BASS device for breath devices and preparations of bodily fluids or scientifically acceptable substitutes for non-breath devices.

For disposable alcohol screening devices that indicate the presence of alcohol in a manner that requires interpretation, combine Tests 1 and 2, in accordance with 4.3 below.

For alcohol screening devices that indicate the presence of alcohol in a manner that does not require interpretation, perform the test using a VNTSC investigator. To conform at 0.008 BAC, not more than one positive result. To conform at 0.032 BAC, not more than one non-positive result.

4.2 Test 2. Blank Reading.

Perform 20 trials under normal laboratory conditions at 0.000 BAC. Use non-alcoholic human breath for breath devices and preparations of non-alcoholic bodily fluids or scientifically acceptable substitutes for non-breath devices.

For disposable alcohol screening devices that indicate the presence of alcohol in a manner that requires interpretation, combine Tests 1 and 2, in accordance with 4.3 below.

For alcohol screening devices that indicate the presence of alcohol in a manner that does not require interpretation, perform the test using a VNTSC investigator. To conform, no positive results. If the device is capable of providing a reading of greater than 0.000 BAC and less than 0.020 BAC, not more than one such result.

4.3 Methodology for Combining Tests 1 and 2 for Disposable Interpretive Devices.

Perform the test using ten individuals who qualify as test interpreters (according to the manufacturer's restrictions, if any) and who have no knowledge of test BACs. Ask each individual to read the manufacturer's instructions for interpretation of the device's read-out.

Label sixty devices from 1 to 60 and randomly separate them into three groups of twenty. Record the numbers in each group. Use two of the groups of devices for Test 1 and the remaining group for Test 2. Dose each group at the BAC levels specified in Tests 1 and 2. Order the sixty devices into a single set from 1 to 60 and ask each individual to independently interpret the results of these trials.

Ask each individual to record each result as being one of the following: "at .00 BAC"; "above .00 and below .02 BAC"; "at or above .02 BAC"; or "can't tell". Dosing of devices and interpretation of results will be accomplished within a two hour period.

To conform, with each interpreter, no positive results at .000 BAC, not more than one positive result at .008 BAC and not more than one non-positive result at .032 BAC. If the device is capable of providing a reading of greater than 0.000 BAC and less than 0.020 BAC, with each interpreter, not more than one such result at .000 BAC.

4.4 *Interference*

Test for the effect of acetone and, in the case of breath or saliva devices, cigarette smoke.

4.4.1 Test 3.1. *Acetone.*

Perform 40 trials, including 20 trials at 0.008 BAC and 20 trials at 0.032 BAC. Use a calibrating unit for this test for breath devices and preparations of bodily fluids or scientifically acceptable substitutes for non-breath devices.

Prepare test BACs to include an acetone concentration equivalent to a BAC of 0.010 grams per 100 milliliters blood. For breath screening devices, add 115 microliters of acetone per 500 milliliters of solution for use in the calibrating unit.[4]

To conform at 0.008 BAC, not more than one positive result. To conform at 0.032 BAC, not more than one non-positive result.

4.4.2 Test 3.2. *Cigarette smoke* (breath and saliva test devices only).

Perform five trials at 0.000 BAC. Use non-alcoholic human breath for breath devices and preparations of non-alcoholic bodily fluids or scientifically acceptable substitutes for non-breath devices.

Select a person who smokes cigarettes for this test. Ask the person selected to smoke approximately one half of a cigarette. Within one minute after smoking, or after a waiting period specified in the manufacturer's instructions, ask him or her to blow into the screening device according to manufacturer's instructions. Then ask the person to smoke another inhalation and repeat the test to produce a total of five trials.

To conform, no positive results.

4.5 *Temperature.*

Test at low and high ambient temperature.

4.5.1 Test 4.1 *Low Ambient Temperature.*

Perform 40 trials at 10°C, including 20 trials at 0.008 BAC and 20 trials at 0.032 BAC. Use a calibrating unit for this test for breath devices and preparations of bodily fluids or scientifically acceptable substitutes for non-breath devices.

To conform at 0.008 BAC, not more than one positive result. To conform at 0.032 BAC, not more than one non-positive result.

4.5.2 Test 4.2 *High Ambient Temperature.*

Perform trials of 40 devices at 40°C, including 20 trials at 0.008 BAC and 20 trials at 0.032 BAC. Use a calibrating unit for this test for breath devices and preparations of bodily fluids or scientifically acceptable substitutes for non-breath devices.

To conform at 0.008 BAC, not more than one positive result. To conform at 0.032 BAC, not more than one non-positive result.

4.6 Test 5.0. *Vibration.*

Perform 40 trials, including 20 trials at 0.008 BAC and 20 trials at 0.032 BAC. Use a calibrating unit for this test for breath devices and preparations of bodily fluids or scientifically acceptable substitutes for non-breath devices.

Mount the screening device on a shake table and vibrate the table in simple harmonic motion through each of its three major axes, as specified below. Sweep through each frequency range in 2.5 minutes, then reverse the sweep to the starting frequency in 2.5 minutes. The 40 disposable testers may be placed in a suitable box mounted on the shake table. Test after vibration.

Frequency (hertz)	Amplitude (inches, peak to peak)
10 to 30	0.30
30 to 60	0.15

To conform at 0.008 BAC, not more than one positive result. To conform at 0.032 BAC, not more than one non-positive result.

Appendix—Labeling Instructions for Alcohol Screening Devices

Intended Use

Provide the intended use including the specimen matrix (e.g. saliva, breath), the assay type (quantitative, semi-quantitative) the purpose of performing the assay and the individual designated to perform the assay.

e.g. This product is intended for the (quantitative, semiquantitative) determination of alcohol in——define matrix (for e.g., saliva, breath, sweat) to perform screening alcohol assays.
This product is recommended for use by individuals who have been trained in the administration of screening devices.

Description of Testing System

Provide the principles of the procedure for performing the alcohol screening assay.

e.g. This product uses alcohol dehydrogenase, infrared technology, etc. to perform the test.

Chemical Reaction Sequence

Describe the chemical reaction sequence, if applicable.

Reagents

List the concentration, strength, composition of the reactive ingredients.

List the non-reactive ingredients.

Reagent Preparation and Storage

Provide instructions for preparing the reagents, if applicable.

Provide the instructions for storing the reagents, if applicable.

Provide any signs of deterioration of the reagents, if applicable.

Provide the reagent's shelf life and opened expiration dating, if applicable.

e.g. Unopened tests are stable until the date printed on the product container when stored at 22–28°C. Opened test must be used at once.

Provide a caution not to use the reagents beyond the expiration dating.

Precautions

1. List any reagents that may be hazardous such as caustic compounds, sodium azide or other hazardous reagents and instructions for disposal, if applicable.

2. If visually read, warn the user the result should not be interpreted by readers who are color-blind or visually impaired.

3. Provide warning to user to treat all samples as potentially infective. Include instructions for handling and disposal of the sample.

Specimen Collection

Provide instructions for collecting and handling the sample.

Provide criteria for specimen rejection, if applicable.

Calibration

Disposable tests are pre-calibrated. No additional calibration is required.

Reusable (Instrumented) tests require calibration.

Provide information regarding how calibrations are to be conducted, if applicable, including the number and concentration of calibrators, and the frequency of calibration.

Provide instructions for calibration and recalibration.

Provide the criteria for acceptability of calibration.

Test Procedure (Disposable)

Provide adequate step-by-step instructions for performing the test.

If the test is disposable (non-instrumented) and involves a color reaction, include the time frame for which the test must be read and recorded.

e.g. Read within 15 minutes.

Test Procedure (Reusable/Instrumented)

Provide adequate step-by-step instruction for performing the test.

Provide the installation procedures and, if applicable, any special requirements.

Provide the space and ventilation requirements.

Provide the description of the required frequency of equipment maintenance and function checks.

Provide the instructions for any remedial action to be taken when the equipment performs outside of operating range.

Provide any operational precautions and limitations.

Provide the instructions for the protection of equipment and instrumentation from fluctuations or interruptions in electrical current that could adversely affect test results and reports, if applicable.

Quality Control (QC)

Disposable Tests

If applicable, the function and stability of the test can be determined by examination of the procedural "built in" controls contained in the product. If these controls are not working, the test is invalid and must be repeated.

Disposable/Instrumented Devices

If external quality control materials are used, provide number, type, matrix and concentration of the QC materials.

Provide directions for performing quality control procedures. Provide an adequate description of the remedial action to be taken when the QC results fail to meet the criteria for acceptability.

Provide directions for interpretation of the results of quality control samples.

Results

Describe how the user obtains the test results, from a colored bar, instrument read-out, printout, etc.

Describe the results in terms of blood alcohol concentration.

Describe what concentration indicates a positive result and what concentration indicates a negative result.

[3] Available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

[4] Based on an experimentally determined water to air partition factor 365 to 1 at 34° to yield acetone-in-air concentrations of 0.5 milligrams per liter.

Limitations

List the substances or factors that may interfere with the test and cause false results including technical or procedural errors.

Dynamic Range

Provide the operating range of the product.

Precision and Accuracy

Precision and Accuracy specifications are included in the National Highway Traffic Safety Administration's (NHTSA's) Model Specifications for Alcohol Screening Devices. Only devices that meet these model specifications will be included on NHTSA's Conforming Products List for alcohol screening devices.

Specificity

List the substances that have been evaluated with your product that do or do not interfere at the concentration indicated.

References

Provide pertinent bibliography

Technical Assistance

List an 800 number the user may contact for further information or technical assistance.

[FR Doc. 94-1858 Filed 2-3-94; 1:00 pm]

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Tuesday
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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, et. al.

Alcohol Misuse Prevention Program and Antidrug Program for Personnel and Employees of Foreign Air Carriers Engaged in Specified Aviation Activities; Rule and Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 121, and 135

[Docket No. 27065; Amendment No. 61–94, 63–29, 65–37, 121–237, and 135–48; Docket Nos. 24706; 26233; 26872]

RIN 2120–AE43

Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule prescribes regulations establishing the aviation industry alcohol misuse prevention program. It includes requirements for an alcohol testing program for air carrier employees who perform safety-sensitive duties, in implementation of the FAA-related provisions of the Omnibus Transportation Employee Testing Act of 1991, which was enacted on October 28, 1991. Employees who perform safety-sensitive duties directly or by contract for aviation employers that hold a certificate issued under certain FAA regulations, operators as defined in the regulations, or air traffic control facilities not operated by the FAA or the U.S. military must be subject to an FAA-mandated alcohol misuse prevention program (AMPP). This final rule requires alcohol testing of these employees, proscribes certain alcohol-related conduct, and establishes specified consequences for engaging in alcohol misuse. Employers must provide written materials to covered employees explaining the program and educating employees about the dangers of alcohol misuse. Employers must also submit reports to the FAA on the results of the program. This rule is intended to ensure that public safety is maintained by preventing alcohol misuse by safety-sensitive aviation employees.

DATES: This rule is effective on March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Office of Aviation Medicine, Drug Abatement Division (AAM–800), Federal Aviation Administration, 400 7th Street, SW., Washington, DC 20590; telephone (202) 366–6710.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must include the notice number of this final rule.

Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On December 15, 1992, the FAA published a notice of proposed rulemaking (NPRM) in which it proposed to require air carriers to institute alcohol misuse prevention programs similar to the antidrug programs already in place (57 FR 59458). The NPRM was published as part of a coordinated effort by the Office of the Secretary of Transportation (OST) and four other DOT agencies to address the issue of alcohol misuse in the transportation industries. With the exception of the NPRM published by the Research and Special Programs Administration, the rulemakings were initiated under the provisions of the Omnibus Transportation Employee Testing Act of 1991 (Pub.L. 102–143, Title V).

In conjunction with OST and the other DOT agencies, the FAA held a series of public hearings on the regulations proposed in the NPRM. The FAA-specific sections of each of these hearings were recorded by a court reporter and the transcripts of the hearings with copies of any material submitted to the hearing panel have been placed in the docket. The testimony and written materials were considered in development of this final rule.

Current Laws and Regulations

A variety of laws and regulations currently restrict the consumption of alcohol by some aviation employees. Federal criminal law prohibits any person from operating or directing the operation of a common carrier while under the influence of alcohol. 18 U.S.C. 342. A blood alcohol level of .10 percent is considered presumptive evidence that the person is under the influence. 18 U.S.C. 343(1).

The FAA's regulations concerning alcohol misuse are supplemented but not changed by this rule. Currently, under the FAA's rules, no person may act or attempt to act as a crewmember of a civil aircraft within 8 hours after consuming any alcoholic beverage, while under the influence of alcohol, or while having 0.04 percent by weight or more of alcohol in the blood. (14 CFR 91.17(a).) In limited circumstances, the FAA's regulations require crewmembers to submit to alcohol tests requested by State or local law enforcement officers and, upon request, to furnish the results of such tests to the Administrator. (14 CFR 91.17(c).) Refusal to take a properly authorized law enforcement alcohol test or to furnish the results can result in the denial, revocation, or suspension of an airman certificate issued under part 61 or 63. (14 CFR 61.16 and 63.12a.)

Holders of or applicants for medical certificates issued under 14 CFR part 67 are subject to additional regulations regarding alcohol use. First, a diagnosis of alcoholism is a disqualifying factor for a medical certificate. A diagnosed alcoholic must be evaluated by the Federal Air Surgeon and meet certain recovery criteria prior to receiving a medical certificate. However, to facilitate recovery and to prevent the unnecessary loss of skilled employees, a program established by the FAA, the airline industry, and the pilots' unions has enabled hundreds of alcoholic pilots to safely return to duty. The program combines confrontation, therapy, and stringently monitored aftercare.

Part 67 also provides that any individual who applies for a medical certificate must permit access by the Administrator to information in the National Driver Register concerning drug- and alcohol-related driving offenses. (14 CFR 67.3.) If an individual has had two or more such offenses within 3 years after the effective date of the rule, the FAA may suspend or revoke a part 61 airman certificate held by the individual or deny the individual's application for such certificate. (14 CFR 61.15.)

Discussion of Comments and Final Rule

The Common Preamble

A common preamble to all of the related NPRMs proposing alcohol testing rules was published on December 15, 1992 (57 FR 59382, *et seq.*). This common preamble contained a thorough discussion of the comments submitted to the DOT advance notice of proposed rulemaking (ANPRM) published on November 2, 1989, and an overview of the general issues related to alcohol use in the transportation industries. A similar introductory discussion is found in the common preamble to this final rule and the final alcohol misuse prevention rules published by the other affected DOT agencies elsewhere in today's **Federal Register**. The common preamble also responds to comments submitted to the various DOT agency dockets that raise multimodal aspects of the final rules or the Act. This common preamble is incorporated into this final rule by reference. Because the majority of the issues raised in comments were addressed in the common preamble, the FAA views comments addressed to other DOT agencies as part of its docket, even though copies of those comments are not physically stored with the other comments. Interested persons can request access to those comments through the FAA docket. Any aspects of the final rule that are not discussed below are addressed in the common preamble.

Alcohol Misuse Prevention Program (AMPP)

The essential provisions of the AMPP proposed by the FAA in the NPRM have remained largely unchanged in this final rule. The rule uses three primary tools for reducing the threat of alcohol misuse in aviation. First, by amending parts 65, 121, and 135, the rule prohibits certain alcohol-related conduct by employees performing safety-sensitive duties. Second, under the provisions of new appendix J to part 121, such employees must be subject to pre-employment, random, post-accident, reasonable suspicion, return to duty, and follow-up alcohol testing. This testing is federally-mandated but will be administered by the affected employers. Third, in accordance with requirements in appendix J, employees subject to the rule must be provided with materials designed to educate them about the provisions of the rule and the consequences of engaging in alcohol misuse.

Other Requirements Imposed by Employers; Requirement for Notice

Only a few commenters addressed the issue of possible conflicts or confusion regarding company-required programs and FAA-mandated programs. These commenters (representing both labor and management) focused on the issue of alcohol test results of 0.02 to 0.039. The commenters noted that although the FAA's NPRM proposed specific actions for test results falling within this range, an employer is not precluded from taking severe employment action based on these results should the employer so choose. A number of labor organizations wanted the FAA to preclude such action in its final rule.

The FAA has not adopted these comments. The choice of whether to continue to employ an individual should properly remain within the discretion of the employer. We also note that employment or other consequences outside those required by the rule may be subject to both State law and labor-management negotiation.

With respect to the establishment of a separate company policy, a number of commenters noted that companies already had alcohol testing or prevention programs in place. These commenters stated that established programs should suffice for compliance with the FAA's rule, or that the FAA's rule would unnecessarily duplicate these programs.

The FAA recognizes that, as was the case when the antidrug rule was first implemented, some employers might have programs that encompass some or all of this rule's requirements. To ensure complete and uniform compliance with a single regulatory standard, however, we are not permitting company programs to substitute for programs required by this rule. Should an aviation employer determine that, as a matter of company policy, a different program should be implemented or continued, the program must be clearly separate from the program required under this rule, with appropriate notice given prior to tests under this rule. The FAA will not permit commingling of employer-directed and FAA-mandated programs.

Employers Required To Establish Programs

The NPRM reflected the FAA's best assessment, based on the developments in the FAA's industry antidrug program, of the categories of employers that should be subject to the alcohol misuse rule. Like the antidrug rule, the FAA determined that the minimal benefit to public safety that might accrue from inclusion of operators that did not hold part 121 or part 135 certificates did not warrant the cost and intrusiveness of alcohol testing. A few commenters addressed this issue and requested additional relief for the small aviation employers we did propose to cover. The FAA has assessed its requirements and has elected to retain most of its regulatory provisions unchanged from the NPRM. We have, however, reduced the reporting requirement burden, which will be addressed below.

The final rule will include essentially the same classes of employers as are covered by the anti-drug rule: 14 CFR part 121 certificate holders, 14 CFR part 135 certificate holders, sightseeing operators who meet the criteria of 14 CFR 135.1(c), and air traffic control (ATC) facilities not operated by the FAA or by or under contract to the U.S. military will have to establish alcohol misuse prevention programs. Companies with employees who perform safety-sensitive functions by contract for these employers will be permitted to establish and manage programs under this appendix. However, while a contractor company that manages its own program will perform all of the functions required of an "employer" in appendix J, the certificate holders, operators, and ATC facilities will remain responsible for ensuring that all covered employees who perform services for them are subject to an FAA-mandated program.

Employees Subject to the Rule

The NPRM proposed to retain essentially the same coverage as the antidrug rule. The covered categories included persons performing any of the following duties: flight crewmember, flight attendant, flight instruction, aircraft dispatch, aircraft maintenance, ground security coordinator, aviation screening, and air traffic control. The category of flight test personnel was not included because it was redundant. The category of ground security coordinator duties was specified separately to reflect the coverage intended by the term "aviation security" in the antidrug rule.

In order to determine if any changes should be made in the categories of covered employees, the FAA asked a number of questions in the NPRM. The questions were intended to solicit comment on whether the increased benefit to safety that could accrue by including other functions would warrant the imposition of an alcohol testing requirement on individuals performing those functions or if, consistent with safety, categories of employees could be eliminated from the rule.

The comments on this issue ranged from those stating that since the rule was unnecessary it should provide only the minimum coverage required by the Act to a few comments stating that every aviation employee who could even possibly affect safety should be subject to alcohol testing. Most labor organizations favored the former approach. A number of commenters supporting limited application of the rule recommended that only maintenance personnel who actually return aircraft to service should be covered by the rule. A few commenters supported adding to the coverage proposed in the NPRM. These commenters primarily identified refuelers and deicers as categories of employees that should be subject to alcohol testing.

The FAA has chosen to retain the categories of covered employees proposed in the NPRM. Although a system of checks and inspections does exist to ensure that maintenance activities are properly performed, the

FAA has determined that it is essential that the individuals who perform aircraft maintenance activities be subject to this rule. (The term preventive maintenance has been added to maintenance not because the FAA intends to increase the reach of the rule, but rather to ensure that, as was intended in the NPRM, the rule clearly parallels the coverage of the antidrug rule.)

The FAA carefully reviewed the comments supporting the inclusion of additional categories of covered employees. For a number of reasons, the FAA has elected not to adopt these recommendations. First, the FAA is aware that the costs associated with this rule will be significant. Each additional requirement that was considered was therefore scrutinized with respect to the cumulative burden that would accrue. Based on that consideration, the FAA has determined that the possible marginal benefit that might be achieved by adding categories of covered employees is outweighed by the burden associated with such a change.

Prohibited Alcohol-Related Conduct

This rule will prohibit specific alcohol-related conduct by covered employees and will also prohibit an employer from using a covered employee if the employer has actual knowledge that the employee has engaged in such conduct. Each of the prohibitions has been carefully tailored to minimize the restriction on the otherwise lawful use of alcohol by covered employees. With the exception of use of alcohol after an accident, each prohibition is limited to prohibiting alcohol use that may affect the performance of covered functions. Some commenters requested that the FAA list the specific actions within a safety-sensitive function that trigger coverage under this rule. Given the variety of tasks encompassed within each category and the differences in the conduct of aviation operations by different employers, however, a comprehensive regulatory listing of such activities is not possible. Therefore, as was proposed in the NPRM, coverage under the rule will be determined by the employer based on the requirements of the FAA's regulations and the employer's experience and knowledge of the employees' duties.

The identification of the activities that will subject employees to this rule shall be included in the company policy required under appendix J and are subject to FAA review.

The specific prohibitions are:

Alcohol Concentration: The OST common preamble contains a detailed discussion of the prohibited alcohol concentrations and a disposition to the comments regarding this issue. It should be noted however, that although this rule will contain a bifurcated system of test results and consequences (0.02–0.039 and 0.04 or greater) the rule will not affect the current regulatory provision in 14 CFR 91.17 under which crewmembers are subject to sanction by the FAA for having a blood alcohol concentration of 0.04% or greater.

Performance of covered functions while under the influence of alcohol: As noted above, the FAA's current regulations prohibit any person from acting or attempting to act as a crewmember while under the influence of alcohol. While the FAA's experience in enforcing this provision indicates that it is a useful tool in preventing alcohol misuse, it has been determined that such a prohibition in the context of an employer-based program, with no intervention by a Federal agency or right to review, could lead to unacceptable treatment of employees. This provision has therefore been removed as a violation of the rule.

The concept of "under the influence" remains present in this final rule, however, as part of the reasonable suspicion testing requirement. Under the final rule, if an employer were to determine that sufficient evidence existed to believe that a covered employee was under the influence of alcohol, the employer would be required to administer a reasonable suspicion test. If no test could be performed, safety would still be protected because the employee must be removed from performing safety-sensitive duties temporarily.

This rule does not limit the employer's authority to remove the employee from the performance of safety-sensitive duties if the employer believed, notwithstanding an alcohol test result of less than 0.04 or no test at all, that the employee was impaired. As noted previously, the employer must remove the employee, at least temporarily, if the employee's alcohol concentration was 0.02 or greater but less than 0.04 or if no test could be performed. However, any action other than a temporary removal in either the absence of a test result or with a test result under 0.04 would have to be under the employer's independent authority.

On-duty use: A number of commenters expressed concern that the FAA's proposed definition of "performing safety-sensitive functions" could result in the application of the on-duty use prohibition to employees who might be at home on reserve status for days at a time. Given the dramatic effect of a violation of this provision (*i.e.*, it invokes the permanent bar addressed below), these commenters requested clarification of this provision.

This provision applies to any covered employee who, while not actually performing a safety-sensitive function, could be called at any time to perform. The FAA intends the provision to reach only employees who are at work. Affected employees include, for example, a maintenance supervisor who is in her office who could be called at any time to take over on a maintenance task. Such employees would have to refrain from using alcohol or would be in violation of the on-duty use provision. On-call or reserve employees who are not at work, such as those mentioned above, will, however, be subject to the prohibitions on pre-duty use of alcohol.

Additionally, the rule should not be read as permitting on-duty use to be presumed from an alcohol concentration above the prohibited levels. This would of necessity require the application of back extrapolation to the results, which, as analyzed in detail in the common preamble, is not permitted. To assert a violation of this provision, the employer would have to have clear evidence of consumption of alcohol by a safety-sensitive employee (*e.g.*, an admission, credible witnesses). One important aspect of the prohibition is that it is triggered by the consumption of items other than alcoholic beverages. Use of a medication containing alcohol while on duty will violate this rule and will trigger the permanent bar provisions discussed below. The FAA encourages employers and labor organizations to take appropriate steps to warn affected employees of this prohibition.

Pre-duty use: As was proposed in the NPRM, this rule provides a two-tiered prohibition with respect to pre-duty use of alcohol. No commenter opposed prohibiting alcohol use by a crewmember prior to duty, and many commenters wanted the prohibition extended to up to 24 hours before a flight. As noted above, the FAA already prohibits any person from acting or attempting to act as a crewmember within 8 hours after the consumption of any alcoholic beverage. This prohibition was based on a determination by the FAA that a specified period of abstinence would decrease the likelihood that an individual would be impaired by alcohol while acting as a crewmember. The FAA is aware that individuals who drink to excess may still be impaired even after abstaining for 8 hours; however, the 8-hour rule establishes an adequate behavioral

limitation for the majority of persons who are not heavy drinkers. The FAA has determined that the 8-hour limit remains appropriate for crewmembers. Additionally, in order to ensure consistency between the prohibitions affecting FAA and other air traffic controllers, the pre-duty use period for these employees has been changed to 8 hours.

Although with respect to crewmembers, this provision does, to some extent, duplicate the restrictions in 14 CFR 91.17(a), it is limited in application to the covered employees of the specified employers under the rule. The rule also prohibits the employers from using covered employees who have impermissibly used alcohol—a restriction on employers that does not currently exist in the FAA's regulations.

A number of commenters objected to the FAA proposal to add a 4-hour pre-duty use limitation for other classes of covered employees. Some commenters believed that imposition of a 4-hour rule on all covered employees would have little safety benefit while intruding significantly into the lives of employees. The FAA agrees that the nature of the safety-sensitive functions other than crewmember duties is sufficiently different that an 8-hour limitation on pre-duty use of alcohol for those classes could constitute an unwarranted intrusion by the Federal government into the off-duty lives of aviation industry employees. The FAA continues to believe, however, that the minimal disruption that might be caused by a 4-hour limitation is outweighed by the safety benefit that is achieved by moderating the use of alcohol by safety-sensitive employees before they perform their duties.

The FAA is also not adopting a suggestion made in the public hearings regarding other DOT agencies' rules under which employees subject to short notice calls to work would have to abstain from consuming alcohol for 4 hours prior to duty or after being called to duty, whichever is shortest. The FAA does not believe that in the context of the aviation industry there is any situation in which the need for the employee to perform safety-sensitive functions is so exigent that a 4- or 8-hour limitation should be waived.

Use following an accident: As proposed in the NPRM, a covered employee with actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident would be required to refrain from using alcohol for 8 hours unless the employee had been given a post-accident test or the employer had determined that the employee's performance could not have contributed to the accident. The restriction on use, as proposed, would primarily affect those employees whose performance of duties just around the time of the accident may have contributed to the accident and whose consumption of alcohol prior to the time of the accident would be relevant information.

A number of commenters questioned the FAA's ability to enforce this provision and the employees' ability to comply. Some commenters stated that it was unfair of the FAA to consider denying individuals who had been traumatized by an accident the relief that a drink might provide. The FAA recognizes that the rule might be difficult to enforce, and we encourage employers to attempt to control the actions of the affected employees as circumstances permit. The final rule also includes, as in the NPRM, an actual notice requirement so that employees who are unaware of an accident or who do not realize that their performance of duties may be implicated are not held to have violated the rule if, unknowingly, they use alcohol during the post-accident period. The FAA notes that the prohibition only applies if an employee performed a safety-sensitive function on the aircraft involved in an accident at or near the time of the accident. The rule does not, for example, affect individuals who performed maintenance on the aircraft days or weeks prior to the accident.

Despite the potential difficulties associated with this provision, however, and the commonly accepted practice of using alcohol to handle stressful situations, the prohibition is necessary to ensure that use of alcohol before an accident is not masked by allegedly post-accident consumption of alcohol.

Refusal To Submit to a Required Alcohol Test

A number of commenters objected to the FAA's proposal to treat refusal to submit to random, post-accident, reasonable suspicion, or follow-up testing as a rule violation (as discussed in the common preamble), or as a potential basis for the denial, suspension, or revocation of a certificate issued under 14 CFR part 61, 63, or 65. A few of these commenters stated that because alcohol testing was unconstitutional there should be no sanction attached to refusing to be tested. The Constitutional aspects of this rule are addressed in the common preamble.

A number of labor groups expressed concern that employees who were subjected to harassing tests or who became aware that proper procedures were not being followed (*e.g.*, the breath alcohol technician (BAT) reuses a mouthpiece) would be placed in the position of having to submit to questionable tests or face possibly severe sanctions. As with any potentially problematic test, the employee will have to determine whether to proceed with the test or to decline. It would then be for the employer in either situation to evaluate the facts, review the provisions of this rule and in 49 CFR part 40, and make a decision on the validity of the test or the legitimacy of the employee's asserted bases for declining the test. The FAA would have to similarly evaluate all of the available information if the FAA considers taking action in the case of an alleged refusal. As a practical matter, these situations can be avoided if each employer ensures that its supervisors and BATs are thoroughly trained and if a knowledgeable employer representative is available to respond quickly to concerns raised during the course of an alcohol test.

No commenter objected to the FAA's decision not to attach any consequences other than preclusion from performing a safety-sensitive function to an individual's choice not to submit to pre-employment or return to duty testing. These provisions are consistent with the FAA's choice in the antidrug rule not to base certificate action on refusals of pre-employment drug tests, and therefore, these provisions remain unchanged.

Required Alcohol Testing

The common preamble discusses in detail the types of alcohol tests that are required under this rule and those of the other DOT agencies. There are, however, certain aspects of alcohol testing raised by the commenters that are specific to the aviation industry. Those issues are addressed below.

Pre-employment testing: As discussed more fully in the common preamble, the nomenclature used to describe this type of test has been changed from "pre-employment/pre-duty," as used in the NPRM, to simply "pre-employment." It should be noted that this change is not intended to affect the substantive requirements for this type of testing, or to imply that the testing must occur prior to hiring an individual. As was proposed in the NPRM, under this final rule employers may conduct pre-employment testing at any time prior to the first time the individual is used to perform (*i.e.*, is "employed" in) a safety-sensitive function. An individual may be tested prior to completion of the hiring process; after he or she has been hired for a safety-sensitive position but

before actual commencement of duties; or, in the case of a current employee, prior to transferring the employee from performing non-safety-sensitive duties to performing safety-sensitive duties.

In the NPRM, the FAA requested specific comment on whether the proposed procedure for using the results of prior pre-employment alcohol tests would be useful. The majority of commenters did not feel that the provision should be retained. Labor groups were concerned that the confidentiality of information regarding employees' past alcohol use would be breached by this provision. Many employers expressed concern about the possibility of liability if they released the results, even in response to a specific employee consent. One commenter recommended that the FAA develop a standard consent form to be used for release of alcohol misuse information from an employer to any third party. Finally, some commenters stated that even if the use of prior test results was authorized, they would not use the option. They saw little utility in the option or expressed reservations about relying on tests the quality of which the employer could not ensure.

Although the FAA recognizes that few employers may choose to use the option of relying on an applicant's prior test results, the FAA has elected to retain this option. The difficulties, if any, associated with choosing this option would be one accepted voluntarily by the employer who so chooses. Further, the FAA notes that even in the absence of such a provision, a prospective employer could still seek information regarding the past performance of an applicant. The FAA has not adopted the recommendation to prepare a standard consent form for use in this or any other disclosure situation. The rule does contain specific language regarding the content of the consent; the FAA expresses no preference as to the format of the document.

Finally, one commenter stated that the pre-employment testing provision did not meet the requirements of the Act because it does not require testing for use of alcohol in violation of law or Federal regulation. While a strict reading of the Act may indicate that this commenter is correct, upon review of the legislative history of the Act, the FAA believes that the pre-employment testing provision in this rule meets the intent of Congress.

Post-accident testing: The NPRM proposed that post-accident alcohol testing would be essentially the same as in the antidrug rule. The triggering event would be an aircraft accident (as specifically defined in the rule) and the employees subject to testing would be the same—covered employees whose performance of safety-sensitive functions either contributed to an accident or cannot be completely discounted as a contributing factor.

Although commenters generally supported the concept of post-accident testing, some were concerned about the practical difficulties associated with determining which employees to test and ensuring the tests are performed in the very short and usually extremely hectic period just following an accident. Some commenters specifically cited the difficulty faced in determining if persons performing maintenance may have contributed to the accident and problems associated with reaching the remote locations in which aircraft accidents can occur.

These same concerns have arisen in the context of post-accident drug testing. With respect to identifying employees to test, both rules provide that the decisions must be based on the best available information. Although the purpose of a post-accident alcohol test is to identify individuals who should be removed from safety-sensitive duties, the focus of a post-accident alcohol test is evidence of alcohol use that may have affected the performance of safety-sensitive functions that contributed to the accident. Test subjects should be restricted to those for whom an alcohol test conducted after an accident would be relevant to whether the individual possibly contributed to the accident as a result of impermissibly using alcohol.

A number of commenters also questioned the requirement that individuals who may be subject to post-accident testing must, with limited exceptions, remain at the scene of the accident. These commenters noted that an aircraft accident is always an extremely traumatic event for the crewmembers involved and it would be unduly harsh to prevent these crewmembers from leaving the immediate vicinity of the accident.

The FAA accepts these concerns and has amended the provision in the final rule to require the employee to remain readily available for testing. This could include going to a crew lounge or airline office; however, the employee would have to take appropriate steps to ensure that if the employer determined that the employee must undergo post-accident testing, the employer would be able to rapidly locate the employee and have him or her tested. It would not, for example, be acceptable for the employee to leave the scene of the accident at an airport without informing the employer or a designated point of contact of the employee's location—even if the employee remained at the airport and technically "available" for testing.

The issues associated with remote site testing and conduct of tests within the required timeframes are addressed in the common preamble. As mentioned in that document, the FAA is not adopting the recommendation that employers be allowed to substitute for FAA-mandated tests post-accident tests conducted by law enforcement officers (LEOs) for law enforcement purposes. The FAA already has in place a provision (14 CFR 91.17) under which crewmembers required to submit to alcohol tests by LEOs may be required to provide the results of such tests to the FAA. The possible conflicts between the employer's obligations and the intent of post-accident tests under this rule and those of LEOs outweigh any benefit that might be achieved from such a proposal. (As discussed in the preamble to 49 CFR part 40, however, a LEO could serve as an employer's BAT, but any tests would have to be conducted pursuant to this rule and 49 CFR part 40.)

Random testing: As required by the Act, the rule includes random alcohol testing for covered employees. The FAA has tailored the testing to ensure that testing reasonably serves the FAA's interest in aviation safety. Selection procedures like those in current FAA-approved antidrug plans must be used to ensure randomness of testing.

The majority of comments received on random testing (other than those asserting it was unconstitutional and/or unnecessary) cited the particular difficulties associated with testing of crewmembers at or near the time of the flight. These commenters noted that pre-flight time for crewmembers, especially pilots, is very tightly scheduled, with little built in flexibility. The commenters asserted that employers would be faced with two choices: either arrange for all crewmembers to report for duty early every day (because testing is supposed to be both unannounced and random) to ensure that the employees were available for testing if they were selected, or accept that a certain number of flights might be delayed to accommodate the additional time required to conduct testing. These commenters asked that the FAA revise its rule to eliminate random testing or to permit all random testing to occur after flights terminate.

While the FAA is extremely sensitive to the financial and operational implications of this rule, it cannot adopt the recommendation of these commenters. Random alcohol testing is required by the Act. An effective random testing program must be designed to detect and deter all of the prohibited conduct: pre-duty use of alcohol, on-duty use of alcohol, and reporting for duty or remaining on duty with an impermissible alcohol concentration. Because post-flight testing (especially on long flights) would realistically only address on-duty use of alcohol, it would not serve the overall purpose of random alcohol testing. Similarly, if all testing were performed before flights (as recommended by one commenter), the testing program would have no deterrent effect for on-duty use of alcohol. The FAA intends to work with the aviation industry to assist employers in implementing the most cost-effective random alcohol testing programs possible.

The final rule retains the provision from the NPRM under which employees selected for testing must proceed immediately to the testing site. The rule also provides that an employee notified of his or her selection while in the midst of performing a safety-sensitive function would be directed to cease performing the function and proceed to the testing site as soon as possible. Obviously, the FAA does not expect any safety-sensitive employee to simply abandon his or her duties upon notification of selection for random testing. Such an employee would have to arrange for a replacement or otherwise cease performing the safety-sensitive function as soon as it could be safely terminated.

The term "immediately" was used by the FAA intentionally. To the extent possible, employees notified of selection for a random test should take whatever steps are necessary to report to the testing site without any delay or detour. The time between notification and testing should be the absolute minimum necessary. The FAA recognizes that in some situations employees will have to advise supervisors that the employees must report for testing. Employers should ensure that they have instituted procedures to accommodate this provision (for example, the employer could arrange for the BAT to coordinate with designated supervisors to approve the employees' departure to a testing site before notifying the selected employees). The FAA expects that, with limited exceptions, the time between notification and testing will be no more than the requisite travel time to the testing site. If notification and testing occur at an airport, this time should be a matter of minutes.

Reasonable suspicion testing: Most of the commenters to the NPRM supported the provision for reasonable suspicion alcohol testing, although some labor organizations asserted that two supervisors should be required. The FAA has not adopted this recommendation. The common preamble discusses in detail the substantive revisions to this provision.

Return to duty and follow-up testing: The specific requirements for these types of tests are discussed in the common preamble.

Retesting after result of 0.02 or greater but less than 0.04: In the NPRM, the FAA sought comment on whether the proposed "retest or return" procedure gives employers enough flexibility (or too much) in handling covered employees with low-level alcohol concentrations. Because most commenters supported a single cut-off level, very few addressed this provision. One commenter stated that if the bifurcated cut-off system was adopted, all employees testing between 0.02 and 0.039 should be subject to another test before returning to work; employers should not have the option of waiting until the next duty period in lieu of a test.

The FAA has not adopted this recommendation. The primary intent of this rule is to protect safety, and that goal is adequately accomplished whether an employee tests below 0.02 or is made to wait at least 8 hours before performing safety-sensitive functions. No additional benefit would be achieved by instituting a return-to-duty testing requirement for all employees who test in the 0.02 to 0.039 range. Further, the rule does not preclude, and would in fact require, the employer to conduct a reasonable suspicion test if, when the employee next reported for duty, the employee showed indicators of alcohol misuse.

Recordkeeping and Reporting; Confidentiality

The requirements of the final rule with respect to recordkeeping are largely unchanged from the NPRM. The records must be maintained in a secure location and are releasable only as required under the rule or with the express written consent of the employee. This rule requires the release of employee-specific information to a subsequent employer or other identified individual if the original employer receives a written request from the employee. Contrary to the concerns expressed by some commenters, the FAA believes that providing a regulatory mandate for such release and removal of employer discretion will minimize possible liability.

The rule also provides express authority to the FAA to conduct on-site inspections of employer's alcohol programs, including the alcohol testing process. As stated in the preamble to the NPRM, the FAA's experience with compliance monitoring under the antidrug rule has indicated that the individuals managing employers' programs are often unaware of the FAA's authority to conduct such inspections. While the Administrator or his designee has such authority even absent a regulatory provision, the FAA determined that inclusion of such a provision in this rule is necessary to ensure industry awareness of the FAA's authority to monitor compliance.

Although the NPRM proposed reporting of statistical information by all employers and other aviation entities with separate AMPPs, this final rule has been revised to limit the number of entities required to submit reports. The FAA similarly amended its antidrug rule, primarily to relieve the burdens associated with these rules on small employers. The formats to be used for reporting the statistical information are published as exhibits following this rule. No other form, including another DOT Agency's form is acceptable for submission to the FAA.

Consequences of Engaging in Misuse of Alcohol or Refusing To Submit to Testing

The Omnibus Transportation Employee Testing Act of 1991 (the Act) amended the Federal Aviation Act of 1958 (the FAAct) and the statutes that apply to the Federal Railroad Administration, the Federal Highway Administration, and the Federal Transit Administration. While these amendments have much common language, especially in the area of testing, they are not identical. Of greatest significance, the amendments to the FAAct contain a section entitled "Prohibition on service," which does not appear in the amendments to the other DOT agencies' statutes.

The "Prohibition on Service" section is found at new FAAct section 614(b). Under subsection 614(b)(1), an individual may not remain on duty in a safety-sensitive function if he or she has violated the prohibitions on the use of alcohol. This legislative provision on continued duty is reflected in each of the subsections of the FAA's rule addressing prohibited conduct (see, *e.g.*, 14 CFR 65.46a). Each section states either directly or by implication that the employee may not report for duty or remain on duty requiring the performance of safety-sensitive functions while engaging in conduct prohibited by the rule. These sections further provide that no employer who has actual knowledge that an employee is in violation of the rule may permit the employee to perform or continue to

perform safety-sensitive functions. Additionally, appendix J, section V, paragraph A expressly prohibits an employee who has engaged in conduct prohibited by the rule from performing safety-sensitive functions. This section, consistent with the rules of the other DOT agencies, also requires removal from duty for refusal to submit to a required alcohol test.

Section 614(b)(2) of the FAAct, "Effect of Rehabilitation," states that no covered employee may perform a safety-sensitive function after engaging in prohibited conduct unless he or she has completed a rehabilitation program under the provisions of section 614(c) of the FAAct. Section 614(c)(1) requires the Administrator to prescribe regulations that provide, at a minimum, for the identification of employees in need of assistance in resolving problems with misuse of alcohol. Further, the section gives the Administrator the authority to determine the circumstances under which such employees would be required to participate in any required rehabilitation. The provisions recognize that rehabilitation may not be appropriate or warranted in all cases of prohibited conduct.

The legislative requirement of section 614(b)(2) is implemented in appendix J, section V, paragraph E, "Required evaluation." This section requires that the employee be evaluated in accordance with section VI of the appendix prior to performing covered functions. The evaluation process is discussed further below.

The rule also contains a provision, analogous to the one in the antidrug rule, under which employers are required to notify the Federal Air Surgeon of any instance in which a holder of a part 67 medical certificate violated the provisions of the rule or refused to submit to a required alcohol test (with the exception of pre-employment tests). The employer also has to forward to the FAA copies of the evaluations conducted by the SAP. The Federal Air Surgeon will use this information to determine whether further action should be taken with respect to the medical certificate. No employee requiring an airman medical certificate shall return to the performance of safety-sensitive functions without the Federal Air Surgeon's recommendation.

Section 614(b)(3) of the FAAct, "Performance of prior duties prohibited," provides sanctions for employees who engage in prohibited use of alcohol after the date of the Omnibus Transportation Employee Testing Act. This subsection is found only in the amendments to the FAAct and has no parallel in the amendments to the other DOT agencies' statutes. It provides that, under certain circumstances discussed below, an individual shall not be permitted to perform the duties related to air transportation that he or she performed prior to the date he or she engaged in the impermissible use of alcohol. The legislation does not require that the individual's employment be terminated, nor that he or she be reassigned to perform non-safety-sensitive functions. However, it is an absolute bar to the performance of the same duties the employee performed before the violation.

This bar applies under four circumstances. The first occurs if the individual misuses alcohol "while on duty." The remaining prohibitions all relate to rehabilitation: the absolute bar to returning to duty applies if an employee misuses alcohol after the date of enactment, and

1. Had previously misused alcohol and undergone a program of rehabilitation under the regulations promulgated pursuant to the Act;
2. Refused to undertake any required rehabilitation; or
3. Failed to complete any required rehabilitation.

This rule implements the prohibitions in two ways. First, appendix J, section V, paragraph B, "Permanent disqualification for service" applies if an employee is determined to have violated the on-duty use prohibition or if the employee twice violated other provisions of the rule after its effective date. Under this section the employee is permanently barred from performing the safety-sensitive functions he or she performed before such a determination.

As proposed in the NPRM, this bar would have applied to the performance of any safety-sensitive function. The FAA noted in the NPRM that a narrow bar, limited only to the safety-sensitive functions the individual previously performed, could lead to anomalous results. Commenters differed in responding to the proposed bar, some favoring a broad exclusion while another wanted the bar removed as inconsistent with the Americans with Disabilities Act (ADA). The latter commenter failed to note that the Act requires a permanent bar and that the regulations implementing the ADA provide for the necessity of complying with the regulations of another Federal agency (29 CFR 1630.15(e)). However, the FAA has concluded that a bar limited to the statutory requirement is more likely to be seen as clearly consistent with the ADA and other legal constraints, and has thus adopted this change in the final rule. It should be noted that employers retain any discretion they may have under independent authority to preclude such employees from performing other safety-sensitive functions. The FAA expects that employers will exercise responsible judgment in deciding whether employees not expressly barred from service will be permitted to perform other safety-sensitive functions.

As addressed in the NPRM, the bar on two-time violators will apply both to persons who had gone through rehabilitation and to those who, after evaluation by a substance abuse professional (SAP), are determined not to need treatment. Otherwise, an employee who was found to need treatment and had an instance of recidivism would be sanctioned, but an employee who did not need assistance but simply chose to engage in misuse of alcohol would not be sanctioned.

A number of commenters objected to the FAA's proposal to apply the permanent bar to individuals who engage in multiple instances of alcohol misuse. They noted that recidivism is often a normal part of the rehabilitative process. Given the Act's requirements, these comments cannot be adopted. The Act requires that individuals complete rehabilitation prior to returning to safety-sensitive functions. Therefore, once an employee has been deemed by the SAP to have completed rehabilitation and is returned to the performance of safety-sensitive functions, the employee must conform his or her conduct to the requirements of the rule.

The bar following a refusal or failure of rehabilitation is implicitly implemented in this rule by the requirement that prior to returning to duty performing safety-sensitive functions each employee must be evaluated by an SAP to determine whether the employee properly met the requirements for rehabilitation established during the initial evaluation. An employee who does not meet the requirements, whether by failure or refusal, will be precluded from returning to the performance of safety-sensitive functions. Commenters supported the FAA's choice in the NPRM not to propose a definite time period during which the employee must comply. They agreed that the rule will thus allow for the denial phase that most people go through when first confronted with evidence of an alcohol problem.

Alcohol Misuse Information and Training

In the NPRM, the FAA specifically sought comment on whether the rule should include alcohol awareness training for all employees. Commenters split almost equally between two positions: Labor organizations and employees favored employee training, and employers stated that such training would be unnecessary and costly. The common preamble addresses these issues in greater detail; however, it should be noted that while the FAA is not requiring formal employee training, the FAA did adopt the recommendation to provide more detailed written materials to employees. Further, nothing in this rule precludes an employer from providing training to its employees under the employer's own authority.

Employee Referral, Evaluation, and Treatment

As was noted in the NPRM, the FAA recognized the sometimes conflicting needs of employer flexibility and employee health. The FAA did not propose to prescribe regulations with respect to specific types of rehabilitation and maintains that position in the final rule. This rule does include the process proposed in the NPRM under which each covered employee who engages in alcohol misuse or who refuses to submit to testing must be advised of all resources available to the employee. It also requires that each such employee be evaluated by a SAP to determine whether and what assistance the employee needed in resolving problems associated with alcohol misuse.

Some commenters, primarily labor organizations and employees, stated that the rule should include a mechanism to protect employees from overzealous, biased, or unprofessional SAPs. These commenters suggested that employees be entitled to obtain a second opinion from another SAP, that the SAP evaluations be reviewed by a medical review officer, or that the employee be permitted to choose the SAP. The FAA has not adopted these suggestions. Each person authorized by this rule to act as an SAP has obligations independent of this rule which require him or her to perform the duties in this rule professional and ethical manner. Aside from the financial restrictions discussed in the common preamble, the FAA does not believe that any additional protection of employees is necessary. The use of a second opinion system would be especially difficult and problematic in a program such as this one where, in the exercise of reasonable, good faith analysis of a case, two SAPs could very possibly arrive at different conclusions on the appropriate therapeutic intervention. As was the case in the NPRM, however, the final rule provides that selection of the SAP should be made in accordance with employer/employee agreements and employer policies.

Employer Alcohol Misuse Prevention Program Plans; Certification Statements

The FAA proposed in the NPRM to include a requirement that employers submit detailed alcohol misuse prevention program (AMPP) plans to the FAA for approval prior to implementation of a program under the rule. Many commenters stated that the use of specific plans would be unduly cumbersome in the context of an AMPP. These commenters stated that unlike drug testing, in which a single laboratory is generally used, it is likely that alcohol testing will be conducted using a variety of breath testing devices. Additionally, since the SAPs must personally evaluate each employee who violates the rule, large companies will probably arrange to have many SAPs available wherever they are necessary. These commenters requested that the FAA limit its plan submission requirements to address these concerns.

The FAA agrees with these comments. Although the use of detailed, preapproved plans was and remains beneficial in the context of the antidrug rule, the FAA has chosen to minimize the requirements for the final alcohol rule. Instead, the FAA will require submission of a certification statement that will provide specified identifying information and an agreement to comply with this rule. Like the plan submission requirement, the certification statements will provide the FAA with the ability to readily determine which companies are failing or refusing to comply with the rule.

Commenters generally supported the FAA proposal to permit companies whose employees perform covered services by contract to an employer to establish independent alcohol misuse prevention programs. Under the revised procedures in this rule, contractor companies are able to submit certification statements directly to the FAA and may be authorized to implement AMPPs for their own employees. An aspect of the NPRM that has not changed is the requirement that each entity that establishes an AMPP, whether a contractor company or an employer, must maintain its program in accordance with the final rule. A contractor company, for example, is required to maintain the confidentiality of records pertaining to its employees and must disclose such records only in accordance with the rule. The FAA has retained the ability to revoke its authorization for any contfactor company that fails to properly implement its AMPP. Because employers are only able to use contractor employees who are subject to an FAA-mandated program, potential revocation of authorization to establish an AMPP provides a strong incentive to contractor companies to properly implement their programs.

The FAA has also retained the provisions under which employers and contractor companies may join consortia for purposes of complying with the rule. A consortium certification statement must set forth the aspects of the AMPP that the consortium intends to provide to aviation employers.

Generally, the final rule provides that aviation entities must submit the certification statements in duplicate. The FAA will annotate receipt on one of the copies and return it to the submitter, after which the submitter can implement its AMPP.

Phased Implementation

The NPRM included a proposed schedule for phased implementation of the AMPP for the aviation industry. Most commenters that addressed the schedule favored the FAA's proposal and this schedule has been maintained in the final rule. For each class of employers, the rule requires submission of a certification statement by a certain date and implementation of the FAA-mandated AMPP approximately 6 months later. One change was made in response to comments: As proposed, employers would have had 8 months after their specified submission date to ensure that contractor employees were subject to an approved program. Many commenters did not think, given the complexity of the new requirements, that they could both implement their own programs and monitor their contractor companies' compliance. The FAA has therefore revised the timetable to require employers to ensure compliance by contractors 12 months after the date on which the employers' must submit their certification statements.

Under the final rule, part 121 and large part 135 certificate holders (more than 50 covered employees) and air traffic control facilities are required to comply with the rule first, with implementation scheduled to occur on January 1, 1995. Part 135 certificate holders with 11 to 50 covered employees are in the second phase of implementation (June 1, 1995), and small part 135 certificate holders and

§ 135.1(c) operators in the last phase (January 1, 1996).

Employees Located Outside the U.S.

The NPRM proposed that the rule would apply to direct employees of U.S. air carriers who perform safety-sensitive functions outside the U.S. after January 2, 1995. The NPRM also proposed that the FAA would not permit testing of such employees, however, if the FAA received written documentation from an employer demonstrating that such testing would be inconsistent with the laws and regulations of the country in which the testing would occur. Upon review of the comments submitted to this docket and to FAA Docket Number 27066 (which addressed possible testing requirements for foreign air carriers), the FAA has determined that it will not require testing of any employees located outside the territory of the United States.

To ensure proper selection for random testing, an employer is required to remove from the random testing pool any employee assigned to perform covered functions solely outside the territory of the United States, since such an employee would not be available for testing. The employee must be returned to the random testing pool as soon as the employee once more begins to perform functions wholly or partially within the territory of the United States. Although the FAA is cognizant of concerns about safety and economic parity that would be raised by such an exclusion, the FAA has determined that extraterritorial application of this rule, with its significant logistical issues and possible conflicts with local laws, should not be pursued.

Paperwork Reduction Act Approval

Appendix J to part 121 requires each employer to submit to the FAA: An alcohol misuse prevention program certification statement; notification to the FAA of alcohol misuse by holders of airman medical certificates issued under 14 CFR part 67; notification to the FAA of refusals to submit to alcohol testing by holders of airman certificates issued under 14 CFR parts 61, 63, and 65; and annual statistical reports summarizing data on the employer's alcohol misuse prevention program. To provide the notifications and reports to the FAA, employers are required to maintain records related to each covered employee, including test results. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the recordkeeping and reporting requirements in this final rule have been submitted to the Office of Management and Budget (OMB) for approval Information collection requirements are not effective until the paperwork reduction act package has been received.

Economic Summary

A full regulatory evaluation has been prepared by the FAA and placed in the docket that provides detailed estimates of the economic consequences of this regulatory action. The FAA certifies that the annual costs to be imposed on small operators will not exceed the thresholds for significant impact and that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The FAA finds that this rule affects all part 121 and part 135 air carriers. The FAA finds that this rule will not have an adverse impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States.

Federalism Implications

This rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Significance

This rule is not likely to result in an annual effect on the economy of $100 million or more, although it may result in an increase in costs for consumers, industry, or Federal, State, or local agencies. The FAA has determined, however, that this rule involves issues of substantial interest to the public. Therefore, the FAA has determined that the rule is significant under the Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

A Regulatory Impact Analysis of the rule has been placed in the regulatory docket. A copy may be obtained by contacting the office identified under "FOR FURTHER INFORMATION CONTACT."

Other Regulatory Matters

The FAA has received three petitions for rulemaking that address issues concerning alcohol use in aviation. The docket numbers for those petitions are 24706, 26233, and 26872. Because the issues raised in the petitions have been resolved in this final rule, the FAA has closed these actions.

A number of commenters also asked that the FAA amend 14 CFR 91.13(a) to provide that crewmembers would only be held liable for the actions of a fellow crewmember if they have actual knowledge that the crewmember was impaired by drugs or alcohol. The comments cited the case of *Johnson* v. *National Transportation Safety Board*, 979 F.2d 618 (7th Cir. 1992), in which a pilot lost his airman certificate after his copilot was determined to have been intoxicated. Revision of this provision was neither explicitly nor implicitly contemplated in the NPRM, and the FAA finds that the issue is outside the scope of this rulemaking.

List of Subjects

14 CFR Part 61

Air safety, Air transportation, Aircraft, Aircraft pilots, Airmen, Alcohol, Alcoholism, Aviation safety, Safety, Transportation.

14 CFR Part 63

Air safety, Air transportation, Aircraft, Airmen, Alcohol, Alcoholism, Aviation safety, Safety, Transportation.

14 CFR Part 65

Air safety, Air traffic, Air transportation, Aircraft, Airmen, Alcohol, Alcoholism, Aviation safety, Safety, Transportation.

14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Alcohol, Alcoholism, Aviation safety, Pilots, Safety, Transportation.

14 CFR Part 135

Air carriers, Air taxi, Air transportation, Aircraft, Airmen, Airplanes, Alcohol, Alcoholism, Aviation safety, Pilots, Safety, Transportation.

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 61, 63, 65, 121, and 135 as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. Section 61.14 is revised to read as follows:

§ 61.14 Refusal to submit to a drug or alcohol test.

(a) This section applies to an employee who performs a function listed in appendix I or appendix J to part 121 of this chapter directly or by contract for a part 121 certificate holder, a part 135 certificate holder, or an operator as defined in § 135.1(c) of this chapter.

(b) Refusal by the holder of a certificate issued under this part to take a drug test required under the provisions of appendix I to part 121 or an alcohol test required under the provisions of appendix J to part 121 is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

PART 63—CERTIFICATION: FLIGHT CREW-MEMBERS OTHER THAN PILOTS

3. The authority citation for part 63 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, 1427, 1429, and 1430 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

4. Section 63.12b is revised to read as follows:

§ 63.12b Refusal to submit to a drug or alcohol test.

(a) This section applies to an employee who performs a function listed in appendix I or appendix J to part 121 of this chapter directly or by contract for a part 121 certificate holder, a part 135 certificate holder, or an operator as defined in § 135.1(c) of this chapter.

(b) Refusal by the holder of a certificate issued under this part to take a drug test required under the provisions of appendix I to part 121 or an alcohol test required under the provisions of appendix J to part 121 is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

5. The authority citation for part 65 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

6. Section 65.23 is revised to read as follows:

§ 65.23 Refusal to submit to a drug or alcohol test.

(a) *General.* This section applies to an employee who performs a function listed in appendix I or appendix J to part 121 of this chapter directly or by contract for a part 121 certificate holder, a part 135 certificate holder, an operator as defined in § 135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or the U.S. military.

(b) Refusal by the holder of a certificate issued under this part to take a drug test required under the provisions of appendix I to part 121 or an alcohol test required under the provisions of appendix J to part 121 is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

7. Section 65.46a is added to read as follows:

§ 65.46a Misuse of alcohol.

(a) This section applies to employees who perform air traffic control duties directly or by contract for an employer that is an air traffic control facility not operated by the FAA or the U.S. military (*covered employees*).

(b) *Alcohol concentration.* No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that an employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

(c) *On-duty use.* No covered employee shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

(d) *Pre-duty use.* No covered employee shall perform air traffic control duties within 8 hours after using alcohol. No employer having actual knowledge that such an employee has used alcohol within 8 hours shall permit the employee to perform or continue to perform air traffic control duties.

(e) *Use following an accident.* No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post-accident test under appendix J to part 121 of this chapter, or the employer has determined that the employee's performance could not have contributed to the accident.

(f) *Refusal to submit to a required alcohol test.* No covered employee shall refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol test required under appendix J to part 121 of this chapter. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

8. Section 65.46b is added to read as follows:

§ 65.46b Testing for alcohol.

(a) Each air traffic control facility not operated by the FAA or the U.S. military (hereinafter *employer*) must establish an alcohol misuse prevention program in accordance with the provisions of appendix J to part 121 of this chapter.

(b) No employer shall use any person who meets the definition of *covered employee* in appendix J to part 121 to perform a safety-sensitive function listed in that appendix unless such person is subject to testing for alcohol misuse in accordance with the provisions of appendix J.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

9. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1485, and 1502 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

10. Section 121.458 is added to subpart O to read as follows:

§ 121.458 Misuse of alcohol.

(a) *General.* This section applies to employees who perform a function listed in appendix J to this part for a certificate holder (*covered employees*). For the purpose of this section, a person who meets the definition of covered employee in appendix J is considered to be performing the function for the certificate holder.

(b) *Alcohol concentration.* No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No certificate holder having actual knowledge that an employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

(c) *On-duty use.* No covered employee shall use alcohol while performing safety-sensitive functions. No certificate holder having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

(d) *Pre-duty use.* (1) No covered employee shall perform flight crewmember or flight attendant duties within 8 hours after using alcohol. No certificate holder having actual knowledge that such an employee has used alcohol within 8 hours shall permit the employee to perform or continue to perform the specified duties.

(2) No covered employee shall perform safety-sensitive duties other than those specified in paragraph (d)(1) of this section within 4 hours after using alcohol. No certificate holder having actual knowledge that such an employee has used alcohol within 4 hours shall permit the employee to perform or continue to perform safety-sensitive functions.

(e) *Use following an accident.* No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post-accident test under appendix J of this part, or the employer has determined that the employee's performance could not have contributed to the accident.

(f) *Refusal to submit to a required alcohol test.* No covered employee shall refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol test required under appendix J to this part. No certificate holder shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

11. Section 121.459 is added to subpart O to read as follows:

§ 121.459 Testing for alcohol.

(a) Each certificate holder must establish an alcohol misuse prevention program in accordance with the provisions of appendix J to this part.

(b) No certificate holder shall use any person who meets the definition of *covered employee* in appendix J to this part to perform a safety-sensitive function listed in that appendix unless such person is subject to testing for alcohol misuse in accordance with the provisions of appendix J.

12. Appendix J to part 121 is added to read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

This appendix contains the standards and components that must be included in an alcohol misuse prevention program required by this chapter.

I. General.

A. *Purpose.* The purpose of this appendix is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform safety-sensitive functions in aviation.

B. *Alcohol testing procedures.* Each employer shall ensure that all alcohol testing conducted pursuant to this appendix complies with the procedures set forth in 49 CFR part 40. The provisions of 49 CFR part 40 that address alcohol testing are made applicable to employers by this appendix.

C. *Definitions.*

As used in this appendix—

Accident means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and the time all such persons have disembarked, and in which any person suffers death or serious injury or in which the aircraft receives substantial damage.

Administrator means the Administrator of the Federal Aviation Administration or his or her designated representative.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this appendix.

Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Confirmation test means a second test, following a screening test with a result 0.02 or greater, that provides quantitative data of alcohol concentration.

Consortium means an entity, including a group or association of employers or contractors, that provides alcohol testing as required by this appendix and that acts on behalf of such employers or contractors, provided that it has submitted an alcohol misuse prevention program certification statement to the FAA in accordance with this appendix.

Contractor company means a company that has employees who perform safety-sensitive functions by contract for an employer.

Covered employee means a person who performs, either directly or by contract, a safety-sensitive function listed in section II of this appendix for an employer (as defined below). For purposes of pre-employment testing only, the term "covered employee" includes a person applying to perform a safety-sensitive function.

DOT agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR parts 65, 121, and 135; 49 CFR parts 199, 219, and 382) in accordance with 49 CFR part 40.

Employer means a part 121 certificate holder; a part 135 certificate holder; an air traffic control facility not operated by the FAA or by or under contract to the U.S. military; and an operator as defined in 14 CFR 135.1(c).

Performing (a safety-sensitive function): an employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Refuse to submit (to an alcohol test) means that a covered employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with this appendix, or engages in conduct that clearly obstructs the testing process.

Safety-sensitive function means a function listed in section II of this appendix.

Screening test means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

Violation rate means the number of covered employees (as reported under section IV of this appendix) found during random tests given under this appendix to have an alcohol concentration of 0.04 or greater plus the number of employees who refused a random test required by this appendix, divided by the total reported number of employees in the industry given random alcohol tests under this appendix plus the total reported number of employees in the industry who refuse a random test required by this appendix.

D. *Preemption of State and local laws.*

1. Except as provided in subparagraph 2 of this paragraph, these regulations preempt any State or local law, rule, regulation, or order to the extent that:

(a) Compliance with both the State or local requirement and this appendix is not possible; or

(b) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this appendix.

2. The alcohol misuse requirements of this title shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

E. *Other requirements imposed by employers.*

Except as expressly provided in these alcohol misuse requirements, nothing in these requirements shall be construed to affect the authority of employers, or the rights of employees, with respect to the use or possession of alcohol, including any authority and rights with respect to alcohol testing and rehabilitation.

F. *Requirement for notice.*

Before performing an alcohol test under this appendix, each employer shall notify a covered employee that the alcohol test is required by this appendix. No employer shall falsely represent that a test is administered under this appendix.

II. Covered Employees

Each employee who performs a function listed in this section directly or by contract for an employer as defined in this appendix must be subject to alcohol testing under an FAA-approved alcohol misuse prevention program implemented in accordance with this appendix. The covered safety-sensitive functions are:

1. Flight crewmember duties.
2. Flight attendant duties.
3. Flight instruction duties.
4. Aircraft dispatcher duties.
5. Aircraft maintenance or preventive maintenance duties.
6. Ground security coordinator duties.
7. Aviation screening duties.
8. Air traffic control duties.

III. Tests Required

A. Pre-employment

1. Prior to the first time a covered employee performs safety-sensitive functions for an employer, the employee shall undergo testing for alcohol. No employer shall allow a covered employee to perform safety-sensitive functions unless the employee has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04. If a pre-employment test result under this paragraph indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of paragraph F of section V of this appendix apply.

2. An employer is not required to administer an alcohol test as required by this paragraph if:

(a) The employee has undergone an alcohol test required by this appendix or the alcohol misuse rule of another DOT agency under 49 CFR part 40 within the previous 6 months, with a result indicating an alcohol concentration less than 0.04; and

(b) The employer ensures that no prior employer of the covered employee of whom the employer has knowledge has records of a violation of § 65.46a, 121.458, or 135.253 of this chapter or the alcohol misuse rule of another DOT agency within the previous 6 months.

B. Post-accident

1. As soon as practicable following an accident, each employer shall test each surviving covered employee for alcohol if that employee's performance of a safety-sensitive function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the employer's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.

2. If a test required by this section is not administered within 2 hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FAA upon request of the Administrator or his or her designee.

3. A covered employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

C. Random testing

1. Except as provided in paragraphs 2–4 of this section, the minimum annual percentage rate for random alcohol testing will be 25 percent of the covered employees.

2. The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the violation rate for the entire industry. All information used for this determination is drawn from alcohol MIS reports required by this appendix. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random alcohol testing of covered employees. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

3. (a) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of this appendix for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(b) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of this appendix for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

4. (a) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of this appendix for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(b) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of this appendix for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

5. The selection of employees for random alcohol testing shall be made by a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

6. The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol testing determined by the Administrator. If the employer conducts random testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees who are subject to random alcohol testing at the same minimum annual percentage rate under [redacted]ndix or any DOT alcohol testing rule.

7. Each employer shall ensure that random alcohol tests conducted under this appendix are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

8. Each employer shall require that each covered employee who is notified of selection for random testing proceeds to the testing site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

9. A covered employee shall only be randomly tested while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

10. If a given covered employee is subject to random alcohol testing under the alcohol

testing rules of more than one DOT agency, the employee shall be subject to random alcohol testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's functions.

11. If an employer is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the employer may—

(a) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(b) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

D. Reasonable Suspicion Testing

1. An employer shall require a covered employee to submit to an alcohol test when the employer has reasonable suspicion to believe that the employee has violated the alcohol misuse prohibitions in § 65.46a, 121.458, or 135.253 of this chapter.

2. The employer's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

3. Alcohol testing is authorized by this section only if the observations required by paragraph 2 are made during, just preceding, or just after the period of the work day that the covered employee is required to be in compliance with this rule. An employee may be directed by the employer to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

4. (a) If a test required by this section is not administered within 2 hours following the determination made under paragraph 2 of this section, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the determination made under paragraph 2 of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(b) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an employer permit the covered employee to perform or continue to perform safety-sensitive functions until:

(1) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or

(2) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination made under paragraph 2 of this section that there is reasonable suspicion that the employee has violated the alcohol misuse provisions in § 65.46a, 121.458, or 135.253 of this chapter.

(c) Except as provided in paragraph 4(b), no employer shall take any action under this appendix against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an employer with authority independent of this appendix from taking any action otherwise consistent with law.

E. Return to Duty Testing

Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited in § 65.46a, 121.458, or 135.253 of this chapter, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

F. Follow-up Testing

Following a determination under section VI, paragraph C.2 of this appendix that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each employer shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of section VI, paragraph C.3(b)(2) of this appendix. A covered employee shall be tested under this paragraph only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

G. Retesting of Covered Employees With an Alcohol Concentration of 0.02 or Greater but Less Than 0.04

Each employer shall retest a covered employee to ensure compliance with the provisions of section V, paragraph F of this appendix, if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

IV. Handling of Test Results, Record Retention, and Confidentiality

A. Retention of Records

1. *General Requirement.* Each employer shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

2. Period of Retention. Each employer shall maintain the records in accordance with the following schedule:

(a) *Five years.* Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater.

documentation of refusals to take required alcohol tests, calibration documentation, employee evaluations and referrals, and copies of any annual reports submitted to the FAA under this appendix shall be maintained for a minimum of 5 years.

(b) *Two years.* Records related to the collection process (except calibration of evidential breath testing devices) and training shall be maintained for a minimum of 2 years.

(c) *One year.* Records of all test results below 0.02 shall be maintained for a minimum of 1 year.

3. *Types of Records.* The following specific records shall be maintained.

(a) Records related to the collection process:

(1) Collection logbooks, if used.

(2) Documents relating to the random selection process.

(3) Calibration documentation for evidential breath testing devices.

(4) Documentation of breath alcohol technician training.

(5) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(6) Documents generated in connection with decisions on post-accident tests.

(7) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(b) Records related to test results:

(1) The employer's copy of the alcohol test form, including the results of the test;

(2) Documents related to the refusal of any covered employee to submit to an alcohol test required by this appendix.

(3) Documents presented by a covered employee to dispute the result of an alcohol test administered under this appendix.

(c) Records related to other violations of §§ 65.46a, 121.248, or 135.253 of this chapter.

(d) Records related to evaluations:

(1) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(2) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(3) Records of notifications to the Federal Air Surgeon of violations of the alcohol misuse prohibitions in this chapter by covered employees who hold medical certificates issued under part 67 of this chapter.

(e) Records related to education and training:

(1) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.

(2) Documentation of compliance with the requirements of section VI, paragraph A of this appendix.

(3) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(4) Certification that any training conducted under this appendix complies with the requirements for such training.

B. Reporting of Results in a Management Information System

1. Annual reports summarizing the results of alcohol misuse prevention programs shall be submitted to the FAA in the form and manner prescribed by the Administrator by March 15 of each year covering the previous calendar year (January 1 through December 31) in accordance with the provisions below.

(a) Each part 121 certificate holder shall submit an annual report each year.

(b) Each entity conducting an alcohol misuse prevention program under the provisions of this appendix, other than a part 121 certificate holder, that has 50 or more covered employees on January 1 of any calendar year shall submit an annual report to the FAA for that calendar year.

(c) The Administrator reserves the right to require employers not otherwise required to submit annual reports to prepare and submit such reports to the FAA. Employers that will be required to submit annual reports under this provision will be notified in writing by the FAA.

2. Each employer that is subject to more than one DOT agency alcohol rule shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered function. Prior to conducting any alcohol test on a covered employee subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

3. Each employer shall ensure the accuracy and timeliness of each report submitted.

4. Each report shall be submitted in the form and manner prescribed by the Administrator.

5. Each report shall be signed by the employer's alcohol misuse prevention program manager or other designated representative.

6. Each report that contains information on an alcohol screening test result of 0.02 or greater or a violation of the alcohol misuse provisions of § 65.46a, 121.458, or 135.253 of this chapter shall include the following informational elements:

(a) Number of covered employees by employee category.

(b) Number of covered employees in each category subject to alcohol testing under the alcohol misuse rule of another DOT agency, identified by each agency.

(c)(1) Number of screening tests by type of test and employee category.

(2) Number of confirmation tests, by type of test and employee category.

(d) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04 by type of test and employee category.

(e) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test and employee category.

(f) Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater.

(g) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in section V, paragraph E, and section VI, paragraph C of this appendix).

(h) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater.

(i) Number of covered employees who were found to have violated other alcohol misuse provisions of §§ 65.46a, 121.458, or 135.253 of this chapter, and the action taken in response to the violation.

(j) Number of covered employees who refused to submit to an alcohol test required under this appendix, the number of such refusals that were for random tests, and the action taken in response to each refusal.

(k) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

7. Each report with no screening test results of 0.02 or greater or violations of the alcohol misuse provisions of §§ 65.46a, 121.458, or 135.253 of this chapter shall include the following informational elements. (This report may only be submitted if the program results meet these criteria.)

(a) Number of covered employees by employee category.

(b) Number of covered employees in each category subject to alcohol testing under the alcohol misuse rule of another DOT agency, identified by each agency.

(c) Number of screening tests by type of test and employee category.

(d) Number of covered employees who engaged in alcohol misuse who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in section V, paragraph E, and section VI, paragraph C of this appendix).

(e) Number of covered employees who refused to submit to an alcohol test required under this appendix, and the action taken in response to each refusal.

(f) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

8. An FAA-approved consortium may prepare reports on behalf of individual aviation employers for purposes of compliance with this reporting requirement. However, the aviation employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

C. Access to Records and Facilities

1. Except as required by law or expressly authorized or required in this appendix, no employer shall release covered employee information that is contained in records required to be maintained under this appendix.

2. A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The employer shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

3. Each employer shall make available copies of all results of alcohol testing conducted under this appendix and any other information pertaining to the employer's alcohol misuse prevention program, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee.

4. When requested by the National Transportation Safety Board as part of an accident investigation, each employer shall disclose information related to the employer's administration of a post-accident alcohol test administered following the accident under investigation.

5. Records shall be made available to a subsequent employer upon receipt of written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's request.

6. An employer may disclose information required to be maintained under this appendix pertaining to a covered employee to the employee or to the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from the results of an alcohol test administered under this appendix or from the employer's determination that the employee engaged in conduct prohibited under §§ 65.46a, 121.458, or 135.253 of this chapter (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

7. An employer shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

8. Each employer shall permit access to all facilities utilized in complying with the requirements of this appendix to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its covered employees.

V. Consequences for Employees Engaging in Alcohol-Related Conduct

A. Removal From Safety-sensitive Function

1. Except as provided in section VI of this appendix, no covered employee shall perform safety-sensitive functions if the employee has engaged in conduct prohibited by §§ 65.46a, 121.458, or 135.253 of this chapter or an alcohol misuse rule of another DOT agency.

2. No employer shall permit any covered employee to perform safety-sensitive functions if the employer has determined that the employee has violated this paragraph.

B. Permanent Disqualification From Service

An employee who violates §§ 65.46a(c), 121.458(c), or 135.253(c) or who violates other alcohol misuse provisions of §§ 65.46a, 121.458, or 135.253 of this chapter and had previously engaged in conduct that violated the provisions of §§ 65.46a, 121.458, or 135.253 of this chapter after March 18, 1994 is permanently precluded from performing for an employer the safety-sensitive duties the employee performed before such violation.

C. Notice to the Federal Air Surgeon

1. An employer who determines that a covered employee who holds an airman medical certificate issued under part 67 of this chapter has violated the provisions of §§ 65.46a, 121.458, or 135.253 of this chapter shall notify the Federal Air Surgeon within 2 working days.

2. Each such employer shall forward to the Federal Air Surgeon a copy of the report of any evaluation performed under the provisions of section VI of this appendix within 2 working days of the employer's receipt of the report.

3. All documents shall be sent to the Federal Air Surgeon, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 400 7th Street SW., Washington, DC 20590.

4. No covered employee who holds a part 67 airman medical certificate shall perform safety-sensitive duties for an employer following a violation until and unless the Federal Air Surgeon has recommended that the employee be permitted to perform such duties.

D. Notice of Refusals

1. Except as provided in subparagraph 2 of this paragraph, each employer shall notify the FAA of any covered employee who holds a certificate issued under part 61, part 63, or part 65 who has refused to submit to an alcohol test required under this appendix. Notifications should be sent to: Federal Aviation Administration, Aviation Standards National Field Office, Airmen Certification Branch, AVN–460, P.O Box 25082, Oklahoma City, OK 73125.

2. An employer is not required to notify the FAA of refusals to submit to pre-employment alcohol tests or refusals to submit to return to duty tests.

E. Required Evaluation and Testing

No covered employee who has engaged in conduct prohibited by §§ 65.46a, 121.458, or 135.253 of this chapter shall perform safety-sensitive functions unless the employee has met the requirements of section VI, paragraph C of this appendix. No employer shall permit a covered employee who has engaged in such conduct to perform safety-sensitive functions unless the employee has met the requirements of section VI, paragraph C of this appendix.

F. Other Alcohol-Related Conduct

1. No covered employee tested under the provisions of section III of this appendix who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, nor shall an employer permit the employee to perform or continue to perform safety-sensitive functions, until:

(a) The employee's alcohol concentration measures less than 0.02; or

(b) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following administration of the test.

2. Except as provided in subparagraph 1 of this paragraph, no employer shall take any action under this rule against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this rule from taking any action otherwise consistent with law.

VI. Alcohol Misuse Information, Training, and Referral

A. Employer Obligation to Promulgate a Policy on the Misuse of Alcohol

1. *General requirements.* Each employer shall provide educational materials that explain these alcohol misuse requirements and the employer's policies and procedures with respect to meeting those requirements.

(a) The employer shall ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the employer's FAA-mandated alcohol misuse prevention program and to each person subsequently hired for or transferred to a covered position.

(b) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

2. *Required content.* The materials to be made available to employees shall include detailed discussion of at least the following:

(a) The identity of the person designated by the employer to answer employee questions about the materials.

(b) The categories of employees who are subject to the provisions of these alcohol misuse requirements.

(c) Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with these alcohol misuse requirements.

(d) Specific information concerning employee conduct that is prohibited by this chapter.

(e) The circumstances under which a covered employee will be tested for alcohol under this appendix.

(f) The procedures that will be used to test for the presence of alcohol, protect the employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(g) The requirement that a covered employee submit to alcohol tests administered in accordance with this appendix.

(h) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(i) The consequences for covered employees found to have violated the prohibitions in this chapter, including the requirement that the employee be removed immediately from performing safety-sensitive functions, and the procedures under section VI of this appendix.

(j) The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(k) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem; and available methods of evaluating and resolving problems associated with the misuse of alcohol; and intervening when an alcohol problem is suspected, including confrontation, referral to any available employee assistance program, and/or referral to management.

(l) *Optional provisions.* The materials supplied to covered employees may also include information on additional employer policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the employer's authority independent of this appendix. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

B. Training for Supervisors

Each employer shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under section II of this appendix receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

C. Referral, Evaluation, and Treatment

1. Each covered employee who has engaged in conduct prohibited by §§ 65.46a, 121.458, or 135.253 of this chapter shall be advised by the employer of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

2. Each covered employee who engages in conduct prohibited under §§ 65.46a, 121.458, or 135.253 of this chapter shall be evaluated by a substance abuse professional who must determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

3. (a) Before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by §§ 65.46a, 121.458, or 135.253 of this chapter, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(b) In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse—

(i) Shall be evaluated by a substance abuse professional to determine whether the employee has properly followed any rehabilitation program prescribed under subparagraph 2 of this paragraph, and,

(ii) Shall be subject to unannounced follow-up alcohol tests administered by the employer following the employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. The employer may direct the employee to undergo testing for drugs (both return to duty and follow-up), in addition to alcohol testing, if the substance abuse professional determines that drug testing is necessary for the particular employee. Any such drug testing shall be conducted in accordance with the requirements of 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

4. Evaluation and rehabilitation may be provided by the employer, by a substance abuse professional under contract with the employer, or by a substance abuse professional not affiliated with the employer. The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/employee agreements and employer policies.

5. Each employer shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with alcohol misuse does not refer the employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through—

(a) A public agency, such as a State, county, or municipality;

(b) The employer or a person under contract to provide treatment for alcohol problems on behalf of the employer;

(c) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(d) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

6. The requirements of this paragraph with respect to referral, evaluation, and rehabilitation do not apply to applicants who refuse to submit to pre-employment testing or have a pre-employment test with a result indicating an alcohol concentration of 0.04 or greater.

VII. Employer's Alcohol Misuse Prevention Program

A. Schedule for Submission of Certification Statements and Implementation

1. Each employer shall submit an alcohol misuse prevention program (AMPP) certification statement as prescribed in paragraph B of section VII of this appendix, in duplicate, to the FAA, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 400 7th Street SW., Washington, DC 20590, in accordance with the schedule below.

(a) Each employer that holds a part 121 certificate, each employer that holds a part 135 certificate and directly employs more than 50 covered employees, and each air traffic control facility affected by this rule shall submit a certification statement to the FAA by July 1, 1994. Each employer must implement an AMPP meeting the requirements of this appendix on January 1, 1995. Contractor employees to these employers must be subject to an AMPP meeting the requirements of this appendix by July 1, 1995.

(b) Each employer that holds a part 135 certificate and directly employs from 11 to 50 covered employees shall submit a certification statement to the FAA by January 1, 1995. Each employer must implement an AMPP meeting the requirements of this appendix on July 1, 1995. Contractor employees to these employers must be subject to an AMPP meeting the requirements of this appendix by January 1, 1996.

(c) Each employer that holds a part 135 certificate and directly employs ten or fewer covered employees, and each operator as defined in 14 CFR 135.1(c) shall submit a certification statement to the FAA by July 1, 1995. Each employer must implement an AMPP meeting the requirements of this appendix on January 1, 1996. Contractor employees to these employers must be subject to an AMPP meeting the requirements of this appendix by July 1, 1996.

2. A company providing covered employees by contract to employers may be authorized by the FAA to establish an AMPP under the auspices of this appendix by submitting a certification statement meeting the requirements of paragraph B of section VII of this appendix directly to the FAA. Each contractor company that establishes an AMPP shall implement its AMPP in accordance with the provisions of this appendix.

(a) The FAA may revoke its authorization in the case of any contractor company that fails to properly implement its AMPP.

(b) No employer shall use a contractor company's employee who is not subject to the employer's AMPP unless the employer has first determined that the employee is subject to another FAA-mandated AMPP.

3. A consortium may be authorized to establish a consortium AMPP under the auspices of this appendix by submitting a certification statement meeting the requirements of paragraph B of section VII of this appendix directly to the FAA. Each consortium that so certifies shall implement the AMPP on behalf of the consortium members in accordance with the provisions of this appendix.

(a) The FAA may revoke its authorization in the case of any consortium that fails to properly implement the AMPP.

(b) Each employer that participates in an FAA-approved consortium remains individually responsible for ensuring compliance with the provisions of these alcohol misuse requirements and must maintain all records required under section IV of this appendix.

(c) Each consortium shall notify the FAA of any membership termination within 10 days of such termination.

4. Any person who applies for a certificate under the provisions of parts 121 or 135 of this chapter after the effective date of the final rule shall submit an alcohol misuse prevention program (AMPP) certification statement to the FAA prior to beginning operations pursuant to the certificate. The AMPP shall be implemented concurrently with beginning such operations or on the date specified in paragraph A.1. of this section, whichever is later. Contractor employees to a new certificate holder must be subject to an FAA-mandated AMPP within 180 days of the implementation of the employer's AMPP.

5. Any person who intends to begin air traffic control operations as an employer as defined in 14 CFR 65.46(a)(2) (air traffic control facilities not operated by the FAA or by or under contract to the U.S. military) after March 18, 1994 shall, not later than 60 days prior to the proposed initiation of such operations, submit an alcohol misuse prevention program certification statement to the FAA. The AMPP shall be implemented concurrently with the inception of operations or on the date specified in paragraph A.1 of this section, whichever is later. Contractor employees to a new air traffic control facility must be subject to an FAA-approved program within 180 days of the implementation of the facility's program.

6. Any person who intends to begin sightseeing operations as an operator under 14 CFR 135.1(c) after March 18, 1994 shall, not later than 60 days prior to the proposed initiation of such operations, submit an alcohol misuse prevention program (AMPP) certification statement to the FAA. The AMPP shall be implemented concurrently with the inception of operations or on the date specified in paragraph A.1 of this section, whichever is later. Contractor employees to a new operator must be subject to an FAA-mandated AMPP within 180 days of the implementation of the employer's AMPP.

7. The duplicate certification statement shall be annotated indicating receipt by the FAA and returned to the employer, contractor company, or consortium.

8. Each consortium that submits an AMPP certification statement to the FAA must receive actual notice of the FAA's receipt of the statement prior to performing services as an FAA-approved consortium under this appendix on behalf of employers or contractor companies.

9. Each employer, and each contractor company that submits a certification statement directly to the FAA, shall notify the FAA of any proposed change in status (*e.g.*, join a consortium or another carrier's program, change consortium, etc.) prior to the effective date of such change. The employer or contractor company must ensure that it is continuously covered by an FAA-mandated alcohol misuse prevention program.

B. Required Content of AMPP Certification Statements

1. Each AMPP certification statement submitted by an employer or a contractor company shall provide the following information:

(a) The name, address, and telephone number of the employer/contractor company and for the employer/contractor company AMPP manager;

(b) FAA operating certificate number (if applicable);

(c) The date on which the employer or contractor company will implement its AMPP;

(d) If the submitter is a consortium member, the identity of the consortium; and

(e) A statement signed by an authorized representative of the employer or contractor company certifying an understanding of and agreement to comply with the provisions of the FAA's alcohol misuse prevention regulations.

2. Each consortium certification statement shall provide the following information.

(a) The name, address, and telephone number of the consortium's AMPP manager;

(b) A list of the specific services the consortium will be providing in implementation of FAA-mandated AMPPs (e.g., random testing, SAP).

(c) A statement signed by an authorized representative of the consortium certifying an understanding of and agreement to comply with the provisions of the FAA's alcohol misuse prevention regulations.

VIII. Employees Located Outside the U.S.

A. No covered employee shall be tested for alcohol misuse while located outside the territory of the United States.

1. Each covered employee who is assigned to perform safety-sensitive functions solely outside the territory of the United States shall be removed from the random testing pool upon the inception of such assignment.

2. Each covered employee who is removed from the random testing pool under this paragraph shall be returned to the random testing pool when the employee resumes the performance of safety-sensitive functions wholly or partially within the territory of the United States.

B. The provisions of this appendix shall not apply to any person who performs a safety-sensitive function by contract for an employer outside the territory of the United States.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

13. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421–1431, and 1502 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

14. In § 135.1 paragraphs (c) and (d) are revised to read as follows:

§ 135.1 Applicability.

* * * * *

(c) For the purpose of §§ 135.249, 135.251, 135.253, 135.255, and 135.353, *operator* means any person or entity conducting non-stop sightseeing flights for compensation or hire in an airplane or rotorcraft that begin and end at the same airport and are conducted within a 25 statute mile radius of that airport.

(d) Notwithstanding the provisions of this part and appendices I and J to part 121 of this chapter, an operator who does not hold a part 121 or part 135 certificate is permitted to use a person who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to FAA-approved anti-drug and alcohol misuse prevention programs to perform—

(1) Aircraft maintenance or preventive maintenance on the operator's aircraft if the operator would otherwise be required to transport the aircraft more than 50 nautical miles further than the repair point closest to operator's principal place of operation to obtain these services; or

(2) Emergency repairs on the operator's aircraft if the aircraft cannot be safely operated to a location where an employee subject to FAA-approved programs can perform the repairs.

15. Section 135.253 is added to subpart E to read as follows:

§ 135.253 Misuse of alcohol.

(a) This section applies to employees who perform a function listed in appendix J to part 121 of this chapter for a certificate holder or operator (*covered employees*). For the purpose of this section, a person who meets the definition of covered employee in appendix J is considered to be performing the function for the certificate holder or operator.

(b) *Alcohol concentration.* No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No certificate holder or operator having actual knowledge that an employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

(c) *On-duty use.* No covered employee shall use alcohol while performing safety-sensitive functions. No certificate holder or operator having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

(d) *Pre-duty use.* (1) No covered employee shall perform flight crewmember or flight attendant duties within 8 hours after using alcohol. No certificate holder or operator having actual knowledge that such an employee has used alcohol within 8 hours shall permit the employee to perform or continue to perform the specified duties.

(2) No covered employee shall perform safety-sensitive duties other than those specified in paragraph (d)(1) of this section within 4 hours after using alcohol. No certificate holder or operator having actual knowledge that such an employee has used alcohol within 4 hours shall permit the employee to perform or continue to perform safety-sensitive functions.

(e) *Use following an accident.* No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post-accident test under appendix J of part 121 of this chapter, or the employer has determined that the employee's performance could not have contributed to the accident.

(f) *Refusal to submit to a required alcohol test.* No covered employee shall refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol test required under appendix J to part 121 of this chapter. No operator or certificate holder shall permit a covered employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

16. Section 135.255 is added to subpart E to read as follows:

§ 135.255 Testing for alcohol.

(a) Each certificate holder and operator must establish an alcohol misuse prevention program in accordance with the provisions of appendix J to part 121 of this chapter.

(b) No certificate holder or operator shall use any person who meets the definition of "covered employee" in appendix J to part 121 to perform a safety-sensitive function listed in that appendix unless such person is subject to testing for alcohol misuse in accordance with the provisions of appendix J.

Issued in Washington, DC, on January 25, 1994.

Federico Pena,

Secretary of Transportation.

David R. Hinson,

Administrator.

Note: These exhibits will not appear in the Code of Federal Regulations.

Exhibits—FAA Alcohol Testing Management Information System Data Collection Forms

BILLING CODE 4910-13-P

ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Aviation Administration (FAA) and the U.S. Department of Transportation (DOT) **Alcohol Testing MIS Data Collection Form.** These instructions outline and explain the information requested and indicate the probable sources for this information. A sample applicant testing results table with a narrative explanation is provided on pages iii-iv as an example to facilitate the process of completing the form correctly.

This reporting form includes five sections. These sections address the data elements required in the FAA and the DOT alcohol testing regulations. The five sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. AVIATION EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i-ii	1
C. ALCOHOL TESTING INFORMATION	ii-v	2-4
D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION	v	4-5
E. ALCOHOL TRAINING/EDUCATION	v	5

Page 1 **AVIATION EMPLOYER INFORMATION** (Section A) requires the company name for which the report is prepared and a current address. Below the company names, list any other names the company uses ("Doing Business As") and the company's FAA Plan Identification Number. Provide the FAA Operating Certificate Number held by the company (if any). Below the company name, list the name, address, and telephone number for any other aviation companies covered under the report, attaching additional sheets, if necessary. Finally, a signature and title with a date, are required certifying the correctness and completeness of the information provided on the form, and a current telephone number (including the area code) of the individual who prepared the report.

Page 1 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under the FAA/DOT regulations. For the FAA, the covered employee categories are: "Flight Crewmember" which includes pilots, flight engineers, and navigators; "Flight Attendant"; "Flight Instructor"; "Aircraft Dispatcher"; "Maintenance", which includes employees who perform preventive maintenance; "Ground Security Coordinator"; "Aviation Screener"; and "Air Traffic Controller." The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the

reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if your company employs FAA covered personnel who also perform non-aviation duties covered by the alcohol rules of one or more DOT operating administration(s). **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

Page 2 **ALCOHOL TESTING INFORMATION** (Section C) requires information for alcohol testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the applicant was applying. The other categories are for employee testing and require information for company employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. If the value for an item is zero (0), place a zero (0) on the form. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iv.

Four types of information are necessary to complete this table. The first column with the heading "**NUMBER OF SCREENING TESTS,**" requires a count of all screening alcohol tests performed for each employee category. It should not include refusals to test.

The second column with the heading "**NUMBER OF CONFIRMATION TESTS,**" requires a count of all confirmation alcohol tests performed for each employee category.

The third column with the heading "**NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04,**" requires a count for each employee category of test results equal to or greater than 0.02, but less than 0.04.

The fourth column with the heading "**NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04,**" requires a count for each employee category of test results equal to or greater than 0.04. **Note: An employee may not return to a safety sensitive position if a result is equal to or greater than 0.02. Therefore, if the number of results equal to or greater than 0.04 is unknown, you may report all return to duty results in the third column of the table.**

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page iv with example numbers.

Page 2 Below the part of the table containing pre-employment testing information is a box with the heading **"Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater"**. Enter the appropriate number in the box provided.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **ALCOHOL TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Flight Crewmember" and "~~Flight Attendant~~" to illustrate the procedures for completing the form.

A Screening tests were performed on 157 job applicants for flight crewmember positions during the reporting year. This information is entered in the first column of the table in the row marked "Flight Crewmember".

B Confirmation tests were necessary for 6 of the 157 applicants for flight crewmember positions. Enter this information in the second column of the table in the row marked "Flight Crewmember". The confirmation test results for these 6 applicants were the following:

Applicant	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

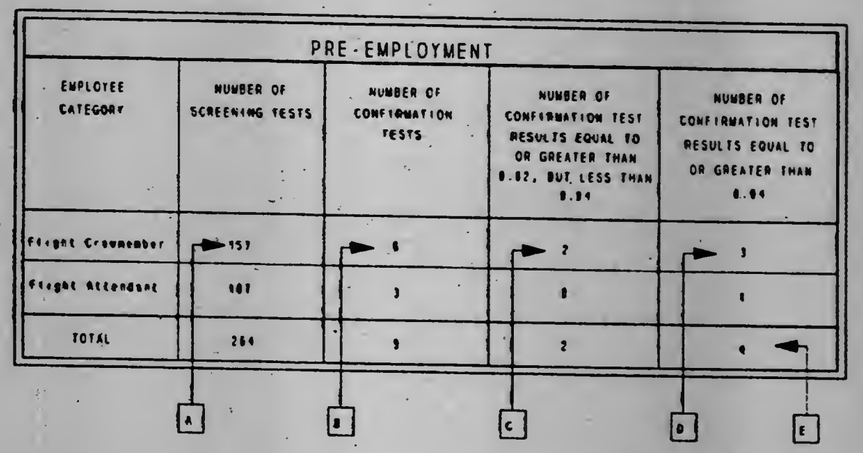
C The confirmation test results for 2 of the applicants for flight crewmember positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the third column of the table in the row marked "Flight Crewmember".

D The confirmation test results for 3 of the applicants for flight crewmember positions were equal to or greater than 0.04. Enter this information in the fourth column of the table in the row marked "Flight Crewmember".

E The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 applicants for flight crewmember positions and 107 applicants for flight attendant positions were subjected to screening tests. The total for that column would be 264 (i.e., 157 + 107). The same procedure should be used for each column (i.e., add all the numbers in that column and place the answer in the last row).

Please note that the sample data collection form also has information for flight attendants workers on line two. The same procedures outlined for flight crewmember should be followed

for entering the data on flight attendants. With applicants for flight attendant positions, 107 screening tests were conducted resulting in 3 confirmation tests. No results were equal to or greater than 0.02, but less than 0.04; the confirmation test result for 1 of the flight attendant applicants was equal to or greater than 0.04. This information is entered in the row marked "Flight Attendant".



Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATION TESTS". These numbers may differ since some confirmation test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 3 Following the table that summarizes **ALCOHOL TESTING INFORMATION**, your must provide the **"Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FAA regulations)"**. This information should be available from the personnel office and/or drug or alcohol program manager.

Page 4 Next you must provide information on **ACTIONS TAKEN ON VIOLATIONS OF THIS REGULATION**. Indicate the number of employees subjected to the following actions:

- **No longer employed with company** - include covered employees who resigned or were terminated as the result of alcohol misuse.

- **Reassigned to non-covered functions** - include covered employees who were reassigned within the company to a non-covered position as the result of alcohol misuse.

- **Entered rehabilitation, if applicable, and/or returned to covered functions** - include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.

- **Other** - include covered employees who did not fall under one of the previous options and specify the action taken.

Indicate the sum of the actions taken on the line marked TOTAL.

Page 4 **OTHER ALCOHOL TESTING/PROGRAM INFORMATION** (Section D) requires that you provide information on employees who tested positive for drugs and alcohol (at the same time), information on violations of other alcohol provisions (not necessarily resulting in positive alcohol tests), and information on employees who refused to submit to an alcohol test.

Page 4 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater**, requires that a count of all such employees be entered in the indicated box.

Page 4 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION**, requires supplying the number of covered employees who used alcohol prior to performing a safety-sensitive function, while performing a safety-sensitive function, and before taking a required post-accident alcohol test. Other violations not delineated in this table may also be provided.

Page 5 **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a random or other (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FAA regulation and the actions taken following the refusal.

Page 5 **ALCOHOL TRAINING/EDUCATION** (Section E) requires information on the number of supervisory personnel who have received the required alcohol training during the current reporting period.

FAA ALCOHOL TESTING MIS DATA COLLECTION FORM OMB No. 2120-0535

YEAR COVERED BY THIS REPORT: 19__

A. AVIATION EMPLOYER INFORMATION

Company Name	FAA Plan No. FAA Certificate No.	
Street Address/P.O. Box		
City	State	Zip Code

Other Part 121 and/or Part 135 certificate holders included in this report. (Attach additional sheets if necessary.)

Company Name	Telephone No. ( ) -	
Street Address/P.O. Box		
City	State	Zip Code

I, the undersigned, certify that the information provided on this Federal Aviation Administration Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

Signature _____ Date _____

Title _____ Telephone Number _____

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Aviation Administration estimates that the average burden for this report form is 2.5 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: FAA Drug Abatement Division (AAM-800); U.S. Department of Transportation; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2120-0535); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF FAA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FHWA	FRA	FTA	RSPA	USCG
Flight Crewmember						
Flight Attendant						
Flight Instructor						
Aircraft Dispatcher						
Maintenance						
Ground Security Coordinator						
Aviation Screener						
Air Traffic Controller						
TOTAL						

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the current reporting period only (for example, January 1, 1994 - December 31, 1994).
2. This report is only for testing REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION (FAA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):
   - Results should be reported only for employees in COVERED POSITIONS as defined by the FAA alcohol testing regulations.
   - The information provided should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.
3. Information on refusals for testing should only be reported in Section D ["OTHER ALCOHOL TESTING/PROGRAM INFORMATION"]. Do not include refusals for testing in other sections of this report.
4. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

C. ALCOHOL TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
PRE-EMPLOYMENT				
Flight Crewmember				
Flight Attendant				
Flight Instructor				
Aircraft Dispatcher				
Maintenance				
Ground Security Coordinator				
Aviation Screener				
Air Traffic Controller				
Total				
RANDOM				
Flight Crewmember				
Flight Attendant				
Flight Instructor				
Aircraft Dispatcher				
Maintenance				
Ground Security Coordinator				
Aviation Screener				
Air Traffic Controller				
Total				

Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater:	

C. ALCOHOL TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
POST-ACCIDENT				
Flight Crewmember				
Flight Attendant				
Flight Instructor				
Aircraft Dispatcher				
Maintenance				
Ground Security Coordinator				
Aviation Screener				
Air Traffic Controller				
Total				
REASONABLE SUSPICION				
Flight Crewmember				
Flight Attendant				
Flight Instructor				
Aircraft Dispatcher				
Maintenance				
Ground Security Coordinator				
Aviation Screener				
Air Traffic Controller				
Total				
RETURN TO DUTY				
Flight Crewmember				
Flight Attendant				
Flight Instructor				
Aircraft Dispatcher				
Maintenance				
Ground Security Coordinator				
Aviation Screener				
Air Traffic Controller				
Total				

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FAA regulations):	

C. ALCOHOL TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
FOLLOW-UP				
Flight Crewmember				
Flight Attendant				
Flight Instructor				
Aircraft Dispatcher				
Maintenance				
Ground Security Coordinator				
Aviation Screener				
Air Traffic Controller				
Total				

ACTIONS TAKEN ON VIOLATIONS OF THIS REGULATION	Number
No longer employed with company:	
Reassigned to non-covered functions:	
Entered rehabilitation, if applicable, and/or returned to covered functions:	
Other (specify):	
TOTAL	

D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:	

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION	
NUMBER OF COVERED EMPLOYEES	VIOLATION
	Covered employee used alcohol while performing safety-sensitive function.
	Covered employee used alcohol within 4/8 hours of performing safety-sensitive function.
	Covered employee used alcohol before taking a required post-accident alcohol test.

D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION (cont.)

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	NUMBER OF REFUSALS	
	RANDOM TESTS	OTHER TESTS
Number of covered employees who refused to submit to an alcohol test required under the FAA rule:		
ACTION TAKEN	NUMBER	
No longer employed with company:		
Reassigned to non-covered functions:		
Entered rehabilitation, if applicable, and/or returned to covered functions:		
Other (specify):		

E. ALCOHOL TRAINING/EDUCATION

ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD	Number
Number of supervisors who have received Initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FAA alcohol testing regulations:	

ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS)
"EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Aviation Administration (FAA) and the U.S. Department of Transportation (DOT) **Alcohol Testing MIS "EZ" Data Collection Form.** This form should only be used if there are **no screening tests with results equal to or greater than 0.02 and no alcohol misuse** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes three sections. These sections address the data elements required in the FAA/DOT alcohol testing regulations.

SECTION A - AVIATION EMPLOYER INFORMATION requires the company name for which the report is prepared, a current address, the company's FAA Plan Identification Number, and the FAA Operating Certificate Number held by the company (if any). Below the company name, list the name, address, and telephone number for any other aviation companies covered under the report, attaching additional sheets, if necessary. Finally, a signature and title with a date are required certifying the correctness and completeness of the information provided on the form, and a current telephone number (including the area code) of the individual who prepared the report.

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the FAA/DOT regulations. For the FAA, the covered employee categories are: "Flight Crewmember", which includes pilots, flight engineers, and navigators; "Flight Attendant"; "Flight Instructor"; "Aircraft Dispatcher"; "Maintenance", which includes employees who perform preventive maintenance; "Ground Security Coordinator"; "Aviation Screener"; and "Air Traffic Controller." The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if your company employs FAA covered personnel who also perform non-aviation duties covered by the alcohol rules of one or more other DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

SECTION C - ALCOHOL TESTING INFORMATION requires information for alcohol testing. The first table requests information on the **NUMBER OF ALCOHOL SCREENING TESTS CONDUCTED** by employee category and type of test. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the applicant was applying. The other categories are for employee testing and require information for company employees in **covered positions** only. Enter the number of alcohol screening tests conducted by employee category for each category of testing. The testing categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. If no testing occurred zeroes should be entered. These numbers **do not** include refusals for testing. Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of the **number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FAA regulations).** This information should be available from the personnel office and/or alcohol program manager.

SECTION D - OTHER ALCOHOL TESTING/PROGRAM INFORMATION requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random or other** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FAA regulation and the action taken following the refusal. Indicate the number of employees subjected to the following actions:

- **No longer employed with company** - include covered employees who resigned or were terminated as the result of a refusal to submit to an alcohol test.
- **Reassigned to non-covered functions** - include covered employees who were reassigned within the company to a non-covered position as the result of a refusal to submit to an alcohol test.
- **Entered rehabilitation, if applicable, and/or returned to covered functions** -include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.
- **Other** - include covered employees who did not fall under one of the previous options and specify the actions taken.

SECTION E - ALCOHOL TRAINING/EDUCATION requires information on the number of supervisory personnel who have received the required alcohol training during the current reporting period.

FAA ALCOHOL TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2120-0535
(No Alcohol Misuse)

YEAR COVERED BY THIS REPORT: 19__

A. AVIATION EMPLOYER INFORMATION

Company Name	FAA Plan No. FAA Certificate No.	
Street Address/P.O. Box		
City	State	Zip Code

Other Part 121 and/or Part 135 certificate holders included in this report. (Attach additional sheets if necessary.)

Company Name	Telephone No. ( )	
Street Address/P.O. Box		
City	State	Zip Code

I, the undersigned, certify that the information provided on this Federal Aviation Administration Alcohol Testing Management Information System "EZ" Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

Signature _____ Date _____

Title _____ Telephone Number _____

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Aviation Administration estimates that the average burden for this report form is 1 hour. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: FAA Drug Abatement Division (AAM-800); U.S. Department of Transportation; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2120-0535); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF FAA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FHWA	FRA	FTA	RSPA	USCG
Flight Crewmember						
Flight Attendant						
Flight Instructor						
Aircraft Dispatcher						
Maintenance						
Ground Security Coordinator						
Aviation Screener						
Air Traffic Controller						
TOTAL						

C. ALCOHOL TESTING INFORMATION

NUMBER OF SCREENING TESTS CONDUCTED						
EMPLOYEE CATEGORY	PRE-EMPLOYMENT	RANDOM	POST-ACCIDENT	REASONABLE SUSPICION	RETURN TO DUTY	FOLLOW-UP
Flight Crewmember						
Flight Attendant						
Flight Instructor						
Aircraft Dispatcher						
Maintenance						
Ground Security Coordinator						
Aviation Screener						
Air Traffic Controller						
Total						

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FAA regulations):	

D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	NUMBER OF REFUSALS	
	RANDOM TESTS	OTHER TESTS
Number of covered employees who refused to submit to an alcohol test required under the FAA rule:		
ACTION TAKEN	NUMBER	
No longer employed with company:		
Reassigned to non-covered functions:		
Entered rehabilitation, if applicable, and/or returned to covered functions:		
Other (specify):		

E. ALCOHOL TRAINING/EDUCATION

ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD	Number
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FAA alcohol testing regulations:	

[FR Doc. 94–2032 Filed 2–3–94; 1:00 pm]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 65, 121, 135

[Docket No. 25148; Notice No. 94-3]

RIN 2120-AC33

Antidrug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: On November 14, 1988, the FAA issued a final rule requiring specified aviation employers and operators to initiate antidrug programs, including drug testing, for personnel performing specified safety-related functions. Subsequently, on October 28, 1991, the Omnibus Transportation Employee Testing Act of 1991 (the Act) was enacted. Among other things, the Act provided a statutory mandate for drug testing in the aviation industry and required specific consequences for positive drug tests. This NPRM proposes amendments to certain provisions of the FAA's antidrug rule to comply with the Act. The NPRM also proposes certain other changes to the antidrug rule that would clarify employer and medical review officer (MRO) responsibilities or address other issues that have been identified since the promulgation of the rule. These amending changes would facilitate implementation and enforcement of the final rule.

DATES: Comments must be received on or before April 18, 1994.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 25148, 800 Independence Avenue, SW., Washington, DC 20591. Comments that are delivered to this address must be marked "Docket No. 25148." Comments may be examined in room 915G between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Julie B. Murdoch, Office of Aviation Medicine, Drug Abatement Division (AAM-800), Federal Aviation Administration, 400 7th Street, SW., Washington, DC 20590; telephone (202) 366-6710.

SUPPLEMENTARY INFORMATION:

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the notice number of this NPRM.

Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On November 21, 1988, the FAA issued its final antidrug rule requiring certain aviation employers and operators to develop and to implement an antidrug program for employees performing specified aviation activities (53 FR 47024). Initially, the rule was issued under the general authority of the FAA Administrator to promulgate regulations relating to aviation safety; however, the Omnibus Transportation Employee Testing Act of 1991 (the Act) amended the Federal Aviation Act of 1958 (the FAAct) to provide a statutory mandate for drug testing of air carrier employees. The Act also prescribed certain consequences for prohibited drug use and mandated the use of split specimen testing. This notice proposes changes to the antidrug rule that would conform the rule to the requirements of the Act.

In addition to the conforming changes required by the Act, this notice also proposes certain other changes to the antidrug rule. Each of these changes would clarify the requirements of the rule, or otherwise address concerns that have been raised since the rule was published. Although the FAA has issued a number of amendments to the rule, most of these amendments simply deferred the various compliance deadlines or effective dates contained in the rule. This notice includes substantive changes to address provisions of the rule that are in some cases unclear, do not comport with the changes in the final DOT drug testing procedures issued on December 1, 1989, or do not adequately address required steps in the implementation process.

Many of the issues underlying the proposed changes were raised by employers implementing the rule, by physicians performing MRO functions, and by other federal agencies. After studying these issues, the FAA determined that the needs of the industry would best be served by the amendments proposed in this rulemaking action. The amendments would also meet the needs of public safety, and facilitate the compliance and enforcement mandate of the FAA.

Discussion of the Proposed Amendments

This rulemaking action encompasses a variety of proposed changes to the FAA's antidrug regulations, most of which would affect the operational provisions of the antidrug rule found in 14 CFR part 121, appendix I. These changes range from minor technical changes to a complete revision of the MRO provisions. Each of the proposed changes is discussed in detail below.

Amendments Required by the Act

Prohibition on Service; Rehabilitation and Evaluation

Among the amendments to the FAAct in the Omnibus Transportation Employee Testing Act is a section entitled "Prohibition on service" (found at new FAAct section 614(b)), which provides that no person who is determined to have engaged in illegal drug use may perform a safety-sensitive function after such determination. The FAA's regulations that address use of prohibited drugs (see, e.g., 14 CFR 65.46(c), (d)) already include such a prohibition on continued duty; however, these sections would be revised slightly to reflect the fact that entities other than certificate holders (i.e., contractor companies) can require drug tests under the antidrug rule if they have an FAA-approved antidrug program.

Section 614(b)(2) of the FAAct, "Effect of Rehabilitation," states that no covered employee may perform a safety-sensitive function after engaging in prohibited conduct unless he or she has completed a rehabilitation program under the provisions of section 614(c) of the FAAct. Section 614(c)(1) requires the Administrator to prescribe regulations that at a minimum provide for the identification and opportunity for treatment of employees in need of assistance in resolving problems with the use of controlled substances. Further, the section states that the Administrator shall determine the circumstances under which such employees shall be required to participate in such a program. This language recognizes that rehabilitation may not be appropriate or warranted in all cases of prohibited conduct.

The legislative requirement of section 614(b)(2) is implemented in the proposed revisions to paragraph A, section VII, of appendix I. The legislative history of the Act reflected the fact that the FAA did not prescribe regulations with respect to specific types of rehabilitation in its antidrug rule. However, because the Act requires the FAA to prescribe regulations under which persons in need of assistance would be identified, this NPRM proposes to modify the MRO duties to include such identification.

As proposed, each covered employee who had a positive drug test or who refused to submit to testing would be advised of all relevant resources available to the employee. Further, each such employee would be evaluated by the MRO or, on referral by the MRO, by a substance abuse professional (SAP) who would determine whether and what assistance the employee needed in resolving problems associated with prohibited drug use. The SAP would have to be a qualified individual as defined in the NPRM with knowledge of and clinical experience in the diagnosis and treatment of drug use and abuse. This NPRM would not propose to change any requirements concerning whether an employer would provide or pay for any required treatment, would continue to employ, or would hold a position open for the employee upon completion of the treatment. As is currently the case under the antidrug rule, these issues would be a matter for employer/employee negotiation.

New section 614(b)(3) of the FAAct, "Performance of prior duties prohibited," provides sanctions for employees who engage in prohibited use of drugs. It provides that, under certain circumstances discussed below, an individual shall not be permitted to perform the duties related to air transportation that he or she performed prior to the date he or she engaged in the prohibited drug use. The legislation does not require that the individual's employment be terminated, nor that he or she be reassigned to perform non-safety-sensitive functions. However, it is an absolute bar to the performance of the same duties the employee performed before the violation.

This bar applies under four circumstances. The first occurs if the individual illegally uses drugs "while on duty." The remaining prohibitions all relate to rehabilitation: the absolute bar to returning to duty applies if an employee uses drugs after the date of enactment, and

1. Had previously used drugs and undergone a program of rehabilitation under the regulations promulgated pursuant to the Act;
2. Refused to undertake any required rehabilitation; or
3. Failed to complete any required rehabilitation.

The proposed rule would implement the prohibitions in two ways. First, the applicable regulatory sections (14 CFR 65.46, 121.455, and 135.249) would be revised to prohibit employers from using any person to perform the function specified in section III of appendix I that the individual was performing if that person had two verified positive drug tests or if the individual used a prohibited drug while performing such a specified function. In order to effectively administer this provision, the FAA is proposing that this prohibition would be effective for tests occurring after the effective date of the final rule proposed in this notice.

This bar would be limited to the narrow prohibition in the Act and would not affect the performance of other duties. While the FAA recognizes that a narrow bar could lead to anomalous results (for example, a person might be barred from performing screening duties but could serve as a pilot), a bar that is limited to the statutory requirements is more likely to be consistent with the requirements of the Americans with Disabilities Act or other legal constraints. The FAA expects that employers would exercise responsible judgment in determining whether employees not expressly barred from service should be permitted to perform other safety-sensitive duties.

The bar on two-time violators would apply both to persons who had gone through rehabilitation and to those who, after evaluation, were determined not to need treatment. Otherwise, an employee who was found to need treatment and had an instance of recidivism would be sanctioned, but an employee who did not need assistance but simply chose to use drugs again would not be sanctioned. This proposal is made under the FAA's general statutory authority to prescribe regulations affecting aviation safety.

Second, the bar following a refusal to undertake or failure to complete rehabilitation would be implemented by retaining the current requirement that prior to returning to duty performing safety-sensitive functions following a failure of an FAA-mandated drug test or refusal to submit to such a drug test, the employee would have to be evaluated by the MRO on the specific issue of compliance with any previously-established treatment program. This NPRM also retains the provisions regarding MRO recommendations for return to duty, with the modification that, based on the requirements of the Act, the MRO cannot recommend return to duty if an individual has failed to comply with a specified rehabilitation program. The FAA has chosen, however, not to propose a definite time period during which the employee must agree to undertake or complete the prescribed rehabilitation. This allows for the denial phase that most people go through when first confronted with evidence of a drug problem.

Split Specimen Testing

Split specimen testing is a procedure under which an original urine specimen is divided into two containers, each of which is sealed, labeled, and maintained separately. If the primary specimen tests positive, the split or secondary specimen can be tested to ensure that the confirmed positive was not caused by error or tampering. The FAA's final antidrug rule was silent on the issue of split specimen testing; however, the DOT final rule (49 CFR part 40) included a provision under which employers could offer the option of split specimen testing (49 CFR 40.25(f)(10)(ii)). In accordance with the requirements of the Act, DOT has revised its procedural rule to require split specimen testing for all drug testing performed under the auspices of the FAA antidrug rule (and those of the Federal Highway Administration, the Federal Railroad Administration, and the Federal Transit Administration). Under this proposal, split specimen testing would be in lieu of the right to request a retest of the original specimen (see proposed revisions to section VI, paragraph C of appendix I).

Both the Act and the DOT revised rule provide that an employee is entitled to split specimen testing if the employee requests such testing within 3 days of receiving notice of the positive test result. However, as provided in 49 CFR part 40, a request to have a split specimen tested made after the 3-day period must be honored if the employee provides an adequate explanation of the delay, and in other cases the employer may voluntarily agree to the test of the split specimen. Finally, as proposed, no employer or agency action would be stayed during the request period or while waiting for split specimen test results.

Clarifying Amendments

Rule Language

This NPRM provides notice that in the final rule subsequent to this NPRM, the FAA will amend the antidrug rule to change the terms "passing" and "failing" a drug test. All of the DOT agencies that require drug testing, including the FAA, have received reports of some confusion in their respective industries regarding the use of the terms passing and failing a drug test and how those terms relate to different drug test results (i.e.,

confirmed or verified positive or negative test, cancelled tests, etc.). Currently, under the antidrug rule, an individual does not "fail" a drug test until the test result has been verified positive by a MRO. Similarly, "passing" a drug test requires a verified negative test result. Although this NPRM does not include each affected section, the final rule will change these terms wherever they are used throughout the antidrug rule to the more accurate "verified positive" or "verified negative."

Contract Air Traffic Control Facilities

When the FAA's final antidrug rule was published in 1988, air traffic control (ATC) facilities operated under contract with the FAA were explicitly excluded from coverage under the rule. It was originally intended that employees of such facilities would be included in the FAA's program (for its own employees). Subsequently, however, it was determined that employees of contract ATC facilities should be subject to the FAA's rules for the aviation industry. This notice proposes to change the definition of covered employers to include such facilities. The FAA's air traffic control facilities and facilities operated by the military (whether directly or by contract) would not be affected by this proposal.

Refusal to Submit to Testing

The final antidrug rule included amendments to the airmen certification sections of the FAA's regulations under which a refusal to submit to testing could be the basis for a certificate action. However, the rule did not have an express requirement for employers to notify the FAA of refusals or a specific mechanism for providing such notice. This proposed section (paragraph E of section VI of appendix I to part 121) would correct this gap in the requirements of the rule. It should be noted that the current antidrug rule with respect to the limitation on sanctions for refusals of preemployment tests would not be changed. As is currently the case, an individual who refuses to submit to preemployment testing would be subject to follow-up testing (what is now called return to duty testing) if he or she is subsequently hired, because the individual might have refused based on recent drug use. The individual would not, however, be subject to certificate action for declining what is essentially a test taken voluntarily as a precondition to performing safety-sensitive duties (and, similarly, this rule does not propose certificate action for a refusal to submit to the recharacterized return to duty test).

Employees Covered By the Antidrug Rule

The NPRM proposes to modify the specified safety-sensitive duties slightly to parallel the classes of covered functions in the FAA's new alcohol misuse prevention program rule (14 CFR part 121, appendix J). This modification is not intended to significantly change the antidrug rule's coverage. The most significant changes are the elimination of flight test and ground instruction duties. The former category would be eliminated because the FAA has determined that as a practical matter, these duties are essentially subsumed in flight crewmember or flight instructor duties. Ground instruction duties would be eliminated based on the FAA's desire to reduce the burden of the antidrug rule on the industry and the determination that individuals performing such duties could be removed from the program without jeopardizing public safety. Additionally, the FAA would propose an editorial change to the current category of "aviation security or screening duties." As revised, separate categories of "aviation screening duties" and "ground security coordinator duties" would be established. This change would clarify the FAA's original intent with respect to covered security functions.

Preemployment Testing

This NPRM proposes to revise the antidrug rule's preemployment testing provision (paragraph A of section V of appendix I) to make the provision less burdensome. The final antidrug rule required preemployment testing before an individual could be hired to perform a function specified in appendix I. As interpreted by the FAA, testing was required of individuals not currently employed by the employer, of current employees moving from a non-covered to a covered function, and in circumstances where an employee was removed from the random testing pool or unavailable for testing for an extended period of time. Individuals who had failed or refused to submit to an FAA-mandated drug test also had to pass a preemployment test prior to performing or returning to safety-sensitive duties.

The FAA continues to believe that preemployment drug testing has utility for those individuals who have not previously been subject to the FAA-approved random drug testing program of an employer. However, we have reassessed the need for preemployment testing in other situations, such as when an employee has been on leave of absence or working outside the territory of the United States. Therefore, the FAA proposes to only require preemployment testing of an individual prior to the first time the individual performs a safety-sensitive function for an employer. Such an individual would have to pass a preemployment test prior to performing a safety-sensitive function and the employer could not permit the individual to perform such a function until the employer receives a negative preemployment test result. Employers would be permitted to require submission to preemployment testing in cases where an employee previously subject to random testing by that employer has been removed from the random testing pool for reasons other than a failure of an FAA-mandated drug test or refusal to submit to such testing.

Return to Duty and Follow-up Testing

The FAA's final antidrug rule includes the category of "testing after return to duty" (paragraph F, section V, appendix I), under which individuals who had been hired to perform or returned to the performance of covered functions after failing or refusing to submit to an FAA-mandated drug test must be subject to unannounced testing. As noted above, the type of test required before returning to duty was characterized as a preemployment test.

Based on employer reports and compliance inspections, the FAA has determined that the nomenclature used for testing after a drug test failure or refusal is causing confusion in the industry. Additionally, during drafting of the alcohol testing regulations the FAA determined that the threshold test necessary to ensure an employee is alcohol free following a failed or refused test would be best understood if it were called the "return to duty test" and unannounced testing conducted after the individual has been placed in a covered function is more accurately referred to as "follow-up" testing. The FAA proposes to amend the section V of appendix I to reflect this nomenclature. As revised, therefore, an individual who failed or refused a preemployment test would have to pass another preemployment test before performing safety-sensitive duties, and, after evaluation and compliance with any required rehabilitation, would then be subject to follow-up testing. An employee who failed or refused another type of test (e.g., random) would have to pass a return to duty test before returning to the performance of safety-sensitive duties, and would then be subject to follow-up testing if he or she was returned to safety-sensitive duties. Like all FAA-mandated tests, return to duty and follow up tests would have to be performed in accordance with the requirements of appendix I and the testing procedures in 49 CFR part 40.

The FAA is also proposing two other changes that would parallel the provisions of the alcohol rule. The first change would be the addition of a mandatory minimum number of drug tests during an individual's first 12 months after being hired for or returning to the performance of safety sensitive functions after the individual has had a verified positive FAA-mandated drug test. As proposed the individual would have to undergo at least six tests before follow-up testing could be terminated. The second change would permit the employer to direct the individual to undergo alcohol testing, as well as drug testing, if the medical review officer determines that such testing would be appropriate. This provision would address the situation of polysubstance abuse.

The FAA is requesting specific comment on whether to amend the antidrug rule to establish a minimum number of follow-up tests. The FAA's alcohol misuse prevention program requires a minimum of six follow-up alcohol tests in the first 12 months after an employee has been returned to safety-sensitive duties. Several other DOT agencies have added a similar minimum number of test to their antidrug rules. The Federal Railroad Administration is amending its rule based on information from its industry that indicates that medical professionals have been reluctant to require follow-up tests.

The FAA has not had the same experience with follow-up testing; our information indicates that aviation medical review officers are generally establishing appropriate schedules for follow-up testing. However, the FAA requests comment on whether a schedule for the first year after return should be established by regulation, rather than leaving follow-up testing entirely within the discretion of the MRO and the employer. The FAA also seeks comment on whether six tests would be the appropriate number or whether fewer tests should be required. Finally, the FAA requests comments on whether requiring a minimum number of follow-up tests would affect the likelihood that an employer would return an individual to safety-sensitive duties after a positive drug test.

Medical Review Officer Functions

As proposed in this NPRM, section VII of appendix I would be substantially revised. First, changes in the DOT final rule (49 CFR part 40), which establishes the duties of the MRO in the verification process, have superseded the FAA's rule. Rather than reiterate the duplicative provisions of the DOT rule, which are subject to change, the FAA antidrug rule, as revised, would generally cite to the applicable provisions of the DOT rule and incorporate them (and therefore any future amendments) by reference. This is the same approach as that taken in the FAA's current rule with regard to specimen collection.

The MRO duties would be revised to require the MRO to inquire whether an individual holds a part 67 airman medical certificate, to process requests for split specimen testing, and to evaluate or refer the individual to an SAP as discussed above. The NPRM would also clarify the MRO's specific duties in the case of an employee or applicant who holds a part 67 airman medical certificate or who would be required to hold such a certificate to perform a covered function for an employer.

Although the final antidrug rule set forth some of the MRO duties with respect to airmen medical certificate holders, the FAA has determined from compliance inspections that these provisions are not sufficiently clear. The antidrug rule also did not include timeframes for submission of the reports required to be sent to the Federal Air Surgeon (FAS) and the address for submission is no longer correct. These omissions have led to confusion and occasionally to significant delays in notification to the FAS. As proposed, MROs would have 5 working days following verification of a positive test result in which to make a determination regarding probable drug dependence. They would be required to forward all documents pertaining to the test result, verification, dependency, and return to duty recommendations, if any, to the FAS within 7 working days of verifying the positive test result.

Finally, new provisions would be added to the MRO section to clarify the issue of recordkeeping by the MRO. Although MROs currently maintain records necessary for accomplishing their duties, essentially as agents of employers, there was no express authorization or requirement to maintain such records in the final antidrug rule. The proposed section would rectify this oversight.

Antidrug Program Plan Submission

Several changes are proposed in this NPRM to the plan submission provisions. First, the address to which plans are to be submitted would be changed. Second, the "transition" provisions of the rule for new aviation employers (paragraph A.5., section IX) would be changed to eliminate the substantial grace period previously provided. When the rule was first promulgated, it allowed all new covered employers a significant period of time to develop antidrug program plans, submit the plans to the FAA for approval, and implement the programs set forth in the plans. The delay was necessary because the antidrug rule was new both to the industry and to the FAA. Since the promulgation of the rule, however, the industry and the FAA have made great strides in incorporating drug testing in the normal course of the aviation business. Published guidance is available from the FAA and from private sector entities, and antidrug programs are generally running smoothly at aviation entities of all sizes. Given the wealth of material and experience now available, there is no longer a reason to permit carriers to begin operations without having implemented an FAA-approved antidrug program.

The FAA noted in the preamble to the final rule that the timeframes for new businesses might be accelerated in the future (53 FR 47043; November 21, 1988), and, accordingly, this NPRM proposes amending the final rule to prohibit covered employers from beginning operations without an approved antidrug program. The program would have to be implemented, and all covered employees subject to testing, not later than the inception of operations. As proposed, any person hired by a new certificate holder to perform a covered function after the issuance of the certificate would have to undergo preemployment testing. Additionally, each new employer would have to ensure that employees performing covered functions by contract were subject to an FAA-approved antidrug program within 60 days of the implementation of the employer's program. This requirement will impose no significant burden on new operators and any burden is outweighed by the benefits gained by public safety.

Third, the consortium plan submission section would be revised to require that each consortium program must provide for notification to the FAA of changes in membership. Finally, a new provision (section IX, paragraph A.8.) would expressly state the now-implicit responsibility of covered employers to ensure that they are continuously covered under an approved antidrug program. This section reflects the FAA's recognition of

the fluid nature of the aviation industry, in which locations, contracts, and even corporate identities are subject to frequent changes.

Employees Located Outside the U.S.

The FAA's final antidrug rule applied to employees performing covered functions for the specified employers regardless of whether the employees were located within the territory of the United States or were located in a foreign country. In recognition of the international implications of the rule, however, the effective date of the rule with respect to employees located outside the territory of the U.S. was deferred on a number of occasions, most recently to January 2, 1995. Although the FAA has been pursuing multilateral initiatives through the International Civil Aviation Organization (ICAO), there are still significant practical and legal concerns surrounding implementation of the antidrug rule outside the territory of the United States. Based on the issues and concerns that have been raised, the FAA is proposing to substantially revise the international section of the antidrug rule (section XII, appendix I).

As proposed, no employee located outside the territory of the United States could be tested for illegal drug use under the provisions of appendix I. To ensure proper selection for random testing, an employer would be required to remove from the random testing pool any employee assigned to perform covered functions solely outside the territory of the United States, since such an employee would not be available for testing. The employee would have to be returned to the random testing pool as soon as the employee once more began to perform functions wholly or partially within the territory of the United States. As noted above, the employer would have the option of requiring the employee to undergo a preemployment test prior to returning to the performance of a covered function within the territory of the United States (and therefore to the random testing pool). This section would be further amended to provide that the provisions of appendix I would not apply to employees performing functions specified in appendix I by contract outside the territory of the United States. Although the FAA is cognizant of concerns about safety and economic parity that would be raised by such an exclusion, the FAA proposes that extraterritorial application of the antidrug rule, with its significant logistical issues and possible conflicts with local laws, should not be pursued.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final antidrug rule, issued on November 14 1988, were previously submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. The OMB approval is under control number 2120–0535. The recordkeeping and reporting requirements proposed in this notice will be submitted to OMB for approval. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, room 3001, Washington, DC 20503; attention: FAA Desk Officer. A copy should be submitted to the FAA's docket. The following is a synopsis of the paperwork burden associated with this notice:

Title: Antidrug Program for Personnel Engaged in Specified Aviation Activities

Need for Information: This information is needed to ensure compliance with the requirements of the FAA's antidrug rule and the Omnibus Transportation Employee Testing Act of 1991.

Proposed Use of Information: The information submitted is intended to be used for monitoring industry implementation of and compliance with the FAA's antidrug rule and in evaluating the effectiveness of the program.

Frequency:

Antidrug Program Plan: One time submission for FAA review and approval.

Antidrug Program Plan Amendments: One time submission for FAA review and approval as changes to plans occur or are required.

Statistical Report: Annual.

Burden Estimate: 11,993 hrs.

Respondents: Specified aviation employers.

Average Burden, Hours/Respondent/Year: 10.5 (Reporting); 1.0 (Recordkeeping).

Federalism Implications

The amendments proposed in this NPRM would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Evaluation Summary

The FAA has determined that this proposal is not major as defined in Executive Order 12866. Therefore, a full regulatory analysis that includes identification and evaluation of cost-reducing alternatives to the proposal has not been prepared. Instead, the FAA has prepared a more concise regulatory evaluation that analyzes only this proposal. The FAA does not expect that this proposed rule would have a significant economic effect on a substantial number of small entities or on international trade.

A copy of the complete regulatory evaluation, regulatory flexibility determination, and international trade assessment has been placed in the docket. A copy may be obtained by contacting the office identified under "FOR FURTHER INFORMATION CONTACT."

Significance

This rule is not likely to result in an annual effect on the economy of $100 million or more, although it may result in a small increase in costs for consumers, industry, or Federal, State, or local agencies. The FAA has determined, however, that this rule involves issues of substantial interest to the public. Therefore, the FAA has determined that the rule is significant under the Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

List of Subjects

14 CFR Part 65

Aircraft, Airmen, Air safety, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Safety, Transportation.

14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

14 CFR Part 135

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air taxi, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR parts 65, 121, and 135 as follows:

Part 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

1. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. Section 65.46 is amended by revising paragraphs (a)(2), (d), and (e) and by adding paragraph (g) to read as follows:

§ 65.46 Use of prohibited drugs.

(a) * * *

(2) An *employer* means an air traffic control facility not operated by the FAA or by or under contract to the U.S. military that employs a person to perform an air traffic control function.

* * * * * *

(d) Except as provided in paragraph (e) of this section, no employer may knowingly use any person to perform, nor may any person perform for an employer, either directly or by contract, any air traffic control function if that person failed or refused to submit to a drug test required by appendix I to part 121 of this chapter.

(e) Paragraph (d) of this section does not apply to a person who has received a recommendation to be hired or to return to duty from a medical review officer in accordance with appendix I to part 121 of this chapter or who has received a special issuance medical certificate after evaluation by the Federal Air Surgeon for drug dependency in accordance with part 67 of this chapter, unless the person had previously failed a drug test required under that appendix, both such failures occurring after [THE EFFECTIVE DATE OF THE FINAL RULE].

* * * * * *

(g) No employer may knowingly use any person to perform, nor may any person perform for an employer, either directly or by contract, any air traffic control function if that person used a prohibited drug during the performance of an air traffic control function directly or by contract for an employer after [THE EFFECTIVE DATE OF THE FINAL RULE].

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1485, and 1502 (revised Pub. L. 102,143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

4. Section 121.455 is amended by revising paragraphs (c) and (d) and by adding paragraph (e) to read as follows:

§ 121.455 Use of prohibited drugs.

* * * * * *

(c) Except as provided in paragraph (d) of this section, no certificate holder may knowingly use any person to perform, nor may any person perform for a certificate holder, either directly or by contract, any function listed in appendix I to this part if that person failed or refused to submit to a drug test required by that appendix.

(d) Paragraph (c) of this section does not apply to a person who has received a recommendation to be hired or to return to duty from a medical review officer in accordance with appendix I to this part or who has received a special issuance medical certificate after evaluation by the Federal Air Surgeon for drug dependency in accordance with part 67 of this chapter; provided, however, that no person shall be permitted to perform the function specified in appendix I that he or she was performing prior to failing a drug test if the person had previously failed a drug test required under that appendix, both such failures occurring after [THE EFFECTIVE DATE OF THE FINAL RULE].

(e) No certificate holder may knowingly use any person to perform, nor may any person perform for a certificate holder, either directly or by contract, the function specified in appendix I performed by that person if the person used a prohibited drug during the performance of the function directly or by contract for an employer as defined in that appendix after [THE EFFECTIVE DATE OF THE FINAL RULE].

Appendix I to Part 121—Drug Testing Program

5. Section II (Definitions) of Appendix I is amended by revising the first sentence of the definitions of *employee* and *employer* and by adding the definition of *substance abuse professional* to read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * * *

II. Definitions

* * * * * *

Employee is a person who performs, either directly or by contract, a function listed in section III of this appendix for an employer, as defined in this appendix. * * *

Employer is a part 121 certificate holder, a part 135 certificate holder, an operator as defined in § 135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military. * * *

* * * * * *

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of disorders related to drug use and abuse.

6. Section III of Appendix I (Employees Who Must Be Tested) is revised to read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * * *

III. Employees Who Must Be Tested

Each person who performs a function listed in this section directly or by contract for an employer must be tested pursuant to an FAA-approved antidrug program conducted in accordance with this appendix:

a. Flight crewmember duties.
b. Flight attendant duties.
c. Flight instruction duties.
d. Aircraft dispatcher duties.
e. Aircraft maintenance or preventive maintenance duties.
f. Ground security coordinator duties.
g. Aviation screening duties.
h. Air traffic control duties.

7. Section V of Appendix I (Types of Drug Testing Required) is amended by revising paragraphs A and F and adding a new paragraph G to read as follows:

Appendix I to Part 121—Drug Testing Program

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V. Types of Drug Testing Required

* * * * * *

A. Preemployment Testing

1. Prior to the first time an individual performs a function listed in section III of this appendix for an employer, the employer shall require the individual to undergo testing for prohibited drug use.

2. An employer is permitted to require preemployment testing of an individual if the following criteria are met:

(a) The individual previously performed a covered function for the employer;

(b) The employer removed the individual from the employer's random testing program conducted under this appendix for reasons other than a failure of an FAA-mandated drug test or a refusal to submit to such testing; and

(c) The individual will be returning to the performance of a function covered by this appendix.

(3) No employer shall allow an individual required to undergo preemployment testing under section V, paragraphs A.(1) or (2) of this appendix to perform a covered function unless the employer has received the results of the drug test indicating that the individual has passed the test.

(4) The employer shall advise each individual applying to perform a covered function at the time of application that the

individual will be required to undergo preemployment testing to determine the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs in the individual's system. The employer shall provide this same notification to each individual required by the employer to undergo preemployment testing under section V, paragraph A.(2) of this appendix.

* * * * *

F. Return to Duty Testing

Each employer shall ensure that before an individual is returned to duty to perform a function specified in section III of this appendix after refusing to submit to a drug test required by this appendix or failing a drug test conducted under this appendix, the individual shall undergo a drug test. No employer shall allow an individual required to undergo return to duty testing to perform a covered function unless the employer has received the results of the drug test indicating that the individual has passed the test.

G. Follow-up Testing

1. Each employer shall implement a reasonable program of unannounced testing of each individual who has been hired to perform or who has been returned to the performance of a function specified in section III of this appendix after refusing to submit to a drug test required by this appendix or failing a drug test conducted under this appendix.

2. The number and frequency of such testing shall be determined by the employer's medical review officer, but shall consist of at least six tests in the first 12 months following the employee's return to duty.

3. The employer may direct the employee to undergo testing for alcohol, in addition to drugs, if the medical review officer determines that alcohol testing is necessary for the particular employee. Any such alcohol testing shall be conducted in accordance with the provisions of 49 CFR part 40.

4. Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a function specified in section III of this appendix. The medical review officer may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the medical review officer determines that such testing is no longer necessary.

8. Section VI of Appendix I (Administrative Matters) is amended by revising paragraph C and adding paragraph E to read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

VI. Administrative Matters

* * * * *

C. Employee Request for Test of a Split Specimen

1. Not later than 72 hours after receipt of notice of a verified positive test result, an employee may submit a written request to the MRO for testing of the second, "split" specimen obtained during the collection of the primary specimen that resulted in the confirmed positive test.

2. The split specimen shall be tested in accordance with the procedures in 49 CFR part 40.

3. The MRO may proceed with verification of the primary test result pending receipt of the result of the split specimen test. If the primary test result is verified as positive, actions required under this rule (*e.g.*, notification to the Federal Air Surgeon, removal from safety-sensitive position) are not stayed pending receipt of the split specimen test result.

* * * * *

E. Refusal to Submit to Testing

1. Each employer shall notify the FAA of any employee who holds a certificate issued under part 61, part 63, or part 65 who has refused to submit to a drug test required under this appendix. Notifications should be sent to: Federal Aviation Administration, Aviation Standards National Field Office, Airmen Certification Branch, AVN–460, P.O Box 25082, Oklahoma City, OK 73125.

2. Employers are not required to report refusals to submit to preemployment testing.

9. Section VII of Appendix I is revised to read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

VII. Medical Review Officer

The employer shall designate or appoint a medical review officer (MRO) who shall be qualified in accordance with 49 CFR part 40 and shall perform the functions set forth in 49 CFR part 40 and this appendix. If the employer does not have a qualified individual on staff to serve as MRO, the employer may contract for the provision of MRO services as part of its drug testing program.

A. MRO Duties

In addition to the functions delineated in 49 CFR part 40, the MRO shall perform the duties listed in this section.

1. During the MRO's interview with an employee or applicant who has failed a drug test, the MRO shall inquire, and the individual must disclose, whether the individual holds an airman medical certificate issued under part 67 of this chapter or would be required to hold such certificate in order to perform the duties of the position for which the applicant is applying.

2. The MRO must process employee requests for testing of split specimens in accordance with section VI, paragraph C, of this appendix.

3. The MRO shall advise each employee who fails a drug test or refuses to submit to a drug test required under this appendix of the resources available to the employee in evaluating and resolving problems associated with illegal drug use, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

4. The MRO shall evaluate, or shall have evaluated by a substance abuse professional, each employee who fails a drug test or refuses to submit to a drug test required under this appendix to determine if the employee is in need of assistance in resolving problems associated with illegal drug use.

5. Prior to recommending that an employee be returned to the performance of a function listed in section III of this appendix after the employee has failed or refused to submit to a drug test required by this appendix, the MRO shall—

a. Ensure that an employee returning to the performance of a function has passed return to duty drug test conducted under section V., paragraph F of this appendix;

b. Ensure that each employee has been evaluated in accordance with section VII, paragraph A.4 of this appendix; and

c. Ensure that the employee demonstrates compliance with any rehabilitation program recommended following the evaluation required under section VII, paragraph A.4 of this appendix.

6. The MRO shall not recommend that a person who fails to satisfy the requirements in section VII, paragraph A.5 of this appendix be returned to duty performing a function listed in section III of this appendix.

7. Prior to recommending that an individual be hired to perform a function listed in section III of this appendix after such individual has failed or refused to submit to a pre-employment drug test required by this appendix, the MRO shall—

a. Ensure that an individual has passed a preemployment test conducted under section V, paragraph A, of this appendix;

b. Evaluate the individual, or have the individual evaluated by a substance abuse professional, for drug use or abuse; and

c. Ensure that the individual has complied with the requirements of any rehabilitation program in which the individual participated following the preemployment test the individual failed or to which the individual refused to submit.

B. MRO Determinations

In the case of an employee or applicant who holds an airman medical certificate issued under part 67 of this chapter, or who is or would be required to hold such certificate in order to perform a function listed in section III of this appendix for an employer, the MRO shall take the following actions after verifying a positive drug test result.

1. In addition to the evaluation required in section VII, paragraph A.4 of this appendix, the MRO shall make a determination of probable drug dependence or nondependence as specified in part 67 of this chapter within 5 working days of verifying the test result. If the MRO is unable to make such a determination, he or she should so state in the individual's records.

2. If the MRO determines that an individual is nondependent, the MRO may recommend that the individual be returned to duty, subject to the requirements of section VII, paragraph A.5 of this appendix. If the MRO makes a determination of probable drug dependence or cannot make a dependency determination, the MRO shall not recommend that the individual be returned to duty.

3. After making the determinations in section VII, paragraphs B.1 and B.2 of this appendix, the MRO must forward the names of such individuals with identifying information, the determinations concerning dependence, return to duty recommendations, and any supporting information to the Federal Air Surgeon within 7 working days after verifying the positive drug test result of such individuals.

4. All reports required under this section shall be forwarded to the Federal Air Surgeon, Federal Aviation Administration, Attn: Drug Abatement Division (AAM–800), 400 7th Street SW., Washington, DC 20590.

C. MRO records

Each MRO shall maintain records concerning drug tests performed under this rule in accordance with the following provisions:

1. All records shall be maintained in confidence and shall be released only in accordance with the provisions of this rule and 49 CFR part 40.

2. Records concerning drug tests confirmed positive by the laboratory shall be maintained for 5 years. Such records include the MRO copies of the custody and control form, copies of dependency determinations where applicable, medical interviews, and any other documentation concerning the MRO's verification process.

3. Records of confirmed negative test results shall be maintained for 12 months.

4. All records maintained pursuant to this rule by each MRO are subject to examination by the Administrator or the Administrator's representative at any time.

5. Should the employer change MROs for any reason, the employer shall ensure that the former MRO forwards all records maintained pursuant to this rule to the new MRO within 10 working days of receiving notice from the employer of the new MRO's name and address.

6. Any employer obtaining MRO services by contract shall ensure that the contract includes a recordkeeping provision that is consistent with this paragraph, including requirements for transferring records to a new MRO.

10. Section IX of Appendix I is amended by revising the heading and paragraphs A(1), A(5), and A(7) and adding paragraphs A(8) and A(9) to read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

IX. Employer's Antidrug Program Plan

A. * * *

(1) Each employer shall submit an antidrug program plan to the Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 400 7th Street, SW., Washington, DC 20590.

* * * * *

(5)(a) Any person who applies for a certificate under the provisions of part 121 or 135 of this chapter after [THE EFFECTIVE DATE OF THE FINAL RULE] shall submit an antidrug program plan to the FAA for approval and must obtain such approval prior to beginning operations under the certificate. The program shall be implemented not later than the date of inception of operations. Contractor employees to a new certificate holder must be subject to an FAA-approved antidrug program within 60 days of the implementation of the employer's program.

(b) Any person who intends to begin sightseeing operations as an operator under 14 CFR 135.1(c) after [THE EFFECTIVE DATE OF THE FINAL RULE] shall, not later than 60 days prior to the proposed initiation of such operations, submit an antidrug program plan to the FAA for approval. No operator may begin conducting sightseeing flights prior to receipt of approval; the program shall be implemented concurrently with the inception of operations. Contractor employees to a new operator must be subject to an FAA-approved program within 60 days of the implementation of the employer's program.

(c) Any person who intends to begin air traffic control operations as an employer as defined in 14 CFR 65.46(a)(2) (air traffic control facilities not operated by the FAA or by or under contract to the U.S. military) after [THE EFFECTIVE DATE OF THE FINAL RULE] shall, not later than 60 days prior to the proposed initiation of such operations, submit an antidrug program plan to the FAA for approval. No air traffic control facility may begin conducting air traffic control operations prior to receipt of approval; the program shall be implemented concurrently with the inception of operations. Contractor employees to a new air traffic control facility must be subject to an FAA-approved program within 60 days of the implementation of the facility's program.

* * * * *

(7) Any entity or individual whose employees perform functions listed in section III of this appendix pursuant to a contract with an employer (as defined in section II of this appendix), and any consortium of contractors or employers subject to this appendix may submit an antidrug program plan to the FAA for approval on a form and in a manner prescribed by the Administrator.

(a) The plan shall specify the procedures that will be used to comply with the requirements of this appendix.

(b) Each consortium program must provide for reporting changes in consortium membership to the FAA within 10 working days of such changes.

(c) Each contractor or consortium shall implement its antidrug program in accordance with the terms of its approved plan.

(8) Each air traffic control facility operating under contract to the FAA shall submit an antidrug program plan to the FAA (specifying the procedures for all testing required by this appendix) not later than [90 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE]. Each facility shall implement its antidrug program not later than 60 days after approval of the program by the FAA. Employees performing air traffic control duties by contract for the air traffic control facility (i.e., not directly employed by the facility) must be subject to an FAA-approved antidrug program within 60 days of implementation of the air traffic control facility's program.

(9) Each employer, or contractor company that has submitted an antidrug plan directly to the FAA, shall ensure that it is continuously covered by an FAA-approved antidrug program, and shall obtain appropriate approval from the FAA prior to changing programs (e.g., joining another carrier's program, joining a consortium, or transferring to another consortium).

* * * * *

11. Section XII of appendix I to part 121 is revised to read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

XII. Employees Located Outside the Territory of the United States

A. No individual shall undergo a drug test required under the provisions of this appendix while located outside the territory of the United States.

1. Each employee who is assigned to perform functions specified in section III of this appendix solely outside the territory of the United States shall be removed from the random testing pool upon the inception of such assignment.

2. Each covered employee who is removed from the random testing pool under this section shall be returned to the random testing pool when the employee resumes the performance of safety-sensitive functions wholly or partially within the territory of the United States.

B. The provisions of this appendix shall not apply to any person who performs a function listed in section III of this appendix by contract for an employer outside the territory of the United States.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

12. The authority citation for part 135 continues to read as follows:

AUTHORITY: 49 U.S.C. 1354(a), 1355(a), 1421–1431, and 1502 (revised Pub. L. 102,143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

13. Section 135.249 is amended by revising paragraphs (c) and (d) and by adding paragraph (e) to read as follows:

§ 135.249 Use of prohibited drugs.

* * * * *

(c) Except as provided in paragraph (d) of this section, no certificate holder or operator may knowingly use any person to perform, nor may any person perform for a certificate holder or operator, either directly or by contract, any function listed in appendix I to part 121 of this chapter if that person failed or refused to submit to a drug test required by that appendix.

(d) Paragraph (c) of this section does not apply to a person who has received a recommendation to be hired or to return to duty from a medical review officer in accordance with appendix I to part 121 of this chapter or who has received a special issuance medical certificate after evaluation by the Federal Air Surgeon for drug dependency in accordance with part 67 of this chapter; provided, however, that no person shall be permitted to perform the function specified in appendix I that he or she was performing prior to failing a drug test if the person had previously failed a drug test required under that appendix, both such failures occurring after [THE EFFECTIVE DATE OF THE FINAL RULE].

(e) No certificate holder or operator may knowingly use any person to perform, nor may any person perform for a certificate holder or operator, either directly or by contract, the function specified in appendix I to part 121 of this chapter performed by that person if the person used a prohibited drug while performing such a function directly or by contract for an employer as defined in that appendix after [THE EFFECTIVE DATE OF THE FINAL RULE].

Issued in Washington, DC, on January 25, 1994.

Federico Peña,

Secretary of Transportation.

David R. Hinson,

Administrator.

[FR Doc. 94–2033 Filed 2–14–94; 1:00 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 129

[Docket No. 27066; Notice No. 94–2]

RIN 2120–AE79

Antidrug Program and Alcohol Misuse Prevention Program for Employees of Foreign Air Carriers Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Omnibus Transportation Employee Testing Act of 1991 (the Act) directs the Federal Aviation Administration (FAA) Administrator to prescribe regulations that require foreign air carriers to establish drug and alcohol testing programs for employees performing safety-sensitive aviation functions. The Act also specifies that the Administrator shall only prescribe regulations that are consistent with the international obligations of the United States and take into consideration any applicable laws and regulations of foreign countries.

This notice proposes to require foreign air carriers to establish drug and alcohol testing programs for their employees performing safety sensitive aviation functions within the territory of the United States unless multilateral action is taken that supports an aviation environment free of substance abuse.

DATES: Comments must be received on or before May 16, 1994. Additional notice of rulemaking may be given based on the comments received.

ADDRESSES: Comments on this notice should be mailed in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 27066, 800 Independence Avenue, SW., Washington, DC 20591. Comments that are delivered to this address must be marked "Docket No. 27066." Comments may be examined in Room 915G between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Office of Aviation Medicine, Drug Abatement Division (AAM–800), Federal Aviation Administration, 400 7th Street, SW., Washington, DC 20590; telephone (202) 366–6710.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of a proposed rule by submitting such written data, views, suggestions, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before rulemaking action is taken. Persons wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 27066." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available for review in the Rules Docket, both before and after the comment closing date. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will also be filed in the docket. Any comments provided to the docket in the preliminary portion of this rulemaking will be considered prior to any final action and need not be resubmitted.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. The request must include the notice number of this NPRM.

Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Current Laws & Regulations

The Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143, Title V) was enacted on October 28, 1991. Among other things, the Act adds a new section 614 to the Federal Aviation Act of 1958 (FAAct). Section 614(a)(1) of the FAAct (49 U.S.C. 1434(a)(1)) directs the Administrator to prescribe regulations requiring the testing of air carrier and foreign air carrier employees for the use of alcohol and controlled substances. Section 614(e)(3) of the FAAct (49 U.S.C. 1434(e)(3)) further directs that "the Administrator shall only establish requirements applicable to foreign air carriers that are consistent with the international obligations of the United States, and the Administrator shall take into consideration any applicable laws and regulations of foreign countries." The requirement to publish regulations applicable to foreign air carriers is consistent with other requirements of the Act to publish similar regulations for other modes of transportation.

Discussion

Pursuant to the requirements of the Act, this notice proposes to require foreign air carriers to establish antidrug and alcohol misuse programs like those required of U.S. carriers by January 1, 1996. The FAA is optimistic that recent efforts at the International Civil Aviation Organization (ICAO) will result in satisfactory multilateral action to prevent substance abuse in the international workplace, which consistent with the Act, could make FAA rulemaking unnecessary.

The FAA has general statutory authority to regulate safety in civil aviation under the FAAct. As recognized in section 1108 of the FAAct, the United States of America has complete and exclusive national sovereignty in the airspace of the United States (49 U.S.C. app. 1508(a)).

Pursuant to the Act, the FAA has the option of not imposing testing requirements on foreign air carriers if the FAA determines, based upon future developments within ICAO, that an FAA testing rule is not required. If no U.S. rule is to be adopted or the instant proposal warrants modification pursuant to ICAO action, the FAA will publish notice of such decision. Further analysis of the issue in light of any comments received in response to this notice also could assist the FAA in making the determination.

The FAA is encouraged by recent developments at ICAO, and has determined that an international agreement would be the preferred alternative to unilateral actions by individual ICAO member States. The FAA remains committed to the multilateral process underway at ICAO and will not require testing if a satisfactory alternative is reached through bilateral or multilateral action. In the event that such is not forthcoming, the FAA is now seeking comments on the implementation of a direct application of U.S. drug testing requirements to foreign air carriers.

Discussion of Comments on ANPRM

The FAA recognized that foreign countries and foreign air carriers would have many concerns regarding the possible application of testing regulations to foreign air carrier employees. We therefore published an advance notice of proposed rulemaking (ANPRM) on this same subject in which we asked a number of questions about the legal, practical, and cultural issues associated with testing. The comment period for the NPRM, originally set for 60 days, was extended an additional 45 days to allow for translation of documents and coordination with management or government officials outside the United States. Many useful and cogent comments were received in response to the ANPRM and will be considered by the FAA prior to any final rulemaking. It is not necessary for commenters to this NPRM to resubmit those comments.

The FAA received 65 comments on the ANPRM, most of which were provided by foreign governments or foreign air carriers. Nineteen of the comments were procedural, requesting an extension of the comment period. Three comments were received that supported the concept of unilateral imposition of testing requirements on foreign air carriers. Two of these were from trade associations for the U.S. air carriers (Regional Airline Association (RAA) and Air Transport Association (ATA)), and one was from a U.S. labor organization (Airline Dispatchers Federation (ADF)). Both RAA and ATA stated that foreign air carriers would have a competitive advantage if they did not have to implement testing programs that are required of U.S. air carriers. ATA and ADF stated that passenger safety required holding safety-sensitive employees of foreign carriers to the same standard as similar employees of U.S. air carriers.

The remaining comments were from foreign governments, foreign trade and labor associations, and foreign air carriers. These commenters objected in whole or in part to the possible unilateral imposition of testing requirements on foreign air carriers in the United States.

International Law

Most of the foreign air carriers and foreign governments commenting on the ANPRM asserted that any regulation that unilaterally required foreign air carriers to implement substance abuse testing programs would violate international law, exceeding the generally recognized limits to extraterritorial jurisdiction. A number of commenters also stated that testing requirements would conflict with foreign laws or regulations, primarily those affecting labor relations and privacy rights.

The majority of these commenters also asserted that unilateral action by the United States to impose a testing requirement would impermissibly implicate the qualifications of airmen, in contravention of the Chicago Convention. Airmen certification or licensure is within the jurisdiction of the country of aircraft registry (Chicago Convention art. 32), and each member State must recognize certificates and licenses issued by other States, as long as minimum standards are met (id., art. 33). The commenters assert that these provisions prohibit the United States from imposing additional certification requirements on otherwise qualified and certificated crewmembers.

Finally, a few commenters, among them the Embassy of Belgium, stated that under the applicable bilateral agreement, the United States would have to request consultations prior to imposing any new safety requirement.

Discussion

The testing program discussed in this notice is well within the FAA's authority to regulate the safe operation of aircraft within the territory of the United States (Chicago Convention art. 11). The FAA desires further comments, if any, on this point and further seeks comments addressing any legal problems with regards to the proposed testing.

Financial and Operational Concerns

Many of the commenters noted that it was difficult to estimate the likely cost of implementing programs since the ANPRM did not propose any specific requirements. They also noted, however, that it was likely that imposition of drug and alcohol testing requirements could have a disproportionate financial impact on foreign carriers. British Airways (BA), for example, stated that it schedules its crews on flights from London to the U.S. West Coast under very tight time and duty constraints and does not generally have replacement crew available. For example, if an individual crewmember were selected for testing, the additional time required for the testing could put the individual beyond the allowable duty time. BA states that the flight would then have to be delayed, resulting in significant costs to BA.

Other commenters noted that imposing any regulations under which foreign air carrier employees or their urine samples would have to be transported to the United States for testing would pose significant increased costs on foreign air carriers.

FAA Response

In evaluating the international implications of its substance abuse programs for U.S. carriers, the FAA has become aware of the difficulties associated with evaluating testing programs established in foreign countries and with the FAA's compliance monitoring activities outside the U.S. The regulatory evaluation does examine the system delay costs for foreign air carriers although it does not presume to determine how an individual air carrier would conduct testing or calculate the costs for an individual program.

International Civil Aviation Organization (ICAO)

A significant number of commenters noted that the ICAO was established under the Chicago Convention specifically to address issues of general applicability to international civil aviation. Many of these commenters supported proceeding through the ICAO process to reach a multilateral consensus on ways to achieve the ultimate goal of civil aviation workplaces free of substance abuse.

FAA RESPONSE

As noted in the ANPRM, the Act directs the Secretaries of State and Transportation to call on the member countries of the ICAO to strengthen and enforce existing standards to prohibit the use, in violation of law or Federal regulation, of alcohol or a controlled substance by crew members in international civil aviation (Section 614(e)(3) of the FAAct; 49 U.S.C. app. 1434(e)(3)).

The FAA is aware that the problem of substance abuse may be different in the United States than in other countries. Some countries, for example, may have little or no problem with illegal drug use but a significant problem with workplace alcohol misuse. Further, other countries may have difficulty implementing U.S. testing and laboratory standards. It is for that reason that we prefer a multilateral solution through ICAO that would enable each country to tailor its substance abuse prevention efforts to its particular needs.

On September 30, 1992, a resolution offered by the United States, which was co-sponsored by a number of other countries, was introduced at the 29th General Assembly of ICAO in furtherance of this legislative directive (ICAO Document A29–WP/67; EX/17; 3/9/92). The resolution was approved by the Assembly and states that the Assembly:

1. *Declares* its strong support for making and maintaining civil aviation workplaces free of substance abuse and encourages cooperative efforts throughout the international civil aviation community to educate employees on the dangers of substance abuse, and to take steps, when deemed necessary, to detect and deter such use, and through such efforts, to ensure that substance abuse never becomes prevalent or tolerated within civil aviation;

2. *Urges* the Council to accord a high degree of priority . . . to expediting the development and publication of guidance material containing measures which may be implemented by Contracting States . . . ;

3. *Requests* the Council to continue its efforts to monitor:

(a) the existence and growth of the threat to the safety of international civil aviation posed by substance abuse; and

(b) efforts by Contracting States to implement preventive measures; and

4. *Requests* the Council to present a report on the implementation of this Resolution to the next ordinary session of the Assembly.

The member States of ICAO unanimously adopted this resolution, which indicates that substance abuse is recognized as a threat to international civil aviation safety. Since the adoption of the Assembly resolution, ICAO has made substantial progress in developing the mandated guidance material. On December 14, 1993, the ICAO group charged with developing the material adopted an outline including sections on education, treatment and rehabilitation, and testing. The group expects its work to be completed, and the guidance material published, by the end of 1994.

The FAA commends ICAO for its progress thus far and reiterates the United States commitment to resolve the problem of drug and alcohol misuse by transportation workers through this multilateral process.

The FAA remains optimistic that an international solution will be reached. However, to protect the public safety in the event a multilateral solution is not reached through ICAO, the FAA is continuing to develop an alternative testing requirement; the FAA must ensure that it has in place regulations to address the threat posed today by substance abuse in the event that ICAO's efforts do not come to fruition in a timely fashion or are otherwise inadequate.

Discussion of the Proposed Rule

The FAA proposes to require foreign air carriers to establish antidrug and alcohol misuse prevention programs by January 1, 1996. Testing would be conducted using the procedures established by the Office of the Secretary of Transportation in 49 CFR part 40. Additional requirements or more specific guidance on implementation issues would be published as needed by the FAA. However, the FAA will not require foreign air carriers to establish antidrug and alcohol misuse programs if a multilateral action is taken by ICAO that supports an aviation environment free of substance abuse.

The proposal reflects the FAA's use of substance abuse testing as the primary tool for detecting and deterring substance abuse by safety-sensitive aviation employees, especially illegal drug use. It is a prevention/identification methodology that could be applied under stringent regulatory conditions throughout the international aviation community, especially in the context of suspected substance abuse. The FAA recognizes that testing does not address all of the complex issues raised by substance abuse and that prevention/identification efforts targeting workplace substance abuse would serve to increase aviation safety. The FAA prefers a multilateral solution, and although testing is being proposed, the FAA may defer the compliance date or reconsider the necessity of the rule if appropriate international action is taken. The FAA would publish a notice accordingly.

The FAA recognizes that imposing testing requirements on foreign air carriers could raise legal and technical implementation problems that could hinder achieving the ultimate goal of an international aviation environment free of substance abuse. The FAA invites comments on these issues. The FAA would prefer not to require testing if multilateral action or a series of bilateral agreements can be obtained.

Paperwork Reduction Act Approval

The proposal would require foreign air carriers operating within the territory of the United States to maintain records regarding drug and alcohol testing conducted by the foreign air carrier and to submit such records to the FAA or to provide access to such records to the Administrator upon request.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), if recordkeeping and reporting requirements are included in the final rule, they will be submitted to the Office of Management and Budget (OMB) for approval after supplemental notice is given in the **Federal Register**.

Economic Summary

This Notice of Proposed Rulemaking (NPRM) serves to fulfill part of the requirements of the FAA-related provisions of the Omnibus Transportation Employee Testing Act of 1991 (the Act), which was enacted October 28, 1991. Congress has imposed a statutory obligation on the FAA Administrator to prescribe regulations that, among other things, establish an alcohol misuse testing program for air carrier employees who perform safety-sensitive duties. The Act also directs the FAA Administrator to prescribe regulations that require foreign air carriers to establish drug and alcohol misuse testing programs for employees performing safety-sensitive aviation functions. Such regulations must be consistent with the international obligations of the United States and take into consideration any applicable laws and regulations of foreign air carriers.

The FAA proposes to require foreign air carriers to establish anti-drug and alcohol misuse prevention programs by January 1, 1996, that are consistent with the international obligations of the United States. However, there would be no requirements if multilateral efforts to ensure an aviation environment free of substance abuse are reached or actions towards this end make an FAA testing rule unnecessary.

The proposed rule would apply the existing anti-drug program and the new alcohol misuse prevention program to all part 129 air carriers. The anti-drug rule for domestic air carriers was published in 1988 and has been in effect since 1990. The alcohol misuse program for domestic air carriers will take effect in 1995. This proposed rule would require part 129 air carriers to begin implementing both such programs in January 1996.

Costs

The FAA estimated the number of part 129 employees subject to both drug and alcohol testing. These employees include all part 129 pilots, copilots, instructors, engineers, and navigators, part 129 flight attendants, and mechanics and repairmen who are employed by part 129 air carriers.

The FAA assumes that foreign air carriers would set up their anti-drug and alcohol misuse programs similar to those of domestic air carriers. Hence, this analysis applies the assumptions described and used in the anti-drug and alcohol misuse prevention regulatory evaluations for domestic air carriers to foreign air carriers.

The applicable costs for the program include the program development costs, the Management Information System (M.I.S.) annual reporting costs, the costs for the individual type of tests, the setting up of an Employee Assistance Program (EAP) (applicable only for the anti-drug program), and system delay costs. The ten year discounted costs for the anti-drug and alcohol misuse preventions programs range from $17.8 million to $24.5 million.

Benefits

The FAA's objective in proposing requiring mandatory anti-drug and alcohol misuse programs is to foster an environment free of drug use and alcohol misuse for personnel engaged in critical aviation safety occupations. The public expects, and is entitled to, an aviation environment free of substance abuse and misuse.

The FAA has determined that major benefits would accrue from these proposals. The first would be the prevention of potential injuries and fatalities and property losses resulting from accidents attributed to individuals whose judgement or motor skills may have been impaired by the presence of drugs or alcohol. The second would be the potential reduction in absenteeism, lost worker productivity, medical costs, and improved general safety in the workplace by the deterrence of alcohol misuse.

At this time, neither drug use nor alcohol misuse has been cited officially as a causative factor of any part 129 commercial aircraft accident. The absence of accidents, however, cannot be the baseline by which to measure the existence of a drug or alcohol problem in the aviation industry. No statistical database is available from which to estimate how many accidents were the consequence of impairment by drugs or alcohol of a pilot or any other safety-sensitive employee.

The FAA examined the seating capacity, average passenger load, and average replacement cost of a representative sample of both narrow-body and wide-body airplanes, in addition to the cost of the National Transportation Safety Board (NTSB) investigations. In calculating benefits, the FAA also evaluated the increased productivity from employees who are deterred from alcohol misuse. The total quantifiable discounted benefits that would result from promulgation of this proposed rule amount to $87.4 million discounted over ten years.

Cost/Benefit Analysis

In the Act, Congress imposed a statutory obligation on the FAA to prescribe regulations that, among other things, establish anti-drug and alcohol misuse testing programs for employees of part 129 air carriers who perform safety-sensitive duties. The FAA has evaluated the cost of setting up and administering these substance abuse and misuse programs, and found that the ten-year discounted costs range from $17.8 million to $24.5 million. This is less than the ten-year discounted benefits of $87.4 million. Accordingly, the FAA finds these programs to be cost beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small U.S. entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities." Because this proposed rule would only affect foreign carriers, the RFA is not applicable.

International Trade Impact Statement

In accordance with the Office of Management and Budget memorandum dated March 1983, federal agencies engaged in rulemaking activities are required to assess the effects of regulatory change on international trade. This proposed rule, if adopted, would place the same regulatory requirements on foreign air carriers that currently exist for U.S. air carriers (anti-drug abuse program) or are proposed for U.S. air carriers (alcohol misuse program). It is not expected that the proposed rule would have an adverse effect on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States. While there would be increased costs to foreign carriers as a consequence of this proposed rule, these costs will be offset by the benefits and an increase in public confidence.

Federalism Implications

Any rule arising from this NPRM will not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Significance

This notice of proposed rulemaking does not constitute a "significant regulatory action" under Executive Order 12866. It does involve issues of substantial interest to the public, however, and the FAA has therefore determined that the NPRM is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

Issued in Washington, DC, on January 25, 1994.

Federico Peña,

Secretary of Transportation.

David R. Hinson,

Administrator.

[FR Doc. 94–2035 Filed 2–3–94; 1:00 pm]

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federal register

Tuesday
February 15, 1994

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Part 199
Alcohol Misuse Prevention Program; Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS–128, Amdt. No. 199–9]

RIN 2137–AC21

Alcohol Misuse Prevention Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations requiring operators of gas, hazardous liquid and carbon dioxide pipelines and liquefied natural gas (LNG) facilities subject to the pipeline safety regulations to implement alcohol misuse prevention programs for employees who perform safety-sensitive functions. This final rule is consistent with the alcohol rules of other operating administrations (OAs) published elsewhere in today's **Federal Register**, except that RSPA is not requiring pre-employment or random testing. The final rule requires only post-accident, reasonable suspicion, return-to-duty, and follow-up testing. This rule requires operators to remove from safety-sensitive functions employees who engage in prohibited alcohol conduct, and not permit them to return to those functions until specific requirements are met. Operators must provide covered employees with written materials that specifically identify the employees covered by the rule, explain the requirements of the rule, and establish the consequences of engaging in prohibited conduct. Operators must maintain records concerning their programs and report data regarding employee alcohol misuse to RSPA annually. The rules are intended to ensure an alcohol-free workplace, and increase the overall safety of pipeline operations.

EFFECTIVE DATE: This rule is effective March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Rippert, Office of Pipeline Safety Compliance, RSPA, DOT, 400 Seventh Street, SW., Washington, DC 20590–0001 (202 366–6223); or the RSPA Dockets Unit, (202) 366–4453, for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 1992, RSPA published a notice of proposed rulemaking (NPRM) (57 FR 59712) to require pipeline operators of gas, hazardous liquid and carbon dioxide pipelines and liquefied natural gas (LNG) facilities, who are subject to 49 CFR part 192, 193, or 195, to implement alcohol misuse prevention programs for employees who perform certain covered functions. The NPRM proposed to exempt from the alcohol rules operators of "master meter systems" and "liquefied petroleum gas" (LPG) operators.

The comment period on the NPRM closed on April 14, 1993, and all comments received were considered, including the testimony of 16 individuals who presented statements at the three public hearings held on February 26, 1993, in Washington, DC; on March 2, 1993, in Chicago, Illinois; and on March 5, 1993, in San Francisco, California. RSPA received written comments from 108 persons including 75 pipeline operators, eight pipeline industry associations, seven individuals, five labor unions, four state agencies, three contractors, two consortiums, two vendors, one law firm and one Federal agency. All written comments, as well as the hearing transcripts and any statements or other materials submitted at the hearings, have been placed in the docket.

OST Common Preamble

As part of the DOT-wide alcohol misuse prevention rulemaking effort DOT issued a common preamble to all of the related NPRMs that were published on December 15, 1993 (57 FR 59382, *et seq.*). The common preamble precedes this document in today's **Federal Register** and should be read first to ensure a complete understanding of today's substantive final rule. This common preamble contains a thorough discussion of the comments submitted to the DOT alcohol docket and responds to comments submitted to the various DOT agency dockets that raised multimodal aspects of the final rules or the Act.

Discussion of Comments

Authority for RSPA Regulation of Alcohol Misuse.

The majority of the commenters strongly objected to the mandatory imposition of alcohol misuse regulations, as proposed for the pipeline industry. They contended that: (1) Alcohol testing of pipeline operators is not required under the provisions of the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act); (2) the pipeline industry has an excellent safety record; (3) RSPA lacks a factual basis or statistical data that would support a finding of any alcohol-related pipeline accidents; and (4) the proposed alcohol regulations would violate the Fourth Amendment of the Constitution. However, some commenters expressed support for inclusion of a limited alcohol testing program consisting of post-accident and reasonable suspicion testing elements and support for development of a "pilot or demonstration" alcohol program to be conducted by RSPA and various pipeline industry associations. The pilot program would be implemented by operators to develop statistical data which would support the need for an extensive alcohol testing program or data that would indicate implementation of a limited alcohol misuse prevention program was more feasible for the entire industry.

Most commenters opposed the proposed alcohol program, or suggested modifications to tailor the program to the needs of the pipeline industry. Several commenters noted that the pipeline industry is not covered by the Omnibus Act. Commenters stated that there is no indication that there is an alcohol problem in the pipeline industry, and thus there is no justification for imposing Federal regulation. Commenters also stated that pipelines pose different safety risks than other forms of public transportation because they do not carry passengers.

RSPA Response. RSPA is today issuing a final rule on alcohol testing based on its own existing statutory authority to promote safety and to ensure general application of DOT's alcohol misuse regulations to all employees performing safety-sensitive functions in the transportation industries. The two statutes under which RSPA administers the pipeline safety program are the Natural Gas Pipeline Safety Act of 1968, as amended (49 App. U.S.C. 1671 et seq.) and the Hazardous Liquid Pipeline Safety Act of 1979, as amended (49 App. U.S.C. 2001 *et seq.*). The broad safety authority in these statutes is applicable to various aspects of pipeline facilities, including "design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities." 49 App. U.S.C. 1672 and 2002. Under this authority, RSPA can promulgate regulations where those regulations would enhance pipeline safety.

The lack of data cited by some commenters could be the result of a lack of testing and industry alcohol prevention programs rather than the absence of an alcohol problem in the pipeline industry. Alcohol misuse is a problem in society generally, and it is reasonable to expect that the pipeline industry is not immune to the problem of alcohol misuse. As noted in the preamble to the NPRM, RSPA's drug rule was upheld even though there was no evidence of a particularized drug problem in the pipeline industry. *International Brotherhood of Electrical Workers* v. *Skinner*, 913 F.2d 1454 (9th Cir. 1990). Pipeline safety is very important, and operator error can contribute to accidents and incidents involving release of hazardous materials. Although pipelines do not carry people, they do transport very dangerous materials that, if released, can pose a serious threat to public safety, property, and the environment. Therefore, for safety reasons, we have decided to issue this final rule. Although the pipeline industry is not covered by the Omnibus Act, in order to provide a margin of safety in the pipeline industry, this final rule establishes a limited alcohol misuse prevention program. This program includes education, training, prohibitions on certain alcohol-related conduct, and post-accident, reasonable suspicion, return-to-duty, and follow-up testing. To balance our safety concerns with the cost to industry and the lack of evidence of a pipeline alcohol problem, we are not requiring random or pre-employment testing. With the exception of those two types of testing, this final rule is generally consistent with the rules of the other OAs. Such other alterations as are necessary to meet the special circumstances of the pipeline industry have been incorporated into the final rule. We will monitor the data we receive from post-accident and reasonable cause tests to determine if further action is warranted. This final rule will ensure that pipeline employees are subject to the same alcohol prohibitions, consequences, and educational efforts that apply to other transportation workers. Pipeline operators may conduct other types of alcohol testing if they have independent authority to do so.

Constitutional issues and comments on issues common to all of the OAs are addressed in detail in the common preamble to the OA alcohol rules, published elsewhere in today's **Federal Register**.

Applicability and Scope. Several commenters, including the American Gas Association, opposed application of the proposed rule to natural gas transmission and distribution companies. Some commenters indicated that the definition of "safety-sensitive function" and "performing a safety-sensitive function" are too broad and unclear. Other commenters stated that the definition of "covered employee" should include only persons actually employed by an operator, and should not include applicants for employment. Some operators indicated that RSPA should clarify if the alcohol testing regulations are to be a free-standing program separate and distinct from the drug testing program or whether alcohol testing could be integrated with the existing drug testing program. They also pointed out that having different alcohol regulations for each of the OAs may create an administrative burden in complying with the various final rules.

RSPA Response. The NPRM proposed to include essentially the same classes of operators and covered functions as are subject to the anti-drug rule. This rule is adopting as final the NPRM proposal that operators of gas, hazardous liquid and carbon dioxide pipelines, and LNG facilities, who are subject to 49 CFR part 192, 193, or 195, implement alcohol misuse prevention programs for covered employees who perform certain functions covered by the pipeline safety regulations. Persons who perform regulated operation, maintenance, and emergency response functions for operators of these pipelines and facilities directly affect transportation safety. The final rule does not apply, however, to operators of master meter systems or LPG operators. The terms "covered functions" and "safety-sensitive functions" as used here and in the common preamble are synonymous and refer to the performance of an operation, maintenance, or emergency-response function performed on a pipeline or an LNG facility. The term "safety-sensitive function" is used in the Omnibus Transportation Employee Testing Act to describe functions which employees perform.

Operators may combine their RSPA drug and alcohol programs. This final rule is consistent with the other OA rules in order to minimize, to the extent possible, any compliance burden for operators subject to the rules of more than one OA. Because RSPA is not imposing pre-employment testing, the definition of a "covered employee" does not include an applicant for employment.

In the NPRM, RSPA solicited comment on five issues regarding implementation of the proposed alcohol regulations. The questions and comments are summarized below:

1. Are there covered functions the performance of which appears to sufficiently implicate safety to warrant regulating alcohol-related conduct and imposition of a testing requirement?

Several commenters indicated support for requiring only post-accident and reasonable suspicion testing to be mandated by RSPA. Many commenters indicated that pre-employment, random, and return-to-duty were costly and unnecessary as proposed in the NPRM. The commenters supported the current definition of "employee" in the drug testing regulations, and stated that the definition should not be expanded. RSPA agrees that the proposed definition of "employee" is adequate and has not expanded it. As discussed above, the final rule does not require either pre-employment or random testing.

2. Do pipeline operators have any data on the size of the population that would be affected and the incidence of alcohol misuse by this population?

Many operators stated they currently have company-mandated alcohol testing policies in place. These provisions cover testing in post-accident and reasonable suspicion situations. Some commenters indicated zero incidence of alcohol misuse. During the development of the drug testing regulations, many commenters suggested that RSPA include alcohol testing as a tested substance in any required testing program. They also pointed out that alcohol is probably the substance most abused by the public. As discussed above, the lack of data in the pipeline industry does not mean that there is not a problem with alcohol misuse. Therefore, RSPA is requiring a limited alcohol misuse program for the pipeline industry.

3. What additional costs would be incurred by inclusion of other functions and what would be the offsetting benefits (e.g., in terms of accident prevention, productivity, employee lost time)?

Many commenters agreed that increasing the scope of covered employees, especially if random testing were implemented, would substantially increase the costs associated with the regulations. Administrative costs and employee lost time would be increased. Furthermore, inconsistencies develop if alcohol regulations are implemented and differences in scope of coverage between the drug and alcohol testing programs were to occur. This would lead to drug and alcohol testing programs covering different employees. Therefore, the final alcohol rule applies to the same covered functions as the drug rule.

4. Does the industry or public have any information on alcohol-related accidents?

Many commenters argued that RSPA, DOT and the National Transportation

Safety Board (NTSB) have no statistical data to support alcohol-related accidents. Some commenters believe that in the absence of a comprehensive factual analysis, it is unreasonable to conclude that all the proposed types of federally-mandated alcohol testing should be required in the pipeline industry. As discussed above, RSPA has carefully evaluated all facets of the alcohol testing regulations including the required types of testing, categories of covered employees, costs associated with implementation of a testing program and the societal benefits. RSPA has determined that implementation of a limited alcohol testing program is appropriate.

5. Are there other ways that RSPA could reduce the burden on small operators?

Many commenters believe that a limited program such as post-accident and reasonable suspicion testing could be effectively implemented and would not adversely affect the numerous small gas operators. They suggested that allowing the use of non-evidential breath testing devices for screening would lower the overall costs of the entire program. Several commenters suggested that operators with less than 50 employees be excluded from the requirements of alcohol testing. To reduce the burden on small entities, the final rule exempts master meter operators and LPG operators. For all other operators, the final rule eliminates the requirement for random and pre-employment testing. In addition, RSPA has determined that small operators (50 or fewer covered employees) should be excluded from the annual submission of an alcohol MIS report to lessen the burden. RSPA will periodically conduct a sampling of the small operators alcohol programs. Discussion of alternatives for testing methods devices is contained in the common preamble published elsewhere in today's **Federal Register**. Although DOT is not permitting the use of non-evidential breath testing devices, the final rule permits the use for screening of certain evidential devices that are less costly and in the future will allow use of other devices (for screening) that we approve as meeting DOT criteria.

Reasonable Suspicion Testing

Many commenters indicated they were frustrated by use of the phrase "reasonable suspicion" for alcohol testing when the term "reasonable cause" is used in the drug testing regulations. Some commenters supported the NPRM proposal that a supervisor who makes the determination that reasonable suspicion exists to test a covered employee shall not conduct the breath alcohol test on that employee, if another supervisor is readily available. Other commenters indicated that alcohol testing should not be conducted by supervisors, but should be handled by the operator's contract collectors.

RSPA Response. RSPA considers the two terms to be synonymous. The term "reasonable suspicion" is used in the Omnibus Act, and for consistency with other OA alcohol rules, this final rule uses the term "reasonable suspicion." RSPA will consider amending the drug rules to adopt the same terminology. RSPA is concerned about the potential for abuse and harassment of an employee, if the same supervisor who makes the determination that reasonable suspicion exists also conducts the breath test on the employee. Therefore, RSPA has revised this provision to stipulate that the supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

Pre-Duty Use

The NPRM proposed to require each operator to prohibit a covered employee from using alcohol within four hours prior to performing safety-sensitive functions. The final rule adopts an amended provision that prohibits using alcohol within four hours prior to performing covered functions, or within the period of time after an employee has been notified to report to duty to respond to an emergency. In the pipeline industry, an operator commonly has only a limited number of employees or a single employee qualified and available to respond in an emergency situation. In such a case, an employee may be in an unofficial "on-call" status. For example, an employee who finished work for the day and returned home, had a beer at 6 p.m., and was called at 8 p.m. to respond to an emergency, would be prohibited from using alcohol from 8 p.m. until completion of the safety-sensitive duties. This provision is intended to be used only for emergency situations where an operator has no other recourse. Even in an emergency situation, however, if an operator notifies an employee to report, and the operator believes the employee cannot perform because he or she is impaired by alcohol, the operator should not permit the employee to perform safety-sensitive functions.

Alcohol Plans

The NPRM proposed to require operators to develop, maintain, and follow a written alcohol misuse prevention plan. This type of plan proved beneficial in assisting the industry in establishing anti-drug testing programs and educating the industry about the requirements of the drug rule. RSPA requested operators to provide specific comments on whether a model drug and alcohol plan would be beneficial to employers to standardize the requirements of the rules and assist in compliance issues. A number of commenters were in favor of RSPA developing guidance material for use by operators. Commenters stated that guidance materials would aid the operators in the development of a written alcohol misuse prevention plan addressing the requirements contained in the RSPA final rule and part 40. Commenters, however, indicated that such guidance material should not be used as an enforcement tool in limiting an operator's plan to the same language contained in the guidance materials.

RSPA Response. RSPA is developing guidance materials for operators, to assist them in implementing alcohol misuse prevention plans, that we plan to publish prior to implementation of the regulations. The guidance materials could be used by operators and contractors that provide services to operators subject to the regulations. RSPA does not intend for the guidance materials to limit an operator's ability to provide more detail for its employees. The guidance material for alcohol would be added to the existing drug testing guidance material for ease of reference.

Management Information System (MIS) Report

The NPRM proposed to require operators to report alcohol statistical information, as an essential tool for monitoring compliance with the rule. Many commenters were opposed to one or more of the reporting elements proposed in the NPRM. Comments submitted by Exxon and the Interstate Natural Gas Association of America addressed several areas of the form that they contended would present an undue burden in the collection and reporting of data. These comments included objections to the data on employee categories; dual coverage and reporting for employees covered by other DOT agencies; and the requirement to submit annual reports no later than February 15th. Some operators objected to the size and complexity of the report format and the numerous detailed instructions required to complete the form. One consortium indicated that costs of designing software and integrating this type of informational software into the current drug management programs would be immense. Another consortium, which represents numerous small operators and municipalities, suggested that consortia should be allowed to report on behalf of the companies they serve, thus reducing the paperwork required. Many operators provided suggested changes and modifications to reduce the recordkeeping and reporting burden.

RSPA Response. This final rule requires the submission of annual statistical data on each operator's alcohol misuse prevention program. To reduce the burden on small operators (those with 50 or fewer covered employees), those operators are not required to submit annual reports. Small operators are required to keep records and submit to RSPA, upon written request, reports on their alcohol programs. To reduce the reporting burden on operators who have no verified positive test results, RSPA has limited the information to be provided and has developed a simplified "EZ Form" for submitting their reports. In addition, operators are not required to report alcohol testing data for contractors and their employees. Operators, however, are required to keep records on contractor data and make the records available for inspection. To simplify reporting, RSPA has eliminated the requirement to report data on covered employees by function. RSPA has incorporated these amendments into the final alcohol MIS report forms, which appear as exhibits A and B immediately following the rule text in this **Federal Register**. RSPA has determined that while the alcohol testing data elements are properly a matter of regulation, the format in which the data are reported should remain within the discretion of the Administrator. This will enable RSPA to make any revisions to the format that become necessary without undertaking additional rulemaking. Because RSPA does not have regulatory authority over consortia, the final rule requires operators to submit MIS reports. An operator may make arrangements with a consortium to provide data to the operator in whatever format the operator desires, but the responsibility for submitting drug and alcohol MIS reports to RSPA remains with the operator.

Contractor Compliance

The NPRM proposed that contractor employees should be included in the group of employees that must undergo alcohol misuse testing because their job performance is no less critical than the performance of employees who work directly for operators. RSPA proposed limiting the employees, including contractors, covered by the alcohol misuse rule to those who perform operation, maintenance, or emergency-response functions, on the pipeline or LNG facility, that are regulated under part 192, 193, or 195. Seven commenters indicated that RSPA should exclude contractor employees from the definition of "employee." Some commenters suggested that RSPA should be responsible for ensuring that contractor employees are in compliance with parts 40 and 199.

RSPA Response. RSPA believes that contractor employees must be included in the group of employees subject to the alcohol misuse provisions. The performance of safety-sensitive functions by contract employees is no less critical than the performance of the employees who work directly for operators.

Advisory Committee Reviews

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), and section 204(b) of the Hazardous Liquid Pipeline Safety Act of 1979, as amended [Pub. L. 97–468, January 14, 1983), each provide that proposed amendments to safety standards established under the statutes be submitted to the pipeline advisory committees for consideration. Of the 14 ballots received, 12 were in favor of implementing an alcohol misuse prevention program and 2 were opposed. The advisory members comments indicate they are generally in favor of an alcohol testing prevention program for the pipeline industry which has limited testing provisions (post-accident and reasonable suspicion) such as those discussed in this final rule.

In January 1993, copies of the NPRM were mailed to each member of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. On November 29, 1993, RSPA mailed additional copies of the NPRM to each member, and requested that the committees vote by mail on the proposals in the NPRM, and provide any additional comments.

Regulatory Analyses and Notices

E.O. 12866 and DOT Regulatory Policies and Procedures

The final rule is a significant regulatory action under Executive Order 12866, and has been reviewed under that order. It is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because it is of substantial public interest. A regulatory evaluation is available for review in the docket. RSPA has evaluated the industry-wide costs and benefits relating to the implementation of the alcohol misuse prevention program for pipeline operators. RSPA has calculated the total cost of this program for the first year to be $1,876,270. The exclusion of pre-employment and random testing from the final rule has provided a substantial reduction in the total cost of the alcohol program. We have projected yearly program costs of $186,407, with a slight increase every third year to allow for major equipment overhaul which would project a total program cost of $258,907. The total 10-year program costs are estimated to be $3,806,745. The total 10-year discounted costs are projected to be $3,270,684 (uses net present value at 7%).

RSPA believes that major cost benefits will accrue from this rule, including the prevention of potential injuries, fatalities and property losses resulting from accidents attributed to alcohol misuse, and improved worker productivity and estimates the savings to be $15,344,000.

Paperwork Reduction Act

The final rule sets forth new alcohol misuse prevention program requirements and includes information collection requirements subject to the Paperwork Reduction Act. These requirements have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and 5 CFR Part 1320. Information collection requirements are not effective until Paperwork Reduction Act clearance has been received.

Regulatory Flexibility Act

The final rule affects all entities subject to part 192, 193, or 195, except operators of master meter systems and liquefied petroleum gas (LPG) operators, which are exempt. Master meter systems and LPG operators constitute the bulk of small businesses or other small entities that operate gas pipeline systems subject to part 192. There are few, if any, small entities that operate hazardous liquid or carbon dioxide pipelines subject to part 195, or LNG facilities subject to part 193. Therefore, I certify under section 605 of the Regulatory Flexibility Act (5 U.S.C.) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612

This regulation will not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and

responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Recordkeeping and reporting.

In consideration of the foregoing, RSPA is amending 49 CFR part 199 as follows:

1. The title for part 199 is revised to read as follows:

PART 199—DRUG AND ALCOHOL TESTING

2. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, and 2002; 49 CFR 1.53.

3. Sections 199.1 through 199.25 are designated as subpart A, and subpart B is added to read as follows:

Subpart B—Alcohol Misuse Prevention Program

Sec.

199.200 Purpose.
199.201 Applicability.
199.202 Alcohol misuse plan.
199.203 Alcohol testing procedures.
199.205 Definitions.
199.207 Preemption of State and local laws.
199.209 Other requirements imposed by operators.
199.211 Requirement for notice.
199.213 Starting date for alcohol testing programs.
199.215 Alcohol concentration.
199.217 On-duty use.
199.219 Pre-duty use.
199.221 Use following an accident.
199.223 Refusal to submit to a required alcohol test.
199.225 Alcohol tests required.
199.227 Retention of records.
199.229 Reporting of alcohol testing results.
199.231 Access to facilities and records.
199.233 Removal from covered function.
199.235 Required evaluation and testing.
199.237 Other alcohol-related conduct.
199.239 Operator obligation to promulgate a policy on the misuse of alcohol.
199.241 Training for supervisors.
199.243 Referral, evaluation, and treatment.
199.245 Contractor employees.

Subpart B—Alcohol Misuse Prevention Program

§ 199.200 Purpose.

The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions for operators of certain pipeline facilities subject to parts 192, 193, or 195 of this chapter.

§ 199.201 Applicability.

This subpart applies to gas, hazardous liquid and carbon dioxide pipeline operators and liquefied natural gas operators subject to parts 192, 193, or 195 of this chapter. However, this subpart does not apply to operators of master meter systems defined in § 191.3 or liquefied petroleum gas (LPG) operators as discussed in § 192.11 of this chapter.

§ 199.202 Alcohol misuse plan.

Each operator shall maintain and follow a written alcohol misuse plan that conforms to the requirements of this subpart and the DOT procedures in part 40 of this title. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education and training elements.

§ 199.203 Alcohol testing procedures.

Each operator shall ensure that all alcohol testing conducted under this subpart complies with the procedures set forth in part 40 of this title. The provisions of 49 CFR part 40 that address alcohol testing are made applicable to operators by this subpart.

§ 199.205 Definitions.

As used in this subpart:

Accident means an incident reportable under part 191 of this chapter involving gas pipeline facilities or LNG facilities, or an accident reportable under part 195 of this chapter involving hazardous liquid or carbon dioxide pipeline facilities.

Administrator means the Administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this subpart.

Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Confirmation test means a second test, following a screening test with a result 0.02 or greater, that provides quantitative data of alcohol concentration.

Consortium means an entity, including a group or association of employers, recipients, or contractors, that provides alcohol testing as required by this subpart or other DOT alcohol testing rules and that acts on behalf of the operators.

Covered employee means a person who performs on a pipeline or at an LNG facility an operation, maintenance, or emergency-response function regulated by parts 192, 193, or 195 of this chapter. *Covered employee* and *individual* or *individual to be tested* have the same meaning for the purposes of this subpart. The term covered employee does not include clerical, truck driving, accounting, or other functions not subject to parts 192, 193, or 195. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

Covered function (safety-sensitive function) means an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the function is regulated by parts 192, 193, or 195.

DOT agency An agency (or operating administration) of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR parts 61, 63, 65, 121, 135; 49 CFR parts 199, 219, 382, and 654) in accordance with part 40 of this title.

Employer or operator means a person who owns or operates a pipeline or LNG facility subject to parts 192, 193, or 195 of this chapter.

Performing (a covered function): An employee is considered to be performing a covered function (safety-sensitive function) during any period in which he or she is actually performing, ready to perform, or immediately available to perform such covered functions.

Refuse to submit (to an alcohol test) means that a covered employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this subpart, or engages in conduct that clearly obstructs the testing process.

Screening test means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

§ 199.207 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this subpart preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this subpart is not possible;

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this subpart; or

(3) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

(b) This subpart shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 199.209 Other requirements imposed by operators.

Except as expressly provided in this subpart, nothing in this subpart shall be construed to affect the authority of operators, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

§ 199.211 Requirement for notice.

Before performing an alcohol test under this subpart, each operator shall notify a covered employee that the alcohol test is required by this subpart. No operator shall falsely represent that a test is administered under this subpart.

§ 199.213 Starting date for alcohol testing programs.

(a) *Large operators.* Each operator with more than fifty covered employees on February 15, 1994 shall implement the requirements of this subpart beginning on January 1, 1995.

(b) *Small operators.* Each operator with fifty or fewer covered employees on February 15 1994 shall implement the requirements of this subpart beginning on January 1, 1996.

(c) All operators commencing operations after February 15, 1994 shall have an alcohol misuse program that conforms to this subpart by January 1, 1996, or by the date an operator begins operations, whichever is later.

§ 199.215 Alcohol concentration.

Each operator shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. No operator having actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform covered functions.

§ 199.217 On-duty use.

Each operator shall prohibit a covered employee from using alcohol while performing covered functions. No operator having actual knowledge that a covered employee is using alcohol while performing covered functions shall permit the employee to perform or continue to perform covered functions.

§ 199.219 Pre-duty use.

Each operator shall prohibit a covered employee from using alcohol within four hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. No operator having actual knowledge that a covered employee has used alcohol within four hours prior to performing covered functions or within the time period after the employee has been notified to report for duty shall permit that covered employee to perform or continue to perform covered functions.

§ 199.221 Use following an accident.

Each operator shall prohibit a covered employee who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the operator as a contributing factor to the accident from using alcohol for eight hours following the accident, unless he or she has been given a post-accident test under § 199.225(a), or the operator has determined that the employee's performance could not have contributed to the accident.

§ 199.223 Refusal to submit to a required alcohol test.

Each operator shall require a covered employee to submit to a post-accident alcohol test required under § 199.225(a), a reasonable suspicion alcohol test required under § 199.225(b), or a follow-up alcohol test required under § 199.225(d). No operator shall permit an employee who refuses to submit to such a test to perform or continue to perform covered functions.

§ 199.225 Alcohol tests required.

Each operator shall conduct the following types of alcohol tests for the presence of alcohol:

(a) *Post-accident.* (1) As soon as practicable following an accident, each operator shall test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the operator's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.

(2) If a test required by this section is not administered within 2 hours following the accident, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by paragraph (a) is not administered within 8 hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(3) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the operator or operator representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the operator to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(b) *Reasonable suspicion testing.* (1) Each operator shall require a covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

(2) The operator's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable

observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

(3) Alcohol testing is authorized by this section only if the observations required by paragraph (b)(2) of this section are made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this subpart. A covered employee may be directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions.

(4) (i) If a test required by this section is not administered within 2 hours following the determination under paragraph (b)(2) of this section, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the determination under paragraph (b)(2) of this section, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Records shall be submitted to RSPA upon request of the Administrator.

(ii) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, an operator shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an operator permit the covered employee to perform or continue to perform covered functions, until:

(A) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or

(B) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination under paragraph (b)(2) of this section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

(iii) Except as provided in paragraph (b)(4)(ii), no operator shall take any action under this subpart against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an operator with the authority independent of this subpart from taking any action otherwise consistent with law.

(c) *Return-to-duty testing.* Each operator shall ensure that before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§ 199.215 through 199.223, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(d) *Follow-up testing.* (1) Following a determination under § 199.243(b) that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each operator shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of § 199.243(b)(2)(ii).

(2) Follow-up testing shall be conducted when the covered employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing such functions.

(e) *Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.* Each operator shall retest a covered employee to ensure compliance with the provisions of § 199.237, if an operator chooses to permit the employee to perform a covered function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

§ 199.227 Retention of records.

(a) *General requirement.* Each operator shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each operator shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, employee evaluation and referrals, and MIS annual report data shall be maintained for a minimum of five years.

(2) *Two years.* Records related to the collection process (except calibration of evidential breath testing devices), and training shall be maintained for a minimum of two years.

(3) *One year.* Records of all test results below 0.02 (as defined in 49 CFR part 40) shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained:

(1) Records related to the collection process:

(i) Collection log books, if used.

(ii) Calibration documentation for evidential breath testing devices.

(iii) Documentation of breath alcohol technician training.

(iv) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(v) Documents generated in connection with decisions on post-accident tests.

(vi) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(2) Records related to test results:

(i) The operator's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this subpart.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this subpart.

(3) Records related to other violations of this subpart.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Record(s) related to the operator's MIS annual testing data.

(6) Records related to education and training:

(i) Materials on alcohol misuse awareness, including a copy of the operator's policy on alcohol misuse.

(ii) Documentation of compliance with the requirements of § 199.231.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this subpart complies with the requirements for such training.

§ 199.229 Reporting of alcohol testing results.

(a) Each large operator (having more than 50 covered employees) shall submit an annual management information system (MIS) report to RSPA of its alcohol testing results in the form and manner prescribed by the Administrator, by March 15 of each year for the previous calendar year (January 1 through December 31). The Administrator may require by written notice that a small operator (50 or fewer covered employees), not otherwise required to submit annual MIS reports, submit such a report to RSPA.

(b) Each operator that is subject to more than one DOT agency alcohol rule shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number of covered employees. Prior to conducting any alcohol test on a covered employee subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each report, required under this section, shall be submitted to the Office of Pipeline Safety Compliance (OPS), Research and Special Programs Administration, Department of Transportation, room 2335, 400 Seventh Street, SW., Washington, DC 20590.

(d) Each report that contains information on an alcohol screening test result of 0.02 or greater or a violation of the alcohol misuse provisions of §§ 199.215 through 199.223 of this subpart shall be submitted on "RSPA Alcohol Testing MIS Data Collection Form" and include the following informational elements:

(1) Number of covered employees.

(2) Number of covered employees subject to testing under the alcohol misuse rule of another operating administration by each agency.

(3) (i) Number of screening tests by type of test.

(ii) Number of confirmation tests by type of test.

(4) Number of confirmation tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test.

(5) Number of confirmation tests indicating an alcohol concentration of 0.04 or greater, by type of test.

(6) Number of covered employees with a confirmation test indicating an alcohol concentration of 0.04 or greater or who have violations of other alcohol misuse provisions who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in §§ 199.235 and 199.243).

(7) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater.

(8) Number of covered employees who were found to have violated other provisions of §§ 199.215 through 199.221, and any action taken in response to the violation.

(9) Number of covered employees who refused to submit to an alcohol test required under this subpart, and the action taken in response to the refusal.

(10) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(e) Each report with no screening alcohol test results of 0.02, or greater or violations of the alcohol misuse provisions of §§ 199.215 through 199.223 of this subpart shall be submitted on "RSPA Alcohol Testing MIS Data Collection EZ Form" and include the following informational elements. (This "EZ" report may only be submitted if the program results meet these criteria)

(1) Number of covered employees.

(2) Number of covered employees subject to testing under the alcohol misuse rule of another operating administration identified by each agency.

(3) Number of screening tests by type of test.

(4) Number of covered employees who refused to submit to an alcohol test required under this subpart, and the action taken in response to the refusal.

(5) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(f) A consortium may prepare reports on behalf of individual pipeline operators for purposes of compliance with this reporting requirement. However, the pipeline operator shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

§ 199.231 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this subpart, no employer shall release covered employee information that is contained in records required to be maintained in § 199.227.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The operator shall promptly provide the records requested by the employee. Access to a employee's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each operator shall permit access to all facilities utilized in complying with the requirements of this subpart to the Secretary of Transportation, any DOT agency, or a representative of a state agency with regulatory authority over the operator.

(d) Each operator shall make available copies of all results for employer alcohol testing conducted under this subpart and any other information pertaining to the operator's alcohol misuse prevention program, when requested by the Secretary of Transportation, any DOT agency with regulatory authority over the operator, or a representative of a state agency with regulatory authority over the operator. The information shall include name-specific alcohol test results, records, and reports.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, an operator shall disclose information related to the operator's administration of any post-accident alcohol tests administered following the accident under investigation.

(f) An operator shall make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.

(g) An operator may disclose information required to be maintained under this subpart pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under this subpart, or from the operator's determination that the covered employee engaged in conduct prohibited by §§ 199.215 through 199.223 (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(h) An operator shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

§ 199.233 Removal from covered function.

Except as provided in §§ 199.239 through 199.243, no operator shall permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by §§ 199.215 through 199.223 or an alcohol misuse rule of another DOT agency.

§ 199.235 Required evaluation and testing.

No operator shall permit a covered employee who has engaged in conduct prohibited by §§ 199.215 through 199.223 to perform covered functions unless the employee has met the requirements of § 199.243.

§ 199.237 Other alcohol-related conduct.

(a) No operator shall permit a covered employee tested under the provisions of § 199.225, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, to perform or continue to perform covered functions, until:

(1) The employee's alcohol concentration measures less than 0.02 in accordance with a test administered under § 199.225(e); or

(2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no operator shall take any action under this subpart against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an operator with authority independent of this subpart from taking any action otherwise consistent with law.

§ 199.239 Operator obligation to promulgate a policy on the misuse of alcohol.

(a) *General requirements.* Each operator shall provide educational materials that explain these alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements.

(1) The operator shall ensure that a copy of these materials is distributed to each covered employee prior to start of alcohol testing under this subpart, and to each person subsequently hired for or transferred to a covered position.

(2) Each operator shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to covered employees shall include detailed discussion of at least the following:

(1) The identity of the person designated by the operator to answer covered employee questions about the materials.

(2) The categories of employees who are subject to the provisions of this subpart.

(3) Sufficient information about the covered functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with this subpart.

(4) Specific information concerning covered employee conduct that is prohibited by this subpart.

(5) The circumstances under which a covered employee will be tested for alcohol under this subpart.

(6) The procedures that will be used to test for the presence of alcohol, protect the covered employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(7) The requirement that a covered employee submit to alcohol tests administered in accordance with this subpart.

(8) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(9) The consequences for covered employees found to have violated the prohibitions under this subpart, including the requirement that the employee be removed immediately from covered functions, and the procedures under § 199.243.

(10) The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(11) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and including intervening evaluating and resolving problems associated with the misuse of alcohol including intervening when an alcohol problem is suspected, confrontation, referral to any available EAP, and/or referral to management.

(c) *Optional provisions.* The materials supplied to covered employees may also include information on additional operator policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the operator's authority independent of this subpart. Any such additional policies or consequences shall be clearly described as being based on independent authority.

§ 199.241 Training for supervisors.

Each operator shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under § 199.225(b) receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 199.243 Referral, evaluation, and treatment.

(a) Each covered employee who has engaged in conduct prohibited by §§ 199.215 through 199.223 of this subpart shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each covered employee who engages in conduct prohibited under §§ 199.215 through 199.223 shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

(c) (1) Before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§ 199.215 through 199.223 of this subpart, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(2) In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse—

(i) Shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol tests administered by the operator following the employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. In addition, follow-up testing may include testing for drugs, as directed by the substance abuse professional, to be performed in accordance with 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the operator, by a substance abuse professional under contract with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment of costs shall be made in accordance with the operator/employee agreements and operator/employee policies.

(e) The operator shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with alcohol misuse does not refer the employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through—

(1) A public agency, such as a State, county, or municipality;

(2) The operator or a person under contract to provide treatment for alcohol problems on behalf of the operator;

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

§ 199.245 Contractor employees.

(a) With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that the alcohol testing, training and education required by this subpart be carried out by the contractor provided:

(b) The operator remains responsible for ensuring that the requirements of this subpart and part 40 of this title are complied with; and

(c) The contractor allows access to property and records by the Operator, the Administrator, any DOT agency with regulatory authority over the operator or covered employee, and, if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the operator's compliance with the requirements of this subpart and part 40 of this title.

Issued in Washington, DC on January 25, 1994.

Federico Peña,

Secretary of Transportation.

Ana Sol Gutiérrez,

Acting Administrator, Research and Special Programs Administration.

Note: The following appendix and exhibit will not appear in the Code of Federal Regulations.

BILLING CODE 4910-60-P

APPENDIX B - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information in the Research and Special Programs Administration (RSPA) and the U.S. Department of Transportation (DOT) **Alcohol Testing MIS Data Collection Form**. These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages ii-iii as an example to facilitate the process of completing the form correctly.

This reporting form includes three sections. Collectively, these sections address the data elements required in the RSPA and the DOT alcohol testing regulations. The three sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. PIPELINE EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	1
C. ALCOHOL TESTING INFORMATION	i-iv	2

Page 1 **EMPLOYER INFORMATION** (Section A) requires the company name for which the report is done, a current address, and the name of the person responsible for completing the form. Be sure to check which one of the five categories (gas gathering; gas transmission; gas distribution; transportation of hazardous liquids; and transportation of carbon dioxide) characterizes the **primary** nature of your operation. Finally, a signature, date, and current telephone number (including the area code) are required certifying the correctness and completeness of the form.

Page 1 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under DOT regulations. There is only one category of covered employees for RSPA -- Operation/Maintenance/Emergency Response. The most likely source for this information is the employer's personnel department These counts should be based on the company records for the reported year.

Additional information must be completed if your company employs personnel who perform duties covered by the alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

Page 2 **ALCOHOL TESTING INFORMATION** (Section C) requires information for alcohol testing by category of testing. These categories include: (1) post-accident, (2) reasonable suspicion, (3) return to duty, and (4) follow-up testing. All numbers entered into this table should be for company employees in a **covered position** only. Each part of this table must be completed for each category of testing.

These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iii.

Four types of information are necessary to complete this table. The first blank column with the heading **"NUMBER OF SCREENING TESTS"** requires a count of all screening alcohol tests performed. It should not include refusals to test. The second blank column with the heading **"NUMBER OF CONFIRMATION TESTS"** requires a count of all confirmation alcohol tests performed.

The third blank column with the heading **"NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04"** refers to the number of test results equal to or greater than 0.02, but less than 0.04.

The fourth blank column with the heading **"NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04"** refers to the number of specimens with a result equal to or greater than 0.04. **Note: For return to duty testing, a confirmation test result equal to or greater than 0.02 is a violation of the alcohol rule. Therefore, if the number of results equal to or greater than 0.04 is unknown, you may report all results in the third column of the table.**

A sample table is provided on page iii with example numbers.

SAMPLE TEST RESULTS TABLE

The following example is for Section C, **ALCOHOL TESTING INFORMATION**, which summarizes post-accident testing results. The procedures detailed here also apply to the other categories for testing in Section C which require you to summarize testing results for covered employees. This example will use "Post-Accident" testing to illustrate the procedures for completing the form.

[A] Screening tests were performed on 47 covered employees during the reporting year. This information is entered in the first blank column of the table in the row marked "POST-ACCIDENT".

[B] Confirmation tests were necessary for 6 of the 47 covered employees. Enter this information in the second blank column of the table in the row marked "POST-ACCIDENT". The confirmation test results for these 6 employees were the following:

Employee	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

[C] The confirmation test results for 2 of the covered employees were equal to or greater than 0.02, but less than 0.04. Enter this information in the third blank column of the table in the row marked "POST-ACCIDENT".

D The confirmation test results for 3 of the covered employees were equal to or greater than 0.04. Enter this information in the fourth blank column of the table in the row marked "POST-ACCIDENT".

TYPE OF TEST	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
POST-ACCIDENT	→ 47	→ 6	→ 2	→ 3
	A	B	C	D

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATION TESTS". These numbers may differ since some confirmation test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all categories of testing in the table in Section C.

Page 2 Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of the "**Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in RSPA regulations)**". This information should be available from the personnel office and/or the drug and alcohol program manager.

Page 2 Next you must provide information on **ACTIONS TAKEN ON ALCOHOL TEST RESULTS EQUAL TO OR GREATER THAN 0.04**. Indicate the number of employees subjected to the following actions:

- **No longer employed with company** - include covered employees who resigned or were terminated as the result of a confirmation test result equal to or greater than 0.04.
- **Reassigned to non-covered functions** - include covered employees who were reassigned within the company to a non-covered position as the result of a confirmation test result equal to or greater than 0.04.
- **Entered rehabilitation, if applicable, and/or returned to covered functions** - include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.

- **Other** - include covered employees who did not fall under one of the previous options and specify the action taken.

Enter the sum of the number of actions taken on the line marked **TOTAL**

Page 2 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater**, requires that a count of all such employees be entered in the indicated box.

Page 2 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION**, requires supplying the number of covered employees who used alcohol prior to performing a safety-sensitive function, while performing a safety-sensitive function, and before taking a required post-accident alcohol test. The action taken with covered employees who violate any of these RSPA alcohol regulation provisions is also to be supplied. Other violations not delineated in this table may also be provided.

Page 2 **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to an alcohol test required under the RSPA regulation and the action taken following the refusal.

Page 2 **ALCOHOL TRAINING/EDUCATION** requires information on the number of supervisory personnel who have received the required alcohol training during the current reporting period.

RSPA ALCOHOL TESTING MIS DATA COLLECTION FORM OMB No 2137-0579

A. PIPELINE EMPLOYER INFORMATION

Company _____ Year Covered by This Report: _____

Address _____ Person responsible for completing the form:

_____ _____

Check the one box that indicates the primary nature of your operation.

☐ Gas gathering
☐ Gas transmission
☐ Gas distribution
☐ Transportation of hazardous liquids
☐ Transportation of carbon dioxide

I, the undersigned certify that the information provided on this Research and Special Programs Administration Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____
Signature Date of Signature

_____ _____
Title Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Research and Special Programs Administration estimates that the average burden for this report form is 3.1 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Pipeline Safety, RSPA, DOT; 400 7th St., S.W.; Washington, DC 20590; OR Office of Management and Budget, Paperwork Reduction Project (2137-0579); Washington, DC 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF RSPA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FRA	FTA	USCG
Operation/Maintenance/Emergency Response						

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM

1 All items refer to the current reporting period only (for example January 1 1994 - December 31 1994)

2 This report is only for testing REQUIRED BY THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION (RSPA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)

- Results should be reported only for employees in COVERED POSITIONS as defined by RSPA/DOT alcohol testing regulations
- The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40

3 Information on refusals for testing should only be reported in the table EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST Do not include refusals for testing in other sections of this report

4 Complete all items. DO NOT LEAVE ANY ITEM BLANK If the value for an item is zero (0) place a zero (0) on the form

C. ALCOHOL TESTING INFORMATION

TYPE OF TEST	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
POST-ACCIDENT				
REASONABLE SUSPICION				
RETURN TO DUTY				
FOLLOW-UP				

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in RSPA regulations)	

ACTIONS TAKEN ON ALCOHOL TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER
No longer employed with company:	
Reassigned to non-covered functions:	
Entered rehabilitation, if applicable, and /or returned to covered functions:	
Other (specify):	
TOTAL	

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:	

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN
	Covered employee used alcohol while performing safety-sensitive function.	
	Covered employee used alcohol within 4 hours of performing safety-sensitive function.	
	Covered employee used alcohol before taking a required post-accident alcohol test.	

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	NUMBER OF REFUSALS
Number of employees who refused to submit to an alcohol test required under the RSPA rule:	
ACTION TAKEN	NUMBER
No longer employed with company:	
Reassigned to non-covered functions:	
Entered rehabilitation, if applicable, and/or returned to covered functions:	
Other (specify):	

ALCOHOL TRAINING/EDUCATION	NUMBER
Supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by RSPA alcohol testing regulations:	

EXHIBIT B - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Research and Special Programs Administration (RSPA) and the U.S. Department of Transportation (DOT) **Alcohol Testing MIS "EZ" Data Collection Form**. This form should only be used if there is **no alcohol misuse** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes three sections. These sections address the data elements required in the RSPA and DOT alcohol testing regulations.

SECTION A - PIPELINE EMPLOYER INFORMATION requires the company name for which the report is done, a current address, and the name of the person responsible for completing the form. Be sure to check which one of the five categories (gas gathering; gas transmission; gas distribution; transportation of hazardous liquids; and transportation of carbon dioxide) characterizes the **primary** nature of your operation. Finally, a signature, date, and current telephone number (including the area code) are required certifying the correctness and completeness of the form.

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the RSPA regulation. There is only one category of covered employees for RSPA --- Operation/Maintenance/Emergency Response. The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year.

Additional information must be completed if your company employs personnel who perform duties covered by the alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

SECTION C - ALCOHOL TESTING INFORMATION requires information for alcohol testing, refusals for testing, and education/training. The first table requests information on the **NUMBER OF SCREENING TESTS CONDUCTED** in each category for testing. All numbers entered into this table should be for applicants or company employees in **covered positions** only. Each part of this table must be completed for each category of testing including: (1) post-accident, (2) reasonable suspicion, (3) return to duty, and (4) follow-up testing. These numbers **do not** include refusals for testing. Simply enter the number of alcohol screening tests conducted for each category of testing.

Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of the **number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in RSPA regulations)**. This information should be available from the personnel office and/or alcohol program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to an alcohol test required under the RSPA regulation and the action taken following the refusal. Indicate the number of employees subjected to the following actions:

- **No longer employed with company** - include covered employees who resigned or were terminated as the result of a refusal to submit to an alcohol test.
- **Reassigned to non-covered functions** - include covered employees who were reassigned within the company to a non-covered position as the result of a refusal to submit to an alcohol test.
- **Entered rehabilitation, if applicable, and/or returned to covered functions** - include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.
- **Other** - include covered employees who did not fall under one of the previous options and specify the action taken.

ALCOHOL TRAINING/EDUCATION requires information on the number of supervisory personnel who have received the required alcohol training during the current reporting period.

RSPA ALCOHOL TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2137-0579
(No Alcohol Misuse)

A. PIPELINE EMPLOYER INFORMATION

Company _____ Year Covered by This Report: _____

Address _____ Person responsible for completing the form:

_____ _____

Check the one box that indicates the primary nature of your operation.

☐ Gas gathering
☐ Gas transmission
☐ Gas distribution
☐ Transportation of hazardous liquids
☐ Transportation of carbon dioxide

I, the undersigned, certify that the information provided on the attached Research and Special Programs Administration Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____
Signature Date of Signature

_____ _____
Title Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Research and Special Programs Administration estimates that the average burden for this report form is 3.0 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Pipeline Safety, RSPA, DOT; 400 7th St., S.W.; Washington, DC 20590; OR Office of Management and Budget, Paperwork Reduction Project (2137-0579); Washington, DC 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF RSPA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FRA	FTA	USCG
Operation/Maintenance/Emergency Response						

C. ALCOHOL TESTING INFORMATION

NUMBER OF SCREENING TESTS CONDUCTED				
EMPLOYEE CATEGORY	POST-ACCIDENT	REASONABLE SUSPICION	RETURN TO DUTY	FOLLOW-UP
Operation/Maintenance/ Emergency Response				

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in RSPA regulations):	

C. ALCOHOL TESTING INFORMATION (cont.)

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	NUMBER OF REFUSALS
Number of employees who refused to submit to an alcohol test required under the RSPA rule:	
ACTION TAKEN	NUMBER
No longer employed with company:	
Reassigned to non-covered functions:	
Entered rehabilitation, if applicable, and/or returned to covered functions:	
Other (specify):	

ALCOHOL TRAINING/EDUCATION	NUMBER
Supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by RSPA alcohol testing regulations:	

[FR Doc. 94-2034 Filed 2-3-94; 1:00 pm]
BILLING CODE 4910-60-C

Federal Register

Tuesday
February 15, 1994

Part VI

Department of Transportation

Federal Railroad Administration

49 CFR Part 219

Alcohol Testing; Amendments to Alcohol/Drug Regulations; Final Rule

International Application: Alcohol/Drug Regulations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. RSOR-6; Notice No. 38]

RIN 2130-AA81

Alcohol Testing; Amendments to Alcohol/Drug Regulations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA issues a final rule to conform its regulations on control of alcohol and drug use in railroad operations to the requirements of the Omnibus Transportation Employee Testing Act of 1991 (Act). Among other changes, FRA now requires pre-employment and random alcohol testing of safety-sensitive employees, and makes the reasonable suspicion component of for cause testing mandatory for both alcohol and drugs. FRA also amends its procedures to incorporate split sample testing and to incorporate the departmental alcohol testing procedures published elsewhere in today's **Federal Register**.

EFFECTIVE DATES: This final rule is effective January 1, 1995, except that the amendment to § 219.707 and § 219.708 are effective August 15, 1994.

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Docket No. RSOR-6, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street SW., room 8201, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Walter C. Rockey, Executive Assistant to the Associate Administrator for Safety (RRS-3), Office of Safety, FRA, Washington, DC 20590 (Telephone: (202) 366-0897) or Patricia V. Sun, Trial Attorney (RCC-30), Office of Chief Counsel, FRA, Washington, DC 20590 (Telephone: (202) 366-4002).

SUPPLEMENTARY INFORMATION:

Background

On December 15, 1992, FRA published a notice proposing to amend its regulations on alcohol and drug misuse (49 CFR part 219) in response to the testing requirements mandated by the Omnibus Transportation Employee Testing Act of 1991 (57 FR 59588). At hearings in Washington, DC, Chicago, and San Francisco, FRA heard testimony from over 20 parties, including the major industry trade associations (the American Association of Railroads (AAR) and the American Short Line Railroad Association (ASLRA)) and labor organizations (the Brotherhood of Locomotive Engineers (BLE), the Brotherhood of Railroad Signalmen (BRS), and the Railway Labor Executives' Association (RLEA)). FRA also received oral or written comment from the American Public Transit Association (APTA), the Transportation Trades Department (TTD) of the AFL-CIO, the National Transportation Safety Board (NTSB), individual freight and commuter railroads, service providers, and state and local governments, among others. FRA has reconsidered some of its proposals in light of the comments received.

First, the effective date for this rule is January 1, 1995, to ensure that EBTs that meet part 40 specifications will be widely available and to allow for implementation of quality control systems. This will also allow railroads time to purchase evidential breath testing devices (EBTs) and phase in other part 40 requirements such as breath alcohol technician training. To ensure a smooth transition, existing provisions will remain in effect and voluntary compliance before the effective date will not be allowed. (However, urine split sample drug testing is effective beginning on August 15, 1994. See part 40 and §§ 219.707 and 219.708 of this final rule.

Second, FRA permits screening tests to be conducted on preliminary breath testing devices (PBTs) found on the Conforming Products List (CPL) of the National Highway Traffic Safety Administration (NHTSA). EBTs that currently qualify for the CPL but do not meet the specifications listed in DOT's amended "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 CFR Part 40 (Part 40), published elsewhere in today's **Federal Register**), may be used as PBTs. As discussed in part 40, NHTSA will develop model specifications for a new CPL to qualify other alcohol testing devices (such as saliva tests and breath tubes) as PBTs. Procedures for these additional PBTs will be addressed in future rulemakings.

Third, in a separate notice issued by the Office of the Secretary (OST), the Department proposes to allow blood testing for screening and confirmation tests in the case of reasonable suspicion or after qualifying accidents (for modes other than rail). Combined, the use of PBTs and blood would be an alternative testing methodology that could be used in remote locations or unusual circumstances when EBTs are inaccessible. Allowing a blood test option for for cause testing would substantially reduce the costs of alcohol testing, since railroads would not have to ensure system-wide availability of breath alcohol technicians (BATs) and EBTs for unplanned testing events. Railroads would then be free to plan the deployment or contracting of BATs and EBTs for the remaining types of testing (pre-employment, return to service, follow-up, and random) which are all, of course, scheduled by the railroads.

Since FRA has repealed its existing breath and blood testing procedures (§ 219.104(e) and former § 219.303), for cause testing will be conducted exclusively under today's amended part 40 procedures, which contain new breath testing safeguards. For now, FRA allows only breath to be used in for cause testing. As mentioned above, however, the Department is proposing part 40 blood testing procedures (see the DOT notice titled "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 CFR part 40, published elsewhere in today's **Federal Register**). If the Department adopts this proposal, and allows for cause blood alcohol testing, FRA will allow railroads to conduct for cause blood alcohol testing under part 40 procedures.

Also, FRA moves the authority for optional post-accident breath testing formerly contained in § 219.303 from for cause testing to post-accident testing. Although urine and blood samples must still be collected and sent to FRA's post-accident laboratory for full toxicological testing, the EBT breath testing option allows railroads to obtain immediate test results. (Post-accident breath testing must be conducted in accordance with part 40, however, since FRA will not retain § 219.303's procedures.) This relocation means, in effect, that the categorical standards used in subpart C will govern, rather than the reasonable cause criteria of subpart D.

Additional discussion of alcohol testing methodology can be found below and in a separate departmental Final Rule, "Procedures for Transportation Workplace Testing Programs" (49 CFR part 40), also published elsewhere in today's **Federal Register**.

Finally, for random alcohol testing, FRA will introduce performance-based testing by industry. Performance-based testing was widely supported by commenters. As proposed, FRA will use a graduated submission and implementation schedule similar to the one used to phase-in random drug testing. Railroads will initially be required to conduct random alcohol testing at a 25 percent rate. Performance-based testing, as determined by the Administrator, will begin a year after industry-wide implementation of random alcohol testing has occurred. (In a separate departmental NPRM in today's **Federal Register**, FRA also proposes to implement performance-based testing for random drug testing. See "Random Drug Testing Program.")

The section-by-section analysis discusses these and other amendments contained in the final rule. (Editorial changes and several proposed amendments that did not receive comment are adopted without further discussion.)

Interested parties should also review the departmental preamble (common preamble) published by the Office of the Secretary of Transportation elsewhere in today's **Federal Register**, which is incorporated herein by reference. (The Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Research and Special Projects Administration (RSPA) are also publishing alcohol testing rules in today's **Federal Register**.) Although the common preamble discusses issues pertaining to all of the modal rules, some of its discussion is not directly applicable to FRA's rule. The basis for any differences can be found in the section-by-section analysis.

For convenience and ease of reference, the entire rule text as amended is republished.

Multi-modal Coverage

For railroads, multi-modal coverage primarily affects those employees (mainly signal maintainers) who both perform covered service and hold Commercial Driver's Licenses (CDLs). These employees are subject to FRA and FHWA regulations. CDL holders who do not perform covered service (such as maintenance of way and shop employees) are subject only to FHWA's regulations.

The ASLRA and rail labor wanted all railroad employees to be covered by FRA only. The AAR, on the other hand, recommended that FHWA regulations determine coverage for railroad commercial vehicle drivers, although testing would be conducted in accordance with FRA's regulations. Estimating that approximately 1,000 rail drivers per major railroad are subject to dual coverage, the AAR expressed concern about how to resolve differences between FRA and FHWA regulations and pointed out that this group of employees could be subject to a different random testing rate if performance-based rates are set by industry.

While sympathetic to these industry concerns, FRA and DOT believe that modal coverage, like reportability (see Annual Reporting Requirements; Amendments to Alcohol/Drug Regulations, 58 FR 68232), must be determined by employee function to be logically consistent. As guidance, FRA's policy for CDL holders who perform covered service (and other employees subject to dual coverage) is as follows:

For pre-employment and random testing, an employee is covered by whichever operating administration (OA) covers more than 50% of that employee's function. For post-accident and reasonable suspicion testing, however, coverage is determined by the function the employee was performing at the time of the accident or incident. Finally, for return to service and follow-up testing, the employee is covered by the same OA to which the initial positive was reported.

For example, a signalmen who holds a CDL but performs less than 50% of his time driving is covered by FRA for pre-employment and random testing. If that signalmen were to have a reportable accident while driving a commercial motor vehicle, however, the post-accident test and any return to service tests and follow-up tests would be governed by FHWA. On the other hand, if in another instance a supervisor determined that the same signalman was impaired by a controlled substance while performing covered service under FRA's regulations, the reasonable suspicion test result and any post-positive return to service and follow-up test results would be governed by FRA.

Under the management information system (MIS), test results should be reported to whichever OA governed the particular type of test. Each OA will calculate the violation rate for its industry, based on reported random test results. It is possible, therefore, that CDL holders covered by FHWA regulations could be tested at a different rate from those under FRA regulations.

See the common preamble for further discussion of this issue.

Section by Section Analysis

Subpart A—General

§ 219.3 Application.

Paragraph (b)(2)

FRA continues to exempt small railroads from subparts D, E, F and G. Although they are exempt from mandatory reasonable suspicion testing, small railroads must enforce the prohibitions contained in §§ 219.101 and 219.102 (presumably through the industry's longstanding Rule G and their own for cause testing programs). Additionally, even though small railroads are exempted from the employee assistance requirements of subpart E, they must provide information on substance abuse services to their covered employees, as required by § 219.23.

Paragraph (b)(3)

As mentioned above, FRA recently published a final rule implementing the drug testing portion of the management information system, a new reporting system for alcohol and drug program information that replaces the data that railroads currently submit in their annual reports under § 217.13(d). For reasons discussed in the drug MIS rule, FRA exempts railroads with fewer than 400,000 manhours from all MIS reporting requirements (including the alcohol program date elements added in today's final rule).

Foreign Application

Foreign railroads have been subject to portions of FRA's regulations on the control of alcohol and drug use (49 CFR part 219) since February 10, 1986. In a Notice of Termination of Rulemaking Proceedings published elsewhere in today's **Federal Register**, FRA withdraws its advance notice of proposed rulemaking (ANPRM) on application of the Act's new requirements to foreign railroads operating within the United States (57 FR 59805). In lieu of a separate rulemaking on this issue, FRA revises § 219.3(c) to continue and make permanent its current level of application of alcohol and drug testing to foreign railroads operating within the United States.

As applied, FRA's current approach affects only Canadian employees, since Mexican employees do not operate in U.S. territory. FRA does not seek extra-territorial application of its regulations. A covered service employee whose primary place of service or point of departure ("home terminal") for rail transportation services is located outside the U.S. continues to be subject to limited exceptions in coverage, since the primary terms and conditions of his or her employment were established under foreign law. Thus, the employee is subject to FRA's prohibitions and return to service conditions, as well as post-accident and for cause testing, only when operating in U.S. territory. (Pursuant to the Act, the employee is subject to mandatory reasonable suspicion alcohol and drug testing while on U.S. soil, although the accident/incident and rules violation components of FRA's for cause testing program remain discretionary.) Employee assistance policies (subpart

E), pre-employment testing (subpart F) and random testing (subpart G) remain subject to the law of the country where the employee is based (as determined by the employee's home terminal or reporting point).

A U.S.-based covered service employee of a foreign railroad continues to be subject to all components of FRA's program, as amended. For both U.S.-based and foreign based covered service employees, all testing pursuant to part 219 must be conducted under the procedures set forth in part 219 and part 40, as amended in today's Federal Register.

§ 219.5 Definitions.

FRA revises its definition of alcohol to conform to the definition published by NHTSA in its September 17, 1993 notice on "Highway Safety Programs; Model Specifications for Devices to Measure Breath Alcohol" (58 FR 48705), which proposed to revise model specifications for EBTs. As discussed in both part 40 and the common preamble, FRA now requires employers to look to NHTSA's CPL for both PBTs and EBTs.

Commenters were split on FRA's proposal to expand its definition of covered employees to include first line supervisors in random alcohol and drug testing programs. Most industry commenters found this proposal unjustified, since supervisors as a group have no record of substance abuse directly affecting railroad safety and are already subject to post-accident and for cause testing if they perform covered service. The ASLRA did not want supervisors to count as covered employees for purposes of the small railroad exemption (under FRA's proposal, supervisors would not have been considered Hours of Service Act employees towards the 15 employee threshold). On the other hand, the Long Island Railroad wanted testing expanded to include every supervisor in the chain of command, and Amtrak already uses its own authority to test its first two levels of supervisors (although Amtrak was concerned about preemption by FRA). Rail labor has always supported supervisory testing, for both equity and safety reasons.

On balance, FRA has decided to drop this proposal since there is no statutory mandate to include supervisors in testing. Moreover, it would often be difficult to determine where first-line supervisory lines should be drawn since supervisors frequently perform multiple functions. Further, other modal administrations have not included supervisory personnel in the covered class.

FRA amends its proposed definition of *substance abuse professional* (SAP), to include addiction counselors who have been certified by the National Association of Alcoholism and Drug Abuse Counselors Commission. This DOT-wide amendment is discussed in more detail in the common preamble.

FRA also substitutes *substance abuse professional* for EAP counselor wherever that term appeared in the text of the Locomotive Engineer Certification regulation. Commenters did not offer any other changes to conform the language of 49 CFR part 240 to the language of this part.

FRA adds a definition, *"violation rate,"* which measures the rail industry's overall random alcohol "positive" rate. Each year, the Administrator will examine the violation rate to determine whether the industry testing rate should be adjusted, as explained in § 219.608 on performance-based testing.

§ 219.9 Responsibility for compliance.

Paragraphs (a) and (c)

The recently enacted Rail Safety Enforcement and Review Act (RSREA), Public Law No. 102–365, amended the Federal Railroad Safety Act of 1970 (FRSA) (See 45 U.S.C. 438(a)) to clarify that FRA's safety jurisdiction extends to all entities that may violate the railroad safety laws. FRA amends this section to make clear that this part, like all regulations issued under authority of the FRSA, applies not only to railroads but also to any other entity that may violate this part, including independent contractors who provide goods and services to railroads and the employees of such contractors.

Metro-North and the Metropolitan Transit Authority commented that this amendment appeared to make a railroad responsible for administering substance abuse programs for its independent contractor employees. That is not FRA's intent. FRA is concerned at this time only with ensuring that all persons who perform covered service for a railroad are subject to the same testing, regardless of whether the person has a direct employment relationship with the railroad. For FRA purposes, a railroad is in compliance if it contracts with its contractors who perform covered service to assure their compliance with part 219. The railroad may then, for example, attach copies of these contracts as part of its random alcohol testing plan submission. In practice, FRA anticipates that many contractors will develop a single substance abuse program for their employees, which can be recognized by all the railroads that the contractor serves. FRA has added regulatory text to clarify what is intended here.

FRA will publish a separate notice to make conforming revisions to the penalty schedule set out in Appendix A to part 219.)

§ 219.11 General conditions for chemical tests.

Paragraph (g)

As proposed, FRA continues to require supervisors to receive a minimum of three hours of combined training on alcohol and drugs. FRA received little comment on this issue. While two commenters felt that 60 minutes should be sufficient, particularly if offered as an annual refresher course, a commuter railroad that already provides 8 hours of supervisory training felt that 3 hours was a bare minimum.

FRA believes that a minimum of 3 hours is sufficient, but now requires training on post-accident testing criteria and collection procedures. Railroads may integrate these required topics into their current training programs, which must be made available for inspection upon request.

§ 219.13 Preemptive effect.

Section 219.13, which states the preemptive effect of safety regulations issued under the FRSA (See 45 U.S.C. 434), remains unchanged. The Act expressly did not provide a new preemption standard; instead, it amended the FRSA to require the Secretary to issue rules, regulations, standards, and orders relating to alcohol and drug use in railroad operations.

§ 219.15 Alcohol concentrations in blood and breath.

This section is deleted since a revised alcohol concentration definition is included in § 219.5.

§ 219.21 Information collection.

As mentioned above, FRA has replaced § 217.13(d)'s reporting requirements with a management information system to collect information on railroad drug misuse programs. (MIS comments were addressed in that rule.) After railroads have implemented alcohol testing, FRA will require reporting of alcohol misuse programs data as well. In § 219.801, FRA adds data elements on alcohol testing to complete the MIS' information collection on railroad substance abuse programs. FRA will use this data to monitor compliance and enforcement.

§ 219.23 Railroad policies.

Paragraph (f)

FRA received no comments on this paragraph. In addition to the proposed requirements, FRA requires railroads to publish information to each covered employee on the signs, symptoms and effects of alcohol misuse, as well as available methods of intervention once an alcohol problem is suspected. FRA hopes that publishing such information will facilitate self- and peer-referrals, particularly when supplemented by the list of EAP resources that must be made available to covered employees under paragraph (d) of this section. Railroads must therefore provide the required information to all of their covered employees (not just those who have been identified as having a substance-abuse problem).

Railroads may of course provide additional information beyond these requirements.

Subpart B—Prohibitions

As discussed above, existing provisions will remain in effect to allow for a smooth transition. The effective date for the amendments to this subpart is January 1, 1995.

§ 219.101 Alcohol and drug use prohibited.

Paragraph (a)(3), Pre-Duty Abstinence

FRA proposed to prohibit a safety-sensitive employee from using alcohol either for four hours before reporting to perform covered service, or for the period of time running from when the employee receives a "call," or notice to report for covered service, to when the employee actually reports for covered service, whichever is the lesser of the two periods. FRA also proposed to prohibit a railroad, through an employer's duty to prevent violations of § 219.101 and § 219.102, from allowing an employee to report for covered service, or go or remain on duty in covered service, if the railroad has actual knowledge that the employee is in violation of § 219.101(a)(3).

Industry commenters were concerned that specifying a pre-duty abstinence period would erode Rule G's prohibition on working with any alcohol in one's system, by implying that employees may report to work with alcohol in their system so long as consumption occurred before the required abstinence period. The Chicago and North Western (CNW) commented that pre-duty abstinence would be difficult to enforce, and should more properly be identified as the employee's responsibility.

Several commenters felt that FRA's proposed period was too short. APTA, the Metropolitan Transportation Authority and SEPTA suggested mandating eight hours of pre-duty abstinence. The NTSB preferred a longer period, but would also support an eight hours of pre-duty abstinence if uniformly applied.

New Jersey Transit (NJT), however, while recommending that pre-duty drinking should be absolutely prohibited, felt that the proposed abstinence period would be useful both as an enforcement and a public relations tool. NJT also felt that the employee should have the option to take a pre-duty test if either the employee or the employer suspects that the employee may be in violation.

FRA had asked for comment on whether this pre-duty prohibition is workable for "short-call" employees, such as those who operate trains in pool crew service and off extra boards and signal maintainers who are subject to call without notice round the clock to handle "trouble calls." In response to this query, the BLE and BRS recommended that FRA mandate by-pass provisions (mark-offs), particularly for signal employees subject to short call. The RLEA agreed that employees should be allowed to mark off and stay off-duty when impaired, and suggested that any potential for abuse could be curbed by setting limits; for example, requiring an EAP referral for any employee who marks off three or more times in a year. The TTD commented that pre-duty abstinence would be impracticable for those employees who are always subject to call, and that FRA should allow employees to mark off for any type of impairment.

As discussed in the NPRM, FRA encourages railroads to adopt mark off procedures in the concept of voluntary programs such as Operation Red Block. However, because the successful implementation of such programs requires faithful adherence to mutual undertakings, FRA believes that implementation of such programs should be a bargaining issue rather than a federal mandate. Implementation of mark-off procedures therefore remains voluntary. In contrast, the eight hour pre-duty abstinence period suggested by the NTSB and some carriers would in effect impose total prohibition on short-call employees. After considering the comments, FRA believes that its proposal is the most workable compromise and thus the approach most likely to elicit voluntary compliance.

Paragraph (a)(4)

Rail management commenters uniformly supported a .02 standard (the equivalent of zero tolerance, because of the technological limitations of EBTs), because of concerns that the proposed system would preempt Rule G's longstanding prohibitions against alcohol use. Railroads opposed a .04 standard for the same reason.

Because of the technological limitations of EBTs, rail labor considered a .04 standard to be the most defensible, and suggested that any alcohol level below be considered a negative. The RLEA saw no conflict between a .04 standard and Rule G, since railroads would remain free to maintain a zero tolerance standard under their own authority.

The NTSB supported a .00 standard, which would not permit an employee with any positive BAC to perform "safety-sensitive functions," citing evidence in aviation and highway research of a hangover effect on performance many hours after a person's BAC had returned to zero.

After considering the comments, FRA believes that none of these recommended standards is appropriate. A true .00 standard could not be enforced, as a practical matter. A .02 standard would probably cause SAPs to waste time and effort on employees who do not in fact have alcohol or substance abuse problems, while a .04 standard would actually invite some employees to risk using alcohol, in the hope that their BAC would be below .04 by the time that they could be tested (e.g., employees at remote work sites). This approach would also deprive railroads of information that could be used to enforce Rule G and other, more stringent company policies.

FRA therefore believes that the proposed "bifurcated" or "two-tier" system is necessary to avoid having the full consequences of a violation apply to those situations where an employee's test result indicates an alcohol concentration between .02 percent and .039 percent. The employee will not have to be evaluated by a SAP, or administered a return to duty test. However, since use of alcohol indicates that the employee may present a safety risk, the employee will not be allowed to perform covered service for a minimum of eight hours after administration of the test.

With the sole exception of pre-employment tests for final applicants for employment (discussed below), FRA does not adopt the proposed retest option. Railroads were unsure as to what to do with an employee while waiting for his or her BAC to drop to below .02., since Rule G prohibits a covered employee who has any alcohol in his or her system from being on company property. Since this option is

incompatible with traditional railroad policy, FRA believes that employees who are identified to have low levels of alcohol can more appropriately be handled through Operation Redblock and other existing programs specifically developed to fit industry needs.

Like the very similar rule currently in effect, the bifurcated system does not preempt a railroad's independent authority to test and discipline under Rule G. As stated in § 219.1, railroads retain the latitude to adopt more stringent standards under their own authority. For instance, railroads retain their authority to discipline an employee under company policy for a .02–.039 test result conducted under FRA authority or to discipline an employee found to have violated Rule G based solely on supervisory observations. The latter option should prove useful for very small railroads (who will not be required to conduct mandatory reasonable suspicion testing) when faced with an obviously drunk employee reporting for duty, particularly if an evidential breath testing device (EBT) is not readily available.

§ 219.104 Responsive action.

Existing provisions will remain in effect to allow for a smooth transition. As discussed above, however, the effective date for implementation of post-positive return to service and follow-up alcohol testing is January 1, 1995.

Paragraph (d), Return to Covered Service

FRA proposed to require a return to service test for the substance of the original positive only. Because of concerns about polydrug and alcohol abuse, discussed in greater detail in the section below, FRA also authorizes a railroad to require an employee to be tested for both alcohol and drugs, if such return to service testing has been recommended by the SAP for that employee.

Paragraph (e), Follow-up Testing

Earlier, FRA discussed the deletion of its current blood testing procedures. As proposed, FRA deletes the breath and blood testing procedures formerly contained in this paragraph. Testing will instead be conducted under part 40's more rigorous evidential breath testing procedures, which should provide employees ample reassurance that breath testing will be fair and technically sound.

FRA had proposed that an employee's first year of follow-up testing after a post-positive return to covered service include a minimum of six unannounced tests that would track the basis for the employee's removal; that is, an employee who was removed for misuse of controlled substances or for refusing to provide body fluid samples under a mandatory provision of this part would be follow-up tested only for drugs, while an employee who was removed for misuse of alcohol or for refusing to provide breath under a mandatory provision of this part would be follow-up tested only for alcohol. After this first year, additional follow-up testing would be discretionary upon recommendation of the SAP, who is authorized to recommend follow-up testing for up to 48 months.

FRA asked for comment on the issues of recidivism and polydrug abuse. In its compliance reviews, FRA uncovered instances of railroads failing to conduct follow-up tests on employees who had returned to covered service following positive drug tests. In several cases, routine random testing had detected drug use by post-positive employees. Moreover, FRA's study of clinical literature shows some incidence (10–50 percent) of individuals abusing both alcohol and one or more illicit or controlled substances. There is more evidence for individuals who cease drug misuse crossing over from drugs to alcohol; the cross-over from alcohol to drugs (and particularly those drugs contained in the DHHS test panel) is not as well documented.

Comment was divided. The AAR and the ASLRA, among others, felt that follow-up testing should be left completely to the discretion of the SAP. Rail labor agreed. SEPTA and APTA however, wanted mandatory testing for 60 months, with APTA recommending a minimum of 12 tests the first year and 6 tests each year thereafter. APTA and all rail commenters wanted the authority to follow-up test for both alcohol and drugs, regardless of the substance of the positive. SEPTA offered data from its program, which includes 30 months of follow-up testing. Other than reasonable suspicion testing, SEPTA's highest positive rate (10.17 percent in the last fiscal year) was for post-positive return to service tests.

To address concerns about employee relapse, FRA retains its proposed testing minimums while allowing for greater cross-substance testing. Broader monitoring may help detect instances where an employee switches to alternative drugs after being deprived of his or her primary drug of abuse. FRA therefore requires a return to service test and six follow-up tests in the first 12 months for the substance (or class) of the original positive. In addition, a railroad may choose to test for both alcohol and drugs at the return to service test, and at follow-up tests for a total of up to 60 months, if such testing is recommended by the SAP. The SAP may make such additional testing part of a conditional recommendation for the employee's return to service.

This approach allows for flexible case management, recognizing that an employee who misuses either alcohol or a controlled substance could have a more general propensity to abuse psychoactive drugs (i.e., active polydrug abuse or incipient cross-addiction). Its intent is to eliminate any question as to the employer's right and obligation to provide for aftercare monitoring of employees who have violated alcohol or drug rules.

Paragraph (f)

(As discussed above, the .02–.039 rule text is now in § 219.101(a)(4).) This paragraph seeks to ensure that the SAP places the interest of safety above other considerations, when recommending treatment or advising the railroad about whether to return an employee to covered service.

Subpart C—Post-Accident Toxicological Testing

The common preamble discussion of post-accident testing does not apply to FRA's program, which unlike those of other modes, requires full toxicological testing following designated accidents and incidents.

As discussed above, existing provisions will remain in effect to allow for a smooth transition. The effective date for the amendments to this subpart is January 1, 1995.

§ 219.201 Events for which testing is required.

Paragraphs (a)(1)(iii) and (a)(2)(ii), Damage thresholds for Major Train Accidents and Impact Accidents

FRA received little comment on its proposal to raise the amount of railroad property damage required for major train accidents and for impact accidents, which was prompted by recent low positive rates. Accordingly, FRA redefines § 219.201(a)(1)(iii) (major train accidents) to require testing for accidents that cause $1,000,000 or more in damage. FRA also redefines § 219.201(a)(2)(ii) (impact accidents) to require testing for non-injury accidents that cause $150,000 or more in damage. The NTSB uses this reporting threshold (although the NTSB, unlike FRA, includes damage to lading).

FRA expects that much of this data will be replaced through railroad for cause testing. (Commenters were silent as to whether Subpart D testing should be required for events between the existing $50,000 threshold and the proposed $150,000 threshold where there is a reasonable belief that the particular employee contributed to the accident.)

Paragraph (b) [Exceptions]

All commenters supported FRA's proposal to exclude from post-accident testing accidents that otherwise qualify but are clearly attributable to vandalism. (The NTSB did not comment.) FRA therefore adopts this proposal. Consistent with the other exceptions, the vandalism exception holds railroad supervisors to § 219.201(c)'s reasonable inquiry/good faith judgment standard when making determinations.

§ 219.203 Responsibilities of railroads and employees.

Paragraph (a), Employees Tested

As discussed above, once a railroad has made a good faith determination that a qualifying event has occurred, the railroad may conduct breath alcohol testing if an EBT is available and breath testing does not interfere with or delay collection of samples for mandatory blood and urine testing. While railroads must still collect blood and urine samples for full toxicological testing, this option allows quick enforcement action since there is no need to wait for laboratory analysis.

Although FRA has moved the authority for optional breath testing from for cause testing to post-accident testing, the procedures specified in § 219.303 have not been retained. Instead, railroads who choose to exercise this option must conduct breath testing in accordance with the new Part 40 procedures published today.

FRA will revise Forms 6180.73 and 6180.74 to allow for railroad reporting of EBT test results. Form 6180.73 will add a check off box on the railroad representative's copy asking whether one or more employees were breath tested. Form 6180.74 will add a similar check off box for each tested employee. If breath alcohol tests are conducted, the railroad may either attach a copy of each Part 40 breath alcohol testing form (the railroad will have to make an additional copy for FRA purposes, since the Part 40 form allows only for BAT, employee, and employer copies) to the FRA forms to be shipped with the toxicology kit, or send a copy of each Part 40 form directly to FRA within 10 days of the tests. (Appendix C will contain revised instructions.)

FRA expects the results from breath and blood alcohol testing to almost always vary, since an EBT test will usually be conducted hours before the railroad is able to collect blood and urine samples, allowing the employee's BAC to change in the interim. The breath test result will always stand on its own, however, since by definition an EBT test always meets evidential standards.

FRA will use the results from all three types of testing (breath, blood, and urine) for post-accident toxicological analysis, since the purpose of mandatory toxicological testing remains unchanged. Blood and urine samples will continue to be collected as independent aids to accident investigation, not as backups for EBT test results.

§ 219.205 Sample collection and handling.

FRA will publish an amended Appendix C to part 219 to modify post-accident procedures, toxicology kits, forms, and instructions to accommodate optional breath alcohol testing and mandatory urine split sample procedures. (FRA already splits blood samples into two sealed 10 milliliter tubes.) FRA will announce when the new kits and forms become available.

Upon employee request, FRA's post-accident toxicological laboratory will ship the employee's sealed split samples to another DHHS-certified laboratory for testing.

§ 219.209 Reports of tests and refusals.

Paragraph (b)

With the addition of the breath test option described above, a railroad must report to FRA any refusals to provide breath for testing.

Paragraph (c)

In an earlier Safety Recommendation, the NTSB recommended that FRA require railroads to submit notification, including reasons for the delay, whenever a post-accident test could not be conducted within four hours of the qualifying accident or incident. The NTSB's current recommendation reduces this testing window from four hours to two. Such a requirement would in effect compel railroads to submit a report for each qualifying event, since the average FRA post-accident collection time is 5.5 hours.

FRA requires reporting but will minimize the burden by adopting the NTSB's original four hour recommendation, which is a more workable window for post-accident testing. In addition, while reports must be prepared and maintained for inspection upon request, they do not have to be submitted to FRA.

§ 219.211 Analysis and follow-up.

Paragraph (a)

As part of its amended Appendix C, FRA will publish a summary of its post-accident testing protocols, which have been submitted to the DHHS.

§ 219.213 Unlawful refusals; consequences.

A refusal to provide breath for optional testing will have the same consequences as a refusal to provide bodily fluid samples for mandatory testing; the employee shall be disqualified from covered service for nine months.

Subpart D—Testing for Cause

As proposed, FRA amends the heading of this subpart to differentiate now-mandatory reasonable suspicion from accident/incident and rule violation testing, which remain discretionary. This new heading also conforms to the classifications used in FRA's drug MIS.

As discussed above, existing provisions will remain in effect to allow for a smooth transition. The effective date for the amendments to this subpart is January 1, 1995.

§ 219.300 Mandatory reasonable suspicion testing.

Noting that an alcohol test is not needed to confirm possession of alcohol or controlled substances, the AAR considered the proposed language in this paragraph overbroad since it would require alcohol testing whenever a supervisor suspected any violation of § 219.101(a). FRA agrees, and has amended this paragraph to require testing only when *use* of alcohol is suspected. (The Act specifies that reasonable suspicion testing must be conducted for *use* of alcohol or controlled substances.) Therefore, a suspicion of possession alone does not require a reasonable suspicion test.

FRA will not add long-time decline in job performance as a factor for the employer to consider when determining whether to conduct a reasonable suspicion test on an employee. Only one commuter line supported this proposal. The AAR thought this additional factor unnecessary, since a supervisor could only consider long-term performance in conjunction with specific contemporaneous observations indicative of substance abuse, and such observations would provide an independent basis for a now mandatory reasonable suspicion test. Rail labor agreed, commenting that employers

have authority to conduct reasonable suspicion testing without this factor, and that long-term decline in job performance would more properly be handled by EAPs, since it is often caused by personal problems other than substance abuse. The NTSB did not comment on this issue.

(For purposes of intermodal consistency, and to avoid any misimpression that a reasonable suspicion drug test could be required solely based on perceived long-term decline in performance without a contemporaneous manifestation clearly tied to drug use, FRA has deleted the following phrase: "[s]uch observations may include indications of the chronic and withdrawal effects of drugs." Deletion of this phrase is not intended to limit a supervisor from taking into consideration any contemporaneous indication of drug use. But FRA cautions that chronic and withdrawal effects alone will seldom yield unambiguous contemporary indications in the case of either alcohol or drugs. Where unambiguous withdrawal effects are encountered, prompt medical attention will normally take precedence over occupational alcohol or drug testing. Where a long-term decline in performance occurs, referral under subpart E of this rule ("Identification of Troubled Employees") is the indicated course of action.

Paragraph (b)

FRA had proposed a "logic tree" for situations where a supervisor reasonably suspects an employee of substance abuse, but is unable to determine whether the medium of abuse is alcohol or controlled substance(s). FRA continues to recommend, but will not require, the following process: a supervisor should conduct an alcohol test first whenever an employee's symptoms could be consistent with either alcohol or controlled substance use. If the breath test result is below .02, the supervisor should conduct a urine drug test to continue the search for an explanation. If the breath test result is .02 percent or more, drug urinalysis is optional.

Because of polydrug abuse, Metra and SEPTA considered this logic tree unnecessary, suggesting that employers should be allowed to conduct both a breath alcohol test and a urine drug test whenever reasonable suspicion exists to test for alcohol. Although FRA agrees that employers need some latitude to inquire into suspected polydrug abuse, FRA recommends that supervisors decide step by step whether additional testing is needed, instead of automatically proceeding to test for both alcohol and controlled substances.

Paragraph (c)(1)

Reaction was cleanly split on FRA's proposal to prohibit a supervisor who makes a reasonable suspicion determination from also conducting the breath test for that employee. Railroads uniformly opposed this prohibition as both impractical and unnecessary. Carriers who conduct for cause testing programs under their own authority had experienced no problems with supervisory abuse of discretion. To document their lack of supervisory depth, several AAR member railroads submitted examples of locations where normally only one supervisor would be available. Commenters also noted that testing could only be conducted if a trained supervisor had an articulable basis for his or her suspicion. Additionally, the employee would observe the entire breath alcohol testing process and the NPRM required all breath testing devices to meet evidential standards.

In contrast, rail labor supported the determining supervisor as BAT prohibition. The BLE and BRS noted that FRA's requirement of two supervisors (one of whom must be trained) to make a reasonable suspicion drug testing determination has been in place for several years. In theory, therefore, the same two supervisors would also be available for reasonable suspicion alcohol testing. More importantly, this requirement makes more likely that each breath alcohol test will have an independent witness.

FRA believes that a compromise may be possible, particularly in light of the Department's decision to allow employers to use PBTs for screening tests. In the above-mentioned NPRM on blood testing procedures, OST proposes to allow the determining supervisor to conduct the screening test on an EBT or a PBT (if an EBT is unavailable), but not the confirmation test, which must still be conducted on an EBT by another individual. This would provide testing flexibility for reasonable suspicion events that occur in remote locations, while still requiring all confirmation tests to be conducted by a person not in the employee's chain of command. Comments on this proposal should be submitted to OST's docket.

Paragraph (c)(2)

Commenters raised similar pros and cons for FRA's proposal to require two trained supervisors to make a determination to conduct a reasonable suspicion drug test. In response, FRA will instead retain its existing requirement of two supervisors, one of whom must be trained in the signs and symptoms of substance abuse (as provided for in § 219.11(g)), to make a reasonable suspicion drug testing determination.

Paragraph (d)

Under FRA's original proposal, a major concern for commenters was the possibility that testing situations could frequently occur in remote locations where EBTs are unavailable. Where this occurred, a railroad could still enforce prohibitions against alcohol misuse under its own authority, but would be unable to conduct federally mandated testing.

At a minimum, permitting the use of PBTs should enable railroads to conduct screening tests in most circumstances. As discussed above, FRA proposes to allow confirmation blood alcohol testing. Under current FRA procedures, however, if the screening test result indicates alcohol misuse, the supervisor must determine whether a confirmation test can be conducted on an EBT within eight hours of the screen. If an EBT is unavailable, the unconfirmed screening test will be considered a no test.

However, once a supervisor suspects alcohol misuse, he or she must enforce the prohibitions in Subpart B even if the employee cannot be tested at that time. FRA requires the supervisor to comply with the prohibitions in § 219.101(a)(4) and send the employee home for at least eight hours. As always, a railroad may also take independent enforcement action under its own authority.

§ 219.301 Testing for reasonable cause.

FRA has reformulated its proposed language in response to the ASLRA's comment that the phrase "based on affirmative evidence of unsafe conduct" implied a probable cause standard for testing. Instead, FRA will require a supervisor to have "a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident". This case law-derived language, while clearly a lesser standard than traditional probable cause, stresses that a supervisor must have more than a hunch or a guess upon which to base his or her determination. This restriction applies only to testing under FRA accident/incident authority, however.

§ 219.302 Prompt sample collection; time limitation.

Paragraph (b)(2)

Contrary to the discussion in the common preamble, the eight hour time limit for completion of accident/incident for cause testing, runs from the time a responsible railroad supervisor receives notice of the event providing reasonable cause for conduct of the test.

Paragraph (f)

A railroad must prepare and maintain a report, similar to the post-accident delay report required in § 219.209(c), whenever a reasonable suspicion test cannot be conducted within two hours of the observations or events that were the basis for the railroad's reasonable suspicion determination. The report does not have to be submitted, but must be made available upon request.

§ 219.303 Alcohol test procedures and safeguards.

As discussed earlier, FRA will allow PBTs to be used for screening tests in response to commenters' near unanimous demand for greater flexibility. By allowing the use of PBTs, however, FRA does not excuse railroads from making their best efforts to ensure the availability of EBTs for routine testing situations.

§ 219.303 Breath test procedures and safeguards.

Paragraph (c)

As discussed above, FRA will adopt part 40 blood alcohol testing procedures upon publication of the Department's final rule. This paragraph is accordingly deleted.

Subpart F-Pre-employment Tests

Existing provisions will remain in effect to allow for a smooth transition. As discussed above, however, the effective date for implementation of pre-employment alcohol testing is January 1, 1995.

§ 219.501 Pre-employment tests.

As mentioned above, FRA adopts the proposed retest option only for final applicants for employment. An applicant whose test result indicates an alcohol concentration between .02 percent and .039 percent will not be allowed to perform safety-sensitive service until he or she has a later test result indicating an alcohol concentration of less than .02. Since rule G applies only to current railroad employees, allowing a retest option for applicants is compatible with traditional industry policy. This option also makes FRA pre-employment policy administratively consistent with the rest of the Department.

Commenters expressed no interest in the proposed "grandfathering" provision, which would have allowed railroads to exempt a covered employee from pre-employment testing if a background check indicated that the employee had not had any violations of this part or of the alcohol and drug misuse rules of another DOT agency within the last six months. FRA has decided to delete this option, since the added flexibility it would have provided is unnecessary for the rail industry, which traditionally has a stable employee population and a low turnover rate (unlike trucking, for example).

Subpart G-Random Testing Programs

§ 219.607 Railroad random alcohol testing programs.

Paragraph (a)

All commenters on the issue favored combined alcohol and drug random testing programs. The BLE and BRS recommended this approach as a cost effective means of deterrence, since an employee could not know in advance whether he or she was being tested for alcohol, for drugs, or for both. Transtar felt that a single testing program would reduce both cost and confusion. Metra and APTA supported using the same selection to conduct alcohol and drug testing, while Amtrak wanted the flexibility to conduct alcohol and drug tests simultaneously for some employees, but at different times for others.

FRA agrees that flexibility is important, and will allow railroads to combine plans/and or testing, if desired. A railroad may submit a separate alcohol testing plan or a combined testing plan for approval. The combined testing plan may be a previously approved random drug testing plan that has been modified by adding alcohol testing elements (any modifications should be specified and highlighted, however).

FRA will, for the most part, duplicate the notice requirements and criteria for plan approval that were used to implement random drug testing, including a three-tier submission and implementation schedule that allows smaller carriers additional time to develop and execute random alcohol testing plans. Class I and commuter railroads must submit random alcohol testing plans for FRA approval within 6 months after publication of this rule and must implement random alcohol testing beginning on January 1, 1995; Class II railroads must submit plans within 12 months after publication and must implement testing beginning on July 1, 1995, and Class III railroads must submit plans within 18 months after publication and must implement testing beginning on January 1, 1996. (For the reasons discussed below, there will be no phase-in of the testing rate.)

Paragraph (b)(2)

Commenters (including, among others, the APTA, AAR, ASLRA, BLE, BRS and RLEA) were close to unanimous in supporting a 10 percent testing rate the first year, followed by an annual performance-based rate set according to each railroad's random alcohol positive rate for the preceding year. In support of this low initial rate, commenters pointed to the existence of an extensive peer prevention and employee assistance system, the addition of new types of mandatory (pre-employment and reasonable suspicion) alcohol testing, and supervisory knowledge of the signs and symptoms of alcohol, making alcohol misuse comparatively easy to detect. Commenters also cited the General Accounting Office's study and the results of the AAR's test project, as evidence that lowering testing rates does not affect deterrence. Support was also widespread for railroad-specific performance-based testing (for both alcohol and drugs), both as an incentive for carriers to try alternative methods of deterrence, and as a reward to those carriers who have viable peer referral and bypass programs.

FRA agrees that the initial random rate for alcohol testing should be lower than the current 50 percent random drug testing rate, and that testing rates should then be tied to the preceding year's positive rate. However, FRA believes that a 10 percent testing rate is the absolute minimum level of effort required to sustain awareness and deterrence. Moreover, FRA is concerned that a railroad-specific performance-based system could create an incentive for some railroads to report and/or keep records dishonestly, thus requiring considerable enforcement effort to guard against such improper manipulation. Such a system would also be difficult to apply to smaller railroads, since even a small variation in the number of positives (e.g., 0 vs. 1) would result in high year-to-year volatility in each railroad's required testing rate. In other words, the small size of a given railroad's population and the resulting small number of tests could create variations in positive rates that do not truly reflect that railroad's incidence of employee misuse.

Therefore, FRA (along with FAA, FHWA and FTA) will instead set a 25 percent initial rate for alcohol testing, with performance-based alcohol testing by industry. Each railroad is expected to achieve the required 25 percent testing rate at the inception of random alcohol

testing. (FRA intends to discuss the random rate for drug testing in a separate NPRM). As discussed in § 219.608, the Administrator will publish a minimum random testing rate, which will be determined by the overall violation rate for the rail industry.

Paragraph (b)(3)

Because of the short half-life of alcohol in the body, railroads may conduct random alcohol testing at any time the employee reports for work and at any time during the duty tour (except for when the employee is expressly relieved of any responsibility for the performance of safety-sensitive duties).

Paragraph (b)(6)

An employee may be tested only when he or she is on duty and either performs covered service or is immediately available to perform covered service. Therefore, the issue of commingled service is critical to plan approval, since off-duty consumption of alcohol is not proscribed (so long as the employee does not report for duty with a BAC of .02 or more). Plans must be carefully designed to subject commingled service employees to testing only to the extent that they perform or can reasonably be expected to perform covered service during a given duty tour.

Industry commenters wanted the flexibility to conduct testing at different times during an employee's "duty tour." FRA has no objections, so long as the date or time of the test is not predictable to the employee. For instance, a railroad could not cluster its tests exclusively at the beginning or end of the duty tour. (FRA will not adopt its proposal to limit a railroad's time in which to notify an employee to a period running from 30 minutes before to 30 minutes after the employee performs safety-sensitive functions, plus applicable travel time.)

§ 219.608 Administrator's determination of random alcohol testing rate.

For at least three calendar years (because of staggered implementation dates, the minimum amount of time needed for all classes of railroads to have one year of alcohol testing data), railroads will conduct random alcohol testing at a 25 percent annualized rate. Subsequently, FRA will use employer data obtained from MIS reports to determine the industry's violation rate, which will in turn determine the minimum testing rate to be authorized by the Administrator. Any random rate change indicated by industry performance will occur at the beginning of the calendar year. Railroads will remain free to test at higher rates provided they treat all employees alike.

Subpart H—Procedures and Safeguards for Urine Drug Testing and for Breath Alcohol Testing

As noted above, the urine drug testing split sample procedures specified in part 40 are mandatory beginning on August 15, 1994 as are the amendments to this subpart concerning urine drug testing.

§ 219.708 Employee requests for testing.

Comments were cleanly divided as to how much time should be allowed for an employee to request a test of his or her split sample. Carriers uniformly supported the 72 hour period proposed by OST, while labor wanted to duplicate the 60 day period currently allowed in FRA's retest option.

Although FRA agrees with labor that the retest option has worked well in the past, FRA will no longer allow retests of primary samples. Instead, to be consistent with the rest of the Department, FRA will allow split sample testing only. An employee will have 72 hours (the minimum contemplated by the Act) within which to request a test of his or her split sample, running from when the employee receives actual notice from the medical review officer (MRO) that the employee's test result has been verified as positive. As an additional safeguard, the MRO must inform an employee who has a confirmed test result of his or her right to request a split sample test at the time of the MRO's initial contact with the employee, even though the employee's 72 hours do not begin to run until after the MRO has completed the verification process. The employee may also present information to the MRO if he or she believes that unusual circumstances (e.g., an intervening holiday, the unavailability of the MRO) prevented him or her from requesting a split sample test within 72 hours.

§ 219.715 Alcohol testing procedures.

As discussed, FRA will permit railroads to use EBTs that qualify for NHTSA's CPL but do not meet part 40 requirements (lacking sequential numbering and printout capability, for example) as PBTs for screening tests. This allows those railroads that already conduct alcohol testing under their own authority (such as Amtrak and the CNW), to recoup the full useful life of previously purchased EBTs, while allowing other railroads the flexibility to reduce costs. An EBT test is still required for confirmation, however.

Subpart I—Annual Report

§ 219.801 Reporting of alcohol misuse prevention program results in a management information system.

FRA recently published a final rule implementing a management information system to obtain and analyze employer drug misuse program data. Included in this rule are comparable information collection requirements for alcohol misuse program data.

Appendices D3 and D4, attached as exhibits to this rule, are respectively the standard and "EZ" forms for reporting of employer alcohol misuse program data. (These forms are similar to Appendices D and D2 in the drug MIS.) FRA will not ask for information on operational tests and inspections or supervisory training, since reporting on these combined programs is already required under the drug MIS.

Like the drug MIS, the alcohol MIS asks for information on for cause alcohol testing (although these data elements appear repetitive, they are not identical since the charts have been modified to reflect the two-tier or bifurcated system). Once alcohol testing has produced a year's worth of data, FRA will republish a combined MIS form for alcohol and drug program data.

Subpart J—Recordkeeping Requirements

§§ 219.901 and 219.903 Retention of breath alcohol testing records and urine drug testing records.

FRA adopts the retention requirements as proposed. Although several commenters felt that these proposed requirements were too burdensome, these sections conform with the departmental requirements published in part 40 today. In addition, FRA retains § 219.713's current requirement for railroads to maintain for at least five years a summary record of each covered employee's test results.

§ 219.905 Access to facilities and records.

FRA proposes to replace § 219.713's language on access to records and adopt 49 CFR § 40.81, which allows an employer to release an employee's alcohol and drug test records only with the written consent of the employee, with the exceptions of when access is requested by a DOT agency or the NTSB or when access is requested by a decisionmaker in a legal proceeding relating to a benefit sought by the employee.

Executive Order 12866 and DOT Regulatory Policy and Procedures

This proposal is significant under Executive Order 12866. It is also significant under the Department of Transportation's Regulatory Policy and Procedures.

The Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Railroads that have fewer than 15 employees in covered service that do not operate on the tracks of another railroad or engage in joint operations are exempt from subparts D, E, F, and G, and are exempted from new subparts I and J as well. Railroads with fewer than 400,000 manhours of employment are also exempt from subpart I.

Federalism Implications

This rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, FRA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies to this final rule because it changes several approved collections of information and initiates several new information collection requirements for alcohol misuse programs. As mentioned earlier, FRA recently implemented a Management Information System to collect drug misuse prevention program data.

For the drug portion of the MIS only, FRA estimated that information gathering, record maintenance and form preparation would approximate 65 hours each year for the standard form. For the simplified (EZ) form, FRA estimated that information gathering, record maintenance and form preparation would approximate 20 hours each year.

FRA estimates that the addition of alcohol testing data elements will add approximately 8 hours to preparation of the standard form, for a total of 73 hours each year. The simplified form will require an additional 4 hours to prepare, for a total of 24 hours each year. Approximately 40 railroads are expected to submit the standardized form, and 20 railroads are expected to submit the short form.

FRA has requested Office of Management and Budget (OMB) approval of these revised information collection requirements. A Federal Register notice will be published when Paperwork Reduction Act approval is obtained. Current information collection requirements under part 219 were approved under OMB No. 2130–0526.

List of Subjects in 49 CFR Part 219

Alcohol and drug abuse, Railroad safety, Reporting and record keeping requirements.

Accordingly, for the reasons stated in the preamble, FRA amends 49 CFR part 219 as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

1. Authority for part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; Pub. L. 102–143; and 49 CFR 1.49(m).

Part 219—[Amended]

2. Part 219 is amended by removing the terms "EAP counselor" and "counselor" wherever they appear and by replacing them with "Substance abuse professional" and "professional" respectively; and by removing "$5,700 in 1989 and 1990" and by adding in its place "$6,300 in 1991 and thereafter" wherever this phrase appears in the text.

3. Section 219.3 is amended by revising paragraph (a) introductory text; adding paragraph (b)(3); and revising paragraph (c) to read as follows:

§ 219.3 Application.

(a) Except as provided in paragraphs (b) and (c), this part applies to——

(b) * * *

(b)(3) Subpart I does not apply to a railroad that has fewer than 400,000 total manhours.

(c) Subparts E, F and G do not apply to operations of a foreign railroad conducted by covered service employees whose primary place of service ("home terminal") for rail transportation services is located outside the United States. Such operations and employees are subject to Subparts A, B, C, and D when operating in United States territory.

4. Section 219.5 is amended by adding, in alphabetical order, definitions for *alcohol concentration (or content), alcohol use, confirmation test, consortium, DOT agency, screening test, refuse to submit, substance abuse professional* and *violation rate;* by removing the definition for *EAP counselor;* by revising the definitions for *alcohol, covered employee,* and the first sentence of *independent,* as follows:

§ 219.5 Definitions.

As used in this part—

Alcohol means the intoxicating agent in beverage alcohol, ethanol or other low molecular weight alcohols including methyl or isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath (as indicated by a breath test under this part) or grams of alcohol per 100 milliliters of whole blood.

Alcohol use means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.

* * * * *

Confirmation test means a second test, following a screening test with a result of .02 or greater, that provides quantitative data of alcohol concentration.

Consortium means an entity, including a group or association of employers or contractors, that provides alcohol testing as required by this part or other DOT alcohol testing regulation and that acts on behalf of the employers.

* * * * *

Covered employee means a person who has been assigned to perform service subject to the Hours of Service Act (45 U.S.C. 61–64b) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service. (An employee is not "covered" within the meaning of this part exclusively by reason of being an employee for purposes of section 2(a)(3) of the Hours of Service Act, as amended (45 U.S.C. 62(a)(3)).) For the purposes of pre-employment testing only, the term covered employee includes a person applying to perform covered service.

* * * * *

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol or controlled substance testing (14 CFR parts 61, 63, 65, 121 and 135; 49 CFR parts 199, 219, 382 and 654) in accordance with part 40 of this title.

* * * * *

Independent with respect to a medical facility, means not under the ownership or control of the railroad and not operated or staffed by a salaried officer or employee of the railroad. * * *

* * * * *

Refuse to submit (to an alcohol test) means that a covered employee fails to provide adequate breath for testing without a valid medical explanation

after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.

* * * * *

Screening test means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

* * * * *

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug related disorders.

* * * * *

Violation rate means the number of covered employees (as reported under § 219.801 of this part) found during random tests given under this part to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by this part, divided by the total reported number of employees in the industry given random alcohol tests under this part plus the total reported number of employees in the industry who refuse a random test required by this part.

5. Section 219.9 is amended by revising the first sentence of paragraph (a) and adding a new paragraph (c) as follows:

§ 219.9 Responsibility for compliance.

(a) Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. * * *

(b) * * *

(c) Any independent contractor or other entity that performs covered service for a railroad has the same responsibilities as a railroad under this part, with respect to its employees who perform covered service. The entity's responsibility for compliance with this part may be fulfilled either directly by that entity or by the railroad's treating the entity's employees who perform covered service as if they were its own employees for purposes of this part. The responsibility for compliance must be clearly spelled out in the contract between the railroad and the other entity or in another document. In the absence of such a clear delineation of responsibility, FRA will hold the railroad and the other entity jointly and severally liable for compliance.

6. Section 219.11 is amended by revising paragraph (b)(2); by redesignating existing paragraph (g) as paragraph (h); and by adding paragraphs (c)(4) and (g) as follows:

§ 219.11 General conditions for chemical tests.

* * * * *

(b) * * *

(2) In any case where an employee has sustained a personal injury and is subject to alcohol or drug testing under this part, necessary medical treatment shall be accorded priority over provision of the breath or body fluid sample(s). No employee who is unable to urinate normally (based on the judgment of a medical professional that catheterization would be required) as a result of a personal injury, resulting medical treatment, or renal failure shall be required to provide a urine sample. Nothing in this section shall bar use of a urine sample made available as a result of catheterization undertaken for medical purposes, provided the circumstances of such collection are fully documented and the specimen is otherwise handled in accordance with the applicable requirements of this title.

* * * * *

(c) * * *

(4) The results of any breath tests for alcohol conducted by or for the treating facility.

* * * * *

(g) Each supervisor responsible for covered employees (except a working supervisor within the definition of co-worker under this part) shall be trained in the signs and symptoms of alcohol and drug influence, intoxication and misuse consistent with a program of instruction to be made available for inspection upon demand by FRA. Such a program shall, at a minimum provide information concerning the acute behavioral and apparent physiological effects of alcohol and the major drug groups on the controlled substances list. The program shall also provide training on the qualifying criteria for post-accident testing contained in subpart C of this part, and the role of the supervisor in post-accident collections described in subpart C and appendix C of this part. The duration of such training shall be not less than 3 hours.

* * * * *

§ 219.15 [Removed]

7. Section 219.15 is removed and reserved.

8. Section 219.23 is amended by revising the section heading; revising paragraphs (a) and (b); and adding paragraphs (d) through (f), to read as follows:

§ 219.23 Railroad policies.

(a) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear and unequivocal written notice to the employee that the test is being required under Federal Railroad Administration regulations. Use of the mandated DOT form for urine drug testing or breath analysis satisfies the requirements of this paragraph.

(b) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear, unequivocal written notice of the basis or bases upon which the test is required (*e.g.*, reasonable suspicion, violation of a specified operating/safety rule enumerated in subpart D of this part, random selection, follow-up, etc.). Completion of the alcohol testing form or urine custody and control form indicating the basis of the test (prior to providing a copy to the employee) satisfies the requirement of this paragraph.

* * * * *

(d) Each railroad shall provide educational materials that explain the requirements of this part, and the railroad's policies and procedures with respect to meeting those requirements.

(1) The railroad shall ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the railroad's alcohol misuse prevention program and to each person subsequently hired for or transferred to a covered position.

(2) Each railroad shall provide written notice to representatives of employee organizations of the availability of this information.

(e) *Required content.* The materials to be made available to employees shall include detailed discussion of at least the following:

(1) The identity of the person designated by the railroad to answer employee questions about the materials.

(2) The classes or crafts of employees who are subject to the provisions of this part.

(3) Sufficient information about the safety-sensitive functions performed by those employees to make clear that the period of the work day the covered employee is required to be in compliance with this part is that period when the employee is on duty and is required to perform or is available to perform covered service.

(4) Specific information concerning employee conduct that is prohibited under subpart B of this part.

(5) In the case of a railroad utilizing the accident/incident and rule violation reasonable cause testing authority provided by this part, prior notice (which may be combined with the notice required by §§ 219.601(d)(1) and 219.607(d)(1)), to covered employees of the circumstances under which they will be subject to testing.

(6) The circumstances under which a covered employee will be tested under this part.

(7) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(8) The requirement that a covered employee submit to alcohol and drug tests administered in accordance with this part.

(9) An explanation of what constitutes a refusal to submit to an alcohol or drug test and the attendant consequences.

(10) The consequences for covered employees found to have violated subpart B of this part, including the requirement that the employee be removed immediately from covered service, and the procedures under § 219.104.

(11) The consequences for covered employees found to have an alcohol concentration of .02 or greater but less than .04.

(12) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and available methods of evaluating and resolving problems associated with the misuse of alcohol, including utilization of the procedures set forth in subpart E of this part and the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(f) *Optional provisions.* The materials supplied to employees may also include information on additional railroad policies with respect to the use or possession of alcohol and drugs, including any consequences for an employee found to have a specific alcohol concentration, that are based on the railroad's authority independent of this part. Any such additional policies or consequences shall be clearly and obviously described as being based on independent authority.

9. Section 219.101 is amended by revising paragraph (a)(2)(ii); and adding new paragraphs (a)(3) and (a)(4) as follows:

§ 219.101 Alcohol and drug use prohibited.

(a) * * *

(2) * * *

(ii) Having .04 or more alcohol concentration in the breath or blood; or

* * * * *

(3) No employee may use alcohol for whichever is the lesser of the following periods:

(i) within four hours of reporting for covered service; or

(ii) after receiving notice to report for covered service.

(4) No employee tested under the provisions of this part whose test result indicates an alcohol concentration of .02 or greater but less than .04 shall perform or continue to perform covered service functions for a railroad, nor shall a railroad permit the employee to perform or continue to perform covered service, until the start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

* * * * *

10. Section 219.104 is amended by revising paragraphs (a), (d), and (e); and adding paragraphs (f) and (g) as follows:

§ 219.104 Responsive action.

(a) *Removal from covered service.*

(1) If the railroad determines that an employee has violated § 219.101 or § 219.102, or the alcohol or controlled substances misuse rule of another DOT agency, the railroad shall immediately remove the employee from covered service and the procedures described in paragraphs (b) through (e) of this section shall apply.

(2) If an employee refuses to provide breath or a body fluid sample or samples when required to by the railroad under a mandatory provision of this part, the railroad shall immediately remove the employee from covered service, and the procedures described in paragraphs (b) through (e) of this section shall apply.

(3) (i) This section does not apply to actions based on breath or body fluid tests for alcohol or drugs that are conducted exclusively under authority other than that provided in this part (*e.g.*, testing under a company medical policy, for-cause testing policy wholly independent of Subpart D of this part, or testing under a labor agreement).

(ii) This section and the information requirements listed in § 219.23 do not apply to applicants who refuse to submit to a pre-employment test or who have a pre-employment test with a result indicating either an alcohol concentration equal to or greater than .04, or the misuse of controlled substances.

* * * * *

(d) *Return to covered service.* An employee who has been determined to have violated § 219.101 or § 219.102 or who refused to cooperate in a breath or body fluid test under this part shall not be returned to covered service unless the employee has—

(1) Been evaluated by a substance abuse professional to determine if the employee is affected by a psychological or physical dependence on alcohol or one or more controlled substances or by another identifiable and treatable mental or physical disorder involving misuse of alcohol or drugs as a primary manifestation;

(2) Been evaluated by a substance abuse professional to determine that the employee has properly followed the prescribed rehabilitation program; and

(3) (i) Presented a urine sample for testing under Subpart H of this part that tested negative for controlled substances assayed (in the case of an employee who has been determined to have violated a prohibition of § 219.101 or § 219.102 regarding possession or misuse of controlled substances or who refused to provide a body fluid sample or samples when required to by the railroad under a mandatory provision of this part); or

(ii) presented breath for testing under Subpart H of this part that indicated an alcohol concentration of less than .02. (in the case of an employee who has been determined to have violated a prohibition of § 219.101 regarding possession or misuse of alcohol or who refused to provide breath when required to by the railroad under a mandatory provision of this part).

(4) An employee shall be required to present both a urine sample and breath for testing, as specified in this section and Subpart H of this part, if the substance abuse professional determines that such testing is necessary as a

condition for returning the particular employee to covered service.

(e) *Follow-up testing.* An employee returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the substance abuse professional and shall be subject to unannounced follow-up tests administered by the railroad following the employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. Any such testing shall be performed in accordance with the requirements of 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(1) If the employee has been determined to have violated a prohibition of § 219.101 or § 219.102 regarding possession or misuse of controlled substances, or if the employee refused to provide a body fluid sample or samples when required to by the railroad under a mandatory provision of this part, the employee shall be subject to follow-up testing as specified in this section. Such testing shall be for controlled substances, but may include testing for alcohol as well, if the substance abuse professional determines that alcohol testing is necessary for the particular employee.

(2) If the employee has been determined to have violated a prohibition of § 219.101 regarding possession or misuse of alcohol, or if the employee refused to provide breath when required to by the railroad under a mandatory provision of this part, the employee shall be subject to follow-up testing as specified in this section. Such testing shall be for alcohol, but may include testing for controlled substances as well, if the substance abuse professional determines that drug testing is necessary for the particular employee.

(f) The railroad shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with alcohol or controlled substances misuse does not refer the employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through—

(1) a public agency, such as a state, county, or municipality;

(2) the railroad or a person under contract to provide treatment for alcohol problems on behalf of the railroad;

(3) the sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(4) the sole source of therapeutically appropriate treatment reasonably accessible to the employee.

(g) Railroad compliance with the provisions of paragraphs (a), (d), and (e) of this section is mandatory beginning on January 1, 1995.

11. Part 219 is amended by adding § 219.107 to subpart B as follows:

§ 219.107 Consequences of unlawful refusal.

(a) An employee who refuses to provide breath or a body fluid sample or samples when required to by the railroad under a mandatory provision of this part shall be deemed disqualified for a period of nine (9) months.

(b) Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice of the reason for this action, and the procedures described in § 219.104(c) shall apply.

(c) The disqualification required by this section shall apply with respect to employment in covered service by any railroad with notice of such disqualification.

(d) The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(e) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.104(d), and the employee shall be subject to follow-up tests, as provided by that section.

12. Section 219.201 is amended by revising paragraphs (a)(1)(iii), (a)(2)(ii), and (b) as follows:

§ 219.201 Events for which testing is required.

(a) * * *

(1) * * *

(iii) Damage to railroad property of $1,000,000 or more.

(2) * * *

(ii) Damage to railroad property of $150,000 or more.

* * * * *

(b) *Exceptions.* No test shall be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test shall be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado or other natural disaster) or to vandalism, as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

* * * * *

13. Section 219.203 is amended by revising paragraph (a)(1); and revising the first sentence of paragraph (d)(2), as follows:

§ 219.203 Responsibilities of railroads and employees.

(a) *Employees tested.*

(1) (i) Following each accident and incident described in § 219.201, the railroad (or railroads) shall take all practicable steps to assure that all covered employees of the railroad directly involved in the accident or incident provide blood and urine samples for toxicological testing by FRA. Such employees shall cooperate in the provision of samples as described in this part and Appendix C.

(ii) If the conditions for mandatory toxicological testing exist, the railroad may also require employees to provide breath for testing in accordance with the procedures set forth in 49 CFR Part 40 and this part, if such testing does not interfere with timely collection of required samples.

* * * * *

(d) * * *

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain blood samples after having been acquainted with the requirements of this subpart, the railroad shall immediately notify FRA by toll free telephone (800–424–0201), stating the employee's name, the medical facility, its location, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. * * *

* * * * *

14. Section 219.205 is amended by revising paragraph (a) as follows:

§ 219.205 Sample collection and handling.

(a) *General.* Urine and blood samples shall be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this subpart, and the technical specifications set forth in Appendix C to this part.

* * * * *

15. Part 219 is amended by adding § 219.206 as follows:

§ 219.206 FRA access to breath test results.

Documentation of breath test results shall be made available to FRA consistent with the requirements of this subpart, and the technical specifications set forth in Appendix C to this part.

16. Section 219.209 is amended by adding a new last sentence to paragraph (a)(1); and by adding a new paragraph (c), as follows:

§ 219.209 Reports of tests and refusals.

(a)(1) * * * Notification shall be provided to the Office of Safety, FRA, at (202) 366–0501; an answering machine will record any notification calls made to this number outside of the Federal work week (8:30 a.m. to 5 p.m. EST or EDT).

* * * * *

(c) If a test required by this section is not administered within four hours following the accident or incident, the railroad shall prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the Federal Railroad Administration upon request of the Associate Administrator for Safety.

17. Section 219.211 is amended by revising the second sentence of paragraph (a); by revising the last sentence of paragraph (c) and the last sentence of paragraph (d); and by revising paragraphs (e) and (h), as follows:

§ 219.211 Analysis and follow-up.

(a) * * * Samples are analyzed for alcohol and controlled substances specified by FRA under protocols specified by FRA, summarized in Appendix C, which have been submitted to the Department of Health and Human Services for acceptance.

* * * * *

(c) * * * The Federal Railroad Administration shall not be bound by the railroad Medical Review Officer's determination, but that determination will be considered by FRA in relation to the accident/incident investigation and with respect to any enforcement action under consideration.

(d) * * * (However, as further provided in this section, FRA may provide results of testing under this subpart and supporting documentation to the National Transportation Safety Board.)

(e) An employee may respond in writing to the results of the test prior to the preparation of any final investigation report concerning the accident or incident. An employee wishing to respond shall do so by letter addressed to the Alcohol/Drug Program Manager, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 days of receipt of the test results. Any such submission shall refer to the accident date, railroad and location, shall state the position occupied by the employee on the date of the accident/incident, and shall identify any information contained therein that the employee requests be withheld from public disclosure on grounds of personal privacy (but the decision whether to honor such request shall be made by the FRA on the basis of controlling law).

* * * * *

(h) Except as provided in § 219.201 (with respect to non-qualifying events), each sample (including each split sample) provided under this subpart is retained for not less than three months following the date of the accident or incident (two years from the date of the accident or incident in the case of a sample testing positive for alcohol or a controlled substance). Post-mortem specimens may be made available to the National Transportation Safety Board (on request).

* * * * *

18. Section 219.213 is amended by revising paragraphs (a) and (b) as follows:

§ 219.213 Unlawful refusals; consequences.

(a) *Disqualification.*

An employee who refuses to cooperate in providing breath, blood or urine samples following an accident or incident specified in this subpart shall be withdrawn from covered service and shall be deemed disqualified for covered service for a period of nine (9) months in accordance with the conditions specified in § 219.107.

(b) *Procedures.* Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice of the reason for this action and an opportunity for hearing before a presiding officer other than the charging official. The employee shall be entitled to the procedural protection set out in § 219.104(d).

* * * * *

19. Subpart D is amended by revising the heading of the subpart and adding § 219.300 as follows:

Subpart D—Testing For Cause

§ 219.300 Mandatory reasonable suspicion testing.

(a) *Requirements.*

(1) Beginning on January 1, 1995, a railroad shall require a covered employee to submit to an alcohol test when the railroad has reasonable suspicion to believe that the employee has violated any prohibition of Subpart B of this part concerning use of alcohol. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

(2) A railroad shall require a covered employee to submit to a urine drug test when the railroad has reasonable suspicion to believe that the employee has violated the prohibitions of Subpart B of this part concerning use of controlled substances. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. Such observations may include indications of the chronic and withdrawal effects of drugs.

(b) (1) With respect to an alcohol test, the required observations shall be made by a supervisor trained in accordance with § 219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct testing on that employee.

(2) With respect to a urine drug test, the required observations shall be made by two supervisors, at least one of whom is trained in accordance with § 219.11(g).

(c) Nothing in this section shall be construed to require the conduct of breath alcohol testing or urine drug testing when the employee is apparently in need of immediate medical attention.

20. Section 219.301 is amended by removing and reserving paragraph (b)(1); revising the introductory text to paragraphs (b), (b)(2) and (c); and removing paragraphs (f) and (g), as follows:

§ 219.301 Testing for cause.

(a) * * *

(b) *For cause breath testing.* In addition to reasonable suspicion as described in § 219.300, the following circumstances constitute cause for the administration of breath alcohol tests under this section:

(1) [Reserved].

(2) *Accident/incident.* The employee has been involved in an accident or incident reportable under part 225 of this title, and a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or

(3) * * *

(c) *For cause urine testing.* In addition to reasonable suspicion as described in § 219.300, each of the conditions set forth in paragraphs (b)(2) ("accident/incident") and (b)(3) ("rule violation") of this section as constituting cause for breath alcohol testing also constitutes cause with respect to urine drug testing.

* * * * *

21. Part 219 is amended by adding a new § 219.302 as follows:

§ 219.302 Prompt sample collection; time limitation.

(a) Testing under this subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

(b) No employee shall be required to participate in breath alcohol or urine drug testing under this section after the expiration of an eight hour period from—

(1) The time of the observations or other events described in this section; or

(2) In the case of an accident/incident, the time a responsible railroad supervisor receives notice of the event providing reasonable cause for conduct of the test.

(c) An employee may not be tested under this subpart if that employee has been released from duty under the normal procedures of the railroad. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (*i.e.*, who is absent without leave).

(d) As used in this subpart a "responsible railroad supervisor" means any responsible line supervisor (e.g., a trainmaster or road foreman of engines) or superior official in authority over the employee to be tested.

(e) In the case of a urine drug test, the eight-hour requirement is satisfied if the employee has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the urine specimens within that period.

(f) If a test required by this section is not administered within two hours following the determination under § 219.300, the railroad shall prepare and maintain on file a record stating the reasons the test was not properly administered. If a test required by this section is not administered within eight hours following the determination under § 219.300, the railroad shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Records shall be submitted to FRA upon request of the Administrator.

(g) Section 219.23 prescribes the notice to an employee that is required to provide breath or a body fluid sample under this part.

22. Part 219 is amended by revising § 219.303 to read as follows:

§ 219.303 Alcohol test procedures and safeguards.

The conduct of alcohol testing under this subpart is governed by Subpart H of this part and Part 40 of Subtitle A of this title.

23. Part 219 is amended by removing §§ 219.307 and 219.309.

24. Subpart F is amended by revising the subpart heading to read as follows:

Subpart F—Pre-employment Tests

25. Section 219.501 is revised to read as follows:

§ 219.501 Pre-employment tests.

(a) Beginning on January 1, 1995, prior to the first time a covered employee performs covered service for a railroad, the employee shall undergo testing for alcohol and drugs. No railroad shall allow a covered employee to perform covered service, unless the employee has been administered an alcohol test with a result indicating an alcohol concentration less than .04 and has been administered a test for drugs with a result that did not indicate the misuse of controlled substances. This requirement shall apply to final applicants for employment and to employees seeking to transfer for the first time from non-covered service to duties involving covered service. If the test result of a final applicant for pre-employment indicates an alcohol content of .02 or greater, the provisions of paragraph (b) of this section shall apply.

(b) No final applicant for employment tested under the provisions of this part who is found to have an alcohol concentration of .02 or greater but less than .04 shall perform safety-sensitive functions for a railroad, nor shall a railroad permit the applicant to perform safety-sensitive functions, until the applicant's alcohol concentration measures less than .02.

(c) Tests shall be accomplished through breath analysis and analysis of urine samples. The conduct of breath alcohol testing and urine drug testing under this subpart is governed by Subpart H of this part and part 40 of subtitle A of this title.

(d) As used in subpart H with respect to a test required under this subpart, the term *covered employee* includes an applicant for pre-employment testing only. In the case of an applicant who declines to be tested and withdraws the application for employment, no record shall be maintained of the declination.

(e) Railroad compliance with the provisions of paragraphs (a) through (c) of this section is mandatory beginning on January 1, 1995.

26. Part 219 is amended by revising § 219.503 to read as follows:

§ 219.503 Notification; records.

The railroad shall provide for medical review of the urine drug test results as provided in subpart H of this part. The railroad shall notify the applicant of the results of the urine and breath tests in the same manner as provided for employees in subpart H. Records shall be maintained confidentially and shall be retained in the same manner as required under subpart J for employee test records, except that such records need not reflect the identity of an applicant whose application for employment in covered service was denied.

§ 219.505 [Amended]

27. Section 219.505 is amended by revising the section heading to read "Refusals;" removing the designation from paragraph (a); and removing paragraph (b).

28. Part 219 is amended by revising the heading of subpart G as follows:

Subpart G—Random Alcohol and Drug Testing Programs

PART 219—[AMENDED]

29. Section 219.601 is amended by revising the heading, the undesignated paragraph following (b)(2)(iii), paragraph (b)(7), and the first two sentences of paragraph (c) as follows:

§ 219.601 Railroad random drug testing programs.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

During the subsequent 12-month period, the program shall select for testing a sufficient number of employees so that the number of tests conducted will equal at least 50 percent of the number of covered employees. Annualized percentage rates shall be determined by reference to the total number of covered employees employed by the railroad at the beginning of the particular twelve-month period or by an alternate method specified in the plan approved by the Associate Administrator for Safety. If the railroad conducts random testing through a consortium, the annual rate may be calculated for each individual employer or for the total number of covered employees subject to random testing by the consortium.

* * * * *

(7) Each time an employee is notified for random drug testing the employee will be informed that selection was made on a random basis.

(c) *Approval.* The Associate Administrator for Safety will notify the railroad in writing whether the program is approved as consistent with the criteria set forth in this part. If the Associate Administrator for Safety determines that the program does not conform to those criteria, the Associate Administrator for Safety will inform the railroad of any matters preventing approval of the program, with specific explanation as to necessary revisions.

* * *

* * * * *

§ 219.603 [Amended]

30. Section 219.603 is amended by revising the section heading to read "*Participation in drug testing*", and by removing the designation "(a) *Participation*" from paragraph (a); and removing paragraphs (b) and (c).

31. Section 219.605 is amended by revising the heading and adding a new final sentence to paragraph (b) as follows:

§ 219.605 Positive drug test results; procedures.

* * * * *

(b) * * * The responsive action required in § 219.104 is not stayed pending the result of a retest or split sample test.

32. Part 219 is amended by adding a new § 219.607 to subpart G as follows:

§ 219.607 Railroad random alcohol testing programs.

(a) Each railroad shall submit for FRA approval a random alcohol testing program meeting the requirements of this subpart. A Class I railroad (including the National Railroad Passenger Corporation) or a railroad providing commuter passenger service shall submit such a program not later than August 15, 1994. A Class II railroad shall submit such a program not later than February 15, 1995. A Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall submit such a program not later than August 15, 1995. A railroad commencing operations after the pertinent date specified in this paragraph shall submit a random alcohol testing program not later than 30 days prior to such commencement. The program shall be submitted to the Associate Administrator for Safety, FRA, for review and approval. If, after approval, a railroad desires to amend the random alcohol testing program implemented under this subpart, the railroad shall file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program shall not be implemented prior to approval.

(b) *Form of programs.* Random alcohol testing programs submitted by or on behalf of each railroad under this subpart shall meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents shall conform to such criteria in implementing the program:

(1) Selection of covered employees for testing shall be made by a method employing objective, neutral criteria which ensures that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, *i.e.*, no employee may be selected as the result of the exercise of discretion by the railroad. The selection method shall be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection shall be retained for not less than 24 months from the date upon which the particular samples were collected.

(2) The program shall include testing procedures and safeguards, and, consistent with this part, procedures for action based on tests where the employee is found to have violated § 219.101.

(3) The program shall ensure that random alcohol tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(4) The program shall ensure to the maximum extent practicable that each covered employee shall perceive the possibility that a random alcohol test may be required at any time the employee reports for work and at any time during the duty tour (except any period when the employee is expressly relieved of any responsibility for performance of covered service).

(5) An employee shall be subject to testing only while on duty. Only employees who perform covered service for the railroad shall be subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program shall specify the extent to which, and the circumstances under which they shall be subject to testing. To the extent practical within the limitations of this part and in the context of the railroad's operations, the railroad program shall provide that employees shall be subject to the possibility of random testing on any day they actually perform covered service.

(6) Testing shall be conducted promptly, as provided in § 219.715(a).

(7) Each time an employee is notified for random alcohol testing the employee will be informed that selection was made on a random basis.

(8) Each railroad shall ensure that each covered employee who is notified of selection for random alcohol testing proceeds to the test site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the railroad shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(c) *Implementation.* (1) No later than 45 days prior to commencement of random alcohol testing, the railroad shall publish to each of its covered employees, individually, a written notice that they will be subject to random alcohol testing under this part. Such notice shall state the date for commencement of the program, shall state that the selection of employees for testing will be on a strictly random basis, shall describe the consequences of a determination that the employee has violated § 219.101 or any applicable railroad rule, and shall inform the employee of the employee's rights under subpart E of this part. A copy of the notice shall be provided to each new covered employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph creates a defense to a violation of § 219.101. This notice may be combined with the notice or policy statement required by § 219.23.

(2) Each Class I railroad (including the National Railroad Passenger Corporation) and each railroad providing commuter passenger service

shall implement its approved random alcohol testing program beginning on January 1, 1995. Each Class II railroad shall implement its approved random testing program beginning on July 1, 1995. Each Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall implement its approved random testing program beginning on January 1, 1996. In the case of a railroad commencing operations after the pertinent date set forth in paragraph (a) of this section for filing of a program, the railroad shall implement its approved random testing program not later than the expiration of 60 days from approval by the Administrator or by the pertinent date set forth in this paragraph, whichever is later.

33. Part 219 is amended by adding a new § 219.608 to Subpart G as follows:

§ 219.608 Administrator's determination of random alcohol testing rate.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random alcohol testing shall be 25 percent of covered employees.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the violation rate for the entire industry. All information used for the determination is drawn from the alcohol MIS reports required by this part. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random alcohol testing of covered employees. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.801 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.801 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(d) (1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 219.801 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 219.801 for any calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(e) The railroad shall randomly select and test a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol testing determined by the Administrator. If the railroad conducts random alcohol testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random testing at the same minimum annual percentage rate under this part or any DOT alcohol testing rule.

(f) If a railroad is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the railroad may—

(1) establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the railroad is subject.

34. Part 219 is amended by adding a new § 219.609 to Subpart G as follows:

§ 219.609 Participation in alcohol testing.

A railroad shall, under the conditions specified in this subpart and Subpart H of this part, require a covered employee selected through the random testing program to cooperate in breath testing to determine compliance with § 219.101, and the employee shall provide the required breath and complete the required paperwork and certifications. Compliance by the employee shall be excused only in the case of a documented medical or family emergency.

35. Part 219 is amended by adding a new § 219.611 to Subpart G as follows:

§ 219.611 Test result indicating prohibited alcohol concentration; procedures.

Procedures for administrative handling by the railroad in the event an employee's confirmation test indicates an alcohol concentration of .04 or greater are set forth in § 219.104.

PART 219—[AMENDED]

36. Part 219 is amended by revising the heading of Subpart H as follows:

Subpart H—Procedures and Safeguards for Urine Drug Testing and for Alcohol Testing

37. Part 219 is amended by revising the heading of § 219.703 as follows:

§ 219.703 Drug testing procedures.

38. Section 219.707 is amended by revising the section heading and the first sentence of paragraph (a) as follows:

§ 219.707 Review by MRO of Urine Drug Testing Results.

(a) Urine drug test results reported positive by the laboratory as provided in part 40 of this title shall not be deemed positive or disseminated to any person (other than to the employee tested in a medical interview, if conducted) until they are reviewed by a Medical Review Officer (MRO) of the railroad as required by part 40 of this title and this section.

* * *

* * * * * *

39. Part 219 is amended by adding a new § 219.708 as follows:

§ 219.708 Employee requests for testing.

If the test result of the primary sample is positive, an employee may request that his or her split sample(s) be tested in accordance with the procedures specified in 49 CFR part 40.

§ 219.713 [Removed]

40. Part 219 is amended by removing and reserving § 219.713.

41. Part 219 is amended by adding a new § 219.715 as follows:

§ 219.715 Alcohol testing procedures.

(a) Each covered employee who is notified of selection for alcohol testing and who is not performing covered service at the time of notification shall proceed to the testing site immediately. The railroad shall ensure that an employee who is performing covered service at the time of notification shall, as soon as possible without affecting safety, cease to perform covered service and proceed to the testing site.

(b) Each railroad shall ensure that all alcohol testing conducted under this part complies with the procedures set forth in Part 40 of this title. The provisions of Part 40 of this title that address alcohol testing are made applicable to employers by this part.

42. Part 219 is amended by adding a new Subpart I as follows:

Subpart I—Annual Report

§ 219.801 Reporting alcohol misuse prevention program results in a management information system.

(a) Each railroad that has 400,000 or more total manhours shall submit to FRA by March 15 of each year a report covering the previous calendar year (January 1–December 31), summarizing the results of its alcohol misuse prevention program.

(b) A railroad that is subject to more than one DOT agency alcohol regulation shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered functions. Prior to conducting any alcohol test on a covered employee subject to the regulations of more than one DOT agency, the railroad shall determine which DOT agency regulation or rule authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each railroad shall ensure the accuracy and timeliness of each report submitted. The report shall be submitted on one of the two forms specified by the FRA.

(d) Each report that contains information on an alcohol screening test result of .02 or greater or a violation of the alcohol misuse provisions of Subpart B of this part shall include the following elements (the "Alcohol Testing Management Information System Data Collection Form," Appendix D3 to this part):

(1) Number of covered employees by employee category (*i.e.*, train service, engine service, dispatcher/operator, signal, other).

(2) Number of covered employees in each category subject to alcohol testing under the alcohol misuse regulation of another DOT agency, identified by each agency.

(3) (i) Number of screening tests by type of test (*i.e.*, pre-employment and covered service transfer, random, post-positive return to service, and follow-up) and employee category.

(ii) Number of confirmation tests, by type of test and employee category.

(4) Number of confirmation alcohol tests indicating an alcohol concentration equal of .02 or greater but less than .04, by type of test and employee category.

(5) Number of confirmation alcohol tests indicating an alcohol concentration of .04 or greater, by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of .04 or greater.

(7) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of .04 or greater, or who have violations of other alcohol misuse provisions, who were returned to service in covered positions (having complied with the recommendations of a substance abuse professional as described in § 219.104(d)).

(8) For cause breath alcohol testing under railroad authority, by reason for test (accident/injury or rules violation), the number of screening tests conducted, the number of confirmation tests conducted, the number of confirmation tests of .02 or greater but less than .04, and the number of confirmation test results of .04 or greater.

(9) For cause breath alcohol testing under FRA authority, by reason for test (reasonable suspicion, accident/injury or rules violation), the number of screening tests conducted, the number of confirmation tests conducted, the number of confirmation tests of .02 or greater but less than .04, and the number of confirmation test results of .04 or greater.

(10) Number of covered employees who were found to have violated other provisions of Subpart B of this part, and the action taken in response to the violation.

(11) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test result and an alcohol test result indicating an alcohol concentration of .04 or greater.

(12) Number of covered employees who refused to submit to a random alcohol test required under this part.

(13) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(14) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use during the reporting period.

(e) Each report that contains no screening test results of 0.02 or greater or violations of the alcohol misuse provisions of Subpart B of this part shall include the following informational elements (the "Alcohol Testing Management Information System Data Collection Form (No Alcohol Misuse)," Appendix D4 to this part): (This report may only be submitted if the program results meet this criteria.)

(1) Number of covered employees by employee category (*i.e.*, train service, engine service, dispatcher/operator, signal, other).

(2) Number of covered employees in each category subject to alcohol testing under the alcohol misuse regulation of another DOT agency, identified by each agency.

(3) Number of screening tests by type of test (*i.e.*, pre-employment and covered service transfer, random, post-positive return to service, and follow-up) and employee category.

(4) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of .04 or greater, or who have violations of other alcohol misuse provisions, who were returned to service in covered positions (having complied with the recommendations of a substance abuse professional as described in § 219.104(d)).

(5) For cause breath alcohol testing under railroad authority, by reason for test (accident/injury or rules violation), the number of screening tests conducted.

(6) For cause breath alcohol testing under FRA authority, by reason for test (reasonable suspicion, accident/injury or rules violation), the number of screening tests conducted.

(7) Number of covered employees who refused to submit to a random alcohol test required under this part.

(8) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(9) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use during the reporting period.

(f) Annual reporting for calendar year 1993 and prior years shall be governed by the provisions of § 217.13 of this chapter in effect during the subject calendar period.

43. Part 219 is amended by adding Subpart J as follows:

Subpart J—Record Keeping Requirements

§ 219.901 Retention of breath alcohol testing records.

(a) *General requirement.* Each railroad shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each railroad shall maintain the records in accordance with the following schedule:

(1) *Five years.* The following shall be maintained for a minimum of five years:

(i) records of alcohol test results with results indicating an alcohol concentration of .02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, and employee evaluation and referrals;

(ii) a summary record of each covered employee's test results; and

(iii) a copy of the annual report summarizing the results of its alcohol misuse prevention programs (if required to submit under § 219.801(a).

(2) *Two years.* Records related to the collection process (except calibration of evidential breath testing devices) and training shall also be maintained for a minimum of two years.

(3) *One year.* Records of all test results below .02 shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records must be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Calibration documentation for evidential breath testing devices.

(iv) Documentation of breath alcohol technician training.

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(vi) Documents generated in connection with decisions on post-accident testing.

(vii) Documents verifying the existence of a medical explanation of the inability of a covered employee to provide an adequate breath sample.

(2) Records related to test results:

(i) The railroad's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this part.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Records related to evaluation and training:

(i) Materials on drug misuse awareness, including a copy of the railroad's policy on drug misuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 219.903 Retention of urine drug testing records.

(a) *General requirement.* Each railroad shall maintain records of its drug misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each railroad shall maintain the records in accordance with the following schedule:

(1) *Five years.* The following shall be maintained for a minimum of five years:

(i) records of employee positive drug test results, documentation of refusals to take required drug tests, and employee evaluation and referral;

(ii) a summary record of each covered employee's test results; and

(iii) a copy of the annual report summarizing the results of its drug misuse prevention program (if required to submit under § 219.803(a).

(2) *Two years.* Records related to the collection process and training shall be maintained for a minimum of two years.

(3) *One year.* Records of negative test results (as defined in Part 40 of this title) shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records must be maintained.

(1) Records related to the collection process:

(i) Documents relating to the random selection process.

(ii) Documents generated in connection with decisions to administer reasonable suspicion drug tests.

(iii) Documents generated in connection with decisions on post-accident testing.

(iv) Documents verifying the existence of a medical explanation of the inability of a covered employee to provide a urine sample.

(2) Records related to test results:

(i) The railroad's copy of the drug test custody and control form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to a drug test required by this part.

(iii) Documents presented by a covered employee to dispute the result of a drug test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Records related to evaluation and training:

(i) Materials on alcohol misuse awareness, including a copy of the railroad's policy on alcohol misuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 219.905 Access to facilities and records.

(a) Release of covered employee information contained in records required to be maintained under §§ 219.901 and 219.903 shall be in accordance with 49 CFR Part 40 and this section. (For purposes of this section only, urine drug testing records shall be considered equivalent to breath alcohol testing records.)

(b) Each railroad shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the railroad or any of its covered employees.

(c) Each railroad shall make available copies of all results for railroad alcohol and drug testing programs conducted under this part and any other information pertaining to the railroad's alcohol and drug misuse prevention program, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the railroad or covered employee.

44. Part 219 is amended by adding Appendices D3 and D4 as follows:

BILLING CODE 4910-06-P

APPENDIX D 3 - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Railroad Administration (FRA) **Alcohol Testing MIS Data Collection Form**. These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-iv as an example to facilitate the process of completing the form correctly.

This reporting form includes five sections. Collectively, these sections address the data elements required in the FRA and the U.S. Department of Transportation (DOT) alcohol testing regulations. The five sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. RAILROAD EMPLOYER INFORMATION	I	1
B. COVERED EMPLOYEES	I	2
C. ALCOHOL TESTING INFORMATION	Ii-iv	3-4
D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION	iv	5
E. ALCOHOL TRAINING/EDUCATION	iv	5

Page 1 **RAILROAD EMPLOYER INFORMATION** (Section A) requires the company name for which the report is done and a current address. Below this, a signature, date, and current telephone (including the area code) are required certifying the correctness and completeness of the form.

Page 2 **COVERED EMPLOYEES** (Section B) requires a count for each Hours of Service Act employee category that must be tested under FRA regulations. The categories are: "Engine Service", "Train Service", "Dispatcher/Operator", "Signal Service", and "Other." The **OTHER** category is a count of employees performing covered service that are not included in specific preceding categories. Examples include yardmasters, hostlers (non-engineer craft), bridge tenders, switch tenders, etc. These counts should be based on the company records as of January 1 of the reported year. The **TOTAL** is a count of **all** covered employees for all categories combined, i.e., the sum of the column.

Additional information must be completed if your company employs personnel who perform duties covered by the alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

Page 3 **ALCOHOL TESTING INFORMATION** (Section C) requires information for alcohol testing by category of testing. All numbers entered into the pre-employment (and transfer to covered service) section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for company employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random testing, (2) return to duty testing, (3) follow-up testing, (4) for cause testing due to accidents/injuries, (5) for cause testing due to rule violations, and (6) reasonable suspicion testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iv.

Four types of information are necessary to complete this table. The first blank column with the heading **"NUMBER OF SCREENING TESTS"** requires a count of all screening alcohol tests performed for each employee category. It should not include refusals to test. The second blank column with the heading **"NUMBER OF CONFIRMATION TESTS"** requires a count of all confirmation alcohol tests performed for each employee category.

The third blank column with the heading **"NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04"** requires a count for each employee category.

The fourth blank column with the heading **"NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04"** requires a count for each employee category. **Note: For return to duty testing, a confirmation result equal to or greater than 0.02 is a violation of the alcohol rule. Therefore, if the number of results equal to or greater than 0.04 is unknown, you may report all results in the third column of the table.**

Each column in the table should be added and the answer entered in the row marked **"TOTAL"**.

A sample table is provided on page iv with example numbers.

Page 3 At the bottom of the page containing pre-employment testing information is a box with the heading **"Number of applicants/transfers denied employment/transfer following an alcohol test indicating an alcohol concentration of 0.04 or greater"**. Enter the appropriate number in the box provided.

Page 3 Next, you must provide a count of the **"Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FRA regulations)"**. This information should be available from the personnel office and/or the drug and alcohol program manager.

Page 4 **FOR CAUSE TESTING** data are provided in three separate parts of the table -- one for accidents/injuries, one for rules violations, and one for reasonable suspicion. In the top portion of the parts for accidents/injuries and rules violations you must indicate whether the testing was conducted under FRA authority or under railroad authority

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **ALCOHOL TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories for testing in Section C which require you to summarize testing results for employees. This example will use the categories "Engine Service" and "Train Service" to illustrate the procedures for completing the form.

A Screening tests were performed on 157 job applicants for engine service positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Engine Service".

B Confirmation tests were necessary for 6 of the 157 applicants for engine service positions. Enter this information in the second blank column of the table in the row marked "Engine Service". The confirmation test results for these 6 applicants were the following:

Applicant	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C The confirmation test results for 2 of the applicants for engine service positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the third blank column of the table in the row marked "Engine Service".

D The confirmation test results for 3 of the applicants for engine service positions were equal to or greater than 0.04. Enter this information in the fourth blank column of the table in the row marked "Engine Service".

E The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 applicants for engine service positions and 107 applicants for train service positions were subjected to screening tests. The total for that column would be 264 (i.e., 157 + 107). The same procedure should be used for each column (i.e. add all the numbers in that column and place the answer in the last row).

Please note that our sample data collection form also has information for train service workers on line two. The same procedures outlined for engine service should be followed for entering the data on train service workers. With applicants for train service positions, 107 screening tests were conducted resulting in 3 confirmation tests. No results were equal to or greater than 0.02, but less than 0.04; the confirmation test result for 1 of the train service applicants was equal to or greater than 0.04. This information is entered in the row marked "Train Service".

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATION TESTS". These numbers may differ since some confirmation test results may be less than 0.02.

PRE-EMPLOYMENT				
EMPLOYEE CATEGORI	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
Engine Service	157	6	2	3
Train Service	107	3	0	1
TOTAL	264	9	2	4

A B C D E

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 5 **OTHER ALCOHOL TESTING/PROGRAM INFORMATION** (Section D) requests information on employees tested for drugs and alcohol at the same time and that you complete tables dealing with violations of other alcohol provisions/prohibitions of the regulation and refusals for testing.

Page 5 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater**, requires that a count of all such employees be entered in the indicated box.

Page 5 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION** requires supplying the number of covered employees who used alcohol prior to performing a safety-sensitive function, while performing a safety-sensitive function, and before taking a required post-accident alcohol test. The action taken with covered employees who violate any of these FRA alcohol regulation provisions is also to be supplied. Other violations not delineated in this table may also be provided.

Page 5 **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random or non-random** (pre-employment, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FRA regulation.

Page 5 **ALCOHOL TRAINING/EDUCATION** (Section E) requires information on the number of supervisory personnel who have received the required alcohol training during the current reporting period.

FRA ALCOHOL TESTING MIS DATA COLLECTION FORM OMB No. 2130-0526

YEAR COVERED BY THIS REPORT: 19__

A. RAILROAD EMPLOYER INFORMATION

Company _____

Address _____

_____

_____

I, the undersigned, certify the information provided on the attached Federal Railroad Administration Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____
Signature

_____
Title

_____
Date of Signature

_____
Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. The willful falsification of any information in this report may also subject the submitter to civil or criminal prosecution under Title 45, U.S.C. Section 438(e).

The Federal Railroad Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety; Federal Railroad Administration; 400 7th St., S.W.; Washington. D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2130-0526); Washington. D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF FRA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FTA	RSPA	USCG
Engine Service						
Train Service						
Dispatcher/Operator						
Signal Service						
Other*						
TOTAL						

* Includes yardmasters, hostlers (non-engineer craft), bridge tenders, switch tenders, and other miscellaneous employees performing covered service as defined in 49 CFR 228.5 (c).

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the current reporting period only (for example, January 1, 1994 - December 31, 1994).
2. This report is only for testing REQUIRED BY THE FEDERAL RAILROAD ADMINISTRATION (FRA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):
   - Results should be reported only for employees in COVERED POSITIONS as defined by the FRA alcohol testing regulations.
   - The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.
3. Information on refusals for testing should only be reported in Section D ["OTHER ALCOHOL TESTING/PROGRAM INFORMATION"]. Do not include refusals for testing in other sections of this report.
4. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

C. ALCOHOL TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
PRE-EMPLOYMENT				
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
Total				
RANDOM				
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
Total				
RETURN TO DUTY				
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
Total				
FOLLOW-UP				
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
Total				

Number of applicants/transfers denied employment/transfer following an alcohol test indicating an alcohol concentration of 0.04 or greater	

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FRA regulations)	

C. ALCOHOL TESTING INFORMATION (continued)

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
FOR CAUSE ALCOHOL TESTING DUE TO ACCIDENT*/INJURY *(Accidents NOT qualifying under 49 CFR Part 219 Subpart C) (Testing Conducted Under: FRA Rule Railroad Rule)				
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
TOTAL				
DUE TO RULES VIOLATION (Testing Conducted Under: FRA Rule Railroad Rule)				
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
TOTAL				
REASONABLE SUSPICION				
Engine Service				
Train Service				
Dispatcher/Operator				
Signal Service				
Other				
TOTAL				

D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:	

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN
	Covered employee used alcohol while performing safety-sensitive function	
	Covered employee used alcohol within 4 hours of performing safety-sensitive function	
	Covered employee used alcohol before taking a required post-accident alcohol test	

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	Number
Covered employees who refused to submit to a **random** alcohol test required under the FRA regulation:	
Covered employees who refused to submit to a **non-random** alcohol test required under the FRA regulation:	

E. ALCOHOL TRAINING/EDUCATION

TRAINING DURING CURRENT REPORTING PERIOD	Number
Supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FRA alcohol testing regulations:	

APPENDIX D 4 - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Railroad Administration (FRA) **Alcohol Testing MIS "EZ" Data Collection Form**. This form should only be used if there is **no alcohol misuse** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes three sections. These sections address the data elements required in the FRA and the U.S. Department of Transportation (DOT) alcohol testing regulations.

SECTION A - RAILROAD EMPLOYER INFORMATION requires the company name for which the report is done and a current address. Below this, a signature, date, and current telephone (including the area code) are required certifying the correctness and completeness of the form.

SECTION B - COVERED EMPLOYEES requires a count for each Hours of Service Act employee category that must be tested under FRA regulations. The categories are: "Engine Service", "Train Service", "Dispatcher/Operator", "Signal Service", and "Other." The **OTHER** category is a count of employees performing covered service that are not included in specific preceding categories. Examples include yardmasters, hostlers (non-engineer craft), bridge tenders, switch tenders, etc. These counts should be based on the company records as of January 1 of the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the column.

Additional information must be completed if your company employs personnel who perform duties covered by the alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION,** requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

SECTION C - ALCOHOL TESTING INFORMATION requires information for alcohol testing, refusals for testing, and training/education. The first table requests information on the **NUMBER OF ALCOHOL SCREENING TESTS CONDUCTED** in each category for testing. All numbers entered into the pre-employment (and transfer to covered service) section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Enter the number of alcohol screening tests conducted by employee category for each category of testing. Testing categories include: (1) random, (2) for cause testing due to accidents/injuries, (3) for cause testing due to rule violations, (4) reasonable suspicion, (5) return to duty, and (6) follow-up. Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FRA regulations). This information should be available from the personnel office and/or alcohol program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a random or non-random (pre-employment, reasonable suspicion, return to duty, follow-up, or for cause testing) alcohol test required under the FRA regulation.

ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD requires information on the number of supervisory personnel who have received alcohol training during the current reporting period.

FRA ALCOHOL TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2130-0526
(No Alcohol Misuse)

YEAR COVERED BY THIS REPORT: 19__

1. RAILROAD EMPLOYER INFORMATION

Company _____

Address _____

_____

_____

I, the undersigned, certify the information provided on the attached Federal Railroad Administration Alcohol Testing Management Information System "EZ" Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____
Signature

_____
Title

_____
Date of Signature

_____
Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. The willful falsification of any information in this report may also subject the submitter to civil or criminal prosecution under Title 45, U.S.C. Section 438(e).

The Federal Railroad Administration estimates that the average burden for this report form is 4 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety; Federal Railroad Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2130-0526); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF FRA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FTA	RSPA	USCG
Engine Service						
Train Service						
Dispatcher/Operator						
Signal Service						
Other*						
TOTAL						

* Includes yardmasters, hostlers (non-engineer craft), bridge tenders, switch tenders, and other miscellaneous employees performing covered service as defined in 49 CFR 228.5 (c).

C. ALCOHOL TESTING INFORMATION

NUMBER OF ALCOHOL SCREENING TESTS CONDUCTED							
EMPLOYEE CATEGORY	PRE-EMPLOYMENT	RANDOM	FOR CAUSE Accident/Injury Testing Conducted Under Rule FRA __ Railroad __	FOR CAUSE Rules Violation Testing Conducted Under Rule FRA __ Railroad __	REASONABLE SUSPICION	RETURN TO DUTY	FOLLOW-UP
Engine Service							
Train Service							
Dispatcher/Operator							
Signal Service							
Other							
Total							

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FRA regulations):	
EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	Number
Covered employees who refused to submit to a random alcohol test required under the FRA regulation:	
Covered employees who refused to submit to a non-random alcohol test required under the FRA regulation:	
ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD	Number
Supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FRA alcohol testing regulations:	

FRA Form No. FRAF6180.95B

Issued in Washington, D.C. on January 25, 1994.

Federico Peña,

Secretary of Transportation.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

[FR Doc. 94-2111 Filed 2-3-94; 1:00 pm]

BILLING CODE 4910-06-C

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. RSOR–6; Notice No. 36]

RIN 2130–AA82

International Application: Alcohol/Drug Regulations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Termination of rulemaking proceedings.

SUMMARY: The Federal Railroad Administration has determined that a separate rulemaking on international application of the Omnibus Transportation Employee Testing Act of 1991 (Act) is unnecessary. Accordingly, this notice withdraws FRA's December 15, 1992 advance notice of proposed rulemaking (ANPRM), which asked for comment on issues arising from the application of the Omnibus Transportation Employee Testing Act of 1991 (Act) to foreign railroads operating within the United States [57 FR.59605].

DATES: This proposed rule is withdrawn on February 15, 1994.

FOR FURTHER INFORMATION CONTACT: Walter C. Rockey, Executive Assistant to the Associate Administrator for Safety (RRS–3), Office of Safety, FRA, Washington, DC 20590 (Telephone: (202) 366–0897) or Patricia V. Sun, Trial Attorney (RCC–30), Office of Chief Counsel, FRA, Washington, DC 20590 (Telephone: (202) 366–4002).

SUPPLEMENTARY INFORMATION: Foreign railroads have been subject to portions of FRA's regulations on the control of alcohol and drug use (49 CFR part 219) since February 10, 1986. In the above-mentioned ANPRM, FRA asked for comment on practical considerations arising from international application of the new requirements of the Act, and received none. Foreign railroads generally enter into United States territory only for limited distances and these railroads already comply with existing FRA rules on post-accident and for cause testing. In light of this, and FRA's successful compliance record with foreign railroads, FRA will not proceed with a separate rulemaking on international application of the Act. Interested parties should instead look to FRA's final rule on alcohol-testing (published elsewhere in today's Federal Register), which continues FRA's current level of application while conforming part 219 to the requirements of the Act. The departmental common preamble published in today's Federal Register also contains a discussion of this issue.

Issued in Washington, DC, on January 25, 1994.

Federico Peña,

Secretary of Transportation.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

[FR Doc. 94–2036 Filed 2–3–94; 1:00 pm]

BILLING CODE 4910–06–P

federal register

Tuesday
February 15, 1994

Part VII

Department of Transportation

Federal Highway Administration

49 CFR Parts 382, et. al.
Controlled Substances and Alcohol Use and Testing; Rule and Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 382, 391, 392, and 395

[FHWA Docket Nos. MC–116, MC–92–19, MC–92–23]

RIN 2125–AA79, 2125–AC85, 2125–AD06

Controlled Substances & Alcohol Use and Testing

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adding regulations on controlled substances and alcohol use and testing to the Federal Motor Carrier Safety Regulations and making conforming amendments to other parts of those regulations. This is being done to comply with the requirements of the Omnibus Transportation Employee Testing Act of 1991. This rule requires employers to test drivers who are required to obtain commercial driver's licenses (CDLs) for the illegal use of alcohol and controlled substances.

EFFECTIVE DATE: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: *For information regarding program issues:* Mr. David Miller, Office of Motor Carrier Standards, (202) 366–2981, or *for information regarding legal issues:* Mr. David Sett, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal legal holidays.

SUPPLEMENTARY INFORMATION:

I. How to Read the FHWA Rules Published Today

A. Final Rules

The final rules requiring drug and alcohol testing of commercial motor vehicle operators are published in three places in today's **Federal Register**. This document contains the final rule for part 382, consisting of the substantive requirements of who, what, where, and when drug and alcohol testing must be done by employers. The text of the rule follows the discussion in this preamble. This final rule follows from two separate notices of proposed rulemakings—one for alcohol testing and one for drug testing. Five other operating administrations (OA) of the Department are publishing similar substantive rules for alcohol testing in today's **Federal Register**.

In addition, a Department of Transportation-wide preamble precedes this document in today's **Federal Register**. It is entitled Limitation on Alcohol Use by Transportation Workers. This common preamble discusses comments to the notices of proposed rulemakings (NPRM) published by six operating administrations on December 15, 1992, including the FHWA, and the parts of the final rules common to the six operating administrations. It should be read in conjunction with this document to ensure a complete understanding of the FHWA's final rule. There is no common rule associated with the common preamble. The rule contained in this document contains the requirements for motor carriers.

A third document, consisting of regulatory amendments and a preamble, contains the technical testing procedures designed for use when testing is required by part 382, this rule. Procedures for Transportation Workplace Drug and Alcohol Testing Programs, also published elsewhere in today's **Federal Register**, specifies how the testing is to be conducted. It adds alcohol testing procedures and drug testing amendments to 49 CFR part 40, the current Department-wide drug testing procedures regulation.

B. Notices of Proposed Rulemakings

In addition to the final rules mentioned above, the FHWA is also publishing in today's **Federal Register** three proposals to change certain provisions of the final rules. For more information than provided below, please refer to each NPRM.

The first NPRM contains a proposal to amend the part 382 final rule you are now reading to include foreign-based employers and their drivers who operate commercial motor vehicles in and through the United States. Included is a discussion of the comments received in response to an advanced notice of proposed rulemaking (ANPRM) published by the FHWA on December 15, 1992, in which various issues related to foreign coverage were raised.

The second NPRM proposes to amend part 40 to allow confirmatory blood testing for alcohol during reasonable suspicion and post-accident tests when an evidential breath testing device is not readily available. The Department-wide proposal seeks comment on how blood testing for alcohol should be conducted and what laboratories should be used.

The third NPRM proposes a Department-wide procedure for each operating administration's Administrator to adjust the random drug testing rate. Paralleling the provisions for adjusting the alcohol testing rate appearing in this rulemaking, the proposal would allow a reduction in the drug testing rate based upon reliable statistics of positive rates for each operating administration's program.

C. Use of Terms That Might Be Confusing to the Reader

In this document and the others published by the FHWA and the Department in today's **Federal Register**, the terms "drugs" and "controlled substances" are interchangeable and have the same meaning. Unless otherwise provided, drugs and controlled substances refer to marijuana (THC), cocaine, opiates, phencyclidine (PCP), and amphetamines (including methamphetamines).

II. Background

A. Statutory Authority

The Omnibus Transportation Employee Testing Act of 1991 (the Omnibus Act) was signed by President Bush on October 28, 1991, as part of the 1992 Department of Transportation and Related Agencies Appropriations Act. Public Law 102–143, Title V, 105 Stat. 917, 952 (1991). The Omnibus Act requires the Secretary of Transportation to promulgate regulations for alcohol and controlled substances testing for persons in safety-sensitive positions in four modes of transportation—motor carrier, airline, railroad, and mass transit. The general requirements of the Omnibus Act are addressed in the Office of the Secretary of Transportation's (OST) final rule amending 49 CFR part 40 and in the common preamble, applicable to all of the U.S. Department of Transportation (DOT) modal agency rules on alcohol testing programs. These documents appear elsewhere in today's issue of the **Federal Register**.

Section 5 of the Omnibus Act addresses requirements specific to employers who own or lease commercial motor vehicles (CMVs) or assign persons to operate such vehicles. 49 U.S.C. 2717. This section amends the Commercial Motor Vehicle Safety Act of 1986 (CMVSA). Public Law 99–570, 100 Stat. 3207–170 (codified at 49 U.S.C. app. 2701–2718). The CMVSA established the requirements for the Commercial Drivers License (CDL). The FHWA has implemented the CDL provisions of the CMVSA through the publication of several final rules.

The Omnibus Act requires the Secretary to issue regulations requiring employers to conduct pre-employment, reasonable suspicion, random and post-accident testing of drivers for the use, in violation of law or Federal regulation, of alcohol or controlled substances.

Congress recognized current FHWA regulations for controlled substances testing and the scientific and technical guidelines established by the Department of Health and Human Services incorporated therein.

In addition, this rule is issued under the general safety regulatory authority of the FHWA. See 49 U.S.C. 3102 and app. 2505.

B. Regulatory History

1. Current Regulations

The FHWA published a final rule on November 21, 1988, setting forth regulations to require employers who operate CMVs in interstate commerce to have an anti-controlled substances program, including the testing of interstate CMV drivers. See 53 FR 47134. That rule required employers to conduct five types of controlled substances tests: Pre-employment/use; periodic; reasonable cause; post-accident; and random. 49 CFR part 391, subpart H.

Though there is no corresponding alcohol testing program currently applicable to motor carriers, a number of other regulations prohibit the misuse of alcohol and drugs when operating a CMV. Prohibitions on use before and during driving appear in 49 CFR 392.4 and 392.5. A driver who is convicted of being under the influence of drugs or alcohol while driving a CMV is subject to CDL suspension. 49 CFR 383.51. A driver who uses Schedule I drugs, without medical authorization, is physically unqualified to drive in interstate commerce. 49 CFR 391.41(b)(12).

On the same date, November 21, 1988, and in conjunction with publication of the FHWA drug testing rule, the OST published a Department-wide interim final rule, "Procedures for Transportation Workplace Drug Testing Programs." See 53 FR 47002. On December 1, 1989, OST published a final rule amending certain portions of the interim final rule. 54 FR 49854, 49 CFR part 40.

Subsequent to the publication of the November 21, 1988, FHWA final rule, the FHWA published several notices relating to the controlled substances testing requirements. See 54 FR 39546, 54 FR 46616, and 54 FR 53294. On February 1, 1990, the FHWA published an interim final rule and requested additional comments to FHWA Docket No. MC–116 on the changes to the rule and how to streamline the controlled substances testing program. 55 FR 3546. The FHWA received 24 comments in response to this interim final rule. The responses to two of these comments will be addressed later in this document. The other comments were addressed in a recent rulemaking on the drug testing management information system (58 FR 68194 and 68220, December 23, 1993).

On November 2, 1989, OST published an advance notice of proposed rulemaking (ANPRM) on alcohol testing. 54 FR 46326.

2. Notices of Proposed Rulemaking

On December 15, 1992, the FHWA requested public comments on two notices of proposed rulemaking (NPRM) which address alcohol and controlled substance testing:

1. Alcohol Testing [57 FR 59382, 59409, and 59516, December 15, 1992, Docket No. MC–92–19], and
2. Controlled Substances Testing [57 FR 59382, 59409, and 59567, December 15, 1992, Docket No. MC–92–23].

3. Public Hearings

The Department of Transportation and the FHWA held three 2-day public hearings regarding the alcohol and controlled substances testing NPRMs. The hearings were held in Washington, DC, on February 25 and 26, Chicago, Illinois, on March 1 and 2, and San Francisco, California, on March 4 and 5. The FHWA has included transcripts of each hearing in the rulemaking dockets. Comments made at the hearings are discussed below along with written comments submitted directly to the dockets.

4. Comments to the Dockets

A. Alcohol Testing [Docket MC–92–19]. Comments to docket MC–92–19 that relate to rule provisions common to all operating administrations are discussed in the common preamble, *Limitation on Alcohol Use by Transportation Workers*, published elsewhere in today's **Federal Register**. Discussion in this rulemaking document will focus on aspects or applications of the rule which are unique to FHWA. Where a discussion is included in this document, the corresponding section in the common preamble should also be consulted for a complete understanding of this final rule.

The FHWA received 323 comments to docket MC–92–19, the alcohol NPRM, by the close of business on April 14, 1993. The commenters included employers, drivers, trade associations, unions, medical review officers (MROs), substance abuse professionals (SAPs), and governmental agencies, including law enforcement agencies, and school districts.

Applicability

Comments: Many custom harvesters stated that their industry should retain the current exemption from drug testing in 49 CFR part 391, *Qualification of Drivers*, and also be exempt from alcohol testing. Some commenters, including The Kansas Electric Coop, stated that rural electric cooperatives should be exempt from testing because job responsibilities are different from those of over-the-road truck drivers. They stated that their employees spend minimal time on high speed thoroughfares in close proximity to small passenger cars. A local government agency stated that mechanics should not be subject to alcohol and controlled substances testing because they could not afford such a program.

The Virginia State Police, among others, stated that only employees subject to 49 CFR part 391 should be tested. They stated that the controlled substances testing program is in place and working. The additional testing for alcohol could readily be implemented. Some comments recommended a partial exemption for foreign drivers and a total exemption for electrical contractors.

Other commenters, including the Owner-Operator Independent Drivers Association (OOIDA), disagreed with the principle of industry-wide waivers from alcohol-testing regulations. Though it opposes non-probable cause testing, the OOIDA stated that if testing were imposed, all drivers should be treated equally. The Federal mandate is that government and school bus drivers be tested as other drivers are tested.

One commenter stated that employees who worked for employers subject to the Federal Transit Administration (FTA) rules should be tested under FTA rules. Another commenter asked how to report CDL drivers who are subject to the Federal Transit Act, and whether non-CDL and non-Section 18 drivers must be tested. The Montana and South Dakota Departments of Transportation recommended that transit systems with fewer than 15 safety-sensitive employees should be exempt from testing regulations. The Association of American Railroads (AAR) and Transtar, Inc. stated that railroad employees who operate CMVs should be tested under the jurisdiction of the FRA, not the FHWA. The AAR stated that most railroad employees, who operate CMVs, drive their vehicles sporadically. Driving is not their primary responsibility. Some commenters stated pipeline employees, who operate CMVs, should only be subject to Research and

Special Programs Administration (RSPA) jurisdiction.

The Tennessee Valley Authority (TVA) and other commenters stated that employees subject to the Nuclear Regulatory Commission (NRC) should be tested under NRC regulations. The TVA stated that there is needless, costly duplication which significantly compounds the opportunity for human error in the testing program. The U.S. Postal Workers Union stated that the U.S. Post Office has a credible controlled substances testing program and should be given credit for their program. Pinnacle Transport Services, Inc. stated that drivers of CMVs should only be subject to FHWA regulations.

Other commenters, including the Washington State Patrol (WSP), stated that government employees should be totally exempted from the alcohol testing regulations. The WSP stated that requiring governmental agencies, including school bus drivers and highway road crews, to implement random alcohol testing would further reduce limited budgets for these agencies. The WSP also stated that their state currently has a strong and effective school bus inspection program.

FHWA Response: The Omnibus Act, as stated above, amended the CMVSA, subjecting all drivers of CMVs who are required to obtain CDLs to testing for the illegal use of alcohol and controlled substances. The Omnibus Act does not provide specific waiver authority apart from the CMVSA. The CMVSA gives the Secretary the discretion to waive classes of drivers and vehicles from all or part of the statute's requirements. The FHWA does not believe that this waiver authority is broad enough to waive all drivers from requirements of the Omnibus Act. See H.R. Rep. No. 901, 99th Cong., 2d Sess. 4 (1986). Moreover, the FHWA does not believe it is in the public interest to grant industry-wide exemptions from testing requirements beyond those permitted in the CDL program as a whole. Therefore, only those few categories of drivers that have received full waivers from CDL requirements are similarly waived from drug and alcohol testing requirements.

Employers not subject to this rule will be those employers who exclusively employ drivers that are not subject to commercial driver's license requirements. Such employers may be Department of Defense (DoD) agencies who only employ active duty military personnel. Those (DoD) agencies that employ civilian and non-active duty drivers will be subject to these rules and must implement FHWA required testing programs for those civilian and non-active duty drivers. Other employers not subject to this rule include farmers, emergency response and firefighting companies, when they employ drivers that have been waived from the CDL requirements by their State of licensure.

Employers who are subject to the Federal Transit Administration's (FTA) alcohol and controlled substances testing regulations are not subject to the FHWA's regulations. The FTA generally requires its grantee's to be subject to its rules. The FTA, however, will not require recipients receiving Federal funding under section 16(b)(2) of the Federal Transit Act to follow the FTA substance testing rule. The Federal Transit Act, under section 16(b)(2), provides capital assistance through a State to organizations that provide specialized transportation services to elderly persons and persons with disabilities. The funds may go to nonprofit organizations, and under certain circumstances, to public bodies.

Though some commenters suggested to the FHWA and the FTA that the FTA cover section 16(b)(2) recipients in the FTA rule, the Omnibus Act does not provide such coverage. Therefore, the CMV drivers of section 16(b)(2) recipients will be covered under this FHWA rule. See the FTA final rule published elsewhere in today's Federal Register for further information.

As for employers and drivers subject to other Federal agencies' testing programs, the FHWA, along with the other operating administrations in the Department and the OST, have worked with the NRC, the Departments of Energy (DOE) and Health and Human Services (DHHS) and other Federal agencies to establish similar requirements for testing of both the agencies' Federal employees and regulated entities. The FHWA has attempted to have substantially compatible regulations with all Federal agencies that require testing of Federal and non-Federal employees. However, operators of CMVs and their employers must comply with the requirements of the Omnibus Act regardless of whether an employer has an existing drug and/or alcohol testing program.

This section also specifies that persons who are both an employer and a driver, that is, the person who owns a business and also drives a commercial motor vehicle for that business (generally called an owner-operator), must comply with both the driver and the employer requirements contained in part 382. This section also stipulates that an employer with only one driver may not have an independent random testing program. Such employers must join a group of other DOT regulated employers, generally known as a consortium, to conduct random testing for alcohol and drug testing. This requirement is necessary to ensure a truly random selection, since it is impossible to randomly select from a pool that contains only one person.

Definitions

Comments: The Council of Special Transportation and the County of Somerset, New Jersey stated that the term "safety-sensitive position" should be defined in the regulations. The Council of Special Transportation added that the FHWA and FTA should minimize inconsistencies in their respective regulations and definitions. Other commenters stated that the definition of the term "accident" should be consistent with current rules.

FHWA Response: The term "safety-sensitive function" was defined in the proposal and is defined in this final rule. A safety-sensitive function or position in the mass transit industry encompasses more functions than the FHWA's exclusive definition of a CMV driver and thus, the FHWA and FTA cannot have identical definitions for this term. Testing is restricted to CMV operators in Section 5 of the Omnibus Act. Section 6, in contrast, allows the FTA to determine what mass transportation employees are responsible for safety-sensitive functions. See the FTA final rule published elsewhere in today's Federal Register for a complete discussion of FTA covered safety-sensitive functions.

The FHWA proposed a definition of "accident" to be consistent with the Omnibus Act, which requires that drivers involved in an accident where there is loss of human life, regardless of fault be tested. The Secretary is also given the discretion to determine what other serious accidents, involving bodily injury or significant property damage, trigger post-accident testing. The FHWA is maintaining the definition as proposed in the NPRM, which adopted the definition of accident appearing in 49 CFR 390.5.

Requirement for Notice

Comments: Numerous commenters opposed any requirement to provide written notification, stating that because the proposed regulations prohibit an employer from representing a non-DOT test as a test conducted under the regulations of the Department, no written notice is necessary. Other commenters stated that written notice should be provided. The Amalgamated Transit Union (ATU) stated that a written notice requirement would establish uniformity and confirm that notice has been properly given.

Recommendations regarding the time frame for written notice ranged from immediately prior to the test to the day of the test.

FHWA Response: This requirement is necessary to address the concerns of drivers who have complained that their employers purported to require a test under the current drug testing program when, in fact, the test was not required by FHWA regulations. In order to provide employers with flexibility, the form of the notification is not prescribed. It may be oral or written. The breath alcohol testing form and the drug testing custody and control form may be used to meet the requirement for notice. The final rule requires only that notification be given prior to the administration of the test.

Medication Exception.

Comments: Several commenters, including the American Trucking Associations (ATA), stated that an exception should not be made for the consumption of prescription medication containing alcohol. However, the ATA also stated that employees should be allowed to possess prescription medicine containing alcohol.

Other comments, including those from the OOIDA, stated that an exception should be allowed for the consumption of prescription medicine containing alcohol. STA United Inc. recommended removing the stipulation that an employer must have actual knowledge that an employee possesses alcohol, arguing that actual knowledge implies the existence of a witness and the presence of a witness justifies the performance of a reasonable suspicion test.

FHWA Response: The FHWA received no comments regarding whether a driver is as safe on the highway using medications as a driver who does not use them. We believe that the public interest is better served if we continue our long-standing prohibition on the possession and consumption of substances containing any amount of alcohol. Highway safety is of paramount importance, and there are alternative medications which do not contain alcohol. The FHWA continues to believe that CMV drivers must use non-impairing medications while driving CMVs.

Finally, it should be noted that mere possession of alcohol, standing alone, does not give rise to a reasonable suspicion test under this part, which must be based on observations concerning the appearance, behavior, speech, or body odors of a driver.

Pre-duty Alcohol Use

Comments: Several commenters stated that drivers should abstain from consuming alcohol prior to duty, but there was no consensus on the length of the required abstinence. The US DOE recommended 5 hours. The Texas Pupil Transportation Drug Testing Advisory Committee recommended 6 hours. Other commenters, including the American Bus Association (ABA) and U.S. West Communications, recommended 8 hours. The ABA believed that an 8 hour abstinence is necessary in order to prevent an otherwise lawful use of alcohol from invalidating a post-accident test. The Council on Special Transportation opposed the pre-duty prohibition on the use of alcohol because it is unfair to "on call" drivers and the employer can not enforce such a regulation.

FHWA Response: Current regulations applicable to persons who operate CMVs in interstate commerce prohibit a person from consuming an intoxicating beverage regardless of its alcohol content within 4 hours before going on duty, operating or having physical control of a motor vehicle. See 49 CFR 392.5. The FHWA believes that the public's interest in safety is better served if the current pre-duty alcohol prohibition is extended to all CMV operators subject to alcohol and controlled substances testing. All commenters who were in favor of prohibiting pre-duty alcohol use supported abstinence periods of 4 or more hours. The FHWA understands the concern of the ABA that the pre-duty use of alcohol may register during a post-accident test. The 4 hour abstinence period, however, is a minimum requirement, regardless of a driver's alcohol concentration. A driver may in fact need to abstain for a longer period in order to be below 0.02 BAC while operating a CMV.

Pre-employment/Pre-duty Testing

Comments: The ATA stated that pre-employment testing is unnecessary and that the FHWA should waive such testing under section 12013 of the CMVSA. Once a driver is hired, they state, the person is subject to random and probable cause testing, which is sufficient to deter misuse.

FHWA Response: Even accepting, for the sake of the argument, the comment's presumption that pre-employment testing is inherently useless, the FHWA does not believe it has the authority to waive all drivers from a major provision of the legislation. Eliminating all pre-employment tests would greatly diminish the number of required tests, and would, in effect, rewrite the statute.

Post-accident Testing

Comments: There were numerous comments to this section dealing with such issues as who should be required or permitted to perform the post-accident testing and how long after an accident occurs should a driver be required to be tested. Commenters, including the California Trucking Association (CTA), supported the position that law enforcement officials either be required or permitted to perform post-accident testing. The CTA stated that the police should perform post-accident testing because they have the necessary equipment and training to perform the tests. One commenter stated that the test should be performed if the accident is reportable, regardless of whether a citation is issued. Other commenters supported post-accident testing only if the driver receives a citation. The NEA opposed the requirement to test all CMV drivers involved in fatal accidents because the tested driver may not have caused the accident. The National Education Association (NEA) stated that there should be some showing of fault or culpability before a driver is required to be tested. A few commenters opposed post-accident testing.

There was no consensus on the maximum time limit after the accident an employer should be required to test the driver. The US DOE recommended one hour while others recommended either four or eight hours as the maximum limit. A few commenters did not like the eight hour time limit but did not recommend an alternative.

The National Solid Waste Management Association (NSWMA) stated that a post-accident test should not be voided if the testing official fails to give notice that the test is required by regulation. Other commenters stated that either police or employers should be permitted to conduct the test at the employer's option.

FHWA Response: The Omnibus Act expressly requires that every CMV driver involved in an accident that involves a fatality must be tested for alcohol and controlled substances, regardless of whether the driver was culpable or at fault.

The statute does allow, however, the FHWA to determine what other types of "serious accidents involving bodily injury or significant property damage" should lead to a driver being tested for alcohol and controlled substances. In order to be consistent with current standards, accidents as defined in 49 CFR 390.5 (towaway and medical

assistance criteria) are considered serious enough to trigger testing. In addition, there must be some determination by a third party law enforcement official, through issuance of a traffic citation to the driver arising from the accident, that the driver's actions may have contributed to the accident.

Certain tests conducted by law enforcement officials with independent authority may be substituted by the employer for a post-accident test if the employer obtains the results. Since such tests would be conducted independent of this part, a law enforcement official would not give the notification required in this part.

Post-accident testing must be done as soon as possible after an accident. However, the FHWA realizes that there are times when, because of unforeseen problems, a test is not obtainable in the first couple of hours after the accident. The FHWA believes that the eight hour time frame for alcohol testing is therefore necessary to allow for testing under such circumstances. A driver who was over 0.10 BAC at the time of the accident may continue to test above 0.02 BAC at the time of the test. It is generally accepted that alcohol dissipates from the body in a very short time. However, the FHWA believes that a driver, who continues to have a prohibited alcohol concentration up to 8 hours after an accident that requires an alcohol/controlled substances test, should be subject to evaluation by a substance abuse professional.

Random Testing

See Limitation on Alcohol Use by Transportation Workers for discussion of random alcohol testing comments, including the random roadside testing option proposed in the NPRM but not included in the final rule.

Reasonable Suspicion Testing

Comments: A few commenters, including the IBT, were opposed to lowering the number of supervisors needed to make a reasonable suspicion observation, from the current rule's two to the proposal's one. The union stated that it weakens protection for workers. Other commenters supported the single supervisor requirement.

FHWA Response: The FHWA believes that requiring only one supervisor or company official to make a reasonable suspicion determination responds to the operational realities of motor carrier operations. The FHWA received many comments and much oral testimony stating that there are often not two supervisors available to make such determinations on those relatively infrequent occasions when some drivers return to terminals. Only one supervisor or company official might be present and available to observe the driver.

The current drug testing rule, moreover, requires observation by two supervisors or company officials only where feasible. It is the FHWA's experience in administering the rule that motor carriers often, due to the operational characteristics noted above, have not found it feasible to obtain observations from two supervisors. After the fact evaluation by the FHWA of feasibility has proven difficult. In effect, therefore, this rule may not be diminishing significantly the overall numbers of supervisors and company officials making reasonable suspicion determinations.

In order to counteract any perceived increase in the potential for abuse by company officials caused by eliminating the two supervisor requirement, the one supervisor who makes the reasonable suspicion determination is prohibited from conducting the alcohol test. Thus, it remains that at least two company officials must become involved before any driver is determined to have violated this rule such that the driver is referred to a SAP. Drivers are further protected by the requirement for all persons making reasonable suspicion determinations to receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of alcohol misuse.

Exceptions for Testing Performed by Consortiums

Comments: Pinnacle Transport Services, Inc. stated that the reference in the title of this topic to consortiums should be removed because it did not accurately and completely reference the applicable sections.

FHWA Response: The FHWA agrees, and has removed this as a separate exception. The only exceptions available in the final rule are placed under the pre-employment testing sections. The random testing exception has been removed entirely.

Retention of Records

Comments: Numerous commenters, including the ATA, recommended reducing the record retention period from the proposed 5-year period to a 3-year period. Roadway Express, Inc. stated that a maximum record retention period of three years would be consistent with other FHWA recordkeeping requirements for medical records. The US DOE recommended that equipment records be retained for 2 years since they are similar in nature to collection process records. Pinnacle Transport Services, Inc. recommended that the threshold for alcohol test results which are required to be kept for 5 years should be changed from 0.02 BAC to 0.04 BAC. The NSWMA recommended that the annual report of test results be kept for no more than 5 years.

The Arlington, Virginia Public Schools recommended that employers not be required to keep equipment calibration records because the police department does the alcohol testing for the school system.

FHWA Response: The proposed regulations were designed to be consistent among all modes of the Department to permit compliance for employers that are subject to the regulations of two or more DOT agencies. The FHWA does not believe that sufficient justification was presented to warrant a change to the record retention requirements. With regard to maintenance of records by a party other than the employer, the FHWA currently allows agents of the employer to maintain certain records, provided the employer obtains such records for auditing within two business days after the request of an authorized representative of the FHWA. This language is included in § 382.401(d).

Access to Facilities and Records

See *Limitation of Alcohol Use by Transportation Workers* for discussion of this section.

Required Evaluation and Testing

See *Limitation on Alcohol Use by Transportation Workers* for discussion of comments on this section.

Other Alcohol-Related Conduct

See *Limitation on Alcohol Use by Transportation Workers* for discussion of comments on this section.

Disqualifications and Consequences

Comments: The OOIDA and the NEA both recommended that a driver not be disqualified without the benefit of a hearing. The Idaho Department of Law Enforcement recommended that a driver only be disqualified upon conviction of an alcohol violation, not a positive test.

FHWA Response: Because the FHWA has not included the MCSAP random roadside testing option in the final rule, the associated CDL suspension penalties, and the corresponding driving prohibition periods in the employer-based testing option, are also not included in the final rule. The only consequence under this rule for violation of the alcohol prohibitions is referral to a substance abuse professional, who may require the driver to undergo treatment before returning to perform safety-sensitive functions, and a return-to-duty test with a result below 0.02. The purpose is to ensure that drivers are evaluated for alcohol problems, and that they get the treatment they need before returning to duty. Therefore, the time period a driver is actually prohibited from driving will vary, depending on the speed with which a SAP is consulted and the results of the SAP's evaluation.

Of course, the driver disqualifications and 24 hour out-of-service period provided for discovery and conviction of certain alcohol offenses by law enforcement officials remain. See 49 CFR 383.51 and 392.5.

Motor Carrier Obligation to Promulgate a Policy on the Misuse of Controlled Substances

See *Limitations on Alcohol Use by Transportation Workers* for discussion of comments on this section.

Controlled Substance Training for Supervisors and Company Officials

See *Limitations on Alcohol Use by Transportation Workers* for discussion of comments on this section.

Referral, Evaluation and Treatment

See *Limitations on Alcohol Use by Transportation Workers* for discussion of this section.

Part 392—Alcohol Prohibition

Comments: The Shell Oil Company and the Organization Resources Counselors Inc. stated that an out-of-service order should be produced only for an alcohol concentration of 0.04 BAC or more. Pinnacle Transport Services opposed the requirement that no driver shall be on duty or operate a CMV if by the person's appearance, the driver may have used alcohol.

FHWA Response: The FHWA has had a policy of zero tolerance for alcohol use by CMV drivers since the early 1940's. The safety of the traveling public is paramount. An employee who has either recently consumed an alcoholic beverage or who has any detected presence of alcohol may not be on duty until the alcohol has dissipated from the person's system. It is not specified in this section how the alcohol is detected or how long it takes to dissipate.

In addition, section 382.505 provides that drivers are prohibited from driving for 24 hours, though not placed out-of-service, when they are discovered through testing under part 382 to have an alcohol concentration of 0.02 or greater, but less than 0.04. Results below 0.02 through testing under this part are considered "negative."

The 24 hours out-of-service period is required by the CMVSA to be imposed on drivers discovered by law enforcement officials to have violated the proscriptions in § 392.5, including any measured concentration of alcohol. It is designed to ensure that the employee is provided enough time to become alcohol free prior to driving a CMV again. See discussion below of Section 382.505 in Section-by-Section Analysis.

On-Duty Time

Comments: Several commenters, including the ATA, oppose recording time spent submitting to an alcohol or controlled substances test as on-duty time. The ATA stated that time spent acquiring or renewing a CDL or taking a physical examination is not logged as on-duty time. The recording of on-duty time while performing a mandatory test would have a significant impact on the industry in terms of lost productivity and other costs. Testing is a fitness for duty issue, they believe, not the performing of work for an employer. The OOIDA stated that return-to-duty testing should always be on-duty time. STA United Inc. stated that return-to-duty testing should be on-duty time if the driver continues to work for the same employer in a job not related to safety during rehabilitation.

FHWA Response: Testing under these requirements is done to deter CMV drivers from using alcohol and controlled substances. The FHWA continues to believe that all time spent travelling to and participating in either a drug or alcohol test is to be logged as on-duty time when a random, reasonable suspicion, post-accident, or follow-up test is directed by or on behalf of a motor carrier.

B. Controlled Substances Docket MC–92–23

The comments to docket MC–92–23 which are similar to those considered in the discussion of the comments to the alcohol testing docket MC–92–19 are not discussed again below. The following discussion involves only comments that are different from those submitted to docket no. MC–92–19 and the common preamble, *Limitation on Alcohol Use by Transportation Workers.*

The FHWA received 107 comments to this NPRM. The commenters included: Employers; drivers; driver's associations; unions; MROs; SAPs; and Federal, State and local governments. Commenters from government agencies included law enforcement agencies and school districts.

Applicability

Comments: The American Postal Workers Union (APWU) stated that postal workers should be exempt from controlled substances testing. The Truck Stop Operators Association stated that mechanics should be subject to the FHWA rules.

FHWA Response: As stated above, only drivers waived from CDL requirements are similarly waived from the alcohol and controlled substances testing regulations. Mechanics who hold CDLs to operate CMVs for truck stop operators will be required by this rule to submit to alcohol and drug testing if they operate CMVs on public highways.

Definitions

Comments: One commenter stated that the definition of MRO should include health care professionals because the FHWA allows these professionals to perform medical examinations. One commenter at the San Francisco, California, hearing recommended that a definition of "verified negative test" be included in this section. Commenters to the docket and at the Washington, D.C. hearing that the definition of SAP should include a "certified employee assistance professional", "occupational health nurse" and "certified addiction counselor". The Employee Assistance Professionals Association recommended that only their members be allowed to serve as SAPs.

The IBT said that "canceled test" should be defined in part 40, if at all. The IBT believed that the use of the word "adulteration" in the definition of "canceled test" was confusing. In addition, the IBT recommended that MROs be required to take MRO courses and pass a qualifying examination. The IBT also believed that SAPs should be certified, be in current practice and have appropriate training.

FHWA Response: The FHWA agrees with the IBT that the definition of the term "canceled test" was confusing and has concluded that the FHWA's restatement of part 40 issues is unwarranted. The FHWA has decided to remove this section, making part 40 procedures for canceled tests to be the FHWA standard.

The definitions of a SAP, verified negative test, and the qualifications of MROs and SAPs also involve Department-wide issues and thus will be controlled by regulations issued the Office of the Secretary 49 CFR Part 40. See the Office of the Secretary's responses to these comments in the final rule amending part 40, Docket No. 48153, *Procedures for Transportation*

Workplace Drug and Alcohol Testing Programs, published elsewhere in today's **Federal Register**.

Starting Date for Controlled Substances Testing Programs

Comments: One commenter was confused about the proposed 382.115(c) regarding employers who begin business after the second year after implementation of the rule. One commenter stated that the implementation dates should be the same for all employers. Other commenters believed that the alcohol and controlled substances testing programs should be implemented within 6 months of the effective date of the regulations. The Montana Office of Public Instruction suggested that implementation be delayed until July 1, 1995, to allow Montana school districts to minimize negative fiscal consequences to existing programs.

FHWA Response: Given its experience administering the drug testing program under part 391, subpart H, the FHWA believes that small employers will require more time to implement changes mandated by the Omnibus Act than large employers. Small entities may have difficulty implementing all of the requirements within one year. Larger employers, however, should be able to implement the programs within approximately one year.

Accordingly, large employers (fifty or more drivers) will be required to implement a complete, fully operational program that complies with this rule and part 40 on January 1, 1995. Small employers (fewer than fifty drivers) must implement the requirements of this part and part 40 on January 1, 1996.

Furthermore, the Department has decided that all employers subject to the current drug testing regulations at part 391, subpart H, must begin split sample collections and provide CMV drivers the opportunity for split sample reconfirmation of a verified positive drug test result within 6 months from today, in accordance with the amended part 40. Since this only affects those persons subject to current drug testing under subpart H, amendatory language has been inserted in subpart H requiring this Department-wide procedure.

Controlled Substances Testing—General

Comments: The IBT recommended removing the reference to "prescription drug", because such a reference was not in the present rule.

FHWA Response: The FHWA agrees that the reference to prescription controlled substance use should be deleted. The FHWA has used the term, "therapeutic drug use" in § 391.97(d) and has placed that phrase into this rule.

Pre-Employment/Pre-Duty Testing

Comments: The International Brotherhood of Teamsters recommended retaining the 12-month participation option which is currently part of the exception criteria in subpart H. Two commenters recommended that employers be permitted to obtain and use an applicant's prior testing information during the hiring process as a condition of employment. The OOIDA was opposed to requiring a driver to sign an authorization for the release of test results as a condition of employment.

FHWA Response: The subpart H, "12 month participation in a random drug testing program" allowance will be retained. 49 CFR 391.103(d)(2)(ii)(B). See the discussion of § 382.413 below for a discussion of release of previous employers' testing information.

Post-Accident Testing

Comments: The OOIDA opposed post-accident testing without probable cause. Other commenters believed that the term "safety sensitive function" should be defined. The Edison Electric Institute suggested that paragraph (a)(1) be revised to read "* * * performing a safety sensitive function with regard to driving, loading or securing loads on vehicles that are driven on a public highway." In addition, commenters asked if continuous procedural instructions about post-accident testing would include ensuring that post-accident testing kits are kept in each vehicle and that reminders are posted on bulletin boards.

The ATA believed that post-accident testing should apply only to those drivers involved in a fatal accident for which they were issued a citation for a moving violation. One commenter was opposed to the provision that a citation had to be issued. A few commenters stated that there should be no acceptable reason for leaving the scene of an accident.

One commenter believed that the "tow-away" requirement in accidents should be replaced with minimum dollar amounts. For example, $2,500 for "vans" and $5,000 for "buses and trucks" could be used. Another commenter suggested that the FHWA either require that a blood test be performed on a driver who is incapacitated for at least 24 hours or require a law enforcement official to perform the test.

FHWA Response: The Omnibus Act requires that testing be conducted after all fatal accidents, regardless of whether or not a citation is issued. Safety-sensitive functions are defined in § 382.107 of the rule. The regulations require that the employer provide employees with necessary post-accident information, procedures, and instructions so that the employees may be able to comply with the requirements of this section. The FHWA believes that the employer should be given maximum flexibility in implementing the post-accident drug testing requirements. "Post-accident testing kits" and bulletin board notices might be possible options for complying with the regulations, but there is no requirement to produce either such kits or notices. There is also no requirement, or authorization, to take specimens of any kind from an incapacitated driver unable to consent to testing.

The FHWA believes that the "tow-away" criteria appearing in the definition, adopted from 49 CFR 390.5, is better criteria for an accident because property damage estimates sometimes change. Finally, it is reasonable to allow drivers subject to post-accident testing to leave the scene of the accident for medical and other emergencies.

Random Testing

Comments: One commenter was opposed to any random testing for controlled substances. A few commenters recommended testing by employers. Though not proposed, other commenters recommended that the drug testing be done at the roadside by government officials.

Although the FHWA did not provide any options for a random testing rate in the drug testing NPRM, many commenters recommended rates differing from 50%.

One commenter suggested that a statement should be added to this section regarding the legality of requiring an employee to submit to testing on off-duty time. Another commenter questioned the requirement to perform random selections at least quarterly.

FHWA Response: For a discussion of adjusting the random drug testing rate in a manner similar to the alcohol / testing rate adjustment provided in this rule, see the NPRM published elsewhere in today's **Federal Register**.

To preserve randomness and the deterrent value of the program, drivers must have an equal chance of being randomly tested throughout the year. Due to the varying sizes of employers, however, nowhere in the rule is it required that random selection be made at least on a quarterly basis for all employers. The rule merely requires that testing be spread reasonably throughout the year.

As stated above, the time spent performing most tests must be logged as on duty. Compensation arrangements between drivers and their employers is beyond the scope of FHWA regulatory authority.

Reasonable Suspicion Testing

Comments: One commenter suggested that the supervisor's observations leading to a reasonable suspicion test be documented within two hours of the observation. Another suggested that the time requirement for documentation be reduced to within two to six hours from the 24 hours provided in the proposal. One commenter stated that documentation should not be attached to the results, but should be available upon request.

FHWA Response: The FHWA currently requires in 49 CFR § 391.99(d) that documentation of reasonable suspicion determinations for drug tests be completed within 24 hours of the observed behavior or before the results of the tests are received, whichever is earlier. There is no requirement that the written documentation for a reasonable suspicion test be attached to the test result itself.

This requirement is being carried over for drug testing only in this rule. An employer may need more than two or six hours to document a reasonable suspicion test. The 24 hour period should allow documentation to occur by the next day's shift at the latest because, in most situations, test results will not be available within 24 hours.

Written documentation is required for reasonable suspicion drug testing, but not alcohol testing, because of the greater difficulty in recognizing indications of drug use. Unlike alcohol use, drug use, largely because of its general illegality, is not something with which most people are widely familiar. The physical effects may also be more subtle, even to those exposed to drug use and to professional Drug Recognition Experts (DRE). While 60 minutes of training in the indicators of drug use is required by the rule, it is not expected to transform employers into DREs.

Documentation will allow employers to review reasonable suspicion determinations made by its officials. By comparing the observations recorded before both positive and negative test results, employers may be able to evaluate patterns or procedures which are affecting the efficacy of reasonable suspicion testing, and make changes accordingly. In this way, documentation should also serve to reduce the potential for the use of reasonable suspicion testing as a method of harassing drivers.

Exceptions for Testing Performed by Consortiums

Comments: One commenter stated that this section omits certifications from other employers for trip lease, interchange, or contract drivers.

FHWA Response: Because the exception is being moved to the pre-employment/pre-duty testing section, certifications for trip lease, interchange, or contract drivers are still acceptable.

Split Sample Testing

Comments: A number of commenters were in favor of the section as proposed. One of them stated that it provides further protection of privacy and due process rights.

The ATA stated that split sample testing should only be required for reasonable suspicion testing. One commenter, the Food Marketing Institute (FMI), stated that there has been no demonstrated need for split samples and suggested that split samples be allowed as an option. The FMI recommended that an employer be allowed to choose the testing lab and require the employee to pay for testing. One commenter believed that the employer should not have to pay for the split sample test. Another commenter suggested that the FHWA allow the same laboratory to test the split sample so that employers could avoid both the additional cost of blind sample testing and the necessity of a contract with another laboratory.

STA United believed that part 40 and part 382 should explain which sample is primary and which is secondary by milliliter example. STA United stated that split sample testing is costly. The California Department of Personnel Administration was opposed to split sample testing.

FHWA Response: Because split sample testing involves the issue of testing methodology, the regulations on split sample testing are being written by the Office of the Secretary. The FHWA has decided to remove this section and defer to the requirements in part 40. See the part 40 rulemaking published elsewhere in today's **Federal Register**, *Procedures for Transportation Workplace Drug and Alcohol Testing Program.*

Canceled Tests

Comments: Several commenters to this section agreed with it as written and cited the deterrent effect. One commenter recommended that a retest should be performed if the employer requests it. Other commenters recommended adding canceled, follow-up, random, and reasonable suspicion tests to those that require a driver to resubmit a sample. One commenter stated that the requirements of this section were burdensome and costly and should be the responsibility of the testing laboratories and MRO.

FHWA Response: Because canceled tests involve testing procedures applicable to all modes of DOT, the FHWA has decided to remove this section and defer to the requirements in part 40. See the part 40 rulemaking published elsewhere in today's **Federal Register**, *Procedures for Transportation Workplace Drug and Alcohol Testing Program.*

Laboratory Notifications

Comments: The California Department of Personnel Administration suggested that laboratory reports be sent directly to the employer.

FHWA Response: The FHWA has decided to remove this section and defer to the requirements in part 40. See the part 40 rulemaking published elsewhere in today's **Federal Register**, *Procedures for Transportation Workplace Drug and Alcohol Testing Program.*

Medical Review Officer Notifications to the Tested Individual

Comments: One commenter stated that the prescription medication affirmative defense to allegations of driving while using a controlled substance should be removed. STA United stated that if a MRO does not make contact with the employee, the MRO must include complete documentation with the hard copy test result. The California Department of Personnel Administration believed that the time limit allowed for a MRO review should be restricted. The Department also believed that the employer should instruct the employee to be available for a MRO contact; the MRO to contact the employer within three days if unable to contact the employee; and the employee to contact the MRO within three days. One commenter supported the requirement for the employer to contact the employee promptly if the MRO is unable to reach the employee.

FHWA Response: Because MRO notification to the tested individual involves a multi-modal procedural issue, the FHWA has decided to remove this section and defer to the requirements in part 40. See the part 40 rulemaking published elsewhere in today's **Federal Register**, *Procedures for Transportation Workplace Drug and Alcohol Testing Program.*

Medical Review Officer Notification to the Employer

Comments: One commenter believed that the MRO should be required to send a signed written notification to the employer within three days of the MRO's final completion of paperwork necessary to generate the final report. Another commenter recommended that the MRO be allowed fourteen days to mail the results.

One commenter recommended that the MRO should only be permitted to use electronic transmission devices which provide confidentiality of results; MROs should not be permitted to use a facsimile machine. Another commenter supported the use of facsimile machines to transmit controlled substances test results. One commenter believed that a written report of the results was a burden; the MRO should only be required to review and certify the results. STA United recommended that the "three day mail" requirement be clarified. The commenter also stated that the requirement that the name of the donor be provided by the MRO compromises privacy.

FHWA Response: A signed, written notification from the MRO to the employer identifying the driver and test results is essential to the effective administration of this rule. If a motor carrier allows an MRO to report controlled substances test results by the use of a facsimile machine, the employer must control access to reports transmitted in this manner.

The FHWA also disagrees with the comment that the MRO should be required to send signed written notification within three days of the MRO's final completion of paperwork and the commenter who recommended that the MRO be allowed fourteen days to mail the test results. Three business days after completion of the MRO's review of the test result is sufficient time to both generate a controlled substances test result report and begin the report transmission process to the employer. Certain tests, such as a pre-employment/pre-duty or return-to-duty test, require the employer to receive a negative test result before allowing the employee to perform a safety sensitive function. An excessive time limit in obtaining a controlled substances test result may affect an employee's livelihood.

Employer Notifications

Comments: One commenter recommended that the employer not be required to notify pre-employment controlled substances test subjects that the MRO was unable to contact them, unless they requested the results of the tests. One commenter stated that it is unrealistic to require an employer to contact applicants who tested positive for a controlled substance because they probably no longer want the job.

The Caroline Power & Light believed that there should be no requirement that employees be notified after every test. Employers should be allowed to communicate the test results in their own way.

FHWA Response: Notifying the driver of positive test results is essential to fairness. The procedures contained in subpart H and included in this rule are adequate to ensure notification. Yet, it is desirable that review of applicant's tests be concluded in some way. In the current drug testing program, tests are conducted and MROs hold results indefinitely until a driver is contacted. It is only at the point that a driver is contacted that the five day period begins to run to verify a confirmed positive test result. To remedy that situation, under this final rule, an employer is required to make a reasonable effort to contact the applicant and inform the applicant that he/she must contact the MRO immediately. If the applicant does not contact the MRO after 5 days, the MRO will verify the test as positive and close the donor's file rather than leave it open indefinitely.

Laboratory Recordkeeping and Record Retention

Comments: The IBT believed that because the requirements of this section are adequately addressed in part 40, the section should be removed. The OOIDA was in support of this section.

FHWA Response: The FHWA agrees. This section is removed.

Medical Review Officer Recordkeeping and Record Retention

Comments: Some commenters stated that they saw no compelling reason for this requirement and recommended that employers be permitted to be the custodians of test results.

FHWA Response: The FHWA does not agree that employers should be the sole custodians of test results. Because the MRO makes controlled substances test determinations, the MRO must also retain copies of test results as a back-up and for use in compliance enforcement and in resolving potential disputes involving test results.

Employer Record Retention

Comments: The OOIDA was in favor of the regulations as proposed. Mobile Laboratory Services recommended that employers be allowed to retain any copy of the custody and control form because employers often do not get the copy that shows the controlled substances test results from the MRO.

Roadway Express Inc. and ATA recommended that the record retention period should be reduced to three years, consistent with other FHWA record retention requirements. The Baltimore Gas & Electric Company believed that a retention period should be assigned to each record to eliminate errors in their maintenance.

FHWA Response: The FHWA disagrees with the commenter who stated that the employer be allowed to retain any copy of the custody and control form because employers do not always receive the employer copy of the form. The employer is required to retain the employer's copy of the custody and control form, and not, for instance, the copy of the form which the testing laboratory sends to the MRO. The MRO might change a laboratory confirmed positive test result to a verified negative test result after affording the donor an opportunity to present an affirmative defense.

The FHWA believes it must remain consistent with the other operating Administrations who all have a five year recordkeeping requirement for positive test results.

Reporting of Results in a Management Information System

Comments: One commenter stated that the amount of information submitted in response to the annual reporting requirement should be dependent on the number of persons subject to the rule. The DOT should provide the annual reporting form and alcohol testing form free of charge. One commenter suggested that the reporting year should be July 1 through June 30 with the due date in August of each year. Conoco Inc. objected to the proposed annual reporting requirement and suggested continuation of the current system.

FHWA Response: Annual reporting of results will assist the FHWA in determining the need for future action on the programs. Without such information, the FHWA has no way of discovering whether the use of drugs and/or alcohol is decreasing or increasing. This information is needed to reassess such things as the efficacy of the program, the random testing rate, the need for various types of testing programs, and whether additional countermeasures are necessary. Though the FHWA wishes to simplify recordkeeping, it must maintain similar recordkeeping requirements as other DOT modes, especially for those employers subject to the jurisdiction of two or more Administrations. The calendar year is used as the reporting year. The model forms provided with this rule may be used to compile the annual report.

Access to Individual Records

Comments: Many commenters expressed their frustration with the lack of a system of drug testing information under the current drug testing rule. Many responded favorably to the question in the NPRM's preamble about making release of such information a condition of employment as a driver. Some went so far as to say that the program was meaningless without some system, because drivers who test positive merely go to work for another employer without ever being recertified as medically qualified or taking a return-to-duty test. Other commenters strongly opposed requiring information sharing as a violation of privacy rights.

FHWA Response: The FHWA agrees that the lack of shared information has left the current drug testing program with a large hole through which drivers can avoid the purpose of the program—to deter drug use by drivers. Some drivers are continuing to use drugs, and when caught, merely change employers. Section 382.413 of this final rule has been designed to ensure that drivers complete the required rehabilitation and return-to-duty tests. By making the information releasable only pursuant to the driver's consent, privacy concerns are obviated.

Required Evaluation and Testing

Comments: NSWMA recommended that drivers who have tested positive for controlled substances only be allowed to perform safety-sensitive functions necessary to respond to an emergency under a motor carrier or government escort.

FHWA Response: Though not stated expressly in the rule, it is reasonable to allow a driver to temporarily continue to perform safety-sensitive functions after a violation of the rule's prohibitions in an emergency situation. In such a situation, an employer or government official may not always be available to oversee the driver's action. For example, a driver who has violated the rules may move a truck carrying hazardous materials off of a bridge or a railroad track crossing. These types of instances will be rare. If the driver is the only available person at the scene capable of eliminating the imminent danger of a threat to public safety, the driver should be allowed to perform the safety-sensitive function only until the danger has ceased.

Disqualifications and Penalties

Comments: The IBT stated that a one year loss of driving privileges for a refusal to submit to a required test is unduly harsh. A refusal to test should be the same penalty as a positive controlled substances test. The union stated that often it is unclear whether or not the driver's words or behavior constituted a refusal to be tested.

The ATA recommended that an employee who tests positive for a controlled substances test also be disqualified for 120 days for each violation. DAC Services stated that the penalties proposed in the NPRM should be made stricter, with the penalty for testing positive at least as severe as a refusal to be tested. Roadway Express Inc. recommended a 120 day disqualification for the first offense and a lifetime disqualification for the second offense. The employer stated that the mere testing or even detection without significant job consequences for positive tests will not deter controlled substances use. National MRO stated that a verified positive test after a fatal accident should trigger stricter penalties in addition to barring a driver from holding a CDL. Another consortium, Bensinger/Dupont Inc., opposed the 60 day disqualification for a second positive controlled substances test, recommending, instead, a minimum of six random follow-up tests.

FHWA Response: The FHWA has not included any CDL suspensions or other disqualifications from the final rule, including for a refusal to test. The only driving prohibition period for a controlled substances violation is similar to that for alcohol—completion of rehabilitation requirements and a return-to-duty test with a negative result.

Motor Carrier Obligation to Promulgate a Policy on the Misuse of Controlled Substances

Comments: The ATA and the Roadway Express Inc. stated that the proposed NPRM details the educational material requirements to such a degree that the employer is unduly restricted in material development. Both commenters recommended that the employee have access to this information upon request rather than requiring an employer to provide every covered employee with a copy of the material. The employee does not need to be informed of the controlled substances testing procedures because they are already in the Department's regulations if the employee wishes to consult them.

The IBT recommended at least one hour of training for employees conducted by an instructor who is able to answer questions from the participants, rather than the proposed requirement to notify employees of the availability of this material.

FHWA Response: The FHWA believes that the motor carrier is not unduly restricted in educational material development. The final rule contains the minimum required educational material content. The FHWA allows the employer considerable latitude regarding additional materials and the form of dissemination. A live presentation is not required. The regulations require that the educational materials must be provided to the employee and that the employee and employer sign the employer's notice of the availability of the materials.

Controlled Substance Training for Supervisors and Company Officials

See *Limitations on Alcohol Use by Transportation Workers* for discussion of this section.

Referral, Evaluation and Treatment

See *Limitations on Alcohol Use by Transportation Workers* for discussion of this section.

PART 395—HOURS OF SERVICE OF DRIVERS

Definitions

Comments: Several commenters supported requiring time spent in the controlled substances testing process as on-duty time. The IBT recommended including time spent traveling to and from the collection site as on-duty time. Other commenters stated that the definition of on-duty time should include return-to-duty testing.

The Western Company believed that including testing as on-duty time would cause a significant burden on the industry.

FHWA Response: See the response to comments under Docket MC–92–19 above.

D. Docket No. MC–116—Other Comments Regarding Controlled Substances Testing

Comments: The ATA stated that physicians who perform biennial medical examinations and prospective employers should have access to prior controlled substances test results without the need for an employee's authorization.

The regulations require a CMV driver who receives a citation in an accident to be tested, yet the employee may not receive the citation until days after the accident, when any controlled

substances in the body present during the accident have dissipated.

The ATA stated that part 394 of the FMCSRs requires a motor carrier to notify the FHWA of a fatality. The requirement to report controlled substances test results poses difficulties, they believe, because it may take up to 10 days to receive a controlled substances test result.

FHWA Response: The elimination of periodic controlled substances testing obviates any need to provide for the release of prior controlled substances testing information to physicians. Previous employers may release prior controlled substances test results to prospective employers, but only with the driver's written consent.

The FHWA does not believe, however, that 32 hours is an extraordinary time period to conduct a controlled substances test. If a citation is issued within 32 hours of the accident, a test must be conducted.

Notification to FHWA by the employer is no longer required after any accidents, because part 394 of the FMCSRs has been eliminated. See 58 FR 6726, February 2, 1993. Therefore, a motor carrier no longer has to notify the FHWA regarding controlled substances test results as part of a fatal accident report.

Comments: The College of American Pathologists stated that § 391.115(b) of the FMCSRs makes the driver responsible for collecting the required sample and forwarding it to a National Institute of Drug Abuse certified laboratory. The College stated that the motor carrier should be responsible for ensuring that the required sample is collected and sent to a proper laboratory.

FHWA Response: The final rule requires an employer to provide necessary post-accident information, procedures, and instructions to the employee prior to the operation of a CMV so that the employee is able to comply with post-accident testing requirements. An employer will not have control over a driver after all accidents. The driver is responsible in some situations to ensure collection of a specimen or sample.

Section-by-Section Analysis

The Department-wide common preamble, *Limitation on Alcohol Use by Transportation Workers*, published elsewhere in today's **Federal Register**, should be reviewed for a discussion of each section's common requirements and intent. Discussion in the common preamble is not repeated here. This analysis is confined to the sections and parts of sections which are not considered in the part of the common preamble entitled, "Overview of the Operating Administration's Final Rules."

The drug and alcohol testing requirements are, to the extent possible, identical. For example, the preemptive effects of the Omnibus Act are the same for both the alcohol and drug elements of the program, and is discussed as a whole. In contrast, there is a difference between the exception criteria to a pre-employment alcohol test and a pre-employment drug test, and both provisions are discussed.

Subpart A—General

Section 382.101 Purpose

The purpose of this rule is to establish employer-based alcohol and controlled substances testing programs to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by drivers of commercial motor vehicles. This rule prohibits any alcohol misuse that could affect performance of driving a CMV, including: (1) Use on the job; (2) use during the four hours before driving a CMV; (3) having prohibited concentrations of alcohol in the system while driving CMVs; (4) use during 8 hours following an accident; and (5) refusal to take a required test. This rule prohibits any controlled substances use, without a licensed doctor of medicine or osteopathy's written prescription.

This rule requires pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up testing using procedures specified in 49 CFR part 40. These procedures use an evidential breath testing device for alcohol testing. For controlled substances testing, urine specimen collection and testing by a laboratory certified by the Department of Health and Human Services is required. Additional testing under the authority of this rule for drugs other than those specified in part 40, without the permission of the Department, is strictly prohibited. The primary purpose of the testing provisions is to deter misuse of alcohol and controlled substances.

Following a determination that an employee has misused alcohol, this rule requires the employee's removal from safety-related functions and provides minimum requirements for return to performance of safety-sensitive functions:

(1) Following a determination that the employee has violated the alcohol prohibitions in subpart B of these rules, including having a test result of 0.04 BAC or greater, an employee must be removed from, and cannot be returned to, a safety-sensitive function until, at a minimum,

(a) The employee undergoes evaluation, and where necessary, rehabilitation,

(b) A substance abuse professional determines that the employee has successfully complied with any required rehabilitation, and

(c) The employee undergoes a return-to-duty test with a result of less than 0.02.

(2) An employee with an alcohol concentration of 0.02 or greater but less than 0.04 is not permitted to perform safety-sensitive functions for a minimum of 24 hours.

(3) Following a determination that an employee has misused controlled substances, as determined through testing, this rule requires the employer to remove the employee from safety-related functions until, at a minimum,

(a) The employee undergoes evaluation, and where necessary, rehabilitation,

(b) A substance abuse professional determines that the employee has successfully complied with any required rehabilitation, and

(c) The employee takes a return-to-duty test with a verified negative test result.

This rule mandates reporting and recordkeeping requirements and provide for alcohol and controlled substances misuse information for employees, supervisor training, and referral of employees to substance abuse professionals (SAP).

Section 382.103 Applicability

The FHWA's existing drug rules generally cover persons who perform sensitive safety-related functions in interstate commercial transportation on highways. They affect approximately 3 million persons and include commercial truck and motor coach drivers. This final rule for alcohol and controlled substances testing covers the same population, but also extends coverage to both inter- and intrastate truck and motor coach operations (including those operated by Federal, State and local government agencies, church and civic organizations, Indian tribes, farmers, custom harvesters, for-hire and private companies) as required by the Omnibus Act. This increases the total number of persons covered by the alcohol and controlled substances testing rules to over 6 million.

The FHWA's rule focuses on function rather than a defined job or position. An individual's job may encompass several different functions, some of which are not safety-sensitive. Since alcohol is a legal substance, alcohol use is relevant only to the extent its use coincides with performance of a safety-related function. As a safety regulatory matter, for example, the rule does not prohibit a school bus driver from having a drink before or while performing functions that are not safety-sensitive (as long as no other regulation is violated). For example, if the school bus driver is receiving all-day training on retirement planning along with non-safety employees and the other employees can have a drink at lunch, the school bus driver may also, provided the driver will not be operating a school bus within 4 hours.

Testing only applies to drivers operating in the United States. Consistent with CDL requirements, this rule does not apply to drivers operating outside the 50 States and the District of Columbia. Drivers operating in territories of the United States, such as Guam or Puerto Rico, therefore, are not covered by this rule.

At this time, testing also does not apply to those drivers who operate in the United States, but normally report for duty in a foreign country, whether or not the employer is foreign-owned or the employee is a foreigner. An NPRM, published elsewhere in today's **Federal Register**, proposes, however, to add foreign-based drivers operating in the United States to the program. In the meantime, only foreign and American citizens who report for duty at an employer's terminal in the United States are subject to these requirements.

Section 382.105 Testing Procedures

The final rule requires that employers ensure that all alcohol and controlled substances testing conducted under these rules complies with the procedures in the amended 49 CFR part 40. *See Procedures for Transportation Workplace Drug and Alcohol Testing* published by the Department elsewhere in today's **Federal Register**. The FHWA rule incorporates by reference the amended 49 CFR part 40.

Section 382.107 Definitions

See Limitations on Alcohol Use by Transportation Workers, published elsewhere in today's **Federal Register**.

Section 382.109 Preemption of State and Local Laws

See *Limitations on Alcohol Use by Transportation Workers*, published elsewhere in today's **Federal Register**.

Section 382.111 Other Requirements Imposed by Employers

See *Limitations on Alcohol Use by Transportation Workers*, published elsewhere in today's **Federal Register**.

Section 382.113 Requirement for Notice

Before performing an alcohol or controlled substances test under these rules, the employer must notify the driver being tested that the alcohol or controlled substances test being administered is required by the rule. The notice can be oral or written. Use of the U.S. Department of Transportation Breath Alcohol Testing Form or the controlled substances custody and control form, whichever is appropriate, may serve as the required notice. An employer shall not falsely represent that a test administered under their own or other authority independent of FHWA's authority is being administered under FHWA requirements.

Section 382.115 Starting Date for Testing Programs

Interstate motor carriers subject to 49 CFR part 391, subpart H prior to the effective date of this rule must implement the split sample urine collection procedure within six months of the publication date of this final rule. The split sample urine collection procedures for controlled substances testing have been codified in the regulations since the original FHWA controlled substances testing regulations went into effect on December 21, 1988, though, until now, it was merely an option and not required. See 49 CFR 40.25(f)(10). Therefore, employers currently subject to part 391 controlled substances testing should not be overly burdened in changing their programs to incorporate the split sample requirement. The Department is changing the procedures slightly with respect to the laboratory that will perform the analysis of the split sample. Those changes are contained in the part 40 amendments published elsewhere in today's **Federal Register**.

Except for the split sample urine collection implementation date for interstate motor carriers subject to part 391, subpart H, all large employers must implement the requirements of the rule beginning on January 1, 1995. Small employers must implement the rule beginning on January 1, 1996. The size of the employer is determined by the number of drivers it employs. Interstate motor carriers currently subject to 49 CFR part 391, subpart H must switch to implementation of part 382 on the appropriate date. An employer beginning operations before the applicable implementation date of part 382 is required to implement part 391 drug testing only, and then will be required to implement part 382 alcohol testing and change to part 382 drug testing on the appropriate implementation date.

The staggered timetable should allow smaller employers to join alcohol and controlled substances testing programs already established by larger employers or preexisting consortia, which may reduce their costs. The implementation schedules also take into account the time needed by manufacturers to produce the required breath test devices. All employers must have an alcohol and controlled substances testing program in compliance with this final rule in place two years after the effective date of this rule.

Subpart B—Prohibitions

This rule prohibits certain drug and alcohol usage by CMV drivers. A driver is prohibited from performing, and an employer is prohibited from using a driver to perform, safety-sensitive functions after a positive drug test result or an alcohol test result indicating a 0.02 BAC, regardless of when the drug or alcohol was ingested and regardless of whether or not the driver is under the influence of alcohol or drugs, as defined in Federal, State, or local law.

Section 382.201 Alcohol Concentration

See *Limitations of Alcohol Use by Transportation Workers*, published elsewhere in today's **Federal Register**.

Section 382.203 Alcohol Possession

This section prohibits a driver from possessing unmanifested alcohol products while driving a CMV. The FHWA has had a long-standing requirement that no driver shall drive a CMV while possessing any product containing alcohol, regardless of its alcohol content. The FHWA will extend this requirement to all CMV drivers subject to this rule. A driver may not possess medication, food, or other alcohol-containing products that are not specifically manifested to be on the truck or bus. A manifested alcohol product is any product that is being transported on the CMV as a part of the shipment of freight.

Section 382.205 On-Duty Use

See *Limitations of Alcohol Use by Transportation Workers*, published elsewhere in today's **Federal Register**.

Section 382.207 Pre-Duty Use

See *Limitations of Alcohol Use by Transportation Workers*, published elsewhere in today's **Federal Register**.

Section 382.209 Alcohol Use Following an Accident

See *Limitations of Alcohol Use by Transportation Workers*, published elsewhere in today's **Federal Register**.

Section 382.211 Refusal to Submit to a Required Test

The FHWA will disqualify drivers for one year, under the procedures in 49 CFR part 386, if a driver refuses to submit to a post-accident test after a fatal accident. See § 382.507.

An applicant's or driver's refusal to submit to a pre-employment test or a return-to-duty test will not trigger the need for evaluation by a SAP. In those cases, the applicant or driver is not performing a safety-sensitive position from which to be removed. Since those tests are a condition precedent to starting or returning to perform safety-sensitive functions, the applicant or driver simply could not be hired or returned to duty.

Section 382.213 Controlled Substances Use

The FHWA currently prohibits the use of controlled substances by drivers (49 CFR § 392.4). Drivers who use drugs are rendered medically unqualified to drive in interstate commerce (49 CFR § 391.41(b)(12). Similarly, this section prohibits drivers from using controlled substances, except pursuant to a doctor's prescription. The doctor must also advise the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. Employers are prohibited from permitting a driver to perform safety-sensitive functions who uses drugs. The employer may require a driver to inform it of any therapeutic drug use otherwise prohibited by this section.

Section 382.215 Controlled Substances Testing

Similar to the current drug testing program, drivers are prohibited from driving, and employers are prohibited from using a driver, who tests positive for drugs or with a 0.04 or greater BAC. The prohibition remains in effect until the driver complies with the requirements of section 382.605, including evaluation by a SAP.

A driver who is prohibited from performing safety-sensitive functions may be assigned to non-safety-sensitive functions until such time as the driver complies with the requirements for returning to duty in this part.

Subpart C—Tests Required

The FHWA's current drug testing regulations require pre-employment, periodic, reasonable cause/suspicion, post-accident and random tests (testing also is required for drivers who seek to return to work following a positive test or refusal to submit to a test). The Omnibus Act requires all these forms of testing except periodic tests, which generally are performed as part of required physical examinations for some drivers operating in interstate commerce, and may be suspended if certain conditions are met.

Although periodic tests are discretionary under the Omnibus Act, the FHWA will not to require or authorize periodic testing for alcohol or controlled substances. Of course, employers that wish to continue to perform periodic testing under their own authority may do so.

Section 382.301 Pre-employment/Pre-Duty Testing

In order to give employers flexibility, this section allows an employer to forgo administration of a pre-employment test if the driver has had an alcohol test conducted under any DOT agency's alcohol misuse rule following part 40 procedures with a result less than 0.04 within the previous six months and the employer ensures that no prior employer of whom the employer has knowledge has records showing a violation of these rules within the previous six months. Generally, this means that when checking prior employers to obtain test results within the past six months, the new employer must also determine that the prior employers have no records of a violation of an OA alcohol misuse rule within 6 months. The new employer wishing to avail itself of this exception, must check all known prior employers within the last six months.

The exception for pre-employment drug testing is narrower. In addition to the above criteria, there are participation requirements, which are carried over from the current rule, § 391.103(d).

In order to avail itself of either exception, an employer must obtain the information listed in paragraph (d).

In the current testing program, the FHWA expects employers to conduct pre-employment testing of drivers each time a driver returns to work after a lay-off period when the driver does not continue to be subject to random drug testing or has been employed by another entity. However, if a driver is laid off, but continues to be subject to random drug testing and is not employed by another entity, a pre-employment test is not required under this section.

The following examples describe situations in which an employer must perform pre-employment tests.

1. A new employer just started operating CMVs in commerce. All drivers that would be hired to drive CMVs subject to this rule will fall under the pre-employment testing requirements.

2. Employer A purchases Employer B. The pre-employment testing requirements would not be applicable to Employer A, because the individual's employment status has not been interrupted.

3. All scenarios in which an employer name changes occur, the pre-employment requirements would not apply.

4. An employer is organized in divisions and subsidiaries. In any case where a driver would be transferred from one division to another, the pre-employment requirements would not apply. Under this scenario the employer is one corporate entity. The situation where a driver transfers from one wholly owned subsidiary to another, a pre-employment test would be needed, because each subsidiary is considered a separate corporate entity.

5. A driver usually drives vehicles for which a CDL is not required to operate, but then is required to obtain a CDL and drive CMVs for the same employer. A pre-employment test would be required because the driver will be subject to part 382.

6. Any time a driver is hired and has not been part of a drug program that complies with the FHWA regulations for the previous 30 days, a pre-employment drug test is required.

When any pre-employment test is required, an employer must actually test the individual or meet all of the respective requirements for pre-employment exceptions for alcohol or controlled substances.

Section 382.303 Post-Accident Testing

The definition of accidents that trigger a post-accident test is contained in 49 CFR § 390.5. As soon as practicable following an accident, an employer shall test a surviving driver for alcohol and controlled substances, when any person involved in the accident has been fatally injured or the driver received a citation for a moving traffic violation arising from performance of a safety-sensitive functions with respect to the accident. The need for testing is presumed. Any decision not to administer a test must be based on the employer's determination, using the best information available at the time, that a human being did not die or that the employer's CMV driver was not cited for a moving traffic violation arising from the accident within such time that a test could be conducted within 32 hours after the time of the accident.

Employers are also obligated to provide information to their drivers to allow them to be tested after an accident. This is especially important for employers whose operations occur in remote areas. Drivers are then obligated to follow the instructions and see that the tests are conducted. Any driver subject to post-accident testing who leaves the scene of an accident before a test is administered or fails to remain readily available for testing may be deemed by the employer to have refused to submit to testing. Such a refusal is treated as if the driver had a verified positive controlled substances test result or had an alcohol test result of 0.04 or greater. The employer is responsible for judging whether the driver remained readily available and must record any failure to administer tests within the time periods provided.

Employers should make every effort possible, given the circumstances surrounding the accident, to ensure that the driver is available for a post-accident test. This, of course, does not mean that necessary medical treatment for injured people should be delayed or that a driver cannot leave the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

Testing of drivers for drugs must be initiated prior to the 32nd hour after the accident. As in alcohol testing, if the citation is not issued by the key hour or testing is not initiated by that hour, there is less likelihood of obtaining a meaningful result. The employer then will have to cease attempts to administer the test and must explain why the employer was unable to administer a drug test. Under no circumstances is an employer authorized by this rule to conduct alcohol or drug testing on dead CMV drivers.

In lieu of administering a post-accident test, employers may substitute a breath or blood test for the use of alcohol and a urine test for the use of drugs administered by on-site police or public safety officials under separate authority. This may be particularly useful if that test can be administered before the employer can get to the scene. These local authorities often are first to arrive at an accident site, particularly if the accident occurs in a remote area, and sometimes are equipped to conduct field alcohol breath and controlled substances tests. The employer is allowed to substitute a blood or breath alcohol test and a urine drug test performed by such local officials, using procedures required by their jurisdictions, if the employer obtains the test results from the local jurisdiction or the driver.

An employer substituting a law enforcement-based post-accident test must take the actions appropriate to the result—not using the driver for 24 hours for an alcohol test result between 0.02 and 0.039 BAC, and referral to a SAP for an alcohol test result of 0.04 BAC or greater or a positive drug test result.

For example, a rental car company's airport shuttle bus driver is involved in an accident on an airport access road with a non-CMV driver and the non-CMV driver is killed instantly. The CMV driver must be tested under this rule for both alcohol and controlled substances. An airport police officer at the scene determines, under authority independent of this rule, that the CMV driver should be tested for alcohol use. The police officer requires the CMV driver to submit to a blood test at the airport health clinic using procedures developed by the airport police department for such alcohol use testing. When the rental car company obtains the blood test result from either the driver or the airport police department, such a test will be allowed to substitute for the alcohol test. However, the rental car company will have to require its CMV driver to also submit to a controlled substances test under this rule, since both tests are required after a human being is killed.

Another example could involve an air freight delivery truck driver who falls asleep at the wheel, her truck runs into a median barrier causing the front axle to be bent and inoperable and requiring the vehicle to be towed from the scene. The investigating State patrol officer, based upon observations and material found at the scene, has cause to believe the driver was using an illegal substance and the driver was speeding excessively. The officer cites the CMV driver for excessive speed and requires the CMV driver to submit to urine testing at a local hospital. The urine is sent, as required by that State's laws, to the State's forensic crime laboratory for drug testing. When the employer receives the test result from the driver or State patrol, the employer may use the result, regardless of whether the laboratory used Department of Health and Human Services or part 40 procedures for testing the specimen, rather than requiring the driver to submit to another drug test.

Section 382.305 Random Testing

See *Limitations of Alcohol Use by Transportation Workers* for a discussion of adjusting the random alcohol testing rate based on the industry positive rate. The alcohol testing rate is set initially at 25%. See also the NPRM on adjusting the random drug testing rate, published elsewhere in today's **Federal Register**.

This section requires random alcohol testing that is limited to the time period surrounding the performance of safety-related functions. A driver may only be tested while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions. Obviously, the best time to test is before the driver begins to perform the safety-sensitive function. Detection at that point will prevent the driver from actually performing the function while he or she has alcohol in his or her system. However, if the driver understands that a random test will only be administered before he or she begins work and there is an opportunity to drink during work, deterrence is limited. The ability to test just before, during or just after performance increases the deterrent effect and may enable detection of drivers who use alcohol on the job. The purpose of the concept of "just before" and "just after" is to avoid the problem that some safety-sensitive functions could not be interrupted for the performance of a test (e.g., driving a school bus). It is intended to be close enough to the actual performance of the safety-sensitive function, however, that the test results will clearly indicate that the driver has engaged in the misuse of alcohol when performing or about to perform those functions.

This rule, however, will not place such a requirement on controlled substances testing. Controlled substances testing may be performed at anytime while the driver is at work for the employer. The driver may be doing clerical or mechanical repair duties at the time of notification by the employer.

This rule will provide that employers require that each driver selected for random testing proceed to the testing site immediately. In the event the driver is performing a safety-sensitive function when notified, the employer must ensure that the driver ceases the function, consistent with safety, and proceeds to the site as soon as possible.

An employer may not delay a test based upon a consignor's, consignee's, or employer's demand to move freight or passengers. Employers should plan their notifications to reduce conflict

with such demands affecting their random alcohol and drug testing programs. However, employers are expected to notify and conduct tests on drivers as soon as possible after a selection of drivers is made. This means that when a selection of drivers has been made, the employer shall require all drivers selected to submit to testing at their first available time in the terminal or other appropriate location. Employers shall not delay testing for drivers until just before the next selection of drivers names. Although the FHWA has allowed this practice in the past, the FHWA believes that some employers may use such an interpretation to perform quasi-reasonable suspicion tests of drivers by manipulating the timing of such tests, rather than conducting random testing that is not based on individualized suspicion. In addition, employers may have been delaying testing to move freight or allow a driver with a problem to "clean up" prior to taking the test. Under normal circumstances, employers shall not dispatch selected driver on a new trip, from a work reporting location where other drivers are or have been tested, until to only test drivers once every few years. Rather, it will have to test at least once a year and establish a program that will ensure that there is no period of time during which employees know testing "is done for the year." For example, if an employer is required to conduct only two tests and that number of tests are completed by mid-summer, the employer's program must ensure that more tests could be conducted before the end of the calendar year. Such an employer could conduct random testing every quarter or could randomly select the month, within the next 12 months, for conducting the next test(s). Depending on the month selected, the employer may in fact test more than once in a calendar year. Using a revolving calendar, the first selection and test is made in May 1995 for the calendar year 1995; the next selection must be for the 12 months from May 1995 to April 1996. In addition, if a consortium sets up a testing pool where this scenario would be applicable, the consortium must also follow this procedure.

Another alternative is for employers to join a consortium with testing pools large enough so that their drivers are always subject to random testing. Although the FHWA has eased the burden on small employers in a number of ways, these restrictions that may raise the effective annual random testing rate are necessary to achieve deterrence in alcohol and controlled substances use. A small employer, of course, can achieve the benefits of a lower random rate without the higher costs of meeting the deterrence requirements if it joins a consortium.

Random testing pools may be formed in a variety of ways. To promote efficiency and reduce costs, particularly for smaller employers and employers subject to more than one DOT agency rule, the FHWA permits the combination of geographically-proximate drivers covered by different DOT agency rules into one pool. To maintain fairness and the equal chance of each driver to be selected and tested, certain conditions must be met. For example, drivers in any industry who travel most of the time should constitute one pool; others who remain in the vicinity of the testing site should be in another, as long as the selection and testing rates are the same. However, if testing is required of drivers immediately upon selection or whenever they first return to the testing location after their selection (but still unannounced), there would be no need for separate pools. Any acceptable method must ensure that each driver has an equal chance of actually being tested. Although multi-modal pools will be permitted, other specific DOT agency requirements will have to be met, such as the FAA requirement for prior approval of consortium-operated random testing pools.

If the employer joins a consortium, this rule will permit the calculation of the annual rate on either the total number of drivers for each individual employer or the total number of covered employees subject to random testing by the consortium's pool covering the employer. This will mean that a consortium member could have less than its required number of random tests conducted if the overall consortium rate equals the required rate. Thus, if Employer A has ten drivers and the consortium has 500 drivers in the pool covering Employer A, and a 50 percent rate applies, if Employer A chooses to have the rate based on the consortium, the consortium must conduct at least 250 tests even if only four or fewer drivers of Employer A are tested. So long as each driver has an equal chance of being tested each time the consortium conducts random tests, the requisite deterrence factor remains. Membership in a consortium, as noted earlier, should improve deterrence for small companies because their drivers will continue to perceive an equal chance of being selected and tested throughout the year.

The FHWA has had many inquiries regarding compliance by owner-operators with the random testing requirements in Part 391. It has been the FHWA's view and will continue to be the view that owner-operators cannot conduct their own random testing program. Owner-operators must meet the conditions of random testing, which include that the random selection process must provide for testing to be unannounced and the timing of such test unpredictable. The FHWA believes that the requirement of unannounced testing requires that an owner-operator must join a consortium or testing pool that includes at least two or more drivers. Owner-operators are expected to join consortiums that have at least two or more covered employees. The other covered employees may be subject to aviation, railroad, mass transit, maritime or pipeline industries, provided that the applicable regulations for those other industries allows inclusion of CMV drivers in their testing pools.

Upon each of the implementation dates for this rule, the FHWA will remove, for the employers subject to the applicable implementation dates, the current prohibition that intrastate commercial motor vehicle drivers shall not be included in random testing selection pools with interstate commercial drivers. As this new rule applies to all inter- and intrastate drivers with CDLs, there will be no need for the separation. However, the FHWA will prohibit the inclusion in the random selection pools of any employees not subject to any of the DOT agency testing rules. When a representative of the FHWA or any DOT agency is investigating an employer subject to these rules, the representative of FHWA must determine whether the required testing rate has been met. Prohibiting non-drivers and other non-DOT covered employees from participating in the same random selection pools will assist the employer in complying with these rules, especially in ensuring that drivers are tested at the required minimum annual percentage rate.

If a driver works for two or more employers subject to FHWA or DOT agency regulations, the driver must be in all of the employers' random testing programs.

When drivers are off work due to long-term lay-offs, illnesses, injuries or vacations, the employer has three options. First, the driver's name could be skipped and the next driver's name on the selection list could be selected and tested. If this occurs, the employer must keep documentation that the driver was ill, injured, laid off, or on vacation and that the driver was in the random selection pool for that cycle. Second, the employer could remove the driver's name from the selection pool for that cycle. If this is done for drug testing and the driver is out of the program for more than 30 days, the pre-employment testing provisions of this rule will apply. Finally, the employer could set the driver's name aside until the driver comes back from the extended leave and the employer would conduct the test at that time. The employer shall not, however, notify any driver to submit to a test while the driver is off work due to these extended leave periods. Employers with seasonal fluctuations in the number of drivers actually driving should adjust each random selection episode to reflect the fluctuation, thereby ensuring an equal chance of all drivers being selected.

A consortium that performs selection and/or testing services as agents for the employer must prepare and provide to the employer complete and comprehensive descriptions of the procedures used by the consortium. An employer must have this information readily available for inspection. The consortium, and an employer who does not use a consortium, must include in these descriptions: how the random selection pool is assembled; the method of selection and notification of drivers; the location of collection sites (at terminals, clinics, "on the road", etc.); methods of reporting the test results on each driver; and summary reports of the consortium's program. Also, documentation must be provided that the consortium is testing at the prescribed minimum annual percentage rate for alcohol and/or controlled substances. Each employer is at no time relieved of the duty to comply with each requirement of this rule.

Section 382.307 Reasonable Suspicion Testing

See *Limitations of Alcohol Use by Transportation Workers* for discussion of the majority of the elements of this section.

In the FHWA rule, only one supervisor is required to make the reasonable suspicion determination. That supervisor may not, however, conduct the alcohol test on the driver. Documentation of the grounds for reasonable suspicion to require a controlled substances test must be made and signed by the supervisor within 24 hours of the observed behavior or before the results of the test are released, whichever is later.

Section 382.309 Return-to-Duty Testing

See *Limitations of Alcohol Use by Transportation Workers* for discussion of this section.

Section 382.311 Follow-Up Testing

See *Limitations of Alcohol Use by Transportation Workers* for discussion of this section.

Subpart D—Handling of Test Results, Record Retention, and Confidentiality

Section 382.401 Retention of Records

To provide for FHWA oversight of the alcohol and controlled substances testing programs and to protect driver confidentiality, an employer is required to maintain, for a specified period, in a secure location with controlled access, certain records of its alcohol and controlled substance use prevention program. This section itself does not require any records to be generated. Other sections of the rule does that. This section merely sets forth the retention periods for records generated pursuant to other sections of the rule.

The records may be included in personnel records that have controlled and secure access only by authorized personnel. The FHWA is requiring all documents be maintained in accordance with § 390.31, which sets forth requirements for copies and long-tern storage of documents, including computer storage systems. Though the records may be maintained anywhere, the employer must make them available to an FHWA representative, upon two days notice, at the employer's principal place of business.

Section 382.403 Reporting of Results in a Management Information System

For oversight purposes, each employer will be required to generate and retain, at a minimum, an annual calendar year summary of the results of its alcohol and controlled substances prevention program for each calendar year. The FHWA will randomly select a sample of employers from all employers subject to part 382. The sample of employers will be large enough so that the sample statistics will have a tolerable error of plus or minus one percentage point in a 99 percent confidence interval. For example, this means the FHWA will be 99 percent confident that the actual industry positive rate is within plus or minus one percentage point of the sample statistics.

Employers selected to submit data will be notified by mail during the month of January of the year in which the data is due. For example, an employer who is selected and notified in January 1998 must report data for calendar year 1997 by March 15, 1998. The notice to submit data will specify the name and address where the data are to be submitted and enclose copies of both a long and a short "EZ" form. Employers will have the option to submit either form by electronic transmission and will receive information on how to submit the forms electronically.

Previous versions of the forms were included in the NPRMs [57 FR 59409] as appendix B to 49 CFR part 40. The FHWA foresees that the forms or instructions may be changed in the future to make them more understandable based on future comments. Therefore, the most current versions of the long and short "EZ" forms are contained in this document for informational purposes only as Illustrations I and II in the Appendix to this document respectively. This appendix will not appear in the Code of Federal Regulations. The FHWA is not soliciting employers to submit data by including the forms in this document. The FHWA will not enter information into the MIS from unsolicited respondents because the sample is random in nature. The acceptance of unsolicited responses would bias the sample. The aggregation of information collected from solicited reports will be utilized for program analysis and to respond to requests for information from Federal agencies, members of Congress, and the general public.

Employers whose drivers had any verified positive controlled substances test results or any alcohol test results of 0.02 or greater in the preceding calendar year must utilize the long form. Employers whose drivers had no verified positive controlled substances test results and no alcohol test results indicating alcohol concentrations of less than 0.02 in the preceding calendar year will be allowed to utilize the short form. Employers whose drivers had refused to test in the preceding calendar year will be allowed to utilize the short form if no drivers had verified positive controlled substances test results or alcohol test results indicating concentrations 0.02 or greater in the preceding year. Controlled substances test results must be reported for the calendar year in which the MRO made the final determination of the test result regardless of the date the specimen was collected. For example, a final determination of a controlled substances test result made by a MRO on January 2, 1996, for a specimen collected on December 30, 1995, must be included in the data for calendar year 1996.

Within Section B (Covered Employees) of both the long and short "EZ" forms, employers must submit the number of covered employees in each category subject to testing under the alcohol and controlled substances testing regulations of more than one DOT operating administration (OA), identified by OA. As formulated by the Department, employers who are subject to the alcohol and/or controlled substances testing regulations of two or more OAs must submit data to each regulating OA for those employees covered by that OA's rule. Employees who perform functions covered by more than one OA should be identified by their employer under the covered position that they will be reported. Data on dual covered employees should be reported to the appropriate OA.

The issue of multi-modal coverage affects railroads, aviation, maritime, and pipeline safety operations. Although many commenters suggested that all CDL holders in the various industries should report to their primary OA, the OAs believe that reportability should be determined by employee function. Therefore, drivers who are subject to the alcohol and/or controlled substances testing regulations of more than one OA must be reported as follows:

For pre-employment and random testing, a driver should be reported to whichever OA covers more than 50% of that driver's function. If the driver is subject to three or more OA rules, the employer must determine which function the driver performs the greatest percentage of the time and report the pre-employment and random testing results to the OA covering the greatest percentage of the driver's duties, e.g. driving CMVs 45 percent of the time, flying airplanes 35 percent of the time, and operating railroad equipment 30 percent of the time. For post-accident and reasonable suspicion testing, however, reportability should be determined by the function the driver was performing at the time of the accident or incident. Finally, for return to duty and follow-up testing, the employee should be reported to the same OA to whom the initial positive controlled substances test or alcohol test indicating a concentration of 0.04 or greater was reported. The FHWA must stress here that, although the driver has been tested and is reported to other DOT agencies under their regulations, the driver is prohibited from operating any CMV as required by Subpart E of this rule.

Section 382.405 Access to Facilities and Records

See *Limitations of Alcohol Use by Transportation Workers* for discussion of this section.

Section 382.413 Release of Alcohol and Controlled Substances Test Information by Previous Employers

Paragraph (a) restates § 382.405(b) in terms of the employer. An employer may obtain any of the information retained by other employers under part 382, pursuant to a driver's consent.

Paragraph (b), by contrast, provides that an employer shall obtain certain elements of that information, also pursuant to the driver's consent. This merely makes mandatory that which employers have had the option to do under the current drug testing program—make release of previous testing information a condition of employment as a driver. Information on alcohol and controlled substances testing results from the driver's previous employers must be obtained generally before using the driver. An employer is, of course, free to make release of any information a condition of employment, though this section only requires certain information.

Since the information is releasable by the previous employer only pursuant to a driver's written authorization, an employer must make obtaining such authorization a condition of the driver performing safety-sensitive functions for the employer. Requiring the driver's consent will ensure that the information remains confidential and is released only to the extent authorized by the driver. The protections of § 382.405 remain in full effect, including allowance of the re-release of information also only pursuant to the driver's consent.

The information to be released under this section is limited to positive controlled substances test results, alcohol test results of 0.04 or greater, and refusals to be tested, for the two years preceding the date of inquiry. None of the other information required to be maintained by the employer in this rule is required to be released under paragraph (b). Restricting the content of the mandatory inquiries, by not requiring negative drug test results and alcohol tests with results less than 0.04 to be obtained, should minimize the burden of compliance on employers.

This section is necessary to effectuate the referral, evaluation, and treatment requirements of the rule. Whereas the NPRM proposed a system of information and penalty suspensions tied to the driver's CDL, this final rule includes no CDL consequences because the law-enforcement based testing option has not been chosen. Licensing agencies would be understandably reluctant to issue suspensions based solely on the results of employer-based tests, without affording the driver a review process.

Comments to the dockets and experience in administering the current drug testing program make it clear that some system of information is necessary to give effect to the requirements of the rule. One of the major problems with the current drug testing rule is that drivers who test positive merely apply to work with a different employer without taking the required retest or becoming medically recertified to drive. The new employer has no clear way and, unfortunately, too often, no incentive to determine if the driver-applicant is avoiding the requirements. With the rehabilitation requirements in this rule over and above those in the current drug testing program, the incentive to avoid them will only be increased.

The problem is particularly acute in the motor carrier industry, due to its size and turnover rate. Of the approximately 270,000 known interstate carriers, about 10% enter and leave business each year. Adding intrastate carriers, also covered by this rule, only serves to increase the number of carriers in flux. Similarly, of the approximately 6.6 million drivers covered by the rule, it is conservatively estimated that 20% work for a different employer from one year to the next. Given these numbers, it is not difficult to see the potential for getting lost and avoiding the rule's requirements, especially where there is no tracking system being used, such as the CDL Information System.

Sharing information on recent positive tests, and the requirement in paragraph (g) that employers obtain proof of completion of rehabilitation and return-to-duty test requirements after positive tests, is not such a tracking system. It will help keep drivers, and employers, from avoiding evaluation and possible treatment following a violation, however. Again, it must be emphasized that this section requires nothing that could not be willingly accomplished by employers under the current rule. An employer could make release of prior results a condition of employment as a driver, and should require drivers with positive tests to prove they have been retested and medically recertified as qualified. Employers are, after all, prohibited from using a driver it knows has tested positive but has not been recertified and tested negative. By making such inquiries and conditions mandatory, this section merely sets forth a standard of knowledge for new employers to comply with the rule.

An employer that learns that a driver-applicant is prohibited from driving need not refer the driver to a SAP for evaluation and treatment. The employer must, however, obtain proof of a SAP evaluation and return-to-duty test before using the driver-applicant. Therefore, drivers with positive drug test results, alcohol test results of 0.04 or greater, or refusals to test should either maintain copies of subsequent SAP evaluations and return-to-duty tests, or should also consent to release of them along with the required information, in order to show compliance with the rule. Alternatively, a pre-employment test directed by the hiring employer may serve as a return-to-duty test under such circumstances.

In no case should any test result for alcohol or drugs under this part be used to infer that a person is an alcoholic or drug addict. Testing under this part determines whether a driver may need to be removed from safety-sensitive functions and must be referred to a substances abuse professional only. The tests under this part are conduct test only, and do not determine the status of any person. Prospective employers should refer to the requirements of the Americans with Disabilities Act, and implementing regulations, 42 CFR 1630, before taking any employment actions based on SAP evaluations released by drivers to the prospective employer.

This section is consistent with 49 CFR 391.21 and 391.23, which requires a driver-applicant to list the names, addresses, and dates of employment for all employers in the preceding three years (10 years for CDL drivers), and requires employers to investigate the driver's record by contacting all of the driver's previous employers within the three preceding years. The information on testing could be easily added to the inquiry. This inquiry requirement has been included in part 382, and not part 391, because part 391 does not cover many of the drivers to which this rule applies. Drivers' and employers' compliance with the requirement to list and investigate prior employers for purposes of test result information, will be enforced in the same manner that part 391 is currently enforced.

The maximum (14 calendar days) period granted to the employer to obtain the testing information is shorter than the period allowed to investigate the driver's employment record, as required in 49 CFR 391.23. Since the period of investigation is also shorter, three years rather than two, the burden of compliance is lessened. Fourteen days also makes it more difficult to abuse the section's intent by discharging drivers before the information is absolutely required to be obtained. As an additional incentive to promptly obtain the required information, and to facilitate future inquiries, paragraph (d) requires the employer to obtain the information even if the driver stops driving before the information is obtained or before the 14 day period had expired.

In this rule, also differing from § 391.23, an employer is required in the first instance to obtain the information prior to using the driver. Only if such promptness is not feasible, and only for as long as it remains infeasible, may an employer delay obtaining the information. Obviously, the utility of this provision is diminished the longer an employer waits to make the inquiries. The potential is there, however, for a prudent employer, especially those many commenters who have requested a provision allowing the exchange of information, to obtain meaningful information and to aid drivers who misuse alcohol and drugs by ensuring completion of rehabilitation.

An employer is prohibited in paragraph (c) from using a driver for longer than 14 days without obtaining the prior testing information. The new employer must make a good faith effort to obtain the information. An employer who makes a good faith effort, but through no fault of its own is unable to obtain the information, may continue to use the driver if it makes a note under paragraph (f) of the attempt. For instance, if a previous employer refuses, in violation of § 382.405, to make the information available pursuant to the driver's request, the new employer should note the attempt to obtain the information and place the note with the driver's other testing information.

Finally, paragraph (f) leaves the form of the release of information to the discretion of the employer. The employer must, however, ensure confidentiality of the information in the same manner as provided in § 382.405.

Subpart E—Consequences for Drivers Engaging in Substance Abuse—Related Conduct

Section 382.501 Removal From Safety-Sensitive Function

Paragraph (c) extends all of the driving consequences of violating the rule, provided in subpart E, to commercial motor vehicles in interstate commerce as defined in part 390, as well as CMVs in commerce as defined in § 382.107. For example, a driver removed from performing safety sensitive functions because of a rule violation occurring in a 26,001 pound or greater vehicle in inter- or intrastate commerce, also is prohibited from driving a 10,001 pound or greater vehicle in interstate commerce, until complying with § 382.605. This provision extends consequences of violations incurred in transportation under CDL jurisdiction to transportation covered by the Federal Motor Carrier Safety Regulations.

Section 382.503 Required Evaluation and Testing

See *Limitations of Alcohol Use by Transportation Workers*, published elsewhere in today's **Federal Register**.

Section 382.505 Other Alcohol-Related Conduct

Though the minimum alcohol concentration to incur referral to a SAP and a return-to-duty test is 0.04, alcohol tests with result below 0.04 are also serious and represent a threat to the safety of the motoring public. An alcohol concentration of 0.039 does not warrant evaluation and rehabilitation under the rule, but it may have an adverse effect on a driver's abilities. In addition, the driver's blood alcohol curve may be rising. In other words, the individual may have just consumed enough alcohol to eventually produce an alcohol concentration of 0.04 or greater, but the alcohol is just entering the bloodstream and, at the time of testing, the alcohol concentration is below 0.04, but rising. It is, rather, a matter of testing fora.

Part 382 establishes a program of employer-based testing. Section 382.505 requires a driving prohibition of 24 hours for a test result of 0.02 or greater but less than 0.04. (In most instances, the rehabilitation referral requirements of § 382.605 will also take at least 24 hours.)

Section 392.5 (c) and (d), on the other hand, requires law enforcement officials to issue a 24 hour out-of-service order to a driver with any measured alcohol concentration or detected presence of alcohol. There is no 24 hour driving prohibition period in § 392.5 required directly of the driver and employer without the involvement of a law enforcement official. Section 392.5(a) and (b) merely prohibit driving after a measured alcohol concentration or detected presence of alcohol, without placing any time limit. Moreover, because tests conducted under part 382 with results below 0.02 are deemed to be "negative" or zero, there can be no measured alcohol concentration for which to prohibit driving under § 392.5 when the result is less than 0.02.

Still, an employer must comply with the driving prohibition in § 392.5, regardless of a test result below 0.02 or not, if it discovers violation of any of the other proscriptions provided in the section, such as pre-duty use, possession, and detected presence of alcohol. In most circumstances, a driver would also be removed from safety-sensitive functions and referred to a SAP under part 382 for committing such violations, in effect imposing the driving prohibition in § 392.5 anyway. If a driver subject to § 392.5 is given a test, however, which results in a concentration below 0.02, but the employer detects the presence of alcohol in the driver through other means, the employer is prohibited from using the driver until there is no longer the presence of alcohol.

Post-accident tests administered by a law enforcement official under independent authority may result in a 24 hour out-of-service order issued by the official for concentrations below 0.02 because the test is not administered under part 382.

Section 382.507 Penalties

Section 5(f) of the Act allows the Secretary to determine appropriate sanctions for drivers who are determined through testing developed under this Act to have used alcohol or controlled substances in violation of law or Federal regulation, but are not under the influence of alcohol or controlled substances as provided in the CMVSA. Regulations issued pursuant to the CMVSA impose disqualifications and other penalties for "conviction" by Federal, State, or local law enforcement officials of driving under the influence of alcohol or controlled substances (§ 383.51). This section provides that employers and drivers who violate these rules, which do not provide for "convictions" or CDL disqualifications, are subject to 49 U.S.C. 521(b), which allow civil forfeiture penalties of up to $10,000.

Subpart F—Alcohol and Controlled Substances Misuse Information, Training, and Referral

Section 382.601 Motor Carrier Obligation To Promulgate a Policy on the Misuse of Alcohol and Controlled Substances

Materials explaining how the employer implements the requirements of this part and the employer's policies must be provided to each driver. Written notice of the availability of these materials must be provided to representatives of employee labor organizations.

In addition to educational information, the materials also may include the description of any self-identification program or procedure under which a driver may decline to perform or continue to perform safety-sensitive functions without penalty when he or she may be in violation of these rules, including any limits on the program. The employer also may include information on additional employer policies with respect to the use or possession of alcohol, including any consequences for a driver found to have a specified alcohol concentration, that are based on the employer's authority independent of these rules. These additional policies must be clearly identified as based on the employer's independent authority.

Motivating drivers about safety in the workplace and good health is important to making an alcohol and controlled substances use prevention program work. Because the primary objective of this alcohol and controlled substances misuse program is deterrence rather than detection, it is especially important that, before any testing is begun, employers make their drivers fully aware of the dangers of alcohol and controlled substances misuse in their jobs, advise them where help can be obtained if they have a problem with alcohol or controlled substances use, and the potential consequences for people who violate this rule. An effective company policy and educational effort can more than pay for itself with the benefits it can achieve.

Section 382.603 Training for Supervisors

See *Limitations of Alcohol Use by Transportation Workers* for discussion of this section.

Section 382.605 Referral, Evaluation, and Treatment

The Omnibus Act requires that an opportunity for treatment be made available to drivers. This does not require employers to provide or pay for rehabilitation or to hold a job open for a driver with or without salary. In the current drug testing rules, the Department decided that it was inappropriate to establish a Federal role in mandating that employers provide for rehabilitation and that it should be left to management/driver negotiation. The same logic will apply here. The FHWA has decided not to mandate employer-provided rehabilitation in this rule.

We encourage those employers who can afford to provide rehabilitation to do so through established health insurance programs, since it helps their drivers, benefits morale, is often cost-effective and ultimately contributes to the success of both their business and their testing programs.

This section requires an employer to advise a driver who engages in conduct prohibited under these rules of the available resources for evaluation and treatment of alcohol and controlled substances problems. The employer will have no similar obligation to applicants who refuse to submit to or fail a pre-employment test.

A SAP will evaluate each driver who violates these rules to determine whether the driver needs assistance resolving problems associated with alcohol misuse and refer the driver for any necessary treatment. Before returning to duty after a violation, each driver must undergo an applicable alcohol or controlled substances test with a result of less than 0.02 alcohol concentration and/or a verified negative controlled substances test result. In addition, each driver identified as needing assistance must (1) Be evaluated again by a SAP to determine whether the driver has successfully complied with the rehabilitation program prescribed following the initial evaluation, and (2) be subject to a minimum of six (6) unannounced, follow-up tests over the following twelve (12) months. Compliance with the prescribed treatment and passing the test(s) will not guarantee a right of reemployment. They will be preconditions the driver must meet in order to perform safety-sensitive functions.

For a CMV driver to return to duty following a controlled substances test that results in a verified positive test result, the CMV driver must stop using drugs, be evaluated by a substance abuse professional, and take a return-to-duty controlled substances test with a negative result. The SAP evaluation takes the place of the requirement in 49 CFR 391.45(c) that drivers who test positive for drugs, and are thereby rendered medically unqualified to drive under § 391.41(b)(12), must be recertified as medically qualified to drive. Drivers identified as needing assistance must also complete any rehabilitation required by the substance abuse professional, be re-evaluated by a substance abuse professional to determine whether rehabilitation requirements were followed, and be subject to follow-up tests.

Follow-up and return-to-duty tests need not be confined to the substance involved in the violation. If the SAP determines that a driver needs assistance with a poly-substance abuse problem, the SAP may, for instance, require alcohol tests to be performed along with the required drug follow-up and/or return-to-duty tests, after a driver has violated the drug testing prohibition.

The rule will provide that the evaluation and the rehabilitation may be provided by the employer, by a SAP under contract with the employer or by a SAP not affiliated with the employer. The choice of SAP and assignment of costs will be made in accordance with employer/driver agreements and employer policies.

Other Issues

As in the current drug testing rules, the FHWA wants to provide program flexibility to allow employers to carry out their programs in a more efficient, cost-effective manner and to ease the compliance burden on small businesses. Testing, for example, may be conducted by the employer, an outside contractor, a consortium, a union, or any other party or agent of the employer. The employer remains responsible for compliance with the requirements of this part.

The use of consortia has worked well in the drug testing area. In fact, it is the predominant method of compliance in some industries, particularly among smaller employers. One reason to delay implementation of this rule for smaller employers is to enable them to form or join consortia or large employer testing programs, rather than have to establish their own programs.

Employers may find it more cost-effective and convenient to conduct alcohol testing at the same time they conduct drug testing. Because we are requiring alcohol testing at or near the time of performance, drug testing also would have to occur at such times. For random testing, employers could easily accomplish this by randomly choosing the driver's number and then testing the driver the next time he or she performs safety-sensitive functions.

Multi-Agency Coverage

In some industries, a significant percentage of drivers are subject to the testing rules of more than one DOT OA; some are subject to the testing rules of more than one federal agency (*e.g.*, drivers covered by the Department of Energy may also be covered by FHWA). Where it will not compromise the effectiveness of the testing program or other requirements, one DOT agency will defer to another or recognize the validity of the other's requirements.

There are different situations in which multi-agency coverage can occur:

(1) A driver may perform different modal functions for the same employer. For example, a driver may act as both a railroad repair person and a truck driver for a single employer, activities regulated by the FRA and the FHWA, respectively. Such a driver could be in a single random pool under these rules, but will have to have an equal chance of being selected for random testing while performing either track repair or driving functions.

(2) A driver may have two employers. For example, a driver may fly for one employer and drive for another. That driver will be subject to two random testing requirements and will generally be in two different pools. As discussed above, however, the driver could be covered by one random testing pool, *e.g.*, one run by a consortium; in both situations, the driver will be subject to random testing in either job.

This rule will require that drivers cease safety-sensitive functions in every mode of transportation, once determined to be in violation of any one of the OA rules. We also have been consulting with other federal agencies during this rulemaking proceeding in an attempt to make Federal government rules as consistent as possible. The Department of Energy (DOE) already has issued a similar rule on alcohol misuse for drivers in nuclear facilities. To avoid any potential conflict, DOE officials have indicated that they plan to defer to the DOT rules where there are entities covered by both programs.

Self-Identification/Peer-Referral Programs

Since the FHWA's primary purpose is to deter drivers from having alcohol and controlled substances in their systems while performing safety-sensitive functions, drivers should be able to identify themselves as unfit to work. The FHWA encourages employers to establish self-identification or peer-referral programs and encourage drivers to use them. These programs, which already exist in some segments of the highway transportation industries, generally allow a driver to decline, without penalty, to perform or continue to perform her job if the driver knows that she is or may be impaired by alcohol or controlled substances. The FHWA will not require self-identification programs, because we believe that they are a matter more appropriate for labor/management negotiations. The successful implementation of such programs depends upon joint labor-management commitment to an alcohol/drug-free work environment.

Any such program, however, could not interfere with the tests required by these rules. For example, a driver could not identify himself as unfit to drive after having been notified of a random or reasonable suspicion test and expect to avoid the consequences for a positive test or a refusal to test. Such a program could, however, permit a driver to initiate a voluntary alcohol test to determine whether the driver is in violation of these rules, without fear of consequences required by this rule, regardless of the test results.

Education

There is some disagreement about the respective effectiveness of education vis-a-vis enforcement. Some researchers claim that education is more effective in preventing alcohol misuse than apprehension of the abuser. The American Automobile Association Foundation for Traffic Safety compared eight states that adopted tougher drunk driving laws with six that did not. The new laws had no effect at all on traffic fatalities. The Foundation attributes the overall decline in U.S. traffic-related deaths between 1980 and 1985 to public awareness campaigns by such groups as Mothers Against Drunk Driving (MADD). A Boston University researcher similarly concluded that social pressure and publicity "may be as important as government regulations in reducing drunk driving and fatal crashes." (Both quoted in "USA Today", Wednesday, August 3, 1988.)

These studies have been criticized as poorly designed and misleading, since education programs were never isolated as an independent variable for comparison. NHTSA believes that the most effective programs are those that combine education and enforcement. Public information and education programs, in the absence of enforcement activities or sanctions, have never been shown to have an impact on alcohol-related fatal crashes. Conversely, scores of studies have found that programs involving enhanced enforcement, roadside sobriety checkpoints, and the use of sanctions such as license suspensions frequently have resulted in significant reductions of alcohol-related fatalities. Although there is disagreement on the effectiveness of education alone, it appears that using education as an adjunct to deterrent measures will make both more effective.

Removal of Part 391, Subpart H

The present regulations for controlled substances testing are contained as a subpart to the FHWA's driver qualification regulations in part 391, and are applicable only to drivers subject to part 391. Generally, parts 390 through 399 of title 49 subchapter B are applicable to motor carriers and drivers who operate in interstate commerce. The Omnibus Act requires the FHWA to expand the scope of persons required to be tested beyond those subject to part 391. This rule will completely replace 49 CFR part 391, subpart H controlled substances testing on January 1, 1996.

The Omnibus Act requires all operators of CMVs to be tested for controlled substances and alcohol. This encompasses far more drivers than have been subject to parts 390 through 399. It applies to all drivers required to obtain a CDL. Drivers to which Federal drug testing requirements are newly applicable include, but are not limited to drivers and their employers operating wholly in intrastate commerce, employed directly by Federal, State and local governments, including school districts, and drivers with restricted-use CDLs or drivers in a State that does not recognize State option waiver CDLs (farm vehicle operators, firefighters and operators of emergency equipment).

The FHWA will make part 391, subpart H ineffective on the two implementation dates of part 382 to enable motor carriers to continue to use the existing regulations until all requirements of part 382 are to be complied with fully. Table I shows the existing regulations at 49 CFR part 391, subpart H and the section where the FHWA has moved the existing regulation into this rule.

TABLE I

Name	Old section	Change	New section
Purpose and scope	391.81(a)		382.101
	391.81(b)	Removed.	
	391.81(c)	Removed.	
Applicability	391.83	Omnibus Act	382.103
Definitions	391.85		382.107
Notifications of test results and recordkeeping	391.87(a)		382.407(a)
	391.87(b)		382.411(a)
	391.87(c)		382.411(a)
	391.87(d)		382.401
	391.87(e)	Removed	
	391.87(f)		382.407(a)
	391.87(g)		382.405(c)
	391.87(h)		382.403
Access to individual test results or test findings	391.89(a)		382.405(a)
	391.89(b)		382.405(b)
Implementation schedule	391.93		382.115
Drug use prohibitions	391.95(a)		382.213
	391.95(b)		382.215
	391.95(c)	Removed	
	391.95(d)		382.211
Prescribed drugs; Affirmative defense	391.97		40.33(c)
Reasonable cause testing requirements	391.99		382.307
	391.101		
Pre-employment testing requirements	391.103		382.301
Biennial (periodic) testing requirements	391.105 & 391.107	Removed	
Random testing requirements	391.109		382.305
Random testing exceptions	391.109(d)	Removed	
Post-accident testing	391.113	Omnibus Act	382.303
Disqualifications	391.117	Removed	
Employee Assistance Program	391.119	Omnibus Act	382.601
EAP Training Program	391.121		382.603
After-care Monitoring	391.123		382.605(c)

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866. This rule has been reviewed under this order. It is significant within the meaning of Department of Transportation regulatory policies and procedures, too. It is anticipated that the economic impact of this rulemaking will be substantial; therefore, a full regulatory evaluation is required and has been prepared. The regulatory evaluation is included in the docket.

Executive Order 12875 (Enhancing the Intergovernmental Partnership)

The FHWA has determined that this action's NPRM published on December 15, 1992 (57 FR 59516) contained a requirement that must be analyzed in accordance with Executive Order 12875. The FHWA has reviewed the final rule under this order. The FHWA has determined that the proposed requirement for random roadside alcohol testing by State and local law enforcement officials would mandate States to perform roadside alcohol testing on commercial motor vehicle drivers. The requirement would not completely reimburse States for the cost of such a mandated program. The FHWA has decided not to mandate roadside alcohol testing as proposed, because of many factors including this Executive Order. See the section "Other Issues—Motor Carrier Safety Assistance Program (MCSAP)" in *Limitations of Alcohol Use by Transportation Workers* elsewhere in today's **Federal Register** for further discussion of the FHWA's and the DOT's analysis of this Executive Order as it relates to this final rule.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. This final rule will require employers to test drivers for the use of alcohol and controlled substances. It will have a significant economic impact on small entities. The FHWA has lessened the economic impact on small entities by allowing them an additional year to comply with the rule over and above the time given to large employers.

Executive Order 12612 (Federalism Assessment)

This action adds part 382 to the FMCSRs pertaining to testing for alcohol and controlled substances by drivers of commercial motor vehicles operating in commerce on public roads and highways. These requirements directly affect employers and their drivers, including State and local employers and their drivers. The rule also will regulate employers and drivers who have historically been regulated only by their State of residence or where the employer's business is located. These requirements preempt State and local laws, regulations, rules, and orders that are inconsistent with the requirements of this rule. The preemption authority for this document was specifically provided for under 49 U.S.C. app. 2717, Section 12020(e)(1) of the Omnibus Transportation Employee Testing Act of 1991.

Under the Motor Carrier Safety Assistance Program, States will not be required to adopt compatible part 382 regulations for drug or alcohol testing as a condition for receiving grant monies under the program.

For the reasons set forth above, the agency is not required to prepare a Federalism Assessment for this proposal.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities applies to this program.

Paperwork Reduction Act

The information collection requirements in part 382 of this rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Information collection requirements are not effective until Paperwork Reduction Act clearance has been received.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 382, 391, 392 and 395

Alcohol testing, Controlled substances testing, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

Issued on: January 25, 1994.

Federico Peña,

Secretary of Transportation.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, CFR subtitle B, chapter III, parts 391, 392, and 395, and add part 382 as set forth below:

1. Chapter III is amended by adding part 382 as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Subpart A—General

Sec.
382.101 Purpose.
382.103 Applicability.
382.105 Testing procedures.
382.107 Definitions.
382.109 Preemption of State and local laws.
382.111 Other requirements imposed by employers.
382.113 Requirement for notice.
382.115 Starting date for testing programs.

Subpart B—Prohibitions

382.201 Alcohol concentration.
382.204 Alcohol possession.
382.205 On-duty use.
382.207 Pre-duty use.
382.209 Use following an accident.
382.211 Refusal to submit to a required alcohol or controlled substances test.
382.213 Controlled substances use.
382.215 Controlled substances testing.

Subpart C—Tests Required

382.301 Pre-employment testing.
382.303 Post-accident testing.
382.305 Random testing.
382.307 Reasonable suspicion testing.
382.309 Return-to-duty testing.
382.311 Follow-up testing.

Subpart D—Handling of Test Results, Record Retention, and Confidentiality

382.401 Retention of records.
382.403 Reporting of results in a management information system.
382.405 Access to facilities and records.
382.407 Medical review officer notifications to the employer.
382.409 Medical review officer record retention for controlled substances.
382.411 Employer notifications.
382.413 Release of alcohol and controlled substances test information by previous employers.

Subpart E—Consequences for Drivers Engaging in Substance Use-Related Conduct

382.501 Removal from safety-sensitive function.
382.503 Required evaluation and testing.
382.505 Other alcohol-related conduct.
382.507 Penalties.

Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

382.601 Motor carrier obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.
382.603 Training for supervisors.
382.605 Referral, evaluation, and treatment.

Authority: 49 U.S.C. app. 2505; 49 U.S.C. app. 2701 *et seq.*; 49 U.S.C. 3102; 49 CFR 1.48.

Subpart A—General

§ 382.101 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

§ 382.103 Applicability.

(a) This part applies to every person who operates a commercial motor vehicle in interstate or intrastate commerce, and is subject to the commercial driver's license requirements of part 383 of this subchapter.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement an alcohol and controlled substances testing program that includes more persons than himself/herself as covered employees in the random testing pool.

(c) This part shall not apply to employers and their drivers:

(1) Required to comply with the alcohol and/or controlled substances testing requirements of parts 653 and 654 of this title; or

(2) Granted a full waiver from the requirements of the commercial driver's license program; or

(3) Granted an optional State waiver from the requirements of part 383 of this subchapter; or

(4) Of foreign domiciled operations, with respect to any driver whose place of reporting for duty (home terminal) for commercial motor vehicle transportation services is located outside the territory of the United States.

§ 382.105 Testing procedures.

Each employer shall ensure that all alcohol or controlled substances testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol or controlled substances testing are made applicable to employers by this part.

§ 382.107 Definitions.

Words or phrases used in this part are defined in §§ 386.2 and 390.5 of this subchapter, and § 40.3 or § 40.73 of this title, except as provided herein—

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Commerce means (1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and (2) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(1) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

(2) Has a gross vehicle weight rating of 26,001 or more pounds; or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation test For alcohol testing means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration. For controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Consortium means an entity, including a group or association of employers or contractors, that provides alcohol or controlled substances testing as required by this part, or other DOT alcohol or controlled substances testing rules, and that acts on behalf of the employers.

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, 653 and 654), in accordance with part 40 of this title.

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer. For the purposes of pre-employment/pre-duty testing only, the term *driver* includes a person applying to an employer to drive a commercial motor vehicle.

Employer means any person (including the United States, a State, District of Columbia or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term *employer* includes an employer's agents, officers and representatives.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Refuse to submit (to an alcohol or controlled substances test) means that a driver (1) Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, or (3) engages in conduct that clearly obstructs the testing process.

Safety-sensitive function means any of those on-duty functions set forth in § 395.2 *On-Duty time*, paragraphs (1) through (7) of this chapter.

Screening test (also known as initial test). In alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Violation rate means the number of drivers (as reported under § 382.305 of this part) found during random tests given under this part to have an alcohol concentration of 0.04 or greater, plus the number of drivers who refuse a random test required by this part, divided by the total reported number of drivers in the industry given random alcohol tests under this part plus the total reported number of drivers in the industry who refuse a random test required by this part.

§ 382.109 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public.

§ 382.111 Other requirements imposed by employers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of drivers, with respect to the use or possession of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

§ 382.113 Requirement for notice.

Before performing an alcohol or controlled substances test under this part, each employer shall notify a driver that the alcohol or controlled substances test is required by this part. No employer shall falsely represent that a test is administered under this part.

§ 382.115 Starting date for testing programs.

(a) *Large employers.* Each employer with fifty or more drivers on March 17, 1994, shall implement the requirements of this part beginning on January 1, 1995.

(b) *Small employers.* Each employer with fewer than fifty drivers on March 17, 1994, shall implement the requirements of this part beginning on January 1, 1996.

(c) All employers shall have alcohol and controlled substances programs that conform to this part by the date in paragraph (a) or (b) of this section, whichever is applicable, or by the date an employer begins commercial motor vehicle operations, whichever is later.

Subpart B—Prohibitions

§ 382.201 Alcohol concentration.

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.204 Alcohol possession.

No driver shall be on duty or operate a commercial motor vehicle while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. No employer having actual knowledge that a driver possesses unmanifested alcohol may permit the driver to drive or continue to drive a commercial motor vehicle.

§ 382.205 On-duty use.

No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.207 Pre-duty use.

No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.

§ 382.209 Use following an accident.

No driver required to take a post-accident alcohol test under § 382.303 of this part shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

§ 382.211 Refusal to submit to a required alcohol or controlled substances test.

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under § 382.303, a random alcohol or controlled substances test required under § 382.305, a reasonable suspicion alcohol or controlled substances test required under § 382.307, or a follow-up alcohol or controlled substances test required under § 382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

§ 382.213 Controlled substances use.

(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(b) No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

(c) An employer may require a driver to inform the employer of any therapeutic drug use.

§ 382.215 Controlled substances testing.

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for controlled substances. No employer having actual knowledge that a driver has tested positive for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

Subpart C—Tests Required

§ 382.301 Pre-employment testing.

(a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for alcohol and controlled substances. No employer shall allow a driver to perform safety-sensitive functions unless the driver has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04, and has received a controlled substances test result from the medical review officer indicating a verified negative test result. If a pre-employment alcohol test result under this section indicates an alcohol content of 0.02 or greater but less than 0.04, the provisions of § 382.505 shall apply.

(b) *Exception for pre-employment alcohol testing.* An employer is not required to administer an alcohol test required by paragraph (a) of this section if:

(1) The driver has undergone an alcohol test required by this section or the alcohol misuse rule of another DOT agency under part 40 of this title within the previous six months, with a result indicating an alcohol concentration less than 0.04; and

(2) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the alcohol misuse rule of another DOT agency within the previous six months.

(c) *Exception for pre-employment controlled substances testing.* An employer is not required to administer a controlled substances test required by paragraph (a) of this section if:

(1) The driver has participated in a drug testing program that meets the requirements of this part within the previous 30 days; and

(2) While participating in that program, either

(i) Was tested for controlled substances within the past 6 months (from the date of application with the employer) or

(ii) Participated in a random controlled substances testing program for the previous 12 months (from the date of application with the employer); and

(3) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substance use rule of another DOT agency within the previous six months.

(d) (1) An employer who exercises either paragraph (b) or (c) of this section shall contact the alcohol and/or controlled substances testing program(s) in which the driver participates or participated and shall obtain from the testing program(s) the following information:

(i) Name(s) and address(es) of the program(s).

(ii) Verification that the driver participates or participated in the program(s).

(iii) Verification that the program(s) conform to part 40 of this title.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for alcohol or controlled substances.

(v) The date the driver was last tested for alcohol and controlled substances.

(vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part.

(2) An employer who uses, but does not employ, a driver more than once a year must assure itself once every six months that the driver participates in an alcohol and controlled substances testing program(s) that meets the requirements of this part.

§ 382.303 Post-accident testing.

(a) As soon as practicable following an accident involving a commercial motor vehicle, each employer shall test for alcohol and controlled substances each surviving driver:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation under State or local law for a moving traffic violation arising from the accident.

(b) (1) *Alcohol tests.* If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FHWA upon request of the Associate Administrator.

(2) *Controlled substance tests.* If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FHWA upon request of the Associate Administrator.

(c) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(d) An employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(e) The results of a breath or blood test for the use of alcohol or a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to applicable Federal, State or local requirements, and that the results of the tests are obtained by the employer.

§ 382.305 Random testing.

(a) (1) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random alcohol testing shall be 25 percent of the average number of driver positions.

(2) The minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.

(b) The FHWA Administrator's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by § 382.403 of this part. In order to ensure reliability of the data, the FHWA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the FHWA Administrator will publish in the **Federal Register** the minimum annual percentage rate for random alcohol testing of drivers. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c) (1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FHWA Administrator may lower this rate to 10 percent of all drivers if the FHWA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the FHWA Administrator may lower this rate to 25 percent of all drivers if the FHWA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(d) (1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 382.403 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent for all drivers.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 382.403 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent for all drivers.

(e) The selection of drivers from random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table of a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made.

(f) The employer shall randomly select a sufficient number of drivers for alcohol testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol testing determined by the FHWA Administrator. For controlled substances testing, the employer shall randomly select a sufficient number of drivers for controlled substances testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate of 50 percent of drivers. If the employer conducts random testing for alcohol and/or controlled substances through a consortium, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of drivers covered by the consortium who are subject to random alcohol and/or controlled substances testing at the same minimum annual percentage rate under this part or any DOT alcohol or controlled substances testing rule.

(g) Each employer shall ensure that random alcohol and controlled substances tests conducted under this part are unannounced and that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.

(h) Each employer shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function at the time of notification, the employer shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(i) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(j) If a given driver is subject to random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency for the same employer, the driver shall be subject to random alcohol and/or controlled substances testing at the minimum annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

(k) If an employer is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

§ 382.307 Reasonable suspicion testing.

(a) An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning alcohol, except for § 382.204. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(b) An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

(c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or company official who is trained in accordance with § 382.603 of this part. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.

(d) Alcohol testing is authorized by this section only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this part. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(e) (1) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (a) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (a) of this section, the employer shall cease attempts to administer an alcohol test

and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until:

(i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or

(ii) Twenty four hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this part concerning the use of alcohol.

(3) Except as provided in paragraph (e)(2) of this section, no employer shall take any action under this part against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit an employer with independent authority of this part from taking any action otherwise consistent with law.

(f) A written record shall be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisor or company official who made the observations, within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

§ 382.309 Return-to-duty testing.

(a) Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part concerning alcohol, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(b) Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part concerning controlled substances, the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

§ 382.311 Follow-up testing.

(a) Following a determination under § 382.605(b) that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, each employer shall ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional in accordance with the provisions of § 382.605(c)(2)(ii).

(b) Follow-up alcohol testing shall be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.

Subpart D—Handling of Test Results, Record Retention and Confidentiality

§ 382.401 Retention of records.

(a) *General Requirement.* Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of Retention.* Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* The following records shall be maintained for a minimum of five years:

(i) Records of driver alcohol test results with results indicating an alcohol concentration of 0.02 or greater,

(ii) Records of driver verified positive controlled substances test results,

(iii) Documentation of refusals to take required alcohol and/or controlled substances tests,

(iv) Calibration documentation,

(v) Driver evaluation and referrals shall be maintained for a minimum of five years, and

(vi) A copy of each annual calendar year summary required by § 382.403.

(2) *Two years.* Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices) and training shall be maintained for a minimum of two years.

(3) *One year.* Records of negative and canceled controlled substances test results (as defined in part 40 of this title) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used;

(ii) Documents relating to the random selection process;

(iii) Calibration documentation for evidential breath testing devices;

(iv) Documentation of breath alcohol technician training;

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;

(vi) Documents generated in connection with decisions on post-accident tests;

(vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and

(viii) Consolidated annual calendar year summaries as required by § 382.403.

(2) Records related to a driver's test results:

(i) The employer's copy of the alcohol test form, including the results of the test;

(ii) The employer's copy of the controlled substances test chain of custody and control form;

(iii) Documents sent by the medical review officer to the employer, including those required by § 382.407(a).

(iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part; and

(v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance; and

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

(i) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;

(ii) Documentation of compliance with the requirements of § 382.601, including the driver's signed receipt of education materials;

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion; and

(iv) Certification that any training conducted under this part complies with the requirements for such training

(6) Records related to drug testing:

(i) Agreements with collection site facilities, laboratories, medical review officers, and consortia;

(ii) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s);

(iii) Monthly laboratory statistical summaries of urinalysis required by § 40.29(g)(6); and

(iv) The employer's drug testing policy and procedures.

(d) *Location of records.* All records required by this part shall be maintained as required by § 390.31 of this subchapter and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Highway Administration.

§ 382.403 Reporting of results in a management information system.

(a) An employer shall prepare and maintain an annual calendar year summary of the results of its alcohol and controlled substances testing programs performed under this part. By March 15 of each year, all employers shall complete the annual summary covering the previous calendar year.

(b) If an employer is notified, during the month of January, of a request by the Federal Highway Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the Federal Highway Administration by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that the Federal Highway Administration specifies in its request. The report shall be in the form and manner prescribed by the Federal Highway Administration in its request. When the report is submitted to the Federal Highway Administration by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

(c) Each annual calendar year summary that contains information on a verified positive controlled substances test result, an alcohol screening test result of 0.02 or greater, or any other violation of the alcohol misuse provisions of subpart B of this part shall include the following informational elements:

(1) Number of drivers subject to part 382;

(2) Number of drivers subject to testing under the alcohol misuse or controlled substances use rules of more than one DOT agency, identified by each agency;

(3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);

(4) Number of positives verified by a MRO by type of test, and type of controlled substance;

(5) Number of negative controlled substance tests verified by a MRO by type of test;

(6) Number of persons denied a position as a driver following a pre-employment verified positive controlled substances test and/or a pre-employment alcohol test that indicates an alcohol concentration of 0.04 or greater;

(7) Number of drivers with tests verified positive by a medical review officer for multiple controlled substances;

(8) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart;

(9) (i) Number of supervisors who have received required alcohol training during the reporting period; and

(ii) Number of supervisors who have received required controlled substances training during the reporting period;

(10) (i) Number of screening alcohol tests by type of test; and

(ii) Number of confirmation alcohol tests, by type of test;

(11) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test;

(12) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test;

(13) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in §§ 382.503 and 382.605), in this reporting period, who previously:

(i) Had a verified positive controlled substance test result, or

(ii) Engaged in prohibited alcohol misuse under the provisions of this part;

(14) Number of drivers who were administered alcohol and drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater; and

(15) Number of drivers who were found to have violated any non-testing prohibitions of subpart B of this part, and any action taken in response to the violation.

(d) Each employer's annual calendar year summary that contains only negative controlled substance test results, alcohol screening test results of less than 0.02, and does not contain any other violations of subpart B of this part, may prepare and submit, as required by paragraph (b) of this section, either a standard report form containing all the information elements specified in paragraph (c) of this section, or an "EZ" report form. The "EZ" report shall include the following information elements:

(1) Number of drivers subject to part 382;

(2) Number of drivers subject to testing under the alcohol misuse or controlled substance use rules of more than one DOT agency, identified by each agency;

(3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);

(4) Number of negatives verified by a medical review officer by type of test;

(5) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart;

(6) (i) Number of supervisors who have received required alcohol training during the reporting period; and

(ii) Number of supervisors who have received required controlled substances training during the reporting period;

(7) Number of screen alcohol tests by type of test; and

(8) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in §§ 382.503 and 382.605), in this reporting period, who previously:

(i) Had a verified positive controlled substance test result, or

(ii) Engaged in prohibited alcohol misuse under the provisions of this part.

(e) Each employer that is subject to more than one DOT agency alcohol or controlled substances rule shall identify each driver covered by the regulations of more than one DOT agency. The identification will be by the total number of covered functions. Prior to conducting any alcohol or controlled substances test on a driver subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(f) A consortium may prepare annual calendar year summaries and reports on behalf of individual employers for purposes of compliance with this section. However, each employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

§ 382.405 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this section, no employer shall release driver information that is contained in records required to be maintained under § 382.401.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. The employer shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each employer shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(d) Each employer shall make available copies of all results for employer alcohol and/or controlled substances testing conducted under this part and any other information pertaining to the employer's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a driver, the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the employer's determination that the driver engaged in conduct prohibited by subpart B of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver.)

(h) An employer shall release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

§ 382.407 Medical review officer notifications to the employer.

(a) The medical review officer may report to the employer using any communications device, but in all instances a signed, written notification must be forwarded within three business days of completion of the medical review officer's review, pursuant to part 40 of this title. A medical review officer shall report to an employer clearly:

(1) That the controlled substances test being reported was in accordance with part 40 of this title and this part;

(2) The name of the individual for whom the test results are being reported;

(3) The type of test indicated on the custody and control form (i.e. random, post-accident, etc.);

(4) The date and location of the test collection;

(5) The identities of the persons or entities performing the collection, analysis of the specimens and serving as the medical review officer for the specific test;

(6) The verified results of a controlled substances test, either positive or negative, and if positive, the identity of the controlled substance(s) for which the test was verified positive.

(b) A medical review officer shall report to the employer that the medical review officer has made all reasonable efforts to contact the driver as provided in § 40.33(c) of this title. The employer shall, as soon as practicable, request that the driver contact the medical review officer prior to dispatching the driver or within 24 hours, whichever is earlier.

§ 382.409 Medical review officer record retention for controlled substances.

(a) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results.

(b) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of one year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer, and no medical review officer shall release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the employer or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this part, the information delineated in § 382.407(a) of this subpart.

§ 382.411 Employer notifications.

(a) An employer shall notify a driver of the results of a pre-employment controlled substance test conducted under this part, if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application. An employer shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The employer shall also inform the driver which controlled substance or substances were verified as positive.

(b) The designated management official shall make reasonable efforts to contact and request each driver who submitted a specimen under the employer's program, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated management official shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 24 hours.

§ 382.413 Release of alcohol and controlled substances test information by previous employers.

(a) An employer may obtain, pursuant to a driver's written consent, any of the information concerning the driver which is maintained under this part by the driver's previous employers.

(b) An employer shall obtain, pursuant to a driver's consent, information on the driver's alcohol tests with a concentration result of 0.04 or greater, positive controlled substances test results, and refusals to be tested, within the preceding two years, which are maintained by the driver's previous employers under § 382.401(b)(1)(i) through (iii).

(c) The information in paragraph (b) of this section must be obtained and reviewed by the employer no later than 14 calendar days after the first time a driver performs safety-sensitive functions for an employer, if it is not feasible to obtain the information prior to the driver performing safety-sensitive functions. An employer may not permit a driver to perform safety-sensitive functions after 14 days without obtaining the information.

(d) If the driver stops performing safety-sensitive functions for the employer before expiration of the 14 day period or before the employer has obtained the information in paragraph (b) of this section, the employer must still obtain the information.

(e) The prospective employer must provide to each of the driver's employers within the two preceding years the driver's specific, written authorization for release of the information in paragraph (b).

(f) The release of any information under this part may take the form of personal interviews, telephone interviews, letters, or any other method of obtaining information that ensures confidentiality. Each employer must maintain a written, confidential record with respect to each past employer contacted.

(g) An employer may not use a driver to perform safety-sensitive functions if the employer obtains information on the driver's alcohol test with a concentration of 0.04 or greater, verified positive controlled substances test result, or refusal to be tested, by the driver, without obtaining information on a subsequent substance abuse professional evaluation and/or determination under § 382.401(c)(4) and compliance with § 382.309.

Subpart E—Consequences For Drivers Engaging In Substance Use-Related Conduct

§ 382.501 Removal from safety-sensitive function.

(a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol or controlled substances rule of another DOT agency.

(b) No employer shall permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if the employer has determined that the driver has violated this section.

(c) For purposes of this subpart, commercial motor vehicle means a commercial motor vehicle in commerce as defined in § 382.107, and a commercial motor vehicle in interstate commerce as defined in part 390.

§ 382.503 Required evaluation and testing.

No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of § 382.605. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of § 382.605.

§ 382.505 Other alcohol-related conduct.

(a) No driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

§ 382.507 Penalties.

Any employer or driver who violates the requirements of this part shall be subject to the penalty provisions of 49 U.S.C. § 521(b).

Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

§ 382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.

(a) *General requirements.* Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.

(1) The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

(2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the employer to answer driver questions about the materials;

(2) The categories of drivers who are subject to the provisions of this part;

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;

(4) Specific information concerning driver conduct that is prohibited by this part;

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part;

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver;

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under § 382.605;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a coworker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

(c) *Optional provision.* The materials supplied to drivers may also include information on additional employer policies with respect to the use or possession of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's

authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) *Certificate of receipt.* Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

§ 382.603 Training for supervisors.

(a) Each employer shall ensure that persons designated to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307 receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

§ 382.605 Referral, evaluation, and treatment.

(a) Each driver who has engaged in conduct prohibited by subpart B of this part shall be advised by the employer of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counselling and treatment programs.

(b) Each driver who engages in conduct prohibited by subpart B of this part shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.

(c) (1) Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if the conduct involved a controlled substance.

(2) In addition, each driver identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use,

(i) Shall be evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol and controlled substances tests administered by the employer following the driver's return to duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and consist of at least six tests in the first 12 months following the driver's return to duty. The employer may direct the driver to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular driver. Any such testing shall be performed in accordance with the requirements of 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the employer, by a substance abuse professional under contract with the employer, or by a substance abuse professional not affiliated with the employer. The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/driver agreements and employer policies.

(e) The employer shall ensure that a substance abuse professional who determines that a driver requires assistance in resolving problems with alcohol misuse or controlled substances use does not refer the driver to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring a driver for assistance provided through—

(1) A public agency, such as a State, county, or municipality;

(2) The employer or a person under contract to provide treatment for alcohol or controlled substance problems on behalf of the employer;

(3) The sole source of therapeutically appropriate treatment under the driver's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the driver.

(f) The requirements of this section with respect to referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a pre-employment alcohol or controlled substances test or who have a pre-employment alcohol test with a result indicating an alcohol concentration of 0.04 or greater or a controlled substances test with a verified positive test result.

PART 391—QUALIFICATION OF DRIVERS

4. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48

5. Section 391.93 is revised to read as follows:

§ 391.93 Implementation schedule.

(a) All motor carriers shall have a drug testing program that conforms to this subpart and 49 CFR part 40 by the date a motor carrier begins motor carrier operations.

(b) All motor carriers shall require all collection personnel to implement the split sample collection procedures required under § 40.25(f)(10) of this title by August 15, 1994.

(c) An employer may begin complying with the requirements of paragraph (b) of this section on or after March 17, 1994.

6. Section 391.125 is added to Subpart H to read as follows:

§ 391.125 Termination schedule of this subpart.

(a) *Large employers.* Each motor carrier with fifty or more drivers on March 17, 1994, shall terminate compliance with this subpart and shall implement the requirements of part 382 of this subchapter beginning on January 1, 1995.

(b) *Small employers.* Each motor carrier with fewer than fifty drivers on March 17, 1994, shall terminate compliance with this subpart and shall implement the requirements of part 382 of this subchapter beginning on January 1, 1996.

(c) All motor carriers shall terminate compliance with this subpart on January 1, 1996.

PART 392—DRIVING OF MOTOR VEHICLES

7. The authority citation for part 392 continues to read as follows:

Authority: 49 App. U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

8. Section 392.5 is amended by revising the heading of the section,

paragraphs (a)(1) through (a)(3) and (b)(2) to read as follows:

§ 392.5 Alcohol prohibition.

(a) No driver shall—

(1) Use alcohol, as defined in § 382.107 of this subchapter, or be under the influence of alcohol, within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle; or

(2) Use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle; or

(3) Be on duty or operate a commercial motor vehicle while the driver possesses an alcoholic beverage. However, this does not apply to possession of alcohol which is manifested and transported as part of a shipment.

(b) * * *

(2) Be on duty or operate a commercial motor vehicle if, by the driver's general appearance or conduct or by other substantiating evidence, the driver appears to have used alcohol within the preceding four hours.

* * * * *

§ 395.2 Definitions.

9. In § 395.2, the definition of *On-duty time* is amended by redesignating paragraphs (8) and (9) as (9) and (10), and adding a new paragraph (8) to read as follows:

* * * * *

On-duty time * * *.

(8) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by part 382 or part 391, subpart H, of this subchapter, whichever is applicable, when directed by a motor carrier.

* * * * *

Note: The following appendix will not appear in the Code of Federal Regulations

Appendix to Preamble—Information Systems Data Collection Forms

BILLING CODE 4910-22-P

ILLUSTRATION I

DRUG AND ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug and alcohol testing information sought by the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT) in the **Drug and Alcohol Testing MIS Data Collection Form**. These instructions explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-iv (for drug results) and v-vi (for alcohol results) as an example to facilitate the process of completing the form correctly.

This reporting form is comprised of four sections. Collectively, these sections address the data elements required in the FHWA and the DOT drug and alcohol testing regulations. The four sections, the page number for the instructions, and the page location on the reporting form are shown below.

Section	Instructions Page	Reporting Form Page
A. MOTOR CARRIER EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	1
C. DRUG TESTING INFORMATION	ii-iv	2
D. ALCOHOL TESTING INFORMATION	iv-vi	3

Page 1 **MOTOR CARRIER EMPLOYER INFORMATION** (Section A) requires the company name for which the report is completed, a current address, the U.S. DOT number, and the ICC number (if applicable). A signature, date, and current telephone (including the area code) must be entered by the person certifying to the correctness and completeness of the report.

Page 1 **COVERED EMPLOYEES** (Section B) requires a count for each driver that must be tested under DOT regulations. There is only one category of covered employees for FHWA regulated employers, and that is "Drivers". The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the calendar year being reported. An employee who is hired twice or more in the reported year must be counted as a single employee.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of drivers, who are covered employees, under the appropriate additional operating administration(s). The employees covered by more than one DOT operating administration must be counted under all appropriate operating administrations.

Page 2 **DRUG TESTING INFORMATION** (Section C) requires information for drug testing by category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in a **covered position** only (i.e. "Drivers"). Each part of this table must be completed for each category of testing. These numbers **do not** include refusals for testing.

Section C is used to summarize the drug testing results for applicants and covered employees. There are seven categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following six parts are for entering drug testing data on random, post-accident/non-fatal, post-accident/fatal, reasonable suspicion, return to duty, and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of specimens collected in each testing category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, **PRE-EMPLOYMENT TESTING INFORMATION**. The format and explanations used for the sample table apply to all seven parts of the table in Section C.

Information on actions taken with those persons testing positive is required at the end of Section C. Specific instructions for providing this latter information are given after the instructions for completing the table in Section C.

Three types of information are necessary to complete the left side of this table. The first column ("**NUMBER OF SPECIMENS COLLECTED**"), requires a count for all collected specimens. It should not include refusals to test. The second column ("**NUMBER OF SPECIMENS VERIFIED NEGATIVE**"), requires a count for all completed tests that were verified negative by your Medical Review Officer (MRO).

The third column ("**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS**"), refers to the number of specimens provided by job applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of thee table ("**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG**"), requires counts of positive tests **for each** of the five drugs for which tests were completed, (i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines). The number of positive specimens for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results should be included once in each of the appropriate columns (marijuana and cocaine).

A sample table is provided on page iii with example numbers.

Page 2 — Below the table for drug testing information is a box ("Number of persons denied a position as a covered employee following a verified positive drug test"). This is a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

Page 2 — Also following the table that summarizes **DRUG TESTING INFORMATION**, you must provide counts for employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule. This information should be available from the personnel office and/or drug program manager.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **DRUG TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses "Pre-Employment" testing to illustrate the correct procedures for completing the form.

[A] Urine specimens were collected for 157 job applicants for driver positions during the reporting year. This information is entered in the first column of the table in the row marked "PRE-EMPLOYMENT".

[B] The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for driver positions were negative (i.e., no drugs were detected). Enter this information in the second column of the table in the row marked "PRE-EMPLOYMENT".

[C] The MRO for your company reported that 4 of those 157 specimens from applicants for driver positions were positive (i.e., a drug or drugs were detected). Enter this information in the third column of the table in the row marked "PRE-EMPLOYMENT".

[D] With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

TYPE OF TEST	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT	157	153	4	3	1	0	0	1

A B C D

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Since two different drugs were detected in specimen #3 (multi-drug), entries are made in both the marijuana and the cocaine columns for this specimen. Information on multi-drug specimens must also be entered in the table, **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG.**

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all categories of testing in the table in Section C.

Page 2 — **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. First, indicate the **NUMBER OF VERIFIED POSITIVES.** Then, specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 specimens, then you would write "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 specimens, then you would write "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 2 — **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required by FHWA regulation.

Page 2 — **DRUG TRAINING/EDUCATION** requires information on the number of supervisory personnel who have received the required drug training during the current reporting period.

Page 3 — **ALCOHOL TESTING INFORMATION** (Section D) requires information for alcohol testing by category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in **covered positions** only (i.e., "Drivers"). Each part of this table must be completed for each category of testing. These numbers **do not** include refusals for testing. A sample table is provided on page vi with example numbers.

Four types of information are necessary to complete this table. The first column (**"NUMBER OF SCREENING TESTS"**), requires a count of all screening alcohol tests performed. It should not include refusals to test. The second column (**"NUMBER OF CONFIRMATION TESTS"**) requires a count of all confirmation alcohol tests performed.

The third column (**"NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04"**), refers to the number of test results equal to or greater than 0.02, but less than 0.04.

The fourth column (**"NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04"**), refers to the number of specimens with a result equal to or greater than 0.04. **Note: For return to duty testing, a confirmation test result equal to or greater than 0.02 is a violation of the alcohol rule. Therefore, if the number of results equal to or greater than 0.04 is unknown, you may report all results in the third column of the table.**

Page 3 — Below the table for alcohol testing information is a box (**"Number of persons denied a position as a covered employee following an alcohol test indicating an alcohol concentration of 0.04 or greater"**). This is a count of those persons who were not placed in a covered position because their alcohol test indicated an alcohol concentration of 0.04 or greater.

Page 3 — Also following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of the **"Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations)"**. This information should be available from the personnel office and/or drug and alcohol program manager.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for **ALCOHOL TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other reasons for testing in the table which require you to summarize testing results for employees. This example will use "Pre-Employment" testing to illustrate the procedures for completing the form.

[A] Screening tests were performed on 157 job applicants for driver positions during the reporting year. This information is entered in the first blank column of the table in the row marked "PRE-EMPLOYMENT".

[B] Confirmation tests were necessary for 6 of the 157 applicants for driver positions. Enter this information in the second blank column of the table in the row marked "PRE-EMPLOYMENT". The confirmation test results for these 6 applicants were the following:

Applicant	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

[C] The confirmation test results for 2 of the applicants for driver positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the third blank column of the table in the row marked "PRE-EMPLOYMENT".

[D] The confirmation test results for 3 of the applicants for driver positions were equal to or greater than 0.04. Enter this information in the fourth blank column of the table in the row marked "PRE-EMPLOYMENT".

TYPE OF TEST	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
PRE-EMPLOYMENT	157	6	2	3
	A	B	C	D

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATION TESTS". These numbers may differ since some confirmation test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all categories of testing in the table in Section D.

Page 3 — **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater**, requires that a count of all such employees be entered in the indicated box.

Page 3 — **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION**, requires information on the **NUMBER OF COVERED EMPLOYEES** committing such a violation, a description of the **VIOLATION** committed (e.g., pre-duty alcohol use, on duty alcohol use, on duty alcohol possession), and a description of the **ACTION TAKEN** in response to the violation.

Page 3 — **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FHWA regulation.

Page 3 — **ALCOHOL TRAINING/EDUCATION** requires information on the number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations during the current reporting period.

FHWA DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM OMB No. 2125-0543

A. MOTOR CARRIER EMPLOYER INFORMATION

Company _____ Year Covered by This Report: _____
Principal Place of Business for Safety:

Physical Address _____ Mailing Address _____

_____ _____

U.S. DOT Number _____ ICC Number _____

I, the undersigned, certify that the information provided on this Federal Highway Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____
Signature Date of Signature

_____ _____
Title Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Highway Administration estimates that the average burden for this report form is 2 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Director, Office of Motor Carrier Standards (HCS-1); Federal Highway Administration; 400 7th St., S.W.; Washington, DC 20590; OR Office of Management and Budget, Paperwork Reduction Project (2125-0543); Washington, DC 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF FHWA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FRA	FTA	RSPA	USCG
Drivers						

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1994 - December 31, 1994).
2. This report is only for testing **REQUIRED BY THE FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**:
   - Results should be reported only for employees in **COVERED POSITIONS** as defined by FHWA/DOT drug and alcohol testing regulations.
   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, amphetamines, and alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.
3. Information on refusals for testing should only be reported in the tables entitled "EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG (or AN ALCOHOL) TEST". Do not include refusals for testing in other sections of this report.
4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.
5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

C. DRUG TESTING INFORMATION

TYPE OF TEST	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT								
RANDOM								
POST-ACCIDENT/NON-FATAL								
POST-ACCIDENT/FATAL								
REASONABLE SUSPICION								
RETURN TO DUTY								
FOLLOW-UP								

Number of persons denied a position as a covered employee following a verified positive drug test:	
Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule:	

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG					
NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	Number
Covered employees who refused to submit to a **random** drug test required under the FHWA regulation:	
Covered employees who refused to submit to a **non-random** drug test required under the FHWA regulation:	

DRUG TRAINING/EDUCATION	Number
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FHWA drug testing regulations:	

D. ALCOHOL TESTING INFORMATION

TYPE OF TEST	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
PRE-EMPLOYMENT				
RANDOM				
POST-ACCIDENT/NON-FATAL				
POST-ACCIDENT/FATAL				
REASONABLE SUSPICION				
RETURN TO DUTY				
FOLLOW-UP				

Number of persons denied a position as a covered employee following an alcohol test indicating an alcohol concentration of 0.04 or greater:	
Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations):	
Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:	

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN
	Driver used alcohol while performing safety-sensitive function.	
	Driver used alcohol within 4 hours of performing safety-sensitive function.	
	Driver used alcohol before taking a required post-accident alcohol test.	

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	Number
Covered employees who refused to submit to a random alcohol test required under the FHWA regulation:	
Covered employees who refused to submit to a non-random alcohol test required under the FHWA regulation:	

ALCOHOL TRAINING/EDUCATION	Number
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations:	

ILLUSTRATION II

DRUG AND ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT) **Drug and Alcohol Testing MIS "EZ" Data Collection Form**. This form should only be used if there are **no positive drug tests and no alcohol misuse** to be reported by your company. These instructions explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FHWA and DOT drug and alcohol testing regulations.

SECTION A - MOTOR CARRIER EMPLOYER INFORMATION requires the company name for which the report is completed, a current address, the U.S. DOT number, and the ICC number (if applicable). A signature and title, date, and current telephone (including the area code) must be entered by the person certifying the correctness and completeness of the report.

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under FHWA regulations. There is only one category of covered employees for FHWA, and that is "Drivers". The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the calendar year being reported. An employee who is hired twice or more in the reported year must be counted as a single employee.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s). The employees covered by more than one DOT operating administration must be counted under all appropriate operating administrations.

SECTION C - DRUG TESTING INFORMATION requires information for drug testing, refusals for testing, and training/education. The first table requests information on the **NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE** in each category for testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/ non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in a **covered position** only (i.e. "Drivers"). Each part of this table must be completed for each category of testing. These numbers **do not** include refusals for testing. **"COLL"** requires the number of specimens collected for each category of testing. **"NEG"** requires a count for all completed tests that were verified negative by your Medical Review Officer (MRO). Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the categories.

Following the table for drug testing data you must provide counts for **drivers returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule.** This information should be available from the personnel office and/or drug program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FHWA regulation.

DRUG TRAINING/EDUCATION requires information on the number of supervisory personnel who have received the required drug training during the current reporting period.

SECTION D - ALCOHOL TESTING INFORMATION requires information for alcohol testing, refusals for testing, and training/education. The first table requests information on the **NUMBER OF SCREENING TESTS CONDUCTED** in each category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in **covered positions** only (i.e., "Drivers"). Enter the number of alcohol screening tests conducted for each category of testing. These numbers do not include refusals for testing.

Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of the **"Number of drivers who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations)"**. This information should be available from the personnel office and/or drug and alcohol program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FHWA regulation.

ALCOHOL TRAINING/EDUCATION requires information on the number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations during the current reporting period.

FHWA DRUG AND ALCOHOL TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2125-0543

A. MOTOR CARRIER EMPLOYER INFORMATION

Company _____ Year Covered by This Report: _____

Principal Place of Business for Safety:

Physical Address _____ Mailing Address _____

_____ _____

U.S. DOT Number _____ ICC Number _____

I, the undersigned, certify that the information provided on the attached Federal Highway Administration Drug and Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____
Signature Date of Signature

_____ _____
Title Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Highway Administration estimates that the average burden for this report form is 30 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Director, Office of Motor Carrier Standards (HCS-1); Federal Highway Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2125-0543); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF FHWA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FRA	FTA	RSPA	USCG
Drivers						

C. DRUG TESTING INFORMATION

NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE															
EMPLOYEE CATEGORY	PRE-EMPLOYMENT		RANDOM		POST-ACCIDENT/ NON-FATAL		POST-ACCIDENT/ FATAL		REASONABLE SUSPICION		RETURN TO DUTY		FOLLOW-UP	
	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG
Drivers														

Number of drivers returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule	

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 382

[FHWA Docket No. MC–93–3]

RIN 2125–AD11

Controlled Substances and Alcohol Use and Testing; Foreign-Based Motor Carriers and Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is proposing to extend the applicability of rules regarding controlled substance and alcohol use and testing to include foreign-based drivers of motor carriers operating in the United States. The goal of alcohol and controlled substances testing is to detect and deter misuse of alcohol and controlled substances by drivers of commercial motor vehicles, thereby enhancing U.S. highway safety by reducing accidents.

DATES: Written, signed comments must be received on or before April 18, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–93–3, room 4232, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal legal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding program issues: Mr. David Miller, Office of Motor Carrier Standards, (202) 366–2981. For information regarding legal issues: Mr. David Sett, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1988, the FHWA, along with certain other agencies within the Department of Transportation (the Department), adopted regulations requiring pre-employment/use, periodic, post-accident, reasonable cause and random drug testing of commercial motor vehicle drivers. The FHWA rule applies to all covered drivers while operating in the United States, regardless of whether they are based in a foreign country or the United States. The rule provided, however, that it would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rule as originally published further provided that in any event it would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rules raises questions of compatibility with that country's laws or policies. See 53 FR 47134, codified at 49 CFR 391.81 *et seq.*

The FHWA has delayed the effective date of drug testing requirements for foreign-based employees of foreign-based motor carriers on four occasions. See 54 FR 39546, September 27, 1989; 54 FR 53294, December 27, 1989; 56 FR 18994, April 24, 1991; 57 FR 31277, July 14, 1992. The last of these established January 2, 1995, as the date for compliance.

Meanwhile, on October 28, 1991, the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act) was enacted. 49 U.S.C. 2717. The Omnibus Act requires the Secretary of Transportation to issue regulations requiring drug and alcohol testing of commercial motor vehicle drivers. Proposed rules implementing such testing were published on December 15, 1992. See 57 FR 59516 for alcohol and 57 FR 59567 for drugs. These new rules would replace the current drug testing rule in 49 CFR part 391 and would institute alcohol testing. The final rule implementing the Omnibus Act is being published elsewhere in today's **Federal Register.**

The Omnibus Act applies to foreign-based motor carriers and drivers on its face, with the proviso that the new rules be "consistent with the international obligations of the United States, and * * * into consideration any applicable laws and regulations of foreign countries." 49 U.S.C. 2717(e)(3). Thus, foreign-based drivers are required to be covered by the statute, but the Secretary is granted the authority to deem the requirement satisfied by the testing laws of foreign nations.

On December 15, 1992, the FHWA published an advance notice of proposed rulemaking (ANPRM) to obtain specific information from interested parties. Now, based upon comments received, the FHWA seeks comments on this NPRM.

II. Comments

There were fifteen comments to the docket. All specific references to a foreign nation were to Canada. Two commenters noted they had no knowledge of the drug and alcohol testing laws or practices of Mexico. No other nations were mentioned in the comments as being a base from which drivers or motor carriers operate in the United States.

A. Applicability

Of the fifteen comments, nine expressed support for extending coverage of testing and misuse regulations to foreign-based drivers. Two commenters were opposed to extension. Another commenter, the Owner-Operator Independent Drivers Association (OOIDA), opposed all testing of drivers, except upon a probable cause determination of a law enforcement official. The OOIDA stated, however, that if United States-based drivers are tested, then foreign drivers should be tested to the same extent. Finally, the Canadian Embassy suggested that unilateral implementation of testing of Canadian drivers should be avoided in favor of continuing bilateral negotiations aimed at mutual recognition of existing United States regulations and Canadian regulations under development.

The most common rationale offered in support of coverage was fairness. Several commenters pointed to the competitive advantage enjoyed by foreign motor carriers which need not incur the substantial cost of testing. Comments in support also focused on the safety benefit to be derived from extended testing.

The commenters opposed to coverage provided a variety of reasons for excluding foreign-based drivers. The Canadian Owner-Operator Drivers Association (COODA) stated it was discriminatory to require testing of Canadian drivers because Canada has no laws authorizing such testing. The International Brotherhood of Teamsters argued that requiring testing of Canadian drivers was a violation of Canadian sovereignty, and unnecessary due to the absence of a demonstrated substance abuse problem in the industry. The Canadian Embassy referred to principles of comity, as embodied in the bilateral negotiations, and the difficulty of enforcing a unilateral prescription. The embassy noted that rules requiring pre-employment, reasonable cause, follow-up, and post-accident testing of commercial vehicle operators for controlled substances and alcohol are currently under development in Canada.

FHWA Response. The FHWA disagrees with the notion that requiring foreign-based drivers to be drug and alcohol tested as a condition of operating in the United States is a violation of the sovereignty of Canada, or any other nation. Foreign drivers only need be tested insofar as they operate in the United States. In no way is it being suggested that transportation occurring solely outside the borders of the United States, or that part of a cross border movement taking place on foreign soil, be subject to drug testing rules. Moreover, compliance with the testing rules may be entirely accomplished within the borders of the United States, foreclosing any concerns of conflict with laws of other nations which might prohibit, for instance, certain activities such as random testing.

Drug and alcohol testing is merely one of the many Federal requirements with which foreign, and domestic, drivers and motor carriers are obliged to comply while operating in the United States. That another sovereignty does not place such requirements on motor carriers and drivers is immaterial. There are, after all, motor carrier safety standards in Canada and Mexico which do not exist in this country or are inconsistent with United States standards, but nevertheless apply to United States carriers operating in those countries. In other words, United States national standards might be different from those in other countries, but they are applied evenly across the board to all carriers and drivers operating in the United States. Because of this equality of national treatment, there is no discrimination against foreign carriers or drivers. Moreover, as a number of commenters stated, it may well be discriminatory against domestic carriers not to require testing of foreign operators.

Though there are no international legal obstacles to application of the rules to foreign-based drivers, the FHWA recognizes the efficacy of applying the principles of "comity" (recognition of another nation's laws and judicial decisions) expressed by the Canadian Embassy. As the embassy stated, the Department and its Canadian counterpart have been discussing this issue and the need for common standards since publication of the original drug testing rule. The discussions can further be viewed in the context of wider ranging trilateral, structured negotiations between Canada, Mexico, and the United States aimed at achieving greater harmonization of the national motor carrier safety standards of the three nations. These negotiations resulted, for example, in a Memoranda of Understanding in which the United States agreed to recognize certain commercial driver's licenses issued in Mexico and Canada. Though negotiations have produced no similar "international obligations" regarding drug and alcohol testing, it would be prudent to structure foreign-based applicability in such a way as to be consistent with the negotiations, allow rule development in other countries to proceed, and explore opportunities for reciprocal agreements.

B. Compliance

In addition to raising the threshold applicability issue, the ANPRM posed a number of questions on the mechanics of compliance. In general, the comments identified no serious difficulties in applying the rules to foreign-based carriers. Several implementation strategies were offered.

Most commenters believed the rule could and should be administered in Canada, rather than requiring compliance activities to be performed solely in the United States. For example, the COODA recommended using Canadian doctors as Medical Review Officers and arranging for certification of Canadian laboratories. Imperial Oil Limited noted that two Canadian laboratories are certified by the U.S. Department of Health and Human Services and that a similar Canadian system of certification could be developed. While not disagreeing with allowing such activities to be performed in foreign nations, National MRO, Inc. stated that it was possible that all testing services, including collection, laboratory analysis, medical review, and substance abuse counseling could be done in the United States, and estimated an increase in cost of up to 10 percent for additional communications services.

The American Trucking Associations, Inc. suggested that foreign-based drivers be required to join and participate in a United States-based consortium within 30 days of entry into the United States, and that drivers be subject to review of participation at the border upon subsequent entry. Pinnacle Transport Services, Inc. suggested use of a compliance certification card which could be presented at the border upon entry. National Solid Waste Management Association stated that testing could be performed at ports of entry.

FHWA response. The FHWA agrees that the rule as written can be complied with by foreign-based carriers either totally in the United States or totally in foreign nations, or by some combination of both. The FHWA also believes that the various suggestions regarding compliance in Canada, certification of Canadian laboratories, and mutual recognition of reciprocal standards may offer benefits in efficiency, cost, and comity and should be explored further.

III. Proposal

The applicability section of the final controlled substances and alcohol testing rule is being amended to include coverage of foreign-based drivers of foreign-based carriers. To accomplish this, § 382.103(c)(4), which excludes foreign-based carriers, would be deleted. Based on the comments about the efficacy and progress of the negotiations aimed at achieving compatibility and reciprocity of testing standards, the implementation date will be delayed to provide maximum opportunity for the process to be completed successfully. However, if the process is not completed successfully, the requirements of 49 CFR parts 40 and 382 are proposed to go into effect on January 1, 1996. Accordingly, a section would be added, § 382.119, which would provide that foreign-based carriers will be required to implement the rule by January 1, 1996.

The FHWA requests comments on this proposal to require foreign-based employees of foreign-domiciled employers to be tested for the use of controlled substances and alcohol.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and significant within the meaning of Department of Transportation regulatory policies and procedures. The FHWA has prepared a regulatory evaluation for this proposal and the evaluation indicates that the rule will have a small positive impact of $8.5 million discounted over ten years. A copy of the regulatory evaluation is included in the docket for this NPRM.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the regulatory evaluation, the FHWA believes that the impact on small entities will be minimal. Furthermore, it should be noted the Omnibus Act mandates alcohol and controlled substances testing irrespective of the size of the entities.

For these reasons, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking has no federalism implications to warrant the preparation of a Federalism Assessment. This action would require foreign-domiciled employers to test their drivers for the use of controlled substances and alcohol. The action does not place any requirements on the States to comply with this rule.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements in part 382 of this rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 382

Alcohol testing, Controlled substances testing, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

Issued on: January 25, 1994.

Federico Pena,

Secretary of Transportation.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend 49 CFR, subtitle B, chapter III, part 382 as set forth below:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. app. 2701 *et seq.*; 49 U.S.C. 3102; 49 CFR 1.48.

2. In § 382.103, paragraph (c)(4) is removed and paragraph (c)(3) is revised to read as follows:

§ 382.103 Applicability.

* * * * *

(c) * * *

(3) Who have been granted a State option waiver from the requirements of part 383 of this subchapter.

3. Part 382, subpart A is amended by adding a new § 382.119 to read as follows:

§ 382.119 Starting date for controlled substances and alcohol testing programs of foreign-domiciled employers.

All foreign-domiciled employers conducting transportation operations, by motor vehicle, in the United States shall have implemented controlled substances and alcohol testing programs that conform to this part and part 40 of this title by January 1, 1996. Voluntary compliance may be effected at an earlier date.

[FR Doc. 94–2038 Filed 2–3–94; 1:00 pm]
BILLING CODE 4910–22–P

federal register

Tuesday
February 15, 1994

Part VIII

Department of Transportation

Federal Transit Administration

49 CFR Parts 653 and 654
Prevention of Alcohol and Prohibited Drug Misuse in Transit Operations; Rules

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 654

[Docket No 92–I]

RIN 2132–AA38

Prevention of Alcohol Misuse in Transit Operations

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: The Omnibus Transportation Employee Testing Act of 1991 directs the Federal Transit Administration to issue regulations on drug and alcohol testing for mass transit workers in safety-sensitive positions. This document accordingly sets forth the agency's alcohol misuse prevention program, which is intended to increase the safety of mass transit operations.

EFFECTIVE DATE: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: For program issues, Judy Meade, Office of Safety and Security, Federal Transit Administration, DOT, 400 Seventh St., SW., room 6432, Washington DC 20590. Telephone: 202–366–2896. For legal questions, Nancy Zaczek or Daniel Duff, Office of the Chief Counsel, Federal Transit Administration, DOT, 400 Seventh St., SW., room 9316, Washington DC 20590. Telephone: 202–366–4011 (voice); 202–366–2979 (TDD). Copies of the regulation are available in alternative formats upon request.

SUPPLEMENTARY INFORMATION: Because of the length of this preamble, the following outline of the rule's introductory material is provided.

I. How to read this rule.
II. Discussion
A. Background
B. The Omnibus Transportation Employee Testing Act of 1991
C. The Anti-Drug Rule
D. Study of alcohol use in the transit industry
E. Summary of the Final Rule
F. Overview of the Comments
III. Discussion of the Comments
A. Multi-modal jurisdiction
B. Accident
C. Safety-sensitive function
D. Covered employee/contractor
E. Pre-employment/pre-duty testing
F. Reasonable suspicion testing
G. Random testing/random testing rate
H. Post-accident testing
I. Return to duty/follow-up testing
J. Treatment
K. Training
L. Management Information System (MIS) reporting requirement
M. Implementation date
N. Combined drug and alcohol rules
P. Indian Tribal Governments
Q. Waivers
III. Section-by-Section Analysis
IV. Americans with Disabilities Act of 1990
V. Economic Analysis
VI. Regulatory Process Matters

I. How To Read This Rule

This rule has three components: Part 654, "Prevention of Alcohol Misuse in Transit Operations"; the common preamble by the Office of the Secretary (OST), "Limitation on Alcohol Use By Transportation Workers" published elsewhere in today's **Federal Register**; and Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing programs." This document is part 654, the Federal Transit Administration's (FTA) alcohol testing regulations for recipients of certain kinds of Federal funding. This preamble to part 654 briefly explains those issues unique to the transit industry and is followed by the text of the substantive regulation. The common preamble, on the other hand, discusses the issues and comments common to all five DOT agencies issuing final alcohol rules today. Finally, the testing procedures for administering alcohol and drug tests are set forth in part 40 and the issues concerning it are discussed in its preamble.

II. Discussion

A. Background

On December 15, 1992, the Federal Transit Administration (FTA) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** at 57 FR 59646, entitled "Prevention of Alcohol Misuse in Transit Operations." The NPRM invited comment from the public on the proposed rule, which would require certain recipients of Federal transit funding to have a comprehensive alcohol misuse prevention program. FTA provided a 120-day comment period and received over 125 comments on the regulation proposed in the NPRM.

In addition to receiving written comments on the NPRM, in 1993 FTA held three public hearings on the rule: on February 25–26, in Washington DC; on March 1–2, in Chicago, Illinois; and on March 4–5, in San Francisco, California. Each hearing was recorded by a court reporter; the transcript of each hearing and any statements or other material submitted to the hearing officer during the hearings are contained in the public docket to this rule and were considered in developing this final rule.

B. The Omnibus Transportation Employee Testing Act of 1991

The Omnibus Transportation Employee Testing Act of 1991 (the Act) (Title V, Pub. L. 102–143, October 28, 1991) mandates some operating administrations within the Department of Transportation, including the FTA, to issue regulations on the misuse of alcohol by safety-sensitive employees. While there is a complete discussion of the various provisions of the Act in the Department-wide preamble found elsewhere in today's issue of the **Federal Register**, the following discussion highlights provisions of the Act concerning the FTA.

The Federal Transit Administration must issue regulations requiring recipients of funds under section 3, 9, or 18 of the Federal Transit Act, as amended (FT Act), or section 103(e)(4) of title 23 of the United States Code to test safety-sensitive employees for the use of alcohol in violation of law or Federal regulation. Because certain recipients of FTA funds are regulated by the Federal Railroad Administration (FRA) or the Federal Highway Administration (FHWA), the Act permits such recipients to be subject to the alcohol misuse regulations of those agencies.

Compliance with FTA's rule is a condition of the receipt of Federal transit funding. The Act authorizes FTA to withhold that funding if a recipient is not in compliance with FTA's rule or, as appropriate, the alcohol misuse rules of FRA or FHWA . Specifically, the Act authorizes FTA to withhold Federal funding under section 3, 9, or 18 of the FT Act, or section 103(e)(4) of title 23 of the U.S. Code.

The Act directs the FTA to require four kinds of alcohol testing: pre-employment, reasonable suspicion, random, and post accident, and permits FTA to require periodic alcohol testing. The Act further directs FTA to require a post-accident test when there has been a loss of human life.

The Act authorizes the testing only of employees who perform safety-sensitive functions, but does not define what activities constitute a safety-sensitive function, specifically authorizing the agency to make that determination.

The Act directs FTA to require its recipients to test safety-sensitive employees for the use of alcohol in violation of Federal law or regulation (alcohol misuse) and in so doing to safeguard the privacy of safety-sensitive employees to the maximum extent practicable. It also directs that all tests which indicate the misuse of alcohol be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol.

If a safety-sensitive employee is found to have used alcohol in violation of Federal law or regulation, the Act directs FTA to provide that person with an opportunity for evaluation and treatment. Also, the Act permits FTA, as appropriate, to permit the disqualification or dismissal of any safety-sensitive employee who has used alcohol in violation of Federal law or regulation.

In providing this regulatory authority, the Act authorizes the FTA to preempt State or local laws, rules, regulations, ordinances, standards, or orders inconsistent with this rule, except for certain provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or property damage.

C. The Anti-drug Rule

The Federal Transit Administration also is publishing its final anti-drug program rule elsewhere in today's issue of the **Federal Register**; the two rules will be implemented on the same dates.

D. Study of Alcohol Use in the Transit Industry.

In 1991, FTA's Office of Safety and Security conducted a study to determine the extent of drug and alcohol use in the transit industry. The study's findings analyze the results of two surveys designed to gather information on substance abuse policies and programs as well as drug and alcohol use patterns in the transit industry. Of the two surveys, one was completed by transit system managers and the other by safety-sensitive transit employees. (See "Substance Abuse in the Transit Industry", Rept. No. DC–90–7021; November, 1991.)

The agency survey sought information on substance abuse program policies and procedures, test results indicating drug or alcohol use during calendar year 1990, disciplinary procedures, employee training, and substance related accident data. The survey was mailed to four hundred transit systems. Three hundred and six systems comprise the agency data base.

The employee survey was given to 1,975 safety-sensitive employees at nine randomly selected transit systems separated into three groups based on annual ridership. The employee questionnaire focused solely on personal use of drugs and alcohol; to a large extent the questions were standardized to facilitate comparison with a National Institute on Drug Abuse (NIDA) Household Survey.

The study was designed to guarantee respondent confidentiality for both the agency and employee surveys. Since both surveys were voluntary, no data were collected from any system or employee who did not consent to participate.

The following are some key findings from the surveys about alcohol use:

- Of the 306 systems in the data base, 78 percent conduct some type of drug testing and 58 percent conduct alcohol testing. When asked which substance was most prevalently abused by the workforce, 75 percent of the agencies identified alcohol.
- The personal use data provided in the 1988 and 1990 NIDA household surveys provide a benchmark for comparisons of the transit industry results with those of the general population. Those results indicate that self-reported alcohol use by transit employees was only slightly lower than reported use by the general population.
- About six percent of the safety-sensitive employees reported using alcohol within five hours before reporting to duty or during duty hours.
- Most of these duty-related drinkers were also high-volume drinkers of six to ten or more drinks each occasion.
- The positive alcohol rate for vehicle and equipment maintenance personnel is 3.7 percent, twice that for vehicle operators. Dispatchers also have a positive alcohol rate twice that of vehicle operators.

Based on the study's findings, the statutorily mandated testing for substance abuse is timely and well-founded. This rulemaking should aid in the control of alcohol misuse in the transit industry.

E. Summary of the Final Rule

This rule applies to recipients of funds under section 3, 9, or 18 of the FT Act, or section 103(e)(4) of title 23 of the United States Code. It requires each employer to establish and conduct an alcohol misuse prevention program in which safety-sensitive employees are tested for the misuse of alcohol and supervisors are trained to recognize the signs and symptoms of alcohol misuse.

The rule requires the use of testing procedures found in Part 40 of title 49 of the Code of Federal Regulations.

The rule establishes a prohibited alcohol concentration level of 0.04 but also establishes another alcohol concentration range, 0.02 or greater but less than 0.04, with special ramifications attached to it.

The regulation specifies that employers may not allow safety-sensitive employees to consume alcohol under certain circumstances: (1) Four hours before performing a safety-sensitive function; (2) while performing a safety-sensitive function; (3) after a fatal accident unless the employee has been tested, or eight hours have elapsed, whichever occurs first; or (4) after a nonfatal accident unless the employee's involvement can be completely discounted as a contributing factor to the accident, the employee has been tested, or eight hours has elapsed. The rule requires testing in the following situations:

1. Pre-employment (including transfer to a safety-sensitive position within the organization);
2. Reasonable suspicion;
3. Random;
4. Post-accident; and
5. Return to duty/follow-up.

The rule requires breath testing for all tests with an evidential breath testing device (EBT), which is a device listed on the National Highway Traffic Safety Administration's (NHTSA) Conforming Product List (CPL).

The rule requires both a screening and a confirmation test. An employer may take action based only on the results of the confirmation test.

As noted above, the rule establishes a prohibited alcohol concentration level of 0.04. If a sample from an employee on a confirmation alcohol test measures 0.04 or greater, the covered employee must be removed from his or her safety-sensitive position, be told about educational and treatment programs available, and be evaluated by a substance abuse professional to determine whether the employee has an alcohol problem. The rule does not address the issue of who should pay for the employee's treatment, which is a local issue.

If, however, the sample tests at 0.02 or greater but less than 0.04, the covered employee must be removed from his safety-sensitive position. The employer may, after some period of time, retest the employee to ensure that his alcohol concentration level is less than 0.02 and then permit him to resume his safety-sensitive position. If the employer does not retest the employee, the employer must remove him from his safety-sensitive position for at least eight hours. If an employer elects to remove the employee for eight hours, the employer is not required subsequently to administer an alcohol test before the employee resumes performing a safety-sensitive function unless the employee exhibits signs of alcohol misuse when he returns to work.

The rule applies to any entity that receives certain Federal funding from the FTA. Such an entity, called a recipient, must certify to the FTA that it will carry out the requirements of this part. Not all such recipients provide

mass transit services directly, relying instead upon other public or private entities to provide such services in whole or in part. In these cases, the direct recipient of FTA funds is legally responsible to the FTA for assuring that any entity operating on its behalf is in compliance with the alcohol testing rule.

Compliance with the rule is a condition of Federal assistance. Failure of a recipient to comply with the rule—either in its own operations or in those of an entity operating on its behalf—will result in the suspension of Federal transit funding to the recipient.

Because, as noted above, a recipient may not always directly carry out mass transit services, the rule uses "operator" or "employer" to describe those who actually may be providing transit service and therefore must comply with the alcohol testing program, but under the rule it is always the direct recipient of FTA funds that legally is responsible to FTA for complying with the rule.

F. Overview of the Comments

The FTA received 126 comments in response to the NPRM. FTA considered all comments filed in a timely manner as well as all statements and material presented at the public hearings on the rule. The breakdown among commenter categories is as follows:

Transit operators (public and private)	45
Cities and counties	8
State DOTs	22
Labor unions	6
Trade associations	7
Individual citizens	2
Nonprofit organizations/special transit providers	16
State governments	4
Public Utility	1
Member of Congress	1
Private business	1
Others	6

Many commenters addressed issues common to all of the DOT final alcohol rules published today, including what alcohol concentration level should be prohibited; how alcohol should be defined; or what conduct should constitute a refusal to submit to a test. All such general issues are addressed in the common preamble published elsewhere in today's **Federal Register**. Other commenters addressed issues unique to the transit industry, such as whether volunteer drivers should be subject to the rule, the applicability of the regulation to providers of transportation paid with publicly subsidized vouchers or scrip (user-side subsidies), or whether the rule applies to Indian tribal governments or to section 16(b)(2) recipients. All of the major FTA issues addressed by the commenters are discussed in Section III below.

III. Discussion of the Comments

A. Multi-modal Jurisdiction

Because many FTA recipients operate a variety of different mass transit services—such as bus, rapid rail, commuter rail, or ferry boat services—they may be regulated by the FTA and by another DOT agency or agencies, such as the Federal Railroad Administration (FRA), the Federal Highway Administration (FHWA), or the United States Coast Guard (Coast Guard). In addition, the Act authorized FHWA, for the first time, to regulate intrastate Commercial Driver's License (CDL) holders, which include many transit employees. To limit the alcohol rules with which such recipients would have to comply, the NPRM discussed a proposal under which (1) FRA's alcohol misuse regulation would apply to FTA recipients that operate railroads, including the recipient's safety-sensitive employees; (2) FTA 's alcohol misuse program, not FHWA's, would apply to recipients who employ or use the services of safety-sensitive employees who hold a CDL, but the individual CDL holder otherwise would remain subject to FHWA's implementation of the Commercial Motor Vehicle Safety Act of 1986; and (3) both FTA's and Coast Guard's alcohol misuse programs would apply to recipients operating vessels, and the Coast Guard would continue to regulate the individual safety-sensitive employee (vessel crew member) by pursuing licensing actions or other punitive measures.

FTA received several comments concerning the multi-modal jurisdictional issue suggesting a rather significant change to the FTA's approach to this rulemaking. Several commenters suggested that DOT should issue one regulation covering all entities regulated by any DOT agency. In contrast, other commenters suggested that FTA and FHWA should issue a joint regulation or issue two separate regulations using identical language.

FTA Response. FTA is sympathetic to the concerns of recipients regulated by more than one DOT agency alcohol testing rule, some of whom proposed a single regulation. As a practical matter, however, an agency-wide DOT alcohol rule would be difficult to implement because of the different characteristics of the various communities each agency regulates. Nevertheless, FTA addresses the multi-jurisdictional issue by clarifying the jurisdiction of FTA, FRA, FHWA, and Coast Guard over transit entities. In this regard, we have adopted the proposal in the NPRM discussed above.

B. Accident

The vast majority of comments concerning this definition focused on incidents involving only property damage; specifically, how the seriousness of these incidents should be measured, thus justifying the administration of an alcohol test. In the NPRM we had proposed a dollar measurement, whereby an accident was any incident resulting in at least $1,000 in total property damage.

Most commenters addressed the dollar amount proposed in the NPRM and stated that $1,000 was too low a threshold. Some of these commenters proposed their own method of calculating a dollar threshold such as a measurement based on a vehicle's gross vehicle weight—the greater the weight the higher the property damage threshold.

Other commenters objected to the use of a dollar threshold to measure the seriousness of incidents involving only damage to property. These commenters urged us to adopt an objective measure of property damage such as FHWA's definition of accident. FHWA defines an accident involving only property damage as an incident that so disables the vehicle that it must be towed away from the scene.

Another commenter objected to the use of dollar amounts and requested that we adopt a reasonable cause standard.

Other commenters addressed the overall definition of accident. In the NPRM we had limited the definition to an incident involving a revenue service vehicle, and several commenters objected to this limitation, proposing instead that we include any incident involving a nonrevenue service vehicle as well.

FTA Response. FTA has changed the definition of "accident" in such a way that it is broadened in some respects, and narrowed in others. In particular, FTA has broadened the definition in the final rule to include occurrences involving nonrevenue service vehicles operated by a holder of a CDL. We recognize that this decision falls short of the recommendation proposed by some commenters favoring the inclusion of all occurrences involving nonrevenue service vehicles, but it is based on another consideration, avoiding overlapping jurisdictions of FTA and FHWA. Ordinarily, FHWA would regulate CDL holders as well as their employers. This new coverage in our final rule is consistent with the agreement between FTA and FHWA that FTA's alcohol misuse program applies to the transit employers of CDL holders.

FTA has further modified the proposed definition of "accident" to distinguish the situations of different kinds of mass transit vehicles. Many mass transit vehicles, such as buses and vans, are passenger-carrying motor vehicles. FTA believes that it is sensible to use a definition of "accident" that is consistent with FHWA's for such vehicles. Therefore, we are adopting a provision paralleling FHWA's definition of "accident" (in 49 CFR 390.5). The definition states that an "accident" occurs when a vehicle (whether a mass transit vehicle or another vehicle, such as a private automobile) suffers disabling damage and is towed away from the scene of the "accident." This provision eliminates the subjectivity inherent in basing a definition on estimates of property damage.

For other vehicles—light or rapid rail cars, ferry boats, trolley cars and buses, etc.—we also believe it is best to eliminate a property damage-based standard. Instead, the final rule provides that if the mass transit vehicle is removed from revenue service as the result of the occurrence, an "accident" is deemed to take place. FTA believes that the operating practices of employers typically result in at least the temporary removal from revenue service of vehicles that have been involved in all but the most minor of mishaps.

Of course, any occurrence in which someone is killed, or injured sufficiently to require medical treatment away from the accident scene, is an "accident" for purposes of this rule, regardless of the type of transit vehicle involved.

We have further narrowed the definition of accident by deleting the reference to reportable accidents. In the NPRM we proposed that any occurrence required to be reported to FRA, FHWA, or the Coast Guard would constitute an accident, but the final rule uses only the criteria discussed above.

C. Safety-sensitive Function

Most commenters addressed the definition of "safety-sensitive" function, one of the most important definitions in the rule. Because the proposed definition had a list of functional categories, most commenters objected either to the inclusion or exclusion of a particular category. Some commenters, however, merely sought clarification of the categories in the NPRM.

Including those employees who "maintain a revenue service vehicle" in the definition particularly concerned several commenters. While most commenters understood that this category included mechanics, some thought that it covered workers who clean rather than repair buses, rail cars, and other mass transit facilities. The remaining commenters made specific recommendations concerning mechanics, some arguing that we should exclude all mechanics, with others stating that we should exclude only those working under contract for section 18 rural operators. Yet others suggested that we should include only those mechanics working for large transit operators.

Commenters objected to only one other safety-sensitive category, "controlling the movement of revenue service vehicles," the category which includes dispatchers. These commenters contend that dispatchers do not perform a safety-sensitive function.

Although we did not include any categories involving the construction, design, or manufacture of revenue service vehicles or other mass transit equipment or facilities, several commenters suggested that we specifically exclude them from the definition. Without this specific exclusion they believe there may be some instances in which such workers might be considered to be performing a safety-sensitive function.

Other commenters recommended that we add other employee categories to the definition, including police and other security personnel, and mechanics who repair nonrevenue service vehicles.

Finally, some commenters sought clarification of the definition: whether it included volunteers and CDLs holders, and on the meaning of "directly supervising an employee who is performing a safety-sensitive function."

FTA Response. We have made several changes to the definition of "safety-sensitive employee." Before describing those changes, however, we first explain why we proposed a definition based on function rather than titles. Because each transit system uses its own job classification categories, we wanted to avoid specifying particular job titles. Instead, we concluded that four job functions were critical to safety, and in the NPRM identified operating, maintaining, and controlling the movement of vehicles as those functions critical to the safety of the traveling public, and added a fourth category, first-line supervisors of anyone operating, maintaining, or controlling the movement of the vehicle. The final rule adopts these categories, with some changes.

Now a discussion of the changes made. Most notably, we have created two new categories of "safety-sensitive functions": The carrying of a firearm for security purposes, and the operation of a nonrevenue service vehicle by a CDL holder. We include firearm-bearing police and security personnel because of the sensitivity of their position and the danger to the public should they be under the influence of alcohol.

As discussed above, FHWA regulates CDL holders, both interstate and intrastate, and their employers. FTA's relationship is with its recipients, many of whom employ CDL holders. To avoid a jurisdictional conflict, FTA and FHWA have agreed that FTA's alcohol misuse rule will apply to transit entities that employ or use the services of CDL holders, regardless of the kind of vehicle they operate.

We have also reduced the scope of the definition somewhat. While we proposed in the NPRM to include first-line supervisors of safety-sensitive employees, the final rule limits that category by covering only supervisors whose responsibilities include the performance of a safety-sensitive function. For instance, if a supervisor's job description requires her to drive a vehicle, she would be covered, but if it did not, she would not.

Further, in response to comments, we have excluded from the scope of the rule contract mechanics for any entity receiving section 18 funds.

Regarding the recommendation specifically to exclude construction, design, and manufacturing personnel, we believe it is unnecessary to do so because the list of categories in the definition is exclusive. Any functional category—such as construction or design or manufacturing—not in the definition is not subject to the rule.

Finally, some clarification on the issue of safety-sensitive employees. Volunteers are covered by the rule if they perform any safety-sensitive function. Coverage under the rule should not be based on whether an individual holds a paying position, but on whether that individual is in a position to affect the safety of the transit-riding public. The final rule definition of covered employee thus specifically includes volunteers.

Another ambiguity mentioned by several commenters concerns the maintenance category, which several commenters believed would include workers who clean rather than repair transit equipment. We do not mean to cover such workers and emphasize that only mechanics who repair vehicles or who perform routine maintenance are the types of maintenance workers covered by the rule.

D. Covered Employee/Contractor

In the NPRM the definition of covered employee included three general categories of safety-sensitive employees—those directly employed by an employer, those employed by a contractor, and applicants for a safety-sensitive position. Most comments about this definition pertained to the coverage of contractors in the NPRM which included any person or organization providing services or performing work consistent with a specific understanding or arrangement, which could be a written contract or an informal arrangement reflecting an ongoing relationship between the parties.

Many commenters objected to the inclusion of contractors within the scope of the rule, believing that employers should not be accountable for a contractor's compliance with the rule because employers have little or no control over contractors or their employees.

While other commenters did not specifically object to the inclusion of contractors, they did object to the scope of the definition of contractor and recommended that it be defined to include only those who perform work or provide service under a formal written agreement.

Other commenters sought to exclude contractors in rural areas contending that many simply would refuse to do business with the recipient rather than submit to an alcohol testing program. The remaining commenters requested that we exclude only contract mechanics from the definition.

FTA Response. In response to comments, we have made a number of changes to the wording of this safety-sensitive function, although the basic concepts in the NPRM remain unchanged.

The final rule includes direct employees, contractors and their employees, and applicants under the definition, but reflects the following changes. First, we specifically include volunteers in the definition because, as noted above, we define "safety-sensitive" functionally and look only to the function that a person performs, not whether they receive pay for their work.

Second, while many commenters objected to including contractors who perform safety-sensitive functions, we have for the most part continued to include them in light of legislative history on this issue. The following was said during the debate on the bill:

> Drug and alcohol-testing requirements must not be circumvented through contracting out of work.
>
> Safety-sensitive employees of recipients of the Federal transit grant money identified in the bill, and these safety-sensitive employees working for contractors of such recipients must be covered exactly to the same extent and in the same fashion. I know that I speak for all conferees when I say that we will not tolerate a situation where employees performing substantially the same safety-sensitive function are covered or not covered depending on whether they work directly for a public authority or an outside contractor. 137 Cong Rec. S14766 (daily ed. Oct. 16, 1991.)(Statement of Sen. D'Amato).

On the other hand, we are sympathetic to the persuasive arguments of rural operators on this issue, and specifically exclude from coverage under the rule contract mechanics who perform work or provide services for section 18 rural recipients. We believe that the potential cost and hardship of including such contractors outweighs any benefits including them might bring, since so many rural operators believe that they simply would be unable to get any outside servicing if providers of that service were subject to this rule.

E. Pre-employment/Pre-duty Testing

Although the NPRM included the pre-employment/pre-duty tests within one provision, in fact they apply to different types of workers-applicants in one instance, and transferees from a nonsafety-sensitive position to a safety-sensitive position in the other. Nevertheless, both applicants and transferees must take an alcohol test indicating an alcohol concentration level less than 0.04 before they can perform a safety-sensitive function for the first time. Hence, the NPRM would allow an employer to hire someone who has taken an alcohol test with a result of 0.04 or greater so long as that individual is retested and has a result less than 0.04 before he or she performs a safety-sensitive function. Under the notice provision, the NPRM required applicants and transferees to be notified that they must submit to an alcohol test. Moreover, a pre-employment alcohol test could be waived by the employer, which distinguishes the alcohol NPRM from the anti-drug NPRM.

Commenters focused on these issues. Specifically, commenters requested that we add a notification requirement to the pre-employment/pre-duty testing provision of the final rule. On the other issue, commenters stated that employers should not be able to accept the results of an alcohol test administered under the requirements of another DOT agency.

FTA Response. In the NPRM we did require an employer to notify an applicant that he or she would be required to submit to an alcohol test. We have made no changes to this requirement in the final rule.

We have, however, changed the language in the rule which ensures that the employer is aware that it has the discretion to waive a pre-employment alcohol test in one limited circumstance when the employee has been tested within the previous six months under the rules of another DOT agency. This is not a change from the NPRM, rather it is a clarification.

We have made another change in response to commenters who were confused by the term pre-duty testing and assumed that it meant that an employee must be tested every time they were about to perform a safety-sensitive function. This is not the case. We meant to apply that provision to transferees from a nonsafety-sensitive position to a safety-sensitive position. To clarify our intent we have deleted the phrase "pre-duty" (in the context of pre-employment alcohol testing) from the final rule.

F. Reasonable Suspicion Testing

Commenters responding to this general area raised numerous issues. Before discussing those issues, however, we first briefly summarize the reasonable suspicion testing provision as it appeared in the NPRM.

Reasonable suspicion testing is specifically required by the Act, and the NPRM proposed authorizing an employer to conduct a test when it believes the employee is exhibiting certain characteristics of alcohol misuse. The NPRM never identifies or defines those characteristics, but authorizes an employer to require a reasonable suspicion alcohol test on the basis of specific, contemporaneous, articulable observations concerning the appearance and behavior of the covered employee, which characterize alcohol misuse.

Moreover, those observations must be made by a supervisor trained in detecting the symptoms of alcohol misuse. The NPRM specifically required that a supervisor receive one hour of training, which must include information about the manifestations and behavioral characteristics indicating alcohol misuse.

Commenters took a number of positions on this issue. Some wanted only one supervisor to make the reasonable suspicion determination, others wanted two. Some believed that the test could be based on the observations of a third party, such as a transit passenger.

Commenters also took different positions on the amount of time a supervisor should be trained, although most thought that one hour was not enough time to adequately train a supervisor. Some commenters suggested four hours of training, others suggested four hours of combined alcohol and drug training, and yet another suggested five to ten hours of training with the additional requirement of a proficiency certification.

Many commenters suggested that the language of the reasonable suspicion provision be broadened to include other factors in the determination. For instance, some suggested that employers be allowed to review an employee's attendance records for absenteeism and tardiness. Others suggested that an employer be allowed to examine other records indicating whether the employee had any moving traffic violations, occupational injuries, or operating rule violations. And others suggested that an employer be able to look at the pattern of the employee's conduct both on and off the job.

Lastly, the commenters discussed the matter of whether there should be written documentation of a reasonable suspicion determination. The NPRM did not require written documentation, but stated that any document generated as a result of a reasonable suspicion determination must be maintained for a year. Several commenters recommended that a written determination be required, with one suggesting that a checklist also be required. One commenter recommended that a second supervisor concur in the written determination before a reasonable suspicion test could be conducted. Another commenter suggested that written documentation be required only if the employee tested at 0.02 or greater and subsequently was disciplined.

FTA Response. In the final rule we essentially have retained the reasonable suspicion provision from the NPRM, with only minor changes, because we believe it adequately balances the rights of employees against the rights of the traveling public. For instance, we believe that the observations must be made by a supervisor trained in detecting the symptoms of alcohol misuse rather than by some third party. (Of course a third party could alert a transit operator about a particular situation, which might trigger a supervisor to pay particular attention to the affected employee.)

We also believe that a determination made by a single supervisor trained in detecting the signs of alcohol misuse adequately protects the employee, and we were concerned about the cost of requiring two supervisors to make the determination.

Although many commenters recommended that supervisors receive more than one hour of training, we have not changed this requirement in the final rule, being sensitive to the costliness of such training. Individual employers of course are free to provide as much additional training beyond the required one hour as they like. Employers also are allowed to combine drug and alcohol training, provided the required time frames are satisfied.

The standard used to authorize a reasonable suspicion test remains unchanged in the final rule, which means that a supervisor may consider only short-term indicators of alcohol misuse. We stress that long-term indications of alcohol misuse such as absenteeism or tardiness or moving traffic violations cannot be used as the basis for conducting a reasonable suspicion alcohol test, which must only be based on contemporaneous and articulable observations. Of course, a supervisor may particularly be alert to the conduct and job performance of an employee based on the supervisor's long-term knowledge of the employee.

We do not require a supervisor to document an employee's behavior in writing. We do, however, provide that any documents generated by the determination must be maintained for one year. Again, the final rule does not require an employer to document each and every reasonable suspicion determination, although an employer would be prudent to do so.

G. Random Testing/Random Testing Rate

The random testing provision generated many comments, with most commenters proposing the adoption of a particular random testing rate or a particular method of determining a random testing rate. Other commenters were concerned about the frequency of random testing and how the test should be administered. Several commenters sought clarification of certain aspects of the provision.

Several different alternatives for determining the random testing rate were offered. Many commenters suggested a flat rate, ranging from 10 percent to 50 percent.

Others suggested a performance-based rate, that is, a rate determined by the results of random testing. Under such a scheme, if the number of results of 0.04 or greater exceeds a specified rate (for example, 1 percent), then the employer would be required to test at a higher specified random rate (for example, 50 percent). If the number of positives is less than the specified rate, the employer would be required to test at a reduced random rate (for example, 25 percent). One commenter recommended that an employer could randomly test 20 percent of its employees if less than 3 percent, of its random tests were positive, but if the number of positives exceeded 3 percent, the employer would have to raise its testing rate.

Other variations were proposed. Several commenters suggested that we set a minimum random testing rate of 10 percent, but give an employer the discretion to test at a higher rate based on its own experience. Another commenter suggested that we require a random rate less than 50 percent and allow an employer to set its own rate for different classes of employees. Yet another commenter recommended that we set a rate anywhere from 10 percent to 50 percent but allow an employer to reduce its rate if it has programs, such as training and rehabilitation programs, in addition to those required by the final rule.

Another commenter recommended that random testing be phased in, 15 percent the first year, 20 percent the second year, and 25 percent thereafter, presumably to ease cost and administrative burdens. Another commenter, however, recommended that those who had never randomly tested employees should be required to test at a higher random rate than those who have had a program in effect. Lastly, one commenter believed that FTA should not set the rate at all, but the rate should be determined by an agreement between labor and management. Aside from the random testing rate issue, commenters also addressed how the test itself should be conducted. In this regard, several commenters were concerned about how truly random testing would be, and suggested that the testing itself should be conducted by an outside agency.

FTA Response. In determining the random alcohol testing rate, FTA has considered not only the comments on this issue but other factors as well. We therefore have established a random alcohol testing rate of 25 percent, the rate at which all DOT agencies issuing rules today are requiring. We recognize, however, that random alcohol testing does subject a large number of employees to testing and is costly. We have thus added a provision to the final rule allowing the random alcohol testing rate to drop to 10 percent annually if, based on the MIS reports, the violation rate for random alcohol testing in the transit industry is less than 0.5 percent for two consecutive years. If subsequently the violation random alcohol testing rate increases to greater than 0.5 percent for any one calendar

year, the random alcohol testing rate would go to 25 percent, and if it increases to greater than one percent, the random alcohol rate would be increased to 50 percent. Each year, FTA will announce the random alcohol testing rate in the **Federal Register**.

Moreover, the NPRM required random testing to be completely random, which means that it must be unannounced. It must also be unpredictable, which is the reason we proposed that the tests be spread reasonably throughout a 12-month period. We have retained both of these requirements in the final rule.

We do not require the test to be conducted by an outside agency. Although requiring a third party to conduct the random alcohol testing may afford an employee additional protection, we believe the final rule provides an employee with sufficient protection. Among other things, the rule requires an employer to use a scientifically valid method to randomly select employees from a pool in which each employee has an equal chance of being selected.

Lastly, although some commenters were confused about when we would require an employer to conduct random alcohol testing, we have retained the NPRM restrictions in the final rule. In the NPRM we proposed to restrict random testing to just before, during, or just after the employee performs a safety-sensitive function because alcohol is a legal substance, and an employee who is not performing or who will not be performing a safety-sensitive function within four hours may engage in a legal activity. Thus the alcohol rule strictly limits the period of time when an employee is subject to random testing. This is particularly important for supervisors who may rarely perform a safety-sensitive function.

H. Post-accident Testing

The comments on this provision concerned three basic questions: when should a test be performed following an accident, which employees should be tested, and who should conduct the testing.

In determining when a post-accident test should be required, the NPRM distinguished between fatal and nonfatal accidents. After an accident involving a fatality, the NPRM required the employer to test employees who were on duty and present in the vehicle at the time of the accident as well as mechanics involved in the vehicle's most recent maintenance. After an accident not involving a fatality had occurred, the employer was required to test certain employees unless their performance could be completely discounted as a contributing factor to the accident.

Instead of this dual standard in the NPRM, one commenter suggested that we adopt a reasonable cause standard for determining when a post-accident test should be performed, regardless of the seriousness of the accident.

Although other commenters did not specifically propose a reasonable cause standard, they did object to the scope of the fatal accident provision, in which all safety-sensitive employees on-duty and present in the vehicle at the time of the accident, as well as mechanics, must be tested.

Most of the comments on who should be tested stressed the difficulty of testing mechanics, especially when vehicle maintenance is contracted out. Some flatly stated that testing mechanics in rural areas was not practical, while others stated that requiring the testing of mechanics after an accident is unreasonable. While some commenters opposed the testing of any mechanics, others suggested that we include only certain mechanics. In this connection, one commenter suggested that we require the testing only of those mechanics who have maintained the affected vehicle within the two weeks before the accident occurred. Another commenter made the same recommendation but suggested that only those mechanics who maintained the vehicle two days before the accident be tested.

Although most comments concerned the testing of mechanics, one commenter also suggested that we require the testing of drivers only if they are contributorily negligent.

Commenters also stressed the difficulty of testing employees after an accident. They cited examples of employees leaving the scene of the accident, or police or hospital personnel refusing to allow the employee to be tested by the employer. These commenters contended that the rule should address these problems.

FTA Response. FTA in its final rule has developed a dual post-accident testing provision: after accidents involving a fatality, and after accidents involving bodily injury or property damage. The Act requires us to mandate an alcohol test whenever someone dies as a result of a mass transit accident, and we thus have expressly rejected the adoption of a probable cause standard in such cases. Simply put, if an accident involving a fatality has occurred, an alcohol test must be given within 8 hours to those safety-sensitive employees on-duty in the vehicle at the time of the accident.

Other employees' conduct may contribute to an accident, however. For example, if two trains are placed on the same track and collide, the performance of safety-sensitive duties by a vehicle controller could have contributed to the accident. If there are indications that brake failure was involved in a bus accident, and the vehicle's brake system was maintained a brief time before in the garage by an identifiable mechanic, the performance of that mechanic could have contributed to the accident. In situations of this kind, the rule directs the employer to test the other employee, but only if the employer determines, based on the best information available at the time, that the other employee's performance could have contributed to the accident. Implementing this provision rests substantially on the good judgment of the employer. For example, if the performance of the relevant work by a mechanic occurred long enough ago (e.g., more than eight hours before a test could be administered) that a meaningful test could not be administered, the employer would not be expected to administer the test. If the bus was recently in the shop only for an air conditioning repair, there would be no point in testing a mechanic after an accident in which brake failure may have been involved.

With respect to non-fatal accidents involving road surface vehicles (e.g., buses and vans), a covered employee on duty in the vehicle at the time of the accident would have to be tested if the employee had received a citation from a law enforcement officer. As in the case of fatal accidents, the employer would test other employees if the employer determined, based on the best information available at the time, that such an employee's performance could have contributed to the accident. Examples of such a test could include the situation of the mechanics mentioned above and a situation in which a bus driver was not cited by local law enforcement personnel but the employer, in its good judgment, determined that the driver's performance could have contributed to the accident.

With respect to other vehicles (e.g., rail vehicles), the employer would have to test covered employees on duty in the vehicle at the time of the accident, unless the employer determined, based on the best information available at the time, that an employee's performance could be completely discounted as a contributing factor in the accident. This is a different standard than in the case of road surface vehicles, because there is little likelihood of an on-the-spot law enforcement citation to the operator of vehicles like rail cars. As in the other post-accident testing situations, the employer could make a judgment to test other covered employees, if the employer concluded that their performance could have contributed to the accident.

After an accident has occurred, an employer—not police or hospital personnel—must test affected employees for the misuse of alcohol. The rule does not permit a waiver of the employer's obligation to test an employee after an accident, nor does it allow an employer to use the results of laboratory findings of an alcohol test administered by police, for law enforcement purposes, or hospital personnel for treatment of injury.

Under the final rule, however, an employee may be taken to a medical treatment facility immediately after an accident without being tested by the employer. An employee also may leave the scene of an accident, without being tested, so long as he remains readily available for testing, which means that the employer knows the whereabouts of the employee until he is tested and that the employee is available to be tested immediately after being notified by the employer and within 8 hours of the accident. Thus an employee may receive medical attention or respond to police questions or seek assistance for injured individuals.

I. Return to Duty/Follow-up Testing

The comments concerning these two kinds of testing focused primarily on the roles of the employer and the Substance Abuse Professional (SAP). The NPRM proposed authorizing the SAP to determine not only when an employee may return to duty after testing at 0.04 or greater, but also how many follow-up tests an employee should take and for what period of time.

Many commenters objected to the extent of authority given to the SAP under the NPRM. An employer, not the SAP, should determine if and when an employee may resume a safety-sensitive function after testing at 0.04 or greater these commenters stated. They also contended that an employer should control the follow-up testing requirements, such as the length of time an employee must submit to follow-up testing and the number of tests the employee must take annually.

Other commenters recommended that the final rule prescribe in detail the follow-up testing requirements, with several offering suggestions. One commenter recommended that the rule require 60 months of follow-up testing, with 12 tests required in the first year and 6 annually thereafter. Another commenter recommended 60 months of testing with a prescribed number of tests over the entire 60 month period; another a 36 month follow-up period with 6 tests required annually; and another a 24 month follow-up testing period with 3 tests required the first year. And, lastly, one commenter stated that the rule should not recommend a specific number of follow-up tests at all.

FTA Response. The final rule retains the authority of the SAP. In making this decision, we strove to balance the rights and privacy of the employee against the safety of the traveling public. Because of the extensive credentials required to be an SAP, we believe that they are most qualified to make the necessary decisions concerning the ability of an employee to return to his or her safety-sensitive position. In addition, because studies have shown that the relapse rate is highest in the first year of recovery, we mandate a minimum of 6 alcohol tests during that time. After that period, however, we believe that the SAP should determine when follow-up testing should end; in any event, it must end if 60 months have elapsed from the time of the employee's return to duty. We note that an employer may require additional follow-up testing under its own authority. It is important to emphasize, moreover, that during the 60-month period the employee remains separately subject to random testing as well.

J. Treatment

The NPRM proposed that any covered employee who tested at 0.04 or greater must be advised by his employer of the resources available to help him resolve problems associated with alcohol misuse and be evaluated by an SAP. The NPRM neither authorized nor prohibited an employer from disciplining or discharging an employee because he tested at 0.04 or greater; it simply stated that the employee who tests in that range must be removed from his safety-sensitive position.

Several commenters objected to our silence on this issue, and asked us to clarify the rule by specifically authorizing the employer to take whatever disciplinary action the employer deems necessary.

The remaining commenters addressed the issue of rehabilitation. One commenter suggested that we mandate rehabilitation and treatment. Another commenter recommended that the final rule require reinstatement in addition to rehabilitation. Yet another commenter stated that the final rule should not address the issue of rehabilitation, which should be decided by the employer and the union. Lastly, a commenter stated that an employer should not be required to refer an employee to an SAP when the employer's policy is to discharge any employee who tests at 0.04 or greater.

FTA Response. FTA has retained the language in the NPRM on this issue. We thus remain silent on whether an employer may dismiss or disqualify an employee who has tested at 0.04 or greater, an issue best decided at the local level.

Concerning rehabilitation, we believe that we have met the requirements of the Act, which state that the rule must provide for identification and opportunity for treatment of employees who are determined to have misused alcohol. In this regard, we require that an employee who tests at 0.04 or greater be evaluated to determine whether he needs assistance. Such an employee may return to his safety-sensitive position after he has properly completed a course of treatment as determined by an SAP, and has passed a return to duty alcohol test.

If an employee undergoes treatment, the rule does not address the issue of who should pay for it. We believe that this issue should be decided at the local level. Nor does the rule deal with the issue of recidivism, when an employee has repeatedly tested at 0.04 or greater and has repeatedly been referred to treatment. Again, we believe that issue should be decided at the local level. This rule requires the removal of a safety-sensitive employee from a safety position if the employee tests at 0.04 or greater, but does not address employment or disciplinary issues in connection with such action.

K. Training

The NPRM proposed that supervisors who make reasonable suspicion determinations receive 60 minutes of training on the physical, behavioral, and performance indicators of probable alcohol misuse, which would enable the supervisor to make an informed reasonable suspicion determination. In addition, the NPRM proposed that all safety-sensitive employees be provided educational materials about the effects of alcohol misuse on health, safety, and the work environment.

We received numerous comments on this issue, virtually all of them in favor of requiring training, at least for supervisors. For employees, most commenters were silent, although one favored requiring 60 minutes of training and another asked that we help develop a curriculum for a general educational program.

Because almost all of the commenters were in favor of training for supervisors,

many commenters proposed certain training specifications. Some commenters proposed a combined drug and alcohol training program; one commenter specifically recommended four hours of combined drug and alcohol training, while another made the same recommendation but added a one-hour yearly refresher course.

The remaining commenters did not specifically recommend that the drug and alcohol training be combined. Instead, one commenter suggested that supervisors be required to receive four hours of training and that the class size be limited to four individuals. Other commenters recommended a full day of training, one suggesting that supervisors should be certified after satisfactorily being trained. Lastly, several commenters stated that we should require interactive training.

FTA Response. FTA believes that training will greatly improve the efficacy of the alcohol misuse prevention program, and we agree with the commenters who favor a training requirement for supervisors. We note, however, that most of the comments addressed one of two areas, the amount of training required and the actual content of the program itself.

Although most commenters recommended that we increase the amount of training for supervisors who make reasonable suspicion determinations, we have not done so in the final rule. We believe that one hour of training is sufficient to train supervisors who may make reasonable suspicion determinations to recognize the signs and symptoms of alcohol misuse; moreover, an employer may, at its own discretion, choose to provide additional training. These requirements are one-time only; the final rule does not require annual or recurring training, although an employer certainly is not prohibited from providing any additional training. Moreover, we do allow employers to combine drug and alcohol training providing that the minimum time requirements are observed.

Nor does the final rule specify the content of the training programs, since an employer should develop a program to meet its own needs. We believe that it would be inappropriate for the rule to specify the content of this kind of training program. The employer best knows its workforce and the needs of its employees.

L. Management Information System (MIS) Reporting Requirement

The vast majority of comments on this issue concerned the State's role in record collection. Under the NPRM, we proposed to require States to collect and forward to FTA the annual reports prepared by their subrecipients. Because the State merely "passes through" the Federal grant funds to a subrecipient, most commenters believed that the State should not be responsible for ensuring the accuracy of the information collected, nor for submitting the reports to the FTA on time. In fact, one commenter suggested that only large employers should be required to keep and submit detailed information on test results.

Some States focused on the overlap between this NPRM and a rulemaking required under section 28 of the FT Act, which requires certain States to oversee the safety of certain kinds of fixed guideways. Some commenters explained that they would not be able effectively to oversee certain fixed guideway systems unless they were given access to the records generated under this rule.

Finally, some commenters asked that we provide States an extra 60 days from the annual February 15th reporting date.

FTA Response. In the final rule we have retained the requirement that a State collect and submit to FTA on behalf of its subrecipients the data required under this rule. This requirement is consistent with the fundamental legal relationship between FTA and the direct recipient of Federal funding, which in some instances is a State, in which case the State must collect and submit the annual report required under this rule and meet the same reporting deadline as other recipients. The due date of the annual report has been changed to March 15. A State must collect the reports prepared by its subrecipients and their contractors, as appropriate, and forward them to the FTA.

The final rule includes two different reporting forms, FTA Alcohol Testing Management Information System (MIS) Data Collection Form (Appendix B) and FTA Alcohol Testing Management Information System (MIS) "EZ" Data Collection Form (Appendix C). Appendix B must be used in reporting all alcohol test results of 0.02 or greater; Appendix C must be used by employers who have no test results of 0.02 or greater to report.

FTA intends to combine the drug and alcohol regulations' reporting forms within two to three years after implementation.

We appreciate those comments directing our attention to the potential overlap between this rule and the State Safety Oversight NPRM published in the **Federal Register** on December 9, 1993 at FR 64856. We have amended those provisions requiring access to certain facilities to also permit access by State oversight agency officials to facilitate their oversight role as proposed in the State Safety Oversight NPRM.

M. Implementation Date

The NPRM proposed to require compliance with this rule within one year of publication in the **Federal Register** for large employers and within two years for States and small employers. This provision contrasted with implementation periods proposed in the drug NPRM, which were six months for large employers and one year for States and small employers.

Several commenters strongly favored implementing both the drug and the alcohol rules simultaneously. Another commenter recommended that, for budgeting reasons, FTA key the implementation period to the fiscal year.

FTA Response. In the final rule, we have decided that large employers must implement their alcohol testing programs on January 1, 1995, while small employers will have until January 1, 1996. This is consistent with the implementation date of our related drug rule and will ensure that the MIS annual report data collection effort will coincide with the calendar year.

We provide small employers additional time to implement their rule because they may find it necessary to form consortia. Large employers in many instances already have experience in testing their employees for alcohol misuse.

We further note, in response to several inquiries, that the rule provides no authority for employers to begin its program before the implementation dates included in this rule.

N. Combined Drug and Alcohol Rules

Many commenters urged us to combine the drug and alcohol NPRMs into one final rule, or, in the alternative, to combine common aspects of both rules, such as the training and reporting requirements.

FTA Response. We have decided not to combine the drug and alcohol testing rules at this time because there are significant differences between them. For instance, the random rate for the two rules differ, 25 percent for alcohol and 50 percent for drugs. Also, the time period during which an employee may be subject to random testing differs in the two rules. The alcohol rule contains an entire subpart, Prohibitions, which specifies when an employee cannot use alcohol. In contrast, the drug rule contains no comparable subpart because prohibited drugs are controlled substances. On the other hand, we do allow an employer to combine certain aspects of the rules, most notably the training requirements. In addition, we encourage the employer to formulate and promulgate one policy statement concerning both drugs and alcohol.

O. Indian Tribal Governments

Several commenters have asked us to clarify the applicability of the rule to Indian tribal governments and have suggested that we preempt Indian tribal law. Because Indian tribal governments are not subject to State law or regulation, these commenters are concerned about the ability of a State section 18 recipient to require an Indian tribal government subrecipient to comply with this regulation.

FTA Response. As a general matter, statutes apply to Indian Nations or tribes unless (1) the law touches exclusive rights of self-goverance in purely intramural matters; (2) the application of the law would abrogate rights guaranteed by Indian treaties; or (3) there is proof by legislative history or some other means that Congress intended the law not to apply to Indians on their reservations, *Donovan* v. *Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1116 (9th Cir. 1985).

In this regard, there is no legislative history indicating congressional intent not to apply the Act to Indian tribes. We have no information, moreover, on the issues addressed in points one and two. In the absence of any such information, we conclude that the Act would preempt Indian tribal law but of course would consider any arguments to the contrary based on points one and two.

We stress that compliance with the rule is a condition of Federal funding, which means that an Indian tribal recipient or operator would have to comply with this rule if it wanted to receive the benefits of Federal transit assistance. On the other hand, should a particular Indian tribe object to drug or alcohol testing, it could simply choose not to receive Federal funding.

P. Waivers

Several commenters have asked us to waive the application of the rule to certain categories of employers. For instance, one commenter recommended that employers with less than 16 employees be excluded from complying with the rule. Another recommended that any section 18 recipient certifying that it has not had an alcohol or drug related accident in three years should be exempted from the rule.

FTA Response. Language in a report of the Senate Committee on Commerce, Science, and Transportation accompanying the Act addressed the issue of FTA granting waivers of the rule in whole or in part:

> The Committee is aware of concerns raised with regard to the difficulties some believe may be faced by small transit operations located in rural areas In complying with [FTA] drug and alcohol testing requirements. If, after notice and opportunity for comment, the Secretary determines that a waiver for certain operations from such requirements would not be contrary to the public interest and would not diminish the safe operation of rural transit conveyances, the committee would not object to a waiver, in whole or in part, of the application of regulations issued pursuant to this bill with regard to recipients of funds under section 18 of the [Federal Transit Act, as amended.]. S. Rep. No. 80, 102d Cong., 1st Sess. 36 (1991).

Notwithstanding this legislative history, the Act itself does not specifically authorize the FTA to "waive" particular requirements of the rule. Nonetheless, we believe we can implement the rule in such a way that it minimizes burdens on small operators.

In this regard, we have adopted several provisions to ease the rule's impact on small operators. Small operators, which includes section 18 rural providers and smaller recipients of section 9 formula funds—are provided additional time to comply with the rule. We have also exempted from the rule mechanics under contract to or with informal agreements with a section 18 employer. To reduce costs and administrative burdens we allow and encourage section 18 providers to join a consortium of operators to comply with the rule.

IV. Section-by-Section Analysis

Subpart A—General

A. Purpose. (§ 654.1)

This section explains that the purpose of the rule is to promote safety by requiring a recipient to establish and implement an alcohol testing program to detect the misuse of alcohol, by breath testing, and to deter the misuse of alcohol by educating and training safety-sensitive employees about the safety and health ramifications of alcohol misuse.

B. Applicability. (§ 654.3) zI11This section describes FTA's jurisdiction over recipients and covered employees and how it may overlap with that of other modal agencies; whether section 16(b)(2) recipients must comply with this rule; the effect of the rule on user-side subsidies; and the effect of the rule on those who may no longer receive FTA funding.

1. *FTA grant programs under sections 3, 9, and 18 and the Interstate Transfer Program.* Under the section 3 discretionary grant program, FTA funds three categories of capital projects: the construction of new rail projects; the improvement and maintenance of existing rail and other fixed guideway systems; and the rehabilitation of bus systems. Under sections 9 and 18, the formula grant programs, FTA funds both capital and operating assistance to specific categories of recipients that receive Federal funds under a statutory formula based on population, population density, and other factors. Generally, urbanized areas receive section 9 funding directly, while nonurbanized areas receive section 18 funding through the State.

FTA also provides funds under 23 U.S.C. section 103(e)(4), the interstate transfer program. Under this program, FTA provides funding to States and localities for capital transit projects in lieu of nonessential interstate highway projects. Hence, recipients of these types of FTA funding may be States, transit agencies, or other kinds of localities, but all such recipients are public entities.

2. *FTA jurisdiction.* FTA is a Federal agency that makes grants of Federal financial assistance under various statutory provisions. Under all of these provisions, the agency's relationship is with the direct receiver of Federal financial assistance, the recipient. Such a recipient of Federal funds must comply with a variety of Federal requirements, including this rule, and enters into a grant agreement with the FTA to that end. After accepting a grant from the FTA, a recipient is responsible for ensuring that it, or any entity that it uses to provide mass transportation services, will comply with all relevant Federal requirements.

While the Act requires us to issue this alcohol testing rule, it does not change the fundamental relationship between FTA and a direct recipient of Federal financial assistance.

That is, FTA does not directly regulate covered employees, which means that FTA has no authority directly to deal with a covered employee under any circumstances.

Rather, the Act authorizes FTA to require a recipient to implement an alcohol misuse prevention program, and it is the recipient that is responsible for assuring that covered employees comply with the rule. If a recipient fails to do so, FTA will withhold Federal funding.

3. *Multi-modal jurisdiction.* As discussed below, recipients may be regulated by another DOT modal agency such as the Federal Railroad Administration (FRA), which regulates railroads, the Federal Highway Administration (FHWA), which regulates holders of Commercial Driver's Licenses (CDL) and their employers, or the United States Coast Guard, which regulates certain vessels and mariners.

Both FRA and FHWA are authorized under the Act to establish an alcohol testing program for their respective regulated communities, which include some FTA recipients. Coast Guard has jurisdiction over mariners and vessels, including the authority to take action against a seaman based on alcohol intoxication.

Coast Guard's regulated community also includes some FTA recipients. Therefore, to clarify the jurisdiction between FTA and other DOT agencies, we have reached the following agreements with the relevant agencies.

a. *Federal Railroad Administration.* The FRA regulates railroads. A railroad is defined under the Federal Railroad Safety Act of 1970 as [a]ll forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

45 U.S.C. 431(e)(1988).

If an FTA recipient solely operates a commuter railroad, those railroad operations are subject to FRA's alcohol rule. Such a recipient must certify to the FTA that it complies with FRA's rule as provided for under § 654.83 of this part. See Appendix A for the certification such a recipient must execute.

If a recipient operates a railroad as well as other mass transit services, its railroad operations are subject to FRA's rule while its non-railroad mass transit operations are subject to the FTA rule.

b. *Federal Highway Administration.* The Act authorizes FHWA to regulate intrastate motor carriers and specifically requires it to issue an alcohol rule which applies to intrastate as well as interstate motor carriers. Thus, to avoid subjecting recipients who are also motor carriers to two different rules, FTA and FHWA have agreed that these recipients are subject only to FTA's alcohol rule.

c. *United States Coast Guard.* If a recipient operates a ferry boat service, it is subject to both FTA's and Coast Guard's alcohol misuse regulations with regard to the ferry boat service. Applicable Coast Guard regulations are located in 33 CFR part 95 and 46 CFR parts 4 and 16. FTA and Coast Guard agree, however, that a recipient in compliance with FTA's alcohol misuse prevention rule will also probably be in compliance with the relevant Coast Guard provisions.

It is important to note that Coast Guard's regulations require alcohol testing in only one situation, when there has been a serious marine incident. Serious marine incidents include large oil or hazardous substance spills and reportable marine casualties which result in (1) One or more deaths; (2) serious injuries; (3) damage to property in excess of $100,000; (4) loss of an inspected vessel; or (5) loss of a self-propelled uninspected vessel over 100 gross tons.

Under Coast Guard's regulations, a test must be conducted by using blood or breath specimens. Use of an FTA-required EBT would satisfy the Coast Guard requirement. Because FTA has defined accident more broadly than Coast Guard, an FTA recipient who performs a post-accident breath test under FTA's rule should be in compliance with Coast Guard's rule as well.

Coast Guard also allows employer or law enforcement officer to direct reasonable cause testing under situations specified in 33 CFR part 95. We believe that this provision represents only a minor difference from FTA's rule.

We note here that the Coast Guard is authorized to take certain actions against a marine employer or a mariner. FTA's rule does not affect Coast Guard's authority or requirements in any respect. Consequently, a recipient that operates a ferry boat service is subject to withholding of Federal funding if it is in non-compliance with FTA's rule, and any appropriate action if it is in non-compliance with the Coast Guard rule.

4. *Covered employees of recipients.* As noted above, FTA does not directly regulate employees or workers who are subject to the provisions of this rule through action of their employers. This general proposition is not true of FHWA and the Coast Guard, which use licensing actions or other measures to enforce their safety rules, which would include their alcohol rules. A recipient's safety-sensitive employees thus may be subject to licensing actions of these agencies, even though the recipient is regulated by FTA and its employees are covered only by FTA's alcohol regulations. For example, a CDL holder employed by an FTA recipient remains subject to the Commercial Motor Vehicle Safety Act of 1986, and the consequences that attach to a violation of it. For example, a CDL holder convicted of driving under the influence of drugs or alcohol may have his or her Commercial Driver's License suspended or revoked. Similarly, the Coast Guard is authorized to revoke a license, certificate, or document of a marine employee under certain circumstances. Coast Guard's relevant provisions specifying the rights and responsibilities of marine employees are located in 46 CFR parts 4, 5, and 16 and 33 CFR part 95.

5. *Section 16(b)(2) recipients.* Some entities receive funding under section 16(b)(2) of the FT Act, which provides capital assistance, through a State, to organizations that provide specialized transportation services to elderly persons and persons with disabilities.

While some commenters suggested that we cover section 16(b)(2) recipients under the rule, we do not do so, noting that the Act references recipients of funds under sections 3, 9, or 18 of the FT Act or section 103(e)(4) of title 23 of the U.S. Code, but not section 16. Note, however, that a section 16(b)(2) recipient may be covered by the alcohol regulation published by the FHWA elsewhere in today's **Federal Register**.

6. *User-side subsidies.* A user-side subsidy refers to the practice of providing passengers publicly subsidized script or vouchers, which the passenger then uses to pay for transportation from a private carrier such as a taxicab company. In essence, a recipient provides transportation services indirectly through such subsidies.

The regulation applies to certain recipients of FTA funding, and to transit operators providing service under contract or other arrangements with those recipients. To the extent that a taxi operator does not provide service under an arrangement with an FTA recipient, but is chosen at random by the passenger, it would not be subject to the rule. If, however, the taxicab company or private operator does provide service under an arrangement with an FTA recipient, it is covered by the rule as a contractor, as defined by the rule. In such cases, the taxi company may wish to designate only certain drivers to provide such service, in which case only those designated drivers would be subject to the rule's alcohol testing program.

7. *Continuing Federal interest.* Not all recipients receive a Federal grant or grants for capital or operating assistance each year under the formula or discretionary programs. Some may receive capital assistance only when they need to purchase equipment or construct or repair a facility, which could occur once every few years. Indeed, there may be a recipient that receives a capital grant just once over a five or ten year period. It is important to emphasize in these cases that once a recipient has received an FTA capital grant after the effective date of this rule and has therefore agreed to comply with the rule, it must continue to comply with the rule (and other Federal requirements) during the useful life of the equipment or facility funded under the grant. In short, this rule remains in effect so long as the grant-acquired assets and related grant obligations remain in effect, and is not contingent upon a recipient receiving Federal funds each year.

This is not the case with operating assistance, however, which essentially is "used up" each year and is not considered to have a useful life beyond any given year. Thus in the event a recipient receives an operating assistance grant just once (and has not separately received a capital grant), it would only have to comply with this rule for that one year. This is probably a hypothetical example, however, since most recipients receive operating assistance on an annual basis, while others receive capital funding at some point, in which case they would have to comply with the rule over the life of the grant-acquired asset.

D. Alcohol Testing Procedures. (§ 654.5)

This section mandates compliance with the alcohol testing procedures in 49 CFR part 40, a separate rulemaking document published elsewhere in today's issue of the **Federal Register**.

E. Definitions. (§ 654.7)

1. *Accident.* An accident may trigger a post-accident alcohol test, and is defined as an incident in which a person has died or is treated at a medical facility or when there has been property damage resulting in the towing of a vehicle or the removal of a transit vehicle from revenue service.

For accidents not involving a fatality, we have created two categories of vehicles. The first is for "road surface" vehicles, including buses, vans, automobiles, and electric buses. For this category, an accident is an occurrence resulting in a vehicle—either a mass transit vehicle or another vehicle—suffering disabling damage and having to be towed away. This definition parallels that used by FHWA for commercial motor vehicle accidents, and includes language drawn from FHWA's regulations specifying what kind of damage is viewed as disabling.

The second category includes rail cars, trolley buses and trolley cars, and vessels. This category would also include other kinds of transit conveyances operated by FTA recipients, such as people movers, inclines, and monorails. An accident is deemed to occur to such a vehicle when the occurrence results in the vehicle being removed from revenue service. FTA views an accident happening when the vehicle is not operating in revenue service (e.g., an accident that occurs in a rail yard) as falling within this definition if it results in damage that would result in a comparable vehicle being withdrawn from revenue service or results in a delay in the vehicle being returned to revenue service.

2. *Administrator.* Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

3. *Alcohol.* For a general discussion of this definition, see the common preamble and the preamble to part 40 issued by the Office of the Secretary, published elsewhere in today's **Federal Register**.

4. *Alcohol concentration.* For a general discussion of this definition, see the common preamble and the preamble to part 40 issued by the Office of the Secretary, published elsewhere in today's **Federal Register**.

5. *Alcohol use.* For a general discussion of this definition, see the common preamble and the preamble to part 40 issued by the Office of the Secretary, published elsewhere in today's **Federal Register**.

6. *Certification.* This definition describes the statement that must be executed by the recipient.

7. *Confirmation test.* For a general discussion of this definition, see the preamble accompanying part 40 of this title, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, published elsewhere in today's **Federal Register**.

8. *Consortium.* This definition describes an arrangement in which employers place their safety-sensitive employees in a pool with the safety-sensitive employees of other employers. Any employer subject to any DOT agency alcohol misuse regulation may join a consortium for the purpose of complying with the rule. It may be particularly advantageous for smaller entities to join a consortium and thereby limit costs and administrative burdens.

9. *Contractor.* This definition covers a broad range of arrangements between an FTA recipient and those carrying out services for it and includes not only written and oral commitments in which both parties agree to specific terms and conditions but informal arrangements as well. An informal arrangement essentially is any ongoing relationship between two parties. Hence, repeatedly doing business with another entity would come within the meaning of a contractual arrangement under the rule.

10. *Covered employee.* This definition describes who is subject to the rule. Only safety-sensitive employees that work for a recipient or any entity performing a mass transit function on behalf of a recipient are covered by the rule, except for contract mechanics for small operators, which are not covered.

11. *DOT.* The abbreviation DOT stands for the United States Department of Transportation.

12. *DOT agency.* DOT contains several operating agencies, five of which are issuing alcohol misuse prevention rules in today's issue of the **Federal Register** Those agencies are: FHWA (49 CFR part 350), FRA (49 CFR part 219), FAA (14 CFR part 61), and RSPA (49 CFR part 654).

13. *Employer.* This definition applies to entities that must implement an alcohol misuse rule. It includes recipients and other entities that provide mass transit service or perform a safety-sensitive function for a recipient. It includes subrecipients, operators, contractors, and consortia.

14. *FTA.* FTA is the abbreviation for the Federal Transit Administration.

15. *Large operator.* A large operator is a transit provider primarily operating in an area of 200,000 or more in population.

16. *Performing (a safety-sensitive function).* For a general discussion of this definition, see the common preamble issued by the Office of the Secretary, published elsewhere in today's **Federal Register**.

17. *Railroad.* This definition is from the Railroad Safety Act of 1970 and is used in the rule to distinguish FTA's jurisdiction from FRA's. Basically, FRA has jurisdiction over any form of transportation that runs on rails and is connected to the general railroad system. FTA thus has jurisdiction over

all self-contained forms of mass transportation that run on rails, so long as those systems receive Federal funding from the FTA under sections 3, 9, or 18 of the FT Act or section 103(e)(4) of title 23 of the U.S. Code.

18. *Recipient.* This definition, based on the Act, defines a recipient as an entity receiving Federal financial assistance directly from the FTA under section 3, 9, or 18 of the FT Act or section 103(e)(4) of title 23 of the U.S. Code.

19. *Refuse to submit.* For a general discussion of this definition, see the common preamble as well as part 40 of this title, Procedures for Transportation Workplace Drug and Alcohol Testing Programs," published elsewhere in today's **Federal Register.**

20. *Safety-sensitive function.* This definition determines which categories of employees are subject to the rule. Because each recipient uses its own terminology, we have decided to define safety-sensitive based on the function performed instead of listing specific job categories. Each employer must decide for itself whether a particular employee performs any of the functions listed in this definition.

The definition lists five categories of safety-sensitive functions. The list itself is exclusive, which means that either an employee performs a safety-sensitive function listed in a category or she does not. An employer may not add any category to the list unless it wishes to test those additional employees separately under its own authority.

The first category is operating a revenue service vehicle, whether or not the vehicle is in service. In short, an employee who operates a revenue service vehicle for any purpose whatsoever is a safety-sensitive employee and is subject to the rule.

The second category is operating a nonrevenue service vehicle when required to be operated by a holder of a CDL. The third category is controlling dispatch or movement of a revenue service vehicle or equipment used in revenue service.

The fourth category is maintaining a revenue service vehicle unless the recipient receives section 18 funding and contracts out such services. Maintaining a revenue service vehicle includes any act which repairs, provides upkeep to a vehicle, or any other process which keeps the vehicle operational. It does not include cleaning either the interior or the exterior of the vehicle or transit facility. This category specifically excludes only the employees of a contractor or other entity who maintains revenue service vehicles for section 18 recipients. Hence, all other employees who maintain revenue service vehicles whether by contract or otherwise are safety-sensitive employees.

The fifth category is carrying a firearm for security purposes. A security guard who does not carry a firearm is excluded from this category, and is not a safety-sensitive employee.

We note that supervisors are included in this definition so long as the supervisor performs or the supervisor's job description includes the performance of any of the functions listed in categories 1 through 5.

21. *Screening test.* For a general discussion of this definition, see the preamble accompanying Part 40 of this title, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, published elsewhere in today's **Federal Register.**

22. *Small operator.* A small operator is a recipient operating primarily in an area of less than 200,000 in population.

23. *Substance abuse professional.* For a general discussion of this definition see the common preamble published by the Office of the Secretary, published elsewhere in today's **Federal Register.**

24. *Vehicle.* This definition lists types of vehicles used in mass transportation, or which may be involved in accidents with such vehicles. Because mass transit encompasses travel by bus, van, ferry boat, and rail, the list is meant to be very broad, covering every type of conveyance used to provide mass transit (including such things as people movers and inclines). The term "mass transit vehicle" is used to distinguish vehicles actually used for transit purposes from those used by the general public.

25. *Violation rate.* For a general discussion of this definition, please see the common preamble issued by the Office of the Secretary, published elsewhere in today's **Federal Register.**

F. Preemption of State and Local Laws. (§ 654.9).

The Act provides that this rule preempts any inconsistent State or local law, ordinance, rule, regulation, standard, or order.

Consistent with long-standing Department-wide interpretation of this type of preemption language, the regulation specifies that "inconsistent with" means that the regulation:

(1) Preempts a State or local requirement if compliance with the local requirement and the FTA regulation is not possible; or

(2) Preempts a State or local requirement if compliance with the local requirement is an obstacle to accomplishing the provisions of the FTA regulation.

On the other hand, neither the statute nor the regulation preempts State criminal laws that impose sanctions for reckless conduct.

G. Other Requirements Imposed by an Employer. (§ 654.11)

An employer may impose other requirements in addition to those imposed by this rule if those additional requirements do not conflict or interfere with the requirements of this rule. For example, an employer may require a supervisor to be trained for two hours instead of one, or an employer may provide training for employees.

H. Requirement for Notice. (§ 654.13)

This section requires an employer to notify an employee that the employee is being tested under Federal law. This section specifically bars an employer from misrepresenting a test conducted under its own authority as a test mandated by Federal law.

I. Starting Date for Alcohol Testing Programs. (§ 654.15)

This section states the implementation date for large operators, States, and small operators.

Subpart B—Prohibitions

This subpart identifies the acts prohibited by the rule. Although the rule text addresses the employer, we believe these sections are best understood if they are directed to the employee.

A. Alcohol Concentration. (§ 654.21)

This section sets the alcohol concentration level prohibited by the rule at 0.04. A covered employee may not perform a safety-sensitive function when his or her alcohol concentration level is at 0.04 or greater.

B. On-duty Use. (§ 654.23)

This section prohibits a covered employee from consuming alcohol while performing a safety-sensitive function.

C. Pre-duty Use. (§ 654.25)

Paragraph (a) prohibits employees from consuming alcohol four hours before performing a safety-sensitive function.

For on-call employees, the employer must prohibit a covered employee from using alcohol within four hours of performing a safety-sensitive function, and must establish a procedure that allows an employee to: (1) Say he has used alcohol and (2) indicate whether he is able to perform his safety-sensitive function. If the employee believes he is not capable of performing his safety-sensitive function, the employer shall excuse the employee from doing so. If, however, the employee believes he is capable of performing a safety-sensitive function, the employer shall test the employee and shall permit the employee to perform a safety-sensitive function if his alcohol concentration level measures less than 0.02. If an employee's alcohol concentration level measures at 0.02 or greater but less than 0.04, the employer may allow the employee to perform his safety-sensitive function only if he is retested and his alcohol concentration level measures less than 0.02. If an employee is not retested, he must wait until eight hours has elapsed before resuming the performance of a safety-sensitive function.

To encourage employees to admit that they have consumed alcohol, they shall not be subject to the consequences specified in subpart E. If, however, an on-call employee does not indicate that she has consumed alcohol and exhibits signs of alcohol misuse, she may be subject to reasonable suspicion testing. If the test indicates an alcohol concentration level at 0.04 or greater she would be subject to the consequences of violating this rule.

D. Use Following an Accident. (§ 654.27)

This section prohibits an employee from consuming alcohol after an accident until she has been tested, eight hours have elapsed, or if an employee's conduct is completely discounted as a contributing factor to the accident. In the case of fatal accidents, the covered employee on duty in the vehicle at the time of the accident must refrain from drinking for eight hours or until she has been tested, whichever occurs first.

E. Refusal to Submit to a Required Alcohol Test. (§ 654.29)

If an employee refuses to submit to a random, post-accident, reasonable suspicion, or follow-up test, he is treated as if he tested at 0.04 or greater and subjected to the consequences established in subpart E.

Subpart C—Tests Required

A. Pre-employment Testing. (§ 654.31)

This section requires an employer to administer a pre-employment alcohol test to applicants and employees transferring from a nonsafety-sensitive position to a safety-sensitive position.

This section, however, does not preclude an employer from hiring an applicant before the administration of an alcohol test. Nor does this section preclude an employer from hiring an applicant who has taken an alcohol test indicating an alcohol concentration level of 0.04 or greater. It states that before an employee performs a safety-sensitive function, an employee must take an alcohol test with a result indicating an alcohol concentration level less than 0.04.

This section also applies to current employees transferring from a nonsafety-sensitive position to a safety-sensitive position. Similarly to an applicant, the transferee must take an alcohol test prior to the first time she performs a safety-sensitive function with a result indicating an alcohol concentration level less than 0.04.

If an applicant's or a transferee's alcohol concentration level measures at 0.02 or greater but less than 0.04, they cannot perform a safety-sensitive function until their alcohol concentration level measures less than 0.02. The employer, therefore, may opt to retest them until their alcohol concentration level measures less than 0.02 or not to allow them to perform a safety-sensitive function for eight hours.

Paragraph (b) of this section allows the employer to waive, under very limited circumstances, the administration of a pre-employment test. A test may be waived when (1) the applicant or transferee has been tested within the previous six months under the requirements of another DOT agency's alcohol misuse prevention rule; and (2) the employer ensures that no prior employer has knowledge or records of an employee's violation of an alcohol misuse rule within the previous six months. This section requires an employer to contact prior employers seeking this information.

If an employer does not wish to seek this information, it may choose to administer a pre-employment test.

B. Post-accident Testing. (§ 654.33)

This section requires a test after an accident has occurred, and establishes two categories of accidents, fatal and nonfatal. Nonfatal accidents are treated differently depending on the type of transit vehicle involved. For a more complete description of the ways in which different kinds of accidents are treated, please refer to the discussion of post-accident testing in the portion of the preamble that responds to comments.

The rule requires an employer to test the appropriate covered employees as soon as possible, but within 8 hours of the accident.

The rule also requires an employer to require an employee to remain readily available for testing; if the employee does not do so, the employer can treat such behavior as refusing to submit to an alcohol test. Remaining readily available means that the employer knows the whereabouts of the employee and must conduct the test as soon as practicable but within 8 hours of the accident.

This section allows an employee to seek medical attention, assist injured individuals, or obtain assistance in dealing with the accident if necessary before being tested for misusing alcohol.

C. Random Testing. (§ 654.35)

The rule requires an employer to randomly test covered employees for the misuse of alcohol. The testing must truly be random, which means that it is random with respect to the person tested and the predictability of the actual administration of the test.

An employer cannot use an employee's name in a random selection pool. Rather, an employer must identify each covered employee by a unique number, such as a social security or a payroll identification number, which is entered into a pool from which the selection is made. Each covered employee must have an equal chance of being tested. Once a covered employee is selected and tested, their identification number is reentered into the pool so that they will have an equal chance of being tested the next time the employer conducts random testing.

An employer must test randomly throughout the calendar year. Testing must be unannounced and occur on a reasonable basis throughout the entire calendar year. Random tests must be conducted in an unpredictable fashion. For example, an employer may not conduct random tests only on a Monday or only at the beginning of a shift. Further, once an employee is notified of his selection for a random test, he must report (or be escorted) immediately to the collection site.

This section also describes the random alcohol testing rate which is based on the number of test results indicating an alcohol concentration of 0.04 or greater in the transit industry and thus may be decreased or increased on the basis of data made available to FTA. The rule requires employers to randomly test at a minimum annual rate of 25 percent, which means that the number of tests to be administered during a year must be equal to 25 percent of the number of employees in the selection pool. Based on the data FTA receives, however, the rate may be lowered to 10 percent if the positive random alcohol rate of the transit industry is less than 0.5 percent per year for two consecutive years. If the rate is lowered, it may subsequently be increased to 50 percent if the transit

industry positive random alcohol rate is equal to or greater than one percent for one year. FTA will publish a Notice in the **Federal Register** annually announcing the random alcohol testing rate. We emphasize that the rate is calculated and implemented industry-wide, and not on the basis of any individual employer's rate.

For compliance purposes, it is important to note that in calculating its positive random alcohol testing results an employer must include a refusal to submit to a test as an alcohol test result of 0.02 or greater.

This section establishes definite periods of time an employee may be randomly tested for alcohol, just before, during, and just after performing a safety-sensitive function.

D. Reasonable Suspicion Testing. (§ 654.37)

This section establishes testing based on reasonable suspicion that an employee has misused alcohol and establishes the standard the employer must use in determining whether to conduct such a test. First, a supervisor, trained in detecting the signs and symptoms of alcohol misuse must observe the employee's appearance, behavior, speech, and body odors for signs of alcohol misuse. Then the trained supervisor determines, based on specific, contemporaneous, and articulable observations, whether the employee must take a reasonable suspicion alcohol test.

This standard precludes the use of long term indicators of alcohol misuse such as absenteeism, tardiness, occupational injuries, or moving traffic or operating rule violations as a basis for a reasonable suspicion determination.

Although the observation and determination must be made by a supervisor trained in the signs and symptoms of alcohol misuse, this standard does not preclude the use of observations made by third parties such as passengers. Should a passenger believe, however, that an employee has misused alcohol, a trained supervisor should observe the employee first hand and decide whether a reasonable suspicion test is warranted.

This section limits the period of time the trained supervisor may observe the employee for signs and symptoms of alcohol misuse to just before, during, or just after the employee performs a safety-sensitive function and limits the time frame for the employer to decide that a reasonable suspicion alcohol test is necessary to these time periods as well.

Once a reasonable suspicion determination is made, paragraph (d) requires the employer to conduct a reasonable suspicion alcohol test. If, for some reason a test cannot be administered after a reasonable suspicion determination, paragraph (d) gives the employer two options. The employer can wait for eight hours to elapse before allowing an employee to perform a safety-sensitive function, or the employer can administer an alcohol test sometime during the eight hours. In any event, if a test is not conducted within two hours the employer must record why it was not conducted. If it was not conducted within eight hours, the employer must also record the reasons for that failure. The employer must maintain these records and submit them to the FTA upon request.

When an employee is not given a reasonable suspicion test, this paragraph precludes an employer from applying the consequences established in subpart E for a violation of the rule.

E. Return to Duty Testing. (§ 654.39)

This section requires an employee who has violated a prohibition of Subpart B to take a return to duty test. The employee may not perform a safety-sensitive function until she has taken a return to duty test indicating that her alcohol concentration level is less than 0.02.

In addition, because of the prevalence of combined drug and alcohol misuse, an employer may also subject an employee who previously tested at 0.04 or greater under the FTA alcohol rule to a return to duty drug test.

F. Follow-up Testing. (§ 654.41)

Upon taking a return to duty test with a result less than 0.02, an employee is subject to follow-up testing for up to 60 months. During the first 12 months the employee is subject to a minimum of 6 follow-up alcohol tests, which must be unannounced and conducted reasonably throughout the 12 months.

After those 12 months, the substance abuse professional determines whether the employee should be subject to follow-up testing for the remaining 48 months. Because many individuals abuse more than one substance at a time, an employer may, based on the recommendations of the SAP, subject an employee who previously tested at 0.04 or greater under the FTA alcohol rule to follow-up testing for the use of prohibited drugs. An employer may also subject an employee who previously failed to pass a drug test under part 653 to follow-up testing for the misuse of alcohol.

Like reasonable suspicion and random testing, follow-up testing must be conducted just before, during, or just after the employee performs a safety-sensitive function.

It is important to note that an employee subject to follow-up testing remains separately subject to random testing under this rule.

G. Retesting of Covered Employees With an Alcohol Concentration of 0.02 or Greater but Less Than 0.04. (§ 654.43)

This section applies when an employee has taken an alcohol test showing an alcohol concentration level of 0.02 or greater but less than 0.04. When this happens the consequences of subpart E do not apply. The employee, however, may not perform a safety-sensitive function with this amount of alcohol in his system. The rule provides, therefore, that the employer may opt to retest the employee or prohibit him from performing a safety-sensitive function for eight hours. If an employer selects the first option and retests the employee, the employee may perform a safety-sensitive function only if on retest his alcohol concentration level measurers less than 0.02. If the employer elects to do so, it may conduct several tests until the employee's alcohol concentration level measures less than 0.02.

Subpart D—Administrative Requirements

A. Retention of Records. (§ 654.51)

Section 654.51 explains which records relating to the alcohol testing program must be retained and for how long.

The rule provides for three separate record retention periods for different types of records, five years, three years, and one year. Each employer must maintain for five years records of covered employees' alcohol test results of 0.02 or greater, documentation of refusals to take an alcohol test, and covered employee referrals to the SAP. Collection process and employee training documents must be retained for two years, while records of test results less than 0.02 must be retained for one year.

B. Reporting of Results in a Management Information System. (§ 654.53)

The reporting requirements required in section 654.53 are part of a Department-wide effort to standardize reporting for alcohol testing, by establishing a Management Information System (MIS). The data collected will be used by FTA and DOT to identify trends, to determine the random alcohol testing rate, and to assess the success or failure of the agency's regulatory program.

The data elements were selected to provide information on the scope of the program, the prevalence of alcohol misuse in mass transportation, the implementation of the program, and the deterrent effect of the rules over time.

Recipients and subrecipients must submit to FTA their own annual reports as well as an annual report from each of their contractors with covered employees. Each report submitted must cover a calendar year. The closing date for data is December 31 and the report is due at FTA by March 15 of the following year.

C. Access to Facilities and Records. (§ 654.55)

Paragraph (a) of this section precludes an employer, in most circumstances, from releasing information contained in records required to be maintained under this rule. Examples of such records include any document generated as a result of a reasonable suspicion determination or a refusal to take an alcohol test. An employer, however, may release information when required to do so by law or this rule, or if expressly authorized.

Paragraph (b) provides that the employer must provide the employee copies of records relating to the employee's alcohol tests or pertaining to the employee's use of alcohol. Once the employee has submitted his request in writing, the employer must promptly provide the records to him. The employer may charge for reproducing the records but only for those records specifically requested.

Paragraph (c) requires the employer to allow certain governmental entities to have access to any facility used to comply with this rule. The rule provides that the Secretary of Transportation or representatives from any other DOT agency shall have access. In addition, the rule requires an employer to allow the State agency designated by the governor to oversee rail fixed guideway systems to also have access to its facilities so as to properly oversee the safety of a rail fixed guideway system as required by section 28 of the FT Act. We note here that the State oversight of rail fixed guideway system Notice of Proposed Rulemaking published in the **Federal Register** on December 9, 1993 at 58 FR 64856 contains FTA's proposal for the State oversight agency.

Paragraph (d) requires an employer to give certain governmental entities copies of test results and any other information pertaining to the employer's alcohol misuse prevention program. Those governmental entities are the same as those specified in subsection (c).

Paragraph (e) requires an employer to disclose information about the employer's administration of a post-accident alcohol test to the National Transportation Safety Board (NTSB) when it investigates an accident.

Paragraph (f) provides that the employer must give copies of certain records to a subsequent employer if the employee makes such a request in writing. The employer may disclose only that information specifically authorized by the employee in her written request.

Paragraph (g) requires the employer to disclose certain information when requested to do so by the employee or a decisionmaker in a lawsuit, grievance, or other proceeding when such a proceeding has been initiated by the employee and arises from the results of an alcohol test administered under this part or from the employer's determination that the employee has violated a provision in subpart B. This provision does not cover any proceeding initiated by a third party. This provision is limited to employment-type actions such as worker's compensation or unemployment compensation which are initiated by the employee.

Subsection (h) provides that the employer must release information to any individual when requested to do so by the employee in writing. The employer may release only that information specifically authorized by the employee.

Subpart E—Consequences for Employees Engaging in Alcohol-Related Conduct

In general, this subpart addresses the consequences to employees for violating any provision contained in subpart B. This subpart contains three sections, the first two of which apply to every employee who has violated a provision in subpart B. The third section concerns only those employees whose alcohol concentration level was tested at 0.02 or greater but less than 0.04.

A. Removal From Safety-sensitive Function. (§ 654.61)

This section requires employers to remove an employee from his safety-sensitive function if the employee has violated any of the prohibitions listed in subpart B. The regulation is silent concerning any subsequent disciplinary actions, including termination's, to be taken against the employee.

B. Required Evaluation and Testing. (§ 654.63)

Once an employee has committed a violation of subpart B, she must not only be removed from her safety-sensitive position, she must also be told of the resources available to her to evaluate and resolve problems associated with alcohol misuse. She must then be evaluated by a substance abuse professional.

C. Other Alcohol-related Conduct. (§ 654.65)

This section explains the consequences for those employees whose alcohol concentration level measures at 0.02 or greater but less than 0.04. In this situation, the employer has two options: it can retest the employee and return her to her safety-sensitive function when the test indicates that her alcohol concentration level is less than 0.02. Or, the employer may remove the employee from her safety-sensitive position for at least eight hours.

An employer may not apply the consequences of Subpart E to an employee whose alcohol level measures at 0.02 or greater but less than 0.04.

Subpart F—Alcohol Misuse Information, Training, and Referral

A. Employer Obligation to Promulgate a Policy on the Misuse of Alcohol. (§ 654.71)

The rule requires an employer to make available to every safety-sensitive employee a policy statement describing the employer's alcohol testing program. The policy must include the following information:

1. Specific categories of employees subject to testing.
2. Where to go for more information about the program.
3. When and why an employee will be tested.
4. The consequences of failing an alcohol test.
5. Program elements in addition to those required by the FTA regulation.

The FTA expects each employer to describe the consequences of a covered employee's taking an alcohol test indicating an alcohol concentration at 0.04 or greater, which must include removal of the employee from his safety-sensitive position and evaluation and possible referral for treatment. In addition, at the employer's discretion the policy statement could describe funding arrangements for treatment. The policy must indicate whether an employer would suspend or terminate a covered employee who has taken a test with a result at 0.04 or greater, and the circumstances under which such actions will be taken.

The rule does not mandate rehabilitation for a covered employee, but only requires that an employee be evaluated by an SAP to determine

whether the employee has a problem with alcohol misuse. If treatment for a covered employee is deemed necessary, the rule does not require the employer to pay for it. Any decision to provide treatment, and who should pay for it, is made at the local level.

This position on treatment is consistent with congressional debate on the topic. Both Senators Danforth and Hollings clarified this point by stating:

> DOT must issue regulations . . . providing for the opportunity for treatment of employees in need of assistance in resolving problems with alcohol or drug use. My understanding is that this does not mandate that rehabilitation be provided but does encourage companies to make such programs available. The legislation does not discuss who pays for treatment, wages during this period, or rights of reinstatement. 137 Cong. Rec. S14770 (daily ed. Oct. 16, 1991) (Statement of Sen. Danforth)
>
> The Senator's understanding is correct. Such arrangement could be left to negotiation between the employer and employee, either through individual arrangement or collective bargaining, as appropriate. . . . 137 Cong. Rec. S14770 (daily ed. Oct. 16, 1991) (Statement of Sen. Hollings).

B. Training for Supervisors. (§ 654.73)

This section provides that supervisors who may make reasonable suspicion determinations must be trained about the physical, behavioral, speech, and performance indicators of probable alcohol use. Such a supervisor must receive at least 60 minutes of training, which may be added to the 60 minutes of training required under the FTA drug rule, published elsewhere in today's issue of the **Federal Register**.

C. Referral, Evaluation, and Treatment. (§ 654.75)

This section concerns only those employees who have violated a provision in Subpart B. This section requires the employer to advise such an employee of the resources available to her in resolving problems associated with alcohol misuse. The information provided by the employer should include the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

Such an employee must be evaluated by a substance abuse professional to determine whether the employee needs help in resolving problems associated with alcohol misuse. The substance abuse professional then determines what kind of help the employee needs. Any employee who has violated subpart B must take a return to duty test before she may be allowed to perform a safety-sensitive function with a result showing that her alcohol concentration level measures less than 0.02.

If, however, the SAP determines that the employee needs help in resolving problems with alcohol misuse, the employee must follow the course of treatment prescribed by the SAP. To return to duty, the employee must be evaluated by a substance abuse professional again to determine whether the employee has properly followed the treatment course originally prescribed and is able to return to work.

Then, such an employee must not only take a return to duty test but she must also submit to follow-up testing, which occurs unpredictably and unannounced for up to sixty months following her return to duty. Based on the recommendations of the SAP, the employee may be subject to both drug and alcohol follow-up testing. The employee must take at least six follow-up alcohol tests (all indicating an alcohol level less than 0.02) during the first 12 months following her return to duty. After that period of time, the SAP determines whether the employee should continue to be subject to follow-up testing for the additional 48 months and if so shall determine how many tests the employee should take and how often they should be administered.

Such an employee remains separately subject to random alcohol testing.

Paragraph (d) discusses several employment options concerning the substance abuse professional. Who pays for the services of the substance abuse professional, however, is determined at the local level.

Paragraph (e) prohibits, in some circumstances, a substance abuse professional from treating an employee after evaluation and determination that the employee needs help. This section, however, allows an evaluating SAP also to treat an employee when: (1) the SAP is an employee of or under contract to an employer; (2) the SAP is the only source of appropriate therapeutic treatment provided under the employee's health plan or reasonably accessible to the employee; (3) or the SAP works for a public agency such as a State, county, or municipality.

Paragraph (f) provides that an employer is not required to provide applicants with an opportunity for referral, evaluation, and treatment.

Subpart G—Compliance

This subpart establishes the certification requirements for recipients of FTA funding under sections 3, 9, or 18 of the FT Act or section 103(e)(4) of title 23 of the U.S. Code.

A. Compliance a Condition of FTA Financial Assistance. (§ 654.81)

This section mandates the withholding of Federal funds from a recipient of FTA funding under sections 3, 9, or 18 of the FT Act, or section 103(e)(4) of title 23 of the U.S. Code, if it is not in compliance with the rule. To be in compliance with the rule, the recipient either must implement the requirements of the rule or require their implementation by subrecipients, operators, contractors, employers, or any other entity performing a mass transit function on behalf of the recipient.

It is important to note that any misrepresentation or false statement to FTA is a criminal violation under section 1001 of title 18 of the United States Code.

B. Requirement to Certify Compliance. (§ 654.83)

This section requires a recipient to certify that the requirements of the rule have been met. We emphasize that the direct recipient of FTA funds makes this certification to FTA.

The certifications are required annually, with large operators submitting their certifications before January 1, 1995, and small operators and States submitting their certifications before January 1, 1996. States will certify on behalf of subrecipients and their contractors.

The certification itself must comply with the sample certification provided in Appendix A to this part, be authorized by the recipient's governing board or other authorizing official, and be signed by a party specifically authorized to do so.

V. Americans With Disabilities Act of 1990

Title I of the Americans With Disabilities Act of 1990 (ADA) focuses on responsibilities of employers for employees. A basic premise of title I is that a person with a disability must be provided a reasonable accommodation to work. It is possible that some covered workers will be considered persons with disabilities for purposes of protections under the ADA. For a more complete discussion of this issue please see the DOT-wide preamble preceding this FTA document in today's **Federal Register**.

VI. Economic Analysis

The FTA has evaluated the industry-wide costs and benefits of the rule, Prevention of Alcohol Misuse in Transit Operations. This rule will require personnel who perform safety-sensitive functions to be covered by a formal program to control alcohol misuse in mass transit operations. This rule will cover FTA recipients and combine education and testing in a comprehensive alcohol misuse prevention program. Five types of alcohol tests will be administered:

- Pre-Employment
- Reasonable Suspicion
- Post-Accident
- Random
- Return to Duty/Follow-up

Transit agencies will be required to report the number of tests given, the number of test results at 0.02 or greater and other attributes of their program to the FTA and to certify compliance with this regulation annually.

Annual costs of the alcohol testing program range from $10 to $13 million per year. Total costs over 10 years are $115 million.

Annual benefits range from $6 to $55 million per year. Total benefits over 10 years are $482 million.

A major premise in calculating both costs and benefits is the assumption that all transit systems will start from scratch or "ground zero" when implementing alcohol testing programs as a result of this regulation.

Estimates in this analysis are based on (1) the 1989 and 1991 National Urban Mass Transportation Statistics Section 15 Annual Reports, (2) the 1991 report, Substance Abuse in the Transit Industry, prepared for the FTA by Booz, Allen & Hamilton, Inc., (3) data provided by the Substance Abuse and Mental Health Service Administration, and (4) information from other agencies, individuals, and organizations knowledgeable about alcohol misuse in the United States.

VII. Regulatory Process Matters

A. Executive Order 12688

The FTA has evaluated the industry costs and benefits of the drug testing rule, and has determined that this rulemaking is a significant rule under Executive Order 12688 because the required alcohol misuse prevention program raises novel policy issues and will materially affect public safety as well as State and local governments. This rule will not, however, have an annual impact on the economy of $100 million or more.

B. Departmental Significance

This rule is a "significant regulation" as defined by the Department's Regulatory Policies and Procedures, because it involves an important departmental policy and will probably generate a great deal of public interest. The purpose of this rule is to make mass transit systems safer by ensuring that safety-sensitive employees do not misuse alcohol.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the FTA has evaluated the effects of this rule on small entities. Based on the evaluation, the FTA hereby certifies that this action will have a significant economic impact on a substantial number of small entities. The rule has some provisions designed to mitigate burdens on small entities which are discussed in the regulatory evaluation.

This rule applies to public recipients of Federal Transit funds, 274 of which are large and 1,341 of which are small. It is estimated that it will cost the small transit systems $40 million to implement this alcohol rule, with total benefits to them of $147 million over the 10-year analysis.

D. Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act. A request for Paperwork Reduction Act approval has been submitted to the Office of Management and Budget in conjunction with this rule. Information collection requirements are not effective until Paperwork Reduction Act clearance has been received.

E. Executive Order 12612

We have reviewed this rule under the requirements of Executive Order 12612 on Federalism. Although the Federal Transit Administration has determined that this rule has significant Federalism implications to warrant a Federalism assessment, this rulemaking is mandated by the Omnibus Transportation Employee Testing Act of 1991 (the Act). In considering the Federalism implications of the rule, FTA has focused on several key provisions of Executive Order 12612.

Necessity for action. This rule is mandated by law, which requires comprehensive drug and alcohol testing programs of recipients of Federal transit funding. Congress responded to specific accidents by mandating these rules to ensure the safety of the transit-riding public.

Consultation with State and local governments. FTA provides financial assistance to mass transportation systems throughout the country by means of grants to States and public bodies. Because this rule will affect those States and local entities, we published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** to solicit the views of the affected entities, including States and local governments, and held three public hearings in conjunction with the NPRM. In short, we actively sought the views and comments of the affected States and localities.

Need for Federal action. This rule responds to a Congressional mandate that the safety of the transit riding public requires comprehensive anti-drug and alcohol testing programs.

Authority. The statutory authority for this final rule is the Act mentioned above and discussed elsewhere in the preamble.

Preemption. This rule preempts any State or local law, order, or regulation to the contrary, and also is discussed elsewhere in the preamble. Because compliance with the rule is a condition of Federal financial assistance, State and local governments have the option of not seeking the Federal funds if they do not choose to comply with this rule.

F. National Environmental Policy Act

The agency has determined that this regulation has no environmental implications. Its purpose is to regulate the behavior of those safety-sensitive employees who work in the transit industry and will have no appreciable effect on the quality of the environment.

G. Energy Impact Implications

This regulation does not affect the use of energy because it regulates the behavior of those safety-sensitive employees who work in the transit industry.

List of Subjects in 49 CFR Part 654

Alcohol testing, Grant programs—transportation, Mass transit, Reporting and recordkeeping requirements, Safety, Transportation.

Accordingly, for the reasons cited above, the agency amends title 49 by adding a new part 654, to read as set forth below:

PART 654—Prevention of Alcohol Misuse in Transit Operations

Sec.

Subpart A—General

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Appendix A to Part 654—Sample Certifications of Compliance

Appendix B to Part 654—FTA Alcohol Testing Management Information System (MIS) Data Collection Form.

Appendix C to Part 654—FTA Alcohol Testing Management Information System (MIS), "EZ" Data Collection Form.

Authority: Sec. 6, Pub. L. 102–143; 49 CFR 1.51.

Subpart A—General

654.1 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform safety-sensitive functions for employers receiving assistance from the Federal Transit Administration (FTA).

654.3 Applicability.

(a) Except as specifically excluded in paragraph (b) of this section, this part applies to a recipient under—

(1) Section 3, 9, or 18 of the Federal Transit Act, as amended (FT Act); or

(2) Section 103(e)(4) of title 23 of the United States Code.

(b) A recipient operating a railroad regulated by the Federal Railroad Administration (FRA) shall follow 49 CFR part 219 and § 654.83 of this part for its railroad operations, and this part for its non-railroad operations, if any.

(Note: For recipients who operate marine vessels, see also United States Coast Guard regulations at 33 CFR part 95 and 46 CFR parts 4, 5, and 6.)

§ 654.5 Alcohol testing procedures.

Each employer shall ensure that all alcohol testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 that address alcohol testing are made applicable to employers by this part.

§ 654.7 Definitions.

As used in this part—

Accident means an occurrence associated with the operation of a vehicle, if as a result—

(1) An individual dies;

(2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;

(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, "disabling damage" means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative; or

(4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from revenue service.

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

Alcohol concentration means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Certification means a recipient's written statement, authorized by the organization's governing board or other authorizing official, that the recipient has complied with the provisions of this part. (See § 654.87 for requirements on certification.)

Confirmation test means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

Consortium means an entity, including a group or association of employers, operators, recipients, subrecipients, or contractors, which provides alcohol testing as required by this part, or other DOT alcohol testing rule, and which acts on behalf of the employer.

Contractor means a person or organization that provides a service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered employee means a person, including a volunteer, applicant, or transferee, who performs a safety-sensitive function for an entity subject to this part.

DOT means the United States Department of Transportation.

DOT agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR part 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, and 654) in accordance with part 40 of this title.

Employer means a recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

Large operator means a recipient or subrecipient primarily operating in an area of 200,000 or more in population.

Performing (a safety-sensitive function) means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Railroad means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Recipient means an entity receiving Federal financial assistance under section 3, 9, or 18, of the FT Act, or under section 103(e)(4) of title 23 of the United States Code.

Refuse to submit (to an alcohol test) means that a covered employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.

Safety-sensitive function means any of the following duties:

(1) Operating a revenue service vehicle, including when not in revenue service;

(2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;

(3) Controlling dispatch or movement of a revenue service vehicle;

(4) Maintaining a revenue service vehicle or equipment used in revenue service, unless the recipient receives section 18 funding and contracts out such services; or

(5) Carrying a firearm for security purposes.

Screening test means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

Small operator means a recipient or subrecipient primarily operating in an area of less than 200,000 in population.

Substance abuse professional (SAP) means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A "mass transit vehicle" is a vehicle used for mass transportation.

Violation rate means the number of covered employees (as reported under § 654.53 of this part) found during random tests given under this part to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by this part, divided by the total reported number of employees in the industry given random alcohol tests under this part plus the total reported number of employees in the industry who refuse a random test required by this part.

§ 654.9 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order, to the extent that:

(1) Compliance with both the State or local requirement and any requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 654.11 Other requirements imposed by employers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

§ 654.13 Requirement for notice.

Before performing an alcohol test under this part, each employer shall notify a covered employee that the alcohol test is required by this part. No employer shall falsely represent that a test is administered under this part.

§ 654.15 Starting date for alcohol testing programs.

(a) *Large employers.* Each recipient operating in an area of 200,000 or more in population on March 17, 1994 shall implement the requirements of this part beginning on January 1, 1995.

(b) *Small employers.* Each recipient operating in an area of 200,000 or less in population on March 17, 1994 shall implement the requirements of this part beginning on January 1, 1996.

(c) An employer shall have an alcohol misuse program that conforms to this part by January 1, 1996, or by the date the employer begins operations, whichever is later.

Subpart B—Prohibitions

§ 654.21 Alcohol concentration.

Each employer shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

§ 654.23 On-duty use.

Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

§ 654.25 Pre-duty use.

(a) *General.* Each employer shall prohibit a covered employee from using alcohol within 4 hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within four hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions.

(b) *On-call employees.* An employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include:

(1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function.

(2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

§ 654.27 Use following an accident.

Each employer shall prohibit any covered employee required to take a post-accident alcohol test under § 654.33 from alcohol use for eight

hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

§ 654.29 Refusal to submit to a required alcohol test.

Each employer shall require a covered employee to submit to a post-accident alcohol test required under § 654.33, a random alcohol test required under § 654.35, a reasonable suspicion alcohol test required under § 654.37, or a follow-up alcohol test required under § 654.41. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

Subpart C—Tests Required

§ 654.31 Pre-employment testing.

(a) Prior to the first time a covered employee performs safety-sensitive functions for an employer, the employer shall ensure that the employee undergoes testing for alcohol. No employer shall allow a covered employee to perform safety-sensitive functions, unless the employee has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04. If a pre-employment test result under this section indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of § 654.65 shall apply.

(b) An employer may elect not to administer an alcohol test required by paragraph (a) of this section, if:

(1) The employee has undergone an alcohol test required by this Part or the alcohol misuse rule of another DOT agency under part 40 of this title within the previous six months, with a result indicating an alcohol concentration less than 0.04; and

(2) The employer ensures that no prior employer of the covered employee of whom the employer has knowledge has records of a violation of this subpart or the alcohol misuse rule of another DOT agency within the previous six months.

§ 654.33 Post-accident testing.

(a)(1) *Fatal accidents.* As soon as practicable following an accident involving the loss of human life, an employer shall test each surviving covered employee on duty in the mass transit vehicle at the time of the accident. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(2) *Nonfatal accidents.* (i) As soon as practicable following an accident not involving the loss of human life, in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, the employer shall test each covered employee on duty in the mass transit vehicle at the time of the accident if that employee has received a citation under State or local law for a moving traffic violation arising from the accident. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(ii) As soon as practicable following an accident not involving the loss of human life, in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the employer shall test each covered employee on duty in the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The decision not to administer a test under this paragraph shall be based on the employer's determination, using the best available information at the time of the determination, that the employee's performance could not have contributed to the accident. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(b) If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this paragraph is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall maintain the same record. Records shall be submitted to the FTA upon request of the Administrator.

(c) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

§ 654.35 Random testing.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random alcohol testing shall be 25 percent of covered employees.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol MIS reports required by § 654.53. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random alcohol testing of covered employees. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 654.53 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 654.53 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 654.53 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 654.53 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(e) The selection of employees for random alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(f) The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol testing determined by the Administrator. If the employer conducts random alcohol testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random alcohol testing at the same minimum annual percentage rate under this part or any DOT alcohol testing rule.

(g) Each employer shall ensure that random alcohol tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(h) Each employer shall require that each covered employee who is notified of selection for random alcohol testing proceeds to the test site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(i) A covered employee shall only be randomly tested while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

§ 654.37 Reasonable suspicion testing.

(a) An employer shall require a covered employee to submit to an alcohol test when the employer has reasonable suspicion to believe that the employee has violated the prohibitions in this part.

(b) The employer's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

(c) Alcohol testing is authorized by this section only if the observations required by paragraph (b) of this section are made during, just preceding, or just after the period of the work day that the covered employee is required to be in compliance with this part. An employer may direct a covered employee to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(d)(1) If a test required by this section is not administered within two hours following the determination under paragraph (b) of this section, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the determination under paragraph (b) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, an employer shall not permit a covered employee to report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an employer permit the covered employee to perform or continue to perform safety-sensitive functions, until:

(i) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02 percent; or

(ii) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination under paragraph (b) of this section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this part.

(3) Except as provided in paragraph (d)(2), no employer shall take any action under this part against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an employer with the authority independent of this part from taking any action otherwise consistent with law.

§ 654.39 Return to duty testing.

Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02. (See § 654.75)

§ 654.41 Follow-up testing.

(a) Follow-up testing shall be conducted when the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(b) Following a determination under § 654.75(b) that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each employer shall ensure that the employee is subject to unannounced follow-up testing as directed by a substance abuse professional in accordance with the provisions of § 654.75(c)(2)(ii).

§ 654.43 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.

Each employer shall retest a covered employee to ensure compliance with the provisions of § 654.65, if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

Subpart D—Administrative Requirements

§ 654.51 Retention of records.

(a) *General requirement.* Each employer shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, and employee evaluation and referrals shall be maintained for a minimum of five years. Each employer shall maintain a copy of its annual MIS report(s) for a minimum of five years.

(2) *Two years.* Records related to the collection process (except calibration of EBT's) and training shall be maintained for a minimum of two years.

(3) *One year.* Records of all test results less than 0.02 shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Calibration documentation for evidential breath testing devices.

(iv) Documentation of breath alcohol technician training.

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(vi) Documents generated in connection with decisions on post-accident tests.

(vii) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(2) Records related to test results:

(i) The employer's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this part.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Copies of annual MIS reports submitted to FTA.

(6) Records related to education and training:

(i) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.

(ii) Documentation of compliance with the requirements of § 654.71 of this part.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 654.53 Reporting of results in a management information system.

(a) Each recipient shall submit to the FTA Office of Safety and Security by March 15 of each year a report covering the previous calendar year (January through December 31), summarizing the results of its alcohol misuse prevention program.

(b) Each recipient shall ensure the accuracy and timeliness of each report submitted by an employer, consortium, joint enterprise, or by a third party service provider acting on the employer's behalf.

(c) Each report that contains information on an alcohol screening test result of 0.02 or greater or a violation of the alcohol misuse provisions of this part shall include the following informational elements:

(1) Number of FTA covered employees by employee category.

(2)(i) Number of screening tests by type of test and employee category.

(ii) Number of confirmation tests, by type of test and employee category.

(3) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test and employee category.

(4) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test and employee category.

(5) Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater.

(6) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in covered positions during the reporting period (having complied with the recommendation of a substance abuse professional as described in § 654.75).

(7) Number of fatal and nonfatal accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater.

(8) Number of fatalities resulting from accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater.

(9) Number of covered employees who were found to have violated other provisions of subpart B of this part and the action taken in response to the violation.

(10) Number of covered employees who were administered alcohol and drug tests at the same time, with a positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater.

(11) Number of covered employees who refused to submit to a random alcohol test required under this part.

(12) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(13) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(14) Identification of FTA funding source(s).

(d) Each report with no screening test results of 0.02 or greater or violations of the alcohol misuse provisions of this part shall include the following informational elements. (This report may only be submitted if the program results meet these criteria.)

(1) Number of FTA covered employees.

(2) Number of alcohol tests conducted with results less than 0.02 by type of test and employee category.

(3) Number of employees with a confirmation alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position during the reporting period.

(4) Number of covered employees who refused to submit to a random alcohol test required under this part.

(5) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(6) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(7) Identification of FTA funding source(s).

§ 654.55 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this section, no employer shall release covered employee information that is contained in records required to be maintained under § 654.51.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The employer shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for

records other than those specifically requested.

(c) Each employer shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency with regulatory authority over the employer or any of its covered employees or to a State oversight agency authorized to oversee rail fixed guideway systems.

(d) Each employer shall make available copies of all results for employer alcohol testing conducted under this part and any other information pertaining to the employer's alcohol misuse prevention program, when requested by the Secretary of Transportation, or any DOT agency with regulatory authority over the employer or covered employee, or to a State oversight agency authorized to oversee rail fixed guideway systems.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a post-accident alcohol test administered following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under this part, or from the employer's determination that the employee engaged in conduct prohibited by subpart B of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(h) An employer shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

Subpart E—Consequences for Employees Engaging in Alcohol-related Conduct

§ 654.61 Removal from safety-sensitive function.

Except as provided in subpart F of this part, no employer shall permit any covered employee to perform safety-sensitive functions if the employee has engaged in conduct prohibited by subpart B of this part or an alcohol misuse rule of another DOT agency.

§ 654.63 Required evaluation and testing.

No employer shall permit any covered employee who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions unless the employee has met the requirements of § 654.75.

§ 654.65 Other alcohol-related conduct.

(a) No employer shall permit a covered employee tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:

(1) The employee's alcohol concentration measures less than 0.02; or

(2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

Subpart F—Alcohol Misuse Information, Training, and Referral

§ 654.71 Employer obligation to promulgate a policy on the misuse of alcohol.

(a) *General requirements.* Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting those requirements. The policy shall be adopted by the employer's governing board.

(1) The employer shall ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under this section of the employer's alcohol misuse prevention program and to each person subsequently hired or transferred to a covered position.

(2) Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to covered employees shall include detailed discussion of at least the following:

(1) The identity of the person designated by the employer to answer employee questions about the materials.

(2) The categories of employees who are subject to the provisions of this part.

(3) Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with this part.

(4) Specific information concerning employee conduct that is prohibited by this part.

(5) The circumstances under which a covered employee will be tested for alcohol under this part.

(6) The procedures that will be used to test for the presence of alcohol, protect the employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(7) The requirement that a covered employee submit to alcohol tests administered in accordance with this part.

(8) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(9) The consequences for covered employees found to have violated the prohibitions imposed under subpart B, including the requirement that the employee be removed immediately from safety-sensitive functions, and the procedures under § 654.75 of this part.

(10) The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(11) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and available methods of intervening when an alcohol problem is suspected, including confrontation, referral to any available EAP, and/or referral to management.

(c) *Optional provisions.* The materials supplied to covered employees may also include information on additional employer policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol concentration, that are based on the

employer's authority independent of this part. Any such additional policies or consequences shall be clearly and obviously described as being based on independent authority.

§ 654.73 Training for supervisors.

Every employer shall ensure that supervisors designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under § 654.37 receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 654.75 Referral, evaluation, and treatment.

(a) Each covered employee who has engaged in conduct prohibited by subpart B of this part shall be advised by the employer of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each covered employee who engages in conduct prohibited under subpart B shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

(c)(1) Before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02. In addition, the substance abuse professional may recommend that the employee be subject to a return to duty drug test, performed in accordance with 49 CFR part 40.

(2) In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse:

(i) Shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol testing administered by the employer following the employee's return to duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and consist of at least six tests in the first 12 months following the employee's return to duty. In addition, follow up testing may include testing for drugs , as directed by the substance abuse professional, to be performed in accordance with of 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the employer, by a substance abuse professional under contract with the employer, or by a substance abuse professional not affiliated with the employer. The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/employee agreements and employer policies.

(e) The employer shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with alcohol misuse does not refer the employee to the substance abuse professional's private practice from which the substance abuse professional receives remuneration or to a person or organization in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through—

(1) A public agency, such as a State, county, or municipality;

(2) The employer or a person under contract to provide treatment for alcohol problems on behalf of the employer;

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

(f) The requirements of this section with respect to referral, evaluation, and rehabilitation, do not apply to applicants who refuse to submit to a pre-employment alcohol test or who have a pre-employment alcohol test with a result indicating an alcohol concentration of 0.04 or greater.

Subpart G—Compliance

§ 654.81 Compliance a condition of FTA financial assistance.

(a) *General.* A recipient may not be eligible for Federal financial assistance under section 3, 9, or 18 of the Federal Transit Act, as amended, or under section 103(e)(4) of title 23 of the United States Code if a recipient fails to establish and implement an alcohol misuse prevention program as required by this part. Failure to certify compliance with these requirements, as specified in § 654.83, will result in the suspension of a grantee's eligibility for Federal funding.

(b) *Criminal violation.* A recipient is subject to criminal sanctions and fines for false statements or misrepresentations under § 1001 of title 18 of the United States Code.

(c) *State's role.* Each State shall certify compliance on behalf of its section 3, 9 or 18 subrecipients, as applicable, whose grant the State administers. In so certifying, the State shall ensure that each subrecipient is complying with the requirements of this part. A section 3, 9 or 18 subrecipient, through the administering State, is subject to suspension of funding from the State if such subrecipient is not in compliance with this part.

§ 654.83 Requirement to certify compliance.

(a) A recipient of FTA financial assistance shall certify annually to the applicable FTA Regional Office compliance with the requirements of this part, including the training requirements. Large operators shall certify compliance initially by January 1, 1995. Small operators and States shall certify compliance initially by January 1, 1996.

(b) A certification must be authorized by the organization's governing board or other authorizing official, and must be signed by a party specifically authorized to do so. A certification must comply with the applicable sample certification provided in Appendix A to this part.

Appendix A to Part 654—Sample Certifications of Compliance

This Appendix contains two separate examples of certification language. The first example consists of the generally applicable certification language. Example II should be used by employers who are covered by Federal Railroad Administration's alcohol misuse prevention program regulations.

I

(a) *For recipients who are large or small operators*

I, (name), (title), certify that (name of recipient) and its contractors, as required, for (name of recipient), has established and implemented an alcohol misuse prevention program in accordance with the terms of 49 CFR part 654.

(b) For States certifying on behalf of its subrecipients and their contractors

I, (name, title) on behalf of (STATE) certify that the entities on the attached list of Federal Transit Act subrecipients operating in this State, have established and implemented alcohol misuse prevention programs in accordance with the terms of 49 CFR part 654.

II

The text of the certification of an employer that provides commuter rail transportation service regulated by the Federal Railroad Administration shall be as follows:

I, (name), (title), certify that (name of recipient) and its contractors, as required, for (name of recipient), has an alcohol misuse prevention program that meets the requirements of the Federal Railroad Administration's regulations for employees regulated by the Federal Railroad Administration, and has established and implemented an alcohol misuse prevention program in accordance with the terms of 49 CFR part 654 for all other covered employees who perform safety-sensitive functions.

BILLING CODE 4910-57-P

APPENDIX B TO PART 654 - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information in the Federal Transit Administration (FTA) **Alcohol Testing MIS Data Collection Form**. These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-iv as an example to facilitate the process of completing the form correctly.

This reporting form includes six sections. Collectively, these sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) alcohol testing regulations. The six sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	2
C. ALCOHOL TESTING INFORMATION	ii-iv	3-4
D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION	v	5
E. ALCOHOL TRAINING/EDUCATION	v	5
F. FTA FUNDING SOURCES	v	5

Page 1 **EMPLOYER INFORMATION** (Section A) requires the year covered by this report, the agency name for which the report is done, a current address, a person's name and phone number to contact if there are any questions about the report. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA alcohol testing regulation.

Page 2 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under the FTA alcohol testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the

recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Page 3 **ALCOHOL TESTING INFORMATION** (Section C) requires information for alcohol testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iv.

Four types of information are necessary to complete this table. The first blank column with the heading **"NUMBER OF SCREENING TESTS,"** requires a count for all screening tests conducted for each employee category. The second blank column with the heading **"NUMBER OF CONFIRMATION TESTS,"** requires a count for all confirmation alcohol tests performed for each employee category.

The third blank column with the heading **"NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO 0.02, BUT LESS THAN 0.04,"** requires a count for each employee category of completed alcohol tests that resulted in an alcohol concentration equal to or greater than 0.02, but less than 0.04.

The fourth blank column with the heading **"NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04,"** requires a count for each employee category of completed alcohol tests that resulted in an alcohol concentration equal to or greater than 0.04. **Note: For return to duty testing, a confirmation result equal to or greater than 0.02 is a violation of the alcohol rule. Therefore, if the number of results equal to or greater than 0.04 is unknown, you may report all results in the third column of the table.**

Each column in the table should be added and the answer entered in the row marked **"TOTAL"**.

A sample table is provided on page iv with example numbers.

Page 3 Below the part of the table containing pre-employment testing information are three boxes. This information should be available from the safety program manager or the alcohol program manager.

1) **"Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater".** This is a count of those persons who were not placed in a covered position because they took a breath test that resulted in an alcohol concentration of 0.04 or higher.

2) "Number of accidents, as defined by the FTA alcohol testing regulation, which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater". This is a count of fatal and non-fatal accidents which resulted in post-accident breath alcohol tests indicating a concentration of 0.04 or greater for any employees involved in the accident.

3) "Number of fatalities resulting from accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater". This is a count of fatalities in accidents which resulted in post-accident alcohol tests indicating a concentration of 0.04 or greater for any employees involved in the fatal accidents.

Page 4

Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide the number of employees who engaged in alcohol misuse who were returned to duty in a covered position during this reporting period (having complied with the recommendations of a substance abuse professional as described in FTA regulations). This information should be available from the personnel office and/or alcohol program manager.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **ALCOHOL TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Revenue Vehicle Operation" and "Armed Security Personnel" to illustrate the procedures for completing this section.

A Screening tests were performed on 157 job applicants for revenue vehicle operator positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Revenue Vehicle Operation".

B Confirmation tests were necessary for 6 of the 157 applicants for revenue vehicle operator positions. Enter this information in the second blank column of the table in the row marked "Revenue Vehicle Operation". The confirmation test results for these 6 applicants were the following:

Applicant	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C The confirmation test results for 2 of the applicants for revenue vehicle operator positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the fourth blank column of the table in the row marked "Revenue Vehicle Operation".

D The confirmation test results for 3 of the applicants for revenue vehicle operator positions were equal to or greater than 0.04. Enter this information in the third blank column of the table in the row marked "Revenue Vehicle Operation".

E The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 applicants for revenue vehicle operator positions and 107 applicants for armed security personnel positions were subjected to screening tests. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column. (i.e., add all the numbers in that column and place the answer in the last row).

Please note that our sample data collection form also has information for armed security personnel on line two. The same procedures outlined for revenue vehicle operators should be followed for entering the data on armed security personnel. With applicants for armed security personnel positions, 107 screening tests were conducted resulting in 3 confirmation tests. No confirmation results were equal to or greater than 0.02, but less than 0.04; and the confirmation test result for 1 of the armed security personnel applicants was equal to or greater than 0.04. This information is entered in the row marked "Armed Security Personnel".

PRE-EMPLOYMENT				
EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
Revenue Vehicle Operation	157 (A)	6 (B)	2 (C)	3 (D)
Armed Security Personnel	107	3	0	1
TOTAL	264	9	2	4 (E)

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATION TESTS". These numbers may differ since some confirmation test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 5 **OTHER ALCOHOL TESTING/PROGRAM INFORMATION** (Section D) requires information on employees tested for drugs and alcohol at the same time and that you complete a table dealing with violations of other alcohol provisions/prohibitions of the regulation and a table dealing with employees who refused to submit to an alcohol test.

Page 5 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater,** requires that a count of all such employees be entered in the indicated box.

Page 5 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION** requires supplying the number of covered employees who used alcohol prior to performing a safety-sensitive function, while performing a safety-sensitive function, and before taking a required post-accident alcohol test. The action taken with covered employees who violate any of these FTA alcohol regulation provisions is also to be supplied. Other violations not delineated in this table may also be provided.

Page 5 **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FTA regulation.

Page 5 **ALCOHOL TRAINING/EDUCATION** (Section E) requires information on the number of supervisory personnel who have received alcohol training during the current reporting period.

Page 5 **FTA FUNDING SOURCES** (Section F) asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section.

For FTA Use Only

FTA ALCOHOL TESTING MIS DATA COLLECTION FORM OMB No. 2132-0557

YEAR COVERED BY THIS REPORT: 19__

A. EMPLOYER INFORMATION

Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on this Federal Transit Administration Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____

Signature Date of Signature

_____

Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security (TTS-3); Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0557); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES	
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES
Revenue Vehicle Operation	
Revenue Vehicle and Equipment Maintenance	
Revenue Vehicle Control/Dispatch	
CDL/Non-Revenue Vehicle	
Armed Security Personnel	
TOTAL	

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1994 - December 31, 1994).
2. This report is only for testing **REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):**
   - Results should be reported only for employees in **COVERED POSITIONS** as defined by the FTA alcohol testing regulation.
   - The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.
3. Information on refusals for testing should only be reported in Section D ["OTHER ALCOHOL TESTING INFORMATION"]. Do not include refusals for testing in other sections of this report.
4. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

C. ALCOHOL TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
PRE-EMPLOYMENT				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
RANDOM				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
POST-ACCIDENT				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				

Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater:	

Number of accidents, as defined by the FTA alcohol testing regulation, which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater:	FATAL	NON-FATAL

Number of fatalities resulting from accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater:	

C. ALCOHOL TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
REASONABLE SUSPICION				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
RETURN TO DUTY				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
FOLLOW-UP				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position during this reporting period (having complied with the recommendations of a substance abuse professional as described in FTA regulations):	

D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:	

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN
	Covered employee used alcohol while performing safety-sensitive function.	
	Covered employee used alcohol within 4 hours of performing safety-sensitive function.	
	Covered employee used alcohol before taking a required post-accident alcohol test.	

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	Number
Covered employees who refused to submit to a random alcohol test required under the FTA regulation:	
Covered employees who refused to submit to a non-random alcohol test required under the FTA regulation:	

E. ALCOHOL TRAINING/EDUCATION

TRAINING DURING CURRENT REPORTING PERIOD	Number
Supervisory personnel who have received at least 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FTA alcohol testing regulations:	

F. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	3 ___	9 ___	16(b)(2) ___	18 ___

APPENDIX C TO PART 654 - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Transit Administration (FTA) **Alcohol Testing MIS "EZ" Data Collection Form**. This form should only be used if there is **no alcohol misuse** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) alcohol testing regulations.

SECTION A - EMPLOYER INFORMATION requires the year covered by this report, the agency name for which the report is done, a current address, and a person's name and phone number to contact if there are any questions about the report. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title, and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA alcohol testing regulation.

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the FTA alcohol testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the recipient's or contractor's records for the reported year. The **TOTAL** is a count of all covered employees for all categories combined, i.e., the sum of the columns.

SECTION C - ALCOHOL TESTING INFORMATION requires information for alcohol testing, refusals for testing, and training/education. The first table requests information on the **NUMBER OF ALCOHOL SCREENING TESTS CONDUCTED** in each category for testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Enter the number of alcohol screening tests conducted by employee category for each category of testing. Testing categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty. and (5) follow-up testing. Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of **employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in the FTA regulation)**. This information should be available from the personnel office and/or alcohol program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-

employment, post-accident, reasonable suspicion, return to duty, or follow-up) **alcohol test** required under the FTA regulation.

ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD requires information on the number of supervisory personnel who have received alcohol training during the current reporting period.

SECTION D - FTA FUNDING SOURCES asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section.

For FTA Use Only

FTA ALCOHOL TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2132-0557
(No Alcohol Misuse)

YEAR COVERED BY THIS REPORT: 19__

A. EMPLOYER INFORMATION

Company Name _____

Address _____

_____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on the attached Federal Transit Administration Alcohol Testing Management Information System "EZ" Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____
Signature Date of Signature

_____
Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security (TTS-3); Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0557); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES	
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES
Revenue Vehicle Operation	
Revenue Vehicle and Equipment Maintenance	
Revenue Vehicle Control/Dispatch	
CDL/Non-Revenue Vehicle	
Armed Security Personnel	
TOTAL	

C. ALCOHOL TESTING INFORMATION

NUMBER OF ALCOHOL SCREENING TESTS CONDUCTED						
EMPLOYEE CATEGORY	PRE-EMPLOYMENT	RANDOM	POST-ACCIDENT	REASONABLE SUSPICION	RETURN TO DUTY	FOLLOW-UP
Revenue Vehicle Operation						
Revenue Vehicle and Equipment Maintenance						
Revenue Vehicle Control/Dispatch						
CDL/Non-Revenue Vehicle						
Armed Security Personnel						
Total						

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in the FTA regulation):	

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	Number
Covered employees who refused to submit to a random alcohol test required under the FTA regulation:	
Covered employees who refused to submit to a non-random alcohol test required under the FTA regulation:	

ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD	Number
Supervisory personnel who have received at least 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FTA alcohol testing regulations:	

D. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	3 ___	9 ___	16(b)(2) ___	18 ___

BILLING CODE 4910-57-C

Issued: January 25, 1994.
Federico Peña,
Secretary of Transportation.
Gordon J. Linton,
Administrator.
[FR Doc. 94–2039 Filed 2–3–94; 1:00 pm]
BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 653

[Docket No. 92–H]

RIN 2132–AA37

Prevention of Prohibited Drug Use in Transit Operations

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: The Omnibus Transportation Employee Testing Act of 1991 directs the Federal Transit Administration to issue regulations on drug and alcohol testing for mass transit workers in safety-sensitive positions. This document accordingly sets forth the agency's anti-drug program, which is intended to increase the safety of mass transit operations.

EFFECTIVE DATE: March 17, 1994.

FOR FURTHER INFORMATION CONTACT: For program issues, Judy Meade, Office of Safety and Security, Federal Transit Administration, DOT, 400 Seventh St., SW., room 6432, Washington DC 20590. Telephone: 202–366–2896. For legal questions, Nancy Zaczek or Daniel Duff, Office of the Chief Counsel, Federal Transit Administration, DOT, 400 Seventh St., SW., room 9316, Washington DC 20590. Telephone: 202–366–4011 (voice); 202–366–2979 (TDD). Copies of the regulation are available in alternative formats upon request.

SUPPLEMENTARY INFORMATION: Because of the length of this preamble, the following outline of the rule's introductory material is provided.

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I. Discussion

A. Background

On December 15, 1992, the Federal Transit Administration (FTA) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, at 57 FR 59660, entitled "Prevention of Prohibited Drug Use in Transit Operations." The NPRM invited comment from the public on the proposed rule, which would require certain recipients of Federal transit funding to have a comprehensive anti-drug program. FTA provided a 120-day comment period and received over 80 comments on the regulation proposed in the NPRM.

In addition to receiving written comments on the NPRM, in 1993 FTA held three public hearings on the rule: on February 25–26, in Washington DC, on March 1–2, in Chicago, Illinois, and on March 4–5, in San Francisco, California. Each hearing was recorded by a court reporter; the transcript of each hearing and any statements or other material submitted to the hearing officer during the hearings are contained in the public docket to this rule and were considered in developing this final rule.

B. The 1988 Drug Rule

On November 22, 1988, the FTA issued a final rule requiring certain recipients of Federal financial assistance under the Urban Mass Transportation Act of 1964, as amended, to develop and implement drug testing programs. That regulation, codified at 49 CFR part 653, was the first time the FTA had required such a program. By December 21, 1989, approximately 200 large transit systems certified compliance with the regulation and began testing the urine of safety-sensitive employees for five types of illegal drugs.

Shortly after its final rule was published in 1988, the FTA was sued by three unions representing most American transit workers. In these three suits, consolidated in the United States District Court for the District of Columbia, the plaintiffs contended, among other arguments, that FTA lacked statutory authority to issue a drug testing rule. The district court upheld the regulation and the plaintiffs appealed.

On January 19, 1990, the United States Court of Appeals for the District of Columbia Circuit overturned that decision in *Amalgamated Transit Union v. Skinner*, 894 F.2d 1362 (D.C. Cir. 1990) and on January 25, 1990, FTA published a notice in the **Federal Register** suspending its anti-drug regulation. (Today's final rule replaces suspended part 653 with a new part 653.)

Subsequently, the Omnibus Transportation Employee Testing Act of 1991 (the Act) was enacted, authorizing FTA to require drug testing of safety-sensitive employees. (Pub. L. 102–143, Title V.) This final rulemaking is issued under the authority of that Act.

C. The Omnibus Transportation Employee Testing Act of 1991

The Act requires the FTA to issue a rule requiring recipients of certain FTA funding to test safety-sensitive employees for the prohibited use of controlled substances. The Act directs FTA to require recipients of Federal funds under section 3, 9, or 18 of the Federal Transit Act, as amended (FT Act), or section 103(e)(4) of title 23 of the U.S. Code, to test safety-sensitive employees for any substance listed in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) which the Secretary has determined poses a risk to transportation safety. Because certain recipients of FTA funds are regulated by the Federal Railroad Administration (FRA) or the Federal Highway Administration (FHWA), the Act permits such recipients to be subject to the anti-drug regulations of those agencies.

Compliance with FTA's rule is a condition of the receipt of certain kinds of Federal transit funding. The Act authorizes FTA to withhold that funding if a recipient is not in compliance with FTA's rule or, as appropriate, the anti-drug rules of FRA or FHWA . Specifically, the Act authorizes FTA to withhold Federal funding under section 3, 9, or 18 of the FT Act or section 103(e)(4) of title 23 of the U.S. Code.

The Act directs the FTA to require four kinds of drug testing: pre-employment, reasonable suspicion, random, and post accident, and permits FTA to require periodic drug testing. The Act further directs FTA to require a post-accident test when there has been a loss of human life.

The Act authorizes the testing only of employees who perform safety-sensitive functions, but does not define what activities constitute a safety-sensitive function, specifically authorizing the agency to make that determination.

The Act directs FTA to require its recipients to test safety-sensitive employees for the prohibited use of controlled substances, and in so doing to safeguard the privacy of safety-sensitive employees to the maximum extent practicable. Moreover, the Act requires that the specimen be subdivided, secured, and labeled in the presence of the tested employee, with one part tested and the other part retained in a secure manner to prevent tampering. If the tested portion is verified positive for the presence of illegal drugs, the Act specifies that the tested employee may request that the other portion be tested at another certified laboratory. To ensure the accuracy of the testing procedures, the Act permits only those laboratories certified by the Department of Health and Human Services (DHHS) to test specimen samples.

If a safety-sensitive employee has a verified positive drug test result for prohibited drugs, the Act directs FTA to ensure that the employee receives opportunity for evaluation and treatment. Also, the Act permits FTA, as appropriate, to permit the disqualification or dismissal of any safety-sensitive employee who has a verified positive drug test result.

In providing this regulatory authority, the Act authorizes the FTA to preempt State or local laws, rules, regulations, ordinances, standards, or orders inconsistent with this rule, except for certain provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or property damage.

D. Summary of the Final Rule

The final rule applies to recipients of Federal funds under sections 3, 9, or 18 of the FT Act, or section 103(e)(4) of title 23 of the United States Code. It requires each such recipient to establish and implement an anti-drug program, consisting primarily of a testing program but with elements requiring training, educating, and evaluating safety-sensitive employees as well.

The regulation specifies that safety-sensitive employees may not use any of the five prohibited substances identified in the regulation: marijuana, cocaine, opiates, amphetamines, or phencyclidine.

The rule mandates the following kinds of testing:

1. Pre-employment (including transfer from a nonsafety-sensitive position to a safety-sensitive position within the organization);
2. Reasonable suspicion;
3. Random;
4. Post-accident; and
5. Return to duty/follow-up (periodic).

The rule requires the use of testing procedures found in part 40 of title 49 of the Code of Federal Regulations, the procedures used in the drug testing rules of all agencies of the Department of Transportation (DOT), which requires the testing of urine samples. Part 40 conforms to the DHHS "Scientific and Technical Guidelines for Drug Testing Programs" issued on April 11, 1988 and amended today to incorporate changes required by the Act. For a discussion of those changes, please see part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs", and its accompanying preamble published elsewhere in today's **Federal Register.** This part 653 includes procedures that require a substance abuse professional to evaluate a covered employee who has a verified positive drug test result as defined under this part. Consequently, both parts must be followed.

If a covered employee has a verified positive drug test result (as defined in this part 653), the employee must be removed from the safety-sensitive position, be told about educational and treatment programs available, and be evaluated by a substance abuse professional to determine whether the employee has a drug problem. The rule does not address who should pay for the employee's treatment, which is a local issue.

To return to her safety-sensitive position, the employee must properly complete any course of treatment prescribed by the substance abuse professional and take a drug test with a verified negative result.

The rule requires each recipient to adopt a policy statement describing its anti-drug program policies and procedures, including the consequences of drug use and a verified positive drug test result.

The rule applies to any entity that receives certain Federal funding from the FTA. Such an entity, called a recipient, must certify to the FTA that it will carry out the requirements of this part. Not all such recipients provide mass transit services directly, relying instead upon other public or private entities to provide such services in whole or in part. In these cases, the direct recipient of FTA funds remains legally responsible to the FTA for assuring that any entity operating on its behalf is in compliance with the drug testing rule.

Compliance with the rule is a condition of Federal assistance. Failure of a recipient to comply with the rule—either in its own operations or in those of an entity operating on its behalf—will result in the suspension of all Federal transit funding to the recipient.

Because, as noted above, a recipient may not always directly carry out mass transit services, the rule uses "operator" or "employer" to describe those who actually may be providing transit service and therefore must comply with the drug testing program, but under the rule it is always the direct recipient of FTA funds that legally is responsible to FTA for complying with the rule.

E. Overview of the Comments

The FTA received 84 comments in response to the NPRM. FTA considered all comments filed in a timely manner as well as all statements and material presented at the public hearings on the rule. The breakdown among commenter categories is as follows:

Transit operators (public and private)	35
Cities and counties	4
State DOTs	11
Labor unions	2
Trade associations	9
Individual citizen	1
Nonprofit organizations/special transit providers	12
State governments	2
Public Utility	1
Member of Congress	1
Private businesses	3
Others	4

Most of the comments addressed issues raised in the NPRM, but some commenters addressed additional issues, such as whether volunteer drivers should be subject to the rule, or the applicability of the regulation to providers of transportation paid with publicly subsidized vouchers or scrip (user-side subsidies). All of the major issues addressed by the commenters are discussed in Section II.

II. Discussion of the Comments

A. Multi-modal Jurisdiction

Because many FTA recipients operate a variety of different mass transit services—such as bus, rapid rail, commuter rail, or ferry boat services—they may be regulated by the FTA and by another DOT agency or agencies, such as the Federal Railroad Administration (FRA), the Federal Highway Administration (FHWA), or the United States Coast Guard (Coast Guard). For the most part, these agencies have regulated drug use among safety-sensitive employees since 1989,

including employees of certain FTA recipients. In addition, the Act authorized FHWA, for the first time, to regulate intrastate Commercial Driver's License (CDL) holders, which include many transit employees. To limit the anti-drug regulations with which such recipients would have to comply, the NPRM discussed a proposal under which (1) FRA's drug testing regulation would apply to FTA recipients that operate railroads, including the recipient's safety-sensitive employees; (2) FTA's drug testing program, not FHWA's, would apply to recipients who employ or use the services of safety-sensitive employees who hold a CDL, but the individual CDL holder otherwise would remain subject to FHWA's implementation of the Commercial Motor Vehicle Safety Act of 1986; and (3) both FTA's and Coast Guard's drug testing program would apply to recipients operating vessels, and Coast Guard would continue to regulate the individual safety-sensitive employee (vessel crew member) by pursuing licensing actions or other punitive measures.

FTA received ten comments concerning the multi-modal jurisdictional issue suggesting a rather significant change to the FTA's approach to this rulemaking. Several commenters suggested that DOT should issue one regulation covering all entities regulated by any DOT agency. In contrast, other commenters suggested that FTA and FHWA should issue a joint regulation or issue two separate regulations using identical language. Lastly, one commenter particularly focused on the chain-of-custody form, mandated by part 40, and recommended that all DOT agencies use the same form.

FTA Response. FTA is sympathetic to the concerns of recipients regulated by more than one DOT agency anti-drug rule, some of whom proposed a single regulation. As a practical matter, however, an agency-wide DOT drug rule would be difficult to implement because of the different characteristics of the various communities each agency regulates. Nevertheless, FTA addresses the multi-jurisdictional issue by clarifying the jurisdiction of FTA, FRA, FHWA, and Coast Guard over transit entities. In this regard, we have adopted the proposal in the NPRM discussed above.

In response to one commenter, DOT will amend part 40 in the near future to address the issue concerning one DOT-wide chain-of-custody form.

B. Accident

The vast majority of comments concerning this definition focused on incidents involving only property damage; specifically, how the seriousness of these incidents should be measured, thus justifying the administration of a drug test. In the NPRM we had proposed a dollar measurement, whereby an accident was any incident resulting in at least $1,000 in total property damage.

Most commenters addressed the dollar amount proposed in the NPRM and stated that $1,000 was too low a threshold. Some of these commenters proposed their own method of calculating a dollar threshold such as a measurement based on a vehicle's gross vehicle weight—the greater the weight the higher the property damage threshold.

Other commenters objected to the use of a dollar threshold to measure the seriousness of incidents involving only damage to property. These commenters urged us to adopt an objective measure of property damage such as FHWA's definition of accident. FHWA defines an accident involving only property damage as an incident that so disables the vehicle that it must be towed away from the scene.

Another commenter objected to the use of dollar amounts and requested that we adopt a reasonable cause standard.

Other commenters addressed the overall definition of accident. In the NPRM we had limited the definition to an incident involving a revenue service vehicle, and several commenters objected to this limitation, proposing instead that we include any incident involving a nonrevenue service vehicle as well.

FTA Response. FTA has changed the definition of "accident" in such a way that it is broadened in some respects, and narrowed in others. In particular, FTA has broadened the definition in the final rule to include occurrences involving nonrevenue service vehicles operated by a holder of a CDL. We recognize that this decision falls short of the recommendation proposed by some commenters favoring the inclusion of all occurrences involving nonrevenue service vehicles, but it is based on another consideration, avoiding a jurisdictional conflict between FTA and FHWA. Ordinarily, FHWA would regulate CDL holders as well as their employers. This new coverage in our final rule is consistent with the agreement between FTA and FHWA that FTA's drug testing program applies to the transit employers of CDL holders.

FTA has further modified the proposed definition of "accident" to distinguish the situations of different kinds of mass transit vehicles. Many mass transit vehicles, such as buses and vans, are passenger-carrying motor vehicles. FTA believes that it is sensible to use a definition of "accident" that is consistent with FHWA's for such vehicles. Therefore, we are adopting a provision paralleling FHWA's definition of "accident" (in 49 CFR 390.5). The definition states that an accident occurs when a vehicle (whether a mass transit vehicle or another vehicle, such as a private automobile) suffers disabling damage and is towed away from the scene of the accident. This provision eliminates the subjectivity inherent in basing a definition on estimates of property damage.

For other vehicles—light or rapid rail cars, ferry boats, trolley cars and buses, etc.—we also believe it is best to eliminate a property damage-based standard. Instead, the final rule provides that if the mass transit vehicle is removed from revenue service as the result of the occurrence, an "accident" is deemed to take place. FTA believes that the operating practices of recipients typically result in at least the temporary removal from revenue service of vehicles that have been involved in all but the most minor of mishaps.

Of course, any occurrence in which someone is killed or injured sufficiently to require medical treatment away from the accident scene, is an "accident" for purposes of this rule, regardless of the type of transit vehicle involved.

We have further narrowed the definition of "accident" by deleting the reference to reportable accidents. In the NPRM we proposed that any occurrence required to be reported to FRA, FHWA, or the Coast Guard would constitute an accident, but the final rule uses only the criteria discussed above.

C. Safety-sensitive function

Most commenters addressed the definition of safety-sensitive function, one of the most important definitions in the rule. Because the proposed definition had a list of functional categories, most commenters objected either to the inclusion or exclusion of a particular category. Some commenters, however, merely sought clarification of the categories in the NPRM.

Including those employees who "maintain a revenue service vehicle" in the definition particularly concerned several commenters. While most commenters understood that this category included mechanics, some thought that it covered workers who clean rather than repair buses, rail cars,

and other mass transit facilities. The remaining commenters made specific recommendations concerning mechanics, some arguing that we should exclude all mechanics, with others stating that we should exclude only those working under contract for section 18 rural operators. Yet others suggested that we should include only those mechanics working for large transit operators.

Commenters objected to only one other safety-sensitive category, "controlling the movement of revenue service vehicles", the category which includes dispatchers. These commenters contend that dispatchers do not perform a safety-sensitive function.

Although we did not include any categories involving the construction, design, or manufacture of revenue service vehicles or other mass transit equipment or facilities, several commenters suggested that we specifically exclude them from the definition. Without this specific exclusion they believe there may be some instances in which such workers might be considered to be performing a safety-sensitive function.

Other commenters recommended that we add categories to the definition, including police and other security personnel, and mechanics who repair nonrevenue service vehicles.

Finally, some commenters sought clarification of the definition: whether it included volunteers and CDL holders, and on the meaning of "directly supervising an employee who is performing a safety-sensitive function."

FTA Response. We have made several changes to the definition of "safety-sensitive employee." Before describing those changes, however, we first explain why we proposed a definition based on function rather than titles. Because each transit system uses its own job classification categories, we wanted to avoid specifying particular job titles. Instead, we concluded that four job functions were critical to safety, and in the NPRM identified operating, maintaining, and controlling the movement of vehicles as those functions critical to the safety of the traveling public, and added a fourth category, first-line supervisors of anyone operating, maintaining, or controlling the movement of the vehicle. The final rule adopts these categories, with some changes.

Now a discussion of the changes made. Most notably, we have created two new categories of safety-sensitive functions: The carrying of a firearm for security purposes, and the operation of a nonrevenue service vehicle by a CDL holder. We include firearm-bearing police and security personnel because of the sensitivity of their position and the danger to the public should they be under the influence of prohibited drugs.

As discussed above, FHWA regulates CDL holders, both interstate and intrastate, and their employers. FTA's relationship is with its recipients, many of whom employ CDL holders. To avoid a jurisdictional conflict, FTA and FHWA have agreed that FTA's drug testing rule will apply to transit entities that employ or use the services of CDL holders, regardless of the kind of vehicle they operate.

We have also reduced the scope of the definition somewhat. While we proposed in the NPRM to include supervisors of safety-sensitive employees, the final rule limits that category by covering only first-line supervisors whose responsibilities include the performance of a safety-sensitive function. For instance, if a supervisor's job description requires her to drive a vehicle, she would be covered, but if it did not, she would not.

Further, in response to comments, we have excluded from the scope of the rule contract mechanics for any entity receiving section 18 funds.

Regarding the recommendation specifically to exclude construction, design, and manufacturing personnel, we believe it is unnecessary to do so because the list of categories in the definition is exclusive. Any functional category—such as construction or design or manufacturing—not in the definition is not subject to the rule.

Finally, some clarification on the issue of safety-sensitive employees. Volunteers are covered by the rule if they perform any safety-sensitive function. Coverage under the rule should not be based on whether an individual holds a paying position, but on whether that individual is in a position to affect the safety of the transit-riding public. The final rule definition of covered employee thus specifically includes volunteers.

Another ambiguity mentioned by several commenters concerns the maintenance category, which several commenters believed would include workers who clean rather than repair transit equipment. We do not mean to cover such workers and emphasize that only mechanics who repair vehicles or who perform routine maintenance are the types of maintenance workers covered by the rule.

D. Covered employee/contractor

In the NPRM the definition of covered employee included three general categories of safety-sensitive employees—those directly employed by an employer, those employed by a contractor, and applicants for a safety-sensitive position. Most comments about this definition pertained to the coverage of contractors in the NPRM, which included any person or organization providing services or performing work consistent with a specific understanding or arrangement, which could be a written contract or an informal arrangement reflecting an ongoing relationship between the parties.

Many commenters objected to the inclusion of contractors within the scope of the rule, believing that employers should not be accountable for a contractor's compliance with the rule because employers have little or no control over contractors or their employees.

While other commenters did not specifically object to the inclusion of contractors, they did object to the scope of the definition of contractor and recommended that it be defined to include only those who perform work or provide service under a formal written agreement.

Other commenters sought to exclude contractors in rural areas contending that many simply would refuse to do business with the recipient rather than submit to a sophisticated drug testing program. The remaining commenters requested that we exclude only contract mechanics from the definition.

FTA Response. In response to comments, we have made a number of changes to the wording of this safety-sensitive function, although the basic concepts in the NPRM remain unchanged.

The final rule includes direct employees, contractors and their employees, and applicants under the definition, but reflects the following changes. First, we specifically include volunteers in the definition because, as noted above, we define "safety-sensitive" functionally and look only to the function that a person performs, not whether they receive pay for their work.

Second, while many commenters objected to including contractors who perform safety-sensitive functions, we have for the most part continued to include them in light of legislative history on this issue. The following was said during the debate on the bill:

> Drug and alcohol-testing requirements must not be circumvented through contracting out of work.
>
> Safety-sensitive employees of recipients of the Federal transit grant money identified in the bill, and those safety-sensitive employees working for contractors of such recipients must be covered exactly to the same extent and in the same fashion. I know that I speak

for all conferees when I say that we will not tolerate a situation where employees performing substantially the same safety-sensitive function are covered or not covered depending on whether they work directly for a public authority or an outside contractor. 137 Cong Rec. S14766 (daily ed. Oct. 16, 1991.) (Statement of Sen. D'Amato).

On the other hand, we are sympathetic to the persuasive arguments of rural operators on this issue, and specifically exclude from coverage under the rule contract mechanics who perform work or provide services for section 18 rural recipients. We believe that the potential cost and hardship of including such contractors outweighs any benefits including them might bring, since so many rural operators believe that they simply would be unable to get any outside servicing if providers of that service were subject to this rule.

E. Pre-employment/Pre-duty Testing

Although the NPRM included the pre-employment/pre-duty tests within one provision, in fact they apply to different types of workers—applicants in one instance, and transferees from a nonsafety-sensitive position to a safety-sensitive position in the other. Under the NPRM, an applicant could not be hired unless he passes a pre-employment drug test, nor could a transferee, already employed by the employer, perform a safety-sensitive function until she passes a drug test. Under the specific notice provision, the NPRM required applicants and transferees to be notified that they must submit to a drug test. Moreover, a pre-employment drug test could not be waived by the employer, which distinguished the anti-drug NPRM from the alcohol NPRM. (The alcohol NPRM proposed to allow the employer in certain limited circumstances to accept another alcohol test result in lieu of a pre-employment test.)

Commenters focused on these issues. Specifically, commenters requested that we add a notification requirement to the pre-employment/pre-duty testing provision of the final rule. On the other issue, commenters stated that employers should not be able to accept the results of a drug test administered under the requirements of another DOT agency.

FTA Response. In the NPRM we did require an employer to notify an applicant that he or she would be required to take a drug test with a verified negative result. We have made no changes to this requirement in the final rule. As noted above, some commenters thought that we allowed an employer to use certain existing test results in lieu of a pre-employment test. We do not. That provision was not in the drug NPRM, nor is it in this final rule.

We have made another change in response to comments on our related alcohol rule. Some commenters were confused by the term pre-duty testing and assumed that it meant that an employee must be tested every time they were about to perform a safety-sensitive function. This is not the case. We meant to apply that provision to transferees from a nonsafety-sensitive position to a safety-sensitive position. To clarify our intent we have deleted the phrase "pre-duty" (in the context of pre-employment drug testing) from the final rule.

F. Reasonable Suspicion Testing

Commenters responding to this general area raised numerous issues. Before discussing those issues, however, we first briefly summarize the reasonable suspicion testing provision as it appeared in the NPRM.

Reasonable suspicion testing is specifically required by the Act, and the NPRM basically authorizes an employer to conduct a test when it believes the employee is exhibiting certain characteristics of prohibited drug use. The NPRM never identifies or defines those characteristics, but authorizes an employer to require a reasonable suspicion drug test on the basis of specific, contemporaneous, articulable observations concerning the appearance and behavior of the covered employee, which characterize prohibited drug use.

Moreover, those observations must be made by a supervisor trained in detecting the symptoms of drug use. The NPRM specifically required that a supervisor receive two hours of training, which must include information about the manifestations and behavioral characteristics indicating prohibited drug use.

Commenters took a number of positions on this issue. Some wanted only one supervisor to make the reasonable suspicion determination, others wanted two. Some believed that the test could be based on the observations of a third party, such as a transit passenger.

Commenters also took different positions on the amount of time a supervisor should be trained, although most thought that one hour was not enough time to adequately train a supervisor. Some commenters suggested four hours of training, others suggested four hours of combined alcohol and drug training, and yet another suggested five to ten hours of training with the additional requirement of a proficiency certification.

Many commenters suggested that the language of the reasonable suspicion provision be broadened to include other factors in the determination. For instance, some suggested that employers be allowed to review an employee's attendance records for absenteeism and tardiness. Others suggested that an employer be allowed to examine other records indicating whether the employee had any moving traffic violations, occupational injuries, or operating rule violations. And others suggested that an employer be able to look at the pattern of the employee's conduct both on and off the job.

Lastly, the commenters discussed the matter of whether there should be written documentation of a reasonable suspicion determination. The NPRM did not require written documentation, but stated that any document generated as a result of a reasonable suspicion determination must be maintained for a year. Several commenters recommended that a written determination be required, with one suggesting that a checklist also be required. One commenter recommended that a second supervisor concur in the written determination before a reasonable suspicion test could be conducted. Another commenter suggested that written documentation be required only if the employee has a verified positive drug test result and subsequently was disciplined.

FTA Response. In the final rule we essentially have retained the reasonable suspicion provision from the NPRM, with only one change, because we believe it adequately balances the rights of employees against the rights of the traveling public. For instance, we believe that the observations must be made by a supervisor trained in detecting the symptoms of prohibited drug use rather than by some third party. (Of course a third party could alert a transit operator about a particular situation, which might trigger a supervisor to pay particular attention to the affected employee.)

We also believe that a determination made by a single supervisor trained in detecting the signs of drug use adequately protects the employee, and we were concerned about the cost of requiring two supervisors to make the determination.

However, although many commenters supported the requirement that supervisors receive two hours of training, we have changed this requirement in the final rule, being sensitive to the costliness of such training. Supervisors who make reasonable suspicion referrals will be required to undergo only one hour of training. Individual employers of course are free to provide as much additional training beyond the required one hour as they like. Employers also are allowed to combine drug and alcohol training, provided the required time frames are satisfied.

The standard used to authorize a reasonable suspicion test remains unchanged in the final rule, which means that a supervisor may consider only short-term indicators of drug use. We stress that long-term indications of drug use such as absenteeism or tardiness or moving traffic violations cannot be used as the basis for conducting a reasonable suspicion drug test, which must only be based on contemporaneous and articulable observations. Of course, a supervisor may particularly be alert to the conduct and job performance of an employee based on the supervisor's long-term knowledge of the employee.

We do not require a supervisor to document an employee's behavior in writing. We do, however, provide that any documents generated by the determination must be maintained for one year. Again, the final rule does not require an employer to document each and every reasonable suspicion determination, although an employer would be prudent to do so.

G. Random Testing/Random Testing Rate

The random testing provision generated many comments, with most commenters proposing the adoption of a particular random testing rate or a particular method of determining a random testing rate. Other commenters were concerned about the frequency of random testing and how the test should be administered. Several commenters sought clarification of certain aspects of the provision.

Several different alternatives for determining the random testing rate were offered. Many commenters suggested a flat rate, ranging from 10 percent to 50 percent.

Others suggested a performance based rate, that is, a rate determined by the results of random testing. Under such a scheme, if the number of verified positive test results exceeds a specified rate (for example, 1 percent), then the employer would be required to test at a higher specified random rate (for example, 50 percent). If the number of verified positive test results is less than the specified rate, the employer would be required to test at a reduced random rate (for example, 25 percent). One commenter recommended that an employer could randomly test 20 percent of its employees if less than 3 percent of its random tests were verified, but if the number of verified positives exceeded 3 percent the employer would have to raise its testing rate.

Other variations were proposed. Several commenters suggested that we set a minimum random testing rate of 10 percent, but give an employer the discretion to test at a higher rate based on its own experience. Another commenter suggested that we require a random rate below 50 percent and allow an employer to set its own rate for different classes of employees. Yet another commenter recommended that we set a rate anywhere from 10 percent to 50 percent but allow an employer to reduce its rate if it has programs, such as training and rehabilitation programs, in addition to those required by the final rule.

Another commenter recommended that random testing be phased in, 15 percent the first year, 20 percent the second year, and 25 percent thereafter, presumably to ease cost and administrative burdens. Another commenter, however, recommended that those who had never randomly tested employees should be required to test at a higher random rate than those who have had a program in effect. Lastly, one commenter believed that FTA should not set the rate at all, but the rate should be determined by an agreement between labor and management. Aside from the random testing rate issue, commenters also addressed how the test itself should be conducted. In this regard, several commenters were concerned about how truly random testing would be, and suggested that the testing itself should be conducted by an outside agency.

FTA Response. In determining the random drug testing rate, FTA has considered not only the comments on this issue but other factors as well. Most importantly, because FTA, unlike other DOT agencies, has not previously required drug testing, we do not know the extent of drug use in the mass transit industry. We therefore have established a random drug testing rate of 50 percent, the rate at which other DOT agencies have been requiring random testing since 1989.

We recognize, however, that random drug testing does subject a large number of employees to urine testing and is costly. We have thus today issued an NPRM requesting comment on whether we should adopt a performance based random drug testing rate. For a complete discussion of this issue, please see the NPRM entitled "Random Drug Testing Program" published elsewhere in today's issue of the Federal Register.

Moreover, the NPRM required random testing to be completely random, which means that it must be unannounced. It must also be unpredictable, which is the reason we proposed that the tests be spread reasonably throughout a 12-month period. We have retained both of these requirements in the final rule.

We do not, however, require the test to be conducted by an outside agency. Although requiring a third party to conduct the random drug testing may afford an employee additional protection, we believe the final rule provides an employee with sufficient protection. Among other things, the rule requires an employer to use a scientifically valid method to randomly select employees from a pool in which each employee has an equal chance of being selected.

Lastly, some commenters are confused about an issue raised in the alcohol NPRM that does not relate to this rule. In our companion alcohol NPRM, we restricted random testing to the time frames just before, during, or just after the employee performs a safety-sensitive function. Several commenters to the drug rule asked us to explain the reasoning for this restriction.

We emphasize that this limitation does not apply to the drug rule. Because drugs are prohibited substances, a safety-sensitive employee may be randomly tested for drugs at any time while on duty. In contrast, alcohol is a legal substance, and an employee who is not performing or who will not be performing a safety-sensitive function within four hours may engage in a legal activity. Thus the alcohol rule strictly limits the period of time when the employee is subject to random testing.

H. Post-accident Testing

The comments on this provision concerned three basic questions: when should a test be performed following an accident, which employees should be tested, and who should conduct the testing.

In determining when a post-accident test should be required, the NPRM distinguished between fatal and nonfatal accidents. After an accident involving a fatality, the NPRM required the employer to test employees who were on duty and present in the vehicle at the time of the accident as well as mechanics involved in the vehicle's most recent maintenance. After an accident not involving a fatality had occurred, the employer was required to test certain employees unless their performance could be completely discounted as a contributing factor to the accident.

Instead of this dual standard in the NPRM, one commenter suggested that we adopt a reasonable cause standard for determining when a post-accident test should be performed, regardless of the seriousness of the accident.

Although other commenters did not specifically propose a reasonable cause standard, they did object to the scope of the fatal accident provision, in which all safety-sensitive employees on-duty and present in the vehicle at the time of the accident, as well as mechanics, must be tested.

Most of the comments on who should be tested stressed the difficulty of testing mechanics, especially when vehicle maintenance is contracted out. Some flatly stated that testing mechanics in rural areas was not practical, while others stated that requiring the testing of mechanics after an accident is unreasonable. While some commenters opposed the testing of any mechanics, others suggested that we include only certain mechanics. In this connection, one commenter suggested that we require the testing only of those mechanics who have maintained the affected vehicle within the two weeks before the accident occurred. Another commenter made the same recommendation but suggested that only those mechanics who maintained the vehicle two days before the accident be tested.

Although most comments concerned the testing of mechanics, one commenter also suggested that we require the testing of drivers only if they are contributorily negligent.

Commenters also stressed the difficulty of testing employees after an accident. They cited examples of employees leaving the scene of the accident, or police or hospital personnel refusing to allow the employee to be tested by the employer. These commenters contended that the rule should address these problems.

FTA Response. FTA in its final rule has developed a dual post-accident testing provision: after accidents involving a fatality, and after accidents involving bodily injury or property damage. The Act requires us to mandate a drug test whenever someone dies as a result of a mass transit accident, and we thus have expressly rejected the adoption of a probable cause standard in such cases. Simply put, if an accident involving a fatality has occurred, a drug test must be given within 32 hours to those safety-sensitive employees on-duty in the vehicle at the time of the accident.

Other employees' conduct may contribute to an accident, however. For example, if two trains are placed on the same track and collide, the performance of safety-sensitive duties by a vehicle controller could have contributed to the accident. If there are indications that brake failure was involved in a bus accident, and the vehicle's brake system was maintained a brief time before in the garage by an identifiable mechanic, the performance of that mechanic could have contributed to the accident. In situations of this kind, the rule directs the employer to test the other employee, but only if the employer determines, based on the best information available at the time, that the other employee's performance could have contributed to the accident. Implementing this provision rests substantially on the good judgment of the employer. For example, if the performance of the relevant work by a mechanic occurred long enough ago (e.g., more than 32 hours before a test could be administered) that a meaningful test could not be administered, the employer would not be expected to administer the test. If the bus was recently in the shop only for an air conditioning repair, there would be no point in testing a mechanic after an accident in which brake failure may have been involved.

With respect to non-fatal accidents involving road surface vehicles (e.g., buses and vans), a covered employee on duty in the vehicle at the time of the accident would have to be tested if the employee had received a citation from a law enforcement officer. As in the case of fatal accidents, the employer would test other employees if the employer determined, based on the best information available at the time, that such an employee's performance could have contributed to the accident. Examples of such a test could include the situation of the mechanic mentioned above and a situation in which a bus driver was not cited by local law enforcement personnel but the employer, in its good judgment, determined that the driver's performance could have contributed to the accident.

With respect to other vehicles (e.g., rail vehicles), the employer would have to test covered employees on duty in the vehicle at the time of the accident, unless the employer determined, based on the best information available at the time, that an employee's performance could be completely discounted as a contributing factor in the accident. This is a different standard than in the case of road surface vehicles, because there is little likelihood of an on-the-spot law enforcement citation to the operator of vehicles like rail cars. As in the other post-accident testing situations, the employer could make a judgment to test other covered employees, if the employer concluded that their performance could have contributed to the accident.

After an accident has occurred, an employer—not police or hospital personnel—must test affected employees for the use of prohibited drugs. The rule does not permit a waiver of the employer's obligation to test an employee after an accident, nor does it allow an employer to use the results of laboratory findings of a drug test administered by police or hospital personnel.

Under the final rule, however, an employee may be taken to a medical treatment facility immediately after an accident without being tested by the employer. An employee also may leave the scene of an accident, without being tested, so long as he remains readily available for testing, which means that the employer knows the whereabouts of the employee until he is tested and that the employee is available to be tested immediately after being notified by the employer and within 32 hours of the accident. Thus an employee may receive medical attention or respond to police questions or seek assistance for injured individuals.

I. Return to Duty/Follow-up Testing

The comments concerning these two kinds of testing focused primarily on the roles of the employer and the Substance Abuse Professional (SAP). The NPRM proposed authorizing the SAP to determine not only when an employee may return to duty after a verified positive drug test result, but also how many follow-up tests an employee should take and for what period of time.

Many commenters objected to the extent of authority given to the SAP under the NPRM. An employer, not the SAP, should determine if and when an employee may resume a safety-sensitive function after a verified positive drug test result, these commenters stated. They also contended that an employer should control the follow-up testing requirements, such as the length of time an employee must submit to follow-up testing and the number of tests the employee must take and pass annually.

Other commenters recommended that the final rule prescribe in detail the follow-up testing requirements, with several offering suggestions. One commenter recommended that the rule require 60 months of follow-up testing, with 12 tests required in the first year and 6 annually thereafter. Another commenter recommended 60 months of testing with a prescribed number of tests over the entire 60 month period; another a 36 month follow-up period with 6 tests required annually; and another a 24 month follow-up testing period with 3 tests required the first year. And, lastly, one commenter stated that the rule should not recommend a specific number of follow-up tests at all.

FTA Response. The final rule retains the authority of the SAP. In making this decision, we strove to balance the rights and privacy of the employee against the safety of the traveling public. Because of the extensive credentials required to be a SAP, we believe that they are most qualified to make the necessary decisions concerning the ability of an employee to return to his or her safety-sensitive position. In addition, because studies have shown that the relapse rate is highest in the first year of recovery, we mandate a minimum of 6 drug tests during that time. After that period, however, we believe that the SAP should determine when follow-up testing should end; in any event, it must end if 60 months have elapsed from the time of the employee's return to duty. We note that an employer may require additional follow-up testing under its own authority. It is important to emphasize, moreover, that during the 60-month period the employee remains separately subject to random testing as well.

J. The Split Sample Procedure

The NPRM proposed that the urine sample be split, and poured-off into two specimen bottles. This provides an employee with the option of having an analysis of the split sample performed at a separate laboratory should the primary specimen test result be verified positive. The NPRM would have provided an employee 72 hours to decide whether to have the analysis of the split sample performed.

Only a few commenters responded to this provision, with most recommending that the employer be allowed to test the urine sample for more than the five prohibited drugs. Others focused on the amount of time the NPRM gave the employee to request that the secondary sample be tested. Some contend that 72 hours is too short a period of time, and others asked whether the 72 hours included weekends and holidays. Yet another commenter asked that the rule require the employee to pay for the test of the split sample.

FTA Response. On the time period issue, an employee, after being notified by the Medical Review Officer (MRO) that the primary specimen has been verified positive, must request within 72 hours that the split be tested. Although several commenters objected to the 72-hour time period, the Act specifies that an employee must be given three days to request that the split sample be analyzed. In the final rule we interpret three days to mean 72 hours, and because most transit systems operate seven days a week and during holidays, we have decided that the 72-hour time period includes both holidays and weekends.

Concerning who pays for the test of the split sample, the rule is silent, and this issue properly must be decided at the local level.

Finally, for a complete discussion of FTA's and DOT's response to this issue, please see part 40 and its preamble published elsewhere in today's issue of the Federal Register.

K. Treatment

The NPRM proposed that any covered employee who has a verified positive drug test result must be advised by his employer of the resources available to help him resolve problems associated with drug use and be evaluated by a SAP. The NPRM neither authorized nor prohibited an employer from disciplining or discharging an employee because he has a verified positive drug test result for prohibited drug use; it simply stated that such an employee must be removed from his safety-sensitive position.

Several commenters objected to our silence on this issue, and asked us to clarify the rule by specifically authorizing the employer to take whatever disciplinary action the employer deems necessary.

The remaining commenters addressed the issue of rehabilitation. One commenter suggested that we mandate rehabilitation and treatment. Another commenter recommended that the final rule require reinstatement in addition to rehabilitation. Yet another commenter stated that the final rule should not address the issue of rehabilitation, which should be decided by the employer and the union. Lastly, a commenter stated that an employer should not be required to refer an employee to an SAP when the employer's policy is to discharge any employee who has a verified positive drug test result.

FTA Response. FTA has retained the language in the NPRM on this issue. We thus remain silent on whether an employer may dismiss or disqualify an employee who has a verified positive drug test result, an issue best decided at the local level.

Concerning rehabilitation, we believe that we have met the requirements of the Act, which state that the rule must provide for identification and opportunity for treatment of employees who are determined to have used prohibited drugs. In this regard, we require that an employee who has a verified positive drug test result be evaluated to determine whether he needs assistance. Such an employee may return to his safety-sensitive position after he has properly completed a course of treatment as determined by an SAP, and takes a return to duty drug test with a verified negative result.

If an employee undergoes treatment, the rule does not address the issue of who should pay for it. We believe that this issue should be decided at the local level. Nor does the rule deal with the issue of recidivism, when an employee has repeated verified positive drug test results and has repeatedly been referred to treatment. Again, we believe that issue should be decided at the local level. This rule requires the removal of an employee from a safety-sensitive position if the employee has a verified positive drug test result, but does not address employment or disciplinary issues in connection with such action.

L. Training

The NPRM proposed that supervisors who make reasonable suspicion determinations receive 120 minutes of training on the physical, behavioral, and performance indicators of probable drug use, which would enable the supervisor to make an informed reasonable suspicion determination. In addition, the NPRM proposed that all safety-sensitive employees be trained about the effects of drug use on health, safety, and the work environment.

We received numerous comments on this issue, virtually all of them in favor of requiring training, at least for supervisors. For employees, most commenters were silent, although one favored requiring 60 minutes of training and another asked that we help develop a curriculum for a general educational program.

Because almost all of the commenters were in favor of training for supervisors, many commenters proposed certain training specifications. Some commenters proposed a combined drug and alcohol training program; one commenter specifically recommended four hours of combined drug and alcohol training, while another made the same recommendation but added a one-hour yearly refresher course.

The remaining commenters did not specifically recommend that the drug and alcohol training be combined. Instead, one commenter suggested that supervisors be required to receive four hours of training and that the class size be limited to four individuals. Other commenters recommended a full day of

training, one suggesting that supervisors should be certified after satisfactorily being trained. Lastly, several commenters stated that we should require interactive training.

FTA Response. FTA believes that training will greatly improve the efficacy of the anti-drug program, and we agree with the commenters who favor a training requirement for both safety-sensitive employees and supervisors. We note, however, that most of the comments addressed one of two areas, the amount of training required and the actual content of the program itself.

We have decided to adopt the recommendation of one commenter and require all safety-sensitive employees to receive at least 60 minutes of training. We believe that training for covered employees is important because of the profound ramifications of prohibited drug usage on personnel health, public safety, and the work environment. We also believe that one hour of training is sufficient to train supervisors who may make reasonable suspicion determinations to recognize the signs and symptoms of drug use; moreover, an employer may, at its own discretion, choose to provide additional training. These requirements are one-time only; the final rule does not require annual or recurring training, although an employer certainly is not prohibited from providing any additional training. Moreover, we do allow employers to combine drug and alcohol training providing that the minimum time requirements are observed.

Nor does the final rule specify the content of the training programs, since an employer should develop a program to meet its own needs. We believe that it would be inappropriate for the rule to specify the content of this kind of training program. The employer best knows its workforce and the needs of its employees.

M. Management Information System (MIS) Reporting Requirement

The vast majority of comments on this issue concerned the State's role in record collection. Under the NPRM, we proposed to require States to collect and forward to FTA the annual reports prepared by their subrecipients. Because the State merely "passes through" the Federal grant funds to a subrecipient, most commenters believed that the State should not be responsible for ensuring the accuracy of the information collected, nor for submitting the reports to the FTA on time. In fact, one commenter suggested that only large employers should be required to keep and submit detailed information on test results.

Some States focused on the overlap between this NPRM and a rulemaking required under section 28 of the FT Act, which requires certain States to oversee the safety of certain kinds of fixed guideways. Some commenters explained that they would not be able effectively to oversee certain fixed guideway systems unless they were given access to the records generated under this rule.

Finally, some commenters asked that we provide States an extra 60 days from the annual February 15th reporting date.

FTA Response. In the final rule we have retained the requirement that a State collect and submit to FTA on behalf of its subrecipients the data required under this rule. This requirement is consistent with the fundamental legal relationship between FTA and the direct recipient of Federal funding, which in some instances is a State, in which case the State must collect and submit the annual report required under this rule and meet the same reporting deadline as other recipients. The due date of the annual report has been changed to March 15. States must collect the reports prepared by their subrecipients and their contractors, as appropriate, and forward the reports to the FTA.

The final rule includes two different reporting forms, FTA Drug Testing Management Information System (MIS) Data Collection Form (Appendix B) and FTA Drug Testing Management Information System (MIS) "EZ" Data Collection Form (Appendix C). Appendix B must be used in reporting both verified positive and negative drug test results; Appendix C must be used by employers who have no verified positive drug test results to report.

FTA intends to combine the drug and alcohol regulations' reporting forms within two to three years after implementation.

We appreciate those comments directing our attention to the overlap between this rule and the State Safety Oversight NPRM published in the **Federal Register** on December 9, 1993 at FR 64856. We have amended those provisions requiring access to certain facilities to also permit access by State oversight agency officials to facilitate their oversight role as proposed in the State Safety Oversight NPRM.

N. Implementation Date

The NPRM proposed to require compliance with this rule within six months of publication in the **Federal Register** for large employers and within one year for States and small employers. This provision contrasted with implementation periods proposed in the alcohol NPRM, which were one year for large employers and two years for States and small employers.

Several commenters strongly favored implementing both the drug and the alcohol rules simultaneously. Another commenter recommended that, for budgeting reasons, FTA key the implementation period to the fiscal year. Other commenters recommended specific implementation periods. For instance, one commenter suggested that all employers be given four months while another suggested three to six months. Another commenter recommended that large employers comply with the rule within six to nine months of the publication date.

FTA Response. In the final rule, we have decided that large employers must implement their drug testing programs on January 1, 1995, while small employers will have until January 1, 1996 to implement their programs. This is consistent with the implementation date of our related alcohol rule and will ensure that the annual MIS report data will coincide with the calendar year.

We provide small employers additional time to implement their rule because they may find it necessary to form consortia. Large employers in most instances already have experience in testing their employees for drug use.

We further note, in response to several inquiries, the rule provides no authority for an employer to begin its program before the implementation dates included in this rule.

O. Combined Drug and Alcohol Rules

Many commenters urged us to combine the drug and alcohol NPRMs into one final rule, or, in the alternative, to combine common aspects of both rules, such as the training and reporting requirements.

FTA Response. We have decided not to combine the drug and alcohol testing rules at this time because there are significant differences between them. For instance, the random rate for the two rules differ, 25 percent for alcohol and 50 percent for drugs. Also, the time period during which an employee may be subject to random testing differs in the two rules. The alcohol rule contains an entire subpart, Prohibitions, which specifies when an employee cannot use alcohol. In contrast, the drug rule contains no comparable subpart because prohibited drugs are controlled substances. On the other hand, we do allow an employer to combine certain aspects of the rules, most notably the training requirements. In addition, we encourage the employer to formulate and promulgate one policy statement concerning both drugs and alcohol.

P. Indian Tribal Governments

Several commenters have asked us to clarify the applicability of the rule to Indian tribal governments and have suggested that we preempt Indian tribal law. Because Indian tribal governments are not subject to State law or regulation, these commenters are concerned about the ability of a State section 18 recipient to require an Indian tribal government subrecipient to comply with this regulation.

FTA Response. As a general matter, statutes apply to Indian Nations or tribes unless (1) the law touches exclusive rights of self-governance in purely intramural matters; (2) the application of the law would abrogate rights guaranteed by Indian treaties; or (3) there is proof by legislative history or some other means that Congress intended the law not to apply to Indians on their reservations, *Donovan* v. *Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1116 (9th Cir. 1985).

In this regard, there is no legislative history indicating congressional intent not to apply the Act to Indian tribes. We have no information, moreover, on the issues addressed in points one and two. In the absence of any such information, we conclude that the Act would preempt Indian tribal law but of course would consider any arguments to the contrary based on points one and two.

Q. Waivers

Several commenters have asked us to waive the application of the rule to certain categories of employers. For instance, one commenter recommended that employers with less than 16 employees be excluded from complying with the rule. Another recommended that any section 18 recipient certifying that it has not had an alcohol or drug related accident in three years should be exempted from the rule.

FTA Response. Language in a report of the Senate Committee on Commerce, Science, and Transportation accompanying the Act addressed the issue of FTA granting waivers of the rule in whole or in part:

> The Committee is aware of concerns raised with regard to the difficulties some believe may be faced by small transit operations located in rural areas in complying with [FTA] drug and alcohol testing requirements. If, after notice and opportunity for comment, the Secretary determines that a waiver for certain operations from such requirements would not be contrary to the public interest and would not diminish the safe operation of rural transit conveyances, the committee would not object to a waiver, in whole or in part, of the application of regulations issued pursuant to this bill with regard to recipients of funds under section 18 of the [Federal Transit Act, as amended.]. S. Rep. No. 80, 102d Cong., 1st Sess. 36 (1991).

Notwithstanding this legislative history, the Act itself does not specifically authorize the FTA to "waive" particular requirements of the rule. Nonetheless, we believe we can implement the rule in such a way that it minimizes burdens on small operators.

In this regard, we have adopted several provisions to ease the rule's impact on small operators. Small operators—which include section 18 rural providers and small recipients of section 9 funds—are provided additional time to comply with the rule. We have also exempted from the rule's coverage mechanics under contract to or with informal agreements with a section 18 employer. To reduce costs and administrative burdens, we allow and encourage section 18 providers to join a consortium of operators to comply with the rule.

III. Section-by-Section Analysis

Subpart A—General

A. Overview. (§ 653.1)

This section provides an overview of the anti-drug rule. Basically, the rule requires certain recipients of FTA funding to establish and implement an anti-drug program consisting primarily of a program in which a safety-sensitive employee's urine is tested for five prohibited substances under certain circumstances. The rule further specifies that both safety-sensitive employees and their supervisors must be given educational materials and be trained about the effects of drugs on the human body and on an individual's ability to perform duties while under the influence of drugs. Employers must establish, publicize, and promote an anti-drug policy describing requirements of this program and the consequences of any violation of it. The rule specifies the consequences for any recipient that fails to implement the requirements of this rule.

B. Purpose. (§ 653.3)

This section explains that the rule is designed to promote public safety by requiring a recipient to establish and implement an anti-drug program to detect the use of prohibited drugs, by urine testing, and to deter the use of those drugs by educating and training safety-sensitive employees about the safety and health ramifications of drug use and abuse.

C. Applicability. (§ 653.5)

This section describes FTA's jurisdiction over recipients and covered employees and how it may overlap with that of other modal agencies; whether section 16(b)(2) recipients must comply with this rule; the effect of the rule on user-side subsidies; and the effect of the rule on those who may no longer receive FTA funding.

1. *FTA grant programs under sections 3, 9, and 18 and the Interstate Transfer Program.* Under the section 3 discretionary grant program, FTA funds three categories of capital projects: the construction of new rail projects; the improvement and maintenance of existing rail and other fixed guideway systems; and the rehabilitation of bus systems. Under sections 9 and 18, the formula grant programs, FTA funds both capital and operating assistance to specific categories of recipients that receive Federal funds under a statutory formula based on population, population density, and other factors. Generally, urbanized areas receive section 9 funding directly, while nonurbanized areas receive section 18 funding through the State.

FTA also provides funds under 23 U.S.C. section 103(e)(4), the interstate transfer program. Under this program, FTA provides funding to States and localities for capital transit projects in lieu of nonessential interstate highway projects. Hence, recipients of these types of FTA funding may be States, transit agencies, or other kinds of localities, but all such recipients are public entities.

2. *FTA jurisdiction.* FTA is a Federal agency that makes grants of Federal financial assistance under various statutory provisions. Under all of these provisions, the agency's relationship is with the direct receiver of Federal financial assistance, the recipient. Such a recipient of Federal funds must comply with a variety of Federal requirements, including this rule, and enters into a grant agreement with the FTA to that end. After accepting a grant from the FTA, a recipient is responsible for ensuring that it, or any entity that it uses to provide mass transportation services, will comply with all relevant Federal requirements.

While the Act requires us to issue this drug testing rule, it does not change the fundamental relationship between FTA and a direct recipient of Federal financial assistance.

That is, FTA does not directly regulate covered employees, which means that FTA has no authority directly to deal with a covered employee under any circumstances.

Rather, the Act authorizes FTA to require a recipient to implement an anti-drug program, and it is the recipient that is responsible for assuring that covered employees comply with the rule. If a recipient fails to do so, FTA will withhold Federal funding.

3. *Multi-modal jurisdiction.* As discussed below, recipients may be regulated by another DOT modal agency, such as the Federal Railroad Administration (FRA), which regulates railroads, the Federal Highway Administration (FHWA), which regulates holders of Commercial Driver's Licenses (CDL), or the United States Coast Guard, which regulates certain vessels and mariners.

a. *Federal Railroad Administration.* The FRA regulates railroads. A railroad is defined in the Federal Railroad Safety Act of 1970 as: [a]ll forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

45 U.S.C. § 431(e) (1988).

If an FTA recipient solely operates a commuter railroad, those railroad operations are subject to FRA's drug rule. Such a recipient must certify to the FTA that it complies with FRA's rule as provided for under section 653.83 of this part. See Appendix A for the certification such a recipient must execute.

If a recipient operates a railroad as well as other mass transit services, its railroad operations are subject to FRA's rule while its non-railroad mass transit operations are subject to the FTA rule.

b. *Federal Highway Administration.* Before the Act, FHWA was authorized to regulate only interstate motor carriers. Hence, when FHWA issued its anti-drug rule in 1988, most of FTA's recipients, which generally operate intrastate, were not affected by it. The Act, however, authorizes FHWA to regulate intrastate motor carriers and specifically requires it to issue an anti-drug rule which applies to intrastate as well as interstate motor carriers. Thus, to avoid subjecting recipients who are also motor carriers to two different rules, FTA and FHWA have agreed that these recipients are subject only to FTA's anti-drug rule.

c. *United States Coast Guard.* If a recipient operates a ferry boat service, it is subject both to FTA and Coast Guard anti-drug regulations with regard to that service. Applicable Coast Guard regulations may be found at 33 CFR part 95 and 46 CFR parts 4 and 16. Generally, the FTA's drug testing regulation is consistent with the Coast Guard's. Moreover, both FTA and the Coast Guard require employers to follow 49 CFR part 40 when conducting a drug test. Unlike the Coast Guard, however, FTA requires an additional procedure set forth in this rule—which is not in Part 40. That is, we require that in the case of a verified positive drug test result, the covered employee be referred to a substance abuse professional (SAP) for evaluation.

As noted earlier, if a recipient complies with this part 653, the recipient generally will also be in compliance with the Coast Guard regulation. To assist in the compliance with both regulations, we note in various provisions of the Section-by-Section Analysis portion of this preamble the differences between the FTA and Coast Guard rules.

4. *Covered employees of recipients.* As noted above, FTA does not directly regulate employees or workers who are subject to the provisions of this rule through the actions of their employers. This general proposition is not true of FHWA and the Coast Guard, which use licensing actions or other measures to enforce their safety rules, including their anti-drug rules. A recipient's safety-sensitive employees thus may be subject to licensing actions of these agencies, even though the recipient is regulated by FTA and its employees are covered only by FTA's anti-drug regulations. For example, a CDL holder employed by an FTA recipient remains subject to the Commercial Motor Vehicle Safety Act of 1986, and the consequences that attach to a violation of it. For example, a CDL holder convicted of driving under the influence of drugs or alcohol may have his or her Commercial Driver's License suspended or revoked. Similarly, the Coast Guard is authorized to revoke a license, certificate of registry, or merchant mariner's document of a crewmember under certain circumstances. Coast Guard's relevant provisions specifying the rights and responsibilities of crewmember are located in 46 CFR parts 4, 5, and 16 and 33 CFR part 95.

5. *Section 16(b)(2) recipients.* Some entities receive funding under section 16(b)(2) of the FT Act, which provides capital assistance, through a State, to organizations that provide specialized transportation services to elderly persons and persons with disabilities.

While some commenters suggested that we cover section 16(b)(2) recipients under the rule, we do not do so, noting that the Act references recipients of funds under sections 3, 9, or 18 of the FT Act or section 103(e)(4) of title 23 of the U.S. Code, but not section 16. Note, however, that a section 16(b)(2) recipient may be covered by the anti-drug regulation published by the FHWA elsewhere in today's Federal Register.

6. *User-side subsidies.* A user-side subsidy refers to the practice of providing passengers publicly subsidized script or vouchers, which the passenger then uses to pay for transportation from a private carrier such as a taxicab company. In essence, a recipient provides transportation services indirectly through such subsidies.

The regulation applies to certain recipients of FTA funding, and to transit operators providing service under contract or other arrangements with those recipients. To the extent that a taxi operator does not provide service under an arrangement with an FTA recipient, but is chosen at random by the passenger, it would not be subject to the rule. If, however, the taxicab company or private operator does provide service under an arrangement with an FTA recipient, it is covered by the rule as a contractor, as defined by the rule. In such cases, the taxi company may wish to designate only certain drivers to provide such service, in which case only those designated drivers would be subject to the rule's drug testing program.

7. *Continuing Federal interest.* Not all recipients receive a Federal grant or grants for capital or operating assistance each year under the formula or discretionary programs. Some may receive capital assistance only when they need to purchase equipment or construct or repair a facility, which could occur once every few years. Indeed, there may be a recipient that receives a capital grant just once over a five or ten year period. It is important to emphasize in these cases that once a recipient has received an FTA capital grant after the effective date of this rule and has therefore agreed to comply with the rule, it must continue to comply with the rule (and other Federal requirements) during the useful life of the equipment or facility funded under the grant. In short, this rule remains in effect so long as the grant-acquired assets and related grant obligations remain in effect, and is not contingent upon a recipient receiving Federal funds each year.

This is not the case with operating assistance, however, which essentially is "used up" each year and is not considered to have a useful life beyond any given year. Thus in the event a recipient receives an operating assistance grant just once (and has not separately received a capital grant), it would only have to comply with this rule for that one year. This is probably a hypothetical example, however, since most recipients receive operating assistance on an annual basis, while others receive capital funding at some point, in which case they would have to comply with the rule over the life of the grant-acquired asset.

D. Definitions. (§ 653.7)

1. *Accident.* An accident may trigger a post-accident alcohol test, and is defined as an incident in which a person has died or is treated at a medical facility or when there has been property damage resulting in the towing of a vehicle or the removal of a transit vehicle from revenue service.

For accidents not involving a fatality, we have created two categories of vehicles. The first is for "road surface" vehicles, including buses, vans, automobiles, and electric buses. For this category, an accident is an occurrence resulting in a vehicle—either a mass transit vehicle or another vehicle—suffering disabling damage and having to be towed away. This definition parallels that used by FHWA for commercial motor vehicle accidents, and includes language drawn from FHWA's regulations specifying what kind of damage is viewed as disabling.

The second category includes rail cars, trolley buses and trolley cars, and vessels. This category would also include other kinds of transit conveyances operated by FTA recipients, such as people movers, inclines, and monorails. An accident is deemed to occur to such a vehicle when the occurrence results in the vehicle being removed from revenue service. FTA views an accident happening when the vehicle is not operating in revenue service (e.g., an accident that occurs in a rail yard) as falling within this definition if it results in damage that would result in a comparable vehicle being withdrawn from revenue service or results in a delay in the vehicle being placed into or returned to revenue service.

2. *Administrator.* Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

3. *Anti-drug program.* This definition describes the scope of the program created by this rule, which encompasses testing and training intended to promote safety by deterring the use of prohibited substances.

4. *Canceled test.* This definition describes a test that has not taken place, a specimen that cannot be analyzed by a laboratory, or a test that is declared invalid by a Medical Review Officer (MRO). For instance, a urine specimen that is rejected by the laboratory is a canceled test. A canceled test is different from a verified positive or negative test. It is also different from the behavior that constitutes a refusal to submit; for a test to be canceled the employee must be ready to submit to a test.

5. *Certification.* This definition describes the statement that must be executed by the recipient.

6. *Chain-of-custody.* This definition refers to the procedures specified in part 40 for the handling of a urine sample. These procedures are designed to protect the integrity of the test and the rights of the employee by ensuring that a particular employee's specimen is sent to a particular laboratory without any intervening steps or opportunity for tampering with the sample.

7. *Consortium.* This definition describes an arrangement in which employers place their safety-sensitive employees in a pool with the safety-sensitive employees of other employers. Any employer subject to any DOT agency anti-drug regulation may join a consortium for the purpose of complying with the rule. It may be particularly advantageous for smaller entities to join a consortium and thereby limit costs and administrative burdens.

8. *Contractor.* This definition covers a broad range of arrangements between an FTA recipient and those carrying out services for it and includes not only written and oral commitments in which both parties agree to specific terms and conditions but informal arrangements as well. An informal arrangement essentially is any ongoing relationship between two parties. Hence, repeatedly doing business with another entity would come within the meaning of a contractual arrangement under the rule.

9. *Covered employee.* This definition describes who is subject to the rule. Only safety-sensitive employees that work for a recipient or any entity performing a mass transit function on behalf of a recipient are covered by the rule, except for contract mechanics for small operators, which are not covered.

10. *DOT.* The abbreviation DOT stands for the United States Department of Transportation.

11. *DOT agency.* DOT contains several operating agencies, five of which issued anti-drug rules in 1988. Those agencies are: FHWA (49 CFR part 382), FRA (49 CFR part 219), FAA (14 CFR part 121, appendix J), Coast Guard (46 CFR parts 4 and 16), and RSPA (49 CFR part 199).

12. *Employer.* This definition applies to entities that must implement an anti-drug rule. It includes recipients and other entities that provide mass transit service or perform a safety-sensitive function for a recipient. It includes subrecipients, operators, contractors, and consortia.

13. *FTA.* FTA is the abbreviation for the Federal Transit Administration.

14. *Large operator.* A large operator is a transit provider primarily operating in an area of 200,000 or more in population.

15. *Medical Review Officer.* A medical review officer is a medical doctor who not only has knowledge of substance abuse disorders, but who also has been trained to interpret and evaluate laboratory test results in conjunction with an employee's medical history. A medical review officer verifies a positive test result by reviewing a laboratory report and an employee's unique medical history to determine whether the result was caused by the use of prohibited drugs or by an employee's medical condition.

16. *Prohibited drug.* This definition lists the drugs listed in section 102(6) of the Controlled Substances Act that have been determined by the Secretary as being a risk to public safety: marijuana, opiates, amphetamines, cocaine, or phencyclidine.

17. *Railroad.* This definition is from the Railroad Safety Act of 1970 and is used in the rule to distinguish FTA's jurisdiction from FRA's. Basically, FRA has jurisdiction over any form of transportation that run on rails and is connected to the general railroad system. FTA thus has jurisdiction over all self-contained forms of mass transportation that run on rails, so long as those systems receive Federal funding from the FTA under sections 3, 9, or 18 of the FT Act or section 103(e)(4) of title 23 of the U.S. Code.

18. *Recipient.* This definition, based on the Act, defines a recipient as an entity receiving Federal financial assistance directly from the FTA under section 3, 9, or 18 of the FT Act or section 103(e)(4) of title 23 of the U.S. Code.

19. *Refuse to submit (to a drug test).* This definition describes the behavior that constitutes a refusal to submit to a drug test, that is, the refusal to produce a specimen.

20. *Safety-sensitive function.* This definition determines which categories of employees are subject to the rule. Because each recipient uses its own terminology, we have decided to define safety-sensitive based on the function performed instead of listing specific job categories. Each employer must decide for itself whether a particular employee performs any of the functions listed in this definition.

The definition lists five categories of safety-sensitive functions. The list itself is exclusive, which means that either an employee performs a safety-sensitive function listed in a category or she does not. An employer may not add any category to the list unless it wishes to test those additional employees separately under its own authority.

The first category is operating a revenue service vehicle, whether or not the vehicle is in service. In short, an employee who operates a revenue service vehicle for any purpose whatsoever is a safety-sensitive employee and is subject to the rule.

The second category is operating a nonrevenue service vehicle when required to be operated by a holder of a CDL.

The third category is controlling dispatch or movement of a revenue service vehicle or equipment used in revenue service.

The fourth category is maintaining a revenue service vehicle unless the recipient receives section 18 funding and contracts out such services. Maintaining a revenue service vehicle includes any act which repairs, provides upkeep to a vehicle, or any other process which keeps the vehicle operational. It does not include cleaning either the interior or the exterior of the vehicle or transit facility. This category specifically excludes only the employees of a contractor or other entity who maintains revenue service vehicles for section 18 recipients. Hence, all other employees who maintain revenue service vehicles whether by contract or otherwise are safety-sensitive employees.

The fifth category is carrying a firearm for security purposes. A security guard who does not carry a firearm is excluded from this category, and is not a safety-sensitive employee.

We note that supervisors are included in this definition so long as the supervisor performs or the supervisor's job description includes the performance of any function listed in categories 1 through 5.

21. *Small operator.* A small operator is a recipient operating primarily in an area of less than 200,000 in population.

22. *Substance abuse professional.* This definition establishes the requirements for anyone who evaluates employees subject to drug testing under this part. The SAP must be knowledgeable about and have clinical experience in the diagnosis and treatment of both drug and alcohol-related disorders. The SAP must also be a licensed physician, either a Medical Doctor or Doctor of Osteopathy, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor who is certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission.

23. *Vehicle.* This definition lists types of vehicles used in mass transportation, or which may be involved in accidents with such vehicles. Because mass transit encompasses travel by bus, van, ferry boat, and rail, the list is meant to be very broad, covering every type of conveyance used to provide mass transit (including such things as people movers and inclines). The term "mass transit vehicle" is used to distinguish vehicles actually used for transit purposes from those used by the general public.

24. *Verified negative drug test result.* This definition explains that, if a medical review officer determines there is no evidence of prohibited drugs in an employee's urine sample, the drug test result shall be declared negative.

25. *Verified positive drug test result.* This definition explains that, if a medical review officer determines there is evidence of prohibited drugs in an employee's urine sample, the drug test result shall be declared positive.

E. Preemption of State and Local Laws. (§ 653.9)

The Act provides that this rule preempts any inconsistent State or local law, ordinance, rule, regulation, standard, or order.

Consistent with long-standing Department-wide interpretation of this type of preemption language, the regulation specifies that "inconsistent with" means that the regulation:

(1) Preempts a State or local requirement if compliance with the local requirement and the FTA regulation is not possible; or

(2) Preempts a State or local requirement if compliance with the local requirement is an obstacle to accomplishing the provisions of the FTA regulation.

On the other hand, neither the statute nor the regulation preempts State criminal laws that impose sanctions for reckless conduct.

F. Other Requirements Imposed by an Employer. (§ 653.11)

An employer may impose other requirements in addition to those imposed by this rule if those additional requirements do not conflict or interfere with the requirements of this rule. For example, an employer may require a supervisor to be trained for four hours instead of one, or an employer may provide annual training for both supervisors and employees. An employer may also require an employee to provide another urine sample in a separate void and may then test that sample for drugs other than the five prohibited drugs. Under the rule, when an employer imposes additional requirements the employer must advise the employee that the requirements are not pursuant to this regulation.

G. Starting Date for Drug Testing Programs. (§ 653.13)

This section states the implementation date for large operators. States, and small operators.

Subpart B—Program Requirements

This subpart describes the four elements of the anti-drug program each employer must implement to be in compliance with this part. An employer must: develop and disseminate a policy statement; train and educate employees about the consequences of prohibited drug use; require testing under five different circumstances; and provide an opportunity for the identification and treatment of employees needing assistance.

A. Requirement To Establish an Anti-drug Program. (§ 653.21)

This section requires an employer to establish an anti-drug program to deter and detect the use of prohibited drugs, consisting of educating and training about drug usage and urine testing for prohibited drugs. The anti-drug program must comply with the requirements imposed by the rule.

B. Required Elements of an Anti-drug Program. (§ 653.23)

This section includes a checklist of the main requirements of the anti-drug program and cross references those provisions which address specific requirements.

C. Policy Statement Contents. (§ 653.25)

The rule requires an employer to make available to every safety-sensitive employee a policy statement describing the employer's anti-drug testing program. The policy must include the following information:

1. Specific categories of employees subject to testing.

2. Where to go for more information about the program.

3. When and why an employee will be tested.

4. The consequences of a verified positive drug test result.

5. Program elements in addition to those required by the FTA regulation.

The FTA expects each employer to describe the consequences to a covered employee of his verified positive drug test result, which must include removal of the employee from his safety-sensitive position and evaluation and possible referral for treatment. In addition, at the employer's discretion the policy statement could describe funding arrangements for treatment. The policy must indicate whether an employer would suspend or terminate a covered employee who has a verified positive drug test result, and the circumstances under which such actions will be taken.

The rule does not mandate rehabilitation for a covered employee, but only requires that an employee be evaluated by an SAP to determine whether the employee has a problem with prohibited drug use. If treatment for a covered employee is deemed necessary, the rule does not require the employer to pay for it. Any decision to provide treatment, and who should pay for it, is made at the local level.

This position on treatment is consistent with congressional debate on the topic. Both Senators Danforth and Hollings clarified this point by stating:

> DOT must issue regulations. . . providing for the opportunity for treatment of employees in need of assistance in resolving problems with alcohol or drug use. My understanding is that this does not mandate that rehabilitation be provided but does encourage companies to make such programs available. The legislation does not discuss who pays for treatment, wages during this period, or rights of reinstatement. 137 Cong. Rec. S14770 (daily ed. Oct. 16, 1991) (Statement of Sen. Danforth)

> The Senator's understanding is correct. Such arrangement could be left to negotiation between the employer and employee, either through individual arrangement or collective bargaining, as appropriate. . . . 137 Cong. Rec. S14770 (daily ed. Oct. 16, 1991) (Statement of Sen. Hollings).

D. Requirement to Disseminate Policy. (§ 653.27)

This section requires an employer to disseminate its policy statement required by the rule. An employer must notify each covered employee in writing, as well as employee organizations.

E. Education and Training Programs. (§ 653.29)

This section requires an employer to establish an education and training program. In the educational program, which must be provided to covered employees as well as supervisors, an employer must distribute educational materials, including the employer's anti-drug policy statement. The rule also requires the employer to provide a hotline telephone number of a community service organization that deals with drug abuse problems, if such a number is available.

The training component consists of two programs. For all covered employees the training program must be at least 60 minutes in duration, and address certain problems associated with using prohibited drugs. The training program must cover the ramifications of drug use on personal health, safety, and the work environment, and include information on the signs and symptoms that may indicate prohibited drug use.

In addition, for supervisors who may make reasonable suspicion determinations, employers must provide a training program of at least 60 minutes. This training must focus on the physical, behavioral, and performance indicators of drug use.

An employer may add the FTA drug program training to the FTA alcohol training required under the alcohol final rule, published elsewhere in today's **Federal Register**. An employer may provide any additional training it deems necessary.

F. Types of Drug Tests. (§ 653.31)

This section specifies the different tests the employer must conduct: pre-employment (including transfer to a safety-sensitive position); post-accident (fatal and nonfatal); reasonable suspicion, random, return to duty, and follow-up.

It also specifies the five prohibited drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidine.

G. Notice Requirement. (§ 653.33)

This section requires an employer to notify an employee that the employee is being tested under Federal law and that the employee must provide a urine sample that will be tested for the five prohibited drugs. In this regard, the custody form that each employer signs when a test is administered can satisfy this notice requirement.

This section specifically bars an employer from misrepresenting a test conducted under its own authority as a test mandated by Federal law.

H. Action When Employee Has a Verified Positive Drug Test Result. (§ 653.35)

This section addresses two situations, when an employee has a verified positive drug test result, or has refused to submit to a test. In either case, the employer must remove the safety-sensitive employee from his/her position as soon as practicable after being notified of the result. In both instances, the employer must ensure that the employee is assessed under the provisions of section 653.37, which require that the employee be evaluated by an SAP.

Marine transit operators have additional responsibilities. Consistent with 46 CFR 16.201(c), an employer or prospective employer of an individual holding a license, certificate of registry, or merchant mariner's document who has a verified positive drug test result must report the test result to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI).

I. Referral, Evaluation and Treatment. (§ 653.37)

This section requires an employer to advise an employee who has a verified positive drug test result of the resources available in resolving problems associated with drug misuse. The information provided by the employer shall include the names, addresses and telephone numbers of substance abuse professionals, and counseling and treatment programs.

Such an employee must be evaluated by a substance abuse professional to determine whether the employee needs help in resolving problems associated with drug misuse. The SAP then determines what kind of help the employee needs. Any such employee must take a return to duty drug test with a verified negative result before he or she may be allowed to perform a safety sensitive function again.

The employee must follow the course of treatment prescribed by the SAP. To return to duty, the employee must be evaluated by a SAP to determine that the employee has properly followed the course of prescribed treatment and is able to return to work.

The employee then must take a return-to-duty test with a verified negative result and is then subject to follow-up testing, which occurs unpredictably for up to 60 months following return to duty. In any event, the employee must take at least six follow up tests with verified negative results during the first twelve months after returning to duty. The SAP then determines how many follow up tests

should be administered over the remaining 48 months.

In addition, the SAP may recommend that the employee also be subject to return to duty and follow-up testing for alcohol misuse.

Such an employee remains separately subject to random drug testing.

An employer is not required to provide applicants with an opportunity for referral, evaluation, and treatment.

Subpart C—Types of Drug Tests

A. Pre-employment Testing. (§ 653.41)

This section prohibits an employer from hiring an applicant for a safety-sensitive function unless the applicant takes a drug test with a verified negative result administered in accordance with this regulation. This section also requires that an employee who transfers from a nonsafety-sensitive position to a safety-sensitive position to be tested before he or she actually begins performing a safety-sensitive function for the first time.

For marine employers, 46 CFR 16.210(a) prohibits hiring or giving a commitment of employment to an individual unless the individual takes a drug test with a verified negative result or meets a stated pre-employment exemption under 46 CFR 16.210(b). Marine employers that also are FTA recipients, however, must in every instance require an applicant to take a drug test with a verified negative result before they may be hired.

B. Resasonable Suspicion Testing. (§ 653.43)

This section requires an employer to test a covered employee for prohibited drug use if the employer has reasonable suspicion to believe that the covered employee has used prohibited drugs. The reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, or speech of the covered employee, which are characteristic of prohibited drug use.

The rule requires the decision to be made by a supervisor trained in detecting the signs and symptoms of prohibited drug use.

C. Post-accident Testing. (§ 653.45)

This section requires a test after an accident has occurred, and establishes two categories of accidents, fatal and nonfatal. Non-fatal accidents are treated differently depending on the type of transit vehicle involved. For a more complete description of the ways in which different kinds of accidents are treated, please refer to the discussion of post-accident testing in the portion of the preamble that responds to comments.

The rule requires an employer to test the appropriate covered employees as soon as possible, but within 32 hours, consistent with other DOT agency existing drug testing rules.

The rule also requires an employer to require an employee to remain readily available for testing; if the employee does not do so, the employer can treat such behavior as refusing to submit to a drug test. Remaining readily available means that the employer knows the whereabouts of the employee and must conduct the test as soon as practicable but within 32 hours of the accident.

This section allows an employee to seek medical attention, assist injured individuals, or obtain assistance in dealing with the accident, if necessary, before being tested for prohibited drugs.

D. Random Testing. (§ 653.47)

The rule requires an employer to randomly test covered employees for the use of prohibited drugs. The testing must truly be random, which means that it is random with respect to the person tested and the predictability of the actual administration of the test.

An employer cannot use an employee's name in a random selection pool. Rather, an employer must identify each covered employee by a unique number, such as a social security or a payroll identification number, which is entered into a pool from which the selection is made. Each covered employee must have an equal chance of being tested. Once a covered employee is selected and tested, their identification number is reentered into the pool so that they will have an equal chance of being tested the next time the employer conducts random testing.

An employer must test randomly throughout the calendar year. Testing must be unannounced and occur on a reasonable basis throughout the entire calendar year. Random tests must be conducted in an unpredictable fashion. For example, an employer may not conduct random tests only on a Monday or only at the beginning of a shift. Further, once an employee is notified of his selection for a random test, he must report (or be escorted) immediately to the collection site.

The random drug testing rate is set at 50 percent. For compliance purposes, it is important to note that in calculating its random testing results an employer must include adulterated urine samples and refusals to submit to a test as verified positive test results.

E. Return to Duty Testing. (§ 653.49)

Return to duty testing refers to the test that employees who have verified positive drug test results or refuse to submit to a drug test.

In addition, because of the prevalence of combined drug and alcohol misuse, an employer may, based on the recommendations of the substance abuse professional, also subject an employee who previously had a verified positive drug test result under the FTA anti-drug rule to a return to duty alcohol test.

F. Follow-up Testing. (§ 653.51)

Upon taking a return to duty test with a verified negative result, an employee is subject to follow-up testing for up to 60 months. During the first 12 months the employee is subject to a minimum of 6 follow-up drug tests which must be unannounced and conducted reasonably throughout the 12 months.

After those 12 months, the substance abuse professional determines whether the employee should be subject to follow-up testing for the remaining 48 months. Because many individuals abuse more than one substance at a time, an employer may, based on the recommendations of the SAP, subject an employee who previously had a verified positive drug test result for prohibited drugs under this rule to follow-up testing for the misuse of alcohol. An employer may also subject an employee who previously tested at 0.04 or greater on an alcohol test under part 654 to follow-up drug testing for the use of prohibited drugs.

It is important to note that an employee subject to follow-up testing remains separately subject to random drug testing under this rule.

Subpart D—Drug Testing Procedures

This subpart contains a drug testing procedure required by the Act in addition to those required in 49 CFR part 40.

A. Compliance With Testing Procedures Requirements. (§ 653.61)

This section requires an employee to use the testing procedures in 49 CFR Part 40 unless expressly provided otherwise in this part. This Part 653 contains the additional testing requirement mandated by the Act, namely, the evaluation by an SAP.

B. Substance Abuse Professional. (§ 653.63)

This section explains the role of the substance abuse professional. In relation to a covered employee, a substance abuse professional is neither a counselor nor a treating professional. Rather, an SAP evaluates an employee who either has a verified positive drug test result or refused to be tested to determine whether the covered employee needs help resolving a problem with prohibited drug use. The SAP then makes certain recommendations to the employee, which the employee must follow. Before returning to duty, the employee is reevaluated by an SAP to determine whether the employee has followed the SAP's recommendations. The SAP then determines whether the employee is ready to return to her safety-sensitive function. The SAP also determines the number of follow-up tests the employee should be subject to in addition to the six mandatory follow-up tests in the first 12 months after the employee's return to duty.

The rule discusses several employment options concerning the substance abuse professional. Who pays for the services of the substance abuse professional, however, is determined at the local level.

This section prohibits, in some circumstances, a substance abuse professional from treating an employee after evaluation and determination that the employee needs help. This section, however, allows an evaluating SAP also to treat an employee when the SAP is an employee of or under contract to an employer, the SAP is the only source of appropriate therapeutic treatment provided under the employee's health plan or reasonably accessible to the employee, or the SAP works for a public agency such as a State, county, or municipality.

Subpart E—Administrative Requirements

A. Retention of Records. (§ 653.71)

Section 653.71 explains which records relating to the drug testing program must be retained and for how long. The rule provides for three separate record retention periods for different types of records—five years, three years, and one year. Each employer must maintain for five years records of covered employees' verified positive drug test results, documentation of refusals to take a drug test, and covered employee referrals to the SAP. Collection process and employee training documents must be retained for two years, while records of negative test results must be retained for one year.

B. Reporting of Results in a Management Information System. (§ 653.73)

The reporting requirements required in section 653.73 are part of a Department-wide effort to standardize reporting for drug testing by means of a Management Information System (MIS). The data collected will be used by FTA and DOT to identify trends and to assess the success or failure of the agency's anti-drug rule.

The data elements were selected to provide information on the scope of the program, the prevalence of drug use in mass transportation, the implementation of the program and its related costs, and the deterrent effect of the rule over time. Appendix B must be used in reporting both verified positive and negative drug test results; Appendix C must be used by employers who have no verified positive drug results to report. FTA does intend to combine the drug and alcohol annual reporting forms within two to three years after the implementation date.

Recipients and subrecipients must submit to FTA their own annual reports as well as an annual report from each of their contractors with covered employees. Each report submitted must cover a calendar year. The closing date for data is December 31 and the report is due at FTA by March 15 of the following year.

C. Access to Facilities and Records. (§ 653.75)

Paragraph (a) of this section precludes an employer, in most circumstances, from releasing information contained in records required to be maintained under this rule. Examples of such records include any document generated as a result of a refusal to take a drug test or a reasonable suspicion determination. An employer, however, may release information when required to do so by law or this rule, or if expressly authorized.

Paragraph (b) provides that the employer must provide the employee copies of records relating to the employee's alcohol tests or pertaining to the employee's prohibited use of drugs. Once the employee has submitted his request in writing, the employer must promptly provide the records to him. The employer may charge for reproducing the records but only for copies of those records specifically requested.

Paragraph (c) requires the employer to allow certain governmental entities to have access to any facility used to comply with this rule. The rule provides that the Secretary of Transportation or representatives from any other DOT agency shall have access. In addition, the rule requires an employer to allow the State agency designated by the governor to oversee rail fixed guideway systems to also have access to its facilities to properly oversee the safety of a rail fixed guideway system as required by section 28 of the FT Act. We note here that the State oversight of rail fixed guideway system Notice of Proposed Rulemaking published in the Federal Register on December 9, 1993 at 58 FR 64856 contains FTA's proposal for the State oversight agency.

Paragraph (d) requires an employer to give certain governmental entities copies of test results and any other information pertaining to the employer's anti-drug program. Those governmental entities are the same as those specified in subsection (c).

Paragraph (e) requires an employer to disclose information about the employer's administration of a post-accident drug test to the National Transportation Safety Board (NTSB) when it investigates an accident.

Paragraph (f) provides that the employer must give copies of certain records to a subsequent employer if the employee makes such a request in writing. The employer may disclose only that information specifically authorized by the employee in her written request.

Paragraph (g) requires the employer to disclose certain information when requested to do so by the employee or a decisionmaker in a lawsuit, grievance, or other proceeding when such a proceeding has been initiated by the employee and arises from the results of a drug test administered under this part. This provision does not cover any proceeding initiated by a third party and is limited to employment actions such as worker's compensation or unemployment compensation which are initiated by the employee.

Subsection (h) provides that the employer must release information to any individual when requested to do so by the employee in writing. The employer may release only that information specifically authorized by the employee.

Subpart F—Certifying Compliance

This subpart establishes the certification requirements for recipients of FTA funding under sections 3, 9, or 18 of the FT Act or section 103(e)(4) of title 23 of the U.S. Code.

A. Compliance a Condition of FTA Financial Assistance. (§ 653.81)

This section mandates the withholding of Federal funds from a recipient of FTA funding under sections 3, 9, or 18 of the FT Act, or section 103(e)(4) of title 23 of the U.S. Code, if it is not in compliance with the rule. To be in compliance with the rule, the recipient either must implement the requirements of the rule or require their

implementation by subrecipients, operators, contractors, employers, or any other entity performing a mass transit function on behalf of the recipient.

It is important to note that any misrepresentation or false statement to FTA is a criminal violation under section 1001 of title 18 of the United States Code.

B. Requirement to Certify Compliance. (§ 653.83)

This section requires a recipient to certify that the requirements of the rule have been met. We emphasize that the direct recipient of FTA funds makes this certification to FTA.

The certifications are required annually, with large operators submitting their certification before January 1, 1995 and small operators and States submitting their certifications before January 1, 1996. States will certify on behalf of subrecipients and their contractors.

The certification itself must comply with the sample certification provided in Appendix A to this part, be authorized by the recipient's governing board or other authorizing official, and be signed by a party specifically authorized to do so.

IV. Americans With Disabilities Act

Title I of the American With Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of disability in employment. A basic premise of Title I is that a person with a disability must be provided a reasonable accommodation to work. It is possible that some covered workers will be considered persons with disabilities for purposes of protections under the ADA. For a more complete discussion of this issue please see the DOT-wide Preamble preceding this FTA document in today's **Federal Register**.

V. Economic Analysis

The Federal Transit Administration (FTA) has evaluated the industry-wide costs and benefits of the rule, Prevention of Prohibited Drug Use in Transit Operations. This rule will require personnel who perform safety-sensitive functions to be covered by a formal program to control drug use in mass transit operations. This rule will cover FTA recipients and combine education and testing in a comprehensive anti-drug program. Five types of drug tests will be administered:

- Pre-Employment
- Reasonable Suspicion
- Post-Accident
- Random
- Return to Duty/Follow-up

Transit agencies will be required to report the number of tests given, the number of failures-to-pass and other attributes of their program to the FTA and to certify compliance with this regulation annually.

Annual costs of the drug testing program range from $25 to $32 million per year. Total costs over 10 years are $299 million. Random tests are the most costly.

Annual benefits range from $11 to $103 million per year. Total benefits over 10 years are $867 million.

A major premise in calculating both costs and benefits is the assumption that all transit systems will start from scratch or "ground zero" when implementing drug testing programs as a result of this regulation. Estimates in this analysis are based on (1) the 1989 and 1991 National Urban Mass Transportation Statistics Section 15 Annual Reports, (2) the 1991 report, Substance Abuse in the Transit Industry, prepared for the FTA by Booz, Allen & Hamilton, Inc., (3) data provided by the Substance Abuse and Mental Health Service Administration, and (4) information from other agencies, individuals, and organizations knowledgeable about drug abuse and chemical testing in the United States.

VI. Regulatory Process Matters

A. Executive Order 12688

The FTA has evaluated the industry costs and benefits of the drug testing rule, and has determined that this rulemaking is a significant rule under Executive Order 12688 because the required anti-drug program raises novel policy issues and will materially affect public safety as well as State and local governments. This rule will not, however, have an annual impact on the economy of $100 million or more.

B. Departmental Significance

This rule is a "significant regulation" as defined by the Department's Regulatory Policies and Procedures, because it involves an important departmental policy and will probably generate a great deal of public interest. The purpose of this rule is to make mass transit systems safer by ensuring that safety-sensitive employees do not use prohibited substances.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the FTA has evaluated the effects of this rule on small entities. Based on the evaluation, the FTA hereby certifies that this action will have a significant economic impact on a substantial number of small entities. This rule has some provisions designed to mitigate burdens on small entities which are discussed in the regulatory evaluation.

This rule applies to public recipients of Federal Transit funds, 274 of which are large and 1314 of which are small. It is estimated that it will cost the small transit systems $86 million to implement this drug rule, with total benefits to them of $267 million over the 10 year analysis.

D. Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act. A request for Paperwork Reduction Act approval has been submitted to the Office of Management and Budget in conjunction with this rule. Information collection requirements are not effective until Paperwork Reduction Act clearance has been received.

E. Executive Order 12612

We have reviewed this rule under the requirements of Executive Order 12612 on Federalism. Although the Federal Transit Administration has determined that this rule has significant Federalism implications to warrant a Federalism assessment, this rulemaking is mandated by the Omnibus Transportation Employee Testing Act of 1991 (the Act). In considering the Federalism implications of the rule, FTA has focused on several key provisions of Executive order 12612.

Necessity for action. This rule is mandated by law, which requires comprehensive drug and alcohol testing programs of recipients of Federal transit funding. Congress responded to specific accidents in mass transportation by mandating these rules to ensure the safety of the transit-riding public.

Consultation with State and local governments. FTA provides financial assistance to mass transportation systems throughout the country by means of grants to States and public bodies. Because this rule will affect those States and local entities, we published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** to solicit the views of the affected entities, including States and local governments, and held three public hearings in conjunction with the NPRM. In short, we actively sought the views and comments of the affected States and localities.

Need for Federal action. This rule responds to a Congressional mandate that the safety of the transit riding public requires comprehensive anti-drug and alcohol testing programs.

Authority. The statutory authority for this final rule is the Act, mentioned above and discussed elsewhere in the preamble.

Preemption. This rule preempts any State or local law, order, or regulation to the contrary, as discussed elsewhere in the preamble. Because compliance with the rule is a condition of Federal financial assistance, State and local governments have the option of not receiving the Federal funds if they do not choose to comply with this rule. We have not preempted Indian tribal law.

F. National Environmental Policy Act.

The agency has determined that this regulation has no environmental implications. Its purpose is to regulate the behavior of those safety-sensitive employees who work in the transit industry and will have no appreciable effect on the quality of the environment.

G. Energy Impact Implications.

This regulation does not affect the use of energy because it regulates the behavior of those safety-sensitive employees who work in the transit industry.

List of Subjects in 49 CFR Part 653

Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

Accordingly, for the reasons cited above, the agency amends title 49 by revising part 653, as set forth below:

Part 653—Prevention of Prohibited Drug Use in Transit Operations

Subpart A—General

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653.41 Pre-employment testing.
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Appendix A to Part 653—Certification of Compliance

Appendix B to Part 653—FTA Drug Testing Management Information System (MIS) Data Collection Form

Appendix C to Part 653—FTA Drug Testing Management Information System (MIS) "EZ" Data Collection Form

Authority: Sec. 6, Pub. L. 102–143, 105 Stat. 917; 49 CFR 1.51

Subpart A—General

§ 653.1 Overview.

(a) This part describes the anti-drug program to be implemented by a recipient of certain funding from the Federal Transit Administration.

(b) The part includes six subparts. Subpart A covers the general requirements of the FTA anti-drug program. Subpart B specifies the basic requirements of each employer's anti-drug program, including the types of tests to be conducted, and the elements required to be in each employer's drug testing program. Subpart C describes the different types of drug tests to be conducted. Subpart D describes a new drug testing procedural requirement mandated by the Act. Subpart E contains administrative matters such as reports and recordkeeping requirements. Subpart F specifies how a recipient certifies compliance with the rule.

§ 653.3 Purpose.

The purpose of this part is to require a recipient to implement an anti-drug program to deter and detect the use of prohibited drugs by covered employees.

§ 653.5 Applicability.

(a) Except as specifically excluded in paragraph (b) of this section, this part applies to a recipient under—

(1) Section 3, 9, or 18 of the Federal Transit Act, as amended (FT Act); or

(2) Section 103(e)(4) of title 23 of the United States Code.

(b) A recipient operating a railroad regulated by the Federal Railroad Administration (FRA) shall follow 49 CFR part 219 and § 653.83 of this part for its railroad operations, and this part for its non-railroad operations, if any.

(Note: For recipients who operate marine vessels, see also Coast Guard regulations at 33 CFR part 95 and 46 CFR parts 4,5, and 6.)

§ 653.7 Definitions.

As used in this part—

Accident means an occurrence associated with the operation of a vehicle, if as a result—

(1) An individual dies;

(2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;

(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

(4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from revenue service.

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Anti-drug program means a program to detect and deter the use of prohibited drugs as required by this part.

Canceled test means a test that has been declared invalid by a Medical Review Officer. It is neither a verified positive nor a verified negative test, and includes a specimen rejected for testing by a laboratory.

Certification means a recipient's written statement, authorized by the organization's governing board or other authorizing official, that the recipient has complied with the provisions of this part. (*See* § 653.77 for certification requirements.)

Chain-of-custody means the procedures in part 40 of this title

concerning the handling of a urine specimen.

Consortium means an entity, including a group or association of employers, operators, recipients, subrecipients, or contractors, which provides drug testing as required by this part, or other DOT drug testing rule, and which acts on behalf of the employer.

Contractor means a person or organization that provides a service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered employee means a person, including a volunteer, applicant, or transferee, who performs a safety-sensitive function for an entity subject to this part.

DOT means the United States Department of Transportation.

DOT agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring drug testing (see parts 199, 219, 382, and 653 of this title; 14 CFR part 121, Appendix J; 33 CFR part 95; and 46 CFR parts 4 and 16).

Employer means a recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

Large operator means a recipient or subrecipient primarily operating in an area of 200,000 or more in population.

Medical Review Officer (MRO) means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

Prohibited drug means marijuana, cocaine, opiates, amphetamines, or phencyclidine.

Railroad means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Recipient means an entity receiving Federal financial assistance under section 3, 9, or 18, of the FT Act, or under section 103(e)(4) of title 23 of the United States Code.

Refuse to submit (to a drug test) means that a covered employee fails to provide a urine sample as required by 49 CFR part 40, without a valid medical explanation, after he or she has received notice of the requirement to be tested in accordance with the provisions of this subpart, or engages in conduct that clearly obstructs the testing process.

Safety-sensitive function means any of the following duties:

(1) Operating a revenue service vehicle, including when not in revenue service;

(2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;

(3) Controlling dispatch or movement of a revenue service vehicle;

(4) Maintaining a revenue service vehicle or equipment used in revenue service, unless the recipient receives section 18 funding and contracts out such services; or

(5) Carrying a firearm for security purposes.

Small operator means a recipient or subrecipient primarily operating in an area of less than 200,000 in population.

Substance abuse professional (SAP) means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A *mass transit vehicle* is a vehicle used for mass transportation.

Verified negative (drug test result) means a drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use.

Verified positive (drug test result) means a drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use.

§ 653.9 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and any requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 653.11 Other requirements imposed by an employer.

An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.

§ 653.13 Starting date for drug testing programs.

(a) *Large employers.* Each recipient operating in an area of 200,000 or more in population on March 17, 1994 shall implement the requirements of this part beginning on January 1, 1995.

(b) *Small employers.* Each recipient operating in an area of 200,000 or less in population on March 17, 1994 shall implement the requirements of this part beginning on January 1, 1996.

(c) An employer shall have an anti-drug program that conforms to this part by January 1, 1996, or by the date the employer begins operations, whichever is later.

Subpart B—Program Requirements

§ 653.21 Requirement to establish an anti-drug program.

Each employer shall establish an anti-drug program consistent with the requirements of this part.

§ 653.23 Required elements of an anti-drug testing program.

An anti-drug program shall include the following:

(a) A statement describing the employer's policy on prohibited drug use in the workplace, including the consequences associated with prohibited drug use. This policy statement shall include all of the elements specified in § 653.25. Each employer shall disseminate the policy consistent with the provisions of § 653.27.

(b) An education and training program which meets the requirements of § 653.29.

(c) A testing program, as described in § 653.31 that meets the requirements of this part and part 40 of this title.

(d) Procedures for assessing the covered employee who has a verified positive drug test result as described in § 653.37.

§ 653.25 Policy statement contents.

The policy statement shall be adopted by the local governing board of the employer or operator, be made available to each covered employee, and shall include, at a minimum, detailed discussion of:

(a) The identity of the person designated by the employer to answer employee questions about the anti-drug program.

(b) The categories of employees who are subject to the provisions of this part.

(c) Specific information concerning the behavior that is prohibited by this part.

(d) The specific circumstances under which a covered employee will be tested for prohibited drugs under the provisions of this part.

(e) The procedures that will be used to test for the presence of drugs, protect the employee and the integrity of the drug testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct covered employee.

(f) The requirement that a covered employee submit to drug testing administered in accordance with this part.

(g) A description of the kind of behavior that constitutes a refusal to take a drug test and a statement that such a refusal constitutes a verified positive drug test result.

(h) The consequences for a covered employee who has a verified positive drug test result or refuses to submit to a drug test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional.

(i) If the employer implements elements of an anti-drug program that are in addition to this part (See § 653.31), the employer shall give each covered employee specific information concerning which provisions are mandated by this part and which are not.

§ 653.27 Requirement to disseminate policy.

Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug policies and procedures.

§ 653.29 Education and training programs.

Each employer shall establish an employee education and training program for all covered employees, including:

(a) *Education.* The education component shall include display and distribution to every covered employee of: informational material and a community service hot-line telephone number for employee assistance, if available.

(b) *Training*—(1) *Covered employees.* Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms which may indicate prohibited drug use.

(2) *Supervisors.* Supervisors who may make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use.

§ 653.31 Drug testing.

(a) An employer shall establish a program which provides for testing for prohibited drugs and drug metabolites in the following circumstances: pre-employment, post-accident, reasonable suspicion, random, and return to duty/follow-up, as described in detail in each case in subpart C of this part.

(b) When administering a drug test, an employer shall ensure that the following drugs are tested for:

(1) Marijuana;
(2) Cocaine;
(3) Opiates;
(4) Amphetamines; and
(5) Phencyclidine.

§ 653.33 Notice requirement.

Before performing a drug test under this part, each employer shall notify a covered employee that the drug test is required by this part. No employer shall falsely represent that a test is administered under this part.

§ 653.35 Action when employee has a verified positive drug test result.

(a) As soon as practicable after receiving notice from the medical review officer (MRO) that an employee has a verified positive drug test result, or if an employee refuses to submit to a drug test, the employer shall require that a covered employee cease performing a safety-sensitive function.

(b) Before allowing the covered employee to resume performing a safety-sensitive function, the employer shall ensure that the covered employee meets the requirements of this part for returning to duty, including taking a return to duty drug test with a verified negative result, as required by § 653.49.

§ 653.37 Referral, evaluation, and treatment.

(a) A covered employee who has a verified positive drug test result refuses to submit to a drug test under this part shall be advised by the employer of the resources available to the covered employee in evaluating and resolving problems associated with prohibited drug use, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b)(1) The employer shall ensure that each covered employee who has a verified positive drug test result or refuses to take a drug test shall be evaluated by a substance abuse professional who shall determine whether the covered employee is in need of assistance in resolving problems associated with prohibited drug use.

(2) Evaluation and rehabilitation may be provided by the employer, by a substance abuse professional under contract with the employer, or by a substance abuse professional not affiliated with the employer. The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/employee agreements and employer policies.

(3) The employer shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with prohibited drug use does not refer the employee to the substance abuse professional's private practice from which the substance abuse professional receives remuneration or to a person or organization from which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through—

(i) A public agency, such as a State, county, or municipality;

(ii) The employer or a person under contract to provide treatment for prohibited drug use problems on behalf of the employer;

(iii) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(iv) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

(c) An employer shall ensure that, before returning to duty to perform a safety-sensitive function, a covered

employee has complied with the referral and evaluation provisions of this part and takes a return to duty drug test with a verified negative result under § 653.49.

(d) The requirements of this section do not apply to applicants.

Subpart C—Types of Drug Testing

§ 653.41 Pre-employment testing.

(a) An employer may not hire an applicant to perform a safety-sensitive function unless the applicant takes a drug test with a verified negative result administered under this part.

(b) An employer may not transfer an employee from a nonsafety-sensitive function to a safety-sensitive function until the employee takes a drug test with a verified negative result administered under this part.

(c) If an applicant or employee drug test is canceled, the employer shall require the employee or applicant to take another pre-employment drug test.

§ 653.43 Reasonable suspicion testing.

(a) An employer shall conduct a drug test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug.

(b) An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. The required observations must be made by a supervisor who is trained in detecting the signs and symptoms of drug use.

(c) An employer shall not permit a direct supervisor of an employee to serve as the collection site person for a drug test of the employee.

§ 653.45 Post-accident testing.

(a)(1) *Fatal accidents.* As soon as practicable following an accident involving the loss of human life, an employer shall test each surviving covered employee on duty in the mass transit vehicle at the time of the accident. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(2) *Nonfatal accidents.* (i) As soon as practicable following an accident not involving the loss of human life, in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, the employer shall test each covered employee on duty in the mass transit vehicle at the time of the accident if that employee has received a citation under State or local law for a moving traffic violation arising from the accident. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(ii) As soon as practicable following an accident not involving the loss of human life, in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the employer shall test each covered employee on duty in the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The decision not to administer a test under this paragraph shall be based on the employer's determination, using the best available information at the time of the determination, that the employee's performance could not have contributed to the accident. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(b) An employer shall ensure that a covered employee required to be tested under this section is tested as soon as practicable and within 32 hours of the accident. A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing.

(c) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

§ 653.47 Random testing.

(a) Each employer shall, at various times, randomly select covered employees for unannounced drug testing. The selection of covered employees shall be made by a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with covered employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.

(b) During each calendar year following the start of the anti-drug program required by this part, the employer shall meet the following conditions:

(1) The dates for administering unannounced testing of randomly-selected covered employees shall be spread reasonably throughout the calendar year; and

(2) The number of covered employees randomly selected for testing during the calendar year shall be equal to a minimum annual percentage rate of 50 percent of the total number of covered employees subject to drug testing under this part.

(c) Each covered employee shall be in a pool from which random selection is made. Each covered employee in the pool shall have an equal chance of selection and shall remain in the pool, whether or not the covered employee is ever tested.

(d) If an employer conducts random testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

§ 653.49 Return to duty testing.

(a) *Return to duty.* An employer shall ensure that, before returning to duty to perform a safety-sensitive function, each covered employee who has refused to submit to a drug test or has a verified positive drug test result—

(1) Has been evaluated by a substance abuse professional to determine whether the covered employee has properly followed the recommendations for action by the substance abuse professional, including participation in any rehabilitation program;

(2) Has taken a return to duty drug test with a verified negative result. If a test is canceled, the employer shall require the employee to take another return to duty drug test.

(3) A substance abuse professional may recommend that the employee be subject to a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02, to be conducted in accordance with 49 CFR part 40.

(b) *Marine employers.* Marine employers subject to U.S. Coast Guard chemical testing regulations shall ensure that each covered employee who has a verified positive drug test result administered under this part is evaluated by a Medical Review Officer.

§ 653.51 Follow-up testing.

Each employer shall ensure that each covered employee who returns to duty after a required evaluation made under § 653.37 is subject to unannounced follow-up drug testing as provided for in § 653.63(d). The employer may require the employee to take one or more follow-up alcohol tests, with a result indicating an alcohol concentration of less than 0.04, as directed by the SAP, to be performed in accordance with 49 CFR part 40.

Subpart D—Drug Testing Procedures

§ 653.61 Compliance with testing procedures requirements.

The drug testing procedures of part 40 of this title apply to employers covered by this part, unless expressly provided otherwise in this part.

§ 653.63 Substance abuse professional.

(a) An employer's anti-drug program shall have available the services of a designated substance abuse professional.

(b) The substance abuse professional shall determine whether a covered employee who has refused to submit to a drug test or has a verified positive drug test result is in need of assistance in resolving problems associated with prohibited drug use. The substance abuse professional then recommends a course of action to the employee.

(c) The substance abuse professional shall determine whether a covered employee who has refused to submit to a drug test or has a verified positive drug test result has properly followed the SAP's recommendations.

(d) The substance abuse professional shall determine the frequency and duration of follow-up testing for a covered employee. Such employee shall be required to take a minimum of six follow-up drug tests with verified negative results during the first 12 months after returning to duty. After that period of time, the substance abuse professional may recommend to the employer the frequency and duration of follow-up drug testing, provided that the follow-up testing period ends 60 months after the employee returns to duty. In addition, follow-up testing may include testing for alcohol, as directed by the substance abuse professional, to be performed in accordance with 49 CFR part 40.

Subpart E—Administrative Requirements

§ 653.71 Retention of records.

(a) *General requirement.* An employer shall maintain records of its anti-drug program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* In determining compliance with the retention period requirement, each record shall be maintained for the specified period of time, measured from the date of the document's or data's creation. Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years:* Records of covered employee verified positive drug test results, documentation of refusals to take required drug tests, and covered employee referrals to the SAP, and copies of annual MIS reports submitted to FTA.

(2) *Two years:* Records related to the collection process and employee training.

(3) *One year:* Records of negative drug test results.

(c) *Types of records.* The following specific records must be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Documents generated in connection with decisions to administer reasonable suspicion drug tests.

(iv) Documents generated in connection with decisions on post-accident drug testing.

(v) MRO documents verifying existence of a medical explanation of the inability of a covered employee to provide an adequate urine sample.

(2) Records related to test results:

(i) The employer's copy of the custody and control form.

(ii) Documents related to the refusal of any covered employee to submit to a drug test required by this part.

(iii) Documents presented by a covered employee to dispute the result of a drug test administered under this part.

(3) Records related to referral and return to duty and follow-up testing:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for referral for assistance in resolving problems associated with drug use.

(ii) Records concerning a covered employee's entry into and completion of the program of treatment recommended by the substance abuse professional.

(4) Records related to employee training:

(i) Training materials on drug use awareness, including a copy of the employer's policy on prohibited drug use.

(ii) Names of covered employees attending training on prohibited drug use and the dates and times of such training.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

(5) Copies of annual MIS reports submitted to FTA.

§ 653.73 Reporting of results in a management information system.

(a) Each recipient shall submit to FTA's Office of Safety and Security by March 15 of each year a report covering the previous calendar year (January 1 through December 31), which summarizes the results of its anti-drug program.

(b) Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, consortium or joint enterprise or by a third party service provider acting on the employer's behalf.

(c) Each report that contains information on verified positive drug test results shall be submitted on the FTA Drug Testing Management Information System (MIS) Data Collection Form and shall include the following informational elements:

(1) Number of FTA covered employees by employee category.

(2) Number of covered employees subject to testing under the anti-drug regulations of the United States Coast Guard.

(3) Number of specimens collected by type of test (i.e., pre-employment, periodic, random, etc.) and employee category.

(4) Number of positives verified by a Medical Review Officer (MRO) by type of test, type of drug, and employee category.

(5) Number of negatives verified by a MRO by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a verified positive drug test.

(7) Number of covered employees verified positive by an MRO or who refused to submit to a drug test, who were returned to duty in covered positions during the reporting period (having complied with the recommendations of a substance abuse professional as described in § 653.37).

(8) Number of employees with tests verified positive by a MRO for multiple drugs.

(9) Number of covered employees who were administered alcohol and

drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater.

(10) Number of covered employees who refused to submit to a random drug test required under this part.

(11) Number of covered employees who refused to submit to a non-random drug test required under this part.

(12) Number of covered employees and supervisors who received training during the reporting period.

(13) Number of fatal and nonfatal accidents which resulted in a verified positive post-accident drug test.

(14) Number of fatalities resulting from accidents which resulted in a verified positive post-accident drug test.

(15) Identification of FTA funding source(s).

(d) If all drug test results were negative during the reporting period, the employer must use the "EZ form" (Appendix C). It shall contain:

(1) Number of FTA covered employees.

(2) Number of covered employees subject to testing under the anti-drug regulation of the United States Coast Guard.

(3) Number of specimens collected and verified negative by type of test and employee category.

(4) Number of covered employees verified positive by an MRO or who refused to submit to a drug test, who were returned to duty in covered positions during the reporting period (having complied with the recommendations of a substance abuse professional as described in § 653.37).

(5) Number of covered employees who refused to submit to a random drug test under this part and how many of those were random test refusals.

(6) Number of covered employees who refused to submit to a non-random drug test required under this part.

(7) Number of covered employees and supervisors who received training during the reporting period.

(8) Identification of FTA funding source(s).

§ 653.75 Access to facilities and records.

(a) Except as required by law, or expressly authorized or required in this section, no employer may release information pertaining to a covered employee that is contained in records required to be maintained by § 653.71.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs, including any records pertaining to his or her drug tests. The employer shall provide promptly the records requested by the employee. Access to a covered employee's records shall not be contingent upon payment for records other than those specifically requested.

(c) An employer shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems.

(d) An employer shall disclose data for its drug testing program and any other information pertaining to the employer's anti-drug program required to be maintained by this part, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee or to a State oversight agency authorized to oversee rail fixed guideway systems.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a drug test following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of written request from the covered employee. Subsequent disclosure by the employer is permitted only as expressly authorized by the terms of the covered employee's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug test administered under this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee.)

(h) An employer shall release information regarding a covered employee's record as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

Subpart F—Certifying Compliance

§ 653.81 Compliance a condition of FTA financial assistance.

(a) *General.* A recipient may not be eligible for Federal financial assistance under section 3, 9, or 18 of the Federal Transit Act, as amended, or under section 103(e)(4) of title 23 of the United States Code if a recipient fails to establish and implement an anti-drug program as required by this part. Failure to certify compliance with these requirements, as specified in § 653.83, will result in the suspension of a grantee's eligibility for Federal funding.

(b) *Criminal violation.* A recipient is subject to criminal sanctions and fines for false statements or misrepresentations under section 1001 of title 18 of the United States Code.

(c) *State's role.* Each State shall certify compliance on behalf of its section 3, 9 or 18 subrecipients, as applicable, whose grant the State administers. In so certifying, the State shall ensure that each subrecipient is complying with the requirements of this part. A section 3, 9 or 18 subrecipient, through the administering State, is subject to suspension of funding from the State if such subrecipient is not in compliance with this part.

§ 653.83 Requirement to certify compliance.

(a) A recipient of FTA financial assistance shall certify annually to the applicable FTA Regional Office compliance with the requirements of this part, including the training requirements. Large operators shall certify compliance initially by January 1, 1995. Small operators and States shall certify compliance initially by January 1, 1996.

(b) A certification must be authorized by the organization's governing board or other authorizing official, and must be signed by a party specifically authorized to do so. A certification must comply with the applicable sample certification provided in Appendix A to this part.

Appendix A to Part 653—Certification of Compliance

This appendix contains two separate examples of certification language. The first example consists of the generally applicable certification language. Example II should be used by employers who are covered by the Federal Railroad Administration's anti-drug regulation.

I

(a) *For recipients who are large or small operators*

I, (name), (title), certify that (name of recipient) and its contractors, as required, for (name of recipient), has established and implemented an anti-drug program in accordance with the terms of 49 CFR part 653. I further certify that the employee training conducted under this part meets the requirements of 49 CFR part 653.

(b) *For States certifying on behalf of its subrecipients and their contractors*

I, (name, title) on behalf of (STATE) certify that the entities on the attached list of FT Act subrecipients operating in this State, have established and implemented anti-drug programs in accordance with the terms of 49 CFR part 653.

II

The text of the certification of an employer that provides commuter rail transportation service regulated by the Federal Railroad Administration shall be as follows:

I, (name), (title), certify that (name of recipient) and its contractors, as required, for (name of recipient), has an anti-drug program that meets the requirements of the Federal Railroad Administration's regulations for employees regulated by the Federal Railroad Administration, and has established and implemented an anti-drug program in accordance with the terms of 49 CFR part 653 for all other covered employees who perform safety-sensitive functions.

BILLING CODE 4910-57-P

APPENDIX B TO PART 653 - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in the Federal Transit Administration (FTA) **Drug Testing MIS Data Collection Form**. These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-v as an example to facilitate the process of completing the form correctly.

This reporting form includes six sections. Collectively, these sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) drug testing regulations. The six sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	2
C. DRUG TESTING INFORMATION	ii-v	3-4
D. OTHER DRUG TESTING/PROGRAM INFORMATION	v	5
E. DRUG TRAINING/EDUCATION	vi	5
F. FTA FUNDING SOURCES	vi	5

Page 1 **EMPLOYER INFORMATION** (Section A) requires the name of the employer for which the report is done, a current address, contact name, and phone number. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA drug testing regulation.

Page 2 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under the FTA drug testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the

recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if the employer has personnel who perform duties also covered by the anti-drug rule of the United States Coast Guard (USCG). **NUMBER OF EMPLOYEES COVERED BY THE USCG**, requires that you identify the number of employees in each employee category.

Section C is used to summarize the drug testing results for applicants and covered employees. There are six categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following five parts are for entering drug testing data on random, post-accident, reasonable suspicion, return to duty and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of specimens collected in each employee category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, **PRE-EMPLOYMENT** testing information. The format and explanations used for the sample apply to all six parts of the table in Section C.

Information on actions taken with those persons testing positive is required at the end of both pages. Specific instructions for providing this latter information are given after the instructions for completing the table in Section C

Page 3 **DRUG TESTING INFORMATION** (Section C) requires information for drug testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iv.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED**," requires a count for all collected specimens by employee category. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE**," requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading **"NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,"** refers to the number of specimens provided by applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading **"NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,"** requires counts of positive tests for each of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked **"TOTAL"**.

A sample table is provided on page iv with example numbers.

Page 3

Below the part of the table containing pre-employment testing information is a box with the heading **"Number of persons denied a position as a covered employee following a verified positive drug test"**. This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **DRUG TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Revenue Vehicle Operation" and "Armed Security Personnel" to illustrate the procedures for completing the form.

A — Urine specimens were collected for 157 applicants for revenue service vehicle operation positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Revenue Vehicle Operation".

B — The Medical Review Officer (MRO) for the employer reported that 153 of those 157 specimens from applicants for revenue service vehicle operation positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Revenue Vehicle Operation".

C — The MRO for the employer reported that 4 of those 157 specimens from applicants for revenue service vehicle operation positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "Revenue Vehicle Operation".

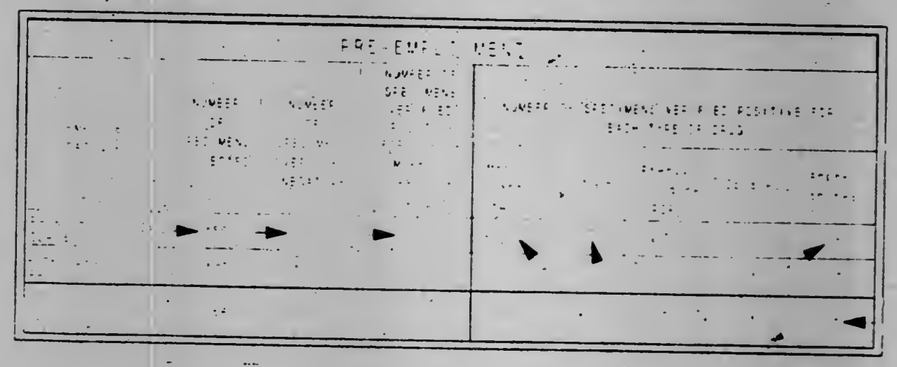
D — With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Two different drugs were detected in specimen #3 (multi-drug) so an entry is made in both the marijuana and the cocaine column for this specimen. Information on multi-drug specimens must also be entered in Section D, **OTHER DRUG TESTING/PROGRAM INFORMATION**, on page 5 of the reporting form.

Please note that the sample data collection form also has information for armed security personnel on line two. The same procedures outlined for revenue service vehicle operation should be followed for entering the data on armed security personnel. With applicants for armed security personnel positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives -- 1 for marijuana and 1 for opiates. This information is entered in the row marked "Armed Security Personnel".

E — The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for revenue service vehicle operation positions were collected and 107 for applicants for armed security personnel positions. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column, i.e., add all the numbers in that column and place the answer in the last row.



Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 4 — Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide counts of fatal and non-fatal accidents and fatalities which resulted in positive post-accident drug tests for any employee involved in the accident. This information should be available from the safety program manager or the drug program manager.

Page 4 — Also following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule. This information should be available from the personnel office and/or drug program manager.

Page 5 — **OTHER DRUG TESTING/PROGRAM INFORMATION** (Section D) requires that you complete a table dealing with specimens positive for more than one drug, employees testing positive for both drugs and alcohol, and a table dealing with employees who refused to submit to a drug test.

Page 5 — **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**. Then specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 revenue vehicle operator specimens, then you would write "Revenue Vehicle Operation" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 revenue vehicle operator specimens, then you would write "Revenue Vehicle Operation" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 5 — Next you must provide a count of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater.

Page 5 — **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FTA regulation.

Page 5 — **DRUG TRAINING/EDUCATION** (Section E) requires information on the number of covered employees and supervisory personnel who have received drug training during the current reporting period.

Page 5 — **FTA FUNDING SOURCES** (Section F) asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section(s).

For FTA Use Only

FTA DRUG TESTING MIS DATA COLLECTION FORM

OMB No. 2132-0556

YEAR COVERED BY THIS REPORT: 19__

A. EMPLOYER INFORMATION

Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on this Federal Transit Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____

Signature Date of Signature

_____

Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security (TTS-3); Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0556); Washington, D.C. 20503

B. COVERED EMPLOYEES

COVERED EMPLOYEES		
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY THE USCG
Revenue Vehicle Operation		
Revenue Vehicle and Equipment Maintenance		
Revenue Vehicle Control/Dispatch		
CDL/Non-Revenue Vehicle		
Armed Security Personnel		
TOTAL		

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the current reporting period only (for example, January 1, 1994 - December 31, 1994).

2. This report is only for testing REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):

   - Results should be reported only for employees in COVERED POSITIONS as defined by the FTA drug testing regulation.
   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section D ["OTHER DRUG TESTING INFORMATION"]. Do not include refusals for testing in other sections of this report.

4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

C. DRUG TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
RANDOM								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
POST-ACCIDENT								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								

Number of persons denied a position as a covered employee following a verified positive drug test:	

C. DRUG TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
REASONABLE SUSPICION								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
RETURN TO DUTY								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
FOLLOW-UP								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								

Number of accidents, as defined by the FTA drug testing regulation, which resulted in a positive post-accident drug test:	FATAL	NON-FATAL

Number of fatalities resulting from accidents which resulted in a positive post-accident drug test:	
Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule:	

D. OTHER DRUG TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phency-clidine (PCP)	Opiates	Amphet-amines

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:	

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	Number
Covered employees who refused to submit to a random drug test required under the FTA regulation:	
Covered employees who refused to submit to a non-random drug test required under the FTA regulation:	

E. DRUG TRAINING/EDUCATION

TRAINING DURING CURRENT REPORTING PERIOD	Number
Covered employees who have received at least 60 minutes of initial training on the consequences, manifestations, and behavioral cues of drug use as required by the FTA drug testing regulation:	
Supervisory personnel who have received 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FTA drug testing regulation:	

F. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	3 ___	9 ___	16(b)(2) ___	18 ___

APPENDIX C TO PART 653 - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Transit Administration (FTA) **Drug Testing MIS "EZ" Data Collection Form**. This form should only be used if there are **no positive tests** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) drug testing regulations.

SECTION A - EMPLOYER INFORMATION requires the company name for which the report is done, a current address, contact name, and phone number. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title, and date are required certifying the correctness and completeness of the form. Also indicate the year covered by this report. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA drug testing regulation

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the FTA drug testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if the employer has personnel who perform duties also covered by the anti-drug rule of the United States Coast Guard (USCG). **NUMBER OF EMPLOYEES COVERED BY THE USCG**, requires that you identify the number of employees in each employee category.

SECTION C - DRUG TESTING INFORMATION requires information for drug testing, refusal for testing, and training. The first table requests information on the **NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE** in each category for testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. **"COLL"** requires the number of specimens collected in each employee category for each category of testing. **"NEG"** requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO). Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the categories. Each column in the table should be added and the answer entered in the row marked **"TOTAL"**.

Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule. This information should be available from the personnel office and/or drug program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FTA regulation.

DRUG TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD requires information on the number of covered employees and supervisory personnel who have received drug training during the current reporting period

SECTION D - FTA FUNDING SOURCES asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section(s).

For FTA Use Only

FTA DRUG TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2132-0556

YEAR COVERED BY THIS REPORT: 19__

A. EMPLOYER INFORMATION

Company Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on the attached Federal Transit Administration Drug Testing Management Information System "EZ" Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____

Signature Date of Signature

_____

Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security (TTS-3); Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0556); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES		
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY THE USCG
Revenue Vehicle Operation		
Revenue Vehicle and Equipment Maintenance		
Revenue Vehicle Control/Dispatch		
CDL/Non-Revenue Vehicle		
Armed Security Personnel		
TOTAL		

C DRUG TESTING INFORMATION

NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE												
EMPLOYEE CATEGORY	PRE-EMPLOYMENT		RANDOM		POST-ACCIDENT		REASONABLE SUSPICION		RETURN TO DUTY		FOLLOW-UP	
	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG
Revenue Vehicle Operation												
Revenue Vehicle and Equipment Maintenance												
Revenue Vehicle Control/Dispatch												
CDL/Non-Revenue Vehicle												
Armed Security Personnel												
TOTAL												

Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule:	

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	Number
Covered employees who refused to submit to a random drug test required under the FTA regulation:	
Covered employees who refused to submit to a non-random drug test required under the FTA regulation:	

DRUG TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD	Number
Covered employees who have received at least 60 minutes of initial training on the consequences, manifestations, and behavioral cues of drug use as required by the FTA drug testing regulation:	
Supervisory personnel who have received 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FTA drug testing regulation:	

D. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply	3 ___	9 ___	16(b)(2) ___	18 ___

Issued: January 25, 1994.

Federico Pēna,

Secretary of Transportation.

Gordon J. Linton,

Administrator.

[FR Doc. 94–2041 Filed 2–3–94; 1:00 pm]

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February 15, 1994

Part IX

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Random Drug Testing Program; Proposed Rule

DEPARTMENT OF TRANSPORTATION

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[OST Docket No. 48498 , Notice 94–2]

RIN 2105–AB94

Random Drug Testing Program

AGENCIES: Office of the Secretary, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, Research and Special Programs Administration, and the United States Coast Guard, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Five operating administrations—the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Research and Special Programs Administration (RSPA) and the United States Coast Guard (USCG)—currently require random drug testing of safety-sensitive employees. In a final rule published elsewhere in today's **Federal Register**, the Federal Transit Administration (FTA) , also a part of DOT, is adopting a parallel rule for covered transit employees.

In response to public comments, petitions submitted by industry, and on its own initiative, the FAA, FRA, FHWA, RSPA, USCG and FTA (the operating administrations or "OAs") are proposing to lower the minimum random drug testing rate to 25 percent where the industry-wide (e.g., aviation, rail) random positive rate is less than 1.0 percent for 2 calendar years while testing at 50 percent. The rate would return to 50 percent if the industry random positive rate were 1.0 percent or higher in any subsequent calendar year. The industry-wide random positive rate for each transportation industry would be calculated from data submitted to the Department and announced yearly by the respective Administrator or the Commandant of the Coast Guard.

DATES: Comments are due April 18, 1994.

ADDRESSES: Comments should be sent to the docket number and address of the relevant OA. General comments may be sent to Docket 48498, Office of Documentary Services (C–55), U.S. Department of Transportation, room 4107, 400 Seventh Street SW., Washington, DC 20590–0001. It is not necessary to send copies to both the OST docket and the operating administration docket.

FAA—Docket 25148 and 26604, Federal Aviation Administration, 800 Independence Ave SW., room 915–G, Washington, DC 20591.

USCG—Docket 93–089, United States Coast Guard, 2100 2nd Street SW., room 3406, Washington, DC 20593.

RSPA—Docket PS–134, Research and Special Programs Administration, 400 Seventh Street SW., room 8419, Washington, DC 20590.

FRA—Docket RSOR–6, Federal Railroad Administration, 400 Seventh Street SW., room 8209, Washington, DC 20590.

FHWA—Docket No. MC–94–5, Federal Highway Administration, 400 Seventh Street SW., room 4232, Washington, DC 20590.

FTA—Docket 93–C, Federal Transit Administration, 400 Seventh Street SW., room 9316B, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Smith, Acting Director, Office of Drug Enforcement and Program Compliance, (202) 366–3784.

SUPPLEMENTARY INFORMATION:

Regulatory Background

DOT agencies have been involved in drug testing since the mid-1980s. The USCG has tested its uniformed personnel for drug use since 1982. DOT began random drug testing of certain of its civilian employees in September 1987.

The Department's civilian employee drug testing program is tightly controlled, centrally administered by headquarters staff, and monitored daily. Employee awareness and the visibility of the program are maintained through training programs conducted by regional drug program coordinators. Specimens are collected by a single contractor service, which operates under a uniform standard of procedures that provides for consistent and reliable collections.

The random testing program was phased in and, by September 1988, DOT was testing a population of nearly 33,000 federal civilian employees (primarily air traffic controllers, safety inspectors and individuals with high security clearances) at a testing rate of at least 50 percent each year for illegal drug use. The annual rate of positive random tests has declined from about 0.83 percent to as low as 0.21 percent over the last six years. Over the past four years, the rate has consistently stayed well below 0.5 percent. The data indicated that, in this homogeneous, skilled, and stable population, there was no distinction in the percentage of positive testing results based on geography, age, etc. As a result of the apparent deterrent effect of the testing program as demonstrated by carefully-maintained recordkeeping, long experience, and the decreasing number of positive results, the Department lowered its federal employee random testing rate. Effective March 1, 1992, the Department has been conducting random testing at a rate of at least 25 percent annually. The positive rate continues to remain at a similarly low level. The Department will continue to evaluate the data and will adjust the random testing rate, as necessary. The testing rate adjustment saved the Department approximately 40 percent in annual collection and laboratory testing costs.

The Federal Railroad Administration (FRA) has the longest experience with drug testing programs applicable to transportation industry workers. In 1986, railroads began pre-employment, post accident, and reasonable cause/suspicion testing, as required by the FRA.

In 1988, the Department of Transportation issued six final rules mandating anti-drug programs for certain transportation workers in the aviation, interstate motor carrier, pipeline, maritime and transit industries and expanded the requirements of the existing FRA rule. The rules included requirements for education, training, testing and sanctions. The testing component of each program included pre-employment, post-accident, reasonable cause, periodic (for those subject to periodic medical examinations) and random drug testing for approximately four million workers in safety-sensitive positions. Based on extensive experience and success in testing military and other populations, the Department imposed wide scale random testing requirements because unannounced random drug testing is generally regarded as the best method of deterring illegal drug use, thereby enhancing the safety of the transportation industries.

The OAs' rules imposed a random testing rate of at least 50 percent per year. This means that if an employer has 400 covered employees, the employer must conduct at least 200 random tests per year. Selection for testing must be random, with every employee in the random pool having an equal chance of being chosen each time a selection is made. Because of the randomness, some employees could be tested more than once in a given year, while others might not be tested for years. However, every covered employee would know that he or she had one chance in two of being tested each year. Employers were allowed to phase in random testing at a rate of 25 percent for the first year, but had to increase to at least a 50 percent testing rate after one year.

After the final rules were issued, lawsuits delayed implementation of the rules for three of the six DOT agencies. Currently, only transit workers are not covered by the testing regulations. The 1988 final rule adopted by the Federal Transit Administration (formerly called the Urban Mass Transportation Administration) was vacated by the United States Court of Appeals for the District of Columbia Circuit because of a lack of statutory authority. Legislation (the FTA provisions of the Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102–143, Title V, October 28, 1991) was subsequently enacted to remedy this problem as well as address other significant concerns with alcohol misuse and illegal drug use by individuals in various transportation industries who perform safety-sensitive duties. A final rule covering transit employees is published elsewhere in today's **Federal Register**. The rule provides, among other things, that transit employees will be subject to a random testing rate of at least 50 percent.

The Federal Railroad Administration phased in random testing in three groups: large railroads, medium-size railroads, and short line railroads. In January 1990, large railroads began testing at 25 percent, medium-size railroads began testing at 25 percent in July 1990 and short line railroads began testing at 25 percent in November 1990. Random testing at a 50 percent rate began one year after these dates for each of the three categories.

In the aviation industry, the 25 percent rate was instituted for large air carriers in December 1989, for medium-size carriers in April 1990, and for the smallest carriers in August of 1990. Testing at 50 percent began one year after the initial phase-in. Testing of contractor employees (such as repair station personnel or security screeners) began one year after the carriers that they worked for or supported initiated testing.

Testing of pipeline personnel began with phase-in (25 percent) testing in April 1990 for large operators and in August 1990 for small operators, with the 50 percent rate implemented one year later by each group.

Random and non-suspicion-based post-accident drug testing in the motor carrier industry were enjoined by court order, although the other types of testing were implemented on December 21, 1989. After the injunction was lifted, random testing by large motor carriers began in November 1991 at a 25 percent rate and testing by small motor carriers began in January 1992 at a 25 percent rate. One year after these dates, the rate increased to 50 percent. (The current rule covers just interstate motor carriers, but a final rule in today's **Federal Register** will extend coverage to all employers and persons who use individuals who are required to have commercial driver's licenses, including employees of intrastate motor carriers and school bus drivers who drive vehicles covered by the drug rule.)

The USCG rule regarding random testing of some commercial vessel personnel was enjoined by court order in December 1989. Other types of testing were phased in commencing in June 1989. In July 1991, the USCG issued a revised rule addressing the court's concerns and justifying the categories of employees subject to random testing. In October of 1991, the maritime industry began testing at a 25 percent random rate with a requirement to increase to a 50 percent rate one year after implementation. There was no distinction between large and small maritime employers for this implementation of random testing.

Only the Federal Aviation Administration and the Federal Railroad Administration require their regulated employers, with minor exceptions, to report testing statistics to them. The Federal Highway Administration, the U.S. Coast Guard and the Research and Special Programs Administration review records maintained by covered employers, but do not have composite data on testing statistics for their industries. Separate final rules published in the **Federal Register** on December 23, 1993, require that certain employers regulated by all five OAs submit uniform data concerning drug testing on an annual basis to those administrations. (Data from the motor carrier industry would be gathered on a survey basis.) In a final rule published in today's **Federal Register**, FTA is requiring similar reporting requirements for the drug testing requirements it is imposing on the transit industry.

The ANPRM

On December 15, 1992 (57 FR 59778), DOT published an advance notice of proposed rulemaking (ANPRM) requesting public comment and submission of data concerning whether there are less costly alternatives to the current random testing program that can maintain an adequate level of deterrence and detection of illegal drug use. Although the anti-drug regulations were promulgated by various DOT agencies, we issued a Departmental ANPRM because of the commonality of the issues.

The purpose of the ANPRM was to seek data and ideas on additional strategies that would ensure the continued effectiveness of the Department's anti-drug program while reducing its cost. The ANPRM asked for comment on a number of alternatives to the current 50 percent random testing rate that DOT could consider. These alternatives included:

(1) Making an across-the-board modification of the rate for all DOT anti-drug programs;

(2) Modifying how the random testing rate is implemented (e.g., frequency of testing, etc.);

(3) Making a selective modification of the rate by

(a) Operating administration (e.g., FAA or FRA could modify its rate);

(b) Job category (e.g., pilots, train engineers);

(c) Any other category that warranted a different rate based on drug use prevalence or other factors (e.g., age or geographic region);

(4) Establishing a performance standard program;

(5) Permitting employers who take specified additional steps to deter drug use to reduce their random testing rate;

(6) Modifying the random testing rate for all operating administration rules for a specific time period, subject to reconsideration after the results are analyzed;

(7) Conducting demonstration programs in each operating administration before further action is taken; or

(8) Combining some of the alternatives.

In addition, we asked for comment on a number of other issues, most notably costs and data on positive test results.

Comments

Over 115 comments were filed in response to the ANPRM. Commenters included governmental agencies, trade associations, regulated entities, unions, contractors and consultants, and individuals.

In terms of the appropriate random testing rate, the comments ranged from suggestions to abolish all random testing requirements to greatly increasing the current 50 percent testing rate. Those favoring abolition of random testing argued that the federal requirements are intrusive, punitive, costly, and unnecessary. Several commenters argued that post accident and reasonable suspicion testing were adequate. Others supported pre-employment and periodic testing, in addition to post accident and reasonable suspicion testing.

Over 20 commenters favored a rate of less than 25 percent. These commenters tended to focus on the low prevalence of drug use in the workplace, the high cost of testing and time lost from the job. Over 50 commenters favored a testing rate of 25 percent. A number argued that the drug problem is not as widespread as originally believed. In general, these commenters argued that a 25 percent rate would provide substantial savings while maintaining a serious deterrent effect. Many focused on the cost of the current program and argued that the savings from reducing the incremental number of tests and associated non-productive time would be significant. Others took a more holistic approach and noted that other types of tests, training and education were also deterrents.

Over a dozen commenters supported the current system. They argued that a decrease in the rate will increase recreational use and undermine the deterrent purpose of the program. Several stated that the data were inadequate to justify a reduction and that costs will not drop because the lower volume will result in higher per test costs. Others took an "if it ain't broke, don't fix it" attitude.

Four commenters argued that the rate should be increased. These commenters stated that a greater perception of getting caught would result in less drug use. At least one noted that at a 50 percent testing rate, some employees are never tested while others are tested two or more times per year.

The ANPRM asked for comment on whether any change should be made across all operating administrations or selectively by industry, company, or job classification. Most who favored a differentiated approach suggested that the rate be set by industry. Many of these commenters believed that their industry was better than others and that they were being penalized unfairly by unrelated "bad actors." There was some support for setting the rate by job categories tempered by the concern that such differentiation not be arbitrary. An equal number of commenters stated that it would be confusing to have too many subgroups and argued for a more even-handed approach. A number of commenters suggested that employers should have flexibility to set the rate at whatever level they thought best, based on their own past experience.

Many commenters focused on the importance of research, employee and supervisor education, employee assistance programs and effective enforcement to deter drug use. Most of these comments focused on making the drug testing requirements and the employers' policies highly visible to employees. In particular, a strong "for cause" testing policy and firm discipline was seen by most of these commenters to be essential.

A number of commenters provided information on costs and positive rates. Virtually all the commenters that discussed positive rates stated that there had been no, or very few, positive random test results in their companies or industries. Comments on the cost per test ranged from the teens to well over a hundred dollars. The general comments on cost savings that could be attributed to a change in the random rate also varied considerably. Some argued that the savings would be proportionate to the change in the testing rate because they pay a set fee per drug test. Most believed there would be a substantial savings, although the amount of savings would not directly correlate to the testing rate because the employer still had fixed administrative costs in running the program. A few commenters argued that costs would not drop at all because labs will simply charge more for tests. The comments on costs and benefits are discussed in greater detail in the accompanying regulatory evaluations prepared by each OA and available for review in the docket.

Commenters differed on how much data they believed necessary to justify a change in the testing rate. Most commenters believed at least two years were necessary, although some believed one year was adequate and others, up to five years. There was some support for demonstration programs, particularly if they would result in the random testing rate being lowered without delay. Those viewing demonstration programs as a "tactic" to delay across the board lowering of the testing rate opposed them vigorously.

Technical Meeting

In addition to soliciting written comments, the Department held a public meeting on workplace random testing and its impact on drug use deterrence in Washington, DC, on February 1 and 2, 1993. The meeting included presentations by experts from federal agencies and the military, academia and private industry. Over 20 participants presented papers and sparked discussions that ranged from mathematical models of drug testing rates and their impact on drug use to program data from corporations using random drug testing as part of a drug-free workplace strategy. The participants presented no definitive data that identified optimal random testing rates for achieving maximum deterrence of drug use. Many corporate representatives expressed views that favored reducing required random testing rates; however, they did not support their views with specific data on the causal or correlative relationship between random testing rates and drug use deterrence. The discussions also covered the corollary issue of detection of drug abusers who are not deterred by workplace drug prevention policies or programs. The meeting was attended by over 200 people and included question and answer periods. Transcripts of the meeting are included in the docket.

Available Data

The Department would appreciate public comment in identifying additional data concerning the effectiveness of random testing rates. The following summarizes the data currently available to the Department concerning the results of random testing in the regulated industries, the Department's civilian workforce, and the U.S. Coast Guard military personnel.

	1990	1991	1992
Aviation:			
Total Number of Random Tests	84,585	170,439	183,176
Number of Positives	445	1,258	1,307
Percent Positive	0.53	0.74	0.71
Railroads:			
Total Number of Random Tests	35,228	50,436	42,599
Number of Positives	365	447	336
Percent Positive	1.04	0.88	0.79

FRA's random testing regulations were issued in November 1988, with the first testing, as noted earlier, starting in January 1990. FRA has kept records of post-accident drug testing for the last five years. For purposes of analyzing any effect from the issuance of the requirement or the implementation of the testing, the positive rates for post-accident testing are provided; they are as follows:

1987	1988	1989	1990	1991	1992
5.1%	5.6%	3.0%	3.0%	1.1%	1.8%

In the rail industry, reasonable cause testing occurs whenever there is a violation of a federal safety rule (Rule G), as opposed to when there is individualized suspicion of drug use. The positive rates are as follows:

1987	1988	1989	1990	1991	1992
5.4%	4.7%	3.6%	1.8%	1.9%	1.9%

In July 1991, the FRA initiated a comparative study of random testing rates and the impact on deterrence, as measured by the positive rate. The study compared 4 railroads testing at 50 percent (control group) with 4 railroads testing at 25 percent (experimental group). The positive rate for the control group when the study was initiated was 1.1 percent; for the experimental group it was 0.89 percent. In the first year (July 1991 through June 1992), the control group positive rate was 0.90 percent, the experimental group's was 0.87 percent. For the period July 1992 through June 1993, these groups had positive rates of 0.80 percent and 0.94 percent, respectively. Statistically, the differences in the positive rates between the control and experimental groups are not significant.

Motor Carriers

In general compliance investigations of 4,967 interstate motor carrier drug testing programs by FHWA in the first six months of FY 1993, records indicated that 28,250 random tests were conducted. There were 878 verified positive results (3.11 percent). The audits represent less than 2 percent of the motor carriers subject to the FHWA rule. The FHWA selects interstate motor carriers for general safety rule compliance investigations by determining factors such as a safety rating or prior compliance problem. These compliance investigations do not offer scientific, statistically unbiased sampling methods.

The Omnibus Transportation Employee Testing Act of 1991 (Pub.L. 102–143, Title V, Section 5) requires FHWA to conduct a demonstration project to study the feasibility of random roadside alcohol and controlled substances testing. The project's goal is to consider alternative methodologies for implementing random testing systems for commercial motor vehicle operators. Congress' intent was for the FHWA to report and make recommendations concerning random testing administered by means other than carrier-administered testing. Preliminary data from the four state random roadside testing project indicate that of 34,127 drug tests conducted, 1,241 (3.9 percent) were positive for drugs. An additional 1,305 drivers randomly selected for a drug test refused to be tested.

The report is to address the effectiveness of State-administered testing in detecting individuals, such as owner-operators, who might otherwise avoid detection in carrier-administered testing programs. The report, Congress stated, may also include testing or other detection methods performed by Federal or local agencies. In addition, the report is to address the funding of such testing through existing State grant programs or other similar programs. The report is due to Congress by April 1994.

U.S. DOT Employees

In the Department's federal employee testing program, the random testing rate of at least 50 percent was phased-in over the first year of the program and achieved at the end of FY 1988. A testing rate of at least 50 percent was maintained in FY 1989–1991. In FY 1992, the figures include testing over the first five months with a rate of at least 50 percent, followed by seven months of testing with a rate of at least 25 percent. (FY93 figures reflect a full year with the lower testing rate) The following table summarizes DOT federal employee random testing data.

	FY88	FY89	FY90	FY91	FY92	FY93
Total Number of Random Tests	5,047	17,926	19,103	18,671	12,454	9,433
Number of Positives	42	92	43	40	39	24
Percent Positive	0.83	0.51	0.23	0.21	0.31	0.25

As noted earlier, the USCG has been conducting random drug tests on its active duty and reserve uniformed personnel. Rather than setting a specific testing rate as a requirement at the beginning of the fiscal year, the USCG conducts the maximum number of tests possible from the funds that are appropriated. The percentage of positive results for random tests in each fiscal year and the approximate testing rate is as follows:

	1987	1988	1989	1990	1991	1992	1993
Percent Positive	1.57	1.31	68	41	41	78	75
Testing Rate Percent	120	95	95	95	85	85	80

Testing Rates in Various Federal Agencies

Executive Order 12564, "Drug-Free Federal Workplace," signed by President Reagan in September 1986, required random drug testing of safety- and security-related federal employees in 135 federal executive branch agencies. According to a 1991 report of the General Accounting Office ("Employee Drug Testing: Status of Federal Agencies' Programs: Report to the Chairman, Committee on Governmental Affairs," U.S. Senate, (May 1991), GAO/FFD–91–70, 14–19), the random drug testing rates at the 18 agencies that GAO reviewed ranged from 4 to 100 percent. In November 1992, GAO issued a follow-up report entitled "Employee Drug Testing: Opportunities Exist to Lower Drug-Testing Program Costs." GAO/GGD–93–13. Although the 1992 report did not reach any definitive conclusions as to what is the ideal frequency for drug testing, it did recommend that the Director of the Office of National Drug Control Policy work with drug-testing agencies to consider modifications to their selected frequency levels of employee testing.

The Proposal

This NPRM proposes to lower the random testing rate to 25 percent for each industry regulated by an operating administration where the industry-wide random positive rate is less than 1.0 percent for 2 consecutive calendar years while testing at 50 percent. The rate would increase back to 50 percent if the industry random positive rate were 1.0 percent or higher for any entire subsequent calendar year. Under the proposal, it is possible that different industries will be subject to different rates in a given calendar year.

We selected the 1.0 percent positive rate as the rate adjustment standard based on the experience that the military and other workplace programs have had with deterrence-based drug testing. Their results reveal that no matter what rate is used for random testing, the testing programs will never achieve zero positives. There always is a constant group of "hard-core" individuals of less than 1.0 percent of the population who are detected positive over a period of time; these individuals are unaffected by deterrence-based testing because of addiction or belief in their invincibility.

Because the proposal will require review of the data and calculations within the operating administrations, the NPRM proposes that each year the Administrator (or Commandant of the Coast Guard) will publish in the **Federal Register** the minimum required percentage for random testing of covered employees during the calendar year following publication. Any random rate change indicated by industry performance would occur at the beginning of that calendar year. We request comment on whether a different implementation cycle would be better.

The Administrator's decision to authorize a decrease (or require a return to the 50 percent rate) would be based on the overall positive rate in the industry. The primary source of data will be the Management Information System (MIS) reports from covered employers to the individual operating administrations. For the aviation and rail industries, we are proposing to rely on the data submitted under reporting requirements that have been in place since their drug testing rules were originally issued. The FAA drug testing rule currently requires all employers to report, among other things, the total number of tests, the number of positive tests and the number of employees that refused to be tested. Similarly, FRA requires large railroads to report detailed information concerning their drug testing performance. Based on these reports, FAA and FRA could lower their rate to 25 percent as early as January 1995 (if a final rule is issued in this rulemaking before the end of 1994).

Under the NPRM, if a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency, the employee would be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function. Similarly, the NPRM provides that if an employer is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the employer may either establish separate pools for random selection, with each pool containing covered employees subject to testing at the same required rate, or randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

The proposal includes several provisions to provide employers greater flexibility or to provide greater clarity. For example, the NPRM proposes that, if the employer conducts random testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees subject to random testing by the consortium. In order to ensure deterrence, the dates for administering random tests would be required to be spread reasonably throughout the calendar year.

There are a number of important issues related to calculating the positive rate. Consistent with the final rules addressing alcohol misuse prevention that are being published in today's **Federal Register**, the term "positive rate" would be defined in the definition section of each operating administration drug rule as, "the number of positive results for random tests conducted under this part plus the number of refusals of random tests required by this part, divided by the total number of random tests conducted under this part plus the number of refusals of random tests required by this part."

This NPRM would add a definition of "refuse to submit" in each operating administration drug rule. The definition would be "a covered employee [who] fails to provide a urine sample as required by 49 CFR part 40, without a valid medical explanation, after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process." As a practical matter this means that refusals to take a random drug test would count as a positive result for the purpose of calculating the industry random test rate and would count toward the number of tests required to be conducted. Since they are treated as if they are positive, we believe they should be counted in the totals. Moreover, without this approach, the system could be easily abused. For example, employers with high positive rates might have an incentive to subtly communicate that employees that test positive will be fired but employees that refuse to be tested will receive little or no punishment.

Drug urine samples found to be adulterated are considered a refusal to test because they are an obstruction of the testing process. In addition, they count as positives for the purpose of calculating the industry random test rate and count toward the number of tests required to be conducted. Administrative or procedural errors during the testing process, such as breaking the container holding the sample, are considered canceled tests and are not counted in the totals when calculating the industry random test rate.

Before lowering the testing rate in any industry, the Department wants to be confident that the data are reliable and fairly represent the drug prevalence in the industry. The MIS rules require that employers submit data for each calendar year by the following March 15th. We envision that the OAs and the OST Drug Office would review the data and that the Administrator (or Commandant) would issue a determination within a few months. If the data indicated that a change in the rate were warranted, the change would go into effect the following year, beginning January 1. This process is the same as the one established in the alcohol final rules published elsewhere in today's **Federal Register**. As in that rule, we believe that covered entities generally need approximately one-half year lead time to adjust their procedures, make changes in any contracts and take other necessary action to adjust to an increase or decrease. We also believe it would be best to keep the reporting determination process on a consistent, calendar year basis. We are aware that this process has a built-in delay, and request comments on whether there is some easier method that, at the same time, provides adequate time to gather and submit data, issue a **Federal Register** notice, and implement the change.

Of equal or greater concern is the built-in lag time between industry reports of rising positive rates and the OA's re-imposition of the 50 percent testing rate. To address this concern, the rule provides that the rate will be raised after 1 year of data indicating a positive rate of 1.0 percent or greater. As a practical matter, however, any industry that is lowered to a 25 percent rate cannot be returned, under the current proposal, to a 50 percent rate until a year after the data indicating the problem. For the reasons noted above, we do not think it is practical to require a change in the testing rate on shorter notice.

We recognize that because the reported positive rate is obtained from data whose precision is eroded by sampling variance and measurement error, and whose accuracy is diminished by non-response bias, there is a greater risk that it diverges from the actual positive rate in the population. Each OA will be using MIS data collection and sampling methods that address these issues to the extent possible and make sense in the context of its particular industry. Where not all employers are included in the reported data, the OA will decide how many covered employers must be required to report or be sampled; this decision will be based on the number of employers (not otherwise required to report) that must be sampled to ensure that the reported data from the sampled employers reliably reflects the data that would have been received if all were required to report. However, we retain for our discretion the decision on whether the reported data reliably support the conclusion (*e.g.*, based on audits of company records that show significant falsification of reports). If the reported data are not sufficiently reliable, the OA will not permit the random rate adjustment to occur.

We have proposed using industry positive rates (positive tests and refusals to test) as the performance benchmark rather than individual employer or job category positive rates urged by some commenters. Company-by-company rates would be extremely difficult to implement and enforce, would be extremely difficult to apply to small companies, would require reports from all companies, could encourage cheating (especially in areas of heavy competition), and could excessively complicate the use of consortia. Although an individual company may have reduced incentive to lower its positive rate, industry organizations may pressure it to work toward a more favorable industry random testing rate. Industry-wide rates should be much more effective, and easier to implement and enforce. In addition, setting testing rates by job category would raise difficult questions of classification and might appear discriminatory to the employees involved.

The practical implication of this NPRM is that FHWA, RSPA and USCG would remain at 50 percent until they have 2 years of data showing that random positive rates for their industries are less than 1.0 percent. FTA, which is just issuing its drug testing rules in today's **Federal Register**, will begin random drug testing at 50 percent. Like the other operating administrations, it may only lower the rate after 2 years of data showing that the random positive rate for its industry is less than 1 percent. The 2-year period for motor carriers and mass transit would only start after their new drug testing requirements are fully implemented, i.e., two years after testing for small entities starts. If this proposal is adopted, we will announce in the final rule in this rulemaking whether one, or both, industries may lower their random drug testing rate.

The Coast Guard is also proposing to remove existing (and no longer applicable) regulatory language that allowed existing marine employers to begin their random drug testing at a 25 percent annual rate (46 CFR 16.205(d)). This provision was included to reduce the initial burden that the then-new random drug testing program would impose on employers. Because the provision no longer serves any purpose, and may lead to confusion, the Coast Guard proposes to remove this regulatory language.

RSPA is proposing to revise the random testing cycle to a calendar year beginning on January 1 and ending December 31. The December 23, 1994, Management Information System final rule requires operators to begin collecting drug testing data in 1994, and to report that information to RSPA on an annual basis beginning in 1995. The current regulations required operators to begin their drug testing programs, including random testing, in April and August 1990. RSPA believes this proposed change will eliminate the confusion and administrative burden expressed by many operators who are conducting random testing on an April-April or August-August cycle as required by the current regulations. The proposed revision will allow operators to conduct random testing and collect their drug testing data on a calendar year cycle.

Comparison With Alcohol Misuse Prevention Final Rules

With one major exception, this proposal is intended to mirror, in concept, the final rules for alcohol testing being issued in today's **Federal Register**. Those rules initiate random alcohol testing at a 25 percent rate and make provision for the testing rate to be increased to 50 percent if the positive rate is 1.0 percent or greater for any entire subsequent year, and decreased to a 10 percent testing rate if less than 0.5 percent for two consecutive years. The exception is that this NPRM does not propose to lower the random testing rate to 10 percent if the industry positive rate is less than 0.5 percent.

The Department tentatively finds that a 25 percent random testing rate is the minimal effective rate to ensure deterrence for *drug* use and to allow at least a modicum of detection. The drug rules are dealing, by and large, with illegal substances or, at least, legal substances that are being used contrary to lawful purposes. Unlike alcohol, few people can readily detect most drug use from behavior or appearance. Because of the legality of alcohol and its everyday use throughout society, many people can detect when it has been consumed or when a person is under the influence. Another distinction is that drugs are often packaged in very small form, such as a tablet or powder, while many common forms of alcohol, such as beer or wine, are more visible because of the size of their containers. Thus, alcohol misuse appears to be more easily deterred or detected than drug use and it is not as necessary to establish as strong a deterrence for alcohol through

the tool of random testing. We solicit comment, however, on whether the alcohol approach should be considered for the final drug rule.

Regulatory Analyses and Notices

DOT Regulatory Policies and Procedures

The NPRM is considered to be a significant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034, because of the substantial public and Congressional interest in this subject. Regulatory evaluations for each OA have been prepared and are available for review in the respective dockets. This NPRM was reviewed by the Office of Information and Regulatory Affairs pursuant to Executive Order 12866.

FAA estimates an average potential cost savings of approximately $8.9 million per year if the testing rate is dropped to 25 percent. USCG estimates an annual cost savings of between $0.8 million to $1.6 million annually; RSPA estimates $2.05 million per year; FRA estimates $1 million per year; FHWA estimates $107 million per year; and FTA estimates an average of over $7 million per year. Further detail is available in the OA regulatory evaluations, which are available in the respective dockets.

Executive Order 12612

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12630

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that any potential modification in the random drug testing program does not pose the risk of a taking of constitutionally protected private property.

Regulatory Flexibility Act

Depending on how many, if any, transportation industries qualify for a reduction in the random testing rate, the proposal could have a significant economic impact on a substantial number of small entities. Some transportation industries, particularly motor carriers, pipelines, maritime, and transit, are composed of many small companies. If the random testing rate were reduced, there would be a significant cost savings, as discussed in the accompanying regulatory flexibility analyses. In addition, to the extent that the rate is lowered it might have a negative economic impact on those contractors who provide services to employers covered under the rules, some of whom are small entities. The Department specifically seeks public comment on the effect, if any, of potential changes in the program on small entities, as well as any suggested alternative approaches. Further review will be conducted based on comments received on this notice.

Paperwork Reduction Act

There are a number of reporting or recordkeeping requirements associated with DOT-mandated drug testing. Some of the requirements are currently part of the OAs' drug testing rules and some have been incorporated as a result of the final rules setting up the management information systems that were published in the **Federal Register** on December 23, 1993. To the extent that fewer random tests are required in a given transportation industry, there will be a proportionate reduction in recordkeeping, but no change in the reporting requirement.

National Environmental Policy Act

The Department has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment and that an environmental impact statement is not required.

Issued on January 25, 1994, in Washington, DC.

Federico Peña,

Secretary of Transportation.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

For the reasons set out in the preamble, the Federal Aviation Administration proposes to amend 14 CFR part 121, as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1485, and 1502 (revised Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. In Appendix I, Sec. II, the definition of "positive rate" would be added in alphabetized order, and the definition of "refusal to submit" would be revised, to read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

II. Definitions

* * * * *

Positive rate means the number of positive results for random drug tests conducted under this part plus the number of refusals to take random tests required by this part, divided by the total number of random drug tests conducted under this part plus the number of refusals to take random tests required by this part.

* * * * *

Refusal to submit means that a covered employee failed to provide a urine sample as required by 49 CFR part 40, without a valid medical explanation, after he or she has received notice of the requirement to be tested in accordance with this appendix or engaged in conduct that clearly obstructs the testing process.

3. Appendix I, Section V, Paragraph C is revised to read as follows:

Apendix I to Part 121—Drug Testing Program

* * * * *

V. Types of Drug Testing

* * * * *

C. Random testing. 1. Except as provided in paragraphs 2–4 of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

2. The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this appendix. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

3. When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of this appendix for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

4. When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of this appendix for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

5. The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

6. The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the employer conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

7. Each employer shall ensure that random drug tests conducted under this appendix are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

8. If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

9. If an employer is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the employer may—

(a) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(b) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

Issued in Washington, DC, on January 25, 1994.

David R. Hinson,

Administrator, Federal Aviation Administration.

List of Subjects in 46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 16, as follows:

PART 16—CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301 and 7701; 49 CFR 1.46.

2. In § 16.105, the definitions of *Positive rate* and *Refuse to take (a drug test)* are added in alphabetized order to read as follows:

§ 16.105 Definitions of terms used in this part.

* * * * *

Positive rate means the number of positive results for random drug tests conducted under this part plus the number of refusals to take random tests required by this part, divided by the total number of random drug tests conducted under this part plus the number of refusals to take random tests required by this part.

Refuse to submit means that a crewmember fails to provide a urine sample as required by 49 CFR part 40, without a valid medical explanation, after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.

* * * * *

§ 16.205 [Amended]

3. In § 16.205, paragraph (d) is removed and reserved.

4. In § 16.230, paragraphs (c) and (e) are revised, paragraph (f) is redesignated as paragraph (k), and new paragraphs (f) through (j) are added to read as follows:

§ 16.230 Random testing requirements.

* * * * *

(c) The selection of crewmembers for random drug testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with crewmembers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the testing frequency and selection process used, each covered crewmember shall have an equal chance of being tested each time selections are made and an employee's chance of selection shall continue to exist throughout his or her employment. As an alternative, random selection may be accomplished by periodically selecting one or more vessels and testing all crewmembers covered by this section, provided that each vessel subject to the marine employer's test program remains equally subject to selection.

* * * * *

(e) Except as provided in paragraph (f) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered crewmembers.

(f) The annual rate for random drug testing may be adjusted in accordance with this paragraph.

(1) The Commandant's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported random positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this part. In order to ensure reliability of the data, the Commandant considers the quality and completeness of the reported data, may obtain additional information or reports from marine employers, and may make appropriate modifications in calculating the industry positive rate. Each year, the Commandant will publish in the **Federal Register** the minimum annual percentage rate for random drug testing of covered crewmembers. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

(2) When the minimum annual percentage rate for random drug testing is 50 percent, the Commandant may lower this rate to 25 percent of all covered crewmembers if the Commandant determines that the data received under the reporting requirements of 46 CFR 16.500 for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(3) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of 46 CFR 16.500 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Commandant will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered crewmembers.

(g) Marine employers shall randomly select a sufficient number of covered crewmembers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Commandant. If the marine employer conducts random drug testing through a consortium, the number of crewmembers to be tested may be calculated for each individual marine employer or may be based on the total number of covered crewmembers covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

(h) Each marine employer shall ensure that random drug tests conducted under this part are

unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(i) If a given covered crewmember is subject to random drug testing under the drug testing rules of more than one DOT agency for the same marine employer, the crewmember shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the crewmember's function.

(j) If a marine employer is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the marine employer may—

(1) Establish separate pools for random selection, with each pool containing the covered crewmembers who are subject to testing at the same required rate; or

(2) Randomly select such crewmembers for testing at the highest percentage rate established for the calendar year by any DOT agency to which the marine employer is subject.

* * * * *

Issued in Washington, DC on January 25, 1994.

Adm. J. William Kime,

Commandant, United States Coast Guard.

List of Subjects in 49 CFR Part 199

Drug testing, Pipeline safety, Recordkeeping and reporting.

For the reasons set out in the preamble, RSPA proposes to amend 49 CFR part 199, as follows:

PART 199—DRUG AND ALCOHOL TESTING

1. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, and 2002; 49 CFR 1.53.

2. Section 199.3 is amended by adding the following definitions in alphabetical order:

§ 199.3 Definitions.

* * * * *

Positive rate means the number of positive results for random drug tests conducted under this subpart plus the number of refusals of random tests required by this subpart, divided by the total number of random drug tests conducted under this subpart plus the number of refusals of random tests required by this subpart.

* * * * *

Refuse to submit means that a covered employee fails to provide a urine sample as required by 49 CFR part 40, without a valid medical explanation, after he or she has received notice of the requirement to be tested in accordance with the provisions of this subpart, or engages in conduct that clearly obstructs the testing process.

* * * * *

3. Section 199.11 is amended by revising paragraph (c) to read as follows:

§ 199.11 Drug tests required.

* * * * *

(c) *Random testing.* (1) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

(2) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this part. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from operators, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

(3) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 199.25 for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(4) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 199.25 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

(5) The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(6) The operator shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the operator conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual operator or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

(7) Each operator shall ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(8) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same operator, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(9) If an operator is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the operator may—

(i) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(ii) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the operator is subject.

* * * * *

Issued in Washington, D.C. on January 25, 1994.

Ana Sol Gutiérrez,

Acting Administrator, Research and Special Programs Administration.

List of Subjects in 49 CFR Part 219

Alcohol and drug abuse, Railroad safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FRA proposes to amend 49 CFR part 219, as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

1. The authority for part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; Pub. L. 102–143; and 49 CFR 1.49(m).

2. Section 219.5 is amended by adding, in alphabetical order, definitions for "positive rate" and "refuse to submit" as follows:

§ 219.5 Definitions

* * * * *

Positive rate means the number of positive results for random drug tests conducted under this part plus the number of refusals of random tests required by this part, divided by the total number of random drug tests conducted under this part plus the numbers of refusals of random tests required by this part .

* * * * *

Refuse to submit means that a covered employee fails to provide a urine sample as required by 49 CFR part 40, without a valid medical explanation, after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.

* * * * *

3. Section 219.602 is added as follows:

§ 219.602 Administrator's determination of random drug testing rate.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this part. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from railroads, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

(c) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.803 for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(d) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 219.803 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

(e) Selection of covered employees for testing shall be made by a method employing objective, neutral criteria which ensures that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, *i.e.*, no employee may be selected as a result of the exercise of discretion by the railroad. The selection method shall be capable of verification with respect to the randomness of the selection process.

(f) The railroad shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the railroad conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual railroad or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

(g) Each railroad shall ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(h) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same railroad, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(i) If an railroad is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the railroad may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the railroad is subject.

Issued in Washington, DC on January 25, 1994.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

List of Subjects in 49 CFR part 382

Alcohol and drug abuse, Highway safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FHWA proposes to amend 49 CFR part 382, as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority for part 382 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. app. 2701 et. seq; 49 U.S.C. 3102; 49 CFR 1.48.

2. Section 382.107 is amended by adding, in alphabetical order, a definition for "positive rate" and revising the definition for "refuse to submit" as follows:

§ 382.107 Definitions

* * * * *

Positive rate means the number of positive results for random drug tests conducted under this part plus the number of refusals of random tests required by this part, divided by the total number of random drug tests conducted under this part plus the number of refusals of random tests required by this part .

* * * * *

Refuse to submit means that a driver fails to provide a urine sample as required by 49 CFR part 40, without a valid medical explanation, after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.

* * * * *

3. New paragraphs (l) though (p) are added in § 382.305, as follows:

§ 382.305 Random testing.

* * * * *

(l) Except as provided in paragraph (b) of this section, the annual percentage rate for random drug testing will be not less than 50 percent of the drivers.

(m)(1) The Administrator will authorize employers to lower the annual

percentage rate required in paragraph (a) of this section for random drug testing to not less than 25 percent of all drivers when the FHWA determines that the data received by the FHWA for two consecutive calendar years under the reporting requirements of § 382.403 of this part indicates that the positive rate is less than 1.0 percent. When the data for any calendar year in which the annual percentage rate for random drug testing is not less than 25 percent indicate that the positive rate is equal to or greater than 1.0 percent, the Administrator will require employers to increase the annual percentage rate for random drug testing to not less than 50 percent of all drivers.

(2) The Administrator's decision to authorize a decrease or require return to the 50 percent minimum annual percentage rate for random drug testing will be based on the positive rate in the entire industry. Each year, the Administrator will publish in the **Federal Register** any change to the minimum required percentage for random selection of drivers under this part. The change will be applicable January 1 of the calendar year following publication.

(3) In order to ensure statistical validity, the Administrator will consider the quality and completeness of the reported data and will make appropriate modifications in calculating the industry positive rate.

(n) The employer shall randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the required percentage determined by the Administrator. If the employer conducts random testing through a consortium, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random testing under this part or by any DOT drug testing rule. The dates for administering random tests shall be spread reasonably throughout the calendar year.

(o) If a given driver is subject to random drug testing under the drug testing rules of more than one DOT agency for the same employer, the driver shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

(p) If an employer is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing drivers subject to testing at the same required rate; or

(2) Randomly select such drivers for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

Issued in Washington, DC on January 25, 1994.

Rodney E. Slater,

Administrator, Federal Highway Administration.

List of Subjects in 49 CFR Part 653

Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set out in the preamble, the Federal Transit Administration proposes to amend 49 CFR part 653, as follows:

PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority citation for part 653 continues to read:

Authority: Sec. 6, Pub. L. 102–143, 105 Stat. 917; 49 CFR 1.51.

2. The definition of "positive rate" is added and the definition of "refuse to submit" is revised in § 653.7 as follows:

§ 653.7 Definitions.

* * * * *

Positive rate means the number of positive results for random drug tests conducted under this part plus the number of refusals of random tests required by this part, divided by the total number of random drug tests conducted under this part plus the number of refusals of random tests required by this part.

* * * * *

Refuse to submit means that a covered employee fails to provide a urine sample as required by 49 CFR part 40, without a valid medical explanation, after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.

* * * * *

3. Section 653.47 is revised to read as follows:

§ 653.47 Random testing.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this part. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

(c) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 653.73 for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(d) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 653.73 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

(e) The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(f) The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the employer conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

(g) Each employer shall ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(h) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same employer, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(i) If an employer is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

Issued in Washington, DC on January 25, 1994.

Gordon J. Linton,

Administrator, Federal Transit Administration.

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federal register

Tuesday
February 15, 1994

Part X

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Gaming Compact Between the Confederated Tribes of the Umatilla Indian Reservation and the State of Oregon, which was executed on November 29, 1993.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: February 2, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–3397 Filed 2–14–94; 8:45 am]

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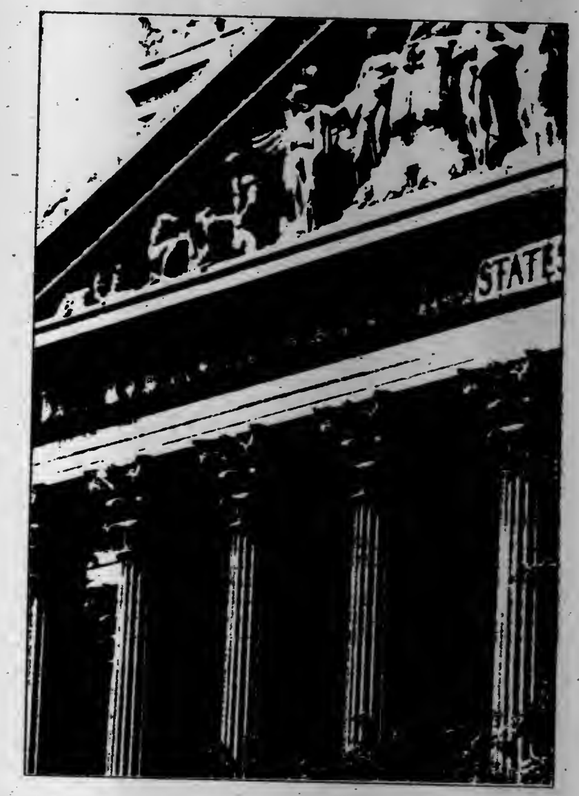
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WHEN: February 17 at 9:00 am and 1:30 pm
WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
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48 CFR
Proposed Rules:
14....7714

49 CFR
571....7643

50 CFR
611 (2 documents)....7647, 7656
672....7647
675....7656
676 (2 documents)....7647, 7656

Federal Register
Vol. 59, No. 32
Wednesday, February 16, 1994

Presidential Documents

Title 3—

The President

Executive Order 12898 of February 11, 1994

Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1–1. IMPLEMENTATION.

1–101. *Agency Responsibilities.* To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1–102. *Creation of an Interagency Working Group on Environmental Justice* (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1–103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3–3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5–502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1–103. *Development of Agency Strategies.* (a) Except as provided in section 6–605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)–(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12 month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1–104. *Reports to the President.* Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1–103(e) of this order.

Sec. 2–2. FEDERAL AGENCY RESPONSIBILITIES FOR FEDERAL PROGRAMS. Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Sec. 3–3. RESEARCH, DATA COLLECTION, AND ANALYSIS.

3–301. *Human Health and Environmental Research and Analysis.* (a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3–302. *Human Health and Environmental Data Collection and Analysis.* To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a): (a) each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1–103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001–11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

Sec. 4–4. SUBSISTENCE CONSUMPTION OF FISH AND WILDLIFE.

4–401. *Consumption Patterns.* In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

4–402. *Guidance.* Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

Sec. 5–5. PUBLIC PARTICIPATION AND ACCESS TO INFORMATION. (a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

Sec. 6–6. GENERAL PROVISIONS.

6–601. *Responsibility for Agency Implementation.* The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6–602. *Executive Order No. 12250.* This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6–603. *Executive Order No. 12875.* This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

6–604. *Scope.* For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6–605. *Petitions for Exemptions.* The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6–606. *Native American Programs.* Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

6–607. *Costs.* Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6–608. *General.* Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6–609. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

William J. Clinton

THE WHITE HOUSE,
February 11, 1994.

[FR Doc. 94–3685
Filed 2–14–94; 3:07 pm]
Billing code 3195–01–P

Editorial note: For the memorandum that was concurrently issued on Federal environmental program reform, see issue No. 6 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

Federal Register
Vol. 59, No. 32
Wednesday, February 16, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 92C–0292]

Listing of Color Additives Subject to Certification; FD&C Red No. 40

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of FD&C Red No. 40 and FD&C Red No. 40 Aluminum Lake for coloring drugs and cosmetics intended for use in the area of the eye. This action is in response to a petition filed by The Cosmetic, Toiletry, and Fragrance Association (CFTA).

DATES: Effective February 17, 1994, except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by March 18, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9519.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of August 11, 1992 (57 FR 35833), FDA announced that a color additive petition (CAP 6C0203) had been filed by CTFA, 1101 17th St. NW., suite 300, Washington, DC 20036, proposing that the color additive regulations for FD&C Red No. 40 be amended to provide for the safe use of FD&C Red No. 40 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye. The petition was filed under section 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e). CTFA later amended the petition to limit the lakes requested for eye area use to the FD&C Aluminum Lake prepared in accordance with § 82.51 (21 CFR 82.51).

II. Definitions

Section 70.3(s) (21 CFR 70.3(s)) defines the term "area of the eye" as "the area enclosed within the circumference of the supra-orbital ridge and the infra-orbital ridge, including the eyebrow, the skin below the eyebrow, the eyelids and the eyelashes, and conjunctival sac of the eye, the eyeball, and the soft areolar tissue that lies within the perimeter of the infra-orbital ridge."

The term "lake" is defined in § 70.3(l) as "a straight color extended on a substratum by adsorption, coprecipitation, or chemical combination that does not include any combination of ingredients made by simple mixing process."

III. Background

Section 70.5(a) (21 CFR 70.5(a)) states that "No listing or certification of a color additive shall be considered to authorize the use of any such color additive in any article intended for use in the area of the eye unless such listing or certification of such color additive specifically provides for such use." The petitioner has requested that FD&C Red No. 40 and FD&C Red No. 40 Aluminum Lake be listed for use in the area of the eye.

Part 82 (21 CFR part 82) lists the certifiable provisionally listed colors and specifications, and includes a description of and specifications for the lakes that are permitted for use in foods (§ 82.51) and in drugs and cosmetics (§ 82.1051). Sections 82.51 and 82.1051 list the acceptable lakes that can be combined with the straight colors listed therein. The petitioner has requested that this order be limited to the Aluminum Lake of FD&C Red No. 40, prepared in accordance with § 82.51. Section 82.51 also limits to alumina the substrata that can be used for FD&C lakes.

IV. Safety

In its evaluation of the safety of the proposed use of the subject color additive, FDA has considered the safety data submitted to support current listings for the use of FD&C Red No. 40 in foods, drugs, and cosmetics. FDA has also evaluated ocular toxicity studies submitted to support eye area use of the color additive and its aluminum lake. The agency has determined that the petitioned use is safe because no adverse effects were found in these studies at levels relevant to the petitioned use.

V. Conclusions

Based on data contained in the petition and other relevant information, FDA concludes that there is a reasonable certainty that no harm will result from the use of FD&C Red No. 40 and FD&C Red No. 40 Aluminum Lake as color additives in the area of the eye, and that the additives are safe for their intended use. The agency also concludes on the basis of available data that the color additive will perform its intended effect and thus is suitable for the petitioned uses. The agency, therefore, is amending the color additive regulations in §§ 74.1340(b) and 74.2340(b) (21 CFR 74.1340(b) and 74.2340(b)) to provide for the use of FD&C Red No. 40 and FD&C Red No. 40 Aluminum Lake in drugs and cosmetics intended for use in the area of the eye.

This document provides for the permanent listing of the aluminum lake of FD&C Red No. 40 for use in the area of the eye. Other uses of the lakes of FD&C Red No. 40 are already permanently listed under §§ 74.1340 and 74.2340. The agency notes that §§ 74.1340(a)(3) and 74.2340(a)(2) refer to §§ 82.51 and 82.1051 for the manufacturing process and specifications for the lakes of FD&C Red No. 40. While the agency recognizes that this referral is to a section that is designated as provisional, FDA considers this referral to be appropriate because that section defines current good manufacturing practice and provides appropriate specifications to ensure the quality and purity of lakes made with the color additive. The agency has under consideration an action to permanently list all lakes that have been provisionally listed under parts 81 and 82. When that action is

completed, FDA intends to amend this referral as appropriate.

VI. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to list the petitioned uses are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before March 18, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 is revised to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. Section 74.1340 is amended by revising paragraph (b) to read as follows:

§ 74.1340 FD&C Red No. 40.

* * * * *

(b) *Uses and restrictions.* (1) FD&C Red No. 40 and FD&C Red No. 40 Aluminum Lake may be safely used in coloring drugs, including those intended for use in the area of the eye, subject to the restrictions on the use of color additives in § 70.5(b) and (c) of this chapter, in amounts consistent with current good manufacturing practice.

(2) Other lakes of FD&C Red No. 40 may be safely used in coloring drugs, subject to the restrictions on the use of color additives in § 70.5 of this chapter, in amounts consistent with current good manufacturing practice.

* * * * *

3. Section 74.2340 is amended by revising paragraph (b) to read as follows:

§ 74.2340 FD&C Red No. 40.

* * * * *

(b) *Uses and restrictions.* FD&C Red No. 40 may be safely used in coloring cosmetics generally, except that only FD&C Red No. 40 and FD&C Red No. 40 Aluminum Lake may be safely used in coloring cosmetics intended for use in the area of the eye. These uses are subject to the following restrictions:

(1) The color additive may be used in amounts consistent with current good manufacturing practice.

(2) The color additive shall not be exposed to oxidizing or reducing agents that may affect the integrity of the color additives or any other condition that may affect their integrity.

Dated: February 9, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-3553 Filed 2-15-94; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 74

[Docket No. 92C-0295]

Listing of Color Additives Subject to Certification; FD&C Blue No. 1

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of FD&C Blue No. 1 and FD&C Blue No. 1 Aluminum Lake for coloring drugs and cosmetics intended for use in the area of the eye. This action is in response to a petition filed by the Cosmetic, Toiletry, and Fragrance Association (CTFA).

DATES: Effective February 17, 1994, except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by March 18, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW. Washington, DC 20204, 202-254-9519.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of August 11, 1992 (57 FR 35833), FDA announced that a color additive petition (CAP 6C0206) had been filed by CTFA, 1101 17th St. NW., suite 300, Washington, DC 20036. The petition proposed that the color additive regulations for FD&C Blue No. 1 be amended to provide for the safe use of FD&C Blue No. 1 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye. The petition was filed under section 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e). CTFA later amended the petition to limit the lakes requested for eye area use to FD&C Blue No. 1 Aluminum Lake prepared in accordance with § 82.51 (21 CFR 82.51).

II. Definitions

Section 70.3(s) (21 CFR 70.3(s)) defines the term "area of the eye" as

"the area enclosed within the circumference of the supra-orbital ridge and the infra-orbital ridge, including the eyebrow, the skin below the eyebrow, the eyelids and the eyelashes, and conjunctival sac of the eye, the eyeball, and the soft areolar tissue that lies within the perimeter of the infra-orbital ridge." The term "lake" is defined in § 70.3(l) as "straight color extended on a substratum by adsorption, coprecipitation, or chemical combination that does not include any combination of ingredients made by simple mixing process."

III. Background

Section 70.5(a) (21 CFR 70.5(a)) states that "No listing or certification of a color additive shall be considered to authorize the use of any such color additive in any article intended for use in the area of the eye unless such listing or certification of such color additive specifically provides for such use." The regulations, in § 81.1 (21 CFR 81.1), state that the color additive lakes listed therein may not be used in products that are intended to be used in the area of the eye. The petitioner has requested that the uses for FD&C Blue No. 1 and FD&C Blue No. 1 Aluminum Lake be expanded to include uses in the area of the eye.

Part 82 (21 CFR part 82) lists the certified provisionally listed colors and specifications and includes a description of, and specifications for, the lakes that are permitted for use in foods (§ 82.51) and in drugs and cosmetics (§ 82.1051). Sections 82.51 and 82.1051 list the acceptable lakes that can be combined with the straight colors listed therein. The petitioner has requested that this order be limited to the Aluminum Lake of FD&C Blue No. 1, prepared in accordance with § 82.51 Section 82.51 also limits the substrata that can be used for FD&C lakes to alumina.

IV. Safety

In its evaluation of the safety of the proposed use of the subject color additive, FDA has considered the safety data submitted previously to support current listings for the use of FD&C Blue No. 1 in foods, drugs, and cosmetics. FDA also evaluated ocular toxicity studies submitted to support eye area use of the color additive and its aluminum lake. FDA has determined that the petitioned use is safe, because no adverse effects were found in these studies at levels relevant to the petitioned use

V. Conclusions

Based on data contained in the petition and other relevant material, FDA concludes that there is a reasonable certainty that no harm will result from the use of FD&C Blue No. 1 and FD&C Blue No. 1 Aluminum Lake as color additives in the area of the eye, and that the additives are safe for their intended use. The agency also concludes on the basis of available data that the color additive will perform its intended effect and thus is suitable for the petitioned uses. The agency, therefore, is amending the color additive regulations in §§ 74.1101(c) and 74.2101(c) (21 CFR 74.1101(c) and 74.2101(c)) to provide for the use of FD&C Blue No. 1 and FD&C Blue No. 1 Aluminum Lake in drugs and cosmetics, respectively, intended for use in the area of the eye.

This document provides for the permanent listing of the aluminum lake of FD&C Blue No. 1 for use in the area of the eye. Other uses of the lakes of FD&C Blue No. 1 are provisionally listed under §§ 81.1, 82.51, 82.101, and 82.1051. The agency notes that §§ 74.1101(b)(2) and 74.2101(b)(2) refer to §§ 82.51 and 82.1051 for the manufacturing process and specifications for the lakes of FD&C Blue No. 1. While the agency recognizes that this referral is to a section that is designated as provisional, FDA considers this referral to be appropriate because that section defines current good manufacturing practice and provides appropriate specifications to ensure the quality and purity of lakes made with the color additive. The agency has under consideration an action to permanently list all lakes that have been provisionally listed under parts 81 and 82. When that action is completed, FDA intends to amend this referral as appropriate.

VI. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to list the petitioned uses are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection

VII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before March 18, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows.

Authority: Secs. 201, 401, 402 403 409 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21

U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. Section 74.1101 is amended by revising paragraphs (b) and (c) to read as follows:

§ 74.1101 FD&C Blue No. 1.

* * * * *

(b) *Specifications.* (1) The color additive FD&C Blue No. 1 for use in coloring drugs generally shall conform in specifications to the requirements of § 74.101(b).

(2) FD&C Blue No. 1 Aluminum Lake shall be prepared in accordance with the requirements of § 82.51 of this chapter.

(c) *Uses and restrictions.* (1) FD&C Blue No. 1 may be safely used for coloring drugs, including drugs intended for use in the area of the eye, in amounts consistent with current good manufacturing practice.

(2) FD&C Blue No. 1 Aluminum Lake may be safely used for coloring drugs intended for use in the area of the eye, in amounts consistent with current good manufacturing practice, subject to the restrictions on the use of color additives in § 70.5(b) and (c) of this chapter.

* * * * *

3. Section 74.2101 is amended by revising paragraphs (b) and (c) to read as follows:

§ 74.2101 FD&C Blue No. 1.

* * * * *

(b) *Specifications.* (1) The color additive FD&C Blue No. 1 shall conform in specifications to the requirements of § 74.101(b).

(2) FD&C Blue No. 1 Aluminum Lake shall be prepared in accordance with the requirements of § 82.51 of this chapter.

(c) *Uses and restrictions.* (1) FD&C Blue No. 1 may be safely used for coloring cosmetics generally, including cosmetics intended for use in the area of the eye, in amounts consistent with current good manufacturing practice.

(2) FD&C Blue No. 1 Aluminum Lake may be safely used for coloring cosmetics intended for use in the area of the eye, in amounts consistent with current good manufacturing practice.

* * * * *

Dated: February 9, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–3554 Filed 2–15–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905, 962 and 984

[Docket No. R–94–1633; FR–2961–C–05]

RIN 2577–AB15

Family Self-Sufficiency Program; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule; correction.

SUMMARY: On May 27, 1993 (58 FR 30858), the Department published in the **Federal Register** an interim rule that implemented the requirements and procedures that will govern local Family Self-Sufficiency programs beginning or continuing in Federal fiscal year 1993. The Department also published a final rule which adopted the interim rule as the final regulations for the Family Self-Sufficiency Program, and which final rule will be effective on May 27, 1994 (one year from the date of publication in accordance with the program's authorizing legislation). (The interim rule was effective 30 days from the date of publication and solicited public comment.)

The purpose of this document is to correct technical errors contained in the May 27, 1993 interim rule.

EFFECTIVE DATE: June 28, 1993.

FOR FURTHER INFORMATION CONTACT: For section 8 issues: Madeline Hastings, Director, Rental Assistance Division, room 4204. Telephone number (202) 708–2841.

For public housing management issues: Edward Whipple, Director, Occupancy Division, room 4206. Telephone number (202) 708–0744.

For Indian Housing issues: Dominic Nessi, Director, Office of Indian Housing, room 4140. Telephone number (202) 708–1015.

For supportive service issues: Paula Blunt, Supportive Services Coordinator, Office of Resident Initiatives, room 4112. Telephone number (202) 708–4214.

The address for each of these contacts is the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The telephone numbers listed are not toll-free numbers. Hearing-impaired persons may contact these offices via TDD by calling (202) 708–9300 or 1–(800) 877–339.

SUPPLEMENTARY INFORMATION: On May 27, 1993 (58 FR 30858), the Department published in the **Federal Register** an interim rule that implemented the requirements and procedures that will govern local Family Self-Sufficiency (FSS) programs beginning or continuing in Federal fiscal year (FY) 1993. The Department also published a final rule which adopted the interim rule as the final regulations for the Family Self-Sufficiency Program, and which final rule will be effective on May 27, 1994 (one year from the date of publication in accordance with the program's authorizing legislation). (The interim rule was effective 30 days from the date of publication and solicited public comment.)

The purpose of this document is to correct editorial errors contained in the May 27, 1993 interim rule. The following provides a summary of the corrections that are being made by this document.

Corrections 1 and 2. Section 106(j) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) made operation of a local FSS program optional for Indian housing authorities (IHAs) for the Indian housing program. For the Indian housing program, the FSS rule provides that IHAs that elect to operate local FSS programs are not subject to minimum program size requirements as are housing agencies (HAs) other than IHAs. Note that the part 962 regulations, which are the regulations applicable to the public housing FSS program, contain a section concerning minimum program size requirements—24 CFR 962.105 (Minimum program size). (See table of sections at 58 FR 30889.) No comparable section, however, is contained in the Indian housing FSS regulations. (See table of sections at 58 FR 30883).

Two provisions in the Indian housing FSS regulations inadvertently make reference to minimum program size requirements—paragraph (a)(2) in § 905.3020 (Program implementation) and § 905.3021 (Administrative fees). (See 58 FR 30887, first column for both citations.) The last sentence of paragraph (a)(1) of § 905.3020 also uses the phrase "families *required* to be served" (emphasis added) which indicates that IHAs are subject to minimum program size requirements. Accordingly, the reference to minimum program size requirements in these two sections is incorrect, and is removed by this notice.

In addition, § 905.3021 (Administrative fees) also contains a missing word. This section provides that the performance funding system (PFS) shall provide for the inclusion of "reasonable and administrative costs."

The correct phrase should be "reasonable and *eligible* administrative costs."

Corrections 3, 10 and 19. In each of the three FSS rules (the Indian housing FSS rule, the public housing FSS rule, and the section 8 FSS rule), the phrase, "without good cause," should have been inserted where the rule discusses termination of the FSS contract of participation on the basis of the family's failure to comply with the contract terms. Accordingly, this phrase is added to § 905.3022 (b)(5) and (h)(2), § 962.303 (b)(5) and (h)(2), and § 984.303 (b)(5) and (i). (See, respectively, 58 FR 30887 (second column), 30894 (first column), and 30900 (third column)).

In addition to inserting the phrase "without good cause" in § 984.303(b)(5), the word "without" in paragraph (b)(5)(i) of this section should be "withhold." (See 58 FR 30900).

Correction 4. In § 905.3024(b) (Total tenant payment and increases in family income), the second "or" should be "for." (See 58 FR 3088, second column.)

Corrections 5–8. In the definitions of "Action plan," "Certification," "FSS account," "Program Coordinating Committee," and "Self-sufficiency" in § 962.103 (Definitions), the word "subpart" in each definition should be "part." (See 58 FR 30889, third column, and 58 FR 30890, second and third columns.)

Correction 9. In § 962.302 (Administrative fees), the word "eligible" should be inserted after the words "reasonable and" in the fourth line of this paragraph. (See 58 FR 30893.)

Correction 11. In § 962.305 (FSS account), in paragraph (b)(1)(i), the second "FSS" should be followed by the word "credit." (See 58 FR 30895, first column.)

Correction 12. In § 962.305(c), the heading "Disbursement before expiration of contract term" should be italicized to clarify that this is the heading for this paragraph. (See 58 FR 30895, second column.)

Correction 13. In § 962.305(e), the phrase "unless such use is prohibited by the statute or regulations governing the particular homeownership program" was inadvertently omitted. (See 58 FR 30895, third column.) This phrase is included in the comparable section in the Indian housing FSS regulations. (See § 905.3024(e) at 58 FR 30889, first column.)

Corrections 14–17. In the definitions of "Action plan," "Certification," "FSS account," and "Self-sufficiency" in § 984.103 (Definitions), the word "subpart" in each definition should be "part." (See 58 FR 30896 middle column, and 58 FR 30897, first and second columns.)

Correction 18. In the definition of "FSS related service program" in § 984.103, the phrase "of this subpart" is unnecessary and should be omitted. (See 58 FR 30897.)

This document will correct the above technical errors.

The Department does not intend to make any substantive amendments to the FSS program rules until the FSS final rule becomes effective on May 27, 1994. The Department has received 34 public comments on the May 27, 1993 FSS interim and final rules. The Department is reviewing these comments and may consider further amendments to the FSS final rule, after the rule becomes effective on May 27, 1994.

Accordingly, FR Doc. 93–12326, an interim rule published in the **Federal Register** on May 27, 1993 (58 FR 30858), is corrected to read as follows:

1. On pages 30886 and 30887, in § 905.3020, the last sentence of paragraph (a)(1), in the third column on page 30886, and paragraph (a)(2), in the first column on page 30887, are corrected to read as follows:

§ 905.3020 Program implementation.

(a) * * *

(1) *Program start-up.* * * * Full delivery of the supportive services to be provided to the total number of families to be served under the program need not occur within 12 months, but must occur by the deadline set forth in paragraph (a)(2) of this section.

(2) *Full enrollment and delivery of services.* Except as provided in paragraph (a)(3) of this section, the IHA must have completed enrollment of the total number of families to be served under the FSS program, and must have begun delivery of the supportive services within two years from the date of notification of approval of the application for new Indian housing units.

* * * * *

2. On page 30887, in the first column, § 905.3021 is corrected to read as follows:

§ 905.3021 Administrative fees.

The performance funding system (PFS), provided under section 9(a) of the Act, shall provide for the inclusion of reasonable and eligible administrative costs incurred by IHAs in carrying out local FSS programs. These costs are subject to appropriations by the Congress.

3. On pages 30887 and 30888, in § 905.3022, paragraph (b)(5), on page 30887 in the second column, and paragraph (h)(2), on page 30888 in the first column, are corrected to read as follows:

§ 905.3022 Contract of participation.

* * * * *

(b) * * *

(5) *Consequences of noncompliance with contract.* The contract of participation shall specify that if the FSS family fails to comply with the terms and condition of the contract of participation, without good cause, the IHA may:

* * * * *

(h) * * *

(2) The failure of the FSS family to meet its obligations under the contract of participation without good cause;

* * * * *

§ 905.3024 [Corrected]

4. On page 30888, in the second column, in § 905.3024(b), correct the word "or" the second time it appears to read "for."

§ 962.103 [Corrected]

5. On page 30889, in the third column, in § 962.103, in the definition of "Action Plan," correct the word "subpart" to read "part."

6. On page 30890, in the first column, in § 962.103, in the definition of "Certification," correct the word "subpart" to read "part."

7. On page 30890, in the third column, in § 962.103, in the definition of "Program Coordinating Committee," correct the word "subpart" to read "part."

8. On page 30890, in the third column, in § 962.103, in the definition of "Self-sufficiency," correct the word "subpart" to read "part."

§ 962.302 [Corrected]

9. On page 30893, in the third column, in § 962.302, add the word "eligible" after the words "reasonable and" in line 4.

10. On page 30894, in the first and third column, in § 962.303, correct paragraphs (b)(5) introductory text and paragraph (h)(2) to read as follows:

§ 962.303 Contract of participation.

* * * * *

(b) * * *

(5) *Consequences of noncompliance with the contract.* The contract of participation shall specify that if the FSS family fails to comply, without good cause, with the terms and conditions of the contract of participation, which includes compliance with the public housing lease, the PHA may:

* * * *

(h) * * *

(2) The failure of the FSS family to meet its obligations under the contract of participation without good cause;

* * * * *

§ 962.305 [Correction]

11. On page 30895, in the first column, in § 962.305, correct paragraph (b)(1)(i) introductory text by adding the word "credit" between the words "FSS" and "shall."

12. On page 30895, in the second column, in § 962.305, correct paragraph (c)(2) by italicizing the heading—"*Disbursement before expiration of contract term.*"

13. On page 30895, in the third column, in § 962.305, correct paragraph (e) to read as follows:

§ 962.305 FSS account.

* * * * *

(e) *Use of FSS account funds for homeownership.* An FSS family may use its FSS account funds for the purchase of a home, including the purchase of a home under one of HUD's homeownership programs, or other Federal, State, or local homeownership programs unless such use is prohibited by the statute or regulations governing the particular homeownership program.

§ 984.103 [Corrected]

* * * * *

14. On page 30896, in the second column, in § 984.103, in the definition of "Action plan," correct the word "subpart" to read "part."

15. On page 30896, in the second column, in § 984.103, in the definition of "Certification," correct the word "subpart" to read "part."

16. On page 30897, in the first column, in § 984.103, in the definition of "FSS account," correct the word "subpart" to read "part."

17. On page 30897, in the first column, in § 984.103, in the definition of "FSS related service program," remove the phrase "of this subpart."

18. On page 30897, in the second column, in § 984.103, in the definition of "Self-sufficiency," correct the word "subpart" to read "part."

19. On pages 30900 and 30901, in § 984.303, correct paragraphs (b)(5) introductory text and (b)(5)(i) on page 30900 in the third column, and correct paragraph (i) on page 30901 in the second column, to read as follows:

§ 984.303 Contract of participation.

* * * * *

(b) * * *

(5) *Consequences of noncompliance with contract.* The contract of participation shall specify that if the FSS family fails to comply, without good cause, with the terms and conditions of the contract of participation, which includes compliance with the assisted lease, the PHA may:

(i) Withhold the supportive services;

* * * * *

(i) *Option to terminate section 8 housing and supportive service assistance.* The PHA may terminate or withhold section 8 housing assistance, the supportive services, and the FSS family's participation in the FSS program, if the PHA determines, in accordance with the hearing procedures provided in 24 CFR 882.216 and 887.405, that the FSS family has failed to comply without good cause with the requirements of the contract of participation as provided in paragraph (b)(5) of this section.

* * * * *

Dated: February 7, 1994.

Myra L. Ransick,

Assistant General Counsel for Regulations.

[FR Doc. 94–3457 Filed 2–15–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP St. Louis 94–003]

RIN 2115–AA97

Safety Zone; Illinois River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Illinois River. The regulation is needed to protect tank barges from the hazards associated with ice. The regulation will restrict general navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATES: This regulation is effective January 25, 1994 and will terminate on March 10, 1994 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Timothy Deal, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are MST1 Franz F. Karnuth, Project Officer, Marine Safety Office, St. Louis, Missouri and LCDR A. O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, severe weather conditions have developed hazardous icing conditions and insufficient time exists to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue a regulation now as the conditions are presenting immediate hazards.

Background and Purpose

The hazards associated with icing conditions require immediate response to insure safe navigation and to prevent tank barge hull failure. Recent surveys of the regulated area by industry and Coast Guard representatives has established the need to impose restrictions.

Regulatory Evaluation

This regulation is not considered a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, St. Louis, Missouri will monitor the situation and will authorize entry into the closed area as conditions warrant. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823 for current information.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.[5] of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action to protect public safety.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T02–006 is added, to read as follows:

§ 165.T02–006 Safety zone: Upper Mississippi River.

(a) *Location.* The Illinois River between mile 0.0 and 187.3 is established as a safety zone.

(b) *Effective dates.* This regulation becomes effective on January 25, 1994 and will terminate on March 10, 1994.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zone without authority of the Captain of the Port apply. The Captain of the Port, St. Louis, Missouri will notify the maritime community of river conditions affecting the areas covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: January 25, 1994.

Scott P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 94–3518 Filed 2–15–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4838–3]

North Carolina; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of clarification.

SUMMARY: This notice clarifies the approved list of authorities published in the January 27, 1994, **Federal Register** (59 FR 3792) for final authorization of revisions to North Carolina's Hazardous Waste Management Program. Due to a printing error on page 3793, the phrase "Burning of Hazardous Waste in Boilers and Industrial Furnaces Rule (Checklist 85)." was deleted from the end of the preceding paragraph and instead placed as a false heading for the chart which followed. North Carolina is not being authorized for the Burning of Hazardous Waste in Boilers and Industrial Furnaces Rule.

DATES: Final authorization for North Carolina's program revision shall be effective March 28, 1994, unless EPA publishes a prior **Federal Register** action withdrawing the January 27, 1994, final rule.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION: In the January 27, 1994, issue of the **Federal Register** on page 3793, the last paragraph is corrected to read:

North Carolina is today seeking authority to administer the following federal requirements promulgated between July 1, 1990, and June 30, 1991, for the requirements of RCRA Cluster I except for the February 21, 1991, (56 FR 7134) Burning of Hazardous Waste in Boilers and Industrial Furnaces Rule (Checklist 85).

The Chart on pages 3793 and 3794 are corrected to read (without the heading) as follows:

Federal requirement	HSWA or FR reference	Federal promulgation date	State authority
Checklist 80	55 FR 40834	10/5/90	15 NCAC 13A .0006(a).
Toxicity Characteristics	56 FR 3798	2/1/91	
Hydrocarbon Recovery Operations (HSWA)	56 FR 13406	4/2/91	
Checklist 81	55 FR 46354	11/2/90	15A NCAC 13A .0006(d).
Petroleum refinery and secondary oil/water/solid separation sludge listings (F037 and F038).	55 FR 51707	12/17/90	15A NCAC 13A .0006(e).
Checklist 82—Wood preserving listings	55 FR 50450	12/6/90	15A NCAC 13A .0002(b).
			15A NCAC 13A .0006(a).
			15A NCAC 13A .0006(d).
			15A NCAC 13A .0006(e).
			15A NCAC 13A .0007(c).
			15A NCAC 13A .0009(k).
			15A NCAC 13A .0009(s).
			15A NCAC 13A .0010(j).
			15A NCAC 13A .0010(r).
			15A NCAC 13A .0013(b).
Checklist 83—Land disposal restrictions for third third schedule waste; technical amendments.	56 FR 3864	1/31/91	15A NCAC 13A .0006(a).
			15A NCAC 13A .0006(c).
			15A NCAC 13A .0006(d).
			15A NCAC 13A .0007(a).
			15A NCAC 13A .0007(c).
			15A NCAC 13A .0012(a).
			15A NCAC 13A .0012(b).
			15A NCAC 13A .0012(c).
			15A NCAC 13A .0012(e).
			15A NCAC 13A .0013(g).

Federal requirement	HSWA or FR reference	Federal promulgation date	State authority
Checklist 84—Toxicity characteristic; chlorofluorocarbon refrigerants	56 FR 5910	2/13/91	15A NCAC 13A .0006(a).
Checklist 86—Removal of strontium sulfide from the list of hazardous waste; technical amendment.	56 FR 7567	2/25/91	15A NCAC 13A .0006(d). 15A NCAC 13A .0006(e).
Checklist 87—Organic air emission standards for process vents equipment leaks; technical amendment.	56 FR 19290	4/26/91	15A NCAC 13A .0009(u). 15A NCAC 13A .0009(v). 15A NCAC 13A .0010(b). 15A NCAC 13A .0010(c). 15A NCAC 13A .0010(e). 15A NCAC 13A .0010(s). 15A NCAC 13A .0010(t). 15A NCAC 13A .0013(b).
Checklist 88—Administrative stay for K069	56 FR 19951	5/1/91	15A NCAC 13A .0006(d).
Checklist 89—Revision to the petroleum refining primary and secondary oil/water/solids separation sludge listings (F037 and F038).	56 FR 21955	5/13/91	15A NCAC 13A .0006(d).
Checklist 90—Mining waste exclusion III	56 FR 27300	6/13/91	15A NCAC 13A .0006(a).
Checklist 91—Wood preserving listings administrative stay for F032, F034, and F035 listings.	56 FR 27332	6/13/91	15A NCAC 13A .0006(d). 15A NCAC 13A .0009(s). 15A NCAC 13A .0010(r).
Burning and blending of hazardous waste	§3004(q)(2)(A) §3004(r) (2) & (3)		NCGS 130A–21.6 NCGS 130A–294(c)(1). NCGS 130A–294(c)(15).
Surface impoundments in existence on November 8, 1984	§3005(j) (1) & (6)		NCGS 130A–294(c)(7). NCGS 130A–294(c)(11). NCGS 130A–294(c)(15). NCGS 130A–294(b)(7). NCGS 150B–21.6.

Dated: February 7, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–3538 Filed 2–15–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[WO–200–4370–02–24 1A; Circular No. 2631]

RIN 1004–AB81

Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Prohibited Acts, Administrative Remedies, and Penalties; Administrative Remedies

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule allows the authorized officer to place in full force and effect decisions to cancel a Private Maintenance and Care Agreement to allow immediate repossession of animals found to be subject to abuse or neglect. This final rule also makes technical amendments to regulatory text relating to the use of full force and effect decisions pertaining to the removal of wild horses and burros.

EFFECTIVE DATE: February 16, 1994.

ADDRESSES: Inquiries or suggestions should be sent to: Director (200), Bureau of Land Management, U.S. Department of the Interior, 1849 C St. NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Vernon R. Schulze, Division of Wild Horses and Burros, Bureau of Land Management (NV–960), Wild Horse and Burro National Program Office, (702) 785–6583.

SUPPLEMENTARY INFORMATION: This rule was published on an interim final basis on January 9, 1991 (56 FR 876), effective on that date, to allow immediate repossession of adopted wild free-roaming horses and burros and cancellation of Private Maintenance and Care Agreements (PMACAs) in cases where abuse or neglect are found to endanger the life or health of adopted animals. Horses and burros for which title has been passed to private individuals do not qualify as "wild free-roaming horses and burros" pursuant to 16 U.S.C. 1333, and, therefore, will not be affected by this rule. The interim final rule allowed 60 days for public comment. One public comment was received. This comment supported the interim final rule.

Accordingly, the interim final rule is now adopted and published in final form. The wording of the interim final rule has been modified somewhat to ensure consistency with the Departmentwide full force and effect rule located at 43 CFR 4.21, which was issued in final form on January 19, 1993, after the publication of the interim final wild horse and burro rule. These technical amendments are needed to make 43 CFR part 4700 consistent with the Departmentwide full force and effect rule. The rule does not in any way limit the right of appeal of persons whose PMACAs are revoked, and allows such persons to petition for a stay of such decisions. It merely allows animals to be repossessed for their protection until issues raised on appeal can be considered.

Technical amendments to paragraph (c) of § 4770.3 are also being made in this final rule to reflect the amendment of the Departmentwide full force and effect rule. Paragraph (c) was added to § 4770.3 on July 6, 1992, to allow the authorized officer to place wild horse and burro removal decisions in full force and effect. The technical amendments to paragraph (c) are being made in this final rule to provide consistent wording within § 4770.3, and to make the provisions of § 4770.3 consistent with the procedural requirements of 43 CFR 4.21. The amendments will not affect the way in which the substance of paragraph (c) is implemented. Paragraph (c) of this section was not included in the interim final rule published January 9, 1991.

The principal author of this final rule is Vernon R. Schulze, Wild Horse and Burro Program Specialist, assisted by the staff of the Division of Legislation and Regulatory Management, BLM Washington Office.

It has been determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

This rule has been reviewed under Executive Order 12866.

The Department of the Interior has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, Wildlife.

Under the authorities cited below, part 4700, subchapter D, chapter II, title 43 of the Code of Federal Regulations, is amended as set forth below.

Dated: November 3, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

1. The authority citation for part 4700 is revised to read as follows:

Authority: 16 U.S.C. 1331–1340; 18 U.S.C. 47; 43 U.S.C. 315, 1740.

2. Section 4770.3 is revised to read as follows:

§ 4770.3 Administrative remedies.

(a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals and petitions for stay of a decision of the authorized officer must be filed within 30 days of receipt of the decision in accordance with 43 CFR part 4.

(b) Notwithstanding the provisions of paragraph (a) of § 4.21 of this title, the authorized officer may provide that decisions to cancel a Private Maintenance and Care Agreement shall be effective upon issuance or on a date established in the decision so as to allow repossession of wild horses or burros from adopters to protect the animals' welfare.

(c) Notwithstanding the provisions of paragraph (a) of § 4.21 of this title, the authorized officer may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision.

[FR Doc. 94–3516 Filed 2–15–94; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–09; Notice 34]

RIN 2127–AE80

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document amends labeling and other requirements of Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems," for rear-facing infant restraint systems. It requires that warning labels for these systems include a warning against using the restraint in any vehicle seating position equipped with an air bag. It also requires that printed instructions for rear-facing restraints include safety information about air bags.

DATES: This rule is effective on August 15, 1994. Petitions for reconsideration of the rule must be received by March 18, 1994.

ADDRESSES: Petitions for reconsideration should refer to the docket and number of this document and be submitted to: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic safety Administration, 400 Seventh St. SW., Washington, DC 20590 (telephone 202–366–4919).

SUPPLEMENTARY INFORMATION: This document amends labeling and other requirements of Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems," for rear-facing infant restraint systems. The amendments made by this document were proposed in a notice of proposed rulemaking (NPRM) published on April 16, 1993 (58 FR 19792). Rear-facing restraints are currently required by Standard 213 to be labeled with warnings and other information about their proper use (S5.5.1 and S5.52). This rule requires that the warning label for rear-facing restraints include a warning against using the restraint in any vehicle seating position equipped with an air bag. This document also requires that printed instructions for these seats include safety information about air bags.

"Rear-facing infant restraint system," as used in this document, refers to an infant restraint system (except a car bed) which is positioned in a vehicle so that the restrained infant faces the rear of the vehicle. In a frontal crash, the crash forces are spread evenly across the infant's back and shoulders, the strongest part of an infant's body.

When the rear-facing infant restraint is placed on a vehicle seat, the restraint's seat back projects forward, far in front of the vehicle seat back. If the vehicle seating position is a front passenger one equipped with an air bag, the forward-projecting seat back of the infant restraint may rest on or be located close to the part of the vehicle instrument panel containing the air bag.

Placing a rear-facing restraint on such a vehicle seat raises a safety concern of the interaction between those restraints and air bags. An air bag must inflate quickly to create a protective cushion that protects occupants during frontal crashes. The quickly deploying air bag might injure an infant when it strikes the seat back of a rear-facing infant restraint.

In the Fall of 1991, the agency evaluated air bag/infant restraint interactions by conducting 30 mph dynamic sled tests with top and mid-mounted air bags. (The data from these tests are available in Docket No. 74–09, General Reference.) NHTSA's findings from these tests indicate that air bags generally produce substantial increases in the values for the head injury criterion (HIC) and chest acceleration of dummies seated in rear-facing restraints, compared to the values for dummies in rear-facing restraints tested with no air bag.

To reduce the likelihood that an infant restraint would be placed in a vehicle seating position that has an air bag, the agency is requiring each infant restraint to be labeled with a warning

against such use. The warning must state either:

Warning: When your baby's size requires that this restraint be used so that your baby faces the rear of the vehicle, place the restraint in a vehicle seat that does not have an air bag.

or

Warning: Place this restraint in a vehicle seat that does not have an air bag.

The former warning is used for convertible infant seats, i.e., seats that can use rear-facing for infants and forward-facing for older children. The latter is for seats that can be used only rear-facing for infants.

The warning must be labeled on a red, orange or yellow background and be visible to a person installing the restraint.

NHTSA is also requiring that infant restraint manufacturers provide information on the air bag/infant restraint interaction issue in their printed instructions accompanying the infant restraint. The manufacturers must provide a warning against using rear-facing restraints in seating positions equipped with air bags, and explain the reasons for, and consequences of, not following the warning.

NHTSA has already required vehicle manufacturers to provide warnings and information about the interaction of air bags and rear-facing infant restraints. This information must be placed on the sun visors in vehicles with air bags and provided in the vehicle owner's manual. (This requirement is included in the rule implementing the provision in the Intermodal Surface Transportation Efficiency Act requiring the agency to mandate air bags at all front outboard seating positions in passenger cars, and in light trucks and multipurpose vehicles. 58 FR 46551, September 1, 1993.) Today's rule supplements that requirement to increase the likelihood that parents will be made aware of the possible effect of a deploying air bag on an infant restraint. Further, when the vehicle itself is labeled, parents will be provided the safety information even if the infant restraint they are using lacks the label required by today's final rule (which could happen if the infant restraint were manufactured before the effective date of today's rule).

The requirements adopted in today's document are substantially similar to those NHTSA proposed in the April 1993 NPRM. The text proposed in the notice for convertible seats (which are designed for use by both an infant and toddler) and infant restraints read, respectively:

Warning: When this restraint is used in a rear-facing mode, do not place in the front seat of a vehicle that has a passenger side air bag.

and

Warning: Do not use this infant restraint in the front seat of a vehicle that has a passenger side air bag.

With the goal of having the warning be conspicuous, NHTSA proposed that the message be on a yellow background, and be visible when the restraint is installed rear-facing in the vehicle. The agency requested comments on whether the message should be required to be visible to a person in the driver's seat when the restraint is so installed.

The agency received 16 comments on the NPRM. Commenters included child seat manufacturers (Century, Fisher Price, Cosco), vehicle manufacturers (Volkswagen, Ford), state safety agencies (Michigan, New York), the National Transportation Safety Board (NTSB), the American Academy of Pediatrics, consumer groups (SafetyBeltSafe, Advocates for Highway and Auto Safety), business groups (Insurance Institute for Highway Safety, National Automobile Dealers Association), and private individuals. All the commenters generally supported the NPRM; several had suggested changes.

Most of the comments related to issues about the wording of the label. Comments were also received on the label's conspicuity, and on the proposal that child seat manufacturers provide information about air bags in the consumer instructions accompanying each restraint. In addition, some commenters were concerned about the possible effect of the labeling and informational requirements on the possible development of infant restraints that can be safely used in an air bag-equipped vehicle seating position.

Wording of the Label

Commenters addressed various issues about the wording of the warning label.

One issue is whether specific wording should be mandated. The proposed regulatory text contained the exact wording of the label. Like the other safety warnings required by Standard 213, the air bag/infant restraint warning would have to be printed word for word as set forth in the standard. Advocates for Highway and Auto Safety (Advocates) believed the exact wording should be specified. "It would not be appropriate to leave the wording of a safety warning label, which must be concise, clear, accurate, and uniform, to manufacturer discretion." Commenters such as the American Academy of Pediatrics (AAP), Jerome Koziatek and Robert Potter, Jr. conferred that the wording should be mandated, and suggested changes to the wording to improve it. Ford opposed mandating the wording, believing that the prescribed wording may limit the flexibility of manufacturers, especially if it became possible for a child seat manufacturer to recommend use of an infant restraint in an air bag-equipped seating position under certain circumstances. (This issue of the future development of infant restraints is further discussed below.) Ford stated that the wording currently specified in Standard 213 "can be altered as needed."

The specific wording of the safety warnings currently required by Standard 213 to be marked on a child seat is mandated. Notwithstanding Ford, all other commenters appeared to understand that the wording of the air bag warning must appear on the restraint as stated in the standard. It is for that reason that comments were requested and submitted on the efficacy and appropriateness of the wording. NHTSA has decided to mandate the wording of the new air bag warning for the reasons explained in the NPRM. Those reasons are consistent with Advocates' view, quoted above, that the wording must be carefully crafted so as to reduce as much as possible the possibility that the warning is misunderstood. As explained in the NPRM:

> [T]he message should be brief, alerting consumers to and reminding them about a safety concern without causing "information overload." The message also should not inadvertently induce the consumer to misuse a restraint, such as might happen if the message were so loosely worded that consumers might conclude they could avoid the problem by simply turning the restraint around so that the child is forward-facing when the restraint is used in an air bag equipped seating position. The message also should be conspicuous.

58 FR at 19793.

To further clarify Standard 213's labeling requirements for Ford, NHTSA notes that the safety warnings required by the standard may not be "altered as needed" by a manufacturer. If a manufacturer believes the wording should be altered, it must submit a petition for rulemaking to change the requirements in Standard 213.

Cosco expressed concern that Standard 213 already requires too many warnings, and that another warning would compound the complexity and confusion of the labeling. That child seat manufacturer is concerned that consumers may not pay attention to or understand the warnings because there are simply too many warnings. Cosco suggested that NHTSA review the labeling required by the standard and possibly condense some of the required information. Fisher-Price also suggested that NHTSA undertake a "complete reconsideration" of Standard 213's labeling requirements, "to assure that on-seat markings are not rendered ineffectual because of the excess of required information."

NHTSA agrees that a significant amount of information is required to be labeled on an infant restraint, and is willing to consider, in a future rulemaking, suggestions for ways in which the information could be edited or condensed. The agency believes that the air bag warning is needed now notwithstanding that it will be another item of information that competes for the attention of the consumer. However, the agency will review Standard 213's labeling requirements as Cosco and Fisher-Price suggested.

Commenters were divided on whether the proposed wording was sufficiently clear. SafetyBeltSafe and the IIHS believed the statements were clear; however, some other commenters believed the clarity of the wording could be improved. The AAP believed that, in response to the proposed wording for convertible seats, some consumers might mistakenly turn the restraint so that the infant is forward-facing in an air bag position. AAP suggested that the warning should be clearer that an infant restraint must be used rear-facing, regardless of the presence of an air bag. To accomplish this, AAP suggested that the warning include the statement, "When your baby's size requires that this restraint be used in a rear-facing position * * *" as a condition precedent for the warning not to use the restraint in an air-bag equipped seating position. NHTSA agrees the wording should refer to the baby's size and has made appropriate changes.

Some commenters objected to certain words in the proposed warning. AAP suggested the word "position" should be used instead of "mode" in the term "rear-facing mode," since the former word is more commonly recognized than the latter. Cosco said that adding "mode" following "rear-facing" is unnecessary. NHTSA has removed "mode" from the wording. Cosco also suggested the references to "front seat" or "passenger side" in "passenger side air bag" are unnecessary, since they do not add any relevant information. The agency agrees. Mr. Koziatek suggested the label should direct the consumer to "secure" the restraint instead of "place" it on the vehicle seat, to increase the likelihood that the restraint will be fastened to the seat. NHTSA declines to make the change, because "secure" might distract a consumer from the purpose of the air bag warning.

Some comments suggested adding more text to the warning label. Mr. Koziatek recommended that the label include a statement directing the consumer to check the vehicle owner's manual for information about where the infant restraint should be placed in the vehicle. The statement is not needed on the label. Child seat labels already must refer consumers to the printed instructions for information on securing the child seat to the vehicle (S5.5.2(g)). Also, NHTSA is requiring the printed instructions for child seats to include a statement that owners of vehicles with passenger side air bags should refer to their vehicle owner's manual for child seat installation instructions. Moreover, NHTSA's September 1993 rule mandating air bags in passenger vehicles will require the sun visor on vehicles with passenger side air bags to be labeled with a statement referring the consumer to the vehicle owner's manual for information about the warning not to use a rear-facing infant restraint in a vehicle seating position equipped with an air bag. Placing the same information on the child seat would be redundant, and would further crowd the child seat label.

Other suggestions were made for adding additional text to the warning label. Mr. Potter believed a statement describing the possible consequences of not following the warning is needed, such as by referring to the possibility of "serious injury or death." NHTSA disagrees, since this rule already requires the use instructions to contain information on the consequences of not following the warning. SafetyBeltSafe suggested that the label should include a warning in Spanish. NHTSA is not requiring the bilingual labeling for the reasons discussed at 55 FR 48262 (denial of Mattox petition to require Spanish installation instructions, November 20, 1990). Thus, the standard requires manufacturers to supply the information in English. However, once this requirement is met, manufacturers may supply the same information in other languages, so long as the presence or location of the translation does not confuse consumers.

Several commenters responded to the agency's request for comments on the merits of requiring a symbol (or graphic) warning about using rear-facing restraints with an air bag. New York's Department of Motor Vehicles supported the use of a symbol because "a symbol would assist adults who are reading disabled or who speak a foreign language." The AAP believed it would be desirable to have a symbol of a child restraint on the vehicle dashboard, "if a non-confusing symbol can be designed." Century commented that a symbol can increase the effectiveness of the warning label "as long as it adequately identifies and warns of the hazard." Cosco expressed reservations about requiring a symbol. That commenter believed a symbol would draw an excessive amount of attention to the issue of the air bag's possible effect on a rear-facing restraint "over others that may be as bad or worse," such as, Cosco believes, the incompatibility of vehicle belts with certain child seats. Cosco also stated that the effectiveness of a symbol depends on the ability of the consumer to recognize it. "If NHTSA requires such a symbol, it should be prepared to publicize it."

The agency has decided not to require use of a symbol. Had it been required, the symbol would have been in addition to the words. NHTSA believes that the words will draw sufficient attention to the label, especially since the warning will be subject to the conspicuity requirements discussed in the next section. In response to New York's comment that a symbol would assist adults who are reading disabled or who speak a foreign language, the agency is concerned that there is no universally recognized symbol for effectively communicating the warning at this time The lack of such familiarity with a symbol would reduce the symbol's effectiveness and could cause confusion.

Conspicuity of the Label

The conspicuity of the label is ensured by requirements concerning its location, color and font style.

The aspect of promoting the conspicuity of the label that engendered the most comments was the location of the warning label, i.e., whether the message should be required to be visible to a person in the driver's seat if the restraint were installed rear-facing in the front outboard passenger seating position. Seven commenters responded to this issue. The IIHS concurred that the label should be visible to the driver. Century, Advocates, SafetyBeltSafe, Fisher-Price, and the AAP objected to the driver's side approach. These commenters believed locating the label so that it is visible to the driver reduces the effectiveness of the warning, since the warning would be readable only when the restraint is improperly installed. The commenters believed a driver noticing the label on an

improperly installed restraint would be unlikely to take the time to exit the vehicle and move the restraint to the rear seat of the vehicle. Mr. Potter suggested the label should be placed on the shoulder harness/webbing of the restraint.

NHTSA agrees that the warning should be visible to the installer while the restraint is being installed. The agency thinks that there is merit in the commenters' belief that a driver who noticed the warning could be reluctant to stop the vehicle to move a rear-facing infant restraint to the vehicle's rear seat after the infant restraint is installed. Further, the driver would already have been provided a warning as a result of the September 1993 rule mandating air bags in passenger vehicles. The rule requires the driver's side sun visor on vehicles with passenger side air bags to be labeled with a warning against using rear-facing child restraints with the passenger side air bag. Accordingly, NHTSA is requiring that the warning on the child restraint be visible to a person who is standing adjacent to the front outboard passenger seat of a vehicle and installing the rear-facing infant restraint system in that seat.

The requirement concerning the color of the contrasting background for the warning has been changed from the proposal in response to a comment from Ford. Ford suggested that red and orange be permitted in addition to yellow. NHTSA is permitting those similarly bright and attention-attracting colors. Ford also suggested that the color be required only for the word "WARNING" at the beginning of the required statement, instead of the entire statement. NHTSA is requiring the entire statement to be printed against the color contrasting background to maximize the conspicuity of the warning.

Volkswagen objected to the requirement that the letters be capitalized, stating that manufacturers should be allowed to decide on the print format. NHTSA disagrees. Standard 213 requires important safety messages on the proper use of child restraints to be capitalized. These include a warning that the consequences of failing to follow the manufacturer's use instructions can result in the child striking the vehicle's interior in a crash (S5.5.2(g)), and directions on snugly adjusting the child restraint belts around the child (S5.5.2(h)) and on placing an infant restraint so that it is rear-facing (S5.5.2(k)). The air bag warning is as important as these messages. Requiring the information to be capitalized is consistent with the present labeling requirement of S5.5.2 to capitalize such information, and increases the likelihood that the consumer will notice and read the information. However, NHTSA will revisit this issue when it reviews all labeling requirements.

Printed Instructions

This rule amends S5.6.1 to add a requirement that the printed instructions for rear-facing infant restraints must provide a warning against using rear-facing restraints at seating positions equipped with air bags and must explain the reasons for the warning and consequences of not following it. NHTSA is also requiring that the instructions include a statement that owners of vehicles with front passenger side air bags should refer to their vehicle owner's manual for child seat installation instructions. The agency adopted the latter requirement in response to a suggestion from Volkswagen. Effective March 1994, the owner's manual of each vehicle having a front passenger side air bag must include information on the proper positioning of occupants, including children, at seating positions equipped with an air bag. The information must include any necessary precautions that should be heeded for the safety of those occupants. The requirement adopted today for infant restraint instructions complements the requirement for the vehicle owner's manual.

Effect on Future Designs

The agency believes that the label and information requirements adopted today will be effective in warning consumers against using a rear-facing infant restraint in a vehicle seating position equipped with an air bag. The warning is needed because data have indicated that unacceptably high forces are produced by a deploying air bag on present designs of rear-facing infant restraints.

Several commenters, however, expressed concern that the requirements adopted today might impede the development of rear-facing infant restraints that are safe to use in an air bag equipped seating position. These commenters indicated that manufacturers are undertaking efforts to develop infant restraints that can be used in an air bag-equipped seating position. Ford said that the warning statement may limit the flexibility of infant restraint manufacturers to recommend using a rear-facing system in an air bag-equipped seating position under limited circumstances, such as if the vehicle seat were adjusted to a certain position. Century stated that NHTSA should ensure that the warning label requirement does not prevent future child seat designs that work adequately with an air bag. Century suggested that NHTSA should begin defining a test procedure and performance criteria for testing the interaction of child restraints with air bags.

NHTSA does not intend for this rule to impede the development of rear-facing restraints that are compatible with an air bag. As discussed in the NPRM, the agency has been closely monitoring the work of a task force on Child Restraint and Air Bag Interaction (CRABI) formed by the Society of Automotive Engineers. The task force is comprised of motor vehicle and child seat manufacturers and highway safety researchers. It has developed guidelines consisting of test procedures and test configurations (e.g., test dummies and a test fixture) that can be used for evaluating the interactions between child restraints and air bags. Moreover, NHTSA has developed, for research and evaluation purposes, procedures that were used in the Fall 1991 test program of air bags and rear-facing infant restraints. NHTSA will continue to closely monitor the work of CRABI, especially regarding the development of test procedures evaluating the performance of an infant restraint when used with a passenger side air bag. If CRABI were to develop a test procedure from its guidelines, NHTSA would evaluate it to determine whether the procedure is appropriate for Standard 213. Among other things, the procedure would have to be suitable for testing all types of infant restraints, and be able to provide test results that assess the performance of the restraint in the real world. The agency will consider a test procedure for incorporation into Standard 213 as soon as a suitable one is developed.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant" under them. NHTSA has prepared a regulatory evaluation for this action which discussed the potential costs, benefits and other impacts of this rule. A copy of this evaluation has been placed in the docket for this rulemaking action. Interested persons may obtain copies of it by writing to the docket section at the address provided at the beginning of this notice.

To briefly summarize the evaluation, NHTSA estimates that the consumer cost of the labeling requirements of this rule ranges from $0.09 to $0.17 per rear-facing infant restraint. The total annual cost for all infant restraints will range from $350,280 to $661,640. This cost is expected to be even smaller if the warning statement is placed on the existing FMVSS No. 213 label.

The evaluation also estimates that, assuming that the warning is effective at preventing any placing of rear-facing restraints in air bag positions, 2 to 4 lives will be saved and 445 injuries will be reduced a year.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Of the 11 current child restraint manufacturers known to the agency (not counting vehicle manufacturers that produce and install built-in restraints) there are three that qualify as small businesses. This is not a substantial number of small entities. As to vehicle manufacturers that produce and install built-in restraints, most of those restraints are forward-facing restraints and are installed in a rear seating position. Further, those manufacturers are generally not considered small businesses.

Regardless of the number of small entities, the rule will not have a significant economic impact on these entities. Infant restraints range in cost between $20 and $70, with the average price about $39. Convertible seats range in cost between $45 and $120, with the average price about $79. If the entire $0.17 cost of the rule were added to the cost of the restraint, the typical infant restraint will increase in price by only 0.44 percent and the typical convertible seat, by only 0.22 percent. Small organizations and governmental jurisdictions might be affected by the rule if these entities procure child restraint systems for programs such as loaner programs. While the cost of the restraint could increase, loaner program procurements will not be significantly affected. A program that had a fixed amount of money for procuring child restraints will have its procurements reduced by only 0.34 to 0.57 percent. Thus, regardless of the number of small organizations and governmental jurisdictions, NHTSA concludes the rule will not have a significant economic impact on these entities.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.213 [Amended]

2. Section 571.213 is amended by revising S5.5.2(k) and adding S5.6.1.8, to read as follows:

§ 571.213 Standard No. 213, Child Restraint Systems.

* * * * *

S5.5.2 * * *

(k) In the case of each child restraint system that can be used in a rear-facing position, the following statements:

(i) Either "PLACE THIS CHILD RESTRAINT IN A REAR-FACING POSITION WHEN USING IT WITH AN INFANT," or "PLACE THIS INFANT RESTRAINT IN A REAR-FACING POSITION WHEN USING IT IN THE VEHICLE," and,

(ii) Either of the following statements, as appropriate, on a red, orange or yellow contrasting background, and placed on the restraint so that it is on the side of the restraint designed to be adjacent to the front passenger door of a vehicle and is visible to a person installing the rear-facing child restraint system in the front passenger seat:

Warning: When your baby's size requires that this restraint be used so that your baby faces the rear of the vehicle, place the restraint in a vehicle seat that does not have an air bag.

or

Warning: Place this restraint in a vehicle seat that does not have an air bag.

* * * * *

S5.6.1.8 In the case of each child restraint system that can be used in a position so that it is facing the rear of the vehicle, the instructions shall provide a warning against using rear-facing restraints at seating positions equipped with air bags, and shall explain the reasons for, and consequences of not following the warning. The instructions shall also include a statement that owners of vehicles with front passenger side air bags should refer to their vehicle owner's manual for child restraint installation instructions.

Issued on February 8, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–3252 Filed 2–14–94; 10:00 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 676

[Docket No. 940242–4042; I.D. 110193B]

Foreign Fishing; Groundfish of the Gulf of Alaska; Limited Access Management of Federal Fisheries in and Off of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final 1994 specifications of groundfish and associated management measures; closures; request for comments.

SUMMARY: NMFS announces final 1994 harvest specifications for Gulf of Alaska (GOA) groundfish and associated management measures. This action is necessary to establish harvest limits and associated management measures for groundfish during the 1994 fishing year. NMFS is also closing specified fisheries consistent with the final 1994 groundfish specifications. These measures are intended to carry out management objectives contained in the Fishery Management Plan (FMP) for Groundfish of the GOA.

DATES: Effective February 10, 1994 through 24:00 Alaska local time (A.l.t.), December 31, 1994. All closures to directed fishing are effective through 24:00 A.l.t., December 31, 1994. Comments are invited on the apportionments of reserves on or before February 25, 1994.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668. Copies of the Environmental Assessment (EA) for 1994 Total Allowable Catch Specifications for the GOA, dated February 1994, may be obtained from the above address. The Final Stock Assessment and Fishery Evaluation Report (SAFE report), dated November 1993, is available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS announces for the 1994 fishing year: (1) Total allowable catches (TAC) for each groundfish target species category in the GOA and apportionments thereof among domestic annual processing (DAP), joint venture processing (JVP), total allowable level of foreign fishing (TALFF), and reserves; (2) apportionments of reserves to DAP; (3) assignments of the sablefish TAC to authorized fishing gear users; (4) apportionments of pollock TAC among regulatory areas, seasons, and between inshore and offshore components; (5) apportionment of Pacific cod TAC between inshore and offshore components; (6) "other species" TAC; (7) prohibited species catch (PSC) limits relevant to fully utilized groundfish species; (8) closures to directed fishing; (9) Pacific halibut PSC mortality limits; and, (10) seasonal apportionments of the halibut PSC limits. A discussion of each of these measures follows. The process of determining TACs for groundfish species in the GOA is established in regulations implementing the FMP, which was prepared by the Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 676. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

Pursuant to § 672.20(a)(2)(ii), the sum of the TACs for all species must fall within the combined optimum yield (OY) range of 116,000–800,000 metric tons (mt) established for these species in § 672.20(a)(1). Under §§ 611.92(c)(1) and 672.20(a)(2)(i), TACs are apportioned initially among DAP, JVP, TALFF, and reserves. The DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S. fishermen typically deliver their catches to foreign processors at sea. TALFF amounts are intended for harvest by foreign fishermen. Regulations at § 672.20(a)(2)(ii) establish initial reserves equal to 20 percent of the TACs for pollock, Pacific cod, flounder target species categories, and "other species." Reserve amounts are set aside for possible reapportionment to DAP and/or JVP if the initial apportionments prove inadequate. Reserves that are not reapportioned to DAP or JVP may be reapportioned to TALFF according to § 672.20(d)(2).

The Council met on September 21–26, 1993, and developed recommendations for proposed 1994 TAC specifications for each target species category of groundfish on the basis of the best available scientific information. The Council also recommended other management measures pertaining to the 1994 fishing year. Under § 672.20(c)(1)(ii), 1994 specifications were proposed in the **Federal Register** (58 FR 60575, November 17, 1993). No JVP or TALFF amounts were specified because GOA groundfish are fully utilized by the DAP fisheries. Under § 672.20(c)(1)(ii), one-fourth of the preliminary specifications and gear apportionments and one-fourth of the Pacific halibut PSC amounts were effective January 1 on an interim basis and are now superseded by the final 1994 specifications.

The Council met on December 6–10, 1993, to review the best available scientific information concerning groundfish stocks, and to consider public testimony regarding 1994 groundfish fisheries. Scientific information is contained in the November 1993 SAFE report for the GOA. The November 1993 SAFE report was prepared and presented by the GOA Plan Team to the Council and the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP) and includes the most recent information concerning the following:

(a) For pollock: Data from the 1993 spring hydroacoustic survey in Shelikof Strait conducted by the Alaska Fisheries Science Center; egg production estimates of spawning biomass; estimates of catch-at-age from the 1992 fishery; updated estimates of catch; length-frequency data from the 1993 hydroacoustic survey and the first quarter of the 1993 fishery;

(b) For sablefish: Data from the 1993 Cooperative and Domestic Longline Surveys;

(c) For Pacific cod: Size composition data from the NMFS longline surveys of the GOA were updated through 1993;

(e) For flatfish: Ageing information for rex sole allowed computation of $F_{30\%}$ and $F_{35\%}$ values; and

(f) For groundfish, generally: Harvest and discard data from the NMFS Observer Program Office for 1993.

The Plan Team recommended that, starting in 1994, rex sole be removed from the deep-water flatfish category and be managed as a separate target species category to provide flexibility in managing rockfish bycatch.

For establishment of the acceptable biological catches (ABC) and TACs, the Council considered information in the SAFE report, recommendations from its SSC and AP, as well as public testimony. The SSC adopted the ABC recommendations from the Plan Team, which were provided in the SAFE report, for all of the target species categories, except that for Pacific ocean perch (POP). The Council adopted the SSC ABC recommendations for each target species category, except for POP. The Council's recommended ABCs, listed in Table 1, reflect harvest amounts that are less than the specified overfishing amounts (Table 1).

The SSC calculated the POP ABC by applying a fishing mortality rate of F=0.08 that would reduce the spawning biomass per recruit ratio to 44 percent of its pristine level and further reducing F to 0.04 based on the ratio of current female spawner biomass to the optimal level. This rate was then applied to the 1994 exploitable biomass of 101,800 mt. The Plan Team reduced this value further by the ratio of $F_{35\%}/F_{30\%}$, resulting in an ABC recommendation of 3,030 mt, to ensure that the ABC was less than the overfishing level of 3,940 mt. The SSC considered this adjustment inappropriate, stating that it arbitrarily foregoes catch without providing biological justification. The SSC recommended that the ABC for POP be set at 3,943 mt. However, the Council adopted the recommendation of the Plan Team and set the ABC for POP at 3,030 mt. The Plan Team's ABC of 3,030 mt better conforms to the policy objectives of the POP rebuilding plan established under Amendment 32 to the FMP, adopted by the Council in September 1993 and submitted for Secretarial review on December 18, 1993.

1. Specifications of TAC and Apportionments Thereof Among DAP, JVP, TALFF, and Reserves

The Council recommended TACs equal to ABCs for pollock, Pacific cod, sablefish, shortraker/rougheye rockfish, pelagic shelf rockfish, demersal shelf rockfish, thornyhead rockfish, and northern rockfish. The recommended TACs for Pacific cod, sablefish, shortraker/rougheye, thornyhead rockfish and northern rockfish are at levels that will support bycatch needs in other fisheries. Other TACs are set at levels that are fully utilized in the directed fisheries. The Council recommended TACs less than the ABC for shallow-water and deep-water flatfish, POP, other slope rockfish, Atka mackerel, rex sole, flathead sole, and arrowtooth flounder (Table 1). The sum of the TACs approved by the Council for all GOA groundfish is 304,595 mt, which is within the OY range specified by the FMP. The sum of the TACs is lower than the 1993 TAC sum of 306,651 mt. The sum of 1994 ABCs for all groundfish is 553,050 mt, which is lower than the 1993 ABC total of 732,668 mt.

For pollock, in September 1993, the Council adopted a preliminary ABC of 78,000 mt for the Western/Central Regulatory Areas. However, at the September Plan Team meeting, the Plan Team requested that four additional exploitation strategies be explored. Based on the results of these new analyses, which were presented at the November 1993 Plan Team meeting, an ABC of 102,000 mt was recommended for the Western/Central Areas. The Plan Team recommendation represents the fishing mortality strategy that was associated with a 95 percent chance of maintaining the spawner biomass level above the threshold level (F=0.20). The Plan Team chose this fishing strategy because of recent trends in poor recruitment of GOA pollock and because of ecosystem concerns. The Council concurred with the conservative exploitation strategy and recommended a TAC and an ABC of 102,000 mt for pollock for the Western/Central GOA for 1994.

The TACs for shallow-water (Western GOA) and deep-water (Central GOA) flatfish and rex sole (Central GOA) were set at 4,500 mt, 7,500 mt and 7,500 mt, respectively. These amounts reflect recent harvest levels and will limit the halibut bycatch associated with these fisheries. The TACs for flathead sole and arrowtooth flounder were set at 10,000 mt and 30,000 mt, respectively, also to limit halibut bycatch. As discussed above, consistent with the Council's previously adopted rebuilding policy for POP, a conservative exploitation rate was recommended. The recommended 1994 TAC of 2,550 mt was based on a rate intermediate between the optimal fishing rate and the rate required to provide unavoidable bycatch. The POP ABC of 3,030 mt, recommended by the Council, provides a buffer between the TAC (2,550 mt) and the overfishing level (3,940 mt). The Council also recommended that the overfishing level for POP be apportioned by regulatory area.

The Council adopted the AP's recommended "other rockfish" TACs for each regulatory area as follows: 199 mt for the Western Regulatory Area; 988 mt for the Central Regulatory Area; and 3,813 mt for the Eastern Regulatory Area. The Council was concerned that the directed fishery for "other rockfish" in the Eastern Regulatory Area could result in high bycatches of other target species categories. The Council was particularly concerned that high bycatches of demersal shelf rockfish (DSR) in the Southeast Outside District of the Eastern Regulatory Area could occur. In 1993, a trawl vessel operator caught substantial amounts of DSR in this district as bycatch while conducting a directed fishery for "other rockfish." As a result, the DSR TAC was reached prematurely and resulted in economic losses to Southeast Alaska fishermen who otherwise depend on DSR for a certain amount of their annual income. Therefore, the Council recommended that the TAC for "other rockfish" be set at an amount that would only support bycatch needs in other directed fisheries. NMFS has determined that a TAC of 1,048 mt for the Eastern Regulatory Area would support bycatch needs in other directed fisheries. This amount was derived using the amount of "other rockfish" bycatch caught by vessels participating in the 1993 pelagic shelf rockfish directed fishery.

Under Amendment 31, approved on October 18, 1993, Atka mackerel was established as a separate target category beginning with the 1994 fishing year. The Council made 1994 recommendations of overfishing and ABC for Atka mackerel. Uncertainty about the biological status of Atka mackerel and the concern that Atka mackerel is a prey species for Steller sea lions prompted the Council to adopt conservative TACs for this target species category. The Council established a TAC of 3,500 mt and apportioned the TAC between the Western (2,500 mt) and Central (1,000 mt) Regulatory Areas. NMFS implements a TAC of 5 mt for Atka mackerel in the Eastern Regulatory Area, raising the total TAC to 3,505 mt, to accommodate small amounts of Atka mackerel that might be caught in this management area. The total amount that was reported to have been caught in the Eastern Regulatory Area during the 1993 fishing year was 0.8 mt. Providing an Atka mackerel TAC in the Eastern Regulatory Area provides consistency with respect to reporting requirements for Atka mackerel in the Central and Western Regulatory Areas, and will be less confusing for the fishing industry. NMFS has adjusted the TAC for the "other species" category and the overall sum of TACs to account for this change.

The Council, after adopting the TACs, recommended 1994 apportionments of the TACs for each species category among DAP, JVP, TALFF, and reserves. Existing harvesting and processing capacity of the U.S. industry is capable of utilizing the entire 1994 TAC specification for GOA groundfish; therefore, the Council recommended that the DAP allowance equal the TAC for each species category, resulting in no TALFF or JVP apportionments for the 1994 fishing year.

NMFS has reviewed the Council's recommendation for TAC specifications and apportionments and hereby approves these specifications under § 672.20(c)(1)(ii)(B), except for "other species."

The 1994 ABCs, TACs, and overfishing levels are shown in Table 1.

TABLE 1.—1994 ABCs, TACs, AND DAPs OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA

[Amounts specified as Joint Venture Processing (JVP) and Total Allowable Level Of Foreign Fishing (TALFF) are proposed to be zero and are not shown in this table. Reserves are apportioned to DAP]

Species	Area[1]	ABC	TAC	Overfishing
Pollock[2]				
Shumagin	(61)	22,130	22,130}	
Chirikof	(62)	23,870	23,870}	230,000
Kodiak	(63)	56,000	56,000}	
Subtotal	W/C	102,000	102,000	
	E	7,300	7,300	16,400
Total		109,300	109,300	246,400
Pacific cod[3]				
Inshore	W	.....	14,967	
Offshore	W	.....	1,663	
Inshore	C	.....	28,125	
Offshore	C	.....	3,125	
Inshore	E	.....	2,268	
Offshore	E	.....	252	
Subtotals:	W	16,630	16,630	
	C	31,250	31,250	
	E	2,520	2,520	
Total		50,400	50,400	71,100
Flatfish (deep-water)[4]	W	460	460	
	C	12,930	7,500	
	E	3,120	3,120	
Total		16,510	11,080	19,280
Rex sole[4]	W	800	800	
	C	9,310	7,500	
	E	1,840	1,840	
Total		11,950	10,140	13,960
Flathead sole	W	9,120	2,000	
	C	23,080	5,000	
	E	3,650	3,000	
Total		35,850	10,000	39,310
Flatfish (shallow-water)[5]	W	20,290	4,500	
	C	12,950	12,950	
	E	1,180	1,180	
Total		34,420	18,630	44,670
Arrowtooth flounder	W	28,590	5,000	
	C	186,270	20,000	
	E	21,380	5,000	
Total		236,240	30,000	275,930
Sablefish[6]	W	2,290	2,290	
	C	11,220	11,220	
	WYK	4,850	4,850	
	SEO	7,140	7,140	
Total		25,500	25,500	31,700
Pacific ocean perch[7]	W	680	571	880
	C	850	714	1,100
	E	1,500	1,265	1,960
Total		3,030	2,550	3,940
Short raker/rougheye[8]	W	100	100	
	C	1,290	1,290	
	E	570	570	
Total		1,960	1,960	2,900

TABLE 1.—1994 ABCs, TACs, AND DAPs OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

[Amounts specified as Joint Venture Processing (JVP) and Total Allowable Level Of Foreign Fishing (TALFF) are proposed to be zero and are not shown in this table. Reserves are apportioned to DAP]

Species	Area[1]	ABC	TAC	Overfishing
Other rockfish[9,10,11]	W	330	199	
	C	1,640	988	
	E	6,330	1,048	
Total		8,300	2,235	9,850
Northern Rockfish[12]	W	1,000	1,000	
	C	4,720	4,720	
	E	40	40	
Total		5,760	5,760	10,360
Pelagic shelf rockfish[13]	W	1,030	1,030	
	C	4,550	4,550	
	E	1,310	1,310	
Total		6,890	6,890	11,550
Demersal shelf rockfish[11]	SEO	960	960	1,680
Thornyhead rockfish	GW	1,180	1,180	1,440
Atka mackerel[14]	W	.....	2,500	
	C	.....	1,000	
	E	.....	5	
Total		4,800	3,505	19,040
Other species[14]	GW	N/A[15]	14,505	
Total[16]:	553,050	304,595	803,110	

Footnotes

1. Regulatory areas and districts are defined at § 672.2.

2. Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area (Table 3), each of which is further divided into equal quarterly allowances. In the Eastern Regulatory Area, pollock is not divided into quarterly allowances.

3. Pacific cod is allocated 90 percent to the inshore, and 10 percent to the offshore component. Component allowances are shown in Table 4.

4. "Deep water flatfish" means Dover sole and Greenland turbot. Rex sole is a separate target species beginning with the 1994 fishing year.

5. "Shallow water flatfish" means flatfish not including "deep water flatfish," flathead sole, rex sole, or arrowtooth flounder.

6. Sablefish is allocated to trawl and hook-and-line gears (Table 2).

7. "Pacific ocean perch" means *Sebastes alutus*.

8. "Shortraker/rougheye rockfish" means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

9. "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means Slope rockfish.

10. "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegates* (harlequin), *S. wilsoni* (pygmy), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth).

11. "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. babcocki* (redbanded), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

12. "Northern rockfish" means *Sebastes polyspinis*.

13. "Pelagic shelf rockfish" means *Sebastes melanops* (black), *S. mystinus (blue), S. ciliatus (dusky), S. entomelas (widow), and S. flavidus* (yellowtail).

14. Atka mackerel is a separate target species beginning in 1994. "Other species" means sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of target species.

15. N/A means not applicable.

16. The total ABC is the sum of the ABCs for target species.

2. Apportionment of Reserves to DAP

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish species, and the "other species" category be set aside in reserves for possible apportionment at a later date (§ 672.20(a)(2)(ii)). For the preceding 6 years, including 1993, NMFS has apportioned all of the reserves to DAP effective on January 1. For 1994, NMFS apportions reserves for each species category to DAP, anticipating that domestic harvesters and processors will need all the DAP amounts. Specifications of DAP shown in Table 1 reflect apportioned reserves. Under § 672.20(d)(5)(iv), the public may submit comments on the apportionments of reserves. Comments should focus on whether, and the extent to which, operators of vessels of the United States will harvest reserve or DAP amounts during the remainder of the year and whether, and the extent to which, U.S. harvested groundfish can or will be processed by U.S. fish processors or received at sea by foreign fishing vessels.

3. Assignment of the Sablefish TACs to Authorized Fishing Gear Users

Under § 672.24(c), sablefish TACs for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is assigned to hook-and-line gear and 20 percent to trawl gear. In the

Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear and 5 percent is assigned to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used as bycatch to support directed fisheries for other target species. Sablefish caught in the GOA with gear other than hook-and-line or trawl gear must be treated as prohibited species and may not be retained. Table 2 shows the assignments of the 1994 sablefish TACs between hook-and-line and trawl gear.

TABLE 2.—1994 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ASSIGNMENTS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR

[Values are in metric tons]

Area/district	TAC	Hook-and-line share	Trawl share
Western	2,290	1,832	458
Central	11,220	8,976	2,244
West Yakutat	4,850	4,608	242
Southeast Outside	7,140	6,783	357
Total	25,500	22,199	3,301

4. Apportionments of Pollock TAC Among Regulatory Areas, Seasons, and Between Inshore and Offshore Components

In the GOA, pollock is apportioned by area, season, and inshore/offshore components. Regulations at § 672.20(a)(2)(iv) require that the TAC for pollock in the combined W/C GOA be apportioned among statistical areas Shumagin (61), Chirikof (62), and Kodiak (63) in proportion to known distributions of the pollock biomass. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. Each statistical area apportionment is further divided equally among the four quarterly reporting periods of the fishing year (Table 3). Within any fishing year, any unharvested amount of any quarterly allowance of pollock TAC is added in equal proportions to the quarterly allowance of following quarters, resulting in a sum for each quarter that does not exceed 150 percent of the initial quarterly allowance. Similarly, harvests in excess of a quarterly allowance of TAC are deducted in equal proportions from the remaining quarterly allowances of that fishing year. As defined at § 672.23(f), directed fishing for the four quarterly allowances will start on January 1, June 1, July 1, and October 1. The Eastern Regulatory Area pollock TAC of 7,300 mt is not allocated among smaller areas, or quarters.

Regulations at § 672.20(a)(2)(v)(A) require that the DAP apportionment for pollock in all regulatory areas and all quarterly allowances thereof be divided into inshore and offshore components. The inshore component is apportioned 100 percent of the pollock DAP in each regulatory area after subtraction of amounts that are determined by the Regional Director to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, incidental amounts of pollock to be caught by the offshore component are unknown, and will be determined during the fishing year.

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND QUARTERLY ALLOWANCES. ABC FOR THE W/C GOA IS 102,000 METRIC TONS (MT)

[Biomass distribution is based on 1990 survey data. TACs are equal to ABC. Inshore and offshore allocations of pollock are not shown. ABCs and TACs are rounded to the nearest 10 mt]

Statistical area	Biomass percent	1994 TAC	Quarterly allowance
Shumagin (61)	21.7	22,130	5,532
Chirikof (62)	23.4	23,870	5,968
Kodiak (63)	54.9	56,000	14,000
Total	100.0	102,000	25,500

5. Apportionment of Pacific Cod TAC Between Inshore and Offshore Components

Regulations at § 672.20(a)(2)(v)(B) require that the DAP apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. The inshore component is equal to 90 percent of the Pacific cod TAC in each regulatory area with 10 percent of the TAC assigned to the offshore component. Inshore and offshore allocations of the 50,400 mt Pacific cod TAC for 1994 are shown in Table 4.

TABLE 4.—1994 ALLOCATION OF PACIFIC COD IN THE GULF OF ALASKA; ALLOCATIONS TO INSHORE AND OFFSHORE COMPONENTS

[In metric tons]

Regulatory area	TAC	Component allocation	
		Inshore (90%)	Offshore (10%)
Western	16,630	14,967	1,663
Central	31,250	28,125	3,125
Eastern	2,520	2,268	252
Total	50,400	45,360	5,040

6. "Other Species" TAC

The FMP specifies that the TAC amount for the "other species" category is calculated as 5 percent of the 1994 combined TACs for target species. For 1993, the Council recommended that "other species" be made available separately in each of the three regulatory areas to avoid preemption of fishing activities in the remainder of the GOA by a target fishery for Atka mackerel that developed in the Western Regulatory Area. Approval of Amendment 31, which established Atka mackerel as a separate target species, removed the necessity to apportion "other species" among regulatory areas in 1994. At the December 1993 meeting, the Council recommended a GOA-wide TAC of 14,504 mt for "other species." As discussed above, a 1994 TAC of 5 mt for Atka mackerel in the Eastern Regulatory Area is established by NMFS, thus increasing the TAC for "other species" to 14,505 mt.

7. PSC Limits Relevant to Fully Utilized Species

Under § 672.20(b)(1), if NMFS determines, after consultation with the Council, that the TAC for any species or species group will be fully utilized in the DAP fishery, a groundfish PSC limit applicable to the JVP fisheries may be specified for that species or species group.

The Council recommended that DAP equal TAC for each species category. Zero amounts of JVP are available. NMFS concurs with the Council's recommendation, and has not established any JVP amounts; therefore, no groundfish PSC limits under § 672.20(b)(1) are necessary.

8. Closures to Directed Fishing

The "proposed 1994 Initial Specifications of Groundfish and Associated Management Measures" for the GOA (58 FR 60575, November 17, 1993) contained several closures to directed fishing for groundfish during 1994. The closures for the final specifications are listed in Table 5.

Under § 672.20(c)(2)(ii), the Regional Director determined that the entire TACs or allocations of TAC of some groundfish species and species groups will be needed as incidental catch to support other anticipated groundfish fisheries during 1994. The Regional Director is establishing directed fishing allowances of zero mt and prohibiting directed fishing for the remainder of the year for the fisheries listed in Table 5. Directed fishing standards for the aforementioned closures may be found at § 672.20(g).

TABLE 5.—CLOSURES TO DIRECTED FISHING FOR TOTAL ALLOWABLE CATCHES IMPLEMENTED BY THIS ACTION [1]

[Offshore = The Offshore Component; TRW = Trawl; ALL = All Gears; WG = Western Regulatory Area; CG = Central Regulatory Area; EG = Eastern Regulatory Area; GOA = Entire Gulf of Alaska]

Fishery	Component	Gear	Closed areas
Atka mackerel		ALL	GOA
Northern rockfish		ALL	EG
Other rockfish [2]		ALL	WG,EG
Pacific cod	Offshore	ALL	WG,CG,EG
Pacific ocean perch		ALL	WG,CG,EG
Rex sole		ALL	WG
Sablefish		TRW	WG,CG
Shortraker/rougheye rockfish		ALL	WG,CG,EG
Thornyhead rockfish		ALL	GOA

[1] These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR Part 672.
[2] Other rockfish includes slope and demersal shelf rockfish in the WG and CG.

9. Halibut Prohibited Species Catch (PSC) Mortality Limits

Under § 672.20(f)(2), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and are established for pot gear. At its December 1993 meeting, the Council recommended that NMFS reestablish 1993 halibut PSC limits of 2,000 mt for trawl gear and 750 mt for hook-and-line gear for 1994. The hook-and-line halibut PSC limit is further apportioned between the DSR fishery (10 mt halibut mortality) and all other hook-and-line fisheries (740 mt).

As in the proposed specifications, the Council recommended that pot gear be exempt from Pacific halibut PSC limits for the 1994 fishing year. The Council proposed this exemption after considering that the groundfish catch and associated halibut bycatch and mortality rates for pot gear are low (5 percent).

At the September 1993 meeting, the Council recommended that NMFS prepare a rule for Secretarial approval that, if approved, would authorize separate apportionments of the trawl halibut bycatch mortality limit between

trawl fisheries for the deep-water species complex (deep-water flatfish, rockfish, sablefish and arrowtooth flounder) and for the shallow-water species complex (pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species"). At its December 1993 meeting, the Council further recommended that this action be implemented under emergency rulemaking so that it could be effective early in 1994. An emergency rule was prepared by NMFS and implemented February 7, 1994 (59 FR 6222, February 10, 1994). The emergency rule specifies trawl fishery apportionments of the 1994 GOA trawl halibut bycatch mortality limit and seasonal apportionments thereof. The emergency rule specifications supersede those set forth in this notice during the effective period of the emergency rule.

NMFS concurs with the Council's recommendations listed above. The following types of information as presented in, and summarized from, the 1993 SAFE report, or as otherwise available from NMFS, Alaska Department of Fish and Game, the International Pacific Halibut Commission (IPHC) or public testimony were considered:

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is available from 1993 observations of the groundfish fisheries as a result of the NMFS Observer Program. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through December 16, 1993, is 1,993 mt, 1,279 mt, and 2.4 mt, respectively, for a total of 3,214 mt. Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the first, second, and third quarters of the fishing year. Halibut mortality did not constrain trawling effort in the fourth quarter of 1993. Trawling, with the exception of trawling for pollock with pelagic trawl gear, was closed in 1993 from March 24 to March 29 (58 FR 16372, March 26, 1993), from April 19 to June 28 (58 FR 21545, April 22, 1993), and from August 3 to October 4 (58 FR 41640, August 5, 1993) as a result of halibut PSC seasonal allowances. Hook-and-line gear was closed to directed fishing for all but DSR on June 4 to December 31, 1993 (58 FR 32064, June 8, 1993; 58 FR 46095, September 1, 1993).

The amount of groundfish that trawl or hook-and-line gear might have harvested if halibut had not been seasonally limiting in 1993 is unknown. Even though halibut mortality was not constraining in the fourth quarter of 1993, some amounts of groundfish remained unharvested. Sablefish and Pacific cod are of the most interest to fishermen using hook-and-line gear. Over 900 mt of sablefish in the Western Regulatory Area, and 1,000 mt of Pacific cod in the Eastern Regulatory Area remained unharvested during 1993. An unknown portion of these amounts likely would have been harvested had 1993 halibut restrictions not been limiting.

(B) Expected Changes in Groundfish Stocks

At its December 1993 meeting, the Council adopted lower ABCs for pollock, Pacific cod, deep-water flatfish, flathead sole, shallow-water flatfish, arrowtooth flounder, and POP than those established for 1993. The Council adopted higher ABCs for sablefish, pelagic shelf rockfish, and demersal shelf rockfish than those established for 1993. The ABCs for other groundfish are unchanged from 1993 levels. Rex sole and Atka mackerel were separated out of deepwater flatfish and "other species," and established as separate target species categories for 1994. More information on these changes is included in the Final SAFE report dated November 1993 and in the Council and SSC minutes.

(C) Expected Changes in Groundfish Catch

The total of the 1994 TACs for the GOA is 304,595 mt, a slight decrease from the 1993 TAC total of 306,651 mt. At its December 1993 meeting, the Council changed the 1994 TACs for some fisheries from the 1993 TACs. Those fisheries for which the 1994 TACs were lower than in 1993 are pollock (decreased to 109,300 mt from 114,400 mt), Pacific cod (decreased to 50,400 mt from 56,700 mt), POP (decreased to 2,550 mt from 2,560 mt), and "other rockfish" (decreased to 2,235 mt from 5,383 mt). Rex sole was separated from the deep-water flatfish complex in 1994 and assigned a separate TAC resulting in a slight increase in the total TAC for the two target groups but reducing the TAC for deep-water flatfish. Those species for which the 1994 TAC was higher than in 1993 are shallow-water flatfish (increased to 18,630 mt from 16,240 mt), sablefish (increased to 25,500 mt from 20,900 mt), shortraker/rougheye (increased to 1,960 mt from 1,764 mt), pelagic shelf rockfish (increased to 6,890 mt from 6,740 mt), DSR (increased to 960 mt from 800 mt) and thornyhead rockfish (increased to 1,180 mt from 1,062 mt).

(D) Current Estimates of Halibut Biomass and Stock Condition

The stock assessment for 1992 conducted by the IPHC indicates that the total exploitable biomass of Pacific halibut was 265.8 million pounds. This represents a decline in biomass of 11 percent from the previous stock assessment, a rate similar to declines observed in previous years. The decline is expected to continue over the next few years as a consequence of reduced recruitment.

(E) Potential Impacts of Expected Fishing for Groundfish on Halibut Stocks and U.S. Halibut Fisheries

Halibut fisheries will be adjusted to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 1994 groundfish fisheries are expected to use the entire halibut PSC limit of 2,750 mt. The allowable directed commercial catch is determined by accounting for the recreational catch, waste, and bycatch mortality, and then providing the remainder to the directed fishery. Therefore, although the amount of halibut available for directed halibut fisheries will be reduced, halibut bycatch in groundfish fisheries is not expected to have any effect on halibut stocks.

(F) Methods Available for, and Costs of, Reducing Halibut Bycatches in Groundfish Fisheries

Halibut bycatch may be reduced by (1) reducing amounts of groundfish TACs, (2) reducing halibut bycatch rates through a Vessel Incentive Program, (3) modifications to gear and fish handling procedures, and (4) changes in groundfish fishing seasons.

Reductions in groundfish TACs do not usually provide incentives for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TACs depend on species and amounts of groundfish foregone.

Trawl vessels carrying observers for purposes of complying with the Observer Plan are subject to the Vessel Incentive Program. The program encourages trawl fishermen to avoid high halibut bycatch rates while conducting groundfish fisheries by specifying bycatch rate standards for various target fisheries.

Current regulations require groundfish pots to have halibut exclusion devices to reduce halibut bycatches. Resulting low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits. Because halibut bycatch mortality in the pot fisheries is so low, and not expected to increase during 1994, the Council has again recommended exempting these fisheries from halibut bycatch restrictions in 1994, as it did in 1993. A recent change in the definition of pelagic trawl gear is intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation and also for performance of the trawl gear in terms of crab bycatch (58 FR 39680, July 26, 1993). A recent regulatory change required all hook-and-line vessel operators to employ careful release measures when handling halibut bycatch (58 FR 28799, May 17, 1993). This measure is intended to reduce handling mortality, increase the amount of groundfish harvested with the available halibut mortality limits, and possibly lower overall halibut mortality in groundfish fisheries.

Halibut bycatch will potentially be reduced by changes in some groundfish fishing seasons. The sablefish hook-and-line season starts May 18, and the rockfish trawl fishery is delayed until the third quarter, July 4. These delays postpone the start of the sablefish and rockfish fisheries to times when seasonal halibut bycatch rates are lower.

Methods listed under (F) above, will be reviewed by NMFS and the Council to determine their effectiveness. Changes will be initiated as necessary in response to this review or to public testimony and comment, either through regulatory or FMP amendments.

Consistent with the goals and objectives of the FMP to reduce halibut bycatches while providing an opportunity to harvest the groundfish OY, NMFS proposes the assignments of 2,000 mt and 750 mt of halibut PSC mortality limits to trawl and hook-and-line gear, respectively. While these limits will reduce the harvest quota for commercial halibut fishermen, NMFS has determined that they will not result in unfair allocation to any particular user group. NMFS recognizes that some halibut bycatch will occur in the groundfish fishery, but expansion of the Vessel Incentive Program, required modifications to gear and handling procedures, and delays to the start of the sablefish hook-and-line gear and rockfish trawl gear fisheries are intended to reduce adverse impacts on halibut fishermen while promoting the opportunity to achieve the OY from the groundfish fishery.

10. Seasonal Allocations of the Halibut PSC Limits

Under § 672.20(f)(2), NMFS seasonally allocates the halibut PSC limits based on recommendations from the Council. The FMP requires that the following information be considered by the Council in recommending seasonal allocations of halibut (a) seasonal distribution of halibut, (b) seasonal distribution of target groundfish species relative to halibut distribution, (c) expected halibut bycatch needs on a seasonal basis relevant to changes in halibut biomass and expected catches of target groundfish species, (d) expected bycatch rates on a seasonal basis, (e) expected changes in directed groundfish fishing seasons, (f) expected actual start of fishing effort, and (g) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry. The Council recommended the same seasonal allowances of PSC limits for the 1994 fishing year as those in effect during the 1993 fishing year. The publication of the final 1993 initial groundfish and PSC specifications (58 FR 16787, March 31, 1993) summarizes Council findings with respect to each of the FMP considerations set forth above. At this time, the Council's findings are unchanged from those set forth in 1993. Pacific halibut PSC limits, and apportionments thereof, are presented in Table 6. Regulations specify that overages and shortfalls in PSC catches will be accounted for within the 1994 fishing year.

Slight adjustments from the 1993 seasonal allocations are proposed to accommodate dates of anticipated fishing effort and the opening date of the hook-and-line directed fishery for sablefish (May 18, 1994). Trawling for rockfish species will start on July 4, 1994 in accordance with § 672.23(d).

TABLE 6.—1994 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR. VALUES ARE IN METRIC TONS. ALL ALLOWANCES AND APPORTIONMENTS OTHER THAN THOSE ON JANUARY 1 AND DECEMBER 31 BEGIN AND END AT 12:00 NOON, ALASKA LOCAL TIME

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan. 1–Apr. 1	600 (30%)	Jan. 1–May 18	200 (27%)	Jan. 1–Dec. 31	10 (100%).
Apr. 1–Jul. 1	400 (20%)	May 18–Aug. 31	500 (68%)		
Jul. 1–Oct. 1	600 (30%)	Sep. 1–Dec. 31	40 (5%)		
Oct. 1–Dec. 31	400 (20%)				
Total	2,000 (100%)		740 (100%)		10 (100%)

Assumed halibut mortality rates for halibut PSC bycatch in 1994 are similar to those used in 1993 and are unchanged from those established in the proposed specifications. These rates are listed in Table 7 and reflect mandatory careful release measures implemented during 1993 (58 FR 28799, May 17, 1993). Further information on halibut mortality can be found in the November SAFE report. NMFS has determined that the Council's recommendation for the seasonal apportionments of the Pacific halibut PSC to gear types and the assumed mortality rates are appropriate and is implementing the Council's recommendations.

TABLE 7.—1994 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA WITH MANDATORY CAREFUL RELEASE MEASURES

[Table Values are Percent of Halibut Bycatch Assumed to be Dead]

Gear and target	Observed vessels	Unobserved vessels
Hook-and-line:		
Sablefish	14.0	17.0
Other targets	11.5	14.0
Trawl:		
Pelagic pollock	75.0	75.0
Rockfish, shallow water flatfish, "other spp.," Atka mackerel	60.0	60.0
Pacific cod, non-pelagic pollock, deep water flats, rex sole	55.0	55.0
Pot:		
All targets	5.0	5.0

Opening Date of the Directed Fishery for Sablefish for Hook-and-Line Gear

Under regulations at § 672.23(c), the opening date for the directed fishing season for sablefish with hook-and-line gear is the calendar day from May 9 through May 22 upon which the tide with the smallest tidal range occurs. According to annual tide tables published by NOAA for 1994, this date is May 18, 1994. Therefore, in accordance with § 672.23 (b) and (c), the season will commence at 12:00 noon, Alaska local time, May 18, 1994.

Responses to Comments

Written comments on the proposed 1994 specifications and other management measures were requested until December 10, 1993. No written comments were received on the specifications as proposed.

Classification

This action apportions reserves to DAP fisheries on a date other than those specified in § 672.20(d)(i). The Assistant Administrator for Fisheries, NOAA, finds that it is necessary to waive the opportunity for prior public comment provided by the regulations to prevent premature closure of the fishery. In accordance with § 672.20(d)(5)(iv), comments are invited on the reserve apportionments as noted in "DATES" above.

List of Subjects in 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Parts 672 and 676

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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50 CFR Parts 611, 675 and 676

[Docket No. 931100–4043; I.D. 110193D]

Foreign Fishing; Groundfish Fishery of the Bering Sea and Aleutian Islands; Limited Access Management of Federal Fisheries In and Off of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 1994 initial specifications of groundfish and associated management measures; closures.

SUMMARY: NMFS announces final specifications of total allowable catches (TACs), initial apportionments of TACs for each category of groundfish, and associated management measures in the Bering Sea and Aleutian Islands management area (BSAI) during the 1994 fishing year. This action is necessary to establish harvest limits and associated management measures for groundfish during the 1994 fishing year. NMFS also is closing specified fisheries consistent with the final 1994 groundfish specifications and fishery bycatch allowances of prohibited species. These measures are intended to conserve and manage the groundfish resources in the BSAI.

EFFECTIVE DATE: February 10, 1994 through 24:00 Alaska local time (A.l.t.) on December 31, 1994, or until changed by subsequent notice in the **Federal Register**. All closures to directed fishing are effective through 24:00 A.l.t. December 31, 1994.

ADDRESSES: Comments on directed fishing closures should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802–1668 (Attn: Lori Gravel). The final Environmental Assessment prepared for the 1994 TAC specifications may be obtained from the same address, or by calling 907–586–7229. The final Stock Assessment and Fishery Evaluation (SAFE) report may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fishery Management Biologist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 675 that implement the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP). Other applicable regulations are found at 50 CFR 611.93 (foreign fishing) and 50 CFR part 676 (limited entry fisheries off of Alaska). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP and implementing regulations require the Secretary, after consultation with the Council, to specify annually the apportionments of prohibited species catch (PSC) limits among fisheries and seasons (§ 675.21(b)), the TAC, initial domestic annual harvest (DAH), and initial total allowable level of foreign fishing (TALFF) for each target species and the "other species" category (§ 675.20(a)(2)). The sum of the TACs must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). Specifications set forth in Tables 1–7 of this action satisfy these requirements. For 1994, the sum of TACs is 2,000,000 mt.

Proposed BSAI groundfish specifications and specifications for prohibited species bycatch allowances for the groundfish fishery of the BSAI were published in the **Federal Register** on November 17, 1993 (58 FR 60584). Comments were invited through December 10, 1993. No written

comments were received within the comment period. Verbal comments were received, and public consultation with the Council occurred during the Council meeting in Seattle, Washington, held December 6–10, 1993. Council recommendations and biological and economic data that were available at the Council's December meeting were considered in implementing the final 1994 specifications.

The specified TAC for each species is based on the best available biological and socioeconomic information. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological information about the condition of groundfish stocks in the BSAI at their September and December 1993 meetings. This information was compiled by the Council's BSAI Groundfish Plan Team and is presented in the final 1994 SAFE report for the BSAI groundfish fisheries, dated November 1993. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters. From these data and analyses, the Plan Team estimates an acceptable biological catch (ABC) for each species category.

A summary of the preliminary ABCs for each species for 1994 and other biological data from the September 1993 draft SAFE report were provided in the discussion supporting the proposed 1994 specifications. The Plan Team's recommended ABCs were reviewed by the SSC, AP, and Council at their September 1993 meetings. Based on the SSC's comments concerning technical methods and new biological data not available in September, the Plan Team revised its ABC recommendations in the final SAFE report dated November 1993. The revised ABC recommendations were again reviewed by the SSC, AP, and Council at their December 1993 meetings. While the SSC endorsed most of the Plan Team's recommendations for 1994 ABCs set forth in the final SAFE report, the SSC recommended revisions to ABC amounts calculated for Bogoslof pollock, Greenland turbot, and Atka mackerel. The Council adopted the SSC's recommendations for the 1994 ABSs. The final ABCs, listed in Table 1, reflect harvest amounts that will not cause overfishing as defined in the FMP.

TABLE 1.—FINAL 1994 SPECIFICATIONS OF THE ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC) WHICH EQUAL THE DOMESTIC ANNUAL PROCESSING (DAP), AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA.[1 2]

Species	ABC	TAC	ITAC=DAP[3]	Over fishing level
Pollock:				
Bering Sea (BS)	1,330,000	1,330,000	1,130,500	1,590,000
Aleutian Islands (AI)	56,600	56,600	48,110	60,400
Bogoslof District	31,750	1,000	850	31,750
Pacific cod	191,000	191,000	162,350	228,000
Sablefish:				
BS	540	540	459	670
AI	2,800	2,800	2,380	3,490
Atka mackerel TOTAL	122,500	68,000	57,800	484,000
Western AI	53,900	10,000	8,500	.....
Central AI	55,125	44,525	37,846	.....
Eastern AI, BS	13,475	13,475	11,454	.....
Yellowfin sole	230,000	150,325	127,776	269,000
Rock sole	313,000	75,000	63,750	363,000
Greenland turbot	7,000	7,000	5,950	24,800
BS	.....	4,667	3,967	.....
AI	.....	2,333	1,983	.....
Arrowtooth flounder	93,400	10,000	8,500	130,000
Other flatfish[4]	225,000	56,000	47,600	270,000
Pacific Ocean perch:				
BS	1,910	1,910	1,624	2,920
AI	10,900	10,900	9,265	16,600
Other red rockfish:[5]				
BS	1,400	1,400	1,190	1,400
Sharpchin/Northern:				
AI	5,670	5,670	4,820	5,670
Shortraker/Rougheye:				
AI	1,220	1,220	1,037	1,220
Other rockfish:[6]				
BS	365	365	310	365
AI	770	770	655	770
Squid	3,110	3,110	2,644	3,110
Other Species[7]	27,500	26,390	22,432	141,000
Totals	2,656,435	2,000,000	1,700,000	.....

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock and for the purpose of these specifications, the BS includes the Bogoslof district.

[2] Zero amounts of groundfish are specified for Joint Venture Processing (JVP) and Total Allowable Level of Foreign Fishing (TALFF).

[3] Initial TAC (ITAC)=0.85 of TAC; initial reserve=TAC – ITAC=300,000 mt.

[4] "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species) and all other flatfish species that have a separate specified TAC amount.

[5] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.

[6] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye.

[7] "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

The SSC's revisions to the ABCs recommended by the Plan Team for Bogoslof pollock, Greenland turbot and Atka mackerel are discussed below.

Bogoslof Pollock

The Plan Team indicated in the final 1994 SAFE report that the current estimate of biomass of Aleutian Basin pollock (490,000 mt) is the best estimate, assuming that no recruitment to the stock has occurred and that natural mortality (M) is 0.2. Reassessment of the Bogoslof area hydroacoustic survey with new threshold levels of abundance has not changed previous conclusions that this stock has declined since 1988. The Plan Team assumed that no recruitment occurred in 1993 or will occur in 1994, and projected a biomass for 1994 of 490,000 mt using M=.02. The Plan Team then calculated the $F_{0.35}$ exploitation rate of 0.26 to derive an ABC of 127,000. The SSC, however, adjusted the exploitation rate downward by 25 percent to select a ratio of current biomass to optimal biomass. This leads to an ABC of 31,750. Due to lack of recruitment predicted for 1993 and 1994, the Council recommended a TAC of 1,000 mt to provide for bycatch in other groundfish operations.

Greenland Turbot

The Plan Team used a new stock synthesis model to estimate the ABC, which was updated with catch and survey data through October 1993. A more conservative exploitation rate of $F_{0.40}$ and an increased slope survey catchability coefficient of 0.75 was selected. These adjustments resulted in a conservative ABC of 17,200 mt. Continued poor recruitment and stock abundance levels lead the SSC to recommend a continuation of the present 7,000 mt ABC for this species. The Council concurred with this recommendation and set the TAC at 7,000 for this species. The Council further recommended apportioning two-thirds of the Greenland turbot TAC (4,667 mt) to the eastern Bering Sea, and one-third of the TAC (2,333 mt) to the Aleutian Islands in proportion to the biomass estimates in these areas. The Council's recommendation will spread fishing effort over a larger area.

Atka Mackerel

The SSC accepted the Plan Team's 1994 estimate of ABC (245,000 mt), although it expressed concern that the time series of trawl surveys is short and inconsistent in coverage. The SSC also was apprehensive about possible environmental problems that may result from an increased catch of the magnitude implied by the Plan Team's estimate of 1994 ABC. Atka mackerel is a prey species of northern fur seals and Steller sea lions. During their migrations, northern fur seals (a depleted species) feed heavily on Atka mackerel as they move through the Aleutian passes. Given these concerns, the SSC recommended to continue its 1992 and 1993 policy to phase in the Plan Team's estimate of ABC over a 6-year period by adopting the 1993 biomass estimate (816,000 mt) and raising the exploitation rate in steps. These incremental steps are as follows: (M)(1)/6 in 1992, (M)(2)/6 in 1993, (M)(3)/6 in 1994, (M)(4)/6 in 1995, (M)(5)/6 in 1996 and M in 1997. According to this schedule, the recommended ABC for 1994 is (0.30/2)(816,000)=122,500 mt. The main purpose of this approach is to postpone a large ABC increase until new survey estimates are available to evaluate the phase-in policy.

Amendment 28 to the BSAI FMP became effective August 11, 1993 (58 FR 37660, July 13, 1993). This amendment establishes three new management districts in the Aleutian Islands (AI) subarea (western, central, and eastern AI management districts) for the purpose of apportioning TAC of groundfish. The intent of this action is to improve TAC management, disperse fishing effort, and minimize the potential for undesirable effects of concentrated fishing effort. The Council recommended a 68,000 mt TAC for Atka mackerel in the BSAI in 1994. Based on the authority provided by Amendment 28, the Council recommended apportionment of the TAC for Atka mackerel among the AI management districts and the Bering Sea relative to survey biomass estimates: 10,000 mt in the western area; 44,525 mt in the central area; and 13,475 mt in the eastern area and Bering Sea combined.

TAC Specifications

The Council developed its TAC recommendations (Table 1) based on the final ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC in the required OY range of 1.4–2.0 million mt. Each of the Council's recommended TACs for 1994 is equal to or less than the final 1994 ABC for each species category. Therefore, NMFS finds that the recommended TACs are consistent with the biological condition of groundfish stocks. The final ABCs, TACs, ITACs, overfishing levels and initial apportionments of groundfish in the BSAI area for 1994 are given in Table 1 of this action. The apportionment of pollock TACs among fisheries and seasons is discussed below.

Apportionment of TAC

As required by §§ 675.20(a)(3) and 675.20(a)(7)(i), each species' TAC initially is reduced by 15 percent. The sum of these 15 percent amounts is the reserve. The reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

The initial TAC (ITAC) for each target species and the "other species" category at the beginning of the year, which is equal to 85 percent of TAC, is then apportioned between the domestic annual harvest (DAH) category and the total allowable level of foreign fishing (TALFF). Each DAH amount is further apportioned between two categories of U.S. fishing vessels. The domestic annual processing (DAP) category includes U.S. vessels that process their catch on board or deliver it to U.S. fish processors. The joint venture processing (JVP) category includes U.S. fishing vessels working in joint ventures with foreign processing vessels authorized to receive catches in the U.S. exclusive economic zone.

In consultation with the Council, the initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). Consistent with the final notice of 1991–1993 initial specifications, the Council recommended that 1994 DAP specifications be set equal to TAC and that zero amounts of groundfish be allocated to JVP and TALFF. In making this recommendation, the Council considered the capacity of DAP harvesting and processing operations and anticipated that 1994 DAP operations will harvest the full TAC specified for each BSAI groundfish species category.

Apportionment of the Pollock TAC to the Inshore and Offshore Components and to the Western Alaska Community Development Quota

Regulations at § 675.20(a)(2)(iii) require that the 1994 pollock ITAC specified for the BSAI be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component (Table 2). Definitions of these components are found at § 675.2.

TABLE 2.—SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TACS [1, 2]

Subarea	TAC	ITAC [3]	Roe season [4]	Non-roe season [5]
Bering Sea:				
Inshore	.....	395,675	178,054	217,621.
Offshore	.....	734,825	330,671	404,154.
	1,330,000	1,130,500	508,725	621,775.
Aleutian Islands:				
Inshore	.....	16,838	16,838	Remainder.
Offshore	.....	31,272	31,272	Remainder.
	56,600	48,110	48,110	Remainder.
Bogoslof:				
Inshore	.....	298	298	Remainder.
Offshore	.....	552	552	Remainder.
	1,000	850	850	Remainder.

[1] TAC=total allowable catch.
[2] Based on an offshore component allocation of 0.65(TAC) and an inshore component allocation of 0.35(TAC).
[3] ITAC=initial TAC=0.85 of TAC;
[4] January 1 through April 15—based on a 45/55 split (roe=45%).
[5] August 15 through December 31—based on a 45/55 split (non-roe=55%).

Regulations at § 675.20(a)(3)(ii) require one-half of the pollock TAC to be placed in the reserve for each subarea or district, or 7.5 percent of each TAC to be assigned to a Community Development Quota (CDQ) reserve for each subarea or district. Given the 1994 pollock TACs specified in Table 1, the 1994 CDQ reserve amounts for each subarea is as follows:

BSAI subarea	Pollock CDQ (mt)
Bering Sea	99,750
Aleutian Islands	4,245
Bogoslof	75

Under regulations governing the CDQ program at § 675.27, NMFS may allocate the 1994 pollock CDQ reserves to eligible Western Alaska communities or groups of communities that have an approved community development plan (CDP). The Secretary has approved six CDP's and associated percentages of the CDQ reserve for each CDP recipient for 1994 (58 FR 61031, November 19, 1993). Table 3 lists the approved CDP recipients, and each recipient's allocation of the 1994 pollock CDQ reserve for each subarea.

TABLE 3.—APPROVED SHARES (%'S) AND RESULTING ALLOCATIONS AND SEASONAL ALLOWANCES (METRIC TONS) OF THE 1994 POLLOCK CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS), ALEUTIAN ISLANDS (AI), AND BOGOSLOF (BF) SUBAREAS AMONG APPROVED CDP RECIPIENTS

CDP Recipient	Percent	Area	Allocation	Roe season allowance [1]
Aleutian Pribilof Island Community Development Assn	18	BS	17,955	8,080
		AI	764	344
		BF	14	6
Total	.....	.....	18,733	8,430
Bristol Bay Economic Development Assn	20			
		BS	19,950	8,977
		AI	849	382
		BF	15	7
Total	.....	.....	20,814	9,366
Central Bering Sea Fishermen's Assn	8	BS	7,980	3,591
		AI	340	153
		BF	6	3
Total	.....	.....	8,326	3,747
Coastal Villages Fishing Coop	27	BS	26,933	12,120
		AI	1,146	516
		BF	20	9
Total	.....	.....	28,099	12,645
Norton Sound Economic Development Corp	20	BS	19,950	8,977
		AI	849	382
		BF	15	7
Total	.....	.....	20,814	9,366
Yukon Delta Fisheries Development Assn	7	BS	6,982	3,142
		AI	297	134

TABLE 3.—APPROVED SHARES (%'S) AND RESULTING ALLOCATIONS AND SEASONAL ALLOWANCES (METRIC TONS) OF THE 1994 POLLOCK CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS), ALEUTIAN ISLANDS (AI), AND BOGOSLOF (BF) SUBAREAS AMONG APPROVED CDP RECIPIENTS—Continued

CDP Recipient	Percent	Area	Allocation	Roe season allowance[1]
		BF	5	2
Total			7,284	3,278
Total	100		104,070	46,832

[1] No more than 45 percent of a CDP recipient's 1994 pollock allocation may be harvested during the pollock roe season, January 1 through April 15.

Seasonal Allowances of Pollock TAC

Under § 675.20(a)(2)(ii), the ITAC of pollock for each subarea or district of the BSAI area is divided, after subtraction of reserves (§ 675.20(a)(3)), into two allowances. The first allowance will be available for directed fishing from January 1 to April 15 (roe season). The second allowance will be available from August 15 through the end of the fishing year (non-roe season).

The Council recommended that the 1994 seasonal allowances of pollock be set at the same relative levels as in 1993 with 45 percent of the pollock ITAC specified for each management subarea or district during the roe season and 55 percent during the non-roe season (Table 2). Although the Council is authorized under § 675.20(a)(7)(ii) to recommend seasonal allowances of the 1994 CDQ pollock reserve, it did not take such action at its December 1993 meeting. Therefore NMFS is limiting the 1994 fishery to 45 percent of the CDQ reserve during the roe season, consistent with the seasonal split recommended by the Council for the inshore/offshore pollock fisheries.

When specifying seasonal allowances of the pollock TAC, the Council and the Secretary consider the following nine factors as specified in section 14.4.10 of the FMP:

1. Estimated monthly pollock catch and effort in prior years;
2. Expected changes in harvesting and processing capacity and associated pollock catch;
3. Current estimates of, and expected changes in, pollock biomass and stock conditions; conditions of marine mammal stocks; and biomass and stock conditions of species taken as bycatch in directed pollock fisheries;
4. Potential impacts of expected seasonal fishing for pollock on pollock stocks, marine mammals, and stocks and species taken as bycatch in directed pollock fisheries;
5. The need to obtain fishery data during all or part of the fishing year;
6. Effects on operating costs and gross revenues;
7. The need to spread fishing effort over the year, minimize gear conflicts, and allow participation by various elements of the groundfish fleet and other fisheries;
8. Potential allocative effects among users and indirect effects on coastal communities; and
9. Other biological and socioeconomic information that affects the consistency of seasonal pollock harvests with the goals and objectives of the FMP.

A discussion of these factors relative to the roe and non-roe seasonal allowances (45 and 55 percent of the TAC, respectively) was contained in the final 1993 specifications for BSAI groundfish (58 FR 8703, February 17, 1993). Considerations under these factors remain unchanged from 1993 given that the relative seasonal allowances for 1993 and 1994 are the same.

Apportionment of Pollock TAC to the Non-Pelagic Trawl Gear Fishery

Regulations under § 675.24(c)(2) authorize the Secretary, in consultation with the Council, to limit the amount of pollock TAC that may be taken in the directed fishery for pollock using non-pelagic trawl gear. This authority is intended to reduce the amount of halibut and crab bycatch that occurs in non-pelagic trawl operations.

Regulations were implemented during 1993 to more effectively limit the bycatch of halibut and crab when directed fishing for pollock with non-pelagic trawl gear is closed (58 FR 39680, July 26, 1993). Given these regulatory constraints, the Council did not recommend limiting the amount of pollock TAC that may be taken in the 1994 directed fishery for pollock by vessels using non-pelagic trawl gear. NMFS concurs in the Council's recommendation, and no limit on the amount of pollock TAC that may be taken in the directed fishery for pollock using non-pelagic trawl gear is specified.

Allocation of the Pacific Cod TAC

At its June 1993 meeting, the Council adopted Amendment 24 to the FMP, which authorizes fixed allocations of the Pacific cod TAC among vessels using trawl gear, hook-and-line gear or pot gear, and jig gear. A final rule implementing Amendment 24 was published in the **Federal Register** on January 28, 1994 (59 FR 4009). That final rule specifies gear allocations of the 1994 Pacific cod TAC and seasonal apportionments of the amount of Pacific cod TAC allocated to vessels using hook-and-line or pot gear.

Sablefish Gear Allocation

Regulations under § 675.24(c)(1) require that sablefish TACs for the Bering Sea and Aleutian Islands subareas be divided between trawl and hook-and-line/pot gear fisheries. Gear allocations of TACs are specified in the following proportions: Bering Sea subarea: trawl gear—50 percent; hook-and-line/pot gear—50 percent, and Aleutian Islands subarea: trawl gear—25 percent; hook-and-line/pot gear—75 percent (Table 4).

TABLE 4.—1994 GEAR SHARES OF BSAI SABLEFISH TAC

Subarea	Gear	Percent of TAC	Share of TAC (mt)	Share of ITAC (mt)[1]
Bering Sea[2]	Trawl	50	270	230
	Hook-and-line/pot gear	50	270	229
Aleutian Islands	Trawl	25	700	595

TABLE 4.—1994 GEAR SHARES OF BSAI SABLEFISH TAC—Continued

Subarea	Gear	Percent of TAC	Share of TAC (mt)	Share of ITAC (mt)[1]
	Hook-and-line/pot gear	75	2,100	1,785

[1] Initial TAC (ITAC)=0.85 of TAC, rounded to the nearest whole mt; 0.15 of TAC is apportioned to reserve. The sum of both ITAC gear shares in a subarea is equal to the ITAC for that subarea in Table 1.
[2] Includes Bogoslof district.

Allocation of Prohibited Species Catch (PSC) Limits for Crab, Halibut, and Herring

PSC limits of red king crab and *C. bairdi* Tanner crab in Bycatch Limitation Zones (50 CFR 675.2) of the Bering Sea subarea, and for Pacific halibut throughout the BSAI area are specified under § 675.21(a). At this time, the 1994 PSC limits are:

—200,000 red king crabs for Zone 1 trawl fisheries;
—one million *C. bairdi* Tanner crabs for Zone 1 trawl fisheries;
—three million *C. bairdi* Tanner crabs for Zone 2 trawl fisheries;
—3,775 mt mortality of Pacific halibut for the BSAI trawl fisheries;
—900 mt mortality of Pacific halibut for BSAI non-trawl fisheries; and
—1,962 mt Pacific herring for BSAI trawl fisheries.

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 1994 herring biomass is 196,229 mt. This amount was derived using 1993 survey data and an aged structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Complete analysis of the 1993 spawning data was provided by the ADF&G at the Council's December 1993 meeting. Therefore, the herring PSC limit for 1994 is 1,962 mt.

Regulations under § 675.21(b) authorize the apportionment of each PSC limit into bycatch allowances for specified fishery categories. Regulations at § 675.21(b)(1)(iii) specify seven fishery categories (midwater pollock, Greenland turbot/arrowtooth flounder/sablefish, rock sole/other flatfish, yellowfin sole, rockfish, Pacific cod, and bottom pollock/Atka mackerel/"other species"). Regulations at § 675.21(b)(2) authorize the apportionment of the non-trawl halibut PSC limit among three fishery categories (Pacific cod hook-and-line fishery, groundfish pot gear fishery, and other non-trawl fisheries). The PSC allowances are listed in Table 5. In general, the fishery bycatch allowances listed in Table 5 reflect the recommendations made to the Council by its AP. These recommendations were based on 1993 bycatch amounts, anticipated 1994 harvest of groundfish by trawl gear and fixed gear, anticipated changes in fishery bycatch needs pending approval of a final rule implementing Amendment 24, and assumed halibut mortality rates in the different groundfish fisheries based on analyses of 1991–1993 observer data.

In 1993, NMFS exempted groundfish pot gear fisheries from halibut bycatch restrictions in Amendment 21 to the FMP (March 18, 1993, 58 FR 14524). During 1993, the halibut mortality associated with this groundfish catch was 2.5 mt, based on an assumed halibut mortality rate of 5 percent. The Council recommended continuing to exempt groundfish pot gear fisheries from halibut bycatch restrictions during the 1994 fisheries.

TABLE 5.—FINAL 1994 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

	Zone 1	Zone 2	BSAI-wide
Trawl fisheries:			
Red king crab, number of animals:			
Yellowfin sole	40,000		
Rcksol/oth.flat[1]	110,000		
Turb/arrow/sab[2]	0		
Rockfish	0		
Pacific cod	10,000		
Pick/Atka/othr[3]	40,000		
Total	200,000		
C. bairdi Tanner crab, number of animals:			
Yellowfin sole	175,000	1,275,000	
Rcksol/oth.flat	475,000	260,000	
Turb/arrow/sabl	0	5,000	
Rockfish	0	10,000	
Pacific cod	175,000	200,000	
Pick/Atka/othr	175,000	1,250,000	
Total	1,000,000	3,000,000	
Pacific halibut, mortality (mt):			
Yellowfin sole			592
Rcksol/oth.flat			688
Turb/arrow/sabl			137
Rockfish			201
Pacific cod			1,200
Pick/Atka/othr			957
Total			3,775
Pacific herring, mt:			
Midwater pollock			1,419
Yellowfin sole			332

TABLE 5.—FINAL 1994 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES—Continued

	Zone 1	Zone 2	BSAI-wide
Rcksol/oth.flat			0
Turb/arrow/sabl			0
Rockfish			8
Pacific cod			25
Pick/Atka/othr[4]			178
Total			1,962
Non-trawl fisheries:			
Pacific halibut, mortality (mt):			
Pacific Cod			725
Other non-trawl			175
Groundfish Pot Gear			[5]
Total			900

[1] Rock sole and other flatfish fishery category.
[2] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[3] Pollock, Atka mackerel, and "other species" fishery category.
[4] Pollock other than midwater pollock, Atka mackerel, and "other species" fishery category.
[5] Exempt.

Seasonal Apportionments of PSC Limits

Regulations at § 675.21(b)(3) authorize the Secretary, after consultation with the Council, to establish seasonal apportionments of prohibited species bycatch allowances among the fisheries to which bycatch has been apportioned. Under § 675.21(b)(3), the basis for any such apportionment must be based on the following types of information:

1. Seasonal distribution of prohibited species;
2. Seasonal distribution of target groundfish species relative to prohibited species distribution;
3. Expected prohibited species bycatch needs on a seasonal basis relevant to change in prohibited species biomass and expected catches of target groundfish species;
4. Expected variations in bycatch rates throughout the fishing year;
5. Expected changes in directed groundfish fishing seasons;
6. Expected start of fishing effort; or
7. Economic effects of establishing seasonal prohibited species apportionments on segments of the target groundfish industry.

At its December 1993 meeting, the Council recommended that the halibut bycatch allowances listed in Table 5 be seasonally apportioned as shown in Table 6, for yellowfin sole, rock sole/other flatfish, rockfish, and pollock/Atka mackerel/"other species" fishery categories. The recommended seasonal apportionments reflect recommendations made to the Council by its AP.

The AP recommended seasonal apportionments of the halibut bycatch allowances specified for the yellowfin sole, and rocksole/other flatfish fishery categories in anticipation of a 1994 rulemaking that would adjust the season opening date for the BSAI yellowfin sole and "other flatfish" fisheries from May 1 to January 20. At its December 1993 meeting, the Council recommended that this action be implemented early in 1994 under an emergency interim rule. The intent of the recommended season adjustment is to provide additional fishing opportunities in the BSAI early in the year and reduce the incentive for trawl vessel operators to move from the BSAI to the Gulf of Alaska after the rock sole roe fishery is closed, typically by the end of February.

The AP recommended that 20 percent of halibut bycatch be apportioned to the rockfish fishery during the periods January 20 through April 1, and July 1 to December 31, and that 60 percent of the halibut bycatch be apportioned during the period April 1 through July 1. The AP's recommendation was intended to provide a greater opportunity for participants in this fishery to more fully harvest TAC amounts of all rockfish species within these recommended halibut bycatch apportionments.

The AP's recommended seasonal apportionment of the halibut bycatch allowance for the pollock/Atka mackerel/"other species" fishery category is based on the seasonal allowances of the Bering Sea pollock ITAC recommended for the roe and non-roe seasons, and the assumption that most of the pollock taken during the roe season will be taken with pelagic trawl gear with reduced halibut bycatch rates.

The AP recommended a seasonal apportionment of the halibut bycatch allowance specified for the Pacific cod hook-and-line gear fishery based on:

(1) Anticipation that the proposed allocation of Pacific cod TAC among gear groups under Amendment 24 will be approved;

(2) Most of the hook-and-line gear effort for Pacific cod will occur during the first half of 1994; and

(3) The Council's desire to limit a hook-and-line fishery for Pacific cod during summer months when halibut bycatch rates are high.

NMFS approves the Council's recommendations for prohibited species bycatch allowances and seasonal apportionments. The seasonal apportionments of the halibut bycatch allowances are intended to increase the harvest of the groundfish OY by providing for directed groundfish fisheries when catches per unit of effort are high and corresponding halibut species bycatch rates are relatively low.

TABLE 6.—FINAL SEASONAL APPORTIONMENTS OF THE 1994 PACIFIC HALIBUT BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES. ALL ALLOWANCES AND APPORTIONMENTS OTHER THAN THOSE ON JANUARY 1 AND DECEMBER 31 BEGIN AND END AT 12:00 NOON, ALASKA LOCAL TIME

Fishery	Seasonal bycatch allowances (mt halibut)
Trawl Gear:	
Yellowfin sole	
Jan. 20–Aug. 02	230
Aug. 02–Dec. 31	362
Total	592
Rock sole/"other flatfish"	
Jan. 20–Mar. 29	428
Mar. 29–Jun. 28	180
Jun. 28–Dec. 31	80
Total	688
Turbot/arrowtooth flounder/sablefish.	
Total	137
Rockfish	
Jan. 20–Apr. 01	40
Apr. 01–Jul. 01	120
Jul. 01–Dec. 31	41
Total	201
Pacific cod	
Jan. 20–Dec. 31	1,200
Total	1,200
Pollock/Atka mackerel/ "other species".	
Jan. 20–Apr. 15	430
Apr. 15–Dec. 31	527
Total	957
Total Trawl Halibut Mortality	3,775
Non-Trawl Gear:	
Pacific cod[2]	
Jan. 01–Apr. 30	685
Apr. 30–Aug. 31	40
Aug. 31–Dec. 31	[3]
Total	725
Other Non-trawl	175
Groundfish pot	[4]
Total Non-trawl Halibut Mortality	900

[2] Pending approval of Amendment 24, Pacific cod will be apportioned among three 4-month periods for 1994.
[3] Remainder.
[4] Exempt.

For purposes of monitoring the fishery halibut bycatch mortality allowances specified in Table 6, the Regional Director will use observed halibut bycatch rates and reported and observed groundfish catch to project when a fishery's halibut bycatch mortality allowance is reached. The Regional Director monitors the fishery bycatch mortality allowances using assumed mortality rates that are based on the best information available, including that contained in the final annual SAFE report.

Assumed halibut mortality rates for halibut bycatch in 1994 are listed in Table 7. These rates are similar to those used in 1993 and reflect mandatory careful release measures implemented during 1993 for the hook-and-line gear fisheries (58 FR 28799, May 17, 1993). The derivation of mortality rates assumed for the trawl fishery is discussed in the preamble to the final rule implementing halibut bycatch mortality limits (58 FR 14524, March 18, 1993). Assumed rates for the hook-and-line gear fishery are explained in the rule implementing careful release procedures. Analysis of 1992 and 1993 observer data suggest that mortality rates for the hook-and-line gear fishery generally continue to reflect 1993 assumed rates. The assumed mortality rates listed in Table 7 reflect recommendations by the Council after review of the International Pacific Halibut Commission and SSC recommendations. NMFS concurs with the Council's recommendations as the best available information for 1994.

TABLE 7.—ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1994

	Observed vessels (percent)	Unobserved vessels (percent)
Hook-and-Line Gear Fisheries:		
BSAI Pacific cod	12.5	15.0
BSAI Other Hook-and-line	12.5	15.0
Trawl Gear Fisheries (Assumed Mortality rates are unchanged from 1993):		
Midwater pollock		80.0
Atka mackerel, rock sole, yellowfin sole, other flatfish		70.0
Pacific cod, bottom pollock, rockfish		60.0
Arrowtooth, Greenland turbot, sablefish, other species		40.0
Pot Gear Fisheries		5.0

Groundfish PSC Limits

No PSC limits for groundfish species are specified in this action. Section 675.20(a)(6) authorizes NMFS to specify PSC limits for groundfish species or species groups for which the TAC will be completely harvested by domestic fisheries. These PSC limits apply only to JVP or TALFF fisheries. At this time, no groundfish are allocated to either JVP or TALFF and specifications of groundfish PSC limits are unnecessary.

Closures to Directed Fishing

Fishing for groundfish in the Bering Sea and Aleutian Islands is authorized from January 1 through December 31, with the following exceptions (§ 675.23):

(1) Directed fishing for yellowfin sole, "other flatfish," arrowtooth flounder, and turbot is authorized from May 1, 1994 to December 31, 1994, subject to the other provisions in the BSAI regulations;

(2) Fishing for groundfish with trawl gear in the BSAI is prohibited until January 20, 1994;

(3) Directed fishing for pollock by the inshore and offshore components, defined at § 675.2, is authorized from January 1, 1994, through April 15, 1994, and August 15, 1994, through the end of the fishing year;

(4) Directed fishing for pollock under the Western Alaska Community Development Quota Program is authorized from January 1, 1994, through the end of the fishing year (§ 675.23(e)); and

(5) Directed fishing with trawl gear in Zone 1 for rockfish, Greenland turbot, arrowtooth flounder and sablefish is closed as there is no PSC to support this fishery (Table 5).

In addition to these regulatory closures, the Council and NMFS annually recommend closures to directed fishing for species needed as bycatch amounts in other directed fisheries. A principal consideration for the Council in developing its 1994 TAC recommendations was ensuring that the sum of the species TACs did not exceed the maximum OY of 2 million mt. After consideration of the amount of each species category TAC that is required for bycatch in other directed fisheries, the Council and NMFS recommended that TAC amounts specified for the following species be closed to directed fishing: (1) Pacific ocean perch in the Bering Sea; (2) other red rockfish in the Bering Sea; (3) shortraker/rougheye in the Aleutian Islands; (4) other rockfish in the Bering Sea and Aleutian Islands; (5) arrowtooth flounder in the BSAI; and (6) pollock in the Bogoslof district. Species or species groups identified in Table 8 will be necessary as incidental catch to support other anticipated groundfish fisheries and TAC amounts for these species will be used for bycatch purposes only. If NMFS determines the full TAC amount will not be used as bycatch, NMFS may open a directed fishery for that species.

TABLE 8.—CLOSURES TO DIRECTED FISHING UNDER 1994 INTERIM TACS[1]

Fishery (all gear)	Closed area
Pollock in Bogoslof District.	Statistical Area 518.
Pacific ocean perch ...	Bering Sea.
Shortraker/rougheye rockfish.	AI.
Other rockfish[2]	BSAI.
Other red rockfish[3] ...	Bering Sea.
Rockfish, Greenland turbot/arrowtooth/ sablefish.	Zone 1.
Arrowtooth	BSAI.

[1] These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR Part 675.

[2] In the BSAI, "Other rockfish" includes *Sebastes* and *Sebastolobus* species except for Pacific ocean perchand the "other red rockfish" species.

[3] "Other red rockfish" includes shortraker, rougheye, sharpchin and northern.

Expiration of Interim 1994 Specifications

Regulations under § 675.20 (a)(7)(i) authorize one-fourth of each ITAC and apportionment thereof, one-fourth of each PSC allowance, and the first seasonal allowance of pollock to be in effect on January 1 on an interim basis and to remain in effect until superseded by final initial specifications for 1994. The final 1994 initial groundfish harvest specifications and prohibited species bycatch allowances implemented under this action supersede the interim 1994 specifications published in Tables 1 and 4 of the proposed specifications (58 FR 60584, November 17, 1993).

Response to Comments

Written comments on the proposed 1994 specifications and other management measures were requested through December 10, 1993. No written comments were received.

Classification

This action is authorized under 50 CFR 611.93(b), 675.20, and 676; and is covered by the regulatory flexibility analysis prepared for the implementing regulations.

A draft environmental assessment (EA) on the allowable harvest levels set forth in the final 1994 SAFE report was available for public review at the December 6–10, 1993, Council meeting. A final EA was prepared on the final 1994 TAC amounts recommended by the Council.

Consultation pursuant to section 7 of the Endangered Species Act was conducted for the 1994 BSAI initial specifications and concluded that the fishing activities conducted will not impact endangered or threatened marine mammal species in any manner not already evaluated in previous formal consultations.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Parts 675 and 676

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–3564 Filed 2–10–94; 4:53 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 32
Wednesday, February 16, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1011

[DA–94–07]

Milk in the Tennessee Valley Marketing Area; Proposed Temporary Reduction of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This document invites comments on a proposal to temporarily reduce the supply plant shipping requirement of the Tennessee Valley Federal milk order (Order 11) for the months of March through July 1994. The proposed action was requested by Armour Foods Ingredients Company (Armour), which operates a proprietary supply plant pooled under Order 11. Armour contends the action is necessary to prevent the uneconomical movement of milk and to ensure that producer milk associated with the market in the fall will continue to be pooled in the spring and summer months.

DATES: Comments are due no later than February 23, 1994.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this proposed action in conformance with Executive Order 12866.

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 and the provisions of § 1011.7(b) of the order, temporary revision of certain provisions of the order regulating the handling of milk in the Tennessee Valley marketing area is being considered for the months of March 1, 1994, through July 31, 1994.

All persons who wish to send written data, views or arguments about the proposed revision should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this document in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures before the requested revision is to be effective.

All written submissions made pursuant to this document will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed revision would reduce from 40 to 30 percent the supply plant shipping requirement for the period of March through July 1994. The Tennessee Valley order requires that a supply plant ship a minimum of 60 percent of the total quantity of milk physically received at the supply plant during the months of August through November, January, and February, and 40 percent in each of the other months. The order also provides authority for the Director of the Dairy Division to increase or decrease this supply plant shipping requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments of milk or to prevent uneconomic shipments.

Armour states that it would have to make uneconomical shipments of milk to meet the 40 percent supply plant shipping requirement to continue its pool status. Additionally, the proponent states that the 40 percent requirement could jeopardize the continued association of producers who have supplied the Order 11 market in the fall.

Armour anticipates that marketing conditions in 1994 will mirror those in 1993, when the shipping percentage was also reduced. It expects milk supplies to be adequate to meet the Class I needs of the market.

List of Subjects in 7 CFR Part 1011

Milk marketing orders.

The authority citation for 7 CFR part 1011 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: February 8, 1993.

Richard M. McKee,

Acting Director, Dairy Division

[FR Doc. 94–3503 Filed 2–15–94, 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of International Investment

31 CFR Part 800

Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons

AGENCY: Department of the Treasury.

ACTION: proposed rule.

SUMMARY: These proposed regulations implement amendments to section 721 of title VII of the Defense Production Act of 1950 (the "DPA"), as added by section 5021 of the Omnibus Trade and Competitiveness Act of 1988, relating to mergers, acquisitions, and takeovers of U.S. persons by or with foreign persons, and as amended by section 837 of the National Defense Authorization Act for Fiscal Year 1993. That amendment requires that the President or his designee undertake an investigation under section 721 of certain acquisitions which could result in control of U.S. persons by foreign government controlled entities. It also expands the factors the President must consider in making a determination under section 721, modifies the existing congressional reporting requirement under section 721, and requires that any designee of the President under section 721 share with any other designee a copy of an assessment made in a particular case of the risk of diversion of a defense critical technology.

These proposed regulations implement only those provisions relating to mandatory investigations, and also make a few technical and conforming changes to the existing regulations. The statutory amendments pertaining to the factors for Presidential decisionmaking and report sharing, which do not directly affect the behavior of parties filing under section 721, were deemed sufficiently straightforward not to require any implementing regulations.

DATES: Comments must be submitted on or before March 18, 1994.

ADDRESSES: Comments should be sent to: Donald Crafts, Director, Office of International Investment, Department of the Treasury, room 5100, 15th Street and Pennsylvania Ave., NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Deputy Assistant General Counsel for International Affairs, or Francine McNulty Barber, Attorney-Adviser, Department of the Treasury, 15th Street and Pennsylvania Ave., NW., Washington, DC 20220, (202) 622–1947. For further information regarding procedures for giving notice, contact Donald E. Crafts, Staff Chairman of the Committee and Acting Director, Office of International Investment, room 5100, Department of the Treasury, 15th Street and Pennsylvania Ave., NW., Washington, DC 20220, (202) 622–1860.

SUPPLEMENTARY INFORMATION: Section 136 of the Defense Production Act Amendments of 1992 (P.L. 102–558) amended section 709 of the DPA by requiring that any regulation issued under the DPA be published in the **Federal Register** and that opportunity for public comment be provided for not less than thirty days. Although the Treasury Department elected to provide a sixty day comment period for the regulations originally proposed to implement section 721, it has decided to provide thirty days for these proposed regulations, which, with a few exceptions, are of a relatively routine nature.

The preamble to these regulations, once published in final form, will be preserved with the preamble to the original regulations as an appendix in the Code of Federal Regulations.

Executive Order 12866: These regulations are not subject to the requirements of Executive Order 12866 because they relate to a foreign and military affairs function of the United States.

Paperwork Reduction Act: The collections of information provided for in this proposed rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Act Project (1501–0121), Washington, DC 20503, with copies to the Office of International Investment at the address noted above.

The collection of information provided for in this proposed rule is in section 800.402. Thus far, the regulations have requested parties filing a notification under section 721 to provide 10 copies of the notification. However, the Committee on Foreign Investment in the United States has been expanded by Executive Order 12860 of September 3, 1993, to include three additional members: the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and the Director of the Office of Science and Technology Policy. The regulations have accordingly been amended to request that three additional copies of the notifications be provided by parties making a filing under section 721, for a total of 13 copies. The regulations have also been amended to request more information pertaining to foreign government control to assist the Committee in implementing the amendment to section 721 pertaining to mandatory investigations of certain acquisitions involving such control.

The information collected pursuant to these regulations is required by the Committee to assist it in determining whether to investigate mergers, acquisitions, and takeovers of persons involved in interstate commerce in the United States by or with foreign persons for possible threats to the national security, as required by section 721 of the Defense Production Act. This information will be used to determine the extent and nature of foreign control, as well as the national security implications of the transactions at issue. The likely respondents are individuals and businesses.

Estimated Total Annual Reporting Burden: 6000 hours

Estimated Average Annual Burden per Respondent: This varies, depending on individual circumstances, with an average of 60 hours

Estimated Number of Respondents: 100

Estimated Annual Frequency of Responses: 1

Regulatory Flexibility Act: These regulations implement amendments to section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) ("DPA"). Section 709 of the DPA (50 U.S.C. App. 2159) provides that the regulations issued under it are not subject to the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553). Notwithstanding this exemption, section 709 of the DPA was amended by section 136 of the Defense Production Act Amendments of 1992 (P.L. 102–558) to require any regulation issued under the DPA to be published in the **Federal Register** for at least thirty days to provide for public comment. This requirement subjects this proposed rule to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The impact of this proposed rule on small entities is expected to be insignificant. This proposed regulation imposes additional informational requirements on entities controlled by foreign governments. Most businesses affected by this rule will likely be large businesses, because these are the most likely to be controlled by a foreign government. Accordingly, it is certified that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Discussion of the Proposed Rule

Section 837(a) of the Defense Authorization Act creates for the first time a mandatory investigation provision under Exon-Florio. There are three points worth noting about this provision. First, this provision is limited in application to certain types of acquisitions. Specifically, the acquirer in question must be a foreign government controlled entity, or an entity acting on behalf of a foreign government. Furthermore, the acquisition must be one which "could result in control of a person engaged in interstate commerce in the United States *that could affect the national security of the United States*" (emphasis added). Thus, even where the other specified criteria are met, this provision does not mandate an investigation for cases that could not "affect the national security of the United States."

Second, for purposes of determining whether the acquisition results in foreign government control, CFIUS is applying the same functional test for control as provided in section 800.204.

Third, in contrast to the criterion for Presidential action under Exon-Florio, *i.e.*, that the foreign party acquiring control might take action that "threatens to impair the national security," the criterion for undertaking an investigation of transactions involving government controlled entities is that there could be an effect on the national security.

The term "foreign government" has been broadly defined for purposes of these proposed regulations to include any government or body exercising governmental functions, and includes but is not limited to national as well as various regional and local levels of government. It is important to note that the definition is not limited to the particular levels of government that are specified in the proposed regulation, and that other governmental bodies, including supra-national entities such as the European Union (including its component parts), are covered by this regulation.

For purposes of the mandatory investigation provision, the proposed regulations define the term "engage in" as used in the phrase "seeks to engage in any merger, acquisition or takeover * * *" to mean "seeks to acquire control through." The purpose of this regulation is to clarify that the mandatory investigation provision would not be triggered in cases where a foreign government controlled entity is a passive participant in an acquisition by a foreign person. The Committee believes that this reading is supported by the legislative history, and particularly floor statements made by members of Congress who sponsored this particular amendment. *See, e.g.*, Cong. Rec., Sept. 18, 1992, pages S 14050 through 14053 (comments of Senators Exon, Sarbanes and Riegle); and Cong. Rec. Oct. 3, 1992, page H 10986 (comments of Representative Collins).

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (International Affairs). However, personnel from other offices of the Treasury Department and from other agencies that are members of the Committee participated extensively in its development.

List of Subjects in 31 CFR Part 800

Foreign investments in United States, Investigations, National defense, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 31, Chapter VIII, Part 800 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 800—[AMENDED]

1. The authority citation for part 800 is revised to read as follows:

Authority: Section 721 of Pub. L. 100–418, 102 Stat. 1107, made permanent law by section 8 of Pub. L. 102–99, 105 Stat. 487 (50 U.S.C. App. 2170) and amended by section 837 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102–484, 106 Stat. 2315, 2463; E.O. 12661, 54 FR 779, 3 CFR, 1988 Comp., p. 618.

2. Section 800.208 and §§ 800.209 through 800.221 are redesignated as § 800.209 and §§ 800.211 through 800.223, respectively.

3. Sections 800.208 and 800.210 are added to read as follows:

§ 800.208 Engage in.

The term *engage in*, as used in the phrase *seeks to engage in any merger, acquisition or takeover* in section 721(b), means *seeks to acquire control through*.

§ 800.210 Foreign government.

The term *foreign government* means any government or body exercising governmental functions, other than the government of the United States, a State of the United States, or a political subdivision of the United States or a State. The term includes but is not limited to national, state, provincial and municipal governments, including their respective departments, agencies, government-owned enterprises and other agencies and instrumentalities.

4. Newly designated § 800.222 is amended by revising the reference "§ 800.211" in Example 1 to read "§ 800.213".

5. Section 800.301 is amended by revising the third sentence in Example 1 of paragraph (b)(5) to read as follows:

§ 800.301 Transactions that are acquisitions under Section 721.

* * * * *

(b) * * *

(5) * * *

Example 1. * * * Under the Articles of Incorporation of JV Corp., Corp. A through its shareholding in JV Corp. may elect a majority of the Board of Directors of JV Corp. * * *

* * * * * *

6. Section 800.302 is amended by revising the reference "§ 800.217" in paragraph (d) introductory text to read "§ 800.219".

7. Section 800.401 is amended by revising "ten copies" in paragraph (a) to read "thirteen copies".

8. Section 800.402 is amended by revising paragraph (c)(3)(v)(A), by removing the word "and" at the end of paragraph (c)(5)(i), by removing the period at the end of paragraph (c)(5)(ii)(E), and replacing it with a semicolon, be adding paragraphs (c)(5)(iii) and (iv), and by adding paragraph (i) to read as follows:

§ 800.402 Contents of voluntary notice.

* * * * *

(c) * * *

(3) * * *

(v) * * *

(A) It is a supplier, for example, a prime contractor, or a first tier subcontractor, or, if known, a subcontractor at any tier, to the Department of Defense or any component of the Department of Defense, or a seller to any such prime contractor or subcontractor, and, to the knowledge of the parties submitting notice, to what extent the U.S. person is a sole-source supplier of the Department of Defense's needs for a particular product or service;

* * * * *

(5) * * *

(iii) Whether the foreign person is acting on behalf of a foreign government, either as an agent or a representative, or in some similar capacity; and

(iv) Whether a foreign government or an entity controlled by a foreign government—

(A) Has the power or right to determine, direct, take, reach or cause decisions of the acquirer with respect to

any of the matters listed in section 800.204, and, if so, the source of that power or right (*e.g.*, shareholders agreement, contract, statute, regulation) and the mechanics of its operation;

(B) Owns or controls voting or convertible securities of the acquiring foreign person or any affiliate of the acquiring foreign person, and if so, the nature and percentage amount of any such securities;

(C) Has the right or power to appoint any of the principal officers or the members of the board of directors of the acquiring foreign person or any affiliate of the acquiring foreign person; or

(D) Holds any contingent interest (*e.g.*, such as might arise from a lending transaction) in the foreign acquiring party and, if so, the rights that are covered by this contingent interest, and the manner in which they would be enforced.

* * * * *

(i) Persons filing a voluntary notice shall include a copy of the most recent asset or stock purchase agreement or other document establishing the terms of the acquisition.

9. Section 800.504 is amended by revising the references "subparagraphs (d) (1) and (2)" in the second sentence of paragraph (b) to read "subparagraphs (e) (1) and)2)".

10. Section 800.601 is amended by revising the references "Section 721(c)" and "Section 721(d)" in paragraphs (b) and (d) to read "Section 721(d)" and "Section 721(e)", respectively, and by revising the reference "Section 721 (c) and (d)" in paragraph (c) to read "Section 721 (d) and (e)".

11. Section 800.702 is amended by revising the reference "Section 721(h)" in paragraph (a) to read "Section 721(c)".

12. The Appendix to Part 800 is amended in III. *Section-by-Section Discussion of Changes*, by revising the paragraph headings "*Section 800.211*", "*Section 800.214*", "*Section 800.217*", and "*Section 800.220*" to read "*Section 800.213*", "*Section 800.216*", "*Section 800.219*", and "*Section 800.222*", respectively.

Dated: January 11, 1994.

Jeffrey R. Shafer,

Assistant Secretary (International Affairs).

[FR Doc. 94–3540 Filed 2–10–94; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 25 and 160

[CGD 78–174]

RIN 2115–AA29

Hybrid PFD's; Establishment of Approval Requirements; Correction

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking; correction.

SUMMARY: The Coast Guard is correcting errors in the preamble and proposed regulatory text which appeared in the **Federal Register** on January 18, 1994 (59 FR 2575).

DATES: Comments must be received on or before April 18, 1994.

FOR FURTHER INFORMATION CONTACT: LTjg Roger A. Smith, Office of Marine Safety, Security, and Environmental Protection, Attn: G–MVI–3/14, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–1444.

SUPPLEMENTARY INFORMATION: The Coast Guard published an interim final rule promulgating hybrid inflatable PFD requirements in the **Federal Register** on August 22, 1985 (50 FR 33923). The SNPRM published in the **Federal Register** on January 18, 1994 (59 FR 2575) proposes changes to the requirements for approving hybrid PFD's and for the carriage of hybrid PFD's on commercial vessels.

Correction of Publication

The publication on January 18, 1994, of the Supplemental Notice of Proposed Rulemaking (CGD 78–174), which was the subject of FR Doc. 94–1135, is corrected as follows:

1. On page 2578, first column, under *section 160.077–31 Approved Use*, paragraph (j)(4) should be designated paragraph (4) and the word "added" should read "amended".

2. On page 2578, first column, under *section 160.077–31 Size Ranges*, paragraph designation (1) should be a lower case (l).

§ 160.077–23 [Corrected]

3. On page 2585, first column, in § 160.077–23(b)(1)(i), "§ 160.077–3(d)(5)" should read "§ 160.077–23(d)(5)".

§ 160.077–23 [Corrected]

4. On page 2586, first column, in § 160.077–27, paragraph (e)(2), under the heading *Hybrid Inflatable Type I, II, or III*, in the fourth sentence "will not" should read "may only" so it reads "The buoyancy provided by this PFD when not inflated may only float approximately 90 percent of the boating public."

Dated: February 8, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–3517 Filed 2–15–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–188; RM–8278]

Radio Broadcasting Services; Westbrook, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a Notice of Proposed Rule Making issued in response to Buckley Broadcasting Corporation of Maine requesting the substitution of Channel 265B1 for Channel 265A at Westbrook, Maine, and modification of the license for Station WYNZ to specify the higher class channel. See 58 FR 38547, July 19, 1993. Saga Communications of New England, Inc., the current licensee of Station WYNZ, has filed an application seeking to take advantage of the Commission's new rules permitting an upgrade in facilities by the application process rather than the rule making process (BPH–930818IC). See FM Channel and Class Modification by Application, 58 FR 38534, July 19, 1993. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–188, adopted January 27, 1994, and released February 9, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3531 Filed 2–15–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–258; RM–8253]

Radio Broadcasting Services; Hawaiian Ocean View Estates, and Ocean View, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: This document denies the allotment of Channel 273A to Ocean View, Hawaii, and dismisses the proposal to allot Channel 273A to Hawaiian Ocean View Estates, Hawaii, as requested by Betty Adalsteinsson and James Stonecipher, respectively. See 58 FR 52733, October 12, 1993. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–258, adopted January 24, 1994, and released February 9, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3532 Filed 2–15–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–8, RM–8412]

Radio Broadcasting Services; Ola, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Yell County Broadcasting, requesting the allotment of FM Channel 267A to Ola, Arkansas, as that community's first local aural transmission service. Coordinates used for his proposal are 35–01–02 and 93–13–34.

DATES: Comments must be filed on or before April 4, 1994, and reply comments on or before April 19, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Dan J. Alpert, Esq., Law Offices of Dan J. Alpert, 1250 Connecticut Avenue NW., #700, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–8, adopted January 27, 1994, and released February 9, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3533 Filed 2–15–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–9, RM–8423]

Radio Broadcasting Services; Tunica, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Tunica Broadcasting seeking the allotment of Channel 241C3 to Tunica, Mississippi, as the community's first local FM service. Channel 241C3 can be allotted to Tunica in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.2 miles) southwest to avoid short-spacing conflicts with Station WLZA–FM, Channel 241C2, Eupora, Mississippi, and with a rule making proposal (RM–8336) to allot Channel 240C3 at Harrisburg, Arkansas. The coordinates for Channel 241C3 are North Latitude 34–38–56 and West Longitude 90–26–39.

DATES: Comments must be filed on or before April 4, 1994, and reply comments on or before April 19, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barbara L. Waite, Esq., Venable, Baetjer, Howard & Civiletti, suite 1000, 1201 New York Avenue NW., Washington, DC 20005 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–9, adopted January 27, 1994, and released February 9, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex*

parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-3534 Filed 2-15-94; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 59, No. 32

Wednesday, February 16, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021094A]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council's Standing and Special Reef Fish and the Standing and Special Shrimp Scientific and Statistical Committees will hold public meetings on March 4, 1994, at the Radisson Inn New Orleans Airport, 2150 Veterans Memorial Boulevard, Kenner, Louisiana; telephone: (504) 467-3111. The Standing and Special Reef Fish Scientific and Statistical Committee meeting will be held from 10 a.m to 12:30 p.m.

The purpose of the meeting is to review proposed Draft Amendment 9 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico. Draft Amendment 9 includes management measures to collect historical landings data from fishermen, to extend the reef fish permit moratorium and the red snapper endorsement system, and to provide partial red snapper endorsements in 1995 to historical captains if the red snapper endorsement system is extended. The historical landings data will be used to establish the eligibility of fishermen if a system to limit access to the red snapper fishery is implemented based on individual transferable quotas (ITQs) or license limitations. Individuals would be notified of their potential allocation.

The Standing and Special Shrimp Scientific and Statistical Committee meeting will be held from 1:30 p.m. to 3 p.m.

The purpose of that meeting is to review Amendment 7 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico which proposes to:

(1) Define overfishing for white shrimp;

(2) Provide for a framework adjustment for the overfishing definitions for brown, white, and pink shrimp;

(3) Revise the overfishing definition for royal red shrimp; and

(4) Eliminate the total allowable level of foreign fishing to allow the domestic fleet to harvest the entire optimum yield.

The Standing Scientific and Statistical Committee meeting will be held from 3 p.m. to 3:30 p.m. for consideration of operation procedures.

FOR FURTHER INFORMATION CONTACT: (Shrimp) Terrance R. Leary, Fishery Biologist, or (Reef Fish) Steven M. Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228-2815.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the above address by February 25, 1994.

Dated: February 10, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-3561 Filed 2-15-94; 8:45 am]

BILLING CODE 3510-22-P

[I.D. 021094B]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council's Reef Fish Advisory Panel will hold a meeting on March 3, 1994, at the Radisson Inn New Orleans Airport, 2150 Veterans Memorial Boulevard, Kenner, Louisiana; telephone: (504) 467-3111. The meeting will be held from 12 p.m to 4 p.m.

The purpose of the meeting is to review proposed Draft Amendment 9 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico. Draft Amendment 9 includes management measures to collect historical landings data from fishermen, to extend the reef fish permit moratorium and red snapper endorsement system, and to provide partial red snapper endorsements in 1995 to historical captains if the red snapper endorsement system is extended. The historical landings data will be used to establish the eligibility of fishermen if a system to limit access to the red snapper fishery is implemented based on individual transferable quotas (ITQs) or license limitations. Individuals would be notified of their potential allocation.

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228-2815.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the above address by February 25, 1994.

Dated: February 10, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-3562 Filed 2-15-94; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement To Assess the Impacts of Stationing Mechanized or Armored Forces at Fort Lewis, WA

AGENCY: Department of Defense, United States Army.

ACTION: Notice of availability.

SUMMARY: As part of the worldwide reorganization of its force structure, the Army proposes to station heavy (armored or mechanized) combat units at Fort Lewis, Washington. This Final

Environmental Impact Statement (FEIS) analyzes two stationing alternatives (one or two brigades) and the No Action Alternative. The One-Brigade Alternative results in approximately 4,000 additional troops and 500 tracked vehicles. Under the Two-Brigade Alternative, approximately 10,400 additional troops and 1,100 tracked vehicles would be assigned to Fort Lewis and its sub-installation, Yakima Training Center (YTC). New construction would be required to support either stationing alternative.

The FEIS will be available for public review during a 30-day post-filing waiting period prior to the Army making the final decision on the stationing of mechanized and armored combat forces at Fort Lewis.

ADDRESSES: Copies of the FEIS will automatically be mailed to individuals who attended the scoping and public hearings meetings, commented during the public comment period and who requested copies. Copies will be sent to city, county, and federal officials, and civic organizations, and public libraries. Individuals not currently on the mailing list may obtain a copy of the FEIS by contacting Mr. Randall W. Hanna, Chief, Environmental and Natural Resources Division, Headquarters, I Corps and Fort Lewis, ATTN: AFZH–DEQ, Fort Lewis, Washington 98433–5000.

Dated: February 8, 1994.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environmental, Safety, and Occupational Health), OASA (IL&E).

[FR Doc. 94–3566 Filed 2–15–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of closed and partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Assessment Governing Board and its committees. This notice also describes the functions of the Board. Notice of these meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meetings.

DATES: March 3–5, 1994.

TIME: March 3, 1994—Subject Area Committee #2, 4 p.m.–6 p.m. (open); Achievement Levels Committee, 4 p.m.–6 p.m. (open). March 4, 1994—Executive Committee, 7 a.m.–8:45 a.m. (open); Full Board, 9 a.m.–10 a.m. (open); Reporting and Dissemination Committee, 10 a.m.–12 noon (open); Subject Area Committee #1, 10 a.m.–12 noon (open); Design and Analysis Committee, 10 a.m.–12 noon (open); Full Board, 12 noon–1:15 p.m. (closed); 1:15 p.m.–5 p.m. (open); Nominations Committee 4 p.m.–5 p.m. (closed). March 5, 1994—Full Board, 9 a. m.—11:30 a.m. (open); 11:30 a.m.–approximately 12 noon, (closed).

LOCATION: Madison Hotel, 15th and M Streets, NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC 20002–4233, Telephone (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under Section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 USC 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On March 3, two committees will be in open session from 4 p.m. until 6 p.m. The Subject Areas Committee #2 will meet to review and make final approval of the 1996 NAEP Arts Consensus Project for submission to the full Board. The Achievement Levels Committee will meet to hear an update of the achievement levels setting process, and to review the final draft of the achievement levels policy.

On March 4, the Executive Committee will meet in open session from 7 a.m. until 8:45 a.m. Agenda items for this meeting include an update on NAEP/NAGB as related to the reauthorization of the Elementary and Secondary Education Act, and a report on the planning for the joint-conference sponsored by NAGB and NCES on standard setting.

The full Board will convene at 9 a.m. The morning session of the full Board meeting, 9 a.m. until 10 a.m., will include approval of the meeting agenda, the Executive Director's report, and an update on NAEP. From 10 a.m. until 12 noon, there will be open meetings of the Reporting and Dissemination Committee, the Design and Analysis Committee, and the Subject Area Committee #1. The full Board will reconvene in partially closed session from 12 noon to 1:15 p.m. During this partially closed session the NAEP 1992 Trends in Academic Progress will be presented. The discussion will include references to specific items from the assessment, the disclosure of which might significantly frustrate implementation of the NAEP. This session must be closed to the public because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The full Board meeting will open to the public at 1:15 p.m. and continue to 5 p.m. Agenda items include a final report form Subject Area Committee #1 on the 1996 NAEP Arts Education Assessment Framework and Specifications; a presentation on NAEP Dissemination Strategy, GED Spanish Testing Equating Project, and an Ethics Briefing for new Board members.

Also, on March 4, the Nominations Committee will meet in closed session from 4 p.m.—5 p.m. The Committee will review and discuss the qualifications of nominees for vacancies in the membership of the National Assessment Governing Board and formulate recommendations for the Board. The review and subsequent discussions of this information relate solely to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

On March 5, from 9 a.m. until 11:30 a.m., the full Board will reconvene. The agenda for this session includes a presentation on the analysis of NAEP results by socio-economic and "opportunity to learn" factors, and to hear reports from the subcommittees. Beginning at 11:30 a.m. and concluding at approximately 12 noon, the meeting will be closed to the public to permit the Board to hear the Nominations Committee recommendations of candidates for Board membership. The review and subsequent discussions of this information relate solely to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

This meeting of the National Assessment Governing Board will be adjourned at approximately 12 noon.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, national Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m. A summary of the activities at each closed portion of these meetings, including related matters that are informative to the public, consistent with the policy of Title 5 U.S.C. 552b(c), will be available to the public within fourteen days of the closed and partially closed meetings.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 94–3563 Filed 2–15–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–304–000]

Central Hudson Gas & Electric Corp.; Filing

February 10, 1994.

Take notice that on January 13, 1994, Central Hudson Gas & Electric Corporation (CH&E) tendered for filing an amendment to FERC Contract No. 26 dated August 26, 1993 between CHG&E and New York State Electric and Gas Corporation (NYSEG). The amended contract provides for an increase in the facilities charge associated with investment at the Smithfield Substation due to the replacement of a motor-operated manually controlled air break switch with a supervisory controlled circuit breaker.

The facilities charge increases from $57.00 per month to $2,410.00 per month and is retroactive to August 16, 1991 the date on which the circuit breaker was placed in service. The update to the facilities charge was delayed until final closure of the Work Order for the system modifications.

CHG&E requests waiver of the FERC advance notice requirement set forth in 18 CFR 35.11.

All other provisions of FERC Contract No. 26 shall remain in effect. CHG&E states that copies of the subject filing were served upon NYSEG.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3556 Filed 2–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–10–008]

Southern Natural Gas Co.; Shortening Comment Period

February 9, 1994.

On February 8, 1994, Southern Natural Gas Company filed a supplemental compliance filing in the above-docketed proceeding. By this notice, the period for filing comments on the filing is shortened to and including February 16, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3555 Filed 2–15–94; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–11, FCC 94–29]

Cellular Application of Telephone and Data Systems, Inc.; Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice of hearing designation order.

SUMMARY: Cellular application of Telephone and Data Systems, Inc. (TDS) is designated for hearing. The Commission has determined that a substantial and material question of fact exists as to whether a subsidiary of TDS has misrepresented facts to or lacked candor before the Commission. The hearing will examine the subsidiary's conduct before the Commission and determine whether TDS holds the requite character qualifications necessary to hold the cellular license for the Wisconsin 8 (Vernon) Rural Service Area.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joseph Weber, Mobile Services Division, Common Carrier Bureau (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of Memorandum Opinion and Order and Hearing Designation Order in CC Docket 94–11, adopted February 1, 1994, and released February 1, 1994.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Memorandum Opinion and Order and Hearing Designation Order

The Commission has designated for hearing the cellular application of Telephone and Data Systems, Inc. (TDS) for the Wisconsin 8 (Vernon) Rural Service Area. United States Cellular Corporation (USCC), a TDS subsidiary, was a party of La Star Cellular Telephone Company (La Star), an applicant to provide cellular service in St. Tammany Parish in the New Orleans, Louisiana Metropolitan Statistical Area. La Star's application was designated for hearing with the mutually exclusive application of New Orleans CGSA, Inc. (NOCGSA). La Star was found to be ineligible and the application of NOCGSA was granted. The Commission affirmed this conclusion. See La Star Cellular Telephone Company, 6 FCC Rcd 6860 (I.D. 1991), *aff'd*, 7 FCC Rcd 3762 (1992), *appeal pending sub nom., Telephone and Data Systems, Inc.* v. *FCC*, Case No. 92–1273 (D.C. Cir.).

NOCGSA argued that USCC misrepresented facts and lacked candor before the Commission. Neither the presiding administrative law judge, nor the Commission reached the merits of those arguments. The Commission did state, however, that the issues could be revisited in future proceedings. See La Star Cellular Telephone Company, 7 FCC Rcd at 3767, n.3.

The Commission has revisited the character arguments in the instant Order and has concluded that a substantial and material question of fact exists as to whether USCC was fully truthful and candid in its dealings with the Commission. For instance, one USCC principal swore in written testimony that a management committee controlled the actions of La Star. Oral testimony elicited from that same witness, however, showed that the management committee served little purpose and did not direct the actions of La Star. Because the Commission believes that a substantial and material question of fact exists about USCC's character, it has designated issues for hearing to determine whether USCC principals misrepresented facts or lacked candor in the *La Star* proceeding. The hearing will also determine based upon the evidence of whether USCC misrepresented facts or lacked candor, whether TDS holds the necessary character qualifications to hold the license for the Wisconsin 8 Rural Service Area.

Pursuant to section 309(e) of the Communications Act of 1934 as amended, TDS's application has been designated for hearing upon the following issues listed below:

(1) To determine whether United States Cellular Corporation misrepresented facts to the Commission, lacked candor in its dealings with the Commission, or attempted to mislead the Commission, and, in this regard, whether United States Cellular Corporation has violated § 1.17 of the Commission's Rules, 47 CFR 1.17.

(2) To determine, based on the evidence adduced in issue 1, above, whether Telephone and Data Systems, Inc. possesses the requisite character qualifications to hold the cellular Block B authorization for the Wisconsin 8 (Vernon) Rural Service Area and, accordingly, whether grant of its application would serve the public interest, convenience, and necessity.

The Commission has further noted that if USCC has lacked candor or misrepresented facts in any pleadings filed within a year of the release of the Order, the presiding administrative law judge may find that USCC or TDS has violated § 1.17 of the Commission's rules and impose a forfeiture up to the statutory maximum.

Federal Communications Commission.

William F. Canton,

Acting Secretary.

[FR Doc. 94–3530 Filed 2–15–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011447.

Title: U.S./Mediterranean Policing Agreement.

Parties:

A.P. Moller-Maersk Line
Croatia Line
d/Amico Societa di Navigazione per Azioni
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
Italia di Navigazione, S.p.A.
Lykes Lines
Med-Pacific Express
Mediterranean Shipping C.
Nedlloyd Lines
Nordana Line AS
P&O Containers Limited
Sea-Land Service, Inc.
United Arab Shipping Company (S.A.G.)
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed Agreement would authorize the parties to discuss, agree and exchange information on matters relating to self-policing and/or neutral body policing of the parties' obligations in the trades from ports in Spain, Italy, North African Spanish ports, Portugal, Mediterranean coast of France, Spanish Mediterranean ports and the Canary Islands, but excluding ports on the Azores Islands, and all ports and points in Continental Europe via such ports, and all U.S. ports and points including Puerto Rico.

Agreement No.: 224–010901–003.

Title: Port of Galveston/Del Monte Fresh Fruit Company.

Parties:

Port of Galveston
Del Monte Fresh Fruit Company ("Del Monte")

Synopsis: The proposed amendment provides for Del Monte to pay 50 percent of the published tariff wharfage rate on containerized bagged resin for the term of the Agreement.

Dated: February 10, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–3546 Filed 2–15–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

G T International, Inc., 3257 S. Del Mar Ave., Rosemead, CA 33054, Officer: Geoffrey Ren, President, Demetrio Pina, Vice President, Vilma Pina, Secretary, Raul Cabrera, Treasurer

Newport Cargo Consolidated, Inc., 12533 Crenshaw Blvd., Hawthorne, CA 90250, Officers: Hae Soon Yoon, President/Stockholder, Hwa Kyung Yoon, Vice President/Stockholder

Green Delta Corp., 2520 NE Broadway Street, #204, Minneapolis, MN 55413, Officer: Keumog L. Ahn, Corporate Executive Officer

Josephine D. Mina-Saito, 29360 North Begonias Lane, Canyon Country, CA 91351, Sole Proprietor

"K" Line Air Service (U.S.A.) Inc., 144–35 157th Street, Jamaica, NY 11434, Officers: Tetsuo Shoji, President, Koichi Inouye, Executive Vice President, Yuichi Aoyagi, Secretary/Treasurer

Express International Forwarders, Inc., 41501 N.W. 97th Ave., Ste. 3, Miami, FL 33172, Officers: Maura A. Paz, Director/President/Treasurer, Lild C. Barrera, Vice President/Secretary

Intercarga U.S.A. Corporation, 8325 N.W. 66th Street, Miami, FL 33166, Officers: Alberto Blest, President/Stockholder, Mariana De Ruiz, Treasurer/Stockholder, Carlos Salhuana, Stockholder

U.S. Cargo, Inc., 1920 N.W. 94th Ave., Miami, FL 33172, Officers: Daniel Gamas, President/Director, John H. Shaw, Secretary/Director.

Dated: February 10, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–3547 Filed 2–15–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

BACKGROUND: Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: Comments are welcome and should be submitted on or before March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551. Gary Waxman, OMB Desk Officer (202/395-7340), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

SUPPLEMENTARY INFORMATION:

Request for OMB approval to revise the following report:

1. *Report title:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks
Agency form number: FFIEC 002
OMB Docket number: 7100-0032
Frequency: Quarterly
Reporters: U.S. branches and agencies of foreign banks
Annual reporting hours: 44,045
Estimated average hours per response: 19.15
Number of respondents: 575
Small businesses are affected.

General description of report:

This information collection is mandatory [12 U.S.C. 3105 (b)(2), 1817(a)(1) and (3), and 3102(b)] and is given partial confidential treatment [5 U.S.C. 552(b)(8)].

On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This balance sheet information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy purposes. The report is collected and processed by the Federal Reserve on behalf of all three federal bank regulatory agencies. The proposed changes affect several existing schedules; the proposed changes are as follows:

(1) Revisions to reflect the effect of Financial Accounting Standards Board Statement No. 115, "Accounting for Certain Investments in Debt and Equity Securities" (FASB 115), which agencies and branches of foreign banks must adopt for FFIEC 002 purposes for fiscal years beginning after December 15, 1993:

(a) A new item would be added to Schedule RAL, "Assets and Liabilities", for "Assets Held in Trading Accounts."

(b) In the Memorandum section of Schedule RAL, "Assets and Liabilities", Memorandum item 1, "Market value of securities held", would be deleted. Four new memoranda items would be added for "Fair value of held-to-maturity securities", "Amortized cost of held-to-maturity securities", "Fair value of available-for-sale securities", and "Amortized cost of available-for-sale securities."

(2) On Schedule RAL, "Assets and Liabilities", a memorandum item would be added to indicate the level of auditing work performed for the U.S. branch.

(3) On Schedule C, "Loans", a new item would be added for "Lease financing receivable (net of unearned income)", with a split into separate subitems for U.S. addressees (domestic) and non-U.S. addressees (domestic).

(4) On Schedule M, "Duefrom/Due to Related Institutions in the U.S. and in Foreign Countries", the title for Part IV, "Allowance for loan losses" would be retitled as "Confidential Loan Information", and a new item would be added for "Other Real Estate Owned."

(5) On Schedule M, Part V, "Commitments and contingencies with related depository institutions", two new items would be added for "all other off-balance sheet contingent liabilities" and "all other off-balance sheet continent claims."

In addition, the general instructions to the FFIEC 002 would be modified to allow on-balance sheet amounts associated with conditional and exchange contracts (e.g., forwards, interest rate swaps, and options) to be offset in accordance with Financial Accounting Standards Board Interpretation No. 39. This would be an interim treatment pending clarification of an interpretive issue under Interpretation No. 39. However, consistent with existing instructions to the commercial bank Call Report, the instructions to the FFIEC 002 would be modified to indicate that the netting of assets and liabilities other than those arising from conditional and excange contracts will not be permitted unless specifically required by the instructions.

The effective date for the proposed changes, if approved, would be the March 31, 1994, report date.

Board of Governors of the Federal Reserve System, February 10, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-3539 Filed 2-15-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Privacy Act of 1974: Altered System of Records

AGENCY: Office of the Assistant Secretary for Management and Budget, Office of the Secretary, HHS.

ACTION: Notice of an altered system of records.

SUMMARY: The U.S. Department of Health and Human Services (HHS) proposes to amend the system notice for its system of records 09–90–0024, the Financial Transactions of HHS Accounting and Finance Offices, by adding routine use Number 16. This routine use would enable the Department to disclose necessary information to automated data processing contractors that have been hired to develop, test, or operate automated data processing systems to be used for processing the financial and accounting transactions of HHS.

DATES: HHS invites interested parties to submit comments on the proposed routine use on or before March 18, 1994. HHS has sent a Report of Altered System to the Congress and to the Office of Management and Budget (OMB) on February 10, 1994. The alteration to the

system will be effective 40 days from the date submitted to OMB unless HHS receives comments which would result in a contrary determination.

ADDRESSES: Please address comments to: Deputy Assistant Secretary, Finance, Room 739–H, Hubert H. Humphrey Building, 200 Independence Ave, SW., Washington, DC 20201.

Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sue Mundstuk, DASF Privacy Act Coordinator, Room 705–D, Hubert H. Humphery Building, 200 Independence Ave, SW, Washington, DC 20201, Telephone: (202) 690–6228.

SUPPLEMENTARY INFORMATION: The system notice was last published at 53 FR 11707 (1988). The proposed routine use is to enable the agency to disclose to a contractor so that it can develop, test, or operate automated data processing systems to be used for processing these financial transactions. This use meets the compatibility of purpose criterion since the financial records have been collected to process and keep track of individual financial transactions, and the automated data processing system being serviced by the contractor will be used for that purpose.

The complete system notice is republished below.

Dated: February 7, 1994.

Kenneth S. Apfel,

Assistant Secretary for Management and Budget.

09–90–0024

SYSTEM NAME:

Financial Transactions of HHS Accounting and Finance Offices, HHS/OS/ASMB.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix 1.

Memoranda copies of claims submitted for reimbursement of travel and other expenditures while on official business may also be maintained at the administrative office of the HHS employee. Records concerning delinquent debts may also be maintained at the program office or by designated claims officers apart from the finance office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who receive a payment from OPDIV/Agency/Regional finance offices and all persons owing monies to these HHS offices. Persons receiving payments include, but are not limited to, travelers on official business, grantees, contractors, consultants, and recipients of loans and scholarships. Persons owing monies include, but are not limited to, persons who have been overpaid and who owe HHS a refund and persons who have received from HHS goods or services for which there is a charge or fee (e.g. Freedom of Information Act requesters).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identification number, address, purpose of payment, accounting classification and amount paid. Also, in the event of an overpayment and for delinquent loans, grants or scholarships, the amount of the indebtedness, the repayment status and the amount to be collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Budget and Accounting Act of 1950 (Pub. L. 81–784). Debt Collection Act of 1982 (Pub. L. 97–365).

PURPOSE(S):

These records are an integral part of the accounting systems at operating division, agency, regional office and specific area locations. The records are used to keep track of all payments to individuals, exclusive of salaries and wages, based upon prior entry into the systems of the official commitment and obligation of government funds. When an individual is to repay funds advanced as a loan or scholarship, etc., the records will be used to establish a receivable record and to track repayment status. In the event of an overpayment to an individual, the record is used to establish a receivable record for recovery of the amount claimed. The records are also used internally to develop reports to the Internal Revenue Service and applicable state and local taxing officials of taxable income. This is a Departmentwide notice of payment and collection activities at all locations listed in Appendix 1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records will be routinely disclosed to the Treasury Department for check preparation.

2. Records may be disclosed to members of Congress concerning a Federal financial assistance program. Also, disclosure may be made to a congressional office from an individual's record in response to an inquiry from the congressional office made at the request of the individual.

3. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its device.

4. A record from this system of records may be disclosed as a "routine use" to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

5. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

6. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

7. Where a contract between a component of the Department and a labor organization recognized under E.O. 11491 provides that the agency will disclose personal records relevant to the organization's mission, records in the system of records may be disclosed to such organization.

8. A record may be disclosed to the Department of Justice, to a court, or other tribunal, or to another party before such tribunal, when: (1) HHS, or any component thereof; (2) Any HHS employee in his or her official capacity; (3) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (4) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

9. A record about a loan applicant or potential contractor or grantee may be disclosed to credit reporting agencies to obtain a credit report in order to determine his/her creditworthiness.

10. When an individual applies for a loan under a loan program as to which the OMB has made a determination under I.R.C. 6103(a)(3), a record about his/her application may be disclosed to the Treasury Department to find out whether he/she has a delinquent tax account, for the sole purpose of determining his/her creditworthiness.

11. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

a. To another Federal agency so that agency can effect a salary offset;

b. To another Federal agency so that agency can effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

c. To the Treasury Department to request his/her mailing address under I.R.C. 6103(m)(2) in order to locate him/her or in order to have a credit report prepared;

d. To agents of the Department and to other third parties, including credit reporting agencies, to help locate him/her or to obtain a credit report on him/her, in order to help collect or compromise a debt;

e. To debt collection agents under 31 U.S.C. 3718 or under common law to help collect a debt; and

f. To the Justice Department for litigation or for further administrative action.

Disclosure under part (d) of this use is limited to the individual's name, address, Social Security number, and other information necessary to identify him/her. Disclosure under parts (a)–(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for purposes of preparing a commercial credit report on the individual. Part (a) applies to claims or debts arising or payable under the Social Security Act only if the employee consents in writing to the offset.

12. A record from this system may be disclosed to another Federal agency that has asked the Department to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States. Disclosure under this routine use is limited to: Name, address, Social Security number, and other information necessary to identify the individual, information about the money payable to or held for the individual, and other information concerning the administrative offset.

13. Disclosure with regard to claims or debts arising under or payable under the Social Security Act may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1986 (31 U.S.C. 3701(a)(3)). However, this disclosure will not be made with regard to debts from overpayments to beneficiaries under Title II (Old-Age, Survivors, and Disability Insurance) and Title XVI (Supplementary Security Income) of this Act. The purpose of this disclosure is to aid in the collection of outstanding debts owed the Federal Government. Disclosure of records is limited to the individual's name, address, Social Security number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency or program under which the claim arose.

14. Information in this system of records is used to prepare W–2 and 1099 Forms to submit to the Internal Revenue Service and applicable state and local governments items considered to be included as income to an individual: certain travel related payments to employees, all payments made to persons not treated as employees (e.g. fees to consultants and experts), and amounts written-off as legally or administratively uncollectible, in whole or in part.

15. A record may be disclosed to banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the individual has given his/her credit card number for this purpose.

16. Records may be disclosed to a contractor (and/or to its subcontractor) who has been engaged to perform services on an automated data processing system used in processing financial transactions. The contractor may have been engaged to develop, modify and test a new automated data processing (ADP) system, including both software and hardware upgrades or enhancements to such a system; perform periodic or major maintenance on an existing ADP system; audit or otherwise evaluate the performance of such an ADP system; and/or operate such an ADP system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): Disclosure may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government, typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Disclosure of records is limited to the individual's name, address, Social Security number, and other information necessary to establish the individual's identity; the amount, status and history of the claim; and the agency or program under which the claim arose. The disclosure will be made only after the procedural requirements of 31 U.S.C. 3711(f) have been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Hard copy documents are manually filed at agency and regional office sites; and on disc pack and magnetic tape at central computer sites.

RETRIEVABILITY:

This varies according to the particular accounting system within the Operating Division, Agency and Regional Office. Usually the hard copy document is filed by name within accounting classification. Computer records may be indexed by social security number and voucher number. Intra-departmental uses and transfers concern the validation and certification for payment, and for HHS internal audits.

SAFEGUARDS:

1. *Authorized users:* Employees and officials directly responsible for programmatic or fiscal activity, including administrative and staff personnel, financial management personnel, computer personnel, and managers who have responsibilities for implementing HHS funded programs.

2. *Physical safeguards:* File folders, reports and other forms of personnel data, and electronic diskettes are stored in areas where fire and life safety codes are strictly enforced. All documents and diskettes are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas. Magnetic tapes and computer matching tapes are locked in a computer room and tape vault.

3. *Procedural safeguards:* Password protection of automated records is provided. All authorized users protect information from public view and from unauthorized personnel entering an office. The safeguards described above were established in accordance with HHS Chapter 45–13 of the General Administration Manual; and the HHS ADP Systems Manual Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records are purged from automated files once the accounting purpose has been served; printed copy and manual documents are retained and disposed of in accordance with General Accounting Office principles and standards as authorized by the National Archives and Records Service.

SYSTEM MANAGER(S) AND ADDRESS:

See Appendix 2.

NOTIFICATION PROCEDURE:

Inquiries are to be made, either in writing or in person, to the organizations listed under "Location" in appendix 1, with the exception of Food and Drug Administration records. For those records, contact: FDA Privacy Act Coordinator (HFW–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Give name and social security number, purpose of payment or collection (travel, grant, etc.) and, if possible, the agency accounting classification.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also clearly specify the record contents being sought, and may include a request for an accounting of disclosures that have been made of their records, if any. (These access procedures are in accordance with Department regulations (45 CFR 5b.5(a)(2)).)

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedure above, and reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Travel vouchers submitted by the individual; grant, contract and loan award document; delinquent loan, grant and scholarship record; consultant invoice of services rendered; and application for travel advance.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1

Location

Payments to and Collections from individual records are located at the following HHS Regional Offices:

Regional Office I, John F. Kennedy Federal Building, Boston, MA 02203
Regional Office II, 26 Federal Plaza, Room 41–106, New York, NY 10278
Regional Office III, 3535 Market Street, PO Box 13716, Philadelphia, PA 19101
Regional Office IV, 101 Marietta Tower, Atlanta, GA 30323
Regional Office V, 105 West Adams St., Chicago, IL 60603
Regional Office VI, 1200 Main Tower, Room, 935, Dallas, TX 75202
Regional Office VII, Federal Office Building, Kansas City, MO 64106
Regional Office VIII, Federal Office Building, 1961 Stout Street, Denver, CO 80294–3538
Regional Office IX, Federal Office Building, Room 411, 50 United Nations Plaza, San Francisco, CA 94102
Regional Office X, 2201 6th Avenue, Seattle, WA 98121.

Payments to and Collections from individuals records are located at the following HHS Operating Division and Agency Headquarters and Field Offices:

Office of the Secretary (to include the records of Administration for Children and Families) Hubert H. Humphrey Building, 200 Independence Avenue, SW., Division of Accounting Operations, Washington, DC 20201.

Indian Health Service

Headquarters IHS, 5600 Fishers Lane, Room 6A–30, Rockville MD 20857
Aberdeen Area IHS, Federal Building, 115 Fourth Ave., SE, Aberdeen, SD 57401
Alaska Area IHS, 250 Gambell St., Anchorage, AK 99501
Albuquerque Area Office, 505 Marquette NW, Suite 1502, Albuquerque, NM 57102–2163
Albuquerque Headquarters West IHS, 300 San Mateo, NE, Suite 500, Albuquerque, NM 87108
Bemidji Area IHS, 203 Federal Building, Bemidji, MN 56601
Billings Area IHS, 711 Central Ave., Billings, MT 59103
California Area IHS, 1825 Bell St., Sacramento, CA 95825–1097
Nashville Area IHS, 3310 Perimeter Hill Dr., Nashville, TN 37211
Navajo Area IHS, PO Box "G", Window Rock, AZ 86515–5004
Oklahoma Area IHS, 3625 NW 56th St., Five Corporation Plaza, Oklahoma City, OK 73112
Phoenix Area IHS, 3738 North 16th St., Suite "A", Phoenix, AZ 85016–5981
Portland Area IHS, 1220 SW Third Ave., Room 476, Portland, OR 97204–2892
Office of Health Program Research and Development IHS, 7900 South "J" Stock Rd., Tucson, AZ 85746–9352.

Public Health Service

Centers for Disease Control and Prevention, Financial Management Office (E–12), 1600 Clifton Road, NE, Atlanta, GA 30333
Centers for Disease Control and Prevention, Accounting Section (C05), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226
Food and Drug Administration, Parklawn Building, HFA–120, 5600 Fishers Lane, Rockville, MD 20857
Food and Drug Administration, 60 Eighth Street, NE, Atlanta, GA 30309
Food and Drug Administration, Boston District Office, One Montvale Avenue, Stoneham, MA 62180
Food and Drug Administration, 599 Delaware Avenue, Buffalo, NY 14202
Food and Drug Administration, Room 700, Federal Office Building, 850 3rd Avenue (at 30th Street), Brooklyn, NY 11232
Food and Drug Administration, 61 Main Street, West Orange, NJ 07052
Food and Drug Administration, room 1204, US Customhouse, 2nd and Chestnut Streets, Philadelphia, PA 19106
Food and Drug Administration, 900 Madison Avenue, Baltimore, MD 21201
Food and Drug Administration, San Juan District Office, PO Box 5719 PTA, De Tierra Station, San Juan, PR 00906–5719
Food and Drug Administration, Room 1222, Main Post Office Building, 433 West Van Buren Street, Chicago, IL 60607
Food and Drug Administration, 1560 East Jefferson Avenue, Detroit, MI 48207
Food and Drug Administration, 1141 Central Parkway, Cincinnati, OH 45202
Food and Drug Administration, 240 Hennepin Avenue, Minneapolis, MN 55401
Food and Drug Administration, 3032 Bryan Street, Dallas, TX 75204
Food and Drug Administration, 4298 Elysian Fields, New Orleans, LA 70122
Food and Drug Administration, National Center for Toxicological Research, Jefferson, AR 72079
Food and Drug Administration, 1009 Cherry Street, Kansas City, MO 64106
Food and Drug Administration, Room 1002, US Courthouse and Courthouse Building, 1114 Market Street, St. Louis, MO 63101
Food and Drug Administration, Building 20, Denver Federal Center, PO. Box 25087, Denver, CO 80255–0087
Food and Drug Administration, Federal Office Building, Room 506, 50 U.N. Plaza, San Francisco, CA 94102
Food and Drug Administration, 1521 West Pico Boulevard, Los Angeles, CA 90015
Food and Drug Administration, 22201 23rd Avenue, SE., Bothell, WA 98021–4421.

National Institutes of Health

National Institutes of Health, Operations Accounting Branch, Building 31 Room B1B58, 9000 Rockville Pike, Bethesda, MD 20014
National Institutes of Health, Building 1, Room 222, Rocky Mountain laboratory, Hilton, MT 59840
National Institutes of Health, National Institute of Mental Health, WAW Building, Room 562, St. Elizabeth's Hospital, Washington, DC 20032
National Institutes of Health, Frederick Cancer Research Facility, Fort Detrick Building, Room 427, Frederick, MD 21702–1201
National Institutes of Health, National Institutes of Environmental Health Sciences, Building 101, Room B2–03, Research Triangle Park, NC 27709
National Institutes of Health, National Institute on Drug Abuse, Addiction Research Center, 4940 Eastern Avenue, Building C, Room 248, Baltimore, MD 21224
National Institutes of Health, National Institute on Aging, Gerontology Research Center, 4940 Eastern Avenue, Room 1–E–15, Baltimore, MD 21224
Social Security Administration, Division of Finance, Administrative Collections, PO Box 17052, Baltimore, MD 21235
Social Security Administration, Division of Finance, Vendor Payment Inquiries, PO Box 47, Baltimore, MD 21235
Social Security Administration, Office of Disability Operations, PO Box 1039, Baltimore, MD 21241

Title II:

Social Security Administration—Title II, Northeastern Program Service Center, PO Box 4400, Jamaica, NY 11431
Social Security Administration—Title II, Mid-Atlantic Program Service Center, PO Box 3430, Philadelphia, PA 19122
Social Security Administration—Title II, Southeastern Program Service Center, PO Box 830580, Birmingham, AL 35282–0688
Social Security Administration—Title II, Great Lakes Program Service Center, PO Box 4471, Chicago, IL 60680
Social Security Administration—Title II, Western Program Service Center, PO Box 1909, Richmond, CA 94802–9966
Social Security Administration—Title II, Mid-America Program Service Center, PO Box 15528, Kansas City, MO 64106–9937
Social Security Administration—Title XVI, Northeastern Program Service Center, PO Box 4500, Jamaica, NY 11431
Social Security Administration—Title XVI, Mid-Atlantic Program Service Center, PO Box 3490, Philadelphia, PA 19122
Social Security Administration—Title XVI, Southeastern Program Service Center, PO Box 12263, Birmingham, AL 35282–3678
Social Security Administration—Title XVI, Great Lakes Program Service Center, PO Box 5931, Chicago, IL 60680
Social Security Administration—Title XVI, Western Program Service Center, PO Box 4055, Richmond, CA 94804–9941
Social Security Administration—Title XVI, Mid-America Program Service Center, PO Box 15627, Kansas City, MO 64106–9937
Health Care Financing Administration, Gwynn Oak Avenue, Baltimore, MD 21235.

Payments to and Collections from individual records maintained by the Payment Management System at the following central payment office for Grants and contracts:

Public Health Service, Division of Payment Management, Box 6021, Rockville, MD 20852.

Appendix 2

Systems Manager, Departmental principles and standards concerning the system of records are the responsibility of:

Department of Health and Human Services, Assistant Secretary for Management and Budget, Office of the Secretary, Room 510A, Hubert H. Humphrey Building, Washington, DC 20201

Operational responsibilities are as follows:

- For payment and Collections from individual records at Department and Regional Offices: Department of Health and Human Services, Office of the Secretary and Headquarters for Regional Operations, Finance, Room 750D, Hubert H. Humphrey Building, Washington, DC 20201.
- For Payments and Collections from individual records at Principal Operating Component Offices (CDC, FDA, NIH, SAMHSA, HRSA, ASH, IHS, AHCPR):

Public Health Service, Director, Division of Financial Management, Room 16–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857
Social Security Administration, Director, Office of Financial Management, Room 840, Annex Social Building, Baltimore, MD 21235
Administration for Children and Families, Director, Office of Financial Management, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447
Health Care Financing Administration, Director, Office of Management and Budget, Room G–P–4, East High Rise Building, 8401 Security Blvd, Baltimore, MD 21235
or
Health Care Financing Administration, Room H1, Hubert H. Humphrey Building, 200 Independence Ave, SW., Washington, DC 20201.

[FR Doc. 94–3541 Filed 2–15–94; 8:45 am]
BILLING CODE 4160–04

Centers for Disease Control and Prevention

Sanford Cohen and Associates' Working Group for the Idaho National Engineering Laboratory Environmental Dose Reconstruction Project and Public Information Meetings; Public Meetings

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), announces the following meetings.

NAME: Sanford Cohen and Associates' Working Group for the Idaho National Engineering Laboratory Environmental Dose Reconstruction Project and Public Information meetings

Date: Thursday, March 3, 1994
Time: 2 p.m.–4 p.m.
Place: Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho 83402

Date: Wednesday, March 23, 1994
Time: 7 p.m.–9 p.m.
Place: Red Lion-Riverside, 2900 Chinden Boulevard, Boise, Idaho 83714

Date: Thursday, March 24, 1994
Time: 7 p.m.–9 p.m.
Place: Red Lion-Riverside, 2900 Chinden Boulevard, Boise, Idaho 83714

Date: Tuesday, May 24, 1994
Time: 7 p.m.–9 p.m.
Place: Shilo Inn, 702 Appleway, Coeur d'Alene, Idaho 83814

Date: Wednesday, May 25, 1994
Time: 10 a.m.–3 p.m.
Place: Shilo Inn, 702 Appleway, Coer d'Alene, Idaho 83814

Date: Wednesday, July 13, 1994
Time: 10 a.m.–3 p.m.
Place: Weston Plaza Hotel and Convention Center, 1350 N. Blue Lakes Boulevard, Twin Falls, Idaho 83301

STATUS: Open to the public for observation and comment, limited only by space available. The meeting room will accommodate approximately 100 people.

PURPOSE: Under a Memorandum of Understanding signed in December 1990 with the Department of Energy (DOE), the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

CDC has begun an environmental dose reconstruction for DOE's Idaho National Engineering Laboratory (INEL) near Idaho Falls, Idaho. Sanford Cohen & Associates (SC&A) is gathering the data necessary to perform the dose reconstruction under contract to CDC. SC&A has formed a working group made up of Idaho citizens. The working group's primary purpose is to follow the project's progress and provide input in SC&A's planning process.

The working group meetings are intended to promote direct public input into Phase I of the INEL Dose Reconstruction Project. Topics will focus particularly on technical and operational issues to help improve and expedite the process of identifying and retrieving documents relevant to a dose reconstruction for INEL.

The public information meetings are to: (1) share information about SC&A's working group, (2) provide the public an opportunity to review actual records that have been entered into the database; and (3) gain input from the public on the project.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Leeann S. Denham, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., (F–35), Atlanta, Georgia, 30341–3724, telephone 404/488–7040, FAX 404/488–7044.

Dated: February 10, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–3577 Filed 2–15–94; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Detroit, Michigan District Office, chaired by Carl Reynolds, District Director. The topics to be discussed are medical devices, current good manufacturing practice regulations, proposed revisions, and request for comments.

DATES: Thursday, February 24, 1994, 1 p.m. to 3 p.m.

ADDRESSES: Methodist Hospital Auditorium, 1601 North Senate Ave., Indianapolis, IN 46206.

FOR FURTHER INFORMATION CONTACT: Janet LeClair, Public Affairs Specialist, Food and Drug Administration, 101 West Ohio St., Indianapolis, IN 46204, 317–226–6500.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: February 9, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–3571 Filed 2–15–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1994:

Name: HRSA AIDS Advisory Committee.
Time: March 14–15, 1994, 8 a.m.
Place: National Institutes of Health, Building 31, Conference Rm. 6, 9000 Rockville Pike, Bethesda, MD 20205.

The meeting is open to the public.

Purpose: The Committee advises the Secretary with respect to health professional education, patient care/health care delivery to HIV-infected individuals, and research relating to transmission, prevention and treatment of HIV infection.

Agenda: Discussions will be held concerning issues related to the reauthorization of the Ryan White Comprehensive AIDS Resources and Emergency Act of 1990; the AIDS Education Training Centers program, and the evaluation of Ryan White Programs.

Anyone requiring information regarding the subject Committee should contact Pearl Katz, Ph.D., AIDS Program Office, Health Resources and Services Administration, room 14A–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–4588.

Agenda items are subject to change as priorities dictate.

Dated: February 10, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–3549 Filed 2–15–94; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Special Project Grants; Maternal and Child Health Services; Federal Set-Aside Program; Collaborative Health, Education and Human Services Systems Interprofessional Education and Training

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Notice of availability of funds.

SUMMARY: The Maternal and Child Health Bureau (MCHB), HRSA, announces that fiscal year (FY) 1994 funds are available for grants to create collaborative health, education, and human service systems for children and their families, including children with special health care needs. Awards will be made under the program authority of section 502(a) of the Social Security Act, the Maternal and Child Health (MCH) Federal Set-Aside Program, which authorizes MCH Special Projects of Regional and National Significance (SPRANS), including special MCH improvement projects (MCHIP) which contribute to the health of children with special health care needs (CSHCN) and their families.

Approximately $600,000 will be available to support up to 2 grants at a maximum of $300,000 per award per year for up to 4 years. Funds for the MCH Federal Set-Aside Program are appropriated by Public Law 103–112. A **Federal Register** notice announcing the availability of funds for other SPRANS categories will be published in the near future.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The MCH Block Grant Federal Set-Aside Program addresses issues related to the Healthy People 2000 objectives of improving maternal, infant, child and adolescent health and developing service systems for children at risk of chronic and disabling conditions. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office Washington, DC 20402–9325, (telephone: 202 783–3238).

ADDRESSES: Grant applications must be obtained from and submitted to: Chief, Grants Management Branch, Office of Program Support, Maternal and Child Health Bureau, Health Resources and Services Administration, room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1440. Applicants for these projects will use application Form PHS 5161–1 with revised face page DHHS Form 424, approved by OMB under control number 0937–0189.

DATES: The application deadline date is March 18, 1994. Competing applications will be considered to be on time if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Late applications or those sent to an address other than indicated in the **ADDRESS** section will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For programmatic or technical information contact Merle G. McPherson, M.D., 5600 Fishers Lane, room 18A–27, telephone: 301 443–2350. Requests for information concerning business management issues should be directed to Mrs. Maxine Toense, Grants Management Branch, telephone: 301 443–1440.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Grants covered by this announcement will be supported by SPRANS funds set aside under the Maternal and Child Health Services Block Grant in the category of special MCH improvement projects (MCHIP) which contribute to the health of CSHCN and their families. The purpose of these grants is to help eliminate overlap and fragmentation of services to children and their families through creation of new community service systems, working together with health, education and social service professionals. Applications are solicited for projects which:

(1) Demonstrate the ability of health, social service and education professionals to work together in communities to foster successful physical, social and emotional growth for children and their families;

(2) Assist in the development of curricula at institutions of higher learning, based on best practices learned in community settings; and

(3) Disseminate a collaborative model of personnel training and service delivery at the regional, State and national levels.

Grantees are expected to work collaboratively with the Commission on Leadership in Interprofessional Education to field test model curricula. The Commission, an organizational unit of the Association of Teacher Educators which grew out of a March, 1990, symposium cosponsored by MCHB, the American Association of Colleges for Teacher Education, and the American Academy of Pediatrics, focuses on the study of ways to produce a new generation of interprofessionally oriented leaders in health, teaching, administration, social work, and other human service professions whose members possess the knowledge, skills and values needed to create new community service systems for children and their families.

Preference for funding will be given to applicants with prior experience linking health, education and social service professionals together with policy makers in State and local health and education agencies and private sector organizations to solve complex problems facing children and their families that require collaboration. This means that approved applicants with such experience will be funded ahead of other categories or groups of applicants.

Applicants will use guidelines adapted from the FY 1993 SPRANS Field-Initiated Project subcategory to prepare their applications. These guidelines will be included with the grant application materials. Information in this announcement, such as application receipt dates, will supersede that contained in the guidelines.

Time does not permit a formal comment period on the category and preferences described above. Any comments which members of the public wish to make should be submitted to: Chief, Grants Management Branch, at the address listed in the **ADDRESSES** section.

Special Concerns

In its administration of the MCH Services Block Grant, the MCHB places special emphasis on improving service delivery to women and children from culturally identifiable populations who have been disproportionately affected by barriers to accessible care. This means that SPRANS projects are expected to serve and appropriately involve in project activities members of ethnoculturally distinct groups, unless there are compelling programmatic or other justifications for not doing so. The MCHBs intent is to ensure that project outcomes are of benefit to culturally distinct populations and to ensure that the broadest possible representation of culturally distinct and historically underserved groups is supported through programs and projects sponsored by the MCHB.

Projects supported under SPRANS are expected to be part of community-wide, comprehensive initiatives, to reflect appropriate coordination of primary care and public health activities, and to target HRSA resources effectively to fill gaps in the Nations health system for at-risk mothers and children. This applies especially to projects in the 15 communities in the Nation which have received grants from HRSA under the Administrations Healthy Start initiative. Grantees in these communities providing services related to activities of a Healthy Start program are expected to coordinate their projects with the Healthy Start program efforts. Healthy Start communities include: Aberdeen Area Indian Nations, NE/ND/SD; Baltimore, MD; Birmingham, AL; Boston, MA; Chicago, IL; Cleveland, OH; Detroit, MI; Lake County, IN; New Orleans, LA; New York, NY; Oakland, CA; Philadelphia, PA; Pittsburgh, PA; PeeDee Region, SC; and Washington, DC.

Grants/Amounts: Up to $600,000 of SPRANS funds will be available to support up to two projects at a maximum of $300,000 per award for a one-year period. Awards are made for grant periods of up to four years.

Review Criteria

The following general criteria are used, as pertinent, to review and evaluate for funding all applications for SPRANS grants and cooperative agreements:

—The quality of the project plan or methodology.
—The need for the services, research, training or technical assistance.
—The cost-effectiveness of the proposed project relative to the number of persons proposed to be benefitted, served or trained, considering, where relevant, any special circumstances associated with providing care or training in various areas.
—The extent to which the project will contribute to the advancement of MCH and/or CSHCN services.
—The extent to which rapid and effective use of grant funds will be made by the project.
—The effectiveness of procedures to collect the cost of care and service from third-party payment sources (including government agencies) which are authorized or under legal obligation to make such payment for any service (including diagnostic, preventive and treatment services).
—The extent to which the project will be integrated with the administration of the Maternal and Child Health Services block grants, State primary care plans, public health, and prevention programs, and other related programs in the respective State(s).
—The soundness of the project's management, considering the qualifications of the staff of the proposed project and the applicant's facilities and resources.
—The extent to which the project gives special emphasis to improving service delivery to women and children from culturally identifiable populations who have been disproportionately affected by barriers to accessible care and ensures that members of culturally distinct groups are appropriately represented in the activities of approved grants and cooperative agreements.
—In communities with Healthy Start projects, a commitment by applicants whose projects are related to activities of a Healthy Start program to coordinate their projects with Healthy Start program efforts.
—The strength of the project's plans for evaluation.
—The strength of the applicant's prior experience linking health, education

and social service professionals together with policy makers in State and local health and education agencies and private sector organizations to solve complex problems facing children and their families that require collaboration.

In addition to the above criteria, other special review criteria are used to assess grants announced in this notice. As detailed in the guidance enclosed with the application packet, these special review criteria focus closely on the quality of each element of the program narrative section of the application: the problem; contributing factors; project goals; outcome objectives; methodology; tracking of project implementation; monitoring and evaluations; use of project information; capabilities of the applicant; budget and justification; and the overall significance of the project.

Eligible Applicants

Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for grants in the MCHIP category.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

The MCH Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: December 6, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 94–3548 Filed 2–15–94; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Monitoring Committee Meeting

AGENCY: Department of the Interior, U.S. Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Monitoring Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. A number of subjects will be discussed during the Committee meeting including: continuation of the review of monitoring programs collecting data concerning non-indigenous species and further development of a pilot program to acquire data from existing monitoring programs.

DATES: The Monitoring Committee will meet from 9 a.m. to 3 p.m. on Thursday, March 3, 1994.

ADDRESSES: The Monitoring Committee meeting will be held at the U.S. Fish and Wildlife Service Building, room 200A, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. James Weaver, National Fisheries Research Center, 7920 NW. 71st Street, Gainesville, Florida 32606 at (904) 378–8181.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Monitoring Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Monitoring Committee Chairman, National Fisheries Research Center, 7920 NW. 71st Street, Gainesville, Florida 32606 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: February 8, 1994.

Gary Edwards,

Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 94–3559 Filed 2–15–94; 8:45 am]

BILLING CODE 4310–55–M

Great Lakes Panel on Aquatic Nuisance Species; Meeting

AGENCY: Department of the Interior, U.S. Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Great Lakes Panel on Aquatic Nuisance Species (Great Lakes Panel), a regional committee of the Aquatic Nuisance Species Task Force. A number of subjects will be discussed including: Implementation of the information/education strategy, development of the State comprehensive management plans, legislative and budget priorities, and research needs.

DATES: The Great Lakes will meet from 9 a.m. to 5 p.m. on Friday, March 11, 1994.

ADDRESSES: The meeting will be held at the Holiday Inn Madison West, 1313 John Q. Hammons Drive, Middleton, Wisconsin 53562–3500 at (608) 831–2000.

FOR FURTHER INFORMATION CONTACT: Lori Reynolds, Great Lakes Commission, The Argus Building, 400 Fourth Street, Ann Arbor, Michigan 48103 at (313) 665–9135.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Great Lakes Panel on Aquatic Nuisance Species, a regional committee of the Aquatic Nuisance Species Task force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 7461, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of meeting will be maintained by Coordinator, Aquatic Nuisance Species Task force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Great lakes Panel Coordinator, Great Lakes Commission, The Argus Building, 400 Fourth Street, Ann Arbor, Michigan 48103 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: February 8, 1994.

Gary Edwards,

Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 94–3560 Filed 2–15–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Pecos National Historical Park; Minor Revision of Park Boundary

Public Law 101–313 established Pecos National Historical Park on June 27, 1990. The March 1990 map, referenced in the legislation as "Pecos National Historical Park Boundary Concept" and numbered 430/80028 identified the area of the park as being approximately 5,865 acres including the Forked Lightning Ranch. Section 202(b) of Public Law 101–313 authorizes the Secretary of the Interior to make minor revisions in the boundary of the park in accordance with section 7(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–4 and following).

Since establishment of the park, the National Park Service has determined that the Forked Lightning Ranch actually included property located outside the established boundary: A 66.29-acre parcel of land encumbered by an easement for the old U.S. Highway 85, and an unencumbered 29.26 acres located west of the old highway easement. It was the intention of the parties involved in the expansion of the park to include the entire Forked Lightning Ranch property within the boundary. In order to facilitate improved resource protection and law enforcement it has been determined necessary to revise the park boundary to include an additional 100.55 acres. This includes the Old Highway 85 right-of-way (66.29 acres), the 29.26-acre parcel located west of the old highway, and an additional 5.00 acres owned by the State of New Mexico located adjacent to the old highway.

Therefore, notice is hereby given that in accordance with the Land and Water Conservation Fund Act, as amended, the boundary of Pecos National Historical Park should be revised as described above. The revised boundary is depicted on a map entitled "Boundary Map, Pecos National Historical Park," Drawing No. 430/80,043, and dated September 1993. This map is on file and available for inspection in the Office of the National Park Service, Department of the Interior; the Office of the Southwest Region, National Park Service; and the Office of the Superintendent, Pecos National Historical Park.

Dated: January 26, 1994

Mary R. Bradford,

Acting Regional Director, Southwest Region.

[FR Doc. 94–3542 Filed 2–15–94; 8:45 am]

BILLING CODE 4310–70–P

General Management Plan, Development Concept Plan, and Final Environmental Impact Statement; Natchez National Historical Park, MS

AGENCY: National Park Service; Interior.

ACTION: Notice of availability of General Management Plan/Development Concept Plan/Final Environmental Impact Statement, Natchez National Historical Park, Mississippi.

SUMMARY: Pursuant to Council on Environmental Quality Regulations and National Park Service Policy, the National Park Service (NPS) announces the release of the General Management Plan/Development Concept Plan/Final Environmental Impact Statement (GMP/DCP/FEIS) for Natchez National Historical Park, Mississippi.

DATES: The GMP/DCP/FEIS will be on public review until March 21, 1994. Any review comments must be postmarked no later than March 21, 1994, and addressed to the Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Superintendent, Natchez National Historical Park, P.O. Box 1208, Natchez, Mississippi 39121. Telephone: (601) 442–7047.

SUPPLEMENTARY INFORMATION: The GMP/DCP/FEIS presents three alternatives for future management and use of Natchez National Historical Park. The draft plan went on public review in May/June 1993. This final plan incorporates comments made during that public review.

Copies of the GMP/DCP/FEIS are available for review at the Regional Office in Atlanta and at the park. Copies of the GMP/DCP/FEIS may be obtained from the Superintendent at the above address.

Dated: February 9, 1994.

James W. Coleman, Jr.,

Regional Director, Southeast Region.

[FR Doc. 94–3543 Filed 2–15–94; 8:45 am]

BILLING CODE 4310–70–M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on Wednesday, March 16, 1994, in the Environmental Education Center, Barataria Preserve Unit, Jean Lafitte National Historical Park and Preserve, 7400 Highway 45, Marrero, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—General Park Update
—Lake Salvado Erosion Barrier
—General Management Plan
—Natural Resources Protection Program
—Proposed Wildlife and Recreation Zone
—Nutria Populations
—Old Business
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, suite 3080, New Orleans, Louisiana 70130, Telephone 504/589–3882.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: February 2, 1994.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 94–3544 Filed 2–15–94; 8:45 am]

BILLING CODE 4310–70–M

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of National Park System Advisory Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that a meeting of the National Park System Advisory Board will be held on Sunday, March 6, 1994, at The Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia. The general business meeting will start at 8 a.m., continuing until about 5 p.m.

After opening remarks by various National Park Service speakers, the Board will receive an interim report from its Land and Water Conservation Fund Review Committee, which is scheduled to provide a final report in August 1994. By mid-morning, the Board's Natural Areas Committee is to bring recommendations before the Board regarding a Special Resource Study of the Ka Iwi area of Oahu, Hawaii. The Board's History Areas Committee will next present recommendations regarding a Special Resource Study of New Bedford, Massachusetts, then a number of National Historic Landmark nominations and related topics for consideration. Later in the day, the Board's Historic Preservation Performance Review Committee will propose recommendations for deliberation and adoption by the Board, as will the Board's Humanities Committee. Other miscellaneous topics and reports may also be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Chairman may also permit attendees to address the Board, but may restrict the length of presentations as necessary to allow the Board to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Mr. David L. Jervis, Office of Policy, National Park Service, P.O. Box 37127, Washington, DC 20013–7127 (telephone 202–208–4030). More specific information on potential National Historic Landmarks may be obtained from Senior Historian Benjamin Levy (History Division, telephone 202–343–8164) at the same P.O. Box address.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 1220, Main Interior Building, 1849 C Street NW., Washington, DC.

John J. Reynolds,

Deputy Director.

[FR Doc. 94–3545 Filed 2–15–94; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–32 (Sub-No. 59X)]

Boston and Maine Corporation; Abandonment Exemption—Middlesex County, MA

[Docket No. AB–355 (Sub-No. 11X)]

Springfield Terminal Railway Company—Discontinuance of Service Exemption; Middlesex County, MA

Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments and Discontinuances to abandon and discontinue service over a segment of B&M's rail line known as the Lowell Secondary Track, between milepost 24.27 and milepost 25.01, a distance of approximately 0.74 miles, in Lowell, Middlesex County, MA. B&M seeks authority to abandon the line, and ST, which leases the line from B&M, seeks authority to discontinue service over the line.

B&M and ST certify that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic, if any, has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication),[1] and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 18, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by February 28, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 8, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicants' representative: Kevin J. O'Connell, Esq., Law Department, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

B&M and ST have filed an environmental report which addresses the effect, if any, of the abandonment and the discontinuance on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 18, 1994. Interested persons may obtain a copy of the EA by writing to SEA (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 3, 1994.

[1] B&M and ST certify that they have met the newspaper publication requirement of 49 CFR 1105.7(c). The substance of the publication and certification required by that section for environmental reports is the same as that set forth at 49 CFR 1105.12.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–3595 Filed 2–15–94; 8:45 am]

BILLING CODE 7035–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 22, 1994, through February 4, 1994. The last biweekly notice was published on February 2, 1994 (59 FR 4933).Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 18, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinic n. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the

amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director):** petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: January 24, 1994

Description of amendment request: The proposed amendment would implement Line Item 5.9 of NRC Generic Letter 93-05, "Line Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation," which recommends licensees consider deleting the requirements to perform response time testing for selected instrumentation in the isolation system where the required time corresponds to the diesel start time.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

LaSalle has evaluated the proposed Technical Specification Amendment. Based upon the criteria for defining a Significant Hazards Consideration established in 10 CFR 50.92(c), operation of LaSalle County Station in accordance with the proposed amendment will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposal seeks to eliminate response time testing requirements for selected instrumentation in the isolation system. The proposal does not introduce changes in the response times themselves. The probability and consequences of an accident previously evaluated are not increased because accepted licensing criteria are maintained. The requirements for channel checks, functional tests, calibrations, and logic system functional tests are not altered by this proposal. The ability to detect degrading trends of response times is available via the above Technical Specification required tests. Therefore, the response times of these systems will be maintained within the acceptance limits assumed in plant safety analyses and required for successful mitigation of an initiating event because of the continued Technical Specification testing.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposal does not change component or system interactions. Accident analyses assume a loss of AC power which is restored by startup of emergency diesel generators. The 13 second interval associated with the restoration of AC power, which establishes the response time for the isolation functions, is maintained. The starting, sequencing, and loading functions associated with the diesel generators is not affected by the proposed change. The response times include the instrument response times, which are typically measured in fractions of a second, and the response times of the actuation logic circuits, which are typically less than a second. These times are small in comparison to the diesel generator start time (13 seconds). The ability of the isolation system to perform its intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in plant safety analyses is not altered by the proposed change.

3) Involve a significant reduction in a margin of safety because:

The proposal does not involve the relaxation of any criteria identified in the SAR or reduce any of the requirements of Technical Specifications. The proposed revision does not affect licensing acceptance limits associated with accidents. With the exception of MSIVs, the safety analyses do not address individual sensor response times or the response times of the logic systems to which the sensors are connected. These analyses conservatively establish the margin of safety. Deleting the requirement to perform unnecessary response time testing does not affect the results of accident and transient analyses. Plant and system response to an initiating event will remain in compliance within the assumptions of safety analyses.

The proposed change does not increase the probability or consequences of an accident, and there is no impact on equipment important to safety or systems, structures or components. There is no associated change to the type, amount, or control of radioactive effluents, nor is there an associated increase in individual or cumulative occupational radiation exposure. There is no effect upon the capabilities of the associated systems to perform their intended functions within the allowed response times assumed in safety analyses. Therefore, the margin of safety is preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: January 17, 1994

Description of amendment request: Connecticut Yankee Atomic Power Company (CYAPCO) proposes to remove Technical Specification 3/4.4.12, "Failed Fuel Rods" and its associated BASES Section 3/4.4.12.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

A review of the accidents detailed in the Updated Final Safety Analysis Report, Chapter 15, was undertaken to determine if they were impacted by the proposed change. The review indicated that the previously evaluated accidents were not impacted by the proposed license amendment.

All fuel design and performance criteria are the same for Cycle 18 as in previous cycles. All criteria will continue to be met and no new single-failure mechanisms will be created. This change does not involve any alterations to plant equipment or procedures which would affect any operational modes or accident assumptions. This proposed license amendment does delete a technical specification that is no longer considered necessary. This deletion is prompted by the replacement of stainless steel clad fuel with zircaloy clad fuel. The zircaloy clad fuel, if it experiences damage, will release iodine into the primary system. Any iodine released is covered within the guidelines specified in the existing Technical Specification 3/4.4.8, "Specific Activity." This specification will ensure that operation does not continue with radiochemistry values that exceed those assumed in our accident assumptions. The existing Technical Specification of specific activity along with the zircaloy clad fuel will ensure that a significant increase in the probability or consequences of an accident previously evaluated is not present.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The possibility of an accident or malfunction of a different type than any evaluated previously in the UFSAR [Updated Final Safety Analysis Report] is not created. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

The presence of defective fuel rods and the resultant iodine release would only affect potential offsite doses. This proposed license amendment does not increase the radiochemistry limits, but does revert the technical specifications back to the standard methodology and limitations that were unable to be used because of the stainless steel clad fuel. These new limitations will continue to ensure that doses remain within the limits prescribed.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not have any adverse impact on the protective boundaries. The margin of safety, as defined in the basis for any technical specification, is not reduced. The proposed changes do not adversely impact any of the safety systems, nor do they increase the number of challenges to the safety systems.

The limit of 160 defective rods was chosen to be consistent with initial conditions assumed for the radiological design basis. The elimination of this specification is acceptable since the basis for the initial condition can be supported by the use of zircaloy clad fuel as opposed to the unique stainless steel clad. If future fuel defects are debris induced, the dose equivalent iodine will be within expected radiochemistry values and the resulting doses will be bounded. Therefore, there is no reduction in the margin of safety as defined in the basis of any technical specification with the deletion of the defective fuel rod technical specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: December 6, 1993

Description of amendment request: The proposed amendment request would revise the Technical Specifications (TSs) to provide a temporary one-time revision to the Definition Section of the TS. Specifically, a footnote is added in the Definition Section of the TS which is applicable to TS 1.2.1, "Cold Shutdown Condition," changing T_{avg} less than or equal to 200°F to less than or equal to 250°F and TS 1.2.2, "Hot Shutdown Condition," changing T_{avg} greater than 200°F to greater than 250°F. The footnote further states that the change is for the one time, fuel out, chemical decontamination program. This program is currently scheduled for the upcoming 1995 refueling outage of the Indian Point Nuclear Generating Unit 2.

Basis for proposed no significant hazards consideration determination As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Approval of the proposed one time change to the Technical Specification definition of cold shutdown for purposes of performing the full RCS [reactor coolant system] chemical decontamination without fuel in the reactor would provide relief from unnecessary technical specification action statements that are based on fuel in the reactor. Credible accidents with significant consequences are practically eliminated with the removal of the reactor fuel during the performance of the FSD [full reactor coolant system chemical decontamination]. In addition, specific actions would be taken in accordance with the requirements of the NRC approved WCAP-12932-A Rev 2 to ensure that RCS and affected interfacing systems integrity are preserved. Thus, system capability within established accident scenarios would not be compromised. The proposed amendment would therefore not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

As noted above, the proposed amendment seeks to eliminate unnecessary Technical Specification action requirements during the performance of full RCS chemical decontamination. These actions are unnecessary because there will be no fuel in the reactor and the RCS and other affected systems will be operated under conditions well within their design capability during the implementation of this process. In addition, the FSD effort will be conducted in accordance with the requirement(s) of the NRC approved Westinghouse topical report WCAP-12932-A Rev. 2. Accidents involving failures of the decontamination process system will not exceed the bounding conditions for any previously established accidents involving failure of a radwaste system. Accordingly, the possibility of a new or different kind of accident from any previously analyzed will not be created.

3. There has been no reduction in the margin of safety.

The proposed amendment provides relief from technical specification actions in the performance of the FSD which become unnecessary when there is no fuel in the reactor. The change will not adversely impact any Technical Specification required systems, structures or components. The design capability of systems, structures or

components impacted will not be reduced. Consequently, no significant reduction in the margin of safety for any system, structure, or component is involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: January 18, 1994

Description of amendment request: The proposed amendments remove the tables of containment penetration conductor overcurrent protective devices from the Technical Specifications (TS) in accordance with the guidance contained in Generic Letter 91-08, "Removal of Component Lists from Technical Specifications." The tables would be relocated to Chapter 16 of the Catawba Final Safety Analysis Report (Selected Licensee Commitments Manual). In addition, the licensee proposes the removal of an obsolete footnote to TS 4.8.4. The footnote, which made TS 4.8.4.a initially effective following the first refueling outage of Unit 1, is no longer needed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. Relocating the component lists of containment penetration conductor overcurrent protective devices from the technical specifications to the [Selected Licensee Commitments] SLC Manual (with all attendant required technical specification changes as described previously and also including removal of the above described obsolete footnote) has no impact upon either the probability or consequences of any accident. No plant equipment is affected by the proposed change. No equipment is being added or deleted from the lists; only the source document for the lists is being changed. Any future changes to the lists (i.e., changes to the plant) will be subject to the provisions of 10CFR50.59 and also subject to the change control provisions of Chapter 6 of Catawba's Technical Specifications.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No accident causal mechanisms are affected by the proposed change, as no change to the plant is being proposed. In addition, no change to the manner in which the plant is operated is being made. Finally, no changes to plant procedures are being made which would affect any accident causal mechanisms.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. The proposed change has no impact upon any safety margin. The proposed change is consistent with the guidance provided in Generic Letter 91-08 and the control provisions utilized as a result of relocating the subject component lists are at least as stringent as those set forth in the generic letter.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Loren R. Plisco, Acting

Duke Power Company, Docket No. 50-413, Catawba Nuclear Station, Unit No. 1, York County, South Carolina

Date of amendment request: January 10, 1994

Description of amendment request: The proposed amendment would revise Technical Specifications 2.0 and 3/4.2 which currently requires the determination of the reactor coolant system flow rate by precision heat balance measurement at least once per 18 months. Date of publication of individual notice in Federal Register: January 26, 1994 (59 FR 3743)

Expiration date of individual notice: February 25, 1994

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 10, 1994

Description of amendment request: The amendments would change the method of measuring the reactor coolant system flow rate (Technical Specifications 2.0 and 3/4.2) during the 18-month surveillance for McGuire, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) This amendment will not significantly increase the probability or consequence of any accident previously evaluated.

No component modification, system realignment, or change in operating procedure will occur which could affect the probability of any accident or transient. The change in method of flow measurement will not change the probability of actuation of any Engineered Safeguard Feature or other device. The actual flow rate will not change. The consequences of previously-analyzed accidents will not change as a result of the new method of flow measurement.

(2) This amendment will not create the possibility of any new or different accidents not previously evaluated.

No component modification or system realignment will occur which could create the possibility of a new event not previously considered. The elbow taps are already in place, and are used to monitor flow for the Reactor Protection System. They will not initiate any new events.

(3) This amendment will not involve a significant reduction in a margin of safety.

As described in [the licensee's application], the change in method of RCS flow measurement will provide a more accurate indication of the flow. The actual flow rate will not be affected. The revised setpoints for low reactor coolant flow are driven by changes to statistical allowances and do not represent substantive, or less conservative, changes. There is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Astkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Loren R. Plisco, Acting

Entergy Operations Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 23, 1993

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) for the following four items in accordance with the guidance in Generic Letter (GL) 93-05 "Line Item Technical Specifications Improvements To Reduce Surveillance Requirements For Testing During Power Operation".1) GL Item 5.14 Radiation Monitors will change the channel functional test from monthly to quarterly.2) GL Item 6.1 Reactor Coolant System (RCS) Isolation Valves will increase the time from 72 hours to 7 days for remaining in cold shutdown without leak testing the RCS isolation valves.3) GL Item 6.6 Pressurizer Heaters will change the verification of capacity from at least once per 92 days to each refueling outage and will change the demonstration of the emergency power supply from at least once per 18 months to at each refueling outage.4) GL Item 9.1 Auxiliary Feedwater Pump and System Testing will change the frequency of these pumps from once per 31 days on a staggered basis to quarterly on a staggered bases.

All of the above are compatible with Waterford 3 plant operating experience and are consistent with NUREG-1366, "Improvement To Technical Specification Surveillance Requirements," December 1992 and the licensing basis for Waterford 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change to increase the radiation monitoring instrumentation channel functional test from monthly to quarterly will have no effect on design basis accidents. The findings in NUREG-1366 determined that this change will increase the availability of radiation monitors.

The proposed change to increase the 72 hour time for remaining in cold shutdown without leak testing the RCS isolation valves to 7 days will not affect any design basis accidents. NUREG-1366 findings have determined that extending this interval does not significantly alter the associated risk. In addition, the current requirement has a potential for causing problems resulting from a hurried recovery.

The proposed change to the pressurizer heater capacity test interval from quarterly to each refueling interval will have no affect on any design basis accidents. The TS requires at least 2 groups of pressurizer heaters each having a nominal capacity of 150 kW. Waterford 3 has 8 groups of pressurizer heaters; two proportional groups of 150 kW each, and 6 backup groups of 200 kW each. An evaluation of past operating experience has shown the availability of at least 6 groups of pressurizer heaters with a minimum of 150 kW each.

The proposed change to extend the testing interval for the EFW [emergency feedwater] pumps will have no affect on any design basis accidents. The pumps will continue to be tested quarterly to the same standards applied to safety related pumps as defined by the ASME [American Society of Mechanical Engineers] Section XI Code. Satisfactory completion of testing in accordance with the Code is accepted as verification that safety related pumps will be available to perform their intended function.

The proposed changes identified above are supported by the findings identified in NUREG-1366 and consistent with the guidance provided in Generic Letter 93-05. These line-item improvements are intended to improve plant safety, decrease equipment degradation, and remove unnecessary burden on personnel resources by reducing the amount of testing that the TS require during power operation. Therefore, the proposed changes identified above will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The changes identified above only affect the frequency of surveillance testing. There are no changes that will alter operation of the plant or the manner in which it is operated. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes identified herein extend testing frequency in an effort to improve plant reliability and safety. The proposed changes are consistent with the findings in NUREG-1366, guidance in Generic Letter 93-05 and plant operating experience. As such, the proposed changes will preserve the established margin of safety for the affected specifications. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N. S. Reynolds, Esq., Winston & Strawn 1400 L Street NW., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 19, 1993

Description of amendment request: The proposed change would relocate the requirements of Technical Specification 3/4.3.4, Turbine Overspeed Protection, to Section 16.3 of the Vogtle Electric Generating Plant, Units 1 and 2, Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change involves the relocation of the TS [Technical Specification] requirements for the turbine overspeed protection system to the VEGP [Vogtle Electric Generating Plant] FSAR [Final Safety Analysis Report]. The requirements that will reside in the FSAR will continue to ensure that the probability of turbine missile generation is maintained below NRC limits as defined in NUREG-1048, Appendix U. Since the turbine overspeed protection system will remain capable of protecting the turbine from excessive overspeed, the proposed change will have no effect on the consequences of an accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident than any previously evaluated. The proposed change does not involve any change to the configuration or method of operation of any plant equipment, and no new failure modes have been defined for any plant system or component. In addition, no new limiting failures have been identified as a result of the proposed change. The requirements for the turbine overspeed protection system that will reside in the FSAR will ensure that the system remains capable of protecting the turbine from excessive overspeed. Therefore, the proposed change will not create the possibility of a new or different kind of accident than any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety. The proposed change would allow the requirements for the turbine overspeed protection system to be relocated to the FSAR on the basis that the turbine overspeed protection system does not meet the criteria of the NRC Final Policy Statement on Technical Specifications Improvements for

Nuclear Reactors. The requirements that will reside in the FSAR for the turbine overspeed protection system will ensure that the system remains capable of protecting the turbine from excessive overspeed. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308

NRC Project Director: Loren R. Plisco, Acting

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50-499 South Texas Project, Unit 2, Matagorda County, Texas

Date of amendment request: January 25, 1994

Description of amendment request: The licensee proposes to make a one-time change to the technical specifications to add new Technical Specifications 3/4.10.6 and 3/4.10.7 to the Special Test Exemptions section. The new TS would allow the restart of Unit 2 with expired calibrations on the core exit thermocouples (CET) and the reactor coolant system (RCS) resistance temperature detectors (RTD). This amendment will also add a new Technical Specification to allow the ascension to 75 percent rated thermal power with an expired precision heat balance reactor coolant flow measurement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1)The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed change will allow the restart of [STP] Unit 2 with Core Exit Thermocouples and Reactor Coolant System Resistance Temperature Detectors technically inoperable due to expired calibrations. The calibrations of these instruments can only be completed when the Unit reaches Normal Operating Pressure and Normal Operating Temperature in Mode 3. Once the calibrations of these instruments are completed, this one time change will expire and all of the existing applicable Limiting Conditions for Operations will become effective immediately. Since industry and South Texas Project Electric Generating Station experience has shown that the failure mechanism for these types of instrument is complete failure as opposed to a gradual drift, and there will be calibration points to compare RTD readings to actual RCS temperature as the RCS temperature increases, it is reasonable to expect these CETs/RTDs will function as they did before their calibrations expired. For this reason, all applicable functions, including COMS, T_{hot}, T_{cold}, and T_{avg} are expected to operate normally. Because normal operation of the instruments is expected and the only reason for the instruments being declared inoperable is their expired calibrations, this change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed change will also allow the restart of Unit 2 with the precision heat balance RCS flow measurement surveillance expired. This surveillance is used to confirm the values indicated by the RCS flow meters. These instruments are calibrated every 18 months and the RCS flow meters will be checked every 12 hours to ensure adequate flow prior to the completion of the precision heat balance RCS flow measurement. Since this surveillance is only used to confirm the reading of calibrated instruments and does not involve any changes to the design or function of the instruments, this change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The operations of Unit 2 with the CETs and RCS RTDs technically inoperable due to expired calibrations, until these calibrations can be completed in Mode 3, does not affect the design bases of the CETs and RCS RTDs or any of the accident evaluations involving these instruments. Since industry and South Texas Project Electric Generating Station experience indicates that the failure mechanism for these types of instruments is not a gradual drift but complete failure, the reasonable expectation is the CETs/RTDs will function as they did prior to their calibrations expiring.

Additionally, the operation of Unit 2 with the precision heat balance RCS flow measurement surveillance expired does not affect the design bases of the RCS flow meters or any of the accident evaluations involving these instruments. This surveillance is used to confirm the values indicated by the RCS flow meters. These instruments are calibrated every 18 months and the RCS flow meters will be checked every 12 hours to ensure adequate flow prior to the completion of the precision heat balance RCS flow measurement.

Because normal operation of all of these instruments is expected, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change does not involve a significant reduction in the margin of safety.

The RCS RTDs are auctioneered to prevent a failed high or low instrument from adversely influencing the safety of the plant. This feature is still operable and will, along with normal operator activities, provide assurance that the margin of safety is not reduced by this change. In addition, the change does not affect the design bases, accident analysis, reliability or capability of the CETs/RTDs to perform their intended safety functions. The RCS flow meters will be checked every 12 hours to ensure adequate flow prior to the completion of the precision heat balance RCS flow measurement.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendment involves no significant hazards consideration.Local Public Document Location: Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Suzanne C. Black

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 28, 1993

Description of amendment request: The proposed amendment would revise the Cooper Nuclear Station (CNS) Technical Specifications to modify the licensee's organizational structure by removing the positions of "Site Manager" and "Senior Manager of Operations." The functions presently given in CNS Technical Specifications for the Site Manager position will be assumed by the Vice President - Nuclear.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

The proposed change removing the positions of Site Manager and Senior Manager of Operations from the Technical Specifications is administrative in nature. The functions and responsibilities of the previous position of Site Manager presently given in the plant Technical Specifications will be performed by the Vice President - Nuclear. Additionally, with the reorganization, the Senior Manager of Operations position is eliminated and therefore, this position is also being removed. The provision in the Technical Specifications for automatic shifting of Plant Manager responsibilities to the Senior Manager of Operations has also been removed. The shifting of Plant Manager responsibilities (in writing) to one of the Managers at CNS who is qualified for this position remains in the Technical Specifications. The position removals and responsibility transfers in the organization do not affect plant design or operation, nor do they affect the way any systems, structures, or components are operated or maintained. The individual filling the position "Vice President - Nuclear" is qualified to perform the assigned tasks and responsibilities. Restructuring of the sentence in specification 6.2.B.6, is purely an administrative change. Also, this proposed change does not alter the conditions or assumptions in any of the Updated Safety Analysis Report (USAR) accident analyses. Since the USAR accident analyses remain bounding, the consequences previously evaluated are not adversely affected by the proposed change. Therefore, it can be concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Evaluation

The proposed Technical Specification revision removes all references to the position title of the Site Manager. The responsibilities of this position presently given in the Technical Specifications are being incorporated and performed by the position "Vice President - Nuclear." Additionally, with the reorganization, the Senior Manager of Operations position is eliminated and therefore, this position is also being removed. The shifting of Plant Manager responsibilities (in writing) to one of the Managers at CNS who is qualified for this position remains in the Technical Specifications. All given management activities will continue to be performed by qualified individuals. Restructuring of the sentence in specification 6.2.B.6 is purely an administrative change. This change does not affect the design or operation of any system, structure, or component in the plant, and is considered to be an administrative change. Accordingly, no new failure modes have been defined for any plant system or component important to safety, nor has any new limiting failure been identified as a result of the proposed change. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Evaluation

This proposed amendment involves a change to the Administrative Controls Section of the CNS Technical Specifications; specifically, removal of two positions referenced in the organizational structure. The Site Manager position is being deleted and the responsibilities of this position listed in the Technical Specifications are being performed by the Vice President - Nuclear. Additionally, with the reorganization, the Senior Manager of Operations position is eliminated and therefore, this position and responsibilities are also being removed. The shifting of Plant Manager responsibilities (in writing) to one of the Managers at CNS who is qualified for this position remains in the Technical Specifications. All given management activities, as described in the Technical Specifications, will continue to be performed by qualified individuals. Restructuring of the sentence in specification 6.2.B.6, is purely an administrative change. The proposed change does not adversely impact the plant's ability to meet applicable regulatory requirements. The proposed change does not alter any means of plant operation, nor does the proposed change involve any physical alterations to the plant and does not affect any plant safety parameters or setpoints. Therefore, this proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Asuburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G. D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: William D. Beckner

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 10, 1993

Description of amendment request: The proposed amendment would revise the Cooper Nuclear Station (CNS) Technical Specifications Sections 3/4.21 "Environmental/Radiological Effluents," and 6.5, "Station Reporting Requirements," to change the frequency of the reporting period of the "Semiannual Radioactive Materials Release Report" from semiannual to annual and to extend the reporting frequency of the Annual Design Change Report from an annual submittal to annually or along with the Updated Safety Analysis Report (USAR) updates required by 10 CFR 50.71(e). These proposed changes are intended to make the CNS Technical Specifications consistent with the current provisions of 10 CFR 50.36(a) and 10 CFR 50.59(b), respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

The proposed changes are administrative in nature and makes the Cooper Nuclear Station (CNS) Technical Specifications (T/S) consistent with amended regulations of 10CFR50.36(a), and 10CFR 50.59(b) by reducing the submittal frequency of certain reports to the NRC. The proposed revisions do not involve any change to plant design, plant operation, or configuration of any plant equipment that is used to mitigate the consequences of an accident previously evaluated. Also, the proposed changes do not alter the conditions or assumptions in any of the Updated Safety Analysis Report (USAR) accident analyses. Since the USAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. As administrative changes, all defined terms on the affected pages have been capitalized. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Evaluation

The proposed changes are administrative in nature and makes the CNS T/S consistent with amended regulations of 10CFR50.36(a), and 10CFR50.59(b) by reducing the submittal frequency of certain reports to the NRC. The proposed revisions do not involve any change to plant design, plant operation, or configuration of any plant equipment that is used to mitigate the consequences of an accident previously evaluated. Accordingly, no new failure modes have been created for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. Also, there will be no change in the types or increase in the amount of effluents released offsite. As administrative changes, all defined terms on the affected pages have been capitalized. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety?

Evaluation

The proposed changes are administrative in nature and do not adversely impact the plant's ability to meet applicable regulatory requirements related to liquid or gaseous effluents, and solid waste releases. The proposed changes do not alter any

administrative controls over radioactive effluents, nor do the proposed changes involve any physical alterations to the plant with respect to radioactive effluents. These changes do not affect the meaning, application, and function of the T/S requirements. The proposed change will reduce the administrative burden of NRC reporting without reducing the protection for public health and safety. As administrative changes, all defined terms on the affected pages have been capitalized. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Asuburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G. D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: William D. Beckner

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: January 6, 1994

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Tables 3.2.7, 3.6.2a, 4.6.2a, 3.6.2b and 4.6.2b to delete the main steam line isolation and automatic reactor shutdown (reactor scram) functions of the Main Steam Line Radiation Monitor. Conforming changes would also be made to the Bases of these TSs and to the Bases for TS 2.1.2. The licensee stated that the proposed changes would be consistent with the NRC's Improved Standard Technical Specifications, NUREG-1433, and with NRC-approved (Safety Evaluation, dated May 15, 1991) Boiling Water Reactor Owners' Group Licensing Topical Report NEDO-31400A, dated July 9, 1987.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the functions being removed do not contribute to avoidance of any previously evaluated accidents. Further, the changes have been shown to have an insignificant impact on overall reactivity control failure frequency. This insignificant impact is offset by the relatively large reduction in core damage frequency realized by the implementation of these changes. Hence, the probability or consequences of previously evaluated accidents are not significantly increased due to this change. To the contrary, as stated in the topical report [NEDO-31400A] the changes provide a net improvement in overall plant safety.

The proposed amendment does not involve a physical or procedural change to any structure, component or system that significantly affects the probability or consequences of any accident or malfunction of equipment important to safety previously evaluated in the Final Safety Analysis Report (Updated). The proposed amendment will involve a change to reactor protection and isolation actuation systems circuitry that will remove the automatic reactor shutdown and Main Steam Line Isolation Valve closure functions of the Main Steam Line Radiation Monitor. However, the physical changes will not affect the remaining scram or vessel isolation functions.

[***T]he methods, procedures and assumptions used to perform the eneric analyses in NEDO-31400A are bounding for the Nine Mile Point Unit 1 with regard to input values. Niagara Mohawk has also provided in the evaluation reasonable assurance that significantly increased levels of radioactivity in the main steam lines will be controlled expeditiously to limit both occupational and environmental exposures. The Main Steam Line Radiation Monitor alarm setpoints will be set at 1.5 times the normal full power background dose rate and should any monitor exceed its alarm setpoint, the reactor coolant will be sampled to determine activity levels and the possible need for additional corrective actions.

The offgas radiation monitor is a more sensitive monitor than the Main Steam Line Radiation Monitor because the nitrogen-16 source, dominating the radiation signal to the Main Steam Line Radiation Monitor, has decayed by the time the radiation monitor can be affected by any increased levels of activity. Therefore, setting the offgas radiation monitor at 1.5 times the nitrogen-16 background dose rate is not reasonable since setting the monitor that low can lead to spurious activations of the alarm.

Nine Mile Point Unit 1's monitor configuration, as described in the FSAR, detects the concentration of the offgas as it flows through the pipe. Thus, the detector is sensitive to fluctuations in condenser air inleakage, which can have an appreciable impact on the monitor readings, especially at readings as low as 1.5 times the normal full power background. Therefore, Niagara Mohawk proposes to set the alarm at five (5) times the normal full power background, which is still very conservative compared to the value allowed by Technical Specification 3.6.15.c., which is set based on Nine Mile Point Unit 1's Offsite Dose Calculation Manual.

Niagara Mohawk believes that a setting of five (5) times the normal full power background is extremely conservative and is low enough to ensure detection of even minor fuel performance changes. Furthermore, if the monitor alarms at this setpoint of five times the normal full power background, the offgas will immediately be sampled and analyzed, followed by an analysis of a reactor coolant sample.

Furthermore, the analyses in the Licensing Topical Report demonstrate that removal of the automatic reactor scram and Main Steam Line Isolation Valve closure functions of the Main Steam Line Radiation Monitor does not change the conclusions in the Final Safety Analysis Report (Updated) that the calculated radiological release consequences of the bounding control rod drop accident will not exceed the acceptable dose limits specified in 10CFR[Part]100.

Therefore, Niagara Mohawk concludes that the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The function of a Main Steam Line Radiation Monitor trip is to detect abnormal fission produce release and isolate the main steam lines, thereby stopping the transport of fission products from the reactor to the main condenser. The monitors do not perform a prevention function for any kind of accident.

The main steam line high radiation scram and main steam line isolation functions were originally intended to mitigate, not prevent, an existing accident scenario. However, the functions being removed do not contribute to avoidance or mitigation of any previously evaluated accidents since no credit is taken for these functions in any design basis event for terminating the initiating event or assuring the radioactive release remains within accepted limits. The existence of a Main Steam Line Radiation Monitor trip does not prevent the occurrence of a fuel failure event or any other type of event. Elimination of these functions will not introduce a new or different accident scenario.

The proposed amendment represents a change to the physical configuration of the plant in that some reactor protection system circuits will be modified to eliminate the main steam line high radiation scram and main steam line isolation signals. However, these changes will not affect the remaining scram or vessel isolation functions. In all other respects, plant design and operation remain unchanged.

Therefore, Niagara Mohawk Power Corporation concludes that the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety because, as shown in the topical report, the changes represent an overall improvement in plant safety in that the core damage frequency is reduced. Safe operation of the plant is enhanced by elimination of the unnecessary scram and isolation of the reactor vessel. With implementation of these changes, the primary heat sink remains available, a large transient on the vessel and safety-related actuations is avoided, and the Offgas System remains available to control the pathway of a potential release. Therefore, Niagara Mohawk concludes that the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone NuclearPower Station, Unit 1, New London County, Connecticut

Date of amendment request: January 14, 1994

Description of amendment request: The proposed amendment corrects an editorial error. Specifically, the amendment changes the reference in Limiting Condition for Operation (LCO) 3.4.D from "3.3.A through C" to "3.4.A, 3.4.B, and 3.4.C." The amendment also changes the associated bases to clarify the LCO minimum solution concentration requirement of 11 weight percent and updates the excerpt from 10 CFR 50.62 to reflect the current text of the regulation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO [Northeast Nuclear Energy Company] has reviewed the proposed change and has concluded that it does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change only modifies an incorrect reference in Section 3.4.D of the Technical Specifications. In practice, if Specification 3.4.A, 3.4.B, or 3.4.C cannot be met, an orderly shutdown is initiated. As currently written, the failure to meet the requirements of Section 3.3 would also initiate a shutdown in accordance with Section 3.4.D. This is not the intent of Section 3.4.D since Section 3.3 already has specific shutdown requirements. This proposed change will correct Section 3.4.D so that it limits the conditions under which a plant shutdown must be initiated to the LCOs of the standby liquid control system. Therefore, this proposed change will not increase the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change corrects an incorrect section reference. There is no change to the operation or design of the plant, nor is there any change to the operability requirements of either section. The proposed change properly identifies the conditions under which the plant must be shutdown if an LCO is not met for the standby liquid control system. In practice, if Specification 3.4.A, 3.4.B, or 3.4.C cannot be met, an orderly shutdown is initiated. Since there is no change in plant operation or design, there is no possibility of a different kind of accident.

3. Involve a significant reduction in a margin of safety.

The proposed change does not modify the design or function of the plant, nor does it reduce operability requirements of either Section 3.3 or 3.4. The proposed change only corrects an incorrect section reference by identifying the correct shutdown requirements for the standby liquid control system. Since there is no change to plant operation or design and the shutdown requirements are not reduced, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company (NNECO), Docket Nos. 50-245, 50-336 and 50-423, Millstone Nuclear Power Station, Units 1, 2 and 3, New London County, Connecticut

Date of amendment request: December 22, 1993

Description of amendment request: The proposed amendments would change the Technical Specification (TS) as follows:

1. Change the title of the Nuclear Station Director to Senior Vice President - Millstone Station.

2. Remove the requirement to provide a copy of Plant Operations Review Committee (PORC) and Site Operations Review Committee (SORC) meeting minutes to the Executive Vice President - Nuclear. The Senior Vice President - Millstone Station is being proposed to replace the Executive Vice President - Nuclear for receipt of PORC and SORC meeting minutes.

3. Make editorial changes to the Millstone Unit No. 1 TS Index.

4. Correct a typographical error in Section 6.2.1.d of the Millstone Unit No. 1 TS.

5. Correct a typographical error in Section 6.5.3.1.a of the Millstone Unit No. 3 TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is provided below:

The proposed changes do not involve an SHC because the changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No design basis accidents are affected by these proposed changes. The proposed changes are administrative and editorial in nature to reflect a recent reorganization, removal of the Executive Vice President - Nuclear from receipt of PORC and SORC meeting minutes, addition of the Senior Vice President - Millstone Station to the receipt of PORC and SORC meeting minutes, and editorial changes to the Millstone Unit Nos. 1 and 3 Technical Specifications. No safety systems are adversely affected by the proposed changes, and no failure modes are associated with the changes. Therefore, there is no impact on the probability of occurrence or the consequences of any design basis events.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. There is no impact on plant response, and no new failure modes are introduced. These proposed administrative and editorial changes have no impact on safety limits or design basis accidents, and they have no potential to create a new or unanalyzed event.

3. Involve a significant reduction in a margin of safety.

The changes do not directly affect any protective boundaries nor do they impact the safety limits for the protective boundaries. These proposed changes are administrative

and editorial in nature. Therefore, there can be no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: December 17, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications to allow a relaxation in setpoint tolerance of the pressurizer safety valves (PSVs) and main steam safety valves (MSSVs) from plus or minus 1% to plus or minus 3% for the "as-found" test condition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise the "as found" setpoint tolerances for the PSVs and MSSVs from [plus or minus] 1% to [plus or minus] 3%. For the resetting of the PSVs and MSSVs, a [plus or minus] 1% setpoint tolerance will be required prior to declaring the valve operable for those instances where the [plus or minus] 1% tolerance was exceeded. The proposed changes involve no hardware modifications to plant structures, systems, or components. The proposed setpoint tolerance of [plus or minus] 3% for the "as-found" condition was previously evaluated as part of the PSE [Plant Safety Evaluation] report for the transition to VANTAGE 5H fuel. The PSE was reviewed and approved by the NRC staff as a part of a prior license amendment.(9) In addition, since the proposed changes have previously been evaluated by the PSE report, the calculated radiological release associated with the PSE remain unaffected. In addition, the proposed changes are in compliance with applicable sections of the ASME Code and will not significantly affect structural integrity of either the reactor coolant system or the main steam system. Therefore, the proposed changes will have no effect on the probability or consequences of previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not create the possibility of a new or different kind of accident from those previously analyzed. The changes revise the Technical Specifications so that setpoint tolerance for the PSVs and MSSVs can be [plus or minus] 3% for the "as-found" condition. These changes have no effect on plant operation. The PSV and MSSV setpoint drift in excess of the [plus or minus] 1% lift setting is an occurrence which has previously and may subsequently occur. The analyses for the transition to the VANTAGE 5H fuel have examined the effects on the plant accident analyses for relaxation in PSV and MSSV setpoint tolerance to [plus or minus] 3%. Also, these changes will have no effect on ASME Code compliance. These changes do not introduce any new failures.

3. Involve a significant reduction in the margin of safety.

In support of the transition to the VANTAGE 5H fuel, a PSE was performed which assumed a [plus or minus] 3% setpoint tolerance for both the PSVs and MSSVs. Therefore, the effects of relaxing the PSV and MSSV setpoints are already accounted for in the existing analyses of record and will not affect the plants accident analyses. Additionally, the proposed changes will have no significant effect on the structural integrity of the reactor coolant system or the main steam system. Also, for those occurrences where the "as-found" setpoint of the PSV or MSSV is in excess of [plus or minus] 1%, a resetting to within [plus or minus] 1% of the valve setpoint will be required prior to declaring the valve operable. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, DiabloCanyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: December 14, 1993 (Reference LAR 93-07)

T3Description of amendment requests: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to revise Technical Specification (TS) 3/4.8.1, "A.C. Sources" to increase the required quantity of emergency diesel generator (EDG) fuel oil stored in the engine-mounted tank (day tank). The amendment request also proposes to revise TS 3/4.7.11, "Area Temperature Monitoring," and 3/4.8.1 to remove references to a five EDG configuration. The specific TS changes proposed are as follows:

(1) TS 3/4.7.11 would be revised to remove references to a common (swing) diesel generator in Table 3.7-5.

(2) TS 3.8.1.1 and TS 3.8.1.2 would be revised to increase the required minimum contained volume in the EDG engine-mounted fuel tank (day tank) from 200 gallons to 250 gallons.

(3) TS 3.8.1.1 and TS 4.8.1.1.2 would be revised to remove references to a five EDG configuration.

(4) TS 3.8.1.2 would be revised to correct a footnote. TS Bases 3/4.8.1, 3/4.8.2, and 3/4.8.3 would be revised to clarify commitments to Regulatory Guide 1.137 and expand the scope of information contained within the TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed increase in day tank TS minimum contained volume requirements provides additional conservatism to assure the EDG fuel oil contained in the day tank is sufficient to provide adequate time for an operator to take corrective action to restore the fuel oil supply to the affected day tank in the unlikely event that the fuel oil supply from the main tanks were cut off.

Deletion of TS references to a five diesel generator configuration and correction of the TS 3.8.1.2 footnote are administrative changes that do not change the operating methodology of DCPP. These proposed administrative changes remove outdated information and correct an administrative oversight.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed increase in day tank TS minimum contained volume requirements would not involve any physical change to the plant systems or, in particular, to the EDG day tanks. The change does not affect the ability of the EDGs to start and to fulfill their safety-related function. Hence, no new failure mechanisms will be introduced.

The proposed removal of references to a five EDG configuration and correction of the TS 3.8.1.2 footnote are administrative in nature. Further, the proposed changes would not result in any physical alteration to any plant system. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Increasing the day tank TS minimum contained volume requirements is a conservative change which provides additional margin to assure the EDG fuel oil contained in the day tank is sufficient to provide adequate time for an operator to take corrective action to restore the fuel oil supply to the affected day tank in the unlikely event that the fuel oil supply from the main tanks were cut off. The proposed change will not alter any accident analysis assumptions, initial conditions, or results. Consequently, the proposed change to increase the EDG day tank TS contained fuel oil requirement does not have any effect on the margin of safety.

The proposed administrative changes clarify the TS by removing references to a five diesel generator configuration and correcting the TS 3.8.1.2 footnote.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: December 9, 1993

Description of amendment request: The amendment would change the Operating Licenses and their corresponding Appendices A to reflect the planned implementation of the Power Rerate Program at Limerick Generating Station Units 1 and 2, and the corresponding increase in the authorized maximum reactor core power level by five percent to 3458 megawatts thermal (MWt) from the current limit of 3293 MWt.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed Operation License (OL) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed power rerate imposes only minor increases in the plant operating conditions. Plant systems, components, and structures have been verified to be capable of performing their intended functions under rerated conditions. Where necessary, some components will be modified or replaced prior to implementation of the Power Rerate Program to accommodate the revised operating condition. No new component or system interactions that could lead to an accident are created. As discussed below, no transient events result in a new sequence of events which could lead to a new accident scenario. Emergency Core Cooling Systems (ECCS) - Loss-of-Coolant Accident (LOCA) Analysis.

The current ECCS-LOCA performance analysis is already bounding for power rerate conditions. The fuel peak cladding temperature for rerate conditions is 1,345°F, which is below the 2,200°F regulatory limit. Therefore, the analysis demonstrates that the LGS, Units 1 and 2 will continue to comply with 10CFR50.46 and 10CFR50, Appendix K.

Transient Event Analysis

The evaluation results for transient events indicate the margin to the fuel Safety Limit Minimum Critical Power ratio (MCPR) will be maintained for the 8x8 array fuel types, such as GE8x8NB or GE11 fuel design. The current fuel thermal-mechanical limits will continue to be met.

Also, the power-dependent and flow-dependent MCPR and Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limits developed as part of the Average Power Range Monitor Rod Block Monitor Technical Specifications (ARTS) improvement program are applicable to power rerate. A TS Change Request to implement the ARTS improvement program was submitted to the NRC by letter dated August 27, 1993. The peak reactor vessel bottom head pressure will remain within the American Society for Mechanical Engineers (ASME) Code requirement for reactor overpressure protection.

The analysis performed focused on the most limiting transient events in each disturbance category selected specifically for the power rerate evaluations. The results demonstrated that LGS, Unit 1 and Unit 2 core thermal power output can be safely increased to power rerate parameters without impacting plant safety during a postulated transient event. The details of the impact to the description in the UFSAR are delineated below.

a) Events Resulting in a Core Coolant Temperature Decrease

i) Loss of Feedwater Heating (LFWH)

The delta Critical Power Ratio (delta CPR) for the LFWH event at the rerated power is bounded by the result estimated for the current rated power level and remains significantly less than the Operating Limit MCPR. There is no change between the delta CPR results for high and low reactor core flow conditions. The calculated thermal and mechanical overpowers for this event at power rerate conditions also meet the fuel design criteria.

ii) Feedwater Controller Failure (FWCF) Maximum Demand

For the Increased Core Flow (ICF) and the Maximum Extended Load Line Limit (MELLL) conditions, the trend for the FWCF - Maximum Demand event at rerate conditions is consistent with the current rated power analysis. For both high and low reactor core flow conditions, the FWCF - Maximum Demand event becomes most limiting due to the Turbine Bypass Valve Out-of-Service (TBVOOS) and the Recirculation Pump Trip Out-of-Service (RPTOOS) analyses assumption. The fuel thermal margin results remain within the acceptable limits for the fuel type analyzed.

b) Events Resulting in a Reactor Pressure Increase

i) Turbine Trip with No Bypass (TTNBP)

At rerate conditions, the fuel transient thermal and mechanical overpower results remain below the NRC acceptance criteria.

ii) Generator Load Rejection with No Bypass (LRNBP)

The fuel transient thermal responses are less severe than for the TTNBP event described above. Therefore, at power rerate conditions, the LRNBP event remains bounded by the TTNBP event.

iii) Main Steam Isolation Valve Closure, Flux Scram (MSIVF)

The peak reactor vessel bottom head pressure for rerate conditions is slightly higher than the pressure at current rated conditions due to the higher initial reactor coolant system pressure. However, this result is still below the ASME overpressure limit of 1,375 psig by a margin of 33 psi.

c) Events Resulting in a Core Coolant System Flow Rate Decrease

i) Recirculation Pump Seizure

The recirculation pump seizure assumes instantaneous stoppage of the pump motor

shaft of one recirculation pump. As a result, the reactor core flow decreases rapidly. The reactor flow decreases rapidly. The reactor vessel level swell due to the rapid reactor core flow reduction reaches the high reactor water level setpoint, causing a feedwater pump trip, a main turbine trip, and subsequently a reactor scram on turbine stop valves closure. The peak neutron flux and average fuel surface heat flux do not increase significantly above the initial conditions, therefore no impact on the fuel thermal margin is postulated to occur.

d) Events Resulting in Reactivity and Power Distribution Anomalies

i) Rod Withdrawal Error (RWE)

The calculated delta CPR of 0.10 for this event at rerate conditions is bounded by the generic ARTS - based RWE limits of 0.13. Therefore, the generic ARTS-based RWE analysis delta CPR result is verified to be applicable for power rerate conditions for LGS Units 1 and 2.

e) Events Resulting in a Reactor Coolant Inventory Increase

i) Inadvertent High Pressure Coolant Injection (HPCI) System Actuation

Based on the peak average fuel surface heat flux results, the HPCI actuation event will be bounded by the limiting pressurization event (i.e., the TTNBP event described above) for delta CPR consideration.

Anticipated Transients Without SCRAM (ATWS) Analysis

A generic evaluation for the ATWS event is provided in Section 3.7 of the Topical Report NEDC-31984P, "Generic Evaluations of General Electric Boiling Water Reactor Power Uprate," Supplement 1, dated July 1991. This evaluation concludes that the ATWS acceptance criteria for fuel, reactor pressure vessel (RPV) and containment integrity will be met, if the following exists:

- Reactor power increases less than or equal to 5%
- Reactor Steam Dome pressure increases less than or equal to 40 psi;
- Safety Relief Valve (SRV) opening setpoints increase less than or equal to 80 psi: and
- ATWS high pressure setpoint increases less than or equal to 20 psi.

The plant's parameter changes will remain within the above criteria, except that the ATWS high pressure setpoint increase is 40 psi rather than 20 psi in order to maintain the same relationship between the ATWS high pressure setpoint and the SRV opening setpoints. Based on the previous analysis, this difference would have a minor effect on the analysis results. The only significant change is a slightly higher (i.e., about 10 psi) peak RPV pressure.

For additional assurance, a LGS specific ATWS analysis for a 5% power rerate was performed. The events analyzed were:

1. Main Steam Isolation Valve (MSIV) Closure.
2. Pressure Regulator Failure - Open.
3. Loss of Feedwater, and
4. Inadvertent Opening of a Relief Valve.

The LGS specific analysis also concludes that the ATWS acceptance criteria for fuel, RPV, and containment integrity will be met for a 5% power rerate.

Other Evaluations

The impact of power rerate on the radiological consequences of the accidents presented in UFSAR Chapter 15 was determined based on the current design basis analyses, post rerate implementation system conditions, and radiological source terms. In general, power rerate will result in a small increase in the quantity of radioactive material released during accidents and therefore slightly higher (i.e., approximately 2% to 5%) accident doses. However, USFAR Chapter 15 accident doses for rerated conditions remain within the regulatory limits specified in 10CFR100 and 10CFR50, Appendix A, GDC 19.

The UFSAR Chapter 15 accidents that were evaluated and updated for rerate conditions are as follows:

1) Loss of Coolant Accident (LOCA)
2) Main Steam Line Break (MSLB)
3) Fuel Handling Accident
4) Control Rod Drop Accident
5) Instrument Line Break
6) Feedwater Line Break
7) Steam Jet Air Ejector Line Break
8) Offgas System Failure
9) Liquid Radioactive Waste System Failure

An evaluation was also performed to address the power rerate impact on accident mitigative features, structures, systems, and components, within the balance of plant. The results are as follows:

- Auxiliary systems such as the Emergency Service Water, Residual Heat Removal (RHR) Service Water, Ultimate Heat Sink (i.e., the spray pond), safety-related portions of secondary containment reactor enclosure air cooling, primary containment drywell air recirculation, and Emergency Diesel Generator enclosure ventilation were confirmed to operate acceptably under normal and accident conditions after implementation of power rerate.
- Combustible gas control systems were confirmed to be capable of maintaining oxygen concentrations inside the primary containment within regulatory limits under post accident rerate conditions.
- The secondary containment reactor enclosure recirculation system and Standby Gas Treatment system were confirmed to be able to adequately contain, process, and control the release of normal and post-accident levels of radioactive material after implementation of power rerate.
- Instrumentation was reviewed and confirmed to be capable of performing their control and monitoring functions under rerate conditions.
- Electric power systems including the main turbine generator and switchgear components were verified as being capable of providing the electrical load as a result of the rerated power levels. No safety-related electrical loads were affected which would impact the Emergency Diesel Generators.
- Piping systems were evaluated for the effect of operation at higher power levels, including transient loadings. The evaluation confirmed that with few exceptions piping and supports are adequate to accommodate the increased loadings resulting from operation at rerated power conditions. In a few cases, piping supports will be modified to accept the higher forces due to rerate conditions.
- The effect of rerate conditions on high energy line break (HELB) events for all Nuclear Steam Supply System (NSSS) and Balance of Plant (BOP) systems was evaluated. The evaluation confirmed structures, systems, and components important to safety are capable of accommodating the effects of jet impingement and blowdown forces and the environmental effects resulting from HELB events at rerate conditions.
- The Moderate Energy Line Break (MELB) analysis was evaluated for impact due to rerate conditions. Sufficient margin was determined to exist in the original analysis to bound the rerate conditions.
- Main control room (MCR) habitability was evaluated. Post-accident MCR and Technical Support Center (TSC) doses were confirmed to be within the limits of General Design Criterion (GDC) 19 of 10CFR50 Appendix A.
- Radiation doses for normal operation were reviewed and confirmed to remain within the limits of 10CFR20 and 10CFR50, Appendix I. The impact on post-accident sampling activities and post-accident access to vital areas was also confirmed to be acceptable.
- The environmental qualification of electrical and mechanical equipment important to safety was evaluated for the impact of normal and accident operating conditions at rerated power levels. The majority of equipment will remain qualified for the new conditions. For equipment that is not qualified, corrective actions will be taken to ensure the plant equipment will perform their intended functions under rerate conditions. No new equipment will be added for power rerate which would increase the potential for component failure. The Preventative Maintenance Program (PMP) will continue to provide for appropriate equipment repair or replacement during operation at rerated power conditions.
- The impact of operation at rerated power levels was evaluated for Station Blackout and Fire Safety Shutdown area heat-up concerns. The evaluation confirmed there is no adverse impact from rerate on the ability of the plant to achieve safe shutdown under these conditions.
- The consequences of postulated transients and special events (i.e., ATWS and Station Blackout) will remain within NRC acceptance criteria for rerate conditions. Concurrent malfunctions assumed to occur during accidents have been accounted for in the safety analyses for rerate conditions. The consequences of these equipment malfunctions will not change with implementation of the Power Rerate Program. Equipment that is important to safety either is capable of or will be modified and/or replaced to be capable of performing its intended function. The availability of redundant systems to provide safety functions in the event of component malfunction is not impacted as a result of rerate conditions. Furthermore, the impact of power rerate on the consequences of abnormal transients and accident conditions which are a result of component malfunctions has been shown to be acceptable.

The probability (i.e., frequency of occurrence) of Design Basis Accidents (DBAs) occurring is not affected by the proposed increased power level, as the applicable regulatory criteria established for plant equipment (e.g., ASME Code, the Institute of Electrical and Electronics Engineers (IEEE) standards, National Electrical Manufacturer's Association (NEMA) standards, NRC Regulatory Guides) will still be followed as the plant is operated at the rerated power level. Reactor SCRAM setpoints will be established such that there is no significant increase in frequency due to rerate conditions. No new challenges to safety-related equipment will result from the implementation of power rerate.

The changes in consequences of hypothetical accidents which would occur from 102% of the rerated power, compared to those previously evaluated, are in all cases not significant, because the accident evaluations from a power rerate to 105% of original rated power will not result in exceeding the applicable NRC approved acceptance limits. The spectrum of hypothetical accidents and transients has been investigated, and has been determined to meet the current regulatory criteria for LGS, Units 1 and 2 at rerate conditions. The offsite radiological doses resulting from DBAs are calculated to increase by only a few percent (i.e., approximately 2% to 5%) because of the rerated power level, and will remain below 10CFR100 limits. In the area of reactor core design, the fuel operating limits will continue to be met at the rerated power level, and fuel reload analyses will continue to show that plant transients will meet the criteria accepted by the NRC as specified in NEDO-24011, "GESTAR II."

Challenges to fuel or ECCS performance were evaluated and shown to still meet the criteria of 10CFR50.46 and 10CFR50, Appendix K. Challenges to the primary containment have been evaluated and still meet 10CFR50, Appendix A, GDC 38, "Long Term Cooling," and GDC 50, "Containment." Radiological release events have been evaluated and have been shown to meet the guidelines of 10CFR100.

Therefore, the proposed OL changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) The proposed OL changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

All actions to ensure that safety-related structures, systems, and components will remain within their design allowable values, and ensure that they can perform their intended functions under rerate conditions will be taken prior to implementation of power rerate. Power rerate does not increase challenges to or create any new challenges to safety-related equipment or other equipment whose failure could cause an accident. No new equipment is added as a result of implementing the Power Rerate Program which would create the possibility of a new type of accident. In addition, power rerate does not create any new sequence of events or failure modes that lead to a new type of accident.

Implementation of power rerate will increase the average neutron flux in the reactor core, which increases the integrated neutron fluence on the reactor pressure vessel (RPV) wall. To account for the higher fluence, an RPV fracture toughness analysis was performed for power rerate conditions. This analysis resulted in a proposed revision to the "pressure vs. temperature" curves currently provided in the Technical Specifications (TS), that will maintain the current level of protection for the RPV. Therefore, power rerate will not result in any new failure mode for the RPV, and thus, does not create the possibility of a different type of accident from any accident previously evaluated.

No new operating mode, safety-related equipment lineup, accident scenario, or equipment failure mode was identified as resulting from the implementation of the Power Rerate Program. The full spectrum of accident considerations defined in NRC Regulatory Guide 1.70, "Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants - LWR Edition," Revision 3, dated November 1978, have been evaluated for rerate conditions and no new or different kind of accident has been identified. Implementation of the Power Rerate Program uses already-developed technology and applies it within the capabilities of already existing plant equipment in accordance with presently existing regulatory criteria to include applicable NRC approved codes, standards, and methods. General Electric (GE) has designed Boiling Water Reactors (BWRs) of higher power levels than the rerated power of any of the currently operating BWR fleet and no new power dependent accidents have been identified.

Therefore, the proposed OL changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed OL changes do not involve a significant reduction in a margin of safety.

Power rerate will not involve a significant reduction in a margin of safety, as plant equipment and reactions to transients and hypothetical accidents will not result in exceeding the presently approved NRC acceptance limits. The accident doses are calculated to increase a few percent (approximately 2% to 5%) because of power rerate, but remain below 10 CFR 100 limits. The events (i.e., transients, accidents, and ATWS) that form the bases of the TS were evaluated for power rerate conditions. Although some changes to the TS are required to implement power rerate, no NRC acceptance limit will be exceeded. Therefore, the margins of safety with respect to the safety limits and other TS bases will be maintained.

For systems addressed in the TS Section 2.2, 3/4.1, 3/4.2, 3/4.3, 3/4.4, 3/4.5, 3/4.6 and 3/4.7 (i.e., Reactor Protection System, Standby Liquid Control System, Power Distribution Limits, Instrumentation, Reactor Coolant System, Emergency Core Cooling Systems, Containment Systems, and Plant Systems), all components will be operable and capable of performing their intended functions under power rerate conditions such that the margin of safety is not adversely impacted.

Therefore, the proposed OL changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 21, 1993

Description of amendment request: The proposed Technical Specification (TS) changes revise Table 3.2.F, "Surveillance Instrumentation," to accurately describe the main stack high range and reactor building roof vent high range radiation monitors, and deletes previously approved TS Change Request (TSCR) 91-10 for Unit 3 (License Amendment No. 168). TSCR 91-10 requested an emergency temporary change to the TS to allow fuel loading to take place without all control rods fully inserted into the core.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Because the proposed changes are administrative in nature, they do not effect the initial conditions or precursors assumed in the Updated Final Safety Analysis Report Section 14. These changes do not decrease the effectiveness of equipment relied upon to mitigate the previously evaluated accidents.

Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not make any physical changes to the plant or changes to operating procedures. Therefore, implementation of the proposed changes will not affect the design function or configuration of any component or introduce any new operating scenarios or failure modes or accident initiation.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature and are intended to provide clarification or eliminate confusion when interpreting the Technical Specifications. The proposed changes do not adversely affect the assumptions or sequence of events used in any accident analysis.

Therefore, the proposed changes do not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

South Carolina Electric & Gas Company, South Carolina Public ServiceAuthority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: October 29, 1993

Description of amendment request: The licensee is preparing to replace the currently installed steam generators with new model Delta 75 steam generators (Delta 75 SGs). The new steam generators will be larger than those currently installed. The physical changes to the plant and the accident reanalyses needed to support those changes will necessitate changes to the Technical Specifications (TS). The TS changes requested involve alterations to the core operating limits, changes to various reactor trip setpoints, deletion of the negative flux rate trip, removal of references to specific analyses, changes to the steam/feedwater flow mismatch activation setpoint, changes to shutdown limits, changes to instrument uncertainty allowances, a change to the methodology for reactor coolant system (RCS) flow determination, modifications to departure from nucleate boiling (DNB) parameters, a change to the engineered safety features actuation system setpoints for steam generator water levels, removal of the F* and L* criteria, and the addition of a requirement for a first inservice inspection for the new steam generators. Due to the size of the new steam generators, TS containing references to the maximum containment pressure following a steam line break and the total RCS volume will also change; in addition, a reference to RCS temperature is changed from a nominal value to an indicated value.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), South Carolina Electric & Gas Company (SCE&G or the licensee) has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Operation of VCSNS [Virgil C. Summer Nuclear Station] in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementation of the [Delta] 75 SGs and revised operating conditions do not contribute to the initiation of any accident evaluated in the FSAR [Final Safety Analysis Report]. Supporting factors are as follows:

- The [Delta] 75 SG is designed in accordance with ASME [American Society of Mechanical Engineers] Code Section III, 1986 edition [sic] and other applicable federal, state, and local laws, codes and regulations and meets the original interfaces for the Model D3 SGs with exception that provisions for a larger blowdown nozzle have been made and the feedwater inlet nozzle is located in the upper shell.

- All NSSS [nuclear steam supply system] components (i.e., reactor vessel, RC Pumps, pressurizer, CRDM's [control rod drive mechanisms], [Delta] 75 SGs, and RCS piping) are compatible with the revised operating conditions. Their structural integrity is maintained during all proposed plant conditions through compliance with the ASME code.

- Fluid and auxiliary systems which are important to safety are not adversely impacted and will continue to perform their design function.

- Overall plant performance and operation are not significantly altered by the proposed changes.

Therefore, since the reactor coolant pressure boundary integrity and system functions are not adversely impacted, the probability of occurrence of an accident evaluated in the VCSNS FSAR will be no greater than the original design basis of the plant.

An extensive analysis has been performed to evaluate the consequences of the following accident types currently evaluated in the VCSNS FSAR:

- Non-LOCA [loss-of-coolant accident]
- Large Break LOCA
- Steam Generator Tube Rupture

With the [Delta] 75 SGs and revised operating conditions, the calculated results (i.e., DNBR [departure from nucleate boiling ratio], Primary and Secondary System Pressure, Peak Clad Temperature, Metal Water Reaction, Challenge to Long Term Cooling, Environmental Conditions Inside and Outside Containment, etc.) for the accidents are similar to those currently reported in the VCSNS FSAR. Select results (i.e., Containment Pressure During a Steam Line Break, Minimum DNBR for Rod Withdrawal from Subcritical, etc.) are slightly more limiting than those reported in the current FSAR due to the use of the assumed operating conditions with the new [Delta] 75 SGs, and in some cases, use of an uprated core power of 2900 MWt. However, in all cases, the calculated results do not challenge the integrity of the primary/ secondary/ containment pressure boundary and remain within the regulatory acceptance criteria applied to VCSNS's current licensing basis. The assumptions utilized in the radiological evaluations, described in Section 3.7, are thus appropriate and are judged to provide a conservative estimate of the radiological consequences during accident conditions. Given that calculated radiological consequences are not significantly higher than current FSAR results and remain well within 10CFR100 limits, it is concluded that the consequences of an accident previously evaluated in the FSAR are not increased.

2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The [Delta] 75 SGs and revised operating conditions will not introduce any new accident initiator mechanisms. Structural integrity of the RCS is maintained during all plant conditions through compliance with the ASME code. No new failure modes or limiting single failures have been identified. Design requirements of auxiliary systems are met with the RSGs [Replacement Steam Generators]. Since the safety and design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, no new accident scenarios have been created. Therefore, the types of accidents defined in the FSAR continue to represent the credible spectrum of events to be analyzed which determine safe plant operation.

3) The proposed license amendment does not involve a significant reduction in a margin of safety.

Although the [Delta] 75 SGs and revised operating conditions will require changes to the VCSNS Technical Specifications, it will not invalidate the LOCA, non-LOCA, or SGTR [steam generator tube rupture] conclusions presented in the FSAR accident analyses (Appendix 6). For all the FSAR non-LOCA transients, the DNB design basis, primary and secondary pressure limits, and dose limits continue to be met. The LOCA peak cladding temperatures remain below the limits specified in 10CFR50.46. The calculated doses resulting from a SGTR event will continue to remain within a small fraction of the 10CFR100 permissible releases. Environmental conditions associated with High Energy Line Break (HELB) both inside and outside containment have been evaluated. The containment design pressure will not be violated as a result of the HELB. Equipment qualification will be updated, as necessary, to reflect the revised conditions resulting from HELB. The margin of safety with respect to primary pressure boundary is provided, in part, by the safety factors included in the ASME Code. Since the components remain in compliance with the codes and standards in effect when VCSNS was originally licensed (with the exception of the [Delta] 75 RSGs which use the 1986 ASME Code Section III Edition), the margin of safety is not reduced. Thus, there is no reduction in the margin to safety as defined in the bases of the VCSNS Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: S. Singh Bajwa

South Carolina Electric & Gas Company, South Carolina Public ServiceAuthority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: December 17, 1993

Description of amendment request: The proposed changes would revise Technical Specification 3/4.3.3.6, "Accident Monitoring Instrumentation," and the associated Technical Specification Bases. The changes are in accordance with the applicable guidance of Revision 3 to Regulatory Guide (RG) 1.97.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. The proposed changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Regulatory Guide 1.97 furnishes standards acceptable to the NRC for instrumentation to monitor plant variables and systems during and following an accident. The purpose of the accident monitoring instrumentation is to display plant variables that provide information required by the control room operators for manual actions and long term recovery. Determination of variable types and category designations for VCSNS [Virgil C. Summer Nuclear Station] was accomplished from a review of the Emergency Response Guidelines (ERGs), the Final Safety Analysis Report, and the Westinghouse Owners Group (WOG) ERGs. The WOG ERGs were used at VCSNS as a basis for the Emergency Response Procedures. Operability of the instruments used for accident monitoring ensures there is sufficient information available on selected plant parameters to monitor plant status during and following an accident. The changes proposed do not effect components that can cause an accident. The increase in allowable outage times from 7 to 30 days or from 48 hours to 7 days does not significantly affect the consequences of an event previously evaluated. The channel redundancy and the relatively short outage times, coupled with the low probability of an event requiring accident monitoring instrumentation during this interval, ensure that sufficient information is available for operator manual actions. The condition of the plant in either HOT STANDBY or HOT SHUTDOWN, the first stage of the plant shutdown process, has no impact on the assumptions made in the accident analysis.

The change in mode applicability for the Reactor Building Area High Range Radiation Monitors to include modes 1, 2, and 3, but exclude mode 4, is based on the usage of these monitors which is to indicate a significant degradation of the reactor coolant pressure boundary. These monitors do not initiate any automatic mitigation system and are solely required to be operable to provide indication which in conjunction with other operator actions will aid in mitigating the consequences of design basis accidents. Design basis accident sequences which may create a significant degradation of the reactor coolant pressure boundary are not postulated to occur during mode 4. Therefore, the proposed change does not increase the probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change is consistent with the requirements of RG 1.97. The accident monitoring instrumentation will make available reliable information to plant control room operators to mitigate the consequences of a design basis accident. The first stages of plant shutdown, HOT STANDBY and HOT SHUTDOWN, are plant modes for which VCSNS has been analyzed. Since no plant configuration changes or changes to the mode of operation of equipment, systems, and components are introduced by the proposed Technical Specification, no new failure modes or accident sequences are instituted. Therefore, the changes proposed do not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in a margin of safety.

The inclusion of category 1, type A or B, instrumentation in the TS [Technical Specifications] provides assurance that adequate information is available to the operators to maintain VCSNS in a safe condition during and following a design basis accident. Accomplishment of specific manual action by the control room operators is enhanced due to the availability and reliability of the indications. The proposed changes do not affect the design or operation of safety related components relied upon to automatically mitigate the consequences of a design basis event. The proposed change from HOT SHUTDOWN to HOT STANDBY as the first stage of plant shutdown will not affect the design or operation of any safety related system or component. Therefore, the changes proposed would not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: S. Singh Bajwa

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: November 3, 1993

T3Description of amendment requests: The licensee proposes to revise the operability requirements of containment isolation valves listed in Technical Specification (TS) Table 3.6-1, Section D. The associated Bases 3/ 5.6.3, "Containment Isolation Valves," is also revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change provides new actions and Allowed Outage Times (AOTs) for valves in Section D of Technical Specification (TS) Table 3.6-1 that are currently allowed by the existing TS to be secured for an indefinite period of time as long as they are secured in their Engineered Safety Feature Actuation System (ESFAS) actuated position. These valves are considered operable by the existing TS although they may be unable to perform their containment isolation function.

The proposed change ensures that these valves are returned to operable status within specified times based on the results of specific risk evaluations on their contribution to core damage or offsite dose release. The proposed change does not involve a physical change to the facility as described in the Updated Final Safety Analysis Report (UFSAR). Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The ESFAS actuated positions of these valves are the positions assumed in the safety analysis. There are no new accidents associated with this proposed change because the previously analyzed events already considered failures of containment isolation valves. The plant is equipped with dual and redundant containment isolation valves. Leaving the valves in their ESFAS actuated positions does not create a new accident. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

This proposed change 1) limits the AOT of certain valves based on contributions to core damage and offsite dose release when the valves are secured in their ESFAS actuated position and 2) requires these valves to be returned to OPERABLE status prior to Mode 4 entry from a cold shutdown to ensure they are available to perform their intended containment isolation function. Previously, these valves could be secured in the ESFAS actuated position indefinitely. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: Theodore R. Quay

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: December 27, 1993

Description of amendment request: The proposed change would revise the Technical Specifications (TS) for the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2). The proposed changes revise the review responsibilities of the Station Nuclear Safety and Operating Committee (SNSOC) and the Management Safety Review Committee (MSRC).

The NA-1&2 TS address the organization and responsibilities of both the onsite and offsite review groups: SNSOC and MSRC, respectively. The responsibilities of the SNSOC include the review of new procedures and changes to procedures that affect nuclear safety. The MSRC review responsibilities include the review of safety evaluations and SNSOC meeting minutes and reports. The extent of these review activities would be revised by the proposed changes to ensure the two review groups are focusing on nuclear safety issues and not spending an unnecessary amount of time on activities of minimal safety significance. Specifically, the proposed changes would revise the review responsibilities of SNSOC regarding procedure changes. Rather than reviewing all procedure changes, SNSOC would only review procedure changes that require a safety evaluation. The proposed changes also would revise the review responsibilities of the MSRC. Rather than reviewing all of the safety evaluations and SNSOC meeting minutes and reports as presently required by the TS, the MSRC would only review a representative sample of these documents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[T]he elimination of the SNSOC review of procedure changes that do not require a safety evaluation, revising the wording for approval of procedure changes, and the modification of the MSRC's duties regarding their review of safety evaluations and SNSOC meeting minutes and reports will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. As administrative changes, the proposed Technical Specifications changes have no direct or indirect effect on accident precursors. No plant modifications are being implemented and operation of the plant is unchanged. SNSOC review of new procedures and procedure changes that require a safety evaluation ensures that activities that could affect nuclear safety are being properly reviewed. The MSRC's overview of representative samples of safety evaluations and SNSOC meeting minutes and reports based on performance ensures these programs are being properly implemented and nuclear safety is not being compromised; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated since physical modifications are not involved and systems and components will be operated as before the change. The proposed changes are wholly administrative in nature and have no impact on plant operations or accident considerations. These changes modify the scope of SNSOC review of procedure changes and MSRC's review functions concerning safety evaluations and SNSOC meeting minutes and reports. Procedure changes will continue to receive management review in accordance with administative procedures, however, only changes that require a safety evaluation will require SNSOC approval. MSRC review of representative samples of safety evaluations and SNSOC meeting minutes and reports based on performance will continue to provide adequate assurance that nuclear safety is being properly considered; or

3. Involve a significant reduction in a margin of safety as defined in the basis of any Technical Specification since the responsibilities of the SNSOC and MSRC are not addressed by the existing Technical Specification Bases, nor are review requirements for procedures. The proposed changes are administrative in nature and have no impact on, nor were they considered in, existing UFSAR accident analyses. Safety significant procedure changes, i.e., changes that require a safety evaluation to be prepared, will continue to be reviewed by SNSOC, as will new procedures. Procedure changes still require cognizant management approval and preparation of an activity screening to determine whether or not the change impacts nuclear safety. This ensures activities important to nuclear safety are being appropriately reviewed. The effectiveness of the safety evaluation program, and the thoroughness of SNSOC meetings and reports will be assured through the MSRC's plant overview function which is based on observed performance.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: Herbert N. Berkow

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, Docket No. 50-413, Catawba Nuclear Station, Unit No. 1, York County, South Carolina

Date of amendment request: January 10, 1994

Description of amendment request: The proposed amendment would revise Technical Specifications 2.0 and 3/4.2 which currently requires the determination of the reactor coolant system flow rate by precision heat balance measurement at least once per 18 months. Date of publication of individual notice in Federal Register: January 26, 1994 (59 FR 3743)

Expiration date of individual notice: February 25, 1994

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: November 11, 1993, as supplemented November 22, 1993

Description of amendment request: The proposed amendments would provide an interim acceptance criteria for control rod drop time on Oconee Unit 1. Specifically, control rod Group 1, Rod 8, and Group 2, Rod 5, would be considered operable with an insertion time of less than or equal to 3.00 seconds provided that: (1) the average insertion time for the remaining rods in Group 1 and the average insertion time for the remaining rods in Group 2 is less than or equal to 1.5 seconds, and (2) the core average negative reactivity insertion rate is within the assumptions of the safety analysis. The acceptance criteria would apply until the end of the current fuel cycle for Oconee Unit 1. This acceptance criteria for rod drop time would apply for the two rods, rather than the existing Technical Specification 4.7.1 limit of 2.00 seconds from the fully withdrawn position to 3/4 insertion.Date of publication of individual notice in Federal Register: November 29, 1993 (58 FR 62689)

Expiration date of individual notice: December 29, 1993

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of application for amendment: December 8, 1993tl11tT3Brief description of amendment request: The proposed amendment would grant one-time extensions for certain Technical Specification surveillances which are currently required to be performed beginning February 16, 1994. The licensee is requesting extension of the surveillance intervals because the current operating cycle has been extended, impacting the required completion dates for these surveillances. Performance of these surveillances within the required intervals would require that the plant be placed in an undesirable operating configuration, or would necessitate a plant shutdown. The surveillances for which extensions have been requested will be performed during the fifth refueling outage, scheduled to begin on April 16, 1994.

Date of individual notice in **Federal Register:** January 18, 1994 (59 FR 2630)

Expiration date of individual notice: February 17, 1994

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 22, 1993

Description of amendment request: The proposed amendment would add Limiting Conditions for Operation (LCO) and Surveillance Requirements to Tables 3.12.1, "Water Spray/Sprinkler Protected Areas," and 4.12.1, "Water Spray/Sprinkler Tests," and clarify the associated Bases to reflect the installation of a new full area fire suppression system in the east and west cable tunnels. This new full area fire suppression system was installed because the previous sprinkler system did not provide coverage to some cable trays and the sprinkler head orientation did not provide full coverage of the cable trays where it was installed. The proposed amendment would also correct other portions of Tables 3.12.1 and 4.12.1 for consistency with changes made to reflect the east and west cable tunnel modification.Date of publication of individual notice in **Federal Register:** January 18, 1994 (59 FR 2634)

Expiration date of individual notice: February 17, 1994

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental

Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: October 28, 1992, as supplemented December 14, 1993

Brief description of amendments: The amendments remove Table 4.4-5, "Reactor Vessel Material Surveillance Program Withdrawal Schedule," from the McGuire Technical Specifications and make other administrative changes associated with the removal of the withdrawal schedule in accordance with NRC Generic Letter 91-01.

Date of issuance: January 31, 1994
Effective date: January 31, 1994
Amendment Nos.: 139 and 121
Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1992 (57 FR 61112) The December 14, 1993, letter provided clarifying information that did not change the scope of the October 28, 1992, application and the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 31, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Astkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3,. Oconee County, South CarolinaDate of application of amendments: July 14, 1993, as supplemented August 24 and September 22, 1993

Brief description of amendments: The amendments revise TS 3.1.2.9 to clarify the role of High Pressure Injection and Core Flood Tank deactivation in maintaining pilot operated relief valve operability for low temperature overpressure protection (LTOP), add restrictions regarding applicability of controls which assure 10 minutes are available for operator action to mitigate an LTOP event, revise the pressure-temperature limits and associated LTOP setpoints, and make associated administrative changes. Also, the Bases would be revised to be consistent with the above changes.

The conformance of the upper shelf energy and reactor vessel material surveillance program to Appendices G and H will be determined pending the NRC staff resolution of Generic Letter 92-01 in 1994.

Date of issuance: January 25, 1994
Date of issuance: January 25, 1994
Effective date: To be issued within 30 days from the date of issuance
Amendment Nos.: 204, 204, and 201
Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46228) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 25, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: February 19, 1993

Brief description of amendments: The amendments revise the Appendix A TSs 3.4.9.1, 3.4.9.2, and 4.4.9.2 relating to pressurizer surge line stratification.

Date of issuance: January 31, 1994
Effective date: January 31, 1994
Amendment Nos.: 179 and 59
Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** Aspril 28, 1993 (58 FR 25854) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 31, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One,Unit No. 2, Pope County, Arkansas

Date of application for amendment: February 24, 1993

Brief description of amendment: The amendment revised the containment internal pressure lower limit of Technical Specification Figure 3.6-1 from 12.8 to 13.2 psia.

Date of issuance: February 3, 1994
Effective date: 30-days from date of issuance
Amendment No.: 156
Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16858) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: October 4, 1993

Brief description of amendments: The amendments revise the surveillance test schedule in TS 4.6.1.2a and the associated Bases for performing Type A test which determine the overall integrated containment leakage rate.

Date of issuance: January 11, 1994
Effective date: January 11, 1994Amendment Nos. 158, 152Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59748) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 11, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50-498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: December 6, 1993

Brief description of amendments: The amendments modify Technical Specification 3.7.1.2 by extending the allowed outage time for the Unit 1 Train D turbine-driven auxiliary feedwater pump from 72 hours to 168 hours. This change is a one-time-only extension to accommodate an augmented test program for the turbine driven auxiliary feedwater pump during the restart of Unit 1 from the 1993 outage.

Date of issuance: January 25, 1994
Effective date: January 25, 1994, to be implemented within 10 days of issuance.

Amendment No.: 58
Facility Operating License No. NPF-76. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67848). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 25, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: November 4, 1993

Brief description of amendment: The amendment revises Clinton Technical Specification 3/4.8.1.1, "AC Sources - Operating," by relocating the surveillance requirement to inspect the diesel generators in accordance with the manufacturer's recommendations to the preventive maintenance program.

Date of issuance: January 31, 1994
Effective date: January 31, 1994
Amendment No.: 87
Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 8, 1993 (58 FR 64610) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library District, 310 N. Quincy Street, Clinton, Illinois 61727.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, IllinoisDate of application for amendment: November 4, 1993

Brief description of amendment: The licensee proposed modifying Technical Specification 3/4.8.2.1, "DC Sources - Operating," by deleting the requirement that the plant be shut down to perform the required battery capacity or service testing. Following discussions with the licensee, the staff has modified the licensee's proposal and approved a one-time only change to permit replacement of the Division IV battery subsystem at power.

Date of issuance: February 2, 1994
Effective date: February 2, 1994
Amendment No.: 88
Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 8, 1993 (58 FR 64610) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 2, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook, Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: Aspril 16, 1993, as supplemented September 28 and December 3, 1993

Brief description of amendment: The amendment revises Technical Specifications to allow certain tests normally designated as 18-month surveillances to be delayed until the next refueling outage scheduled to begin August 6, 1994. Extensions for four groups of surveillances (Groups 1, 2, 6, 11) were previously approved for Unit 2 in Amendment 158 dated December 22, 1993. This amendment grants approval for the extensions requested for the remaining 12 groups of surveillances and completes the staff's review of the licensee's April 16, 1993 (as supplemented) application.

Date of issuance: January 26, 1994
Effective date: January 26, 1994
Amendment No.: 159
Facility Operating License No. DPR-74. Amendment revises the Technical Specifications. Dates of initial notice in **Federal Register:** Asugust 4, 1993 (58 FR 41505) and December 21, 1993 (58 FR 67850)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 26, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: June 11, 1993, supplemented by letter dated November 15, 1993

Brief description of amendment: The amendment revises the pressure/temperature (P/T) limits for the reactor vessel. Specifically, Figure 3.4-2, "Millstone Unit 2 Reactor Coolant System Presure-Temperature Limitations for 12 Full Power Years," on page 3/4 4-19, is revised to reflect the change in the curves and the title change to "Millstone Unit 2 Reactor Coolant System Pressure-Temperature Limitations for 20 EFPY."

Date of issuance: January 27, 1994
Effective date: As of the date of issuance to be implemented within30 days.
Amendment No.: 170
Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39054) The November 15, 1993, submittal provided information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, DiabloCanyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County,California

Date of application for amendments: December 22, 1992, as supplemented July 19, 1993 (Reference LAR 92-08)

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2. Specifically, TS Section 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," would be revised to change the second level undervoltage trip setpoint and allowable values. Technical Specification 3/4.8.1, "A.C. Sources," would also be changed to revise the diesel generator (DG) steady state voltage surveillance requirements. The second level undervoltage relay TS setpoint and allowable values will be changed to maintain acceptable voltages at the 480 volt and 120 volt buses during sustained degraded voltage conditions. The DG steady state voltage surveillance requirements will be changed to ensure that the diesel generators provide adequate voltage when required to power the vital loads.

Date of issuance: January 6, 1994
Effective date: 60 days from date of issuance
Amendment Nos.: 86 & 85

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7002) The July 19, 1993 submittal provided clarifying information and did not affect the initial **Federal Register** notice and proposed no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 6, 1994No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County,California

Date of application for amendments: July 6, 1993, as supplemented December 29, 1993 (Reference LAR 93-03)

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," Table 4.3-2, "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements," for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to relax the slave relay test frequency for slave relays K612A, K614B, K615A, and K615B from quarterly to once per 18 months during refueling or extended cold shutdowns. The affected slave relays cause isolation of the charging and letdown portions of the chemical and volume control system, and actuate charging pump suction valves associated with volume control tank and refueling water storage tank isolation.

Date of issuance: January 31, 1994

Effective date: For cycle 7 and after

Amendment Nos.: 87 and 86

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** Asugust 18, 1993 (58 FR 43929) The December 29, 1993, submittal provided clarifying information and did not effect the initial **Federal Register** Notice and proposed no significant hazards consideration.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 31, 1994.No significan hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: January 9, 1991, as supplemented on August 19, 1991, June 22, 1992 and August 3, 1992

Brief description of amendments: The amendment changed the Technical Specifications to revise the isolation setpoints for the ambient temperature switches for the High Pressure Coolant Injection and Reactor Core Isolation Cooling Systems room area coolers.

Date of issuance: January 31, 1993

Effective date: January 31, 1993

Amendment Nos.: 132 and 99

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32389) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 31, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: Asugust 27, 1993, as supplemented November 10, and December 20, 1993

Brief description of amendment: The amendment allows a one-time TS change to extend the allowed outage time (AOTs) for the Unit 2 residual heat removal service water (RHRSW) system as well as the suppression pool spray and suppression pool cooling modes of the residual heat removal system from 72, 168 (i.e. seven days), and 72 hours, respectively, to 288 hours (i.e., twelve days). The extended AOTs would allow continued Unit 2 operation while maintenance isolation valves are installed on both loops of the RHRSW system.

Date of issuance: January 26, 1994

Effective date: January 26, 1994

Amendment No. 30

Facility Operating License No. NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50970) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 26, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas CompanyDelmarva Power and Light Company, and Atlantic City Electric Company,Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station,Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: October 5, 1993

Brief description of amendments: This amendment revised the Plant Operating Review Committee review, the Nuclear Review Board review, the Radiological Environmental Monitoring Program requirements, position titles, and the organization chart in Appendix B of the Technical Specifications (TS) to be consistent with Appendix A of the TS.

Date of issuance: January 26, 1994

Effective date: January 26, 1994Amendments Nos.: 183 and 188

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 8, 1993 (58 FR 64612) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 26, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: February 2, 1993, and supplemented by letter dated November 16, 1993.

Brief description of amendment: The amendment extends the period of time to reduce the setpoints of the Average Power Range Monitors and the Rod Block Monitor when the plant enters single-loop operations. Additionally, the change incorporates updated core values relative to single loop operations and the addition of a new Specification 3.0.5 and its associated Bases.

Date of issuance: January 25, 1994

Effective date: As of date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment No.: 63

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16872) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 25, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 21, 1993, as supplemented on October 29, 1993, and November 16, 1993; the staff's proposed finding of no significant hazards is not affected by these supplements.

Brief description of amendment: This amendment revises Technical Specifications surveillance requirement 4.4.2.2 to apply only to the pilot stage assembly of the safety relief valves (SRVs) and adds a new surveillance requirement which will require the main portion of the SRVs to be set pressure tested at least once every 5 years.

Date of issuance: January 27, 1994

Effective date: January 27, 1994

Amendment No.: 64

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** Asugust 18, 1993 (58 FR 43931) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 21, 1993 as supplemented on August 23, 1993.

Brief description of amendment: This amendment revised a Technical Specification surveillance requirement to increase the voltage limit from 4580 to 4785 volts when performing the 18-month emergency diesel generator full load rejection test.

Date of issuance: February 4, 1994

Effective date: Effective as of date of issuance and to be implemented upon restart following fifth refueling outage currently scheduled to begin on March 5, 1994.

Amendment No.: 65

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34091) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 4, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of application for amendment: Asugust 30, 1993

Brief description of amendment: The amendment changes the main feedwater system containment isolation valves from the feedwater control and control bypass valves to the feedwater stop check valves.

Date of issuance: January 21, 1994

Effective date: As of date of issuance and shall be implemented within 60 days of the date of issuance

Amendment No. 128

Facility Operating License No. DPR-75: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR50974) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 21, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: November 25, 1991

Brief description of amendments: These amendments revise Technical Specification (TS) 3/4.7.8, "Fire Suppression Systems." This TS revision deletes the phrase "during shutdown" from the fire pump diesel engine surveillance requirement 4.7.8.1.2.c. This will allow the surveillance of the fire pump diesel engine to be performed when one or both Units 2 and 3 are in operation.

Date of issuance: February 1, 1994

Effective date: February 1, 1994

Amendment Nos.: 109 and 98

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 22, 1992 (57 FR 2600) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 1, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: September 30, 1993 (TS 345)

Brief description of amendment: The amendment deletes conditions from the Browns Ferry Units 1, 2, and 3 licenses which require maintenance of positive access controls for the containment in accordance with 10 CFR 73.55(d)(8), and deletes a redundant condition from the Unit 3 license.

Date of issuance: February 1, 1994

Effective date: February 1, 1994

Amendment Nos.: 202 - Unit 1; 221 - Unit 2; 175 - Unit 3

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendment revises the license conditions.

Date of initial notice in **Federal Register:** December 8, 1993 (58 FR 64616) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 1, 1994.No significant hazards consideration comments received: None

Local Public Document Room location: Asthens Public Library, South Street, Athens, Alabama 35611.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: May 6, 1993

Brief description of amendment: The amendment revises the reporting frequency requirements from semiannual to annual for submission to the NRC of the Radioactive Effluent Release Report, and clarifies the

reporting requirements regarding steam generator tube inspection Category C-3 results.

Date of issuance: December 30, 1993
Effective date: December 30, 1993
Amendment No.: 184
Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34096) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: July 16, 1993, as supplemented November 15, 1993. The November 15, 1993, submittal did not expand the scope of the original application and did not change the proposed no significant hazards consideration determination.

Brief description of amendments: These amendments implement the revised 10 CFR Part 20, Standards for Protection Against Radiation, and reflect revisions to 10 CFR 50.36a.

Date of issuance: January 25, 1994
Effective date: January 25, 1994
Amendment Nos. 185 and 185
Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** Asugust 18, 1993 (58 FR 43937) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 25, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: March 19, 1993, as supplemented December 9, 1993.

Brief description of amendments: These amendments address plant operation with a control rod urgent alarm failure, a change in the control rod assembly partial movement surveillance test frequency, and proposed administrative changes.

Date of issuance: February 4, 1994
Effective date: February 4, 1994
Amendment Nos. 186 and 186
Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28064) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 4, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301 Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 14, 1993

Brief description of amendments: The amendments split Technical Specification (TS) 15.3.1.E.2, which defines the allowable limits of chloride and fluoride in the reactor coolant, into two individual Limiting Conditions for Operation (LCOs), thus clarifying the reactor coolant chemistry limitations. In addition, the amendments added a 24-hour hot shutdown action statement to the reactor coolant impurity limit LCOs. The amendments also modified the corresponding TS Bases Section.

Date of issuance: January 27, 1994
Effective date: January 27, 1994
Amendment Nos.: 145 and 149
Facility Operating License Nos. DPR-24 and DPR-27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 3, 1993 (58 FR 12270) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 27, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By March 18, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director):** petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 18, 1993, as supplemented by letter dated December 21, 1993.

Brief description of amendment: The amendment revises the River Bend, Unit 1 Technical Specifications to permit extending the time to perform leak rate testing of certain containment isolation

valves and pressure isolation valves so that the testing can be performed during the refueling outage scheduled to start April 16, 1994, rather than requiring an earlier shutdown solely to perform the testing. Also, an exemption to 10 CFR Appendix J was issued on February 2, 1994, that provides an extension, consistent with the revision to the technical specifications, to allow the testing of containment isolation valves to be delayed until the refueling outage.

Date of issuance: February 2, 1994
Effective date: February 2, 1994
Amendment No.: Asmendment No. 71
Facility Operating License No. NPF-47: The amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes. January 5, 1994 (59 FR 616)The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 2, 1994.

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, NW., Washington, D.C. 20005

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: January 24, 1994

Brief description of amendment: The amendment revised the applicability requirement in Sections 3.0.4, 4.0.4, 3.3.7.5 Action 80, 4.3.7.5, 3.4.2 Action c, and 4.4.2 of the Technical Specifications to permit Susquehanna, Unit 2 to continue to operate with the acoustic monitor on the "S" safety/relief valve tailpipe inoperable.

Date of issuance: January 31, 1994
Date of issuance: January 31, 1994
Effective date: As of its date of issuance and will remain in effect until the next shutdown of sufficient duration to allow for containment entry, not to exceed the sixth refueling and inspection outage.

Amendment No.: 100
Facility Operating License No. NPF-22: Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. On January 27, 1994, the staff issued a Notice of Enforcement Discretion, which was immediately effective and remained in effect until this amendment was issued.

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the Commonwealth of Pennsylvania and final no significant hazards considerations determination are contained in a Safety Evaluation dated January 31, 1994.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge 2300 N Street NW., Washington, D.C. 20037

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18071.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: January 13, 1994

Brief description of amendment: The amendment modified the Technical Specifications (TS) to defer response time testing for low pressure emergency core cooling systems (ECCS) until startup following the next cold shutdown, but not later than the startup following completion of the spring 1994 refueling outage.

Date of issuance: January 31, 1994
Effective date: January 31, 1994
Amendment No.: 120
Facility Operating License No. NPF-21: The amendment revised the Technical Specifications. Public comments on proposed no significant hazards consideration comments received: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated January 31, 1994.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: M. H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502.

NRC Project Director: The odore R. Quay

Dated at Rockville, Maryland, this
For the Nuclear Regulatory Commission

Robert A. Capra,

Acting Director, Division of Reactor Projects -I/II, Office of Nuclear Reactor Regulation

[Doc. 94-3465 Filed 2-15-94; 8:45 am]

BILLING CODE 7590-01-F

POSTAL RATE COMMISSION

Briefing by NAA

February 10, 1994.

Notice is hereby given that on February 28, 1994, members of the Commission and staff will be briefed by Newspaper Association of America on current trends in the newspaper industry. The briefing will be conducted at the Commission's Washington, DC office.

Anyone seeking further information, or wishing to attend, should contact Charles L. Clapp, Secretary of the Commission, at 202–789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 94–3557 Filed 2–15–94; 8:45 am]

BILLING CODE 7710–FW–P

ADVO, et al.; Cancellation of Visit

February 8, 1994.

Notice is hereby given that the Commission visits previously scheduled for February 8, 9, and 10, 1994, notice of which was published on February 2, 1994 (59 FR 4958), had to be cancelled due to weather conditions. In lieu of one of the intended visits, representatives of ADVO, Inc. made an oral presentation to members of the Commission and staff in the Commission's offices in Washington, DC on the afternoon of February 8, 1994. A report on the presentation will be on file in the Commission's Docket Room.

Charles L. Clapp,

Secretary.

[FR Doc. 94–3558 Filed 2–15–94; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 20068; 812–8560]

The Seven Seas Series Fund, et al.; Application for Exemption

February 10, 1994

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS; The Seven Seas Series Fund (the "Investment Company"), State Street Bank and Trust Company ("State Street"), Russell Fund Distributors, Inc. ("RFD") and Frank Russell Investment Management Company ("FRIMCo").

RELEVANT ACT SECTIONS; Order requested under section 6(c) of the Act for conditional exemptions from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would end the Investment Company and all future open-end investment companies and series thereof that are advised by State Street and that are in the same group of investment companies, to issue an unlimited number of separate classes of securities representing interests in some or all of the existing and future series of the Investment Company, and to assess a contingent deferred sales load ("CDSL") on certain redemptions of shares, and, under certain circumstances, to waive the CDSL.

FILING DATE: The application was filed on September 2, 1993, and amended on December 15, 1993. Counsel, on behalf of applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 7, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. The Seven Seas Series Fund and Russell Fund Distributors, Inc., Two International Place, 34th Floor, Boston, Massachusetts 02110; State Street Bank and Trust Company, 225 Franklin Street, Boston, Massachusetts 02110; J. David Griswold, Frank Russell Investment Management Company, 909 A Street, Tacoma, Washington 98402.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel (202) 272–3030, or Barry D. Miller, Senior Special Counsel, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Investment Company is a Massachusetts business trust registered under the Act as an open-end management investment company. The Investment Company is a series company and consists of fourteen separate funds, each of which has separate investment objectives and policies (the "Funds").[1] FRIMCo is the administrator, State Street is the adviser, custodian, and transfer agent, and RFD is the distributor of the Investment Company. The Funds consist of both money market funds and funds with fluctuating net asset values, the shares of which are sold and redeemed daily at net asset value without a sales or redemption charge.

2. Applicants seek the requested relief on behalf of the Funds, and all future investment companies that are advised by State Street and that are in the same "group of investment companies" as defined in rule 11a–3 under the Act.

A. Multi-Class System

1. Applicants propose to create a multi-class distribution system (the "Multi-Class System"). The Investment Company would be permitted to offer an unlimited number of classes of additional classes of shares ("New Shares") in connection with (a) the existing distribution plan adopted pursuant to section 12b–1 under the Act (the "Distribution Plan"); (b) a services plan adopted pursuant to rule 12b–1 under the Act providing for certain shareholder services which may be in lieu of or in addition to, the Distribution Plan (the "Services Plan"); and/or (c) a non-rule 12b–1 administrative plan (the "Shareholder Administrative Plan"); or (d) with No Distribution Plan, Services Plan, or Shareholder Administrative Plan (collectively, the "Plans"). The New Shares would be subject to the same investment objective, policies and limitations as the Investment Company's existing shares. Applicants also propose to assess a CDSL on certain redemptions of shares and to waive the CDSL under certain circumstances.

2. Regarding each class of New Shares, the Investment Company could enter into a Services Plan agreement and/or a Shareholder Administrative Plan agreement (the "Plan Agreements") with the distributor and/or groups, organizations or institutions such as banking organizations, broker-dealers, trade associations, membership organizations, investment advisers and managers, financial planners and pension plans ("Organizations") concerning the provision of certain services to the clients, members, or customers of such Organizations who from time to time own New Shares which are offered in connection with a particular class ("Class Shareholders").

3. The services provided pursuant to the Plans will augment or replace (and not be duplicative of) the services to be provided to the Funds by FRIMCo, RFD and State Street. Applicants propose to "unbundle" the services to be provided to the Funds to permit Organizations to select those services they wish to provide to their Class Shareholders under the Plan Agreements, with the precise services to be rendered to be tailored to their Class Shareholders' needs.

4. Regarding each class of New Shares, the applicable Fund would pay the distributor and/or an Organization for its services and assistance in accordance with the terms of its particular Plan Agreement (the "Plan Payments") and the expense of such payments would be borne entirely by the owners of the class of shares of the Fund to which each Plan Agreement relates. Plan Payments will not exceed the limits imposed under article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers ("NASD") for the class. To assure that the limit is not exceeded, each Plan Agreement would include a "cap" or other similar provision limiting the amount of Plan Payments payable under each Plan and across all Plans.

5. Expenses of the Investment Company that cannot be attributed directly to any one Fund will be allocated to each Fund based on the relative net assets of such Fund. Expenses that may be attributable to a Fund but not to a particular class will be allocated to a class based on the relative percentage of net assets of such class. Each class will bear certain expenses attributable specifically to such class, as set forth in condition 1 below ("Class Expenses").

6. New Shares of certain classes ("Class B Shares") could convert automatically into New Shares of another second class ("Class A Shares") at the end of a fixed period following the purchase of Class B Shares (the "Conversion Period"). New Shares purchased through the reinvestment of dividends and other distributions paid regarding Class B shares also will be Class B Shares. Such Class B Shares will

[1] As used in the application, the term "Fund" includes funds created by future investment companies.

convert to Class A Shares on the earlier of the end of the Conversion Period from the date of such reinvestment purchase, or the conversion date of the most recently purchased Class B Shares which were not acquired through the reinvestment of dividends or other distributions.

7. The conversion of Class B Shares to Class A Shares is subject to the availability of an opinion of counsel or Internal Revenue Service private letter ruling that the conversion of the Class B Shares does not constitute a taxable event under federal income tax law. The conversion of Class B shares to Class A shares may be suspended if such a ruling or opinion no longer is available.

8. Fund shareholders generally will be limited to exchanging shares for a similar class of shares of another Fund of the Investment Company. Any exceptions to this policy will be disclosed in the appropriate prospectuses, and in all events, the Investment Company's exchange policy will comply with rule 11a–3 under the Act.

B. The CDSL

1. Applicants also propose to assess a CDSL on certain redemptions of shares and to waive the CDSL under certain circumstances. The amount of the CDSL will vary, depending on the length of time the shares have been held. The CDSL typically will be 1%, but can range up to 8.5% on shares redeemed within the first year of purchase. Applicants will comply with article III, section 26 of the NASD's Rules of Fair Practice, regarding any sales charges and asset-based distribution charges. The CDSL may be reduced during the applicable CDSL period, so that redemptions of shares held after that period would not be subject to any CDSL. A CDSL will not be imposed on any shares issued prior to the date of the order granting exemptive relief.

2. The CDSL would not be imposed on redemptions of shares that were purchased in connection with the reinvestment of dividends. Furthermore, no CDSL would be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for the shares purchased during the CDSL period. In determining whether a CDSL is applicable, a redemption would be made first of shares derived from reinvestment of distributions, second of shares derived from reinvestment of distributions, second of shares purchased prior to the CDSL period, and third, of shares purchased during the CDSL period. The amount of the CDSL will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the percentage of the net asset value of the shares at the time of redemption.

3. The CDSL would be waived (a) on redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code, of a shareholder, (b) in connection with distributions from an individual retirement account or other qualified retirement plan following death, total or permanent disability or reaching retirement age, (c) on redemptions effected pursuant to a Fund's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the minimum account size, and (d) in connection with shares sold to customers of State Street, Trustees and officers of Investment Company, and employees and retirees of State Street, RFD, and the Administrator.

Applicants' Legal Analysis

1. Applicants request an exemptive order pursuant to section 6(c) of the Act to the extent the proposed issuance and sale of New Shares might be deemed: (a) To result in a "senior security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(f)(1) of the Act, and (b) to violate the equal voting provisions of section 18(i) of the Act.

2. The proposed allocation of expenses and voting rights relating to the Plans in the manner described is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowing and does not affect a Fund's existing assets or reserves; nor will it increase the speculative character of the shares of a Fund, since all shares will participate *pro rata* in all of the Fund's income and expenses, except for the proposed Plan Payments and Class Expenses.

3. Since all shares of a Fund will be redeemable at all times; since no class of shares will have any preference or priority over any other class in the Fund in that no class will have distribution or liquidation preferences regarding particular assets and no class will be protected by any reserve or other account; and since the similarities and differences of the shares will be disclosed fully in the prospectus for each class of the Fund, investors will not be given misleading impressions regarding the safety or risk of the shares, and the nature of the shares will not be rendered speculative.

4. Applicants request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder, to the extent necessary to permit the Funds to assess a CDSL on certain redemptions of shares, and waive the CDSL in certain instances.

5. Applicants submit that the proposed CDSL arrangement is fair, consistant with the policy and provisions of the Act, and is in the best interests of the shareholders upon whom it will be imposed. The imposition of the CDSL will not prevent a redeeming shareholder from receiving its proportionate share of the current net assets of fund or class, but merely will defer the deduction of a sales charge and make it contingent upon an event which may never occur. Additionally, the deferral of the sales charge and its contingency upon the occurrence of an event which may not occur, does not change the basis nature of this charge, which is in every other respect a sales charge.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions.

A. Multi-Class System

1. Each class of shares of a Fund representing interests in the same portfolio of investments of the Fund will be identical in all respects, except for the differences related to: (a) The designation of each class of shares of the Fund; (b) expenses assessed to a class pursuant to the Plans; (c) certain Class Expenses for each class of shares, which would be limited to: (i) transfer agent fees identified by the transfer agent as being attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expenses of the Investment Company's administrator and other administrative personnel for services required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to a specific class of shares (vii) trustees' fees incurred as a result of issues relating to a specific class of shares; (viii) organizational expenses incurred to establish a specific class of shares; and (ix) independent accountants' fees related solely to a specific class of shares; (d) voting rights as to matters exclusively affecting the class except as provided in condition 15; (e) exchange privileges; and (f) the conversion features of certain classes of New Shares. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order.

2. The trustees of the Investment Company, including a majority of the trustees who are not interested persons of the Investment Company ("independent trustees"), will approve the Multi-Class System. The minutes of the meetings of the trustees regarding the deliberations of he trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the best interests of the Investment Company, the Funds, and shareholders.

3. The initial determination of the Class Expenses, if any, that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Investment Company, including a majority of the independent trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Funds for the existence of any material conflicts among the interests of the various classes of shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The investment adviser and distributor of the Investment Company will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the investment adviser and the distributor, at their own cost, will remedy such conflict, up to and including establishing a new registered management investment company.

5. The Investment Company's distributor will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all person selling shares of the Investment Company to agree to conform to such standards.

6. The Shareholder Administrative Plan will be adopted and operated in accordance with the Procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

7. The trustees will receive quarterly and annual statements concerning the amounts expended under the Plans and the related Plan Agreements complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocation upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

8. Dividends paid by a Fund regarding a class of shares will be calculated in the same manner, at the same time, on the same day and will be in the same amount as dividends paid by that Fund, except that Plan Payments made by a class under its Plan and any Class Expenses will be borne exclusively by the affected class.

9. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which report has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Investment Company that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act and the work papers of the Expert with respect to such reports, following a request by the Investment Company (which the Investment Company agrees to provide), will be available for inspection by the SEC staff upon the written request by a senior member of the SEC's Division of Investment Management or a Regional Office of the SEC. Authorized staff members would be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in Statement of Auditing Standards No. 70 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of the classes of shares and the proper allocation of expenses among the classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition 9 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in that condition. Applicants will take immediate corrective action if the Exert, or appropriate substitute Expert, does not so concur in the ongoing reports.

11. The prospectuses of each class of a Fund will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the Multi-Class System will be set forth in guidelines to be furnished to the trustees.

13. A Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, CDSLs, and exchange privileges (if any) applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. A Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The

shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of the Fund. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Fund, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of a Fund. The information provided by applicants for publication in any newspaper, or similar listing of a Fund's net asset value or public offering price, will present each class of shares separately.

14. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset value of the two classes, without the imposition of any sales load, fee or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Fund implements any amendment to its rule 12b–1 plan with respect to any class of shares (or, if presented to shareholders, adopts or implements any amendment of a Shareholder Administrative Plan) that would increase materially the amount that may be borne by that class under the Plan ("Class A Shares" for purposes of this section), existing shares of another class ("Class B Shares" for purposes of this section) convertible into Class A Shares will stop converting into Class A Shares unless the Class B shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Class B Shares are exchanged or converted into a new class of shares ("New Class A" for purposes of this section), identical in all material respects to Class A as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Class A. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Class B Shares for a new class ("New Class B" for purposes of this section), identical to existing Class B Shares in all material respects except that New Class B will convert into New Class A. New Class A or New Class B may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4 of this application, any additional cost associated with the creation, exchange, or conversion of New Class A or New Class B shares shall be borne solely by the adviser and the distributor of the Investment Company. Class B Shares sold after the implementation of the proposal may convert to Class A Shares subject to the higher maximum amount, provided that the material features of the Class A plan and the relationship of such plan to the Class B Shares are disclosed in an effective registration statement.

16. Applicants acknowledge that the grant of the requested exemptive order does not imply SEC approval, authorization of or acquiescence in any particular level of payments that a Fund may make pursuant to any Plan in reliance on the exemptive order.

B. The CDSL

Applicants expressly agree that they will comply with proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988, as such rule is currently proposed and as it may be reproposed, adopted or amended in the future.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3552 Filed 2–15–94; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 32

Wednesday, February 16, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 3, 1994, 59 FR 5668.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 9, 1994, 2:00 p.m.

CHANGE IN THE MEETING: The following Docket Number has been added to Item CAE–2 on the Agenda scheduled for February 9, 1994.

Item No., Docket No., and Company

CAE–2—EL94–13–001, Entergy Services, Inc. and Gulf States Utilities Company

Lois D. Cashell,

Secretary.

[FR Doc. 94–3636 Filed 2–14–94; 8:45 pm]

BILLING CODE 6717–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, February 17, 1994.

PLACE: 11th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following.

1. *Spurlock Mining Co., Inc. & Sarah Ashley Mining Co., Inc.*, Docket No. KENT 92–306, etc. (Issues include whether the judge properly considered the effect of assessed civil penalties on the mine operators' ability to continue in business, under 30 U.S.C. § 820(i), given that they are no longer in business.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: February 9, 1994.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–3676 Filed 2–14–94; 2:13 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Tuesday, February 22, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 11, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–3604 Filed 2–14–94; 11:24 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change of Time and Date

The previously announced closed meeting (**Federal Register** Vol. 59, page 5816, Tuesday, February 8, 1994) of the National Credit Union Administration scheduled for 10:00 a.m., Tuesday, February 15, 1994, has been rescheduled for 3:00 p.m., Wednesday, February 16, 1994.

The previously announced items are:

1. Approval of Minutes of Previous Closed Meeting.

2. Administrative Action under Sections 202 and 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).

3. Appeal from Credit Union of Determination under Part 701, NCUA's Rules and Regulations. Closed pursuant to exemption (8).

4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

The closed meeting will be held in the Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–3691 Filed 2–14–94; 3:32 pm]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 14, 1994.

A closed meeting will be held on Thursday, February 17, 1994, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording securities will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, February 17, 1994, at 10:00 a.m., will be.

Settlement of administrative proceedings of en enforcement nature.

Institution of injunctive actions.

Isntitution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Opinion.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum (202) 272–2300.

Dated: February 14, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–3636 Filed 2–14–94; 1:59 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 32
Wednesday, February 16, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 14

[FAR Case 91-104]

Federal Acquisition Regulation; Electronic Contracting

Correction

In proposed rule document 93–31594 beginning on page 69588 in the issue of Thursday, December 30, 1993, make the following correction:

14.401 [Corrected]

On page 69590, in the first column, in section 14.401(a), in the third line, insert "not" before "be opened".

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 92-164; FCC–93–219]

Class C Emergency Position Indicating Radio Beacons

Correction

In rule document 93–14244 beginning on page 33343 in the issue of Thursday, June 17, 1993, make the following correction:

§ 80.205 [Corrected]

On page 33344, in the second column, in § 80.205(a), in the table, in footnote 13, in the second line, "February 1, 1989" should read "February 1, 1999".

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federal register

Wednesday
February 16, 1994

Part II

Environmental Protection Agency

40 CFR Part 80
Regulation of Fuels and Fuel Additives; Standards for Reformulated and Conventional Gasoline; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–4817–8]

Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Through the amended Clean Air Act of 1990, Congress mandated that EPA promulgate new regulations requiring that gasoline sold in certain areas be reformulated to reduce vehicle emissions of toxic and ozone-forming compounds. This document finalizes the rules for the certification and enforcement of reformulated gasoline and provisions for unreformulated or conventional gasoline.

DATES: The regulations for the reformulated gasoline program are effective on March 18, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1994. The information collection requirements contained in 40 CFR part 80 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. EPA will publish a document in the Federal Register following OMB approval of the information collection requirements.

Retail sale of reformulated gasoline will begin on January 1, 1995, as will the provisions for the "simple model" certification, the anti-dumping program for conventional gasoline, and the associated enforcement procedures. (For all ensuing sections of this document, the program's beginning date of January 1, 1995 refers only to the retail sale of reformulated gasoline.) Certification of reformulated gasoline by the "complex model" and compliance with the Phase II performance standards, will begin January 1, 1998 and January 1, 2000, respectively.

ADDRESSES: Materials relevant to this FRM are contained in Public Dockets A–92–01 and A–92–12, located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT:

Paul Machiele (reformulated gasoline requirements), U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4264.

George Lawrence (reformulated gasoline and anti-dumping enforcement requirements), U.S. EPA (6406J), Field Operations and Support Division, 501 3rd Street, Washington, DC 20005, Telephone: (202) 233–9307.

SUPPLEMENTARY INFORMATION: Today's final rule is preceded by four previous notices: an initial notice proposing standards for reformulated and conventional gasoline (NPRM) published on July 9, 1991 (56 FR 31176), a supplemental notice (SNPRM) published on April 16, 1992 (57 FR 13416), an additional NPRM published on February 26, 1993 (58 FR 11722), and a notice of correction for Phase II standards published on April 1, 1993 (58 FR 17175). Insofar as the rules finalized today mirror the proposed standards, those previous documents may be referred to.

Today's preamble explains the basis and purpose of the final rule, focusing on issues that have been revised since the publication of the correction notice for the Phase II performance standards (58 FR 17175). Support documents, including the Regulatory Impact Analysis (RIA), are available in Public Docket No. A–92–12.

To Request Copies of This Final Rule Contact: Delores Frank, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4295.

Copies of the preamble, the Final Regulatory Impact Analysis (RIA), the Responses to Comments on Enforcement Provisions (RCEP), the complex model, the simple model and the regulations for the reformulated gasoline rulemaking are available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. The six documents mentioned above will be in the form of a ZIP file and can be identified by the following titles: "PREAMBLE.ZIP" (preamble); "RIAFINAL.ZIP" (RIA); "ENFORCE.ZIP" (RCEP); "EPAFINAL.ZIP" (complex model); "MODFINAL.ZIP" (simple model); "REGFINAL.ZIP" (regulations). To download these files, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <Help Selection or <CR> to exit: D *filename.zip*

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. Then go into your own software and tell it to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers.

I. Background

The purpose of the reformulated gasoline regulations is to improve air quality by requiring that gasoline be reformulated to reduce motor vehicle emissions of toxic and tropospheric ozone-forming compounds, as prescribed by section 211(k)(1) of the Clean Air Act (CAA or the Act), as amended. This section of the Act mandates that reformulated gasoline be sold in the nine largest metropolitan areas with the most severe summertime ozone levels and other ozone nonattainment areas that opt into the program. It also prohibits conventional gasoline sold in the rest of the country from becoming any more polluting than it was in 1990. This requirement ensures that refiners do not "dump" fuel components that are restricted in reformulated gasoline and that cause environmentally harmful emissions into conventional gasoline.

Section 211(k)(l) directs EPA to issue regulations that, beginning in 1995, "require the greatest reduction in emissions of ozone-forming and toxic air pollutants ("toxics") achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any non air-quality and other air-quality related health and environmental impacts and energy requirements." The Act mandates certain requirements for the reformulated gasoline program. Section 211(k)(3) specifies that the minimum requirement for reductions of volatile organic compounds (VOC) and toxics for 1995 through 1999, or Phase I of the reformulated gasoline program, must require the more stringent of either a formula fuel or an emission reductions performance standard, measured on a mass basis, equal to 15 percent of baseline emissions. Baseline emissions are the emissions of 1990 model year vehicles operated on a specified baseline gasoline. CAA compositional specifications for reformulated gasoline include a 2.0 weight percent oxygen minimum and a 1.0 volume percent benzene maximum.

For the year 2000 and beyond, the Act specifies that the VOC and toxics performance standards must be no less than that of the formula fuel or a 25 percent reduction from baseline emissions, whichever is more stringent. EPA can adjust this standard upward or downward taking into account such factors as feasibility and cost, but in no case can it be less than 20 percent. These are known as the Phase II reformulated gasoline performance standards. Taken together, sections 211(k)(1) and 211(k)(3) call for the Agency to set standards that achieve the most stringent level of control, taking into account the specified factors, but no less stringent than those described by section 211(k)(3).

The reader may refer to the April 16, 1992 SNPRM (57 FR 13416) and the February 26, 1993 NPRM (58 FR 11722) described in more detail below), the February 1993 Draft Regulatory Impact Analysis (DRIA), the Final Regulatory Impact Analysis (RIA), and Public Dockets A–91–02 and A–92–12 for a thorough description of the goals and regulatory development of the reformulated and anti-dumping programs and discussions of a number of associated technical issues.

A. Regulatory Negotiation (Reg Neg)

Shortly after passage of the Clean Air Act Amendments of 1990, EPA entered into a regulatory negotiation with interested parties to develop specific proposals for implementing both the reformulated gasoline and related anti-dumping programs. These parties included representatives of the oil and automobile industries, vehicle owners, state air pollution control officials, oxygenate suppliers, gasoline retailers, environmental organizations, and citizens' groups. (See the 1991 NPRM for the members of the negotiating committee and a discussion of the process for selecting them.)

In August 1991 the committee reached consensus on a program outline and signed an "Agreement in Principle" describing that consensus. EPA agreed to propose a two-step approach to reformulated gasoline. The first step would take effect in 1995 and utilize a "simple model" to certify that a gasoline meets applicable emission reduction standards. The simple model allows certification based on a fuel's oxygen, benzene, heavy metal and aromatics content and Reid Vapor Pressure (RVP).

Under the second step, according to the regulatory negotiation agreement, EPA would propose a "complex model" to supplant the simple model for certifying compliance with these standards. Certification under the complex model would take effect 4 years after it is promulgated. EPA also agreed to propose the more stringent Phase II emission performance standards.

B. July 9, 1991 NPRM (56 FR 31176)

The first NPRM for the reformulated gasoline program was published prior to the conclusion on the regulatory negotiations. Normally, in a negotiated rulemaking, such a reg-neg committee meets to develop a proposed rule which will be acceptable to all parties. If consensus is reached on a proposed rule, it is published as an NPRM. The committee members and the entities they represent agree to support the proposal and not to seek judicial review of the final rule if it has the same substance and effect as the consensus proposal. In this case, EPA published an NPRM while the advisory committee was still conducting negotiations. The Agency believed that although consensus of the members on an acceptable rule was possible, an NPRM was required at that time in order to meet the statutory deadline.

The 1991 NPRM described the provisions of both a program to require the sale of gasoline which reduces emissions of toxics and ozone-forming volatile organic compounds (VOCs) in certain nonattainment areas and a program to prohibit the gasoline sold in the rest of the country from becoming more polluting. The 1991 notice described the outline of the reformulated gasoline program as required by statutory provisions and options that the regulatory negotiation committee members were considering. Topics included in the 1991 proposal consisted of the derivation of the emission standards, fuel certification by modeling, opt-in provisions, credits, anti-dumping requirements, and enforcement provisions for all aspects of the reformulated gasoline program.

C. April 16, 1992 SNPRM (57 FR 13416)

As noted above, the Agency's SNPRM (57 FR 13416) reflected the agreement reached in the regulatory negotiation that had been conducted to develop reformulated gasoline regulations under section 211(k). The Supplemental Notice of Proposed Rulemaking (SNPRM) described the standards and enforcement scheme for both reformulated and conventional gasoline. It also included specific proposals for the simple emission model to be used in gasoline certification and enforcement.

D. February 26, 1993 NPRM (58 FR 11722)

In their comments on the SNPRM, the ethanol industry expressed concern that the reformulated gasoline rulemaking, as proposed in the SNPRM, effectively excluded ethanol from the reformulated gasoline market. In an attempt to address their concern, the Agency proposed an ethanol incentive program, at the direction of former President Bush, intended to promote the use of ethanol (and other renewable oxygenates) in reformulated gasoline. The objective of the proposed renewable oxygenate program was to enhance the market share for renewable oxygenates while, theoretically, maintaining the overall environmental benefits of the reformulated gasoline simple model. This would be accomplished by offsetting any increase in volatility that may result from the inclusion of ethanol with volatility reductions that occur in the rest of the RFG pool. This volatility balancing, however would not take into account any increase in volatility in-use due to mixing of ethanol and non-ethanol gasoline blends (commingling). The renewable oxygenate program would not be required in class B areas (the South) unless a state requested inclusion in the program. Thus, the NPRM (58 FR 11722) for reformulated gasoline proposed revisions to the simple model, as well as to the associated anti-dumping, and enforcement provisions. Also included in the NPRM were the proposed complex model for certification of reformulated gasoline and the proposed Phase II performance standards. The complex model is now scheduled to take effect January 1, 1998. The complex model will provide a method of certification based on the fuel characteristics such as oxygen, benzene, aromatics, RVP, sulfur, olefins and the percent of fuel evaporated at 200 and 300 degrees Fahrenheit (E200 and E300, respectively). The NPRM also proposed Phase II standards for reformulated gasoline which are to take effect in the

year 2000, as prescribed by section 211(k)(3) of the Clean Air Act (CAA). The proposed VOC performance standard was 20–32 percent for class B and 26–35 percent for class C. EPA proposed to set the toxic standard at 20 or 25 percent reduction since additional toxics control was not found to be cost effective and, in most cases, these greater toxics reductions were expected to occur through fuel reformulation for VOC control. The NPRM also included proposed NO_x performance standards of 0–16 percent in classes B and C. The proposed NO_x standards greater than zero were not required by the CAAA, but were proposed under the authority of section 211(c)(1) in conjunction with the Phase II reformulated gasoline standards of the Act since additional NO_x control was deemed beneficial and cost effective in reducing ambient ozone levels.

E. Discussion of Major Comments and Issues

EPA received a number of comments on the first NPRM (56 FR 31176), the SNPRM (57 FR 13416), and the latest NPRM (58 FR 11722) for reformulated and conventional gasoline. Comments covered a wide range of topics including regulatory procedure, certification standards, modeling emissions by the simple and complex models, the role of ethanol and other oxygenates in reformulated gasoline, vehicle testing, the anti-dumping program, Phase II standards, cost-effectiveness, and a number of enforcement-related issues. EPA has conducted an analysis of the comments received and duly considered the significant issues. Summaries of these comments and EPA's responses to them are contained in the Final Regulatory Impact Analysis and the Summary and Analysis of Comments which has been placed in the docket for this rulemaking (Public Docket No. A–92–12). Since the publication of the NPRM, the Agency has continued to develop the complex model. The first revisions of the complex emissions model since 1993 NPRM publication for reformulated gasoline have been provided to the public at a June 2, 1993 public workshop. EPA developed several complex model options in July which was provided to the public. In October of 1993, a draft version of the final complex model was released for public inspection as well. All the iterations of the complex model since the publication of the 1993 NPRM have been available to the public via a public electronic bulletin board and in submittals to the EPA Air Docket, Docket No. A–92–12.

All the various components of this rulemaking are being finalized in today's notice. The additional time has allowed adequate public review of the complex model and its implications for the reformulated gasoline Phase II standards.

The remainder of this preamble is organized into the following sections:

II. Treatment of Ethanol
III. Simple Model for Reformulated Gasoline Compliance
IV. Complex Model
V. Augmenting the Models Through Testing
VI. Phase II (Post-1999) Reformulated Gasoline Performance Standards and NO_x Standards for Reformulated Gasoline
VII. Enforcement
VIII. Anti-Dumping Requirements for Conventional Gasoline
IX. Anti-Dumping Compliance and Enforcement Requirements for Conventional Gasoline
X. Provisions for Opt-In by Other Ozone Non-Attainment Areas
XI. Federal Preemption
XII. Environmental and Economic Impacts
XIII. Public Participation
XIV. Compliance With the Regulatory Flexibility Act
XV. Statutory Authority
XVI. Administrative Designation and Regulatory Analysis
XVII. Compliance With the Paperwork Reduction Act
XVIII. Notice Regarding Registration of Reformulated Gasolines

II. Treatment of Ethanol

A. Background

The April 16, 1992 proposal of the Simple Model and Phase I standards was designed to be fuel and oxygenate neutral. Ethanol, however, when added to gasoline in the amount needed to satisfy the oxygen content requirement of the Act raises the Reid vapor pressure (RVP) of the resulting blend by about 1 psi, making it more difficult for ethanol blends to meet the mass VOC performance standards than blends using other oxygenates. For ethanol to be blended with the RFG, a blendstock gasoline with an RVP low enough to offset the increase resulting from adding ethanol would have to be obtained.

Ethanol industry representatives commented that obtaining such blendstocks would be both difficult and expensive, because "sub-RVP" blendstocks would be more costly to refine and because blendstock production would be controlled by petroleum refiners. Methyl tertiary butyl ether (MTBE), an oxygenate which does not boost a fuel's RVP, which is derived from methanol gas and the petroleum product isobutylene and whose blends can readily be put through petroleum pipelines, was thought to be the oxygenate of choice for most refiners. Ethanol's representatives theorized that the oil industry would have a desire to use MTBE over ethanol and, thus, little incentive to make the sub-RVP blendstock necessary for ethanol blending. The ethanol industry contended that a reformulated gasoline program which they argued would effectively preclude ethanol was contrary to Congress' intent that ethanol have a role in the program. They argued that the oxygen content requirement of section 211(k)(2) was motivated in large part by a desire to expand markets for ethanol. They noted the strong support afforded the RFG legislative initiative by members of Congress from agricultural states. They also cited statements in the legislative history indicating some members' expectation that the RFG program would provide an increasing market for ethanol.

Ethanol representatives contended that the benefits of ethanol use justify its inclusion in the RFG program. Specifically, they explained that ethanol is currently made in the United States from domestically-grown grains, primarily corn, and thus represents an important domestic and renewable source of energy. They further explained that to the extent ethanol is used in place of imported petroleum products, it promotes the nation's energy independence and improves its balance of trade, and that ethanol use also strengthens the market for corn, consequently reducing the need for price supports. Moreover, as a biomass-based product, ethanol is potentially a renewable fuel to the extent the energy derived exceeds any fossil fuel energy consumed in producing the ethanol.

In view of ethanol's importance to the nation's energy security and agricultural economy, ethanol representatives urged that the proposal be revised to allow ethanol to effectively participate in the RFG market. They suggested several possible revisions. For example, they argued that the 1 psi waiver granted to certain ethanol blends by section 211(h) of the CAA be applied to ethanol-blended RFG under section 211(k). They reasoned that since Congress recognized in the provision requiring nationwide reductions in fuel RVP that ethanol required such a waiver, ethanol should receive a similar waiver if the VOC performance standard for RFG sold in the smoggiest cities were defined in terms of a required reduction in RVP.

If the section 211(h) waiver were not available to RFG ethanol blends, the ethanol industry suggested that the VOC reduction requirement take into account that specific VOCs from various reformulated gasolines differ in their ozone formation potential. While ethanol raises a fuel's volatility and thus its VOC emissions, they argued that the resulting VOCs are less ozone-forming than those that would otherwise occur. They urged that the 15 percent reduction requirement should thus be interpreted to require a 15 percent reduction in ozone-forming potential, not simply mass of ozone-forming VOCs. Ethanol supporters suggested additional ways of encouraging or even requiring ethanol use in RFG. The Governors Ethanol Coalition, for instance, suggested that EPA require the RFG market to satisfy its oxygenate requirements through a minimum percentage of domestically produced renewable fuel.

Based on ethanol's importance to the nation's energy and agricultural policy, President Bush on October 1, 1992 announced a plan to allow ethanol to effectively compete in the RFG program, with the expectation that, with barriers removed, ethanol use would grow. In lieu of an RVP waiver, or inclusion of ozone reactivity this plan was based upon provisions of section 211(k)(1) allowing the Administrator to take into consideration cost, energy requirements, and other specified factors in setting RFG performance standards. The most significant part of this plan called for EPA to "establish rules for reformulated gasoline in all northern cities that will have the effect of granting a one-pound waiver for the first 30 percent market share of ethanol blends, while achieving environmental benefits comparable to those provided for in EPA's proposed rule and regulatory negotiation." The environmental benefits of the proposed RFG program would be maintained by offsetting any increase in volatility of RFG containing ethanol with reductions in the volatility of the rest of the reformulated gasoline pool. In response to the announcement by former President Bush, EPA proposed on February 26, 1993 provisions to provide an RVP (and VOC) incentive for the use in reformulated gasoline of renewable oxygenates such as ethanol.

B. Concerns With the Proposal

At the time of the February 26, 1993 proposal, EPA had a number of concerns with respect to its legality, energy benefits, and environmental neutrality. Nevertheless, we proposed the provisions for public comment in the hope that these concerns could be overcome based on new data and information developed in-house or received through public comment. Since the time of the proposal these concerns have been enhanced. Additional data and information has been developed which indicates that energy benefits would be unlikely to occur as a result of the proposal. While the production of much of the ethanol in the country produces on the margin more energy and uses less petroleum than went into its production, a recent study by the Department of Energy (refer to DOE's comments on the proposal) indicates that the margin disappears when ethanol is mixed with gasoline. The energy loss and additional petroleum consumption necessary to reduce the volatility of the blend to offset the volatility increase caused by the ethanol causes the energy balance and petroleum balance to go negative. Since the potential energy benefits were the basis in the proposal for providing the incentives for renewable oxygenates, the justification for the proposal no longer exists.

Additional data and information has also been developed which indicates that VOC emissions would increase significantly under the proposal. As discussed in section I of the RIA, the commingling effect of mixing ethanol blends with non-ethanol blends in consumer's fuel tanks, the effect of ethanol on the distillation curve of the blend, and unrestricted early use of the complex model combined result in roughly a 6–7.5% increase in gasoline vehicle VOC emissions even though there is no increase in the average RVP of in-use gasoline. As a result, the proposal would have sacrificed 40 to 50 percent of the VOC control that is required under section 211(k) for reformulated gasoline in exchange for incentives for what is likely to have been only a marginal increase in the market share of ethanol in reformulated gasoline and no energy benefits or cost savings.

As discussed in section I of the RIA, ethanol is not excluded from competing in the reformulated gasoline market under the provisions of the April 16, 1992 SNPRM. As a result of the economic advantage of ethanol over other oxygenates, ethanol should maintain a significant market share under the reformulated gasoline program even without the renewable oxygenate incentives proposed in the February 16, 1993 proposal. As a result, the actual ethanol market share increase as a result of the renewable oxygenate provisions would be expected to be far less than the maximum of 30% for which incentives were provided. Given the relatively small increase in ethanol demand as a result of the renewable oxygenate provisions in exchange for such a large loss in the environmental control of the reformulated gasoline program, there does not appear to be any justification for promulgating these provisions.

Furthermore, comments were received from virtually all parties, including ethanol industry representatives, that the proposal was unworkable and would significantly increase the cost of the reformulated gasoline program. While EPA maintains that the program would have provided an economic incentive for the use of renewable oxygenates in reformulated gasoline up to a 30% market share, EPA acknowledges that the proposal would have intruded into the efficient operation of the marketplace, impacting the cost of the reformulated gasoline program. As a result, after taking into account the cost, non-air quality and environmental impacts, and energy impacts, EPA has found itself with no choice but to back away from the renewable oxygenate provisions of the February 26, 1993 proposal.

C. Provisions for the Final Rule

In lieu of the renewable oxygenate proposal, EPA investigated a number of options aimed at making the program more workable by reducing the fuel tracking, recordkeeping, and enforcement burden associated with the proposal. While such options tended to make the program more workable from the standpoint of the refining and fuel distribution processes, they also tended to either reduce the assurance that the environmental benefits of the program would be achieved in all areas covered by the RFG program, or to place additional restrictions on the flexibility contained in the proposal for blending ethanol into gasoline. Given this and the other concerns with the proposal (cost, lack of energy benefits, significant environmental loss, etc.), EPA did not believe these options to be appropriate or justifiable either under the provisions of section 211(k) of the Act. The reader is referred to the Final Regulatory Impact Analysis for a detailed discussion of the renewable oxygenate program.

A number of commenters suggested alternative provisions (1.0 psi RVP waiver for ethanol blends; inclusion of ozone reactivity in the standard setting process, mandates for refiners to provide clear gasoline blendstock for downstream blending with ethanol, etc.) to the proposed renewable oxygenate program to allow ethanol to play a larger role in the reformulated gasoline program. It was argued that without such provisions ethanol would be excluded from the market entirely in direct conflict with the intent of Congress in the CAA.

EPA, however, does not agree that ethanol is excluded from competing in the reformulated gasoline marketplace under the provisions of the April 16, 1992 proposal. In fact, as under the recently implemented wintertime oxygenated fuels program, ethanol is expected to significantly increase its market share under the reformulated gasoline program, especially in Midwestern areas where ethanol enjoys State tax incentives and relatively low distribution costs. In addition, not only is ethanol expected to compete as an alcohol, but it also may compete with methanol as an ether feedstock in the future. As a result, EPA believes that the treatment of ethanol blends under the April 16, 1992 proposal is entirely consistent with the intent of Congress as expressed in section 211(k) of the CAA.

The alternative provisions (1.0 psi RVP waiver for ethanol blends, inclusion of ozone reactivity in the standard setting process, mandates for refiners to provide clear gasoline blendstock for downstream blending with ethanol, etc.) suggested by various commenters to further enhance the competitiveness of ethanol in the reformulated gasoline program are not appropriate. These provisions are both outside of EPA's legal authority under the CAA, and indefensible from an environmental and scientific standpoint. The 1.0 psi waiver for example, could easily forfeit all VOC emission reductions otherwise achieved by the reformulated gasoline program. A move away from the mass based standards of the Act to reactivity based standards is not only unsupportable on the basis of the available scientific information, but even if EPA were able to do so, it would be unlikely to provide any significant advantage for ethanol blends. As discussed in section I of the RIA, the recent urban airshed modeling studies claiming that ethanol blends with a 1.0 psi waiver do not increase ozone relative to an MTBE blended reformulated gasoline are frought with invalid assumptions and inconsistencies and are not applicable to the reformulated gasoline situation. As a result, they provide no credible scientific support for special provisions for ethanol in the context of the reformulated gasoline program.

Given the lack of justification for the renewable oxygenate provisions of the February 26, 1993 proposal, the options considered for simplifying that proposal, and other alternative provisions recommended by commenters, EPA is, thus, basing the oxygenate-related provisions of the final rule on the provisions as proposed in the April 16, 1992 proposal. Despite this decision, EPA still believes ethanol will be able to compete favorably in the reformulated gasoline market either as a direct additive or as an ether feedstock as discussed above. As such, EPA believes that the nationwide production of ethanol will increase as a result of this rulemaking with corresponding benefits to our Nation's agricultural sector. However, the increase may not be as large as it otherwise would have been had an incentive program been promulgated for ethanol. The reader is referred to section I. of the RIA for additional description of the comments and information which led up to this decision.

III. Simple Model for Reformulated Gasoline Compliance

In accordance with section 211(k) of the Clean Air Act, EPA requires that in order for a gasoline to be certified as reformulated, it must contain at least 2.0 weight percent oxygen, no more than 1.0 volume percent benzene, and no heavy metals (unless a waiver is granted); result in no increase in NO_X emissions; and achieve required toxics and VOC emission reductions. The VOC, NO_X, and toxics emission requirements effective between January 1, 1995 and December 31, 1997 and EPA's derivation of them are set forth below.

Two methods by which refiners can certify their fuel as meeting the VOC, NO_X, and toxics requirements of reformulated gasoline are contained in this rulemaking. The first, by use of a "Simple Model," is described in this section. A second method, the use of the "Complex Model" is described in Section IV. Provisions for augmenting the Complex Model through vehicle testing are described in Section V. For reasons set forth in the April 16, 1992 SNPRM (57 FR 13417–13418) and discussed Section V, vehicle testing is not an option as a separate, stand-alone method of certification. First, models can better reflect in-use emission effects since they can be based on the results of multiple test programs. Second, individual test programs may be biased, either intentionally or unintentionally. Third, fuel compositions tend to vary due in part to factors beyond the control of fuel suppliers, potentially requiring testing of each batch if a model is not used. Finally, models make more efficient use of scarce and expensive emissions effects data than is otherwise possible. For these reasons, EPA believes that the modeling options promulgated by EPA are necessary for the reformulated gasoline program to achieve its environmental objectives and to minimize the costs of the program. Comments were received suggesting that EPA allow certification based on testing as an optional means of certification. However, for the same reasons discussed above, EPA does not believe such an option would be appropriate. EPA would have much less certainty that the results of the test program were valid.

At the time of the simple model proposal, while a number of fuel parameters were thought to impact emissions, data were sufficient for only a few of these parameters (Reid vapor pressure, fuel oxygen, benzene, and aromatics) to quantify their effect with reasonable accuracy for use in an emissions model. For those additional parameters which were thought to impact emissions in a directionally clear, but as of yet unquantifiable manner (sulfur, T90, and olefins), EPA proposed that they be capped at the refiner's 1990 average level to prevent emission effects from changes in their levels from undercutting the emission reductions achieved by the parameters contained in the simple model. The effect of aromatics on VOC and NO_X emissions was also unclear, but instead of being capped, it was believed that the level of aromatics would be controlled by the role aromatics plays in the formation of air toxics emissions.

Data is now available to accurately quantify not only the effects of RVP, oxygen, benzene, and aromatics on emissions, but also sulfur, T90 (or E300), olefins, and T50 (or E200). The effects of these fuel parameters are incorporated into the Complex Model described in Section IV.

The Complex Model is the most accurate and complete model currently available for use in the reformulated gasoline program. Absent any other considerations, EPA would require use of the Complex Model for purposes of certification. However, based on leadtime considerations, EPA is allowing use of either the Simple or Complex Model during the first three years of the reformulated gasoline program as proposed. These lead time considerations were described in the April 1992 proposal (57 FR 13417–8). EPA is providing four years leadtime before use of the Complex Model is mandatory to allow the regulated industry adequate time to plan and design necessary refinery modifications, obtain necessary permits and capital, complete construction, and complete start-up and equipment shakedown. Furthermore, EPA has every confidence that on average the refiners certifying their fuel using the Simple Model will achieve the emission reductions that

Congress intended for the reformulated gasoline program.

Various comments were received criticizing the use of the Simple Model for fuel certification, stating that it had limited flexibility, discouraged innovation, penalized refiners producing cleaner than average gasoline in 1990, and should be scrapped. Many of these comments would appear to be resolved by the option available for early use of the Complex Model. Therefore, in keeping with the need to provide adequate lead time and the fact that compliance with the Simple Model will produce the mandatory VOC and toxic emission reductions, refiners will be permitted to use the simple model for certification until December 31, 1997. Until this date, fuel suppliers will have the option of using the complex model instead of the simple model to take advantage of the effects of parameters contained in the complex model but not contained in the simple model (as described in the following paragraphs). The reader is referred to the April 16, 1992 SNPRM for more discussion of these lead time provisions.

A. Simple VOC Emissions Model

The simple model for VOC emissions is comprised of fuel specifications for RVP and oxygen. Fuels sold at retail outlets must have an RVP during the high ozone season (June 1 through September 15) of no more than 7.2 psi in VOC control region 1 (the southern areas typically covered by ASTM class B during the summer) and 8.1 psi in VOC control region 2 (the northern areas typically covered by ASTM class C during the summer).[1] The differences in climate between these two types of areas requires a corresponding difference in gasoline volatility to achieve the same emissions effect. The period of June 1 through September 15 was chosen for the high ozone season because most of the ozone violations occur during this period. (See 56 FR 24242 for a discussion of the determination of this period.)

Section 211(k)(3) of the Act requires that at a minimum reformulated gasoline comply with the more stringent of either a 15% reduction in VOC emissions or a formula fuel described in that section, whichever is greater. EPA has determined that the formula fuel would achieve less than a 15% reduction in VOC. As such, the minimum VOC emission reduction required by the Act is 15%. As discussed in section IV, EPA believes that the VOC emission reduction in VOC control region 2 from a fuel with an RVP of 8.1 psi and 2.0 weight percent oxygen will be sufficient to achieve the minimum 15% VOC emission reduction relative to the Clean Air Act baseline gasoline (which has an RVP of 8.7 psi). In VOC control region 1, an 8.1 psi RVP fuel with 2.0 percent oxygen (which would meet the minimum 15% reduction requirement relative to the CAA baseline fuel) would actually have greater emissions than a fuel meeting EPA's Phase II RVP control standards for VOC control region 1 (maximum RVP of 7.8 psi). EPA believes that when Congress designated cities for inclusion in the reformulated gasoline program that it intended the program to provide emissions reductions in addition to those provided by the Phase II RVP requirements. If EPA merely required reformulated gasoline in VOC control region 1 to meet the RVP requirement for VOC control region 2, then no reduction in VOC emissions would accrue under the first phase of the reformulated gasoline program beyond those mandated by Phase II RVP standards. EPA projects that relative to Phase II RVP control levels, a fuel with 7.2 psi RVP and 2.0 weight percent oxygen would provide VOC emission reductions in VOC control region 1 similar to those obtained in VOC control region 2.

While requiring reformulated gasoline sold in VOC control region 1 to have an RVP of no more than 7.2 psi goes beyond the minimum requirement stated in section 211(k)(3), section 211(k)(1) authorizes EPA to require emission reductions in VOC control region 1 of this magnitude because they are achievable considering costs, other air quality and non-air quality impacts, and the energy implications of such a requirement.

Similarly, EPA believes that additional VOC reductions are obtainable if refiners are allowed to meet the RVP and oxygen standards through averaging. If refiners wish to take advantage of averaging, EPA thus will require their average RVP for both VOC control regions 1 and 2 to be reduced by 0.1 psi to 7.1 and 8.0 psi, respectively, and the average oxygen concentration to be increased to 2.1 weight percent oxygen. For additional discussion of the rationale for the more stringent standard in VOC control region 1 and the increase in stringency of the averaging standards, the reader is referred to the April 16, 1992 SNPRM.

B. Simple NO_X Emissions Model

The Clean Air Act requires that there be no NO_X emissions increase from reformulated fuels. Based on data available during the regulatory negotiations and at the time of the April 16, 1992 proposal, it appeared that fuel oxygen content and the type of oxygenate used may have an impact on NO_X emissions while no other simple model parameter appeared to have such an impact. Due to the statutory requirement for oxygenate use, and the lack of any other parameters in the simple model by which refiners could offset any NO_X increase, EPA needed to place restrictions on the amount of oxygen that could be added to the fuel in order to prevent NO_X emission increases. EPA proposed on the basis of the data then available that MTBE blends containing up to 2.7 weight percent (wt%) oxygen and other blends containing up to 2.1 wt% oxygen would be presumed to result in no NO_X increase. Greater oxygenate concentrations could not be permitted due to the risk of NO_X emission increases.

When additional data became available, however, there did not appear to be any significant difference between the NO_X emission effects of oxygen from different oxygenates. Furthermore, it appeared that reducing the concentration of a number of additional fuel parameters (aromatics, olefins, sulfur, etc) could reduce NO_X emissions. Since these fuel parameters all tend to be reduced to varying degrees when oxygenates are added to gasoline, EPA proposed in its February 26, 1993 proposal that all oxygenates be assumed to result in no NO_X emission increase under the simple model up to 2.7 wt% oxygen.

Under the final Complex Model discussed in Section IV, oxygen has been found to result in no NO_X increase, in fact, it results in a very slight decrease. However, the other changes that occur to the fuel when oxygenates are added both increase and decrease NO_X emissions (increases in E200 increase NO_X emissions while reductions in sulfur, olefins, aromatics, and increases in E300 reduce NO_X emissions). Typically the effect of these other fuel changes will be to further reduce NO_X emissions. However, there is no control placed on E200 levels under the simple model, and the levels of sulfur, olefins, an E300 are only constrained to the refiner's 1990 baseline levels (aromatics is controlled indirectly to some degree by the toxics requirement). As a result, there is no assurance under the simple model that

[1] Lower RVP limits apply for fuels that comply under averaging. RVP controls also apply from May 1 to May 31 for facilities upstream of retail outlets. These issues are discussed elsewhere in this proposal.

oxygenate addition will not increase NO_X emissions. The more oxygenate added, the greater the increase in E200, and the greater the possibility for a NO_X increase. For this reason EPA believes it is still appropriate to cap the maximum oxygen content under the Simple Model at 2.7 wt%. Any higher oxygen concentrations will require use of the complex model.

However, for a number of reasons, EPA believes it is appropriate for any oxygenate up to 3.5 weight percent oxygen to be presumed to result in no NO_X emission increase under the simple model during those months without ozone violations (e.g., winter months) unless a state requests that oxygenate levels be limited to the 2.7 wt% oxygen level applicable during those months with ozone violations. First, although there are a number of concerns associated with NO_X emissions, the main concern of focus in this rulemaking is ozone which is for the most part a summertime problem. Second, while there is no assurance that individual batches of gasoline containing more than 2.7 wt% oxygen will not increase NO_X emissions, the increase, if any, would be small (i.e., likely less than 1 percent). Third, on average across all fuel produced by all refiners in an area, a NO_X reduction may still occur. Fourth, there are benefits to the use of oxygenates during the winter months (lower CO and air toxics emissions) that may be more important to individual states than the certainty that no one batch of fuel increases NO_X emissions relative to the 1990 baseline.

A state may make a request for the 2.7 wt% oxygen limit to apply during the non-ozone season when it believes that the use of higher oxygenate levels would interfere with attainment or maintenance of another ambient air quality standard (other than ozone) or another air quality problem. This proposal parallels the Regulatory Negotiation Agreement of August 16, 1991 and EPA's letter to the Renewable Fuels Association dated August 14, 1991.

C. Simple Toxics Emissions Model

Under section 211(k)(3), EPA must at a minimum require the more stringent of either a specified formula fuel or a 15 percent reduction in toxics emissions from that of baseline gasoline. All five of the toxic air pollutants that section 211(k)(10) of the Act specifies for control through reformulated gasoline (benzene, 1,3-butadiene, polycyclic organic matter (POM), formaldehyde, and acetaldehyde) also fall under the category of VOCs. Exhaust emissions include unburned benzene and benzene formed from other aromatics during the combustion process. Benzene, an aromatic compound, is a natural component of gasoline and, as such, is present in evaporative, running loss and refueling emissions (nonexhaust emissions). However, nonexhaust VOC and benzene emissions data are only available in sufficient quantities under high ozone test conditions. Therefore, nonexhaust benzene emissions are not considered outside of the high ozone season. The four other toxic air pollutants subject to control by reformulated gasoline are not present in gasoline and hence are solely products of combustion.

The equations that represent the simple model for air toxics emissions are shown in section 80.42 of the regulations. The derivation and referenced work is given in the regulatory impact analysis.

Only minor changes were made to the proposed simple toxics model. One change excluded ethane from the exhaust VOC baseline emissions as discussed below in Section III.D.3. The weight fractions of the various toxics as a function of VOC have also been adjusted accordingly, resulting in no net change in predicted toxics performance for a particular fuel. At the request of commenters, EPA has also included the oxygenates tertiary amyl methal ether (TAME) and ethyl tertiary amyl ether (ETAE) as well as provisions for other oxygenates and mixed oxygenates. Due to their similar chemical makeup, methyl ethers (such as TAME) and ethyl ethers (such as ETAE) are to be modeled using the same equations as for MTBE and as for ETBE, respectively. Higher alcohols will be modeled using the same equations as for ethanol. Higher ethers will be modeled as ETBE for all air toxics, since ETBE was the highest ether for which toxics data were available.

D. Baseline Determination

Where the performance standard is more stringent than the formula, the Act requires EPA to promulgate standards for the performance of reformulated gasoline that are relative to emission levels from baseline vehicles using baseline fuel. In order to determine whether fuels meet the performance requirements of reformulated gasoline under the simple model, EPA must therefore establish the baseline to which the emission performance of reformulated fuels are to be compared. The following discussion describes how EPA derived the emission baselines.

1. Control Periods

Before the emission baselines can be determined, the time frame over which fuel performance will be evaluated must be identified. Section 211(k) of the Act requires control of VOC emissions during the "high ozone season." For the purposes of this rulemaking, the high ozone season is defined to be June 1 through September 15. This period covers the vast majority of days during which the national ambient air quality standard for ozone is exceeded nationwide and is consistent with the period covered by EPA's gasoline volatility control requirements. All gasoline at service stations must thus comply with the reformulated gasoline requirements during this period. Also in keeping with the gasoline volatility control rulemaking the "VOC control Period" for compliance with the reformulated gasoline provisions upstream from the service station (necessary to ensure complying fuel is available at the service stations during the high ozone season) is May 1 through September 15.

2. Baseline Gasoline

The fuels to be used in determining baseline emissions are unchanged from the February 26, 1993 proposal and are shown below.

TABLE III–1.—BASELINE FUEL COMPOSITIONS

	Summer	Winter
Sulfur, ppm	339	338
Benzene, volume percent	1.53	1.64
RVP, psi	8.7	11.5
Octane, R+M/2	87.3	88.2
T10, degrees F	128	112
T50, degrees F	218	200
T90, degrees F	330	333
Aromatics, volume percent	32.0	26.4
Olefins, volume percent	9.2	11.9
Saturates, volume percent	58.8	61.7

3. Definition of Ozone-Forming VOC

The Act requires reductions in emissions of ozone-forming VOCs. This interpretation is consistent with the focus of Section 211(k) on the areas with the most extreme ozone pollution problem. EPA proposed in April 16, 1992 that methane would be excluded from the definition of VOC on the basis of its low reactivity in keeping with past EPA actions, but included all other VOCs including ethane. EPA further proposed, however, that should the Agency modify the definition of VOC, we might do so for the reformulated gasoline rulemaking as well. As discussed in the February 26, 1993 proposal, EPA has also modified the definition of VOC to exclude ethane in a separate Agency rulemaking (57 FR 3941). As a result, the performance of fuels meeting the VOC emission requirements under the simple model are expressed on a non-methane, non-ethane basis. This change resulted in slight changes to the simple model equations previously proposed, but the overall results of the simple model are essentially unaffected.

4. Simple Model Baseline

The following table shows the baseline emissions under the simple model which result from the assumptions discussed above. Since the MOBILE model does not estimate toxics emissions, however, separate data and information was necessary to determine their baseline emissions. The toxics baseline was developed in essentially the same manner as that proposed in the April 16, 1992 proposal. An explanation of this derivation can be found in Section II of the RIA.

TABLE III–2.—SIMPLE MODEL BASELINE EMISSIONS

	Summer		Winter
	Region 1	Region 2	
Exhaust VOCs (g/mi)	0.444	0.444	0.656
Non-Exhaust VOC (g/mi)	.856	.766	0
Total VOCs (g/mi)	1.30	1.21	0.656
Exhaust Benzene (mg/mi)	30.1	30.1	40.9
Evaporative Benzene	4.3	3.8	0.0
Running Loss Benzene	4.9	4.5	0.0
Refueling Benzene	0.4	0.4	0.0
1,3–Butadiene	2.5	2.5	3.6
Formaldehyde	5.6	5.6	5.6
Acetaldehyde	4.0	4.0	4.0
POMs	1.4	1.4	1.4
Total TAPs (mg/mi)	53.2	52.1	55.5

E. Phase I Performance Standards Under the Simple Model

Section 211(k)(3) directs EPA to require, at minimum, that Phase I reformulated gasoline comply with the more stringent of two alternative VOC and toxics emission requirements—either a performance standard of a 15 percent reduction from baseline levels on a mass basis, or compositional requirements specified as a formula in Section 211(k)(3)(A). The formula effectively defines a set of maximum or minimum fuel parameter specifications. In evaluating which requirement is more stringent, EPA is to consider VOC and toxics separately.

The stringency of the formula is best evaluated by determining the emissions performance of the fuels that would be certifiable if EPA were to impose the requirements of Section 211(k)(3)(A). A gasoline would meet these requirements if it (1) had no more than 1.0 volume percent benzene, (2) had no more than 25 volume percent aromatics, (3) had no less than 2.0 weight percent oxygen, and (4) met the requirements for detergent additives and lead content. The formula does not specify or limit any additional gasoline properties, and therefore a wide variety of fuels with very different properties would qualify as complying with the formula. For example, the formula specifies the weight percent oxygen but does not specify the type of oxygenate. If EPA were to impose the requirements of Section 211(k)(3)(A), then any approved oxygenate could be used to meet the formula's oxygen requirement, as long as it was blended to achieve the required weight percent oxygen. The same would be true of sulfur levels, distillation characteristics, olefin levels, RVP levels, and so on. As long as the formula's requirements were met, the fuel would be certifiable if EPA were to base its certification requirements on Section 211(k)(3)(A).

To evaluate the emissions performance of the various fuels that would comply with the formula requirements, EPA used the Phase I complex model. Given the Phase I baseline emission levels, EPA considers the complex model to be the most appropriate means of evaluating emissions performance since it incorporates the Agency's most recent, complete, and accurate knowledge of the effects of fuel properties on VOC and toxics emissions. Since many of the fuel parameters that are not specified for the formula affect VOC and toxics emissions, the various possible formula fuels exhibit a wide variety of emission performance levels as these unspecified parameters vary. According to the Complex Model, requirements based on many possible formula fuels would be less stringent than requirements based on the 15 percent minimum reduction requirements of Section (211)(k)(3)(B). In addition, the lack of specificity of the formula fuel would make establishment of an equivalent emissions performance standard impossible, since one or more possible formula fuels would fail to meet any specific standard.

In past proposals, EPA has evaluated the formula fuel by assigning levels for unspecified parameters at their level in baseline gasoline, as defined in section 211(k)(9)(B) of the Act. However, such an interpretation would not eliminate the problems described above, since the oxygenate type would remain unspecified. Hence the requirements of a formula could be met by a range of fuels, each based on different oxygenates, even if unspecified parameters were to be set to baseline levels, and this range of fuels would exhibit a range of emission performance levels. While the Complex Model attributes identical effects to oxygen in different chemical forms for most pollutants, it incorporates emission effects that depend on the type of oxygenate used for nonexhaust benzene, acetaldehyde, and formaldehyde emissions. EPA therefore ran the complex model for several fuels, varying the type of oxygenate and holding other parameters not specified by the formula at statutory baseline levels.

The VOC emission reductions from baseline levels for all such formula fuels were less than 15 percent. EPA therefore based the VOC emission requirements for Phase I reformulated gasoline on the 15 percent reduction minimum performance standard, since this standard is more stringent than the requirements of the formula.

For toxics performance, EPA separately evaluated the emissions

performance of fuels that met the formula requirements and contained statutory baseline levels of unspecified fuel properties for VOC control regions 1 and 2, since nonexhaust benzene emissions would differ in these two regions. EPA also evaluated such fuels with different oxygenate types. The results are shown in Table II–3. These results include both summer and winter effects, weighted based on the share of vehicle miles traveled in each season.

TABLE II–3.—PHASE I TOXICS EMISSIONS PERFORMANCE OF FORMULA FUELS

Oxygenate type	Percent reduction from CAAB levels	
	VOC control region 1	VOC control region 2
ETBE	11.82	11.65
Ethanol	13.16	13.01
MTBE	16.33	16.15
TAME	16.81	16.67

The results indicate that whether a formula fuel (with unspecified fuel parameters at statutory baseline levels) meets the 15% minimum performance requirement of section 211(k)(3)(B) depends on the type of oxygenate used. If EPA were to impose the formula requirements of section 211(k)(3)(A), the results presented in Table II–3 indicate that not all gasolines which could be certified as reformulated would achieve at least a 15 percent reduction in toxics mass emissions, even if unspecified fuel properties were set at statutory baseline levels. If EPA were to require a 15 percent emissions reduction in accordance with section 211(k)(3)(B), however, all fuels would achieve this minimum level of reductions. EPA therefore believes that the formula requirements of section 211(k)(3)(A) are not as stringent as the performance standard set forth in Section 211(k)(3)(B).

The minimum performance standard for Phase II is even more stringent than the Phase I standards. EPA has therefore determined that the performance standard is more stringent than the formula for both VOCs and toxics, for both Phase I and Phase II. EPA must therefore set its Phase I requirements for both VOCs and toxics to be no less stringent than the 15 percent emission reduction performance standard required by section 211(k)(3)(B). EPA has considered whether it should require greater reductions in toxics mass emissions than that required by the 15 percent minimum performance standard. However, the Agency has concluded that more stringent toxics requirements are not cost-effective, as is discussed more fully in Section VI. Hence EPA has set the Phase I toxic emission performance standard at the minimum 15 percent reduction from baseline levels required by the Act. Compliance with this standard must be demonstrated using the appropriate emission models throughout Phase I.

Under the authority of section 211(k)(1), EPA believes that the greater flexibility and reduced cost afforded to gasoline refiners and importers by an averaging program allow EPA to require a greater reduction in toxics emissions than is required under section 211(k)(3). As discussed in Section VII, the Agency believes it appropriate, when the air toxics standard is met on average, that it be 1.5 percentage points more stringent than standards met on a per-gallon basis. EPA estimates that the approximate 1.5 percentage point margin will be sufficient to recoup any compliance margin refiners would have otherwise had to maintain to ensure achievement of the toxics requirements in the absence of an averaging program. In sum, the tighter averaged standard should have the potential to increase the environmental benefits of the reformulated gasoline program while not increasing the cost of obtaining those benefits. As a result, the air toxics performance standard when met on an annual average basis is set at a 16.5% reduction from baseline levels.

F. Applicability (1995–7)

The Simple Model described in this section is effective beginning January 1, 1995 with the beginning of the reformulated gasoline program as a means by which fuel producers can certify that their fuel meets the requirements for reformulated gasoline. The Complex Model described in Section IV will not be required to be used for fuel certification until January 1, 1998.

Until January 1, 1998, refiners who produce reformulated gasoline will have a choice of certifying their gasoline by using either the Simple Model or the Complex Model. EPA proposed three options for establishing the performance standards under early, optional use of the Complex Model. Under one option, if a refiner opts to utilize the Complex Model before January 1, 1998 the reformulated gasoline can have no worse VOC, NO_X, or toxic emissions performance than would be predicted by the Complex Model for a Simple-Model fuel (minimum 2.0 percent oxygen, maximum 1.0 percent benzene, and maximum RVP of 8.1 psi in Class C areas and 7.2 psi in Class B areas) having that refiner's average 1990 levels of sulfur, olefins, and T90 (E300). The second option was a variation of the first, in that refiners producing gasoline for use in only the southern reformulated gasoline areas (VOC control region 1) could measure their fuel performance against the CAA baseline gasoline as an alternative to their own 1990 refinery baseline. The third option, proposed by EPA in February 1993, would extend the second option to all reformulated gasoline areas.

The rationales for these options are discussed in detail in EPA's proposals. Many of the comments were also received prior to the proposals, and as such were addressed there. As a result, the reader is referred back to the proposals for additional discussion. After considering the comments, EPA has decided to promulgate the first option. First, under this option each refiner will have to achieve the same reductions, whether they use the simple model or the complex model. The option to use either model increases refiner flexibility, but will not change the emissions reductions required for a refiner prior to mandatory use of the complex model in 1998. EPA believes that the reductions required under the simple model are achievable considering all relevant factors and will continue to be so under the optional use of the complex model. In fact, the additional flexibility of using the complex model would in some cases make them even more reasonable.

Second, the other two options create an incentive for early use of the complex model by those refiners who would then have a less stringent performance standard than under the simple model. This would produce on average an increase in overall emissions for reformulated gasoline compared to average emissions if only the simple model was allowed. Refiners with individual baselines for sulfur, T90 and olefins that are lower than the CAA baseline would, under the second and third options, get credit for emission benefits for these parameters, and could use this to justify a less stringent RVP control than required under the simple model. There would be no parallel disincentive to early use of the complex model for refiners with higher baselines which would result in an increase in their required reductions. This imbalance in the expected early use of the complex model could easily lead to an average 1–2 percentage point reduction in the average emission performance of reformulated gasoline from 1995–7 as discussed in section I of the RIA. Based on this negative environmental impact, and the reasonableness of the complex model performance standard under the first option, EPA has decided to promulgate the first option described above for early use of the complex model.

G. Enforcement of the Early Use Option

Additional controls over reformulated gasoline certified using the "early-use" complex model are necessary for the operation of the downstream enforcement mechanisms of VOC and NO_X emissions performance minimums, and covered area gasoline quality surveys. These restrictions are necessary because under the restricted early-use approach being promulgated, VOC, toxics, and NO_X percentage reductions are calculated from a baseline fuel using the refiner's 1990 baseline levels of sulfur, T–90, and olefins. As a result, the reformulated gasolines produced by different refiners (or in some cases, at different refineries) under this option will likely each meet different percentage reduction standards for VOC, toxics, and NO_X. Therefore, the performance of a fungible mixture of complex model gasolines produced by different refiners at different refineries could not be predicted, nor could be evaluated.[2]

In order for the per-gallon minimums for VOC and NO_X emissions performance to be monitored by downstream regulated parties and enforced by EPA, the baseline for a given gasoline sample must be known. Without knowledge of the baseline, it is not possible to determine whether the fuel complies with the per-gallon minimums, since it will be different for each refinery. Similarly, in order for the gasoline quality surveys to function under early use of the complex model, the baseline from which to determine the emission performance for VOC, toxics, and NO_X must be known. Without knowledge of the baseline, it is not possible to determine whether the complex model fuels in an area on average meet the per-gallon standards.

EPA received comments from two industry groups representing the refining industry on this issue. Both commenters stated that EPA should require that "early-use" complex model gasolines subject to different baselines be segregated through the gasoline distribution system. EPA is adopting this suggested approach as the best (and perhaps only) means of accommodating both the restricted early-use option and downstream enforcement of per-gallon minimums and gasoline quality surveys.

Under this approach, gasoline sampled at any point in the distribution system would have known values for VOC, toxics, and NO_X emissions performance that meet the per-gallon and minimum standards. Today's rule requires that these values must be included in the product transfer documents for "early-use" complex model gasoline, to inform downstream parties and EPA of the relevant per-gallon and minimum values.

Today's rule prohibits the commingling throughout the distribution system, including at retail outlets, of "early-use" complex model gasoline that is subject to different baselines. One commenter stated that the segregation of this gasoline should be through the terminal level only. EPA disagrees with this comment because segregation through the retail level also is necessary in order for gasoline quality surveys to function. Survey samples are taken at retail outlets, and the survey requires that the relevant per-gallon values for VOC, toxics, and NO_X emissions performance must be known for each sample.

EPA realizes that restrictions on commingling of "early-use" complex model gasolines constitutes a significant constraint on the use of this option, because most gasoline used in the United States is transported as a fungible commodity. As a result, EPA anticipates that before 1998 the complex model will be used only in limited situations. This might occur where a refiner has a gasoline transportation system that is dedicated from the refinery through the retail level, or where the cost advantages of using the complex model are sufficiently large to offset the difficulties of segregation. In spite of these constraints, EPA sees no alternative to requiring segregation controls over "early-use" complex model gasoline.

IV. Complex Model

The complex model described in this section has undergone significant changes since it was first proposed in the February 1993 NPRM. These changes have been made in response to three key factors: EPA's improved understanding of the relationship between fuel characteristics and emissions, EPA's use of more appropriate data analysis methods, and comments received in response to the February NPRM, a public workshop held on May 25, 1993, and EPA's July 14, 1993 docket submission that described a number of alternative complex models. The key elements in the complex model being promulgated today are discussed in this section. This discussion also addresses the major substantive comments received by EPA regarding the complex model. A more detailed description of the model and its derivation, including a detailed summary and analysis of comments, can be found in Section IV of the RIA.

Baseline Emissions

As discussed in Section III, EPA is using a July 11, 1991 version of MOBILE4.1 to estimate baseline emissions from light-duty vehicles for the simple model, assuming a basic inspection and maintenance program. This baseline was developed in the regulatory negotiation and was at the time the best estimate of the in-use emission performance of 1990 vehicles from which to ensure that the minimum performance standards required by section 211(k) of the Clean Air Act would be achieved.

Since that time the Agency has developed a new version of the MOBILE model, MOBILE5a, for use by the states in demonstrating compliance with the national ambient air quality standard for ozone. As proposed in the February 26, 1993 proposal, EPA will use MOBILE5a in conjunction with an enhanced I/M program to establish the emission baseline for Phase II of the reformulated gasoline program beginning in the year 2000. EPA, however, has decided to retain the MOBILE4.1 and basic I/M baseline assumption for the simple model during Phase I of the RFG program. Switching to a MOBILE5a baseline for Phase I would have required reformulated fuels to meet a slightly more stringent RVP standard to maintain the minimum VOC emissions performance required by the Act. The majority of the VOC emission reductions achieved by RFG are from nonexhaust emissions; under MOBILE5a, nonexhaust VOC emission reductions are less effective in reducing overall VOC emissions than are exhaust VOC reductions, while the opposite is true under MOBILE4.1. Thus, in order to provide refiners with sufficient leadtime to complete the investments needed to meet the requirements of the program, the baseline for the Simple Model is determined using MOBILE4.1.

When replacement of the Simple Model with the Complex Model is required in 1998, the issue again arises as to whether a more stringent standard should be required by shifting to use of MOBILE5a in determining the baseline. MOBILE5a clearly provides a more

[2] Beginning in 1998, certification of reformulated gasoline using the simple model will no longer be an option, and all reformulated gasoline will be certified using the complex model. Also beginning in 1998, all refiners and importers will calculate emissions performance reductions from Clean Air Act average gasoline; individual refiner baselines will not be relevant to reformulated gasoline. As a result, the difficulties with downstream enforcement and surveys will be resolved.

recent estimate of the mobile source VOC inventory than does MOBILE4.1. However, many of the changes made in MOBILE5a were intended to significantly increase the accuracy of the exhaust emission estimates while similar changes which would have increased the accuracy of the nonexhaust VOC emission estimate were not incorporated for various reasons, including the limited time available to revise the MOBILE model. As a result, the proportional contribution of exhaust and nonexhaust VOC emissions to the in-use VOC inventory may not be any more accurate in MOBILE5a than in MOBILE4.1 even though MOBILE5a provides a more accurate assessment of the total contribution of mobile sources to the entire VOC inventory by virtue of its greater accuracy in estimating exhaust VOC emissions. Since it is the relative proportions of exhaust and nonexhaust VOC emissions and not the overall magnitude of the mobile source VOC inventory which determines how difficult it will be for refiners to meet the overall VOC standard in 1998, it is unclear whether MOBILE5a would be more appropriate to use in 1998 than MOBILE4.1.

A simple model fuel evaluated using the complex model achieves more than the minimum 15% requirement of the Act using the MOBILE4.1 baseline exhaust/nonexhaust ratio but less than the 15% requirement using the MOBILE5a baseline exhaust/nonexhaust ratio. Given the uncertainty in the actual in-use exhaust/nonexhaust ratio during this interim period, it is difficult to know whether or not the 15% actually would be achieved in-use by a fuel meeting the requirements of the Simple Model. Using MOBILE4.1 to determine the baseline in 1998 would introduce some risk that the 15% minimum performance requirement of the Act would not be met in-use by a fuel meeting the requirements of the Simple Model. However, this risk is relatively small in magnitude (less than three percentage points of emission reduction are at stake) and duration (the risk exists for only two years). On the other hand, using MOBILE5a to determine the 1998 baseline would result in some risk that refiners would be required to incur greater costs to achieve a more stringent standard than the minimum required by the Act. This greater stringency would have the effect of creating a third interim phase to the RFG program.

Given the uncertainty in determining whether a MOBILE4.1-based performance standard or a MOBILE5a-based standard more accurately reflects the in-use conditions in 1998, the potential disruption to refinery operations (even if only for a small increase in the stringency of the fuel reformulation requirements), the fact that a more stringent standard in 1998 was not discussed or envisioned as part of the regulatory negotiation process, and the fact that any risk to the environment is small and of short duration, EPA does not believe it to be appropriate to base the Phase I complex model standards on MOBILE5a and require refiners to meet a more stringent performance standard in 1998. As a result, EPA will retain MOBILE4.1 with basic I/M as the basis for the Phase I performance standards under the Complex Model in 1998.

In summary, EPA has retained the VOC and NO_x baselines proposed in the SNPRM, including the relevant I/M assumptions, for use with the complex model prior to 2000. The onset of the Phase II performance standards in 2000 will increase the overall stringency of the standards, and a new baseline based on MOBILE5A will not, by itself, be the cause of new investment by refiners. By this time, enhanced I/M programs should be fully operational in nearly all reformulated gasoline areas. Therefore, baseline VOC and NO_x emission levels to be used with the complex model in Phase II are based on MOBILE5A's estimate of emissions from light-duty vehicles and trucks with enhanced I/M.

Baseline estimates of toxics emissions are not available directly from the MOBILE models. The nonexhaust toxics model bases its estimates of nonexhaust toxics on the RVP and benzene levels of the fuel. Since both of these levels are specified for Clean Air Act baseline (CAAB) gasoline, EPA has used the nonexhaust toxics model to determine the baseline nonexhaust toxics emission level. The exhaust toxics baseline has been estimated by multiplying the exhaust toxics emission level predicted by the complex model for CAAB gasoline by the ratio of baseline exhaust VOC emissions to the average exhaust VOC emission measurement in the complex model database. Since the five regulated exhaust toxic pollutants are all classified as VOCs, this adjustment sets the baseline exhaust toxics level equal to the exhaust toxics levels that would have been observed if the vehicles represented by the complex model database had VOC emission levels representative of in-use vehicles when tested on CAAB gasoline. No comments were received opposing this approach, which is discussed in more detail in Section III of the RIA.

In evaluating the performance of simple model fuels, EPA has focused its attention on the average refiner. The need to compensate for differences between individual refinery baselines and the Clean Air Act baseline when the use of the complex model becomes mandatory has been communicated in past proposals, workshops, and the discussions associated with the Agreement in Principle. Hence refiners have been given adequate notice that if their baseline fuel produces higher emissions than CAAB fuel, then they must offset such emissions when the use of the complex model becomes mandatory in 1998. The four years before use of the complex model becomes mandatory is adequate leadtime for refiners. Refiners undertaking investments to comply with the simple model requirements have been made aware of these requirements, and this transition process was inherent in the regulatory negotiation agreement and in prior proposals. EPA recognizes that the precise emissions impact of individual refiner baselines could not be determined with confidence until the Complex Model was promulgated. However, refiners were aware of at least one course of action that would satisfy the requirements of the program under the complex model, namely to alter their baseline fuel to match the Clean Air Act baseline prior to meeting the simple model requirements.

Baseline emissions of VOC, NO_x, and toxics are given in Table IV–1 for Phase I and in Table IV–2 for Phase II. Summer and winter baselines are shown for both phases, with summer baseline emissions for VOC Control Regions 1 and 2 shown separately. The toxics emission baseline shown in Table IV–1 is applicable only during 1998 and 1999 and for those refiners choosing to use the complex model prior to 1998; the baselines shown in Table IV–2 are applicable in 2000 and beyond.

TABLE IV–1.—PHASE I BASELINE EMISSIONS, MILLIGRAMS/MILE

Pollutant	Summer		
	Region 1	Region 2	Winter
Running loss VOC	430.77	390.42	0.00
Hot soak VOC	264.61	229.96	0.00
Diurnal VOC	125.09	108.71	0.00
Refueling VOC	40.01	40.01	0.00
Nonexhaust VOC	860.48	769.10	0.00
Exhaust VOC	446.00	446.00	660.00
Total VOC	1306.48	1215.10	660.00
NO_x	660.00	660.00	750.00
Running loss benzene	4.92	4.46	0.00
Hot soak benzene	3.02	2.63	0.00
Diurnal benzene	1.30	1.13	0.00
Refueling benzene	0.42	0.42	0.00
Nonexhaust toxics	9.66	8.63	0.00
Exhaust benzene	26.10	26.10	37.57
Acetaldehyde	2.19	2.19	3.57
Formaldehyde	4.85	4.85	7.73
1,3-butadiene	4.31	4.31	7.27
POM	1.50	1.50	2.21
Exhaust toxics	38.95	38.95	58.36
Total toxics	48.61	47.58	58.36

TABLE IV–1.—PHASE II BASELINE EMISSIONS, MILLIGRAMS/MILE

Pollutant	Summer		
	Region 1	Region 2	Winter
Running loss VOC	328.53	294.15	0.00
Hot soak VOC	84.11	80.97	0.00
Diurnal VOC	93.34	63.62	0.00
Refueling VOC	53.33	53.33	0.00
Nonexhaust VOC	559.31	492.07	0.00
Exhaust VOC	907.00	907.00	1341.00
Total VOC	1306.48	1215.10	1341.00
NO_x	1340.00	1340.00	1540.00
Running loss benzene	3.75	3.36	0.00
Hot soak benzene	0.96	0.93	0.00
Diurnal benzene	0.97	0.66	0.00
Refueling benzene	0.56	0.56	0.00
Nonexhaust toxics	6.24	5.51	0.00
Exhaust benzene	53.54	53.54	77.62
Acetaldehyde	4.44	4.44	7.25
Formaldehyde	9.70	9.70	15.34
1,3-butadiene	9.38	9.38	15.84
POM	3.04	3.04	4.50
Exhaust toxics	80.10	80.10	120.55
Total toxics	86.34	85.61	120.55

Exhaust Emissions Model

1. Data Sources

The relationship between fuel properties and exhaust emissions is complex and the theory behind such relationships continues to be developed. As a result, EPA has asked industry, state regulatory agencies, and other organizations with relevant test data to make their data available to the Agency to ensure that this rule is based on as much relevant information as possible. The complex model described in the following section is based on data generated from a number of exhaust emissions testing programs. These programs, their design intent, and their limitations are discussed in Section IV.A of the RIA. Data from these programs were excluded from EPA's analysis if the data were not based on a valid FTP measurement cycle, if the vehicle in question did not employ 1990-equivalent emission control technology, if the vehicles did not exhibit stable, repeatable emissions performance, or if the data were clearly inconsistent with the bulk of the data available to EPA (based on statistical considerations). In addition, data from programs that did not measure nonmethane hydrocarbon emissions were not used to develop EPA's exhaust VOC complex model. The Agency believes its analysis considered all valid, and relevant data on the exhaust emissions effect of fuel modifications when used in 1990 model year and

equivalent vehicles that was available at the time the model was developed.

2. Analysis Method

Exhaust emissions are affected by both vehicle and fuel characteristics. Since the test programs described above generally involved different vehicles, different fuels, and in some cases different test procedures, the analysis required to determine the relationship between fuel properties and emissions is complex. However, EPA believes that the methods used to develop the complex model considers and addresses these complexities appropriately. EPA utilized statistical analysis techniques to isolate the effects of fuel modifications on exhaust emissions of VOC, NO_X, and toxics from other factors affecting exhaust emissions.

At a series of six public workshops held over the past two years, the Agency presented its views on data sources, analysis methods, and preliminary emissions models for public review and comment. The Agency also requested other organizations to share their data, analysis expertise, and emissions models at these workshops. The methods used to develop the model promulgated today appropriately incorporate the comments and suggestions regarding the analysis process received at the workshops, as well as other comments and suggestions received from industry, state and federal government authorities, and other interested parties during the course of this rulemaking. Information regarding the workshops, public comments and suggestions, and EPA's analysis methods can be found in Docket A–92–12. The approach chosen by EPA to analyze the available data is summarized below and is discussed more fully in Section IV.A of the RIA.

Since the vehicle and the fuel both affect exhaust emissions, EPA's analysis separated exhaust emissions into fuel components and vehicle components. In all test programs analyzed by EPA, the single most significant determinant of the level of emissions from a given vehicle on a given fuel was the vehicle itself. Fuel properties exert a much smaller influence on exhaust emissions than do vehicle characteristics such as emission control system technology, vehicle mileage, catalyst efficiency, oxygen sensor efficiency, engine size, engine design, vehicle size, fuel efficiency, vehicle maintenance, etc. To identify the effects of fuel property modifications on emissions, EPA found it necessary to identify the effect of each vehicle on emissions and separate this effect from the fuel effects. For vehicles used in more than one test program, EPA found it necessary to determine the vehicle effect separately for each test program since vehicle effects were observed to change between studies.

The fuel components of exhaust emissions were separated into two main categories. The first category consisted of the effects of individual fuel parameters. For example, the effect of sulfur on NO_X emissions was best modeled by a relationship containing a linear sulfur term (of the form c_1S, where c_1 is a constant and S is the sulfur level) and a second-order sulfur term (of the form c_2S^2, where c_2 is a constant). The second category of fuel terms consisted of interactive effects between two fuel parameters. For example, EPA's analysis found that the effect of aromatics on hydrocarbon emissions is related to the E300 level of the fuel. This effect cannot be represented as an aromatics or E300 effect alone but must be represented as an interactive term of the form c_3AE, where c_3 is a constant, A is the aromatics level, and E is the E300 level.

In the February 1993 proposal, EPA indicated that it planned to make several changes to the method used to develop the complex model. As discussed in that proposal and in the RIA, fuels can be characterized in terms of a number of different sets of fuel parameters. EPA used the results of individual fuel studies and its public workshops to select the set of fuel parameters used to model exhaust emissions in its February 1993 proposal. At that time, the Agency indicated that it might alter its choice of parameters to represent gasoline distillation characteristics from a temperature basis (using T50 and T90) to a percent evaporated basis (using E200 and E300, the percentage of the fuel's volume that evaporates when heated to 200°F and 300°F, respectively). For reasons outlined in the February 1993 NPRM and section IV.A of the RIA, EPA has chosen to make this change and has converted its exhaust emission models to a percent evaporated basis since the NPRM was issued, removing the T50 and T90 terms from its models in the process. The Auto/Oil Heavy Hydrocarbon and EPA Phase II Reformulated Gasoline Test Program studies have been added to the complex model database. Finally, EPA has changed the confidence level required to permit terms to remain in the model to 90 percent, in keeping with the approach used in developing the simple model. The Agency was not able to determine the influence of the type of aromatic compounds in fuels, specifically heavy aromatics, on exhaust emissions, and hence such terms have not been included in the complex model at this time.

Because vehicles can have different emission control systems, the Agency anticipated that fuel modifications would have different emission effects on different types of cars. To account for these differences, EPA's February 1993 proposal divided vehicles into two "emitter classes" (normal and higher emitters) based on their exhaust emission levels. EPA then subdivided vehicles in each emitter class into "technology groups" based on the emission control technology with which each vehicle was equipped. However, as discussed in the NPRM, EPA was concerned that technology group distinctions among higher emitters might not be appropriate, since such vehicles' high level of emissions indicated that their emission control systems were not functioning properly. In addition, the limited quantity of data for higher emitters made it difficult to identify genuine differences in emissions response between higher emitters of different technology groups. Many commenters expressed similar concerns. Hence the model promulgated today does not divide higher emitters into technology group categories but retains such distinctions when analyzing normal emitters. In response to numerous comments, EPA attempted to reduce the number of normal emitter technology groups. However, as discussed in section IV.A of the RIA, EPA was unable to identify an appropriate basis for consolidation. EPA considers its retention of emitter class and technology group distinctions to be justified by the presence of statistically significant fuel effects specific to individual emitter classes and technology groups in today's complex model.

At the same time, EPA recognized the validity of comments received from a number of sources that (1) many emission effects were likely to be consistent across multiple technology groups or across emitter classes, and (2) insufficient data were available to model many potential terms, particularly interactive terms. The approach used by EPA to construct the complex model proposed in February 1993 did not incorporate these legitimate concerns. To do so, EPA has utilized a modified version of the "unified" approach advocated by API and other commenters (as described in the RIA) to develop today's complex model. This modeling approach, the statistical criteria used by EPA in conjunction with this approach, and the techniques used to simplify the models are discussed in detail in section IV.A of the RIA and are summarized below.

First, interactive terms were permitted to enter the models only when sufficient data were available. The model proposed in the February 1993 NPRM permitted all interactive terms to enter the models, regardless of whether sufficient data were available to estimate such an effect, and it did not apply statistical criteria to evaluate whether terms added to the model introduced more risk of inaccuracy in the model than they removed.

Second, preliminary models for higher emitting vehicles were constructed based solely on data from such vehicles. Only those terms that satisfied EPA's statistical criteria (discussed at length in the RIA) were retained. These criteria included measures to balance overfitting (introducing too many terms to explain the observed data) and underfitting (not including terms necessary to explain the observed data). The NPRM model did not include measures to prevent overfitting.

Third, the entire database was analyzed using the unified approach. The effects of each term on emissions was divided into two parts: an average effect across all vehicles, and a series of adjustment terms for each technology group and for higher emitters. Only those terms that satisfied EPA's statistical criteria were retained, with two exceptions. Higher emitter adjustment terms were retained regardless of statistical significance since they had been found to be statistically significant when examining the higher emitter data separately. EPA was concerned that failure to do so might cause genuine higher emitter effects to be "washed out" by the greater number of data for normal emitters. In addition, some overall terms were retained for hierarchy reasons despite low statistical significance. For example, a linear term for a given fuel parameter (e.g., E300) might not be significant while a squared term for the same parameter (e.g., $E300^2$) might be significant. Since the mathematical form of the squared terms includes the corresponding linear effects, the linear term would be retained regardless of significance to preserve the model's hierarchical structure. The importance of hierarchy was emphasized by a number of workshop participants and commenters, as discussed in the RIA. The NPRM model included separate terms for each technology group and emitter class and hence did not include terms to represent the average effect of a fuel parameter across all vehicles. The NPRM model also did not incorporate hierarchy considerations.

Fourth, outlying and overly influential data were dropped from the database and the model was re-estimated based on the remaining data. Outlying data consist of observations that differ from the average observed effect by so large a margin that they are more likely to represent observational error, reporting error, or other measurement artifacts than genuine phenomena. Outlying data can obscure genuine emissions effects. Influential data consist of observations that by themselves materially affect the resulting model, i.e., the model would differ materially if they were excluded. In a database the size of the Complex Model database, individual data points should not have such unusually large effects. Excluding outlying and influential observations is standard statistical practice. The NPRM model did not exclude either type of observation.

Fifth, terms were deleted from the resulting model to avoid overfitting and collinearity problems. Overfitting occurs when so many terms are included in a regression model that the expected error due to the erroneous inclusion of a term exceeds the expected error due to not including the term. Collinearity problems occur when the fuel parameters included in the model are correlated with one another in the fuels tested. For example, the addition of oxygenate to gasoline causes E200 to increase. The oxygenate-containing fuels in the complex model database tend to have higher E200 values than fuels without oxygenate. In a sense, one can predict the E200 value of a fuel by knowing its oxygen content. Hence these two parameters would be considered to be highly collinear. Since regression models are developed under the assumption that terms are not collinear, the presence of strong collinearities can introduce error into the regression. Today's complex model takes both collinearity and overfitting into account by using a standard statistical criterion called Mallow's C_p criterion to remove terms which introduce large overfitting and collinearity problems. This approach resulted in a simpler, more reasonable, and statistically more sound model than had been proposed in the February 1993 NPRM. It should be noted that high emitter terms forced into the model earlier in the process could be dropped at this stage of the analysis. Measures were taken to limit collinearity problems in the NPRM model, but overfitting concerns and the C_p criterion were not addressed.

Sixth, the contribution of each remaining term to the model's explanatory power was estimated, and those terms whose contribution summed to less than one percent were deleted (i.e., the retained terms accounted for 99 percent of the explanatory power of the model) to simplify the form of the model without materially reducing its ability to predict the emissions impact of fuel modifications. This step was not taken during development of the NPRM model.

Finally, the resulting models for each technology group within the set of normal emitting vehicles were consolidated into a single equation using a random balance approximation. The details of that approximation are given in Section IV.A of the RIA. This step was not taken during development of the NPRM model.

The results of EPA's modeling efforts confirms the importance of technology group and emitter class distinctions, as can be seen by examining the differences in the exhaust emission equations for specific normal emitter technology groups or for normal and higher emitter class categories (as discussed in greater detail in the RIA). Efforts to reduce the number of technology group categories for normal emitters were not successful. Efforts to subdivide higher emitters by their emission characteristics such as exhaust hydrocarbon to NO_X ratio did not improve the quality of EPA's higher emitter model. However, as discussed above, EPA found it unnecessary to separate higher emitters by technology group. This modification reflects EPA's belief, supported by preliminary field information, that one or more emission control components on higher emitters tend to be malfunctioning, which renders a classification scheme based on vehicle equipment questionable.

3. Exhaust Model

As was discussed in the April 1992 and February 1993 proposals, the weight assigned to each technology group or emitter class for modeling purposes was set equal to its contribution to in-use emissions for each pollutant. The weight assigned to each emitter class was set equal to its projected contribution to in-use emissions. The weighting factor assigned to normal emitters was then broken down further by technology group, again according to their projected contribution to in-use emissions. These estimates and projections are essentially unchanged from the February 1993 proposal, although minor changes have been made to reflect more complete

information about the fraction of 1990 sales accounted for by each technology group. The rationale for, derivation of, and renormalization of the weighting factors themselves are discussed in more detail in the RIA.

Various commenters indicated that they considered EPA's previously proposed models were too complex. In response, the Agency has modified its analysis method in several ways. The resulting method, described in Section IV.B.2, results in exhaust emission models containing two equations for each pollutant instead of as many as sixteen separate equations, as was the case for the model proposed in February 1993. Each equation also has far fewer terms than the February 1993 equations. However, EPA does not believe that today's less complicated complex model is less accurate than the complex models presented at public workshops or in the February proposal. This belief is based on the models' comparable explanatory power (as reflected in their similar R^2) and the superior accuracy of today's model in accounting for the emission effects seen in the vehicle testing programs that comprise the complex model database. Today's VOC and NO_x models are based on the most accurate of the three sets of models included in EPA's July 14, 1993 docket submittal, while also taking into account relevant comments regarding specific aspects of the models. Today's toxics models are a further simplification of the models included in the July 1993 docket submittal in response to comments received by EPA on its docket submittal. These points are discussed more fully in Section IV.A of the RIA.

The specific equations that comprise the complex model can be found in section 80.45 of the regulations for this rule. Their derivation is discussed in detail in Section IV.A of the RIA. The range of parameter values for which these equations are valid is discussed in Section D and in Section IV.D of the RIA. As discussed in Section V, refiners are required to submit data to augment the model if they wish to certify fuels with properties that fall outside this range as reformulated gasolines.

C. Nonexhaust Model

Nonexhaust emissions are less strongly affected by vehicle design and are influenced by fewer fuel characteristics than are exhaust emissions. In addition, the theoretical principles involved in nonexhaust emissions (which include evaporative, running loss, and refueling emissions) are better understood, and nonexhaust emission control technologies are more consistent across vehicles, than are exhaust emissions and emission control technologies. Since the relationship between fuel properties and nonexhaust emissions is less complex and better understood than for exhaust emissions, there was much less need for EPA to generate additional data to evaluate nonexhaust emissions than was the case for exhaust emissions. EPA was able to base its nonexhaust VOC emission model on data generated from EPA's ongoing nonexhaust emissions testing program that has been used to develop EPA's MOBILE emission inventory models, specifically the MOBILE4.1 and MOBILE5.0A models. EPA believes this data to be sufficient to model the relationship between fuel properties and nonexhaust VOC emissions for the purposes of this rule. Additional information about MOBIL4.1 and MOBILE5.0A can be found in Dockets A–91–02 and A–92–12.

EPA is in the process of developing an enhanced model of nonexhaust VOC emissions, based on a more complete set of theoretical principles and additional test data, that is expected to be more accurate and more widely applicable to oxygenated fuels than the MOBILE models. A preliminary version of this model was discussed at a public workshop held on August 25, 1992, and materials related to this model have been placed in the docket for this rulemaking. At this time, however, this enhanced nonexhaust VOC emissions model is not complete and hence is not incorporated in today's complex model.

The nonexhaust VOC model in today's complex model is based on correlations between RVP and nonexhaust VOC emissions derived from the July 11, 1991 version of MOBILE4.1 for Phase I of the reformulated gasoline program (1995–1999) and from MOBILE5A for Phase II (2000 and beyond). This approach is consistent with the definition of baseline emissions set forth in Section IV.A and is based on the same considerations outlined in that section.

To develop the correlations shown below, the MOBILE models were used with temperatures of 69 to 94 degrees Fahrenheit for Class B areas and 72 to 92 degrees Fahrenheit for Class C areas. As discussed in Section IV.A, a basic inspection and maintenance program was assumed for Phase I while an enhanced I/M program was assumed for Phase II. In addition, the presence of Stage II evaporative emissions recovery systems with an overall vapor recovery efficiency of 86 percent was assumed (as discussed in the SNPRM and NPRM). EPA is in the process of promulgating requirements for onboard refueling emission controls which may be more effective at controlling refueling emissions than Stage II vapor recovery systems. However, these requirements did not apply to 1990 model year vehicles and hence cannot be incorporated into the model for certification purposes. In addition, EPA has chosen not to incorporate the effects of onboard refueling controls in its evaluation of the effects of reformulated fuels on emissions from the entire in-use vehicle fleet, which includes vehicles from a number of different model years. This decision was made for several reasons. First, requirements for onboard refueling controls have not yet been finalized, making evaluation of their impact on in-use emissions difficult. Second, onboard refueling controls are not expected to be required on all new vehicles until 2000 and are not expected to be present on the bulk of in-use vehicles for several years after that time. Third, while onboard controls are expected to be more efficient at controlling refueling emissions than Stage II controls, the difference is not expected to be large in areas affected by the reformulated gasoline program and will affect only a small portion of total nonexhaust VOC emissions. Since EPA's analysis of the additional benefits of onboard vapor recovery controls is not yet available, and since such benefits are expected to be small relative to overall emissions, EPA has chosen to retain its assumptions regarding Stage II vapor recovery in forecasting the effects of fuel modifications on nonexhaust VOC emissions from the in-use vehicle fleet.

The only toxic air pollutant covered by the reformulated gasoline program that is found in nonexhaust emissions is benzene, which is a natural component of gasoline. The other four toxic air pollutants listed in section 211(k) are solely products of fuel combustion and hence are not found nonexhaust emissions. As discussed in the SNPRM, the Agency's correlation between fuel benzene content and summer nonexhaust benzene emissions is based on results from General Motors' proprietary model of tank vapors, as confirmed independently by EPA-generated data using a number of fuels. Both the derivation and verification of the nonexhaust benzene emissions model are discussed more fully in the RIA. The nonexhaust benzene emission model also depends on the RVP of the fuel, as is the case for the nonexhaust VOC emission model. The derivation of the nonexhaust benzene and VOC models is discussed more fully in the RIA.

D. Range/Extrapolation

Like all regression models, the complex model is not valid for all possible input values. The range of fuel parameter values over which the complex model accurately predicts vehicle emissions is given in Table IV–3. These ranges are based on the range of data used to develop the models and on comments received by the Agency on this issue. The limits proposed in the February 1993 were, in some cases, narrower than the range of data used to develop the complex model. In addition, the limits proposed in the NPRM would have prevented a number of very low emitting fuels from being certified using the model.

TABLE IV–3.—PARAMETER RANGES FOR WHICH THE COMPLEX MODEL CAN BE USED

Fuel Parameter	Valid range for:	
	Reformulated fuel	Conventional fuel
Aromatics, vol %	0–50	0–55
E200, %	30–70	30–70
E300, %	70–100	70–100
Olefins, vol %	0–25	0–30
Oxygen, vol %	0–3.7	0–3.7
RVP, psi	6.4–10	6.4–11
Sulfur, ppm	0–500	0–1000
Benzene, vol %	0–2.0	0–4.9

EPA has received a number of comments requesting alterations in the model's range. After considering these comments and re-evaluating the data on which the complex model is based, EPA has modified the range limits. In some cases, EPA has chosen to extrapolate the complex model slightly beyond the range for which data were available in order to allow additional fuels, both conventional and reformulated, to be evaluated using the model without recourse to expensive and time-consuming vehicle testing. These extrapolations are limited to those parameters whose effects appear to be well-characterized by the complex model. A detailed discussion of the limits of the available data, EPA's rationale for extending the valid range of the model for some parameters, and the extrapolation method used to extend the model can be found in Section IV.D of the RIA.

E. Winter

While the VOC performance standard for reformulated fuels applies only in the summer, the toxics and no-NO_x-increase requirements apply year-round. EPA therefore recognized the need to model the exhaust toxics and NO_x emissions performance of reformulated gasolines during the winter months as well as during the high ozone season. Modeling winter emissions performance, however, presented a number of difficulties. First, the data sources described earlier provided data on emissions performance only under summer conditions and for gasolines with RVP levels typical of summer gasolines. Second, the RVP levels of fuels included in the complex model database ranged from 7 to 10 psi, while winter fuels tend to have RVP levels in the 11.5 psi range and are not restricted by other regulations. Hence the complex model cannot be used directly for fuels with typical winter RVP levels.

RVP's impact on canister loading and subsequent purging is thought to be the primary cause of its effects on exhaust emissions. Since data do not exist on the effects of winter fuels on canister loading under winter conditions, the Agency is not able at this time to model the effects of winter RVP levels on exhaust emissions. To avoid making unsound or speculative predictions, EPA proposed and is now promulgating a requirement that for purposes of evaluating emissions effects using the complex model, the RVP of winter fuels be set at the summer statutory baseline RVP value. In effect, this requirement builds into the model the assumption that the RVP level of winter gasolines has no effect on NO_x or exhaust toxics emissions. As a result, refiners will not be required to alter the RVP levels of winter gasolines. Refiners will receive neither benefit nor penalty for changing the RVP of their winter gasolines. To evaluate winter fuels using the complex model, an RVP value equal to that of summer baseline gasoline (8.7 psi) must be used instead of the fuel's actual RVP. Doing so effectively removes the contribution of RVP to winter exhaust emissions.

When sufficient data is developed on the emissions impact of winter RVP levels under winter ambient conditions, EPA will be able to revise the complex model accordingly. Until then, EPA believes it is more appropriate to assume that RVP levels have winter exhaust emission effects than to speculate about the magnitude of such impacts.

In its prior proposals, EPA had proposed that winter nonexhaust emissions, including winter nonexhaust benzene emissions, be considered zero. EPA received a number of comments requesting that both baseline emissions and the nonexhaust toxics model include winter nonexhaust benzene emissions. This request was based on the belief that the year-round benzene limits would result in reduced nonexhaust benzene emissions in the winter months. EPA has evaluated this claim, taking into account temperature ranges and the effects of inspection and maintenance programs on such emissions. EPA acknowledges the validity of this claim, since winter nonexhaust emissions, including nonexhaust benzene emissions, are likely to be nonzero under all winter temperature ranges. In the past, the lack of sufficient data on nonexhaust emissions under winter temperature conditions has prevented EPA from developing reliable, accurate models of winter nonexhaust emissions. The commenters provided a limited quantity of data on winter nonexhaust emissions to support their claim. However, the data submitted in support of this claim were based on measurements of nonexhaust emissions from vehicles with very low nonexhaust emissions. EPA's analysis indicates that these vehicles are not representative of in-use vehicles. In addition, the chemical composition of the measured nonexhaust emissions were characteristic of resting losses (losses that occur due to permeation through fuel system components) rather than of diurnal, hot soak, or running loss emissions. Resting losses are not included in EPA's baseline emission estimates, so EPA does not consider it appropriate to include resting losses in its nonexhaust emission models. Finally, no data were submitted on nonexhaust benzene emissions from fail vehicles under winter conditions. Since nonexhaust benzene emissions from such vehicles will comprise a significant portion of winter nonexhaust benzene emissions, EPA is concerned that a model based on the submitted data would not provide accurate estimates of such emissions. Given the theoretical merits of the claim, however, EPA will consider including a model of winter benzene nonexhaust emissions in the complex model in the future when sufficient data become available.

F. Fungibility

EPA has long recognized the importance of maintaining a fungible fuel system, in which complying gasolines can be mixed freely without resulting in mixtures that do not themselves comply with regulatory requirements. Fungibility is essential to smooth, cost-effective operation of fuel distribution systems such as pipelines. The Agency has received numerous comments on the need to maintain fungibility. At the same time, the Agency considers it essential that gasolines certified as reformulated meet

all required emission performance levels in the field. In cases where the effects of a given fuel parameter on emissions are non-linear, it is possible for two complying fuels to produce a non-complying fuel when mixed.

The complex model contains a number of nonlinear terms, which introduces the possibility that gasolines which comply with this rule's requirements in isolation would not comply if mixed with other complying fuels. EPA has been concerned with this possibility and has undertaken extensive analyses to determine its likelihood and to develop methods to cope with its occurrence. EPA's analyses, which have utilized methods that have been supported by a number of organizations, indicate that the complex model promulgated in today's rule will not create fungibility problems despite its inclusion of nonlinear terms. This analysis is explained in greater detail in Section IV.F of the RIA.

G. Future Model Revisions

The complex model promulgated in this rulemaking reflects EPA's best understanding of the relationship between fuel characteristics and vehicle emissions. However, EPA expects future research to clarify this relationship. EPA also recognizes that changes in in-use vehicle emission control programs (e.g., I/M programs) will continue to occur and that these changes may alter the relationship between fuel characteristics and in-use emissions. In addition, the Agency is concerned that augmentations to the model through vehicle testing (Section V) may, over time, accumulate to the point that a revised complex model, incorporating the current complex model database and all relevant information gathered since then, would be beneficial. As discussed in Section V, EPA plans to issue revised complex models when the Agency deems that sufficient new information is available to warrant such action. Model revisions will be developed through a formal rulemaking process.

H. Complex Model Performance of Simple Model Fuels

Fuels qualifying as reformulated under the simple model must meet specified benzene, oxygen, and RVP requirements while also satisfying the toxics performance standard. The RVP requirement differs between VOC control regions, and the requirements and standards also vary depending on whether compliance is being achieved on a per-gallon or averaging basis. In addition, levels of other fuel parameters are only specified under the simple model in terms of deviations from each refiner's baseline fuel. Evaluating the performance of simple model fuels under the complex model is difficult since fuel properties can vary widely.

However, it is possible to evaluate a set of fuels that are representative of expected, typical simple model fuels. EPA expects most refiners to pursue compliance on average (for all or part of their product slate) in order to maximize flexibility in day-to-day refinery operations and recoup compliance margins. Given present and projected conditions, EPA also expects that MTBE and ethanol will be the most commonly used oxygenates during Phase I of the reformulated gasoline program. The fuels specified in Tables IV–4 and IV–5 below include fuels designed to meet the requirements of the simple model in both VOC control regions and using both oxygenates. The level of olefins, sulfur, E200, and E300 have been set to Clean Air Act baseline levels, while the level of aromatics has been set at the level necessary to comply with the toxics requirements of the simple model. Aromatics levels were assumed to be the same for summer and winter fuels.

TABLE IV–4.—TYPICAL SIMPLE MODEL FUELS USING MTBE

[Under Averaging]

	Fuel			
	1	2	3	4
Fuel Description:				
Season	Summer	Summer	Winter	Winter
VOC Control Region	1	2	1	2
Fuel Parameter:.				
RVP, psi	7.1	8.0	N/A	N/A
Oxygen, wt%	2.1	2.1	2.1	2.1
Benzene, vol%	0.95	0.95	0.95	0.95
Aromatics, vol%	27.5	26.3	27.5	26.3
Olefins, vol%	9.2	9.2	11.9	11.9
E200, %	41	41	50	50
E300, %	83	83	83	83
Sulfur, ppm	339	339	338	338

TABLE IV–5.—TYPICAL SIMPLE MODEL FUELS USING ETHANOL

[Under Averaging]

	Fuel			
	5	6	7	8
Fuel Description:				
Season	Summer	Summer	Winter	Winter
VOC Control Region	1	2	1	2
Fuel Parameter:.				
RVP, psi	7.1	8.0	N/A	N/A
Oxygen, wt%	2.1	2.1	2.1	2.1
Benzene, vol%	0.95	0.95	0.95	0.95
Aromatics, vol%	25.5	24.3	25.5	24.3
Olefins, vol%	9.2	9.2	11.9	11.9
E200, %	41	41	50	41

TABLE IV–5.—TYPICAL SIMPLE MODEL FUELS USING ETHANOL—Continued

[Under Averaging]

	Fuel			
	5	6	7	8
E300, %	83	83	83	83
Sulfur, ppm	339	339	338	338

The performance of these fuels according to the complex model (using the MOBILE4.1 baseline as previously discussed) is summarized in Table IV–6.

TABLE IV–6.—PERFORMANCE OF TYPICAL SIMPLE MODEL FUELS UNDER THE PHASE I COMPLEX MODEL

[Under Averaging][1]

Fuel	Emission reduction versus CAAB fuel (percent)				
	Exhaust VOC	Nonexhaust VOC	Total VOC	NO_x	Toxics
1	7.92	51.42	36.57	1.46	27.33
2	5.35	23.93	17.11	1.28	24.57
3	0.33	N/A	0.33	−0.21	12.83
4	0.80	0.00	0.80	0.04	13.87
5	8.64	51.42	36.82	1.90	25.70
6	6.09	23.93	17.38	1.76	22.56
7	3.55	N/A	3.56	0.58	11.52
8	4.01	N/A	4.01	0.88	12.48

[1] Performance of summer fuels (#s 1, 2, 5, 6) given relative to that of Clean Air Act summer baseline fuel. Performance of winter fuels (#s 3, 4, 7, 8) given relative to that of the winter baseline fuel defined in Section III.

I. Phase I Performance Standards Under the Complex Model

All fuels produced during Phase I of the reformulated gasoline program must meet the VOC, toxics, and NO_x requirements of the Act. Fuels certified using the complex model in Phase I must show either no increase in NO_x emissions from baseline levels on a per-gallon basis as discussed in the February 1993 proposal or a 1.5% reduction from baseline levels on average as discussed in Section VII. In addition, as discussed in Section III.E., such fuels must result in either a 15% reduction in total toxics emissions from baseline levels on a per-gallon basis or a 16.5% reduction in total toxics emissions from baseline levels on average.

With regard to the VOC standards, EPA considers fuels produced to meet the provisions of the simple model to be producible. Thus, as discussed in the February 1993 proposal, EPA believes it feasible to base the Phase I standards for VOC emissions on the performance of fuels that meet the Simple Model requirements, provided that this performance is more stringent than minimum performance required by the Act. EPA considers the fuels whose VOC performances were evaluated in Section IV.H to be representative of Simple Model fuels. Under the reformulated gasoline program, VOC emissions are controlled only during the high ozone season. For this reason, the VOC performance standard has been determined by the performance of the Phase I summer fuels presented in Section IV.H. Since these fuels achieve emissons reductions that equal or exceed the minimum requirements set forth in the Act, the VOC performance standard during Phase I for fuels certified under the complex model has been based on the performance of these fuels. Setting the VOC performance standards in 1998–1999 equal to this VOC performance level, which EPA believes to be a reasonable estimate of the average performance of fuels produced in 1995–1997, preserves the integrity of the two-phase program specified by Congress and is consistent with the Agreement in Principle signed in 1991.

The summer VOC performance of "typical" high ozone season simple model reformulated gasolines according to the complex model is presented in Table IV–6. In VOC Control Region 1, the simple model fuel reduces VOC emissions by 36.6 percent for the MTBE-containing fuel (Fuel 1) and 36.8 percent for the ethanol-containing fuel (Fuel 5). Since the 1998 performance requirements in VOC Control Region 1 are to be based on the performance of typical simple model fuels, and since Fuels 1 and 5 both satisfy the simple model requirements and are considered by EPA to be representative of typical simple model fuels, EPA has set its 1998 performance standards in VOC Control Region 1 so as to permit both of these fuels to meet the 1998 performance standards. In addition, EPA considers Fuel 1 to be more representative of typical simple model fuels in VOC Control Region 1 since MTBE does not boost fuel RVP levels to the extent that ethanol does. As was discussed in the April 1992 and February 1993 proposals, EPA believes that per-gallon performance standard should be set 1.5 percentage points below the averaging performance standard. Hence high ozone season fuels certified using the complex model during Phase I of the reformulated gasoline program must provide a VOC emission reduction from baseline levels of 36.6 percent when complying on average and 35.1 percent when complying on a per-gallon basis. Similarly, high ozone season fuels certified using the complex model during Phase I in VOC Control Region 2 must provide a VOC emission reduction from baseline levels of 17.1 percent when complying on average and 15.6 percent when complying on a per-gallon basis. These standards are summarized in Table IV–7 for both VOC

control regions, under averaging and per-gallon compliance. Note that a negative performance standard signifies a reduction from baseline emission levels.

TABLE IV-7.—REFORMULATED GASOLINE PERFORMANCE STANDARDS RELATIVE TO CLEAN AIR ACT BASELINE GASOLINE FOR 1998–1999

[Percent]

Emission	VOC control region 1		VOC control region 2	
	Average	Per gallon	Average	Per gallon
VOC	−36.6	−35.1	−17.1	−15.6
Toxics	−16.5	−15.0	−16.5	−15.0
NO_x	−1.5	0.0	−1.5	0.0

In summary, the per-gallon and averaging VOC performance standards under the complex model during Phase I is set by the performance of the corresponding simple model fuel when evaluated using the complex model. The toxics performance standard is set at the statutory requirement of a 15 percent reduction from baseline levels for per-gallon compliance and a 16.5 percent reduction for compliance on average. Similarly, the NO_x performance standard under the complex model during Phase I must satisfy the no NO_x increase requirement on a per-gallon basis, or meet a 1.5% reduction for compliance on average.

V. Augmenting the Models Through Testing

During the regulatory negotiation process, vehicle testing and emission modeling procedures for certifying that a gasoline complies with the NO_x, toxics, and VOC requirements were discussed. Emission models such as the simple model described in Section III and the complex model described in Section IV offer several advantages over testing to determine emission effects. First, models can better reflect in-use emission effects since they can be based on the results of multiple test programs. Second, individual test programs may be intentionally or unintentionally biased due to vehicle selection, test design, and analysis methods. Third, fuel compositions tend to vary due in part to factors beyond the control of fuel suppliers such as variations in crude oil compositions and the inherent variability of refining processes. As a result, without one or more modeling options, each batch of fuel would have to be tested to ascertain its emission performance. Such levels of testing are neither desirable (because of the potential for intentional or unintentional bias in vehicle test programs) nor practical (because of the time and expense involved in vehicle testing). Fourth, models make more efficient use of scarce and expensive emission effects data than is possible otherwise. For these reasons, EPA believes that the modeling options outlined above are necessary for the reformulated gasoline program to achieve its environmental objectives and to minimize the costs of the program.

These emission models, however, reflect currently-available information and hence do not allow refiners to take advantage of emission benefits derived from new fuel additives or changes in fuel parameters not contained in the models. To allow for fuel technology development and innovation, the Agency also believes that testing has a role in certification as a means of supplementing the models. This section contains a detailed discussion of the provisions EPA is promulgating regarding the conditions under which testing is permitted, the manner in which test results can be used to supplement the models, and the minimum requirements for vehicle testing programs. As was first outlined in the February 1993 NPRM, the vehicle testing process described in this section has undergone significant changes since it was first proposed in the April 1992 SNPRM. These changes have been made in response to changes in EPA's approach to modeling the relationship between fuel properties and emissions, as described in Section IV, and comments received in response to the April 1992 and February 1993 proposals. The following discussion addresses the major substantive comments received by EPA regarding certification of fuels by vehicle testing. A detailed summary and analysis of comments can be found in Section IV.G of the RIA.

A. Applicability of Testing

Vehicle testing is the primary way that the effects of various gasoline formulations on motor vehicle emissions can be determined. As described above, data from vehicle testing programs forms the bulk of the basis for the simple and complex models.

EPA believes that fuel certification through single test programs is inherently less reliable than certification through a testing-based model. The simple and complex models developed by EPA are based on a far greater amount of testing than would be available from any single test program. These models incorporate and balance the varying and conflicting results of numerous test programs. The statistical variation associated with an individual test program may cause a fuel to show emission effects during testing that would not occur in-use. Therefore, EPA proposes that testing only be permitted to augment the models for fuel effects that are not covered in the models.

B. Augmenting the Simple Model

Due to the belief that fuels certified by vehicle testing should be evaluated in conjunction with the most complete emission model available to more accurately determine the emission benefits of the fuels being tested, EPA proposed that vehicle testing be permitted to augment the simple model only for the effect of oxygenates on NO_x emissions beyond the simple model's oxygen caps. All other testing was to have been performed to augment the complex model. Based on data collected since the time of the proposal on the effect of oxygenates on NO_x, EPA no longer believes it appropriate to augment the simple model even in the limited manner described above. Considerably more data are available in the complex model database regarding the effect of oxygenates on NO_x emissions than would be provided by any individual test program. Therefore, testing can only be performed to augment the complex model. Fuels with oxygen concentrations in excess of 2.7 weight percent must be certified using the complex model.

C. Augmenting the Complex Model

EPA believes that the objective of testing under the complex model should be to evaluate the emission effects of fuels whose emission effects cannot be adequately represented by the model. Such fuels would include fuels claiming emission effects from parameters not included in the complex model and fuels containing complex model parameters at levels beyond the range covered by the model. Without this constraint, it may be possible for a fuel producer to use the statistical variation associated with testing to claim emission effects through testing which would not be demonstrated in-use, when tested to a greater degree, or when modeled. For example, a fuel that would fail to meet the VOC requirement by a small margin when evaluated under the complex model could be tested and shown to meet the VOC requirement due to the testing error associated with any vehicle testing program. In addition, allowing testing of existing modeled parameters essentially would make the complex model, and the associated emission performance standards, a fluid target. Fuel producers would lose the certainty associated with a fixed model and the confidence that their capital investments will be useful for a fixed amount of time. Therefore, vehicle testing can be used only to determine the emission effects of parameters not adequately represented by the complex model. The emission effects of the fuel parameter in question will be determined by combining the emission effects determined through vehicle testing with the emission effects predicted by the complex model. Furthermore, each testing program can be used to identify the effects of only one new fuel parameter, unless the changes in other fuel parameters are a natural and inherent consequence of the primary fuel modification. Without this constraint, EPA believes that accurate determination of the effects of specific fuel parameters would be more difficult due to the inherent variability in testing programs and the increased opportunities for gaming.

In addition, fuel suppliers opting to augment the complex model through vehicle testing must examine the extent to which emissions are affected when fuels certified with the augmented complex model are mixed with other fuels. The Agency is concerned with two potential problems when different fuels are combined. First, the emission effects of a parameter, as determined from vehicle testing, may not behave linearly as fuels with one level of the parameter are mixed with fuels with different levels of the same parameter. The degree to which this process occurs is referred to in this notice as the parameter's dilution effect. Dilution effects are evident in the complex model proposed in February 1993 and in the model being promulgated today. Second, the emission effects of various fuel parameters may be affected by the level of other fuel parameters. The degree to which this process occurs is referred to in this notice as an interactive effect. If such effects are present (as in the complex model proposed in February 1993 and in the complex model being promulgated today), actual emission performance of the fuel mixture in-use could be worse than emission performance predicted from the complex model augmented by vehicle testing results. Therefore, the testing process must be structured so as to identify dilution and interactive effects.

D. Advance Approval of Test Programs

Given the number of factors involved in designing a test program, the potential for inappropriate design is high. EPA wishes to avoid submittal of petitions based on test data from poorly designed programs in order to assure that the time and money invested in such programs is well-spent and to assure that all augmentations to the model are based on accurate data from well-designed test programs. Hence EPA will require petitioners to obtain advance approval from the Agency for their proposed vehicle testing programs. EPA will consider petitions to augment the model only if based on the results of approved testing programs. Furthermore, EPA retains the discretion to evaluate other data when evaluating petitions to augment the complex model and when determining the nature, extent, and limitations of the augmentation. This data may include the existing complex model database, additional vehicle testing programs, and other augmentation applications.

Petitioners are required to include the following information when submitting a test program plan for approval: the fuel parameter to be evaluated for emission effects; the number and description of vehicles to be used in the test, including model year, model name, VIN number, mileage, emission performance, technology type, and vehicle manufacturer; the methods used to procure and prepare the vehicles for testing; the fuels to be used in the testing program, characterized as defined in Section V.I.5; the pollutants and emission categories to be evaluated; the methods and precautions to be used to ensure that the effects of the parameter in question are independent of the effects of other parameters already included in the complex model; a description of the quality assurance procedures to be used during the test program, and the identity and location of the organization performing the testing. EPA anticipates and encourages petitioners to submit the information listed above in stages beginning with the most general and ending with the most specific in order to streamline the approval process and eliminate wasted effort. EPA will work with petitioners to remedy unsatisfactory aspects of their proposed testing program.

These provisions provide the Agency with greater assurance that petitioners would not selectively report test results to the Agency that support their petitions. Petitioners would still be able to "game" the testing process by pre-screening vehicles to obtain a test fleet with the desired sensitivity to the proposed parameter. However, such a test fleet would have to be re-tested as part of the formal test program and hence would be subject to the variability inherent in vehicle testing, which would tend to reduce the gaming benefits from pre-screening. EPA believes that the risks and costs associated with re-testing will tend to dissuade petitioners from attempting to manipulate the testing process in this manner.

EPA further requires that the results of all approved testing programs be submitted to the Agency, even if the parameter in question proves not to provide an emission benefit. The Agency believes this requirement is necessary to ensure that all available data is at the Agency's disposal when evaluating proposed augmentations to the complex model and when updating the model itself. EPA does not intend to use this provision to limit legitimate, innovative test programs. Rather, EPA is only interested in preventing the creation of artificial fuel parameters that claim to be the source of emission effects which are in reality only normal statistical variability.

An example may help clarify the problems that can arise if testing is permitted for such artificial parameters. The level of C10+ aromatics (aromatics whose molecules contain ten or more carbon atoms) influences a fuel's E200, E300, and total aromatics levels. A testing program to identify the effects of C10+ aromatics may indicate that an emission effect from such compounds exists when the effect is actually due to differences in the fuels' E200, E300, and total aromatics levels or to the inherent statistical variability associated with vehicle testing. A petition for approval

of a test program to identify the effects of C10+ aromatics would be required to identify specific measures to be taken to isolate the emission effects of C10+ aromatics from those of E200, E300 and total aromatics, all three of which are included in the complex model. In this example, EPA might require that certain test fuels contain identical levels of E200, E300, and total aromatics; that more rigorous statistical tests be used to identify genuine C10+ aromatics effects beyond those already incorporated in the complex model for E200, E300, and total aromatics; that the fuels used in the test program meet more detailed compositional criteria to ensure their representativeness; or that additional vehicles and/or fuels be tested. This provision helps assure that the effects observed in vehicle testing programs are genuine and will occur in-use.

E. Exclusive Rights to Augmentation

EPA's April 1992 and February 1993 proposals discussed the advantages and disadvantages of providing a system of exclusive rights to model augmentations. EPA has given this matter further consideration, including consideration of comments regarding exclusive rights. The Agency has concluded that the reasons given in its April 1992 proposal for not providing a system of exclusive rights are still valid. Hence the regulations governing augmentation of the complex model through vehicle regulation being promulgated today do not provide for exclusive rights to augmentations. Each augmentation will be available to any refiner desiring to utilize it, and no restrictions are provided under this rulemaking for exclusive rights, other than those granted under other legal code (e.g., patent law). The Agency does not believe adequate authority exists to promulgate exclusive rights provisions under this rulemaking. Furthermore, as discussed in the April 16, 1992 proposal, there are a number of reasons from economic, administrative, and air quality perspectives that make open use of model augmentations a desirable public policy.

To allow interested parties to review and comment on a model augmentation, EPA will publish a description of the augmentation and its supporting data and information for public comment prior to approving an augmentation for use. In keeping with the provision of the Act, EPA will take into account any comments received, and act upon any request received for fuel certification through model augmentation within 180 days of such a request being completed.

F. Duration of Augmentation

In its April 1992 proposal, EPA proposed that augmentations would remain in effect until the next subsequent complex model update was issued. EPA further proposed that if an augmentation had been valid for three or fewer years upon implementation of the subsequent update to the complex model, then refiners were permitted to continue using the augmentation in conjunction with the previous complex model for an additional length of time, subject to certain restrictions. EPA has received a number of comments on this proposal. Today's rule includes a set of limitations on the duration of the augmentation that incorporate some elements of these comments. These limitations are described below.

The Agency is concerned that fuel suppliers not be allowed to claim emission effects in perpetuity based on the testing program described in this section due to the smaller degree of statistical confidence in such effects compared to those included in an updated complex model. The Agency also recognizes the need for fuel suppliers to recoup investments made to reformulate gasoline, including investments to utilize the emission effects identified through vehicle testing. Therefore, petitioners will be permitted to use emission effects determined through vehicle testing only for a limited period of time. In general, this period of time extends until an updated version of the complex model takes effect. Updates to the complex model will be issued by EPA through a formal rulemaking process at such time that the Agency determines that sufficient additional data has become available to warrant issuing such an update. Since some augmentations may be in place for a relatively short period of time before the model is updated, the Agency may not be able to adequately assess the augmentation. However, if a proposed update to the complex model is issued within three years of the time at which the augmentation takes effect, then fuel suppliers may be permitted to continue using the augmentation to determine the emission effects of reformulated gasolines. Specifically, if the Agency does not formally accept, reject, or modify the augmentation in question for inclusion in the updated complex model, then the augmentation will remain available until the next update to the model takes effect. If the Agency reviews the augmentation and either excludes the augmentation entirely or includes the augmentation in a modified form, then the augmentation will remain available for use in its original form, in conjunction with the complex model for which the augmentation was issued, to those fuel producers who can demonstrate to the Administrator's satisfaction that they have begun producing fuels that are certified using the augmentation. In such cases, the augmentation may continue to be used for five years from the date the augmentation took effect or for three years of fuel production, whichever is shorter.

For the reasons discussed above, augmentations to the model for the effects of a given parameter over a particular range are permitted only once. Regardless of whether the emission effects of a parameter are included in an updated model, the augmentation can neither be used nor renewed (even with data from a second identical test program) once the maximum time period for use of a model augmented with the effects of that parameter has expired. Further testing is permitted, however, to provide EPA with the additional data needed to include the effect in a future update to the model.

G. Limits on the Range of an Augmentation

Fuel suppliers will be permitted to claim the emission effects of augmentations only to the extent that the test program measured the effects of the fuel parameter in question over the range in question. If the parameter is included in the complex model, then the augmentation will be valid for fuels containing levels of the parameter between the level tested in the test program and the nearest limit of the complex model (as described in Section IV). If the parameter is not included in the complex model, then the augmentation will be valid for fuels containing levels of the parameter between the candidate and baseline levels (i.e., the levels found in Addition Fuels 1 and 3 in Table V.1). This provision is intended to be consistent with the limits on the application of the simple and complex models as expressed in Sections III and IV.

H. EPA Approval, Confirmatory Testing, and Fees

In the process of reviewing a model augmentation, EPA must confirm the accuracy of the test results. To this end, EPA intends to monitor the petitioner's test program. The Agency also reserves the right to perform confirmatory testing to assure the validity of the test results and the emission performance of the reformulated fuel before allowing augmentation of the model. EPA further reserves the right to collect fees any

lawful of an amount sufficient to recoup all costs associated with such confirmatory testing. EPA anticipates that if any confirmatory testing is performed that it will be of a limited nature and focused only on those aspects of the test program which are unexpected or contrary to prior test programs and engineering knowledge. Since EPA has not proposed methods to be used to calculate and collect such fees, these provisions will be handled through a subsequent rulemaking.

I. Test Requirements

1. Winter Testing

To be certified as reformulated, a gasoline must meet the air toxics and NO_X emission requirements year-round; the oxygen, benzene, and heavy metal content requirements year-round, and the VOC emission requirements in the high ozone season. As discussed in Section IV of this notice and Sections III and IV of the RIA, the Agency does not have sufficient data to model winter exhaust emissions. While differences between the effects of fuel parameters under summer and winter conditions beyond those discussed in Section IV may exist, the Agency does not have any evidence to date to suggest that they are significant. Therefore, EPA will apply the exhaust models developed for summer emissions to winter fuels as well for purposes of determining their air toxics and NO_X emissions. The Agency is concerned that allowing winter testing for some fuel parameters while modeling the effects of other parameters based on summer emission data creates the possibility of "gaming" the testing process. Fuel suppliers could use the summer model to determine the effects of parameters that would behave unfavorably under winter conditions and use winter testing to determine the effects of parameters that would behave favorably under winter conditions. This possibility may result in fuels being certified for winter use (through a combination of winter testing and summer modeling) that result in smaller emission reductions in-use than are intended by the Act or than would occur by using the summer model. Therefore, EPA is at this time requiring that all testing be performed under summer ambient conditions. As the Agency gathers additional data in the future with which to revise the model, EPA will consider whether sufficient winter test data exists to permit the development of winter NO_X and air toxics models. If such models can be developed, the Agency will consider whether to allow winter testing.

2. Pollutants to be Measured

To the extent testing is performed to augment the complex model, it must be performed to determine the emission effects on all the pollutants covered by the reformulated gasoline certification requirements, including toxics (carbon monoxide and carbon dioxide emissions must also be measured to permit validation of test results). Failure to have such a requirement might result in important emission effects being overlooked and could allow fuel producers to "game" the certification requirements by permitting them to utilize the modeling option for one pollutant and the test results for another pollutant when it would be advantageous. The resulting certified reformulated gasolines may not meet all of the applicable emission reduction requirements in-use. For example, the model augmented by test results may indicate that a fuel meets the VOC requirement but fails the toxics requirement, while the model alone may indicate that the fuel meets the toxics requirement but fails the VOC requirement. Allowing the petitioner to claim the toxics emission effects predicted by the model while claiming VOC benefits determined through testing would ignore fuel effects on toxics that may not be addressed by the model.

Testing costs would be significantly reduced if only VOC and NO_X emissions were measured by testing, and toxics emissions were allowed to be modeled. However, since the testing option can only be used when the candidate fuel's parameters fall outside of the range of the model, EPA believes that adequate information seldom would be available to allow toxics emissions from such fuels to be modeled adequately if adequate information on VOC and NO_X emissions were not available. If a fuel parameter is expected to affect VOC or NO_X and is not covered by the model, toxics emissions may very well be affected and should be measured.

It should be noted, however, measurement of toxics emissions for the fuels used to determine interactive effects (discussed below in section IV.I.4.) need not be performed. During development of the complex model, EPA found that interactive effects for air toxics are either statistically insignificant, impossible to discern given the accuracy and extent of available data, or too small to contribute substantially to the model's explanatory and predictive power. The complex model being promulgated today contains no interactive terms for air toxics emissions for these reasons, and hence EPA considers it unnecessary to require testing for interactive effects on air toxics. Specifically, toxics emissions need not be measured when testing additional Extension Fuels to determine interactive effects or when testing Addition Fuels 4, 5, 6, and 7, as described in Section V.I.5. However, EPA reserves the right to require that toxics be measured during vehicle testing programs when evidence exists that adverse interactive effects may exist for toxics. In particular, EPA reserves the right to require testing for interactive toxics effects if future revisions to the complex model include such effects.

To better optimize the test program for the particular fuel parameter being evaluated, the Administrator may approve a request to waive certain pollutant measurement requirements contained in this section. Any such waiver would have to be obtained in advance of vehicle testing. A request for such a waiver must include an adequate justification for the requested change, including the rationale for the request and supporting data and information. Such a request must justify the reason that measurement of certain pollutants clearly is not necessary, and identify those pollutants for which additional testing may be warranted. For example, a petition might note that reducing the concentration of a specific high molecular weight aromatic decreased VOC emissions even though the overall concentration of similar aromatics remained unchanged. The petitioner may be able to justify a reduced need for toxics measurement based on the results of other studies which show that toxics are proportional to total aromatics rather than to individual aromatics species. In exchange, additional testing may be justified for VOC emissions to enable a greater degree of statistical confidence in the test results. As a result, the fuel supplier may be able to present EPA with sufficient justification to warrant increased testing for VOC emissions and decreased testing for toxics emissions.

3. Exhaust and Nonexhaust Testing

VOC and air toxics emissions occur in both exhaust and nonexhaust emissions. However, EPA believes that the relationship between fuel characteristics and nonexhaust emissions is known with greater certainty and precision than the relationship between fuel characteristics and exhaust emissions. Nonexhaust emissions are a much simpler phenomenon to model than exhaust emissions. Nonexhaust emissions are driven primarily by well-understood principles of physical chemistry and are modified by devices such as charcoal canisters that are

relatively easily modeled. Exhaust emissions, by contrast, involve combustion and catalysis reactions that are not as well understood theoretically and are much more difficult to model. In addition, exhaust emissions are estimated directly from the Federal Test Procedure (FTP) utilizing the Urban Dynamometer Driving Schedule, while nonexhaust emissions are estimated from both FTP and non-FTP test cycles in a complex process. Finally, data on nonexhaust emissions is much more extensive and internally consistent than data for exhaust emissions. For these reasons, EPA is restricting testing to augment the model to exhaust emission testing. Vehicle testing of nonexhaust emissions will not be accepted by EPA as the basis for augmentations to the nonexhaust emission model promulgated in today's rulemaking.

EPA reserves the right to revise the nonexhaust emission model in the future to reflect new data acquired by the Agency, with such revisions taking effect after the start of Phase II of the program. In particular, either a new MOBILE model or ongoing research aimed at modeling nonexhaust emissions as a function of true vapor pressure over a range of temperatures may provide the basis for a revised nonexhaust model. The nonexhaust complex model being promulgated today relies on the Reid vapor pressure (RVP) to characterize fuels' nonexhaust emission characteristics. However, RVP is measured at a fixed fuel temperature (100 °F), while nonexhaust emissions occur over a wide range of fuel temperatures (80 °F to 130 °F). Since different oxygenates alter the relationship between RVP and true vapor pressure at a given temperature to different extents, EPA believes that a model based on true vapor pressure would be more accurate for fuels containing oxygenates than a model based solely on RVP.

By permitting nonexhaust emissions from a given fuel to be estimated only from models and exhaust emissions to be estimated based in part on vehicle testing, EPA believes that the accuracy of fuel emission estimates will be enhanced. EPA also believes that this restriction will focus testing resources on those emission effects which the model predicts with the least degree of certainty (i.e., exhaust emissions), thereby improving the degree of certainty of emission predictions over the long run.

4. Eligibility of Fuel Properties for Testing

In providing for augmentation of the complex model through vehicle testing, EPA's intent is to provide refiners with the ability to take advantage of new or ongoing research into the relationship between fuel properties and exhaust emissions. As discussed elsewhere in this section, however, the Agency believes that the complex model is more accurate and reliable than any single test program for the parameters included in the model.

Therefore, augmentation by testing will be permitted only for certain fuel parameters and for certain levels of those parameters. Augmentations will not be permitted for fuel parameters that are included and quantified in the complex model database, regardless of whether they appear in the complex model itself. Such parameters were either not identified or identified and later rejected during the rulemaking process, which included a series of regulatory negotiation meetings, public workshops, and public meetings. EPA believes that the opportunities for error far exceed the potential emission benefits from allowing model augmentations using parameters that did not survive the peer review process.

Augmentation through vehicle testing will be permitted to extend the valid range of the complex model for parameters already included in the model. The purpose of such testing would be to determine the behavior of the parameter within this extended range. Augmentations also will be permitted for parameters that neither have been included in today's complex model nor were measured for the fuels contained in the complex model database. The purpose of testing in this case would be to determine the behavior of new parameters, including any dilution and interactive effects. The test requirements differ for these two cases to reflect differences in existing knowledge and environmental risk.

5. Test Fuels

The Agency has three major goals that must be satisfied before accepting an augmentation to the complex model. First, the augmentation must provide proper credit for fuel modifications. Second, the augmentation must account for dilution effects properly. Third, the augmentation must account for interactive effects between the parameter being tested and other fuel parameters properly. EPA believes that these three goals cannot be met without specifying at least some of the characteristics of fuels to be included in a test program. The remainder of this section describes the basic characteristics of the fuels required as part of a vehicle test program.

a. *Fuels required to extend the range of existing complex model parameters.* Three "extension fuels" must be included in test programs intended to extend the range of the complex model for a given parameter to a more extreme level. Extension fuel #1 would contain the more extreme level of the parameter being extended in order to determine the parameter's effects on emissions at this more extreme level. Extension fuel #2 would contain the parameter being extended at levels at or near its current lower limit in the model. Extension fuel #3 would contain the parameter being extended at levels at or near its current upper limit in the model. These latter two fuels are necessary in order to estimate the size and significance of squared terms involving the parameter being extended. For all three fuels, the levels of other complex model parameters are to be set at the levels specified in Table V.2, which the Agency believes are representative of levels that will be found in typical reformulated fuels. In addition, all three fuels must be blended from representative refinery streams to the extent practicable. The three extension fuels must meet the requirements presented in Tables V.1 and V.2 to within the blending tolerances specified in Table V.4.

If the Complex Model contains interactive effects between the parameter in question and other parameters, two additional fuels must be tested to quantify the magnitude of any such effect at extended levels of the parameter in question. For each interacting parameter, the two additional fuels would contain the parameter being tested at levels identical to that found in Extension Fuel #1. The interacting parameter would be present at the levels specified in Table V.1 for Extension Fuels 2 and 3, respectively, in the two additional fuels in order to quantify the size of the interactive effect over its full range. Other parameters would be set at the levels specified in Table V.2. It should be noted that since today's complex model includes only one interactive term (involving aromatics and E300), this situation would arise relatively infrequently.

TABLE V.1.—LEVEL OF EXISTING COMPLEX MODEL PARAMETERS BEING EXTENDED

Fuel property being extended	Extension fuel #	Extension fuel #2	Extension fuel #3
Sulfur, ppm.	Extension Level.	80	450
Benzene, vol%.	Extension Level.	0.5	1.5
RVP, psi .	Extension Level.	6.7	8.0
E200, % .	Extension Level.	38	61
E300, % .	Extension Level.	78	92
Aromatics, vol%.	Extension Level.	20	45
Olefins, vol%.	Extension Level.	3.0	18
Oxygen, wt%.	Extension Level.	1.7	2.7
Octane, R+M/2.	87.5	87.5	87.5

TABLE V.2.—LEVELS FOR FUEL PARAMETERS OTHER THAN THOSE BEING EXTENDED

Fuel property	Extension fuel #1	Extension fuel #2	Extension fuel #3
Sulfur, ppm	150	150	150
Benzene, vol%	1.0	1.0	1.0
RVP, psi	7.5	7.5	7.5
E200, %	50	50	50
E300, %	85	85	85
Aromatics, vol%	25	25	25
Olefins, vol%	9.0	9.0	9.0
Oxygen, wt%	2.0	2.0	2.0
Octane, R+M/2	87.5	87.5	87.5

b. *Fuels required to qualify new complex model fuel parameters.* Seven "addition fuels" must be included in test programs intended to augment the complex model with fuel parameters not included in the model. These fuels are intended to provide the data necessary to estimate linear, squared, and interactive emission effects for the parameter being tested. The fuel parameter values for all seven addition fuels are specified in Table V.3; these values must be met to within the blending tolerance ranges specified in Table V.4.

TABLE V.3.—PROPERTIES OF FUELS TO BE TESTED WHEN AUGMENTING THE MODEL WITH A NEW FUEL PARAMETER

Fuel property	Fuels						
	1	2	3	4	5	6	7
Sulfur, ppm	150	150	150	35	35	500	500
Benzene, vol%	1.0	1.0	1.0	0.5	0.5	1.3	1.3
RVP, psi	7.5	7.5	7.5	6.5	6.5	8.1	8.1
E200, %	50	50	50	62	62	37	37
E300, %	85	85	85	92	92	79	79
Aromatics, vol%	27	27	27	20	20	45	45
Olefins, vol%	9.0	9.0	9.0	2.0	2.0	18	18
Oxygen, wt%	2.1	2.1	2.1	2.7	2.7	1.5	1.5
Octane, (R+M)/2	87	87	87	87	87	87	87
New Parameter[1]	C	C+B	B	C	B	C	B
		2					

[1] C=Candidate level, B=Baseline level.

In Table V.3, Fuel 1 is the candidate fuel, Fuel 3 is the candidate-baseline fuel, and Fuel 2 is a dilution fuel that is tested to determine whether emissions respond linearly to levels of the candidate fuel parameter. Testing on addition fuels 1, 2, and 3 will provide the data needed to assess the emission effects of the parameter being tested in isolation. Three separate levels of the parameter are specified in order to provide data to estimate both linear and squared terms involving the parameter, while other fuel parameters have been set at levels expected to be typical of in-use reformulated gasolines. Fuels 4 and 5 are low-emitting fuels with candidate and baseline levels of the parameter in question. Fuels 6 and 7 are the corresponding high-emitting fuels. Testing on these four fuels will provide the data needed to assess the existence and size of interactive effects between the parameter being tested and other fuel parameters already included in the complex model. Estimating these effects for very high emitting fuels (addition fuels 6 and 7) and very low emitting fuels (addition fuels 4 and 5) maximizes the sensitivity of the test program to such effects.

If the parameter being tested is not specified for CAA baseline gasoline, its baseline level must be comparable to its level in gasoline representative of commercial reformulated gasolines. Petitioners are required to obtain approval for the baseline level of this parameter from the Agency prior to beginning their vehicle test programs. Such approval would depend in part on the use of an appropriate basis for determining the properties of "representative" commercial reformulated gasolines. The basis for this specification and for the specifications described in Table V.3 are discussed more fully in section IV.G of the RIA.

c. *Other fuels requirements.* To produce fuels with the parameter values listed above for the extension and addition fuels, the amount and type of paraffins present in each fuel may require adjustments. These adjustments must reflect the distribution of paraffin types in representative refinery streams. Two other issues must also be addressed regarding the composition and properties of extension and addition fuels. First, non-compositional fuel properties such as RVP, E200, and E300 may differ from the values specified in Tables V.2 and V.3 as a natural result of compositional differences among fuels or as a result of the inherent variability in blending processes. In such cases, the complex model is to be used to compensate for such differences when

evaluating vehicle testing results, as described in section 80.48 of today's regulations.

Second, EPA also is concerned that variations due to blending may cause fuel parameters not included in the model to vary among fuels, and such parameters may have significant emission effects not predicted by the model. To minimize this risk, the properties of the various fuels must match those specified in Tables V.1 through V.3 to within the tolerances defined in Table V.4. In addition, the extension and addition fuels must be blended from identical refinery streams to the extent possible. Failure to meet this requirement would reduce the certainty that emission effects found in vehicle testing are due solely to the parameter being tested. However, if a petitioner can show that it is not feasible to meet all such tolerances for the petitioner's fuels due either to: (1) Naturally-resulting changes in fuel parameters arising from changes in the parameter(s) in question or (2) blending technology limitations, EPA will consider modifying the relevant tolerances. Any such request must come prior to the start of the test program. In such cases, EPA reserves the right to use the model and relevant data from prior augmentation petitions to adjust for whatever differences remain among the fuels.

TABLE V.4.—FUEL PARAMETER BLENDING TOLERANCES

Fuel parameter	Blending tolerance
Sulfur content	±25 ppm.
Benzene content	±0.2 vol %.
RVP	±0.2 psi.
E200 level	±2 %.
E300 level	±4 %.
Oxygenate content	±1.0 vol %.
Aromatics content	±2.7 vol %.
Olefins content	±2.5 vol %.
Saturates content	±2.0 vol %.
Octane	±0.5.
Candidate parameter	To be determined as part of the augmentation process.

An octane requirement of 87.5 (measured by the (R+M)/2 method) must be met for all fuels used in vehicle testing to within the tolerance specified in Table V.4, unless octane itself is the fuel property being evaluated for its effect on emissions. All test fuels must also contain detergent additives in concentrations adequate to meet the requirements of section 211(l) of the Act, and the concentration must be within ten percent of the average detergent concentration for all fuels included in the test program.

8. Test Procedures

For the reformulated gasoline program to achieve actual in-use reductions in fuel-related VOC and toxics emissions, certification test results must correlate with reductions in in-use emissions. No test procedure, however, is completely representative of all in-use conditions. The range of vehicle uses and operating conditions and the range of geographical and climatic conditions throughout the country prevent a single test procedure from being entirely representative. However, EPA has developed or is in the process of developing test procedures which attempt to reflect a broad spectrum of in-use vehicle operating conditions. These test procedures were used in part to develop the emission factors in EPA's MOBILE4.1, MOBILE5, and MOBILE5A emission models, which in turn have been used to develop the modeling option for fuel certification. To maintain consistency between the certification methods, these test procedures also are to be used for vehicle testing to augment the model.

a. *Exhaust emission testing.* Exhaust emissions must be measured through the use of the Federal Test Procedure (FTP) for new vehicle certification (Subpart B of Part 86 of the Code of Federal Regulations) with modifications to allow vehicle preconditioning between tests on different fuels and to provide for benzene, formaldehyde, acetaldehyde, and 1,3-butadiene sampling and analysis. Since POM (the fifth regulated toxic air pollutant) cannot currently be measured accurately and since no single measurement procedure is generally accepted, its measurement is not required. A detailed description of the toxics measurement procedures can be found in section 80.55 and section 80.56 of the regulations for this rulemaking.

b. *Fuel parameter measurement precision.* One source of error in testing programs es described in this section is uncertainty in the composition and properties of the fuels being tested. Since fuel testing is far less expensive than vehicle emission testing, EPA believes it is highly cost effective to measure the properties of the fuels multiple times to reduce the uncertainty in projected emissions due to uncertainty in fuel composition. As a result, at minimum, the properties defined in Table V.5 must be measured a sufficient number of times to reduce the 95 percent confidence interval, as calculated using a standard t-test, to the tolerances defined in Table V.5.

TABLE V.5.—FUEL PARAMETER MEASUREMENT TOLERANCES FOR FUEL CERTIFICATION BY VEHICLE TESTING

Parameter	Measurement tolerance (95 percent confidence interval)
API Gravity	±0.2 °API.
Sulfur content	±5 ppm.
Benzene content	±0.05 vol %.
RVP	±0.08 psi.
Octane	±0.1 (R+M/2).
E200 level	±2 %.
E300 level	±2 %.
Oxygenate content	±0.2 vol %.
Aromatics content	±0.5 vol %.
Olefins content	±0.3 vol %.
Saturates content	±1.0 vol %.
Octane	±0.2.
Candidate parameter	To be determined as part of the augmentation process.

EPA recognizes that fuels used in vehicle testing may differ significantly in composition in terms of specific chemical species while appearing to be identically composed in terms of broad chemical families. The Agency further recognizes that such compositional differences may result in emission effects, and that such differences may confound or be used to "game" testing programs. Therefore, the fuels used in vehicle testing must be blended from representative refinery streams, and their composition must be fully characterized by gas chromatography or equivalent analysis methods (following the methodology used in the Auto/Oil study[3]) and the results submitted to EPA. Petitioners would have the option of either submitting these results for approval prior to beginning vehicle testing or including these results in their completed petition. However, in either case, EPA would retain the authority to require modifications to the test fuels to ensure that their compositions are appropriate. Hence petitioners electing not to obtain prior approval of their fuel compositions would assume the risk that EPA may require modifications to the petitioner's test fuels upon receipt of the completed petition, thereby invalidating any testing the petitioner may have completed.

EPA received a number of comments on its fuel specification and measurement precision proposals. Many of these comments have been

[3] Auto/Oil Air Quality Improvement Research Program, Technical Bulletin #1, December 1990.

incorporated in today's testing regulations, notably removal of the end point specification and inclusion of detergents and octane specifications. A detailed discussion of comments can be found in Section VI.G of the RIA.

c. *Other test fuel provisions.* To maximize the accuracy and confidence in the results from a test program of the magnitude specified in this section, it is good practice to ensure that systematic changes in the emission characteristics of the test vehicles do not occur during testing. Such effects can overwhelm the fuel effects being measured. Therefore, the first fuel tested in any given vehicle must be retested in that vehicle at the end of the test program. In addition, the order in which fuels are tested on each vehicle must be randomized to prevent carryover effects from biasing test results.

In response to comments, EPA has decided to remove the requirement for repeat measurements of VOC and NO_x emissions from each fuel. EPA considers the measures described above to provide adequate quality assurance without repeat measurements and recognizes that removal of the repeat testing requirements will make vehicle testing significantly less onerous and time-consuming.

7. Vehicle Selection

a. *1990 Equivalency.* Section 211(k)(3) of the CAA specifies that the required reductions in VOC and toxics emissions are to be measured from the emissions of those pollutants from "baseline vehicles." Section 211(k)(10)(A) defines baseline vehicles as representative model year 1990 (MY–90) vehicles. However, in order to simplify test vehicle selection and remain consistent with the practices used to develop the complex model, other model year vehicles may be included in the test program. Specifically, 1986 through 1989 model year vehicles may be tested if the 1990 version had an engine and exhaust system that was not different from the earlier model year versions in ways that could affect the emission performance of the vehicles (i.e., if the model's EPA emission certification data were "carried over" through the 1990 model year[4]). EPA retains the right to reject any non-1990 model year vehicle that the manufacturer deems to be different in terms of emission control technology or engine design from 1990 vehicles made by that manufacturer. The test fleet must be composed only of light-duty vehicles and light-duty trucks, in keeping with the practices followed in developing the complex model.

b. *Vehicle selection criteria.* Another consideration in vehicle selection is the condition of the test vehicles. EPA believes that Congress intended that the required VOC and toxics emission reductions be achieved not only at certification but also in-use. In order for this to be true, the test vehicles' condition should be representative of that of in-use vehicles. Therefore, for the purposes of the reformulated gasoline program, representative vehicles must have emission performances typical of the in-use emission performance of 1990 vehicles over their lifetime, a technology mix similar to that of the 1990 model year fleet, and a minimum of 4,000 miles of service to assure break-in of engine and emission control system components. In addition, the test fleet must contain vehicles with a distribution of VOC emissions similar to that of in-use vehicles. Emissions of other pollutants tend to respond in a similar manner (e.g., carbon monoxide and air toxics) or in an essentially uncorrelated manner (e.g., NO_x).

In order for the emissions effects measured during vehicle testing to reflect the emission effects that will be experienced by actual in-use vehicles, EPA considers it necessary to control the composition of the test fleet. As discussed in Section IV, EPA's complex model has identified significant differences in the effects of fuel modifications on emissions among vehicles from different emitter classes and technology groups. EPA's vehicle fleet requirements are intended to assure that a sufficient number of vehicles are tested to provide statistical confidence in observed emission effects, to assure that the vehicles tested are representative of the emission characteristics of in-use vehicles, and to assure that the vehicles tested have emission control technologies that are representative of emission control technologies found on 1990 model year vehicles.

(1) *Higher Emitters/Normal Emitters.* In order that the test fleet for exhaust emission testing reflect the distribution in vehicle emission performance in-use, the test fleet must consist of two exhaust VOC emitter subfleets, normal emitters and higher emitters. The proportion of vehicles in each subfleet is to be set equal to the distribution of vehicle emission performance when enhanced I/M programs are in place. These proportions are shown in Table V.6, which is based on an EPA analysis[5] of the distribution of the in-use emission performance of a hypothetical fleet composed entirely of 1990 model year vehicles when subject to an enhanced I/M program. This distribution is consistent with the assumptions made in developing the Phase II Complex Model.

TABLE V.6.—EMITTER GROUPS AND IN-USE EMISSIONS

Emitter group	Fraction of in-use fleet	Emission fraction	
		VOCs	NO_x
Normal: <2 x THC Standard (<0.82 g/mi)	0.738	0.444	0.738
Higher: ≥2 x THC Standard (≥0.82 g/mi)	0.262	0.556	0.262

An option had been proposed for comment which would not have separated the test fleet into separate emitter groups under the assumption that they may not respond differently to fuels. However, EPA's analysis of the complex model database and the complex model itself indicates that this assumption is invalid. Hence EPA has determined that the test fleet must contain vehicles from both emitter groups.

Assembling a test fleet with the specified emission performance distribution requires vehicles to be obtained with the desired emission performance. For the reformulated gasoline program, such vehicles must be obtained by randomly selecting vehicles with the desired emission performance from the in-use fleet and testing those vehicles in their as-received condition. This method helps assure that the vehicles selected for testing have emission control problems that are representative of in-use emission problems. EPA had considered allowing normal emitting vehicles with intentionally-disabled emission control systems to serve as higher emitting vehicles, but no suitable disablement scheme has been identified and evidence indicating that disabled vehicles would have emission performance representative of in-use higher emitters has not been found. For these reasons, EPA will not permit

[4] For a more complete explanation of this issue, please see "1990 Baseline Vehicles," memorandum from David Korotney to EPA Air Docket A–92–12, November 30, 1993.

[5] "Exhaust VOC Emission Inventory By Vehicle Emitter Class Following Implementation of an Enhanced Inspection and Maintenance (I/M) Program", Memorandum from Christian Lindhjem and David Brzezinski to EPA Air Docket A–92–12, June 24, 1993.

higher emitting vehicles to be created by intentionally disabling normal emitting vehicles.

Test vehicles' emission performance will need to be pre-screened to place them in the appropriate emitter group and to assure the proper emissions distribution within the test fleet. Such prescreening tests must be conducted using EPA vehicle certification fuel (Indolene) over the Federal Test Procedure since these were the conditions which were used to generate the data for the in-use emission distribution. Prescreening tests can also be performed using the Clean Air Act baseline gasoline and/or the I/M 240 test procedure. Results from such tests can be correlated with FTP test results with Indolene (as outlined in section 80.62 of the accompanying regulations).

(2) *Technology Groups.* As discussed in Section IV, the development of the complex model revealed that the emissions effect of fuel modifications in normal emitting vehicles varied among the engine and exhaust system technologies present in 1990 model year vehicles. Hence EPA has concluded that the normal emitter test fleet must have a technology distribution that is representative of the technology distribution present in the 1990 model year fleet. The required distribution is shown in Table V.7.

In addition to the technology group criteria of Table V.7, approximately 30 percent of the vehicles selected for each emitter class sub-fleet must be light-duty trucks (LDTs) to reflect the representation of LDTs in the light-duty vehicle fleet. EPA believes that the benefits of providing flexibility in determining the selection of LDTs for the test fleet outweigh the benefits of accuracy achieved by specifying which vehicles from Table V.7 should be LDTs. However, as is also the case for other design elements of the test program, the distribution of LDTs among the normal emitter technology groups is subject to EPA approval.

A number of commenters objected to the application of this technology group distribution to the higher emitting vehicle subfleet, as was specified in prior proposals. EPA's experience in developing the complex model, as discussed in Section IV and the RIA, confirms that higher emitter emissions tend to be much less dependent on vehicle technology differences than are normal emitter emissions. Therefore, the higher emitting vehicle subfleet need not meet the technology distribution requirement, though a mixture of vehicle models and manufacturers should still be included. The higher emitter subfleet also must meet the 1990 model year and light duty vehicle criteria described previously and, like other elements of proposed testing programs, is subject to EPA approval.

TABLE V.7.—TEST VEHICLE CHARACTERISTICS

Veh. #	Fuel system	Catalyst	Air injection	EGR	Tech. group	Manufacturer
1	Multi	3W	No Air	EGR	1	GM.
2	Multi	3W	No Air	No EGR	2	Ford.
3	TBI	3W	No Air	EGR	3	GM.
4	Multi	3W+OX	Air	EGR	4	Ford.
5	Multi	3W	No Air	EGR	1	Honda.
6	Multi	3W	No Air	No EGR	2	GM.
7	TBI	3W	No Air	EGR	3	Chrysler.
8	Multi	3W+OX	Air	EGR	4	GM.
9	TBI	3W+OX	Air	EGR	7	Chrysler.
10	Multi	3W	Air	EGR	5	Toyota.
11	Multi	3W	No Air	EGR	1	Ford.
12	Multi	3W	No Air	No EGR	2	Chrysler.
13	Carb	3W+OX	Air	EGR	9	Toyota.
14	TBI	3W	No Air	EGR	3	Ford.
15	Multi	3W+OX	Air	EGR	4	GM.
16	Multi	3W	No Air	EGR	1	Toyota
17	Multi	3W	No Air	No EGR	2	Mazda
18	TBI	3W	No Air	EGR	3	GM.
19	Multi	3W+OX	Air	EGR	4	Ford.
20	Multi	3W	No Air	EGR	1	Nissan.

TABLE V.8—TECHNOLOGY GROUP DEFINITIONS

Tech. group	Fuel system	Catalyst	Air injection	EGR
1	Multi	3W	No Air	EGR
2	Multi	3W	No Air	No EGR
3	TBI	3W	No Air	EGR
4	Multi	3W+OX	Air	EGR
5	Multi	3W	Air	EGR
6	TBI	3W	Air	EGR
7	TBI	3W+OX	Air	EGR
8	TBI	3W	No Air	No EGR
9	Carb	3W+OX	Air	EGR

Legend for Tables V.7 and V.8

Fuel System:
Multi = Multi-point fuel injection
TBI = Throttle body fuel injection
Carb = Carburetted
Catalyst:
3W = 3-Way catalyst
3W+OX = 3-Way catalyst plus an oxidation catalyst
Air Injection:
Air = Air injection
No Air = No air injection
EGR:
EGR = Exhaust gas recirculation
No EGR = No exhaust gas recirculation

Vehicles must be added to the normal emitter sub-fleet in the order in which they appear in the table. If more than 20 vehicles are included in the normal emitter sub-fleet, then the additional vehicles must be selected starting over with vehicle number one in Table V.7.

(3) *Number of Test Vehicles.* Exhaust emissions are subject to considerable variability due to the complexity of combustion chemistry, engine behavior, and emission control. As a result, substantial statistical uncertainty typically exists in exhaust emission reduction estimates based on a single test program. To reduce this uncertainty, an adequate number of vehicles must be tested for their exhaust emissions. In order to keep statistical uncertainty reasonably low while at the same time limit the test fleet size to reasonable levels, the test fleet for exhaust emissions must consist of a minimum of 20 vehicles. To maintain adequate statistical confidence in test results, however, the distribution of the test fleet among the emitter groups must also be defined so as to minimize statistical uncertainty. As discussed in the April 16, 1992 proposal, differences in VOC, NO_X and toxics emission distributions for in-use vehicles prevents optimization of the size of the emitter groups for all three pollutants simultaneously. EPA is basing the number of vehicles in each emitter group on their VOC emission performance, based on the reasons discussed in the April 16, 1992 proposal and on the use of VOC emission performance to define emitter groups.

The uncertainty associated with VOC emissions is quite complex. The higher emitting vehicles in various test programs have tended to have significantly greater variability in emission effects than normal emitting vehicles. Hence to minimize statistical uncertainty, a greater proportion of higher emitters should be tested than would be suggested by their contribution to in-use emissions. However, EPA believes that pre-screening and stabilization of higher emitters can reduce their variability to approach that of normal emitters. Therefore, to minimize the statistical uncertainty in the test program the number of normal and higher emitters in the test fleet should represent the contribution of each sub-fleet to total in-use emissions. Since the relative contribution of normal and higher emitters to total VOC emissions is approximately equal (as discussed at length in the RIA), equal numbers of normal and higher emitters must be contained in any test fleet.

(4) *Waiver Provisions for Different Test Program Requirements.* A number of options were discussed in April 16, 1992 which attempted to simplify or minimize the vehicle test fleet requirements while still maintaining the statistical confidence in the results of any test program. Based upon EPA's experience with the programs conducted as part of the complex model development, the test fleet provisions promulgated here represent the minimum possible if adequate statistical confidence in test program results is to be maintained. In fact, EPA believes that many petitioners may desire to test additional vehicles in order to improve their study's statistical power and thereby improve the likelihood that an augmentation petition would be granted.

Nevertheless, in some instances petitioners may believe that a more optimal test fleet composition than the one specified above exists for the fuel parameter being tested. In such cases, petitioners can petition the Administrator to approve a waiver from certain of the requirements in this section relating to the number of test vehicles and their distribution among the normal and higher emitter groups. Any such waiver would have to be obtained in advance of the start of the test program involved. A request for such a waiver must include an adequate justification for the requested change, including the rationale for the request and supporting data and information. EPA reserves the right to require testing of additional vehicles beyond the 20-vehicle minimum where such testing is necessary to evaluate emission effects properly.

8. Data Analysis

a. *Weighting of emission test data.* The manner in which the test data is to be analyzed must be consistent with the goal that the emission benefits from reformulated gasoline be realized in-use, just as is the case for the exhaust emission complex model itself (as discussed in Section IV). Therefore, augmentation of the models with vehicle testing results must reflect the effects of fuel modifications on emissions of each exhaust pollutant (VOC, NO_X, benzene, 1,3-butadiene, formaldehyde, and acetaldehyde) on 1990 vehicles. The augmentation also must incorporate differences in these effects for vehicles with different emission control technologies and different emission levels. The vehicle selection criteria discussed above are intended to satisfy these requirements without requiring an extremely large test fleet. The results of vehicle test programs will be weighted to reflect the contribution of each emitter class and technology type to in-use emissions according to the procedure described in Section IV for the exhaust emission complex model.

b. *Data analysis to extend the range of existing model parameters.* When extending the range of a fuel parameter already included in the complex model, EPA believes that the data generated through vehicle testing should be combined with the data used to develop the complex model itself. This approach offers several important advantages. First, it takes full advantage of existing knowledge regarding the effects of the parameter in question on emissions. Second, it reduces inconsistencies between the complex model and the augmentation, thereby simplifying certification and enforcement. Third, it reduces the possibility of petitioners deliberately manipulating the test program to obtain a desired augmentation since the limited data generated by the test program will be combined with the much more extensive data available in the complex model database.

The analysis process is described in detail in section 80.48 of today's regulations and in Section IV.G of the RIA. The process requires that the emission effects of the parameter being tested be verified at the extended level while not permitting emission effects of other parameters to be modified from the effects incorporated in the complex model. In addition, the augmentation would only apply to fuels with levels of the parameter being tested that fall outside the range for which the complex model is valid. These safeguards are intended to prevent the results of vehicle testing from being used to alter aspects of the complex model that a fuel supplier or other organization deems undesirable.

c. *Data analysis to add new fuel parameters.* Vehicle test data for new fuel parameters such as new additives cannot be analyzed in the manner described above for existing fuel parameters. Vehicle-to-vehicle variability can cause significant differences in vehicle responses to parameters already included in the complex model from what the complex model would predict. The analysis method described above would apply these differences entirely to the new parameter, which would allow substantial opportunities to game the testing and model augmentation process. To minimize the risk of gaming

and assure proper representation of the effects of new fuel parameters, a different analysis process must be used when augmenting the model with a new fuel parameter. This process is designed to identify the effects of the new parameter itself, including its behavior upon dilution, as well as any interactive effects between the parameter and existing complex model parameters.

The process itself is described in detail in section 80.48 in today's regulations and in Section IV of the RIA. The modeling process incorporates five techniques to minimize gaming and isolate the actual emission effects of the new parameter being tested. First, the complex model is used to adjust the emissions performance of the test vehicles on the three fuels for any differences in fuel parameters other than the one being tested. These adjustments should be minor, since fuel properties other than the one being tested are required to be nearly identical. Second, the linear and squared terms for the new parameter are determined based on test data from addition fuels 1, 2, and 3 before interactive effects are introduced into the augmented complex model based on the results of testing addition fuels 4, 5, 6, and 7. This approach is used because the direct effects of fuel parameters (represented by the linear and squared terms) are less easily gamed or obscured than are interactive effects since fewer variables are involved. Third, the statistical criteria defined in section 80.57 are used to assure that only statistically significant terms are included in the augmentation.

Fourth, the model must include all terms for the pollutant being modeled that are already included in the complex model. In addition, only the linear, squared, and interactive terms involving the new parameter are permitted to enter the augmentation. The coefficients for the complex model terms will be fixed at the values established in this rule. By not permitting the augmentation to change existing complex model terms, the analysis process reduces opportunities to game to modify complex model effects that the testing organization considers undesirable.

Fifth, augmentations are not permitted for parameters not contained in the complex model but for which measurements exist in the complex model database. Including such parameters in an augmented complex model is likely to result in large changes in complex model coefficients due to the interrelationship between fuel properties. Such changes would complicate enforcement and might introduce fungibility problems that would diminish the in-use effectiveness of reformulated fuels. Further, EPA's experience in developing the complex model suggests that including such parameters would introduce collinearity problems and exacerbate the risk of test program gaming. Since such parameters were considered for inclusion in the complex model but were rejected based on input from affected parties and EPA staff, EPA has decided not to permit augmentations for such parameters. However, the Agency will consider including such parameters in subsequent revisions to the complex model.

Interactive terms were not permitted to enter EPA's complex models for exhaust toxics, as discussed in Section IV and the RIA. Hence interactive effects on toxics emissions are not permitted in augmentation petitions, unless the test program was intended and specifically designed to investigate such effects.

The preceding discussion assumes that the interactive effects identified through testing cannot be traced to a specific cause. If the cause of the interactive effect can be identified, it may be appropriate to determine a greater beneficial augmentation due to the parameter in question than the effects identified through the procedure above or to include an interactive term in the complex model. Therefore, EPA will allow testing of additional fuels to identify the cause of the interactive effect and the magnitude of the effect for representative in-use fuels (again subject to Agency approval regarding the appropriateness of the petitioner's definition of representative gasoline). Petitioners will be required to obtain approval from the Administrator for the proposed additional testing before beginning such testing. Petitioners will be permitted to claim larger benefits for the parameter in question based on the results of such tests, subject to the approval of the Administrator.

For a more complete description of these procedures, the reader is referred to section 80.57 of the regulations and to Section IV of the RIA.

d. *Acceptance criteria.* As discussed in Section H, EPA reserves the right to evaluate the quality of testing data submitted in support of petitions to augment the models, to reject test data or analyses submitted to the Agency if such data or analyses are found to be insufficient, flawed, or otherwise deficient, and to include test data or analyses from other sources when evaluating the proposed augmentation to the model.

VI. Phase II (Post-1999) Reformulated Gasoline Performance Standards and NO_X Standards for Reformulated Gasoline

A. Introduction

The Clean Air Act (the Act), as amended in November 1990, establishes a more stringent minimum level of control of ozone-forming VOCs and air toxics emissions from reformulated gasoline beginning in the year 2000 than is required prior to that date. For the first five years of the reformulated gasoline program (Phase I; January 1, 1995 through December 1999), Congress established a minimum requirement of 15% reduction of ozone forming VOCs and toxic air pollutants [CA section 211(k)(3)(B)].[6] Starting with January 1, 2000 (Phase II), the 15% minimum required reductions are increased to 25%, with the provision that EPA may increase or decrease this level based on technological feasibility, considering cost, but may not decrease it below 20% [CA section 211(k)(3)(B)]. The restriction on increases in NO_X emissions continues to apply during Phase II of the program.

The regulatory negotiation conducted by EPA for this rulemaking did not address the Phase II VOC and toxics standards, nor did it address a reduction in NO_X emissions beyond the statutory cap imposed under section 211(k)(2)(A). After analyzing the costs and benefits of various controls, along with other relevant factors, EPA proposed a range of possible Phase II standards for VOC and toxics. Furthermore, based on EPA's view that NO_X reductions were important to achieve attainment of the ozone NAAQS in many nonattainment areas, EPA also proposed a NO_X reduction performance standard for Phase II reformulated gasoline relying on EPA's authority under section 211(c)(1)(A). A more detailed discussion of EPA's Phase II proposals for VOCs, toxics, and NO_X is provided in subsection 2 below.

For the reasons described below, EPA has decided to establish per gallon Phase II VOC performance standards of 25.9% for VOC control region 2 (northern areas) and 27.5% for VOC control Region 1 (southern areas).[7] EPA is also promulgating a per gallon toxics performance standard of 20% for all

[6] The numerical performance standard of § 211(k)(3)(B) sets the minimum level of reductions, as it is more stringent than the reductions achieved by the formula fuel in § 211(k)(3)(A).

[7] The 27.9% VOC performance standard for VOC control region 1 is measured against the statutory baseline gasoline, which has an RVP of 8.7 psi. This amounts to a 17.7% VOC reduction when measured against a baseline gasoline with RVP of 7.8 psi.

reformulated gasoline. Reformulated gasoline will also have to meet a 5.5% per gallon reduction in emissions of NO_X. EPA has also established more stringent VOC, toxics, and NO_X performance standards where a refiner or importer complies on average, as well as minimum per gallon standards, as explained in section C below.

1. Statutory Requirements

Section 211(k)(1) requires that reformulated gasoline achieve the greatest reductions possible in volatile organic compounds (VOCs) and toxics emissions, "taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements. Specifically, section 211(k)(3)(B) of the Act requires that, in the year 2000 and beyond, "aggregate emissions of ozone-forming volatile organic compounds from baseline vehicles[8] when using reformulated gasoline shall be 25 percent below the aggregate emissions of ozone forming volatile organic compounds from such vehicles when using baseline gasoline[9]." Similarly, a 25% reduction in emissions of toxic air pollutants is required. The Act also specifies that the Administrator may adjust the 25 percent reduction level to provide for lesser or greater reductions based on technological feasibility, giving consideration to the cost of achieving such reductions. In no case can the required reduction be less than 20 percent. The Act further provides that emissions of oxides of nitrogen (NO_X) cannot increase as a result of the use of reformulated gasoline. These VOC and toxics reductions and NO_X limit are known as the Phase II reformulated gasoline standards.

Section 211(c) of the Act allows the Administrator to regulate fuels or fuel additives if "any emission product of such fuel or fuel additives causes, or contributes to, air pollution which may reasonably be anticipated to endanger the public health or welfare." Section 211(c)(2) further provides that EPA cannot control these fuels and fuel additives "except after consideration of all relevant medical and scientific evidence available * * *, including consideration of other technologically or economically feasible means of achieving emissions standards." In addition, EPA must find that the prohibition "will not cause the use of any other fuel or fuel additive which will produce emissions which will endanger the public health or welfare to the same or greater degree than the use of the [regulated fuel/fuel additive]."

EPA has elected to use this authority to require reformulated fuels to also achieve NO_X reductions in order to reduce ozone formation, based on scientific evidence regarding the benefits of NO_X control and on the cost-effectiveness of NO_X reductions. The determination of the need for, scientific justification of, and cost-effectiveness of NO_X control is presented in the RIA and summarized in subsection C.2 below.

2. Proposal

EPA proposed a range of VOC and toxics performance standards for Phase II reformulated gasoline, covering a variety of options for setting these standards [see the Notice of Correction for the Proposed Rule 58 FR 17175 (April 1, 1993)]. The proposed VOC standards ranged between 29.7 and 37.7 percent reduction in emissions for VOC control region 1 areas (Class A and B, the southern areas of the country) based on a baseline fuel with an RVP of 8.7 psi[10], and between 26.7 and 34.7 percent reduction for VOC control region 2 areas (Class C, the northern areas of the country) [58 FR 17178, 17179, 17180 (April 1, 1993)]. These percentage reductions are in comparison to the emissions performance of baseline vehicles operating on baseline gasoline; the proposed version of the complex model was used to establish a fuel's emissions performance. In proposing the range of values EPA considered the costs of VOC control, the cost-effectiveness of the controls, the health and environmental effects, energy impacts, and technological feasibility.

EPA's analysis showed that fuels meeting the proposed VOC and toxics standards were expected to show no increase in NO_X emissions, and in fact would likely achieve some reduction in NO_X. Based on the expected benefits of NO_X reduction, and considering various other factors, EPA also proposed NO_X emissions reduction standards for Phase II reformulated gasoline based on the authority of section 211(c)(1)(A) of the Act. The proposed NO_X standards ranged from 0 to 14.8 percent reduction for VOC control region 1 (southern areas) and 0 to 15.4 percent reduction for VOC control region 2 (northern areas) [58 FR 17178–9 (April 1, 1993)]. Again, the NO_X emissions performance of a fuel would be determined using the proposed complex model. The range of proposed standards was based, in part, on different levels of potentially acceptable cost-effectiveness as well as whether the cost-effectiveness was calculated based on reductions in NO_X emissions alone or on the combined reduction in VOC and NO_X emissions.

EPA proposed alternative VOC standards that would apply depending on whether EPA adopted a NO_X reduction standard. These were based on changes in the cost-effectiveness analysis from combined VOC plus NO_X emissions reductions. As explained in the proposal, measures taken to achieve the NO_X reductions under this option would result in VOC emission reductions incremental to those obtained under the proposed VOC only standards, which were based solely on the cost per ton of VOC reduced. These additional VOC emission reductions obtained through a combined VOC plus NO_X standard presented the option of setting a standard for larger VOC reductions. EPA analyzed the cost-effectiveness of a more stringent VOC standard in connection with a NO_X standard, and proposed a range of values depending on the target cost-effectiveness level: for southern areas, 29.7–40.2 percent based on an 8.7 psi baseline RVP (20.7–33.8 percent reduction based on a 7.8 psi baseline RVP); for northern areas, 26.7–37.3 percent reduction.

In analyzing potential VOC and NO_X reduction requirements, EPA looked at two potential cost-effectiveness targets: $5,000/ton and $10,000/ton. These figures were selected as representative of the range of cost-effectiveness for controls which would be incurred by many ozone nonattainment areas in achieving attainment. In addition, they reflected higher cost-effectiveness values than those for any then-existing federal nationwide motor vehicle or motor vehicle fuel control programs.

Finally, EPA proposed a toxics emissions reduction standard between 20 and 25 percent. The 25 percent reduction standard proposed was based on the level specified in section 211(k)(3)(ii) of the Act. In the proposal, EPA recognized that while on average this level of toxics control was cost effective, it could be highly cost ineffective for some refiners. The statutory minimum 20 percent reduction standard was proposed as an alternative to allow refiners further flexibility in meeting the VOC and NO_X standards (and for some to reduce the need for capital intensive modifications

[8] According to section 211(k)(10)(A) of the Act, "baseline vehicle" means representative model year 1990 vehicles.

[9] The formulation for summertime baseline gasoline is defined in section 211(k)(10)(B) of the Act. See further discussion of baseline emissions in section IV.

[10] Relative to a baseline fuel including an RVP of 7.8 psi, the proposed VOC standards ranged between 20.7 and 31.7 percent reduction.

specific to toxics control), under circumstances where in most cases large reductions in toxics emissions would automatically result from the VOC and NO_X controls.

3. General Comments Received on Proposal

EPA received several comments recommending a reproposal of the Phase II standards once the complex model was finalized and EPA could develop a single standard for each pollutant. One comment stated that the construct of the complex model will have a significant effect on the standards, and it was therefore not possible to comment on the costs or performance of the Phase II standards as proposed (since they were not based on the final complex model). Others commented that it was improper to establish standards until the model that predicts benefits exists. EPA does not believe it is necessary to repropose these standards, since the proposal presented a range of values for the standards and outlined all of the options that were considered. The final standards were derived based on the final complex model, so the standards include the effect of the complex model on the emissions reductions predicted. EPA had proposed, and it was agreed in Reg-Neg, that the Phase II standards would be promulgated with the complex model.

Briefly described below are the factors EPA considered in setting the standards being promulgated today, the methodology used in determining the cost-effectiveness of fuel controls, and the reasoning used in determining the standards. The full analysis leading to the final standards is more thoroughly discussed in section VI of the regulatory impact analysis (RIA) associated with this rulemaking.

B. Factors Affecting Selection of the Phase II Standards

In determining the Phase II reformulated gasoline standards, EPA considered the health, environmental, and energy impacts, as well as the cost and the technological feasibility of reformulating gasoline to attain emission reductions of VOCs, toxics, and NO_X. EPA's analyses of these factors are discussed briefly below, and in detail in the RIA.

1. Health and Environmental Impacts

The purpose of the reformulated gasoline program is to reduce motor vehicle emissions of ozone forming VOCs and certain specified toxic air pollutants in those areas most in need of such reductions. As discussed above, EPA is also reducing ozone forming NO_X emissions from RFG as a part of this rulemaking. EPA measured the health and environmental benefits of the reformulated gasoline program in terms of the number of tons of VOC, NO_X, and toxics reduced, since the Act specifies mass-based emissions reductions. The benefits of toxics reductions were further evaluated on the basis of the number of cancer incidences avoided, since this is a common measure of the effectiveness of toxics control. The reader is directed to section C below for quantified estimates of these reductions.

The benefits of ozone reduction will be gained through the reduction of both VOC and NO_X emissions. Ambient ozone levels and the effect of VOC emission reductions on these levels vary from city to city, making it difficult to quantify the benefits of the VOC reduction beyond tons of emissions reduced. In general, reductions in VOC emissions will improve the air quality of most affected areas and thereby reduce the negative health impacts of exposure to high levels of ozone. Visibility and other environmental measures are also improved through reductions in emissions of ozone precursors. Similar benefits will be gained through reductions in NO_X emissions. The reader is directed to subsection C.2 for further discussion on the health and environmental benefits of NO_X control.

Reducing ozone levels in highly populated urban areas would help to reduce short-term health effects such as impaired lung function, cough, nausea, chest pain, throat irritation, increased susceptibility to respiratory infection, and increased sensitivity of asthmatics to allergens (e.g., pollen) and other bronchoconstrictors. Long-term health effects of exposure to ozone include accelerated aging of the lungs, reduced elasticity of the lungs, scarring of lung tissue, and permanent reductions in baseline lung function.

Although the reformulated gasoline program is concentrated in urban areas, some reformulated gasoline will be used in rural areas as a result of spillover in the distribution system. Reducing ozone levels in rural areas would enhance agricultural crop yield, currently estimated to be reduced by as much as $2–3 billion per year by existing ozone concentrations.[11] In addition, lower ozone levels would help reduce damage to forest ecosystems which experience lower tree growth rate, foliage damage, and increased susceptibility to stress (e.g., insects, disease, drought) caused by current tropospheric ozone levels.[12]

Reductions in mobile source emissions of the air toxics addressed in the reformulated gasoline program (benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and POM) may result in fewer cancer incidences. A number of adverse noncancer health effects have also been associated with exposure to air toxics, particularly with higher level exposures experienced in particular microenvironments such as parking garages and refueling stations. These other health effects include blood disorders, heart and lung diseases, and eye, nose, and throat irritation. Some of the toxics may also be developmental and reproductive toxicants, while very high exposure can cause effects on the brain leading to respiratory paralysis and even death. The use of reformulated gasoline meeting the Phase II standards will likely help to reduce some of these health effects, as well. A more thorough discussion of the variety of possible non-cancer effects of concern from exposure to air toxics is contained in EPA's Motor Vehicle-Related Air Toxics Study.[13]

The emissions reductions and cancer incidences avoided as a result of today's standards are discussed below in section C.

In addition to the benefits from reductions in emissions of VOC, NO_X, and toxics, other environmental benefits will be realized as a result of the use of reformulated gasoline. Emissions of carbon monoxide will decrease as the result of adding oxygen to the fuel, to the benefit of areas out of attainment for this air pollutant and to human health in general.[14] In addition, since reformulated gasoline is projected to cost more than conventional gasoline, it is possible that consumers will purchase and, thus, use less gasoline, resulting in fewer overall emissions due to mobile sources.

2. Energy Impacts

Production of Phase II reformulated gasoline subject to performance standards for VOC, NO_X, and toxics will require an increase in the amount of energy used at the refinery. An estimate of the energy used depends on many factors, including how the energy balance is evaluated, the type and source of oxygenate, the refinery configuration, and the reformulation approach. Determining an exact energy

[11] U.S. EPA, "Air Quality Criteria for Ozone and Other Photochemical Oxidants," EPA Report No. EPA–600/8–84/020A-E, p.1–27.

[12] Ibid., p. 7–1 through 7–4.

[13] EPA document 420–R–93–005, April 1993.

[14] Most of this benefit will occur as a result of the use of oxygen in Phase I RFG, not from the Phase II reductions.

increase associated with reformulated gasoline production (on the basis of a constant level of gasoline energy produced) is difficult.

As later sections of this document will show, the standards for VOC and NO_X reduction promulgated today will likely be met largely through reductions in the sulfur content and Reid vapor pressure (RVP) of the fuel. The process used to remove sulfur from gasoline, hydrodesulfurization, is an energy intensive process; mainly due to the need for and consumption of hydrogen. The energy impact will depend on the sulfur level of the crude used by the refinery and the level of sulfur control necessary for that refinery to meet the standards. Reducing the RVP of the fuel requires removal of the lighter compounds in the fuel, also an energy consuming process. Overall, it is expected that the energy consumption by refineries in producing Phase II reformulated gasoline will increase slightly (perhaps a couple percent) over the level of energy used to make Phase I RFG, but the magnitude of this increase is difficult to measure due to the many variables involved.

3. Technological Feasibility

EPA also considered the technological feasibility of producing fuels to meet the Phase II standards. EPA believes that the refinery modeling results (from which the fuel parameter control costs were estimated) indicated that it is technologically feasible to make the fuel parameter changes that were analyzed in developing the standards. The refinery models utilize only well-developed, demonstrated, commercially available technologies, and are designed to only model fuels within the limits of these technologies.[15] Given the cost incentives created by this rulemaking, in all likelihood new technologies will be developed between now and the year 2000 which will reduce the costs for certain types of fuel parameter changes. Thus, EPA believes that the determination of fuel parameter control costs using the results of the existing refinery models is reasonable, that the costs generated are perhaps conservative, and that the technological feasibility of producing such emission-reducing fuels is justifiable. This position was supported by many of the comments received. While other commenters questioned the costs used in developing the proposal (as discussed in subsection 4.b), no comments questioned the technological feasibility of these refinery configurations.

Because the standards promulgated today will not take effect until the year 2000, and because all the processes needed to produce complying fuels are already commercially available, EPA does not believe that lead time will be an issue in achieving the required emissions reductions.

4. Fuel Safety and Driveability

EPA evaluated safety concerns associated with the use of low RVP fuels and found no significant negative impacts, as discussed in the RIA. Comments also raised concerns about driveability problems arising from the use of low RVP fuels. They raised concerns that EPA's analysis in the proposal did not address spring months (the transition time to the VOC control period), September RVP fuel sold in October, and low RVP gasoline sold in low temperature areas near nonattainment areas.

While neither EPA nor any other organization conducted driveability testing at low ambient summer temperatures, EPA has looked at the actual vapor pressure of fuels currently in production, as documented in the draft RIA.[16] Based upon a comparison of actual vapor pressures, EPA believes that 6.5 psi RVP fuel in the summer should have similar driveability to current winter fuels. At this time EPA believes there should be no significant driveability problems with gasoline at an RVP level down to 6.5 psi. Until such time as data can be gathered to more fully evaluate the driveability impacts of low RVP fuels, EPA believes that 6.5 psi may present a practical lower limit below which the existence of adverse driveability impacts is unknown. Discussions with representatives of both the oil and automotive industries reflected a similar uneasiness in going below 6.5 psi RVP given the lack of data at lower levels. However, the standards for Phase II RFG are performance based standards. As a result, flexibility exists for refiners to meet the Phase II standards, without reducing the RVP of the gasoline below 6.5 psi.

5. Cost-Effectiveness of Emissions Reductions

a. *Introduction.* For purposes of this discussion, EPA defines cost-effectiveness as the ratio of the incremental cost of a control measure to the incremental benefit, e.g., tons of VOC or other emissions reduced. Considering cost-effectiveness allows the Agency to develop a relative ranking of various ozone and toxics control strategies so that an environmental goal can be achieved at minimum cost. As the cost-effectiveness of an emission reduction strategy increases, it may be possible to achieve similar, substantial emission control in other ways (e.g., through other regulatory programs) at the same or lower cost per unit of benefit. EPA therefore considered cost-effectiveness in deciding what VOC, NO_X, and toxics control, if any, to impose beyond the minimum levels required under section 211(k)(3)(B).

One commenter recommended that EPA evaluate the cost-effectiveness of this program separately for small and large refiners, and also that EPA consider granting small refiners more time to comply with the requirements (as is allowed by California for California reformulated gasoline). The California reformulated gasoline program requires all refiners selling gasoline in the state to produce reformulated gasoline, and thus does not afford any flexibility to refiners, large or small. The federal RFG program, however, does not require 100% production of RFG in any region, nor does it require that every refiner produce RFG. Hence, small refiners can choose not to produce RFG and instead supply conventional gasoline if the costs of complying with the program are too burdensome. For those small refiners electing to produce RFG, the option to select between per gallon and averaging standards, as well as the ability to set their own baselines, gives them flexibility to meet the standards in the manner that is most cost effective for them. Furthermore, the enforcement structure is based on a single set of standards for Phase II RFG. Allowing some refiners to comply with a different set of standards would require additional and more complicated enforcement provisions, and could jeopardize the fungibility of reformulated gasolines.[17] Since EPA believes that the existing program provides sufficient flexibility to small refiners, there is no need to pursue multiple enforcement programs. See section XV for additional discussion of the impact of this rule on small refiners.

b. *Fuel Parameter Control Costs.* Fuel parameter control costs and interrelationships between fuel parameters are integral parts in the

[15] See the RIA for additional details on the refinery models used for this analysis.

[16] "Draft Regulatory Impact Analysis for the Notice of Proposed Rulemaking of the Complex Model, Phase II Performance Standards, and Provisions for Renewable Oxygenates," February 5, 1993.

[17] For Phase I RFG, the standards are set at the statutory minimum for both VOCs and toxics. EPA could not lawfully allow small refiners less stringent standards or more time to comply with the Phase I standards.

evaluation of the cost-effectiveness of Phase II RFG controls. The costs and interrelationships used to develop the VOC and toxics standards were estimated from the results of refinery modeling performed by Bonner and Moore Management Science,[18] by Turner, Mason, and Co. for the Auto-Oil Air Quality Improvement Research Program; [19] by Turner, Mason, and Co. for the Western States Petroleum Association (WSPA); [20] and by EPA in-house (using the Bonner and Moore refinery model).[21] EPA used these regional refinery models to estimate the cost and interrelationships of various fuel parameter controls. The final average nationwide costs were obtained by weighing the regional values by the estimated fraction of total reformulated gasoline (RFG) production in each region.

Many comments were received on the costs used in the proposal. Some of these comments, and EPA's response, are summarized here, while the RIA contains a complete discussion and analysis of the comments received. Several commenters questioned the appropriateness of using independent refinery models to generate costs for control of individual parameters. In addition, they questioned the aggregation of results from regional models to generate national average costs, and recommended instead using a model from the region likely to realize the highest costs for producing reformulated gasoline (PADD 1). While using regional models to estimate national average costs requires an acknowledgment of the inherent limitations in such models, EPA believes that it is appropriate to use them for the purpose of determining the costs to produce reformulated gasoline. The limitations and assumptions made in using the refinery models and the results of this analysis are discussed in detail in the RIA.

The manufacturing cost of producing gasoline is the sum of the capital recovery cost and the operating costs, adjusted for changes in the energy content of the fuel (to represent consistent fuel economy). VOC control is mandated only during the high ozone season, and thus all costs were allocated to the high ozone season in the refinery modeling work. In contrast to VOC control, toxics control and the benefits from reductions in toxics emissions occur year-round. Although the costs of toxics control should be determined on an annual basis, EPA used the same costs that were used for the VOC analysis, since it had been determined in the RIA (and supported by many comments received) that additional toxics control would be highly cost-ineffective. The level of either VOC or toxics control that is cost effective is not greatly affected by the accuracy of the costs, due to the magnitude of reductions achieved.

Some comments received on the proposal raised the concern that this method of determining costs did not accurately reflect all of the costs of the program, since the "compliance costs" for record keeping and enforcement, as well as costs incurred by pipelines or other entities, were not included. While it is true that "compliance costs" will be incurred as a result of the reporting and enforcement requirements of Phase II RFG, EPA does not anticipate the costs to be greater than those incurred by the Phase I RFG program. Refiners will already be supplying the information required by EPA for Phase I, and will continue to do so under Phase II. Hence, there is no additional cost of compliance to add to the costs of Phase II RFG.

Other factors affecting incremental fuel parameter control costs include the amount of reformulated gasoline produced by the refinery and the effects of fuel parameter changes on fuel economy. Because producing reformulated gasoline reduces flexibility in refinery operations, the cost of producing such fuels increases with the amount of reformulated gasoline that is produced in a given refinery. In this analysis, EPA used a scenario of RFG production based on participation in the reformulated gasoline program by the nine mandated areas, those areas which had opted into the program as of August 14, 1993 (the close of the comment period on the proposal), the entire Northeast Ozone Transport Region (including both attainment and nonattainment areas), and all other ozone nonattainment areas. This scenario was chosen to represent the Phase II RFG program that would result if all eligible areas opted into the program. Since the Ozone Transport Commission has not announced plans to opt-in to the RFG program, and the only additional nonattainment areas that have opted into the program since August 14 are those located in Kentucky, the volume of RFG production used for this analysis is overstated by about 20 percentage points. As a result, the cost estimates are higher than will likely be experienced, since use of RFG in the entire Northeast would severely limit refinery production in that region, incurring somewhat higher costs to individual refiners, particularly to those refiners which for economic reasons would choose not to produce RFG and merely continue producing conventional fuel.

EPA evaluated the costs for incremental control levels for a variety of fuel parameters. This evaluation revealed that the greater the level of control, the higher the costs of achieving that level. Complete information on the development of the individual parameter costs is provided in the RIA.

Several comments were received questioning the validity of evaluating the cost-effectiveness of Phase II RFG on a parameter by parameter basis. The recommended alternative was to evaluate the cost of producing a gasoline meeting the standards for a variety of refinery configurations, and to use this information to determine the cost-effectiveness of the standard. As explained in the RIA, EPA determined that it was appropriate to evaluate cost-effectiveness on an incremental basis to properly compare fuel controls to other forms of emission control.

c. *Emissions reductions.*—In determining the emission reductions and the associated cost-effectiveness of VOC control, EPA employed a convention typically used in estimating the benefit of both mobile and stationary source VOC controls. This convention requires the determination of cost-effectiveness on the basis of annual tons of VOC reduced. Thus, even though VOC emission reductions required under section 211(k) occur only during the high ozone season, the convention is to calculate the cost of the fuel parameter control per ton of VOC removed as if the high ozone season emission reductions were spread over the whole year. Comments were received that questioned the appropriateness of evaluating the cost-effectiveness on an annualized tons reduced basis rather than on a summer tons reduced basis, since the program is a summer program. The purpose of applying this convention to the evaluation of Phase II RFG was to allow direct comparison of the cost-effectiveness of this program with the cost-effectiveness of other VOC control strategies, which is typically calculated on a year-round basis. The only other appropriate alternative would be to recalculate the cost-effectiveness of all other programs on the basis of cost per ton of control during the high ozone season, the only time period when emission reductions for the purposes of ozone control are of any significant value.

Reductions in emissions of both exhaust and evaporative VOC are determined for a given fuel parameter change using the complex model. As discussed in earlier sections, the complex model statutory baseline emissions are based on 1990 vehicle technology, and compliance with the Phase II standards is measured relative to these base emissions. As explained in the RIA, EPA determined that the olefin level specified in the statutory baseline was not representative of the actual olefin level of gasoline in 1990. Phase I RFG includes no specific limits on olefins, and thus refiners can meet Phase I standards (under the complex model) by controlling any fuel parameters. However, refiners whose olefin baseline is significantly higher than the statutory level may need to reduce olefins to meet the no NO_x increase requirement, putting them at a competitive disadvantage because olefin control is costly. Hence, using data from Bonner and Moore modelling as well as fuel surveys from cities across the country, the baseline olefin level was reevaluated and set at 13.1 vol% for the purposes of determining cost-effectiveness.

Although the standards require reductions for baseline vehicles relative to the emissions from the statutory baseline fuel, the cost-effectiveness of a given fuel parameter control is measured based on actual, i.e., in-use emission reductions. For this reason, EPA determined the cost-effectiveness of fuel parameter changes relative to the incremental in-use emissions. The baseline in-use emissions were determined for 2003, a typical post-1999 year, using MOBILE5a with enhanced inspection and maintenance (I/M), as discussed in section IV.[22] Exhaust and evaporative percent reductions for in-use emissions are determined separately by applying the percent reduction in emissions predicted by the complex model to the in-use emissions, and then totalled to get total in-use emissions reductions. The cost, emissions reductions, and cost-effectiveness of incremental changes in fuel parameters for Phase II RFG is calculated relative to Phase I RFG.

To determine the cost-effectiveness of the toxics standard, EPA employed the convention of basing cost-effectiveness on the number of cancer incidences avoided. The number of cancer incidences avoided is determined based on the reduction in emissions of each regulated air toxic. The complex model was used to calculate the annual reduction in both exhaust and evaporative emissions of each toxic for each fuel reformulation. Each toxic emission has a different unit risk factor, defined as the number of cancer incidences per year per gram-per-mile-emission per person. Therefore, the emissions of each toxic pollutant were converted to an estimate of annual cancer incidences using the risk factor for that pollutant and the population of the participating reformulated gasoline areas. The total cancer incidences resulting from the total toxics emissions were then calculated by summing the cancer incidences for the individual toxics.

d. *Cost-effectiveness.* The costs and emissions reductions for each parameter change are combined to determine the incremental cost-effectiveness ($/ton) of each level of control, assigning all of the costs to the control of the pollutant of concern (VOC or NO_x). Several comments were received regarding this method of establishing cost-effectiveness. One comment suggested that refiners are likely to reduce parameters to levels lower than the mandated limits to ensure compliance with the standards. Thus it was suggested that the cost analysis should be based on a marginal increase in the standard to determine the true cost-effectiveness of the program. EPA's cost-effectiveness analysis is inherently an averaging analysis, however, since the cost estimates are based on the responses of average regional refineries to changes in fuel composition. Averaging allows refiners to be high or low for any batch of fuel, as long as their average meets the standard over the course of the entire compliance period. Measurement error goes both above and below the true values on any given batch of fuel, but should average zero over the course of many batches. As a result, there is no need for a compliance margin in setting an averaging standard.

EPA proposed a range of VOC and NO_x emission reduction standards based, in part, on two possible benchmarks for cost-effectiveness, $5,000/ton and 10,000/ton.[23] Several commenters stated that $5,000/ton was most appropriate, particularly in light of the inaccuracies in the cost analysis. Some commenters believed that $5,000/ton was too high compared to alternate control strategies, while others stated that this was reasonable compared to other strategies currently required.

Upon review of the costs of other VOC and NO_x control programs (see subsections C.1 and C.2 below), EPA believes that a cost-effectiveness benchmark of $10,000/ton is too high at this point in time and that a cost-effectiveness of approximately $5,000/ton is more appropriate for the Phase II VOC standard and the accompanying NO_x standard. The standards presented today fall within this guideline.

The cost-effectiveness of toxics control was similarly determined as the ratio of the total incremental cost for the incremental reduction in emissions to the total tons of toxics reduced. The cost-effectiveness of toxics control was also calculated as the ratio of total costs to incremental reductions in cancer incidences. EPA's proposal did not include any benchmark limits for the cost-effectiveness of toxics control, but did acknowledge that in most cases control above the statutory minimum was not cost-effective. This conclusion was supported by the comments received, and by the final analysis presented here.

C. Phase II Reformulated Gasoline Standards and NO_x Standards for Reformulated Gasoline

The following sections explain the development of the VOC standards for Phase II reformulated gasoline, and the NO_x standards EPA is setting for gasoline sold in RFG areas after 1999. The final standards are summarized in subsection 3 below.

1. VOC Standards Development

Table VI–1 shows the incremental fuel parameter control costs, emissions reductions, and cost-effectiveness calculated by EPA for use in setting the VOC emissions standards. The specific fuel parameter changes shown in the table are only examples; refiners may achieve the required standards by any combination of fuel component controls resulting in the required emissions performance. EPA received conflicting comments regarding which parameters

[18] Bonner and Moore Management Science, "Study of the Effects of Fuel Parameter Changes on the Cost of Producing Reformulated Gasoline," Prepared for EPA under contract through Southwest Research Institute and the National Institute for Petroleum and Energy Research. This data, as well as data generated by EPA in-house, was made available to the public through the following document: "DOE and API Phase II Cost Estimates," EPA Memorandum from Lester Wyborny, FSSB, to the Air Docket, November 4, 1993.

[19] "Costs of Alternate Gasoline Reformulations, Results of U.S. Refining Study," Turner, Mason & Co. for the Economics Committee of the Auto/Oil Air Quality Improvement Research Program, April 1992.

[20] "WSPA Study of the Cost Impacts of Potential CARB Phase 2 Gasoline Regulations," Turner Mason & Company for the Western States Petroleum Association, November 18, 1993.

[21] "Aromatics and E200 Reformulation Costs," Memorandum from Lester Wyborny, EPA, to the Air Docket, December 10, 1993.

[22] Following the precedent set in the proposal, the *in-use* baseline for VOC Control Region 1 areas included an RVP of 7.8 psi. The standards set today are based on reductions relative to the statutory baseline fuel with an RVP of 8.7 psi, however.

[23] As discussed later, EPA considered a number of issues, including flexibility of refiners and burden to the industry, in addition to cost-effectiveness when setting the Phase II RFG standards.

would likely be controlled to meet the proposed standards in a cost effective manner. As demonstrated in the RIA, EPA has used all available information to determine which parameters can be controlled in a cost effective manner to achieve VOC emission reductions .

TABLE VI–1.—FUEL PARAMETER CONTROL COSTS AND VOC REDUCTIONS[1]

Fuel parameter control	Incremental cost (¢/gal)	Cumulative reduction (%)	Incremental cost-eff. ($/ton)	Incremental to phase 1 ($/ton)
Phase I—RVP: 8.0 psi, Oxygen: 2.1wt%, Benzene: 0.95%:				
RVP to 7.1 psi	0.19	22.9	400	400
RVP to 6.7 psi	0.08	25.5	600	400
Sulfur to 250 ppm	0.12	[2]28.1	3,700	600
Sulfur to 160 ppm	0.55	27.1	11,000	1,300
Sulfur to 138 ppm	0.24	27.4	19,000	1,600
Sulfur to 100 ppm	0.52	27.8	24,000	2,300
Olefins to 8.0 vol%	0.78	26.2	(–)	3,700
Aromatics to 20 vol%	2.01	27.8	24,000	6,000
Oxygen to 2.7 vol%	0.61	28.2	28,000	6,600
Olefins to 5.0 vol%	2.77	27.4	(–)	11,000
E300 to 88%	0.35	27.4	48,000	11,000
E300 to 91%	2.01	27.5	198,000	14,000
E200 to 44%	0.38	27.7	37,000	14,000
E200 to 47%	1.32	28.4	36,000	15,000
E200 to 50%	2.97	29.0	96,000	18,000

[1] Based on costs and emissions reductions for VOC control region 2 (northern areas). Assumes all costs allocated to VOC control.
[2] RVP control down to 6.5 psi, the limit considered reasonable at this point in time for driveability purposes, would increase this value to 27.2% at a similar cost-effectiveness level.

As the information in the Table VI–1 shows, RVP control down to 6.7 psi achieves virtually all of the VOC emission reductions that are achievable at less than $5,000 per incremental ton of VOC reduced.[24] Sulfur can be reduced to a level of approximately 250 ppm at an incremental cost-effectiveness of less than $5,000 per ton, gaining an additional 0.6% VOC reduction, to achieve a total reduction (on average) of 26.1%. RVP could also be reduced further to 6.5 psi, the level currently considered a reasonable limit for driveability purposes, to obtain an additional 1.1% reduction (for a total of 27.2%). Incremental changes in fuel parameters other than RVP have only a marginal effect on VOC emissions and can be very costly; less than an additional one percent reduction would be achieved at a significantly higher incremental cost of over $10,000/ton VOC. In spite of the uncertainty in the cost estimates used, the level of VOC control that is cost effective is relatively insensitive to variations in cost due to the fact that anything other than RVP and the first increment of sulfur control causes the costs to escalate dramatically, making control of other parameters cost ineffective.

The cost-effectiveness of VOC control in Phase II RFG presented in Table VI–1 has been compared to the cost-effectiveness of other stationary and mobile source VOC control strategies. As summarized in the RIA, a review of the estimated cost-effectiveness of controlling VOC emissions from stationary sources yielded a wide range of values. Many of the existing VOC control strategies have minimal costs or even result in savings. However, a number of VOC control options have significant costs associated with them. For example, the estimated cost-effectiveness of reducing emissions from automobile and light truck coating operations in assembly plants is $1,000–4,000/ton VOC. Reducing emissions from the production of pneumatic rubber tires is estimated to cost between $150 and $18,800 per ton of VOC reduced, depending on the operation to which control is applied. Control of emissions from floating roof tanks used for storage of petroleum liquids can cost up to $3,700/ton VOC reduced. Reducing emissions from the production of high density polyethylene, polypropylene, and polystyrene resins can cost between $1,000 and $3,000/ton VOC reduced depending on the level of control.

Control of VOC emissions from mobile sources similarly is estimated (see the RIA) to result in a wide range of cost-effectiveness values, depending on the type of program and level of control achieved. Enhanced inspection and maintenance (I/M) programs will cost between $900–1,700/ton VOC reduced, while basic I/M was estimated to cost $5,400/ton VOC.[25] The Tier 1 standards for light duty vehicles (already implemented for the 1994 model year) were estimated to cost about $6,000/ton VOC.

2. NO_x Standards Development

While section 211(k)(2)(A) of the Act specifies that there be no net increase in NO_x emissions (over baseline levels) resulting from the use of reformulated gasoline, both a National Research Council study[26] and a study prepared for EPA[27] have indicated that additional NO_x reductions could significantly reduce ozone formation in many areas. Gasoline vehicles contributed 20–35% of total urban NO_x inventories in 1990 and are expected to contribute similar amounts in 2000.[28] As identified in subsection A.1 above, section 211(c) of the Act gives the Agency broad regulatory authority to regulate motor vehicle fuel quality if any emission product of such fuel causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare. Based on the reports cited above, other EPA work in ambient ozone analysis, and the authority granted EPA under section 211(c), EPA proposed setting a NO_x emission reduction standard in connection with the Phase II standards to further reduce ozone formation during the high ozone season.

A number of aspects of the RFG program lead naturally to a focus on NO_x control. First, Phase II RFG is focused on the worst ozone nonattainment areas. Second, these areas will be required to use VOC controlled Phase II RFG only during the time of the year when control is needed (the summer months). Third, special fuel distribution for RFG will already be in place in these areas; many of the costs of producing and distributing this new gasoline will have been incurred as a result of the Phase II program. Fourth, EPA has shown (in the RIA and the following sections) that gasoline can be refined cost-effectively to reduce NO_x emissions.

EPA sees little benefit in creating a second gasoline program, which would likely differ only slightly from RFG in the geographic areas affected, to control NO_x emissions. A large segment of the industry is already making the changes necessary to comply with the Phase I RFG standards in 1998 relative to the statutory baseline for sulfur and olefin levels (and all other parameters defined). Therefore, many refiners will be assessing the need for sulfur and olefin control in the next few years to ensure they comply with the no NO_x increase requirement of the Act. Promulgated separately, a NO_x standard would require refiners to make changes to their refineries in addition to those already made to comply with Phase I RFG and the Phase II VOC and toxics standards, perhaps making some of the original refinery changes obsolete. By enacting a NO_x emissions reductions program at this time EPA hopes to avoid this concern. EPA believes that in locations where reformulated gasoline is found necessary to reduce the formation of ozone, a NO_x standard is appropriate as well, as discussed below and in Section VI of the RIA.

The Agency received many comments about the proposed NO_x standards. Some commenters claimed it was counter to the regulatory negotiation agreement. This concern has been addressed in section A above. Others felt that NO_x control should be considered on a local basis to meet local needs and thus should not be part of a national fuel program. Another stated that states should have to demonstrate the need for mobile source NO_x control before EPA required it. Some commenters supported NO_x control based on the cost-effectiveness analysis presented in the proposal because of the similarity with the costs of other current NO_x control programs. One comment suggested that EPA control NO_x by eliminating the oxygen requirement using the authority granted in section 211(k)(2)(A). It was also questioned whether EPA had satisfied the requirements to use the authority granted in section 211(c) regarding the supporting information presented in the proposal. The remainder of this section presents EPA's response to these concerns; additional detail may be found in the RIA.

a. *Scientific justification for NO_x control.* As discussed in the RIA, a recent study by the National Research Council (NRC) indicated that VOC control alone is of minimal benefit to ozone nonattainment areas such as Houston which have high VOC to NO_x ratios in the ambient air.[29] The NRC study and work by EPA[30] and others[31] have also indicated that NO_x control is an effective ozone control strategy for the northeast (including New York-Connecticut and Boston-Maine) as well as the Lake Michigan region (Milwaukee, Chicago, and Muskegon). In general, many studies have shown that NO_x control alone may be helpful in achieving ozone reductions in some areas, though not necessarily in all areas, again depending on the VOC to NO_x ratios. Reductions in emissions of both VOC and NO_x should benefit all areas, however. Those areas that do not benefit from the reduction in NO_x emissions should benefit from the large reduction in VOC emissions that will be achieved by Phase II RFG.

There are also non-ozone benefits of NO_x control, such as reductions in emissions leading to acid rain formation, reductions in toxic nitrated polycyclic aromatic compounds, lower secondary airborne particulate (i.e. ammonium nitrate) formation, reduced nitrate deposition from rain, improved visibility, and lower levels of nitrogen dioxide. A complete discussion of these benefits can be found in the RIA. A NO_x standard also should effectively protect against an increase in the olefin content of the fuel, reducing concern over a possible increase in the reactivity of vehicle emissions.

b. *Consideration of section 202 motor vehicle controls.* Before controlling or prohibiting a fuel or fuel additive under section 211(c)(1)(A), the Administrator must consider "other technologically or economically feasible means of achieving emission standards under section [202]." This has been interpreted as requiring consideration of regulation through motor vehicle standards under section 202 prior to regulation of fuels or fuel additives under section 211(c)(1)(A) [*Ethyl Corp. v. Environmental Prot. Agcy.*, 541 F.2d 1, 32 (D.C. Cir. 1976)]. This does not establish a mandatory preference for vehicle controls over fuel controls, but instead calls for the good faith consideration of motor vehicle standards before imposition of fuel controls [541 F.2d at 32 n.66]. This reflects Congress' recognition that fuel controls under section 211(c)(1)(A) might logically involve controls on fuel composition itself, while vehicle standards under section 202 are generally performance standards, regulating vehicle emissions and not the design or structure of the vehicle. Fuel controls might therefore lead to greater government involvement in the regulation of the manufacturing process than would be expected from vehicle controls [541 F.2d at 11 n.13].

Congress addressed this concern by requiring agency "consideration" of vehicle standards under section 202 before imposition of fuel controls under section 211(c)(1)(A). It is important to note that the Administrator must in good faith consider such vehicle controls, but retains full discretion in deciding whether to adopt either fuel or vehicle controls, or both [541 F.2d at 32 n.66].

In evaluating motor vehicle controls under section 202 in this context, the first major point to consider is that EPA has already imposed more stringent NO_x control standards on motor vehicles. The Tier 1 standards for light-duty motor vehicles and trucks require reductions in light-duty motor vehicle NO_x emissions starting with model year 1994, with a percentage phase-in of the more stringent Tier 1 standards until they apply to all new model year 1996 and later light-duty vehicles and trucks. These vehicles are also required to meet in-use standards.[32] For heavy-duty vehicles, EPA recently reduced the NO_x standard to 4 g/bhp-hr, starting with

[24] Note that the cost of this level of reduction incremental to the emission reductions achieved by Phase I RFG is significantly less than $1,000/ton VOC.

[25] "Inspection/Maintenance Program Requirements," Final Rule, 57 FR 52984, November 5, 1992.

[26] "Rethinking the Ozone Problem in Urban and Regional Air Pollution," National Research Council, December 18, 1991.

[27] "Modeling the Effects of Reformulated Gasolines on Ozone and Toxics Concentrations in the Baltimore and Houston Areas," prepared for EPA.OPPE.APB by Systems Applications International, September 30, 1992.

[28] While Tier I vehicles, which have lower NO_x emissions than conventional vehicles, will be entering the fleet, they will have only had five years to displace older, dirtier cars by 2000. Anticipated growth in vehicle miles travelled will offset any emissions benefits gained from the use of cleaner cars.

[29] National Research Council, *Rethinking the Ozone Problem in Urban and Regional Air Pollution*, National Academy Press, Washington, D.C., 1991.

[30] U.S. EPA, *Regional Ozone Modelling for Northeast Transport* (ROMNET), EPA Report 450/4–91–002a, June 1991.

[31] See the RIA for additional references.

[32] 56 FR 25724, June 5, 1991. Also, note that the Tier 1 standards apply to light-duty trucks with a loaded vehicle weight rating of 3,750 lbs. or less.

model year 1998 [58 FR 15781, March 24, 1993]

While these motor vehicle and motor vehicle engine controls are expected to reduce mobile source emissions of NO_x, this result is limited by certain basic facts. First, the standards only apply to new motor vehicles and engines. It will therefore take several years after the first model year of the standards before vehicles and engines certified to these standards will make up a significant portion of the motor vehicle fleet.[33] In addition, it is expected that emissions reductions based on the reduction in the NO_x standard will be offset to a significant extent by an increase, over time, in total vehicle miles travelled.

In addition to motor vehicle controls under section 202, EPA has recently adopted or proposed other controls aimed at in-use NO_x emissions from mobile sources. The enhanced inspection and maintenance (I/M) rules call for use of these more stringent I/M procedures starting with 1996 [57 FR 52950, November 5, 1992]. EPA has also proposed standards that would limit NO_x emissions from new large horsepower diesel non-road engines, pursuant to section 213 of the Act [58 FR 28809, May 17, 1993]. While enhanced I/M programs will directly affect the motor vehicle fleet, the non-road engine regulations are similar to the motor vehicle regulations under section 202 in that they would apply to new non-road engines only, and therefore involve a certain time before a significant portion of this category of non-road engines is replaced by new engines certified to meet the NO_x standards.

Additional mobile source controls, whether under section 202 or under other authority such as described above, may well be cost effective and reasonable options that EPA might decide to adopt. However, there are certain limitations imposed by Congress on adoption of more stringent standards ("Tier 2 standards"). For example, Congress spelled out when and under what conditions EPA may promulgate more stringent NO_x standards for light-duty vehicles and trucks. Congress required that EPA conduct a study on whether more stringent standards for light-duty vehicles and trucks should be adopted, and report back to Congress no later than June 1, 1997 [section 202(i)(1), (2)]. Based on the study EPA must conduct a rulemaking to determine whether there is a need for such further reductions, whether the technology will be available for such reductions, and whether further reductions in emissions from such vehicles will be cost effective. If these determinations are made in the affirmative, then EPA would proceed to promulgate emissions standards that are more stringent than the Tier 1 standards [section 202(i)(3)(C)]. If EPA does promulgate more stringent standards, they may not take effect any earlier than model year 2004, and no later than model year 2006.

It is clear from this that EPA has not, at this time, completed the lengthy process for determining whether or not more stringent standards should be established for light-duty vehicles and trucks under section 202(i). Congress established a detailed provision spelling out the procedures to follow and the substantive determinations that must be made before such controls could be adopted. There is no indication, and EPA does not believe, that these mandated procedures and criteria preclude the exercise of discretion under section 211(c)(1)(A) prior to completion of the rulemaking under section 202(i). Congress required that EPA consider motor vehicle controls, but did not establish a mandatory preference for such controls and did not preclude the adoption of fuel controls prior to a decision on Tier 2 motor vehicle standards.

In any case, it is clear that a decision to impose more stringent NO_x standards for light-duty vehicles and trucks under section 202(i) could not take effect prior to model year 2004. It would then take several years before a significant portion of the in-use fleet would include vehicles or trucks certified to a NO_x standard more stringent than the Tier 1 standard. A similar situation would apply to a more stringent NO_x standard for heavy-duty engines. The mandatory leadtime and stability provision of section 202(a)(3)(C) would preclude imposition of more stringent NO_x standards for heavy-duty engines until model year 2001 at the earliest. It would again take several years before a significant portion of the in-use heavy-duty fleet contained engines certified to a more stringent NO_x standard. For non-road engines and vehicles, EPA expects to continue to explore NO_x controls. But as with motor vehicles, any new or more stringent NO_x standards will only apply to new non-road engines, after providing a reasonable period for leadtime. The effect on in-use emissions is delayed based on the time needed before new non-road engines replace earlier models.

Given these circumstances, there are several important reasons why promulgation of a NO_x reduction standard for reformulated gasoline is important, whether or not additional vehicle or engine controls are later adopted by the Agency. First, emissions reductions from the NO_x performance standard would start as soon as the standard is applicable, with no delay based on fleet turnover time. Significant NO_x emission reductions would be achieved right away, in the summer of 2000, while more stringent light-duty or heavy-duty standards would not be expected to significantly affect in-use emissions until much later in that decade. Second, a NO_x reduction standard for reformulated gasoline would act to reduce emissions from all mobile sources that use gasoline, whether on-road or off-road, while section 202 or section 213 standards only act to limit emissions from new engines or vehicles in that specific category of mobile sources. Third, this fuel control is specifically aimed at areas of the country that are in nonattainment for ozone, and is limited in time to that part of the year when ozone is of most concern. Vehicle or engine controls, in contrast, apply to all new engines or vehicles, wherever they are used, throughout the year. This fuel control thus allows a more narrow regulatory solution aimed at the specific geographical areas and time periods when control is needed. Fourth, the expected increase in vehicle miles travelled over time leads EPA to believe that this fuel control is needed to continue to achieve the in-use NO_x emission reductions necessary for many areas of the country to reach attainment for ozone. Finally, the NO_x fuel standard adopted here minimizes any concern there might be that a fuel control would tend to interfere in the production process by directing refiners on how to make their product. The NO_x standard is not a fuel recipe, but instead establishes a performance standard, leaving refiners free to produce their gasoline in any way that achieves the desired reductions.

EPA is not at this time determining whether additional vehicle or engine NO_x controls should be adopted under section 202 or any other provision of the Act. Instead, based on all of the above, EPA believes that a NO_x reduction standard for reformulated gasoline under section 211(c)(1)(A) is an appropriate exercise of discretion, whether or not the agency imposes additional vehicle or engine NO_x controls in the future.

c. *Cost-effectiveness of NO_x control in RFG.* EPA has evaluated the cost-effectiveness of NO_x control using the same costs that were used in establishing the standard for VOC control. The results are summarized in Table VI–2 below. The table indicates that sulfur is the only fuel parameter that results in significant NO_x reductions at a reasonable cost. Changes in fuel parameters other than sulfur have only a small effect on NO_x emissions at significantly higher costs, with the possible exception of olefin control (which would increase VOC at the same time it reduced NO_x). A NO_x reduction of approximately 6.8% could be achieved with sulfur control down to approximately 138 ppm at a reasonable cost, whether compared on the basis of the cost of the last increment of reduction (5.8% to 6.8% NO_x) or the overall cost incremental to Phase I RFG reductions.

[33] As supported by the MOBILE5a model, 58 FR 29409, May 20, 1993.

TABLE VI–2.—FUEL PARAMETER CONTROL COSTS AND NO_x REDUCTIONS [1]

Fuel parameter control	Incremental cost (¢/gal)	Cumulative reduction (percent)	Incremental cost-eff. ($/ton)	Incremental to phase I ($/ton) [2]
Phase I:				
RVP: 8.0 psi, Oxygen: 2.1wt percent, Benzene: 0.95 percent.				
RVP to 6.7 psi	.....	0.4		
Sulfur to 250 ppm	0.12	2.4	1,300	3,200
Sulfur to 160 ppm	0.56	5.8	3,700	3,500
Sulfur to 138 ppm	0.24	6.8	5,200	3,700
Sulfur to 100 ppm	0.52	8.7	6,200	4,200
Olefins to 8.0 vol percent	0.78	10.8	8,000	5,000
Aromatics to 20 vol percent	2.01	11.9	40,000	8,200
Oxygen to 2.7 vol percent	0.61	12.5	25,000	8,900
Olefins to 5.0 vol percent	2.77	14.1	37,000	12,000
E300 to 88 percent	0.35	14.1	(–)	13,000
E300 to 91 percent	2.01	14.2	820,000	16,000
E200 to 44 percent	0.38	13.9	(–)	17,000
E200 to 47 percent	1.32	13.7	(–)	19,000
E200 to 50 percent	2.97	13.5	(–)	24,000

[1] Based on costs and emissions reductions for VOC control region 2 (northern areas). Assumes all costs allocated to NO_x control. Cost effectiveness values will be slightly lower if credit given for the VOC reductions that also result with some of the fuel changes.
[2] NO_x cost effectiveness incremental to a Phase II VOC standard would be slightly lower, especially for the first few increments.

A NO_x emissions reduction of 6.8% would be slightly less than half of that achieved from California Phase II reformulated gasoline, since California requires sulfur reduction to approximately 30 ppm,[34] aromatics reduction to 22 vol%, olefins reduction to 4 vol%, and control of fuel distillation parameters.[35] However, the cost-effectiveness of producing a fuel with the requirements of California Phase II RFG in a national program would be extremely poor (roughly an order of magnitude higher) relative to that of the standards being set today.

d. *Cost-effectiveness of other NO_x control strategies.* The cost-effectiveness of a 6.8% NO_x standard has been compared to the cost-effectiveness of other existing and planned mobile and stationary source NO_x control programs. The Tier 1 emissions standards for light duty vehicles (already implemented for the 1994 model year) described above in 2.b will incur an estimated incremental cost of $2,000–6,000/ton NO_x if credit is only given for those emission reductions achieved in ozone nonattainment areas (to allow direct comparison with reformulated gasoline). Increasing the stringency of the NO_x cutpoint in enhanced inspection and maintenance programs (in effect, causing a greater number of vehicles to fail the test and incur repair costs) is estimated to have a cost-effectiveness of $4,000–8,000/ton. Achieving the Tier 2 mobile source NO_x standards (should EPA determine that such standards are necessary to meet air quality requirements) are likely to cost more than $10,000/ton of NO_x reduced.

Certain NO_x controls for heavy-duty highway and nonroad vehicles are likely to be as or more cost effective as a 6.8% NO_x reduction standard. EPA is in the process of developing and studying such controls. However, as discussed in subsection 2.b, heavy-duty NO_x controls cannot be implemented without mandatory leadtime provisions, and thus the benefits of these controls will not be realized for many years beyond implementation of the Phase II RFG standards. In addition, all heavy-duty mobile source NO_x control strategies that have not yet been implemented or are not already under consideration are likely to be very costly. NO_x control combined with the reformulated gasoline program is very reasonable by contrast.

The comparative cost-effectiveness to stationary source NO_x emission controls is based on control strategies suggested for utility boilers.[36] In ozone nonattainment areas, standards are being considered that will require controls more stringent than suggested by reasonably achievable control technology (RACT) standards. The RACT standards will likely be met through the use of low NO_x burner technology. This technology has a relatively low cost-effectiveness at up to $1,000/ton, but the achievable emissions reduction is limited. In order to attain the required level of control for utilities to meet the ozone air quality standard in many areas, additional controls will likely be required, especially by the year 2000. One of the likely strategies utilized will be selective catalytic reduction (SCR) which is estimated to cost $3,000–$10,000/ton NO_x.

3. Final VOC Standards and NO_x Standards

To reduce the cost to the industry of complying with the Phase I and Phase II RFG standards, EPA had proposed granting refiners the option of meeting the VOC and the air toxics emission standards on an averaging basis rather than requiring compliance on a per

[34] All values based on the averaging standard.
[35] Based on the same methodology used to determine the 7.0% NO_x reduction for federal RFG (using the complex model), California Phase II RFG is estimated to achieve a NO_x reduction of about 14.6%.
[36] "Evaluation and Costing of NO_x Controls for Existing Utility Boilers in the NESCAUM Region"; Draft Report prepared by Acurex Corp., prepared for Bill Neuffer, OAQPS, U.S. EPA, October 1992.

gallon basis. However, the NO_x emissions standards had to be met on a per gallon basis rather than on an average basis.

Several comments received on the NO_x standard expressed a desire for the allowance of NO_x averaging as well as a per gallon standard. According to these comments NO_x averaging would provide greater flexibility to refiners, and was consistent with the Reg-Neg agreement. One comment stated that NO_x averaging would not cause air quality concerns, while a per gallon NO_x standard (even at no NO_x increase) would impose substantial constraints on VOC.

NO_x averaging would provide the industry with greater flexibility in meeting the NO_x standard for Phase II RFG. In addition, the cost-effectiveness analysis is inherently based on averaging (since the costs are derived based on regional refinery models). Hence, EPA has elected to allow both a per gallon and an averaging standard for NO_x emissions under the Phase II RFG program. As discussed in section VII, the Phase II averaging standard for NO_x is set 1.3 percentage points more stringent than the per gallon standard (slightly smaller than the increment for VOC and air toxics). A minimum per gallon standard (under averaging) will be set at 4 percentage points below the averaging standard, following the precedent set with the VOC standard for Phase I RFG.

Based on all of the factors discussed above, as well as the results of the regulatory impact analysis, EPA today is setting VOC reduction standards for Phase II reformulated gasoline and concurrent NO_x reduction standards for gasoline sold in areas participating in the RFG program beginning in the year 2000. (The toxics standard is discussed below in subsection 4.) The standards are shown in Table VI–3 below. The combination of fuel parameters on which the standards are based is just one of many fuel formulations which could be used to achieve the standards. From EPA's analysis of cost-effectiveness, however, it is clear that RVP control and sulfur control are expected to be the basic fuel parameter changes that refiners will rely on to comply with these standards. At the same time, it must be stressed that today's standards are performance standards which may be met by the refiner's choice of fuel parameter controls; EPA is not establishing specifications for fuel composition. Specific issues concerning these final standards are discussed in the following sections.

TABLE VI–3.—VOC STANDARDS FOR PHASE II REFORMULATED GASOLINE AND NO_x REDUCTION STANDARDS

[Percent Reduction in Emissions]

Controlled emission	VOC control region 1	VOC control region 2
VOC:		
Per gallon	[1] 27.5	25.9
Averaging	29.0	27.4
Minimum	25.0	23.4
NO_x:		
Per gallon	5.5	5.5
Averaging	6.8	6.8
Minimum	3.0	3.0

[1] Reductions relative to a base fuel with RVP at 7.8 psi on a per gallon basis would be 17.2% for VOC and 5.3% for NO_x.

a. *Flexibility for refiners.* The VOC and NO_x standards presented in Table VI–3 were determined assuming both controls were necessary. Were EPA not to set a NO_x standard, there may be greater flexibility to further control RVP for the purposes of VOC control. As shown in Table VI–1, for the purposes of VOC control RVP to 6.5 and sulfur to 250 ppm would achieve a reduction of 27.2% in VOC control region 2, at an incremental cost-effectiveness of $3,700/ton VOC (or less than $600/ton incremental to the Phase I reductions). This is nearly the same level of reduction achieved with RVP at 6.7 psi and sulfur reductions to 138 ppm under the combined VOC and NO_x standards.

Various comments questioned basing the VOC standard on a gasoline RVP of 6.5 psi, due to potential driveability problems with fuels at lower RVPs (which refiners will produce on occasion to meet the average standard). Commenters were concerned that the VOC standard would reduce the flexibility available to refiners by essentially requiring all RFG to have an RVP of 6.5 psi. As discussed previously, EPA currently believes that 6.5 psi RVP is a practical limit in the reduction of gasoline volatility, due to the lack of information at the present time to ascertain whether or not driveability problems exist below that level. In the absence of NO_x control, EPA believes that adequate flexibility would still exist for refiners to meet a VOC performance standard based on the control of RVP down to 6.5 psi, since some flexibility still exists in adjusting sulfur and olefin levels. However, in the context of a NO_x standard this flexibility is greatly reduced.

A fuel meeting the combined requirements of 6.5 psi RVP and 138 ppm sulfur would achieve a VOC reduction of 28.4% (in VOC control region 2) and a NO_x reduction of 6.9%. Standards based on this fuel formulation could severely restrict the flexibility for some refiners, and pose an undue burden on others. For example, refiners with various parameter levels above the statutory baseline would need additional VOC control to offset the VOC impact of these parameters. Under the above scenario, these refiners would be limited in achieving further RVP control, since the ability to further reduce RVP and sulfur and/or increase olefins would be limited. This would significantly increase the cost-effectiveness of the VOC control.

Upon consideration of these concerns, among other issues, EPA decided to set a VOC standard derived based on a fuel RVP of 6.7 psi to allow refiners some flexibility to meet the performance-based VOC standard through control of RVP without the need to go below 6.5 psi. By setting a concurrent NO_x standard based largely on additional sulfur control, which also achieves some small additional VOC reductions, refiners will not need to go as low as 6.5 psi to meet the equivalent level of VOC control. The cost-effectiveness of a 6.8% (on average) NO_x reduction standard when credit is given for the additional level of VOC control obtained at this level of sulfur reduction is approximately $5,000/ton NO_x reduced.

b. *Costs and emissions reductions.* The overall cost of the Phase II reformulated gasoline VOC standards and NO_x standards for Phase II RFG is approximately 1.2 cents per gallon (incremental to Phase I RFG). This value appears to be reasonable, as the less stringent Phase I reformulated gasoline cost is estimated to be about 3–5 cents per gallon, as discussed in section V. EPA does not expect non-production related costs, such as distribution costs, recordkeeping and reporting costs, etc., to increase relative to Phase I reformulated gasoline. A complete discussion of the development of these costs is found in the RIA.

As a result of today's standards, VOC emissions will be reduced by about 10,000 tons in VOC control region 1 (southern) areas each summer and 32,000 tons in VOC control region 2 (northern) areas. In addition, southern areas will experience a reduction of about 8,300 tons NO_x and northern areas will experience a reduction of 13,800 tons NO_x. The emissions reductions experienced in southern areas are smaller than experienced in northern areas due to the fact that southern areas are already required to use fuels with lower Reid vapor pressures, and thus the emissions reduction benefits of RFG use in these areas is smaller.

c. *Compliance margin consideration.* Several commenters expressed a desire for looser standards to account for compliance margins. The optional provision for averaging standards allows refiners to meet the standards in the manner which is most cost-effective for their refinery in exchange for meeting a standard that is considered at least or more stringent as the per gallon standard plus a compliance margin. The VOC and NO_x reduction standards have both been based in part on a cost-effectiveness analysis that implicitly is based on an averaging standard. In that case, a compliance margin becomes much less relevant, if at all, because of the flexibility introduced through averaging.

d. *Local selection of VOC or VOC and NO_x control.* EPA requested comments on an option to allow nonattainment areas to select between either VOC control or combined VOC and NO_x control, depending on the air quality needs of that area. A potential problem with this option is that it would require production of another type of reformulated gasoline in one or more grades. Distribution problems and complications already expected with implementation of the reformulated gasoline requirements could increase.

Many commenters opposed this option, citing added costs and complications to the distribution system which would likely result. No commenters appeared to be strongly in favor of it. Hence, the Agency has chosen not to allow local selection of a VOC and/or NO_x control program. The standards for VOC and NO_x emissions will apply to all reformulated gasoline areas.

e. *Other options considered.* EPA proposed [37] and investigated several options for VOC standards. One proposed option was to set a VOC standard at the statutory level of 25% reduction; this standard could also be set higher based on the cost-effectiveness analysis. Also mentioned in the NPRM was the option to relax the VOC standard if a NO_x standard was promulgated to allow refiners more flexibility in meeting both standards. Finally, EPA proposed granting refiners the option to trade off VOC and NO_x control within fixed limits on either standard.

EPA determined that setting only a 25% reduction VOC standard (with a requirement of no NO_x increase) would provide minimal NO_x reductions and marginal VOC benefits to southern (VOC Control Region 1) areas which will already use lower RVP fuel than northern areas under Phase I. A higher VOC standard selected based on a cost-effectiveness benchmark of about $5,000/ton would get somewhat greater NO_x reductions and some additional VOC reductions in southern areas.

EPA has set the VOC standard based on a level of reduction that would allow flexibility to refiners and would not be too economically burdensome. Since a NO_x standard is being set concurrently, EPA set the VOC standard based on a slightly more relaxed RVP than might have been used if only a VOC standard were implemented, as discussed above in subsection a. One comment on the proposal strongly opposed lessening the maximum achievable level of VOC reduction to achieve NO_x reductions. As discussed above, however, roughly the same level of VOC reduction is being achieved with both a NO_x standard and a VOC standard (basing the standard on a fuel with 138 ppm sulfur and an RVP of 6.7 psi) as would be achieved if only VOC control were required (basing the standard on a fuel RVP of 6.5 psi and a sulfur level of 250 ppm).

The final option proposed by EPA was to set a combined VOC and NO_x standard and allow refiners flexibility in controlling emissions of either. As discussed in subsection C.2 above, EPA believes it is important to achieve both VOC and NO_x control. VOC control alone would not provide significant ozone reduction benefits in all areas using RFG. The option of allowing refiners to meet a combined VOC and NO_x standard would have likely resulted in VOC control (primarily through RVP reductions) with minimal NO_x control. Refiners would have had a strong incentive to augment the complex model through vehicle testing and push RVP well below the 6.5 psi level in order to avoid sulfur control (for NO_x reductions), since RVP control is much less costly. As mentioned previously, EPA has significant concerns about driveability problems with fuels with RVPs lower than 6.5 psi. Since refiners would be limited in their ability to cost effectively achieve the combined standards, the reductions achieved through this type of program would be in question. Hence, EPA has decided not to implement a combined VOC and NO_x standard. No significant comments were received on this option.

4. Toxics Standard

The statute sets the minimum Phase II standard for toxics reduction at 25%, although EPA has the authority to reduce this to no lower than 20% "based on technological feasibility, considering cost." [38] EPA proposed both levels of reductions as options for the toxics standard. EPA has looked at the technology required to attain a 25% toxics standard, and the cost of implementing that technology. EPA expects that the technology implemented by refiners to comply with the required VOC and NO_x reductions will result on average in a 26% reduction in annual toxics at reasonable costs, as discussed earlier. For certain refiners with higher baseline levels of various parameters, however, EPA expects that compliance with the VOC and NO_x standards will not automatically lead to compliance with a 25% toxics standard. For these refiners, additional toxics control will typically require further benzene reduction or aromatics reduction (if octane can be maintained). Benzene reductions would impact only emissions of benzene, not 1,3-butadiene, which has been shown to be of greater cancer-causing risk to the public than the other air toxics.[39] (The statutory requirements of section 211(k) requires a focus on reductions in mass emissions of air toxics, not on a reduction in cancer risk, and therefore does not permit EPA to set the standard based on cancer risk.) Implementation of the benzene and/or aromatics reduction technology will be expensive and will raise their costs of production, putting refiners facing this situation at a competitive disadvantage to those refiners who comply with the toxics standard "for free" based on their compliance with the VOC and NO_x standards. In addition, a requirement of additional toxics reductions may also limit refiners' flexibility in producing reformulated gasoline.

EPA has considered two additional factors in considering the feasibility of requiring this subset of refiners to pay the costs of implementing additional toxics control technology in order to meet a 25% standard. First, even if the toxics standard is reduced to 20%, EPA believes that the average toxics reduction across all refiners will still be above 25% based upon the fuel changes used to comply with the VOC and NO_x standards. Second, the additional toxics control required by this subset of refiners results in very high cost per cancer incidence avoided. The main control strategies for toxics, benzene and aromatics reductions, are very expensive, in excess of $100 million/CI. This is well beyond the $1–10 million/

[37] As corrected in 58 FR 17175, Thursday, April 1, 1993.

[38] The toxics standard is a requirement for an average percent reduction over the entire year, not solely in the summer (high ozone) season.

[39] "Motor-Vehicle Related Air Toxics Study," EPA Report 420–R–93–005, April 1993.

CI which the Agency believes to be achievable through other programs. Even though a 25% toxics standard is technologically feasible, the unique circumstances discussed above raise questions about the increased cost to this subset of refiners of implementing additional toxics reduction technology.

Based on these concerns regarding the costs of implementing toxics control technology, EPA is setting the toxics standard for Phase II RFG in both VOC control regions at 20%. There was general support in the comments received for the fact that the cost-effectiveness of toxics control beyond a 20% reduction is questionable. No substantive comments were received opposing the option of setting the standard at the minimum 20% reduction.

Based on today's standards and the analysis summarized in the RIA, about 630 tons of toxics will be reduced in VOC control region 2 each summer and 370 tons of toxics in VOC control region 1. Emissions of all toxics except formaldehyde will be reduced. As a result of these emissions reductions, approximately 3–4 cancer incidences will be avoided annually nationwide (incremental to Phase I).

VII. Enforcement

Section 211(k) of the Clean Air Act requires, beginning January 1, 1995, that the gasoline sold or dispensed in certain ozone nonattainment areas must be certified as reformulated. Gasoline that is not certified as reformulated is classified as conventional gasoline and must be sold outside these nonattainment areas. Under the enforcement scheme promulgated today, refiners and importers will be required to designate all gasoline as either reformulated or conventional. Gasoline designated as reformulated must meet the standards for reformulated gasoline, and conventional gasoline must meet the anti-dumping standards for conventional gasoline. In addition, refiners and importers will be required to prepare product transfer documents for all gasoline produced or imported, that identify the gasoline as reformulated or conventional and specify restrictions as to the time and place where the gasoline may be used.

Parties downstream of refiners and importers that transport, store, or dispense gasoline are responsible for ensuring that only reformulated gasoline is used in reformulated gasoline covered areas, and that reformulated gasoline is used at a time and place consistent with the time and place of use restrictions recited in the product transfer documents. In addition, downstream parties are responsible for ensuring that reformulated gasoline does not violate the per-gallon minimum and maximum standards, discussed more fully below.

During calendar years 1995 through 1997, refiners and importers may certify reformulated gasoline pursuant to either the Phase I simple model standards, or the Phase I complex model (early use) standards. This election must be made separately for each refinery on a calendar year basis. During calendar years 1998 and 1999, all reformulated gasoline must meet the Phase I complex model standards, and beginning in 2000, all reformulated gasoline must meet the Phase II complex model standards.

The final rule establishes reformulated gasoline standards for oxygen, benzene, toxics emissions performance, and heavy metals under all models. Standards for RVP, sulfur, T–90, and olefins are included only under the simple model, and standards for VOC and NO_X emissions performance are included only under the Phase I and II complex models.

A refiner or importer electing early use of the complex model during 1995, 1996, or 1997 must determine individual refinery or importer performance standards for VOC, toxics, and NO_X. These standards are determined by evaluating the following slate of fuel parameter values in the Phase I complex model: The simple model requirements, per section 80.41(a) or (b), for benzene, RVP and oxygen; the aromatics value necessary to meet the simple model toxics standard using these values for benzene, RVP and oxygen; the refinery or importer individual baseline values for E–300, sulfur, and olefins; and the statutory summertime or wintertime baseline value for E–200.

The percent reductions in VOC, toxics, and NO_X emissions determined using the above fuel in the Phase I complex model are the reformulated gasoline standards for a refinery or importer electing early use of the complex model.

Beginning in 1998, the Phase I reformulated gasoline VOC, toxics, and NO_X standards for a refinery or importer are as specified in section 80.41 (c) and (d). As a result of the individual refinery or importer baselines under complex model early use, gasoline that is produced under this option at any specific refinery or imported by any specific importer, may not be fungibly mixed with gasoline that is produced at another refinery or imported by another importer. This segregation of early use complex model gasolines, and other segregation requirements, are discussed more fully below.

Refiners and importers may elect to meet certain reformulated gasoline standards either on a per-gallon basis or on average. This election, which must be made separately for each parameter and separately for each calendar year, applies to all gasoline produced at a refinery by a refiner, or imported by an importer, during a calendar year. Refiners and importers cannot meet the standard for any single parameter on a per-gallon basis for certain batches and on average for other batches during any calendar year.

A refiner or importer that opts for compliance on average must also meet requirements for gasoline quality surveys. Standards that may be met on average are RVP, oxygen, and benzene, and VOC, toxics, and NO_X emissions performance.

The purpose of the gasoline quality surveys is to ensure, for example, that RVP averaging by refiners or importers does not result in a covered area receiving reformulated gasoline that, on average over the covered area, has a higher RVP than would occur without such refiner or importer averaging. This applies for each parameter subject to refiner or importer averaging. In the event a gasoline quality survey reveals that the gasoline being used in a covered area does not meet the per-gallon standard for any regulated parameter, the per-gallon maximum or minimum standard for that parameter is made more rigorous, and except in the case of oxygen the standard for average compliance is made more rigorous. With certain limited exceptions, these adjusted standards apply to all gasoline produced at each refinery that supplied the covered area with the failed survey during the year of the survey failure, or during any year the adjusted standards apply. These gasoline quality survey requirements also apply to oxygenate blenders that meet the oxygen standard on average.

The final rule also includes other mechanisms to ensure that refiner or importer averaging will not result in a covered area receiving reformulated gasoline that, on average, is less "reformulated" than would occur absent such refiner or importer averaging. To meet this goal, EPA established standards for average compliance that are more rigorous than the standards for per-gallon compliance, and established the per-gallon maximums and minimums that apply to gasoline meeting the averaged standards. These maximums and minimums limit the range of averaging for the averaged standards, and the more stringent averaged standards require refiners and importers to further reformulate their gasoline to meet these standards.

Refiners and importers may meet the averaged standards for oxygen and benzene through the exchange of credits. Credits are generated as a result of a refiner producing, or an importer importing, gasoline that on average exceeds the averaged standards for oxygen or benzene over the averaging period. An oxygenate blender using the averaged oxygen standard may generate, or use, oxygen credits.

The final rule specifies the manner in which credits must be used. Credits must be generated in the same averaging period as they are used—credits may not be banked for use in a later averaging period; all credit transfers must occur within fifteen days following the end of the averaging period in which they are generated; and only validly created credits may be used to achieve compliance.

The final rule constrains the use of the averaged standard for oxygen, and the use of oxygen credits in certain circumstances. Reformulated gasoline subject to simple model standards that is designated for use in the high ozone season—VOC-controlled reformulated gasoline—must meet both the oxygen standard and the RVP standard separately during the VOC control period (discussed more fully below). Simple model VOC-controlled gasoline may not be averaged with simple model non-VOC-controlled gasoline to show compliance with the oxygen standard during the VOC control period. In addition, reformulated gasoline designated for use in cities subject to the requirements of the oxygenated fuels program during the oxygenated fuels program control period (or "OPRG" gasoline) may not be averaged together with gasoline not designated for this use for purposes of meeting the oxygen standard on average.[40] As a result, only oxygen credits generated from VOC-controlled gasoline subject to simple model standards may be used to meet the separate oxygen standard for VOC-controlled gasoline; and oxygen credits generated from OPRG gasoline may only be used to meet the oxygen standard for OPRG gasoline. The mechanisms used to ensure correct accounting under these oxygen averaging and credit constraints are discussed in a separate section below.

The final rule also includes provisions that regulate the manner in which oxygenates may be added downstream of the refinery or import facility within the reformulated gasoline program. Oxygenate may only be added to specially formulated reformulated gasoline blendstock intended for such downstream oxygenate blending (or "RBOB"). If oxygenate were added to reformulated gasoline not specially formulated, in most cases the resulting gasoline would not meet the reformulated gasoline standards. Refiners and importers of RBOB are required to include in the RBOB product transfer documents the type and amount, or range of types and amounts, of oxygenate that may be blended with each particular RBOB. RBOB must be segregated from reformulated gasoline, and from other RBOB having different oxygenate requirements, to the point of oxygenate blending. Distributors may only dispense RBOB to registered oxygenate blenders. Oxygenate blenders may only blend the specified type and amount of oxygenate with any RBOB, and must meet the standard for oxygen for all RBOB dispensed to them.

Refiners and importers are required to meet the reformulated gasoline standards for RBOB for all parameters other than oxygen, based on the properties of the reformulated gasoline that will be produced through blending the appropriate type and amount of oxygenate with the RBOB. As a result, if the incorrect type and/or amount of oxygenate is blended with the RBOB, the refiner or importer may fail to comply with the non-oxygen standards.

In order to ensure that the non-oxygen standards for RBOB are met, refiners and importers may transfer RBOB only to oxygenate blenders with whom they have a first- or second-hand contractual relationship. This contract must include procedures intended to ensure proper performance of oxygenate blending. In addition, the refiner or importer must conduct a quality assurance program over the oxygenate blender's blending operation.

These constraints on the transfer of RBOB do not apply if a refiner or importer designates the RBOB as suitable for blending with any oxygenate or with ethers only,[41] and assumes that ethanol will be blended with "any-oxygenate" RBOB and MTBE will be blended with "ether-only" RBOB. A refiner or importer using this blending assumption option further assumes that the volume of oxygenate blended will be that amount necessary for the resulting reformulated gasoline to have an oxygen content of 2.00 weight percent, or approximately 5.70 volume percent in the case of ethanol, and approximately 10.80 volume percent in the case of MTBE. These oxygenate blending assumptions are discussed more fully below.

In order to ensure that gasoline produced or imported as reformulated in fact meets the reformulated gasoline standards, refiners and importers are required to engage an independent laboratory to sample each batch of reformulated gasoline produced or imported, and to analyze up to ten percent of the samples collected. EPA will direct the independent laboratories as to which samples to analyze. Refiners producing gasoline using computer-controlled in-line blending may obtain a waiver from EPA and have the in-line blending records audited in lieu of the independent sampling and testing requirements. The independent sampling and testing requirement is discussed more fully below.

Under the final rule, refiners, importers, and oxygenate blenders are required to keep specified records that relate to the production or importation of gasoline, sampling and testing of gasoline, credit transfers, and compliance calculations. All regulated parties are required to keep copies of product transfer documents, and records of any quality assurance sampling and testing performed.

Refiners, importers, and oxygenate blenders are required to submit reports to EPA that contain information necessary to demonstrate that standards have been achieved either per-gallon or on average. The periods for reporting are calendar quarters (January through March, April through June, July through September and October through December). The quarterly reports are due on the last day of the second month following the end of the quarter.

Quarterly reports consist of detailed information describing each batch of reformulated gasoline or RBOB produced or imported. Additional reporting requirements apply for refiners, importers, and oxygenate blenders who produce reformulated gasoline or RBOB which meets any of the applicable standards on average. RVP, VOC, and NO_X averaging reports are submitted with the third quarterly report of a given year and cover the high ozone season averaging period. Oxygen, benzene and toxics averaging reports and credit transaction reports are submitted with the fourth quarterly report and cover the annual averaging period. Credit transaction and averaging reports are not required for reformulated gasoline or RBOB which meets all of the

[40] The oxygenated fuels program refers to state programs established pursuant to § 211(m) of the Act, involving wintertime use of oxygenated gasoline to control emissions of carbon monoxide.

[41] The ethers include but are not limited to MTBE, TAME, and ETBE.

applicable standards on a per-gallon basis.

Refiners, oxygenate blenders, and importers are required to register with EPA by November 1, 1994 or no later than three months in advance of the first date the party will produce or import reformulated gasoline, whichever is later. Registration information identifies the refiner, blender, or importer and any facilities at which reformulated gasoline or RBOB may be produced, and the independent laboratory that will be used to fulfill the independent analysis requirements. EPA will supply a registration number to each refiner, importer, and oxygenate blender, and a facility registration number for each refinery and oxygenate blending facility that is identified; these registration numbers must be used in all reports to EPA.

The final rule includes a requirement that all refiners, importers, and oxygenate blenders must commission an annual review of the information contained in the reports to EPA, or an "attest engagement." Attest engagements must be conducted either by a Certified Public Accountant, or by a Certified Internal Auditor, following procedures included in the final rule. The attest procedures are intended to ensure that all gasoline produced or imported is included in the reports for either reformulated gasoline or conventional gasoline; that product transfer documents are properly prepared; that the requirements for downstream oxygenate blending are met; and that in the case of a refiner using computer-controlled in-line blending, that the blend records support the reported properties of the gasoline produced.

All parties in the gasoline distribution system are required to segregate certain categories of reformulated gasoline from other categories. These segregation requirements result primarily from the time and place of use restrictions necessary for reformulated gasoline, and to a lesser extent are necessary for per-gallon minimums and maximums and gasoline quality surveys in covered areas. In summary form, the segregation requirements are the following.

Gasoline subject to simple model standards may not be fungibly mixed with gasoline subject to complex model standards. In addition, gasoline produced at any refinery or imported by any importer that is subject to the complex model before 1998 must be segregated from complex model gasoline produced at any other refinery or imported by any other importer. These two segregation requirements, which are limited to the period 1995 through 1997, are necessary in order for per-gallon minimums and maximums and gasoline quality surveys to properly function.

Only gasoline that is VOC-controlled may be used during the high ozone season, which requires the segregation of VOC-controlled and non-VOC-controlled gasoline in advance of the high ozone season (other than to "blend up" storage tanks to the VOC-controlled standards). Similarly, only gasoline designated for VOC Control Region 1 may be sold in that region, which requires the segregation of VOC Control Region 1 gasoline from VOC Control Region 2 gasoline. In addition, VOC-controlled gasoline produced with ethanol may not be mixed with VOC-controlled gasoline produced using any other oxygenate during the period January 1 through September 15. These segregation requirements are necessary in order for VOC emission reductions to be achieved.

Lastly, only gasoline designated as oxygenated fuels program reformulated gasoline (OPRG) may be sold in an oxygenated fuels program area during the oxygenated fuels control period, which requires the segregation of OPRG gasoline from non-OPRG gasoline in advance of any oxygenated fuels control period (other than to "blend up" storage tanks). This segregation requirement is necessary so that the extra oxygenate used in oxygenated fuels program cities does not, through averaging, result in non-oxygenate fuels program cities receiving less oxygen than is required under the Clean Air Act.

The final rule establishes liability for a number of prohibited activities that may occur downstream of the refinery or importer, including the following: The sale, dispensation, transportation, or storage of conventional gasoline represented to be reformulated; the failure of reformulated gasoline to meet the minimum or maximum standards; and the use of reformulated gasoline in a manner inconsistent with the time and place of use restrictions recited in the product transfer documents. When such a violation is found, the following parties are presumed liable: The operator of the facility at which the violating gasoline is found, and each upstream party, other than carriers, that supplied any of the gasoline found to be in violation. In the case of a facility operating under the brand name of a refiner, that refiner is also presumed liable regardless of whether the refiner supplied any of the gasoline found in violation.

A party presumed liable may establish an affirmative defense by showing that it did not cause the violation, that the party's product transfer documents were proper, and that the party carried out a quality assurance program to monitor the per-gallon minimum and maximum standards of the gasoline under the party's control.

A more detailed description of the liability and defense provisions relating to carriers is included below.

The final rule specifies the manner in which penalties will be determined for violations of the final rule. These penalty provisions include calculations of the number of days of violation, and presumptions regarding the properties of gasoline.

The remainder of Section V of the preamble discusses major changes from the enforcement provisions that were proposed in the supplemental notice of proposed rulemaking published at 58 FR 11722 (February 26, 1993). The following portion of this section also responds to a number of significant public comments on the enforcement provisions contained in the 1993 proposal. Responses to other significant comments EPA received are contained in a separate "response to comments" document that has been placed in the docket for this rulemaking.

A. California Enforcement Exemption

In the February 26, 1993, notice of proposed rulemaking (NPRM), EPA proposed to exempt refiners, importers and blenders of "California gasoline" from certain enforcement provisions in the proposed federal reformulated gasoline regulations. The Agency generally proposed that "California gasoline" would mean gasoline subject to the State of California's reformulated gasoline regulations that was either produced within the State or imported into the State from outside the United States.

The proposed California enforcement exemptions were based on the Agency's comparison of the estimated emission reduction benefits of California's Phase 2 reformulated gasoline program with those anticipated from the federal phase I reformulated gasoline program, using the federal complex model proposed in the NPRM. The California Phase 2 program establishes standards for eight gasoline characteristics—sulfur, benzene, olefin, aromatic hydrocarbons, oxygen, RVP, T50 and T90—applicable starting March 1, 1996. EPA's analysis indicated that California Phase 2 gasoline will have a greater emission reduction benefit than federal reformulated gasoline. This analysis also indicated that, in the case of VOC, toxic and NO_X emissions performance, California Phase 2 gasoline has a greater emissions performance reduction than federal phase I gasoline, compared to

Clean Air Act base gasoline. EPA's review also indicated that the California oxygen "flat limit" of 1.8 to 2.2% will in practice be equivalent to the 2.0% minimum oxygen content required by the Act. See 58 FR 11746–7 (February 26, 1993).

The Agency proposed that, effective with the start of California's Phase 2 program, regulated parties would be exempt from meeting the enforcement requirements dealing with compliance surveys (section 80.69), independent sampling and testing (section 80.70(c)), designation of gasoline (section 80.70(d)), marking of conventional gasoline (section 80.70(g)), downstream oxygenate blending (section 80.72), record keeping (section 80.74), reporting (section 80.75), product transfer documents (section 80.77), and antidumping record keeping (section 80.105) and reporting (section 80.106).[42] Between the January 1, 1995, start of the federal program and the March 1, 1996, start of the California Phase 2 program, EPA proposed a more limited set of exemptions from federal enforcement requirements, specifically the compliance survey and independent sampling and testing requirements (sections 80.69 and 80.70(c), respectively).

The Agency also proposed a number of restrictions on the applicability of the California enforcement exemptions. First, the exemptions would not apply to gasoline sold in California and produced at a refinery located within the United States but outside California. Similarly, the exemptions would not apply to gasoline produced in California but sold outside that State. Second, the exemptions would not apply to gasoline produced under a two-year (March 1, 1996, through February 29, 1996) extension granted to small refiners under the California regulations. Third, the exemptions would become null and void (i.e., they would not apply to any California regulated party) if any gasoline formulation certified by the State using a predictive model or vehicle testing does not comply with the federal reformulated gasoline standards. Fourth, the enforcement exemptions would cease to apply to a party granted a variance by California unless EPA granted relief for extraordinary circumstances under section 80.73 of the federal regulations. Fifth, a regulated party that is assessed a penalty for a violation of either the California or federal reformulated gasoline requirements would lose its enforcement exemptions. (Such a party could petition the Agency for relief from this result, for good cause.) Sixth, the California enforcement exemptions would apply only during the time that the federal phase I program remains in effect (i.e., until the year 2000), subject to extension in a later rulemaking.

The February 26, 1993, NPRM contains a more detailed discussion of the California reformulated gasoline program, the Agency's comparison of the emission reduction benefits of the California and federal programs, and the proposed California enforcement exemption provisions. That notice also includes a detailed rationale for the proposed exemptions and restrictions. See 58 FR 11747–11750.

The Agency received several comments on the proposed California enforcement exemptions, all of which were generally supportive of the regulation. Most of these comments also suggested various modifications and clarifications of the proposed regulations. In this final rule the Agency is promulgating a revised version of the California enforcement exemptions regulation, which includes many of the modifications recommended by commenters.[43] A detailed discussion of these comments, the Agency's responses to these comments, and the modifications made to the proposed rule is contained in a separate "Responses to Comments" document. The following is a summary of the more significant changes made to the proposed rule:

The proposed exclusion from the enforcement exemptions of small refiners who are granted a two-year extension under the California program has been dropped from the final rule. The Agency has determined that the emissions performance of fuels meeting the California reformulated gasoline standards to which these refiners will be subject during the two-year period, in conjunction with the statewide California sulfur standard, meets or exceeds the performance required under the Phase I federal reformulated gasoline program, as measured by the complex model (which may be used to determine compliance with federal standards during this period[44]). An analysis of these standards has been placed in the rulemaking docket.

The enforcement exemptions have been extended to California reformulated gasoline produced at refineries located outside of California that produce only California reformulated gasoline and federal conventional gasoline (i.e., that do not produce federal reformulated gasoline). The primary rationale for excluding such gasoline, that its producer would be required to implement all of the federal enforcement provisions for a refinery's non-California reformulated gasoline, is not applicable to facilities that do not produce federal reformulated gasoline. In order to assure that such gasoline is in fact shipped to, and sold in, California, section 80.81(g) of the final regulations now prescribes transfer documentation and record keeping requirements for such gasoline.

The compliance survey exemption is extended to all gasoline subject to the California reformulated gasoline regulations (no matter where produced) and will not be lost by a party who otherwise loses its California enforcement exemptions (e.g., a refiner who violates federal or state reformulated gasoline regulations or whose gasoline formulation is found to be less stringent than the federal requirements). The purpose of compliance surveys is to ensure that each area receiving reformulated gasoline receives gasoline that, on average, achieves the performance that would be expected if per-gallon compliance was the only available compliance option. The Agency believes that there would be little purpose served in imposing this requirement on only a small subset of the gasoline sold in California.

Exemptions from the following enforcement provisions have been added in the final rule: the parameter value reconciliation requirements in section 80.65(e)(2); the reformulated gasoline and RBOB compliance requirements in section 80.65(c); the annual compliance audit requirements in section 80.65(h); and the compliance attest engagement requirements in subpart F. The Agency believes that these exemptions are consistent with the rationale for the exemptions proposed in the NPRM.

[42] The numbering of many provisions in the proposed regulations has been changed in the final rules. For example, proposed § 80.69 is now § 80.68, proposed § 80.70(c) is now § 80.65(f), proposed § 80.70(d) is now § 80.65(d), proposed § 80.70(g) is now § 80.65(g), and proposed § 80.72 is now § 80.69. Cross-references in the final California enforcement exemption regulation have been revised to reflect these and other numbering changes in the final reformulated gasoline regulations.

[43] The Agency has re-analyzed the relative emission reduction benefits of the California Phase II reformulated gasoline program and the federal Phase I program, using the complex model being promulgated today, and has again concluded that the California program is at least as stringent as the federal program. The analysis also found that fuel meeting the standards of the California Phase II program has a greater VOC, NO_X and toxic performance reduction than fuel meeting the federal reformulated gasoline Phase I standards. A copy of this analysis has been placed in the rulemaking docket.

[44] Use of the complex model is optional until the end of 1997, and mandatory thereafter.

The provision related to withdrawal of the enforcement exemptions on the basis of certification by California of a gasoline formulation that does not meet the federal reformulated gasoline standards has been modified in several ways. First and most importantly, the withdrawal will only apply to the refiner, importer or blender of the non-complying formulation, not to all California gasoline. Second, any party whose gasoline is certified under either the predictive model or vehicle testing provisions of the California regulations will be required to notify the Agency within 30 days of such a certification and to submit a written demonstration that the gasoline formulation is in compliance with federal standards. If such a demonstration is not timely submitted, the exemptions are automatically (and immediately) lost. If a submitted demonstration is determined to be incorrect by the Agency, EPA will notify the party (by first-class mail)[45] that its enforcement exemptions will expire on a certain date. Third, the date on which these exemptions will expire has been extended to no earlier than 90 days from the date of the EPA notice, to provide additional time for compliance. The Agency believes that this additional time is needed to comply with all of the many enforcement requirements that will become applicable if a California exemption is lost. In particular, requirements such as the independent analysis requirements (section 80.65(f)) and the compliance attest engagement requirements (subpart F) may require the negotiation of contracts with third parties.

The effective date for the withdrawal of the enforcement exemptions on the basis of a reformulated gasoline penalty assessment has been extended to 90 days, and this provision has been revised to make clear that this grace period does not begin until any interim administrative appeal has been completed. Once a final penalty assessment has been made by an agency or a district court, the 90-day period will begin.

The provision related to compliance with standards on average for an averaging period that is partly before and partly after March 1, 1996, has been clarified. Under the final rule, producers and importers who elect to demonstrate compliance on average with any federal reformulated gasoline standard[46] will be required to demonstrate such compliance for two overlapping averaging periods: January 1, 1995, through December 31, 1995; and March 1, 1995, through February 29, 1996. The proposal could have been interpreted to require compliance with these standards for a two-month averaging period in early 1996, which would be very difficult for refiners to meet on average and which was not intended by the Agency.

The provision intended to prohibit the averaging of "very clean" California reformulated gasoline with "less clean" federal reformulated gasoline has been clarified in the final rule. In addition, it has been made applicable to producers and importers of all gasoline subject to the California program, not just to refiners and importers located outside the State (as was proposed). Section 80.81(d) now provides that producers and importers of such gasoline must exclude the volume and properties of California reformulated gasoline from all conventional gasoline and federal reformulated gasoline sold elsewhere, for purposes of demonstrating compliance with standards specified in section 80.41 and 80.90. An overall demonstration of compliance for all gasoline (California and non-California) produced or imported is also still required.

The exemption from the federal recordkeeping requirements has been modified to require the retention for five years of records mandated by section 2270 of the California reformulated gasoline regulations (which require retention for two years). This requirement, along with other enforcement provisions for which an exemption is not being provided, will provide the Agency with the capability of performing audits of compliance with federal requirements by parties who produce California reformulated gasoline.

As noted above, more detailed information on the modifications made to the proposed rule and the comments on which they are based is contained in the separate "Responses to Comments" document. That document also responds to comments that did not result in changes to the proposed rule.

[45] Because the loss of the enforcement exemption will apply to only a single party (rather than to all producers and importers of California gasoline), the Agency does not believe that there is a need for a **Federal Register** notice annnouncing a determination of non-compliance (as proposed in the NPRM) and has deleted this provision from the final rule.

[46] In the case of refiners and importers using the simple model, the standards that may be met on average are the RVP, benzene, oxygen, and toxics emissions performance standards. For parties using the complex model, the standards that may be met on average are the benzene, oxygen, and toxics and VOC emissions performance standards.

B. Testing Methods and Testing Tolerances

The final rule, in section 80.46, sets forth test methods regarding reformulated gasoline parameters. EPA has carefully considered all comments concerning proposed test methods and related issues and many of those comments have been incorporated in the final rule. The test methods are those that provide for the best balance of accuracy, cost effectiveness and ease of use for competent lab technicians. The final rule generally provides for one regulatory method for each parameter in order to assure accuracy and to avoid problems with biases between different methods. However, in two cases (regarding oxygen and aromatics) the regulation provides for an alternative method for industry to use, if desired, until January 1, 1997, to provide lead time to acquire equipment necessary for the primary test method and to become familiar with its use. Where American Society of Testing and Materials (ASTM) methods have been adopted, any future updated version of the ASTM methods will not automatically be adopted. EPA will use appropriate procedures if it desires to adopt any updated methods.

1. Test Methodology Overview

EPA proposed test methods for the measurement of each of the parameters required in the creation of reformulated gasoline, and received numerous comments regarding the proposed methods. Most of the comments were quite similar in their overall character. However, one commenter seemed to summarize the prevailing recommendations quite well. API stated in part: "API recommends that EPA observe the following guiding principles regarding laboratory test methods: (1) *Test methods must be proven.* . . . (2) *Test methods must be reliable.* . . . (3) *Test procedures must be suitable for refinery personnel.* . . . (4) *Test methods must not be unnecessarily costly.* . . . (5) *Test method reproducibility must be recognized.* . . . (6) *Criteria for adoption of other methods should be developed.* . . ."

EPA agrees with most of these criteria. It would be ideal to discover accurate test methods that have been proven reliable in the industry, that are easy for personnel to operate and have a minimal cost. The new test method for Reid Vapor Pressure (RVP) set forth in the volatility regulations (40 CFR part 80, appendix E, Method 3) is an example of such a method that is accurate, easy to operate and is relatively inexpensive. These qualities in the RVP test method have enabled many downstream parties to incorporate this method into their oversight program under the volatility rule. EPA believes this improved oversight contributed significantly to the reduction in volatility violations during the 1993 high ozone season. Ease of operation and cost were considered when EPA adopted this test method. However, it must be recognized that the most important factors in the choice of the new RVP test method were its accuracy and precision.

EPA would like to prescribe test methods that conform to API's criteria. However, EPA's leading priority must remain precision and accuracy, even at the expense of other criteria. EPA is always willing to cooperate with industry to investigate the possibility of easier and less expensive methods if the methods also are accurate and precise. To do so not only aids industry, but also ultimately assists EPA's purpose of preventing violations.

EPA must follow its policy in maintaining precision and accuracy with regard to any enforcement test tolerances as well. EPA is determined to achieve the most accurate and precise result that is practical. EPA's purpose in testing is to ensure relevant standards are being met, and to allow an enforcement action where EPA is able to establish a violation with reasonable certainty. However, EPA does not have sufficient data at this time from the EPA laboratory to determine the most precise test tolerances. Interim test tolerances have been established until that data becomes available. Enforcement test tolerances are discussed more fully below.

Most commenters requested that EPA allow more than one test method for each parameter. The final rule provides for one regulatory method for each parameter in order to assure accuracy and to avoid problems of bias between different methods. Refiners and importers must use the regulatory method, or an alternative method in the case of two parameters during a limited time period, when testing to meet the mandatory testing requirements of section 80.65(e). In addition, independent laboratories, when conducting tests to verify the accuracy of the refiner and importer testing, must use the regulatory method. EPA has learned from its experience with other motor vehicle fuel regulatory programs, notably volatility, that it is preferable to have one regulatory testing method as opposed to multiple regulatory test methods for each parameter because of the potential for conflicting results among methods due to bias. However, in two cases, oxygen and aromatics, where the test methods are relatively new, the regulation provides for optional alternative methods for refiners and importers to use to meet the testing requirements of section 80.65(e) until January 1, 1997, providing lead-time for industry to acquire equipment and to become familiar with use of the regulatory methods. Of course, these alternative methods can likewise be used at any time for defense purposes as long as there is correlation with the regulatory methods.

2. Test Methods Under Section 80.46

a. *Reid vapor pressure (RVP).* EPA proposed to use the ASTM method ES–15 or the procedure described in 40 CFR part 80, appendices D and E. Comments favored the use of ASTM ES–15. However, it was noted that ES–15 is a temporary emergency ASTM standard and will expire shortly. ASTM D–5191 is the permanent standard. It was also noted that this method is suitable for oxygenated blends.

Commenters requested that EPA also allow the two dry methods set forth in appendices D and E in 40 CFR part 80. These methods are the manual tank and gauge method, the Herzog analog method, and the Herzog digital method. In addition, a request was made to include the ASTM D–5190 method, an alternative mini method.

EPA has decided that RVP must be determined in accordance with the method in 40 CFR part 80, appendix E, Method 3. This method, very similar to ASTM D–5191, clearly complies with many of the criteria espoused by API. The method is simple and inexpensive. Industry has already begun to gear up for this method because of its use in the Phase II Volatility regulations. It is appropriate to use the same RVP test method for the volatility and reformulated gasoline programs to prevent confusion and inconsistencies.

EPA has decided that the method in 40 CFR part 80, appendix E, Method 3 will be the only regulatory volatility test method. As with the volatility rule, other methods may be used for defense purposes as long as the method used is properly correlated with the regulatory method. (40 CFR part 80, appendix E, Method 3, Paragraph 9.4). See, 58 FR 14476 (March 17, 1993) for a more thorough discussion regarding the choice of a single volatility test method.

b. *Distillations.* EPA proposed to use the ASTM method D–86–82 as the regulatory test method, and comments were favorable with regard to this method. It was noted, however, that the method was updated in November 1990. This most recent revision of this method is ASTM D–86–90. One commenter requested that the language be more specific. Another commenter suggested that a newer method, D–3710, which is a gas chromatography method, be used. A notation was also made that the repeatability and reproducibility figures in degrees Fahrenheit in the ASTM method D–86–90 were incorrect.

EPA has decided that the distillation parameters must be determined in accordance with the ASTM method D–86–90. The regulatory language has been amended to state that the figures for repeatability and reproducibility given in degrees Fahrenheit in Table 9 in the ASTM method are incorrect, and may not be used. As with all the parameters, there will be only one regulatory distillation test method. However, other suitable methods may be used for defense purposes (but not to meet mandatory testing requirements) as long as they are properly correlated with the regulatory test method. EPA is always interested in the development of alternative methods if they are as accurate and precise as the regulatory test method. Many of the parameters in reformulated gasoline can be measured by a gas chromatograph with an appropriate detector. For this reason, it might be appropriate to explore the development of the D–3710 method or some alternative gas chromatographic method with an appropriate detector for future use as the distillation test method.

c. *Benzene.* EPA proposed to use ASTM method D–3606 for the regulatory test method, and most commenters were in agreement with the use of this method. However, commenters noted that other acceptable gas chromatographic methods exist for the determination of benzene such as D–4815 (a gasoline oxygenate method) and D–4420 (an aromatics method). Comments were made that D–3606 requires a dedicated chromatograph for benzene in gasoline only. It was also noted that the D–3606 results may be affected by interference from the presence of ethanol and methanol.

EPA has decided that the single regulatory method for measuring concentration of benzene will be ASTM method D–3606–92. Due to the possibility of a slight interference from ethanol and methanol in the test results, the method has been amended by the regulation to require that the instrument parameters be adjusted to ensure complete resolution of the benzene, ethanol and methanol peaks. As with all reformulated gasoline parameters, EPA has chosen one regulatory test method. However, it should be noted that the

presence of benzene can be tested also by the GC–MS, the regulatory method for aromatics testing. With the GC–MS, there should not be a problem with the presence of oxygenates and a dedicated chromatograph is not needed. EPA is interested in the possibility of participating with industry in the development of the GC–MS method for benzene.

d. *Aromatics.* EPA proposed to use the Gas Chromatograph-Mass Spectrometry (GC–MS) method, developed by EPA, for total aromatics determination.

Most commenters opposed the method proposed by EPA. One commenter recommended delaying selection of a lab test method until the procedure can be evaluated and completely developed. Commenters also criticized the method for its cost, the amount of time the method demands, and because industry feels that the method will require highly specialized staff. One commenter stated that the proposed method was so incomplete that it was not possible to provide detailed technical comments on it. Most commenters suggested that EPA adopt ASTM method D–1319, a fluorescent indicator absorption method.

EPA has decided to adopt the proposed method, the GC–MS, as the single regulatory method for the determination of total aromatics. However, because the method is relatively new, leaving industry little time to scrutinize the method, the final regulations allow use of ASTM method D–1319–93 until January 1, 1997 for purposes of meeting the industry testing requirements under section 80.65(e), provided this method is correlated with the GC–MS method. This two year transition period should allow sufficient time for industry to purchase equipment and become familiar with the new method. In addition, during this time period, it is anticipated that EPA and industry can discuss any problems that might arise as a result of the new method being promulgated. Moreover, the GC–MS method has been rewritten to provide more detail and specificity.

EPA is aware that industry is uncomfortable with a newly developed method that has not had the usual round-robin testing or extensive participation by ASTM. However, EPA believes that the method available, D–1319, is so archaic when compared with present day technology, and has such extremely poor accuracy and precision, that it is necessary to develop a new method. Furthermore, D–1319 has not been proven effective with oxygenated fuels even though the updated version does include a multiplication factor to use when oxygenates are present. EPA also believes that it does not have the choice of leaving the method open until the GC–MS could be evaluated more thoroughly given the timing of the final rule. EPA believes the GC–MS is a dependable, accurate and precise method that, with the aid of industry, can be applied in the near future to many of the other reformulated gasoline parameters. The eventual use for several parameters should somewhat offset the initial cost. EPA also believes, based on personal experience, that the GC–MS apparatus is readily usable by competent lab technicians with about one week of training. It is less personnel-intensive and more accurate than the D–1319 method.

e. *Oxygen and Oxygenates.* EPA proposed to use the GC-Oxygenate Flame Ionization Detector (OFID) method for determining oxygen content. Many commenters objected to the OFID method due to the fact that ASTM is still reviewing it through round-robin testing and precision information is not presently known. Commenters were concerned with the laboratory time required and the high deterioration and replacement rate cost of the cracker reactor. Commenters were also concerned with possible increased down-time in the laboratory. Most commenters suggested that ASTM method D–4815, a method used by industry during the winter oxygenate season, be used for testing oxygenates. Some commenters also suggested the use of portable Infrared (IR) analyzers because of their low cost and rapid results.

EPA has chosen to use the GC–OFID method as the single regulatory method for measuring oxygen content and oxygenates. As with the aromatics determination, EPA felt compelled to develop a new method given the shortcomings of the methods presently available. However, the ASTM method D–4815–93 can be used for the compounds specified in the method until January 1, 1997 to meet industry testing requirements under section 80.65(e). ASTM method D–4815 has been used for quite some time, but with the addition of heavier oxygenates, D–4815 has become increasingly difficult to use. EPA is aware that there has been an attempt to expand the scope and range of D–4815 to include heavier oxygenates (as set forth in D–4815–93). However, the longer one has to wait to extract the heavier oxygenates, the more likely it is that hydrocarbons will be drawn out with the oxygenates, interfering with the test results. In addition, EPA is not satisfied with the accuracy of D–4815. The reproducibility and repeatability factors are quite large. Presently, OFID is the only accurate method known that is capable of testing for oxygenates at all ranges. EPA believes a reliable, accurate and precise method that is capable of testing for oxygenates at all ranges is required when the reformulated gasoline requirements go into effect.

EPA has been using GC–OFID for four years. During that period, the cracker reactor has required replacement on only one occasion. EPA has had the opportunity to use various portable IR methods for field screening tests and has been pleased with the results. However, although these are excellent screening devices, they are not presently at the stage of development that would allow their use as a regulatory enforcement method.

f. *Sulfur.* EPA proposed to use an inductively coupled plasma atomic emission spectrometer (ICP–AES) method for sulfur analysis that was developed at EPA's laboratory. Most commenters were opposed to this method because it is an unproven technology, because it is very expensive, and because there are no substantial benefits received from this technology that are not also available through existing methods. It was also thought not to be practical in a refinery environment. Commenters suggested the use of ASTM D–4045, ASTM D–2622, or ASTM D–4294.

After considering the comments, EPA has chosen ASTM D–2622–92, an x-ray spectrometry method, as the regulatory sulfur test method. This is a newer version of the same test method that is used for testing sulfur in the low sulfur diesel fuel program. Industry should already be on-line with this method since the diesel program went into effect on October 1, 1993. The newer version has correction factors to adjust for the interference from oxygenated product.

g. *Olefins.* EPA proposed to use the ASTM method D–1319–88 to determine olefin content. Most commenters were in favor of this method since there are no other standard methods for olefins from which to choose at this time. Most commenters pointed out that the method is not as accurate as it should be. Comments were made that the method was updated in 1989 (D–1319–89). Comments were made that the method would not detect any oxygenates present, but that the results can be normalized to determine the amount of oxygen present using multiplications factors.

EPA has chosen the ASTM method D–1319–93, Fluorescent Indicator Absorption method (FIA) as the single regulatory method to determine olefin content. EPA has chosen this method because there are no alternative methods available. EPA believes that an accuracy greater than is possible with the D–1319 method is desirable and looks forward to working with industry to develop a suitable GC–MS method to detect olefins in the near future. The newest version, ASTM D–1319–93, was chosen because it contains multiplication factors to determine the amount of oxygen present.

3. Enforcement Test Tolerances

EPA has chosen to set forth enforcement test tolerances in the preamble of this regulation for oxygen, benzene, and RVP, the three parameters that will be subject to enforcement testing for minimum and/or maximum levels under the simple model.

Commenters suggested that EPA should set enforcement test tolerances for all seven parameters. One commenter stated the belief that EPA is required by the Clean Air Act to set enforcement test tolerances. Many commenters requested enforcement leniency downstream so that pipelines, while attempting to stay in compliance, do not force refiners to produce reformulated gasoline at even lower specifications than the regulations require.

a. *Issues Regarding Whether Enforcement Test Tolerances Are Required.* There are three specific provisions in the section 211(k) that refer to establishing test tolerances. The first, section 211(k)(3)(A), establishes a formula fuel as the statutory minimum for VOC and toxic emissions reductions, if the formula fuel is more stringent than the performance standards found in section 211(k)(3)(B). The formula includes a minimum oxygen content of 2.0 wt. % "subject to a testing tolerance established by the Administrator." This provision is inapplicable, however, as EPA has determined that the performance standards in section 211(k)(3)(B) are more stringent than the formula fuel.

Second, section 211(k)(4)(C) of the Act requires that EPA establish "appropriate measures of, and methodology for, ascertaining the emissions of air pollutants (including calculations, equipment, and testing tolerances)." This provision addresses technical issues regarding measurement or determination of emissions of various air pollutants, and does not require that EPA establish enforcement test tolerances. Congress most likely expected that individual vehicle testing by refiners, importers, and EPA would be the basis for quantifying the emissions reductions from reformulated gasolines, with certification of reformulated gasoline based on such individual test programs.[47] In using a large data base from several vehicle test programs EPA has exercised the authority provided under this provision, and has established emissions models that are much more accurate and reliable predictors of emissions performance than individual vehicle test programs. Variability in test results was accounted for in the modeling process itself, so that the models include a "test tolerance" based on averaging of test results from the vehicle test programs underlying the emissions models.

EPA has established appropriate test procedures for use with the model, but they measure not air pollution emissions but fuel parameter values needed to operate the model. 40 CFR 80.46. EPA has, however, established test tolerances to determine when fuel parameter values are acceptable for use in the model, as well as limits on the range of the parameters for the model. Where a refiner or importer seeks to augment the emissions model through a vehicle test program, EPA's regulations also include provisions on testing and calculations, and account for test tolerances through the averaging of vehicle test results. EPA believes these fully implement any requirement to establish test tolerances in a context where an emissions model is the methodology to determine air pollutant emissions.

Some commenters point to language of various legislators made during the floor debate on the Clean Air Act Amendments of 1990. In the floor debate, various Congressmen made general statements on the issue of whether EPA must provide enforcement tolerances under section 211(k)(4)(C).[48] There is no clear indication in these statements that Congress intended in section 211(k)(4)(C) to mandate changes in the numerical standards adopted by EPA, or to mandate a regulatory exercise of enforcement discretion. Instead these floor debate statements are most reasonably read as indicating that EPA should establish reasonable testing tolerances in the procedures and methodologies adopted to quantify air pollutants for the reformulated gasoline and anti-dumping programs, so that the regulated community and EPA can measure these air pollutants in a workable, verifiable manner without undue cost. EPA believes that its regulations fully implement this objective. To the extent these statements during the floor debate are read to imply that "testing tolerances" should be interpreted the same for purposes of section 211(k)(2)(B) and 211(k)(4)(C), EPA respectfully rejects this interpretation as contrary to the intent of Congress as expressed in the language of the Act. Furthermore, floor debate quotes are not authoritative as to the meaning of the Act, especially where such statements are contrary to the language of the Act itself.

The third relevant statutory provision is section 211(k)(2)(B). There Congress tied the testing tolerance requirement to the level of the standard itself. This provision establishes a minimum oxygen content requirement for the reformulated gasoline of "2.0 percent by weight (subject to a testing tolerance established by the Administrator)". Unlike section 211(k)(4)(C), which addresses technical issues regarding measurement of air pollutants, this provision addresses the level of the standard itself and compliance with the oxygen content requirement. EPA interprets this as requiring establishment of a reasonable testing tolerance for the oxygen content requirement. As in the winter time oxygenated gasoline program, EPA is establishing this tolerance as 0.30 wt.% oxygen. Unlike section 211(k)(4)(C), there is no explicit requirement that this tolerance be incorporated into the regulations, and given the nature of an enforcement testing tolerance EPA is not adopting it as a rule.

b. *The discretionary nature of enforcement test tolerances.* As discussed above, enforcement test tolerances are not required by the Act except for oxygenate testing pursuant to section 211(k)(2)(B), and even there, Congress left to EPA's discretion at what

[47] While Congress apparently expected that EPA would in all likelihood establish a vehicle testing program to measure emissions and certify reformulated gasoline, EPA has instead adopted an emission model that is built on many different test programs. To the extent "calculations, equipment, and testing tolerances" is still relevant in this context, it is taken to address testing needed to use the model, such as testing of a gasoline to obtain data for input into the model. The test procedures adopted by EPA typically include provisions designed to address test variability. In addition EPA's regulations specify test tolerances for various parameters, such as when a refiner and an outside laboratory measure the fuels parameters, and specify the acceptable range for such parameters in using the model.

[48] See, e.g., statement by Congressman Hall at 136 Cong. Rec. H12901 (October 26, 1990.) "A reasonable testing tolerance is expressly provided for oxygen in new 211(k)(2)(B). Under 211(k)(4)(C), EPA must also establish reasonable testing tolerances for all other aspects of this program, to minimize cost and make it workable and verifiable in the real world. EPA is specifically expected to promptly establish such tolerance limits. Similar reasonable tolerances are intended for the CO program in 211(m)."

level such tolerance should be set as well as any criteria EPA would use. EPA has carefully considered the many comments regarding test tolerances. Any test tolerance would involve establishing a policy that the Agency would forego an enforcement action unless, in testing an enforcement sample, EPA found that a standard was exceeded by a set amount. Other appropriate conditions could also be required, such as evidence that the regulated party conducted appropriate sampling and testing. Establishing an enforcement tolerance based on testing or any other factor is a matter solely within the Agency's enforcement discretion, and is not addressed by section 211(k), except for purposes of the oxygen content requirements of section 211(k)(2)(B). As described below, EPA has decided to announce its current position on enforcement test tolerances with respect to several of the emission and content standards specified for reformulated gasoline subject to the simple model.

EPA is aware that as a result of the gasoline volatility regulations at 40 CFR 80.27–28, many pipelines only accept gasoline which tests below the RVP standard minus a margin of safety set by the pipelines. In some cases, the margin of safety set by the pipelines is equal to the reproducibility of the RVP test method. Many commenters expressed concern that a similar pipeline policy also would apply to the reformulated gasoline maximum/minimum parameters. Likewise, EPA is concerned about downstream parties who have limited control over the quality of the product received. For example, gasoline in the custody of a pipeline or terminal may be the product of several commingled refinery shipments. In light of these concerns, EPA intends to withhold prosecution of downstream parties such as pipelines and terminals, where proper sampling and testing by the downstream party shows that the product exceeds standard but tests within the tolerance set by EPA, and where there is no reason to believe that the party caused the gasoline to exceed the standard.

4. Enforcement Test Tolerance Values

Almost every commenter suggested that EPA use reproducibility for enforcement tolerances. Commenters suggested that because the comparison of test results from different laboratories is inevitable, it is necessary to incorporate an appropriate measure of the variability between laboratories.

EPA has decided in its discretion to adopt enforcement test tolerances for certain requirements in addition to oxygen content. As discussed above, the Clean Air Act does not require enforcement testing tolerances for the six reformulated gasoline parameters other than oxygen (i.e., RVP, distillations, benzene, aromatics, sulfur, and olefins). In addition, only three fuel parameters (RVP, oxygen, and benzene) have maximum and/or minimum standards under the simple model. Therefore, these simple model parameters are the only ones likely to involve EPA testing for enforcement purposes. Although not required to do so, EPA has decided to set forth in the preamble of this Rule testing tolerances for these parameters, in order to provide regulated entities with information of interest to them regarding EPA's enforcement program.

In fuels enforcement programs under Title II of the Clean Air Act, EPA generally uses data obtained from its own laboratory to determine the appropriateness of any testing tolerance. At the present time, however, sufficient data needed to determine enforcement testing tolerances based on EPA laboratory data are not available. Therefore, EPA is setting initial test tolerances sufficiently large to assure that any competent laboratory testing a conforming sample could arrive at results that would indicate that the sample was not in violation. However, EPA may adopt new tolerances as data on test methods are developed, as technology changes, or as further information becomes available concerning the precision and accuracy of a particular method, whether established by EPA or by multiple testing protocol.

The test tolerance is only to be used by EPA to determine whether an enforcement action should be brought. It is EPA's contention that any sample that is over the standard is in violation. However, no enforcement action will be brought if the sample is over the standard, but within the tolerance. Furthermore, refiners and importers may not use the tolerance to expand the applicable standard. If the refiner or importer results show the product to be above the standard, then the product is in violation regardless of whether or not it is within the tolerance.

To better establish the most appropriate test tolerances, EPA proposes a joint effort between EPA and industry to develop a gasoline standard with known properties which could be used by all laboratories for calibration purposes and for detecting laboratory biases.

EPA has not included in this Preamble the enforcement tolerances for VOC and NO_X emissions performance, but intends to issue guidance that includes these enforcement tolerances within the next several months. The tolerances applicable under the complex model will be applied by EPA in the manner discussed above.

The following enforcement tolerances currently are applicable under the simple model:

a. *RVP.* A tolerance of 0.30 psi will be allowed for RVP in order to be consistent with the tolerance level currently used in the gasoline volatility program.

b. *Oxygen.* The oxygen tolerance will be 0.30 weight percent oxygen, which is consistent with the test tolerance currently in use in the winter oxygenate program.

c. *Benzene.* The initial test tolerance for benzene is 0.21 vol%, but this tolerance value will be modified through a round-robin testing process that is intended to identify a more appropriate test tolerance for benzene. Under this approach, the 0.21 vol% initial benzene tolerance will be used only until January, 1996, when the modified benzene tolerance will apply.

The process for identifying the new benzene tolerance will involve a round-robin testing program to be carried out cooperatively by EPA and the American Petroleum Institute (API). This testing program will involve testing by a number of laboratories selected by EPA and API, in accordance with a round-robin testing protocol that will be developed jointly by EPA and API. The purpose of the testing program is to identify the lab-to-lab reproducibility that exists among high-caliber laboratories that follow good laboratory procedures including procedures dealing with quality assurance and quality control, and where all reasonable steps have been taken to achieve high lab-to-lab correlation. The testing program generally will follow the round-robin methodology used by the American Society of Testing and Materials (ASTM). EPA, API, and the laboratories involved also will attempt to improve lab-to-lab correlations, through use of a gasoline matrix with known, repeatable properties.

The new tolerance will be determined from the reproducibility standard deviation resulting from the round-robin in such a way that the Agency can be 95% certain that materials tested at the standard plus the tolerance are in fact over the standard. The above calculations will be used to establish the tolerance regardless of whether the resulting value is less than or greater than 0.21 vol%, but the value will not be greater than 0.30 vol% regardless of the results of the testing program.

The round-robin testing is to be completed by January 1, 1995, statistical analysis of the test results will be completed by June 1, 1995, the new tolerance will be announced by EPA by July 1, 1995, and the new tolerance will be effective beginning in January, 1996. In the event the round-robin testing program is not completed by January, 1995, the benzene tolerance will be 0.03 vol% beginning in January, 1996, provided that the failure to complete the program is through no fault of EPA. If, however, the testing program failure is EPA's fault, or if the testing program is completed in accordance with the round-robin testing protocol and the testing data is submitted to EPA by January 1, 1995, the initial 0.21 vol% benzene tolerance will continue to apply beyond January, 1996. If, through EPA's fault, the announcement of the tolerance is delayed beyond July 1, 1995, the new tolerance will become effective six months following announcement of the new tolerance, and until then the tolerance of 0.21 vol% will apply.

C. Independent Sampling and Testing Requirements

In its 1992 supplemental proposal, EPA proposed that refiners and importers would be required to carry out a program of independent sampling and testing of reformulated gasoline that is produced or imported. 57 FR 13445. Only refiners commented on this proposal; without exception, these comments were critical. Nevertheless, EPA has retained the independent sampling and testing requirement in the final rule, with certain revisions based on comments, for the reasons contained in the 1992 SNPRM and in today's notice.

In the 1992 SNPRM, EPA explained the reasons for the independent sampling and testing requirement. Independent sampling and testing would flag errors in refiner or importer analysis and allow corrections of either noncomplying product or of the accounting books kept by these parties. These errors could be caused by mistakes in sample collection, sample analysis, by bias in the refiner's or importer's sampling and/or testing system, by inadvertent mistake, or by outright cheating.

In addition, EPA expects that reformulated gasolines will almost always be combined in the fungible gasoline distribution system after it leaves the refinery, and in many cases such fungible mixing will occur before the gasoline leaves the refinery or is transferred by the refiner to another party. Once fungible mixing occurs, there is no opportunity to look behind the refiner's or importer's test result records, except for those limited cases where EPA inspects reformulated gasoline at the refinery before fungible mixing of the gasoline occurs. This problem is amplified by the averaging option available for refiners and importers. Once a batch of reformulated gasoline becomes mixed with other batches from the same or different refiners or importers, EPA is no longer able to test this fungible mixture to determine compliance with either per-gallon or averaging standards. EPA can then only sample and test for compliance with the maximum and minimum requirements, and has to rely on the refiner's or importer's records and test results to verify the accuracy of averaging and credit reports that are submitted.

Sampling and testing by EPA would therefore normally be a valid check only for maximum and minimum requirements, and will not provide a means of verifying whether the individual gasolines contained in a fungible mixture met the reformulated gasoline per-gallon or average standards when produced. Absent independent sampling and testing, therefore, there would be little or no means of verifying whether reformulated gasoline met standards, or whether reports of credit creation are accurate.

Commenters on the proposed rule cited a number of reasons the independent sampling and testing requirements should be revised or not be made final. One commenter stated that independent sampling and testing is unnecessary and redundant to other enforcement requirements included in the reformulated gasoline program, such as penalties for noncompliance, the quality assurance sampling and testing defense element, gasoline quality surveys, recordkeeping, and attest engagements.

While these enforcement requirements in the final rule are important, their focus is different from the focus of independent sampling and testing. Quality assurance sampling and testing is a required showing for most parties presumed liable for downstream violations that is intended to monitor compliance with the maximum and minimum requirements, and is not intended to monitor the accuracy of the per-batch properties refiners and importers enter into their records. The recordkeeping requirements do not play a verification role; records kept by refiners and importers are only as accurate as the information entered by these parties. The gasoline quality surveys monitor the overall quality of gasoline being used in a covered area during the survey periods, but the capacity of surveys to detect cheating by refiners and importers is limited. Surveys will take place in any covered area during only several weeks per year. In addition, the gasoline used in a covered area is a mixture of the gasolines produced or imported by a large number of refiners and importers, often hundreds or thousands of miles distant from the covered area. Surveys would not be expected to detect improper deviations in gasoline properties from the properties reported by one or several of these refiners or importers.

The procedures specified for attest engagements were specifically designed to not overlap with the independent sampling and testing provisions. In any event, in most cases attests would not be capable of detecting errors or cheating in sample analysis; an auditor only can review the information contained in a refiner's records, and is not able to collect and analyze samples of gasoline produced months prior to the attest engagement.

These and other components of EPA's enforcement program for reformulated gasoline are not able on their own to address the main focus of the independent sampling and testing program—the accuracy of the individual batch determinations made by refiners and importers. These determinations must be accurate to achieve compliance with either the per-gallon or averaging standards. Given the fungible mixing of reformulated gasoline both within a refinery or import facility and in the gasoline distribution system, EPA is not able to check the accuracy of these individual batch determinations.

Compliance with the reformulated gasoline requirements also involves accurately analyzing many more gasoline components than is required under any of EPA's prior motor vehicle fuel regulations. This additional complexity both increases the need for refiner or importer accuracy, and makes it that much harder for EPA to check compliance after gasoline has been fungibly mixed. EPA believes the independent sampling and testing program is a reasonable response to these circumstances, and draws a reasonable balance between EPA's enforcement needs and the desirability of maintaining a highly fungible gasoline distribution system.

Other commenters stated that independent sampling and testing was unnecessary because the fungible gasoline distribution system, and contractual commitments, will guarantee product compliance. EPA

believes that product specifications will be set by pipelines or gasoline sales contracts for reformulated gasoline, however these specifications are expected to address only the minimum and maximum requirements and time and place of use restrictions. EPA does not believe these specifications will focus on whether a particular batch of reformulated gasoline was produced on average or per-gallon, or on the specific parameter values of the batch, provided the values are within the maximum and minimum requirements. As a result, gasoline specifications do not obviate the need for independent sampling and testing.

Several commenters cited cost as a basis for excluding independent sampling and testing from the final rule. One industry group commented that the costs of independent sampling and testing will be $30 to $40 million per year

EPA believes the costs of independent sampling and testing will be significantly smaller than this commenter suggested. EPA has estimated that the annual costs of this program element will be between $1.9 and $7.8 million per year. A copy of a memorandum describing EPA derivation of this estimate has been placed in the docket for this rulemaking. EPA believes that the principal difference between the industry and EPA cost estimates is that the industry assumes it will be necessary for each refinery to have an independent sampler in place 24 hours per day, 365 days per year. As a result of this assumption, industry assigns an annual cost of $32 million for sample collection only. This assumption is not justified. While some high-volume refineries producing a large percentage of reformulated gasoline may require the presence of an independent sampler much of the time, most refineries will produce a batch of reformulated gasoline less frequently than every day.[49]

Several commenters stated that the costs of independent sampling and testing will be disproportionately high for small refiners, because their batch sizes are small in comparison to batch sizes for larger refiners, and because independent labs may not be conveniently located relative to small refineries, requiring sample shipping. It is true that the per-gallon costs of independent sampling and testing will be larger for a refinery producing reformulated gasoline in small batches in comparison to the per-gallon costs for a refiner producing larger batches. Nevertheless, EPA believes this cost difference is insignificant. For a 20,000 barrel batch, a small-sized batch, the per-gallon cost of independent sampling and testing would be $0.0003; for a 50,000 barrel batch, the per-gallon cost would be $0.0001.[50] EPA anticipates that samples collected at refineries located distant from any reliable independent laboratory will be shipped to the laboratory, but does not believe such sample shipping is problematic or costly. These conclusions are based on EPA's experience in conducting gasoline quality inspections throughout the country over at least the past dozen years, when its inspectors have shipped several thousand samples per year to EPA's laboratory for analysis.

Commenters stated that the independent sampling and testing requirements will result in delays in the movement of finished reformulated gasoline due to the time required to resolve test result discrepancies between refiner/importer laboratories and independent laboratories, or that gasoline found to violate standards through independent sampling and testing may not be correctable because the gasoline in question will be in the fungible distribution system at the time the violation is determined.

EPA does not believe these concerns create a basis for excluding the independent sampling and testing requirements. EPA does not construe the independent sampling and testing provisions to require refiners or importers to hold gasoline at the refinery or import facility until the independent testing is completed. In the event of a discrepancy between the refinery/importer test result for a gasoline batch and the independent laboratory test result for that batch, EPA anticipates the refiner/importer will correct the batch values it claims: if the standard for the parameter in question is being met on average, the value for that parameter used in calculating compliance would be changed (if the correct parameter value is within the per-gallon maximum).

In the case of gasoline subject to the per-gallon standards, and in the case of the per-gallon minimum and maximum standards, EPA believes refiners and importers will be able to avoid the situation where, subsequent to the gasoline leaving the refinery or import facility, the gasoline is discovered to violate these standards. Refiners and importers will avoid this situation in several ways. First, refiners and importers will have the results of their own tests before the gasoline leaves the refinery or import facility, and the final rule requires that these tests must indicate the gasoline meets all standards. Second EPA's experience is that refiners and importers produce gasoline subject to per-gallon standards with a "margin-of-safety" sufficient to ensure tests by others do not indicate the gasoline fails to meet the standards. Third, with regard to tests pursuant to the independent sampling and testing requirement, refiners and importers presumably will select only high-caliber independent labs, and will closely correlate with them, making the possibility of conflicting test results unlikely. Fourth, the independent lab results do not have to exactly match the refiner- or importer-test results, but rather have to be within a range that is specified in the final rule. Lastly, test results by regulated parties downstream of the refinery or import facility (e.g., pipelines, terminals), or by EPA, would not be a basis for concluding gasoline violates a per-gallon minimum or maximum standard unless the test result exceeds the standard *plus* an enforcement tolerance. Enforcement tolerances are discussed in another section of this preamble.

Nevertheless, in a situation where these mechanisms fail and a refiner or importer learns, through tests by EPA or others, that a parameter value for a gasoline batch subject to the per-gallon standard violated that standard, or for a gasoline batch subject to the average standard violated a per-gallon minimum or maximum standard, the refiner or importer would be expected to correct the violation.

Several commenters raised concerns over the logistics and safety of non-company employees entering refineries to collect samples. EPA agrees that in order to comply with the independent sampling and testing requirements, a refiner or importer will be required to make arrangements with the independent laboratory that address logistics and safety issues. A refiner or importer would be expected to select as its independent laboratory a company that is able and willing to commit by contract to collect samples in a manner that minimizes interference with refinery or importer operations—to collect samples in a timely manner, and comply with company safety requirements. Because refiners and importers are given the latitude to select their own independent laboratories, EPA believes these parties will be able to identify and select ones that are satisfactory.

Several commenters stated that independent sampling and testing will not be a successful deterrent to willful cheating, because a cheater can buy off its "independent" laboratory. While this type of fraud is always possible, EPA believes it is considerably more difficult for a refiner or importer intent on cheating to falsify reports when a second company has to be brought into the conspiracy. Given the consequences if caught, independent laboratories are unlikely to collaborate with a refiner or importer to falsify reports to EPA. False reporting by a refiner, importer, or independent laboratory would constitute a criminal violation under 18 U.S.C. section 1001, subject to monetary penalties and imprisonment, and EPA would expect to seek vigorous prosecution of such a case. In addition, the final rule provides that any laboratory that fails to comply with the requirements of the rule is subject to debarment or suspension, *i.e.*, the company that operates the laboratory would be made ineligible for any government contracts, and would be precluded from participating in the reformulated gasoline program.

Another criticism made of the independent sampling and testing provision is the inconsistency with the requirements for conventional gasoline, where independent sampling and testing is not required. EPA considered requiring independent sampling and testing for conventional gasoline, but decided to treat conventional and reformulated gasoline differently in this regard. EPA believes the profit incentive for cheating is less for a producer of conventional gasoline than for a producer of reformulated gasoline. Conventional gasoline does not require the new and costly refining procedures necessary for reformulated gasoline, and will not be sold at reformulated gasoline's price. In contrast to reformulated gasoline, conventional gasoline is subject to neither time and place of use restrictions nor to per-gallon maximums and minimums. Moreover, an enforcement program for reformulated gasoline that is more strict than for conventional gasoline is appropriate given the greater air quality concerns in the areas slated to receive reformulated gasoline.

EPA considered enforcement approaches to verifying refiner and importer test results for conventional gasoline that are less burdensome than independent sampling and testing, such as the approaches that were suggested by the reformulated gasoline commenters and are discussed below. These middle-ground approaches were rejected for the same reasons they were rejected for the reformulated gasoline program—they simply would not be effective as test verification mechanisms.

As a result, EPA concluded that while independent sampling and testing is necessary for reformulated gasoline, these procedures are not justified for conventional gasoline.

Commenters suggested several alternatives to independent sampling and testing. None of these alternatives satisfy the program needs addressed by independent sampling and testing, however.

Many commenters stated that EPA should establish a program of EPA certification of refiner and importer company laboratories, and participation in round-robin analysis programs, as an alternative to independent sampling and testing. Presumably independent sampling and testing only would be required where a company laboratory failed to obtain EPA certification. Commenters cited other federal programs that include the laboratory certification and/or round-robin approach, including the National Pollutant Discharge Elimination System (NPDES) and federal requirements for petroleum products produced to meet military specifications.

EPA does not believe that laboratory certification and round-robin programs would provide sufficient verification of refiner or importer testing of reformulated gasoline. Programs of this type generally provide information on the quality of work a given laboratory is capable of performing under optimal conditions; they shed little light on the quality of the laboratory's day-to-day work which is the main focus of the independent sampling and testing requirement.

Certification by EPA or another organization would determine if a laboratory has proper equipment and personnel properly trained as of the date of the certification, but would provide no certainty of the ongoing laboratory operation. The treatment of round-robin samples by laboratories is predictably special. If a laboratory's continued certification is contingent on the quality of its analysis of samples received from EPA, the laboratory would be expected to assign its best personnel to this task, to be particularly careful in the analysis, and probably to repeat the analysis enough times to be certain a correct result is obtained. The treatment received by round-robin samples may bear little resemblance to the treatment normal samples receive. Certainly, neither laboratory certification nor round-robin testing would constitute any deterrent to a willfully cheating refiner or importer.

EPA believes the other federal programs that use laboratory certification and/or round-robins are inappropriate precedents for use of these approaches in the reformulated gasoline program. In the case of petroleum products produced to military specifications, the military presumably receives the products produced and can at that time verify whether the products meet relevant standards and criteria. This type of after-the-fact verification is not possible for reformulated gasoline for the reasons that have been discussed. In the case of facilities regulated under the NPDES program, it is possible to verify whether the levels of pollutants being discharged by the facilities are consistent with facility-specific permits that have been issued through EPA inspections that include water samples collected at the facilities. The reformulated gasoline situation is distinguished from the NPDES program because fungible mixing that often occurs within the refinery or import facility would render EPA inspections ineffective as a reformulated gasoline test verification mechanism.

Commenters offered other alternatives to independent sampling and testing that would rely on random refinery audits by independent parties or by EPA, or of verification-analysis by EPA of a representative portion of the samples analyzed by refiners and importers. EPA rejected these alternatives. The limitations inherent in EPA refinery or import facility inspections that result from fungible mixing, discussed above, also would apply to audits conducted by independent parties. A program that would rely on EPA-conducted verification analysis of certain samples that are sent to EPA by refiners or importers raises the same types of concerns that occur under the round-robin approach. Refiners and importers would be expected to analyze samples that also are sent to EPA for verification-testing with a level of care that may bear little resemblance to normal laboratory practices, and this approach would

[49] Industry has estimated that, nationwide, 175 batches of gasoline are produced per day. Only a portion of these will be of reformulated gasoline, and of these, a portion will be produced through in-line blending and not require independent sampling and testing. The number of batches per day that will require independent sampling and testing is between 22 and 71. There are about 200 refineries operating in the United States; EPA believes that between 100 and 120 of these will produce reformulated gasoline (excluding refineries in California that will be exempt from the independent sampling and testing requirements). As a result, EPA estimates that on average refineries will produce one batch of reformulated gasoline that requires independent sampling and testing every 1.4 to 5.5 days.

[50] EPA estimates the cost to collect and store a sample will be $230, and the analysis costs will be $42 (based on an analysis cost of $415 and analysis of 10% of the samples collected at a refinery), or $272.

provide small deterrent to the willful cheater.

Other commenters suggested that EPA should rely on EPA-conducted inspections at refineries and at downstream locations, as in the gasoline volatility program. EPA intends to conduct inspections like these under the reformulated gasoline program, but does not consider them to be replacements for independent sampling and testing. EPA inspections at refineries and import facilities will be able to monitor the refiner- or importer-claimed properties for reformulated gasoline only if product is present at the time of the EPA inspection that has not been fungibly mixed. EPA believes this will often not be the case. Moreover, the refiner or importer is required to submit reports to EPA stating the claimed properties of a batch of gasoline only at the conclusion of each quarter, and would know which gasoline EPA sampled during an inspection. It would be expected that prior to filing its report to EPA, a refiner or importer would verify, and re-verify, its analysis results for gasoline that had been sampled by EPA. A willful cheater could simply record the correct properties for gasoline that had been sampled by EPA, while continuing to report bogus properties for the remainder of the gasoline.

Inspections conducted by EPA downstream would almost always be of fungibly mixed gasolines, and as a result would be valid only for checking compliance with the maximum and minimum requirements; downstream inspections would not serve as a check on the per-gallon or average properties claimed by refiners and importers.

It is relevant to note the difference in enforcement that was used under the lead phasedown program, as contrasted with the enforcement possible under reformulated gasoline. Lead phasedown was similar to reformulated gasoline in that refiners and importers were required to meet an average standard that applied to gasoline produced or imported. Unlike reformulated gasoline, however, lead phasedown compliance was based only on the volume of gasoline produced and the amount of lead used in that production—two categories of information that were easily verified after-the-fact. Lead usage was verifiable because EPA required all lead manufacturers to report to EPA the amount of lead shipped to each refinery. EPA could verify the volume of gasoline produced through audits of refinery production documents, cross checked with refinery sales documents and records from transferees of refinery gasoline.

Under reformulated gasoline, however, this type of after-the-fact verification of refinery or importer reports is not possible. In contrast with volume information, routinely determined and kept by all parties to gasoline transactions, the properties relevant to reformulated gasoline include many that are routinely determined only a single time—by the refiner laboratory—and are therefore not susceptible to verification and cross checks.

One commenter stated that EPA should require independent sampling and testing only for identified violators. EPA has rejected this option, however, because of difficulties in implementing such an approach. The limitations in determining refiner or importer cheating in its reports to EPA, discussed above, would make it difficult for EPA to know or prove any party is a violator in this way. Such refiner-specific imposition of independent sampling and testing would most properly be based on proof of refiner violations involving improper product testing, but if such violations could be documented easily, or even with difficulty but reliably, there would be little need for independent sampling and testing to begin with. It is precisely this difficulty in detecting and documenting testing violations that creates the need for independent sampling and testing. Violations that are susceptible to reliable documentation, such as of the minimum and maximum requirements or of the time and place of use restrictions, would not appear appropriate predicates for imposing independent sampling and testing. Requirements of this type are not the primary focus of independent sampling and testing. Moreover, if non-testing violations resulted in the imposition of independent sampling and testing, alleged violators would likely use protracted litigation to avoid the consequence.

Commenters made a number of suggestions as to changes that should be made in the independent sampling and testing program as proposed. One commenter proposed that EPA should require independent sampling and testing only for reformulated gasoline that meets standards on average, and not for reformulated gasoline that meets standards per-gallon. EPA rejected this option, however, for the reasons provided below.

EPA could inspect reformulated gasoline produced to meet the per-gallon standard, or fungible mixtures of per-gallon gasolines, and gain reasonable certainty that the gasolines were produced in compliance with the per-gallon standard. This is the type of enforcement program used for other gasoline rules with per-gallon standards, such as volatility. See 40 CFR part 80. In the absence of averaging, this is the type of enforcement program EPA might expect to use for reformulated gasoline.

EPA believes that most reformulated gasoline found downstream will not be per-gallon gasoline only, however, but rather is likely to be either averaged gasoline or a mixture of per-gallon and averaged gasoline, and therefore not susceptible to downstream verification of refiner and importer reports. As a result, the ultimate consequence of removing the independent sampling and testing requirement from per-gallon gasoline would be the loss of verification over most refiner and importer reports for per-gallon reformulated gasoline.

One commenter said that EPA should require independent laboratories to use the same test methods as the refinery. EPA agrees with this suggestion, and has incorporated it in the final rule. As discussed in the test method section of this Preamble, EPA requires refiners and importers to use the regulatory test methods when meeting the refinery and import facility testing requirements in order to avoid erroneous test results due to bias among test methods. For the same reason, the accuracy of test results by independent laboratories would be compromised if independent laboratories use non-regulatory test methods. The commenter's suggestion is an appropriate solution to this possibility.

Another commenter said that EPA should reduce the length of time independent laboratories are required to retain samples, from the 180-day period in the proposal to 60 days. EPA has retained the 180-day sample retention period to allow EPA the opportunity to obtain portions of samples after it receives quarterly reports from refiners, importers, and independent laboratories. EPA recognizes that certain types of analysis results become less reliable as samples age, but believes there is enough information to be learned from samples older than 60 days to justify the 180-day sample retention requirement.[51]

Lastly, one commenter said that EPA should eliminate the requirement that independent laboratories determine

[51] Reid vapor pressure is the fuel parameter most susceptible to change due to storage time, because the more volatile fractions of a fuel sample may be lost if samples are not properly capped and stored at cold temperatures. Even in the case of RVP, however, EPA's experience with analyses of samples that have been stored for 180 days has been that the RVP of samples decline only approximately 0.2 psi, which is a change sufficiently small that EPA may continue to use the samples.

certain information about the gasoline sampled, including the batch volume, storage tank identification, and the grade of gasoline. EPA proposed that independent laboratories obtain this information as part of the verification process over refiner or importer reports, and continues to believe it is necessary. For example, the properties of gasoline produced is only one part of the information necessary for demonstrating compliance; the volume of gasoline produced with given properties also is necessary. Information on storage tank and gasoline grade is included as a means of confirming the gasoline sampled and tested by the refiner or importer, and that by the independent laboratory, is the same.

D. Downstream Oxygenate Blending Assumptions

EPA received various comments on the assumptions refiners and importers may make regarding downstream oxygenate blending for purposes of calculating the properties of reformulated gasoline blendstock intended for downstream oxygenate blending (RBOB). Under the proposal, and the final rule, refiners and importers of RBOB are responsible for meeting all reformulated gasoline standards, except the oxygen standard; downstream oxygenate blenders are responsible for meeting the oxygen standard for reformulated gasoline produced using RBOB. In order to determine compliance with the non-oxygen reformulated gasoline standards a refiner or importer must calculate the non-oxygen parameter values for the reformulated gasoline. To do this, a refiner or importer must include a value for the oxygen content the RBOB will achieve subsequent to downstream oxygenate blending, because the values of non-oxygen parameters will differ based upon the type and amount of oxygenate blended downstream.[52]

EPA proposed that refiners and importers of RBOB have two options for the oxygen content value used in their calculations of non-oxygen parameters. A refiner or importer could use the actual oxygenate type and amount blended with the RBOB, provided the refiner or importer carries out a program of contractual controls and quality assurance sampling and testing over the downstream oxygenate blending operation. Under the second option, the refiner or importer could make certain default assumptions regarding the type and amount of oxygenate blended downstream. EPA proposed that this assumption must be the "worst case" assumption with regard to the oxygenate type, and volume (within the oxygen minimum and maximum requirements).[53]

One commenter suggested that EPA should modify the nature of this default assumption, by allowing refiners to designate one of two categories of RBOB, "ether-only RBOB" and "any-oxygenate RBOB." These categories would have different assumptions for oxygenate type; ether-only RBOB would be assumed to be blended with MTBE, and any-oxygenate RBOB would be assumed to be blended with ethanol. Notwithstanding the assumption of MTBE use for purposes of compliance calculations for ether-only RBOB, any ether could be added downstream to an ether-only RBOB. However, it would be a violation to add an alcohol to an ether-only RBOB. This commenter stated further that the amount of oxygenate should be assumed to be that amount necessary to add 2.1 weight percent oxygen, the annual average oxygen level that oxygenate blenders must achieve for reformulated gasoline produced using RBOB when meeting the oxygen content standard on average.

EPA has generally adopted this suggestion for the final rule, but in a slightly modified form.

By adopting the approach suggested in the comments EPA is in effect adding an ether-only designation to the any-oxygenate designation implicit in EPA's proposal. EPA also is modifying to some extent the oxygen content and type assumptions that refiners must make if they rely on this RBOB designation in determining compliance with the VOC, toxics, and other non-oxygen content requirements of reformulated gasoline. First, refiners and importers that produce or import RBOB are required to designate the RBOB as any-oxygenate RBOB, or as ether-only RBOB.[54] These designations are in addition to, but must be consistent with, the specifications for the type(s) and amount(s) of oxygenate that must be included in the product transfer documents for RBOB. Second, refiners or importers that do not meet the requirements for a quality assurance program over downstream oxygenate blending, must assume that ethanol is blended with any-oxygenate RBOB, and that MTBE is blended with ether-only RBOB. For both types of RBOB, the refiner or importer must assume that the amount used is that amount sufficient for the gasoline produced to have 2.0 weight percent oxygen, or approximately 5.70 volume percent in the case of ethanol and approximately 10.80 volume percent in the case of MTBE. Refiner or importer oversight of the downstream oxygenate blending operation is not required if a refiner or importer relies on these "worst case" assumptions. However, as noted below, these types of RBOB must be segregated from one another.

EPA believes these assumptions regarding the type of oxygenate used are appropriate. The principal risk to the environment under the oxygen use assumptions is that an oxygenate blender will blend ethanol with ether-only RBOB, which would result in reformulated gasoline that probably would support neither the toxics nor benzene properties claimed by the refiner or importer of the RBOB (due to an insufficient dilution effect), nor, in the case of VOC-controlled gasoline, the claimed RVP nor VOC properties (due to RVP increases from ethanol). On the other hand, any-oxygenate RBOB will be formulated for blending with ethanol, and would only improve for all properties if blended with an ether such as MTBE.

Several mechanisms will help ensure ethanol is not blended with ether-only RBOB. Ether-only RBOB and any-oxygenate RBOB must be segregated throughout the distribution system to the point of oxygenate blending. The product transfer documents will identify ether-only RBOB as such, which will put each person in the distribution network, and the oxygenate blender, on notice that the RBOB is not suitable for ethanol blending. Absent a highly unusual situation, a distributor would not be expected to dispense ether-only RBOB into a gasoline

[52] The impact of blending different oxygenate types and amounts on the non-oxygen properties of RBOB is great. VOC emissions are dramatically effected by changes in RVP, yet different oxygenates effect RVP very differently; ethanol blended above about four volume percent (1.5 weight percent oxygen) increases the RVP of the resulting gasoline by 1 psi, while oxygenates other than ethanol cause very little or no change in RVP.

Similarly, toxics emissions performance and benzene are strongly influenced by the dilution effect caused by oxygenate blending, yet different oxygenates must be blended at very different volumes to result in the same oxygen content in the gasoline produced; to produce gasoline with 2.00 weight percent oxygen, for example, requires 5.4 volume percent ethanol, or 11.0 volume percent MTBE.

[53] The worst case assumption for RVP and VOC emissions performance reduction would be ethanol, at the oxygen maximum level. For toxics emissions performance and benzene, the worst case would be the oxygenate providing the minimum volume (normally ethanol) at the oxygen minimum level.

[54] Any oxygenate RBOB must meet all reformulated gasoline standards subsequent to blending with any of the following: ethanol, methanol, butanol, MTBE, TAME, or ETBE. Ether-only RBOB must meet all reformulated gasoline standards subsequent to blending with any of the following: MTBE, TAME, or ETBE.

delivery truck for splash blending, because ethanol is the only oxygenate that normally is splash blended in trucks. In addition, it is likely that if ethanol were blended with VOC-controlled ether-only RBOB, the resulting gasoline will not meet the RVP maximum or VOC emissions performance minimum requirements, and would be susceptible to detection through EPA inspections or quality assurance programs conducted by regulated parties.

EPA believes the volume assumptions based on 2.0 weight percent oxygen are preferable to the commenter's suggested 2.1 weight percent basis, because there is no reason to believe any particular oxygenate blender will elect to use the averaged oxygen standard of 2.1 weight percent. In a situation like this involving default assumptions it is appropriate to adopt a more conservative assumption. Oxygenate blenders have the option of meeting either the oxygen standard for per-gallon compliance of 2.0 weight percent, or the oxygen standard for average compliance of 2.1 weight percent. EPA believes the assumption that oxygenate blenders will at least meet the per-gallon standard is appropriate, and preferable to the proposed "worst case" oxygen use assumption of 1.5 weight percent, due to enforcement mechanisms contained in the final rule that apply to oxygenate blenders, i.e., quality assurance sampling and testing and recordkeeping.

While it is true that any single batch of reformulated gasoline produced by blending RBOB with oxygenate could receive the per-gallon minimum 1.5 weight percent oxygen, the oxygenate blender must offset any gasoline produced at this oxygen level with other gasoline produced with oxygen levels greater than 2.1 in order to meet the 2.1 average oxygen content standard. In addition, EPA believes it is likely that most oxygenate blenders will choose to meet the oxygen standard on a per-gallon basis, rather than on average. The testing, recordkeeping, and reporting requirements for an oxygenate blender who elects the average oxygen standard are significantly greater than for an oxygenate blender who elects the per-gallon standard. Moreover, EPA's oversight experience with the state-enforced wintertime oxygenated fuels program, which includes the option of meeting that program's oxygen standard either per-gallon or on average, is that the vast majority of oxygenate blenders have elected the per-gallon option in that program. This precedent from the oxygenated fuels program is more compelling because the oxygen standard in the oxygenated fuels program is 2.7 weight percent for both the per-gallon and average options, yet oxygenate blenders for the most part still chose the per-gallon option. In contrast, under the reformulated gasoline program the average oxygen standard (2.1 weight percent) is more rigorous than the per-gallon oxygen standard (2.0 weight percent), which is an additional reason to believe reformulated gasoline oxygenate blenders will choose the per-gallon option.

All oxygenate blenders, including a blender using any-oxygenate or ether-only RBOB and who uses the average oxygen standard, must follow the oxygen amount instructions contained in the RBOB product transfer documents. These instructions must specify the minimum oxygen necessary for the resulting reformulated gasoline to meet all per-gallon minimum and maximum standards. For example, a particular batch of any-oxygenate RBOB may specify 2.0 weight percent oxygen in order for the resulting reformulated gasoline to meet the 1.3 vol% benzene per-gallon maximum. An oxygenate blender using the RBOB in this example is required to add a volume of oxygenate that is large enough for the reformulated gasoline to have a minimum 2.0 weight percent oxygen (e.g., a minimum of 5.4 vol% ethanol), regardless of whether the oxygenate blender is meeting the oxygen standard per-gallon or on average.

A refiner or importer of RBOB who, in lieu of producing ether-only and/or any-oxygenate RBOB, elects to conduct a quality assurance program over downstream oxygenate blending operations may use the actual oxygen types and amounts blended with the RBOB. If such a refiner or importer fails to properly carry out the quality assurance program, however, the RBOB will be deemed to have been blended with 4.0 vol% ethanol (1.5 wt% oxygen), the "worst case" oxygenate type and amount that is not constrained by "ether-only" or "any-oxygenate" designations. Under this assumption the reformulated gasoline would receive a 1 psi RVP boost associated with ethanol (see Section I of the RIA), and the minimum dilution effect of any oxygenate at 1.5 wt% oxygen (for example, 1.5 wt% oxygen results from 4.0 vol% ethanol, or 8.2 vol% MTBE). This assumption is appropriate in such a situation because it is possible the RBOB could be blended with ethanol at the 1.5 wt% oxygen minimum. EPA believes it is reasonable to assume the RBOB will be blended with at least the per-gallon minimum oxygen volume of 1.5 wt% oxygen, because of the requirements imposed on oxygenate blenders, such as recordkeeping, and mechanisms included in the final rule to ensure compliance with per-gallon minimums, such as quality assurance sampling and testing by regulated parties and enforcement by EPA.

E. Averaging issues

1. Use of per-gallon and average standards

EPA proposed that refiners and importers would be allowed to decide, on a per-batch basis, which regulated parameters will be subject to per-gallon standards and which will be subject to average standards. See 57 FR 13444 (April 16, 1992). For example, under the proposal refiners could decide for any given batch of reformulated gasoline to meet the benzene per-gallon standard and the toxics emissions reduction standard on average. Under the proposal these elections could be made separately for each batch of gasoline produced or imported, and separately for each parameter.

EPA also intended that these per-gallon/average elections could be changed subsequent to the gasoline leaving the refinery or import facility, so that if gasoline that was intended to meet a particular standard on a per-gallon basis is discovered, subsequent to shipment, to violate the per-gallon standard, the refiner or importer could change its accounting records to switch the gasoline batch to the average standard category (provided the gasoline meets the per-gallon minimum or maximum).

EPA has reconsidered this approach, and now believes that refiners and importers should be allowed to use either the per-gallon or the average standard for each parameter, but that parties may not use a combination of per-gallon and average standards for any parameter during any single averaging period. This per-gallon versus average election must be made separately for each refinery and for each importer or oxygenate blender. Under this revised approach, for example, a refiner could elect to meet the benzene standard per-gallon and the toxics emissions performance standard on average for all reformulated gasoline produced at a refinery, but once these elections are made, they would apply to all reformulated gasoline produced at that refinery for the entire averaging period for these parameters.

EPA is making this change from the proposal because it is concerned that under the proposed approach nationwide average levels for regulated parameters would not achieve the levels of the average standards. For example, the average standard for benzene is set at 0.95 wt%, because, among other factors, EPA estimates that this level is at least as stringent as the benzene level that would exist in the absence of averaging. EPA is concerned that under the proposed approach for electing per-gallon versus average standards the nationwide average benzene levels in reformulated gasoline would be greater than the 0.95 wt% average standard for benzene. This result would be contrary to the intent of the Clean Air Act and EPA's goal that averaging should result in average parameter levels that are no less stringent than would occur in the absence of averaging.

Section 211(k)(7)(C) of the Act provides that benzene and oxygen credits may not result in average levels for these parameters that are less stringent than would occur in the absence of using any benzene or oxygen credits. EPA has viewed this constraint on the use of credits as appropriate to employ for all reformulated gasoline parameters that may be met on average, including parameters other than oxygen and benzene, that averaging should not result in average parameter levels that are less stringent than would occur in the absence of averaging.

In addition, section 211(k)(1) of the Act directs EPA to promulgate reformulated gasoline regulations that require the greatest achievable reductions in VOC and toxics emissions, taking into account cost, health and environmental impacts, and energy requirements. EPA has concluded that if refiners were required to meet the reformulated gasoline standards on a per-gallon basis only, that refiners would produce gasoline with properties equal to the standards plus "margins-of-safety" necessary to ensure the gasoline in fact meets the per-gallon standards. EPA also has concluded that the added flexibility afforded regulated parties through an average VOC or toxics standard results in the ability by refiners and importers to achieve more stringent standards when met on average than is possible when standards are met per-gallon, and the magnitude of this greater stringency is at least equal to the margins-of-safety that would be used with per-gallon standards. As a result, in implementing section 211(k)(1) EPA intends to establish requirements that will result in reformulated gasoline having VOC and toxics properties that in practice are at least equal to the per-gallon standards plus the margins-of-safety (which is equal to the average standards).

In implementing these two statutory provisions, EPA intends that reformulated gasoline should have VOC and toxics emissions performance properties, and benzene and oxygen content properties that, regardless of whether credits or averaging are used, are in practice at least equal to the more stringent properties refiners would achieve if only a per-gallon standard were allowed. The level of these more stringent properties is at least equal to the per-gallon standard plus any "margin-of-safety" refiners would employ if only per-gallon standards were included.

As a result, EPA proposed and is adopting standards for average compliance that are more stringent than the standards for per-gallon compliance. Moreover, the differences between the proposed average and per-gallon standards reflect EPA's estimates of this per-gallon "margin-of-safety" for each parameter. The relationship between margins-of-safety and average standards is discussed more fully in the 1992 SNPRM, at 57 FR 13457–13458.

EPA is concerned that if refiners, importers, and oxygenate blenders can elect per-gallon versus average standards on a batch-by-batch basis, the levels of parameters in practice will not, on average, be approximately at the level expected if only a per-gallon standard were applied (equal to the per-gallon standards plus the margins-of-safety), but rather will on average be closer to the per-gallon standards. EPA believes the proposed approach would have this result because of the ability of refiners and importers to elect to use the per-gallon or the average standards separately for each batch.

For example, the per-gallon benzene standard is 1.00 vol%, and the average benzene standard is 0.95 vol%. Under the proposal a refiner could, for each batch of gasoline produced, elect to meet the per-gallon or the average benzene standard. EPA believes that under the proposed approach most refiners would produce gasoline with the intention that the benzene level will be very close to, but slightly below, 1.00 vol%. If the refiner's benzene test for any given batch indicates the benzene level is between 0.95 vol% and 1.00 vol% (which refiners would be able to achieve for most batches), the batch would be placed in the per-gallon compliance category. If the refiner misses this benzene goal for any batch, and the refiner's test result indicates a benzene level above 1.00 vol% (1.05 vol%, for example), the refiner would simply place that batch in the average compliance category, and also produce a corresponding volume of gasoline in the average category (or change a previously-produced batch to the average compliance category) having a benzene level sufficiently below 0.95 vol% that the two batches have an average benzene content of 0.95 vol%. The net result over the annual benzene averaging period would be that the majority of gasoline would be in the per-gallon compliance category with an average benzene content close to 1.00 vol%, while the minority of gasoline would be in the average compliance category with an average benzene content of 0.95 vol%. Under this example, the resulting overall benzene level of the gasoline produced by the refiner would be greater than the approximately 0.95 vol% which EPA would expect if all reformulated gasoline had to meet the per-gallon benzene standard.

EPA announced in its 1992 proposal a clear intention that average standards be allowed in order to increase refiner and importer flexibility. EPA also made clear its expectation that the "margin-of-safety" normally expected with a per-gallon standard not be lost because of averaging. This change is designed to implement this goal by preventing the potential unfavorable result from averaging described above. The final rule therefore includes a requirement that refiners, importers, and oxygenate blenders must elect, for each calendar year and for each parameter, to use only the per-gallon standard or only the average standard for each regulated parameter. This election must be made separately for each refinery.

Under this revised approach to averaging, the average parameter levels for the gasoline produced by any refiner would be approximately the same regardless of whether the refiner elects the per-gallon or the average standards. For example, a refiner who elects to meet the benzene standard on a per-gallon basis probably will plan to produce gasoline with benzene levels sufficiently below the 1.00 wt% benzene standard to ensure that, when the production of each batch is complete, the refiner's benzene test results for each batch will be below 1.00 wt%. EPA estimates that refiners subject to the per-gallon benzene standard would aim for approximately 0.95 wt% benzene, and as a result the gasoline produced by such a refiner would have an average benzene level of about 0.95 wt%. In the case of refiners subject to the average benzene standard, on the other hand, refiners probably would plan to produce gasoline with benzene levels that exactly equal the 0.95 wt% benzene standard, with the result that the average benzene level for the gasoline produced by such refiners would be almost exactly 0.95 wt%.

Under the revised approach for selecting whether to meet standards per-gallon versus average, therefore, the average parameter values in practice will be at the levels intended by EPA and Congress, and not at the less stringent levels that would have resulted from the proposed approach.

EPA has not included a process for refiners, importers, and oxygenate blenders to notify EPA in advance of the per-gallon versus average standard elections. Rather, parties in effect will make this election when the first batch of reformulated gasoline is produced or imported each averaging period, because all reformulated gasoline subsequently produced or imported during the averaging period must follow the lead of the first batch.

2. Oxygen averaging

a. *Separate oxygen averaging for simple model VOC-controlled reformulated gasoline.* In the proposed regulations published in 1992, EPA proposed that in the case of gasoline subject to the simple model the oxygen standard would have to be met separately for reformulated gasoline that is designated as VOC-controlled. The rationale for this category of oxygen averaging was that under the simple model the VOC emissions reductions required for reformulated gasoline would be deemed met only if the oxygen and RVP standards are each met for gasoline designated as VOC-controlled. Under that proposal, the gasoline quality surveys to be conducted in cities during the high ozone season would measure both RVP and oxygen of gasoline; the city would be considered to have passed a VOC survey only if both the oxygen and RVP levels met the per-gallon standards for these parameters.

An industry group commented on this approach to VOC surveys and oxygen averaging. This commenter suggested that the VOC surveys should be based on a "simple model" VOC equation that would take into account both oxygen and RVP. Under this VOC equation, if the oxygen content found during a survey is below the per-gallon oxygen standard (worse than the standard), this deficiency may be offset by an RVP level that is below the per-gallon RVP standard (better than the standard), and vice versa. This commenter went on to suggest that under this approach, there would be no need to require refiners and importers to separately meet the oxygen standard for simple model VOC-controlled reformulated gasoline.[55] Instead, according to this comment, the oxygen standard should apply only on an annual basis.[56]

In the 1993 proposal, EPA adopted the approach to VOC surveys and oxygen averaging suggested by this commenter. EPA has now reconsidered, and has included in the final rule a requirement for separate oxygen averaging for simple model VOC-controlled gasoline. The final rule retains the "simple model" VOC emissions reduction equation for use in gasoline quality surveys during the high ozone season, however.

EPA agrees that the "simple model" VOC equation is appropriate for use in the VOC compliance surveys. This is because the surveys are designed to help ensure that the area in fact receives the VOC reductions required by the simple model RVP and oxygen per-gallon and averaging standards, where refiners and importers do not need to demonstrate compliance on average beyond the refinery or importer level. If the surveys show compliance on average with the expected VOC reductions, then there would not be a need to "ratchet" the RVP or oxygen standards. However, the surveys are an enforcement and compliance tool, and do not replace the simple model standards themselves. Even if the surveys are passed, the separate RVP and oxygen content standards still apply under the simple model and refiners and importers must comply with them. Given the inherent limits on the frequency and number of VOC-gasoline quality surveys they can not reasonably be treated as a substitute for the standards themselves. It is reasonable to require that a refiner or importer demonstrate compliance with the simple model oxygen content standards that apply under averaging.

Under this view, the purpose of the "simple model" VOC equation as used in VOC compliance surveys is to allow a slight variance in oxygen due to averaging, to be offset by a slight variance in RVP due to averaging, and vice versa. The "simple model" VOC equation is not intended to encourage refiners to employ a strategy of producing simple model VOC-controlled gasoline well below the oxygen standard, to be offset by gasoline well below the RVP standard. The simple model RVP and oxygen standards will still apply.

Under the complex model separate oxygen averaging is not necessary for VOC-controlled gasoline, because there is a specific standard for VOC emissions performance that applies to reformulated gasoline. VOC emissions performance will be used under the complex model gasoline quality surveys.

b. *Averaging and credits under the separate oxygen categories.* Under the final rule, simple model reformulated gasoline designated as meeting the oxygen standard on average must meet the oxygen standard during the calendar year averaging period, and must meet this standard separately for VOC-controlled gasoline, and for non-OPRG gasoline.[57] This preamble section is intended to clarify the mechanism for meeting these overlapping oxygen requirements within a single refinery or oxygenate blending facility, or for a single importer. In addition, this section is intended to clarify the manner in which oxygen credits may be created, transferred, and used.

There are four possible categories of reformulated gasoline for purposes of oxygen averaging and credits:

1. VOC-controlled, non-OPRG;
2. Non-VOC-controlled, non-OPRG;
3. Non-VOC-controlled, OPRG; and
4. VOC-controlled, OPRG.[58]

[55] Under the 1992 proposal, the separate RVP standard would apply only to simple model VOC-controlled reformulated gasoline. The manner in which the RVP standard applies to VOC-controlled gasoline under today's rule is the same as in the proposals. The oxygen standard, on the other hand, would have to be met separately for two categories of reformulated gasoline under the 1992 proposal: VOC-controlled reformulated gasoline and all reformulated gasoline.

[56] Under the 1992 proposal, for purposes of oxygen averaging, gasoline intended for use in oxygenated fuels program areas during the oxygenated fuels control periods (or OPRG) could not be averaged together with non-OPRG gasoline. The reason separate oxygen averaging was proposed for non-OPRG gasoline is to ensure areas not included in the oxygenated fuels program receive gasoline that meets the 2.0 oxygen content mandated by the Clean Air Act. If OPRG and non-OPRG gasoline could be averaged together for oxygen purposes, the gasoline in the OPRG areas—where 2.7 weight percent oxygen is required during the oxygenated fuels control period—could be used to offset gasoline with 1.5 weight percent oxygen intended for use in non-OPRG areas.

No comments were received on this proposed treatment of oxygen averaging for gasoline designated as OPRG versus non-OPRG, and this treatment is unchanged under today's rule.

[57] Non-OPRG reformulated gasoline is reformulated gasoline not intended for use in an oxygenated fuels control area during the oxygenated fuels control period.

[58] One industry group commented that there will be no gasoline in the VOC-controlled, OPRG category. EPA disagrees with this conclusion.

VOC-controlled gasoline must be present in terminals in covered areas during the period May 1 through September 15. The oxygenated fuels control periods for areas that also are included in the reformulated gasoline program begin on October 1 or later, and last through either January or February, except for the New York City area, which lasts until April 30. Parties will supply OPRG gasoline to terminals in advance of October 1 in order to "blend up" terminals to the oxygenated fuels standard by that date. If this OPRG gasoline arrives at terminals before September 15 (which likely will occur), the gasoline also would have to meet the VOC-control standards; the product thus would be in the VOC-controlled, OPRG category. A similar situation will likely occur in the Spring in New York City, where parties will supply VOC-controlled gasoline to terminals in advance of May 1 in order to "blend up" terminals to meet the VOC-control standards by that date. This pre-May 1 gasoline thus would also be in the VOC-controlled, OPRG category.

The final rule does not require that each of these categories must separately meet the oxygen standard. Only VOC-controlled and non-OPRG gasoline must each separately meet the oxygen standard. As a result, the oxygen averaging standards must be separately met for the following three classes of gasoline:

1. All reformulated gasoline produced or imported, consisting of all four categories;
2. VOC-controlled gasoline, consisting of the VOC-controlled, OPRG; and VOC-controlled, non-OPRG categories; and
3. Non-OPRG gasoline, consisting of the VOC-controlled, non-OPRG; and non-VOC-controlled, non-OPRG categories.

In order for oxygen credit creation and use to be consistent with the separate classes of oxygen averaging, the creator/transferor of any credits must identify which of the four categories the credits represent. The user/transferee of credits must apply the credits to that same category, in order to determine if the oxygen averaging requirements have been met for the three classes specified above.

By way of example, assume that Refiner A produced the following batches of reformulated gasoline, each of which was designated for average compliance for oxygen, and each of which was produced during the same calendar year:

Batch No.	Volume (gallons)	Oxygen content	Designations	
			VOC-controlled	OPRG
1	100	2.3	Yes	No.
2	150	1.9	No	No.
3	120	2.2	No	Yes.
4	100	1.8	Yes	Yes.
5	130	2.1	Yes	No.
6	160	2.2	No	No.
7	160	2.5	Yes	No.

Refiner A then calculated the compliance total for oxygen for each of the four categories, by multiplying the volume of gasoline in that category times 2.1; and the actual total for oxygen for each category, by multiplying the volume of each batch in a category times the oxygen content of the batch, and summing the results for the category. The refiner's results are as follows:

	Categories			
	VOC-control, non-OPRG	Non-VOC-control, non-OPRG	Non-VOC-control, OPRG	VOC-control, OPRG
Compliance total	819	651	252	210
Actual total	903	637	264	180

Refiner A transferred 52 credits in the VOC-controlled, non-OPRG category to another refiner, and recalculated its actual total in that category to be 851.

Refiner A then calculated its compliance position with regard to each separate class of oxygen averaging, by calculating the compliance total and the actual total for the three classes of oxygen averaging: VOC-controlled, non-OPRG, and overall. The results of these calculations are as follows:

	Class of oxygen averaging		
	VOC-control	Non-OPRG	Overall
Compliance total	1029	1470	1932
Actual total	1031	1488	1932
Net total	2	18	0

Because the actual total for oxygen is, for each class of oxygen averaging, equal to or greater than the compliance total, Refiner A has met the oxygen averaging standards.

For gasoline subject to the complex model, there are only two classes for oxygen averaging: non-OPRG, and overall. In consequence, oxygen credits must be placed into one of only two categories—OPRG, and non-OPRG. With these simplifications, oxygen credits for gasoline subject to complex model standards would be created, transferred, and use in a manner similar to the example described above. Because of the differences in oxygen categories for simple and complex gasoline, however, oxygen credits generated from gasoline subject to the complex model could not be used to achieve compliance for gasoline subject to the simple model.

3. NO_x averaging

EPA proposed that the NO_x complex model standard would be a 0% emissions performance increase under Phase I of the complex model before 2000. Under Phase II of the complex model beginning in 2000, EPA proposed a range of NO_x standards, from a 0% emissions performance increase to a 15% emissions performance decrease. Averaging was not proposed as a compliance option for NO_x. In the final rule, EPA has finalized the Phase II NO_x standards, and has allowed for NO_x averaging under both Phase I and Phase II.

Under Phase I in the final rule, the NO_x per-gallon standard remains at the proposed level of a 0% emissions performance increase. The final rule also provides an average standard for NO_x compliance of a 1.5% emissions performance reduction, which is more stringent than the per-gallon standard, and with an associated per-gallon minimum NO_x standard of a 2.5% emissions performance increase.

EPA believes that the most appropriate interpretation of section 211(k)(2)(A) is that the NO_x emissions performance of reformulated gasoline should be at the level expected from a 0% NO_x increase standard on a per-

gallon basis. This approach guarantees no increase in NO_X emissions, and is a reasonable interpretation of this provision. At the same time, EPA does not believe that NO_X averaging is precluded in all cases under this provision. The text of section 211(k)(2)(A) is not explicit on this point, and the certification provision of section 211(k)(4) would appear to allow averaging over a slate of fuels.

The Phase I NO_X averaging provisions are designed such that the average NO_X performance of reformulated gasoline should be the same under either standard. Given this result, and the discretion afforded the Administrator in section 211 (k)(2)(A) and (k)(4), the NO_X averaging provisions under Phase I complex model standards is a reasonable way to implement this statutory requirement.

Under Phase II, the NO_X standards are different for VOC-controlled versus non-VOC-controlled gasoline. Non-VOC-controlled gasoline has the same per-gallon, average, and per-gallon minimum standards as under Phase I. The NO_X standards for VOC-controlled gasoline under Phase II require a NO_X reduction: A 5.5% emissions performance reduction in the case of the per-gallon standard, and a 6.8% emissions performance reduction in the case of the average standard. In addition, the average standard has an associated per-gallon minimum NO_X standard of a 3.0% emissions performance reduction. The rationale for requiring NO_X reductions in conjunction with VOC-controlled gasoline under Phase II is discussed more fully in section VI of the preamble.

The general approach used for setting the average NO_X standards, and the per-gallon NO_X minimums associated with the average standards, is the same as for other average and per-gallon minimums/maximums for reformulated gasoline. The average standard is set at a level that is equal to the per-gallon standard plus the "margin-of-safety" refiners would use to ensure compliance if only a per-gallon standard were allowed. EPA estimates this "margin-of-safety" would be 1.5% in the case of VOC and toxics emissions performance. In the case of NO_X emissions performance, EPA estimates the "margin-of-safety" also would be 1.5% during Phase I, but during Phase II would be 1.3%.

The per-gallon minimum is included in order to cap the averaging range. It is set at a level that is 2.5% less stringent than the per-gallon standard in the case of VOC, toxics, and NO_X emissions performance. Limiting the averaging range is one of the mechanisms included in the final rule to ensure each covered area receives reformulated gasoline that on average provides the air quality benefits Congress intended for reformulated gasoline. The relationship between per-gallon and average standards, and the need for per-gallon minimums and maximums, are discussed in the 1992 SNPRM at 57 FR 13455–13458.

The final rule requires that the NO_X averaging standards under both Phase I and Phase II must be met separately for gasoline and RBOB that is designated VOC-controlled and for gasoline and RBOB that is not designated as VOC-controlled. This separate averaging is necessary in order to ensure that the ozone reduction benefits deriving from the NO_X reductions occur during the high ozone season. If the VOC-controlled and non-VOC-controlled gasoline could be averaged together over the entire calendar year NO_X averaging period, there is the possibility that gasoline in the non-VOC-controlled category could have sufficient NO_X reductions that, through averaging, gasoline in the VOC-controlled category would not have the intended NO_X reductions.

Separate NO_X averaging for VOC-controlled and non-VOC-controlled gasoline also is necessary to ensure that both the VOC-controlled and the non-VOC-controlled categories of gasoline comply with the no increase in NO_X emissions performance instruction of section 211(k)(2)(A) of the Act. If VOC-controlled and non-VOC-controlled gasoline could be averaged together, there is the possibility that the gasoline in one category or the other would have greater NO_X emissions performance reductions than is required, with the consequence that the gasoline in the other category could have a NO_X emissions performance increase. Requiring separate NO_X averaging for VOC-controlled and non-VOC-controlled gasoline prevents this possibility.

In a departure from the general approach used for average standards, there is no gasoline quality survey prerequisite for use of the complex model Phase II NO_X average standard for VOC-controlled gasoline. The gasoline quality surveys serve the purpose of ensuring that the minimum reformulated gasoline requirements of section 211(k) are met in each covered area when averaging is used. The minimum per gallon NO_X reductions required under Phase II for VOC-controlled gasoline go beyond the minimum requirements of section 211(k), however, so there is certainty the minimum NO_X requirements of section 211(k)(2)(A) (no NO_X increase) will be met in each covered area without the need for surveys and possible ratchets.

F. Survey Issues

1. Ratchets of Simple and Complex Standards on Survey Failure

Under the 1992 and 1993 proposals, and under the final rule, refiners, importers, and oxygenate blenders that meet standards on average must conduct gasoline quality surveys in reformulated gasoline covered areas; in the event of a survey failure for a parameter, the standards for that parameter are "ratcheted" to be more rigorous. Under the 1993 proposal, and under the final rule, VOC and toxics surveys consist of a simple model portion and a complex model portion. Also under the 1993 proposal, EPA proposed that in the event of a failure of either the simple or the complex model portions of a VOC or toxics survey, that both simple and complex model VOC and toxics standards would be ratcheted.[59]

One industry group commented on this proposal to ratchet both simple and complex standards, stating that instead of EPA's proposed approach, a failure of the simple model portion of a survey should result only in a ratchet of simple model standards, and vice versa. The commenter's concern was that ratchets of both the simple and complex standards, when only one survey type is violated, would be unnecessary to achieve the surveys' purpose—to ensure gasoline quality fluctuations due to averaging do not result in gasoline quality in any covered area that is "dirtier" than it would be if all gasoline was certified to the per-gallon standards.

With the exception of simple model VOC and toxics survey failures that occur in 1997, discussed below, EPA generally agrees with this comment. Deficiencies in gasoline quality that are identified by the surveys are corrected (prospectively) through ratchets of average and maximum standards that occur only for the class of gasoline (simple or complex) for which a survey is failed. Survey failures also are prevented through quality assurance measures implemented by refiners and importers intended to prevent survey failures and ratchets, and such measures probably would not be different if ratchets occur only for the class of gasoline for which a survey is failed.

The exception to this ratchet approach in the case of simple model VOC and toxics survey failures in 1997 occurs because a ratchet of the simple model standard in such a case would not constitute an incentive to refiners or importers to prevent survey failures of this type. Use of the complex model is mandatory beginning on January 1, 1998; subsequent to this date, the simple model standards may no longer be used. As a result of this timing, any failure of a simple model VOC or toxics survey in 1997 would have no consequence if only the simple model standards are ratcheted, because ratcheted standards become applicable only in the year subsequent to the year of the survey failure. Therefore, unless both the simple and complex model standards ratchet in the event of a simple model VOC or toxics survey failure in 1997, refiners and importers will have no incentive to take steps to avoid simple model survey failures in the year before the complex model becomes mandatory.

The final rule has been modified to reflect this approach to survey ratchets.

2. The (Limited) Intra-Covered Area Averaging Alternative to Surveys

Section 211(k)(7) of the Act states that the reformulated gasoline regulations shall provide for granting oxygen and benzene credits to persons who produce gasoline that exceed the standards for these parameters, providing for certification of gasoline based on such credits where they are used within the same covered area as they are generated, and requiring that the use of credits not result in average oxygen or benzene levels that are worse than would occur if no credit provisions were allowed. This is the statutory basis for including benzene and oxygen credits in the proposals and in the final rule.

EPA believes these provisions are satisfied by refinery-based averaging combined with compliance surveys, but also believes they would allow a refiner or importer to meet the reformulated gasoline standards for oxygen and/or benzene (but not for other parameters) on average if the party is able to demonstrate the gasoline it produces or imports, and uses within a single covered area, meets the oxygen or benzene standards on average. To the extent section 211(k)(7) provides for such intra-covered area averaging, it would be allowed without the need for the gasoline quality surveys that are the general prerequisite for averaging.

In order to give regulatory effect to this averaging aspect of section 211(k)(7) of the Act, EPA proposed regulations that would allow intra-covered area averaging without meeting the survey requirements. The proposal would have allowed this averaging approach for all parameters that may be averaged. The proposal did not, however, include enforcement mechanisms intended to ensure a party choosing this option does so properly, such as mechanisms to ensure, and document, the gasoline in question is used only in a single covered area, such as recordkeeping, reporting, or quality assurance requirements.

EPA generally has retained this averaging option in the final rule in section 80.67(a)(2), but with several modifications. The final rule restricts the non-survey averaging option to oxygen and benzene only. This restriction is included because EPA intends to limit its application only to those parameters included in section 211(k)(7) of the Act. In addition, EPA has included in the final rule the requirement that any party intending to use the non-survey averaging option must first obtain approval from EPA through a petition process. The final rule specifies that the petition must describe in detail the mechanisms the refiner or importer will use to ensure that the gasoline in question is in fact produced by the refiner or imported by the importer, and is used only within the covered area and in no other attainment area or covered area. The petition also must describe the recordkeeping, reporting, auditing, and other quality assurance measures the party will use to document and report the quality of the gasoline used in the covered area.

The petition would be expected to address mechanisms to establish with certainty the properties of the gasoline used in the covered area, and mechanisms to ensure the gasoline delivered for use in the covered area is not transported by a transferee of the gasoline (e.g., a truck distributor) for use in an adjoining attainment area or in another covered area. To the extent any of a party's gasoline is mixed with gasoline produced by another refiner or imported by another importer in the fungible gasoline distribution system, EPA believes the party would have serious difficulty achieving the product tracking certainties required for intra-covered area averaging.

EPA believes this intra-covered area averaging approach will have very limited, if any, application, because it requires precise tracking of the quality of gasoline that is produced by a single refiner or is imported by a single importer and used within a single covered area. It was the great difficulty in this type of gasoline tracking, voiced by refiners and downstream segments of the gasoline distribution system, that gave rise to the general reformulated gasoline averaging approach included in the final rule—of refinery-level averaging combined with covered area gasoline quality surveys. Having established mechanisms to accomplish averaging on a nationwide basis, EPA believes it should sanction separate, intra-covered area averaging only if there is complete certainty the intra-covered area approach can be carried out successfully and in a manner subject to full enforcement oversight. EPA further believes the petition-approach included for intra-covered area averaging is the best means of accomplishing this certainty, without promulgating an additional extensive regulatory scheme.

G. Conventional Gasoline Marker

EPA's proposed intent to designate the chemical phenolphthalein as the required marker for conventional gasoline has been subjected to reconsideration on the basis of phenolphthalein field tests conducted using the gasoline pipeline operated by the Amoco Oil Company in Mandan, North Dakota by the American Petroleum Institute and Amoco. The results of those field tests suggest that phenolphthalein may not perform to EPA's expectations for reliably distinguishing conventional gasoline from reformulated gasoline. Specifically, the field tests suggest that phenolphthalein does not adequately mix with conventional gasoline and may act to contaminate water, metal surfaces and/or other petroleum products.

Accordingly, EPA has elected not to issue a final rule governing conventional gasoline markers at this time. Instead, EPA has undertaken further investigation of alternative markers with interested petroleum and chemical companies. EPA intends to publish a new proposal for the conventional gasoline marker, and to promulgate a final conventional gasoline marker rule based on this proposal. Interested parties will have the opportunity to comment on this proposal.

H. Responsibilities of Refiners and Oxygenate Blenders

The introduction to this Preamble section describes the various responsibilities of refiners and oxygenate blenders under the reformulated gasoline program.

[59] Surveys for benzene and oxygen include both simple and complex model samples, because the measurements for these fuel parameters are not dependent on the simple or the complex models. As a result, failure of a benzene survey results in ratchets of the benzene standard under both the simple and the complex models; and the failure of an oxygen survey results in ratchets of the oxygen standard under both the simple and the complex models.

Comments were received requesting clarification of the requirements that would apply in a case where more than one party is involved in a refinery or oxygenate blending operation.

The final regulations define the terms "refiner," "refinery," "oxygenate blender," and "oxygenate blending facility."[60] The definition of "oxygenate blender" includes a party that owns or controls the blendstocks or gasoline used or the gasoline produced at an oxygenate blending facility. This definition is necessary in recognition of the practice of blendstock owners to specify the type and amount of oxygenates to be added by another party. Because the blendstock owner thus exercises control over the blending operation and affects the qualities of the finished gasoline, it is appropriate to include the product owner within the definition of oxygenate blenders and to impose responsibility for regulatory compliance on that party with substantial control over the quality of the final product.

As a result of these definitions, there may be situations where more than one person meets the definition of refiner or oxygenate blender for a single refinery or oxygenate blending facility. For example, at an oxygenate blending facility there may be one person who owns the RBOB and oxygenate and causes those products to be combined to produce reformulated gasoline (who also could be a distributor or reseller), another person who owns the gasoline storage tanks in which the RBOB and oxygenate are combined (who also could be a truck or terminal carrier), and still another person who operates and controls the blending equipment at the facility on a day-to-day basis. Each of the parties described in this example independently meets the definition of oxygenate blender for the oxygenate blending facility described. A similar scenario, with more than one person meeting the definition of refiner, is possible in the case of a refinery.

The final rule provides that each person meeting the definition of refiner or oxygenate blender is independently responsible that standards and other requirements that attach to a refining or oxygenate blending operation must be met. This is the same requirement that attaches in other motor vehicle fuel regulatory programs. For example, under the gasoline lead phasedown program, in cases where the lead phasedown standard is violated as a result of excess average lead content of gasoline produced, EPA holds each person meeting the refiner definition liable; and under the gasoline volatility program, in cases where the volatility standard is violated as a result of improper oxygenate blending, EPA holds each person meeting the definition of oxygenate blender liable.

However, as in other motor vehicle fuel regulatory programs, EPA intends to exercise its enforcement discretion and not seek to hold liable parties meeting a definition in relation to a batch of gasoline that chose to jointly meet the requirements of the final rule. In practice, therefore, each requirement pertaining to an individual batch of gasoline must be met only once. For example, the determination of properties, independent sampling and testing, compliance audits, testing of RBOB, record keeping and reporting requirements, and oxygenate blender quality assurance programs need not be met separately by each person who meets the refiner or oxygenate blender definition with respect to a specific batch of gasoline or blendstock. Rather, within the exercise of EPA's enforcement discretion, each party is individually responsible for ensuring that each requirement is met at least once for any specific batch.

For example, EPA would exercise its enforcement discretion and not seek to impose liability on a party that meets the definition of oxygenate blender that does not separately sample and test the gasoline produced or separately submit reports to EPA relating to a specific batch of gasoline, as long as some party with equivalent standing (an oxygenate blender) does conduct the required sampling and testing and does file a valid annual report. However, each person meeting the definition of oxygenate blender in this example is individually responsible that the required sampling and testing occurs and that the required reports to EPA are submitted.

EPA anticipates that the people involved in a refining or oxygenate blending operation will discuss among themselves who will be responsible for each of the regulatory requirements. In most cases, EPA anticipates that the product owner will take the lead in satisfying requirements, though the allocation of these responsibilities is strictly within the province of the regulated parties involved. If a refinery or oxygenate blending facility requirement is accomplished by one person, EPA will consider the requirement to have been accomplished by each person who meets the definition of refiner or oxygenate blender. If a refinery or oxygenate blending facility requirement is not properly accomplished, however, EPA will consider the lapse to be a violation by each person who meets the definition of refiner or oxygenate blender. Similarly, if a standard applicable to the refinery or oxygenate blending facility is not satisfied, EPA will consider each person who meets the definition of refiner or oxygenate blender to have failed to satisfy the relevant standard.

EPA anticipates that reformulated gasoline and RBOB will be produced exclusively, or almost exclusively, at the refinery at which the blendstocks are produced from crude oil, due to the complexities inherent in producing reformulated gasoline and RBOB. EPA believes it will be very difficult for a downstream party to obtain blendstocks with the specific mixtures of properties such that the blendstocks may be blended together to produce gasoline meeting the standards for reformulated gasoline or RBOB.

However, if such downstream blending-refining does occur, all requirements attaching to refiners apply to all parties meeting the definition of a "refiner". Note that, if blendstocks are combined with reformulated gasoline, the reformulated gasoline standards must be met on the basis of the volume and properties of the blendstocks only and compliance may not rely on the properties of the reformulated gasoline to which the blendstock is added. In addition the resulting reformulated gasoline/blendstock mixture must meet all reformulated gasoline standards. In the event any party attempts downstream blending-refining of reformulated gasoline or RBOB, EPA intends to scrutinize the operation closely.

Commenters expressed concern that, where the oxygen standard is being met on an average basis, all persons who satisfy the oxygenate blender definition may not have access to the information necessary to know that this standard is being met in fact. This issue was of particular concern for oxygenate blenders who are carriers, where the normal business practice is to blend oxygenate according to the instructions of the product owner-oxygenate blender.

[60] Section 80.2(h) defines refinery as "a plant at which gasoline is produced."

Section 80.2(i) defines refiner as "any person who owns, leases, operates, controls, or supervises a refinery."

Section 80.2(ll) defines oxygenate blending facility as "any facility (including a truck) at which oxygenate is added to gasoline or blendstock, and at which the quality or quantity of gasoline is not altered in any other manner except for the addition of deposit control additives."

Section 80.2(mm) defines oxygenate blender as "any person who owns, leases, operates, controls, or supervises an oxygenate blending facility, or who owns or controls the blendstocks or gasoline used or the gasoline produced at an oxygenate blending facility."

The final rule provides that oxygenate blenders will be held liable, *inter alia*, for reformulated gasoline produced for averaged compliance that is determined to exceed the minimum and/or maximum standards. The final rule also prohibits the sale, by any person, of gasoline that violates, *inter alia*, a refiners' averaged compliance with the standards.

Oxygenate blenders have direct control over whether a specific fuel meets the minimum and/or maximum requirements of the reformulated gasoline program. Blenders have no control over whether that fuel is being produced to comply with per-gallon or averaged standards. Where gasoline is designated for oxygen compliance on a per-gallon basis, the blender may take steps to ensure that 2.0 weight percent oxygen is added to each batch of gasoline produced. Where gasoline is produced to averaged compliance, the blender is precluded from independent knowledge of whether the average will be met.

EPA appreciates this dilemma faced by parties downstream of a refiner achieving compliance on average. However, EPA believes both that the requirements that blenders be held potentially liable for selling averaged gasoline that fails to meet the averaged standard is necessary and that adequate safeguards are available. Potential liability is necessary to effectively prevent the sale and distribution of non-complying product by downstream parties which possess any opportunity to prevent the product from being released into the environment.

For example, if a carrier-oxygenate blender receives instructions to add less than 2.00 weight percent oxygen to RBOB (the per-gallon oxygen standard), the carrier should obtain the assurance of the product owner, in writing if possible, that the reformulated gasoline being produced meets the oxygen standard on average. If a violation of the average oxygen standard occurs involving gasoline produced by the carrier-oxygenate blender, and the carrier-oxygenate blender can demonstrate that it made this inquiry in good faith and received an appropriate assurance, EPA will exercise its enforcement discretion and not hold the carrier-oxygen blender liable for the standard violation unless the carrier knew, or should have known, the oxygen standard would not be met on average. This type of inquiry and assurance would be no defense for oxygenate blended outside the per-gallon minimum/maximum standard, however.

I. Prohibitions, Liabilities and Defenses

1. Prohibitions

The final rule contains certain prohibitions that apply to all parties in the gasoline distribution network, that address the per-gallon minimum and maximum standards for reformulated gasoline and the restrictions related to the time and place of use for reformulated gasoline. Also prohibited for every party are, *inter alia*, the addition of oxygenate to reformulated gasoline (except reformulated gasoline that is designated for use in an oxygenated fuels program during the oxygenated fuels control period); the combining of reformulated gasoline produced using ethanol with reformulated gasoline produced using another oxygenate during the period May 1 through September 15; and (during 1995 through 1997) the combining of reformulated gasolines or RBOBs subject to complex model standards unless the constituent reformulated gasolines or RBOBs have identical baselines.

The final rule also prohibits all parties, other then retailers and wholesale purchaser-consumers, from combining reformulated gasoline or RBOB subject to simple model standards with reformulated gasoline or RBOB that is subject to complex model standards during 1995 through 1997.

The rational for these prohibitions are discussed separately in the preamble sections dealing with the specific topics which result in the prohibitions.

EPA received comments on its proposal to prohibit any party from transporting, storing, dispensing, selling, or supplying reformulated gasoline that does not meet a reformulated gasoline certification. The commenters were concerned that only gasoline that meets all reformulated gasoline standards would be "certified," and that, as a result of averaging, parties downstream of the refinery would have no way of knowing if a particular batch of gasoline was produced to meet standards.

EPA agrees with this comment, and has modified the final rule to limit the downstream prohibition involving reformulated gasoline properties to the per-gallon minimum and maximum standards that apply to all reformulated gasoline, regardless of whether the gasoline is produced to the per-gallon or average standards.[61] As a result, downstream parties may determine if any particular gasoline batch meets the per-gallon minimums and maximums through sampling and testing. Moreover, EPA inspections conducted downstream of the refinery/importer will monitor compliance with the per-gallon minimums and maximums, and not compliance with the standards that apply to refiners and importers.

EPA's proposal would also prohibit refiners and importers from producing or importing reformulated gasoline that does not meet reformulated gasoline standards. Several commenters observed that the production alone of reformulated gasoline or RBOB that fails to meet required standards does not cause environmental harm, because the product may be corrected before it leaves the refinery. EPA generally agrees with this comment, and has adjusted the regulatory language to clarify that the prohibition against the production of reformulated gasoline that fails to meet standards applies only to gasoline that is intended for sale or use. During the course of any inspection at a refinery or import facility, EPA will rely on the documentation used by a refiner or importer to determine if any particular gasoline is "finished" and therefore is intended for sale or use, or is an "unfinished" product for which the refiner or importer intends additional blending.

Accordingly, the final rule prohibits the manufacture, sale, offering for sale, distribution, dispensing, supplying offering for supply, transporting or causing the transportation by refiners and importers of finished gasoline "intended" for sale or use where such gasoline fails to meet reformulated gasoline standards. This approach is consistent with EPA's approach under the Lead Phasedown, Fuel Volatility and Diesel Desulfurization Programs.

2. Liabilities

a. *General.* The final rule provides that where the gasoline contained in a storage tank at any facility owned, leased, operated, controlled or supervised by any refiner, importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer is found in violation of the prohibitions, most parties involved in the chain of distribution upstream of the facility found in violation are presumed liable for the violation.

Carriers are presumed liable for violations arising from product under

[61] For example, the refiner/importer benzene standard is 1.00 volume percent if met on a per-gallon basis, or 0.95 volume percent if met on average with a 1.30 volume percent per-gallon maximum. As a result, no gallon of gasoline may have a benzene content greater than 1.30 volume percent, regardless of whether the gasoline is produced or imported to the per-gallon or average standard. This 1.30 benzene maximum thus may be enforced against downstream parties.

the control and/or custody of the carrier at the carrier's facility, and for violations at any facility where EPA demonstrates that the carrier caused the violation. Carriers who meet the definition of refiner or oxygenate blender have the same liabilities and defenses as any other refiner or oxygenate blender.

The final rule also provides defenses against liability for each person presumed liable. These defenses are discussed below. For a more detailed discussion of the rationale for the liabilities and defenses established by this rule, see EPA's proposal at 57 FR 13470–13473 (April 16, 1992).

One commenter stated that where gasoline in a storage tank is in violation of the regulations, EPA should either narrow the range of persons presumptively liable or expand the availability of affirmative defenses. The comment is based on the normal industry practice of commingling products in common storage tanks, the number of fuel manufacturers that would be involved, the likelihood of commingling, the absence of quantitative thresholds, and the absence of a requirement that individual parties exercise sufficient control over the contents of the tank. Another commenter queried what distinguishes this program from other fuels programs which did not impose such presumptive liability.

EPA has had extensive experience in enforcing other motor vehicle fuel programs under 40 CFR part 80, including the unleaded gasoline and gasoline volatility programs and the recent diesel sulfur program. Each of these other fuels programs include presumptive liability schemes that are very similar to the presumptive liability scheme proposed for reformulated gasoline.

The liability and defense provisions of this rule are structured similarly to those adopted by EPA in its prior motor vehicle fuel programs, including the controls on leaded and unleaded gasoline, gasoline volatility and diesel fuel desulfurization. For those programs, EPA's regulations identify various persons who are presumed liable when violations are detected at various points in the motor fuel distribution system. For example, 40 CFR 80.28 identifies those persons responsible for violations of the gasoline volatility regulations when a violation is detected at refiner or importer facilities (§ 80.28(a)), at carrier facilities (§ 80.28(b)), at branded distributor facilities, reseller facilities, or ethanol blending plants (§ 80.28(c)), at unbranded distributor facilities and ethanol blending plants (§ 80.28(d)), at branded retail outlets or wholesale purchaser-consumer facilities (§ 80.28(e)), and at unbranded retail outlets or wholesale purchaser-consumer facilities (§ 80.28(f)). In general, all persons who could have caused a violation at a facility are presumed to be liable for the violation detected at the facility. At branded facilities the refiner is also presumed liable based on their ability to exercise a degree of control at these facilities. Various affirmative defenses are afforded to persons presumed liable, and in all cases the presumptions of liability are rebuttable. 40 CFR 80.28(g). The affirmative defenses typically involve showing (1) that the person did not cause the violation, (2) that they either conducted tests showing the gasoline was in compliance when they transferred it to the next person in the distribution system, or that they received proper documentation when they received the gasoline and conducted a sufficient quality assurance sampling and testing program. Additional elements of an affirmative defense must be shown by refiners when a violation is detected at a branded outlet. A detailed discussion of the reasons for the gasoline volatility liability defense provisions can be found at 54 FR 11872 (March 22, 1989).

The regulations adopted for the reformulated gasoline program follow this same general structure. For example, if the gasoline in a storage tank, or at any other point in the distribution system, is found to be in violation of the requirements, then the following persons are presumed liable: All persons (including carriers) who own, lease, operate, supervise or control the facility; all persons other than carriers who manufactured, sold, transported, or dispensed the gasoline found at the facility; carriers who dispensed, transported, supplied or stored the gasoline where EPA can show they caused the violation; and the refiner or importer whose brand name is displayed at the facility, if any. They will not be deemed liable if they can show (1) they did not cause the violation, (2) that product transfer documents indicate the gasoline in question met all relevant requirements, and (3) they conducted a sufficient quality assurance program. Additional elements must be shown by refiners or importers for violations at branded facilities.

The rationale for assigning a presumption of liability to all contributors to a batch of noncomplying fuel is that, as with gasoline volatility and the other motor vehicle fuel programs, EPA is in a particularly poor position to know who caused a violation that is detected at a point in the distribution system. In the case of a violation found at a retail station, for example, the retailer often will say it has no control over the quality of the gasoline delivered by the distributor (or by more than one distributor) and did nothing to cause the violation; the distributor will say it has no control over the quality of the gasoline provided by the terminal and did nothing to cause the violation; the terminal will say it only supplies the gasoline received from the pipeline and did nothing to cause the violation, etc. EPA normally lacks the information necessary to establish the cause of the violation because its inspectors were not present when the gasoline in question moved through the distribution system; yet EPA has a sample that is, in fact, in violation.

In contrast to EPA, the parties responsible for the facility, or for supplying the gasoline contained at a facility found to be in violation are, collectively, in the best position to determine the cause of the violation. It is these parties who are presumed liable. The presumption of liability normally has the desired effect of forcing the presumptively liable parties to cooperate in identifying the violation's cause, which both resolves the issue of liability for the party or parties actually responsible for the violation and establishes defenses against liability for parties not responsible. In addition, branded refiners or importers are presumed liable based on the degree of control such refiners or importers have over gasoline that is sold under their brand name.

The likelihood of commingling, the absence of quantitative thresholds, the degree of control exercised by the branded parties presumed liable, and the reasonableness of a presumption of liability for parties involved with the production or distribution of the gasoline discovered in violation is the same for the reformulated gasoline program as it is for the gasoline volatility and other motor vehicle fuel programs. In both cases, EPA is confronted with a fungible gasoline distribution system, with various persons either involved with the production or distribution of the noncomplying gasoline, or exercising some degree of control over the downstream facility where the violation was detected. In both cases EPA is not reasonably able to locate the cause of the violation, and the regulations reasonably require the parties involved with the noncomplying gasoline and

facility to bear the burden of locating the cause of the violation.

EPA has included in the final rule liability for branded importers for violations found at facilities at which that importers' brand name is displayed. This liability is parallel with the liability presumption that attaches to branded refiners for violations found at branded facilities. This change from the proposed liability scheme is included because the absence of liability for branded importers created a potential gap in the regulatory scheme. If any party meets the definition of a branded importer, it is reasonable that they be treated equally with branded refiners.

Moreover, EPA does not believe the scope of the liability provisions should be narrowed. The scope of parties presumed liable is designed to ensure that each party in the reformulated gasoline production and distribution system with any opportunity to affect the quality of the fuel may be held accountable for noncomplying fuel. Otherwise, the substantial economic incentives associated with cheating under this program would result in the exploitation of gaps in the scope of coverage.

As a result, EPA declines to adjust the range of parties presumptively liable for commingled fuels violations or to adjust the affirmative defenses.

Certain commenters requested clarification of the volume of gasoline a party must contribute to a non-complying storage tank to create the presumption of liability. EPA's April 1992 proposal would hold each party responsible for a violation detected at a storage tank, or at any other point in the gasoline distribution system, if the party was involved with any of the noncomplying gasoline. This would include distributors for the most recent delivery, and in most cases would also include distributors for the several prior deliveries. See 57 FR 13471 (April 16, 1992). Commenters requested clarification from EPA as to what was meant by "several deliveries."

EPA has retained the proposed language that assigns presumptive liability to any party that contributes "any gasoline" to the noncomplying gasoline in the batch or storage tank. There is no single *de minimis* volume that would be appropriate in every situation. In addition, there is no single number of deliveries that would identify the source for all noncomplying gasoline present in the batch or storage tank yielding the noncomplying sample. EPA will evaluate the issue of non-causation as a result of a small volume contribution to a non-complying storage tank on a case-by-case basis.

One commenter observed that a downstream party receiving noncomplying product would be obliged to store the product until the owner of the product determines a solution. The commenter recommended that a party storing nonconforming product that has been properly re-documented stating its actual characteristics should not be penalized.

EPA generally agrees with this comment. The final rule prohibits, *inter alia*, the distribution, transportation, storage or sale (or offer to sell) of noncomplying product represented as reformulated gasoline and intended for sale or use in any covered area. EPA will assume, absent countervailing evidence, that all gasoline found in the United States is intended for domestic sale or use and thus subject to the reformulated gasoline or anti-dumping rules. Countervailing evidence to overcome this assumption with regard to a specific tank of gasoline would include a showing of the following: demonstrate that the gasoline is clearly identified as noncomplying product; that the noncomplying gasoline is segregated from other gasoline; that the storage tank containing the gasoline has been clearly designated as product unavailable for sale or distribution, that the noncomplying gasoline in fact has not re-entered the distribution system; and that the gasoline is redirected toward a process of bringing the gasoline into compliance. A party storing noncomplying gasoline meeting this burden would not be in violation of the prohibitions contained in today's rule.

b. *Carriers.* EPA received a variety of comments objecting to the imposition of presumptive liability on carriers.

Several commenters argued that the prohibitions contained in section 211(k)(5) of the Act identify refiners, blenders and marketers as the regulated parties under the reformulated gasoline and anti-dumping programs, but does not specifically name carriers.

Section 211(k)(1) authorizes EPA to "promulgate regulations * * * establishing requirements for reformulated gasoline * * *." This broad grant of authority is the principal source of authority for the regulatory structure adopted for the reformulated gasoline program, along with the various specific requirements and authorizations found in other paragraphs in section 211(k). EPA has determined, in exercising this authority, that the most appropriate structure for this program is one which provides for the regulation of reformulated gasoline from its point of production or importation to its eventual transfer to the ultimate consumer.

First, EPA's experience with various other motor vehicle fuel regulations, promulgated under section 211(c) of the Act, indicate that this is critical to the success of the program. This is based on the fungible nature of the gasoline distribution system, the complex interrelationships between the various parties involved in producing and marketing gasoline, and the large number of different parties that will be involved in bringing reformulated gasoline to the market. Second, the reformulated gasoline program includes a complex mixture of requirements, involving the regulation of several different gasoline components as well as the emissions performance of the gasoline. A cradle-to-grave approach is necessary to ensure that the air quality benefits from this program are actually achieved in use, given the large number of parties who will have custody or control of a batch of reformulated gasoline, and the potential that their actions could adversely affect the emissions reductions expected from the reformulated gasoline program. This could occur, for example, because the quality of gasoline has been changed, or because it has been dispensed or used at an improper time or place. For these reasons, EPA believes that it is proper to regulate all parties involved with the production, distribution and sale of reformulated gasoline.

At the same time, EPA has assigned different responsibilities to different parties in the production and distribution system. EPA proposed and has decided to adopt final rules including carriers as a regulated party, and assigning them responsibilities commensurate with their unique role in the gasoline distribution system. EPA believes this is a reasonable exercise of its broad grant of authority under section 211(k)(1).

EPA has determined that the regulation of carriers—pipelines, barge operators or truck carriers—is necessary to accomplish the goal of cradle-to-grave oversight monitoring and enforcement. This determination is based on the potential for carriers to cause violations of the reformulated gasoline regulation, the need to impose a duty on carriers to exercise care in transporting or storing reformulated gasoline, and the need for EPA to be able to determine the source of violations within the program. For example, carriers possess the potential to cause violations of this program by commingling inappropriate grades of gasoline, delivering conventional gasoline into a covered area, or by carrying non-VOC controlled gasoline in

a storage facility over from a non-VOC control period into a VOC control period and selling or distributing that product. In each of these examples, the carrier would be directly responsible for causing the violation. EPA believes that the presumption of liability proposed in the final rule effectively imposes a duty of care on carriers to avoid these violations. Further, as discussed in the economic analysis accompanying this final rule, the costs associated with carrier compliance are reasonable and have been designed to provide carriers with the minimum oversight costs necessary to accomplish the goals of this program.

Certain carriers argue that Congress did not authorize the regulation of carriers in this program as the prohibition found in section 211(k)(5) of the Act only applies to refiners, importers, distributors and marketers, but not carriers. Therefore, it is argued, EPA may not regulate carriers.

EPA disagrees with this argument. First, it misinterprets the prohibitions adopted by Congress in section 211(k)(5). The statutory prohibitions found in that paragraph are self-effectuating once EPA promulgates regulations establishing the requirements for certification of reformulated gasoline. Section 211(k)(5) does not limit EPA's authority to establish various additional regulatory prohibitions, as necessary, in the exercise of EPA's rulemaking discretion under section 211(k)(1). It also does not limit EPA's authority under section 211(k)(1) to regulate, as appropriate, the activities of various persons in the gasoline distribution system, including carriers.

In any case, EPA believes that carriers are reasonably included in the term "marketers" as used in section 211(k)(5). That term is vague and ambiguous, and EPA reasonably interprets it to include all persons regulated by EPA in the reformulated gasoline program including carriers.

The Act does not define the term marketer for purposes of section 211(k), and while that term is used in various other provisions of the Act, it is only defined for purposes of one unrelated provision, section 324 (involving responsibility for gasoline vapor recovery systems at small volume retail outlets). The term generally appears to indicate a broad category of persons involved in the gasoline distribution system, a generic phrase with a catch-all meaning. See sections 211(h)(4), 211(1) and 211(m)(2). As used in those provisions, the scope of the term may be broader or narrower, depending on how detailed Congress made the list of parties covered by each provision. For example, the long list of parties referenced in section 211(h)(4) makes it clear that "marketer" as used there means an undefined category of persons other than distributors, blenders, resellers, carriers, retailers, or wholesale purchaser-consumers, while in sections 211(1) and (m)(2) the term means an undefined category of persons other than refiners. The legislative history for section 211(k) fails to shed any light on Congress' intent.

The generally accepted meaning of the term "marketer" is "one that deals in a market." Webster's Ninth New Collegiate Dictionary (1990). A carrier would reasonably fall within this definition. Given the lack of a clear definition in the Act for this vague term, the indications that Congress intended it to have a somewhat broad, catch-all meaning, and the reasons provided above supporting EPA's inclusion of carrier's as regulated parties in the reformulated gasoline program, EPA has reasonably determined that carriers are included in the term "marketer" as it is used in section 211(k) of the Act.

Various commenters claimed that it was inappropriate to impose a presumption of liability on carriers, based on their unique circumstances. They noted that carriers do not take title to or own the gasoline, have contractual obligations to maintain the integrity of the shipment, only act in accordance with instructions from the product owner, and have incentives to not tamper with the product, as it would expose them to liability and would prejudice their relationships with both the shipper and purchaser. Commenters stated that carriers lack any economic incentive to violate the reformulated gasoline requirements, and any action that does not violate these requirements is only in response to the gasoline owner's instructions. Commenters also stated that carriers cannot refuse such instructions except for clear violations of the law.

Barge operator-carriers noted that the risk of accidental contamination for barge operator-carriers is virtually nonexistent due to contract obligations to maintain cargo integrity and the product testing that occurs before and after shipping. They also argued that the volume of product in a barge-tank would dilute any trace contaminants such that there was no practical risk of a violation of the reformulated gasoline requirements from contamination.

EPA recognizes that carriers occupy a role that is somewhat unique in the gasoline distribution system. In general, EPA agrees that there is limited economic incentive for carriers to tamper with the quality of gasoline, in that carriers do not own the gasoline they ship or store and would not profit by taking advantage of the price differential between complying and noncomplying gasoline. At the same time, there are still significant opportunities for carriers to directly cause violations of the reformulated gasoline program. For example, a carrier's delivery territory may span a boundary between an area requiring reformulated gasoline and an area that may receive conventional gasoline. Misdelivery of conventional fuel into the reformulated gasoline covered area would be a violation of the prohibitions of the reformulated gasoline program. Other situations where a carrier can cause a violation include a terminal-carrier or truck-carrier who mixes conventional gasoline and reformulated gasoline and transfers the resulting gasoline as reformulated; who mixes reformulated gasoline designated as VOC-controlled with non-VOC-controlled gasoline and transfers the resulting gasoline as VOC-controlled; who delivers gasoline designated for use in VOC-Control Region 1 to a retail outlet located in VOC-Control Region 2; who mixes oxygen program reformulated gasoline (OPRG) and non-OPRG reformulated gasoline and transfers the mixture as OPRG; or who mixes simple and complex model reformulated gasoline. In these examples, EPA would hold the carrier liable if the carrier improperly delivered the gasoline or mixed the gasolines that should have been segregated. Note that the gasoline owner in each of these examples also would be presumed liable for the violation.

Based on these circumstances, the presumption of liability assigned to carriers is much more limited than that assigned to any other regulated party. Like other parties, a carrier is liable for violations that occur at its own facility. However, unlike other regulated parties, carriers are not liable for violations detected at other facilities, unless EPA can show that the carrier caused the violation. This is a significant reduction in the scope of the presumption of liability as compared to the scope proposed for carriers, and reflects EPA's balancing of the unique characteristics noted by carriers and the need to prevent carriers from adversely affecting the characteristics of reformulated gasoline. This parallels the presumption of liability for carriers adopted by the Agency in the gasoline volatility regulations, and approved by the court in *National Tank Truck Carriers, Inc.* v. *U.S.E.P.A.*, 907 F.2d 177 (D.C. Cir. 1990).

EPA acknowledges that carriers may operate on the instructions of the product owner. In fact, several commenters suggested that carriers are obligated to not deviate from the owner's instructions regardless of whether those instructions are consistent with the reformulated gasoline rules.

However, the Interstate Commerce Commission [62] has advised EPA that carriers are not obligated to store or transport gasoline in a manner that violates applicable laws. The ICC view of carrier obligation allows carriers to self-determine which loads they will store or carry. The ICC also observed that a carrier's obligation to accept tenders is superseded by an obligation to comply with applicable law, including regulations that implement the Clean Air Act Amendments of 1990. Accordingly, carriers are not placed in an untenable position by refusing to store or transport gasoline that does not comply with the reformulated gasoline requirements.

c. *Carriers acting as refiners or oxygenate blenders.* The final rule provides for a presumption of liability for violations found downstream of a refinery or oxygenate blending facility for all persons who meet the definition of refiner or oxygenate blender, including carriers who meet this definition.[63]

A presumption of liability is necessary in the case of a carrier acting as a refiner or oxygenate blender because in both cases the carrier plays a significant role in the actions that establish or change the quality of reformulated gasoline. For example, the practice of splash-blending oxygenates and gasoline in gasoline delivery trucks is a common form of gasoline blending, and the trucks used for splash blending often are operated by truck carriers. Frequently, the carrier truck driver directly controls the volumes of gasoline blendstock and oxygenate that are combined in the truck. In consequence, the carrier is directly responsible for the quality of the finished gasoline in such a splash-blending operation.

Commenters observed that in other fuel regulatory programs, carriers acting as refiners or oxygenate blenders are specifically excepted from presumptive liability for violations determined at facilities downstream from the refinery or oxygenate blending facility. This is not accurate. Carriers who meet the refiner or oxygenate blender definition are treated the same under the reformulated gasoline regulations as under other motor vehicle fuel programs. The definition of a "refiner" is consistent throughout EPA's fuel regulatory programs, and in all these programs a carrier who meets the refiner definition is subject to the same liability as any other person who meets the refiner definition. Oxygenate blenders are simply a sub-category of refiners who produce gasoline only by oxygenate blending. As a result, carriers acting as oxygenate blenders are regulated consistently with any other oxygenate blender under the program.

Carrier-commenters argued that the owner of the gasoline and oxygenate used in an oxygenate blending operation should be responsible for meeting the requirements for sampling and testing, compliance record keeping, reporting and auditing, because only the owner can remedy violations. For the reasons discussed in the refiner and oxygenate blender section of this preamble, EPA has determined that each person who meets the oxygenate blender definition is individually responsible for ensuring that the requirements that attach to an oxygenate blending operation are met. However, as discussed above, carrier-oxygenate blenders and product owner-oxygenate blenders may reach agreements on the allocation of responsibilities for meeting the oxygenate blending requirements within the scope of EPA's enforcement discretion.

3. Defenses

The final rule specifies that a regulated party may rebut the presumption of liability by demonstrating (1) that it did not cause the violation, (2) that the product transfer documents account for all the gasoline in question and indicate that the product complied with all applicable standards, and (3) that the party conducted an acceptable quality assurance program of periodic sampling and testing.

When a non-complying product is found at a facility operating under a refiner's brand name, the refiner must also demonstrate additional elements for a valid defense. This includes a showing that the violation was caused by a party in violation of a contractual understanding imposed by the refiner to prevent such action.

The defenses available to regulated parties to rebut the presumption of liability are closely patterned after those adopted for other motor vehicle fuel regulatory programs under 40 CFR part 80, including the gasoline volatility program. The presumption of liability is rebuttable, including the imposition of vicarious refiner liability for violations detected at branded facilities. This regulatory structure is fully consistent with the relevant judicial decisions in this area. *See Amoco Oil Co.* v. *Environmental Protection Agency*, 501 F.2d 270 (D.C. Cir. 1976) ("Amoco II"), and *National Tank Truck Carriers, Inc.*, supra.

As discussed above, carriers not acting as refiners or oxygenate blenders will not be deemed presumptively liable for violations found downstream of the carrier facility, unless EPA shows that the carrier caused the violation. Accordingly, such carriers will not be required to present a defense to such downstream violations. However, where a violation is found at a carrier's facility, the carrier must meet the defense elements in order to avoid liability. Note that EPA intends to exercise its enforcement discretion to permit a carrier to rely on a properly conducted quality assurance program undertaken by the product owner to satisfy the quality assurance program defense element.

One commenter observed that the proposed regulations fail to account for carriers making consecutive deliveries to reformulated gasoline and conventional gasoline markets. Such carriers may appear to have complying and non-complying product on board, according to the commenter.

The issue raised by this commenter applies not only to carriers, but potentially to any party who transports gasoline (e.g., a distributor or reseller). EPA does not consider the transportation of both reformulated and conventional gasoline in the same vehicle to be a violation provided that the destinations of the different products are proper and documented, and the products are properly segregated. Obviously, any party in such a situation should use care that the gasolines are not mixed and are properly delivered.

Various commenters objected to the proposal that refiners would be presumptively liable for downstream violations, including those found at downstream facilities that display the refiner's brand name. One commenter stated that the proposed regulations would impose an irrebuttable presumption of liability in violation of the Due Process clause of the Constitution and *Amoco Oil Co.* v. *EPA*, 501 F.2d 722 (D.C. Cir. 1974) ("*Amoco*

[62] Per telephone conversation with Charles Wagner, Deputy Director, Operations and Enforcement Section, Office of Compliance and Consumer Assistance, Interstate Commerce Commission.

[63] Liabilities and defenses for refiners and oxygenate blenders are discussed generally in the section on refiners and oxygenate blenders above.

I") and Amoco II. The commenter claimed that the presumption was in practice irrebuttable due to product fungibility and the very high cost of testing required to avoid liability. The commenter also observed that refiners lack sufficient control over downstream parties to lawfully impose vicarious liability on the refiner, in part due to the Petroleum Marketing Practices Act. EPA disagrees.

The defense elements established in the final rule set forth reasonably attainable criteria to rebut a presumption of liability for violations detected downstream of a refinery. The final rule provides that refiners must demonstrate: (1) That the refiner did not cause the violation; (2) that product transfer documents account for all of the gasoline found in violation and indicate that the gasoline met relevant requirements; and (3) that the refinery has conducted a quality assurance sampling and testing program. Where the violation is found at a facility carrying the refiner's brand name, the refiner must show, in addition, that the violation was caused by: (1) An act in violation of law; (2) or an action in violation of a contractual obligation imposed by the refiner; or, (3) the action of a carrier or other distributor not subject to a contract with the refiner but engaged by the refiner for the transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner reasonably calculated to prevent such action.

Addressing the above defense elements seriatim, EPA believes the information necessary to demonstrate that the refiner did not cause a violation determined downstream is reasonably within the control of a refiner through review of its production testing and shipping records. Further, refineries may reasonably provide in contracts with downstream parties for the refiner to conduct quality assurance sampling and testing at the downstream facility. Such testing would be limited to determining that maximum/ minimum and other applicable standards are met.

Branded refiners, as discussed elsewhere in this preamble, are held to a more stringent standard for establishing a defense to downstream violations due to the enhanced control such refiners have over branded downstream parties. First, EPA anticipates that a brand refiner is able to exercise sufficient control over its downstream affiliates so as to prevent any violation other than one arising from a violation of law (other than a violation of this final rule). EPA also anticipates that a branded refiner will possess contractual leverage to be able to impose contractual obligations on downstream parties necessary to assure that violations will not occur under the terms of the contract. Finally, EPA anticipates that a brand refiner will possess contractual leverage to impose handling requirements on non-brand carriers or other distributors not subject to the refiner's brand but engaged by the refiner for the transportation of gasoline, and to allow specification or inspection of procedures and equipment by the refiner reasonably calculated to prevent such action. As with branded downstream parties, EPA believes that a conservative quality assurance program will deter violations downstream of the refiner by creating an atmosphere of oversight presence and quality assurance by the refiner. Further, EPA believes that quality assurance is in the refiner's self-interest in guaranteeing the quality of its product in the market.

One commenter suggested that downstream quality assurance requirements might adversely affect the positions of independent distributors by allowing branded refiners to tighten up on contracts with the independents and force them out of the market. However, EPA believes that most distributors will conduct quality assurance programs regardless of any involvement by branded refiners, because of the distributor's potential for liability for violations that exists independent of the refiner's liability, and because most distributors are concerned about product quality for reasons that are independent of the reformulated gasoline requirements. As a result, EPA does not believe that contractual provisions requiring quality assurance imposed by branded refiners constitute a significant additional burden on distributors. Moreover, the defense provisions related to branded refiners requires contracts only with branded resellers or retailers. As a result, refiners are not required to impose contractual quality assurance provisions on distributors who are not identified with the refiner's brand name.

EPA believes that the result of the final rule's liability and defense scheme is that refiners who maintain careful compliance with this rule and conduct an appropriate quality assurance program over their branded facilities, including periodic sampling and testing, will not be held inequitably liable for violations caused by downstream parties who display the refiner's brand name. Because many of these elements of defense call for the refiner to exercise precaution through normal contractual instruments, EPA anticipates that the cost of these measures will be minimal and consistent with the costs and expenses experienced in the gasoline volatility and lead phasedown programs.

The rebuttable presumption of liability in the reformulated gasoline program is consistent with the holdings in Amoco I and Amoco II. The liability provision of the unleaded gasoline regulations that was challenged in Amoco I and held by the Court to be improper imposed strict vicarious liability on parties upstream of a retail facility at which a violation had been determined. The Amoco I court held that any presumption of liability must be rebuttable. Amoco II held that a presumption of refiner liability must be rebuttable for violations resulting from the sale of leaded gasoline as unleaded by retail facilities owned and leased by the refiner. As a result of the Amoco I and Amoco II decisions, the unleaded gasoline regulations were revised to allow refiners to rebut a presumption of liability even where the refiner owned or leased a retail outlet found in violation.

All presumptions of liability contained in the reformulated gasoline regulations are rebuttable. As in other 40 CFR part 80 fuels programs (unleaded gasoline, volatility, and diesel sulfur), the final reformulated gasoline rule provides for more stringent refiner defense elements in the case of a violation at a facility displaying that refiner's brand name, as opposed to a case where the facility in violation does not display the refiner's brand name. Nevertheless, the final regulations provide that the refiner in such a brand-name-facility case may rebut a presumption of vicarious liability by showing that the violation was caused by a party other than the refiner. Accordingly, the final rule does not create strict vicarious liability by any party, and is consistent with the teachings of Amoco I and Amoco II.

One commenter stated that a retailer could prove the first retailer defense element (that the retailer did not cause the violation) only by proving the second retailer defense element (that product transfer documents that meet relevant requirements account for all gasoline purchased and sold by the retailer), and therefore the element should be deleted. EPA agrees that one of the most common ways retailers show non-causation is by identifying the source of all gasoline present at the retail outlet, and showing that this product was represented by the distributor(s) or reseller(s) to meet all relevant requirements. In enforcing other motor vehicle fuels programs where retailers have often used this type of evidence to proffer a defense, however, EPA's experience has been that retailers are rarely found to be ultimately liable unless the retailer made decisions to commingle gasolines in the retail tank that should have been segregated. It is possible that a retailer's proferring of product transfer documents may be inadequate to establish a complete defense to an allegation of a violation. For instance, the retailer may have knowledge, independent of the product transfer documents, that should lead the retailer to understand that the gasoline's qualities are not as represented on the documents. In such a circumstance, the retailer would be required to show by means other than the documents that it did not cause the violation. Accordingly, the elements of defense for a retailer may overlap, and as a result are not redundant. The adequacy of a defense will be determined on a case-by-case basis.

One commenter objected that a party would have to test gasoline received by the party following each receipt, and test the gasoline delivered to other parties following each delivery, in order to absolutely prove the party did not cause a violation for which the party could be presumptively liable. EPA agrees that the most conclusive proof for non-causation for any possible allegation of liability would be test results of the type described by the commenter. In fact, this is the type of testing that commonly is carried out by the parties where large volumes of gasoline are involved. Refiners and importers conduct such testing of the gasoline they produce or import, as do other parties such as pipelines and terminals when receiving or shipping large-sized batches of gasoline. In situations where the volume of gasoline received or shipped/delivered is small, EPA does not anticipate that every-batch testing is needed to show non-causation. EPA believes that parties who deal in small-sized gasoline batches are able to effectively monitor the quality of gasoline received and shipped/delivered and establish the cause of violations that occur through careful attention to program requirements, discretion in the selection of business partners, and good quality control practices including a program of periodic sampling and testing. This belief by EPA is based on its experience in enforcing other motor vehicle fuels programs.

One commenter stated that the requirement of a quality assurance program in addition to all other testing and audit requirements, is redundant.

EPA believes that quality assurance sampling and testing is essential so that there is an incentive for parties to adequately monitor the quality of gasoline received and shipped/ delivered. The principal purpose of quality assurance sampling and testing, in EPA's view, is to alert a party to gasoline quality problems so that the party may correct the problem and the conditions that caused the problem before EPA documents any violations. Other enforcement mechanisms that are included in the reformulated gasoline program are important for their own reasons, but EPA does not believe they eliminate the need for sampling and testing.

In addition, the existence of an adequate quality assurance program is a separate element of the defense to a presumption of liability because EPA does not feel confident that a party did not cause a violation absent such evidence. For example, even if one party can show that another party was the apparent or primary cause of a downstream violation, that does not on its own show that the first party did not also cause the violation. The fungible nature of the gasoline distribution system could well lead to situations where more than one and perhaps several parties contributed to a violation detected downstream. Absent a sufficient quality assurance program, production of proper transfer records, and any other evidence needed to show that the first party did not cause the violation, EPA does not believe that the first party has properly rebutted the presumption of liability. A quality assurance program, which involves sampling and testing the gasoline while it is in the hands of a party, is reasonably considered a necessary, minimum element of properly showing that a party did not cause a violation and thereby rebutting a presumption of liability.

Refiners, importers and oxygenate blenders are required to conduct sampling and testing under the regulations, as well as have independent audits performed. For those parties, the required sampling and testing may well satisfy the quality assurance element of a defense to presumptive liability and is therefore not redundant. For those parties it only calls for additional sampling and testing where the required sampling and testing would not be adequate to satisfy that element of the defense. For all other parties, the quality assurance element of a defense is not redundant as there is no required sampling and testing for other parties.

Nevertheless, sampling and testing by parties other than refiners, importers, and oxygenate blenders is not required by the final rule, but rather is a voluntary defense element only. If a party believes that no violations will occur as a result of other program requirements, the party could choose to avoid a quality assurance sampling and testing program. Such a decision would, however, increase the risk of violation attributable to the party. Without a quality assurance sampling and testing program a party would have scant basis for knowing if the gasoline it receives and ships or delivers meets standards. In addition, in the event the party's confidence is misplaced and EPA documents a violation for which the party is presumed liable, the party would be unable to establish a defense against that liability.

A commenter requested that EPA define the frequency of sampling and testing that EPA would consider sufficient to satisfy the quality assurance defense element. Another commenter recommended that EPA should base enforcement actions exclusively on EPA testing using regulatory test methods and not on oversight sampling and testing by regulated parties.

EPA is reluctant to specify the details of a "sufficient" quality assurance sampling and testing program, because the type of program that is sufficient in any situation depends on the particular facts of that situation. In addition, EPA believes regulated parties are closest to their own operations and are therefore in the best position to judge the program that is adequate. Typically, such a program should include sampling and testing of a representative sampling of the gasoline the party receives and ships or delivers; identification of any sample that is in violation of relevant standards, and for such a sample, correction of the violation and the conditions that caused the violation; and an increased rate of sampling and testing when conditions indicate an increased likelihood of violations (e.g., violating samples found).

In the case where a violation is detected through a party's quality assurance program, and the party corrects both the violation and the conditions that caused the violation without any involvement by EPA, EPA generally forgoes any enforcement on the basis of the party's test results. If the party does not follow-up on violations in this manner, however, EPA may initiate an enforcement action on the basis of the party's test results.

Carrier-commenters objected to the quality assurance sampling and testing defense element as applied to carriers. Commenters stated that a carrier is in a uniquely weak position in the gasoline distribution system to verify the

characteristics of product received in order to rebut an assertion that the carrier caused a violation.

EPA recognizes that the term "carrier" covers an array of carriage and distribution operations. Pipelines, barge operations, ship operations, tank trucks, and storage facilities may all meet the definition of a carrier. Each type of carrier has unique capacities for conducting quality assurance sampling and testing programs. For instance, pipelines, barge and ship carriers, and storage facilities typically deal with large volumes of gasoline. EPA believes that these high volume operations already conduct sampling and testing programs during the normal course of business that normally will satisfy the quality assurance defense element. In fact, commenters observed that barge carriers typically sample and test loads both before and after shipment to ensure the integrity of their product.

The unique circumstances of tank truck carriers have been considered in the final rule. Truck carriers, like other carriers, will be asked to present evidence of a quality assurance program only where EPA documents a violation at the carrier's facility.[64] In addition, truck carriers may rely on a properly conducted quality assurance program carried out by another party over the carrier's operation (most likely the product owner). Moreover, quality assurance sampling involving gasoline delivery trucks may be accomplished using samples collected at retail stations following truck deliveries (discussed more fully above), providing carriers with additional flexibility in meeting this defense element. It is also relevant that under the existing gasoline volatility and diesel sulfur programs carriers, including truck carriers, are required to conduct quality assurance sampling and testing in order to establish a defense for violations. As a result, the carrier quality assurance defense element in the reformulated gasoline program is merely an extension of the carriers' current quality assurance responsibilities.

EPA intends to exercise its enforcement discretion to provide carriers with flexibility to satisfy the quality assurance sampling and testing defense element if another party, most likely the product owner, carries out an adequate sampling and testing program over the gasoline stored or transported by the carrier. The product owner is required to conduct a quality assurance program in order to establish a defense against its own liability, so that an arrangement between the carrier and the product owner in this regard would be little additional burden for the product owner.

Carriers also may seek contractual indemnification from the product owner against liability for violations detected at the carrier's facility. EPA believes that the traditional allocation of risk through contract is an appropriate method for carriers to safeguard their interests within the fuel distribution system. Contractual indemnification combined with a contractual commitment by the product owner to carry out an effective quality assurance sampling and testing program would provide a carrier with reasonable protection against financial exposure for liability for violations for which the carrier is not responsible.

EPA has analyzed the costs associated with voluntary carrier sampling and testing. First year per-party costs[65] are calculated to be approximately $2,672 for pipelines, $1,042 for truckers acting as oxygenate blenders, and $517 for other truckers. Costs during 1996 and 1997 are estimated at $2,437, $673 and $480, respectively. Moreover, EPA assumes that many of these costs will be shared among carriers and the owners of the product. EPA has concluded that these costs are reasonable given the importance of the quality assurance program to the success of the reformulated gasoline program.

4. Alternative Enforcement Options

Several commenters offered alternatives to EPA's proposed enforcement scheme. The alternatives proposed include: EPA should rely on cease and desist orders; EPA should only presume liability where a violation is found and allow private contract law to insure the violator against upstream causation; EPA should require willful and knowing negligence for vicarious refiner liability; and EPA should impose sampling and testing requirements on all tank truck carriers, even if sampling and testing is already performed by an upstream party for the carrier, to avoid economic advantage over for-hire carriers.

EPA has considered these alternative enforcement schemes and has determined to implement the scheme as proposed or modified and discussed above. This enforcement scheme is unified, consistent with EPA's enforcement in the gasoline volatility, diesel sulfur and lead phasedown programs, and focusses enforcement attention at the points in the distribution system where the pollution forming potential of gasolines may be affected by parties in the manufacturing and/or distribution process. A stringent compliance oversight and enforcement program, as described in detail in the final rule and this preamble, is necessitated by the significant financial incentives that exist for parties to not comply. EPA's experience in the lead phasedown and gasoline volatility programs has been that financial incentives will result in cheating and that a vigorous enforcement presence will result in diminished incidence of non-compliance. Accordingly, EPA believes that an enforcement program relying on cease and desist orders alone for encouraging compliance by parties would not be effective in deterring violations and would fail to remove economic incentives for non-compliance. Further, EPA believes that reliance on private contract law to insure the violator against upstream causation would be ineffective in providing for maximum compliance due to the uncertainty of the resolution of contract disputes and the amenability of such disputes to resolution for reasons other than the interests of compliance with the Clean Air Act. Also, EPA has determined not to require willful and knowing negligence for vicarious refiner liability due to the difficulty of establishing knowledge and due to EPA's belief that such a requirement would ease the obligation of refiners to strictly monitor the quality of their product as it is distributed. Finally, EPA has created a system of sampling and testing that creates the most thorough oversight scheme necessary while avoiding unnecessary redundancies. The regulations require each party to conduct sampling and testing at appropriate points in the distribution system. However, as discussed above, EPA will exercise its enforcement discretion so as to allow parties the flexibility to jointly assume responsibility for the accomplishment of required testing. This exercise of enforcement discretion is intended to avoid redundancies. EPA cannot justify the imposition of unnecessary sampling and testing on the regulated community

[64] Carriers are liable under two circumstances: when a violation is found at the carrier's facility, and where EPA shows the carrier caused a violation found elsewhere. The quality assurance defense element would have application only in the first circumstance, however, because in a case where EPA establishes the carrier caused a violation the carrier would not be able to establish a defense even if the carrier conduced a quality assurance program.

[65] First year costs include: analyzing RFG regulatory provisions; planning activities; training; field testing for conventional gasoline marker; sampling and testing for reform properties (though this is partially a customary and usual business practice by virtue of required testing for RVP and oxygenates for federal and state programs). Pipelines already routinely test for other properties as well.

to alter economic advantages associated with this program.

J. Baselines for Imported Gasoline

EPA received comments on the appropriate baseline to apply for gasolines produced at foreign refineries and imported into the United States.

1. Introduction

EPA's regulations prescribe the procedures for establishing 1990 baselines for refiners and importers. Compliance with the anti-dumping standards is measured by comparison to these baselines. In addition, during the period 1995 through 1997, the reformulated gasoline emissions standards are based in part on maximum parameter levels measured against these baselines. Section 211(k)(8) provides for refiners, blenders or importers to determine individual 1990 baselines predicated on adequate and reliable data. In the absence of such adequate and reliable data, Congress prescribed a summertime baseline and mandated that the Administrator would establish a wintertime baseline."[66]

The final rule provides mechanisms for establishing accurate and verifiable refinery baselines, while avoiding options that might provide incentives for the regulated community to "game" the baseline-setting process. These two principles that underlie the baseline-setting mechanisms (accurate, verifiable, and no opportunity for "gaming") serve the environmental purpose of ensuring that the quality of gasoline used in the United States beginning in 1995 is properly compared with the quality of the gasoline used in the United States in 1990.

Subsequent to January 1, 1995, all conventional gasoline marketed in the U.S. will be subject to emission standards established with reference to an individual baseline. Between January 1, 1995 and January 1, 1998, all reformulated gasoline marketed in the U.S. also will be subject to standards established with reference to an individual baseline. The consequence of a baseline-setting mechanism that would result in baselines that, overall, are less stringent than 1990 average gasoline quality, would be that the environmental benefits intended for reformulated and conventional gasoline beginning in 1995 would not be achieved.

If refiners had the option of presenting the data necessary to establish an individual refinery baseline, or being assigned the anti-dumping statutory baseline, each refiner's choice would be clear. Each refiner would calculate whether the individual baseline or the statutory baseline is more stringent for that refiner, and would simply select the least stringent option. In consequence, if parties were given more than one regulatory option to establish a baseline, the cumulative effect of each individual refiner's exercise of the baseline-setting option would be that the environmental benefits intended for reformulated and conventional gasoline would not be achieved. Accordingly, EPA has avoided providing options within the baseline-setting scheme.

2. Required Individual Baselines—Domestic Refiners

EPA's final rule provides for a scheme to establish refinery baselines for domestic refiners that avoids giving parties options, and within this no-option constraint, that uses the best available data in setting baselines. As a general approach, parties are required to establish individual baselines using actual 1990 data (Method 1). However, EPA does not anticipate that many domestic refiners will have all the data necessary to establish an individual baseline based entirely on actual 1990 data. Therefore, where the actual 1990 data is not available, the baseline provisions provide for the modelling of 1990 parameters (Methods 2 and 3). These models are based on the absence of "first choice" 1990 data, and require that the affected party provide the "next best" data available from production subsequent to 1990 to establish a modelled accurate baseline.

Domestic refiners are not permitted an option to revert to the use of Methods 2 and 3. Rather, refiners are required to use Method 1 if actual 1990 data is available. If the Method 1 data are not available, refiners are required to use Method 2, and if Method 2 data are not available, refiners are required to use Method 3. Domestic refiners are not permitted an option to use the statutory baseline. Domestic refiners are required to use independent commercial auditors to certify the accuracy and the availability (or non-availability) of data for any of the baseline setting methods, and to assure the proper application of those methods. This scheme does not give domestic refiners any choice in the manner in which baselines are set, thus avoiding the potential for "gaming" by individual refiners. Moreover, EPA is easily able to conduct enforcement audits of the baseline submissions of domestic refiners. In consequence, EPA believes that this scheme will result in the establishment of an accurate representation of the actual U.S. 1990 baseline gasoline fuel properties from domestic refiners. This baseline setting scheme is discussed in detail in Section VIII of this preamble.

3. Baselines—Importers of Foreign Gasoline

The final rule provides that importers of gasoline must establish an individual baseline using actual 1990 gasoline characteristics (Method 1). Where actual 1990 data are not available, however, an approach that is different than the approach used for domestic refiners is necessary. In the absence of actual 1990 data, an importer is required to use the anti-dumping statutory baseline.

Importers are not permitted to use Methods 2 or 3 because often it is simply not technically feasible to model an importer's 1990 baseline from gasoline imported during the years subsequent to 1990, for the following reasons. The foreign sources and production processes underlying an importer's post-1990 gasoline will have changed for most importers from those sources and processes underlying the importer's 1990 product. The model Methods are not designed to factor in such changes. In addition, it is exceedingly difficult to establish the refinery-of-origin of discrete products, due in part to the fact that foreign gasoline from different foreign refineries often is subject to fungible mixing prior to arrival at the U.S.[67] Accordingly, both the importers and EPA would be unable to verify the accuracy or reliability of an importer's modelled baseline.

As a result of the technical infeasibility of the application of Methods 2 and 3 to importers (change of gasoline source-refiners between 1990 and later years, and inability to track refinery-of-origin generally), and lack of adequate enforcement, all importers that are unable to produce actual 1990 production values are required to revert to the anti-dumping statutory baseline. In addition, EPA anticipates that most importers lack the actual 1990 testing data necessary for establishing a baseline using Method 1. As a result, EPA expects most importers will be

[66] The statutory baseline is intended to approximate the national average gasoline parameter values for gasoline used in the United States in 1990.

[67] In discussions with representatives of the U.S. Customs Service, EPA has been informed that the Customs Service has found it is virtually impossible to trace a batch of gasoline from point of entry in the U.S. back to the country of origin. Country of origin for gasoline is relevant for Customs purposes because import tariffs on gasoline differ depending on whether the country of origin has most-favored-nation trade status. To the extent the Customs Service is unable to verify even the country of origin of gasoline, the refinery of origin would be even more difficult to verify.

assigned the anti-dumping statutory baseline.

EPA considered giving foreign refiners, as opposed to importers, the option of either setting individual baselines using Methods 1, 2, and 3, or of being assigned the anti-dumping statutory baseline. This approach is flawed, however, because of the gaming opportunity it would give foreign refiners. As discussed above, such a gaming opportunity would result in an overall quality of gasoline in 1995 and thereafter that would fail to achieve the environmental goals intended for reformulated and conventional gasoline.

A foreign refiner with an actual baseline dirtier than the statutory baseline would prefer to continue to produce to that baseline. However, a foreign refiner with an actual baseline cleaner than the statutory baseline would prefer to produce to the less stringent statutory baseline. Accordingly, the incentives to game the program would result in the average quality of gasoline imported to the U.S. being skewed to produce dirtier gasoline than the statutory baseline. Foreign refiners would collectively exceed the U.S. average gasoline parameters, resulting in dirtier U.S. air.

EPA also considered whether it would be feasible to apply the same baseline-setting approach used for domestic refiners to foreign refiners directly, i.e., that any foreign refiner would be required to establish an individual baseline using Methods 1, 2, or 3. Under this approach, any foreign refiner, like any domestic refiner, who is unable to establish the quality of its 1990 US-market gasoline would be barred from supplying gasoline for use within the United States beginning in 1995. This approach would be consistent with the guiding themes for baseline-setting: That parties not have options in setting baseline levels, and that within this constraint that the baselines are set using the best available data. Application of this baseline-setting approach to foreign refiners is problematic, however.

Foreign refiner use of the general scheme using Methods 1, 2 and 3 would require that the foreign refiner must have actual test data for the portion of its production destined for U.S. markets, or in the alternative, foreign refiners would have to model the 1990 quality of their U.S. product based on post-1990 gasoline quality data and refinery configuration information. EPA believes that most foreign refiners lack the information necessary to establish their 1990 U.S. market gasoline under either Method 1, 2 or 3. Most (if not all) foreign refiners, like domestic refiners, did not collect adequate data in 1990 to use Method 1. In addition, Methods 2 and 3 generally are inappropriate for use by foreign refiners for technical reasons, in that Methods 2 and 3 model the quality of overall refinery gasoline production, not the quality of a portion of refinery production. The overall quality of gasoline from a refinery may bear scant resemblance to the quality of the portion going to the U.S. market. Accordingly, Methods 2 and 3 normally will not work for refineries that ship only a portion of their production to the U.S. market.

EPA believes that it is inappropriate to require the use of Methods 2 and 3 baselines when these Methods will not work properly for some or most foreign refiners, and when the consequence of such a failure would be to bar the foreign refiner from importing gasoline into the U.S. Therefore, in order to create a non-optional baseline setting approach for foreign refiners, EPA determined to regulate their gasolines through domestic importers as described above.

In addition to the technical difficulties inherent in applying baseline-setting Methods 2 and 3 to importers and foreign refiners, and the potential for gaming that would result from optional use of these Methods, EPA is concerned that it would be unable to carry out a consistently effective compliance monitoring and enforcement program of foreign refinery baselines set using these Methods, with the result that the accuracy of foreign refinery baselines would not be ensured.

There is a fundamental distinction between EPA's ability to monitor and enforce regulatory requirements that would apply against domestic as opposed to foreign refiners. Simply put, domestic refiners are subject to the full panoply of EPA's regulatory jurisdiction and compliance monitoring, while not all foreign refiners desiring to produce reformulated and/or conventional gasoline may be subject to EPA's regulatory jurisdiction with equivalent certainty. Compliance monitoring and enforcement are integral to the establishment of accurate and verifiable baselines, as well as subsequent compliance with standards based on these baselines.

The reformulated gasoline program compliance monitoring and enforcement scheme consists of several elements designed in the aggregate to ensure that the environmental goals of the Clean Air Act are met, including, *inter alia*: baseline-setting audits; mandatory reporting and record keeping; independent laboratory sampling and testing; tracking of product from point of production to point of distribution; unannounced EPA compliance inspections; annual attest engagements by certified professionals; and an enforcement scheme comprised of civil penalties, injunctive relief, and criminal sanctions. Domestic refiners and importers are subject to EPA jurisdiction in each of these activities; all foreign refiners may not be equally amenable to EPA jurisdiction.

Domestic refiners, required to establish individual baselines using actual or inferred 1990 production values (Methods 1, 2 and/or 3), are required to have baseline parameter determination methodology and resulting values verified by an EPA-certified auditor. However, foreign refiners, like all foreign corporations and citizens, enjoy protected status under the laws of their national jurisdiction and are not equally amenable to EPA audits of refiner baselines.[68] EPA has experienced difficulty in other mobile source regulatory programs, including the foreign automotive certificate of conformity program, in gaining entry to foreign countries to conduct compliance inspections and therefore believes similar problems could arise under the reformulated gasoline program.

EPA has considered whether one or more foreign refiners may be able to devise a diplomatic instrument sufficient to guarantee EPA's certified auditors and inspectors access to conduct baseline verification audits and compliance oversight and enforcement inspections. However, the foreign supply of gasoline (conventional and ultimately reformulated gasolines) to the U.S. currently depends on imports from numerous foreign sources. EPA believes it unlikely that all current (or foreseeable future) foreign suppliers of gasoline will be able to provide adequate diplomatic guarantees for EPA access.

The environmental benefits of the reformulated gasoline program depend on EPA's receipt of accurate and verifiable reports from regulated parties, and EPA's ability to review the data possessed by the regulated community

[68] A commenter suggested that diplomatic instruments may be available to mitigate EPA's concerns with access to foreign refineries for baseline certification and compliance monitoring and oversight. However, EPA has not been presented with a model instrument that guarantees such access over time. In contrast, EPA does have guaranteed access to domestic refineries and importers through authority provided in the Act and its implementing regulations.

Further, EPA is unaware of any current diplomatic instruments which would provide EPA with assurances of oversight of the integrity of compliance audits conducted by non-U.S. auditors.

that underlies the reports, or in the alternative, EPA's ability to seek civil, criminal and professional sanctions against domestic corporate officers and professionals engaged in maintaining records or submitting reports and audits to the U.S. government. However, in the case of foreign refineries, EPA does not have the authority for oversight of the record keeping and reporting process that is equivalent to EPA's authority over domestic refiners and possible sanctions are not equally available to ensure accurate reports by foreign parties. Again, EPA believes it unlikely that all foreign governments desiring to import reformulated or conventional gasoline to the U.S. would either consent or be able to provide adequate assurance of foreign reporters' amenability to EPA legal process.

The integrity of the reformulated gasoline program is also affected by EPA's ability to verify the baseline that applies to each batch of gasoline produced domestically or imported. The baseline of a gasoline batch establishes the standard against which compliance for that batch will be measured.

In the case of gasoline produced domestically, baselines are set at the refinery; any gasoline produced at a refinery and intended for the domestic market is subject to that refinery's baseline. As a result, tracking of gasoline to its refinery-of-origin is not necessary in the case of domestically-produced gasoline.

If foreign refinery-specific baselines were applied to imported gasolines, however, it would be necessary to identify the refinery-of-origin for all imported gasoline. This type of identification often would be very difficult or impossible. At the time gasoline arrives by ship at a U.S. port of entry, the gasoline has no inherent quality that would identify either the refinery at which the gasoline was produced or the baseline that properly applies to the gasoline. The only mechanism available for correlating any imported gasoline with the refinery-of-origin is the paperwork that accompanies the gasoline. EPA's ability to verify the accuracy of such paperwork is extremely limited. Gasoline produced by a foreign refinery may trade hands or be intermixed with other product several times before entering the United States. EPA lacks the ability to accurately and readily determine the refinery-of-origin based solely on the documentation of fuel transactions and shipments through myriad distribution parties and routes outside the United States.

If foreign refinery baselines were allowed, EPA would have no recourse other than to rely on the import paperwork that is supplied by the importer for purposes of identifying the baseline applicable for imported gasoline. EPA would have little or no means of detecting, documenting, or proving any cheating in the form of misstating the refinery-of-origin and thereby the applicable baseline for imported gasoline. EPA would therefore lack the ability to monitor the compliance of foreign refineries with individual baselines. Accordingly, EPA has determined to abide by its proposal to focus regulation of foreign gasoline on domestic importers of product over which EPA does enjoy enforcement jurisdiction.

Domestic refiners and importers are subject to unannounced compliance inspections by EPA. Foreign refiners, by virtue of their sovereign protected status, are not equally subject to unannounced inspections. Again, the environmental and public health benefits arising from an austere compliance monitoring program are not as readily available with respect to foreign refiners.

Domestic refiners and importers are subject to a panoply of enforcement mechanisms to ensure compliance with the Clean Air Act. EPA may seek civil or criminal penalties or injunctive relief within the U.S. judicial system and be assured that judgments will be enforced. Judicial remedies are essential to EPA's enforcement of a regulatory program in which significant economic incentives exist to produce non-complying product.

However, U.S. judicial jurisdiction may not fully and easily extend to foreign refiners. EPA's ability to exercise enforcement measures against foreign refiners is uncertain, at best. For example, in an EPA motor vehicle recall administrative action against a foreign automobile manufacturer, the manufacturer argued EPA lacked jurisdiction and refused to accept service or comply with administrative discovery requirements in a manner that would not be possible by a domestic automobile manufacturer. Accordingly, EPA has determined to focus its regulatory authority on domestic importers of foreign gasoline which are amenable to U.S. legal process.

In summary, EPA has considered all proposed baseline-setting alternatives for foreign gasolines to the final rule and has determined that the rule issued today is necessary to protect the quality of U.S. air and public health. Further, the baseline setting scheme promulgated today is the least restrictive scheme available to ensure that the goals of the Clean Air Act are achieved.

EPA is aware that the baseline approach adopted today for foreign refiners is the result of EPA's concerns over a variety of technical and enforcement issues related to the importation of gasoline.

4. Comments

One foreign refiner commenter to the 1992 SNPRM objected to this baseline-setting scheme on the grounds that some domestic refiners may receive baselines dirtier than the statutory baseline due to their ability to use actual or inferred 1990 production values, while most importers, and therefore foreign refiners, would be subject to the statutory baseline and would not enjoy an opportunity to use an individual baseline dirtier than the statutory baseline.[69] This would occur because it is unlikely that domestic importers that do not own foreign refineries maintained records of 1990 imported gasoline characteristics adequate to establish an individual baseline. The commenter recommended that foreign refiners be permitted to establish individual baselines using Methods 1, 2 and/or 3 to establish their baselines.

EPA gave serious consideration to this comment, and in the 1993 SNPRM described the concerns raised by the comment and the alternatives suggested by the commenter, and invited comment on the issue.

In response to the 1993 SNPRM several commenters objected to providing foreign refineries with individual baselines on the grounds that such baselines would promote gaming of the system, thereby reducing the air quality benefits sought under the Act, and would provide foreign refiners with a competitive advantage. Because foreign refiners do not have to comply with the reformulated gasoline program's anti-dumping provisions for conventional gasoline sold outside of the U.S., the commenters alleged that foreign refiners can produce reformulated gasoline at lower overall cost.

Other comments were received that supported the granting of foreign refinery baselines, on the grounds that such baselines would enhance competition among gasoline suppliers within domestic US markets, to the advantage of the public generally.

EPA believes the comments related to any competitive consequences of baselines are irrelevant. As a result, EPA has rejected all comments relating to competitive concerns, and EPA's

[69] This issue is primarily of concern to foreign refiners whose actual 1990 production characteristics exceed the statutory baseline.

decisions regarding the manner in which baselines are set are not influenced by such considerations.

After consideration of all relevant comments on this issue, EPA has determined to implement the baseline provisions described above. The detriment to the U.S. environment associated with the potential establishment of inaccurate refinery baselines by current and possibly future foreign sources of imported gasoline, along with the difficulties associated with monitoring compliance with the anti-dumping and reformulated gasoline programs, compel the Agency to require that domestic importers establish individual baselines using Method 1 or that they comply with the anti-dumping statutory baseline, and to not establish individual baselines for foreign refiners. This scheme is consistent with the scheme of requiring refiners, domestic or foreign, to measure compliance against an accurate and verifiable baseline that is based on adequate and reliable data. The approach is also consistent with EPA's intent to avoid the creation of options within the baseline setting scheme that would allow gaming by the regulated community. Further, the scheme is consistent with EPA's compliance monitoring and enforcement capacity.

5. U.S. Energy Security

One commenter suggested that requiring foreign refiners to produce to the statutory baseline would result in a shortfall of imported gasolines to the U.S. EPA's analysis indicates that gasoline supplies will be unaffected by implementation of the proposed baseline requirements. This conclusion is based on the likelihood that the baseline proposal would at most result in a small change in gasoline imports in limited markets, combined with the excess domestic refining capacity, and the expansion of gasoline volume that will result from the oxygenate use mandated for domestic gasoline.

EPA concludes that the baseline provisions adopted today pose no significant problem for U.S. energy security.

6. Date the Complex Model Becomes Mandatory

One commenter notes that the individual baseline issue is only pertinent to the years during which gasoline may be produced under the simple model for determining gasoline characteristics. Beginning in 1998, when the complex model becomes mandatory, the commenter correctly points out, all reformulated gasoline will be required to achieve specified reductions from the statutory baseline. Accordingly, the commenter observes, individual baselines for foreign refineries are only critical during the years the simple model is relevant.

However, the refinery/importer individual baseline will continue to be relevant beyond application of the simple model due to its application to conventional gasoline through the anti-dumping requirements. As a result, if individual foreign refinery baselines were allowed, the difficulties described above would persist in perpetuity. Accordingly, the feasibility of the baseline setting scheme established today will have longstanding effect on the viability of the reformulated gasoline and anti-dumping program.

K. Date Reformulated Gasoline Requirements Begin

Section 211(k)(5) prohibits the sale or dispensing of conventional gasoline in any covered area beginning on January 1, 1995. In order to implement this timing mandate, EPA proposed that the reformulated gasoline requirements would apply at all locations beginning on January 1, 1995. EPA now believes that it is necessary for the reformulated gasoline requirements to apply at facilities upstream of the retail outlet level beginning on December 1, 1994, in order for facilities at the retail level to have reformulated gasoline beginning on January 1, 1995.

Under the gasoline volatility program (40 CFR 80.27–80.28), the volatility standards apply at facilities upstream of the retail outlet level beginning on May 1 of each year, and at all facilities including retail outlets and wholesale purchaser-consumers beginning on June 1 of each year.[70] This regulatory approach provides a one month lead-time during which the gasoline being dispensed at terminals meets the summertime volatility standard, in order to "turn over" the gasoline in retail level storage tanks to meet the summertime volatility standard before June 1. As a result of this timing requirement for gasoline volatility, almost all retail outlets achieve the summertime volatility standard by June 1 through the normal cycle of gasoline deliveries.

In contrast to this favorable experience under the gasoline volatility program, during implementation of the diesel sulfur program (40 CFR 80.29–80.30) retailers and wholesale purchaser-consumers had significant difficulties complying with the new requirements at the beginning of that program on October 1, 1993. The diesel sulfur regulations did not require facilities upstream of the retail level to have low sulfur diesel fuel in place well before October 1, 1993, and many terminals did not meet the low sulfur standard until very shortly before October 1. As a result, a large number of retail outlets and wholesale purchaser-consumers were not able to obtain low sulfur diesel fuel in advance of the October 1, 1993 date when all facilities were required to meet the low sulfur diesel standard. In consequence of this situation in some areas of the country prices of low sulfur diesel fuel rose 30¢ to 40¢ over the cost of high sulfur diesel fuel. As a result, EPA was compelled to grant retailers and wholesale purchaser consumers additional time after October 1 to come into compliance with the diesel sulfur standard.

EPA believes that unless a lead-time is mandated under the reformulated gasoline program, the January 1, 1995 commencement will result in the same supply difficulties that occurred under diesel sulfur, and retailers and wholesale purchaser consumers will be unable to meet the reformulated gasoline standards on January 1, 1995. EPA further believes that a one month lead-time is appropriate for the reformulated gasoline program, because a lead-time of this length has been successful under the gasoline volatility program. As a result, the final regulations include the requirement that certain reformulated gasoline requirements must be met by facilities upstream of the retail level beginning on December 1, 1994.

This regulatory provision constitutes a clarification of the proposal that would require all parties, including retailers and wholesale purchaser-consumers, to meet the reformulated gasoline standards beginning on January 1, 1995. The proposed regulatory timing could only be achieved if upstream facilities began dispensing reformulated gasoline before January 1, 1995, and that in consequence a lead-time of approximately one month was implicit in the proposal.

All regulatory requirements for reformulated gasoline apply to gasoline that is produced or imported after December 31, 1994, or any time during 1994 if it is intended for use after January 1, 1995. It is presumed that all gasoline produced or imported after December 1, 1994 is intended for use after January 1, 1995. These requirements include, *inter alia*, independent sampling and testing, provisions dealing with downstream oxygenate blending, record keeping,

[70] The end of the volatility control season each year is September 15 at all facilities.

reporting, and attest engagements. This reach of the reformulated gasoline requirements is consistent with the regulatory provision contained in the proposal (also included in the final rule at § 80.65(a)), that reformulated gasoline requirements would apply to all gasoline sold, dispensed, stored, transported, produced, or imported on or after January 1, 1995. EPA thus proposed that gasoline sold or dispensed on January 1, 1995, and that necessarily will have been produced or imported during 1994, would be subject to all reformulated gasoline requirements.

Thus, for example, all gasoline produced or imported on or after December 1, 1994 will have to be designated as reformulated or conventional. If it is designated as reformulated it will have to comply with reformulated gasoline standards. If it does not comply with reformulated gasoline standards, it will have to be designated as conventional, segregated from reformulated gasoline, and clearly labeled as conventional gasoline and not intended for use in any covered area.

In the case of reporting requirements, EPA intends that no quarterly or averaging reports will be submitted in 1994, and that the first quarterly report in 1995, that must be submitted by May 31, 1995, will be the first reformulated gasoline report. As a result, all batch-specific information for gasoline produced during 1994 should be included in the first quarter 1995 report. A provision is included in the final rule to this effect, at § 80.75(a)(3). Similarly, EPA does not intend that a separate attest engagement must be performed at the conclusion of 1994, but that the 1995 attest engagement must include all gasoline produced or imported in 1994.

EPA also has included a provision in the final rule, at § 80.67(i), to specify the manner in which standards are met for reformulated gasoline produced to average (as opposed to per-gallon) standards during 1994. Proposed provisions dealing with averaging did not address this category of reformulated gasoline, because the averaging proposals only addressed gasoline produced beginning in January 1995.

The provision in the final rule specifies that reformulated gasoline that is produced or imported during 1994 but that is intended to be used in 1995 may meet the reformulated gasoline standards on average, provided that the refiner or importer satisfies the gasoline quality survey prerequisite during 1995. The provision further specifies that any such average compliance reformulated gasoline must be grouped with gasoline produced or imported during 1995 for purposes of compliance calculations, as well as reporting. As a result of the requirement that for each parameter only the per-gallon or only the average standard may be used during each averaging period, the compliance approach used for each parameter in 1994 (per-gallon vs. average) must also be used for all of 1995.

EPA believes this approach for average compliance gasoline produced in 1994 is appropriate, because it represents the alternative that preserves the opportunity for refiners and importers to meet standards on average for this category of gasoline, with the smallest regulatory burden for regulated parties and for EPA. EPA considered, and rejected, the alternative of allowing parties to use only the per-gallon standards during 1994, because of the adverse impact on flexibility of such a restriction.

EPA also rejected the option of requiring that average standards must be met separately for gasoline produced or imported during 1994.[71] EPA believes there would be no significant environmental consequence of combining 1994-gasoline with 1995-gasoline for averaging purposes, but that the regulatory burden of separate accounting for 1994-gasoline would be significant. The simple model standards that will apply for gasoline produced or imported during 1994 are limited to oxygen, benzene, and toxics emissions performance, because this gasoline will not be VOC-controlled. These parameters are regulated because of toxic pollution concerns, and have the relatively long averaging period of twelve months because the threat of toxic pollution is long-term, cumulative in nature. EPA believes that combining the limited volume of 1994-gasoline with 1995-gasoline is consistent with the long-term averaging approach to toxics generally.

VIII. Anti-Dumping Requirements for Conventional Gasoline

A. Introduction

Section 211(k)(8) of the Act requires that average per gallon emissions of specified pollutants from non-reformulated (i.e., conventional) gasoline use must not deteriorate relative to emissions from 1990 gasoline, on a refiner[72] basis. Compliance is measured by comparing emissions of a refiner's conventional gasoline against those of a baseline gasoline. An individual baseline, consisting of fuel parameters and emissions, is developed for each refiner based on the quality of its 1990 gasoline, although under certain circumstances the individual baseline is the statutory baseline fuel parameters and emissions. To implement this requirement, EPA is promulgating requirements known as the anti-dumping provisions for conventional gasoline producers and importers. These requirements apply to all conventional gasoline producers and importers whether or not they also produce or import reformulated gasoline.

This section describes the key features of the anti-dumping provisions (excluding the compliance and enforcement provisions applicable to conventional gasoline which are discussed in Section IX). The requirements discussed in this section are detailed primarily in § 80.90 to § 80.93 in the accompanying regulations. This section also highlights major comments received on EPA's proposals in this area and how this final rule differs from those proposals. Additional supporting information can be found in Section VII of the associated Regulatory Impact Analysis (RIA).

B. Emission Requirements

1. Introduction

Section 211(k)(8) of the Act requires that EPA promulgate regulations ensuring that, for each refiner, average per gallon emissions of VOC, CO, NO_X and toxic air pollutants from its conventional gasoline do not increase over emissions from the gasoline introduced into commerce by that refiner in calendar year 1990. Emissions are to be measured on a mass basis, and each of the four pollutants is to be considered separately. Increases in NO_X emissions due to oxygenate use may be offset by equivalent or greater mass reductions in the other pollutants.

The regulations promulgated today address exhaust benzene, total exhaust toxics and NO_X emissions from conventional gasoline use. In addition, under the simple model, refiner specific caps are set for sulfur, olefins and T90. EPA is not promulgating specific requirements for emissions of VOCs or CO, as EPA believes that the regulations promulgated herein, in conjunction with various other agency regulations and Clean Air Act requirements, will

[71] A refiner or importer who produces or imports reformulated gasoline using the average standards, but who uses only the per-gallon standards during 1995, would be required to meet the average standards using the 1994-gasoline only.

[72] For ease in discussion, the term "refiner", as used in this discussion of the anti-dumping program, will hereafter include refiners, blenders and importers. Where appropriate, blenders and importers will be mentioned specifically.

adequately meet the emissions limits for all four pollutants specified in section 211(k)(8). A detailed discussion of EPA's reasons for adopting this approach may be found in the Agency's July 9, 1991 proposal and, in summary, in the RIA.

Section 211(k)(8) authorizes this approach as that provision requires that EPA promulgate regulations "ensuring" that conventional gasoline meet certain requirements on a refiner specific basis, but does not mandate that EPA promulgate regulations for each of the four pollutant categories. This provision therefore provides EPA with the discretion to fashion a regulatory program that "ensures" these results. While a relatively straightforward approach to this would involve emissions requirements for each of the four pollutant categories, it need not if the regulatory program otherwise achieves the required result.

While the language used by Congress in section 211(k)(8)(A) supports this interpretation, there are several other provisions in section 211(k) where Congress clearly specified that EPA promulgate various requirements, and such language is conspicuously missing from section 211(k)(8)(A). See, for example, section 211(k)(8)(D) ("The Administrator shall promulgate an appropriate compliance period * * *"), section 211(k)(1) ("regulations shall require the greatest reduction in emissions * * * taking into consideration * * *"), section 211(k)(2) ("regulations * * * shall require that reformulated gasoline comply with paragraph (3) and * * * each of the following requirements * * *"), section 211(k)(4)(A) ("The regulations * * * shall include [certification procedures] * * *"), section 211(k)(7) ("The regulations * * * shall provide for the granting of an appropriate amount of credits * * *"). While EPA received several comments on the proposed conventional gasoline requirements, no one disagreed with the above interpretation of EPA's authority under section 211(k)(8)(A).

2. Emission Requirements Prior to January 1, 1998

Prior to mandatory use of the complex model on January 1, 1998, the requirements of section 211(k)(8) of the Act will be met by requiring that the annual average exhaust benzene emissions of a refiner's conventional gasoline not exceed its baseline exhaust benzene emissions. The exhaust benzene emissions due to conventional gasoline can be determined using the simple model discussed in Section III. Only the effects of fuel benzene and fuel aromatic content on exhaust benzene are included in this model.

When the simple model is used for compliance, the annual average sulfur, olefin and T90 values of a party's conventional gasoline cannot exceed its baseline values of those parameters by more than 25 percent. These limits will provide some additional assurance that conventional gasoline emissions of toxics and NO_X will not rise prior to use of the complex model. EPA does not expect the levels of these parameters in conventional gasoline to naturally increase due to the reformulated gasoline program, since the simple model for reformulated gasoline simply caps these three fuel parameters at their baseline levels and does not require their reduction.

A refiner may also use the complex model for determining compliance prior to its mandatory use. Because all of the fuel parameters affecting exhaust benzene emissions are part of the model (benzene, aromatics, RVP, sulfur, olefins, E300, E200, and oxygen) there is no need for separate "caps" on fuel parameters as associated with the simple model.

A refiner's baseline exhaust benzene emissions are determined by evaluating the refiner's baseline fuel parameter values in the model chosen by the refiner for compliance. At the end of a compliance period, the average fuel parameter values of a refiner's conventional gasoline over that period are evaluated in the same compliance model used to determine the refiner's baseline emissions. The resulting emission values are then compared to the baseline emission values to determine if the party is in or out of compliance with the anti-dumping requirement. While there was general support for the regulatory approach taken by EPA, several commenters suggested specific revisions to the emissions requirements. EPA's responses are discussed in the RIA. However, none of the comments caused EPA to change its proposed requirements, and all of the above provisions are being promulgated essentially as proposed.

EPA had proposed that while a refiner may choose to use either the simple model or the complex model prior to January 1, 1998, it must use the same model for both the reformulated gasoline and the anti-dumping programs. Several commenters disagreed with this last restriction. EPA is, however, promulgating this requirement as proposed because the anti-dumping and reformulated gasoline provisions are inherently tied together. The specific model used to certify reformulated gasoline will affect which fuel components are likely to be dumped. To avoid incentives to dump, the effect of these components on conventional gasoline emissions should be evaluated on the same basis as the reformulated gasoline emissions. Otherwise, incentives will exist to shift dirty components to conventional fuel areas using whichever model predicts the lowest emissions increase due to those components.

3. Emission Requirements Beginning January 1, 1998

Beginning January 1, 1998, the requirements of section 211(k)(8) of the Act shall be met by requiring that the exhaust toxic emissions and the NO_X emissions of a party's conventional gasoline not exceed that party's baseline exhaust toxic and NO_X emissions. Compliance with this requirement shall be determined using the complex model described in Section IV.

The exhaust toxics emissions requirement under mandatory use of the complex model includes all five pollutants defined in section 211(k)(10)(C) as toxics. These are exhaust benzene, formaldehyde, acetaldehyde, 1,3-butadiene and POM. Benzene emissions occur in both exhaust and nonexhaust emissions, and accordingly, section 211(k)(10)(C) does not limit the toxic air pollutant benzene to exhaust benzene. However, as stated, EPA is only promulgating regulations applicable to exhaust benzene. Nonexhaust benzene emissions will be effectively controlled by the summertime volatility controls applicable to conventional gasoline.[73] The sum of the baseline exhaust emissions of each of the five toxics is the value that must not be exceeded by the sum of the exhaust emissions of these toxic pollutants due to a refiner's or importer's annual average conventional gasoline.

NO_X emissions from conventional gasoline use are also controlled beginning January 1, 1998. Although EPA is concerned that high oxygenate levels may contribute to increased NO_X emissions, the Act states that any NO_X emissions increase in conventional gasoline due to oxygenate use can be offset by VOC, CO and toxic emission reductions. EPA is addressing this provision of the Act by allowing compliance with the anti-dumping NO_X emission requirement to be determined on either a nonoxygenated basis or an oxygenated basis, as discussed further in paragraph C.5.e of this section.

[73] No credit can be taken nor penalties received under the anti-dumping program for nonexhaust benzene reductions, or increases. Nonexhaust benzene emissions decrease due to RVP reductions, which are a VOC reduction strategy already considered under the anti-dumping program as the reason for not explicitly controlling VOC emissions.

C. Requirements for Individual Baseline Determination

1. Introduction

Compliance under section 211(k)(8) of the Act is measured against an individual baseline (comprised of individual baseline fuel parameter and emission values) which is determined for each refiner if sufficient data exist from which to determine a baseline representative of that refiner's 1990 gasoline. Additionally, the Act states that if no adequate or reliable data exist regarding the gasoline sold by a refiner in 1990, the refiner must use the statutory baseline gasoline fuel parameters[74] as its baseline fuel parameters.

2. Requirements for Refiners, Blenders and Importers

a. *Requirements for producers of gasoline and/or gasoline blendstocks.* No adverse comments were received on the proposal that a refinery which primarily produces gasoline blendstocks from crude oil (including crude oil derivatives) and mixes those blendstocks to form gasoline be subject to baseline determination using any, or a combination of, the three data types described below in paragraph 3. The requirements are being promulgated essentially as proposed.

Likewise, no adverse comments were received regarding the proposal to exempt (from the anti-dumping requirements) those entities which produce and/or supply gasoline blendstocks to refiners and blenders, but do not produce gasoline. Hence EPA is not promulgating anti-dumping requirements for such entities.

b. *Requirements for purchasers of gasoline and/or gasoline blendstocks.* As proposed in April 1992, refiners who exclusively purchase blendstocks and/or gasoline and mix these purchased components to form another gasoline (i.e., blenders) must use Method 1-type data (as described in paragraph 3 below). Lacking sufficient Method 1-type data, the blender shall have the anti-dumping statutory baseline as its individual baseline. Most who commented on this issue suggested that blenders should be allowed the same opportunities as refiners to use 1990 and post-1990 gasoline and blendstock data. Otherwise, a blender may have to "reformulate" its conventional gasoline. Commenters also stated that this provision penalized blenders for not sampling their 1990 fuel when there were no such requirements. As discussed in the proposal, EPA does not believe that use of blendstock data or post-1990 gasoline or blendstock data would allow an accurate portrayal of a blender's 1990 production. Additional comments are discussed in the RIA; however, none led to a change in the proposed requirements for blenders.

c. *Requirements for importers of gasoline.* On April 16, 1992, EPA proposed that those who imported gasoline into the U.S. in 1990 must use Method 1-type data (as described in paragraph 3). Lacking sufficient Method 1-type data, the importer would have the anti-dumping statutory baseline as its individual baseline. An importer who did not import gasoline into the U.S. in 1990, but who does so after 1994, would also have the anti-dumping statutory baseline as its individual baseline. EPA proposed that if a U.S. importer is also a refiner and imported 75 percent or more of the 1990 gasoline production of a refinery into the U.S. in 1990, it could determine a baseline for that refinery using the three data types described in paragraph 3 below.

Most commenters agreed with EPA's overall proposal concerning importers. Some felt, however, that the "75 percent" criteria was self-selecting—only those importer/refiners with higher baseline emissions relative to the statutory baseline would choose to develop an individual baseline. Those importer/refiners with relatively low baseline emissions would use the statutory baseline, and thus dumping could result, since they would be complying with a baseline which was less stringent than one based on their own 1990 gasoline quality. EPA agrees that "dumping" could occur, but expects it to be minimal since few importing refineries are likely to meet the "75 percent" criteria. Nonetheless, EPA is requiring that all importers which are also refiners utilize Method 1-, 2- and 3-type data to determine the individual baselines of their refineries which meet the 75 percent criteria.

One commenter claimed that location, not percent of production imported, dictates enforceability. However, EPA believes that enforcement of a non-domestic refinery is governed less by location and more by the willingness of the company and/or country to open its refinery for compliance visitations. Another commenter specifically stated that Canadian refineries should be treated the same as domestic refineries for the purpose of establishing baselines. As stated, EPA believes that it will be relatively easy to accurately determine the quality of the gasoline produced in 1990 at a refinery outside of the U.S., for sale to the U.S., if a significant amount (i.e., 75 percent) of the production of the refinery came to the U.S. Independent of where the refinery is located, if less than this amount was imported, it will be more difficult to combine information on refinery operations and blendstock and gasoline data (i.e., Methods 2 and 3-type data) and allocate such information so as to establish the quality of the refinery's 1990 gasoline which was sent to the U.S.

Some commenters felt that an importer should be allowed to use all available 1990 and later data to establish a baseline and have its baseline verified by an auditor. However, as stated in the proposals, EPA believes that significant dumping could occur if post-1990 data is allowed since that data may not represent the importer's 1990 gasoline. EPA is thus promulgating this essentially provision as proposed.

d. *Requirements for exporters of gasoline.* EPA's proposals did not explicitly discuss whether gasoline exported from the U.S. in 1990 would be included in individual baseline determinations. However, because exported gasoline did not contribute to pollution in the U.S. in 1990, a producer of gasoline exported from the U.S. in 1990 shall not include the exported gasoline properties or volumes in its baseline determination. A refiner which exports all of its future gasoline outside of the U.S. is not subject to the anti-dumping requirements.

3. Types of Data

a. *Introduction.* As discussed in the July 9, 1991 proposal, EPA is concerned that use of the statutory baseline parameters in lieu of determining an individual baseline could have severe competitive effects. At the same time, EPA realizes that there likely will be insufficient directly measured 1990 fuel parameter data available from which to determine representative individual baseline parameters. Thus, in order to make the best use of available data in developing representative individual baselines, EPA is specifying the types of data and calculations that may be used in the baseline determination.

In the proposals, three methods (Methods 1, 2 and 3) were described for refiners to use to determine their baseline parameter values. Method 1-type data consists of a refiner's measured fuel parameter value and volume records of its 1990 gasoline. As discussed in the RIA, Method 1-type

[74] The statutory baseline gasoline for anti-dumping purposes is discussed further in paragraph C.3.e of this section.

data can be from 1990 production or 1990 shipments as long as no data is double counted and all available production and shipment data are used in the baseline determination. Method 2-type data consists of a refiner's 1990 gasoline blendstock composition data and 1990 gasoline and blendstock production records. Method 3-type data consists of a refiner's post-1990 blendstock composition data and 1990 gasoline and blendstock production records. For both Methods 2 and 3, these provisions apply to those blendstocks used in the production of gasoline within the refinery. Under certain circumstances, Method 3-type data may consist of post-1990 gasoline composition data as well.

No major comments were received negating the appropriateness of utilizing these three methods or data types. A few minor comments were submitted which are addressed in the RIA. Several commenters did request that EPA allow combinations of Methods 1, 2 and 3-type data to be used in baseline determination, in order to improve the use of available data and thus develop more accurate and representative 1990 individual baselines. EPA agrees that a more representative baseline will result if a combination of higher and lower levels of data is used rather than excluding the better data (i.e., Method 1) due to it being inadequate by itself. EPA had proposed that the different types of data must be used in a hierarchical order, i.e., Method 1-type data has to be used first, and if insufficient Method 1-type data was available for a given fuel parameter, Method 2-type data would be used, etc. EPA is modifying the proposals to allow baseline parameter values to be determined using a combination of the methods, or data types, if necessary, although the same hierarchy must be maintained. Thus, insufficient Method 1-type data may be supplemented with Method 2-type data and, if data were still lacking, the available Method 1 and 2-type data would be supplemented with Method 3-type data.

b. *Inclusion of gasoline blendstock.* Although not specified in the proposals, EPA is requiring that gasoline blendstock which becomes gasoline (per 40 CFR 80.2(c)) solely upon the addition of a specific type and amount of oxygenate, be included in the baseline determination. Unless evidence is provided which indicates that such blendstock was blended with oxygenate other than ethanol or less than 10.0 volume percent ethanol, or was not further modified downstream, the refiner shall assume that said blendstocks were blended with ten (10.0) volume percent ethanol. This requirement provides some assurance that baseline emissions are not artificially low due to selective inclusion or exclusion of such blendstock. Requiring that the blendstock be assumed to have been blended with a specific amount of ethanol (unless otherwise shown) will result in a more stringent baseline than if the blendstock were assumed blended with a lower volume of ethanol, a different oxygenate or not further modified. Hence, the burden of proof of actual disposition of such product is on the refiner.

c. *Method 3 additional information.* In order that the fuel parameter values obtained with Method 3-type data adequately represent the 1990 values of those parameters, EPA proposed that the refiner must provide detailed documentation of its 1990 and post-1990 refinery operations, including comparing 1990 and post-1990 operations, intermediates and products, and other aspects of refinery operations which would cause its post-1990 gasoline to differ from its 1990 gasoline. For instance, if post-1991 data is used, appropriate adjustments must be made for the refinery operational changes that occurred due to the 1992 volatility rules and the oxygenated fuels program, two situations which could cause post-1990 operations to differ from 1990 operations. The required documentation will assist the baseline auditor in its verification and EPA in its review of the refiner's baseline submission. This provision is being promulgated as proposed.

EPA proposed to allow post-1990 gasoline data to be used to estimate 1990 baseline parameters under certain circumstances. In addition to requiring the same detailed documentation of 1990 and post-1990 operations as above, in the February 26, 1993 proposal, EPA specified that the volumetric fraction of each blendstock in post-1990 gasoline must be within ten (10.0) percent of the volumetric fraction of the same blendstock in 1990 gasoline. For example, if a refiner's 1990 gasoline contained 30 volume percent reformate, post-1990 gasoline data may be used in the baseline determination as long as it contained 27.0–33.0 volume percent reformate and provided all other blendstocks also conformed to these requirements.

EPA received many comments stating that the use of post-1990 gasoline data was more accurate, and less costly, than using post-1990 blendstock data. EPA agrees, and is allowing the use of gasoline data under certain circumstances, as discussed below. Commenters also suggested that verification of differences and similarities between 1990 and post-1990 operations and the resulting gasoline should be left to the baseline auditor rather than compared to specific criteria. While the auditor will verify the comparison of 1990 and post-1990 operations, etc., all issues verified by the auditor will also be reviewed by EPA. In addition to the technical reasons discussed below, specifying such criteria (i.e., the "10 percent" criterion) will ensure the uniformity of both auditor and EPA evaluations and verifications.

As discussed in the RIA, unless post-1990 blendstock fractions are sufficiently similar to 1990 blendstock fractions, adjustments for differences will have to be made at the blendstock level, making any gasoline data moot. Larger differences than 10 percent in large streams such as reformate could affect overall aromatic levels by up to 3 volume percent, which is clearly significant. For smaller streams, however, a 10 percent change could be insignificant. Therefore, EPA is expanding its criteria by allowing post-1990 gasoline blendstocks to meet the larger of (1) the 10 percent criterion, or (2) be within two absolute volume percent of the blendstock volumetric fraction in 1990 gasoline. As discussed in the RIA, this means of utilizing post-1990 gasoline should adequately cover typical fluctuations in both large and small volume blendstocks without unduly sacrificing accuracy.

Post-1990 gasoline data for which a single 1990 blendstock does not meet either of the blendstock fraction requirements cannot be used in the baseline determination. However, EPA also received comment that many refiners would not be able to use post-1990 gasoline data, even with the expanded criteria, simply due to butane utilization changes from 1990. Because butane, and thus RVP, were reduced after 1990 due to volatility controls, and because RVP reductions reduce emissions, EPA is exempting butane from the blendstock requirements for using post-1990 gasoline.

d. *E200 and E300.* Although not previously included among the fuel parameters for which baseline values are required to be determined, EPA is now requiring that baseline values be determined for the fuel parameters E200 and E300, the percent evaporated at 200 °F and 300 °F, respectively. Although these two fuel parameters replace T50 and T90, respectively, in the complex model, T90 baseline values are still required to be determined for use prior to mandatory complex model use.

EPA expects E200 and E300 values to be determined directly from gasoline or blendstock data, even if distillation information has to be regraphed. If such a determination is not possible, E200 and E300 values may be estimated from otherwise acceptable T50 and T90 data using the equations specified in the regulations. Thus, this addition will not void any data collected under the proposed criteria.

e. *Anti-dumping statutory baseline.* As mentioned earlier, in some cases a blender or importer may not be able, or be allowed, to develop an individual baseline from its own data. In that case, the refiner or importer would have the statutory baseline as its individual baseline. Although the compliance period for conventional gasoline is annual (as discussed in the proposals and as described in section IX), emissions determined using the complex models are determined on a summer and winter basis. Thus, there are separate anti-dumping summer and winter baseline fuel parameters, which are the statutory summer baseline specified in the Act, and the winter baseline determined by EPA as required by the Act. Few comments were received concerning the proposed annual average statutory baseline (which is a weighted average of the statutory summer and winter baselines, as discussed in the proposals). None of the comments led to a change in the annual average baseline fuel parameter values.

4. Data Collection and Testing Requirements

a. *Sampling requirements.* In the February 26, 1993 proposal, EPA proposed minimum sampling requirements in order to ensure that enough gasoline or blendstock samples were taken from which to develop a representative baseline. Namely, for Method 1-type data, at least half of the batches (by number of batches, not volume), or shipments if not batch blended, in a calendar month shall have been tested for a particular parameter. For Methods 2 and 3-type data, at least weekly sampling of continuous blendstock streams and, if blendstocks are produced on a batch basis, sampling of at least half of the batches of each blendstock produced in a month is required.

Many refining industry commenters protested this proposal claiming that they had sampled based on the April 16, 1992 proposal requiring "sufficient" sampling, and that EPA's more specific requirement could void data collected, and the time and money spent. EPA agrees that the sufficient frequency of sampling may vary according to circumstance (such as the degree of variation in operating conditions), and is modifying its latest proposal by accepting, under certain circumstances, data which does not meet the requirements specified above. However, if less than the minimum data is used, the refiner must document, and the auditor verify, why the data is less than the minimum requirements and why it is sufficient in quantity and quality to use in the baseline determination. EPA retains the right to reject use of less than the minimum data if the documentation is incomplete or the justification not technically sound. In all cases,[75] all available samples must be analyzed and the results used in baseline determination if more than the minimum number of samples are available.

Additionally, EPA is promulgating its proposal to require at least three months worth of both summer and winter data. As discussed in the RIA, this requirement ensures that the collected data covers the typical changes in gasoline composition which occurs across seasons. Although not explicitly stated in the proposal, to better distinguish between summer and winter, summer months shall consist of any month in which gasoline was produced to meet the federal summer volatility requirements. It is not necessary for such low volatility fuel to be produced for the entire month. Winter months are any months which could not be considered summer months.

b. *Post-final rule data collection.* Few comments were received on the February 26, 1993 proposal that if a refiner collects data after promulgation of these regulations, the data must be collected no later than the end of the third month of the first three full months during which summer gasoline is produced by the refiner following promulgation of the final rule. EPA is modifying this provision slightly, requiring only that proof must be given that additional data was needed and indeed was collected after today.

c. *Negligible parameter values.* On February 26, 1993, EPA proposed to exempt refinery streams from testing for one or more specific parameters if a stream contains negligible amounts of those parameters. The affected fuel parameters are benzene, aromatics, olefins and sulfur. EPA also proposed threshold criteria for each fuel parameter, i.e., the amount of the fuel parameter in a stream at or below which the parameter would be considered negligible. EPA has changed the values of some of the threshold criteria based on comment. Specifically, the benzene threshold value was reduced and the sulfur threshold value increased. A full discussion of these changes can be found in the RIA; the actual values are also listed in § 80.91. Oxygen was added to the list of parameters that may be considered negligible under certain circumstances. Other than those modifications, the requirements are being promulgated as proposed.

d. *Test methods.* Many commenters were concerned that the test methods they had used to analyze samples would be invalid because they were not the same as the required test methods being promulgated today for reformulated gasoline. EPA had proposed, on April 16, 1992, that sampling and measurement techniques used to determine baseline parameters must yield results which are equivalent to the results obtained per the techniques and methodologies specified for the reformulated gasoline program. However, because of constantly evolving test methods, in addition to the fact that the final regulations concerning reformulated gasoline test methods will only be known today, it would be inappropriate to disallow data because it was not tested according to certain methods when there were no requirements to do so. Nonetheless, EPA is concerned that the test methods used be adequate. In a modification of the proposal, EPA will accept data determined using methods other than those required under the reformulated gasoline program, upon petition and approval, as long as the methodology or technique was a standard industry-accepted measurement technique at the time the measurement was taken. If data to be used in the baseline determination was, somehow, obtained via a more accurate test method prior submission of the baseline to EPA, it may be acceptable. The baseline auditor will verify that the techniques used to determine the baseline data meet the requirements discussed above. Although not previously discussed, EPA is allowing oxygen content, as well as oxygenate volume, to be determined from oxygenate blending records. The composition of the oxygenate, with regard to the other required fuel parameters, must still be determined.

[75] In instances where a sample was mislabeled or improperly tested or where an analysis results in a value which is significantly different from expected values based on operating conditions, etc., the result may be excluded from the baseline calculation. However, all instances of such exclusion must be documented and verified by the auditor.

5. Baseline Fuel Parameter Determination

a. *Closely integrated gasoline producing facilities.* Based on earlier comments, on February 26, 1993 EPA proposed to allow blending facilities (or terminal operations) to be included in a refinery's baseline determination if a closely integrated relationship could be shown between the refinery and the terminal. EPA also requested comments as to what criteria would constitute "closely integrated". Many commenters supported allowing a single baseline for such a situation. Requiring 60–75 percent of a blending facility's blendstocks to have come from a single refinery was suggested for defining a closely integrated refinery-terminal relationship. EPA is promulgating the proposal with the requirement that at least 75 percent of the blendstock received at the terminal in 1990 must have come from the associated refinery. EPA believes this is a reasonable number, as explained in the RIA, considering that oxygenates and butane, among others, are blended into gasoline after the refinery, while constituting much less than 20 percent of gasoline by volume.

In the case of an aggregate refiner baseline, as discussed in paragraph 6.d, a terminal or terminals may be included in the aggregate baseline if each terminal received at least 75 percent of its blendstock from one or more of the aggregated refineries with which it is associated. For instance, the 75 criteria is satisfied if the terminal received 25 percent of its 1990 blendstock from refinery A and 50 percent from refinery B, refinery A and B being part of an aggregate baseline. Alternatively, it may also have received the entire 75 percent from either refinery A or B.

Although not previously proposed, some comments were received regarding other types of closely integrated facility relationships. EPA is thus allowing a single individual baseline to be determined for two or more refineries (or sets of gasoline blendstock-producing units) which are geographically near each other but are not within a single refinery gate, and whose 1990 operations were significantly interconnected. The burden is placed on the refiner to show that its two facilities are "significantly interconnected". In this case, the two facilities will have a single set of baseline parameter values and associated emissions.

Some commenters suggested that U.S. refiners with import operations also be allowed to develop a single baseline covering their refining and importing operations. EPA rejected this suggestion because it would be difficult for EPA to track a fuel's production location before the fuel is or was imported, particularly when considering 1990 production. Also, allowing such a situation would amount to trading between foreign and domestic refineries, which was not mandated nor intended by Congress.

b. *Seasonal weighting.* In the February 26, 1993 proposal, EPA proposed that a refinery's own production volumes of summer and winter gasoline (based on RVP) be used in the weighting of data on a summer and winter basis. This change from the previous proposal received a lot of support, and is being promulgated as proposed on February 26, 1993. As discussed in paragraph 6.a, the 1990 annual baseline volume is the larger of the gasoline volume produced in or shipped from the refinery in 1990. Thus, a refinery's own baseline volumes of summer and winter gasoline (either on a produced or shipped basis) shall be used for weighting the summer and winter anti-dumping emissions and sulfur, olefins and T90 values. As proposed, all volume which is not summer volume is considered winter volume.

c. *Grade weighting.* On February 26, 1993, EPA proposed that average fuel parameter values be determined first for each grade of gasoline produced, and the resulting values weighted by the fraction of each grade sold in the period over which the value is determined. Based on comments, the proposal has been modified and, for this final rule, "grade" shall mean each traditional grade of gasoline produced in the refinery in 1990, e.g., regular, midgrade, and premium, not each different integer octane number.

d. *Equations.* The equations have been modified slightly from the February 1993 proposal to require that specific gravity be included in the determination of baseline sulfur and oxygen contents. Because both of these fuel parameters are determined on a weight basis, and because gasoline and blendstocks vary, sometimes significantly, in weight-to-volume ratio, correct accounting of such terms must include a weight-to-volume conversion. Additionally, separate average baseline fuel parameter values must be determined for summer and winter, as discussed previously.

e. *Oxygen in the baseline.* In the April 16, 1992 proposal, EPA discussed several methods of accounting for oxygen in the baseline determination. Several commenters suggested that the baseline be determined on a nonoxygenate basis so as not to penalize those who "reformulated", i.e., produced cleaner gasoline, early. Others supported including only the positive difference (i.e., an increase in oxygen use) between 1990 and post-1994 oxygenate use. Others suggested variations—excluding it in the baseline but including it in compliance, and including it as is in both the baseline and compliance calculations. Others argued that oxygenate used in conventional gasoline designated for areas for CO reduction purposes should not be considered.

The anti-dumping provisions of section 211(k)(8) are based on a comparison of 1990 and post-1994 emissions, and use of an oxygenated baseline for compliance determination would be the most appropriate baseline. EPA is therefore requiring baseline fuel parameter values to be determined on an oxygenated basis. Section 211(k)(8)(C) of the Act also requires that increases in NO_X emissions, due to conventional gasoline oxygenate use, be offset by reductions in the other three pollutants. As stated earlier, significant VOC and CO reductions will occur even without the reformulated gasoline rulemaking. To ensure that an increase in NO_X emissions is not associated with the use of oxygen, EPA is allowing refiners to choose to use either an oxygenated or nonoxygenated baseline when determining NO_X emissions. Compliance would be measured on the same basis. Under this provision, a refiner could choose to switch from a nonoxygenated to an oxygenated baseline, beginning with the next averaging period. The initial choice to use an oxygenated baseline, or the switch from a nonoxygenated to an oxygenated baseline is, however, permanent. EPA expects a refiner to operate its refinery to its advantage, and thus it is not likely to make such decisions (of whether to use a nonoxygenated or an oxygenated baseline for NO_X purposes) lightly. Additionally, Congress intended that the anti-dumping program compare a refiner's 1990 emissions with its post-1994 emissions, based on its fuels' actual average composition, i.e., its actual oxygenated baseline or oxygenated compliance value. EPA is allowing refiners to use a nonoxygenated or an oxygenated baseline when determining NO_X emissions in order to fulfill the provision that NO_X increases due to oxygenates be offset. However, to minimize unnecessary administrative complications due to every refiner potentially changing its baseline NO_X value annually, EPA is allowing only the one-time change.

In determining the nonoxygenated parameter values from the oxygenated values, only the physical dilution and distillation effects of the oxygenate shall be considered. Adjustments to refinery operations that would have been different had oxygenates not been used (i.e., octane) shall not be included because many potential adjustments are possible. For instance, if a refiner's actual (oxygenated) baseline aromatics were 30 volume percent and actual oxygenate use was 5 volume percent, the nonoxygenated baseline aromatics value would be 31.6 volume percent, or 30/(100% − 5%). While it is likely that reformer severity may have been higher had oxygenates not been used (thus resulting in perhaps even a higher aromatics baseline value) such operational effects due to oxygenate use shall not be considered because they cannot be known with certainty. Additionally, while the oxygen content and the effects of oxygenate volume on parameters will be excluded from the nonoxygenated baseline determination, the total gasoline volume (including actual 1990 oxygenate use and the volume of oxygenate assumed or shown to have been blended with gasoline blendstock as discussed in paragraph 3.b) will be used to determine the individual 1990 baseline volume.

A few commenters suggested that oxygenate volume be excluded from conventional gasoline volumes. EPA disagrees—Congress specified that certain NO_X emissions increases be offset, but did not specify how to deal with baseline volumes, leaving it to EPA's discretion. Additionally, the reason for allowing NO_X emissions to be evaluated on a nonoxygenate basis in the first place is so as not to penalize refiners whose emissions increase due to oxygenate use. It is possible that restricting baseline volumes by excluding oxygenate volumes could penalize some refiners. Thus, it would be inappropriate for EPA to restrict the applicability of the individual baseline to the nonoxygenated gasoline volume.

f. *Work-in-progress.* EPA proposed criteria for allowing a work-in-progress (WIP) adjustment on April 16, 1992. In the February 26, 1993 proposal, EPA expanded the proposed criteria in several areas. A WIP adjustment allows the refiner to modify its baseline volumes and fuel parameter values (which affect emissions) to account for the WIP. A more detailed discussion of the rationale and background concerning WIP adjustments may be found in the RIA.

Several comments reiterated a concern expressed in the regulatory negotiation discussions that a WIP adjustment should be a limited exception, structured so that few refiners would qualify. EPA agrees that the criteria for a WIP adjustment should be fairly stringent, as the adjustment was intended only for those for whom a significant investment had already been made in order to comply with another government mandate. Additionally, a broad program of adjustments could indicate that EPA exceeded its equitable discretion under Alabama Power, as discussed in the RIA. Nonetheless, most commenters supported allowing WIP adjustments for significant differences between unadjusted and WIP-adjusted values of exhaust benzene emissions, exhaust toxics emissions, NO_X emissions, sulfur, olefin or T90, instead of just exhaust benzene emissions as proposed in April 1992. A few commenters suggested reducing the threshold comparison criteria (between WIP-unadjusted and adjusted values) of 5 percent for emissions and 25 percent for sulfur, T90 and olefins. EPA agreed with the substance of these comments and is reducing the thresholds between WIP and non-WIP values. A discussion of the proposed and final threshold criteria is presented in the RIA. EPA's final threshold values under this requirement are that WIP-unadjusted and adjusted emissions values must differ by 2.5 percent, and sulfur, olefins and T90 values by 10 percent. Again, only one of the thresholds has to be met in order to meet this requirement.

A few comments were received regarding the requirement that the WIP be associated with other regulatory requirements, specifically, the type of the regulatory requirement that would be acceptable to EPA. EPA is clarifying this, and WIP based on a legislative or regulatory environmental requirement enacted or promulgated prior to 1/1/91 will be deemed as meeting the "associated with other regulatory requirement" criterion.

In the February 26, 1993 proposal, EPA clarified its definition of WIP as

> * * * projects under construction in 1990 and projects which were contracted for and which will be completed in time for the refiner to comply with the regulatory requirement * * *[76]

This language was included to ensure that the WIP was completed in a timely manner, since the WIP was ostensibly being done to comply with a regulatory requirement. Less than timely completion would indicate that the regulatory requirement was not a driving factor in initiating the WIP. However, EPA is not promulgating such a completion requirement because if the WIP project was not completed in a timely manner, the refiner is likely to be losing money since it cannot produce a certain fuel or meet certain emission requirements, etc. The contractual requirement discussed below will ensure that the refiner was committed to the WIP project. Additionally, EPA is specifying that an adjustment will only be allowed for WIP projects involving installation or modification of one or more gasoline blendstock- or distillate-producing units in the refinery.

As stated, EPA also proposed (and is promulgating) that WIP shall include projects under construction in 1990 and projects for which contracts were signed prior to or in 1990 such that the refiner was financially committed to permanently changing refinery operations. Clarification was requested as to what types of contracts would be considered to have committed the refiner to the WIP. EPA believes that the contracts should have committed the refiner to purchasing materials and construction of the WIP. As such, a process engineering design contract does not commit the refiner to actually implementing the WIP and would not be considered a WIP contract under this provision. Other suggestions included allowing WIP adjustments for work not necessarily associated with a regulatory requirement, including WIP which would have a beneficial effect on a refinery's overall environmental performance. Again, WIP adjustments were intended to apply only to specific situations, i.e., those relatively costly projects undertaken for mandated environmental betterment. Thus, it would not be appropriate to expand the criteria (as suggested) for qualifying for a WIP adjustment.

On February 26, 1993, EPA proposed allowing either the "10 percent" criteria from the April 16, 1992 proposal or a $10 million minimum cost of the WIP to satisfy the capital-at-risk criteria. Some commenters suggested that the requirements be more stringent—one suggested a threshold value of $50 million. Others suggested reducing the threshold value to $5 million (possibly a more appropriate value for small refiners) or 5 percent, or eliminating any "dollar" amount because no one should be penalized because its investment fails to meet arbitrary time or cost criteria. EPA believes that such criteria must be specified in order to prevent a proliferation of adjustments for other than true hardship cases. Additionally, the proposed criteria are fairly stringent requirements, and more stringent requirements could threaten the

[76] From § 80.91(d)(5) of the February 1993 proposal.

viability of some refiners. EPA could have relaxed the criteria, i.e., set a lower dollar amount. However, as stated, the WIP provision was included to provide relief for those projects that would significantly financially impact the refiner, and not for inconsequential modifications. Thus either the "10 percent" criteria or the $10 million criteria will be allowed to satisfy this requirement.

Many comments and suggested language were received concerning EPA's February 26, 1993 proposal that a WIP adjustment would simultaneously cap a refiner's anti-dumping emissions and sulfur, T90 and olefin values at five (5) percent over the corresponding statutory baseline values. Most commenters opposed such simultaneous caps. EPA also proposed that a refiner whose WIP-adjusted baseline emissions exceeded 105 percent of anti-dumping statutory baseline emissions did not have to reduce its emissions further (to 105 percent of the anti-dumping statutory baseline) if its WIP-adjusted baseline emissions were less than its pre-WIP baseline emissions. EPA believes though that some limit on the adjustment must be included to minimize environmental harm. The limit must apply to all who are allowed a WIP adjustment. Thus, EPA is limiting WIP increases in baseline exhaust benzene, exhaust toxics and NO_x emissions and sulfur, olefins and T90 values to the larger of (1) the unadjusted individual baseline value of each emission or fuel parameter or (2) 105 percent of the corresponding anti-dumping statutory baseline value. Note that sulfur, olefins and T90 are only constrained when compliance is determined using the simple model. When compliance is determined using the complex model, the WIP-adjusted values of these three fuel parameters are not subject to the caps. Given EPA's discretion in even granting WIP adjustments, EPA believes this provision provides an acceptable balance between allowing WIP adjustments and ensuring that increases in emissions over 1990 levels are minimized.

g. *Baseline adjustment for extraordinary circumstances.* In the February 26, 1993 proposal, EPA requested comments on allowing the baseline fuel parameters, volumes and emissions of a refinery to be adjusted due to the occurrence of specific extraordinary or extenuating circumstances which caused its 1990 gasoline production to be different than it would have been had the circumstance not occurred. Many commenters felt that baseline adjustments should be allowed for the proposed situations as well as for others. One commenter stated that every site is unique, thus baseline adjustments should be evaluated on a case-by-case basis. Still others suggested that EPA allow adjustments only for small refiners, or for several other specific circumstances. Several commenters, however, felt that no extenuating circumstance baseline adjustment should be allowed. Among the reasons cited for not allowing adjustments were: competitive inequities; Congressional intent to account for 1990 only; difficulty in defining extenuating circumstances; use of this provision as a method of voiding work-in-progress requirements.

While EPA's policy objective is not to establish a broad adjustment program, EPA is allowing adjustments for specific extenuating circumstances. Allowable circumstances include unforeseen, unplanned downtime of at least 30 days of one or more gasoline blendstock producing units due to equipment failure or natural cause beyond the control of the refiner, or for nonannual maintenance (turnaround) downtime which occurred in 1990. These types of adjustments reflect instances where the 1990 baseline truly deviated from the otherwise expected baseline (historic and future), had the incident not occurred.

EPA is also permitting baseline adjustments for certain refiners which produced JP–4 jet fuel in 1990. As discussed in the RIA, EPA believes that it has authority to allow such adjustments due to the discretion afforded EPA by Congress. Additionally, *Alabama Power* v. *Costle*[77] gives EPA "case-by-case discretion" to grant variances or even dispensation from a rule where imposition of the requirement would result in minimal environmental benefit but the would extremely burden a regulated party. While the anti-dumping requirements, in general, apply to all conventional gasoline whether or not reformulated gasoline is also produced, under the criteria mentioned above, no "dumping" will occur since no reformulated gasoline will be produced by such refiners. Congressional intent with regard to the anti-dumping program will be met while not unduly burdening those that meet the specified criteria.

JP–4 baseline adjustments are generally limited to single-refinery refiners because such refiners have no way to aggregate baselines[78] so as to reduce the combined burden of JP–4 phaseout and the anti-dumping requirements on their operations. In some cases, if no relief were granted in this area, the viability of a refinery could be at stake. EPA is also allowing baseline adjustments for multi-refinery refiners as long as each of the refineries meets all of the specified criteria.

JP–4 production must have also constituted a significant portion of a refiner's 1990 production in order for a significant burden to exist. In its February 1993 proposal, EPA requested comment on what minimum portion of a refinery's 1990 production JP–4 should have constituted for the circumstance to be extenuating, and several different ratio options were suggested by commenters, as discussed in the RIA. As discussed in the RIA, EPA is requiring that the ratio of the refinery's 1990 JP–4 production to its 1990 gasoline production must equal or exceed 0.5.

While the adjusted emission baselines of those approved for JP–4 adjustments are likely to be higher than their actual 1990 baselines (primarily due to increased benzene and aromatics) EPA expects minimal negative environmental affects. Because the number of refineries meeting the criteria is expected to be small and the total production of all such refineries is also small, less gasoline is affected by any baseline adjustments than if the criteria were less stringent. In this situation, EPA believes that any negative environmental effects resulting from the allowed adjustments are justifiably balanced by the reduced burden on qualifying refiners.

Although EPA is allowing baseline adjustments for the specific circumstances described above, it in no way means this to be a precedent to allow adjustments for actual or so-called extenuating circumstances now or in the future. The language of the Act does not allow EPA to broadly permit baseline adjustments. Additionally, a baseline is neither unrepresentative of 1990, nor incalculable, because of post-1990 changes in crude availability, fuel specifications, fuel markets, etc. Congress certainly knew that such changes could affect baseline determinations, yet in creating the anti-dumping requirements it did not require EPA to consider such factors in determining baselines. In fact, no direction was given to account for two mandated fuel changes, Phase II volatility control and lead phaseout.

It is likely that circumstances for which baseline adjustments are not allowed may negatively affect some refiners. However, every refiner will be subject to future changes in markets, fuel quality requirements, etc., all of which will affect the refiner's gasoline quality and ability to comply with its anti-dumping baseline. Thus, except in extreme cases, baseline adjustments due to post-1990 changes which affect refiners would not be practical (due to the myriad circumstances which may exist) nor necessarily fair, and are definitely not supported by the language of the Act nor the intent of Congress. EPA is appropriately not providing for such adjustments.

h. *Inability to meet these requirements.* Although not previously discussed, EPA realizes that many unique circumstances will arise regarding the baseline determination. As such, if a refiner or importer is unable to comply with one or more of the requirements specified for baseline determination, it may be allowed to accommodate the lack of compliance in a reasonable, technically sound manner. It must petition EPA for such a variance, and the alternative must be verified by the baseline auditor. The petition may or may not be approved by EPA.

6. Baseline Volume and Emissions Determination

a. *Individual baseline volumes for refiners, blenders and importers.* The individual baseline volume of a refiner which utilizes Methods 1, 2 and or 3-type data to determine its baseline fuel parameters shall be the larger of the total volume of gasoline produced in or shipped from the refinery in 1990, excluding volumes exported. This provision is added because 1990 shipments and production could differ. As discussed in the RIA, while 1990 gasoline shipments actually contributed to emissions, data is available (by Methods 1, 2 or 3) on 1990 gasoline production. The difference between the shipped and produced gasoline is expected to be negligible with respect to baseline determination. Volumes of oxygenates blended into gasoline at the refinery and oxygenate assumed or shown to have been blended into gasoline downstream of the refinery, as discussed in paragraph 3.b, shall be included. The baseline volume shall be determined after all adjustments, such as for work-in-progress or extenuating circumstances, have been performed.

The individual baseline volume of a blender utilizing only Method 1-type data or having the anti-dumping statutory baseline as its individual baseline shall be also the larger of the volume of 1990 gasoline produced in or shipped from the refinery (blending facility). The individual baseline volume of an importer utilizing only Method 1 or having the anti-dumping statutory baseline as its individual baseline shall be the total volume of gasoline imported into the U.S. in 1990.

b. *Limitations on applicability of individual baselines.* In the April 16, 1992 proposal, EPA proposed to limit the applicability of a refiner's or importer's individual baseline to a certain portion of its post-1994 conventional gasoline production or imports and apply the anti-dumping statutory baseline parameter values to the volume in excess of this amount. This excess amount would reflect the portion of the post-1994 growth in gasoline production over 1990 volumes that is attributed to conventional gasoline. The refiner or importer would comply with the production weighted average of the two resulting baseline emission figures.

Most of the commenters agreed that the increase in conventional gasoline production over this baseline volume should be subject to the statutory baseline. However, commenters disagreed as to whether the increase should be determined relative to actual production or relative to capacity. In addition to agreeing with the proposal, those favoring production as the basis cited the difficulty in determining gasoline refining capacity. Those favoring capacity as the basis commented that if baselines are applied on a production basis, conventional gasoline production could be limited below capacity and reduce the capability to supply conventional gasoline to some markets. Also, commenters claimed that factors such as the Persian Gulf war and the phaseout of JP–4 jet fuel made 1990 production unrepresentative of normal industry refining activity.

While EPA agrees that 1990 production may have been unrepresentative of normal operations in some ways, it believes that some unusual circumstances occur every year and the limitation of individual baselines to 1990 production, as described above and in the RIA, is the better choice for minimizing emission increases and market distortions. Thus EPA is promulgating this requirement as proposed except that baseline volume shall be based on 1990 gasoline shipments rather than production. Gasoline shipments better reflect volumes actually in the market in 1990. For a refiner, its 1990 total volume would be its 1990 actual gasoline shipments, including adjustments to account for WIP or extenuating circumstances, and including oxygenate volume.

c. *Baseline emissions determination.* Every refinery must develop a set of individual baseline parameters, volume and emissions. Prior to 1/1/98, compliance with baseline emissions must be determined using either the simple or complex model equations for exhaust benzene. In the case of the simple model, only fuel benzene and fuel aromatics are considered—VOC changes which may affect benzene emissions are not considered. Beginning 1/1/98, compliance with baseline emissions must be determined using the complex model for total exhaust toxics and NO_x.

As discussed in Section IV, there are separate complex models from which to determine summer and winter emissions. As such, average baseline fuel parameters must be determined separately for summer and winter. Conventional gasoline baseline emissions (and sulfur, olefins and T90 values) will first be determined separately, on a summer and winter basis, using summer and winter fuel parameter values (except that average winter RVP will be 8.7 psi, as discussed in the RIA). The summer and winter emissions (and sulfur, olefins and T90 values) will then be weighted by the respective summer and winter baseline volumes to determine annual average baseline emissions (and sulfur, olefins and T90 values). Compliance is determined in a similar manner.

As also discussed in Section IV, there are two complex models—one for use prior to 2000 and one for use in 2000 and beyond. As such, every refinery will have two sets of baseline total exhaust toxics and NO_x emissions—one set applicable prior to 2000, and one in 2000 and beyond. Note that baseline fuel parameter values and volume do not change, only the emissions determined from those parameters. In the case of NO_x, it is likely that every refinery will actually have four potential baseline NO_x emissions values, depending on whether a nonoxygenated or an oxygenated baseline is used to evaluate NO_x emissions (see discussion in paragraph 5.e).

Many commenters were also concerned about the effect of future revisions to the complex model on 1990 baseline emissions and future compliance, particularly should additional fuel parameters be added to the model. In the event of revisions to the complex model, EPA will

[77] *Alabama Power Company* v. *Costle*, 636 F.2d 323.357 (D.C. Cir 1979).

[78] As discussed in paragraph 6.d, a refiner with more than one refinery may determine an aggregate baseline, i.e., a conventional gasoline compliance baseline, which consists of the volume-weighted emissions or fuel parameters, as applicable, of two or more refineries.

promulgate additional regulations which will consider the impact on conventional gasoline, including consideration of lead time, cost and other factors.

d. *Conventional gasoline compliance baselines.* The Clean Air Act refers to gasoline sold by a refiner, blender or importer (section 211(k)(8)(A)), but does not specify an averaging unit for baseline determination nor whether gasoline and the resulting emissions should be treated on a refinery or refiner basis, thus authorizing EPA to adopt the most appropriate method of complying with the anti-dumping requirements. EPA considered three possible options for baseline determination—refinery basis, refiner basis, or some combination of the two. During the regulatory negotiation, it was agreed that EPA would propose allowing a refiner to elect to establish an individual baseline. In the April 1992 proposal, EPA proposed that refiners could choose either refiner-wide averaging or refinery-by-refinery averaging, but not a combination of the two. This was to avoid situations where multi-refinery refiners could game the system and potentially gain a significant competitive advantage over single-refinery refiners.

Although, as stated, EPA expressed concern about multi-refinery refiners' having an advantage over single-refinery refiners, few commenters agreed with EPA's April 1992 proposal. Of those that did agree, some suggested that all refineries should be required to comply with their individual baselines, to minimize any advantages for multi-refinery companies over single refinery companies.

However, most of the comments received on this issue claimed that EPA had not interpreted this provision correctly from the Agreement-in-Principle. The agreement, according to the commenters, allowed refiners to decide how to aggregate their refineries' baselines. Some suggested that if aggregations are only allowed as proposed, compliance with the simple model, complex model and/or anti-dumping requirements would be difficult.

Upon further consideration of this issue, EPA is allowing refiners to choose to have one or more individual refinery conventional gasoline compliance baselines and one or more "refiner" baselines (i.e., more than one grouping of two or more refineries to form a compliance baseline). Because the decision to group or not group refineries is a onetime decision, and because a refiner's total emissions will be conserved, the possibility of gaming will be reduced. When two or more refineries are grouped for the purpose of having a single conventional gasoline compliance baseline, the refineries shall be considered "aggregated", and the resulting baseline shall be an "aggregate" baseline.

Aggregate baselines are determined by volume-weighting the baseline emissions and sulfur, olefin and T90 values of the aggregated facilities. If aggregated, all NO_x baselines in an aggregate must be determined either on a nonoxygenated or an oxygenated basis, using the corresponding nonoxygenated or oxygenated baseline parameters. The choice of whether a refinery has its own individual baseline or is part of an aggregate baseline is a one-time decision, i.e., refineries cannot be re-aggregated annually. Also, an individual baseline (including both parameter and emission values) must be calculated for each refinery, whether that refinery will be part of an aggregate baseline or not. This is required because reformulated gasoline compliance under either the simple model or early use of the complex model is on a refinery basis. Also, individual baselines must be known in the event that a refinery is sold or shut down, or other reason why the baseline would need to be recalculated.

EPA also proposed to require individual refinery baselines for refineries located in specific isolated geographic areas where localized dumping was occurring. EPA is retaining this proposal in the final rule. Few comments were received on this issue and are addressed in the RIA.

e. *Baseline recalculation.* In its April 16, 1992 proposal, EPA proposed certain instances when baselines would have to be recalculated. Few adverse comments were received. In the case of a refinery which is shut down after 1990, EPA had proposed that an aggregate baseline which contained the shutdown refinery would not change unless the shutdown refinery was sold. However, upon further consideration, EPA believes that it is more appropriate, and more consistent with the other recalculation requirements, to remove a shutdown refinery's contributions to an aggregate baseline. EPA is thus promulgating this requirement with the other proposed requirements.

D. Baseline Auditor

In the February 26, 1993 proposal, EPA expanded on the qualifications and responsibilities of the baseline auditor which each refiner or importer must utilize to verify its baseline. Refiners and importers utilizing the anti-dumping statutory baseline, if so allowed, are not required to have a baseline auditor.

1. Auditor Qualifications

EPA proposed specific criteria for determining the independence and technical capability of the auditor (and where applicable, the auditor's organization and/or certain persons working with or for the auditor). A few commenters suggested minor changes in the proposed criteria as discussed in the RIA, and some of these recommendations are incorporated in the final rule.

EPA also proposed that the auditor retained by a refiner or importer may also have developed the baseline for the same refiner or importer as long as all other auditor qualification requirements were met. Several commenters who addressed this issue agreed that the auditor should be allowed to also be the baseline preparer, mostly from a cost savings point-of-view. Other commenters pointed out that the independence of the review would be lost. While this may diminish to some extent the value of an independent audit, the cost and time savings are relevant considerations. In balancing these concerns, EPA is allowing the auditor to also have prepared the baseline.

2. Auditor Certification

EPA proposed two options by which potential auditors could be approved by EPA as qualified to audit baselines. One option involved precertification by EPA; under this option, a statement of the auditor's qualifications would be submitted to EPA. EPA would officially certify an auditor, or if no comment were received from EPA within a specified time, the auditor would be considered certified by default. The other option required the refiner or importer to ensure that the auditor is qualified, and to provide a qualification statement for the auditor with the baseline submission. In this case, the auditor would not be pre-certified by EPA.

Most commenters agreed with allowing both options. One commenter thought that EPA should notify auditors of approval rather than letting them be certified by default, and that they should be pre-certified. EPA believes that, in most cases, it will respond in some form, not necessarily approval or disapproval, prior to the end of the allowable time period. In the proposal, EPA allowed the auditor to be certified by default after 30 days. However, EPA now believes that it should not allow an auditor to be certified by default until 45 days after application or today's date, whichever is later, because of possible delays, e.g., mail delivery, in receiving an auditor's qualification statement.

EPA had also proposed that within thirty (30) days of hiring a baseline auditor or today's date, whichever is later, each refiner and importer must inform EPA of the name, organization address and telephone number of the auditor hired. EPA now believes this information is not critical and thus is eliminating this requirement. This information is only required in the baseline submission.

3. Auditor Responsibilities

The major issues raised by commenters concerning auditor responsibilities was whether the auditor was to verify the baseline determination or recalculate the baseline itself. EPA agrees that the auditor should independently verify the baseline determination, and is not required to develop a second baseline determination. However, the auditor must take whatever action is necessary to ensure that all baseline submission requirements are fulfilled. EPA is also requiring that a refiner's baseline submission include a statement prepared and signed by the primary analyst stating that, to the best of its knowledge, it has thoroughly reviewed the sampling methodology and baseline calculations, and that they meet the requirements and intentions of the rulemaking, and that it agrees with the final baseline parameter and emission values listed in the baseline submission. EPA is not requiring auditors to submit (to EPA) an audit plan prior to beginning the baseline verification process.

E. Baseline Submission and Approval

1. Timing

Few comments were received concerning the timing of baseline submissions, and EPA is promulgating its requirements that baselines be submitted to EPA within 6 months of today's date and that baselines determined using data collected after today be submitted to EPA by September 1, 1994. EPA will consider petitions for an extension of these deadlines, however, submitters should take note that late submissions could cause delays in receiving EPA decisions on approval of their baselines. EPA is promulgating such timing requirements in order to give the industry sufficient time to generate and audit individual baselines. EPA is well aware of the need for expeditious review of submitted baselines, and encourages submission of baselines as soon as possible after today.

2. Petitions

In many situations in the baseline determination, a refiner or importer is required to petition EPA in order to be allowed to account for a variance from a requirement. In other situations, the refiner or importer is required to "show" that it meets certain criteria. In either of these situations, approval will be given by the Director of the EPA's Office of Mobile Sources, or designee. As will be discussed below, all petitions must be included in the baseline submission—in fact, in most cases, baseline calculations have to be determined both with and without the requested variance, since the outcome of the request would be unknown. Although not previously proposed, EPA is allowing petitions and "showings" to be submitted prior to the baseline submission deadline although an early decision on the request is not guaranteed. Nonetheless, the baseline submission must be submitted by the applicable deadline, whether or not EPA has decided to approve or disapprove the request.

3. Submission Requirements

Based on comments to its proposals, EPA has determined that a number of its proposed baseline submission requirements were not pertinent to a baseline determination. EPA is thus requiring that, at minimum, the information described in § 80.93 be included in the baseline submission. Information on crudes and refinery unit operations is still required because EPA may wish to evaluate baseline submissions using a refinery flow simulation system. EPA plans to develop a sample baseline submission document which should be available soon after today.

Although not previously required in the baseline submission, the blendstock-to-gasoline ratio for each calendar year 1990 through 1993 must now be included. The blendstock-to-gasoline ratio is discussed further in Section IX, and is defined in § 80.102. Determination of this ratio is also subject to auditor verification, as is the entire baseline submission.

EPA may require submittal of more extensive data if such data is required to aid EPA in its review of the baseline submission, or if discrepancies in any part of the baseline submission are found. Additional information that may be useful to EPA in its evaluation of the baseline submission may be included, at the refiner's discretion.

EPA is slightly expanding the content required in the statement signed by the chief executive officer which is included in the baseline submission. The statement must state that the data submitted is the extent of the data available for the determination of each of the required baseline fuel parameter values, that sampling methodology and baseline calculations meet the requirements and intentions of the rulemaking, and that the final baseline parameter and emission values listed represent its 1990 gasoline, to the best of his or her knowledge.

If a refiner or importer desires that certain information in the baseline submission not be publicly available, it must a assert a claim of confidentiality, as discussed below, and include this request in the baseline submission.

4. Baseline Approval

EPA will approve baselines and upon approval publish, in the **Federal Register**, the standards for each applicable gasoline producing or importing facility of a refiner, blender or importer. Because a party's baseline will become its standard for compliance with the anti-dumping and early reformulated gasoline requirements, EPA believes the standard should be publicly known, and as discussed below, there are no compelling reasons not to publish such information. Additionally, such standards are not entitled to confidential treatment (40 CFR 2.301(e), special confidentiality rules applicable to Clean Air Act cases). Thus, upon Agency approval of a baseline, the baseline exhaust benzene, exhaust toxics and NO_x emissions values and 125 percent of the baseline sulfur, olefins and T90 values shall be published. This information is required on a refinery or facility basis because the reformulated gasoline requirements are on a refinery-basis, and because this information needs to be known in the event a refinery changes owners.

While EPA previously proposed that it would publish baseline parameter values by refinery, it now believes that no substantive comments could result from publishing such information because of the complexity of the baseline determination. Additionally, EPA realizes that certain aspects of the baseline determination must necessarily remain confidential in order to prevent serious, negative competitive effects. Thus EPA is allowing any person or organization providing information to EPA in connection with the determination of a baseline, including establishing a baseline or investigating possible baseline discrepancies, to assert that some or all of the information submitted, except the baseline emissions or parameter values which are the standard for a refiner, refinery or

importer, is entitled to confidential treatment as provided in 40 CFR part 2, subpart 2. Such confidential information shall be clearly distinguished from other information to the greatest extent possible, and clearly labeled "Confidential Business Information." Information covered by a claim of confidentiality will be released by EPA only to the extent allowed by procedures set forth in 40 CFR part 2, subpart B. Failure to submit a claim of confidentiality with submission of the baseline, however, may lead to release of information by EPA without further notice to the submitter (40 CFR 2.203 (a) and (c)).

Most comments on this topic addressed the publication of individual baseline information. Several commenters suggested publishing a refiner's or importer's anti-dumping index (ADI), a ratio of the individual baseline emissions to the statutory baseline emissions. However, there is little difference between this value and the actual value if the statutory baseline emissions are known. Another suggestion included providing such information only upon request. Again, there is little difference between "on request" and publishing such information at one time. One commenter stated that no where in the statute was publication of baseline data required. While that is true, EPA must release the standards (and any other non-CBI information) upon request, and there are benefits from publishing them, e.g., citizen suit enforcement, more information to the general public about EPA's standards, better deterrence to noncompliance. Commenters did not provide any clear or compelling reason for not publishing the standards, and there are benefits from publishing them, as discussed. Additional comments, which did not affect the final rule, and EPA responses can be found in the RIA.

IX. Anti-Dumping Compliance and Enforcement Requirements for Conventional Gasoline

The final rule implements section 211(k)(8) of the Clean Air Act which provides that beginning January 1, 1995, average per gallon emissions of specified pollutants from non-reformulated or conventional gasoline use must not deteriorate relative to emissions from 1990 gasoline on a refiner or importer basis. This could occur, for example, if fuel components or properties that cause harmful emissions and that are removed from or limited in reformulated gasoline, are "dumped" into conventional (non-reformulated) gasoline. As a result, the "anti-dumping" program limits the emissions of specified pollutants from conventional gasolines, and under certain circumstances from blendstocks (based on EPA's authority under section 211(k)(c) of the Act).

The final rule differs from the earlier proposals primarily in the area of blendstock accounting. These changes are discussed in greater detail below.

Refiners and importers must establish individual 1990 baselines in order to compare the emissions characteristics of gasoline they produced or imported in 1990 with the emissions characteristics of conventional gasoline produced or imported in 1995 and later. See section VIII for a discussion of the methods required for development of an individual baseline. The baseline for refiners who were not in business in 1990, and in certain cases for other importers and refiner-blenders, is the statutory baseline found at § 80.91(c)(5) of the regulations.

Refiners who operate more than one refinery have the option of demonstrating compliance with the anti-dumping provisions for each refinery separately, or the refiner may group its refineries and show compliance for each group separately provided that each refinery's performance is accounted for either separately or as part of a refinery group. The refiner's refinery-grouping election may not be changed after the initial election. Blendstock tracking and accounting as discussed below, must be determined in accordance with the same refinery grouping as chosen for compliance purposes.

The final rule has three separate sets of compliance standards for determining compliance with the anti-dumping requirements, however, only one set applies to a refiner or importer at any one time. These are the Simple Model standards and Optional Complex Model standards, that apply in 1995, 1996, and 1997; and the Mandatory Complex Model standards that apply in 1998 and thereafter. All three sets of standards require refiners and importers to average certain properties of conventional gasoline and demonstrate compliance with prescribed standards, which in some cases are actual fuel properties and in others are emissions products calculated from specific fuel properties.[79]

Under the Simple Model standards, a refiner or importer is required to demonstrate on an annual basis that average exhaust benzene emissions of conventional gasoline do not exceed the refiner's or importer's 1990 compliance baseline for exhaust benzene emissions, and that average sulfur, olefins and T90 each do not exceed 125% of the refiner's or importer's 1990 average levels for each of these parameters. Under the Optional Complex Model standards, annual average levels of exhaust benzene emissions, volume weighted for each batch as determined under the applicable model, may not exceed the refiner's or importer's 1990 average exhaust benzene emissions calculated in the same manner. Under the Mandatory Complex Model standards, annual average levels of exhaust toxic emissions and NO_X emissions, volume weighted for each batch as determined under the applicable model, may not exceed the refiner's or importer's 1990 average levels for exhaust toxic emissions and NO_X emissions calculated in the same manner. Refiners and importers are required to determine the emissions performance for each batch of gasoline in either the applicable summer or winter model based on whether or not the batch has been designated to comply with EPA volatility requirements.

The final rule provides that in 1995, 1996, and 1997, refiners and importers may determine compliance based on either the Simple Model standards or the Optional Complex Model standards, at their option. However, a refiner that produces reformulated gasoline under the Simple Model must use the Simple Model anti-dumping standards, and a refiner that produces reformulated gasoline under the optional complex model must use with the Optional Complex Model anti-dumping standards.

Refiners and importers are required to include the following products, which are produced or imported during each averaging period, in anti-dumping compliance calculations: conventional gasoline; non-gasoline petroleum products if required under the blendstock accounting provisions (discussed below); and gasoline blending stock which becomes conventional gasoline upon the addition of oxygenate (discussed below).

In addition, oxygenate that is added to a refiner's or importer's gasoline or blendstock downstream of the refinery or import facility may be included in the refiner's or importer's compliance calculations only if the refiner or importer is able to demonstrate with certainty that the oxygenate has been added to that party's gasoline. Provisions are included in the final rule for the manner in which refiners and importers must make this demonstration.

Oxygenate blended downstream may be counted by a refiner or importer if the refiner or importer demonstrates that it performed the oxygenate blending. In addition, the oxygenate may be counted if the blending is conducted by a blender with whom the refiner or importer has a contract that specifies procedures intended to ensure proper blending, and the refiner or importer monitors the downstream blending operation through audits, inspections, and sampling and testing of the gasoline produced at the blending operation. These downstream oxygenate blending provisions are discussed more fully below.

Refiners and importers also have the option of determining compliance for exhaust NO_X emissions performance either with or without the inclusion of oxygenates provided that the baseline NO_X performance is determined in the same manner. Refiners and importers may elect to switch one time under certain conditions which are discussed more fully in Section VIII of the Regulatory Impact Analysis.

Enforcement of the anti-dumping standards under this rule consists of a combination of mechanisms to monitor compliance with the regulations, including: refiner/importer sampling and testing of gasoline produced or imported; record keeping; reporting; annual audits by refiners and importers; and Agency audits.

The final rule specifies the manner in which penalties will be determined for violations of the anti-dumping requirements of the final rule. These penalty provisions include calculations of the number of days of violation, and presumptions regarding the properties of gasoline.

Under the anti-dumping requirements in the final rule, certain refiners are also required to account for blendstocks that are produced. The principal policy reason for imposing blendstock tracking and accounting is that, unless proscribed, certain refiners will have an incentive to transfer blendstocks based on the differences in baselines that will exist. These differences thus could result in the transfer of the "production" of gasoline from a refinery with a more rigorous baseline to another refinery with a less rigorous baseline, through the transfer of blendstocks. This transfer-of-blendstocks concern is described more fully below.

Refiners and importers are required to establish a baseline of the volume of certain specified blendstocks[80] produced and transferred to others, relative to the volume of gasoline produced (the "blendstock-to-gasoline ratio"). This baseline is established by determining, for each calendar year 1990 through 1993, the volumes of blendstocks produced and transferred, the volumes of gasoline produced, and calculating the annual and four-year average blendstock-to-gasoline ratios. Refiners may include in baseline calculations only those volumes of blendstocks for which the refiner is able to demonstrate the blendstock was used in the production of gasoline. This baseline blendstock-to-gasoline ratio must be established using the baseline auditing procedures described in § 80.93.

Beginning in 1995, refiners are required to determine the blendstock-to-gasoline ratio for each calendar year compliance period. This compliance period ratio is then compared with the baseline ratio. During each year 1995 through 1997, the annual compliance period ratio is compared with the largest ratio of the individual annual baseline ratios. Beginning in 1998, the compliance period ratio will be the running four-year average of the annual ratios,[81] instead of an annual ratio. This is then compared with the baseline four-year average ratio.

In the case of both the annual comparisons before 1998, and the average comparisons beginning in 1998, if the compliance period ratio exceeds the baseline ratio by ten percent or more special blendstock accounting must be carried out by the refiner, unless certain exemptions are met or the refiner has been granted a waiver by EPA.[82] These exceptions to blendstock accounting are discussed more fully below.

In a case where special blendstock accounting is required, the refiner must include the properties of all blendstocks produced in its compliance calculations for the two subsequent averaging periods. In addition, the refiner must notify any recipients of such "accounted-for" blendstocks that the downstream party may not include the properties in that party's calculations. The second and subsequent times that the compliance period ratio exceeds the ten percent threshold, special blendstock accounting is required for the four years subsequent to the second exceedance.

The final rule includes a provision that allows a refiner to petition for a waiver from special blendstock accounting in a case where the volume of blendstock produced is the result of extreme or unusual circumstances which are clearly outside the control of the refiner and could not have been avoided, such as fire, accident, or natural disaster.

Blendstock tracking is limited under the final rule. Refiners with an annual compliance period blendstock-to-gasoline ratio of three percent or less are exempt from special blendstock accounting, regardless of how the compliance period ratio compares with the baseline ratio. This exemption is included because, in such a circumstance, there are limited environmental effects, and the party has a limited ability to gain economic advantage from transferring production to a less rigorous baseline.

The final rule also excludes from the blendstock tracking and accounting requirements blendstocks that are exported, transferred to a refiner for use as a refinery feedstock, or are transferred between refineries that have been aggregated under a common baseline. Also excluded are transfers for other than gasoline blending purposes, e.g., transfers of product for use in a chemical process, because such other-than-gasoline-blending use renders the product non-blendstock by definition. Such transactions are not indicative of an attempt by a refiner to gain an improper baseline.

A. Blendstock Accounting

EPA's 1991 Notice Of Proposed Rulemaking for the anti-dumping program proposed compliance based on the properties of finished gasoline only and did not address accounting for blendstocks. Commenters on this Notice stated that the proposed anti-dumping regulations would create the opportunity for certain refiners to avoid the normally-applicable baseline through the transfer of gasoline blendstocks to another refiner with a more lenient baseline. This opportunity derives from the fact that the 1990 individual baseline for a large percentage of the refiners is more

[79] For a discussion of issues concerning which properties or pollutants are covered in the federal anti-dumping program, see section VIII of this preamble and the Notice of Proposed Rulemaking, published July 9, 1991 (56 FR 31219–31222).

[80] The blendstock tracking requirements apply only to certain blendstocks that have properties that are "dirtier" than the 1990 Clean Air Act average fuel parameters for anti-dumping. Use of the term "blendstock" also means that tracking applies only to non-gasoline petroleum products that are used in the production of gasoline (see 40 CFR 80.2(s)). As a result, refiners and importers are not required to track non-gasoline petroleum products where the refiner or importer can demonstrate these products are used for a purpose other than gasoline blending.

[81] In 1998, the compliance period ratio consists of the average of the ratios for 1995 through 1998; in 1999, the compliance period ratio consists of the average of the ratios for 1996 through 1999; etc.

[82] For example, if the largest baseline annual ratio for a refinery is 5%, and the 1995 ratio for that refinery is 10%, this increase would be 100%, and special blendstock accounting would be required for that refinery unless exempted for other reasons.

stringent than the 1990 average. According to the commenters, a refiner who operates a refinery with such a more-stringent-than-average baseline could effectively achieve an easier baseline by shifting blendstocks produced at that refinery to another refinery with a less stringent baseline. Gasoline could then be "produced" at the blendstock-transferee refinery using blendstocks produced at the blendstock-transferor refinery. This strategy could be accomplished, for example, through the transfer of blendstocks to a refiner-blender who would use the statutory average baseline, such as a new business. Commenters stated concern that refiners using this strategy would achieve a significant competitive advantage.

EPA agreed with these concerns, and in the 1992 Supplemental Notice of Proposed Rulemaking proposed requirements on the methods of accounting for gasoline blendstocks. This blendstock accounting proposal was included to limit the adverse environmental effects of such production transfers, by ensuring that each refiner meets the anti-dumping standards using the baseline that properly applies to the refiner.

In order to avoid the baseline-shifting possibility, EPA proposed that refiners would be required to either include in the refinery compliance calculations all blendstocks produced at a refinery, or the products would be prohibited for subsequent use in blending gasoline. Under this proposal, refiners would be required, with certain exceptions, to chemically mark un-accounted-for products to ensure they are not used by downstream parties for gasoline blending. This proposal included provisions intended to ensure that blendstock would be included in anti-dumping compliance calculations by only one refiner, and prohibitions intended to prevent the use of marked petroleum products in gasoline production.

Commenters on the 1992 proposal objected to the blendstock accounting/marking scheme because of its impact on the refining industry. Commenters raised concerns regarding the liability scheme and the paperwork requirements associated with the accounting and the marking of blendstocks. Commenters also contended that the marking of blendstocks would be disruptive to the chemical industry.

In response to these comments, EPA proposed a significantly revised blendstock accounting mechanism in the 1993 Supplemental Notice of Proposed Rulemaking. This proposal eliminated the requirement that refiners account-for or mark blendstocks and eliminated the prohibitions and liabilities associated with the use of marked blendstock. Under this revised mechanism, refiners would be required to monitor the volume of certain blendstocks produced at each refinery relative to the volume of gasoline produced. If for any year the proportion of a refinery's production that is blendstock (the "blendstock-to-gasoline ratio") increased relative to the refinery's baseline blendstock-to-gasoline ratio by ten percent or more, with certain exceptions the refinery would be required to account for all blendstocks produced at the refinery during the year of the failure, or in the alternative any blender-recipient of blendstock produced at that refinery would be required to use the refinery's baseline when accounting for such blendstock during the year of the failure.

Under the proposal, a refiner would be exempt from special blendstock accounting if the refiner's blendstock-to-gasoline ratio for any compliance year is three percent or less, regardless of how the increase compares with the baseline ratio. Blendstock tracking would be required only for refiners having a 1990 baseline more stringent than the anti-dumping statutory baseline. These provisions were designed to limit the blendstock accounting provisions to those circumstances where there is likely to be an environmental problem. This also would help to avoid unnecessary costs and burdens on the regulated community. In any case where EPA can show that a refiner transferred blendstocks in order to evade a more stringent baseline, however, the special blendstock accounting would be required.

The proposed regulations would require refiners to track only specified blendstocks that have properties that are "dirtier" than normal anti-dumping baseline properties; a list of such blendstocks was included. In addition, tracking would not be required under the proposal for petroleum products the refiner could establish are used for non-gasoline-blending purposes.

EPA received substantial comments on the blendstock accounting mechanism included in the 1993 proposal.

Several comments addressed the manner in which the compliance period blendstock-to-gasoline ratios are compared to the baseline ratios. Several commenters said that the blendstock-to-gasoline ratio for any annual averaging period should be compared to the largest single-year ratio during the baseline period, and not to a multi-year averaging period as proposed. This change is necessary, according to one commenter, because refinery equipment is shut-down for maintenance during normal refinery operations (or a refinery equipment "turnaround"), and that such turnarounds often will result in increased blendstock shipments from a refinery. An industry group commenter further stated that most refinery equipment goes through a maintenance turnaround every four years. Other commenters suggested that the possibility of triggers due to erratic blendstock-to-gasoline ratios should be solved by enlarging the ten percent ratio threshold.

EPA agrees with the concerns raised by these comments, and has modified the manner in which blendstock-to-gasoline ratios are compared in the final rule. During 1995 through 1997, the annual compliance period blendstock-to-gasoline ratio is compared to the largest one-year ratio during the baseline period. Beginning in 1998, however, because of data availability due to the implementation of the reformulated gasoline regulations the compliance period ratio is a running average consisting of the average of the current year's ratio and the ratios from the three previous years. This four-year compliance period ratio is compared to the similar four-year baseline ratio. EPA believes this approach to evaluating blendstock-to-gasoline ratios responds to the concerns raised by the commenters, and will minimize if not eliminate the chance that the ten percent threshold will be exceeded because of maintenance, turnarounds and other like events that do not indicate a transfer of production to achieve a less stringent baseline. For example, any increase in blendstock sales volume during the compliance period that is due to refinery equipment turnaround should be matched by blendstock sales volume during the baseline period that also is due to a turnaround. Beginning in 1998 the comparison of four-year averages should further dampen any unusual, short-term deviations from the normal proportion of refinery sales that is blendstock.

EPA believes comparing the blendstock-to-gasoline ratio of a four-year compliance period with a four-year baseline period provides the best indication of a refiner's overall approach to blendstock production, because of its correlation with the normal period of refinery equipment turnarounds. During the first three years of the program when a four-year compliance period is not possible, however, the approach of comparing each compliance year's blendstock-to-gasoline ratio with the largest single year's ratio during the baseline period is the best alternative.

EPA believes the one-year ratio comparison approach is inferior to the four-year ratio comparison approach as a long-term program mechanism, because under the one-year approach there is the potential for refiners to have large blendstock-to-gasoline ratios in each year that are not due to normal refinery operations, yet these ratios would be acceptable if smaller than the largest one-year ratio from the baseline period. The final rule nevertheless includes the one-year approach for 1995 through 1997, because refiners will be required to include 1995 through 1997 blendstock ratios in their 1998 four-year average ratio. Any refiner who has produced excess blendstock in order to "game" the one-year comparison approach during the first three program years is likely to fail the more appropriate four-year comparison in 1998. EPA believes the likelihood such a refiner would violate the ten percent threshold and incur the consequent blendstock accounting requirements will constrain refiner gaming of this type.

EPA has retained the ten percent blendstock-to-gasoline ratio trigger in the final rule, however, because a trigger at this level is appropriate for the like-time-period comparisons used in the final rule. With the promulgated approach, EPA believes that blendstock sales increases in excess of the trigger are only likely to occur in cases where a refiner attempts to improperly gain use of a less stringent baseline.

Several comments focused on the two options proposed for special blendstock accounting, the first option with the refiner accounting for the blendstock and the second option with the downstream refiner-blender using the baseline of the blendstock producer-refiner. These commenters stated that refiners using the refiner-accounting option would have difficulty if it became apparent late in the year that the ratio threshold would be exceeded, because the required adjustment must reflect the total volume of all blendstocks produced and sold during the entire year. These commenters stated that the refiner-accounting option also would be difficult to implement because downstream refiner-blenders of the blendstock, who would have included blendstock received during the year in compliance planning, would have to recalculate compliance with the refiner-accounted blendstock excluded. Similar timing and complexity concerns were expressed in the case of a refiner who selected the option of shifting the refiner's baseline to blendstock recipients.

EPA agrees with these comments, and has modified the final rule as a result. In any case where the blendstock-to-gasoline threshold is exceeded, special blendstock accounting is required beginning in the subsequent averaging period. This change will avoid the timing and complexity problems of requiring refiners and downstream blendstock recipients to recalculate compliance retroactively for the compliance period during which the threshold is exceeded. In addition, EPA has rethought the option of allowing refiners to pass the refiner baseline to blendstock recipients, and has excluded this option from the final rule. EPA believes that the burden of special blendstock accounting should fall on the refiner that produces the excess blendstock, and such parties should not be allowed to pass the accounting responsibility to downstream parties. EPA proposed the option of allowing refiners to pass the refiner-baseline to downstream blender-refiners in order to allow more flexibility in meeting the anti-dumping requirements. EPA now believes that this flexibility advantage is outweighed by countervailing considerations, including the complexity that results from this option, the equity in placing the blendstock accounting responsibility only on the refiner who has control over the volume of blendstocks that is produced, and the inequity that could result if a refiner imposed a more stringent baseline on downstream blender-refiners.

One commenter expressed concern that the reason EPA proposed blendstock accounting measures was to prevent new blender-refiners from entering the market in order to correct a perceived "loophole" in the proposed rules, and that such market manipulation by EPA is inappropriate.

EPA agrees that the anti-dumping program should not preclude new blenders from entering the market, and does not believe that the final regulations have such a result. Any refiner who enters the market beginning in 1995 will have the same regulatory requirements as refiners who were in business before that date. They of course will have the statutory baseline and not a baseline that is more stringent than the statutory baseline. A new refiner would therefore not be subject to the blendstock accounting requirements.

EPA has implemented the following changes in the final rule in response to comments: (1) The gasoline portion of the compliance period blendstock-to-gasoline ratio has been expanded to include all gasoline produced, including reformulated gasoline and RBOB, because a comparison to conventional gasoline alone would more likely cause the trigger to be exceeded and not represent true incidences of dumping; (2) straight run naphtha has been excluded from the list of applicable blendstocks that are included in the blendstock portion of the blendstock-to-gasoline ratio, because properties of this product are cleaner than the anti-dumping statutory baseline; and (3) feedstocks, exported blendstocks, and blendstocks transferred between refineries that are aggregated for compliance purposes are excluded from the blendstock portion of the ratio, as they are not indicative of a transfer of production to avoid a more stringent baseline.

EPA proposed that refiners would be exempt from special blendstock accounting if the compliance period blendstock-to-gasoline ratio is three percent or less, regardless of how this ratio compares with the baseline ratio. One commenter stated that EPA should either reduce the three percent threshold for this exemption, or eliminate the exemption altogether. The commenter claimed that refiners could produce primarily dirty blendstocks (e.g., benzene) within the three percent limit for sale into the downstream market, which would result in environmental degradation. This commenter further stated that with the three percent exemption, only approximately fifteen percent of refiners would be required to monitor the blendstock-to-gasoline ratio under EPA's proposed scheme. This commenter also stated that the blendstock tracking provisions should apply to all refiners and not only to parties with more-rigorous-than-statutory baselines, because all parties have the opportunity to sell dirty blendstocks into the downstream market.

EPA disagrees with the concern raised by this comment. Any party who combines blendstocks to produce conventional gasoline, or who combines blendstocks (other than oxygenate) with conventional gasoline, is considered to be a "refiner" under the anti-dumping regulations, and is required to meet all anti-dumping standards and requirements. Moreover, such a blender-refiner is required to meet anti-dumping standards only on the basis of the volume and properties of the blendstock used, and may not include in compliance calculations the volume and properties of any gasoline used in blending. Any blender-refiner must, therefore, offset any "dirty" blendstocks

used with sufficient "clean" blendstocks to meet the anti-dumping standards on average. Most downstream blender-refiners will be subject to the anti-dumping statutory baseline.

EPA believes these requirements on blender-refiners will limit the opportunities for refiners to produce and sell "dirty" blendstocks. In addition, because any "dirty" blendstocks must be offset with "clean" blendstocks the gasoline produced will cause no environmental degradation.

EPA does not agree with the comment that all refiners could gain an advantage from shifting blendstocks regardless of their baseline. Only refiners with a baseline more-stringent-than-statutory could shift blendstocks to another refiner with the average baseline and thereby circumvent the anti-dumping requirements. For a refiner with a less-stringent-than-statutory baseline, the statutory baseline is more stringent. As a result, blendstock shifted by such a refiner to another refiner with the statutory baseline would have to meet standards as measured against a more stringent baseline. A refiner with a less-stringent-than-statutory baseline similarly would not be able to circumvent the baseline provisions merely by shifting blendstock to another refiner with an even less stringent individual refinery 1990 baseline, because the volume of gasoline that may be produced against the individual refinery 1990 baseline is limited to the second refiner's 1990 equivalent gasoline volume.[83] Compliance for any gasoline produced in excess of the 1990 equivalent gasoline volume is measured against the Clean Air Act statutory baseline. In consequence, if blendstocks are shifted by one refiner to another with a more lenient baseline, in effect the shifted blendstock must meet standards measured against the statutory baseline.

As a result, EPA has not included in the final rule any provisions that would limit the volumes of blendstocks that are produced and sold, except for the provisions intended to address the baseline-shifting strategy.

B. Inclusion of Oxygenate in Anti-Dumping Compliance Calculations

Oxygenates are included in the set of products that may be included in anti-dumping compliance calculations under certain conditions, because the oxygenate used in the production of conventional gasoline alters the results of the anti-dumping compliance calculations. As a result, where a refiner or importer is able to establish that oxygenate is in fact added to gasoline or blendstock produced or imported by that party, it is appropriate to allow the refiner or importer to include the oxygenate in compliance calculations. This approach to oxygenate use under anti-dumping is consistent with the proposals, but the final rule clarifies the manner in which parties must demonstrate that oxygenate is in fact used.

In the SNPRM 92 and SNPRM 93, EPA proposed that the inclusion of oxygenate volume in compliance calculations by refiners and importers would be optional, except as required in the calculation of other exhaust emission products under the applicable model. These proposals did not, however, specify the manner in which the oxygenate use showing must be made. EPA believes the provisions included in the final rule dealing with the oxygenate use showing during compliance periods is necessary in order to ensure conventional gasoline emissions are accurately reported.[84]

Oxygenate blenders are not required to demonstrate compliance with anti-dumping standards because the blending of oxygenate has only a positive effect on the quality of gasoline or blendstock with which oxygenate is blended with regard to the properties or emission products regulated under anti-dumping.[85]

Oxygenate that is blended at a refinery or import facility would be included in compliance calculations as a matter of course because the oxygen (along with all other gasoline constituents) would be reflected in the batch analyses conducted of the gasoline using samples collected before the gasoline left the refinery or import facility.

The requirements that must be met in order for refiners and importers to be allowed to claim oxygenates which are blended downstream are similar to the requirements relating to reformulated gasoline blendstock for oxygenate blending (RBOB) in the reformulated gasoline program. The thrust of these requirements is that the refiner or importer must show that the oxygenate claimed was in fact added to the refiner's or importer's gasoline. This could be shown if the refiner or importer is able to demonstrate that it blended the oxygenate while the gasoline (or gasoline blendstock) is still owned by the refiner or importer.

If the downstream blending is carried out by a person other than the refiner or importer, in order to include the oxygenate in its compliance calculations the refiner or importer must have a contract with the downstream blender which mandates procedures that are necessary for proper blending. In addition, the refiner or importer must monitor the downstream blending operation in a manner reasonably calculated to ensure the oxygenate use claimed by the refiner or importer is accurate. Such monitoring must include audits, inspections, and sampling and testing of gasoline produced by the downstream blender.

The provisions that must be included in the contract with the oxygenate blender are those which the refiner or importer believes are necessary to ensure the oxygenate claimed by the refiner or importer is in fact added. At a minimum, the contract should provide for the inspections, sampling and testing, and audits by the refiner or importer over the oxygenate blending operation, as well as any quality assurance measures the refiner or importer feels the oxygenate blender should carry out. The contract also could specify the technical manner in which oxygenate is blended, if necessary to support the refiner's or importer's oxygenate use claims.

The inspections and periodic sampling and testing oversight requirement is intended to ensure any oxygenate-use claims by a refiner or importer are supported by the actual oxygenate blending that occurs. The sampling and testing must be of the gasoline that is produced at the oxygenate blending operation, using base gasoline that was produced or imported by the refiner or importer. If the volume percent oxygenate found through sampling and testing is inconsistent with the refiner's or importer's claimed oxygenate volume, the refiner or importer must resolve the inconsistency in order to include the oxygenate in its compliance calculations. EPA believes the sampling and testing should be unannounced, should occur at different times during the portion of the averaging period when oxygenate is blended, and that the overall frequency is dependent on the situation. The sampling and testing should increase in frequency as the oxygenate volume increases, with oxygenate blenders who are less sophisticated, or where the refiner has any reason to question the oxygenate blending operation.

Inspections by refiners and importers should be calculated to determine if the oxygenate blender is complying with the procedures included in the contract with the oxygenate blender, such as quality assurance by the blender.

EPA believes that audits must occur at least annually, and more frequently if there is any reason for the refiner or importer to question the oxygenate blending operation. EPA further believes that audits must include, at a minimum, review of records that reflect the types and volumes of oxygenate purchased and used by the downstream blender to ensure they are consistent with the refiner's or importer's claims. In a case where the oxygenate blender is using base gasoline that is produced or imported by more than one refiner or importer, the audit must distinguish the oxygenate blended with the different refiner's or importer's base gasoline. In a case where the base gasoline is fungibly mixed with gasolines from other refiners or importers prior to its receipt by the downstream blender, the audit must account for the portion of the fungible mixture that is the gasoline produced by the refiner or imported by the importer.

As a result of the complexities inherent in tracking gasoline through the fungible distribution system, EPA believes in most cases it will be impracticable for refiners or importers to effectively monitor downstream oxygenate blending with gasoline that is shipped fungibly, and as a result the refiner or importer normally would be precluded from including the oxygenate in compliance calculations.

In any case where the downstream oxygenate use claims by a refiner or importer are not supported by the inspections, sampling and testing, or audits, or where EPA is able to establish that the oxygenate use claims by the refiner or importer are incorrect, the refiner or importer would not be allowed to include the oxygenate in compliance calculations. If the error is discovered subsequent to the conclusion of an averaging period, moreover, the refiner or importer would be required to recalculate its compliance calculations for the averaging period *ab initio* without including the oxygenate, even if this recalculation results in the refiner or importer being out of compliance with the anti-dumping standards.

C. Inclusion of Sub-Octane Blendstock in Compliance Calculations

EPA has included conventional gasoline and gasoline blendstock[86] that is intended for downstream oxygenate blending in the set of products that must be included in the compliance calculations of refiners and importers.

Most base gasoline that is used in downstream oxygenate blending operations meets the definition of gasoline and as a result must be included in refiner/importer compliance calculations without regard to the provisions related to blendstock.[87] Base gasoline meets the gasoline definition where the gasoline has the properties of gasoline that also is sold for use without oxygenate blending. For example, one common practice is to blend 10 vol% ethanol with 87 octane gasoline to produce 89.6 octane gasoline, and 87 octane gasoline is commonly sold for use without oxygenate blending. 87 octane base gasoline therefore meets the definition of gasoline.

Most "sub-octane" blendstock specifically designed for oxygenate blending also meets the definition of gasoline, because gasoline having similar properties is sold in certain regions of the country and at certain times of the year.[88] For example, 85 octane blendstock—a "sub-octane" blendstock—is sometimes produced with the intention that with the addition of 10 vol% ethanol this blendstock will become 87 octane gasoline. However, because 85 octane gasoline is sold in the mountain states in the winter, 85 octane blendstock meets the definition of "gasoline" and is not a "blendstock" under the definition of that term even when it is blended with ethanol.

Potentially there are "sub-octane" blendstocks that become gasoline solely through the addition of oxygenate and that have octanes that are lower than the octane of any gasoline sold anywhere in the United States. Such a product would not meet the definition of gasoline, but would be a blendstock.

EPA nevertheless believes that the refiner or importer who produces or imports "sub-octane" base gasoline product, rather than the oxygenate blender, should include the product in its compliance calculations for several reasons. First, the emissions performance of such products is determined primarily through its basic properties and not by the addition of oxygenate. Second, to the extent that a refiner or importer produced or imported "sub-octane" base gasoline in 1990, thus contributing to the quality of the gasoline pool in 1990, such product should be part of that refiner's or importer's conventional gasoline pool in 1995. Third, the refiner or importer of such product is likely to be more sophisticated than oxygenate blenders in defining the quality of conventional gasoline necessary to meet the requirements of the anti-dumping program, and in meeting the range of anti-dumping requirements that apply to refiners. Oxygenate blenders, who often are truck splash blender-distributors, are not required to meet anti-dumping standards (for reasons discussed above), but placing the responsibility of accounting for "sub-octane" base gasoline on oxygenate blenders would result in these parties becoming "refiners" who are subject to the full scope of anti-dumping requirements.

Finally, if refiners and importers who produce or import "sub-octane" blendstock could avoid including this product in their compliance calculations, the anti-dumping enforcement requirements would have to be expanded to include complex (and expensive) product tracking and accounting mechanisms designed to ensure product of this type ultimately is accounted for, and is included in the compliance calculations of only a single party. EPA believes, therefore, that it is appropriate for the refiners and importers of "sub-octane" blendstocks to include such products in their compliance calculations under the anti-dumping program.

This requirement for refiners and importers to include sub-octane "blendstock" in compliance calculations is consistent with, but less far-reaching than, the proposal contained in the 1992 SNPRM that refiners and importers would be

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[83] The 1990 equivalent gasoline volume is a calculated volume that subtracts from the refiner's 1990 total gasoline volume the volume of reformulated gasoline produced by the refiner during the compliance period.

[84] EPA proposed that any refiner or importer who elects to include oxygenate in its compliance calculations would be required to include oxygenates in its 1990 baseline as well. Under the final rule, however, refiners and importers are required to include oxygenate in anti-dumping baselines whether or not oxygenate is included in compliance calculations. The baseline-setting process, including the treatment of oxygenate, is discussed in preamble section VIII.

[85] Under 40 CFR 80.2(ll), an oxygenate blending facility is "any facility (including a truck) at which oxygenate is added to gasoline or blendstock, and at which the quality or quantity of gasoline is not altered in any other manner except for the addition of deposit control additives." Under 40 CFR 80.2(mm), an oxygenate blender is "any person who owns, leases, operates, controls, or supervises an oxygenate blending facility, or who owns or controls the blendstock or gasoline used or the gasoline produced at an oxygenate blending facility."

Oxygenate blenders are regulated under the anti-dumping provisions, *inter alia*, to the extent the oxygenate they blend is used in the compliance calculations of the refiner or importer who produces or imports the base gasoline used by the oxygenate blender. In this situation, the oxygenate blender is required, with regard to this oxygenate blending, to maintain records and to allow EPA inspections.

[86] 40 CFR 80.2(s) defines gasoline blending stock or component as "any liquid compound which is blended with other liquid compounds or with lead additives to produce gasoline."

[87] 40 CFR 80.2(c) defines gasoline as "any fuel sold in any State for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline." (footnote omitted).

[88] For purposes of this discussion, "sub-octane" blendstock is blendstock that has an octane below 87.

required to account for all blendstock produced or imported.

D. Compliance Calculations for Blendstock That Is Blended With Gasoline

In the SNPRM 93, EPA proposed that parties who produce gasoline solely by combining different blendstocks could determine compliance on the basis of the properties and volumes of the blendstocks without performing a full analysis of the final blends. This compliance determination approach also was intended to apply to parties who add blendstocks to finished gasoline which has been included in another party's compliance calculations. Under this proposal, refiners and importers would insert the properties and values of the blendstocks into the equations for the complex and simple model standards. EPA now believes this compliance calculation approach is appropriate only for simple model standards, but not for complex model standards because blendstocks have parameters that are outside the range of the complex model.

This approach is included in the final rule for refiners and importers subject to the simple model because a blender-refiner can calculate the volume-weighted averages of sulfur, T–90, olefins, and exhaust benzene using blendstock analyses only.

For example, consider a blender-refiner who has the anti-dumping statutory baseline, which for olefins is 10.6 vol%. The simple model anti-dumping standard for olefins is no greater than 125% times 10.8, or 13.50 vol%. In this example the blender-refiner used two blendstocks during the averaging period, 10,000 gallons of light FCC naphtha which the blender-refiner sampled and tested and determined to contain 39.8 vol% olefins. The blender-refiner also used 25,000 gallons of reformate that through the blender-refiner's sampling and testing was determined to contain 1.0 vol% olefins. The blender-refiner in this example determined the annual average olefin content of its blendstock by calculating the volume-weighted average olefin content of these two blendstocks, or (10,000 * 39.8) plus (25,000 * 1.0) divided by 35,000, or 11.8 vol% olefins. Because 11.8 vol% is less than the 13.25 vol% olefin standard, the blender-refiner in this example would meet the anti-dumping olefin standard. Annual averages for the blender-refiner for sulfur, T–90, and exhaust benzene under the simple model would be calculated in a similar manner.

EPA believes that compliance with complex model standards cannot be determined using the volume-weighted properties of blendstock as described above, because such an approach would not provide meaningful results for exhaust benzene, or toxics or NO_X emissions performance. EPA has, however, included a method in the final rule for calculating compliance under the complex model in the case of blendstock that is added to gasoline whereby compliance is determined on the basis of blendstocks blended with gasoline. This results in a calculation method that is consistent with the technical limitations inherent with the complex model.

Under this calculation method, the blender-refiner determines the fuel parameters of the blendstock or blendstocks that are to be added to a base gasoline, by testing a representative sample of each blendstock. The blender-refiner then calculates the properties of the gasoline that would result if the blendstock or blendstocks were blended, in the volume-ratio used in the blending operation, with a gasoline having parameters that are equal to anti-dumping baseline applicable to the blender-refiner, except that properties measured on a weight or ppm basis, such as sulfur, must be corrected for the specific gravities of the products blended. In most cases, the anti-dumping statutory baseline would be the applicable baseline for blender-refiners. This mathematical calculation thus models the fuel parameters of the gasoline that would result if the blendstock in question were in fact blended with gasoline having properties equal to the blender-refiner's baseline in the volume-ratio used in the blending operation. The emissions performance (exhaust benzene, or toxics or NO_X emissions performance) of the mathematically-created gasoline is determined through the appropriate complex model, as is the emissions performance of the blender-refiner's baseline gasoline. The emissions performance effect of the blendstock is calculated by subtracting the emissions performance of the blender-refiner's baseline gasoline from the emissions performance of the mathematically-calculated gasoline. The anti-dumping standard is met if the volume-weighted emissions performance for all blendstock used in blends during the averaging period is equal to or less than zero.

For example, consider a blender-refiner who has the anti-dumping statutory baseline, and who is subject to the complex model standards (toxics and NO_X emissions performance). This blender-refiner uses two blendstocks during a certain portion of the averaging period, a light FCC naphtha and a reformate, and these blendstocks are blended at the rate of 10 vol% FCC naphtha, 25 vol% reformate, and 65 vol% base gasoline. A partial list of the properties of these blendstocks, as determined by the blender-refiner through sampling and testing, are as follows:

	FCC naphtha	Reformate	Anti-dumping statutory gasoline
Aromatics (vol%)	13.5	31.1	28.6
Olefins (vol%)	39.8	1.0	10.8
Sulfur (ppm)	289	10	338
Specific gravity	0.753	0.801	0.742

The blender-refiner determines the properties of the blends that would result if these blendstocks were blended at these rates with gasoline having properties equal to the anti-dumping statutory baseline. In the case of aromatics, the calculation would be the following:

aromatics
(vol%)=(13.5×0.10)+31.1×0.25)+(28.6×0.65)=27.72

As stated earlier, fuel properties measured on a weight percent or ppm basis would have to be adjusted for specific gravity as follows:

$$\text{sulfur (ppm)} = \frac{(289\times.10\times.753)+(10\times.25\times.801)+(338\times.65\times.742)}{(.10\times.753)+(.25\times.801)+(.65\times.742)} = 246.6$$

All other parameters required for the complex model would be calculated in a similar manner to create a list of calculated parameters except for the determination of RVP for ethanol blends. Because of the high RVP of ethanol and its non-linear blending characteristics, gasoline blends with at least 1.50% ethanol by volume should be entered into the appropriate complex model with an assumed RVP 1.0 psi greater than that of the base gasoline and other blendstocks. Below 1.50% ethanol concentration, the RVP of the base gasoline and blendstock should be unchanged for calculation purposes in the complex model. These parameters are then applied to the complex model to generate the values of the exhaust benzene, toxics and NO_X emissions performance for the hypothetical calculated blend. In this example, the complex model yields a NO_X emissions performance for this gasoline of 640 mg/mile.

The properties of the anti-dumping statutory gasoline are then applied to the complex model to determine that this gasoline has a NO_X emissions performance of 660 mg/mile. The blender-refiner in this example then subtracts the NO_X emissions performance of anti-dumping statutory gasoline from the NO_X emissions performance of the hypothetical calculated blend, to yield the NO_X emissions performance effect of the blendstocks used of −20 mg/mile (640 − 660 = − 20 mg/mile).

The blender-refiner would then repeat this process for all blends produced during the averaging period where blendstock was added to base gasoline. These per-batch NO_X emissions performance effects are then combined on a volume-weighted basis, and the blender-refiner would have met the NO_X anti-dumping standard if this net value is equal to or less than zero. A similar analysis was performed for toxics emissions performance.

X. Provisions for Opt-in by Other Ozone Non-Attainment Areas

Section 211(k)(6) of the Act allows certain areas to opt into the reformulated gasoline (RFG) program. Thus, such areas may choose to participate in the RFG program, unlike the nine areas with the highest ozone design values which are required to participate.

The following is a list of all areas either required to be covered by the reformulated gasoline program or which have opted into the program to date:

Connecticut—Entire State

Areas Classified as Severe Ozone Nonattainment Areas

1. Fairfield County (part)
2. Litchfield County (part)

Areas Classified as Serious Ozone Nonattainment Areas

1. Fairfield County (part)
2. Hartford County
3. Litchfield County (part)
4. Middlesex County
5. New Haven County
6. New London County
7. Tolland County
8. Windham County

Delaware

Areas Classified as Severe Ozone Nonattainment Areas

1. Kent County
2. New Castle County

Areas Classified as Marginal Ozone Nonattainment Areas

1. Sussex County

District of Columbia

Areas Classified as Serious Ozone Nonattainment Areas

1. Washington (entire area)

Kentucky

Areas Classified as Moderate Ozone Nonattainment Areas

1. Boone County
2. Bullitt County (part)
3. Campbell County
4. Jefferson County
5. Kenton County
6. Oldham County (part)

Maine

Areas Classified as Moderate Ozone Nonattainment Areas

1. Androscoggin County
2. Cumberland County
3. Kennebec County
4. Knox County
5. Lincoln County
6. Sagadahoc County
7. York County

Areas Classified as Marginal Ozone Nonattainment Areas

1. Hancock County
2. Waldo County

Maryland

Areas Classified as Severe Ozone Nonattainment Areas

1. Anne Arundel County
2. Baltimore County
3. Carroll County
4. Cecil County
5. Harford County
6. Howard County

Areas Classified as Serious Ozone Nonattainment Areas

1. Calvert County
2. Charles County
3. Frederick County
4. Montgomery County
5. Prince Georges County

Areas Classified as Marginal Ozone Nonattainment Areas

1. Kent County
2. Queen Annes County

Massachusetts—Entire State

Areas Classified as Serious Ozone Nonattainment Areas

1. Barnstable County
2. Berkshire County
3. Bristol County
4. Dukes County
5. Essex County
6. Franklin County
7. Hampden County
8. Hampshire County
9. Middlesex County
10. Nantucket County
11. Norfolk County
12. Plymouth County
13. Suffolk County
14. Worcester County

New Hampshire

Areas Classified as Serious Ozone Nonattainment Areas

1. Hillsborough County (part)[89]
2. Rockingham County (part)[90]
3. Strafford County

Areas Classified as Marginal Ozone Nonattainment Areas

1. Hillsborough County (part)
2. Merrimack County
3. Rockingham County (part)

New Jersey

Areas Classified as Severe Ozone Nonattainment Areas

1. Bergen County

[89] Part of Hillsborough County is classified as serious, the other part as marginal.

[90] Part of Rockingham County is classified as serious, the other part as marginal.

2. Burlington County
3. Camden County
4. Cumberland County
5. Essex County
6. Gloucester County
7. Hudson County
8. Hunterdon County
9. Mercer County
10. Middlesex County
11. Monmouth County
12. Morris County
13. Ocean County
14. Passaic County
15. Salem County
16. Somerset County
17. Sussex County
18. Union County

Areas Classified as Moderate Ozone Nonattainment Areas

1. Atlantic County
2. Cape May County

Areas Classified as Marginal Ozone Nonattainment Areas

1. Warren County

New York

Areas Classified as Severe Nonattainment Areas

1. Bronx County[91]
2. Kings County
3. Nassau County
4. New York County
5. Queens County
6. Richmond County
7. Rockland County
8. Suffolk County
9. Westchester County

Areas Classified as Marginal Nonattainment Areas

1. Albany County
2. Dutchess County
3. Erie County
4. Essex County[92]
5. Greene County
6. Jefferson County
7. Montgomery County
8. Niagara County
9. Rensselaer County
10. Saratoga County
11. Schenectady County

Pennsylvania

Areas Classified as Severe Ozone Nonattainment Areas

1. Bucks County[93]
2. Chester County
3. Delaware County
4. Montgomery County
5. Philadelphia County

Areas Classified as Moderate Ozone Nonattainment Areas

1. Allegheny County
2. Armstrong County
3. Beaver County
4. Berks County
5. Butler County
6. Fayette County
7. Washington County
8. Westmoreland County

Areas Classified as Marginal Ozone Nonattainment Areas

1. Adams County
2. Blair County
3. Cambria County
4. Carbon County
5. Columbia County
6. Cumberland County
7. Dauphin County
8. Erie County
9. Lackawanna County
10. Lancaster County
11. Lebanon County
12. Lehigh County
13. Luzerne County
14. Mercer County
15. Monroe County
16. Northampton County
17. Perry County
18. Somerset County
19. Wyoming County
20. York County

Rhode Island—Entire State

Areas Classified as Serious Ozone Nonattainment Areas

1. Bristol County
2. Kent County
3. Newport County
4. Providence County
5. Washington County

Texas—Houston/Galveston area

Area Classified As Moderate Ozone Nonattainment Area

1. Collin County
2. Dallas County
3. Denton County
4. Tarrant County

Virginia

Areas Classified as Serious Ozone Nonattainment Areas

1. Alexandria
2. Arlington County
3. Fairfax
4. Fairfax County
5. Falls Church
6. Loudoun County
7. Manassas
8. Manassas Park
9. Prince William County
10. Stafford County

Areas Classified as Moderate Ozone Nonattainment Areas

1. Charles City County
2. Chesterfield County
3. Colonial Heights
4. Hanover County
5. Henrico County
6. Hopewell
7. Richmond County

Areas Classified as Marginal Ozone Nonattainment Areas

1. Chesapeake
2. Hampton
3. James City County
4. Newport News
5. Norfolk
6. Poquoson
7. Portsmouth
8. Smyth County (part)[94]
9. Suffolk
10. Virginia Beach
11. Williamsburg
12. York County

Vermont and portions of other areas in Pennsylvania and New Hampshire have formally requested to opt-in to the reformulated gasoline program, although the designated areas in these states are categorized as unclassified/attainment. Because of statutory limitations, attainment areas will not be allowed to opt-in to the program, with a limited exception given to some areas in established ozone transport regions as authorized by section 184 of the Act. The reader is referred to the RIA for further discussion of the statutory limitations.

Other ozone nonattainment areas that are not listed herein may also opt-in to the reformulated gasoline program as permitted by section 211(k)(6), under constraints such as sufficient lead-time domestic fuel availability.

Several key issues were brought to EPA's attention in the form of comments, and EPA's response is summarized below. More detailed discussion of these opt-in issues can be found in Section IX of the Final Regulatory Impact Analysis (RIA).

Several commenter inquiries pertained to opting out of the reformulated gasoline program. Once an area has opted into the reformulated gasoline program, the issue arises whether it may, at a later date, decide to opt out of the program. While EPA is currently considering opt-out provisions, section 211(k) does not give EPA the authority to develop an opt-out procedure. Thus, EPA is not including any opt-out provisions in this rulemaking, but may pursue a separate action in the future that would allow states to opt-out of the RFG program, provided sufficient notice is given.

In its April 1993 NPRM, EPA requested comment on whether to permit areas to opt-in to only Phase I (1995–99) of the RFG program, and not require them to receive Phase II RFG starting in 2000. Several commenters supported allowing states to opt-in to Phase I only, but cited a number of concerns regarding the logistics of producing and distributing Phase I and Phase II reformulated gasolines concurrently. Because of these potential fuel proliferation problems (i.e., many types of fuels available or required in the marketplace at one time), as well as enforcement problems and weak statutory authority (which is discussed further in the RIA), EPA will not allow nonattainment areas to opt-in to only Phase I. Opt-in areas must be willing to commit to the change to Phase II RFG in the year 2000. As discussed above, EPA may undertake a separate action which would give opted-in areas the opportunity to opt-out of the RFG program. In this case if a state desired to maintain the Phase I RFG standards beyond the year 1999, the state could promulgate its own regulations requiring this. Such a program would have to be enforced by the state, however, and would also have to be approved by EPA as part of the State Implementation Plan review process.

As discussed briefly above, some of the comments received by EPA included a request that attainment areas be permitted to opt-in to the RFG program. The Act does not allow participation by attainment areas into the reformulated gasoline program.

EPA also received suggestions that it modify the opt-in application procedure to allow more lead time for refiners. EPA feels that its existing application procedure for opt-in and its lead time provisions are adequate, and do not require revision.

Finally, one commenter suggested that opt-in should be allowed only after a nonattainment area has adopted Stage II controls and enhanced inspection and maintenance. EPA favors giving eligible areas freedom to opt-in to the RFG provisions, and will not require that areas first implement Stage II controls and enhanced inspection and maintenance.

The NO_X standard for Phase II reformulated gasoline (see Section VI above) will be required in all current and future opt-in areas. As discussed in the Section VI of the RIA, NO_X control is believed to be necessary to ensure that all opt-in areas realize a reduction in ozone levels. Since future opt-in areas are likely to be similar to some current reformulated gasoline areas (including current opt-in) in terms of geographical location, meteorological conditions, and other factors affecting ozone formation, it is reasonable to assume that future opt-in areas will similarly benefit from NO_X control. Furthermore, as discussed in Section VI of the RIA, applying the NO_X standard to the same areas as the reformulated gasoline standard is considered to be the most appropriate and cost effective manner in which to achieve ozone benefits through fuel reformulation. Since refiners will already be producing reformulated gasoline controlling both VOC and NO_X, the addition of new areas to the reformulated gasoline program will only require an increase in the volume of RFG produced and will not pose any leadtime problems.

XI. Federal Preemption

Whenever the federal government regulates in an area, the issue of preemption of State action in the same area is raised. The regulations proposed here will affect virtually all of the gasoline sold in the United States. As opposed to commodities that are produced and sold in the same area of the country, gasoline produced in one area is often distributed to other areas. The national scope of gasoline production and distribution suggests that federal rules should preempt State action to avoid an inefficient patchwork of potentially conflicting regulations. Indeed, Congress provided in the 1977 Amendments to the Clean Air Act that federal fuels regulations preempt non-identical State controls except under certain specified circumstances (see, section 211(c)(4) of the Clean Air Act). EPA believes that the same approach to federal preemption is desirable for the reformulated gasoline and anti-dumping programs. EPA, therefore, is issuing today's final rule under the authority of sections 211 (k) and (c), and promulgate under section 211(c)(4) that dissimilar State controls be preempted unless either of the exceptions to federal preemption specified by section 211(c)(4) applies. Those exceptions are sections 211(c)(4) (B) and (C).

As raised in some of comments received by the Agency, the Regulatory Negotiation agreement was not intended to modify the provisions of section 211(c)(4)(B). Under this provision, once the State of California has received a waiver under section 209(b) of the Clean Air Act, it has the ability to regulate fuels and fuel additives without the need for a waiver under section 211 of the Clean Air Act. In accordance with the intent of Congress in enacting sections 209(b) and 211(c)(4)(B) of the Clean Air Act, California has used, and EPA understands will continue to use, these provisions to design a program to meet its unique needs.

EPA believes that the limited federal preemption promulgated here appropriately balances the utility and efficacy of uniform national rules with States' needs to address their unique pollution problems.

XII. Environmental and Economic Impacts

A. Environmental Impact

Section 211(k) of the Clean Air Act indicates that the primary purposes of reformulated gasoline are to reduce ozone-forming VOC emissions during the high ozone season and emissions of toxic air pollutants during the entire year. Reductions in VOCs are environmentally significant because of the associated reductions in ozone formation and in secondary formation of particulate matter, with the associated improvements in human health and welfare. Reductions in emissions of toxic air pollutants are environmentally important because they carry significant benefits for human health and welfare primarily by reducing the number of cancer cases each year.

1. Phase I Reformulated Gasoline

Beginning in 1995, reformulated gasoline certified during Phase I of the program must achieve a nominal emissions reduction of 15 percent for VOCs, 16.5 percent for air toxics on average, and NO_X emissions are not allowed to increase beyond levels evident in baseline gasoline. EPA expects simple model fuels to meet these Clean Air Act standards. As discussed in the section IV, high ozone season fuels certified using the complex model during Phase I of the reformulated gasoline program in VOC control region I must provide a VOC emission reduction from baseline levels of 36.6 percent when complying on average and 35.1 percent when complying on a per-gallon basis. Similarly, high ozone season fuels certified using the complex model during Phase I in VOC Control Region 2 must provide a VOC emission reduction from baseline levels of 17.1 percent when complying on average and 15.6 percent when complying on a per-gallon basis.

The Agency projects that VOC emission reductions for Phase I of reformulated gasoline will be approximately 90–140 thousand tons during the summer period for the "nine cities" and the other areas that have currently opted into the program. Assuming a one year exposure to both the baseline and controlled level of toxic emissions, the number of cancer incidences is estimated to decrease by

[91] The state requested time to study the boundaries and classification under Section 107(d)(4)(A)(iv). The boundaries and classification of Orange and Putnam Counties will be determined based upon evaluation of that study by EPA.

[92] This area is a rural transport area.

[93] These counties are already defined as "covered areas" and are subjected to the federal reformulated fuel program under Section 211(k)(10)(D).

[94] This is a rural transport area.

approximately 16 (assuming enhanced I/M in place) or 24 (assuming basic I/M in place) incidences per each year that the program is in place, in the nine cities and the opt-in areas (refer to section V of the RIA for an explanation and methodology of these numbers). These reductions will naturally increase to the extent that other areas opt into the program.

2. Phase II Reformulated Gasoline

Beginning in the year 2000, reformulated gasoline certified on average must meet a VOC emission reduction standard of 27.4 percent in VOC control region 2 and 29.0 percent in VOC control region 1, as well as a toxic emission reduction standard on average of 21.5 percent. In addition, a NO_X emission reduction standard of 6.8 percent on average is required for Phase II of reformulated gasoline. The Agency projects that under Phase II, there will be 3–4 fewer incidences of cancer per year, summertime VOC emissions will be reduced by approximately 42,000 tons, and summertime NO_X emissions will be reduced by approximately 22,000 tons in the nine cities and other areas currently opted into the RFG program (incremental to Phase I).

B. Economic Impact

1. Phase I Reformulated Gasoline

Due to the required addition of oxygenates to gasoline and to refinery processing changes that will be needed to reduce fuel benzene and RVP levels and to meet the VOC, NO_X and toxic emission standards, the cost of producing reformulated gasoline certified under Phase I, is expected to increase by approximately 3–5 cents per gallon in 1995 above the cost of conventional gasoline. We project annual costs of $700 to $940 million for both those areas mandated to be part of the program and those that have chosen to opt-in. Additionally, there will be costs due to testing, enforcement and recordkeeping.

2. Phase II Reformulated Gasoline

As discussed in Section VI, The overall cost of the Phase II reformulated gasoline VOC standards and NO_X standards for Phase II RFG is approximately 1.2 cents per gallon (incremental to Phase I RFG) during the VOC control period when the more stringent VOC and NO_X standards are in effect. There should be no additional cost during the non-VOC control period, since only the toxics standard changes, and there is not expected to be a cost for year-round toxics control above that required for Phase I RFG. In addition, EPA does not expect non-production related costs, such as distribution costs, recordkeeping and reporting costs, etc., to increase significantly relative to Phase I reformulated gasoline.

The environmental and economic impacts of the reformulated gasoline program are described in more detail in the Section V and VI of the Final Regulatory Impact Analysis.

XIII. Public Participation

During the reformulated gasoline rulemaking, EPA encouraged and welcomed full public participation in arriving at its final decisions and developing its final rule. EPA met with representatives of the automobile, petroleum, and oxygenate industries as well as environmental and citizen organizations. Their concerns and ideas were considered in the development in this final rule for reformulated gasoline. Public workshops to discuss and resolve a variety of issues on several aspects of the reformulated gasoline program were sponsored by the Agency.

Additionally, EPA solicited, reviewed, and considered written comments on all aspects of its three previous proposals and Phase II correction notice. All comments received by the Agency are located in the EPA Air Docket, Dockets A–91–02 and A–92–12 (See **ADDRESSES**). As mentioned above, all significant comments were used to revise the previous proposals and/or are responded to in the Regulatory Impact Analysis contained in Docket A–91–02.

XIV. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of the reformulated gasoline regulation and to identify significant adverse impacts of federal regulations on a substantial number of small entities. Because the RFA does not provide concrete definitions of "small entity," "significant impact," or "substantial number," EPA has established guidelines setting the standards to be used in evaluating impacts on small businesses[95]. For purposes of the reformulated gasoline regulations, a small entity is any business which is independently owned and operated and not dominant in its field as defined by SBA regulations under section 3 of the Small Business Act.

The Agency has found that the reformulated gasoline and anti-dumping regulations may possibly have some economic impact on a substantial number of small refiners. However, these regulations may not significantly affect gasoline blenders, terminal operators, service stations and ethanol blenders under the same EPA criteria. Small business entities are not required by the Clean Air Act to manufacture reformulated gasoline. Since most small refiners are located in the mountain states or in California, which has its own (more stringent) reformulated gasoline program, the vast majority of small refiners are unaffected by the federal reformulated gasoline requirements. Furthermore, all businesses (both large and small) maintain the option to produce conventional gasoline to be sold in areas not obligated by the Act to receive reformulated gasoline or those areas which have not chosen to opt into the program.

All refiners will be affected by the anti-dumping requirements, which are less stringent than those for the reformulated gasoline portion of the program. The anti-dumping regulations affecting conventional gasoline are not expected to disproportionately impact small refiners of conventional gasoline.

In addition, all refiners have the option to use either the simple or complex model during the first years of the reformulated gasoline program. Refiners have greater flexibility under the complex model than under the simple model (which focuses primarily on volatility control) in choosing the least-cost method of compliance.

The component of the reformulated gasoline program most likely to unfavorably impact small entities is the fundamental necessity that reformulated gasoline meet more stringent emission standards and thus processing requirements. The Agency is unaware of any alternative options which might relieve the regulatory burden on small entities while simultaneously maintaining the program benefits required by the statute. Exempting small refiners from the reformulated gasoline regulations would result in the failure of meeting CAA performance standards, which is illegal. All reformulated gasoline is required to meet the same performance and compositional standards. Additionally, enforcement of a reformulated gasoline program (with exemptions or less stringent standards for some fuel producers), in-use, would be virtually impossible to enforce due to the inherent nature of the fungible gasoline distribution system in existence.

Despite the inability to exempt small businesses from the requirements of the reformulated gasoline program, EPA has made accommodations where possible. One example of the versatility embedded in the reformulated gasoline regulations, by EPA, is the flexibility available to all refiners, both small and large, to choose to have one or more individual refinery conventional gasoline compliance baselines and one or more "refiner" baselines (i.e., more than one grouping of two or more refineries to form a compliance baseline). Another example of the flexibility of the regulations is the ability to produce reformulated gasoline on a per gallon or averaging basis. Also, certain small refiners who produced JP–4 jet fuel in 1990 may be able to adjust their baselines so as to reduce the compliance burden. It is worthy to note that although EPA has received several comments which claim that the reformulated gasoline regulations will result in closing the small business entities affected by this rule, convincing evidence supporting this claim has not been submitted.

In accordance with section 604 of the Regulatory Flexibility Act, EPA has prepared a regulatory flexibility analysis which includes a comprehensive justification for the determination briefly reviewed above, as well as a summary and assessment of the issues raised by public comments on the Initial Regulatory Flexibility Analysis. The complete analysis is contained within the Regulatory Impact Analysis which has been placed in the docket for this rulemaking: EPA Air Docket A–92–12.

XV. Statutory Authority

The statutory authority for the rules finalized today is granted to EPA by sections 114, 211 (c) and (k) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7545 (c) and (k), and 7601.

XVI. Administrative Designation and Regulatory Analysis

Pursuant to Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because the Administrator has determined that reformulated gasoline will cost well in excess of $100 million per year and therefore should be classified as a significant regulatory action. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record: EPA Air Docket A–92–12.

A Regulatory Impact Analysis (RIA) for the reformulated gasoline program has been prepared and placed in Public Docket No. A–92–12 to accompany this EPA notice of final rulemaking. A draft version of the Regulatory Impact Analysis was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866. Written comments from OMB and EPA response to those comments have also been placed in the public docket for this rulemaking. EPA has made subsequent updates and revisions to the draft version pertinent to the use of the simple model. A final version of the analysis is available in the docket cited above.

XVII. Compliance With the Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No.1591.03) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA, 401 M Street, SW. (Mail Code 2136); Washington, DC 20460 or by calling (202) 260–2740. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

This collection of information has an estimated reporting burden averaging 8 hours per response and an estimated annual recordkeeping burden averaging 38 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

XVIII. Notice Regarding Registration of Reformulated Gasolines

EPA is in the process of establishing new requirements for the registration of motor vehicle fuels and fuel additives (F/FAs) as authorized by sections 211(b) and 211(e) of the Clean Air Act (CAA).[96] A proposal was published on April 15, 1992 (57 FR 13168). Pursuant to court order, EPA is scheduled to issue the final rule on or before April 29, 1994. The new registration regulations would supplement existing requirements and would apply to all F/FAs designated for registration, including reformulated gasoline and oxygenated gasolines. This new rule would require manufacturers of designated F/FAs to conduct certain tests and submit information regarding the composition and the potential health and welfare effects of the emissions produced by such F/FAs. Consistent with statutory requirements, for products registered prior to the promulgation of the F/FA final rule the proposal would allow a period of three years for the submission of certain data required by the rule. Under this proposal, manufacturers of designated F/FAs not registered prior to the promulgation of the F/FA final rule would be required to submit the requisite information prior to registration. This would mean that products not registered at the time of promulgation of the final F/FA testing rule would not be allowed to be registered and sold until EPA receives the requisite health effects information. In view of this proposed provision, EPA is advising manufacturers of reformulated gasoline and oxygenated gasolines to promptly register their products (or update their current gasoline registrations) so they can enter the marketplace and make use of the three-year time window allowed by the statute to conduct the required tests.

[95] U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Compliance With the Regulatory Flexibility Act," EPA Office of Policy, Planning, and Evaluation, 1984. In addition, U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act," Office of Policy, Planning, and Evaluation, 1992.

[96] Under section 211(a) registration of designated fuels and fuel additives is required as a precondition to introduction into the marketplace.

The purpose of this section is to provide some guidance to fuel producers on the registration process.

To make the registration process more flexible and convenient, current registration procedures allow a fuel producer to include in the original registration a list of additives that might be used in the marketed fuel, along with the applicable range of concentration-in-use for each alternative. Manufacturers are also allowed to revise existing fuel registrations to accommodate expected changes in their formulations. These provisions allow fuel producers to respond quickly to fluctuations in price, availability, and other market or technical factors when they formulate their fuel products.

Consistent with this current practice, EPA will permit fuel producers to register their oxygenated gasoline formulations (including reformulated gasoline) by simply revising their existing gasoline registrations to include the pertinent oxygenating compound(s). Fuel producers who are uncertain about their future fuel formulations could potentially list an unlimited number of oxygenates which they might, under some conceivable circumstances, blend into gasoline. However, EPA would generally advise against the strategy of including every possible alternative oxygenate. The fact that, for the sake of convenience, registrations are permitted to be modified to cover oxygenated gasolines does not mean that all potential formulations which fit under this broad compositional umbrella will necessarily be considered equivalent to a single fuel product. In fact, the F/FA final rule is expected to consider each gasoline/oxygenate blend as a different formulation. Thus, fuel producers would be responsible for the testing of each gasoline/oxygenate blend covered by the respective fuel registration. Furthermore, oxygenated compounds that are listed but not tested within the allotted time period (i.e., three years) could not be used by the manufacturer. Thus, in determining which oxygenate compounds to include in the registration, each producer should carefully consider the tradeoff between the additional flexibility which a comprehensive list of potential oxygenates might provide and the additional testing responsibility which might result.

For more information about registration procedures, please contact the registration office at (202) 233–9755. For information on the testing requirements of the F/FA rule contact Ines Figueroa at (313) 668–4575.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Incorporation by reference, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: December 15, 1993.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.2 is amended by adding paragraphs (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), and (nn) to read as follows:

§ 80.2 Definitions.

* * * * *

(ee) *Reformulated gasoline* means any gasoline whose formulation has been certified under § 80.40, which meets each of the standards and requirements prescribed under § 80.41, and which contains less than the maximum concentration of the marker specified in § 80.82 that is allowed for reformulated gasoline under § 80.82.

(ff) *Conventional gasoline* means any gasoline which has not been certified under § 80.40.

(gg) *Batch of reformulated gasoline* means a quantity of reformulated gasoline which is homogeneous with regard to those properties which are specified for reformulated gasoline certification.

(hh) *Covered area* means each of the geographic areas specified in § 80.70 in which only reformulated gasoline may be sold or dispensed to ultimate consumers.

(ii) *Reformulated gasoline credit* means the unit of measure for the paper transfer of oxygen or benzene content resulting from reformulated gasoline which contains more than 2.1 weight percent of oxygen or less than 0.95 volume percent benzene.

(jj) *Oxygenate* means any substance which, when added to gasoline, increases the oxygen content of that gasoline. Lawful use of any of the substances or any combination of these substances requires that they be "substantially similar" under section 211(f)(1) of the Clean Air Act, or be permitted under a waiver granted by the Administrator under the authority of section 211(f)(4) of the Clean Air Act.

(kk) *Reformulated gasoline blendstock for oxygenate blending, or RBOB* means a petroleum product which, when blended with a specified type and percentage of oxygenate, meets the definition of reformulated gasoline, and to which the specified type and percentage of oxygenate is added other than by the refiner or importer of the RBOB at the refinery or import facility where the RBOB is produced or imported.

(ll) *Oxygenate blending facility* means any facility (including a truck) at which oxygenate is added to gasoline or blendstock, and at which the quality or quantity of gasoline is not altered in any other manner except for the addition of deposit control additives.

(mm) *Oxygenate blender* means any person who owns, leases, operates, controls, or supervises an oxygenate blending facility, or who owns or controls the blendstock or gasoline used or the gasoline produced at an oxygenate blending facility.

(nn) *Oxygenated fuels program reformulated gasoline, or OPRG* means reformulated gasoline which is intended for use in an oxygenated fuels program control area, as defined at paragraph (pp) of this section, during an oxygenated fuels program control period, as defined at paragraph (qq) of this section.

* * * * *

3. New subpart D, consisting of §§ 80.40 through 80.89, subpart E, consisting of §§ 80.90 through 80.124, and subpart F, consisting of §§ 80.125 through 80.135, are added to read as follows:

Subpart D—Reformulated Gasoline

Sec.

80.40 Fuel certification procedures.
80.41 Standards and requirements for compliance.
80.42 Simple emissions model.
80.43–80.44 [Reserved]
80.45 Complex emissions model.
80.46 Measurement of reformulated gasoline fuel parameters.
80.47 [Reserved]
80.48 Augmentation of the complex emission model by vehicle testing.
80.49 Fuels to be used in augmenting the complex emission model through vehicle testing.
80.50 General test procedure requirements for augmentation of the emission models.
80.51 Vehicle test procedures.
80.52 Vehicle preconditioning.
80.53–80.54 [Reserved]
80.55 Measurement methods for benzene and 1,3-butadiene
80.56 Measurement methods for formaldehyde and acetaldehyde.
80.57–80.58 [Reserved]

80.59 General test fleet requirements for vehicle testing.
80.60 Test fleet requirements for exhaust emission testing.
80.61 [Reserved]
80.62 Vehicle test procedures to place vehicles in emitter group sub-fleets.
80.63–80.64 [Reserved]
80.65 General requirements for refiners, importers, and oxygenate blenders.
80.66 Calculation of reformulated gasoline properties.
80.67 Compliance on average.
80.68 Compliance surveys.
80.69 Requirements for downstream oxygenate blending.
80.70 Covered areas.
80.71 Descriptions of VOC-control regions.
80.72 [Reserved]
80.73 Inability to produce conforming gasoline in extraordinary circumstances.
80.74 Record keeping requirements.
80.75 Reporting requirements.
80.76 Registration of refiners, importers or oxygenate blender.
80.77 Product transfer documentation.
80.78 Controls and prohibitions on reformulated gasoline.
80.79 Liability for violations of the prohibited activities.
80.80 Penalties.
80.81 Enforcement exemptions for California gasoline.
80.82 Conventional gasoline marker. [Reserved]
80.83–80.89 [Reserved]

Subpart E—Anti-Dumping

80.90 Conventional gasoline baseline emissions determination.
80.91 Individual baseline determination.
80.92 Baseline auditor requirements.
80.93 Individual baseline submission and approval.
80.94–80.100 [Reserved]
80.101 Standards applicable to refiners and importers.
80.102 Controls applicable to blendstocks.
80.103 Registration of refiners and importers.
80.104 Record keeping requirements.
80.105 Reporting requirements.
80.106 Product transfer documents.
80.107–80.124 [Reserved]

Subpart F—Attest Engagements

80.125 Attest engagements.
80.128 Definitions.
80.127 Sample size guidelines.
80.128 Agreed upon procedures for refiners and importers.
80.129 Agreed upon procedures for downstream oxygenate blenders.
80.130 Agreed upon procedures reports.
80.131–80.135 [Reserved]

Subpart D—Reformulated Gasoline

§ 80.40 Fuel certification procedures.

(a) Gasoline that complies with one of the standards specified in § 80.41 (a) through (f) that is relevant for the gasoline, and that meets all other relevant requirements prescribed under § 80.41, shall be deemed certified.

(b) Any refiner or importer may, with regard to a specific fuel formulation, request from the Administrator a certification that the formulation meets one of the standards specified in § 80.41 (a) through (f).

§ 80.41 Standards and requirements for compliance.

(a) *Simple model per-gallon standards.* The "simple model" standards for compliance when achieved on a per-gallon basis are as follows:

SIMPLE MODEL PER-GALLON STANDARDS

Reid vapor pressure (in pounds per square inch):	
Gasoline designated for VOC-Control Region 1	≤7.2
Gasoline designated for VOC-Control Region 2	≤8.1
Oxygen content (percent, by weight)	≥2.0
Toxic air pollutants emissions reduction (percent)	≥15.0
Benzene (percent, by volume)	≤1.00

(b) *Simple model averaged standards.* The "simple model" standards when achieved on average are as follows:

SIMPLE MODEL AVERAGED STANDARDS

Reid vapor pressure (in pounds per square inch):	
Gasoline designated for VOC-Control Region 1:	
Standard	≤7.1
Per-Gallon Maximum	≤7.4
Gasoline designated for VOC-Control Region 2:	
Standard	≤8.0
Per-Gallon Maximum	≤8.3
Oxygen content (percent, by weight):	
Standard	≥2.1
Per-Gallon Minimum	≥1.5
Toxic air pollutants emissions reduction (percent)	≥16.5
Benzene (percent, by volume):	
Standard	≤0.95
Per-Gallon Maximum	≤1.30

(c) *Phase I complex model per-gallon standards.* The Phase I "complex model" standards for compliance when achieved on a per-gallon basis are as follows:

PHASE I—COMPLEX MODEL PER-GALLON STANDARDS

VOC emissions performance reduction (percent):	
Gasoline designated for VOC-Control Region 1	≥35.1
Gasoline designated for VOC-Control Region 2	≥15.8
Toxic air pollutants emissions performance reduction (percent)	≥15.0
NO_x emissions performance reduction (percent)	≥0.0
Oxygen content (percent, by weight)	≥2.0
Benzene (percent, by volume)	≤1.00

(d) *Phase I complex model averaged standards.* The Phase I "complex model" standards for compliance when achieved on average are as follows:

PHASE I—COMPLEX MODEL AVERAGED STANDARDS

VOC emissions performance reduction (percent):	
Gasoline designated for VOC-Control Region 1:	
Standard	≥36.6
Per-Gallon Minimum	≤32.6
Gasoline designated for VOC-Control Region 2:	
Standard	≥17.1
Per-Gallon Minimum	≥13.1
Toxics air pollutants emissions performance reduction (percent)	≥16.5
NO_x emissions performance reduction (percent):	
Standard	≥1.5
Per-Gallon Minimum	≤−2.5
Oxygen content (percent, by weight):	
Standard	≥2.1
Per-Gallon Minimum	≥1.5
Benzene (percent, by volume):	
Standard	≤0.95
Per-Gallon Maximum	≤1.30

(e) *Phase II complex model per-gallon standards.* The Phase II "complex model" standards for compliance when achieved on a per-gallon basis are as follows:

PHASE II—COMPLEX MODEL PER-GALLON STANDARDS

VOC emissions performance reduction (percent):	
Gasoline designated for VOC-Control Region 1	≥27.5
Gasoline designated for VOC-Control Region 2	≥25.9
Toxic air pollutants emissions performance reduction (percent)	≥20.0
NO_x emissions performance reduction (percent):	
Gasoline designated as VOC-controlled	≥5.5
Gasoline not designated as VOC-controlled	≥0.0
Oxygen content (percent, by weight)	≥2.0
Benzene (percent, by volume)	≤1.00

(f) *Phase II complex model averaged standards.* The Phase II "complex model" standards for compliance when achieved on average are as follows:

PHASE II—COMPLEX MODEL AVERAGED STANDARDS

VOC emissions performance reduction (percent):	
Gasoline designated for VOC-Control Region 1:	
Standard	≥29.0
Per-Gallon Minimum	≥25.0
Gasoline designated for VOC-Control Region 2:	
Standard	≥27.4
Per-Gallon Minimum	≥23.4
Toxics air pollutants emissions performance reduction (percent)	≥21.5
NO_x emissions performance reduction (percent):	
Gasoline designated as VOC-controlled:	
Standard	≥6.8
Per-Gallon Minimum	≥3.0
Gasoline not designated as VOC-controlled:	
Standard	≥1.5
Per-Gallon Minimum	≥−2.5
Oxygen content (percent, by weight):	
Standard	≥2.1
Per-Gallon Minimum	≥1.5
Benzene (percent, by volume):	
Standard	≤0.95
Per-Gallon Maximum	≤1.30

(g) *Oxygen maximum standard.* The per-gallon standards for maximum oxygen content, which apply to reformulated gasoline subject to the simple model per-gallon or average standards, are as follows.

(1) For reformulated gasoline designated as VOC-controlled:

(i) The standard shall be 2.7% by weight; except that

(ii)(A) The standard shall be 3.5% by weight within the boundaries of any state if the state notifies the Administrator it wishes this different standard to apply; provided that

(B) There have been no occasions within the three preceding years when the ozone ambient air quality standard was exceeded within any covered area within the state.

(2) For reformulated gasoline not designated as VOC-controlled:

(i) The standard shall be 3.5% by weight; except that

(ii) In the case of any state that has notified the Administrator that the use of an oxygenate will interfere with attainment or maintenance of an ambient air quality standard or will contribute to an air quality problem, the standard shall be 2.7% by weight within the boundaries of that state.

(h) *Additional standard requirements.* In addition to the standards specified in paragraphs (a) through (g) of this section, the following standards apply for all reformulated gasoline:

(1) The standard for heavy metals, including lead or manganese, on a per-gallon basis, is that reformulated gasoline may contain no heavy metals. The Administrator may waive this prohibition for a heavy metal (other than lead) if the Administrator determines that addition of the heavy metal to the gasoline will not increase, on an aggregate mass or cancer-risk basis, toxic air pollutant emissions from motor vehicles.

(2) In the case of any refinery or importer subject to the simple model standards:

(i) The annual average levels for sulfur, T–90, and olefins cannot exceed that refinery's or importer's 1990 baseline levels for each of these parameters; and

(ii) The 1990 baseline levels and the annual averages for these parameters shall be established using the methodology set forth in §§ 80.91 through 80.92; and

(iii) In the case of a refiner that operates more than one refinery, the standards specified under this paragraph (h)(2) shall be met using the refinery grouping selected by the refiner under § 80.101(g).

(i) *Use of simple and complex models.* (1) During each calendar year 1995 through 1997, any refinery or importer shall be subject to either the simple model standards specified in paragraphs (a) and (b) of this section, or the Phase I complex model standards specified in paragraphs (c) and (d) of this section, at the option of the refiner or importer, provided that:

(i) No refinery or importer may be subject to a combination of simple and complex standards during any calendar year; and

(ii) Any refiner or importer that elects to achieve compliance with the anti-dumping requirements using the:

(A) Simple model shall meet the requirements of this Subpart D using the simple model standards; or

(B) Complex model or optional complex model shall meet the requirements of this Subpart D using the complex model standards.

(2) During the period January 1, 1998 through December 31, 1999, any refiner or importer shall be subject to the Phase I complex model standards specified in paragraphs (c) and (d) of this section.

(3) Beginning on January 1, 2000, any refiner or importer shall be subject to the Phase II complex model standards specified in paragraphs (e) and (f) of this section.

(j) *Complex model early use.* Before January 1, 1998, the VOC, toxics, and NO_x emissions performance standards for any refinery or importer subject to the Phase I complex model standards shall be determined by evaluating all of the following parameter levels in the Phase I complex model (specified in § 80.45) at one time:

(1) The simple model values for benzene, RVP, and oxygen specified in § 80.41 (a) or (b), as applicable;

(2) The aromatics value which, together with the values for benzene, RVP, and oxygen determined under paragraph (j)(1)(i) of this section, meets the simple model toxics requirement specified in § 80.41 (a) or (b), as applicable;

(3) The refinery's or importer's individual baseline values for sulfur, E–300, and olefins, as established under § 80.91; and

(4) The appropriate seasonal value of E–200 specified in § 80.45(b)(2).

(k) *Effect of VOC survey failure.* (1) On each occasion during 1995 or 1996 that a covered area fails a simple model VOC emissions reduction survey conducted pursuant to § 80.68, the RVP requirements for that covered area beginning in the year following the failure shall be adjusted to be more stringent as follows:

(i) The required average RVP level shall be decreased by an additional 0.1 psi; and

(ii) The maximum RVP level for each gallon of averaged gasoline shall be decreased by an additional 0.1 psi.

(2) On each occasion that a covered area fails a complex model VOC emissions reduction survey conducted pursuant to § 80.68, or fails a simple model VOC emissions reduction survey conducted pursuant to § 80.68 during 1997, the VOC emissions performance standard for that covered area beginning in the year following the failure shall be adjusted to be more stringent as follows:

(i) The required average VOC emissions reduction shall be increased by an additional 1.0%; and

(ii) The minimum VOC emissions reduction, for each gallon of averaged gasoline, shall be increased by an additional 1.0%.

(3) In the event that a covered area for which required VOC emissions reductions have been made more stringent passes all VOC emissions reduction surveys in two consecutive years, the averaging standards VOC emissions reduction for that covered area beginning in the year following the second year of passed survey series shall be made less stringent as follows:

(i) The required average VOC emissions reduction shall be decreased by 1.0%; and

(ii) The minimum VOC emissions reduction shall be decreased by 1.0%.

(4) In the event that a covered area for which the required VOC emissions reductions have been made less stringent fails a subsequent VOC emissions reduction survey:

(i) The required average VOC emission reductions for that covered area beginning in the year following this subsequent failure shall be made more stringent by increasing the required average and the minimum VOC emissions reduction by 1.0%; and

(ii) The required VOC emission reductions for that covered area thereafter shall not be made less stringent regardless of the results of subsequent VOC emissions reduction surveys.

(l) *Effect of toxics survey failure.* (1) On each occasion during 1995 or 1996 that a covered area fails a simple model toxics emissions reduction survey series, conducted pursuant to § 80.68, the simple model toxics emissions reduction requirement for that covered area beginning in the year following the year of the failure is made more stringent by increasing the average toxics emissions reduction by an additional 1.0%.

(2) On each occasion that a covered area fails a complex model toxics emissions reduction survey series, conducted pursuant to § 80.68, or fails a simple model toxics emissions reduction survey series conducted pursuant to § 80.68 during 1997, the complex model toxics emissions reduction requirement for that covered area beginning in the year following the year of the failure is made more stringent by increasing the average toxics emissions reduction by an additional 1.0%.

(3) In the event that a covered area for which the toxics emissions standard has been made more stringent passes all toxics emissions survey series in two consecutive years, the avereging standard for toxics emissions reductions for that covered area beginning in the year following the second year of passed survey series shall be made less stringent by decreasing the average toxics emissions reduction by 1.0%.

(4) In the event that a covered area for which the toxics emissions reduction standard has been made less stringent fails a subsequent toxics emissions reduction survey series:

(i) The standard for toxics emissions reduction for that covered area beginning in the year following this subsequent failure shall be made more stringent by increasing the average toxics emissions reduction by 1.0%; and

(ii) The standard for toxics emissions reduction for that covered area thereafter shall not be made less stringent regardless of the results of subsequent toxics emissions reduction surveys.

(m) *Effect of NO_x survey failure.* (1) On each occasion that a covered area fails a NO_x emissions reduction survey conducted pursuant to § 80.68, except in the case Phase II complex model NO_x standards for VOC-controlled gasoline, the NO_x emissions reduction requirements for that covered area beginning in the year following the failure shall be adjusted to be more stringent as follows:

(i) The required average NO_x emissions reduction shall be increased by an additional 1.0%; and

(ii) The minimum NO_x emissions reduction, for each gallon of averaged gasoline, shall be increased by an additional 1.0%.

(2) In the event that a covered area for which required NO_x emissions reductions have been made more stringent passes all NO_x emissions reduction surveys in two consecutive years, the averaging standards for NO_x emissions reduction for that covered area beginning in the year following the second year of passed survey series shall be made less stringent as follows:

(i) The required average NO_x emissions reduction shall be decreased by 1.0%; and

(ii) The minimum NO_x emissions reduction shall be decreased by 1.0%.

(3) In the event that a covered area for which the required NO_x emissions reductions have been made less stringent fails a subsequent NO_x emissions reduction survey:

(i) The required average NO_x emission reductions for that covered area beginning in the year following this subsequent failure shall be made more stringent by increasing the required average and the minimum NO_x emissions reduction by 1.0%; and

(ii) The required NO_x emission reductions for that covered area thereafter shall not be made less stringent regardless of the results of subsequent NO_x emissions reduction surveys.

(n) *Effect of benzene survey failure.* (1) On each occasion that a covered area fails a benzene content survey series, conducted pursuant to § 80.68, the benzene content standards for that covered area beginning in the year following the year of the failure shall be made more stringent as follows:

(i) The average benzene content shall be decreased by 0.05% by volume; and

(ii) The maximum benzene content for each gallon of averaged gasoline shall be decreased by 0.10% by volume.

(2) In the event that a covered area for which the benzene standards have been made more stringent passes all benzene content survey series conducted in two consecutive years, the benzene standards for that covered area beginning in the year following the second year of passed survey series shall be made less stringent as follows:

(i) The average benzene content shall be increased by 0.05% by volume; and

(ii) The maximum benzene content for each gallon of averaged gasoline shall be increased by 0.10% by volume.

(3) In the event that a covered area for which the benzene standards have been made less stringent fails a subsequent benzene content survey series:

(i) The standards for benzene content for that covered area beginning in the year following this subsequent failure shall be the more stringent standards which were in effect prior to the operation of paragraph (n)(2) of this section; and

(ii) The standards for benzene content for that covered area thereafter shall not be made less stringent regardless of the results of subsequent benzene content surveys.

(o) *Effect of oxygen survey failure.* (1) In any year that a covered area fails an oxygen content survey series, conducted pursuant to § 80.68, the minimum oxygen content requirement for that covered area beginning in the year following the year of the failure is made more stringent by increasing the minimum oxygen content standard, for each gallon of averaged gasoline, by an additional 0.1%; however, in no case shall the minimum oxygen content standard be greater than 2.0%.

(2) In the event that a covered area for which the minimum oxygen content standard has been made more stringent passes all oxygen content survey series in two consecutive years, the minimum oxygen content standard for that covered area beginning in the year following the second year of passed survey series shall be made less stringent by decreasing the minimum oxygen content standard by 0.1%.

(3) In the event that a covered area for which the minimum oxygen content standard has been made less stringent fails a subsequent oxygen content survey series:

(i) The standard for minimum oxygen content for that covered area beginning in the year following this subsequent failure shall be made more stringent by increasing the minimum oxygen content standard by 0.1%; and

(ii) The minimum oxygen content standard for that covered area thereafter shall not be made less stringent regardless of the results of subsequent oxygen content surveys.

(p) *Effective date for changed minimum or maximum standards.* In the case of any minimum or maximum standard that is changed to be more

stringent by operation of paragraphs (k), (m), (n), or (o) of this section, the effective date for such change shall be ninety days following the date EPA announces the change.

(q) *Refineries, importers, and oxygenate blenders subject to adjusted standards.* Standards for average compliance that are adjusted to be more or less stringent by operation of paragraphs (k), (l), (m), (n), or (o) of this section apply to averaged reformulated gasoline produced at each refinery or oxygenate blending facility, or imported by each importer as follows:

(1) Adjusted standards for a covered area apply to averaged reformulated gasoline that is produced at a refinery or oxygenate blending facility if:

(i) Any averaged reformulated gasoline from that refinery or oxygenate blending facility supplied the covered area during any year a survey was conducted which gave rise to a standards adjustment; or

(ii) Any averaged reformulated gasoline from that refinery or oxygenate blending facility supplies the covered area during any year that the standards are more stringent than the initial standards; unless

(iii) The refiner or oxygenate blender is able to show that the volume of averaged reformulated gasoline from a refinery or oxygenate blending facility that supplied the covered area during any year under paragraphs (q)(1) (i) or (ii) of this section was less than one percent of the reformulated gasoline produced at the refinery or oxygenate blending facility during that year, or 100,000 barrels, whichever is less.

(2) Adjusted standards for a covered area apply to averaged reformulated gasoline that is imported by an importer if:

(i) The covered area with the adjusted standard is located in Petroleum Administration for Defense District (PADD) I, and the gasoline is imported at a facility located in PADDs I, II or III;

(ii) The covered area with the adjusted standard is located in PADD II, and the gasoline is imported at a facility located in PADDs I, II, III, or IV;

(iii) The covered area with the adjusted standard is located in PADD III, and the gasoline is imported at a facility located in PADDs II, III, or IV;

(iv) The covered area with the adjusted standard is located in PADD IV, and the gasoline is imported at a facility located in PADDs II, or IV; or

(v) The covered area with the adjusted standard is located in PADD V, and the gasoline is imported at a facility located in PADDs III, IV, or V; unless

(vi) Any gasoline which is imported by an importer at any facility located in any PADD supplies the covered area, in which case the adjusted standard also applies to averaged gasoline imported at that facility by that importer.

(3) Any gasoline that is transported in a fungible manner by a pipeline, barge, or vessel shall be considered to have supplied each covered area that is supplied with any gasoline by that pipeline, or barge or vessel shipment, unless the refiner or importer is able to establish that the gasoline it produced or imported was supplied only to a smaller number of covered areas.

(4) Adjusted standards apply to all averaged reformulated gasoline produced by a refinery or imported by an importer identified in this paragraph (q), except:

(i) In the case of adjusted VOC standards for a covered area located in VOC Control Region 1, the adjusted VOC standards apply only to averaged reformulated gasoline designated as VOC-controlled intended for use in VOC Control Region 1; and

(ii) In the case of adjusted VOC standards for a covered area located in VOC Control Region 2, the adjusted VOC standards apply only to averaged reformulated gasoline designated as VOC-controlled intended for use in VOC Control Region 2.

(r) *Definition of PADD.* For the purposes of this section only, the following definitions of PADDs apply:

(1) The following states are included in PADD I:

Connecticut
Delaware
District of Columbia
Florida
Georgia
Maine
Maryland
Massachusetts
New York
New Hampshire
New Jersey
North Carolina
Pennsylvania
Rhode Island
South Carolina
Vermont
Virginia
West Virginia

(2) The following states are included in PADD II:

Illinois
Indiana
Iowa
Kansas
Kentucky
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
Oklahoma
South Dakota
Tennessee
Wisconsin

(3) The following states are included in PADD III:

Alabama
Arkansas
Louisiana
Mississippi
New Mexico
Texas

(4) The following states are included in PADD IV:

Colorado
Idaho
Montana
Utah
Wyoming

(5) The following states are included in PADD V:

Arizona
California
Nevada
Oregon
Washington

§ 80.42 Simple emissions model.

(a) *VOC emissions.* The following equations shall comprise the simple model for VOC emissions. The simple model for VOC emissions shall be used only in determining toxics emissions:

Summer=The period of May 1 through September 15
Winter=The period of September 16 through April 30
EXHVOCS1=Exhaust nonmethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 1 during the summer period
EXHVOCS2=Exhaust nonmethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 2 during the summer period
EXHVOCW=Exhaust nonmethane VOC emissions from the fuel in question, in grams per mile, for the winter period
EVPVOCS1=Evaporative VOC emissions from the fuel in question, in grams per mile for VOC control region 1 during the summer period
EVPVOCS2=Evaporative VOC emissions from the fuel in question, in grams per mile for VOC control region 2 during the summer period
RLVOCS1=Running loss VOC emissions from the fuel in question, in grams per mile for VOC control region 1 during the summer period
RLVOCS2=Running loss VOC emissions from the fuel in question, in grams per mile for VOC control region 2 during the summer period
REFVOCS1=Refueling VOC emissions from the fuel in question, in grams per mile for VOC control region 1 during the summer period

REFVOCS2=Refueling VOC emissions from the fuel in question, in grams per mile for VOC control region 2 during the summer period
OXCON=Oxygen content of the fuel in question, in terms of weight percent (as measured under § 80.46)
RVP=Reid vapor pressure of the fuel in question, in pounds per square inch (psi)

(1) The following equations shall comprise the simple model for VOC emissions in VOC Control Region 1 during the summer period:

EXHVOCS1=0.444×(1−(0.127/2.7)×OXCON)
EVPVOCS1=0.7952−0.2461×RVP+0.02293×RVP×RVP
RLVOCS1=−0.734+0.1096×RVP+0.002791×RVP×RVP
REFVOCS1=0.04×((0.1667×RVP)−0.45)

(2) The following equations shall comprise the simple model for VOC emissions in VOC Control Region 2 during the summer period:

EXHVOCS2=0.444×(1−(0.127/2.7)×OXCON)
EVPVOCS2=0.813−0.2393×RVP+0.021239×RVP×RVP
RLVOCS2=0.2963−0.1306×RVP+0.016255×RVP×RVP
REFVOCS2=0.04×((0.1667×RVP)−0.45)

(3) The following equation shall comprise the simple model for VOC emissions during the winter period:

EXHVOCW=0.656×(1−(0.127/2.7)×OXCON)

(b) *Toxics emissions.* The following equations shall comprise the simple model for toxics emissions:

EXHBEN=Exhaust benzene emissions from the fuel in question, in milligrams per mile
EVPBEN=Evaporative benzene emissions from the fuel in question, in milligrams per mile
HSBEN=Hot soak benzene emissions from the fuel in question, in milligrams per mile
DIBEN=Diurnal benzene emissions from the fuel in question, in milligrams per mile
RLBEN=Running loss benzene emissions from the fuel in question, in milligrams per mile
REFBEN=Refueling benzene emissions from the fuel in question, in milligrams per mile
MTBE=Oxygen content of the fuel in question in the form of MTBE, in terms of weight percent (as measured under § 80.46)
ETOH=Oxygen content of the fuel in question in the form of ethanol, in terms of weight percent (as measured under § 80.46)
ETBE=Oxygen content of the fuel in question in the form of ETBE, in terms of weight percent (as measured under § 80.46)
FORM=Formaldehyde emissions from the fuel in question, in milligrams per mile
ACET=Acetaldehyde emissions from the fuel in question, in milligrams per mile
POM=Emissions of polycyclic organic matter from the fuel in question, in milligrams per mile
BUTA=Emissions of 1,3-Butadiene from the fuel in question, in milligrams per mile
FBEN=Fuel benzene of the fuel in question, in terms of volume percent (as measured under § 80.46)
FAROM=Fuel aromatics of the fuel in question, in terms of volume percent (as measured under § 80.46)
TOXREDS1=Total toxics reduction of the fuel in question during the summer period for VOC control region 1 in percent
TOXREDS2=Total toxics reduction of the fuel in question during the summer period for VOC control region 2 in percent
TOXREDW=Total toxics reduction of the fuel in question during the winter period in percent

(1) The following equations shall comprise the simple model for toxics emissions in VOC control region 1 during the summer period:

TOXREDS1=[100×(53.2−EXHBEN−EVPBEN−RLBEN−REFBEN−FORM−ACET−BUTA−POM)]/53.2
EXHBEN=[1.884+0.949×FBEN+0.113×(FAROM−FBEN)]/100]×1000×EXHVOCS1
EVPBEN=HSBEN+DIBEN
HSBEN=FBEN×(EVPVOCS1×0.679)×1000×[(1.4448−(0.0684×MTBE/2.0)−(0.080274×RVP))/100]
DIBEN=FBEN×(EVPVOCS1×0.321)×1000×[(1.3758−(0.0579×MTBE/2.0)−(0.080274×RVP))/100]
RLBEN=FBEN×RLVOCS1×1000×[(1.4448−(0.0684×MTBE/2.0)−(0.080274×RVP))/100]
REFBEN=FBEN×REFVOCS1×1000×[(1.3972−(0.0591xMTBE/2.0)−(0.081507×RVP))/100]
BUTA=0.00556xEXHVOCS1x1000
POM=3.15×EXHVOCS1

(i) For any oxygenate or mixtures of oxygenates, the formaldehyde and acetaldehyde shall be calculated with the following equations:

FORM=0.01256×EXHVOCS1×1000×[1+(0.421/2.7)×MTBE+TAME)+(0.358/3.55)×ETOH + (0.137/2.7)×(ETBE+ETAE)]
ACET=0.00891×EXHVOCS1×1000×[1 + (0.078/2.7)×(MTBE+TAME)+(0.865/3.55)×ETOH+(0.867/2.7)×(ETBE+ETAE)]

(ii) When calculating formaldehyde and acetaldehyde emissions using the equations in paragraph (b)(1)(i) of this section, oxygen in the form of alcohols which are more complex or have higher molecular weights than ethanol shall be evaluated as if it were in the form of ethanol. Oxygen in the form of methyl ethers other than TAME and MTBE shall be evaluated as if it were in the form of MTBE. Oxygen in the form of ethyl ethers other than ETBE shall be evaluated as if it were in the form of ETBE. Oxygen in the form of non-methyl, non-ethyl ethers shall be evaluated as if it were in the form of ETBE.

(2) The following equations shall comprise the simple model for toxics emissions in VOC control region 2 during the summer period:

TOXREDS2=100×(52.1−EXHBEN−EVPBEN−RLBEN−REFBEN−FORM−ACET−BUTA−POM)/52.1
EXHBEN=[(1.884+0.949×FBEN+0.113×(FAROM−FBEN))/100]×1000×EXHVOCS2
EVPBEN=HSBEN+DIBEN
HSBEN=FBEN×(EVPVOCS2×0.679)×1000×[(1.4448−(0.0684×MTBE/2.0)−(0.080274×RVP))/100]
DIBEN=FBEN×(EVPVOCS2×0.321)×1000×[(1.3758−(0.0579×MTBE/2.0)−(0.080274×RVP))/100]
RLBEN=FBEN×RLVOCS2×1000×[(1.4448−(0.0684×MTBE/2.0)−(0.080274×RVP))/100]
REFBEN=FBEN×REFVOCS2×1000×[(1.3972−(0.0591×MTBE/2.0)−(0.081507×RVP))/100]
BUTA=0.00556×EXHVOCS2×1000
POM=3.15×EXHVOCS2

(i) For any oxygenate or mixtures of oxygenates, the formaldehyde and acetaldehyde shall be calculated with the following equations:

FORM=0.01256×EEXHVOCS2×1000×[1+(0.421/2.7)×(MTBE+TAME)+(0.358/3.55)×ETOH+(0.137/2.7)×(ETBE+ETAE)]
ACET=0.00891×EXHVOCS2×1000×[1+(0.078/2.7)×(MTBE+TAME)+(0.865/3.55)×ETOH+(0.867/2.7)×(ETBE+ETAE)]

(ii) When calculating formaldehyde and acetaldehyde emissions using the equations in paragraph (b)(2)(i) of this section, oxygen in the form of alcohols which are more complex or have higher molecular weights than ethanol shall be evaluated as if it were in the form of ethanol. Oxygen in the form of methyl ethers other than TAME and MTBE shall be evaluated as if it were in the form of MTBE. Oxygen in the form of

ethyl ethers other than ETBE shall be evaluated as if it were in the form of ETBE. Oxygen in the form of non-methyl, non-ethyl ethers shall be evaluated as if it were in the form of ETBE.

(3) The following equations shall comprise the simple model for toxics emissions during the winter period:

TOXREDW=100 × (55.5 − EXHBEN − FORM − ACET − BUTA − POM) /55.5

EXHBEN=[(1.884+0.949 × FBEN+0.113 × (FAROM − FBEN)) /100] × 1000 × EXHVOCW

BUTA=0.00556 × EXHVOCW × 1000

POM=2.13 × EXHVOCW

(i) For any oxygenate or mixtures of oxygenates, the formaldehyde and acetaldehyde shall be calculated with the following equations:

FORM=0.01256 × EXHVOCS1 × 1000 × [1+{0.421/2.7) × (MTBE+TAME)+(0.358/3.55) × ETOH+(0.137/2.7) × (ETBE+ETAE)]

ACET=0.00891 × EXHVOCS1 × 1000 × [1+(0.078/2.7) × (MTBE+TAME)+(0.865/3.55) × ETOH+(0.867/2.7) × (ETBE+ETAE)]

(ii) When calculating formaldehyde and acetaldehyde emissions using the equations in paragraph (b)(3)(i) of this section, oxygen in the form of alcohols which are more complex or have higher molecular weights than ethanol shall be evaluated as if it were in the form of ethanol. Oxygen in the form of methyl ethers other than TAME and MTBE shall be evaluated as if it were in the form of MTBE. Oxygen in the form of ethyl ethers other than ETBE shall be evaluated as if it were in the form of ETBE. Oxygen in the form of non-methyl, non-ethyl ethers shall be evaluated as if it were in the form of ETBE.

(c) *Limits of the model.* (1) The model given in paragraphs (a) and (b) of this section shall be used as given to determine VOC and toxics emissions, respectively, if the properties of the fuel being evaluated fall within the ranges shown in this paragraph (c). If the properties of the fuel being evaluated fall outside the range shown in this paragraph (c), the model may not be used to determine the VOC or toxics performance of the fuel:

Fuel parameter	Range
Benzene content	0–2.5 vol %
RVP	6.6–9.0 psi
Oxygenate content	0–3.5 vol %
Aromatics content	10–45 vol %

(2) The model given in paragraphs (a) and (b) of this section shall be effective from January 1, 1995 through December 31, 1997, unless extended by action of the Administrator.

§§ 80.43–80.44 [Reserved]

§ 80.45 Complex emissions model.

(a) *Definition of terms.* For the purposes of this section, the following definitions shall apply:

Target fuel=The fuel which is being evaluated for its emissions performance using the complex model

OXY=Oxygen content of the target fuel in terms of weight percent

SUL=Sulfur content of the target fuel in terms of parts per million by weight

RVP=Reid Vapor Pressure of the target fuel in terms of pounds per square inch

E200=200 °F distillation fraction of the target fuel in terms of volume percent

E300=300 °F distillation fraction of the target fuel in terms of volume percent

ARO=Aromatics content of the target fuel in terms of volume percent

BEN=Benzene content of the target fuel in terms of volume percent

OLE=Olefins content of the target fuel in terms of volume percent

MTB=Methyl tertiary butyl ether content of the target fuel in terms of weight percent oxygen

ETB=Ethyl tertiary butyl ether content of the target fuel in terms of weight percent oxygen

TAM=Tertiary amyl methyl ether content of the target fuel in terms of weight percent oxygen

ETH=Ethanol content of the target fuel in terms of weight percent oxygen

exp=The function that raises the number e (the base of the natural logarithm) to the power in its domain

Phase I=The years 1995–1999

Phase II=Year 2000 and beyond

(b) *Weightings and baselines for the complex model.* (1) The weightings for normal and higher emitters (w_1 and w_2, respectively) given in Table 1 shall be used to calculate the exhaust emission performance of any fuel for the appropriate pollutant and Phase:

TABLE 1.—NORMAL AND HIGHER EMITTER WEIGHTINGS FOR EXHAUST EMISSIONS

	Phase I		Phase II	
	VOC & toxics	NO_X	VOC & toxics	NO_X
Normal Emitters (w_1)	0.52	0.82	0.444	0.738
Higher Emitters (w_2)	0.48	0.18	0.556	0.262

(2) The following properties of the baseline fuels shall be used when determining baseline mass emissions of the various pollutants:

TABLE 2.—SUMMER AND WINTER BASELINE FUEL PROPERTIES

Fuel property	Summer	Winter
Oxygen (wt %)	0.0	0.0
Sulfur (ppm)	339	338

TABLE 2.—SUMMER AND WINTER BASELINE FUEL PROPERTIES—Continued

Fuel property	Summer	Winter
RVP (psi)	8.7	11.5
E200 (%)	41.0	50.0
E300 (%)	83.0	83.0
Aromatics (vol %)	32.0	26.4
Olefins (vol %)	9.2	11.9
Benzene (vol %)	1.53	1.64

(3) The baseline mass emissions for VOC, NO_X and toxics given in Tables 3, 4 and 5 of this paragraph (b)(3) shall be used in conjunction with the complex model during the appropriate Phase and season:

TABLE 3.—BASELINE EXHAUST EMISSIONS

Exhaust pollutant	Phase I		Phase II	
	Summer (mg/mile)	Winter (mg/mile)	Summer (mg/mile)	Winter (mg/mile)
VOC	446	660	907	1341
NO_X	660	750	1340	1540
Benzene	26.10	37.57	53.54	77.62
Acetaldehyde	2.19	3.57	4.44	7.25
Formaldehyde	4.85	7.73	9.70	15.34
1,3-Butadiene	4.31	7.27	9.38	15.84
POM	1.50	2.21	3.04	4.50

TABLE 4.—BASELINE NON-EXHAUST EMISSIONS (SUMMER ONLY)

Non-exhaust pollutant	Phase I		Phase II	
	Region 1 (mg/mile)	Region 2 (mg/mile)	Region 1 (mg/mile)	Region 2 (mg/mile)
VOC	860.48	769.10	559.31	492.07
Benzene	9.66	8.63	6.24	5.50

TABLE 5.—TOTAL BASELINE VOC, NO_X AND TOXICS EMISSIONS

Pollutant	Summer (mg/mile)				Winter (mg/mile)			
	Phase I		Phase II		Phase I		Phase II	
	Region 1	Region 2	Region 1	Region 2	Region 1	Region 2	Region 1	Region 2
NO_X	660.0	660.0	1340.0	1340.0	750.0	750.0	1540.0	1540.0
VOC	1306.5	1215.1	1466.3	1399.1	660.0	660.0	1341.0	1341.0
Toxics	48.61	47.58	86.34	85.61	58.36	58.36	120.55	120.55

(c) *VOC performance.* (1) The exhaust VOC emissions performance of gasolines shall be given by the following equations:

VOCE=VOC(b)+(VOC(b)×Y_{voc}(t)/100)

$Y_{voc}(t)=[(w_1\times N_v)+(w_2\times H_v)-1]\times 100$

where

VOCE=Exhaust VOC emissions in milligrams/mile

Y_{voc}(t)=Exhaust VOC performance of the target fuel in terms of percentage change from baseline

VOC(b)=Baseline exhaust VOC emissions as defined in paragraph (b)(2) of this section for the appropriate Phase and season

$N_v=[\exp v_1(t)]/[\exp v_1(b)]$

$H_v=[\exp v_2(t)]/[\exp v_2(b)]$

w_1=Weighting factor for normal emitters as defined in paragraph (b)(1) of this section for the appropriate Phase

w_2=Weighting factor for higher emitters as defined in paragraph (b)(1) of this section for the appropriate Phase

$v_1(t)$=Normal emitter VOC equation as defined in paragraph (c)(1)(i) of this section, evaluated using the target fuel's properties subject to paragraphs (c)(1) (iii) and (iv) of this section

$v_2(t)$=Higher emitter VOC equation as defined in paragraph (c)(1)(ii) of this section, evaluated using the target fuel's properties subject to paragraphs (c)(1) (iii) and (iv) of this section

$v_1(b)$=Normal emitter VOC equation as defined in paragraph (c)(1)(i) of this section, evaluated using the base fuel's properties

$v_2(b)$=Higher emitter VOC equation as defined in paragraph (c)(1)(ii) of this section, evaluated using the base fuel's properties

(i) *Consolidated VOC equation for normal emitters.*

$v_1=(-0.003641\times OXY)+(0.0005219\times SUL)+(0.0289749\times RVP)+(-0.014470\times E200)+(-0.068624\times E300)+(0.0323712\times ARO)+(-0.002858\times OLE)+(0.0001072\times E200^2)+(0.0004087\times E300^2)+(-0.0003481\times ARO\times E300)$

(ii) *VOC equation for higher emitters.*

$v_2=(-0.003626\times OXY)+(-5.40X10^{-5}\times SUL)+(0.043295\times RVP)+(-0.013504\times E200)+(-0.062327\times E300)+(0.0282042\times ARO)+(-0.002858\times OLE)+(0.000106\times E200^2)+(0.000408\times E300^2)+(-0.000287\times ARO\times E300)$

(iii) *Flat line extrapolations.* (A) During Phase I, fuels with E200 values greater than 65.83 percent shall be evaluated with the E200 fuel parameter set equal to 65.83 percent when calculating Y_{voc}(t) and VOCE using the equations described in paragraphs (c)(1)(i) and (ii) of this section. Fuels with E300 values greater than E300* (calculated using the equation E300*=80.32+[0.390×ARO]) shall be evaluated with the E300 parameter set equal to E300* when calculating VOCE using the equations described in paragraphs (c)(1) (i) and (ii) of this section. For E300* values greater than 94, the linearly extrapolated model presented in paragraph (c)(1)(iv) of this section shall be used.

(B) During Phase II, fuels with E200 values greater than 65.52 percent shall be evaluated with the E200 fuel parameter set equal to 65.52 percent when calculating VOCE using the equations described in paragraphs (c)(1)(i) and (ii) of this section. Fuels with E300 values greater than E300* (calculated using the equation E300*=79.75+[0.385 ×ARO]) shall be evaluated with the E300 parameter set equal to E300* when calculating VOCE

using the equations described in paragraphs (c)(1) (i) and (ii) of this section. For E300* values greater than 94, the linearly extrapolated model presented in paragraph (c)(1)(iv) of this section shall be used.

(iv) *Linear extrapolations.* (A) The equations in paragraphs (c)(1) (i) and (ii) of this section shall be used within the allowable range of E300, E200, and ARO for the appropriate Phase, as defined in Table 6:

TABLE 6.—ALLOWABLE RANGES OF E200, E300, AND ARO FOR THE EXHAUST VOC EQUATIONS IN PARAGRAPHS (c)(1)(i) AND (ii) OF THIS SECTION

Fuel parameter	Phase I		Phase II	
	Lower limit	Higher limit	Lower limit	Higher limit
E200	33.00	65.83	33.00	65.52
E300	72.00	[1]Variable	72.00	[2]Variable
ARO	18.00	46.00	18.00	46.00

[1] Higher E300 Limit=80.32+[0.390×(ARO)].
[2] Higher E300 Limit=79.75+[0.385×(ARO)].

(B) For fuels with E200, E300 and ARO levels outside the ranges defined in Table 6, $Y_{voc}(t)$ shall be defined as:

For Phase I:

$$Y_{voc}(t)=100\%\times0.52\times[\exp(v_1(et))/\exp(v_1(b))-1]+100\%\times0.48\times[\exp(v_2(et))/\exp(v_2(b))-1]+\{[100\%\times0.52\times\exp(v_1(et))/\exp(v_1(b))]\times[\{[(0.0002144\times E200_{et})-0.014470]\times\Delta E200\}+\{[(0.0008174\times E300_{et})-0.068624-(0.000348\times ARO_{et})]\times\Delta E300\}+\{[(-0.000348\times E300_{et})+0.0323712]\times\Delta ARO\}]\}+\{[100\%\times0.48\times\exp(v_2(et))/\exp(v_2(b))]\times[\{[(0.000212\times E200_{et})-0.01350]\times\Delta E200\}+\{[(0.000816\times E300_{et})-0.06233-(0.00029\times ARO_{et})]\times\Delta E300\}+\{[(-0.00029\times E300_{et})+0.028204]\times\Delta ARO\}]\}$$

For Phase II:

$$Y_{voc}(t)=100\%\times0.444\times[\exp(v_1(et))/\exp(v_1(b))-1]+100\%\times0.556\times[\exp(v_2(et))/\exp(v_2(b))-1]+\{[100\%\times0.444\times\exp(v_1(et))/\exp(v_1(b))]\times[\{[(0.0002144\times E200_{et})0.014470]\times\Delta E200\}+\{[(0.0008174\times E300_{et})-0.068624-(0.000348\times ARO_{et})]\times\Delta E300\}+\{[(-0.000348\times E300_{et})+0.0323712]\times\Delta ARO\}]\}+\{[100\%\times0.556\times\exp(v_2(et))/\exp(v_2(b))]\times[\{[(0.000212\times E200_{et})-0.01350]\times\Delta E200\}+\{[(0.000816\times E300_{et})-0.06233-(0.00029\times ARO_{et})]\times\Delta E300\}+\{[(-0.00029\times E300_{et})+0.028204]\times\Delta ARO\}]\}$$

where

v_1, v_2=The equations defined in paragraphs (c)(1) (i) and (ii) of this section

et=Collection of fuel parameters for the "edge target" fuel. These parameters are defined in paragraphs (c)(1)(iv)(C) and (D) of this section

$v_1(et)$=The function v_1 evaluated with "edge target" fuel parameters, which are defined in paragraphs (c)(1)(iv)(C) and (D) of this section

$v_2(et)$=The function v_2 evaluated with "edge target" fuel parameters, which are defined in paragraphs (c)(1)(iv)(C) and (D) of this section

$v_1(b)$=The function v_1 evaluated with the appropriate baseline fuel defined in paragraph (b)(2) of this section

$v_2(b)$=The function v_2 evaluated with the appropriate baseline fuel defined in paragraph (b)(2) of this section

$E200_{et}$=The value of E200 for the "edge target" fuel, as defined in paragraphs (c)(1)(iv)(C) and (D) of this section

$E300_{et}$=The value of E300 for the "edge target" fuel, as defined in paragraphs (c)(1)(iv)(C) and (D) of this section

ARO_{et}=The value of ARO for the "edge target" fuel, as defined in paragraphs (c)(1)(iv)(C) and (D) of this section.

(C) During Phase I, the "edge target" fuel shall be identical to the target fuel for all fuel parameters, with the following exceptions:

(1) If the E200 level of the target fuel is less than 33 volume percent, then the E200 value for the "edge target" fuel shall be set equal to 33 volume percent.

(2) If the aromatics level of the target fuel is less than 18 volume percent, then the ARO value for the "edge target" fuel shall be set equal to 18 volume percent.

(3) If the aromatics level of the target fuel is greater than 46 volume percent, then the ARO value for the "edge target" fuel shall be set equal to 46 volume percent.

(4) If the E300 level of the target fuel is less than 72 volume percent, then the E300 value for the "edge target" fuel shall be set equal to 72 volume percent.

(5) If the E300 level of the target fuel is greater than 95 volume percent, then the E300 value for the "edge target" fuel shall be set equal to 95 volume percent.

(6) If [80.32+(0.390×ARO)] exceeds 94 for the target fuel, then the E300 value for the "edge target" fuel shall be set equal to 94 volume percent.

(7) If the E200 level of the target fuel is less than 33 volume percent, then ΔE200 shall be set equal to (E200−33 volume percent).

(8) If the E200 level of the target fuel equals or exceeds 33 volume percent, then ΔE200 shall be set equal to zero.

(9) If the aromatics level of the target fuel is less than 18 volume percent, then ΔARO shall be set equal to (ARO−18 volume percent). If the aromatics level of the target fuel is less than 10 volume percent, then ΔARO shall be set equal to 8 volume percent.

(10) If the aromatics level of the target fuel is greater than 46 volume percent, then ΔARO shall be set equal to (ARO−46 volume percent).

(11) If neither of the conditions established in paragraphs (c)(1)(iv)(C)*(8)* and *(9)* of this section are met, then ΔARO shall be set equal to zero.

(12) If the E300 level of the target fuel is less than 72 volume percent, then E300 shall be set equal to (E300−72 volume percent).

(13) If the E300 level of the target fuel is less than 94 volume percent and [80.32+(0.390×ARO)] also is greater than 94, then ΔE300 shall be set equal to (E300−94 volume percent). If the E300 level of the target fuel is greater than 95 volume percent and [80.32+(0.390×ARO)] also is greater than 94, then ΔE300 shall be set equal to 1 volume percent.

(14) If neither of the conditions established in paragraphs (c)(1)(iv)(C)*(11)* and *(12)* of this section are met, then ΔE300 shall be set equal to zero.

(D) During Phase II, the "edge target" fuel is identical to the target fuel for all fuel parameters, with the following exceptions:

(1) If the E200 level of the target fuel is less than 33 volume percent, then the E200 value for the "edge target" fuel shall be set equal to 33 volume percent.

(2) If the aromatics level of the target fuel is less than 18 volume percent, then the ARO value for the "edge target" fuel shall be set equal to 18 volume percent.

(3) If the aromatics level of the target fuel is greater than 46 volume percent, then the ARO value for the "edge target" fuel shall be set equal to 46 volume percent.

(4) If the E300 level of the target fuel is less than 72 volume percent, then the E300 value for the "edge target" fuel shall be set equal to 72 volume percent.

(5) If the E300 level of the target fuel is greater than 95 volume percent, then the E300 value for the "edge target" fuel shall be set equal to 95 volume percent.

(6) If [79.75+(0.385×ARO)] exceeds 94 for the target fuel, then the E300 value for the "edge target" fuel shall be set equal to 94 volume percent.

(7) If the E200 level of the target fuel is less than 33 volume percent, then ΔE200 shall be set equal to (E200−33 volume percent).

(8) If the E200 level of the target fuel equals or exceeds 33 volume percent, then ΔE200 shall be set equal to zero.

(9) If the aromatics level of the target fuel is less than 18 volume percent and greater than or equal to 10 volume percent, then ΔARO shall be set equal to (ARO−18 volume percent). If the aromatics level of the target fuel is less than 10 volume percent, then ΔARO shall be set equal to 8 volume percent.

(10) If the aromatics level of the target fuel is greater than 46 volume percent, then ΔARO shall be set equal to (ARO−46 volume percent).

(11) If neither of the conditions established in paragraphs (c)(1)(iv)(D)*(8)* and *(9)* of this section are met, then ΔARO shall be set equal to zero.

(12) If the E300 level of the target fuel is less than 72 volume percent, then E300 shall be set equal to (E300−72 volume percent).

(13) If the E300 level of the target fuel is less than 94 volume percent and [79.75+(0.385×ARO)] also is greater than 94, then ΔE300 shall be set equal to (E300−94 volume percent). If the E300 level of the target fuel is greater than 95 volume percent and [79.75+(0.385×ARO)] also is greater than 94, then ΔE300 shall be set equal to 1 volume percent.

(14) If neither of the conditions established in paragraphs (c)(1)(iv)(D)*(11)* and *(12)* of this section are met, then ΔE300 shall be set equal to zero.

(2) The winter exhaust VOC emissions performance of gasolines shall be given by the equations presented in paragraph (c)(1) of this section with the RVP value set to 8.7 psi for both the baseline and target fuels.

(3) The nonexhaust VOC emissions performance of gasolines in VOC Control Region 1 shall be given by the following equations, where:

VOCNE1=Total nonexhaust emissions of volatile organic compounds in VOC Control Region 1 in grams per mile

VOCDI1=Diurnal emissions of volatile organic compounds in VOC Control Region 1 in grams per mile

VOCHS1=Hot soak emissions of volatile organic compounds in VOC Control Region 1 in grams per mile

VOCRL1=Running loss emissions of volatile organic compounds in VOC Control Region 1 in grams per mile

VOCRF1=Refueling emissions of volatile organic compounds in VOC Control Region 1 in grams per mile

(i) During Phase I:

VOCNE1=VOCDI1+VOCHS1+VOCRL1+VOCRF1

VOCDI1=[0.00736 × (RVP²)] − [0.0790 × RVP]+0.2553

VOCHS1=[0.01557 × (RVP²)] − [0.1671 × RVP]+0.5399

VOCRL1=[0.00279 × (RVP²)] − [0.1096 × RVP] − 0.7340

VOCRF1=[0.006668 × RVP] − 0.0180

(ii) During Phase II:

VOCNE1=VOCDI1+VOCHS1+VOCRL1+VOCRF1

VOCDI1=[0.007385 × (RVP²)] − [0.08981 × RVP]+0.3158

VOCHS1=[0.006654 × (RVP²)] − [0.08009 × RVP]+0.2846

VOCRL1=[0.017768 × (RVP²)] − [0.18746 × RVP]+0.6146

VOCRF1=[0.0004767 × RVP]+0.011859

(4) The nonexhaust VOC emissions performance of gasolines in VOC Control Region 2 shall be given by the following equations, where:

VOCNE2=Total nonexhaust emissions of volatile organic compounds in VOC Control Region 2 in grams per mile

VOCDI2=Diurnal emissions of volatile organic compounds in VOC Control Region 2 in grams per mile

VOCHS2=Hot soak emissions of volatile organic compounds in VOC Control Region 2 in grams per mile

VOCRL2=Running loss emissions of volatile organic compounds in VOC Control Region 2 in grams per mile

VOCRF2=Refueling emissions of volatile organic compounds in VOC Control Region 2 in grams per mile

(i) During Phase I:

VOCNE2=VOCDI2+VOCHS2+VOCRL2+VOCRF2

VOCDI2=[0.006818 × (RVP²)] − [0.07682 × RVP]+0.2610

VOCHS2=[0.014421 × (RVP²)] − [0.16248 × RVP]+0.5520

VOCRL2=[0.016255 × (RVP²)] − [0.1306 × RVP]+0.2963

VOCRF2=[0.006668 × RVP] − 0.0180

(ii) During Phase II:

VOCNE2=VOCDI2+VOCHS2+VOCRL2+VOCRF2

VOCDI2=[0.004775 × (RVP²)] − [0.05872 × RVP]+0.21306

VOCHS2=[0.006078 × (RVP²)] − [0.07474 × RVP]+0.27117

VOCRL2=[0.016169 × (RVP²)]±[0.17206 × RVP]+0.56724

VOCRF2=[0.004767 × RVP]+0.011859

(5) Winter VOC emissions shall be given by VOCE, as defined in paragraph (c)(2) of this section, using the appropriate baseline emissions given in paragraph (b)(3) of this section. Total nonexhaust VOC emissions shall be set equal to zero under winter conditions.

(6) *Total VOC emissions.* (i) Total summer VOC emissions shall be given by the following equations:

VOCS1=(VOCE/1000)+VOCNE1

VOCS2=(VOCE/1000)+VOCNE2

VOCS1=Total summer VOC emissions in VOC Control Region 1 in terms of grams per mile

VOCS2=Total summer VOC emissions in VOC Control Region 2 in terms of grams per mile

(ii) Total winter VOC emissions shall be given by the following equations:

VOCW=(VOCE/1000)

VOCW=Total winter VOC emissions in terms of grams per mile

(7) *Phase I total VOC emissions performance.* (i) The total summer VOC emissions performance of the target fuel in percentage terms from baseline levels shall be given by the following equations during Phase I:

VOCS1%=[100% × (VOCS1 − 1.306 g/mi)]/(1.306 g/mi)

VOCS2%=[100% × (VOCS2 − 1.215 g/mi)]/(1.215 g/mi)

VOC1%=Percentage change in VOC emissions from baseline levels in VOC Control Region 1

VOC2%=Percentage change in VOC emissions from baseline levels in VOC Control Region 2

(ii) The total winter VOC emissions performance of the target fuel in percentage terms from baseline levels shall be given by the following equations during Phase I:

VOCW%=[100% × (VOCW − 0.660 g/mi)]/(0.660 g/mi)
VOCW%=Percentage change in winter VOC emissions from baseline levels

(8) *Phase II total VOC emissions performance.* (i) The total summer VOC emissions performance of the target fuel in percentage terms from baseline levels shall be given by the following equations during Phase II:

VOCS1%=[100% × (VOCS1 − 1.4663 g/mi)]/(1.4663 g/mi)
VOCS2%=[100% × (VOCS2 − 1.3991 g/mi)]/(1.3991 g/mi)

(ii) The total winter VOC emissions performance of the target fuel in percentage terms from baseline levels shall be given by the following equation during Phase II:

VOCW%=[100% × (VOC − 1.341 g/mi)]/(1.341 g/mi)

for

(d) *NO_X performance.* (1) The summer NO_X emissions performance of gasolines shall be given by the following equations:

$NO_X = NO_X(b) + [NO_X(b) \times Y(t)/100]$
$Y_{NOX}(t) = [(w_1 \times N_n) + (w_2 \times H_n) - 1] \times 100$

where

NO_X=NO_X emissions in milligrams/mile
$Y_{NOx}(t)$=NO_X performance of target fuel in terms of percentage change from baseline
$NO_X(b)$=Baseline NO_X emissions as defined in paragraph (b)(2) of this section for the appropriate phase and season
$N_n = \exp n_1(t)/\exp n_1(b)$
$H_n = \exp n_2(t)/\exp n_2(b)$
w_1=Weighting factor for normal emitters as defined in paragraph (b)(1) of this section for the appropriate Phase
w_2=Weighting factor for higher emitters as defined in paragraph (b)(1) of this section for the appropriate Phase
$n_1(t)$=Normal emitter NO_X equation as defined in paragraph (d)(1)(i) of this section, evaluated using the target fuel's properties subject to paragraphs (d)(1)(iii) and (iv) of this section
$n_2(t)$=Higher emitter NO_X equation as defined in paragraph (d)(1)(ii) of this section, evaluated using the target fuel's properties subject to paragraphs (d)(1)(iii) and (iv) of this section
$n_1(b)$=Normal emitter NO_X equation as defined in paragraph (d)(1)(i) of this section, evaluated using the base fuel's properties
$n_2(b)$=Higher emitter NO_X equation as defined in paragraph (d)(1)(ii) of this section, evaluated using the base fuel's properties

(i) *Consolidated equation for normal emitters.*

$n_1 = (0.0018571 \times OXY) + (0.0006921 \times SUL) + (0.0090744 \times RVP) + (0.0009310 \times E200) + (0.0008460 \times E300) + (0.0083632 \times ARO) + (-0.002774 \times OLE) + (-5.63X10^{-7} \times SUL^2) + (-0.000119 \times ARO^2) + (0.0003665 \times OLE^2)$

(ii) *Equation for higher emitters.*

$n_2 = (-0.00913 \times OXY) + (0.000252 \times SUL) + (-0.01397 \times RVP) + (0.000931 \times E200) + (-0.00401 \times E300) + (0.007097 \times ARO) + (-0.00276 \times OLE) + (0.0003665 \times OLE^2) + (-7.995x10^{-5} \times ARO^2)$

(iii) *Flat line extrapolations.* (A) During Phase I, fuels with olefin levels less than 3.77 volume percent shall be evaluated with the OLE fuel parameter set equal to 3.77 volume percent when calculating NO_X performance using the equations described in paragraphs (d)(1)(i) and (ii) of this section. Fuels with aromatics levels greater than 36.2 volume percent shall be evaluated with the ARO fuel parameter set equal to 36.2 volume percent when calculating NO_X performance using the equations described in paragraphs (d)(1)(i) and (ii) of this section.

(B) During Phase II, fuels with olefin levels less than 3.77 volume percent shall be evaluated with the OLE fuel parameter set equal to 3.77 volume percent when calculating NO_X performance using the equations described in paragraphs (d)(1)(i) and (ii) of this section. Fuels with aromatics levels greater than 36.8 volume percent shall be evaluated with the ARO fuel parameter set equal to 36.8 volume percent when calculating NO_X performance using the equations described in paragraphs (d)(1)(i) and (ii) of this section.

(iv) *Linear extrapolations.* (A) The equations in paragraphs (d)(1)(i) and (ii) of this section shall be used within the allowable range of SUL, E300, OLE, and ARO for the appropriate Phase, as defined in the following Table 7:

TABLE 7.—ALLOWABLE RANGES OF SUL, OLE, AND ARO FOR THE NO_X EQUATIONS IN PARAGRAPHS (d)(1)(i) AND (ii) OF THIS SECTION

Fuel parameter	Phase I		Phase II	
	Low end	High end	Low end	High end
SUL	10.0	450.0	10.0	450.0
E300	70.0	95.0	70.0	95.0
OLE	3.77	19.0	3.77	19.0
ARO	18.0	36.2	18.0	36.8

(B) For fuels with SUL, E300, OLE and ARO levels outside the ranges defined in Table 7 of paragraph (d)(1)(iv)(A) of this section, $Y_{NOx}(t)$ shall be defined as:

For Phase I:

$Y_{NOx}(t) = 100\% \times 0.82 \times [\exp(n_1(et)) / \exp(n_1(b)) - 1] + 100\% \times 0.18 \times [\exp(n_2(et) / \exp(n_2(b)) - 1] + \{[100\% \times 0.82 \times [\exp(n_1(et)) / \exp(n_1(b))] \times [\{[(-0.00000133 \times SUL_{et}) + 0.000692] \times \Delta SUL\} + \{[(-0.000238 \times ARO_{et}) + 0.0083632] \times \Delta ARO\} + \{[(0.000733 \times OLE_{et}) - 0.002774] \times \Delta OLE\}]\} + \{[100\% \times 0.18 \times [\exp(n_2(et)) / \exp(n_2(b))] \times [\{[(-0.0001599 \times ARO_{et}) + 0.007097] \times \Delta ARO\} + \{[(0.000732 \times OLE_{et}) - 0.00276] \times \Delta OLE\}]\}$

For Phase II:

$Y_{NOx}(t) = 100\% \times 0.738 \times [\exp(n_1(et)) / \exp(n_1(b)) - 1] + 100\% \times 0.262 \times [\exp(n_2(et) / \exp(n_2(b)) - 1] + \{[100\% \times 0.738 \times [\exp(n_1(et)) / \exp(n_1(b))] \times [\{[(-0.00000133 \times SUL_{et}) + 0.000692] \times \Delta SUL\} + \{[(-0.000238 \times ARO_{et}) + 0.0083632] \times \Delta ARO\} + \{[(0.000733 \times OLE_{et}) - 0.002774] \times \Delta OLE\}]\} + \{[100\% \times 0.262 \times [\exp(n_2(et)) / \exp(n_2(b))] \times [\{[(-0.0001599 \times ARO_{et}) + 0.007097] \times \Delta ARO\} + \{[(0.000732 \times OLE_{et}) - 0.00276] \times \Delta OLE\}]\}$

where

n_1, n_2=The equations defined in paragraphs (d)(1) (i) and (ii) of this section.
et=Collection of fuel parameters for the "edge target" fuel. These parameters are defined in paragraphs (d)(1)(iv) (C) and (D) of this section.
$n_1(et)$=The function n_1 evaluated with "edge target" fuel parameters, which are defined in paragraph (d)(1)(iv)(C) of this section.
$n_2(et)$=The function n_2 evaluated with "edge target" fuel parameters, which are defined in paragraph (d)(1)(iv)(C) of this section.
$n_1(b)$=The function n_1 evaluated with the appropriate baseline fuel parameters defined in paragraph (b)(2) of this section.
$n_2(b)$=The function n_2 evaluated with the appropriate baseline fuel parameters defined in paragraph (b)(2) of this section.
SUL_{et}=The value of SUL for the "edge target" fuel, as defined in paragraph (d)(1)(iv)(C) of this section.
ARO_{et}=The value of ARO for the "edge target" fuel, as defined in paragraph (d)(1)(iv)(C) of this section.
OLE_{et}=The value of OLE for the "edge target" fuel, as defined in paragraph (d)(1)(iv)(C) of this section.

(C) For both Phase I and Phase II, the "edge target" fuel is identical to the target fuel for all fuel parameters, with the following exceptions:

(1) If the sulfur level of the target fuel is less than 10 parts per million, then the value of SUL for the "edge target" fuel shall be set equal to 10 parts per million.

(2) If the sulfur level of the target fuel is greater than 450 parts per million, then the value of SUL for the "edge target" fuel shall be set equal to 450 parts per million.

(3) If the aromatics level of the target fuel is less than 18 volume percent, then the value of ARO for the "edge target" fuel shall be set equal to 18 volume percent.

(4) If the olefins level of the target fuel is greater than 19 volume percent, then the value of OLE for the "edge target" fuel shall be set equal to 19 volume percent.

(5) If the E300 level of the target fuel is greater than 95 volume percent, then the value of E300 for the "edge target" fuel shall be equal to 95 volume percent.

(6) If the sulfur level of the target fuel is less than 10 parts per million, then ΔSUL shall be set equal to (SUL − 10 parts per million).

(7) If the sulfur level of the target fuel is greater than 450 parts per million, then ΔSUL shall be set equal to (SUL − 450 parts per million).

(8) If the sulfur level of the target fuel is neither less than 10 parts per million nor greater than 450 parts per million, ΔSUL shall be set equal to zero.

(9) If the aromatics level of the target fuel is less than 18 volume percent and greater than 10 volume percent, then ΔARO shall be set equal to (ARO − 18 volume percent). If the aromatics level of the target fuel is less than 10 volume percent, then ΔARO shall be set equal to 8 volume percent.

(10) If the aromatics level of the target fuel is greater than or equal to 18 volume percent, then ΔARO shall be set equal to zero.

(11) If the olefins level of the target fuel is greater than 19 volume percent, then ΔOLE shall be set equal to (OLE − 19 volume percent).

(12) If the olefins level of the target fuel is less than or equal to 19 volume percent, then ΔOLE shall be set equal to zero.

(2) The winter NO_X emissions performance of gasolines shall be given by the equations presented in paragraph (d)(1) of this section with the RVP value set to 8.7 psi.

(3) The NO_X emissions performance of the target fuel in percentage terms from baseline levels shall be given by the following equations:

For Phase I:

Summer NO_X%=[100% × (NO_X − 0.660 g/mi)]/(0.660 g/mi)
Winter NO_X%=[100% × (NO_X − 0.750 g/mi)]/(0.750 g/mi)

For Phase II:

Summer NO_X%=[100% × (NO_X − 1.340 g/mi)]/(1.340 g/mi)
Winter NO_X%=[100% × (NO_X − 1.540 g/mi)]/(1.540 g/mi)
Summer NO_X%=Percentage change in NO_X emissions from summer baseline levels
Winter NO_X%=Percentage change in NO_X emissions from winter baseline levels

(e) *Toxics performance*—(1) *Summer toxics performance.* (i) Summer toxic emissions performance of gasolines in VOC Control Regions 1 and 2 shall be given by the following equations:

TOXICS1=EXHBZ + FORM + ACET + BUTA + POM + NEBZ1
TOXICS2=EXHBZ + FORM + ACET + BUTA + POM + NEBZ2

where

TOXICS1=Summer toxics performance in VOC Control Region 1 in terms of milligrams per mile.
TOXICS2=Summer toxics performance in VOC Control Region 2 in terms of milligrams per mile.
EXHBZ=Exhaust emissions of benzene in terms of milligrams per mile, as determined in paragraph (e)(4) of this section.
FORM=Emissions of formaldehyde in terms of milligrams per mile, as determined in paragraph (e)(5) of this section.
ACET=Emissions of acetaldehyde in terms of milligrams per mile, as determined in paragraph (e)(6) of this section.
BUTA=Emissions of 1,3-butadiene in terms of milligrams per mile, as determined in paragraph (e)(7) of this section.
POM=Polycyclic organic matter emissions in terms of milligrams per mile, as determined in paragraph (e)(8) of this section.
NEBZ1=Nonexhaust emissions of benzene in VOC Control Region 1 in milligrams per mile, as determined in paragraph (e)(9) of this section.
NEBZ2=Nonexhaust emissions of benzene in VOC Control Region 2 in milligrams per mile, as determined in paragraph (e)(10) of this section.

(ii) The percentage change in summer toxics performance in VOC Control Regions 1 and 2 shall be given by the following equations:

For Phase I:

TOXICS1%=[100% × (TOXICS1 − 48.61 mg/mi)]/(48.61 mg/mi)
TOXICS2%=[100% × (TOXICS2 − 47.59 mg/mi)]/(47.59 mg/mi)

For Phase II:

TOXICS1%=[100% × (TOXICS1 − 86.35 mg/mi)]/(86.35 mg/mi)
TOXICS2%=[100% × (TOXICS2 − 85.61 mg/mi)]/(85.61 mg/mi)

where

TOXICS1%=Percentage change in summer toxics emissions in VOC Control Region 1 from baseline levels.
TOXICS2%=Percentage change in summer toxics emissions in VOC Control Region 2 from baseline levels.

(2) *Winter toxics performance.* (i) Winter toxic emissions performance of gasolines in VOC Control Regions 1 and 2 shall be given by the following equation, evaluated with the RVP set at 8.7 psi:

TOXICW=[EXHBZ + FORM + ACET + BUTA + POM]

where

TOXICW=Winter toxics performance in VOC Control Regions 1 and 2 in terms of milligrams per mile.
EXHBZ=Exhaust emissions of benzene in terms of milligrams per mile, as determined in paragraph (e)(4) of this section.
FORM=Emissions of formaldehyde in terms of milligrams per mile, as

determined in paragraph (e)(5) of this section.

ACET=Emissions of acetaldehyde in terms of milligrams per mile, as determined in paragraph (e)(6) of this section.

BUTA=Emissions of 1,3-butadiene in terms of milligrams per mile, as determined in paragraph (e)(7) of this section.

POM=Polycyclic organic matter emissions in terms of milligrams per mile, as determined in paragraph (e)(8) of this section.

(ii) The percentage change in winter toxics performance in VOC Control Regions 1 and 2 shall be given by the following equation:

For Phase I:

TOXICW%=[100%×(TOXICW − 58.36 mg/mi)] / (58.36 mg/mi)

For Phase II:

TOXICW%=[100%×(TOXICW − 120.55 mg/mi)] / (120.55 mg/mi)

where

TOXICW%=Percentage change in winter toxics emissions in VOC Control Regions 1 and 2 from baseline levels.

(3) *Year-round toxics performance.* (i) Year-round toxics performance in VOC Control Regions 1 and 2 shall be given by the following equation for reformulated and Clean Air Act baseline gasolines:

TOXICY1=[(0.396×TOXICS1)+ (0.604×TOXICW)]

TOXICY2=[(0.396×TOXICS2)+ (0.604×TOXICW)]

where

TOXICY1=Year-round toxics performance in VOC Control Region 1 in terms of milligrams per mile.

TOXICS1=Summer toxics performance in VOC Control Region 1 in terms of milligrams per mile, as determined in paragraph (e)(1)(i) of this section.

TOXICY2=Year-round toxics performance in VOC Control Region 2 in terms of milligrams per mile.

TOXICS2=Summer toxics performance in VOC Control Region 2 in terms of milligrams per mile, as determined in paragraph (e)(1)(i) of this section.

TOXICW=Winter toxics performance in VOC Control Regions 1 and 2 in terms of milligrams per mile, as determined in paragraph (e)(2)(i) of this section.

(ii) The percentage change in year-round toxics performance in VOC Control Regions 1 and 2 shall be given by the following equations:

For Phase I:

TOXICY1%=[100%×(TOXICY1 − 54.50 mg/mi)] / (54.50 mg/mi)

TOXICY2%=[100%×(TOXICY2 − 54.09 mg/mi)] / (54.09 mg/mi)

For Phase II:

TOXICY1%=[100%×(TOXICY1 − 107.00 mg/mi)] / (107.00 mg/mi)

TOXICY2%=[100%×(TOXICY2 − 106.71 mg/mi)] / (106.71 mg/mi)

TOXICY1%=Percentage change in year-round toxics emissions in VOC Control Region 1 from baseline levels.

TOXICY2%=Percentage change in year-round toxics emissions in VOC Control Region 2 from baseline levels.

(4) Exhaust benzene emissions shall be given by the following equation, subject to paragragh (e)(4)(iii) of this section:

EXHBZ=BENZ(b) + (BENZ(b) × $Y_{BEN}(t)$/100)

$Y_{BEN}(t)$=[$(w_1 \times N_b) + (w_2 \times H_b) - 1$] × 100

where

EXHBZ=Exhaust benzene emissions in milligrams/mile

$Y_{BEN}(t)$=Benzene performance of target fuel in terms of percentage change from baseline.

BENZ(b)=Baseline benzene emissions as defined in paragraph (b)(2) of this section for the appropriate phase and season.

N_b=exp $b_1(t)$/exp $b_1(b)$

H_b=exp $b_2(t)$/exp $b_2(b)$

w_1=Weighting factor for normal emitters as defined in paragraph (b)(1) of this section for the appropriate Phase.

w_2=Weighting factor for higher emitters as defined in paragraph (b)(1) of this section for the appropriate Phase.

$b_1(t)$=Normal emitter benzene equation, as defined in paragraph (e)(4)(i) of this section, evaluated using the target fuel's properties subject to paragraph (e)(4)(iii) of this section.

$b_2(t)$=Higher emitter benzene equation as defined in paragraph (e)(4)(ii) of this section, evaluated using the target fuel's properties subject to paragraph (e)(4)(iii) of this section.

$b_1(b)$=Normal emitter benzene equation as defined in paragraph (e)(4)(i) of this section, evaluated for the base fuel's properties.

$b_2(b)$=Higher emitter benzene equation, as defined in paragraph (e)(4)(ii) of this section, evaluated for the base fuel's properties.

(i) *Consolidated equation for normal emitters.*

b_1=(0.0006197×SUL)+ (−0.003376×E200)+ (0.0265500×ARO)+ (0.2223900×BEN)

(ii) *Equation for higher emitters.*

b_2=(−0.096047×OXY)+ (0.0003370×SUL)+ (0.0112510×E300)+ (0.0118820×ARO)+ (0.2223180×BEN)

(iii) If the aromatics value of the target fuel is less than 10 volume percent, then an aromatics value of 10 volume percent shall be used when evaluating the equations given in paragraphs (e)(4) (i) and (ii) of this section. If the E300 value of the target fuel is greater than 95 volume percent, then E300 value of 95 volume percent shall be used when evaluating the equations given in paragraphs (e)(4) (i) and (ii) of this section.

(5) Formaldehyde mass emissions shall be given by the following equation, subject to paragraphs (e)(5) (iii) and (iv) of this section:

FORM=FORM(b)+(FORM(b)×$Y_{FORM}(t)$/100)

$Y_{FORM}(t)$=[$(w_1 \times N_f)+(w_2 \times H_f) - 1$]×100

where

FORM=Exhaust formaldehyde emissions in terms of milligrams/mile.

$Y_{FORM}(t)$=Formaldehyde performance of target fuel in terms of percentage change from baseline.

FORM(b)=Baseline formaldehyde emissions as defined in paragraph (b)(2) of this section for the appropriate Phase and season.

N_f=exp $f_1(t)$/exp $f_1(b)$

H_f=exp $f_2(t)$/exp $f_2(b)$

w_1=Weighting factor for normal emitters as defined in paragraph (b)(1) of this section for the appropriate Phase.

w_2=Weighting factor for higher emitters as defined in paragraph (b)(1) of this section for the appropriate Phase.

$f_1(t)$=Normal emitter formaldehyde equation as defined in paragraph (e)(5)(i) of this section, evaluated using the target fuel's properties subject to paragraphs (e)(5) (iii) and (iv) of this section.

$f_2(t)$=Higher emitter formaldehyde equation as defined in paragraph (e)(5)(ii) of this section, evaluated using the target fuel's properties subject to paragraphs (e)(5) (iii) and (iv) of this section.

$f_1(b)$=Normal emitter formaldehyde equation as defined in paragraph (e)(5)(i) of this section, evaluated for the base fuel's properties.

$f_2(b)$=Higher emitter formaldehyde equation as defined in paragraph (e)(5)(ii) of this section, evaluated for the base fuel's properties.

(i) *Consolidated equation for normal emitters.*

f_1=(−0.010226×E300)+ (−0.007166×ARO)+ (0.0462131×MTB)

(ii) *Equation for higher emitters.*

f_2=(−0.010226×E300)+ (−0.007166×ARO)+ (−0.031352×OLE)+ (0.0462131×MTB)

(iii) If the aromatics value of the target fuel is less than 10 volume percent, then an aromatics value of 10 volume percent shall be used when evaluating the equations given in paragraphs (e)(5) (i) and (ii) of this section. If the E300 value of the target fuel is greater than 95 volume percent, then an E300 value of 95 volume percent shall be used when evaluating the equations given in paragraphs (e)(5) (i) and (ii) of this section.

(iv) When calculating formaldehyde emissions and emissions performance, oxygen in the form of alcohols which are more complex or have higher molecular weights than ethanol shall be evaluated as if it were in the form of ethanol. Oxygen in the form of methyl ethers other than TAME and MTBE shall be evaluated as if it were in the form of MTBE. Oxygen in the form of ethyl ethers other than ETBE shall be evaluated as if it were in the form of ETBE. Oxygen in the form of non-methyl, non-ethyl ethers shall be evaluated as if it were in the form of ETBE.

(6) Acetaldehyde mass emissions shall be given by the following equation, subject to paragraphs (e)(6) (iii) and (iv) of this section:

ACET=ACET(b)+(ACET(b)×$Y_{ACET}(t)$/100)

$Y_{ACET}(t)$=[$(w_1 \times N_a)+(w_2 \times H_a) - 1$]×100

where

ACET=Exhaust acetaldehyde emissions in terms of milligrams/mile

$Y_{ACET}(t)$=Acetaldehyde performance of target fuel in terms of percentage change from baseline

ACET(b)=Baseline acetaldehyde emissions as defined in paragraph (b)(2) of this section for the appropriate phase and season

N_a=exp $a_1(t)$/exp $a_1(b)$

H_a=exp $a_2(t)$/exp $a_2(b)$

w_1=Weighting factor for normal emitters as defined in paragraph (b)(1) of this section for the appropriate phase

w_2=Weighting factor for higher emitters as defined in paragraph (b)(1) of this section for the appropriate phase

$a_1(t)$=Normal emitter acetaldehyde equation as defined in paragraph (e)(6)(i) of this section, evaluated using the target fuel's properties, subject to paragraphs (e)(6) (iii) and (iv) of this section

$a_2(t)$=Higher emitter acetaldehyde equation as defined in paragraph (e)(6)(ii) of this section, evaluated using the target fuel's properties, subject to paragraphs (e)(6) (iii) and (iv) of this section

$a_1(b)$=Normal emitter acetaldehyde equation as defined in paragraph (e)(6)(i) of this section, evaluated for the base fuel's properties

$f_2(b)$=Higher emitter acetaldehyde equation as defined in paragraph (e)(6)(ii) of this section, evaluated for the base fuel's properties

(i) *Consolidated equation for normal emitters.*

a_1=(0.0002631×SUL)+ (0.0397860×RVP)+ (−0.012172×E300)+ (−0.005525×ARO)+ (−0.009594×MTB)+ (0.3165800×ETB)+(0.2492500×ETH)

(ii) *Equation for higher emitters.*

a_2=(0.0002627×SUL)+ (−0.012157×E300)+ (−0.005548×ARO)+ (−0.055980×MTB)+ (0.3164665×ETB)+(0.2493259×ETH)

(iii) If the aromatics value of the target fuel is less than 10 volume percent, then an aromatics value of 10 volume percent shall be used when evaluating the equations given in paragraphs (e)(6) (i) and (ii) of this section. If the E300 value of the target fuel is greater than 95 volume percent, then an E300 value of 95 volume percent shall be used when evaluating the equations given in paragraphs (e)(6) (i) and (ii) of this section.

(iv) When calculating acetaldehyde emissions and emissions performance, oxygen in the form of alcohols which are more complex or have higher molecular weights than ethanol shall be evaluated as if it were in the form of ethanol. Oxygen in the form of methyl ethers other than TAME and MTBE shall be evaluated as if it were in the form of MTBE. Oxygen in the form of ethyl ethers other than ETBE shall be evaluated as if it were in the form of ETBE. Oxygen in the form of non-methyl, non-ethyl ethers shall be evaluated as if it were in the form of ETBE.

(7) 1,3-butadiene mass emissions shall be given by the following equations, subject to paragraph (e)(7)(iii) of this section:

BUTA=BUTA(b)+(BUTA(b)×$Y_{BUTA}(t)$/100)

$Y_{BUTA}(t)$=[$(w_1 \times N_d)+(w_2 \times H_d) - 1$]×100

where

BUTA=Exhaust 1,3-butadiene emissions in terms of milligrams/mile

$Y_{BUTA}(t)$=1,3-butadiene performance of target fuel in terms of percentage change from baseline

BUTA(b)=Baseline 1,3-butadiene emissions as defined in paragraph (b)(2) of this section for the appropriate phase and season

N_d=exp $d_1(t)$/exp $d_1(b)$

H_d=exp $d_2(t)$/exp $d_2(b)$

w_1=Weighting factor for normal emitters as defined in paragraph (b)(1) of this section for the appropriate phase

w_2=Weighting factor for higher emitters as defined in paragraph (b)(1) of this section for the appropriate Phase.

$d_1(t)$=Normal emitter 1,3-butadiene equation as defined in paragraph (e)(7)(i) of this section, evaluated using the target fuel's properties, subject to paragraph (e)(7)(iii) of this section.

$d_2(t)$=Higher emitter 1,3-butadiene equation as defined in paragraph (e)(7)(ii) of this section, evaluated using the target fuel's properties, subject to paragraph (e)(7)(iii) of this section.

$d_1(b)$=Normal emitter 1,3-butadiene equation as defined in paragraph (e)(7)(i) of this section, evaluated for the base fuel's properties.

$d_2(b)$=Higher emitter 1,3-butadiene equation as defined in paragraph (e)(7)(ii) of this section, evaluated for the base fuel's properties.

(i) *Consolidated equation for normal emitters.*

d_1=(0.0001552×SUL)+ (−0.007253×E200)+ (−0.014866×E300)+ (−0.004005×ARO)+ (0.0282350×OLE)

(ii) *Equation for higher emitters.*

d_2=(−0.060771×OXY)+ (−0.007311×E200)+ (−0.008058×E300)+ (−0.004005×ARO)+ (0.0436960×OLE)

(iii) If the aromatics value of the target fuel is less than 10 volume percent, then an aromatics value of 10 volume percent shall be used when evaluating the equations given in paragraphs (e)(7) (i) and (ii) of this section. If the E300 value of the target fuel is greater than 95 volume percent, then an E300 value of 95 volume percent shall be used when evaluating the equations given in paragraphs (e)(7) (i) and (ii) of this section.

(8) Polycyclic organic matter mass emissions shall be given by the following equation:

POM=0.003355×VOCE
POM=Polycyclic organic matter emissions in terms of milligrams per mile
VOCE=Non-methane, non-ethane exhaust emissions of volatile organic compounds in grams per mile.

(9) Nonexhaust benzene emissions in VOC Control Region 1 shall be given by the following equations for both Phase I and Phase II:

NEBZ1=DIBZ1+HSBZ1+RLBZ1+RFBZ1
HSBZ1=10 × BEN × HSVOC1 × [(−0.0342 × MTB)+(−0.080274 × RVP)+1.4448]
DIBZ1=10 × BEN × DIVOC1 × [(−0.0290 × MTB)+(−0.080274 × RVP)+1.3758]
RLBZ1=10 × BEN × RLVOC1 × [(−0.0342 × MTB)+(−0.080274 × RVP)+1.4448]
RFBZ1=10 × BEN × RFVOC1 × [(−0.0296 × MTB)+(−0.081507 × RVP)+1.3972]

where

NEBZ1=Nonexhaust emissions of volatile organic compounds in VOC Control Region 1 in milligrams per mile.
DIBZ1=Diurnal emissions of volatile organic compounds in VOC Control Region 1 in milligrams per mile.
HSBZ1=Hot soak emissions of volatile organic compounds in VOC Control Region 1 in milligrams per mile.
RLBZ1=Running loss emissions of volatile organic compounds in VOC Control Region 1 in milligrams per mile.
RFBZ1=Refueling emissions of volatile organic compounds in VOC Control Region 1 in grams per mile.
VOCDI1=Diurnal emissions of volatile organic compounds in VOC Control Region 1 in milligrams per mile, as determined in paragraph (c)(3) of this section.
VOCHS1=Hot soak emissions of volatile organic compounds in VOC Control Region 1 in milligrams per mile, as determined in paragraph (c)(3) of this section.
VOCRL1=Running loss emissions of volatile organic compounds in VOC Control Region 1 in milligrams per mile, as determined in paragraph (c)(3) of this section.
VOCRF1=Refueling emissions of volatile organic compounds in VOC Control Region 1 in milligrams per mile, as determined in paragraph (c)(3) of this section.

(10) Nonexhaust benzene emissions in VOC Control Region 2 shall be given by the following equations for both Phase I and Phase II:

NEBZ2=DIBZ2+HSBZ2+RLBZ2+RFBZ2
HSBZ2=10 ×BEN × HSVOC2 × [(−0.0342 × MTB)+(−0.080274 × RVP)+1.4448]
DIBZ2=10 × BEN × DIVOC2 × [(−0.0290 × MTB)+(−0.080274 × RVP)+1.3758]
RLBZ2=10 × BEN × RLVOC2 × [(−0.0342 × MTB)+(−0.080274 × RVP)+1.4448]
RFBZ2=10 × BEN × RFVOC2 × [(−0.0296 × MTB)+(−0.081507 × RVP)+1.3972]

where

NEBZ2=Nonexhaust emissions of volatile organic compounds in VOC Control Region 2 in milligrams per mile.
DIBZ2=Diurnal emissions of volatile organic compounds in VOC Control Region 2 in milligrams per mile.
HSBZ2=Hot soak emissions of volatile organic compounds in VOC Control Region 2 in milligrams per mile.
RLBZ2=Running loss emissions of volatile organic compounds in VOC Control Region 2 in milligrams per mile.
RFBZ2=Refueling emissions of volatile organic compounds in VOC Control Region 2 in grams per mile.
VOCDI2=Diurnal emissions of volatile organic compounds in VOC Control Region 2 in milligrams per mile, as determined in paragraph (c)(4) of this section.
VOCHS2=Hot soak emissions of volatile organic compounds in VOC Control Region 2 in milligrams per mile, as determined in paragraph (c)(4) of this section.
VOCRL2=Running loss emissions of volatile organic compounds in VOC Control Region 2 in milligrams per mile, as determined in paragraph (c)(4) of this section.
VOCRF2=Refueling emissions of volatile organic compounds in VOC Control Region 2 in milligrams per mile, as determined in paragraph (c)(4) of this section.

(f) *Limits of the model.* (1) The equations described in paragraphs (a), (c), and (d) of this section shall be valid only for fuels with fuel properties that fall in the following ranges for reformulated gasolines and conventional gasolines:

(i) For reformulated gasolines:

Fuel property	Acceptable range
Oxygen	0.00–3.70 weight percent.
Sulfur	0.0–500.0 parts per million by weight.
RVP	6.4–10.0 pounds per square inch.
E200	30.0–70.0 volume percent.
E300	70.0–100.0 volume percent.
Aromatics	0.0–50.0 volume percent.
Olefins	0.00–25.0 volume percent.
Benzene	0.0–2.0 volume percent.

(ii) For conventional gasolines:

Fuel property	Acceptable range
Oxygen	0.00–3.70 weight percent.
Sulfur	0.0–1000.0 parts per million by weight.
RVP	6.4–11.0 pounds per square inch.
E200	30.0–70.0 volume percent.
E300	70.0–100.0 volume percent.
Aromatics	00.0–55.0 volume percent.
Olefins	0.00–30.0 volume percent.
Benzene	0.0–4.9 volume percent.

(2) Fuels with one or more properties that do not fall within the ranges described in above shall not be certified or evaluated for their emissions performance using the complex emissions model described in paragraphs (c), (d), and (e) of this section.

§ 80.46 Measurement of reformulated gasoline fuel parameters.

(a) *Sulfur.* Sulfur content shall be determined using American Society for Testing and Materials (ASTM) standard method D–2622–92, entitled "Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry."

(b) *Olefins.* Olefin content shall be determined using ASTM standard method D–1319–93, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption."

(c) *Reid vapor pressure (RVP).* Reid Vapor Pressure (RVP) shall be determined using the procedure described in 40 CFR part 80, appendix E, Method 3.

(d) *Distillation.* (1) Distillation parameters shall be determined using ASTM standard method D–86–90, entitled "Standard Test Method for Distillation of Petroleum Products"; except that

(2) The figures for repeatability and reproducibility given in degrees Fahrenheit in Table 9 in the ASTM method are incorrect, and shall not be used.

(e) *Benzene.* (1) Benzene content shall be determined using ASTM standard method D–3606–92, entitled "Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography"; except that

(2) Instrument parameters must be adjusted to ensure complete resolution of the benzene, ethanol and methanol peaks because ethanol and methanol may cause interference with ASTM standard method D–3606–92 when present.

(f) *Aromatics.* Aromatics content shall be determined by gas chromatography identifying and quantifying each aromatic compound as set forth in paragraph (f)(1) of this section.

(1) (i) *Detector.* The detector is an atomic mass spectrometer detector (MSD). The detector may be set for either selective ion or scan mode.

(ii) *Method A.* (A) The initial study of this method used a three component internal standard using the following calculations.

(B) The calibration points are constructed by calculating an amount ratio and response ratio for each level of a particular peak in the instrument's calibration table.

(C) The amount ratio is the amount of the compound divided by the amount of the internal standard for a given level.

(D) The response ratio is the response of the compound divided by the response of the internal standard at this level.

(E) The equation for the curve through the calibration points is calculated using the type fit and origin handling specified in the instrument's calibration table. In the initial study the fit was a second degree polynomial including a forced zero for the origin.

(F) The response of the compound in a sample is divided by the response of the internal standard to provide a response ratio for that compound in the sample.

(G) A corrected amount ratio for the unknown is calculated using the curve fit equation determined in paragragh (f)(1)(ii)(E) of this section.

(H) The amount of the aromatic compound is equal to the corrected amount ratio times the Amount of Internal Standard.

(I) The total aromatics in the sample is the sum of the amounts of the individual aromatic compounds in the sample.

(J) An internal standard solution can be made with the following compounds at the listed concentrations in volume percent. Also listed is the Chemical Abstracts Service Registry Number (CAS), atomic mass unit (amu) on which the detector must be set at the corresponding retention time if used in the selective ion mode, retention times in minutes, and boiling point in °C. (Other, similar, boiling point materials can be used which are not found in gasoline.) Retention times are approximate and apply only to a 60 meter capillary column used in the initial study. Other columns and retention times can be used.

(1) 4-methyl-2-pentanone, 50 vol% [108–10–1], 43.0 amu, 22.8 min., bp 118;

(2) benzyl alcohol, 25 vol%, [100–51–6], 108 amu, 61.7 min., bp 205;

(3) 1-octanol, [111–87–5], 25 vol%, 56.0 amu, 76.6 min., bp 196;

(K) At least two calibration mixtures which bracket the measured total aromatics concentration must be made with a representative mixture of aromatic compounds. The materials and concentrations used in the highest concentration calibration level in the initial study for this method are listed in this paragraph (f)(1)(ii)(K). Also listed is the Chemical Abstracts Service Registry Number (CAS), atomic mass unit (amu) on which the detector must be set for the corresponding retention time if used in the selective ion mode, retention times in minutes, and in some cases boiling point in °C. The standards are made in 2,2,4-trimethylpentane (isooctane), [540–84–1]. Other aromatic compounds, and retention times may be acceptable as long as the aromatic values produced meet the criteria found in the quality assurance section for the aromatic methods.

Compound	Concentrations vol %	CAS No.	AMU	Retention time, min.	Boiling point, °C
Benzene	2.25	71–43–2	78	18.9	80.1
Methylbenzene	2.5	108–88–3	91	25.5	111
Ethylbenzene	2.25	100–41–4	91	34.1	136.2
1,3–Dimethylbenzene 1,4–Dimethylbenzene	5	108–38–3	91	35.1	136–138
1,2-dimethylbenzene	10	95–47–6	91	38.1	144
(1-methylethyl)-benzene	2.25	620–14–4	105	42.8	.....
Propylbenzene	2.25	103–65–1	91	48.0	159.2
1-ethyl-2-methylbenzene	2.25	611–14–3	105	49.3	165
1,2,4-trimethylbenzene	2.25	95–63–6	105	50.9	169
1-ethyl-2-methylbenzene	2.25	611–14–4	105	53.3	165
1,3-diethylbenzene	2.25	141–93–5	119	56.6	181
Butylbenzene	2.25	104–51–8	91	60.7	183
1-methyl-2-(1-methylethyl)-benzene	2.25	933–98–2	119	63.9	.....
1-ethyl-3-methylbenzene	2.25	620–14–4	105	64.2	.....
1-methyl-4-iso-propylbenzene	2.25	99–87–6	119	69.0	177
2-ethyl-1,3-dimethylbenzene	2.25	2870–04–4	119	73.0	.....
2-methylpropylbenzene	2.25	538–93–2	91	75.0	.....
1-methyl-3-(1-methylethyl)-benzene	2.25	535–77–3	119	75.6	.....
1-methyl-3-propylbenzene	2.25	1074–43–7	105	78.9	.....
2-ethyl-1,4-dimethylbenzene	2.25	1758–88–9	119	83.2	187
1-methyl-4-(methylethyl)-benzene	2.25	934–80–9	119	83.4	.....
1-ethyl-2,4-dimethylbenzene	2.25	874–41–9	119	85.7	.....
(1,1-dimethylethy)-3-methylbenzene	2.25	27138-21–2	133	87.3	.....
1-ethyl-2,3-dimethylbenzene	2.25	933–98–2	119	88.7	.....
1-(1,1-dimethylethyl)-3-methylbenzene	2.25	175–38–3	133	89.4	.....
1-ethyl-1,4-dimethylbenzene	2.25	874–41–9	119	94.9	.....
2-ethyl-1,3-dimethylbenzene	2.25	2870–04–4	119	100.9	.....
1-ethyl-3,5-dimethylbenzene	2.25	934–74–7	119	102.5	.....
1–2,4,5-tetramethylbenzene	2.25	95–93–2	119	115.9	197
Pentylbenzene	2.25	538–68–1	91	116	.....
Naphthalene	2.25	191–20–3	128	118.4	198
3,5 dimethyl-tso-butylbenzene	2.25	98–19–1	147	118.5	205.5

(iii) *Method B.* (A) Use a percent normalized format to determine the concentration of the individual compounds. No internal standard is used in this method.

(B) The calculation of the aromatic compounds is done by developing calibration curves for each compound using the type fit and origin handling specified in the instrument's calibration table.

(C) The amount of compound in a sample (the corrected amount) is calculated using the equation determined in paragraph (f)(1)(ii) of this section for that compound.

(D) The percent normalized amount of a compound is calculated using the following equation:

$$A_n = 100 \times \left(\frac{A_c}{A_s} \right)$$

where:

A_n = percent normalized amount of a compound

A_c = corrected amount of the compound

A_s = sum of all the corrected amounts for all identified compounds in the sample

(E) The total aromatics is the sum of all the percent normalized aromatic amounts in the sample.

(F) This method allows quantification of non-aromatic compounds in the sample. However, correct quantification can only be achieved if the instrument's calibration table can identify the compounds that are responsible for at least 95 volume percent of the sample and meets the following quality control criteria.

(2) Quality assurance. (i) The performance standards will be from repeated measurement of the calibration mixture, standard reference material, or process control gasoline. The uncertainty in the measured aromatics percentages in the standards must be less than 2.0 volume percent in the fuel at a 95% confidence level.

(ii) If the bias of the standard mean is greater than 2% of the theoretical value, then the standard measurement and measurements of all samples measured subsequent to the previous standard measurement that met the performance criteria must be repeated after re-calibrating the instrument.

(iii) Replicate samples must be within 3.0 volume percent of the previous sample or within 2.0 volume percent of the mean at the 95% confidence level.

(3) Alternative test method. (i) Prior to January 1, 1997, any refiner or importer may determine aromatics content using ASTM standard method D–1319–93, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption," for purposes of meeting any testing requirement involving aromatics content; provided that

(ii) The refiner or importer test result is correlated with the method specified in paragraph (f)(1) of this section.

(g) *Oxygen and oxygenate content analysis.* Oxygen and oxygenate content shall be determined by the gas chromatographic procedure using an oxygenate flame ionization detector (GC-OFID) as set out in paragraphs (g)(1) through (8) of this section.

(1) *Introduction; scope of application.* (i) The following single-column, direct-injection gas chromatographic procedure is a technique for quantifying the oxygenate content of gasoline.

(ii) This method covers the quantitative determination of the oxygenate content of gasoline through the use of an oxygenate flame ionization detector (OFID). It is applicable to individual organic oxygenated compounds (up to 20 mass percent each) in gasoline having a final boiling point not greater than 220 °C. Samples above this level should be diluted to fall within the specified range.

(iii) The total concentration of oxygen in the gasoline, due to oxygenated components, may also be determined with this method by summation of all peak areas except for dissolved oxygen, water, and the internal standard. Sensitivities to each component oxygenate must be incorporated in the calculation.

(iv) All oxygenated gasoline components (alcohols, ethers, etc.) may be assessed by this method.

(v) The total mass percent of oxygen in the gasoline due to oxygenated components also may be determined with this method by summing all peak areas except for dissolved oxygen, water, and the internal standard.

(vi) Where trade names or specific products are noted in the method, equivalent apparatus and chemical reagents may be used. Mention of trade names or specific products is for the assistance of the user and does not constitute endorsement by the U.S. Environmental Protection Agency.

(2) *Summary of method.* A sample of gasoline is spiked to introduce an internal standard, mixed, and injected into a gas chromatograph (GC) equipped with an OFID. After chromatographic resolution the sample components enter a cracker reactor in which they are stoichiometrically converted to carbon monoxide (in the case of oxygenates), elemental carbon, and hydrogen. The carbon monoxide then enters a methanizer reactor for conversion to water and methane. Finally, the methane generated is determined by a flame ionization detector (FID).

(3) *Sample handling and preservation.* (i) Samples shall be collected and stored in containers which will protect them from changes in the oxygenated component contents of the gasoline, such as loss of volatile fractions of the gasoline by evaporation.

(ii) If samples have been refrigerated they shall be brought to room temperature prior to analysis.

(iii) Gasoline is extremely flammable and should be handled cautiously and with adequate ventilation. The vapors are harmful if inhaled and prolonged breathing of vapors should be avoided. Skin contact should be minimized.

(4) *Apparatus.* (i) A GC equipped with an oxygenate flame ionization detector.

(ii) An autosampler for the GC is highly recommended.

(iii) A 60-m length, 0.25-mm ID, 1.0-µm film thickness, nonpolar capillary GC column (J&W DB–1 or equivalent) is recommended.

(iv) An integrator or other acceptable system to collect and process the GC signal.

(v) A positive displacement pipet (200 µL) for adding the internal standard.

(5) *Reagents and materials.* Gasoline and many of the oxygenate additives are extremely flammable and may be toxic over prolonged exposure. Methanol is particularly hazardous. Persons performing this procedure must be familiar with the chemicals involved and all precautions applicable to each.

(i) Reagent grade oxygenates for internal standards and for preparation of standard solutions.

(ii) Supply of oxygenate-free gasoline for blank assessments and for preparation of standard solutions.

(iii) Calibration standard solutions containing known quantities of suspected oxygenates in gasoline.

(iv) Calibration check standard solutions prepared in the same manner as the calibration standards.

(v) Reference standard solutions containing known quantities of suspected oxygenates in gasoline.

(vi) Glass standard and test sample containers (between 5 and 100 Ml capacity) fitted with a self-sealing polytetrafluoroethlene (PTFE) faced rubber septum crimp-on or screw-down sealing cap for preparation of standards and samples.

(6) *Calibration.*—(i)(A) Calibration standards of reagent-grade or better oxygenates (such as methanol, absolute ethanol, methyl t-butyl ether (MTBE), di-i-propyl ether (DIPE), ethyl t-butyl ether (ETBE), and t-amyl methyl ether (TAME)) are to be prepared gravimetrically by blending with gasoline that has been previously determined by GC/OFID to be free of oxygenates. Newly acquired stocks of reagent grade oxygenates shall be analyzed for contamination by GC/FID and GC/OFID before use.

(B) Required calibration standards (percent by volume in gasoline):

Oxygenate	Range (percent)	Number of standards (minimum)
Methanol	0.25–12.00	5
Ethanol	0.25–12.00	5
t-Butanol	0.25–12.00	5
MTBE	0.25–15.00	5

(ii) Take a glass sample container and its PTFE faced rubber septum sealing cap. Transfer a quantity of an oxygenate to the sample container and record the mass of the oxygenate to the nearest 0.1 mg. Repeat this process for any additional oxygenates of interest except the internal standard. Add oxygenate-free gasoline to dilute the oxygenates to the desired concentration. Record the mass of gasoline added to the nearest 0.1 mg, and determine and label the standard according to the mass percent quantities of each oxygenate added. These standards are not to exceed 20 mass percent for any individual pure component due to potential hydrocarbon breakthrough and/or loss of calibration linearity.

(iii) Inject a quantity of an internal standard (such as 2-butanol) and weigh the contents again. Record the difference in masses as the mass of internal standard to the nearest 0.1 mg. The mass of the internal standard shall amount to between 2 and 6 percent of the mass of the test sample (standard). The addition of an internal standard reduces errors caused by variations in injection volumes.

(iv) Ensure that the prepared standard is thoroughly mixed and transfer approximately 2 Ml of the solution to a vial compatible with the autosampler if such equipment is used.

(v) At least five concentrations of each of the expected oxygenates should be prepared. The standards should be as equally spaced as possible within the range and may contain more than one oxygenate. A blank for zero concentration assessments is also to be included. Additional standards should be prepared for other oxygenates of concern.

(vi) Based on the recommended chromatographic operating conditions specified in paragraph (g)(7)(i) of this section, determine the retention time of each oxygenate component by analyzing dilute aliquots either separately or in known mixtures. Reference should be made to the Chemical Abstracts Service (CAS) registry number of each of the analytes for proper identification. Approximate retention times for selected oxygenates under these conditions are as follows:

Oxygenate	CAS	Retention time (minutes)
Dissolved oxygen	7782–44–7	5.50
Water	7732–18–5	7.20
Methanol	67–56–1	9.10
Ethanol	64–17–5	12.60
Propanone	67–64–1	15.00
2–Propanol	67–63–0	15.70
t-Butanol	75–65–0	18.00
n-Propanol	71–23–8	21.10
MTBE	1634–04–4	23.80
2–Butanol	15892–23–6	26.30
i-Butanol	78–83–1	30.30
ETBE	637–92–3	31.10
n-Butanol	71–36–3	33.50
TAME	994–05–8	35.30
i-Pentanol	137–32–6	38.10

(vii) By GC/OFID analysis, determine the peak area of each oxygenate and of the internal standard.

(viii) Obtain a calibration curve by performing a least-squares fit of the relative area response factors of the oxygenate standards to their relative mass response factors as follows:

$$R_{ao} = b_o R_{mo} + b_1 (R_{mo})^2$$

where:

R_{ao} = relative area response factor of the oxygenate, A_o/A_i

R_{mo} = relative mass response factor of the oxygenate, Mo/M_i

A_o = area of the oxygenate peak

A_i = area of the internal standard peak

M_o = mass of the oxygenate added to the calibration standard

M_i = mass of internal standard added to the calibration standard

b_o = linear regression coefficient

b_1 = quadratic regression coefficient

(7) *Procedure.* (i) GC operating conditions:

(A) Oxygenate-free helium carrier gas: 1.1 Ml/min (2 bar), 22.7 cm/sec at 115 °C;

(B) Carrier gas split ratio: 1:100;

(C) Zero air FID fuel: 370 Ml/min (2 bar);

(D) Oxygenate free hydrogen FID fuel: 15 Ml/min (2 bar);

(E) Injector temperature: 250 °C;

(F) Injection volume: 0.5 µL;

(G) Cracker reactor temperature: sufficiently high enough temperature to ensure reduction of all hydrocarbons to the elemental states (i.e., $C_xH_{2x} \rightarrow C + H_2$, etc.);

(H) FID temperature: 400 °C; and

(I) Oven temperature program: 40 °C for 6 min, followed by a temperature increase of 5 °C/min to 50 °C, hold at 50 °C for 5 min, followed by a temperature increase of 25 °C/min to 175 °C, and hold at 175 °C for 2 min.

(ii) Prior to analysis of any samples, inject a sample of oxygenate-free gasoline into the GC to test for hydrocarbon breakthrough overloading the cracker reactor. If breakthrough occurs, the OFID is not operating effectively and must be corrected before samples can be analyzed.

(iii) Prepare gasoline test samples for analysis as follows:

(A) Tare a glass sample container and its PTFE faced rubber septum sealing cap. Transfer a quantity of the gasoline sample to the sample container and record the mass of the transferred sample to the nearest 0.1 mg.

(B) Inject a quantity of the same internal standard (such as 2-butanol) used in generating the standards and weigh the contents again. Record the difference in masses as the mass of internal standard to the nearest 0.1 mg. The mass of the internal standard shall amount to between 2 and 6 percent of the mass of the test sample (standard). The addition of an internal standard reduces errors caused by variations in injection volumes.

(C) Ensure that this test sample (gasoline plus internal standard) is thoroughly mixed and transfer approximately 2 mL of the solution to a vial compatible with the autosampler if such equipment is used.

(iv) After GC/OFID analysis, identify the oxygenates in the sample based on retention times, determine the peak area of each oxygenate and of the internal standard, and calculate the relative area response factor for each oxygenate.

(v) Monitor the peak area of the internal standard. A larger than expected peak area for the internal standard when analyzing a test sample may indicate that this oxygenate is present in the original sample. Prepare a new aliquot of the sample without addition of the oxygenate internal standard. If the presence of the oxygenate previously used as the internal standard can be detected, then either:

(A) The concentration of this oxygenate must be assessed by the method of standard additions; or

(B) An alternative internal standard, based on an oxygenate that is not present in the original sample, must be utilized with new calibration curves.

(vi) Calculate the relative mass response factor (R_{mo}) for each oxygenate based on the relative area response

factor (R_{mo}) and the calibration equation in paragraph (g)(6)(viii) of this section.

(vii) Calculate the mass percent of the oxygenate in the test sample according to the following equation:

$$M_o\% = \frac{R_{mo} M_i (100\%)}{M_s}$$

where:

M_o% = mass percent of the oxygenate in the test sample

M_s = mass of sample to which internal standard is added

(viii) If the mass percent exceeds the calibrated range, gravimetrically dilute a portion of the original sample to a concentration within the calibration range and analyze this sample starting with paragraph (g)(7)(iii) of this section.

(ix) Report the total weight percent oxygen as follows:

(A) Subtract the peak areas due to dissolved oxygen, water, and the internal standard from the total summed peak areas of the chromatogram.

(B) Assume the total summed peak area solely due to one of the oxygenates that the instrument is calibrated for and determine the total mass percent as that oxygenate based on paragraph (g)(7)(vii) of this section. For simplicity, chose an oxygenate having one oxygen atom per molecule.

(C) Multiply this concentration by the molar mass of oxygen and divide by the molar mass of the chosen oxygenate to determine the mass percent oxygen in the sample. For example, if the total peak area is based on MTBE, multiply by 16.00 (the molar mass of atomic oxygen) and divide by 88.15 (the molar mass of MTBE).

(x) Sufficient sample should be retained to permit reanalysis.

(8) *Quality control procedures and accuracy.* (i) The laboratory shall routinely monitor the repeatability (precision) of its analyses. The recommendations are:

(A) The preparation and analysis of laboratory duplicates at a rate of one per analysis batch or at least one per ten samples, whichever is more frequent.

(B) Laboratory duplicates shall be carried through all sample preparation steps independently.

(C) The range (R) for duplicate samples should be less than the following limits:

Oxygenate	Concentration mass percent	Upper limit for range mass percent
Methanol	0.27–1.07	0.010+0.043C
Methanol	1.07–12.73	0.053C
Ethanol	1.01–12.70	0.053C
MTBE	0.25–15.00	0.069+0.029C
DIPE	0.98–17.70	0.048C
ETBE	1.00–18.04	0.074C
TAME	1.04–18.59	0.060C

where:

$C=(C_o+C_d)/2$

C_o=concentration of the original sample

C_d=concentration of the duplicate sample

R=Range, $|C_o-C_d|$

(D) If the limits in paragraph (g)(8)(i)(C) of this section are exceeded, the sources of error in the analysis should be determined, corrected, and all analyses subsequent to and including the last duplicate analysis confirmed to be within the compliance specifications must be repeated. The specification limits for the range and relative range of duplicate analyses are minimum performance requirements. The performance of individual laboratories may indeed be better than these minimum requirements. For this reason it is recommended that control charts be utilized to monitor the variability of measurements in order to optimally detect abnormal situations and ensure a stable measurement process.

(E) *(1)* For reference purposes, a single laboratory study of repeatability was conducted on approximately 27 replicates at each of five concentrations for each oxygenate. The variation of MTBE analyses as measured by standard deviation was very linear with respect to concentration. Where concentration is expressed as mass percent, over the concentration range of 0.25 to 15.0 mass percent this relationship is described by the equation:

standard deviation=0.00784×C+0.0187

(2) The other oxygenates of interest, methanol, ethanol, DIPE, ETBE, and TAME, had consistent coefficients of variation at one mass percent and above:

Oxygenate	Concentration mass percent	Coefficient of variation percent of point
Methanol	1.07–12.73	1.43
Ethanol	1.01–12.70	1.43
DIPE	0.98–17.70	1.29
ETBE	1.00–18.04	2.00
TAME	1.04–18.59	1.62

(3) The relationship of standard deviation and concentration for methanol between 0.27 and 1.07 mass percent was very linear and is described by the equation:

standard deviation=0.0118×C+0.0027

(4) Based on these relationships, repeatability for the selected oxygenates at 2.0 and 2.7 mass percent oxygen were determined to be as follows, where repeatability is defined as the half width of the 95 percent confidence interval (i.e., 1.96 standard deviations) for a single analysis at the stated concentration:

Oxygenate	Concentration			Repeatability mass percent
	Mass percent oxygen	Mass percent oxygenate	Volume percent oxygenate	
Methanol	2.0	4.00	3.75	0.11
Ethanol	2.0	5.75	5.41	0.16
MTBE	2.00	11.00	11.00	0.21
DIPE	2.0	12.77	13.00	0.32
ETBE	2.0	12.77	12.74	0.50

Oxygenate	Concentration			Repeatability mass percent
	Mass percent oxygen	Mass percent oxygenate	Volume percent oxygenate	
TAME	2.0	12.77	12.33	0.41
Methanol	2.7	5.40	5.07	0.15
Ethanol	2.7	7.76	7.31	0.21
MTBE	2.7	14.88	14.88	0.26
DIPE	2.7	17.24	17.53	0.43
ETBE	2.7	17.24	17.20	0.67
TAME	2.7	17.24	16.68	0.55

(ii) The laboratory shall routinely monitor the accuracy of its analyses. The recommendations are:

(A) Calibration check standards and calibration standards may be prepared from the same oxygenate stocks and by the same analyst. However, calibration check standards and calibration standards must be prepared from separate batches of the final diluted standards. For the specification limits listed in paragraph (g)(8)(ii)(C) of this section, the concentration of the check standards should be in the range given in paragraph (g)(8)(i)(C) of this section.

(B) Calibration check standards shall be analyzed at a rate of at least one per analysis batch and at least one per 10 samples, whichever is more frequent.

(C) If the measured concentration of a calibration check standard is outside the range of 100.0% ±6.0% of the theoretical concentration for a selected oxygenate of 1.0 mass percent or above, the sources of error in the analysis should be determined, corrected, and all analyses subsequent to and including the last standard analysis confirmed to be within the compliance specifications must be repeated. The specification limits for the accuracy of calibration check standards analyses are minimum performance requirements. The performance of individual laboratories may indeed be better than these minimum requirements. For this reason it is recommended that control charts be utilized to monitor the variability of measurements in order to optimally detect abnormal situations and ensure a stable measurement process.

(D) Independent reference standards should be purchased or prepared from materials that are independent of the calibration standards and calibration check standards, and must not be prepared by the same analyst. For the specification limits listed in paragraph (g)(8)(ii)(F) of this section, the concentration of the reference standards should be in the range given in paragraph (g)(8)(i)(C) of this section.

(E) Independent reference standards shall be analyzed at a rate of at least one per analysis batch and at least one per 100 samples, whichever is more frequent.

(F) If the measured concentration of an independent reference standard is outside the range of 100.0% ±10.0% of the theoretical concentration for a selected oxygenate of 1.0 mass percent or above, the sources of error in the analysis should be determined, corrected, and all analyses subsequent to and including the last independent reference standard analysis confirmed to be within the compliance specifications in that batch must be repeated. The specification limits for the accuracy of independent reference standards analyses are minimum performance requirements. The performance of individual laboratories may be better than these minimum requirements. For this reason it is recommended that control charts be utilized to monitor the variability of measurements in order to optimally detect abnormal situations and ensure a stable measurement process.

(G) The preparation and analysis of spiked samples at a rate of one per analysis batch and at least one per ten samples.

(H) Spiked samples shall be prepared by adding a volume of a standard to a known volume of sample. To ensure adequate method detection limits, the volume of the standard added to the sample shall be limited to 5% or less than the volume of the sample. The spiked sample shall be carried through the same sample preparation steps as the background sample.

(I) The percent recovery of the spiked sample shall be calculated as follows:

$$\%\,\text{Recovery} = \frac{100\%\ (C_m(V_o+V_i)-C_oV_o)}{C_sV_i}$$

where:

V_o=Volume of sample (Ml)

V_i=Volume of spiking standard added (Ml)

C_m=Measured concentration of spiked sample

C_o=Measured background concentration of sample

C_s=Known concentration of spiking standard

(J) If the percent recovery of any individual spiked sample is outside the range 100% ±10% from the theoretical concentration, then the sources of error in the analysis must be determined and corrected, and all analyses subsequent to and including the last analysis confirmed to be within the compliance specifications must be repeated. The maintenance of control charts is one acceptable method or ensuring compliance with this specification.

(K) *(1)* Either the range (absolute difference) or relative range (but not necessarily both) for duplicate samples shall be less than the following limits:

Oxygenate	Concentration (volume percent)	Range	Relative range (volume percent)
Methanol	1.0–12.0	.....	7.2
Ethanol	3.0–12.0	.....	7.1
t-Butanol	3.0–12.0	.....	9.4
MTBE	3.0–15.0	0.55	9.2

(2) Relative range is calculated as follows:

$$R_r = \frac{200(R)}{C_o + C_d}$$

where:
R_r=relative range
R=range
C_o=concentration of the original sample
C_d=concentration of the duplicate sample

(3) If the limits in paragraph (g)(8)(ii)(K)*(1)* of this section are exceeded, the sources of error in the analysis should be determined, corrected, and all analyses subsequent to and including the last duplicate analysis confirmed to be within the compliance specifications must be repeated. The specification limits for the range and relative range of duplicate analyses are minimum performance requirements. The performance of individual laboratories may indeed be better than these minimum requirements. For this reason it is recommended that control charts be utilized to monitor the variability of measurements in order to optimally detect abnormal situations and ensure a stable measurement process. For reference purposes, a single laboratory study of precision (approximately 35 replicates) yielded the following estimates of method precision:

Oxygenate	Concentration (weight percent)	Repeatability (volume percent)	(Percent)
Methanol	2.0	3.7	0.11
Ethanol	2.0	5.4	0.24
t-Butanol	2.0	8.8	0.39
MTBE	2.0	11.0	0.37

(4) Repeatability is defined as the half width of the 95 percent confidence interval for a single analysis at the stated concentration.

(iii) The laboratory shall routinely monitor the accuracy of its analyses. At a minimum this shall include:

(A) Calibration check standards and calibration standards may be prepared from the same oxygenate stocks and by the same analyst. However, calibration check standards and calibration standards must be prepared from separate batches of the final diluted standards. For the specification limits listed in paragraph (g)(8)(iii)(C) of this section, the concentration of the check standards should be in the range given in paragraph (g)(8)(iii)(C) of this section.

(B) Calibration check standards shall be analyzed at a rate of one per analysis batch or at least one per ten samples, whichever is more frequent.

(C) If the measured concentration of a calibration check standard is outside the range of 100%±10% percent of the theoretical concentration for methanol and ethanol, or 100%±13% for t-butanol and MTBE, the sources of error in the analysis should be determined, corrected, and all analyses subsequent to and including the last standard analysis confirmed to be within the compliance specifications must be repeated. The specification limits for the accuracy of calibration check standards analyses are minimum performance requirements. The performance of individual laboratories may indeed be better than these minimum requirements. For this reason it is recommended that control charts be utilized to monitor the variability of measurements in order to optimally detect abnormal situations and ensure a stable measurement process.

(D) Independent reference standards shall be purchased or prepared from materials that are independent of the calibration standards and calibration check standards, and must not be prepared by the same analyst. For the specification limits listed in paragraph (g)(8)(iii)(F) of this section, the concentration of the reference standards should be in the range given in paragraph (g)(8)(iii)(C) of this section.

(E) Independent reference standards shall be analyzed at a rate of one per analysis batch or at least one per 100 samples, whichever is more frequent.

(F) If the measured concentration of an independent reference standard is outside the range of 100%±10% of the theoretical concentration for methanol and ethanol, or 100%±13% for t-butanol and MTBE, the sources of error in the analysis should be determined, corrected, and all analyses subsequent to and including the last independent reference standard analysis confirmed to be within the compliance specifications in that batch must be repeated. The specification limits for the accuracy of independent reference standards analyses are minimum performance requirements. The performance of individual laboratories may indeed be better than these minimum requirements. For this reason it is recommended that control charts be utilized to monitor the variability of measurements in order to optimally detect abnormal situations and ensure a stable measurement process.

(G) If matrix effects are suspected, then spiked samples shall be prepared and analyzed as follows:

(1) Spiked samples shall be prepared by adding a volume of a standard to a known volume of sample. To ensure adequate method detection limits, the volume of the standard added to the sample should be minimized to 5% or less of the volume of the sample. The spiked sample should be carried through the same sample preparation steps as the background sample.

(2) The percent recovery of spiked samples should be calculated as follows:

$$\%\text{Recovery} = \frac{100\,(C_c(V_o + V_s) - C_o V_o)}{C_i\, V_s}$$

where:
C_c=concentration of spiked sample
C_o=concentration of sample without spiking
C_i=known concentration of spiking standard
V_o=volume of sample
V_s=volume of spiking standard added to the sample

(3) If the percent recovery of a spiked sample is outside the range of 100% ±13% of the theoretical concentration for methanol and ethanol, or 100% ±16% for t-butanol and MTBE, the sources of error in the analysis should be determined, corrected, and all analyses subsequent to and including the last analysis confirmed to be within the compliance specifications must be repeated. The specification limits for the accuracy of the percent recovery of spiked sample analyses are minimum performance requirements. The performance of individual laboratories may indeed be better than these minimum requirements. For this reason it is recommended that control charts be utilized to monitor the variability of measurements in order to optimally detect abnormal situations and ensure a stable measurement process.

(9)(i) Prior to January 1, 1997, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C_1 to C_4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D–4815–93, entitled "Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C_1 to C_4 Alcohols in Gasoline by Gas Chromatography," for purposes of meeting any testing requirement; provided that

(ii) The refiner or importer test result is correlated with the method set forth in paragraphs (g)(1) through (g)(8) of this section.

(h) *Incorporations by reference.* ASTM standard methods D–3606–92, D–1319–93, D–4815–93, D–2622–92, and D–86–90 with the exception of the degrees Fahrenheit figures in Table 9 of D–86–90, are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(A) and 1 CFR part 51. Copies may be obtained from the American Society of Testing Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–92–12, 401 M Street SW., Washington, DC 20460 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 80.47 [Reserved]

§ 80.48 Augmentation of the complex emission model by vehicle testing.

(a) The provisions of this section apply only if a fuel claims emission reduction benefits from fuel parameters that are not included in the complex emission model or complex emission model database, or if the values of fuel parameters included in the complex emission model set forth in § 80.45 fall outside the range of values for which the complex emission model is deemed valid.

(b) To augment the complex emission model described at § 80.45, the following requirements apply:

(1) The petitioner must obtain prior approval from the Administrator for the design of the test program before beginning the vehicle testing process. To obtain approval, the petitioner must at minimum provide the following information: the fuel parameter to be evaluated for emission effects; the number and description of vehicles to be used in the test fleet, including model year, model name, vehicle identification number (VIN), mileage, emission performance (exhaust THC emission level), technology type, and manufacturer; a description of the methods used to procure and prepare the vehicles; the properties of the fuels to be used in the testing program (as specified at § 80.49); the pollutants and emission categories intended to be evaluated; the precautions used to ensure that the effects of the parameter in question are independent of the effects of other parameters already included in the model; a description of the quality assurance procedures to be used during the test program; the statistical analysis techniques to be used in analyzing the test data, and the identity and location of the organization performing the testing.

(2) Exhaust emissions shall be measured per the requirements of this section and § 80.49 through § 80.62.

(3) The nonexhaust emission model (including evaporative, running loss, and refueling VOC and toxics emissions) shall not be augmented by vehicle testing.

(4) The Agency reserves the right to observe and monitor any testing that is performed pursuant to the requirements of this section.

(5) The Agency reserves the right to evaluate the quality and suitability of data submitted pursuant to the requirements of this section and to reject, re-analyze, or otherwise evaluate such data as is technically warranted.

(6) Upon a showing satisfactory to the Administrator, the Administrator may approve a petition to waive the requirements of this section and § 80.49, § 80.50(a), § 80.60(d)(3), and § 80.60(d)(4) in order to better optimize the test program to the needs of the particular fuel parameter. Any such waiver petition should provide information justifying the requested waiver, including an acceptable rationale and supporting data. Petitioners must obtain approval from the Administrator prior to conducting testing for which the requirements in question are waived. The Administrator may waive the noted requirements in whole or in part, and may impose appropriate conditions on any such waiver.

(c) In the case of petitions to augment the complex model defined at § 80.45 with a new parameter, the effect of the parameter being tested shall be determined separately, for each pollutant and for each emitter class category. If the parameter is not included in the complex model but is represented in whole or in part by one or more parameters included in the model, the petitioner shall be required to demonstrate the emission effects of the parameter in question independent of the effects of the already-included parameters. The petitioner shall also have to demonstrate the effects of the already-included parameters independent of the effects of the parameter in question. The emission performance of each vehicle on the fuels specified at § 80.49, as measured through vehicle testing in accordance with § 80.50 through § 80.62, shall be analyzed to determine the effects of the fuel parameter being tested on emissions according to the following procedure:

(1) The analysis shall fit a regression model to the natural logarithm of emissions measured from addition fuels 1, 2, and 3 only (as specified at § 80.49(a)) and adjusted as per paragraph (c)(1)(iv) of this section that includes the following terms:

(i) A term for each vehicle that shall reflect the effect of the vehicle on emissions independent of fuel compositions. These terms shall be of the form $D_i \times V_i$, where D_i is the coefficient for the term and V_i is a dummy variable which shall have the value 1.0 for the ith vehicle and the value 0 for all other vehicles.

(ii) A linear term in the parameter being tested for each emitter class, of the form $A_i \times (P_i - P_i\,(avg)) \times E_i$, where A_i is the coefficient for the term, P_i is the level of the parameter in question, P_i (avg) is the average level of the parameter in question for all seven test fuels specified at § 80.49(a)(1), and E_i is a dummy variable representing emitter class, as defined at § 80.62. For normal emitters, E_1=1 and E_2=0. For higher emitters, E_1=0 and E_2=1.

(iii) For the VOC and NO_x models, a squared term in the parameter being tested for each emitter class, of the form $B_i \times (P_i - P_i\,(avg))^2 \times E_i$, where B_i is the coefficient for the term and where P_i, P_i (avg), and E_i are as defined in paragraph (c)(1)(ii) of this section.

(iv) To the extent that the properties of fuels 1, 2, and 3 which are incorporated in the complex model differ in value among the three fuels, the

complex model shall be used to adjust the observed emissions from test vehicles on those fuels to compensate for those differences prior to fitting the regression model.

(v) The A_i and B_i terms and coefficients developed by the regression described in this paragraph (c) shall be evaluated against the statistical criteria defined in paragraph (e) of this section. If both terms satisfy these criteria, then both terms shall be retained. If the B_i term satisfies these criteria and the A_i term does not, then both terms shall be retained. If the B_i term does not satisfy these criteria, then the B_i term shall be dropped from the regression model and the model shall be re-estimated. If, after dropping the B_i term, the A_i term does not satisfy these criteria, then both terms shall be dropped, all test data shall be reported to EPA, and the augmentation request shall be denied.

(2) After completing the steps outlined in paragraph (c)(1) of this section, the analysis shall fit a regression model to a combined data set that includes vehicle testing results from all seven addition fuels specified at § 80.49(a), the vehicle testing results used to develop the model specified at § 80.45, and vehicle testing results used to support any prior augmentation requests which the Administrator deems necessary.

(i) The analysis shall fit the regression models described in paragraphs (c)(2)(ii) through (v) of this section to the natural logarithm of measured emissions.

(ii) All regressions shall include a term for each vehicle that shall reflect the effect of the vehicle on emissions independent of fuel compositions. These terms shall be of the form $D_i \times V_i$, where D_i is the coefficient for the term and V_i is a dummy variable which shall have the value 1.0 for the ith vehicle and the value 0 for all other vehicles. Vehicles shall be represented by separate terms for each test program in which they were tested. The vehicle terms for the vehicles included in the test program undertaken by the petitioner shall be calculated based on the results from all seven fuels specified at § 80.49(a). Note that the D_i estimates for the petitioner's test vehicles in this regression are likely to differ from the D_i estimates discussed in paragraph (c)(1)(i) of this section since they will be based on a different set of fuels.

(iii) All regressions shall include existing complex model terms and their coefficients, including those augmentations that the Administrator deems necessary. All terms and coefficients shall be expressed in centered form.

(iv) All regressions shall include the linear and squared terms, and their coefficients, estimated in the final regression model described in paragraph (c)(1) of this section.

(v) The VOC and NO_x regressions shall include those interactive terms with other fuel parameters, of the form $C_{i(I,J)} \times (P_I - P_I\ (avg)) \times (P_J - P_J\ (avg)) \times E_i$, where $C_{i(I,J)}$ is the coefficient for the term, P_I is the level of the parameter being added to the model, P_I (avg) is the average level of the parameter being added for all seven addition fuels specified at § 80.49(a), P_J is the level of the other fuel parameter, P_J (avg) is the centering value for the other fuel parameter used to develop the complex model or used in the other parameter's augmentation study, and E_i is as defined in paragraph (c)(1) of this section, which are found to satisfy the statistical criteria defined in paragraph (e) of this section. Such terms shall be added to the regression model in a stepwise manner.

(3) The model described in paragraphs (c) (1) and (2) of this section shall be developed separately for normal-emitting and higher-emitting vehicles. Each emitter class shall be treated as a distinct population for the purposes of determining regression coefficients.

(4) Once the augmented models described in paragraphs (c) (1) through (3) of this section have been developed, they shall be converted to an uncentered form through appropriate algebraic manipulation.

(5) The augmented model described in paragraph (c)(4) of this section shall be used to determine the effects of the parameter in question at levels between the levels in Fuels 1 and 3, as defined at § 80.49(a)(1), for all fuels which claim emission benefits from the parameter in question.

(d)(1) In the case of petitions to augment the complex model defined at § 80.45 by extending the range of an existing complex model parameter, the effect of the parameter being tested shall be determined separately, for each pollutant and for each technology group and emitter class category, at levels between the extension level and the nearest limit of the core of the data used to develop the unaugmented complex model as follows:

Fuel parameter	Data core limits	
	Lower	Upper
Sulfur, ppm	10	450
RVP, psi	7	10
E200, vol %	33	66
E300, vol %	72	94
Aromatics, vol %	18	46
Benzene, vol %	0.4	1.8
Olefins, vol %	1	19
Oxygen, wt %.		
As ethanol	0	3.4
All others:	0	2.7

(2) The emission performance of each vehicle on the fuels specified at § 80.49(b)(2), as measured through vehicle testing in accordance with §§ 80.50 through 80.62, shall be analyzed to determine the effects of the fuel parameter being tested on emissions according to the following procedure:

(i) The analysis shall incorporate the vehicle testing data from the extension fuels specified at § 80.49(b), the vehicle testing results used to develop the model specified at § 80.45, and vehicle testing results used to support any prior augmentation requests which the Administrator deems necessary. A regression incorporating the following terms shall be fitted to the natural logarithm of emissions contained in this combined data set:

(A) A term for each vehicle that shall reflect the effect of the vehicle on emissions independent of fuel compositions. These terms shall be of the form $D_i \times V_i$, where D_i is the coefficient for the term and V_i is a dummy variable which shall have the value 1.0 for the ith vehicle and the value 0 for all other vehicles. Vehicles shall be represented by separate terms for each test program in which they were tested. The vehicle terms for the vehicles included in the test program undertaken by the petitioner shall be calculated based on the results from all three fuels specified at § 80.49(b)(2).

(B) Existing complex model terms that do not include the parameter being extended and their coefficients, including those augmentations that the Administrator deems necessary. The centering values for these terms shall be identical to the centering values used to develop the complex model described at § 80.45.

(C) Existing complex model terms that include the parameter being extended. The coefficients for these terms shall be estimated by the regression. The centering values for these terms shall be identical to the centering values used to develop the complex model described at § 80.45.

(D) If the unaugmented VOC or NO_x complex models do not contain a squared term for the parameter being extended, such a term should be added in a stepwise fashion after completing the model described in paragraphs (d)(2)(i)(A) through (C) of this section. The coefficient for this term shall be estimated by the regression. The centering value for this term shall be identical to the centering value used to develop the complex model described at § 80.45.

(E) The terms defined in paragraphs (d)(2)(i)(C) and (D) of this section shall be evaluated against the statistical criteria defined in paragraph (e) of this section.

(ii) The model described in paragraph (d)(2)(i) of this section shall be developed separately for normal-emitting and higher-emitting vehicles, as defined at § 80.62. Each emitter class shall be treated as a distinct population for the purposes of determining regression coefficients.

(e) *Statistical criteria.* (1) The petitioner shall be required to submit evidence with the petition which demonstrates the statistical validity of the regression described in paragraph (c) or (d) of this section, including at minimum:

(i) Evidence demonstrating that colinearity problems are not severe, including but not limited to variance inflation statistics of less than 10 for the second-order and interactive terms included in the regression model.

(ii) Evidence demonstrating that the regression residuals are normally distributed, including but not limited to the skewness and Kurtosis statistics for the residuals.

(iii) Evidence demonstrating that overfitting and underfitting risks have been balanced, including but not limited to the use of Mallow's C_p criterion.

(2) The petitioner shall be required to submit evidence with the petition which demonstrates that the appropriate terms have been included in the regression, including at minimum:

(i) Descriptions of the analysis methods used to develop the regressions, including any computer code used to analyze emissions data and the results of regression runs used to develop the proposed augmentation, including intermediate regressions produced during the stepwise regression process.

(ii) Evidence demonstrating that the significance level used to include terms in the model was equal to 0.90.

(f) The complex emission model shall be augmented with the results of vehicle testing as follows:

(1) The terms and coefficients determined in paragraph (c) or (d) of this section shall be used to supplement the complex emission model equation for the corresponding pollutant and emitter category. These terms and coefficients shall be weighted to reflect the contribution of the emitter category to in-use emissions as shown at § 80.45.

(2) If the candidate parameter is not included in the unaugmented complex model and is not represented in whole or in part by one or more parameters included in the model, the modification shall be accomplished by adding the terms and coefficients to the complex model equation for that pollutant, technology group, and emitter category.

(3) If the parameter is included in the complex model but is being tested at levels beyond the current range of the model, the terms and coefficients determined in paragraph (d) of this section shall be used to supplement the complex emission model equation for the corresponding pollutant.

(i) The terms and coefficients of the complex model described at § 80.45 shall be used to evaluate the emissions performance of fuels with levels of the parameter being tested that are within the valid range of the model, as defined at § 80.45.

(ii) The emissions performance of fuels with levels of the parameter that are beyond the valid range of the unaugmented model shall be given in percentage change terms by $100\text{-}[(100+A)\times(100+C)/(100+B)]$, where:

(A) "A" shall be set equal to the percentage change in emissions for a fuel with identical fuel property values to the fuel being evaluated except for the parameter being extended, which shall be set equal to the nearest limit of the data core, using the unaugmented complex model.

(B) "B" shall be set equal to the percentage change in emissions for the fuel described in paragraph (f)(3)(i) of this section according to the augmented complex model.

(C) "C" shall be set equal to the percentage change in emissions of the actual fuel being evaluated using the augmented complex model.

(g) EPA reserves the right to analyze the data generated during vehicle testing, to use such analyses to determine the validity of the augmentation petition, and to use such data to update the complex model for use in certifying all reformulated gasolines.

(h) Duration of acceptance of emission effects determined through vehicle testing:

(1) If the Agency does not accept, modify, or reject a particular augmentation for inclusion in an updated complex model (performed through rulemaking), then the augmentation shall remain in effect until the next update to the complex model takes effect.

(2) If the Agency does reject or modify a particular augmentation for inclusion in an updated complex model, then the augmentation shall no longer be able to be used as of the date the updated complex model is deemed to take effect, unless the following conditions and limitations apply:

(i) The augmentation in question may continue to be used by those fuel suppliers which can prove, to the Administrator's satisfaction, that the fuel supplier had already begun producing a fuel utilizing the augmentation at the time the revised model is promulgated.

(ii) The augmentation in question may only be used to evaluate the emissions performance of fuels in conjunction with the complex emission model in effect as of the date of production of the fuels.

(iii) The augmentation may only be used for three years of fuel production, or a total of five years from the date the augmentation first took effect, whichever is shorter.

(3) The Administrator shall determine when sufficient new information on the effects of fuel properties on vehicle emissions has been obtained to warrant development of an updated complex model.

§ 80.49 Fuels to be used in augmenting the complex emission model through vehicle testing.

(a) Seven fuels (hereinafter called the "addition fuels") shall be tested for the purpose of augmenting the complex emission model with a parameter not currently included in the complex emission model. The properties of the addition fuels are specified in paragraphs (a) (1) and (2) of this section. The addition fuels shall be specified with at least the same level of detail and precision as in § 80.43(c), and this information must be included in the petition submitted to the Administrator requesting augmentation of the complex emission model.

(1) The seven addition fuels to be tested when augmenting the complex model specified at § 80.45 with a new fuel parameter shall have the properties specified as follows:

PROPERTIES OF FUELS TO BE TESTED WHEN AUGMENTING THE MODEL WITH A NEW FUEL PARAMETER

Fuel property	Fuels						
	1	2	3	4	5	6	7
Sulfur, ppm	150	150	150	35	35	500	500
Benzene, vol %	1.0	1.0	1.0	0.5	0.5	1.3	1.3
RVP, psi	7.5	7.5	7.5	6.5	6.5	8.1	8.1
E200, %	50	50	50	62	62	37	37
E300, %	85	85	85	92	92	79	79
Aromatics, vol %	27	27	27	20	20	45	45
Olefins, vol %	9.0	9.0	9.0	2.0	2.0	18	18
Oxygen, wt %	2.1	2.1	2.1	2.7	2.7	1.5	1.5
Octane, (R+M)/2	87	87	87	87	87	87	87
New Parameter [1]	C	C+B/2	B	C	B	C	B

[1] C=Candidate level, B=Baseline level.

(i) For the purposes of vehicle testing, the "baseline" level of the parameter shall refer to the level of the parameter in Clean Air Act baseline gasoline. The "candidate" level of the parameter shall refer to the most extreme value of the parameter, relative to baseline levels, for which the augmentation shall be valid.

(ii) If the fuel parameter for which the fuel supplier is petitioning EPA to augment the complex emission model (hereinafter defined as the "candidate parameter") is not specified for Clean Air Act summer baseline fuel, then the baseline level for the candidate parameter shall be set at the levels found in typical gasoline. This level and the justification for this level shall be included in the petitioner's submittal to EPA prior to initiating the test program, and EPA must approve this level prior to the start of the program.

(iii) If the candidate parameter is not specified for Clean Air Act summer baseline fuel, and is not present in typical gasoline, its baseline level shall be zero.

(2) The addition fuels shall contain detergent control additives in accordance with section 211(l) of the Clean Air Act Amendments of 1990 and the associated EPA requirements for such additives.

(3) The addition fuels shall be specified with at least the same level of detail and precision as in § 80.43(c), and this information shall be included in the petition submitted to the Administrator requesting augmentation of the complex emission model.

(i) Paraffin levels in Fuels 1 and 2 shall be altered from the paraffin level in Fuel 3 to compensate for the addition or removal of the candidate parameter, if necessary. Paraffin levels in Fuel 4 shall be altered from the paraffin level in Fuel 5 to compensate for the addition or removal of the candidate parameter, if necessary. Paraffin levels in Fuel 6 shall be altered from the paraffin level in Fuel 7 to compensate for the addition or removal of the candidate parameter, if necessary.

(ii) Other properties of Fuels 4 and 6 shall not vary from the levels for Fuels 5 and 7, respectively, unless such variations are the naturally-occurring result of the changes described in paragraphs (a)(1) and (2) of this section. Other properties of Fuels 1 and 2 shall not vary from the levels for Fuel 3, unless such variations are the naturally-occurring result of the changes described in paragraphs (a)(1) and (2) of this section.

(iii) The addition fuels shall be specified with at least the same level of detail and precision as defined in paragraph (a)(5)(i) of this section, and this information must be included in the petition submitted to the Administrator requesting augmentation of the complex emission model.

(4) The properties of the addition fuels shall be within the blending tolerances defined in this paragraph (a)(4) relative to the values specified in paragraphs (a)(1) and (2) of this section. Fuels that do not meet these tolerances shall require the approval of the Administrator to be used in vehicle testing to augment the complex emission model:

Fuel parameter	Blending tolerance
Sulfur content	±25 ppm.
Benzene content	±0.2 vol %.
RVP	±0.2 psi.
E200 level	±2 %.
E300 level	±4 %.
Oxygenate content	±1.0 vol %.
Aromatics content	±2.7 vol %.
Olefins content	±2.5 vol %.
Saturates content	±2.0 vol %.
Octane	±0.5.
Detergent control additives.	±10% of the level required by EPA's detergents rule.
Candidate parameter	To be determined as part of the augmentation process.

(5) The composition and properties of the addition fuels shall be determined by averaging a series of independent tests of the properties and compositional factors defined in paragraph (a)(5)(i) of this section as well as any additional properties or compositional factors for which emission benefits are claimed.

(i) The number of independent tests to be conducted shall be sufficiently large to reduce the measurement uncertainty for each parameter to a sufficiently small value. At a minimum the 95% confidence limits (as calculated using a standard t-test) for each parameter must be within the following range of the mean measured value of each parameter:

Fuel parameter	Measurement uncertainty
API gravity	±0.2°API.
Sulfur content	±10 ppm.
Benzene content	±0.02 vol %.
RVP	±0.05 psi.
Octane	±0.2 (R+M/2).
E200 level	±2%.
E300 level	±2%.
Oxygenate content	±0.2 vol %.
Aromatics content	±0.5 vol %.
Olefins content	±0.3 vol %.
Saturates content	±1.0 vol %.
Detergent control additives.	±2% of the level required by EPA's detergents rule.
Candidate parameter	To be determined as part of the augmentation process.

(ii) The 95% confidence limits for measurements of fuel parameters for which emission reduction benefits are claimed and for which tolerances are not defined in paragraph (a)(5)(i) of this section must be within ±5% of the mean measured value.

(iii) Each test must be conducted in the same laboratory in accordance with the procedures outlined at § 80.46.

(b) Three fuels (hereinafter called the "extension fuels") shall be tested for the purpose of extending the valid range of the complex emission model for a parameter currently included in the complex emission model. The properties of the extension fuels are specified in paragraphs (b)(2) through (4) of this section. The extension fuels shall be specified with at least the same level of detail and precision as in § 80.43(c), and this information must be included in the petition submitted to the Administrator requesting augmentation of the complex emission model. Each set of three extension fuels shall be used only to extend the range of a single complex model parameter.

(1) The "extension level" shall refer to the level to which the parameter being tested is to be extended. The three fuels to be tested when extending the range of fuel parameters already included in the complex model or a prior augmentation to the complex model shall be referred to as "extension fuels."

(2) The composition and properties of the extension fuels shall be as described in paragraphs (b)(2) (i) and (ii) of this section.

(i) The extension fuels shall have the following levels of the parameter being extended:

LEVEL OF EXISTING COMPLEX MODEL PARAMETERS BEING EXTENDED

Fuel property being extended	Extension fuel No. 1	Extension fuel No. 2	Extension fuel No. 3
Sulfur, ppm	Extension level	80	450
Benzene, vol %	Extension level	0.5	1.5
RVP, psi	Extension level	6.7	8.0
E200, %	Extension level	38	61
E300, %	Extension level	78	92
Aromatics, vol %	Extension level	20	45
Olefins, vol %	Extension level	3.0	18
Oxygen, wt %	Extension level	1.7	2.7
Octane, R+M/2	87	87	87

(ii) The levels of parameters other than the one being extended shall be given by the following table for all three extension fuels:

LEVELS FOR FUEL PARAMETERS OTHER THAN THOSE BEING EXTENDED

Fuel property	Extension fuel No. 1	Extension fuel No. 2	Extension fuel No. 3
Sulfur, ppm	150	150	150
Benzene, vol %	1.0	1.0	1.0
RVP, psi	7.5	7.5	7.5
E200, %	50	50	50
E300, %	85	85	85
Aromatics, vol %	25	25	25
Olefins, vol %	9.0	9.0	9.0
Oxygen, wt %	2.0	2.0	2.0
Octane, R+M/2	87	87	87

(3) If the Complex Model for any pollutant includes one or more interactive terms involving the parameter being extended, then two additional extension fuels shall be required to be tested for each such interactive term. These additional extension fuels shall have the following properties:

(i) The parameter being tested shall be present at its extension level.

(ii) The interacting parameter shall be present at the levels specified in paragraph (b)(2)(i) of this section for extension Fuels 2 and 3.

(iii) All other parameters shall be present at the levels specified in paragraphs (b)(2)(ii) and (b)(3) of this section.

(4) All extension fuels shall contain detergent control additives in accordance with Section 211(l) of the Clean Air Act Amendments of 1990 and the associated EPA requirements for such additives.

(c) The addition fuels defined in paragraph (a) of this section and the extension fuels defined in paragraph (b) of this section shall meet the following requirements for blending and measurement precision:

(1) The properties of the test and extension fuels shall be within the blending tolerances defined in this paragraph (c) relative to the values specified in paragraphs (a) and (b) of this section. Fuels that do not meet the following tolerances shall require the approval of the Administrator to be used in vehicle testing to augment the complex emission model:

Fuel parameter	Blending tolerance
Sulfur content	±25 ppm.
Benzene content	±0.2 vol %.
RVP	±0.2 psi.
E200 level	±2 %.
E300 level	±4 %.
Oxygenate content	±1.5 vol %.
Aromatics content	±2.7 vol %.
Olefins content	±2.5 vol %.
Saturates content	±2.0 vol %.
Octane	±0.5.
Candidate parameter	To be determined as part of the augmentation process.

(2) The extension and addition fuels shall be specified with at least the same level of detail and precision as defined in paragraph (c)(2)(ii) of this section, and this information must be included in the petition submitted to the Administrator requesting augmentation of the complex emission model.

(i) The composition and properties of the addition and extension fuels shall be determined by averaging a series of independent tests of the properties and compositional factors defined in paragraph (c)(2)(ii) of this section as well as any additional properties or compositional factors for which emission benefits are claimed.

(ii) The number of independent tests to be conducted shall be sufficiently large to reduce the measurement uncertainty for each parameter to a sufficiently small value. At a minimum the 95% confidence limits (as calculated using a standard t-test) for each parameter must be within the following range of the mean measured value of each parameter:

Fuel parameter	Measurement uncertainty
API gravity	±0.2 °API.
Sulfur content	±5 ppm.
Benzene content	±0.05 vol %.
RVP	±0.08 psi.
Octane	±0.1 (R+M/2).
E200 level	±2 %.
E300 level	±2 %.
Oxygenate content	±0.2 vol %.
Aromatics content	±0.5 vol %.
Olefins content	±0.3 vol %.
Saturates content	±1.0 vol.%
Octane	±0.2.
Candidate parameter	To be determined as part of the augmentation process.

(iii) Petitioners shall obtain approval from EPA for the 95% confidence limits for measurements of fuel parameters for which emission reduction benefits are claimed and for which tolerances are not defined in paragraph (c)(2)(i) of this section.

(iv) Each test must be conducted in the same laboratory in accordance with the procedures outlined at § 80.46.

(v) The complex emission model described at § 80.45 shall be used to adjust the emission performance of the addition and extension fuels to compensate for differences in fuel compositions that are incorporated in the complex model, as described at § 80.48. Compensating adjustments for naturally-resulting variations in fuel parameters shall also be made using the complex model. The adjustment process is described in paragraph (d) of this section.

(ii) The complex emission model described at § 80.45 shall be used to adjust the emission performance of addition and extension fuels to compensate for differences in fuel parameters other than the parameter being tested. Compensating adjustments for naturally-resulting variations in fuel parameters shall also be made using the complex model. These adjustments shall be calculated as follows:

(1) Determine the exhaust emissions performance of the actual addition or extension fuels relative to the exhaust emissions performance of Clean Air Act baseline fuel using the complex model. For addition fuels, set the level of the parameter being tested at baseline levels for purposes of emissions performance evaluation using the complex model. For extension fuel #1, set the level of the parameter being extended at the level specified in extension fuel #2. Also determine the exhaust emissions performance of the addition fuels specified in paragraph (a)(1) of this section with the level of the parameter being tested set at baseline levels.

(2) Calculate adjustment factors for each addition fuel as follows:

(i) Adjustment factors shall be calculated using the formula:

$$A = \frac{[1+(P(actual)/100)]}{[1+(P(nominal)/100)]}$$

where

A=the adjustment factor

P(actual)=the performance of the actual fuel used in testing according to the complex model

P(nominal)=the performance that would have been achieved by the test fuel defined in paragraph (a)(1) of this section according to the complex model (as described in paragraph (d)(1) of this section).

(ii) Adjustment factors shall be calculated for each pollutant and for each emitter class.

(3) Multiply the measured emissions from each vehicle by the corresponding adjustment factor for the appropriate addition or extension fuel, pollutant, and emitter class. Use the resulting adjusted emissions to conduct all modeling and emission effect estimation activities described in § 80.48.

(e) All fuels included in vehicle testing programs shall have an octane number of 87.5, as measured by the (R+M)/2 method following the ASTM D4814 procedures, to within the measurement and blending tolerances specified in paragraph (c) of this section.

(f) A single batch of each addition or extension fuel shall be used throughout the duration of the testing program.

§ 80.50 General test procedure requirements for augmentation of the emission models.

(a) The following test procedure must be followed when testing to augment the complex emission model described at § 80.45.

(1) VOC, NO_X, CO, and CO_2 emissions must be measured for all fuel-vehicle combinations tested.

(2) Toxics emissions must be measured when testing the extension fuels per the requirements of § 80.49(a) or when testing addition fuels 1, 2, and 3 per the requirements of § 80.49(a).

(3) When testing addition fuels 4, 5, 6, and 7 per the requirements of § 80.49(a), toxics emissions need not be measured. However, EPA reserves the right to require the inclusion of such measurements in the test program prior to approval of the test program if evidence exists which suggests that adverse interactive effects of the parameter in question may exist for toxics emissions.

(b) The general requirements per 40 CFR 86.130–96 shall be met.

(c) The engine starting and restarting procedures per 40 CFR 86.136–90 shall be followed.

(d) Except as provided for at § 80.59, general preparation of vehicles being tested shall follow procedures detailed in 40 CFR 86.130–96 and 86.131–96.

§ 80.51 Vehicle test procedures.

The test sequence applicable when augmenting the emission models through vehicle testing is as follows:

(a) Prepare vehicles per § 80.50.

(b) Initial preconditioning per § 80.52(a)(1). Vehicles shall be refueled randomly with the fuels required in § 80.49 when testing to augment the complex emission model.

(c) Exhaust emissions tests, dynamometer procedure per 40 CFR 86.137–90 with:

(1) Exhaust Benzene and 1,3–Butadiene emissions measured per § 80.55; and

(2) Formaldehyde and Acetelaldehyde emissions measured per § 80.56.

§ 80.52 Vehicle preconditioning.

(a) Initial vehicle preconditioning and preconditioning between tests with different fuels shall be performed in accordance with the "General vehicle handling requirements" per 40 CFR 86.132–96, up to and including the completion of the hot start exhaust test.

(b) The preconditioning procedure prescribed at 40 CFR 86.132–96 shall be observed for preconditioning vehicles between tests using the same fuel.

§§ 80.53–80.54 [Reserved]

§ 80.55 Measurement methods for benzene and 1,3-butadiene.

(a) Sampling for benzene and 1,3-butadiene must be accomplished by bag sampling as used for total hydrocarbons determination. This procedure is detailed in 40 CFR 86.109.

(b) Benzene and 1,3-butadiene must be analyzed by gas chromatography. Expected values for benzene and 1,3-butadiene in bag samples for the baseline fuel are 4.0 ppm and 0.30 ppm respectively. At least three standards ranging from at minimum 50% to 150% of these expected values must be used to calibrate the detector. An additional standard of at most 0.01 ppm must also be measured to determine the required limit of quantification as described in paragraph (d) of this section.

(c) The sample injection size used in the chromatograph must be sufficient to be above the laboratory determined limit of quantification (LOQ) as defined in paragraph (d) of this section for at least one of the bag samples. A control chart of the measurements of the standards used to determine the response, repeatability, and limit of quantitation of the instrumental method for 1,3-butadiene and benzene must be reported.

(d) As in all types of sampling and analysis procedures, good laboratory practices must be used. See, Lawrence, Principals of Environmental Analysis, 55 Analytical Chemistry 14, at 2210–2218 (1983) (copies may be obtained from the publisher, American Chemical Society, 1155 16th Street NW., Washington, DC 20036). Reporting reproducibility control charts and limits of detection measurements are integral procedures to assess the validity of the chosen analytical method. The repeatability of the test method must be determined by measuring a standard periodically during testing and recording the measured values on a control chart. The control chart shows the error between the measured standard and the prepared standard concentration for the periodic testing. The error between the measured standard and the actual standard indicates the uncertainty in the analysis. The limit of detection (LOD) is determined by repeatedly measuring a blank and a standard prepared at a concentration near an assumed value of the limit of detection. If the average concentration minus the average of the blanks is greater than three standard deviations of these measurements, then the limit of detection is at least as low as the prepared standard. The limit of quantitation (LOQ) is defined as ten times the standard deviation of these measurements. This quantity defines the amount of sample required to be measured for a valid analysis.

(e) Other sampling and analytical techniques will be allowed if they can be proven to have equal specificity and equal or better limits of quantitation. Data from alternative methods that can be demonstrated to have equivalent or superior limits of detection, precision, and accuracy may be accepted by the Administrator with individual prior approval.

§ 80.56 Measurement methods for formaldehyde and acetaldehyde.

(a) Formaldehyde and acetaldehyde will be measured by drawing exhaust samples from heated lines through either 2,4–Dinitrophenylhydrazine (DNPH) impregnated cartridges or impingers filled with solutions of DNPH in acetonitrile (ACN) as described in §§ 86.109 and 86.140 of this chapter for formaldehyde analysis. Diluted exhaust sample volumes must be at least 15 L for impingers containing 20 ml of absorbing solution (using more absorbing solution in the impinger requires proportionally more gas sample to be taken) and at least 4 L for cartridges. As required in § 86.109 of this chapter, two impingers or cartridges must be connected in series to detect breakthrough of the first impinger or cartridge.

(b) In addition, sufficient sample must be drawn through the collecting cartridges or impingers so that the measured quantity of aldehyde is sufficiently greater than the minimum limit of quantitation of the test method for at least a portion of the exhaust test procedure. The limit of quantitation is determined using the technique defined in § 80.55(d).

(c) Each of the impinger samples are quantitatively transferred to a 25 mL volumetric flask (5 mL more than the sample impinger volume) and brought to volume with ACN. The cartridge samples are eluted in reversed direction by gravity feed with 6mL of ACN. The eluate is collected in a graduated test tube and made up to the 5mL mark with ACN. Both the impinger and cartridge samples must be analyzed by HPLC without additional sample preparation.

(d) The analysis of the aldehyde derivatives collected is accomplished with a high performance liquid chromatograph (HPLC). Standards consisting of the hydrazone derivative of formaldehyde and acetaldehyde are used to determine the response, repeatability, and limit of quantitation of the HPLC method chosen for acetaldehyde and formaldehyde.

(e) Other sampling and analytical techniques will be allowed if they can be proven to have equal specificity and equal or better limits of quantitation. Data from alternative methods that can be demonstrated to have equivalent or superior limits of detection, precision, and accuracy may be accepted by the Administrator with individual prior approval.

§§ 80.57–80.58 [Reserved]

§ 80.59 General test fleet requirements for vehicle testing.

(a) The test fleet must consist of only 1989–91 MY vehicles which are technologically equivalent to 1990 MY vehicles, or of 1986–88 MY vehicles for which no changes to the engine or exhaust system that would significantly affect emissions have been made through the 1990 model year. To be technologically equivalent vehicles must have closed-loop systems and possess adaptive learning.

(b) No maintenance or replacement of any vehicle component is permitted except when necessary to ensure operator safety or as specifically permitted in § 80.60 and § 80.61. All vehicle maintenance procedures must be reported to the Administrator.

(c) Each vehicle in the test fleet shall have no fewer than 4,000 miles of accumulated mileage prior to being included in the test program.

§ 80.60 Test fleet requirements for exhaust emission testing.

(a) Candidate vehicles which conform to the emission performance requirements defined in paragraphs (b) through (d) of this section shall be obtained directly from the in-use fleet and tested in their as-received condition.

(b) Candidate vehicles for the test fleet must be screened for their exhaust VOC emissions in accordance with the provisions in § 80.62.

(c) On the basis of pretesting pursuant to paragraph (b) of this section, the test fleet shall be subdivided into two emitter group sub-fleets: the normal emitter group and the higher emitter group.

(1) Each vehicle with an exhaust total hydrocarbon (THC) emissions rate which is less than or equal to twice the applicable emissions standard shall be placed in the normal emitter group.

(2) Each vehicle with an exhaust THC emissions rate which is greater than two times the applicable emissions standard shall be placed in the higher emitter group.

(d) The test vehicles in each emitter group must conform to the requirements of paragraphs (d)(1) through (4) of this section.

(1) Test vehicles for the normal emitter sub-fleet must be selected from the list shown in this paragraph (d)(1). This list is arranged in order of descending vehicle priority, such that the order in which vehicles are added to the normal emitter sub-fleet must conform to the order shown (e.g., a ten-vehicle normal emitter group sub-fleet must consist of the first ten vehicles listed in this paragraph (d)(1)). If more vehicles are tested than the minimum number of vehicles required for the normal emitter sub-fleet, additional vehicles are to be added to the fleet in the order specified in this paragraph (d)(1), beginning with the next vehicle not already included in the group. The vehicles in the normal emitter sub-fleet must possess the characteristics indicated in the list. If the end of the list is reached in adding vehicles to the normal emitter sub-fleet and additional vehicles are desired then they shall be added beginning with vehicle number one, and must be added to the normal emitter sub-fleet in accordance with the order in Table A:

TABLE A—TEST FLEET DEFINITIONS

Veh. No.	Fuel system	Catalyst	Air injection	EGR	Tech. group	Manufacturer
1	Multi	3W	No Air	EGR	1	GM.
2	Multi	3W	No Air	No EGR	2	Ford.
3	TBI	3W	No Air	EGR	3	GM.
4	Multi	3W+OX	Air	EGR	4	Ford.
5	Multi	3W	No Air	EGR	1	Honda.
6	Multi	3W	No Air	No EGR	2	GM.
7	TBI	3W	No Air	EGR	3	Chrysler.
8	Multi	3W+OX	Air	EGR	4	GM.
9	TBI	3W+OX	Air	EGR	7	Chrysler.
10	Multi	3W	Air	EGR	5	Toyota.
11	Multi	3W	No Air	EGR	1	Ford.
12	Multi	3W	No Air	No EGR	2	Chrysler.
13	Carb	3W+OX	Air	EGR	9	Toyota.
14	TBI	3W	No Air	EGR	3	Ford.
15	Multi	3W+OX	Air	EGR	4	GM.
16	Multi	3W	No Air	EGR	1	Toyota.
17	Multi	3W	No Air	No EGR	2	Mazda.
18	TBI	3W	No Air	EGR	3	GM.
19	Multi	3W+OX	Air	EGR	4	Ford.
20	Multi	3W	No Air	EGR	1	Nissan.

TABLE B—TECH GROUP DEFINITIONS IN TABLE A

Tech group	Fuel system	Catalyst	Air injection	EGR
1	Multi	3W	No Air	EGR.
2	Multi	3W	No Air	No EGR.
3	TBI	3W	No Air	EGR.
4	Multi	3W+OX	Air	EGR.
5	Multi	3W	Air	EGR.
6	TBI	3W	Air	EGR.
7	TBI	3W+OX	Air	EGR.
8	TBI	3W	No Air	No EGR.
9	Carb	3W+OX	Air	EGR.

Legend:
Fuel system:
Multi=Multi-point fuel injection
TBI=Throttle body fuel injection
Carb=Carburetted
Catalyst:
3W=3–Way catalyst
3W+OX=3–Way catalyst plus an oxidation catalyst
Air Injection:
Air=Air injection
EGR=Exhaust gas recirculation

(2) Test vehicles for the higher emitter sub-fleet shall be selected from the in-use fleet in accordance with paragraphs (a) and (b) of this section and with § 80.59. Test vehicles for the higher emitter sub-fleet are not required to follow the pattern established in paragraph (d)(1) of this section.

(3) The minimum test fleet size is 20 vehicles. Half of the vehicles tested must be included in the normal emitter sub-fleet and half of the vehicles tested must be in the higher emitter sub-fleet. If additional vehicles are tested beyond the minimum of twenty vehicles, the additional vehicles shall be distributed equally between the normal and higher emitter sub-fleets.

(4) For each emitter group sub-fleet, 70 ± 9.5% of the sub-fleet must be LDVs, & 30 ± 9.5% must be LDTs. LDTs include light-duty trucks class 1 (LDT1), and light-duty trucks class 2 (LDT2) up to 8500 lbs GVWR.

§ 80.61 [Reserved]

§ 80.62 Vehicle test procedures to place vehicles in emitter group sub-fleets.

One of the two following test procedures must be used to screen candidate vehicles for their exhaust THC emissions to place them within the emitter group sub-fleets in accordance with the requirements of § 80.60.

(a) Candidate vehicles may be tested for their exhaust THC emissions using the federal test procedure as detailed in 40 CFR part 86, with gasoline conforming to requirements detailed in 40 CFR 86.113–90. The results shall be used in accordance with the requirements in § 80.60 to place the vehicles within their respective emitter groups.

(b) Alternatively, candidate vehicles may be screened for their exhaust THC emissions with the IM240 short test procedure.[1] The results from the IM240 shall be converted into results comparable with the standard exhaust FTP as detailed in this paragraph (b) to place the vehicles within their respective emitter groups in accordance with the requirements of § 80.60.

(1) A candidate vehicle with IM240 test results <0.367 grams THC per vehicle mile shall be classified as a normal emitter.

(2) A candidate vehicle with IM240 test results ≥0.367 grams THC per vehicle mile shall be classified as a higher emitter.

§§ 80.63–80.64 [Reserved]

§ 80.65 General requirements for refiners, importers, and oxygenate blenders.

(a) *Date requirements begin.* The requirements of this subpart D apply to all gasoline produced, imported, transported, stored, sold, or dispensed:

[1] EPA Technical Report EPA–AA–TSS–91–1. Copies may be obtained by ordering publication number PB92104405 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

(1) At any location other than retail outlets and wholesale purchaser-consumer facilities on or after December 1, 1994; and

(2) At any location on or after January 1, 1995.

(b) *Certification of gasoline and RBOB.* Gasoline or RBOB sold or dispensed in a covered area must be certified under § 80.40.

(c) *Standards must be met on either a per-gallon or on an average basis.* (1) Any refiner or importer, for each batch of reformulated gasoline or RBOB it produces or imports, shall meet:

(i) Those standards and requirements it designated under paragraph (d) of this section for per-gallon compliance on a per-gallon basis; and

(ii) Those standards and requirements it designated under paragraph (d) of this section for average compliance on an average basis over the applicable averaging period; except that

(iii) Refiners and importers are not required to meet the oxygen standard for RBOB.

(2) Any oxygenate blender, for each batch of reformulated gasoline it produces by blending oxygenate with RBOB shall, subsequent to the addition of oxygenate, meet the oxygen standard either per-gallon or average over the applicable averaging period.

(3)(i) For each averaging period, and separately for each parameter that may be met either per-gallon or on average, any refiner shall designate for each refinery, and any importer or oxygenate blender shall designate, its gasoline or RBOB as being subject to the standard applicable to that parameter on either a per-gallon or average basis. For any specific averaging period and parameter all batches of gasoline or RBOB shall be designated as being subject to the per-gallon standard, or all batches of gasoline and RBOB shall be designated as being subject to the average standard. For any specific averaging period and parameter a refiner for a refinery, or any importer or oxygenate blender, may not designate certain batches as being subject to the per-gallon standard and others as being subject to the average standard.

(ii) In the event any refiner for a refinery, or any importer or oxygenate blender, fails to meet the requirements of paragraph (c)(3)(i) of this section and for a specific averaging period and parameter designates certain batches as being subject to the per-gallon standard and others as being subject to the average standard, all batches produced or imported during the averaging period that were designated as being subject to the average standard shall, *ab initio*, be redesignated as being subject to the per-gallon standard. This redesignation shall apply regardless of whether the batches in question met or failed to meet the per-gallon standard for the parameter in question.

(d) *Designation of gasoline.* Any refiner or importer of gasoline shall designate the gasoline it produces or imports as follows:

(1) All gasoline produced or imported shall be properly designated as either reformulated or conventional gasoline, or as RBOB.

(2) All gasoline designated as reformulated or as RBOB shall be further properly designated as:

(i) Either VOC-controlled or not VOC-controlled;

(ii) In the case of gasoline or RBOB designated as VOC-controlled, either intended for use in VOC-Control Region 1 or VOC-Control Region 2 (as defined in § 80.71);

(iii) Either oxygenated fuels program reformulated gasoline, or not oxygenated fuels program reformulated gasoline. Gasoline or RBOB must be designated as oxygenated fuels program reformulated gasoline if such gasoline:

(A) Contains more than 2.0 weight percent oxygen; and

(B) Arrives at a terminal from which gasoline is dispensed into trucks used to deliver gasoline to an oxygenated fuels control area within five days prior to the beginning of the oxygenated fuels control period for that control area;

(iv) For gasoline or RBOB produced, imported, sold, dispensed or used during the period January 1, 1995 through December 31, 1997, either as being subject to the simple model standards, or to the complex model standards;

(v) For each of the following parameters, either gasoline or RBOB which meets the standard applicable to that parameter on a per-gallon basis or on average:

(A) Toxics emissions performance;

(B) NO_x emissions performance;

(C) Benzene content;

(D) With the exception of RBOB, oxygen content;

(E) In the case of VOC-controlled gasoline or RBOB certified using the simple model, RVP; and

(F) In the case of VOC-controlled gasoline or RBOB certified using the complex model, VOC emissions performance; and

(vi) In the case of RBOB, either as RBOB that may be blended with any oxygenate, or RBOB that may be blended with an ether only.

(3) Each batch of reformulated or conventional gasoline or RBOB produced or imported at each refinery or import facility, or each batch of blendstock produced and sold or transferred if blendstock accounting is required under § 80.101(d)(1)(ii), shall be assigned a number (the "batch number"), consisting of the EPA-assigned refiner, importer, or oxygenate blender registration number, the EPA-assigned facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced or imported each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (e.g., 4321–4321–95–001, 4321–4321–95–002, etc.).

(e) *Determination of properties.* (1) Each refiner or importer shall determine the value of each of the properties specified in paragraph (e)(2)(i) of this section for each batch of reformulated gasoline it produces or imports prior to the gasoline leaving the refinery or import facility, by collecting and analyzing a representative sample of gasoline taken from the batch, using the methodologies specified in § 80.46. This collection and analysis shall be carried out either by the refiner or importer, or by an independent laboratory. A batch of simple model reformulated gasoline may be released by the refiner or importer prior to the receipt of the refiner's or importer's test results except for test results for oxygen, benzene, and RVP.

(2) In the event that the values of any of these properties is determined by the refiner or importer and by an independent laboratory in conformance with the requirements of paragraph (f) of this section:

(i) The results of the analyses conducted by the refiner or importer for such properties shall be used as the basis for compliance determinations unless the absolute value of the differences of the test results from the two laboratories is larger than the following values:

Fuel property	Range
Sulfur content	25 ppm
Aromatics content	2.7 vol %
Olefins content	2.5 vol %
Benzene content	0.21 vol %
Ethanol content	0.4 vol %
Methanol content	0.2 vol %
MTBE (and other methyl ethers) content.	0.6 vol %
ETBE (and other ethyl ethers) content.	0.6 vol %
TAME	0.6 vol %
t-Butanol content	0.6 vol %
RVP	0.3 psi
50% distillation	5 °F
90% distillation	5 °F
API Gravity	0.3 °API

(ii) In the event the values from the two laboratories for any property fall outside these ranges, the refiner or importer shall use as the basis for compliance determinations:

(A) The larger of the two values for the property, except the smaller of the two results shall be used for MTBE, ethanol, methanol, or ETBE for calculating compliance with all requirements and standards except RVP; or

(B) The refiner shall have the gasoline analyzed for the property at one additional independent laboratory. If this second independent laboratory obtains a result for the property that is within the range, as listed in paragraph (e)(2)(i) of this section, of the refiner's or importer's result for this property, then the refiner's or importer's result shall be used as the basis for compliance determinations.

(f) *Independent analysis requirement.* (1) Any refiner or importer of reformulated gasoline or RBOB shall carry out a program of independent sample collection and analyses for the reformulated gasoline it produces or imports, which meets the requirements of one of the following two options:

(i) *Option 1.* The refiner or importer shall, for each batch of reformulated gasoline or RBOB that is produced or imported, have the value for each property specified in paragraph (e)(2)(i) of this section determined by an independent laboratory that collects and analyzes a representative sample from the batch using the methodologies specified in § 80.46.

(ii) *Option 2.* The refiner or importer shall have a periodic independent testing program carried out for all reformulated gasoline produced or imported, which shall consist of the following:

(A) An independent laboratory shall collect a representative sample from each batch of reformulated gasoline that the refiner or importer produces or imports;

(B) EPA will identify up to ten percent of the total number of samples collected under paragraph (f)(1)(ii)(A) of this section; and

(C) The designated independent laboratory shall, for each sample identified by EPA under paragraph (f)(1)(ii)(B) of this section, determine the value for each property using the methodologies specified in § 80.46.

(2)(i) Any refiner or importer shall designate one independent laboratory for each refinery or import facility at which reformulated gasoline or RBOB is produced or imported. This independent laboratory will collect samples and perform analyses in compliance with the requirements of this paragraph (f) of this section.

(ii) Any refiner or importer shall identify this designated independent laboratory to EPA under the registration requirements of § 80.76.

(iii) In order to be considered independent:

(A) The laboratory shall not be operated by any refiner or importer, and shall not be operated by any subsidiary or employee of any refiner or importer;

(B) The laboratory shall be free from any interest in any refiner or importer; and

(C) The refiner or importer shall be free from any interest in the laboratory; however

(D) Notwithstanding the restrictions in paragraphs (f)(2)(iii) (A) through (C) of this section, a laboratory shall be considered independent if it is owned or operated by a gasoline pipeline company, regardless of ownership or operation of the gasoline pipeline company by refiners or importers, provided that such pipeline company is owned and operated by four or more refiners or importers.

(iv) Use of a laboratory that is debarred, suspended, or proposed for debarment pursuant to the Governmentwide Debarment and Suspension regulations, 40 CFR part 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4, shall be deemed noncompliance with the requirements of this paragraph (f).

(v) Any laboratory that fails to comply with the requirements of this paragraph (f) shall be subject to debarment or suspension under Governmentwide Debarment and Suspension regulations, 40 CFR part 32, or the Debarment, Suspension and Ineligibility regulations, Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(3) Any refiner or importer shall, for all samples collected or analyzed pursuant to the requirements of this paragraph (f), cause its designated independent laboratory:

(i) At the time the designated independent laboratory collects a representative sample from a batch of reformulated gasoline, to:

(A) Obtain the refiner's or importer's assigned batch number for the batch being sampled;

(B) Determine the volume of the batch;

(C) Determine the identification number of the gasoline storage tank or tanks in which the batch was stored at the time the sample was collected;

(D) Determine the date and time the batch became finished reformulated gasoline, and the date and time the sample was collected;

(E) Determine the grade of the batch (e.g., premium, mid-grade, or regular); and

(F) In the case of reformulated gasoline produced through computer-controlled in-line blending, determine the date and time the blending process began and the date and time the blending process ended, unless exempt under paragraph (f)(4) of this section;

(ii) To retain each sample collected pursuant to the requirements of this paragraph (f) for a period of 30 days, except that this period shall be extended to a period of up to 180 days upon request by EPA;

(iii) To submit to EPA periodic reports, as follows:

(A) A report for the period January through March shall be submitted by May 31; a report for the period April through June shall be submitted by August 31; a report for the period July through September shall be submitted by November 30; and a report for the period October through December shall be submitted by February 28;

(B) Each report shall include, for each sample of reformulated gasoline that was analyzed pursuant to the requirements of this paragraph (f):

(1) The results of the independent laboratory's analyses for each property; and

(2) The information specified in paragraph (f)(3)(i) of this section for such sample; and

(iv) To supply to EPA, upon EPA's request, any sample collected or a portion of any such sample.

(4) Any refiner that produces reformulated gasoline using computer-controlled in-line blending equipment is exempt from the independent sampling and testing requirements specified in paragraphs (f) (1) through (3) of this section, provided that such refiner:

(i) Obtains from EPA an exemption from these requirements. In order to seek such an exemption, the refiner shall submit a petition to EPA, such petition to include:

(A) A description of the refiner's computer-controlled in-line blending operation, including a description of:

(1) The location of the operation;

(2) The length of time the refiner has used the operation;

(3) The volumes of gasoline produced using the operation since the refiner began the operation or during the previous three years, whichever is shorter, by grade;

(4) The movement of the gasoline produced using the operation to the point of fungible mixing, including any points where all or portions of the gasoline produced is accumulated in gasoline storage tanks;

(5) The physical lay-out of the operation;

(6) The automated control system, including the method of monitoring and controlling blend properties and proportions;

(7) Any sampling and analysis of gasoline that is conducted as a part of the operation, including on-line, off-line, and composite, and a description of the methods of sampling, the methods of analysis, the parameters analyzed and the frequency of such analyses, and any written, printed, or computer-stored results of such analyses, including information on the retention of such results;

(8) Any sampling and analysis of gasoline produced by the operation that occurs downstream from the blending operation prior to fungible mixing of the gasoline, including any such sampling and analysis by the refiner and by any purchaser, pipeline or other carrier, or by independent laboratories;

(9) Any quality assurance procedures that are carried out over the operation; and

(10) Any occasion(s) during the previous three years when the refiner adjusted any physical or chemical property of any gasoline produced using the operation downstream from the operation, including the nature of the adjustment and the reason the gasoline had properties that required adjustment; and

(B) A description of the independent audit program of the refiner's computer-controlled in-line blending operation that the refiner proposes will satisfy the requirements of this paragraph (f)(4); and

(ii) Carries out an independent audit program of the refiner's computer-controlled in-line blending operation, such program to include:

(A) For each batch of reformulated gasoline produced using the operation, a review of the documents generated that is sufficient to determine the properties and volume of the gasoline produced;

(B) Audits that occur no less frequently than annually;

(C) Reports of the results of such audits submitted to the refiner, and to EPA by the auditor no later than February 28 of each year;

(D) Audits that are conducted by an auditor that meets the non-debarred criteria specified in § 80.125 (a) and/or (d); and

(iii) Complies with any other requirements that EPA includes as part of the exemption.

(g) *Marking of conventional gasoline.* [Reserved]

(h) *Compliance audits.* Any refiner, importer, and oxygenate blender of any reformulated gasoline or RBOB shall have the reformulated gasoline or RBOB it produced, imported, or blended during each calendar year audited for compliance with the requirements of this subpart D, in accordance with the requirements of subpart F of this part, at the conclusion of each calendar year.

(i) *Exclusion from compliance calculations of gasoline received from others.* Any refiner for each refinery, any oxygenate blender for each oxygenate blending facility, and any importer shall exclude from all compliance calculations the volume and properties of any reformulated gasoline that is produced at another refinery or oxygenate blending facility or imported by another importer.

§ 80.66 Calculation of reformulated gasoline properties.

(a) All volume measurements required by these regulations shall be temperature adjusted to 60 degrees Fahrenheit.

(b) The percentage of oxygen by weight contained in a gasoline blend, based upon its percentage oxygenate by volume and density, shall exclude denaturants and water.

(c) The properties of reformulated gasoline consist of per-gallon values separately and individually determined on a batch-by-batch basis using the methodologies specified in § 80.46 for each of those physical and chemical parameters necessary to determine compliance with the standards to which the gasoline is subject, and per-gallon values for the VOC, NO_X, and toxics emissions performance standards to which the gasoline is subject.

(d) Per-gallon oxygen content shall be determined based upon the weight percent oxygen of a representative sample of gasoline, using the method set forth in § 80.46(g). The total oxygen content associated with a batch of gasoline (in percent-gallons) is calculated by multiplying the weight percent oxygen content times the volume.

(e) Per-gallon benzene content shall be determined based upon the volume percent benzene of a representative sample of a batch of gasoline by the method set forth in § 80.46(e). The total benzene content associated with a batch of gasoline (in percent-gallons) is calculated by multiplying the volume percent benzene content times the volume.

(f) Per-gallon RVP shall be determined based upon the measurement of RVP of a representative sample of a batch of gasoline by the sampling methodologies specified in Appendix D of this part and the testing methodology specified in Appendix E of this part. The total RVP value associated with a batch of gasoline (in RVP-gallons) is calculated by multiplying the RVP times the volume.

(g) (1) Per-gallon values for VOC and NO_X emissions reduction shall be calculated using the methodology specified in § 80.46 that is appropriate for the gasoline.

(2) Per-gallon values for toxic emissions performance reduction shall be established using:

(i) For gasoline subject to the simple model, the methodology under § 80.42 that is appropriate for the gasoline; and

(ii) For gasoline subject to the complex model, the methodology specified in § 80.46 that is appropriate for the gasoline.

(3) The total VOC, NO_X, and toxic emissions performance reduction values associated with a batch of gasoline (in percent reduction-gallons) is calculated by multiplying the per-gallon percent emissions performance reduction times the volume of the batch.

§ 80.67 Compliance on average.

The requirements of this section apply to all reformulated gasoline and RBOB produced or imported for which compliance with one or more of the requirements of § 80.41 is determined on average ("averaged gasoline").

(a) *Compliance survey required in order to meet standards on average.* (1) Any refiner, importer, or oxygenate blender that complies with the compliance survey requirements of § 80.68 has the option of meeting the standards specified in § 80.41 for average compliance in addition to the option of meeting the standards specified in § 80.41 for per-gallon compliance; any refiner, importer, or oxygenate blender that does not comply with the survey requirements must meet the standards specified in § 80.41 for per-gallon compliance, and does not have the option of meeting standards on average.

(2)(i)(A) A refiner or importer that produces or imports reformulated gasoline that exceeds the average standards for oxygen or benzene (but not for other parameters that have average standards) may use such gasoline to offset reformulated gasoline which does not achieve such average standards, but only if the reformulated gasoline that does not achieve such average standards is sold to ultimate consumers in the same covered area as was the reformulated gasoline which

exceeds average standards; provided that

(B) Prior to the beginning of the averaging period when the averaging approach described in paragraph (a)(2)(i)(A) of this section is used, the refiner or importer obtains approval from EPA. In order to seek such approval, the refiner or importer shall submit a petition to EPA, such petition to include:

(1) The identification of the refiner and refinery, or importer, the covered area, and the averaging period; and

(2) A detailed description of the procedures the refiner or importer will use to ensure the gasoline is produced by the refiner or is imported by the importer and is used only in the covered area in question and is not used in any other covered area, and the record keeping, reporting, auditing, and other quality assurance measures that will be followed to establish the gasoline is used as intended; and

(C) The refiner or importer properly completes any requirements that are specified by EPA as conditions for approval of the petition.

(ii) Any refiner or importer that meets the requirements of paragraph (a)(2)(i) of this section will be deemed to have satisfied the compliance survey requirements of § 80.68 for the covered area in question.

(b) *Scope of averaging.* (1) Any refiner shall meet all applicable averaged standards separately for each of the refiner's refineries;

(2)(i) Any importer shall meet all applicable averaged standards on the basis of all averaged reformulated gasoline and RBOB imported by the importer; except that

(ii) Any importer to whom different standards apply for gasoline imported at different facilities by operation of § 80.41(i), shall meet the averaged standards separately for the averaged reformulated gasoline and RBOB imported into each group of facilities that is subject to the same standards; and

(3) Any oxygenate blender shall meet the averaged standard for oxygen separately for each of the oxygenate blender's oxygenate blending facilities, except that any oxygenate blender may group the averaged reformulated gasoline produced at facilities at which gasoline is produced for use in a single covered area.

(c) *RVP and VOC emissions performance reduction compliance on average.* (1) The VOC-controlled reformulated gasoline and RBOB produced at any refinery or imported by any importer during the period January 1 through September 15 of each calendar year which is designated for average compliance for RVP or VOC emissions performance on average must meet the standards for RVP (in the case of a refinery or importer subject to the simple model standards) or the standards for VOC emissions performance reduction (in the case of a refinery or importer subject to the complex model standards) which are applicable to that refinery or importer as follows:

(i) Gasoline and RBOB designated for VOC Control Region 1 must meet the standards for that Region which are applicable to that refinery or importer; and

(ii) Gasoline and RBOB designated for VOC Control Region 2 must meet the standards for that Region which are applicable to that refinery or importer.

(2) In the case of a refinery or importer subject to the simple model standards, each gallon of reformulated gasoline and RBOB designated as being VOC-controlled may not exceed the maximum standards for RVP specified in § 80.41(b) which are applicable to that refiner or importer.

(3) In the case of a refinery or importer subject to the complex model standards, each gallon of reformulated gasoline designated as being VOC-controlled must equal or exceed the minimum standards for VOC emissions performance specified in § 80.41 which are applicable to that refinery or importer.

(d) *Toxics emissions reduction and benzene compliance on average.* (1) The averaging period for the requirements for benzene content and toxics emission performance is January 1 through December 31 of each year.

(2) The reformulated gasoline and RBOB produced at any refinery or imported by any importer during the toxics emissions performance and benzene averaging periods that is designated for average compliance for these parameters shall on average meet the standards specified for toxics emissions performance and benzene in § 80.41 which are applicable to that refinery or importer.

(3) Each gallon of reformulated gasoline may not exceed the maximum standard for benzene content specified in § 80.41 which is applicable to that refinery or importer.

(e) *NO_X compliance on average.* (1) The averaging period for NO_X emissions performance is January 1 through December 31 of each year.

(2) The requirements of this paragraph (e) apply separately to reformulated gasoline and RBOB in the following categories:

(i) All reformulated gasoline and RBOB that is designated as VOC-controlled; and

(ii) All reformulated gasoline and RBOB that is not designated as VOC-controlled.

(3) The reformulated gasoline and RBOB produced at any refinery or imported by any importer during the NO_X averaging period that is designated for average compliance for NO_X shall on average meet the standards for NO_X specified in § 80.41 that are applicable to that refinery or importer.

(4) Each gallon of reformulated gasoline must equal or exceed the minimum standards for NO_X emissions performance specified in § 80.41 which are applicable to that refinery or importer.

(f) *Oxygen compliance on average.* (1). The averaging period for the oxygen content requirements is January 1 through December 31 of each year.

(2) The requirements of this paragraph (f) apply separately to reformulated gasoline in the following categories:

(i) All reformulated gasoline;

(ii) All reformulated gasoline that is not designated as being OPRG; and

(iii) In the case of reformulated gasoline certified under the simple model, that which is designated as VOC-controlled.

(3) The reformulated gasoline produced at any refinery or imported by any importer during the oxygen averaging period that is designated for average compliance for oxygen shall on average meet the standards for oxygen specified in § 80.41 that is applicable to that refinery or importer.

(4) The reformulated gasoline that is produced at any oxygenate blending facility by blending RBOB with oxygenate that is designated for average compliance for oxygen shall on average meet the standards for oxygen specified in § 80.41 that is applicable to that oxygenate blending facility.

(5) Each gallon of reformulated gasoline must meet the applicable minimum requirements, and in the case of simple model reformulated gasoline the minimum and maximum requirements, for oxygen content specified in § 80.41.

(g) *Compliance calculation.* To determine compliance with the averaged standards in § 80.41, any refiner for each of its refineries at which averaged reformulated gasoline or RBOB is produced, any oxygenate blender for each of its oxygenate blending facilities at which oxygen averaged reformulated gasoline is produced, and any importer that imports averaged reformulated gasoline or RBOB shall, for each averaging period and for each portion of gasoline for which standards must be separately achieved, and for each relevant standard, calculate:

(1)(i) The compliance total using the following formula:

$$\text{COMPLIANCE TOTAL} = \left(\sum_{i=1}^{n} V_i\right) \times \text{std}$$

where

V_i=the volume of gasoline batch i

std=the standard for the parameter being evaluated

n=the number of batches of gasoline produced or imported during the averaging period

and

(ii) The actual total using the following formula:

$$\text{ACTUAL TOTAL} = \sum_{i=1}^{n} (V_i \times \text{parm}_i)$$

where

V_i=the volume of gasoline batch i

parm_i=the parameter value of gasoline batch i

n=the number of batches of gasoline produced or imported during the averaging period

(2) For each standard, compare the actual total with the compliance total.

(3) For the VOC, NO_X, and toxics emissions performance and oxygen standards, the actual totals must be equal to or greater than the compliance totals to achieve compliance.

(4) For RVP and benzene standards, the actual total must be equal to or less than the compliance totals to achieve compliance.

(5) If the actual total for the oxygen standard is less than the compliance total, or if the actual total for the benzene standard is greater than the compliance total, credits for these parameters must be obtained from another refiner, importer or (in the case of oxygen) oxygenate blender in order to achieve compliance:

(i) The total number of oxygen credits required to achieve compliance is calculated by subtracting the actual total from the compliance total oxygen; and

(ii) The total number of benzene credits required to achieve compliance is calculated by subtracting the compliance total from the actual total benzene.

(6) If the actual total for the oxygen standard is greater than the compliance total, or if the actual total for the benzene standard is less than the compliance totals, credits for these parameters are generated:

(i) The total number of oxygen credits which may be traded to another refinery, importer, or oxygenate blender is calculated by subtracting the compliance total from the actual total for oxygen; and

(ii) The total number of benzene credits which may be traded to another refinery or importer is calculated by subtracting the actual total from the compliance total for benzene.

(h) *Credit transfers.* (1) Compliance with the averaged standards specified in § 80.41 for oxygen and benzene (but for no other standards or requirements) may be achieved through the transfer of oxygen and benzene credits provided that:

(i) The credits were generated in the same averaging period as they are used;

(ii) The credit transfer takes place no later than fifteen working days following the end of the averaging period in which the reformulated gasoline credits were generated;

(iii) The credits are properly created;

(iv) The credits are transferred directly from the refiner, importer, or oxygenate blender that creates the credits to the refiner, importer, or oxygenate blender that uses the credits to achieve compliance;

(v) Oxygen credits are generated, transferred, and used:

(A) In the case of gasoline subject to the simple model standards, only in the following categories:

(1) VOC-controlled, non-OPRG;

(2) Non-VOC-controlled, non-OPRG;

(3) Non-VOC-controlled, OPRG; and

(4) VOC-controlled, OPRG; and

(B) In the case of gasoline subject to the complex model standards, only in the following categories:

(1) OPRG; and

(2) Non-OPRG;

(vi) Oxygen credits generated from gasoline subject to the complex model standards are not used to achieve compliance for gasoline subject to the simple model standards;

(vii) Oxygen credits are not used to achieve compliance with the minimum oxygen content standards in § 80.41; and

(viii) Benzene credits are not used to achieve compliance with the maximum benzene content standards in § 80.41.

(2) No party may transfer any credits to the extent such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this paragraph are improperly created credits.

(3) In the case of credits that were improperly created, the following provisions apply:

(i) Improperly created credits may not be used to achieve compliance, regardless of a credit transferee's good faith belief that it was receiving valid credits;

(ii) No refiner, importer, or oxygenate blender may create, report, or transfer improperly created credits; and

(iii) Where any credit transferor has in its balance at the conclusion of any averaging period both credits which were properly created and credits which were improperly created, the properly created credits will be applied first to any credit transfers before the transferor may apply any credits to achieve its own compliance.

(i) *Average compliance for reformulated gasoline produced or imported before January 1, 1995.* In the case of any reformulated gasoline that is intended to be used beginning January 1, 1995, but that is produced or imported prior to that date:

(1) Any refiner or importer may meet standards specified in § 80.41 for average compliance for such gasoline, provided the refiner or importer has the option of meeting standards on average for 1995 under paragraph (a) of this section, and provided the refiner or importer elects to be subject to average standards under § 80.65(c)(3); and

(2) Any average compliance gasoline under paragraph (i)(1) of this section shall be combined with average compliance gasoline produced during 1995 for purposes of compliance calculations under paragraph (g) of this section.

§ 80.68 Compliance surveys.

(a) *Compliance survey option 1.* In order to satisfy the compliance survey requirements, any refiner, importer, or oxygenate blender shall properly conduct a program of compliance surveys in accordance with a survey program plan which has been approved by the Administrator of EPA in each covered area which is supplied with any gasoline for which compliance is achieved on average that is produced by that refiner or oxygenate blender or imported by that importer. Such approval shall be based upon the survey program plan meeting the following criteria:

(1) The survey program shall consist of at least four surveys which shall occur during the following time periods: one survey during the period January 1 through May 31; two surveys during the period June 1 through September 15; and one survey during the period September 16 through December 31.

(2) The survey program shall meet the criteria stated in paragraph (c) of this section.

(3) In the event that any refiner, importer, or oxygenate blender fails to

properly carry out an approved survey program, the refiner, importer, or oxygenate blender shall achieve compliance with all applicable standards on a per-gallon basis for the calendar year in which the failure occurs, and may not achieve compliance with any standard on an average basis during this calendar year. This requirement to achieve compliance per-gallon shall apply *ab initio* to the beginning of any calendar year in which the failure occurs, regardless of when during the year the failure occurs.

(b) *Compliance survey option 2.* A refiner, importer, or oxygenate blender shall be deemed to have satisfied the compliance survey requirements described in paragraph (a) of this section if a comprehensive program of surveys is properly conducted in accordance with a survey program plan which has been approved by the Administrator of EPA. Such approval shall be based upon the survey program plan meeting the following criteria:

(1) The initial schedule for the conduct of surveys shall be as follows:

(i) 120 surveys shall be conducted in 1995;

(ii) 80 surveys shall be conducted in 1996;

(iii) 60 surveys shall be conducted in 1997;

(iv) 50 surveys shall be conducted in 1998 and thereafter.

(2) This initial survey schedule shall be adjusted as follows:

(i) In the event one or more ozone nonattainment areas in addition to the nine specified in § 80.70, opt into the reformulated gasoline program, the number of surveys to be conducted in the year the area or areas opt into the program and in each subsequent year shall be increased according to the following formula:

$$ANS_i = \left(\frac{V_{opt-in}}{V_{orig}} \times NS_i\right) + NS_i$$

where:

ANS_i = the adjusted number of surveys for year i; i = the opt-in year and each subsequent year

NS_i = the number of surveys according to the schedule in paragraph (b)(1) of this section in year i; i = the opt-in year and each subsequent year

V_{opt-in} = the total volume of gasoline supplied to the opt-in covered areas in the year preceding the year of the opt-in

V_{orig} = the total volume of gasoline supplied to the original nine covered areas in the year preceding the year of the opt-in

(ii) In the event that any covered area fails a survey or survey series according to the criteria set forth in paragraph (c) of this section, the annual decreases in the numbers of surveys prescribed by paragraph (b)(1) of this section, as adjusted by paragraph (b)(2)(i) of this section, shall be adjusted as follows in the year following the year of the failure. Any such adjustment to the number of surveys shall remain in effect so long as any standard for the affected covered area has been adjusted to be more stringent as a result of a failed survey or survey series. The adjustments shall be calculated according to the following formula:

$$ANS_i = \left(\frac{V_{failed}}{V_{total}} \times (NS_{i-1} - NS_i)\right) + NS_i$$

where:

ANS_i = the adjusted number of surveys in year i; i = the year after the failure and each subsequent year

V_{failed} = the total volume of gasoline supplied to the covered area which failed the survey or survey series in the year of the failure

V_{total} = the total volume of gasoline supplied to all covered areas in the year of the failure

NS_i = the number of surveys in year i according to the schedule in paragraph (b)(1) of this section and as adjusted by paragraph (b)(2)(i) of this section; i = the year after the failure and each subsequent year

(3) The survey program shall meet the criteria stated in paragraph (c) of this section.

(4) On each occasion the comprehensive survey program does not occur as specified in the approved plan with regard to any covered area:

(i) Each refiner, importer, and oxygenate blender who supplied any reformulated gasoline or RBOB to the covered area and who has not satisfied the survey requirements described in paragraph (a) of this section shall be deemed to have failed to carry out an approved survey program; and

(ii) The covered area will be deemed to have failed surveys for VOC and NO_X emissions performance, and survey series for benzene and oxygen, and toxic and NO_X emissions performance.

(c) *General survey requirements.* (1) During the period January 1, 1995 through December 31, 1997:

(i) Any sample taken from a retail gasoline storage tank for which the three most recent deliveries were of gasoline designated as meeting:

(A) Simple model standards shall be considered a "simple model sample"; or

(B) Complex model standards shall be considered a "complex model sample."

(ii) A survey shall consist of the combination of a simple model portion and a complex model portion, as follows:

(A) The simple model portion of a survey shall consist of all simple model samples that are collected pursuant to the applicable survey design in a single covered area during any consecutive seven-day period and that are not excluded under paragraph (c)(6) of this section.

(B) The complex model portion of a survey shall consist of all complex model samples that are collected pursuant to the applicable survey design in a single covered area during any consecutive seven-day period and that are not excluded under paragraph (c)(6) of this section.

(iii) (A) The simple model portion of each survey shall be representative of all gasoline certified using the simple model which is being dispensed in the covered area.

(B) The complex model portion of each survey shall be representative of all gasoline certified using the complex model which is being dispensed in the covered area.

(2) Beginning on January 1, 1998:

(i) A survey shall consist of all samples that are collected pursuant to the applicable survey design in a single covered area during any consecutive seven-day period and that are not excluded under paragraph (c)(6) of this section.

(ii) A survey shall be representative of all gasoline which is being dispensed in the covered area.

(3) A VOC survey, and prior to January 1, 2000, a NO_X survey, shall consist of any survey conducted during the period June 1 through September 15.

(4) (i) A toxics, oxygen, and benzene survey series shall consist of all surveys conducted in a single covered area during a single calendar year.

(ii) A NO_X survey series shall consist of all surveys conducted in a single covered area during the periods January 1 through May 31, and September 16 through December 31 during a single calendar year.

(5) (i) Each simple model sample included in a survey shall be analyzed for oxygenate type and content, benzene content, aromatic hydrocarbon content, and RVP in accordance with the methodologies specified in § 80.46; and

(ii) Each complex model sample included in a survey shall be analyzed for oxygenate type and content, olefins, benzene, sulfur, and aromatic hydrocarbons, E–200, E–300, and RVP in accordance with the methodologies specified in § 80.46.

(6) (i) The results of each survey shall be based upon the results of the analysis of each sample collected during the course of the survey, unless the sample violates the applicable per-gallon maximum or minimum standards for the parameter being evaluated plus any enforcement tolerance that applies to the parameter (e.g., a sample that violates the benzene per-gallon maximum plus any benzene enforcement tolerance but meets other per-gallon maximum and minimum standards would be excluded from the benzene survey, but would be included in the surveys for parameters other than benzene).

(ii) Any sample from a survey that violates any standard under § 80.41, or that constitutes evidence of the violation of any prohibition or requirement under this subpart D, may be used by the Administrator in an enforcement action for such violation.

(7) Each laboratory at which samples in a survey are analyzed shall participate in a correlation program with EPA to ensure the validity of analysis results.

(8) (i) The results of each simple model VOC survey shall be determined as follows:

(A) For each simple model sample from the survey, the VOC emissions reduction percentage shall be determined based upon the tested values for RVP and oxygen for that sample as applied to the VOC emissions reduction equation at § 80.42(a)(1) for VOC-Control Region 1 and § 80.42(a)(2) for VOC-Control Region 2;

(B) The VOC emissions reduction survey standard applicable to each covered area shall be calculated by using the VOC emissions equation at § 80.42(a)(1) with RVP=7.2 and OXCON=2.0 for covered areas located in VOC-Control Region 1 and using the VOC emissions equation at § 80.42(a)(2) with RVP=8.1 and OXCON=2.0 for covered areas located in VOC-Control Region 2; and

(C) The covered area shall have failed the simple model VOC survey if the VOC emissions reduction average of all survey samples is less than VOC emissions reduction survey standard calculated under paragraph (c)(8)(i)(B) of this section.

(ii) The results of each complex model VOC emissions reduction survey shall be determined as follows:

(A) For each complex model sample from the survey, the VOC emissions reduction percentage shall be determined based upon the tested parameter values for that sample and the appropriate methodology for calculating VOC emissions reduction at § 80.47; and

(B) The covered area shall have failed the complex model VOC survey if the VOC emissions reduction percentage average of all survey samples is less than the applicable per-gallon standard for VOC emissions reduction.

(9) (i) The results of each simple model toxics emissions reduction survey series conducted in any covered area shall be determined as follows:

(A) For each simple model sample from the survey series, the toxics emissions reduction percentage shall be determined based upon the tested parameter values for that sample and the appropriate methodology for calculating toxics emissions performance reduction at § 80.42.

(B) The annual average of the toxics emissions reduction percentages for all samples from a survey series shall be calculated according to the following formula:

$$AATER = \left(\left(\frac{\sum_{i=1}^{n_1} TER_{1,i}}{n_1}\right) \times 0.468\right) + \left(\left(\frac{\sum_{i=1}^{n_2} TER_{2,i}}{n_2}\right) \times 0.532\right)$$

where

AATER = the annual average toxics emissions reduction

$TER_{1,i}$ = the toxics emissions reduction for sample i of gasoline collected during the high ozone season

$TER_{2,i}$ = the toxics emissions reduction for sample i of gasoline collected outside the high ozone season

n_1 = the number of samples collected during the high ozone season

n_2 = the number of samples collected outside the high ozone season

parameter values for that sample and the appropriate methodology for calculating toxics emissions reduction at § 80.47;

(B) The annual average of the toxics emissions reduction percentages for all samples from a survey series shall be calculated according to the formula specified in paragraph (c)(8)(i)(B) of this section; and

(C) The covered area shall have failed the complex model toxics survey series if the annual average toxics emissions reduction is less than the applicable

per-gallon complex model standard for toxics emissions reduction.

(10) The results of each NO_X emissions reduction survey and survey series shall be determined as follows:

(i) For each sample from the survey and survey series, the NO_X emissions reduction percentage shall be determined based upon the tested parameter values for that sample and the appropriate methodology for calculating NO_X emissions reduction at § 80.47; and

(ii) The covered area shall have failed the NO_X survey or survey series if the NO_X emissions reduction percentage average for all survey samples is less than the applicable Phase I or Phase II complex model per-gallon standard for NO_X emissions reduction.

(11) For any benzene content survey series conducted in any covered area the average benzene content for all samples from the survey series shall be calculated. If this annual average is greater than 1.000 percent by volume, the covered area shall have failed a benzene survey series.

(12) For any oxygen content survey series conducted in any covered area the average oxygen content for all samples from the survey series shall be calculated. If this annual average is less than 2.00 percent by weight, the covered area shall have failed an oxygen survey series.

Each survey program shall:

(i) Be planned and conducted by a person who is independent of the refiner or importer (the surveyor). In order to be considered independent:

(A) The surveyor shall not be an employee of any refiner or importer;

(B) The surveyor shall be free from any obligation to or interest in any refiner or importer; and

(C) The refiner or importer shall be free from any obligation to or interest in the surveyor; and

(ii) Include procedures for selecting sample collection locations, numbers of samples, and gasoline compositions which will result in:

(A) Simple model surveys representing all gasoline certified using the simple model being dispensed at retail outlets within the covered area during the period of the survey; and

(B) Complex model surveys representing all gasoline certified using the complex model being dispensed at retail outlets within the covered area during the period of the survey; and

(iii) Include procedures such that the number of samples included in each survey assures that:

(A) In the case of simple model surveys, the average levels of oxygen, benzene, RVP, and aromatic hydrocarbons are determined with a 95% confidence level, with error of less than 0.1 psi for RVP, 0.05% for benzene (by volume), and 0.1% for oxygen (by weight); and

(B) In the case of complex model surveys, the average levels of oxygen, benzene, RVP, aromatic hydrocarbons, olefins, T–50, T–90, and sulfur are determined with a 95% confidence level, with error of less than 0.1 psi for RVP, 0.05% for benzene (by volume), 0.1% for oxygen (by weight), 0.5% for aromatic hydrocarbons (by volume), 0.5% for olefins (by volume), 5 °F. for T–50 and T–90, and 10 ppm for sulfur; and

(iv) Require that the surveyor shall:

(A) Not inform anyone, in advance, of the date or location for the conduct of any survey;

(B) Upon request by EPA made within thirty days following the submission of the report of a survey, provide a duplicate of any gasoline sample taken during that survey to EPA at a location to be specified by EPA each sample to be identified by the name and address of the facility where collected, the date of collection, and the classification of the sample as simple model or complex model; and

(C) At any time permit any representative of EPA to monitor the conduct of the survey, including sample collection, transportation, storage, and analysis; and

(v) Require the surveyor to submit to EPA a report of each survey, within thirty days following completion of the survey, such report to include the following information:

(A) The identification of the person who conducted the survey;

(B) An attestation by an officer of the surveyor company that the survey was conducted in accordance with the survey plan and that the survey results are accurate;

(C) If the survey was conducted for one refiner or importer, the identification of that party;

(D) The identification of the covered area surveyed;

(E) The dates on which the survey was conducted;

(F) The address of each facility at which a gasoline sample was collected, the date of collection, and the classification of the sample as simple model or complex model;

(G) The results of the analyses of simple model samples for oxygenate type and oxygen weight percent, benzene content, aromatic hydrocarbon content, and RVP, and the calculated toxics emission reduction percentage;

(H) The results of the analyses of complex model samples for oxygenate type and oxygen weight percent, benzene, aromatic hydrocarbon, and olefin content, E–200, E–300, and RVP, and the calculated VOC, NO_X, and toxics emissions reduction percentages;

(I) The name and address of each laboratory where gasoline samples were analyzed;

(J) A description of the methodology utilized to select the locations for sample collection and the numbers of samples collected;

(K) For any samples which were excluded from the survey, a justification for such exclusion; and

(L) The average toxics emissions reduction percentage for simple model samples and the percentage for complex model samples, the average benzene and oxygen percentages, for each survey conducted during the period June 1 through September 15, the average VOC emissions reduction percentage for simple model samples and the percentage for complex model samples, and beginning on January 1, 2000, the average NO_X emissions reduction percentage.

(14) Each survey shall be conducted at a time and in a covered area selected by EPA no earlier than two weeks before the date of the survey.

(15) The procedure for seeking EPA approval for a survey program plan shall be as follows:

(i) The survey program plan shall be submitted to the Administrator of EPA for EPA's approval no later than September 1 of the year preceding the year in which the surveys will be conducted; and

(ii) Such submittal shall be signed by a responsible corporate officer of the refiner, importer, or oxygenate blender, or in the case of a comprehensive survey program plan, by an officer of the organization coordinating the survey program.

(16) (i) No later than December 1 of the year preceding the year in which the surveys will be conducted, the contract with the surveyor to carry out the entire survey plan shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the surveyor or placed into an escrow account with instructions to the escrow agent to pay the money over to the surveyor during the course of the conduct of the survey plan.

(ii) No later than December 15 of the year preceding the year in which the surveys will be conducted, the Administrator of EPA shall be given a copy of the contract with the surveyor, proof that the money necessary to carry out the plan has either been paid to the surveyor or placed into an escrow account, and if placed into an escrow account, a copy of the escrow agreement.

§ 80.69 Requirements for downstream oxygenate blending.

The requirements of this section apply to all reformulated gasoline blendstock for oxygenate blending, or RBOB, to which oxygenate is added at any oxygenate blending facility.

(a) *Requirements for refiners and importers.* For any RBOB produced or imported, the refiner or importer of the RBOB shall:

(1) Produce or import the RBOB such that, when blended with a specified type and percentage of oxygenate, it meets the applicable standards for reformulated gasoline;

(2) In order to determine the properties of RBOB for purposes of calculating compliance with per-gallon or averaged standards, conduct tests on each batch of the RBOB by:

(i) Adding the specified type and amount of oxygenate to a representative sample of the RBOB; and

(ii) Determining the properties and characteristics of the resulting gasoline using the methodology specified in § 80.65(e);

(3) Carry out the independent analysis requirements specified in § 80.65(f);

(4) Determine properties of the RBOB which are sufficient to allow parties downstream from the refinery or import facility to establish, through sampling and testing, if the RBOB has been altered or contaminated such that it will not meet the applicable reformulated gasoline standards subsequent to the addition of the specified type and amount of oxygenate;

(5) Transfer ownership of the RBOB only to an oxygenate blender who is registered with EPA as such, or to an intermediate owner with the restriction that it only be transferred to a registered oxygenate blender;

(6) Have a contract with each oxygenate blender who receives any RBOB produced or imported by the refiner or importer that requires the oxygenate blender, or, in the case of a contract with an intermediate owner, that requires the intermediate owner to require the oxygenate blender to:

(i) Comply with blender procedures that are specified by the contract and are calculated to assure blending with the proper type and amount of oxygenate;

(ii) Allow the refiner or importer to conduct quality assurance sampling and testing of the reformulated gasoline produced by the oxygenate blender;

(iii) Stop selling any gasoline found to not comply with the standards under which the RBOB was produced or imported; and

(iv) Carry out the quality assurance sampling and testing that this section requires the oxygenate blender to conduct;

(7) Conduct a quality assurance sampling and testing program to be carried out at the facilities of each oxygenate blender who blends any RBOB produced or imported by the refiner or importer with any oxygenate, to determine whether the reformulated gasoline which has been produced through blending complies with the applicable standards, using the methodology specified in § 80.46 for this determination.

(i) The sampling and testing program shall be conducted as follows:

(A) All samples shall be collected subsequent to the addition of oxygenate, and either:

(*1*) Prior combining the resulting gasoline with any other gasoline; or

(*2*) In the case of truck splash blending, subsequent to the delivery of the gasoline to a retail outlet or wholesale purchaser-consumer facility provided that the three most recent deliveries to the retail outlet or wholesale purchaser facility were of gasoline produced using that refiner's or importer's RBOB, and provided that any discrepancy found through the retail outlet or wholesale purchaser facility sampling is followed-up with measures reasonably designed to discover the cause of the discrepancy; and

(B) Sampling and testing shall be at one of the following rates:

(*1*) In the case of RBOB which is blended with oxygenate in a gasoline storage tank, a rate of not less than one sample for every 400,000 barrels of RBOB produced or imported by that refiner or importer that is blended by that blender, or one sample every month, whichever is more frequent; or

(*2*) In the case of RBOB which is blended with oxygenate in gasoline delivery trucks through the use of computer-controlled in-line blending equipment, a rate of not less than one sample for every 200,000 barrels of RBOB produced or imported by that refiner or importer that is blended by that blender, or one sample every three months, whichever is more frequent; or

(*3*) In the case of RBOB which is blended with oxygenate in gasoline delivery trucks without the use of computer-controlled in-line blending equipment, a rate of not less than one sample for each 50,000 barrels of RBOB produced or imported by that refiner or importer which is blended, or one sample per month, whichever is more frequent;

(ii) In the event the test results for any sample indicate the gasoline does not comply with applicable standards (within the ranges specified in § 80.70(b)(2)(i)), the refiner or importer shall:

(A) Immediately take steps to stop the sale of the gasoline that was sampled;

(B) Take steps which are reasonably calculated to determine the cause of the noncompliance and to prevent future instances of noncompliance;

(C) Increase the rate of sampling and testing to one of the following rates:

(*1*) In the case of RBOB which is blended with oxygenate in a gasoline storage tank, a rate of not less than one sample for every 200,000 barrels of RBOB produced or imported by that refiner or importer that is blended by that blender, or one sample every two weeks, whichever is more frequent; or

(*2*) In the case of RBOB which is blended with oxygenate in gasoline delivery trucks through the use of computer-controlled in-line blending equipment, a rate of not less than one sample for every 100,000 barrels of RBOB produced or imported by that refiner or importer that is blended by that blender, or one sample every two months, whichever is more frequent; or

(*3*) In the case of RBOB which is blended with oxygenate in gasoline delivery trucks without the use of computer-controlled in-line blending equipment, a rate of not less than one sample for each 25,000 barrels of RBOB produced or imported by that refiner or importer which is blended, or one sample every two weeks, whichever is more frequent;

(D) Continue the increased frequency of sampling and testing until the results of ten consecutive samples and tests indicate the gasoline complies with applicable standards, at which time the sampling and testing may be conducted at the original frequency;

(iii) This quality assurance program is in addition to any quality assurance requirements carried out by other parties;

(8) A refiner or importer of RBOB may, in lieu of the contractual and quality assurance requirements specified in paragraphs (a) (6) and (7) of this section, base its compliance calculations on the following assumptions:

(i) In the case of RBOB designated for any-oxygenate, assume that ethanol will be added;

(ii) In the case of RBOB designated for ether-only, assume that MTBE will be added; and

(iii) In the case of any-oxygenate and ether-only designated RBOB, assume that the volume of oxygenate added will be such that the resulting reformulated

gasoline will have an oxygen content of 2.0 weight percent;

(9) Any refiner or importer who does not meet the contractual and quality assurance requirements specified in paragraphs (a) (6) and (7) of this section, and who does not designate its RBOB as ether-only or any-oxygenate, shall base its compliance calculations on the assumption that 4.0 volume percent ethanol is added to the RBOB; and

(10) Specify in the product transfer documentation for the RBOB each oxygenate type or types and amount or range of amounts which is consistent with the designation of the RBOB as any-oxygenate, or ether-only, and which, if blended with the RBOB will result in reformulated gasoline which:

(i) Has VOC, toxics, or NO_X emissions reduction percentages which are no lower than the percentages that formed the basis for the refiner's or importer's compliance determination for these parameters;

(ii) Has a benzene content and RVP level which are no higher than the values for these characteristics that formed the basis for the refiner's or importer's compliance determinations for these parameters; and

(iii) Will not cause the reformulated gasoline to violate any standard specified in § 80.41.

(b) *Requirements for oxygenate blenders.* For all RBOB received by any oxygenate blender, the oxygenate blender shall:

(1) Add oxygenate of the type(s) and amount (or within the range of amounts) specified in the product transfer documents for the RBOB;

(2) Designate each batch of the resulting reformulated gasoline as meeting the oxygen standard per-gallon or on average;

(3) Meet the standard requirements specified in § 80.65(c) and § 80.67(e), the record keeping requirements specified in § 80.74, and the reporting requirements specified in § 80.75; and

(4) In the case of each batch of reformulated gasoline which is designated for compliance with the oxygen standard on average:

(i) Determine the volume and the weight percent oxygen of the batch using the testing methodology specified in § 80.46;

(ii) Assign a number to the batch (the "batch number"), beginning with the number one for the first batch produced each calendar year and each subsequent batch during the calendar year being assigned the next sequential number, and such numbers to be preceded by the oxygenate blender's registration number, the facility number, and the second two digits of the year in which the batch was produced (e.g., 4321–4321–95–001, 4321–4321–95–002, etc.); and

(iii) Meet the compliance audit requirements specified in § 80.65(h).

(c) *Additional requirements for terminal storage tank blending.* Any oxygenate blender who produces reformulated gasoline by blending any oxygenate with any RBOB in any gasoline storage tank, other than a truck used for delivering gasoline to retail outlets or wholesale purchaser-consumer facilities, shall, for each batch of reformulated gasoline so produced determine the oxygen content and volume of this gasoline prior to the gasoline leaving the oxygenate blending facility, using the methodology specified in § 80.46.

(d) *Additional requirements for distributors dispensing RBOB into trucks for blending.* Any distributor who dispenses any RBOB into any truck which delivers gasoline to retail outlets or wholesale purchaser-consumer facilities, shall for such RBOB so dispensed:

(1) Transfer the RBOB only to an oxygenate blender who has registered with the Administrator of EPA as such;

(2) Transfer any RBOB designated as ether-only RBOB only if the distributor has a reasonable basis for knowing the oxygenate blender will blend an oxygenate other than ethanol with the RBOB; and

(3) Obtain from the oxygenate blender the oxygenate blender's EPA registration number.

(e) *Additional requirements for oxygenate blenders who blend oxygenate in trucks.* Any oxygenate blender who obtains any RBOB in any gasoline delivery truck shall:

(1) On each occasion it obtains RBOB from a distributor, supply the distributor with the oxygenate blender's EPA registration number;

(2) Conduct a quality assurance sampling and testing program to determine whether the proper type and amount of oxygenate is added to RBOB. The program shall be conducted as follows:

(i) All samples shall be collected subsequent to the addition of oxygenate, and either:

(A) Prior combining the resulting gasoline with any other gasoline; or

(B) Subsequent to the delivery of the gasoline to a retail outlet or wholesale purchaser-consumer facility provided that the three most recent deliveries to the retail outlet or wholesale purchaser facility were of gasoline that was produced by that oxygenate blender and that had the same oxygenate requirements, and provided that any discrepancy in oxygenate type or amount found through the retail outlet or wholesale purchaser facility sampling is followed-up with measures reasonably designed to discover the cause of the discrepancy;

(ii) Sampling and testing shall be at one of the following rates:

(A) In the case computer-controlled in-line blending is used, a rate of not less than one sample per each five hundred occasions RBOB and oxygenate are loaded into a truck by that oxygenate blender, or one sample every three months, whichever is more frequent; or

(B) In the case computer-controlled in-line blending is not used, a rate of not less than one sample per each one hundred occasions RBOB and oxygenate are blended in a truck by that oxygenate blender, or one sample per month, whichever is more frequent;

(iii) Sampling and testing shall be of the gasoline produced through one of the RBOB-oxygenate blends produced by that oxygenate blender;

(iv) Samples shall be analyzed for oxygenate type and oxygen content using the testing methodology specified at § 80.46; and

(v) In the event the testing results for any sample indicate the gasoline does not contain the specified type and amount of oxygenate (within the ranges specified in § 80.70(b)(2)(i)):

(A) Immediately stop selling (or where possible, to stop any transferee of the gasoline from selling) the gasoline which was sampled;

(B) Take steps to determine the cause of the noncompliance;

(C) Increase the rate of sampling and testing to one of the following rates:

(*1*) In the case computer-controlled in-line blending is used, a rate of not less than one sample per each two hundred and fifty occasions RBOB and oxygenate are loaded into a truck by that oxygenate blender, or one sample every six weeks, whichever is more frequent; or

(*2*) In the case computer-controlled in-line blending is not used, a rate of not less than one sample per each fifty occasions RBOB and oxygenate are blended in a truck by that oxygenate blender, or one sample every two weeks, whichever is more frequent; and

(D) This increased frequency shall continue until the results of ten consecutive samples and tests indicate the gasoline complies with applicable standards, at which time the frequency may revert to the original frequency.

(f) *Oxygenate blending with OPRG.* Notwithstanding the requirements for and restrictions on oxygenate blending provided in this section, any oxygenate blender may blend oxygenate with reformulated gasoline that is designated as OPRG, without meeting the record keeping and reporting requirements that otherwise apply to oxygenate blenders, provided that the reformulated gasoline so produced is:

(1) Used in an oxygenated fuels program control area during an oxygenated fuels program control period; and

(2) "Substantially similar" under section 211(f)(1) of the Clean Air Act, or is permitted under a waiver granted by the Administrator under the authority of section 211(f)(4) of the Clean Air Act.

§ 80.70 Covered areas.

For purposes of subparts D, E, and F of this part, the covered areas are as follows:

(a) The Los Angeles-Anaheim-Riverside, California, area, comprised of:

(1) Los Angeles County;

(2) Orange County;

(3) Ventura County;

(4) That portion of San Bernadino County that lies south of latitude 35 degrees, 10 minutes north and west of longitude 115 degrees, 45 minutes west; and

(5) That portion of Riverside County, which lies to the west of a line described as follows:

(i) Beginning at the northeast corner of Section 4, Township 2 South, Range 5 East, a point on the boundary line common to Riverside and San Bernadino Counties;

(ii) Then southerly along section lines to the centerline of the Colorado River Aqueduct;

(iii) Then southeasterly along the centerline of said Colorado River Aqueduct to the southerly line of Section 36, Township 3 South, Range 7 East;

(iv) Then easterly along the township line to the northeast corner of Section 6, Township 4 South, Range 9 East;

(v) Then southerly along the easterly line of Section 6 to the southeast corner thereof;

(vi) Then easterly along section lines to the northeast corner of Section 10, Township 4 South, Range 9 East;

(vii) Then southerly along section lines to the southeast corner of Section 15, Township 4 South, Range 9 East;

(viii) Then easterly along the section lines to the northeast corner of Section 21, Township 4 South, Range 10 East;

(ix) Then southerly along the easterly line of Section 21 to the southeast corner thereof;

(x) Then easterly along the northerly line of Section 27 to the northeast corner thereof;

(xi) Then southerly along section lines to the southeast corner of Section 34, Township 4 South, Range 10 East;

(xii) Then easterly along the township line to the northeast corner of Section 2, Township 5 South, Range 10 East;

(xiii) Then southerly along the easterly line of Section 2, to the southeast corner thereof;

(xiv) Then easterly along the northerly line of Section 12 to the northeast corner thereof;

(xv) Then southerly along the range line to the southwest corner of Section 18, Township 5 South, Range 11 East;

(xvi) Then easterly along section lines to the northeast corner of Section 24, Township 5 South, Range 11 East;

(xvii) Then southerly along the range line to the southeast corner of Section 36, Township 8 South, Range 11 East, a point on the boundary line common to Riverside and San Diego Counties.

(b) San Diego County, California.

(c) The Greater Connecticut area, comprised of:

(1) The following Connecticut counties:

(i) Hartford;

(ii) Middlesex;

(iii) New Haven;

(iv) New London;

(v) Tolland; and

(vi) Windham; and

(2) Portions of certain Connecticut counties, described as follows:

(i) In Fairfield County, the City of Shelton; and

(ii) In Litchfield County, all cities and townships except the towns of Bridgewater and New Milford.

(d) The New York-Northern New Jersey-Long Island-Connecticut area, comprised of:

(1) Portions of certain Connecticut counties, described as follows:

(i) In Fairfield County, all cities and townships except Shelton City; and

(ii) In Litchfield County, the towns of Bridgewater and New Milford;

(2) The following New Jersey counties:

(i) Bergen;

(ii) Essex;

(iii) Hudson;

(iv) Hunterdon;

(v) Middlesex;

(vi) Monmouth;

(vii) Morris;

(viii) Ocean;

(ix) Passaic;

(x) Somerset;

(xi) Sussex; and

(xii) Union; and

(3) The following New York counties:

(i) Bronx;

(ii) Kings;

(iii) Nassau;

(iv) New York (Manhattan);

(v) Queens;

(vi) Richmond;

(vii) Rockland;

(viii) Suffolk; and

(ix) Westchester.

(e) The Philadelphia-Wilmington-Trenton area, comprised of:

(1) The following Delaware counties:

(i) New Castle; and

(ii) Kent; and

(2) Cecil County, Maryland; and

(3) The following New Jersey counties:

(i) Burlington;

(ii) Camden;

(iii) Cumberland;

(iv) Gloucester;

(v) Mercer; and

(vi) Salem; and

(4) The following Pennsylvania counties:

(i) Bucks;

(ii) Chester;

(iii) Delaware;

(iv) Montgomery; and

(v) Philadelphia.

(f) The Chicago-Gary-Lake County, Illinois-Indiana-Wisconsin area, comprised of:

(1) The following Illinois counties:

(i) Cook;

(ii) Du Page;

(iii) Kane;

(iv) Lake;

(v) McHenry; and

(vi) Will; and

(2) Portions of certain Illinois counties, described as follows:

(i) In Grundy County, the townships of Aux Sable and Goose Lake; and

(ii) In Kendall County, Oswego township; and

(3) The following Indiana counties:

(i) Lake; and

(ii) Porter.

(g) The Baltimore, Maryland area, comprised of:

(1) The following Maryland counties:

(i) Anne Arundel;

(ii) Baltimore;

(iii) Carroll;

(iv) Harford; and

(v) Howard; and

(2) The City of Baltimore.

(h) The Houston-Galveston-Brazoria, Texas area, comprised of the following Texas counties:

(1) Brazoria;

(2) Fort Bend;

(3) Galveston;

(4) Harris;

(5) Liberty;

(6) Montgomery;

(7) Waller; and

(8) Chambers.

(i) The Milwaukee-Racine, Wisconsin area, comprised of the following Wisconsin counties:

(1) Kenosha;

(2) Milwaukee;

(3) Ozaukee;

(4) Racine;

(5) Washington; and
(6) Waukesha.
(j) The ozone nonattainment areas listed in this paragraph (j) are covered areas beginning on January 1, 1995. The geographic extent of each covered area listed in this paragraph (j) shall be the nonattainment area boundaries as specified in 40 CFR Part 81, subpart C:
(1) Sussex County, Delaware;
(2) District of Columbia portion of the Washington ozone nonattainment area;
(3) The following Kentucky counties:
(i) Boone;
(ii) Campbell;
(iii) Jefferson; and
(iv) Kenton;
(4) Portions of the following Kentucky counties:
(i) Bullitt; and
(ii) Oldham;
(5) The following Maine counties:
(i) Androscoggin;
(ii) Cumberland;
(iii) Kennebec;
(iv) Knox;
(v) Lincoln;
(vi) Sagadahoc;
(vii) York;
(viii) Hancock; and
(ix) Waldo;
(6) The following Maryland counties:
(i) Calvert;
(ii) Charles;
(iii) Frederick;
(iv) Montgomery;
(v) Prince Georges;
(vi) Queen Anne's; and
(vii) Kent;
(7) The entire State of Massachusetts;
(8) The following New Hampshire counties:
(i) Strafford;
(ii) Merrimack;
(iii) Hillsborough; and
(iv) Rockingham;
(9) The following New Jersey counties:
(i) Atlantic;
(ii) Cape May; and
(iii) Warren;
(10) The following New York counties:
(i) Albany;
(ii) Dutchess;
(iii) Erie;
(iv) Essex;
(v) Greene;
(vi) Jefferson;
(vii) Montgomery;
(viii) Niagara;
(ix) Rensselaer;
(x) Saratoga; and
(xi) Schenectady;
(11) The following Pennsylvania counties:
(i) Alleheny;
(ii) Armstrong;
(iii) Beaver;
(iv) Berks;
(v) Butler;
(vi) Fayette;
(vii) Washington;
(viii) Westmoreland;
(ix) Adams;
(x) Blair;
(xi) Cambria;
(xii) Carbon;
(xiii) Columbia;
(xiv) Cumberland;
(xv) Dauphin;
(xvi) Erie;
(xvii) Lackawanna;
(xviii) Lancaster;
(xix) Lebanon;
(xx) Lehigh;
(xxi) Luzerne;
(xxii) Mercer;
(xxiii) Monroe;
(xxiv) Northampton;
(xxv) Perry;
(xxvi) Somerset;
(xxvii) Wyoming; and
(xxviii) York;
(12) The entire State of Rhode Island;
(13) The following Texas counties:
(i) Collin;
(ii) Dallas;
(iii) Denton; and
(iv) Tarrant;
(14) The following Virginia areas:
(i) Alexandria;
(ii) Arlington County;
(iii) Fairfax;
(iv) Fairfax County;
(v) Falls Church;
(vi) Loudoun County;
(vii) Manassas;
(viii) Manassas Park;
(ix) Prince William County;
(x) Stafford County;
(xi) Charles City County;
(xii) Chesterfield County;
(xiii) Colonial Heights;
(xiv) Hanover County;
(xv) Henrico County;
(xvi) Hopewell;
(xvii) Richmond County;
(xviii) Chesapeake;
(xix) Hampton;
(xx) James City County;
(xxi) Newport News;
(xxii) Norfolk;
(xxiii) Poquoson;
(xxiv) Portsmouth;
(xxv) Suffolk;
(xxvi) Virginia Beach;
(xxvii) Williamsburg; and
(xxviii) York County; and
(15) Portions of Smyth County of Virginia.
(k) Any other area classified under 40 CFR part 81, subpart C as a marginal, moderate, serious, or severe ozone nonattainment area may be included on petition of the governor of the state in which the area is located. Effective one year after an area has been reclassified as a severe ozone nonattainment area, such severe area shall also be a covered area for purposes of this subpart D.

§ 80.71 Descriptions of VOC-control regions.

(a) Reformulated gasoline covered areas which are located in the following states are included in VOC-Control Region 1:

Alabama
Arizona
Arkansas
California
Colorado
District of Columbia
Florida
Georgia
Kansas
Louisiana
Maryland
Mississippi
Missouri
Nevada
New Mexico
North Carolina
Oklahoma
Oregon
South Carolina
Tennessee
Texas
Utah
Virginia

(b) Reformulated gasoline covered areas which are located in the following states are included in VOC-Control Region 2:

Connecticut
Delaware
Idaho
Illinois
Indiana
Iowa
Kentucky
Maine
Massachusetts
Michigan
Minnesota
Montana
Nebraska
New Hampshire
New Jersey
New York
North Dakota
Ohio
Pennsylvania
Rhode Island
South Dakota
Vermont
Washington
West Virginia
Wisconsin
Wyoming

(c) Reformulated gasoline covered areas which are partially in VOC Control Region 1 and partially in VOC Control Region 2 shall be included in VOC Control Region 1, except in the case of the Philadelphia-Wilmington-Trenton CMSA which shall be included in VOC Control Region 2.

§ 80.72 [Reserved]

§ 80.73 Inability to produce conforming gasoline in extraordinary circumstances.

In appropriate extreme and unusual circumstances (e.g., natural disaster or Act of God) which are clearly outside the control of the refiner, importer, or oxygenate blender and which could not have been avoided by the exercise of prudence, diligence, and due care, EPA may permit a refiner, importer, or oxygenate blender, for a brief period, to distribute gasoline which does not meet the requirements for reformulated gasoline, if:
(a) It is in the public interest to do so (e.g., distribution of the nonconforming gasoline is necessary to meet projected shortfalls which cannot otherwise be compensated for);
(b) The refiner, importer, or oxygenate blender exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity;
(c) The refiner, importer, or oxygenate blender can show how the requirements for reformulated gasoline will be expeditiously achieved;
(d) The refiner, importer, or oxygenate blender agrees to make up air quality detriment associated with the nonconforming gasoline, where practicable; and
(e) The refiner, importer, or oxygenate blender pays to the U.S. Treasury an amount equal to the economic benefit of the nonconformity minus the amount expended, pursuant to paragraph (d) of this section, in making up the air quality detriment.

§ 80.74 Record keeping requirements.

All parties in the gasoline distribution network, as described in this section, shall maintain records containing the information as required in this section. These records shall be retained for a period of five years from the date of creation, and shall be delivered to the Administrator of EPA or to the Administrator's authorized representative upon request.
(a) *All regulated parties.* Any refiner, importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale-purchaser who sells, offers for sale, dispenses, supplies, offers for supply, stores, transports, or causes the transportation of any reformulated gasoline or RBOB, shall maintain records containing the following information:
(1) The product transfer documentation for all reformulated gasoline or RBOB for which the party is the transferor or transferee; and
(2) For any sampling and testing on RBOB or reformulated gasoline:
(i) The location, date, time, and storage tank or truck identification for each sample collected;
(ii) The identification of the person who collected the sample and the person who performed the testing;
(iii) The results of the tests; and
(iv) The actions taken to stop the sale of any gasoline found not to be in compliance, and the actions taken to identify the cause of any noncompliance and prevent future instances of noncompliance.
(b) *Refiners and importers.* In addition to other requirements of this section, any refiner and importer shall, for all reformulated gasoline and RBOB produced or imported, maintain records containing the following information:
(1) Results of the tests to determine reformulated gasoline properties and characteristics specified in § 80.65;
(2) Results of the tests for the presence of the marker specified in § 80.82;
(3) The volume of gasoline associated with each of the above test results using the method normally employed at the refinery or import facility for this purpose;
(4) In the case of RBOB:
(i) The results of tests to ensure that, following blending, RBOB meets applicable standards; and
(ii) Each contract with each oxygenate blender to whom the refiner or importer transfers RBOB; or
(iii) Compliance calculations described in § 80.69(a)(8) based on an assumed addition of oxygenate;
(5) In the case of any refinery or importer subject to the simple model standards, the calculations used to determine the 1990 baseline levels of sulfur, T–90, and olefins, and the calculations used to determine compliance with the standards for these parameters; and
(6) In the case of any refinery or importer subject to the complex model standards before January 1, 1998, the calculations used to determine the baseline levels of VOC, toxics, and NO_x emissions performance.
(c) *Refiners, importers and oxygenate blenders of averaged gasoline.* In addition to other requirements of this section, any refiner, importer, and oxygenate blender who produces or imports any reformulated gasoline for which compliance with one or more applicable standard is determined on average shall maintain records containing the following information:
(1) The calculations used to determine compliance with the relevant standards on average, for each averaging period and for each quantity of gasoline for which standards must be separately achieved; and
(2) For any credits bought, sold, traded or transferred pursuant to § 80.67(h), the dates of the transactions, the names and EPA registration numbers of the parties involved, and the number(s) and type(s) of credits transferred.
(d) *Oxygenate blenders.* In addition to other requirements of this section, any oxygenate blender who blends any oxygenate with any RBOB shall, for each occasion such terminal storage tank blending occurs, maintain records containing the following information:
(i) The date, time, location, and identification of the blending tank or truck in which the blending occurred;
(ii) The volume and oxygenate requirements of the RBOB to which oxygenate was added; and
(iii) The volume, type, and purity of the oxygenate which was added, and documents which show the source(s) of the oxygenate used.
(e) *Distributors who dispense RBOB into trucks.* In addition to other requirements of this section, any distributor who dispenses any RBOB into a truck used for delivering gasoline to retail outlets shall, for each occasion RBOB is dispensed into such a truck, obtain records identifying:
(1) The name and EPA registration number of the oxygenate blender that received the RBOB; and
(2) The volume and oxygenate requirements of the RBOB dispensed.
(f) *Conventional gasoline requirement.* In addition to other requirements of this section, any refiner and importer shall, for all conventional gasoline produced or imported, maintain records showing the blending of the marker required under § 80.82 into conventional gasoline, and the results of the tests showing the concentration of this marker subsequent to its addition.
(g) *Retailers before January 1, 1998.* Prior to January 1, 1998 any retailer that sells or offers for sale any reformulated gasoline shall maintain at each retail outlet the product transfer documentation for the most recent three deliveries to the retail outlet of each grade of reformulated gasoline sold or offered for sale at the retail outlet, and shall make such documentation available to any person conducting any gasoline compliance survey pursuant to § 80.68.

§ 80.75 Reporting requirements.

Any refiner, importer, and oxygenate blender shall report as specified in this section, and shall report such other information as the Administrator may require.

(a) *Quarterly reports for reformulated gasoline.* Any refiner or importer that produces or imports any reformulated gasoline or RBOB, and any oxygenate blender that produces reformulated gasoline meeting the oxygen standard on average, shall submit quarterly reports to the Administrator for each refinery or oxygenate blending facility at which such reformulated gasoline or RBOB was produced and for all such reformulated gasoline or RBOB imported by each importer.

(1) The quarterly reports shall be for all such reformulated gasoline or RBOB produced or imported during the following time periods:

(i) The first quarterly report shall include information for reformulated gasoline or RBOB produced or imported from January 1 through March 31, and shall be submitted by May 31 of each year beginning in 1995;

(ii) The second quarterly report shall include information for reformulated gasoline or RBOB produced or imported from April 1 through June 30, and shall be submitted by August 31 of each year beginning in 1995;

(iii) The third quarterly report shall include information for reformulated gasoline or RBOB produced or imported from July 1 through September 30, and shall be submitted by November 30 of each year beginning in 1995; and

(iv) The fourth quarterly report shall include information for reformulated gasoline or RBOB produced or imported from October 1 through December 31, and shall be submitted by the last day of February of each year beginning in 1996.

(2) The following information shall be included in each quarterly report for each batch of reformulated gasoline or RBOB which is included under paragraph (a)(1) of this section:

(i) The batch number;

(ii) The date of production;

(iii) The volume of the batch;

(iv) The grade of gasoline produced (i.e., premium, mid-grade, or regular);

(v) For any refiner or importer:

(A) Each designation of the gasoline, pursuant to § 80.65; and

(B) The properties, pursuant to §§ 80.65 and 80.66;

(vi) For any importer, the PADD in which the import facility is located; and

(vii) For any oxygenate blender, the oxygen content.

(3) Information pertaining to gasoline produced or imported during 1994 shall be included in the first quarterly report in 1995.

(b) *RVP averaging reports.* (1) Any refiner or importer that produced or imported any reformulated gasoline or RBOB under the simple model that was to meet RVP standards on average ("averaged reformulated gasoline") shall submit to the Administrator, with the third quarterly report, a report for each refinery or importer for such averaged reformulated gasoline or RBOB produced or imported during the previous RVP averaging period. This information shall be reported separately for the following categories:

(i) Gasoline or RBOB which is designated as VOC-controlled intended for areas in VOC-Control Region 1; and

(ii) Gasoline or RBOB which is designated as VOC-controlled intended for VOC-Control Region 2.

(2) The following information shall be reported:

(i) The total volume of averaged reformulated gasoline or RBOB in gallons;

(ii) The compliance total value for RVP; and

(iii) The actual total value for RVP.

(c) *VOC emissions performance averaging reports.* (1) Any refiner or importer that produced or imported any reformulated gasoline or RBOB under the complex model that was to meet the VOC emissions performance standards on average ("averaged reformulated gasoline") shall submit to the Administrator, with the third quarterly report, a report for each refinery or importer for such averaged reformulated gasoline produced or imported during the previous VOC averaging period. This information shall be reported separately for the following categories:

(i) Gasoline or RBOB which is designated as VOC-controlled intended for areas in VOC-Control Region 1; and

(ii) Gasoline or RBOB which is designated as VOC-controlled intended for VOC-Control Region 2.

(2) The following information shall be reported:

(i) The total volume of averaged reformulated gasoline or RBOB in gallons;

(ii) The compliance total value for VOC emissions performance; and

(iii) The actual total value for VOC emissions performance.

(d) *Benzene content averaging reports.* (1) Any refiner or importer that produced or imported any reformulated gasoline or RBOB that was to meet the benzene content standards on average ("averaged reformulated gasoline") shall submit to the Administrator, with the fourth quarterly report, a report for each refinery or importer for such averaged reformulated gasoline that was produced or imported during the previous toxics averaging period.

(2) The following information shall be reported:

(i) The volume of averaged reformulated gasoline or RBOB in gallons;

(ii) The compliance total content of benzene;

(iii) The actual total content of benzene;

(iv) The number of benzene credits generated as a result of actual total benzene being less than compliance total benzene;

(v) The number of benzene credits required as a result of actual total benzene being greater than compliance total benzene;

(vi) The number of benzene credits transferred to another refinery or importer; and

(vii) The number of benzene credits obtained from another refinery or importer.

(e) *Toxics emissions performance averaging reports.* (1) Any refiner or importer that produced or imported any reformulated gasoline or RBOB that was to meet the toxics emissions performance standards on average ("averaged reformulated gasoline") shall submit to the Administrator, with the fourth quarterly report, a report for each refinery or importer for such averaged reformulated gasoline that was produced or imported during the previous toxics averaging period.

(2) The following information shall be reported:

(i) The volume of averaged reformulated gasoline or RBOB in gallons;

(ii) The compliance value for toxics emissions performance; and

(iii) The actual value for toxics emissions performance.

(f) *Oxygen averaging reports.* (1) Any refiner, importer, or oxygenate blender that produced or imported any reformulated gasoline that was to meet the oxygen standards on average ("averaged reformulated gasoline") shall submit to the Administrator, with the fourth quarterly report, a report for each refinery and oxygenate blending facility at which such averaged reformulated gasoline was produced and for all such averaged reformulated gasoline imported by each importer during the previous oxygen averaging period.

(2)(i) The following information shall be included in each report required by paragraph (f)(1) of this section:

(A) The total volume of averaged RBOB in gallons;

(B) The total volume of averaged reformulated gasoline in gallons;

(C) The compliance total content for oxygen;

(D) The actual total content for oxygen;

(E) The number of oxygen credits generated as a result of actual total oxygen being greater than compliance total oxygen;

(F) The number of oxygen credits required as a result of actual total oxygen being less than compliance total oxygen;

(G) The number of oxygen credits transferred to another refinery, importer, or oxygenate blending facility; and

(H) The number of oxygen credits obtained from another refinery, importer, or oxygenate blending facility.

(ii) The information required by paragraph (f)(2)(i) of this section shall be reported separately for the following categories:

(A) For gasoline subject to the simple model standards:

(*1*) Gasoline designated as VOC-controlled and non-oxygenated fuels program reformulated gasoline (OPRG);

(*2*) Gasoline which is designated as VOC-controlled and non-OPRG;

(*3*) Gasoline which is designated as non-VOC-controlled and OPRG; and

(*4*) Gasoline which is designated as non-VOC-controlled and non-OPRG; and

(B) For gasoline subject to the Phase I or Phase II complex model standards:

(*1*) Gasoline which is designated as OPRG; and

(*2*) Gasoline which is designated as non-OPRG.

(iii) The results of the compliance calculations required in § 80.67(f) shall also be included in each report required by paragraph (f)(1) of this section, for each of the following categories:

(A) All reformulated gasoline;

(B) Gasoline which is designated as non-OPRG; and

(C) For gasoline subject to the simple model standards, gasoline which is designated as VOC-controlled.

(g) *NO_x emissions performance averaging reports.* (1) Any refiner or importer that produced or imported any reformulated gasoline or RBOB that was to meet the NO_x emissions performance standard on average ("averaged reformulated gasoline") shall submit to the Administrator, with the fourth quarterly report, a report for each refinery or importer for such averaged reformulated gasoline that was produced or imported during the previous NO_x averaging period.

(2) The following information shall be reported:

(i) The volume of averaged reformulated gasoline or RBOB in gallons;

(ii) The compliance value for NO_x emissions performance; and

(iii) The actual value for NO_x emissions performance.

(3) The information required by paragraph (g)(2) of this section shall be reported separately for the following categories:

(i) Gasoline and RBOB which is designated as VOC-controlled; and

(ii) Gasoline and RBOB which is not designated as VOC-controlled.

(h) *Credit transfer reports.* (1) As an additional part of the fourth quarterly report required by this section, any refiner, importer, and oxygenate blender shall, for each refinery, importer, or oxygenate blending facility, supply the following information for any oxygen or benzene credits that are transferred from or to another refinery, importer, or oxygenate blending facility:

(i) The names, EPA-assigned registration numbers and facility identification numbers of the transferor and transferee of the credits;

(ii) The number(s) and type(s) of credits that were transferred; and

(iii) The date(s) of transaction(s).

(2) For purposes of this paragraph (h), oxygen credit transfers shall be reported separately for each of the following oxygen credit types:

(i) For gasoline subject to the simple model standards:

(A) VOC controlled, oxygenated fuels program reformulated gasoline (OPRG) oxygen credits;

(B) VOC controlled, non-OPRG oxygen credits;

(C) Non-VOC controlled, OPRG oxygen credits; and

(D) Non-VOC controlled, non-OPRG oxygen credits; and

(ii) For gasoline subject to the Phase I or Phase II complex model standards:

(A) OPRG oxygen credits; and

(B) Non-OPRG oxygen credits.

(i) *Covered areas of gasoline use report.* Any refiner or oxygenate blender that produced or imported any reformulated gasoline that was to meet any reformulated gasoline standard on average ("averaged reformulated gasoline") shall, for each refinery and oxygenate blending facility at which such averaged reformulated gasoline was produced submit to the Administrator, with the fourth quarterly report, a report that contains the identity of each covered area that was supplied with any averaged reformulated gasoline produced at each refinery or blended by each oxygenate blender during the previous year.

(j) *Additional reporting requirement for certain importers.* In the case of any importer to whom different standards apply for gasoline imported at different facilities, by operation of § 80.41(m)(2)(iii), such importer shall submit separate reports for gasoline imported into facilities subject to different standards.

(k) *Reporting requirements for early use of the complex model.* Any refiner for any refinery, or any importer, that elects to be subject to complex model standards under § 80.41(i)(1) shall report such election in writing to the Administrator no later than sixty days prior to the beginning of the calendar year during which such standards would apply. This report shall include the refinery's or importer's baseline values for VOC, NO_x, and toxics emissions performance, in milligrams per mile.

(l) *Reports for per-gallon compliance gasoline.* In the case of reformulated gasoline or RBOB for which compliance with each of the standards set forth in § 80.41 is achieved on a per-gallon basis, the refiner, importer, or oxygenate blender shall submit to the Administrator, by the last day of February of each year beginning in 1996, a report of the volume of each designated reformulated gasoline or RBOB produced or imported during the previous calendar year for which compliance is achieved on a per-gallon basis, and a statement that each gallon of this reformulated gasoline or RBOB met the applicable standards.

(m) *Reports of compliance audits.* Any refiner, importer, and oxygenate blender shall cause to be submitted to the Administrator, by May 31 of each year, the report of the compliance audit required by § 80.65(h).

(n) *Report submission.* The reports required by this section shall be:

(1) Submitted on forms and following procedures specified by the Administrator; and

(2) Signed and certified as correct by the owner or a responsible corporate officer of the refiner, importer, or oxygenate blender.

§ 80.76 Registration of refiners, importers or oxygenate blenders.

(a) Registration with the Administrator of EPA is required for any refiner and importer, and any oxygenate blender that produces any reformulated gasoline.

(b) Any person required to register shall do so by November 1, 1994, or not later than three months in advance of the first date that such person will produce or import reformulated gasoline or RBOB, or conventional gasoline or applicable blendstocks, whichever is later.

(c) Registration shall be on forms prescribed by the Administrator, and shall include the following information:

(1) The name, business address, contact name, and telephone number of the refiner, importer, or oxygenate blender;

(2) The address and physical location where the documents which are required to be retained by § 80.74 or 80.104 will be kept by the refiner, importer, or oxygenate blender; and

(3) For each separate refinery and oxygenate blending facility:

(i) The facility name, physical location, contact name, telephone number, type of facility, and whether the facility will produce reformulated gasoline, RBOB, conventional gasoline or applicable blendstocks;

(ii) The identity of each covered area which is supplied with any reformulated gasoline or RBOB produced at the refinery or blending facility or imported by the importer; and

(iii) The name, address, contact name and telephone number of the independent laboratory used to meet the independent analysis requirements of § 80.65(f).

(d) EPA will supply a registration number to each refiner, importer, and oxygenate blender, and a facility registration number for each refinery and oxygenate blending facility that is identified, which shall be used in all reports to the Administrator.

(e)(1) Any refiner, importer, or oxygenate blender shall submit updated registration information to the Administrator within thirty days of any occasion when the registration information previously supplied becomes incomplete or inaccurate; except that

(2) EPA must be notified in writing of any change in designated independent laboratory at least thirty days in advance of such change.

§ 80.77 Product transfer documentation.

On each occasion when any person transfers custody or title to any reformulated gasoline or RBOB, other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee documents which include the following information:

(a) The name and address of the transferor;

(b) The name and address of the transferee;

(c) The volume of gasoline which is being transferred;

(d) The location of the gasoline at the time of the transfer;

(e) The date of the transfer;

(f) The proper identification of the gasoline as conventional or reformulated;

(g) In the case of reformulated gasoline or RBOB:

(1) The proper identification as:

(i)(A) VOC-controlled for VOC-Control Region 1; or VOC-controlled for VOC-Control Region 2; or Not VOC-controlled; or

(B) In the case of gasoline or RBOB that is VOC-controlled for VOC-Control Region 1, the gasoline may be identified as suitable for use either in VOC-Control Region 1 or VOC-Control Region 2;

(ii) Oxygenated fuels program reformulated gasoline; or Not oxygenated fuels program reformulated gasoline; and

(iii) Prior to January 1, 1998, certified under the simple model standards or certified under the complex model standards; and

(2) The minimum and/or maximum standards with which the gasoline or RBOB conforms for:

(i) Benzene content;

(ii) Except for RBOB, oxygen content;

(iii) In the case of gasoline subject to the simple model standards, RVP;

(iv) In the case of gasoline subject to the complex model standards:

(A) Prior to January 1, 1998, the VOC and NO_x emissions performance minimums in milligrams per mile; and

(B) Beginning on January 1, 1998, the VOC and NO_x emissions performance reduction percentage minimums;

(h) Prior to January 1, 1998, in the case of gasoline or RBOB subject to the complex model standards:

(1) The name and EPA registration number of the refinery at which the gasoline was produced, or importer that imported the gasoline; and

(2) Instructions that the gasoline or RBOB may not be combined with any other gasoline or RBOB that was produced at any other refinery or was imported by any other importer;

(i) In the case of reformulated gasoline blendstock for which oxygenate blending is intended:

(1) Identification of the product as RBOB and not reformulated gasoline;

(2) The designation of the RBOB as suitable for blending with:

(A) Any-oxygenate;

(B) Ether-only; or

(C) Other specified oxygenate type(s) and amount(s); and

(3) The oxygenate type(s) and amount(s) which the RBOB requires in order to meet the properties claimed by the refiner or importer of the RBOB;

(4) Instructions that the RBOB may not be combined with any other RBOB except other RBOB having the same requirements for oxygenate type(s) and amount(s), or, prior to blending, with reformulated gasoline; and

(j) In the case of transferrers or transferees who are refiners, importers or oxygenate blenders, the EPA-assigned registration number of those persons.

§ 80.78 Controls and prohibitions on reformulated gasoline.

(a) *Prohibited activities.* (1) No person may manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline represented as reformulated and intended for sale or use in any covered area:

(i) Unless each gallon of such gasoline meets the applicable benzene maximum standard specified in § 80.41;

(ii) Unless each gallon of such gasoline meets the applicable oxygen content:

(A) Minimum standard specified in § 80.41; and

(B) In the case of gasoline subject to simple model standards, maximum standard specified in § 80.41;

(iii) Unless each gallon is properly designated as oxygenated fuels program reformulated gasoline, within any oxygenated gasoline program control areas during the oxygenated gasoline control period;

(iv) Unless the product transfer documentation for such gasoline complies with the requirements in § 80.77; and

(v) During the period May 1 through September 15 for all persons except retailers and wholesale purchaser-consumers, and during the period June 1 through September 15 for all persons including retailers and wholesale purchaser-consumers:

(A) Unless each gallon of such gasoline is VOC-controlled for the proper VOC Control Region, except that gasoline designated for VOC-Control Region 1 may be used in VOC-Control Region 2;

(B) Unless each gallon of such gasoline that is subject to simple model standards has an RVP which is below the applicable RVP maximum specified in § 80.41;

(C) Unless each gallon of such gasoline that is subject to complex model standards has a VOC and NO_x emissions reduction percentage which is above the applicable minimum specified in § 80.41.

(2) No refiner or importer may produce or import any gasoline represented as reformulated or RBOB, and intended for sale or use in any covered area:

(i) Unless such gasoline meets the definition of reformulated gasoline or RBOB; and

(ii) Unless the properties of such gasoline or RBOB correspond to the product transfer documents.

(3) No person may manufacture and sell or distribute, or offer for sale or distribution, dispense, supply, or offer for supply, store, transport or cause the transportation of gasoline represented as conventional which does not contain at least the minimum concentration of the conventional gasoline marker specified in § 80.82.

(4) Gasoline shall be presumed to be intended for sale or use in a covered area unless:

(i) Product transfer documentation as described in § 80.77 accompanying such gasoline clearly indicates the gasoline is intended for sale and use only outside any covered area; or

(ii) The gasoline is contained in the storage tank of a retailer or wholesale purchaser-consumer outside any covered area.

(5) No person may combine any reformulated gasoline with any non-oxygenate blendstock except:

(i) A person that meets each requirement specified for a refiner under this subpart; and

(ii) The blendstock that is added to reformulated gasoline meets all reformulated gasoline standards without regard to the properties of the reformulated gasoline to which the blendstock is added.

(6) No person may add any oxygenate to reformulated gasoline, except that oxygenate may be added to reformulated gasoline that is designated as OPRG provided that such gasoline is used in an oxygenated fuels program control area during an oxygenated fuels control period.

(7) No person may combine any reformulated gasoline blendstock for oxygenate blending with any other gasoline, blendstock, or oxygenate except:

(i) Oxygenate of the type and amount (or within the range of amounts) specified by the refiner or importer at the time the RBOB was produced or imported; or

(ii) Other RBOB for which the same oxygenate type and amount (or range of amounts) was specified by the refiner or importer.

(8) No person may combine any VOC-controlled reformulated gasoline that is produced using ethanol with any VOC-controlled reformulated gasoline that is produced using any other oxygenate during the period January 1 through September 15.

(9) Prior to January 1, 1998:

(i) No person may combine any reformulated gasoline or RBOB that is subject to the simple model standards with any reformulated gasoline or RBOB that is subject to the complex model standards, except that such gasolines may be combined at a retail outlet or wholesale purchaser-consumer facility;

(ii) No person may combine any reformulated gasoline subject to the complex model standards that is produced at any refinery or is imported by any importer with any other reformulated gasoline that is produced at a different refinery or is imported by a different importer, unless the other refinery or importer has an identical baseline for meeting complex model standards during this period; and

(iii) No person may combine any RBOB subject to the complex model standards that is produced at any refinery or is imported by any importer with any RBOB that is produced at a different refinery or is imported by a different importer, unless the other refinery or importer has an identical baseline for meeting complex model standards during this period.

(10) No person may combine any reformulated gasoline with any conventional gasoline and sell the resulting mixture as reformulated gasoline.

(b) *Liability.* Liability for violations of paragraph (a) of this section shall be determined according to the provisions of § 80.79.

(c) *Determination of compliance.* Compliance with the standards listed in paragraph (a) of this section shall be determined by use of one of the testing methodologies specified in § 80.46, except that where test results using the testing methodologies specified in § 80.46 are not available or where such test results are available but are in question, EPA may establish noncompliance with standards using any information, including the results of testing using methods that are not included in § 80.46.

(d) *Dates controls and prohibitions begin.* The controls and prohibitions specified in paragraph (a) of this section apply at any location other than retail outlets and wholesale purchaser-consumer facilities on or after December 1, 1994, at any location on or after January 1, 1995.

§ 80.79 Liability for violations of the prohibited activities.

(a) *Persons liable.* Where the gasoline contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any refiner, importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer is found in violation of the prohibitions described in § 80.78(a), the following persons shall be deemed in violation:

(1) Each refiner, importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer who owns, leases, operates, controls or supervises the facility where the violation is found;

(2) Each refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at the facility where the violation is found;

(3) Each refiner, importer, oxygenate blender, distributor, and reseller who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation; and

(4) Each carrier who dispensed, supplied, stored, or transported any gasoline which is in the storage tank containing gasoline found to be in violation, provided that EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that the carrier caused the violation.

(b) *Defenses for prohibited activities.* (1) In any case in which a refiner, importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer would be in violation under paragraph (a) of this section, it shall be deemed not in violation if it can demonstrate:

(i) That the violation was not caused by the regulated party or its employee or agent;

(ii) That product transfer documents account for all of the gasoline in the storage tank found in violation and indicate that the gasoline met relevant requirements; and

(iii)(A) That it has conducted a quality assurance sampling and testing program, as described in paragraph (c) of this section; except that

(B) A carrier may rely on the quality assurance program carried out by another party, including the party that owns the gasoline in question, provided that the quality assurance program is carried out properly.

(2)(i) Where a violation is found at a facility which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by paragraph (b)(1) of this section, that the violation was caused by:

(A) An act in violation of law (other than the Act or this part), or an act of sabotage or vandalism;

(B) The action of any reseller, distributor, oxygenate blender, carrier,

or a retailer or wholesale purchaser-consumer supplied by any of these persons, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite periodic sampling and testing by the refiner to ensure compliance with such contractual obligation; or

(C) The action of any carrier or other distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner which are reasonably calculated to prevent such action.

(ii) In this paragraph (b), to show that the violation "was caused" by any of the specified actions the party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(c) *Quality assurance program.* In order to demonstrate an acceptable quality assurance program for reformulated gasoline at all points in the gasoline distribution network, other than at retail outlets and wholesale purchaser-consumer facilities, a party must present evidence:

(1) Of a periodic sampling and testing program to determine if the applicable maximum and/or minimum standards for oxygen, benzene, RVP, or VOC or NO_x emission performance are met; and

(2) That on each occasion when gasoline is found in noncompliance with one of the requirements referred to in paragraph (c)(1) of this section:

(i) The party immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of the violating product; and

(ii) The party promptly remedies the violation (such as by removing the violating product or adding more complying product until the applicable standards are achieved).

§ 80.80 Penalties.

(a) Any person that violates any requirement or prohibition of subpart D, E, or F of this part shall be liable to the United States for a civil penalty of not more than the sum of $25,000 for every day of each such violation and the amount of economic benefit or savings resulting from each such violation.

(b) Any violation of a standard for average compliance during any averaging period, or for per-gallon compliance for any batch of gasoline, shall constitute a separate violation for each and every standard that is violated.

(c) Any violation of any standard based upon a multi-day averaging period shall constitute a separate day of violation for each and every day in the averaging period. Any violation of any credit creation or credit transfer requirement shall constitute a separate day of violation for each and every day in the averaging period.

(d)(1)(i) Any violation of any per-gallon standard or of any per-gallon minimum or per-gallon maximum, other than the standards specified in paragraph (e) of this section, shall constitute a separate day of violation for each and every day such gasoline giving rise to such violations remains any place in the gasoline distribution system, beginning on the day that the gasoline that violates such per-gallon standard is produced or imported and distributed and/or offered for sale, and ending on the last day that any such gasoline is offered for sale or is dispensed to any ultimate consumer for use in any motor vehicle; unless

(ii) The violation is corrected by altering the properties and characteristics of the gasoline giving rise to the violations and any mixture of gasolines that contains any of the gasoline giving rise to the violations such that the said gasoline or mixture of gasolines has the properties and characteristics that would have existed if the gasoline giving rise to the violations had been produced or imported in compliance with all per-gallon standards.

(2) For the purposes of this paragraph (d), the length of time the gasoline in question remained in the gasoline distribution system shall be deemed to be twenty-five days; unless the respective party or EPA demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the gasoline giving rise to the violations remained any place in the gasoline distribution system for fewer than or more than twenty-five days.

(e)(1) Any reformulated gasoline that is produced or imported and offered for sale and for which the requirements to determine the properties and characteristics under § 80.65(f) is not met, or any conventional gasoline for which the refiner or importer does not sample and test to determine the relevant properties, shall be deemed:

(i)(A) Except as provided in paragraph (e)(1)(i)(B) of this section to have the following properties:

Sulfur content—970 ppm
Benzene content—5 vol %
RVP (summer)—11 psi
50% distillation—250 °F
90% distillation—375 °F
Oxygen content—0 wt %
Aromatics content—50 vol %
Olefins content—26 vol %

(B) To have the following properties in paragraph (e)(1)(i)(A) of this section unless the respective party or EPA demonstrates by reasonably specific showings, by direct or circumstantial evidence, different properties for the gasoline giving rise to the violations; and

(ii) In the case of reformulated gasoline, to have been designated as meeting all applicable standards on a per-gallon basis.

(2) For the purposes of paragraph (e)(1) of this section, any refiner or importer that fails to meet the independent analysis requirements of § 80.65(f) may not use the results of sampling and testing that is carried out by that refiner or importer as direct or circumstantial evidence of the properties of the gasoline giving rise to the violations, unless this failure was not caused by the refiner or importer.

(f) Any violation of any affirmative requirement or prohibition not included in paragraph (c) or (d) of this section shall constitute a separate day of violation for each and every day such affirmative requirement is not properly accomplished, and/or for each and every day the prohibited activity continues. For those violations that may be ongoing under subparts D, E, and F of this part, each and every day the prohibited activity continues shall constitute a separate day of violation.

§ 80.81 Enforcement exemptions for California gasoline.

(a)(1) The requirements of subparts D, E, and F of this part are modified in accordance with the provisions contained in this section in the case of California gasoline.

(2) For the purposes of this section, "California gasoline" means any gasoline that is sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California and that:

(i) Is manufactured within the State of California;

(ii) Is imported into the State of California from outside the United States; or

(iii) Is imported into the State of California from inside the United States and that is manufactured at a refinery that does not produce reformulated gasoline.

(b)(1) Any refiner, importer, or oxygenate blender of gasoline that is sold, intended for sale, or made available for sale as a motor fuel in the State of California is, with regard to such gasoline, exempt from the compliance survey provisions contained in § 80.68.

(2) Any refiner, importer, or oxygenate blender of California gasoline is, with regard to such gasoline, exempt from the independent analysis requirements contained in § 80.65(f).

(3) Any refiner, importer, or oxygenate blender of California gasoline that elects to meet any benzene content, oxygen content, or toxics emission reduction standard specified in § 80.41 on average for any averaging period specified in § 80.67 that is in part before March 1, 1996, and in part subsequent to such date, shall, with regard to such gasoline that is produced or imported prior to such date, demonstrate compliance with each of the standards specified in § 80.41 for each of the following averaging periods in lieu of those specified in § 80.67:

(i) January 1 through December 31, 1995; and

(ii) March 1, 1995, through February 29, 1996.

(4) The compliance demonstration required by paragraph (b)(3)(ii) of this section shall be submitted no later than May 31, 1996, along with reports required to be submitted under § 80.75(a)(1).

(c) Any refiner, importer, or oxygenate blender of California gasoline that is manufactured or imported subsequent to March 1, 1996, and that meets the requirements of the California Phase 2 reformulated gasoline regulations, as set forth in Title 13, California Code of Regulations, sections 2260 et seq., is, with regard to such gasoline, exempt from the following requirements (in addition to the requirements specified in paragraph (b) of this section):

(1) The parameter value reconciliation requirements contained in § 80.65(e)(2);

(2) The designation of gasoline requirements contained in § 80.65(d);

(3) The reformulated gasoline and RBOB compliance requirements contained in § 80.65(c);

(4) The marking of conventional gasoline requirements contained in §§ 80.65(g) and 80.82;

(5) The annual compliance audit requirements contained in § 80.65(h);

(6) The downstream oxygenate blending requirements contained in § 80.69;

(7) The record keeping requirements contained in §§ 80.74 and 80.104, except that records required to be maintained under Title 13, California Code of Regulations, section 2270, shall be maintained for a period of five years from the date of creation and shall be delivered to the Administrator or to the Administrator's authorized representative upon request;

(8) The reporting requirements contained in §§ 80.75 and 80.105;

(9) The product transfer documentation requirements contained in § 80.77; and

(10) The compliance attest engagement requirements contained in subpart F of this part.

(d) Any refiner, importer, or oxygenate blender that produces or imports gasoline that is sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California subsequent to March 1, 1996, shall demonstrate compliance with the standards specified in §§ 80.41 and 80.90 by excluding the volume and properties of such gasoline from all conventional gasoline and reformulated gasoline that it produces or imports that is not sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California subsequent to such date. The exemption provided in this section does not exempt any refiner or importer from demonstrating compliance with such standards for all gasoline that it produces or imports.

(e)(1) The exemption provisions contained in paragraphs (b)(2), (b)(3), and (c) of this section shall not apply under the circumstances set forth in paragraphs (e)(2) and (e)(3) of this section.

(2)(i) Such exemption provisions shall not apply to any refiner, importer, or oxygenate blender of California gasoline if any gasoline formulation that it produces or imports is certified under Title 13, California Code of Regulations, section 2265 or section 2266, unless such refiner, importer, or oxygenate blender within 30 days of the issuance of such certification:

(A) Notifies the Administrator of such certification;

(B) Submits to the Administrator copies of the applicable certification order issued by the State of California and of the application for certification submitted by the regulated party to the State of California; and

(C) Submits to the Administrator a written demonstration that the certified gasoline formulation meets each of the complex model per-gallon standards specified in § 80.41(c).

(ii) If the Administrator determines that the written demonstration submitted under paragraph (e)(2)(i)(C) of this section does not demonstrate that the certified gasoline formulation meets each of the complex model per-gallon standards specified in § 80.41(c), the Administrator shall provide notice to the party (by first class mail) of such determination and of the date on which the exemption provisions specified in paragraph (e)(1) of this section shall no longer be applicable, which date shall be no earlier than 90 days after the date of the Administrator's notification.

(3)(i) Such exemption provisions shall not apply to any refiner, importer, or oxygenate blender of California gasoline who has been assessed a civil, criminal or administrative penalty for a violation of subpart D, E or F of this part or for a violation of the California Phase 2 reformulated gasoline regulations set forth in Title 13, California Code of Regulations, sections 2260 et seq., effective 90 days after the date of final agency or district court adjudication of such penalty assessment.

(ii) Any refiner, importer, or oxygenate blender subject to the provisions of paragraph (e)(3)(i) of this section may submit a petition to the Administrator for relief, in whole or in part, from the applicability of such provisions, for good cause. Good cause may include a showing that the violation for which a penalty was assessed was not a substantial violation of the federal or California reformulated gasoline regulations.

(f) In the case of any gasoline that is sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California subsequent to March 1, 1996, any person that manufactures, sells, offers for sale, dispenses, supplies, offers for supply, stores, transports, or causes the transportation of such gasoline is, with regard to such gasoline, exempt from the following prohibited activities provisions:

(1) The oxygenated fuels provisions contained in § 80.78(a)(1)(iii);

(2) The product transfer provisions contained in § 80.78(a)(1)(iv);

(3) The oxygenate blending provisions contained in § 80.78(a)(7); and

(4) The segregation of simple and complex model certified gasoline provision contained in § 80.78(a)(9).

(g)(1) Any refiner that operates a refinery located outside the State of California at which California gasoline (as defined in paragraph (a)(2)(iii) of this section) is produced shall, with regard to such gasoline, provide to any person to whom custody or title of such gasoline is transferred, and each transferee shall provide to any subsequent transferee, documents which include the following information:

(i) The name and address of the transferor;

(ii) The name and address of the transferee;

(iii) The volume of gasoline which is being transferred;

(iv) The location of the gasoline at the time of the transfer;

(v) The date and time of the transfer;

(vi) The identification of the gasoline as California gasoline; and

(vii) In the case of transferrors and transferees who are refiners, importers or oxygenate blenders, the EPA-assigned registration number of such persons.

(2) Each refiner and transferee of such gasoline shall maintain copies of the product transfer documents required to be provided by paragraph (g)(1) of this section for a period of five years from the date of creation and shall deliver such documents to the Administrator or to the Administrator's authorized representative upon request.

(h) For purposes of the batch sampling and analysis requirements contained in § 80.65(e)(1), any refiner, importer or oxygenate blender of California gasoline may use a sampling and/or analysis methodology prescribed in Title 13, California Code of Regulations, sections 2260 et seq., in lieu of any applicable methodology specified in § 80.66.

(i) The exemption provisions contained in this section shall not be applicable after December 31, 1999.

§ 80.82 Conventional gasoline marker [Reserved]

§§ 80.83–80.89 [Reserved]

Subpart E—Anti-Dumping

§ 80.90 Conventional gasoline baseline emissions determination.

(a) *Annual average baseline values.* For any facility of a refiner or importer of conventional gasoline, the annual average baseline values of the facility's exhaust benzene emissions, exhaust toxics emissions, NO_x emissions, sulfur, olefins and T90 shall be determined using the following equation:

$$\text{BASELINE} = \frac{\text{SUMRBASE} \times \text{SUMRVOL} + \text{WNTRBASE} \times \text{WNTRVOL}}{\text{SUMRVOL} + \text{WNTRVOL}}$$

where

BASELINE=annual average baseline value of the facility,
SUMRBASE=summer baseline value of the facility,
SUMRVOL=summer baseline gasoline volume of the facility, per § 80.91,
WNTRBASE=winter baseline value of the facility,
WNTRVOL=winter baseline gasoline volume of the facility, per § 80.91.

(b) *Baseline exhaust benzene emissions—simple model.* (1) Simple model exhaust benzene emissions of conventional gasoline shall be determined using the following equation:

$$\text{EXHBEN} = (1.884 + 0.949 \times BX + 0.113 \times (AR - BZ))$$

where

EXHBEN=exhaust benzene emissions,
BZ=fuel benzene value in terms of volume percent (per § 80.91), and
AR=fuel aromatics value in terms of volume percent (per § 80.91).

(2) The simple model annual average baseline exhaust benzene emissions for any facility of a refiner or importer of conventional gasoline shall be determined as follows:

(i) The simple model baseline exhaust benzene emissions shall be determined separately for summer and winter using the facility's oxygenated individual baseline fuel parameter values for summer and winter (per § 80.91), respectively, in the equation specified in paragraph (b)(1) of this section.

(ii) The simple model annual average baseline exhaust benzene emissions of the facility shall be determined using the emissions values determined in paragraph (b)(2)(i) of this section in the equation specified in paragraph (a) of this section.

(c) *Baseline exhaust benzene emissions—complex model.* The complex model annual average baseline exhaust benzene emissions for any facility of a refiner or importer of conventional gasoline shall be determined as follows:

(1) The summer and winter complex model baseline exhaust benzene emissions shall be determined separately using the facility's oxygenated individual baseline fuel parameter values for summer and winter (per § 80.91), respectively, in the appropriate complex model for exhaust benzene emissions described in § 80.45.

(2) The complex model annual average baseline exhaust benzene emissions of the facility shall be determined using the emissions values determined in paragraph (c)(1) of this section in the equation specified in paragraph (a) of this section.

(d) *Baseline exhaust toxics emissions.* The annual average baseline exhaust toxics emissions for any facility of a refiner or importer of conventional gasoline shall be determined as follows:

(1) The summer and winter baseline exhaust emissions of benzene, formaldehyde, acetaldehyde, 1,3-butadiene, and polycyclic organic matter shall be determined using the oxygenated individual baseline fuel parameter values for summer and winter (per § 80.91), respectively, in the appropriate complex model for each exhaust toxic (per § 80.45).

(2) The summer and winter baseline total exhaust toxics emissions shall be determined separately by summing the summer and winter baseline exhaust emissions of each toxic (per paragraph (d)(1) of this section), respectively.

(3) The annual average baseline exhaust toxics emissions of the facility shall be determined using the emissions values determined in paragraph (d)(2) of this section in the equation specified in paragraph (a) of this section.

(e) *Baseline NO_x emissions.* The annual average baseline NO_x emissions for any facility of a refiner or importer of conventional gasoline shall be determined as follows:

(1) The summer and winter baseline NO_x emissions shall be determined using the baseline individual baseline fuel parameter values for summer and winter (per § 80.91), respectively, in the appropriate complex model for NO_x (per § 80.45).

(2) The annual average baseline NO_x emissions of the facility shall be determined using the emissions values determined in paragraph (e)(2) of this section in the equation specified in paragraph (a) of this section.

(3) The requirements specified in paragraphs (e) (1) and (2) of this section shall be determined separately using the oxygenated and nonoxygenated individual baseline fuel parameters, per § 80.91.

(f) *Applicability of Phase I and Phase II models.* The requirements of paragraphs (d) and (e) of this section shall be determined separately for the applicable Phase I and Phase II complex models specified in § 80.45.

(g) *Calculation accuracy.* Emissions values calculated per the requirements of this section shall be determined to four (4) significant figures. Sulfur, olefin and T90 values calculated per the requirements of this section shall be determined to the same number of decimal places as the corresponding value listed in § 80.91(c)(5).

§ 80.91 Individual baseline determination.

(a) *Baseline definition.* (1) The "baseline" or "individual baseline" of a refinery, refiner or importer, as applicable, shall consist of:

(i) An estimate of the quality, composition and volume of its 1990 gasoline, or allowable substitute, based on the requirements specified in §§ 80.91 through 80.93; and

(ii) Its baseline emissions values calculated per paragraph (f) of this section; and

(iii) Its 1990–1993 blendstock-to-gasoline ratios calculated per § 80.102.

(2)(i) The quality and composition of the 1990 gasoline of a refinery, refiner or importer, as applicable, shall be the set of values of the following fuel parameters: benzene content; aromatic content; olefin content; sulfur content; distillation temperature at 50 and 90 percent by volume evaporated; percent evaporated at 200 °F and 300 °F; oxygen content; RVP.

(ii) A refiner, per paragraph (b)(3)(i) of this section, shall also determine the API gravity of its 1990 gasoline.

(3) The methodology outlined in this section shall be followed in determining a baseline value for each fuel parameter listed in paragraph (a)(2) of this section.

(b) *Requirements for refiners, blenders and importers—(1) Requirements for producers of gasoline and gasoline blendstocks.* (i) A refinery engaged in the production of gasoline blendstocks from crude oil and/or crude oil derivatives, and the subsequent mixing of those blendstocks to form gasoline, shall have its baseline fuel parameter values determined from Method 1, 2 and/or 3-type data as described in paragraph (c) of this section, provided the refinery was in operation for at least 6 months in 1990.

(ii) A refinery which was in operation for at least 6 months in 1990, was shut down after 1990, and which restarts after June 15, 1994, and for which insufficient 1990 and post-1990 data was collected prior to January 1, 1995 from which to determine an individual baseline, shall have the values listed in paragraph (c)(5) of this section as its individual baseline parameters.

(iii) A refinery which was in operation for less than 6 months in 1990 shall have the values listed in paragraph (c)(5) of this section as its individual baseline parameters.

(2) *Requirements for producers or importers of gasoline blendstocks only.* A refiner or importer of gasoline blendstocks which did not produce or import gasoline in 1990 and which produces or imports post-1994 gasoline shall have the values listed in paragraph (c)(5) of this section as its individual baseline parameters.

(3) *Requirements for purchasers of gasoline and/or gasoline blendstocks.* (i) A refiner or refinery, as applicable, solely engaged in the production of gasoline from gasoline blendstocks and/or gasoline which are simply purchased and blended to form gasoline shall have its individual baseline determined using Method 1-type data (per paragraph (c) of this section) from every batch of 1990 gasoline.

(ii) If Method 1-type data on every batch of the refiner's or refinery's 1990 gasoline does not exist, that refiner or refinery shall have the values listed in paragraph (c)(5) of this section as its individual baseline parameters.

(4) *Requirements for importers of gasoline and/or gasoline blendstocks.* (i) An importer of gasoline shall determine an individual baseline value for each fuel parameter listed in paragraph (a)(2) of this section using Method 1-type data on every batch of gasoline imported by that importer into the United States in 1990.

(ii) An importer which is also a foreign refiner must determine its individual baseline using Method 1, 2 and/or 3-type data (per paragraph (c) of this section) if it imported at least 75 percent, by volume, of the gasoline produced at its foreign refinery in 1990 into the United States in 1990.

(iii) An importer which cannot meet the criteria of paragraphs (b)(4)(i) or (ii) of this section for baseline determination shall have the parameter values listed in paragraph (c)(5) of this section as its individual baseline parameter values.

(5) *Requirements for exporters of gasoline and/or gasoline blendstocks.* A refiner shall not include quality or volume data on its 1990 exports of gasoline blendstocks or gasoline in its baseline determination.

(c) *Data types—(1) Method 1-type data.*

(i) Method 1-type data shall consist of quality (composition and property data) and volume records of gasoline produced in or shipped from the refinery in 1990, excluding exported gasoline. The measured fuel parameter values and volumes of batches, or shipments if not batch blended, shall be used except that data on produced gasoline which was also shipped shall be included only once.

(ii) Gasoline blendstock which left a facility in 1990 and which could become gasoline solely upon the addition of oxygenate shall be included in the baseline determination.

(A) Fuel parameter values of such blendstock shall be accounted for as if the gasoline blendstock were blended with ten (10.0) volume percent ethanol.

(B) If the refiner or importer can provide evidence that such gasoline blendstock was not blended per paragraph (c)(1)(ii)(A) of this section, and that such gasoline blendstock was blended with another oxygenate or a different volume of ethanol, the fuel parameter values of the final gasoline (including oxygenate) shall be included in the baseline determination.

(C) If the refiner or importer can provide evidence that such gasoline blendstock was not blended per paragraph (c)(1)(ii)(A) or (B) of this section, and that such gasoline blendstock was sold with out further changes downstream, the fuel parameter values of the original product shall be included in the baseline determination.

(iii) Data on 1990 gasoline purchased or otherwise received, including intracompany transfers, shall not be included in the baseline determination of a refiner's or importer's facility if the gasoline exited the receiving refinery unchanged from its arrival state.

(2) *Method 2-type data.* Method 2-type data shall consist of 1990 gasoline blendstock quality data and 1990 blendstock production records, specifically the measured fuel parameter values and volumes of blendstock used in the production of gasoline within the refinery. Blendstock data shall include volumes purchased or otherwise received, including intracompany transfers, if the volumes were blended as part of the refiner's or importer's 1990 gasoline. Henceforth in §§ 80.91 through 80.93, "blendstock(s)" or "gasoline blendstock(s)" shall include those products or streams commercially blended to form gasoline.

(3) *Method 3-type data.* (i) Method 3-type data shall consist of post-1990 gasoline blendstock and/or gasoline quality data and 1990 blendstock and gasoline production records, specifically the measured fuel parameter values and volumes of blendstock used in the production of gasoline within the refinery. Blendstock data shall include volumes purchased or otherwise received, including intracompany transfers, if the volumes were blended as part of the refiner's or importer's 1990 gasoline.

(ii) In order to use Method 3-type data, the refiner or importer must do all of the following:

(A) Include a detailed discussion comparing its 1990 and post-1990 refinery operations and all other differences which would cause the 1990 and post-1990 fuel parameter values to differ; and

(B) Perform the appropriate calculations so as to adjust for the differences determined in paragraph (c)(3)(ii)(A) of this section; and

(C) Include a narrative, discussing the methodology and reasoning for the adjustments made per paragraph (c)(3)(ii)(B) of this section.

(iii) In order to use post-1990 gasoline data, either of the following must be shown for each blendstock-type included in 1990 gasoline, excluding butane:

(A) The post-1990 volumetric fraction of a blendstock is within (+/−)10.0 percent of the volumetric fraction of that blendstock in 1990 gasoline. For example, if a 1990 blendstock constituted 30 volume percent of 1990 gasoline, this criterion would be met if the post-1990 volumetric fraction of the blendstock in post-1990 gasoline was 27.0–33.0 volume percent.

(B) The post-1990 volumetric fraction of a blendstock is within (+/−)2.0 volume percent of the absolute value of the 1990 volumetric fraction. For example, if a 1990 blendstock constituted 5 volume percent of 1990 gasoline, this criterion would be met if the post-1990 volumetric fraction of the blendstock in post-1990 gasoline was 3–7 volume percent.

(iv) If using post-1990 gasoline data, post-1990 gasoline blendstock which left a facility and which could become gasoline solely upon the addition of oxygenate shall be included in the baseline determination, per the requirements specified in paragraph (c)(1)(ii) of this section.

(4) *Hierarchy of data use.* (i) A refiner or importer must determine a baseline fuel parameter value using only Method 1-type data if sufficient Method 1-type data is available, per paragraph (d)(1)(ii) of this section.

(ii) If a refiner has insufficient Method 1-type data for a baseline parameter value determination, it must supplement that data with all available Method 2-type data, until it has sufficient data, per paragraph (d)(1)(iii) of this section.

(iii) If a refiner has insufficient Method 1- and Method 2-type data for a baseline parameter value determination, it must supplement that data with all available Method 3-type data, until it has sufficient data, per paragraph (d)(1)(iii) of this section.

(iv) The protocol for the determination of baseline fuel parameter values in paragraphs (c)(4)(i) through (iii) of this section shall be applied to each fuel parameter one at a time.

(5) *Anti-dumping statutory baseline.* (i) The summer anti-dumping statutory baseline shall have the set of fuel parameter values identified as "summer" in § 80.45(b)(2). The anti-dumping summer API gravity shall be 57.4 °API.

(ii) The winter anti-dumping statutory baseline shall have the set of fuel parameter values identified as "winter" in § 80.45(b)(2), except that winter RVP shall be 8.7 psi. The anti-dumping winter API gravity shall be 60.2 API.

(iii) The annual average anti-dumping statutory baseline shall have the following set of fuel parameter values:

Benzene, volume percent—1.60
Aromatics, volume percent—28.6
Olefins, volume percent—10.8
RVP, psi—8.7
T50, degrees F—207
T90, degrees F—332
E200, percent—46
E300, percent—83
Sulfur, ppm—338
API Gravity, °API—59.1

(d) *Data collection and testing requirements*—(1) *Minimum sampling requirements.*—(i) *General requirements.* (A) Data shall have been obtained for at least three months of the refiner's or importer's production of summer gasoline and at least three months of its production of winter gasoline.

(1) A summer month shall be any month during which the refiner produced any gasoline which met the federal summer gasoline volatility requirements. Winter shall be any month which could not be considered a summer month.

(2) The three months which compose the summer and the winter data do not have to be consecutive nor within the same year.

(3) If, in 1990, a refiner marketed all of its gasoline only in an area or areas which experience no seasonal changes relative to gasoline requirements, e.g., Hawaii, only 3 months of data are required.

(B) Once the minimum sampling requirements have been met, data collection may cease. Additional data may only be included for the remainder of the calendar year in which the minimum sampling requirements were met. In any case, all available data collected up until the time data collection ceases must be utilized in the baseline determination.

(C) Less than the minimum requirements specified in paragraph (d)(1) of this section may be allowed, upon petition and approval (per § 80.93), if it can be shown that the available data is sufficient in quality and quantity to use in the baseline determination.

(ii) *Method 1 sampling requirements.* At least half of the batches, or shipments if not batch blended, in a calendar month shall have been sampled over a minimum of six months in 1990.

(iii) *Method 2 sampling requirements.* (A) Continuous blendstock streams shall have been sampled at least weekly over a minimum of six months in 1990.

(B) For blendstocks produced on a batch basis, at least half of all batches of a single blendstock type produced in a calendar month shall have been sampled over a minimum of six months in 1990.

(iv) *Method 3 sampling requirements*—(A) *Blendstock data. (1)* Post-1990 continuous blendstock streams shall have been sampled at least weekly over a minimum of six months.

(2) For post-1990 blendstocks produced on a batch basis, at least half of all batches of a single blendstock type produced in a calendar month shall have been sampled over a minimum of six months.

(B) *Gasoline data.* At least half of the post-1990 batches, or shipments if not batch blended, in a calendar month shall have been sampled over a minimum of six months in order to use post-1990 gasoline data.

(2) *Sampling beyond today's date.* The necessity and actual occurrence of data collection after today's date must be shown.

(3) *Negligible quantity sampling.* Testing of a blendstock stream for a fuel parameter listed in this paragraph (d)(3) is not required if the refiner can show that the fuel parameter exists in the stream at less than or equal to the amount, on average, shown in this paragraph (d)(3) for that fuel parameter. Any fuel parameter shown to exist in a refinery stream in negligible amounts shall be assigned a value of 0.0:

Aromatics, volume percent—1.0
Benzene, volume percent—0.15
Olefins, volume percent—1.0
Oxygen, weight percent—0.2
Sulfur, ppm—30.0

(4) *Sample compositing.* (i) Samples of gasoline or blendstock which have been retained, but not analyzed, may be mixed prior to analysis and analyzed, as described in paragraphs (d)(4)(iii) (A) through (H) of this section, for the required fuel parameters. Samples must be from the same season and year and must be of a single grade or of a single type of batch-produced blendstock.

(ii) Blendstock samples of a single blendstock type obtained from continuous processes over a calendar month may be mixed together in equal volumes to form one blendstock sample and the sample subsequently analyzed for the required fuel parameters.

(iii)(A) Samples shall have been collected and stored per the method normally employed at the refinery in order to prevent change in product composition with regard to baseline properties and to minimize loss of volatile fractions of the sample.

(B) Properties of the retained samples shall be adjusted for loss of butane by comparing the RVP measured right after blending with the RVP determined at the time that the supplemental properties are measured.

(C) The volume of each batch or shipment sampled shall have been noted and the sum of the volumes calculated to the nearest hundred (100) barrels.

(D) For each batch or shipment sampled, the ratio of its volume to the total volume determined in paragraph (d)(4)(iii)(C) of this section shall be determined to three (3) decimal places. This shall be the volumetric fraction of the shipment in the mixture.

(E) The total minimum volume required to perform duplicate analyses to obtain values of all of the required fuel parameters shall be determined.

(F) The volumetric fraction determined in paragraph (d)(4)(iii)(D) of this section for each batch or shipment shall be multiplied by the value determined in paragraph (d)(4)(iii)(E) of this section.

(G) The resulting value determined in paragraph (d)(4)(iii)(F) of this section for each batch or shipment shall be the volume of each batch or shipment's sample to be added to the mixture. This volume shall be determined to the nearest milliliter.

(H) The appropriate volumes of each shipment's sample shall be thoroughly mixed and the solution analyzed per the methods normally employed at the refinery.

(5) *Test methods.* (i) If the test methods used to obtain fuel parameter values of gasoline and gasoline blendstocks differ or are otherwise not equivalent in precision or accuracy to the corresponding test method specified in § 80.46, results obtained under those procedures will only be acceptable, upon petition and approval (per § 80.93), if the procedures are or were industry-accepted procedures for measuring the properties of gasoline and gasoline blendstocks at the time the measurement was made.

(ii) Oxygen content may have been determined analytically or from oxygenate blending records.

(A) The fuel parameter values, other than oxygen content, specified in paragraph (a) of this section, must be established as for any blendstock, per the requirements of this paragraph (d).

(B) All oxygen associated with allowable gasoline oxygenates per § 80.2(jj) shall be included in the determination of the baseline oxygen content, if oxygen content was determined analytically.

(C) Oxygen content shall be assumed to be contributed solely by the oxygenate which is indicated on the blending records, if oxygen content was determined from blending records.

(6) *Data quality.* Data may be excluded from the baseline determination if it is shown to the satisfaction of the Director of the Office of Mobile Sources, or designee, that it is not within the normal range of values expected for the gasoline or blendstock sample, considering unit configuration, operating conditions, etc.; due to:

(i) Improper labeling; or

(ii) Improper testing; or

(iii) Other reasons as verified by the auditor specified in § 80.92.

(e) *Baseline fuel parameter determination*—(1) *Closely integrated gasoline producing facilities.* Each refinery or blending facility must determine a set of baseline fuel parameter values per this paragraph (e). A single set of baseline fuel parameters may be determined, upon petition and approval, for two or more facilities under either of the following circumstances:

(i) Two or more refineries or sets of gasoline blendstock-producing units of a refiner engaged in the production of gasoline per paragraph (b)(1) of this section which are geographically proximate to each other, yet not within a single refinery gate, and whose 1990 operations were significantly interconnected.

(ii) A gasoline blending facility operating per paragraph (b)(3) of this section received at least 75 percent of its 1990 blendstock volume from a single refinery, or from one or more refineries which are part of an aggregate baseline per § 80.101(h). The blending facility and associated refinery(ies) must be owned by the same refiner.

(2) *Equations*—(i) *Parameter determinations.* Average baseline fuel parameters shall be determined separately for summer and winter using summer and winter data (per paragraph (d)(1)(i)(A) of this section), respectively, in the applicable equation listed in paragraphs (e)(2) (ii) through (iv) of this section, except that average baseline winter RVP shall be 8.7 psi.

(ii) *Product included in parameter determinations.* In each of the equations listed in paragraphs (e)(2) (ii) through (iv) of this section, the following shall apply:

(A) All gasoline produced to meet EPA's 1990 summertime volatility requirements shall be considered summer gasoline. All other gasoline shall be considered winter gasoline.

(B) *(1)* Baseline total annual 1990 gasoline volume shall be the larger of the total volume of gasoline produced in or shipped from the refinery in 1990.

(2) Baseline summer gasoline volume shall be the total volume of low volatility gasoline which met EPA's 1990 summertime volatility requirements. Baseline summer gasoline volume shall be determined on the same basis (produced or shipped) as baseline total annual gasoline volume.

(3) Baseline winter gasoline volume shall be the baseline total annual gasoline volume minus the baseline summer gasoline volume.

(C) Fuel parameter values shall be determined in the same units and at least to the same number of decimal places as the corresponding fuel parameter listed in paragraph (c)(5) of this section.

(D) Volumes shall be reported to the nearest barrel or to the degree at which historical records were kept.

(iii) *Method 1.* Summer and winter Method 1-type data, per paragraph (c)(1) of this section, shall be evaluated separately according to the following equation:

$$X_{bs} = \sum_{g=1}^{p_s} \left(\frac{T_{gs}}{n_s} \times \frac{\sum_{i=1}^{n_{gs}} \left(X_{gis} \times V_{gis} \times SG_{gis} \right)}{\sum_{i=1}^{n_{gs}} \left(V_{gis} \times SG_{gis} \right)} \right)$$

where:
X_{bs}=summer or winter baseline value of fuel parameter X for the refinery
s=season, summer or winter, per paragraph (d)(1)(i)(A)(*1*) of this section
g=separate grade of season s gasoline produced by the refinery in 1990
p_s=total number of different grades of season s gasoline produced by the refinery in 1990
T_{gs}=total volume of season s grade g gasoline produced in 1990
N_s=total volume of season s gasoline produced by the refinery in 1990
i=separate batch or shipment of season s 1990 gasoline sampled
n_{gs}=total number of season s samples of grade g gasoline
X_{gis}=parameter value of grade g gasoline sample i in season s
V_{gis}=volume of season s grade g gasoline sample i
SG_{gis}=specific gravity of season s grade g gasoline sample i (used only for fuel parameters measured on a weight basis)

(iv) *Method 2.* Summer and winter Method 2-type data, per paragraph (c)(2) of this section, shall be evaluated separately according to the following equation:

$$X_{bs}=\sum_{j=1}^{m_s}\left(\frac{T_{js}}{n_s}\times\left(\frac{\sum_{i=1}^{N_{js}}X_{ijs}}{n_{js}}+\frac{\sum_{i=1}^{p_j}\left(X_{ijs}\times V_{ijs}\times SG_{ijs}\right)}{\sum_{i=1}^{p_j}\left(V_{ijs}\times SG_{ijs}\right)}\right)\right)$$

where
X_{bs}=Summer or winter baseline value of fuel parameter X for the refinery
s=season, summer or winter, per paragraph (d)(1)(i)(A)(*1*) of this section
j=type of blendstock (e.g., reformate, isomerate, alkylate, etc.)
m_s=total types of blendstocks in season s 1990 gasoline
T_{js}=total 1990 volume of blendstock j produced in the refinery and used in the refinery's season s gasoline
N_s=total volume of season s gasoline produced in the refinery in 1990
i=sample of blendstock j
n_{js}=number of samples of season s blendstock j from continuous process streams
X_{ijs}=parameter value of sample i of season s blendstock j
p_{js}=number of samples of season s batch-produced blendstock j
V_{ijs}=volume of batch of sample i of season s blendstock j
SG_{ijs}=specific gravity of sample i of season s blendstock j (used only for fuel parameters measured on a weight basis)

(v) *Method 3.* (A) Post-1990 Blendstock. Summer and winter Method 3-type data, per paragraph (c)(3) of this section, shall be evaluated separately according to the following equation:

$$X_{bs}=\sum_{j=1}^{m_s}\left(\frac{T_{js}}{N_s}\times\left(\frac{\sum_{i=1}^{n_{js}}X_{ijs}}{n_{js}}+\frac{\sum_{i=1}^{p_{js}}\left(X_{ijs}\times V_{ijs}\times SG_{ijs}\right)}{\sum_{i=1}^{p_{js}}\left(V_{ijs}\times SG_{ijs}\right)}\right)\right)$$

where
X_{bs}=Summer or winter baseline value of fuel parameter X for the refinery
s=season, summer or winter, per paragraph (d)(1)(i)(A)(*1*) of this section
j=type of blendstock (e.g., reformate, isomerate, alkylate, etc.)
m_s=total types of blendstocks in season s 1990 gasoline
T_{js}=total 1990 volume of blendstock j produced in the refinery and used in the refinery's season s gasoline
N_s=total volume of season s gasoline produced in the refinery in 1990
i=sample of post-1990 season s blendstock j
n_{js}=number of samples of post-1990 season s blendstock j from continuous process streams
X_{ijs}=parameter value of sample i of post-1990 season s blendstock j
p_{js}=number of samples of post-1990 season s batch-produced blendstock j
V_{ijs}=volume of post-1990 batch of sample i of season s blendstock j
SG_{ijs}=specific gravity of sample i of season s blendstock j (used only for fuel parameters measured on a weight basis)

(B) Post-1990 gasoline. Summer and winter Method 3-type gasoline data, per paragraph (c)(3) of this section, shall be evaluated separately according to the following equation:

$$X_{bs}=\sum_{g=1}^{p_s}\left(\frac{T_{gs}}{N_s}\times\frac{\sum_{i=1}^{n_{gs}}\left(X_{gis}\times V_{gis}\times SG_{gis}\right)}{\sum_{i=1}^{n_{gs}}\left(V_{gis}\times SG_{gis}\right)}\right)$$

where:
X_{bs}=Summer or winter baseline value of fuel parameter X for the refinery
s=season, summer or winter, per paragraph (d)(1)(i)(A)(*1*) of this section
g=separate grade of season s gasoline produced by the refinery in 1990
p_s=total number of different grades of season s gasoline produced by the refinery in 1990
T_{gs}=total volume of season s grade g gasoline produced in 1990
N_s=total volume of season s gasoline produced by the refinery in 1990
i=separate batch or shipment of post-1990 season s gasoline sampled
n_{gs}=total number of samples of post-1990 season s grade g gasoline
X_{gis}=parameter value of post-1990 grade g season s gasoline sample i
V_{gis}=volume of post-1990 season s grade g gasoline sample i
SG_{gis}=specific gravity of post-1990 season s grade g gasoline sample i (used only for fuel parameters measured on a weight basis)

(3) *Percent evaporated determination.* (i) Baseline E200 and E300 values shall be determined directly from actual measurement data.

(ii) If the data per paragraph (e)(3)(i) of this section are unavailable, upon petition and approval, baseline E200 and E300 values shall be determined from the following equations using the baseline T50 and T90 values, if the baseline T50 and T90 values are otherwise acceptable:

E200=147.91−(0.49×T50)

E300=155.47−(0.22×T90)

(4) *Oxygen in the baseline.* Baseline fuel parameter values shall be determined on both an oxygenated and non-oxygenated basis.

(i) If baseline values are determined first on an oxygenated basis, per paragraph (e) of this section, the calculations in paragraphs (e)(4)(i) (A) through (C) of this section shall be performed to determine the value of each baseline parameter on a non-oxygenated basis.

(A) Benzene, aromatic, olefin and sulfur content shall be determined on a non-oxygenated basis according to the following equation:

$$UV=\frac{AV}{(100-OV)}$$

where
UV=non-oxygenated parameter value
AV=oxygenated parameter value
OV=1990 oxygenate volume as a percent of total production

(B) Reid vapor pressure (RVP) shall be determined on a non-oxygenated basis according to the following equation:

$$UR=\frac{BR-\sum_{i=1}^{n}\left(OV_i\times OR_i\right)}{\left(100-\sum_{i=1}^{n}\left(OV_i\right)\right)}$$

where
UR=non-oxygenated RVP (baseline value)
BR=oxygenated RVP
i=type of oxygenate used in 1990
n=total number of different types of oxygenates used in 1990
OV_i=1990 volume, as a percent of total production, of oxygenate i
OR_i=blending RVP of oxygenate i

(C) Test data and engineering judgement shall be used to estimate T90, T50, E300 and E200 baseline values on a non-oxygenated basis. Allowances shall be made for physical dilution and distillation effects only, and not for refinery operational changes, e.g., decreased reformer severity required due to the octane value of oxygenate which would reduce aromatics.

(ii) If baseline values are determined first on a non-oxygenated basis, the calculations in paragraphs (e)(4)(ii) (A) through (C) of this section shall be performed to determine the value of each baseline parameter on an oxygenated basis.

(A) Benzene, aromatic, olefin and sulfur content shall be determined on an oxygenated basis according to the following equation:

$AV=UV\times(100-OV)$

where
AV=oxygenated parameter value
UV=no-oxygenate parameter value
OV=1990 oxygenate volume as a percent of total production

(B) Reid vapor pressure (RVP) shall be determined on an oxygenated basis according to the following equation:

$$BR=UR\times\left(100-\sum_{i=1}^{n}\left(OV_i\right)\right)+\sum_{i=1}^{n}\left(OV_i\times OR_i\right)$$

where
BR=oxygenated RVP
UR=non-oxygenated RVP
i=type of oxygenate
n=total number of different types of oxygenates
OV_i=1990 volume, as a percent of total production, of oxygenate i
OR_i=blending RVP of oxygenate i

(C) Test data and engineering judgement shall be used to estimate T90, T50, E300 and E200 baseline values on an oxygenated basis. Allowances shall be made for physical dilution and distillation effects only, and not for refinery operational changes, e.g., decreased reformer severity required due to the octane value of oxygenate which would reduce aromatics.

(5) *Work-in-progress.* A refiner may, upon petition and approval (per § 80.93), be allowed to account for work-in-progress at one or more of its refineries in 1990 in the determination of that refinery's baseline fuel parameters using Method 1, 2 or 3-type data if it meets the requirements specified in this paragraph (e)(5).

(i) Work-in-progress shall include:

(A) Refinery modification projects involving gasoline blendstock or distillate producing units which were under construction in 1990; or

(B) Refinery modification projects involving gasoline blendstock or distillate producing units which were contracted for prior to or in 1990 such that the refiner was committed to purchasing materials and constructing the project.

(ii) The modifications discussed in paragraph (e)(5)(i) of this section must have been initiated with intent of complying with a legislative or regulatory environmental requirement enacted or promulgated prior to January 1, 1991.

(iii) When comparing emissions or parameter values determined with and without the anticipated work-in-progress adjustment, at least one of the following situations results when comparing annual average baseline values per § 80.90:

(A) A 2.5 percent or greater difference in exhaust benzene emissions (per § 80.90); or

(B) A 2.5 percent or greater difference in total exhaust toxics emissions (per § 80.90(d)); or

(C) A 2.5 percent or greater difference in NO_x emissions (per § 80.90(e)); or

(D) A 10.0 percent or greater difference in sulfur values; or

(E) A 10.0 percent or greater difference in olefin values; or

(F) A 10.0 percent or greater difference in T90 values.

(iv) The requirements of paragraph (e)(5)(iii) of this section shall be determined according to the following equation:

$$\text{Percent Difference} = \frac{|\text{Unadjusted Value} - \text{Adjusted Value}|}{\text{Unadjusted Value}} \times 100$$

(v) The capital involved in the work-in-progress is at least:

(A) 10.0 percent of the refinery's depreciated book value as of the work-in-progress start-up date; or

(B) $10 million.

(vi) Sufficient data shall have been obtained since reliable operation of the work-in-progress was achieved. Such data shall be used in the determination of the adjusted baseline fuel parameter and as verification of the effect of the work-in-progress.

(vii) Increases in each of the annual average baseline values (per § 80.90) of exhaust benzene emissions, exhaust toxics emissions and NO_x emissions due to work-in-progress adjustments are limited to the larger of:

(A) The unadjusted annual average baseline value of each emission specified in this paragraph (e)(5)(vii); or

(B) The following values:

(1) Exhaust benzene emissions, simple model, 6.77;

(2) Exhaust benzene emissions, complex model, 34.68 mg/mile;

(3) Exhaust toxics emissions, 53.20 mg/mile in Phase I, 109.7 mg/mile in Phase II;

(4) NO_x emissions, 750.1 mg/mile in Phase I, 1534. mg/mile in Phase II.

(viii) When compliance is achieved using the simple model (per § 80.101), increases in each of the annual average baseline values (per § 80.90) of sulfur, olefins and T90 due to work-in-progress adjustments are limited to the larger of:

(A) The unadjusted annual average baseline value of each specified fuel parameter specified in this paragraph (e)(5)(viii); or

(B) The following values:

(1) Sulfur, 355 ppm;

(2) Olefins, 11.3 volume percent;

(3) T90, 349 °F.

(ix) All work-in-progress adjustments must be accompanied by:

(A) Unadjusted and adjusted fuel parameters, emissions, and volumes; and

(B) A description of the current status of the work-in-progress (i.e., the refinery modification project) and the date on which normal operations were achieved; and

(C) A narrative describing the situation, the types of calculations, and the reasoning supporting the types of calculations done to determine the adjusted values.

(6) *Baseline adjustment for extenuating circumstances.* (i) Baseline adjustments may be allowed, upon petition and approval (per § 80.93), if a refinery had downtime of a gasoline blendstock producing unit for 30 days or more in 1990 due to:

(A) Unplanned, unforeseen circumstances; or

(B) Non-annual maintenance (turnaround).

(ii) Fuel parameter and volume adjustments shall be made by assuming that the downtime did not occur in 1990.

(iii) All extenuating circumstance adjustments must be accompanied by:

(A) Unadjusted and adjusted fuel parameters, emissions, and volumes; and

(B) A description of the current status of the extenuating circumstance and the date on which normal operations were achieved; and

(C) A narrative describing the situation, the types of calculations, and the reasoning supporting the types of calculations done to determine the adjusted values.

(7) *Baseline adjustments for 1990 JP–4 production.* (i) Baseline adjustments may be allowed, upon petition and approval (per § 80.93), if a refinery produced JP–4 jet fuel in 1990 and meets all of the following requirements:

(A) The refinery is the only refinery of a refiner such that it cannot form an aggregate baseline with another refinery (per paragraph (f) of this section) or all of the refineries of a refiner produced JP–4 in 1990 and each of the refineries also meets the requirements specified in paragraphs (e)(7)(i) (B) and (C) of this section.

(B) The refinery will not produce reformulated gasoline. If the refinery produces reformulated gasoline at any time in a calendar year, its compliance baseline shall revert to its unadjusted baseline values for that year and all subsequent years.

(C) The ratio of the refinery's 1990 JP–4 production to its 1990 gasoline production equals or exceeds 0.5.

(ii) Fuel parameter and volume adjustments shall be made by assuming that no JP–4 was produced in 1990.

(iii) All adjustments due to 1990 JP–4 production must be accompanied by:

(A) Unadjusted and adjusted fuel parameters, emissions, and volumes; and

(B) A narrative describing the situation, the types of calculations, and the reasoning supporting the types of calculations done to determine the adjusted values.

(f) *Baseline volume and emissions determination*—(1) *Individual baseline volume.* (i) The individual baseline volume of a refinery described in paragraph (b)(1)(i) of this section shall be the larger of the total gasoline volume produced in or shipped from the refinery in 1990, excluding gasoline blendstocks and exported gasoline, and including the oxygenate volume associated with any product meeting the requirements specified in paragraph (c)(1)(ii) of this section.

(ii) Gasoline brought into the refinery in 1990 which exited the refinery, in 1990, unchanged shall not be included in determining the refinery's baseline volume.

(iii) If a refiner is allowed to adjust its baseline per paragraphs (e)(5) through (e)(7) of this section, its individual baseline volume shall be the volume determined after the adjustment.

(iv) The individual baseline volume for facilities deemed closely integrated, per paragraph (e)(1) of this section, shall be the combined 1990 gasoline production of the facilities, so long as mutual volumes are not double-counted, i.e., volumes of blendstock sent from the refinery to the blending facility should not be included in the blending facility's volume.

(v) The baseline volume of a refiner, per paragraph (b)(3) of this section, shall be the larger of the total gasoline volume produced in or shipped from the refinery in 1990, excluding gasoline blendstocks and exported gasoline.

(vi) The baseline volume of an importer, per paragraph (b)(4) of this section, shall be the total gasoline volume imported into the U.S. in 1990.

(2) *Individual baseline emissions.* (i) Individual annual average baseline emissions (per § 80.90) shall be determined for every refinery, refiner or importer, as applicable.

(ii) For each individual summer or winter baseline fuel parameter value (determined per paragraph (e) of this section) which is outside of the complex model conventional gasoline valid range for that parameter (per § 80.45(f)(1)(ii)), the complex model range is extended only for such fuel parameters, in both baseline and compliance complex model emissions determinations, and only for the applicable summer or winter models.

(iii) Facilities deemed closely integrated, per paragraph (e)(1) of this section, shall have a single set of annual average individual baseline emissions.

(iv) Aggregate baselines (per § 80.101(h)) must have the NO_x emissions of all refineries in the aggregate determined on the same basis, using either oxygenated or non-oxygenated baseline fuel parameters.

(3) *Geographic considerations requiring individual conventional gasoline compliance baselines.* (i) Anyone may petition EPA to establish separate baselines for refineries located in and providing conventional gasoline to an area with a limited gasoline distribution system if it can show that the area is experiencing increased toxics emissions due to an ozone nonattainment area opting into the reformulated gasoline program pursuant to section 211(k)(6) of the Act.

(ii) If EPA agrees with the finding of paragraph (f)(4)(i) of this section, it shall require that the baselines of such refineries be separate from refineries not located in the area.

(iii) If two (2) or more of a refiner's refineries are located in the geographic area of concern, the refiner may aggregate the baseline emissions and sulfur, olefin and T90 values of the refineries or have an individual baseline for one or more of the refineries, per paragraph (f)(3) of this section.

(4) *Baseline recalculations.* Aggregate baseline exhaust emissions (per § 80.90) and baseline sulfur, olefin and T90 values and aggregate baseline volumes shall be recalculated under the following circumstances:

(i) A refinery included in an aggregate baseline is entirely shutdown. If the shutdown refinery was part of an aggregate baseline, the aggregate baseline emissions, aggregate baseline sulfur, olefin and T90 values and aggregate volume shall be recalculated to account for the removal of the shutdown refinery's contributions to the aggregate baseline.

(ii) A refinery exchanges owners.

(A) All aggregate baselines affected by the exchange shall be recalculated to reflect the addition or subtraction of the baseline exhaust emissions, sulfur, olefin and T90 values and volumes of that refinery.

(B) The new owner may elect to establish an individual baseline for the refinery or to include it in an aggregate baseline.

(C) If the refinery was part of an aggregate of three or more refineries, the remaining refineries in the aggregate from which that refinery was removed will have a new aggregate baseline. If the refinery was part of an aggregate of only two refineries, the remaining refinery will have an individual baseline.

(g) *Inability to meet the requirements of this section.* If a refiner or importer is unable to comply with one or more of the requirements specified in paragraphs (a) through (f) of this section, it may, upon petition and approval, accommodate the lack of compliance in a reasonable, logical, technically sound manner, considering the appropriateness of the alternative. A narrative of the situation, as well as any calculations and results determined, must be documented.

§ 80.92 Baseline auditor requirements.

(a) *General requirements.* (1) Each refiner or importer is required to have its individual baseline determination methodology, resulting baseline fuel parameter, volume and emissions values, and 1990–1993 blendstock-to-gasoline ratios (per § 80.102) verified by an auditor which meets the requirements described in this section. A refiner or importer which has the anti-dumping statutory baseline as its individual baseline is exempt from this requirement.

(2) An auditor may be an individual or organization, and may utilize contractors and subcontractors to assist in the verification of a baseline.

(3) If an auditor is an organization, one or more persons shall be designated as primary analyst(s). The primary analyst(s) shall meet the requirements described in paragraphs (c) (2) and (3) of this section and shall be responsible for the baseline audit per paragraph (f) of this section.

(b) *Independence.* The auditor, its contractors, subcontractors and their organizations shall be independent of the submitting organization. All of the criteria listed in paragraphs (b) (1) and (2) of this section must be met by every individual involved in substantive aspects of the baseline verification.

(1) *Previous employment criteria.* (i) None of the auditing personnel, including any contractor or subcontractor personnel, involved in the baseline verification for a refiner or importer shall have been employed by the refiner or importer at any time during the three (3) years preceding the date of hire of the auditor by the refiner or importer for baseline verification purposes.

(ii) Auditor personnel may have been a contractor or subcontractor to the refiner or importer, as long as all other criteria listed in this section are met.

(iii) Auditor personnel may also have developed the baseline of the refiner or importer whose baseline they are auditing, but not as an employee (per paragraph (b)(1)(i) of this section). Those involved only in the development of the baseline of the refiner or importer need not meet the requirements specified in this section.

(2) *Financial criteria.* Neither the primary analyst, nor the auditing organization nor any organization or individual which may be contracted or subcontracted to supply baseline verification expertise shall:

(i) Have received more than one quarter of its revenue from the refiner or importer during the year prior to the date of hire of the auditor by the refiner or importer for auditing purposes. Income received from the refiner or importer to develop the baseline being audited is excepted; nor

(ii) Have a total of more than 10 percent of its net worth with the refiner or importer; nor

(iii) Receive compensation for the audit which is dependent on the outcome of the audit.

(c) *Technical ability.* All of the following criteria must be met by the auditor in order to demonstrate its technical capability to perform the baseline audit:

(1) The auditor shall be technically capable of evaluating a baseline determination. It shall have personnel familiar with petroleum refining processes, including associated computational procedures, methods of product analysis and economics, and expertise in conducting the auditing process, including skills for effective data gathering and analysis.

(2) The primary analyst must understand all technical details of the entire baseline audit process.

(3)(i) The primary analyst shall have worked at least five (5) years in either refinery operations or as a consultant for the refining industry.

(ii) If one or more computer models designed for refinery planning and/or economic analysis are used in the verification of an individual baseline, the primary analyst must have at least

three (3) years experience working with the model(s) utilized in the verification.

(iii) EPA may, upon petition, waive one or more of the requirements specified in paragraph (c)(3) of this section if the technical capability of the primary analyst is demonstrated to the satisfaction of the Director of the Office of Mobile Sources, or designee.

(d) *Auditor qualification statement.* A statement documenting the qualifications of the auditor, primary analyst(s), contractors, subcontractors and their organizations must be submitted to EPA (Fuel Studies and Standards Branch, Baseline Auditor, U.S. EPA, 2565 Plymouth Rd., Ann Arbor, MI 48105).

(1) *Timing.* (i) The auditor qualification statement may be submitted by the refiner or importer prior to baseline submission (per § 80.93) or by a potential auditor at any time. The auditor will be deemed certified when all qualifications are met, to the satisfaction of the Director of the Office of Mobile Sources, or designee. If no response is received from EPA within 45 days of application or today's date, whichever is later, the auditor shall be deemed certified.

(ii) The auditor qualification statement may be submitted by the refiner or importer with its baseline submission (per § 80.93). If the auditor does not meet the criteria specified in this section, the baseline submission will not be accepted.

(2) *Content.* The auditor qualification statement must contain all of the following information and may contain additional information which may aid EPA's review of the qualification statement:

(i) The name and address of each person and organization involved in substantive aspects of the baseline audit, including the auditor, primary analyst(s), others within the organization, and contractors and subcontractors;

(ii) The refiners and/or importers for which the auditor, its contractors and subcontractors and their organizations do not meet the independence criteria described in paragraph (b) of this section; and

(iii) The technical qualifications and experience of each person involved in the baseline audit, including a showing that the requirements described in paragraph (c) of this section are met.

(e) *Refiner and importer responsibility.* (1) Each refiner and importer required to have its baseline verified by an auditor (per paragraph (a)(1) of this section) is responsible for utilizing an auditor for baseline verification which meets the requirements specified in paragraphs (b) and (c) of this section.

(2) A refiner's or importer's baseline submission will not be accepted until it has been verified using an auditor which meets the requirements specified in paragraphs (b) and (c) of this section.

(f) *Auditor responsibilities.* (1) The auditor must verify that all baseline submission requirements are fulfilled. This includes, but is not limited to, the following:

(i) Verifying that all data is correctly accounted for;

(ii) Verifying that all calculations are performed correctly;

(iii) Verifying that all adjustments to the data and/or calculations to account for post-1990 data, work-in-progress, and/or extenuating or other circumstances, as allowed per § 80.91, are valid and performed correctly.

(2) The primary analyst shall prepare and sign a statement, to be included in the baseline submission of the refiner or importer, stating that:

(i) He/she has thoroughly reviewed the sampling methodology and baseline calculations; and

(ii) To the best of his/her knowledge, the requirements and intentions of the rulemaking are met in the baseline determination; and

(iii) He/she agrees with the final baseline parameter, volume and emission values listed in the baseline submission.

(3) The auditor may be subject to debarment under U.S.C. 1001 if it displays gross incompetency, intentionally commits an error in the verification process or misrepresents itself or information in the baseline verification.

§ 80.93 Individual baseline submission and approval.

(a) *Submission timing.* (1) Each refiner, blender or importer shall submit two copies of its individual baseline to EPA (Fuel Studies and Standards Branch, Baseline Submission, U.S. EPA, 2565 Plymouth Rd., Ann Arbor, MI 48105) not later than June 1, 1994.

(2) If a refiner must collect data after December 15, 1993 (per § 80.91(d)(2)), it shall submit two copies of its individual baseline to EPA (per § 80.93(a)(1)) by September 1, 1994.

(3) (i) All petitions required for baseline adjustments or methodology deviations will be approved or disapproved by the Director of the Office of Mobile Sources, or designee. All instances where a "showing" or other proof is required are also subject to approval by the Director of the Office of Mobile Sources, or designee.

(ii) Auditor-verified petitions, "showings" and other associated proof may be submitted to EPA (per § 80.93(a)(1)) prior to the official submittal of the entire baseline determination. EPA will attempt to review and approve, disapprove or otherwise comment on the petition, etc., prior to the deadline for baseline submittal.

(iii) In the event that EPA does not comment on the petition prior to the deadline for baseline submittal, the refiner or importer must still comply with the applicable baseline submittal deadline.

(4) If a baseline recalculation is required per § 80.91(f), documentation and recalculation of all affected baselines shall be submitted to EPA within 30 days of the previous baseline(s) becoming inaccurate due to the circumstances outlined in § 80.91(f).

(b) *Submission content.* (1) Individual baseline submissions shall include, at minimum, the information specified in this paragraph (b).

(i) During its review and evaluation of the baseline submission, EPA may require a refiner or importer to submit additional information in support of the baseline determination.

(ii) Additional information which may assist EPA during its review and evaluation of the baseline may be included at the submitter's discretion.

(2) Administrative information shall include:

(i) Name and business address of the refiner or importer;

(ii) Name, business address and business phone number of the company contact;

(iii) Address and physical location of each refinery, terminal or import facility;

(iv) Address and physical location where documents which are supportive of the baseline determination for each facility are kept;

(3) The chief executive officer statement shall be:

(i) A statement signed by the chief executive officer of the company, or designee, which states that:

(A) The company is complying with the requirements as a refiner, blender or importer, as appropriate;

(B) The data used in the baseline determination is the extent of the data available for the determination of all required baseline fuel parameters;

(C) All calculations and procedures followed per §§ 80.90 through 80.93 have been done correctly;

(D) Proper adjustments have been made to the data or in the calculations, as applicable;

(E) The requirements and intentions of the rulemaking have been met in determining the baseline fuel parameters; and

(F) The baseline fuel parameter values determined for each facility represent that facility's 1990 gasoline to the fullest extent possible.

(ii) A refiner or importer which is permitted to utilize the parameter values specified in § 80.91(c)(5), and does so, shall submit a statement signed by the chief executive officer of the company, or designee, indicating that insufficient data exist for a baseline determination by the types of data allowed for that entity, as specified in § 80.91.

(4) The auditor-related requirements are:

(i) Name, address, telephone number and date of hire of each auditor hired for baseline verification, whether or not the auditor was retained through the baseline approval process.

(ii) Identification of the auditor responsible for the verification. A copy of this auditor's qualification statement, per § 80.92, must be included if the auditor has not been approved by EPA, per § 80.92;

(iii) Indication of the primary analyst(s) involved in each refinery's baseline verification; and

(iv) The signed auditor verification statement, per § 80.92.

(5) The following baseline information for each refinery, refiner or importer, as applicable, shall be provided:

(i) Individual baseline fuel parameter values, on an oxygenated and non-oxygenated basis, and on a summer and winter basis, per § 80.91;

(ii) Individual baseline exhaust emissions shall be shown separately, on a summer, winter and annual average basis (per § 80.90) as follows:

(A) Simple model exhaust benzene emissions;

(B) Complex model exhaust benzene emissions;

(C) Complex model exhaust toxics emissions, for Phase I;

(D) Complex model exhaust NO_X emissions, for Phase I, using oxygenated individual baseline fuel parameters;

(E) Complex model exhaust NO_X emissions, for Phase I, using non-oxygenated individual baseline fuel parameters;

(F) Complex model exhaust toxics emissions, for Phase II;

(G) Complex model exhaust NO_X emissions, for Phase II, using oxygenated individual baseline fuel parameters; and

(H) Complex model exhaust NO_X emissions, for Phase II, using non-oxygenated individual baseline fuel parameters;

(iii) Individual 1990 baseline gasoline volumes, per § 80.91, shall be shown separately on a summer, winter and annual average basis; and

(iv) Blendstock-to-gasoline ratios for each calendar year 1990 through to 1993, per § 80.102.

(6) Confidentiality claim.

(i) Upon approval of an individual baseline, EPA will publish the individual standards for each refinery, blender or importer in the **Federal Register**. Such information shall include baseline emissions as specified in § 80.90 and 125% of the individual baseline values for sulfur, olefins and T90.

(ii) Information in the baseline submission which the submitter desires be considered confidential business information (per 40 CFR part 2, subpart B) must be clearly identified. Information specified in paragraph (b)(5) of this section shall not be considered confidential.

(7) Information related to baseline determination as specified in § 80.91 and paragraph (c) of this section.

(c) *Additional baseline submission requirements when Method 1-, 2- and/or 3-type data is utilized.* All requirements of this paragraph shall be reported separately for each facility, unless the facilities are closely integrated, per § 80.91.

(1) *General.* The following information shall be provided:

(i) The number of months in 1990 during which the facility was operating;

(ii) 1990 summer gasoline production volume, per § 80.91, total and by grade, for all gasoline produced but not exported;

(iii) 1990 winter gasoline production volume, per § 80.91, total and by grade, for all gasoline produced, excluding gasoline exported; and

(iv) Whether this facility is actually two facilities which are closely integrated, per § 80.91.

(2) *Baseline values.* The following shall be included for each fuel parameter for which a baseline value is required, per § 80.91:

(i) Narrative of the development of the baseline value of the fuel parameter, including discussion of the sampling and calculation methodologies, technical judgment used, effects of petition results on calculated values, and any additional information which may assist EPA in its review of the baseline;

(ii) Identification of the data-type(s), per § 80.91, used in the determination of a given fuel parameter;

(iii) Identification of test method. If not per § 80.46, include a narrative, explain differences and describing adequacy, per § 80.91;

(iv) Documentation that the minimum sampling requirements per § 80.91 have been met;

(v) Petition and narrative, if needed, for use of less than the minimum required data, per § 80.91;

(vi) Identification of instances of sample compositing per § 80.91;

(vii) Identification of streams for which one or more parameter values were deemed negligible per § 80.91; and

(viii) Discussion of the calculation of oxygenated or non-oxygenated fuel parameter values from non-oxygenated or oxygenated values, respectively, per § 80.91.

(3) *Method 1.* If Method 1-type data is utilized in the baseline determination, the following information on 1990 batches of gasoline, or shipments if not batch blended, are required by grade shall be provided:

(i) First and last sampling dates;

(ii) The following shall be indicated separately on a summer and winter basis, by month:

(A) Number of months sampled;

(B) Number of 1990 batches, or shipments if not batch blended;

(C) Total volume of all batches or shipments;

(D) Number of batches or shipments sampled;

(E) Total volume of all batches or shipments sampled;

(F) Baseline fuel parameter value, per § 80.91; and

(iii) A showing that data was available on every batch of 1990 gasoline, if applicable, per § 80.91 (b)(3) or (b)(4).

(4) *Method 2.* If Method 2-type data is utilized in the baseline determination, the following information on each type of 1990 blendstock used in the refinery's gasoline are required, by blendstock type shall be provided:

(i) First and last sampling dates; and

(ii) The following shall be indicated separately on a summer and winter basis, by month:

(A) Number of months sampled;

(B) Each type of blendstock used in 1990 gasoline and total number of blendstocks. Include all blendstocks produced, purchased or otherwise received which were blended to produce gasoline within the facility. Identify all blendstocks not produced in the facility but used in the facility's 1990 gasoline;

(C) Total volume of each blendstock used in gasoline in 1990;

(D) Identification of blendstock streams as batch or continuous;

(E) Number of blendstock samples from continuous blendstock streams;

(F) Number of blendstock samples from batch processes, including volume of each batch sampled; and

(G) Baseline fuel parameter value, per § 80.91.

(5) *Method 3, blendstock data.* The following information on each type of post-1990 gasoline blendstock used in the refinery's gasoline are required, by blendstock type shall be provided:

(i) First and last sampling dates;

(ii) The following shall be indicated separately on a summer and winter basis, by month:

(A) Number of post-1990 months sampled;

(B) Each type of blendstock used in 1990 gasoline and total number of blendstocks. Include all blendstocks produced, purchased or otherwise received which were blended to produce gasoline within the facility. Identify all blendstocks not produced in the facility but used in the facility's 1990 gasoline;

(C) Total volume of each blendstock used in gasoline in 1990;

(D) Identification of post-1990 blendstock streams as batch or continuous;

(E) Number of post-1990 blendstock samples from continuous blendstock streams;

(F) Number of post-1990 blendstock samples from batch processes, including volume of each batch sampled; and

(G) Baseline fuel parameter value, per § 80.91; and

(iii) Support documentation showing that the criteria of § 80.91 for using Method 3-type blendstock data are met.

(6) *Method 3, post-1990 gasoline data.* The following information on post-1990 batches of gasoline, or shipments if not batch blended, are required by grade:

(i) First and last sampling dates;

(ii) The following shall be indicated separately for summer and winter production, by month:

(A) Number of post-1990 months sampled;

(B) Number of post-1990 batches, or shipments if not batch blended;

(C) Total volume of all post-1990 batches or shipments;

(D) Number of post-1990 batches or shipments sampled;

(E) Volume of each post-1990 batch or shipment sampled; and

(F) Baseline fuel parameter value, per § 80.91; and

(iii) Support documentation showing that the criteria of § 80.91 for using post-1990 gasoline data are met.

(7) *Work-in-progress (WIP).* All of the following must be included in support of a WIP adjustment (per § 80.91(e)(5)):

(i) Petition including identification of the specific baseline emission(s) or parameter for which the WIP adjustment is desired;

(ii) Showing that all WIP criteria, per § 80.91(e)(5), are met;

(iii) Unadjusted and adjusted baseline fuel parameters, emissions and volume for the facility; and

(iv) Narrative, per § 80.91 (e)(5).

(8) *Extenuating circumstances.* All of the following must be included in support of an extenuating circumstance adjustment (per § 80.91 (e)(6) through (e)(7)):

(i) Petition including identification of the allowable circumstance, per § 80.91 (e)(6) through (e)(7);

(ii) Showing that all applicable criteria, per § 80.91 (e)(6) through (e)(7), are met;

(iii) Unadjusted and adjusted baseline fuel parameters, emissions and volume for the facility; and

(iv) Narrative, per § 80.91.

(9) *Other baseline information.* Narrative discussing any aspects of the baseline determination not already indicated per the requirements of this paragraph (c) shall be provided.

(10) *Refinery information.* The following information, on a summer or winter basis, shall be provided:

(i) Refinery block flow diagram, showing principal refining units;

(ii) Principal refining unit charge rates and capacities;

(iii) Crude types utilized (names, gravities, and sulfur content) and crude charge rates; and

(iv) Information on the following units, if utilized in the refinery:

(A) Catalytic Cracking Unit: conversion, unit yields, gasoline fuel parameter values (per § 80.91(a)(2));

(B) Hydrocracking Unit: unit yields, gasoline fuel parameter values (per § 80.91(a)(2));

(C) Catalytic Reformer: unit yields, severities;

(D) Bottoms Processing Units (including, but not limited to, coking, extraction and hydrogen processing): gasoline stream yields;

(E) Yield structures for other principal units in the refinery (including but not limited to Alkylation, Polymerization, Isomerization, Etherification, Steam Cracking).

§§ 80.94–80.100 [Reserved]

§ 80.101 Standards applicable to refiners and importers.

Any refiner or importer of conventional gasoline shall meet the standards specified in this section over the specified averaging period, beginning on January 1, 1995.

(a) *Averaging period.* The averaging period for the standards specified in this section shall be January 1 through December 31.

(b) *Conventional gasoline compliance standards*—(1) *Simple model standards.* The simple model standards are the following:

(i) Annual average exhaust benzene emissions, calculated according to paragraph (g)(1)(i) of this section, shall not exceed the refiner's or importer's compliance baseline for exhaust benzene emissions;

(ii) Annual average levels of sulfur shall not exceed 125% of the refiner's or importer's compliance baseline for sulfur;

(iii) Annual average levels of olefins shall not exceed 125% of the refiner's or importer's compliance baseline for olefins; and

(iv) Annual average values of T–90 shall not exceed 125% of the refiner's or importer's compliance baseline for T–90.

(2) *Optional complex model standards.* Annual average levels of exhaust benzene emissions, weighted by volume for each batch and calculated using the applicable complex model under § 80.45, shall not exceed the refiner's or importer's 1990 average exhaust benzene emissions.

(3) *Complex model standards.* Annual average levels of exhaust toxics emissions and NO_X emissions, weighted by volume for each batch and calculated using the applicable complex model under § 80.45, shall not exceed the refiner's or importer's 1990 average exhaust toxics emissions and NO_X emissions, respectively.

(c) *Applicability of standards.* (1) For each averaging period prior to January 1, 1998, a refiner or importer shall be subject to either the Simple Model or Optional Complex Model Standards, at their option, except that any refiner or importer shall be subject to:

(i) The Simple Model Standards if the refiner or importer uses the Simple Model Standards for reformulated gasoline; or

(ii) The Optional Complex Model Standards if the refiner or importer used the Complex Model Standards for reformulated gasoline.

(2) Beginning January 1, 1998, each refiner and importer shall be subject to the Complex Model Standards for each averaging period.

(d) *Product to which standards apply.* Any refiner for each refinery, or any importer, shall include in its compliance calculations:

(1) Any conventional gasoline produced or imported during the averaging period;

(2) Any non-gasoline petroleum products that are produced or imported and sold or transferred from the refinery or group of refineries or importer during the averaging period, if required pursuant to § 80.102(e)(2), unless the refiner or importer is able to establish in the form of documentation that the petroleum products were used for a purpose other than the production of gasoline within the United States;

(3) Any gasoline blending stock produced or imported during the averaging period which becomes conventional gasoline solely upon the addition of oxygenate;

(4)(i) Any oxygenate that is added to conventional gasoline, or gasoline blending stock as described in paragraph (d)(3) of this section, where such gasoline or gasoline blending stock is produced or imported during the averaging period;

(ii) In the case of oxygenate that is added at a point downstream of the refinery or import facility, the oxygenate may be included only if the refiner or importer can establish the oxygenate was in fact added to the gasoline or gasoline blendstock produced, by showing that the oxygenate was added by:

(A) The refiner or importer; or

(B) By a person other than the refiner or importer, provided that the refiner or importer:

(1) Has a contract with the oxygenate blender that specifies procedures to be followed by the oxygenate blender that are reasonably calculated to ensure blending with the amount and type of oxygenate claimed by the refiner or importer; and

(2) Monitors the oxygenate blending operation to ensure the volume and type of oxygenate claimed by the refiner or importer is correct, through periodic audits of the oxygenate blender designed to assess whether the overall volumes and type of oxygenate purchased and used by the oxygenate blender are consistent with the oxygenate claimed by the refiner or importer and that this oxygenate was blended with the refiner's or importer's gasoline or blending stock, periodic sampling and testing of the gasoline produced subsequent to oxygenate blending, and periodic inspections to ensure the contractual requirements imposed by the refiner or importer on the oxygenate blender are being met.

(e) *Product to which standards do not apply.* Any refiner for each refinery, or any importer, shall exclude from its compliance calculations:

(1) Gasoline that was not produced at the refinery or was not imported by the importer;

(2) Blendstocks that have been included in another refiner's compliance calculations, pursuant to § 80.102(e)(2) or otherwise;

(3) Gasoline that meets the enforcement exemption for California gasoline under § 80.81; and

(4) Gasoline that is exported.

(f) *Compliance baseline determinations.* (1) In the case of any refiner or importer for whom an individual baseline has been established under § 80.91, the individual baseline for each parameter or emissions performance shall be the compliance baseline for that refiner or importer.

(2) In the case of any refiner or importer for whom the anti-dumping statutory baseline applies under § 80.91, the anti-dumping statutory baseline for each parameter or emissions performance shall be the compliance baseline for that refiner or importer.

(3) In the case of a party that is both a refiner and an importer, and for whom an individual 1990 baseline has not been established for the imported product under § 80.91(b)(4), the compliance baseline for the imported product shall be the 1990 volume weighted average of all of the refiner's individual refinery baselines.

(4) Any compliance baseline under paragraph (f) (1) or (3) of this section shall be adjusted for each averaging period as follows:

(i) The 1990 equivalent conventional gasoline volume for an averaging period is calculated according to the following formula:

$$V_{eq} = V_c - \left(\frac{((V_r + V_c) - V_{1990}) \times V_c)}{V_r + V_c} \right)$$

where

V_{eq}=the 1990 equivalent conventional gasoline volume

V_{1990}=the 1990 volume of gasoline as determined under § 80.91(f)(1)

V_r=the total volume of reformulated gasoline produced or imported by a refiner or importer during the averaging period excluding gasoline which meets the enforcement exemptions of § 80.81

V_c=the total volume of conventional gasoline produced or imported by a refiner or importer during the averaging period excluding gasoline which meets the enforcement exemptions of § 80.81

(ii)(A) If the total volume of the conventional gasoline produced or imported by the refiner or importer during the averaging period is equal to or less than that refiner's or importer's 1990 equivalent conventional gasoline volume, the compliance baseline for each parameter or emissions performance shall be that refiner's or importer's individual 1990 baseline; or

(B) If the total volume of the conventional gasoline produced or imported by the refiner or importer is greater than that refiner's or importer's 1990 equivalent conventional gasoline volume, the compliance baseline for each parameter or emissions performance shall be calculated according to the following formula:

$$CB_i = \left(\frac{(B_i \times V_{eq}) + (DB_i \times (V_c - V_{eq}))}{V_c} \right)$$

where

CB_i=the compliance baseline value for parameter or emissions product i

B_i=the refiner's or importer's individual baseline value for parameter i calculated according to the methodology in § 80.91

V_{eq}=the 1990 equivalent conventional gasoline volume for the averaging period, calculated pursuant to paragraph (f)(4)(iii) of this section

DB_i=the anti-dumping statutory baseline value for parameter i, as specified at § 80.91(c)(5)

V_c=the total volume of conventional gasoline and other products included under paragraph (d) of this section produced or imported by a refiner or importer during the averaging period

(g) *Compliance calculations.* (1) In the case of any refiner or importer subject to an individual refinery baseline, the annual average value for each parameter or emissions performance during the averaging period, calculated according to the following methodologies, shall be less than or equal to the refiner's or importer's standard under paragraph (b) of this section for that parameter.

(i) Exhaust benzene emissions under the Simple Model for an averaging period are calculated as follows:

EXHBEN=1.884+(0.949×BZ)+(0.113×(AR–BZ))

where

EXHBEN=the average exhaust benzene emissions for the averaging period

BZ=the average benzene content for the averaging period

AR=the average aromatics content for the averaging period

(ii) The average value for each parameter for an averaging period shall be calculated as follows:

$$APARM = \left(\frac{\sum_{i=1}^{n} (V_i \times PARM_i \times SG_i)}{\sum_{i=1}^{n} V_i \times SG_i} \right)$$

where

APARM=the average value for the parameter being evaluated

V_i=the volume of conventional gasoline and other products included under paragraph (d) of this section, in batch i

$PARM_i$=the value of the parameter being evaluated for batch i as determined in accordance with the test methods specified in § 80.46

n=the number of batches of conventional gasoline and other products included under paragraph (d) of this section produced or imported during the averaging period

SG_i=specific gravity of batch i (only applicable for properties determined on a weight percent or ppm basis)

(iii) Exhaust benzene emissions performance for each batch shall be calculated in accordance with the applicable model under § 80.45.

(iv) Exhaust toxics emissions performance for each batch shall be calculated in accordance with the applicable model under § 80.45.

(v) Exhaust NO_X emissions performance for each batch shall be calculated in accordance with the applicable model under § 80.45.

(2) In the case of any refiner or importer subject to the anti-dumping statutory baseline, the refiner or importer shall determine compliance using the following methodology:

(i) Calculate the compliance total for the averaging period for sulfur, T–90, olefins, exhaust benzene emissions, exhaust toxics and exhaust NO_X emissions, as applicable, based upon the anti-dumping statutory baseline value for that parameter using the formula specified at § 80.67.

(ii) Calculate the actual total for the averaging period for sulfur, T–90, olefins, exhaust benzene emissions, exhaust toxics and exhaust NO_X emissions, as applicable, based upon the value of the parameter for each batch of conventional gasoline and gasoline blendstocks, if applicable, using the formula specified at § 80.67.

(iii) The actual total for exhaust benzene emissions, exhaust toxics and exhaust NO_X emissions, shall not exceed the compliance total, and the actual totals for sulfur, olefins and T–90 shall not exceed 125% of the compliance totals, as required under the applicable model.

(3) In the case of any batch of gasoline that is produced by combining blendstock with gasoline, where the gasoline portion of the blend is not included in the compliance calculation, the emissions performance for exhaust benzene, exhaust toxics, and exhaust NO_X emissions for the blendstock shall be:

(i)(A) The emissions performance of a gasoline that would be produced by combining the blendstock used at the volume percentage used, with a gasoline that has properties that are equal to the refiner's or importer's anti-dumping baseline; minus

(B) The emissions performance of a gasoline that has properties that are equal to the refiner's or importer's anti-dumping baseline.

(ii) The volume weighted net emissions performance for exhaust benzene, exhaust toxics, and exhaust NO_X emissions, as applicable, for all batches of gasoline that are produced during the averaging period by combining blendstock with gasoline, shall be equal to or less than zero.

(iii) The value of those properties measured on a weight percent or ppm basis shall be adjusted for the specific gravity of the gasoline and blendstocks used for the purposes of calculations under paragraph (g)(3) of this section.

(iv) For blends which contain greater than 1.50 volume percent ethanol, the RVP of the final blend shall be 1.0 psi greater than the RVP of the base gasoline and blendstocks without the ethanol for the purposes of calculations under paragraph (g)(3) of this section.

(v) For blends containing less than 1.50 volume percent ethanol, the RVP of the base gasoline and blendstocks without ethanol shall be used for the purposes of calculations under paragraph (g)(3) of this section.

(4) Compliance calculations under this subpart E shall be based on computations to the same degree of accuracy that are specified in establishing individual baselines under § 80.91.

(5) The emissions performance of gasoline that has an RVP that is equal to or less than the RVP required under § 80.27 ("summer gasoline") shall be determined using the applicable summer complex model under § 80.45.

(6) The emissions performance of gasoline that has an RVP greater than the RVP required under § 80.27 ("winter gasoline") shall be determined using the applicable winter complex model under § 80.45, using an RVP of 8.7 psi for compliance calculation purposes under this subpart E.

(7)(i) For the 1998 averaging period any refiner or importer may elect to determine compliance with the requirement for exhaust NO_X emissions performance either with or without the inclusion of oxygenates in its compliance calculations, in accordance with § 80.91(e)(4), provided that the baseline exhaust NO_X emissions performance is calculated using the same with- or without-oxygen approach.

(ii)(A) Any refiner or importer must use the with- or without-oxygen approach elected under paragraph (g)(7)(i) of this section for all subsequent averaging periods; except that

(B) In the case of any refiner or importer who elects to determines compliance for the calendar year 1998 averaging period without the inclusion of oxygenates, such refiner or importer may elect to include oxygenates in its compliance calculations for the 1999 averaging period.

(iii) Any refiner or importer who elects to use the with-oxygen approach under paragraph (g)(7)(ii)(B) of this section must use this approach for all subsequent averaging periods.

(h) *Refinery grouping for determining compliance.* (1) Any refiner that operates more than one refinery may:

(i) Elect to achieve compliance individually for the refineries; or

(ii) Elect to achieve compliance on an aggregate basis for a group, or for groups, of refineries, some of which may be individual refineries; provided that

(iii) Compliance is achieved for each refinery separately or as part of a group; and

(iv) The data for any refinery is included only in one compliance calculation.

(2) Any election by a refiner to group refineries under paragraph (h)(1) of this section shall:

(i) Be made as part of the report for the 1995 averaging period required by § 80.105;

(ii) Apply for the 1995 averaging period and for each subsequent averaging period, and may not thereafter be changed; and

(iii) Apply for purposes of the blendstock tracking and accounting provisions under § 80.102.

(3)(i) Any standards under this section shall apply, and compliance calculations shall be made, separately for each refinery or refinery group; except that

(ii) Any refiner that produces conventional gasoline for distribution to a specified geographic area which is the subject of a petition approved by EPA pursuant to § 80.91(f)(3) shall achieve compliance separately for gasoline supplied to such specified geographic area.

(i) *Sampling and testing.* (1) Any refiner or importer shall for each batch of conventional gasoline, and other products if included paragraph (d) of this section, prior to such gasoline or product leaving the refinery or import facility:

(i)(A) Determine the value of each of the properties required for determining compliance with the standards that are applicable to the refiner or importer, by collecting and analyzing a representative sample of gasoline or blendstock taken from the batch, using the methodologies specified in § 80.46; except that

(B) Any refiner that produces gasoline by combining blendstock with gasoline that has been included in the compliance calculations of another refiner or of an importer may for such gasoline meet this sampling and testing requirement by collecting and analyzing a representative sample of the blendstock used subsequent to each receipt of such blendstock if the compliance calculation method specified in paragraph (g)(3) of this section is used.

(ii) Assign a number to the batch (the "batch number"), as specified in § 80.65(d)(3);

(2) For the purposes of meeting the sampling and testing requirements under paragraph (i)(1) of this section, any refiner or importer may, prior to analysis, combine samples of gasoline collected from more than one batch of gasoline or blendstock ("composite sample"), and treat such composite sample as one batch of gasoline or blendstock provided that the refiner or importer:

(i) Meets each of the requirements specified in § 80.91(d)(4)(iii) for the samples contained in the composite sample;

(ii) Combines samples of gasoline that are produced or imported over a period no longer than one month;

(iii) Uses the total of the volumes of the batches of gasoline that comprise the composite sample, and the results of the analyses of the composite sample, for purposes of compliance calculations under paragraph (g) of this section; and

(iv) Does not combine summer and winter gasoline, as specified under paragraphs (g) (5) and (6) of this section, in a composite sample.

§ 80.102 Controls applicable to blendstocks.

(a) For the purposes of this subpart E:

(1) All of the following petroleum products that are produced by a refiner or imported by an importer shall be considered "applicable blendstocks":

(i) Reformate;

(ii) Light coker naphtha;

(iii) FCC naphtha;

(iv) Benzene/toluene/xylene;

(v) Pyrolysis gas;

(vi) Aromatics;

(vii) Polygasoline; and

(viii) Dimate; and

(2) Any gasoline blendstock with properties such that, if oxygenate only is added to the blendstock the resulting blend meets the definition of gasoline under § 80.2(c), shall be considered gasoline.

(b)(1) Any refiner or importer of conventional gasoline or blendstocks shall determine the baseline blendstock-to-gasoline ratio for each calendar year 1990 through 1993 according to the following formula:

$$BG_{by} = \frac{V_{bs}}{V_g}$$

Where:

BG_{by}=Blendstock-to-gasoline ratio for base year

V_{bs}=Volume of applicable blendstock produced or imported and transferred to others during the calendar year, and used in to produce gasoline

V_g=Volume of gasoline produced or imported during the calendar year

(2)(i) Only those volumes of applicable blendstocks for which the refiner is able to demonstrate the blendstock was used in the production of gasoline may be included in baseline blendstock-to-gasoline ratios under paragraph (b)(1) of this section.

(ii) The baseline volume data for applicable blendstocks and gasoline shall be confirmed through the baseline audit requirements specified in § 80.92 and submitted in accordance with the requirements of § 80.93.

(c) Any refiner or importer shall calculate the baseline cumulative blendstock-to-gasoline ratio according to the following formula:

$$BGC_{base} = \frac{\sum_{i=1}^{n} V_{bs,i}}{\sum_{i=1}^{n} V_{g,i}}$$

Where:

BGC_{base}=Baseline cumulative blendstock-to-gasoline ratio

$V_{bs,\ i}$=Volume of applicable blendstock produced or imported and transferred to others during calendar year i

$V_{g,\ i}$=Volume of gasoline produced or imported during calendar year i

i=each year, 1990 through 1993, for which a blendstock-to-gasoline ratio is calculated under paragraph (b) of this section

(d)(1) For each averaging period, any refiner or importer shall:

(i) Determine the averaging period blendstock-to-gasoline ratio according to the following formula:

$$BG_a = \frac{V_{bs}}{V_g}$$

Where:

BG_a=Blendstock-to-gasoline ratio for the current averaging period

V_{bs}=Volume of applicable blendstock produced or imported during the averaging period and subsequently transferred to others

V_g=Volume of conventional gasoline, reformulated gasoline, and RBOB produced or imported during the averaging period

(ii) For each averaging period until January 1, 1998, calculate the peak year blendstock-to-gasoline ratio percentage change according to the following formula:

$$PC_p = \left(\frac{BG_a - BG_p}{BG_p} \right) \times 100$$

Where:

PC_p=Peak year blendstock-to-gasoline ratio percentage change

BG_a=Blendstock-to-gasoline ratio for the averaging period calculated under paragraph (d)(1)(i) of this section

BG_p=Largest one year blendstock-to-gasoline ratio calculated under paragraph (b) of this section

(2) Beginning on January 1, 1998, for each averaging period any refiner or importer shall:

(i) Determine the running cumulative compliance period blendstock-to-gasoline ratio according to the following formula:

$$BGC_{comp} = \frac{\sum_{i=1}^{n} V_{bs,i}}{\sum_{i=1}^{n} V_{g,i}}$$

Where:

BGC_{comp}=Running cumulative compliance period blendstock-to-gasoline ratio

$V_{bs,i}$=Volume of applicable blendstock produced or imported and transferred to others during averaging period i

$V_{g,i}$=Volume of conventional gasoline, reformulated gasoline, and RBOB produced or imported during averaging period i

i=The current averaging period, and each of the three immediately preceding averaging periods

(ii) Calculate the cumulative blendstock-to-gasoline ratio percentage change according to the following formula:

$$PC_c = \left(\frac{BGC_{comp} - BGC_{base}}{BGC_{base}}\right) \times 100$$

Where:

PC_c=Cumulative blendstock-to-gasoline ratio percentage change

BGC_{comp}=Running cumulative compliance period blendstock-to-gasoline ratio as determined in paragraph (d)(2)(i) of this section

BGC_{base}=Baseline cumulative blendstock-to-gasoline ratio calculated under paragraph (c) of this section

(3) For purposes of this paragraph (d), all applicable blendstocks produced or imported shall be included, except those for which the refiner or importer has sufficient evidence in the form of documentation that the blendstocks were:

(i) Exported;

(ii) Used for other than gasoline blending purposes;

(iii) Transferred to a refiner that used the blendstock as a "feedstock" in a refining process during which the blendstock underwent a substantial chemical or physical transformation; or

(iv) Transferred between refineries which have been grouped pursuant to § 80.101(h) by a refiner for the purpose of determining compliance under this subpart.

(e)(1) Any refiner or importer shall have exceeded the blendstock-to-gasoline ratio percentage change threshold if:

(i) The peak year blendstock-to-gasoline ratio percentage change calculated under paragraph (d)(1)(ii) of this section is more than ten; or

(ii) Beginning on January 1, 1998, the cumulative blendstock-to-gasoline ratio percentage change calculated under paragraph (d)(2)(ii) of this section is more than ten.

(2) Any refiner or importer that exceeds the blendstock-to-gasoline ratio percentage change threshold shall, without further notification:

(i) Include all blendstocks produced or imported and transferred to others in its compliance calculations for two averaging periods beginning on January 1 of the averaging period subsequent to the averaging period when the exceedance occurs;

(ii) Provide transfer documents to the recipient of such blendstock that contain the language specified at § 80.106(b); and

(iii) Transfer such blendstock in a manner such that the ultimate blender of such blendstocks has a reasonable basis to know that such blendstock has been accounted for.

(3) Any refiner or importer that has previously exceeded the blendstock-to-gasoline ratio percentage change threshold, and subsequently exceeds the threshold for an averaging period and is not granted a waiver pursuant to paragraph (f)(2)(i) of this section, shall, without further notification, meet the requirements specified in paragraphs (e)(2) (i) through (iii) of this section for four averaging periods, beginning on January 1 of the averaging period following the averaging period when the subsequent exceedance occurs.

(f)(1) The refiner or importer blendstock accounting requirements specified under paragraph (e) of this section shall not apply in the case of any refiner or importer:

(i) Whose 1990 baseline value for each regulated fuel property and emission performance, as determined in accordance with §§ 80.91 and 80.92, is less stringent than the anti-dumping statutory baseline value for that parameter or emissions performance;

(ii) Whose averaging period blendstock-to-gasoline ratio, calculated according to paragraph (d)(1)(i) of this section, is equal to or less than .0300; or

(iii) Who obtains a waiver from EPA, provided that a petition for such a waiver is filed no later than fifteen days following the end of the averaging period for which the blendstock-to-gasoline ratio percentage change threshold is exceeded.

(2)(i) EPA may grant the waiver referred to in paragraph (f)(1)(iii) of his section if the level of blendstock production was the result of extreme or unusual circumstances (e.g., a natural disaster or act of God) which clearly are outside the control of the refiner or importer, and which could not have been avoided by the exercise of prudence, diligence, and due care.

(ii) Any petition filed under paragraph (f) of this section shall include information which describes the extreme or unusual circumstance which caused the increased volume of blendstock produced or imported, the steps taken to avoid the circumstance, and the steps taken to remedy or mitigate the effect of the circumstance.

(g) Notwithstanding the requirements of paragraphs (a) through (f) of this section, any refiner or importer that transfers applicable blendstock to another refiner or importer with a less stringent baseline requirement, either directly or indirectly, for the purpose of evading a more stringent baseline requirement, shall include such blendstock(s) in determining compliance with the applicable requirements of this subpart.

§ 80.103 Registration of refiners and importers.

Any refiner or importer of conventional gasoline must register with the Administrator in accordance with the provisions specified at § 80.76.

§ 80.104 Record keeping requirements.

Any refiner or importer shall maintain records containing the information as required by this section.

(a) Beginning in 1995, for each averaging period:

(1) Documents containing the information specified in paragraph (a)(2) of this section shall be obtained for:

(i) Each batch of conventional gasoline, and blendstock if blendstock accounting is required under § 80.102(e)(2); or

(ii) Each batch of blendstock received in the case of any refiner that determines compliance on the basis of blendstocks properties under § 80.101(g)(3).

(2)(i) The results of tests performed in accordance with § 80.101(i);

(ii) The volume of the batch;

(iii) The batch number;

(iv) The date of production, importation or receipt;

(v) The designation regarding whether the batch is summer or winter gasoline;

(vi) The product transfer documents for any conventional gasoline produced or imported;

(vii) The product transfer documents for any conventional gasoline received;

(viii) For any gasoline blendstocks received by or transferred from a refiner or importer, documents that reflect:

(A) The identification of the product;

(B) The date the product was transferred; and

(C) The volume of product;

(ix) In the case of any refinery-produced or imported products listed in § 80.102(a) that were transferred for other than gasoline blending purposes, documents which demonstrate that other purpose; and

(x) In the case of oxygenate that is added by a person other than the refiner or importer under § 80.101(d)(4)(ii)(B), documents that support the volume of oxygenate claimed by the refiner or importer, including the contract with the oxygenate blender and records relating to the audits, sampling and testing, and inspections of the oxygenate blender operation.

(b) Any refiner or importer shall retain the documents required in this section for a period of five years from the date the conventional gasoline or blendstock is produced or imported, and deliver such documents to the Administrator of EPA upon the Administrator's request.

§ 80.105 Reporting requirements.

(a) Beginning with the 1995 averaging period, and for each subsequent averaging period, any refiner for each refinery or group of refineries at which any conventional gasoline is produced, and any importer that imports any conventional gasoline, shall submit to the Administrator a report which contains the following information:

(1) The total gallons of conventional gasoline produced or imported;

(2) The total gallons of applicable blendstocks produced or imported and transferred to others;

(3) The total gallons of blendstocks included in compliance calculations pursuant to § 80.102(e)(2);

(4) The average exhaust benzene emissions, sulfur, olefins and T90 if using the Simple Model; exhaust benzene emissions if using the optional Complex Model; or exhaust toxic emissions and NO_x emissions if using the Complex Model, as applicable, calculated in accordance with § 80.101;

(5) The following information for each batch of conventional gasoline or batch of blendstock included under paragraph (a) of this section:

(i) The batch number;

(ii) The date of production;

(iii) The volume of the batch;

(iv) The grade of gasoline produced (i.e., premium, mid-grade, or regular); and

(v) The properties, pursuant to § 80.101(i); and

(6) Such other information as EPA may require.

(b) The reporting requirements of paragraph (a) of this section do not apply in the case of any conventional gasoline or gasoline blendstock that is excluded from a refiner's or importer's compliance calculation pursuant to § 80.101(e).

(c) For each averaging period, each refiner and importer shall cause to be submitted to the Administrator of EPA, by May 30 of each year, a report in accordance with the requirements for the Attest Engagements of §§ 80.125 through 80.131.

(d) The report required by paragraph (a) of this section shall be:

(1) Submitted on forms and following procedures specified by the Administrator of EPA;

(2) Submitted to EPA by the last day of February each year for the prior calendar year averaging period; and

(3) Signed and certified as correct by the owner or a responsible corporate officer of the refiner or importer.

§ 80.106 Product transfer documents.

(a)(1) On each occasion when any person transfers custody or title to any conventional gasoline, the transferor shall provide to the transferee documents which include the following information:

(i) The name and address of the transferor;

(ii) The name and address of the transferee;

(iii) The volume of gasoline being transferred;

(iv) The location of the gasoline at the time of the transfer;

(v) The date of the transfer;

(vi) In the case of transferors or transferees who are refiners or importers, the EPA-assigned registration number of those persons; and

(vii) The following statement: "This product does not meet the requirements for reformulated gasoline, and may not be used in any reformulated gasoline covered area."

(2) The requirements of paragraph (a)(1) of this section apply to product that becomes gasoline upon the addition of oxygenate only.

(b) On each occasion when any person transfers custody or title to any blendstock that has been included in the refiner's or importer's compliance calculations under § 80.102(e)(2), the transferor shall provide to the transferee documents which include the following statement: "For purposes of the Anti-Dumping requirements under 40 CFR Part 80, Subpart E, this blendstock has been accounted for by the refiner that produced it, and must be excluded from any subsequent compliance calculations."

§§ 80.107–80.124 [Reserved]

Subpart F—Attest Engagements

§ 80.125 Attest engagements.

(a) Any refiner, importer, and oxygenate blender subject to the requirements of this subpart F shall engage an independent certified public accountant, or firm of such accountants (hereinafter referred to in this subpart F as "CPA"), to perform an agreed-upon procedures attestation engagement of the underlying documentation that forms the basis of the reports by §§ 80.75 and 80.104.

(b) The CPA shall perform the attestation engagements in accordance with the Statements on Standards for Attestation Engagements.

(c) The CPA may complete the requirements of this subpart F with the assistance of internal auditors who are employees or agents of the refiner, importer, or oxygenate blender, so long as such assistance is in accordance with the Statements on Standards for Attestation Engagements.

(d) Notwithstanding the requirements of paragraph (a) of this section, any refiner, importer, or oxygenate blender may satisfy the requirements of this subpart F if the requirements of this subpart F are completed by an auditor who is an employee of the refiner, importer, or oxygenate blender, provided that such employee:

(1) Is an internal auditor certified by the Institute of Internal Auditors, Inc. (hereinafter referred to in this subpart F as "CIA"); and

(2) Completes the internal audits in accordance with the Codification of Standards for the Professional Practice of Internal Auditing.

(e) Use of a CPA or CIA who is debarred, suspended, or proposed for debarment pursuant to the Governmentwide Debarment and Suspension Regulations, 40 CFR Part 32, or the Debarment, Suspension, and Ineligibility Provisions of the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4, shall be deemed in noncompliance with the requirements of this section.

(f) The following documents are incorporated by reference: the Statements on Standards for Attestation Engagements, Codification of

Statements on Auditing Standards, written by the American Institute of Certified Public Accountants, Inc., 1991, and published by the Commerce Clearing House, Inc., Identification Number 059021, and the Codification of Standards for the Professional Practice of Internal Auditing, written and published by the Institute of Internal Auditors, Inc., 1989, Identification Number ISBN 0–89413–207–5. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the Statements on Standards for Attestation Engagements may be obtained from the American Institute of Certified Public Accountants, Inc., 1211 Avenue of the Americas, New York, New York 10036, and copies of the Codification of Standards for the Professional Practice of Internal Auditing may be obtained from the Institute of Internal Auditors, Inc., 249 Maitland Avenue, Altamonte Springs, Florida 32701–4201. Copies may be inspected at the U.S. Environmental Protection Agency, Office of the Air Docket, 401 M Street, SW., Washington, DC., or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington DC.

§ 80.126 Definitions.

The following definitions shall apply for the purposes of this subpart F:

(a) *Averaging compliance records* shall include the calculations used to determine compliance with relevant standards on average, for each averaging period and for each quantity of gasoline for which standards must be achieved separately.

(b) *Credit trading records* shall include worksheets and EPA reports showing actual and complying totals for oxygen and benzene; credit calculation worksheets; contracts; letter agreements; and invoices and other documentation evidencing the transfer of credits.

(c) *Designation records* shall include laboratory analysis reports that identify whether gasoline meets the requirements for a given designation; operational and accounting reports of product storage; and product transfer documents.

(d) *Oxygenate blender records* shall include laboratory analysis reports; refiner, importer and oxygenate blender contracts; quality assurance program records; product transfer documents; oxygenate purchasing, inventory, and usage records; and daily tank inventory gauging reports, meter tickets, and product transfer documents.

(e) Product transfer documents shall include documents that reflect the transfer of ownership or physical custody of gasoline or blendstock, including invoices, receipts, bills of lading, manifests, and pipeline tickets.

(f) A *tender* means the physical transfer of custody of a volume of gasoline or other petroleum product all of which has the same identification (reformulated gasoline, conventional gasoline, RBOB, and other non-finished gasoline petroleum products), and characteristics (time and place of use restrictions for reformulated gasoline).

(g) *Volume records* shall include summaries of gasoline produced or imported that account for the volume of each type of gasoline produced or imported. The volumes shall be based on tank gauges or meter reports and temperature adjusted to 60 degrees Fahrenheit.

§ 80.127 Sample size guidelines.

In performing the attest engagement, the auditor shall sample relevant populations to which agreed-upon procedures will be applied using the methods specified in this section, which shall constitute a representative sample.

(a) Sample items shall be selected in such a way as to comprise a simple random sample of each relevant population; and

(b) Sample size shall be determined using one of the following options:

(1) *Option 1.* Determine the sample size using the following table:

SAMPLE SIZE, BASED UPON POPULATION SIZE

No. in population (N)	Sample size
66 and larger	29
41–65	25
26–40	20
0–25	N or 19, whichever is smaller.

(2) *Option 2.* Determine the sample size in such a manner that the sample size is equal to that which would result by using the following parameters and standard statistical methodologies:

Confidence Level—95%
Expected Error Rate—0%
Maximum Tolerable Error Rate—10%

(3) *Option 3.* The auditor may use some other form of sample selection and/or some other method to determine the sample size, provided that the resulting sample affords equal or better strength of inference and freedom from bias as compared with paragraphs (b)(1) and (2) of this section), and that the auditor summarizes the substitute methods and clearly demonstrates their equivalence in the final report on the audit.

§ 80.128 Agreed upon procedures for refiners and importers.

The following are the minimum attest procedures that shall be carried out for each refinery and importer. Agreed upon procedures may vary from the procedures stated in this section due to the nature of the refiner's or importer's business or records, provided that any refiner or importer desiring to modify procedures obtains prior approval from EPA.

(a) Read the refiner's or importer's reports filed with EPA for the previous year as required by §§ 80.75 and 80.105.

(b) Obtain a gasoline inventory reconciliation analysis for the current year from the refiner or importer which includes reformulated gasoline, RBOB, conventional gasoline, and non-finished-gasoline petroleum products.

(1) Test the mathematical accuracy of the calculations contained in the analysis.

(2) Agree the beginning and ending inventories to the refiner's or importer's perpetual inventory records.

(c) Obtain separate listings of all tenders during the current year of reformulated gasoline, RBOB, conventional gasoline, and non-finished-gasoline petroleum products.

(1) Test the mathematical accuracy of the calculations contained in the listings.

(2) Agree the listings of tenders' volumes to the gasoline inventory reconciliation in paragraph (b) of this section.

(3) Agree the listings of tenders' volumes, where applicable, to the EPA reports.

(d) Select a representative sample from the listing of reformulated gasoline tenders, and for this sample:

(1) Agree the volumes to the product transfer documents;

(2) Compare the product transfer documents designation for consistency with the time and place, and compliance model designations for the tender (VOC-controlled or non-VOC-controlled, VOC region for VOC-controlled, OPRG versus non-OPRG, summer or winter gasoline, and simple or complex model certified); and

(3) Trace back to the batch or batches in which the gasoline was produced or imported. Obtain the refiner's or importer's internal laboratory analyses for each batch and compare such analyses for consistency with the analyses results reported to EPA and to the time and place designations for the tender's product transfer documents.

(e) Select a representative sample from the listing of RBOB tenders, and for this sample:

(1) Agree the volumes to the original product transfer documents;

(2) Determine that the requisite contract was in place with the downstream blender designating the required blending procedures, or that the refiner or importer accounted for the RBOB using the assumptions in § 80.72(a)(9);

(3) Review the product transfer documents for the indication of the type and amount of oxygenate required to be added to the RBOB;

(4) Trace back to the batch or batches in which the RBOB was produced or imported. Obtain refiner's or importer's internal lab analysis for each batch and agree the consistency of the type and volume of oxygenate required to be added to the RBOB with that indicated in applicable tender's product transfer documents; and

(5) Agree the sampling and testing frequency of the refiner's or importer's downstream oxygenated blender quality assurance program with the sampling and testing rates as required in § 80.72.

(f) Select a representative sample of reformulated gasoline and RBOB batches produced by computerized in-line blending, and for this sample:

(1) Obtain the composite sample internal laboratory analyses results; and

(2) Agree the results of the internal laboratory analyses to the quarterly batch information submitted to the EPA.

(g) Select a representative sample from the listing of the tenders of conventional gasoline and conventional gasoline blendstock that becomes gasoline through the addition of oxygenate only, and for this sample:

(1) Agree the volumes to the product transfer documents;

(2) For a representative sample of tenders, trace back to the batch or batches in which the gasoline was produced or imported. Obtain the refiner's or importer's internal laboratory analyses for each batch and compare such analyses for consistency with the analyses results reported to EPA; and

(3) Where the refiner or importer has included oxygenate that is blended downstream of the refinery or import facility in its compliance calculations in accordance with § 80.101(d)(4)(ii), obtain a listing of each downstream oxygenate blending operation from which the refiner or importer is claiming oxygenate for use in compliance calculations, and for each such operation:

(i) Determine if the refiner or importer had a contract in place with the downstream blender during the period oxygenate was blended;

(ii) Determine if the refiner or importer has records reflecting that it conducted physical inspections of the downstream blending operation during the period oxygenate was blended;

(iii) Obtain a listing from the refiner or importer of the batches of conventional gasoline or conventional sub-octane blendstock, and the compliance calculations for which include oxygenate blended by the downstream oxygenate blender, and test the mathematical accuracy of the calculations contained in this listing;

(iv) Obtain a listing from the downstream oxygenate blender of the oxygenate blended with conventional gasoline or sub-octane blendstock that was produced or imported by the refiner or importer. Test the mathematical accuracy of the calculations in this listing. Agree the overall oxygenate blending listing obtained from the refiner or importer with the listing obtained from the downstream oxygenate blender. Select a representative sample of oxygenate blending listing obtained from the downstream oxygenate blender, and for this sample:

(A) Using product transfer documents, determine if the oxygenate was blended with conventional gasoline or conventional sub-octane blendstock that was produced by the refiner or imported by the importer; and

(B) Agree the oxygenate volume with the refiner's or importer's listing of oxygenate claimed for this gasoline;

(v) Obtain a listing of the sampling and testing conducted by the refiner or importer over the downstream oxygenate blending operation. Select a representative sample of the test results from this listing, and for this sample agree the tested oxygenate volume with the oxygenate use listings from the refiner or importer, and from the oxygenate blender; and

(vi) Obtain a copy of the records reflecting the refiner or importer audit over the downstream oxygenate blending operation. Review these records for indications that the audit included review of the overall volumes and type of oxygenate purchased and used by the oxygenate blender to be consistent with the oxygenate claimed by the refiner or importer and that this oxygenate was blended with the refiner's or importer's gasoline or blending stock.

(h) In the case of a refiner or importer that is not exempt from blendstock tracking under § 80.102(f):

(1) Obtain listings for those tenders of non-finished-gasoline classified by the refiner or importer as:

(i) Applicable blendstock which is included in the refiner's or importer's blendstock tracking calculations pursuant to § 80.102(b) through (d);

(ii) Applicable blendstock which is exempt pursuant to § 80.102(d)(3) from inclusion in the refiner's or importer's blendstock tracking calculations pursuant to § 80.102 (b) through (d); and

(iii) All other non-finished-gasoline petroleum products.

(2) Test the mathematical accuracy of the calculations contained in the analysis.

(3) Agree the listings of tenders' volumes to the gasoline inventory reconciliation in paragraph (b) of this section.

(4) Agree the EPA report for the volume classified as applicable blendstock pursuant to the requirements of § 80.102.

(5) Select a representative sample from the listing of applicable blendstock which is reported to EPA, and for such sample:

(i) Agree the volumes to records supporting the transfer of the tender to another person; and

(ii) Trace back to the batch or batches in which the non-finished-gasoline petroleum product was produced or imported. Obtain the refiner's or importer's internal laboratory analysis for each batch and compare such analysis for consistency with the product type assigned by the refiner or importer (e.g., reformate, light coker naphtha, etc.), and that this product type is included in the applicable blendstock list at § 80.102(a).

(6) Select a representative sample from the listing of applicable blendstock which is exempt from inclusion in the blendstock tracking report to EPA, and for such sample:

(i) Agree the volumes to records supporting the transfer of the tender to another person;

(ii) Trace back to the batch or batches in which the non-finished-gasoline petroleum product was produced or imported. Obtain the refiner's or importer's internal laboratory analysis for each batch and compare such analysis for consistency with the product type assigned by the refiner or importer (e.g., reformate, light coker naphtha, etc.), and that this product type is included in the applicable blendstock list at § 80.102(a); and

(iii) Obtain the documents that demonstrate the purpose for which the product was used, and agree that the documented purpose is one of those specified at § 80.102(d)(3).

(7) Select a representative sample from the listing of all other non-

finished-gasoline petroleum products, and for such sample:

(i) Agree the volumes to records supporting the transfer of the tender to another person;

(ii) Trace back to the batch or batches in which the non-finished-gasoline petroleum product was produced or imported. Obtain the refiner's or importer's internal laboratory analysis for each batch and compare such analysis for consistency with the product-type assigned by the refiner or importer (e.g., alkylate, isobutane, etc.), and agree that this product type is excluded from the applicable blendstock list at § 80.102(a).

(i) In the case of a refiner or importer required to account for blendstocks produced or imported under § 80.102(e)(2):

(1) Obtain listings for those tenders of non-finished-gasoline tenders classified by the refiner or importer as:

(i) Blendstock which is included in the compliance calculations for the refinery or importer; and

(ii) All other non-finished-gasoline petroleum products;

(2) Test the mathematical accuracy of the calculations contained in the listings under paragraph (i)(1) of this section;

(3) Agree the listings of tenders' volumes to the gasoline inventory reconciliation in paragraph (b) of this section;

(4) Select a representative sample from the listing of blendstock tenders which are included in the compliance calculations for the refinery or importer, and for such sample:

(i) Agree the volumes to records supporting the transfer of the tender to another person;

(ii) Review the product transfer documents for the statement indicating the blendstock has been accounted-for, and may not be included in another party's compliance calculations; and

(iii) Trace back to the batch or batches in which the blendstock was produced or imported. Obtain the refiner's or importer's internal laboratory analyses for each batch and compare such analyses for consistency with the analyses results reported to EPA; and

(5) Select a representative sample from the listing of tenders of non-finished-gasoline petroleum products that are excluded from the refiner's or importer's compliance calculations, and for such sample confirm that documents demonstrate the petroleum products were used for a purpose other than the production of gasoline within the United States.

§ 80.129 Agreed upon procedures for downstream oxygenate blenders.

The following are the procedures to be carried out at each oxygenate blending facility that is subject to the requirements of this subpart F:

(a) Read the blenders reports filed with the EPA for the previous year as required by § 80.75.

(b) Obtain a material balance analysis summarizing receipts of RBOB and oxygenate to the blender, and the deliveries of reformulated gasoline from the blender.

(1) Test the mathematical accuracy of the calculations contained in the analysis.

(2) Agree the beginning and ending inventory to the blender's perpetual inventory records.

(3) Agree the analysis, where applicable, to the EPA reports.

(c) Obtain a listing of all RBOB receipts for the previous year.

(1) Test the mathematical accuracy of the volumetric calculations contained in the listing.

(2) Agree the volumetric calculations of RBOB receipts to the calculations contained in the material balance analysis.

(3) Select a representative sample of RBOB receipts from the listing. Review the product transfer documents for the indication of the type and volume of oxygenate required to be added to the RBOB.

(d) Obtain a listing of all reformulated gasoline batches produced by the blender during the previous year.

(1) Test the mathematical accuracy of the volumetric calculations contained in the listing.

(2) Agree the volumetric calculations contained in the listing to the calculations contained in the material balance analysis.

(3) Select a representative sample of the batches from the listing, and for these batches:

(i) Obtain the blender's records that indicate the volume and type of oxygenate that was blended, the volume of RBOB that was blended and the product transfer documents for the RBOB, and the internal lab analysis where applicable;

(ii) Agree the consistency of the type and volume of oxygenate added to the RBOB with that indicated to be added in the RBOB's product transfer documents;

(iii) Recalculate the actual oxygen content based on the volumes blended and agree to the report to EPA on oxygen; and

(iv) Review the time and place designations in the product transfer documents prepared for the batch by the blender, for consistency with the time and place designations in the product transfer documents for the RBOB (e.g., VOC-controlled or non-VOC-controlled, VOC region for VOC-controlled, OPRG versus non-OPRG, and simple or complex model).

(e) Agree the sampling and testing frequency of the blender's quality assurance program with the sampling and testing rates required in § 80.72.

§ 80.130 Agreed upon procedures reports.

(a) *Reports.* (1) The CPA or CIA shall issue to the refiner, importer, or blender a report summarizing the procedures performed and the findings in accordance with the attest engagement or internal audit performed in compliance with this subpart.

(2) The refiner, importer or blender shall provide a copy of the auditor's report to the EPA within the time specified in § 80.75(m).

(b) *Record retention.* The CPA or CIA shall retain all records pertaining to the performance of each agreed upon procedure and pertaining to the creation of the agreed upon procedures report for a period of five years from the date of creation and shall deliver such records to the Administrator upon request.

§§ 80.131–80.135 [Reserved]

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Part III

Department of Agriculture

Forest Service

36 CFR Parts 261 and 262
Prohibitions: Law Enforcement Support Activities; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 261 and 262

RIN 0596–AA75

Prohibitions; Law Enforcement Support Activities

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide a comprehensive revision of the acts prohibited on the National Forest System enforced by personnel of the Forest Service. These proposed revisions respond to emerging law enforcement issues, the enactment of new laws, and the promulgation of new rules that have occurred since the subject rules were last revised. The intent of these rules is to adequately protect National Forest System resources, the public who uses the National Forest System, and the employees who administer it. Public comment is invited.

DATES: Comments must be received in writing by April 18, 1994.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (5300), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the Office of the Director, Fiscal and Public Safety Staff, room 605, 1621 North Kent Street, Arlington, VA, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jack Gregory, Law Enforcement and Investigations Staff, (912) 267–2471 or Kathryn Toffenetti, Office of the General Counsel, Natural Resources Division, (202) 720–2651.

SUPPLEMENTARY INFORMATION:

Law Enforcement Activities on the National Forest System

Promulgation of Rules

In order to carry out the agency's statutory mission, it has long been necessary to promulgate rules setting forth those acts that are prohibited on the National Forest System. These rules are integral to Forest Service efforts to protect resources, facilities, employees, and the public. The primary authority for the Secretary to promulgate such rules is found at 16 U.S.C. 551. Violators of these rules can be punished by imprisonment for a term not to exceed six months and are subject to a range of fines as a result of the enactment of the Comprehensive Crime Control Act of 1984 (18 U.S.C. 3559, 3571).

Jurisdiction of Notional Forests

Both Federal and State laws apply to the national forests (16 U.S.C. 480), that is, both Federal and State criminal and civil jurisdiction apply to persons within the national forests. Generally, State enforce State laws, while Federal officers enforce Federal laws and regulations. In most cases, the Forest Service enforces laws and regulations relating to its resource protection responsibilities. Some prohibitions established in certain State laws may also be appropriate subjects of Federal regulation. There are several Forest Service prohibited acts that rely on the existence of a particular State law for definition, for example, 36 CFR 261.13(i) prohibits the operation of any vehicle off Forest Development, State or County roads "in violation of State law established for vehicles used off roads." Thus, in some instances, an act or omission by a national forest visitor may be regulated by both Federal and State governments.

Forest officers cooperate fully with State, local, and other Federal agencies in executing their responsibilities related to the National Forest System. With the enactment of the Cooperative Law Enforcement Act in 1971 (16 U.S.C. 551a), the Forest Service has entered into reimbursable agreements with some State and local agencies (usually a county sheriff's office) for the protection of persons and their property on the National Forest System where the existence of forest attractions and facilities account for an extraordinary amount of visitor use. These agreements provide an avenue to assist local jurisdictions that are impacted by these attractions. During the past several years, however, it has become evident that reimbursement through the Cooperative Law Enforcement program cannot alone provide the level of protection that should be afforded the public in Forest Service recreation areas. For example, when a forest visitor is victimized by theft of personal property or an assault and the local enforcement authority is unable to respond, there are often trained and equipped Forest Service law enforcement personnel in the immediate area at the time of the incident. These victims are often assisted by Forest officers who initiated what action they can, given the current scope of the prohibitions.

Need For Revision of Rules

Pursuant to Departmental Regulation 1512–1, the Forest Service has reviewed 36 CFR Part 261—Prohibitions and 36 CFR Part 262—Law Enforcement Support Activities to determine their current applicability in view of new and changing laws, conditions, and other factors affecting the management of the National Forest System, employees, and the general public. By letter of September 8, 1987, the Chief of the Forest Service asked each Regional and Washington Office staff unit to review the current rules and to make suggestions on any needed revisions. This Service-wide review has revealed a need to revise the rules in order to more effectively respond to recent changes in laws, regulations and policy, and emerging law enforcement issues.

Protection of Forest Users and Visitors

Without exception, Forest Service regions cited an inadequate regulatory basis for conducting law enforcement activities in certain areas when State and local authorities are unable to provide law enforcement services associated with violations of State or local law occurring on the National Forest System. This situation occurs as a result of a number of factors, one being the inability of small local law enforcement agencies to respond quickly to all but the most violent of crimes against users (murder, rape and other assaults). Many local law enforcement agencies find that their limited personnel, the distant location of Forest Service areas, and the seasonal nature of use these areas receive are impediments to rapid response to crimes committed on the National Forest System. When State and local law enforcement units cannot respond promptly, and trained and equipped Forest officers are at a location where persons need help or encounter criminal activity affecting those persons, the Forest Service should be in a position to render emergency assistance. Because Forest officers generally cannot enforce State laws, the agency needs rules which will make certain State crimes violations of Forest Service regulations. The authority provided by 16 U.S.C. 551 allows regulating occupancy and use even if such regulation is not necessary for the protection of forest resources (*United States* v. *Hymans*, 463 F.2d 615 (10th Cir. 1972)). To prohibit, for example, the theft of visitors' personal property is a reasonable regulation of the use of the forests and should help to keep visits to the national forests enjoyable.

Expanded Forest Service Law Enforcement Authority

There is a need to revise the regulations to reflect expanded authority granted by statutes enacted since the rules were last revised, specifically, certain provisions of the Comprehensive Crime Control Act of 1984 (18 U.S.C. 3559, 3571), and the National Forest System Drug Control Act of 1986 as amended (16 U.S.C. 559b–g).

Technical Corrections

There is a need to make technical corrections in terminology and citations in several places in the rules, including revising the Authority citations for both parts.

Felony Case Prosecution Requests

There is a need to incorporate certain statutes contained in the Federal Criminal Code into agency rules to facilitate enforcing such statutes as misdemeanors rather than as felonies. This will help reduce agency felony case prosecution requests presented to the U.S. Department of Justice as well as provide for a speedier resolution of certain cases. Examples of these kinds of cases include intimidation and impersonation of Forest Service employees, use of controlled substances, unauthorized use of Forest Service computer systems, and thefts of certain government property or resources.

Section-by-Section Analysis of Proposed Rule

The proposed rule would amend two parts of Chapter II of Title 36 of the Code of Federal Regulations: Part 261—Prohibitions, and Part 262—Law Enforcement Support Activities. A section-by-section discussion of the changes proposed to each part follows.

Part 261—Prohibitions

Subpart A of this part sets forth acts and omissions that are prohibited throughout the National Forest System. Subpart B grants authority to Regional Foresters and Forest Supervisors to issue orders and regulations prohibiting certain acts in specific areas.

Subpart A—General Prohibitions

Section 261.1 Scope

This section establishes when the prohibitions of the subpart apply. The punctuation in paragraphs (a)(1) through (a)(4) would be revised to make clear that the conditions set forth in § 261.1(a) are in the alternative (i.e. that all conditions need not apply, just any one of them).

Paragraph (a)(3) currently provides that the rules of the subpart apply to an act or omission that affects, threatens, or endangers persons using the National Forest System or Forest development roads or trails or persons engaged in the protection, maintenance, or administration of such. As written, the rule protects Forest Service employees only when they are engaged in their duties and does not apply to situations where Forest Service employees are threatened or intimidated during "off-duty" hours as a result of an action taken while they were on duty. This situation can be remedied by revising paragraph (a)(3) to refer in paragraph (a)(3)(ii) to threats to or endangerment of persons engaged in or on account of the performance of official duties including the administration of the National Forest System.

Existing paragraph (a)(4) would be revised to clarify that these regulations apply within the boundaries of those components of the National Trails System or the National Wild and Scenic Rivers System that are administered by the Forest Service.

A new paragraph (a)(5) would be added to provide the agency a means of protecting personal property of forest users in the absence of a response by local law enforcement agencies. At present, if a forest user has personal property stolen or damaged (for example, an ice chest or sports equipment) the Forest Service must rely on State or local law enforcement personnel to investigate and charge the person responsible. However, in many cases, local law enforcement agencies do not have the resources to investigate these cases in a timely manner, and while the Forest Service has authority to investigate the case, it presently has no basis in its regulations for charging a person with misdemeanor theft. This is understandably a source of frustration to forest visitors victimized by theft, especially when trained and equipped Forest officers may be in the area where the theft or incident occurred and are able to identify the person(s) responsible. This addition to the rule would bridge this gap in law enforcement in those cases where local law enforcement agencies cannot respond in a timely manner

Paragraph (b) of existing § 261.1 exempts certain activities allowed for by statute that otherwise may be a violation of this part. The paragraph currently cites The Wilderness Act of 1964 and the Mining Law of 1872. The provisions of other laws which would also apply are not included. The paragraph would be revised to make clear the agency's intent to exempt from the prohibitions of this part any activity that is conducted in compliance with other regulations set forth in chapter II.

A new paragraph (c) would be added to make clear that the existence of these rules does not prevent the Federal Government from proceeding with necessary criminal action codified in Federal statutes rather than under these regulations. This revision is necessary to comport with the fact that the United States Department of Justice determines when the Federal Government should pursue criminal sanctions under Federal statute.

A new paragraph (d) would be added to clarify that unless intent is stated in specific provisions, strict liability applies to these regulations. The prohibited acts set forth in 36 CFR part 261 are offenses in the nature of neglect where the law requires care, or are offenses in the nature of inaction where the law imposes a duty (*Morisette* v. *United States*, 341 U.S. 262 (1952)). Such offenses "render[s] criminal a type of conduct that a reasonable person should know is subject to stringent public regulation and may seriously threaten the community's health or safety," (*Liparota* v. *United States*, 471 U.S. 419, 426 (1985)). Thus, for example, a prohibition of unauthorized livestock on national forest land without regard to whether a person intended to place such livestock there would tend to ensure that a person exercises diligence to prevent resource damage. A person should know that the use of Federal lands is subject to stringent regulation, and that action or inaction in violation of such regulations can cause irreparable harm to the public or the land and its resources.

No other revisions are proposed to this section.

Section 261.1a Special Use Authorizations, Contracts and Operating Plans

The term "operating plans" in the heading and text of this section would be changed to "plans of operations" in order that one standardized term can be used throughout this part to describe the various documents authorizing mineral related operations conducted pursuant to 36 CFR part 228 or 36 CFR part 292, subpart D. The last sentence of this paragraph would be removed as it duplicates information contained in other parts of 36 CFR and does not pertain to law enforcement on the National Forest System.

No other revisions are proposed to this section.

Section 261.1b Penalty

This section currently states the penalty for violating these rules in the words of 16 U.S.C. 551: "Any violation of the prohibitions of this part [261] shall be punished by a fine of not more than $500 or imprisonment for not more than six months or both * * *"

However, the enactment of the Comprehensive Crime Control Act of 1984, as amended, established categories of offenses based on the maximum amount of imprisonment for each offense (18 U.S.C. 3559). Offenses with a maximum term of six months of imprisonment, such as those offenses covered by these regulations, are now considered "Class B Misdemeanors" (the subject rules were formerly classified as petty offenses, 18 U.S.C. 3559(a)(7)). The statutory language of 18 U.S.C. 3571 prescribes a range of fines for Class B Misdemeanors depending on specific circumstances associated with the violation. The proposed revision to this section reflects this statutory change and provides for an exception by including the words "unless otherwise provided" which, for example, would apply to the enforcement of the collection of fees authorized by the Land and Water Conservation Act (36 CFR 261.15). A failure to pay such a fee is an infraction, which allows for a range of fines pursuant to 18 U.S.C. 3571 but does not allow for imprisonment of the offender.

No other revisions are proposed to this section.

Section 261.2 Definitions

Two existing definitions would be revised and twelve new definitions would be added to conform to various amendments that are proposed elsewhere in the subpart:

The term "Damaging" would be revised to add the words "rut" and "gouge" to better define damage to roadways and property.

The last sentence of the definition for the term "National Forest System" would be revised to conform to the definition established in the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).

The term "Alcoholic beverage" would be added to clarify which beverages are intended to be covered in the prohibition against possession and use of alcoholic beverages at 36 CFR 261.58(bb). In the absence of a definition in this section, the Forest Service has relied on defining alcoholic beverage by reference to State law. The intention was to prohibit possession of all forms of alcoholic beverages when provided by an order; yet in some states, the definition of alcoholic beverages does not include beer and wine. This inconsistent treatment of "alcoholic beverage" in the present rule can be remedied by defining alcoholic beverages as "beer, wine, distilled spirits, and any other beverage defined as such by State law."

The term "Computer" would be added to clarify the type of machines covered under two new proposed rules in 36 CFR 261.9. The definition is the same as the definition at 18 U.S.C. 1030.

The term "Contraband" would be added to support a proposed revision at 36 CFR 261.4(c).

The term "Controlled substance" would be added so that possession of drugs may be handled through a United States Magistrate judge by the issuance of a violation notice, rather than by proceeding under the simple possession statute at 21 U.S.C. 844, which requires either the filing of a complaint or information, or indictment by a Federal grand jury. The definition is the same as that used at 36 CFR 1.4.

The terms "Endangered species," "Threatened species," and "Sensitive species" would be added to implement the rules at 36 CFR 261.9 (a) and (b). The current rule refers to these terms, but does not provide definitions. The proposed rule defines Endangered species and Threatened species as those species designated as such by the Secretary of the Interior or the Secretary of Commerce. The proposed definition for Sensitive species is the same as in the Forest Service Manual, section 2670.5.

The terms "Guiding" and "Outfitting" would be defined to indicate to the public and the courts the intended prohibited acts when engaging in such activities without a special use authorization. The definitions proposed parallel those found in the Forest Service Special Uses Handbook (FSH 2709.11).

A definition of the term "Intimidating" would be added to clarify the prohibited acts covered by this term.

The term "Plan of operations" would be added in order that one standardized term can be used throughout this part to describe the various documents authorizing mineral-related operations conducted pursuant to 36 CFR part 228 or 36 CFR part 292, subpart D.

The term "Scenic easement" would be added to support two proposed rule additions at 36 CFR 261.9(i) and 36 CFR 261.10(r) which provide for the enforcement of requirements or prohibitions associated with such easements.

Section 261.3 Interfering With a Forest Officer, Volunteer, or Human Resource Program Enrollee or Giving False Report to a Forest Officer

As currently written, this section prohibits interference with a Forest officer, interference with a volunteer or human resource employee, and the giving of a false report to a Forest officer. It is proposed to revise the section's heading to read "Interfering with agency functions" for clarity and brevity.

Existing paragraph (a) would be revised to combine the two "Forest officer" and "volunteer" interference rules currently found at paragraphs (a) and (c) into a single prohibition.

Existing paragraph (b) would be revised for clarity.

Two additions are proposed for this section. A new paragraph (c) is proposed to support on-site control of the public and maintain order during firefighting, law enforcement, or other operations.

A new paragraph (d) is proposed to prohibit the impersonation of Forest officers, volunteers, or human resource program enrollees. At present, the only option available to the agency is to prosecute an impersonation as a felony (18 U.S.C. 912). The proposed regulation would provide the opportunity, where appropriate, to treat these cases as misdemeanors, rather than to proceed under felony statutes.

No other revisions are proposed to this section.

Section 261.4 Disorderly Conduct

The proposed changes to § 261.4 result from situations encountered by Forest officers, usually in developed recreation areas, that require immediate attention such as breach of the peace or other illegal activity which, if not resolved, threatens the health, safety, rights, or enjoyment of forest users. Usually, Forest officers encounter these situations due to the unavailability of State or local authorities to patrol recreation areas. Often Forest officers are the only recognized authority with law enforcement responsibilities that the public may encounter. In other cases where State authorities do perform patrols, they may not be in a given location when law enforcement action must be taken, requiring Forest officers to initiate action until the State or local authority can arrive. The above scenarios are occurring routinely in some Forest Service recreation areas, and while the agency has the authority to regulate activity of this nature, it has no current regulations on which to support actions being taken by employees.

The section heading would be revised to read "Public behavior" to encompass the broader area of prohibited conduct included in the proposed rule.

Existing paragraph (a) would be revised to include the words "or any other violent behavior" in addition to prohibiting "fighting."

Existing paragraph (b) currently prohibits "offensive, derisive or annoying communication." The proposed revision of this paragraph is a narrower approach, identifying with more specficity the types of language or action that is prohibited and adding the element of intent to cause, or knowingly or recklessly creating the risk of, public alarm, nuisance, jeopardy or violence.

Existing paragraph (c), which prohibits making "statements or other actions directed toward inciting or producing imminent lawless action" would be removed, as this provision would be covered in revised paragraph (b).

A new paragraph (c) is proposed to prohibit the possession, selling, cultivation, dispensing, or bartering of controlled substances, alcoholic beverages, or contraband if such acts are a violation of State or Federal law. While the Forest Service has the authority to investigate controlled substance violations under the National Forest System Drug Control Act of 1986, as amended, and make arrests under that Act, it may not be practical to prosecute all as felony cases, such as the possession of small amounts of controlled substances intended for personal use. Therefore, the agency proposes to establish a rule which provides for a misdemeanor penalty. Alcoholic beverages have been included as the agency is currently without a rule prohibiting underage consumption or possession of alcoholic beverages in violation of State or Federal law on the National Forest System. Forest Service regions report continuing problems in both developed and undeveloped areas pertaining to large "keg" parties and other parties where underage alcoholic consumption is occurring. In many cases, State and local officers are unavailable to take the necessary enforcement actions in order to protect other forest users who are affected by this problem. The rule would also prohibit the possession of contraband (i.e. where the very possession of an item is illegal, as defined by either State or Federal law). Some examples of included items would be certain animal parts or unregistered automatic weapons.

A new paragraph (e) would be added prohibiting "being under the influence of any controlled substance or alcoholic beverage," if it is a violation of either State or Federal law. This would be a companion rule with the proposed new paragraph (c) and is needed for the same reasons.

Finally, new paragraphs (f) and (g) would be added to allow for federal prosecutions of persons who victimize forest visitors or other persons and their property on the National Forest System.

No other revisions are proposed to this section.

Section 261.5 Fire

One change is proposed to this section. As written, paragraph (b) prohibits the firing of tracer or incendiary ammunition. The wording of the paragraph requires that a Forest officer must prove that a person actually "fired" the ammunition, something that is very hard to do. Accordingly, this prohibition would be expanded to prohibit the possession of tracer or incendiary ammunition as well. The possession of tracer or incendiary ammunition on the National Forest System can be harmful to persons as well as resources and is clearly not within the public interest. If persons are prohibited from possessing such ammunition, there is less likelihood of it being fired.

Section 261.6 Timber and Other Forest Products

Existing paragraphs (a) and (h) would be revised to include the term "approved plan of operations" and "permit" as exceptions to the stated prohibited acts.

Paragraph (c) currently prohibits removing timber or other forest product except to a place designated for scaling. As some forest products are recorded by means other than scaling, a proposed revision to this paragraph would clarify that it is prohibited to remove such products except to a place designated for scaling or other means of recording by a forest officer.

Paragraph (d) currently prohibits the marking of trees or other forest products to be cut or removed in a manner similar to that employed by Forest officers. This paragraph would be revised to prohibit the counterfeit marking of trees to be left uncut on a timber sale. During the past 2 years, at least one Forest Service region has encounter numerous markings of "leave" trees on timber sales that were never marked by Forest Service personnel. Investigation or later communication to the agency by the person(s) claiming responsibility revealed that these markings were made to hamper Forest Service timber sales efforts by trying to confuse timber sale purchasers as to which trees could be cut and which trees were to be left. Where this has occurred, Forest officers have had to re-mark portions of timber sales incurring additional agency costs.

Paragraph (e), which prohibits the removal or hauling of timber or other forest products unless it is properly identified by the terms of a special use authorization or contract, would be revised for clarity by removing the word "hauling" and adding in its place the words "transporting" and "possessing." The revision is needed to better define the offense and to make clear that possession of forest products without the proper identification as required by a special use authorization or timber sale contract is prohibited.

A new paragraph (i) is proposed to prohibit "altering, adding, moving, or removing any stamp, brand, paint, timber sale boundary marker or tag, or other identification on any tree * * * previously marked or surveyed by a Forest officer * * *." This addition is needed due to the increasing number of cases where legitimate brands, paint, and timber sale boundary markers have been altered, moved, or removed. In pursuing such cases, the agency has discovered that the current rules do not adequately address this practice.

No other revisions are proposed to this section.

Section 261.7 Livestock

Paragraph (a) currently prohibits "placing or allowing unauthorized livestock to enter or to be in the National Forest System * * *." In a recent Ninth Circuit Court of Appeals case (*United States* v. *Semenza*, 835 F.3d 223 (9th Cir. 1987)), the court stated that the inclusion of the words "placing" and "allowing" required the government to prove that the livestock owner meant to violate this rule intentionally. This interpretation is not consistent with the agency's intent; therefore paragraph (a) would be revised by removing the words "placing" or "allowing" to make clear that unauthorized livestock are prohibited without regard to whether a person intended to place or allow such livestock on National Forest System lands.

No other revisions are proposed to this section.

Section 261.8 Fish and Wildlife

Paragraph (a) currently prohibits the "hunting, trapping, fishing, catching, molesting, killing, or having in possession any kind of wild animal, birds, or fish" to the extent that Federal or State laws are violated. Under the proposed rule, this paragraph would be expanded to include the words "transporting, buying, selling, bartering, or offering to buy" wild animals, birds, or fish to cover additional activities prohibited by State or Federal laws which Forest officers routinely encounter in the field. The revision would also add "shellfish" to the

existing rule, as there are several large shellfish beds on the National Forest System in Washington State, and these are not protected under the current rule.

No other revisions are proposed to this section.

Section 261.9 Property

The heading of this section would be revised to read "Property administered by the Forest Service" to clarify that the prohibitions apply to United States Government property rather than to the personal property of a forest visitor. In addition, the introduction to the section would be revised to state: "Except as provided by special use authorization, contract, approved plan of operations, or Federal law or regulation, the following are prohibited * * *." This revision is proposed so these authorizing documents only have to be stated once in the section, rather than in each paragraph.

Existing paragraph (a) would be revised and combined with existing paragraph (b) and expanded to prohibit "disturbing, damaging, excavating, diggings, removing, transporting, possessing, buying, selling, bartering, or offering to buy, sell, or barter any natural feature or other property of the United States." By incorporating this change into part 261, the agency will be able to cite persons for property violations as misdemeanors rather than as felonies under the United States Criminal Code (18 U.S.C. 641 and 1361) when appropriate.

Existing paragraph (c) would be revised and combined with existing paragraph (d) and redesignated as paragraph (b). The paragraph would also include a corollary addition of the words "disturbing, damaging, excavating, digging, removing, transporting, possessing, buying, selling, bartering, or offering to buy, sell, or barter any plant that is classified as a threatened, endangered, or sensitive species." This revision would replace the terms "rare" and "unique" with the term "sensitive" in order to reflect a change in agency terminology since adoption of the current rule (Forest Service Manual, section 2670.5). Plants that once were identified as "rare" or "unique" have been placed on "sensitive" plant lists established and maintained by each Regional Office of the Forest Service.

Existing paragraph (e) would be redesignated as paragraph (d) and revised by adding the words "without permission" to remove an ambiguity in the current rule. The proposed rule would make clear that employees and contractors may be permitted to occupy Forest Service buildings and offices after closing hours.

Existing paragraph (f) would be revised for clarity and redesignated as paragraph (e).

Existing paragraphs (g), (h), and (i) would be combined and revised for clarity and redesignated as new paragraph (c).

Four new provisions are proposed for this section. A new paragraph (f) would prohibit the possession, duplication, or use of Forest Service locks and keys without authorization. All Forest Service regions are experiencing significant problems with the unauthorized use of these items. The only remedy currently available is under the provisions of 18 U.S.C. 641, which requires the agency to prove that an actual theft of government property has occurred. These kinds of cases can best be handled as misdemeanors rather than as felonies; therefore, inclusion in part 261 of a prohibition on unauthorized possession, duplication, and use of Forest Service locks and keys is appropriate.

New paragraph (g) and (h) are proposed to parallel, as misdemeanors, a relatively new computer fraud law found at 18 U.S.C. 1030. The statute requires that unauthorized access must "affect the use of the government's operation * * * of a computer." The statute also did not provide for prosecution under a misdemeanor charge. The addition of paragraphs (g) and (h) in part 261 would allow the agency to initiate action where there has been unauthorized use regardless of the effect of the use on the government's operation of a computer, and would provide a means for prosecution of such use as a misdemeanor. The definition of "computer" proposed for inclusion in § 261.2 is the same as in 18 U.S.C. 1030.

The addition of paragraph (i) would provide a prohibition against performing an action or failing to perform an action in violation of any restrictive covenants or deed reservations associated with scenic easements. There are many instances when there are blatant, but minor, violations of a scenic easement (e.g. installation of signs, use of unauthorized paint colors, etc.) which can be resolved more efficiently through the issuance of a citation rather than through the initiation of a lawsuit.

Finally, new paragraph (j) is proposed to make it clear that removal of minerals or mineral materials from the National Forest System is prohibited unless done in compliance with laws and regulations. To be in compliance, a person may need to obtain an approved plan of operations or operating plan in accordance with 36 CFR part 228, subparts A, C, or E, 36 CFR part 292, subpart D, or a permit or lease issued by the Department of the Interior in accordance with 43 CFR chapter II, subchapter C.

No other revisions are proposed to this section.

Section 261.10 Occupancy and Use

The prohibitions in this section relate to occupancy and use of the National Forest System by persons or entities other than the Forest Service. The introductory text immediately following the heading would be revised to include the same language as proposed for § 261.9 for the reasons outlined in that section.

Paragraph (b) would be revised for clarity to include "residing upon" the National Forest System as a prohibited act.

Paragraph (c) would be revised to add the words "leasing," "merchandise," "equipment," and "renting" to update the existing rule on activities prohibited without authorization.

Paragraph (d) would be revised to remove the prohibition against the discharge of a firearm across or on a Forest development road unless "any person or property is exposed to injury or damage * * *." The blanket prohibition against any discharge has created a significant problem in several Forest Service regions as a "Forest development road" includes closed roads, traffic service level "D" roads, and other similar roads that have little or no vehicular use. Because of the limited traffic, hunting along these roads is not considered to be a safety problem. The proposed revision would add a prohibition against the discharge of a firearm from a vehicle and then make clear that the current prohibition against discharging a firearm "in any manner or place whereby any person or property is exposed to injury or damage as a result of such discharge or use," applies to any location in the National Forest System.

Paragrph (k) would be revised to change the term "operating plan" or "plan of operations."

In addition to the preceding amendments, six new provisions are proposed for this section. A new paragraph (n) would prohibit the payment of any "product, permit, fee or service" by a check backed by insufficient funds. Several Assistant United States Attorneys have recommended this addition, as the only current remedy for such practices is to pursue them through State courts, which has not been efficient. There have been documented instances where the same user of a group-fee area or campsite, knowing that the agency is unable to initiate an effective collection action, has written bad checks two and sometimes three years in a row.

A new paragraph (o) would prohibit anyone from charging or collecting fees from persons using the National Forest System, unless the charge or collection is permitted by Federal law, regulation, or special use authorization. In the past few years, there have been an increasing number of cases where private individuals were successful in obtaining "payments" from unsuspecting forest users for such things as rafting, using four-wheel-drive roads, and walking across areas under special use authorization, none of which required payment of a fee. This rule is needed to protect the public from unlawful fees by providing a means for prosecuting those engaging in such schemes.

A new paragraph (p) would be added to provide for the prosecution of a failure to display an authorizing document when it is required by the document to do so.

A new paragraph (q) would prohibit "outfitting or guiding" on the National Forest System without a special use authorization or in violation of Federal or State law. This proposal was probably the addition most widely requested by the Forest Service regions. Considerable problems have existed in the enforcement of the requirement that outfitting and guiding be conducted under special use authorization due to the lack of a definition for the two activities. The approach taken in the proposed rule is to define "outfitting and guiding" at 36 CFR 261.2 and then to prohibit these activities without a special use authorization at 36 CFR 261.10.

A new paragraph (r) would be added to prohibit the undertaking of any activity in violation of the requirements of a scenic easement. This is a companion rule to the proposed 36 CFR 261.9(i) and is being promulgated for the same reasons outlined in that paragraph.

No other revisions are proposed to this section.

Section 261.11 Sanitation

Existing paragraph (b) would be revised to establish a general prohibition against littering. The current text provides that a Forest officer may take action only against persons who leave "litter in an exposed or unsanitary condition." This has proven insufficient to protect the National Forest System from littering.

No other revisions are proposed to this section.

Section 261.12 Forest Development Roads and Trails

Existing paragraph (a) would be revised to add the terms "contract" and "approved plan of operations" to the list of authorizing documents, correcting an unintentional omission.

A new paragraph (e) is proposed to establish a rule prohibiting the operation of a vehicle in violation of State laws, posted signs, or traffic devices. Although local authorities are relied on, when possible, to enforce traffic regulations, there are many times when it is not possible or practical to obtain their help, making Forest Service enforcement necessary. For example, reckless driving is a matter that needs immediate action when it is spotted by a trained and properly equipped Forest officer to ensure safe travel for other road users. Since State laws are applicable to Forest development roads, they could be enforced by Forest officers, when necessary, through adoption of this proposed prohibition.

The language proposed for new paragraph (f) currently appears at 36 CFR 261.54(f), which prohibits "operating a vehicle carelessly, recklessly, * * * or in a manner or at a speed that would endanger or be likely to endanger any person or property." The paragraph would be removed from subpart B, amended to clarify this is a strict liability offense, and made a part of subpart A.

A new paragraph (g) would require the use of seatbelts, if provided by the manufacturer, for occupants of vehicles traveling on Forest development roads. The prohibition would support State laws which require the same, while ensuring safety and consistency by relying on a single rule that would apply throughout the National Forest System. Seatbelt laws vary from State to State. For example, some states exempt the passengers of certain classes of vehicles from mandatory seatbelt usage, while others, exempt certain passengers. In many areas on the National Forest System, a Forest development road can cross State boundaries. In these situations, reliance on some State seatbelt statutes could lead to inconsistency and confusion. This provision will ensure the protection afforded by seatbelts throughout the National Forest System regardless of individual State laws.

No other revisions are proposed to this section.

Section 261.13 Use of Vehicles Off Roads

Several changes are proposed to this section.

Existing paragraph (a) would be revised to clarify the current "valid license" requirement by referring to a "valid operator's license or permit," if required by State law.

Existing paragraph (e) would be removed as the prohibition is included in the proposal for § 261.4(e).

Existing paragraph (f) would remain unchanged but redesignated as (e).

Existing paragraph (g) would be revised and redesignated as (f). The paragraph would contain the same language as proposed for 36 CFR 261.12(f). The revision, as proposed for this section, would provide a consistent approach in the treatment of careless and reckless driving throughout the National Forest System.

Existing paragraph (h) would be revised and redesignated as (g). The revision would better define the current prohibition of operating a vehicle that disturbs the land or other resources.

Existing paragraph (i) would remain unchanged but redesignated as (h).

One additional provision is proposed for this section. Many States have passed special registration requirements for off-road vehicles. In support of these requirements, a new paragraph (i) is proposed to prohibit the operation of a vehicle without displaying a license plate or the proper registration, if it is required by State law.

Section 261.14 Developed Recreation Sites

One change is proposed to this section.

A new paragraph (r) would be added to prohibit the informal reservation or "staking-out" of camping units by third parties. Unless campsites are specifically designated for advanced reservations, they are intended to be occupied on a first-come, first-served basis. The "staking out" of campsites has become a continuing problem as recreational use of National Forest System lands increases and is one that visitors often bring to the attention of Forest officers for resolution.

Section 261.15 Admission, Recreation Use and Special Recreation Permit Fees

This section would be revised to require forest visitors to comply with the "posted fee payment instructions" at developed sites and facilities. This proposed revision would close a legal gap in the current rule which prohibits "failing to pay." This change responds to several court decisions which have held that existing 36 CFR 261.15 requires payment, but does not require compliance with any other payment instructions posted at each site

Section 261.22 Buildings Used in Furtherance of the Administration of the National Forest System or Forest Service Programs

This section would be added to the subpart to protect Forest Service employees and facilities. The proposed addition paraphrases the current General Services Administration building regulations at 41 CFR subpart 101–20.3.

Subpart B—Prohibitions in Areas Designated by Order

This subpart grants authority to Regional Foresters and Forest Supervisors to issue orders and regulations prohibiting certain acts in specific areas. An explanation of the proposed revisions to this subpart follows by section.

Section 261.50 Orders

Consistent with other revisions proposed throughout Subpart A, paragraph (e)(1) would be revised to include the words "special use authorization," "contract," "approved plan of operations", and "Federal law or regulation" as the list of either authorizing documents used by the Forest Service or to make clear that the order may also exempt persons with authorization given by law or regulation.

Section 261.53 Special Closures

This section states, that when provided by an order, it is prohibited to go into or be in an area which is closed for the protection of certain animal populations or biological communities, management activities, or public health and safety.

Paragraph (a) currently states "threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish." The proposed revision would remove all the categories which are currently listed and be revised to include simply "plants, animals, birds, fish or shellfish." This revision is needed as the current listed categories are too narrow to provide effective protection to certain species of animals during different times of year. For example, the agency may wish to close a sensitive elk calving area during a specific time of year, but are currently unable to do so because elk are not "threatened or endangered, etc." The proposed revision would remedy this situation.

Section 261.54 Forest Development Roads

Three changes are proposed to this section.

Paragraph (a) currently prohibits the use of any type of vehicle upon the issuance of an order. This rule would be revised by adding the words "or possessing" to the current text. In many cases, local county ordinances prohibit the possession of certain types of vehicles on lands either adjacent to or within a sensitive area, for example, the possession of tracked vehicles or modified off-road vehicles within a special wildlife or waterfowl habitat nesting area. The addition would allow a Regional Forester or Forest Supervisor to issue a specific order that prohibits the possession of a certain class of vehicle, if needed to be consistent with a Forest Land and Resource Management Plan or to support a local ordinance.

Paragraph (c) currently prohibits using a road for commercial hauling without a permit or written authorization upon the issuance of an order. The rule would be revised by adding the words "or other commercial activities" to the current text. Authorization for commercial use of Forest development roads should not be limited to hauling a product; other commercial use such as transporting heavy equipment should also be subject to this requirement.

Finally, paragraph (f), which prohibits careless or reckless driving, would be removed because, as previously noted, it is proposed to make this a general prohibition in § 261.12.

Section 261.58 Occupancy and Use

Paragraph (m) allows for the issuance of an order to prohibit the "discharge of a firearm, air rifle, or gas gun." Under the proposed rule, this paragraph would be revised to read "discharging or possessing a firearm, air rifle, gas gun, or other device capable of causing injury to persons or wildlife or capable of causing property damage." For example, the addition of the prohibition against "possessing" is necessary for wildlife protection at certain times of the year on different national forest units and for public safety in areas of higher visitor use or when property would be easily damaged by firearms and other devices shooting projectiles. The addition of "or other device" is necessary to support the inclusion of devices, such as starter pistols and crossbows, which can cause serious bodily harm or death if used. And finally, the addition of "capable of causing injury to persons or wildlife or capable of causing property damage" is necessary to specify more precisely the type of device to which the prohibition would apply.

Paragraph (bb) would be revised to adopt the new definition of "alcoholic beverage" proposed at 36 CFR 261.2.

A new paragraph (dd) would be added to prohibit the storage of personal property in any area outside of a national forest developed recreation site when prohibited by an order. Similar to the problem within developed recreation sites addressed by proposed § 261.14(r), is the "staking out" of popular sites by users several weeks in advance of when they are to be occupied for hunting or other activities. Often, other users desiring to camp in the same area are unable to do so because of this activity. This rule is proposed for Subpart B, because of the site-specific nature of the problem and the need for flexibility to prescribe different lengths of time for each area.

A new paragraph (ee) would be added to enable a Regional Forester or Forest Supervisor to issue an order prohibiting the possession, storage, or use of glass food or beverage containers. The rule is proposed in light of serious safety hazards presented by broken glass in heavily used beaches and swimming areas and the need to prevent injuries from cuts to persons recreating in these areas.

No other revisions are proposed to this section.

Part 262—Law Enforcement Support Activities

This part provides administrative rules pertaining to certain operational matters affecting Forest Service law enforcement programs and activities.

Section 262.1 Definitions

A new definition section would be added to provide for definitions of "Law Enforcement Officer" and "Special Agent." The definitions are needed in the regulation to support the section on purchase of evidence.

Existing § 262.1 would be redesignated as § 262.2.

Existing § 262.2, which governs the purchase of information in furtherance of investigations, would be revised and combined with § 262.3, which governs the purchase of evidence. This revision is proposed in response to requests of several Forest Service regions for a payment scale for purchase of information and evidence that reflects the gravity of the offenses investigated, such as violations of the National Forest System Drug Control Act of 1986, as amended. For example, amounts that Special Agents could be authorized to pay for information or evidence would be raised from $200 and $400 respectively, to $500 for a single transaction, with other increases or

changes proposed for the employees so listed. Existing paragraph (b) in both sections, which states that payments cannot be made for the investigation of petty offenses, would be removed. The agency's authority to make payments for evidence and information was affirmed in a decision of the Comptroller General dated April 29, 1971 (CG–B–172259) and allows for payment to further any criminal investigation, otwithstanding the classification of the offense.

Subpart B—Impoundments and Removals

The title of this subpart would be revised to read "Administrative Impoundments and Removals." This change would clarify that the rules provide for administrative remedies that may be taken by the Forest Service to impound and remove animals or personal property on the National Forest System. Criminal law enforcement procedures associated with impoundments and property seizures made pursuant to arrests and searches are not covered by the regulations and are contained in the Federal Rules of Criminal Procedure for the United States District Courts and the Forest Service Law Enforcement Handbook (FSH 5309.11).

No other revisions are proposed to this section.

Section 262.12 Impounding of Personal Property

Paragraph (d) would be revised to allow the Forest Service to use un-redeemed or abandoned personal property if it is needed for official use, rather than having to offer it for sale. The authority for this proposed change is found in the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484(m)) and at 41 CFR part 101–48. In many cases, the conversion of un-redeemed personal property to Government property can provide a substantial cost savings to the agency.

Section 262.13 Removal of Obstructions

This section currently provides for the removal of vehicles or other objects which create either an "impediment or hazard to the safety, convenience, or comfort of other users of the National Forest System." The rule would be revised to include a vehicle or other object "which has been left in such a manner that it impairs or may result in the impairment of any area of the National Forest System or other areas under Forest Service control." The revision is needed in light of increasing problems associated with the abandonment of automobiles or other large objects left as junk in popular undeveloped recreation areas on the National Forest System.

No other revisions are proposed to this section.

Summary

In summary, the Forest Service proposes to amend its rules governing Prohibitions and Law Enforcement Support Activities in order to:

—Improve protection of public and their property, National Forest System lands, waters, and other resources, and agency employees;
—Update the rules to reflect expanded Forest Service law enforcement authority granted by statutory change;
—Make technical corrections and revisions due to the passage of new laws and the promulgation of new rules in other parts of this chapter; and
—Provide both the agency and United States Department of Justice increased flexibility in prosecution options for certain offenses.

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments received will be considered in promulgation of the final rule. Respondents should note that substantive comments are more helpful than form letters or responses from questionnaires.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act.

Executive Order 12630 for the Evaluation of Risk and Avoidance of Unanticipated Takings directs all agencies to evaluate whether certain proposed agency actions present a risk of effecting a taking of private property. Section 2(a)(3) of the Order exempts law enforcement actions from the requirements of the Executive Order. Since this proposed action involves additions, and technical and administrative changes, to prohibitions of activities on or affecting National Forest System land and resources, visitors, and employees, section 2(a)(3) applies and further analysis under the Executive Order is unnecessary.

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the fullest extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable in ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this notice.

Controlling Paperwork Burdens on the Public

This proposed rule will not result in additional paperwork not already required by law or approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing

regulations at 5 CFR part 1320 do not apply.

Environmental Impact

This proposed rule would set forth the acts that are prohibited on the National Forest System. This rule, in and of itself, will not have environmental effects that need to be addressed in compliance with the National Environmental Policy Act procedures. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administration procedures, programs, processes, or instructions." The agency's preliminary assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

List of Subjects in 36 CFR Parts 261 and 262

Crime, Law enforcement, and National forests.

Therefore, for the reasons set forth in the preamble, it is proposed to amend chapter II of title 36 of the Code of Federal Regulations as follows:

PART 261—PROHIBITIONS

1. The authority citation for part 261 is revised to read as follows:

Authority: 7 U.S.C. 1011(f), 16 U.S.C. 472, 551, 559b–h, 1131(b), 1133(b)–(d)(1), 1246(i), 1281(d), 4601–6a(e), 18 U.S.C. 3559, 3571, 43 U.S.C. 1740, 1761.

Subpart A—General Prohibitions

2–3. Revise § 261.1 to read as follows:

§ 261.1 Scope.

(a) The prohibitions in this part apply, except as otherwise provided, when:

(1) An act or omission occurs in the National Forest System or on a Forest development road or trail;

(2) An act or omission affects, threatens, or endangers property of the United States administered by the Forest Service;

(3) An act or omission affects, threatens, or endangers:

(i) A person occupying or using the National Forest System or a Forest development road or trail;

(ii) A person on account of or in the performance of official duties, including the administration of the National Forest System or a Forest development road or trail;

(4) An act of omission occurs within the designated boundaries of a Forest Service administered component of the National Trails System or the National Wild and Scenic Rivers System; or

(5) An act or omission affects, threatens, or endangers property of any person on any lands or waters within the National Forest System or a Forest development road or trail.

(b) Nothing in this part shall preclude activities that are authorized by laws relating to the National Forest System and that are conducted in compliance with regulations set forth in this Chapter.

(c) Nothing in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any applicable State and local laws and regulations.

(d) Unless an offense set out in this part contains a term (or terms) that includes intent in its meaning, intent is not an element of any offense under this part.

4. Revise § 261.1a to read as follows:

§ 261.1a Special use authorizations, contracts and plans of operations.

The Chief, each Regional Forester, each Forest Supervisor, and each District Ranger or equivalent officer may issue Special use authorizations, award contracts, or approve plans of operations authorizing the occupancy or use of a road, trail, area, lake, or other part of the National Forest System in accordance with authority which is delegated elsewhere in this chapter or in the Forest Service Manual. These Forest officers may allow in the authorizing document or approved plan of operations an act or omission that would otherwise be a violation of a subpart A or a subpart C regulation or a subpart B order.

5. Revise § 261.1b to read as follows:

§ 261.1b Penalty.

The punishment for violating any prohibition of this part shall be imprisonment of not more than six months or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both, unless otherwise provided.

6. In § 261.2, the introductory text is republished; the definitions of "Damaging" and "National Forest System" are revised; the term "Operating plan" is removed; and the following definitions are added in appropriate alphabetical order to read as follows:

§ 261.2 Definitions.

The following definitions apply to this part:

* * * * *

Alcoholic beverage means beer, wine, distilled spirits, and any other beverage defined as such by State law.

* * * * *

Computer means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device.

Contraband means any goods, merchandise, or other substance, the possession or transportation of which is prohibited by either Federal or State law.

Controlled substance means a drug or other substance or immediate precursor included in schedules I, II, III, IV, or V or part B of the Controlled Substance Act (21 U.S.C. 812) or a drug or substance added to these schedules pursuant to the terms of the Act, or as defined by State law.

Damaging means to injure, mutilate, deface, rut, gouge, cut, chop, girdle, dig, excavate, kill, or in any way harm or disturb.

Endangered species means any species of plant or animal which is designated as endangered by the Secretary of the Interior or Commerce pursuant to 50 CFR 17.11 and 17.12.

* * * * *

Guiding means providing, for pecuniary remuneration or other gain, services such as supervision, protection, education, training, transportation, subsistence, or interpretation to individuals or groups in their pursuit of a natural resource based outdoor activity.

* * * * *

Intimidating means to abuse or threaten verbally or physically.

* * * * *

National Forest System means all national forest lands and waters reserved or withdrawn from the public domain of the United States, national forest lands and waters acquired through purchase, exchange, donation, or other means, national grasslands and land utilization projects and waters administered under Title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1012), and other lands, waters, or interests therein administered by the Forest Service or are designated for administration through the Forest Service as a part of the System.

* * * * *

Outfitting means providing, for pecuniary remuneration or other gain, any saddle or pack animal, vehicle or boat, tents or camp gear, or similar supplies or equipment, except through retail sale in the ordinary course of business.

* * * * *

Plan of operations means a plan of operations as provided in 36 CFR part 228, subpart A, an operating plan as provided in 36 CFR part 228, subpart C, or 36 CFR part 292, subpart D, or a surface use plan of operations as provided in 36 CFR part 228, subpart E.

Scenic easement means any interest in land owned by the United States which gives the Federal Government any right to control the occupancy and use of land (including air space above such land) in order to protect scenic and natural values or for any other purposes authorized by law including public access. Scenic easements shall include, but are not limited to, restrictive covenants, deed reservations, conservation easements, reserved interest deeds, and other partial interests in land by whatever name given.

Sensitive species means a plant or animal species identified by a Regional Forester for which population viability is a concern, as evidenced by a significant current or predicted downward trend in population numbers or density or a significant current or predicted downward trend in habitat capability that would reduce a species' existing distribution.

* * * * *

Threatened species means any plant or animal species which is designated as threatened by the Secretary of the Interior or Commerce at 50 CFR 17.11 and 17.12.

* * * * *

7. Revise § 261.3 to read as follows:

§ 261.3 Interfering with agency functions.

The following are prohibited:

(a) Resisting, intimidating, endangering, assaulting, injuring, or interfering with any Forest officer, volunteer, or human resource program enrollee on account of or in the performance of official duties including the administration of the National Forest System or a Forest development road or trail.

(b) Giving any false, fictitious, or fraudulent report or other information to any Forest officer knowing that such report or other information contains false, fictitious, or fraudulent statement or entry.

(c) Violating the lawful order of a Forest officer engaged in the performance of official duties to maintain order or control of public behavior during firefighting, law enforcement, or other operations.

(d) Impersonating or posing as a Forest officer, volunteer or human resource program enrollee.

8. Revise § 261.4 to read as follows:

§ 261.4 Public behavior.

The following are prohibited:

(a) Engaging in fighting or any other violent behavior.

(b) Using language, an utterance, or gesture, or engaging in a display or act that is:

(1) Obscene;

(2) Physically threatening or menacing; or

(3) Done in a manner that is likely to inflict injury or incite an immediate breach of the peace;

and with intent to cause public alarm, nuisance, jeopardy, or violence, or knowingly or recklessly creating a risk thereof.

(c) Possessing, selling, cultivating, dispensing, or bartering for any controlled substance, alcoholic beverage, or contraband in violation of State or Federal law.

(d) Causing public inconvenience, annoyance, or alarm by making unreasonably loud noise.

(e) Being under the influence of any controlled substance or alcoholic beverage in violation of State or Federal law.

(f) Damaging, removing, transporting, or possessing any thing of value belonging to any person without permission.

(g) Intimidating, endangering, assaulting, injuring, or interfering with any person.

9. In § 261.5, the introductory text is republished and paragraph (b) is revised to read as follows:

§ 261.5 Fire.

The following are prohibited:

(a) * * *

(b) Firing or possessing any tracer bullet or incendiary ammunition.

* * * * *

10. In § 261.6, the introductory text is republished; paragraphs (a), (c), (d), (e), and (h) are revised and a new paragraph (i) is added to read as follows:

§ 261.6 Timber and other forest products.

The following are prohibited:

(a) Cutting or otherwise damaging any tree, or other forest product, except as authorized by a special use authorization, timber sale contract, permit, approved plan of operations, or Federal law or regulation.

(b) * * *

(c) Failing, when required by the timber sale contract or permit, to bring timber or other forest products cut under a contract or permit to a place designated for scaling or other means of recording by a forest officer, or removing timber or other forest product from such designated place prior to scaling or other means of recording.

(d) Stamping, marking with paint, or otherwise identifying any tree or other forest product in a manner similar to that employed by Forest officers to mark or designate a tree or any other forest product for cutting, removing, or leaving uncut.

(e) Loading, removing, transporting, or possessing timber or any other forest products acquired under any permit or timber sale contract, unless such product is identified as required by the permit or contract.

* * * * *

(h) Removing any timber, tree, or other forest product, except as authorized by special use authorization, timber sale contract, permit, approved plan of operations, or Federal law or regulation.

(i) Altering, adding, moving, or removing any stamp, brand, paint, Forest Service timber sale boundary marker or tag, or other identification on any tree, or other forest product previously marked or surveyed by a Forest officer, except as authorized by a Forest officer, special use authorization, timber sale contract, permit, approved plan of operations, or Federal law or regulation.

11. In § 261.7, the introductory text is republished and paragraph (a) is revised to read as follows:

§ 261.7 Livestock.

The following are prohibited:

(a) Unauthorized livestock within the National Forest System or on other lands under Forest Service administrative control.

* * * * *

12. In § 261.8, the introductory text is republished and paragraph (a) is revised to read as follows:

§ 261.8 Fish and wildlife.

The following are prohibited to the extent that Federal or State law is violated:

(a) Hunting, trapping, fishing, catching, molesting, killing, possessing, transporting, buying, selling, bartering, or offering to buy, sell, or barter any kind of wild animal, bird, fish, shellfish, or parts thereof, or taking the eggs of any bird or fish.

* * * * *

13. Revise § 261.9 to read as follows:

§ 261.9 Property administered by the Forest Service.

Except as provided by special use authorization, contract, approved plan of operations, or Federal law or regulation, the following are prohibited:

(a) Disturbing, damaging, excavating, digging, removing, transporting, possessing, buying, selling, bartering, or offering to buy, sell, or barter, any natural feature or other property of the United States.

(b) Disturbing, damaging, removing, transporting, possessing, buying, selling, bartering, or offering to buy, sell, or barter, any plant that is classified as a threatened, endangered, or sensitive species.

(c) Disturbing, damaging, excavating, digging, removing, transporting, possessing, buying, selling, bartering, or offering to buy, sell, or barter, any fossil or other paleontological resource; or prehistoric, historic, or archaeological resource, structure, site, artifact, or property.

(d) Entering any building, structure, or enclosed area owned or controlled by the United States, without permission of a Forest officer, when such building, structure, or enclosed area is not open to the public.

(e) Using any pesticide except for personal use as an insect repellent or other minor uses.

(f) Possessing, duplicating, using, or allowing the use of any Forest Service lock or key without permission of a Forest officer.

(g) Accessing or using any computer system or computer network owned, leased, or controlled by the Forest Service without permission of a Forest officer.

(h) Using, damaging, destroying, altering, copying, or deleting information, data, or programs stored in any computer system or computer network owned, leased, or controlled by the Forest Service without permission of a Forest officer.

(i) Performing or allowing to be performed an action prohibited by a scenic easement owned by the United States, or failing to perform an action required by such an easement.

(j) Removing any mineral or mineral material.

14. Revise § 261.10 to read as follows:

§ 261.10 Occupancy and use.

Except as provided by special use authorization, contract, approved plan of operations, or federal law or regulation, the following are prohibited:

(a) Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communication equipment, or other improvement on the National Forest System or facilities thereon.

(b) Taking possession of, occupying, residing upon, or otherwise using the National Forest System or facilities thereon for any purpose.

(c) Selling, leasing, renting, or offering for sale, lease, or rent any kind of merchandise, service, or equipment, or conducting any kind of work activity or service.

(d) Discharging a firearm or using any other implement capable of taking human life, causing injury, or damaging property:

(1) in or within 150 yards of a residence, building, campsite, developed recreation site or occupied area

(2) from a vehicle; or

(3) in any manner or place whereby any person or property is exposed to injury or damage as a result of such discharge or use.

(e) Abandoning any personal property.

(f) Placing a vehicle or other object in such a manner that it is an impediment or hazard to the safety or convenience of any person.

(g) Disseminating, posting, placing, or erecting any paper, notice, advertising material, sign, handbill, petition, or similar written and/or graphic matter.

(h) Operating or using in or near a campsite, developed recreation site, or over an adjacent body of water, any device which produces noise, such as a radio, television, musical instrument, motor, or engine, in such a manner and at such time so as to unreasonably disturb any person.

(i) Operating or using a public address system, whether fixed, portable, or vehicle mounted, in or near a campsite or developed recreation site or over an adjacent body of water.

(j) Use or occupancy of the National Forest System or facilities thereon when authorization is required.

(k) Violating any term or condition of a special use authorization, contract, or approved plan of operations.

(l) Failing to stop a vehicle when directed to do so by a Forest officer.

(m) Failing to pay any special use fee or other charges as required.

(n) Paying for any product, special use authorization, fee, or service by check with insufficient funds.

(o) Charging, collecting, or attempting to charge or collect a fee or thing of value from any person lawfully using the National Forest System.

(p) Failing to display a special use authorization, license, tag or other document when such display is required.

(q) Outfitting on, or guiding on the National Forest System.

(r) Undertaking any activity in contravention of prohibitions or requirements of a scenic easement.

15. In § 261.11, the introductory text is republished and paragraph (b) is revised to read as follows:

§ 261.11 Sanitation.

The following are prohibited:

(a) * * *

(b) Depositing, leaving, or causing to be left, any refuse, debris, trash, or litter on the National Forest System or facilities thereon not designated for that purpose.

* * * * *

16. In § 261.12, the introductory text is republished, paragraph (a) is revised and new paragraphs (e) through (g) are added to read as follows:

§ 261.12 Forest development roads and trails.

The following are prohibited:

(a) Violating the load, weight, height, length, or width limitations prescribed by State law except by contract, special use authorization, approved plan of operations, written agreement or by order issued under § 261.54 of this part.

* * * * *

(e) Operating any vehicle in violation of State law, posted sign or traffic device.

(f) Operating a vehicle carelessly, recklessly, or in a manner or at a speed that would endanger or be likely to endanger any person or property.

(g) Operating or riding in any vehicle on a Forest development road without wearing seatbelts, if provided by the manufacturer.

17. Revise § 261.13 to read as follows:

§ 261.13 Use of vehicles off roads.

It is prohibited to operate any vehicle off Forest development, State or County roads:

(a) Without a valid operator's license or permit in possession if required by State law.

(b) Without an operable braking system.

(c) From one-half hour after sunset to one-half hour before sunrise unless equipped with working head and tail lights.

(d) In violation of any applicable noise emission standard established by any Federal or State agency.

(e) Creating excessive or unusual smoke.

(f) Carelessly, recklessly, or in a manner or at speed that would endanger or be likely to endanger any person or property.

(g) In a manner which damages the land or vegetative resources, or injures or unreasonably disturbs wildlife.

(h) In violation of State law established for vehicles used off roads.

(i) Without displaying a valid vehicle license or possessing a vehicle registration if required by State law.

18. In § 261.14, the introductory text is republished and a new paragraph (r) is added to read as follows:

§ 261.14 Developed recreation sites.

The following are prohibited:

* * * * *

(r) Reserving any portion of the site for another person or party without permission of a Forest officer.

19. Revise § 261.15 to read as follows:

§ 261.15 Admission, recreation use, and special recreation permit fees.

Failure to comply with posted fee payment instructions for any fee established for admission or entrance to, or use of, a site, facility, equipment, or service furnished by the United States is prohibited. A violation of this section is an infraction and no sentence of imprisonment is authorized.

20. Add a new § 261.22 to read as follows:

§ 261.22 Buildings used in furtherance of the administration of the National Forest System or Forest Service Programs.

The following are prohibited in buildings owned or leased by the Forest Service:

(a) Engaging in conduct which impedes or disrupts the performance of official duty or the safety of Government employees.

(b) Engaging in conduct which prevents the general public from obtaining the services provided by the Government or its agents or contractors on the property.

(c) Failing to submit packages, briefcases, or other containers for inspection, when required, prior to entrance.

(d) Carrying, possessing, depositing, or placing firearms, other dangerous or deadly weapons, explosives, or items intended to be used to fabricate an explosive or incendiary device, unless authorized by special use authorization, contract, approved plan of operations, or Federal law or regulation.

Subpart B—Prohibitions in Areas Designated by Order

21. In § 261.50, revise paragraph (e)(1) as follows:

§ 261.50 Orders.

* * * * *

(e) * * *

(1) Persons who have specific authorization for the otherwise prohibited act or omission by virtue of a special use authorization, contract, approved plan of operations, or Federal law or regulation.

* * * * *

22. In § 261.53, the introductory text is republished and paragraph (a) is revised to read as follows:

§ 261.53 Special closures.

When provided by an order, it is prohibited to go into or be upon any area which is closed for the protection of:

(a) plants, animals, birds, fish, or shellfish.

* * * * *

23. In § 261.54, the introductory text is republished, paragraph (f) is removed and paragraphs (a) and (c) are revised to read as follows:

§ 261.54 Forest development roads.

When provided by an order, the following are prohibited:

(a) Using or possessing any type of vehicle prohibited by the order.

(b) * * *

(c) Using a road for commercial hauling or other commercial activities without a special use authorization or written authorization.

(d) * * *

(e) * * *

24. Amend § 261.58 by revising paragraphs (m) and (bb) and by adding paragraphs (dd), and (ee) to read as follows:

§ 261.58 Occupancy and use.

When provided by an order, the following are prohibited:

* * * * *

(m) Discharging or possessing a firearm, air rifle, gas gun, or other device capable of causing injury to persons or wildlife or capable of causing property damage.

* * * * *

(bb) Possessing an alcoholic beverage.

(cc) * * *

(dd) Storing, placing, or leaving personal property unattended outside of developed recreation sites for more than the length of time specified by the order.

(ee) Possessing, storing, or using any glass food or beverage containers.

PART 262—LAW ENFORCEMENT SUPPORT ACTIVITIES

1. The authority citation for part 262 is revised to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472; 16 U.S.C. 551; 16 U.S.C. 559b–h; 40 U.S.C. 484(m); CG–B–172259.

§§ 262.2 and 262.3 [Removed]

§ 262.1 [Redesignated as § 262.2]

2. Remove §§ 262.2 and 262.3, redesignate § 262.1 as § 262.2, and add new §§ 262.1 and 262.3 to read as follows:

§ 262.1 Definitions.

The following definitions apply to this subpart:

Law Enforcement Officer means an employee of the Forest Service in other than the Criminal Investigating series, GS–1811, who is authorized by the Washington Office, Director for Law Enforcement and Investigations to conduct investigations, make arrests with or without a warrant or process, issue violation notices, execute and serve search and arrest warrants, carry firearms for law enforcement purposes, and perform other duties as directed in connection with the enforcement or administration of all laws, rules, and regulations in which the Department of Agriculture, Forest Service, is or may be a party of interest.

Special Agent means an employee of the Forest Service in the Criminal Investigating series, GS–1811, who is authorized by the Chief to perform all duties conferred upon such officer under all laws and regulations administered by the Forest Service including the authority to conduct investigations, to execute and serve search and arrest warrants, to serve orders, subpoenas, or other judicial processes as directed, to carry firearms, make arrests, issue violation notices, and perform other duties as directed in connection with the enforcement or administration of all laws, rules and regulations in which the Department of Agriculture, Forest Service, is or may be a party of interest.

§ 262.3 Purchase of information or evidence in furtherance of investigations.

(a) *Approval of payments.* The following Forest Service officials may make or approve payments for purchase of information or evidence to further law enforcement investigations in the amount shown for each transaction as follows:

(1) Law Enforcement Officers....up to $250.00
(2) Special Agents.....up to $500.00
(3) Regional Special Agents in Charge.....up to $1,000.00
(4) Director for Law Enforcement and Investigations.....up to $5,000.00
(5) Chief, for amounts exceeding.....$5,000.00

(b) [Reserved]

Subpart B—Administrative Impoundments and Removals

3. Revise the title of subpart B as set out above.

4. Amend § 262.12 by revising paragraph (d) to read as follows:

§ 262.12 Impounding of personal property.

* * * * *

(d) If the personal property is not redeemed on or before the date fixed for its disposition, it shall become property of the United States. Such property may be retained by the Forest Service for use in on-going management activities, sold at public sale to the highest bidder, or otherwise disposed of. When personal property is sold pursuant to this regulation, the Forest officer making the sale shall furnish the purchaser with a bill of sale or other written instrument evidencing the sale.

5. Revise § 262.13 to read as follows:

§ 262.13 Removal of obstructions.

A Forest officer may remove or cause to be removed, to a more suitable place, a vehicle or other object which is an impediment or hazard to the safety, convenience, or comfort of any person, or which has been left in such a manner that it impairs or may result in the impairment of any areas of the National Forest System or other lands under Forest Service control.

Dated: January 6, 1994.

David G. Unger,

Associate Chief.

[FR Doc. 94–3358 Filed 2–15–94; 8:45 am]

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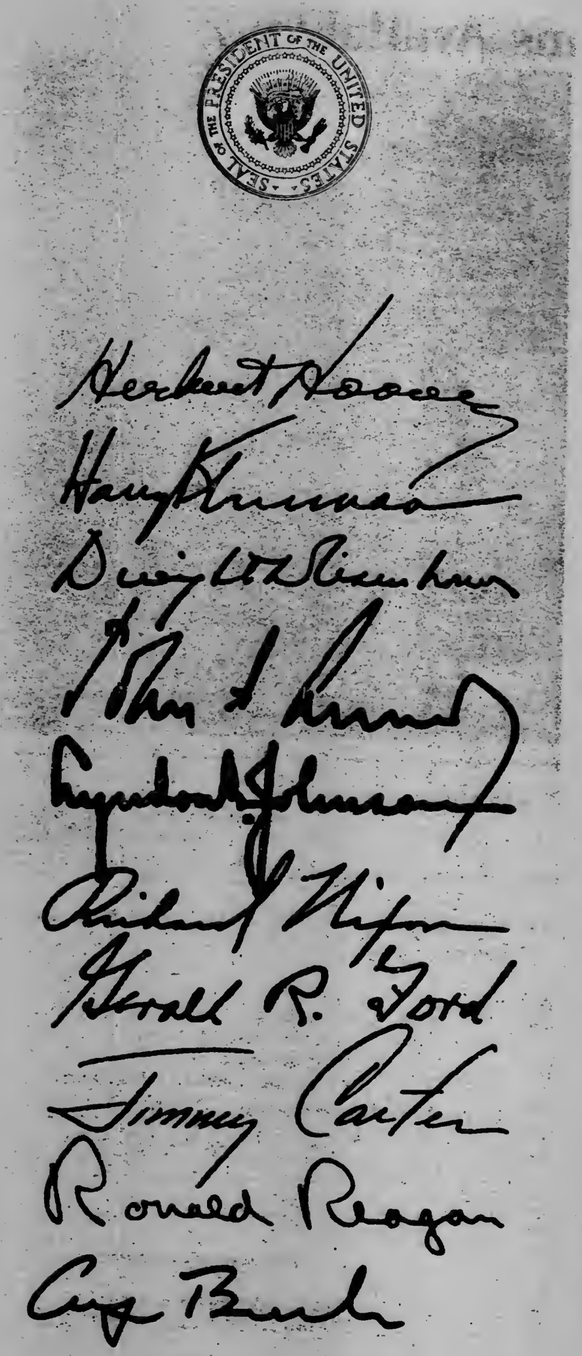
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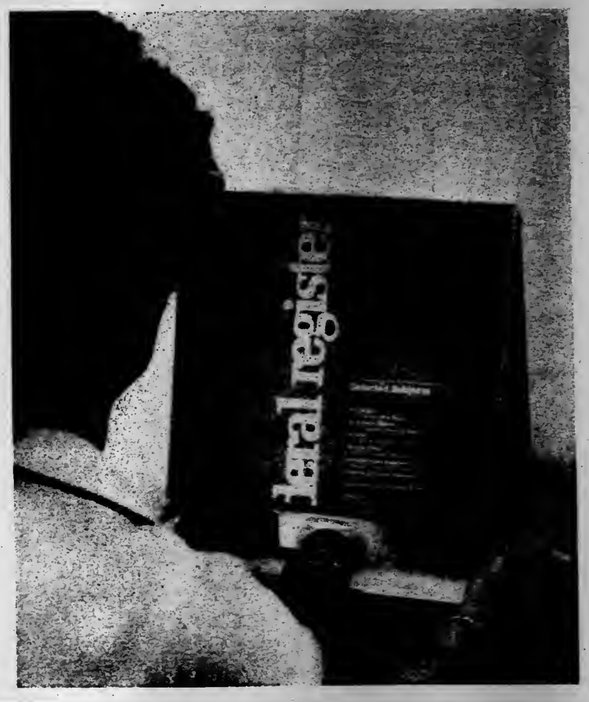
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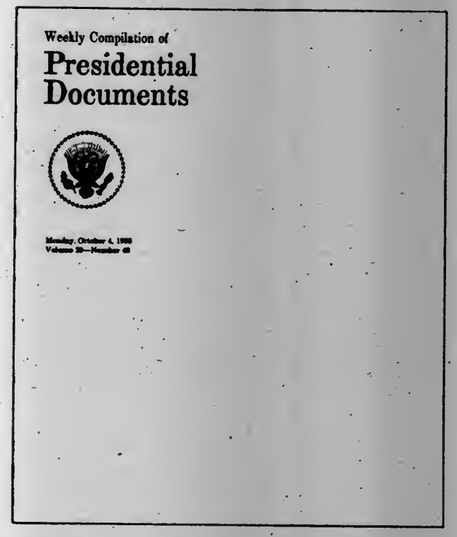
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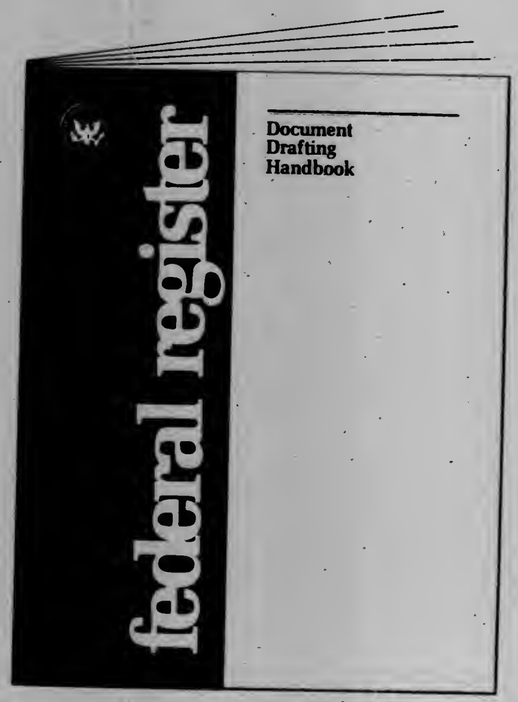
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WHERE: University of Arizona Medical School, DuVal Auditorium, 1501 N. Campbell Avenue, Tucson, AZ
RESERVATIONS: Federal Information Center 1–800–359–3997 or in the Tucson area, call 602–290–1616

OAKLAND, CA

WHEN: March 30 at 9:00 am
WHERE: Oakland Federal Building, 1301 Clay Street, Conference Rooms A, B, and C, 2nd Floor, Oakland, CA
RESERVATIONS: Federal Information Center 1–800–726–4995

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The President

Presidential Determination No. 94–8 of January 5, 1994

Procurement of Trident II Missiles

Memorandum for the Secretary of Defense

Pursuant to the authority vested in me by the Department of Defense Appropriations Act for the fiscal year ending September 30, 1994, Public Law 103–139, I hereby certify that proposing "detubing" of nuclear powered ballistic missile submarines (SSBNs) as an option for eliminating submarine-launched ballistic missile (SLBM) launchers under the START treaties to the other START Treaty signatories in the Joint Compliance and Inspection Commission (JCIC) would not be in the national interest.

You are hereby authorized and directed to notify the Congress of this determination and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 5, 1994.

[FR Doc. 94–3810
Filed 2–15–94; 2:27 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91-155-12]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding a portion of Riverside County, CA, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective February 14, 1994. Consideration will be given only to comments received on or before April 18, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-155-12. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78-10; referred to below as the regulations) and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573-57579, Docket No. 91-155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding to or removing from the list of quarantined areas certain portions of Los Angeles, Santa Clara, Orange, San Bernardino, and San Diego Counties, CA. Amendments affecting California were made effective on September 10, and November 12, 1992; and on January 19, July 16, August 3, September 15, October 8, November 22, and December 16, 1993; and on January 10, 1994 (57 FR 42485-42486, Docket No. 91-155-2; 57 FR 54166-54169, Docket No. 91-155-3; 58 FR 6343-6346, Docket No. 91-155-4; 58 FR 39123-39124, Docket No. 91-155-5; 58 FR 42489-42491, Docket No. 91-155-6; 58 FR 49186-49190, Docket No. 91-155-7; 58 FR 53105-53109, Docket No. 91-155-8; 58 FR 63027-63031, Docket No. 91-155-9; 58 FR 67627-67630, Docket No. 91-155-10; and 59 FR 2281-2283, Docket No. 91-155-11).

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an additional infestation of Medfly has been discovered in the Corona area of Riverside County, CA.

The regulations in § 301.78-3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78-3 by adding an area in Riverside County of approximately 62 square miles. The new quarantined area is as follows:

Riverside County

That portion of Riverside County bounded by a line drawn as follows: Beginning at the intersection of Interstate Highway 15 and Bellegrave Avenue; then southwest along Bellegrave Avenue to its intersection with the Riverside/San Bernardino County line; then southwest along the Riverside/San Bernardino County line to its intersection with State Highway 71; then southeast along State Highway 71 to its intersection with State Highway 91; then south from this intersection along an imaginary line to its intersection with the Corona City limit; then west, south, and east along the Corona City limit to its intersection with State Street; then north along State Street to its intersection with Chase Drive; then southeast along Chase Drive to its intersection with El Cerrito Road; then northeast along El Cerrito Road to its intersection with Temescal Canyon Road; then northeast from this intersection along an imaginary line to the intersection of Magnolia Avenue and State Highway 91; then northwest from this intersection along an imaginary line to the intersection of California Avenue and 6th Street; then west along 6th Street to its intersection with Interstate Highway 15; then north along Highway 15 to the point of beginning.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean

fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This interim rule affects the interstate movement of regulated articles from the Corona area of Riverside County, CA. There are approximately 93 small entities that could be affected, including 66 fruit sellers, 14 nurseries, 6 growers, 4 vendors, and 3 swapmeets.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the sale of these articles would not be affected by this interim regulation.

In the new quarantined area in Riverside County, the effect on those few small entities that do move regulated articles interstate from parts of the quarantined areas will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in subpart 301.78 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) under OMB control number 0579–0088.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas is amended by adding an entry for Riverside County in alphabetical order to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

* * * * *

Riverside County. That portion of Riverside County beginning at the intersection of Interstate Highway 15 and Bellegrave Avenue; then southwest along Bellegrave Avenue to its intersection with the Riverside/San Bernardino County line; then southwest along the Riverside/San Bernardino County line to its intersection with State Highway 71; then southeast along State Highway 71 to its intersection with State Highway 91; then south from this intersection along an imaginary line to its intersection with the Corona City limit; then west, south, and east along the Corona City limit to its intersection with State Street; then north along State Street to its intersection with Chase Drive; then southeast along Chase Drive to its intersection with El Cerrito Road; then northeast along El Cerrito Road to its intersection with Temescal Canyon Road; then northeast from this intersection along an imaginary line to the intersection of Magnolia Avenue and State Highway 91; then northwest from this intersection along an imaginary line to the intersection of California Avenue and 6th Street; then west along 6th Street to its intersection with Interstate Highway 15; then north along Highway 15 to the point of beginning.

Done in Washington, DC, this 14th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–3615 Filed 2–16–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–209–AD; Amendment 39–8814; AD 94–03–07]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Carbon Brakes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error in an existing airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. That AD currently requires inspections of the brake rod inner cylinder bolts on the main landing gear (MLG) wheels and brakes; inspections of certain MLG bushings; installation of retainer plates at each MLG brake disconnect; inspection and modification of the brake rod pin assembly at each MLG wheel; repair or replacement of discrepant parts; and revision of the Airplane Flight Manual (AFM), as necessary. This action corrects a column heading in a table that appeared in the rule. This action is necessary to ensure that affected operators are aware of the correct accellerate-stop distances to observe when complying with certain requirements of the rule.

DATES: Effective February 18, 1994.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of February 18, 1994 (59 FR 5074, February 3, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On January 27, 1994, the FAA issued AD 94–03–07, Amendment 39–8814 (59 FR 5074, February 3, 1994), which is applicable to Boeing Model 767 series airplanes equipped with carbon brakes. That AD requires inspections of the brake rod inner cylinder bolts on the main landing gear (MLG) wheels and brakes; inspections of certain MLG bushings; installation of retainer plates at each MLG brake disconnect; inspection and modification of the brake rod pin assembly at each MLG wheel; repair or replacement of discrepant parts; and revision of the FAA-approved Airplane Flight Manual (AFM), as necessary. That action was prompted by numerous reports of brake failure during landing and during a low energy rejected takeoff. The actions required by that AD are intended to prevent failure of two or more MLG brakes, which could adversely affect the stopping performance of the airplane.

Recently, the FAA has become aware of the fact that the version of this AD that was published in the **Federal Register** contained a typographical error in paragraph (f). That paragraph requires that the AFM be revised to include information concerning two-brake-deactivated performance decrements that must be observed until certain inspections and installation actions required by paragraphs (a) through (b)(3) of the AD have been accomplished.

That AFM revision contains three "options" with which affected operators may comply. "Option 3" of this AFM revision information contains a table specifying "Corrected Accelerate Stop Distances" (Section 4.3 of the AFM) that operators who elect to comply with "Option 3" are to observe when calculating the maximum allowable takeoff weight of the airplane. In the portion of the AD published in the **Federal Register**, the headings of two columns ["Corrected Accel-Stop Distance (feet)" and "Adjusted Corrected Accel-Stop Distance (feet)"] in this table were inadvertently transposed. With such a transposition, the material appearing in the respective columns could be misleading to operators attempting to comply with this portion of the rule.

The FAA has determined that it is appropriate to take action to correct AD 94–03–07 to correctly label the columns of material appearing in the table included under "Option 3" of paragraph (f).

Action is taken herein to correct the error and to correctly add the AD as an amendment to § 39.13 of the Federal Aviation Regulations (FAR). The effective date of the rule remains February 18, 1994.

The final rule is being reprinted in its entirety for the convenience of affected operators.

Since this action only corrects columnar headings in a table related to an optional method of compliance with a rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

94–03–07 Boeing: Amendment 39–8814. Docket 93–NM–209–AD.

Applicability: Model 767 series airplanes equipped with carbon brakes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of two or more MLG brakes, which could adversely affect the stopping performance of the airplane, accomplish the following:

(a) Except as provided in paragraph (f) of this AD, within 60 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Boeing Service Bulletin 767–32A0116, Revision 1, dated January 13, 1994:

(1) Perform a surface temper etch inspection and a fluorescent magnetic particle inspection to detect cracks or thermal damage of the brake rod inner cylinder bolts on the main landing gear (MLG) wheels and brakes in accordance with the service bulletin. As a result of these inspections, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable:

(i) If cracking or thermal damage is found on any bolt: Prior to further flight, replace the existing bolt with a new or serviceable bolt in accordance with the service bulletin. Repeat the inspections thereafter at intervals not to exceed 800 flight cycles.

(ii) If cracking or thermal damage is not found on any bolt: Apply finish and reinstall

the bolt in accordance with the service bulletin. Repeat the inspections thereafter at intervals not to exceed 800 flight cycles.

(2) Perform a visual inspection to detect cracking of the inner cylinder fork lug bushings and the brake rod bushings at the inner cylinder fork lug end in accordance with the service bulletin. Repeat that inspection thereafter at intervals not to exceed 800 flight cycles.

(b) For airplanes having line positions 132 through 518, inclusive: Except as provided in paragraph (f) of this AD, within 60 days after the effective date of this AD, accomplish paragraphs (b)(1), (b)(2), and (b)(3), as follows:

(1) Install the retainer plates at each MLG brake disconnect; and adjust the torque of the "B"-nut on the hydraulic line connection to the disconnect fitting; in accordance with Boeing Alert Service Bulletin 767–32A0125, dated November 11, 1993.

(2) Remove the cross bolt from the brake housing and brake rod pin assembly at each MLG wheel; remove the brake rod pin assembly; perform a visual inspection of the brake rod pin assembly to detect cracks, bronze transfer, corrosion, chrome discoloration, and areas of missing chrome plate; prior to further flight, replace any damaged brake rod pin assembly with a new or serviceable assembly; modify the brake rod pin assembly; install the modified brake rod pin into the brake housing and brake rod; and install a new brake attach pin retainer configuration; in accordance with Boeing Service Bulletin 767–32A0126, Revision 1, dated January 13, 1994.

(3) Perform a one-time visual inspection to detect cracking, deformation, and/or a missing piece in the bushings in the brake housing, and the bushings in the end of the brake rod, in accordance with Boeing Service Bulletin 767–32A0128, Revision 1, dated January 13, 1994.

(c) For any bushing that is found broken and/or any bushing that is found having a piece missing during the inspection(s) required by paragraphs (a)(2) and/or (b)(3) of this AD, accomplish the requirements of either paragraph (c)(1) or (c)(2), as follows:

(1) Within 10 flight cycles after detection, repair or replace the bushing in accordance with the appropriate service bulletin. No performance decrements are required within the first 10 flight cycles since detection. Or

(2) If the affected bushing has not been replaced within 10 flight cycles after detection, observe one-brake-deactivated performance decrements in accordance with the FAA-approved Airplane Flight Manual (AFM) until replacement of the affected bushing is accomplished. Operation must be performed with all brakes and the antiskid system fully functional, while operating with one-brake-deactivated performance decrements for broken bushings and/or a bushing with a missing piece.

(d) For any bushing that is found to be cracked or deformed during the inspection(s) required by paragraphs (a)(2) and/or (b)(3) of this AD, accomplish the requirements of either paragraph (d)(1) or (d)(2), as follows:

(1) Within 100 flight cycles since detection, repair or replace the bushing in accordance with the appropriate service bulletin. No performance decrements are required within the first 100 flight cycles since detection. Or

(2) If the affected bushing(s) has not been replaced within 100 flight cycles since detection, observe one-brake-deactivated performance decrements in accordance with the FAA-approved AFM until replacement of the affected bushing is accomplished. Operation must be performed with all brakes and the antiskid system fully functional, while operating with one-brake-deactivated performance decrements for cracked bushings.

(e) Operators may operate beyond 60 days after the effective date of this AD with one-brake-deactivated performance decrements for cracked or broken bushings, provided that the actions required by paragraphs (a) through (b)(3) of this AD have been accomplished.

(f) Revise the Limitations and Flight Performance sections of the FAA-approved AFM (or computer generated takeoff weight tables) to include the following information. (This may be accomplished by inserting a copy of this AD in the AFM.) If the actions required by paragraphs (a) through (b)(3) of this AD have not been accomplished within 60 days after the effective date of this AD, the following two-brake-deactivated performance decrements must be observed until the actions required by paragraphs (a) through (b)(3) of this AD have been accomplished. The following adjustments reflect takeoff and landing performance, assuming failure of two brakes. Operation must be performed with all brakes operative and the anti-skid system operative.

Option 1

(1) Subtract 70,000 LB (31,750 KG) from the takeoff limited weight (the most limiting (lowest) of maximum certified, obstacle clearance, tire speed, brake energy, climb, or field length limited weight). No adjustment to the takeoff speeds for the resulting weight is required.

(2) Landing Field Length—Section 4.13 of the Airplane Flight Manual: Multiply 'all brakes operative' FAR landing field length by a factor of 1.26.

(3) Maximum Quick Turnaround Weight—Section 4.13 of the Airplane Flight Manual: No change from the 'all brakes operative' value.

Option 2

(1) Field Length Limited Weight—Section 4.4 of the Airplane Flight Manual: Reduce the 'all brakes operative' field length limited weight by 10,500 LB (4,750 KG). The maximum allowable takeoff weight is the most limiting (lowest) of maximum certified, climb, obstacle clearance, tire speed, or this adjusted field length limited weight.

(2) Reference $V_{1(mcg)}$ Limited Accelerate-Stop Distance—Section 4.8 of the Airplane Flight Manual: Increase the reference $V_{1(mcg)}$ limited accelerate-stop distance by 1000 FT.

(3) Takeoff Decision Speed, V_1—Section 4.7 of the Airplane Flight Manual: Reduce V_1 by the following:

Weights below 330,000 LB (150,000 KG):
Subtract 4 knots
Weights at or above 330,000 LB (150,000 KG):
Subtract 3 knots

If the resulting V_1 is less than $V_{1(mcg)}$, takeoff is permitted with V_1 set equal to $V_{1(mcg)}$ provided the corrected accelerate-stop distance available exceeds the adjusted reference $V_{1(mcg)}$ limited accelerate-stop distance from Step 2.

(4) Brake Energy Limits—Section 4.7 of the Airplane Flight Manual: Reduce the maximum brake energy speed allowed with all brakes operative by 30 knots. Verify the scheduled V_1 is less than the reduced V_{MBE}. If not, then takeoff weight must be reduced.

(5) Landing Field Length—Section 4.13 of the Airplane Flight Manual: Multiply 'all brakes operative' FAR landing field length by a factor of 1.20.

(6) Maximum Quick Turnaround Weight—Section 4.13 of the Airplane Flight Manual: No change from the 'all brakes operative' value.

Option 3

Once the following adjustments to corrected accelerate-stop distance and V_{MBE} are determined, the takeoff weights should be calculated in the normal fashion (using these adjusted data) to determine the maximum allowable takeoff weight.

(1) Corrected Accelerate Stop Distance—Section 4.3 of the Airplane Flight Manual: Use the following table to adjust the corrected accelerate-stop distance.

Corrected accel-stop distance (feet)	Adjusted corrected accel-stop distance (feet)	Corrected accel-stop distance (feet)	Adjusted corrected accel-stop distance (feet)
4000	3420	13,000	11,552
5000	4312	14,000	12,470
6000	5206	15,000	13,391
7000	6104	16,000	14,315
8000	7005	17,000	15,241
9000	7908	18,000	16,171
10,000 ..	8815	19,000	17,104
11,000 ..	9724	20,000	18,039
12,000 ..	10,637	.....	.....

Linearly interpolate for accelerate-stop distance values between those shown.

(2) Reference $V_{1(mcg)}$ Limited Accelerate-Stop Distance—Section 4.8 of the Airplane Flight Manual: Increase the reference $V_{1(mcg)}$ limited accelerate-stop distance by 500 FT.

If V_1 is less than $V_{1(mcg)}$, takeoff is permitted with V_1 set equal to $V_{1(mcg)}$ provided the corrected accelerate-stop distance available exceeds this adjusted reference $V_{1(mcg)}$ limited accelerate-stop distance.

(3) Brake Energy Limits—Section 4.7 of the Airplane Flight Manual: Use the following table to adjust the maximum brake energy speed allowed with all brakes operative after correcting for runway slope and wind.

All brake op V_{MBE}—KIAS	Adjusted V_{MBE}—KIAS	All brake op V_{MBE}—KIAS	Adjusted V_{MBE}—KIAS
100	84.2	170	141.4
110	92.4	180	149.6
120	100.6	190	157.8

All brake op V_{MBE}—KIAS	Adjusted V_{MBE}—KIAS	All brake op V_{MBE}—KIAS	Adjusted V_{MBE}—KIAS
130	108.7	200	166.0
140	116.9	210	174.2
150	125.1	220	182.3
160	133.3	.....	.....

Linearly interpolate for V_{MBE} values between those shown.

(4) Landing Field Length—Section 4.13 of the Airplane Flight Manual: Multiply 'all brakes operative' FAR landing field length by a factor of 1.20.

(5) Maximum Quick Turnaround Weight—Section 4.13 of the Airplane Flight Manual: No change from the 'all brakes operative' value."

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with Boeing Service Bulletin 767–32A0116, Revision 1, dated January 13, 1994; Boeing Alert Service Bulletin 767–32A0125, dated November 11, 1993; and Boeing Service Bulletin 767–32A0126, Revision 1, dated January 13, 1994. This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of February 18, 1994 (59 FR 5074, February 3, 1994). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on February 18, 1994.

Issued in Renton, Washington, on February 10, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3581 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–97–AD; Amendment 39–8821; AD 94–04–03]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that currently requires repetitive inspections to detect cracks in the slat track roller bearing bolts, and replacement, if necessary. This amendment adds an inspection of the positional plates installed on certain airplanes, and replacement, if necessary; reduces the compliance time for the initial inspection; and cites the latest revision to the service bulletin as the appropriate service information source. This amendment is prompted by a report that certain positional plates may not stop rotation of the roller bearing bolts. The actions specified by this AD are intended to prevent jamming of the affected slat or separation of the slat from the airplane.

DATES: Effective March 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90–18–02, Amendment 39–6708 (55 FR 34699, August 24, 1990), which is applicable to all Boeing Model 727 series airplanes, was published in the **Federal Register** on August 23, 1993 (58 FR 44466). The action proposed to require repetitive inspections to detect cracks in the slat track roller bearing bolts, and replacement, if necessary; and an inspection of the positional plates installed on certain airplanes, and replacement, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that the compliance time of 2,500 flight cycles, as specified in paragraphs (b) and (d) of the proposal, be reduced to 2,000 flight cycles to coincide with the interval expressed in Boeing Service Bulletin 727–57–0172, which is cited in the proposed rule.

The FAA does not concur with the commenter's request to shorten the proposed compliance time In developing an appropriate compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modifications. Further, this AD supersedes an existing AD that specified a compliance time of 2,500 flight cycles. The FAA has received no reports to date of any problem encountered as a result of that compliance time. To reduce the compliance time of the proposal would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments received, and eventually issuing a final rule; the time required for that procedure may be as long as four additional months. In light of these considerations, and in consideration of the amount of time that has already elapsed since issuance of the original notice, the FAA has determined that further delay of this final rule action is not warranted.

The Air Transport Association (ATA) of America, on behalf of its members, requests that the FAA review existing approvals of alternative methods of compliance for AD 90–18–02 and determine if these approvals remain valid for this AD and, if so, either place a "NOTE" in the final rule or convey that information to affected operators through individual notices. ATA contends that including such a "NOTE" in this AD would expedite AD handling and reduce processing costs for both operators and the FAA.

The FAA has reviewed existing approvals of alternative methods of compliance for AD 90–18–02 and finds that these approvals would not necessarily be acceptable for this AD, since the actions required by the

existing AD do not adequately address the unsafe condition. However, if an operator believes its existing approval also should be considered acceptable for this AD, that operator should resubmit its request for approval from the FAA in accordance with the provisions of paragraph (f) of this AD.

One ATA member suggests that, in lieu of being superseded, AD 90–18–02 should be revised or amended so that operators with approvals of alternative methods of compliance for that AD would not be required to resubmit requests for such approvals for this AD. The FAA does not concur. The FAA has determined that the actions required by AD 90–18–02 do not adequately address the specified unsafe condition. Consequently, issuance of this AD is necessary to require additional actions in order to fully address the unsafe condition. The FAA's normal policy in this regard is that when an AD requires additional actions, the existing AD is superseded by being removed from the system and a new AD added.

One commenter requests that the FAA include an initial implementation period of 2,500 flight cycles in the final rule to allow operators that are currently performing inspections in accordance with the requirements of AD 90–18–02 additional time to "transition over" to the use of Revision 3 of Boeing Service Bulletin 727–57–0172. The commenter states that, as written, the proposed rule would require that those operators begin accomplishing the inspections in accordance with Revision 3 immediately after the effective date of this AD.

The FAA does not concur with the commenter's request. The FAA infers that the commenter's request for an implementation period to "transition over" refers to a need for additional time to update records and plan/schedule subsequent inspections. The FAA finds that additional time to begin accomplishing the inspections in accordance with Revision 3 of the service bulletin is not warranted.

Paragraphs (a) and (b) of the final rule are purposefully redundant with the exception of the inspection thresholds specified. The intent of paragraph (b) is to reduce the inspection threshold from that specified in paragraph (a) and to require that operators accomplish the inspection in accordance with Revision 3 of the service bulletin. Revision 3 of the service bulletin does not contain significant changes from other issues of the service bulletin. Further, operators have been provided ample notice through the proposed AD of the FAA's intent to require that Revision 3 of the service bulletin be used for any inspection accomplished after the effective date of this final rule. Operators will also receive 30 additional days after publication of this final rule in the **Federal Register** before this AD will become effective.

The FAA has revised paragraph (a) of this AD to clarify its intent that operators currently accomplishing the repetitive inspections required by AD 90–18–02 continue to perform those inspections in accordance with Revision 3 of the service bulletin until the first inspection required by paragraph (b) of this AD has been accomplished. In addition, paragraph (b) of this AD has been revised to specify that accomplishment of the repetitive inspections in accordance with Revision 3 of the service bulletin terminates the repetitive inspections required by paragraph (a) of this AD.

One commenter requests that paragraph (d) of the proposal be revised to indicate that no further action is required if a "checking tool" is used to ensure that a functionally acceptable positional plate was installed per Boeing Drawing 65C31395. The commenter indicates that it has developed a tool for checking the dimensions of the positional plate in accordance with the Boeing drawing. The commenter states that, since it has used a functionally acceptable solution to the problem and since this solution is recognized by Boeing as being equivalent to the procedures described in Revision 3 of the service bulletin cited in the proposal, the FAA should also recognize this procedure as an acceptable method of complying with the proposed requirements of this AD.

The FAA does not concur with the commenter's request to revise paragraph (d) of this AD to indicate that no further action is required if a "checking tool" is used. Paragraph (d) of this AD requires that the gap between the roller bolt head and the positional plate be measured in accordance with Revision 3 of Boeing Service Bulletin 727–57–0172. However, that service bulletin does not specify the use of any particular tool when performing the measurement. The FAA has no data available to evaluate the validity of the tool referenced by the commenter. In addition, the FAA does not find it necessary to limit the methods available to operators to accomplish the requirements of paragraph (d) of this AD. Since the service bulletin does not specify the use of any particular tool, the FAA considers that any measuring tool that allows operators to determine if the gap between the roller bolt head and the positional plate is within specified limits meets the intent of paragraph (d) of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,635 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,047 airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,036,530, or $990 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6708 (55 FR 34699, August 24, 1990), and by adding a new airworthiness directive (AD), amendment 39–8821, to read as follows:

94–04–03 Boeing: Amendment 39–8821. Docket 93–NM–97–AD. Supersedes AD 90–18–02, Amendment 39–6708.

Applicability: All Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the roller bearing bolts and subsequent jamming of the affected slat or separation of the slat from the airplane, accomplish the following:

(a) Prior to the accumulation of 12,000 total flight cycles, or within 2,500 flight cycles after September 30, 1990 (the effective date of AD 90–18–02, Amendment 39–6708), whichever occurs later: Accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 727–57–0172, Revision 1, dated October 12, 1989; Revision 2, dated June 27, 1991; or Revision 3, dated March 19, 1992. After the effective date of this AD, the inspection shall be accomplished only in accordance with Revision 3 of the service bulletin. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles until the inspection required by paragraph (b) of this AD is accomplished.

(1) For airplanes equipped with roller bearing bolts made from CRES material: Perform a fluorescent particle inspection of the slat track roller bearing bolts to detect cracks.

(2) For airplanes equipped with roller bearing bolts not made from CRES material: Perform a magnetic particle inspection of the slat track roller bearing bolts to detect cracks.

(b) Prior to the accumulation of 8,000 total flight cycles, or within 2,500 flight cycles after the effective date of this AD, whichever occurs later, unless accomplished previously within the last 2,500 flight cycles prior to the effective date of this AD: Accomplish paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 727–57–0172, Revision 3, dated March 19, 1992. Repeat this inspection thereafter at intervals not to exceed 5,000 flight cycles. Accomplishment of this inspection terminates the repetitive inspection requirement of paragraph (a) of this AD.

(1) For airplanes equipped with roller bearing bolts made from CRES material: Perform a fluorescent particle inspection of the slat track roller bearing bolts to detect cracks.

(2) For airplanes equipped with roller bearing bolts not made from CRES material: Perform a magnetic particle inspection of the slat track roller bearing bolts to detect cracks.

(c) If any cracked bolt is found during any inspection required by this AD, prior to further flight, replace the cracked bolt with a serviceable bolt and inspect the associated roller to detect seizure, in accordance with Boeing Service Bulletin 727–57–0172, Revision 1, dated October 12, 1989, Revision 2, dated June 27, 1991, or Revision 3, dated March 19, 1992. If the roller is seized or does not turn smoothly, prior to further flight, replace the defective roller with a serviceable roller in accordance with the service bulletin.

(d) For airplanes having positional plates installed in accordance with Boeing Service Bulletin 727–57–0172, dated September 6, 1985, Revision 1, dated October 12, 1989, or Revision 2, dated June 27, 1991: Prior to the accumulation of 5,000 flight cycles since modification, or within 2,500 flight cycles after the effective date of this AD, whichever occurs later, measure the gap between the roller bolt head and the positional plate in accordance with Boeing Service Bulletin 727–57–0172, Revision 3, dated March 19, 1992.

(1) If the gap measures 0.020 inch or less, no further action is required by this AD.

(2) If the gap measures more than 0.020 inch, prior to further flight, replace the positional plate with a new positional plate in accordance with Figure 3 of the service bulletin.

(e) Modification of the bolts and slat tracks in accordance with Boeing Service Bulletin 727–57–0172, Revision 3, dated March 19, 1992, constitutes terminating action for the actions required by paragraphs (a), (b), and (d) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections, replacements, gap measurement, and modification shall be done in accordance with Boeing Service Bulletin 727–57–0172, Revision 1, dated October 12, 1989; Boeing Service Bulletin 727–57–0172, Revision 2, dated June 27, 1991; and Boeing Service Bulletin 727–57–0172, Revision 3, dated March 19, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on March 21, 1994.

Issued in Renton, Washington, on February 4, 1994.

N. B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3103 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–58–AD; Amendment 39–8825; AD 89–02–12 R1]

Airworthiness Directives; Gulfstream Model G–IV Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–IV airplanes, that currently requires deactivating instrument landing systems (ILS) that utilize dedicated Bendix radios. This amendment provides for an optional terminating action, which, if accomplished, allows reactivation of the Bendix ILS systems. This amendment is prompted by the development of a modification that positively addresses the identified unsafe condition. The actions specified by this AD are intended to prevent the hazardous deviations from the intended course.

DATES: Effective March 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Flanagan, Aerospace Engineer, Airframe Branch, ACE–120A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta,

Georgia 30349; telephone (404) 991–2910; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 89–02–12, Amendment 39–6155 (54 FR 11165, March 17, 1989), which is applicable to certain Gulfstream G–IV airplanes, was published in the **Federal Register** on October 27, 1993 (58 FR 57756). That action proposed to revise AD 89–02–12 to continue to require deactivating the instrument landing systems (ILS) utilizing dedicated Bendix radios and modifying the electronic display controller wiring. That action also proposed to provide for an optional terminating action, which consists of modifying the ILS receivers hardware and TCAS symbol generators software for the #1 and #2 electronic display controllers.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that there are approximately 95 Model G–IV airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry will be affected by this action.

The actions currently required by AD 89–02–12 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of that AD on U.S. operators is estimated to be $9,735, or $165 per airplane.

This revision of AD 89–02–12 will add no new additional costs to operators, since it merely provides for an optional terminating action. Should an operator elect to accomplish the terminating action, the associated modification will take approximately 6 work hours per airplane to accomplish. The relocation and certification of a new AM/FM entertainment antenna will take approximately 120 work hours per airplane to accomplish. The average labor charge is $55 per work hour. All required parts will be provided free of charge by the manufacturer. Based on these figures, the total cost of accomplishing the optional terminating action is estimated to be $6,930 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6155 (54 FR 11165, March 17, 1989), and by adding a new airworthiness directive (AD), amendment 39–8825, to read as follows:

89–02–12 R1 Gulfstream: Amendment 39–8825. Docket 93–NM–58–AD. Revises AD 89–02–12, Amendment 39–6155.

Applicability: Model G–IV airplanes, as listed in Gulfstream Aircraft Service Change No. 110, dated January 24, 1989, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a) and (b) of this AD merely restate the requirements of paragraphs A. and B. of AD 89–02–12, Amendment 39–6155. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 89–02–12 have already been accomplished, paragraphs (a) and (b) of this AD do not require that those actions be repeated.

To prevent hazardous deviations from the intended course, accomplish the following:

(a) Prior to further flight after April 3, 1989 (the effective date of AD 89–02–12, Amendment 39–6155), discontinue use of the Bendix instrument landing system (ILS) radios for any type of approach. Pull both circuit breakers (C/B) on the co-pilot's C/B panel labeled "ILS #1" and "ILS #2." Tie-wrap the C/B's out, using TY23M or equivalent tie-wraps. Affix placards (Gulfstream decal #1159F40000–911 or equivalent) to the control heads and the C/B's, labeling them "INOP."

(b) Within 10 hours of airplane operation after April 3, 1989 (the effective date of AD 89–02–12, Amendment 39–6155), modify the wiring to the #1 and #2 electronic display controllers, in accordance with Gulfstream Aircraft Service Change No. 110, dated January 24, 1989.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) Accomplishment of the actions specified in both paragraphs (e)(1) and (e)(2) of this AD constitutes terminating action for the requirements of this AD:

(1) Modify the Bendix ILS systems in accordance with Gulfstream Aircraft Service Change No. 110A, dated April 9, 1993; and

(2) Prior to further flight after accomplishing the actions specified in paragraph (e)(1) of this AD, reactivate the Bendix ILS systems after relocating the forward radome mounted AM/FM entertainment antenna system in accordance with a method approved by the Manager, Atlanta ACO, FAA, Small Airplane Directorate.

(f) The modifications shall be done in accordance with Gulfstream Aircraft Service Change No. 110, dated January 24, 1989, and Gulfstream Aircraft Service Change No. 110A, dated April 9, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 21, 1994.

Issued in Renton, Washington, on February 7, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3235 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–131–AD; Amendment 39–8816; AD 94–03–09]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that requires inspection, modification, and replacement, if necessary, of the flap vane lugs. This amendment is prompted by reports of failure of flap vane lugs due to stress corrosion. The actions specified by this AD are intended to prevent failure of the flap vane lugs, which could lead to separation of flap vane from the airplane and cause injury to people or damage to property on the ground.

DATES: Effective March 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Western Export Company, Attn: Commercial and Customer Support, Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aeronautical Engineer, Flight Test Branch, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Lockheed Model L–1011–385 series airplanes was published in the **Federal Register** on September 21, 1993 (58 FR 48984). That action proposed to require inspection, modification, and replacement, if necessary, of the flap vane lugs.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposal.

Two commenters request that the compliance time for the inspection of the flap vane lugs be extended from the proposed 1,800 flight hours to at least 3,500 flight hours, in order to accommodate regularly scheduled "C" check intervals for the majority of the affected fleet. The commenters point out that, in the preamble to the proposal, the FAA indicated that the intent of the specified compliance time of the rule was to allow operators "ample time for the inspection to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities (i.e., 'C' checks)." The commenter states that revising the compliance time to match the scheduled maintenance interval will enable affected operators to procure adequate necessary parts or manufacture them locally, thus minimizing costs and logistical considerations. The FAA concurs that the compliance time should be extended. Although the compliance time published in the notice was "1,800 flight hours," the intended compliance time was actually "1,800 flight cycles." This latter figure was meant to translate to approximately 3,600 flight hours, which is the average interval for scheduled "C" checks within the affected fleet. The final rule has been revised to specify a compliance time of 1,800 flight cycles.

One commenter requests that the proposal be revised to allow repetitive inspections to be accomplished in accordance with part I ("Preparation and Inspection") of the service bulletin, rather than the proposed one-time inspection and follow-on rework in accordance with part II ("Vane Lug Rework for Lugs Without a Crack/Corrosion Indication"). The commenter suggests that the rework procedures of part II could serve as terminating action for the repetitive inspections. This would allow operators that have inspected but not reworked the lug bores more time to accomplish the rework. It would also allow operators more flexibility in complying with the AD. The FAA does not concur. The inspection procedure specified in part I of the service bulletin and paragraph (a) of this AD is neither designed as nor intended to be an interim or on-going inspection to detect cracking or corrosion. The purpose of that inspection is only to determine the scope of the rework of the lug bores that is necessary. As for providing additional time for conducting the rework procedures, as discussed previously, the final rule has been revised to specify a longer compliance time than was proposed. This longer interval will provide sufficient time for operators to perform both the one-time inspection and the necessary rework within normal maintenance schedules.

One commenter requests that the proposed rule be revised to provide some flexibility in the use of materials for bushing fabrication. The commenter notes that the Lockheed service bulletin referenced in the notice calls out "QQ–C–645, CQ-Alloy 642, Drawn Annealed and Cadmium Plated" material for such fabrication. However, the commenter stocks a bushing material made of a different alloy, which it uses in its fleet in flight control and landing gear applications. The commenter requests to be permitted to use this different material rather than the material specified in the service bulletin. The FAA does not concur. There currently are no FAA-approved data that would allow for the use of the commenter's specific alloy in a flap vane lug application. However, under the provisions of paragraph (e) of this AD, the commenter may submit a request to use this material as an alternative method of compliance with the AD, provided that substantiating data are included to demonstrate that this material will provide an acceptable level of safety in this particular application.

This same commenter requests that the proposed rule be revised to include a part-marking procedure different from that called out in the referenced service bulletin. The procedure contained in the service bulletin specifies that the letter "A" is to be added to the end of the part number on each modified (reworked) vane fitting. The commenter requests that the rule include an alternative procedure to permit adding the letter "A" after the part number of the top assembly (the complete vane assembly) instead. The commenter states that this

alternative procedure will simplify changes to its stock number assignments under its parts tracking system. The FAA cannot specifically concur with this request. The FAA does not consider that the inclusion of such changes as the one requested is appropriate in this AD. However, as stated previously, under the provisions of paragraph (e) of this AD, the commenter may submit a request to use an alternative marking procedure as an alternative method of compliance with the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 241 Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this AD, that it will take approximately 96 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. On the basis of these figures, the total cost impact of the AD on U.S. operators is estimated to be $617,760, or $5,280 per airplane.

However, the FAA has been advised that 56 of the affected U.S.-registered airplanes have been inspected in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators is now only $322,080.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–03–09 Lockheed: Amendment 39–8816. Docket 93–NM–131–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the flap vane lugs, which could ultimately lead to separation of the flap vane from the airplane and pose a danger to persons and property on the ground, accomplish the following:

(a) Within 1,800 flight cycles after the effective date of this AD, inspect the inboard and outboard lug of each flap vane to detect cracks and corrosion, in accordance with Lockheed TriStar L–1011 Service Bulletin 093–57–199, Revision 1, dated May 5, 1993.

Note: Inspections and rework previously accomplished prior to the effective date of this AD in accordance with the original issue of Lockheed TriStar L–1011 Service Bulletin 093–57–199, dated January 21, 1988, are considered in compliance with this paragraph and do not need to be repeated.

(b) For any lug that shows no evidence of cracks or corrosion, prior to further flight, rework the lug bore in accordance with part II of the service bulletin.

(c) If any lug has corrosion or cracking that is within the limits specified in the service bulletin, prior to further flight, accomplish the rework procedures in accordance with Part III of the service bulletin.

(d) If any lug has corrosion or cracking that exceeds the limits specified in the service bulletin, prior to further flight, replace the lug with a new or serviceable part in accordance with the service bulletin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspection, rework, and replacement procedures shall be done in accordance with Lockheed TriStar L–1011 Service Bulletin 093–57–199, Revision 1, dated May 5, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Western Export Company, Attn: Commercial and Customer Support, Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 21, 1994.

Issued in Renton, Washington, on January 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–2411 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–112–AD; Amendment 39–8815; AD 94–03–08]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes, that currently requires certain structural modifications and inspections. This amendment requires additional structural modifications and inspections. This amendment is prompted by an evaluation by the Model DC–10 Task Group, which identified additional modifications for mandatory action. The actions specified by this AD are intended to prevent degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long-term continued operational safety should be assured by actual modification of the airframe, where feasible, rather than only repetitive inspections for known service problems.

DATES: Effective March 21, 1994.

The incorporation by reference of McDonnell Douglas Report No. MDC–K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," Revision B, dated March 24, 1993, as listed in the regulations, is approved by the Director of the Federal Register as of March 21, 1994.

The incorporation by reference of McDonnell Douglas Report No. MDC–K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," Revision A, dated February 28, 1990, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 10, 1990 (55 FR 31816, August 6, 1990).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90–16–04, Amendment 39–6613 (55 FR 31816, August 6, 1990), which is applicable to McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes, was published in the **Federal Register** on October 12, 1993 (58 FR 52717). The action proposed to supersede AD 90–16–04 to require additional structural modifications and inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 426 Model DC–10 series airplanes and Model KC–10A (military) airplanes of the affected design in the worldwide fleet.

The FAA estimates that 194 airplanes of U.S. registry were originally affected by AD 90–16–04. The requirements of that AD were estimated to take approximately 360 work hours at a current average labor rate of $55 per work hour. The cost for required modification kits was estimated to be $9,600 per airplane. Based on these figures, the FAA estimated that the total cost impact of AD 90–16–04 on U.S. operators would be $5,703,600, or $29,400 per airplane, over the initial 4-year time period. (These figures do not include the cost of downtime, planning, set-up, familiarization, or tool acquisition.)

The FAA estimates that a total of 269 airplanes of U.S. registry will be affected by the new requirements specified in this AD. This increase in the number of affected airplanes is due to various reasons, including transfer of ownership and the fact that additional airplanes have accumulated time-in-service since the issuance of AD 90–16–04 and have now reached the threshold for modification/inspection. The new additional requirements contained in this AD action will take approximately 796 additional work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Required parts will cost an additional $101,900 per airplane. Based on these figures, the total additional cost impact of this AD on U.S. operators is estimated to be $39,187,920, or $145,680 per airplane, over a 4-year time period. (These figures do not include the cost of downtime, planning, set-up, familiarization, and tool acquisition.)

The figures discussed above are based on the assumption that no operator has yet accomplished the currently required or the newly required requirements of this AD action. However, the FAA has been advised that various modifications that are required by this AD have previously been accomplished on many of the affected airplanes. Therefore, the future total cost impact of this AD is less that the figure shown.

Additional airplanes will be affected as they accumulate time-in-service and reach the threshold for modification/inspection.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6613 (55 FR 31816, August 6, 1990), and by adding a new airworthiness directive (AD), amendment 39–8815, to read as follows:

94–03–08 McDonnell Douglas: Amendment 39–8815. Docket 93–NM–112–AD. Supersedes AD 90–16–04, Amendment 39–6613.

Applicability: Model DC–10–10, –10F, –15, –30, –30F, –40, and –40F series airplanes and Model KC–10A (military) airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a) and (c) of this AD restate the requirements for an initial inspection and the repetitive inspections contained in paragraphs A. and C. of AD 90–16–04. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 90–16–04, paragraphs (a) and (c) of this AD require that the next scheduled inspection be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraphs A. and C. of AD 90–16–04.

Note 2: Paragraphs (b) and (d) of this AD restate the modification requirements of paragraphs B. and D. of AD 90–16–04. As allowed by the phrase, "unless accomplished previously," if the requirements of paragraphs B. and D. of AD 90–16–04 have been accomplished previously, paragraphs (b) and (d) of this AD do not require that they be repeated.

To prevent structural failure, accomplish the following:

(a) For service bulletins other than those identified in paragraph (c) of this AD, within the threshold for inspections specified in the service bulletins listed in Table 2.1 of McDonnell Douglas Report No. MDC–K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," Revision A, dated February 28, 1990 (hereafter referred to as the "SARD, Revision A"), or Revision B, dated March 24, 1993 (hereafter referred to as the "SARD, Revision B"), or within one repetitive inspection period specified in those service bulletins after September 10, 1990 (the effective date of AD 90–16–04, Amendment 39–6613), whichever occurs later, inspect for cracks in accordance with those service bulletins. Repeat these inspections thereafter at the intervals specified in the service bulletins listed in Table 2.1 of the SARD, Revision A or Revision B.

(1) If any crack is found as a result of any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 3: Detection of any discrepancies other than cracking necessitates appropriate corrective action in accordance with the provisions of part 43 of the Federal Aviation Regulations (FAR).

(2) Modification in accordance with paragraph (b) of this AD terminates the individual inspection requirements of the applicable service bulletin.

(b) For service bulletins other than those identified in paragraph (c) of this AD, prior to reaching the incorporation thresholds listed in the SARD, Revision A or Revision B, or prior to four years after September 10, 1990, whichever occurs later, accomplish the structural modifications specified in the service bulletins listed under "S/B No. Rev." in Table 2.1 of the SARD, Revision A or Revision B.

Note 4: The service bulletin revision levels listed under "Recommended Modification" in Table 2.1 of the SARD, Revision B, are acceptable revisions for modifications accomplished prior to September 10, 1990.

Note 5: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

(c) For McDonnell Douglas Service Bulletins A30–37, 30–38, 53–16, 53–19, 53–25, 54–11, 54–27, 54–33, 55–2, and 57–7, listed in Table 2.1 of the SARD, Revision A; and for McDonnell Douglas Service Bulletins A30–37, 30–38, 53–16, 53–19, 53–25, 54–11, 54–27, 55–2, and 57–7, listed in Table 2.1 of the SARD, Revision B: Within the threshold for inspections listed under "S/B Change Required" in Table 2.1 of the SARD, Revision A or Revision B, or within one repetitive inspection period specified under "S/B Change Required" in Table 2.1 of the SARD, Revision A or Revision B, after September 10, 1990, whichever occurs later, inspect for cracks in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Repeat these inspections thereafter at the intervals specified under "S/B Change Required" in Table 2.1 of the SARD, Revision A or Revision B.

(1) If any crack is found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(2) Modification in accordance with paragraph (d) of this AD terminates the individual inspection requirements of the applicable service bulletin.

(d) Prior to four years after September 10, 1990, accomplish the structural modifications stipulated in the service bulletins specified in paragraph (c) of this AD.

(e) Within the threshold for inspections specified in the service bulletins listed in Table 2.2 of the SARD, Revision B, or within one repetitive inspection period specified in those service bulletins after the effective date of this AD, whichever occurs later, inspect for cracks in accordance with those service bulletins. Repeat these inspections thereafter at the intervals specified in the service bulletins listed in Table 2.2 of the SARD, Revision B.

(1) If any crack is found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(2) Modification in accordance with paragraph (f) of this AD terminates the individual inspection requirements of the applicable service bulletin.

(f) Prior to reaching the incorporation thresholds listed in the SARD, Revision B, or within four years after the effective date of this AD, whichever occurs later, accomplish the structural modifications specified in the service bulletins listed in Table 2.2 of the SARD, Revision B.

Note 6: The service bulletin revision levels listed under "Recommended Modification" in Table 2.2 of the SARD, Revision B, are acceptable revisions for modifications accomplished prior to the effective date of this AD.

Note 7: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The inspections, and modification shall be done in accordance with McDonnell Douglas Report No. MDC–K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," Revision A, dated February 28, 1990; or McDonnell Douglas Report No. MDC K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document", Revision B, dated March 24, 1993, which contains the following list of effective pages:

Page No.	Revision sym shown on page	Date shown on page
Pages xiii and xiv.	(Not shown on these pages).	March 24, 1993.

The incorporation by reference of McDonnell Douglas Report No. MDC K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document", Revision B, dated March 24, 1993, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of McDonnell Douglas Report No. MDC–K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," Revision A, dated February 28, 1990, was approved previously by the Director of the Federal Register in accordance 5 U.S.C. 552(a) and 1 CFR part 51 as of September 10, 1990 (55 FR 31816, August 6, 1990). Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on March 21, 1994.

Issued in Renton, Washington, on January 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–2412 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–107–AD; Amendment 39–8824; AD 94–04–06]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires replacement of the existing ground/flight microswitches located in the main landing gear with improved microswitches, and installation of an anti-skid system ON/OFF switch in the flight compartment. This amendment is prompted by an incident involving loss of braking, which was caused by mechanical ground/flight microswitches that froze while in the flight position. The actions specified by this AD are intended to prevent loss of braking below 40 miles per hour, when the anti-skid system is activated.

DATES: Effective March 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on September 1, 1993 (58 FR 46139). That action proposed to require replacement of the existing left- and right-hand ground/flight microswitches with new, improved microswitches at the MLG downlock, temperature sensor, and anti-skid harness positions. The proposed rule would also require installation of an anti-skid system ON/OFF switch in the flight compartment, for certain airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests withdrawal of the proposal. The commenter notes that the proposed replacement and installation has already been accomplished on all 14 airplanes affected by this proposal in the U.S.-registered fleet. Therefore, the commenter does not believe that an AD is necessary. The commenter also asserts that issuance of the proposal would only add to an administrative paperwork burden. The FAA does not agree. Issuance of this AD is necessary to ensure accomplishment of the requirements on any affected airplane currently of foreign registry that is purchased by a U.S. operator and placed on the U.S. register in the future. The FAA has determined that issuance of this AD should only result in a minor administrative burden, since the required actions have already been accomplished.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD. The FAA has been advised that all 14 affected airplanes have been modified in accordance with the requirements of this AD. Therefore, currently, this AD action imposes no additional economic burden on any U.S. operator.

However, should an unmodified airplane be imported and placed on the U.S. Register in the future, it will take approximately 113 work hours per airplane to accomplish the proposed actions, at an average labor rate of $55 per work hour. Required parts would cost approximately $1,800 per airplane. Based on these figures, the total cost impact of the AD is estimated to be $8,015 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-04-06 Fokker: Amendment 39-8824. Docket 93-NM-107-AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11265 inclusive, 11268 through 11283 inclusive, 11286, 11289, 11291, 11293, 11295, 11297, 11300, and 11303; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of braking below 40 miles per hour, when the anti-skid system is activated, accomplish the following:

(a) For all airplanes: Within 3 months after the effective date of this AD, replace the existing Dowty Electronics left- and right-hand ground/flight microswitches, part number 620602801, issue 1, with new, improved microswitches, part number 620602801, issue 2, at the main landing gear (MLG) downlock, temperature sensor, and anti-skid harness positions, in accordance with Fokker Service Bulletin SBF100-32-060, dated October 20, 1992.

(b) For airplanes having serial numbers 11244 through 11265 inclusive, 11268 through 11275 inclusive, 11277, and 11279: Within 12 months after the effective date of this AD, install an anti-skid system ON/OFF switch in the flight compartment in accordance with Fokker Service Bulletin SBF100-32-060, dated October 20, 1992.

(c) As of the effective date of this AD, no person shall install a Dowty Electronics left- and/or right-hand ground/flight microswitch, part number 620602801, issue 1, on any airplane.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The replacement and installation shall be done in accordance with Fokker Service Bulletin SBF100-32-060, dated October 20, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 21, 1994.

Issued in Renton, Washington, on February 7, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-3236 Filed 2-16-94; 8:45 am]

BILLING CODE 4910-13-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-247; RM-8328]

Radio Broadcasting Services; Pauls Valley, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Washita Broadcasting, Inc., substitutes Channel 249C3 for Channel 249A at Pauls Valley, Oklahoma, and modifies the license of Station KGOK to specify operation on the higher class channel. See 58 FR 51603, October 4, 1993. Channel 249C3 can be allotted to Pauls Valley in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) southwest, at coordinates North Latitude 34-42-14 and West Longitude 97-15-46, to accommodate petitioner's desired transmitter site. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-247, adopted January 25, 1994, and released February 9, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 249A and adding Channel 249C3 at Pauls Valley.

Federal Communications Commission

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-3587 Filed 2-16-94; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 59, No. 33
Thursday, February 17, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 772

RIN 3206-AF76

Interim Relief

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is publishing a proposed change to regulations reflecting administrative case law on taking personnel actions to provide interim relief under the Whistleblower Protection Act of 1989. These changes also reflect OPM's initiative to sunset the Federal Personnel Manual.

DATES: Comments must be received on or before April 18, 1994.

ADDRESSES: Written comments may be sent or delivered to Marjorie A. Marks, Chief, Family Programs and Employee Relations Division, Office of Labor Relations and Workforce Performance, U.S. Office of Personnel Management, room 7412, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert (202) 606-2920.

SUPPLEMENTARY INFORMATION: The Whistleblower Protection Act of 1989 (WPA), Public Law 101-12 codified at 5 U.S.C. 7701(b)(2)(A), provided that prevailing parties in an appeal to the Merit Systems Protection Board (MSPB) shall be granted the relief provided in the decision, and remaining in effect pending the outcome of any petition for review. OPM published final regulations on this subject in the **Federal Register** on January 31, 1992 (57 FR 3707-3715). The final regulations authorized agencies to take interim personnel actions to provide a prevailing applicant or employee the interim relief ordered in an MSPB initial decision. Interim personnel actions include, but are not limited to, interim appointments, interim repromotions after demotions, and interim within-grade increases.

After these regulations were published, the Merit Systems Protection Board (MSPB) issued an administrative decision in *Leonard Ginocchi* v. *Department of Treasury*, DC315I8910527, February 19, 1992, which explained MSPB's interpretation of the WPA with regard to interim relief. In *Ginocchi*, the Board ruled that it would not look behind the agency's determination under 5 U.S.C. 7701(b)(2)(A) that returning an employee to the workplace would be unduly disruptive. It also held that an agency making a determination of undue disruption did not have to keep the employee on excused absence (administrative leave), but could place the employee in other duties. OPM believes this facet of *Ginocchi* is a reasonable and persuasive interpretation of the WPA. Since this interpretation is inconsistent with a portion of OPM's regulations (which was based on a more restrictive interpretation), OPM is proposing to delete that portion of the regulations—section 772.102(d). This change will help reduce any confusion by practitioners before the Board about their respective rights and responsibilities regarding interim relief.

In addition, OPM notes that guidance on preparing official documentation to effect an interim personnel action is currently located in Federal Personnel Manual Supplement 296-33. The current regulations provide that interim relief actions need to be prepared in accordance with that guidance and other guidance contained in FPM Chapter 296. Consistent with OPM's initiative to sunset the FPM, OPM proposes to delete references in the regulation to the FPM.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Part 772

Administrative practice and procedure; Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend part 772 of title 5 of the Code of Federal Regulations as follows:

PART 772—INTERIM RELIEF

1. The authority citation for part 772 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, and 7301; Pub. L. 101-12.

§ 772.102 [Amended]

2. Section 772.102 is amended by removing paragraphs (d) and (g); redesignating paragraphs (e) and (f) as paragraphs (d) and (e) respectively; and by removing the semicolon and the word "and" at the end of redesignated paragraph (e) and inserting a period in its place.

[FR Doc. 94-3617 Filed 2-16-94; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 212

[Regulation L; Docket No. R-0825]

Management Official Interlocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is proposing to amend its regulations that implement the Depository Institution Management Interlocks Act (Interlocks Act or Act). The Interlocks Act generally prohibits certain management official interlocks between depository institutions, depository holding companies, and their affiliates. The proposed amendment would create limited exemptions to the prohibition on management official interlocks between certain depository organizations located in the same community or relevant metropolitan statistical area (RMSA). These exemptions would permit management official interlocks between depository organizations that together control only a small percentage of the total deposits in the community or RMSA. These exemptions are based on the Board's belief that these management interlocks would not threaten to inhibit or restrict

competition among depository organizations. In addition, the Board is soliciting comment generally on revisions to the existing Interlocks Act regulations that the Board should consider, including the addition of other exemptions. The Board also is proposing amendments to implement certain provisions of the Management Interlocks Revision Act of 1988.

DATES: Written comments must be received on or before April 11, 1994.

ADDRESSES: Comments, which should refer to Docket No. R-0825, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Thomas M. Corsi, Senior Attorney (202/452-3275), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551

SUPPLEMENTARY INFORMATION:

Background—Exemptions to the Interlocks Act

The general purpose of the Interlocks Act is to foster competition among depository organizations[1] by prohibiting certain management interlocks that might contribute to anticompetitive practices. The primary concern is that interlocking management may enable certain depository institutions to control the flow and availability of credit in the markets in which they operate.

The Act prohibits a management official of a depository organization from serving at the same time as a management official of an unaffiliated depository organization located in the same community[2] or RMSA.[3] 12 U.S.C. 3202. Congress designated RMSAs as appropriate regions within which to restrict management interlocks because RMSAs are "economic trade areas and reflect the area in which financial institutions compete." S. Rep. No. 323, 95th Cong., 1st Sess. 14 (1977).[4]

In the Interlocks Act, Congress authorized the Federal depository institutions regulatory agencies (the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Office of the Comptroller of the Currency, hereinafter the "Agencies") to implement rules and regulations to carry out the Act, including rules or regulations which permit service by a management official that would otherwise be prohibited by the Act. 12 U.S.C. 3207. The legislative history of the Act indicates that the Agencies may exercise this rulemaking authority to exempt management official interlocks that otherwise might be prohibited by the statute if they establish that the exemption has a pro-competitive effect. H.R. Rep. No. 1383, 95th Cong., 2d Sess. 15 (1978).

Pursuant to this rulemaking authority, the Board, along with the other Agencies, previously established exceptions for institutions located in low- and moderate-income areas, minority- and/or women-owned organizations, newly-chartered institutions, and institutions facing conditions endangering their safety and soundness. *See* 12 CFR 212.4(b). These exceptions are all available on a temporary basis upon a demonstration that the exempted management official interlock is necessary to provide management or operating expertise to the requesting institution.

The Agencies are publishing their proposed rule notices separately. The Board now seeks comment on a proposal to establish additional exemptions from the prohibitions of the Act. These exemptions would be available to depository organizations that between them control a small percentage of deposits in a community or RMSA. The Board also proposes an amendment to exempt honorary and advisory directors that serve institutions with less than $100 million in assets from the definition of a "management official" in the Interlocks Act. This change is consistent with a provision of the Management Interlocks Revision Act of 1988 (Pub. L. 100-650, 102 Stat. 3819 (1988)).

In addition to the proposed new exemption to the Interlocks Act, the Board, together with the other Federal depository institutions regulatory agencies, is considering a more comprehensive revision of the regulations implementing the statute. Any such revision would seek to simplify the regulations, revise existing exemptions, and consider new exemptions that would foster competition in relevant RMSAs and communities and thus minimize unnecessary regulatory burden while still fulfilling the requirements of the Interlocks Act. The Board therefore is using this notice of proposed rulemaking as an opportunity to solicit additional comment on the question of the improvement of its Interlocks Act regulations.

The Small Market Share Exemption

The Interlocks Act prevents two competing institutions from conspiring through common management officials to adversely impact competition in the products and services they offer Where two depository institutions dominate a large portion of the market, these risks are real. But when a particular market is served by many institutions, the risks diminish that two depository institutions with interlocking management can adversely affect the credit products and services available in their market.

The Board believes that analysis of the combined deposit holdings of two institutions provides a meaningful assessment of the capacity of the two institutions to control credit and related services in their market. This proposal reflects the view that two depository institutions that control a small portion of the market they serve are not capable of exerting sufficient market influence to materially restrict the terms and availability of credit in their market. For institutions located in a RMSA, the RMSA constitutes the relevant market.

Some depository institutions compete in smaller markets either within or outside of RMSAs. The Interlocks Act provides that the relevant market for these organizations and organizations with total assets of $20 million or less that are located within a RMSA, is the city, town, or village and contiguous and adjacent areas in which the organizations are located. 12 U.S.C. 3202.

[1] A depository organization means a depository institution or a depository holding company. *See* 12 CFR 212.2(g).

[2] Community is defined as a city, town, or village, or contiguous or adjacent cities, towns, or villages. 12 CFR 212.2(c)

[3] An RMSA includes a primary metropolitan statistical area, a metropolitan statistical area, or a consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget. *See* 12 CFR 212.2(n); 58 FR 27443 (May 18, 1993).

[4] The prohibitions apply if both organizations are depository institutions, each with an office in the same RMSA; if offices of depository institution affiliates of both organizations are located in the same RMSA; or if one organization is a depository institution that has an office in the same RMSA as a depository institution affiliate of the other organization. The RMSA prohibition does not apply to depository institutions with less than $20 million in assets. *See* 12 CFR 212.3.

The Proposal

The Board is proposing to amend the management interlocks regulations to permit two depository organizations that serve the same RMSA to share management officials in circumstances where organizations control a small portion of the deposits in that market. Specifically, this proposal would permit two competing depository organizations, each with assets in excess of $20 million, to share management officials if the organizations together control no more than 20 percent of the deposits in the RMSA. Additionally, the depository organizations could control no more than 20 percent of the deposits in any other RMSA whether they compete directly, through offices, or through affiliated depository institutions.

Under the proposal, depository organizations located in RMSAs would look to appropriate deposit share data available from the relevant Federal Reserve Bank in order to determine whether they are entitled to the exemption in reliance upon this information. Depository institutions would not have to apply to the appropriate Federal depository institution regulatory agency for permission to engage in the interlock.

The Board would treat management interlocks between institutions with assets of less than $20 million that are located within an RMSA and all depository institutions located outside of an RMSA in a similar manner. Specifically, the amendment would exempt any management interlock between two depository organizations located in a community, as defined by § 212.2 of the regulation, if the depository organization's combined share of the total deposits in the community is no more than 20 percent. Similarly, to be exempt, the organizations may not together control more than 20 percent of the deposits in any community in which they or their depository institution affiliates are located.

The proposal would provide an exemption only if management interlocks between the two organizations are not otherwise prohibited by the Act. For example, 12 U.S.C. 3203 provides that a depository institution or a depository holding company with assets in excess of $1 billion may not enter into a management interlock with a depository institution or a depository holding company with assets in excess of $500 million. No exemption would be available for interlocks that fall within this prohibition. The exemption is effective as long as the organizations meet the conditions. If the level of deposit control exceeds 20 percent of deposits in the community or RMSA, as measured annually, the depository organizations shall have up to 15 months to address the prohibited interlock by shrinking the deposit base, terminating the interlock, or taking any other action to correct the violation.

No prior Board approval is required. The exemption is intended to be self-implementing. Management is responsible for compliance with the terms of the exemption and maintaining sufficient supporting documentation.

Determining Deposit Share of the Relevant Market

Using the total deposit data reported by depository institutions to the Federal Deposit Insurance Corporation (FDIC) in the Summary of Deposits addendum to the Report of Condition and Income, the depository organizations will determine for themselves whether the exemption is available. The FDIC compiles the collected deposit data into a summary and makes the deposit summary available annually. The FDIC's annual deposit summary breaks-out the total deposits of every insured depository institution by branch.[5] This deposit data can be sorted by RMSA, and by community as that term is defined by the Act, to provide to depository organizations the necessary information to determine deposit share by the relevant market.

The FDIC provides this deposit summary to each of the Agencies. Under the proposal, the Board will make the deposit data available to all bank holding companies and state member banks.[6] Each of the Agencies will make the same data available to the other depository organizations. The process would involve neither an application nor an approval from any of the Agencies but, the burden of determining the applicability of the exemption falls upon the depository organizations that seek it. Depository organizations located in an RMSA would simply look to the deposit share data for the total deposits of the RMSA. Then, both interlocking depository organizations would determine whether their combined share of the total deposits exceeds 20 percent. If the combined share of deposits is no more than 20 percent of the market, the interlock is exempt.

The Board intends this exemption to be available to community-based depository organizations in the same manner as for organizations whose relevant market is the RMSA. However, while the deposit share data can be pre-sorted and made readily available by RMSA, the deposit share data cannot be pre-sorted by community. For example, two community-based depository organizations seeking to rely on the small market share exemption must first determine the total deposits in their community. To do this, the depository organizations must request deposit share data from the Board with sufficient specificity to delineate the community defined by the Interlocks Act that both the interlocking institutions will serve. Only then can they calculate the portion of the deposits in the market that they would be deemed to control if they engage in the interlock.

Whether within or outside of an RMSA, the depository organizations will be required to retain records supporting the applicability of the exemption, and to reconfirm, on an annual basis, that the interlock is eligible for the exemption. The most recent deposit share data made available to the depository organizations by the Agencies will determine whether organizations are entitled to the small market share exception. When new data demonstrates that the two interlocking institutions' combined control of deposits exceeds 20 percent of deposits in the community or RMSA, the affected depository organizations have up to 15 months to correct the prohibited interlock.

Pro-competitive Results

The Board believes this proposal will have a pro-competitive effect. Since the deposit base of the exempted interlocking institutions is small, the risk of anticompetitive control over the market is remote. To provide to these particular institutions this limited relief from the management interlock

[5] The data do not include the deposits held by federally-chartered credit unions, which are insured by the National Credit Union Share Insurance Fund, and state-chartered credit unions. Typically, these credit union deposits comprise only a small part of the total deposits in a relevant market. If included, the deposit figures for a particular market would be slightly increased. As such, the data will not include the credit union deposits, but will still serve as a reliable approximation of the total deposits in the relevant market.

[6] For the purpose of ascertaining whether depository organizations qualify for the exception, deposit information regarding specific counties and RMSAs will be available at each Federal Reserve Bank.

restrictions enlarges the pool of experienced management talent upon which they may draw and enhances their operational effectiveness. The result will be better managed, more competitive, and healthier depository institutions.

Request for Comment

In addition to any relevant comments on this proposal, the Board specifically requests comment on the following:

1. Whether 20 percent or less of the deposits of a community or RMSA is an appropriate threshold for the exemption, or whether a different level is more appropriate.

2. Should the community and RMSA exemptions rely on the same or a different threshold level?

3. Should the exemption require depository organizations to demonstrate that they control no more than 20 percent of the deposits of communities within an RMSA? For example, if two depository organizations with more than $20 million in assets operate in a community within a RMSA, should the exemption require that the depository organizations control no more than 20 percent of the deposits in the community and no more than 20 percent of the deposits in the RMSA? Consider depository organizations that compete in several communities within a RMSA.

4. Whether and how the proposed procedure to employ the deposit data collected by the FDIC in connection with the Report of Condition and Income will permit depository organizations to determine easily and effectively whether they qualify for the small market share exception.

5. Whether the exemption for community-based institutions will be easy to use, or whether these institutions might be better served by another approach to the exemption.

6. Whether the exemption would enable depository organizations to subvert the purposes of the Interlocks Act by establishing multiple interlocks involving several individuals. For example, the Board is concerned that each of several directors of one depository organization could serve as a director of a different unaffiliated depository organization, facilitating diminished competition among the several depository organizations. The Board seeks comment on whether this concern is justified, and if so, whether it is exacerbated by the fact that the threshold limit for the exemption is set at 20 percent of the deposits in the RMSA or community, rather than a smaller percentage.

In addition to this proposal, the Board plans a comprehensive revision of the regulations implementing the Interlocks Act. The Board intends to simplify the regulation, revise the interlocks prohibitions and exemptions, and consider new exemptions that promote competition without fostering anticompetitive practices. The comprehensive revision will eliminate unnecessary regulatory burden in a manner consistent with the Interlocks Act and the stated objectives of the Board.

Toward this end, the Board solicits comment on how to clarify and improve the entire rule in a manner consistent with the Interlocks Act.

Paperwork Reduction Act

The collection of information contained in this proposed rule will be reviewed by the Board under Office of Management and Budget (OMB) delegated authority pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments regarding the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System at the address noted above and should refer to Docket No. R-0825.

The collection of information in this proposed rule is found in § 212.4(d), and takes the form of records maintained by depository organizations which are sufficient to support their determination that the interlocking relationships which they have established are exempt under this section. Such depository organizations must also maintain records which demonstrate that they have subsequently reconfirmed such determinations on an annual basis. The information will be used to provide state and federal examiners of depository institutions with documentation which will allow them to ascertain whether depository organizations are eligible for the exemption.

The estimated annual recordkeeping burden for the collection of information requirement in this proposed rule is summarized as follows:

Number of Recordkeepers: 70
Annual Hours per Recordkeeper: 3
Total Recordkeeping Hours: 210

Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Board hereby certifies that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities. The effect of the rule, if adopted as proposed, would be to reduce the compliance requirements imposed upon small entities by creating a regulatory exemption to the prohibition on management interlocks between certain organizations. Furthermore, the proposed exemption would affect only the management structure of only a few institutions.

List of Subjects in 12 CFR Part 212

Antitrust, Banks, banking, Holding companies, Management official interlocks.

Accordingly, for the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR part 212 as follows:

PART 212—MANAGEMENT OFFICIAL INTERLOCKS (REGULATION L)

1. The authority citation for part 212 continues to read as follows:

Authority: 12 U.S.C. 3201 *et seq.*, 15 U.S.C. 19.

2. Section 212.2 is amended by revising paragraph (h) to read as follows:

§ 212.2 Definitions.

* * * * *

(h)(1) *Management official* means:

(i) An employee or officer with management functions (including a branch manager);

(ii) A director (including an advisory or honorary director, except in the case of a depository institution with total assets of less than $100,000,000);

(iii) A trustee of a business organization under the control of trustees (e.g. a mutual savings bank); or

(iv) Any person who has a representative or nominee serving in any such capacity.

(2) *Management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or

(iii) Persons described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)).

* * * * *

3. Section 212.4 is amended by adding a new paragraph (d) to read as follows:

§ 212.4 Permitted interlocking relationships.

* * * * *

(d) *Small market share exemption—*

(1) *Depository organizations controlling no more than 20 percent of the deposits in a community or RMSA.* A management official may serve two unaffiliated depository organizations in a capacity which would otherwise be prohibited by § 212.3(a) or (b) of this part if the following conditions are met:

(i) The interlock is not prohibited by § 212.3(c) of this part; and

(ii) The two depository organizations hold in the aggregate no more than 20 percent of the deposits, as reported annually in the Summary of Deposits, in each RMSA or community in which the depository organizations have offices, or in which depository institution affiliates of both depository organizations are located.

(2) *Confirmation and records.* Depository organizations must maintain records sufficient to support their determination that the interlocking relationship is exempt under this section and must reconfirm that determination on an annual basis.

(3) *Termination.* An interlock permitted by this exemption may continue as long as the conditions of this section are satisfied. Any increase in the aggregate deposit holdings of the depository organizations as reported annually in the Summary of Deposits, that causes the interlock to become prohibited will be treated as a change in circumstances under § 212.6 of this part.

By order of the Board of Governors of the Federal Reserve System, February 4, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-3090 Filed 2-16-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-CE-52-AD]

Airworthiness Directives: de Havilland DHC-6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to de Havilland DHC-6 series airplanes. The proposed action would require repetitively inspecting the horizontal stabilizer center hinge bracket for cracks, and replacing any cracked center hinge bracket. Several reports of cracks in the horizontal stabilizer center hinge bracket flange on the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent separation of the elevator control support from the airplane as a result of a cracked horizontal stabilizer center hinge bracket, which could result in reduced controllability of the airplane.

DATES: Comments must be received on or before April 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-CE-52-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6220; facsimile (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93-CE-52-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-CE-52-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on de Havilland DHC-6 series airplanes. Transport Canada reports that the horizontal stabilizer center hinge bracket has cracked on several of the above referenced airplanes.

De Havilland has issued Service Bulletin (SB) 6/512, dated October 25, 1991, which specifies procedures for (1) inspecting the horizontal stabilizer center hinge bracket for cracks; and (2) replacing this center hinge bracket. Transport Canada classified this service bulletin as mandatory and issued Transport Canada AD CF-92-05, dated February 7, 1992, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other de Havilland DHC-6 series airplanes of the same type design, the proposed AD would require repetitively inspecting the horizontal stabilizer center hinge bracket for cracks, and replacing any cracked center hinge bracket. The proposed action would be accomplished in accordance

with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB 6/512, dated October 25, 1991.

The FAA estimates that 169 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $9,295. This figure only includes the cost for the initial inspection and does not include replacement costs if a center hinge bracket was found cracked nor does it include repetitive inspection costs. The FAA has no way to determine how many center hinge brackets may be cracked or how many repetitive inspections each owner/operator may incur.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD to read as follows:

De Havilland: Docket No. 93–CE–52–AD.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 250 hours time-in-service (TIS), unless already accomplished, and thereafter at intervals not to exceed 1,200 hours TIS.

To prevent separation of the elevator control support from the airplane as a result of a cracked horizontal stabilizer center hinge bracket, which could result in reduced controllability of the airplane, accomplish the following:

(a) Inspect the horizontal stabilizer center hinge bracket for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin 6/512, dated October 25, 1991, except that where dye penetrant inspections are specified, accomplish visual inspections with a strong light source and 10X magnifying glass. If any cracks are found, prior to further flight, replace the center hinge bracket in accordance with the referenced service bulletin.

Note 1: The repetitive inspection requirement of this AD still applies if the center hinge bracket is replaced.

(b) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office (ACO), FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5 Canada; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 11, 1994.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Office.

[FR Doc. 94–3576 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–CE–61–AD]

Airworthiness Directives: Piper Aircraft Corporation PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Federal Aviation Administration (FAA) recently became aware of an incident in England where the left main landing gear (MLG) collapsed on a Piper Aircraft Corporation (Piper) Model PA34–200T airplane because of swivel pin failure. At that time, the FAA found no service difficulty reports on airplanes of this type design that are certificated for operation in the United States. The FAA has since reviewed service difficulty reports of all Piper airplanes that have retractable MLG with the swivel pin configuration (certain PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 series airplanes), and found two incidents of cracked swivel pins. The purpose of this advance notice is to seek comments from interested persons regarding the best action (if any) to take in order to correct any possible problems with retractable MLG swivel pins. All comments and ideas will be evaluated by the FAA and the FAA will research the situation to decide whether rulemaking is needed.

DATES: Comments must be received on or before May 10, 1994.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–61–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–2910; facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–61–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this ANPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–61–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA is currently investigating a possible unsafe condition on Piper PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 series airplanes that have retractable main landing gear (MLG) with a swivel pin configuration.

The MLG collapsed on a Piper Model PA34–200T airplane that is certificated for operation in England because of MLG swivel pin failure. At that time, the FAA found no service difficulty reports of this type on airplanes of this type design that are certificated for operation in the United States. The FAA has since reviewed service difficulty reports of all Piper airplanes that have retractable MLG with the swivel pin configuration (certain PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 series airplanes), and found two incidents of swivel pin failure.

Discussions with operators that utilize these type airplanes under 14 CFR part 135 reveal that regular maintenance inspections require inspections in this area every 200 hours time-in-service (TIS), and that there have been no problems with the retractable MLG swivel pins.

The inspection procedures in Piper's maintenance manual of the referenced airplanes calls for inspecting the MLG assembly every 100 hours TIS. The inspection procedures do not specifically address a teardown inspection of this assembly. At this time, the FAA has determined that there is no basis to establish a threshold or repetitive teardown inspection interval of this assembly based on the information obtained.

In order to adequately make a determination as to what type of action to take (if any), the FAA is issuing this advance notice of proposed rulemaking (ANPRM) to provide an opportunity for the general public to participate in the decision whether to initiate rulemaking. Interested persons are encouraged to provide information that describes what they consider the best action (if any) to be taken to correct the possible problem. In this regard, the FAA is especially interested in comments and viewpoints on the following:

1. How often do you have the retractable MLG swivel pins inspected and in what detail, i.e., visual, dye penetrant, etc.?

2. Does the checklist in the procedures you utilize during the MLG swivel pin inspections include removal of the swivel pins?

3. Have you ever replaced the swivel pin?

a. If so, please list the hours TIS replaced and the reason why for each instance?

b. If not, how many hours TIS have you accumulated on your airplane?

4. Do you feel that the current inspection requirements are adequate, i.e., 14 CFR part 43, your checklist, Piper's maintenance manual, etc.? Please list any specific recommendations that you may have concerning current or future inspection requirements.

5. Please include the model and serial number of your airplane, and the part number of the retractable MLG swivel pin with this correspondence.

6. Please provide any other information that you feel is pertinent in helping the FAA determine what type of action (if any) needs to be taken. The following figure (Figure 1) depicts the retractable MLG assembly, including the swivel pin.

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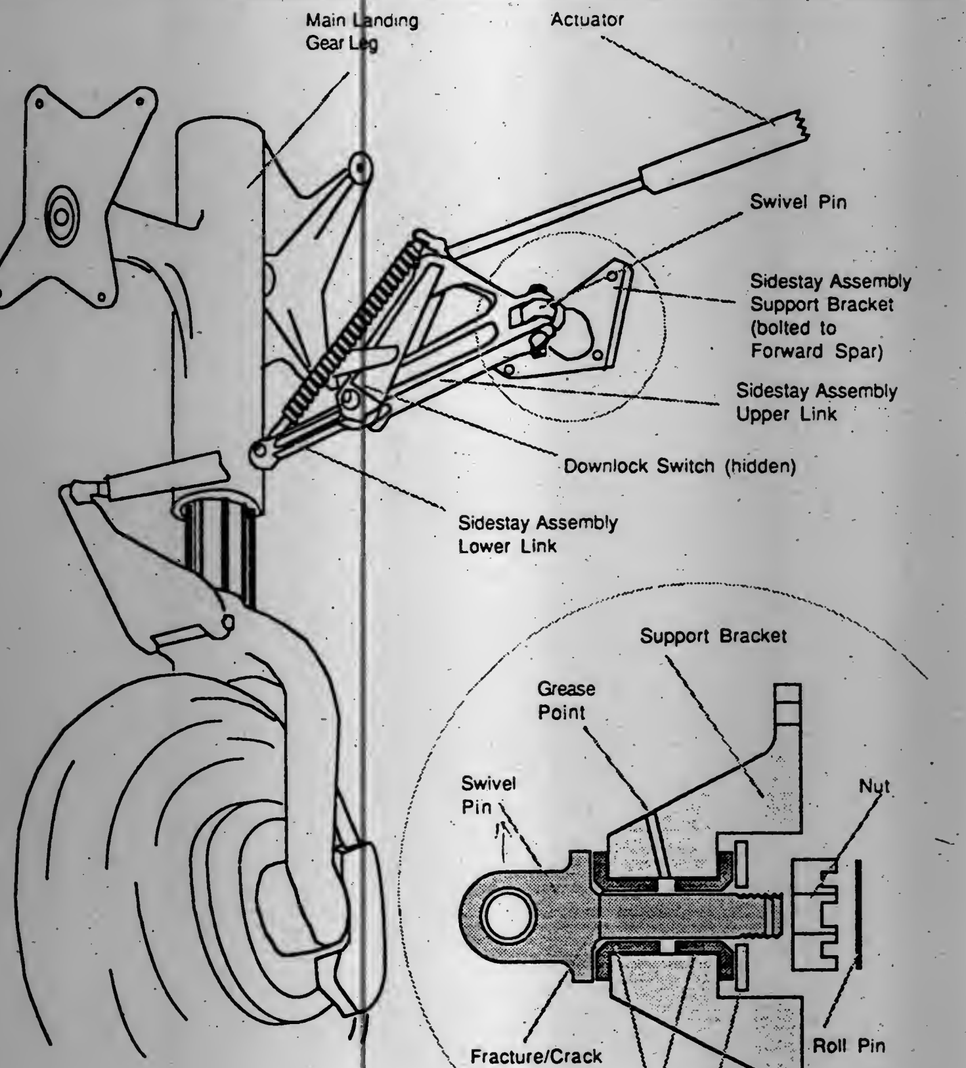


Figure 1

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Issued in Kansas City, Missouri, on February 11, 1994.

Mickael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-3575 Filed 2-16-94; 8:45 am]

BILLING CODE 4910-13-U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-33608; International Series Release No. 635; File No. S7-24-91]

RIN 3235-AE42

Large Trader Reporting System

AGENCY: Securities and Exchange Commission.

ACTION: Reproposed rulemaking.

SUMMARY: The Commission is reproposing Rule 13h-1 and Form 13H under Section 13(h) of the Securities Exchange Act of 1934 ("Exchange Act"). Rule 13h-1 was initially proposed by the Commission in Exchange Act Release No. 29593 (August 22, 1991), 56 FR 42550 (August 28, 1991). Reproposed Rule 13h-1 would establish an activity-based identification, recordkeeping, and reporting system for large trader accounts and transactions. Reproposed Rule 13h-1 also would establish a definition for large traders and require such large traders to file Form 13H with the Commission. Registered broker-dealers would be required to maintain transaction records for each large trader account and report transactions upon the request of the Commission or a self-regulatory organization ("SRO") designated by the Commission. Reproposed Rule 13h-1 would fulfill the goals of the Market Reform Act of 1990 ("Market Reform Act") by providing the Commission with the information necessary to reconstruct trading activity in periods of market stress and for enforcement or other regulatory purposes, without imposing undue burdens or costs on market participants.

DATES: Comments must be received on or before April 18, 1994.

ADDRESSES: Persons wishing to submit written comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7-24-91. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Julio A. Mojica, Assistant Director, (202) 272-7497, Nicholas T. Chapekis, Special Counsel, (202) 272-3115, or Cameron D. Smith, Staff Attorney, (202) 272-5418, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is reproposing Rule 13h-1 to implement the large trader reporting provisions of the Market Reform Act [1] and section 13(h) of the Exchange Act.[2] The Large Trader Reporting System that would be established by reproposed Rule 13h-1 was initially proposed in Securities Exchange Act Release No. 29593 (August 22, 1991), 56 FR 42550 (August 28, 1991) ("Proposing Release").

The Proposing Release chronicled the fundamental changes in participants, information systems, and investment techniques that have shaped the securities markets during the last decade.[3] As a result of these changes, today's securities markets are global in nature and characterized by large foreign and domestic investors that rapidly trade large quantities of securities, for themselves and others, throughout the world. During this period of change, the securities markets have experienced an increase in activity and the potential for volatility.

The legislative history accompanying the Market Reform Act noted the Commission's limited ability to analyze the causes of the significant market declines of October 1987 and 1989.[4] The Commission's inability to analyze trading activity was attributed to its lack of specific statutory authority to gather broad-based samples of investor trading information. To resolve this problem, Congress provided the Commission with specific authority to establish a large trader reporting system.

In the Proposing Release, the Commission proposed rules that defined the term large trader, required the disclosure of a large trader's identity and accounts to the Commission or others, and provided for the assignment of unique identifying numbers to large traders. The proposed rule also required broker-dealers that carry large trader accounts to maintain records of identified large trader transactions as well as transactions of those persons who have not identified themselves, but whom the broker-dealer knew or had reason to know were large traders. In addition, the proposed rule required broker-dealers to report large trader transactions in machine-readable form through the industry's existing electronic bluesheet system to the Commission upon request.

The Commission solicited comments on various aspects of the proposed rule, including the definition of a large trader, the identifying and reporting activity thresholds, exemptions, Form 13H filing requirements, execution time recordkeeping and reporting, and the proposed rule's application to foreign entities. The Commission was particularly sensitive to the burdens imposed by the proposed system and sought alternatives that would reduce such burdens and still accomplish the objectives of the Market Reform Act.

The Commission received 77 written comments on the proposed rule.[5] In addition, members of the Division of Market Regulation met on numerous occasions with the Securities Industry Association ("SIA"), the American Bankers Association, the Intermarket Surveillance Group ("ISG"), the Securities Industry Automation Corporation ("SIAC"), and two broker-dealers, to answer questions and discuss issues related to the operation of the proposed system and its impact on market participants.[6]

While generally supportive of the goals of the Market Reform Act,[7] the commenters expressed concern that the proposed rule would be unduly burdensome and costly. The commenters generally sought clarification of "who" would be a large trader, "what" information must be disclosed on Form 13H, and "when" Form 13H or trade report information must be submitted. These concerns were manifested in specific questions and

[1] Public Law 101-432, 104 Stat. 963 (1990).

[2] 15 U.S.C. 78m(h) (1990).

[3] See Proposing Release, 56 FR 42550.

[4] See generally Senate Comm. on Banking, Housing, and Urban Affairs, Report to accompany the Market Reform Act of 1990, S. Rep. No. 300, 101st Cong. 2d Sess. (May 22, 1990) (reporting S. 648) ("Senate Report") and House Comm. on Energy and Commerce, Report to accompany the Securities Market Reform Act of 1990, H.R. Rep. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657) ("House Report").

[5] The comment letters and the Division of Market Regulation's summary thereof have been placed in the Commission's public files. See SEC File No. S7-24-91.

[6] Memoranda summarizing the Division of Market Regulation's meetings with these entities have been placed in the Commission's public files. See SEC File No. S7-24-91.

[7] Comments were received from seven types of market participants and regulatory organizations, which may be grouped as follows: 12 broker-dealers; 24 investment advisers; 13 industry or professional associations; 8 banks or trust companies; 6 regulatory organizations; 4 law firms; and 9 other affected market participants.

comments regarding the rules for aggregation, the definitions of ownership and control, the scope of Form 13H information, and time frames for filing Form 13H. The commenters also addressed the identifying activity level, exemptions, and the duty to supervise compliance with the proposed rule. Finally, the broker-dealer community raised several concerns regarding the technical aspects of the reporting requirements for execution times, multiple large trader identification numbers ("LTID"), and the time frame for submitting trade reports.

The reproposed rule has been revised to incorporate many of the suggestions made in the comment letters. These provisions are intended to clarify the operation of the reproposed system and reduce the costs associated with all aspects of the reproposed rule. The changes found in the reproposed rule would: (1) Clarify the definition of a large trader and provide a flexible concept of aggregation; (2) increase the identifying and reporting activity levels; (3) reduce the scope of information captured on Form 13H; (4) streamline Form 13H filing and updating requirements that include an inactive filing status; (5) provide more informative and detailed instructions to Form 13H; (6) reduce the recordkeeping and reporting requirements for LTIDs; (7) provide special reporting requirements for execution times; and (8) provide a safe harbor for the duty to supervise.

The reproposed rule also addresses today's complex global trading environment and attempts to maintain a level playing field between broker-dealers and banks, both domestic and foreign. The Commission has endeavored to maintain an equal competitive environment between these entities by imposing requirements on custodians or nominees of omnibus accounts. These duties include: (1) Form 13H filings; (2) confidential and limited disclosures to the Commission or others; and (3) limited duties to disaggregate and assure compliance with omnibus account identification requirements.

Essentially, the reproposed large trader reporting system would require that a person that falls within the definition of a large trader would file Form 13H with the Commission. Upon receipt of Form 13H, the Commission would assign an LTID to the large trader. After receiving a LTID, large traders would contact their broker-dealers and inform them of their number and all accounts to which it applies. Thereafter, the large trader only would be required to file an updated Form 13H annually. The broker-dealers carrying the large trader's accounts would maintain records of the trades for the account. These broker-dealers would electronically report transactions upon receiving a request from the Commission. Broker-dealers also would be required to supervise compliance with the reproposed rule by their customers.

Fundamentally, the burdens that would be imposed on large traders by the reproposed rule would include: (1) Filing Form 13H (See Sections III.B.1. and 2.); (2) disclosing it's LTIDs to broker-dealers (See Section III.B.3.); (3) updating Form 13H annually (See Section III.B.1.); and (4) providing additional information when the Commission requests (See Section III.B.5.). The burdens imposed on broker-dealers would include: (1) Maintaining records of transactions effected for large trader accounts (See Section III.C.); (2) electronically reporting large trader transaction information when the Commission requests (See Section III.D.); and (3) supervising their customers' compliance with the reproposed rule (See Section III.E.).

The specific changes to the proposed rule and several examples of how they would affect the reproposed system are discussed below. The Commission believes that the reproposed rule accomplishes the objectives of the Market Reform Act by creating an effective market reconstruction tool, minimizing burdens and costs, and maintaining a fair competitive environment among markets and market participants.

II. Solicitation of Comments

The Commission believes that the modifications and additions found in the reproposed rule would significantly reduce the burdens and costs of the proposed system without impeding its effectiveness and, therefore, would accomplish the objectives of the Market Reform Act. As discussed below, the Commission staff has engaged in extended discussions with market participants and securities information processors, and many alternatives have been identified. The Commission has incorporated in the reproposed rule those alternatives that it believes would accomplish the objectives of the Market Reform Act.

Because the changes to the proposed rule are significant, the Commission seeks comments on any aspect of the reproposed rule and, specifically, comments that relate to the: (1) The identifying activity level; (2) other means to assure that natural persons who were not intended to be large traders are not affected by the reproposed rule; (3) the use of the Depository Trust Company's ("DTC") Institutional Delivery System ("ID System"); (4) the rules for aggregation of accounts; (5) Form 13H and Schedules; (6) the supervisory safe harbor; and (7) the plan for implementing the transaction reporting system. Finally, the Commission invites comments as to whether there are more cost-effective alternatives to the reproposed rule or system that would provide similar benefits, including particular alternatives that adopt a different structure. The Commission also continues to solicit specific comments that explore the relative costs and benefits of the reproposed system generally, or any other alternatives. Furthermore, because of the time that has elapsed, comments that identify any new information technologies that accomplish the objectives of the Market Reform Act and minimize costs to a greater extent would be appreciated.

With respect to the reproposed identifying activity level, the Commission solicits comments on the appropriateness of the new thresholds. The new identifying activity level, combined with certain exemptions from the definition of a transaction and the new inactive status, were designed to minimize the impact of the reproposed rule on natural persons that infrequently trade in a magnitude that may warrant imposing the added regulatory burdens of the reproposed system. The Commission would welcome comments regarding any other means for eliminating the impact of the reproposed rule on these types of persons. In particular, the Commission solicits comments on whether a separate identifying activity level for natural persons or an exemption for natural persons that effect less 1,000,000 shares or fair market value of $25 million in a calendar day, would be a more appropriate means for minimizing the impact of the Rule.

The ID System is an electronic communications and book-entry settlement system through which most large institutional investors, their brokers or advisers, or their custodians or nominees confirm and settle trades.[8]

[8] See DTC Participant Operating Procedures, Section M, ID System Procedures (April 1983). DTC also has established a similar system for international institutional activity called the International Institutional Delivery System ("IID System"). See Securities Exchange Act Release No. 27545 (December 18, 1989) 54 FR 53017 (December 26, 1989). The IID System varies from the ID System in that it does not provide a mechanism for automated book-entry settlement. DTC has proposed enhancements to the ID System that would unify existing ID and IID Systems into an "Interactive ID System." See Securities Exchange Act Release No. 33010 (October 4, 1993), 58 FR 53007 (October 13, 1993); and DTC An Interactive Option for the Institutional Delivery System, Memorandum to Participants and Other ID Users (March 31, 1993).

As discussed below, the ID System has been incorporated into the reproposed rule to reduce its burdens in three respects. Under the reproposed rule, the use of numbers assigned by DTC to ID System participants would: (1) Be incorporated into the Schedules to Form 13H by permitting their use in lieu of LTIDs; (2) minimize the amount of communication among members of an investment complex that would be necessary to complete Form 13H and fulfill the LTID disclosure requirements; and (3) establish a limit on the number of identification numbers that would be required to be maintained for each account, and reported for each transaction, by broker-dealers.

The Commission specifically solicits comments on the appropriateness and feasibility of these proposed uses of the ID System. The Commission would welcome comments that identify other ID System information or procedures that would reduce the burden of the reproposed rule without diminishing its effectiveness for accomplishing the objectives of the Market Reform Act.

With respect to the reproposed rules for aggregation of accounts and Form 13H, the Commission solicits comments on additional simplification or means for reducing the burden of determining who is a large trader and completing Form 13H. The Commission also solicits comments on the appropriateness of the supervisory safe harbor. Finally, the Commission solicits comments on whether a proposed plan for implementing the transaction reporting requirements would be feasible.

III. Discussion of the Reproposed Rule

A. Application and Scope

The fundamental scope and application of the reproposed rule is established by the definition of a large trader. The definition of a large trader and its separately defined terms were found in paragraph (f) of the proposed rule. These definitions have been reorganized into paragraph (a) of the reproposed rule in order to clarify the fundamental application and scope of the reproposed rule. As mentioned above, many of the comments raised concerns that generally may be described as a question of "who is a large trader." The terms of the reproposed rule essentially would provide that every person who effects aggregate transactions reaching the identifying activity level, through accounts carried by a registered broker-dealer, which are aggregated based on ownership or control, would be a large trader.

1. Definition of a Large Trader

The term large trader, as defined in paragraph (a)(1) of the reproposed rule, would mean every person who, for an account that he owns or controls, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level. The reproposed definition of a large trader closely tracks the definition provided in Section 13(h)(8)(A) of the Exchange Act.[9]

The reproposed rule varies from the proposed rule and statutory definition only to the extent that the phrase "* * * for an account that he owns or controls * * *" has replaced the phrase "* * * for his own account or an account for which he exercises investment discretion * * *".[10] The Commission believes that this modification does not change the proposed definition of a large trader, but merely clarifies the interrelationship between the definition of a large trader and its separately defined terms.

The definition of a large trader remains dependent upon the definitions of a person, account, ownership, control, publicly traded security, transaction, the identifying activity level, and the rules for aggregation. The Commission believes that the modifications to the proposed definitions of these terms address the questions raised by the commenters, clarify the proposed rule, and narrow the proposed definition of a large trader.

a. *Definition of a person.* The definition of a person found in paragraph (a)(2) of the reproposed rule varies only slightly from the proposed definition.[11] The lone modification to this definition would be the deletion of the term "trust" and the addition of the phrase "persons, entities, partnerships, or other groups acting as a trustee." The addition of this phrase addresses a legal issue raised by a private pension trust, which asserted that a trust may not be deemed a person because it does not have a present ability to act (e.g., effect transactions) separate from its trustee. The Market Reform Act intended that trusts of all types be included in the definition of a large trader.[12] The definition of a person contained in paragraph (a)(2) of the reproposed rule would assure that all trusts, through their trustees, are included within the definition of a person and thus may be large traders.

b. *Definition of an account.* Paragraph (a)(3) of the reproposed rule would add a definition for the term "account or accounts." This term was not defined in the proposed rule and the comments received from banks, investment advisers, and other non-broker-dealer market participants exhibited substantial confusion in this respect. The Commission believes that this confusion led the commenters to incorrectly interpret "who" the Commission intended to be included within the definition of a large trader. These commenters appear to have believed, incorrectly, that the accounts of "small" trust or advisory customers would become large traders, with all of the duties attendant thereto, by virtue of the fact that a large trader exercised control over such accounts.

The Commission, therefore, is proposing new paragraph (a)(3) that would define the term account or accounts to mean each proprietary and customer account maintained or carried by a registered broker or dealer, which is disclosed or undisclosed to such broker or dealer as to ownership, and for which books and records are required to be kept in accordance with the provisions of Rule 17a–3 under the Exchange Act. This definition would clarify that only accounts maintained or carried by broker-dealers under the Exchange Act would be subject to the reproposed rule.

c. *Definition of ownership.* The definition of ownership would be narrowed and reorganized in paragraph (a)(4) of the reproposed rule. The apparent breadth of this definition received extensive comments, especially with respect to its impact on the proposed rules for aggregation and the information required to be provided on Form 13H.[13] The Commission also received many comments on the proposed inclusion of custodians or nominees within the definition of ownership.

[9] See 15 U.S.C. 78m(h)(8)(A) (1990).

[10] See Proposing Release, 58 FR 42561 (proposed text).

[11] *Id.*

[12] See Proposing Release, 56 FR 42552, at n. 26 and accompanying text.

[13] See *infra* Sections III.A.2. and III.B.2., for a discussion of the reproposed rules pertaining to aggregation and Form 13H, respectively.

The Commission believes that the commenters failed to understand that the concept of ownership is focused on the "accounts of a person." The Commission, however, acknowledges that the proposed definition of ownership, combined with the rules for aggregation, may support some of the sweeping interpretations of the proposed definition of a large trader expressed in the comments. These commenters broadly interpreted the proposed definition of ownership and the rules for aggregation to require: (1) The aggregation of individual accounts of all employees, officers, directors, controlling shareholders, and partners with their large trader corporation, trust, or partnership, irrespective of such individual's role in the trading decisions of the large trader entity; (2) the accounts of all parent, subsidiary, and affiliated companies within a holding company structure to be aggregated by and with each parent, subsidiary, or affiliate; and (3) the accounts of wholly unrelated large trader entities to be aggregated due to common directors, controlling shareholders, partners, or trustees. In response to these comments, the Commission has revised the proposed definition of ownership.

i. *General definition.* The definition of ownership, as reproposed in paragraph (a)(4), would provide that an account of a person shall be deemed to be owned or under common ownership of the person in whose name an account is maintained, or custodian or nominee that maintains an omnibus account, and any other person who has more than a 10 percent financial interest in the equity in the account or accounts of such person. This reproposed definition of ownership would incorporate existing rules, procedures, and practices that require broker-dealers to maintain the name and address of the beneficial owner of an account and would be interpreted consistently with such rules, procedures, and practices.[14]

The reproposed rule states that "an account of a person" would be deemed to be owned or under common ownership, thus emphasizing that the primary focus of the concept of ownership would be the "accounts of a person," and not ownership of the person itself. Accordingly, under the reproposed rule, accounts maintained in the name of a parent, subsidiary, or affiliate would be deemed to be owned by that parent, subsidiary, or affiliate. This focus would be made evident in the reproposed Schedules 6a and 6b to Form 13H.

The focus on accounts also would address those comments that deemed the accounts of employees, officers, directors, controlling shareholders, and partners to be owned by their respective corporation or partnership, irrespective of such individual's role or lack thereof, in the trading decisions of the large trader entity. The reproposed rule would eliminate the sweeping nature of the proposed definition by providing that an account is owned or under common ownership of the entity.

ii. Custodians or nominees. As discussed in the Proposing Release, institutional investors engage the services of different investment advisers and executing broker-dealers, yet the trades effected by these persons may be settled and the investment assets may be deposited centrally with one custodian bank, trust company, or broker-dealer that is sometimes referred to as a prime broker.[15] The Commission believes, based upon its experience with broad-based trade reconstructions, that the increased size and specialization of market participants has led to the increased use of these multi-layered accounts. Typically, these accounts fragment or obscure the information about large trader accounts and activity that the Commission needs to analyze market trading.

Substantial comments were received with respect to the inclusion of custodians or nominees within the definition of ownership. The commenters all questioned the appropriateness of including passive custodians or nominees. These commenters argued that passive custodians or nominees, which merely act as a conduit for delivery/receipt versus payment ("DVP/RVP") settlement of transactions, should not be included within the definition of a large trader. However, the comments regarding custodians and nominees acknowledged that many custodians or nominees act as a discretionary agent or fiduciary for the execution of trades and thus may be large traders that control accounts owned by other persons.

The inclusion of custodians and nominees also caused broker-dealers, banks, and trust companies to question the capture of multiple LTIDs for a single account or transaction. These commenters asserted that the cost of keeping and reporting multiple LTIDs, for a single account or trade, would be unduly burdensome.[16] It also was suggested that the capture of multiple LTIDs may cause duplication or distortion of total reconstructed trade activity. Many of these commenters also noted the possible applications of the ID System. Lastly, the commenters confirmed that, in these multi-layered accounts, the participants usually do not have knowledge of each other's activities and, individually, none of the participants may know or have access to all of the information that the Commission needs to analyze market trading activity.

The Commission believes that the inclusion of custodians and nominees in the definition of ownership would serve three important purposes. First, it would assure that banks and broker-dealers, both foreign and domestic, are treated consistently under the reproposed rule. Second, it would assure disclosure of the appropriate LTIDs for each account. Finally, the inclusion of custodians and nominees would enable the Commission to efficiently characterize trading activity.

The problem that the Commission has sought to address with respect to custodians and nominees is its inability to obtain information about the ultimate or actual beneficial owners and controllers of omnibus accounts or accounts otherwise undisclosed as to ownership. Although the number of these accounts may be small in relation to fully disclosed accounts, the Commission believes that the nature of large trader activity causes a significant percentage of this activity to be effected through these accounts. Accordingly, the definition of ownership in the reproposed rule would include only those custodians or nominees that maintain omnibus accounts or accounts otherwise undisclosed as to ownership.

These changes would work in conjunction with the other modifications to the definition of ownership to assure that the fully disclosed owner of an account, or the custodian or nominee of an omnibus account, is deemed to be the owner of that account, not the broker-dealer, bank, or trust company that acts only as an agent for settlement of transactions effected through a fully disclosed account. Moreover, reproposed Schedule 8 to Form 13H has been designed to capture information about a custodian or nominee large trader and the undisclosed large traders that effect trades in or through his omnibus accounts, not small or otherwise infrequent traders whose trades may be effected through such accounts. Reproposed Schedule 8 is designed in a manner that the Commission believes would approximate existing ID System practices and procedures for maintaining such information.[17]

The Commission believes that the revisions to the reproposed definition of ownership would significantly clarify the obligations of persons that own and/or act as custodians or nominees for large trading accounts. The Commission also believes that the reproposed definition of ownership would minimize the burden of the identification requirements on such large traders.

d. *Definition of control.* As with the definition of ownership, the commenters uniformly criticized the sweeping impact of the proposed definition of control when combined with the proposed rules for aggregation. Some commenters questioned whether merely controlling the accounts or trading of a large trader would, by itself, cause such controller to be a large trader.

Many of the commenters also indicated that the persons or entities that control trading activities usually have the most knowledge of large trader accounts, activity, or objectives and, therefore, should be the focus of the identification requirements. Finally, one commenter questioned the appropriateness of the inclusion of limited discretionary investment authority within the definition of control. This commenter asserted that the definition of limited discretion would force broker-dealers to aggregate the activity of all customers for whom they executed not held orders.[18]

The definition of control has been modified in paragraph (a)(5) of the reproposed rule.[19] These revisions would emphasize that the focus of the reproposed concept of control is "control of the accounts of a person," not control of the person itself. The reproposed rule also would provide that the owner of an account, as well as any person with full or limited discretion over an account, is deemed to control that account.

The reproposed rule would clarify that a person's mere exercise of control over a large trader's accounts or transactions, without effecting the requisite level of transactions, would not cause such person to be a large trader under the reproposed rule. Additionally, new paragraphs (a)(5)(i) and (ii) of the reproposed rule would add the definitions of full and limited discretionary investment authority suggested in the Proposing Release.[20] With respect to the execution of not held orders, the Commission would interpret their execution to not fall within the reproposed definition of control.

Finally, the reproposed rule would acknowledge that persons who control accounts usually are in possession of most of the information required by Form 13H and required to be disclosed to broker-dealers. Accordingly, reproposed Schedules 7a and 7b to Form 13H and the reproposed LTID disclosure requirements would be specifically designed to capture and disclose information regarding fully disclosed or omnibus accounts controlled by a large trader.

The Commission believes that these requirements take into account the existing industry practices and procedures for the maintenance of such information. The Commission also believes that the changes to the proposed definition of control would clarify the obligations of large traders who control accounts owned by others and would minimize their burdens.

e. *Definition of a transaction.* The definition of a transaction or transactions provided in paragraph (a)(7) of the reproposed rule, also would clarify and narrow the scope of the definition of a large trader. The modifications to this definition address technical issues raised in the comments regarding the inclusion of cancellations, corrections, and exercises or assignments of option contracts, within the meaning of the term transaction or transactions.

The reproposed rule states that the term transaction or transactions would mean all transactions in publicly traded securities, including cancellations, corrections, exercises, and assignments.[21] The definition of publicly traded securities found in reproposed paragraph (a)(6) would be unchanged, and would mean any national market system security as defined in Rule 11Aa2–1 under the Exchange Act.[22]

New paragraph (a)(7)(i) of the reproposed rule was added to exclude from the term "transaction" certain activity commonly posted to customer accounts by clearing broker-dealers and passive custodians or nominees. This paragraph would exclude from the definition of a transaction any journal or bookkeeping entry made to an account to record or memorialize the receipt or delivery of funds or securities pursuant to the settlement of a transaction.

Three new exclusions to the term transaction also have been added in paragraphs (a)(7)(v), (vi), and (vii) of the reproposed rule. These exclusions track the trading objectives or characteristics, identified in the Proposing Release, of small or otherwise infrequent traders that the Commission did not intend to be included in the definition of a large trader.[23] These new exclusions would include: (1) Transactions effected by a court appointed executor, administrator, or fiduciary pursuant to the distribution of a decedent's estate; (2) transactions effected pursuant to a court order or judgment for distribution of property in a marital proceeding; and (3) a qualified plan or trust rollover afforded favorable tax treatment under section 402(a)(5) of the Internal Revenue Code.[24]

It should be noted that the exclusion for transactions of a decedent or marital estate would include only those transactions effected pursuant to the distribution or liquidation of such estates and would not include transactions effected pursuant to the

[14] See Rule 17a–3(a)(9)(i) under the Exchange Act, 17 CFR 240.17a–3(a)(9)(i).

[15] See Proposing Release, 56 FR 42554, at nn. 47–49 and accompanying text.

[16] See *infra* Section III.C.2. and III.D.3., for discussions of the reproposed LTID recordkeeping and reporting requirements, respectively.

[17] Essentially, the ID System captures information regarding the capacity of the participants to a multi-layered account. Participants are grouped and numbered as agents, broker-dealers, institutions, and interested parties. The term "Agent" is defined as the entity appointed by the buyer and seller to clear their trades. The term "Broker-dealer" means the entity that executes a trade on behalf of the buyer or seller. The term "Institution" means those parties that initiate the trade as buyer or seller, on its own behalf or on behalf of another. Finally, the term "Interested Party" is defined as those entities, other than the Agent or Institution, which receive a confirmation because they have a role to play in the settlement of a trade. It is important to note that these capacities are not mutually exclusive and one participant may perform the tasks associated with any number of these capacities. See ID System Directory, Volume X, Number 9, September 1992.

[18] Not held orders relieve the executing broker of responsibility with respect to the time and price of execution, if the broker uses "brokerage judgment" when executing the order. See e.g., New York Stock Exchange ("NYSE") Rule 123A.44, NYSE Guide (CCH) ¶2123A. Not held orders may be characterized as: (1) defensive orders required by brokers in times of unusual market volatility (*i.e.*, fast markets); or (2) consideration provided by a customer to a broker for the commitment of capital or expertise in the execution of large "block trades." See e.g., NYSE Rule 127.10, NYSE Guide (CCH) ¶2127 (definition of block trade).

[19] See Proposing Release, 56 FR 42553, at nn. 34 and 35.

[20] See Proposing Release, 56 FR 42561 (proposed text).

[21] See *infra* text accompanying n. 67, for the impact of this definition on the trade reporting requirements of the reproposed rule.

[22] 17 CFR 240.11Aa2–1. A national market system security is any security that is subject to an effective real-time transaction reporting plan filed with the Commission, and includes all securities listed on a national securities exchange and all National Association of Securities Dealers, Inc., Automated Quotation System ("NASDAQ"), National Market System ("NMS") securities. See Proposing Release, 56 FR 42552, at text accompanying nn. 16–19.

[23] See Proposing Release, 56 FR 42551, at n. 12 and accompanying text.

[24] 26 U.S.C. 402(a)(5) (1988).

continuing administration or investment of such estate's assets. The distinction drawn between the distribution and the administration of an estate pursuant to a court order acknowledges that court appointed fiduciaries may be authorized to invest and reinvest in securities for many years. The Commission believes that the exclusion of such estates from the identification requirements of the reproposed rule would be inappropriate.

The Commission believes that these new exclusions from the definition of a transaction would indirectly exempt a significant number of those small or otherwise infrequent traders that were not intended to be large traders under the Market Reform Act. Moreover, the Commission believes that the definition of a transaction would reduce the impact of the reproposed rule on registered broker-dealers.

f. Identifying activity level. The Commission expressly solicited comment on the appropriateness of the volume, market value, exercise value, and time period proposed for the identifying activity level. Generally, the commenters felt that the threshold was too low and recommended higher levels that ranged from a low of 200,000 shares and $10 million, to a high of 5 million shares and $50 million. A few commenters suggested that only market value should determine large trader status, while others suggested that market price, rather than exercise price, would be more appropriate for valuing options. Finally, many of the commenters expressed support for a calendar day measure because of the inherent difficulty of aggregating transactions effected in different time zones.

The definition of the identifying activity level contained in paragraph (a)(8) of the reproposed rule would increase and change the thresholds contained in the proposed rule from 100,000 shares to 200,000 shares and fair market value of $2 million, and from a fair market value of $4 million to $10 million. The Commission believes that the addition of the $2 million fair market value requirement to the fundamental share volume threshold would act as a floor to minimize the impact of the reproposed rule on those persons that effect transactions in lower priced securities. The Commission solicits comments on whether this new element of the identifying activity level would be appropriate. The Commission also sclicits comments regarding the effectiveness of the new identifying activity level for minimizing the impact of the reproposed rule on natural persons that infrequently trade large amounts of publicly traded securities.

The time period for aggregating transactions also would be changed from a 24 hour period to "a calendar day where the account is located." The Commission would deem a calendar day to be a 24-hour period starting at 12 a.m. and ending at 11:59 p.m. An account would be deemed to be located at the principal place of business of the broker-dealer, not where the customer or registered representative servicing the account is located. Finally, the provisions regarding program trading are reproposed without changes in paragraphs (a)(9) and (10).[25]

The Commission continues to believe that the capture of significant trading activity concurrently with program trading activity is essential for accomplishing the purposes of the Market Reform Act. The Commission has balanced this need against the burden of capturing the information and believes that the reproposed identifying activity level would strike an appropriate balance. The Commission also believes that the reproposed identifying activity level would establish a relatively simple and bright-line threshold that would be squarely within the activity-based mandate of the Market Reform Act.

2. Aggregation of Accounts and Transactions

Section 13(h)(3) of the Exchange Act authorizes the Commission to prescribe rules governing the manner in which transactions and accounts shall be aggregated, including the basis of ownership or control.[26] The commenters uniformly criticized the proposed rules for aggregation as overly broad and inflexible. Generally, these criticisms were levied by diversified financial service holding companies whose affiliates, subsidiaries, and divisions engage in related and unrelated trading activities. As discussed above, much of this criticism emanated from the definitions of ownership and control.

These commenters argued that the mandatory nature of the proposed rules would cause overlapping and duplicative aggregation among the various entities within a holding company structure. The commenters made a variety of recommendations, including a flexible approach, approaches designed to meet the needs of the specific commenter, an "acting in concert" approach, and the elimination of the concept of aggregation. The comments regarding aggregation highlight the complexity of designing a simple and efficient large trader system that accommodates the different corporate structures and business practices of large traders. The proposed aggregation requirements, however, were intended to deter non-compliance by prohibiting a person or group of persons from splitting activity among many broker-dealers, accounts, and transactions for the purpose of avoiding the identification requirements of the proposed rule.

a. *General Description.* The rules for aggregation have been reorganized into paragraphs (c)(1) and (2) of the reproposed rule to distinguish the requirements for the aggregation of accounts and the aggregation of transactions, respectively. The rules for the aggregation of transactions found in reproposed paragraph (c)(2) contain only minor changes that reflect the reorganization of the proposed rules.[27]

The focus of the reproposed rule would be the "aggregation of accounts owned or controlled by a person." Paragraph (c)(1)(i) of the reproposed rule would implement a new flexible approach to the aggregation of accounts by permitting, but not requiring, the aggregation of accounts that are owned or controlled or under common ownership or control of a person, which independently would be a large trader. Conversely, paragraph (c)(1)(ii) of the reproposed rule would require aggregation of accounts of a person who independently would not be a large trader.

In order to assure compliance and deter the use of this flexible approach to circumvent the reproposed rule, new paragraph (c)(1)(iii) would provide that, under no circumstances, shall a person or group of persons acting in concert toward a common investment objective be permitted to disaggregate accounts in order to avoid the identification requirements of the reproposed rule. Finally, reproposed Form 13H and Schedules have been redesigned to explain and facilitate the various choices that large traders may make with respect to aggregation.

b. *Disaggregation.* The concept of disaggregation would be reorganized into paragraph (c)(3)(i) of the reproposed rule. The reproposed rule provides that the Commission may require a large trader to disaggregate accounts or transactions in any manner and authorizes the Commission to require the submission of additional transaction or other information relating to transactions reported under the reproposed rule. To assure that the

[25] See Proposing Release, 56 FR 42552, at text accompanying n. 15.

[26] See 15 U.S.C. 78m(h)(3) (1990).

[27] See Proposing Release, 56 FR 42561 (proposed text).

Commission's requests for disaggregation are reasonable, however, the reproposed rule would require the Commission to consider the operational capabilities of the large trader when making a request for disaggregation.

The Commission's efforts to assure the credibility of the reproposed system would require the imposition of certain duties on omnibus large traders. These duties would include supplying information that would facilitate analysis of market trading activity. The duties would arise from, and pertain to, the disaggregation and identification requirements.[28] These duties are found in paragraph (c)(3)(ii) of the reproposed rule and would only apply to those large traders that maintain, or effect transactions through, omnibus accounts carried by a registered broker-dealer. The obligations imposed on these large traders would be to establish systems and procedures designed to assure compliance with the disaggregation and identification requirements and, in particular, assure that the information regarding omnibus accounts, disclosed to the Commission on reproposed Schedules 7b and 8, is accurate and complete.

Systems and procedures designed to assure compliance with the identification and disaggregation requirements that are substantially comparable to those described in reproposed paragraph (f) would be deemed to be in compliance with reproposed paragraph (c)(3)(ii). Systems and procedures designed to assure that Schedules 7b and 8 are accurate and complete may include recordkeeping procedures triggered by the opening of new accounts and prescribing how, or for whom, a given omnibus account may be used. These systems and procedures are not intended to affect the existing disclosure practices and procedures between broker-dealers and banks or trust companies.[29]

The need to impose these duties on omnibus large traders results from the undisclosed nature of omnibus accounts. The Commission believes that the obligations found in reproposed paragraph (c)(3)(ii) would be necessary to assure the effectiveness and credibility of the large trader system. The Commission also believes that these requirements would establish consistent duties with respect to omnibus accounts maintained by banks or broker-dealers.

c. *Aggregation examples.* A diversified financial services holding company, for example, may engage in all forms of banking, corporate finance, and trust services in addition to the full range of broker-dealer activities, such as proprietary trading, market making, brokerage execution, and clearing services for retail and institutional customer accounts. This holding company also may provide discretionary and non-discretionary investment management services for retail and institutional customers, as well as for affiliated and unaffiliated investment companies, pension funds, and insurance companies.

Under the reproposed rules for the aggregation of accounts, the holding company is permitted to formulate its own methodology for filing of Form 13H.[30] For example, it may file a single Form 13H that would include accounts of all its owned or controlled and commonly owned or controlled persons, divisions, subsidiaries, and affiliates. In the alternative, the holding company may file separate Form 13Hs for its divisions, subsidiaries, and affiliates that independently would be a large trader. Finally, the holding company may file a separate Form 13H for individual traders or trading desks which also would independently qualify as a large trader.

In another example, a diversified broker-dealer that engages in investment banking, proprietary trading, discretionary and non-discretionary investment management services, and clearing and custody services may also adopt its own methodology for the filing of Form 13H. First, the broker-dealer could file a single Form 13H for all of its activities. Second, the broker-dealer could file separate forms by dividing its activities along the three large trader capacities and then further subdivide each capacity in a fashion that best suits its business needs. Accordingly, this broker-dealer may wish to file one Form 13H for each proprietary trader due to operational considerations, two Form 13Hs for its investment management subsidiary due to confidentiality considerations (*e.g.*, one for affiliated investment company accounts and one for other managed accounts), and for supervisory considerations, one Form 13H for all of the omnibus accounts for which it acts as custodian/nominee only.

The Commission believes that this flexible approach to aggregation would accommodate the needs of the greatest number of large traders in the least burdensome manner possible. The Commission also believes that the reorganization and revision of the reproposed rules for aggregation would clarify the reproposed definition of a large trader. Nevertheless, the Commission solicits comments on whether there are other more effective means for aggregating accounts that would accomplish the objectives of the Market Reform Act.

B. Identification Requirements for Large Traders

Section 13(h)(1) of the Exchange Act authorizes the Commission to prescribe identification requirements for large traders for the purpose of monitoring the impact of large transactions on securities markets and to assist the Commission in the enforcement of the Exchange Act.[31] The Commission is specifically authorized to require large traders to provide it with the information deemed necessary or appropriate to identify large traders and all accounts in or through which large traders effect transactions.[32] The Commission also is authorized to require large traders to disclose their large trader status to the registered broker-dealers that carry the accounts through which they effect transactions.[33] The Commission is reproposing Rule 13h–1(b) and Form 13H to implement these provisions of Section 13(h)(1) of the Exchange Act.

1. Form 13H Filing Requirements

Paragraph (b)(1) of the reproposed rule provides that each large trader shall file Form 13H with the Commission in accordance with the instructions contained therein. The filing requirement for Form 13H is the most significant burden imposed on large traders by the reproposed rule. The time for filing Form 13H is contained in new paragraphs (b)(1) (i) and (ii) of the reproposed rule.

The Commission recognizes that, due to the nature of many large trader's business activities, much of the information required by the proposed form may change daily. Accordingly, new paragraph (b)(1) of the reproposed rule would eliminate the proposed requirement that a large trader file a Form 13H every time the "information contained therein becomes inaccurate for any reason."

[28] See *infra* Section III.E., for a discussion of the supervisory safe harbor for broker-dealers.

[29] Custodian or nominee large traders generally are required to maintain and report information to their respective regulatory authorities that is similar to that required on these Schedules. These large traders, however, are not normally required to disclose proprietary information (*e.g.*, customer lists) to competitors or other non-primary regulatory authorities.

[30] See *infra* Section III.B.2., for a discussion of Form 13H and instructions.

[31] See 15 U.S.C. 78m(h)(1) (1990).

[32] See 15 U.S.C. 78m(h)(1)(A) (1990).

[33] See 15 U.S.C. 78m(h)(1)(B) (1990).

Paragraph (b)(1) of the reproposed rule would require a large trader to file Form 13H within 10 business days after it first effects transactions that reach the identifying activity level and within 60 calendar days after the end of each full calendar year thereafter. It should be noted, however, that a large trader would still be required to disclose its LTID or ID System number when a new account is opened during a calendar year.[34] The Commission believes that the reproposed Form 13H filing requirements would substantially reduce the frequency of filings and accomplish the purposes of the Market Reform Act.

2. Form 13H and Instructions

The Commission received many negative comments about Form 13H. The majority of the commenters argued that the proposed Form 13H and Schedules were duplicative or burdensome, and would be required to be filed too frequently. The commenters made various suggestions to eliminate or reduce the burdens of the proposed form. These suggestions included: (1) eliminating the listing of certain types of accounts;[35] (2) incorporating information contained in other Commission filings by reference; (3) limiting the number of officers, directors, and partners for whom information must be provided; and (4) redesigning the proposed Schedules to capture the particular information possessed by each of the three basic types of large trader (*i.e.*, owner, controller, or custodian/nominee).

a. *General description.* The Commission is reproposing a substantially revised Form 13H, Schedules, and Instructions. The revisions to proposed Form 13H reflect the modifications to the definition of a large trader and LTID disclosure requirements and incorporate other recommendations made in the comments. As discussed in the Proposing Release, the information disclosed on Form 13H would be exempt from disclosure under the Freedom of Information Act ("FOIA") pursuant to Section 13(h)(7) of the Exchange Act.[36] A few commenters questioned the apparent lack of a similar exemption for the transaction information reported under the proposed rule. Section 13(h)(7) provides that "any information required to be kept or reported" is exempt from disclosure under FOIA. Therefore, transaction information reported under the reproposed rule also would be exempt from disclosure under FOIA. The Commission believes that the non-disclosure of such information also may be covered by other existing Commission rules.[37]

The cover page to reproposed Form 13H would remain substantially unchanged except for the exclusion of the amended filing requirement, the addition of an inactive filing status, and the capture of applicable LTID or ID System numbers. Item 1 to Form 13H also would be unchanged, except for minor changes that conform with the reproposed definition of a person.[38] The remaining Items and Schedules of the proposed form have been substantially revised in the reproposed Form 13H.

Reproposed Item 2 to Form 13H would implement a new exemption from the filing requirements of reproposed Item 4 for persons and entities regulated by the Commission by allowing the incorporation by reference of information already on file with the Commission. The Commission anticipates that some of the most common registrations or filings that large traders may list in reproposed Item 2 would include: Form BD; Form ADV; Forms 3, 4, or 5; Form 10–K or 10–Q; and Form U–4.

The Instructions to reproposed Item 2 also would inform large traders that the listed registrations and filings should reflect the registrations of all other large traders and persons whose accounts the large trader has decided to aggregate into its Form 13H. Finally, the reproposed Instructions would inform large traders that Item 4 and the appropriate Schedule must be filed for those persons who are not registered with the Commission and whose accounts have been aggregated with a "registered person."

The Schedules to reproposed Item 4 also have been refined to capture only minimal descriptive information about the persons who own or control a large trader corporation, partnership, limited partnership, or trust. For the most part, the collection of addresses, telephone and facsimile numbers, and regulatory information has been eliminated. The terms "officer and partner" also have been changed in the reproposed Schedules 4b and 4c to "executive officer" and "limited partner that is the owner of more than a 10 percent financial interest in the accounts of the large trader." The term "executive officer" would be deemed to mean "policy-making officer" and otherwise would be interpreted in accordance with Rule 16a–1(f) under the Exchange Act.[39] As suggested in the comments, these changes should substantially reduce the number of persons for whom such Schedules must be prepared and filed under the reproposed rule.

Reproposed Item 5 to Form 13H would facilitate the new flexible rules for aggregation. Item 5(a) would require the large trader to list all commonly owned or commonly controlled persons whose accounts are aggregated into the particular Form 13H that independently would be a large trader (*i.e.*, aggregated accounts). Conversely, Item 5(b) would require the large trader to list all other commonly owned or controlled large traders that independently filed Form 13H and that could have been, but were not, aggregated into the particular large trader's Form 13H (*i.e.*, disaggregated accounts). Again, the reproposed Instructions would caution large traders that the information supplied in Item 5 must accurately reflect their choice for aggregation or disaggregation of accounts.

The reproposed Schedules to new Items 6 through 8, which gather account information, address the concerns expressed in the comments and reorganize, substantially reduce, or eliminate much of the information regarding a large trader's accounts that may have been captured by the proposed Schedules. These reproposed Schedules have been completely redesigned to require the identification of only one contact person for each Schedule and establish a "single-line-item" type of account listing. The reproposed Instructions indicate that the proposed qualifications for designated contact persons would be retained without meaningful changes. The reproposed Instructions also advise large traders that they may submit internally produced lists of accounts, provided that such lists contain all required information in a format substantially similar to the applicable Schedule.

The new account Schedules also have been reorganized to track the three capacities in which a large trader may act with respect to a given account (*i.e.*, owner, controller, or custodian/nominee). The reproposed Schedules would capture different combinations of large trader capacities, based upon the large trader's knowledge of accounts and the extent of beneficial ownership disclosure made to the carrying broker-dealer. Reproposed Schedules 6a and 6b would be used by those market participants who own accounts.

Reproposed Schedules 7a and 7b would be used by market participants who control accounts owned by others. These Schedules have been redesigned to indicate that accounts controlled by the large trader that are owned by small or otherwise infrequent traders would not be required to be specifically listed on these Schedules. Instead, reproposed Item 2 of Schedule 7a would capture general information about fully disclosed "non-large trader" accounts controlled by the large trader (*i.e.*, the total number of such accounts and broker-dealers carrying them). If applicable, information regarding other large traders whose activity may be controlled by the large trader through one of the listed accounts would be provided in reproposed Item 3 of Schedule 7a and Item 2 of Schedule 7b.

Lastly, Schedule 8 would be used by those broker-dealers, banks, and trust companies that market their clearing or depository services independently from their other brokerage or investment management services. It should be noted that reproposed Schedules 7b and 8 incorporate the ID System to the extent that they permit a large trader to list the applicable ID System numbers or LTIDs of the custodian or nominee for an omnibus account and other interested parties (*i.e.*, owners and controllers). The Commission believes that, due to the wide-spread use and automated nature of the ID System, most of these numbers are routinely communicated among, and maintained in an automated fashion by, market participants. The disclosure of other large traders required by these Schedules would provide an important and common basis for disaggregation.

Rarely would a large trader be required to complete all five of these reproposed Schedules. The Commission believes that such a filing probably would occur only if a diversified financial services company decided to aggregate the accounts of all of its divisions, subsidiaries, or affiliates into a single Form 13H filing.

The complexity of the Form 13H disclosures under the reproposed rules would be greatest for a single aggregated filing and would become progressively less complex for multiple Form 13H filings. Generally, the large trader's organizational structure and business practices, combined with the reproposed requirements of Item 2, Item 5, and the account Schedules, would dictate the complexity of a Form 13H filing.

The number of LTIDs that would be assigned varies directly with the number of Form 13H filings. The commenters indicate that some broker-dealers and large traders may prefer to be assigned many LTIDs for supervisory purposes while others may prefer a single LTID for confidentiality reasons. In this respect, the SIA suggested that a broker-dealer be permitted to use its LTID for the confidential numbered accounts of its customers. Similarly, a few commenters, primarily foreign financial services holding companies or universal banks, asserted that the LTID disclosure requirements may cause them to breach "Chinese Walls" between investment banking, investment advisory, market making, or brokerage units. The Commission believes that these entities would be able to avoid this result under the reproposed rules by carefully aggregating or disaggregating accounts.

The Commission acknowledges that excessive aggregation or disaggregation of commonly owned or controlled accounts may increase the overall costs and burdens on large traders and the Commission. The probability of receiving a request for disaggregation, and the cost thereof, also would vary directly with the extent of aggregation chosen by a large trader. The Commission would remind all market participants to evaluate their business practices and weigh the costs and benefits of aggregation or disaggregation in light of all the considerations outlined above.

The Commission believes that perhaps the most important revisions to proposed Form 13H are the reproposed set of General and Special Instructions.[40] These new Instructions provide answers to many of the specific questions raised in the comments. The Instructions provide all of the pertinent definitions, the rules for aggregation, and examples of who would be a large trader and what information must be provided on Form 13H. The reproposed Instructions also provide guidance and cross-references to the reproposed rule, other related instructions, and particular burden reducing features or alternatives of reproposed Form 13H. Accordingly, the Commission would encourage all market participants to carefully review the reproposed General and Special Instructions for Form 13H before completing and filing Form 13H.

b. *Form 13H Examples.* Assume a trustee for a large pension fund is not registered with the Commission and personally manages 75% of the pension's assets. Assume further that the pension trustee delegates full discretionary investment authority over the remaining 25% of the pension's total assets to several investment advisers (*e.g.*, a growth stock adviser, an index arbitrager, and a portfolio hedging strategist).

This pension trustee would be required to complete one of the reproposed Schedules to Item 4 depending on the organizational type of the trustee (*i.e.*, individual, corporation, or partnership). With respect to the 75% of the pension's total assets that the pension fund trustee personally manages, he would be deemed to own and control the accounts and would know the carrying broker-dealers and account numbers. The pension fund trustee, therefore, would list these accounts on reproposed Schedule 6a.

Depending on the nature of the delegations of authority to each of the advisers, the pension trustee may not know the broker-dealers the advisers use to execute trades or maintain accounts. Accordingly, reproposed Schedule 6b has been designed to capture the information that the pension trustee knows (*i.e.*, the advisers' names, addresses, numbers, and type of delegation), and reproposed Schedules 7a and 7b would capture the information in the possession of the adviser (*i.e.*, carrying broker-dealer, account number, disclosure of ownership, and other large traders).

Assuming that the advisers are large traders and were registered with the Commission, they would list Form BD or ADV in Item 2 of their Form 13Hs, and therefore, would be exempt from the requirements of Item 4. It should be noted that if any of these advisers is not a large trader, then such adviser would not file Form 13H under the reproposed rules. In such cases, the Commission would be able to identify and contact the non-large trader adviser, if necessary, through the information provided by the pension trustee on its Schedule 6b to Form 13H.

In addition, assume that the trustee of the pension fund also engages the services of a prime broker, bank, or trust company to act only as the custodian or nominee for omnibus accounts that are owned and controlled by the pension trustee or owned by such trustee and controlled by the different advisers. In this case, the pension fund trustee would list on its Form 13H the omnibus

[34] See *Infra* Section III.B.3., for a discussion of the duty to disclose large trader status.

[35] These comments argued that the proposed Schedules, especially proposed Schedule 5, should not require a large trader that controls accounts to list the fully disclosed accounts of small or otherwise infrequent traders that it controls or the undisclosed sub-accounts of persons for whom trades are effected through an omnibus account.

[36] 15 U.S.C. 78m(h)(7) (1990). See Proposing Release, 56 FR 42554 at text accompanying nn. 50–52

[37] See *e.g.*, 17 CFR 200.80(b)(3), (4)(iii), (5), (7), and (8).

[38] See *supra* Section II.A.1.a., for a discussion of the addition of persons or entities acting as a trustee to the definition of a person.

[39] 17 CFR 240.16a–1(f).

[40] See *infra* Appendix A.

accounts for which he or she is the owner and controller on Schedule 6a and the delegations of investment discretion on Schedule 6b. The advisers that control the pension fund's trading through the omnibus accounts would list such accounts on Schedule 7b of their Form 13Hs.

The prime broker, bank, or trust company acting only as custodian or nominee for all of the omnibus accounts (*i.e.*, the custodian or nominee large trader) would list such accounts, carrying broker-dealer, and the relevant controllers on reproposed Schedule 8. It should be noted that if the omnibus account custodian or nominee also controlled these accounts, in whole or in part, then it would complete Schedule 7b instead.[41] The custodian or nominee large trader would be in possession of the information required by Schedule 7b or 8, for the following reasons. First, it is the carrying broker-dealer's customer with respect to the omnibus accounts and, therefore, would be required to complete a new account application and provide all other information requested by the broker-dealer with respect to settlement instructions and the persons authorized to effect transactions through the accounts. Second, the various advisers and the trustee of the pension fund, to the extent that he or she controls transactions, would be required by the reproposed rule to disclose such information to the prime broker, bank, or trust company acting as custodian or nominee.[42] Finally, if the custodian bank or trust company was an issuer of publicly-traded securities, it may list Form 10–K or 10–Q in Item 2 and would not be required to complete Item 4 on its Form 13H.

Another example of how the reproposed Schedules to Form 13H may be applied would be where a registered investment adviser for a mutual fund complex chooses to file one Form 13H, covering all of the accounts controlled for affiliated or unaffiliated investment companies. Assuming that each mutual fund independently would be a large trader, they would be listed in Item 5(a) of the adviser's Form 13H. The Form ADV of the adviser and each investment company's registration statement or periodic reports also would be listed in Item 2 of the adviser's Form 13H. If the accounts through which the adviser effects transactions are fully disclosed as to ownership by a particular investment company within the fund complex, the adviser would complete Schedule 7a. Alternatively, if such accounts do not disclose the particular investment company for whom the adviser is effecting transactions (*i.e.*, are maintained on an omnibus basis), then the adviser would complete Schedule 7b.

The Commission believes that the revisions to the reproposed Form 13H and instructions would dispel many of the misconceptions regarding the information that would be required to be disclosed on Form 13H. The revised Schedules to Form 13H also minimize the burdens of the reproposed rule by utilizing existing ID System practices and procedures for disclosure and maintenance of information among large traders and other parties to multi-layered accounts. The Commission specifically solicits comments on the appropriateness of all the changes found in reproposed Form 13H and Schedules.

3. Disclosure of Large Trader Status

Many of the commenters expressed concerns that the proposed disclosure requirements would cause overlapping, confusing, or unnecessary disclosures by more than one large trader for a given account. The broker-dealer commenters also indicated that the cost of modifying automated brokerage accounting systems to maintain and report multiple LTIDs for a single account or trade would be substantial.

The reproposed rule would retain the proposed LTID assignment system[43] and would modify the duty of large traders to disclose their LTIDs and accounts to broker-dealers. The reproposed rule also would require similar disclosures of information to custodians or nominees and large traders that control transactions.

Reproposed paragraph (b)(2)(i) would require a large trader who controls a fully disclosed account or the custodian or nominee for an omnibus account to disclose its LTID and accounts to the carrying broker-dealers. Hence, under the reproposed rules, each large trader account should have only one LTID number associated with it, namely the LTID number of the controlling large trader or of the custodian or nominee large trader.

The Commission notes that the reproposed definition of control states that an account would be controlled by the owner of the account. Consequently, if an account is controlled only by its owner, then the owner would be required to disclose its LTID to the carrying broker-dealer. This duty also would apply to fully disclosed accounts of small or otherwise infrequent traders whose accounts are controlled by large traders, even though these accounts would not be listed on the reproposed Schedules to Item 7.

Paragraph (b)(2)(i) of the reproposed rule would effectively eliminate the majority of situations where multiple LTIDs would be disclosed to a broker-dealer for a single account. The Commission believes that the only situation where more than one LTID would be disclosed to a broker-dealer for a single account would be where more than one large trader controls transactions in an account that is fully disclosed as to ownership. These situations would include fully disclosed accounts controlled by their owner and another adviser or such accounts controlled by two or more advisers.

Reproposed paragraph (b)(2)(ii) would require a large trader who controls omnibus accounts to disclose its LTID or ID System number to the broker-dealer or large trader acting as the custodian or nominee for such account. Similarly, reproposed paragraph (b)(2)(iii) would require a large trader that owns accounts but has delegated full or limited discretionary investment authority to another person to disclose its LTID or ID System number to such person. These duties are coordinated with the filing requirements for Schedules 7a, 7b, and 8 to reproposed Form 13H.[44]

The Commission acknowledges that reproposed paragraphs (b)(2) (ii) and (iii) may cause multiple LTIDs or ID System numbers to be disclosed to custodian or nominee and controlling large traders, respectively. The Commission believes that these required disclosures of large trader status would not be overlapping or unnecessarily burdensome and would utilize existing ID System practices and procedures. The Commission also believes that these disclosure requirements would minimize the amount of communication among members of an investment complex that would be necessary to complete Form 13H. Moreover, these changes to the proposed rule would conform with the various rules and regulations that require financial

[41] Of course, if the pension trustee retained the prime broker, bank, or trust company to act only as agent for settlement of its fully disclosed accounts, then such agent would not be deemed to own such account and would not be a large trader required to file Form 13H and Schedule 8.

[42] See infra Section III.B.3., with respect to this required disclosure under reproposed paragraph (b)(2)(ii).

[43] Upon filing Form 13H a large trader would be assigned an LTID by the Commission. See Proposing Release, 56 FR 42553, at text immediately following n. 37.

[44] See supra Section III.A.2.b., for a discussion of the omnibus account identification and disaggregation duties that attach to the filing of Schedules 7b and 8.

institutions of all types to identify the beneficial owners of accounts, confirm trades, and maintain possession and control of customer funds and securities.

The Commission believes that the revisions to the reproposed rules for disclosure of large trader status incorporate many of the recommendations made by the commenters and reduce the burdens imposed on market participants. The Commission solicits comment on this use of the ID System and whether other ID System procedures or information would further the purposes of the Market Reform Act.

4. Inactive Filing Status

In the Proposing Release, the Commission specifically solicited comments on various means of minimizing the impact of the proposed rule on small or otherwise infrequent traders. The Commission received many comments in this respect and all were supportive of minimizing the impact of the proposed system on small or otherwise infrequent traders. Many of the commenters suggested that an annual activity threshold could be used to limit the impact of the proposed system on infrequent large traders. The commenters did not identify any common trading objectives or characteristics of small or infrequent traders that may inadvertently become large traders, other than those suggested in the Proposing Release.[45]

The reproposed rule would implement a new "inactive filing status," pursuant to paragraph (b)(3) of the reproposed rule. This new paragraph provides that large traders whose aggregate transactions during the previous full calendar year, which do not reach the identifying activity level and an aggregate calendar year total of 2,000,000 shares or fair market value of $30,000,000, shall become inactive upon filing Form 13H. This threshold would incorporate the identifying activity threshold and would add an "aggregate calendar year activity threshold." Aggregate calendar year activity would be computed in accordance with the rules for aggregation of transactions found in paragraph (c)(2) of the reproposed rule.

The reproposed Instructions explain that this new inactive status would be invoked by checking the appropriate box on the cover page when filing an annual Form 13H for the calendar year in which the large trader was inactive. Once a large trader has made an "inactive filing," he would be exempt from the reproposed annual filing requirements contained in paragraph (b)(1)(ii) and the LTID disclosure requirements of paragraph (b)(2). However, if an inactive large trader subsequently effects transactions that reach the identifying activity level, then the large trader again would be required to reactivate its large trader status by filing Form 13H within 10 business days. The reproposed Instructions indicate that such "reactivated large traders" would retain the LTID initially assigned to them by the Commission.

The Commission believes that this new inactive filing status would eliminate the burdens of the identification requirements on small or otherwise infrequent traders and, therefore, would accomplish the objectives of the Market Reform Act. Nevertheless, the Commission solicits comments on whether this new provision would adequately reduce or eliminate the impact of the reproposed rule on natural persons that infrequently effect large trades. The Commission also solicits suggestions for other means of eliminating the burden of the reproposed rule on natural persons.

5. Other Information

Paragraph (b)(4) of the reproposed rule has been added to the identification requirements to assure that the Commission has the authority to obtain, from time to time, other descriptive or clarifying information regarding accounts, or transactions effected through accounts, identified on Form 13H. This new paragraph would provide the Commission with the express authority to obtain other information from large traders that is not otherwise disclosed on Form 13H and may be crucial for understanding or analyzing information collected through the system. The Commission believes that the reproposed rule would not be unduly burdensome and would assure that the Form 13H filing requirements accomplish the objectives of the Market Reform Act.

C. Recordkeeping Requirements for Brokers and Dealers

Section 13(h)(2) of the Exchange Act authorizes the Commission to prescribe recordkeeping requirements for large trader activity that it deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[46] The Commission also is authorized to conduct reasonable periodic, special, or other examinations of all records required to be made and kept pursuant to the Rule.[47] Paragraph (d) of the reproposed rule would implement the recordkeeping provisions of section 13(h)(2) of the Exchange Act.

1. General Requirements

The general recordkeeping requirements, which contain minor changes from the proposed rule,[48] would provide that every registered broker-dealer that carries accounts for itself or others shall make and keep records of transactions effected directly or indirectly by or through such broker or dealer for all large traders. In addition, as specifically authorized by the Market Reform Act, the reproposed rule also would require that broker-dealers keep records of transactions for each person such broker or dealer knows or has reason to know is a large trader based on transactions effected by or through such broker or dealer. Further, paragraph (d)(4) of the reproposed rule would provide that such records shall be kept for a period of three years, the first two in an accessible place, in accordance with Rule 17a-4(b) under the Exchange Act.[49]

The reproposed rule would explicitly provide that only registered broker-dealers that carry accounts for themselves or others would be affected. The term "registered broker-dealer" is defined in Section 3(a)(48) of the Exchange Act as a broker or dealer registered or required to be registered pursuant to Section 15 or 15B of the Exchange Act.[50] Executing broker-dealers and prime brokers that do not carry large trader accounts would not be subject to the recordkeeping requirements of paragraph (d) of the reproposed rule, notwithstanding that these persons may perform other specific tasks for large traders and may be large traders. The Commission believes that these modifications would clarify the applicability of the general recordkeeping requirements of the reproposed rule.

2. Elements of Transaction Information

Paragraph (d)(2) of the reproposed rule would provide the elements of information required to be maintained for all transactions. The Commission believes that these elements incorporate, to the extent possible, existing recordkeeping requirements under the Exchange Act and SRO rules for the electronic bluesheet system and,

[45] See Proposing Release, 56 FR 42551, at nn. 12–14 and accompanying text.

[46] See 15 U.S.C. 78m(h)(2) (1990).

[47] See 15 U.S.C. 78m(h)(4) (1990).

[48] See Proposing Release, 56 FR 42560 (proposed text).

[49] 17 CFR 240.17a-4(b).

[50] See 15 U.S.C. 78c(a)(48) (1988).

thereby, minimize the burdens imposed on registered broker-dealers.

Due to changes to the LTID disclosure requirements, the recordkeeping requirement for LTIDs found in paragraph (d)(2)(x) of the reproposed rule would now require a broker-dealer to maintain only the LTID of the controllers of a fully disclosed account, or the custodian or nominee of an omnibus account. In addition, paragraphs (d)(2)(v) and (d)(2)(vii) of the reproposed rule have been modified to incorporate suggestions made by the commenters. Paragraph (d)(2)(v) has been modified to include the designation of exercises or assignments of option contracts. Paragraph (d)(2)(vii) has been modified to clarify that the personal accounts of officers, directors, or employees of a broker-dealer are not required to be aggregated with accounts owned or controlled by such broker-dealer.

In addition, the reproposed rule includes three new elements that the Commission believes are necessary to reduce the burden of maintaining multiple LTIDs and execution times. First, paragraph (d)(2)(xi) of the reproposed rule would provide that broker-dealers must maintain the ID System numbers of agents, broker-dealers, institutions, and other interested parties otherwise maintained for the account for which a transaction is effected.[51] The use of ID System numbers would have the effect of limiting the number of LTIDs that a broker-dealer must maintain and report with respect to a given account. The Commission understands that broker-dealers currently maintain these ID System numbers in their automated name and address records.[52] The Commission specifically solicits comments on the appropriateness of the use of ID System numbers and whether other information, systems, or procedures may further reduce the burden of multiple LTID recordkeeping.

Second, paragraph (d)(2)(xii) of the reproposed rule would provide that broker-dealers must maintain the code, identification, or sequence number assigned to a transaction that was routed or effected through an automated order routing system maintained by an SRO, such as the NYSE SuperDOT system. These numbers are uniformly maintained and used by broker-dealers and SROs to route reports of executed transactions to the appropriate broker-dealer branch offices or to research the status of unexecuted orders. The Commission would use these numbers to "link or match" transaction reports to the applicable SRO audit trail, in order to determine or verify the reported execution time.

Finally, paragraph (d)(2)(xiii) of the reproposed rule would establish a miscellaneous or unspecified field that would provide the Commission with flexibility to accommodate future changes or problems. This flexibility also could be used to facilitate specific requests that would reduce the burdens of the reproposed system for a given broker-dealer. The Commission believes that the reproposed recordkeeping requirements would assure that the information necessary to accomplish the objectives of the Market Reform Act would be maintained. The Commission also believes that these reproposed requirements would reduce burdens substantially.

D. Trade Reporting Requirements of Brokers and Dealers

Section 13(h)(2) of the Exchange Act specifically authorizes the Commission to require registered broker-dealers to report transactions that equal or exceed the reporting activity level effected by or through such broker-dealer for persons who they know are large traders, or any persons who they have reason to know are large traders on the basis of transactions effected by or through such broker-dealers.[53] The Commission also is authorized to require broker-dealers to report transactions to the Commission or an SRO designated by the Commission on the morning following the day on which the transactions were effected or otherwise immediately upon request of the Commission or designated SRO. Further, the Commission is authorized to require that such transaction reports be transmitted in any format that it may prescribe, including machine-readable form. The Commission is reproposing paragraph (e) to implement the transaction reporting provisions of Section 13(h)(2) of the Exchange Act.

1. General Requirements

The general reporting requirement would provide that every registered broker-dealer that carries accounts for large traders, or other persons for whom records must be maintained, shall electronically report transactions in machine-readable form and in accordance with instructions issued by the Commission. Transaction reports would be required to contain all elements of information for transactions effected through accounts carried by such broker-dealer for large traders and other persons for whom records must be maintained, which equal or exceed the reporting activity level. The Commission continues to propose that transaction reports be transmitted through the existing electronic bluesheet system.[54] The special reporting requirement for trades of "unidentified large traders," has been reorganized without changes into paragraph (e)(5) of the reproposed rule.

2. Reporting Activity Level

The Commission expressly solicited comment on the appropriateness of the proposed reporting activity level. Generally, the commenters felt that the threshold was too low, and eight recommended higher levels that ranged from a low of 5,000 shares and $200,000 to a high of 100,000 shares and $5 million. In response to these comments, the proposed reporting activity level has been modified.

The reporting activity level contained in paragraph (e)(2)(i) of the reproposed rule would increase the thresholds contained in the proposed rule from 1,000 to 2,000 shares, and from a fair market value of $40,000 to $100,000. The reproposed rule also would add a "calendar day where the account is located" time frame, which would address today's global trading environment.[55] As noted in the Proposing Release, the reproposed rules

[51] See *supra* n. 17, describing ID System participants.

[52] These automated records, and the ID System numbers contained therein, provide the data processing mechanism for the automated issuance of effirmations (i.e., confirmations) to the respective parties to an ID System trade. Under the proposed Interactive ID System, a Standing Instructions Database ("SID") is planned to be implemented. This database would establish a standing repository for customer account and settlement information furnished by institutions, agents, and broker-dealers. This information would include the customer name, agent for the customer, the agent's internal account number, and interested parties. When entering trade data to the ID System, a broker-dealer could simply refer to account designations contained in the SID, and the system would automatically add details (e.g., customer name, agent, and interested parties) to the confirmations of the trade. The Commission notes that, absent large trader recordkeeping and reporting requirements, the proposed SID may eliminate the need for broker-dealers to maintain this information in their internal records. See Securities Exchange Act Release No. 33010 (October 4, 1993), 58 FR 53007 (October 13, 1993).

[53] 15 U.S.C. 78m(h)(2) (1990).

[54] See Proposing Release, 56 FR 42557, at text accompanying nn. 65–86.

[55] For example, a registered investment company whose portfolio is composed of international securities may enter orders to effect transactions in domestic, European, and Asian securities markets. These orders may be effected on different calendar days where the account is located because of the various time zones in which the markets are located. As a consequence, the Commission notes that it may need to request 13H transaction reports for the calendar days immediately preceding or following the calendar day on which a significant market event occurred.

for aggregation would not apply to the reporting activity level.[56]

In addition, the reproposed rule would recognize that broker-dealers may prefer to report or "dump" all transactions in a given security.[57] In this regard, new paragraph (e)(2)(ii) of the reproposed rule would be added to permit broker-dealers to report transactions that are less than 2,000 shares or fair market value of $100,000. Finally, paragraph (e)(2)(iii) of the reproposed rule clarifies the proposed reporting provision for program trades and states that each transaction that is part of a program trade shall be reported regardless of share quantity or fair market value. The Commission believes that the reproposed reporting activity level would reduce the burden of the transaction reporting requirements.

3. Multiple Large Trader Identification Numbers

The broker-dealer and bank commenters indicated that significant costs would be incurred for enlarging systems and manually loading multiple LTIDs into their automated name and address records.[58] This concern was a direct result of the proposed definition of a large trader and broad requirements for disclosure, recordkeeping, and reporting of LTIDs of persons who own and control a given account. This concern was compounded with respect to the proposed treatment of omnibus accounts.[59] The commenters generally suggested that tax identification numbers or ID System numbers be used to alleviate this burden.

The Commission has sought to reduce the burden of multiple LTIDs. The Commission has chosen to accomplish this objective through a narrowed definition of a large trader, reduced Form 13H information, limited disclosure of LTIDs, the use of ID System numbers, and trade reporting requirements that incorporate these changes.

The SIA generally expressed its concurrence with this solution to the concerns with the multiple LTID reporting requirements.[60] The Commission, however, specifically solicits comments on the transaction reporting aspects of the reproposed use of ID System numbers and any other information, systems, or procedures that would more effectively accomplish the objectives of the Market Reform Act.

4. Execution Times

Due to the anticipated burden of automating execution times, the Commission proposed and solicited comments on a two year plan to phase-in the automation of execution time reporting requirements. The Commission received substantial comments from broker-dealers regarding the proposed execution time reporting requirements. One commenter acknowledged that automated execution times were essential for reliable time-sequenced trading reconstructions and expressed support for the proposed two year phase-in plan. However, the majority of the commenters asserted that the development and implementation of automated systems for maintaining and reporting execution times would be costly.

The commenters generally explained that in order to comply with the proposed rule, broker-dealers would be required to develop and implement so-called "automated order match systems." These order match systems would automatically link or match the execution time recorded on customer order tickets with the execution time recorded on the corresponding trade tickets prepared on the floor of an exchange. Without these systems broker-dealers would be required to manually research and identify the execution time for each customer trade.

Five broker-dealers and the SIA, on behalf of its members, supplied cost estimates. These cost estimates ranged from a high of $8.5 million to a low of $17,000.[61] These cost estimates included many different items, some of which were not intended by the proposed rule. For example, many of these estimates included the cost of developing sophisticated systems that would fulfill the obligation of broker-dealers to supervise compliance with the proposed rule. These systems presumably would identify related accounts that may be required to be aggregated, through computer systems that employ forms of "artificial intelligence."

During the review of these cost estimates, it appeared to the Commission that the magnitude of the cost may be dependent upon the type of business conducted by a broker-dealer. The SIA acknowledged that broker-dealers with large retail client bases, branch networks, or widely marketed clearing services would be more likely to have implemented an order match system as a necessary cost of doing such business. Conversely, broker-dealers that primarily have institutional clients and few branches would be less likely to have automated order match systems and the ability to enhance their automated systems in a cost-effective manner.

The commenters also indicated that "average price" trades and accounts compound their execution time concerns exponentially.[62] In addition, the commenters noted that a Commission request for transaction reports would likely come at times of severe market stress, which typically stretch broker-dealer trade processing capabilities to their limits. Finally, as a result of the proposed next business day reporting time frame, the commenters indicated that automation would be the only feasible means to assure compliance.

A few commenters suggested alternatives for reducing this burden that included requesting execution times on a need-to-know basis, lengthening the reporting time frame, and postponing the effectiveness of the requirements to see how frequently the data would be required. From the outset, the Commission has sought alternative solutions that would minimize this burden while achieving the fundamental purpose of the large trader reporting provisions of the Market Reform Act. The Commission staff, SIA, and SIAC have not identified existing industry systems that would gather execution times for investor

[56] See Proposing Release, 56 FR 42556, at n. 68.

[57] See Proposing Release, 56 FR 42556, at n. 74.

[58] See Memoranda to SEC File No. S7–24–91 from the Division of Market Regulation dated March 20, 1992, which outline this issue as discussed at meetings with the SIA and the American Bankers Association.

[59] See Proposing Release, 56 FR 42557, at text accompanying n. 79.

[60] See Memoranda to SEC File No. S7–24–91 from the Division of Market Regulation dated June 8, 1992 and June 11, 1992 outlining discussions with the American Bankers Association and the SIA, respectively. See also *supra* n. 52, however, describing the Standing Instructions Database features of the proposed Interactive ID System and the potential elimination of the need for broker-dealers to maintain such information.

[61] At the request of the Division of Market Regulation, 16 broker-dealers subsequently submitted cost estimates ranging from $8.6 million to $100,000.

[62] Average price trades usually entail the execution of one large order, for one or more customers, through many small trades at varying prices throughout a given day. Customers who employ a broker-dealer, bank, or trust company as their centralized custodian and agent for settlement typically request that trades be confirmed and submitted for settlement as one trade at an average price in order to minimize the "ticket charges or fees" levied by the custodian. For example, a 150,000 share order may be filled through the execution of 100 trades of 1,500 shares each, at 50 different prices, and beginning at 9:30 a.m. and ending at 4:00 p.m. This average price trade may be posted to the customer account, and settled, as one "ticket" for 150,000 shares at an average price, without any indication of the many smaller lots, different prices, or actual execution times.

trading activity in a simple and accurate manner.

Three alternatives that would require the development of new systems, however, were proposed. First, it was suggested that "branch or DOT" sequence numbers could be used in conjunction with SRO audit trail data. While this suggestion appeared to be workable with respect to "system orders,"[63] the SIA and SIAC agreed that this proposal would still require some form of automated order match system and may be considered by some broker-dealers to be equally as burdensome with respect to "manual orders."[64]

Second, after acknowledging that system order execution times did not pose a significant problem, the SIA proposed the development of computer algorithms that would match "order entry times" with SRO audit trail data to determine the execution time of manual orders. Third, the Division of Market Regulation proposed a hybrid of these alternatives that bifurcates the execution time reporting requirements along the lines of system and manual orders.[65]

After carefully weighing costs and benefits, the Commission has decided to repropose the Division's alternative for reducing the burdens of the execution time reporting requirements. The reproposed reporting requirements are found in new paragraphs (e) (3) and (4).

Paragraph (e)(3) of the reproposed rule would provide that with respect to system orders, all transaction information required to be maintained under the reproposed rule, including execution time, would be required to be reported to the Commission or an SRO designated by the Commission before the close of business on the day specified in a request for such information. As indicated in the Proposing Release, the Commission would not require reports to be submitted prior to trade comparison and would consider pertinent market conditions as well as the capabilities of the industry's trade processing facilities.[66] Moreover, under the reproposed rule, the Commission may require the transmission of transaction reports after final settlement because of the inclusion of cancellations and corrections within the definition of a transaction.[67]

Paragraph (e)(4)(i) of the reproposed rule would provide that with respect to manual orders, all transaction information required to be maintained, except execution time, would be required to be reported before the close of business on the day specified in a request for such information. Lastly, new paragraph (e)(4)(ii) of the reproposed rule would provide that the execution times of manual order transactions, which were initially reported without execution times, would be required to be reported within 15 calendar days after a subsequent request for such information. It should be noted that the Commission may request that broker-dealers provide such information for entire transaction report submissions, individual transactions, or a group of related transactions. Further, these manual order execution times would be required to be transmitted electronically, in machine-readable form, with all of the previously reported information regarding each of the manual order transactions for which execution times were requested.

The Commission would carefully use these new reporting requirements to minimize the extent of extraneous information gathered through the system. The combination of the reporting requirements for execution times and sequence numbers would enable the Commission to generate accurate reconstructions of all large trader activity. Although these new provisions may slow down the completion of trading reconstructions, the Commission believes that the resulting analyses of trading reconstructions will be superior to any previous efforts in terms of accuracy, completeness, and timeliness. The SIA expressed its concurrence with this solution to the execution time reporting requirement concerns.[68]

The Commission believes that the reporting requirements contained in the reproposed rule incorporate all existing information or systems and would minimize associated burdens. Further, the Commission believes that these requirements would strike a fair and reasonable balance between the costs of such reporting and the Commission's need to obtain execution times. Finally the Commission believes that the reproposed reporting requirements would establish an efficient means for analyzing multi-layered accounts.

E. Supervisory Safe Harbor

Section 13(h)(2) of the Exchange Act provides a mechanism for supervision of the large trader reporting system by authorizing the Commission to establish rules for recordkeeping and reporting of transactions effected by persons a broker-dealer "knows or has reason to know" is a large trader, based on transactions effected directly or indirectly by or through such broker-dealer.[69] As proposed, the duty to supervise would apply to compliance with the identification requirements and would be imposed on all broker-dealers and other large traders that effect transactions through, or maintain omnibus accounts with, broker-dealers.[70]

A number of comments on this aspect of the proposed rule were received from broker-dealers and banks. These comments revolved around the scope of this duty and sought clarification concerning the steps to be taken to avoid liability for their customers' intentional or unintentional failure to comply with the identification requirements of the proposed rule.[71] Many of the commenters focused on the lack of automated systems for cross-referencing or aggregating accounts that may be commonly owned or controlled. The commenters extrapolated from this premise that the development of automated systems for this purpose would be extremely expensive and unduly burdensome. The commenters also suggested that the principal compliance burden should be placed on large traders and that an objective standard or "safe harbor" should be created.

The Commission emphasizes that the reproposed rule places the principal burden of compliance with the identification requirements on large traders. The Commission, however, also believes that some form of supervisory requirements and systems, which are consistent with the self-regulatory framework of the Exchange Act, are necessary to assure that the objectives of the Market Reform Act are fulfilled.

Paragraph (f) of the reproposed rule would clarify and minimize the burden of the duty to supervise imposed by the "reason to know" provisions of Section 13(h)(2) of the Exchange Act. This duty to supervise would apply to registered introducing or correspondent broker-dealers that clear their transactions on an omnibus basis through a self-clearing broker-dealer. Absent other indications, self-clearing broker-dealers would not normally be expected to supervise compliance by such broker-dealers or their customers for whom transactions are effected through omnibus accounts.

The Commission acknowledges that this duty to supervise would impose additional burdens on broker-dealers. Accordingly, paragraph (f) of the reproposed rule would establish a "safe harbor" for the supervisory duty. This new paragraph would initially provide that registered broker-dealers would not be deemed to know or have reason to know that a person is a large trader if it does not have actual knowledge that a person is a large trader and has established policies and procedures reasonably designed to assure compliance with the identification requirements of the reproposed rule. Paragraphs (f) (1) and (2) of the reproposed rule provide the specific elements that would be required for the supervisory safe harbor.

Paragraph (f)(1) of the reproposed rule requires the establishment of systems "reasonably designed to detect and identify" persons who have not complied with the identification requirements. This paragraph incorporates the "reason to know" standard and clarifies that, with respect to groups of accounts that may be identified as large traders (i.e., commonly owned or controlled accounts), policies and procedures would be within the safe harbor if they are reasonably designed to detect and identify such groups of accounts based on account name, tax identification number, or other readily available information.

The Commission would deem "other readily available information" to include, for example, those instances where a single customer effects the requisite transactions through a single registered representative, trading desk, or branch office in his or her personal accounts, accounts of family members, or accounts of others, pursuant to written trading authorizations. Similarly, customer authorization to transfer funds or securities among accounts in order to receive approval for trading activities, meet margin requirements, or to settle transactions, may be deemed other readily available information.

Paragraph (f)(2) of the reproposed rule also would require that broker-dealer supervisory policies and procedures contain systems reasonably designed to inform persons and large traders of their obligations to file Form 13H and disclose their large trader status. In this respect, questions and informative disclosures on new account applications, as well as annual notices to identified and unidentified large traders, among other things, would be deemed by the Commission to fulfill this element of the safe harbor.

The Commission notes that the elements of the safe harbor do not specifically require automated systems, employee training programs, or any other systems or procedures. The adequacy of supervisory procedures would depend on the nature and characteristics of a broker-dealer's business. The Commission believes that many different systems or procedures may be effective for accomplishing the objectives of the supervisory duties and, therefore, would satisfy the requirements of the safe harbor.

Paragraph (f) of the reproposed rule incorporates many of the suggestions contained in the comments for reducing the burdens attendant to supervision of the system. The Commission believes that these new paragraphs add detail and objectivity to the reason to know requirements of the Market Reform Act and, therefore, reduce the burden of the supervisory scheme of the reproposed rule. The Commission also believes that these provisions are consistent with the general supervisory obligation imposed on broker-dealers by the Exchange Act.[72] The Commission, however, specifically solicits comments on the reproposed supervisory scheme and whether other more effective means exist, within the limitations provided by the Market Reform Act, for assuring the accuracy or reliability of information collected through the reproposed system and maintaining a level playing field between broker-dealers and banks.

F. Exemptions

Section 13(h)(6) of the Exchange Act authorizes the Commission to exempt any person or class of persons or any transaction or class of transactions, either conditionally, upon specific terms and conditions, or for stated periods. The Commission may provide for such exemptions through rules or orders that are consistent with the purposes of the Exchange Act.[73]

The commenters did not express objections to the proposed exemptions, which were based upon the capture of similar information by SROs or involve activity generally deemed not to affect markets for publicly traded securities. The commenters, however, suggested additional classes of persons and transactions that should be exempt. These suggested exemptions included: (1) Introducing broker-dealers; (2) foreign and domestic market makers; (3) certain custodian banks; (4) small investment managers; (5) unit investment trusts; (6) issuer repurchases; and (7) after-hours foreign trading activity.

Paragraph (g)(1) of the reproposed rule would specifically provide that certain broker-dealers are exempt from the identification, recordkeeping, and reporting requirements of the Rule. The reproposed rule would retain the exemptions proposed (*i.e.*, specialists, option market makers, and floor brokers) and add market makers registered by a national securities association to the extent that they are acting in their market making capacity.

Paragraph (g)(2) of the reproposed rule would exempt certain transactions and introducing broker-dealers from the reporting requirements. The specific transactions that would be exempt from the reporting requirements only include those transactions effected by specialists, option market makers, and other market makers in the publicly traded securities for which they are registered. In addition, paragraph (g)(2)(iii) has been added to definitively exempt introducing broker-dealers that do not carry accounts for themselves or others from the reporting requirements of the reproposed rule.

The Commission believes that the comprehensive exemptions for entities that are subject to similar SRO recordkeeping and reporting requirements would establish an equal competitive environment between all forms of market professionals that are registered with an SRO. The Commission also believes that these exemptions would assure that the reproposed system collects the appropriate information from the appropriate registered broker-dealers.

With respect to other suggested exemptions, the Commission believes that some have been incorporated in portions of the reproposed rule. For instance, the reproposed definition of a large trader, reduced scope of Form 13H, and inactive filing status, would

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[63] "System orders" are those orders that are routed and reported through SRO order routing systems and are automatically posted to back-office accounting systems by the system. These orders, generally, may be characterized as orders for small individual investors or program trades.

[64] "Manual orders" are those orders that are routed and reported manually over the telephone or telegraph and are manually posted to back-office accounting systems by broker-dealer personnel. These orders, generally, may be characterized as large block trades for institutional investors.

[65] See Memoranda to SEC File No. S7–24–91 from the Division of Market Regulation dated April 16, 1992, May 7, 1992, and June 11, 1992 outlining meetings where these proposals were discussed.

[66] See Proposing Release, 56 FR 42557, at n. 84 and accompanying text.

[67] See supra Section III.A.1.e., for a discussion of the definition of a transaction.

[68] See Memorandum to SEC File No. S7–24–91 from the Division of Market Regulation dated June 11, 1992 indicating the SIA's concurrence.

[69] 15 U.S.C. 78m(h)(2) (1990).

[70] See Proposing Release 56 FR 42554, at text accompanying nn. 44–46, 53–54, and 108.

[71] See Proposing Release, 56 FR 42554, at n. 46, for the administrative remedies that the Commission may impose for a failure to supervise. The Commission also notes that it may institute proceedings and impose any other remedies that it may deem appropriate.

[72] See e.g., Sections 15(b)(4)(E) of the Exchange Act, 15 U.S.C. 78o(b)(4)(E) (1988).

[73] See 15 U.S.C. 78m(h)(6) (1990).

implicitly exempt or significantly reduce the burden on custodian banks or trust companies, foreign market makers, and unit investment trusts.[74] On the other hand, the Commission believes that some of the other suggested exemptions would not be consistent with the purposes of the large trader reporting provisions of the Exchange Act.[75]

The exemptive provisions of the reproposed rule acknowledge the existing systems for collecting similar information. The Commission believes that these exemptions accomplish the purposes of the Market Reform Act and minimize the number of persons affected by the various aspects of the reproposed rule.

G. Application to Foreign Entities

In the Proposing Release, the Commission discussed the application of the proposed rule to foreign entities.[76] The Commission was, and continues to be, concerned that excluding foreign entities and persons would leave domestic markets and exchanges at a competitive disadvantage relative to foreign markets and exchanges. Moreover, the Commission is concerned that the exclusion of foreign intermediaries (*i.e.*, broker-dealers and banks) that maintain omnibus accounts with domestic broker-dealers would competitively disadvantage domestic intermediaries that perform omnibus trade execution or custodial functions for large traders. The Commission believes that the preservation of a fair competitive environment is fundamental to the accomplishment of the purposes of the Market Reform Act.

The Commission solicited comments from foreign and domestic market participants and foreign regulatory agencies regarding the application of the proposed rule and, specifically, alternative means for filing Form 13H, maintaining Form 13H information, and assigning LTIDs. The Commission received 15 comments from foreign entities.[77] These commenters questioned the extent to which the proposed rule would apply and asserted that compliance with the proposed rule may cause breaches of certain local confidentiality requirements.

Many of these commenters generally asserted, without explanation, that the application of the proposed rule was unacceptable. A few of the commenters acknowledged the existence of memoranda of understanding ("MOUs"), however, none offered specific ideas or sought further discussions regarding alternatives or the development of "MOU-type" understandings. It should be noted that, in an enforcement context, the Commission would continue to obtain information from foreign regulatory authorities pursuant to existing MOU protocols.

As discussed above, the application and scope of the reproposed rule would be established by the definition of a large trader, which closely tracks Section 13(h)(8)(A) of the Exchange Act.[78] The Commission also notes that foreign broker-dealers would not be subject to recordkeeping or transaction reporting requirements of the reproposed rule. Accordingly, only foreign entities that are large traders would be subject to the reproposed rule. The duties and burdens imposed on all large traders include: (1) Filing Form 13H; (2) disclosing large trader status; (3) providing other information about accounts and reported transactions; and (4) if the foreign large trader maintains or controls transactions in an omnibus account carried by a registered broker-dealer, and the duty to assure compliance with the identification and disaggregation requirements of the reproposed rule.

A foreign entity or person would be a large trader, thus subject to the reproposed rule, only if the following four elements are present: (1) A person owns or controls an account or aggregated accounts; (2) such person effects aggregate transactions in publicly traded securities that reach the identifying activity level; (3) such transactions are effected directly or indirectly by or through accounts maintained by a registered broker-dealer; and (4) such transactions are effected by use of any means or instrumentality of interstate commerce or the mails or any facility of a national securities exchange.

The various combinations of these elements are too numerous to discuss at length. However, the bounds of the application of the reproposed rule may be explored through the analysis of two typical examples of securities activity that may be referred to as "foreign activity." First, assume that a foreign bank maintains an omnibus account with a domestic registered broker-dealer. Through this omnibus account, the foreign bank effects trades in publicly traded securities on a national securities exchange for its foreign customers (*i.e.*, citizens of, or persons domiciled in, a foreign country) that reach the identifying activity level. In this case, the foreign bank would be a custodian or nominee large trader and would be required to: (1) File Form 13H and Schedules 7b and/or 8; (2) disclose its LTID and all such accounts to the registered broker-dealers carrying such accounts; (3) assure compliance with the disaggregation and identification requirements as well as the accuracy of Schedules 7b or 8; and (4) if requested, disaggregate accounts or transactions.

As noted above, the foreign bank large trader would not be required to disclose on its Form 13H the non-large trader foreign customers whose trades are effected through its omnibus accounts. However, the reproposed rules would require the foreign bank large trader to assure that the information contained on Schedules 7b and 8 is accurate and complete. Accordingly, the foreign bank large trader would be required to disclose to the Commission the LTID or IID System numbers of its identified large trader customers.

In addition, if the foreign bank large trader effects transactions through such omnibus accounts for one of its customers and such transactions reach the identifying activity level, then in order to assure compliance with the disaggregation and identification requirements of the reproposed rule, the foreign bank large trader would have a duty to advise such foreign customer of its duty to file Form 13H and disclose its status in accordance with the reproposed rule. This duty would apply to the foreign bank large trader whether the customer's transactions were effected on a discretionary or non-discretionary basis.

For a second example, assume that a registered broker-dealer carries the account of a domestic or foreign customer, and it effects a program trade

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[74] Unit investment trusts, and similar "closed-end mutual funds," essentially are fixed portfolios of securities assembled by a sponsor and held for the life of the trust. Typically, these entities investments are static and, therefore, the identification or reporting requirements of the reproposed rule may be triggered only at their inception and termination. The new inactive status was designed, in part, with these entities in mind and would effectively eliminate the ongoing burdens of the reproposed rule on these entities.

[75] These suggested exemptions would include: (1) "small" investment advisers that control "large transactions" (*i.e.*, transactions that reach the identifying activity level); (2) issuer repurchases; and (3) after-hours foreign trading activity.

[76] See Proposing Release, 56 FR 42558, at text accompanying nn. 105–109.

[77] Of these 15 comments, 12 were submitted by regulatory organizations or industry associations, including: the Ambassador of France, London Stock Exchange, British Department of Trade and Industry, German Ministry of Finance, Association of German Banks, British Merchant Banking and Securities House Association, Delegation of the Commission of the European Communities, Institutional Fund Managers Association, Institute of International Bankers, Swiss Bankers Association, Hong Kong Association of Banks, and Thesaurier-Generaal of the Netherlands.

[78] 15 U.S.C. 78m(h)(8)(A) (1990).

in publicly traded securities in a foreign over-the-counter market or exchange. In order to effect the trade, the registered broker-dealer transmits the order information by facsimile to a foreign broker-dealer affiliate. Further, assume that the affiliated foreign broker-dealer effects the transaction for an omnibus account which it carries in the name of the domestic broker-dealer.

This activity would cause the foreign or domestic customer to be a large trader because it owned accounts, had effected the requisite trades indirectly through an account maintained by a registered broker-dealer, and through the means or instrumentality of interstate commerce.

Alternatively, if the foreign broker-dealer exercised control over the transaction then it also would be a large trader because it would have controlled accounts and effected the requisite trades by or through an account carried by a registered broker-dealer. Conversely, neither the customer or foreign broker-dealer would be large traders if the trade was effected exclusively by or for an account owned or controlled by the foreign or domestic customer and carried by the foreign broker-dealer, because the transaction would not be effected directly or indirectly by or for an account carried by a registered broker-dealer.

As discussed above, the identification requirements would significantly clarify and narrow the scope of the reproposed rule and, thereby, reduce the associated burdens on all large traders. Accordingly, the Commission believes that the burdens imposed on foreign large traders are necessary and appropriate, not unduly burdensome, and are imposed uniformly on domestic and foreign markets, exchanges, intermediaries, and investors.

H. Proposed Implementation

The Commission proposes that the transaction reporting requirements contained in paragraph (e) of the reproposed rule become effective 18 months after adoption of the final rule. The Commission believes that this time frame would provide sufficient time for the securities information processors and broker-dealers to plan, design, and implement all of the various enhancements to existing transaction reporting systems required by the reproposed rule. During this implementation period, the Commission would conduct periodic tests of the trade reporting system and work closely with broker-dealers, SIAC, and the ISG to develop all of the technical data processing software required by the reproposed rule.

The Commission believes that this implementation objective would facilitate the cost-effective development of the transaction reporting systems required by the reproposed rule. The Commission specifically solicits comments on whether the proposed 18 month period would be feasible.

I. Statutory Authority

Section 13(h)(5) of the Exchange Act requires the Commission, when exercising its rulemaking authority for large trader reporting, to consider: (1) Existing reporting systems; (2) the costs associated with keeping and reporting large trader information; and (3) the relationship between United States and international securities markets. The Commission considered these requirements when formulating the proposed rule and firmly believed that, notwithstanding certain elements of the proposed rule that may cause market participants to incur additional costs, the proposed system minimized costs in virtually every respect. The additional costs acknowledged by the Commission, included: (1) Preparation, filing, and updating Form 13H; (2) maintenance and reporting of large trader transaction information; (3) maintenance and reporting of LTIDs and execution times; and (4) development and implementation of supervisory systems and procedures.

The reproposed rule reflects the Commission's commitment to work with market participants to incorporate all existing industry systems that would minimize the costs associated with the reproposed system. The reproposed rule also reflects the Commission's conscious decision to shift substantial portions of the burdens imposed by the proposed rule from market participants to the Commission. Further, the foreign application of the reproposed rule has been carefully considered in light of its impact on the relationship between foreign and domestic securities markets, intermediaries, and investors.

The Commission believes that the comments on the proposed rule highlight the complexity of designing a simple and efficient large trader system that accommodates many different types of large traders as well as business practices and procedures. Faced with these conflicting needs and practices, the Commission is reproposing rules that it believes would minimize the costs and burdens imposed on the greatest number of affected market participants.

The Commission believes that the reproposed rule narrows and clarifies the definition of a large trader, and thus reduces the costs and burdens of the system. The revisions to the identification requirements, through the various definitions and rules for aggregation, have significantly reduced the number of persons who would be subject to the identification requirements of the reproposed rule. The inactive filing status, and the other filing or disclosure requirements, have been revised to incorporate other existing information and eliminate unnecessary information.

The Commission believes that the information captured and disclosed under the reproposed identification requirements would be the minimum necessary for creating an effective large trader reconstruction tool. Moreover, the Commission believes that such information would be collected or disclosed in a fashion that approximates existing systems, practices, and procedures commonly used by all forms of large traders.[79]

The modifications and additions to the recordkeeping and reporting requirements of the reproposed rule would significantly clarify their application and reduce technical burdens. The Commission believes that the reproposed rule's additional elements of transaction information, combined with the new reporting requirements for multiple LTIDs and system or manual order execution times, incorporate existing recordkeeping and reporting practices, procedures, and systems for customer trade information. As a result, the Commission believes that the reproposed recordkeeping and reporting requirements would provide the least burdensome method of collecting large trader transaction information.

The supervisory provisions of the reproposed rule would clarify the duty to supervise. The supervisory obligations also would assure the credibility of the reproposed system and a level playing field between broker-dealers and other omnibus large traders to the greatest extent permitted by the Market Reform Act. The Commission believes that the new safe harbor provision provides meaningful detail and objectivity that would considerably reduce the burden of the supervisory duties. The Commission also believes that the reduced burdens of the identification requirements may foster

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[79] The Commission reiterates its belief that the reproposed rule is consistent with the intent of the Market Reform Act and only requires identification or disclosure of large traders whose transactions are effected through omnibus accounts, and not "small beneficial owners" whose trades are effected through such accounts. See Proposing Release, 56 FR 42553, at n. 41 (citing the Senate Report); and House Report, supra n. 4, at 25.

greater compliance with the reproposed rule and indirectly reduce the supervisory burden of broker-dealers and omnibus large traders.

The Commission believes that the reproposed rule's application to foreign entities and persons would accomplish the objectives of the Market Reform Act by maintaining uniformity between domestic and foreign markets, exchanges, intermediaries, and investors. Finally, the Commission believes that the proposed plan for implementing the transaction reporting system would facilitate its cost-effective development.

IV. Conclusion

The Commission is reproposing Rule 13h–1 and Form 13H, which would establish an activity-based identification, recordkeeping, and reporting system for large trader accounts and transactions. This system would enable the Commission to gather large trader information in a timely manner and in the form necessary to reconstruct trading activity in periods of market stress and for surveillance, enforcement, and other regulatory purposes. The Commission believes that the reproposed rule achieves the objectives of the Market Reform Act and would establish an effective market reconstruction tool that minimizes costs.

V. Effects on Competition and Regulatory Flexibility Analysis

Section 23(a) of the Exchange Act[80] requires that the Commission, when proposing rules under the Exchange Act, consider the effects on competition of such rules, if any, and balance any anti-competitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is of the view that the Rule will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Pursuant to the requirements of the Regulatory Flexibility Act,[81] the Commission previously prepared an Initial Regulatory Flexibility Analysis ("IRFA"), concerning the proposed rule. The IRFA indicated that the proposed rule may impose some additional costs on small broker-dealers, small investment advisers, and small investors. The Commission has prepared a revised IRFA that details the changes to the proposed rule found in the reproposed rule. The Commission believes that the reproposed rule has been structured in a manner that further minimizes the costs of the reproposed system and fulfills the requirements of the Market Reform Act and section 13(h) of the Exchange Act. A copy of the revised IRFA may be obtained from Cameron D. Smith, Staff Attorney, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, (202) 272–5418.

[80] 15 U.S.C. 78w(a) (1988).

[81] 5 U.S.C. 604 (1988).

VI. List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By adding § 240.13h–1 to read as follows:

§ 240.13h–1 Large trader reporting system.

(a) *Definitions.* For purposes of this section—

(1) The term *large trader* means every person who, for an account that he owns or controls, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level.

(2) The term *person* shall mean those persons and entities specified in Section 3(a)(9) of the Securities Exchange Act of 1934, two or more persons acting as a partnership, limited partnership, syndicate, or other group, but does not include a foreign central bank, and also includes such persons, entities, partnerships, or groups acting as a trustee.

(3) The term *account* or *accounts* means each proprietary and customer account maintained or carried by a registered broker or dealer, which is disclosed or undisclosed to such broker or dealer as to ownership, and for which books and records are required to be made and kept in accordance with the provisions of § 240.17a–3.

(4) *Ownership.* An account of a person shall be deemed to be owned or under common ownership of the person in whose name an account is maintained, or a custodian or nominee that maintains an omnibus account or accounts otherwise undisclosed as to ownership, and any other person who has more than a 10 percent financial interest in the equity in the account or accounts of such person.

(5) *Control.* An account of a person shall be deemed to be controlled or under the common control of the owner of such account, and any other person that has received or been assigned full or limited investment discretion from the owner of such account. For purposes of this section:

(i) The term *full discretionary investment authority* means the discretion to enter orders for an account owned by another person; for the purchase or sale of any publicly traded security or securities, of any size, and at any time or price, without prior instruction or approval of the owner of such account; and

(ii) The term *limited discretionary investment authority* means the discretion to enter orders for an account owned by another person, for the purchase or sale of any publicly traded security or securities, limited only to the price or time of execution, upon the express prior instruction or approval of the owner of such account.

(6) The term *publicly traded security* means any equity security, option on an equity security, or an option on a group or index of equity securities (or based on the value thereof) listed, or admitted to unlisted trading privileges, on a national securities exchange and all other national market system securities as defined in § 240.11Aa2–1.

(7) The term *transaction* or *transactions* means all transactions in publicly traded securities, including cancellations, corrections, and exercises or assignments of option contracts, except for the following transactions:

(i) Any journal or bookkeeping entry made to an account in order to record or memorialize the receipt or delivery of funds or securities pursuant to the settlement of a transaction;

(ii) Any transaction that is part of an offering of securities by or on behalf of an issuer, or by an underwriter on behalf of an issuer, or an agent for an issuer, whether or not such offering is subject to registration under the Securities Act of 1933, *provided, however,* That this exemption shall not include an offering of securities effected through the facilities of a national securities exchange;

(iii) Any transaction effected in reliance on § 230.144A of this chapter;

(iv) Any transaction that constitutes a gift;

(v) Any transaction effected by a court appointed executor, administrator, or fiduciary pursuant to the distribution of a decedent's estate;

(vi) Any transaction effected pursuant to a court order or judgment for distribution of property in settlement of a marital proceeding;

(vii) Any transaction effected pursuant to a rollover of qualified plan or trust assets subject to section 402(a)(5) of the Internal Revenue Code (26 U.S.C. 402(a)(5)); or

(viii) Any transaction between an employer and its employee(s) effected pursuant to the award, allocation, sale, grant or exercise of a publicly traded security, option or other right to acquire securities at a pre-established price pursuant to a plan which is primarily for the purpose of an issuer benefit plan or compensatory arrangement.

(8) The term *identifying activity level* means:

(i) Aggregate transactions in publicly traded securities, effected during a calendar day where the account is located, that are equal to or greater than the lesser of 200,000 shares and fair market value of $2,000,000, or fair market value of $10,000,000; or

(ii) Any transaction or transactions that constitute program trading.

(9) The term *program trading* means either index arbitrage or any trading strategy involving the related purchase or sale of a group or basket of 15 or more publicly traded securities that have a total fair market value of $1,000,000 or more.

(10) The term *index arbitrage* means a trading strategy involving the purchase or sale of a group or basket of publicly traded securities in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled option or futures contracts on a group or index of equity securities (or based on the value thereof), or options on such futures contracts (collectively, derivative index products) in an attempt to profit from a difference between the price of a group or basket of equity securities and the price of a derivative index product through transactions that need not be executed contemporaneously.

(b) *Identification requirements for large traders.*—(1) *Form 13H.* Each large trader shall file Form 13H (17 CFR 249.327) with the Commission, in accordance with the instructions contained therein:

(i) Within 10 business days after first effecting aggregate transactions, or after effecting aggregate transactions subsequent to becoming inactive pursuant to paragraph (b)(3) of this section, which equal or exceed the identifying activity level; and

(ii) Within 60 calendar days after the end of each full calendar year thereafter.

(2) *Disclosure of large trader status.* Each large trader that:

(i) Controls an account, or acts as a custodian or nominee for an omnibus account, shall disclose its large trader identification number and all of its owned or controlled accounts to any registered broker or dealer that carries such accounts;

(ii) Controls an omnibus account, shall disclose its large trader identification number or Depository Trust Company Institutional Delivery System number to the custodian or nominee of such omnibus account; or

(iii) Owns an account for which it has assigned control to another person, shall disclose its large trader identification number or Depository Trust Company Institutional Delivery System number to such other person.

(3) *Inactive Status.* A large trader that has not effected aggregate transactions during the previous full calendar year that equal or exceed the identifying activity level and an aggregate calendar year total of 2,000,000 shares or fair market value of $30,000,000, shall become inactive upon filing and shall not be required to file Form 13H or disclose its large trader status thereafter.

(4) *Other Information.* Large traders shall provide the Commission with such other descriptive or clarifying information it may request from time to time regarding accounts, or transactions effected through accounts, identified on Form 13H.

(c) *Aggregation of accounts and transactions.*—(1) *Accounts.* For the purpose of determining whether a person is a large trader, the following shall apply:

(i) All accounts through which transactions are effected directly or indirectly by a person that are owned or controlled by, or under common ownership or control with such person, which independently would be a large trader, may be aggregated;

(ii) All accounts through which transactions are effected directly or indirectly by a person owned or controlled by, or under common ownership or control with such person, which independently would not be a large trader, shall be aggregated; and

(iii) Under no circumstances shall a person or group of persons acting in concert toward a common investment objective, be permitted to disaggregate accounts owned or controlled by or under the common ownership or control of such person or group of persons, in order to avoid the identification requirements of this section.

(2) *Transactions.* For the purpose of determining whether a person is a large trader, the following shall apply:

(i) The gross volume or fair market value of transactions in equity securities and the gross exercise volume or exercise value of the equity securities underlying transactions in options on equity securities, purchased and sold, shall be aggregated;

(ii) The gross exercise value of transactions in options on a group or index of equity securities (or based on the value thereof), purchased and sold, shall be aggregated; and

(iii) Under no circumstances shall a person or group of persons be permitted to subtract, offset, or net purchase and sale transactions, in equity securities or option contracts, and among or within accounts, when aggregating the volume or fair market value of transactions effected under this section.

(3) *Disaggregation.*—(i) *Generally.* The Commission may require a large trader to disaggregate accounts or transactions in any manner, and provide additional transaction or other information relating to transactions previously reported by a registered broker or dealer, in such cases and upon reasonable terms and conditions considering the operational capabilities of such large trader, when it determines such to be necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of this section.

(ii) *Omnibus accounts.* Large traders that effect transactions through or maintain omnibus accounts with a registered broker or dealer shall establish and maintain policies and procedures reasonably designed to assure compliance with the disaggregation and identification requirements of this section and, in particular, assure the accuracy and completeness of Schedules 7b or 8 to Form 13H. Policies and procedures that are substantially comparable to those described in paragraph (f) of this section shall be deemed to be in compliance with this section.

(d) *Recordkeeping requirements for brokers and dealers.*—(1) *Generally.* Every registered broker or dealer that carries accounts for large traders and persons such broker or dealer knows or has reason to know are large traders, based on transactions effected by or through such broker or dealer, shall maintain records of all elements of

information for all transactions effected directly or indirectly by or through an account carried by such broker or dealer for all large traders and persons that such broker or dealer knows or has reason to know are large traders.

(2) *Specific information.* The elements of information required to be maintained for all transactions, shall include:

(i) Date on which the transaction was executed;

(ii) Account number;

(iii) Identifying symbol assigned to the security;

(iv) Transaction price;

(v) The number of shares or option contracts traded and whether such transaction was a purchase, sale, or short sale, and if an option transaction, whether such was a call or put option, an opening purchase or sale, a closing purchase or sale, or an exercise or assignment;

(vi) The clearing house number of such broker or dealer and the clearing house numbers of the brokers or dealers on the opposite side of the transaction;

(vii) A designation of whether the transaction was effected or caused to be effected for the account of a customer of such broker or dealer, or was a proprietary transaction effected or caused to be effected for the account of such broker or dealer;

(viii) Market center where the transaction was executed;

(ix) The time that the transaction was executed, as required to be reported under paragraph (e) of this section;

(x) The large trader identification number, of the person that controls the account or the custodian or nominee of an omnibus account, for which the transaction was effected;

(xi) The Depository Trust Company Institutional Delivery System numbers of agents, broker-dealers, institutions, and other interested parties otherwise maintained by such broker or dealer for the account for which a transaction is effected;

(xii) The code, identification, or sequence number assigned to a transaction that was routed or effected through an automated order routing system maintained by a self-regulatory organization; and

(xiii) Any other codes, designations, or identifiers that the Commission may deem necessary or appropriate for compliance with the recordkeeping or reporting requirements of this section.

(3) *Retention.* The records and information required to be made and kept pursuant to the provisions of this section shall be kept for such periods of time as provided in § 240.17a–4(b).

(e) *Reporting requirements for brokers and dealers.*—(1) *Generally.* Upon the request of the Commission, or a self-regulatory organization designated by the Commission, every registered broker or dealer that carries accounts for large traders and other persons for whom records must be maintained, shall electronically report in machine-readable form and in accordance with instructions issued by the Commission, all elements of information for all transactions effected directly or indirectly by or through accounts carried by such broker or dealer for large traders and other persons for whom records must be maintained, which equal or exceed the reporting activity level.

(2) The term *reporting activity level* means:

(i) Each transaction in publicly traded securities, effected during a calendar day where the account is located, that is equal to or greater than the lesser of 2,000 shares or fair market value of $100,000;

(ii) Any other transaction in publicly traded securities of lesser amount, that a registered broker or dealer may deem appropriate;

(iii) Each transaction, regardless of share quantity or fair market value, that is part of a group of transactions that constitute program trading; or

(iv) Such other amount that may be established by order of the Commission from time to time.

(3) *System orders.* With respect to transactions routed or effected through an automated order routing system maintained by a self-regulatory organization, registered brokers or dealers shall report, all elements of information for all transactions required to be maintained, including the time that the transaction was executed, before the close of business on the day specified in the request for such transaction information.

(4) *Manual orders.* With respect to transactions that are not routed or effected through an automated order routing system maintained by a self-regulatory organization, registered brokers or dealers shall report:

(i) All elements of information for all transactions required to be maintained, except the time that the transaction was executed, before the close of business on the day specified in a request for such transaction information; and

(ii) The time that each of such transactions were executed, within 15 calendar days after receipt of a specific request for such information.

(5) *Unidentified large traders.* With respect to transactions effected directly or indirectly by or through the account of a person that a registered broker or dealer knows or has reason to know is a large trader, all elements of information for all transactions required to be maintained and such person's name, address, date that the account was opened, and tax identification number(s) shall be reported.

(f) *Supervisory safe harbor.* For the purposes of this section, a registered broker or dealer shall not be deemed to know or have reason to know that a person is a large trader if it establishes policies and procedures reasonably designed to assure compliance with the identification requirements of this section and does not have actual knowledge that a person is a large trader. Policies and procedures shall be deemed to satisfy this section, if they include:

(1) Systems reasonably designed to detect and identify persons that have not complied with the identification requirements of this section, which such broker-dealer knows or has reason to know is a large trader, based upon transactions effected through an account or a group of accounts, that may be identified as a large trader, based on account name, tax identification number, or other information readily available to such broker-dealer; and

(2) Systems reasonably designed to inform large traders of their obligations to file Form 13H and disclose large trader status under this section.

(g) *Exemptions.*—(1) *Comprehensive.* The identification, recordkeeping, and reporting requirements of this section shall not apply to any registered broker or dealer that does not carry accounts for itself or others, and:

(i) Is registered as a specialist or option market maker by a national securities exchange;

(ii) Is a member or allied member of a national securities exchange that exclusively executes transactions on the floor of such national securities exchange; or

(iii) Is registered as a market maker by a national securities association to the extent that it effects transactions in its capacity as a registered market maker.

(2) *Reporting requirements.* The reporting requirements of this section shall not apply to:

(i) Transactions for the account of a specialist or option market maker registered by a national securities exchange, effected in its capacity as a registered specialist or option market maker;

(ii) Transactions for the account of a market maker registered by a national securities association, effected in its capacity as a registered market maker; or

(iii) Any broker or dealer that does not carry accounts for itself or others.

(3) *Written requests.* The Commission may, upon written application, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, large trader, broker or dealer, or class of transactions for which the Commission determines that application of this section is not necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this section.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

4. By adding § 249.327 to read as follows:

§ 249.327 Form 13H, Information required of large traders pursuant to section 13(h) of the Securities Exchange Act of 1934 and rules thereunder.

This form shall be used by persons that are large traders required to furnish identifying information to the Commission pursuant to section 13(h)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(h)(1)) and Rule 13h–1(b)) thereunder (§ 240.13h–1(b) of this chapter).

Dated: February 9, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary

Note: Appendix A will not appear in the Code of Federal Regulations.

BILLING CODE 8010–01–M

APPENDIX A

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 13H

INFORMATION REQUIRED OF LARGE TRADERS PURSUANT TO SECTION 13(h) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULES THEREUNDER

[ ] INITIAL FILING: DATE IDENTIFYING TRANSACTIONS FIRST EFFECTED_____
[ ] ANNUAL FILING: CALENDAR YEAR ENDING ____ ITEMS AMENDED_____
[ ] INACTIVE FILING: DATE IDENTIFYING TRANSACTIONS LAST EFFECTED_____
[ ] CORRECTED FILING: TYPE AND DATE FILING BEING CORRECTED_____

_____
NAME OF LARGE TRADER LTID TAXPAYER IDENTIFICATION NUMBER

_____
DTC ID SYSTEM NUMBER(S) OF THE LARGE TRADER

_____
BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)

TELEPHONE NO. (__) __ - ___ FACSIMILE NO. (__) __ - ___

THE FORM, SCHEDULES, AND CONTINUATION SHEETS MUST BE SUBMITTED BY A NATURAL PERSON WHO EITHER IS THE LARGE TRADER OR IS A PERSON AUTHORIZED BY THE LARGE TRADER TO MAKE THIS SUBMISSION. IF THIS AUTHORIZED PERSON IS ANYONE OTHER THAN THE LARGE TRADER NAMED ABOVE, COMPLETE THE ITEM IMMEDIATELY BELOW:

_____
NAME AND TITLE OF AUTHORIZED PERSON (LAST, FIRST, M.I.)

_____
RELATIONSHIP TO LARGE TRADER

_____
BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)

TELEPHONE NO. (__) __ - ___ FACSIMILE NO. (__) __ - ___

ATTENTION
INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS CONSTITUTE FEDERAL CRIMINAL VIOLATIONS. SEE 18 U.S.C. §1001 AND 15 U.S.C. §78f(a). INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS ALSO MAY RESULT IN CIVIL FINES AND OTHER SANCTIONS PURSUANT TO SECTIONS 20 AND 21 OF THE SECURITIES EXCHANGE ACT OF 1934.

THE LARGE TRADER AND AUTHORIZED PERSON SIGNING THIS FORM REPRESENT THAT ALL INFORMATION CONTAINED IN THE FORM, SCHEDULES, AND CONTINUATION SHEETS IS TRUE, CORRECT, AND COMPLETE. IT IS UNDERSTOOD THAT ALL INFORMATION, WHETHER CONTAINED IN THE FORM, SCHEDULES, OR CONTINUATION SHEETS, IS CONSIDERED AN INTEGRAL PART OF THIS FORM AND THAT ANY AMENDMENT REPRESENTS THAT ALL UNAMENDED INFORMATION REMAINS TRUE, CORRECT, AND COMPLETE.

PURSUANT TO THE SECURITIES EXCHANGE ACT OF 1934, THE UNDERSIGNED LARGE TRADER HAS CAUSED THIS FORM TO BE SIGNED ON ITS BEHALF IN THE CITY OF _____ AND THE STATE OF _____ ON THE _____ DAY OF _____, 19__.

_____
SIGNATURE OF PERSON
AUTHORIZED TO SUBMIT THIS FORM

FORM 13H
INFORMATION REQUIRED OF ALL LARGE TRADERS

NAME OF LARGE TRADER _____

ITEM 1. BUSINESS OF THE LARGE TRADER (CHECK ONE OR MORE AS APPLICABLE)

[ ] BROKER OR DEALER
[ ] INVESTMENT ADVISER
[ ] INVESTMENT COMPANY
[ ] GOVERNMENT SECURITIES BROKER OR DEALER
[ ] MUNICIPAL SECURITIES BROKER OR DEALER
[ ] FUTURES COMMISSION MERCHANT
[ ] OTHER (SPECIFY) _____
[ ] PRIVATE PENSION TRUSTEE
[ ] PUBLIC PENSION TRUSTEE
[ ] INSURANCE COMPANY
[ ] OTHER FINANCIAL INSTITUTION
[ ] COMMODITIES POOL OPERATOR
[ ] HEDGE FUND

ITEM 2. SECURITIES AND EXCHANGE COMMISSION REGISTRATION NUMBERS

IS THE LARGE TRADER AN ISSUER OF SECURITIES UNDER THE SECURITIES ACT OF 1933, REGISTERED UNDER THE SECURITIES EXCHANGE ACT OF 1934, THE INVESTMENT COMPANY ACT OF 1940, THE INVESTMENT ADVISERS ACT OF 1940, OR OTHERWISE REQUIRED TO FILE WITH THE SECURITIES AND EXCHANGE COMMISSION INFORMATION SUBSTANTIALLY SIMILAR TO THE INFORMATION REQUIRED IN THE SCHEDULES TO ITEM 4?

[ ] YES [ ] NO

IF NO, COMPLETE ITEM 4 BELOW.

IF YES, YOU ARE NOT REQUIRED TO COMPLETE ITEM 4 IF YOU SPECIFY THE TYPE OF REGISTRATION OR FILING AND APPLICABLE REGISTRATION OR FILE NUMBERS:

--USE CONTINUATION SHEETS IF NECESSARY--

TYPE OF REGISTRATION	SEC FILE NUMBER OR CRD NUMBER

ITEM 3. COMMODITY FUTURES TRADING COMMISSION REGISTRATION NUMBERS

(a) IS THE LARGE TRADER REGISTERED WITH THE CFTC AS A "REGISTERED TRADER" PURSUANT TO SECTIONS 4i AND 9 OF THE COMMODITY EXCHANGE ACT OF 1974?

[ ] YES [ ] NO

IF YES, SPECIFY THE REGISTRATION NUMBER:_____

(b) IS THE LARGE TRADER OTHERWISE REGISTERED UNDER THE COMMODITY EXCHANGE ACT OF 1974? [ ] YES [ ] NO

IF YES, SPECIFY THE TYPE OF REGISTRATION AND NUMBER:

_____
_____
_____
_____

--USE CONTINUATION SHEETS IF NECESSARY--

FORM 13H
INFORMATION REQUIRED OF ALL LARGE TRADERS

NAME OF LARGE TRADER _____

ITEM 4. TYPE OF LARGE TRADER (CHECK ONE ONLY): THIS ITEM IS NOT REQUIRED TO BE COMPLETED IF THE LARGE TRADER CHECKED "YES" AND COMPLETED ITEM 2 ABOVE.

[ ] INDIVIDUAL
[ ] JOINT TENANT
[ ] PARTNERSHIP
[ ] OTHER (SPECIFY) _____
[ ] CORPORATION
[ ] TRUSTEE
[ ] LIMITED PARTNERSHIP

(a) IF THE LARGE TRADER HAS CHECKED INDIVIDUAL, COMPLETE AND SUBMIT SCHEDULE 4a WITH THIS FORM.

(b) IF THE LARGE TRADER HAS CHECKED JOINT TENANT, PARTNERSHIP, OR LIMITED PARTNERSHIP COMPLETE AND SUBMIT SCHEDULE 4b WITH THIS FORM.

(c) IF THE LARGE TRADER HAS CHECKED CORPORATION OR TRUSTEE, COMPLETE AND SUBMIT SCHEDULE 4c WITH THIS FORM.

ITEM 5. AGGREGATION OF ACCOUNTS BY THE LARGE TRADER

(a) HAS THE LARGE TRADER AGGREGATED IN THIS FORM 13H ACCOUNTS OF ANOTHER PERSON THAT ARE OWNED OR CONTROLLED BY OR UNDER COMMON OWNERSHIP OR CONTROL WITH THE LARGE TRADER THAT INDEPENDENTLY WOULD BE A LARGE TRADER?

[ ] YES [ ] NO

IF YES, LIST THE NAME OF THIS OTHER PERSON(S) AND RELATIONSHIP TO LARGE TRADER (e.g., SUBSIDIARY, AFFILIATE, DIVISION, PARTNER):

--USE CONTINUATION SHEETS IF NECESSARY--

NAME	RELATIONSHIP
_____	_____
_____	_____
_____	_____

(b) HAS ANOTHER LARGE TRADER THAT IS OWNED OR CONTROLLED BY OR UNDER COMMON OWNERSHIP OR CONTROL WITH THE LARGE TRADER INDEPENDENTLY FILED FORM 13H AND BEEN ASSIGNED A LARGE TRADER IDENTIFICATION NUMBER BY THE SEC?

[ ] YES [ ] NO

IF YES, SPECIFY THE NAME, LTID, AND RELATIONSHIP TO THE LARGE TRADER OF THIS OTHER LARGE TRADER(S):

--USE CONTINUATION SHEETS IF NECESSARY--

NAME	LTID	RELATIONSHIP
_____	_____	_____
_____	_____	_____
_____	_____	_____

FORM 13H
INFORMATION REQUIRED OF ALL LARGE TRADERS

NAME OF LARGE TRADER _____

ITEM 6. LIST OF ACCOUNTS OWNED BY THE LARGE TRADER

(a) IF THE LARGE TRADER OWNS AND CONTROLS ACCOUNTS, THEN COMPLETE AND SUBMIT SCHEDULE 6a WITH THIS FORM.

(b) IF THE LARGE TRADER OWNS ACCOUNTS THAT ARE CONTROLLED BY ANOTHER PERSON, THEN COMPLETE AND SUBMIT SCHEDULE 6b WITH THIS FORM.

ITEM 7. LIST OF ACCOUNTS CONTROLLED BUT NOT OWNED BY THE LARGE TRADER

(a) IF THE LARGE TRADER CONTROLS ACCOUNTS THAT ARE FULLY DISCLOSED AS TO OWNERSHIP, THEN COMPLETE AND SUBMIT SCHEDULE 7a WITH THIS FORM.

(b) IF THE LARGE TRADER CONTROLS ACCOUNTS THAT ARE UNDISCLOSED AS TO OWNERSHIP, THEN COMPLETE AND SUBMIT SCHEDULE 7b WITH THIS FORM.

ITEM 8. LIST OF ACCOUNTS MAINTAINED BY THE LARGE TRADER AS CUSTODIAN OR NOMINEE THAT ARE UNDISCLOSED AS TO OWNERSHIP

IF THE LARGE TRADER MAINTAINS ACCOUNTS AS CUSTODIAN OR NOMINEE ONLY THAT ARE UNDISCLOSED AS TO OWNERSHIP, THEN COMPLETE AND SUBMIT SCHEDULE 8 WITH THIS FORM.

SCHEDULE 4a TO FORM 13H.
LARGE TRADER INDIVIDUALS

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. DESIGNATE THE EMPLOYMENT STATUS OF THE LARGE TRADER:

[ ] SELF-EMPLOYED
[ ] OTHERWISE EMPLOYED
[ ] RETIRED OR OTHERWISE NOT EMPLOYED

ITEM 2. PROVIDE THE FOLLOWING INFORMATION REGARDING THE BUSINESS IN WHICH YOU ARE CURRENTLY EMPLOYED, OR IF RETIRED, OF YOUR LAST EMPLOYMENT:

_____
NAME OF BUSINESS OR EMPLOYER

_____
ADDRESS OF BUSINESS OR EMPLOYER (STREET, CITY, STATE, ZIP)

BUSINESS TELEPHONE NO. (__) __-____

LARGE TRADER'S TITLE AND NATURE OF BUSINESS OR EMPLOYMENT:

_____

THIS SCHEDULE IS NOT REQUIRED IF THE LARGE TRADER CHECKED "YES" AND COMPLETED ITEM 2 TO FORM 13H.

SCHEDULE 4b TO FORM 13H.
LARGE TRADER JOINT TENANTS OR PARTNERSHIPS

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. ORGANIZATION TYPE (CHECK ONE):

[ ] JOINT TENANCY [ ] PARTNERSHIP [ ] LIMITED PARTNERSHIP

ITEM 2. JURISDICTION IN WHICH THE LARGE TRADER IS REGISTERED OR ORGANIZED:

_____
(CITY, STATE)

ITEM 3. PRINCIPAL PLACE OF BUSINESS:

_____
(STREET, CITY, STATE, ZIP)

ITEM 4. DESCRIBE THE NATURE OF THE LARGE TRADER'S BUSINESS:

_____

ITEM 5. COMPLETE THE FOLLOWING FOR EACH TENANT AND GENERAL PARTNER, AND IN THE CASE OF LIMITED PARTNERSHIPS, EACH LIMITED PARTNER THAT IS THE OWNER OF MORE THAN A 10 PERCENT FINANCIAL INTEREST IN THE ACCOUNTS OF THE LARGE TRADER:

--USE CONTINUATION SHEETS IF NECESSARY--

NAME	STATUS (CHECK ONE FOR EACH)		
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____ ____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____ ____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER

THIS SCHEDULE IS NOT REQUIRED IF THE LARGE TRADER CHECKED "YES" AND COMPLETED ITEM 2 TO FORM 13H.

SCHEDULE 4c TO FORM 13H.
LARGE TRADER CORPORATIONS OR TRUSTEES

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. ORGANIZATION TYPE (CHECK ONE):

[ ] CORPORATION [ ] TRUSTEE

ITEM 2. JURISDICTION IN WHICH THE LARGE TRADER IS INCORPORATED OR ORGANIZED:

_____
(CITY, STATE)

ITEM 3. PRINCIPAL PLACE OF BUSINESS:

_____
(STREET, CITY, STATE, ZIP)

ITEM 4. DESCRIBE THE NATURE OF THE LARGE TRADER'S BUSINESS:

_____

ITEM 5. COMPLETE THE FOLLOWING FOR EACH EXECUTIVE OFFICER, DIRECTOR, OR TRUSTEE OF A LARGE TRADER CORPORATION OR TRUST:

--USE CONTINUATION SHEETS IF NECESSARY--

NAME	STATUS (CHECK ONE FOR EACH)		
_____	[ ] OFFICER	[ ] DIRECTOR	[ ] TRUSTEE

SCHEDULE 6b TO FORM 13H.
LIST OF PERSONS THAT CONTROL ACCOUNTS OWNED BY THE LARGE TRADER

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. DESIGNATE THE PERSON TO CONTACT FOR INFORMATION REGARDING THE DELEGATION OF INVESTMENT DISCRETION OR AUTHORITY TO THE PERSONS LISTED ON THIS SCHEDULE:

_____
NAME AND TITLE OF DESIGNATED PERSON

_____
BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)

TELEPHONE NO. (__) __-____ FACSIMILE NO. (__) __-____

ITEM 2. LIST AND COMPLETE THE FOLLOWING FOR EACH PERSON THAT CONTROLS ACCOUNTS, IN WHOLE OR IN PART, PURSUANT TO A DELEGATION OF INVESTMENT DISCRETION OR AUTHORITY THAT ARE OWNED BUT NOT CONTROLLED BY THE LARGE TRADER:

--USE CONTINUATION SHEETS IF NECESSARY--

NAME OF PERSON THAT CONTROLS ACCOUNTS	DTC/ID SYSTEM NO. OR LTID	ADDRESS	TELEPHONE NUMBER	DISCRETION: FULL (F) OR LIMITED (L)

LARGE TRADERS HAVE A DUTY TO DISCLOSE THEIR LTID TO THE PERSONS LISTED ON THIS SCHEDULE.

SCHEDULE 7a TO FORM 13H.
LIST OF ACCOUNTS CONTROLLED BY THE LARGE TRADER THAT ARE FULLY DISCLOSED AS TO OWNERSHIP

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. DESIGNATE THE PERSON TO CONTACT FOR INFORMATION REGARDING TRANSACTIONS EFFECTED THROUGH THE ACCOUNTS LISTED ON THIS SCHEDULE:

_____
NAME AND TITLE OF DESIGNATED PERSON

_____
BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)

TELEPHONE NO. (__) __-____ FACSIMILE NO. (__) __-____

ITEM 2. COMPLETE THE FOLLOWING INFORMATION REGARDING ACCOUNTS THAT ARE NOT OWNED BUT ARE CONTROLLED, IN WHOLE OR IN PART, BY THE LARGE TRADER, WHICH ARE FULLY DISCLOSED AS TO OWNERSHIP BY A PERSON THAT IS NOT A LARGE TRADER:

(a) TOTAL NUMBER OF ACCOUNTS: _____
(b) NAMES OF BROKER-DEALERS MAINTAINING OR CARRYING ACCOUNTS:

_____
_____
_____

ITEM 3. LIST AND COMPLETE THE FOLLOWING INFORMATION FOR EACH ACCOUNT THAT IS NOT OWNED BUT IS CONTROLLED, IN WHOLE OR IN PART, BY THE LARGE TRADER, WHICH IS FULLY DISCLOSED AS TO OWNERSHIP BY ANOTHER LARGE TRADER:

--USE CONTINUATION SHEETS IF NECESSARY--

BROKER-DEALER	BROKER-DEALER ACCOUNT NUMBER	ACCOUNT NAME	DTC/ID SYSTEM NO. OR LTID OF OTHER LARGE TRADERS THAT OWN THE FULLY DISCLOSED ACCOUNT

LARGE TRADERS HAVE A DUTY TO DISCLOSE THEIR LTID TO THE BROKER-DEALERS LISTED IN ITEMS 2 AND 3 OF THIS SCHEDULE.

SCHEDULE 7b TO FORM 13H.
LIST OF ACCOUNTS CONTROLLED BY THE LARGE TRADER THAT ARE UNDISCLOSED AS TO OWNERSHIP

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. DESIGNATE THE PERSON TO CONTACT FOR INFORMATION REGARDING TRANSACTIONS EFFECTED THROUGH THE ACCOUNTS LISTED ON THIS SCHEDULE AND ASSISTANCE WITH A REQUEST FOR DISAGGREGATION:

_____
NAME AND TITLE OF DESIGNATED PERSON

_____
BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)

TELEPHONE NO. (__) __-____ FACSIMILE NO. (__) __-____

ITEM 2. LIST AND COMPLETE THE FOLLOWING INFORMATION FOR EACH ACCOUNT THAT IS NOT OWNED BUT IS CONTROLLED, IN WHOLE OR IN PART, BY THE LARGE TRADER, WHICH IS AN OMNIBUS ACCOUNT OR AN ACCOUNT THAT IS OTHERWISE UNDISCLOSED AS TO OWNERSHIP. IF THE LARGE TRADER CONTROLS TRANSACTIONS IN THESE ACCOUNTS FOR OTHER LARGE TRADERS, IDENTIFY THE OTHER LARGE TRADERS WHOSE TRANSACTIONS ARE EFFECTED THROUGH EACH OF THESE ACCOUNTS:

--USE CONTINUATION SHEETS IF NECESSARY--

BROKER-DEALER	BROKER-DEALER ACCOUNT NUMBER	OMNIBUS ACCOUNT NAME AND DTC/ID SYSTEM NO. OR LTID OF THE CUSTODIAN OR NOMINEE	DTC/ID SYSTEM NO. OR LTID OF UNDISCLOSED LARGE TRADERS FOR WHOM TRANSACTIONS ARE CONTROLLED

LARGE TRADERS HAVE A DUTY TO DISCLOSE THEIR LTID TO THE BROKER-DEALERS AND CUSTODIANS OR NOMINEES OF OMNIBUS OR OTHERWISE UNDISCLOSED ACCOUNTS LISTED ON THIS SCHEDULE AND TO ASSURE COMPLIANCE WITH THE IDENTIFICATION AND DISAGGREGATION REQUIREMENTS OF RULE 13h-1.

SCHEDULE 8 TO FORM 13H.
LIST OF ACCOUNTS MAINTAINED BY THE LARGE TRADER AS CUSTODIAN OR NOMINEE ONLY THAT ARE UNDISCLOSED AS TO OWNERSHIP

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. DESIGNATE THE PERSON TO CONTACT FOR ASSISTANCE WITH A REQUEST FOR DISAGGREGATION AND INFORMATION REGARDING TRANSACTIONS EFFECTED THROUGH THE ACCOUNTS LISTED ON THIS SCHEDULE:

_____
NAME AND TITLE OF DESIGNATED PERSON

_____
BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)

TELEPHONE NO. (__) __-____ FACSIMILE NO. (__) __-____

ITEM 2. LIST AND COMPLETE FOR EACH OMNIBUS ACCOUNT MAINTAINED BY, OR CARRIED IN THE NAME OF, THE LARGE TRADER AS CUSTODIAN OR NOMINEE ONLY THAT ARE UNDISCLOSED AS TO OWNERSHIP:

--USE CONTINUATION SHEETS IF NECESSARY--

BROKER-DEALER	BROKER-DEALER ACCOUNT NUMBER	OMNIBUS ACCOUNT NAME AND DTC/ID SYSTEM NO. OR LTID OF THE CUSTODIAN OR NOMINEE	DTC/ID SYSTEM NO. OR LTID OF LARGE TRADERS THAT CONTROL THE ACCOUNT

LARGE TRADERS HAVE A DUTY TO DISCLOSE THEIR LTID TO THE BROKER-DEALERS AND CUSTODIANS OR NOMINEES OF OMNIBUS OR OTHERWISE UNDISCLOSED ACCOUNTS LISTED ON THIS SCHEDULE AND TO ASSURE COMPLIANCE WITH THE IDENTIFICATION AND DISAGGREGATION REQUIREMENTS OF RULE 13h-1.

BILLING CODE 8010-01-C

General Instructions for Form 13h

The following instructions are intended for guidance in completing form 13H and do not provide the full text of the applicable federal laws and regulations. See section 13(h) of the Securities Exchange Act of 1934 [15 U.S.C. § 78m(h)], rule 13h–1 [17 CFR 240.13h–1], and form 13H [17 CFR 249.327] for the full text of the applicable statutes and rules.

A. Persons Required to File Form 13H.

Every person that is a Large Trader must file Form 13H with the U.S. Securities and Exchange Commission (Commission). Upon filing Form 13H, a Large Trader will be assigned a large trader identification number (LTID) by the Commission.

Definition of a Large Trader. The term "Large Trader" means every person who owns or controls an account, that effects transactions for the purchase or sale of a publicly traded securities, by use of any means or instrumentality of interstate commerce or the mails, or any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer, in an aggregate amount equal to or in excess of the identifying activity level. The term "Person" includes any natural person, trustee, company, government, political subdivision, agency, or instrumentality of a government, except foreign central banks, and also includes two or more persons acting as a partnership, limited partnership, syndicate, or other group. Persons that may be Large Traders include individuals, broker-dealers, mutual funds, private and public pension funds, hedge funds, investment advisers, insurance companies, banks, and trust companies.

Large Trader Accounts. The purpose of Form 13H is to provide a system through which the Commission may efficiently identify large trading accounts and the person or group of persons that own and control large trading accounts. The term "Account" means each proprietary and customer account maintained or carried on the books and records of a registered broker-dealer.

Ownership of Accounts. An account of a person is deemed to be owned or under common ownership of the natural person, company, limited partnership, partnership, and trustee in whose name an account is maintained, or custodian or nominee that maintains an omnibus account or account otherwise undisclosed as to ownership, and any other person who has more than a 10 percent financial interest in the equity in the accounts of the person.

Control of Accounts. An account of a person is deemed to be controlled or under the common control of the owner of the account, and any other person that has received from or been assigned by the owner of an account, full or limited investment discretion or authority to direct transactions for the account. The term "Full Discretionary Investment Authority" means the discretion to enter an order or orders for the account of another of any size, at any time or price, without the prior instruction or approval of the owner of the account.

The term "Limited Discretionary Investment Authority" means the discretion to enter an order or orders for the account of another, limited to time or price only, upon the express prior instruction or approval of the owner of the account.

Large Trader Transactions. The term "Transaction" means all transactions in publicly traded securities, including cancellations, corrections, and exercises or assignments of option contracts, except for certain specific transactions. The excluded transactions, include: journal or bookkeeping entries; offerings of securities under the Securities Act of 1933; gifts; transactions effected under a court order of appointment or distribution of property in a decedents estate or divorce proceeding; a qualified rollover of retirement plan assets; or transactions between employees and employers that are part of an employer benefit or compensatory arrangement. The term "Publicly Traded Securities" includes all exchange listed and other national market system securities that are subject to an effective real-time transaction reporting plan.

Identifying Activity Level. The term "Identifying Activity Level" means aggregate transactions of 150,000 shares or fair market value of $7.5 million, effected during any calendar day where the large trader's account is located, or any transactions that constitute program trading. The term "program trading" means index arbitrage or any strategy involving the related purchase or sale 15 or more securities with a total value of $1 million or more.

Aggregation of Accounts. A person or group of persons may aggregate those accounts that are directly or indirectly owned or controlled, or under common ownership or control of a person or group of persons that independently would be large traders. A person or group of persons, however, must aggregate those accounts that are directly or indirectly owned or controlled, or under common ownership or control of a person or group of persons that independently would not be large traders. An aggregated Form 13H for a group of persons may be filed by any of the commonly owned or controlled persons within the group that independently would be a large trader.

For example, diverse financial service holding companies or partnerships may have divisions, subsidiaries, or affiliated companies or partnerships, which independently are large traders, based on transactions effected by or for the accounts of the division, subsidiary, affiliate, or partner. These companies and partnerships would be permitted, but are not required, to aggregate into a single Form 13H all accounts owned or controlled by each division, subsidiary, affiliate, or partner. Conversely, the accounts of any division, subsidiary, affiliate, or partner that independently would not be a large trader would be required to be aggregated into the Form 13H filing of a parent, subsidiary, affiliate, or partner.

Large Traders and authorized persons preparing and filing Form 13H should note that a person, or group of persons acting in concert toward a common investment objective, are prohibited from using the flexibility afforded by these rules to avoid filing Form 13H or to otherwise avoid the identification requirements of Rule 13h-1. Additionally, a person or group of persons that choose to aggregate accounts of persons that independently would be large traders should note that requests for disaggregation may be received from the Commission.

Aggregation of Transactions. All transactions in publicly traded equity and option securities must be aggregated among or within aggregated accounts, without offsetting or netting purchase and sale transactions, and based upon the gross, unhedged, or absolute value of all purchase and sale transactions. The "gross value of an individual equity option" is either: (i) the number of shares underlying the contract multiplied by the number of contracts purchased and sold; or (ii) the strike price of the contract multiplied by the applicable multiplier and the number of contracts purchased and sold. The "gross value of options on a group or index of equity securities" is the strike price of the contract multiplied by the applicable multiplier and the number of contracts purchased and sold. Transactions in index options are not required to be "burst" into share equivalents for each of the underlying component equities.

The determination of "who" is a large trader and "what" information is to be included on form 13H are dependent upon the accounts or group of accounts that a large trader chooses to aggregate into a particular form 13H. Persons authorized to file form 13H should carefully review all general and special instructions regarding aggregation or disaggregation of accounts before filing form 13H. See special instructions to form 13H—item-5—for further instructions regarding aggregation or disaggregation of accounts by a large trader.

B. Form and Schedules Required to be Filed.

Form 13H and Schedules may be filed manually or electronically in accordance with the rules and regulations the Commission may prescribe. If the filing is submitted manually, the filing shall include three (3) copies of Form 13H and Schedules.

All Large Traders must complete and submit Form 13H and one or more of the Schedules to Items 6, 7, or 8. In addition, all Large Traders that check "NO" in Item 2, because they are not registered by or otherwise required to file information with the Commission, must complete Item 4 and submit one of the following three Schedules:

(1) Individuals: Schedule 4a.

(2) Joint Tenants or Partnerships: Schedule 4b.

(3) Corporations or Trustees: Schedule 4c.

All Large Traders that check "YES" in Item 2, and provide the applicable information regarding other registrations or filings with the Commission, are not required to complete Item 4 or any of the corresponding Schedules.

See special instructions to form 13H—items 2 and 4—for further instructions regarding commission registrations or filings and the applicability of schedules 4a through 4c.

C. Time Required for Filing Form 13H.

Initial Filing. Form 13H and Schedules must be filed with the Commission within 10 business days after a person first effects transactions that reach the identifying activity level.

Annual Filing. Form 13H and Schedules must be filed with the Commission within 60 calendar days after the end of each full calendar-year.

Inactive Filing. A Large Trader may become inactive, thus exempt from the annual filing and disclosure requirements, upon filing its annual Form 13H for the previous full calendar year in which it has *not* effected: (1) aggregate transactions that equal or exceed the Identifying Activity Level; *and* (2) an aggregate calendar year total of 2,000,000 shares or fair market value of $30,000,000. Any inactive large trader that subsequently effects transactions that again reach the identifying activity level must make an initial filing within 10 business days after it effects the "re-identifying transactions."

D. Confidentiality.

All information disclosed on Form 13H may not be compelled to be disclosed under the Freedom of Information Act ("FOIA") because the information is specifically exempted from disclosure by Section 13(h)(7) of the Securities Exchange Act of 1934, and the statute establishes particular criteria for withholding or refers to particular types of information to be withheld. The Commission, however, is not authorized to withhold information from Congress, or any other federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

Special Instructions for Form 13H and schedules

A. Instructions for Form 13H—Cover Page.

Type of Filing. Indicate the type of Form 13H filing by checking the appropriate box at the top of the cover page to Form 13H.

If the filing is an "Initial Filing" indicate the first date on which transactions were effected that reached the identifying activity level. An initial filing must include a manually signed Form 13H and all applicable Schedules.

If the filing is an "Annual Filing" indicate the ending date of the appropriate calendar year and list the specific Items or Schedules that are amended or changed. An annual filing must only include a manually signed cover page and those pages of Form 13H or Schedules that have been amended or changed. If no Items or Schedules to Form 13H have been amended or changed, indicate "NONE" in the space provided and only file a manually signed cover page to Form 13H.

If the filing is an "Inactive Filing" indicate the date that the Large Trader last effected aggregate transactions that reached the identifying activity level. A Large Trader shall become inactive, and exempt from the annual filing and LTID disclosure requirements, upon filing.

If the filing is a "Corrected Filing" indicate the type and date of the filing that is being corrected. This type of filing is not required but may be made to correct a previous filing.

All filings should indicate the applicable LTID assigned by the Commission and the Taxpayer Identification Number(s) of the Large Trader. Initial filings will not be required to include a LTID. In addition, all filings should disclose the Depository Trust Company ("DTC") Institutional Delivery System ("ID System") number(s) of the Large Trader that are applicable to the accounts identified in the specific Form 13H. An inactive large trader that effects re-identifying transactions will retain the LTID initially assigned to it by the Commission.

The unchanged or unamended portions of a large trader's form 13H and schedules need not be filed annually.

B. Instructions for Form 13H—Items 1 Through 5.

Item 1. Business of the Large Trader. Specify the type of business of the Large Trader by checking one or more of the listed business types. If the Large Trader is an individual, check "Other" and specify the occupation of such individual. Large Trader banks, trust companies and thrift institutions should check "Other Financial Institution." If the Large Trader is engaged in more than one type of business, check each type that applies to the Large Trader.

The types of businesses checked should reflect the businesses of other large traders whose accounts are aggregated into the Form 13H by the Large Trader. For example, if the aggregated accounts of the Large Trader are accounts owned by other persons but controlled by the Large Trader only as an investment adviser, check only "Investment Adviser," even though the Large Trader may be a division, subsidiary, or affiliate of a broker-dealer that has independently filed Form 13H.

Item 2. SEC Registrations. Indicate whether the Large Trader is an issuer of securities under the Securities Act of 1933, or registered under the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or otherwise is required to file or report information to the Commission that is substantially similar to the information required in the Schedules to Item 4 (e.g., name, location and nature of the business of individual owners, partners, executive officers, directors, and trustees of the Large Trader). If "Yes" is checked, provide the applicable types of registrations and SEC or Central Registration Depository ("CRD") file numbers.

The types of registrations or filings listed should reflect the registrations of other large traders and persons whose accounts are aggregated into the Form 13H of the Large Trader. Therefore, if all of the persons whose accounts are aggregated into the Form 13H are covered by one of the listed registrations or filings, then the Large Trader is not required to complete Item 4 or any of the corresponding Schedules. However, if any person whose accounts are aggregated into the Form 13H of the Large Trader is not covered by one of the listed registrations or filings, then the Large Trader is required to complete Item 4 and the corresponding Schedule for the "un-registered" person.

SEC file numbers may be obtained by calling the commission's public reference room and CRD number may be obtained by calling the member services office of the National Association of Securities Dealers (NASD), during normal business hours.

Item 3. CFTC Registrations. Indicate whether the Large Trader is registered with the Commodity Futures Trading Commission (CFTC) as a "Reporting Trader" pursuant to Sections 4i and 9 of the Commodity Exchange Act of 1974, or otherwise is registered under the Commodity Exchange Act of 1974. If "Yes" is checked, specify the number and type of registration.

Item 4. Type of Large Trader. If the Large Trader checked "NO" in Item 2, then check one of the listed organization types and complete the applicable Schedule. If any other large traders whose accounts are aggregated into the Form 13H of the Large Trader are not covered by one of the registrations or filings listed in Item 2, then check one of the listed organization types and complete the applicable Schedules for these un-registered persons. The Schedules to Item 4 capture information about the following types of un-registered Large Traders whose accounts are aggregated into Form 13H:

Schedule 4a. Individuals.

Schedule 4b. Joint Tenants or general partners, and in the case of limited partners, each limited partner that is the owner of more than a 10 percent financial interest in the accounts of the Large Trader.

Schedule 4c. Executive officers or directors of a corporation, and all trustees for a private or public trust.

The Large Trader must provide full names, addresses, and all other information required on these Schedules.

Item 5. Aggregation of accounts by the Large Trader.

Aggregated Accounts. Indicate in Item 5(a) whether the Large Trader has aggregated accounts of other persons in its Form 13H, which independently would be large traders. If the Large Trader has aggregated the accounts of other persons, list the name of the other person and its relationship to the Large Trader (e.g., division, subsidiary, affiliate, or partner).

Disaggregated Accounts. Indicate in Item 5(b) whether other Large Traders that are owned or controlled by or under common ownership or control with the Large Trader have independently filed a Form 13H and been assigned LTIDs. If the Large Trader has not aggregated the accounts of other Large Traders, list the name of each other large trader, its LTID, and its relationship to the Large Trader (e.g., division, subsidiary, affiliate, or partner). If the Large Trader does not know the LTIDs of the other large traders at the time of filing, it must provide all of these numbers in its next Annual Filing.

Form 13h—Items 1 Through 5—Must Reflect the Large Trader's Choice for Aggregation or Disaggregation of Accounts of Other Persons and Large Traders. See Special Instructions to Form 13h—Items 6 Through 8—For Further Instructions Regarding Disaggregation By a Large Trader.

C. Instructions for Form 13H—Items 6 Through 8

Lists of Large Trader Accounts. Items 6 through 8 are organized along the three

capacities in which a Large Trader may act with respect to a single account (i.e., owner, controller, or custodian). The Schedules correspond to Items 6 through 8 and are organized to capture different combinations of these capacities, based upon the Large Trader's knowledge of information about accounts and the disclosure of ownership to the broker-dealer carrying the account. The Schedules to Items 6 through 8 require a Large Trader to list information about the following types of accounts:

Schedule 6a. Accounts that are owned and controlled by the Large Trader, in whole or in part.

Schedule 6b. Accounts that are owned but not controlled by the Large Trader, in whole or in part, which are controlled by others.

Schedule 7a. Accounts that are not owned but are controlled by the Large Trader, in whole or in part, which are fully disclosed as to ownership.

Schedule 7b. Accounts that are not owned but are controlled by the Large Trader, in whole or in part, which are undisclosed as to ownership.

Schedule 8. Accounts maintained by the Large Trader as custodian or nominee only, which are undisclosed as to ownership.

Depending on a Large Trader's choice for aggregation of accounts, one or more of these schedules must be filed with Form 13H. The schedules attached to Form 13H must reflect the types of accounts that the Large Trader has chosen to aggregate into its Form 13H.

Information Required in the Schedules. The Large Trader must provide full names, addresses, and all other information required on Schedules 6a through 8. Large Traders may attach internally produced lists of accounts to the Schedules provided that such lists capture all required information in a format substantially similar to each of the Schedules. If the Large Trader does not know the LTID or DTC ID System number of other Large Traders at the time of filing, it must provide all of such numbers in its next Annual Filing.

Qualifications of the Designated Contact Person. The Large Trader is required to designate a contact person for information regarding the accounts listed on each Schedule. The designated contact person must: (i) be a natural person; (ii) be employed by or otherwise affiliated with the Large Trader; (iii) be authorized by the Large Trader to respond to any inquiries or requests from the Commission; (iv) have personal knowledge of all orders and transactions in the accounts listed on the Schedule or be in a position to obtain this information promptly from other persons who have such personal knowledge; and (v) have the authority to provide prompt assistance with the disaggregation of the listed accounts.

Disaggregation of Aggregated and Undisclosed Accounts. In the event that the Commission requests, all broker-dealers or large traders that carry or maintain aggregated or undisclosed accounts may be required to assist in the disaggregation of transactions or accounts. The Commission may request disaggregation in any reasonable manner considering the operational capabilities of each broker-dealer or large trader. For example, the Commission may require the Large Trader to disaggregate accounts or transactions of the other persons and Large Traders listed in Form 13H—Item 5(a). The Commission also may require the Large Trader to disaggregate accounts or transactions of the other Large Traders listed in Schedules 7b and 8.

All Large Traders That Control or Maintain Omnibus or Otherwise Undisclosed Accounts Have a Duty to Supervise These Accounts to Assure that Persons Effecting Transactions Through These accounts Comply with the Identification Requirements of Rule 13h-1 and to Assure That the Information Contained in Schedules 7b AND 8 is Accurate and Complete.

[FR Doc. 94-3427 Filed 2-16-94; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I, Subchapter B

[RM93-23-000]

Project Decommissioning at Relicensing; Extension of Time for Reply Comments

February 9, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry; extension of time for reply comments.

SUMMARY: On September 15, 1993, the Commission issued a notice of inquiry on a series of related questions that involve the decommissioning of licensed hydropower projects after the original license for the project has expired (58 FR 48991, September 21, 1993). The date for filing reply comments is being extended at the request of an interested commenter.

DATES: The date for filing reply comments is extended to and including March 7, 1994.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary (202) 208-0400.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3637 Filed 2-16-94; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-4837-9]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to designate a deep ocean disposal site (proposed SF-DODS) located off San Francisco, California, for the disposal of suitable dredged material removed from the San Francisco Bay and other nearby harbors or dredging sites. EPA has tentatively determined that the site designated in the Final EIS as the preferred site will be the site designated as SF-DODS in this proposed rule. The center of the proposed SF-DODS is located approximately 49 nautical miles (91 kilometers) west of the Golden Gate and occupies an area of approximately 6.5 square nautical miles (22 square kilometers). Water depths within the area range between 8,200 to 9,840 feet (2,500 to 3,000 meters). The center coordinates of the oval-shaped site are: 37° 39.0' North latitude by 123° 29.0' West longitude (North American Datum from 1983), with length (north-south axis) and width (west-east axis) dimensions of approximately 4 nautical miles (7.5 kilometers) and 2.5 nautical miles (4.5 kilometers), respectively. This action is necessary to provide an acceptable ocean dumping site for disposal of suitable dredged material, as determined by appropriate sediment testing protocols. The proposed designation of SF-DODS is for a period of 50 years, and a maximum of 6 million cubic yards of dredged material per year. Disposal operations will be prohibited if resources for implementing the site management and monitoring program are not available.

DATES: Comments must be received on or before March 21, 1994.

ADDRESSES: Send comments to: Mr. Allan Ota, Ocean Disposal Coordinator, U.S. Environmental Protection Agency, Region IX (W-7-3), 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744-1980.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Allan Ota, Ocean Disposal Coordinator, U.S. Environmental Protection Agency, Region IX (W-7-3), 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744-1980.

SUPPLEMENTARY INFORMATION:

The supporting document for this proposed designation is the *Final Environmental Impact Statement (EIS) for Designation of a Deep Water Ocean Dredged Material Disposal Site off San Francisco, California, August 1993*, which is available for public inspection at the following locations:

EPA, Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC.

EPA Region IX, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California.

ABAG/MTC Library, 101 8th Street, Oakland, California.

Alameda County Library, 3121 Diablo Avenue, Hayward, California.

Bancroft Library, University of California, Berkeley, California.

Berkeley Public Library, 2090 Kittredge Street, Berkeley, California.

Daly City Public Library, 40 Wembley Drive, Daly City, California.

Environmental Information Center, San Jose State University, 125 South 7th Street, San Jose, California.

Half Moon Bay Library, 620 Correas Street, Half Moon Bay, California.

Marin County Library, Civic Center, 3501 Civic Center Drive, San Rafael, California.

North Bay Cooperative Library, 725 Third Street, Santa Rosa, California.

Oakland Public Library, 125 14th Street, Oakland, California.

Richmond Public Library, 325 Civic Center Plaza, Richmond, California.

San Francisco Public Library, Civic Center, Larkin & McAllister, San Francisco, California.

San Francisco State University Library, 1630 Holloway Avenue, San Francisco, California.

San Mateo County Library, 25 Tower Road, San Mateo, California.

Santa Clara County Free Library, 1095 N. Seventh Street, San Jose, California.

Santa Cruz Public Library, 224 Church Street, Santa Cruz, California.

Sausalito Public Library, 420 Litho Street, Sausalito, California.

Stanford University Library, Stanford, California.

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA authority to designate sites where ocean dumping may be permitted. On October 1, 1986 the Administrator delegated authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the EPA Region in which the sites are located. The proposed SF-DODS designation action is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR 228.4) state that ocean dumping sites will be designated by publication pursuant to 40 CFR part 228. Thisproposed site designation is being published as a proposed rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material. Interested persons may participate in this proposed rulemaking by submitting written comments within 30 days of the date of this publication to the address given above.

The center of the proposed SF-DODS is located approximately 49 nautical miles (91 kilometers) west of the Golden Gate and occupies an area of approximately 6.5 square nautical miles (22 square kilometers). Water depths within the area range between approximately 8,200 to 9,840 feet (2,500 to 3,000 meters). The center coordinates of the oval-shaped site are: 37° 39.0' North latitude by 123° 29.0' West longitude (North American Datum from 1983), with length (north-south axis) and width (west-east axis) dimensions of approximately 4 nautical miles (7.5 kilometers) and 2.5 nautical miles (4.5 kilometers), respectively. EPA Region IX now proposes to designate SF-DODS as an ocean dredged material disposal site for continued use for a period of 50 years and not to exceed 6 million cubic yards of dredged material in any one year period. Site use is subject to a Site Management and Monitoring Plan (SMMP), of which the goals and objectives are described in the Final EIS and summarized in Section G below. A draft SMMP will be made available for public review through a separate Public Notice process. The draft SMMP, currently under development, incorporates a tiered site monitoring structure and MPRSA section 103 permit review. The SMMP will available from the EPA Region IX office address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions.

A notice of availability of the Draft EIS was published in the **Federal Register** on December 11, 1992 discussing EPA Region IX's intent to designate a deep water ocean dredged material disposal site off San Francisco (57 FR 58805). EPA Region IX prepared a Draft EIS titled: Draft Environmental Impact Statement (EIS) for San Francisco Bay Deep Water Dredged Material Disposal Site Designation. The comment period ended on January 25, 1993. EPA Region IX received 35 comment letters on the Draft EIS and incorporated changes where appropriate. On September 10, 1993, notice of availability for public review and comment on the Final EIS was published in the **Federal Register** (58 FR 47741). The comment period for the Final EIS ended on October 29, 1993. Anyone desiring a copy of the proposed rule or the Final EIS may obtain them from the EPA Region IX office address given above.

C. Responses to Final EIS Comments

During the public comment period on the Final EIS, which closed on October 29, 1993, EPA Region IX received 9 comment letters. The following substantive comments were discussed in these letters.

1. Fisheries Valuation

The National marine sanctuaries (Gulf of the Farallones National Marine Sanctuary, Cordell Bank National Marine Sanctuary, and Monterey National Marine Sanctuary/North) commented that the values presented in the Final EIS for fisheries valuation were inaccurate.

Response: These fisheries values, extracted from published documents, represented total estimated values for the different fisheries. EPA Region IX recognizes that calculated values for these fisheries will vary according to the methods used. However, the comparison of the alternative sites and selection of the preferred alternative site with respect to fisheries was based on landings (abundance) of all important commercial and recreational fish and did not require the use of assigned fisheries values. EPA Region IX, with concurrence by the California Department of Fish and Game (CDFG), determined that the existing and potential fisheries resources within Alternative Site 5 are minimal and the site is removed from more important fishing grounds located near Alternative Sites 3 and 4.

2. Beneficial Use of Dredged Material

The Department of Water Resources (DWR) commented on the importance of beneficial use of dredged material as an option acknowledged in the Final EIS.

DWR elaborated on the successes of demonstration projects for levee maintenance which showed no adverse impacts on soil and water quality resulting from the placement of marine sediments.

Response: EPA Region IX acknowledges these and other successes and expects that all beneficial use options will be evaluated further by the Long Term Management Strategy (LTMS) through the development of the Policy and Programmatic EIS/EIR. The availability of specific opportunities for beneficial use of dredged material will be evaluated on a case-by-case (permit-by-permit) basis before an ocean disposal permit is issued.

3. Incorporation of the Site Management and Monitoring Plan (SMMP) into the Final EIS

The CDFG commented that the SMMP "be joined to the Final EIS through either the Federal rule-making process or supplemental (NEPA) process."

Response: The purpose of the Final EIS is to analyze alternative disposal sites. EPA Region IX shares the concerns that CDFG, the National Marine Sanctuaries, and other public interest/environmental groups have about adequate management and monitoring of the proposed SF-DODS during disposal activities. It is Region IX's intent to implement a site management and monitoring plan for the life of proposed SF-DODS. EPA Region IX will commit to implementing an adequate SMMP in the rule-making and the Record of Decision.

4. Piecemealing of Project

Coastal Advocates commented that by designating an ocean disposal option in advance of the LTMS completing work on the other disposal alternatives, EPA and the LTMS program have effectively eliminated upland disposal and other options in the near-term. Response: EPA Region IX recognizes that the LTMS continues to evaluate other disposal options, including upland disposal. Nothing in the proposed ocean disposal site designation affects those efforts, or existing disposal sites within San Francisco Bay managed under provisions of the Clean Water Act. In addition, it should be noted that designation of an ocean site does not constitute a permit to dispose any dredged material at that site. Each project will be evaluated for compliance with the Ocean Dumping criteria (40 CFR part 227) before any disposal can occur at the proposed SF-DODS. Furthermore, it is EPA's intent to encourage beneficial use of material wherever possible and approve ocean disposal of suitable material only when necessary.

5. Need for Ocean Dumping

Coastal Advocates commented that the analysis in the Final EIS for the need for ocean dumping was faulty "because it does not take into account the recent military base closures in the Bay Area."

Response: EPA Region IX recognizes that base closures could have a long-term effect on the need for dredging and ocean disposal. However, even if the long-term need for ocean dumping is substantially reduced by base closures, which is speculative, presently available information appears to indicate that the proposed SF-DODS will still be needed. It appears reasonably certain that there will be substantial dredging projects at the various Bay area commercial ports, among other facilities, in the next fifty years which will generate large amounts of dredged material. Present information indicates that a substantial portion of these dredged sediments would be expected to be suitable for ocean disposal. The end result is the overall need for ocean dumping presented in the Final EIS may or may not be significantly affected in the short-term or long-term. In any event, the actual need for ocean dumping is determined on a project-by-project basis at the time of permitting.

6. Current Navy Project Classified as Historical Dumping

Coastal Advocates commented that the Navy's use of the disposal site concurrent with EPA's site designation prejudices the decision process and is a violation of NEPA.

Response: It should be noted that the Navy's use of their disposal site is permitted under section 103 of MPRSA following a NEPA process which included an EIS and Supplemental EIS for their project-specific use only, separate from EPA's site designation activities. Following extensive field studies of the region, the preferred site for long-term use (section 102 of MPRSA) was selected by EPA for several reasons, including the determinations of: a depositional environment and local topographic containment features; no expected significant impacts to other resources or amenity areas, such as national marine sanctuaries; minimal existing and potential fisheries relative to more important fishing grounds located in or near the other alternative sites; lower abundances and biomass of demersal fishes, megafaunal invertebrates, and infaunal invertebrates; no expected significant impacts to surface and midwater dwelling organisms, including seabirds, mammals, and midwater fishes; and previous degradation of the environment within the preferred alternative site as a result of historical disposal of low-level radioactive wastes and chemical and conventional munitions in the vicinity of the preferred alternative site. In accordance with EPA's ocean site selection criteria (40 CFR 228.5(e)), EPA Region IX classified the preferred dredged material disposal site as a historically-used site based in part on the aforementioned historical dumping activities in the vicinity of the preferred site. The proposed selection of the preferred alternative site coincides with the Navy's decision to identify this site as its Preferred Alternative for dredged material disposal. Finally, it is important to note that EPA's proposed Preferred Alternative was presented to the LTMS Ocean Studies Work Group (OSWG) and received the consensus approval of this work group. The OSWG, which has been an integral part of the site designation process, is comprised of Federal and State agencies, and numerous public interest groups, including local recreational and commercial fishing associations and environmental groups. All of these groups have an active interest in the potential impacts of dredged material management within the San Francisco Bay area.

7. Specific Ocean Dumping Criteria

Coastal Advocates commented that EPA did not satisfy specific criteria of the Ocean Dumping Regulations (40 CFR 228.6), including: an inadequate assessment of impacts to recreational tuna fishing (§ 228.6(a)(2)); an inadequate assessment of radioactivity in San Francisco Bay sediments (§ 228.6(a)(4)); inadequate modeling of dredged material disposal plumes §§ 228.6(a)(2) and 228.6(a)(8); a flawed assessment of biological effects of dumping of contaminated dredged material (§ 228.6(a)(9); and a lack of consideration of adverse impacts to the microlayer (§ 228.6(a)(9)).

Response: Region IX has carefully considered in the Final EIS the important factors required to satisfy the specific site selection criteria. Site designation does not constitute a permit to dispose of any dredged material. The Corps is the permitting agency for dredged material disposal applications and EPA has a joint approval role in determining the suitability of dredged material proposed for ocean disposal. Proposed dredged sediments are evaluated on a project-by-project basis with a rigorous suite of physical, chemical, and bioassay tests, involving statistical comparisons to an appropriate uncontaminated reference site. Sediments that fail the testing criteria are deemed unsuitable and are prohibited from ocean disposal. With respect to impacts to recreational tuna fishing, EPA Region IX determined that the impacts of disposal plumes would be transient and insignificant to these highly mobile pelagic fish which usually are abundant in the area only in the fall. The U.S. Navy performed project-midpoint monitoring activities in the vicinity of the Preferred Alternative as required by their MPRSA section 103 permit which confirmed the transient nature of the disposal plumes. Although radioactivity has not routinely been assessed, if historical information or other evidence suggests such contamination, certain radioactive isotope measurements can be required by EPA in addition to the other aforementioned tests to determine suitability of the proposed dredged material. With respect to modelling of the disposal plume and sediment footprint on the seafloor, EPA Region IX used conservative values for model parameters to obtain results under worst case (highly dispersive) conditions. Water column modelling showed that concentrations of sediments in the water column would be within background levels at the boundaries of the marine sanctuaries, while the footprint modelling showed that any deposits of sediment in the marine sanctuaries would be at the limits of detection at best under optimal conditions. Furthermore, the footprint model does not account for biological activity which would mix the deposited sediment into the native seafloor sediments. The Navy's project-midpoint monitoring studies have largely confirmed the predictions of the fate of the plume and footprint. EPA has performed an extensive evaluation of available information on potential impacts to sea surface microlayer (including an experts' workshop), and concluded that the environmental significance of microlayer contamination has not been clearly established even for enclosed waters. The concern for microlayer effects is largely based on theoretical arguments, laboratory bioassays, and limited field studies. The potential for microlayer effects depends largely on: contaminant concentrations, lack of surface turbulence, degree to which the water body is enclosed or restricted, and proximity to important areas containing neustonic populations that may be exposed. Because the potential significance of microlayer contamination has not been clearly established in relatively enclosed water bodies such as Puget Sound, the potential effects are expected to be much less for disposal activities in the more turbulent and unrestricted offshore oceanic environment. In addition, highly contaminated material will not be approved for disposal in ocean waters.

8. Requirements of the Endangered Species Act (ESA)

Coastal Advocates commented that the documents prepared for the ESA coordination in the Final EIS did not comply with section 7(a)(2) of the ESA, 16 U.S.C. 1536(a)(2).

Response: In accordance with the aforementioned ESA, EPA Region IX formally consulted with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and California Department of Fish and Game to identify any threatened, endangered, or special status species that may be affected by the proposed designation of the SF-DODS. Reviewing all available data, including information from the Final EIS requested by these agencies, concurrence was received from the three agencies that there would be no adverse impacts to local endangered species from the designation of the proposed SF-DODS.

9. Proposed Selection of Preferred Site

Ocean Advocates commented that the preferred alternative is not acceptable for ocean dumping of contaminated material because of: the highly dispersive nature of the waters at the site; its use as a spawning, nursery, feeding and passage area for living resources; its close proximity to three marine sanctuaries; the infeasibility of monitoring; and lack of adequate baseline data.

Response: Site designation does not constitute a permit to dispose of any dredged material. Each project will be evaluated on a case-by-case basis. Rigorous testing of the proposed dredged sediments as described in the response to comment #7 above, will ensure that toxic or highly contaminated dredged materials will not be disposed at the designated disposal site. Although oceanic environments tend to be more dispersive than enclosed water bodies, conservative modeling indicates that there would be insignificant impacts from dredged material disposal, as described in the response to comment #7. EPA's water column modeling predicted that concentrations of dredged materials following disposal would decrease rapidly to background levels and that overall impacts to the local environment would be insignificant. More recent Navy mid-project monitoring has confirmed these expectations of intermittent and short-term impacts. Therefore, impacts to spawning, nursery, feeding and passage areas for living resources are expected to be minor and temporary. The preferred alternative site is located north of the other alternative sites and is the closest to GFNMS and CBNMS. Despite the proximity to the marine sanctuaries, physical oceanographic studies indicate that the predominant currents are north-northwest and are weaker than the currents in the vicinity of the other alternative sites. These oceanographic conditions would be expected to prevent any movement of suspended sediments into the National marine sanctuaries. As described in the response to comment #7, modelling results indicate that suspended sediment transport is insignificant. The recent Navy mid-project monitoring efforts clearly shows that monitoring of the site is feasible, particularly with respect to the most difficult technical tasks related to the deep water depths such as identification of the sediment footprint on the seafloor. With regard to baseline data, EPA Region IX carefully evaluated all of the important relevant data for the region and identified data gaps. An Ocean Studies Plan (OSP) was developed jointly with the regional scientists of the OSWG, and approved by the LTMS Policy Review Committee. The OSP described appropriate field studies necessary to fill those data gaps. The results of these field studies and previous studies in the region provide the most comprehensive collection of data characterizing the Gulf of the Farallones region to date.

D. Alternatives Analysis

The action discussed in this Proposed Rule is the proposed designation of the Preferred Alterative selected in the Final EIS (proposed SF-DODS) for disposal of suitable dredged material from the San Francisco Bay region over 50 years. The LTMS planning estimate is that up to 400 million cubic yards will be dredged in this period; however, the proposed SF-DODS will be limited to a maximum disposal volume of 6 million cubic yards of dredged material in any one year period. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal, as part of the Long Term Management Strategy (LTMS) for dredged material from this region. Approval of specific ocean dredged material disposal permit applications is a completely separate process from site designation. MPRSA section 103 permit applications are reviewed on a case-by-

case basis to determine whether the proposed dredged materials are suitable for disposal at proposed SF-DODS.

The Final EIS discussed the need for the site designation and examined a range of alternatives to the proposed action, including 3 alternative deepwater ocean disposal sites. All disposal options, including upland, in-bay, and ocean disposal alternatives, and LTMS management policies are being evaluated in a separate LTMS Policy EIS/EIR. The upland and in-bay sites are limited in capacity relative to the ocean site for disposal of large volumes of suitable dredged material. Disposal alternatives for individual projects will be evaluated by EPA Region IX and the Corps' San Francisco District on a case-by-case basis during the permitting process. The following ocean disposal alternatives were evaluated in the Final EIS:

1. No Action–Selection of this alternative would prevent final designation of the proposed SF-DODS site. Failure to designate a permanent ocean disposal site pursuant to section 102 of the MPRSA would have significant negative consequences. First, the continued foreseeable need to have some place to dispose of sediments from various San Francisco Bay dredging projects would place pressure on the Corps and EPA to approve on a project-by-project basis the use of temporary in-Bay or ocean dumping location pursuant to either Clean Water Act section 404 or MPRSA section 103. Approval of dredged material disposal via these mechanisms would be less desirable in that dump site selection would not be made in the context of long-term comprehensive planning. The advantages of the latter, the limiting of dumping to a single location and the consideration of cumulative impacts and cumulative needs for dumping could be lost if dump site are selected piecemeal on a project-by-project basis. The LTMS mission is to provide long-term options, including ocean disposal, to accommodate the dredged material volumes and compositions anticipated for the 50-year planning period. Second, the Water Resources Act of 1992 prohibits the continued use of ocean dump sites which have not been designated by EPA as section 102 dump sites by the end of 1997. If EPA fails to designate the proposed SF-DODS by that date, then ocean disposal of dredged materials taken from San Francisco Bay projects will be effectively precluded. It appears from current information that there is a substantial probability that there will not be sufficient capacity available in alternative disposal options to accommodate sediments from currently contemplated dredging projects. Accordingly, the lack of an ocean disposal site could delay or preclude several economically important dredging projects.

2. Alternatives Not Considered for Further Analysis (Study Area 1 and Study Area 2)–Study Area 1, corresponding to the Channel Bar ODMDS is only designated for disposal of sandy material from the San Francisco Bay entrance channel. The LTMS considered changing the designation of this ODMDS to accept sand from other dredging projects in the Bay, but decided that the amount of potentially suitable material would be too small to warrant redesignating the site. Based on this decision, EPA proposes to eliminate Study Area 1 from further consideration. Study Area 2 originally was included as a candidate location on the continental shelf, and was subjected to considerable study effort. Nevertheless, based on its location within the Monterey Bay National Marine Sanctuary (MBNMS) and because dredged material disposal at a new ODMDS within the MBNMS is prohibited, EPA proposes to eliminate Study Area 2 from further consideration as an alternative.

3. Deepwater Alternative Site 3–This site is located approximately 47 nautical miles (87 kilometers) from the Golden Gate in an area where depths range approximately 4,590 to 6,230 feet (1,400 to 1,900 meters). EPA proposes to eliminate this site from further consideration, primarily because of its proximity to Pioneer Canyon and associated hardbottom areas.

4. Deepwater Alternative Site 4–This site is located approximately 50 nautical miles (93 kilometers) from the Golden Gate in an area where depths range approximately from 6,230 to 6,900 feet (1,900 to 2,100 meters). EPA proposes to eliminate this site from further consideration, primarily because of its proximity to Half Moon Bay and its high usage as commercial fishing grounds as compared to Alternative Site 5.

5. Deepwater Alternative Site 5 (Preferred Alternative)–EPA proposes to select this site (proposed SF-DODS) as the preferred alternative based on comparisons of the alternative sites to the specific selection criteria. Alternative Site 5 is located furthest from the coast (approximately 49 nautical miles west of the Golden Gate) and in the deepest depth range (approximately 8,200 to 9840 feet, or 2,500 to 3,000 meters). Bathymetric and sediment surveys indicate Alternative Site 5 is located in a depositional area which, because of existing topographic containment features, is likely to retain dredged material which reaches the sea floor. No significant impacts to other resources or amenity areas, such as marine sanctuaries, are expected to result from designation of Alternative Site 5. Existing and potential fisheries resources within Alternative Site 5 are minimal and the site is removed from more important fishing grounds located closer to the other alternative sites. Abundances and biomass of demersal fishes and megafaunal invertebrates, as well as abundances and diversity of infaunal invertebrates, at Alternative Site 5 are lower than those at the other alternative sites. Potential impacts to surface and mid-water dwelling organisms, such as seabirds, mammals, and midwater fishes, are expected to be insignificant. Finally, disposal of low-level radioactive wastes and chemical and conventional munitions occurred historically in the vicinity of Alternative Site 5. Disposal within the site has also occurred as part of a Navy MPRSA section 103 permit approved for up to 1.2 million cubic yards of suitable dredged material.

The Final EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation of proposed SF-DODS and is based on a disposal site environmental study. The proposed rule is being promulgated in accordance with MPRSA, the EPA Ocean Dumping Regulations, and other applicable Federal environmental legislation. A separate Record of Decision (ROD) will be prepared prior to or as part of the issuance of the Final Rule for this site designation.

E. Site Designation

Today EPA Region IX proposes to designate SF-DODS as a deepwater ocean dredged material disposal site. The center of the proposed SF-DODS is located approximately 49 nautical miles (91 kilometers) west of the Golden Gate and occupies an area of approximately 6.5 square nautical miles (22 square kilometers). Water depths within the area range between 8,200 to 9,840 feet (2,500 to 3,000 meters). The center coordinates of the oval-shaped site are: 37° 39.0' North latitude by 123° 29.0' West longitude (North American Datum from 1983), with length (north-south axis) and width (west-east axis) dimensions of approximately 4 nautical miles (7.5 kilometers) and 2.5 nautical miles (4.5 kilometers), respectively.

Designation of the proposed SF-DODS is for use over a 50-year period and not to exceed 6 million cubic yards of dredged material in any one year period, subject to a Site Management and Monitoring Plan, which will be issued through a separate Public Notice. Annual reports will be prepared on the results of site monitoring. If disposal operations at the site are shown to cause unacceptable adverse environmental impacts, further use of the site will be restricted or terminated. A suitable alternative disposal site may be designated by EPA in this event. Disposal operations will be prohibited if funds and equipment for implementing the site management and monitoring program are not available.

F. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use (40 CFR 228.5). Sites are selected to minimize interference with other marine activities, to keep any temporary perturbations from causing impacts outside the disposal site, and to permit effective monitoring which is designed to evaluate specific areas of concern, such as water quality impacts, significant movement of sediment outside the site and unacceptable impacts to the marine environment or human health. Where feasible, locations off the continental shelf and historical sites are chosen. The 11 specific site selection criteria are listed in 40 CFR 228.6(a) of the EPA Ocean Dumping Regulations. These specific factors are used to evaluate all candidate disposal sites.

The proposed SF-DODS site, as discussed below under the 11 specific factors, is acceptable under the 5 general criteria (40 CFR 228.5). The 5 general criteria and the 11 specific criteria overlap such that if a site meets the latter it necessarily meets the former. Historical disposal in the vicinity of the preferred site has not resulted in significantly adverse effects on fisheries, living resources of the ocean, or other uses of the marine environment.

1. Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1))

The center of the proposed SF-DODS is located approximately 49 nautical miles (91 kilometers) west of the Golden Gate and occupies an area of 6.5 square nautical miles (22 square kilometers). Water depths within the area range between 8,200 to 9,840 feet (2,500 to 3,000 meters). The center coordinates of the oval-shaped site are: 37° 39.0' North latitude by 123° 29.0' West longitude (North American Datum from 1983), with length (north-south axis) and width (west-east axis) dimensions of approximately 4 nautical miles (7.5 kilometers) and 2.5 nautical miles (4.5 kilometers), respectively.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The proposed SF-DODS site provides feeding and breeding areas for common resident benthic species. Floating larvae and eggs of various species are expected to be found at and near the water surface at the site as well as the other sites. Designation of the site will not affect any geographically limited habitats, breeding sites or critical areas that are essential to commercially important species or rare or endangered species.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)

The proposed SF-DODS site is approximately 49 nautical miles (91 kilometers) west of the Golden Gate, 30 nautical miles (56 kilometers) from Pioneer Canyon, 10 nautical miles (19 kilometers) from the Gulf of the Farallones National Marine Sanctuary boundary, and 30 (56 kilometers) nautical miles from the Farallon Islands. EPA Region IX and the Corps' San Francisco District have determined that aesthetic impacts of plumes, transport of dredged material to any shoreline and alteration of any habitat of special biological significance or marine sanctuary will not occur if this site is designated.

Ocean currents flow primarily to the northwest in the upper 2,600 to 3,000 feet (800 to 900 meters) of the water column, although periodic reversals in flow occur. Currents below 3,000 feet (900 meters) are generally weaker than near-surface currents. Therefore, any residual suspended solids from the proposed SF-DODS site will move primarily in the north-northwest direction. Initial water column modeling results using a conservative approach and assuming disposal of 6 million cubic yards of dredged sediments per year indicate that suspended solid levels would decrease to background levels by the time the plume reaches the nearest amenity area (GFNMS boundary). Initial footprint modeling using a conservative approach and assuming disposal of 6 million cubic yards of dredged sediments per year indicates that the majority of the disposed material would be deposited within the disposal site.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste if Any (40 CFR 228.6(a)(4))

Site use over a 50-year period is not to exceed 6 million cubic yards of suitable dredged material per year. The projected volumes are based on historical annual maintenance dredging volumes and projected new work projects in the San Francisco Bay region which could be considered for disposal at the ocean site if the material is determined to suitable for ocean disposal. The anticipated military base closures may reduce the LTMS planning estimates for the total volume of material expected to be dredged over a 50-year period. However, the overall impact of base closures may be offset by other new projects, such as expansion of commercial port facilities in areas vacated by the military. Composition of dredged material is expected to range between two types: predominantly "clay-silt" (e.g., 74% clay, 5% silt, 21% sand) versus "mostly sand" (e.g., 3% silt, 21% clay, 76% sand). These material types are based on data from historical projects from the San Francisco Bay region. The expected disposal method would involve split-hull barges, with capacities ranging between 1,000 to 6,000 cubic yards, which would be towed by ocean-going tugboats. The actual amount of disposal may vary from the annual average for any given year. EPA Region IX and the Corps' San Francisco District will evaluate and manage the amount of dredged material proposed for disposal at proposed SF-DODS through the MPRSA section 103 permit process.

All dredged material proposed for disposal at the site must be suitable for ocean disposal. This determination will be made by EPA Region IX and the Corps' San Francisco District based upon the results of physical, chemical and biological tests before a MPRSA section 103 permit can be issued. Certain dredged material may be exempted from chemical and biological testing based upon the physical characteristics of the sediments and their location in relation to sources of contamination (40 CFR 227.13(b)(1)). Dumping of prohibited materials or other industrial or municipal wastes will not be permitted at the site (40 CFR 227.5 and 227.6(a)).

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

Surveillance and monitoring of the dredged material disposal site involves several agencies. The U.S. Coast Guard

(U.S.C.G) is the Federal agency with authority to conduct onsite surveillance and monitoring of vessels involved in disposal activities at sea. For dredged material disposal, this monitoring would be to determine that the vessels dump the material at the designated disposal site. EPA Region IX and the Corps' San Francisco District share the responsibilities of managing and monitoring the disposal site, and, with the onsite assistance of the U.S.C.G, to enforce permit conditions within the limits of their jurisdiction. Recent Navy mid-project monitoring activities have clearly confirmed the feasibility of surveillance and monitoring at the proposed SF-DODS. A Site Management and Monitoring Plan (SMMP) is under development by EPA Region IX and the Corps' South Pacific Division and San Francisco District. The goals and objectives of the SMMP are summarized in Section G. below. The SMMP will be issued through a separate Public Notice.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))

Ocean currents flow primarily to the northwest in the upper 2,600 to 3,000 feet (800 to 900 meters) of the water column, although periodic reversals in flow occur. Currents below 3,000 feet (900 meters) are generally weaker than near-surface currents. Therefore, any residual suspended solids from the proposed SF-DODS will move primarily in the north-northwest direction. Near-bottom flows may be enhanced by tidal influences and bottom topography. However, sediment resuspension from the seafloor within the preferred site is expected to be minimal. Initial water column modeling results, as indicated in the Final EIS, using a conservative approach (e.g., modeling parameters adjusted for worst case conditions) and assuming disposal of 6 million cubic yards of dredged sediments per year, indicate that suspended solid levels would decrease to background levels when the plume reached the nearest amenity area (GFNMS boundary). Initial footprint modeling using a conservative approach and assuming disposal of 6 million cubic yards of dredged sediments per year indicate that the majority of the disposed material would be deposited within the disposal site.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7)

Under an MPRSA section 103 permit, the Navy is discharging up to 1.2 million cubic yards of dredged material at their Navy disposal site which is contained within the EPA-preferred Alternative Site 5. No other documented disposal of dredged material has occurred within the site. However, disposal of radioactive waste containers was conducted in the vicinity of Alternative Site 5 from 1951–1954. Likewise, chemical and conventional munitions were disposed from approximately 1958 to the late 1960's at the Chemical Munitions Disposal Area. There was no evidence during the site designation field studies of residual contamination. Therefore, potentials for cumulative impacts are considered unlikely.

The associated municipal discharge effects from the San Francisco Southwest Ocean Outfall (5.4 nautical miles or 10.2 kilometers from shore), City of Pacifica Outfall (0.4 nautical miles or 0.8 kilometers from shore), and Northern San Mateo County Outfall (0.4 nautical miles or 0.8 kilometers from shore) are limited to local areas near the outfalls and do not extend to the vicinity of the dredged material disposal site. Discharges of dredged material at the Channel Bar ODMDS (3.0 nautical miles or 5.6 kilometers from shore) are also limited to local areas and not expected to result in farfield impacts. Ocean disposal of acid waste, cannery waste, and refinery waste was discontinued approximately 20 years ago (in 1971–1972), and presence of residual waste which could interact with discharged dredged material to produce cumulative, adverse, environmental effects has not been detected.

8. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 288.6(a)(8))

Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other uses of the ocean as a result of disposal operations is expected to be minimal because of the already high volume of ship traffic through the region. From 1980–1991, the total vessel transits in the San Francisco Bay region ranged from approximately 61,000 to 91,000. As an example of a worst case scenario, assuming around-the-clock disposal operations (assuming 3 trips in a 24-hour period), disposal operations would augment the vessel traffic by less than 2 percent. Compared to Alternative Sites 3 and 4, Site 5 is less utilized as a fisheries resource area. In addition, the potential interferences with recreational and scientific boat traffic and marine resources (e.g., birds and mammals) near the Farallon Islands will be minimized by requirements that barges remain at least 3 nautical miles from the Islands. Under normal conditions, no interference with areas of special importance is expected. However, accidents resulting in releases of material near the Farallones may be a concern. This will also be mitigated by requiring barges to remain 3 nautical miles from the Islands and by requiring appropriate load limits based on sea conditions.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Regional studies described in the Final EIS provide the following determinations. Water quality at the proposed SF-DODS is indistinguishable from the water quality of nearby areas. Sediments contain background levels or low concentrations of trace metal and organic contaminants. The demersal fish community within Alternative Site 5 have lower numbers of species and abundances (rattails, eelpouts, finescale codling) than the other alternative sites. Alternative Site 5 contain moderate numbers of megafaunal invertebrate species but lower overall abundances (sea cucumbers, brittlestars, sea pens) compared to the other alternative sites. Infaunal invertebrates within Alternative Site 5 show lower diversity and abundance (polychaetes, amphipods, isopods, tanaids) compared to Alternative Sites 3 and 4. There have been higher numbers of sightings of marine birds and mammals within Alternative Site 5 relative to the other alternative sites. Mid-water organisms, including juvenile rockfishes, are abundant seasonally within Alternative Site 5 relative to Alternative Sites 3 and 4.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

It is unlikely to see recruitment of nuisance species from the disposal of dredged material due to significant differences in water depth and environment at the disposal site as compared to the relatively shallow dredging sites in the San Francisco Bay region. Local opportunistic benthic species characteristic of disturbed conditions are expected to be present and abundant at any ODMDS in response to physical deposition of sediments. Opportunistic polychaetes, such as *Capitella*, may colonize the

disposal site. These worms can become food items for bottom-feeding fish and are not directly harmful to other species. No recruitment of species capable of harming human health or the marine ecosystem is expected.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11))

The California State Historic Preservation Officer has determined there are no known historic shipwrecks nor any known aboriginal artifacts at the proposed SF-DODS or in the vicinity.

G. Site Management and Monitoring Plan

A Site Management and Monitoring Plan for the proposed SF-DODS is under development by EPA Region IX and the Corps' South Pacific Division and San Francisco District with input from the OSWG. The practicability of implementing a SMMP at the proposed SF-DODS has been confirmed by the recent mid-project MPRSA section 103 permit monitoring activities performed by the Navy at the Navy disposal site which is contained within the proposed SF-DODS. The completed document will be made available for public review through a separate Public Notice process and will available upon request from EPA Region IX. For this Proposed Rule, the major components of the SMMP (including goals, objectives, and criteria) are summarized below.

a. Data for site management will be provided by a tiered site monitoring program which consists of three interdependent modules: a Physical Monitoring Module, a Biological Monitoring Module, and a Chemical Monitoring Module. The Physical Monitoring Module will provide information about the plume behavior in the water column and dredged material footprint on the sea floor. The Biological Monitoring Module provides information about any detectable effects of the water column plume on sea birds, marine mammals, and mid-water fishes. In the event that significant amounts of dredged material (i.e., greater than 5 centimeters) extends outside of the designated site, any detectable impacts on the benthos shall be investigated. The Chemical Monitoring Module provides data on sediment quality and will evaluate any potential bioaccumulation of contaminants in benthic organisms if monitoring indicates that substantially elevated concentrations of contaminants exist in the sediments. Tier 1 monitoring studies shall be performed annually if dredged material disposal occurs at the proposed SF-DODS and will include portions of each module. Initiation of subsequent studies under Tiers 2 and 3 shall be based on exceedances of parameters in Tier 1, as specified in the SMMP.

(1) Annual Tier 1 monitoring activities shall involve physical, chemical, and biological assessments. These activities shall be initiated after a period of one year of disposal activities or disposal of 6 million cubic yards of dredged materials, whichever comes first. A minimum volume of dredged material disposed in any one year period may be established as a trigger for conducting the annual surveys of the footprint, based on ability to identify the dredged material layer within the disposal site. A physical survey of the disposal site shall be conducted to determine whether disposed dredged material is remaining at the proposed SF-DODS site. Sediment mapping techniques (utilizing appropriate technology, such as sediment profile photography) shall be used to determine the areal extent and thickness of the dredged material deposit footprint relative to the disposal site boundaries. Following the physical mapping of the sediment footprint, boxcore samples for sediment chemistry and benthos shall be taken within the footprint and in unaffected areas surrounding the footprint. If a ecologically significant thickness of dredged material (5 centimeters) is not identified outside the boundary of the disposal site, then no management actions (relating to physical monitoring) will be necessary. On the other hand, if significant thicknesses of dredged material are detected outside the site boundary, then management actions (e.g., reevaluation of the site boundary, or restricting or stopping disposal) and/or additional field studies (Tier 2) shall be implemented to evaluate potential impacts of the dredged material deposits outside of the disposal site. The sediment chemistry samples shall be analyzed as a conservative measure to assess any long-term accumulation of contaminants as a result of dredged material disposal. If contaminant trigger levels are not exceeded, then no management actions (relating to chemical monitoring) will be necessary. If contaminant trigger levels are exceeded, then management actions (e.g., restricting or stopping disposal) and additional field studies (Tier 2) shall be implemented to evaluate the potential impacts. Biological monitoring will be based primarily on continued collection and assessment of trends of time-series data for marine birds and mammals and midwater fishes in the Gulf of the Farallones region. Periodic shipboard observations (which could be required in the permit, as appropriate) taken from the vessels involved in disposal operations will provide additional data on any potential impacts to these organisms. If no significant negative trends are detected and shipboard observations do not indicate that adverse impacts are occurring as a result of disposal activities, then no management actions (relating to biological monitoring) will be necessary. If statistically significant negative trends are detected or shipboard observations indicate that adverse impacts are occurring as a result of disposal activities, then management actions (e.g., restricting or stopping disposal) and additional field studies (Tier 2) shall be implemented to assess potential impacts.

(2) Tier 2 monitoring shall occur based on management decisions in Tier 1 as described above with consideration of study options, including collection of additional data to further evaluate the potential physical, chemical, and biological impacts of dredged material dispersed in the water column and deposited outside of the proposed SF-DODS on sensitive water column and benthic biological resources of concern. If warranted, additional physical oceanographic studies shall be conducted to improve the models used to predict the dispersion and deposition of dredged material at the disposal site. These additional studies may include: the collection of additional current meter data, deployment of sediment traps, and deployment of Lagrangian drifters. If the additional data indicate that no detectable (above background) concentrations of material are entering the sanctuaries, then no management actions would be necessary. If the data do indicate significant elevated concentrations of sediments are entering the sanctuaries, then management actions (e.g., restricting or stopping disposal) shall be implemented. The benthic resources of concern include infauna, epifauna and demersal fishes identified in the Final EIS and in the 1985 to 1987 fish block data from the California Department of Fish and Game. The benthic community within the sediment footprint will be compared to benthic communities in adjacent areas outside of the footprint. Additional monitoring activities in a higher tier (Tier 3) may not be necessary if a management decision can be made with the data obtained from the benthic community comparisons. If more data are needed to make a management decision, Tier 3 monitoring shall be

initiated with consideration of options, including testing for bioaccumulation of contaminants in tissues of appropriate benthic and/or epifaunal organisms. EPA and the Corps, in consultation with the OSWG, will determine the appropriate sampling methodologies for marine birds and mammals based on results of the Physical Monitoring Module in Tiers 1 and 2.

(3) Tier 3 monitoring shall be conducted if chemical and/or biological triggers are exceeded in Tier 2. This tier involves the assessment of benthic body burdens of contaminants and correlation with comparison of the benthic communities inside and outside of the sediment footprint. EPA Region IX will determine whether the proposed SF-DODS is a source of significant bioaccumulation in the tissues of benthic species collected at the proposed SF-DODS compared to adjacent unimpacted areas. These data will be used to determine: the continuing use of the proposed SF-DODS; the management options to further limit disposal times, quantities or characteristics of the dredged material; or the possible closure of the site after another site is designated.

b. Guidelines for site use included in the Site Management and Monitoring Plan are:

(1) Use of the site shall be restricted to disposal of dredged sediments only, regulated under section 103 of MPRSA.

(2) All sediments proposed for dredging must be determined to be suitable for ocean disposal by EPA Region IX and the Corps' San Francisco District in accordance with the 1991 EPA/Corps Green Book and Region Implementation Manual. Suitability for ocean disposal will be determined after review of the results of physical, chemical and biological testing of the sediments, except those sediments specifically exempted under the regulations (40 CFR 227.13(b)(1,2,3)) from such testing. When the material does not qualify for an exemption, testing and reporting procedures shall be conducted as described in procedures approved by EPA Region IX and the Corps' San Francisco District.

(3) No dredged material will be disposed at the proposed SF-DODS without a MPRSA section 103 permit issued by the Corps' San Francisco District, or as authorized in a Corps' Civil Works project. All such permits or Corps' Civil Works projects are subject to the approval of EPA Region IX. All disposal operations shall be carried out according to special conditions and other procedures set out in the MPRSA section 103 permits or specifications of the Corps' Civil Works project.

(4) If the dredged material is shown to form significant surface plumes, the timing of disposal operations may be restricted in any 24-hour period.

(5) The maximum allowable volume of disposal is 6 million cubic yards per year. However, it is expected that lower volumes of sediment would be disposed as a result of either unsuitability (as determined by sediment tests) or selection of other disposal options such as beneficial use.

(6) All sediments shall be discharged within a 3,200-foot radius circle centered at the center coordinates of the disposal site, unless otherwise directed.

(7) There are no restrictions on the type of disposal equipment that can be used; however, it is anticipated that most of the dredged material will be excavated with clamshell dredges and disposed from towed split-hull scows or barges; or excavated by hopper dredges and disposed from the hopper dredge or a towed barge.

(8) The U.S.C.G is responsible for surveillance of vessels disposing of dredged material at the site. As staff and equipment availability permit, EPA Region IX, the Corps' San Francisco District or the U.S.C.G may provide an on-board observer, an escort, or impose other requirements to confirm that disposal occurs within the central dumping zone.

(9) The following reporting requirements shall be incorporated into all MPRSA section 103 permits for use of the proposed SF-DODS:

(a) The permittee shall notify EPA Region IX, the Corps' San Francisco District and the U.S.C.G Marine Safety Office in Alameda at least two weeks before the start of the disposal activity.

(b) Each permittee shall provide EPA Region IX, and the Regulatory Branch of the Corps' San Francisco District, with the following information within 30 days following the end of the disposal operation:

Project Information: Project name; permittee; permit number; project beginning and ending dates; project description, including map of area dredged, depth of dredging, side slopes and tolerance dredging (overdredging depth); and type of dredging, either construction or maintenance.

Disposal Information (For each trip to the disposal site): Date; hopper dredge or towing vessel and scow or barge name, number and owner; master of the hopper dredge or towing vessel; capacity of disposal vessel, hopper dredge, scow or barge (in cubic yards and cubic meters); volume discharged (actual volume, not pay volume); a certified plot of all hopper dredge, barge or scow disposal tracks once inside the boundaries of the proposed SF-DODS, including the time and coordinates for the beginning and ending of disposal; and any unusual conditions affecting disposal on any trip (i.e., heavy seas, equipment malfunction, etc.).

Post-Dredging Information: A post-dredging hydrographic survey compared to a pre-dredging hydrographic survey taken at the dredging site shortly before dredging began; number of disposal trips; total amount of dredged material dumped at the proposed SF-DODS in cubic yards and cubic meters, and dredged quantity calculations necessary to determine the extent of dredging at the project site; and if the dredged material is not exempt from testing, the mass loading of materials disposed at the proposed SF-DODS should be calculated based on chemical analyses used to characterize the dredged material before the permit was issued.

c. Monitoring shall occur as specified in the SMMP. If funds to implement the necessary monitoring are not available, disposal operations will not be allowed to continue for that time period. If monitoring identifies that significant adverse impacts are occurring at or beyond the site boundary, site use or designation can be modified or terminated by EPA Region IX to reduce adverse environmental impacts. These modifications will be governed by the following criteria:

(1) Exceedance of Federal water quality criteria after disposal within the site or beyond the proposed SF-DODS boundary as specified in the Ocean Dumping Regulations (40 CFR 227.29(a)).

(2) Movement of disposed material toward significant biological resource areas or marine sanctuaries.

(3) Significant adverse changes in the structure of the benthic community outside the disposal site boundary.

(4) Significant adverse bioaccumulation in organisms collected from the disposal site or areas adjacent to the proposed SF-DODS boundary compared to the reference site.

(5) Significant adverse impacts upon commercial or recreational fisheries resources near the site.

H. Action

EPA Region IX has concluded that the proposed SF-DODS may appropriately be designated for use over a period of 50 years and not to exceed 6 million cubic yards of suitable dredged material per year. Designation of the proposed SF-DODS complies with the general and specific criteria used for site evaluation. The proposed designation of the proposed SF-DODS as an EPA-approved Ocean Dumping Site is being published as proposed rulemaking. Management of this site will be the responsibility of the Regional Administrator of EPA Region IX in cooperation with the Corps' South Pacific Division Engineer and the San Francisco District Engineer, based on objectives defined in the Site Management and Monitoring Plan for the proposed SF-DODS. This Site Management and Monitoring Plan will be issued through a separate Public Notice.

It should be emphasized, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA Region IX's or the Corps' San Francisco District's approval of actual ocean disposal of dredged materials. Before ocean dumping of dredged material at the site may begin, EPA Region IX and the Corps' San Francisco District must evaluate permit applications according to EPA's Ocean Dumping Criteria. EPA Region IX or the Corps' San Francisco District have the right to deny permits if either agency determines that the Ocean Dumping Criteria of MPRSA have not been met.

I. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a major rule. Consequently, this action does not necessitate preparation of a Regulatory Impact Analysis.

This action does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: February 7, 1994.

Felicia A. Marcus,

Regional Administrator, EPA Region IX.

In consideration of the foregoing, part 228 of chapter I of title 40 is amended as set forth below.

PART 228–[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by adding paragraph (b)(70) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(70) Proposed San Francisco Deepwater Ocean Site (proposed SF-DODS) Ocean Dredged Material Disposal Site—Region IX.

Location: Center coordinates of the oval-shaped site are: 37° 39.0' North latitude by123° 29.0' West longitude (North American Datum from 1983), with length (north-south axis) and width (west-east axis) dimensions of approximately 4 nautical miles (7.5 kilometers) and 2.5 nautical miles (4.5 kilometers), respectively.

Size: 6.5 square nautical miles (22 square kilometers).

Depth: 8,200 to 9,840 feet (2,500 to 3,000 meters).

Primary Use: Ocean dredged material disposal.

Period of Use: Continuing use over 50 years from date of site designation and not to exceed 6 million cubic yards of suitable dredged material per year, subject to a detailed Site Management and Monitoring Plan (SMMP) issued through a separate Public Notice.

Restrictions: Use of the site shall be subject to management decisions based on results of monitoring as prescribed in the SMMP, which will be issued through a separate Public Notice. Resources for implementing the SMMP must be available in order for disposal operations to occur. Disposal shall be limited to dredged sediments that comply with EPA's Ocean Dumping Regulations. Disposal operations shall be conducted in accordance with permit conditions specific to each approved project.

* * * * *

[FR Doc. 94–3536 Filed 2–16–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[CC Docket No. 92–297]

Domestic Public Fixed Radio Services; Local Multipoint Distribution Service

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: The Commission requests comments on whether it should establish a Federal Advisory Committee to negotiate proposed technical rules governing the provision of terrestrial and satellite services in the 27.5–29.5 GHz frequency band.

DATES: Comments may be filed on or before March 21, 1994.

ADDRESSES: Comments should be sent to the Office of the Secretary, CC Docket 92–297, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Domestic Radio Branch, Common Carrier Bureau, (202) 634–1773.

SUPPLEMENTARY INFORMATION: The Commission hereby seeks comment on establishing an Advisory Committee to negotiate regulations defining the technical rules appropriate to sharing the 27.5—29.5 GHz band by the proposed Local Multipoint Distribution Service and by satellite services. The negotiations are to assist the Commission in developing regulations that will facilitate the shared use of this spectrum by both satellite uplink and terrestrial point-to-multipoint service providers. Any negotiating committee would be created under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and the Negotiated Rulemaking Act of 1990 (NRA), Public Law 101–648, November 28, 1990, and would consist of representatives of the interests that will be significantly affected by the outcome of these rules.

The Commission has proposed to redesignate the use of the 27.5–29.5 GHz band from point-to-point terrestrial service to point-to-multipoint service. Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, Notice of Proposed Rulemaking, 8 FCC Rcd 557 (1993) (CC Docket 92–297). The band is also allocated on a coprimary basis to fixed satellite services. One licensee, CellularVision of New York (CVNY, formerly Hye Crest Management, Inc.),

holds a regular license to provide terrestrial point-to-multipoint service in this band to the New York City Primary Metropolitan Statistical Area. Other entities hold experimental licenses to test similar services in other areas. As discussed in the Second Notice of Proposed Rulemaking, CC Docket No. 92–297, FCC 94–12, released concurrently with this notice, some of the spectrum in the 28 GHz band may be needed for satellite earth stations that will interconnect with mobile satellite systems. Moreover, the experimental Advanced Communications Technology Satellite (ACTS) launched by NASA in 1993 is using a portion of the band (29.0–29.5 GHz) for research purposes. The satellite has a four-year life expectancy. Hughes Space and Communications Company has filed an application to provide service in this band.

I. Regulatory Negotiation

Regulatory negotiation is a technique through which the Commission hopes to develop better regulations that may be implemented in a less adversarial setting. Negotiations are conducted through an Advisory Committee chartered under FACA. The goal of the Committee is to reach consensus on the language or substance of appropriate rules. If a consensus is reached, it is used as the basis of the Commission's proposal. All procedural requirements of the Administrative Procedure Act (APA) and other applicable statutes continue to apply.

When making a determination regarding the suitability of a proceeding for the negotiated rulemaking process, the Commission must consider whether:

(a) There is a need for the rules to be developed;

(b) There are a limited number of identifiable interests that will be significantly affected by the rules;

(c) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who: (1) Can adequately represent the identifiable interests and (2) are willing to negotiate in good faith to reach a consensus on the proposed rules;

(d) There is a reasonable likelihood that a committee will reach a consensus on the proposed rules within a fixed period of time;

(e) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of final rules;

(f) The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee, and

(g) The agency will, to the maximum extent possible consistent with the legal obligations of the agency, use the consensus of the committee with respect to the proposed rules as the basis for the rules proposed by the agency for notice and comment. Negotiated Rulemaking Act Sec. 3, 5 U.S.C. 583(a).

II. Subject and Scope of Rule for Negotiated Rulemaking

The Commission is proposing that the technical regulations to govern the provision of Local Multipoint Distribution Service and fixed satellite use of the 28 GHz band be developed through negotiation. We believe that the selection criteria listed above are met. Technical rules are necessary to establish under what circumstances, if any, sharing between satellite and terrestrial uses is feasible. The parties whose interests are affected are identifiable from comments filed in this proceeding. These interests can be adequately represented on a committee, and we believe that representatives will act in good faith to reach a consensus on technical rules within a set time frame. We believe that the negotiated rulemaking process will better use public and private resources than would our requiring more iterations of written comments will an adequate record is developed. We have adequate resources to commit to this endeavor and would use the consensus report of the committee to develop proposed technical rules.

The Commission has identified the following primary issue that should be addressed in the negotiations and resolved in the proposed rules developed by the Committee:

What technical rules should be adopted for the Local Multipoint Distribution Service and/or the fixed satellite service so as to maximize the sharing of the spectrum among these services?

If the Negotiated Rulemaking Committee is able to accommodate all proposed uses of the band, we ask that it proposes specific rules to effectuate a sharing plan. We ask that it provide an analysis of how benefits of its proposed solution outweigh other options for accommodating these services. Specifically, we ask that it explain:

—The proper definition of the product market and geographic market for the services proposed;

—The degree of competition anticipated within the relevant market (including the extent to which the proposed services are expected to compete with existing services);

—The degree to which new services and technological innovations will be stimulated by the proposed allocation;

—The amount and nature of investment in the national telecommunications infrastructure expected as a result of the use of the band for the particular service(s);

—The kind and number of jobs that would be created as a result of the licensing of particular services;

—Any other available data concerning the economic growth expected to result from the allocation for the particular service(s).

Other issues may be included by the parties. All recommendations or proposed rules must comply with International Telecommunication Union treaty obligations.

III. Potential Interests and Participants

The Commission has identified the following interests as those most likely to be significantly affected by the proposed rules:

(a) Developers, manufacturers, and licensees of Local Multipoint Distribution Service;

(b) Pending mobile-satellite applicants in the 1610–1625.5/2483.5–2500 MHz band filing by the June 2, 1991 cutoff date for these applications;

(c) Fixed-satellite service applicants and service providers.

The following have tentatively been identified as potentially affected interests should the Commission proceed with a negotiated rulemaking: Suite 12 Group, Bell Atlantic Companies, Video/Phone Systems, Inc., Endgate Company, Gigahertz Equipment Company, David Sarnoff Research Center, The University of Texas System, NASA, Ellipsat Corporation, Motorola Satellite Communications, Inc., Constellation Communications, Inc., Loral/Qualcomm Satellite Service, Inc., TRW, Inc., American Mobile Satellite Corporation, Hughes Space and Communications Company, a representative of public television and educational parties commenting in CC Docket 92–297, Comsearch, Inc., and the Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission.

IV. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

Under FACA, an Advisory Committee may be established only after consultation with the General Services Administration (GSA) and the filing of a charter with Congress. The Commission will prepare a charter and initiate the requisite consultation process prior to formation of the Committee and the commencement of negotiations.

B. Participants

The number of participants in the group is estimated to be about 20 and should not exceed 25. A number larger than this could make it difficult to conduct efficient negotiations. Each interest will have the opportunity to be adequately represented, although this does not necessarily mean that each potentially affected entity will have its own representative. Further, we must be satisfied that the group, as a whole, reflects a proper balance and mix of interests. In this respect, we are especially interested in receiving nominations to participate from public interest advocacy groups, users groups, and educators and academics.

Entities that will be significantly affected by the proposed rules and which believe that their interests will not be adequately represented by any entity specified in paragraph 8 above, may apply for, or nominate another entity for, membership on the Committee. Each application for nomination must include:

(a) The name of the applicant or nominee and a description of the interests the entity will represent,

(b) Evidence that the applicant or nominee is authorized to represent parties related to the interests the entity proposes to represent,

(c) A written commitment that the applicant or nominee shall actively participate in good faith in the development of the rules under consideration,

(d) The reasons that the entities specified in paragraph 8 do not adequately represent the interests of the entity submitting the application or nomination.

If, in response to this Notice, any additional entities request membership or representation in the negotiating group, the Commission will determine whether that entity should be added to the group. The Commission will make that decision based on whether the entity would be substantially affected by the rule and whether that entity is already adequately represented in the negotiating group.

C. Agenda

If the Commission decides to establish a negotiating committee and its charter is approved, it is anticipated that the Committee's first meeting will take place in March or April, 1994, at the Commission's offices, Washington, DC, at a building, room, date, and time that will be announced. At this initial meeting, the committee will complete action on all procedural matters and establish a target date for submission of its recommendations. We expect that the target date would be no later than July, 1994. We anticipate a publication of a Further Notice of Proposed Rulemaking not later than October, 1994.

V. Negotiation Procedures

The following procedures and guidelines will apply to the Committee, if formed. These procedures may be modified, however, after reviewing the comments received in response to this *Notice* or during the negotiation process.

A. Facilitator

The Commission will nominate a person to serve as a neutral facilitator for the negotiations of the Committee, subject to the approval of the Committee by consensus. The facilitator will not be involved in the substantive development of the regulations. The facilitator's roles are to: (1) Chair negotiating sessions, (2) help the negotiation process run smoothly, (3) help participants define and reach a consensus, and (4) manage record-keeping and minute-keeping.

B. Good Faith Negotiations

Since participants must be willing to negotiate in good faith, each organization—including the Commission—must designate a qualified individual to represent its interests. Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Common Carrier Bureau, will be the Commission's representative.

C. Meetings and Compensation

Meetings will be held in the Washington, DC area at the convenience of the Committee. The Commission, if requested, will provide the facilities needed to conduct the meetings, and will provide the facilities needed to conduct the meetings, and will provide any necessary technical support. Private sector members of the Committee will serve without government compensation or reimbursement of expenses. Private sector members will not be special government employees for any purposes whatsoever.

D. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the procedures for committee meetings that they consider most appropriate.

E. Consensus

The goal of the Committee is consensus. The Negotiated Rulemaking Act defines consensus as unanimous concurrence among the represented interests, although the Act permits the Committee to agree to another specified definition. In the event the Committee is unable to reach a consensus, the Committee may include in a report any other information, recommendations, or materials that the Committee considers appropriate, and any Committee member may include as an addendum to the report additional information, recommendations, or materials. Parties to the negotiation may withdraw at any time. If this happens, the remaining Committee members and the Commission will evaluate whether the Committee should continue.

F. Record of Meetings

Pursuant to FACA, the Committee will keep a record of all committee meetings. This record will be placed in the public docket for this rulemaking (CC Docket 92–297). The Commission will announce committee meetings in the **Federal Register**. These meetings will be open to the public.

VI. Conclusion

The Commission requests public comment on whether: (1) It should establish a Federal Advisory Committee, (2) it has properly identified the interests that are significantly affected by the key issues listed above, (3) the suggested committee membership reflects a balanced representation of these interests, and (4) regulatory negotiation is appropriate for this rulemaking.

Pursuant to the applicable procedures set forth in section 4(c) of the Negotiated Rulemaking Act of 1990, 5 U.S.C. 584(c), interested parties may file comments and applications for Committee membership on or before March 18, 1994. Comments and/or applications should be sent to the Office of the Secretary, CC Docket No. 92–297, Federal Communications Commission, Washington, DC 20554. Comments and applications will be available for public inspection during regular business hours in the Dockets Public Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

For further information pertaining to the establishment of the negotiation committee and associated matters, contact Susan Magnotti, Domestic Radio Branch, 2025 M Street, NW., Washington, DC 20554, (202) 634–1773.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94-3772 Filed 2-16-94; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 21

[CC Docket No. 92-297, FCC 94-12]

Establishing Rules and Policies for "Local Multipoint Distribution Service"

AGENCY: Federal Communications Commission.

ACTION: Second notice of proposed rulemaking; response to comments.

SUMMARY: This document addresses comments filed in response to the Commission's proposal to redesignate the 28 GHz frequency band (27.5–29.5 GHz) from terrestrial point-to-point services, to terrestrial point-to-multipoint services. In this action, the Commission modifies its prior proposal. In order to develop regulations for the use of the 28 GHz band that optimize the public interest benefits to the Nation, the Commission is issuing concurrently with this document a public notice requesting comments regarding the establishment of a Negotiated Rulemaking Committee (NRMC). The NRMC, if established, will develop technical regulations reflecting a consensus determination whether proposed terrestrial and satellite uses can share, on a co-frequency and co-coverage basis, the 28 GHz band. In the event that sharing is not possible for some of the proposed uses of the 28 GHz band, parties will be requested to provide detailed analyses of the costs and benefits of the various choices available to the Commission for the use of this frequency band. All other issues pertaining to establishment of LMDS will await development of frequency coordination and sharing criteria for space and terrestrial services and technical parameters for the service.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Common Carrier Bureau, Domestic Facilities Division, (202) 634–1773.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Notice of Proposed Rulemaking in CC Docket 92–297, adopted January 19, 1994, and released February 14, 1994.

The complete text of the Second Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, at (202) 857–3800, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Second Notice of Proposed Rulemaking

In the NPRM, 58 FR 6400 (January 28, 1993), the Commission considered three petitions for rulemaking proposing a redesignation of the 28 GHZ band. That band currently is designated for fixed point-to-point and fixed satellite service use. It found that redesignation of the point-to-point and fixed satellite service use. It found that redesignation of the point-to-point use of the band to point-to-multipoint use could stimulate greater use of a band that largely has lain fallow. However, the Commission asked for comment from satellite entities regarding the effect of redesignation on any proposed fixed satellite use of the band.

As requested by the petitions for rulemaking from Suite 12 and Video/Phone, the Commission proposed that the 28 GHz band initially be licensed to two 1000 MHz blocks to two different carriers. Since it appeared that video service initially would be the primary service offered in LMDS, it proposed to divide each of the 1000 MHz bands into 50 channels of 20 MHz each. It also proposed allowing licensees to provide a wide variety of other services.

The Commission sought comment on whether other assignment schemes might better meet its objectives. It gave one example of a different assignment scheme, *i.e.*, four blocks, two of which would have the capacity to carry 34 video channels, and two of which could be used for smaller video systems or telecommunications systems.

Finally, the Commission requested comment on whether a separate assignment would be specifically required to accommodate the proposed satellite service applications in the Ka-band, or whether adequate coordination and sharing criteria could be developed to permit both terrestrial and fixed satellite services to operate compatibly in the band. It noted that the multicell multipoint configurations in the Suite 12 proposal envisioned a wide area distribution of services that might make frequency sharing with other services impossible.

Comments to the Commission's Notice of Proposed Rulemaking indicated that the majority of interested parties support the Commission's finding of widespread interest in LMDS. However, satellite entities argued in opposition to LMDS, saying that such operations would cause unacceptable interference into fixed satellite services, including feeder links supporting mobile satellite service systems.

The Commission stated that its preference is to accommodate all potential users of the 28 GHz band, both terrestrial and satellite. This outcome would be in keeping with the Commission's responsibilities under Sections 1 and 7 of the Communications Act and would provide consumers with the maximum number of service choices to meet their needs.

Section 1 mandates that the Commission "make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges * * *". 47 U.S.C. 151. Congress also requires the Commission, through Section 7, 47 U.S.C. 157(a), to "encourage the provision of new technologies and services to the public." So important is this policy, Congress has enjoined that "[a]ny person or party (other than the Commission) who opposes a new technology or service * * * shall have the burden to demonstrate that such proposal is inconsistent with the public interest." It has been the Commission's experience, in the nearly sixty years since the Communications Act was enacted, that accommodating new technology and service proposals serves these objectives. The Commission stated that in its view, making the 28 GHz band available to all potential service providers would allow consumers to determine the best use of this spectrum. Accommodating all proposals would result in the availability of maximum communications services possible at the lowest consumer prices possible.

The Commission further stated that coordination issues involved in allowing all interested parties to use the 28 GHz band are highly technical, and their solutions depend upon the specific system design of various proposals to use the 28 GHz band. Moreover, these system designs and the supporting technologies are still in the developmental stage and the course of their development could be influenced by our decisions in this proceeding. The Commission believes that the best way to resolve the issues discussed here would be to establish an advisory committee to negotiate proposed regulations to govern this band. Issued concurrently with this Second Notice of Proposed Rulemaking is a Public Notice requesting comments on the use of a Negotiated Rulemaking Process in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the Negotiated Rulemaking Act of 1990, Public Law 101–648, November 28, 1990.

In spite of parties' best efforts, sharing may not be possible for all proposed uses. The technology required to permit sharing may not yet be developed, sharing efforts may result in unacceptable degradation of service to consumers, or sharing techniques may be prohibitively expensive, thus making an otherwise competitive service unaffordable to customers.

The prospect that only some of the proposed services can be accommodated within the 28 GHz band leaves the Commission with the duty to choose which non-shareable services should be licensed. In order to make these choices, the Commission requires a record based on issues pertaining to the overall public interest in enabling only certain of the non-shareable services. Options for choosing among services include, but are not limited to, enforcing a particular modulation scheme for some or all users; segmenting the band to include as many services as possible with less spectrum than parties requested; assigning all spectrum to satellite uses; or assigning all spectrum to terrestrial uses.

In the event the Negotiated Rulemaking is unsuccessful in reaching a consensus regarding proposed technical rules that would accommodate the proposals before the Commission, the Commission stated that it would require a record to enable it to select the best choices among services proposed. Assuming the Commission ultimately must select among service proposals for the 28 GHz band, the factors it will employ to do this will include:

(a) Economic growth potential: Which solution holds the greatest potential for stimulating lower prices and higher demand for services, and in what product markets and geographic markets? Which solution offers competition in existing markets, and which markets? Which solution best promotes increased efficiencies in spectrum usage, and permits the greatest number of service providers to operate commercially viable systems? Which solution best promotes the offering of new, high-quality and innovative services? Which solution promises to create the greatest number of high-paying jobs, and how? Which solution offers the greatest potential for maximizing interconnection of U.S. telecommunications services and facilities?

(b) Other public interest concerns that may not be readily calculable in economic terms: Which proposed plan appears most likely to make the most services, of the most valuable services, available to the broadest segment of the national community? What are the services, and to whom would they be available? Do any of the proposals promise needed services for unserved or underserved areas, and if so, what services, and to which communities would they be made available? Are particular services more likely to be valuable for educational, job training and employment applications, health care, environmental or public safety uses? Do any of the proposals serve our goal of facilitating the development of a National Information Infrastructure, and if so, how?

(c) Timing: When are the services likely to become available and when are the benefits they promise likely to materialize? If different benefits are likely to be realized at different times, what are the relative advantages of the short-term and long-term benefits of the various services proposed? For example, should the Commission license a service that is likely to become available in one or two years, but outlive its usefulness in five to eight years, if doing so would preclude licensing a service that is likely to produce tangible benefits only after five years, but which benefits may be expected to have long-lasting impact on economic growth and other public interest concerns? What are the likely opportunity costs of not licensing the particular service for operation in this band? Are there any contingencies that would affect the likely offering of the proposed services in a timely manner, such as market entry barriers? The relative efficiency of spectrum use and reuse capability among service providers may also be a factor entering into any final decision.

The proposed standards require quantification on the record in order for the Commission to make decisions based on these factors. To that end, it requests that commenters provide specific, detailed information that would permit the Commission to base a decision on the public interest impact of various options. In particular, the Commission requires precise data on the exact nature of services proposed to be offered by each applicant, what entities would provide the services, the business plans of the service providers, and the expected primary and secondary benefits of the proposed services.

Comment Dates

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments at a time to be established by public notice if the Commission does not establish a Committee or if a Committee is established but does not reach any consensus. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington DC 20554.

Initial Regulatory Flexibility Analysis

1. *Reason for action.* The purpose of this Second NPRM is to obtain comment on the proposed changes in fixed terrestrial and satellite service usage for the 28 GHz frequency band.

2. *Objectives.* The objective of this proposal is to consider methods for appropriating spectrum in the 28 GHz band among existing and potential service proponents.

3. *Legal basis.* The authority for this action is the Administrative Procedure Act, 5 U.S.C. 553; and Sections 4(i), 4(j), 301, 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. 145, 301, and 303(r).

4. *Reporting, recordkeeping and other compliance requirements.* None.

5. *Federal rules which overlap, duplicate or conflict with these rules.* None.

6. *Description, potential impact and number of small entities involved.* Since the first NPRM was issued, the Commission has been made aware of numerous small entities interested in manufacturing and/or providing customer services using a variety of new technologies being developed in the 28 GHz band. The proposals contemplated herein, to the extent they limit the previously proposed rule changes, could impact these small businesses. The impact on small entities described in the NPRM released January 8, 1993, applies to this action as well.

7. *Significant alternatives.* Since the first NPRM was issued, the Commission has been made aware of other firms researching the potential for new technology for video and other telecommunications services in the 28 GHz band. In addition, satellite entities may offer alternatives to some services that would be offered in this band. In part due to these alternatives, the Commission is taking the instant action.

Ordering Clauses

Accordingly, *It is ordered* That the Second Notice of Proposed Rulemaking is hereby adopted;

It is further ordered That a Public Notice pursuant to the Negotiated Rulemaking Act, 5 U.S.C. Sec. 581, SHALL BE ISSUED in accordance with the findings herein;

It is further ordered That the Secretary shall mail a copy of this document to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects in 47 CFR Part 21

Communications common carriers, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretory.

[FR Doc. 94-3771 Filed 2-16-94; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 94-6, RM-8410]

Radio Broadcasting Services; The Dalles, Oregon

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Larson-Wynn, Inc., seeking the allotment of Channel 224C3 to The Dalles, Oregon, as the community's third local FM broadcast service. Channel 224C3 can be allotted to The Dalles in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 45-35-42 and West Longitude 121-10-24.

DATES: Comments must be filed on or before April 4, 1994, and reply comments on or before April 19, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Elwyn T. Wynn, President, Larson-Wynn, Inc., Radio Station KODL-AM, P.O. Box 741, The Dalles, Oregon 97058 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94-6, adopted January 25, 1994, and released February 9, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-3586 Filed 2-16-94; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 94-7, RM-8425]

Television Broadcasting Services; Eagle River, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lyle Robert Evans d/b/a Eagle River Television Company, proposing the allotment of UHF Television Channel 34 to Eagle River, Wisconsin, as that community's first local television broadcast service. Canadian concurrence will be requested for this allotment at coordinates 45-55-00 and 89-14-42. Channel 34 can be allotted to Eagle River without a site restriction.

DATES: Comments must be filed on or before April 4, 1994, and reply comments on or before April 19, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Lyle R. Evans, Eagle River Television Company, 1296 Marian Lane, Green Bay, Wisconsin 54304.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 94-7, adopted January 26, 1994, and released February 9, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-3585 Filed 2-16-94; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1846 and 1852

RIN 2700-AB41

Increasing Contractor Liability on Research and Development Contracts

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: In accordance with Public Law 102-588, NASA has carried out an assessment of the allocation of risk, as currently prescribed by the Federal Acquisition Regulation, between NASA and its contractors for research and development contracts. This assessment included publishing a concept paper in the **Federal Register** (58 FR 16715, March 30, 1993) in order to solicit public and Federal comment on options for allocating risk for correction of defects in materials and workmanship or other failures to conform to contract requirements. As a result of public comment and consistent with the requirement of Public Law 102-588 to initiate rule making, NASA is proposing certain changes to the clause, Inspection of Research and Development—Cost Reimbursement, and the associated prescription.

Essentialiy these changes, modified as a result of public comment on the concept paper, are made to the current FAR coverage:

(1) Allocate additional financial risks to the contractor;

(2) Assign the Government the burden of proof when disallowing the costs of correction or replacement;

(3) Define "routine" operations clearly; and

(4) Prescribe the use of an advance agreement to identify routine operations, to the maximum extent practical.

DATES: Comments are due on or before April 18, 1994.

ADDRESSES: Submit comments to: Headquarters, NASA, Washington, DC 20546, ATTN: CODE HP/MR. T. Deback.

FOR FURTHER INFORMATION CONTACT: Mr. T. Deback, Procurement Policy Division, (202) 358-0431.

SUPPLEMENTARY INFORMATION:

Background

The proposed clause, which would be used as a substitute for the clause at FAR 52.246-8, Inspection of Research and Development—Cost Reimbursement, for certain procurements, adds two situations under which the Contractor will bear additional financial responsibility to remedy failures to comply with the requirements of this contract: (1) The contractor did not apply best efforts toward the accomplishment of the research and development objectives of the contract, and (2) the contractor did not follow generally accepted industrial or engineering practices in performing routine operations. The contractor's liability will be limited to 50 percent of the cost to remedy the failure or 10 percent of the contract value at the time the failure occurred, whichever is less. The proposed clause differs from the standard FAR clause in paragraphs (a) and (h). Current cost principles preclude the allowability of costs for insurance to cover these potential costs.

If after evaluating public comments, NASA decides to adopt the revised clause proposed herein, NASA will also propose and appropriate FAR revision to cover the matter, as required by FAR 1.404.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320.

List of Subjects in 48 CFR Parts 1846 and 1852

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1846 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1846—QUALITY ASSURANCE

2. Subpart 1846.3 is added to read as follows:

Subpart 1846.3—Contract Clauses

1846.308-70 Cost reimbursement research and development contracts.

(a) With the prior approval of the Procurement Officer, the contracting officer shall insert the clause at 1852.246-XX, Inspection of High Risk Research and Development—Cost Reimbursement, in lieu of the clause at (FAR) 48 CFR 52.246-8, in solicitations and contracts for research and development when (1) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, (2) a cost-reimbursement contract is contemplated, and (3) the estimated value of the contract is $50 million or more.

(b) In connection with this clause, an advance agreement should be included in the contract which, to the maximum extent practicable, identifies those particular tasks and activities which are categorized as routine operations, as that term is defined in the clause at 1852.246-XX, and those tasks and activities which embody the contract's research and development objectives. Routine operations include activities such as moving or packaging pieces of equipment, manufacturing standard parts, or conducting standardized tests. Research and development activities encompass tasks, methods, or technical approaches for which success in meeting the contract objectives cannot be reasonably assured.

PART 1852—SOLICITATION PROVISIONS AND CLAUSES

3. Section 1852.246-XX is added to read as follows:

1852.246-XX Inspection of High Risk Research and Development—Cost Reimbursement.

As prescribed in 1846.308-70, insert the following clause:

Inspection of High Risk Research and Development—Cost Reimbursement (xxx 1994)

(a) *Definitions. Contractor's managerial personnel,* as used in this clause, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with performing this contract.

Routine operation means a task or activity which is performed in accordance with customary or regular procedures and for which successful performance is reasonably assured. Routine operations may involve the performance of a service function or the fabrication of an item.

Work, as used in this clause, includes data when the contract does not include the Warranty of Data clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or its subcontractors engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise provided in the contract, the Government shall accept work as promptly as practicable after delivery, and

work shall be deemed accepted 90 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, the Government may require the Contractor to replace or correct work not meeting contract requirements. Time devoted to the replacement or correction of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (h) of this clause, the cost of replacement or correction shall be determined as specified in the Allowable Cost and Payment clause, but not additional fee shall be paid. The Contractor shall not tender for acceptance work required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g)(1) If the Contractor fail to proceed with reasonable promptness to perform replacement or correction, the Government may—

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or make an equitable reduction in any fixed fee paid or payable under the contract;

(ii) Require delivery of any undelivered articles and shall have the right to make an equitable reduction in any fixed fee paid or payable under the contract; or

(iii) Terminate the contract for default.

(2) Failure to agree on the amount of increased cost to be charged the Contractor or to the reduction in fixed fee shall be a dispute.

(h)(1) Notwithstanding paragraphs (f) and (g) of this clause, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure to comply with the requirements of this contract, if the failure is due to:

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel;

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified;

(iii) The Contractor not applying best efforts toward the accomplishment of the research and development objectives of the contract (those for which success cannot be reasonably predicted at the time of contract award); or

(iv) The Contractor not following generally accepted industrial or engineering practices in performing routine operations as part of contract performance.

(2) The contractor's liability for failures due to causes listed in subparagraphs (h)(1)(iii) and (iv) is limited to the lesser of: (i) 50 percent of the cost to remedy the failure, or (ii) 10 percent of the contract value at the time the failure occurred.

(i) This clause shall apply in the same manner to a corrected or replacement end item or components as to work originally delivered.

(j) The Contractor has no obligation or liability under the contract to correct or replace articles not meeting contract requirements at time of delivery, except as provided in this clause or as may otherwise be specified in the contract.

(k) Unless otherwise provided in the contract, the Contractor's obligations to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

[FR Doc. 94–3514 Filed 2–16–94; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC22

Endangered and Threatened Wildlife and Plants; Proposal To List the Barton Springs Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to determine endangered status for the Barton Springs salamander (*Eurycea sosorum*), known only from Barton Springs in Zilker Park, Austin, Travis County, Texas. The primary threat to this species is contamination of the waters that feed Barton Springs due to the potential for catastrophic events (such as petroleum or chemical spills) and chronic degradation resulting from urban activities. Also of concern are disturbances to the salamander's surface habitat (the waters in Barton Springs, Eliza Pool, and Sunken Garden Springs) and reduced groundwater supplies resulting from increased groundwater withdrawal. This proposal, if made final, would implement Federal protection provided by the Act for the Barton Springs salamander.

DATES: Comments from all interested parties must be received by April 18, 1994. Public hearing requests must be received by April 4, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Administrator, U.S. Fish and Wildlife Service, 611 East 6th Street, room 407, Austin, Texas 78701. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell, U.S. Fish and Wildlife Biologist (see **ADDRESSES** section) (512/482–5436).

SUPPLEMENTARY INFORMATION:

Background

The Service proposes to list as endangered the Barton Springs salamander (*Eurycea sosorum*), under the authority of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et. seq.*). The Barton Springs salamander is entirely aquatic and neotenic, meaning it does not metamorphose into a terrestrial form and retains its bright red external gills throughout life. Adults attain an average length of 6.35 centimeters (2.5 inches). This species is slender, with slightly elongate limbs and reduced eyes. Dorsal coloration varies from pale purplish-brown or gray to yellowish-cream. Irregular spacing of dorsal pigments and pigment gaps results in a mottled, "salt and pepper" pattern (Sweet 1978, Chippindale *et al.* 1993).

The Barton Springs salamander was first collected from Barton Springs Pool in 1946 by Bryce Brown and Alvin Flury (Chippindale *et al.* 1993, Texas Parks and Wildlife Department (TPWD) 1993). Although he did not publish a formal description, Dr. Samuel Sweet (University of California at Santa Barbara) was the first to recognize the Barton Springs salamander as distinct from other central Texas *Eurycea* salamanders based on its restricted distribution and unique morphological and skeletal characteristics (such as its reduced eyes, elongate limbs, dorsal coloration, and reduced number of presacral vertebrae) (Sweet 1978, 1984). Formal description of the Barton Springs salamander, based on Sweet's work and genetic studies conducted by the University of Texas and TPWD (TPWD 1989, 1990, 1992), was published in June, 1993 (Chippindale *et al.* 1993). An adult male, collected from Barton Springs Pool in November, 1992, was selected to be the holotype.

The Barton Springs salamander is found near three of four hydrologically connected spring outlets collectively known as Barton Springs (Brune 1981). These three spring outlets are known as Parthenia, Eliza, and Sunken Garden springs and occur in Zilker Park, which is owned and operated by the City of Austin. No salamanders have been found at the fourth spring outlet, which is in Barton Creek immediately above Barton Springs Pool (Paul Chippindale and Dr. David Hillis, University of Texas at Austin; Dr. Andrew Price, TPWD; Sweet; pers. comms., 1993). The area around the main spring outlet (Parthenia Springs) was impounded in the late 1920's to create Barton Springs Pool. Flows from Eliza and Sunken Garden springs are also retained by concrete structures, forming small pools located on either side of Barton Springs Pool. The salamander has been observed under gravel and small rocks, submerged leaves, and algae; among aquatic vegetation; and buried in organic debris, at depths of about 0.1 to 5 meters (0.3 to 16 feet) of water (Chippindale *et al.* 1993, TPWD 1993). It generally does not occur on bare limestone surfaces or in silted areas (Dr. Charles Sexton, City of Austin, Environmental Conservation Services Department, unpublished data).

Hundreds of individuals were estimated to occur in Eliza Pool during the 1970's (James Reddell, University of Texas at Austin, pers. comm. in Chippindale *et al.* 1993). The numbers apparently declined over the next decade. Fewer than a dozen and occasionally no individuals were observed during surveys conducted in Eliza Pool between 1987 and 1992 (Chippindale *et al.* 1993; TPWD 1993; Price, unpubl. data).

The Barton Springs salamander was reportedly abundant among the aquatic vegetation in the deep end of Barton Springs Pool in 1948 (Chippindale *et al.* 1993, TPWD 1993). Between 1989 and 1991, Sexton (*in litt.*, 1992) reported finding salamanders on "about one out of four [snorkeling] dives" under rock rubble immediately adjacent to the main spring outflows. On July 28, 1992, at least 50 salamanders (Hillis, pers. comm., 1993) were found over an area of roughly 400 square meters (4,300 square feet) near the spring outflows in Barton Springs Pool (TPWD 1993). Following reports of a fish kill at Barton Springs Pool on September 28, 1992 (Austin American Statesman, October 2, 1992; Daily Texan, October 13, 1992), only 10 to 11 salamanders were observed and could only be found in an area of about 5 square meters (54 square feet) in the immediate vicinity of the Parthenia Spring outflows (Chippindale *et al.* 1993, TPWD 1993). Since that event, the salamander appears to be recolonizing Barton Springs Pool, which has been attributed to recent changes in pool cleaning operations (see further discussion under Factor A). At least 80 individuals were observed during a November 16, 1992, survey and about 150 individuals were seen on November 24, 1992 (Chippindale *et al.* 1993, TPWD 1993).

The salamander was first observed at Sunken Garden Springs on January 12, 1993 (TPWD 1993). Five or fewer individuals have been sighted on any given visit to this outlet (Chippindale, pers. comm., 1993). Biologists had speculated that the salamander occurred at Sunken Garden Springs; however, no salamanders were observed during previous surveys conducted at this location between 1987 and 1992. Low water levels and the presence of large rocks and sediment in the pool reportedly make searching for salamanders difficult at this location (TPWD 1993).

The extent to which the salamander occurs in the aquifer is unknown. However, there is currently no evidence indicating that the species' range extends beyond the immediate vicinity of Barton Springs. Surveys of other spring outlets (including the spring outlet immediately above Barton Springs Pool) in the Barton Springs segment and other portions of the Edwards Aquifer have failed to locate additional populations (Chippindale *et al.* 1993; William Russell, speleologist; Hillis; Price; Sweet; pers. comms., 1993). No other species of *Eurycea* is known to occur in this portion of the aquifer.

The Barton Springs salamander's diet is believed to consist almost entirely of amphipods (Chippindale *et al.* 1993). Primary predators are believed to be fish and crayfish (Chippindale, Hillis, Price, pers. comm., 1993). Observations of larvae and females with eggs (Chippindale *et al.* 1993) indicate successful breeding is occurring. The species may breed year-round (Chippindale, pers. comm., 1993).

The water that discharges at Barton Springs originates from the Barton Springs segment of the Edwards Aquifer (hereafter referred to as the "Barton Springs segment"). The Barton Springs segment covers roughly 400 square kilometers (155 square miles) from southern Travis County to northern Hays County, Texas. The approximate boundaries are the "bad water" line to the east (where dissolved solids are less than 1,000 milligrams/l (mg/l) (1,000 parts per million) in the aquifer, but greater than this to the east); the Colorado River to the north; the geologic divide between contiguous Edwards limestones overlying the aquifer and the Glen Rose limestones to the west; and a groundwater divide occurring roughly between the Onion Creek and Blanco River watersheds to the south. The area south of the southern boundary is known as the San Antonio segment of the Edwards Aquifer and drains toward San Marcos Springs. Groundwater movement from the San Antonio segment northward to the Barton Springs segment is believed to occur only during extreme drought conditions. North of the southern boundary, the water in the aquifer moves toward Barton Springs (Slade *et al.* 1986).

Barton Springs drains about 391 square kilometers (151 square miles) of the Barton Springs segment. The remaining 10 square kilometers (4 square miles) discharge at Cold and Deep Eddy Springs and are believed to be hydrologically distinct from the area discharging to Barton Springs. Cold and Deep Eddy Springs are recharged by Dry Creek and a portion of Barton Creek. About 96 percent of all springflow from the aquifer discharges through Barton Springs. The remaining 4 percent exits through intermittent springs, most of which are located in Barton Creek between Loop 360 and Barton Springs. These springs flow only about 30 percent of the time and discharge up to 170 liters per second (l/s) (6 cubic feet per second (cfs)). The long-term mean discharge from Barton Springs is about 1,400 l/s (50 cfs), ranging from 283 l/s (10 cfs) to 4,700 l/s (166 cfs) (Slade *et al.* 1986). The mean water temperature is 20° C (68° F) (Martyn-Baker *et al.* 1992).

The Barton Springs segment is divided into two major zones, the recharge zone and artesian zone. The recharge zone is that portion of the aquifer where Edwards limestones are exposed at the surface, and covers the western 79 percent (about 233 square kilometers (90 square miles)) of the aquifer. The artesian zone is confined by an impermeable layer of Del Rio clay and covers the eastern 21 percent of the aquifer. About 85 percent of all recharge is through sinkholes, fractures, and other openings in the beds of six major creeks that cross the recharge zone, including (from north to south) Barton, Williamson, Slaughter, Bear, Little Bear, and Onion creeks. The remaining 15 percent of recharge is through tributaries and direct infiltration between the creeks (Slade *et al.* 1986).

The watersheds of the six creeks upstream (west) of the recharge zone span about 684 square kilometers (264 square miles). This area is referred to as the contributing zone and includes portions of Travis, Hays, and Blanco counties. The recharge and contributing zones make up the total area that provides water to the aquifer, which equals about 917 square kilometers (354 square miles) (Slade *et al.* 1986).

Based on streamflow studies, Onion Creek and Barton Creek contribute the greatest percentages of total recharge to the aquifer (34 percent and 28 percent, respectively). Williamson, Slaughter, Bear, and Little Bear creeks each contribute 12 percent or less to total recharge. Owing to the amount of recharge contributed by Barton Creek

and its proximity to Barton Springs, this creek has a greater impact on the water quality at the springs than any other recharge source in the Barton Springs segment (Slade *et al.* 1986).

The potential of the Edwards Aquifer to rapidly transmit large volumes of water with little filtration makes it highly susceptible to pollution (Slade *et al.* 1986). The Edwards Aquifer is a "karst" aquifer, characterized by subsurface features such as caves, sinkholes, and other conduits. The aquifer is made up of limestones that have high localized permeability and porosity. Dissolution of calcium carbonate along faults and fractures in the bedrock forms solution channels similar to an underground network of pipes. Because these subsurface "pipes" are not uniformly distributed, groundwater movement in the aquifer is highly variable, being rapid in areas where the "pipes" are large and extensive and slow where permeability and porosity are low. Transmissivity (the rate at which groundwater is transmitted through the aquifer) values for the Barton Springs segment have been estimated at 0.3 to 4,000 square meters (3 to 47,000 square feet) per day and tend to increase as one moves northward toward the springs (Slade *et al.* 1985).

Karst aquifers are also more prone to pollution than other aquifers because few materials (such as sand, gravel, and organic matter) are present to filter out pollutants (U.S. Environmental Protection Agency (EPA) 1990). Furthermore, waters entering from the surface receive little filtration from the typically thin soils overlying the aquifer (Slade *et al.* 1986). As a result, increasing urban development over the area supplying recharge waters to the Barton Springs segment can threaten water quality within the aquifer. The Texas Water Commission (TWC) has identified the Edwards Aquifer as being one of the most sensitive aquifers in Texas to groundwater pollution (TWC 1989; Margaret Hart, TWC, *in litt.*, 1991).

The Barton Springs salamander has been a Category 2 candidate species on the Service's candidate notices of review since December 30, 1982 (47 FR 58454; September 18, 1985–50 FR 37958; January 6, 1989–54 FR 554; and November 21, 1991–56 FR 58804), meaning that information then available indicated that a proposal to determine endangered or threatened status was possibly appropriate, but conclusive data on biological vulnerability and threats were not then available to support such a proposal. Through publication of the candidate notices, the Service requests any additional status information that may be available. On January 22, 1992, the Service received a petition from Dr. Mark Kirkpatrick and Ms. Barbara Mahler to list the Barton Springs salamander. The Service evaluated this petition and on November 25, 1992, determined that the petition presented information on threats indicating that the requested action may be warranted. A notice of that finding was published in the **Federal Register** on December 11, 1992 (57 FR 58779). The Service continued its status review of the species and solicited information regarding the status of the salamander. Although the **Federal Register** notice requested that comments be submitted by January 11, 1993, the Service sent out numerous notification letters indicating that it recognized additional time may be needed and requesting that pertinent information be submitted by February 10, 1993. This proposed rule constitutes the final finding on the petitioned action for the Barton Springs salamander.

Summary of Comments and Recommendations

The Service received 205 letters from individuals and agencies providing information and comments on the petition and the 90-day finding. Of the letters received, 104 were form letters stating opposition to listing, 80 were other letters opposing listing, 14 supported listing, and 7 were neutral. Some of the letters provided additional new, substantive information, which was considered in making a final determination on the petition. Major comments of a similar nature or point are grouped into a number of general issues and are presented and discussed here.

Issue 1: Several commenters requested that the Service delay or preclude listing the Barton Springs salamander because too little is known about the salamander's biology, including factors such as its range, population size and status, dietary needs, predators, longevity, reproductive success, and sensitivity to contaminants and other water quality constituents.

Response: The known range of the Barton Springs salamander is based on the most recent information available, including status surveys conducted by the University of Texas at Austin and TPWD pursuant to section 6 of the Act, and through personal communication with biologists who conducted surveys at other springs in central Texas. No new information was provided to contradict the finding that the salamander is endemic to the immediate vicinity of Barton Springs. Regarding other aspects of the species' biology, such as its population status, the Act requires a species to be determined endangered or threatened if one or more of the five factors described in section 4(a)(1) causes it to qualify under the Act's definition. Absolute population number may not be as significant in determining whether a species is endangered or threatened as knowledge that the species' entire range is threatened and cannot be preserved (see Factor A, "The present or threatened destruction, modification, or curtailment of its habitat or range," and Factor D, "The inadequacy of existing regulatory mechanisms"). Although there are still biological questions regarding the Barton Springs salamander, the Service believes that the available scientific information is sufficient for status determination and strongly supports the need to designate the salamander as an endangered species. The data that support this conclusion are presented and discussed in the "Summary of Factors Affecting the Species" section of this rule, particularly under Factor A (loss of habitat). Available information on the sensitivity of the salamander and its prey base (amphipods) to water quality deterioration is discussed under Factors A and E ("Other natural or manmade factors affecting its continued existence"). Once a species becomes listed as threatened or endangered, section 4(f) of the Act directs the Service to develop and implement a recovery plan for that species. Recovery is the process by which the decline of a listed species is arrested or reversed, and threats to its survival are eliminated or neutralized, so that its long-term survival in nature can be ensured. Further research is very often an essential component of recovery plans. The Service envisions that conducting research on the salamander's biology and other factors, such as those mentioned in this comment, will be an important part of the recovery process for this species (see Available Conservation Measures).

Issue 2: Several individuals questioned the taxonomic status of the salamander, asserting that it is still an undescribed species and may be part of the central Texas salamander (*Eurycea neotenes*) complex.

Response: Formal description of the salamander as a distinct species has withstood peer-review and was published in June, 1993 (see discussion in the Background section).

Issue 3: Several commenters stated that water quality data at Barton Springs show no demonstrable deterioration, despite development immediately upstream from the springs, much of which occurred prior to implementation of water quality controls.

Response: The Service recognizes that, other than high levels of fecal-group bacteria and turbidity immediately following storm events, water quality at Barton Springs is considered to be very good. However, only about 3 to 4 percent of the recharge and contributing zones is currently developed. As urban development over the recharge and contributing zones increases, the threat of water quality degradation from point-source and non-point-source pollution will increase. The threat of increased urbanization over these areas and impacts on water quality in the aquifer and at Barton Springs are discussed in Factor A.

Issue 4: Most commenters opposed to the listing stated that existing State and local rules and regulations are adequate to protect the salamander and its habitat from groundwater degradation and depletion.

Response: This issue is presented and discussed in Factor D. The Service recognizes that there are several rules and regulations aimed at protecting water quality and quantity within the aquifer, and that these rules and regulations will provide some benefits to the Barton Springs salamander if adequately enforced. However, no information was presented to show that these existing rules and regulations will ensure long-term protection of water quality and quantity at Barton Springs and will be adequate to protect the salamander and its habitat. Furthermore, there are no assurances that the existing rules and regulations will remain in place and be enforced. Regarding water quantity, the Barton Springs/Edwards Aquifer Conservation District (BS/EACD) has limited enforcement authority and does not regulate 30 to 40 percent of the total volume that is pumped from the Barton Springs segment.

Issue 5: Several individuals expressed concern that listing the salamander could impose restrictions on the recreational use of Barton Springs Pool.

Response: This issue is discussed under Factor B ("Overutilization for commercial, recreational, scientific, or educational purposes"). There is currently no evidence suggesting that swimming in Barton Springs Pool will adversely impact the Barton Springs salamander. The Service maintains the position that if pool maintenance activities are conducted in such a way as to avoid impacting the salamander and its habitat (such as avoiding the application of chemicals and the use of high pressure fire hoses to clean areas inhabited by salamanders), then activities associated with swimming at Barton Springs Pool should not disturb the salamander.

Issue 6: The salamander has persisted despite past droughts, low springflows, and pollution events over the aquifer and its contributing zone and at Barton Springs (elevated fecal coliform bacteria and turbidity).

Response: The Service acknowledges that these events have occurred and that the frequency of such events is likely to increase with increasing development over the aquifer and its contributing zone. Although the salamander has survived these past events, the point at which declining water quality and quantity would cause extinction of the salamander is uncertain. Amphibians in general are highly sensitive to changes in water chemistry, and the salamander's restricted range makes it especially vulnerable to water quality deterioration. A major pollution event has the potential of eliminating the entire species and/or its prey base. Amphipods, which comprise most of the salamander's diet, are especially sensitive to water pollution (see discussion in Factor E).

Issue 7: A few commenters stated that the threat of declining aquifer levels is not substantial at Barton Springs and, in any event, no demonstrable evidence exists that lowered aquifer levels will cause a threat to the continued existence of the salamander.

Response: This issue is addressed in Factor A. Although the Service recognizes that cessation of flows is not likely at Barton Springs in the near future, increased groundwater withdrawal and resulting reduced flows are expected due to increasing urbanization over the aquifer. Reduced aquifer levels may lead to the encroachment of the "bad water" line and increased concentrations of pollutants in the aquifer.

Issue 8: Many individuals opposed listing of the salamander on the grounds that listing would undermine the success of the Balcones Canyonlands Conservation Plan (BCCP).

Response: The BCCP currently proposes to acquire land in the Barton Creek watershed, which will provide some benefits to the salamander by preserving the natural integrity of the landscape and positively contributing to water quality in Barton Creek and Barton Springs. The BCCP participants are currently working toward providing additional water quality protection for the Barton Springs salamander, including retrofitting of existing developments with non-point-source pollution control structures and protecting the aquifer and Barton Springs from catastrophic pollution events (see discussion in Factor D).

Issue 9: Some commenters expressed concern regarding economic impacts of listing the salamander and stated that economic impacts should be considered.

Response: Under section 4(b)(1)(A) of the Act, the listing process must be based solely on the best scientific information available, and economic considerations are not applicable. The legislative history of the Act clearly states the intent of Congress to "ensure" that listing decisions are "based solely upon biological criteria and to prevent non-biological considerations from affecting such decisions" (H.R. Conf. Rep. No. 97–835 for the 1982 amendments). Because the Service is specifically precluded from considering economic impacts in the listing process, the Service has not addressed such impacts in proposing to list this species.

Issue 10: The Service received one comment letter requesting that the Barton Springs salamander be emergency listed.

Response: In accordance with section 4(b)(7) of the Act, a species may be listed as threatened or endangered on an emergency basis if a significant risk to the well-being of the species is identified. Although the Service has determined that multiple threats to the salamander exist (see discussion in "Summary of Factors" section), the Service is not able to justify an emergency determination since these threats are not of such an immediate nature that the delay during the period between this proposed rule and any final rule might pose a significant risk to the well-being of the species.

Issue 11: A few commenters questioned the validity of the information and findings presented in several reports prepared by the U.S. Geological Survey (USGS) (including Slade *et al.* 1985 and 1986, Veenhuis and Slade 1990).

Response: The Service has reviewed the USGS reports used in preparation of this rule and has determined that the data were gathered and analyzed in accordance with sound scientific principles. The Service accepts these reports as valid and relevant scientific information and accepts their findings.

Issue 12: A few individuals cited a 1922 report stating that elevated levels of fecal coliform bacteria have been documented at Barton Springs since 1922 (T.U. Taylor, Austin City Water Survey, *in litt.*, 1922).

Response: According to the City of Austin's review of the 1922 report, the method used to measure bacterial counts at the time the report was prepared is different from that used today, and thus "the bacterial counts are not directly comparable to * * * current sampling" techniques (Austin Librach, City of Austin Environmental Conservation Services Department, *in litt.*, 1991). Elevated counts during the 1920's may have been due to ranching activities or poor sanitary disposal of human wastes, as well as natural sources (Librach, *in litt.*, 1991).

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Barton Springs salamander (*Eurycea sosorum*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The primary threat to the Barton Springs salamander is contamination of the waters that feed Barton Springs. A discussion of some potential effects of contaminants on the salamander and its prey base (amphipods) is provided in this section and under Factor D. Potential factors contributing to contamination of this portion of the Edwards Aquifer are catastrophic events (such as hazardous material spills) and chronic degradation resulting from urban activities. Water quality degradation can result from point-source and/or non-point-source pollution. Point-source pollution originates from identifiable areas, such as leaking pipelines. Non-point-source pollution enters the water supply through diffuse sources, such as runoff from urban areas. The EPA (1990) and TWC (1989) have identified several major potential sources of groundwater contamination, including leaking underground storage tanks, pipelines, septic tanks, and pesticide and fertilizer use. Other threats to the salamander are disturbances to its surface habitat and reduced groundwater supplies owing to increased groundwater withdrawal.

Due to the Barton Springs salamander's restricted range, one or more catastrophic spills has the potential to impact the entire species and its habitat. Catastrophic spills may result from leaking underground storage tanks, pipeline ruptures, transportation accidents, and/or other sources. Spilled materials reported to the TWC for Travis and Hays counties between 1986 and 1992 included oils, sewage, pesticides, ammonia, sodium hydroxide, hydrochloric acid, ferrous sulfate, trichloroethane, and perchloroethene. About a third of the spills involved gasoline or diesel fuel, most of which resulted from underground storage tank leaks and transportation accidents. Leaking underground storage tanks "are considered to be one of the most significant sources of groundwater contamination" in Texas (TWC 1989). The Texas Department of Agriculture (TDA) (1987) has estimated that thousands of underground storage tanks in Texas may be leaking. According to the EPA (1990), "a growing problem of substantial potential consequences is leakage from underground storage tanks and from pipelines leading to them * * * gasoline leakage has caused severe hazardous difficulties throughout the nation." The EPA (in TWC 1989) has estimated that at least 25 percent of the underground storage tanks in Texas "will ultimately be confirmed as leakers."

According to the TWC (1989), "substances spilled on the land surface can be a serious threat if the surface and subsurface materials are sufficiently permeable to permit downward movement" and if spilled materials are not promptly or adequately remediated. Transportation accidents involving hazardous materials at bridge crossings are of particular concern, since creek beds can transport spilled materials directly into the aquifer. For example, if a contaminant spill occurred at the Loop 360 bridge crossing over Barton Creek, less than 5 kilometers (3 miles) south of Barton Springs, the contaminant could reach Barton Springs within hours. The Barton Springs Task Force report to the TWC (City of Austin 1991) states that "the major fault that creates the discharge for Barton Springs crosses Barton Creek in the vicinity of Loop 360 and appears to be a significant point of recharge which may provide direct transmission, similar to pipe flow, to the Springs." Loop 360 provides a major route for transportation of petroleum and gasoline products to service stations in the Austin area.

Oil pipeline ruptures also represent a potential source of groundwater contamination. Three oil pipelines run roughly parallel to each other across the Barton Springs segment and its contributing zone and cross Barton Creek near the Hays/Travis county line. Two of these lines ruptured within the recharge zone during the 1980's, about 13 kilometers (8 miles) south of Barton Springs. These two spills constitute the largest spills reported from Hays and Travis counties between 1986 and 1992 (TWC, unpubl. data). The first major spill occurred in 1986, about 270 meters (300 yards) from Slaughter Creek, when an oil pipeline was severed during a construction operation and released about 366,000 liters (96,600 gallons) of oil. The equipment necessary to contain the spill was on-site at the time the spill occurred (Russell 1987), and about 91 percent of the spill was recovered (Rose 1986). The second pipeline break occurred in 1987 near the first spill site and released over 185,000 liters (49,000 gallons) of oil. According to the TWC database, more than 97 percent of this spill was recovered (TWC, unpubl. data). Although the effects of these two spills on the Barton Springs salamander are unknown, similar spills that are not immediately remediated could adversely impact the salamander and its habitat.

Peter Rose (1986), a geologist who has studied the effects of pipeline oil spills on the Edwards Aquifer, has estimated that oil spills of 160,000 liters (42,000 gallons) or more pose a "reasonable danger" of entering and contaminating the Edwards Aquifer. "Free oil entering an unconfined aquifer would be expected to spread and travel in the direction of water flow, emerging eventually at springs * * *" (Rose 1986). Oil is highly toxic to aquatic life (Pyastolova and Danilova 1987). A study of the effects of oil on the sharp-snouted frog (*Rana arvalis*) showed that "the presence of crude oil in an aquatic environment, even in small amounts (0.05 ml/l) exerts an unfavorable influence on both embryonic and larval development" of the frog, including increased mortality and appearance of deformities (Pyastolova and Danilova 1987). Because of physiological similarities among amphibian larvae, the Barton Springs salamander may exhibit similar or possibly more severe reactions.

The conveyance and treatment of sewage in the watershed, particularly in the recharge zone, may also result in the impairment of local water quality and negative effects to the Barton Springs salamander. In 1982, high levels of fecal coliform bacteria at Barton Springs were attributed to a sewerline leak upstream from Barton Springs Pool. While fecal coliform bacteria are believed to be harmless, they may indicate the presence of other organisms that are pathogenic to aquatic life (Slade *et al.* 1986), some of which may pose a threat to salamanders and/or their prey base.

The USGS has stated that because "there are many sewerlines near the springs, fecal coliform contamination of the springs may be a recurring problem" (Slade *et al.* 1986). There are over 145 kilometers (90 miles) of wastewater lines in the recharge zone of the Barton Springs segment (Maureen McReynolds, City of Austin Water and Wastewater Utility, pers. comm., 1993).

Once an aquifer is contaminated, it can be very difficult to remediate. TDA (1987) maintains that "contaminated groundwater can be extremely difficult and expensive, and in some cases even impossible, to clean up. The only way to maintain groundwater quality is to prevent contamination in the first place." Regarding the effects of oil pipeline spills on the Edwards Aquifer, "* * * for all practical purposes, once spilled oil has been introduced into a cavernous carbonate aquifer, only time and nature can take care of the cleanup job" (Rose 1986).

Major contaminant spills that are not quickly remediated could enter the aquifer and contaminate the waters feeding Barton Springs. Response times to hazardous materials spills vary, depending on several factors, including detection capability, location and size of the spill, weather conditions, whether or not the spill is reported, and the party performing the cleanup. Generally, cleanup is initiated within several hours following detection of a spill, but many weeks may be necessary to complete the effort. In some cases in Travis County, cleanup of leaking storage tanks was not initiated until two months following leak detection (Philip Winsborough, TWC, pers. comm., 1993). In other cases, such as the oil pipeline ruptures that occurred within the recharge zone, cleanup was initiated the same day the spill was detected and completed the following day.

Chronic water quality degradation of the aquifer resulting from increasing urban activities (including roadway, residential, commercial, and industrial development) may also lead to contamination of the waters feeding Barton Springs (see also discussion under Factor D). Because of the characteristics of karst aquifers discussed in the Background section, Barton Springs is believed to be "heavily influenced by the quality and quantity of runoff," particularly in the recharge zone (City of Austin 1991). A report by USGS (Veenhuis and Slade 1990) on the relationship between urbanization and surface water quality in several streams throughout the Austin area (10 of 18 sample sites were along streams in the Barton Springs segment and its contributing zone) demonstrates that increases in impervious cover can lead to large increases in pollutant runoff. This is indicated in several streams with increased levels of suspended solids, biochemical oxygen demand, total organic carbon, total nitrogen, total phosphorus, fecal-group bacteria, inorganic trace elements, and synthetic compounds. A preliminary review of water quality data for 15 wells in the Barton Springs segment also suggests that increasing impervious cover has resulted in increased concentrations of certain water quality constituents in the groundwater, including total nitrogen and total phosphorus (USGS 1992). These changes in groundwater quality may indicate future water quality changes at Barton Springs as development increases across the recharge and contributing zones.

Of the six creeks providing recharge to Barton Springs, Barton Creek has received the most intense development. The TWC has identified nutrients, fecal coliform bacteria, sediment, oil, and grease in Barton Creek, originating from rangeland, golf course runoff, highway construction, and highway runoff (Barbara Britton, TWC, *in litt.*, 1992). Increases in fecal coliform bacteria, nutrients (nitrogen and phosphorus), turbidity, and algal growth have been documented along Barton Creek between Highway 71 and Loop 360 and are primarily due to sewage effluent irrigation and construction activities in this area (City of Austin 1991; Librach, *in litt.*, 1990). Changes in the aquatic invertebrate community along this portion of Barton Creek have also been attributed to golf course runoff (Librach, *in litt.*, 1990) and insecticide use (Dr. Chris Durden, Texas Memorial Museum, *in litt.*, 1991). These reported changes are significant because water quality at Barton Springs responds rapidly to changes in the quality of water contributed by Barton Creek. Groundwater originating from Barton Creek remains in the aquifer for short periods before discharging at the springs. Thus, there is little time for dilution or chemical breakdown of pollutants before discharging at Barton Springs (Slade *et al.* 1986).

Existing land use in the recharge and contributing zones has resulted in recurring fecal-group bacteria contamination and high turbidity (a measure of suspended solids or sediment) at Barton Springs (Slade *et al.* 1986). Data suggest that bacteria and turbidity at Barton Springs increase significantly during storm events. Stormwater runoff has been identified as the major source of fecal coliform pollution at Barton Springs (City of Austin 1991). The level of nitrates at Barton Springs has also increased slightly from about 1.0 mg/l (measured as nitrate nitrogen) prior to 1955 to the current level of about 1.5 mg/l (Slade *et al.* 1986). Increased nutrients may promote the growth of bacteria, algae, and nuisance aquatic plants (Slade *et al.* 1986), which could reduce the dissolved oxygen available to the salamander. In Barton Springs Pool, the routine cleaning procedure necessary to remove algal growth may itself adversely impact the salamander and its habitat (see further discussion later in this section).

High turbidity at Barton Springs has been attributed to construction activity in the Barton Springs segment (Slade *et al.* 1986, City of Austin 1991). Sources of turbidity are believed to be "primarily limited to 126 square miles [326 square kilometers] of the Barton Creek and immediately adjacent watersheds in the recharge zone" (City of Austin 1991). Sediments have been observed emanating directly from the spring outlets in Barton Springs Pool (Doyle Mosier, LCRA; Debbie Dorsey, City of Austin Parks and Recreation Department; pers. comms., 1993). Potential problems resulting from increased sediment loads include (1) reduction of the salamander's habitat by covering substrates on which salamanders, their prey, and/or certain aquatic plants occur; (2) clogging of the salamander's gills, causing asphyxiation (Garton 1977), and smothering of eggs; (3) filling and blocking of underground conduits, restricting groundwater availability and movement; and (4) exposure of aquatic life to certain heavy metals and other toxins that readily bind to sediments. Contaminants that adsorb to the surface of sediments may be transported through the aquifer and later be released back into the water column.

Aside from high levels of fecal-group bacteria and turbidity immediately following storm events, the water quality at Barton Springs is considered to be very good (Slade *et al.* 1986, City of Austin 1991). However, only about 3 to 4 percent of the recharge and contributing zones is currently developed (USGS 1992), and both of these areas are under increasing pressure from urbanization (City of Austin 1988, Veenhuis and Slade 1990). The City of Austin has projected that the Austin metropolitan area will support a population of about 1.9 million by the year 2020, up from 577,000 in 1982 (City of Austin Planning Department, in Veenhuis and Slade 1990). Further development or urbanization in the recharge and contributing zones of the Barton Springs segment is likely to

increase the chance of a major pollution event as well as chronic water quality decline in this area and thus increase the levels of pollutants reaching Barton Creek, other creeks serving as recharge paths, and Barton Springs (see also discussion under Factor D). The USGS (1992) has stated that "much development is projected for the source area of Barton Springs * * *. [Thus] changes in water quality of Barton Springs * * * [are] possible in the near future."

Water quality is highly variable throughout the Barton Springs segment and waters flowing from Barton Springs represent a mixture of these waters, originating primarily from the six streams crossing the recharge zone. Although much development has occurred along Barton Creek near Barton Springs, these waters are diluted by recharge waters from less developed watersheds, such as Onion Creek. Little development has occurred along Onion Creek, which, although farthest from the springs, contributes about 34 percent of the recharge waters (Slade *et al.* 1986). According to the Capital Area Planning Council (CAPCO), Hays County experienced "tremendous growth" in the 1980's and has the second highest growth rate in the 10-county CAPCO region. Dripping Springs, which is located in the contributing zone between Onion Creek and Barton Creek, "will likely continue to experience a high rate of growth as development continues along U.S. 290 from the Oak Hill area westward" (CAPCO 1990). As development across these watersheds increases, the ability of the aquifer to dilute pollutants will continue to decrease. This decreased ability will likely be further compounded by increased pumping and/or drought conditions.

Another threat to the salamander is the degradation of its surface habitat, particularly at Barton Springs Pool and Eliza Pool. Following reports of a fish kill in Barton Springs Pool on September 28, 1992 (Austin American Statesman, October 2, 1992; Daily Texan, October 13, 1992), the salamander's surface range contracted from about a 400 square meter (4,300 square foot) area to about a 5 square meter (50 square foot) area immediately around the outflow of the spring (see discussion in Background). The fish kill has been attributed to the improper application of chlorine used to clean Barton Springs Pool (Chippindale et al. 1993, TPWD 1993). Previous fish kills, although rare events, have also occurred at Barton Springs Pool (Robert Sapronyi, City of Austin Parks and Recreation Department, pers. comm., 1992). Other cleaning procedures and park operations that may have had adverse impacts on the salamander and its surface habitat include lowering the water levels in Barton Springs Pool and Eliza Pool for cleaning, use of high pressure fire hoses in areas where salamanders are found, and removal of aquatic vegetation from Eliza Pool. Runoff from the area above Eliza Pool, which includes a maintenance area and concession stand for the Zilker Eagle train, may also have contributed to the decline in numbers of salamanders found at this location.

Following the September 28 fish kill, the City of Austin discontinued the use of chlorine to clean Barton Springs Pool and Eliza Pool. The City of Austin is continuing to revise its pool maintenance practices in order to protect the salamander and its habitat, as well as maintain a safe environment for swimmers (Camille Barnett, City of Austin, *in litt.*, 1993). Cleaning practices at Eliza Pool and other park operations near this pool are also being reevaluated.

Another change that has been observed at Barton Springs is the loss of aquatic vascular plants in Barton Springs Pool, where salamanders were reportedly abundant in 1946. The plants disappeared during the late 1980's (Chippindale et al. 1993). The cause of the disappearance is unknown and may be due to changes in water quality originating upstream (such as increased turbidity), certain pool maintenance operations, and/or other factors. Aquatic plants are important because they provide cover where salamanders can hide from predators. Amphipods and other invertebrates that form the diet of salamanders also depend on aquatic vegetation (Hillis and Chippindale 1992).

Reduced water levels in the Barton Springs segment could also adversely impact the Barton Springs salamander. The volume of springflow is self-regulated by the level of water in the aquifer. Discharge decreases as water storage in the aquifer drops, which historically has been due primarily to the lack of recharging rains rather than groundwater withdrawal for public consumption (Slade et al. 1986). Reduced aquifer levels may lead to the movement of water with high levels of total dissolved solids from the "bad water" zone to the freshwater zone of the Barton Springs segment, including Barton Springs (Slade et al. 1986). The increased concentration of dissolved solids resulting from this encroachment of "bad water" could have negative impacts on the plants and animals associated with Barton Springs. Reduced groundwater levels would also increase the concentration of pollutants in the aquifer.

The potential for "bad water" encroachment is increased with (a) pumpage of the aquifer and (b) extended low recharge or low flow conditions (Slade et al. 1986). Barton Springs lies near the "bad water" line. Under low flow conditions, Barton Springs and a well near the "bad water" line (YD–58–50–216) show increased dissolved solid concentrations, particularly sodium and chloride, indicating that some encroachment of "bad water" has occurred at Barton Springs in the past (Slade et al. 1986).

According to the Barton Springs/Edwards Aquifer Conservation District (BS/EACD) (1990), pumpage from the aquifer has increased in recent years, resulting in decreased discharges from Barton Springs. The USGS has stated that groundwater withdrawal in the area is expected to increase because of further urbanization in outlying areas of Austin. Currently, discharge from the Barton Springs segment (withdrawal plus springflow) is roughly equal to recharge. Thus, an increase in groundwater withdrawal is likely to cause a decrease in the quantity of water in the aquifer and discharge from Barton Springs (Slade et al. 1986). Based on the current population projection, water demands could almost double by the year 2000 (from about 470 hectare-meters/year (3,800 acre-feet/year) in 1982 to about 760 hectare-meters/year (6,200 acre-feet/year)) (Slade et al. 1986).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threat from overutilization of this species is known to exist at this time. Several citizens have expressed concern over impacts to the salamander from recreational use of Barton Springs Pool for swimming. However, no evidence exists to indicate that swimming in Barton Springs Pool poses a threat to the salamander population. Provided that pool maintenance activities do not adversely impact the salamander and its habitat (see discussion under Factor A), swimming at Barton Springs Pool is not likely to disturb the salamander.

C. *Disease or predation.* Certain naturally occurring populations as well as captive individuals of *Eurycea neotenes* have shown symptoms of redleg, a bacterial (*Aeromonas* sp.) infection (Sweet 1978). The Barton Springs salamander may also be susceptible to this disease, although no diseases or parasites of the Barton Springs salamander have been reported. Primary predators of the Barton Springs salamander are believed to be fish and crayfish; however, no information exists to indicate that predation poses a major threat to this species.

D. *The inadequacy of existing regulatory mechanisms.* No existing rules or regulations specifically require protection of the Barton Springs salamander or its habitat. The salamander is not included on the TPWD's list of threatened and endangered species, and thus the species is not afforded protection by that agency. Several individuals who provided comments on the 90-day finding stated that existing state and local regulations are sufficient to mitigate potential water quality threats resulting from development activities in the Barton Springs segment and contributing zone. However, while there are many existing rules and regulations in place that will likely contribute positively to water quality and quantity, there are no assurances that they are adequate to protect the salamander and its habitat. Furthermore, whether the existing rules and regulations can provide long-term protection of the quality and quantity of the waters feeding Barton Springs is unknown.

There are few measures in place to prevent the risk of hazardous material spills across the recharge and contributing zones. No regulations prohibit the transportation of hazardous materials across the Barton Springs segment (Tom Word, Texas Department of Transportation (TxDOT), pers. comm., 1993), and few existing roads have water quality control structures (such as hazardous materials traps, sediment basins, and filters) to protect against non-point-source pollution and chemical spills (Shyra Darr, Travis County Public Improvements and Transportation Department (PITD), *in litt.*, 1993; Barnett, *in litt.*, 1993; Roland Gamble, TxDOT, *in litt.*, 1993). Travis County and TxDOT have agreed to install water quality devices on new State and county roadway construction projects in the recharge zone (Barnett, *in litt.*, 1993; David Pimentel, PITD, *in litt.*, 1993; Gamble, *in litt.*, 1993). However, no program is currently in place to retrofit these water quality control structures on existing roadways in the Barton Springs segment (Barnett, *in litt.*, 1993). In addition, the effectiveness of these water quality control structures has not yet been determined (Gamble, *in litt.*, 1993).

The major regulations affecting water quality in the Barton Springs segment include the Edwards Rules (31 Texas Administrative Code, Chapter 313), which are promulgated and enforced by the TWC, and the City of Austin's water quality protective ordinances (Williamson Creek Ordinance (1980), Barton Creek Watershed Ordinance (1981), Lower Watersheds Ordinance (1981), Comprehensive Watersheds Ordinance (1986), "Composite Ordinance" (1991), and the "Save Our Springs" ("SOS") Ordinance (1992)). These ordinances are only implemented within Austin's city limits and five-mile extra-territorial jurisdiction, which is about a third of the entire area affecting Barton Springs. Each ordinance includes impervious cover limitations, development setbacks from water quality zones, erosion control measures, restricted or prohibited development on steep slopes, and other water quality protective measures. However, none of the ordinances include retrofit provisions for existing developments or land use regulations (Barnett, *in litt.*, 1993). Furthermore, the ordinances can be rendered ineffective by variance provisions and exemptions. The SOS Ordinance requires greater impervious cover limitations, further development restrictions in the water quality zones of Barton Creek, and limitations of exemptions from the ordinance provisions, and will attempt to reduce the risk of accidental contamination (Barnett, *in litt.*, 1993).

The Edwards Rules regulate construction-related activities on the recharge zone that may "alter or disturb the topographic, geologic, or existing recharge characteristics of a site" as well as any other activity "which may pose a potential for contaminating the Edwards Aquifer," including sewage collection systems and hazardous materials storage tanks. The Edwards Rules regulate construction activities through review of Water Pollution Abatement Plans (WPAPs). The WPAPs do not require site-specific water quality performance standards for developments over the recharge zone nor do they address land use, impervious cover limitations, or retrofitting for developments existing prior to the implementation of the Rules. (Travis County was not incorporated into the Rules until March, 1990; Hays County was incorporated in 1984.) The WPAPs also do not regulate development activities in the aquifer's contributing zone. As yet, the Edwards Rules do not include a comprehensive plan to address the effects of cumulative impacts on water quality in the aquifer.

The long-term success of the watershed ordinances and the Edwards Rules in protecting water quality is unknown. Based on the water quality data and changes observed in Barton Creek (see discussion under Factor A), some level of water quality degradation in this area has already occurred (City of Austin 1991; Librach, *in litt.*, 1990). Even if the Edwards Rules and the watershed ordinances are determined to be effective at protecting water quality, about 50 percent of the area (most of which occurs in Hays County) affecting the waters of the aquifer and Barton Springs is not covered by these City and State rules and regulations. Hays County recently filed a lawsuit against the City of Austin to remove Hays County from the city's extra-territorial jurisdiction, which would further reduce the area covered by the watershed ordinances.

Furthermore, there is no guarantee that the SOS Ordinance or any of the preceding ordinances will remain in effect. A lawsuit has been filed to invalidate the SOS Ordinance. Several bills have also been proposed in the Texas Legislature aimed at restricting local environmental regulatory powers, and could prevent the City of Austin and other local governments from implementing water quality protection ordinances such as the SOS ordinance.

The Balcones Canyonlands Conservation Plan (BCCP) is being developed for Travis County to obtain a section 10(a)(1)(B) permit allowing incidental taking of certain endangered species. Parties involved in the preparation of the BCCP are TPWD, City of Austin, Travis County, and Lower Colorado River Authority. The current draft regional plan does not explicitly provide for conservation of the Barton Springs salamander (City of Austin *et al.* 1993). Proposals to acquire land within the Barton Creek watershed will provide benefits to the salamander by preserving the natural integrity of the landscape and positively contributing to water quality in Barton Creek and Barton Springs. The BCCP participants are currently working toward providing additional surface and groundwater quality protection, including retrofitting existing developments with non-point pollution controls and protecting the aquifer and Barton Springs from catastrophic pollution events. The BCCP has not yet been completed or approved and applies only to Travis County. The BCCP does not remove threats from development activities in Hays County.

While the City of Austin has voluntarily committed to revising pool cleaning and other maintenance operations in Zilker Park to assist in protecting the salamander and its surface habitat, no legal agreement or other incentive is in place to ensure that these efforts will continue for the long term.

To protect water quantity in the Barton Springs segment, the BS/EACD has developed a Drought Contingency

Plan. Barton Springs has always flowed during recorded history and one of the BS/EACD's goals is to assure Barton Springs springflow "does not fall appreciably below historic low levels" (BS/EACD 1990). The BS/EACD regulates municipal and industrial wells that pump more than 10,000 gallons per day (about 60–70 percent of the total volume that is pumped from the Barton Springs segment) and has the ability to limit development of new wells, impose water conservation measures, and curtail pumpage from these wells during drought conditions. According to the BS/EACD (Bill Couch, BS/EACD, pers. comm., 1992), water well production in the higher elevations of the Barton Springs segment has been limited during periods of lower aquifer levels in recent years. However, the ability of the BS/EACD to ensure the plan's success is limited, since it has limited enforcement authority and does not regulate 30 to 40 percent of the total volume that is pumped from the Barton Springs segment. Furthermore, the BS/EACD is not authorized to curtail groundwater withdrawal specifically for the protection of the Barton Springs salamander and its habitat.

E. *Other natural or manmade factors affecting its continued existence.* The very restricted range of the Barton Springs salamander makes this species especially vulnerable to acute and/or chronic groundwater contamination. Since the salamander is an aquatic species, there is no possibility for escape from contamination or other threats to its habitat. A single incident (such as a contaminant spill) has the potential to eliminate the entire species and/or its prey base. Crustaceans, particularly amphipods, on which the salamander feeds, are especially sensitive to water pollution (Mayer and Ellersieck 1986). Based on acute static toxicity data for 63 species tested against 174 chemicals, the Service (Mayer and Ellersieck 1986) has identified amphipods as being the third most sensitive taxonomic group tested.

The effects of environmental contaminants on amphibians has not been well documented, and the toxic effects of most chemicals is unknown. However, current research indicates that amphibians, particularly their eggs and larvae, are sensitive to many of the pollutants that have been tested, such as heavy metals; certain insecticides, particularly cyclodienes (endosulfan, endrin, toxaphene, and dieldrin) and certain organophosphates (parathion, malathion); nitrite; salts; and oil (Harfenist *et al.* 1989). Regarding pesticides, Christine Bishop (Canadian Wildlife Service) states that "the health of amphibians can suffer from exposure to pesticides (Harfenist *et al.* 1989). Because of their semipermeable skin, the development of their eggs and larvae in water, and their position in the food web, amphibians can be exposed to waterborne and airborne pollutants in their breeding and foraging habitats * * * [Furthermore] pesticides probably change the quality and quantity of amphibian food and habitat" (Bishop and Pettit 1992). Toxic effects to amphibians from pollutants may include morphological and developmental aberrations, lowered reproduction and survival, and changes in behavior and certain biochemical processes.

Available information on the effects of contaminants on central Texas *Eurycea* salamanders indicates that these species are very sensitive to changes in water quality. Captive *Eurycea* species, including the Barton Springs salamander, appear to be especially sensitive to changes in water quality and are "quite delicate and difficult to keep alive" (Sweet, *in litt.*, 1993). Sweet reported that captive individuals exhibit toxic reactions to plastic containers, aged tapwater, and detergent residues. The water in which these salamanders are kept also requires frequent changing. The lack of success in attempts at captive propagation of the Barton Springs salamander (Price, pers. comm., 1992) and the San Marcos salamander (*Eurycea nana*) (Janet Nelson, Southwest Texas State University, pers. comm., 1992) may be due to these species' sensitivity to environmental stress. As discussed under Factor A, the Barton Springs salamander also appears to be sensitive to chlorine (Chippindale *et al.* 1993, TPWD 1993).

Recent contamination at Stillhouse Hollow Preserve also demonstrates the sensitivity of *Eurycea* salamanders to changes in water quality. This event appears to have resulted in the decline of a spring population of another species of *Eurycea* found north of the Colorado River (locally known as the "Jollyville Plateau salamander"). The preserve contains two spring outlets, the larger of which has supported an abundant salamander population; a few individuals are typically found at the smaller spring (Hillis and Price, pers. comms., 1993). During a routine inspection of this property on November 19, 1992, a City of Austin employee reported "large amounts of foam" emanating from the larger spring outlet (Mike Kalender, City of Austin Parks and Recreation Department, pers. comm., 1993). The type and source of the contaminant is unknown (Chuck Lesniak, City of Austin Environmental and Conservation Services Department, pers. comm., 1993). Despite repeated search efforts following the incident, no salamanders were observed at or below this spring outlet until over three months later (February 24, 1993), when two individuals were observed (Hillis, Kalender, and Price, pers. comms., 1993).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. The best scientific data indicate that the Barton Springs salamander faces multiple threats from declining water quality and quantity and therefore warrants listing. Based on this evaluation, the preferred action is to list the Barton Springs salamander as endangered. A decision to take no action would constitute failure to properly classify this species pursuant to the Endangered Species Act and would exclude the salamander from protection provided by the Act. A decision to propose threatened status would not adequately reflect its restricted distribution, vulnerability of habitat, and multiplicity of threats that confront it. For the reason given below, critical habitat designation for the Barton Springs salamander is not being proposed.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service's listing regulations at 50 CFR 424.12(a)(1) specify that designation of critical habitat is not prudent when such designation would not be beneficial to the species. The Service finds that designation of the springs occupied by the Barton Springs salamander as critical habitat would not be prudent because it would not provide a conservation benefit to the species, and would actually be detrimental to the species by suggesting a misleadingly restricted view of its true conservation needs.

Designation of Barton Springs as critical habitat would not provide a conservation benefit to the Barton Springs salamander beyond benefits provided by listing and the subsequent evaluation of activities under section 7 of the Act for possible jeopardy to the species. In the Service's section 7 regulations at 50 CFR 402, the definition of "jeopardize the continuing existence" includes "to reduce appreciably the likelihood of both the survival and recovery of the listed species," and "adverse modification" is defined as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Because the species is endemic to such a highly localized area, actions that appreciably diminish water quality and quantity at Barton Springs would be fully evaluated for their effects on the salamander through analysis of whether the actions would be likely to jeopardize the continuing existence of the species. Any action that would appreciably diminish the value, in quality or quantity, of flows from Barton Springs would also reduce appreciably the likelihood of survival and recovery of the Barton Springs salamander. The analysis for possible jeopardy applied to the Barton Springs salamander would therefore be identical to the section 7 analysis for determining adverse modification or destruction of critical habitat; no distinction between jeopardy and adverse modification for activities impacting the waters of Barton Springs can be made at this time. Application of section 7 relative to critical habitat would therefore not add measurable protection to the species beyond what is achievable through review for jeopardy.

Designation of the springs and their immediate environment as critical habitat would actually be detrimental to conservation efforts for the Barton Springs salamander, because it would promote the misconception that the Barton Springs are the only areas important to the conservation of the species. Conservation efforts for the species must address a wide variety of federally funded or authorized activities (summarized in the "Available Conservation Measures" section of this proposed rule) that affect the quality and quantity of water available to the species through their effects on the recharge sources and aquifer that supply water to the habitat of the salamander. Nearly all of these activities will occur beyond the immediate vicinity of Barton Springs, and some will occur several miles away. Designation of Barton Springs as critical habitat would be misleading in implying to federal agencies whose activities may affect the Barton Springs salamander that the Service's concern for the species is limited only to activities taking place at the springs occupied by the species. Designation of Barton Springs as critical habitat would therefore not be prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Conservation and management of the Barton Springs salamander is likely to involve removing threats to the survival of the salamander, including (1) protecting the quality of springflow from Barton Springs by implementing comprehensive programs to control and reduce point sources and non-point sources of pollution throughout the Barton Springs segment of the Edwards Aquifer, (2) minimizing the likelihood of pollution events that would affect groundwater quality, (3) continuing to protect groundwater and springflow quantity by implementing water conservation and drought contingency plans throughout the Barton Springs segment, and (4) continuing to examine and implement pool cleaning practices and other park operations that protect and perpetuate the salamander's surface habitat and population. It is also anticipated that listing will encourage research on the Barton Springs salamander's distribution within the aquifer and critical aspects of its biology (e.g., longevity, natality, sources of mortality, feeding ecology, and sensitivity to contaminants and other water quality constituents).

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Potential activities that may affect the salamander and its habitat include (1) urban development over the recharge and contributing zones that may lead to contamination of the species' water supply through one or more accidental contaminant spills or chronic water quality degradation, (2) increased groundwater withdrawal leading to reduced groundwater levels and springflow (compounded if drought occurs), and (3) certain pool maintenance practices or other activities that may impact the salamander and its surface habitat (such as use of chemicals and high pressure hoses in areas occupied by salamanders and removal of substrates used for cover). Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include Army Corps of Engineers involvement in projects such as the construction of roads, bridges, and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*), pipeline projects, U.S. Environmental Protection Agency authorized discharges under the National Pollutant Discharge Elimination System (NPDES), and Soil Conservation Service and U.S. Housing and Urban Development projects.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. This species

is not in trade, and such permit requests are not expected.

Requests for copies of the regulations regarding listed wildlife and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 420C, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358–2104; FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Barton Springs salamander;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the Barton Springs segment of the Edwards Aquifer, its contributing zone, and the area around Barton Springs and possible impacts on this species resulting from these activities.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to State Administrator, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Austin Ecological Services Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Lisa O'Donnell, U.S. Fish and Wildlife Service (see **ADDRESSES** section) (512/482–5436).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. § 17.11(h) is amended by adding the following, in alphabetical order under Amphibians, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Amphibians							
Salamander, Barton Springs.	*Eurycea sosorum*	U.S.A. (TX)	Entire	E		NA	NA

Dated: February 9, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–3635 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 59, No. 33

Thursday, February 17, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Westslope Timber Sale, Plumas National Forest; Environmental Impact Statement Cancellation

The Plumas National Forest is no longer involved in the preparation of an Environmental Impact Statement for the Westslope Timber Sale.

The notice of Intent, published in the **Federal Register** on March 5, 1991, is hereby rescinded (56 FR 9194).

FOR FURTHER INFORMATION CONTACT: R.C. Bennett, Environmental Coordinator, Plumas National Forest, Box 11500, Quincy, CA 95971, telephone (916) 283–2050.

Dated: January 22, 1994.

H. Wayne Thornton,

Forest Supervisor.

[FR Doc. 94–3671 Filed 2–16–94; 8:45 am]

BILLING CODE 3410–11–M

SerCan Timber Sale, Plumas National Forest; Environmental Impact Statement Cancellation

The Plumas National Forest is no longer involved in the paration of an Environmental Impact Statement for the SerCan Timber Sale.

The notice of Intent, published in the **Federal Register** on March 23, 1989, is hereby rescinded (54 FR 11981).

FOR FURTHER INFORMATION CONTACT: R.C. Bennett, Environmental Coordinator, Plumas National Forest, Box 11500, Quincy, CA 95971, telephone (916) 283–2050.

Dated: January 22, 1994.

H. Wayne Thornton,

Forest Supervisor.

[FR Doc. 94–3672 Filed 2–16–94; 8:45 am]

BILLING CODE 3410–11–M

Saddle Timber Sale, Plumas National Forest; Environmental Impact Statement Cancellation

The Plumas National Forest is no longer involved in the preparation of an Environmental Impact Statement for the Saddle Timber Sale.

The notice of Intent, published in the **Federal Register** on February 3, 1989, is hereby rescinded (54 FR 9194).

FOR FURTHER INFORMATION CONTACT: R.C. Bennett, Environmental Coordinator, Plumas National Forest, Box 11500, Quincy, CA 95971, telephone (916) 283–2050.

Dated: January 22, 1994.

H. Wayne Thornton,

Forest Supervisor.

[FR Doc. 94–3673 Filed 2–16–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requested to conduct administrative review of various antidumping and countervailing duty orders, findings and suspension agreements with January anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with January anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than January 31, 1995.

Antidumping duty proceedings	Period to be reviewed
Canada:	
Brass Sheet and Strip A–122–601:	
Wolverine Tube (Canada) Inc.	1/1/93–12/31/93
Color Picture Tubes A–122–605:	
Mitsubishi Electric Corporation	1/1/93–12/31/93
The Republic of Korea:	
Stainless Steel Cooking Ware A–580–601:	
Daelim Trading Company, Ltd	1/1/93– 12/31/93
The People's Republic of China:	

Antidumping duty proceedings	Period to be reviewed
Potassium Permanganate A–570–001:	
China National Chemicals Import and Export Corporation	1/1/93– 12/31/93
Beijing Dayu Chemical Plant.	
Changsha Organic Chemical Plant.	
Chongqing Jialing Chemical Plant.	
Jinan Huaiyin Chemical General Factory.	
Jinan Tailu Chemical Industry Projects Co., Ltd.	
Shenzhan Metals Materials Co.	
Tianjin Haiyang Chemical Plant.	
Tongji Chemical Plant.	
Zunyi Chemical Plant.	
Calberson Intl.	
Chemical Spa.	
China National Chemicals.	
China National Foreign Trade.	
China Conic.	
Daher Oriental Lines.	
Guangzhou Chemicals.	
Guangdong Foreign Trading Development.	
Guangdong Foreign Economics Development Company Ltd.	
Guangzhou Chemicals.	
Guangdong Foreign Economic Relations & Trade Consultancy Corporation.	
Guangzi Import & Export Trading Corporation.	
Guilin Native Produce & Animal.	
China Native Produce and Animal By-Products I/E Corporation, Fuilin Branch.	
Guilin Prefecture Foreign Economic.	
Guangxi Zhuang Autonomous Region.	
Hei Long Jiang Machinery Imports Exports.	
Helm Products.	
Hunan Golden Glove International.	
Hunan Chemicals & Medicines.	
Mitrans.	
Sinchart.	
Strong Guide.	
Yue Xiu Chemicals.	
AEL Asia Express (HK) Ltd.	
Anduk Industry Supply Co. Ltd.	
Asia Express Company.	
Asia Express Packages.	
Ava International.	
BBT.	
Chemetal.	
Ceylon Shpg.	
Chemproha Chemical Distributors Ltd.	
Continental Freight Forwarders.	
Devoted Cargo Services (HK) Ltd.	
Dynamic Freight Services Ltd.	
Far Ocean Trading Co..	
Globe Ind..	
Go Up Company.	
Gui Da Company Ltd.	
Helmag AG.	
Hip Fung Trading Company.	
He-Ro Chemicals Ltd.	
ICD Group (HK) Ltd.	
International Merona Ltd.	
J.A. Moeller (HK) Ltd.	
K L & Company.	
Kenwa Shipping Co. Ltd.	
Landyet Company, Ltd.	
LP & Assoc Intl Freight Service.	
M & R Forwarding (HK) Ltd.	
Mayer Shipping Ltd.	
Meikien Trading Co. Ltd.	
Newesdean Trading Co. Ltd.	
Pan Air & Sea Forwarders (HK) Ltd.	
Power Shipping Co..	
Progressive Resources Ltd.	
Pacific Champion Express.	
Reimer Martens.	
Sam Wing International, Ltd.	
Santex Import & Export Co..	

Antidumping duty proceedings	Period to be reviewed
Seagull Container Line.	
Shinyei Shipping.	
Shipair Express.	
Sidneyson Ltd.	
Sunstar Int'l Trading.	
Sunway Lines.	
Thompson Express.	
Tin Sing Chemical Engineers, Ltd.	
Trans Ocean Pacific Fwdg.	
Vincent Shipping Co..	
Wincomfort.	
Yue Pak Co., Ltd.	
All other exporters of potassium permanganate from the People's Republic of China are conditionally covered by this review.	
Countervailing Duty Proceedings:	
Thailand:	
Butt-Weld Pipe Fittings C–549–804	1/1/93–12/31/93
Suspension Agreements	
Colombia:	
Miniature Carnations C–301–601	1/1/93–12/31/93
Roses and Other Fresh Cut Flowers C–301–003	1/1/93–12/31/93
Hungary:	
Truck Trailer Axle-and-Brake Assemblies A–437–001	1/1/93–12/31/93

Interested parties must submit applications for disclosure under administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1993).

Dated: February 9, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–3573 Filed 2–16–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–810]

Chrome-Plated Lug Nuts From Taiwan

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and partial termination.

SUMMARY: In response to a request by a petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan. The review covers four firms and the period April 18, 1991, through August 31, 1992. The review indicates the existence of margins for the firms.

As a result of this review, we preliminarily determine to assess antidumping duties equal to the difference between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195 or 482–3814, respectively.

Background

On September 20, 1991, the Department of Commerce (the Department) published the antidumping duty order on chrome-plated lug nuts from Taiwan (56 FR 47737). The Department published a notice of "Opportunity to Request Administrative Review" on September 11, 1992 (57 FR 41725). On September 21, 1992, the petitioner, Consolidated International Automotive, Inc. (Consolidated), requested that we conduct an administrative review for the period April 18, 1991, through August 31, 1992. We published a notice of "Initiation of Antidumping and Countervailing Duty Administrative Review" on October 22, 1992 (57 FR 48202), announcing an administrative review of King Kong Corporation, San Shin Hardware Works Co., Ltd. (San Shin), Gourmet Equipment (Taiwan) Corporation (Gourmet), Chu Fong Metallic Industrial Corporation (Chu Fong), and San Chien Electric Industrial Works, Ltd. (San Chien).

On January 8, 1993, the petitioner withdrew its request for review of San Shin. Therefore, we are terminating the review. We were unable to identify an address for King Kong Corporation. We sent questionnaires to Gourmet, Chu Fong, and San Chien. We received a response from Gourmet and conducted a verification at Gourmet's office September 22, 1993, through September 26, 1993.

On May 26, 1993, the petitioner alleged middleman dumping of the subject merchandise. Based on information compiled during the review process, the Department determined to apply best information available (BIA) to Gourmet and the two non-respondents. Therefore, the Department did not initiate a middleman dumping investigation (see Use of BIA, Middleman dumping allegation, and Transhipment allegation memos to Holly Kuga, Director, Office of Antidumping Compliance).

On June 11, 1993, the petitioner alleged that the respondent was shipping the subject merchandise through Canada to the United States. We examined data provided by the U.S. Customs Service which showed no evidence that the Canadian buyer resold the subject merchandise to the United States during the period of review (POR) (see Use of BIA, Middleman dumping allegation, and Transhipment allegation memo to Holly Kuga, Director, Office of Antidumping Compliance).

The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The merchandise covered by this review is one-piece and two-piece chrome-plated lug nuts, finished or unfinished, which are more than 1 1/16 inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least 3/4 inches (19.05 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not in the scope of this review. Chrome-plated lock nuts are also not in the scope of this review.

During the POR, chrome-plated lug nuts were provided for under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Best Information Available

Based on information gathered while on verification, the Department determined that the data submitted by Gourmet for this review are unverifiable because the response Gourmet submitted was based on an "in-house" accounting system that could not be reconciled to an audited financial statement.

Reliance on the accounting system used for the preparation of the audited financial statements is a key and vital part of the Department's determination that a company's constructed value data are credible. An "in-house" system which has not been audited and is not used for the preparation of the financial statements or for any purpose other than internal deliberations of the company does not assure the Department that such costs have been stated in accordance with generally accepted accounting principles, or that all costs have been appropriately captured by the "in-house" system (see Final Determination at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Korea, 58 FR 37186 (July 9, 1993)). Since Gourmet's "in-house" system cannot be relied upon due to numerous deficiencies (see Use of BIA, and Middleman dumping allegation memo to Holly Kuga, Director, Office of Antidumping Compliance), the Department has determined to apply BIA to Gourmet's sales in the POR, pursuant to Section 776(c) of the Tariff Act.

Chu Fong and San Chien both failed to respond to the Department's questionnaire. Accordingly, we are applying BIA to their entries.

In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). Thus, the Department may determine, on a case-by-case basis, what constitutes BIA. For the purposes of these preliminary results, we applied the following two tiers of BIA where we were unable to use a company's response for purposes of determining a dumping margin (see Final Results of Antidumping Duty Administrative Review of Antifriction Bearings and Parts Thereof from France, et al., 58 FR 39739, July 26, 1993):

1. When a company refuses to cooperate with the Department or otherwise significantly impedes these proceedings, we used as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value investigation (LTFV) or prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperates with our requests for information and, substantially cooperates in verification, but fails to provide the information requested in a timely manner or in the form required or was unable to substantiate it, we used as BIA the higher of (1) the highest rate ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.

Therefore, for parties refusing to respond, Chu Fong and San Chien, the first-tier BIA rate we applied in these preliminary results is 10.67 percent, which is the highest rate the Department found in the original LTFV investigation, Gourmet provided us with responses to our questionnaires, however the information on the record was unverifiable. Accordingly, we applied the second-tier BIA rate of 6.47 percent. This rate represents the highest rate ever applicable to Gourmet.

King Kong Corporation received the "all other" rate because the Department attempted, but could not locate, an address for it.

Preliminary Results of Review

We have preliminarily determined that the following margins exist for the period April 18, 1991, through August 31, 1992:

Manufacturer/exporter	Margin (percent)
Gourmet Equipment (Taiwan) Corporation	6.47
Chu Fong Metallic Industrial Works Co, Ltd	10.67
San Chien Industrial Works, Ltd	10.67
King Kong Corporation	6.93

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions concerning all respondents directly to the U.S. Customs Service.

Furthrmore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act (1) The cash deposit rate for the reviewed firms will be those firms' established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period, (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the "all others" rate will remain at 6.93 percent as established in the LTFV investigation.

On May 25, 1993, the Court of International Trade, in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all other" rate is established for a company,it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to apply the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposit in all current and future administrative reviews. The "all others" rate in the LTFV investigation was 6.93 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and a hearing within 10 days of the date of publication. Any hearing requested will be held as early as convenient for parties but not later than 44 days after date of publication, or the first workday thereafter. Case briefs, or other written comments, from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of review, including its results of its analysis of issues raised in any such written comments.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 3, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–3574 Filed 2–16–94; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification #2 to scientific research permit No. 747 (P45H).

On August 8, 1991 (56 FR 40312), the U.S. Fish and Wildlife Service (USFWS) issued Permit No. 747 under the authority of the Endangered Species Act of 1973 (ESA) (U.S.C. 1531–1543) and the NMFS regulations governing endangered fish and wildlife (50 CFR parts 217–227). On March 3, 1993 (58 FR 14202) NMFS issued an emergency modification to Permit No. 747, to be valid through December 31, 1993. On November 26, 1993 (58 FR 62328) notification was published that FWS has applied for a modification which would authorize them to continue the activities authorized in the March 3, 1993 emergency modification for the duration of the permit. Notice is hereby given that on January 26, 1994, NMFS issued Modification #2 to Permit 747, authorizing the above request.

Permit 747 authorizes scientific research on and captive propagation of Sacramento River winter-run chinook (*Oncorhynchus tshawytscha*), including the capture of up to 20 adults per year for broodstock purposes, the incubations of up to 35,000 of their eggs, and the rearing of the resulting juveniles for release into the upper Sacramento River. These activities are permitted through December 31, 1995.

The emergency modification, and this modification, authorize the permittee to collect and sacrifice up to 450 coded-wire tagged and adipose fin clipped juvenile winter-run chinook salmon released from the FWS's Coleman National Fish Hatchery. The emergency modification was only valid through December 31, 1993. This modification will authorize this take annually for the duration of the permit, through December 31, 1995.

Issuance of this modification was based on a finding that such modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of this modification; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This modification was also issued in accordance with and is subject to parts 217–227 of title 50 CFR, NMFS regulations governing endangered species permits and modifications.

The application, permit, modifications and supporting documentation are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Silver Spring, MD 20910 (301–713–2232); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

Dated: January 26, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources.

[FR Doc. 94–3649 Filed 2–16–94; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 020794A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification to permit No. 754 (P77#56).

SUMMARY: Notice is hereby given that on February 9, 1994, Permit No. 754, issued to the Alaska Fisheries Science Center, National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115 was modified.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, suite 13130, Silver Spring, MD 20910 (301/712–3389); and

Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700— Building 1, Seattle, WA 98115–0070 (206/526–6150).

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

This permit currently authorizes the Holder to capture, tag, handle and release Antarctic seals for the purposes of tracking their movements and obtaining measurements and biological samples. The Permit also authorizes aerial surveys to be flown at altitudes of 500 feet or greater. This permit has now been modified to adjust research methods without causing additional jeopardy to the animals that are the subject of this research.

Dated: February 9, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–3578 Filed 2–16–94; 8:45 am]

BILLING CODE 3510–22–P

Marine Mammals

[I.D. 020794B]

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of modification to application for a scientific research permit (P557).

SUMMARY: Notice is hereby given that Scripps Institution of Oceanography, Institute for Geophysics and Planetary Physics, Acoustic Thermometry of

Ocean Climate Program, 9500 Gilman Drive, La Jolla, CA 92093–0225, has submitted a modification to an application for a permit to take marine mammals and sea turtles for purposes of scientific research.

DATES: Written comments must be received on or before March 21, 1994.

ADDRESSES: The modified application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016);

Coordinator, Pacific Area Office, NMFS, NOAA, 2570 Dole Street, room 106, Honolulu, HI 96822–2396 (808/955–8831).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this modification to the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

This application modification is to request incidental harassment of sea turtles, and additional species of marine mammals which have only occasionally been observed in Hawaiian waters. As described in the original permit application, permission is requested to incidentally harass marine mammals and sea turtles by a low frequency (70 Hz) sound source which will be located north of Haena, off the northern coast of Kauai, Hawaii, at a depth of 850–950m. This sound source is part of the Acoustic Thermometry of Ocean Climate (ATOC) program, and will be operated from February 1994 through December 1995, with a maximum duty cycle of 8%, to conduct research on the effects of this source on marine mammals and sea turtles. The transmission bandwidth is 20 Hz with a level of 195 dB (re: 1 uPa at 1m), and the spectrum level for the peak frequency (70 Hz) is 182 dB. The effects of these transmissions on marine mammals and sea turtles will be monitored through passive acoustic tracking of Mysticetes, shore-based visual observations of marine mammals, and aerial observations and surveys of marine mammals and sea turtles.

Dated: February 9, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–3579 Filed: 2–16–94; 8:45 am]

BILLING CODE 3510–22–P

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for 17 February 1994 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 411 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, February 2, 1994.

Charles H. Atherton,

Secretary.

[FR Doc. 94–3653 Filed 2–16–94; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 1 and 2 March 1994.

Time of Meeting: 0830–1600/1 March (classified); 1300–1630/2 March (classified).

Place: Fort Leavenworth, KS/1 March; Fort McPherson, GA/2 March.

Agenda: The Army Science Board's Ad Hoc Study on "Innovations in Artillery Force Structure" will hold a meeting of the Panel Members. This meeting will be hosted by the Deputy Commanding General U.S. Army Combined Arms Command for Combat Developments (Fort Leavenworth) and the Forces Command Chief of Staff (Fort McPherson). The intent of the meeting is to present general and specific information to the panel pertaining to artillery force structure development within the U.S. Army and Forces Command. It will consist of primarily classified briefings dealing with force structure initiatives, war plans, artillery related studies and analysis, and field artillery weapons systems.

This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–3692 Filed 2–14–94; 4:14 pm]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 1, 2, 3 March 1994.

Time of Meeting: 0900–1700.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's (ASB) Summer Study on "Technical Information Architecture for Army Command, Control, Communications and Intelligence" will receive briefings related to the study from 1 to 3 March 1994. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–3693 Filed 2–14–94; 4:14 pm]

BILLING CODE 3710–08–M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Disposal and Reuse of the Naval Radio Transmitting Facility, Suffolk, VA

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of disposal and reuse of the Naval Radio Transmitting Facility (NRTF) Driver, Suffolk, Virginia. This disposal is being conducted in accordance with the Defense Base Closure and Realignment Act of 1990.

Closure of NRTF Driver was recommended by the 1993 Defense Base Closure and Realignment Commission to eliminate redundancy in geographic coverage in naval telecommunications. The recommendations became effective in September 1993. The proposed action to be evaluated in the EIS involves the disposal of land, buildings, and infrastructure of NRTF Driver for subsequent reuse.

The Navy intends to analyze the environmental effects of the disposal of NRTF Driver based on the reasonably foreseeable reuse of the property, taking into account uses to be identified by the City of Suffolk Reuse Planning Group. The property will likely be developed for mixed uses, including recreation, housing, and light industry. In coordination with the City of Suffolk's reuse plan, other federal agencies may offer uses for the property. The EIS will evaluate alternative reuse concepts of the property, including the "no-action" alternative, which would be retention of the property by the Navy in caretaker status. However, because of the process mandated by the Base Closure and Realignment Act, selection of the "no-action" alternative would be considered impracticable for the Navy to implement.

The EIS will evaluate impacts of reuse of NRTF Driver on the natural environment including wetlands and wildlife habitat, as well as the socioeconomic environment, which includes potential impacts to population, housing, and schools. The Navy will conduct a cultural resource survey to determine whether any sensitive archaeological resources exist within the property. Additionally, the Navy is conducting an Environmental Baseline Survey to determine if any areas of environmental contamination exist.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant environmental issues related to disposal and reuse of the property. The Navy will hold a public scoping meeting on March 3, 1994, beginning at 7 p.m., at the John Yeates Middle School, located on 4901 Bennett Pasture Road, Suffolk, Virginia. This meeting also will be advertised in local newspapers.

A brief presentation will precede request for public comments. The Navy and the City of Suffolk will provide a brief introduction and description of the proposed action. Navy representatives will be available to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of time, each speaker will be asked to limit his or her oral comments to 5 minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the scoping meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the commentor believes the EIS should address. The Navy will provide comment cards at the scoping meeting. Prepared statements also will be accepted at the scoping meeting. Written statements and/or questions regarding the scoping process should be mailed no later than March 18, 1994, to Commander, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia 23511–2699.

(Attn: Mr. Robert Waldo, (Code 2032RW)), telephone (804) 445–2305.

Dated: February 14, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–3618 Filed 2–16–94; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Littoral Warfare/Amphibious Warfare will meet on February 22, 23, 24, and 25, 1994. The meeting will be held at the Applied Physics Laboratory, University of Washington, Seattle, Washington. The meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on each day. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to conduct Executive Sessions to write a briefing and report which provide the Department of the Navy with (1) an assessment of the capabilities and readiness of the U.S. Navy and Marine Corps to effectively conduct littoral and amphibious warfare operations, and (2) recommendations for technological investments that can improve performance while reducing risk to Marine and Naval forces. The agenda will consist of Executive Sessions devoted to discussions of information received and drafting of the study briefing and report.

These discussions and resulting briefing and report will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander R. C. Lewis, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: January 31, 1994

Michael P. Rummel

LCDR, JAGC, USN Federal Register Liaison Officer.

[FR Doc. 94–3648 Filed 2–16–94; 8:45 am]

BILLING CODE 3810–AE–F

Intent To Grant Partially Exclusive Patent License; Federal Products Co.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; Federal Products Company.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Federal Products Company a revocable, nonassignable, partially exclusive license in the United States to

practice the Government-owned invention described in U.S. Patent Application Serial No. 130,480 entitled "Magnetostrictive Linear Displacement Sensor, Angular Displacement Sensor, and Variable Resistor," filed October 1, 1993 in which the Government owns an undivided interest.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: February 8, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–3651 Filed 2–16–94; 8:45 am]

BILLING CODE 3810–AE–M

Intent To Grant Partially Exclusive Patent License; Hydroscience, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Intent to grant partially exclusive patent license; Hydroscience, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Hydroscience, Inc. a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in U.S. Patents No. 4,648,083, "All-Optical Towed and Conformal Arrays" issued March 3, 1987 and 4,653,915, "Method For Reduction of Polarization Fading In Interferometers" issued March 31, 1987 in the field of marine geophysical exploration using acoustic towed array systems.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: February 8, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–3650 Filed 2–16–94; 8:45 am]

BILLING CODE 3810–AE–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 23, 1994. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be open for public observation at 9:30 a.m. at the same location and will include discussions concerning Basinwide hydrologic conditions; the Christina River drought management plan; Pennsylvania municipal compliance with DRBC water conservation plumbing fixture requirements and contracts to receive and expend funds in connection with the scenic rivers water quality monitoring program and a nonpoint source management study of the Musconetcong watershed.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Merrill Creek Owners Group (MCOG) D–77–110 CP (Amendment 4).* A Resolution to include an additional designated unit (Metropolitan Edison Company's Portland Unit 5, an oil/gas fueled combustion turbine electric generating unit) to the list of designated units which is incorporated in the MCOG docket. Table A (Revision 4), attached to the Resolution, replaces Table A (Revision 3).

2. *Carolyn R. Wilson D–83–4 RENEWAL.* An application for the renewal of a ground water withdrawal project, formerly approved under the name of Edith Raughley, to supply up to 18.9 million gallons (mg)/30 days of water to the applicant's supplemental agricultural irrigation system from Well Nos. 1(Home Farm) and 2(Wilson Farm). Commission approval on June 27, 1984 was limited to nine years. The applicant requests that the total withdrawal from all wells remain limited to 18.9 mg/30 days. The project is located in Kent County, Delaware.

3. *Willingboro Municipal Utilities Authority D–87–42 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 60.48 mg/30 days of water to the applicant's distribution system from Well No. 11. Commission approval on October 26, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 300 mg/30 days. The project is located in Willingboro Township, Burlington County, New Jersey.

4. *City of Dover D–88–71 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 300 mg/30 days of water to the applicant's distribution system from Well Nos. 1 through 14. Commission approval on December 14, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 300 mg/30 days. The project is located in the City of Dover, Kent County, Delaware.

5. *Citgo Asphalt Refining Company D–91–34.* A surface water withdrawal project for provision of up to 0.156 million gallons per day (mgd) of water for steam generation and other uses at the applicant's asphalt refining facility. The applicant proposes to withdraw water from Mantua Creek adjacent to the refinery located near the confluence of Mantua Creek with the Delaware River, in West Deptford Township, Gloucester County, New Jersey.

6. *Borough of Richland D–92–1 CP.* An application for approval of a ground water withdrawal project to supply up to 1.3 mg/30 days of water to the applicant's distribution system from existing Well No. 5, and to retain the existing withdrawal limit from all wells of 5.2 mg/30 days. The project is located in Millcreek Township, Lebanon County, Pennsylvania.

7. *Audubon Water Company D–92–47 CP.* An application to consolidate all wells presently owned and operated by the Audubon Water Company (AWC) into one comprehensive docket. Well Nos. VFCC 1 - 4 were previously approved under the ownership of the Valley Forge Industrial Park Water Company and the remaining wells were approved under AWC ownership. The proposed total withdrawal limit of 42 mg/30 days is not an increase in existing total allocation of ground water. The project is located in Lower Providence Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

8. *Township of Pemberton D–92–56 CP.* An application for approval of a ground water withdrawal project to supply up to 17.3 mg/30 days of water to the applicant's distribution system from new Well No. 11, and to retain the existing withdrawal limit from all wells of 38.75 mg/30 days. The project is located in Pemberton Township, Burlington County, New Jersey.

9. *Metro Machine of Pennsylvania, Inc. D–92–65.* A project to revitalize and rehabilitate the shipbuilding and repair operation formerly owned by the Pennsylvania Shipbuilding Company located on the Delaware River in the City of Chester, Delaware County, Pennsylvania and situated approximately two miles northeast of the Commodore Barry Bridge. Water withdrawal from the Delaware River is proposed at a rate of 4.32 mgd used mostly for cooling shipboard facilities, with a portion used to surcharge the fire fighting system, and provide shipboard sanitary service. Approximately 95 percent of the water will be returned to the Delaware River unaltered while shipboard sanitary wastewater will be discharged to the Delaware County Regional Water Quality Control Authority's (DELCORA) sewage treatment plant. Potable water will be provided by the City of Chester.

10. *Narrowsburg Water District D–92–81 CP.* An application for approval of a ground water withdrawal project to supply up to 4.11 mg/30 days of water to the Narrowsburg Water District distribution system from new Well No. 3, and to limit the withdrawal from all wells to 4.11 mg/30 days. The project is located in the Town of Tusten, Sullivan County, New York.

11. *Perkiomen Township Municipal Authority D–93–11 CP.* An application for approval of a ground water withdrawal project to supply up to 3.36 mg/30 days of water to the applicant's southern distribution system from existing Well Nos. PW–1 and PW–2, and to limit the withdrawal from the northern system wells (Well Nos. 2, 3 and 4) to 7.15 mg/30 days. The project is located in Perkiomen Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

12. *Purex Industries D–93–34(G) & D–93–34(D).* An application for approval of a ground water withdrawal and treatment project of up to 11.23 mg/30 days of water from the applicant's ground water remediation system from new Well Nos. RW–1 through RW–13, and to limit the withdrawal from all wells to 11.23 mg/30 days as described in Docket No. D–93–34(G). The water withdrawn will be treated by filtration, ultra-violet peroxidation and air-stripping prior to return to the ground water via recharge wells, as described in Docket D–93–34(D). The project is located in the City of Millville, Cumberland County, New Jersey.

13. *Peddler's View Utility Co. Inc. D–93–41.* A proposed new sewage treatment plant (STP) project to provide a 60,000 gallons per day (gpd) capacity secondary level plant to serve the proposed 214-unit residential development of Peddler's View. The STP will be located in Solebury Township, Bucks County, Pennsylvania, south of Route 202 and east of Route 263. The discharge will be to an 18-acre spray irrigation area on the Peddler's View site to the north side of Route 202.

14. *Ashland Chemical Inc. D–93–48.* An application to replace the withdrawal of water from Well No. 3 in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 4 be limited to 8.7 mg/30 days, and that the total withdrawal from all wells remain limited to 8.7 mg/30 days. The project is located in Glendon Borough, Northampton County, Pennsylvania.

15. *Sechler Foods, Inc. D–93–49.* An application for an increased withdrawal of ground water from existing Well Nos. 2 and 3, previously approved under the ownership of United Poultry Processing Plant, Inc. The applicant requests that the withdrawal from existing Well Nos. 2 and 3 be limited to 9 mg/30 days and that the total withdrawal from all wells be increased from 4.5 to 9 mg/30 days. The project is located in Franklin Township, Gloucester County, New Jersey.

16. *MAFCO Worldwide Corporation D–93–58.* An application to upgrade and modify the applicant's existing 0.36 mgd industrial wastewater treatment plant (IWTP) by providing a filtration unit for reducing suspended solids in the treated effluent. The IWTP serves only the applicant's licorice extract manufacturing operations at the plant site located on Jefferson Avenue between 3rd Street and the Delaware River in the City of Camden, Camden County, New Jersey. The treated effluent will continue to discharge to the Delaware River via the existing outfall in Water Quality Zone 3.

17. *Lake Adventure Community Association D–93–62.* A project to upgrade and expand the applicant's existing 0.065 mgd secondary sewage treatment plant (STP) and provide a 0.16 mgd capacity STP with tertiary filtration. An existing malfunctioning seepage bed discharge system will be discontinued. The existing spray irrigation system will continue in use but with the addition of a seasonal alternate surface water discharge (primarily for winter discharge) to an unnamed tributary in the Birchy Creek Watershed in Dingman Township, Pike County, Pennsylvania. The proposed STP will continue to serve the applicant's residential development in Dingman Township situated approximately one-half mile south of Interstate Route 84 and near the western boundary of Dingman Township.

18. *Sun Pipe Line Company D–93–64.* A project to construct a petroleum products pipeline which will cross the Delaware River between Paulsboro Borough, Gloucester County, New Jersey and Tinicum Township, Delaware County, Pennsylvania. There will also be a crossing of the Schuylkill River in Philadelphia, Pennsylvania, just north of Interstate Route 95 and a crossing of Raccoon Creek in Logan Township, Gloucester County, New Jersey. All crossings will be done via directional drilling with no excavation in the river beds. The proposed crossings will provide interconnections for a 21-mile length of petroleum product pipeline serving Sun Oil Company's Marcus Hook and Philadelphia refineries.

19. *Upper Dublin Township D–93–76 CP.* A project to modify the applicant's existing 0.85 mgd capacity secondary treatment plant (formerly operated by Delaware Valley Industrial Sewage Company) which will continue to serve a portion of Upper Dublin Township and discharge to Pine Run, a tributary of the Wissahickon Creek, in Montgomery County, Pennsylvania. The modification will provide additional 0.25 mgd capacity secondary treatment facilities to improve effluent quality and to allow for a future rerating.

20. *Mobile Estates of Southampton D–93–79.* A project to upgrade and modify the applicant's existing 0.06 mgd sewage treatment plant (STP) and relocate the surface water discharge from a small unnamed tributary of the North Branch Rancocas Creek to a new point discharging directly to the North Branch Rancocas Creek. The STP will provide tertiary treatment facilities and continue to serve only the Mobile Estates of Southampton mobile home development located in Southampton Township, Burlington County, New Jersey.

APPLICATIONS FOR APPROVAL FOR EXTENSION OF THE EXPIRATION DATES OF THE FOLLOWING GROUND WATER DOCKETS AND PROTECTED AREA PERMITS

Docket No.	Docket name	Municipality	County	State	Current expiration	Proposed expiration
D–79–54 CP Renewal 2	Middletown Twp Water Sewer Dept.	Middletown Twp	Bucks	PA	02/28/95	02/28/2000
D–80–51 CP Renewal 2	Warminster Municipal Authority.	Warminster Twp	Bucks	PA	02/20/96	02/20/2201
D–84–03 CP Renewal	Summit Hill Water Authority.	Summit Hill Boro	Carbon	PA	12/14/93	12/14/1998
D–84–60 CP Renewal	Citizens Utilities Water Co of PA.	Spring Twp	Berks	PA	06/27/95	06/27/2000
D–85–08 CP Renewal	Borough of Roosevelt	Roosevelt Boro/	Monmouth	NJ	08/02/96	08/02/1999
D–85–26 CP Renewal	Borough of Ambler	Lower Gwynedd Twp; Upper Dublin Twp.	Montgomery	PA	02/28/95	02/28/2000
D–86–07 CP	Telford Borough Authority.	Hilltown Twp	Bucks	PA	09/28/93	09/28/1998
D–86–59 CP Renewal	Citizens Utilities Home Water Company.	East Pikeland Twp	Chester	PA	12/11/96	12/11/2001
D–87–61 CP Renewal	Bedminster Municipal Authority.	Bedminster Twp	Bucks	PA	06/24/97	06/24/2002
D–87–96 CP	C.S. Water Sewer Company.	Lackawaxen Twp	Pike	PA	04/26/94	04/26/1999
D–89–03 CP	Borough of Collingswood.	Collingswood Boro	Camden	NJ	06/28/94	06/28/1999
D–89–10 CP	Northeast Land Company.	Kidder Twp	Carbon	PA	04/26/94	04/26/1999
D–90–05 CP	Evansburg Water Company.	Lower Providence Twp/ Perkiomen Twp.	Montgomery	PA	12/12/95	12/12/2000
D–90–12 CP	Collegeville-Trappe Joint Water System.	Collegeville Boro/Trappe Boro.	Montgomery	PA	09/26/95	09/26/2000
D–90–57 CP	Township of Medford	Medford Twp	Burlington	NJ	12/12/95	12/12/2000
D–90–68 CP	Kiamesha Artesian Spring Water Co.	Town of Thompson	Sullivan	NY	12/12/95	12/12/2000
D–90–87 CP	Walnutport Authority	Walnutport Boro/Lehigh Twp.	Northampton	PA	01/16/96	01/16/2001
D–90–111 CP	Town of Newton	Town of Newton	Sussex	NJ	05/20/97	05/20/2002
D–92–63 CP	Grand View Hospital	West Rockhill Twp	Bucks	PA	01/20/98	01/20/2003

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: February 8, 1994.

Susan M. Weisman,

Secretary.

[FR Doc. 94–3656 Filed 2–16–94; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 16, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: February 10, 1994.

Wallace R. McPherson, Jr.,

Deputy Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Expedited.
Title: Application for Educational Research and Development Center Program.
Abstract: Research and Development Centers: The Office of Research invites research and development centers established by institutions of higher education or by interstate agencies to conduct educational research and development to submit applications for an award.
Additional Information: An expedited clearance is requested for the data collection on the Application for Educational Research and Development to meet the grant schedule for FY94. In order to provide respondents with sufficient time, a clearance date of February 16 is necessary.
Frequency: Quarterly.
Affected Public: Non-profit institutions.
Reporting Burden
Responses: 9.
Burden Hours: 1,260.
Recordkeeping Burden
Recordkeepers: 0.
Burden Hours: 0.

[FR Doc. 94–3603 Filed 2–16–94; 8:45 am]

BILLING CODE 4000–01–M

The International Research and Studies Program

AGENCY: Department of Education.

ACTION: Publication of 1993 annual report.

SUMMARY: Section 606 of the Higher Education Act of 1965 (HEA), as amended, authorizes the Secretary of Education to provide assistance to conduct research, studies, and surveys and develop specialized instructional materials that further the purposes of Part A of Title VI of the HEA.

The activities conducted under section 606 of the HEA correspond in large part to the foreign language and area studies research activities previously supported under section 602 of Title VI of the National Defense Education Act.

Purpose

Under the International Research and Studies Program, the Secretary of Education awards grants and contracts for—

(a) Studies and surveys to determine the needs for increased or improved instruction in foreign language, area studies, or other international fields, including the demand for foreign language, area, and other international specialists in government, education, and the private sector;

(b) Studies and surveys to assess the use of graduates of programs supported under this title by governmental, educational, and private sector organizations and other studies assessing the outcomes and effectiveness of programs so supported;

(c) Comparative studies of the effectiveness of strategies to provide international capabilities at institutions of higher education;

(d) Research on more effective methods of providing instruction and achieving competency in foreign languages;

(e) The development and publication of specialized materials for use in foreign language, area studies, and other international fields, or for training foreign language, area, and other international specialists; and

(f) The application of performance tests and standards across all areas of foreign language instruction and classroom use.

1993 Program Activities

In fiscal year 1993, 9 new grants ($933,231) and 14 continuation grants ($1,263,767) were awarded under the International Research and Studies Program. All of these grants are active currently and will be monitored through progress reports submitted by grantees. Grantees have 90 days after the expiration of the grant to submit the products resulting from their research to the Department of Education for review and acceptance.

Completed Research

The first grants under the authority of section 606 were awarded in fiscal year 1981. Most of the research projects funded in FY 1981 through FY 1990 have been completed and reported in previous annual reports. However, a number of completed research projects resulting from grants made during prior fiscal years have been received during the past year. A listing of this completed research follows. Grants from fiscal years 1990, 1991, and 1992 are still ongoing, or have recently expired.

Title	Author/location
A Comprehensive Lexicon of English/Chinese Business Terms	A.C. Chang, American Graduate School of International Management, Thunderbird Campus, Glendale, AZ 85306.
Advanced Gulf Arabic	H.A. Qafisheh, Near Eastern Studies, University of Arizona, Tucson, AZ 85721.
Reading Authentic Czech and Polish/Volume II	G. Privorotsky and W. Walczynski, Center for Applied Linguistics, 1118 22nd Street, NW., Washington, DC 20037.
Pashto Reader and Glossary	B. Robson, Center for Applied Linguistics, 1118 22nd Street, NW., Washington, DC 20037.
The Development of the Polish Proficiency Test	C.W. Stansfield, Center for Applied Linguistics, 1118 22nd Street, NW., Washington, DC 20037.
Improving Listening Comprehension in Russian	J. Rubin, I. Thompson, Department of Slavic Languages, George Washington University, Washington, DC 20052.
Translation Tutorials	D. Bowen, Department of Languages and Linguistics, Georgetown University, 37th and O Streets, NW., Washington, DC 20057.
Learning Strategies in Japanese Foreign Language Instruction	A.U. Chamot, Department of Languages and Linguistics, Georgetown University, 37th and O Streets, NW., Washington, DC 20057.
American and Chinese Perceptions and Belief Systems, A PRC-Taiwanese Comparison.	L.B. Szalay, Institute of Comparative Social and Cultural Studies, Inc., 6935 Wisconsin Avenue, Chevy Chase, MD 20815.
Specialized Materials for Teaching Japanese in the Elementary School.	M. Met, Montgomery County Public Schools, 850 Hungerford Drive, Rockville, MD 20850–1747.
Los Arboles Hablan: A Spanish Language Curriculum Unit Based on the Study of Latin American Forests/Phase I.	J.P. Zuman, Intercultural Center for Research in Education, 366 Massachusetts Avenue, Arlington, MA 02174.
Non-Conventional Chinese Reading Materials/Phase I	Tao-chung Yao, Asian Studies, Mount Holyoke College, South Hadley, MA 01075.

All of the listed materials and reports have been reviewed by Department of Education staff and meet the terms and conditions under which the grants were awarded.

To obtain a copy of a complete study, contact the author at the institution listed.

FURTHER INFORMATION: For a copy of this report and further information regarding the International Research and Studies Program, write to Joseph F. Belmonte, Acting Director, Center for International Education, United States Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202–5247. Telephone number: (202) 732–6065.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: February 10, 1994.

David A. Longanecker,

Deputy Assistant Secretary for Postsecondary Education.

[FR Doc. 94–3602 Filed 2–16–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Implementation Plan for the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy announces the availability of the Implementation Plan for the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement. The purpose of the Implementation Plan is to record the results of the public scoping and public participation processes and to serve as a plan for the preparation of the Programmatic Environmental Impact Statement. The Implementation Plan also states the alternatives and issues to be evaluated in the Programmatic Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT: For further information on the Programmatic Environmental Impact Statement, contact: Glen L. Sjoblom, Special Assistant to the Assistant Secretary, Environmental Restoration and Waste Management (EM–1), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–0396.

To request copies of the Implementation Plan, call 1–800–379–5441.

For information on the Department's National Environmental Policy Act process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1990, the Department of Energy issued a Notice of Intent in the **Federal Register** (55 FR 42693) to prepare the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement. In the Notice of Intent, the Department identified the proposed action of implementing an integrated environmental restoration and waste management program, and requested comments on the scope of the Programmatic Environmental Impact Statement. A public comment period was held from October 22, 1990, to February 19, 1991. Beginning on December 3, 1990, the Department held 23 scoping meetings at various locations across the country to provide an opportunity for public participation by interested individuals and organizations, and other governmental agencies. During the public comment period, over 1,200 parties provided approximately 7,000 comments, either by participating in the meetings or by submitting materials and letters to the Department.

On February 4, 1992, the Department announced in the **Federal Register** (57 FR 4193) the availability of a Draft Implementation Plan and an additional opportunity for public review and comment. The public comment period on the Draft Implementation Plan was held from February 4, 1992, to April 10, 1992. Beginning on March 17, 1992, the Department conducted six regional workshops on the Draft Implementation Plan. More than 1,000 comments were received on the Draft Implementation Plan.

After the close of the Draft Implementation Plan comment period, the Department revised the Plan and provided it to the Environmental Restoration and Waste Management Advisory Committee for review and comment. The Committee is composed of individuals from universities, trade associations, state and local governments, Indian Nations, labor unions, environmental groups, and other interested parties. On December 21, 1992, the Committee submitted its formal recommendations on the Draft Implementation Plan. After responding to the Committee's recommendations and discussing further revisions with the Committee, the Department further revised the Implementation Plan. The Implementation Plan now considers all the issues from the public scoping process, the public review and comment period on the Draft Implementation Plan, and the Environmental Restoration and Waste Management Advisory Committee's review and recommendations.

Programmatic Environmental Impact Statement Alternatives

The programmatic alternatives for environmental restoration to be evaluated in the Programmatic Environmental Impact Statement are structured in terms of the factors that affect the selection of remediation goals. In addition to a No Action baseline alternative, four other alternatives will be evaluated: (1) An alternative reflecting the current application of "applicable or relevant and appropriate requirements" under the Comprehensive Environmental Response, Compensation, and Liability Act; (2) an alternative emphasizing foreseeable land use to better define likely exposure scenarios and appropriate waste management strategies; (3) an alternative equally balancing remedial worker and transportation risks with the risk to a site's surrounding population; and (4) an alternative emphasizing foreseeable land use to establish initial remediation objectives while also emphasizing worker and transport risks. Evaluation of these five alternatives is intended to provide input into the development of Department of Energy policies relevant to undertaking future environmental restoration that would incorporate consideration of land use and all major elements of human health risks.

The programmatic alternatives for waste management to be evaluated in the Programmatic Environmental Impact Statement are structured in terms of configurations for each of six waste types: High-level radioactive waste; transuranic radioactive waste; low-level radioactive waste; low-level mixed waste (waste consisting of hazardous and radioactive components); commercial Greater-than-Class-C radioactive waste, and hazardous waste. In addition to a No Action baseline, which includes only existing or approved waste management facilities, alternative configurations for each waste type will be evaluated that reflect decentralized, regionalized, and centralized approaches for utilizing existing and new waste management facilities at Department of Energy sites. The waste management facilities for which alternative configurations will be evaluated are storage facilities for treated high-level waste and commercial Greater-than-Class-C waste pending repository disposal; storage facilities for transuranic waste and treatment facilities in the event that treatment of transuranic waste is required prior to disposal; and treatment, storage, and disposal facilities for low-level, low-level mixed, and hazardous wastes. The evaluation of alternative configurations for waste management facilities is intended to provide environmental input for decisions on the potential consolidation of existing waste management facilities and locating new or expanded waste management facilities at Department of Energy installations. The evaluation of alternative configurations for the treatment of low-level mixed wastes also will provide environmental input for site-specific plans required by the Federal Facility Compliance Act.

Technology Development and Other Issues

The Programmatic Environmental Impact Statement will discuss emerging technologies and their effect on the analysis of alternatives. Several other issues that are important to achieving cleanup and waste management goals and to the implementation of the Department's Environmental Restoration and Waste Management program also will be discussed. Issues to be addressed include budgeting and prioritization, job retraining programs, stakeholder roles, waste minimization, and public involvement. Discussion of these issues is included to assist public understanding of the decisions to be reached, and to provide the opportunity for public input on improving the conduct of the Department's Environmental Restoration and Waste Management Program. The Programmatic Environmental Impact Statement will not evaluate site-specific actions at Department sites that would be covered by appropriate project-level National Environmental Policy Act documentation.

Spent Nuclear Fuel

The Department had proposed to consider the storage of Department-owned spent nuclear fuel in the scope of the Programmatic Environmental Impact Statement. On September 3, 1993, however, the Department announced that it would incorporate the planned programmatic analysis of spent nuclear fuel into the Idaho National Engineering Laboratory Environmental Restoration and Waste Management Environmental Impact Statement to comply with a recent order issued by the U.S. District Court for the District of Idaho. The Programmatic Environmental Impact Statement will contain a summary of the spent fuel analysis and will incorporate the results of that analysis into the Programmatic Environmental Impact Statement's evaluation of cumulative environmental consequences.

Availability of Implementation Plan

Copies of the Implementation Plan have been sent to individuals and interested agencies and organizations who indicated an interest in receiving a copy, and a copy of the Implementation Plan's Executive Summary has been provided to individuals, agencies, and organizations that participated in the public scoping and workshop processes. The full Implementation Plan will be provided to any additional interested parties upon request. Copies of the Implementation Plan also have been placed in the Department of Energy reading rooms and public libraries identified below. Please contact the individual reading rooms and libraries for information on the availability of the Implementation Plan and the hours of operation.

Federal Documents Collection, Alaska State Library, P.O. Box 110571, 8th Floor State Office Building, Juneau, Alaska 99811
Berkeley Public Library, 2090 Kittredge Street, Berkeley, California 94704
Davis Branch, Yolo County Library, 315 East 14th Street, Davis, California 95616
Oakland Operations Office, U.S. Department of Energy, 1333 Broadway, Oakland, California 94612
Livermore Public Library, 1000 South Livermore Avenue, Livermore, California 94550
Serial Division, Los Angeles Public Library, 361 South Anderson Street, Los Angeles, California 90033
Palo Alto Public Library, 1213 Newell Road, Palo Alto, California 94303
Government Publications Section, California State Library, 914 Capitol Mall, P.O. Box 942837 Sacramento, California 94237
San Diego County Library, 5555 Overland Avenue, Building 15, San Diego, California 92123
Semi Valley Public Library, 2969 Tapo Canyon Road, Semi Valley, California 93063
Government Publications Department, Denver Public Library, BS/GPD, 1357 Broadway, Denver, Colorado 80203
Rocky Flats Environmental Monitoring Council, 1536 Cole Boulevard, suite 150, Golden, Colorado 80401
Mesa County Public Library, P.O. Box 20,000–5019, 530 College Place, Grand Junction, Colorado 81502
Lakewood Branch, Jefferson County Public Library, 10200 West 20th Street, Lakewood, Colorado 80215
U.S. Department of Energy Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, Colorado 80030
Connecticut State Library, 231 Capitol Avenue, Hartford, Connecticut 06106
Government Publications, Seely G. Mudd Library, Yale University, 38 Mansfield Street, New Haven, Connecticut 06520
Widener University School of Law Library, P.O. Box 7475, 4601 Concord Pike, Wilmington, Delaware 19803
District of Columbia Library, 6th Level, 500 Indiana Avenue, NW., Washington, D.C. 20001
Freedom of Information Reading Room, U.S. Department of Energy, 1000 Independence Avenue, SW., room 1E–190, Washington, D.C. 20585
Public Reading Room, Largo Public Library, 351 East Bay Drive, Largo, Florida 34640
Document Section, State Library of Florida, R.A. Gray Building, 500 South Poronough, Tallahassee, Florida 82399
Reese Library, Augusta College, 2500 Walton Way, Augusta, Georgia 30910
Federal Documents Section, Hawaii State Library, 478 South King Street, Honolulu, Hawaii 96813
Boise Public Library, 715 South Capitol Boulevard, Boise, Idaho 83702
Idaho State Library, 325 West State Street, Boise, Idaho 83702
Public Reading Room, Idaho Operations Office, U.S. Department of Energy, 1776 Science Center Drive, Idaho Falls, Idaho 83402
Idaho Falls Public Library, 457 Broadway, Idaho Falls, Idaho 83402
Moscow-Latah County Library, 110 South Jefferson, Moscow, Idaho 83843
Idaho Netional Engineering Laboratory Pocatello Office, 215 North 9th, Pocatello, Idaho 83201
Pocatello Library, 612 East Clark, Pocatello, Idaho 83201
Idaho National Engineering Laboratory Twin Falls Office, 1062 Blue Lakes Boulevard North, suite 106, Twin Falls, Idaho 83001
Twin Falls Public Library, 434 2nd Street East, Twin Falls, Idaho 83001
Chicago Operations Office, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, Illinois 60439
Government Publications Department, Chicago Public Library, 400 North Franklin, Chicago, Illinois 60610
Reference Department, Illinois State Library, 300 South Second, Springfield, Illinois 62701
Documents Section, State Library of Iowa, Historical Building, East 12th & Grand, Des Moines, Iowa 50310
Ashland Community College Library, University of Kentucky, 1400 College Drive, Ashland, Kentucky 41101
Federal Documents Section, Kentucky Department for Libraries and Archives, P.O. Box 537, 300 Coffee Tree Road, Frankfort, Kentucky 40602
Paducah Public Library, 555 Washington Avenue, Paducah, Kentucky 42001

Documents Division, Enoch Pratt Free Library, 400 Cathedral Street, Baltimore, Maryland 21201
Harford Community College Library, 401 Thomas Run Road, Bel Air, Maryland 21014
Document Department, State Library of Massachusetts, 442 State House, Boston, Massachusetts 02133
Government Documents Unit, Library of Michigan, P.O. Box 30007, 717 West Allegan Street, Lansing, Michigan 48909
Joseph A. Cook Memorial Library, University of Southern Mississippi, 2609 West 4th Street, Hattiesburg, Mississippi 39406
Documents Section, Mississippi Library Commission, 1221 Ellis Avenue, Jackson, Mississippi 39209
Missouri State Library, P.O. Box 387, 600 West Main Street, Jefferson City, Missouri 65102
U.S. Department of Energy Public Reading Room, Red Bridge Branch, Mid-Continent Public Library, 11140 Locust Street, Kansas City, Missouri 64137
Documents Division, Kansas City Missouri Public Library, 311 East 12th Street, Kansas City, Missouri 64106
Kisker Road Branch, St. Charles City-County Library District, 1000 Kisker Road, St. Charles, Missouri 63303
St. Louis County Library, 1640 South Lindberg Boulevard, St. Louis, Missouri 63131
Documents Division, Montana College of Mineral Science and Technology Library, Park Street, Butte, Montana 59701
Montana State Library, 1515 East 6th Avenue, Helena, Montana 59620
Federal Documents Department, Nebraska Library Commission, 1420 P Street, Lincoln, Nebraska 68508
Beatty Community Library, P.O. Box 129, 4th and Ward Street, Beatty, Nevada 89003
Nevada State Library and Archives, Capitol Complex, 451 North Carson Street, Carson City, Nevada 89710
Nevada Operations Office, U.S. Department of Energy, 2753 South Highland Drive, Las Vegas, Nevada 89193
Government Documents Department, James R. Dickinson Library, University of Nevada, 4505 South Maryland Parkway, Las Vegas, Nevada 89154
Las Vegas Clark County Library, 833 Las Vegas Boulevard North, Las Vegas, Nevada 89101
Lawrenceville Branch, Mercer County Library, 2751 Brunswick Pike, Lawrenceville, New Jersey 08648
Government Publications Department, Alexander Library, Rutgers University, 169 College Avenue, New Brunswick, New Jersey 08903
U.S. Documents, New Jersey State Library, CN–52D, 185 West State Street, Trenton, New Jersey 08625
Albuquerque Operations Office, U.S. Department of Energy, Pennsylvania and H Streets, Kirtland Air Force Base, New Mexico 87115
Government Publications Department, General Library, University of New Mexico, Albuquerque, New Mexico 87131
Carlsbad Public Library, 101 South Halagueno Street, Carlsbad, New Mexico 88220
Mesa Public Library, 1742 Central Avenue, Los Alamos, New Mexico 87545
New Mexico State Library, 325 Don Gasper Avenue, Santa Fe, New Mexico 87503
Cultural Education Department, New York State Library, Madison Avenue, Empire State Plaza, Albany, New York 12230
U.S. Department of Energy, 26 Federal Plaza, Room 3437, New York City, New York 10278
Concord Public Library, 23 N. Buffalo Street, Springville, New York 14141
Lane Library, 800 Vine Street, Cincinnati, Ohio 45202
Documents Department, State Library of Ohio, 65 South Front Street, Columbus, Ohio 43266
Documents Department, Dayton and Montgomery Community Public Library, 215 East Third Street, Dayton, Ohio 45402
Miamisburg Library, 35 South Fifth Street, Miamisburg, Ohio 45342
Portsmouth Public Library, 1220 Galia Street, Portsmouth, Ohio 45667
Shawnee State University Library, 940 Second Street, Portsmouth, Ohio 45662
Social Science Department, Toledo-Lucas County Public Library, 325 Michigan Street, Toledo, Ohio 43624
Portland State University Library, 934 S.W. Harrison, Portland, Oregon 97207
Oregon State Library, State Library Building, West Summer & Court Streets, Salem, Oregon 97310
Government Publications Section, State Library of Pennsylvania, P.O. Box 1601, Walnut Street & Commonwealth Avenue, Harrisburg, Pennsylvania 17105
U.S. Department of Energy Reading Room, Writing Center, University of South Carolina, Aiken Campus, 171 University Parkway, Aiken, South Carolina 29801
Documents Department, South Carolina State Library, P.O. Box 11469, 1500 Senate Street, Columbia, South Carolina 29204
Lawson McGhee Library, Knox County Public Library System, 500 West Church Avenue, Knoxville, Tennessee 37902
Tennessee State Library and Archives, 403 7th Avenue North, Nashville, Tennessee 37219
Freedom of Information Officer, Oak Ridge Operations Office, U.S. Department of Energy, 200 Administration Road, Oak Ridge, Tennessee 37831
U.S. Department of Energy Reading Room, Lynn Library—Learning Center, Amarillo College, 2201 South Washington Street, Amarillo, Texas 79109
U.S. Documents, Texas State Library, P.O. Box 12927, 1201 Brazos, Austin, Texas 78711
Documents Section, Virginia State Library & Archives, 11th Street at Capitol Square, Richmond, Virginia 23219
Richland Operations Office, U.S. Department of Energy, 825 Jadwin Avenue, Richland, Washington 99352
FM–25 Government Publications, Suzzalo Library, University of Washington, Seattle, Washington 98195
Crosby Library, Gonzaga University, E. 502 Boone, Spokane, Washington 99258

Draft Programmatic Environmental Impact Statement

The Department is tentatively planning to hold public workshops in May 1994, in advance of issuing the Draft Programmatic Environmental Impact Statement. Additional announcements will be made at that time. The Department expects to distribute the Draft Programmatic Environmental Impact Statement between June and September 1994; public hearings on the Draft Statement will be scheduled at that time.

Issued in Washington, DC, this 10th day of February 1994.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 94–3642 Filed 2–16–94; 8:45 am]

BILLING CODE 6450–01–P

DOE Response to Recommendation 93–6 of the Defense Nuclear Facilities Safety Board; Maintaining Access to Nuclear Weapons Expertise

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 93–6 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on December 23, 1993, (58 FR 68123) concerning access to nuclear weapons expertise.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before March 21, 1994.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Victor H. Reis, Assistant Secretary for Defense Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on February 2, 1994.

Mark B. Whitaker,

Acting Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004

Dear Mr. Conway: The Department of Energy fully accepts Defense Nuclear Facilities Safety Board Recommendation 93–6, Maintaining Access to Nuclear Weapons Expertise.

The Department shares your concern of ensuring capability to safely conduct nuclear weapons testing operations at the Nevada Test Site and to safely dismantle nuclear weapons at the Pantex Site. To meet this challenge, the Department must identify and maintain access to the critical skills of nuclear weapons scientists, engineers, and technicians. Where access to skills in the future is uncertain, the Department must find ways to capture knowledge, so safe dismantlement procedures can be developed and utilized and safe testing operations can be conducted.

The forthcoming Implementation Plan for Recommendation 93–6 will capitalize on activities that have already been initiated and provide a structured approach for ensuring the continued safe conduct of operations at Pantex and the Nevada Test Site.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 94–3643 Filed 2–16–94; 8:45 am]

BILLING CODE 6450–01–P

Office of the Deputy Secretary

Contract Reform Team: Notice of Availability of the Report of the Contract Reform Team

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability.

SUMMARY: The Contract Reform Team, which was established last year by the Secretary of Energy to conduct a comprehensive review of the Department's contracting practices, has completed its work and provided its recommendations to the Secretary. This notice announces the availability of the Report of the Contract Reform Team (Report) and requests the views of the public on the recommendations contained in the Report. The Department will proceed with implementation of the recommendations following an opportunity to consider the views of DOE employees and the public on the Report's recommendations.

DATES AND ADDRESSES: Copies of the Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office: The publication's number is 061–000–00801–2, and its cost is $11.00. Telephone orders should be directed to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238, FAX (202) 512–2233, Monday through Friday between the hours of 8 a.m. and 4 p.m., eastern time. Mail orders should be directed to: U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954.

The Report also is available for inspection in DOE Public Reading Rooms at Headquarters and in the eight Operations Offices. The locations and telephone numbers of these Reading Rooms are:

Washington, DC

U.S. Department of Energy, Public Reading Room, room 1G–051, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–6020, Attn: Denise Diggin

Albuquerque

National Atomic Museum, 20358 Wyoming Boulevard SE, Kirkland Air Force Base, NM 87117, (505) 845–4378, Attn: Diane Zepeda

Chicago

Chicago Operations Office, Public Reading Room, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252–2010, Attn: Joan L. Redding

Idaho

Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, Idaho Falls, ID 83415, (208) 526–1144, Attn: Gail Wilmore

Nevada

Nevada Operations Office, Public Reading Room, 2753 South Highland Drive, Las Vegas, NV 89109, (702) 295–1459, Attn: Charlotte Santilli

Oak Ridge

Oak Ridge Operations Office, Public Reading Room, Federal Building, 200 Administration Road, Oak Ridge, TN 37830, (615) 576–1216, Attn: Jane Greenwalt

Richland

Richland Operations Office, Public Reading Room, room 130 West, 100 Sprout Road, Richland, WA 99352, (509) 376–8583, Attn: Terri Traub

Oakland

Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612, (510) 637–1794, Attn: Lauren McNair

Savannah River

U.S. Department of Energy, Public Reading Room, University of South Carolina-Aiken, 171 University Parkway, Second Floor Library, Aiken, SC 29801, (803) 725–2889, Attn: James M. Gaver.

Written comments on the Report should be sent to: The Office of the Deputy Secretary, Attention: Contract Reform Team, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW, room 7B–252, Washington, DC 20585. Comments must be received no later than March 21, 1994 and should not exceed ten double-spaced, single-sided typed pages. To facilitate review, an original and two copies of the comments should be provided.

FOR FURTHER INFORMATION CONTACT: For further information contact Carol Drury, U.S. Department of Energy, Office of Public and Consumer Affairs, Washington, DC 20585, at (202) 586–4940.

SUPPLEMENTARY INFORMATION: On May 26, 1993, Secretary of Energy Hazel R. O'Leary announced her intention to establish a Contract Reform Team, chaired by the Deputy Secretary, to review the Department's contracting mechanisms and practices. The Contract Reform Team was charged with a review of a broad range of contracting issues, including the management and operation of DOE weapons production facilities and national laboratories, support service contracting, and environmental restoration activities, consistent with the Department's changing mission.

The Contract Reform Team conducted a thorough analysis of the Department's contracting practices and provided a list of specific recommendations to the Secretary regarding administrative, financial, and regulatory improvements that are intended to increase contractor accountability, enhance competition, provide appropriate incentives for contractors to meet and exceed performance criteria and achieve cost savings, and improve contract administration and financial accountability.

The Department is strongly committed to the President's and Vice President's efforts to reinvent Government and recognizes that reforming DOE's contracting practices is critical to our success. This Report represents a major step forward in the Secretary's efforts to reform the Department's contracting practices. The recommendations are intended to create a system that focuses on efficient processes and quality results, rewards initiative and commitment, and provides meaningful sanctions and penalties where necessary.

The Department is interested in the views of stakeholders within and outside the Department on the Report's recommendations. Following consideration of stakeholder views, the Department intends to proceed with the implementation phase of its contract reform initiative.

Issued in Washington, DC, on February 11, 1994.

William H. White,

Deputy Secretary, Department of Energy.

[FR Doc. 94–3641 Filed 2–16–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER94-949-000, et al.]

Public Service Company of Oklahoma, et al.; Electric Rate and Corporate Regulation Filings

February 8, 1994.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Oklahoma

[Docket No. ER94-949-000]

Take notice that on February 2, 1994, Public Service Company of Oklahoma and Southwestern Electric Power Company submitted for filing a revised SPP Interpool Transmission Service Tariff. The filing companies state that the purpose of the filing is to update the rates for service under the tariff. The filing companies request an effective date of February 2, 1994.

The filing companies state that copies of the filing have been served on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the New Mexico Public Utility Commission. Copies of the filing are also available for inspection in the general offices of each of the filing companies.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Westchester Resco Company, L.P.

[Docket Nos. ES94-14-000 and ES94-14-001]

Take notice that on February 2, 1994, Westchester Resco Company (WRC) filed an application and on February 3, 1994, filed an amendment to its application under section 204 of the Federal Power Act seeking authority to guarantee refunding bonds to be issued by the County of Westchester Industrial Development Agency for refinancing bonds issued in 1982 and seeking authorization for blanket approval of all future issuance of securities and assumptions of liabilities. Also, WRC requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Stone Container Corporation, A Delaware Corporation

[Docket No. EL94-25-000]

Take notice that on January 28, 1994, Stone Container Corporation (Operator) tendered for filing a Petition for Declaratory Order that the transfer of the lessee's interest in a qualifying cogeneration facility from the Operator to Carolina Power & Light Company (CP&L), a North Carolina corporation, will not (1) subject the Operator to Commission regulation as a "public utility" under section 201(e) of the Federal Power Act if the Operator continues to operate the Facility pursuant to an Operating, Maintenance and Repair Agreement between CP&L and the Operator and (2) subject GELCO Corporation (GELCO) and Westinghouse Electric Corporation, as lessors, each holding an undivided interest in the Facility to regulation as "public utilities" under section 201(e) of the Federal Power Act.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Maine Yankee Atomic Power Company

[Docket No. EL93-22-001]

Take notice on February 2, 1994, Maine Yankee Atomic Power Company (Maine Yankee) tendered for filing its compliance report in the above-referenced docket.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Columbus Southern Power Company, Ohio Power Company

[Docket No. ER93-637-000]

Take notice that on January 28, 1994, American Electric Power Service Corporation, on behalf of Columbus Southern Power Company (CSP) and Ohio Power Company (OPCO) tendered for filing revised copies of Supplement B to CSP's FERC Rate Schedule No. 37 and OPCO's FERC Rate Schedule No. 74. Supplement B caps the transmission rate in Rate Schedule Nos. 37 and 74 respectively, for transactions exceeding one year in length at the level ultimately approved by FERC in Docket No. ER93-540-000.

A copy of the filing was served upon the American Municipal Power-Ohio Inc., the City of Columbus, Ohio, and the Public Utility Commission of Ohio.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. El Paso Electric Company, Central and South West Services, Inc.

[Docket No. EC94-7-000]

Take notice that on February 3, 1994, El Paso Electric Company (EPEC) and Central and South West Services, Inc. (CSWS), submitted for filing workpapers that support the testimony and exhibits of three witnesses: Samuel C. Hadaway David A. Harrell and James A. Brugeman, that were included in the Joint Application filed on January 10, 1994, and supplemented on January 13, 1994.

Copies of this second supplemental filing have been served on all parties listed on the service list in Docket No. EC94-7-000 and on all affected state utility commissions.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota)

[Docket No. ER94-882-000]

Take notice that on January 11, 1994, Northern States Power Company (Minnesota) tendered for filing page 4 of the Operating Agreement in the above-referenced docket, which was inadvertently omitted from the filing made in this docket on December 30, 1993.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFF 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3638 Filed 2-16-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. EG94-21-000, et al.]

SEI Bahamas Argentina I, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 7, 1994.

Take notice that the following filings have been made with the Commission:

1. SEI Bahamas Argentina I, Inc.

[Docket No. EG94-21-000]

On January 28, 1994, SEI Bahamas Argentina I, Inc. (the "Applicant"), 900 Ashwood Parkway, Suite 300, Atlanta, Georgia 30338, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a wholly-owned subsidiary of SEI Holdings VI, Inc., which, in turn, is a wholly-owned subsidiary of The Southern Company. The Applicant is participating in a bid for the purpose of owning and/or operating "eligible facilities" as defined in section 32(a)(2) of PUHCA. The facilities consist of four dams and three hydroelectric generating stations with a total installed capacity of 265 MW produced by twelve generating units and associated interconnection facilities. The facilities are located on the Atuel River system in the Department of San Rafael in the Province of Mendoza, Argentina.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Inversores de Electricidad S.A.

[Docket No. EG94-22-000]

On January 28, 1994, Inversores de Electricidad S.A. (the "Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to Part 365 of the Commission's regulations.

The Applicant is jointly owned by SEI Holdings VI, Inc. and SEI Bahamas Argentina I, Inc. SEI Bahamas Argentina I, Inc. is a wholly-owned subsidiary of SEI Holdings VI, Inc., which, in turn, is a wholly-owned subsidiary of The Southern Company. The Applicant is participating in a bid for the purpose of owning and/or operating "eligible facilities" as defined in section 32(a)(2) of PUHCA. The facilities consist of four dams and three hydroelectric generating stations with a total installed capacity of 265 MW produced by twelve generating units and associated interconnection facilities. The facilities are located on the Atuel River system in the Department of San Rafael in the Province of Mendoza, Argentina.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. SEI Inversora S.A.

[Docket No. EG94-23-000]

On January 28, 1994, SEI Inversora S.A. (the "Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to Part 365 of the Commission's regulations.

The Applicant is jointly owned by SEI Bahamas Argentina I, Inc. and Inversores de Electricidad. SEI Bahamas Argentina I, Inc. is a wholly-owned subsidiary of SEI Holdings VI, Inc., which, in turn, is a wholly-owned subsidiary of The Southern Company. Inversores de Electricidad is jointly owned by SEI Holdings VI, Inc. and SEI Bahamas Argentina I, Inc. The Applicant is participating in a bid for the purpose of owning and/or operating "eligible facilities" as defined in section 32(a)(2) of PUHCA. The facilities consist of four dams and three hydroelectric generating stations with a total installed capacity of 265 MW produced by twelve generating units and associated interconnection facilities. The facilities are located on the Atuel River system in the Department of San Rafael in the Province of Mendoza, Argentina.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Gordonsville Energy, L.P.

[Docket Nos. EL94-20-000, QF92-166-003 and QF92-167-003]

Take notice that on January 13, 1994, Gordonsville Energy, L.P. (Gordonsville) tendered for filing a Petition for Waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Gordonsville petitions the Commission to waive the ownership requirements for qualifying cogeneration facilities as set forth in § 292.206(b), 18 CFR 292.206(b) of the Commission's Regulations implementing Section 201 of PURPA, as amended, with respect to Gordonsville's one hundred percent (100%) ownership interest in two natural gas and oil-fired qualifying cogeneration facilities located in Gordonsville, Virginia.

The notice originally issued in this proceeding on January 28, 1994, is amended to reference Docket Nos. QF92-166-003 and QF92-167-003.

Comment date: February 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER93-576-000]

Take notice that on February 2, 1994, Southern California Edison Company submitted supplemental information regarding its filing in the above-captioned docket.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Pennsylvania Power & Light Company

[Docket No. ER94-945-000]

Take notice that on February 1, 1994, Pennsylvania Power & Light Company (PP&L), tendered for filing a proposed change in rate levels of certain electric resale schedules presently on file with the Commission. The proposed change will decrease base rate revenues from jurisdictional sales and service to the specified utility and municipal resale customers (municipal utilities). PP&L requests an effective date of February 1, 1994, the date negotiated by PP&L and the municipal utilities. PP&L states that all the municipal utilities concerned have agreed to the filed rate schedule changes.

PP&L states that copies of the filing were served on the municipal utilities concerned as well as the Pennsylvania Public Utility Commission.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER94-946-000]

Take notice that on February 1, 1994, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission a signed Service Agreement between Niagara Mohawk and the New York Power Authority (NYPA) for sales of system capacity and/or energy or resource capacity and/or energy under Niagara Mohawk's proposed Power Sales Tariff in Docket No. ER93-313-000. Niagara Mohawk filed its Power Sales Tariff on January 11, 1993 and requested an effective date of March 13, 1993 for the Tariff. Niagara Mohawk requests an effective date for this Service Agreement of February 1, 1994, the date of filing with FERC.

A copy of this filing has been served upon NYPA and the New York State Public Service Commission.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. IES Utilities Inc.

[Docket No. ER94-947-000]

Take notice that on February 1, 1994, IES Utilities Inc. (IESU), tendered for filing a Notice of Succession, wherein IESU stated it had adopted all existing rate schedules of Iowa Southern Utilities Company (ISU) and Iowa Electric Light and Power Company (IE)

on file with the Commission. Effective December 31, 1993, ISU merged into IE and the name of the surviving corporation was changed to IES Utilities Inc.

A copy of the filing was served upon all jurisdictional customers of IESU.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service Company

[Docket No. ER94-948-000]

Take notice that on February 2, 1994, Arizona Public Service Company (APS) tendered for filing revised estimated load and contract demand Exhibits applicable under the following rate schedules:

APS–FPC/ FERC No.	Customer	Exhibit name
58	Welton-Mohawk Irrigation & Drainage District	Exhibit B
126	Electrical District No. 6	Exhibit "IL"
140	Electrical District No. 8	Exhibit "IL"
142	McMullen Valley Water Cons. & Drainage District	Exhibit "IL"
143	Tonopah Irrigation District	Exhibit "IL"
153	Harquahala Valley Power District	Exhibit "IL"
155	Buckeye Water Cons. & Drainage District	Exhibit "IL"
158	Rossevelt Irrigation District	Exhibit "IL"
168	Maricopa Water District	Exhibit "IL"

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

A copy of this filing has been served on the above customers and the Arizona Corporation Commission.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Pioneer Energy Partners, Limited Partnership

[Docket No. QF93-127-001]

On February 1, 1994, Pioneer Energy Partners, Limited Partnership tendered for filing a supplement to its filing in this docket. The supplement pertains to technical aspects of the qualifying facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3639 Filed 2-16-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-204-000, et al.]

Arkla Energy Resources Co., et al.; Natural Gas Certificate Filings

February 8, 1994.

Take notice that the following filings have been made with the Commission:

1. Arkla Energy Resources Company, ONEOK Services, Inc.

[Docket No. CP94-204-000]

Take notice that on January 28,1994, Arkla Energy Resources Company (AER), 1600 Smith Street, Houston, Texas 77002 and ONEOK Services, Inc. (ONEOK), 100 West Fifth Street, P.O. Box 871, Tulsa, Oklahoma 74102, filed in Docket No. CP94-204-000 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange agreement and for AER to abandon by sale to Arkansas Louisiana Gas Company (ALG) certain facilities in Marshall County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER states that its predecessor, Arkansas Louisiana Gas Company, and ONEOK's predecessor, Lone Star Gas Company, were authorized to exchange gas in McClain and Marshall Counties, Oklahoma. AER further states that it delivers gas to ONEOK in McClain County, Oklahoma and ONEOK redelivers the gas to AER in Marshall County, Oklahoma for delivery to ALG for distribution in the Town of Kingston, Oklahoma. ALG and ONEOK have negotiated intrastate service arrangements that make the exchange between AER and ONEOK no longer necessary, it is stated. ALG would operate the lines and taps as part of its rural distribution system in Oklahoma and continue to serve the Town of Kingston, Oklahoma, it is stated.

AER proposes to abandon by sale to ALG the exchange receipt facilities, consisting of a 2-inch tap and meter station, and two 2-inch delivery taps and meter stations and approximately 9.4 miles of 3-inch pipeline, all located in Marshall County, Oklahoma. AER and ONEOK also propose to abandon the exchange service under AER's Rate Schedule No. XE-45. ONEOK asserts that it was not assigned a tariff or rate schedule when it accepted the assignment of service from Lone Star. ONEOK is not proposing to abandon any facilities.

Comment date: March 1, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP94-210-000]

Take notice that on February 2, 1994, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP94-210-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery tap, pipeline, metering and appurtenant facilities for additional service to Union Camp Corporation (Union Camp) under Southern's blanket certificate issued in Docket No. CP82-406-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that it was authorized by the Commission to provide service to Union Camp at its Savannah, Georgia Plant by order dated February 18, 1953, in Docket No. G-1907. Southern further states that it proposes to construct and operate certain measurement and regulating facilities in order to provide interruptible transportation service to Union Camp at a second delivery point for use at a new boiler to be constructed at the Savannah Plant in Chetham County, Georgia. Southern says that it proposes to locate the facilities on the plant site in Chatham County, and the estimated cost of construction and installation is approximately $628,967.

Southern states that it would transport gas on behalf of Union Camp pursuant to its Rate Schedule IT. Southern states that the installation of the proposed facilities would have no adverse effect on its peak day or annual requirements.

Comment date: March 25, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP94-215-000]

Take notice that on February 3, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed, in Docket No. CP94-215-000, a request pursuant to §§ 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) for authorization to construct and operate facilities in Moultrie County, Illinois. The facilities would be used as a new delivery point to deliver natural gas transported for Illinois Power Company (Illinois Power), a local distribution company, pursuant to a part 284, subpart G transportation contract between Natural and Illinois Power. Illinois Power would use the gas received as part of its system supply. Natural would construct and operate these facilities under its blanket certificate granted September 1, 1982, at Docket No. CP82-402-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to install dual 8" meter and duel 10" tap facilities for an interconnect with Illinois Power's 20" Hillsboro Lateral. The facilities would be constructed to deliver approximately 90,000 MMBtu per day of natural gas to Illinois Power in Section 4, Township 14 South, Range 5 East, Moultrie County, Illinois, at an estimated total cost of $393,000. Natural states that it has sufficient capacity to provide these services at the proposed delivery point without detriment or disadvantage to Natural's peak day and annual delivery capacity.

Comment date: March 25, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3640 Filed 2-16-94; 8:45 am]

BILLING CODE 6717-01-P

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of November 8 Through November 12, 1993

During the week of November 8 through November 12, 1993, the decisions and orders summarized below were issued with respect to applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

The Gazette Newspapers, 11/9/93, LFA-0156

The Gazette Newspapers filed an Appeal from a determination issued by the DOE Office of Naval Reactors (Naval Reactors) in response to a request for information filed by the Gazette under the Freedom of Information Act (FOIA). The Gazette had requested certain radiological documents that were withheld by Naval Reactors as classified. In considering the Appeal, the DOE found that Naval Reactors properly withheld the requested documents as classified under Executive Order 12356. Accordingly, the Appeal was denied.

Refund Applications

Shell Oil Company/Brown Construction Company; 11/9/93, RR315-5

The DOE issued a Decision and Order denying a Motion for Reconsideration filed in the Shell Oil Company special refund proceeding by Resource Refunds, Inc. (RRI), on behalf of Brown Construction Company (Brown). The RRI Motion sought reversal of a decision to deny the Brown Application for Refund in the Shell proceeding because

the Application was filed after the April 1, 1992 final filing deadline in this proceeding. RRI demonstrated that the late filing was the result of it's own error and was not at all the fault of Brown. The DOE concluded that while RRI's error may have left it responsible for the loss of Brown's potential refund, the agent's mishandling of the Brown's Application did not justify reopening the Shell proceeding. Accordingly, the Motion for Reconsideration filed by RRI on behalf of Brown was denied.

Texaco Inc./Airport Texaco, 11/12/93, RF321–19277

The DOE issued a Decision and Order concerning an Application for Refund filed by Mr. Ben Story in the Texaco Inc. special refund proceeding on behalf of Airport Texaco, a service station located at 7770 Airport Boulevard in Mobile, Alabama. In the Application, Mr. Story indicated that he owned and operated Airport Texaco from March 1978 through March 1984. However, the DOE had previously granted an Application for Refund filed by John Locklier based upon purchases by the service station during the period at the 7770 Airport Boulevard address. In support of his Application, Mr. Locklier had provided Texaco invoices, accounting documents, cancelled checks, and copies of tax forms which established that he operated Airport Texaco from February 1976 through December 1980. Mr. Story also provided a statement from the State of Alabama Department of Revenue attesting to Mr. Story's payment of withholding tax, as reflected on W–2 forms, for the period from March 1978 through 1982. However, according to this statement, Mr. Story paid withholding tax at Airport Texaco only in 1980 and 1981. Because W–2 forms are filed by employees and are based on their earnings, the DOE determined that this evidence could not be taken as proof that Mr. Story was the owner and operator of Airport Texaco. Mr. Story could produce no further documentation to substantiate his claim, and in the absence of a convincing demonstration that he was the owner and operator of Airport Texaco during the refund period, his Application for Refund was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Kenmore ARCO et al	RF304–14449	11/08/93
City of Augusta et al	RF272–83084	11/09/93
City of Hawaiian Gardens	RF272–83545	11/09/93
City of Stamps et al	RF272–84404	11/09/93
Fairchild Industries, Inc	RD272–58630	11/10/93
Fairchild Industries, Inc	RF272–58630	
Farmers Union Oil Company	RF272–88286	11/09/93
Farmers Co-operative Oil Co	RF272–88656	
Gulf Oil Corporation/City of Bowie et al	RF300–21007	11/10/93
Gulf Oil Corporation/Davis Gulf et al	RF300–18272	11/12/93
Gulf Oil Corporation/Hickory Drive-In Gulf et al	RF300–20502	11/12/93
Gulf Oil Corporation/Pilot Freight Carrier et al	RF300–19542	11/12/93
Gulf Oil Corporation/Richard Construction Co., Inc	RF300–19699	11/12/93
Richard Construction Co., Inc	RF300–21762	
Texaco Inc./David Rodgers Texaco et al	RF321–93	11/08/93
Texaco Inc./Mauldin Service Center et al	RF321–19029	11/08/93
Texaco Inc./Ridge Texaco	RF321–8460	11/12/93
Town of Lancaster et al	RF272–85598	11/10/93

Dismissals

The following submissions were dismissed:

Name	Case No.
4-WAY SERVICE	RF321–16744
ARNONE TEXACO	RF321–17906
B. LLOYD'S PECAN PRODUCTS, INC.	RF321–2595
BOYD'S TEXACO	RF321–18413
CAMPBELL 66 EXPRESS	RF321–19880
FAIRLESS HILLS	RF321–16960
HALLMAN'S TEXACO	RF321–17913
LAKEWOOD TEXACO	RF321–14303
MAPLES TEXACO	RF321–8605
MAXWELL'S TEXACO	RF321–18589
MCPHERSON FUELS AND ASPHALTS, INC.	RF321–17017
MOUNTAIN VIEW ELEMENTARY.	RF272–82130
NABE'S TEXACO	RF321–8607
PEPE'S TEXACO	RF321–8606
PORTWAY TEXACO	RF321–17942
RAYLE TEXACO	RF321–18380
RAYLE TEXACO	RF321–18461
ROBERT KETCHUM	RF321–17998
SCHUYLER GRADE SCHOOLS.	RF272–82141
TOM'S TEXACO	RF321–18466
USA GAS TRENTON	RF321–16959
VICKERS, INC.	RF321–16426
WESTERN EXCHANGE CORP.	RF321–16745

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 10, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–3644 Filed 2–16–94; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

Alabama National Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 11, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Alabama National Bancorporation, Shoal Creek, Alabama; to merge with Citizens Holding Company, Inc., Talladega, Alabama, and thereby indirectly acquire Citizens Bank of Talladega, Talladega, Alabama.

2. United Community Banks, Inc., Blairsville, Georgia; to acquire a debenture of White County Bancshares, Inc., Cleveland, Georgia, that is exchangeable for 51 percent of the common shares of its subsidiary, White County Bank, Cleveland, Georgia.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Leeds Holding Company, Leeds, North Dakota; to acquire 100 percent of the voting shares of Bankers Financial Corporation, Drake, North Dakota, and thereby indirectly acquire First National Bank in Drake, Drake, North Dakota.

Board of Governors of the Federal Reserve System, February 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–3612 Filed 2–16–94; 8:45 am]

BILLING CODE 6210–01–F

Alabama National Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 11, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Alabama National Bancorporation, Shoal Creek, Alabama; to acquire Saint Clair Holding Company, Inc., Pell City, Alabama, and its thrift subsidiary, Saint Clair Federal Savings Bank, Pell City, Alabama, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. The activity will be conducted in the State of Alabama.

Board of Governors of the Federal Reserve System, February 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–3613 Filed 2–16–94; 8:45 am]

BILLING CODE 6210–01–F

Hoosier Hills Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 8, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Hoosier Hills Financial Corporation, Osgood, Indiana; to engage *de novo* in a one time lending activity via the lending of funds to the Hoosier Hills Financial Corporation Employee Stock Ownership Plan, Osgood, Indiana, for the sole purpose of purchasing additional holding company stock pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–3611 Filed 2–16–94; 8:45 am]

BILLING CODE 6210–01–F

Marsha Merrill Wedell; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 8, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Marsha Merrill Wedell* and Henri Ludwig Wedell, Memphis, Tennessee; to retain 10.4 percent of the voting shares of Community Bancshares, Inc., Germantown, Tennessee, and thereby indirectly acquire Community First Bank, Germantown, Tennessee.

Board of Governors of the Federal Reserve System, February 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–3614 Filed 2–16–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[2168]

Program Announcement and Proposed Funding Priorities for Cooperative Agreements for Area Health Education Centers Program for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications are now being accepted for fiscal year 1994, Cooperative Agreements for the Area Health Education Centers (AHEC) Program under the authority of section 746(a)(1), (previously section 781(a)(1), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, dated October 13, 1992. Comments are invited on the proposed funding priorities stated below.

Approximately $18.7 million will be available for this program in FY 1994. Total continuation support recommended is $8.4 million. It is anticipated that $10.3 million will be available to support nine competing awards averaging $1.14 million.

The Health Professions Education Extension Amendments of 1992, makes the following amendments to this program.

(1) Period of Support

The maximum period during which the AHEC programs may receive payments shall be 12 years, subject to annual approval by the Secretary and the availability of appropriated funds. The maximum period during which an AHEC center developed by a program may receive payments shall be 6 years. The provision for a 12-year maximum shall not be construed as establishing a limitation on the number of awards under this authority that may be made to the school involved.

(2) General Requirements

As provided in section 746(b), a medical or osteopathic medical school may not receive an award for operational expenses under the existing basic AHEC award authority unless the program:

(a) Maintains preceptorship educational experiences for health science students;

(b) Maintains community-based primary care residency programs or is affiliated with such programs;

(c) Maintains continuing education programs for health professions or coordinates with such programs;

(d) Maintains learning resource and dissemination systems for information identification and retrieval;

(e) Has agreements with community-based organizations for the delivery of education and training in the health professions;

(f) Is involved in the training of health professionals (including nurses and allied health professionals), except to the extent inconsistent with the law of the State in which the training is conducted; and

(g) Carries out recruitment programs for the health science professions, or programs for health-career awareness, among minority and other elementary or secondary students from the areas the program has determined to be medically underserved;

(3) Requirements for Participation of Other Health Professions Schools or Programs

The former requirement that participating medical schools provide for the active participation of at least 2 schools or programs of other health professions (including a school of dentistry if there is one affiliated with the medical school's university) is modified to require also participation of a graduate program of mental health practice if there is one affiliated with the university.

(4) Requirement for Expenditure of at Least 75 Percent of Award in Centers

The former requirement that at least 75 percent of the total funds provided to a school under any AHEC program authority (basic AHEC programs, AHEC Special Initiatives or Model AHEC programs) be expended by the AHEC program in AHEC centers has been amended, as provided in section 746(e)(1)(A) to require also that the school enter into an agreement with each of such centers for purposes of specifying the allocation of the 75 percent of funds.

(5) Alternative Matching Requirements for New AHEC Programs Developed Under Basic AHEC Authority

As provided in section 746(e)(2), for an AHEC center developed as part of an AHEC program first funded under the basic AHEC authority on or after October 13, 1992, the existing requirement that not more than 75 percent of total operating funds be provided by the Federal Government (section 746(e)(1)(B)), is amended to establish a ceiling of 55 percent of any fifth or sixth year of the development or operation of the center.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program.

In FY 1993, HRSA reviewed 17 applications for Cooperative Agreements for the Area Health Education Centers Program. Of those applications, 58.9 percent were approved and 41.1 percent were disapproved. Eight projects, or 47 percent of the applications received, were funded.

In FY 1992, HRSA reviewed 11 applications. Of those applications, 73 percent were approved and 27 percent were disapproved. Three projects or 27 percent of the applications received, were funded.

Purpose

Section 746(a)(1) of the PHS Act authorizes Federal assistance to schools of medicine and osteopathic medicine which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs.

Eligibility

To be eligible to receive support for an area health education center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathic medicine or consortium of such schools, or the parent institution on behalf of such school(s).

Applicants may request up to 3 years of support with the expectation that AHECs planned and developed in years 1 and 2 would be fully operational no later than the 3rd year. The period of Federal support should not exceed 12 years for an area health education center program and 6 years for an area health education center.

The Health Professions Reauthorization Act of 1988, title VI of Public Law 100–607, amended the authority for the area health education center program by:

1. Providing for a waiver, under specified circumstances, of the provision now contained in section 746(a)(2)(C) prohibiting an AHEC from being a school of medicine or osteopathic medicine, the parent institution of such a school, or a branch campus or other subunit of a school of medicine or osteopathic medicine or its parent institution, or a consortium of such entities. The waiver of this provision applies to an AHEC having, at the time of initial application, an operating program supported by appropriations of a State legislature as well as local resources;

2. Reducing the minimum number of individuals enrolled in first-year positions in a rotating osteopathic internship or a medical residency training program in family medicine, general internal medicine, or general pediatrics from six individuals to four; and

3. Revising the requirement that each AHEC shall "conduct interdisciplinary training and practice involving physicians and other health personnel including, where practicable, physician assistants and nurse practitioners" to add "and nurse midwives."

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR part 57, subpart MM.

Degree of Federal Involvement in the Planning, Development and Operation of Area Health Education Centers Program

The Bureau of Health Professions, within the Health Resources and Services Administration, has substantial programmatic involvement in the planning, development, and administration of the AHEC projects by:

1. Reviewing and approving plans upon which continuation of the cooperative agreement is contingent in order to permit appropriate direction and redirection of activities;

2. Reviewing and approving all contracts and agreements among recipient medical or osteopathic schools, other health professions schools and community-based centers;

3. Participating with project staff in the development of funding projections;

4. Developing, with project staff, individual project data collection systems and procedures; and

5. Participating with project staff in the design of project evaluation protocols and methodologies.

Matching Funds Requirement

Section 746(e)(1)(B) of the Act requires that not more than 75 percent of total operating funds of a program in any year shall be provided by the Federal Goverment. However, as provided in section 746(e)(2), for an AHEC center developed as part of an AHEC program first funded under the basic AHEC authority on or after October 13, 1992, a ceiling of 55 percent of any fifth or sixth year of the development or operation of a center is established.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. This program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the program requirements set forth in 42 CFR 57.3804;

2. The capability of the applicant to carry out the proposed project; and

3. The extent of the need of the area to be served by the area health education centers.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

1. Funding preference is defined as the funding of a specific category or group of applications ahead of other categories or groups of approved applications, such as competing continuation projects ahead of new projects.

2. Funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Established Funding Preferences for Fiscal Year 1994

The following funding preference No. 1 was established in FY 1989 after public comment (at 54 FR 189) dated January 4, 1989. Funding Preference No. 2, was established in FY 1993, after public comment at 58 FR 12245, dated March 3, 1993. These funding preferences are being extended in FY 1994.

In making awards for fiscal year 1994, a funding preference will be given to:

(1) Approved competing continuation applications under section 746(a)(1); and

(2) Approved competing new applications under section 746 (a)(1) which propose to plan, develop and implement an AHEC program in a State where there is no existing AHEC

program. These applications will be funded after approved competing continuation applications.

Established Funding Priority for Fiscal Year 1994

The following funding priority was established in FY 1989, after public comment at 54 FR 189, dated January 4, 1989, and is being extended in FY 1994:

A funding priority will be given to applications which demonstrate substantial clinical training (a student or resident clerkship or preceptorship of 4 to 8 weeks) in sites that serve the medically underserved.

Proposed Funding Priorities for FY 1994

It is proposed that a funding priority be given to:

1. Applicants which demonstrate an increase in the percentage of graduates who have entered a Primary Care (Family Medicine, General Internal Medicine, General Pediatrics) Residency, for the most recent 3-year period.

An overall goal of the AHEC Program is to utilize educational interventions to improve the geographic and specialty distribution of primary care health personnel, and thereby increase access to health care to underserved populations. The achievement of AHEC Program goals is enhanced by medical schools (allopathic and osteopathic) which can demonstrate a commitment to increasing the number of students who select graduate training in a primary care specialty (family medicine, general internal medicine, general pediatrics). Such a commitment can be demonstrated in the performance and track record of the applicant medical schools, during a most recent 3-year period. In times of limited dollars, it is reasonable to allocate funds to: (1) Training institutions that have primary care training goals that are consonant with those of the Bureau of Health Professions and the AHEC Program; and (2) institutions that can demonstrate performance in training an increasing number of medical students who upon graduation select a primary care career specialty.

2. Applicants which demonstrate an increase in the percentage of underrepresented minority graduates for the most recent 3-year period.

This funding priority is proposed to encourage the training of underrepresented minorities in an effort to increase the number of underrepresented minorities who are accepted to medical school (allopathic or osteopathic) and complete training. It is assumed that these individuals, following training, are most likely to provide much needed care in medically underserved communities to predominantly minority populations. It is reasonable to provide limited funds to institutions which demonstrate a commitment to increasing the number of underrepresented minorities who graduate from medical school. Such commitment can be demonstrated in the performance and track record of the medical school, during a most recent 3-year period. Current data indicate that the percentage of underrepresented minorities attending and graduating from medical schools is not equal to the percentage of underrepresented minorities in the United States. This priority will assist in addressing the needs of underserved minority populations. The term "underrepresented minorities" means, with respect to a health profession, racial and ethnic populations that are underrepresented in the health profession relative to the number of individuals who are members of the population involved. For this program, it means American Indians or Alaskan Natives, Blacks, Hispanics, and, potentially, various subpopulations of Asian individuals. Applicants must evidence that any particular subgroup of Asian individuals is underrepresented in a specific discipline.

Additional Information

Interested persons are invited to comment on the proposed funding priorities. All comments received on or before March 21, 1994 will be considered before the final funding priorities are established.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–25, Parklawn Building, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to:

Ms. Diane Murray, Grants Management Specialist (U76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6857, Fax: (301) 443–6343.

Completed applications should be forwarded to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Ms. Cherry Tsutsumida, Chief, AHEC and Special Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6817, Fax: (301) 443–6890.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

The deadline date for receipt of applications is March 15, 1994. Applications shall be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service commercial carrier or U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.824 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: December 20, 1993.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–3598 Filed 2–16–94; 8:45 am]

BILLING CODE 4160–15–P

[PN 2164]

Emergency Medical Services for Children Demonstration Grants

AGENCY: Health Resources and Services Administration (HRSA), PHS, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The HRSA in collaboration with the National Highway Traffic Safety Administration (NHTSA) announces the availability of fiscal year (FY) 1994 funds for grants authorized under section 1910 of the PHS Act. These discretionary grants will be made to States or accredited schools of medicine to support projects for the expansion and improvement of emergency medical services for children (EMSC). Funds appropriated by Public Law 103–112 will be used for this purpose. Under the EMSC program authority, awards are made for project periods of up to 2 years.

The NHTSA participated with the HRSA in developing program priorities for the EMSC program for FY 1994. The NHTSA will share the Federal monitoring responsibilities for EMSC awards made during FY 1994 and will continue to provide ongoing technical assistance and consultation in regard to the required collaboration/linkages between applicants and their Highway Safety Offices and Emergency Medical Services Agencies for the State(s). Grantees funded under this program are expected to work collaboratively with the State trauma systems planning and development projects funded by the Bureau of Health Resources Development, HRSA.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. The EMSC grant program will directly address the Healthy People 2000 objectives related to emergency medical services and trauma systems linking prehospital, hospital, and rehabilitation services in order to prevent trauma deaths and long-term disability. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202 783–3238).

ADDRESSES: Grant applications for Emergency Medical Services for Children Demonstration Grants (Revised PHS form #5161–1, approved under OMB #0937–0189) must be obtained from and submitted to: Grants Management Branch, Maternal and Child Health Bureau, HRSA, room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Attn: EMSC, telephone 301 443–1440.

DATES: The application deadline date is May 6, 1994, for all categories except planning grants, which are due March 25, 1994. These are different from the dates announced in the **Federal Register** on February 2, 1994 (59 FR 4925). Competing applications will be considered to be on time if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Late competing applications or those sent to an address other than specified in the **ADDRESS** section will be returned to the applicant.

FOR FURTHER INFORMATION: Requests for technical or programmatic information should be directed to Jean Athey, Ph.D., Division of Maternal, Infant, Child and Adolescent Health, Maternal and Child Health Bureau, Health Resources and Services Administration, room 18A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301 443–4026. Requests for technical or programmatic information from NHTSA should be directed to Garry Criddle, R.N., CDR, USCG/USPHS, Department of Transportation, NHTSA EMS Division, NTS–42, 400 7th Street SW., Washington, DC 20590, telephone 202 366–5440. Requests for information concerning business management issues should be directed to: Maria Carter, Grants Management Specialist, Grants Management Branch, Maternal and Child Health Bureau, at the address listed in the **ADDRESSES** section above.

In addition, this program funds two national EMSC resource centers that are available to provide technical assistance and support to applicants, particularly in the areas of: (1) Understanding EMSC terminology; (2) developing a manageable approach to EMSC implementation; (3) obtaining local support for the grant application process; (4) facilitating development of community linkages for a collaborative effort; (5) identifying products of previously-funded EMSC projects of interest to potential applicants; and (6) offering advice on grant writing. Applicants may contact: James Seidel, M.D., Ph.D., or Deborah Henderson, R.N., M.A., National EMSC Resource Alliance, Research and Education Institute, Harbor/UCLA Medical Center, 1001 West Carson Street, suite S, Torrance, CA 90502, telephone 310 328–0720; or Jane Ball, R.N., Dr. P.H., EMSC National Resource Center, Children's National Medical Center, Emergency Trauma Services, 111 Michigan Ave., NW., Washington, DC 20010, telephone 202 745–5188.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

The Emergency Medical Services for Children statute (Section 1910 of the PHS Act, as amended) establishes a program of two-year grants to States, through a State-designated agency, or to an accredited medical school within the State, for projects for the expansion and improvement of emergency medical services for children who need treatment for trauma or critical illness. For purposes of this grant program, the term "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Northern Mariana Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia. The term "school of medicine" is defined as having the same meaning as set forth in Section 799(1)(A) of the PHS Act (42 U.S.C. 295p(1)(A)). "Accredited" in this context has the same meaning as set forth in section 799(1)(E) of the PHS Act (42 U.S.C. 295p(1)(E)). It is the intent of this grant program to stimulate further development or expansion of ongoing efforts in the States to reduce the problems of life-threatening pediatric trauma and critical illness. The Department does not intend to award grants which would duplicate grants previously funded under the Emergency Medical Services Systems Act of 1972 or which would be used simply to increase the availability of emergency medical services funds allotted to the State under the Preventive Health Services Block Grant.

Funding Categories

There will be four categories of competition for funding this year: State planning grants, State systems grants, targeted issue grants, and resource capacity grants. States may apply for only one of the first two categories, but are not restricted in applying for the last two categories.

Category (1): State Planning Grants

Planning grants are intended for States that have never received an EMSC grant and that are not at a stage of readiness to initiate a full-scale implementation project. States (or medical schools within those States) that have not received prior EMSC implementation grants are the only applicants eligible for this category. Planning grants are designed to enable a State to assess needs and develop a

strategy to begin to address those needs. Funds may be used to hire staff to assist in the assessment of EMSC needs of the State; obtain technical assistance from national, State, regional or local resources; help formulate a State plan for the integration of EMSC services into the existing State EMS plan; and plan a more comprehensive grant proposal based upon a needs assessment performed during the planning grant project period. A comprehensive approach, addressing physical, psychological, and social aspects of EMSC along the continuum of care, should be reflected. An ongoing working relationship with Federal EMSC program staff and resource center staff, beginning with the initiation of a planning grant application, is strongly encouraged. Budget requests in this category should not exceed $50,000. The project period is for one year only, with no renewal. Applications in this category are due earlier than other categories. The application deadline is March 25, 1994.

Category (2): State Systems Grants

This category of grants has two subcategories: implementation grants and system enhancement grants. Proposals for State systems grants may be framed within the context of the changing conditions of health care delivery anticipated under health care reform.

Subcategory (A): implementation grants. Implementation grants will improve the capacity of a State's Emergency Medical Services program to address the particular needs of children. Implementation grants are used to assist States in integrating research-based knowledge and state-of-the-art systems development approaches into the existing State EMS/trauma systems using the experience and products of previous EMSC grantees. Grants of up to $250,000 per award for each twelve month budget period are anticipated. Project periods are up to two years. Up to five grants will be awarded. For this competition, we intend to fund applications from States (and medical schools within those States) that have not as yet received support, or that have received only partial support under this program as part of a regional alliance. This means that approved applications from States (and medical schools within those States) with no or very limited prior EMSC program support will be funded before approved applications from outside this group. Applications will not be accepted for both planning grants and implementation grants simultaneously from the same State.

Subcategory (B): system enhancement grants. System enhancement grants will fund activities that represent the next logical step or steps to take in institutionalizing EMSC activities within the State EMS system and achieving program goals outlined in this announcement and further elaborated in the 1993 Institute of Medicine Report to Congress entitled Emergency Medical Services for Children. (A copy of the Executive Summary of this report will be enclosed with the application kit. The full report is available for $49.95 from National Academy Press, 2101 Constitution Avenue, NW., Box 285, Washington, DC 20055.) For example, funding might be used to improve linkages between local and regional or State agencies, to develop pediatric standards for a region, or to assure effective field triage of the child in physical or emotional crisis to appropriate facilities and/or other resources. Activities implemented under prior EMSC program funding but not completed or made self-sustaining during the original implementation project period will not be considered suitable. States that have previously received EMSC funds may apply for a system enhancement grant, as long as they will not also be receiving implementation grant funds during the project period of the systems enhancement grant. Grants of up to $150,000 are anticipated for the first year, with grants of up to $100,000 for the second year.

Category (3): Targeted Issues Grants

The third funding category is that of targeted issues grants on topics of importance to EMSC. These grants are intended to address specific, focused issues related to the development of EMSC capacity, with the potential to serve as national or regional models. Proposals in this category must have a well conceived methodology to evaluate the impact of the activity. The Director of the Maternal and Child Health Bureau (MCHB) will judge the acceptability of projects proposed in this category. Prospective applicants are urged to contact EMSC program staff well in advance of submitting their formal applications, so that the work of proposal development can be avoided if the proposed project is judged to be inappropriate for submission in this category.

Priorities for this category have been chosen from topics recommended by the 1993 Institute of Medicine Report on EMSC. Priorities and examples include:

—Education and Training. For this priority, proposals are sought which develop or evaluate education or training geared to improving EMS providers' ability to address underdeveloped elements in EMSC. They may relate to particular areas of attention, such as the psychosocial aspects of EMSC, or to particular populations that are underserved or isolated. Proposals focusing on underserved or isolated populations of children might target the needs of Native Americans, Native Alaskans, or Native Hawaiians, adolescents, developmentally disabled, mentally ill, homeless, or children living in rural areas or inner cities. Educational programs might also be developed for particular groups, such as parents, volunteers, caretakers, teachers, firefighters, medical control or medical dispatch personnel. Assessment of the effectiveness of the training, using appropriate outcome measures, is a key objective for proposals in this category. Proposals are expected to incorporate existing materials whenever possible; however, innovations in media or instructional techniques are encouraged. Projects could include the conversion of previously developed teaching materials to interactive video format, the development of curricula or training exercises to promote improved EMS management of psychosocial crises, or the utilization of multidisciplinary seminars or study groups to enhance collaboration on pediatric emergency care between primary and specialty providers.

—Data and Information System Management. For this priority, proposals are sought which reflect an understanding of the uses to which data are to be applied (e.g., patient care, quality assessment, resource allocation, research, etc.) and of the questions they are to answer. Projects should reflect familiarity with efforts of NHTSA, HRSA, the Centers for Disease Control and Prevention (CDC), and the EMSC program to develop national uniform data sets, if appropriate to the proposed project. States are encouraged to develop EMS data systems which include all the elements of a national uniform data set and are capable of describing the nature of EMS provided to children. Demonstrations of linkage of data sources to provide an optimal picture of EMS furnished to children is one example of a proposed project under this priority; such proposals would be expected to show considerable familiarity with previous linkage efforts by the above organizations and others. Another example is the improvement of the quality of data that relate mechanisms of injury to assigned E-codes.

—Communications. For this priority, proposals are sought which take advantage of new telecommunications technologies to improve EMS for children. Proposals could promote access to "911" or "enhanced 911" emergency telephone systems. For example, projects might use the "Make the Right Call" campaign on a statewide basis, with modifications that include educating the public—including children—about when to access EMS services for children; such projects would be expected to incorporate a well conceived evaluation of the impact of such a campaign. Alternatively, proposals could promote the use of advanced technologies to improve care for children. For example, projects might use new technology to improve communications among health care facilities, linking hospitals, health care agencies and/or providers; or to educate various categories of providers by providing on-line pediatric medical control via new technology. Proposals are also sought which evaluate, describe, analyze, or improve the pattern of EMS communications, dispatcher protocols, or on-line medical control as they affect the care of children or in relationship to pediatric utilization of emergency medical services. This priority has been developed in cooperation with HRSA's Trauma Care Systems Planning and Development Program.

—Violence and Injury Prevention. For this priority, activities could include advocacy, education, training, or curriculum development, especially in the development of programs which expand the role of EMS personnel in prevention of injury, interpersonal violence, or youth-on-youth violence. Innovative strategies to link EMS personnel with law enforcement personnel, primary care providers, and community resources are sought. Examples are programs to reduce children's access to firearms or to educate children about the use of seatbelts or bicycle helmets. Further examples include the use of EMS personnel as trainer/educators, advocates, and organizers for community based violence prevention initiatives in schools and other settings serving youth, such as recreation centers, detention centers, or youth employment centers; or the use of EMS records to study the characteristics of violence or for education about the consequences of violence. Violence and injury prevention initiatives might also focus on enhancing preparation of EMS personnel for providing initial attention and arranging appropriate follow-up when there are violent, destructive, damaging, or hurtful behaviors, or when there are injury-risking behaviors, such as combined drinking and driving, substance abuse, or attempted suicide by intentional overdosing on drugs.

—Psychosocial/Behavioral. Proposals are sought for this priority focusing on strategies to reduce the emotional toll of childhood emergencies on the child, family, and/or providers. Examples include development and evaluation of techniques to increase the sensitivity of EMS personnel to psychosocial issues affecting children, adolescents, and their families and enhance EMS provider skills, knowledge, and crisis intervention capability in dealing with these issues; development and evaluation of approaches and techniques for assisting EMS personnel in dealing with child and family crises arising from abuse, neglect, sexual assault, or noncompliant and other high risk behaviors; or activities that foster greater synergy between primary care and mental health specialty personnel in dealing with psychosocial aspects of EMSC.

Up to five grants will be awarded in Category (3), at least one in each priority area, if approved. States that have received EMSC funding as well as those that have never received EMSC funding may compete in this category. Grants for this activity of up to $150,000 per award for each twelve month budget period are anticipated. Project periods are up to two years.

Category (4): Resource Capacity Cooperative Agreements

Up to two resource centers will be supported through cooperative agreements under this funding category. One of these will include maintenance and distribution of EMSC products among its activities and will receive more funds than the other. Resource centers are intended to provide assistance to the public, professional groups, and grantees on issues of importance in developing an EMSC system. In addition to monitoring and technical assistance, Federal involvement will include the following:

—Making available the services of experienced MCHB personnel as participants in the planning and development of all phases of the project.
—Participation, as appropriate, in any conferences and meetings conducted during the period of the cooperative agreement.
—Review, approval, and implementation of procedures to be established for accomplishing the scope of work.
—Assistance and referral in the establishment of Federal interagency contacts that may be needed to carry out the project and assisting MCHB dissemination and program communication goals.
—Participation in the dissemination of project products.

If time permits, comments from the public will be accepted on the categories, priorities, and preferences described above. Any comments which members of the public wish to make should be submitted to: Chief, Grants Management Branch, at the address listed in the ADDRESSES section.

Availability of Funds

Approximately $7,500,000 is available for grants under the EMSC program, of which approximately $3,600,000 will be used for new grants. Of this total, the distribution of funds for new grants is anticipated to be as follows:

Category	Maximum number of awards*	Estimated amounts available*	Project period (years)
(1) State Planning	4	$200,000	1
(2) State Systems:			
(A) Implementation	5	1,250,000	2
(B) System Enhancement	1	600,000	2
(3) Targeted Issues	5	750,000	2
(4) Resource Capacity	2	800,000	2

*All grant amounts in this notice include indirect costs.

Special Concerns

The MCHB places special emphasis on improving service delivery to children from culturally identifiable populations who have been disproportionately affected by barriers to accessible care. This means that EMSC projects are expected to serve and appropriately involve in project activities members of ethnoculturally distinct groups, unless there are compelling programmatic or other justifications for not doing so. The MCHB's intent is to ensure that project outcomes are of benefit to culturally distinct populations and to ensure that the broadest possible representation of culturally distinct and historically underrepresented groups is supported through programs and projects sponsored by the MCHB. This same special emphasis applies to improving service delivery to children with special health care needs.

Project Review and Funding

The Department will review applications in the preceding funding categories as competing applications and will fund those which, in the Department's view, are consistent with the statutory purpose of the program, with particular attention to children from culturally distinct populations and children with special health care needs; and that best meet the purposes of the EMSC program and address

achievement of applicable Healthy People 2000 objectives related to emergency medical services and trauma systems.

Review Criteria

The review of applications will take into consideration the following criteria:

- For Category (1) State Planning Grants
  - —Evidence of the State's commitment to improve pediatric emergency care services and to continue with EMSC program implementation.
  - —The adequacy of the applicant's proposed method to identify problems and conduct a needs assessment.
  - —Evidence of the applicant's understanding of obstacles to EMSC activity in the past, and the completeness of proposed strategies to overcome these obstacles.
  - —The adequacy of the applicant's proposed planning process for improving EMSC.
  - —The soundness of the methods the applicant will use to: (1) Recruit, select and assemble appropriate participants, including minorities, with demonstrated expertise and experience in EMS; trauma systems; child health issues; and emergency care for children; and (2) obtain input from potential consumers of a State EMSC plan.
  - —Reasonableness of the proposed budget, soundness of the arrangements for fiscal management, effectiveness of use of personnel, and likelihood of project completion within the proposed grant period.
- For Categories (2) and (3) State Systems and Targeted Issues Grants
  - —The adequacy of the applicant's understanding of the problem of pediatric trauma and critical illness in the grant locale, including the special problems of (a) children with special health care needs (CSHCN) and their families; and (b) minority children and families (including Native Americans, Native Hawaiians, and Aleska Natives).
  - —The appropriateness of project objectives and outcomes in relation to the specific nature of the problems identified by the applicant.
  - —In relation to the state of the art, the soundness, appropriateness, comprehensiveness, cost effectiveness, and responsiveness of the proposed methodology for achieving project goals and outcome objectives.
  - —The soundness of the plan for evaluating progress in achieving project objectives and outcomes.
  - —Reasonableness of the proposed budget, soundness of the arrangements for fiscal management, effectiveness of use of personnel, and likelihood of project completion within the proposed grant period.
  - —The extent to which the applicant will employ products and expertise of EMSC programs from other States, especially of current and former grantees of the Federal EMSC program.
  - —The extent to which the project gives special emphasis to the issues identified in the Special Concerns section of this notice.
- For Category (2) State Systems Grants only, the following additional criteria
  - —The extent to which the applicant can ensure institutionalization of the proposed project.
  - —The extent to which the applicant demonstrates collaboration and coordination with any trauma care systems implementation plan funded by HRSA.
  - —Evidence that the applicant will: (1) Collaborate and coordinate with other participants in the EMSC continuum, e.g., the State Emergency Medical Services agency; the State MCH/CSHCN agency; the State Highway Safety Office; other relevant State agencies, such as mental health; tribal nations; state and local professional organizations; private sector voluntary organizations; business organizations; parent advocacy groups; consumer or community representatives; hospital organizations; and any other ongoing federally funded projects in EMS, injury prevention, and rural health;
  - —Evidence that the applicant will integrate EMSC systems into the primary care delivery system.
- For Category (4) Resource Capacity Cooperative Agreements
  - —The adequacy of the applicant's understanding of the problem of pediatric trauma and critical illness, including the special problems of (a) CSHCN and their families; and (b) minority children and families (including Native Americans, Native Hawaiians, and Alaska Natives). This understanding includes knowledge of and experience with strategies to overcome identified problems as well as knowledge of and experience with the Title V MCH Block Grant.
  - —The appropriateness of project objectives and outcomes in relation to the specific nature of the problems identified by the applicant.
  - —The soundness, appropriateness, comprehensiveness, cost effectiveness and responsiveness of the proposed methodology for achieving project goals and outcome objectives.
  - —The extent to which the proposed resources are necessary and sufficient for project activities.
  - —The soundness of the plan for evaluating progress in achieving project objectives and outcomes.
  - —Reasonableness of the proposed budget, soundness of the arrangements for fiscal management, effectiveness of use of personnel, and likelihood of project completion within the proposed grant period.
  - —The extent to which the applicant is capable of successfully carrying out the project, particularly, the qualifications of proposed staff.
  - —The extent to which the applicant will employ products and expertise of EMSC programs, especially those of current and former EMSC program grantees.
  - —The extent to which the project gives special emphasis to the issues identified in the Special Concerns section of this notice.
  - —The likelihood of success of the applicant's proposed strategies for promoting coordination and collaboration between separate centers providing different resource capacities.

Eligible Applicants

Applications for funding will be accepted from States and accredited schools of medicine. Applications which involve more than a single State will also be accepted. In developing the proposed project, applicants must seek the participation and support of local or regional trauma centers and other interested entities within the State, such as local government and health and medical organizations in the private sector. If the applicant is a school of medicine, the application must be endorsed by the State. The State's endorsement must acknowledge that the applicant has consulted with the State and that the State has been assured that the applicant will work with the State on the proposed project.

Any State (or medical school within that State) may apply for any category or subcategory of grant, subject to the following considerations based on equitable geographic distribution of EMSC funds, differences in purpose among EMSC grant categories, and variation among States in EMSC program progress:

- For Category (1) Planning Grants, States (or medical schools within those States) that have received prior EMSC implementation grants may not apply for planning grants.
- For Category (2)(A) Implementation Grants, applications from States (and medical schools within those States) that have not previously received EMSC program funds, or that have received only partial support under this program as part of a regional alliance, will receive preference for funding in this subcategory. This means that approved applications from States (and medical schools within those States) with no or very limited prior EMSC program support will be funded ahead of approved applications from outside this group.
- For Category (2)(B) System Enhancement Grants, States (and medical schools within States) that have previously received EMSC funds may apply for a system enhancement grant, as long as they will not also be receiving implementation funds during the project period of the systems enhancement grant. States that have not previously received EMSC funds are advised to apply first for implementation category funds.
- For Category (3) Targeted Issues Grants, eligibility is not affected by receipt of other EMSC funding.
- For Category (4) Resource Capacity Cooperative Agreements, eligibility is not affected by receipt of other EMSC funding.

Applications will not be considered for both Category (1) State Planning Grants and Category (2)(A) Implementation Grants simultaneously from the same State. Funding of an application for a planning grant or for either subcategory of State Systems Grant bars a State from future competitions for that category or subcategory. Although funding of a Category (3) Targeted Issue Grant does not preclude a State (or medical school) from applying for other categories of EMSC funding, applicants should taken care to avoid overlap in proposed project activities and associated Federal support for the separate categories.

Allowable Costs

The MCHB may support reasonable and necessary costs of EMSC Demonstration Grant projects within the scope of approved projects. Allowable costs may include salaries, equipment and supplies, travel, contracts, consultants, and others, as well as indirect costs as negotiated and certified. The MCHB adheres to administrative standards reflected in the Code of Federal Regulations, 45 CFR part 92 and 45 CFR part 74.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, community-based nongovernmental applicants must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions. Community-based non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

Executive Order 12372

This program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

The OMB Catalog of Federal Domestic Assistance number is 93.127.

Dated: December 14, 1993.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–3601 Filed 2–16–94; 8:45 am]

BILLING CODE 4160–15–P

[2161]

Program Announcement and Proposed Minimum Percentage Rates for "High Rate" and "Significant Increase in the Rate" for Implementation of the General Statutory Funding Preference, Proposed Funding Preference and Priority for Grants for Programs for Physician Assistants for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1994 Grants for Programs for Physician Assistants are being accepted under the authority of section 750 title VII, formerly section 788(d) of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. Comments are invited on the proposed minimum percentage rates for high rate and significant increase in the rate" for implementation of the general statutory funding preference, proposed funding preference and priority stated below.

Approximately $6.5 million will be available for Grants for Programs for Physician Assistants. Total continuation support recommended is $4.1 million. It is anticipated that $2.4 million will be available to support approximately 17 competing awards averaging $140,000.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program.

In FY 1993, there was no competitive cycle for this program.

In FY 1992, HRSA reviewed 40 applications. Of those applications, 88 percent were approved and 12 percent were disapproved. Twenty-seven projects, or 68 percent of applications received, were funded.

In FY 1991, HRSA reviewed 17 applications. Of those applications, 53 percent were approved and 47 percent were disapproved. Nine projects or 53 percent of the applications received, were funded.

Purpose

Section 750 of the PHS Act authorizes the award of grants to accredited schools of medicine or osteopathic medicine and other public or nonprofit private entities to assist in meeting the cost of planning, developing and operating or maintaining programs for the training of physician assistants as defined under section 799(3) of the Public Health Service Act.

To receive support, programs must meet the requirements of section 750 of the Act and program regulations implementing these sections published at 42 CFR part 57, subparts H and I and section 791(b) of the PHS Act.

Eligibility

Eligible applicants are accredited schools of medicine or osteopathic medicine and other public or nonprofit private entities.

The initial period of Federal support will not exceed 5 years.

In accordance with section 750(c) of the Act, eligible applicant institutions must provide assurances that the

institutions have appropriate mechanisms for placing graduates of the training program in positions for which they have been trained.

"Program for the Training of Physician Assistants" is defined in section 799 of the PHS Act as an educational program that: (a) Has as its objective the education of individuals who will, upon completion of their studies in the program, be qualified to provide primary health care under the supervision of a physician; and (b) meets regulations prescribed by the Secretary in accordance with section 750(b).

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Grants for Programs for Physician Assistants Program is related to the priority area of Educational and Community-Based Programs.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in the regulations;
2. The potential effectiveness of the project in carrying out the purposes of section 750 of the PHS Act and 42 CFR part 57, subparts H-I;
3. The capability of the applicant to carry out the proposed project;
4. The local, regional and national needs the project proposes to serve;
5. The adequacy of the project's plan for placing graduates in health professional shortage areas;
6. The soundness of the fiscal plan for assuring effective use of grant funds;
7. The potential of the project to continue on a self-sustaining basis after the period of grant support; and
8. The adequacy of the project's plan to develop and use methods designed to attract and maintain minority and disadvantaged students to train as physician assistants.

Other Considerations

In addition, the following funding factors may be applied in determining the funding of approved applications:

1. Funding preference is defined as the funding of a specific category or group of applications ahead of other categories or groups of approved applications, such as competing continuation projects ahead of new projects.
2. Funding priority is defined as the favorable adjustment of aggregate review scores when applications meet specified objective criteria.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for a funding factor will be reviewed and given full consideration for funding.

General Statutory Funding Preference

As provided in section 791(a) of the PHS Act, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This preference will only be applied to applications that rank above the 20th percentile that have been recommended for approval by the peer review group.

Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

"High rate" means that 20 percent of the physician assistant program graduates in academic year 1991–92 or academic year 1992–93, whichever is greater, are spending at least 50 percent of their work time in these settings.

"Significant increase in the rate" means that, between academic years 1991–92 and 1992–93, the rate of physician assistant program graduates in these settings has increased by at least 50 percent and that not less than 15 percent of the academic year 1992–93 graduates are working in these settings.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 40659, dated July 29, 1993.

To allow new programs to compete more equitably in FY 1994, criteria for the statutory and the administrative funding preferences have been developed to apply only to them. This criteria is provided in the application materials.

Proposed Funding Preference for Fiscal Year 1994

The following funding preference is proposed for FY 1994:

A funding preference will be given to established physician assistant training programs which can demonstrate that (a) More than 50 percent of their graduates in 1993 entered a generalist specialty (family medicine, general internal medicine, general pediatrics); or (b) an average of 40 percent of graduates over the last 3 years (1991, 1992, and 1993) entered a generalist specialty.

Proposed Funding Priority for FY 1994

The following priority is proposed for FY 1994:

A funding priority will be given to approved applications that can demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Information Requirements Provision

Under section 791(b) of the Act, the Secretary may make an award under the Grants for Programs for Physician Assistants only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.
2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.
3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

4. If applicable, the number of recent graduates who have chosen careers in primary health care.
5. The number of recent graduates whose practices are serving medically underserved communities.
6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, dated August 17, 1993, and will be provided in the application materials.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. This approval includes the burden for collection of information for the statutory general preference and for the information requirement provision. (OMB #0915–0060, expiration date 7/31/95)

Additional Information

Interested persons are invited to comment on the proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference, proposed funding preference and priority. The comment period is 30-days. All comments received on or before March 21, 1994 will be considered before the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference, proposed funding preference and priority are established.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–25, Parklawn Building, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials, questions regarding grants policy and business management issues should be directed to: Mrs. Judy Bowen, Grants Management Specialist (D–21), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Parklawn Building, Rockville, Maryland 20857, Telephone: (301) 443–6960, Fax: (301) 443–6343.

Completed applications should be forwarded to the Grants Management Office at the above address.

Questions regarding programmatic information should be directed to: Mrs. Joyce Emelio, Program Specialist, Multidisciplinary Centers and Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–03, Parklawn Building, Rockville, Maryland 20857, Telephone: (301) 443–6950, Fax: (301) 443–8890.

The application deadline date for receipt of applications is March 15, 1994. Applications shall be considered to be "on time" if they are either:

1. Received on or before the established deadline date, or
2. Postmarked on or before the established deadline and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.886 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: December 13, 1993.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–3599 Filed 2–16–94; 8:45 am]

BILLING CODE 4160–15–P

[2171]

Program Announcement and Proposed Funding Priorities for Special Project Grants to Schools of Public Health for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1994 Special Projects Grants to Schools of Public Health under the authority of section 762, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. Comments are invited on the proposed funding priorities.

Approximately $2.4 million will be available in FY 1994 for this program to support 18 to 20 competing awards averaging $120,000 to $133,000.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. There were no competitive grant cycles in fiscal years 1992 and 1993. In FY 1991, HRSA reviewed 32 applications for this grant program. Of those applications, 53 percent were approved and 47 percent disapproved. Seventeen grant projects, or 100 percent of the approved grant applications, were funded.

Purpose

Section 762 of the Public Health Service Act (the Act), as amended, authorizes the Secretary to award grants to accredited schools of public health for the costs of planning, developing, demonstrating, operating, and evaluating projects that are in furtherance of the goals established by the Secretary for the year 2000 in the area of: (1) Preventive medicine; (2) health promotion and disease prevention; (3) improving access to and quality of health services in medically underserved communities; or (4) reducing the incidence of domestic violence.

The period of initial Federal support will not exceed 3 years.

Eligibility

Eligible applicants for this program are accredited schools of public health. "A school of public health" means a school as defined in section 799(1)(A) of the PHS Act which has been accredited by the Council on Education for Public Health pursuant to section 799(1)(E) of the Act and which is located in a State as defined in section 799(9) of the Act.

Applicant schools must assure that the students of the school will, through participation in the project for which the award is made, receive training in the activities carried out by the project.

Section 762(e) of the PHS Act provides that the Secretary establish goals for projects under this authority and shall require as a condition of the receipt of a Special Project Grant to Schools of Public Health that schools carry out activities in furtherance of

meeting the goals. Also the law provides that the Secretary establish and implement a methodology for measuring the extent of progress that has been made toward the goals by schools receiving such a grant. A Report to Congress describing the progress made by projects is due not later than February 1, 1994. The goals required by section 762(e) are currently in development and are expected to be available to be mailed with program application materials.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The following review criteria were established in FY 1990 after public comment (55 FR 4482, dated 2/8/90) and the Administration is again extending these criteria in FY 1994.

The review of applications will take into consideration the following criteria:

- The degree to which the proposed project adequately meets legislative intent;
- The background and rationale for the proposed project;
- Whether the project contains clearly stated realistic and achievable national or regional objectives which are described in Healthy People 2000.
- The extent to which the project contains a methodology which is integrated and compatible with project objectives, including collaborative arrangements and feasible workplans;
- Evaluation plans and procedures for program and trainees, if applicable;
- The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources;
- The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when applicable; and
- Whether there is an institutional plan and commitment for self-sufficiency when Federal support ends.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory Preference

In making awards of grants, preference will be given to qualified schools agreeing that the project for which the award is made: (1) Will establish or strengthen field placements for students in public or nonprofit private health agencies or organizations; and (2) will involve faculty members and students in collaborative projects to enhance public health services to medically underserved communities.

Proposed Funding Priorities

It is proposed that a funding priority will be given to programs which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes. This priority is consistent with a HRSA strategy to increase the number of minority health professionals, to assure equal access to health professions education for all population groups, and ultimately, to provide a greater volume of health care in underserved areas.

It is also proposed that a funding priority be given for projects that address the program purpose of reducing the incidence of domestic violence. The incidence of reported violence, especially domestic or family violence, has increased significantly in recent decades. This proposed priority is intended to provide incentive to schools of public health to take responsibility for helping to reduce domestic violence through the special projects grant program.

Additional Information

Interested persons are invited to comment on the proposed funding priorities. The comment period is 30 days. All comments received on or before March 21, 1994 will be considered before the final funding priorities are established. Written comments should be addressed to: Neil Sampson, M.P.H., Director, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to:

Ms. Sandra Bryant (D38), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–6915.

Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Ms. Elizabeth Coleman-Santucci, Public Health Branch, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–09, Rockville, Maryland 20857. Telephone: (301) 443–6896.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of applications is March 21, 1994. Applications will be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program, Special Project Grants to Schools of Public Health, is listed at 93.188 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: December 29, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 94–3600 Filed 2–16–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Office of the Director; Meetings of the Women's Health Initiative Program Advisory Committee and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Women's Health Initiative Program Advisory Committee (WHIPAC), Office of the Director, and its subcommittees, on February 28 and March 1, 1994. All meetings will be held at the ANA Hotel, 2401 M Street, NW., Washington, DC 20037 and will be open to the public, with attendance limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

The meeting of the full committee will be on March 1, 1994, from 8 a.m. to 4 p.m. The purpose of the meeting is to review the status and progress in the planning and conduct of the Women's Health Initiative (WHI), and to advise the NIH Director on the comprehensive plan of prevention studies in the WHI. There will also be a panel discussion on hormone replacement therapy.

The WHIPAC subcommittee meetings (Recruitment and Retention, Public Education, and Study Management) will be held on February 28, 1994 from 7 p.m. to 8:30 p.m. for the discussion of issues pertaining to the recruitment of study subjects to the clinical trial, the informed consent process, center activities, and the dissemination of information to the public.

Dr. Carrie P. Hunter, Special Assistant to the Director, Office of Research on Women's Health, National Institutes of Health, Bethesda, Maryland 20892 (301–402–2900) will provide a summary of the meeting, a roster of committee members, and substantive program information, upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Dina Battle of Conwal Incorporated, at 703–536–3200 in advance of the meeting.

This notice is being published less than 15 days before the meeting due to the difficulty of coordinating conflicting schedules.

Dated: February 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3732 Filed 2–16–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–94–3716]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 4, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Notice of Funding Availability (NOFA) for Intermediaries to Administer Preservation Technical Assistance Grants (FR–3473).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information collection is required to implement Section 312 of Title III of the Housing and Community Development Act of 1992. The NOFA will establish grants to nonprofit organizations to become intermediaries administering technical assistance to resident groups and community based nonprofit developers.

Form Number: None.

Respondents: Individuals or households and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	100		2.8		4.43		1,240

Total Estimated Burden Hours: 1,240.
Status: New.
Contact: Besty Keeler, HUD; (202) 708–1142; Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Dated: February 3, 1994.

[FR Doc. 94–3622 Filed 2–16–94; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–94–3717]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including numbers of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 4, 1994.

Kay Weaver,
Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Real Estate Mortgage Investment Conduit (REMIC) Notice of GNMA.
Office: Government National Mortgage Association (GNMA).
Description of the Need for the Information and its Proposed Use: The purpose of this information collection is to allow GNMA's REMIC Program to raise revenue for the U.S. Government through receipt of guarantee fees and to benefit borrowers using Federally insured or guaranteed mortgages by lowering financing costs for these mortgages.
Form Number: None.
Respondents: Individuals or Households.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	166		1		10		1,660
Recordkeeping	166		1		1		166

Total Estimated Burden Hours: 1,826.
Status: New.
Contact: Paul St. Laurnet, III, HUD (202) 708–2884; Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Dated: February 4, 1994.

[FR Doc. 94–3625 Filed 2–16–94; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Technical/Agency Draft Recovery Plan for the Pygmy Madtom for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the pygmy madtom. This small catfish presently has a very fragmented distribution, but the species was probably formerly much more widespread within the Tennessee River system. The pygmy madtom is currently known to inhabit only two short river reaches within the Duck River, Humphreys County, Tennessee, and the Clinch River, Hancock County, Tennessee. The species has been and continues to be impacted by water quality deterioration. This deterioration occurred as a result of siltation (contributed by coal mining and poor land use practices), other water pollution, and impoundments. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the technical/agency draft recovery plan must be received on or before April 18, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Biggins at the address and telephone number shown above (Ext. 228).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the pygmy madtom (*Noturus stanauli*). The area of emphasis for recovery actions is the Duck River, Humphreys County, Tennessee, and the Clinch River, Hancock County, Tennessee. The protection of existing populations, habitat restoration, preservation of genetic material, and public education are among the management actions outlined in the plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 8, 1994.

Richard G. Biggins,
Acting Field Supervisor.

[FR Doc. 94–3667 Filed 2–16–94; 8:45 am]
BILLING CODE 4310–55–M

Klamath Fishery Management Council; Meeting

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 6 p.m. to 8 p.m. on Monday, March 7, 1994; and from 6 p.m. to 8 p.m. on Tuesday, March 8, 1994. The Klamath Fishery Management Council may have other meetings during this timeframe between the hours of 8 a.m. and 9 p.m. on Monday, March 7, and Tuesday, March 8, 1994. Details will be announced at the March 2, 1994 meeting..

PLACE: The meeting will be held at the Red Lion Inn—Columbia River, 1401 North Hayden Island Drive, Portland, Oregon 97217.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South main, suite 212),

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Fiscal Year 1993 Family Investment Centers (FR–3398).
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: The information collection is required in connection with the issuance of a Notice of Funding Availability which announces funding for Family Investment Centers. Under the program, grants will be provided to public housing agencies and Indian housing authorities to assist families living in public housing with better access to education and job opportunities to achieve self-sufficiency and independence.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Submission: Recordkeeping and one-time.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	500		1		40		20,000
Annual Report	50		1		2		100
Recordkeeping	500		1		1		500

Total Estimated Burden Hours: 20,600.
Status: New.
Contact: Marcia Y. Martin, HUD, (202) 708–3611. Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Dated: February 4, 1994.

[FR Doc. 94–3622 Filed 2–16–94; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–94–3717]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including numbers of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 4, 1994.

Kay Weaver,
Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Real Estate Mortgage Investment Conduit (REMIC) Notice of GNMA.
Office: Government National Mortgage Association (GNMA).
Description of the Need for the Information and its Proposed Use: The purpose of this information collection is to allow GNMA's REMIC Program to raise revenue for the U.S. Government through receipt of guarantee fees and to benefit borrowers using Federally insured or guaranteed mortgages by lowering financing costs for these mortgages.
Form Number: None.
Respondents: Individuals or Households.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	166		1		10		1,660
Recordkeeping	166		1		1		166

Total Estimated Burden Hours: 1,826.
Status: New.
Contact: Paul St. Laurnet, III, HUD (202) 708–2884; Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Dated: February 4, 1994.

[FR Doc. 94–3625 Filed 2–16–94; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Technical/Agency Draft Recovery Plan for the Pygmy Madtom for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the pygmy madtom. This small catfish presently has a very fragmented distribution, but the species was probably formerly much more widespread within the Tennessee River system. The pygmy madtom is currently known to inhabit only two short river reaches within the Duck River, Humphreys County, Tennessee, and the Clinch River, Hancock County, Tennessee. The species has been and continues to be impacted by water quality deterioration. This deterioration occurred as a result of siltation (contributed by coal mining and poor land use practices), other water pollution, and impoundments. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the technical/agency draft recovery plan must be received on or before April 18, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Biggins at the address and telephone number shown above (Ext. 228).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the pygmy madtom (*Noturus stanauli*). The area of emphasis for recovery actions is the Duck River, Humphreys County, Tennessee, and the Clinch River, Hancock County, Tennessee. The protection of existing populations, habitat restoration, preservation of genetic material, and public education are among the management actions outlined in the plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 8, 1994.

Richard G. Biggins,
Acting Field Supervisor.

[FR Doc. 94–3667 Filed 2–16–94; 8:45 am]
BILLING CODE 4310–55–M

Klamath Fishery Management Council; Meeting

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 6 p.m. to 8 p.m. on Monday, March 7, 1994; and from 6 p.m. to 8 p.m. on Tuesday, March 8, 1994. The Klamath Fishery Management Council may have other meetings during this timeframe between the hours of 8 a.m. and 9 p.m. on Monday, March 7, and Tuesday, March 8, 1994. Details will be announced at the March 2, 1994 meeting..

PLACE: The meeting will be held at the Red Lion Inn—Columbia River, 1401 North Hayden Island Drive, Portland, Oregon 97217.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South main, suite 212),

Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The principal agenda item will be to continue discussion on harvest management options for California's Klamath River-origin fall chinook salmon. Meetings will be concurrent with the announced meeting of the Pacific Fishery Management Council.

Dated: February 10, 1994.

Don Weathers,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–3662 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–55–M

Klamath Fishery Management Council; Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 8 a.m. to 4:30 p.m. on Tuesday, March 1, 1994; and from 8 a.m. to 4:30 p.m. on Wednesday, March 2, 1994.

PLACE: The meeting will be held at the Red Lion Inn, 1929 4th Street, Eureka, California, 95501.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main, Suite 212), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The principal agenda item will be making recommendations on a range of options for harvest of Klamath River origin fall chinook salmon to the Pacific Fishery Management Council for the 1994 Ocean Salmon Management season, and to the tribes and the State of California for in-river salmon management options for 1994 in the Klamath River. The Council will also prepare a letter to the Secretary of the Interior, requesting clarification of Tribal fishing rights in the Klamath River Basin, and will identify priority information needs for harvest management, for which funding will be sought.

Dated: February 10, 1994.

Don Weathers,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–3663 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[WO–810–4140–01–24]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approved under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's Clearance Office and to the Office of Management and Budget Paperwork Reduction Project (1004–0074), Washington, DC 20503, telephone 202–395–7340.

Title: Oil and Gas Geothermal Resources Leasing

OMB Approval Number: 1004–0074

Abstract: Respondents supply information which will be used to determine the highest qualified bonus bid submitted for a competitive oil and gas or geotermal lease (Form 3000–2) and enable the Bureau of the Land Management to complete environmental reviews in compliance with the National Environmental Policy Act of 1969 (Form 3200–9). The information supplied allows the Bureau of Land Management to determine whether a bidder is qualified to hold a lease and to conduct geothermal resource operations under the terms of the Mineral Leasing Act of 1920 and the Geothermal Steam Act of 1970.

Bureau Form Numbers: 3000–2, 3200–9

Frequency: On occasion

Description of Respondent: Individuals, small businesses, and oil companies

Estimated Completion Time: 2 hrs

Annual Responses: 443

Annual Burden Hours: 886

Bureau Clearance Officer: (Alternate) Marsha Harley 202–452–5019.

Dated: December 8, 1993.

Hillary A. Oden,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 94–3646 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–84–M

[NV–960–4370–01–241B]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's (BLM) Clearance Office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the BLM's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0042), Washington, DC 20503, telephone 202–395–7340.

Title: Protection, Management, and Control of Wild Free-Roaming Horses and Burros, 43 CFR 4700.

OMB Approval Number: 1004–0042.

Abstract: Respondents furnish documentation about the following:

1. Removal of wild horses and burros from private land (non-form item).
2. Qualifications of applicants related to adoption of 1 to 4 wild horses or burros (Form 4710–10).
3. Qualifications of applicants related to adoption of 5 or more wild horses or burros (non-form item).

The request for removal of animals from private land is necessary to determine the need for removing wild horses and burros from these lands. The documentation about adoption allows the BLM to determine if an applicant will be given the opportunity to adopt wild horses or burros. Adoption applicants provide information about their qualifications and capability to provide humane care and treatment for wild horses and burros under conditions specified by Federal regulations. Applicants for adoption of more than 4 wild horses or burros are requested to provide additional information related to their capability to provide proper care for the number of wild horses or burros requested.

Bureau Form Numbers: Application for Adoption of Wild Horse(s) and Burro(s), Form 4710–10.

Frequency: On occasion.

Description of Respondents: Landowners requesting the BLM to remove wild horses or burros from their property and applicants desiring to adopt wild horses or burros.

Estimated Completion Time: .165 hours per response.

Annual Response: 32,380.

Annual Burden Hours: 5,376.

Bureau Clearance Officer: Marsha A. Harley 202–452–5014.

Dated: January 19, 1994.

J. David Almand,

Acting Deputy Assistant Director, Land and Renewable Resources.

[FR Doc. 94–3647 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–84–M

[WY–040–04–4110–03]

Notice of Availability of Enron's Burly Field Enhance Oil Recovery Project Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Draft Environmental Impact Statement for Enron Burly Field Enhanced Oil Recovery Project. The proposed project area is located in Sections 18, 19, 20 and 29 of Township 28 North, Range 133 West, 6th Principal Meridian, Sublette County, Wyoming.

DATES: Comments on the Draft Environmental Statement must be postmarked by April 18, 1994.

ADDRESSES: Comments on the Draft Environmental Statement should be sent to District Manager, Rock Springs District, Highway 191 North, P.O. Box 1869, Rock Springs, 82902, telephone 307–382–5350.

FOR FURTHER INFORMATION CONTACT: Arlan Hiner, Area Manager, Pinedale Resource Area, 432 E. Mill Street, P.O. Box 768, Pinedale, Wyoming 82941, telephone 307–367–4358.

PUBLIC HEARINGS: No hearings are presently planned. However, should public demand warrant, a hearing would be held by the BLM.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement analyses two development scenarios including a 10 acre and 20 acre spacing infill drilling program within Enron's existing Burly Field. There is potential to convert approximately 14 of the 37 proposed wells into water injection wells for enhanced oil recovery. Associated facilities include access roads, water injection and oil gathering and sales pipelines, central tank battery and an electric distribution powerline.

Dated: February 9, 1994.

David J. Walter,

Acting State Director.

[FR Doc. 94–3580 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–22–M

[MT–921–03–4120–03; NDM 81582]

Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of coal lease offering by sealed bid NDM 81582—The Coteau Properties Company.

SUMMARY: Notice is hereby given that the coal resources in the lands described below in Mercer County, North Dakota, will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by The Coteau Properties Company, in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181–287), as amended.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement and hearing have been completed in accordance with 43 CFR part 3420, subpart 3425. The results of these activities were a finding of no significant environmental impact.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

COAL OFFERED: The coal resource to be offered consists of all recoverable reserves in the following described lands located approximately 10 miles north of the town of Beulah:

T. 145 N., R. 86 W., 5th p.m.,
Sec. 6: Lots 3, 4, 5, SE¼NW¼;
Sec. 8: E½NE¼, NW¼NW¼, SE¼NW¼, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 18: E½.

Containing 792.900 acres, Mercer County, North Dakota.

The Beulah bed, averaging 12.0 feet in thickness, is the only economically minable coal seam within the tract. The tract contains an estimated 9.1 million short tons of recoverable lignite. Coal quality, as received, averages 6831 BTU/lb, 37.78 percent moisture, 5.9 percent ash, 0.8 percent sulfur, 29.3 percent fixed carbon, and 27.0 percent volatile matter. This coal bed is being mined in adjoining tracts by The Coteau Properties Company.

RENTAL AND ROYALTY: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 2.0 percent of the value of coal mined. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

DATE: Lease Sale—The lease sale will be held at 10 a.m., Tuesday, March 22, 1994, in the Conference Room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Bids—Sealed bids must be submitted on or before 9:00 a.m., Tuesday, March 22, 1994, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107–6800. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

SUPPLEMENTARY INFORMATION: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile documents are also available for public inspection at the Montana State Office.

Dated: February 7, 1994.

Francis R. Cherry, Jr.,

Acting State Director.

[FR Doc. 94–3652 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–DN–M

[NV–020–4191–03]

Intent To Prepare Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for a mining Plan of Operations (POO) for the Lone Tree Mine project, Humboldt County, Nevada; and notice of scoping period and public meetings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, and 43 CFR part 3809, the Bureau of Land Management (BLM) will

be directing the preparation of an EIS for the proposed expansion of a gold mine in Humboldt County, Nevada. This EIS will be prepared by contract and funded by the proponent, Santa Fe Pacific Gold Corporation. Public meetings will be held to identify issues to be addressed in the EIS, and to encourage public participation in the review process. Representatives of the BLM and Santa Fe Pacific Gold Corporation will be summarizing the POO and accepting comments from the audience. The BLM invites comments and suggestions on the scope of the analysis.

DATES: Scoping meetings will be held March 8, 1994, at the Humboldt County Library in Winnemucca, Nevada; and on March 9, 1994, at the Airport Plaza Hotel on 1981 Terminal Way, Reno, Nevada. Both meetings will be held from 7–9 p.m. each night. Written comments on the Plan of Operations and the scope of the EIS will be accepted until April 30, 1994. The Draft EIS is expected to be completed by September of 1994, at which time the document will be made available for public review and comment.

ADDRESSES: Scoping comments may be sent to: District Manager, 705 E. 4th Street, Winnemucca, NV 89445, ATTN: Gerald Mortiz, Project Coordinator.

FOR FURTHER INFORMATION CONTACT: Gerald Moritz, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623–1500.

SUPPLEMENTARY INFORMATION: Santa Fe Pacific Gold Corporation of Albuquerque, New Mexico has submitted to the Winnemucca District Office of the BLM, a POO for expansion of their existing gold mine, the Lone Tree Mine (LTM). The POO describes proposed expansion of LTM mining operations in Humboldt County, approximately 34 miles east of Winnemucca, Nevada. A total of approximately 55 million tons of ore and 370 million tons of barren (nongold-bearing) rock may be excavated during the 15 year mine life. Total surface disturbance for all mine facilities would be about 2251 acres. Existing key production facilities would include the mine pits, barren rock piles, ore crushing, conveying, grinding, and oxidation circuits, heap leach pads and solution ponds, gold extraction and refining equipment, and tailings disposal facilities. Nonprocessing ancillary facilities to support the mining activities include administration, laboratory, warehouse, maintenance shop buildings, fuel, oil, reagent and water storage facilities and other small structures required for operations.

This EIS will address the issues of geology, minerals, soils, water resources, vegetation, wildlife, grazing management, air quality, aesthetic resources, cultural resources, paleontological resources, land use, access, recreation, social and economic values related to expansion.

Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the BLM's decision on the POO are invited to participate in the scoping process. The Authorized Officer will respond to public input and comment as part of the final EIS. The decision regarding the proposal will be recorded as a Record of Decision, which is subject to appeal under 43 CFR part 4.

Dated: February 7, 1994.

Ron Wenker,

District Manager, Winnemucca.

[FR Doc. 94–3655 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–020–04–4210–05; AZA–27967]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance to the Chloride School District #11 under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Chloride School District proposes to use the lands for an elementary (kindergarten through 8th grades) school.

Gila and Salt River Base and Meridian

Township 25 North, Range 19 West,
Sec. 10, W½SW¼SW¼.
Comprising 20.00 acres.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current Bureau of Land Management land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for road purposes granted to the Mohave County Board of Supervisors by Right-of-Way No. AZA–27254 for June Road and 7th Street.

For detailed information concerning this action, contact Bill Wadsworth at the office of the Bureau of Land Management, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona, 86401, (602) 757–3161.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 780–8090.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a school.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: February 10, 1994.

G.L. Cheniae,

District Manager.

[FR Doc. 94–3661 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–32–M

[NM–940–04–4730–12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on March 21, 1994.

New Mexico Principal Meridian, New Mexico

T. 30 N., R. 8 W.,
Accepted January 20, 1994, for Group 912 NM.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: February 10, 1994.

John P. Bennett,

Chief, Branch of Cadastral Survey/Geo Science.

[FR Doc. 94–3654 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–943–4210–06; GP4–088; OR–50500]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 4,921 acres of National Forest System lands to protect the recreational and visual resources of the Elk Wild and Scenic River Corridor in the Siskiyou National Forest. This notice closes the lands for up to two years from mining. The lands have been and will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by May 18, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, 503–280–7162.

SUPPLEMENTARY INFORMATION: On January 31, 1994, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2), but not the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

Siskiyou National Forest

Tracts of land located within the following described townships and sections as more particularly identified and described below:

T. 33 S., R. 13 W.,
Secs. 13 to 24, inclusive, secs. 29 and 30.
T. 33 S., R. 14 W.,
Secs. 7, 8, 13, 15, 16, 17, and secs. 20 to 24, inclusive. Beginning at the northeast corner of the SW¼NE¼ of Sec. 7, T. 33 S., R. 14 W.; Thence westerly to the northwest corner of the SW¼NE¼ of Sec. 7; Thence southerly to the south quarter corner of Sec. 7; Thence easterly to the southeast corner of Sec. 7; Thence southerly along the west boundary of Sec. 17 to the northwest corner of the SW¼SW¼ of Sec. 17; Thence easterly to the southwest corner of the E½NW¼SW¼ of Sec. 17; Thence northerly to the northwest corner of the E½NW¼SW¼ of Sec. 17; Thence easterly to the northeast corner of the W½NE¼SW¼ of Sec. 17; Thence southerly to the southeast corner of the W½SE¼SW¼ of Sec. 17; Thence easterly along the south boundary of Sec. 17 to the south quarter corner of Sec. 17; Thence southerly along the north-south centerline of Sec. 20 to the northeasterly right-of-way of Forest Service (FS) road 5502 020 as described in Curry County Book of Records 1, pages 308 and 429; Thence easterly along said northeasterly right-of-way line to the east boundary of Sec. 20, EXCEPT that portion of land in the NE¼ and northeast of the road as described in deed to Maude S. Kohl, et al., recorded June 20, 1969, in Book 11 page 313 of Curry County; Thence northerly to the northeast corner of the SE¼NE¼ of Sec. 20; Thence southeasterly to the summit of Pearce Peak; Thence easterly along the ridge to the summit of Purple Mountain; Thence southeasterly along the ridge to the east-west centerline of Sec. 22; Thence easterly along said centerline to the northeast corner of the SW¼ of Sec. 22; Thence southerly along the north-south centerline of Sec. 22 to the divide between Bald Mountain Creek and Elk River; Thence southeasterly along said divide to the northerly most point of Father Mountain; Thence northeasterly to the east quarter corner of Sec. 23; Thence northeasterly to a point in an unnamed tributary to Elk River at 42°42'15.45" N., 124°18'32.56" W.; Thence northeasterly to a point in a borrow pit and 50 foot offset from FS Road No. 5325 180 at 42°42'31.08" N., 124°18'26.24" W.; Thence easterly and parallel to said FS road at a 50 foot northerly offset to a point at 42°42'27.22" N., 124°17'47.98" W.; Thence northeasterly to a point at the end of FS Road No. 5325 182 at 42°42'40.41" N., 124°17'22.11" W.; Thence northeasterly to a point on the divide between Panther Creek and Elk River at 42°42'49.13" N., 124°17'07.24" W.; Thence southerly to 42°42'44.66" N., 124°17'04.49" W.; Thence southerly to 42°42'36.55" N., 124°17'04.22" W.; Thence southwesterly to 42°42'21.93" N., 124°17'13.85" W.; Thence southeasterly to 42°42'15.44" N., 124°17'09.72" W.; Thence southwesterly to 42°42'08.94" N., 124°17'11.10" W.; Thence southerly to the junction of the West Fork and Main Fork of Panther Creek; Thence southeasterly along the thread of the Main Fork to the junction of the East Fork of Panther Creek; Thence northeasterly to the west sixteenth corner of Secs. 20 and 29, T. 33 S., R. 13 W.; Thence northeasterly to the north quarter of Sec. 20; Thence northeasterly to a point at the end of a logging spur on a prominent ridge at 42°43'03.31" N., 124°15'52.92" W.; Thence following said ridge and logging spur, southeasterly to a point at a 50 foot northerly offset from FS Road No. 5544; Thence parallel to said road at a 50 foot northerly offset to a point on the ridge where the road turns southerly at 42°43'19.14" N., 124°15'35.57" W.; Thence southeasterly to a point at the end of FS Road 5544 040 at 42°43'13.04" N., 124°14'36.19" W.; Thence southeasterly to the south quarter of Sec. 15; Thence southeasterly to a point in Blackberry Creek at 42°42'37.34" N., 124°13'41.38" W.; Thence southeasterly following spur ridge to divide between McCurdy Creek and Blackberry Creek; Thence easterly and northerly along ridge to a 50 foot southerly offset from FS Road No. 5325 starting at 42°42'07.12" N., 124°12'48.52" W. to 42°42'08.54" N., 124°12'38.61" W. to 42°42'16.05" N., 124°12'19.62" W. to 42°42'28.23" N., 124°12'20.18" W. to 42°42'36.75" N., 124°12'27.34" W. to 42°42'49.14" N., 124°12'26.52" W.; Thence easterly to a point in the south fork of Elk River at 42°42'49.75" N., 124°12'09.18" W.; Thence northwesterly along thread of South Fork of Elk River to junction with the Main and North Forks of Elk River; Thence northwesterly to 42°43'07.00" N., 124°12'25.16" W.; Thence northwesterly to 42°43'12.68" N., 124°12'38.10" W.; Thence northwesterly

along spur ridge which divides the North Fork and Main Fork of the Elk River to a prominent point at 42°43'16.33" N., 124°12'43.61" W.; Thence southwesterly along said ridge to a point at 42°43'04.76" N., 124°12'59.84" W.; Thence northwesterly to the intersection of a tributary to Bungalow Creek and the west boundary of Sec. 14; Thence northerly along said section line to the northwest corner of Sec. 14; Thence westerly along the south boundary of Secs. 10, 9, and 8 to a point on the Grassy Knob Wilderness Boundary; Thence along the Grassy Knob Wilderness Boundary line to a point on the east-west centerline of the NE¼ of Sec. 7, T. 33 S., R. 14 W.; Thence west along said east-west centerline to the point of beginning.

The areas described aggregate approximately 4,921 acres in Curry County.

The purpose of the proposed withdrawal is to protect the recreational and visual resources of the Elk Wild and Scenic River Corridor.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are other National Forest management activities, including permits, licenses, and cooperative agreements, that are compatible with the intended use under the discretion of the authorized officer.

Dated: February 11, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–3665 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–33–P

Bureau of Reclamation

Narrows Project, Utah; Draft Environmental Impact Statement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearings on draft environmental impact statement DEIS: INT–DES–94–07.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Reclamation, has prepared a draft environmental impact statement (DEIS) on the proposed Narrows Project. The DEIS describes and presents the environmental effects of three alternatives, including no action, for a multiple-purpose water development project that would provide water for irrigation and municipal use in north Sanpete County, Utah. A public hearing will be held, in two sessions, to receive comments from interested organizations and individuals on the environmental impacts of the proposal.

DATES: A 60-day public review period commences on February 17, 1994. The public hearings are scheduled for Wednesday, March 30, 1994, at 7 p.m., in Price, Utah, and Thursday, March 31, 1994, at 7 p.m., in Mt. Pleasant, Utah.

ADDRESSES: The hearings will be held at the following locations:

- March 30, 1994, at the Carbon County Courthouse, 185 East Main Street, Price, Utah
- March 31, 1994, at the Mt. Pleasant City Office, 115 West Main Street, Mt. Pleasant, Utah

Addresses for comments, requests to testify, and further information: Copies of the DEIS may be requested from Reclamation's Upper Colorado Regional Office at the following address:

- Regional Director, Bureau of Reclamation, Attention: UC–750, 125 South State Street, PO Box 11568, Salt Lake City UT 84147; telephone: (801) 524–5580

Copies of the DEIS are available for inspection at the address above and also at the following locations:

- Office of the Commissioner, Bureau of Reclamation, Technical Liaison Division, 1849 C Street, NW., Washington DC 20240; telephone: (202) 208–4054
- Denver Office, Bureau of Reclamation, Library, room 167, Building 67, Denver Federal Center, Denver CO 80225; telephone: (303) 236–6963

Libraries: Copies will also be available for inspection at libraries in the project vicinity.

FOR FURTHER INFORMATION CONTACT: Lee Swenson, Regional Environmental Officer, Upper Colorado Region; telephone: (801) 524–5580.

SUPPLEMENTARY INFORMATION: Sanpete Water Conservancy District is proposing to build a multiple-purpose water development project that would provide water for irrigation and municipal use. Water from the project would come from a transmountain diversion from upper Gooseberry Creek and its tributaries which are located in the Price River drainage. Irrigation water shortages would be reduced from their present level of 30 percent to 19 percent.

Three alternatives, including no action, are considered in the draft statement. The two action alternatives are: (1) Reclamation's Recommended Plan, and (2) Smaller Reservoir Plan. The Recommended Plan would provide to north Sanpete County an average annual supply of 4,920 acre-feet of supplemental irrigation water for 15,420 acres of presently irrigated farmland and 480 acre-feet of water for municipal use. The service area encompasses about 49,000 acres. The project plan would include construction of Narrows Dam and Reservoir on Gooseberry Creek, pipelines to deliver the water to existing water distribution systems, rehabilitation of the existing Narrows Tunnel, and relocation of 2.9 miles of State Road 264. The project would also provide recreation opportunities and fish and wildlife improvements. In addition to the two action plans and the No Action Plan, the DEIS also evaluates in less detail the impacts of several nonviable alternatives.

The principal environmental consequences that would result from the two action plans include: increased crop production, economic stability and growth, expanded fish and wildlife resources, and recreational opportunities.

Hearing Process Information

Organizations and individuals wishing to present statements at the hearing should contact the Bureau of Reclamation, Upper Colorado Region, at the above address, to announce their intention to participate. Requests for

scheduled presentations will be accepted through 4 p.m. on March 21, 1994.

Oral comments at the hearing will be limited to 10 minutes. The hearing officer may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard. Whenever possible, speakers will be scheduled according to the time preference mentioned in their letter or telephone requests. Speakers not present when called will lose their privilege in the scheduled order and will be recalled at the end of the scheduled speakers.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearing should be received by Reclamation's Upper Colorado Regional Office at the above address by April 11, 1994, for inclusion in the hearing record.

Dated: February 2, 1994.

James O. Malila,

Acting Deputy Commissioner.

[FR Doc. 94–3596 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation 337–TA–360]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: MicroComputer Cable Company.

In the Matter of CERTAIN DEVICES FOR CONNECTING COMPUTERS VIA TELEPHONE LINES

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on February 10, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: February 10, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–3597 Filed 2–16–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32459]

Southern Pacific Transportation Co.—Renewal of Trackage Rights Exemption—Peninsula Corridor Joint Powers Board

Peninsula Corridor Joint Powers Board (JPB) has agreed to extend for 2 years its grant of trackage rights to Southern Pacific Transportation Company (SP), between Santa Clara Junction (milepost 44.0) and Tamien, CA (milepost 48.7), a distance of approximately 4.7 miles. The extension of the trackage rights will be effective on or after March 1, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Bldg., One Market Plaza, room 846, San Francisco CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: February 10, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–3594 Filed 2–16–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/

collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or the Method of Collection

(1) VICAP Crime Analysis Report.
(2) FD–676. Federal Bureau of Investigation.
(3) On Occasion.
(4) State or local governments. This form is used for the collection of data at crime scenes (e.g., unsolved murders) for analysis by FBI VICAP Staff. Law enforcement agencies reporting similar pattern crimes will be provided with relevant information to assist in initiating coordinated multi-agency investigations.
(5) 2,000 annual respondents at 2.0 hours per response.
(6) 4,000 annual burden hours.
(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: February 9, 1994.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–3572 Filed 2–16–94; 8:45 am]

BILLING CODE 4410-02-M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the ATM Forum

Notice is hereby given that, on November 18, 1993, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the ATM Forum (the "ATM Forum") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of ATM Forum are: Bel Fuse Inc., Jersey City, NJ; Broadband Technologies Inc., Research Triangle Park, NC; Graphics Communication Laboratories, Tokyo, Japan; and Sony Corporation, Tokyo, Japan.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the ATM Forum intends to file additional written notifications disclosing all changes in membership.

On April 19, 1993, ATM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on August 20, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 2, 1993 (58 FR 63586).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–3657 Filed 2–16–94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on November 12, 1993, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: (1) Ceridian Corporation, Bloomington, MN, and Paramex Systems Corporation, Salt Lake City, UT, have agreed to become participants in MCC's Adaptive Beam Forming Technology Study; and (2) Raytheon Company, Lexington, MA, has agreed to become a participant in MCC's Mixed Signal Open Systems Project.

On December 21, 1984, MCC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on September 15, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 28, 1993 (58 FR 58019).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–3658 Filed 2–16–94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mortgage Loss Prevention Forum

Notice is hereby given that, on November 15, 1993, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Mortgage Loss Prevention Forum (the "Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identity of the new member of the Forum is: PMI Mortgage Insurance Co., San Francisco, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On September 20, 1993, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 29, 1993 (58 FR 58180).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–3659 Filed 2–16–94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Software Foundation, Inc.

Notice is hereby given that, on November 19, 1993, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new, non-voting members of OSF are as follows: Grumman Data Systems, Herndon, VA; NASA/Langley Research Center, Hampton, VA; Ohio State University, Columbus, OH; Herbert H. Lehman College, Bronx, NY; Laboratoire de l'Accelerateur Lineaire, Orsay, France; Foundation of Research and Technology Hellas, ICS, Heraklio, Greece; Battelle Pacific Northwest Laboratory, Richland, WA; Harvard University, Cambridge, MA; 3M Company, St. Paul, MN; Centre for Development of Telematics, New Delhi, India; University of Waikato, Hamilton, New Zealand; Griffith University, Nathan, Australia; Flinders University of South Australia, Adelaide, Australia; Edith Cowan University, Churchlands, Australia; Australian National University, Canberra, Australia; Michigan Department of Transportation, Lansing, MI; Open Systems Associates, Inc., Reston, VA; Intellisoft Corporation, Acton, MA; Duetsche Bundespost Telekom, Bonne, Germany; Sycomore, S.A., Paris La Defense, France; University of Melbourne, Parkville, Victoria, Australia; University of Western Sydney, MacArthur, Cambelltown, NSW, Australia; University of New South Wales, Kensington, NSW, Australia; Aggregate Computing, Inc., Minneapolis, MN; Montran Corporation, New York, NY; Information Communication Institute of Singapore, Singapore Telecommunications, Singapore; Wells Fargo Bank, San Francisco, CA; Atrium Technologies, Inc., Austin, TX; Fachhochschule Wiesbaden, Wiesbaden, Germany; Template Software, Inc., Herndon, VA; and Freie Universitat Berlin, Berlin, Germany. No new voting members have been added as of this filing.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSF intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, OSF and the Open Software Foundation Institute, Inc. (the "Institute") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988, (53 FR 34594).

The last notification was filed with the Department on August 2, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 2, 1993 (58 FR 46652).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–3660 Filed 2–16–94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; U.S. City Average

Pursuant to Section 604(c) of the Motor Vehicle Information and Cost Savings Act, which was added to the Motor Vehicle Theft Law Enforcement Act of 1984, and the delegation of the Secretary of Transportation's responsibilities under that Act to the Administrator of the Federal Highway Administration (49 CFR, 501.2(f)), the Secretary of Labor has certified to the Administrator and published this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 39.1 percent from its 1984 base period annual average of 311.1 to its 1993 annual average of 432.7.

Signed at Washington, DC, on the 31st day of January 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–3619 Filed 2–16–94; 8:45 am]

BILLING CODE 4510-24-M

Privacy Act of 1974; Amendment of the Systems of Records Notice; Flexiplace Programs

AGENCY: Office of the Secretary, Labor.

ACTION: Amendment of Privacy Act systems of records notice.

SUMMARY: The Department of Labor hereby amends its current Privacy Act systems of records notice to give notice of the creation of flexible workplace pilot projects. These projects will mean that, for short periods of time, participating employees will take copies of agency records to alternative worksites, including their homes or satellite offices, because they will be working at these locations. However, all appropriate safeguards will be taken by these employees so that the records will be safe. This amendment will occur by adding a new category to the General Prefatory Statement within the notice.

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, Office of the Solicitor, telephone (202) 219–8188.

SUPPLEMENTARY INFORMATION: In 1993 the Secretary of Labor authorized flexible workplace pilot projects for Department of Labor employees. Flexiplace is a voluntary program which allows employees to work at home or at geographically convenient satellite offices for part of the workweek with equipment provided by the Department.

Section (e)(4)(A) of the Privacy Act (5 U.S.C. 552a(e)(4)(A)) requires, in part, that each agency publish in the **Federal Register** the location for each of its systems of records. Since employees in the Flexiplace Pilot Programs will be taking copies of Departmental records to these additional locations, the category for SYSTEM LOCATION, for every system, must be amended to reflect the additional locations made possible by the flexiplace pilot programs. The Department's current Privacy Act Systems of Records Notice was published on September 23, 1993 at 58 FR 49548. This amendment will be accomplished by adding a new paragraph to the existing General Prefatory Statement which appears in that notice. The General Prefatory Statement contains provisions that apply to and are incorporated by reference into all the Department's systems of records under the Privacy Act.

Amendment to Privacy Act Systems of Records Notice

The Department hereby amends its September 23, 1993 Privacy Act Systems of Records Notice, 58 FR 49548, by adding the following text to the current General Prefatory Statement which Statement begins at page 49554 of Volume 58 of the **Federal Register.**

System Location—Flexiplace Pilot Programs

This paragraph applies to and is incorporated by reference into all of the Department's systems of records under the Privacy Act, within the category entitled, SYSTEM LOCATION:

Pursuant to the Department of Labor's Flexiplace Pilot Programs, copies of records may be temporarily located at alternative worksites, including employees' homes or at geographically convenient satellite offices for part of the workweek. All appropriate safeguards will be taken at these sites.

Signed at Washington, DC this 10th day of February 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–3623 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance; Steward, Inc., et al

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than February 28, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than February 28, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC. this 7th day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Steward, Inc. (Co.)	Chattanooga, TN	01/31/94	01/27/94	NAFTA–00010	Ferrite Components.
Procter Gamble Manufacturing Co. (IOCW).	Quincy, MA	01/31/94	01/24/94	NAFTA–00011	Bar Soap and Industrial Chemicals.
The Strolle Corp. (Wkrs.)	Phoenix, OR	01/28/94	01/25/94	NAFTA–00012	Wood, Western Pine Cuttings.
Hubbell, Inc. (Wkrs.)	Fogelsville, PA	02/02/94	01/25/94	NAFTA–00013	Electrical Weatherproof Products.
Alcatel Data Networks (Wkrs.)	Mt. Laurel, NJ	02/02/94	01/19/94	NAFTA–00014	Printed Circuit Board Assembly/Testing.
Parkway Fabricators (Wkrs.)	South Amboy, NJ	02/02/94	02/02/94	NAFTA–00015	Rubber Goods, Survival & Skin diving Suits.
Metacomet Manufacturing Co., Inc. (Wkrs.).	Fall River, MA	02/03/94	02/03/94	NAFTA–00016	Belts and Related Trim.

[FR Doc. 94–3624 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–20; Application Number D–5700]

Class Exemption Relating to Certain Employee Benefit Plan Foreign Exchange Transactions

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Class Exemption.

SUMMARY: This document contains a final exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). The class exemption permits the purchase and sale of foreign currencies between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof which is a party in interest with respect to such plan.

The exemption affects participants and beneficiaries of employee benefit plans involved in such transactions, as well as banks and broker-dealers and their affiliates which act as dealers in foreign exchange.

EFFECTIVE DATE: Section I(a) of PTE 94–20 is effective for transactions occurring from January 1, 1975 to June 18, 1991. Section I(b) of PTE 94–20 is effective for transactions occurring on or after June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Lyssa Hall, Pension and Welfare Benefits Administration, Office of Exemption Determinations, U.S. Department of Labor, Washington, DC 20210, (202) 219–8971 (not a toll-free number) or Susan Rees, Plan Benefits Security Division, Office of the Solicitor, (202) 219–9141 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Exemptive relief for the transactions described herein, as well as for other transactions not covered by the proposed exemption, was requested in an application dated July 18, 1984 (Application No. D–5700) submitted by the American Bankers Association (ABA) pursuant to section 408(a) of ERISA and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

In a letter to the ABA dated December 28, 1984, the Department of Labor (the Department) tentatively denied the application. By letter dated June 21, 1985, the ABA modified its application in response to the Department's tentative denial, explaining that it was no longer seeking exemptive relief for foreign exchange transactions between banks and plans where the banks or their affiliates have investment management discretion over the plan assets involved in the transactions. On September 15, 1986, the Department published a notice in the **Federal Register** (51 FR 32695), requesting additional information from the public on various issues being considered by the Department in deciding whether to propose a foreign exchange class exemption in response to the ABA application. The comment period ended on February 24, 1987. Seventeen substantive responses to the solicitation of comments were received.[1]

On March 20, 1991, the Department published a notice in the **Federal Register** (56 FR 11757) of the pendency of a proposed class exemption from the restrictions of section 406(a)(1) (A) through (D) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of certain transactions described in section 4975(c)(1) (A) through (D) of the Code. The notice of pendency invited all interested persons to submit written comments concerning the proposed class exemption by May 20, 1991. The Department received nine public comments requesting, among other things, that the Department broaden the scope of the exemption to provide relief for transactions entered into pursuant to standing instructions. In view of those comments, the Department published a notice of public hearing in the **Federal Register** (56 FR 46806 (September 16, 1991)). The hearing was held on October 3, 1991. Upon consideration of all of the comments received and testimony offered at the public hearing, the Department has determined to grant the proposed class exemption, subject to certain modifications. These modifications and the major comments are discussed below.

Discussion of the Comments

The proposed exemption provided retroactive and prospective relief from section 406(a)(1) (A) through (D) of the Act and section 4975(c)(1) (A) through (D) of the Code for foreign exchange transactions between a party in interest bank or affiliate thereof and an employee benefit plan.

One commentator urged the Department to expand the final exemption to permit broker-dealers who are registered under the Securities Act of 1934 (1934 Act) and their affiliates to engage in foreign exchange transactions with plans. According to this commentator, the same reasons for granting the exemption to banks apply with equal force to broker-dealers and their affiliates. Broker-dealers act as custodians and provide other services to plans which cause them to be parties in interest as defined in section 3(14) of the Act. In addition, broker-dealers may also participate in foreign exchange transactions. Accordingly, absent the availability of an exemption, many major money market broker-dealers and their affiliates might not be able to deal with plans with respect to foreign exchange transactions. The commentator also asserts that in order for the "general" arm's length test contained in the exemption to work effectively, the exemption must include significant participants in the foreign exchange market. Finally, the commentator notes that broker-dealers which are registered under the 1934 Act are subject to extensive regulatory control consisting of a panoply of federal, self-regulatory organization and state regulations and supervisory structures. The Department has considered this comment and determined that it would be appropriate to include broker-dealers which are registered under the 1934 Act and their affiliates within the scope of relief provided by the final class exemption. Accordingly, the final exemption has been modified in this regard.

One commentator requested that the exemption be expanded to provide relief for individual retirement accounts (IRAs) and Keogh plans which are not employee benefit plans covered by title I of the Act.[2] The Department does not believe that a sufficient showing has been made regarding the demand for exemptive relief for non-title I IRAs and Keogh Plans. Therefore, the Department is unable to conclude that the final exemption should be expanded as requested.

The proposed exemption contained a condition requiring that the bank maintain written policies and procedures regarding the handling of foreign exchange transactions with plans which assure that the person acting for the bank knows that he or she is dealing with a plan.

One commentator expressed concern that requiring the person acting for the bank to know that he or she is dealing with an ERISA plan will require the institution of new procedures at foreign exchange desks which will increase the cost of transactions for ERISA plans. The commentator stated that it treats all client transactions in a uniform manner. Finally, the commentator stated that it does not believe that the condition will achieve beneficial results for plan transactions at its facility.

While the commentator states that all client transactions at its facility are treated in a uniform manner, the Department notes that purchases and sales of foreign currency between an employee benefit plan and a party in interest bank or broker-dealer are prohibited in the absence of exemptive relief. The purpose of the above-noted condition is to put persons who act for the bank or broker-dealer on notice that they are dealing with a plan in order that any additional steps or procedures that are necessary to comply with the conditions of the exemption may be implemented. The Department believes that the identification of the client as a plan will help assure compliance with the conditions of the exemption. Accordingly, the Department has determined not to revise the final exemption in this regard.

Section III(c)(6) of the proposed exemption required the issuance of a written confirmation statement for each covered transaction. The proposal required that the confirmation statement disclose the amount of U.S. dollars purchased or sold. A commentator noted that U.S. dollars are not involved in every foreign currency transaction. In response to this comment, the Department has modified section III(c)(6) to require disclosure of the currencies purchased and sold pursuant to the final exemption.

The proposed exemption included a recordkeeping requirement which provided that the bank, broker-dealer or affiliate must maintain within territories under the jurisdiction of the United States Government, the records necessary to determine whether the applicable conditions of the exemption have been met. Several commentators objected to the requirement that records be maintained within territories under the jurisdiction of the U.S. Government. In this regard, they represented that this requirement creates difficulties for those banks who maintain foreign exchange

[1] For a discussion of those comments, see the proposed exemption at 56 FR 11761 (March 20, 1991).

[2] 29 CFR 2510.3–2(d) explains that IRAs described in section 408(e) of the Code will not be considered pension plans subject to title I of ERISA, provided that: (1) no contributions to the plan are made by the employer or employee association; (2) participation is completely voluntary for employees or members; (3) the sole involvement of the employer or employee organization is without endorsement to permit the sponsor to publicize the program, to collect contributions on behalf of the sponsor through payroll deductions or dues checkoffs and to remit them to the sponsor; and (4) the employer or employee organization receives no consideration in the form of cash or otherwise, other than reasonable compensation for services actually rendered in connection with payroll deductions or dues checkoffs.

29 CFR 2510.3–3(b) explains that for purposes of title I of ERISA, "employee benefit plan" shall not include a Keogh Plan under which no employees are covered under the plan. In this regard, 29 CFR 2510.3–3(c) states that for purposes of the above referenced section: (1) an individual and his or her spouse shall not be deemed to be employees with respect to a trade or business, whether incorporated or unincorporated, which is wholly owned by the individual or by the individual and his or her spouse; and (2) a partner in a partnership and his or her spouse shall not be deemed to be employees with respect to the partnership.

trading desks in a country or countries other than the United States. In addition, one commenter suggested that the recordkeeping requirement may result in higher costs to plans involved in foreign exchange transactions.

The ABA suggested that the recordkeeping requirement should permit the required records to be maintained on a computer system located at a foreign facility which would be accessible in the United States. These systems could print out any information requested and produce a hard copy to anyone who is authorized to have such information. These systems would contain all the bank's foreign exchange transactions on a daily basis for employee benefit plans as well as other entities. In this way, all information needed to test for compliance would be available in the United States. Other commenters suggested that requirements similar to those provided in the regulations under section 404(b) of the Act regarding the maintenance of the indicia of ownership of plan assets should be adopted. Specifically, they requested that the exemption permit the required records to be maintained at foreign locations described under the section 404(b) regulations.

The Department notes that the purpose of the record maintenance requirement is to ensure that the persons described in paragraph III(e) of the exemption will have access to bank, broker-dealer or affiliate records involving covered foreign exchange transactions. The Department is unable to determine how the alternatives for holding securities, which are described in the regulations under section 404(b) of the Act, would operate in the context of a record maintenance requirement. If the records were maintained outside of the jurisdiction of the United States Government and became unavailable for reasons beyond the control of the bank, broker-dealer or affiliate, there would be no comparable records available for determining compliance with the terms of this exemption. Accordingly, the Department is not persuaded that the conditions described in the regulations under section 404(b) of the Act would be appropriate with respect to the record maintenance requirement.

The Department has considered the ABA's suggestion to modify the final exemption to include records which are maintained on a foreign computer system that could be accessed in the United States. We note, however, that the ABA is unable to represent that such records could always be accessed on a foreign computer system without the risk of restriction by a foreign government. Accordingly, the Department is unable to conclude that the final exemption should be modified to include this method of recordkeeping.

The ABA, as well as a number of other commentators, requested that the Department expand the proposed exemption to include retroactive and prospective relief for foreign exchange transactions entered into pursuant to a standing authorization, hereinafter "standing instruction." Similarly, many of those commenters also requested that the Department amend the definition of the term "directed transaction" by modifying the requirement that the independent plan fiduciary effect the foreign exchange transaction at a specific exchange rate.

The commentators represent that the utilization of a standing instruction is an integral component in foreign exchange transactions involving employee benefit plans. They further indicate that standing instructions are necessary to repatriate relatively minor amounts of income such as dividend and interest payments routinely generated by foreign securities which are held by plans. In this regard, they state that obtaining individual directions for each income receipt would be impractical and that plan beneficiaries would lose investment income due to the time that it would take to receive directions from investment managers and convert the payments. In addition, many investment managers who wish to effectuate a foreign exchange transaction do not contact the foreign exchange desk directly, but instead leave their trading instructions with their account managers in the bank's trust or global area. Transactions effected in this manner can be bulked or added together with other transactions from employee benefit plans as well as other trusts and custodial accounts so as to obtain a more beneficial exchange rate. Under the circumstances described above, foreign exchange transactions would not meet the definition of "directed" as set forth in the proposed exemption because of the inability to comply with the requirement that the independent plan fiduciary designate a specific exchange rate.

The Department notes that a bank or broker-dealer engages in violations of section 406(b) of the Act whenever it uses its fiduciary authority or control with respect to the plan assets involved in the transaction to increase the amount of its compensation by determining the timing or the specific exchange rate for the foreign exchange transaction. The Department did not propose relief with respect to such transactions because it was unable, at the time, to make the findings required under section 408(a) of the Act. Specifically, the Department was unable to conclude that the conditions proposed by the ABA would effectively and consistently address the potential for abuse of discretion by party in interest banks or broker-dealers in setting exchange rates for foreign exchange transactions.

The commenters have responded to the Department's concerns by suggesting additional conditions which would limit the amount of discretion that a bank or broker-dealer would have in executing the foreign exchange transactions pursuant to standing instructions. Thus, some of the commenters suggested that the class exemption could limit relief to those situations where the triggering event, such as the receipt of cash dividends, would not be within the control of the bank or broker-dealer. In addition, the exchange transaction would have to take place within a short period of time following the triggering event. As a further limitation on the bank or broker-dealer, a commenter suggested that the exchange rate could be set daily prior to execution of the covered foreign exchange transaction using objective criteria which would be disclosed to and approved by a plan fiduciary independent of the bank or broker-dealer. Finally, it was represented that conditions relating to the information which must be provided or made available to the independent plan fiduciary could require very detailed disclosures which would enable such fiduciary to determine the reasonableness of the foreign exchange rates paid by the plan.

On the basis of the comments received following publication of the proposed exemption, the Department believes that it may be appropriate, under certain circumstances, to provide relief from section 406(b)(1) of the Act. Pursuant to the requirements of section 408(a) of the Act, however, the Department is required to offer interested persons an opportunity to present their views and an opportunity for a hearing before granting an exemption from section 406(b) of the Act. Therefore, in order not to delay the publication of an exemption from section 406(a) of the Act for foreign exchange transactions, the Department has decided to grant the exemption described herein while it continues to consider additional exemptive relief for foreign exchange transactions between a plan and a party in interest bank, broker-dealer or affiliate thereof where such transactions are engaged in pursuant to a "standing instruction."

Miscellaneous

One commenter requested that the Department clarify that the term "foreign exchange transaction" which is defined in section IV(a) of the proposed exemption as "the exchange of the currency of one nation for the currency of another nation or a contract for such exchange" includes options to buy or sell foreign currency. The commenter is concerned that a footnote to the supplementary information accompanying the proposed exemption which describes foreign exchange transactions as "generally * * * either 'spot', 'forward', or 'split'" delimits the scope of the literal language of the exemption.

The commenter represents that options contracts operate in a manner similar to that of forward contracts. For example, a forward contract to sell a specified sum of Yen for dollars would enable a party to sell Yen at the agreed upon rate even if the value of Yen declined over the time period covered by the forward contract; the same forward contract would require the counterparty to buy Yen from the party at a rate favorable to the counterparty if the Yen appreciated during the same time period. A similar economic result could be achieved if the party had bought an option to sell Yen at the forward contract rate, and sold an option to buy Yen at the same rate.

After considering this comment, the Department has decided to amend the final exemption to specifically include options to buy or sell currency.

One commenter requested that the Department expand the final exemption to include relief from section 406 (b)(1) & (b)(2) of the Act and section 4975(c)(1)(E) of the Code so that it would be clear that a fiduciary bank would not violate those provisions when it engaged in a foreign exchange transaction if it did not exercise its fiduciary authority to cause the plan to pay it an additional fee. The regulations at 29 CFR 2550.408b–2(e)(2) specifically state that a fiduciary does not engage in an act described in section 406(b)(1) of the Act if the fiduciary does not use any of the authority, control or responsibility which makes such person a fiduciary to cause a plan to pay additional fees for a service furnished by such fiduciary. Accordingly, the Department has determined that it is unnecessary to modify the final exemption as requested.

Finally, for purposes of clarity, the Department has added a definition to section IV of the class exemption. Paragraph (g) defines the term "employee benefit plan" for purposes of this class exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of plans and of their participants and beneficiaries and protective of the rights of the participants and beneficiaries of plans.

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) The exemption is applicable to a transaction only if the conditions specified in the exemption are met.

Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I. Transactions

(a) For the period from January 1, 1975 to June 18, 1991, the restrictions of section 406(a)(1) (A) through (D) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 [the Code) by reason of Code section 4975(c)(1) (A) through (D) shall not apply to any foreign exchange transaction between a bank or broker-dealer or an affiliate thereof and an employee benefit plan with respect to which the bank or broker-dealer or affiliate thereof is a trustee, custodian, fiduciary or other party in interest, provided that (i) the transaction is directed (within the meaning of section IV(e)) on behalf of the plan by a fiduciary which is independent of the bank, the broker-dealer, and any affiliate thereof, and (ii) the conditions set forth in section II are met.

(b) Effective June 18, 1991, the restrictions of section 406(a)(1) (A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of Code section 4975(c)(1) (A) through (D) shall not apply to any foreign exchange transaction between a bank or broker-dealer or an affiliate thereof and an employee benefit plan with respect to which the bank or broker-dealer or an affiliate thereof is a trustee, custodian, fiduciary, or other party in interest, provided that (i) the transaction is directed (within the meaning of section IV(e)) on behalf of the plan by a fiduciary which is independent of the bank, the broker-dealer, and any affiliate thereof, and (ii) all of the conditions set forth in sections II and III are met.

Section II. General Conditions

Section I of this exemption applies only if the following conditions of this section II are satisfied. In the case of transactions described in section I(b), all of the conditions specified in section III below must also be satisfied.

(a) At the time the transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties.

(b) Neither the bank, the broker-dealer, nor any affiliate thereof has any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investments of those assets.

Section III. Specific Conditions

Section I(b) of this exemption applies only if the conditions specified in

section II above and the following conditions are satisfied:

(a) At the time the transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by the bank, the broker-dealer, or any affiliate thereof in comparable arm's length foreign exchange transactions involving unrelated parties.

(b) The bank, or broker-dealer, maintains at all times written policies and procedures regarding the handling of foreign exchange transactions with plans with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for the bank or broker-dealer knows that he or she is dealing with a plan.

(c) A written confirmation statement is issued with respect to each covered transaction to the independent plan fiduciary who directs the transaction for the plan.

The confirmation shall disclose the following information:

(1) Account name;
(2) Transaction date;
(3) Exchange rates;
(4) Settlement date;
(5) Currencies exchanged:
(i) Identity of the currency sold;
(ii) The amount sold;
(iii) Identity of the currency purchased;
(iv) The amount purchased.

The confirmation shall be issued in no event more than 5 business days after execution of the transaction.

(d) The bank or broker-dealer, or affiliate thereof, maintains within territories under the jurisdiction of the United States Government, for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (e) of this section to determine whether the applicable conditions of this exemption have been met. Notwithstanding these recordkeeping requirements, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the bank's or broker-dealer's control, the records are lost or destroyed prior to the end of the six-year period, and no fiduciary of a plan who is independent of the bank or broker-dealer or any affiliate thereof, which engages in a transaction covered by the exemption, shall be subject to the civil penalty that may be assessed under 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, solely because the records are not maintained by the bank, the broker-dealer, or its affiliate, or are not made available for examination by the bank or broker-dealer or affiliate as required by paragraph (e) below.

(e)(i) Except as provided in subparagraph (ii) of this paragraph and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (d) of this Section are available at their customary location for examination, upon reasonable notice, during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service.

(B) Any fiduciary of a plan who has authority to acquire or dispose of the assets of the plan involved in the foreign exchange transaction or any duly authorized employee and representative of such fiduciary.

(C) Any contributing employer to the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such employer.

(ii) None of the persons described in subparagraphs (B) and (C) shall be authorized to examine a bank's or broker-dealer's trade secrets or commercial or financial information of a bank or broker-dealer or an affiliate thereof which is privileged or confidential.

Section IV. Definitions and General Rules

For purposes of this exemption.

(a) A "foreign exchange transaction" means the exchange of the currency of one nation for the currency of another nation, or a contract for such an exchange. The term foreign exchange transaction includes options contracts on foreign exchange transactions.

(b) A "bank" means a bank which is supervised by the United States or a State thereof, or any affiliate thereof.

(c) A "broker-dealer" means a broker-dealer registered under the Securities Exchange Act of 1934, or any affiliate thereof.

(d) An "affiliate" of a bank or broker-dealer means any entity directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such bank or broker-dealer.

(e) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) A foreign exchange transaction involving assets of an employee benefit plan shall be considered "directed" only where the independent plan fiduciary who has not been appointed by the bank or broker-dealer or affiliate thereof, directs such bank or broker-dealer or affiliate thereof to effect the purchase or sale of a specific amount of currency at a specific exchange rate.

(g) For purposes of this exemption, the term "employee benefit plan" refers to a pension plan described in 29 CFR 2510.3–2 and/or a welfare benefit plan described in 29 CFR 2510.3–1.

Signed at Washington, DC, this 10th day of February, 1994.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–3607 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–15, et al.; Exemption Application No. D–9460, et al.]

Grant of Individual Exemptions; G. Robert Taylor Individual Retirement Account, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

G. Robert Taylor Individual Retirement Account (the Account) Located in Chattanooga, Tennessee

[Prohibited Transaction Exemption 94–15; Exemption Application No. D–9460]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of certain shares of stock from the Account to R. Scott Taylor, a disqualified person with respect to the Account, provided that the following conditions are met:

1. The fair market value of the stock is established by an appraiser independent of G. Robert Taylor;

2. The buyer pays no less than current fair market value for the stock;

3. The transaction is entirely for cash; and

4. The Account pays no fees or commissions in regard to the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 29, 1993, at 58 FR 68957.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Money Purchase Retirement Plan of Local 567, I.B.E.W. (the Plan) Located in Falmouth, Maine

[Prohibited Transaction Exemption 94–16; Exemption Application D–9465]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lease (the Lease) of 360 square feet of office space (the Office Space) in a commercial office building located in Falmouth, Maine, to the Plan by the Local No. 567, International Brotherhood of Electrical Workers (I.B.E.W.), Building Corporation (the Building Corporation), a corporation which is wholly-owned by the Local No. 567 of the I.B.E.W., AFL–CIO (the Union), a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (a) The terms of the Lease are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) an independent, qualified appraiser determines annually the fair market rental value of the Office Space; (c) the Lease payments are adjusted annually by an independent, qualified fiduciary, to assure that such Lease payments are not greater than the fair market rental value of the Office Space; (d) the independent, qualified fiduciary determines that the transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; and (e) the independent, qualified fiduciary monitors the transaction and the conditions of the exemption and takes whatever action is necessary to enforce the Plan's rights under the Lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 3, 1993 at 58 FR 64013.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Scios Nova Inc., Scios Nova Inc. 401(k) Plan (the Plan) Located in Mountain View, CA

[Prohibited Transaction Exemption 94–17; Application No. D–9551]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan of Group Annuity Contract, No. GA–10,021 (the GAC) issued by Mutual Benefit Life Insurance Company (Mutual Benefit) to Scios Nova Inc. (the Employer), a party in interest with respect to the Plan; provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan receives no less than the fair market value of the GAC at the time of the sale; (3) the Plan's trustee, acting as independent fiduciary for the Plan, has determined that the sale price is not less than the current fair market value of the GAC; and (4) the Plan's trustee has determined that the transaction is appropriate for and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 17, 1993 at 58 FR 66029.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.).

Local No. 60 Health and Welfare Fund (the Plan) Located in Leominster, Massachusetts

[Prohibited Transaction Exemption 94–18; Exemption Application No. L–9526]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the cash sale of a parcel of real property (the Property) by the Plan to the New England Joint Board of the Retail, Wholesale and Department Store Union, AFL–CIO, for the greater of (1) $170,000 in cash or (2) the fair market value of the Property as of the date of the sale, provided the following conditions are satisfied: (a) the purchase price is not less than the fair market value of the Property on the date of the sale; and (b) the fair market value of the Property is determined by a qualified, independent appraiser as of the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 17, 1993 at 58 FR 66032.

WRITTEN COMMENTS AND HEARING REQUESTS: The Department received one comment with respect to the proposed exemption, but it did not address any issues relating to the subject transaction. The Department received no requests for a hearing with respect to the proposed exemption.

Accordingly, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Penn Mutual Life Insurance Company (Penn Mutual), Located in Philadelphia, Pennsylvania, The Pennsylvania Trust Company (PTC), Located in Radnor, Pennsylvania; Independence Capital Management, Inc. (ICMI), Located in Horsham, Pennsylvania

[Prohibited Transaction Exemption 94–19; Application Nos. D–9194, D–9195, D–9196]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a)(1)(A) through (D) and section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The extension of credit by Penn Mutual, the sponsor and third party guarantor of an investment product involving a guaranteed investment contract (GIC), to a plan invested in the GIC pursuant to the terms of its participation in the Independence Stable Asset Trust (Stable Asset Trust); (2) the sale of the assets of a closed-end collective investment fund (Fund) which is part of the Stable Asset Trust to Penn Mutual upon termination of the Fund, or in connection with a non-benefit withdrawal from the Fund; (3) the transfer of a Fund's assets to Penn Mutual upon termination of the Fund, or in connection with a non-benefit withdrawal from the Fund; and (4) the operation of the Stable Asset Trust in accordance with the letter agreement between Penn Mutual and PTC.

The exemption is subject to the following conditions which are set forth below in Section II.

Section II. General Conditions

The relief provided under Section I is available only if the following conditions are met:

1. The decision to invest in a Fund will be made by a plan fiduciary who is responsible for and knowledgeable regarding the investment of plan assets in GICs and similar investment products and who is independent of Penn Mutual, PTC, and ICMI and any affiliates of such entities (the Independent Fiduciary).

2. Prior to a plan's investment in a Fund, the Independent Fiduciary for such plan receives the following written disclosures:

(a) All material facts concerning the structure, operation and investment objectives of the Fund including:

i. A copy of the Supplement creating the Fund in which the plan intends to invest which identifies the proposed investment portfolio of the Fund (the Supplement), the Fund Commencement Date and the Scheduled Fund Termination Date, the date projected for the funding of all investments to be made in the Fund, the guaranteed rate of return for the Fund, and any other material terms of the Fund;

ii. The confirmation document which confirms the plan fiduciary's written approval of matters set forth in the Supplement;

iii. The Independence Stable Asset Trust Participant Investment Agreement;

iv. The Declaration of Trust of the Short Term Investment Fund of the Pennsylvania Trust Company for Employee Benefit Accounts; and

v. The letter agreement between the Pennsylvania Trust Company and the Penn Mutual Life Insurance Company (Letter Agreement).

(b) The corporate affiliation existing between Penn Mutual, PTC and ICMI and either the amount of the compensation or the method of calculation of the compensation paid to such entities.

3. Neither Penn Mutual nor any of its affiliates has discretionary authority or control with respect to the decision to invest plan assets in the proposed investment product described herein or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

4. The interest charged by Penn Mutual with respect to an amount advanced by Penn Mutual to a plan for a benefit payment advance will be 100% offset by the returns realized with respect to the Stable Asset Trust units held by the plan and no other interest costs or charges will be associated with benefit payment advances.

5. Penn Mutual provides copies of the proposed and final exemption as published in the **Federal Register** to each plan which invests in the proposed investment product.

6. The fees paid to Penn Mutual, PTC, and ICMI will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act and such fees cannot be increased during the term of a Fund as the result of any action taken by Penn Mutual, PTC or ICMI.

7. Penn Mutual maintains or causes to be maintained, for a period of six years, the records necessary to enable the persons described in paragraph (8) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control Penn Mutual or its agents, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than Penn Mutual shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (8) below.

(8)(a). Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph 7 of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or Internal Revenue Service (the Service);

(2) Any fiduciary of an investing Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to an investing Plan or any duly authorized employee or representative of such employee; and

(4) Any participant or beneficiary, any investing Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraph (2)–(4) of this paragraph (8) shall be authorized to examine the trade secrets of Penn Mutual or its affiliates or commercial or financial information which is privileged or confidential.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material facts which are the subject of this exemption.

For purposes of this exemption, affiliate means

(a) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) Any officer, director or partner, in such other person; and

(c) Any corporation or partnership of which such other person is an officer, director or partner.

Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 15, 1993 at 58 FR 60219.

Written Comments: The Department received one written comment and no requests for hearing. The comment was submitted on behalf of the applicants Penn Mutual, PTC and ICMI. The issues addressed in the comment and the Department's responses are summarized as follows:

1. The applicants request that the first sentence of Section I. Covered Transactions section of the Exemption be revised to include the following phrase at the end of subsequent (2) and (3) "or in connection with a non-benefit withdrawal from the Fund,". The applicants represent that the added phrase is intended to reflect the fact that it is contemplated that there may be sales of assets of a Fund which form a part of the Stable Asset Trust to Penn Mutual in connection with a non-benefit withdrawal from the Fund by a participating plan. Such sales are authorized in section 5.6(e) of the declaration of trust for the Stable Asset Trust. In accordance with the applicants' request the Department has included the above-referenced phrase at the end of subsections (2) and (3) of Section I of the final exemption.

2. Paragraph 1 of Section II of the proposed exemption states that the decision to invest in a Fund will be made by a plan fiduciary who is responsible for and knowledgeable regarding the investment of plan investments in GICs and similar investment products. Similarly, paragraph 15(a) of the Summary of Facts and Representations section of the proposed exemption states that the applicants represent that investment of a Plan's assets in a Fund will be made and approved by a plan fiduciary who is responsible for and knowledgeable regarding the investment of plan assets in guaranteed investment contracts and similar products.

The applicants wish to clarify that this condition will be satisfied by an express representation that will be required to be made by the Plan's independent fiduciary under the Independence Stable Asset Trust Participant Investment Agreement.

3. The applicants have noted two factual errors in paragraph 1 of the Summary of Facts and Representation section of the proposed exemption. The correct name of the affiliate listed in the proposed exemption as "Penn Assurance and Annuity Company" is "Penn Insurance and Annuity Company." Secondly, as of December 31, 1992, Penn Mutual had $6.9 billion in consolidated assets and not $46.9 billion as reported in the proposed exemption.

4. Paragraph 10 of the Summary of Facts and Representations section of the proposed exemption includes a description of the non-benefit withdrawal provisions of the synthetic GIC product. The description includes statements to the effect that the withdrawing plan would be subject to a surrender charge and that there would be a credit against the amount of the surrender charge owing based on the excess of the market value of the units of the Fund held by the Plan over the Plan Account Amount as of such date.

The applicants represent that there may be cases where no surrender charges will be applied with respect to non-benefit withdrawals and also there may be circumstances where surrender charges will be applied and will not be subject to any offset. Thus, the word "would" as noted above should be changed to "may". These provisions, in each case, however, will be determined and approved by the Plan fiduciary at the Fund's inception.

5. Paragraph 11 of the Summary of Facts and Representations section of the proposed exemption includes a reference to paragraph 12, which does not appear to relate to the substance of that paragraph. The Department notes that the paragraph labeled "12" was incorrectly identified in the **Federal Register** and the designation for paragraph 13 omitted. As corrected, paragraphs 12 and 13 read as follows.

12. PTC, at its discretion, will be entitled at a Fund's Termination Date to sell any one or more of the Fund assets to Penn Mutual for a cash price sufficient to obtain net proceeds equal to the aggregate of the Plan Account Amounts of plans holding units in the Fund. The obligations of the parties under these arrangements will be netted against one another, resulting in a "swapping-out" of the entire remaining portfolio at an amount equal to the aggregate Plan Account Amounts.

13. Penn Mutual's fee for its minimum yield, liquidity guarantees and Plan Account Amount assurances will be an amount computed on and payable as of pre-set quarterly dates from each Fund. The fee will be equal to the product of the cost of the remaining invested assets in the Fund adjusted in accordance with generally accepted accounting principles for amortization of premium and accretion of discount, times the Penn Mutual Quarterly Compensation Percentage specified in the applicable Fund Supplement.

* * * * *

After consideration of the entire record, including the comment, the Department has determined to grant the exemption as amended in the manner described above.

FOR FURTHER INFORMATION CONTACT: Ms. Lyssa E. Hall of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 10th day of February 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–3606 Filed 2–16–94; 8:45 am;]

BILLING CODE 4510–29–P

Advisory Council on Employee Welfare and Pension Benefits Plan; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Health Care Reform of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12 noon, Wednesday, March 9, 1994, in suite C–5515, Seminar Room 3, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This working group was formed by the Advisory Council to study issues relating to health care reform for employee benefit plans covered by ERISA.

The purpose of the March 9 meeting is to discuss preliminary plans and schedules for accomplishing its objectives for the remainder of the work year. The working group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the working group should submit a written request on or before March 4, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before March 4, 1994.

Signed at Washington, DC, this 11th day of February 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–3631 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Reporting and Disclosure of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 1 p.m. until 3:30 p.m., Wednesday, March 9, 1994, in suite C–5515, Seminar Room 3, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This working group was formed by the Advisory Council to study issues relating to reporting and disclosure for employee benefit plans covered by ERISA.

The purpose of the March 9 meeting is to discuss preliminary plans and schedules for accomplishing its objectives for the remainder of the work year. The working group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the working group should submit a written request on or before March 4, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before March 4, 1994.

Signed at Washington, DC, this 11th day of February 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–3632 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12 noon, Thursday, March 10, 1994, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This working group was formed by the Advisory Council to study issues relating to defined contribution plans covered by ERISA.

The purpose of the March 10 meeting is to discuss preliminary plans and schedules for accomplishing its objectives for the remainder of the work year. The working group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the working group should submit a written request on or before March 4, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before March 4, 1994.

Signed at Washington, DC, this 11th day of February 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–3633 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, March 10, 1994, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Eighty-Fourth meeting of the Secretary's ERISA Advisory Council, which will be held from 2 p.m. until 3:30 p.m., is to receive and discuss each working group's progress in defining its topic and schedule of work to be accomplished. The Council has established three working groups this year to consider health care reform, reporting and disclosure and defined contribution plans. The Council will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting twenty (20) copies on or before March 4, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary at the above address. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before March 4, 1994.

Signed at Washington, DC, this 11th day of February, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–3634 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974: Revision to Two Systems of Records

AGENCY: National Science Foundation.

ACTION: Notice of revised systems of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation is providing notice of a revision to two systems of records—NSF–50, "Principal Investigator/Proposal File and Associated Records," and NSF–51, "Reviewer/Proposal File and Associated Records." Both systems include investigatory records maintained by NSF when proposals are submitted to the agency and subsequent evaluations of the applicants and their proposals are obtained. These systems are being revised to include altered routine uses, and are reprinted in their entirety.

In accordance with the requirements of the Privacy Act, NSF has provided a report on the proposed systems of records to the Director of OMB, the Chairman, Committee on Governmental Affairs, and the Chairman, Committee on Government Operations.

EFFECTIVE DATE: Sections 552a(e) (4) and (11) of Title 5 of the U.S. Code require that the public have thirty days to comment on the routine uses of systems of records. The new routine uses that are the subject of this notice will take effect on March 21, 1994, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: Written comments should be submitted to the NSF Privacy Act Officer, National Science Foundation, Division of Contracts, Policy and Oversight, 4201 Wilson Boulevard, room 485, Arlington, Virginia 22230.

Dated: February 10, 1994.

Herman G. Fleming,

NSF Privacy Act Officer.

NSF–50

SYSTEM NAME:

Principal Investigator/Proposal File and Associated Records.

SYSTEM LOCATION:

Decentralized. There are numerous separate files maintained by individual NSF offices and programs. National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each person that requests support from the National Science Foundation, either individually or through an academic institution.

CATEGORIES OF RECORDS IN THE SYSTEM:

The name of the principal investigator, the proposal and its identifying number, supporting data from the academic institution or other applicant, proposal evaluations from peer reviewers, a review record, financial data, and other related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSES:

This system enables program offices to maintain appropriate files and investigatory material in evaluating applications for grants or other support. NSF employees may access the system to make decisions regarding which proposals to fund, and to carry out other authorized internal duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information may be made:

1. To qualified reviewers for their opinion and evaluation of applicants and their proposals as part of the application review process.

2. To Federal government agencies in order to coordinate grant programs.

3. To contractors, grantees, volunteers and other individuals who perform a service or work on a contract, grant, cooperative agreement, or job for the Federal Government.

4. To the Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

5. To another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various portions of the system are maintained on computer or in hard copy files, depending on the individual program office.

RETRIEVABILITY:

Information can be accessed from the computer database by addressing data contained in the database, including individual names. An individual's name may be used to manually access material in alphabetized hard copy files.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets or are accessed by unique passwords and log-on procedures. Only those persons with a need-to-know in order to perform their duties may access the information.

RETENTION AND DISPOSAL:

File are maintained in accordance with approved record retention schedules. Awarded proposals are transferred to the Federal Records Center for permanent retention. Declined proposals are destroyed five years after they are closed out.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information is obtained from the principal investigator, academic institution or other applicant, peer reviewers, and others.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The portions of this system consisting of investigatory material which would identify persons supplying evaluations of NSF applicants and their proposals have been exempted pursuant to 5 U.S.C. 552a(k)(5).

NSF–51

SYSTEM NAME:

Reviewer/Proposal File and Associated Records.

SYSTEM LOCATION:

Decentralized. There are numerous separate files maintained by individual NSF offices and programs. National Science Foundation, 420–1 Wilson Boulevard, Arlington, Virginia 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reviewers that evaluate Foundation applicants and their proposals, either by submitting comments through the mail or serving on review panels or site visit teams.

CATEGORIES OF RECORDS IN THE SYSTEM:

The "Reviewer/Proposal File and Associated Records" system is a subsystem of the "Principal Investigator/Proposal File and Associated Records" system, and contains the reviewer's name, proposal title and its identifying number, and other related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSES:

This system enables program offices to reference specific reviewers and maintain appropriate files for use in evaluating applications for grants or other support. NSF employees may access the system to help select reviewers as part of the merit review process, and to carry out other authorized internal duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information may be made:

1. To Federal government agencies needing names of potential reviewers and specialists in particular fields.

2. To contractors, grantees, volunteers and other individuals who perform a service or work on a contract, grant, cooperative agreement, or job for the Federal Government.

3. To the Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

4. To another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various portions of the system are maintained on computer or in hard copy files, depending on the individual program office.

RETRIEVABILITY:

Information can be accessed from the computer database by addressing data contained in the database, including individual reviewer names. An individual's name may be used to manually access material in alphabetized hard copy files.

SAFEGUARDS:

All records containing personal information are maintained in secured filed cabinets or are accessed by unique passwords and log-on procedures. Only those persons with a need-to-know in order to perform their duties may access the information.

RETENTION AND DISPOSAL:

File is cumulative and is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES;

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual reviewers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–3616 Filed 2–16–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 60—Disposal of High-Level Radioactive Wastes in Geologic Repositories

3. The form number if applicable: Not applicable.

4. How often the collection is required: The information need only be submitted one time.

5. Who will be required or asked to report: States or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level waste repository site, or wishing to participate in a license review for a potential repository.

6. An estimate of the annual number of responses: 8

7. An estimate of the total number of hours needed annually to complete the requirement or request: An average of 40 hours per response for consultation requests, 80 hours per response for license review participation proposals, and 1 hour per response for statements of representative authority. The total burden for all responses is estimated to be 244 hours.

8. An indication of whether Section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: 10 CFR part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning review of a potential repository site or wish to participate in a license review for a potential repository. Representatives of States or Indian Tribes must submit a statement of their authority to act in such representative capacity. The information submitted by the States and Indian Tribes is used by the director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0127), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 8th day of February 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–3589 Filed 2–16–94; 8:45 am]

BILLING CODE 7590–01–M

load capacity, and also provides missile protection to portions of the support systems for EDGs Nos. 12 and 21. EDGs Nos. 12 and 21 are required to be operable to support the operation of Unit 2.

The upgrading of the Unit 1 EDG will be performed during the upcoming Unit 1 refueling outage (RFO–11). RFO–11 is scheduled to commence on February 8, 1994, and be completed in early May 1994. The steel missile door will be required to be removed about four times during the outage. The licensee estimates that each of the removals will last for about 24 hours, which will result in a total removal time of about 100 hours during the scheduled 89 day RFO–11.

Need for the Proposed Action

The proposed temporary exemption is needed to permit the completion of highly desirable upgrades to the Unit 1 EDG No. 11 without requiring a dual unit shutdown.

Environmental Impacts of the Proposed Action

The proposed exemption does not involve any measurable environmental impacts during normal operation of Unit 2 since the plant configuration is changed only minimally for short periods of time when the missile door will be removed and overall plant operation is not changed. The likelihood of tornado-generated or other high wind-generated missile damage during the time the exemption would be in effect and which could affect equipment required to be operable to avoid radiological impact is low. Also, the licensee indicates that the missile door will be installed whenever severe weather conditions arise. Thus, the proposed temporary exemption would not significantly affect the probability or consequences of potential reactor accidents and would not otherwise affect radiological plant effluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the owner-controlled area defined in 10 CFR part 20. The EDG upgrade project activities do not affect nonradiological plant effluents and has no other environmental impact. Therefore, the staff concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

The principal alternative to requesting the temporary exemption for implementation of the EDG upgrade would be to comply with the restrictive requirements of GDC–2. However, this alternative would not significantly enhance the protection of the environment, and would result in a significant loss of power generation since a dual unit outage would be required.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the April 1973 Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

The NRC staff contacted the State of Maryland, Department of Natural Resources, regarding the environmental impact of this proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment and has determined, therefore, not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application dated December 17, 1993, as supplemented on February 4, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 10th day of February 1994.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–3588 Filed 2–16–94; 8:45 am]

BILLING CODE 7590–01–M

Baltimore Gas and Electric Company; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–318]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix A, General Criterion 2, "Design Bases For Protection Against Natural Phenomena," to Baltimore Gas and Electric Company (the licensee), for the Calvert Cliffs Nuclear Power Plant, Unit No. 2, located at the licensee's site in Calvert County, Maryland.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow relief from General Design Criterion 2 (GDC–2) during the upgrading of the Unit 1 emergency diesel generator (EDG) No. 11. The proposed exemption will permit the temporary removal of a steel missile door which provides missile protection for the No. 11 EDG, which will be out-of-service to allow for modifications which will increase its

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Mr. Paul M. Blanch (Petitioner)

dated August 2, 1993, regarding the Northeast Nuclear Energy Company (licensee) and the Millstone Facility.

The Petitioner requested that the NRC reconsider the May 4, 1993 enforcement action issued to the licensee for discrimination against the Petitioner in violation of 10 CFR 50.7.

The Petitioner requested reconsideration based on his view that additional enforcement action is warranted. Specifically, Petitioner requests: (1) An enforcement action against a licensee Vice President for alleged willful violation of 10 CFR 50.7 and alleged deliberate misconduct under 10 CFR 50.5 in the discriminatory actions against Petitioner; (2) a Severity Level I violation against the licensee corporate officer allegedly responsible for directing action against two of Petitioner's former subordinates; (3) Severity Level I violations against three licensee corporate officers allegedly resonsible for harassment, intimidation and discrimination against the Petitioner; (4) a Severity Level I violation and a Severity Level II violation against a licensee attorney and a licensee manager respectively for threatening individuals with letters of reprimand if they did not communicate with licensee attorneys prior to being interviewed by the NRC's Office of Investigations on the discrimination matter; and (5) a minimum of a Severity Level II violation against a licensee manager for a retaliatory audit of the Petitioner's group.

The Director of the Office of Enforcement has reviewed the bases for the Petitioner's request and has found that the Petitoner has not presented information that would warrant reconsideration of the May 4, 1993 enforcement action. Therefore, the Petitoner's request has been denied. The reasons for the denial are explained in the "Director's Decision Under 10 CFR 2.206" (DD–94–01) which is available for public inspection at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room for the Millstone Nuclear Power Station, unit 3, Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by that regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 9th day of February 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–3590 Filed 2–16–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33614; File No. SR–NASD–94–6]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Assessments and Fees on Members

February 10, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 9, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change to amend Schedule A, Section 2(b) to the By-Laws [1] to add the provision that any initial or transfer application for registration as a registered representative or registered principal with the NASD which requires a special registration review shall be assessed a surcharge of $85.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Any initial or transfer application to register as a representative or principal with the Association requires the submission of Form U–4, the Uniform Application for Securities Industry Registration or Transfer ("Form U–4"). Item 22 on page three of Form U–4 requires disclosure of violations of certain criminal and securities laws, rules and regulations. Any "yes" answer to item 22 requires additional detailed disclosure on the disclosure reporting page of Form U–4, which in turn requires a special registration review of such information by the Association.

Pursuant to Article VI of the By-Laws of the Association, the NASD requires its members to pay a $65 fee for each application submitted to the Association for the registration or transfer of registration of a registered representative or registered principal, as set forth in Schedule A, Section 2(b) to the By-Laws. The NASD is proposing to amend Schedule A, Section 2(b) to the By-Laws to add the provision that any initial or transfer application which requires a special registration review shall be assessed a surcharge of $85.

There are additional costs associated with performing a special registration review of information disclosed in the Form U–4 and maintaining such information in the NASD's Central Registration Depository disciplinary database ("CRD database"). These costs relate to conducting research on all criminal actions, disciplinary actions taken by the states, SROs and the SEC disclosed in the U–4 and including information on such actions on the CRD database. A special registration review will also require CRD to provide information on any criminal, disciplinary, or SEC action.

Based on data for 1991, the Association estimates the extra costs attributable to U–4s in 1994 for which a special registration review is required will be approximately $85 per U–4 filing. The NASD, therefore, in accordance with its objective to align revenues with the cost of providing particular services to members and, specifically, its objective to focus fee increases on actions that impact the disciplinary process, is proposing to amend Schedule A, Section 2(b) to the By-Laws to add the provision that any initial or transfer application which requires a special registration review shall be assessed a surcharge of $85. The surcharge will take effect on March 1, 1994 for all initial and transfer filings either that have a "yes" answer to item 22 on Form U–4 or for which information exists in the CRD database that would require a "yes" answer to item 22 regardless of how it is answered.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act,[2] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members in that the proposed rule change equitably allocates the extra costs associated with U–4s for which a special registration review is required to the member firms incurring such costs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and section (e) of Rule 19b–4 promulgated thereunder in that it constitutes a due, fee or other charge. However, the NASD will implement the fee change on March 1, 1994.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3626 Filed 2–16–94; 8:45 am]

BILLING CODE 8010–01–M

[1] NASD Manual, By-Laws, Schedule A, Section 2(b), (CCH) ¶ 1753.

[2] 15 U.S.C. 78o–3 (1988).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges, Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

February 10, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Morgan Stanley Africa Investment Fund,
Common Stock, $.01 Par Value (File No. 7–11977).

Ashland Oil,
$3.125 Cum. Conv. Pfd., No Par Value (File No. 7–11978).

Crisalerias de Chile S.A.,
American Depository Shares (each representing 3 shares of Common Stock, No Par Value (File No. 7–11979).

Freeport-McMoran Copper & Gold, Inc.,
Dep. Shrs. Series II (each rep. $0.05 of a shr. of Gold-Denominated Pfr. Stk, Series II, $.10 Par Value (File No. 7–11980).

Gables Residential Trust,
Shrs. of Beneficial Inter., $.01 Par Value (File No. 7–11981).

Glimcher Realty Trust,
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11982).

Quantum Restaurant Group, Inc.,
Common Stock, $.01 Par Value (File No. 7–11983).

Mid America Apartment Communities, Inc.,
Common Stock, $.01 Par Value (File No. 7–11984).

O'Sullivan Industries Holding, Inc.,
Common Stock, $.100 Par Value (File No. 7–11985).

Occidental Petroleum Corp.,
$3.00 Cum. Conv. Pfd. Stk., $1.00 Par Value (File No. 7–11986).

Playtex Products, Inc.,
Common Stock, $.01 Par Value (File No. 7–11987).

Shawnut National Corp.,
Warrants, No Par Value (File No. 7–11988).

Statesman Group, Inc.,
Common Stock, $.01 Par Value (File No. 7–11989).

G.T. Global Developing Markets Fund, Inc.,
Common Stock, $.001 Par Value (File No. 7–11990).

United Mobil Homes, Inc.,
Common Stock, $.10 Par Value (File No. 7–11991).

PECO Energy Company,
Common Stock, No Par Value (File No. 7–11992).

Franklin Advantage Real Estate Income Fund,
Series A, Common Stock, No Par Value (File No. 7–11993).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–3828 Filed 2–16–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

February 10, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Ceridian Corp.,
Depositary Shares (rep. 1/100 sh. Cm. Cv. Exch. Pfd., $100.00 Par Value (File No. 7–12003).
Columbus Realty Trust,
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–12004).
Compania Boliviana de Energia Electrica, S.A.,
Common Stock, No Par Value (File No. 7–12005).
Corporate High Yield Fund II,
Common Stock, $.10 Par Value (File No. 7–12006).
Emerging Markets Infrastructure Fund, Inc.,
Common Stock, $.001 Par Value (File No. 7–12007).
Home Holdings, Inc.
Ser. A Common Stock, $.01 Par Value (File No. 7–12008).
Koninklije Ahold AV,
American Depositary Shares (rep. 1 Ord. sh., NGL 1.25 Par Value (File No. 7–12009).
M.I. Schottenstein Homes, Inc.,
Common Stock, $.01 Par Value (File No. 7–12010).
MAXXIM Medical, Inc.
Common Stock, $.001 Par Value (File No. 7–12011).
MuniBond Income Fund, Inc.,
Common Stock, $.10 Par Value (File No. 7–12012).
National Intergroup, Inc.,
$4.20 Cm. Exch. Ser. A Pfd. Stk. (File No. 7–12013).
New York State Gas & Electric Corp.,
Adj. Rte. Srl. Pfd., Ser. B Cum., $25.00 Par Value (File No. 7–12014).
Oil-Dri Corp. of America,
Common Stock, $.10 Par Value (File No. 7–12015).
Pakistan Investment Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12016).
Salomon Brothers Worldwide Income Fund, Inc.,
Common Stock, $.001 Par Value (File No. 7–12017).
Schroder Asian Growth Fund, Inc.,
Common Stock, $.01 Par Value (File No. 7–12018).
Washington Homes, Inc.,
Common Vot. Stock, $.01 Par Value (File No. 7–12019).
Wiser Oil Co.,
Common Stock, $3.00 Par Value (File No. 7–12020).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 4, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–3629 Filed 2–16–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 10, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Quantum Restaurant Group, Inc.,
Common Stock, $.01 Par Value (File No. 7–11957).
Southdown, Inc.,
Pfd. Stock, Conv. Series D (File No. 7–11958).
Glimcher Realty Trust,
Common Shares of Beneficial Interest (File No. 7–11959).
Pakistan Investment Fund, Inc.,
Common Stock, $.01 Par Value (File No. 7–11960).
Pacific Gulf Properties, Inc.,
Common Stock, $1.00 Par Value (File No. 7–11961).
Golden Star Resources, Ltd.,
Common Stock, $.01 Par Value (File No. 7–11962).
Occidental Petroleum Corporation,
$3.00 Cum. Cxy Indexed Conv. Pfd. Stock (File No. 7–11963).
O'Sullivan Industries Holding, Inc.,
Common Stock, $.01 Par Value (File No. 7–11964).
Playtex Products, Inc.,
Common Stock, $.01 Par Value (File No. 7–11965).
Mid American Apartment Communities, Inc.,
Common Stock, $.01 Par Value (File No. 7–11966).
Crisalerias De Chile S.A.,
American Depository Shares (File No. 7–11967).
United Asset Management,
Common Stock, $.01 Par Value (File No. 7–11968).
United Mobile Home, Inc.,
Common Stock, $.01 Par Value (File No. 7–11969).
Plantronics, Inc.,
Common Stock, $.01 Par Value (File No. 7–11970).
G.T. Global Developing Market Fund, Inc.,
Common Stock, $.01 Par Value (File No. 7–11971).
Franklin Advantage Realty Estate Income Fund,
Series A Common Stock, No Par Value (File No. 7–11972).
Bowater Incorporated,
Depository Shares Preferred B Stock (File No. 7–11973).
Bowater Incorporated,
Depository Shares Preferred C Stock (File No. 7–11974).
Security Connecticut Corporation,
Common Stock, $.01 Par Value (File No. 7–11975).
Ceridian Corporation,
Depository Shares each representing 1.100th of a Share of Cum. Cv. Exchangeable Pfd. Stock, $100 Par Value (File No. 7–11976).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–3630 Filed 2–16–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.

February 10, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Grangers Exploration, Ltd.
Common Stock, $.01 Par Value (File No. 7–11994)
Playtex Products, Inc.
Common Stock, $.01 Par Value (File No. 7–11995)
Emerging Markets Infrastructure Fund
Common Stock $.001 Par Value (File No. 7–11996)
Aztar Corp.
Common Stock, $.01 Par Value (File No. 7–11997)
Alliance World Dollar Fund
Common Stock, $.01 Par Value (File No. 7–11998)
Blackrock 2001 Term Trust
Common Stock, No Par Value (File No. 7–11999)
Grupo Casa Autry S.A. de C.V.
American Depositary Shares, No Par Value (File No. 7–12000)
Grupo Mexicano de Desarrollo S.A. de C.V.
American Depositary Shares, No Par Value (File No. 7–12001)
J&L Specialty Steel, Inc.
Common Stock, $.01 Par Value (File No. 7–12002)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–3627 Filed 2–16–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Environmental Document and Public Hearing; Greater Rockford Airport, Rockford, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to hold a public hearing and accept additional scoping comments.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Document has been prepared for proposed development at Greater Rockford Airport, Rockford, Illinois. In addition, it is the intent of this notice to also inform the public that the Airport will be conducting a Public Hearing. Major development items, proposed to be completed over the next 5 to 10 years, are depicted on the Airport Layout Plan (ALP).

FOR FURTHER INFORMATION CONTACT: Melissa Wishy, Community Planner, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (708) 294–7524.

SUPPLEMENTARY INFORMATION: The FAA issued a **Federal Register** Notice on April 22, 1993 announcing its intent to prepare an Environmental Document (possible Environmental Impact Statement) and to hold a May 26, 1993 scoping meeting. At the scoping meeting no significant impacts were identified. Some concerns were expressed over possible noise, floodplain and wetland impacts. The airport sponsor indicated that any impacts would be mitigated below the level of significance as an integral part of the development. Recently, United Parcel Service (UPS) announced their intention to initiate a cargo hub at the airport in an area not covered by the previous scoping meeting. Below is a refined listing of the major associated and indirect development projects, incorporating items scoped originally and those newly identified as part of the UPS project.

1. Develop the midfield area for aviation-related industrial users. (scoped originally)

2. Expand the existing cargo apron and buildings west of the existing terminal building to accommodate a minimum of 26 cargo aircraft. (expansion scoped originally; to accommodate 26 aircraft—new)

3. Extend Runway 7/25 to a length of 10,000 feet by constructing a 3,500-foot southwesterly extension with parallel and connecting taxiways and associated lighting and navigation aids. This would include the installation of a CAT II Instrument Landing System (ILS) for Runway 7. (scoped originally)

4. Relocate approximately 12,000 feet of Belt Line Road and 9,300 feet of Kishwaukee Road. (scoped originally)

5. Expand the existing terminal building and auto parking lot and upgrade the existing airport entrance roadway. (scoped originally)

6. Construct a general aviation apron and T-hangars. (scoped originally)

7. Remove miscellaneous support buildings. (scoped originally)

8. Construct a new 4,000-foot general aviation visual approach runway, parallel to and 5,100 feet southeast of existing Runway 7/25, with associated taxiways and instrumentation. (scoped originally)

9. Construct and realign various taxiways parallel to Runway 1/19. The majority of the realignment work proposed is adjacent to and west of the approach end of Runway 19. (scoped originally)

10. Implement actions recommended in the 1993 Master Drainage/Stormwater Management Plan. (scoped originally)

11. Implement actions recommended in the updated Noise Compatibility Plan. (scoped originally)

12. Acquire approximately 1,100 acres of land for airfield development and noise and floodway mitigation. Included in this acquisition is the relocation of approximately 28 residential dwellings, of which only eleven are considered to be noise impacted and must be acquired and residents relocated prior to the start of any operation resulting from the Proposed Action Alternative. The remaining residential dwellings would be acquired for purposes of airfield development and floodway mitigation. (land acquisition scoped originally; new noise impacted homes)

13. Compensate for wetland impacts caused by the development of the Proposed Action Alternative through the creation of approximately 25 acres of new wetlands. (scoped originally)

14. An additional 1,500 flights annually beyond those originally forecasted but with a greater number of stage three aircraft. This is based on UPS's proposal to initiate an air cargo operation at Greater Rockford Airport. (new)

An informational workshop and Public Hearing will be held from 3 p.m. to 8 p.m. on Tuesday, March 22, 1994 in the Auditorium and Classroom of the Operations & Public Safety Center at Greater Rockford Airport, 60 Airport Drive, Rockford, Illinois. Comments on the Draft Environmental Assessment are invited from Federal, State, and local

agencies, and all other interested parties to provide additional opportunity for scoping comments and to insure that a full range of issues and alternatives related to the proposed projects and actions are addressed and all issues identified. Comments may be provided in writing and/or orally at the Public Hearing or submitted in writing either to the FAA at the address provided above or to Mr. Frederick C. Ford, Executive Director, Greater Rockford Airport, 3600 Airport Drive, P.O. Box 5063, Rockford, Illinois 61125–0063. All comments received by April 6, 1994 will be considered in preparation of the Airport Sponsor's Final Environmental Assessment. Comments received after the close of the comment period, but prior to the FAA's environmental fining will be considered by the FAA to the extent practical. The FAA will issue a Final Environmental Document that includes corrections, clarifications and responses to comments on the Draft Environmental Assessment.

Copies of the Draft Environmental Assessment are available for review at the following locations:

Airport Manager's Office, Greater Rockford Airport Authority, 3600 Airport Drive, Rockford, Illinois 61125–0063
Rockford City Clerk's Office, Rockford City Hall, 1201 Broadway, Rockford, Illinois
Winnebago County Courthouse, County Clerk's Office, 400 West State, Rockford, Illinois
Rockford Public Library, 215 North Wyman, Rockford, Illinois
Illinois Department of Transportation, Division of Aeronautics, One Langhorne Drive, Capitol Airport, Springfield, Illinois
Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018

Issued in Des Plaines, Illinois on February 9, 1994.

Louis H. Yates,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 94–3621 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–M

Availability of Final Environmental Impact Statement (EIS) for the Establishment of an Instrument Landing System (ILS) on Runway 11 at Newark International Airport, Newark, NJ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of Final Environmental Impact Statement (EIS).

SUMMARY: The Federal Aviation Administration (FAA) is issuing this Notice to advise the public, local, State and Federal agencies, and all other interested parties of the availability of a final Environmental Impact Statement (EIS), which assesses the potential effects of constructing and operating an Instrument Landing System (ILS) facility on Runway 11 at Newark International Airport, Newark, New Jersey. The EIS has been prepared in accordance with the National Environmental Policy Act of 1969. The purpose of this proposed action is to reduce delays to the aircraft and passengers utilizing Newark International Airport and to provide more efficient use of the existing runways.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hom of the Federal Aviation Administration at (718) 553–1508, or Mr. Errol Francis of the Federal Aviation Administration at (718) 553–1158.

SUPPLEMENTARY INFORMATION: An FAA evaluation concluded that the installation of an ILS on Runway 11 at Newark International Airport would reduce aircraft and passenger delays and provide for greater efficiency in the use of the existing runways. The FAA, in cooperation with the Port Authority of New York and New Jersey (PANYNJ), began the preparation of an Environmental Assessment (EA) for an Instrument Landing System/Microwave Landing System (ILS/MLS).

A public hearing was held on September 19, 1991 to receive comments regarding the Draft Environmental Assessment (EA) for the proposed Runway 11 ILS/MLS at Newark International Airport; and a notice of Intent to prepare an Environmental Impact Statement (EIS) was published in the **Federal Register** by the FAA on March 29, 1993 inviting comments. Both verbal and written comments were received. Comments from the public hearing and those arising from the publication of the Notice of Intent were incorporated into a Draft Environmental Impact Statement (DEIS). Due to technical reasons and considerations, an MLS was no longer a part of the proposed action.

A notice of Availability of the DEIS was published in the **Federal Register** by the FAA on September 20, 1993 and by the United States Environmental Protection Agency (EPA) on September 24, 1993. Both verbal and written comments were received, incorporated into, and addressed in the Final EIS.

Several alternatives to the proposed action were evaluated in the EIS, including: shifting the demand to other airports; restricting aircraft operations during peak operating hours; installing a precision instrument landing system on another runway; and no action.

An analysis of both the function of the ILS and the data used to develop the Environmental Assessment led to the recommendation to prepare an Environmental Impact Statement (EIS) for the proposed installation of an ILS on Runway 11 at Newark International Airport. In addition, based on this analysis the FAA determined that the Runway 11 precision approach is separate and independent of those issues and actions considered in the EIS currently being completed for the Expanded East Coast Plan (EECP).

The EIS for the Newark Runway 11 ILS project specifically addresses the environmental impacts resulting from the installation and use of a precision approach landing system for Runway 11 at Newark International Airport. The installation of an ILS on Runway 11 is not a component part of the EECP. The scope of the EECP EIS analyzes procedures involving aircraft above 3,000 feet. Utilization of the precision approach to Runway 11 will only effect procedures relevant to, and aircraft operations conducted below 3,000 feet. The Runway 11 ILS precision approach will in no way limit the choice of reasonable alternatives in the current EECP EIS. Rather, the Runway 11 ILS is a stand alone project of independent utility, needed to reduce operating delays at Newark International Airport. Therefore, the preparation of a separate EIS for this project is appropriate.

The EIS is available for public review at the following locations: (1) Cranford Public Library, 224 Walnut Avenue, Cranford, New Jersey (contact the Head Librarian); (2) Elizabeth Public Library, 11 South Broad Street, Elizabeth, New Jersey (contact the Head Librarian); (3) Newark Public Library, 5 Washington Street, Newark, New Jersey (contact the Head Librarian); (4) Air Traffic Control Tower, room 112, Tower Road, Newark International Airport (ask for Mr. Lucious Riley).

To obtain a copy of the EIS, submit a written request to: Mr. Thomas Hom (AEA–451.3), Supervisor, Navaids/Visaids/Weather Section, Airway Facilities Division, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

Issued in Jamaica, New York on February 14, 1994.

Charles J. Hoch,

Manager, Airway Facilities Division, FAA Eastern Region.

[FR Doc. 94–3674 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–M

Flight Standards District Office at Los Angeles, CA; Relocation

Notice is hereby given that on or about January 29, 1994, the Flight Standards District Office at 5885 W. Imperial Highway, Los Angeles, CA 90045 will be relocating to 2250 E. Imperial Highway, suite 140, Kilroy Airport Center, El Segundo, CA 90245. Services to the general public will continue to be provided by this office without interruption. This information will be reflected in the FAA Organization Statement the next time it is reissued. (Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Hawthorne, CA, on January 24, 1994.

Alex Hammond,

Regional Administrator, Western-Pacific Region.

[FR Doc. 94–3246 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 10, 1994.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0023

Form Number: IRS Form 720

Type of Review: Resubmission

Title: Quarterly Federal Excise Tax Return

Description: Form 720 is used to report excise taxes due from retailers and manufacturers on the sale or manufacture of various articles, to report taxes on facilities and services, and taxes on certain products and commodities (gasoline and vaccines, etc.). It enables IRS to monitor excise tax liability for various categories on a single form and to collect the tax quarterly in compliance with the law and regulations (Internal Revenue Code 6011).

Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations

Estimated Number of Respondents/Recordkeepers: 338,000

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
720	25 hr., 21 min	2 hr., 26 min	8 hr., 52 min.
Sch. A	2 hr., 23 min		2 min.
Sch. C Part I	2 hr., 38 min		2 min.
Sch. C Part II	11 hr., 58 min		12 min.
Sch. C Part III	14 min		

Frequency of Response: Quarterly

Estimated Total Reporting/Recordkeeping Burden: 10,003,900 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–3668 Filed 2–16–94; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 33
Thursday, February 17, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published February 9, 1994, 59 FR 6082.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 24, 1994, 2:00 p.m.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue, NW., Washington, DC 20004.

STATUS: Open.

CHANGE IN THE MEETING: The meeting date has been changed to March 11, 1994, 9:00 a.m., to accommodate Department of Energy witnesses.

Note: Any matter not discussed or concluded may be carried over to a later meeting.

FOR MORE INFORMATION CONTACT: Robert M. Andersen, (202) 208–6400.

Dated: February 15, 1994.

Robert M. Andersen,

General Counsel.

[FR Doc. 94–3808 Filed 2–15–94; 8:45 am]

BILLING CODE 6820–KD–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 6676, February 11, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, February 16, 1994.

CHANGES IN THE MEETING: Change in the status of an item:

Proposed amendments to Regulation E (Electronic Fund Transfers) to cover Electronic Benefit Transfer (EBT) programs established by federal, state, or local agencies (proposed earlier for public comment; Docket No. R–0796) has been moved from the Summary Agenda to the *Discussion Agenda.*

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: February 14, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–3727 Filed 2–15–94; 9:31 am]

BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 59, No. 33
Thursday, February 17, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 931107–3307]

RIN 0693–AA70

Proposed Federal Information Processing Standard for Portable Operating System Interface (POSIX)—Part 2: Shell and Utilities

Correction

In notice document 94-1818 beginning on page 4034 in the issue of Friday, January 28, 1994, make the following corrections:

1. On page 4036, in the second column, in the third paragraph, in the first and second lines, "[*c/l*]" should read "[*c;1*]" each place it appears.

2. On the same page, in the same column, in the sixth paragraph, in the second line, "*unmask*" should read "*umask*".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; North American Free Trade Agreement Implementation Act

Correction

In rule document 94-447 beginning on page 1288 in the issue of Monday, January 10, 1994, make the following corrections:

252.225-7007 [Corrected]

1. On page 1291, in the first column, in section 252.225-7007(c), in the fourth line, after "country" insert "designated country".

2. On the same page, in the same column, in section 252.225-7007(d), in the last line "customer" should read "custom".

252.225-7037 [Corrected]

3. On page 1292, in the second column, in section 252.225-7037((f)(2)(iv), in the 10th line, "plan." should read "plant."

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91-143-026]

Great Lakes Gas Transmission Limited Partnership; Revenue Sharing Report

Correction

In notice document 94-2903 appearing on page 6012, in the issue of Wednesday, February 9, 1994, in the first column, in the first line, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-ASW-40]

Proposed Modification of Class E Airspace; Harrison, AR

Correction

In proposed rule document 93-31698 beginning on page 68577 in the issue of Tuesday, December 28, 1993, make the following correction:

On page 68578, in the first column, in the file line at the end of the document, "FR Doc. 93-3" should read "FR Doc. 93-31698".

BILLING CODE 1505-01-D

federal register

Thursday
February 17, 1994

Part II

Department of Education

34 CFR Parts 668 and 682
Student Assistance General Provisions; Federal Family Education Loan Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 682

RIN 1840–AB80

Student Assistance General Provisions; Federal Family Education Loan Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions and Federal Family Education Loan program regulations. These amendments are needed to implement changes in the Higher Education Act of 1965, as amended (HEA), and to improve the monitoring and accountability of institutions and third-party servicers participating in the student financial assistance programs authorized by Title IV of the HEA (Title IV, HEA programs). The changes would establish requirements governing contracts between institutions and third-party servicers to administer any aspect of an institution's participation in those programs. In addition, the changes would strengthen sanctions against institutions for violations of Title IV, HEA program requirements and establish similar sanctions for third-party servicers. The changes also would establish standards of administrative and financial responsibility for third-party servicers that administer any aspect of a guaranty agency's or lender's participation in the Federal Family Education Loan programs.

DATES: Comments must be received on or before April 4, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mr. Greg Allen, U.S. Department of Education, 400 Maryland Avenue SW., room 4318, Regional Office Building 3, Washington, DC 20202–5343.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Allen. Telephone (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 6 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions (34 CFR part 668) currently apply to all institutions that participate in the Student Financial Assistance Programs authorized by Title IV of the HEA. For purposes of these regulations, the Title IV, HEA Student Financial Assistance Programs include the Federal Pell Grant, Federal Family Education Loan (FFEL), Federal Direct Student Loan, State Student Incentive Grant (SSIG), Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs.

The FFEL program regulations (34 CFR part 682) govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan programs (formerly the Guaranteed Student Loan (GSL) programs). With respect to 34 CFR part 682, the Federal Stafford Loan, Federal SLS, Federal PLUS, and Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation Loan programs.

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), enacted December 19, 1989, amended the HEA to authorize the Secretary to promulgate regulations governing the limitation, suspension, or termination of the eligibility of an individual or organization to contract with an educational institution to administer any aspect of the institution's participation in any Title IV, HEA program. That act further amended the HEA to authorize the Secretary to promulgate regulations to take emergency action against or to fine such an individual or organization.

The Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992, amended the HEA to expand the Secretary's authority to regulate the activities of those individuals and organizations, now called *third-party servicers*. Further, Public Law 102–325 authorizes the Secretary to promulgate regulations that are applicable to third-party servicers to establish minimum standards with respect to sound management and accountability of the FFEL programs and include standards for financial responsibility and the assessment of liabilities for FFEL program violations. These proposed regulations would implement those statutory provisions. In addition, these proposed regulations would strengthen and clarify the procedures for fining an institution or limiting, suspending, or terminating its participation in any Title IV, HEA program, and make other minor changes.

The Secretary believes that establishing accountability guidelines for an institution's continued participation and the participation of an institution's third-party servicer in the Title IV, HEA programs is an important element in the general effort for better and more accountable schools, as called for in the National Education Goals.

Negotiated Rulemaking

Section 492 of the HEA contains procedural requirements that the Secretary is to follow in developing proposed regulations for parts B, G, and H of Title IV of the HEA, as amended by the Higher Education Amendments of 1992. Section 492(a) requires the Secretary to convene regional meetings to gain input on the content of proposed regulations. Section 492(b) requires the Secretary, subsequent to these meetings, to draft and submit regulations implementing parts B, G, and H to a negotiated rulemaking process.

In accordance with the requirements of section 492, the Secretary convened four regional meetings to discuss issues related to implementation of parts B, G, and H. The Secretary invited representatives of groups involved in student financial assistance programs, such as students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies. As a precursor to the regional meetings, the Secretary held a meeting in Washington, DC, in August 1992, to invite comments from interested parties as to the key issues that should be addressed at the regional meetings. At the four regional meetings, the Secretary provided participants with a list of issues, based upon those identified in the meeting in August 1992 that needed to be addressed in these proposed regulations. Regional meetings were held in New York, New York; San Francisco, California; Atlanta, Georgia; and Kansas City, Missouri during September 1992. Participants in the meetings were invited to nominate individuals to serve as participants in negotiated rulemaking sessions. The Secretary selected participants for the negotiations process from individuals nominated by groups participating in the regional meetings and attempted, to the extent possible, to have participants reflect the diversity of those participating in the student aid community.

Negotiated rulemaking sessions were held in April, June, and August 1993 in and around the environs of Washington, DC. Taking into account views

expressed at the regional meetings, the Department of Education prepared draft regulations on the main issues discussed. The draft served as the basis for the negotiated rulemaking process.

Regional Meeting Comments

In connection with these regulations, one issue was identified during the August meeting for discussion at the regional meetings: The requirement under section 487(c)(1)(C)(i) of the HEA for an audit of a third-party servicer's administration of an institution's, lender's, or guaranty agency's Title IV, HEA program. During the regional meetings, participants were asked for their recommendations on formulating the compliance standards against which a third-party servicer would be measured in these proposed regulations. Recommendations from the regional meetings varied.

Participants involved in the New York meeting suggested that the compliance standards for third-party servicers contracting with institutions should parallel institutional compliance standards.

Participants in San Francisco recommended that compliance standards for third-party servicers should be developed by an independent accounting firm but that the Department of Education should specify servicer activities that would need to be included in the annual compliance audit report. Participants at this meeting further suggested separate standards for different types of third-party servicers.

Participants meeting in Atlanta suggested that compliance audits of third-party servicers be limited to the area of their specific function; for example, with respect to loan servicers, the default rate of Title IV, HEA program loans should be an indicator of compliance with Title IV, HEA program requirements. Participants also recommended that a third-party servicer, and not the institution with which the servicer contracts, should be cited for any violation of an audit standard by that servicer. One participant recommended that the standards developed by the Association of Independent Certified Public Accountants should be used in the Department of Education's audit guide.

Participants attending the Kansas City regional meeting suggested that in devising audit standards for third-party servicers, the Secretary first should review the audit check list currently in use by the Office of Inspector General of the Department of Education for auditing third-party servicers. Participants did not consider consultants or software providers used by an institution to be included in the definition of *third-party servicer*. Participants suggested that the Department of Education devise a process for grading and validating software.

Regulatory Changes

The Secretary submitted a draft of the proposed regulatory language governing third-party servicers along with the issue described above for discussion at the negotiated rulemaking sessions. Consensus was reached on all major issues except where noted below.

The following summarizes the major changes in this notice of proposed rulemaking (NPRM):

Part 668—Student Assistance General Provisions

Section 668.1 Scope. Part 668 governs the administration of the Title IV, HEA programs by an institution and provides for various enforcement measures against institutions for any violations of program requirements by the institution or its agents. A third-party servicer, as an agent of an institution, must currently apply the requirements of part 668 to administer properly the Title IV, HEA programs on behalf of an institution. The Secretary proposes to specify that the requirements of the Student Assistance General Provisions regulations would be applied to a third-party servicer (as proposed to be defined in § 668.2) to the extent that the servicer administers any aspect of an institution's participation in a Title IV, HEA program. This proposal would enable the Secretary, for the first time, to directly oversee the conduct of third-party servicers. The Secretary also proposes to make clear that although the Secretary would hold a third-party servicer responsible for compliance with applicable regulations, an institution that contracts with the servicer always remains responsible for the servicer's compliance. This clarification merely restates the Department of Education's long-standing policy and requirements with respect to institutional responsibility.

Section 668.2 General definitions. These proposed regulations would incorporate the statutory definition of third-party servicer in section 481(f) of the HEA. Under that definition (as amended by the Higher Education Technical Amendments of 1993 (Pub. L. 103–208), enacted on December 20, 1993), a third-party servicer is an "individual, or any State, or private, profit or nonprofit organization" that contracts with an eligible institution to administer any aspect of the institution's participation in a Title IV, HEA program. The statutory definition includes additional elements applicable to a third-party servicer's administration of the FFEL programs. These aspects of the definition are addressed in a subsequent discussion on 34 CFR part 682.

The Secretary also proposes to include as part of the definition of third-party servicer examples of services which a third-party servicer could provide to an institution that the Secretary considers to constitute the administration of the institution's participation in a Title IV, HEA program. The Secretary believes that examples are necessary to alert those individuals and organizations that contract with an eligible institution of the specific activities that would be subject to the requirements proposed in these regulations.

The examples that the Secretary proposes to include in the definition of third-party servicer are primarily examples that show an obvious relationship to the administration of the Title IV, HEA programs. The Secretary proposes these examples to specifically detail which activities unequivocally constitute the administration of an institution's participation in the Title IV, HEA programs. While these examples are not all-inclusive, they do provide a baseline to judge other activities that could be deemed an aspect of the administration of an institution's participation in the Title IV, HEA programs.

The Secretary also proposes to include another set of examples that the Secretary believes do not constitute the administration of an institution's participation in the Title IV, HEA programs. For example, the Secretary does not consider the activity of publishing ability-to-benefit (ATB) tests to be a third-party servicer activity because publishers of ATB tests do not contract with institutions and under the statute would not fall within the definition of a third-party servicer.

As another example, the Secretary does not consider performing activities as a Multiple Data Entry Processor (MDE) to be included in the scope of third-party servicer activities. While an MDE could be considered to administer certain aspects of an institution's participation in the Title IV, HEA programs, an MDE is bound by other Department of Education requirements. Therefore, the Secretary does not believe it necessary to separately regulate MDE activities as part of these proposed regulations.

In general, the Secretary also proposes to exclude auditing activities from the scope of these regulations. Entities

performing audits are required to be impartial and independent entities with no vested interest in the Title IV, HEA programs. Further, while auditors provide services needed to comply with Title IV, HEA requirements, their services are not directly connected to the day-to-day administration of Title IV, HEA assistance. The Secretary, therefore, believes that auditing activities should not be included in the scope of these regulations.

Other proposed examples classified as being outside the scope of these regulatory requirements simply reinforce the Secretary's belief that certain activities performed by a third-party servicer that do not substantially affect the delivery of Title IV, HEA program aid do not constitute the administration of an institution's participation in the Title IV, HEA programs, (for example, contracting to warehouse records).

As a result of deliberations during the negotiated rulemaking sessions, Federal and non-Federal negotiators concluded that it was not necessary to include or exclude computer services or software providers from the proposed definition of third-party servicer or the examples provided. The negotiators concluded that computer software and computer services are simply technological means to assist in carrying out specific administrative functions. Accordingly, the Secretary invites public comment on whether an individual, State, or organization providing computer software and services represented to satisfy Title IV, HEA program requirements should specifically be included in what the Secretary considers to constitute a third-party servicer's administration of an eligible institution's participation in a Title IV, HEA program.

These proposed regulations would also make clear that an individual, State, or organization that engages in an excluded function is still considered to be a third-party servicer with respect to any other function that constitutes the administration of a Title IV, HEA program performed under a contract with an institution.

The Secretary further proposes to remove the terms *designated department official, initiating official,* and *show-cause official* from subpart G of this part and place them in § 668.2, because this section contains the general definitions applicable to all of part 668 and to all of the Title IV, HEA programs.

Section 668.11 Scope. The Secretary proposes that a third-party servicer's violation of an applicable provision of Subpart B of the Student Assistance General Provisions regulations may subject the servicer to a proceeding under subpart G. This change implements the statutory authority under section 487(c)(1) of the HEA to provide for the accountability of a third-party servicer's administration of any aspect of an institution's participation in the Title IV, HEA programs. Subpart G governs emergency actions or fines against an institution and the limitation, suspension, or termination of the institution's participation in a Title IV, HEA program. The Secretary proposes to add references to a third-party servicer in subpart G so as to provide for emergency actions and fines against a third-party servicer or the limitation, suspension, or termination of the servicer's eligibility to contract with an institution to administer any aspect of the institution's participation in a Title IV, HEA program (see the discussion beginning with § 668.81).

The Secretary also proposes to provide that if a third-party servicer violates an applicable provision of this subpart, the Secretary may also initiate an emergency action, a fine proceeding, or a limitation, suspension, or termination action against any institution under whose contract the servicer violated that provision. Because an institution has agreed to comply with all applicable Title IV, HEA requirements in its agreement with the Secretary, and because the institution must demonstrate under § 668.12 the capability to administer the Title IV, HEA programs, the Secretary emphasizes that the institution is always responsible for the actions of any of its employees, officers, or agents.

Section 668.12 Institutional participation agreement. The Secretary proposes to require an institution to agree, in its participation agreement, to be liable for all misused Title IV, HEA program funds, including those received on the institution's behalf by a third-party servicer, and to be liable for refunds, including those that a third-party servicer was required to pay on the institution's behalf. This provision emphasizes that an institution is always liable for the actions of its employees, officers, and agents regarding its participation in a Title IV, HEA program.

The Secretary also proposes to amend this section by adding new paragraph (b)(2)(vi) to reflect a new statutory directive under the HEA governing the past performance of individuals, agencies, or organizations affiliated with an institution. Under section 487(a)(16) of the HEA, an institution may not knowingly contract with or employ any individual, agency, or organization that has been or whose officers or employees have been convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Title IV, HEA program funds or been judicially determined to have committed fraud involving Title IV, HEA program funds. An institution may not contract with another institution or a third-party servicer that has been terminated under section 432 of the HEA involving the acquisition, use, or expenditure of funds under the Title IV, HEA programs, or that has been judicially determined to have committed fraud involving Title IV, HEA program funds.

The Secretary's proposed rules, in accordance with the consensus reached at the negotiated rulemaking sessions, would apply the prohibitions not only to instances of judicial determinations of criminal or fraudulent activity, but also to administrative determination of fraud and judicial or administrative determinations of any other material violations of law. Administrative proceedings are more frequent and often occur well in advance of related court proceedings. The Secretary believes that administrative proceedings afford sufficient due process, including notice, hearing, and review, to be relied upon for excluding individuals, agencies, or organizations under these provisions from applicable employment or contracting, if such a determination of culpability has been made. The Secretary believes that the reference to material violations of law is necessary, as Title IV, HEA funds are also endangered by the employment of those determined to have violated laws governing the handling of those funds, even if those violations do not rise to the level of fraud. For example, an institution should not employ a person or organization that has failed to pay refunds required under law.

Finally, these proposed regulations would include determinations of misuse of all Federal (as opposed to simply Title IV, HEA programs) funds and State or local government funds. For example, a person determined to have committed fraud in the acquisition of State educational grant funds could foreshadow a potential danger to the Title IV, HEA programs if that person were employed by an institution.

These additional requirements are needed to establish appropriate safeguards to protect the Title IV, HEA programs if serious questions are raised about the honesty and lawful conduct of an individual, agency, or organization that contracts with or is employed by an institution.

Section 668.13 Factors of financial responsibility. Section 498(e) of the HEA

introduces the concept of "substantial control" over an institution essentially by adopting the current regulatory concept of "the ability to affect substantially the actions of" an institution. Accordingly, the Secretary substitutes the new phrase where applicable in these proposed regulations. Further, the Secretary proposes to establish that an institution is not considered financially responsible—a condition of participation in the Title IV, HEA programs—if a person with substantial control over the institution—

(1) Has or had substantial control, either alone or in combination with members of his or her family, over another institution or a third-party servicer that owes liabilities for violations of Title IV, HEA program requirements, if those liabilities are not being properly repaid;

(2) Has family members who, alone or in combination with one another, exercise or exercised substantial control over the other institution or servicer; or

(3) Owes liabilities, or members of his or her family owe liabilities, for violations committed by the other institution or servicer, and the liabilities are not being properly repaid.

The institution could continue to be considered financially responsible if—

(1) The person repays a proportion of the liabilities equivalent to the amount of control held over the other institution or servicer;

(2) The institution can establish that the person does not, in fact, have substantial control over the institution; or

(3) The institution can establish that neither the person nor any of his or her family members in fact has or had substantial control over the other institution or servicer.

The definition of a family member (as currently defined in § 668.13(j)) refers to a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

Finally, the Secretary would apply the concepts of "substantial control" and "ownership interest" (as currently defined in section 498(e) of the HEA and § 668.13) to third-party servicers.

These provisions would expand the factors of financial responsibility of an institution to take into consideration substantial control over both other existing institutions (as opposed to only defunct institutions) and third-party servicers. Section 498(e) of the HEA clearly contemplates this expansion. Furthermore, these requirements are needed for the same reasons that similar requirements recently were adopted for persons with substantial control over defunct institutions. A person might be responsible for incurring liabilities for Title IV, HEA program violations because of his or her substantial control over third-party servicers or other institutions. The person could, nevertheless, have the same level of control over a participating institution while avoiding responsibility for repayment of those liabilities. These requirements are intended to prevent those persons from continuing to participate either directly or indirectly in the Title IV, HEA programs without assuming responsibility for their prior actions.

The Secretary also proposes technical changes to this section to remove as factors of financial responsibility the consideration of matters that would instead be included in § 668.12 as conditions for participation in the Title IV, HEA programs, for the reasons given in the discussion of that section.

Section 668.23 Audits, records, and examination. The Secretary proposes to specify that in addition to current requirements, an institution would be required to cooperate with a guaranty agency in whose program the institution participates and the State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA, in the conduct of audits, investigations, and program reviews. These requirements would clarify existing responsibilities to be accountable to authorized persons or organizations for the institution's activities with respect to the sound management of the Title IV, HEA programs. The Secretary further proposes to apply these requirements to a third-party servicer that contracts with an institution to administer any aspect of that institution's participation in a Title IV, HEA program. This change would merely clarify existing responsibilities of a third-party servicer, as an agent of an institution, to be accountable and provide access to authorized persons for the servicer's activities on behalf of the institution's participation in a Title IV, HEA program.

The Secretary proposes to add a requirement that a third-party servicer that administers funds or determines student eligibility under contract with an institution would be required to have prepared, at least annually, a compliance audit of all aspects of the servicer's administration of the participation in the Title IV, HEA programs of each institution with which the servicer contracts. (This requirement would be satisfied by an audit report submitted in accordance with the Single Audit Act or Office of Management and Budget Circular A–133.) This requirement is necessitated by section 487(c)(1)(C) of the HEA.

The Secretary, however, believes that the contractual obligations of some third-party servicers do not necessitate audits of the servicers' activities. Accordingly, the Secretary proposes to require annual audits to be performed only by those servicers that administer funds or determine student eligibility on behalf of institutions. The consequences of the activities of those servicers to the integrity of the Title IV, HEA programs justify stricter accountability to the Secretary.

In addition, the Secretary proposes certain additional exceptions to the annual audit requirement in the discussion that follows. A third-party servicer that is required to have an audit performed would be excused from the annual audit requirement if that servicer contracts with only one participating institution and if that servicer's administration of a Title IV, HEA program would still be covered fully in that institution's compliance audit. (In proposed regulations to be published shortly after these, the Secretary intends to propose to excuse certain institutions from having an annual audit performed. If an institution were to be excused from an audit requirement, the activities of that institution's third-party servicer would not be fully covered, and thus the servicer would be required to have an audit performed to meet the requirements of this section). This provision would not harm the integrity of the Title IV, HEA programs as the servicer's activities still would be covered fully by the submission of an institution's compliance audit.

A third-party servicer that is required to have an audit performed and that contracts with more than one participating institution could have performed, to meet the requirements of this section, a single comprehensive compliance audit that covers all of the servicer's activities for all of the institutions that the servicer contracts with for Title IV, HEA program purposes, if the audit is conducted in such a way as to satisfy each individual audit requirement and if the audit covers all aspects of the servicer's administration of the participation in the Title IV, HEA programs of all institutions with which the servicer contracts. The Secretary believes that, by allowing third-party servicers to have one inclusive audit performed, instead of many individual audits, the burden associated with these regulations would be reduced (regulatory burden reduction is an objective under Executive Order (E.O.) 12866). Furthermore, the Secretary does not believe that this

provision would in any way affect the soundness of the information required by these regulations.

A third-party servicer would be required to have an audit performed at least once every two years if the servicer administers less than $1,000,000 under the Title IV, HEA programs for the period covered by the audit, or if the servicer's most recently submitted audit report did not contain any material deficiencies and was submitted in a timely fashion. Also, a third-party servicer would not be required to have an audit performed for any year in which the servicer administers less than $250,000 under the Title IV, HEA programs.

The Secretary is proposing these Title IV, HEA program fund thresholds, for purposes of exceptions to the audit requirements of this section, on the assumption that a large amount of Title IV, HEA program funds are not at risk in the case of a third-party servicer that administers less than $250,000 during the audit period. Similarly, the Secretary believes that a third-party servicer administering less than $1,000,000 in the Title IV, HEA programs during the audit period or whose most recently submitted audit report revealed no abnormal practices or material discrepancies in the servicer's administration of those funds, provided that the audit report was submitted in a timely fashion, would not be likely to endanger those funds. By proposing these exceptions to the audit requirements of this section, and thus limiting the scope of these provisions, the Secretary believes that the Department of Education will be able to concentrate on those third-party servicers that pose the greatest financial risk to the Title IV, HEA programs; these exceptions also reduce the administrative burden on those qualifying for the exemptions. The threshold amounts were extrapolated from similar exemptions to audit submission requirements for institutions under the Single Audit Act ($100,000 and $25,000) and increased by a factor of ten in order to cover third-party servicer activities because these entities generally contract with multiple clients and thus would administer greater amounts of Title IV, HEA program funds than any single institution.

These provisions are intended to parallel similar audit requirements for institutions (in proposed regulations to be published shortly after these). The intent is to minimize the burden associated with these regulations, both to the servicing industry and to the Federal Government, as called for under E.O. 12866. The Secretary believes that these exceptions would not harm the integrity of the audit oversight that Congress intended under section 487(c)(1)) of the HEA. Under that section and these regulations, the Secretary retains the authority to require any third-party servicer to have an audit performed on an annual basis if the Secretary believes it is necessary.

This section would be amended to provide that the servicer's first audit would cover the servicer's first full fiscal year after the effective date of these regulations and any period on or after the effective date of these regulations up to the beginning of the servicer's first full fiscal year. The Secretary believes that initial audits will be more useful and effective if they encompass an entire fiscal year. The Secretary also believes that allowing servicers additional time to prepare for the implementation of these regulations would enable servicers to comply more fully with these regulations as well as defray the costs associated with an audit of a partial fiscal year. Subsequent audits would, as required by statute, encompass the entire period since the servicer's previous audit.

A third-party servicer that is required to have an audit performed would be required to submit that audit to the Department of Education's Inspector General by the deadlines established in the audit guide developed by the Department's Office of Inspector General. The Secretary also proposes to apply the statutory requirements of section 487(c) of the HEA to third-party servicers such that the results of these audits would be made available to the appropriate authorities, as detailed in the discussion at the beginning of this section. (The Secretary intends to propose similar requirements for institutions required to have an audit performed in proposed regulations to be published shortly after these).

Section 668.24 Audit exceptions and repayments. The Secretary proposes to extend to a third-party servicer the provisions governing audit exceptions and determinations of audit liabilities that currently apply to institutions. These modifications would simply reflect the Secretary's current practice under this section as applied to a third-party servicer. In addition, an institution or a third-party servicer would have an opportunity to demonstrate within 45 days (35 days is mandated under the current regulations) of the Secretary's notification that the expenditure or compliance was proper. The Secretary is proposing 45 days to make the response period consistent with other reporting requirements in this part.

In addition, this section would be amended to specify additional steps that the Secretary may take to insure the payment of any liabilities that are owed. Under this section, if an institution or third-party servicer owes funds, the Secretary may determine that an administrative offset (as provided for under 34 CFR 30.28) is an appropriate alternative to collect those funds.

In the case of an institution or third-party servicer that provides surety or a guarantee for the benefit of the Secretary, such as a bond or letter of credit, the Secretary may determine it is necessary to collect from that surety or guarantee before the procedures under subpart H of this part are completed, if circumstances warrant.

The Secretary would collect a surety or guarantee before all available appeal procedures are completed—

(1) Where the need to provide relief to students or borrowers affected by the institution's or third-party servicer's actions, as applicable, that led to the assessment of liability, is more important than deferring collection activities until after the completion of appeal proceedings (for example, when unpaid refunds to the Title IV, HEA programs are identified, the Secretary may collect in advance of a final determination or exhaustion of appeal procedures, as the harm to students outweighs deferring collection); or

(2) Where the conditions under which a surety or guarantee are held do not provide adequate assurances that the surety or guarantee will be available for collection through the completion of available appeal proceedings.

These modifications would provide clarification in the regulations of the Secretary's existing practice and authority to collect from sureties or guarantees in accordance with their terms, prior to final determinations of liabilities or exhaustion of appeal procedures.

The Secretary also proposes to make clear that an institution is responsible for repayment of any funds owed by its servicer until those funds are repaid by the servicer. The Secretary considers this provision necessary because an institution is always responsible for the actions of its agents.

The Secretary proposes that if a determination is made to assess a liability against a third-party servicer, the servicer would be required to notify each institution under whose contract the servicer was assessed a liability of the Secretary's determination. The servicer would also be required to notify every institution that contracts with the servicer for the same service that the Secretary determined a liability is owed.

Final consensus on this particular language was not reached as negotiators believed that this provision essentially requires the notification of all institutions with which a servicer contracts. Negotiators objected to a notice being provided to institutions that a servicer contracts with that would not be directly affected by a determination from the Secretary to assess liability. A number of negotiators opposed this language on the ground that such a blanket notification unnecessarily damages a servicer's reputation among unaffected institutions. However, the Secretary believes that an institution that contracts with a third-party servicer should be informed of determinations by the Department of Education that the institution's servicer is improperly administering the Title IV, HEA programs, especially given the potential liability exposure to the institution. These notification requirements would arise only if the Secretary determines that a third-party servicer owes a liability based on an audit finding, after providing the institution or third-party servicer an opportunity to respond to an audit report response. By limiting the requirement for notice provided by a third-party servicer to institutions receiving the same service for which a liability was assessed, the Secretary believes that he has responded to any legitimate concerns raised by the negotiators.

Section 668.25 Contracts between an institution and a third-party servicer. The Secretary proposes to redesignate § 668.25, governing loss of institutional eligibility, as § 668.26 and to add a new § 668.25 that would establish minimum requirements for contracts between an institution and a third-party servicer. Proposed § 668.25 would allow an institution to contract with a servicer to administer aspects of the institution's participation in a Title IV, HEA program only to the extent that the servicer's eligibility to contract with that institution has not been limited, suspended, or terminated under the proceedings in Subpart G (as proposed to be amended). In addition, under these proposed regulations, a third-party servicer is considered eligible to contract with an institution to administer aspects of the institution's participation in a Title IV, HEA program to the extent that the servicer is not found to exhibit indicators of questionable past performance.

Indicators of questionable past performance would be—

(1) A limitation, suspension, or termination action by the Secretary against the servicer within the preceding five years;

(2) An audit finding during the servicer's two most recent audits amounting to at least five percent of funds received or administered by the servicer under the Title IV, HEA programs; and

(3) A citation within the preceding five years for the servicer's failure to submit a required audit report within an acceptable amount of time.

A third-party servicer that shows these indicators of questionable past performance with regard to the Title IV, HEA programs could not, under paragraph (d) of this section, contract with an institution unless the persons or entities with substantial control over the servicer agree to be responsible for any potential liability arising from the servicer's administration of the Title IV, HEA programs. In the case of a third-party servicer that has been subjected to a termination action, the servicer could not contract with an institution unless either the servicer or persons or entities with substantial control over the servicer (or both) provide financial guarantees (specified by the Secretary) to the Secretary for potential liabilities arising from the administration of the Title IV, HEA programs. These provisions are necessary to hold persons who have substantial control over a third-party servicer accountable for their past performance in the administration of the Title IV, HEA programs.

Any contract between an institution and a third-party servicer would have to require the servicer to agree to comply with all applicable Title IV, HEA program requirements, including using any Title IV, HEA program funds that the servicer administers and any earnings on those funds solely for Title IV, HEA program purposes. The servicer would have to agree to refer suspected instances of fraud and criminal activity to the Department of Education's Inspector General. These requirements would parallel those currently required of institutions in establishing an institution's administrative capability but add that the servicer would also have to refer suspected instances of fraud and criminal activity committed by the institution. The contract would have to require the servicer to agree to be liable to the Secretary, jointly and severally with the institution, for any violation by the servicer of any Title IV, HEA program requirement.

With regard to third-party servicer liability, a number of negotiators opposed the Secretary's proposed language, submitted to negotiators at negotiated rulemaking, requiring a third-party servicer to share liability with an institution for an infraction by the servicer of any Title IV, HEA program requirement. The negotiators offered three basic reasons for their opposition.

First, the negotiators stated that any imposition of liability would improperly interfere with the private contract between the servicer and the institution. The parties, in the view of the negotiators, should be free to decide how and if liability should be divided without Federal regulatory prescription.

The Secretary disagrees with this rationale. To ensure that the Title IV, HEA programs are properly administered and Federal funds are safeguarded, the Secretary has always required an institution to demonstrate that it is administratively capable and financially responsible. More and more institutions, however, are employing third-party servicers to administer their programs, thereby delegating responsibility to entities that the Secretary has not reviewed for administrative capability or financial responsibility. Because the Secretary does not directly approve or regulate the qualifications of these servicers, the Secretary believes that it is reasonable to require these servicers to stand behind their work and to be accountable to Federal taxpayers for any losses to Federal funds through the servicer's administration of the Title IV, HEA programs. Moreover, if the issue of liability is left to the discretion of the contracting parties, it is more than likely that some servicers will assume no responsibility for their actions. In proposing direct third-party servicer accountability to the Department of Education, the Secretary believes that institutions employing servicers to administer aspects of their participation in the Title IV, HEA programs would benefit from increased servicer integrity in fulfilling contractual obligations.

Second, the negotiators argued that it would be unreasonable to require a third-party servicer to be prepared to assume liability potentially far in excess of the fees earned by the servicer from the institution. Under this argument, the consequence of requiring third-party servicers to be liable for their actions would be to increase servicing fees charged to institutions and could make it economically impossible, in many cases, for institutions to contract with third parties for services related to the Title IV, HEA programs. The negotiators indicated that in some contracts, institutions specifically give up the right to hold a third-party servicer responsible for the consequences of the servicer's actions in exchange for a lower fee.

The Secretary does not believe that assumption of liability by servicers will make servicers unavailable to institutions. The Secretary believes that most servicers are, or should be, confident enough in the quality of their work to stand behind it financially. To the extent that a third-party servicer is unwilling to assume responsibility, it would seem to indicate that the servicer has no incentive to ensure compliance with the Title IV, HEA program requirements.

Third, the negotiators who objected to these proposed provisions claimed that the Department of Education does not impose similar constraints on its own contractors to assume contingent liability for the consequences of their actions.

The Secretary disagrees with this rationale. Those that contract with the Department of Education have different and more rigorous requirements imposed on them, both in their selection by the Department and in contracts into which the Department enters to ensure the proper use of Federal funds. The Secretary is able to select the Department of Education's contractors and retains the ability directly to enforce contractual provisions.

In an effort to respond to these objections during the negotiated rulemaking sessions, the Secretary suggested a compromise that would have limited joint and several liability of a third-party servicer for violations by the servicer of Title IV, HEA program requirements, in cases where the servicer was not an affiliate of the institution with which the servicer contracts. In those cases, joint and several liability would be capped at the fees and compensation received by the servicer from the institution during the period for which the liability is assessed. The Secretary suggested that, for the purposes of this section, an affiliate could be construed as a third-party servicer that—

(1) Is a parent or subsidiary corporation of the institution;

(2) Shares a person who exercises substantial control over the institution and servicer as defined in § 668.13; or

(3) Shares a common owner, partner, or officer with the institution.

The Secretary suggested this alternate language to decrease the financial risk for servicers that are not related parties to the institutions with which they contract. However, the Secretary believes that servicers that are linked to institutions should be fully accountable to prevent shielding of liability by shifting services to an affiliate. The Secretary invited reaction from the non-Federal negotiators on whether this compromise would sufficiently guard the integrity of the Title IV, HEA programs by providing the Secretary the means to ensure that a liability is repaid and the violation contributing to that liability is redressed and alleviate any legitimate objections raised by the negotiators.

The other negotiators did not accept the Secretary's offered compromise. Some negotiators would not agree to assumption of any liability by a third-party servicer. Thus, there was no consensus on this matter. Because consensus was not reached on either proposal, the Secretary is under no obligation to modify the position originally taken at the start of the negotiated rulemaking sessions. The Secretary therefore proposes regulations consistent with the position taken at the start of negotiated rulemaking because the Secretary believes that this proposal will best provide the greatest protection for Federal tax dollars in the form of Title IV, HEA program funds.

However, because the issue of joint and several liability was debated throughout the negotiated rulemaking sessions without resulting in consensus, the Secretary invites specific comment on this issue, and in particular on the Secretary's compromise rejected by the non-Federal negotiators, as explained previously.

Other contractual requirements would include, in the case of a third-party servicer disbursing or delivering funds under the Title IV, HEA programs or other funds to students, a requirement that the servicer confirm a student's eligibility before disbursing or delivering those funds to the student. A contract with that servicer also would require the servicer to agree to calculate and pay refunds and repayments in accordance with applicable Title IV, HEA program regulations.

Any contract with a third-party servicer would have to provide for the return to the institution of all applicable records and funds held by the servicer if either party terminates the contract, if the servicer stops providing services for the administration of a Title IV, HEA program, or if the servicer goes out of business or files a petition under the Bankruptcy Code. The servicer would have to return not only Title IV, HEA program funds, but also institutional or other funds held by the servicer for the purposes of the Title IV, HEA program for which the servicer no longer provides services.

Consistent with the time frames for other reporting requirements in 34 CFR part 600 that could affect an institution's eligibility or participation, this section also would require an institution to notify the Secretary, within 10 days, each time the institution enters into a new contract with a third-party servicer or significantly modifies an existing contract or if such a contract is terminated. The Secretary intends this provision to cover substantive modifications to existing contracts, such as the inclusion of additional responsibilities or any significant increase in the volume of work performed, and not to cover minor modifications such as a routine adjustment of the compensation owed to a third-party servicer due to inflation. This section also would require the institution to notify the Secretary, within 10 days, if a third-party servicer stops providing services for the administration of a Title IV, HEA program, goes out of business, or files a petition under the Bankruptcy Code. Any notification from an institution would have to include the name and address of the servicer. Upon the request of the Secretary, an institution that has a contract with a third-party servicer would have to provide information relevant to the contract and to the servicer's responsibilities for administering Title IV, HEA programs as well as a copy of the contract.

These changes are necessary for proper monitoring of and accountability for Title IV, HEA program funds. The requirement for a third-party servicer to agree in a contract to observe all applicable Title IV, HEA program requirements, special arrangements, agreements, and limitations is necessary to avoid situations where the servicer improperly argues that it cannot comply with these actions due to provisions in its contract with an institution.

The provisions governing the circumstances under which a third-party servicer must return records and funds to an institution are necessary to protect the interests of participating institutions and students in the event that a third-party servicer is no longer able to provide the services promised under a contract. In addition, the notification provisions would help keep the Secretary informed about those third-party servicers authorized to administer the Title IV, HEA programs on behalf of an institution, would assist the Secretary in providing appropriate materials and funds only to authorized third-party servicers, and would help the Secretary to obtain timely access to institutional records.

Section 668.81 Scope and special definitions. The Secretary proposes to amend this section to provide that the Secretary may initiate an emergency action against an institution or third-party servicer, fine an institution or

servicer or limit, suspend, or terminate the institution's participation in a Title IV, HEA program or the servicer's eligibility to contract with an institution to administer any aspect of an institution's participation in the Title IV, HEA programs, if the institution's servicer, acting under contract with the institution, violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation prescribed under the authority of Title IV of the HEA. This change also makes clear that an institution is always responsible for the actions of its servicers regarding its participation in the Title IV, HEA programs and remains subject to possible administrative action.

Section 668.82 Standard of conduct. The Secretary proposes to amend paragraph (a) of this section to add that a third-party servicer is also a fiduciary of the Department of Education. The Secretary also would amend paragraph (a) to provide that an institution or its third-party servicers would be required at all times to act with the competency and integrity sufficient to qualify the institution or servicer as a fiduciary. This change would clarify and emphasize the requirement that the fiduciary standard always applies and is not to be construed narrowly. The Secretary wishes to point out that this standard is not simply an additional requirement but, rather, it is a condition of initial and continued participation in or servicing of the Title IV, HEA programs. An institution or servicer cannot selectively avoid fiduciary responsibility.

This section would also be amended to specify that the Secretary would have the authority to initiate proceedings against a third-party servicer under this subpart if the servicer violates its fiduciary duty. The Secretary proposes to specify that the Secretary would have the authority to initiate a proceeding against an institution under this subpart if the institution's third-party servicer, acting under contract with the institution, violates the servicer's fiduciary duty. The Secretary wishes to emphasize that an institution is always responsible for the actions of its third-party servicers. The Secretary also proposes to make a technical amendment to clarify the meaning of paragraph (c) of this section. The Secretary's long-standing interpretation of these regulations is that a violation of an institution's fiduciary duty is grounds for termination, limitation, suspension, and fine proceedings—individually or in combination. As a result of the enactment of a statute authorizing the imposition of emergency actions, the Secretary also proposes to add emergency action to this list of potential consequences resulting from an institution's violation of the institution's fiduciary duty. An emergency action also would be applicable against a third-party servicer that violates its fiduciary duty.

The Secretary proposes to specify that an institution or third-party servicer violates its fiduciary duty if the servicer, an officer or employee of the servicer, or any person with substantial control over the servicer is guilty of or has been judicially determined to have committed a crime involving Federal funds. These provisions also would apply to a person, agency, or organization, or an officer or employee of an agency or organization with which the servicer contracts. A violation of fiduciary duty for these reasons would also constitute grounds for the termination of the participation of an institution under whose contract the servicer committed the violation. The Secretary proposes to expand the breadth of paragraph (d) of this section to parallel similar provisions proposed to be included in § 668.12, previously discussed, except that, in this case, these provisions would prohibit a third-party servicer (as opposed to the provisions of § 668.12 which prohibit institutions) from employing or contracting with persons or organizations that have questionable past performance with respect to government funds. Paragraph (d) would be similarly amended to include misuse of State and local government funds and administrative determinations of fraud or other material violations of law.

Finally, the Secretary proposes to amend paragraph (d) of this section. An institution or servicer, to remain qualified as a fiduciary, would have to meet the following requirement. If the institution or servicer becomes aware of a criminal conviction, or an administrative or judicial determination of fraud or other violation of law, by a person involved in the servicer's administration of an institution's participation in a Title IV, HEA program or a person with substantial control over the servicer, with respect to Federal, State, or local government funds, the institution or servicer would be required to protect the Title IV, HEA programs, including removing that person from Title IV, HEA program involvement or from exercising substantial control over the institution or servicer, as applicable.

In addition, if an institution or a third-party servicer becomes aware that a violation of, or failure to carry out, applicable statutes and regulations by the servicer's principals or affiliates (as those terms are defined in 34 CFR part 85), the institution or servicer is required to act to protect the Title IV, HEA programs, the beneficiaries of those programs, and the Federal Government from the risks occasioned by those events. These risks may include, but are not limited to, financial risks and risk to the reputation of the Title IV, HEA programs. An example of an action that an institution or servicer must take to protect the Title IV, HEA programs, their beneficiaries, and the Federal Government is the removal of all Title IV, HEA program administration duties from the assigned responsibilities of an individual. A violation of these proposed provisions would constitute grounds for the termination of the participation of an institution under whose contract the servicer committed the violation and the eligibility of the servicer to administer any aspect of an institution's administration of the Title IV, HEA programs. These amendments parallel similar changes made to the institutional participation agreement requirements under § 668.12.

The Secretary also proposes to amend this section to explain how a basis for debarment and suspension relates to the standard of fiduciary responsibility. Specifically, the Secretary proposes to redesignate current paragraph (e) of this section as paragraph (f) and to add a new paragraph (e). The new paragraph would specify that if an institution or servicer becomes aware that cause for suspension or debarment of any of the institution's or servicer's principals or affiliates (as those terms are defined in 34 CFR part 85) may exist, the institution or servicer is required to act to protect the Title IV, HEA programs in the same manner discussed in the previous paragraph, pending the outcome of a debarment or suspension action against that individual, or of proceedings that could give rise to suspension or debarment action against that individual.

A violation of these provisions by a third-party servicer would constitute grounds for the termination of the participation of an institution under whose contract the servicer committed the violation, if the institution knew or should have known of the causes for suspension or debarment. The violation, of course, would also constitute grounds for the termination of the eligibility of the servicer to administer any aspect of the institution's administration of the Title IV, HEA programs.

The Secretary invites comment on how to apply this requirement to owners and persons holding critical management positions at an institution or servicer. In the final regulations, the Secretary may modify these proposed regulations to address specifically their application to those persons.

These changes are needed to establish appropriate safeguards to protect the Title IV, HEA programs when serious questions are raised about the honesty and lawfulness of the conduct of an institution's or servicer's owners, officers, employees, associates, or contracted help whose duties involve the administration of or influence over the Title IV, HEA programs.

The Secretary holds an institution to the highest standard of care and diligence required of a fiduciary. The use of a third-party servicer confers that same standard on the servicer. However, the Secretary wishes to emphasize that the use of a third-party servicer does not in any way reduce the institution's responsibility to ensure compliance with Title IV, HEA program requirements.

The Secretary also proposes technical changes to this section to remove provisions governing lender participation in the FFEL programs that belong in 34 CFR part 682 and to incorporate provisions in 34 CFR part 682 concerning the consequences of a debarment or suspension on lender participation.

Section 668.83 Emergency action. The Secretary proposes to provide that an emergency action may be imposed on an institution or third-party servicer if the initiating official receives reliable information that a third-party servicer, acting under contract with the institution, is violating a Title IV, HEA program requirement. In an emergency action proceeding against a servicer, the official would also be required to notify each institution that contracts with the servicer of the emergency action. The Secretary believes that an institution that contracts with a third-party servicer should be kept informed of any administrative actions taken by the Department of Education against that servicer that might affect the administration of the institution's participation in the Title IV, HEA programs. To the examples of violations that may lead to an emergency action, the Secretary proposes to add a third-party servicer's lack of administrative ability to make appropriate refunds if students do not complete educational programs or periods of enrollment.

Any of these violations would be grounds for emergency action against a third-party servicer under this subpart. However, because an institution is always responsible for the actions of the institution's servicers, the Secretary believes that emergency action against the institution also may be necessary to prevent the likely loss of Title IV, HEA program funds.

The Secretary also proposes to include fraud committed by an institution or a third-party servicer as a specific example of a possible basis for emergency action. The Secretary proposes to provide an additional list of specific examples of fraud to emphasize the seriousness of these violations. Emergency actions based upon fraud are fully appropriate under existing regulations. The examples involve falsification of documents related to the Title IV, HEA programs, including—

(1) Documents pertaining to a student's eligibility;

(2) Documents submitted to the Department of Education, a guaranty agency, an independent auditor, a third-party servicer, or an institution by a third-party servicer;

(3) Documents pertaining to an institution's legal authorization to provide postsecondary education or to the accreditation or preaccreditation of the institution, the institution's educational programs, or the institution's additional campuses; and

(4) Documents pertaining to a servicer's loan collection activities (for example, due diligence activities), including activities that are not specifically required by the HEA or applicable program regulations.

Sections 668.84 Fine proceedings, 668.85 Suspension proceedings, and 668.86 Limitation or termination proceedings. The Secretary proposes to include, as a specific basis for any of these proceedings against an institution or a third-party servicer, a substantial misrepresentation of the institution's educational program, financial charges, or employability of the institution's graduates by an institution or servicer under contract with an institution, as applicable. The Secretary believes that substantial misrepresentation represents a clear indication of a deliberate intent to misuse Title IV, HEA program funds by deceptively encouraging enrollment, thus abusing the purpose of Title IV, HEA program funds, which is to provide equal access to a quality education for recipients of these funds. The Secretary is proposing to employ the full range of sanctions at the Secretary's disposal against this possible misrepresentation to preserve the integrity of the Title IV, HEA programs and to ensure the accountability of those who administer the programs.

The Secretary proposes to amend these sections to provide for the imposition of a fine against an institution or third-party servicer or the limitation, suspension, or termination of the institution's participation or the servicer's eligibility to contract with an institution to administer any aspect of that institution's participation in the Title IV, HEA programs if the institution's servicer, acting under contract with the institution, violates a Title IV, HEA program requirement. Under §§ 668.84, 668.85 and 668.86, if the Secretary begins a fine, suspension, limitation, or termination proceeding against a third-party servicer, the Secretary may also begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party commits a violation. These technical changes are needed to conform to the changes proposed to the scope of this subpart.

With respect to fine proceedings against third-party servicers, the Secretary proposes to amend § 668.84 to specify under the procedures for fine proceedings that a designated department official notifies each institution that is affected by the alleged violations identified as the basis for the fine proceeding. To the extent possible, the official also notifies each institution that contracts with the servicer for the same service affected by the alleged violation. This change would parallel the notification requirements that the Secretary has proposed under § 668.24(b). As explained in the prior discussion regarding notification requirements under § 668.24(b), there was no consensus during negotiated rulemaking on this proposed provision. Some negotiators opposed this requirement on the grounds previously noted. In addition, §§ 668.85 and 668.86 would require the official to notify each institution that contracts with a third-party servicer under a suspension, limitation, or termination proceeding.

Fine, limitation, suspension, and termination proceedings would all require the official to include in the notice to a third-party servicer the consequences of the action to the institution, including that the Secretary may fine, limit, suspend, or terminate the institution, as applicable. Given the potential consequences to an institution, the Secretary deems it proper to provide notice to each institution that could be affected of the Secretary's intent to seek a sanction against the servicer, whether the Secretary also intends to seek a sanction against the institution or not. Even if the Secretary does not begin a fine, limitation, suspension, or termination proceeding against an institution, the Secretary believes that the institution should be kept informed of the status of any proposed sanction against the institution's servicer. Imposition of the sanction could have an effect on the institution's participation in a Title IV, HEA program. Further, the Secretary believes that an institution should be informed if its servicer's administration of a Title IV, HEA program is called into question. That information would permit the institution to make informed judgments about the institution's continued use of the servicer, and take corrective action prior to the outcome of any administrative proceeding.

Sections 668.87 Prehearing Conference and 668.88 Hearing. The Secretary proposes to add references to third-party servicers to conform to the proposed changes in the scope of this subpart.

Section 668.89 Authority and responsibilities of the hearing official. The Secretary proposes to amend this section to make clear that a hearing official is bound by all applicable statutes and regulations. This change would codify in the regulations the existing responsibility of the hearing official.

Section 668.90 Initial and final decisions—Appeals. This section would be amended to add references to third-party servicers to conform to the proposed changes in the scope of this subpart. In addition, paragraph (a)(3) of this section would be amended to reflect changes proposed under §§ 668.12 and 668.82 dealing with the past performance of individuals, agencies, or organizations that are affiliated with an institution, including, as applicable, third-party servicers.

The Secretary proposes to add a new restriction on a hearing official's authority to modify a proposed sanction against an institution or third-party servicer. If a designated department official brings a termination action against an institution or servicer for engaging in fraud, and a hearing official finds that the institution or servicer has engaged in fraud, the hearing official must uphold the termination. The examples of fraud listed in this section are the same as those proposed for § 668.83 concerning emergency action.

The Secretary believes that if an institution or third-party servicer engages in fraud involving a Title IV, HEA program, the institution's participation in the program should be terminated or the servicer's eligibility to contract with an institution to administer any aspect of that institution's participation in the Title IV, HEA programs, as applicable, should be terminated. The Secretary does not believe that a lesser sanction that permits the institution or servicer to continue to participate in the program or in the case of a third-party servicer to be eligible to contract, is a sufficient safeguard against the likely abuse of Title IV, HEA program funds.

The Secretary proposes to amend paragraph (c)(1) of this section so that in a fine, limitation, or termination proceeding, the hearing official's initial decision automatically becomes the Secretary's final decision in 30 days (20 days is mandated under the current regulations) after the initial decision is issued and received by both parties unless that initial decision is questioned before the Secretary. The Secretary is proposing these new timeframes to make them consistent with other reporting requirements in this part. The Secretary does not believe that a ten-day difference in an institution's or servicer's right to appeal an initial decision would unduly affect the integrity of the Title IV, HEA programs.

The Secretary also proposes to make technical changes in paragraph (a)(3)(iv) of this section to correct typographical errors that inadvertently appeared in final regulations published in the **Federal Register** on July 31, 1991 (56 FR 36698).

Section 668.91 Filing of requests for hearings and appeals; confirmation of mailing and receipt dates. The Secretary proposes to add references to third-party servicers to conform to the proposed changes in the scope of this subpart.

Section 668.92 Fines. The Secretary proposes to add references to third-party servicers in this section to conform to proposed changes governing the imposition of fines in other sections of this subpart.

This section would also be amended to provide for the consideration of the size of the servicer's business (including the number of institutions and student accounts served by the servicer) in determining the amount of a fine against a servicer. This provision would be similar to the provision already in place in this section that requires consideration of the size of an institution in determining the amount of a fine against the institution. The Secretary also proposes to take into account, in the case of a violation by a third-party servicer, the degree to which the servicer can provide evidence that the institution contributed to that violation and the extent to which repeated mechanical systemic unintentional errors contributed to that violation. For purposes of this section, repeated mechanical systemic unintentional errors would be counted as a single violation. This provision was requested by non-Federal negotiators to cover cases where errors in computer systems result in multiple violations. The Secretary proposes to adopt these measures in the interest of fairness to a third-party servicer in cases where a minor programming error leads to hundreds or thousands of violations. While the Secretary believes that all resulting losses should be compensated for by the institution or servicer, fines need not be unduly multiplied. The Secretary specifically invites comment on whether this provision is sufficiently specific and not excessively broad and effectively balances the Federal interest in ensuring compliance with the realities of computer processing.

The Secretary also proposes to provide for the consideration of the amount of liability owed by an institution or third-party servicer on the misuse of Title IV, HEA program funds or refunds in determining the gravity of the institution's or servicer's violation, as applicable, of a Title IV requirement. The number of students affected by the violation also would be a consideration in that determination. The Secretary intends these provisions to serve as guidelines for evaluating the gravity of a violation.

Section 668.93 Limitation. The Secretary proposes to add references to third-party servicers in this section to conform to proposed changes governing the imposition of limitations in other sections of this subpart. The Secretary also proposes that a limitation on a third-party servicer's eligibility to contract with institutions to administer any aspect of an institution's participation in the Title IV, HEA programs could include a limit on the number or size of institutions with which the servicer may contract, the number of accounts (borrower or loan accounts) that the servicer may service under contract, an increase or reduction in the responsibilities allowed or required of the servicer under a contract, or a requirement for the servicer to obtain surety assuring the servicer's ability to meet financial obligations.

The Secretary believes that these limitations are necessary to address the probable causes of improprieties in which a third-party servicer might engage. By limiting the number or size of institutions or accounts that a third-party servicer may serve (including, for example, requiring the servicer to transfer existing accounts back to the institution) the Secretary may address a problem involving the servicer's overextended resources. By limiting the responsibilities performed by the

servicer under a contract, the Secretary may restrict the servicer's administration to a particular Title IV, HEA program while prohibiting the servicer from administering another Title IV, HEA program for which the servicer's past performance has been inadequate. By imposing additional responsibilities under a third-party servicer's contract, the Secretary may require the servicer to use additional safeguards before awarding or disbursing Title IV, HEA program funds or delivering Federal Stafford or Federal SLS loan proceeds.

Section 668.94 Termination. The Secretary proposes to add references to third-party servicers in this section to conform to proposed changes governing termination proceedings in other sections of this subpart. The Secretary proposes to specify that a termination of a third-party servicer's eligibility to contract with an institution to administer a Title IV, HEA program ends the authority of the servicer to administer that program under any existing contract between an institution and the servicer. In addition, if a third-party servicer's eligibility is terminated, the servicer would be required to return to each institution (or otherwise dispose of according to the Secretary's instructions) any funds received by the servicer under that program for that institution or the institution's students. The servicer also would be required to return to the institution all records pertaining to the servicer's administration of the institution's participation in that program.

The Secretary believes that the termination of a third-party servicer's eligibility to contract with an institution should be treated like the termination of an institution's participation in a Title IV, HEA program. Not only should new contracts with an institution be prohibited, but the servicer's existing activities involving the administration of that program also should cease. Further, a third-party servicer may possess unexpended funds under that program for an institution's students at the time that termination takes effect. The servicer should be required to return those funds to the institution so that those students may receive their aid. The return of records to the institution is needed because of the recordkeeping requirements that the various Title IV, HEA program requirements that the various Title IV, HEA program regulations apply to institutions.

Section 668.95 Reimbursements, refunds, and offsets. This section would be amended to add references to third-party servicers to conform to the proposed changes in the scope of this subpart.

Section 668.96 Reinstatement after termination. The Secretary proposes to add references to third-party servicers to conform to proposed changes in the scope of this subpart. The Secretary also proposes to eliminate the provision that permits an institution to apply for reinstatement of its participation after three months if the institution's participation has been terminated for engaging in substantial misrepresentation. Like institutions whose participation is terminated for other violations, the institution would be able to apply for reinstatement only after 18 months from the date of the termination, unless the institution also was debarred or suspended under E.O. 12549 or the Federal Acquisition Regulations (FAR), 48 CFR subpart 9.4. The Secretary further proposes to extend these criteria to apply to a termination of a third-party servicer's eligibility to contract with an institution to administer any aspect of the institution's participation in the Title IV, HEA programs if the basis for that termination was engaging in substantial misrepresentation.

The Title IV, HEA programs are most effective only if students, other members of the public, and governmental and other bodies can rely on the honesty of the representations of an institution or the institution's agents. The harm that substantial misrepresentation does to the integrity of the Title IV, HEA programs, to those who rely on the programs to help meet educational costs, and to the taxpayers who pay for the programs should carry equal weight with the harm done by any other violation of a Title IV, HEA program requirement. If an institution's participation or third-party servicer's eligibility is terminated because the institution or servicer engaged in substantial misrepresentation, the consequence of that termination should be no less than the consequence of a termination for other reasons.

Section 668.97 Removal of limitation. The Secretary proposes to provide that an institution may not apply for removal of a limitation before the later of (1) 12 months from the effective date of the limitation, or (2) the expiration of a debarment or suspension under E.O. 12549 or the FAR, 48 CFR subpart 9.4. Parallel to the requirement for institutions, a third-party servicer would be able to apply for removal of a limitation only after 12 months from the date of the limitation, unless the servicer was also debarred or suspended.

These changes are necessary to conform to the proposed changes in the scope of this subpart. The Secretary would include the length of a debarment or suspension action as a criterion to apply for removal of a limitation to protect the Title IV, HEA programs, the beneficiaries of those programs, and the Federal Government from potential effects of doing business with irresponsible entities.

Sections 668.111 Scope and purpose, 668.112 Definitions, 668.113 Request for review, 668.114 Notification of hearing, and 668.116 Hearing. The Secretary proposes to add references to a third-party servicer to these sections to parallel institutional appeal procedures and thus establish procedures for a third-party servicer to appeal a final audit determination or final program review determination. The proposed procedures generally would be parallel to the procedures already established that govern appeals by an institution of a final audit determination or final program review determination. Under § 668.116(e), the Secretary proposes to expand the types of evidence that an institution or servicer requesting review of the final audit or final program review determination may submit to a hearing official to include Department of Education program review reports and work papers for program reviews and institutional or servicer records and other materials (including records and other materials of institutions with which the servicer has contracts) provided to the Department in response to a program review. The Secretary also proposes to notify all institutions with which a third-party servicer contracts of final audit report or final program review determinations. The Secretary believes that an institution that contracts with a third-party servicer should be kept informed of any activities between the servicer and the Department that might affect the administration of the institution's participation in a Title IV, HEA program.

Section 668.123 Collection. The Secretary proposes to modify this section to conform to the proposed changes to § 668.24.

Part 682—Federal Family Education Loan Programs

Section 682.200 Definitions. The Secretary proposes to amend the definition of *lender* to exclude from the definition of an "eligible lender" any lender that (1) is debarred or suspended under E.O. 12549 or the FAR, (2) has principals or affiliates so debarred or suspended, (3) is an affiliate of any person so debarred or suspended, or (4) employs to administer or assist in the administration of FFEL program funds any person so debarred or suspended. The effect of these proposed changes would be automatically to exclude a debarred or suspended lender from participation in the FFEL programs for the duration of the debarment or suspension. A guaranty agency would thus be prohibited from guaranteeing a new loan made by the lender during this period.

Like the proposed changes governing the standard of conduct of participating educational institutions and third-party servicers under 34 CFR 668.82, these changes are needed to establish appropriate safeguards to protect the integrity of the FFEL programs and the Federal financial interest if serious questions are raised about the honesty and lawfulness of the conduct of a lender's owners, officers, directors, management, employees, or affiliates whose duties involve the administration of or influence over the use of those funds.

The Secretary proposes to amend this section to expand on the statutory definition of *third-party servicer* in the proposed regulations to clarify its applicability in the FFEL programs. Under that definition, a third-party servicer is an individual or organization that contracts with a lender or guaranty agency to administer any aspect of the lender's or guaranty agency's participation in the FFEL programs, including any applicable function described in the definition of third-party servicer in 34 CFR part 668. The Secretary believes that by including the statutory definition as well as a reference to the proposed definition of third-party servicer under 34 CFR part 668, that individuals or organizations that contract with a lender or guaranty agency to administer any aspect of the lender's or guaranty agency's participation in the FFEL programs will be able to determine the applicability of these regulations to themselves.

Section 682.401 Basic Program Agreement. The Secretary proposes to revise this section of the regulations to clarify a guaranty agency's responsibilities if it enters into a contract with a third-party servicer. As discussed previously under § 682.200, the Secretary proposes to prohibit a guaranty agency from entering into a contract with a third-party servicer that the Secretary has determined is not financially responsible or has been determined by the Secretary to have not complied with the statutes and regulations that govern the FFEL programs.

Under this proposed provision, a guaranty agency would be required to provide to the Secretary the names and addresses of any third-party servicer with which the agency contracts and, if requested by the Secretary, a copy of that contract. The Secretary is proposing to require submission by the agency of the name and address of any third-party servicer with which the agency contracts, and, upon request, the contract, to assist the Secretary in carrying out his responsibilities to monitor the performance of third-party servicers.

The Secretary believes that receipt of a copy of the contract is necessary because it states the services that a third-party servicer performs for a guaranty agency. With this information, the Secretary will be better able to monitor program compliance and integrity of the guaranty agency's portfolio that the servicer is administering. These changes would parallel the requirements concerning contracts between institutions and third-party servicers.

Note that section 552 of the Administrative Procedure Act does not require disclosure to the public, under the Freedom of Information Act (FOIA), of subject matter that is deemed to be a trade secret or is of commercial or financial interest or is of a privileged or confidential nature (note also that the entity submitting the information is responsible for identifying information that is not subject to the FOIA's disclosure requirements).

Section 682.413 Remedial actions. The Secretary proposes to revise this section of the regulations to clarify a lender's and its third-party servicer's responsibility to pay liabilities if the servicer has not complied with FFEL program statutes or regulations with respect to services it has contracted with a lender to perform. Under this section, a third-party servicer and lender under whose contract the servicer committed the violation would be considered jointly and severally liable for paying to the Secretary any interest benefits and special allowance or any compensation the servicer has received on any loan from the lender from the date that the servicer fails to comply with any of the requirements in § 682.406(a)(1)–(a)(6), (a)(9), and (a)(12), for any period when the loan has lost its eligibility for reinsurance coverage as a result of the third-party servicer's actions, and for any period after it erroneously bills the Secretary for interest benefits and special allowance. The Secretary would vigorously attempt to collect any of those liabilities first from the lender and, if the lender does not repay those liabilities within 30 days or does not make arrangements satisfactory to the Secretary to repay those liabilities, pursue the third-party servicer for the payment of those liabilities.

This proposed section would also clarify a guaranty agency's and its third-party servicer's responsibilities to pay liabilities to the Secretary if the servicer has not complied with FFEL program statutes or regulations with respect to services that it has contracted with a guaranty agency to perform. Under this proposed provision, the Secretary would require a guaranty agency to repay to the Secretary any reinsurance payments the guaranty agency received on a loan if the third-party servicer contracting with the guaranty agency causes a loan to lose its eligibility for reinsurance. In addition to the repayment of reinsurance, if a third-party servicer makes an incomplete or incorrect statement in connection with any agreement entered into under this part or any other Federal requirement, the guaranty agency with which it has entered into a contract may be subjected by the Secretary to return payments made by the Secretary to the agency, have its payments withheld by the Secretary, or have its participation in the FFEL programs limited, suspended, or terminated. In addition to these penalties, the guaranty agency and its third-party servicer may be fined, may be required to repay any payments the Secretary became obligated to make to others as a result of an incomplete or incorrect statement or violation of any Federal requirement, or be responsible for repaying any interest benefits, special allowance, or reinsurance paid on a Consolidation loan for a violation of 34 CFR 682.206(f)(1). The guaranty agency and its third-party servicer would be considered jointly and severally liable for any of those liabilities. The method by which the Secretary would collect any liability would parallel the proposed provisions governing the circumstances under which a lender and third-party servicer would be jointly and severally liable to the Secretary.

In the negotiated rulemaking sessions, the issue of third-party servicer liability generated controversy and dissension among the negotiators. With regard to liabilities assessed against a third-party servicer under the FFEL programs, many negotiators raised the same objections previously discussed in connection with liability for servicers under 34 CFR part 668. Negotiators raised an additional objection, suggesting that liabilities assessed against third-party servicers under the FFEL programs are unnecessary given

the ability of the Secretary to determine a loan to be uninsured and thus able to be collected directly from a lender or guaranty agency. In response to these objections, the Secretary offered the same modification of the concept of joint and several liability discussed previously in 34 CFR part 668. As noted, no consensus was reached. However, the Secretary agreed to incorporate language into these proposed regulations to specify that the Secretary would first attempt collection from a lender or guaranty agency in the event of liability on the part of a third-party servicer. The Secretary included this provision at the request of negotiators because the Secretary believes that this provision would not adversely impact the integrity of the FFEL programs. The Secretary specifically invites further public comment on the issue of joint and several liability for servicers contracting with lenders and guaranty agencies in order to obtain additional advice from the higher education community in the development of final regulations.

The Secretary specifically invites public comment on whether, and how, the Secretary should hold a third-party servicer that administers FFEL programs jointly and severally liable for any violation of an FFEL program requirement by that servicer and whether any alternative less than assumption of full liability is sufficient to protect the public interest. The Secretary notes that substantial losses have occurred in the FFEL programs due to third-party servicer violations.

Under these proposed regulations, the Secretary would follow the fine proceedings contained in 34 CFR part 668, subpart G, in imposing a fine against a third-party servicer.

Section 682.414 Records, reports, and inspection requirements for guaranty agency programs. The Secretary proposes to amend this section to make a third-party servicer's responsibilities under this part conform to currently existing regulations with respect to a guaranty agency's obligation to maintain current records. Under this provision, a third-party servicer acting as an agent for a guaranty agency would be required to maintain current, complete, and accurate records for all loans that it services for that agency. These records would have to be updated at least once every 10 business days. The Secretary is proposing this provision to ensure that a third-party servicer with which a guaranty agency contracts is responsible for maintaining accurate records.

Section 682.416 Requirements for third-party servicers and lenders contracting with third-party servicers. The Secretary proposes to add a new section to the FFEL program regulations that would set forth administrative and financial standards that a third-party servicer would be required to meet in order to be an eligible third-party servicer with which a lender or guaranty agency may contract for purposes of its responsibilities under the FFEL programs. Under these proposed regulations, a third-party servicer would be considered to be administratively responsible if it provides the services for which it has contracted to perform in accordance with the Federal laws and regulations that govern the FFEL programs, has business systems that are capable of meeting those requirements and has adequate personnel who are knowledgeable about the FFEL programs. The Secretary is proposing these standards because he believes that these are the minimum administrative standards that an agent or entity must meet to demonstrate satisfactorily to the Secretary that it is capable of performing FFEL program services in accordance with applicable statutes and regulations.

The Secretary proposes to apply the standards governing financial responsibility under 34 CFR 668.13(c), (d), (g), and (h), governing the financial responsibility of institutions and third-party servicers contracting with those institutions, to a third-party servicer that administers any aspect of the FFEL programs under a contract with a guaranty agency or lender, for purposes of this part.

During the negotiated rulemaking sessions, the proposed standards governing financial responsibility of third-party servicers and institutions generated disagreement among the negotiators. The Secretary intends that the financial responsibility standards in this section would parallel, as applicable, similar standards of financial responsibility for participating institutions that the Secretary intends to publish in proposed regulations to be published shortly after these. When published, this future NPRM will provide commenters with the opportunity to comment on financial responsibility standards governing both third-party servicers and institutions.

The Secretary proposes these standards to ensure that a third-party servicer would not be able to maintain a contract with a lender or guaranty agency to administer any aspect of the lender's or guaranty agency's FFEL program unless that servicer periodically demonstrates to the Secretary the ability to meet its financial obligations with that lender or guaranty agency. Further, these standards would ensure that the servicer can demonstrate that it is financially stable and will be able to meet these obligations in the future. The Secretary believes that these standards are necessary because the financial failure of a third-party servicer could have an enormous impact on the FFEL programs that could create substantial losses for the Federal taxpayer.

Under these proposed rules, the Secretary would, as determined necessary, conduct a special review of a third-party servicer to determine if it meets the administrative capability and financial responsibility standards proposed in this section. If the Secretary conducts that review, the servicer would be required to provide evidence to the Secretary that it meets these standards. Based on the review of the materials required by this section the Secretary could initiate a limitation, suspension, or termination action against the servicer. If the servicer is unable to demonstrate that it meets the established standards for administrative capability and financial responsibility, the servicer could provide evidence to the Secretary demonstrating that the limitation, suspension, or termination action is unwarranted. This latter provision was added at the request of negotiators to govern situations where a third-party servicer may not be able to meet the defined standards proposed in this section, but the servicer still considers itself to be administratively capable and financially responsible. This provision would allow a third-party servicer the opportunity to demonstrate to the Secretary that it is still administratively capable and financially responsible.

This section would provide that a third-party servicer is not financially responsible under this section if the servicer, or the servicer's owner, majority shareholder, or chief executive officer is determined to have a questionable past performance. The past performance criteria in this section would parallel proposed requirements under 34 CFR 668.12 (implementing statutory requirements governing the past performance of persons or organizations associated with institutions that participate in Title IV, HEA programs) and under 34 CFR 668.82 (governing the standard of conduct of institutions and third-party servicers for purposes of the Title IV, HEA programs). Furthermore, the Secretary proposes to apply this provision to any person employed by the servicer or any person, entity, or any officer or employee of an entity that the servicer contracts with whose past performance is also questionable. In addition, in order to remain financially responsible, if a third-party servicer learns of such a conviction or determination, the servicer would have to take immediate action to safeguard the Title IV, HEA programs, as explained previously in the discussion concerning § 668.82.

However, for purposes of this part, the Secretary proposes to specify that with regard to the conduct of an officer or employee of a third-party servicer or a person, entity, or officer or employee of an entity with which the servicer contracts, that conduct would be a factor in determining the servicer's financial responsibility only if the individual or entity is used in a capacity that involves administering any aspect of the Title IV, HEA programs. For example, the Secretary would not hold the conduct of a custodian employed by a third-party servicer as an element in determining the servicer's financial responsibility, if that custodian had no responsibility for administering a Title IV, HEA program.

The Secretary also proposes to specify that a third-party servicer would not be considered to be financially responsible if the servicer, or any principal or affiliate of the servicer (as those terms are defined in 34 CFR part 85), is debarred or suspended under E.O. 12549 or the FAR, or is engaging in activity that is cause under 34 CFR 85.305 or 85.405 for debarment or suspension under E.O. 12549 or the FAR.

Like the proposed changes governing the past performance of individuals or organizations associated with institutions that participate in the Title IV, HEA programs and standard of conduct of participating institutions and third-party servicers, these changes are needed to establish appropriate safeguards to protect the integrity of the FFEL programs and the Federal financial interest if serious questions are raised about the honest and lawful conduct of a servicer's owners, officers, directors, employees, or affiliates whose duties involve the administration of or influence over the use of those funds.

Under this section, a third-party servicer would be required to have an annual independent audit of its administration of the FFEL programs that examines the servicer's compliance with the Act and applicable regulations and its financial management of FFEL program activities. These requirements and audit exceptions would parallel the proposed audit requirements and exceptions under 34 CFR 668.23 (governing audit requirements for third-party servicers contracting with institutions to administer any aspect of the institution's participation in the Title IV, HEA programs), except that the report of the audit would have to be submitted to the Secretary within six months of the end of the audit report period. A third-party servicer's initial audit would have to cover the same period required of audits performed for third-party servicers contracting with institutions to administer any aspect of the institution's participation in the Title IV, HEA programs (discussed previously in 34 CFR 668.23). The Secretary believes that initial audits will be more useful and effective if they encompass an entire fiscal year. The Secretary also believes that allowing servicers additional time to prepare for the implementation of these regulations would enable servicers to comply more fully with these regulations as well as defray the costs associated with an audit of a partial fiscal year and minimize the burden associated with implementing these regulations, as called for under E.O. 12866. Subsequent audits would, as required by statute, encompass the entire period since the servicer's previous audit.

In addition, the Secretary proposes that the audit report would be conducted in accordance with the audit guide developed by the Inspector General of the Department of Education unless the third-party servicer is a governmental entity or nonprofit organization. A third-party servicer that is a governmental entity would be required to have an audit conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G (pursuant to the Single Audit Act). A third-party servicer that is a nonprofit organization would be required to have an audit conducted in accordance with Office of Management and Budget Circular A–133, "Audit of Institutions of Higher Education and Other Nonprofit Institutions," as incorporated in 34 CFR 74.61(h)(3).

These proposed rules would also limit a lender's ability to enter into a contract with a third-party servicer. As explained previously in the discussion for § 682.200, under this proposal, a lender may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the administrative capability or financial responsibility standards under this section. Further, a lender that contracts with a third-party servicer would have to provide the Secretary with the name and address of the third-party servicer, and, upon request, a copy of that contract.

Sections 682.700 Purpose and scope, 682.701 Definitions of terms used in this subpart, 682.702 Effect on participation, 682.703 Informal compliance procedure, 682.704 Emergency action, 682.705 Suspension proceedings, 682.706 Limitation or termination proceedings, 682.707 Appeals in a limitation or termination proceeding, 682.708 Evidence of mailing and receipt dates, 682.709 Reimbursements, refunds, and offsets, 682.710 Removal of limitation, and 682.711 Reinstatement after termination. The Secretary proposes to amend subpart G to provide that the Secretary would have the authority to limit, suspend, or terminate a third-party servicer's ability to contract with an eligible lender if the Secretary determines the third-party servicer has violated any FFEL program requirement. Section 432(a)(1) of the Act authorizes the Secretary to take action against third-party servicers for any violation of any FFEL program requirement. Under these proposed regulations, the Secretary could also take emergency action against the servicer if the Secretary receives reliable information that the servicer is in violation of applicable requirements pertaining to the lender's portfolio of loans. The procedures under which the Secretary could take those actions and the procedures a third-party servicer could use to appeal those actions are consistent with the long-standing procedures the Secretary uses to take those actions against a lender, and the procedures a lender may use to appeal those actions.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Title IV, HEA programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and

tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Title IV, HEA programs.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small institutions of higher education; small organizations that contract with educational institutions to administer aspects of the institutions' participation in the Title IV, HEA programs; and small organizations that contract with lenders or guaranty agencies to administer aspects of the lenders' or agencies' participation in the FFEL programs. However, the regulations would not have a significant economic impact on these small entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 668.13, 668.23, 668.25, 668.90, 668.96, 668.113, 682.414, 682.416, and 682.711 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Educational institutions that are public or nonprofit institutions or businesses or other for-profit institutions may participate in the Title IV, HEA programs. State entities, nonprofit institutions, businesses or other for-profit organizations, or individuals may contract with educational institutions to administer aspects of the institutions' participation in the programs and may contract with lenders and guaranty agencies to administer aspects of the lenders' and agencies' participation in the FFEL programs. Individuals may apply for student financial assistance under the programs. The Department of Education needs and uses the information to enable the Secretary to determine whether the States, institutions, organizations, businesses, and individuals comply with the requirements for eligibility and participation in the programs.

Annual public reporting and recordkeeping burden contained in the collection of information proposed in these regulations is estimated to be 2,796 hours, including the time for searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and submitting materials.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4318, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program. Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned.)

Dated: February 9, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 668 and 682 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.1 is amended by revising paragraph (a) to read as follows:

§ 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program). To the extent that an institution contracts with a third-party servicer to administer any aspect of the institution's participation in any Title IV, HEA program, the applicable rules in this part also apply to that servicer. An institution's use of a third-party servicer does not alter the institution's responsibility for compliance with the rules in this part.

* * * * *

3. Section 668.2 is amended by adding definitions of "Designated department official", "Initiating official", "Show-cause official", and "Third-party servicer" to paragraph (b) in alphabetical order to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Designated department official: An official of the Department of Education to whom the Secretary has delegated responsibilities indicated in this part.

* * * * *

Initiating official: The designated department official authorized to begin an emergency action under § 668.83.

* * * * *

Show-cause official: The designated department official authorized to conduct a show-cause proceeding for an emergency action under § 668.83.

* * * * *

Third-party servicer: An individual or a State or private, profit or nonprofit organization that enters into a contract with an eligible institution to administer, through either manual or automated processing, any aspect of the institution's participation in any Title IV, HEA program. The Secretary considers administration of participation in a Title IV, HEA program to—

(1) Include performing any function required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation, such as, but not restricted to—

(i) Processing student financial aid applications;

(ii) Performing need analysis;

(iii) Determining student eligibility and related activities;

(iv) Certifying loan applications;

(v) Processing SARs or output documents for payment to students;

(vi) Receiving, disbursing, or delivering Title IV, HEA program funds, excluding lock-box processing of loan payments and normal bank electronic fund transfers;

(vii) Conducting activities required by the provisions governing student consumer information services in Subpart D of this part;

(viii) Preparing and certifying requests for advance or reimbursement funding;

(ix) Loan servicing and collection;

(x) Preparing and submitting notices and applications required under 34 CFR part 600 and subpart B of this part; and

(xi) Preparing a Fiscal Operations Report and Application to Participate (FISAP);

(2) Exclude the following functions:

(i) Publishing ability-to-benefit tests.

(ii) Performing functions as a Multiple Data Entry Processor (MDE).

(iii) Financial and compliance auditing.

(iv) Mailing of documents prepared by the institution.

(v) Warehousing of records; and

(3) Notwithstanding the exclusions referred to in paragraph (2) of this definition, include any activity comprised of any function described in paragraph (1) of this definition.

(Authority: 20 U.S.C. 1088)

* * * * *

4. Section 668.11 is revised to read as follows:

§ 668.11 Scope.

(a) This subpart establishes standards that an institution must meet in order to participate in any Title IV, HEA program.

(b) Noncompliance with these standards by an institution already participating in any Title IV, HEA program or with applicable standards in this subpart by a third-party servicer that contracts with the institution may subject the institution or servicer, or both, to proceedings under subpart G of this part. These proceedings may lead to any of the following actions:

(1) An emergency action.

(2) The imposition of a fine.

(3) The limitation, suspension, or termination of the participation of the institution in a Title IV, HEA program.

(4) The limitation, suspension, or termination of the eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

(Authority: 20 U.S.C. 1094)

5. Section 668.12, as proposed to be amended in a Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30830), is further amended by removing the period at the end of proposed redesignated paragraph (b)(2)(iv)(B) and adding, in its place, a semi-colon and adding new paragraphs (b)(2)(v) and (b)(2)(vi) to read as follows:

§ 668.12 Institutional participation agreement.

* * * * *

(b) * * *

(2) * * *

(v) That it is liable for all—

(A) Improperly spent or unspent funds received under the Title IV, HEA programs, including any funds administered by a third-party servicer; and

(B) Refunds that the institution or its servicer may be required to make; and

(vi) That it will not knowingly—

(A) Employ in a capacity that involves the administration of the Title IV, HEA programs or the receipt of funds under those programs, an individual who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(B) Contract with an institution or third-party servicer that has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds; or

(C) Contract with or employ any individual, agency, or organization that has been, or any of whose officers or employees have been—

(*1*) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State or local government funds; or

(*2*) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local funds.

* * * * *

6. Section 668.13 as amended by the regulations published in the **Federal Register** on June 8, 1993 (58 FR 32201) (effective date pending) is amended by removing paragraphs (c)(4) and (g); redesignating paragraph (c)(5) as (c)(4) and paragraphs (h) through (j) as paragraphs (g) through (i), respectively; adding the word "or" after the semi-colon in paragraph (c)(3); and revising redesignated paragraph (c)(4), paragraph (d)(3), and redesignated paragraphs (g) introductory text and (h) to read as follows:

§ 668.13 Factors of financial responsibility.

* * * * *

(c) * * *

(4) A person who exercises substantial control over the institution or any member or members of the person's family, alone or together—

(i)(A) Exercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a Title IV, HEA program requirement; or

(B) Owes a liability for a violation of a Title IV, HEA program requirement; and

(ii) That person, family member, institution, or servicer is not making payments in accordance with an agreement to repay that liability.

(d) * * *

(3) The Secretary may determine an institution to be financially responsible even if the institution is not otherwise financially responsible under paragraph (c)(4) of this section if—

(i) The institution notifies the Secretary, in accordance with 34 CFR 600.30, that the person referenced in paragraph (c)(4) of this section exercises substantial control over the institution; and

(ii)(A) The person repaid to the Secretary a portion of the applicable

liability, and the portion repaid equals or exceeds the greater of—

(1) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that person or any member or members of that person's family, either alone or in combination with one another;

(2) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the person or any member or members of that person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(3) Twenty-five percent, if that person or any member of that person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution or servicer that owes the liability;

(B) The applicable liability described in paragraph (c)(4)(ii) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(C) The institution demonstrates why—

(1) The person who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(2) The person who exercises substantial control over the institution and each member of that person's family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

* * * * *

(g) An "ownership interest" is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution, institution's parent corporation, a third-party servicer, or a third-party servicer's parent corporation.

* * * * *

(h) The Secretary generally considers a person to exercise substantial control over an institution or third-party servicer, if the person—

(1) Directly or indirectly holds at least a 25 percent ownership interest in the institution or servicer;

(2) Holds, together with other members of his or her family, at least a 25 percent ownership interest in the institution or servicer;

(3) Represents, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 25 percent ownership in the institution or servicer; or

(4) Is a member of the board of directors, the chief executive officer, or other executive officer of—

(i) The institution or servicer; or

(ii) An entity that holds at least a 25 percent ownership interest in the institution or servicer.

* * * * *

7. Section 668.23 is amended by redesignating paragraph (c)(3) as paragraph (c)(3)(i), revising paragraphs (b) and (c)(1), adding paragraph (c)(3)(ii) through (vi) and paragraph (c)(4)(iii), revising paragraph (c)(5), adding a new paragraph (c)(6), and revising paragraph (e) and the authority citation to read as follows:

§ 668.23 Audits, records, and examinations.

* * * * *

(b)(1) An institution that participates in any Title IV, HEA program shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, and the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution participates, and the State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA, in the conduct of audits, investigations, and program reviews authorized by law.

(2) A third-party servicer shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, and the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution contracting with the servicer participates, and the State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA, in the conduct of audits, investigations, and program reviews authorized by law.

(3) The institution's or servicer's cooperation must include—

(i) Providing timely access, for examination and copying, to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records;

(ii) Providing reasonable access to personnel associated with the institution's or servicer's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution or servicer may not—

(A) Refuse to supply any relevant information;

(B) Refuse to permit interviews with those personnel that do not include the presence of representatives of the institution's or servicer's management; or

(C) Refuse to permit interviews with those personnel that are not tape recorded by the institution or servicer.

(c)(1)(i) An institution that participates in the FDSL, Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, Federal PLUS, Federal SLS, Federal Pell Grant, or PAS programs shall have performed a compliance audit of that program.

(ii) A third-party servicer that administers funds or determines student eligibility shall have a compliance audit performed of every aspect of the servicer's administration of the participation in the Title IV, HEA programs of each institution with which the servicer has a contract, unless—

(A) The servicer contracts with only one participating institution; and

(B) The audit of that institution's participation involves every aspect of the servicer's administration of that Title IV, HEA program.

(iii) To meet the requirements of paragraph (c)(1)(ii) of this section, a third-party servicer that contracts with more than one participating institution may submit a single compliance audit report that covers every aspect of the servicer's administration of the participation in the Title IV, HEA programs for each institution with which the servicer contracts.

(iv) The audit required under paragraph (c)(1) (i) or (ii) of this section must be conducted by an independent auditor in accordance with the general standards and the standards for audits in the U.S. General Accounting Office's (GAO's) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.

* * * * *

(3) * * *

(ii) The servicer shall have an audit performed at least once every year.

(iii) Notwithstanding paragraph (c)(3)(ii) of this section, the servicer shall have an audit performed at least once every two years if—

(A) The servicer administers less than $1,000,000 under the Title IV, HEA programs for the period covered by the audit; or

(B) The servicer had no material exceptions identified in the servicer's most recently submitted audit report and that report was submitted in a timely fashion.

(iv) The servicer is not required to have an audit performed for any year in which the servicer administers less than $250,000 under the Title IV, HEA programs.

(v) The servicer's first audit must cover the servicer's activities for its first full fiscal year beginning after July 1, 1994, and include any period from that date to the beginning of the first full fiscal year. Each subsequent audit that the servicer has performed must cover the servicer's activities for the entire period of time since the servicer's preceding audit.

(vi) Notwithstanding paragraph (c)(3)(iii) of this section, the Secretary may, as the Secretary deems necessary, request any third-party servicer to have an audit performed on an annual basis.

(4) * * *

(iii) The servicer shall submit its audit to the Department of Education's Inspector General in accordance with the deadlines established in audit guides developed by the Department of Education's Office of Inspector General.

(5)(i) An institution or third-party servicer that has an audit conducted in accordance with this section shall—

(A) Give the Secretary and the Inspector General access to records or other documents necessary to review the audit; and

(B) Include in any arrangement with an individual or firm conducting an audit described in this section a requirement that the individual or firm shall give the Secretary and the Inspector General access to records or other documents necessary to review the audit.

(ii) A third-party servicer shall give the Secretary and the Inspector General access to records or other documents necessary to review an institution's audit.

(iii) An institution shall give the Secretary and the Inspector General access to records or other documents necessary to review a third-party servicer's audit.

(6) The Secretary may require the institution or servicer to provide, upon request, to cognizant guaranty agencies and eligible lenders under the FFEL programs, State agencies, nationally recognized accrediting agencies, and State postsecondary review entities designated under Subpart 1 of part H of Title IV of the HEA, the results of any audit conducted under this section.

* * * * *

(e) Upon written request, an institution or third-party servicer shall give the Secretary access to all Title IV, HEA program and fiscal records, including records reflecting transactions with any financial institution with which the institution or servicer deposits or has deposited any Title IV, HEA program funds.

* * * * *

(Authority: 20 U.S.C. 1088, 1094, 1099c, 1141 and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

8. Section 668.24 is revised to read as follows:

§ 668.24 Audit exceptions and repayments.

(a)(1) If, as a result of a Federal audit or an audit performed at the direction of an institution or third-party servicer, an expenditure made by the institution or servicer or the institution's or servicer's compliance with an applicable requirement (including the lack of proper documentation), is questioned, the Secretary notifies the institution or servicer of the questioned expenditure or compliance.

(2) If the institution or servicer believes that the questioned expenditure or compliance was proper, the institution or servicer shall notify the Secretary in writing of the institution's or servicer's position and the reasons for that position.

(3) The institution's or servicer's response must be certified as to accuracy and completeness by an independent auditor in accordance with the general standards and the standards for audits in the U.S. General Accounting Office's (GAO's) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions and must be received by the Secretary within 45 days of the date of the Secretary's notification to the institution or servicer.

(b)(1) Based on the audit finding and the institution's or third-party servicer's response, the Secretary determines the amount of liability, if any, owed by the institution or servicer and instructs the institution or servicer as to the manner of repayment.

(2) If the Secretary determines that a third-party servicer owes a liability for its administration of an institution's Title IV, HEA programs, the servicer shall notify each institution under whose contract the servicer owes a liability of the determination. The servicer shall also notify every institution that contracts with the servicer for the same service that the Secretary determined that a liability was owed.

(c)(1) An institution or third-party servicer that must repay funds under the procedures in this section shall repay those funds at the direction of the Secretary within 45 days of the date of the Secretary's notification, unless—

(i) The institution or servicer files an appeal under the procedures established in subpart H of this part; or

(ii) The Secretary permits a longer repayment period.

(2) Notwithstanding paragraphs (b) and (c)(1) of this section—

(i) If an institution or third-party servicer has posted surety or has provided a third-party guarantee and the Secretary questions expenditures or compliance with applicable requirements and identifies liabilities, then the Secretary may determine that deferring recourse to the surety or guarantee is not appropriate because—

(A) The need to provide relief to students or borrowers affected by the act or omission giving rise to the liability outweighs the importance of deferring collection action until completion of available appeal proceedings; or

(B) The terms of the surety or guarantee do not provide complete assurance that recourse to that protection will be fully available through the completion of available appeal proceedings; or

(ii) The Secretary may determine that an administrative offset to collect the funds owed under the procedures of this section is appropriate under 34 CFR 30.28.

(3) If, under the proceedings in subpart H, liabilities asserted in the notification against the institution or third-party servicer are upheld, the institution or third-party servicer shall repay those funds at the direction of the Secretary within 30 days of the final determination under subpart H of this part unless—

(i) The Secretary permits a longer repayment period; or

(ii) The Secretary determines that earlier collection action is appropriate pursuant to paragraph (c)(2) of this section.

(d) An institution is held responsible for any liability owed by the institution's third-party servicer for a violation incurred in servicing any aspect of that institution's participation in the Title IV, HEA programs and remains responsible for that amount until that amount is repaid in full.

(Authority: 20 U.S.C. 1094)

9. Section 668.25 is redesignated as § 668.26 and a new § 668.25 is added to read as follows:

§ 668.25 Contracts between an institution and a third-party servicer.

(a) An institution may enter into a written contract with a third-party servicer for the administration of any aspect of the institution's participation in any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.

(b) Subject to the provisions of paragraph (d) of this section, a third-party servicer is eligible to enter into a written contract with an institution for the administration of any aspect of the institution's participation in any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.

(c) In a contract with an institution, a third-party servicer shall agree to—

(1) Comply with all statutory provisions of or applicable to Title IV of the HEA, all regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, limitations, suspensions, and terminations, including the requirement to use any funds that the servicer administers under any Title IV, HEA program and any interest or other earnings thereon solely for the purposes specified in and in accordance with that program;

(2) Refer to the Office of Inspector General of the Department of Education for investigation of any information indicating there is reasonable cause to believe that the institution might have engaged in fraud or other criminal misconduct in connection with the institution's administration of any Title IV, HEA program or an applicant for Title IV, HEA program assistance might have engaged in fraud or other criminal misconduct in connection with his or her application. Examples of the type of information that must be referred are—

(i) False claims by the institution for Title IV, HEA program assistance;

(ii) False claims of independent student status;

(iii) False claims of citizenship;

(iv) Use of false identities;

(v) Forgery of signatures or certifications; and

(vi) False statements of income;

(3) Be jointly and severally liable with the institution to the Secretary for any violation by the servicer of any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, and any applicable special arrangements, agreements, and limitations;

(4) In the case of a third-party servicer that disburses funds (including funds received under the Title IV, HEA programs) or delivers Federal Stafford Loan or Federal SLS Program proceeds to a student—

(i) Confirm the eligibility of the student before making that disbursement or delivering those proceeds. This confirmation must include, but is not limited to, any applicable information contained in the records required under § 668.23(f); and

(ii) Calculate and pay refunds and repayments due a student, the Title IV, HEA program accounts, and the student's lender under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs in accordance with the institution's refund policy, the provisions of §§ 668.21 and 668.22, and applicable program regulations; and

(5) If the servicer or institution terminates the contract, or if the servicer stops providing services for the administration of a Title IV, HEA program, goes out of business, or files a petition under the Bankruptcy Code, return to the institution all—

(i) Records in the servicer's possession pertaining to the institution's participation in the program or programs for which services are no longer provided; and

(ii) Funds, including Title IV, HEA program funds, received from or on behalf of the institution or the institution's students, for the purposes of the program or programs for which services are no longer provided.

(d) A third-party servicer may not enter into a written contract with an institution for the administration of any aspect of the institution's participation in any Title IV, HEA program, if—

(1)(i) The servicer has been limited, suspended, or terminated by the Secretary within the preceding five years;

(ii) The servicer has had, during the servicer's two most recent audits of the servicer's administration of the Title IV, HEA programs, an audit finding that resulted in the servicer's being required to repay an amount greater than five percent of the funds that the servicer administered under the Title IV, HEA programs for any award year; or

(iii) The servicer has been cited during the preceding five years for failure to submit audit reports required under Title IV of the HEA in a timely fashion; and

(2)(i) In the case of a servicer that has been subjected to a termination action by the Secretary, either the servicer, or one or more persons or entities that the Secretary determines (under the provisions of § 668.13) exercise substantial control over the servicer, or both, have not submitted to the Secretary financial guarantees in an amount determined by the Secretary to be sufficient to satisfy the servicer's potential liabilities arising from the servicer's administration of the Title IV, HEA programs; or

(ii) One or more persons or entities that the Secretary determines (under the provisions of § 668.13) exercise substantial control over the servicer have not agreed to be jointly or severally liable for any liabilities arising from the servicer's administration of the Title IV, HEA programs and civil and criminal monetary penalties authorized under Title IV of the HEA.

(e)(1)(i) An institution that participates in a Title IV, HEA program shall notify the Secretary within 10 days of the date that—

(A) The institution enters into a new contract or significantly modifies an existing contract with a third-party servicer to administer any aspect of that program;

(B) The institution or a third-party servicer terminates a contract for the servicer to administer any aspect of that program; or

(C) A third-party servicer that administers any aspect of the institution's participation in that program stops providing services for the administration of that program, goes out of business, or files a petition under the Bankruptcy Code.

(ii) The institution's notification must include the name and address of the servicer.

(2) An institution that contracts with a third-party servicer to administer any aspect of the institution's participation in a Title IV, HEA program shall provide to the Secretary, upon request, a copy of the contract, including any modifications, and provide information pertaining to the contract or to the servicer's administration of the institution's participation in any Title IV, HEA program.

(Authority: 20 U.S.C. 1094)

10. Section 668.81 is amended by removing paragraph (f); revising paragraphs (a)(1) introductory text, (b), (c) introductory text, and (c)(1); and adding a new paragraph (a)(1)(iv) to read as follows:

§ 668.81 Scope and special definitions.

(a)(1) This subpart establishes regulations for the following actions with respect to a participating institution or third-party servicer:

* * * * *

(iv) The limitation, suspension, or termination of the eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

* * * * *

(b) This subpart applies to an institution or a third-party servicer that violates any statutory provision of or applicable to Title IV, of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation prescribed under authority of Title IV of the HEA.

(c) This subpart does not apply to a determination that—

(1) An institution or any of its locations or educational programs fails to qualify for initial designation as an eligible institution, location, or educational program because the institution, location, or educational program fails to satisfy the statutory and regulatory provisions that define an eligible institution or educational program with respect to the Title IV, HEA program for which a designation of eligibility is sought; or

* * * * *

11. Section 668.82 is revised to read as follows:

§ 668.82 Standard of conduct.

(a) A participating institution or a third-party servicer that contracts with that institution acts in the nature of a fiduciary in the administration of the Title IV, HEA programs. To participate in any Title IV, HEA program, the institution or servicer must at all times act with the competency and integrity necessary to qualify as a fiduciary.

(b) In the capacity of a fiduciary—

(1) A participating institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs; and

(2) A third-party servicer is subject to the highest standard of care and diligence in administering any aspect of the programs on behalf of the institutions with which the servicer contracts and in accounting to the Secretary and those institutions for any funds administered by the servicer under those programs.

(c) The failure of a participating institution or any of the institution's third-party servicers to administer a Title IV, HEA program, or to account for the funds that the institution or servicer receives under that program, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for—

(1) An emergency action against the institution, a fine on the institution, or the limitation, suspension, or termination of the institution's participation in that program; or

(2) An emergency action against the servicer, a fine on the servicer, or the limitation, suspension, or termination of the servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in that program.

(d)(1) A participating institution or a third-party servicer with which the institution contracts violates its fiduciary duty if—

(i)(A) The servicer has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(B) A person who exercises substantial control over the servicer, as determined according to § 668.13, has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(C) The servicer employs a person in a capacity that involves the administration of Title IV, HEA programs or the receipt of Title IV, HEA program funds who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or who has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds; or

(D) The servicer uses or contracts with any other person, agency, or organization that has been or whose officers or employees have been—

(*1*) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or

(*2*) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; and

(ii) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(1)(i) (B) through (D) of this section, the institution or servicer, as applicable, does not promptly remove the person, agency, or organization from any involvement in the administration of the institution's participation in Title IV, HEA programs, or, as applicable, the removal or elimination of any substantial control, as determined according to § 668.13, over the servicer.

(2)(i) A participating institution or a third-party servicer with which the institution contracts violates its fiduciary responsibility if the servicer commits a violation of a statutory provision of or applicable to Title IV of the HEA, a regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation by, a principal or affiliate of the servicer (as those terms are defined in 34 CFR part 85); and

(ii) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(2)(i) of this section, the institution or servicer, as applicable, does not promptly remove the person, agency, or organization from any involvement in the administration of the institution's participation in Title IV, HEA programs, or, as applicable, the removal or elimination of any substantial control, as determined according to § 668.13, over the servicer.

(3) A violation for a reason contained in paragraphs (d) (1) and (2) of this section is grounds for terminating—

(i) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program; and

(ii) The participation in any Title IV, HEA program of any institution under whose contract the servicer committed the violation, if that institution had been aware of the violation and had failed to take the appropriate action described in paragraphs (d)(1)(ii) and (d)(2)(ii) of this section.

(e)(1) A participating institution or third-party servicer, as applicable, violates its fiduciary duty if—

(i)(A) The institution or servicer, as applicable, is debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1987 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(B) Cause exists under 34 CFR 85.305 or 85.405 for debarring or suspending the institution, servicer, or any principal or affiliate of the institution or servicer under E.O. 12549 or the FAR, 48 CFR part 9, subpart 9.4; and

(ii) Upon learning of the debarment, suspension, or cause for debarment or suspension, the institution or servicer, as applicable, does not promptly—

(A) Discontinue the affiliation; or

(B) Remove the principal from responsibility for any aspect of the administration of an institution's or servicer's participation in the Title IV, HEA programs.

(2) A violation for a reason contained in paragraph (e)(1) of this section is grounds for terminating—

(i) The institution's participation in any Title IV, HEA program; and

(ii) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program. The violation is also grounds for terminating, under this subpart, the participation in any Title IV, HEA program of any institution under whose contract the servicer committed the violation, if that institution knew or should have known of the violation.

(f)(1) The debarment of a participating institution or third-party servicer, as applicable, under E.O. 12549 or the FAR, 48 CFR part 9, subpart 9.4, by the Department of Education or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554–557 (formal adjudication requirements under the Administrative Procedure Act), terminates, for the duration of the debarment—

(i) The institution's participation in any Title IV, HEA program; and

(ii) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program.

(2)(i) The suspension of a participating institution or third-party servicer, as applicable, under E.O. 12549 or the FAR, 48 CFR part 9, subpart 9.4, by the Department of Education or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554–557, suspends—

(A) The institution's participation in any Title IV, HEA program; and

(B) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program.

(ii) A suspension under this paragraph lasts for a period of 60 days, beginning on the date of the suspending official's decision, except that the suspension may last longer if—

(A) The institution or servicer, as applicable, and the Secretary, agree to an extension of the suspension; or

(B) The Secretary begins a limitation or termination proceeding against the institution or servicer, as applicable, under this subpart before the 60th day of the suspension.

(Authority: E.O. 12549 (3 CFR, 1987 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1070, *et seq.*, 1082(a)(1) and (h)(1), 1094(c)(1) (D) and (H), and 3474)

12. Section 668.83 is revised to read as follows:

§ 668.83 Emergency action.

(a) Under an emergency action, the Secretary may—

(1) Withhold Title IV, HEA program funds from a participating institution or its students, or from a third-party servicer, as applicable;

(2)(i) Withdraw the authority of the institution or servicer, as applicable, to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds; or

(ii) Withdraw the authority of the institution or servicer, as applicable, to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds except in accordance with a particular procedure; and

(3)(i) Withdraw the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program; or

(ii) Withdraw the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program except in accordance with a particular procedure.

(b)(1) An initiating official begins an emergency action against an institution or third-party servicer by sending the institution or servicer a notice by registered mail, return receipt requested. In an emergency action against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The official also may transmit the notice by other, more expeditious means if practical.

(2) The emergency action takes effect on the date the initiating official mails the notice to the institution or servicer, as applicable.

(3) The notice states the grounds on which the emergency action is based, the consequences of the emergency action, and that the institution or servicer, as applicable, may request an opportunity to show cause why the emergency action is unwarranted.

(c)(1) An initiating official takes emergency action against an institution or third-party servicer only if that official—

(i) Receives information, determined by the official to be reliable, that the institution or servicer, as applicable, is violating any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation;

(ii) Determines that immediate action is necessary to prevent misuse of Title IV, HEA program funds; and

(iii) Determines that the likelihood of loss from that misuse outweighs the importance of awaiting completion of any proceeding that may be initiated to limit, suspend, or terminate, as applicable—

(A) The participation of the institution in one or more Title IV, HEA programs; or

(B) The eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

(2) Examples of violations of a Title IV, HEA program requirement that cause misuse and the likely loss of Title IV, HEA program funds include—

(i) Causing the commitment, disbursement, or delivery by any party of Title IV, HEA program funds in an amount that exceeds—

(A) The amount for which students are eligible; or

(B) The amount of principal, interest, or special allowance payments that would have been payable to the holder of a Federal Stafford, Federal PLUS, or Federal SLS loan if a refund allocable to that loan had been made in the amount and at the time required;

(ii) Using, offering to make available, or causing the use or availability of Title IV, HEA program funds for educational services if—

(A) The institution, servicer, or agents of the institution or servicer have made a substantial misrepresentation as described in §§ 668.72, 668.73, or 668.74 related to those services;

(B) The institution lacks the administrative or financial ability to provide those services in full; or

(C) The institution, or servicer, as applicable, lacks the administrative or financial ability to compensate by appropriate refund for any portion of an educational program not completed by a student; and

(iii) Engaging in fraud involving the administration of a Title IV, HEA program. Examples of fraud include—

(A) Falsification of any document received from a student or pertaining to a student's eligibility for assistance under a Title IV, HEA program;

(B) Falsification, including false certifications, of any document submitted by the institution or servicer to the Department of Education;

(C) Falsification, including false certifications, of any document used for or pertaining to—

(*1*) The legal authority of an institution to provide postsecondary education in the State in which the institution is located; or

(*2*) The accreditation or preaccreditation of an institution or any of the institution's educational programs or locations;

(D) Falsification, including false certifications, of any document submitted to a guaranty agency under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs or an independent auditor;

(E) Falsification of any document submitted to a third-party servicer by an institution or to an institution by a third-party servicer pertaining to the institution's participation in a Title IV, HEA program; and

(F) Falsification, including false certifications, of any document pertaining to the performance of any loan collection activity, including activity that is not required by the HEA or applicable program regulations.

(3) If the Secretary begins an emergency action against a third-party servicer, the Secretary may also begin an emergency action against any institution under whose contract a third-party servicer commits the violation.

(d)(1) Except as provided in paragraph (d)(2) of this section, after an emergency action becomes effective, an institution or third-party servicer, as applicable, may not—

(i) Make or increase awards or make other commitments of aid to a student under the applicable Title IV, HEA program;

(ii) Disburse either program funds, institutional funds, or other funds as assistance to a student under that Title IV, HEA program;

(iii) In the case of an emergency action pertaining to participation in the Federal Stafford Loan, Federal PLUS, or Federal SLS Program—

(A) Certify an application for a loan under that program;

(B) Deliver loan proceeds to a student under that program; or

(C) Retain the proceeds of a loan made under that program that are received after the emergency action takes effect; or

(iv) In the case of an emergency action against a third-party servicer, administer any aspect of any institution's participation in any Title IV, HEA program.

(2) If the initiating official withdraws, by an emergency action, the authority of the institution or servicer to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds, or the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program, except in accordance with a particular procedure specified in the notice of emergency action, the institution or servicer, as applicable, may not take any action described in paragraph (d)(1) of this section except in accordance with the procedure specified in the notice.

(e)(1) Upon request by the institution or servicer, as applicable, the Secretary provides the institution or servicer, as soon as practicable, with an opportunity to show cause that the emergency action is unwarranted or should be modified.

(2) An opportunity to show cause consists of an opportunity to present evidence and argument to a show-cause official. The initiating official does not act as the show-cause official for any emergency action that the initiating official has begun. The show-cause official is authorized to grant relief from the emergency action. The institution or servicer may make its presentation in writing or, upon its request, at an informal meeting with the show-cause official.

(3) The show-cause official may limit the time and manner in which argument and evidence may be presented in order to avoid unnecessary delay or the presentation of immaterial, irrelevant, or repetitious matter.

(4) The institution or servicer, as applicable, has the burden of persuading the show-cause official that the emergency action imposed by the notice is unwarranted or should be modified because—

(i) The grounds stated in the notice did not, or no longer, exist;

(ii) The grounds stated in the notice will not cause loss or misuse of Title IV, HEA program funds; or

(iii) The institution or servicer, as applicable, will use procedures that will reliably eliminate the risk of loss from the misuse described in the notice.

(5) The show-cause official continues, modifies, or revokes the emergency action promptly after consideration of any argument and evidence presented by the institution or servicer, as applicable, and the initiating official.

(6) The show-cause official notifies the institution or servicer, as applicable, of that official's determination promptly after the completion of the show-cause meeting or, if no meeting is requested, after the official receives all the material submitted by the institution in opposition to the emergency action. In the case of a notice to a third-party servicer, the official also notifies each institution that contracts with the servicer of that determination. The show-cause official may explain that determination by adopting or modifying the statement of reasons provided in the notice of emergency action.

(f)(1) An emergency action does not extend more than 30 days after initiated unless the Secretary initiates a limitation, suspension, or termination proceeding under this part or under 34 CFR part 600 against the institution or servicer, as applicable, within that 30-day period, in which case the emergency action continues until a final decision is issued in that proceeding, as provided in § 668.90 (c) or (f), as applicable.

(2) Until a final decision is issued by the Secretary in a proceeding described in paragraph (f)(1) of this section, the continuation, modification, or revocation of the emergency action is at the sole discretion of the initiating official, or, if a show-cause proceeding is conducted, the show-cause official.

(3) If an emergency action extends beyond 180 days by virtue of paragraph (f)(1) of this section, the institution or servicer, as applicable, may then submit written material to the show-cause official to demonstrate that because of facts occurring after the later of the notice by the initiating official or the show-cause meeting, continuation of the emergency action is unwarranted and the emergency action should be modified or ended. The show-cause official considers any written material submitted and issues a determination that continues, modifies, or revokes the emergency action.

(g) The expiration, modification, or revocation of an emergency action against an institution or third-party servicer does not bar subsequent emergency action against that institution on grounds other than those specifically identified in the notice imposing the prior emergency action. Separate grounds may include violation by an institution or third-party servicer of an agreement or limitation imposed or resulting from the prior emergency action.

(Authority: 20 U.S.C. 1094)

13. Section 668.84 is revised to read as follows:

§ 668.84 Fine proceedings.

(a) *Scope and consequences.* (1) The Secretary may impose a fine of up to $25,000 per violation on a participating institution or third-party servicer that—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a fine proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(b) *Procedures.* (1) A designated department official begins a fine proceeding by sending the institution or servicer, as applicable, a notice by certified mail, return receipt requested. In the case of a fine proceeding against a third-party servicer, the official also sends the notice to each institution that is affected by the alleged violations identified as the basis for the fine action, and, to the extent possible, to each institution that contracts with the servicer for the same service affected by the violation. This notice—

(i) Informs the institution or servicer of the Secretary's intent to fine the institution or servicer, as applicable, and the amount of the fine and identifies the alleged violations that constitute the basis for the action;

(ii) Specifies the proposed effective date of the fine, which is at least 20 days from mailing of the notice of intent;

(iii) Informs the institution or servicer that the fine will not be effective on the date specified in the notice if the designated department official receives from the institution or servicer, as applicable, by that date a written request for a hearing or written material indicating why the fine should not be imposed; and

(iv) In the case of a fine proceeding against a third-party servicer, informs each institution that is affected by the alleged violations of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution affected by the alleged violations that—

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request.

(4) A hearing official conducts a hearing in accordance with § 668.88.

(c) *Expedited proceedings.* With the approval of the hearing official and the consent of the designated department official and the institution or servicer, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

14. Section 668.85 is revised to read as follows:

§ 668.85 Suspension proceedings.

(a) *Scope and consequences.* (1) The Secretary may suspend an institution's participation in a Title IV, HEA program or the eligibility of a third-party servicer to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the institution or servicer—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a suspension proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(3) The suspension may not exceed 60 days unless—

(i) The institution or servicer and the Secretary agree to an extension if the institution or servicer, as applicable, has not requested a hearing; or

(ii) The designated department official begins a limitation or termination proceeding under § 668.86.

(b) *Procedures.* (1) A designated department official begins a suspension proceeding by sending a notice to an institution or third-party servicer by certified mail, return receipt requested. In the case of a suspension proceeding against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The designated department official may also transmit the notice by other, more expeditious means if practical. The notice—

(i) Informs the institution or servicer of the intent of the Secretary to suspend the institution's participation or the servicer's eligibility, as applicable, cites the consequences of that action, and identifies the alleged violations that constitute the basis for the action;

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the institution or servicer that the suspension will not be effective on the date specified in the notice, except as provided in § 668.90(b)(2), if the designated department official receives from the institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the suspension should not take place; and

(iv) In the case of a suspension proceeding against a third-party servicer, informs each institution that contracts with the servicer of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing, but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. The suspension does not take place until after the requested hearing is held.

(4) A hearing official conducts a hearing in accordance with § 668.88.

(c) *Expedited proceedings.* With the approval of the hearing official and the consent of the designated department official and the institution or servicer, as applicable, any time period specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

15. Section 668.86 is revised to read as follows:

§ 668.86 Limitation or termination proceedings.

(a) *Scope and consequences.* (1) The Secretary may limit or terminate an institution's participation in a Title IV, HEA program or the eligibility of a third-party servicer to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the institution or servicer—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a limitation or termination proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(3) The consequences of the limitation or termination of the institution's participation or the servicer's eligibility are described in §§ 668.93 and 668.94, respectively.

(b) *Procedures.* (1) A designated department official begins a limitation or termination proceeding by sending an institution or third-party servicer a notice by certified mail, return receipt requested. In the case of a limitation or termination proceeding against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The designated department official may also transmit the notice by other, more expeditious means if practical. This notice—

(i) Informs the institution or servicer of the intent of the Secretary to limit or terminate the institution's participation or servicer's eligibility, as applicable, cites the consequences of that action, and identifies the alleged violations that constitute the basis for the action, and, in the case of a limitation proceeding, states the limits to be imposed;

(ii) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the institution or servicer that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives from the institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the limitation or termination should not take place; and

(iv) In the case of a limitation or termination proceeding against a third-party servicer, informs each institution that contracts with the servicer of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer that—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. The limitation or termination does not take place until after the requested hearing is held.

(4) A hearing official conducts a hearing in accordance with § 668.88.

(c) *Expedited proceeding.* With the approval of the hearing official and the consent of the designated department official and the institution or servicer, as applicable, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

16. Section 668.87 is revised to read as follows:

§ 668.87 Prehearing conference.

(a) A hearing official may convene a prehearing conference if he or she thinks that the conference would be useful, or if the conference is requested by—

(1) The designated department official who brought a proceeding against an institution or third-party servicer under this subpart; or

(2) The institution or servicer, as applicable.

(b) The purpose of a prehearing conference is to allow the parties to settle or narrow the dispute.

(c) If the hearing official, the designated department official, and the institution, or servicer, as applicable, agree, a prehearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1094)

17. Section 668.88 is amended by revising paragraph (b) introductory text and paragraph (d) to read as follows:

§ 668.88 Hearing.

* * * * *

(b) If the hearing official, the designated department official who brought a proceeding against an institution or third-party servicer under this subpart, and the institution or servicer, as applicable, agree, the hearing process may be expedited. Procedures to expedite the hearing process may include, but are not limited to, the following—

* * * * *

(d) The designated department official makes a transcribed record of the proceeding and makes the record available to the institution or servicer, as applicable, upon request and upon the institution's or servicer's payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR part 5).

(Authority: 20 U.S.C. 1094)

18. Section 668.89 is amended by revising paragraphs (a), (b)(2), and (c) introductory text, and adding a new paragraph (d) to read as follows:

§ 668.89 Authority and responsibilities of the hearing official.

(a) The hearing official regulates the course of a hearing and the conduct of the parties during the hearing. The hearing official takes all necessary steps to conduct a fair and impartial hearing.

(b) * * *

(2) If requested by the hearing official, the parties to a hearing shall provide available personnel who have knowledge about the matter under review for oral or written examination.

(c) The hearing official takes whatever measures are appropriate to expedite a hearing. These measures may include, but are not limited to, the following—

* * * * *

(d) The hearing official is bound by all applicable statutes and regulations. The hearing official may not—

(1) Waive applicable statutes and regulations; or

(2) Rule them invalid.

(Authority: 20 U.S.C. 1094)

19. Section 668.90 is revised to read as follows:

§ 668.90 Initial and final decisions—Appeals.

(a)(1)(i) A hearing official issues a written initial decision in a hearing by certified mail, return receipt requested to—

(A) The designated department official who began a proceeding against an institution or third-party servicer;

(B) The institution or servicer, as applicable; and

(C) In the case of a proceeding against a third-party servicer, each institution that contracts with the servicer.

(ii) The hearing official may also transmit the notice by other, more expeditious means if practical.

(iii) The hearing official issues the decision within the latest of the following dates:

(A) The 30th day after the last submission is filed with the hearing official.

(B) The 60th day after the last submission is filed with the hearing official if the Secretary, upon request of the hearing official, determines that the unusual complexity of the case requires additional time for preparation of the decision.

(C) The 50th day after the last day of the hearing, if the hearing official does not request the parties to make any posthearing submission.

(2) The hearing official's initial decision states whether the imposition of the fine, limitation, suspension, or termination sought by the designated department official is warranted, in whole or in part. If the designated department official brought a termination action against the institution or servicer, the hearing official may, if appropriate, issue an initial decision to fine the institution or servicer, as applicable, or, rather than terminating the institution's participation or servicer's eligibility, as applicable, impose one or more limitations on the institution's participation or servicer's eligibility.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section—

(i) If, in a termination action against an institution, the hearing official finds that the institution has violated the provisions of § 668.12(b)(2)(vi), the hearing official also finds that termination of the institution's participation is warranted;

(ii) If, in a termination action against a third-party servicer, the hearing official finds that the servicer has violated the provisions of § 668.82(d) (1) and (2), the hearing official also finds that termination of the institution's participation or servicer's eligibility, as applicable, is warranted;

(iii) If an action brought against an institution or third-party servicer involves its failure to provide surety in the amount specified by the Secretary under § 668.13, the hearing official must find that the amount of the surety established by the Secretary was appropriate unless the institution can demonstrate that the amount was unreasonable;

(iv) In a limitation, suspension, or termination proceeding commenced on the grounds described in § 668.15(b)(1), if the hearing official finds that an institution's Federal Stafford loan and Federal SLS cohort default rate, as defined in § 668.15(f), meets the conditions specified in § 668.15(b)(1) for initiation of limitation, suspension, or termination proceedings, the hearing official finds that the sanction sought by the designated department official is warranted, except that the hearing official finds that no sanction is warranted if the institution demonstrates that it has acted diligently to implement the default reduction measures described in Appendix D to this part;

(v) In a termination action taken against an institution or third-party servicer based on the grounds that the institution or servicer failed to comply with the requirements of § 668.23(c)(4), if the hearing official finds that the institution or servicer failed to meet those requirements, the hearing official finds that the termination is warranted;

(vi) In a termination action against an institution based on the grounds that the institution is not financially responsible under § 668.13(c)(4), the hearing official finds that the termination is warranted unless the institution demonstrates that all applicable conditions described in § 668.13(d)(3) have been met; and

(vii) In a termination action against an institution or third-party servicer on the grounds that the institution or servicer, as applicable, engaged in fraud involving the administration of any Title IV, HEA program, the hearing official finds that the termination action is warranted if the hearing official finds that the institution or servicer, as applicable, engaged in that fraud. Examples of fraud include—

(A) Falsification of any document received from a student or pertaining to a student's eligibility for assistance under a Title IV, HEA program;

(B) Falsification, including false certifications, of any document submitted by the institution or servicer to the Department of Education;

(C) Falsification, including false certifications, of any document used for or pertaining to—

(*1*) The legal authority of an institution to provide postsecondary education in the State in which the institution is located; or

(*2*) The accreditation or preaccreditation of an institution or any of the institution's educational programs or locations;

(D) Falsification, including false certifications, of any document submitted to a guaranty agency under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs, an independent auditor, an eligible institution, or a third-party servicer;

(E) Falsification of any document submitted to a third-party servicer by an institution or to an institution by a third-party servicer pertaining to the institution's participation in a Title IV, HEA program; and

(F) Falsification, including false certifications, of any document pertaining to the performance of any loan collection activity, including activity that is not required by the HEA or applicable program regulations.

(4) The hearing official bases findings of fact only on evidence considered at the hearing and on matters given judicial notice. If a hearing is conducted solely through written submissions, the parties must agree to findings of fact.

(b)(1) In a suspension proceeding, the Secretary reviews the hearing official's initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(2) The Secretary notifies the institution or servicer and, in the case of a suspension proceeding against a third-party servicer, each institution that contracts with the servicer of the final decision. If the Secretary suspends the institution's participation or servicer's eligibility, the suspension takes effect on the later of—

(i) The day that the institution or servicer receives the notice; or

(ii) The date specified in the designated department official's original notice of intent to suspend the institution's participation or servicer's eligibility.

(3) A suspension may not exceed 60 days unless a designated department official begins a limitation or termination proceeding under this subpart before the expiration of that period. In that case, the period may be extended until a final decision is issued in that proceeding according to paragraph (c) of this section.

(c)(1) In a fine, limitation, or termination proceeding, the hearing official's initial decision automatically becomes the Secretary's final decision 30 days after the initial decision is issued and received by both parties unless, within that 30-day period, the institution or servicer, as applicable, or the designated department official appeals the initial decision to the Secretary.

(2)(i) A party may appeal the hearing official's initial decision by submitting to the Secretary, within 30 days after the party receives the initial decision, a brief or other written statement that explains why the party believes that the Secretary should reverse or modify the decision of the hearing official.

(ii) At the time the party files its appeal submission, the party shall provide a copy of that submission to the opposing party.

(iii) The opposing party shall submit its brief or other responsive statement to the Secretary, with a copy to the appellant, within 30 days after the opposing party receives the appellant's brief or written statement.

(iv) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(A) The evidence introduced into the record at the hearing;

(B) Stipulations of the parties if the hearing consisted of written submissions; or

(C) Matters that may be judicially noticed.

(v) Neither party may introduce new evidence on appeal.

(vi) The initial decision of the hearing official imposing a fine or limiting or terminating the institution's participation or servicer's eligibility does not take effect pending the appeal.

(vii) The Secretary renders a final decision. The Secretary may delegate to a designated department official the functions described in paragraph (c)(2) (vii) through (ix) of this section.

(viii) In rendering a final decision, the Secretary considers only evidence introduced into the record at the hearing and facts agreed to by the parties if the hearing consisted only of written submissions and matters that may be judicially noticed.

(ix) If the hearing official finds that a termination is warranted pursuant to paragraph (a)(3) of this section, the Secretary affirms that decision. In any other case, the Secretary may affirm, modify, or reverse the initial decision, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision. If the Secretary affirms the initial decision without issuing a statement of reasons, the Secretary adopts the opinion of the hearing official as the decision of the Secretary. If the Secretary modifies, remands, or reverses the initial decision, in whole or in part, the Secretary's decision states the reasons for the action taken.

(Authority: 20 U.S.C. 1082, 1094)

20. Section 668.91 is amended by revising the heading; and revising paragraphs (a)(1), (a)(2), (b) heading, (b)(1), (b)(2) introductory text, and (c) to read as follows:

§ 668.91 Filing of requests for hearings and appeals; confirmation of mailing and receipt dates.

(a) * * *

(1) A request by an institution or third-party servicer for a hearing or show-cause opportunity, other material submitted by an institution or third-party servicer in response to a notice of proposed action under this subpart, or an appeal to the Secretary under this subpart must be filed with the designated department official by hand-delivery, mail, or facsimile transmission.

(2) Documents filed by facsimile transmission must be transmitted to the designated department official identified, either in the notice initiating the action, or, for an appeal, in instructions provided by the hearing official, as the individual responsible to receive them. A party filing a document by facsimile transmission must confirm that a complete and legible copy of the document was received by the Department of Education, and may be required by the designated department official to provide a hard copy of the document.

* * * * *

(b) *Confirmation of mailing and receipt dates.* (1) The mailing date of a notice from a designated department official initiating an action under this subpart is the date evidenced on the original receipt of mailing from the U.S. Postal Service.

(2) The date on which a request for a show-cause opportunity, a request for a hearing, other material submitted in response to a notice of action under this subpart, a decision by a hearing official, or a notice of appeal is received is, as applicable—

* * * * *

(c) *Refusals.* If an institution or third-party servicer refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the institution or servicer refuses to accept the notice.

(Authority: 20 U.S.C. 1094)

21. Section 668.92 is revised to read as follows:

§ 668.92 Fines.

(a) In determining the amount of a fine, the designated department official, hearing official, and Secretary take into account—

(1)(i) The gravity of an institution's or third-party servicer's violation or failure to carry out the relevant statutory provision, regulatory provision, special arrangement, agreement, or limitation; or

(ii) The gravity of the institution's or servicer's misrepresentation;

(2) The size of the institution;

(3) The size of the servicer's business, including the number of institutions and students served by the servicer;

(4) In the case of a violation by a third-party servicer, the extent to which the servicer can document that the institution contributed to that violation; and

(5)(i) For purposes of assessing a fine on a third-party servicer, the extent to which violations are caused by repeated mechanical systemic unintentional errors.

(ii) The Secretary counts the total of violations caused by repeated mechanical systemic unintentional errors as a single violation.

(b) In determining the gravity of the institution's or servicer's violation, failure, or misrepresentation under paragraph (a) of this section, the designated department official, hearing official, and Secretary take into account the amount of any liability owed by the institution and any third-party servicer that contracts with the institution, and the number of students affected as a result of that violation, failure, or misrepresentation on—

(1) Improperly expended or unspent Title IV, HEA program funds received by the institution or servicer, as applicable; or

(2) Required refunds.

(c) Upon the request of the institution or third-party servicer, the Secretary may compromise the fine.

(Authority: 20 U.S.C. 1094)

22. Section 668.93 is revised to read as follows:

§ 668.93 Limitation.

A limitation may include, as appropriate to the Title IV, HEA program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV, HEA program funds;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from Title IV, HEA program funds;

(c) A limit on the number or size of institutions with which a third-party servicer may contract;

(d) A limit on the number of borrower or loan accounts that a third-party servicer may service under a contract with an institution;

(e) A limit on the responsibilities that a third-party servicer may perform under a contract with an institution;

(f) A requirement for a third-party servicer to perform additional responsibilities under a contract with an institution;

(g) A requirement that an institution obtain surety, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV, HEA program funds;

(h) A requirement that a third-party servicer obtain surety, in a specified amount, to assure the servicer's ability to meet the servicer's financial obligations under a contract; or

(i) Other conditions as may be determined by the Secretary to be reasonable and appropriate.

(Authority: 20 U.S.C. 1094)

23. Section 668.94 is revised to read as follows:

§ 668.94 Termination.

(a) A termination—

(1) Ends an institution's participation in a Title IV, HEA program or ends a third-party servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program;

(2) Ends the authority of a third-party servicer to administer any aspect of any institution's participation in that program;

(3) Prohibits an institution or third-party servicer, as applicable, or the Secretary from making or increasing awards under that program;

(4) Prohibits an institution or third-party servicer, as applicable, from making any other new commitments of funds under that program; and

(5) If an institution's participation in the Federal Stafford Loan, Federal PLUS, or Federal SLS Program has been terminated, prohibits further guarantee commitments by the Secretary for loans under that program to students to attend that institution, and, if the institution is a lender under that program, prohibits further disbursements by the institution (whether or not guarantee commitments have been issued by the Secretary or a guaranty agency for those disbursements).

(b) After its participation in a Title IV, HEA program has been terminated, an institution may disburse or deliver funds under that Title IV, HEA program to students enrolled at the institution only in accordance with § 668.26 and with any additional requirements imposed under this part.

(c) If a third-party servicer's eligibility is terminated, the servicer must return to each institution that contracts with the servicer any funds received by the servicer under the applicable Title IV, HEA program on behalf of the institution or the institution's students or otherwise dispose of those funds under instructions from the Secretary. The servicer also must return to each institution that contracts with the servicer all records pertaining to the servicer's administration of that program on behalf of that institution.

(Authority: 20 U.S.C. 1094)

24. Section 668.95 is revised to read as follows:

§ 668.95 Reimbursements, refunds, and offsets.

(a) The designated department official, hearing official, or Secretary may require an institution or third-party servicer to take reasonable and appropriate corrective action to remedy the institution's or servicer's violation, as applicable, of any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation.

(b) The corrective action may include payment of any funds to the Secretary, or to designated recipients, that the institution or servicer, as applicable, improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to—

(1) With respect to the Federal Stafford Loan, Federal PLUS, and Federal SLS programs—

(i) Ineligible interest benefits, special allowances, or other claims paid by the Secretary; and

(ii) Discounts, premiums, or excess interest paid in violation of 34 CFR part 682; and

(2) With respect to all Title IV, HEA programs—

(i) Refunds required under program regulations; and

(ii) Any grants, work-study assistance, or loans made in violation of program regulations.

(c) If any final decision requires an institution or third-party servicer to reimburse or make any other payment to the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution or servicer.

(Authority: 20 U.S.C. 1094)

25. Section 668.96 is revised to read as follows:

§ 668.96 Reinstatement after termination.

(a)(1) An institution whose participation in a Title IV, HEA program has been terminated may file a request for reinstatement of that participation.

(2) A third-party servicer whose eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program has been terminated may file a request for reinstatement of that eligibility.

(b) An institution whose participation has been terminated or a third-party servicer whose eligibility has been terminated may request reinstatement only after the later of the expiration of—

(1) Eighteen months from the effective date of the termination; or

(2) A debarment or suspension under Executive Order 12549 or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(c) To be reinstated, an institution or third-party servicer must submit its request for reinstatement in writing to the Secretary and must—

(1) Demonstrate to the Secretary's satisfaction that it has corrected the violation or violations on which its termination was based, including payment in full to the Secretary or to other recipients of funds that the institution or servicer, as applicable, has improperly received, withheld, disbursed, or caused to be disbursed;

(2) Meet all applicable requirements of this part; and

(3) In the case of an institution, enter into a new program participation agreement with the Secretary.

(d) The Secretary, within 60 days of receiving the reinstatement request—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to a limitation or limitations.

(Authority: 20 U.S.C. 1094; E.O. 12549 (3 CFR, 1987 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

26. Section 668.97 is revised to read as follows:

§ 668.97 Removal of limitation.

(a) An institution whose participation in a Title IV, HEA program has been limited may not apply for removal of the limitation before the expiration of 12 months from the effective date of the limitation.

(b) A third-party servicer whose eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program has been limited may request removal of the limitation.

(c) The institution or servicer may not apply for removal of the limitation before the later of the expiration of—

(1) Twelve months from the effective date of the limitation; or

(2) A debarment or suspension under Executive Order 12549 or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(d) If the institution or servicer requests removal of the limitation, the request must be in writing and show that the institution or servicer, as applicable, has corrected the violation or violations on which the limitation was based.

(e) No later than 60 days after the Secretary receives the request, the Secretary responds to the institution or servicer—

(1) Granting its request;

(2) Denying its request; or

(3) Granting the request subject to other limitation or limitations.

(f) If the Secretary denies the request or establishes other limitations, the Secretary grants the institution or servicer, upon the institution's or servicer's request, an opportunity to show cause why the participation or eligibility, as applicable, should be fully reinstated.

(g) The institution's or servicer's request for an opportunity to show cause does not waive—

(1) The institution's right to participate in any or all Title IV, HEA programs if it complies with the continuing limitation or limitations pending the outcome of the opportunity to show cause; and

(2) The servicer's right to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the servicer complies with the continuing limitation pending the outcome of the opportunity to show cause.

(Authority: 20 U.S.C. 1094; E.O. 12549 (3 CFR, 1987 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

27. Section 668.111 is amended by revising paragraphs (a) and (b) to read as follows:

§ 668.111 Scope and purpose.

(a) This subpart establishes rules governing the appeal by an institution or third-party servicer from a final audit determination or a final program review determination arising from an audit or program review of the institution's participation in any Title IV, HEA program or of the servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

(b) This subpart applies to any participating institution or third-party servicer that appeals a final audit determination or final program review determination.

* * * * *

28. Section 668.112 is revised to read as follows:

§ 668.112 Definitions.

The following definitions apply to this subpart:

(a) *Final audit determination* means the written notice of a determination issued by a designated department official based on an audit of—

(1) An institution's participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer's administration of any aspect of an institution's participation in any or all of the Title IV, HEA programs.

(b) *Final program review determination* means the written notice of a determination issued by a designated department official and resulting from a program compliance review of—

(1) An institution's participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

(Authority: 20 U.S.C. 1094)

29. Section 668.113 is revised to read as follows:

§ 668.113 Request for review.

(a) An institution or third-party servicer seeking the Secretary's review of a final audit determination or a final program review determination shall file a written request for review with the designated department official.

(b) The institution or servicer shall file its request for review and any records or materials admissible under the terms of § 668.116 (e) and (f), no later than 45 days from the date that the institution or servicer receives the final audit determination or final program review determination.

(c) The institution or servicer shall attach to the request for review a copy of the final audit determination or final program review determination, and shall—

(1) Identify the issues and facts in dispute; and

(2) State the institution's or servicer's position, as applicable, together with the pertinent facts and reasons supporting that position.

(Authority: 20 U.S.C. 1094)

30. Section 668.114 is revised to read as follows:

§ 668.114 Notification of hearing.

(a) Upon receipt of an institution's or third-party servicer's request for review, the designated department official arranges for a hearing before a hearing official.

(b) Within 30 days of the designated department official's receipt of an institution's or third-party servicer's request for review, the hearing official notifies the designated department official and the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer of the schedule for the submission of briefs by both the designated department official and, as applicable, the institution or servicer.

(c) The hearing official schedules the submission of briefs and of accompanying evidence admissible under the terms of § 668.116 (e) and (f) to occur no later than 120 days from the date that the hearing official notifies the institution or servicer.

(Authority: 20 U.S.C. 1094)

31. Section 668.116 is amended by revising paragraphs (b), (d), (e)(1), (f), and (g) to read as follows:

§ 668.116 Hearing.

* * * * *

(b) The hearing process consists of the submission of written briefs to the hearing official by the institution or third-party servicer, as applicable, and by the designated department official, unless the hearing official determines, under paragraph (g) of this section, that an oral hearing is also necessary.

* * * * *

(d) An institution or third-party servicer requesting review of the final audit determination or final program review determination issued by the designated department official shall have the burden of proving the following matters, as applicable:

(1) That expenditures questioned or disallowed were proper.

(2) That the institution or servicer complied with program requirements.

(e)(1) A party may submit as evidence to the hearing official only materials within one or more of the following categories:

(i) Department of Education audit reports and audit work papers for audits performed by the department's Office of Inspector General.

(ii) In the case of an institution, institutional audit work papers, records, and other materials, if the institution provided those work papers, records, or materials to the department no later than the date by which the institution

was required to file its request for review in accordance with § 668.113.

(iii) In the case of a third-party servicer, the servicer's audit work papers and the records and other materials of the servicer or any institution that contracts with the servicer, if the servicer provided those work papers, records, or materials to the Department of Education no later than the date that the servicer was required to file the request for review under § 668.113.

(iv) Department of Education program review reports and work papers for program reviews.

(v) Institutional or servicer records and other materials (including records and other materials of any institution that contracts with the servicer) provided to the Department of Education in response to a program review, if the records or materials were provided to the Department of Education by the institution or servicer no later than the date by which the institution or servicer was required to file its request for review in accordance with § 668.113.

(vi) Other Department of Education records and materials if the records and materials were provided to the hearing official no later than 3 days after the institution's or servicer's filing of its request for review.

* * * * *

(f) The hearing official accepts only evidence that is both admissible and timely under the terms of paragraph (e) of this section, and relevant and material to the appeal. Examples of evidence that shall be deemed irrelevant and immaterial except upon a clear showing of probative value respecting the matters described in paragraph (d) of this section include—

(1) Evidence relating to a period of time other than the period of time covered by the audit or program review;

(2) Evidence relating to an audit or program review of an institution or third-party servicer other than the institution or servicer bringing the appeal, or the resolution thereof; and

(3) Evidence relating to the current practice of the institution or servicer bringing the appeal in the program areas at issue in the appeal.

(g)(1) The hearing official may schedule an oral argument if he or she determines that an oral argument is necessary to clarify the issues and the positions of the parties as presented in the parties' written submissions.

(2) In the event that an oral argument is conducted, the designated department official makes a transcribed record of the proceedings and makes that record available to the institution or servicer and any institution that contracts with the servicer upon the institution's or servicer's request and upon its payment of a fee consistent with that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

* * * * *

32. Section 668.123 is revised to read as follows:

§ 668.123 Collection.

To the extent that the decision of the Secretary sustains the final audit determination or program review determination, subject to the provisions of § 668.24(c)(3), the Department of Education will take steps to collect the debt at issue or otherwise effect the determination that was subject to the request for review.

(Authority: 20 U.S.C. 1094)

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAMS

33. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C 1071 to 1087–2, unless otherwise noted.

34. Section 682.200 is amended in paragraph (b) by revising paragraph (1) and adding a new paragraph (5) in the definition of "Lender" and adding a new definition of "Third- party servicer" in alphabetical order, and by revising the authority citation to read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Lender. (1) The term "eligible lender" is defined in section 435(d) of the Act, and in paragraphs (2) through (5) of this definition.

* * * * *

(5) The term eligible lender does not include any lender that—

(i) Is debarred or suspended, or any of whose principals or affiliates (as those terms are defined in 34 CFR part 85) is debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1987 Comp., p. 189) or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4;

(ii) Is an affiliate, as defined in 34 CFR part 85, of any person who is debarred or suspended under E.O. 12549 or the FAR, 48 CFR part 9, subpart 9.4; or

(iii) Employs a person who is debarred or suspended under E.O. 12549 or the FAR, 48 CFR part 9, subpart 9.4, in a capacity that involves the administration or receipt of FFEL Program funds.

* * * * *

Third-party servicer. Any State or private, profit or nonprofit organization or any individual that enters into a contract with a lender or guaranty agency to administer, through either manual or automated processing, any aspect of the lender's or guaranty agency's FFEL programs required by any statutory provision of or applicable to title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation that governs the FFEL programs, including, any applicable function described in the definition of third-party servicer in 34 CFR part 668; originating, guaranteeing, monitoring, processing, servicing, or collecting loans; claims submission; or billing for interest benefits and special allowance.

* * * * *

(Authority: 8 U.S.C 1101; 20 U.S.C. 1070 to 1087–2, 1088–1098, 1141; E.O. 12549 (3 CFR, 1987 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

35. Section 682.401 is amended by adding a new paragraph (b)(23) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(23) *Third-party servicers.* The guaranty agency may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the financial and compliance standards under § 682.416. The guaranty agency shall provide the Secretary with the name and address of any third-party servicer with which the agency enters into a contract and, upon request by the Secretary, a copy of that contract.

* * * * *

36. Section 682.413 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

§ 682.413 Remedial actions.

(a)(1) The Secretary requires a lender and its third-party servicer administering any aspect of the FFEL programs under a contract with the lender to repay interest benefits and special allowance or other compensation received on a loan guaranteed by a guaranty agency, pursuant to paragraph (a)(2) of this section—

(i) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to comply with any of the requirements set forth in § 682.406(a)(1)-(a)(6), (a)(9), and (a)(12);

(ii) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to meet a condition of guarantee coverage established by the guaranty agency, to the date, if any, on which the guaranty agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(iii) For any period in which the lender or servicer, with respect to the loan, violates the requirements of subpart C of this part; and

(iv) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under § 682.302(d).

(2) For purposes of this section, a lender and any applicable third-party servicer shall be considered jointly and severally liable for the repayment of any interest benefits and special allowance paid as a result of a violation of applicable requirements by the servicer in administering the lender's FFEL programs.

(3) For purposes of paragraph (a)(2) of this section, the relevant third party servicer shall repay any outstanding liabilities under paragraph (a)(2) of this section only if—

(i) The lender has not repaid in full the amount of the liability within 30 days; or

(ii) The lender has not made other satisfactory arrangements to pay the amount of the liability.

(b) The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender, third-party servicer, if applicable, or the agency failed to meet the requirements of § 682.406(a).

(c)(1) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guaranty agency or third-party servicer administering any aspect of the FFEL programs under a contract with the guaranty agency, that makes an incomplete or incorrect statement in connection with any agreement entered into under this part or violates any applicable Federal requirement:

(i) Require the agency to return payments made by the Secretary to the agency.

(ii) Withhold payments to the agency.

(iii) Limit the terms and conditions of the agency's continued participation in the FFEL programs.

(iv) Suspend or terminate agreements with the agency.

(v) Impose a fine on the agency or servicer. For purposes of assessing a fine, repeated mechanical systemic unintentional errors shall be counted as one violation.

(vi) Require repayment from the agency and servicer pursuant to paragraph (c)(2) of this section, of interest, special allowance, and reinsurance paid on Consolidation loan amounts attributed to Consolidation loans that violate § 682.206(f)(1).

(vii) Require repayment from the agency or servicer, pursuant to paragraph (c)(2) of this section, of any related payments that the Secretary became obligated to make to others as a result of an incomplete or incorrect statement or a violation of an applicable Federal requirement.

(2) For purposes of this section, a guaranty agency and any applicable third-party servicer shall be considered jointly and severally liable for the repayment of any interest benefits, special allowance, reinsurance paid, or other compensation on Consolidation loan amounts attributed to Consolidation loans that violate § 682.206(f)(1) as a result of a violation by the servicer administering any aspect of the FFEL programs under a contract with that guaranty agency.

(3) For purposes of paragraph (c)(2) of this section, the relevant third-party servicer shall repay any outstanding liabilities under paragraph (c)(2) of this section only if—

(i) The Secretary has determined that the servicer is jointly and severally liable for the liabilities; and

(ii)(A) The guaranty agency has not repaid in full the amount of the liability within 30 days; or

(B) The guaranty agency has not made other satisfactory arrangements to pay the amount of the liability.

(d)(1) The Secretary follows the procedures described in 34 CFR part 668, subpart G, applicable to fine proceedings against schools, in imposing a fine against a lender, guaranty agency, or third-party servicer. References to "the institution" in those regulations shall be understood to mean the lender, guaranty agency, or third-party servicer, as applicable, for this purpose.

(2) The Secretary also follows the provisions of section 432(g) of the Act in imposing a fine against a guaranty agency or lender.

* * * * *

37. Section 682.414 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) *Records.* (1)(i) The guaranty agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days. Any reference to a guaranty agency under this section includes a third-party servicer that administers any aspect of the FFEL programs under a contract with the guaranty agency, if applicable.

* * * * *

38. A new § 682.416 is added to subpart D to read as follows:

§ 682.416 Requirements for third-party servicers and lenders contracting with third-party servicers.

(a) *Standards for administrative capability.* A third-party servicer is considered administratively responsible if it—

(1) Provides the services and administrative resources necessary to fulfill its contract with a lender or guaranty agency, and conducts all of its contractual obligations that apply to the FFEL program in accordance with FFEL program regulations;

(2) Has business systems that are capable of meeting the requirements of part B of Title IV of the Act and with the FFEL program regulations; and

(3) Has adequate personnel who are knowledgeable about the FFEL programs.

(b) *Standards of financial responsibility.* The Secretary applies the provisions of 34 CFR 668.13(c), (d), (g), and (h) to determine that a third-party servicer is financially responsible under this part. References to "the institution" in those provisions shall be understood to mean the third-party servicer, for this purpose.

(c) *Special review of third-party servicer.* (1) The Secretary may review a third-party servicer to determine that it meets the administrative capability and financial responsibility standards in this section.

(2) In response to a request from the Secretary, the servicer shall provide evidence to demonstrate that it meets the administrative capability and financial responsibility standards in this section.

(3) The servicer may also provide evidence of why administrative action is unwarranted if it is unable to demonstrate that it meets the standards of this section.

(4) Based on the review of the materials provided by the servicer, the Secretary determines if the servicer meets the standards in this part. If the servicer does not, the Secretary may initiate an administrative proceeding under subpart G.

(d) *Past performance of third-party servicer or persons affiliated with*

servicer. Notwithstanding paragraph (b) of this section, a third-party servicer is not financially responsible if—

(1) (i) The servicer; its owner, majority shareholder, or chief executive officer; any person employed by the servicer in a capacity that involves the administration of a Title IV, HEA program or the receipt of Title IV, HEA program funds; any person, entity, or officer or employee of an entity with which the servicer contracts in a capacity that involves the administration of a Title IV, HEA program or the receipt of Title IV, HEA program funds has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving such funds, unless—

(A) The funds that were fraudulently obtained, or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid;

(B) The persons who were convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and

(C) At least five years have elapsed from the date of the conviction, *nolo contendere* plea, guilty plea, or administrative or judicial determination; or

(ii) The servicer, or any principal or affiliate of the servicer (as those terms are defined in 34 CFR part 85), is—

(A) Debarred or suspended under Executive Order (E.O.) 12549 or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(B) Engaging in any activity that is a cause under 34 CFR 85.305 or 85.405 for debarment or suspension under E.O. 12549 or the FAR, 48 CFR part 9, subpart 9.4; and

(2) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(1) of this section, the servicer does not promptly remove the person, agency, or organization from any involvement in the administration of the servicer's participation in Title IV, HEA programs, including, as applicable, the removal or elimination of any substantial control, as determined under 34 CFR 668.13, over the servicer.

(e) *Independent audits.* (1) A third-party servicer shall arrange for an independent audit of its administration of the FFEL program loan portfolio unless—

(i) The servicer contracts with only one lender or guaranty agency; and

(ii) The audit of that lender's or guaranty agency's FFEL programs involves every aspect of the servicer's administration of those FFEL programs.

(2) The audit must—

(i) Examine the servicer's compliance with the Act and applicable regulations;

(ii) Examine the servicer's financial management of its FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO's) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. Procedures for audits are contained in an audit guide developed by and available from the Office of Inspector General of the Department of Education; and

(iv) Except for the initial audit, be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be an annual audit of the servicer's first full fiscal year beginning after July 1, 1994, and include any period from the beginning of the first full fiscal year. The audit report must be submitted to the Secretary within six months of the end of the audit period. Each subsequent audit must cover the servicer's activities for the one-year period beginning no later than the end of the period covered by the preceding audit.

(3) Notwithstanding paragraph (e)(2)(iv) of this section the servicer shall have an audit performed at least once every two years if—

(i) The servicer administers less than $1,000,000 under the Title IV, HEA programs for the period covered by the audit; or

(ii) The servicer had no material exceptions identified in its most recently submitted audit report and that report was submitted in a timely fashion.

(4) The servicer is not required to have an audit performed for any year in which the servicer administers less than $250,000 of the principal value of the loans under the Title IV, HEA programs.

(5) Notwithstanding paragraphs (e)(3) and (4) of this section, the Secretary may, as the Secretary deems necessary, request any third-party servicer to have an audit performed on an annual basis.

(6) With regard to a third-party servicer that is a governmental entity, the audit required by this paragraph must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.

(7) With regard to a third-party servicer that is a nonprofit organization, the audit required by this paragraph must be conducted in accordance with Office of Management and Budget (OMB) Circular A–133, "Audit of Institutions of Higher Education and Other Nonprofit Institutions," as incorporated in 34 CFR 74.61(h)(3).

(f) *Contract responsibilities.* A lender that participates in the FFEL programs may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the requirements of this section. The lender must provide the Secretary with the name and address of any third-party servicer with which the lender enters into a contract and, upon request by the Secretary, a copy of that contract. A third-party servicer that is under contract with a lender to perform any activity for which the records in § 682.414(a)(3)(ii) are relevant to perform the services for which the servicer has contracted shall maintain current, complete, and accurate records pertaining to each loan that the servicer is under contract to administer on behalf of the lender. The records must be maintained in a system that allows ready identification of each loan's current status.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082; E.O. 12549 (3 CFR, 1987 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

39. The title of subpart G is revised to read as follows: Subpart G—Limitation, Suspension, or Termination of Lender or Third-party Servicer Eligibility and Disqualification of Lenders and Schools

40. Section 682.700 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination by the Secretary of the eligibility of an otherwise eligible lender to participate in the FFEL programs or the eligibility of a third-party servicer to enter into a contract with an eligible lender to administer any aspect of the lender's FFEL programs. The regulations in this subpart apply to a lender or third-party servicer that violates any statutory provision governing the FFEL programs or any regulations, special arrangements, agreements, or limitations prescribed under those programs. These regulations apply to lenders that participate only in a guaranty agency program, lenders that participate in the FFEL programs, and third-party servicers that administer aspects of a lender's FFEL program portfolio. These regulations also govern the Secretary's disqualification of a lender or school from participation in the FFEL programs under section 432 (h)(2) and (h)(3) of the Act.

(b) * * *

(1) (i) To a determination that an organization fails to meet the definition of "eligible lender" in section 435(d)(1) of the Act or the definition of "lender" in § 682.200, for any reason other than a violation of the prohibitions in section 435(d)(5) of the Act; or

(ii) To a determination that an organization fails to meet the standards in § 682.416;

* * * * *

41. Section 682.701 is amended by revising the definitions of "Limitation", "Suspension", and "Termination" to read as follows:

§ 682.701 Definitions of terms used in this subpart.

* * * * *

Limitation: The continuation of a lender's or third-party servicer's eligibility subject to compliance with special conditions established by agreement with the Secretary or a guaranty agency, as applicable, or imposed as the result of a limitation or termination proceeding.

Suspension: The removal of a lender's eligibility, or a third-party servicer's eligibility to contract with a lender or guaranty agency, for a specified period of time or until the lender or servicer fulfills certain requirements.

Termination: (1) The removal of a lender's eligibility for an indefinite period of time—

(i) By a guaranty agency; or

(ii) By the Secretary, based on an action taken by the Secretary, or a designated Departmental official under § 682.706; or

(2) The removal of a third-party servicer's eligibility to contract with a lender or guaranty agency for an indefinite period of time by the Secretary based on an action taken by the Secretary, or a designated Departmental official under § 682.706.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

42. Section 682.702 is amended by redesignating paragraph (c) as paragraph (d); adding a new paragraph (c); and removing "(c)" in paragraph (a) and adding, in its place "(d)" to read as follows:

§ 682.702 Effect on participation.

* * * * *

(c) A limitation imposes on a third-party servicer—

(1) A limit on the number of loans or accounts or total amount of loans that the servicer may service;

(2) A limit on the number of loans or accounts or total amount of loans that the servicer is administering under its contract with a lender or guaranty agency; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

* * * * *

43. Section 682.703 is amended by revising paragraph (a) and paragraph (b) introductory text to read as follows:

§ 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender or third-party servicer may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) Under the informal compliance procedure, the Secretary gives the lender or servicer a reasonable opportunity to—

* * * * *

44. Section 682.704 is amended by revising paragraphs (a)(1), (b), (c), and (d)(2)(ii) to read as follows:

§ 682.704 Emergency action.

(a) * * *

(1) Receives reliable information that the lender or a third-party servicer with which the lender contracts is in violation of applicable laws, regulations, special arrangements, agreements, or limitations pertaining to the lender's portfolio of loans;

* * * * *

(b) The Secretary begins an emergency action by notifying the lender or third-party servicer, by certified mail, return receipt requested, of the action and the basis for the action.

(c) The action becomes effective on the date the notice is mailed to the lender or third-party servicer.

(d) * * *

(2) * * *

(ii) Upon the written request of the lender or third-party servicer, the Secretary may provide the lender or servicer with an opportunity to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

45. Section 682.705 is revised to read as follows:

§ 682.705 Suspension proceedings.

(a) *Scope.* (1) A suspension by the Secretary removes a lender's eligibility under the FFEL programs or a third-party servicer's ability to enter into contracts with eligible lenders, and the Secretary does not guarantee or reinsure a new loan made by the lender or new loan serviced by the servicer during a period not to exceed 60 days from the date the suspension becomes effective, unless—

(i) The lender or servicer and the Secretary agree to an extension of the suspension period, if the lender or third-party servicer has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) *Notice.* (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender or servicer a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender or servicer of the Secretary's intent to suspend the lender's or servicer's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed date the suspension becomes effective, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender or servicer that the suspension will not take effect on the proposed date, except as provided in paragraph (c)(8) of this section, if the Secretary receives at least five days prior to that date a request for an oral hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender or servicer to correct voluntarily any alleged violations.

(c) *Hearing.* (1) If the lender or servicer does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Determines that the proposed suspension should be implemented and notifies the lender or servicer of the effective date of the suspension.

(2) If the lender or servicer requests an oral hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender or servicer. No proposed suspension takes effect until a hearing is held.

(3) The oral hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision based on findings of fact and conclusions of law that may suspend the lender's or servicer's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure (28 U.S.C. Appendix), is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender or servicer.

(7) The Secretary automatically reviews the initial decision of the presiding officer. The Secretary notifies the lender or servicer of the Secretary's decision by mail.

(8) A suspension takes effect on either a date that is at least 20 days after the date the notice of a decision imposing the suspension is mailed to the lender or servicer, or on the proposed effective date stated in the notice sent under paragraph (b) of this section, whichever is later.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

46. Section 682.706 is revised to read as follows:

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether a suspension proceeding has begun, by sending the lender or third-party servicer a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender or servicer of the Secretary's intent to limit or terminate the lender's or servicer's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed date the limitation or termination becomes effective, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender or servicer that the limitation or termination will not take effect on the proposed date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the limitation or termination should not take effect;

(vii) Asks the lender or servicer to correct voluntarily any alleged violations; and

(viii) Notifies the lender or servicer that the Secretary may collect any amount owed by means of offset against amounts owed to the lender by the Department and other Federal agencies.

(b) *Hearing.* (1) If the lender or servicer does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender or servicer of the date the limitation or termination becomes effective.

(2) If the lender or servicer requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender or servicer. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's or servicer's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence presented at or before the hearing and matters given official notice.

(6) If a termination action is brought against a lender or third-party servicer and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender or third-party servicer rather than terminating the lender's or servicer's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender or servicer.

(8) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender or servicer and the Secretary or designated Departmental official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties unless the lender, servicer, or designated Departmental official appeals the decision to the Secretary within this period.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer or third-party servicer or servicer's owner or officer, respectively, is convicted of or pled *nolo contendere* or guilty to a crime involving the unlawful acquisition, use, or expenditure of FFEL program funds, that conviction or guilty plea is grounds for terminating the lender's or servicer's eligibility, respectively, to participate in the FFEL programs.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

47. Section 682.707 is amended by revising paragraphs (a) introductory text and (d) to read as follows:

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender, third-party servicer, or designated Departmental official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(9)—

* * * * *

(d) If the presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties unless the lender, servicer, or designated Departmental official appeals the decision to the Secretary within this period.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer or third-party servicer or servicer's owner or officer, respectively, is convicted of or pled *nolo contendere* or guilty to a crime involving the unlawful acquisition, use, or expenditure of FFEL program funds, that conviction or guilty plea is grounds for terminating the lender's or servicer's eligibility, respectively, to participate in the FFEL programs.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

48. Section 682.708 is amended by revising paragraph (b) to read as follows:

§ 682.708 Evidence of mailing and receipt dates.

* * * * *

(b) If a lender or third-party servicer refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender or servicer refuses to accept the notice.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

49. Section 682.709 is revised to read as follows:

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender or third-party servicer to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender, or, in the case of a third-party servicer, the servicer or the lender that has a contract with a third-party servicer, improperly received, withheld, disbursed, or caused to be disbursed. A third-party servicer may be held liable up to the amounts specified in § 682.413(a)(2).

(c) If a final decision requires a lender, a lender that has a contract with a third-party servicer, or a third-party servicer to reimburse or make any payment to the Secretary, the Secretary may, without further notice or opportunity for a hearing, proceed to offset or arrange for another Federal agency to offset the amount due against any interest benefits, special allowance, or other payments due to the lender, the lender that has a contract with the third-party servicer, or the third-party servicer. A third-party servicer may be held liable up to the amounts specified in § 682.413(a)(2).

(Authority: 20 U.S.C. 1080, 1082, 1094)

50. Section 682.710 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 682.710 Removal of limitation.

(a) A lender or third-party servicer may request removal of a limitation imposed by the Secretary in accordance with the regulations in this subpart at any time more than 12 months after the date the limitation becomes effective.

(b) The request must be in writing and must show that the lender or servicer has corrected any violations on which the limitation was based.

* * * * *

(d)(1) If the Secretary denies the request or establishes other limitations, the lender or servicer, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender or third-party servicer may continue to participate in the FFEL programs, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

51. Section 682.711 is amended by revising paragraphs (a), (b)(1), (b)(2), (e), and the authority citation following the section to read as follows:

§ 682.711 Reinstatement after termination.

(a) A lender or third-party servicer whose eligibility has been terminated by the Secretary in accordance with the regulations in this subpart may request reinstatement of its eligibility at any time more than 18 months after the date the termination becomes effective.

(b) * * *

(1) The lender or servicer has corrected any violations on which the termination was based; and

(2) The lender or servicer meets all requirements for eligibility.

* * * * *

(e)(1) If the Secretary denies the lender's or servicer's request or allows reinstatement subject to limitations, the lender or servicer, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender or third-party servicer whose eligibility to participate in the FFEL programs is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

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February 17, 1994

Federal Register

Part III

Department of Education

Federal Direct Student Loan Program; Notice

DEPARTMENT OF EDUCATION

Federal Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Notice of standards for participation and solicitation of applications.

SUMMARY: The Secretary of Education issues standards for participation in the Federal Direct Student Loan (Direct Loan) Program for the 1995–1996 academic year, which is the academic year beginning July 1, 1995. The Secretary also invites applications from schools to participate in the Direct Loan Program for the 1995–1996 academic year. This notice relates to the Federal Direct Stafford Loan Program, the Federal Direct Unsubsidized Stafford Loan Program, and the Federal Direct PLUS Program, collectively referred to as the Direct Loan Program.

EFFECTIVE DATES: Deadline dates for the transmittal of applications are given elsewhere in this notice. The standards for participation in this notice are effective 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these standards, call or write to the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Barbara Ragon, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–5162. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Loan Reform Act of 1993, enacted on August 10, 1993, established the Direct Loan Program under the Higher Education Act of 1965, as amended (HEA). See Subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders.

Background

The statute directs the Secretary to exercise his discretion in the selection of schools so that the loans made under the Direct Loan Program will represent 40 percent of the new student loan volume for academic year 1995–1996, the second year of this program. See section 453(a)(2) of the HEA.

The standards for participation in the second year of the Direct Loan Program are issued in this notice in final form. They do not encompass standards, criteria, procedures, and other regulations to implement the Direct Loan Program in the 1995–1996 and subsequent academic years. Those program regulations will be developed through negotiated rulemaking to the extent practicable. The Secretary expects to publish final program regulations by December 1, 1994. The Secretary anticipates publishing standards for repayment of Direct Loans and standards for Federal Direct Consolidation Loans for the 1994–1995 academic year by May 1994. In addition, the Secretary anticipates publishing standards and procedures for loan origination for the 1995–1996 academic year by April 1994. Both sets of standards, which will be published in final form, will be determined with as much input from the higher education community as practicable.

A school may participate in both the Federal Family Education Loan (FFEL) Program and the Direct Loan Program or only in the Direct Loan Program. A school that is selected to participate in the Direct Loan Program but wishes to withdraw after publication of the rules for loan origination or the other program regulations for the 1995–1996 academic year will be allowed a reasonable period to do so.

I. Eligibility Requirements

A. Eligibility for Federal Family Education Loan Program

To participate in the Direct Loan Program in the 1995–1996 academic year, a school must be eligible to participate in the FFEL Program. Among other requirements, a school must have a cohort default rate of less than 25 percent for one of the three most recent fiscal years for which data are available, unless the school is exempt from this requirement under section 435(a)(3)(C) of the HEA. That section provides that until July 1, 1994, (a) Historically Black Colleges and Universities as defined in section 322(2) of the HEA, (b) tribally controlled community colleges within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, and (c) Navajo Community Colleges under the Navajo Community College Act are exempt from the cohort default rate requirement.

B. Default Rate Requirement for the Direct Loan Program

The Secretary believes that it is not in the best interest of the Direct Loan Program to allow a school to participate in the 1995–1996 academic year if there is a high probability that the school will lose its statutory eligibility to participate in the Federal student loan programs. Therefore, the Secretary will continue to select schools for the Direct Loan Program that also meet the stricter default rate requirements adopted for that program for the 1994–1995 academic year. Consequently, in order for a school to participate in the 1995–1996 academic year, the school must also have a cohort default rate of less than 25 percent in one of the two most recent fiscal years for which data are available at the time of the first selection decision following its application.

If a statutory exemption from the three-year default rate requirement in section 435(a) is extended beyond July 1, 1994, the Secretary reserves the right to waive the two-year cohort default rate requirement for any school exempted from the three-year requirement. The Secretary may select a school that is currently exempt from the statutory requirement on a provisional basis pending a decision by the Congress on extending the exemption.

C. Consortia

If schools apply as a consortium, each school must be an eligible institution. Schools in a consortium interact with the Secretary in the same manner as other schools with one exception: communication between the Secretary and the schools in the consortium is consolidated and channeled through a single point.

II. Selection Criteria

The Secretary will select schools to participate in the Direct Loan Program in the 1995–1996 academic year from among those that apply to participate. An application will be evaluated on the basis of whether the school is willing to participate electronically and whether it is capable of administering the program. From among eligible schools that meet these criteria, the Secretary will, to the extent possible, select schools that are reasonably representative in terms of several factors.

A. Electronic capability

Schools participating in the campus-based programs, which include the Federal Perkins Loan Program, the Federal Supplemental Educational Opportunity Grant Program, and the Federal Work-Study Program, must do so electronically. The majority of schools participating in the Federal Pell Grant Program also do so electronically. The Secretary intends to make maximum use of available technology in the Direct Loan Program and will therefore give strong consideration to whether the school is willing to participate in the program electronically.

B. Administrative Capability

In selecting schools for the 1995–1996 academic year, the Secretary will evaluate a school's demonstrated capability in administering student financial aid programs. While the Secretary retains discretion to evaluate all relevant circumstances, the Secretary has identified certain factors as indicators of a lack of administrative capability. These factors are listed in the standards for participation in this notice.

C. Representativeness

In selecting schools from among eligible applicants that are capable of administering the Direct Loan Program and are willing to participate electronically, the Secretary will select, to the extent practicable, schools that are reasonably representative in terms of several factors. These factors are listed in the standards for participation in this notice.

III. Selection Process

A. Currently Pending Applications

A school that has been selected to participate in the Direct Loan Program for the 1994–1995 academic year, and an eligible school that applied to participate in the program for that year but was not selected, need not submit an application for the 1995–1996 academic year. If an eligible school that applied but was not selected for participation in the first year wishes not to be considered for participation in the second year, it should notify the Secretary.

B. Rolling Application and Selection Process

At the request of the higher education community, the Secretary will employ a rolling application and selection process. As provided in the solicitation of applications in this notice, the Secretary has established up to three deadlines. The first is March 30, 1994. By June 15, 1994, the Secretary will select schools from all applications received by the first deadline, including applications submitted for the 1994–1995 academic year. If the loan volume of the selected schools represents less than 40 percent of the new student loan volume for the 1995–1996 academic year, the Secretary will select additional schools from applications submitted by July 1, 1994. The Secretary will select these schools by September 15, 1994. At this point, if the loan volume of all selected schools represents less than 40 percent of the new student loan volume for the 1995–1996 academic year, the Secretary will select additional schools from applications submitted by October 1, 1994. The Secretary will select these schools by November 15, 1994.

Shortly after each selection, the Secretary will publish lists of selected schools in the **Federal Register**. The Secretary emphasizes that the Department will stop selecting schools for the 1995–1996 academic year as soon as the new student loan volume of the selected schools comprises 40 percent of the total volume for that academic year. It is possible that the 40 percent cut-off will be reached by the first or second application deadline. Thus, potential participants are strongly encouraged to submit applications early.

Waiver of Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. While the Secretary has consulted with members of the higher education community in the development of the standards in this notice, the timely implementation of the Direct Loan Program for the 1995–1996 academic year does not permit the solicitation of further public comment.

The increase from five percent of new student loan volume in the first year of the program to 40 percent in the second year means that the number of schools participating in the program in the second year is likely to increase from 104 to over 2,000. Several thousand applications are expected to be reviewed. In order to determine each applicant's eligibility and evaluate its administrative capability, the Secretary must research several different types of records. The Secretary estimates that up to 75 days will be needed to complete the review of the expected volume of applications and make selection decisions.

To ensure successful implementation of the Direct Loan Program in the second year, schools need to receive program and software training, integrate Direct Loan Program materials into school publications, and interface Direct Loan software and origination procedures with the school's own systems and procedures. The Secretary believes that the training of school personnel, the development and distribution of materials, and the updating of direct loan systems and procedures must begin by June 1994. These preparations require that the Secretary initiate the school selection process as soon as possible.

In light of the preparations required to accommodate the dramatic growth in the Direct Loan Program in the 1995–1996 academic year, the Secretary finds that the requirements for the second-year implementation of the program do not permit the solicitation of further public comment on the standards for participation in that year. Therefore, the Secretary finds that such a solicitation would be impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

STANDARDS FOR PARTICIPATION IN THE DIRECT LOAN PROGRAM—1995–1996 ACADEMIC YEAR

I. Eligibility Requirements

A. In order to participate in the Direct Loan Program, a school must meet the eligibility requirements in section 435(a) of the HEA and in paragraph I.C. of these standards. If schools apply as a consortium, each school must meet these eligibility requirements.

B. Under section 435(a), a school must have a cohort default rate of less than 25 percent for at least one of the three most recent fiscal years for which data are available, unless the school is exempt from this requirement under section 435(a)(3)(C). That section provides that until July 1, 1994, (a) Historically Black Colleges and Universities are defined in section 322(2) of the HEA, (b) tribally controlled community colleges within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, and (c) Navajo Community Colleges under the Navajo Community College Act are exempt from the cohort default rate requirement. C.1. In order to participate in the Direct Loan Program, a school must also have a cohort default rate of less than 25 percent for one of the two most recent fiscal years for which data are available at the time of the first selection decision following its application.

2. If a statutory exemption from the three-year default rate requirement in section 435(a) is extended beyond July 1, 1994, the Secretary reserves the right to waive the two-year cohort default rate requirement for any school exempted from the three-year requirement.

II. Selection Criteria

A. The Secretary selects schools to participate in the Direct Loan Program in the 1995–1996 academic year from among those that apply to participate. In evaluating an application from a school that is eligible to participate in the Direct Loan Program, the Secretary considers two factors:

1. Whether the school is willing to participate (*i.e.* communicate with the Secretary) electronically.

2. Whether the school is capable of administering the Direct Loan Program. While the Secretary retains discretion to evaluate all relevant circumstances, any of the following factors would indicate that the school is not administratively capable:

a. The school is on the reimbursement system of payment for any of the programs under subparts 1 or 3 of part A, part C, or part E of title IV of the HEA.

b. The school is overdue on program or financial reports or audits required under title IV of the HEA.

c. The school is subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the HEA.

d. In the opinion of the Secretary, the school has had significant deficiencies for any of the programs under title IV of the HEA, including deficiencies demonstrated by audits or program reviews submitted or conducted during the five calendar years immediately preceding the date of application.

B. In selecting schools from among eligible applicants that are capable of administering the Direct Loan Program and are willing to participate electronically, the Secretary, to the extent possible, selects schools that are reasonably representative in terms of anticipated loan volume, length of academic program, control of the school, highest degree offered, size of student enrollment, geographic location, annual loan volume, and default experience.

III. Selection Process

A. A school that has been selected to participate in the Direct Loan Program for the 1994–1995 academic year, and an eligible school that applied to participate in the program for that year but was not selected, need not submit an application for the 1995–1996 academic year.

B. By June 15, 1994, the Secretary will select schools from all applications received by March 30, 1994.

C. If the loan volume of the selected schools represents less than 40 percent of the new student loan volume for the 1995–1996 academic year, the Secretary will select additional schools from applications submitted by July 1, 1994. The Secretary will select these schools by September 15, 1994.

D. If the loan volume of all selected schools represents less than 40 percent of the new student loan volume for the 1995–1996 academic year, the Secretary will select additional schools from applications submitted by October 1, 1994. The Secretary will select these schools by November 15, 1994. (20 U.S.C. 1087a *et seq.*)

Solicitation of Applications for Participation in the Direct Loan Program—1995–1996 Academic Year

Purpose of program: To provide loans to enable a student or parent to pay the costs of the student's attendance at a postsecondary school. Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders.

Eligible applicants: Colleges, universities, graduate and professional schools, and vocational and technical schools that meet the definition of an eligible institution under section 435(a) of the HEA.

Deadlines for transmittal of applications: March 30, 1994; July 1, 1994; and October 1, 1994.

For information contact: Barbara Ragon, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5162. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Application form and instructions: The Secretary has developed an application form for a school to use to apply to participate in the Direct Loan Program. A copy of the application form is included as an Appendix to this notice. On this form, the signature of the President or Chief Executive Officer (CEO) of the institution is required.

If a school desires to participate in both the FFEL Program and the Direct Loan Program, it must include an estimate of the percentage of the institution's anticipated new student loan volume that will be made under the Direct Loan Program. In addition, an applying school must indicate whether it is willing to participate in the Direct Loan Program electronically.

If a school is applying as part of a consortium, it must indicate the exact names of all schools in the consortium and the name of the destination point (school or outside entity) for the consortium.

In order to be considered for participation in the 1995–1996 academic year, a school must complete the application and submit it to the address below as soon as possible, but no later than the final deadline date.

A school may mail or fax the application to: U.S. Department of Education, Office of Postsecondary Education, ROB–3, Federal Direct Loan Task Force, room 4025, 400 Maryland Avenue, SW., Washington, DC 20202–5162, FAX: (202) 260–6718, (202) 260–6705, or (202) 260–6706.

(Catalog of Federal Domestic Assistance Number 84.268, Federal Direct Student Loan Program)

Dated: February 9, 1994.

Richard W. Riley,

Secretary of Education.

BILLING CODE 4000–01–P–M

Form Approved - O.M.B. No. 1840-0664 Expiration Date: 5/94

Federal Direct Student Loan Program School Participation Application

Section I: School Information

Please see Instructions on back of Application.

I-A. School Name: _____

I-B. Federal Family Education Loan Program Code: _____

I-C. Address of School President or Chief Executive Officer: _____

_____

_____

I-D. Telephone Number of School President or Chief Executive Officer: _____

I-E. FAX Number of School President or Chief Executive Officer: _____

I-F. IRS Employer Identification Number: _____

I-G. Printed Name of School President or Chief Executive Officer: _____

I-H. Signature of School President or Chief Executive Officer: _____

Section II: School Participation

II-A. Are you willing to participate in the Direct Loan Program electronically? Yes ☐ No ☐

II-B. Would you like to participate in both the Direct Loan Program and the FFEL Program? Yes ☐ No ☐

II-C. If you indicated "yes" in II-B, what percentage of estimated loan volume would be made under the Direct Loan Program? _____

If you are not applying as a consortium, then you do not need to complete Section III.

Section III: School Consortium Information

Note that all schools in the consortium must file an application and be sure to complete the matrix below.

Destination Point: _____ FFEL # of Destination Point (If a school) _____

NAME OF SCHOOL	FFEL # OF SCHOOL

Continue on a separate sheet of paper if necessary.

Direct Loans

Direct Loan Program Application Instructions

I-A School Name - Enter the name of your institution as it appears on the Federal Family Education Loan (FFEL) Program Participation Agreement (PPA). If the name of the school has changed since the PPA was signed, enter the school's new name, which should be currently on file with the Department.

I-B FFELP Code - Enter the six-digit school identification number under which your school receives its FFEL funds and FFEL default rate notifications. Note that only one FFEL code per application will be accepted. Institutions which receive funds from the Department under more than one FFEL code and are consequently notified of more than one default rate must apply for the Direct Loan Program under separate FFEL numbers.

I-C President/CEO Address - Enter the address of the president or chief executive officer who is authorizing the school's application to the Direct Loan Program. If the address of the school has changed since the PPA, enter the new address, which should be currently on file with the Department.

I-D Telephone Number - Enter the telephone number of the president or chief executive officer authorizing your school's application to the Direct Loan Program.

I-E FAX Number - Enter the FAX number of the president or chief executive officer authorizing your school's application to the Direct Loan Program.

I-F IRS Employer Identification Number - Enter your school's nine-digit IRS employer identification number. This is the tax identification number issued to businesses by the IRS.

I-G President/CEO Printed Name - Please print the name of the president or chief executive officer authorizing your school's application to the Direct Loan Program and whose signature is in the signature block.

I-H President/CEO Signature - The signature of the president or chief executive officer authorizes the school's application to the Direct Loan Program. This signature is necessary for a school to be considered for acceptance into the Direct Loan Program.

II-A Method of Participation - Check the box that indicates whether your school is willing to participate electronically in the Direct Loan Program. Electronic participation means that a school will process loans using either a mainframe or personal computer.

II-B Type of Participation - If your school wishes to administer all of its new loans through the Direct Loan Program, check the box which indicates No and skip question II-C. If your school wishes to administer some of its new loans through the FFEL Program and some of its new loans through the Direct Loan Program, check the box which indicates Yes and do not skip question II-C.

II-C Percentage of Loan Volume - Enter the percentage that you anticipate will be made under the Direct Loan Program. For example, if a school anticipates that roughly three quarters of the school's total loan volume will be committed to the Direct Loan Program, then the school should indicate 75% in this blank.

III Consortium Information - For a school to be a part of a consortium it must possess a six-digit school identification number under which it has received its FFEL funds and FFEL default rates. Schools which are part of a consortium will participate in the Direct Loan Program in the same manner as the other Direct Loan schools except that the communication between the Secretary and the schools in consortia is through a single destination point, which may be a school or another entity.

In the space provided please indicate the name (and FFEL number if the destination point is a school) of the destination point for your consortium. In the additional space provided, list the names and corresponding FFEL numbers of all members of your consortium.

Public reporting burden for this collection of information is estimated to average 12 minutes per response, the estimated burden to complete the statement is 20 minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project, 1840-0664, Washington, DC 20503.

Applications should be sent to:

U.S. Department of Education
Office of Postsecondary Education, ROB-3
Federal Direct Loan Task Force, Room 4025
400 Maryland Avenue, SW
Washington, DC 20202-5162
FAX (202) 260-6718, (202) 260-6705, or (202) 260-6706

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federal register

Thursday
February 17, 1994

Part IV

Department of Transportation

Coast Guard

33 CFR Part 151
Shipboard Oil Pollution Emergency Plans; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 93–030]

RIN 2115–AE44

Shipboard Oil Pollution Emergency Plans

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations to require all U.S. flag oil tankers of 150 gross tons and above and all other U.S. flag ships of 400 gross tons and above, to carry approved shipboard oil pollution emergency plans. These regulations would also require foreign oil tankers of 150 gross tons and above and other foreign ships of 400 gross tons and above, to carry evidence of compliance with Regulation 26 when in the navigable waters of the United States. This proposal would implement the requirements of Regulation 26 of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended (MARPOL 73/78). The purpose of Regulation 26 is to improve response capabilities and minimize the environmental impact of oil discharges from ships.

DATES: Comments must be received on or before April 18, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 93–030), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection and copying in room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline L. Sullivan, Project Counsel and Project Manager, Oil Pollution Act (OPA 90) Staff (G–MS), (202) 267–6404, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93–030) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal after reviewing the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal person involved in drafting this document is Ms. Jacqueline L. Sullivan, Project Counsel and Project Manager.

Background and Purpose

MARPOL 73/78

The Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*) (the Act) authorizes the Coast Guard to administer and enforce Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended (MARPOL 73/78). Annex I of MARPOL 73/78 is entitled "Regulations for the Prevention of Pollution by Oil" and is designed to prevent the discharge of oil into the marine environment. MARPOL 73/78 defines oil as petroleum in any form, including crude oil, fuel oil, sludge, oil refuse and refined products; it does not include animal or vegetable based oil or noxious liquid substances.

Regulation 26

The Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) adopted Regulation 26 of Annex I of MARPOL 73/78 at its 31st session in July 1991. Regulation 26 requires every oil tanker of 150 gross tons and above and every other ship of 400 gross tons and above to carry on board a shipboard oil pollution emergency plan approved by its flag state. This requirement entered into force for party states, including the United States, on April 4, 1993, for new ships and enters into force on April 4, 1995, for existing ships.

The 32nd session of IMO in March 1992 adopted a set of guidelines (Resolution MEPC.54(32)) with more specific information for the preparation of shipboard oil pollution emergency plans. The guidelines are intended to assist parties to Annex I of MARPOL 73/78 in developing regulations for domestic implementation of Regulation 26, and are the basis of this proposal.

Shipboard Oil Pollution Emergency Plans

Regulation 26 requires that plans be prepared according to the guidelines developed by IMO and written in the working language of the ship's master and officers. Plans must consist at least of—

(1) The procedure to be followed by the master or other persons having charge of the ship to report an oil pollution incident, as required in article 8 and Protocol I of MARPOL 73/78;

(2) The list of authorities or persons to be contacted in the event of an oil pollution incident;

(3) A detailed description of the actions to be taken immediately by persons on board to reduce or control the discharge of oil following the incident; and

(4) The procedures and point of contact on the ship for coordinating shipboard activities with national and local authorities in responding to the pollution.

The Regulation 26 guidelines expand on the four mandatory provisions of Regulation 26, and also address the following non-mandatory provisions: Plans and diagrams, ship-carried response equipment, public affairs, recordkeeping, plan review, and plan testing.

Definitions

The proposed regulations would be inserted in part 151 of title 33 of the Code of Federal Regulations (CFR), which implements other provisions of MARPOL 73/78. Most of the terms used in the proposal are currently defined in 33 CFR 151.05. Some of the more important definitions are repeated here as an aid to understanding this proposal.

Ship means a vessel of any type whatsoever, operating in the marine environment. This includes hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-propelled or not, and fixed or floating drilling rigs and other platforms.

Oceangoing ship means a ship that—

(1) Is operated under the authority of the United States and engages in international voyages;

(2) Is operated under the authority of the United States and is certificated for ocean service;

(3) Is operated under the authority of the United States and is certificated for coastwise service beyond 3 miles from land;

(4) Is operated under the authority of the United States and operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in 33 CFR 2.05; or

(5) Is operated under the authority of a country other than the United States.

The term "oceangoing" ship is used to apply MARPOL 73/78 requirements in 33 CFR parts 151 and 155, while the term "seagoing" ship is used in 33 CFR part 157. Both terms have been used to implement the Act, which applies Annexes I and II of MARPOL 73/78 only to "seagoing" vessels in 33 U.S.C. 1903. For the purposes of this proposed regulation, the two terms are synonymous.

Oil tanker means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes combination carriers and any "chemical tanker" as defined in Annex II of MARPOL 73/78 when it is carrying a cargo or part cargo of oil in bulk.

The proposed regulations define the following terms:

New ship means a ship delivered on or after April 4, 1993.

Shipboard oil pollution emergency plan means a plan prepared, submitted, and maintained according to the provisions proposed in §§ 151.26 through 151.28 of this NPRM for United States ships; or maintained according to the provisions proposed in § 151.29(a) of this NPRM for foreign ships operated under the authority of a country that is party to MARPOL 73/78 while in the navigable waters of the United States.

Discussion of Proposed Amendments

The proposed regulations would apply to U.S. ships because the Act requires the Coast Guard to prescribe regulations implementing shipboard oil pollution emergency plans for ships of U.S. registry or nationality, or operating under the authority of the United States. In addition, the proposal would apply to Mobile Offshore Drilling Units (MODUs) only when they are not engaged in their primary mode of operation. Any fixed or floating drill rigs, or other offshore installations when engaged in the exploration, exploitation, or associated offshore processing of seabed mineral resources, which have oil pollution emergency plans approved by another Federal or State agency will be considered to be in compliance with Regulation 26.

Foreign ships operating in U.S. waters must also comply with Regulation 26. Ships of foreign countries that are party to MARPOL 73/78 must have a plan approved by their flag state.

Although only 10 percent of the world's tonnage belongs to states not party to Annex I of MARPOL 73/78, 33 U.S.C. 1902(c) requires that regulations be written to ensure that the ships of non-party states do not receive more favorable treatment than vessels of parties to MARPOL 73/78. In accordance with 33 CFR 151.21, these ships must comply with MARPOL 73/78, and carry evidence of such compliance issued by the government of a country that is party to MARPOL or by a recognized classification society. The Coast Guard may review the shipboard oil pollution emergency plans of these ships.

Regulation 26 does not apply to warships; naval auxiliary ships; or other ships owned or operated by a country when engaged in noncommercial service. In addition, the proposed regulation would exempt barges or other ships which are so constructed or operated that no oil can be discharged from any portion thereof, intentionally or unintentionally, including but not limited to, oil discharged as the result of the ships' casualties. This exemption is consistent with similar exemptions from certain MARPOL Annex I based requirements under 33 CFR parts 151 and 155. See 33 CFR §§ 151.17(d), 151.25(1), 155.350(c), and 155.370(e).

In accordance with 33 CFR 151.09, Canadian and U.S. ships operated exclusively on the Great Lakes or their connecting and tributary waters, or exclusively on the internal waters of the U.S. are not required to comply with MARPOL 73/78. This proposed regulations preserves the exclusion of ships operating exclusively in these waters. However, Canada recently acceded in Annexes I and II of MARPOL 73/78 and may apply MARPOL 73/78 requirements to ships in Canadian waters. Consequently, the Coast Guard is reconsidering whether Annexes I and II of MARPOL 73/78, including Regulation 26 provisions, should apply to ships operating in these waters. The Coast Guard solicits comments on the following questions pertaining to ships operating exclusively on the Great Lakes of North America or their connecting and tributary waters:

1. What will be the economic impact of requiring these ships to prepare, submit, and maintain shipboard oil pollution emergency plans?

2. Would an effective date of April 5, 1995, provide an owner of operator of a ship adequate time to prepare and submit a shipboard oil pollution emergency plan?

3. What will be the economic impact of these regulations on "small entities," under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b))?

Comments are not limited to the above and are invited on any aspect of implementing Regulation 26 on the Great Lakes.

This proposal addresses only the four mandatory provisions of Regulation 26 that must be included in shipboard emergency response plans: (1) An outline of procedures for reporting pollution incidents, (2) a list of authorities or persons to be contacted in the event of an incident, (3) a detailed description of the actions to be taken immediately by persons on board to reduce or control discharge of oil following an incident, and (4) a procedure for coordinating response efforts with national and local authorities. The four mandatory provisions of Regulation 26 are the basic items necessary for plans to serve as a tool for shipowners.

Proposed § 151.26(b)(6)(ii)(A) of this NPRM would require each plan to include a separate appendix listing agencies or officials of coastal state administrations responsible for receiving and processing incident reports. The list issued by the MEPC as MEPC/Circ.267 may assist shipowners in complying with this provision. Although inclusion of the MEPC list, or a similar successor list issued by IMO, is not mandated by the proposed regulation, its use would be considered prime facie evidence of compliance with this requirement for enforcement purposes. If a shipowner includes an alternate list in the plan, it should contain comparable information.

The non-mandatory provisions of the Regulation 26 guidelines provide guidance on additional information that could be included in the shipboard oil pollution emergency plans, such as diagrams, response equipment, public affairs practices, recordkeeping, regular plan review by the shipowner and exercising. The Coast Guard is soliciting comments on whether plans should be

required to address any or all of the non-mandatory provisions, particularly those addressing response equipment, plan review, and plan testing.

This proposed regulation would require a shipowner to prepare and submit two English language copies of its plan to the Captain of the Port (COTP) or Officer in Charge, Marine Inspection (OCMI) at the ship's home port for review and approval. The approval period for the plan is five years. When the approval period expires, the shipowner would be required to resubmit the entire plan for review and reapproval. The proposed regulation would also require a shipowner to review its plan annually and submit a letter to the COTP or OCMI at the ship's home port certifying that the review has been completed.

Some of the provisions in this proposed regulation are similar to those of the vessel response plan (VRP) interim final rule (IFR) (58 FR 7376; February 5, 1993) issued under the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380). The OPA 90 VRP IFR establishes requirements for tank vessels which include many of the non-mandatory provisions of the Regulation 26 guidelines, in addition to many of the mandatory provisions. Like the VRP IFR, this proposed regulation would require resubmission of shipboard oil pollution emergency plans every five years. However, differences between this proposed regulation and the VRP IFR remain. Some of the more important differences include the following:

(1) This proposed regulation would apply to oil tankers of 150 gross tons and above and other ships of 400 gross tons and above, while the VRP IFR requirements apply to all tank vessels which carry oil in bulk as cargo, regardless of size;

(2) This proposed regulation would require the creation and maintenance of a list of contacts in all regular ports of call worldwide. The VRP IFR requires a complete geographic-specific listing of contacts and response resources for U.S. ports only.

(3) This proposed regulation would require planning the response to all oil discharges, including the ship's fuel oil, while the VRP IFR applies only to oil carried in bulk as cargo.

(4) This proposed regulation would require procedures and a point of contact on the ship for coordinating response action with shore-based authorities. The VRP IFR generally requires more structured (formalized) arrangements with response organizations in all U.S. ports of call, as well as a shore-based qualified individual to obligate funds on the part of the shipowner or operator.

Tank vessel owners or operators may find it helpful to refer to § 155.1030 of the VRP IFR for additional requirements. The VRP IFR allows for the submission of a vessel response plan which complies with both sets of response plan requirements. This proposed regulation would require a combined shipboard oil pollution emergency plan and vessel response plan to be submitted to Coast Guard Headquarters for review and approval. To facilitate compliance, the approval period is the same for both plans.

For foreign flag tank vessels operating in U.S. waters, the OPA 90 VRP requirements may be considered a local requirement under section 3.1 of the guidelines issued as Resolution MEPC.54(32), and may be included as an appendix to a Regulation 26 plan.

On March 5, 1993, the Coast Guard released Navigation and Vessel Inspection Circular (NVIC) No. 2–93 to provide guidance to the affected community on compliance before Regulation 26 became effective for new ships on April 4, 1993. The NVIC has no regulatory force; it simply provides guidance pending the issuance of regulations. The Coast Guard also issued Change 1 to NVIC 2–93 on July 28, 1993, providing shipowners with the current list of national operational contact points adopted by the MEPC.

Submission of Shipboard Oil Pollution Emergency Plans

Owners or operators of all U.S. Ships to which this regulation applies must prepare and submit two English language copies of the shipboard oil pollution emergency plans to the appropriate Coast Guard Captain of the Port (COTP) or Officer in Charge, Marine Inspection (OCMI) for review and approval. Under Regulation 26, owners or operators of new ships should have submitted plans by April 4, 1993. The term "new ship" means a ship that has been delivered on or after April 4, 1993. For ships delivered after April 4, 1993, plans must be submitted at least 60 days before the owners or operators intend to begin operations. Owners or operators of existing ships will be required to submit plans at least 60 days prior to April 4, 1995, and must have an approved plan on board by April 4, 1995. The term "existing ship" is currently defined in § 151.05 as "a ship that is not a new ship." Therefore, for the purposes of this proposed regulation, "existing ship" means a ship that has been delivered before April 4, 1993. Plans must be resubmitted every five years for review and approval.

Owners or operators of tank vessels that must comply with OPA 90 VRP requirements may meet the requirements of Regulation 26 by submitting one response plan, pursuant to § 155.1030, if the plan addresses the following Regulation 26 requirements in addition to the OPA 90 requirements: (1) Discharges of all oils defined under Annex I of MARPOL 73/78, whether carried as cargo or as fuel; (2) contacts for all coastal state and regular ports of call worldwide; and (3) the procedures and point of contact on the ship for coordinating shipboard action with national and local authorities in combating the pollution. The letter of transmittal should clearly state that the plan is intended to comply with the requirements of both Regulation 26 and OPA 90. Combined Regulation 26 and OPA 90 VRP plans must be submitted to the Coast Guard at the following address: Commandant (G–MEP–6), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f)(1) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that Order. It is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). A draft evaluation has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** This evaluation is summarized below. This proposal will not result in annual costs of $100 million or more; will have no significant adverse effects on competition, employment, or other aspects of the economy, and will not result in a major increase in costs and prices.

The Coast Guard estimates that 1,534 U.S. flag ships must comply with Regulation 26 of Annex I of MARPOL 73/78. The Coast Guard assumes that 1,234 existing non-tank vessels will prepare Shipboard Oil Pollution Emergency Plans to meet the requirements of Regulation 26. In addition, the Coast Guard assumes that 284 existing tank vessels will prepare and submit combined Shipboard Oil Pollution Emergency Plans and OPA 90 Vessel Response Plans. The Coast Guard estimates that 18 ships will be constructed in the U.S. between April 4, 1993 and April 4, 1995. Therefore, the total number of ships which must comply with this regulation will equal 1,534.

Based on hourly cost data of those required to comply with Regulation 26, it is estimated to cost $4,320.00 to prepare a Shipboard Oil Pollution Emergency Plan. It is estimated to cost $855.00 to prepare the additional requirements of a VRP that complies with MARPOL Regulation 26. The total annualized cost to respondents for initial plan preparation between 1993 and 1995 is estimated to be $5,642,820. The Coast Guard will review submitted Shipboard Oil Pollution Emergency Plans to ensure compliance with Regulation 26. Total government annualized costs associated with review of the Shipboard Oil Pollution Emergency Plans are estimated to be $78,663 between 1993 and 1995. The net present value of the costs of the proposed regulation, discounted at 7 percent, is $4,675,060.

The dollar value of direct societal benefits derived from the proposed rule are not quantifiable, but may be substantial. Historical data is insufficient to quantify benefits. However, this program should improve response capabilities and minimize the environmental impact of oil discharges from ships. If efficiencies in the cleanup of spilled oil go up by only a small percentage, the savings that would accrue to the maritime industry and to the public would exceed the costs.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard expects that few new cost will be associated with this rule because few small entities own ships of the gross tonnage to which this proposed regulation would apply. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection of information requirements in the following sections: 151.26, 151.27, and 151.28. The following particulars apply:

DOT No.: 2115.

OMB Control No.: 2115–XXXX.

Administration: U.S. Coast Guard.

Title: Shipboard Oil Pollution Emergency Plans.

Need for Information: This proposed regulation would direct shipowners to prepare, submit, and maintain shipboard oil pollution emergency plans.

Proposed Use of Information: The Coast Guard will review submitted plans to ensure compliance with Regulation 26 of Annex I of MARPOL 73/78. The information contained in the plans will improve the capabilities of individual vessel operators to respond to oil spills and will enhance cooperative response efforts of the vessel operators and the government agencies. Also, Coast Guard issuance of a vessel's International Oil Pollution Prevention (IOPP) Certificate evidencing compliance with Regulation 26 will facilitate the oceangoing trade of U.S. vessels with foreign countries that are parties to MARPOL 73/78.

Frequency of Response: Plans must be resubmitted every 5 years for review and approval. However, if there are any revisions or amendments requiring approval, the plan must be resubmitted as appropriate. In addition, a letter certifying that the annual review has been completed must be submitted annually.

Burden Estimate: 125,396 hours.

Respondents: All owners of U.S. flag oil tankers of 150 gross tons and above and all other U.S. flag ships of 400 gross tons and above.

Form(s): None.

Average Burden Hours per Respondent: 82 hours.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES.**

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal is expected to contribute to the reduction of the occurrence of ship-generated oil spills in the marine environment. A Categorical Exclusion Determination is available in the docket for inspection of copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE

Subpart A—Implementation of MARPOL 73/78

1. The authority citation for 33 CFR part 151, subpart A, continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(c) and 1903(b); Executive Order 11735; 3 CFR 1971–1975 Comp. p. 793; 49 CFR 1.46.

2. Section 151.05 is amended by adding paragraph (5) under the definition of *New ship* and adding a definition of *Shipboard oil pollution emergency plan* to read as follows:

Subpart A—Implementation of MARPOL 73/78

§ 151.05 Definitions

* * * * *

New ship means a ship—

* * * * *

(5) For the purposes of §§ 151.26 through 151.28, which is delivered on or after April 4, 1993.

* * * * *

Shipboard oil pollution emergency plan means a plan prepared, submitted, and maintained according to the provisions of §§ 151.26 through 151.28 of this subpart for United States ships or maintained according to the provisions of § 151.29(a) of this subpart for foreign ships operated under the authority of a country that is party to MARPOL 73/78 while in the navigable waters of the United States.

* * * * *

3. Section 151.09 is amended by adding paragraphs (c) and (d) to read as follows:

§ 151.09 Applicability.

* * * * *

(c) Sections 151.26 through 151.28 apply to each United States oceangoing ship specified in paragraphs (a)(1) through (a)(4) of this section which is—

(1) An oil tanker of 150 gross tons and above or other ship of 400 gross tons and above; or

(2) A fixed or floating drilling rig or other platform, when not engaged in the exploration, exploitation, or associated offshore processing of seabed mineral resources.

(d) Sections 151.26 through 151.28 do not apply to—

(1) The ships specified in paragraph (b) of this section;

(2) Any barge or other ship which is constructed or operated in such a manner that no oil can be discharged from any portion thereof, intentionally or unintentionally, including, but not limited to, oil discharged as the result of a casualty to the ship.

§ 151.21 [Amended]

4. Section 151.21(a) is amended by adding the words "that is party to MARPOL 73/78" in the last sentence after the word "country".

5. Sections 151.26 through 151.29 are added to read as follows:

§ 151.26 Shipboard oil pollution emergency plans.

(a) *Language of the plan.* The shipboard oil pollution emergency plan must be available on board in English and in the working language of the master and the officers of the ship, if different.

(b) *Plan format.* The plan must contain the following six sections. A seventh non-mandatory section may be included at the shipowner's discretion:

(1) *Introduction.* This section must contain the following introductory text:

"(i) This plan is written in accordance with the requirements of Regulation 26 of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).

(ii) The purpose of the plan is to provide guidance to the master and officers on board the ship with respect to the steps to be taken when a pollution incident has occurred or is likely to occur.

(iii) The plan contains all information and operational instructions required by the guidelines (Resolution MEPC.54(32)). The appendices contain names, telephone numbers, telex numbers, etc. of all contacts referenced in the plan, as well as other reference material.

(iv) This plan has been approved by the Coast Guard and, except as provided below, no alteration or revision may be made to any part of it without the prior approval of the Coast Guard.

(v) Changes to the seventh section of the plan and the appendices do not require approval by the Coast Guard. The appendices must be maintained up-to-date by owners, operators, and managers."

(2) *Preamble.* This section must contain an explanation of the purpose and use of the plan and indicate how the shipboard plan relates to other shore-based plans.

(3) *Reporting requirements.* This section of the plan must include information relating to the following:

(i) *When to report.*

(A) A report shall be made whenever an incident involves—

(*1*) A discharge of oil resulting from damage to the ship or its equipment, or for the purpose of securing the safety of a ship or saving life at sea;

(*2*) A discharge of oil during the operation of the ship in excess of the quantities or instantaneous rate permitted in § 151.10 of this subpart or in § 157.37 of this subchapter; or

(*3*) A probable discharge. Factors to be considered in determining whether a discharge is probable include, but are not limited to: Ship location and proximity to land or other navigational hazards, weather, tide, current, sea state, and traffic density. The master must make a report in cases of collision, grounding, fire, explosion, structural failure, flooding or cargo shifting, or an incident resulting in failure or breakdown of steering gear, propulsion, electrical generating system, or essential shipborne navigational aids.

(B) [Reserved]

(ii) *Information required.* This section of the plan must include a notification form, such as that depicted in Table 151.26(b)(3)(ii)(A), that contains information to be provided in the initial and follow-up notifications. The initial notification should include as much of the information on the form as possible, and supplemental information, as appropriate. However, the initial notification must not be delayed pending collection of all information. Copies of the form must be placed at the location(s) on the ship from which notification may be made.

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TABLE 151.26(b)(3)(ii)(A)

SHIPBOARD OIL POLLUTION EMERGENCY PLAN SAMPLE FORMAT FOR INITIAL NOTIFICATION	
AA (SHIP NAME, CALL SIGN, FLAG)	
BB (DATE AND TIME OF EVENT, UTC) D D H H M M	
CC (POSITION, LAT, LONG) d d m m [N][S] d d d m m [E][W]	DD (BEARING, DISTANCE FROM LANDMARK) d d d N miles
EE (COURSE) d d d	FF (SPEED, KNOTS) kn kn 1/10
LL (INTENDED TRACK)	
MM (RADIO STATIONS(S) GUARDED)	
NN (DATE AND TIME OF NEXT REPORT, UTC) D D H H M M	
PP (TYPE AND QUANTITY OF CARGO/BUNKERS ON BOARD)	
QQ (BRIEF DETAILS OF DEFECTS/DEFICIENCIES/DAMAGE)	

TABLE 151.26(b)(3)(ii)(A) Continued

RR (BRIEF DETAILS OF POLLUTION, INCLUDING ESTIMATE OF QUANTITY LOST)
SS (BRIEF DETAILS OF WEATHER AND SEA CONDITIONS) WIND — DIRECTION ☐☐☐ / SPEED (Beaufort) SWELL — DIRECTION ☐☐☐ / HEIGHT (m)
TT (CONTACT DETAILS OF SHIP'S OWNER/OPERATOR/AGENT)
UU (SHIP SIZE AND TYPE) LENGTH: (m) BREADTH: (m) DRAUGHT: (m) TYPE:
XX (ADDITIONAL INFORMATION) BRIEF DETAILS OF INCIDENT: NEED FOR OUTSIDE ASSISTANCE: ACTIONS BEING TAKEN: NUMBER OF CREW AND DETAILS OF ANY INJURIES: DETAILS OF P&I CLUB & LOCAL CORRESPONDENT: OTHERS:

Note: The alphabetical reference letters in the above format are from "General principles for ship reporting systems and ship reporting requirements, including guidelines for reporting incidents involving dangerous goods, harmful substances and/or marine pollutants" adopted by the International Maritime Organization by resolution A648(16). The letters do not follow the complete alphabetical sequence as certain letters are used to designate information required for other standard reporting formats, e.g. those used to transmit route information.

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(B) [Reserved]

(iii) *Whom to contact.*

(A) This section of the plan must make reference to the appendices listing coastal state contacts, port contacts, and ship interest contacts.

(B) For actual or probable discharges of oil, the reports must comply with the procedures described in MARPOL Protocol I.

(4) *Steps to control a discharge.* This section of the plan must contain a discussion of procedures to address the following scenarios:

(i) *Operational spills:* The plan must outline procedures for removal of oil spilled and contained on deck. The plan must also provide guidance to ensure proper disposal of recovered oil and clean-up materials;

(A) *Pipe leakage:* The plan must provide specific guidance for dealing with pipe leakage;

(B) *Tank overflow:* The plan must include procedures for dealing with tank overflows. It must provide alternatives such as transferring cargo or bunkers to empty or slack tanks, or readying pumps to transfer the excess ashore;

(C) *Hull leakage:* The plan must outline procedures for responding to spills due to suspected hull leakage, including guidance on measures to be taken to reduce the head of oil in the tank involved either by internal transfer or discharge ashore. Procedures to handle situations where it is not possible to identify the specific tank from which leakage is occurring must also be provided. Procedures for dealing with suspected hull fractures must be included. These procedures must take into account the effect of corrective actions on hull stress and stability.

(ii) *Spills resulting from casualties:* Each of the casualties listed in this paragraph must be treated in the plan as a separate section comprised of various checklists or other means which will ensure that the master considers all appropriate factors when addressing the specific casualty. These checklists must be tailored to the specific ship. In addition to the checklists, specific personnel assignments for anticipated tasks must be identified. Reference to existing fire control plans and muster lists is sufficient to identify personnel responsibilities in the following situations:

(A) Grounding;

(B) Fire or explosion;

(C) Collision;

(D) Hull failure; and

(E) Excessive list.

(iii) In addition to the checklist and personnel duty assignments required by paragraph (b)(4)(ii) of this section, the plan must include—

(A) Priority actions to ensure the safety of personnel and the ship, assess the damage to the ship, and take appropriate further action;

(B) Information for making damage stability and longitudinal strength assessments, or contacting classification societies to acquire such information. Nothing in this section shall be construed as creating a requirement for damage stability plans or calculations beyond those required by law or regulation; and

(C) Lightening procedures to be followed in cases of extensive structural damage. The plan must contain information on procedures to be followed for ship-to-ship transfer of cargo. Reference may be made in the plan to existing company guides. A copy of such company procedures for ship-to-ship transfer operations must be kept in the plan. The plan must address the coordination of this activity with the coastal or port state, as appropriate.

(5) *National and local coordination.* This section of the plan must contain information to assist the master in initiating action by the coastal State, local government, or other involved parties. This information must include guidance to assist the master with organizing a response to the incident should a response not be organized by the shore authorities. Detailed information for specific areas may be included as appendices to the plan.

(6) *Appendices.* Appendices must include the following information:

(i) Twenty-four hour contact information and alternates to the designated contacts. These details must be routinely updated to account for personnel changes and changes in telephone, telex, and telefacsimile numbers. Clear guidance must also be provided regarding the preferred means of communication.

(ii) The following lists, each identified as a separate appendix:

(A) A list of agencies or officials of coastal state administrations responsible for receiving and processing incident reports;

(B) A list of agencies or officials in regularly visited ports. When this is not feasible, the master must obtain details concerning local reporting procedures upon arrival in port; and

(C) A list of all parties with a financial interest in the ship, including, but not limited to, ship and cargo owners, insurers, and salvage interests.

(D) A list which specifies who will be responsible for informing the parties listed and the priority in which they must be notified.

(iii) A record of annual reviews and changes.

(7) *Non-mandatory provisions.* If this section is included by the shipowner, it should include the following types of information or any other information that may be appropriate:

(i) Diagrams;

(ii) Response equipment;

(iii) Public affairs practices;

(iv) Recordkeeping; and

(v) Plan exercising.

§ 151.27 Plan submission and approval.

(a) No ship subject to this part may operate unless it carries on board a shipboard oil pollution emergency plan approved by the Coast Guard. For new ships, plans must be submitted at least 60 days before the ship intends to begin operations. For existing ships, plans must be submitted at least 60 days prior to April 4, 1995, and an approved plan must be on board by April 4, 1995.

(b) An owner or operator of a ship to which this part applies shall prepare and submit two English language copies of the shipboard oil pollution emergency plan to the Captain of the Port (COTP) or Officer in Charge, Marine Inspection (OCMI) at the ship's home port, for review and approval.

(c) Combined shipboard oil pollution emergency plans and response plans meeting the requirements of subparts D and E of part 155 of this chapter must be prepared according to § 155.1030(j) of this chapter and submitted to the Coast Guard at the following address: Commandant (G–MEP–6), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

(d) If the Coast Guard determines that the plan meets all requirements of this section, the Coast Guard will notify the owner or operator of the ship and return one copy of the approved plan along with an approval letter. The approval period for a plan expires 5 years after the plan approval date.

(e) If the Coast Guard determines that the plan does not meet all of the requirements, the Coast Guard will notify the owner or operator of the plan's deficiencies. The owner or operator must then resubmit two copies of the revised plan, or corrected portions of the plan, within 45 days of receipt of the notice of deficiency.

§ 151.28 Plan review and revision.

(a) An owner or operator of a ship to which this part applies must review the shipboard oil pollution emergency plan annually and submit a letter to the COTP or OCMI at the ship's home port certifying that the review has been completed. This review must occur within 1 month of the anniversary date of Coast Guard approval of the plan.

(b) The owner or operator shall submit any plan amendments to the COTP or OCMI at the ship's home port for information or approval.

(c) The entire plan must be resubmitted to the COTP or OCMI at the ship's home port for reapproval 6 months before the end of the Coast Guard approval period identified in § 151.27(d) of this subpart.

(d) A record of annual review and changes to the plan must be maintained in the appropriate appendices.

(e) The owner or operator shall submit revisions or amendments to an approved plan for information or approval after there is—

(1) A significant change in the ship's configuration that affects the information included in the plan;

(2) A significant change in the ship's procedures to control a discharge; and

(3) A change in the owner or operator of the ship; or

(4) Any other significant changes that affect implementation of the plan.

§ 151.29 Foreign ships.

(a) Each oil tanker of 150 gross tons and above and each other ship of 400 gross tons and above, operated under the authority of a country other than the United States that is party to MARPOL 73/78, shall carry on board a shipboard oil pollution emergency plan approved by its flag state while in the navigable waters of the United States or while at a port or terminal under the jurisdiction of the United States.

(b) Each oil tanker of 150 gross tons and above and each other ship of 400 gross tons and above, operated under the authority of a country that is not a party to MARPOL 73/78, must comply with § 151.21 of this subpart while in the navigable waters of the United States.

Dated: February 10, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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February 17, 1994

Part V

Department of Transportation

Coast Guard

33 CFR Part 150
Louisiana Offshore Oil Port: Expansion of Deepwater Port Safety Zone Boundaries; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 150

[CGD 93–080]

RIN 2115–AE69

Louisiana Offshore Oil Port: Expansion of Deepwater Port Safety Zone Boundaries

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to expand the boundaries of the safety zone for the Louisiana Offshore Oil Port (LOOP). A deepwater port safety zone constitutes an area within which the erection of structures or mobile drilling operations for the exploration for or extraction of oil or gas is prohibited. An expanded safety zone would enlarge the approach to the terminal portion of the safety zone and provide more unobstructed maneuvering room for vessels arriving and departing from LOOP. This would reduce the risk of a marine casualty and subsequent pollution.

DATES: Comments must be received on or before March 21, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 93–080), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406, at the same address, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Walter (Bud) Hunt, Project Manager, Oil Pollution Act (OPA 90) Staff, (G–MS–1), (202) 267–6740. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93–080), and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard encourages individuals or organizations that commented on the notice of petition for rulemaking to submit comments on this notice of proposed rulemaking (NPRM).

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place to be announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Walter (Bud) Hunt, Project Manager, and Jacqueline Sullivan, Project Counsel, Oil Pollution Act (OPA 90) Staff, (G–MS–1).

Background and Purpose

The Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*) requires the Secretary of Transportation to designate a zone of appropriate size around and including any deepwater port for the purpose of navigational safety and to protect the marine environment. This responsibility was delegated to the Coast Guard in 49 CFR 1.46(s). A deepwater port safety zone is designed to promote safety of life and property, marine environmental protection and navigational safety at any deepwater port and adjacent waters. No installations, structures, or uses that are incompatible with port operations are permitted in a deepwater safety zone. 33 CFR part 150 establishes the geographic boundaries of the safety zone for the Louisiana Offshore Oil Port (LOOP) in Annex A and provides for the modification of safety zone boundaries as experience is gained in deepwater port operations. Changes in a safety zone at a deepwater port are subject to notification and consideration of the views of interested parties.

On December 29, 1980, the Coast Guard established a safety zone to protect three single-point moorings at the Louisiana Offshore Oil Port (LOOP) (45 FR 85644). The rulemaking was considered "nonsignificant" under existing Department of Transportation (DOT) and Coast Guard regulatory guidelines. On May 13, 1982, the Coast Guard established a safety fairway to provide unobstructed approach for vessels transmitting to the LOOP safety zone (47 FR 20580).

On January 16, 1984, LOOP submitted to the Coast Guard a request for a waiver of the requirements of 33 CFR 150.337(a) which prohibits a tanker from entering or departing a safety zone by other than a designated safety fairway. LOOP submitted to the Coast Guard chart 11359 and indicated two uncharted areas adjacent to the safety zone which they referred to as excursion zones. LOOP requested that vessels calling at the deepwater port be provided with additional maneuvering room by allowing use of these excursion zones when departing or entering the LOOP safety zone. Deviations from the safety fairway into these zones came to be known as "excursions." On February 20, 1987, the Coast Guard granted for 1 year a waiver of the requirements that tankers enter and leave the safety zone by the safety fairway. LOOP was required to document the number of tanker maneuverings requiring transit outside the existing safety zone, the percentage of excursions which occurred within the two uncharted areas identified as excursion zones, and the date, time, and approximate track line used for each excursion. Since then, the Coast Guard has renewed the waiver on an annual basis.

On December 30, 1987, LOOP asked the Coast Guard to make the waiver permanent. On February 8, 1988, the request was denied on the grounds that future exploration for or extraction of oil or gas might occur within one or both excursion zones. If such activity took place, the Coast Guard might have to revoke the waiver for the sake of safety.

In May 1988, CONOCO, Inc. (CONOCO) was issued an oil and gas lease by the Department of the Interior's Minerals Management Service (MMS) under the Outer Continental Shelf and Lands Act (OCSLA) (43 U.S.C. 1331 *et seq.*) in the area that was in the uncharted existing excursion zone. The lease included a provision for the government to suspend or cancel the lease with compensation when provided by the OCSLA. In August 1990, LOOP notified the Coast Guard that CONOCO intended to drill under authority of Lease OCS–G 9878 within Grand Isle Block 59, approximately 500 yards outside of the existing safety zone and safety fairway and inside the uncharted southerly excursion zone. The Coast Guard is concerned that a vessel casualty could result in a catastrophic pollution incident if a vessel collided with a drilling platform located in the existing excursion area. However, neither MMS policy nor budget provided for repurchasing a lease. While MMS supports the Coast Guard's interest in minimizing the risk of a catastrophic pollution incident at LOOP, it contends that CONOCO has a legal right of access to explore for and produce oil or gas from the lease.

On January 21, 1992, the Coast Guard published a notice of petition for rulemaking and request for comments in the **Federal Register** announcing a request by LOOP that the Coast Guard expand the safety zone that surrounds the deepwater port (57 FR 2236). LOOP requested the Coast Guard to make the waiver permanent thereby enlarging the safety zone by adding the two excursion zones, and prohibiting structures. The proposed safety zone would broaden the entrance to LOOP and prohibit the erection of structures or mobile drilling operations. As a result, the enlarged safety zone would reduce the number of required vessel maneuverings, eliminate structures from the zone, possibly reducing the risk of accidents and subsequent pollution. The proposed safety zone reflects actual tanker activity at LOOP based on detailed records the Coast Guard has required LOOP to maintain.

The Coast Guard received 48 comments in response to the notice of petition for rulemaking. Forty-three responses, mostly from mooring masters and shipping companies, offered strong support for the safety zone expansion. Opposition to the proposal came from CONOCO, MMS, and three oil exploration companies. MMS suggested that if CONOCO or other lessees are denied access to potential oil and gas resources, restitution should be provided by either LOOP or the Coast Guard. Neither the Coast Guard nor the DOT is prepared to provide restitution to CONOCO for loss of potential revenues or costs already incurred in conjunction with oil or gas exploration.

To resolve the conflicting use problems in the excursion zones, LOOP has agreed to purchase from CONOCO the oil and gas leases for Grand Isle Blocks 53, 58, 59, and 65. LOOP would then relinquish these blocks to MMS. LOOP would not seek further expansion of the safety zone or oppose any exploration and production activity outside or adjacent to the expanded safety zone.

On November 2, 1993, in a letter to the Department of Transportation, the MMS stated that it supports the agreement between CONOCO and LOOP. MMS stated that it is prepared to prohibit surface occupancy of offshore oil and gas facilities in the proposed safety zone. However, MMS stated that it may be economically and technically feasible to develop the resources lying beneath the safety zone by directional drilling. MMS would not preclude subseabed access provided that any surface facilities are located outside the safety zone. Such subseabed activity within the safety zone would not interfere with vessel activity in the safety zone.

Under the Deepwater Port Act of 1974, as amended (33 U.S.C. 1509(d)(1)), the Secretary of Transportation is required to consult with the Secretary of State, the Secretary of Defense, the Secretary of the Interior, and the Secretary of Commerce prior to issuing the safety zone around any deepwater port for the purposes of navigational safety. The Coast Guard has informed the noted Departments of the proposed safety zone.

Discussion of Proposed Amendment

Appendix A, Annex A, section (a) of 33 CFR part 150 is amended to expand the boundaries of the deepwater port safety zone at LOOP. This is being done at the request of LOOP, Inc. to enlarge the approach to the terminal portion and provide more maneuvering area for tank vessels arriving or departing from the deepwater port. It does not amend the Areas to be Avoided or the Anchorage Area listed in sections (b) and (c), respectively, in Annex A to Appendix A of 33 CFR part 150.

Regulatory Assessment

This proposal is not a significant regulatory action under Section 3(F)(1) of Executive Order 12866 (58 FR 51735; October 4, 1993) and it does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is not a significant regulation under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic consequences of this rulemaking to be minimal. Potential economic effects include impacts on mineral extraction and the commercial fishing industry. The proposed expansion is relatively insignificant, comprising an approximate 15 percent increase in the size of the safety zone.

When the original safety zone was established, it was not expected that there would be significant interference with mineral extraction or navigation. Due to the relative size of the expansion, no impacts on mineral extraction or navigation are expected in this case either. Access is available via alternative methods such as directional drilling.

The economic consequences of the proposed rulemaking are expected to primarily impact commercial vessels, including commercial fishing vessels. Commercial fishing vessels are permitted restricted use of portions of the safety zone as provided in 33 CFR Table 150.345(a). Therefore, the impact on fishing activities would be negligible due to the small additional area involved. No opposition to the notice of petition for rulemaking was received from the commercial fishing industry.

In addition, this proposed rulemaking will result in permanent safety benefits. Providing additional maneuvering area minimizes the likelihood of a catastrophic pollution incident resulting from a vessel colliding with any portion of the LOOP facility. Therefore, it is expected that expansion of the safety zone will reduce the environmental hazard.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Coast Guard must consider whether this proposed safety zone will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small business concerns under section 3 of the Small Business Act (15 U.S.C. 632). The small entities affected by this proposed rule are commercial fishing activities at the deepwater port. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed safety zone will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposed rule does not require the collection of information under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12812 and has determined that this proposal does not have federalism implications and does not warrant the preparation of a Federalism Assessment. LOOP is located beyond State waters where only Federal jurisdiction applies.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2(c) of Commandant Instruction M16475.1B, this proposed rule is categorically excluded from further environmental documentation. This rule will not result in significant impact on the quality of the human environment, as defined by the National Environmental Policy Act. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 150

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 150 as follows:

PART 150—OPERATIONS

1. The authority citation for part 150 continues to read as follows: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (m)(2), 1509; sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46.

2. Appendix A to part 150, Annex A, is amended by revising paragraph (a) to read as follows:

Appendix A to Part 150—Deepwater Port Safety Zone Boundaries

* * * * *

ANNEX A—LOOP, INC. DEEPWATER PORT, GULF OF MEXICO

	Latitude N.	Longitude W.
(a) *Deepwater Port Safety Zone:*		
(1) Starting at:	28°55'23"	90°00'37"
(2) A rhumb line to:	28°53'50"	90°04'07"
(3) Then an arc with a 4,465 meter (4,883 yard) radius centered at the port pumping platform complex (PPC),	28°53'06"	90°01'30"
(4) To a point:	28°51'07"	90°03'06"
(5) Then a rhumb line to:	28°50'09"	90°02'24"
(6) Then a rhumb line to:	28°49'05"	89°55'54"
(6) Then a rhumb line to:	28°48'36"	89°55'00"
(8) Then a rhumb line to:	28°52'04"	89°52'42"
(9) Then a rhumb line to:	28°53'10"	89°53'42"
(10) Then a rhumb line to:	28°54'52"	89°57'00"
(11) Then a rhumb line to:	28°54'52"	89°59'36"
(12) Then an arc with a 4,465 meter (4,883 yard) radius centered again at the port PPC,	28°53'06"	90°01'30"
(13) To the point of starting:	28°55'23"	90°00'37"

* * * * *

Dated: January 31, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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federal register

Thursday
February 17, 1994

Part VI

Department of Transportation

Coast Guard

46 CFR Part 25

Emergency Position Indicating Radio Beacons and Visual Distress Signals for Uninspected Vessels; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 25

[CGD 87–016b]

RIN 2115–AC69

Emergency Position Indicating Radio Beacons and Visual Distress Signals for Uninspected Vessels

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the uninspected vessel regulations by requiring an emergency position indicating radio beacon (EPIRB) on certain uninspected passenger vessels and uninspected vessels engaged as vessel assistance towing vessels. The proposed EPIRB requirement would apply to these vessels operating more than 3 nautical miles from the coastline or more than 4.8 Km (3 statute miles) from the coastline of the Great Lakes. However, under specific circumstances, these vessels would be exempt from this proposed EPIRB requirement. The Coast Guard also proposes requiring visual distress signals on all uninspected vessels, not presently required to carry them, when operating in coastal waters.

The "EPIRB's on Uninspected Vessels Requirements Act" amended the shipping laws of the United States by requiring uninspected commercial vessels to carry alerting and locating devices, including EPIRBs, as prescribed by regulations. By implementing this law, the regulations will provide improved search and rescue assistance during emergency situations, thereby reducing the potential for the loss of life and property.

DATES: Comments must be received on or before June 17, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA–2/3406) (CGD 87–016b), U.S. Coast Guard Headquarters, 2100 Second St. SW, Washington, DC 20593–0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: ENS. Stephen H. Ober, Survival Systems Branch, (202) 267–1444. Normal office hours are from 8 a.m. to 4 p.m. Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments to the Coast Guard. Persons submitting comments should include their name and address, identify the rulemaking (CGD 87–016b) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons requesting acknowledgement of receipt of their comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no pubic hearing.Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a pubic hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting these regulations are Mr. Robert L. Markle and ENS. Stephen H. Ober, Office of Marine Safety, Security and Environmental Protection, and Mr. Nicholas E. Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On April 19, 1990, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Emergency Position Indicating Radio Beacons for Uninspected Vessels; (CGD 87–016a) in the **Federal Register** (55 FR 14922). The Coast Guard received 125 letters commenting on the NPRM. A public hearing was not requested and one was not held.

On March 10, 1993, the Coast Guard published a final rule requiring EPIRBs on certain uninspected vessels, excluding uninspected passenger vessels and vessel assistance towing vessels (58 FR 13364). The preamble of that final rule sated that an additional supplemental notice of proposed rulemaking (SNPRM) would propose new EPIRB regulations and visual distress signal requirements for uninspected vessels not presently required to carry them. Uninspected passenger vessels are those vessels carrying 6 or less passengers for hire and are commonly known as "charterboats."

Background and Purpose

Public Law 100–540, known as the "EPIRB's On Uninspected Vessels Requirements Act" (102 Stat. 2719, October 28, 1988), amended 46 U.S.C. 4102 by requiring uninspected commercial vessels operating on the high seas and on the Great Lakes 4.8 Km (3 statute miles) from the coastline and beyond to carry alerting and locating equipment, including EPIRBs, as prescribed by regulation. Consistent with this law, this SNPRM proposes EPIRB requirements for uninspected passenger vessels and vessel assistance towing vessels, and proposes the carriage of visual distress signals for certain uninspected vessels not currently required to carry them. In response to the comments received to the NPRM of April 19, 1990 suggesting that EPIRBs were not needed on uninspected passenger vessels and vessel assistance towing vessels, the Coast Guard conducted a detailed study of the available casualty record for uninspected passenger vessels. A copy of this study entitled "Uninspected Passenger Vessel Casualties" is available for review and copying in the docket at the location identified in the **ADDRESSES** section near the beginning of this notice.

Discussion of Comments

In response to the NPRM of April 19, 1990, the Coast Guard received comments from charterboat operators, interested parties from the Great Lakes, various charterboat associations on the Great Lakes, New England charterboat captains, New England Charterboat associations, and charterboat captains in Florida. Additional comments were received from a publication serving the charterboat industry, and an association representing charterboat operators. The Coast Guard also received comments from the Radio Technical Commission for Maritime Services (RTCM), the National Transportation Safety Board (NTSB), a maritime hull and cargo surveyors corporation, and from interested parties that did not identify their affiliation.

Some comments supported the rule as written, expressing the view that safety of charterboat operations and their passengers would be greatly increased and would reduce search and rescue costs. Other comments from charterboat interests expressed opposition to the proposed rule. The primary objections to the proposed requirement were: (1)

The price of the EPIR and the ability of the EPIRB to operate in the marine environment; (2) the actual need for the EPIRB; and (3) the type of EPIRB.

(1) *The price of the EPIRB and the ability of the EPIRB to operate in the marine environment:* The cost of the 406 MHz Satellite EPIRB has been dropping steadily since its introduction. The current advertised price of Satellite EPIRBs averages around $1350. This is one-half the estimated cost used in the NPRM dated April 19, 1990, and confirms the prediction stated in the NPRM that prices would fall. The Coast Guard expects that the cost of the EPIRBs will continue to fall as a result of the combination of bulk purchase orders through associations and marketplace response to keener competition.

The Coast Guard recognizes that exposure to the marine environment can be extremely detrimental, especially to electronic equipment. With this in mind, the Radio Technical Commission for Maritime Services (RTCM) developed a standard for the manufacture of the 406 MHz Satellite EPIRB. This standard incorporates rigorous environmental tests that include long term exposure to salt, fog, and extreme vibrations. These tests were developed to ensure that the 406 MHz Satellite EPIRB will provide successful service throughout its expected life. The Federal Communications Center requires U.S. type accepted 406 MHz satellite EPIRBs to meet the RTCM standards.

(2) *The actual need for an EPIRB:* In response to the comments that EPIRBs were not needed on uninspected passenger vessels and vessel assistance towing vessels, the Coast Guard conducted a detailed study of the available casualty record for uninspected passenger vessels. A copy of this study entitled "Uninspected Passenger Vessel Casualties" is available for review and copying in the docket at the location identified in the **ADDRESSES** section near the beginning of this notice.

The casualty study revealed that although there are a significant number of accidents involving charterboats with deaths resulting, only a few lives would have been saved if these vessels were required to carry EPIRBs. This is because help usually came in one of two ways. One source of assistance has come from other nearby vessels which saw that a vessel was in distress. The other frequent means of obtaining assistance came from the use of a radio, used either to summon the Coast Guard or a nearby vessel.

The Coast Guard disagrees that EPIRBs are not needed on uninspected passenger vessels and vessel assistance towing vessels. However, as a result of the study, the Coast Guard believes that the uninspected passenger vessels in need of EPIRBs are primarily those that operate: (1) At night; (2) out of sight of other vessels; or (3) out of radio range to call for assistance.

(3) *The type of EPIRB:* The comments to the NPRM suggested allowing the carriage of a Category 2, 406 MHz Satellite EPIRB for a boat manufactured under the level flotation requirements of 33 CFR Part 183. The comment expressed an opinion that the construction of a vessel with level flotation defeats the design operation of the Category 1 EPIRB. The Coast Guard is proposing to adopt the recommendation made in these comments.

The Category 1, 406 MHz Satellite EPIRB is a fully automatic, float-free device. It is mounted on the outside of a vessel in a manner so that if a vessel sinks quickly, or unexpectedly, the device will float free, activate, and alert authorities of the distress. The Category 2 406 MHz Satellite EPIRB is manually operated, manually launched, and depends upon a person on the vessel to launch the device.

The Coast Guard requirement for level flotation construction in 33 CFR Part 183 applies only to recreational vessels 6.06 meters (20 ft) in length and under. When a vessel of greater than 6.06 meters (20 ft) in length is manufactured with enough flotation material to keep the boat afloat, this must be substantiated by a certification by the manufacturer that the construction of the vessel includes inherently buoyant material which will prevent the vessel from sinking.

Discussion of Proposed Amendments

Due to information obtained from the casualty study and comments received from the NPRM, the Coast Guard reconsidered the EPIRB proposals for uninspected passenger vessels and vessel assistance towing vessels. The uninspected passenger vessels that are affected by this proposed rule are mostly charterboats. These boats typically make day fishing trips with six or fewer paying passengers on board.

The statutory language requires manned uninspected vessels to carry an EPIRB. The legislative history clearly indicates that Congress intended the EPIRB requirement to apply to manned uninspected vessels including tug boats, towing vessels, offshore supply vessels, oceanographic research vessels, and passenger vessels carrying 6 or less passengers. Consistent with the legislative history, the Coast Guard believes that applying the EPIRB requirement to manned barges is unnecessary since these vessels can not operate without the assistance of another vessel required to carry an EPIRB. Therefore, the Coast Guard proposes that this rule apply to self-propelled uninspected vessels.

The proposed rules would make 406 MHz satellite EPIRBs generally required on uninspected passenger vessels and vessel assistance towing vessels operating more than 3 nautical miles from the coastline or more than 4.8 km (3 statute miles) from the coastline of the Great Lakes, subject to the exceptions discussed below. These are the same areas in which EPIRBs are required on other uninspected commercial vessels. However, the Coast Guard believes that virtually all uninspected passenger vessels operating on these waters are charterboats, and that the proposed exemption conditions would probably exempt most charterboats from the EPIRB requirement.

An uninspected vessel and vessel assistance towing vessel would be exempt from the rule between one hour before sunrise and one hour before sunset if the vessel: (1) Operates between 3 and 20 miles from shore and is equipped with an operable VHF radio capable of transmitting and receiving on channels 6, 13, 16, and 22A and operates within the VHF radio range of at least 1 VHF coast station (same as sea area A1 as defined in 47 CFR 80.1069) or (2) When operating more than 20 miles from shore the vessel must be "in company" with at least one other vessel at all times and the vessels are equipped with an operable VHF radio capable of transmitting and receiving on channels 6, 13, 16, and 22A.

The Coast Guard's proposal for a one hour before sunrise to one hour before sunset exemption criterion is intended to incorporate, in principle, the recommendation from the charterboat operators to exempt vessels on voyages of less than 12 hours duration. The proposed rule would allow day trips to get underway before sunrise. If trouble developed early in a trip, search and rescue operations would still be able to take place in daylight. The proposed rule would also require boats without EPIRBs to be within 3 nautical miles of shore (4.8 Km/3 statute miles on the Great Lakes) at least one hour before sunset.

The Coast Guard is proposing to define the term "in company" to mean 2 or more vessels operating together in the same area, remaining within visual and VHF radio contact, by predetermined agreement prior to

getting underway, for the purpose of ensuring mutual safety.

The condition to have a VHF radio and operate within range of a coast station recognizes the importance radio plays in summoning assistance from the Coast Guard or other vessels. The specified channels are those most likely to be needed in a search and rescue operation. However, in an accident involving a sudden capsizing or sinking, or one that quickly results in a loss of power, an operator who chooses to comply with the regulation by carrying a VHF radio may still be unable to summon help if out of sight of other vessels.

One way of dealing with a possible rapid loss of a vessel's power is to require an emergency battery that is not part of the vessel's main power system. The Coast Guard is specifically interested in receiving comments addressing a requirement that to be eligible for the EPIRB exemption, uninspected passenger vessels be required to have a VHF radio that can be operated using an emergency battery that is not part of the vessel's main power system. Comments are invited on the practicality of such an arrangement and whether this should be an additional condition of the final rule. If the battery-powered operation is considered feasible, should a minimum operating period be specified?

Additionally, the Coast Guard is considering requiring uninspected vessels and vessel assistance towing vessels that operate beyond 20 nautical miles from shore to have a 406 MHz satellite EPIRB. The Coast Guard specifically requests comments on the practicality of such an arrangement and whether this should be an additional condition of the final rule.

This notice also proposes requiring all uninspected commercial vessels to carry the same visual distress signals now required to be carried on commercial fishing vessels in 46 CFR 28.145. For vessels operating in coastal waters within 3 miles of the coastline, the requirements would be the same as the visual distress signals now required on recreational boats in 33 CFR part 175 subchapter C. Vessels operating beyond 3 miles from the coastline would be required to have brighter and longer-burning flares.

The casualty study shows that being seen by another vessel is a primary way in which assistance is obtained. Flares and other visual distress signals are recognized by mariners as signals indicating that assistance is required, so they play an important role where rescue depends on visual detection. The Coast Guard believes that most uninspected passenger vessels and vessel assistance towing vessels already carry visual distress signals since those signals are now required whenever such a vessel is operated as a recreational boat in coastal waters. These flares can be bought for about $20. Therefore, the cost of this requirement would be minimal.

As proposed in this SNPRM, all vessels less than 11 meters (36 feet) in length and vessels of any length with positive flotation could meet the EPIRB requirement by carrying either an installed Category 1 406 MHz Satellite EPIRB or a readily accessible Category 2 (manual) 406 Satellite EPIRB mounted at or near the principal steering station of the vessel. For purposes of this regulation, length is defined as the length listed on a vessel's Certificate of Documentation or Certificate of Number.

Regulatory Evaluation

This proposal is not significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). A draft Regulatory Evaluation is available in the docket for inspection or copying where indicated under **ADDRESSES**.

The specific number of vessels that would be affected by a regulation requiring EPIRBs on uninspected passenger vessels and assistance towing vessels is difficult to determine. The largest group of these vessels are charterboats, most of which make day fishing trips, but some are involved in overnight trips. Others operate as dive boats, excursion boats, parasail boats, vessel towing assistance vessels, water taxis, and other services. Those over five net tons are documented by the Coast Guard, and major accidents involving these vessels are required to be reported to the Coast Guard. Smaller boats are state numbered, are difficult to distinguish from recreational boats, and are often not captured in the Coast Guard's data on commercial vessels.

Furthermore, the number of uninspected passenger vessels is constantly changing since a boat used as a charterboat one day may be used for the owner's recreational purposes on another day. When operating as a charterboat, the boat comes under the regulations for uninspected commercial vessels in 46 CFR subchapter C. When used strictly for recreational purposes with no paying passengers on board, the boat comes under the regulations in 33 CFR subchapter S.

Although there are about 65,000 persons licensed to operate uninspected passenger vessels in the U.S., the Coast Guard believes that less than half of these licensed persons are actively employed as vessel operators. This proposed rule would only apply to those vessels that operate more than 3 nautical miles from the coastline or more than 3 statutory miles from the coastline of the Great Lakes. Consistent with a comment received to the NPRM, the Coast Guard believes that approximately 12,000 charterboats would be affected by this proposed rule.

EPIRB regulations would only affect those vessels operating more than 3 nautical miles from the coastline or more than 4.8 Km (3 statute miles) from the coastline of the Great Lakes. Therefore, if half of the uninspected vessels operate in rivers, inland lakes, bays, or sounds, or within 4.8 Km (3 statute miles) of the coastline of the Great Lakes, about 15,000 uninspected passenger vessels would remain as being potentially affected by an EPIRB rule under the authority in 46 U.S.C. 4102(e).

This number is fairly consistent with an estimate by the association of charterboat operators in one of its letters, that 12,000 charterboats would be affected by the rules proposed in the NPRM. Coast Guard used the association's 12,000 vessel estimate in assessing the potential effects of the rules proposed in this notice.

The draft evaluation uses a cost estimate of $1350 for Category 1 406 MHz Satellite EPIRBs, and $1150 for Category 2 406 MHz Satellite EPIRBS. A set of visual distress signals would cost most vessels about $20. The draft Evaluation estimates that about 1200 charterboats would not qualify for the EPIRB carriage exemption, and would have to purchase a 406 MGz Satellite EPIRB. It also estimates that another 1200 vessels would have to purchase VHF–FM marine radios at $400 each in order to qualify for the EPIRB exemption within Sea Area A1. In addition, an estimated 8500 uninspected vessels would be required to carry visual distress signals for the first time. The estimated present value cost of the proposed regulations to the industry, is about $3 million over 10 years. The number of lives that may be saved through mandatory EPIRB and visual distress signal requirements cannot be accurately predicted. However, economic research indicates that $2.5 million per statistical life saved is a reasonable estimate of people's willingness to pay for safety. The saving of only two lives in ten years would justify the cost of these rules.

In addition to the saving of lives, primary benefits of the regulations include more timely notification to the authorities that a casualty has occurred and more accurate identification of the object of the search and the search area, which should contribute to large savings of money for the Coast Guard and other organizations involved in a search. This rule, in effect, shifts some of the cost burden for search and rescue from the Coast Guard to owners and operators of uninspected vessels. Many unsuccessful searches for overdue vessels have cost millions of dollars before being abandoned. In contrast, a number of searches for pleasure, charter, and fishing vessels have been expedited by EPIRBs carried voluntarily. The savings to the government as a result of elimination or significant reduction of only three or four large-scale searches would justify the cost of these rules, even without considering the lives that may be saved by more timely location of vessels in distress.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Generally, uninspected vessel operators are considered to be small entities. They are typically not part of large diversified corporations, and generally own no more than one or two vessels. When compared to the potential cost associated with the loss of a vessel and/or human life or lives, and in comparison to the cost of most associated equipment necessary to properly and safely operate most of these vessels, the Coast Guard believes the cost of an $1150 to $1350 EPIRB is not considered significant.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. This notice proposes amending the regulations for uninspected commercial vessels, by requiring certain vessels to carry EPIRBs and visual distress signals. The proposed rule would apply to certain vessels operating in coastal waters, on the high seas, and on the Great Lakes. Since this rule affects specific vessels both inside and outside of state waters, the Coast Guard intends to preempt State action addressing the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal is made to enhance the safety of personnel at sea, as well as improving the effectiveness of search and rescue, and is expected to have no environmental impact. A Categorical Exclusion Determination is available in the docket for examination and copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 25

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 25 as follows:

PART 25—REQUIREMENTS

1. The authority citation for part 25 would continue to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 2103, 3306, and 4302; 49 CFR 1.46.

2. By amending 25.26–1 to add a definition for "vessel assistance towing vessel" and "in company" in the appropriate alphabetical order, revising the definition of "uninspected passenger vessel", and removing the NOTE following the definition of "uninspected passenger vessel", to read as follows:

§ 25.26–1 Definitions.

In company means 2 or more vessels operating together in the same area, remaining within visual and VHF radio contact by predetermined agreement prior to getting underway, for the purpose of ensuring mutual safety.

* * * * *

Uninspected passenger vessel means a vessel engaged in the carriage of passengers for hire, and which is not inspected by the Coast Guard under any other 46 CFR subchapter.

Vessel assistance towing vessel means a vessel engaged in providing non-emergency assistance to boaters, and which is not inspected by the Coast Guard under any other 46 CFR subchapter.

3. By revising paragraphs (b)(3) and (c)(2) of § 25.26–5 to read as follows:

§ 25.26–5 Commercial fishing industry vessels.

* * * * *

(b) * * *

(3) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a).

(c) * * *

(2) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a).

4. By revising § 25.26–10 to read as follows:

§ 25.26–10 Uninspected passenger vessels and vessel assistance towing vessels.

(a) After (one year after date of publication of the final rule in the **Federal Register**), each owner or operator of an uninspected passenger vessel or vessel assistance towing vessel 11 meters (36 feet) or more in length, shall ensure that the vessel does not operate more than 3 nautical miles from the coastline or more than 4.8 Km (3 statute miles) from the coastline of the Great Lakes, except as provided for in paragraphs (b) and (c) of this section, unless it has on board—

(1) A float-free, automatically activated Category 1 406 MHz EPIRB stowed in a manner so that it will float free if the vessel sinks; or

(2) Until August 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(b) of this subpart.

(b) After (one year after date of publication of the final rule in the **Federal Register**), the owner or operator of an uninspected passenger vessel or assistance towing vessel less than 11 meters (36 feet) in length, or an uninspected passenger vessel or assistance towing vessel 11 meters (36 feet) or more in length which has a builder's certification that the vessel is

constructed with inherently buoyant material to keep the flooded vessel afloat, shall ensure that the vessel does not operate 3 nautical miles from the coastline or beyond 4.8 Km (3 statute miles) from the coastline of the Great Lakes, except as provided for in paragraph (c) of this section, unless it has—

(1) A manually activated Category 2 406 MHz EPIRB installed in a readily accessible location at or near the principal steering station; or

(2) A float-free, automatically activated Category 1 406 MHz EPIRB installed in a readily accessible location at or near the principal steering station; or

(3) A float-free, automatically activated Category 1 406 MHz EPIRB installed in a manner so that it will float free if the vessel capsizes or sinks; or

(4) Until August 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(b) of this subpart.

(c) A vessel identified in paragraphs (a) and (b) is not required to carry an EPIRB between one hour before sunrise and one hour before sunset if it—

(1) Operates between 3 and 20 minutes from shore and is equipped with an operable VHF radio capable of transmitting and receiving on channels 6, 13, 16, and 22A and operates within the VHF radio range of at least 1 VHF coast station (same as sea area A1 as defined in 47 CFR 80.1069) or

(2) Operates more than 20 miles from shore "in company" with at least one other vessel at all times and each vessel is equipped with an operable VHF radio capable of transmitting and receiving on channels 6, 13, 16, and 22A.

5. By revising the section heading and paragraphs (a) introductory text, (a)(2), (b) introductory text and (b)(3) of § 25.26–20 to read as follows:

§ 25.26–20 Other self-propelled uninspected commercial vessels.

(a) After March 10, 1994, the owner or operator of a self-propelled uninspected commercial vessel 11 meters (36 feet) or more in length, other than a vessel under § 25.26–5 or § 25.26–10 or under paragraph (b) of this section shall ensure that the vessel does not operate more than 3 nautical miles from the coastline or more than 4.8 Km (3 statute miles) from the coastline of the Great Lakes unless it has on board—

(1) * * *

(2) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a) of this subpart.

(b) After March 10, 1994, the owner or operator of a self-propelled uninspected commercial vessel 11 meters (36 feet) or more in length, or 11 meters (36 feet) or more in length which has a builder's certification that the vessel is constructed with sufficient inherently buoyant material to keep the flooded vessel afloat, shall ensure that the vessel does not operate more than 3 nautical miles from the coastline or more than 4.8 Km (3 statute miles) from the coastline of the Great Lakes, unless it has installed in a readily accessible location at or near the principal steering station—

(1) * * *

(2) * * *

(3) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a) of this subpart.

6. By revising § 25.26–30 to read as follows:

§ 25.26–30 121.5/243.0 MHz EPIRBs.

(a) A 121.5/243.0 MHz EPIRB manufactured after October 1, 1988, may be used to meet certain requirements of § 25.26–5 and § 25.26–20, if the EPIRB is operable and was installed on the vessel on or before April 26, 1993. The EPIRB must be a Class A EPIRB, or a Class B EPIRB which is watertight, self-buoyant, and stable in a floating position to properly transmit a distress signal.

(b) A 121.5/243.0 MHz EPIRB manufactured after October 1, 1988, may be used to meet the requirements of § 25.26–10 of this part, if the EPIRB is operable and was installed on the vessel on or before [date 45 days after date of publication in the **Federal Register** of the final rule]. The EPIRB must be a Class A EPIRB, or a Class B EPIRB which is watertight, self-buoyant, and stable in a floating position to properly transmit a distress signal.

7. By adding a new Subpart 25.27 to read as follows:

Subpart 25.27—Distress Signals

Sec.

25.27–1 Definitions.
25.27–5 Visual distress signals.

Subpart 25.27—Distress Signals

§ 25.27–1 Definitions.

As used in this subpart:

Coastal waters means coastal waters as defined in 33 CFR 175.105.

§ 25.27–5 Visual distress signals.

Except for a commercial fishing industry vessel required to carry distress signals under § 28.145 of this chapter, after (one year after date of publication of the final rule in the **Federal Register**, each self-propelled uninspected vessel must be equipped with the distress signals specified in table 25.27–5.

TABLE 25.27–5.—VISUAL DISTRESS SIGNALS

Area	Devices required
Ocean, more than 50 miles from coastline	3 parachute flares, approval series 160.136; plus 6 hand flares, approval series 160.121; plus 3 smoke signals, approval series 160.122.
Ocean, 3 miles—50 miles from coastline; or more than 4.8 Km (3 statute miles) from the coastline of the Great Lakes.	3 parachute flares, approval series 160.136 or 160.036; plus 6 hand flares, approval series 160.121 or 160.021; plus 3 smoke signals, approval series 160.122, 160.022, or 160.037.
Coastal waters, excluding the Great Lakes; or within 4.8 Km (3 statute miles) of the coastline of the Great Lakes.	Night visual distress signals consisting of one electric distress light, approval series 161.013 or 3 approved flares; plus Day visual distress signals consisting of one distress flag, approval series 160.072, or 3 approved flares, or 3 approved smoke signals.[1]

[1] If flares are carried, the same 3 flares may be counted toward meeting both the day and night requirement.

Dated: November 23, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–3519 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–14–M

federal register

Thursday
February 17, 1994

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 9 et al.
Federal Acquisition Regulation; Past Performance Information; Proposed Rule

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 9, 15, and 42

[FAR Case 93–2]

Federal Acquisition Regulation; Past Performance Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are proposing a change to the Federal Acquisition Regulation (FAR) to address requirements for use of past performance information in the contractor selection process.

DATES: Comments should be submitted on or before April 18, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4037, Washington, DC 20405.

Please cite FAR case 93–2 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4035, GS Building, Washington, DC 20405; telephone: (202) 501–4755. Please cite FAR case 93–2.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements Office of Federal Procurement Policy Letter 92–5, Past Performance Information, which was published in the **Federal Register** at 58 FR 3573 on January 11, 1993.

B. Regulatory Flexibility Act

The proposed changes to FAR Parts 9, 15, and 42 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the requirements for use of past performance information in contract award decisions may preclude award to otherwise successful offerors. The extent of the impact is not known. An Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

The proposed rule implements Office of Federal Procurement Policy Letter 92–5, Past Performance Information. The OFPP policy letter requires Federal agencies to evaluate contractor performance on all new contracts over $100,000, to use past performance information in making responsibility determinations in both sealed bid and competitively negotiated procurements, and to specify past performance as an evaluation factor in solicitations for competitively negotiated contracts expected to exceed $100,000. The rule establishes procedures for use of past performance information in the contractor selection process. A satisfactory performance record is a prerequisite to being determined a "responsible source" pursuant to 41 U.S.C. 403. The rule will apply to all large and small entities who perform or are interested in performing Government contracts. The rule will impose no new reporting or recordkeeping requirements on large or small entities. The rule implements OFPP Policy Letter 92–5, but does not duplicate, overlap, or conflict with any other Federal rules. There are no known alternatives which would accomplish the objectives of OFPP Policy Letter 92–5.

A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR case 93–2 in the correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9, 15 and 42

Government procurement.

Dated: February 14, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 9, 15, and 42 be amended as set forth below:

1. The authority citation for 48 CFR parts 9, 15, and 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

9.104–1 [Amended]

2. Section 9.104–1, paragraph (c) is amended by adding the words "and subpart 42.15" at the end.

3. Section 9.105–1, paragraph (c) introductory text, is revised as follows:

9.105–1 Obtaining information.

* * * * *

(c) The contracting officer shall consider relevant past performance information (see subpart 42.15) in making determinations of responsibility or nonresponsibility. In addition, the contracting officer should use the following sources of information to support such determinations:

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

4. Section 15.605, paragraph (b) is revised to read as follows:

15.605 Evaluation factors.

* * * * *

(b)(1) The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of agency acquisition officials except that—

(i) Price or cost to the Government shall be included as an evaluation factor in every source selection.

(ii) Past performance shall be evaluated in all competitively negotiated acquisitions expected to exceed $100,000, unless the contracting officer documents in the contract file the reasons why past performance should not be evaluated. Past performance may be evaluated in competitively negotiated acquisitions estimated at $100,000 or less at the discretion of the contracting officer.

(iii) Quality shall be addressed in every source selection. In evaluation factors, quality may be expressed in terms of technical excellence, management capability, personnel qualifications, prior experience, and schedule compliance.

(2) Any other relevant factors, such as cost realism, may also be included.

* * * * *

5. Section 15.608 is amended in the introductory text of paragraph (a) by removing the parenthetical phrase "(as conveyed by the proposal)", and by adding paragraph (a)(3) as follows:

15.608 Proposal evaluation.

(a) * * *

(3) *Past performance evaluation.* (i) Past performance information should be used in assessing performance risk. The assessment of performance risk should consider the relative merits of the offeror's prior experience and performance as compared to that of other competing offerors. The number and severity of an offeror's problems, the effectiveness of corrective actions taken, the offeror's overall work record, and the age and relevance of past performance information should be considered at the time it is used.

(ii) Past performance information may be obtained from a variety of sources, including private firms. The source and type of past performance information to be included in the evaluation is within the broad discretion of agency acquisition officials and should be tailored to the circumstances of each procurement. Evaluations of contractor performance prepared in accordance with subpart 42.15 are one source of performance information which may be used.

(iii) firms shall be allowed to compete for contracts even though they lack a history of relevant past performance.

* * * * *

PART 42—CONTRACT ADMINISTRATION

6. Section 42.302 is amended by adding paragraph (b)(11) to read as follows:

42.302 Contract administration functions.

* * * * *

(b) * * *

(11) Prepare evaluations of contractor performance in accordance with subpart 42.15.

* * * * *

7. Subpart 42.15, consisting of sections 42.1500 through 42.1503, is added to read as follows:

Subpart 42.15—Contractor Performance Information

42.1500 Scope of subpart.

This subpart provides policies and establishes responsibilities for recording and maintaining contractor performance information. It implements Office of Federal Procurement Policy Letter 92–5, Past Performance Information. This subpart does not apply to procedures used by agencies in determining fees under award or incentive fee contracts.

42.1501 General.

Past performance information is relevant information regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to specifications and to standards of good workmanship; the contractor's record of forecasting and containing costs on any previously performed contracts; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of the customer. This information may be used in preparing evaluations of contractor performance under this subpart.

42.1502 Policy.

(a) Except as provided in paragraph (b) of this section, agencies shall prepare an evaluation of contractor performance for each contract in excess of $100,000 at the time the work under the contract is completed. Additional evaluations may be prepared during the term of the contract. The content and format of performance evaluations shall be established in accordance with agency procedures and should be tailored to the size, content, and complexity of the contractual requirements.

(b) Agencies shall evaluate construction contractor performance and architect/engineer contractor performance in accordance with 36.201 and 36.604, respectively.

42.1503 Procedures.

(a) Agency evaluations of contractor performance prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. The ultimate conclusion and content of an evaluation is a decision of the contracting agency. Copies of the contractor response shall be permanently retained as part of the evaluation.

(b) Departments and agencies are encouraged to share past performance information with other departments and agencies when considered appropriate and to the extent practicable to support future award decisions. However, past performance information including evaluations of contractor performance, shall not be provided to any private party without the contractor's consent, except in accordance with subpart 24.2.

(c) Any past performance information systems, including automated systems, used for maintaining contractor performance information and/or evaluations should include appropriate management and technical controls to ensure that only authorized personnel have access to the data.

(d) Past performance information should be updated as often as necessary to maintain the currency of the information, and shall not be retained for more than six years without being updated.

[FR Doc. 94–3666 Filed 2–16–94; 8:45 am]

BILLING CODE 6820–34–M

federal register

Thursday
February 17, 1994

Part VIII

The President

Executive Order 12899—Establishing an Emergency Board To Investigate a Dispute Between The Long Island Rail Road and Certain of Its Employees Represented by the United Transportation Union

Proclamation 6650—To Amend the Generalized System of Preferences and for Other Purposes

Federal Register
Vol. 59, No. 33
Thursday, February 17, 1994

Presidential Documents

Title 3—

The President

Executive Order 12899 of February 15, 1994

Establishing an Emergency Board To Investigate a Dispute Between The Long Island Rail Road and Certain of Its Employees Represented by the United Transportation Union

A dispute exists between The Long Island Rail Road and certain of its employees represented by the United Transportation Union.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

A first emergency board to investigate the dispute was established by Executive Order No. 12874 on October 20, 1993. The emergency board terminated upon issuance of its report and, subsequently, its recommendations were not accepted.

A party empowered by the Act has requested that the President establish a second emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

Section 9A(e) of the Act provides that the President, upon such request, shall appoint a second emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of the Board.* There is established, effective February 15, 1994, a board of three members to be appointed by the President to investigate this dispute. No member shall be interested pecuniarily or otherwise in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* Within 30 days after creation of the board, the parties to the dispute shall submit to the board final offers for settlement of the dispute. Within 30 days after submission of final offers for settlement of the dispute, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(h) of the Act, from the time a request to establish a board is made until 60 days after the board makes its report, the parties shall make no changes in the conditions out of which the dispute arose, except by agreement.

Sec. 4. *Expiration.* The board shall terminate upon submission of the report provided for in section 2 of this order.

William J. Clinton

THE WHITE HOUSE,
February 15, 1994.

[FR Doc. 94-3853
Filed 2-16-94; 11:06 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 6650 of February 16, 1994

To Amend the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 502 of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2461 and 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Kazakhstan and Romania as beneficiary developing countries for purposes of the Generalized System of Preferences ("GSP").

2. Proclamation No. 6579 of July 4, 1993, implemented an accelerated schedule of duty elimination and modified the rules of origin under the United States-Canada Free-Trade Agreement. Proclamation No. 6641 of December 15, 1993, implemented the North American Free Trade Agreement. Certain conforming changes and technical corrections to the Harmonized Tariff Schedule of the United States ("HTS") were omitted from these proclamations. I have decided that it is appropriate to modify the HTS to make such changes and corrections.

3. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 501 and 604 of the Trade Act, do proclaim that:

(1) General note 4(a) to the HTS, listing those countries whose products are eligible for benefits of the GSP, is modified by inserting "Kazakhstan" and "Romania" in alphabetical order in the enumeration of independent countries.

(2) In order to make conforming changes and technical corrections in certain HTS provisions, pursuant to actions taken in Proclamation No. 6579 and Proclamation No. 6641, the HTS and Proclamation No. 6641 are modified as provided in the annex to this proclamation, effective as of the dates specified in such annex.

(3) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(4) The modifications to the HTS made by paragraph (1) of this proclamation shall be effective with respect to articles that are: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of February, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

Billing code 3195-01-P

Annex

CONFORMING CHANGES AND TECHNICAL CORRECTIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

A. Effective with respect to goods of Canada, under the terms of general note 12 to the HTS, which are entered, or withdrawn from warehouse for consumption, on or after the date specified in a notice published in the Federal Register by the United States Trade Representative pursuant to section B of the annex to Presidential Proclamation 6579:

(1) The modifications made in section (B)(1) of the annex to Proclamation 6579 to subheading "8540.11.00" shall be made to subheadings "8540.11.10, 8540.11.20, 8540.11.30, 8540.11.40 and 8540.11.50".

(2) Subheading 9905.73.04 of the HTS, as established by section (B)(3) of the annex to Proclamation 6579, is modified by striking "7304.41.00" and by inserting in lieu thereof "7304.41.30, 7304.41.60".

B. Effective with respect to goods of Canada, under the terms of general note 12 to the HTS, which are entered, or withdrawn from warehouse for consumption, on or after January 1 of each year of the years listed below:

For subheading 6303.92.20, the Rates of Duty 1-Special subcolumn is modified (i) by deleting the rate of duty preceding the symbol "CA" in parentheses and inserting the rate of duty specified in the first dated column in the table below in lieu thereof, and (ii) for each of the subsequent dated columns, the rates of duty that are followed by the symbol "CA" in parentheses are deleted and the following rates of duty are inserted in lieu thereof:

	1995	1996	1997	1998
6303.92.20	3.8%	2.5%	1.2%	Free

C. Effective January 1, 1994:

(1) General note 1 to the HTS is modified by striking "3 and 4" and by inserting in lieu thereof "3 through 13, inclusive".

(2) For subheading 4504.90.20, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate in such subcolumn, the symbol "MX" in alphabetical order.

(3) General note 4(d) to the HTS is modified by striking "8471.92.40 Malaysia" and by inserting in lieu thereof "8471.92.32 Malaysia" and "8471.92.34 Malaysia".

(4) Subheadings 8471.92.32 and 8471.92.34 are each modified by striking the symbol "A" from the Rates of Duty 1-Special subcolumn and by inserting in lieu thereof "A*".

(5) The superior text immediately preceding subheading 8528.10.04 is modified by deleting "note 4" and inserting in lieu thereof "note 10".

(6) The superior text immediately preceding subheading 8529.90.10 (as in effect at the close of December 31, 1993) is stricken.

(7) The modification made in section (A)(102) of Annex II to Proclamation 6641 to U.S. note 3 to subchapter II of chapter 98 shall be made in subdivision (c) of such U.S. note 3.

(8) Annex III to Proclamation 6641 of December 15, 1993 is modified by:

(a) deleting subheading 4505.90.20 from section (A)(1)(a), and

(b) deleting 6303.92.90, 8529.90.56 and 8529.90.59 from section (D).

Annex (con.)
-2-

D. Effective with respect to goods of Mexico, under the terms of general note 12 to the HTS, entered, or withdrawn from warehouse for consumption, on or after January 1, 1994:

(1) Subheading 6307.90.99 is modified by striking "6.5% (MX)" and by inserting in the parenthetical expression following the "Free" rate of duty in the Rates of Duty 1-Special subcolumn the symbol ", MX" in alphabetical sequence.

(2) U.S. note 10 to subchapter VI of chapter 99 is modified by inserting the following new first effective period for imports entered under subheading 9906.07.08:

"Entered from January 1, 1994, to February 28, 1994 No limit".

(3) U.S. note 13 to subchapter VI of chapter 99 is modified by inserting the following new first effective period for imports entered under subheading 9906.07.42:

"Entered from January 1, 1994, to July 31, 1994 No limit".

(4) U.S. note 14 to subchapter VI of chapter 99 is modified by inserting the following new first effective period for imports entered under subheading 9906.07.47:

"Entered from January 1, 1994, to June 30, 1994 No limit".

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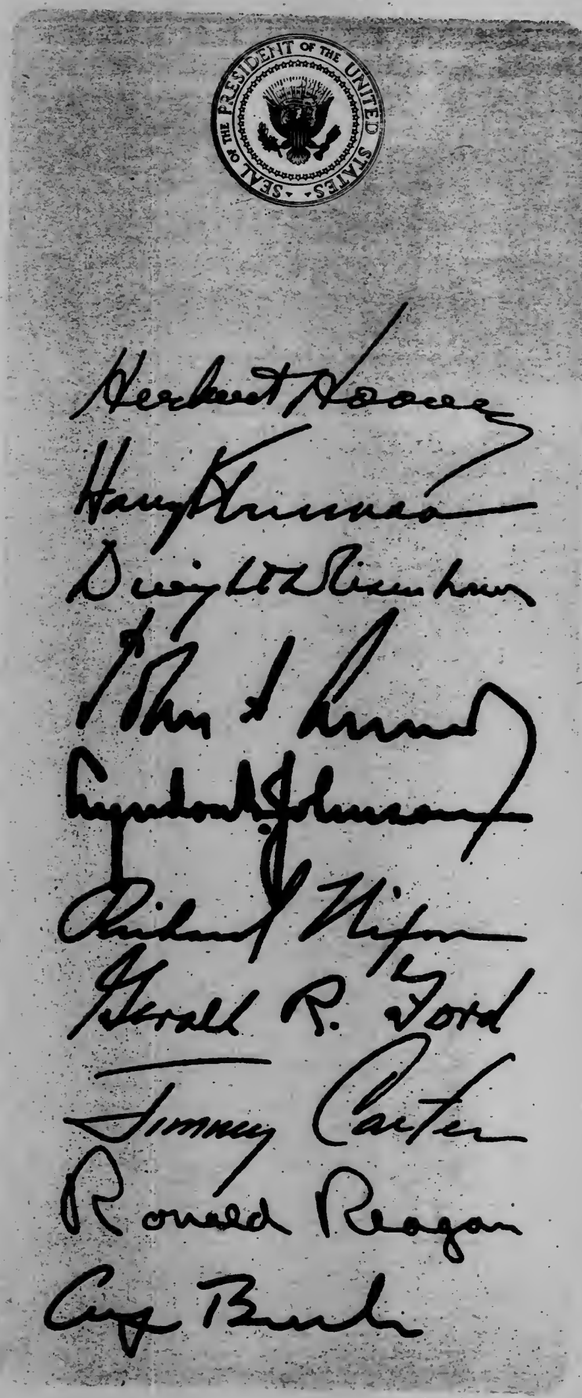
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Free Electronic Bulletin Board service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 59, No. 34
Friday, February 18, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 115CE, Special Condition 23–ACE–74]

Special Conditions; Cessna Model 526 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued for the Cessna Aircraft Company Model 526 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These design features include engine location, performance characteristics, and acrobatic maneuver capabilities, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

EFFECTIVE DATE: March 21, 1994.

FOR FURTHER INFORMATION CONTACT: Mike Downs, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 1993, the Cessna Aircraft Co., P.O. Box 7704, Wichita, KS 67277 made application for acrobatic category type certification of the Model 526 airplane. This airplane is a two place (tandem seating), all metal, low wing, twin turbofan engine-powered monoplane with fully enclosed retractable landing gear. The Model 526 has engines mounted on the fuselage sides aft and above the wing rear spar. The Model 526 is capable of acrobatic flight, including inverted maneuvers, and Mach .700 performance.

Type Certification Basis

Type certification basis of the Cessna Model 526 airplane is as follows: Federal Aviation Regulations (14 CFR part 23), effective February 1, 1965, through amendment 23–42, effective February 4, 1991; 14 CFR part 36, effective December 1, 1969, through amendment effective on the date of type certification; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

Cessna plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include electronic systems, acrobatic flight capability, engine location, and certain performance characteristics necessary for this type of airplane that were not envisaged by the existing regulations.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis, as provided by § 21.17(a)(2).

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisioned when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

The combined effect of the technological advances in aircraft design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of aircraft. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems.

The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safety are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under the energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph (1) or, as an option to a fixed value using laboratory tests, in paragraph (2), as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined below:

Field strength (volts/meter)		
Frequency	Peak	Average
10–100 KHz	50	50
100–500 KHz	60	60
500–2000 KHz	70	70
2–30 MHz	200	200
30–70 MHz	30	30

Field strength (volts/meter)		
Frequency	Peak	Average
70–100 MHz	30	30
100–200 MHz	150	33
200–400 MHz	70	70
400–700 MHz	4020	935
700–1000 MHz	1700	170
1–2 GHz	5000	990
2–4 GHz	6680	840
4–6 GHz	6850	310
6–8 GHz	3600	670
8–12 GHz	3500	1270
12–18 GHz	3500	360
18–40 GHz	2100	750

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions can withstand a peak of electromagnetic field strength of 100 volts per meter (v/m) in a frequency range of 10 KHz to 40 GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

In view of the revised HIRF envelope, the requirement for the fixed value test has been changed to 100 v/m from the previously used value of 200 v/m. The applicant opting for the fixed value laboratory test, instead of the HIRF envelope, may be subject to post certification reassessment based on the finalized rule requirements. The applicant should be cautioned that choosing 100 v/m may make it difficult, under post certification reassessment requirements, to qualify the installations without upgrading the design. If the system should not meet the post certification reassessment requirements, additional protection provisions and/or testing may be required.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the aircraft. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements only apply to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Thrust Attenuation

The Model 526 design includes a system that permits the attenuating of engine thrust. Attenuation is accomplished by movable panels, mounted on the engine pylons downstream of the exhaust cones, that can be deployed into the exhaust streams. The thrust attenuators are designed to be used in both ground and flight operations and differ from thrust reversers in that attenuators do not provide for either zero or reverse thrust levels. These special conditions provide requisite standards for thrust attenuating systems.

Flight

Previous certification and operational experience with jet powered airplanes has not included an airplane of similar design or approval in the acrobatic category.

Current standards in 14 CFR part 23 did not envisage this type of airplane and the associated performance and maneuvering capabilities. Based upon the knowledge and experience gained during certification and operation of previous part 23 jet airplanes and other acrobatic airplanes, special conditions similar to the requirements included in the draft Joint Airworthiness Regulations (JAR) 23, Issue 4 are proposed instead of the performance and flight characteristics requirements of subpart B of part 23.

Operating Limitations and Information

Current standards in part 23 did not envisage this type of airplane and the associated performance and maneuvering capabilities.

To maintain a level of safety consistent with other acrobatic category and jet powered airplanes, special conditions similar to the requirements included in the draft JAR 23, Issue 4 are proposed instead of the marking, placards, and flight manual requirements of subpart G of part 23.

Effects of Contamination on Natural Laminar Flow Airfoils

Airfoil configurations similar to the Cessna Model 526 have been found to have measurable degradation of handling qualities and performance when laminar flow was lost due to airfoil contamination. Tripping of the boundary layer could be caused from flight in precipitation or by the presence of contamination such as insects. If measurable effects are detected, it should be determined that the minimum flight characteristics standards continue to be met, and that any degradation to performance information are identified. This may be accomplished by a combination of analysis and testing. Current standards in part 23 did not envisage this type of airplane and the associated airfoil contamination. Special conditions are proposed since existing regulations do not require these adverse effects to be evaluated.

Discussion of Comments

Notice of Proposed Special Conditions, Notice No. 23–ACE–74, was published in the **Federal Register** on October 12, 1993, and no comments were received. These special conditions are adopted as proposed with minor editorial corrections, except that Special Condition 23.49(a)(1) is reworded to correct an error in publication and Special Condition 23.161(d)(2) is added due to its omission from the original publication.

Conclusion

This action is not a rule of general applicability and affects only the model of airplane identified in these special conditions.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Cessna Model 526 airplane:

Note: To provide for clarity and continuity within the proposed special conditions, some sections of subparts B and G of part 23 are included without change in the following special conditions. These unchanged sections are marked with an asterisk (*) preceding the section number to permit them to be readily identified from the different/added requirements of the proposed special conditions.

1. Protection of Systems From High Intensity Radiated Fields (HIRF)

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. Thrust Attenuating Systems

Thrust attenuating systems must be designed and installed so that no unsafe condition will result during normal operation of the systems, or from any failure (or reasonably likely combination of failures) of the thrust attenuation systems under any anticipated condition of operation of the airplane, including ground operation. Failure of structural elements need not be considered if the probability of this kind of failure is extremely remote.

3. Flight

Instead of compliance with the sections contained in subpart B of part 23, the following sections apply:

General

*SC23.21 Proof of Compliance

(a) Each requirement of this subpart must be met at each appropriate combination of weight and center of gravity within the range of loading conditions for which certification is requested. This must be shown—

(1) By tests upon an airplane of the type for which certification is requested, or by calculations based on, and equal in accuracy to, the results of testing; and

(2) By systematic investigation of each probable combination of weight and center of gravity, if compliance cannot be reasonably inferred upon combinations investigated.

(b) The following general tolerances are allowed during flight testing. However greater tolerances may be allowed in particular tests—

Item	Tolerance
Weight	+5%, −10%
Critical items affected by weight.	+5%, −1%
CG	±7% total travel

SC23.23 Load Distribution Limits

(a) Ranges of weight and center of gravity within which the airplane may be safely operated must be established. If a weight and center of gravity combination is allowable only within certain lateral load distribution limits that could be inadvertently exceeded, these limits must be established for the corresponding weight and center of gravity combinations.

(b) The load distribution must not exceed:

(1) The selected limits;

(2) The limits at which the structure is proven; or

(3) The limits at which compliance with each applicable flight requirement of this subpart is shown.

SC23.25 Weight Limits

(a) *Maximum weight.* The maximum weight is the highest weight at which compliance with each applicable requirement of part 23 (other than those complied with at the design landing weight) is shown. The maximum weight must be established so that it is—

(1) Not more than the least of—

(i) The highest weight selected by the applicant; or

(ii) The design maximum weight, which is the highest weight at which compliance with each applicable structural loading condition of part 23 (other than those complied with at the design landing weight) is shown; or

(iii) The highest weight at which compliance with each applicable flight requirement is shown; and

(2) With each seat occupied, assuming a weight of 190 pounds, not less than the weight with—

(i) Oil at full tank capacity, and at least enough fuel for maximum continuous thrust operation of at least 45 minutes; or

(ii) The required minimum crew, and fuel and oil to full tank capacity.

(b) *Mimimum weight.* The minimum weight (the lowest weight at which compliance with each applicable requirement of this part is shown) must be established so that it is not more than the sum of—

(1) The empty weight determined under SC23.29;

(2) The weight of the required minimum crew (assuming a weight of 170 pounds for each crew member); and

(3) The weight of 5 percent of the total fuel capacity of that particular fuel tank arrangement under investigation.

SC23.29 Empty Weight and Corresponding Center of Gravity

(a) The empty weight and corresponding center of gravity must be determined by weighing the airplane with—

(1) Fixed ballast;

(2) Unusable fuel determined under § 23.959; and

(3) Full operating fluids, including—

(i) Oil;

(ii) Hydraulic fluid; and

(iii) Other fluids required for normal operation of airplane systems.

(b) The condition of the airplane at the time of determining empty weight must be one that is well defined and can be easily repeated.

*SC23.31 Removable Ballast

Removable ballast may be used in showing compliance with the flight requirements of this subpart, if—

(a) The place for carrying ballast is properly designed and installed, and is marked under SC23.1557; and

(b) Instructions are included in the Airplane Flight Manual, approved manual material, or markings and placards, for the proper placement of the removable ballast under each loading condition for which removable ballast is necessary

SC23.45 Performance—General

(a) The performance requirements of this subpart must be met for: Still air; and Ambient atmospheric conditions.

(b) Unless otherwise prescribed, performance data must be provided over not less than the following ranges of conditions:

(1) Airport altitude from seal level to 10,000 feet; and

(2) Temperature from standard to 30 °C above standard, or the maximum ambient atmospheric temperature at which compliance with the cooling provisions of §§ 23.1041 to 23.1045 is shown, if lower.

(c) Performance data must be determined with the means for controlling the engine cooling air supply in the position used in the cooling tests required by §§ 23.1041 to 23.1045.

(d) The available propulsive thrust must correspond to engine thrust not exceeding the approved thrust, less:

(1) Installation losses; and

(2) The equivalent thrust absorbed by the accessories and services appropriate to the particular ambient atmospheric conditions and the particular flight condition.

(e) The performance as affected by engine thrust must be based on a relative humidity of:

(1) 80 percent at and below standard temperature; and

(2) 34 percent at and above standard temperature plus 50 °F

Between the two temperatures the relative humidity must vary linearly

(f) Unless otherwise prescribed in determining the takeoff and landing distances, changes in the airplane's configuration, speed and thrust must be made in accordance with procedures established by the applicant for operation in service. The procedures must be able to be executed consistently by pilots of average skill in atmospheric conditions reasonably expected to be encountered in service

(g) The takeoff and landing distances must be determined on a smooth dry hard-surfaced runway. The effect on these distances of operation on other types of surface (for example, grass, gravel) when dry may be derived and these surfaces listed under SC23.1583(o).

SC23.49 Stalling Speed

(a) V_{SO} and V_{S1} are the stalling speeds or the minimum steady fight speed, in knots (CAS), at which the airplane is controllable with—

(1) The propulsive thrust not greater than zero at the stalling speed, or, if the resultant thrust has no appreciable effect on the stalling speed, with engines idling and throttles closed;

(2) The airplane in the condition existing in the test in which V_{SO} and V_{S1} are being made;

(3) Center of gravity in the position which results in the highest value of V_{SO} and V_{S1} and

(4) Weight used when V_{SO} and V_{S1} are being used as a factor to determine compliance with a required performance standard.

(b) V_{SO} and V_{S1} must be determined by flight tests using the procedure and meeting the flight characteristics specified in SC23.201

SC23.51 Takeoff Speeds

(a) The rotation speed V_R, is the speed at which the pilot makes a control input with

the intention of lifting the airplane out of contact with the runway. V_R must not be less than the greater of 1.05 V_{MC} and 1.10 V_{S1}.

(b) The speed at 50 feet must not be less than the highest of:

(1) A speed that is shown to be safe for continued flight (or emergency landing, if applicable) under all reasonably expected conditions, including turbulence and complete failure of the critical engine; or

(2) 1.10 V_{MC}; or

(3) 1.20 V_{S1}.

SC23.53 Takeoff Distance

(a) The takeoff distance must be determined in accordance with subparagraph (b), using speeds determined in accordance with SC23.51(a) and (b).

(b) The distance required to takeoff and climb to a height of 50 feet above the takeoff surface must be determined for each weight, altitude and temperature within the operational limits established for takeoff with—

(1) Takeoff thrust on each engine;

(2) Wing flaps in the takeoff position(s); and

(3) Landing gear extended.

SC23.63 Climb: General

(a) Compliance with the requirements of SC23.65, SC23.66, SC23.67, SC23.69 and SC23.77 must be shown—

(1) Out of ground effect; and

(2) At speeds that are not less than those at which compliance with the powerplant cooling requirements of §§ 23.1041 to 23.1045 have been demonstrated.

(b) Compliance must be shown, at weights, as a function of airport altitude and ambient temperature, within the operational limits established for takeoff and landing respectively, with—

(1) SC23.65 and SC23.67(a) and (b) for takeoff; and

(2) SC23.67(b) and SC23.77 for landing.

SC23.65 Climb: All Engines Operating

The airplane must have a steady gradient of climb after takeoff of at least 4 percent with—

(a) Takeoff thrust on each engine;

(b) Landing gear extended except that, if the landing gear can be retracted in not more than 7 seconds, it may be assumed to be retracted;

(c) Wing flaps in the takeoff position(s); and

(d) A climb speed not less than the greater of 1.1 V_{MCA} and 1.2 V_{S1}.

SC23.66 Takeoff Climb: One-Engine Inoperative

The steady gradient of climb or descent must be determined at each weight, altitude and ambient temperature within the operational limits established by the applicant with—

(a) Critical engine inoperative;

(b) Remaining engine at takeoff thrust;

(c) Landing gear extended except that, if the landing gear can be retracted in not more than 7 seconds, it may be assumed to be retracted;

(d) Wing flaps in the takeoff position(s);

(e) Wings level; and

(f) Climb speed equal to that achieved at 50 feet in the demonstration of SC23.53.

SC23.67 Climb: One-Engine Inoperative

(a) The steady gradient of climb at an altitude of 400 feet above the takeoff surface must be measurably positive with the—

(1) Critical engine inoperative;

(2) Remaining engine at takeoff thrust;

(3) Landing gear retracted;

(4) Wing flaps in the takeoff position(s); and

(5) Climb speed equal to that achieved at 50 feet in the demonstration of SC23.53.

(b) The steady gradient of climb may not be less than 0.75 percent at an altitude of 1500 feet above the takeoff or landing surface, as appropriate, with the—

(1) Critical engine inoperative;

(2) Remaining engine at not more than maximum continuous thrust;

(3) Landing gear retracted;

(4) Wing flaps retracted; and

(5) Climb speed not less than 1.2 V_{S1}.

SC23.69 En-Route Climb/Descent

(a) *All engines operating.*

The steady gradient and rate of climb must be determined at each weight, altitude and ambient temperature within the operational limits established by the applicant with—

(1) Not more than maximum continuous thrust on each engine;

(2) Landing gear retracted;

(3) Wing flaps retracted; and

(4) Climb speed not less than 1.3 V_{S1}.

(b) *One-engine inoperative.*

The steady gradient and rate of climb/descent must be determined at each weight, altitude and ambient temperature within the operational limits established by the applicant with—

(1) Critical engine inoperative;

(2) Remaining engine at not more than maximum continuous thrust;

(3) Landing gear retracted;

(4) Wing flaps retracted; and

(5) Climb speed not less than 1.2 V_{S1}.

SC23.73 Reference Landing Approach Speed

The reference landing approach speed, V_{REF}, must not be less than the greater of V_{MC}, determined under SC23.149(c) with the wing flaps in the landing position, and 1.3 V_{SO}.

SC23.75 Landing Distance

The horizontal distance necessary to land and come to a complete stop from a point 50 feet above the landing surface must be determined, for standard temperatures at each weight and altitude within the operational limits established for landing, as follows:

(a) A steady approach at not less than V_{REF} must be maintained down to the 50-foot height and—

(1) The steady approach must be at a gradient of descent not greater than 5.2 percent (3 degrees) down to the 50-foot height; and

(2) In addition, an applicant may demonstrate by tests that a maximum steady approach gradient, steeper than 5.2 percent, down to the 50-foot height is safe. The gradient must be established as an operating limitation and the information necessary to display the gradient must be available to the pilot by an appropriate instrument.

(b) A constant configuration must be maintained throughout the maneuver.

(c) The landing must be made without excessive vertical acceleration or tendency to bounce, nose-over, ground loop, or porpoise.

(d) It must be shown that a safe transition to the balked landing conditions of SC23.77 can be made from the conditions that exist at the 50-foot height, at maximum landing weight or the maximum landing weight for altitude and temperature of SC23.63(b)(2), as appropriate.

(e) The brakes must not be used so as to cause excessive wear of brakes or tires.

(f) Retardation means other than wheel brakes may be used if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected in service; and

(3) If any device is used that depends on the operation of any engine, and the landing distance would be increased when a landing is made with that engine inoperative; the landing distance must be determined with that engine inoperative, unless the use of other compensating means will result in a landing distance not more than that with each engine operating.

SC23.77 Balked Landing

The steady gradient of climb must not be less than 2.5 percent with—

(a) Not more than the thrust that is available 8 seconds after initiation of movement of the thrust controls from the minimum flight idle position;

(b) The landing gear extended;

(c) The wing flaps in the landing position; and

(d) A climb speed equal to V_{REF}, as defined in SC23.73.

Flight Characteristics

SC23.141 General

The airplane must meet the requirements of SC23.143 through SC23.253 at all practical loading conditions and operating altitudes for which certification has been requested, not exceeding the maximum operating altitude established under SC23.1527 and without requiring exceptional piloting skill, alertness, or strength.

Controllability and Maneuverability

SC23.143 General

(a) The airplane must be safely controllable and maneuverable during all flight phases including—

(1) Takeoff;

(2) Climb;

(3) Level flight;

(4) Descent;

(5) Go-around; and

(6) Landing (power on and power off) with the wing flaps extended and retracted.

(b) It must be possible to make a smooth transition from one flight condition to another (including turns and slips) without danger of exceeding the limit load factor, under any probable operating condition, including those conditions normally encountered in the sudden failure of any engine.

(c) If marginal conditions exist with regard to required pilot strength, the control forces required must be determined by quantitative

tests. In no case may the control forces under the conditions specified in paragraphs (a) and (b) exceed those prescribed in the following table:

Values in pounds force applied to the relevant control	Pitch	Roll	Yaw
For temporary application:			
Stick	60	30	.....
Rudder pedal	.....	.....	150
For prolonged application	10	5	20

SC23.145 Longitudinal Control

(a) With the airplane as nearly as possible in trim at 1.3 V_{S1}, it must be possible, at speeds below the trim speed, to pitch the nose downward so that the rate of increase in airspeed allows prompt acceleration to the trim speed with—

(1) Maximum continuous thrust on each engine;

(2) Power off; and

(3) Wing flaps and landing gear—

(i) Retracted; and

(ii) Extended.

(b) It must be possible to carry out the following maneuvers without requiring the application of control forces exceeding those specified in SC23.143(c). The trimming controls must not be adjusted during the maneuvers:

(1) With landing gear extended and flaps retracted and the airplane as nearly as possible in trim at 1.4 V_{S1}, extend the flaps as rapidly as possible and allow the airspeed to transition from 1.4 V_{S1} to 1.4 V_{SO}, with—

(i) Power off; and

(ii) Thrust necessary to maintain level flight in the initial condition.

(2) With landing gear and flaps extended, power off and the airplane as nearly as possible in trim at 1.3 V_{SO}, quickly apply takeoff thrust and retract the flaps as rapidly as possible to the recommended balked landing setting and allow the airspeed to transition from 1.3 V_{SO} to 1.3 V_{S1}. Retract the gear when a positive rate of climb is established.

(3) With landing gear and flaps extended, thrust for and in level flight at 1.1 V_{SO} and the airplane as nearly as possible in trim, it must be possible to maintain approximately level flight while retracting the flaps as rapidly as possible with simultaneous application of not more than maximum continuous thrust. If gated flap positions are provided, the flap retraction may be demonstrated in stages with thrust and trim reset for level flight at 1.1 V_{S1} in the initial configuration for each stage—

(i) From the fully extended position to the most extended gated position;

(ii) Between intermediate gated positions, if applicable; and

(iii) From the least extended gated position to the fully retracted position.

(4) With power off, flaps and landing gear retracted and the airplane as nearly as possible in trim at 1.4 V_{S1}, apply takeoff thrust rapidly while maintaining the same airspeed.

(5) With power off, landing gear and flaps extended and the airplane as nearly as possible in trim at V_{REF}, obtain and maintain airspeeds between 1.1 V_{SO} and either 1.7 V_{SO} or V_{FE}, whichever is lower.

(6) With maximum takeoff thrust, landing gear retracted, flaps in the takeoff position(s) and the airplane as nearly as possible in trim at V_{FE} appropriate to the takeoff flap position, retract the flaps as rapidly as possible while maintaining speed constant.

(c) At speeds above V_{MO}/M_{MO} and up to the maximum speed shown under SC23.251, a maneuvering capability of 1.5g must be demonstrated to provide a margin to recover from upset or inadvertent speed increase.

(d) It must be possible, with a pilot control force of not more than 10 pounds, to maintain a speed of not more than V_{REF} during a power-off glide with landing gear and wing flaps extended.

(e) By using normal flight and thrust controls, except as otherwise noted in paragraphs (e)(1) and (e)(2) of this section, it must be possible to establish a zero rate of descent at an attitude suitable for a controlled landing without exceeding the operational and structural limitations of the airplane, as follows:

(1) Without the use of the primary longitudinal control system;

(2) Without the use of the primary directional control; and

(3) If a single failure of any one connecting or transmitting link would affect both the longitudinal and directional primary control system, without the primary longitudinal and directional control system.

SC23.147 Directional and Lateral Control

(a) It must be possible, while holding the wings level within 5 degrees, to make sudden changes in heading safely in both directions. This must be shown at 1.4 V_{S1} with heading changes up to 15 degrees (except that the heading change at which the rudder force corresponds to the limits specified in SC23.143 need not be exceeded), with the—

(1) Critical engine inoperative;

(2) Remaining engine at maximum continuous thrust;

(3) Landing gear—

(i) Retracted; and

(ii) Extended.

(4) Flaps retracted.

(b) It must be possible to regain full control of the airplane without exceeding a bank angle of 45 degrees, reaching a dangerous attitude or encountering dangerous characteristics, in the event of a sudden and complete failure of the critical engine, making allowance for a delay of 2 seconds in the initiation of recovery action appropriate to the situation, with the airplane initially in trim, in the following conditions—

(1) Maximum continuous thrust on each engine;

(2) Wing flaps retracted;

(3) Landing gear retracted; and

(4) Speed equal to that at which compliance with SC23.69(a) has been shown.

(c) It must be shown that the airplane is safely controllable without the use of the primary lateral control system in any configuration and at any speed or altitude within the approved operating envelope and that the airplane's flight characteristics are not impaired below a level needed to permit continued safe flight and the ability to maintain attitudes suitable for a controlled landing without exceeding the operational and structural limitations of the airplane. If a single failure of any one connecting or transmitting link in the lateral control system would also cause the loss of additional control system(s), the above requirement is equally applicable with those additional systems also assumed to be inoperative.

SC23.149 Minimum Control Speed

(a) V_{MC} is the calibrated airspeed at which, when the critical engine is suddenly made inoperative, it is possible to recover control of the airplane, with that engine still inoperative, and thereafter maintain straight flight at the same speed with an angle of bank not more than 5 degrees. The method used to simulate critical engine failure must represent the most critical mode of powerplant failure with respect to controllability expected in service.

(b) V_{MC} for takeoff must not exceed 1.2 V_{S1}, (where V_{S1} is determined at the maximum takeoff weight) and must be determined with the most unfavorable weight and center of gravity position and with the airplane airborne and the ground effect negligible, for the takeoff configuration(s) with—

(1) Maximum available takeoff thrust initially on each engine;

(2) The airplane trimmed for takeoff;

(3) Flaps in the takeoff position(s); and

(4) Landing gear retracted.

(c) The V_{MC} requirements of (a) must also be met for the landing configuration with—

(1) Maximum available takeoff thrust initially on each engine;

(2) The airplane trimmed for an approach with all engines operating at V_{REF} at an approach gradient equal to the steepest used in the landing distance demonstration of SC23.75;

(3) Flaps in the landing position; and

(4) Landing gear extended.

(d) At V_{MC}, the rudder pedal force required to maintain control must not exceed 150 pounds and it must not be necessary to reduce thrust of the operative engine. During recovery, the airplane must not assume any dangerous attitude and it must be possible to prevent a heading change of more than 20 degrees.

(e) A minimum speed to intentionally render the critical engine inoperative must be established and designated as the safe, intentional, one-engine-inoperative speed, V_{SSE}.

SC23.151 Acrobatic Maneuvers

(a) The airplane must be able to perform safely acrobatic maneuvers for which certification is requested. Safe entry speeds for these maneuvers must be determined.

(b) It must be possible to safely recover control of the airplane following inadvertent upsets encountered during the acrobatic maneuvers for which certification is requested.

(c) The airplane must meet the emergency egress requirements of § 23.807(b)(5).

(d) The airplane must meet the following spin requirements:

(1) *One-turn spins.* The airplane must recover from a one-turn spin or a three second spin, whichever takes longer, in not more than one additional turn, after initiation

of the first control action for recovery. In addition—

(i) For both the flaps retracted and flaps extended conditions, the applicable airspeed limit and positive limit maneuvering load factor must not be exceeded;

(ii) No control forces or characteristics encountered during the spin or recovery may adversely affect prompt recovery;

(iii) It must be impossible to obtain unrecoverable spins with any use of the flight or engine power controls either at the entry into or during the spin; and

(iv) For the flaps extended condition, the flaps may be retracted during the recovery, but not before rotation has ceased.

(2) *Six-turn (or greater) spins:* The following requirements must be met in each configuration for which approval for spinning is requested:

(i) The airplane must readily recover from any point in a spin up to and including six turns, or any greater number of turns for which certification is requested, in not more than one and one half additional turns after initiation of the first control action for recovery. However, beyond three turns, the spin may be discontinued if spiral characteristics appear;

(ii) The applicable airspeed limits and limit maneuvering load factors must not be exceeded. For flaps extended configurations for which approval is requested, the flaps must not be retracted during the recovery;

(iii) It must be impossible to obtain unrecoverable spins with any use of the flight or engine power controls either at the entry into or during the spin; and

(iv) There must be no characteristics during the spin (such as excessive rates of rotation or extreme oscillatory motion) that might prevent a successful recovery due to disorientation or incapacitation of the pilot.

SC23.153 Control During Landings

It must be possible, while in the landing configuration, to safely complete a landing without exceeding the control force limits specified in SC23.143(c) following an approach to land—

(a) At a speed of V_{REF}—5 kts;

(b) With the airplane in trim, or as nearly as possible in trim and without the trimming control being moved throughout the maneuver;

(c) At an approach gradient equal to the steepest used in the landing distance demonstration of SC23.75; and

(d) With only those thrust changes, if any, which would be made when landing normally from an approach at V_{REF}.

SC23.155 Elevator Control Force in Maneuvers

(a) The elevator control force needed to achieve the positive limit maneuvering load factor may not be less than W/140 (where W is the maximum weight) or 15 pounds, whichever is greater, except that it need not be greater than 35 pounds.

(b) The requirement of paragraph (a) of this section must be met at maximum continuous thrust with the wing flaps and landing gear retracted—

(1) In a turn, with the trim setting used for wings level flight at V_O; and

In a turn, with the trim setting used for the maximum wings level flight speed, except that the speed need not exceed V_{MO}/M_{MO}.

(c) There must be no excessive decrease in the gradient of the curve of stick force versus maneuvering load factor with increasing load factor.

SC23.157 Rate of Roll

(a) *Takeoff.* It must be possible, using a favorable combination of controls, to roll the airplane from a steady 30 degree banked turn through an angle of 60 degrees, so as to reverse the direction of the turn within W+500÷1300 seconds, where W is the weight in pounds.

(b) The requirement of paragraph (a) of this section must be met when rolling the airplane in each direction with—

(1) Flaps in the takeoff position(s);

(2) Landing gear retracted;

(3) With the critical engine inoperative and the remaining engine at maximum takeoff thrust; and

(4) The airplane trimmed at a speed equal to the greater of 1.2 V_{S1} or 1.1 V_{MC} or as nearly as possible in trim for straight flight.

(c) *Approach.* It must be possible using a favorable combination of controls, to roll the airplane from a steady 30 degree banked turn through an angle of 60 degrees, so as to reverse the direction of the turn within W+2800÷2200 seconds, where W is the weight in pounds.

(d) The requirement of paragraph (c) of this section must be met when rolling the airplane in each direction in the following conditions:

(1) Flaps in the landing position(s);

(2) Landing gear extended;

(3) All engines operating at the thrust for a 3 degree approach; and

(4) The airplane trimmed at V_{REF}.

Trim

SC23.161 Trim

(a) *General.* Each airplane must meet the trim requirements of this section after being trimmed and without further pressure upon, or movement of, the primary controls or their corresponding trim controls by the pilot or the automatic pilot. In addition, it must be possible, in other conditions of loading, configuration, speed and thrust to ensure that the pilot will not be unduly fatigued or distracted by the need to apply residual control forces exceeding those for prolonged application specified in SC23.143(c) This applies in normal operation of the airplane and, if applicable, to those conditions associated with the failure of one engine for which performance characteristics are established.

(b) *Lateral and directional trim.* The airplane must maintain lateral and directional trim in level flight at 0.9 V_H, V_C or V_{MO}/M_{MO}, whichever is lowest, with the landing gear and wing flaps retracted.

(c) *Longitudinal trim.* The airplane must maintain longitudinal trim under each of the following conditions:

(1) A climb with:

(i) Takeoff thrust, landing gear retracted, wing flaps in the takeoff position(s), at the speeds used in determining the climb performance required by SC23.65; and

(ii) Maximum continuous thrust at the speeds and in the configuration used in determining the climb performance required by SC23.69(a).

(2) Level flight at all speeds from the lesser of V_H and V_{MO}/M_{MO} (as appropriate), to 1.4 V_{S1}, with the landing gear and flaps retracted.

(3) A descent at V_{MO}/M_{MO} with power off and with the landing gear and flaps retracted.

(4) Approach with landing gear extended and with—

(i) A 3 degree angle of descent, with flaps retracted and at a speed of 1.4 V_{S1};

(ii) A 3 degree angle of descent, flaps in the landing position(s) at V_{REF}; and

(iii) An approach gradient equal to the steepest used in the landing distance demonstrations of SC23.75, flaps in the landing position(s) at V_{REF}.

(d) The airplane must maintain longitudinal and directional trim and the lateral control force must not exceed 5 pounds, at the speed used in complying with SC23.67(b) with—

(1) The critical engine inoperative;

(2) The remaining engine at maximum continuous thrust;

(3) The landing gear retracted;

(4) The wing flaps retracted; and

(5) An angle of bank of not more than 5 degrees.

Stability

*SC23.171 General

The airplane must be longitudinally, directionally and laterally stable under SC23.173 through SC23.181. In addition, the airplane must show suitable stability and control "feel" (static stability) in any condition normally encountered in service if flight tests show it is necessary for safe operation.

SC23.173 Static Longitudinal Stability

Under the conditions specified in SC23.175 and with the airplane trimmed as indicated, the characteristics of the elevator control forces and the friction within the control system must be as follows:

(a) A pull must be required to obtain and maintain speeds below the specified trim speed and a push required to obtain and maintain speeds above the specified trim speed. This must be shown at any speed that can be obtained, except that speeds requiring a control force in excess of 40 pounds or speeds above the maximum allowable speed or below the minimum speed for steady unstalled flight, need not be considered.

(b) The airspeed must return to within plus or minus 10 percent of the original trim speed when the control force is slowly released at any speed within the speed range specified in paragraph (a) of this section.

(c) The stick force must vary with speed so that any substantial speed change results in a stick force clearly perceptible to the pilot.

SC23.175 Demonstration of Static Longitudinal Stability

Static longitudinal stability must be shown as follows:

(a) *Climb.* The stick force curve must have a stable slope, at speeds between 85 percent and 115 percent of the trim speed, with—

(1) Flaps retracted;

(2) Landing gear retracted;

(3) Maximum continuous thrust; and

(4) The airplane trimmed at the speed used in determining the climb performance required by SC23.69(a).

(b) *Cruise.* With flaps and landing gear retracted and the airplane in trim with thrust for level flight at representative cruising speeds at high and low altitudes, including speeds up to V_{MO}/M_{MO}, as appropriate, except that the speed need not exceed V_H.

(1) The stick force curve must have a stable slope at all speeds within a range that is the greater of 15 percent of the trim speed plus the resulting free return speed range, or 40 knots plus the resulting free return speed range, above and below the trim speed, except that the slope need not be stable—

(i) At speeds less than 1.3 V_{S1}; and

(ii) At speeds greater than V_{FC}/M_{FC}.

(c) *Landing.* The stick force curve must have a stable slope at speeds between 1.1 V_{S1} and 1.8 V_{S1} with—

(1) Flaps in the landing position(s);

(2) Landing gear extended; and

(3) The airplane trimmed at—

(i) V_{REF}, or the minimum trim speed if higher, with power off; and

(ii) V_{REF} with enough thrust to maintain a 3 degree angle of descent.

SC23.177 Static Directional and Lateral Stability

(a) The static directional stability, as shown by the tendency to recover from a skid with the rudder free, must be positive for any landing gear and flap position appropriate to the takeoff, climb, cruise, approach and landing configurations. This must be shown with symmetrical thrust up to maximum continuous thrust and at speeds from 12 V_{S1} up to maximum allowable speed for the condition being investigated. The angle of sideslip for these tests must be appropriate to the type of airplane. At larger angles of sideslip up to that at which full rudder is used or a control force limit in SC23.143 is reached, whichever occurs first, and at speeds from 1.2 V_{S1} to V_O the rudder pedal force must not reverse.

(b) The static lateral stability, as shown by the tendency to raise the low wing in a sideslip, must be positive for all landing gear and flap positions. This must be shown with symmetrical power up to 75 percent maximum continuous thrust at speeds above 1.2 V_{S1} in the takeoff configuration(s) and at speeds above 1.3 V_{S1} in other configurations, up to the maximum allowable speed for the configuration being investigated, in the takeoff, climb, cruise, and approach configurations. For the landing configuration, the power must be up to that necessary to maintain a 3 degree angle of descent in coordinated flight. The static lateral stability must not be negative at 1.2 V_{S1} in the takeoff configuration(s), or at 1.3 V_{S1} in other configurations. The angle of sideslip for these tests must be appropriate to the type of airplane but in no case may the constant heading sideslip angle be less than that obtainable with a 10 degree bank, or if less, the maximum bank angle obtainable with full rudder deflection or 150 pound rudder force.

(c) Paragraph (b) of this section does not apply to acrobatic category airplanes certificated for unlimited inverted flight.

(d) In straight, steady sideslips at 1.2 V_{S1} for any landing gear and flap positions and for any symmetrical thrust conditions up to 50 percent of maximum continuous thrust, the aileron and rudder control movements and forces must increase steadily (but not necessarily in constant proportion) as the angle of sideslip is increased up to the maximum appropriate to the type of airplane. At larger sideslip angles up to the angle at which full rudder or aileron control is used or a control force limit contained in SC23.143 is obtained, the aileron and rudder control movements and forces must not reverse as the angle of sideslip is increased. Rapid entry into, or recovery from, a maximum sideslip considered appropriate for the airplane must not result in uncontrollable flight characteristics.

SC23.181 Dynamic Stability

(a) Any short period oscillation not including combined lateral-directional oscillations occurring between the stalling speed and the maximum allowable speed appropriate to the configuration of the airplane must be heavily damped with the primary controls—

(1) Free; and

(2) In a fixed position.

(b) Any combined lateral-directional oscillations ("Dutch roll") occurring between the stalling speed and the maximum allowable speed appropriate to the configuration of the airplane must be damped to 1/10 amplitude in 7 cycles with the primary controls—

(1) Free; and

(2) In a fixed position.

(c) If it is determined that the function of a stability augmentation system, reference § 23.672, is needed to meet the flight characteristic requirements of this part, the primary control requirements of paragraphs (a)(2) and (b)(2) of this section are not applicable to the tests needed to verify the acceptability of that system.

(d) During the conditions as specified in SC23.175, when the longitudinal control force required to maintain speeds differing from the trim speed by at least plus and minus 15 percent is suddenly released, the response of the airplane must not exhibit any dangerous characteristics nor be excessive in relation to the magnitude of the control force released. Any long-period oscillation of flight path, phugoid oscillation, that results must not be so unstable as to increase the pilot's workload or otherwise endanger the airplane.

Stalls

SC23.201 Wings Level Stall

(a) It must be possible to produce and to correct roll by unreversed use of the rolling control and to produce and to correct yaw by unreversed use of the directional control, up to the time the airplane stalls.

(b) The wings level stall characteristics must be demonstrated in flight as follows. Starting from a speed at least 10 knots above the stall speed, the elevator control must be pulled back so that the rate of speed reduction will not exceed one knot per second until a stall is produced, as shown by either:

(1) an uncontrollable downward pitching motion of the airplane; or

(2) the control reaching the stop.

(c) Normal use of elevator control for recovery is allowed after the downward pitching motion of paragraph (b)(1) of this special condition has unmistakably been produced, or after the control has been held against the stop for not less than the longer of two seconds or the time employed in the minimum steady flight speed determination of SC23.49.

(d) During the entry into and the recovery from the maneuver, it must be possible to prevent more than 15 degrees of roll or yaw by the normal use of controls.

(e) Compliance with the requirements of this section must be shown under the following conditions:

(1) *Wing flaps:* Retracted, fully extended and each intermediate normal operating position;

(2) *Landing gear:* Retracted and extended;

(3) *Power:* Power off and 75 percent maximum continuous thrust. If the thrust-to-weight ratio at 75 percent maximum continuous thrust results in extremely nose-high attitudes, the test may be accomplished with the power required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 V_{SO}, but the power may not be less than 50 percent of maximum continuous thrust.

(4) *Trim:* The airplane trimmed at a speed as near 1.5 V_{S1} as practicable.

SC23.203 Turning Flight and Accelerated Turning Stalls

Turning flight and accelerated turning stalls must be demonstrated in tests as follows:

(a) Establish and maintain a coordinated turn in a 30 degree bank. Reduce speed by steadily and progressively tightening the turn with the elevator until the airplane is stalled, as defined in SC23.201(b). The rate of speed reduction must be constant, and—

(1) For a turning flight stall, may not exceed one knot per second; and

(2) For an accelerated turning stall, be 3 to 5 knots per second with steadily increasing normal acceleration.

(b) After the airplane has stalled, as defined in SC23.201(b) it must be possible to regain wings level flight by normal use of the flight controls but without increasing thrust and without—

(1) Excessive loss of altitude;

(2) Undue pitch up;

(3) Uncontrollable tendency to spin;

(4) Exceeding a bank angle of 60 degrees in the original direction of the turn or 30 degrees in the opposite direction in the case of turning flight stalls;

(5) Exceeding a bank angle of 90 degrees in the original direction of the turn or 60 degrees in the opposite direction in the case of accelerated turning stalls; and

(6) Exceeding the maximum permissible speed or allowable limit load factor.

(c) Compliance with the requirements of this section must be shown under the following conditions:

(1) *Wing flaps:* Retracted, fully extended and each intermediate normal operating position;

(2) *Landing gear:* Retracted and extended;

(3) *Power:* Power off and 75 percent maximum continuous thrust. If the thrust-to-

weight ratio at 75 percent maximum continuous thrust results in extremely nose-high attitudes, the test may be accomplished with the power required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 V_{SO}, but the power may not be less than 50 percent of maximum continuous thrust;

(4) *Trim:* The airplane trimmed at a speed as near 1.5 V_{S1} as practicable.

SC23.207 Stall Warning

(a) There must be a clear and distinctive stall warning, with the flaps and landing gear in any normal position, in straight and turning flight.

(b) The stall warning may be furnished either through the inherent aerodynamic qualities of the airplane or by a device that will give clearly distinguishable indications under expected conditions of flight. However, a visual stall warning device that requires the attention of the crew within the cockpit is not acceptable by itself.

(c) During the stall tests required by SC23.201(b) and SC23.203(a)(1), the stall warning must begin at a speed exceeding the stalling speed by a margin of not less than 5 knots and must continue until the stall occurs.

(d) When following the procedures of SC23.1585, the stall warning must not occur during a takeoff with all engines operating, a takeoff continued with one engine inoperative, or during an approach to landing.

(e) During the stall tests required by SC23.203(a)(2), the stall warning must begin sufficiently in advance of the stall for the stall to be averted by pilot action taken after the stall warning first occurs.

(f) An artificial stall warning may be mutable, provided that it is armed automatically during takeoff and re-armed automatically in the approach configuration.

Ground Handling Characteristics

SC23.231 Longitudinal Stability and Control

The airplane may have no uncontrollable tendency to nose over in any reasonably expected operating condition, including rebound during landing or takeoff. Wheel brakes must operate smoothly and may not induce any undue tendency to nose over.

SC23.233 Directional Stability and Control

(a) A 90 degree cross-component of wind velocity, demonstrated to be safe for taxiing, takeoff and landing must be established and must be not less than 0.2 V_{SO}.

(b) The airplane must be satisfactorily controllable in power-off landings at normal landing speed, without using brakes or engine thrust to maintain a straight path until the speed has decreased to at least 50 percent of the speed at touchdown.

(c) The airplane must have adequate directional control during taxiing.

SC23.235 Operation on Unpaved Surfaces

The airplane must be demonstrated to have satisfactory characteristics and the shock-absorbing mechanism must not damage the structure of the airplane when the airplane is taxied on the roughest ground that may reasonably be expected in normal operation and when takeoffs and landings are performed on unpaved runways having the roughest surface that may reasonably be expected in normal operation.

Miscellaneous Flight Requirements

SC23.251 Vibration and Buffeting

There must be no vibration or buffeting severe enough to result in structural damage and each part of the airplane must be free from excessive vibration, under any appropriate speed and power conditions up to V_D/M_D. In addition, there must be no buffeting in any normal flight condition severe enough to interfere with the satisfactory control of the airplane or cause excessive fatigue to the flight crew. Stall warning buffeting within these limits is allowable.

SC23.253 High Speed Characteristics

The following speed increase and recovery characteristics must be met—

(a) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely speed up to V_{MO}/M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, leveling off from climb and descent from Mach limit to airspeed limit altitude.

(b) Allowing for pilot reaction time after occurrence of the effective inherent or artificial speed warning specified in § 23.1303, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO}/M_{MO} without—

(1) Exceptional piloting strength or skill;

(2) Exceeding V_D/M_D, the maximum speed shown under SC23.251, or the structural limitations; or

(3) Buffeting that would impair the pilot's ability to read the instruments or to control the airplane for recovery.

(c) There may be no control reversal about any axis at any speed up to the maximum speed shown under SC23.251. Any reversal of elevator control force or tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques.

4. Operating Procedures and Information

Instead of compliance with the sections contained in subpart G of part 23, the following sections apply:

*SC23.1501 General

(a) Each operating limitation specified in SC23.1505 through SC23.1527 and other limitations and information necessary for safe operation must be established.

(b) The operating limitations and other information necessary for safe operation must be made available to the crew members as prescribed in SC23.1541 through SC23.1589.

SC23.1505 Airspeed Limitations

The maximum operating limit speed (V_{MO}/M_{MO} airspeed or Mach number, whichever is critical at a particular altitude) must be established as a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent) unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed V_C/M_C and so that it is sufficiently below V_D/M_D and the maximum speed shown under SC23.251 to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D or the maximum speed shown under SC23.251 may not be less than the speed margin established between V_C/M_C and V_D/M_D under § 23.335(b), or the speed margin found necessary in the flight tests conducted under SC23.253.

SC23.1507 Operating Maneuvering Speed

The maximum operating maneuvering speed V_O must be established as an operating limitation, where V_O must not be greater than the $V_S\sqrt{N}$ established in § 23.335(c).

SC23.1511 Flap Extended Speed

(a) The flap extended speed V_{FE} must be established so that it is—

(1) Not less than the minimum value of V_F allowed in § 23.345(b); and

(2) Not more than V_F established under § 23.345 (a), (c), and (d).

(b) Additional combinations of flap setting, airspeed, and engine thrust may be established if the structure has been proven for the corresponding design conditions.

SC23.1513 Minimum Control Speed

The minimum control speed(s) V_{MC}, determined under SC23.149 (b) and (c) must be established as an operating limitation(s).

SC23.1519 Weight and Center of Gravity

The weight and center of gravity ranges, determined under SC23.23 must be established as operating limitations.

SC23.1521 Powerplant Limitations

(a) *General.* The powerplant limitations prescribed in this section must be established so that they do not exceed the corresponding limits for which the engines are type certificated. In addition, other powerplant limitations used in determining compliance with this part must be established.

(b) *Takeoff operation.* The powerplant takeoff operation must be limited by—

(1) The maximum rotational speed (rpm);

(2) The maximum allowable gas temperature;

(3) The maximum allowable oil temperature; and

(4) The time limit for the use of the thrust corresponding to the limitations established in paragraphs (1) and (2) of this special condition.

(c) *Continuous operation.* The continuous operation must be limited by—

(1) The maximum rotational speed (rpm);

(2) The maximum allowable gas temperature; and

(3) The maximum allowable oil temperature.

(d) *Fuel designation.* The fuel designation(s) must be established so that it is not less than that required for the operation of the engines within the limitations in paragraphs (b) and (c) of this section.

(e) *Ambient temperature.* Ambient temperature limitations must be established as the maximum ambient atmospheric temperature at which compliance with the cooling provisions of §§ 23.1041 through 23.1045 is shown.

SC23.1523 Minimum Flight Crew

The minimum flight crew must be established so that it is sufficient for safe operation considering—

(a) The workload on individual crew members;

(b) The accessibility and ease of operation of necessary controls by the appropriate crew member; and

(c) The kinds of operation authorized under SC23.1525.

SC23.1525 Kinds of Operation

The kinds of operation (such as VFR, IFR, day or night) and the meteorological conditions (such as icing) to which the operation of the airplane is limited or from which it is prohibited, must be established appropriate to the installed equipment.

SC23.1527 Maximum Operating Altitude

(a) The maximum altitude up to which operation is allowed, as limited by flight, structural, powerplant, functional, or equipment characteristics, must be established.

(b) A maximum operating altitude limitation of not more than 25,000 feet must be established for pressurized airplanes, unless compliance with § 23.775(e) is shown.

SC23.1529 Instructions for Continued Airworthiness

The applicant must prepare Instructions for Continued Airworthiness in accordance with Appendix G that are acceptable to the FAA. The instructions may be incomplete at type certification if a program exists to ensure their completion prior to the delivery of the first airplane.

Markings and Placards

SC23.1541 General

(a) The airplane must contain—

(1) The markings and placards specified in SC23.1545 through SC23.1567; and

(2) Any additional information, instrument markings and placards required for the safe operation if it has unusual design, operating, or handling characteristics.

(b) Each marking and placard prescribed in paragraph (a) of this section—

(1) Must be displayed in a conspicuous place; and

(2) May not be easily erased, disfigured or obscured.

SC23.1543 Instrument Markings: General

For each instrument—

(a) When markings are on the cover glass of the instrument, there must be means to maintain the correct alignment of the glass cover with the face of the dial;

(b) Each arc and line must be wide enough and located to be clearly visible to the pilot; and

(c) All related instruments must be calibrated in compatible units.

SC23.1545 Airspeed Indicator

Each airspeed indicator must be marked as follows:

(a) For the flap operating range, a white arc with the lower limit at V_{SO} at the maximum weight and the upper limit at the flaps extended speed V_{FE} established under SC23.1511.

(b) A maximum allowable airspeed indication showing the variation of V_{MO}/M_{MO} with altitude or compressibility limitations (as appropriate), or a radial red line marking for V_{MO}/M_{MO} must be made at the lowest value of V_{MO}/M_{MO} established for any altitude up to the maximum operating altitude for the airplane.

SC23.1547 Magnetic Direction Indicator

(a) A placard meeting the requirements of this section must be installed on or near the magnetic direction indicator.

(b) The placard must show the calibration of the instrument in level flight with the engines operating.

(c) The placard must state whether the calibration was made with radio receivers on or off.

(d) Each calibration reading must be in terms of magnetic headings in not more than 30 degree increments.

(e) If a magnetic non-stabilized direction indicator can have a deviation of more than 10 degrees caused by the operation of electrical equipment, the placard must state which electrical loads, or combination of loads, would cause a deviation of more than 10 degrees when turned on.

SC23.1549 Powerplant Instruments

For each required powerplant instrument, as appropriate to the type of instruments—

(a) Each maximum and, if applicable, minimum safe operating limit must be marked with a red radial or a red line;

(b) Each normal operating range must be marked with a green arc or green line not extending beyond the maximum and minimum safe limits;

(c) Each takeoff and precautionary range must be marked with a yellow arc or a yellow line; and

(d) Each engine range that is restricted because of excessive vibration stresses must be marked with red arcs or red lines.

*SC23.1551 Oil Quantity Indicator

Each oil quantity indicator must be marked in sufficient increments to indicate readily and accurately the quantity of oil.

SC23.1553 Fuel Quantity Indicator

A red radial line must be marked on each indicator at the calibrated zero reading, as specified in § 23.1337(b)(1).

SC23.1555 Control Markings

(a) Each cockpit control, other than primary flight controls and simple push-button type starter switches, must be plainly marked as to its function and method of operation.

(b) Each secondary control must be suitably marked.

(c) For powerplant fuel controls—

(1) Each fuel tank selector control must be marked to indicate the position corresponding to each tank and to each existing crossfeed position;

(2) If safe operation requires the use of any tanks in a specific sequence, that sequence must be marked on or near the selector for those tanks;

(3) The conditions under which the full amount of usable fuel in any restricted usage fuel tank can safely be used must be stated on a placard adjacent to the selector valve for that tank; and

(4) Each valve control must be marked to indicate the position corresponding to each engine controlled.

(d) Usable fuel capacity must be marked as follows:

(1) The usable fuel capacity available at each selector control position must be indicated near the selector control.

(e) For accessory, auxiliary and emergency controls—

(1) The landing gear indicator required by § 23.729 must be marked so that the pilot can, at any time, ascertain that the wheels are secured in the extreme positions; and

(2) Each emergency control must be red and must be marked as to method of operation. No control other than an emergency control shall be this color.

SC23.1557 Miscellaneous Markings and Placards

(a) *Baggage and cargo compartments and ballast location.* Each baggage and cargo compartment, and each ballast location, must have a placard stating any limitations on contents, including weight, that are necessary under the loading requirements.

(b) *Fuel and oil filler openings.* The following apply—

(1) Fuel filler openings must be marked at or near the filler cover with—

(i) The words "Jet Fuel"; and

(ii) The permissible fuel designations, or references to the Airplane Flight Manual (AFM) for permissible fuel designations.

(iii) For pressure fueling systems, the maximum permissible fueling supply pressure and the maximum permissible defueling pressure.

(2) Oil filler openings must be marked at or near the filler cover with—

(i) The word "Oil"; and

(ii) The permissible oil designation, or references to the Airplane Flight Manual (AFM) for permissible oil designations.

(c) *Emergency exit placards.* Each placard and operating control for each emergency exit must be red. A placard must be near each emergency exit control and must clearly indicate the location of that exit and its method of operation.

(d) The system voltage of each direct current installation must be clearly marked adjacent to its external power connection.

SC23.1559 Operating Limitations Placard

(a) There must be a placard in clear view of the pilot stating—

(1) That the airplane must be operated in accordance with the approved Flight Manual; and

(2) The certificated category to which the placards apply.

(b) There must be a placard in clear view of the pilot that specifies the kind of operations to which the operation of the airplane is limited or from which it is prohibited under SC23.1525.

SC23.1561 Safety Equipment

(a) Safety equipment must be plainly marked as to method of operation.

(b) Stowage provisions for required safety equipment must be marked for the benefit of occupants.

SC23.1563 Airspeed Placards

There must be an airspeed placard in clear view of the pilot and as close as practicable to the airspeed indicator. This placard must list—

(a) The design maneuvering speed, V_O; and

(b) The maximum landing gear operating speed, VLO;

(c) The maximum value of the minimum control speed, V_{MC} (one-engine inoperative), determined under SC23.149 (b) and (c).

SC23.1567 Flight Maneuver Placard

There must be a placard in clear view of the pilot—

(a) Listing the control actions for recovery from spinning maneuvers; and

(b) Stating that recovery must be initiated when spiral characteristics appear, or after not more than six turns or not more than any greater number of turns for which the airplane has been certificated.

Airplane Flight Manual

SC23.1581 General

(a) An FAA-Approved Airplane Flight Manual must be furnished with each airplane and it must contain the following—

(1) Information required by SC23.1583 through SC23.1589.

(2) Other information that is necessary for safe operation because of design, operating or handling characteristics.

(3) Further information necessary to comply with the relevant operating rules.

(b) Each part of the Airplane Flight Manual containing information prescribed in SC23.1583 through SC23.1589 must be approved, segregated, identified, and clearly distinguished from each unapproved part of the Airplane Flight Manual.

(c) The units used in the Airplane Flight Manual must be the same as those marked on the appropriate instruments and placards.

(d) All Airplane Flight Manual operational airspeeds must, unless otherwise stated, be presented as indicated airspeeds.

(e) Provisions must be made for stowing the Airplane Flight Manual in a suitable fixed container that is readily accessible to the pilot.

(f) Each Airplane Flight Manual must contain a means for recording the incorporation of revisions and/or amendments.

SC23.1583 Operating Limitations

The Airplane Flight Manual must contain operating limitations determined under the applicable regulations, including the following:

(a) *Airspeed limitations.*

(1) Information necessary for the marking of the airspeed limits on the indicator as required in SC23.1545, and the significance of each of those limits and of the color coding used on the indicator.

(2) The speeds V_{MC}, V_O, V_{LE}, and V_{LO} and their significance.

(b) *Powerplant limitations.*

(1) Limitations required by SC23.1521.

(2) Explanation of the limitations marking the instruments required by SC23.1549 through SC23.1553.

(c) *Weight.*

(1) The maximum weight; and

(2) The maximum landing weight, if the design landing weight selected by the applicant is less than the maximum weight.

(3) The maximum takeoff weight for each airport altitude and ambient temperature within the range selected by the applicant not exceeding the weight at which the airplane complies with the climb requirements of SC23.63.

(4) The maximum landing weight for each airport altitude and ambient temperature within the range selected by the applicant not exceeding the weight at which the airplane complies with the climb requirements of SC23.63(b)(2).

(5) The maximum zero fuel weight, where relevant.

(d) *Center of gravity.* The established center of gravity limits.

(e) *Maneuvers.* The following authorized maneuvers, appropriate airspeed limitations, and unauthorized maneuvers, as prescribed in this section:

(1) A list of approved acrobatic flight maneuvers demonstrated in the type flight tests, together with recommended entry speeds and any other associated limitations.

(2) Spin recovery procedure established to show compliance with SC23.151(d).

(f) *Maneuver load factor.* The positive and negative limit load factors in g's.

(g) *Minimum flight crew.* The number and functions of the minimum flight crew determined under SC23.1523.

(h) *Kinds of operation.* A list of the kinds of operation to which the airplane is limited or from which it is prohibited under SC23.1525, and also a list of installed equipment that affects any operating limitation and identification as to the equipment's required operational status for the kinds of operation for which approval has been granted.

(i) *Maximum operating altitude.* The maximum altitude established under SC23.1527.

(j) *Allowable lateral fuel loading.* The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(k) *Baggage and cargo loading.* The following information for each beggage and cargo compartment or zone—

(1) The maximum allowable load; and

(2) The maximum intensity of loading.

(l) *Systems.* Any limitations on the use of airplane systems and equipment.

(m) *Ambient temperatures.* Where appropriate, maximum and minimum ambient air temperatures for operation.

(n) *Smoking.* Any restrictions on smoking in the airplane.

(o) *Types of surface.* A statement of the types of surface on which operations may be conducted must be provided.

SC23.1585 Operating Procedures

Information concerning normal, abnormal (if applicable) and emergency procedures, and other pertinent information necessary for safe operation and the achievement of the scheduled performance, must be furnished, including—

(a) An explanation of significant or unusual flight or ground handling characteristics.

(b) The maximum demonstrated values of crosswind for takeoff and landing and procedures and information pertinent to operations in crosswinds.

(c) Procedures, speeds, and configuration(s) for making a normal takeoff in accordance with SC23.51 and SC23.53 and the subsequent climb in accordance with SC23.65 and SC23.69.

(d) Procedures for abandoning a takeoff due to engine failure or other cause.

(e) A recommended speed for flight in rough air. This speed must be chosen to protect against the occurrence, as a result of gusts, of structural damage to the airplane and loss of control (for example, stalling).

(f) Procedures, speeds, and configuration(s) for making a normal approach and landing in accordance with SC23.73 and SC23.75 and e transition to the balked landing condition.

(g) Procedures for restarting any engine in flight, including the effects of altitude.

(h) Procedures and speeds for continuing a takeoff following engine failure and the conditions under which takeoff can safely be continued, or a warning against attempting to continue the takeoff.

(i) Procedures, speeds, and configurations for continuing a climb following engine failure, after takeoff in accordance with SC23.67 and en route in accordance with SC23.69.

(j) Procedures, speeds, and configuration(s) for making an approach and landing with one engine inoperative.

(k) Procedures, speeds, and configuration(s) for making a balked landing with one engine inoperative and the conditions under which a balked landing can safely be performed or a warning against attempting a balked landing.

(l) The V_{SSE} determined in SC23.149.

(m) Information identifying each operating condition in which the fuel system independence prescribed in § 23.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(n) For each airplane showing compliance with § 23.1353 (g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(o) Information on the total quantity of usable fuel for each fuel tank and the effect on the unusuable fuel quantity as a result of a failure of any pump, must be furnished.

(p) Procedures for the safe operation of the airplane's systems and equipment, both in normal use and in the event of malfunction, must be furnished.

SC23.1587 Performance Information

Unless otherwise prescribed, the following information must be furnished over the altitude and temperature ranges required by SC23.45(b)—

(a) The stalling speeds V_{SO}, and V_S, with the landing gear and wing flaps retracted, determined at maximum weight under SC23.49 and the effect on these stalling speeds of angles of bank up to 60 degrees.

(b) The takeoff distance, determined under SC23.53 and the type of runway surface for which it is valid.

(c) The steady rate and gradient of climb with all engines operating, determined under SC23.69(a).

(d) The landing distance, determined under SC23.75, and the type of runway surface for which it is valid.

(e) The effect on takeoff and landing distances of operation on other than smooth hard surfaces, when dry, determined under SC23.45(g).

(f) The effect on takeoff and landing distances of runway slope and 50 percent of the headwind component and 150 percent of the tailwind component.

(g) The steady rate and gradient of climb/descent with one engine inoperative, determined under SC23.69(b).

(h) The steady gradient of climb/descent, determined under SC23.66.

SC23.1589 Loading Information

The following loading information must be furnished:

(a) The weight and location of each item of equipment that can easily be removed, relocated, or replaced and that is installed when the airplane was weighed under SC23.25.

(b) Appropriate loading instructions for each possible loading condition between the maximum and minimum weights established under SC23.25, to facilitate the center of gravity remaining within the limits established under SC23.23.

5. Effects of Contamination on Natural Laminar Flow Airfoils

In the absence of specific requirements for airfoil contamination, airplane airfoil designs that have airfoil pressure gradient characteristics and smooth aerodynamic surfaces that may be capable of supporting natural laminar flow must comply with the following:

(a) It must be shown by tests, or analysis supported by tests, that the airplane complies with the requirements of SC23.141 through SC23.253 and special condition 4 with any airfoil contamination that would normally be encountered in service and that would cause significant adverse effects on the handling qualities of the airplanes resulting from the loss of laminar flow.

(b) Significant performance degradations identified as resulting from the loss of laminar flow must be provided as part of the information required by special condition 4.

Issued in Kansas City, Missouri, on January 31, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3620 Filed 2–17–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 94–NM–11–AD; Amendment 39–8827; AD 94–04–07]

Airworthiness Directives; Beech Model 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech Model 400A airplanes. This action requires rework or replacement of certain hubcaps on the main landing gear. This AD also requires incorporation of procedures into the FAA-approved maintenance program for inspections of the transducer drive clip to ensure that the drive clip gap does not exceed a specified limit. This amendment is prompted by a report that a Beech Model 400A airplane lost its anti-skid braking system during landing roll out. The actions specified in this AD are intended to prevent degradation or loss of braking performance.

DATES: Effective March 7, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 7, 1994.

Comments for inclusion in the Rules Docket must be received on or before April 19, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dale A. Vassalli, Aerospace Engineer, Systems and Equipment Branch, ACE–130W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4132; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: The FAA has received a report that a Beech Model 400A airplane lost its anti-skid braking system during landing roll out. In addition, the FAA has received reports that other Model 400A airplanes have also experienced similar problems with the anti-skid system. Although the exact cause of the brake failure is undetermined, results of tests and inspections of the brakes and the anti-skid system on these airplanes have revealed that only marginal engagement may occur between the main wheel hubcap drive clip and the anti-skid wheel speed transducer. Lack of adequate engagement between the drive clip and the transducer could cause the transducer to send erroneous signals to the anti-skid control box. This condition, if not corrected, could result in degradation or loss of braking performance.

Model 400A airplanes are equipped with a back-up emergency braking system. Power brake failure procedures contained in the Emergency Procedures section of the FAA-approved Airplane Flight Manual (AFM) specify that the required landing distance will increase by approximately 50 percent when the brakes have failed and the emergency brake system is activated. This increase assumes that brake failure is recognized. In certain brake failure conditions caused by the drive clip not being fully engaged, the pilot may not immediately recognize the degradation of braking performance. In this case, the required landing distance could increase by 70 percent or more.

Federal Aviation Regulation (FAR) 25.735 specifies, in part, that single failures in brake systems are acceptable, as long as the airplane can be brought to rest under the landing performance conditions specified in FAR 25.125 with a mean deceleration during the landing roll of at least 50 percent of that obtained during normal landing performance. Since Beech Model 400A airplanes operate under part 91 of the FAR, the AFM allows landings on a runway as short as the actual landing distance determined under FAR 25.125, if the normal brake system is operating. If the normal brake system fails and the pilot must revert to the emergency brake system, the actual landing distance required could easily exceed the actual runway length available.

The FAA has reviewed and approved Beechcraft Service Bulletin No. 2549, dated January 1994, that describes procedures for replacement of certain hubcaps on the main landing gear with new hubcaps, or rework and reidentification of certain hubcaps. The rework involves adding a spacer between the hubcap drive clip and the hubcap, and reidentifying the hubcap assembly with a specified part number. Accomplishment of these actions will prevent loss of anti-skid braking action due to intermittent wheel speed transducer signals. The service bulletin also describes procedures for an

inspection of the transducer drive clip to ensure that the drive clip gap does not exceed a specified limit. The Beechcraft service bulletin references Crane Hydro-Aire Service Bulletin No. 140–031–32–1, dated December 17, 1993, as an additional source of service information.

Since an unsafe condition has been identified that is likely to exist or develop on other Model 400A airplanes of the same type design, this AD is being issued to prevent degradation or loss of braking performance. This AD requires rework or replacement of certain hubcaps on the main landing gear. This AD also requires incorporation of procedures into the FAA-approved maintenance program for inspections of the transducer drive clip to ensure that the drive clip gap does not exceed a specified limit. The rework or replacement is required to be accomplished in accordance with the Beechcraft service bulletin described previously. The inspection procedure is also referenced in that service bulletin.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–11–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–04–07 Beech Aircraft Corporation: Amendment 39–8827. Docket 94–NM–11–AD.

Applicability: Model 400A airplanes; serial numbers RK–1 through RK–23 inclusive, on which BEECHCRAFT Kit No. 128–8001–1 S (increased landing weight modification) is installed; and serial numbers RK–24 through RK–76 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation or loss of braking performance, accomplish the following:

(a) Within 25 hours time-in-service or 30 days after the effective date of this AD, whichever occurs first, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD:

(1) Replace the existing left- and right-hand hubcaps on the main landing gear with new hubcaps, part number 140–03121–1; or rework the existing hubcaps by adding a spacer between the hubcap drive clip and the hubcap and reidentifying the hubcap assembly as part number 140–03121–1; in accordance with Beechcraft Service Bulletin No. 2549, dated January 1994.

(2) Incorporate into the FAA-approved maintenance inspection program the procedure described in Beechcraft Service Bulletin No. 2549, dated January 1994, for inspecting the transducer drive clip to ensure that the drive clip gap does not exceed 0.20 inch, which must be accomplished each time a hubcap is removed.

Note 1: The Beechcraft service bulletin references Crane Hydro-Aire Service Bulletin No. 140–031–32–1, dated December 17, 1993, as an additional source of service information.

(b) After the effective date of this AD, no person shall install a hubcap assembly, part number 140–03121, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The rework and replacement shall be done in accordance with Beechcraft Service Bulletin No. 2549, dated January 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1601 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 7, 1994.

Issued in Renton, Washington, on February 10, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3582 Filed 2–17–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No 93–ASW–31]

Alteration of Jet Route J–142

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes a segment of Jet Route J–142 between San Simon, AZ, and Socorro, NM. J–142 was initially established for air traffic control (ATC) purposes when Restricted Area R–5113 was in use. Since R–5113 is used for thunderstorm research approximately one month per year, this segment of J–142 is rarely utilized. When R–5113 is active, aircraft will be vectored clear of the area.

EFFECTIVE DATE: 0901 u.t.c., April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On October 14, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove a portion of J–142 between San Simon, AZ, and Socorro, NM (58 FR 53166). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations removes a portion of J–142 between San Simon, AZ, and Socorro, NM. J–142 is a dogleg route established for use when R–5113 is in use. R–5113 is used for thunderstorm research approximately one month a year. Since that portion of J–142 is rarely used, the FAA is removing that segment. Aircraft will be vectored clear of the area when R–5113 is active. This action will reduce chart clutter.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–142 [Revised] From Anton Chico, NM; to Borger, TX.

* * * * *

Issued in Washington, DC, on February 8, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–3742 Filed 2–17–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ANM–37]

Amendment of Class D Airspace; Ogden, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Ogden, Hill Air Force Base (AFB) Utah (UT), Class D airspace. This action corrects an error in the airspace description inadvertently committed during the airspace reclassification process. This action reduces the size of the Ogden, Hill AFB, UT, Class D airspace. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "control zone," replacing it with the designation "Class D airspace." The airspace will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 u.t.c., April 28, 1994.

FOR FURTHER INFORMATION CONTACT: James E. Riley, ANM–537, Federal Aviation Administration, Docket No. 93–ANM–37, 1601 Lind Avenue SW., Renton, Washington 98055–4056, telephone: (202) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On December 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Ogden, Hill AFB, UT, Class D airspace (58 FR 63904). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "control zone," replacing it with the designation "Class

D airspace." Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Class D airspace at Ogden, Hill AFB, UT, to correct an error in the airspace description inadvertently committed during the airspace reclassification process. This action reduces the size of the Ogden, Hill AFB, UT, Class D airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ANM UT D Ogden, Hill AFB, UT [Revised]

Ogden, Hill AFB, UT
(Lat. 41°07'25" N, long. 111°58'23" W)
Ogden-Hinckley Airport
(Lat. 41°11'46" N, long. 112°00'44" W)

That airspace extending upward from the surface to, but not including, 7,800 feet MSL within the 4.3-mile radius of the Ogden-Hinckley Airport and the 4.3-mile radius of the Hill AFB; excluding that airspace within the Ogden-Hinckley Airport, UT, Class D area when it is effective.

* * * * *

Issued in Seattle, Washington, on February 4, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–3740 Filed 2–17–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, and 441

[Docket No. 93N–0366]

Antibiotic Drugs; Updates, Technical Changes, and Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by updating, making noncontroversial technical changes, and making a correction in certain antibiotic drug regulations that provide for accepted standards of antibiotic and antibiotic containing drugs intended for human use.

DATES: Effective February 18, 1994; written comments, notice of participation, and request for a hearing by March 21, 1994; data, information, and analyses to justify a hearing by April 19, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0335.

SUPPLEMENTARY INFORMATION: FDA is amending the antibiotic drug regulations by updating, making noncontroversial technical changes, and making a correction in certain antibiotic drug regulations that provide for accepted standards of antibiotic and antibiotic containing drugs intended for human use.

In § 430.6(b)(89) (21 CFR 430.6(b)(89)), the amount of imipenem master standard that is equivalent to 1 microgram of imipenem activity (potency) is revised from "1.07" to "1.085" micrograms to reflect the total moisture content and impurities in the master standard.

In § 436.215(b) (21 CFR 436.215(b)), the rotation rate of the paddle in the dissolution test for cephalexin hydrochloride monohydrate tablets of "100" revolutions per minute (rpm) is corrected to read "150" rpm. In the **Federal Register** of November 28, 1989 (54 FR 48859), the rotation rate of the apparatus in the dissolution test for cephalexin hydrochloride tablets was incorrectly given as "100" rpm. The only manufacturer of this product brought this error to the agency's attention and requested that the rotation rate be revised to read "150" rpm. The manufacturer has presented data that show that a rotation rate of "100" rpm causes wide variation in the dissolution results for the 500-milligram tablets. This variation causes an increase in the relative standard deviation of the data to the point that a significant number of lots would be rejected. The manufacturer has also submitted data that show that these rejected lots are fully bioavailable. FDA agrees that the 100 rpm rate was an error and that a 150 rpm rotation rate should be used.

In § 441.20a(a)(1)(i) (21 CFR 441.20a(a)(1)(i)), the potency specification for sterile imipenem monohydrate is revised from "not less than 849 micrograms and not more than 990 micrograms" to "not less than 900 micrograms and not more than 1,050 micrograms" of imipenem per milligram on an anhydrous basis. The former potency specification incorrectly reflects the monohydrate form rather than the anhydrous form of the bulk material.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

These amendments institute changes that are corrective, editorial, or of a minor technical nature. Because the amendments are not controversial, and because when effective they provide notice of accepted standards, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. This final rule, therefore, becomes effective February 18, 1994. However, interested persons may, on or before March 21, 1994, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before March 21, 1994, a written notice of participation and request for a hearing, and (2) on or before April 19, 1994, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Parts 436 and 441

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 430, 436, and 441 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. The authority citation for 21 CFR part 430 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 357, 371); secs. 215, 301, 351 of the Public Health Service Act (42 U.S.C. 216, 241, 262).

2. Section 430.6 is amended by revising paragraph (b)(89) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(89) *Imipenem.* The term "microgram" applied to imipenem monohydrate means the imipenem activity (potency) contained in 1.085 micrograms of the imipenem master standard.

* * * * *

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

3. The authority citation for 21 CFR part 436 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

4. Section 436.215 is amended in the table in paragraph (b) by revising the entry for "Cephalexin hydrochloride monohydrate tablets" to read as follows:

§ 436.215 Dissolution test.

* * * * *

(b) * * *

Dosage form	Dissolution medium	Rotation rate[1]	Sampling time(s)	Apparatus
Cephalexin hydrochloride monohydrate tablets	900 mL distilled water	150	45 min	1

[1] Rotation rate of basket or paddle stirring element (revolutions per minute).

PART 441—PENEM ANTIBIOTIC DRUGS

5. The authority citation for 21 CFR part 441 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

6. Section 441.20a is amended by revising paragraph (a)(1)(i) to read as follows:

§ 441.20a Sterile imipenem monohydrate.

(a) * * *

(1) * * *

(i) Its potency is not less than 900 micrograms and not more than 1,050 micrograms of imipenem per milligram on an anhydrous basis.

* * * * *

Dated: February 9, 1994.

Stephanie R. Gray,

Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 94–3730 Filed 2–17–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

[Docket No. 93N–0471]

New Animal Drugs for Use in Animal Feeds; Maduramicin Ammonium With Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

animal drug regulations to remove those portions of the regulations that reflect approval of a new animal drug application (NADA) held by American Cyanamid Co. The NADA provides for the use of 4.54 to 5.45 grams (g) per ton of maduramicin ammonium combination with 500 g per ton of chlortetracycline in the feed of broiler chickens for the prevention of coccidiosis and as an aid in the reduction of mortality due to *Escherichia coli* infections. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0749.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 140–837 held by American Cyanamid Co., Agricultural Research Division, Box 400, Princeton, NJ 08450. The sponsor requested withdrawal of approval of the NADA. The NADA provides for the use of 4.54 to 5.45 g per ton of maduramicin ammonium combination with 500 g per ton of chlortetracycline in the feed of broiler chickens for the prevention of coccidiosis and as an aid in the reduction of mortality due to *E. coli* infections. This document amends 21 CFR 558.128(c)(5)(xiii) and 558.340(c)(2)(i) and (c)(2)(ii) to reflect the withdrawal of approval of the NADA.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.128 [Amended]

2. Section 558.128 *Chlortetracycline* is amended by removing paragraph (c)(5)(xiii).

§ 558.340 [Amended]

3. Section 558.340 *Maduramicin ammonium* is amended by removing and reserving paragraph (c)(2).

Dated: February 10, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–3715 Filed 2–17–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 580

Haitian Transactions Regulations; Extension of Assembly Sector Licenses

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Policy statement.

SUMMARY: The Office of Foreign Assets Control is extending until March 31, 1994, the expiration date for all current assembly sector licenses issued pursuant to the Haitian Transactions Regulations.

EFFECTIVE DATE: January 31, 1994.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

Licenses issued pursuant to § 580.515 of the the Haitian Transactions Regulations, 31 CFR part 580 (the "Regulations"), authorize transactions in connection with both the exportation to Haiti of articles containing specified parts or materials, and the importation into the United States of specified articles assembled in Haiti containing materials or parts exported from the United States. By a policy statement issued on January 6, 1993, the expiration date of those licenses was extended to January 31, 1994 (58 FR 3228, Jan. 8, 1993). The Office of Foreign Assets Control has determined to extend the licenses for an additional 60 days. Accordingly, under the authority of 50 U.S.C. 1701 through 1706; E.O. 12775, 3 CFR, 1991 Comp., p. 349; and E.O. 12779, 3 CFR, 1991 Comp., p. 367, the Office of Foreign Assets Control gives notice that:

1. The expiration date of all licenses issued pursuant to § 580.515 of the Regulations and in effect as of January 31, 1994, is extended to March 31, 1994.

2. Holders of such licenses need not file requests for renewal with the Office of Foreign Assets Control.

Dated: January 27, 1994.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 31, 1994.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–3736 Filed 2–15–94; 11:53 am]

BILLING CODE 4810–25–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[IL39–3–6269; FRL–4835–6]

Standards of Performance for New Stationary Sources; Fossil-Fuel-Fired Steam Generators; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published Monday, May 17, 1993. The regulations pertain to appendix G—Provisions for an Alternative Method of Demonstrating Compliance with 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company.

EFFECTIVE DATE: July 16, 1993.

FOR FURTHER INFORMATION CONTACT: Fayette Bright (312) 886–6069.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections, superseded 40 CFR part 60, subpart D, appendix G, § 60.43 on the effective date as it applies to sulfur dioxide emissions from the two steam generating units at the Central Illinois Public Service Company's Newton Power Station in Jasper County, Illinois. Appendix G provides provisions for alternative methods of compliance with 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company. Appendix G was revised in the CFR under the

authority section 307(b)(1) of the Clean Air Act.

Need for Correction

As published, the last page of the revisions to the final regulations of appendix G was omitted and needs to be added since the regulation as it appears in the CFR is now incomplete.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Fossil-fuel-fired steam generating units, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 26, 1994.

Valdas V. Adamkus,

Regional Administrator.

Accordingly, 40 CFR part 60 is corrected by making the following correcting amendments.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 6.2.9 is added to appendix G to read as follows:

Appendix G—Provisions for an Alternative Method of Demonstrating Compliance With 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company

* * * * *

6.2.9 Identify any periods of time that any exhaust gases were discharged to the DAFGDS bypass stack and the hourly gas flow rate through the DAFGDS stack and through the DAFGDS bypass stack during such periods and reason for bypass operation.

* * * * *

3. Section 6.2.10 of appendix G is removed and reserved.

6.2.10 [Reserved]

[FR Doc. 94–3431 Filed 2–17–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 1F3974/R2040; FRL–4757–8]

RIN 2070–AC18

Pesticide Tolerances for 1-[[2-(2,4-Dichlorophenyl)-4-Propyl-1,3-Dioxolan-2-yl]Methyl]-1H-1,2,4-Triazole and its Metabolites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2yl-]methyl]-1*H*-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the raw agricultural commodities grass forage, hay (straw), and seed screenings and kidney and liver of cattle, goats, hogs, horses, and sheep. This rule to establish the maximum permissible levels for residues of propiconazole in or on the commodities listed above was requested in petitions submitted by the Ciba-Geigy Corp.

EFFECTIVE DATE: This regulation is effective January 28, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 1F3974/R2040], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney C. Jackson, Acting Product Manager (PM) 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 22, 1989 (54 FR 7597), which announced that the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition (PP 9F3706) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), propose to amend 40 CFR 180.434 by establishing tolerances for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the commodities grass hay at 5.0 parts per million (ppm) and grass forage at 0.5 ppm. EPA issued a notice, published in the **Federal Register** of April 19, 1989 (54 FR 15802), which announced that the petition was subsequently amended by Ciba-Geigy Corp. by retaining the previously proposed tolerances for grass hay and grass forage while proposing to increase the established tolerance level for kidney and liver of cattle, goats, hogs, horses, and sheep to 2.0 ppm. EPA issued a notice, published in the **Federal Register** of March 15, 1989 (54 FR 10715), which announced that Ciba-Geigy amended the petition by proposing a tolerance for residues of the fungicide for the commodity grass seed screenings at 10 ppm.

In the **Federal Register** of June 21, 1989 (54 FR 26044), EPA established tolerances, on an interim basis, in 40 CFR 180.434 for residues of this chemical in or on the raw agricultural commodities grass forage, hay and seed screenings and liver and kidney of cattle, goats, hogs, horses, and sheep. An expiration date of June 21, 1991, was imposed for the tolerances. The interim tolerances were established based upon the condition that data be submitted to the Agency to fully support permanent tolerances for these commodities. Available data were insufficient to completely characterize the metabolism of the compound in ruminants, and residue data were inadequate due to insufficient geographic distribution and grass species representation.

Data were submitted in response to the conditions of the interim tolerances within the required time imposed. However, review of these data indicated that the data did not reflect use of the chemical according to label use direction, and the data were considered to be inadequate. The reasons for the inadequacies in the submitted data were not under the control of the company but a result of excessively heavy rainfall during the grass growing season. Label directions pertaining to both the application interval and the prescribed preharvest interval could not be followed.

Subsequently, EPA issued a notice, published in the **Federal Register** of July 1, 1991 (56 FR 29900), which announced that the tolerances described above were extended from June 21, 1991, to June 21, 1993.

A notice of filing to establish tolerance levels in or on grass seed screenings at 70 ppm, grass straw at 40 ppm, and grass forage at 2.0 ppm was published in the **Federal Register** of May 15, 1991 (56 FR 22428). The Agency did not receive any objections in response to this notice. On January 14, 1993, Ciba-Geigy proposed revisions to the earlier published tolerances to include 60 ppm for grass seed screenings, 40 ppm for grass straw, and 0.5 ppm for grass forage. These revised tolerance levels are based on the most recent residue data submitted and are intended to avoid any possible over-tolerance residues in the affected commodities.

The data submitted in the petition and other relevant materials have been evaluated. The data considered include the following.

1. Plant and animal metabolism studies.

2. Residue data for crop and livestock commodities.

3. Two enforcement methodologies and multiresidue method testing data.

4. A rat oral lethal dose (LD_{50}) of 1,517 milligrams/kilogram (mg/kg) of body weight.

5. A 90-day rat feeding study with a no-observable-effect level (NOEL) of 12 mg/kg/day.

6. A 90-day dog feeding study with a NOEL of 1.25 mg/kg/day.

7. A rabbit developmental toxicity study with a maternal NOEL of 100 mg/kg/day and a developmental toxicity NOEL of greater than 400 mg/kg/day (highest dose tested (HDT)).

8. A rat teratology study with a maternal toxicity NOEL of 30 mg/kg/day and a developmental toxicity NOEL of 30 mg/kg/day.

9. A two-generation rat reproduction study with a reproductive NOEL of 125 mg/kg/day (HDT) and a developmental toxicity NOEL of 25 mg/kg/day.

10. A 1-year dog feeding study with a NOEL of 1.25 mg/kg/day.

11. A 2-year rat chronic feeding/carcinogenicity study with a NOEL of 5 mg/kg/day with no carcinogenic potential under the conditions of the study up to and including approximately 125 mg/kg, the highest dose tested.

12. A 2-year mouse chronic feeding/carcinogenicity study with a NOEL of 15 mg/kg/day and with a statistically significant increase in combined adenomas and carcinomas of the liver in male mice at approximately 375 mg/kg/day, the highest dose tested.

13. Ames test with and without activation, negative.

14. A mouse dominant-lethal assay, negative.

15. Chinese hamster nucleus anomaly, negative.

16. Cell transformation assay, negative.

Ciba-Geigy submitted information which resolved the previously outstanding concerns about the nature of the residue in ruminants, an explanation of recovery calculations, and an explanation of the crop field trial protocol. Data gaps exist concerning dosing in the mouse carcinogenicity study. These data requirements were required under reregistration, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq.

As part of EPA's evaluation of potential human health risks, propiconazole has been the subject of five Peer Reviews and one Scientific Advisory Panel (SAP) meeting.

Propiconazole was originally evaluated by the Peer Review Committee on January 15, 1987, and classified as a Group C (possible human) carcinogen with a recommendation made for the quantification of estimated potential human risk using a linearized low-dose extrapolation. The method resulted in the establishment of a Q^* of 7.9×10^{-2} $(mg/kg/day)^{-1}$.

The Peer Review Committee's decision was presented to the FIFRA Scientific Advisory Panel on March 2, 1988. The Panel did not concur with the committee's overall assessment of the weight-of-evidence on the carcinogenicity of propiconazole. The Panel recommended placing the chemical in Group D, indicating that the Group C classification was based on minimal evidence. The Panel's determination that EPA's Group C classification was based on minimal evidence was due to the fact that the incidence of liver tumors in male mice only occurred when the mice were given an excessive chemical dose.

In the second, third, and fourth Peer Reviews that followed, the Peer Review Committee considered recommendations of the SAP as well as rebuttals by the registrant. Its conclusion, however, that propiconazole should be classified as a Group C carcinogen with a quantification of potential human risk remained unchanged.

As part of a fifth Peer Review, EPA considered additional information provided by the registrant in support of the registrant's argument that the high dose was excessively toxic in the mouse carcinogenicity study. It further argued that the data from the high dose (2,500 ppm) should not be included in the evaluation of carcinogenic potential of propiconazole. In support of these arguments, the registrant provided two subchronic oral toxicity studies in mice. Ciba-Geigy also provided a reread of the pathology slides from a mouse oncogenicity study which it felt indicated sufficient concurrent liver toxicity at 2,500 ppm to document that this dose was excessive. These findings were not present in the original pathology report. Owing to the inconsistency in Ciba-Geigy's report and the original report, the Agency requested that an independent (third) evaluation of the pathology slides be made to determine if the pathology reported could be confirmed. The results of this (third) pathology evaluation were used in the fifth Peer Review in place of data resulting from the earlier evaluations provided by Ciba-Geigy.

The Peer Review Committee considered the following facts regarding the toxicology data on propiconazole in a weight-of-evidence determination of carcinogenic potential:

1. Increased numbers of adenomas (increased trend and pairwise comparison) were found in the livers of male CD1 mice given 2,500 ppm of propiconazole in the diet.

2. The treated animals had earlier fatalities than the controls.

3. The numbers of carcinomas were increased (trend only) in male mice only at the 2,500 ppm dose level. Tumors were not significantly increased at the 500 ppm dose level. Adenomas observed in the treated animals were larger and more numerous than those in controls; however, the tumor type (adenoma) was the same.

4. No excessive number of tumors was found in female mice.

5. In a rat study conducted with acceptable doses of propiconazole, no excessive numbers of tumors were found.

The Peer Review Committee determined, based on the additional information submitted by Ciba-Geigy from two 90-day subchronic studies in mice that the 2,500-ppm dose used in the 2-year chronic study exceeded the maximum tolerated dose (MTD) based on the endpoint of hepatic necrosis, and the 500-ppm dose used in the chronic study was inadequate to assess the carcinogenicity of propiconazole. Based on the third pathology evaluation of the chronic study, the Peer Review Committee disagreed with Ciba-Geigy's argument that the study showed excessive toxicity at the 2,500 ppm-dose. However, the Peer Review Committee concluded that the 90-day subchronic studies are a better measure of what would be an MTD.

Based upon these findings, the Peer Review Committee agreed that the classification for propiconazole should remain a Group C (possible human) carcinogen and recommended against the previously used Q^* (viz. 0.079) for risk assessment purposes. For the purpose of risk characterization the Peer Review Committee recommended that the reference dose (RfD) approach should be used for quantification of human risk. This decision was based on the disqualification of the high dose (2,500 ppm), making the data inappropriate for the calculation of Q^*. Because the middle dose (500 ppm) was not considered sufficiently high enough for assessing the carcinogenetic potential of propiconazole, EPA has requested an additional mouse study at intermediate dose levels in male mice only. EPA does not expect that these data will significantly change the above cancer assessment that propiconazole poses a negligible cancer risk to humans.

The reference dose (RfD) for propiconazole is 0.013 mg/kg/day, based on a no-observable-effect level (NOEL) of 1.25 mg/kg/day and an uncertainty factor of 100. The NOEL is taken from a 1-year feeding study in dogs which demonstrated as an effect irritation of the stomach in males.

The Agency has evaluated dietary exposure to the fungicide residues based on the proposed tolerances and the commodities which have established tolerances using data on anticipated residues and percent crop treated data. The livestock burden was calculated using anticipated residues in feed items multiplied by the expected percent contribution to the diet. This dietary burden was then compared with available data from feeding studies to determine anticipated residues in meat and milk. Based on current registered uses of this chemical only 4 percent of the RfD is being utilized for the general U.S. population. The tolerances are expected to elicit only a minor increase in the percent utilization of the RfD for the general U.S. population. The most highly exposed subgroups, nursing and nonnursing infants < 1 year, have Anticipated Residue Contributions (ARCs) from all published tolerances of 1.9×10^{-3} and 3.7×10^{-3} mg/kg bwt/day. These ARCs represent 15% and 28% of the Reference Dose for these subgroups, respectively.

The nature of the residue in plants and animals is adequately understood, and adequate analytical methods (gas chromatography) are available for enforcement purposes. Because of the long lead time for establishing these tolerances and food additive regulations to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (7506C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

The pesticide is considered useful for the purpose for which the tolerances are being sought. For the reasons described above, the Agency is establishing tolerances for residues of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the following raw agricultural commodities: grass forage, 0.5 ppm; grass hay (straw), 40 ppm; grass seed screenings, 60 ppm; kidney and liver of cattle, goats, hogs, horses, and sheep, 2.0 ppm.

Based on the above information the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are proposed as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27) A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (40 FR 24950).

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 28, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.434, by revising paragraph (a), to read as follows:

§ 180.434 1-[[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.

(a) Tolerances are established for residues of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the following raw agricultural commodities:

Commodity	Parts per million
Apricots	1.0
Bananas	0.2
Barley, grain	0.1
Barley, straw	1.5
Cattle, fat	0.1
Cattle, kidney	2.0
Cattle, liver	2.0
Cattle, meat	0.1
Cattle, mbyp (except kidney and liver)	0.1
Celery	5.0
Eggs	0.1
Goats, fat	0.1
Goats, kidney	2.0
Goats, liver	2.0
Goats, meat	0.1
Goats, mbyp (except kidney and liver)	0.1
Grass, forage	0.5
Grass, hay (straw)	40
Grass, seed screenings	60
Hogs, fat	0.1
Hogs, kidney	2.0
Hogs, liver	2.0
Hogs meat	0.1
Hogs, mbyp (except kidney and liver)	0.1
Horses, fat	0.1
Horses, kidney	2.0
Horses, liver	2.0
Horses, meat	0.1
Horses, mbyp (except kidney and liver)	0.1
Milk	0.05
Nectarines	1.0
Peaches	1.0
Pecans	0.1
Plums	1.0
Poultry, fat	0.1
Poultry, kidney	0.2
Poultry, liver	0.2
Poultry, meat	0.1
Poultry, mbyp (except kidney and liver)	0.1

Commodity	Parts per million
Prunes, fresh	1.0
Rice, grain	0.1
Rice, straw	3.0
Rye, grain	0.1
Rye, straw	1.5
Sheep, fat	0.1
Sheep, kidney	2.0
Sheep, liver	2.0
Sheep, meat	0.1
Sheep, mbyp (except kidney and liver)	0.1
Wheat, grain	0.1
Wheat, straw	1.5

* * * * *

[FR Doc. 94–3761 Filed 2–17–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435, 436, and 440

[MB–001–N]

RIN 0938–AA58

Medicaid Program; Eligibility and Coverage Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of delay of effective dates and compliance dates.

SUMMARY: This document delays by an additional 6 months the effective dates of the final rule with comment period on Medicaid Eligibility and Coverage Requirements published January 19, 1993, in the **Federal Register** (58 FR 4908). It also extends the compliance dates for this rule in light of the delay in the effective dates. This delay will give the administration additional time necessary to fully review the policies in these regulations.

DATES: Effective February 17, 1994, the effective and compliance dates are delayed as follows:

Effective Dates: The regulations published January 19, 1993, at 58 FR 4908, are effective on August 18, 1994, except for §§ 435.604, 435.606, 436.604, and 436.606, which are effective October 19, 1994.

Compliance Dates: We will not hold a State out of compliance with the requirements of this final rule published January 19, 1993, at 58 FR 4908, if the State submits preprinted plan amendments and required attachments by October 19, 1994, for all provisions other than §§ 435.604, 435.606, 436.604, and 436.606. States must comply with §§ 435.604, 435.606, 436.604, and 436.606, and submit preprinted plan amendments and required attachments for these sections, by the latest of: (1) January 19, 1995; (2) the first day of the next fiscal year following July 19, 1994, if State legislation is needed to appropriate funds to implement the provisions of these sections; or (3) the first day of the calendar quarter following the end of the next session of the State legislature that convenes after July 19, 1994, if the State needs authorizing legislation to implement the provisions of these sections.

FOR FURTHER INFORMATION CONTACT: Marinos Svolos, (410) 966–4451.

SUPPLEMENTARY INFORMATION: On January 19, 1993, we published in the **Federal Register** a final rule with comment period that amends the requirements for coverage of certain groups of individuals under Medicaid and the requirements for determining Medicaid eligibility. Because the new administration wanted to fully review the policies in these regulations, on February 19, 1993, we published a notice in the **Federal Register** (58 FR 9120) delaying the effective dates and compliance dates of the final rule with comment period for 6 months. On August 23, 1993, we published a second notice (58 FR 44457) delaying these effective dates and compliance dates an additional 6 months. Because this review is not complete, we are now issuing a third extension. We are extending the effective dates of the rule an additional 6 months. We also have extended the compliance dates for all provisions other than §§ 435.604, 435.606, 436.604, and 436.606 for an additional 6 months. For §§ 435.604, 435.606, 436.604, and 436.606, we have extended the compliance dates to the latest of: (1) January 19, 1995; (2) the first day of the next fiscal year following July 19, 1994, if State legislation is needed to appropriate funds to implement the provisions of these sections; or (3) the first day of the calendar quarter following the end of the next session of the State legislature that convenes after July 19, 1994, if the State needs authorizing legislation to implement the provisions of these sections.

These regulations incorporate into the Medicaid regulations substantive changes made in the composition of eligibility groups of individuals and in the criteria used to determine their financial eligibility under Medicaid. The substantive changes were initially made by the Omnibus Budget Reconciliation Act of 1981 (OBRA '81), Public Law 97–35 and the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97–248, and further amended by the Deficit Reduction Act of 1984 (DRA), Public Law 98–369; the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99–272; the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Public Law 99–509; the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93; the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203; the Medicare Catastrophic Coverage Act of 1988 (MCCA), Public Law 100–360; the Family Support Act of 1988, Public Law 100–485; the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Public Law 101–239; and the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508. In addition, the document contains changes made as a result of administrative decisions to improve program administration and efficiency.

(Catalog of Federal Domestic Assistance Program No. 93.778—Medical Assistance Program)

Dated: February 15, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: February 16, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–3885 Filed 2–17–94; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Myrcia Paganii and Calyptranthes Thomasiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Myrcia paganii* (no common name) and *Calyptranthes thomasiana* (no common name) to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *Myrcia paganii*, a small evergreen tree, is endemic to Puerto Rico and known from only three locations in the limestone hills of the northwestern part of the island. *Calyptranthes thomasiana*, an evergreen shrub or small tree, is only known from one area on the island of Vieques in Puerto Rico, one area in St. John, U.S. Virgin Islands, and from Gorda Peak, Virgin Gorda, British Virgin Islands. Modification and loss of habitat, coupled with low numbers and restricted distribution, represent the primary threats to these species. This final rule will provide *Myrcia paganii* and *Calyptranthes thomasiana* with the protection and recovery provisions afforded by the Act for endangered plants.

EFFECTIVE DATE: March 21, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622; and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331–3583).

SUPPLEMENTARY INFORMATION:

Background

Myrcia paganii was first collected by Paul Sintenis during the last part of the nineteenth century. However, the type specimen was destroyed during World War II and no duplicates are known to exist. *Myrcia paganii* was not collected again until Roy Woodbury rediscovered the species in 1959 in the Biafara-Arrozal area to the south of the city of Arecibo, located in northern Puerto Rico. Six individuals are known from this privately owned site (Vivaldi and Woodbury 1981). The species has been reported more recently from two other locations, one individual at each, in the Quebradillas area of northwestern Puerto Rico (Department of Natural Resources 1992).

Myrcia paganii is an evergreen tree which may reach 9 meters (30 feet) in height and 13 centimeters (5 inches) in diameter. The bark is mottled and flaky and the inner bark is orange-brown. Young twigs are flattened and have numerous soft brownish hairs. The leaves are opposite, simple, entire, coriaceous, aromatic, and glandular punctate below. The leaf blade is elliptic to elliptic-oblong, villous when young but glabrescent, 10 to 16 centimeters (4 to 6¼ inches) long, and 4 to 9 centimeters (1½ to 3½ inches) wide. The leaf base is acute, the apex obtuse, and the midvein is clearly impressed above. Petioles are 4 to 5 millimeters long. The flowers and fruit have not been described.

Calyptranthes thomasiana was described in 1855 from specimens collected from St. Thomas, U.S. Virgin Islands. Although collected from St. Thomas, it has not been reported from the island in recent years. It was previously thought to be endemic to Puerto Rico and the U.S. Virgin Islands, but was recently reported from Virgin Gorda, British Virgin Islands, where it occurs within the National Park (Center for Plant Conservation 1992; G. Proctor, pers. comm.). It is currently known from only three locations: Monte Pirata on the island of Vieques in Puerto Rico; Bordeaux Mountain on the island of St. John, U.S. Virgin Islands; and Gorda Peak in Virgin Gorda, British Virgin Islands.

Calyptranthes thomasiana is an evergreen shrub or small tree that may reach 9 meters (30 feet) in height and 13 centimeters (5 inches) in diameter. Leaves are opposite, obovate to oblong, 2 to 4 centimeters (¾ to 1¾ inches) long, blunt at the apex, and short pointed at the base. The leaves are coriaceous, with gland dots, shiny on the upper surface, and dull on the lower surface. Flowers and fruit have not been described.

Some 10 to 12 individuals of *Calyptranthes thomasiana* are known to occur on Vieques near the summit of Monte Pirata. This site is located on U.S. Navy property and is in close proximity to naval communications facilities. It is not known if any individuals were eliminated during the construction of these facilities (Department of Natural Resources 1992). Currently in effect is a 1983 Memorandum of Understanding that designates this area as an ecological conservation zone for the protection of *C. thomasiana* and other species of concern. This area was severely affected by Hurricane Hugo in 1989. On St. John as many as 100 mature individuals are known from a small area on Bordeaux Mountain, which is within the Virgin Islands National Park, National Park Service, U.S. Department of the Interior (G. Ray, pers. comm., Woodbury and Weaver 1987). On Virgin Gorda *C. thomasiana* is found within a National Park owned by the British Virgin Islands government, but the species is rare and localized and may be impacted by park management practices (Center for Plant Conservation 1992; G. Proctor, pers. comm.).

Myrcia paganii and *Calyptranthes thomasiana* were recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species were included among the plants being considered as endangered or threatened by the Service, as published in the **Federal Register** notice of review dated December 15, 1980 (45 FR 82480), the November 28, 1983 update (48 FR 53680), the revised notice of September 27, 1985 (50 FR 39526), and the February 21, 1990 (55 FR 6184) notice of review. Both species were designated as category 1 species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the notice of review published on February 21, 1990.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. Beginning in October 1983, and in each October thereafter, the Service found that listing *Myrcia paganii* and *Calyptranthes thomasiana* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. A proposed rule to list *Myrcia paganii* and *Calyptranthes thomasiana*, published on January 5, 1993 (58 FR 339), constituted the final 1-year finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Comments and Recommendations

In the January 5, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the *San Juan Star* on January 25, 1993. Five letters of comment were received, none of which opposed the listing. Some additional information supplied by the Department of the Navy, U.S. Naval Station, Roosevelt Roads, has been incorporated into this final rule. A public hearing was neither requested nor held.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Myrcia paganii* and *Calyptranthes thomasiana* should be classified as

endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Myrcia paganii* Krug & Urban and *Calyptranthes thomasiana* Berg. are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Two populations of *Myrcia paganii* are found on privately owned land currently subject to intense pressure for agricultural, rural and tourist development. Adjacent land is being cleared for grazing by cattle and goats. One individual has been reported from the Guajataca Commonwealth Forest, where it may be affected by forest management practices. Although on Vieques Island *Calyptranthes thomasiana* is found on U.S. Navy property, near the summit of Monte Pirata, this area has been severely modified for the construction of Navy facilities. The area is presently designated by the Navy as an ecological conservation zone, with *C. thomasiana* being one of the species of concern. However, should the need arise to expand the existing facilities, *C. thomasiana* could be impacted unless appropriate measures are taken to protect the species. Known individuals on St. John are found within the National Park; nevertheless, these may be affected by park management practices and the presence of feral pigs and donkeys.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of these species.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of these species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico as well as the U.S. Virgin Islands have adopted regulations that recognize and provide protection for certain Commonwealth or Territorial listed species. However, although *Calyptranthes thomasiana* is on the U.S. Virgin Island list, *Myrcia paganii* and *C. thomasiana* are not yet on the Commonwealth list. Federal listing provides immediate protection and enhances their protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

One of the most important factors affecting the continued survival of these species is their limited distribution. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. Hurricane Hugo in 1989 dramatically affected the Monte Pirata area of Vieques, felling large trees and creating numerous canopy gaps.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Myrcia paganii* and *Calyptranthes thomasiana* as endangered. *M. paganii* and *C. thomasiana* are each known from only three locations. Deforestation for rural, agricultural, residential and tourist development are imminent threats to the survival of the species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for these species are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species. Both situations apply to *C. thomasiana* and *M. paganii*.

Critical habitat would not be beneficial in terms of adding additional protection for the species under section 7 of the Act. Regulations promulgated for the implementation of section 7 provide for both a "jeopardy" standard and a "destruction or adverse modification" of critical habitat standard. Because of the highly limited distribution of these species and their precarious status, any Federal action that would destroy or have any significant adverse effect on their habitat would likely result in a jeopardy biological opinion under section 7. Under these conditions, no additional benefits would accrue from designation of critical habitat that would not be available through listing alone.

The Service also finds that designation of critical habitat is not prudent for these species due to the potential for taking. The number of individuals of *C. thomasiana* and *M. paganii* is so small that vandalism and collection could seriously affect the survival of these species. Publication of critical habitat descriptions and maps in the Federal Register would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will also be addressed through the recovery process and by utilizing the jeopardy standard under the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, Territorial and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth or Territory, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, required Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for these two species, as discussed above. Federal involvement is anticipated for the population of *Calyptranthes thomasiana* located on Monte Pirata in Vieques, U.S. Navy property, and for the population located in the Virgin Islands National Park in St. John.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State (Commonwealth/Territory) law or regulation, including criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth or Territorial conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for these two species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 420C, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S. and R.A. Defilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund. Washington, D.C. xv + 403 pp.

Center for Plant Conservation. 1992. Report on the Rare Plants of Puerto Rico. Missouri Botanical Garden, St. Louis, Missouri.

Department of Natural Resources. 1992. Natural Heritage Program status information of *Myrcia paganii* and *Calyptranthes thomasiana*. San Juan, Puerto Rico.

Vivaldi, J.L. and R.O. Woodbury. 1981. Status Report on *Myrcia paganii* Krug & Urban. Unpublished report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 24 pp.

Woodbury, R.O. and P.L. Weaver. 1987. The Vegetation of St. John and Hassel Island, U.S. Virgin Islands. U.S. Department of the Interior, National Park Service, Southeast Regional Office, Research/Resources Management Report SER–83. 103 pp.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding a new family, "Myrtaceae—Myrtle family," in alphabetical order to the list of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
* * * * * * *						
Myrtaceae—Myrtle family:						
Calyptranthes thomasiana	None	U.S.A. (PR,VI), British VI	E	529	NA	NA
Myrcia paganii	None	U.S.A. (PR)	E	529	NA	NA
* * * * * * *						

Dated: February 10, 1994.
Mollie H. Beattie,
Director, Fish and Wildlife Service.
[FR Doc. 94-3792 Filed 2-17-94; 8:45 am]
BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 93110-3300; I.D. 021494B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Atka mackerel in the Eastern Aleutian District of the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to prevent exceeding the total allowable catch (TAC) of Atka mackerel in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 13, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with §675.20(a)(7)(ii), the Atka mackerel TAC for the Eastern Aleutian District was established by the final 1994 initial specifications of groundfish for the BSAI (filed by the Office of Federal Register February 10, 1994) as 11,454 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with §675.20(a)(8), that the Atka mackerel TAC in the Eastern Aleutian District soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 11,054 mt after determining that 400 mt will be taken as incidental catch in directed fishing for other species in the Eastern Aleutian District. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District, effective from 12 noon A.l.t., February 13, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at §675.20(h).

Classification

This action is taken under § 675.20.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 14, 1994.
David S. Crestin,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 94-3895 Filed 2-14-94; 4:23 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 59, No. 34
Friday, February 18, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

[Docket No. PRM-71-11]

U.S. Department of Energy, Receipt of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the U.S. Department of Energy (DOE). The petition has been docketed by the Commission and has been assigned Docket No. PRM-71-11. The petitioner requests that the NRC amend its regulations governing packaging and transportation of radioactive materials to specifically exempt canisters containing vitrified high-level waste from the double containment requirement specified in NRC's regulations. The petitioner believes such an amendment would permit more cost-effective high-level radioactive waste management by DOE in the geologic repository and would not adversely affect the safety of the transportation package.

DATES: Submit comments by May 4, 1994. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-492-7758 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) received a petition for rulemaking dated November 30, 1993, submitted by the U.S. Department of Energy (DOE). The petition was docketed as PRM-71-11 on December 6, 1993. The petitioner requests that the NRC amend its regulations specified in 10 CFR part 71 that govern packaging and transport of radioactive materials. Specifically, the petitioner is seeking a specific exemption for canisters containing vitrified high-level waste (HLW) from the requirements currently contained in 10 CFR 71.63(b) regarding special requirements for plutonium shipments. The petitioner notes that current NRC special requirements for plutonium shipments (10 CFR 71.63) specify that all shipments of plutonium with an activity greater than 20 curies per package must meet the double containment requirement in 10 CFR 71.63(b).

Under the Nuclear Waste Policy Act of 1982 (NWPA), as amended, DOE is responsible for developing a geologic repository for the disposal of high-level radioactive waste and spent fuel. Shipments of HLW must be approved for shipment through DOE's Civilian Radioactive Waste Management System (CRWMS) for transport to and disposal in the geologic repository. Also, under the NWPA, all packages used to transport spent fuel and HLW must be certified by NRC. On June 17, 1974 (39 FR 20960), the NRC published a final rule requiring that shipments of plutonium with activity greater than 20 curies per package meet the double containment requirement of 10 CFR 71.63(b).

The petitioner admits that 10 CFR 71.63(b) applies to the shipments of vitrified HLW. However, the petitioner also claims that these shipments should be exempt from the double containment requirement because this material is analogous to spent fuel. As the petitioner notes, the preamble to the final rule states that spent fuel is exempt from the double containment requirement specified in 10 CFR 71.63(b) because these solid forms of plutonium were determined to be "essentially nonrespirable." The petitioner also indicates that the evaluation of the respirability potential of canisters filled with vitrified HLW is based mainly on the results of impact tests.

In support of the petition for rulemaking, the petitioner has included a document entitled "Technical Justification to Support the PRM by the DOE to Exempt HLW Canisters from 10 CFR 71.63(b)" (technical justification). The petitioner claims that the tests described in the technical justification demonstrate that the canisters containing vitrified HLW compare favorably with the physical integrity of the metal cladding surrounding the spent fuel pellets in reactor assemblies. The petitioner believes that because canisters containing vitrified HLW are analogous to spent fuel, these canisters should be exempt from the double containment requirement specified in 10 CFR 71.63(b).

The NRC is soliciting public comment on the petition submitted by DOE that requests the changes to the regulations in 10 CFR part 71 as discussed below.

The Petitioner

Pursuant to the Nuclear Waste Policy Act of 1982, as amended (NWPA), the petitioner is the Federal agency responsible for developing and administering a geologic repository for the deep disposal of high-level radioactive waste and spent fuel. The petitioner proposes to ship the HLW from each of its three storage locations at Aiken, South Carolina; Hanford, Washington; and West Valley, New York, directly to the geologic repository in casks certified by the NRC. The HLW currently exists mostly in the form of liquid and sludge resulting from the reprocessing of defense reactor fuels. The petitioner proposes to solidify (vitrify) this material into a borosilicate glass form in which the HLW is dispersed and immobilized and place it into stainless steel canisters for storage and transport to the geologic repository. The petitioner indicates that it is submitting this petition for rulemaking to amend 10 CFR part 71 so that it can

manage the transportation and disposal of high-level waste in a cost-effective and efficient manner without adversely affecting the safety of the transportation package.

Discussion of the Petition

The petitioner has submitted this petition for rulemaking because it believes it will be adversely affected by the current regulations that require plutonium shipments with activity greater than 20 curies per package to be shipped in a double containment format. The petitioner's primary concern is that the double containment requirement specified in 10 CFR 71.63(b) will prevent it from effectively performing its responsibility under the NWPA to administer the transportation of canisters containing vitrified high-level radioactive waste for disposal in the geologic repository in an efficient and cost-effective manner.

The petitioner states that although the current regulations are appropriate in exempting reactor fuel elements from the double containment requirement specified in 10 CFR 71.63(b), canisters containing vitrified HLW should also be exempted. The petitioner states that spent fuel was exempted from the double containment requirement in 10 CFR 71.63(b) because the fuel pellet itself and the surrounding metal cladding were found to provide adequate protection against the possible dispersion of plutonium particles both under normal transport conditions and during hypothetical accident conditions. The petitioner believes that the tests described in the technical justification provide sufficient technical information to indicate that the borosilicate glass mixture and the storage canisters are analogous to spent fuel that is exempt from the double containment requirement.

In the technical justification, the petitioner describes the physical characteristics of the austenitic stainless steel canisters that will house the vitrified HLW and indicates that the packages will pass a 7-meter drop test onto a flat, essentially unyielding surface without a release of its contents. The petitioner emphasized that this test should not be confused with the hypothetical accident tests specified in 10 CFR 71.73, "Hypothetical Accident Conditions." The petitioner also clarifies that the 9-meter drop test required in 10 CFR 71.73(c)(1) applies to the entire package, including the cask which must be certified by the NRC used to transport the canisters containing the vitrified HLW.

The petitioner provides a detailed comparison in the technical justification between the steel canister that will house vitrified HLW and the reactor fuel elements that are exempt from the double containment requirement in 10 CFR 71.63(b). The petitioner notes that the plutonium contained in reactor fuel elements is encased in solid ceramic fuel pellets surrounded by a sealed, sturdy metal cladding that inhibits dispersion of radioactive particles. The petitioner believes the impact tests performed during the past 20 years on canisters containing simulated HLW glass forms indicate that these canisters qualify for exemption from the double containment requirement.

Helium leak tests and dye penetrant tests performed after the impact testing have demonstrated that the vitrified HLW canisters can withstand a 9-meter drop test. The petitioner acknowledges that reactor fuel elements were exempted from the double containment requirement in 10 CFR 71.63(b) because they are considered to be "essentially nonrespirable." The petitioner believes that because the canisters have not been exposed to the high levels of radiation present in a commercial reactor, these packages will not be subject to molecular-level changes in material properties, such as increased embrittlement, unlike spent reactor fuel cladding. The petitioner concludes that the numerous impact and followup tests on simulated vitrified HLW canisters indicate that the canisters provide, at minimum, protection comparable to that provided by spent fuel cladding.

In the technical justification, the petitioner also compares the physical and chemical characteristics of the vitrified HLW glass mixture to spent fuel pellets. The petitioner notes that production of potentially respirable particles from the glass mixture could result from cooldown processes after being poured into the HLW canister, normal handling and transport conditions, and hypothetical accident conditions. Because impact studies of simulated waste glass from the DOE Savannah River site have shown comparable levels of fracture resistance and similar fractions of respirable particles when compared to unirradiated uranium fuel pellets and other potential waste form materials, the petitioner believes that the fracture resistance of simulated HLW glass is comparable to that of uranium fuel pellets. The petitioner asserts that leak tests performed for both normal transport and hypothetical accident scenarios indicate that the quantity of respirable material produced is minute and fully supports the conclusion that the vitrified HLW canister waste form is "essentially nonrespirable" and, therefore, analogous to reactor fuel elements.

The petitioner also notes that evaluations show that the total concentration of plutonium in an individual fuel assembly is more than 100 times greater than that in an HLW canister from the Savannah River site. The petitioner indicates that the maximum quantity of plutonium projected for the Hanford and West Valley HLW canisters is much less than that of the Savannah River HLW canisters. The petitioner also notes that canisters containing vitrified HLW will be enclosed within a shipping cask that has been certified by NRC during actual transport conditions. The petitioner concludes that this arrangement will further reduce the potential for canister damage and for a release of respirable particles of radionuclides.

The petitioner asserts that proposed disposal criteria would result in a cost-effective option that would not adversely affect public health, environmental quality, the safety of the transportation package, or the safety of workers who handle the transportation package. The petitioner also asserts that the current regulatory limits on radioactivity in the transportation package are intended to protect not only individuals who transport and handle the waste but also the general public if a transportation accident en route to the geologic repository site results in a release of radioactive material.

Adverse Effects on the Petitioner

The petitioner believes that it will be adversely affected if the double containment requirement in 10 CFR 71.63(b) is applied to canisters containing vitrified HLW. The petitioner notes that the only alternative would be to design and construct a double containment transportation cask. The petitioner believes that a double containment requirement would add additional handling steps to the loading and unloading of the HLW canister, resulting in an increase of time and expense in HLW shipments. The additional handling process would increase the radiation dose received by workers and create additional contaminated metal hardware, resulting in increased disposal effort and expense. The petitioner also asserts that a double containment requirement for this HLW form would require additional shipments because of a potential decrease in payload capacity of the cask. Additional shipments would create a corresponding increase in risk to affected populations along the transportation route to the geologic repository. The petitioner believes that the double containment requirement would impose an unnecessary and unduly burdensome rule that cannot be justified in terms of any incremental benefits to public health and safety.

The Petitioner's Proposed Amendment

The petitioner requests that 10 CFR part 71 be amended to overcome the problems the petitioner has itemized and recommends the following revision to the regulations:

The petitioner proposes that § 71.63 be amended by revising paragraph (b) to redesignate paragraph (b)(3) as paragraph (b)(4) and adding a new paragraph (b)(3) to read as follows:

§ 71.63 Special requirements for plutonium shipments.

* * * * *

(b) Plutonium in excess of 20 curies per package must be packaged in a separate inner container placed within outer packaging that meets the requirements of Subparts E and F for packaging of material in normal form. If the entire package is subjected to the tests specified in § 71.71 (Normal Conditions of Transport), the separate inner container must not release plutonium, as demonstrated to a sensitivity of 10^{-6} A_2 per hour. If the entire package is subjected to the tests specified in § 71.73 (Hypothetical Accident Conditions), the separate inner container must restrict the loss of plutonium to not more than A_2 in one week. Solid plutonium in the following forms is exempt from the requirements of this paragraph:

(1) Reactor fuel elements;

(2) Metal or metal alloy;

(3) Canisters containing vitrified high-level waste; and

(4) Other plutonium-bearing solids that the Commission determines should be exempt from the requirements of this section.

The Petitioner's Conclusion

The petitioner has concluded that the double containment requirement specified in 10 CFR 71.63(b) should not be applied to shipments of canisters containing vitrified HLW because this waste form is analogous to spent reactor fuel elements, which are exempt. The petitioner believes that impact and leak tests on the canisters, chemical analyses of spent fuel and simulated HLW borosilicate glass mixtures, and other studies of the levels of radioactivity present in the proposed transportation packages demonstrate that canisters containing vitrified HLW are analogous to spent reactor fuel elements and, therefore, should be exempt from the double containment requirement in 10 CFR 71.63(b). The petitioner has proposed an amendment to the current regulations in 10 CFR part 71 that it believes will permit more cost-effective disposal of high-level waste without adversely affecting the safety of the transportation package, the workers who handle the package, affected populations along the transportation corridor, or the environment.

Dated at Rockville, Maryland, this 14th day of February, 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 94-3766 Filed 2-17-94; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-217-AD]

Airworthiness Directives; British Aerospace Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP airplanes. This proposal would require inspections of the DC connections and cooling fans in certain transformer rectifier units (TRU) to detect damage or overheating and to ensure correct operation, and repair or replacement, if necessary. This proposal is prompted by a report of the loss of all DC electrical power, except for the battery emergency bus, due to failure of the TRU's, which occurred during flight. The actions specified by the proposed AD are intended to prevent loss of essential electrical power required to continue safe flight of the airplane.

DATES: Comments must be received by April 18, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-217-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93-NM-217-AD." The postcard will be stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-217-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model ATP airplanes. The CAA advises

that it has received a report of the loss of all DC electrical power, except for the battery emergency bus, which occurred during flight on a Model ATP airplane. The DC electrical power was lost due to a failure in each of the two transformer rectifier units (TRU's.) A loose DC connection in the first TRU caused its failure. The second TRU failed due to overheat damage to a cooling fan blade in the unit. The airplane landed safely while operating on battery power. Failure of both TRU's during flight could result in loss of essential electrical power required to continue safe flight of the airplane.

Jetstream has issued Service Bulletin ATP–24–58, dated October 29, 1993, which references two Ferranti service bulletins as additional sources of service information. (Ferranti is the manufacture of the TRU's). The Ferranti service bulletins are described below. The CAA classified the Jetstream service bulletin as mandatory.

Ferranti Service Bulletin 24–20–171, dated September 1993, describes procedures for repetitive visual inspections of the DC connections to detect any damage or overheating. This service bulletin also describes procedures for repetitive torque loading inspections of each DC connection to ensure that torque loads are within specified limits, and repetitive verification that each terminal stud is secure in its mounting by visually observing that the stud does not rotate.

Ferranti Service Bulletin 24–20–172, dated September 1993, describes procedures for repetitive visual inspections of the cooling fan blades to detect any damage due to overheating, and a test of the operation of the cooling fan by energizing the relay and confirming that cooling air exists from the grill on the top of the unit.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require:

1. Repetitive visual inspections of the DC connections to detect any damage or overheating, and repair, if necessary;

2. Repetitive torque loading inspections of each DC connection to ensure that torque loads are within specified limits, and verification that each terminal stud is secure in its mounting;

3. Repetitive visual inspections of the cooling fan blades to detect any damage due to overheating, and replacement of the fan blade, if necessary; and

4. Repetitive functional tests of the operation of the cooling fan by energizing the relay and confirming that cooling air exits from the grill on the top of the unit, and repair or replacement of any malfunctioning or damaged cooling fan or cooling fan relay.

The inspection would be required to be accomplished in accordance with the Ferranti service bulletins described previously. Replacement and repair actions would be required to be accomplished in accordance with the airplane maintenance manual or a method approved by the FAA.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,100, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace (Commercial Aircraft) Limited: Docket 93–NM–217–AD.

Applicability: Model ATP airplanes equipped with Ferranti Transformer Rectifier Unit TR202A (Pt. No. 84/59100) or TR202B (Pt. No. 84/60040), certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of essential electrical power required to continue safe flight of the airplane, accomplish the following:

(a) Within 225 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 625 hours time-in-service, accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

(1) Perform a visual inspection of the DC connections to detect any damage or overheating, in accordance with Ferranti Service Bulletin 24–20–171, dated September 1993. If any damage or overheating is found prior to further flight, repair in accordance with a method approved by Manager, Standardization Branch, ANM–113; FAA, Transport Airplane Directorate.

(2) Perform a torque loading inspection of each DC connection to ensure that torque loads are within the limits specified in Ferranti Service Bulletin 24–20–171, dated September 1993; and, during this inspection, ensure that each terminal stud is secure in its mounting by visually observing that the stud does not rotate; in accordance with Ferranti Service Bulletin 24–20–171, dated September 1993.

(3) Perform a visual inspection of the cooling fan blades to detect any damage due to overheating, in accordance with Ferranti Service Bulletin 24–20–172, dated September 1993. If any damage is found, prior to further flight, replace the fan blade with a serviceable part in accordance with the airplane maintenance manual.

(4) Perform a functional test of the operation of the cooling fan by energizing the relay and confirming that cooling air exits from the grill on top of the unit, in accordance with Ferranti Service Bulletin 24–20–172, dated September 1993. Prior to further flight, repair or replace any malfunctioning or damaged cooling fan or cooling fan relay, in accordance with the airplane maintenance manual.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 14, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3755 Filed 2–17–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–25]

Proposed Modification of Class E Airspace; Rifle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend Class E airspace to accommodate a new instrument approach procedure (VOR/DME–C) at the Rifle Garfield County Airport, Rifle, Colorado. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before March 26, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–25, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–25, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–25." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Rifle, Colorado, to accommodate a new instrument approach procedure at the Rifle Garfield County Airport. The area would be depicted on aeronautical charts for pilot reference. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The Class E designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–

1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Rifle, CO [Revised]

Rifle Garfield County Airport, CO
(lat. 39°31'25"N, long. 107°43'37"W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Garfield County Airport, and within 4.3 miles each side of the 090° bearing from the Garfield County Airport, extending from the 7-mile radius to 18.3 miles east of the airport, and within 4.5 miles each side of the 321° bearing from the Garfield County Airport, extending from the 7 mile radius to 14.5 miles northwest of the airport.

* * * * *

Issued in Seattle, Washington, on January 31, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94-3743 Filed 2-17-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ANM-45]

Proposed Amendment to Class E Airspace; Twin Falls, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Twin Falls, Idaho, Class E airspace to accommodate arrival/departure aircraft transitioning between the en route and terminal area southwest of Twin Falls Airport. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before March 25, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 93-ANM-45, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 93-ANM-45, 1601 Lind Avenue SW., Renton, Washington 98055-4056, telephone (206) 227-2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ANM-45." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM-530, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Twin Falls, Idaho, to accommodate arrival/departure aircraft transitioning between the en route and terminal environment southwest of the Twin Falls Airport. The area would be depicted on aeronautical charts for pilot reference. Airspace reclassification, in effect of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The Class E designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM ID E5 Twin Falls, ID [Revised]

Twin Falls-Sun Valley Regional, Joslin Field, ID
(lat. 42°28'55"N, long. 114°29'16"W)
Twin Falls VORTAC
(lat. 42°28'47"N, long. 114°29'22"W)

That airspace extending upward from 700 feet above the surface within 8.3 miles north and 4.3 miles south of the Twin Falls VORTAC 086° and 281° radials extending from the VORTAC to 26.1 miles east and 16.1 miles west, and within 4.3 miles each side of the Twin Falls 156° radial extending from the VORTAC to 8.3 miles southeast of the VORTAC; that airspace extending upward from 1,200 feet above the surface bounded on the northeast by a line beginning at the intersection of long. 114°01'03"W and V-500, extending south along long. 114°01'03"W to V-269, southwest along V-269 to the 18.3-mile radius of the Twin Falls VORTAC, thence clockwise via the 18.3-mile radius to V-484, northwest along V-484 to the 14.4-mile radius of the Twin Falls VORTAC, thence clockwise along the 14.4-mile radius to V-293, southwest along V-293 to the intersection of V-293 and long. 115°00'00"W, thence north along long. 115°00'00"W to a point 7.9 miles southwest of V-253, thence northwest and parallel to V-253 for 25.9 miles, thence to the intersection of V-4, V-253, and V-330, east along V-330 to V-293, north along V-293 to V-500, then to the point of beginning; excluding that airspace within Federal airways.

* * * * *

Issued in Seattle, Washington, on January 31, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94-3741 Filed 2-17-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ANM-41]

Proposed Establishment of Class E Airspace; Longmont, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace to accommodate a new instrument approach procedure and missed approach holding pattern at Vance Brand Airport, Longmont, Colorado. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before March 28, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 93-ANM-41, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Brown, ANM-535, Federal Aviation Administration, Docket No. 93-ANM-41, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ANM-41." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM-530, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Longmont, Colorado, to accommodate a new instrument approach procedure and missed approached holding pattern at Vance Brand Airport. The area would be depicted on aeronautical charts for pilot reference. Airpsace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The Class E designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It,

therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Longmont, CO [New]

Vance Brand Airport, CO

(lat. 40°09'51"N., long. 105°09'47"W.)

That airspace extending upward from 700 feet above the surface within a 5.6-mile radius of the Vance Brand Airport, excluding the Fort Collins and Denver International Airport, Colorado, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on January 31, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–3744 Filed 2–17–94; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1220

RIN 3095–AA48

Agency Program Evaluations

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule; reopening of comment period and notice of meeting.

SUMMARY: The National Archives (NARA) is reopening the comment period for the proposed rule which was published on December 10, 1993 at 58 FR 64915 and will hold a meeting on the proposed revision of NARA regulations on Federal agency records management program evaluations. NARA is taking this action to ensure that any concerns agencies may have about these proposed changes have been addressed and that NARA is fully informed concerning the impact that the changes may have on agency records management programs. The proposed rule affects Federal agencies.

DATES: Comments must be received by March 21, 1994.

A meeting for agency records officers will be held on February 28, 1994, at 10 a.m. The public is invited to attend, space permitting.

ADDRESSES: Comments should be submitted to Acting Director, Policy and Program Analysis Division, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001, or faxed to 301–713–7270.

The meeting will be held in the Multipurpose Room at the National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (301) 713–6730 about the proposed rule or Nina Frederick at (301) 713–7162 about the meeting.

Dated: February 10, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–3906 Filed 2–16–94; 2:30 pm]

BILLING CODE 7515–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH08–4–5088, OH01–1–5846, OH32–1–5776; FRL–4838–3]

Approval of Maintenance Plan and Designation of Areas for Air Quality Planning Purposes; Ohio; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: USEPA is reopening the comment period for a proposed rule published on December 20, 1993 (58 FR 66334). On December 20, 1993, USEPA proposed disapproval of the ozone redesignation requests for Preble, Columbiana and Jefferson Counties.

The USEPA is reopening the comment period for this action to honor requests from the Ohio Environmental Protection Agency and the Regional Air Pollution Control Agency to extend the comment period ninety days.

DATES: Comments regarding the proposed disapproval of the ozone redesignation request for Preble County must be received by April 19, 1994.

ADDRESSES: Written comments should be sent to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604 (312) 886–6798.

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Angela Lee, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–5162.

Dated: January 28, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–3786 Filed 2–17–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 437

[FRL–4839–3]

Public Meeting on Planned Effluent Guidelines for the Centralized Waste Treatment Category (Waste Treatment Phase I)

AGENCY: Environmental Protection Agency.

ACTION: Announcement of public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a public meeting prior to proposing effluent limitations guidelines and standards for the Centralized Waste Treatment Category (formerly called Waste Treatment Phase I). The EPA intends to propose later this year, and this is the only public meeting that the Agency plans to sponsor prior to proposal. The meeting is intended to be a forum in which EPA can report on the status of the regulatory development and in which interested parties can provide information and ideas to the Agency on key technical, scientific, and other issues.

DATES: The public meeting will be held on March 8, 1994, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the U.S. Geological Survey (USGS) National Center Auditorium, 12201 Sunrise Valley Drive, Reston, VA. Seating will be available for approximately 200 attendees.

The USGS National Center is located approximately five miles from Dulles International Airport. To reach USGS, take the Dulles Toll Road to Reston Parkway, go south on Reston Avenue to Sunrise Valley Drive, right on Sunrise Valley Drive, ¼ mile to the USGS entrance on the left side of the road.

FOR FURTHER INFORMATION CONTACT: Debra DiCianna, Engineering and Analysis Division (4303), U.S. EPA, 401 M Street SW., Washington, DC 20460. Telephone (202) 260–7141, fax (202) 260–7185.

SUPPLEMENTARY INFORMATION: EPA is developing effluent limitations guidelines and standards for the Centralized Waste Treatment Category (CWT) under authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Centralized Waste Treatment Category includes facilities which treat industrial waste received from off-site facilities. The following operations are not included: thermal destruction, incineration, stabilization, fuel blending, or solvent recycling.

The public meeting will include a discussion of the scope of the regulation, summary of industry information, preliminary plans for technology-based regulatory options, and general CWT issues. The meeting will not be recorded by a reporter or transcribed for inclusion in the record for the Centralized Waste Treatment Category rulemaking.

Documents relating to the topics mentioned above and a more detailed agenda will be available at the meeting.

Dated: February 14, 1994.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 94–3747 Filed 2–17–94; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–41

RIN: 3090–AE77

Update of Transportation Documentation and Audit Regulations

AGENCY: Federal Supply Service, GSA.

ACTION: Proposed rule

SUMMARY: The General Services Administration proposes to amend part 101–41 of the Federal Property Management Regulations by revising text to reflect administrative decisions and procedural changes; eliminating or correcting obsolete material; and updating addresses, correspondence symbols, codes, and legal citations. This action updates policies and procedures governing the audit of payments for domestic and foreign freight and passenger transportation services furnished for the account of the United States.

DATES: Comments must be received by no later than 4 p.m. April 19, 1994.

ADDRESSES: Written comments must be sent to the General Services Administration (FWPA), 18th & F Streets, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Policy, Procedures and Liaison Branch, Office of Transportation Audits (202–219–3164).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) had determined that this rule is not a significant regulatory action for the purpose of Executive Order 12866 of September 30, 1993, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

This rule contains reporting requirements which have been approved under OMB clearance number 3090–0242.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, it is determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 41 CFR Part 101–41

Accounting, Air carriers, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

GSA proposes to amend 41 CFR part 101–41 as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR part 101–41 continues to read as follows:

Authority: 31 U.S.C. 3726 and 40 U.S.C. 486(c).

2. Section 101–41.002 is amended by revising paragraph (b) to read as follows:

§ 101–41.202 Definitions.

* * * * *

(b) *Carrier* means any transportation services provider, including forwarder, exempt or not exempt from regulation, or other duly authorized agent, subject to the provisions of section 322 of the Transportation Act of 1940, as amended (31 U.S.C. 3726), offering to provide transportation services for the account of the United States.

* * * * *

3. Section 101–41.003 is revised to read as follows:

§ 101–41.203 Exceptions to regulations.

Exceptions to the regulations in this part 101–41 shall be granted only by the Administrator of General Services or the Administrator's designee. Requests for exceptions shall be made in writing to the General Services Administration (FWP), Washington, DC 20405. A copy of the authorizing statement for each deviation, including the nature of the deviation, the reasons for such special action, and the Administrator's approval will be made available for public inspection in accordance with subpart 105–60.3 of this title.

4. Section 101–41.304 is amended by revising paragraph (a) to read as follows:

§ 101–41.304 Agency implementation.

(a) Agencies shall issue new or revise existing regulations and procedures to

conform to the provisions of this part 101–41 and shall forward one copy of such new or revised regulations and procedures to the General Services Administration (FWP), Washington, DC 20405.

* * * * *

5. Section 101–41.006 is amended by revising paragraph (a) to read as follows:

§ 101–41.006 Electronic data interchange (EDI) records.

(a) For the purposes of EDI only, a paper or microform record need not be created to satisfy the requirements of this part if the record is initially prepared in a coordinated electronic exchange medium. Each record kept in such a coordinated medium shall be accompanied by a statement clearly indicating the type of data included in the record and certifying that the information contained in it has been accurately duplicated. This statement shall be executed by the person duplicating the records. The records shall be indexed and retained in such a manner that they are easily accessible and the carrier or the agency shall have the facilities available to locate, identify, and reproduce the records in readable form without loss of clarity.

* * * * *

6. Section 101–41.104 is redesignated as 101–41.008.

Subpart 101–41.1—General

7. In § 101–41.101, paragraph (b)(3) is redesignated as paragraph (c) and revised to read as follows:

§ 101–41.101 Examination of payments, settlement of claims, and review of requirements.

* * * * *

(c) The Administrator of General Services or the Administrator's designee will give due consideration to decisions of the Comptroller General of the United States, which are advisory in nature, resulting from Federal agency or common and contract carrier appeals involving disputed claims by and against the United States or issued under the authority vested in the Comptroller General by the Budget and Accounting Act of 1921, as amended (31 U.S.C. 702), and the Accounting and Auditing Act of 1950, as amended (31 U.S.C. 3501 *et seq.*).

8. Section 101–41.102 is amended by revising paragraph (b) and removing paragraph (e) to read as follows:

§ 101–41.102 GSA responsibilities and functions.

* * * * *

(b) In carrying out the foregoing functions, a designee head of an agency, acting in substance as GSA's audit surrogate, shall forward direct to the General Accounting Office (GAO) matters for consideration by the Comptroller General of the United States or by a division of GAO or shall forward direct to the Department of Justice matters for its consideration of collection action, litigation, and related proceedings, as prescribed in 4 CFR part 105. A claimant who disagrees with the settlement of his claim by GSA's audit surrogate may request reconsideration by the agency head or review by the Comptroller General of the United States in accordance with the guidelines set forth in subpart 101–41.7. These matters are subject to the provisions of § 101–41.101(c) and need not be forwarded through GSA.

* * * * *

9. Section 101–41.103 is amended by revising paragraphs (c), (d), (i)(1), (i)(3)(i) through (i)(3)(vii), (i)(4), (i)(5), (j), (k), (n)(1), (n)(2), (n)(3), and (n)(5) to read as follows:

§ 101–41.103 Procedures, conditions, and limitations relevant to the delegation of authority to perform prepayment audits of selected transportation bills.

* * * * *

(c) Each request shall include a detailed model of the audit process from receipt to payment of carrier bills and the subsequent submission of paid vouchers to GSA for postpayment audit.

(d) The requester shall demonstrate the capability not only to complete an accurate audit within 5 calendar days of receipt of a carrier's bill, but also evidence the ability to generate an accurate nctice to the carrier which specifically describes the reason for any full or partial rejection of the carrier's charges, citing the rate authority applicable thereto.

* * * * *

(i) * * *

(1) Notwithstanding any other provision herein, GSA may request that agencies forward unpaid transportation bills approved for payment after prepayment audit by a designee agency (if any), in lieu of payment to the carrier, in order to adequately protect the Government's right to setoff or where the best interests of the Government so require.

* * * * *

(3) * * *

(i) The carrier is involved in a proceeding under the Bankruptcy Code as a debtor or possible debtor, or is subject to the control of a receiver, trustee, or other similar representative;

(ii) The carrier consistently fails to refund overcharges without assertion of substantial defense or other valid reasons when notified by GSA or any other interested Government agency;

(iii) The carrier, without good cause, fails to make timely disposition or settlement of loss or damage or other claims asserted by agencies of the United States;

(iv) The carrier owes substantial sums of money to the United States for which no adequate arrangements for settlement have been made;

(v) The carrier, as a person or business entity, was determined administratively to be ineligible for payment, unless after review of the facts and in the absence of objection by the U.S. General Accounting Office, it is determined administratively that the best interests of the United States will not be jeopardized by such payment;

(vi) The carrier voluntarily withdraws or is otherwise involuntarily terminated from an agency-wide transportation program; or

(vii) Any other circumstances where a reasonable person, in the exercise of ordinary prudence, would conclude that the carrier is in such financial condition that its ability to pay debts owed to the Government is questionable.

(4) Carriers subject to prepayment audit by GSA for the reasons outlined in § 101–41.103(i)(3), may offer substitute arrangements to adequately protect the Government's right to setoff in consideration for the avoidance of prepayment audit and/or a release of funds deemed adequate by the Government to pursue its right of setoff.

(5) The exercise of actual setoff shall be conducted in accordance with the Federal Claims Collection Standards.

(j) All forms used by the designee or its audit activity in performing the prepayment audit must be approved by GSA (Attn: FWP) prior to usage, and no rules or procedures relative to the prepayment audit may be published by the designee or its audit activity without GSA approval.

(k) The designee and any audit activity under him/her will be guided by applicable Comptroller General decisions and Federal Property Management Regulations, instructions, and precedents regarding substantive and procedural matters.

* * * * *

(n) * * *

(1) Failure to accomplish an accurate audit (less than 85 percent accuracy).

(2) A pattern of failure to make timely payments, or failure to inform carriers within 7 days of defective invoices (Prompt Payment Act time limitations).

(3) Audit results not cost-effective; i.e., where the cost of the audit exceeds the benefits derived.

* * * * *

(5) Failure of the designee, or any audit authority under it to be guided by applicable Comptroller General decisions, Federal Property Management Regulations, and instructions, or precedents regarding substantive and procedural matters.

* * * * *

Subpart 101–41.2—Passenger Transportation Services Furnished for the Account of the United States

10. Section 101–41.202 is amended by revising the introductory text to read as follows:

§ 101–41.202 Standard forms relating to passenger transportation.

The Standard forms listed in paragraphs (a) through (h) of this section are prescribed for use in connection with the procurement of passenger transportation services for the account of the United States.

* * * * *

11. Section 101–41.202–5 is revised to read as follows:

§ 101–41.202–5 Procurement of Standard forms by agencies and carriers.

(a) Agencies may obtain supplies of SF 1169 and SF 1170 assemblies from GSA by submitting a requisition in FEDSTRIP format to GSA's Federal Supply Service, Furniture Commodity Center (3FNI–CO), Washington, DC 20406. With respect to the GTR assemblies, 3FNI–CO maintains a record of the serial numbers imprinted on the forms and the names and mailing addresses of the receiving agencies. Where feasible, agencies should request that the name and address of the office to be billed for payment of charges be preprinted on each SF 1169 and that the name and address of the office to receive the refund be preprinted on each SF 1170. No other overprinting on SF 1169, SF 1170, or SF 1170–EDP (computer-generated) is permitted unless specifically approved in writing by the Director, Office of Transportation Audits (FW), GSA.

(b) Carriers may purchase SF 1113 and SF 1113–A from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or have these printed commercially. When printing these forms commercially, carriers shall ensure that the forms conform to the exact size, wording, and arrangement of the approved Standard forms as well as be printed on a similar grade of paper stock. Carriers may have SF 1113 and SF 1113–A printed also in continuous-feed format for machine billing by adding pin-feed strips on the margins. The tear-off slip may be moved from the bottom to the right edge of SF 1113, to aid in machine use of the form, but it must be perforated on all edges to measure 8½ by 3⅝ inches when detached from the body of SF 1113 and from the pin-feed strips. The forms must conform in all other respects to the exact size, wording, color, and arrangement of the approved Standard forms. Any deviations must be approved in writing by the Director, Office of Transportation Audits (FW), GSA, Washington, DC 20405.

12. Section 101–41.203 is revised to read as follows:

§ 101–41.203 Procurement of passenger transportation services.

Government travel should be via the lowest cost fare available for which the traveler meets all conditions. The issuing officer must ensure that a request is conveyed to the carrier or its agent for the lowest cost fare available by entering "lowest fare for which the traveler qualifies" in the class of service block on the GTR.

13. Section 101–41.203–4 is revised to read as follows:

§ 101–41.203–4 Reduced rate services.

When Government travel is on an air carrier the use of discount fares offered by contract air carriers between certain cities (city-pairs) is mandatory unless an exception is authorized under 41 CFR 301–15.27. For air travel between cities where no contract service exists, or for travel by other common carrier modes, travel must be performed using the lowest cost fare available, e.g., through, group, excursion, commutation, special, or reduced one-way or round-trip fare when it can be determined before the start of a trip that this type of service would be more practical and economical to the Government.

14. Section 101–41.203–5 is revised to read as follows:

§ 101–41.203–5 Joint procurement of rail transportation and accommodations.

When the need for sleeping or parlor car accommodations is known at the time the rail transportation services are authorized, a single GTR shall be issued for joint procurement of transportation and accommodations. A separate GTR may be used to procure accommodations if such service is authorized after procurement of the rail transportation ticket. The GTR shall bear the name of the carrier issuing the sleeping or parlor car ticket and, when known, the number of the GTR covering the rail transportation service.

15. Section 101–41.203–6 is amended by revising paragraph (b) to read as follows:

§ 101–41.203–6 Air excess baggage service.

* * * * *

(b) The GEBAT coupon shall be given to the traveler with the air ticket for presentation to the honoring carrier. Each carrier that is to provide excess baggage service shall fill the pertinent coupon, complete it to show the gross and net weights or number of pieces of baggage carried, and use the coupon to support the subsequent billing of charges. The carrier providing the service may bill its charges direct to the paying office or may forward the coupon to the carrier to which the GTR was tendered for billing.

16. Section 101–41.204–1 is revised to read as follows:

§ 101–41.204–1 Contracts.

With the exception of contracts for intracity bus service and contracts entered into by the Air Mobility Command and the Military Sealift Command, a copy of each contract, negotiated or otherwise, providing rates or charges for passenger transportation services shall be forwarded by agencies, promptly upon execution, to the General Services Administration (FWA), Washington, DC 20405.

17. Section 101–41.204–2 is revised to read as follows:

§ 101–41.204–2 Tenders.

Two copies of each tender or quotation of special rates, fares, charges, or concessions for common or contract carrier passenger transportation services, including those made under section 10721 of the Revised Interstate Commerce Act (49 U.S.C. 10721), formerly section 22 of the Interstate Commerce Act, shall be promptly submitted by the negotiating agencies to the General Services Administration (FWA), Washington, DC 20405.

§ 101–41.205–1 [Reserved]

18. Section 101–41.205–1 is removed and reserved.

19. Section 101–41.205–2 is revised to read as follows:

§ 101–41.205–2 Blanket ticket purchases.

(a) *Procedures for issuing and processing tickets under blanket GTR's.* A blanket GTR may be issued to cover all tickets issued during a mutually agreed upon period not exceeding 1 month if the number of required tickets is of sufficient volume. When a blanket GTR is used to purchase multiple tickets (issued during a designated payment period), the GTR must be given to carrier or its agent prior to issuance of the first ticket. GTR issuing officers are prohibited from giving only a GTR

number to the carrier or its agent in lieu of an actual GTR. Care must be taken that a request is conveyed to the carrier or its agent for the lowest cost fare available, which is done by entering "lowest fare for which the traveler qualifies" in the class of service block on the GTR. Tickets shall be issued as follows:

(1) At the beginning of each payment period, a blanket GTR shall be prepared by the agency and given the TMC. Each ticket issued by the TMC for the period of time covered by the blanket GTR shall bear the number of the procuring GTR.

(2) A separate ticket listing shall be prepared by the TMC for each GTR to show the number and value of the tickets issued during the payment period and such other information as may be agreed upon by the carrier or its agent and the Government agency.

(3) At the end of the payment period, payment shall be made as provided in 101–41.206.

(b) *Procedures for processing unused tickets.* A completely unused ticket procured on a GTR and returned to the carrier or its agent during the same week it is purchased shall be voided by the carrier or its agent and shall not appear on the billing invoice. The carrier or its agent shall issue a receipt for tickets returned within the same week of issuance. The agency shall check the appropriate invoice to ensure that the agency is not billed for the returned tickets. A completely unused ticket procured using a GTR that has already been paid and all partially unused tickets, whether paid or not, shall be processed through the carrier or its agent on Standard Form 1170 for refund under procedures set forth in § 101–41.210.

20. Section 101–41.206 is amended by revising the heading, and paragraphs (a), (b), (c)(3), and (d) to read as follows:

§ 101–41.206 Special procedures for payment of blanket GTR charges for passenger transportation services.

(a) At the end of the payment period for which a blanket GTR has been issued under § 101–41.205–2, the original GTR, copies of the agent's coupons or credit card coupons and individual itineraries for each ticket issued but not voided during the period, the original and two copies of the ticket listing and the SF 1113 shall be forwarded by the TMC to the responsible agency accounting activity for preparation of the appropriate disbursing documents and issuance of the check to the TMC for transportation charges. The payment check shall bear the name and location of the agency authorizing payment and the applicable GTR number.

(b) Agencies using the disbursing facilities of the Department of the Treasury shall issue Standard Form 1166 OCR, Voucher and Schedule of Payments (voucher-schedule), to the Department of Treasury for issuance of the check. The payee block of the voucher-schedule shall include the above-cited identifying information that is to appear on the payment check.

(c) * * *

(3) The agent's coupons or reproduced copy of the agent's coupons or credit card coupon copies and copies of itineraries for each ticket paid on the listing for air and/or rail service.

(d) The carrier/TMC shall be responsible for making settlement of all overcharges identified by GSA upon subsequent audit of the documents covering their respective transportation services and for stating valid claims for additional charges as prescribed in Subpart 101–41.6.

21. Section 101–41/207–3 is revised to read as follows:

§ 101–41.207–3 Disposition of spoiled or canceled GTR's.

A GTR spoiled in preparation, canceled, or prepared for issuance but not used shall be marked "CANCELED" across the face and forwarded immediately through the issuing office to the office maintaining the accountability records. General Records Schedule 9, Travel and Transportation Records (see 36 CFR chapter XII, § 1228.22), provides instructions for the disposal of a GTR.

§ 101–41.208–4 [Reserved]

22. Section 101–41.208–4 is removed and reserved.

23. Section 101–41.208–5 is revised to read as follows:

§ 101–41.208–5 En route honoring of GTR's for rail service.

When there is no ticket agent on duty, necessitating the purchase of a rail transportation ticket on-board, the conductor shall issue a coach, parlor car, or sleeping car ticket for service authorized on the GTR in exchange for the GTR. If a different service or service of lesser value than that shown on the GTR is furnished, the type of service furnished shall be entered on the reverse of the GTR and signed by the conductor and countersigned by the traveler. The traveler shall similarly endorse the memorandum card copy (SF 1169–A). If the original and the memorandum card copy are unavailable, the traveler shall promptly forward written notification of the change to the office that issued the GTR. The carrier shall bill charges for the changed or lesser cost service to avoid subsequent adjustments with the Government.

24. Section 101–41.208–6 is revised to read as follows:

§ 101–41.208–6 En route honoring of GTR's for sleeping or parlor car services only.

When a GTR is presented on the train for sleeping or parlor car accommodations only, it shall be honored provided such accommodations are available and the traveler has purchased a rail passage fare.

25. Section 101–41.210–1 is amended by revising the introductory text of paragraph (a) and paragraph (c) to read as follows:

§ 101–41.210–1 Exchange or returned tickets.

(a) Exchanged or returned tickets are tickets in a carrier's possession for which the carrier has issued a lesser valued ticket, receipt, or refund application showing a refund due the U.S. Government. Agencies shall not submit an SF 1170 to the carrier to claim a refund for the unused value of an exchanged or returned ticket. Carriers are required to make refunds to the "bill charges to" office indicated on the GTR within 60 calendar days from date of ticket exchange. Agencies must provide travelers with a "bill charges to" address by attaching a copy of the GTR or some other document containing the information to the ticket or to the travel authorization. If carriers cannot identify the issuing agency, refunds shall be sent to GSA (FWCA), Washington, DC 20405. These refunds are subject to the following procedures:

* * * * *

(c) When accepting exchanged or returned tickets purchased with a contractor-issued Government employee charge card, the carrier must issue a receipt to the traveler showing a credit is due the traveler.

26. Section 101–41.210–1a is amended by revising paragraph (c) to read as follows:

§ 101–41.210–1a Agency monitoring and processing of exchanged ticket refunds.

* * * * *

(c) Forward carrier ticket refund applications and any other pertinent information to GSA (FWCM), Washington, DC 20405, if refund has not been received within 90 calendar days of date of ticket exchange or return.

27. Section 101–41.210–2 is revised to read as follows:

§ 101–41.210–2 Unused or unreturned tickets.

An unused or unreturned ticket is one which has not been used for passenger service, exchanged, or returned to the carrier or travel management center (TMC) that issued it. Agencies shall demand the refund value of these tickets from carriers or TMC's through the use of an SF 1170, Redemption of Unused Tickets. A separate SF 1170 must be prepared for each GTR, though more than one ticket or adjustment transaction may be related to that GTR. Each ticket must be listed on the SF 1170. An unused or unreturned ticket purchased under a GTS account must be returned by the traveler to the Federal agency office that purchased the ticket. That office shall, in turn, return the ticket to the TMC that furnished the airline ticket. The TMC must issue a receipt to the agency office showing a credit is due the agency. An unused or unreturned ticket purchased with a contractor-issued Government employee charge card must be returned by the traveler to the TMC or air carrier that issued the original ticket. The TMC or air carrier must issue a receipt to the traveler showing a credit is due the employee. For procedures covering unused transportation services billed by foreign-flag carriers, see § 101–41.210–6.

28. Section 101–41.210–3 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 101–41.210–3 Agency processing of SF 1170 claims.

Timely processing of SF 1170 claims is essential to facilitate prompt refunds from carriers. Agencies processing SF 1170 claims shall ensure that:

* * * * *

(c) All other copies, including copies of unused tickets, are retained by the agency for accounting control.

29. Section 101–41.210–3a is amended by revising the introductory text to read as follows:

§ 101–41.210–3a Carrier processing of SF 1170 claims.

Each carrier shall promptly refund monies to adjust items listed on an SF 1170, whether or not the related GTR has been submitted or paid. The carrier shall indicate on the original SF 1170 the amount credited to each ticket and the total amount being refunded, and shall return the original with its refund to the agency. A refund that is inconsistent with the information on the SF 1170 shall be explained or computed on the SF 1170 or in an attached letter. A carrier declining to refund shall furnish an explanation on the original SF 1170. If a carrier is unable to determine which agency submitted the SF 1170, the payment and refund information shall be sent directly to the General Services Administration (FWCA). Any refunds sent directly to GSA will be subject to the following procedures:

* * * * *

30. Section 101–41.210–4 is revised to read as follows:

§ 101–41.210–4 Agency processing of SF 1170 refunds.

Upon return of the original SF 1170 with the refund, the agency shall record and deposit the refund in conformity with its fiscal procedures. If the refund has previously been reported to GSA as uncollected under § 101–41.210–5, the agency shall, within 30 calendar days of receipt thereof, forward the original SF 1170 and file copy of the ticket together with any advice from the carrier regarding the basis of the refund, to the General Services Administration (FWCA), Washington, DC 20405.

31. Section 101–41.210–5 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 101–41.210–5 Agency processing of SF 1170 claims for which the carrier failed to refund or otherwise satisfy the claim.

(a) Partial tickets. A partial ticket is one in which one or more (but not all) coupons have been used. If, within 90 calendar days from the date of issuance of the SF 1170, the carrier has failed to make refund for the unused portion of a partially used ticket or to furnish a satisfactory explanation as to why no refund is due, the agency shall transmit the triplicate of the SF 1170 and all related correspondence to the General Services Administration (FWCA), Washington, DC 20405, for appropriate action. An agency may remove from its active accounts those debts referred to GSA under this section. This shall be recorded in a manner sufficient to support its removal from agency accounting records. Should a refund or response be received from the carrier after referring the claim to GSA, the agency shall, within 30 calendar days of receipt thereof, forward the original SF 1170 and file copy of the ticket, together with any advice from the carrier regarding the basis of the refund, to the General Services Administration (FWCA) in accordance with § 101–41.210–4.

* * * * *

(c) Agencies shall send to the General Services Administration (FWC) all SF 1170 claims on complete tickets on which the carrier alleges that no refund is due or on which there is doubt as to whether the carrier has refunded the full value of the unused ticket. Agency accounting shall be the same as is prescribed for partial tickets forwarded to the General Services Administration.

§ 101–41.210–5a [Reserved]

§ 101–41.210–5b [Reserved]

§ 101–41.210–5c [Reserved]

32. Sections 101–41.210–5a, 210–5b, and 210–5c are removed and reserved.

33. Section 101–41.210.5d is revised to read as follows:

§ 101–41.210–5d Agency recovery of carrier refunds sent directly to GSA.

To recover carrier refunds sent directly to GSA (FWCA), agencies must forward either an F 1080, Voucher for Transfer Between Appropriations and/or Funds, or SF 1081, Voucher and Schedule of Withdrawals and Credits, to the General Services Administration (FWCA). Included on these forms must be the name of the carrier, carrier check number, date, and amount of check (obtained from carrier), as well as the GTR number and the appropriation number to be credited. Agency refund requests should be sent promptly to GSA (FWCA). Refunds from carriers which are not identified and claimed by agencies within 300 days after receipt by GSA (FWCA) will be returned to the U.S. Treasury as miscellaneous receipts.

34. Section 101–41.210–6 is amended by revising paragraph (c) to read as follows:

§ 101–41.210–6 Refund procedures covering unused transportation services billed by foreign-flag carriers.

* * * * *

(c) Adjustments for unfurnished transportation services not reported on SF 1170 but made by deduction or setoff shall be noted on the deduction voucher with a full description of each unused ticket or portion thereof. Reference shall also be made to the transportation request number and the disbursing office (D.O.) voucher or schedule number and the date of payment of the voucher on which the GTR was paid if other than the deduction voucher. The unused ticket or portion thereof shall be forwarded by the agency to the carrier and a copy of the transmittal letter shall be attached to the deduction voucher involved.

35. Section 101–41.211–2 is revised to read as follows:

§ 101–41.211–2 Disposition of recovered GTR's previously reported lost or stolen.

A GTR that has been reported as lost or stolen but subsequently recovered shall not be used to obtain transportation or accommodations. The recovered GTR, whether it is blank or

partially or completely filled out, shall be returned promptly to the issuing officer who shall mark it "CANCELED" and forward it through appropriate channels to the office keeping the accountability records. The National Archives and Records Administration General Records Schedule 9, Travel and Transportation Records, provides instructions for disposition of canceled GTR's (see 36 CFR chapter XII, § 1228.22).

36. Section 101–41.211–3 is revised to read as follows:

§ 101–41.211–3 Billing charges for GTR's lost by carrier.

(a) When a carrier has lost or misplaced a GTR, it shall bill the charges for the services furnished on the SF 1113, Public Voucher for Transportation Charges, annotated with the following signed certification: "I certify that all U.S. Government Transportation Requests (GTR's) honored by the above-named carrier or travel agent pass into my office; that ticket(s) (form and ticket number(s)), value of ticket(s), accommodations (number and type), points of travel (from and to) annotated below was (were) furnished in exchange for the specified GTR; that the stated value(s) is (are) true and correct; that the said GTR has been lost or misplaced and cannot be located; that the honoring carrier has not received payment for services rendered thereunder; and that, if the said GTR is later found, it will be marked "Canceled—SF 1113 with Signed Certification Issued in Lieu of Lost GTR" and transmitted to the General Services Administration (FWAA/C), Washington, DC 20405, and no claim made thereon. Copy/copies of ticket coupon(s), with the GTR number visible, will be attached in support of the SF 1113. A statement of any other pertinent facts and circumstances should be included. Each lost or misplaced GTR shall be billed on a separate SF 1113 to be distinguished from charges applicable to other GTR's. (See § 101–41.214 for billing of transportation charges.)

(b) Disbursing officers shall certify on the SF 1113 that the services specified thereon have been furnished, that payment has not been made to any claimant, and that the record has been annotated to prevent duplicate payment. The carrier may transmit its bill (SF 1113 with certification) to the General Services Administration (FWCA), Washington, DC 20405, if the paying agency is unknown.

37. Section 101–41.211–4 is revised to read as follows:

§ 101–41.211–4 Disposition of GTR's previously certified lost by carrier.

An original GTR that is located after payment has been made under § 101–41.211–3 shall be forwarded promptly to the General Services Administration (FWAA/C), Washington, DC 20405, together with a reference to the carrier's bill on which charges for the lost GTR were paid.

38. Section 101–41.211–5 is revised to read as follows:

§ 101–41.211–5 Billing charges for air excess baggage coupons lost by carrier.

(a) When a carrier has lost or misplaced its flight coupon copy of the GEBAT covering the air carriage of excess baggage, it shall bill the charges on an SF 1113 annotated with the following signed certification: "I certify that all GEBATS honored by the above-named carrier or travel agent pass into my office; that the authorizing GTR(s) (number(s)), applicable passenger ticket(s) (number(s)), name of traveler(s), weight or number of pieces of excess baggage authorized and carried, points between which service was authorized and rendered, and all other information pertinent to the transaction annotated below was (were) furnished in exchange for the specific GEBAT; that the stated value(s) is (are) true and correct; that the said GEBAT has been lost or misplaced and cannot be located; that the honoring carrier has not received payment for services rendered thereunder, and that, if the said GEBAT is later found, it will be marked 'Canceled—SF 1113 with Signed Certification Issued in Lieu of Lost GEBAT' and transmitted to the General Services Administration (FWAA/C), Washington, DC 20405, and no claim made thereon." The disbursing officer shall certify on the SF 1113 that the services specified therein have been furnished, that payment has not been made to any claimant, and that the record has been annotated to prevent duplicate payment.

(b) Excess baggage charges supported by a certified statement instead of a lost GEBAT shall be billed separately from other types of transportation charges. Where the paying agency cannot be determined, the carrier may submit its bill to the General Services Administration (FWCA), Washington, DC 20405, for forwarding to the responsible agency.

(c) An original GEBAT that is located after issuance of the certified statement instead of the lost GEBAT, together with a reference to the carrier's bill on which charges for the lost GEBAT were paid, shall be forwarded promptly to GSA (FWAA/C).

39. Section 101–41.213 is amended by revising paragraph (a)(3) to read as follows:

§ 101–41.213 Carrier entries on GTR's.

(a) * * *

(3) In the "Auditor's Value" space, the carrier audit officer shall enter the charges as specified in paragraph (a)(2) of this § 101–41.213 for the "Agents Value."

* * * * *

40. Section 101–41.214–3 is revised to read as follows:

§ 101–41.214–3 Carrier machine punching on GTR's.

Carriers using 80-column tabulating equipment have the option of keypunching certain information in the GTR's. Carriers electing to punch the GTR must punch all information in fields 1–20 as specified below. Fields 21–25 are for optional use by carriers. No other card fields may be used.

Fields	Information
1–5	Carrier's code number as published in the Continental Directory of Standard Carrier Alpha Codes (SCAC) and Standard Tariff Agents Codes. Inquiries shall be addressed to NMFTA, 2200 Mill Road, Alexandria, VA 22314.
6–10	Carrier's bill number.
11–18	Total amount of transportation charges.
19–20	Federal account (appropriation) symbol. (To be obtained from the Department of the Treasury annual publication "Federal Account Symbols and Titles.")
21–25	Carrier's optional in-house code.

41. Section 101–41.214–5 is amended by revising paragraph (e) to read as follows:

§ 101–41.214–5 Preparation of carrier billing form.

* * * * *

(e) Each carrier shall insert in the appropriate block on the SF 1113 (and SF 1113–A), the standard carrier alpha code (SCAC) assigned to that carrier in the National Motor Freight Traffic Association, Inc., Agent, Directory of Standard Multi-Modal Carrier and Tarif Agents Codes (SCAC and STAC), ICC NMF 101, applicable supplements thereto, or subsequent reissues thereof.

42. Section 101–41.214–7 is revised to read as follows:

§ 101–41.214–7 Cross-reference on billings for additional or supplemental services.

Vouchers supported by GTR's which extend or supplement services covered by other GTR's shall be endorsed by the paying office or issuing agency to show the disbursing office (D.O.) voucher number or schedule number, date of payment, and date of the prior payment. Vouchers covering air excess baggage charges need not be so endorsed.

Subpart 101–41.3—Freight Transportation Services Furnished for the Account of the United States

43. Section 101–41.300 is revised to read as follows:

§ 101–41.300 Scope and applicability of subpart.

This subpart sets forth regulations and procedures governing the procurement of and the billing and payment for freight or express transportation services for the account of the United States.

44. Section 101–41.302–2 is amended by revising the introductory text of paragraph (a), paragraphs (a)(1) and (a)(6), the introductory text of paragraph (c), paragraph (c)(4) and paragraph (d) to read as follows:

§ 101–41.302–2 Description and distribution of Government bills of lading.

(a) The U.S. Government bill of lading (GBL) is a nine-part set consisting of six basic forms. The sets are carbon-interleaved for simultaneous preparation. The GBL set is arranged in the following order:

(1) SF 1103 (original), which refers to subpart 101–41.3 for the terms and conditions of the contract of transportation and contains both the description of the articles comprising the shipment and the certificate of delivery, is given to the carrier upon tender of shipment for use as supporting documentation with the voucher covering the transportation charges involved.

* * * * *

(6) SF 1103–A (memorandum copy), of which there are four copies, is for use by the shipper for fiscal and administrative purposes.

* * * * *

(c) The U.S. Government Bill of Lading-Privately Owned Personal Property (PPGBL) is a seven-part form available in either snap-out or computer pin-feed formats. The sets are carbon interleaved for simultaneous preparation. The PPGBL is arranged in the following order:

* * * * *

(4) SF 1205 (freight waybill-original) is given to the origin carrier and is either carried to destination or is otherwise sent to destination in compliance with origin carrier's instructions. It also serves as the substitute billing document when the original PPGBL is lost or destroyed.

* * * * *

(d) The GBL continuation sheets (SF 1109 through 1112) are also available in nine-part sets and are arranged in order corresponding to the GBL sets. The continuation sheets are for use with the regular GBL and the personal property GBL.

45. Section 101–41.302–3 is amended by revising paragraph (i) to read as follows:

§ 101–41.302–3 Terms and conditions governing acceptance and use of GBLs.

* * * * *

(i) The nondiscrimination clauses contained in section 202 of Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor are incorporated by reference in the GBL.

46. Section 101–41.302–5 is amended by revising paragraph (b) to read as follows:

§ 101–41.302–5 Pickup and delivery services.

* * * * *

(b) When a shipper or consignee so requests and if the carrier furnishes delivery service at destination, the carrier shall check the appropriate box in the "Certificate of Carrier Billing" section on the GBL.

47. Section 101–41.303–4 is revised to read as follows:

§ 101–41.303–4 Lost original commercial bills of lading subsequently recovered.

When the original commercial bill of lading or commercial express receipt is recovered after conversion of an authentic copy of the commercial document to a GBL, the original commercial document shall be forwarded to the paying office of the agency concerned, with an appropriate reference to the previous conversion. If the transportation charges on the GBL converted from the copy of the commercial document have already been paid, the recovered original commercial bill of lading or commercial express receipt shall be marked "VOID"; annotated with the disbursing office (D.O.) voucher or schedule number (or the GSA certificate of settlement number) and payment date; and transmitted to the General Services Administration (FWAA/C), Washington, DC 20405.

48. Section 101–41.305–2 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 101–41.305–2 Transit records; processing and distribution.

* * * * *

(c) *Furnishing transit certificates.* Transit certificates (record of transit tonnage and application) need not be prepared and furnished to GSA (FWAA/C) when the paying office normally verifies or enters the inbound billing information in the "Description of Articles" block of the GBL. If the paying office does not verify or provide inbound billing information, the certificates shall be furnished to General Services Administration (FWAA/C), Washington, DC 20405, as follows:

* * * * *

49. Section 101–41.305–5 is revised to read as follows:

§ 101–41.305–5 Paying office action on transit billings.

The paying office shall verify and, if necessary, correct the transit information shown on the GBL. When the required transit information is not shown, the paying office shall enter the following information in the "Description of Articles" block of the GBL, or on a GBL continuation sheet, under a heading "TRANSIT RESHIPPING CERTIFICATE-INBOUND BILLING REFERENCES": The disbursing office (D.O.) voucher or schedule number and the date of payment of the inbound billing, before forwarding the SF 1113 and a notice of any refunds to GSA (FWAA/C). Vouchers with the accompanying GBL covering free or surrendered transit shall be transmitted to GSA (FWAA/C) separate from other types of transportation vouchers.

50. Section 101–41.306 is amended by revising paragraph (b) to read as follows:

§ 101–41.306 Disposition of GBL forms upon delivery of property to carrier for shipment.

* * * * *

(b) The issuing office shall retain a certified memorandum copy; i.e., the issuing office copy (SF 1103–A and SF 1109–A, if any), and send the consignee copy (SF 1103–B and SF 1109–B, if any) to the consignee. A contractor acting as shipper shall retain one certified memorandum copy, forward one copy to the issuing office, and send the consignee copy to the consignee.

* * * * *

51. Section 101–41.307–5 is revised to read as follows:

§ 101–41.307–5 Lost original GBL's recovered after settlement.

When a lost original GBL is recovered after settlement is effected on the basis of the freight waybill, the original GBL

shall be forwarded to the paying office of the agency concerned for cancellation. The original GBL shall be inscribed with the disbursing office (D.O.) voucher or schedule number, the GSA certificate of settlement number, and the payment date of the freight waybill settlement voucher and shall be forwarded to GSA (FWAA/C).

52. Section 101–41.308–1 is amended by revising the introductory text to read as follows:

§ 101–41.308–1 Agency control.

Agencies shall maintain accountability records and physical control of GBL stock. Employees responsible for the issuance and use of GBL forms shall be held accountable for their disposition. GBL forms generally are serially numbered at the time of printing; no other numbering of the forms, including additions or changes to the prefixes or additions of suffixes, is permitted.

* * * * *

53. Section 101–41.308–2 is revised to read as follows:

§ 101–41.308–2 Disposition of unused GBL's.

GBL forms spoiled in preparation, prepared for issuance but not used, or unusable for any other reason shall be canceled and returned to the accountable office. Those forms shall be disposed of in accordance with General Records Schedule 9, Travel and Transportation Records. (See 36 CFR chapter XII, § 1228.22.)

54. Section 101–41.309–2 is amended by revising paragraph (c)(4) and the concluding text of paragraph (c) to read as follows:

§ 101–41.309–2 Motor carrier or freight forwarder destination storage in transit of household goods or mobile dwellings.

* * * * *

(c) * * *

(4) A copy of the original SF 1113, Public Voucher for Transportation Charges, which was submitted by the line-haul carrier, and copies of any other supplemental SF's 1113 previously submitted for payment of accessorial charges relating to items paid on the original bill.

The originals of those statements listed in paragraphs (c)(1) and (c)(2) shall be used as support for accessorial charges.

55. Section 101–41.310–2 is amended by revising paragraphs (a) and (d) to read as follows:

§ 101–41.310–2 Preparation of carrier billing forms.

(a) Instructions for the preparation of SF 1113, Public Voucher for Transportation Charges, are furnished in the GSA guide "How to Prepare and Process U.S. Government Bills of Lading" (national stock number 7610–00–682–5740). Agencies may obtain copies of this guide by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity.

* * * * *

(d) Each carrier shall insert in the appropriate block on SF 1113 (and SF 1113–A), the Standard Carrier Alpha Code (SCAC) assigned to that carrier in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agents Code (SCAC and STAC), ICC NMF 101, applicable supplements or subsequent reissues.

56. Section 101.41.310–4 is amended by revising paragraph (a)(2) to read as follows:

§ 101–41.310–4 Presentation and payment of carrier's bills.

* * * * *

(a) * * *

(2) A participating carrier or forwarder in privity with the contract of carriage as evidenced by the covering GBL when the bill is submitted with a waiver accomplished by the last carrier (as described in paragraph (a)(1) of this section) in favor of the billing carrier;

* * * * *

57. Section 101–41.311 is revised to read as follows:

§ 101–41.311 Reporting of carrier voluntary refunds.

Agencies shall report voluntary refunds (other than those described in § 101–41.305–3 of this subpart) of excess payments for freight or express charges to the General Services Administration (FWAA/C), Washington, DC 20405. Each report shall include the following:

(a) GBL reference and amount of refund;

(b) Disbursing office (D.O.) voucher or schedule number and date of payment assigned to the original payment; and

(c) Carrier's name and bill number.

58. Section 101–41.312 is amended by revising paragraph (c)(3) to read as follows:

§ 101–41.312 Exception to usual billing and payment procedures.

* * * * *

(c) * * *

(3) Payments made under the provisions of this section are subject to adjustment, if otherwise proper, when the cargo is lost, damaged, or not delivered to the destination specified in the bill of lading contracts. Agencies shall make a diligent effort to collect all agency claims arising under the provisions of this section and shall report uncollected debts to the General Government Division, Claims Group, U.S. General Accounting Office, Washington, DC 20548.

59. Section 101–41.313–1 is revised to read as follows:

§ 101–41.313–1 GBL forms.

(a) Agencies may obtain supplies of the individual snapout GBL sets by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity. Agencies having facilities for computer preparation of GBL's may order them in continuous fanfold format with pin-feed strips attached to the sides, but such forms must conform to all other specifications on the GBL, including overall size, wording, arrangement, color, construction, and grade of paper. Minor adjustments in spacing to accommodate differences in alignment of computer line printing are permissible, but all copies in the GBL sets must register from part to part. Agency orders for continuous fanfold GBL's shall be executed and processed in accordance with § 101–26.302 of this chapter. GSA's Federal Supply Service, Furniture Commodity Center (3FNI–CO), Washington, DC 20406 maintains records of the serial numbers of all GBL and personal property GBL sets furnished and the names and mailing addresses of the receiving agencies.

(b) An agency may order overprinting on the GBL forms to the extent of identifying the name, bureau or service, and address of the payment office; appropriation or fund chargeable; and name and title of the issuing officer and place of issue. No other overprinting on the GBL forms is permitted unless specifically approved in writing by the General Services Administration (FW), Washington, DC 20405.

60. Section 101–41.313–2 is amended by revising the introductory text to read as follows:

101–41.313–2 Carrier billing form.

SF 1113, Public Voucher for Transportation Charges, which shall be used to bill freight transportation charges, is printed on 8½ by 11-inch white paper, with an added 8½ by 3⅜-inch tear-off slip which generally is returned to the carrier with the check covering payment of the vouchered charges, unless alternate arrangements are made for providing this information. (See § 101–41.803(b) for exception.) SF 1113–A, Public Voucher for Transportation Charges (Memorandum Copy), printed on yellow paper, is the same size as the original without the tear-off slip.

* * * * *

61. Section 101–41.314–1 is revised to read as follows:

§ 101–41.314–1 Contracts.

With the exception of contracts for local storage, drayage, and haulage (see § 101–41.304 of this subpart) and contracts entered into by the Military Sealift Command or the Air Mobility Command, a copy of each contract for freight or express transportation services, negotiated or otherwise, providing rates or charges shall be transmitted by agencies promptly upon execution to the General Services Administration (FWA), Washington, DC 20405.

62. Section 101–41.314–2 is revised to read as follows:

§ 101–41.314–2 Quotations and tenders.

Quotations or tenders made by or on behalf of common or contract carriers for freight, small package, or express transportation rates or services, including those authorized by section 10721 of the Revised Interstate Commerce Act, (49 U.S.C. 10721), formerly section 22 of the Interstate Commerce Act, shall be in written form. Two copies of each quotation or tender shall be promptly transmitted by administrative or negotiating agencies to GSA (FWA).

Subpart 101–41.4—Standards for the Payment of Charges for Transportation Services Furnished for the Account of the United States

63. Section 101–41.401 is amended by revising paragraph (a), the introductory text of paragraph (c), paragraph (c)(2), and paragraph (e) to read as follows:

§ 101–41.401 Payment of transportation bills.

(a) Unless GSA's Office of Transportation Audits determines that a prepayment audit is necessary under § 101–41.303(i), each agency or department shall pay any properly documented bill (claim) for freight or passenger transportation charges that is not excepted by the provisions of § 101–41.404–2.

* * * * *

(c) Provisions of Pub. L. 77–560, 56 Stat. 308 [31 U.S.C. 3322(b) and 3528(c)], relieve certifying and disbursing officers of liability for overpayments made for transportation furnished for the account of the United States on GBL's and GTR's when such overpayments are due to the use of improper transportation rates or classifications or to the failure to deduct proper amounts under agreements. However, agencies are not relieved of responsibility for:

* * * * *

(2) Providing the carrier with notice of an apparent error, defect, or impropriety within 7 days of receipt of an invoice.

* * * * *

(e) For the purposes of determining whether interest penalties under the Prompt Payment Act, 31 U.S.C. 3901, *et seq.*, are due, the date on which payment is due is 30 days after receipt of a proper carrier bill or claim.

Subpart 101–41.5—Claims by the United States Relating to Transportation Services

64. Section 101–41.500 is revised to read as follows:

§ 101–41.500 Scope and applicability of subpart.

This subpart sets forth procedures applicable to the assertion of claims by the United States that arise out of freight and passenger transportation services furnished for the account of the United States, the consideration and disposition of protests thereto, the collection of claims by administrative offset and by other means, the imposition of interest, penalties, and the disposition of amounts collected.

65. Section 101–41.502 is amended by revising paragraphs (a)(1) introductory text and (b)(1) to read as follows:

§ 101–41.502 Examination of payments and initiation of collection action and assertion of claims.

(a) * * *

(1) Carrier bills and supporting documents that represent payments made by agency disbursing officers for freight and passenger transportation services shall be forwarded to the General Services Administration (FWAA/C), Washington, DC 20405, for audit. For the purpose of determining whether a claim exists, GSA will consider:

* * * * *

(b) * * *

(1) A GSA notice of overcharge is issued when it is determined that a carrier has been paid a sum in excess of that proper for the services rendered. This notice, which states a debt owed to the United States, sets forth: The amount paid; the basis for the proper charge for each Government bill of lading, Government transportation request, commercial bill of lading, or freight bill; and cites applicable tariff references and other data relied upon to support the statement of difference. A separate notice of overcharge is stated for each Government bill of lading, Government transportation request, commercial bill of lading, or freight bill and mailed to the billing carrier.

* * * * *

66. Section 101–41.503 is revised to read as follows:

§ 101–41.503 Refunds and/or protests to claims.

(a) Carriers are requested to promptly refund amounts due the United States to avoid possible deduction action by GSA. Checks shall be made payable to the "General Services Administration" and mailed to the address specified on the claims notice.

(b) A carrier that disagrees with a claim may protest by letter to the General Services Administration (FWCA), Washington, DC 20405. Since each claim is processed as a separate account receivable, the carrier shall use a separate letter for each claim being protested. The carrier shall present the basis for its protest and submit either the original or a legible copy of all documents substantiating its position. If the carrier believes that an amount less than that claimed is due, it should submit a check for the amount due, together with a full explanation of the reasons for believing the balance is not due. With reference to an ordinary debt, which is the subject of a notice of indebtedness, the carrier may: inspect and copy the Government's records related to the claim; seek review by GSA of the claim decision; and/or enter into a written agreement for the payment of the claim. GSA will acknowledge receipt of each letter containing a substantive protest and upon completion of consideration will notify the carrier whether the claim has been sustained, amended, or canceled. Repetitious letters of protest will not serve to preclude the collection of claims found due.

67. Section 101–41.504 is amended by revising the introductory text, by revising paragraph (c), and by removing paragraph (d) to read as follows:

§ 101–41.504 Collection action by other means.

When a carrier fails to pay or protest a claim and GSA determines that the amount is still due the United States, GSA will effect collection by other means, as set forth in paragraphs (a) through (c) of this section.

* * * * *

(c) When collection cannot be effected through either of the above procedures, GSA normally sends two additional demand letters to the indebted carrier

requesting payment of the amount due within a specified time. If this action is unsuccessful, GSA may report the debt to the Department of Justice for collection, litigation, and related proceedings, as prescribed in 4 CFR part 105.

68. Section 101–41.505 is revised to read as follows:

§ 101–41.505 Disposition of collections.

(a) Net amounts collected by GSA to liquidate debts asserted in the audit of transportation accounts are generally deposited in the Treasury of the United States as miscellaneous receipts.

(b) GSA does not inform agencies of collections deposited to miscellaneous receipts.

69. Section 101–41.506 is amended by revising paragraphs (b) and (e) and the introductory text of paragraph (f) to read as follows:

§ 101–41.506 Transportation debts administratively determined to be due the United States.

* * * * *

(b) Agencies shall refer all administratively determined transportation debts involving loss and/or damage to property to: General Government Division, Claims Group, U.S. General Accounting Office, Washington, DC 20548.

* * * * *

(e) All liquidated or certain claims (those upon which all audit procedures under 31 U.S.C. 3726 have been completed) over $100,000, exclusive of interest, penalties, and administrative charges which cannot be collected, shall be referred to the Department of Justice.

(f) The Director, Office of Transportation Audits, may terminate collection action on, or settle by compromise at less than the principal amount liquidated or certain claims not exceeding $100,000 exclusive of interest, penalties, and administrative charges if:

* * * * *

Subpart 101–41.6—Claims Against the United States Relating to Transportation Services

70. Section 101–41.600 is revised to read as follows:

§ 101–41.600 Scope and applicability of subpart.

This subpart sets forth procedures applicable to the presentation, settlement, reconsideration, and review of claims against the United States relating to freight and passenger transportation services, and implementation of the Prompt Payment Act, 31 U.S.C. 3901 *et seq.*

71. Section 101–41.602 is amended by revising paragraph (b) to read as follows:

§ 101–41.602 Statutory limitations on filing of claims.

* * * * *

(b) A claim must be received by GSA or its designee (the agency out of whose activities the claim arose) within 3 years (not including any time of war) from whichever is the latest of the following dates:

(1) Accrual of the cause of action thereon;

(2) Payment of charges for the transportation involved;

(3) Subsequent refund for overpayment of such charges; or

(4) Deduction made under 31 U.S.C. 3726, as amended. Claims for filing with the designee agency shall be sent to the payment office shown in the "Bill Charges To" box of the procuring document.

* * * * *

72. Section 101–41.603–2 is amended by revising paragraph (b) to read as follows:

§ 101–41.603–2 Forms of claims.

* * * * *

(b) Each supplemental bill shall cover charges relating to bills of lading or transportation requests paid on one original bill. However, if supplemental bills (claims) arise from asserted retroactive increases in charges or from currency fluctuations, SA (FW) will consider a carrier's written request for the single billing of such charges applicable to multiple original bills, if such request bears the concurrence of the agency's paying office.

* * * * *

73. Section 101–41.603–4 is revised to read as follows:

§ 101–41.603–4 Where to file transportation claims.

(a) Claims involving collection actions resulting from the transportation audit performed by the General Services Administration must be filed directly with GSA (FWCA). Any claims so submitted to GSA will be considered 'disputed claims' under section 4(b) of the Prompt Payment Act, 31 U.S. C. 3901 *et seq.* All other transportation claims generally shall be filed with the agency out of whose activities they arose. If that is not feasible (e.g., where the responsible agency cannot be determined or is no longer in existence), they may be sent to GSA (FWCA) for forwarding to the responsible agency or for direct settlement by GSA's transportation audit office. Claims for GSA processing shall be addressed to the General Services Administration (FWCA), Washington, DC 20405.

(b) A claimant who disagrees with the action taken on his/her claim by the agency's payment office may request reconsideration or review of that action, provided he/she meets applicable time limitations. (See § 101–41.101(b), § 101–41.602, and subpart 101–41.7.) The levels for progression of claims not disposed of to the satisfaction of the claimant are as shown in the following table:

PROGRESSIVE STEPS AVAILABLE TO CLAIMANTS REQUESTING RECONSIDERATION OR REVIEW OF DISPUTED CLAIMS

Disputed claims involving—	Applicable to disputed claims filed with—	Agency action for reconsideration by—	Agency dispositive action for reconsideration or review by—
Deductions for loss or damage to property.	Agencies out of whose activities the claims arose.	General Government Division, Claims Group, U.S. General Accounting Office.[1]	Comptroller General of the United States.[2]
Other than loss or damage to property.	Agencies delegated authority to perform audit as GSA's designee. (See note).	Head of agency delegated authority.	Do.
	Agencies not delegated authority to perform audit as GSA's designee.	General Services Administration (FWA).[3]	Administrator of General Services[4] or Comptroller General of the United States.[2]

Note.—Authority to audit transportation bills was delegated effective Oct. 12, 1975, to the Department of State for bills paid at overseas offices and to the Department of Defense for bills paid at certain overseas offices and for bills paid by the Military Airlift Command for contract airlift services. Mailing addresses for those specifically named above as responsible for the reconsideration or review of transportation claims upon request of claimants are:

[1] General Government Division, Claims Group, U.S. General Accounting Office, Washington, DC 20548.

[2] Comptroller General of the United States, U.S. General Accounting Office, Washington, DC 20548.
[3] General Services Administration (FWCA), Washington, DC 20405.
[4] Administrator of General Services, General Services Administration (FW), Washington, DC 20405.

74. Section 101–41.804–1 is amended by revising paragraphs (a) and (c) to read as follows:

§ 101–41.804–1 Transportation claims payable by agencies.

* * * * *

(a) The agency shall annotate each paid claim, other than a bill for air excess baggage charges, with the payment record on the related procuring Government bill of lading (GBL) or Government transportation request (GTR) including disbursing office (D.O.) voucher or schedule number and date of payment.

* * * * *

(c) Claims paid in accordance with this § 101–41.804–1 shall be transmitted to GSA (FWAA/C) separately from other paid transportation documents submitted for audit.

75. Section 101–41.804–2 is amended by revising paragraph (a), the introductory text of paragraph (c), paragraph (c)(4), and paragraph (d) to read as follows:

§ 101–41.804–2 Transportation claims not payable by agencies.

(a) Agencies shall not pay supplemental claims for amounts which have been administratively deducted from transportation payment vouchers in connection with loss and/or damage to property but shall forward such claims to: General Government Division, Claims Group, U.S. General Accounting Office, Washington, DC 20548.

* * * * *

(c) Claims described in paragraph (b) of this section will be handled by GSA under the provisions of § 101–41.605 of this subpart and shall be forwarded separately from other types of transportation documents to the General Services Administration (FWCA), Washington, DC 20405. Agencies shall support each claim forwarded to GSA with:

* * * * *

(4) Citations to previous payments, if any, by reference to disbursing office (D.O.) voucher or schedule number and date of payments; and

* * * * *

(d) Agencies shall notify claimants of the dates on which their claims are forwarded to GSA but shall not inform them of administrative recommendations. Agencies need not take further administrative action but shall forward to GSA (FWCA) any materials subsequently received which relate to forwarded claims and shall furnish supplemental reports to GSA when requested. Any claims so submitted to GSA will be considered 'disputed claims' under section 4(b) of the Prompt Payment Act, 31 U.S.C. 3901 *et seq.*

76. Section 101–41.805–2 is amended by revising paragraphs (b), (c) introductory text, (c)(1), and (d) to read as follows:

§ 101–41.805–2 Processing claims certified for payment.

* * * * *

(b) An agency shall not revise or alter any GSA certificate of settlement except to indicate the appropriation symbol number applicable at the time of payment or to correct subsidiary accounting references relating to the stated appropriation or fund account. Alterations which will result in payment from a different appropriation or fund account or payment in an amount other than that originally stated on the certificate of settlement are not permitted. Any certificate of settlement that cannot be processed shall be returned immediately to GSA (FWCA) with an explanation of the nonpayment.

(c) GSA forwards the original and four copies of each certificate of settlement to the agency by GSA Form 7933, Certificate of Settlement Transmittal, a copy of which shall be receipted and returned promptly to GSA (FWCA). When a setoff amount is to be credited to the accounts of other agencies, GSA supplies additional copies of the certificate for the agencies whose accounts are to be credited. The agency shall take action to effect issuance of the check or checks and shall distribute the certificate of settlement as follows:

(1) Forward the original of the certificate, with the D.O. voucher or schedule number and date of payment stamped in the upper right corner, to GSA (FWCA). (The agency shall be responsible for preparing any required SF 1096, Schedule of Voucher Deductions.)

* * * * *

(d) When the full amount certified for payment is setoff, GSA forwards both the advance copy and the notice copy of the certificate to the claimant and forwards the original and fiscal copies to the agency for processing the return of the annotated original certificate to GSA (FWCA). However, when the setoff amount is to be charged and credited to the same appropriation or fund account, GSA retains the original of the certificate and sends only the fiscal copies to the agency.

Subpart 101–41.7—Reconsideration and Review of General Services Administration Transportation Claim Settlements

77. Section 101–41.700 is amended by revising paragraph (a) to read as follows:

§ 101–41.700 Protest to settlement action.

(a) A claimant who disagrees with the action taken upon his/her claim in GSA's transportation audit may write to the Administrator of General Services, General Services Administration (FW), Washington, DC 20405, requesting reconsideration of the action. The letter shall identify the transaction and set forth in detail the legal, technical, or factual data or other information or documentation relied upon by the carrier to raise substantive doubt as to the correctness of the claim settlement.

* * * * *

Subpart 101–41.8—Transportation Disbursement Procedures

78. Section 101–41.802 is amended by revising paragraphs (a)(3), (a)(6), and (b) to read as follows:

§ 101–41.802 Standard forms for scheduling transportation vouchers for payment.

(a) * * *

(3) SF 1166a OCR, Voucher and Schedule of Payments (Memorandum) (yellow paper).

(6) SF 1167a OCR, Voucher and Schedule of Payments (Continuation Sheet) (Memorandum) (yellow paper).

* * * * *

(b) The procedures prescribed for preparation of SF 1166 OCR, Voucher and Schedule of Payments (voucher-schedule), are applicable to all Federal agencies using the disbursing facilities of the Department of Treasury. The procedures prescribed for the use of SF 1166 OCR apply also to SF 1166a OCR, SF 1167 OCR, and SF 1167a OCR.

* * * * *

79. Section 101–41.803 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–41.803 Scheduling procedures.

(a) Agencies shall prepare a voucher-schedule [SF 1166 OCR] for all basic vouchers covering transportation services furnished for the account of the United States submitted by carriers in accordance with § 101–41.214 and

§ 101–41.310 of this part. Transportation vouchers (SF 1113) shall be listed separately from all other types of payment vouchers. All information required for check issuance purposes must be included on the SF 1166 OCR. After certification by the authorized certifying officer, the voucher-schedule shall be transmitted to the appropriate disbursing office. The transportation vouchers shall be retained by the agency for later transmittal to GSA (FWAA/C) in accordance with § 101–41.807 of this subpart.

(b) The tear-off slips from the related basic SF 1113 must also be sent to the disbursing office for forwarding to the carrier-payees with the payment checks, unless alternate arrangements are made for providing this information. Agencies submitting payment data on magnetic tape to a Department of the Treasury disbursing facility may arrange with that facility for the preparation of enclosures (TFS Form 3039, Notice to Check Recipient), bearing all information shown on the tear-off slips, which must be sent to the carrier-payee with the payment checks instead of the tear-off slips.

* * * * *

80. Section 101–41.804–3 is revised to read as follows:

§ 101–41.804–3 Combining payments due a single payee.

If the amounts of two or more basic transportation vouchers due one payee can be combined in one check, the individual amounts shall be added and shown as one amount on the voucher-schedule, but the voucher or schedule numbers individually identified by letter or number suffixes must be listed separately in the voucher number column of the voucher-schedule. When the amounts of basic vouchers are combined into a single payment, an adding machine tape or facesheet listing the individual amounts shall be attached to the related group of basic vouchers.

81. Section 101–41.805–1 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 101–41.805–1 No-check vouchers.

Basic transportation vouchers for which no checks are to be issued to the voucher-payee shall be scheduled as follows:

(a) Vouchers requiring the processing of an accounting transaction for inclusion in the agency's SF 224, Statement of Transactions (Classified According to Appropriation, Fund, and Receipt Account, and Related Control Totals); SF 1220, Statement of Transactions According to Appropriations, Funds, and Receipt Accounts; or SF 1221, Statement of Transactions According to Appropriations, Funds, and Receipt Accounts (Foreign Service Account), or other approved reporting form, by transfer or without the issuance of a check shall be listed on SF 1166 OCR covering transportation vouchers for which checks are to be issued. Show the words "NO CHECK" in the amount column of SF 1166 OCR opposite the payee's name and address. The amount shall be shown on SF 1096, Schedule of Voucher Deductions, as provided in § 101–41.805–2.

* * * * *

82. Section 101–41.805–2 is amended by revising paragraph (b) to read as follows:

§ 101–41.805–2 Deductions from disbursement vouchers.

* * * * *

(b) When a deduction is made to recover an amount charged to an appropriation or fund account other than one to which the voucher carrying the deduction is chargeable, reference must be made to the disbursing office (station) symbol number and the voucher or schedule number on which the amount was overpaid. When the voucher-schedule contains more than one voucher deduction, a summary by appropriation or fund accounts of all voucher deductions must be made on the voucher-schedule, showing the symbol of each account creditable.

* * * * *

83. Section 101–41.806–1 is revised to read as follows:

§ 101–41.806–1 Makeup and initial distribution of forms.

Agencies shall prepare an original SF 1166 OCR and at least two copies of the SF 1166a OCR. The original and two copies shall be forwarded to the appropriate disbursing office for payment processing.

84. Section 101–41.806–2 is revised to read as follows:

§ 101–41.806–2 Information to be furnished by the disbursing office.

The disbursing office (D.O.) shall imprint clearly within the PAID BY block the word "Paid"; the month, day, and year of payment; and the D.O. (station) symbol number. The disbursing office shall also list in the appropriate column opposite each payee's name the serial numbers of any checks issued in payment of the voucher.

85. Section 101–41.807–2 is amended by revising paragraph (d) to read as follows:

§ 101–41.807–2 Submission of transportation vouchers.

* * * * *

(d) The cover or container of each package shall include the following information.

From: Name and address of transmitting office. Period of account (month/year). Package number _____ of _____. Disbursing office (station) symbol number. Package number ____ of ____.

To: General Services Administration, FWAA/C, Paid Voucher Receiving Unit, 18th & F Streets, NW, Washington, DC 20405.

86. Section 101–41.807–4 is amended by revising paragraph (a) to read as follows:

§ 101–41.807–4 Submission of paid freight bills/invoices, commercial bills of lading, passenger coupons, and supporting documentation covering transportation services by contractors under a cost-reimbursement contract.

(a) Agencies shall ensure that legible copies of paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and supporting documentation for transportation services, for the account of and on which the United States will assume freight and passenger charges that were paid by a Federal agency's contractor under a cost-reimbursement contract and their first-tier subcontractors, under a cost-reimbursement contract, are submitted to GSA for audit. GSA notices of overcharge will be issued in accordance with the provisions set forth in § 101–41.502(b).

* * * * *

Dated: February 7, 1994.

Frank Pugliese,

Deputy Commissioner, Federal Supply Service.

[FR Doc. 94–3645 Filed 2–17–94; 8:45 am]

BILLING CODE 6820–34–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 76

[ET Docket No. 93–7; DA 94–120]

Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: The Commission's Chief Engineer has extended the time for filing reply comments in response to the Notice of Proposed Rule Making (Notice) in ET Docket No. 93–7, FCC 93–495 (58 FR 64541, December 8, 1993). The document sets forth proposals for rules to assure compatibility between cable systems and consumer TV receivers and videocassette recorders.

DATES: Reply comments must be filed on or before February 16, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell (202–653–8162), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: On February 2, 1994, the Consumer Electronics Group of the Electronics Industries Association (EIA/CEG) requested that the Commission extend the time for filing reply comments in response to the Notice of Proposed Rule Making in ET Docket No. 93–7 by one week, to February 16, 1994. The EIA/CEG states that a one week extension of the period for filing reply comments is needed because of the number, length and diversity of the comments.

The Commission does not routinely grant extensions of time. Moreover, in this instance time is very important as the Commission has a statutory deadline to adopt rules for assuring compatibility by April 3, 1994. Nonetheless, we agree with the EIA/CEG that the volume and diversity of the comments warrants additional time for preparing replies. We believe the relatively brief 7-day extension the EIA/CEG requests is consistent with both the task of preparing comments and our need to complete this matter expeditiously.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–3680 Filed 2–17–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–5, RM–6420]

Radio Broadcasting Services; Olivia and Sauk Rapids, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Tri-County Broadcasting, Inc., proposing the substitution of Channel 269C2 for Channel 269A at Sauk Rapids, Minnesota, and modification of the license for Station WHMH(FM). The coordinates for Channel 269C2 are 45–32–00 North Latitude and 94–17–00 West Longitude. To accommodate the upgrade at Sauk Rapids, it is necessary to substitute Channel 261A for Channel 269A at Olivia, Minnesota. Channel 261A can be allotted to Olivia at Station KOLV's existing site (44–45–51 North Latitude and 94–55–45 West Longitude). We shall propose to modify the license for Station WHMH(FM) in accordance with Section 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before April 4, 1994, and reply comments on or before April 19, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Tri-County Broadcasting, Inc., P.O. Box 366, Sauk Rapids, Minnesota 56379.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–5, adopted January 14, 1994, and released February 10, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3682 Filed 1–17–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Additional Comment Period on the Proposed Rule Pertaining to Three Species of Kangaroos in Mainland Australia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the comment period has been extended through March 7, 1994, on the proposed action to delist the three kangaroo species in mainland Australia presently listed as threatened under the U.S. Endangered Species Act as amended (Act) as well as action to rescind the existing special rule applicable to these species. Information on population numbers of the red kangaroo, western gray kangaroo, and eastern gray kangaroo in States of Western Australia, South Australia, New South Wales and Queensland has been provided by the Australian Nature Conservation Agency.

DATES: Comments must be received by March 7, 1994.

ADDRESSES: Comments, information, and questions should be sent to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number 730–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. Comments and other information received will be available for public inspection, by appointment from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708).

SUPPLEMENTARY INFORMATION: The red kangaroo (*Macropus rufus*), the western gray kangaroo *M. fuliginous*, and the

eastern gray kangaroo (*M. giganteus*), except the subspecies *M. g. tasmaniensis*, which was listed as endangered, were listed in 1974 as threatened pursuant to the Act (39 FR 44990), and the commercial importation of kangaroos, their parts and products was banned. A special rule to allow such importations into the United States, after development of adequate State management plans, accompanied the listing. The Service accepted the management programs for four Australian States and lifted the importation ban in 1981 (46 FR 23929), after kangaroo management plans and population survey techniques had been strengthened. The Service allowed continuation of the commercial importation of kangaroos in 1983 (48 FR 34757) and in 1984 withdrew a proposed rule to delist the three species of kangaroos because of the severe and widespread drought of 1982–1983 (49 FR 17555).

The Service was petitioned on December 20, 1989, by Greenpeace USA, with subsequent support from other groups, "to reinstate the ban on commercial importation of kangaroos and of kangaroo products." The Wildlife Legislative Fund of America submitted a petition dated November 6, 1990, which was received by the Service on the following day. That petition requested that all populations of the red kangaroo (*Macropus rufus*), the western gray kangaroo (*M. fuliginous*), and the eastern gray kangaroo (*M. giganteus*), except the subspecies *M. g. tasmaniensis*, be removed from the list of threatened species under the Endangered Species Act.

The Service, in a **Federal Register** notice of June 12, 1991 (56 FR 26971), found that the action requested in the November 6, 1990, petition may be warranted and requested additional comments as part of a continuing status review of kangaroos and kangaroo management in Australia. The comment period was reopened until September 10, 1991. That comment period was later extended to September 24, 1991, in a **Federal Register** notice dated September 17, 1991 (56 FR 47060). The Service directly evaluated kangaroo management in Australia by sending representatives in March 1990 and July 1992, and by requesting and evaluating information about kangaroo management obtained from Commonwealth and State governments. On January 21, 1993 (58 FR 5341), the Service proposed to remove the three kangaroo species listed as threatened from the List of Endangered and Threatened Wildlife and deferred its decision on the petition of December 20, 1989. That proposed rule noted that New South Wales, Queensland, South Australia, and Western Australia have developed adequate and effective conservation programs that ensured the protection of these macropod species (refer to the January 21, 1993, **Federal Register** notice for specifics of the Service's assessment).

Information recently received from the Australian Nature Conservation Agency (ANCA) (formerly the Australian National Parks and Wildlife Service) indicates population declines for each of the three species in most of the States, but all are within the range of variation in population levels since 1981. These figures were reviewed by the Australian Scientific Advisory Committee on Kangaroos, and management recommendations on the part of the Commonwealth and States governments are being developed. However, in order for the public to have full opportunity to comment on the new information the Service is summarizing the population information and will provide the complete communique from ANCA to those requesting it. The information sent by ANCA also includes two short documents prepared by the Australian Bureau of Meteorology on droughts in Australia.

Population estimates for red kangaroos in the commercial harvest zone are 1,483,700, 2,760,000, 1,362,700, and 2,960,000 for South Australia, New South Wales, Western Australia, and Queensland, respectively. The estimates in the first three States were derived from fixed-wing surveys and use the Caughley correction factors, and those in Queensland were "derived from helicopter counts in 9 survey blocks extrapolated to the total harvest area for each species" (ANCA *in litt.*). The population estimates represent declines of about 10 percent, 18 percent, and 3.5 percent between 1992 and 1993 for South Australia, New South Wales, and Queensland, respectively. Red kangaroo populations in Western Australia have fluctuated from 1,004,000, 1,993,000, 2,329,000, 2,370,000, to 1,362,700 in 1981, 1984, 1987, 1990, and 1993, respectively.

The 1993 estimate of 8,360,000 eastern gray kangaroos in Queensland (based on helicopter surveys) represents a 20 percent decline between 1992 and 1993. The 1993 estimates of 2,440,000 and 1,250,000 eastern and western gray kangaroos in New South Wales (based on fixed-wing surveys) represent an 8 percent decline in gray kangaroos from estimates in 1992 in that State. The 1993 estimate of 380,800 western gray kangaroos in South Australia (based on fixed-wing surveys) represents a 4 percent increase between 1992 and 1993.

The population estimate of 433,800 for western gray kangaroos in Western Australia indicated a decline of 60 percent between 1990 and 1993. In view of "the average to exceptional rainfall and low harvest rates between 1990 and 1993 * * * the 1990 population estimates for Western Greys in Western Australia was re-examined and estimates for the commonly surveyed blocks for the period 1981 to 1993 reviewed" (*op. cit.*). The Service understands that some blocks were not surveyed in 1993, but more importantly "the 1990 population estimate was identified as being principally due to anomalously high densities recorded on two 1° × 1° degree [sic] blocks. If these two blocks are excluded and comparison is made only with the common survey blocks, the decline between the 1990 estimates and the 1993 estimates is 9 percent" (*op. cit.*). The population estimates for western gray kangaroos for commonly surveyed areas in Western Australia excluding estimates obtained from the two blocks for 1981, 1984, 1987, 1990, and 1993 are 277,200, 274,300, 325,300, 446,200, and 406,200, respectively.

In light of this new information, the Service is extending the comment period on the proposal to delist the threatened species of kangaroo. Comments and additional information concerning any aspect of the proposed rule are hereby solicited from the public, concerned governmental agencies within the United States, the Australian government, the scientific community, industry, private interests, and any other interested parties.

Authority: 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: February 9, 1994.

Richard N. Smith,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–3790 Filed 2–17–94; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AC28

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Gesneria Pauciflora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Gesneria pauciflora* (no common name) to be a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. This small shrub is endemic to Puerto Rico, where only two populations are known to exist in the western mountains in the municipalities of Maricao and Sabana Grande. The species is threatened by the potential for natural disasters and modification of its highly restricted habitat. This proposal, if made final, would extend the Act's protection and recovery provisions to *Gesneria pauciflora*.

DATES: Comments from all interested parties must be received by April 19, 1994. Public hearing requests must be received by April 4, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, during normal business hours at this office, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297).

SUPPLEMENTARY INFORMATION:

Background

Gesneria pauciflora is a small shrub currently known from only two populations in the western mountains of Puerto Rico. It was discovered by the German botanical collector Paul Sintenis on December 3, 1884, at "Indiera Fria" in Maricao, Puerto Rico. Numerous other botanists collected the plant from this same location throughout the years. A second population was discovered recently in the municipality of Sabana Grande, near the headwaters of the Seco River. Population estimates are difficult due to the plant's habit of growing in dense mats; however, the largest population has been estimated at approximately 1,000 individuals and the second at 50 (Proctor 1991; CPC 1992).

Gesneria pauciflora is a small gregarious shrub that may reach 30 centimeters in height with stems 8 millimeters in diameter. Stems may be erect or decumbent and the bark is smooth, gray-brown, and glabrous. The leaves are alternate, and the terete or flattened petioles are from 2 to 7 millimeters long. Leaf blades are shaped like a narrow trowel, 2.8 to 9.2 centimeters long and .9 to 2.3 centimeters wide, membranous, dark green and glossy above, and pilose along the prominent veins. The margin is subentire toward the cuneate base and serrate to sublobate above. The inflorescences are one to few-flowered and the peduncles from 6.1 to 15.3 centimeters long and slightly curved. The pedicels are 1 to 2 centimeters long, reddish-brown, and pilose to glabrescent. The corolla is tubular, curved, 2 to 2.3 centimeters long, 4 millimeters wide at the base, narrowing to 3 millimeters but widening to 5 millimeters at the middle and again narrowing to 4 millimeters at the mouth. The 5-lobed corolla is yellow to yellow-orange and densely pilose outside but glabrous inside. The fruit is a capsule, approximately 4 millimeters long and wide, gray-brown, glabrescent, with 5 to 10 not prominent ridges (Proctor 1991).

At both known localities the species is found growing in rocky stream beds on wet serpentine rock, where water is constantly seeping. Both localities are found within the Maricao Commonwealth Forest, managed by the Puerto Rico Department of Natural Resources. The largest population is located in an area of steep unstable slopes and may be threatened by landslides and flood damage. Forest management practices such as trail construction may adversely affect the species. The Center for Plant Conservation (1992) assigned *Gesneria pauciflora* a priority 1 ranking, indicating that the plant possibly could go extinct in the wild within the next 5 years.

Gesneria pauciflora was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened by the Service as published in the **Federal Register** notice of review dated December 15, 1980 (45 FR 82480); the November 28, 1983 update (48 FR 53680), the revised notice of September 27, 1985 (50 FR 39526), and the February 21, 1990 (55 FR 6184) and September 30, 1993 (58 FR 51144) notices of review. The species was designated as a category 1 species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the notices of review published on February 21, 1990, and September 30, 1993.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. Beginning in October 1983, and in each October thereafter, the Service found that listing *Gesneria pauciflora* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. This proposed rule constitutes the final 1-year finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Gesneria pauciflora* Urban are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Gesneria pauciflora* is known from only two locations in western Puerto Rico. Although both populations are found within the Maricao Commonwealth Forest, a management plan for the Forest has not been prepared. Activities within the Forest may increase the potential for erosion of the steep unstable slopes where the species occurs. Management practices such as trail construction may directly affect the species.

B. *Overutilization for Commercial, recreational, scientific, or educational purposes.* Although an attractive plant, taking for these purposes has not been a documented factor in the decline of this species.

C. Disease or predation. Disease and predation have not been documented as factors in the decline of this species.

D. The inadequacy of existing regulatory mechanisms. The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Gesneria pauciflora* is not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. Other natural or manmode factors affecting its continued existence. One of the most important factors affecting the continued survival of this species is its limited distribution. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. Landslides, floods and storm damage are natural occurrences which may affect these steep, unstable slopes.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Gesneria pauciflora* as threatened. Two populations are currently known, the largest one of which may contain as many as 1,000 individuals; both occur on land managed by the Commonwealth. Although extremely limited in distribution, the species does not appear to be in imminent danger of becoming extinct. Therefore, threatened rather than endangered status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat is not prudent for this species due to the potential for taking and vandalism. The number of individuals of *Gesneria pauciflora* is so small that vandalism and collection could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, required Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Gesneria pauciflora*, as discussed above. Federal involvement may occur through the use of federal funds (U.S. Department of Agriculture) for forest management practices.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. The 1988 amendments do not reflect this protection for threatened plants, although section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits for *Gesneria pauciflora* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Gesneria pauciflora;*

(2) The location of any additional populations of *Gesneria pauciflora*, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject areas and their possible impacts of *Gesneria pauciflora.*

Final promulgation of the regulation of *Gesneria pauciflora* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R.A. DeFilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, D.C. xv + 403 pp.

Center for Plant Conservation. 1992. Report on the Rare Plants of Puerto Rico. Center for Plant Conservation, Missouri Botanical Garden, St. Louis, Missouri.

Proctor, G.R. 1991. Status report on *Gesneria pauciflora* Urban. In Puerto Rican Plant Species of Special Concern: Status and Recommendations. Publicacion Cientifica Miscelanea No. 2, Department of Natural Resources, San Juan, Puerto Rico.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under "Gesneriaceae—Gesneria family," to the list of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Gesneriaceae—Gesneria family:						
Gesneria pauciflora	None	U.S.A. (PR)	T		NA	NA

Date: February 10, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–3791 Filed 2–17–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 59, No. 34
Friday, February 18, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes and Committee on Regulation

ACTION: Notice of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Governmental Processes and the Committee on Regulation of the Administrative Conference of the United States.

Committee on Governmental Processes

DATES: Tuesday, March 1, 1994, from 1:30 p.m. to 4 p.m.

ADDRESSES: Office of the Chairman, Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION: Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Committee on Regulation

DATES: Friday, March 4, 1994, from 10 a.m. to 12:30 p.m.

ADDRESSES: Office of the Chairman, Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Governmental Processes will meet to continue discussion of a study by Arnold Leibowitz on the Immigration and Naturalization Service, the Customs Service, and other agencies' asset forfeiture, remission and mitigation procedures.

The Committee on Regulation will meet to continue its discussion of proposed recommendations on federal agency use of audited self-certification as a regulatory technique. The Conference's consultant for this project is Professor Douglas Michael of the University of Kentucky.

Attendance at the meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of each committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: February 15, 1994.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–3826 Filed 2–17–94; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Announcement of the Federal Crop Insurance Corporation's Pending Evaluation of County Cotton Insurance Programs

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of intent.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is announcing intent to evaluate its cotton and extra long staple (ELS) cotton programs. The intent of this announcement is to solicit public comment and suggestion for improvement and increased participation in FCIC's cotton programs.

DATES: Written comment, data, and suggestions should be submitted no later than April 19, 1994 to be sure of consideration.

ADDRESSES: Evaluation Division, Federal Crop Insurance Corporation, P.O. Box 419293, Kansas City, MO 64141.

FOR FURTHER INFORMATION CONTACT: Vondie O'Conner, Jr., Acting Director, telephone (816) 926–6343. (Address is listed above.)

SUPPLEMENTARY INFORMATION: It is FCIC's intent to evaluate each of its crop programs periodically. Crop evaluations provide valuable insight into how well programs are operating, the extent to which they are serving the customer, their strengths and weaknesses, and their cost effectiveness. Crop programs experiencing high loss ratios and net losses are priority programs for FCIC to evaluate.

The Omnibus Budget Reconciliation Act of 1993 directed that FCIC take necessary actions to improve the actuarial soundness of multiple peril crop insurance and to achieve, on and after October 1, 1995, a projected loss ratio not to exceed 1.10. For crop years 1988–1992, FCIC's cotton program experienced a loss ratio of 2.05 and a net loss (premium less indemnity) of $378 million. Additionally, for the same crop years, the ELS cotton program experienced a 3.05 loss ratio and suffered a net loss of $8 million.

The evaluation will include a review of insurance areas for actuarial and underwriting performance; the establishment of accurate program dates (sales closing, final planting, acreage reporting, and contract cancellation); the effect of unit division and related rate impacts; the determination of insurance coverages; an analysis on cause of loss, frequency and severity of losses and other pertinent program factors. In addition, prescribed loss adjustment procedure and training will also be evaluated.

Done in Washington, DC on February 10, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–3684 Filed 2–17–94; 8:45 am]

BILLING CODE 3410–08–M

Forest Service

Require the Use of Certified Noxious Weed-Free Forage on National Forest System Lands in Colorado and Wyoming, Regions 2 and 4, Colorado, Kansas, Nebraska, South Dakota, Southern Idaho, Nevada, Utah, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice of proposal to require the use of certified noxious weed-free forage on National Forest System Lands in Colorado and Wyoming.

SUMMARY: The Regional Foresters of the Rocky Mountain and Intermountain Regions of the Forest Service are proposing a requirement that all National Forest visitors in Colorado and Wyoming use certified noxious weed-free hay, straw or mulch when visiting National Forest System lands in those two states. This requirement will affect visitors who routinely use hay or straw on the National Forests such as: recreationists using pack and saddle stock, ranchers with grazing permits, outfitters, and contractors who use straw or other mulch for reseeding purposes. These individuals or groups would be required to purchase certified noxious weed-free forage products or use other approved products such as processed grains and pellets before entering and while on National Forest System lands in the aforementioned states.

DATES: Comments concerning the proposal should be received on or before March 21, 1994.

ADDRESSES: Send written comments concerning the Colorado requirement to: Rocky Mountain Regional Forester, USDA Forest Service, P.O. Box 25127, Lakewood, CO 80225. Comments concerning the requirement in Wyoming should be sent to: Intermountain Regional Forester, USDA Forest Service, Fed. Bldg., 324 25th Street, Ogden, Utah 84401.

FOR FURTHER INFORMATION CONTACT: Rocky Mountain Region, Charlie Richmond, Renewable Resources Staff, P.O. Box 25127, Lakewood, CO 80225, (303) 275–5005; Intermountain Region, Frank Gunnell, Fed. Bldg., 324 25th Street, Ogden, Utah 84401, (801) 625–5829.

BACKGROUND: Noxious weeds are a serious problem in the western United States. Species like Leafy Spurge, Spotted Knapweed, Musk Thistle, Purple Loosestrife and others are alien to the United States and have no natural enemies to keep their populations in balance. Consequently, these undesirable weeds invade healthy ecosystems, displace native vegetation, reduce species diversity, and destroy wildlife habitat. Widespread infestations lead to soil erosion and stream sedimentation. Furthermore, noxious weed invasions weaken reforestation efforts, reduce domestic and wild ungulates grazing capacity, aggravate and occasionally injure forest visitors, and threaten federally protected plants and animals.

To curb the spread of noxious weeds, a growing number of western states have jointly developed noxious weed-free forage certification standards and, in cooperation with various federal, state and county agencies, passed weed-control laws. Because hay and other forage products containing noxious weeds are part of the infestation problem, states have developed a hay inspection/certification/identification process and are encouraging forage producers to grow noxious weed-free products.

In cooperation with the states of Colorado and Wyoming, the U.S. Forest Service is proposing—for all National Forest System lands within those states—a ban on hay, straw or mulch that has not been state certified. This proposal includes a public information plan to insure that: (1) This ban (a.k.a. closure order) is well publicized and understood; and (2) National Forest visitors will know where they can purchase state-certified hay or other products.

The Forest Service invites written comment and suggestions on this proposal. Written comments must be received within 30 days from the date of publication in the **Federal Register**.

Dated: February 7, 1994.

Tom L. Thompson,

Deputy Regional Forester, Rocky Mountain Region.

Dated: February 4, 1994.

William S. Werner,

Acting Deputy Regional Forester, Intermountain Region.

[FR Doc. 94–3696 Filed 2–17–94; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Hearing on Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—New York City; Postponement

Notice was previously given pursuant to the provisions of the United States Commission on Civil Rights Act of 1983, Public Law 98–183, 97 Stat. 1301, *as amended*, of a public hearing of the U.S. Commission on Civil Rights, to commence on Monday, February 28, 1994, beginning at 11:30 a.m. in the Ceremonial Court of the U.S. Court of International Trade, located at One Federal Plaza, New York, New York 10007, in the January 24, 1994, issue of the **Federal Register** at page 3555 (59 FR 3555), FR Doc. 94–1546.

This is to advise the public that the aforementioned public hearing has been postponed, and will be held at a later date. A future notice will be published in the **Federal Register** by the U.S. Commission on Civil Rights apprising the public of the new hearing date, time, and location.

The Commission is an independent, bipartisan, factfinding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information concerning legal developments, with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

For additional information, please contact Mary K. Mathews, Assistant Staff Director for Congressional Affairs at (202) 376–7700, or Rosalind D. Gray, Acting General Counsel at (202) 376–8351.

Dated at Washington, DC, February 16, 1994.

Stella G. Youngblood,

Attorney Advisor, Project Administration.

[FR Doc. 94–3834 Filed 2–17–94; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Partially Closed Meeting

A meeting of the Materials Technical Advisory Committee will be held March 17, 1994, 10:30 a.m., Herbert C. Hoover Building, Room 1617–M2, 14th St. & Pennsylvania Ave., NW., Washington, DC. The Committee advises the Office of Technical and Policy Analysis with respect to technical questions that affect the level of export controls applicable to materials or technology.

Agenda:

General Session

1. Opening remarks by the Chairman
2. Introduction of members and visitors.
3. Presentation of papers or comments by the public.
4. Discussion of the content and application of a New Forum Dual-Use List.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited

number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, presentation materials should be forwarded two weeks prior to the meeting to the address below:

Ms. Lee Ann Carpenter, ODAS/EA/BXA room 1608, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate to the General Counsel, formally determined on May 1, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call (202) 482–2583.

Dated: February 15, 1994.

Betty Anne Ferrell,

Director, TAC Unit.

[FR Doc. 94–3757 Filed 2–17–94; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 681]

Grant of Authority; Establishment of a Foreign-Trade Zone, Texas City, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Texas City Foreign Trade Zone Corporation (formerly, Foreign Trade Zone of Texas City–Gulf Coast, Inc.) (the Grantee), a Texas non-profit corporation, has made application (FTZ Docket 7–93, 58 FR 16173, 3/25/93) to the Board, requesting the establishment of a foreign-trade zone at sites in Texas City, Galveston County, Texas, within the Houston-Galveston Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register** and the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 199, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 1st day of February 1994.

Foreign-Trade Zones Board.

Secretary of Commerce,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–3705 Filed 2–17–94; 8:45 am]

BILLING CODE 3510-DS-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 21, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Commodities

Cup, Disposable
7350–00–082–5741
7350–00–145–8126
7350–00–721–9003
7350–00–926–1661
NPA: The Oklahoma League for the Blind. Oklahoma City, Oklahoma.

Jersey, Reversible
8415–00–245–2052
8415–00–245–2054
8415–00–245–2065
8415–00–245–2073
NPA: Ed Lindsey Industries for the Blind, Inc., Nashville, Tennessee.

Services

Grounds Maintenance
U.S. Army Reserve Center, 4500 S. Lancaster Road, Dallas, Texas
NPA: Fairweather Associates, Inc., Dallas, Texas.

Grounds Maintenance
U.S. Army Reserve Center, 2800 Crestline Road, Fort Worth, Texas
NPA: Goodwill Industries of Fort Worth, Fort Worth, Texas.

Grounds Maintenance
U.S. Army Reserve Center, 920 S. Sam Houston, Huntsville, Texas.
NPA: Tri-County Mental Health/Mental Retardation Services, Conroe, Texas.

Grounds Maintenance
U.S. Army Reserve Center, 3315 9th Street, Wichita Falls, Texas
NPA: Wichita Falls State Hospital, Wichita Falls, Texas.

Janitorial/Custodial
Building 255, Robins Air Force Base, Georgia
NPA: Goodwill Industries of Middle Georgia, Inc., Macon, Georgia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–3778 Filed 2–17–94; 8:45 am]

BILLING CODE 6820-33-P

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the procurement list.

SUMMARY: This action deletes from the Procurement List commodities and services previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 21, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 22 and November 19, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (58 FR 54559 and 61072) of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. Accordingly, the following commodities and services are hereby deleted from the Procurement List:

Commodities

Cushion Assembly, Seat Back
2540–01–065–6288
Cushion, Seat Back, Vehicular
2540–01–065–6289
2540–00–880–3925
Cushion Seat, Vehicular
2540–01–074–6363
Assembly, Support Panel
7105–00–NSH–0004
Base, Grooming Unit
7105–01–007–1830
7105–01–019–0375
7105–01–019–0376
7105–01–019–0379
Bookcase, Drop-Lid
7105–01–005–8408
7105–01–005–8409
7105–01–007–1760
7105–01–009–2567
7105–01–047–3557
Bookcase, Open-Shelf
7105–01–007–9798
7105–01–047–3558
7105–01–047–3556
Box, Vanity
7105–01–007–1831
Bracket, Overchest Support
7105–00–NSH–0003
Chest, Five-Drawer
7105–01–005–8403
7105–01–005–8404
7105–01–007–9797
7105–01–011–8397
Chest, Six-Drawer
7105–01–005–8405
7105–01–005–8406
7105–01–005–8407
7105–01–023–4636
Chest, Stereo
7105–01–005–8474
7105–01–017–6104
7105–01–019–0377
7105–01–019–0378
7105–01–047–3573
Chest, Three-Drawer
7105–01–046–8855
Overchest
7105–01–005–8475
7105–01–047–3574
Top, Grooming Unit
7105–01–005–8478

Services

Commissary Warehouse Service, Langley Air Force Base, Virginia.

Grounds Maintenance, LBJ Memorial Gardens, Washington, DC.

Janitorial/Custodial, Pentagon Officers Athletic Center, Washington, DC.

Pallet Repair, Naval Supply Center, Norfolk, Virginia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–3777 Filed 2–17–94; 8:45 am]

BILLING CODE 6820-33-P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, applicable form, and OMB control number: The Transition Assistance Survey.

Type of request: New.

Number of respondents: 3,000.

Responses per respondent: 1.

Annual responses: 3,000.

Average burden per response: 20 minutes.

Annual burden hours: 990.

Needs and uses: This survey of military veterans, spouses, and former Army civilian personnel is being conducted to evaluate the effectiveness of Department of Defense transition assistance program elements including those that comprise the Army's Job Assistance Centers. Individuals are being interviewed regarding several indicators of labor market success.

Affected public: Individuals or households.

Frequency: One time.

Respondent's obligation: Voluntary.

OMB desk officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: February 14, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–3697 Filed 2–17–94; 8:45 am]

BILLING CODE 5000-04-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The Ad Hoc Study Panel on USAF Space Launch Capabilities of the USAF Scientific Advisory Board will meet on 7–8 March 1994 at the ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings for the SAB Ad Hoc Study on Assessment of USAF Space Launch Capabilities.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 94–3806 Filed 2–17–94; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of committee: Army Science Board (ASB).

Date of meeting: 14 March 1994.

Time of meeting: 1430–1530.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's C3I Issue Group study team will meet with and provide the Sponsor a status report on their study title "Leveraging Commercial Technologies in Army C3 Systems." This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–3694 Filed 2–17–94; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Coastal Engineering Research Board; Meeting

AGENCY: U.S. Army Engineer Waterways Experiment Station, DOD.

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of the committee: Coastal Engineering Board (CERB).

Date of meeting: March 8–10, 1994.

Place: U.S. Army Engineer Waterways Experiment Station, Coastal Engineering Research Center, Vicksburg, Mississippi.

Time: 8:30 a.m.—2:30 p.m. on March 8; 8:30 a.m.—5 p.m. on March 9; 8:30 a.m. to 5 p.m. on March 10.

Proposed agenda: The 1995 Coastal Engineering Program Review is to be held on March 8–10, 1994. On Tuesday, March 8, there will be a review of ongoing work units of the Coastal Engineering Research and Development Programs, plus special presentations on DUCK '94/SANDY DUCK, Coastal Engineering Manual, and an ACES 2.0 Demonstration. On Wednesday morning, March 9, proposed new work units for FY 95 will be discussed. The afternoon session will be devoted to a review of the Coastal Field Data Collection Program. Thursday, March 10, will be devoted to a review of the Monitoring Completed Coastal Projects Program.

This meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Bruce K. Howard, Executive Secretary, U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 94–3729 Filed 2–17–94; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An emergency review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval from the Office of Management and Budget (OMB) has been requested by February 15, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 7th & D Streets, SW., room 4682, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: February 14, 1994.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Emergency
Title: Notice of Standards for Participation and Solicitation of Applications
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Response: 3,000
Burden Hours: 600
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: ED is requesting data from institutions of higher 0education which are interested in participating in the District Loan Program. ED will review this data and select institutions to participate in the second year of the program. If ED does not collect this data, the Secretary will not be able to satisfy the requirements of the law.
Additional Information: ED is requesting an emergency review and approval from the Office of Management and Budget (OMB). This is being requested because ED expects an increase from 5 percent of new student loan volume in the first year of the program to 40 percent in the second year. That means the number of schools participating in the program in the second year is likely to increase from 104 to over 2,000. In order to determine each applicant's eligibility and evaluate its administrative capability, the Secretary must research several different types of records. The Secretary estimates that up to 75 days will be needed to complete the review of the expected volume of applications and make selection decisions. ED has requested an OMB approval by February 15, 1994.

[FR Doc. 94–3712 Filed 2–17–94; 8:45 am]

BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before March 21, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: February 14, 1994.

Cary Green,

Director, Information Resources Management Service.

Office of Vocational and Adult Education

Type of Review: New
Title: Survey of State Directors of Secondary Education and Postsecondary Technical/Occupational Education for a Study of Performance Systems Established by States to Monitor and Evaluate Vocational Education Programs
Frequency: One-time
Affected Public: State or local governments
Reporting Burden:
Responses: 106
Burden Hours: 424
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Surveys of State Directors of Secondary and Postsecondary Vocational Education are needed to collect data on performance systems developed by the States in response to the requirements in the Carl D. Perkins Act (P.L. 101–392). Data from this collection will be used to report to the Congress on the development, implementation, and evolution of performance systems.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: Instructions for Performance Status Report—Magnet Schools Assistance Program (MSAP)
Frequency: Semi-annually
Affected Public: State or local governments
Reporting Burden:
Responses: 57
Burden Hours: 342
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Instructions for Performance Reports are used by grantees to submit semi-annual reports, regarding progress in implementing MSAP projects. Report information is used to assess grantees' eligibility for continuation awards; to monitor performance; for program planning; and other purposes.

Office of the Under Secretary

Type of Review: Extension
Title: Evaluation of Student Support Services Program
Frequency: One time
Affected Public: Individuals or households
Reporting Burden:
Responses: 4,315
Burden Hours: 1,813
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This study will provide information on the characteristics of Federally funded student support service programs and the outcome of the program for participants. The Department will use the information to report to Congress.

[FR Doc. 94–3713 Filed 2–17–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Notice of Noncompetitive Financial Assistance

AGENCY: Bartlesville Project Office and Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Notice of noncompetitive financial assistance grant award to the University of Oklahoma.

SUMMARY: The U.S. Department of Energy, Bartlesville Project Office through the Pittsburgh Energy Technology Center announces, pursuant to 10 CFR 600.7 (b)(2)(i) Criteria (B) and (D), that it intends to award a noncompetitive financial assistance (Grant) to the Center for Reservoir Characterization at the University of Oklahoma. This award is to support a

twelve (12) month research effort entitled "Gypsy Field Project in Reservoir Characterization."

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, Mail Stop 921–118, Pittsburgh, PA 15234.

FOR FURTHER INFORMATION CONTACT: Cynthia Y. Mitchell, Contract Specialist, (412) 892–4862.

SUPPLEMENTARY INFORMATION:

Grant Number: DE–FG22–94BC14970
Estimated Total Value: $348,000.00
Objective: The specific objective of this grant is to conduct a research study targeted at improved oil recovery through better reservoir characterization. Methods developed under this grant could be applied to recovering untapped movable oil through better use of existing wells or through drilling infill wells. Moreover, these methods could be used to improve the recovery factor for small fields which are presently not economic to produce.

Dated: February 1, 1994.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 94–3779 Filed 2–17–94; 8:45 am]

BILLING CODE 6450–01–M

Cancellation of Meeting on Proposed Urgent-Relief Acceptance of a Limited Amount of Spent Fuel From Foreign Research Reactors

AGENCY: Department of Energy and Department of State.

ACTION: Notice of meeting cancellation.

SUMMARY: The Department of Energy and the Department of State planned to co-host a round-table dialogue on February 25, 1994, of senior-level policy makers, including Governors, Members of Congress, and senior government officials in the Department of Energy, the Department of State, and the National Security Council to discuss a summary of the deliberations that took place at the February 10, 1994, meeting on the proposed urgent-relief acceptance of foreign research reactor spent nuclear fuel. Substantial progress was made at this meeting, and areas for further analyses were identified. Based on this constructive dialogue we believe that other methods for involving senior policymakers for further discussions would be more useful than the previously planned meeting on February 25, 1994. This meeting was originally announced in the January 31, 1994, **Federal Register**.

DATES: This forum was to take place on February 25, 1994, at the Hyatt Regency Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC; telephone (202) 737–1234.

FOR FURTHER INFORMATION CONTACT: Mark W. Frei, Office of Waste Management, Office of Environmental Restoration and Waste Management, U.S. Department of Energy (Mail Stop EM–30), 1000 Independence Avenue, SW., Washington, DC 20585; telephone (301) 903–7201.

Issued at Washington, DC, on February 16, 1994.

Jill E. Lytle,

Deputy Assistant Secretary for Waste Management, Environmental Restoration and Waste Management.

[FR Doc. 94–3903 Filed 2–17–94; 8:45 am]

BILLING CODE 6450–01–P

Availability of Modular Cooperative Research and Development Agreement (CRADA)

AGENCY: Office of Technology Utilization, Office of Laboratory Management, Department of Energy.

ACTION: Notice of availability and opportunity for public comment.

SUMMARY: This notice announces the availability of the Department of Energy Modular Cooperative Research and Development Agreement (CRADA). The Modular CRADA is a compendium of provisions which will be used for preparing CRADAs between Department of Energy laboratories and non-Federal Participants. The modular CRADA reflects input from headquarters, Operations Office and Laboratory elements. It also reflects extensive formal and informal technology transfer partner feedback as well as the Department's experience of over 600 CRADAs. It contains the basis and rationale for the language used, as well as pre-approved options and guidance for use of the language. The modular CRADA includes several other important features distinguishing it from previous Department of Energy model CRADAs: (1) It does not require as much oversight by Departmental headquarters, does not have as much required language; (2) it provides more options in certain areas, such as product liability; and (3) it more fully communicates the Department's rationale for its CRADA language. The modular CRADA is expected to be periodically reviewed and revised as part of the Department of Energy's continuous improvement process. Comments from the public are encouraged.

ADDRESSES: A copy of the modular CRADA is available for inspection and reproduction at the public reading room of the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC. The public reading room is open from 10 a.m. to 4 p.m.; you may contact reading room staff at (202) 586–6020. If you want a copy of the modular CRADA mailed to you directly, please contact the U.S. Department of Energy at the address below. Comments on the modular CRADA are welcome and may be sent to the address below.

FOR FURTHER INFORMATION OR TO COMMENT CONTACT: U.S. Department of Energy, PA–5, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: 202–586–5575, Fax: 202–586–7303.

SUPPLEMENTARY INFORMATION: An overview and the table of contents of the modular CRADA are attached.

Issued at Washington, DC, on February 4, 1994.

Antionette Grayson Joseph,

Acting Director, Office of Laboratory Management.

The Modular CRADA

Introduction

This document, to be referred to as the Department of Energy (DOE) Modular Cooperative Research and Development Agreement (CRADA), is a compendium of provisions which may be drawn upon for crafting CRADAs. It has been developed to be responsive to the needs of different CRADA Participants while protecting the interests of the Government and the U.S. taxpayers and is a tool for DOE and its Government-Owned Contractor-Operated (GOCO) laboratories, hereafter referred to as laboratories, to facilitate the negotiation, development and timely approval of CRADAs.

This Modular CRADA incorporates three types of provisions:

(1) Those few that are required by statute or policy, [*set off by double underscore*] are strongly recommended for timely approval, and can only be changed with DOE Headquarters approval. Changing double underscored language or examples may delay the process. Double underscored language can be eliminated where it doesn't apply, such as, for example the deletion of the definition of "Subject Invention" where it is not anticipated that there will be any subject inventions under the CRADA.

(2) Those that sound judgment suggests have a valid basis for being included in the terms and conditions of the CRADA, consistent with the guidelines incorporated herein. These can be modified in one of three ways:

—By using the pre-approved options provided in the guidance;
—By modifying the language without changing its substantive meaning; and
—By negotiating the language that changes its substantive meaning, or even deleting the language with appropriate justification; in each of these two instances, operations office approval is required.

(3) Those that are left solely to the negotiations between the laboratory and the Participants. [Shown in brackets.]

Through a spirit of teamwork and a policy of "no surprises," this document should enable DOE and its laboratories to be responsive to a broad range of Participant needs. This approach is intended to convey the maximum flexibility in CRADA development, and in speed of negotiations and approval, while fostering consistency across DOE and its laboratories.

In drafting a CRADA from the options provided in the Modular CRADA, the laboratory should be careful not to create internal conflicts within the agreement. The draft CRADA should still follow the form (i.e., order of provisions) of the DOE Modular CRADA in order to facilitate operations office review and approval.

In this document, the format for presenting the various provisions of the CRADA will consist of:

—A statement of the article, with language required by statute or policy double underscored;
—A rationale for the article; and
—Pre-approved optional provisions for the article (set off inside a box).

Example: Article 1 (Title)

—Required provisions (if any)
—Rationale or basis for requirement
—Pre-approved optional provisions (if any)
—Rationale/appropriate circumstances
—Pre-approved optional provisions #2
—Rationale/appropriate circumstances
—Bracketed provisions
—Rationale/explanation
—General Guidance

The Sample CRADA

A sample DOE CRADA, which is attached, incorporates the double underscore provisions and some of the more common optional provisions provided in the Modular CRADA. It is a tool for communicating DOE's general requirements and expectations to potential Participants in a clear and consistent manner. The sample DOE CRADA should be provided to potential Participants as the first hand-out in all instances, such as at conferences and trade shows and DOE sponsored events. When the sample DOE CRADA is used for these purposes, it may be modified only to the extent that the laboratory name is inserted.

Negotiating and Approving CRADAs

By law and through prime contract provisions, the laboratories have been delegated the authority and responsibility for negotiating the CRADA, including a Statement of Work. In exercising that authority, laboratories need to strike a balance between consistency and flexibility.

To the extent the negotiated CRADA uses language that does not deviate from the double underlined provisions and uses the pre-approved optional provisions, the Operations Office review and approval of the CRADA will be faster.

The Operations Offices are the approval authority for Joint Work Statements (JWSs) and CRADAs. To facilitate Operations Office review, laboratories should identify all deviations from the double underlined provisions or pre-approved optional provisions at the time the CRADA is submitted for approval. It is recommended that two proposed CRADA versions be submitted by the laboratories to the Operations Offices—one which highlights all deviations from the Modular CRADA provisions using "redline" and "strikeout" features and one which is a "clean" version. All deviations which are considered by the laboratories to be substantive should be supported by appropriate justification. Any deviation from the double underlined provisions requires approval of DOE Headquarters. After receiving any proposed deviations to double underscored language from a laboratory, the Operations Office will transmit the language and reasons for the requested deviation to the Director of the Office of Technology Utilization (LM–20) in Headquarters, who will confer with the appropriate elements in Headquarters in determining if the requested deviation is acceptable and inform the Operations Office of the Headquarters' determination. Any deviations from the pre-approved optional provisions, except for deviations to double underscored language which must be approved by Headquarters, requires review and approval by the Operations Office. In the case of changes from the pre-approved optional provisions which the Operations Office agrees are non-substantive, such approval may be reflected merely by approval of the CRADA. In the case of substantive changes, specific approval in the form of a notation on the "redline" version, or other supporting documents, will suffice. Any requests for modification of the CRADA by the Operations Office to the laboratory must comply with the requirements of 15 U.S.C. 3710a(c)(5)(C).

While available for consultation to both the laboratory and the prospective Participant, the Operations Office should refrain from becoming a third party to the negotiations. Each Operations Office is encouraged to designate a single point of contact to facilitate the CRADA review and approval process at the Operations Office. Like the Operations Offices, Program offices and others should refrain from becoming a third party to the negotiations between the laboratory and the prospective Participant.

The Importance of Teamwork and Communication

In order to use this document effectively, close cooperation and communication between the laboratory and DOE is essential. Issues that can be foreseen as key issues, especially critical departures from pre-approved language, should be discussed as early as possible. There should be a minimum of surprises in the process. At the same time, the laboratory and DOE should be open to proposed changes from Participants where the changes help the process of negotiation but do not infringe upon the Government's rights. When alternative language is clearly called for, such alternative language should be used. One of the objectives of this document is to provide pre-approved alternative language for different situations, as well as guidance and rationale for using that alternative language.

The DOE Modular CRADA will be updated on a routine basis to incorporate new language and alternatives, based on input from the Participants, laboratories, Operations Offices, and DOE programs. Laboratory staff with proposed updates should contact their Operations Office, and Operations Office staff with proposed updates should contact the DOE Office of Technology Utilization.

The following points should be addressed in a CRADA as minimum guidance for an effective CRADA. The attached DOE Sample CRADA is the basic set of CRADA provisions; other clauses are provided in the Guidance to accommodate different arrangements between Contractors and Participants. Many of the specific articles and clauses are negotiable between the Parties.

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[FR Doc. 94-3780 Filed 2-17-94; 8:45 am]
BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. EG94-27-000, et al.]

Black Creek Hydro, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 14, 1994.

Take notice that the following filings have been made with the Commission:

1. Black Creek Hydro, Inc.

[Docket No. EG94-27-000]

On February 7, 1994, Black Creek Hydro, Inc., a Washington State Corporation with its principal place of business at suite 310, 19515 North Creek Parkway, Bothell, Washington 98011, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant owns the Black Creek hydroelectric facility located in King County, Washington. All of the project's energy will be sold at wholesale.

Comment date: March 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp

[Docket No. ER94-951-000]

Take notice that PacifiCorp, on February 4, 1994, tendered for filing, Revision No. 19 to Exhibits A and B of the Contract for Interconnections and Transmission Service, Contract No. 14-060400-2437 ("Transmission Agreement"), dated May 16, 1962, (PacifiCorp Rate Schedule FPC No. 45) between PacifiCorp and the Western Area Power Administration ("Western").

Exhibit A specifies the projected maximum integrated demand in kilowatts which PacifiCorp desires to have transmitted to its respective points of delivery by Western. Exhibit B specifies the projected maximum integrated demand in kilowatts which Western desires to have transmitted to its respective points of delivery by PacifiCorp.

PacifiCorp respectfully requests, a waiver of prior notice be granted and an effective date of January 1, 1994 be assigned to Revision No. 19 to Exhibits A and B, this date being consistent with the effective date shown on Exhibits A and B.

Copies of this filing were supplied to the Wyoming Public Service Commission.

Comment date: February 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Company

[Docket No. ER94-963-000]

Take notice that on February 9, 1994, Portland General Electric Company (PGE) tendered for filing a Round Butte/Cove Interconnection and Operation Agreement and a Lease Agreement between Portland General Electric Company and PacifiCorp. PGE requests that the Commission grant waiver of the notice requirements of 18 CFR 35.3 to allow the agreements to become effective March 1, 1994.

Comment date: February 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER94-477-000]

Take notice that on February 2, 1994, Arizona Public Service Company (APS) tendered for filing the Amendment No. 1 to the Four Corners 230/345 kV Switchyard Maintenance Agreement between APS and Public Service Company of New Mexico (PNM). The Amendment deletes certain supervisory relaying and communication equipment from the facilities which APS maintains for PNM under the Four Corners 230/345 kV Switchyard Maintenance Agreement.

Copies of this filing have been served upon PNM, the Arizona Corporation Commission and the New Mexico Public Service Commission.

Comment date: February 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas & Electric Company

[Docket No. ER94-954-000]

Take notice that on February 7, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing, as a change in rate schedule, new supplements to the "Interconnection Agreement between Northern California Power Agency and Pacific Gas and Electric Company's" (PG&E-NCPA IA). The amended PG&E-NCPA IA and its appendices have been designated as PG&E Rate Schedule FERC No. 142.

Pursuant to the procedures outlined in section 6.2.4.2 of the PG&E-NCPA IA, NCPA has requested and PG&E has agreed to provide NCPA additional firm transmission service for 1994. Therefore, PG&E proposes to amend Exhibits III.1, III.2 and VII.1 of Appendix A to the PG&E-NCPA IA to include NCPA's request for: (1) 12.6 MW of additional Firm Transmission Service for the NCPA Geothermal Plants 1 & 2: (2) 5.0 MW of Fort Flat Powerplant. Also PG&E is filing: (1) A revised Exhibit II.2 for Binding Planning Years 1994 and 1995 and (2) a revised Exhibit VII.1 for the Binding Year 1995 in order to correct errors.

Copies of this filing were served upon NCPA and the California Public Utilities Commission.

Comment date: February 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Chambers Cogeneration Limited Partnership

[Docket Nos. QF87-433-002 and EL94-29-000]

Take notice that on January 18, 1994, Chambers Cogeneration Limited Partnership (Chambers), tendered for filing a Request For Limited Waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Chambers requests the Commission to temporarily waive the operating and efficiency standards for qualifying cogeneration facilities as set forth in § 292.205, 18 CFR 292.205 of the Commission's Regulations implementing Section 201 of PURPA, as amended, with respect to its 253.8 MW cogeneration facility located in Carney's Point, New Jersey. Specifically, Chambers requests waiver of the operating and efficiency standards for the calendar year 1993, during the last month of which the facility commenced initial start-up and testing.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3807 Filed 2-17-94; 8:45 am]
BILLING CODE 6717-01-P

[Docket No. EG94-26-000, et al.]

Hanover Energy Corp., et al.; Electric Rate and Corporate Regulation Filings

February 10, 1994.

Take notice that the following filings have been made with the Commission:

1. Hanover Energy Corporation

[Docket No. EG94-26-000]

On February 7, 1994, Hanover Energy Corp. ("Hanover"), of One Upper Pond Road, Parsippany, New Jersey, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Hanover is developing a gas and/or oil fueled electric generating facility with a capacity of up to 900 MW to be located in the County of Muscogee, State of Georgia, that will be owned and operated by the Partnership. All of the facility's electricity will be sold at wholesale.

Comment date: March 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. TIFD VIII-B Inc.

[Docket No. EG94-25-000]

On February 3, 1994, TIFD VIII-B Inc. (the "Applicant"), with its principal place of business at 1600 Summer Street, Stamford, Connecticut 06927, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant has represented that it will be engaged indirectly, through an affiliate that is a Philippine company, and exclusively in the business of owning and operating electricity generating facilities to be located near Iligan City in Mindanao, Philippines and selling electric energy at wholesale. The electric energy generated by those facilities will be delivered at wholesale to the National Power Corporation, a Philippine electric utility wholly-owned by the Philippine government. Retail sales to Philippine industrial customers may occur in the future, although no such arrangements currently exist.

Comment date: February 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Company

[Docket No. ER94-753-000]

Take notice that on February 4, 1994, Puget Sound Power & Light Company (Puget) tendered for filing an amendment to its filing on December 30, 1993 of its FERC Electric Tariff Original Volume No. 4 including Service Schedules thereunder and corresponding unexecuted Service Agreements (the Tariff).

A copy of the filing was served upon each party to the Service Agreement.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. San Diego Gas & Electric Company

[Docket No. ER94-906-000]

Take notice that on December 29, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing a Certificate of Concurrence in connection with the Agreement filed on June 4, 1992 in Docket No. ER92-626-000.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER94-935-000]

Take notice that on January 24, 1994, Peco Energy Company (Peco) tendered for filing a letter stating effective January 1, 1994, Philadelphia Electric Company's name will be changed to PECO Energy Company.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER94-944-000]

Take notice that on January 31, 1994, Portland General Electric Company (PGE) tendered for filing a Notice of Cancellation of the proposed rate schedules designated Filing No. 64 in Docket No. ER93-133-000.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Hermiston Generating Company

[Docket No. ER94-950-000]

Take notice that on February 2, 1994, Hermiston Generating Company, L.P., owner of an electric generating facility located in Hermiston, Oregon, submitted for filing, pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, an initial rate schedule for sales to PacifiCorp and a petition to grant certain waivers, preapprovals and authorizations.

Comment date: February 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. San Diego Gas & Electric Company

[Docket No. ER94-952-000]

Take notice that on February 4, 1994, San Diego Gas & Electric Company (SDG&E) tendered for filing an Interchange Agreement between SDG&E and ENRON Power Marketing, Inc. (Enron).

SDG&E requests that the Commission allow the Agreement to become effective on the 1st of April 1, 1994 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and ENRON.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Central Maine Power Company

[Docket No. FA93–6–001]

Take notice that on December 20, 1993, Central Maine Power Company (Central Maine) tendered for filing its refund report in the above-referenced docket.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. E.R. Brooks

[Docket No. ID–2814–000]

Take notice that on January 13, 1994, E.R. Brooks, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Central Power and Light Company.

Director, Public Service Company of Oklahoma.

Director, Southwestern Electric Power Company.

Director, West Texas Utilities Company.

Director, Hubbell Incorporated.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Robert L. Ryan

[Docket No. ID–2816–000]

Take notice that on February 1, 1993, Robert L. Ryan (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Inter-Regional Financial Group, Inc.

Director, Tampa Electric Company.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3725 Filed 2–17–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. QF86–1014–006, et al.]

Newark Bay Cogeneration Partnership, L.P., et al.; Electric Rate and Corporate Regulation Filings

February 9, 1994.

Take notice that the following filings have been made with the Commission:

1. Newark Bay Cogeneration Partnership, L.P.

[Docket Nos. QF86–1014–006 and EL94–27–000]

Take notice that on February 3, 1994, Newark Bay Cogeneration Partnership, L.P. (Newark Bay), of 1200 E. Ridgewood Avenue, Ridgewood, New Jersey 07450, tendered for filing a Petition For Temporary Waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Newark Bay requests the Commission to temporarily waive the operating and efficiency standards for qualifying cogenerating facilities as set forth in Section 292.205, 18 CFR 292.205 of the Commission's Regulations implementing Section 201 of PURPA, as amended, with respect to its cogeneration facility located in Newark, New Jersey. Specifically, Newark Bay requests waiver of the operating and efficiency standards for the calendar year 1993, during which the facility was undergoing start-up and testing.

Comment date: Thirty days after publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Ebensburg Power Company

[Docket Nos. QF86–1074–004 and QF86–1074–005]

On February 4, 1994, Ebensburg Power Company tendered for filing an amendment to its filing in this docket. The amendment pertains to the technical and ownership aspects of the qualifying facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: March 1, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Michigan Power Limited Partnership

[Docket No. QF88–441–001]

On February 1, 1994, Michigan Power Limited Partnership, tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining to the ownership structure and technical data of the facility.

Comment date: March 1, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Cedar Bay Generating Company, Limited Partnership

[Docket Nos. QF89–126–005 and EL94–6–000]

Take notice that on January 26, 1994, Cedar Bay Generating Company, Limited Partnership (Applicant), of 7475 Wisconsin Avenue, Bethesda, Maryland 20814, tendered for filing a Request For Limited Waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Cedar Bay requests the Commission to temporarily waive the operating standard for qualifying cogenerating facilities as set forth in Section 292.205, 18 CFR 292.205 of the Commission's Regulations implementing Section 201 of PURPA, as amended, with respect to its 269 MW cogeneration facility located in Jacksonville, Florida. Specifically, Cedar Bay requests waiver of the operating standard for the calendar year 1993, during the last quarter of which the facility was undergoing start-up and testing.

Comment date: Thirty days after publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

5. Massachusetts Institute of Technology (MIT)

[Docket No. QF94–15–000

On February 2, 1994, Massachusetts Institute of Technology (Applicant) tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining primarily to the technical data and the ownership structure of the cogeneration facility.

Comment date: March 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3726 Filed 2–17–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–212–000, et al.]

Williston Basin Interstate Pipeline Company, et al.; Natural Gas Certificate Filings

February 9, 1994.

Take notice that the following filings have been made with the Commission:

1. Williston Basin Interstate Pipeline Company

[Docket No. CP94–212–000]

Take notice that on February 2, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP94–212–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to replace two undersized regulators in South Dakota, under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 *et al.* pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon a regulator at the Black Hawk Border Station No. 1 in Pennington County, South Dakota, and to replace it with a new regulator with an increase in capacity of 130 Mcf per day. It is estimated that the cost to replace the regulator will be $1,125. Williston Basin proposes to abandon a regulator at the North Black Hawk Border Station No. 4 with a new regulator with an increase in capacity of 130 Mcf per day. It is estimated that the cost to replace the regulator will be $1,170.

It is stated that the regulators are used for gas being transported on a firm basis for Montana-Dakota Utilities Co. (Montana-Dakota), a local distribution company, under Williston Basin's Rate Schedule FT–1. It is asserted that the proposed replacement of compressors will have no significant effect on Williston Basin's peak day or annual requirements. It is further asserted that the deliveries using the regulators would be within Montana-Dakota's existing entitlement from Williston Basin.

Comment date: March 28, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP94–214–000]

Take notice that on February 3, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP94–14–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon: (1) 9.75 miles of 8-inch pipeline, two meter stations and two separate side taps located in Starr and Hidalgo Counties, Texas (the "existing facilities"); (2) the firm transportation service provided by Natural under its Rate Schedule X–102 for Valero Interstate Transmission Company; and (3) three separate meters located in Starr and Hidalgo Counties, Texas, which have been previously retired, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that all of the existing facilities are located in remote areas and are not connected to or downstream of Natural's mainline. Natural says that it has accepted an offer from Valero Transmission, L.P. to purchase the existing facilities.

Comment date: March 2, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public for convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3720 Filed 2–17–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. OR94-4-000]

ARCO Products Company and Texaco Refining and Marketing Inc. v. SFPP, L.P.; Complaint

February 14, 1994.

Take notice that on January 14, 1994, ARCO Products Company, a Division of Atlantic Richfield Company (ARCO) and Texaco Refining and Marketing Inc. (TRMI) (jointly Complainants), filed a complaint against SFPP, L.P. (SFPP).

The Complainants assert that SFPP violated and continues to violate Section 1 of the Interstate Commerce Act (ICA) by establishing and charging unjust and unreasonable rates on its system, pursuant to FERC Tariff Nos. 15, 16, 17 and 18, as applicable to Complainants and/or their applicable predecessors and successors. Complainants request refunds, reparations, and, in addition, damages in accordance with the ICA.

Complainants request that the Commission review and determine whether or not the rates, terms, and conditions are in accordance with law, and, if not, to take remedial action, including the setting of rates, terms and conditions for all of the services subject to the Commission's jurisdiction, whether now known or to be discovered in the course of the prosecution of the case, to be charged in the future. Complainants are seeking refunds on all charges of SFPP above the lawful maximum level for all services subject to the jurisdiction of the Commission or after the date of filing of the earliest effective complaint.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before March 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before March 16, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3718 Filed 2-17-94; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2306]

Citizens Utilities Companies; Public Scoping Meeting

February 14, 1994.

The Federal Energy Regulatory Commission (Commission) has received an application for relicense of the existing Clyde River Project No. 2306. This project is located on the Clyde River in northern Vermont, near the town of Newport. The project is operated by Citizens Utilities Companies.

Upon review of the application, supplemental filings, and intervenor submittals, the Commission staff has concluded that they will prepare an Environmental Assessment (EA) that describes and evaluates the probable impacts of the applicant's proposal and alternatives for the project.

One element of the EA process is scoping. Scoping activities are initiated early to:

- Identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the EA;
- Identify significant environmental issues related to the operation of the existing project;
- Determine the depth of analysis for issues that will be discussed in the EA; and
- Identify resource issues that are of lesser importance and, consequently, do not require detailed analysis in the EA.

Scoping Meeting

Commission staff will conduct one scoping meeting for the Clyde River Project. All interested individuals, organizations, and agencies are invited to attend the meeting and help staff identify the scope of environmental issues that should and should not be analyzed in the Clyde River Project EA.

The scoping meeting for the Clyde River Project will be conducted on March 9, 1994, from 7 p.m. to 10 p.m. in the auditorium of the North Country Union High School on Veterans Avenue in Newport, Vermont.

Procedures

The meeting, which will be recorded by a stenographer, will become part of the formal record of the Commission's proceeding on the Clyde River Project. Individuals presenting statements at the meeting will be asked to sign in before the meeting starts and to identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during the public meeting. Speaking time allowed for individuals will be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Scoping Meeting Objectives

At the scoping meeting, the staff will:

- Summarize the environmental issues tentatively identified for analysis in the EA;
- Identify resource issues that are of lessor importance and, therefore, do not require detailed analysis;
- Solicit from the meeting participants all available information, especially quantifiable data, concerning significant local resources; and
- Encourage statements from experts and the public on issues that should be analyzed in the EA.

Information Requested

Federal and state resources agencies, local government officials, interested groups, area residents, and concerned individuals are requested to provide any information they believe will assist the Commission staff to analyze the environmental impacts associated with relicensing the project. The types of information sought include the following:

- Data, reports, and resource plans that characterize the baseline physical, biological, or social environments in the vicinity of the project; and
- Information and data that helps staff identify or evaluate significant environmental issues.

Scoping information and associated comments should be submitted to the Commission no later than April 1, 1994. Written comments should be provided at the scoping meeting or mailed to the Commission, as follows:

Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All correspondence should clearly show the following caption on the first page:

Clyde River Hydroelectric Project, FERC No. 2306.

Intervenors are reminded of the Commission's Rule of Practice and Procedure requiring them to serve a copy of all documents filed with the Commission on each person whose name is listed on the project's service list.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3717 Filed 2-17-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. RP91-160-018]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

February 14, 1994.

Take notice that on February 7, 1994, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, First and Second Revised Volumes No. 1, the following revised tariff sheets, to be effective as follows:

First Revised Volume No. 1 Tariff Sheet
Effective October 1, 1993
Substitute Original Sheet No. 021A
Second Revised Volume No. 1 Tariff Sheets
Effective November 1, 1993
Substitute Original Sheet No. 019A
Effective January 1, 1994
Second Substitute First Revised Sheet No. 019A

Columbia Gulf states that this filing is being made in compliance with the Commission's January 19, 1994 Letter Order in the above-referenced dockets. Specifically, Columbia Gulf is filing revised tariff sheets to reflect the interruptible transportation rates for non-settling parties underlying the Stipulation and Agreement approved by the Commission in an Order in these dockets dated September 29, 1993.

Columbia Gulf states that copies of its filing are available for inspection at its offices at 1700 MacCorkle Avenue, SE., Charleston, WV 25314; 2603 Augusta, Post Office Box 683, Houston, Texas 77210-0683; 700 Thirteenth Street, NW., suite 900, Washington, DC 20005; and have been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before February 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3722 Filed 2-17-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-130-000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

February 14, 1994.

Take notice that on February 8, 1994, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original Sheet No. 369A.

CIG states that it has submitted Substitute Original Sheet No. 369A to correct CIG's filing of December 20, 1993, in Docket No. RP94-85-000. CIG's December 20, 1993, filing was made to implement, consistent with the procedures set forth in the Commission's Order No. 528 series of orders, recovery of Buyout-Buydown costs that CIG had incurred as a result of settlement and litigation of producer and supplier claims. However, CIG has since discovered that its December 20, 1993, filing improperly included certain costs and improperly excluded other costs.

To correct its December 20, 1993, filing, CIG has reduced the total Buyout-Buydown costs sought to be recovered in Docket No. RP94-85-000 by $202,564, bringing those total costs to $5,883,371. The jurisdictional portion of the corrected costs is $5,858,237. Consistent with CIG's proposal to absorb 50 percent of the jurisdictional portion of these costs, CIG now proposes to recover $2,929,119 from its affected jurisdictional firm sales customers.

CIG has requested that the Commission accept this filing, to become effective January 20, 1994, the date the Commission accepted the original tariff sheets in Docket No. RP94-85-000.

CIG states that copies of the filing were served upon all of its affected firm sales customers, interested State Commissions, and the Service List in Docket No. RP94-85-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3723 Filed 2-17-94; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2290]

Southern California Edison Co.; Public Scoping Meetings and Site Visit

February 14, 1994.

The Federal Energy Regulatory Commission (Commission) has received an application for relicense of the existing Kern River Project No. 2290. This project is located on the Kern River in central California, near the town of Kernville. The project is operated by Southern California Edison.

Upon review of the application, supplemental filings, and intervenor submittals, the Commission staff has concluded that they will prepare an Environmental Assessment (EA) that describes and evaluates the probable impacts of the applicant's proposal and alternatives for the project.

One element of the EA process is scoping. Scoping activities are initiated early to:

- Identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the EA;
- Identify significant environmental issues related to the operation of the existing project;
- Determine the depth of analysis for issues that will be discussed in the EA; and
- Identify resource issues that are of lesser importance and, consequently, do not require detailed analysis in the EA.

Scoping Meeting

Commission staff will conduct two scoping meetings for the Kern River Project. All interested individuals, organizations, and agencies are invited to attend the meeting and help staff identify the scope of environmental issues that should and should not be analyzed in the Kern River EA.

The first scoping meeting for the Kern River Project will be on March 15, 1994, from 9:30 a.m. to 12 p.m. in California Department of Fish and Game Offices Conference room, 1234 East Shaw Avenue, Fresno, California. The second scoping meeting will be on March 16, 1994, from 7 p.m. to 10 p.m. in the Kernville Elementary School Cafetorium, 13350 Sierra Way, Kernville, California.

The site visit will be on March 16, 1994, and will begin at 9 a.m. and extend into the afternoon. Those who want to attend the site visit should meet

at the Southern California Edison Office at 15115 Sierra Way, Kernville, California.

Procedures

The meetings, which will be recorded by a stenographer, will become part of the formal record of the Commission's proceeding on the Kern River Project. Individuals presenting statements at the meeting will be asked to sign in before the meeting starts and to identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during the scoping meetings. Speaking time allowed for individuals will be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Scoping Meeting Objectives

At the scoping meetings, the staff will:

- Summarize the environmental issues tentatively identified for analysis in the EA;
- Identify resource issues that are of lessor importance and, therefore, do not require detailed analysis;
- Solicit from the meeting participants all available information, especially quantifiable data, concerning significant local resources; and
- Encourage statements from experts and the public on issues that should be analyzed in the EA.

Information Requested

Federal and state resources agencies, local government officials, interested groups, area residents, and concerned individuals are requested to provide any information they believe will assist the Commission staff to analyze the environmental impacts associated with relicensing the project. The types of information sought include the following:

- Data, reports, and resource plans that characterize the baseline physical, biological, or social environments in the vicinity of the project; and
- Information and data that helps staff identify or evaluate significant environmental issues.

Scoping information and associated comments should be submitted to the Commission no later than April 15, 1994. Written comments should be provided at the scoping meeting or mailed to the Commission, as follows:

Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All correspondence should clearly show the following caption on the first page:

Kern River Hydroelectric Project, FERC No. 2290.

Intervenors are reminded of the Commission's Rule of Practice and Procedure requiring them to serve a copy of all documents filed with the Commission on each person whose name is listed on the project's service list.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3724 Filed 2-17-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. FA92-15-000]

Southwestern Public Service Co.; Order Establishing Hearing Procedures

February 14, 1994.

On December 23, 1993, the Chief Accountant issued a letter under delegated authority noting Southwestern Public Service Company's (SPS) disagreement with the Division of Audits with respect to Exception No. 2, in Part I of the audit report.[1] SPS was requested to advise whether it would agree to the disposition of the contested issue under the shortened procedures provided for by part 41 of the Commission's Regulations. 18 CFR part 41.

By letter dated January 25, 1994, SPS responded that it did not consent to the shortened procedures. Section 41.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set the issue for hearing.

Any interested person seeking to participate in this docket shall file a protest or motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register**.

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Federal Power Act, particularly sections 205, 206, and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedures (18 CFR Chapter I), a public hearing shall be held concerning the appropriateness of SPS's practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, D.C. 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be published in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3809 Filed 2-17-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT94-23-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

February 14, 1994.

Take notice that on February 2, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which tariff sheets are enumerated in appendix A to the filing. The proposed effective date of such tariff sheets is February 2, 1994.

TGPL states that the purpose of the instant filing is to update the Table of Contents and Index of Purchasers in TGPL's Third Revised Volume No. 1 Tariff. TGPL states that the revisions to the Table of Contents and Index of Purchasers include, among other things, company name changes, identification of new Part 284 FT transportation service which has been converted from service under section 7(c) and the elimination of certain X-Rate schedules which have been terminated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3719 Filed 2-17-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-9-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

February 14, 1994.

Take notice that on February 7, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Thirteenth Revised Sixth Revised Sheet No. 28 and Fourteenth Revised Sixth Revised Sheet No. 28, which tariff sheets are proposed to be effective on December 1, 1993 and February 1, 1994, respectively.

TGPL states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X-28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S-2. The tracking filing is being made pursuant to Section 26 of the General Terms and Conditions of Volume No 1. of TGPL's FERC Gas Tariff.

TGPL states that included in appendix A attached to the filing is an explanation of the rate changes and details regarding the computation of the revised S-2 rates.

TGPL states that copies of the filing are being mailed to each of its S-2 customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3721 Filed 2-17-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-220-000]

Williams Natural Gas Co.; Request Under Blanket Authorization

February 14, 1994.

Take notice that on February 8, 1994, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94-220-000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a one inch tap, measuring, regulating and appurtenant facilities for the delivery of transportation gas to Oxford Milling Company (Oxford) in Sumner County, Kansas, under Williams' blanket certificate issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

It is stated that the projected annual volume of delivery is estimated to be approximately 283 Mcf with a peak day volume of 9.5 Mcf for the first year, with the annual volume increasing to 661 Mcf by the third year end with the peak day volume increasing to 22 Mcf by the third year. It is further stated that Oxford will use the gas volumes for commercial heating, restaurant stoves and furnaces. It is averred that the estimated cost of construction is $1,910, which will be reimbursed by Oxford.

Williams states that this change is not prohibited by an existing tariff and Williams further avers that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3716 Filed 2-17-94; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Financial Assistance Program Notice 94-12: Human Genome Program—Technological Advances

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Human Genome Program. This Program is a coordinated, multidisciplinary, goal oriented, research effort aimed at improving technologies that will leed to a detailed understanding of the human genome at the molecular level. Several research goals are encompassed in this notice, with collaborative, multidisciplinary efforts specifically encouraged. Research will be supported for the development of: (1) Integrated approaches to large-scale human genome sequencing that may include supportive mapping and automation; (2) cost-effective DNA sequencing systems that promise more than a 10-fold improvement in throughput; (3) software and resources for real-time analysis and annotation of data from high-speed DNA sequencing systems; (4) resources for facile entry and retrieval of data in community genome maps and DNA sequence databases, including coordinated entry or retrieval across multiple, complementary databases.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., July 14, 1994, to be accepted for merit review in September 1994, and to permit timely

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[1] "2. Accounting for Pension Costs.

The Company did not determine the appropriate amount of pension cost to assign to construction, retirement, and other accounts."

The Division of Audits recommended the Company:

"(1) Revise procedures to ensure that it properly assigns pension cost to construction, retirement and operating expense based upon net periodic pension costs determined consistent with SFAS 87;

(2) Record the necessary correcting entries to adjust construction, retirement and operating expense to reflect the proper assignment of pension costs for each year beginning with 1988; and

(3) Record the necessary correcting entries to adjust the amount of AFUDC accrued on pension costs improperly assigned to construction beginning with 1988."

consideration for award in Fiscal Year 1995.

ADDRESSES: Formal applications referencing Program Notice 94–12 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64 (GTN), Washington, DC 20585, ATTN: Program Notice 94–12. The following address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Smith, Office of Health and Environmental Research, ER–72 (GTN), Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, (301) 903–6488.

SUPPLEMENTARY INFORMATION: Potential applicants are strongly encouraged to submit a brief preapplication in accordance with 10 CFR 600.10(d)(2), that consists of two to three pages of narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE's Human Genome Program. Preapplications referencing Program Notice 94–12 should be received by April 15, 1994, and sent to Dr. David A. Smith, Office of Health and Environmental Research, ER–72 (GTN), Washington, DC 20585. Telephone and FAX numbers are required parts of the preapplication and electronic mail addresses are desirable. A response to the preapplications discussing the potential program relevance of a formal application generally will be communicated within 30 days of receipt.

It is anticipated that approximately $5,000,000 will be available for grant awards during FY 1995, contingent upon availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon availability of funds. Previous awards have ranged from $79,000 per year up to $1,000,000 per year with terms from one to three years. Most awards are in the $200,000 to $400,000 per year range for three years. Similar award sizes are anticipated for new grants. Information on the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, Health Effects and Life Sciences Research Division, ER–72 (GTN), Washington, DC 20585. Telephone requests may be made by calling (301) 903–6488.

The Office of Energy Research, as part of its grant regulations, requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986), or such later revision of those guidelines as may be published in the **Federal Register.**

The dissemination of materials and research data in a timely manner is essential for progress towards the goals of the DOE Human Genome Program. The OHER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research data and materials that may include, where appropriate, putting cell lines, probes, sequence data, software, etc., into public repositories. Once OHER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating materials or submitting data to repositories are allowable; however, such requests must be adequately justified. Applicants should also provide timelines projecting progress toward achieving proposed goals.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on February 8, 1994.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 94–3782 Filed 2–17–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Research Financial Assistance Program Notice 94–13: Human Genome Program—Ethical, Legal, and Social Implications

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Ethical, Legal, and Social Implications (ELSI) subprogram of the Human Genome Program (HGP). The HGP is a coordinated, multidisciplinary, goal-oriented, research effort aimed at improving technologies that will lead to a detailed understanding of the human genome at the molecular level. This particular research notice encompasses research grants that address ethical, legal, and social issues that may arise from the use of information and knowledge resulting from the HGP. The DOE especially encourages the submission of applications to conduct multidisciplinary, empirical research on privacy issues from the creation, use, maintenance, and disclosure of genetic information. This may include (but is not limited to) issues of ownership and control of genetic information and the protection of the privacy of genetic information in various settings including the workplace. Applications should demonstrate knowledge of the relevant literature, and should include detailed plans for the gathering and analysis of factual information and the exploration of issues associated with the ethical, legal, and social implications of the knowledge gained from the HGP. All applications should include, where appropriate, detailed discussion of human subjects protection issues; e.g., storage of, manipulation of, and access to data. Where survey techniques are proposed, provisions to ensure the inclusion of women, minorities, and potentially disabled individuals must be described, unless specific exclusions are scientifically necessary and justified in detail. All proposed research applications should address the issue of efficient dissemination of results to the widest appropriate audience.

The DOE is also soliciting applications for the preparation and dissemination of educational materials in any appropriate medium that will enhance public understanding of both the scientific aspects and the ethical, legal, and social aspects of the HGP. In addition, the DOE is encouraging applications for the support of conferences focusing on specific issues or areas of concern related to the ethical, legal, and social implications of the HGP. Educational and conference applications should also demonstrate awareness of the relevant literature, and include detailed plans for the accomplishment of project goals, including, where appropriate, video productions. In the case of educational activities, the DOE strongly recommends inclusion of assessments of effectiveness of the proposed activities. In the case of all conferences, a fairly detailed and complete roster of committed speakers is necessary. At the completion of the conference, a summary or report is required. Educational and conference applications must also demonstrate awareness of the need to reach the widest appropriate audience.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., e.d.t., July 14, 1994, to be accepted for merit review in September 1994, and to permit timely consideration for award in Fiscal Year 1995.

ADDRESSES: Formal applications referencing Program Notice 94–13 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64 (GTN), Washington, DC 20585, ATTN: Program Notice 94–13. The following address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. Drell, Office of Health and Environmental Research, ER–72 (GTN), Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, (301) 903–6488.

SUPPLEMENTARY INFORMATION: Potential applicants are strongly encouraged to submit a brief preapplication in accordance with 10 CFR 600.10(d)(2), that consists of two to three pages of narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE's Human Genome Program. Preapplications referencing Program Notice 94–13 should be received by April 15, 1994, and sent to Dr. Daniel W. Drell, Office of Health and Environmental Research, ER–72 (GTN), Washington, DC 20585. Telephone and FAX numbers are required parts of the preapplication, and electronic mail addresses are desirable. A response to the preapplications discussing the potential program relevance of a formal application generally will be communicated within 30 days of receipt.

It is anticipated that approximately $1,000,000 will be available for grant awards in this area during FY 1995, contingent upon availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon availability of funds. Previous awards have ranged from $60,000 per year up to $500,000 per year with terms from one to three years. Similar award sizes are anticipated for new grants. Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, Health Effects and Life Sciences Research Division, ER–72 (GTN), Washington, DC 20585. Telephone requests may be made by calling (301) 903–6488.

As part of its grant regulations, ER requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986), or such later revision of those guidelines as may be published in the **Federal Register.**

The dissemination of materials and research data in a timely manner is essential for progress towards the goals of the DOE Human Genome Program. The OHER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research results and materials that may include, where appropriate, publication in the open literature, wide-scale mailings, etc. Once OHER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating results and materials are allowable; however, such requests must be sufficiently detailed and adequately justified. Applicants should also provide timelines projecting progress toward achieving proposed goals.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on February 8, 1994.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 94–3783 Filed 2–17–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Research Financial Assistance Program Notice 94–09; Measurement Science Research Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Measurement Science Research Program. The Measurement Science Program is a coordinated, multidisciplinary, goal-oriented, research effort aimed at developing new technologies to further OHER research in the health and environmental sciences. Several research goals are encompassed in this notice. Mid- to long-term research will be supported for: (1) Development of technology to study biological systems and evaluate the potential health impacts of energy production, (2) environmental measurements relevant to the Department's responsibilities in global climate change research and in environmental remediation.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., June 2, 1994, to permit timely consideration for award in Fiscal Year 1995.

ADDRESSES: Formal applications referencing Program Notice 94–09 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64 (GTN), Washington, DC 20585. Attn: Program Notice 94–09. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Roland F. Hirsch, Office of Health and Environmental Research, ER–73, U.S. Department of Energy, GTN,

Washington, DC 20585, telephone: (301) 903–3682.

SUPPLEMENTARY INFORMATION: Responses to this notice should address the following high priority programmatic needs. Applications for development of instrumentation for health effects research should seek advanced imaging technologies or new techniques for highly sensitive chemical characterization of biological systems at the cellular and subcellular level with high spatial and temporal resolution. Applications for development of instrumentation for environmental sciences research should seek rapid and accurate remote sensing, unattended in situ sensors, and/or data telemetry in one of the following areas: oceanographic measurements relating to global climate change or characterization of contaminated subsurface environments and mixed hazardous wastes.

Responses should seek significant new technologies for addressing these topics. Research to develop routine methods or to solve specific problems with modification of existing instrumentation is not of high priority.

Potential applicants are strongly encouraged to submit a brief preapplication, in accordance with 10 CFR 600.10(d)(2), which consists of two to three pages of narrative describing the research project's objectives and methods of accomplishment. Preapplications will be reviewed relative to the scope and research needs of the OHER Instrumentation Research Program. Preapplications referencing Program Notice 94–09 should be received by March 18, 1994, and sent to Dr. Roland F. Hirsch, Office of Health and Environmental Research, ER–73, U.S. Department of Energy, GTN, Washington, DC 20585, telephone: (301) 903–3682. Telephone and telefax numbers are required to be part of the preapplication. A response to the preapplications discussing the program relevance of a formal application will be communicated by April 8, 1994.

It is anticipated that approximately $4 million will be available for awards during Fiscal Year 1995, contingent upon the availability of appropriated funds. Previous awards have ranged from $100,000 to $500,000 per year with terms up to 3 years. Multiple year funding of awards is expected, also contingent upon availability of funds.

Information about development and submission of applications, eligibility limitations, evaluation, selection processes, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. The Application Guide is available from the Office of Health and Environmental Research, ER–73, U.S. Department of Energy, GTN, Washington, DC 20585. Telephone requests may be made by calling (301) 903–5349.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC on February 8, 1994.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 94–3781 Filed 2–17–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed During the Week of December 31, 1993 Through January 7, 1994

During the week of December 31, 1993, through January 7, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 10, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 31, 1993, through Jan. 7, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 3, 1994	John W. Osenbaugh, Lucas, Iowa	LFA–0346	Appeal of an information request denial request. If granted: The December 1, 1993 Freedom of Information Request Denial issued by the Golden Field Office would be rescinded, and John W. Osenbaugh would receive access to additional information regarding the subcontract between National Renewable Energy Laboratory and Battelle Memorial Institute.
Jan. 4, 1994	Schaal Oil Company, Jefferson, Iowa	LEE–0069	Exception to the reporting requirements. If granted: Schaal Oil Company would not be required to file Form EIA–782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Jan. 5, 1994	Friendly Service Stations, Inc., Fairfield, CT.	LEE–0070	Exception to the reporting requirements. If granted: Friendly Service Stations, Inc., would not be required to file Form EIA–782B. "Resellers/ Retailers' Monthly Petroleum Product Sales Report."
Do	Ron Vader, New Westminster, B.C. Canada.	LFA–0347	Appeal of an information request denial. If granted: The November 19, 1993 Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded, and Ron Vader would receive access to all information concerning a hearing held regarding himself and several other students who accidentally drove into the Hanford Site in heavy fog in December 1976.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Dec. 31, 1993, through Jan. 7, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 7, 1994	Rockwell International Corporation, Denver, CO.	LFA–0348	Appeal of an information request denial. If granted: Rockwell International Corporation would receive access to material setting forth the reasons DOE–HQ withheld or failed to provide documents responsive to a FOIA request.
Do	Utilities, Transporters & Manufacturers, Gladwyne, PA.	LRR–0014	Reconsideration. If granted: The December 17, 1993 Decision and Order (Case No. LRH–0002) issued to Utilities, Transporters, and Manufacturers would be reconsidered and modified to provide the opportunity to present testimony to support its contention.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/31/93 through 1/7/94	Texaco Oil Refund Applications Received	RF321–20011 through RF321–20014.
1/3/94	Giusti Baking Co., Inc	RF272–95094.
1/4/94	Patterson Lumber Co	RF304–15443.
1/5/94	Wagner Trucks	RF272–95095.

[FR Doc. 94–3785 Filed 2–17–94; 8:45 am]

BILLING CODE 6450–01–P

Cases Filed During the Week of December 3 Through December 10, 1993

During the Week of December 3 through December 10, 1993, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For the purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 10, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 3 to Dec. 10, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 24,1993	Texaco/Random Lake Oil Company, Random Lake, NJ.	RR321–140	Request for modification/rescission in the Texaco refund proceeding. If granted: The August 18, 1993 Dismissal Letter (Case No. RF321–17702) issued to Random Lake Oil Company would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.
Dec. 2, 1993	Texaco/Majewski Texaco Service, Greenville, NC.	RR321–141	Request for modification/rescission in the Texaco refund proceeding. If granted: The November 24, 1993 Decision and Order (Case No. RF321–8497) issued to Majewski Texaco Service would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.
Dec. 6, 1993	Northeast Petroleum Industries/Massachusetts, Boston, MA.	RM25–264	Request for modification/rescission in the Northeast Petroleum Industries second stage refund proceeding. If granted: The January 9, 1987 Decision and Order (Case No. RQ25–107) issued to Massachusetts would be modified regarding the State's application for refund submitted in the Northeast Petroleum Industries Second Stage Refund Proceeding.
Dec. 7, 1993	Gray Trucking Company, Washington, DC.	LEF–0120	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V in connection with the March 29, 1982 Consent Order entered into with Gray Trucking Company.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued
[Week of Dec. 3 to Dec. 10, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Do	E.C. Barnes, Inc., St. Thomas, PA	LEE–0063	Exception to the reporting requirements. If granted: E.C. Barnes, Inc. would not be required to file Form 782–B, "Reseller's/Retailer's Monthly Petroleum Product Sales Report.
Do	Petroleum Carrier Company, Inc., Washington, DC.	LEF–0119	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the June 26, 1987 Remedial Order issued to Petroleum Carrier Company, Inc.

REFUND APPLICATIONS RECEIVED WEEK OF DECEMBER 3 TO DECEMBER 10, 1993

Date	Name of refund proceeding/name of refund applicant	Case No.
11/29/93	Hornes International	RF300–21765.
11/29/93	Hornes International	RF300–21766.
11/29/93	Hornes International	RF300–21767.
11/29/93	Hornes International	RF300–21768.
12/06/93	Champion Service	RF349–7.
12/06/93	Singleton's Canal	RF346–109.
12/06/93	Washington Canal Center	RF346–110.
12/07/93	J. Blanton	RC272–222.
12/07/93	DeVille's Canal Service	RF346–111.
12/09/93	General Development Utilities	RF340–195.
12/10/93	Prather's Linen and Uniform	RC272–223.
12/03/93 thru 12/10/93	Crude Oil Refund Applications Received	RF272–95070 thru RF 272–95083.
12/10/93 thru 12/10/93	Atlantic Richfield Applications Received	RF304–15060 thru RF304–15426.
12/10/93 thru 12/10/93	Texaco Oil Refund Applications Received	RF321–19990 thru RF321–19997.

[FR Doc. 94–3786 Filed 2–17–94; 8:45 am]
BILLING CODE 6450–01–P

Office of Science Education and Technical Information

Energy Research Financial Assistance Program Notice 94–11; University Reactor Sharing Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Science Education and Technical Information (ET) of the U.S. Department of Energy (DOE), in keeping with its energy-related mission to strengthen the Nation's support of science, engineering and mathematics education at all levels of education, announces its interest in receiving grant applications for the support of the University Reactor Sharing Program. The purpose of this program is to provide broader access and opportunity for non-reactor owning educational institutions to utilize the scientific and engineering technologies available at these universities with operating reactor facilities. This is accomplished by providing funds to U.S. colleges or universities with nuclear reactor facilities (host institutions) that cover reactor operating costs when the regional affiliates (user institutions) use the reactor facility for student or faculty instruction or research. In accordance with 10 CFR 600.7(b)(1), eligibility for these grants is restricted to U.S. colleges and universities with nuclear reactor facilities because they have a unique opportunity to enable other institutions to participate in important aspects of the Nation's nuclear science and engineering educational programs. It is anticipated, that subject to availability of funds, approximately $500,000 will be available for support of this program during fiscal year 1994.

DATES: Applications under this Notice should be received by 4:30 p.m., Daylight Saving Time, May 3, 1994.

ADDRESSES: Application materials are available from the Office of Science Education and Technical Information, ET–1, 1000 Independence Avenue, SW., Washington, DC 20585, (202)586–8949. Completed applications referencing Program Notice 94–11 must be submitted to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, room F–220, Washington, DC 20585, ATTN: Program Notice 94–11. The following address must be used when submitting applications by U.S. Postal Service Express mail, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874. Telephone and telefax numbers must also be included in any application.

FOR FURTHER INFORMATION CONTACT: Dr. Larry Barker, Program Manager, U.S. Department of Energy, Office of Science Education and Technical Information, Office of University and Science Education Programs, ET–3, Washington, DC 20585, (202) 586–8947.

SUPPLEMENTARY INFORMATION: This program provides funding to host institutions to cover expenses associated with operation of their nuclear reactor facility for the benefit of user institutions to promote education, training or research opportunities. University reactors are extremely versatile neutron sources and research facilities; thus the availability of a nuclear reactor contributes particularly and significantly to research and educational opportunities at both the graduate, undergraduate and precollege levels. Any U.S. educational institution which operates a research or training reactor may submit an application for a new or renewal award. However, those institutions applying that have a substantial number of user institutions indicating continued or new interest in using the nuclear reactor facility are more likely to be selected than those applicants who do not have sufficient numbers of user institutions. User groups affiliated with the host institution are not considered eligible for participation in this program. Projects may range from tours, demonstrations, experiments, workshops and seminars for middle school and high school groups to faculty research projects and MS/PhD thesis or dissertation research. Reactor utilization may range from simple service irradiations and analytical support to basic research studies requiring the facility's most sophisticated equipment. Each application must include under the "Project Description" portion, information on the relative availability of the reactor to outside users, an assessment on a regional basis of the colleges, universities and/or precollege institutions that can be served by the proposing institution's reactor facility, and must provide evidence of interest on the part of potential or former user institutions to utilize the applicant's reactor facility during the proposed grant period. A summary of participation during the previous grant period will provide the supporting information needed. Allowable costs under this program include:

(1) Payments for irradiation services not to exceed the established, published schedule of the host institution;

(2) Payments for use of the reactor and related facilities based upon established rates of the host institution;

(3) Cost of technical assistance furnished by the host institution for conduct of studies by a user institution; and

(4) Costs of materials and supplies consumed in user institution projects.

Unallowable costs under this program include:

(1) Normal operating expenses of the facility;

(2) Laboratory apparatus and instrumentation;

(3) Costs that are covered by existing grant or contract;

(4) Indirect or overhead costs; and

(5) Funds for individual or group travel or subsistence unless there are highly unusual situations and there is prior approval.

During fiscal year 1994, DOE anticipates that the number of awards to be issued and the amount of each award will depend upon the number of approved applications, the amount of funds requested and the total DOE funds made available for this program. It is anticipated that, subject to the availability of funds, $500,000 will be available from DOE's Office of Science Education and Technical Information for this program. Awards may range from $5,000 to $100,000 per year.

Additional information may be subsequently requested by DOE during evaluation of a submitted application. General information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Energy Research Financial Assistance Program, and in 10 CFR part 605. The catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on February 7, 1994.

D. D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 94–3784 Filed 2–17–94; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4708–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 31, 1994 through February 4, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–BPA–L08049–00 Rating LO, Alternating Current (AC) Intertie Transmission Facilities, Capacity Ownership and Federal Marketing and Joint Ventures, Implementation, WA, OR, ID, MT, CA, NV, UT, NM, AZ, WY and British Columbia.

Summary: EPA had no objections to the action as proposed.

ERP No. D–BPA–L08050–WA Rating EC2, Puget Power Northwest Washington Electric Transmission Project, Construction and Operation, Whatcom and Skagit Counties, WA.

Summary: EPA had environmental concerns based on the project's impact on water quality and the lack of a monitoring program that would help to ensure compliance with state Water Quality Standards.

ERP No. D–FHW–E40339–NC Rating EC2, NC–12 Replacement of Herbert C. Bonner Bridge (Bridge No. 11) over Oregon Inlet, Construction; Funding, Coast Guard Bridge Permit, Special-Use-Permit, Right-of-Way Permit, COE Section 10 and 404 Permits, Dare County, NC.

Summary: EPA had environmental concerns regarding environmental risks during construction in the storm prone area and the potential loss of submerged aquatic vegetation habitat. EPA had requested further information on mitigation for wetland losses and the identification of specific BMPs to be designed into the project for nonpoint source pollution control.

ERP No. D–NRC–G06008–LA Rating EC2, Claiborne Uranium Enrichment Center, Construction and Operation, (NUREG–1482), NPDES Permit and Licensing, Homer, Claiborne Parish, LA.

Summary: EPA expressed environmental concerns regarding NRC's discussion of purpose and need, alternatives, waste disposal, pollution prevention and environmental justice. EPA recommended that NRC provide clarification and additional information on these issues.

Final EISs

ERP No. F–BLM–K61115–AZ, Kingman Resource Area, Resource Management Plan, Implementation, Mohave, Yavapi and Coconino Counties, AZ.

Summary: EPA expressed serious environmental concerns regarding the preferred alternative and recommended that the Record of Decision include specific commitments regarding goals, schedules, mitigation measures and mitigation monitoring for improving watershed conditions, riparian areas and wetlands.

ERP No. F–BLM–K67018–CA, Fort Cady Minerals Solution Mining Project, Construction and Operation, Associated Right-of-Way Grants and Mineral Material Sales Permits, San Bernardino County, CA.

Summary: Review of the Final EIS was not deemed necessary. No comment letter was sent to the preparing agency.

ERP No. F–FHW–K40184–CA, CA–87/ Guadalupe Parkway Upgrading, between Julian Street and US 101 in the City of San Jose, Funding and Section 404 Permit, Santa Clara County, CA.

Summary: EPA expressed environmental concerns for the riparian mitigation areas and requested that the FEIS's wetland mitigation measures be

included in the Record of Decision and Caltrans' Section 404 permit application to the Army.

Dated: February 15, 1994

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–3788 Filed 2–17–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4708–5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements filed February 7, 1994 through February 11, 1994 pursuant to 40 CFR 1506.9.

EIS No. 940038, Final EIS, IBR, UT, Price-San Rafael Rivers Unit of the Colorado River Water Quality Improvement Program (CRWQIP) and the on-farm Colorado River Salinity Control Program (CRSC), Improvements, Funding and Possible Section 404 Permit, Carbon and Emery Counties, UT, Due: March 21, 1994, Contact: Darrell Cauley (301) 236–9336.

EIS No. 940039, Draft EIS, BLM, MT, Rosebud Coal Mine Project, Implementation, Approval of Coal Lease Application (MTM–80697) on Federal Coal Lands, Powder River Resource Area, Miles City District Office, Rosebud County, MT, Due: April 25, 1994, Contact: Jim Beaver (406) 255–2918.

EIS No. 940040, Draft EIS, AFS, MT, Elk Creek Land Exchange and Granting an Easement to Plum Creek, Implementation, Flathead National Forest, Swan Lake Ranger District, MT, Due: April 5, 1994, Contact: Ken Meckel (406) 892–4372.

EIS No. 940041, Final EIS, COE, TX, NM, Roving Sands Joint Training Exercise Program and White Sands Missile Range, Implementation, 11th Air Defense Artillery Brigade, Site Specific, Fort Bliss, EL Paso County, TX and Otero and Dona Ana Counties, NM, Due: March 21, 1994, Contact: Arver Ferguson (817) 334–3246.

EIS No. 940042, Final EIS, AFS, MT, Smokey-Corridor Timber Sales, Timber Management and Road Construction/Reconstruction, Implementation, Lewis and Clark National Forest, White Sulphur Springs, Meagher County, MT, Due: March 21, 1994, Contact: Craig Cowie (406) 547–3361.

EIS No. 940043, Final EIS, EPA, CA, International Wastewater Treatment Plant and Outfall Facilities, Construction, Operation and Maintenance, Construction Grants, CA and Mexico, Due: March 21, 1994, Contact: Jennifer Eckert (213) 894–3694.

EIS No. 940044, Final EIS, NPS, MS, Natchez National Historical Park Management, Development and Use Plan, Implementation, Adams County, MS, Due: March 21, 1994, Contact: Robert Dodson (601) 442–7047.

EIS No. 940045, Final EIS, USA, WA, Fort Lewis and Yakima Training Center, Stationing of Mechanized or Armored Combat Forces, COE Section 10 and 404 Permits, Pierce, Thurston, Yakima and Kittitas Counties, WA, Due: March 21, 1994, Contact: Randall W. Hanna (206) 967–5646.

EIS No. 940046, Final EIS, FAA, NJ, Newark International Airport Installation and Operation of an Instrument Landing System on Runway 11, Funding and Airport Layout Plan Approval, Essex and Union Counties, NJ, Due: March 21, 1994, Contact: Thomas Hom (718) 553–1505.

Amended Notices

EIS No. 940014, Draft EIS, COE, NC, Texasgulf Open Pit Mine Continuation, Construction and Operation, Permits Approval, Pamlico River, Aurora, Beaufort County, NC, Due: March 14, 1994, Contact: Hugh Heine (919) 251–4070. Published FR—01–28–94—Review period extended.

Dated: February 15, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–3789 Filed 2–17–94; 8:45 am]

BILLING CODE: 6560–50–U

[FRL–4838–4]

Gulf of Mexico Program Management Committee; Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Management Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Management Committee will hold a meeting March 8–9, 1994 at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Management Committee of the Gulf of Mexico Program will be held on March 8–9, 1994, at the Marriott Hotel, 555 Canal Street, New Orleans, LA. The committee will meet from 8:30 a.m. to 5 p.m. on March 8th and from 8:30 a.m. to noon on March 9th. Agenda items will include: Policy Review Board Guidance Review; Strategic Assessment—Study Update; Memorandum of Understanding—Draft Review; Minority Networking Project—Status Report; and FY94 Project Planning Workshop.

The meeting is open to the public.

Douglas A. Lipka,

Acting Director, Gulf of Mexico Program.

[FR Doc. 94–3749 Filed 2–17–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4838–8]

Report on the Technical Workshop on WTI Incinerator Risk Issues

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a report entitled "Report on the Technical Workshop on WTI Incinerator Risk Issues" (EPA/630/R–94/001). This report compiles discussions and presentations from a peer review workshop that wes held in Washington, DC, on December 8–9, 1993.

ADDRESSES: To obtain a single copy of the report, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569–7562. Please provide your name and mailing address, and request the document by the title and EPA number (EPA/630/R–94/001).

FOR FURTHER INFORMATION CONTACT: Dr. Mario Mangino, U.S. Environmental Protection Agency Region V, 77 West Jackson Boulevard, Chicago, IL, 60604, Telephone: (312) 353–2197.

SUPPLEMENTARY INFORMATION: On December 8 and 9, 1993, EPA held the first of two external peer reviews for risk assessment work for the Waste Technologies, Inc, (WTI) incinerator in East Liverpool, Ohio. For the December meeting (58 FR 60628–60629; November 17, 1993), EPA asked 13 Independent scientists from the fields of toxicology, environmental fate and transport, combustion engineering, atmospheric modeling, and exposure assessment to comment on the scientific and technical aspects of a draft "project plan". Peer reviewers focused on scientific data, methods, and analyses, along with the related assumptions and uncertainties that would be used to describe risk at the site.

This report collects workshop papers, including summary statements prepared by the chairperson for each workshop topic. Workshop participants contributed helpful recommendations that can be used in the WTI risk assessment to be conducted during 1994 as well as long-term recommendations for future work.

EPA will consider the expert recommendations in completing the plan and conducting the risk assessment. While the Risk Assessment Forum organized the peer review workshop, EPA Region 5 developed the draft project plan. All future work on implementing peer review recommendations and setting schedules for risk assessment activities for the incinerator will be handled by Region 5 in conjunction with the Office of Solid Waste and Emergency Response, and, as needed, other Agency offices. At a second meeting, currently projected to be held later this year, EPA will seek expert peer review of the draft risk assessment report.

Dated: February 1, 1994.

Gary J. Foley,

Assistant Administrator for Research and Development.

[FR Doc. 94–3748 Filed 2–17–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4839–1]

Enterprise Recovery Systems Site; Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed *de minimis* settlement.

SUMMARY: Under section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered to approximately 300 potentially responsible parties an Administrative Order on Consent (AOC) to settle claims for past and future removal actions at the above-referenced Site. EPA will consider public comments on the proposed settlement for 30 days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Elizabeth B. Davis, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region IV, Office of Regional Counsel, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347–2641, ext. 2283.

Written comments may be submitted to Ms. Davis within 30 days of the date of publication.

Dated: February 7, 1994.

H. Kirk Lucius,

Acting Director, Waste Management Division.

[FR Doc. 94–3750 Filed 2–17–94; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–40026; FRL–4759–6]

Conditional Exemptions from TSCA Section 4 Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is granting conditional exemptions from Toxic Substances Control Act (TSCA) section 4 test rule requirements to certain manufacturers of chemical substances subject to these rules.

DATES: These conditional exemptions are effective on February 18, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: This notice grants conditional exemptions from TSCA section 4 test rule requirements to all manufacturers of the chemical substances identified below who submitted exemption applications in accordance with 40 CFR 790.80. In each case, EPA has received a letter of intent to conduct the testing from which exemption is sought. Accordingly, the Agency has conditionally approved these exemption applications because the conditions set out in 40 CFR 790.87 have been met. All conditional exemptions thus granted are contingent upon successful completion of testing and submission of data by the test sponsors according to the requirements of the applicable test rule.

If the test requirements are not met and EPA terminates a conditional exemption under 40 CFR 790.93, the Agency will notify each holder of an affected conditional exemption by certified mail or **Federal Register** notice.

This conditional approval applies to all manufacturers which submitted exemption applications for testing of the chemical substances named in the final test rules listed below from January 1, 1993 through December 31, 1993.

Chemicals	CAS No.	40 CFR Citation	Company
9,10-anthraquinone	84–65–1	799.500	C. H. Powell Company
dichlorobenzene	95–50–1	799.1052	The Glidden Company
1,3-dichloropropanol	96–23–1	799.5055	McGean-Rohco, Inc.
diethylene glycol butyl ether acetate	124–17–4	799.1560	BASF Corp.
2-ethylhexanol	104–76–7	799.1645	Glidden Company 3M
isopropanol	67–63–0	799.2325	AKZO
2-mercaptobenzothiazole	149–30–4	799.2475	Prochimie International, Inc.
Multi-Substance Rule for the Testing of Neurotoxicity.			
acetone	67–64–1	799.5050	Appleton Papers Inc. Alabama River Pulp Company, Inc. American Standox, Inc. BASF Corp. BF Goodrich Co. Boise Cascade Corp.

Chemicals	CAS No.	40 CFR Citation	Company
			Bowater Inc. Buckeye Florida Champion International Corporation Chesapeake Paper Products Company Ciba-Geigy Corp. Consolidated Papers Inc. Container Corporation of America DuPont Federal Paper Board Company, Inc. Fel-Pro, Inc. Finch, Pruyn Company, Inc. Ford Motor Co. Frazee Industries, Inc. Gaylord Container Corp. General Motors Georgia-Pacific Corp. Gilman Paper Company P.H. Glatfelter Co. Glidden Co. Great Lakes Chemical Corp. Green Bay Packaging, Inc. Guardsman Products, Inc. Gulf States Paper Corp. Inland Container Corp. ITT Rayonier Inc. International Paper Interstate Paper Corp. Jefferson Smurfit Corp. James River Corp. Lincoln Pulp and Paper Co., Inc. Longview Fibre Co. 3M MacMillan Bloedel Inc. Mead Corp. Miles Inc. Nippon Paint (America) Corp. Packaging Corporation of America Port Townsend Paper Corp. Potlatch Corp. Pratt & Lambert, Inc. St. Joe Forest Products Co. Scott Paper Co. Sherman Williams Simpson Paper Co. Stone Container Corp. Temple-Inland Forest Products Corp. Troy Corp. Union Camp Corp. Wacker Silicones Corp. Westvaco Corporation Weston Paper and Manufacturing Co. Willamette Industries, Inc. Zeneca Specialties
n-amyl acetate	628–63–7	799.5050	American Standox, Inc. BASF Corp. Bowater Inc. DuPont Ford Motor Company General Motors Guardsman Products, Inc. 3M Miles Packaging Corporation of America Pratt & Lambert, Inc. Sherman Williams Troy Corp. Zeneca Specialties
1-butanol	71–36–3	799.5050	American Standox, Inc. Aristech Chemical Corp. BASF Corp. Bowater Inc. BYK Chemie

Chemicals	CAS No.	40 CFR Citation	Company
			Cray Valley Products, Inc. DuPont Ethyl Corp. Ford Motor Co. Frazee Inc. General Motors Glidden Co. Great Lakes Chemical Corp. Guardsman Products, Inc. Lilly Industries, Inc. 3M Miles Inc. Nippon Paint (America) Corp. Packaging Corporation of America PPG Industries, Inc. Pratt & Lambert, Inc. RHEOX Inc. Sherman Williams Co. Troy Corp. Wacker Silicones Corporation Westvaco Corp. Willamette Industries Zeneca Specialties
n-butyl acetate	123–86–4	799.5050	American Standox, Inc. BASF Corp. Bowater Inc. Brenntag Interchem, Inc. Courtaulds Coatings Cray Valley Products, Inc. DuPont Ford Motor Co. Frazee Industries, Inc. General Motors Glidden Co. Guardsman Products, Inc. 3M Miles Inc. Morton International, Inc. Nippon Paint (America) Corp. Packaging Corporation of America PPG Industries, Inc. Pratt & Lambert, Inc. RHEOX Inc. Sherman Williams Troy Corp. Zeneca Specialties
diethyl ether	60–29–7	799.5050	American Standox, Inc. BASF Corp. Bowater Inc. DuPont Ford Motor Co. General Motors Guardsman Products, Inc. 3M Miles Inc. Packaging Corporation of America Sherman Williams Co. Zeneca Specialties
2-ethoxyethanol	110–80–5	799.5050	American Standox, Inc. BASF Corp. Bowater Inc. Ford Motor Co. General Motors Guardsman Products, Inc. 3M Miles Inc. Nippon Paint (America) Corp. Packaging Corporation of America PPG Industries, Inc. Pratt & Lambert, Inc. Sherman Williams Co. Troy Corp.

Chemicals	CAS No.	40 CFR Citation	Company
			Zeneca Specialties
ethyl acetate	141–78–6	799.5050	American Standox, Inc. BASF Corp. Bowater Inc. Courtaulds Coatings Cray Valley Products, Inc. DuPont Ford Motor Company Fuji Photo Film, Inc. General Motors Glidden Company Guardsman Products, Inc. Great Lakes Chemical Corp. 3M Miles Inc. Morton International, Inc. Nippon Paint (America) Corp. Packaging Corporation of America Pratt & Lambert, Inc. RHEOX Inc. Sherman Williams Co. Zeneca
isobutyl alcohol	78–83–1	799.5050	American Standox, Inc. BASF Corp. Bowater Inc. Courtaulds Coatings DuPont Ford Motor Co. Frazee Industries, Inc. General Motors Glidden Co. Guardsman Products, Inc. Lilly Industries Inc. Miles Inc. 3M Nippon Paint (America) Corp. Packaging Corporation of America PPG Industries, Inc. Pratt & Lambert, Inc. RHEOX Inc. Sherman Williams Co. Troy Corp. Union Camp Corp. Zeneca Specialties
methyl isobutyl ketone	108–10–1	799.5050	Alabama River Pulp Company, Inc. American Standox, Inc. BASF Corp. Boise Cascade Corp. BonaKemi USA, Inc. Bowater Inc. Buckeye Florida Champion International Corp. Consolidated Papers Inc. Container Corporation of America Courtaulds Coatings DuPont Federal Paper Board Company, Inc. Ford Motor Co. Frazee Industries, Inc. Gaylord Container Corp. General Motors Georgia-Pacific Corp. Gilman Paper Co. P. H. Glatfelter Co. Glidden Co. Great Lakes Chemical Corp. Green Bay Packaging, Inc. Guardsman Products, Inc. High Point Chemical Corp. International Paper Interstate Paper Corp. James River Corp.

Chemicals	CAS No.	40 CFR Citation	Company
			Jefferson Smurfit Corp. Lincoln Pulp and Paper Co., Inc. Longview Fibre Co. MacMillan Bloedel Inc. 3M Mead Corp. Miles Inc. Nippon Paint (America) Corp. Packaging Corporation of America P. H. Glatfelter Co. Potlatch Corp. PPG Industries, Inc. Pratt & Lambert, Inc. RHEOX Inc. St. Joe Forest Products Co. Scott Paper Co. Sherman Williams Co. Simpson Paper Co. Smurfit Newsprint Corp. Stone Container Corp. Temple-Inland Forest Products Corp. Union Camp Corp. Westvaco Corp. Zeneca Specialties
tetrahydrofuran	109–99–9	799.5050	American Standox, Inc. BASF Corp. Bowater Inc. Ford Motor Co. General Motors Guardsman Products, Inc. 3M Miles Inc. Packaging Corporation of America Sherman Williams Co. Zeneca Specialties

As provided in 40 CFR 790.80, processors are not required to apply for an exemption or conduct testing unless EPA so specifies in a test rule or in a special **Federal Register** notice.

Authority: 15 U.S.C. 2601,2603.

Dated: February 8, 1994.

Denise M. Keehner,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–3759 Filed 2–17–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632–6934.

Federal Communications Commission

OMB Control No.: 3060–0395.

Title: Automated Reporting and Management Information Systems (ARMIS)—Sections 43.21 and 43.22 (FCC Reports 43–05 and 43–07).

Expiration Date: 04/30/96.

Estimated Annual Burden: 151,868 total hours; 941.38 hours per response.

Description: ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements and rates of return, to provide an improved basis for audit and other oversight functions and to enhance the Commission's ability to quantify the effects of alternative policy proposals. ARMIS also includes service quality and infrastructure reporting. The FCC Reports 43–05 and 43–07 are used to monitor the quality of service provided by the local exchange carriers (LECs) under price caps. Such monitoring allows the Commission to observe the success of incentive regulation, and to become aware of any falling off of service quality or infrastructure development.

OMB Control No.: 3060–0106.

Title: Reports of Overseas Telecommunications Traffic—Section 43.61, FCC Report 43.61.

Expiration Date: 12/31/96.

Estimated Annual Burden: 2,340 total hours; 18.28 hours per response.

Description: FCC Report 43.61 is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. The reported data enables the Commission to fulfill its regulatory responsibilities.

OMB Control No.: 3060–0168.

Title: Reports of Proposed Changes in Depreciation Rates—Section 43.43.

Expiration Date: 10/31/96.

Estimated Annual Burden: 120,000 total hours; 10,000 hours per response.

Description: Dominant communication common carriers with annual operating revenues of $100 million or more are required to file a report showing any proposed changes to

their depreciation rates schedule at least 90 days prior to the effective date of the proposed changes pursuant to 47 CFR 43.43. The information filed is used by the Commission to establish the proper depreciation rates to be charged by the carriers.

OMB Control No.: 3060–0165.

Title: Records to be Maintained and Reports to be Filed, Section 41.31.

Expiration Date: 11/30/96.

Estimated Annual Burden: 408 total hours; 6 hours per response.

Description: Section 210 of the Communications Act of 1934, as amended, 47 U.S.C. 210, requires that common carriers subject to the Act maintain records to reflect the name, address, etc., of persons holding telephone or telegraph franks, so as to enable the Commission and/or carriers to compile, if needed, reports in this area.

OMB Control No.: 3060–0147.

Title: Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office, Section 64.804.

Expiration Date: 11/30/96.

Estimated Annual Burden: 208 total hours; 8 hours per response.

Description: Communications common carriers with operating revenues exceeding $1 million who extend unsecured credit to a candidate or person on behalf of such candidates for federal office must file with the FCC a report including due and outstanding balances. The information is used for monitoring purposes.

OMB Control No.: 3060–0076.

Title: Annual Employment Report for Common Carriers, FCC Form 395.

Expiration Date: 12/31/96.

Estimated Annual Burden: 1,200 total hours; 1 hour per response.

Description: The Annual Employment Report is submitted by certain common carrier licensees and permittees. The data is intended to assess compliance with equal employment opportunity requirements. Data is used by the FCC, Congress, the U.S. Commission on Civil Rights, EEOC, NTIA and public interest groups. A Public Notice will be issued to announce the availability of the 1994 edition of the FCC Form 395.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–3683 Filed 2–17–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before April 19, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel Anderson, FEMA Information Collections Clearance Office, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

Type: Reinstate 3067–0219 which has expired.

Title: Approval and Coordination of Requirements to Use the NETC for Extracurricular Training Activities—FEMA Form 75–10, Request for Housing Accommodations, and FEMA Form 75–11, Request for Use of NETC Facilities.

Abstract: The NETC is a FEMA facility which houses the Emergency Management Institute (EMI) and the National Fire Academy (NFA). The NETC provides training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, and longterm disaster discovery. The training is carried out both through a resident program at a central campus facility located in Emmitsburg, Maryland, and through an outreach program which makes courses available at the State and local levels throughout the country.

Special groups sponsored by the EMI or NFA may use NETC facilities to conduct activities closely related to and in direct support of the EMI or NFA. Such groups include other Federal departments and agencies, groups chartered by Congress such as the American Red Cross, State and local governments, volunteer groups and national and international associations representing State and local governments.

FEMA's policy is to accommodate other training activities on a space available basis at the Emmitsburg, Maryland campus.

The data will be used to coordinate extracurricular training activities at the NETC. Such training is that over and above regularly scheduled training sessions of EMI and NFA. FEMA Form 75–10, Request for Housing Accommodations, will be used by Special Groups, FEMA and other Federal agency employees, Adjunct Faculty, and Guest Speakers to request lodging; FEMA Form 75–11, Request for Use of NETC Facilities, will be used by Special Groups to request space at the NETC to conduct classes, meetings, or conferences.

Type of Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden: 130 hours.

Number of Respondents: 1,200.

Estimated Average Burden Time per Response: 7 minutes.

Frequency of Response: One-time.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–3768 Filed 2–17–94; 8:45 am]

BILLING CODE 6718–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before April 19, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

Type: Revision to 3067–0172.

Title: Radiological Protection Program Data Base (RADPRO).

Abstract: The RADPRO data base is designed to track the status of State and local government radiological defense systems. With this data, FEMA is able to determine if State and local governments have adequate personnel, training, equipment, and funding to ensure that a viable and effective radiological defense response capability is developed and maintained throughout the country. The data is collected by the State Radiological Protection Officer as a work product of the Federal-State Comprehensive Cooperative Agreement, maintained in the RADPRO data base which is updated as changes occur, and transmitted to FEMA quarterly.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 2,800 hours.

Number of Respondents: 5,600.

Estimated Average Burden Time per Response: 30 minutes.

Frequency of Response: Annual review of data base. Quarterly transmission of updated records to FEMA.

Dated: February 9, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–3767 Filed 2–17–94; 8:45 am]

BILLING CODE 6718–01–M

GENERAL SERVICES ADMINISTRATION

Public Building Service

Proposed United States Courthouse-Federal Building, City of Sacramento, CA; Availability for a Draft Environmental Impact Statement

The U.S. General Services Administration (GSA) hereby gives notice that a Draft Environmental Impact Statement (DEIS) has been prepared in accordance with the National Environmental Policy Act (NEPA) for a proposed new U.S. Courthouse-Federal Building within the downtown area of the City of Sacramento, California. The proposed site is bordered by H Street to the North, I Street to the South, 5th Street to the West, and 6th Street to the East.

The DEIS is on file and may be obtained from U.S. General Services Administration Region 9, Attn: Lou Lopez, Public Buildings Service, Planning Staff (9PL), 525 Market Street, 35th Floor, San Francisco, California 94105–2799 ((415) 744–5253). A limited number of copies of the DEIS are available to fill single copy requests. Loan copies of the DEIS are available for review at the GSA Sacramento Field Office, 650 Capitol Mall, suite 5515, Sacramento, California.

A public meeting is scheduled to provide the community with an opportunity to submit oral and written comments on the DEIS. The meeting will be held on March 10, 1994 from 3 p.m. to 6 p.m. in room 6537, 6th floor, at John E. Moss Federal Building-U.S. Courthouse, 650 Capitol Mall, Sacramento, California. In addition, final written comments on the DEIS can be submitted to the GSA San Francisco address above and will be accepted until the closing of the public review period on March 24, 1994.

Dated: February 10, 1994.

Aki K. Nakao,

Acting Regional Administrator (9A).

[FR Doc. 94–3800 Filed 2–17–94; 8:45 am]

BILLING CODE 6820–23–M

Steering Committee for the African Burial Ground, New York, NY; Meeting

Notice is hereby given that the Steering Committee for the African Burial Ground, New York, NY, (Steering Committee) will hold its regular monthly meetings, until further notice, on the fourth Monday of each month, beginning with Monday, February 28, 1994. All meetings will begin at 6 p.m. and will be held in the 2nd floor archives of the Schomburg Center for Research in Black Culture, New York Public Library, 515 Malcolm X Boulevard (at 135th Street), New York, NY. Meetings may be continued to the following day(s), if necessary, and shall be so announced during the meeting. Seating may be limited. Please call (212) 264–0456 prior to each meeting to confirm the date, time, and location of the meeting. At the meetings the Steering Committee will consider such matters properly coming before it under its charter and its rules and regulations.

All meetings will be open to the public. Members of the public at large, as may be recognized by the Chairman of the Steering Committee and as permitted by the Steering Committee's rules, will be permitted to speak at the meetings at designated times as provided in the resolutions and rules of the Steering Committee. In addition, written comments by any person may be directed to any aspect of the Steering Committee's mission and other questions regarding the Steering Committee's meetings may be directed to: Chairman Howard Dodson, Chief, Schomburg Center for Research in Black Culture, New York Public Library, 515 Malcolm X Boulevard, New York, NY 10037–1801, Tel: (212) 491–2200. Copies of such written comments may be sent to Robert W. Martin, Deputy Regional Administrator, General Services Administration, Region 2, 26 Federal Plaza, New York, NY 10278.

Dated: February 7, 1994.

Robert W. Martin,

Deputy Regional Administrator.

[FR Doc. 94–3803 Filed 2–17–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0471]

American Cyanamid Co.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by American Cyanamid Co. The NADA provides for the use of maduramicin ammonium in combination with chlortetracycline in the feed of broiler chickens for prevention of coccidiosis and as an aid in the reduction of mortality due to *Escherichia coli* infections. The firm requested the withdrawal of the approval of the NADA. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing the portion of the regulation which reflects approval of the NADA.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville MD 20855, 301–594–0749.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Agricultural Research

Division, Box 400, Princeton, NJ 08450, is the sponsor of NADA 140–837 that provides for the use of 4.54 to 5.45 grams (g) per ton of maduramicin ammonium combination with 500 g per ton of chlortetracycline in the feed of broiler chickens for the prevention of coccidiosis and as an aid in the reduction of mortality due to *E. coli* infections. American Cyanamid requested withdrawal of the NADA approval.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 140–837 and all supplements and amendments thereto is hereby withdrawn, effective February 28, 1994.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 558.128(c)(5)(xiii) and 558.340(c)(2) to reflect withdrawal of the approval.

Dated: February 9, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–3714 Filed 2–17–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[OPA–011–N]

Medicare Program; Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for March 7, 1994, from 8 a.m. until 5 p.m. e.s.t. (Additional meetings are tentatively scheduled for June 6, September 12, and December 12, 1994.)

ADDRESSES: The meeting will be held in room 800, 8th Floor of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Martha DiSario, Executive Director, Practicing Physicians Advisory Council, room 425–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. (202) 690–7874.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act, as added by section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), enacted on November 5, 1990, to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms.

The current members are: Gary C. Dennis, M.D.; Harvey P. Hanlen, D.O.; Kenneth D. Hansen, M.D.; Isabel V. Hoverman, M.D.; Ramon L. Jimenez, M.D.; Jerilyn S. Kaibel, D.C.; William D. Kirsch, D.O.; Marie G. Kuffner, M.D.; David L. Massanari, M.D.; Kenton K. Moss, M.D.; Susan W. Owens, M.D.; Isadore Rosenfeld, M.D.; Richard B. Tompkins, M.D.; James C. Waites, M.D.; and Gary L. Yordy, M.D. The chairperson is Richard B. Tompkins, M.D.

The eighth meeting of the Council will be held on March 7, 1994. The following topics will be discussed at that meeting:

- Durable medical equipment/certificates of medical necessity.
- Evaluation and management codes.

Those individuals or organizations who wish to make 10-minute oral presentations on the above issues must contact the Executive Director to be scheduled. For the name, address, and telephone number of the Executive Director, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. Please submit a written copy of the oral remarks to the Executive Director by February 28, 1994. The number of oral presentations may be limited by the time available.

Anyone who is not scheduled to speak may submit written comments to the Executive Director. The meeting is open to the public but attendance is limited to the space available on a first-come basis.

Authority: Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR part 11.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 14, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–3821 Filed 2–17–94; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

Opportunity for a Cooperative Research and Development Agreement (CRADA) for Development of an Immortalized Fetal Glial Cell Line as a Delivery System for Treatment of Various Neurological Disorders

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health, (NIH) seeks an agreement with a company(ies) which will assist in the further development and commercialization of an immortalized fetal glial cell line for its use as a delivery system for recombinant proteins, drugs, and other pharmaceutical therapeutics for the treatment of various neurological disorders. The National Institute of Neurological Disorders and Stroke (NINDS) believes the technology can be utilized in the treatment of several neurological disorders. The NINDS reserves the right to entertain the possibility of being involved in CRADAs with multiple Companies for the co-development of this delivery system for its use in different neurological disorders.

DATES: Proposals must be received by April 29, 1994.

ADDRESSES: Questions about this opportunity may be addressed to Stephen Finley, Ph.D., National Institutes of Health, NINDS, 9000 Rockville Pike, Building 31, room 8A46, Bethesda, MD 20892. Telephone 301–496–4697.

SUPPLEMENTARY INFORMATION: The NINDS has been issued a patent (Patent #4,707,448) entitled "Immortal Line of Human Fetal Glial Cells," and currently has a patent application (Serial # 08/046,527), entitled "Use of Neuro-derived Fetal Cell Line for Transplantation Therapy" for the use of the patented cell line as a delivery system. The NINDS's Laboratory of Molecular Medicine & Neuroscience/Molecular Medicine and Virology Section (MMN/MMV) has continued its characterization and investigation into the use of this cell line, designated SVG, as a delivery system for recombinant proteins, drugs, or therapeutics into the central nervous system and potentially other organs.

The use of transplanted fetal cells for the treatment of Parkinson's disease, as well as other neurological disorders, has met with varying degrees of success. The use of fresh fetal cells are known to have several disadvantages. For example, even though rigorous screening methods are conducted, there is no guarantee of having infectious free, fresh fetal cells for transplantation. The physical characteristics of fresh fetal cells are uncontrollable (i.e. age, cell type) and generally lack experimental support data. Also, the use of immunosuppressives are required to prevent host rejection of these cells.

Cell lines are easily modified for research and are considered to be a viable alternative to the transplantation of fresh fetal cells. Unfortunately, cell lines also have inherent transplantation problems. Genetically unrelated cells require immunosuppressives to prevent host rejection, and a transformed cell line carries a pre-disposition to tumor formation.

We believe the SVG cell line to be a solution to these and other transplantation problems. These brain derived cells have the same physical characteristics and are easily modified by conventional molecular genetic techniques. *In vitro* and *in vivo* testing has shown the SVG cell lines to be non-oncogenic and non-inflammatory. Also, transfected SVG cells were shown to cause the expression of the desired gene.

Role of NINDS:

1. The Government will continue to proceed with the development of SVG for clinical trials and may provide access to NINDS facilities for the clinical trials to CRADA selectee(s).

2. NINDS will derive *in vivo* data in non-human primate and *in vitro* data establishing SVG's efficacy for FDA support.

The role of successful company(ies) under the CRADA will include the following:

1. Provide expertise for the clinical development of the SVG cell line leading to FDA approval for the marketing of products for therapeutic use.

2. Cost sharing with the NINDS's MMN/MMV for continued clinical development of the cell line.

Criteria for selecting the company(ies) include but are not limited to the following:

1. Experience in the development of products for clinical use.

2. Experience in preclinical and clinical drug development.

3. Experience and ability to produce, package, market and distribute products in the United States and to provide the product at a reasonable cost.

4. Experience in the monitoring, evaluation, and interpretation of the data from an investigational agent clinical studies under an IND.

5. A willingness to cost share in the development of SVG as outlined above. This includes evaluation of SVG cells in non-human primates, production of SVG cells and its modified recombinant in adequate amounts for future clinical trials and marketing.

6. The execution of an agreement to be bound by the DHHS rules involving human and animal subjects.

7. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical trials.

Dated: February 3, 1994.

Donald Christoferson,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 94–3733 Filed 2–17–94; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESS: Licensing information and copies of the U. S. patent applications listed below may be obtained by writing to the indicated Licensing Specialist at the Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed Confidentiality Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Modification of Hepatitis B Virus Infection in Chronic Carriers of Hepatitis B Surface Antigens

Gerin, J.L., Levy, H.B., Merigan, T.C., Purcell, R.H. (NIAID)
Serial No. 05/786,202 filed 11 Apr 77
U.S. Patent 4,140,761 issued 20 Feb 79
Licensing Contact: Girish C. Barua

Interferon introduced parenterally in a human host or stimulated by an inducer (PICLC) for a period of greater than 21 days results in major decrease in all markers of infectivity, such as DNA polymerase, and such markers remain at a depressed level during the period of treatment. Long-term treatment with exogenous interferon of greater than 21 days and up to 14 months results in clinical improvement for chronic hepatitis B virus (HBV) infection and this long-term treatment has resulted in sustained improvement even after cessation of treatment as well as resulting in decrease in infectivity risk to others in close proximity to the infected human host.

Detection of Non-B Hepatitis Associated Antigens

Tabor, E., Gerety, R.J. (FDA)
Serial No. 06/040,921 filed 21 May 79
U.S. Patent 4,356,164 issued 26 Oct 82
Licensing Contact: Girish C. Barua

A method to detect highly transmittable agent of non-A, non-B hepatitis using a counterelectrophoresis analysis. The method may also be applied in the recipients of blood transfusion and for screening blood donors where the donor had transmitted by transufison non-A, non-B hepatitis antigens several years previously.

Detection of Non-A, Non-B Hepatitis Associated Antigens

Tabor, E., Gerety, R.J. (FDA)
Serial No. 06/319,995 filed 10 Nov 81
[CIP of 06/192,291 (ABAN), CIP of 06/060,921]
U.S. Patent 4,395,395 issued 26 Jul 83
Licensing Contact: Girish C. Barua

In the detection of transmittable agent of non-A, non-B hepatitis a method is

described in this invention utilizing antigen-antibody reaction and preferred counterelectrophoresis technique for detection of said antigen.

Heat Treatment of Non-A, Non-B Hepatitis Agent To Prepare a Vaccine

Tabor, E., Gerety, R.J. (FDA)

Serial No. 06/343,026 filed 27 Jan 82

U.S. Patent 4,438,098 issued 20 Mar 84

Licensing Contact: Girish C. Barua

A method of treating the agent of human non-A, non-B hepatitis to render it incapable of causing infection which comprises heating said agent at about 60 deg. C for about 10 hours and recovering the treated protective agent, which could be utilized as a vaccine.

Screening Test for Reverse-Transcriptase Containing Virus Such as Non-A, Non-B Hepatitis, NANBH

Seto, B.P., Gerety, R.J., Coleman, W.G. (FDA)

Serial No. 06/665,400 filed 26 Oct 84

U.S. Patent 4,707,439 issued 17 Nov 87

Licensing Contact: Girish C. Barua

The invention covers a screening test for detecting the presence of contaminating or infectious agents causing non-A, non-B hepatitis or AIDS in a blood donor setting. A kit for detecting contaminating agents belongs to retrovirus is also disclosed. Screening blood or blood related products so as to prevent spreading of infection or contamination due to retroviruses is now possible by the present invention.

Purified Antigens From Non-A, Non-B Hepatitis Causing Factor

Seto, B., Gerety, R.J. (FDA)

Serial No. 06/709,678 filed 8 Mar 85

U.S. Patent 4,673,634 issued 16 Jun 87

Licensing Contact: Girish C. Barua

The invention discloses an isolated and purified antigen specific to non-A, non-B hepatitis (NANBH) causing agent. The utility of the antigen as a diagnostic serologic marker and as screening device for detecting the carrier or source of non-A, non-B hepatitis or infective factor thereof, particularly in a blood bank or plasmapheresis setting and preventing transmission of NANBH by isolating the source is described. Use of the antigens as vaccine to induce protective antibodies capable of neutralizing NANBH infectivity along with a kit for detecting the presence or identifying the carriers or sources of non-A, non-B hepatitis or causative agent thereof is disclosed.

Retrovirus and Related Method Used for Producing a Model for Evaluating the Anti-Retroviral Effects of Drugs and Vaccines

McClure, H., Fultz, P., Anderson, D. (CDC)

Serial No. 07/200,843

U.S. Patent 5,212,084 issued 18 May 93

Licensing Contact: Steven M. Ferguson

An HIV-like retrovirus (SIV/SMM) isolated from clinically normal sooty mangabey monkeys provides a rapid means of testing the efficacy of newly developed anti-retroviral drugs and vaccines. These methods are based upon the observation that SIV/SMM has been shown to cause persistent infection and clinical AIDS-like disease when inoculated into rhesus monkeys and pigtailed macaques. Upon collection and re-inoculation into simians seronegative for SIV/SMM, acute clinical disease appears in all recipients within 3 to 5 days that progresses to death shortly thereafter.

A Sensitive Diagnostic Test for Lyme Disease

Rosa, P.A., Schwan, T.G. (NIAID)

Serial No. 07/885,077 [FWC of 07/361,850 (ABAN)]

Filed 18 May 92

Licensing Contact: Girish C. Barua

The nucleotide sequence of a recombinant clone containing a specific segment of *Borrelia burgdorferi* DNA which enables the identification of the spirochetes causing Lyme disease has been provided. A diagnostic kit containing oligonucleotide primers derived from this sequence, suitable for the detection of *Borrelia burgdorferi* in a PCR assay, as well as the cloned DNA of the present invention, allows the detection of Lyme disease sprockets with sensitivity and specificity not heretofore attained by any other test.

Clones Encoding Mammalian ADP-Ribosylarginine Hydrolases

Moss, J., Stanley, S.J., Nightingale, M.S., Murtagh, J.J.,

Monaco, L., Takada, T. (NHLBI)

Serial No. 07/888,231

Filed 22 May 92

Licensing Contact: Girish C. Barua

The invention relates to the production of mammalian ADP-ribosylarginine hydrolases. These enzymes can be synthesized using recombinant DNA technology. The enzymes catalyze the removal of the ADP-ribose moiety from protein and regulate the ADP-ribose content of protein.

Specific and Sensitive Diagnostic Test for Lyme Disease

Simpson, W.J., Schwan, T., Garon, C. (NIAID)

Serial No. 07/898,233 [FWC of 07/427,735 (ABAN)]

Filed 12 Jun 92

Licensing Contact: Girish C. Barua

This patent application describes species-specific DNA sequences in the pathogenic bacterium *Borrelia burgdorferi*. It includes the use of these sequences, other related sequences obtained from the bacteria, and similar DNA sequences generated by recombinant techniques, as DNA probes for the identification of *B. burgdorferi*. The target sequences have been found in multiple locations and are associated with plasmid molecules. Thus, the natural amplification of these target sequences may create a sensitivity advantage over other single-site DNA probe targets.

Recombinant Vaccinia Virus Expressing Human Retorvirus Gene

Moss, B., Chakrabarti, S. (NIAID)

Serial No. 07/919,384

Filed 7 Jul 89

Licensing Contact: Girish C. Barua

A recombinant vaccinia virus carrying the HIV gp-160 env gene under control of the early/late vaccinia promoter P7.5 and the *E. coli* lacZ gene under control of the vaccinia P11 promoter all inserted into the vaccinia thymidine kinase gene was made. Cells infected with the virus display the HIV gp 160, gp 120 and gp 41 proteins on their surface. These proteins reacted with the sera from AIDS patients. The recombinant vaccinia virus can be used to make these proteins and also as a vaccine. The recombinant virus and the method of making HIV envelope proteins are claimed.

Method for Immune Capture and Primary Isolation of Borrelia Burgdorferi

Dorward, D.W., Schwan, T.G., Garon, C.F. (NIAID)

Serial No. 07/929,172 (CIP of 07/485,551, U.S. Patent 5,217,872 issued 8 Jun 93)

Filed 11 Aug 92

Licensing Contact: Girish C. Barua

This invention relates to novel antigens associated with *Borrelia burgdorferi* which are exported (or shed) *in vivo* and whose detection is a means of diagnosing Lyme disease. The antigens are extracellular membrane vesicles and other bioproducts including the major extracellular protein. The invention further provides antibodies, monoclonal and/or polyclonal, labeled and/or unlabeled, that react with the antigens. The invention is also directed to a method of diagnosing Lyme disease by detecting the antigens in a biological sample taken from a host using the antibodies in conventional immunoassay formats. The invention further relates to kits, for the diagnosis of Lyme disease, comprising the antibodies and ancillary reagents. The advantage of the antibodies used in the invention is that they react with the antigens from geographically diverse strains of *Borrelia burgdorferi*, but do not react with antigens from related *Borrelia* spirochetes.

Enzyme Immunoassay for the Detection of a Marker Associated With a Severe Outcome of Hepatitis Delta Virus Inspection

Fields, H.A., Khudyakov, Y. (CDC)

Serial No. 07/976,358

Filed 17 Nov 92

Licensing Contact: Girish C. Barua

This invention is a method of predicting the development of severe forms of hepatitis delta virus infection (HDV infection) by detecting the presence of anti-HDAg' antibody in patients with HDV infection. The presence of these antibodies is associated with the more severe forms of HDV infection. The invention additionally encompasses an assay for detection of HDAg'-antibodies in biological samples, and a vaccine comprising immunologically active HDAg' polypeptides.

Antigenic Protection of Borrelia Burgdorferi

Simpson, W.J., Schwan, T.G. (NIAID)

Serial No. 08/020,245 (FWC of 07/664,731)

Filed 19 Feb 93

Licensing Contact: Girish C. Baura

This patent application describes a 39 Kda protein (P39) that is species-specific and expressed by all North American and European *B. burgdorferi* isolates. The discovery includes the cloning and expression of the gene for P39 in *E. coli* and the use of P39 as a diagnostic antigen for the serodiagnosis of Lyme borreliosis. The P39 described in this invention report has been found not only to be species-specific, but reactive only with human Lyme sera. This suggests that any patient's serum that is shown to react to P39, irrespective of the patient's clinical picture, can be diagnosed as having Lyme borreliosis.

Article and Method for Detecting the Presence of Pathogens in Excreta

Dobbins, J., Stewart, J.A., Pellett, P., Koopmans, M. (CDC)

Serial No. 08/048,807

Filed 16 Apr 93

Licensing Contact: Girish C. Barua

The present invention provides a diagnostic diaper capable of selectively capturing disease causing agents, such as cytomegalovirus (CMV), from urine. Claims are directed to a diaper with a built in diagnostic assay for infection detectable in excreta, in particular, CMV infection in urine. This invention could be used to screen newborns nationally for infection with CMV since the only current method of detecting CMV infection is to culture the urine, an unsuitable procedure for national screening because of expense, the requirement of special handling, and delayed results.

Immortalized Human Cell Lines Containing Exogenous Cytochrome P450 Genes

Harris, C., Gelboin, H., Gonzalez, F., Mace, L., Pfeifer, A. (NCI)

Serial No. 08/065,201

Filed 19 May 93

Licensing Contact: Steven M. Ferguson

Stable, non-tumorigenic human bronchial and liver epithelial cell lines have been developed that are capable of expressing human cytochrome P450 genes. These immortalized cell lines express enzymatically active cytochrome P450 enzymes typically involved in xenobiotic metabolism. Use of these cell lines makes it now possible to design low-cost *in vitro* toxicity tests or screens for food-born and environmental carcinogens, pathogens or mutagens. Previous toxicology testing methods could only be done in animals, bacteria (Ames test) or animal cell culture models and could not always be fully extrapolated to determine human risk.

Regulator of Contact-Medicated Hemolysin of Mycobacterium Tuberculosis

King, H.C., Sathish, M., Crawford, J.T., Schinnick, T.M. (CDC)

Serial No. 08/066,830

Filed 24 May 93

Licensing Contact: Girish C. Barua

The present invention shows that virulent strains of *M. tuberculosis* possess hemolytical activity while avirulent strains do not. The invention provides the isolation of a contact hemolysin gene from *M. tuberculosis*. Claims are directed to the gene, to the protein produced and to antibodies specifically reactive with the protein. Claims are also directed to diagnostic tests for infection and tests to the distinguished virulent from avirulent infection.

Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity

Pastan, I., Lee, B., Jung, S-H, Brinkmann, U. (NCI)

Serial No. 08/077,252

Filed 14 Jun 93

Licensing Contact: Daniel R. Passeri

The present invention relates to disulfide-stabilized recombinant polypeptide molecules which have the binding ability and specificity for another peptide, such as the variable region of an antibody molecule. Methods of producing these molecules and nucleic acid sequences encoding these molecules are also described. In particular, the invention discloses Fv antibody fragments stabilized by a disulfide bond connecting the V_H and V_L regions of the Fv fragment. The α and β chains of T cell receptors may be similarly stabilized by means described in the invention.

Nucleic Acids of a Novel Hantavirus and Reagents for Detection and Prevention of Infection

Nichol, S.T. (CDC)

Serial No. 08/084,724

Filed 24 Jun 93

Licensing Contact: Girish C. Barua

An outbreak of acute illness in the Four-Corners region of the United States in the spring of 1993 has been associated with the Muerto Canyon strain of hantavirus. The identification of specific nucleotide sequence information for this virus will aid in the development of diagnostic assays and vaccines.

Diagnostic Reagents and Vaccines for Multiple Genotypes of Hepatitis C Virus

Bukh, J., Miller, R.H., Purcell, R.H. (NIAID)

Serial No. 08/086,428

Filed 29 Jun 93

Licensing Contact: Girish C. Barua

The invention describes the complete nucleotide and deduced amino acid sequences of the envelope 1 (E1) gene of 51 hepatitis C virus (HCV) isolates from around the world and the grouping of these isolates into twelve distinct HCV genotypes. More specifically, this invention relates to the oligonucleotides, peptides and recombinant proteins derived from the envelope 1 gene sequences of these isolates and to diagnostic methods and vaccines that employ these reagents.

Poliovirus Specific Primers and Methods of Detection Utilizing the Same

Kilpatrick, D.R. (CDC)

Serial No. 08/092,110

Filed 13 Jul 93
Licensing Contact: Girish C. Barua

The ability to rapidly detect wild polioviruses in clinical specimens is a major concern for the world-wide eradication of polioviruses. This invention describes a method of detecting polioviruses of all three serotypes from viral isolates of clinical specimens using a pair of degenerate PCR primers. These PCR primers do not recognize nonpoliovirus enteroviruses. All poliovirus serotypes (40 polio vaccine-related genotypes and 120 wild poliovirus genotypes from around the world) tested positive. The poliovirus-specific PCR primer will allow for the rapid diagnosis of whether clinical cases of acute flaccid paralysis are the result of a poliovirus infection.

MRI Coil Having Inductively Coupled and Individually Tuned Elements Arranged as Free-Pivoting Components

Wen, H., Chesnick, A.S., Balaban, R.S. (NHLBI)
Serial No. 08/104,849
Filed 12 Aug 93
Licensing Contact: John Fahner-Vihtelic

This application describes an MRI probe/transmitter coil that is composed of concentric cylinders with resonant elements. The probe/transmitter can be tuned using a plurality of freely rotating resonant elements radially mounted between the two cylinders. This invention reduces the effects of subject characteristic variations on the coil resonant frequency in an MRI system. Further, this apparatus increases the sensitivity and efficiency in the magnetic resonance system by raising the Q factor of the probe coil/transmitter. Prototype apparatus effectively reduces the significant coil-subject coupling at high frequencies.

Novel and Selective Inhibitors of Biogenic Amine Transporters

Rothman, R.B., Carroll, F.I., Blough, B., Mascarella, S.W. (NIDA)
Serial No. 08/105,747
Filed 12 Aug 93
Licensing Contact: Arthur Cohn

Novel compounds, particularly (2RS, 3aSR, 8aRS)-1,2,3a,8,8a-Hexahydro-2-Benzyl-1-Methyl-Indeno[1,2-b]pyrrole, bind selectively and potently to the PCP site 2 associated with biogenic amine transporters (BAT), and block these transporters. This compound is the first high affinity ligand to be described which clearly distinguishes between the two PCP binding sites. It differs from phencyclidine (PCP) in that: (1) It has no activity at the MK801-sensitive NMDA receptor, (2) it has considerably higher affinity for the norepinephrin transporter, and (3) it does not produce PCP-like behavioral effects in rats. The compound has been shown to raise the extracellular dopamine levels in rats. Thus it may have utility in treating conditions, like Parkinsons Disease and depression, that respond to increased dopamine levels. Radiolabeled compounds of the invention are useful to label PCP site 2.

Method for Proton Magnetic Resonance Spectroscopie Imaging With Multiple Spin-Echoes

Moonen, C.T., Duyn, J. (NCRR)
Serial No. 08/106,377
Filed 13 Aug 93
Licensing Contact: John Fahner-Vihtelic

This application describes a new method for proton magnetic resonance spectroscopic imaging. This new method does not have the limiting disadvantages of the previous techniques. The method combines multi-slice and multi-spin-echo techniques for high signal-to-noise ratio per unit time and high efficiency spectroscopic information. This invention can also produce compound weighted spectroscopic images by selecting the period between refocusing pulses according to the coupling constant of a group contained in the compound. Application of a pulse sequence to conventional MRI imaging apparatus allows for rapid acquisition of data for generating spectroscopic images.

Orally Active Derivatives of 1,3,5(10)-Estratriene

Kim, H.K, Blye, R.P., Bialy, B. (NICHD)
Serial No. 08/122,853
Filed 17 Sep 93
Licensing Contact: Carol C. Lavrich

Newly developed esters of estradiol which exhibit potent oral and parenteral estrogenic activity offers a new therapy for replacement of the natural hormone, estradiol, in hypogonadism and following removal of the ovaries or cessation of ovarian activity during menopause. The natural hormones, estradiol and estrone are only weakly active upon oral administration requiring large dosages. The most frequently used oral estrogen, 17-alpha-ethenylestradiol, has been associated with a number of serious dose-related side effects. The novel estrogens of this patent, lack the "ethynyl" group and can be used in lower doses, thus eliminating the side effects. The compounds are particularly suitable for use as the estrogenic component of combined oral contraceptives.

Binding Domains From Plasmodium Vivax and Plasmodium Falciparum Erythrocyte Binding Proteins

Sim, K.L, Chitnis, C., Miller, L.H. (NIAID)
Serial No. 98/119,677
Filed 10 Sep 93
Licensing Contact: Mark D. Hankins

Despite considerable research efforts worldwide it has not been possible to design an effective vaccine against malaria. The present invention provides the basis for an effective vaccine against the blood state of malaria infections.

This invention relates to the identification of functional domains of Plasmodium proteins which play a role in erythrocyte binding and invasion. The inventors have identified the erythrocyte binding domains of the sialic acid binding protein (SABP) of P. falciparum and the Duffy antigen binding protein (DABP) of P. vivax. The erythrocyte binding domains can be used as vaccines to induce immune responses which block erythrocyte binding and invasion by P. falciparum and P. vivax merozoites.

Glucose-6-Phosphatase: The Gene Protein and Related Mutations

Chou, J.Y., Lei, K.J. (NICHD)
Serial No. 08/119,773
Filed 10 Sep 93
Licensing Contact: Carpl C. Lavrich

This invention describes nucleic acid sequences and methods useful for producing recombinant glucose-6-phosphatase (c-6-Pase), an enzyme normally present in the liver, kidney, and intestine and needed in glycogen metabolism. Specific mutations in the gene human c-6-Pase cause a shortage or an inactivity of c-6-Pase which results in glycogen storage disease (GSD), type 1A. The invention further provides a kit and methods for detecting the mutations and thus diagnosing the genetic disease that caused GSD type 1A.

Method for Genetating Influenza A Viruses Bearing Attenuating Mutations in Internal Protein Genes

Murphy, B., Lawson, C.M., Subbarao, K.E. (NIAID)
Serial No. 08/123,933
Filed 20 Sep 93
Licensing Contact: Mark D. Hankins

This patent application describes a method of producing attenuated Influenza A strains for use as live Influenza A virus vaccine candidates. The method involves the introduction of one or more attenuating mutations in the polymerase basic protein 2 (PB2) gene of Influenza A virus. The attenuating mutations introduced to date are temperature-sensitive mutations. These mutations are introduced by site directed mutagenesis at specific sites into a cDNA copy of the PB2 gene. An RNA transcript of this mutant PB2 gene is recovered into an infectious influenza A virus using a host range restricted helper virus. This attenuating mutant PB2 gene can be transferred to each new variant of Influenza A virus as it appears in nature. Modifications of this technology permits introduction of mutations into: Polymerase basic protein 1 (PB1) genes; polymerase acidic protein (PA) genes; nuclear protein (NP) genes; membrane protein (M) genes; and non-structural protein (NS) genes. The patent application covering this invention is available for licensing and contains claims to: The methods of producing the attenuated strains; the attenuated strains produced by the methods; and methods of vaccination using the attenuated strains. Viruses containing mutant PB2 genes are also available for licensing.

A Predictive Assay for Suicidal Behavior

Nielsen, D.A., Goldman, D., Linnoila, M., Virkkunen, M. (NIAAA)
Serial No. 08/125,628
Filed 22 Sep 93
Licensing Contact: Arthur Cohn

The present invention describes methods for predicting suicidal and other abnormal behaviors. In particular, the methods are directed to the detection of polymorphisms in the tryptophan hydroxylase gene which are correlated with abnormal serotoninergic function and related behaviors. Serotoninergic activity is correlated with the concentration of the serotonin metabolite 5-hydroxyindoleacetic acid (5–HIAA) in the cerebrospinal fluid (CSF). Indices of decreased serotonin concentration are connected with anxiety related intolerance to delay and deficient control of impulses. Low concentrations of 5–HIAA in the CFS have been associated with risk of suicide in alcoholic, antisocial, and depressed patients. However, the concentration of CSF 5–HIAA's usefulness as a marker is limited by the difficulty and expense of obtaining CSF. This invention fulfills the need for an easily typed marker that is correlated with 5–HIAA concentration and suicidal behavior.

Target Antigens of Transmission Blocking Antibodies for Malaria Parasites

Kaslow, D.C., Duffy, P.E. (NIAID)
DHHS Reference No. E–149–92/1
Filed 22 Sep 93
Licensing Contact: Mark D. Hankins

This patent application is a continuation of U.S. Patent Application 07/912,294 which described Pgs28 a 28 kd protein found in Plasmodium gallinaceum. The new application describes a unique 28 kd protein expressed on the surface of ookinetes of Plasmodium Falciparum (Pfs28). This protein is useful as a malaria transmission blocking vaccine. The patent application covering this invention is available for licensing and contains claims to: The Pfs28 protein; Pfs28's amino acid and nucleic acid sequences; pharmaceutical compositions containing the polypeptide and nucleic acid sequences; and methods of preventing transmission of malaria using these pharmaceutical compositions.

Dated: February 3, 1994.
Donald P. Christoferson,
Acting Director, Office of Technology Transfer.
[FR Doc. 94–3737 Filed 2–17–94; 8:45 am]
BILLING CODE 4140–01–M

Workshop: Hereditary Breast, Ovarian, and Colon Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the National Cancer Institute (NCI) will sponsor a workshop to review the molecular genetics and epidemiology of hereditary cancer of the breast, ovary, and colon; to develop approaches to screening, early detection and chemoprevention of cancers in at-risk family members; and to discuss the psychosocial and ethical implications of genetic screening. This workshop will focus on approaches to the identification and study of families at risk, assuring quality in the development of wide-scale genetic testing, developing a framework for prevention/intervention studies, assessing the counseling needs of individuals at risk for hereditary cancer, and defining the evolving role of the physician in counseling patients concerning cancer risk.

All sessions will be open to the public; however, limited seating is available, and registration will be on a first-come, first-served basis.

DATES: The workshop will be held on April 27–29, 1994, in Washington, DC.

ADDRESSES: Meeting agendas and registration materials can be obtained from Ms. Andrea Brooks, RII Conference Planner, suite 300, Silver Spring, MD 20910 (telephone: 301–650–7417) or RII's Conference Department (telephone: 301–565–4048; fax: 301–565–5112).

FOR FURTHER INFORMATION CONTACT: Dr. Ruthann M. Giusti, Division of Cancer Treatment, National Cancer Institute, Building 31, room 3A44, Bethesda, Maryland 20892 (telephone 301–496–6404; fax: 301–496–0826).

Effective date: January 31, 1994.
Harold Varmus,
Director, NIH.
[FR Doc. 94–3735 Filed 2–17–94; 8:45 am]
BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: NHLBI SEP on Pulmonary Diseases.
Dates of Meeting: February 24, 1994.
Time of Meeting: 8:30 a.m.
Place of Meeting: National Institutes of Health, Building 31C, Conference Room 9, Bethesda, Maryland.
Agenda: To provide concept review for proposed contract or grant solicitations.
Contact Person: Dr. Suzanne Hurd, 5333 Westbard Avenue, Room 6A16, Bethesda, Maryland 20892, (301) 594–7430.

Name of Panel: NHLBI SEP on Clinical Applications and Prevention.
Dates of Meeting: February 22–23, 1994.
Time of Meeting: 9 a.m.
Place of Meeting: National Institutes of Health, Federal Building, 7550 Wisconsin Avenue, Conference Room B119, Bethesda, Maryland 20892.
Agenda: To provide concept review for proposed contract or grant solicitations.
Contact Person: Dr. Lawrence Friedman, Federal Building, 7550 Wisconsin Avenue, Room 212, Bethesda, Maryland 20892, (301) 496–2533.

This notice is being published less than fifteen days prior to the meeting due to difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 15, 1994.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 94–3911 Filed 2–17–94; 8:45 am]
BILLING CODE 4140–01–M

National Institute on Aging; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Subcommittee A of the Biological and Clinical Aging Review Committee.

This meeting will be open to the public as indicated below to discuss administrative details and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

This meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sections 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Gateway Building, room 2C218, National Institutes of Health, Bethesda, Maryland, 20892 (301/496–9322), will provide summaries of the meeting and a roster of the committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator listed for the meeting, in advance of the meeting.

Other information pertaining to the meeting can be obtained from the Scientific Review Administrator indicated below:

Name of Committee: Biological and Clinical Aging Review Subcommittee A.

Scientific Review Administrator: Arthur Schaerdel, D.V.M., Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Date of Meeting: February 27, 1994.

Place of Meeting: The Los Angeles Airport Hilton & Towers, 5711 West Century Boulevard, Los Angeles, California 90045.

Open: February 27 from 8 to 8:30 a.m.

Closed: February 27 from 8:30 a.m. to adjournment on February 27, 1994.

This notice is being published less than the 15 days prior to the meeting due to difficulties of coordinating schedules.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: February 15, 1994.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 94–3908 Filed 2–17–94; 8:45 am]
BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings To Review Individual Grant Applications

Scientific Review Administrator: Dr. Carole Jelsema, (301) 594–7311.

Date of Meeting: February 18, 1994.

Place of Meeting: Holiday Inn, Chevy Chase, MD.

Time of Meeting: 7:30 a.m.

Scientific Review Administrator: Dr. Anita Sostek, (301) 594–7358.

Date of Meeting: March 9, 1994.

Place of Meeting: Westwood Bldg, Rm. 391C, NIH, Bethesda, MD (Telephone Conference).

Time of Meeting: 1:00 p.m.

Scientific Review Administrator: Dr. Teresa Levitin, (301) 594–7141.

Date of Meeting: April 12, 1994.

Place of Meeting: Westwood Bldg, Rm. 303, Bethesda, MD (Telephone Conference).

Time of Meeting: 1:00 p.m.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 16, 1994.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 94–3912 Filed 2–17–94; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D–94–1048; FR–3648–D–01]

Acting Regional Administrator, Region IV (Atlanta) Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Regional Administrator for Region IV.

EFFECTIVE DATE: January 8, 1994.

FOR FURTHER INFORMATION CONTACT: Charles A. Lipthrott, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, room 634, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303–3388, 404–331–5199.

Designation of Acting Regional Administrator for Region IV

Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator during the absence of, or vacancy in the position of, the Regional Administrator, with all the powers, functions, and duties redelegated or assigned to the Regional Administrator: Provided, That no official is authorized to serve as Acting Regional Administrator unless all other employees whose names or titles precede his/hers in this designation are unable to serve by reason of absence:

1. Georgia Program Coordinator
2. Deputy Regional Administrator
3. Director, Operational Support
4. Director, Office of Housing
5. Director, Office of Administration
6. Director, Office of Public Housing
7. Director, Office of Community Planning and Development
8. Regional Counsel
9. Director, Office of Fair Housing and Equal Opportunity.

This designation supersedes the designation effective May 18, 1993, (58 FR 45909, August 31, 1993). (Delegation of Authority by the Secretary effective May 4, 1962, (27 FR 4319, May 4, 1962); Dept. Interim Order II (31 FR 815, January 21, 1966).

This designation shall be effective as of January 8, 1994.

Raymond A. Harris,
Regional Administrator-Regional Housing Commissioner, Region IV (Atlanta).
[FR Doc. 94–3688 Filed 2–17–94; 8:45 am]
BILLING CODE 4210–29–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–3491; FR–3314–N–02]

Announcement of Fiscal Year 1993 Funding Awards for Technical Assistance to Support a Coordinated Agenda for the Southwestern Area of the U.S. (Casa) for Colonias

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of Fiscal Year 1993 funding awards made for the purpose of empowering residents of designated "colonias" in the states of California, New Mexico and Texas in their efforts to improve living standards and conditions within their communities. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Barbara Dorf, Office of Community Planning and Development, room 7214, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–3176. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This Community Technical Assistance program is authorized under section 107(b)(5) of the Housing and Urban Community Development Act of 1974 (42 U.S.C. 5301–5320).

In a Notice of Funding Availability (NOFA) published in the **Federal Register** on September 29, 1992 (57 FR 44854), the Department announced the availability, for Fiscal Year 1993, of $2.3 million in Community Development Technical Assistance Program funds to be used for the purpose of empowering residents of designated "colonias" in the States of California, New Mexico and Texas in their efforts to improve living standards and conditions within their communities. Technical assistance funds will be available for the development of programs for decent, affordable and energy-efficient housing; community water and sewer systems, including drainage systems and hook-up services to colonia residents; promotion of local economic development programs and projects including the establishment of state or federal (if applicable) Enterprise Zones within the colonias; and providing job training and self-employment programs for colonia youth and residents.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of these awards, as follows:

FISCAL YEAR 1993 FUNDING AWARDS FOR TECHNICAL ASSISTANCE TO SUPPORT A COORDINATION AGENDA FOR THE SOUTHWESTERN AREA OF THE U.S. (CASA) FOR COLONIAS

Name of recipient	Funding amount
Hidalgo County, Texas, Contact: Anthony Covacevich, Urban County Director, County of Hidalgo, Texas, 100 East Cano, Edinburg, Texas 78539, (210) 318–2619	$175,218
Community Development Corporation of Brownsville, Texas, Contact: Frank Berjarano, Director, Program Development and Management, Cameron County, 964 E. Harrison, Brownsville, Texas 78520, (210) 541–0828	200,000
Middle Rio Grande Development Council, Contact: Michael Patterson, Executive Director, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876–3533	60,745
Colonias Del Valle, Inc., Contact: Arturo Ramirez, Project Director, Colonias Del Valle, Inc., P.O. Box 746, Pharr, Texas 78577, (210) 787–9903	175,699
City of Rio Bravo, Texas, Contact: Raul Aguero, Mayor, City of Rio Bravo, 1419 Centno Lane, Rio Bravo, Texas 78043, (512) 725–2807	115,557

FISCAL YEAR 1993 FUNDING AWARDS FOR TECHNICAL ASSISTANCE TO SUPPORT A COORDINATION AGENDA FOR THE SOUTHWESTERN AREA OF THE U.S. (CASA) FOR COLONIAS—Continued

Name of recipient	Funding amount
State of Texas, Department of Housing and Community Affairs, Contact: Ruth Cedillo, Director, Texas Department of Community Affairs, P.O. Box 13941, Austin, Texas 78711–3941, (512) 475–3882	350,000
State of California, El Centro, California, Contact: William J. Pavão, Community Development Block Grant Program Manager, Department of Housing and Community Development, 1800 Third Street, Sacramento, California 95814, (916) 327–887	100,000
State of New Mexico, Department of Finance and Administration, Local Government Division, Contact: Tedodoro "Ted" Guambana, Director, Local Government Division, State of New Mexico, Department of Finance and Administration, Bataan Memorial Building, Suite 201, Sante Fe, New Mexico 87503, (505) 827–4950	350,000

Dated: February 9, 1994.
Andrew Cuomo,
Assistant Secretary for Community Planning and Development.
[FR Doc. 94–3690 Filed 2–17–94; 8:45 am]
BILLING CODE 4210–29–P

Office of the Assistant Secretary for Administration

[Docket No. N–94–3718; FR–3661–N–01]

Privacy Act of 1974; Deletion of System of Records

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notification of deletion of an existing system of records.

SUMMARY: The Department proposes to delete one system of records from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: The deletion will be effective February 18, 1994.

ADDRESSES: Rules Docket Clerk, room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT:

Jeanette Smith, Privacy Act Officer. Telephone Number (202) 708–2374. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Department has determined that this system is no longer necessary.

Marilynn A. Davis,

Assistant Secretary for Administration.

Deletion

HUD/H–1

SYSTEM NAME:

Section 8 Lower-Income Rental Assistance Files. (46 FR 54906, November 4, 1981) and "Federal Register Privacy Act Issuances, 1991 Compilation, Volume I."

Reason:

The information contained in this system of records, HUD/H–1, Section 8 Lower-Income Rental Assistance Files, will be subsumed in HUD/H–11, Tenant Housing Assistance and Contract Verification Data.

[FR Doc. 94–3689 Filed 2–17–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–71]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Bob Swieconek, Headquarters, Army Corps of Engineers, Attn: CERE–MC, room 4224, 20 Massachusetts Ave., NW., Washington, DC 20314–1000; (202) 272–1750; Dept. of Veterans Affairs: Douglas Shinn, Management Analyst, Dept. of Veterans Affairs, room 414 Lafayette Building, 811 Vermont Avenue NW., Washington, DC 20420; (202) 233–5026; U.S. Air Force: Bob Menke, Area-MI, Bolling AFB, 172 Luke Avenue, suite 104, Washington, DC 20332–5113; (202) 767–6235; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh Street SW., room 10319, Washington, DC 20590; (202) 366–4246; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Avenue SW., Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers).

Dated: February 18, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 02/18/94

Suitable/Available Properties

Buildings (by Stote)

Alabama

Bldg. TU–22
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776–
Landholding Agency: COE
Property Number: 319011551
Status: Unutilized
Comment: 1,080 sq. ft., 1-story frame residence, needs minor repair, most recent use—lock tender's dwelling.

Bldg. TU–21
Selden Lock and Dam
Route 1

Sawyerville Co: Hale AL 36776–
Landholding Agency: COE
Property Number: 319011552
Status: Unutilized
Comment: 1,080 sq. ft., 1 story frame residence, needs minor repair, most recent use—lock tender's dwelling.

Bldg. TU–23
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776–
Landholding Agency: COE
Property Number: 319011553
Status: Unutilized
Comment: 1,080 sq. ft., 1 story frame residence, needs minor repair, most recent use—lock tender's dwelling.

Bldg. TU–24
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776–
Landholding Agency: COE
Property Number: 319011554
Status: Unutilized
Comment: 1,080 sq. ft., 1 story frame residence, needs minor repair, most recent use—lock tender's dwelling.

Bldg. 19, VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 979220006
Status: Underutilized
Comment: Portion of a 5,320 sq. ft. 4-story structure.

Arizona

Facility 80002
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340052
Status: Unutilized
Comment: 1,352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93.

Facility 80003
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340053
Status: Unutilized
Comment: 1,352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93.

Facility 80004
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340054
Status: Unutilized
Comment: 1,096 sq. ft., wood frame, most recent use—2 bedroom residence, scheduled to be vacant 12/93.

Facility 80005
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340055
Status: Unutilized
Comment: 1,096 sq. ft., wood frame, most recent use—2 bedroom residence, scheduled to be vacant 12/93.

Facility 80006
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340056
Status: Unutilized
Comment: 1,352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93.

Facility 80007
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340057
Status: Unutilized
Comment: 1,352 sq. ft., wood frame, most recent use—3 bedroom residence, scheduled to be vacant 12/93.

Facility 80008
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340058
Status: Unutilized
Comment: 1,096 sq. ft., wood frame, most recent use—2 bedroom residence, scheduled to be vacant 12/93.

Facility 80009
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340059
Status: Unutilized
Comment: 1,096 sq. ft., wood frame; most recent use—2 bedroom residence, scheduled to be vacant 12/93.

Facility 80010
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340060
Status: Unutilized
Comment: 1,352 sq. ft., wood frame; most recent use—3 bedroom residence, scheduled to be vacant 12/93.

Facility 80011
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340061
Status: Unutilized
Comment: 1,352 sq. ft., wood frame; most recent use—3 bedroom residence, scheduled to be vacant 12/93.

Facility 80012
Holbrook Radar Site
1313 North 8th Avenue
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340062
Status: Unutilized
Comment: 1,096 sq. ft., wood frame; most recent use—2 bedroom residence, scheduled to be vacant 12/93.

California

Bldg. 604
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010237
Status: Unutilized
Comment: 1,232 sq. ft., stucco-wood frame; most recent use—housing.

Bldg. 605
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010238
Status: Unutilized
Comment: 1,232 sq. ft., stucco-wood frame; most recent use—housing.

Bldg. 612
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010239
Status: Unutilized
Comment: 1,232 sq. ft., stucco-wood frame; most recent use—housing.

Bldg. 611
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010240
Status: Unutilized
Comment: 1,232 sq. ft., stucco-wood frame; most recent use—housing.

Bldg. 613
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010241
Status: Unutilized
Comment: 1,232 sq. ft., stucco-wood frame; most recent use—housing.

Bldg. 614
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010242
Status: Unutilized
Comment: 1,232 sq. ft., stucco-wood frame; most recent use—housing.

Bldg. 615
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010243
Status: Unutilized
Comment: 1,232 sq. ft., stucco-wood frame; most recent use—housing.

Bldg. 616
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010244
Status: Unutilized
Comment: 1,232 sq. ft., stucco-wood frame; most recent use—housing.

Bldg. 617
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010245
Status: Unutilized
Comment: 1,232 sq. ft., stucco-wood frame; most recent use—housing.

Bldg. 618
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010246

Status: Unutilized
Comment: 1,232 sq. ft., stucco-wood frame; most recent use—housing; needs rehab.
Bldg. 20—VA Medical Center
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles–CA 90073–
Landholding Agency: VA
Property Number: 979210003
Status: Unutilized
Comment: 8,758 gross sq. ft., one story wooden, requires complete restoration meeting standards of national preservation laws and guidelines.
Bldg. 13, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles-CA 90073–
Landholding Agency: VA
Property Number: 979220001
Status: Underutilized
Comment: portion of 66,165 sq. ft. bldg., needs major rehab, no util., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby.
Bldg. 156, VAMC
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles-CA 90073–
Landholding Agency: VA
Property Number: 979230015
Status: Underutilized
Comment: portion of 39,454 sq. ft. bldg., presence of asbestos, needs rehab, seismic reinforcement deficiencies, in his. district, potentially hazardous due to nearby radioactive material.

Florida

Bldg. CN–3
1651 S. Franklin Lock Road
Alva Co: Lee-FL 33920–
Landholding Agency: COE
Property Number: 319130006
Status: Unutilized
Comment: 1,500 sq. ft., 1 story concrete block residence, off-site use only.
Bldg. SF–97
Port Mayaca Lock & Spillway
9 miles north of Canal Point
Port Mayaca Co: Martin FL-33438–
Landholding Agency: COE
Property Number: 319340001
Status: Unutilized
Comment: 1,700 sq. ft., 1-story concrete block/stucco, most recent use—laboratory, off-site use only.

Guam

Anderson VOR
In the municipality of Dededo
Dededo Co: Guam GU-96912–
Location: Access is through Route 1 and Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010267
Status: Unutilized
Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.
Anderson Radio Beacon Annex
In the municipality Dededo
Dededo Co: Guam GU-96912–
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010268
Status: Unutilized
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.
Annex No. 4
Anderson Family Housing
Municipality of Dededo
Dededo Co: Guam GU-96912–
Location: Access is through Route 1. Marine Drive.
Landholding Agency: Air Force
Property Number: 189010545
Status: Underutilized
Comment: various sq. ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam.
Harmon VORsite (Portion) (AJKZ)
Municipality of Dededo
Dededo Co: Guam GU-96912–
Location: Approx. 12 miles southwest of Anderson AFB proper.
Landholding Agency: Air Force
Property Number: 189120234
Status: Unutilized
Comment: 550 sq. ft. bldg., needs rehab on 82 acres.

Idaho

Bldg. 121
Mountain Home Air Force Base
Maine Avenue (See County) Co: Elmore-ID 83648–
Landholding Agency: Air Force
Property Number: 189030007
Status: Excess
Comment: 3,375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski-IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.
Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski-IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.
Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010003
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame, most recent use—residence.
Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame, most recent use—residence.
Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame.
Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame, most recent use—residence.
Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame, most recent use—residence.

Indiana

Bldg. 01, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401–8772
Landholding Agency: COE
Property Number: 319140002
Status: Unutilized
Comment: 1,312 sq. ft., 1 story brick residence, off-site use only.
Bldg. 02, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401–8772
Landholding Agency: COE
Property Number: 319140003
Status: Unutilized
Comment: 1,312 sq. ft., 1 story brick residence, off-site use only.
Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230007
Status: Underutilized
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house, access restrictions.

Iowa

Bldg. 00627
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310001
Status: Unutilized
Comment: 1,932 sq. ft., 1-story concrete block bldg., most recent use—storage, pigeon infested.

Bldg. 00669
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310002
Status: Unutilized
Comment: 1,113 sq. ft., 1-story concrete block bldg., contamination clean-up in process.
Bldg. 00106, Fort Dodge
Ft. Dodge Co: Webster IA 50501–
Landholding Agency: Air Force
Property Number: 189310051
Status: Unutilized
Comment: 200 sq. ft., 1-story wood frame, needs rehab, most recent use—storage.
Bldg.—Prairie Ridge
Rathburn Lake Project, R.R. #3
Centerville Co: Appanoose IA 52544–
Landholding Agency: COE
Property Number: 319340002
Status: Unutilized
Comment: water storage tower, off-site use only.
Bldg.—Bridgeview
Rathburn Lake Project, R. R. #3
Centerville Co: Appanoose IA 52544–
Landholding Agency: COE
Property Number: 319340003
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.
Bldg.—Island View
Rathbun Lake Project, R.R. #3
Centerville Co: Appanoose IA 52544–
Landholding Agency: COE
Property Number: 31934004
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.
Bldg.—Rolling Cove
Rathbun Lake Project, R.R. #3
Centerville Co: Appanoose IA 52544–
Landholding Agency: COE
Property Number: 319340005
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.

Kansas

Trailer—Clinton Lake
Rt. 5, Box 109B
Lawrence Co: Douglas KS 66046–
Landholding Agency: COE
Property Number: 319410003
Status: Excess
Comment: double-wide trailer (24×50), most recent use—residence, needs repair, off-site use only.

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Landholding Agency: COE
Property Number: 319010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.
Kentucky River Lock and Dam 3
Pleasureville Co: Henry KY 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010060
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficiencies.
Bldg. 1
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011628
Status: Unutilized
Comment: 1,530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.
Bldg. 2
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011629
Status: Unutilized
Comment: 1,530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.
Utility Bldg, Nolin River Lake
Moutardier Recreation Site
Co: Edmonson KY
Landholding Agency: COE
Property Number: 319320002
Status: Unutilized
Comment: 541 sq. ft., concrete block, off-site use only.
Bldg. 2—Green River Lake
544 Lake Road
Campbellsville Co: Taylor KY 42718–9805
Landholding Agency: COE
Property Number: 319410001
Status: Unutilized
Comment: 1,620 sq. ft., one story, brick veneer residence, presence of asbestos, off-site use only.
Bldg. 1—Green River Lake
544 Lake Road
Campbellsville Co: Taylor KY 42718–9805
Landholding Agency: COE
Property Number: 319410002
Status: Unutilized
Comment: 1,620 sq. ft., one story, brick veneer residence, presence of asbestos, off-site use only.

Louisiana

Barksdale Radio Beacon Annex
Curtis Co: Bossier LA 71111–
Location: 7 miles south of Bossier City on highway 71 south; left 1¼ miles on highway C1552.
Landholding Agency: Air Force
Property Number: 189010269
Status: Unutilized
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Maine

31 Capehart Family Houses
Charleston Family Housing Annex, Union St.
Bangor Co: Penobscot ME
Landholding Agency: Air Force
Property Number: 189310052
Status: Excess
Comment: 2916–7097 sq. ft., 1–2 story wood, 3-duplexes, 27-four plexes totaling 114 units with garages
GSA Number: 2–D–ME–526G.

Michigan

Bldg. 30
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010779
Status: Excess
Comment: 2,593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.
Bldg. 46
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010786
Status: Excess
Comment: 5,898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.
Bldg. 51
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010791
Status: Excess
Comment: 1,134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 52
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010792
Status: Excess
Comment: 1,134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 53
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010793
Status: Excess
Comment: 1,134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 54
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010794
Status: Excess
Comment: 1,134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 55
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010795
Status: Excess
Comment: 1,134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 56
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010796
Status: Excess
Comment: 1,134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.

Bldg. 57
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010797
Status: Excess
Comment: 1,134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 58
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010798
Status: Excess
Comment: 1,134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 59
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010799
Status: Excess
Comment: 1,134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 60
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010800
Status: Excess
Comment: 1,134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 61
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010801
Status: Excess
Comment: 1,134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 62
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010802
Status: Excess
Comment: 1,134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 63
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010803
Status: Excess
Comment: 1,306 sq. ft.; 1-story wood frame residence with garage; possible asbestos.
Bldg. 64
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010804
Status: Excess
Comment: 1,306 sq. ft.; 1-story wood frame residence with garage; possible asbestos.
Bldg. 65
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010805
Status: Excess
Comment: 1,306 sq. ft.; 1-story wood frame residence with garage; possible asbestos.
Bldg. 66
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010806
Status: Excess
Comment: 1,306 sq. ft.; 1-story wood frame residence with garage; possible asbestos.
Bldg. 67
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010807
Status: Excess
Comment: 1,306 sq. ft.; 1-story wood frame residence with garage; possible asbestos.
Bldg. 68
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010808
Status: Excess
Comment: 1,478 sq. ft.; 1-story wood frame residence with garage; possible asbestos.
Bldg. 70
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010809
Status: Excess
Comment: 1,394 sq. ft.; 1-story concrete block; possible asbestos; most recent use—youth center.
Bldg. 72
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010811
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 73
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010812
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 74
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010813
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 75
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010814
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 76
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010815
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 77
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010816
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 78
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010817
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 79
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010818
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 80
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010819
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 81
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010820
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 82
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010821
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 83
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010822
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 84
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010823
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.

Bldg. 85
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010824
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 86
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010825
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 87
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010826
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 88
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010827
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 89
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010828
Status: Excess
Comment: 1,168 sq. ft.; 1-story wood frame residence; potential utilities; possible asbestos.
Bldg. 97
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010829
Status: Excess
Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.
Bldg. 98
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010830
Status: Excess
Comment: 114 sq. ft.; 1 floor; potential utilities; most recent use—pump house.
Bldg. 10
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010836
Status: Excess
Comment: 1,056 sq. ft.; 1-story wood frame residence.
Bldg. 216
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010847
Status: Excess
Comment: 780 sq. ft.; 1-story wood frame housing garage.
Bldg. 217
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010848
Status: Excess
Comment: 780 sq. ft.; 1-story wood frame housing garage.
Bldg. 218
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010849
Status: Excess
Comment: 780 sq. ft.; 1-story wood frame housing garage.
Bldg. 219
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010850
Status: Excess
Comment: 780 sq. ft.; 1-story wood frame housing garage.
Bldg. 220
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010851
Status: Excess
Comment: 780 sq. ft.; 1-story wood frame housing garage.
Bldg. 221
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010852
Status: Excess
Comment: 780 sq. ft.; 1-story wood frame housing garage.
Bldg. 222
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010853
Status: Excess
Comment: 780 sq. ft.; 1-story wood frame housing garage.
Bldg. 223
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010854
Status: Excess
Comment: 780 sq. ft.; 1-story wood frame housing garage.
Bldg. 224
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010855
Status: Excess
Comment: 780 sq. ft.; 1-story wood frame housing garage.
Bldg. 215
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010856
Status: Excess
Comment: 390 sq. ft.; 1-story wood frame housing garage.
Bldg. 212
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010859
Status: Excess
Comment: 780 sq. ft.; 1-story wood frame housing garage.
Bldg. 214
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010861
Status: Excess
Comment: 780 sq. ft.; 1-story wood frame housing garage.
Bldg. 23
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010865
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldg. 24
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010866
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldg. 36
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010872
Status: Excess
Comment: 25 sq. ft.; 1-floor metal frame; prior use—storage of fire hoses.
Bldg. 37
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010873
Status: Excess
Comment: 25 sq. ft.; 1-floor metal frame; prior use—storage of fire hoses.
Bldg. 201
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010879
Status: Excess
Comment: 25 sq. ft.; 1-floor metal frame; prior use—storage of fire hoses.

Montana

Bldg. 00007
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330066
Status: Unutilized
Comment: 992 sq. ft., 1-story metal, most recent use—auto/hobby shop.
Bldg. 00008
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330067
Status: Unutilized
Comment: 2,640 sq. ft., 1-story metal, most recent use—vehicle parking.
Bldg. 00016
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force

Property Number: 189330068
Status: Unutilized
Comment: 3,604 sq. ft., 1-story cinder block, most recent use—storage.
Bldg. 00023
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330069
Status: Unutilized
Comment: 3,315 sq. ft., 1-story wood, most recent use—fire station.
Bldg. 00024
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330070
Status: Unutilized
Comment: 5,016 sq. ft., 1-story brick, most recent use—dormitory.
Bldg. 00027
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330071
Status: Unutilized
Comment: 14,280 sq. ft., 1-story cinder block, most recent use—recreation center and commissary store.
Bldg. 00029
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330072
Status: Unutilized
Comment: 63 sq. ft., 1-story metal.
Bldg. 00031
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330073
Status: Unutilized
Comment: 3,130 sq. ft., 1-story cinder block, most recent use—maintenance shop and admin.
Bldg. 00032
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330074
Status: Unutilized
Comment: 64 sq. ft., metal, most recent use—storage.
Bldg. 00035
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330075
Status: Unutilized
Comment: 2,252 sq. ft., 4-story metal, most recent use—storage.
Bldg. 00039
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330077
Status: Unutilized
Comment: 874 sq. ft., 1-story masonry, most recent use—storage.
Bldg. 00041
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330078
Status: Unutilized
Comment: 108 sq. ft., 1-story masonry.
Bldg. 00042
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330079
Status: Unutilized
Comment: 760 sq. ft., 1-story masonry, most recent use—warehouse.
Bldg. 00044
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330080
Status: Unutilized
Comment: 3,298 sq. ft., 1-story metal, most recent use—wood hobby shop.
Bldgs. 51, 52, 56, 58
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330081
Status: Unutilized
Comment: 1,352 sq. ft., each, 1-story wood, most recent use—residential.
Bldgs. 53–55, 57, 59, 61, 63, 65, 67, 69, 71
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330082
Status: Unutilized
Comment: 1,152 sq. ft., each, 1-story wood, most recent use—residential.
Bldgs. 60, 62, 64, 66, 68
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330083
Status: Unutilized
Comment: 1,361 sq. ft., each, 1-story wood, most recent use—residential.
Bldgs. 70, 72, 74, 78
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330084
Status: Unutilized
Comment: 1,455 sq. ft., each, 1-story wood, most recent use—residential.
Bldgs. 76, 80
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330085
Status: Unutilized
Comment: 1,343 sq. ft., each, 1-story wood, most recent use—residential.
Bldg. 82
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330086
Status: Unutilized
Comment: 1,553 sq. ft., each, 1-story wood, most recent use—residential.
Bldgs. 150, 152, 154, 156, 158, 160, 162, 164, 168, 170, 172, 174, 176, 178, 180, 182, 184—
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330087
Status: Unutilized
Comment: 1,247 sq. ft., each, 1-story wood, most recent use—residential.
Bldgs. 106–109, 112–113
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330088
Status: Unutilized
Comment: 36 sq. ft., each, most recent use—fire hose house.
Bldgs. 202, 204, 206, 212, 214, 216, 218
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330089
Status: Unutilized
Comment: 72 sq. ft., each, most recent use—storage units.
Bldgs. 208, 210
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330090
Status: Unutilized
Comment: 36 sq. ft., each, most recent use—storage.

New Jersey

Sandy Hook Light
Middletown Co: Monmouth NJ 07732–
Location: Adjacent to Gateway National Recreation Area
Landholding Agency: DOT
Property Number: 879340001
Status: Unutilized
Comment: Brick 29' base diameter lighthouse, historic structure, needs major rehab.

North Carolina

Dwelling 1
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: DOT
Property Number: 879120083
Status: Unutilized
Comment: One story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.
Dwelling 2
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: DOT
Property Number: 879120084
Status: Unutilized
Comment: One story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.
Dwelling 3
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: DOT
Property Number: 879120085
Status: Unutilized
Comment: One story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 319120018
Status: Unutilized
Comment: 1,600 sq. ft. bldg. with 1/2 acre of land, 2-story brick frame, needs rehab, on Natl. Register of Historic Places, no utilities, off-site use only.
William H. Harsha Lake Bldg.
3782 Williamsburg-Bantam Road
Batavia Co: Clermont OH 45106–
Landholding Agency: COE
Property Number: 319240011
Status: Unutilized
Comment: 1,568 sq. ft., wood frame residence, needs major repairs, off-site use only.

Oklahoma

Govt. Quarters #1
Fort Supply Lake
Section 16, T 24 N, R 22 E
Ft. Supply Co: Woodward OK 73841–0248
Landholding Agency: COE
Property Number: 319330001

Status: Excess
Comment: 1,568 sq. ft., 1-story steel frame, most recent use—residential, off-site use only.
Govt. Quarters #2
Fort Supply Lake
Section 16, T 24 N, R 22 E
Ft. Supply Co: Woodward OK 73841–0248
Landholding Agency: COE
Property Number: 319330002
Status: Excess
Comment: 1,568 sq. ft., 1-story wood frame, most recent use—residential, off-site use only.

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242–
Landholding Agency: COE
Property Number: 319210008
Status: Unutilized
Comment: 1,015 sq. ft., 2-story brick residence, off-site use only.
Bldg. 25—VA Medical Center
Delafield Road
Pittsburgh Co: Allegheny PA 15215–
Landholding Agency: VA
Property Number: 979210001
Status: Unutilized
Comment: 133 sq. ft., 1-story brick guard house, needs rehab.

South Carolina

Bldg. 1
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821–
Location: 1/2 mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011544
Status: Excess
Comment: 1,900 sq. ft.; 1-story masonry frame; possible asbestos; most recent use—storage, off-site removal only.
Bldg. 2
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821–
Location: 1/2 mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011545
Status: Excess
Comment: 1,900 sq. ft.; 1-story masonry frame; possible asbestos; most recent use—storage, off-site removal only.
Bldg. 3
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821–
Location: 1/2 mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011546
Status: Excess
Comment: 1,900 sq. ft.; 1-story masonry frame; possible asbestos; most recent use—storage, off-site removal only.
Bldg. 4
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821–
Location: 1/2 mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011547
Status: Excess
Comment: 1,900 sq. ft.; 1-story masonry frame; possible asbestos; most recent use—storage, off-site removal only.
Bldg. 5
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821–
Location: 1/2 mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011548
Status: Excess
Comment: 1,900 sq. ft.; 1-story masonry frame; possible asbestos; most recent use—storage, off-site removal only.

South Dakota

West Communications Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340051
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage.
Bldg. 1, Fort Randall
Lake Francis Case Project
RR 2, Box 20
Bonesteel Co: Gregory SD 57317–
Landholding Agency: COE
Property Number: 319410004
Status: Unutilized
Comment: 1,403 sq. ft., 2-story residence, basement is full of water, off-site use only.
Garage 1, Fort Randall
Lake Francis Case Project
RR 2, Box 20
Bonesteel Co: Gregory SD 57317–
Landholding Agency: COE
Property Number: 319410005
Status: Unutilized
Comment: 364 sq. ft. garage, off-site use only.
Garage 2, Fort Randall
Lake Francis Case Project
RR 2, Box 20
Bonesteel Co: Gregory SD 57317–
Landholding Agency: COE
Property Number: 319410006
Status: Unutilized
Comment: 288 sq. ft. garage, off-site use only.
Granary, Fort Randall
Lake Francis Case Project
RR 2, Box 20
Bonesteel Co: Gregory SD 57317–
Landholding Agency: COE
Property Number: 319410007
Status: Unutilized
Comment: 448 sq. ft., most recent use—storage, off-site use only.
Bldg. #1
Lake Francis Case Project
RR 2, Box 20
Bonesteel Co: Gregory SD 57317–
Landholding Agency: COE
Property Number: 319410008
Status: Unutilized
Comment: 2,400 sq. ft. barn, most recent use—storage, off-site use only.
Barn #2, Fort Randall
Lake Francis Case Project
RR 2, Box 20
Bonesteel Co: Gregory SD 57317–
Landholding Agency: COE
Property Number: 319410009
Status: Unutilized
Comment: 1,248 sq. ft. barn, most recent use—storage, off-site use only.
Machine Shed, Fort Randall
Lake Francis Case Project
RR 2, Box 20
Bonesteel Co: Gregory SD 57317–
Landholding Agency: COE
Property Number: 319410010
Status: Unutilized
Comment: 2,275 sq. ft. barn, most recent use—storage, off-site use only.
Concrete Silo, Fort Randall
Lake Francis Case Project
RR 2, Box 20
Bonesteel Co: Gregory SD 57317–
Landholding Agency: COE
Property Number: 319410011
Status: Unutilized
Comment: 18,000 bushel capacity, most recent use—storage, off-site use only.
Metal Silo, Fort Randall
Lake Francis Case Project
RR 2, Box 20
Bonesteel Co: Gregory SD 57317–
Landholding Agency: COE
Property Number: 319410012
Status: Unutilized
Comment: 18,000 bushel capacity, most recent use—storage, off-site use only.
Shed, Fort Randall
Lake Francis Case Project
RR 2, Box 20
Bonesteel Co: Gregory SD 57317–
Landholding Agency: COE
Property Number: 319410013
Status: Unutilized
Comment: 120 sq. ft. barn, most recent use—storage, off-site use only.
Chicken Coop, Fort Randall
Lake Francis Case Project
RR 2, Box 20
Bonesteel Co: Gregory SD 57317–
Landholding Agency: COE
Property Number: 319410014
Status: Unutilized
Comment: 160 sq. ft., most recent use—chicken production, off-site use only.

Tennessee

Bldg. 16, VAMC Mountain Home
Johnson Co: Washington TN 37604–
Landholding Agency: VA
Property Number: 979220007
Status: Unutilized
Comment: 3,215 sq. ft., 3-story wood frame residence, needs repair, subject to historic preservation requirements.

Texas

Cabin, Texoma Lake
Lot 100, Tract 673, Mill Creek Estates Co: Grayson TX
Landholding Agency: COE
Property Number: 319330003
Status: Excess
Comment: 975 sq. ft., 1-story wood frame with asbestos and masonite wall, most recent use—residential, off-site use only.
House, Texoma Lake
Lot 102, Tract 669, Mill Creek Estates Co: Grayson TX
Landholding Agency: COE
Property Number: 319330004
Status: Excess

Comment: 1,296 sq. ft., 1-story brick veneer, most recent use—residential, off-site use only.

Virginia

Housing
Rt. 637—Gwynnville Road
Gwynn Island Co: Mathews VA 23066–
Landholding Agency: DOT
Property Number: 879120082
Status: Unutilized
Comment: 929 sq. ft., 1-story residence.

Washington

Residence—Tract 1500–1
LSRFWCP Area, Hwy 12
Walla Walla Co: Walla Walla WA 99362–
Landholding Agency: COE
Property Number: 319320006
Status: Excess
Comment: 1,176 sq. ft., 1-story frame residence, need roadway easement, off-site use only.

West Virginia

House—Stonewall Jackson Lake
Entrance to State Park off Route 19
Roanoke Bay Co: Lewis WV 26452–
Landholding Agency: COE
Property Number: 319320007
Status: Excess
Comment: 2,367 sq. ft., 1-story frame residence, off-site use only.

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011524
Status: Unutilized
Comment: 1,224 sq. ft.; 2-story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011525
Status: Unutilized
Comment: 908 sq. ft.; 2-story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 319011527
Status: Unutilized
Comment: 1,290 sq. ft.; 2-story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011531
Status: Unutilized
Comment: 1,300 sq. ft.; potential utilities; 2-story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Landholding Agency: COE
Property Number: 319011533
Status: Unutilized
Comment: 1,952 sq. ft.; 2-story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Landholding Agency: COE
Property Number: 319011535
Status: Unutilized
Comment: 1,224 sq. ft.; 2-story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 319011536
Status: Unutilized
Comment: 1,224 sq. ft.; 2-story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010056
Status: Underutilized
Comment: 2,200 sq. ft., 2-story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Wyoming

Glendale Microwave Bldg.
Section 1
Cody Co: Park WY 82414–
Landholding Agency: Energy
Property Number: 419220001
Status: Excess
Comment: 223 sq. ft., metal frame, communication equipment bldg., limited utilities, off-site removal only.

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 979010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE Property Number: 319010071
Status: Unutilized
Comment: 77.6 acres.

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010072
Status: Unutilized
Comment: 198.5 acres.

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010073
Status: Unutilized
Comment: 50.46 acres.

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010074
Status: Unutilized
Comment: 236.37 acres.

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010075
Status: Unutilized
Comment: 187.30 acres.

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010076
Status: Unutilized
Comment: 13.0 acres.

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010077
Status: Unutilized
Comment: 0.27 acres.

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010078
Status: Unutilized
Comment: 14.6 acres.

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010079
Status: Unutilized
Comment: 6.60 acres.

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010080
Status: Unutilized
Comment: 4.5 acres.

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010081

Status: Unutilized
Comment: 19.50 acres.

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 319010083
Status: Unutilized
Comment: 46 acres.

California

60 AGR/DE
Travis ILS Outer Marker Annex
Rio-Dixon Road
Travis AFB Co: Solano CA 94535–5496
Location: State Highway 113
Landholding Agency: Air Force
Property Number: 189010189
Status: Excess
Comment: .13 acres; most recent use—location for instrument landing systems equipment.

Lake Mendocino
1160 Lake Mendocino Drive
Ukiah Co: Mendocino CA 95482–9404
Landholding Agency: COE
Property Number: 319011015
Status: Unutilized
Comment: 20 acres; steep, dense brush; potential utilities.

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Landholding Agency: VA
Property Number: 979240001
Status: Underutilized
Comment: 4 acres; landslide area.

Guam

Annex 1
Andersen Communication
Dededo Co: Guam GU 96912–
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010427
Status: Underutilized
Comment: 862 acres; subject to utilities easements.

Annex 2, (Partial)
Andersen Petroleum Storage
Dededo Co: Guam GU 96912–
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010428
Status: Underutilized
Comment: 35 acres; subject to utilities easements.

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moultr IL 62565–9804
Landholding Agency: COE
Property Number: 319240004
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions.

Indiana

Tracts 903, 905, 905–C
Patoka Lake Project
Taswell Co: Crawford IN 47527–
Location: From French Lick, IN, take SR 145S for 10 miles to intersection with SR 164, property lies east and adjecent to highway 145.
Landholding Agency: COE
Property Number: 319030003
Status: Excess
Comment: 22.35 acres; limited utilities.

Tracts 142–A, 143
Patoka Lake Project
Dubois Co: Dubois IN 47527–9661
Location: From French Lick, IN take SR 145 S. for 20 miles to SR 164, go west on 164 for 7 miles to Celestine Road, go North on Celestine for 5 miles to Dubois Co. Road 475, then right for ¼ mile to property.
Landholding Agency: COE
Property Number: 319030004
Status: Excess
Comment: 21.30 acres; limited utilities; subject to periodic flooding.

Tract 142–B
Patoka Lake Project
Dubois Co: Dubois IN 47527–9661
Location: From French Lick, IN take SR 145 S for 20 miles to SR 164, go west on 164 for 7 miles to Celestine Road, go North on Celestine for 5 miles to Dubois Co. Road 475, then right for ¼ miles to property.
Landholding Agency: COE
Property Number: 319030005
Status: Excess
Comment: 4.74 acres; limited utilities; subject to periodic flooding.

Tract 601
Patoka Lake Project
French Lick Co: Orange IN 47527–
Location: IN. State Highway 145 south to Jordan Branch Road, Property abuts east right-of-way for Jordan Road.
Landholding Agency: COE
Property Number: 319030006
Status: Excess
Comment: 0.41 acre; limited utilities.

Portion of Tract 1219
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310002
Status: Unutilized
Comment: 0.88 acre, potential utilities.

Portion of Tract No. 1220
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310003
Status: Unutilized
Comment: 0.30 acre, potential utilities.

Portion of Tract No. 1207
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310004
Status: Unutilized
Comment: 0.28 acre, potential utilities.

Portion of Tract No. 116
Huntington Lake
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319320001
Status: Excess
Comment: 3.41 acres with road easement.

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 319010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010025
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010026
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010028
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz.
Landholding Agency: COE
Property Number: 319010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 319010032
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.

Landholding Agency: COE
Property Number: 319010033
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010036
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 319010042
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 319010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 319010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 319010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500–2
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: Lyon KY 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010057
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 319010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 319010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized

Comment: 0.70 acres, wooded; subject to utility easements.

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract B—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130002
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding.

Tract A—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130003
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding.

Tract C—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130005
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding.

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 219140009
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements.

Portion of Lock & Dam No. 1
Kentucky River
Carrolton Co: Carroll KY 41008–0305
Landholding Agency: COE
Property Number: 319320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored.

Portion of Lock & Dam No. 2
Kentucky River
Lockport Co: Henry KY 40036–9999
Landholding Agency: COE
Property Number: 319320004
Status: Underutilized
Comment: approx. 13.14 acres (sloping), access monitored.

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103–
Landholding Agency: COE
Property Number: 319011009
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, La.
Landholding Agency: COE
Property Number: 319011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Land—8.27 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010009
Status: Unutilized
Comment: 8.27 acres, heavily wood with natural drainage ravine across property, most recent use—recreation/buffer area.

Maryland

VA Medical Center
9500 North Point Road
Fort Howard Co: Baltimore MD 21052–
Landholding Agency: VA
Property Number: 979010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Michigan

Calumet Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010862
Status: Excess
Comment: 34 acres; potential utilities

Calumet Air Force Station
Section 31, T58N, R30W
Houghton Township
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010863
Status: Excess
Comment: 3.78 acres; potential utilities.

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011038
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins MN 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Landholding Agency: COE
Property Number: 319011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Leech Lake
Benedict Co: Hubbard MN 56641–
Location: 1 mile from city of Federal Dam, Mn.
Landholding Agency: COE
Property Number: 319011041
Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Grenada Lake
Section 2 and 3, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390–10903
Landholding Agency: COE
Property Number: 319011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 319011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 319011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 319030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Montana

120 acres, Fort Peck Lake Proj Co: McCone MT
Location: Twp 21 north, RNG 43 east, Section 34, N/2NE/4, Section 35, NW/4NW/4
Landholding Agency: COE
Property Number: 319220005
Status: Unutilized
Comment: 120.00 acres, rough & rugged terrain
GSA Number: 7–D–MT–4137–FF.

Ohio

Hannibal Locks and Dam
Ohio River
P.O. Pox 8
Hannibal Co: Monroe OH 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Landholding Agency: COE
Property Number: 319010015
Status: Underutilized
Comment: 22 acres; river bank.

Oklahoma

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 319010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 319010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Landholding Agency: COE
Property Number: 319011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement.

Tracts L24, L25
Crooked Creek Lake Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam.
Landholding Agency: COE
Property Number: 319011011
Status: Unutilized
Comment: 7.59 acres; potential for utilities.

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN.
Landholding Agency: COE
Property Number: 319010927
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport.
Landholding Agency: COE
Property Number: 319010928
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 319010929
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 319010930
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010931
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 319010932
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 319010933
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 319010934
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010935
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010936
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles East of Cumberland City.
Landholding Agency: COE
Property Number: 319010937
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010938
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010939
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010940
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills.
Landholding Agency: COE
Property Number: 319010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 319010943
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 319011173
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 319130007
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation.

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements.

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Tracts A–20, A–21
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140008
Status: Underutilized
Comment: 821 acres, most recent use—recreation, subject to existing easements

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Landholding Agency: COE
Property Number: 319140010
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Texas

Parcel #222
Lake Texoma Co: Grayson TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number: 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation.

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

VA Medical Center
4800 Memorial Drive
Waco Co: McLennan TX 76711–
Landholding Agency: VA
Property Number: 979010081
Status: Underutilized
Comment: 2.3 acres, negotiating lease w/ Owens-Illinois Glass Plant, most recent use—parking lot.

Washington

Portion of Tract 905
Lower Monumental Lock & Dam
½ mi SE of Lyons Ferry Marina Co: Whitman WA
Landholding Agency: COE
Property Number: 319320005
Status: Excess

Comment: 3.788 acres with encroaching private well.

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Suitable/Unavailable Properties

Buildings (by State)

California

Hawes Site (KHGM)
March AFB
Hinckley Co: San Bernardino CA 92402–
Landholding Agency: Air Force
Property Number: 189010084
Status: Unutilized
Comment: 9290 sq ft., 2 story concrete, most recent use—radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles CA 91706–
Landholding Agency: COE
Property Number: 319011298
Status: Unutilized
Comment: 1,500 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access.

Bldg. 116
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979110009
Status: Underutilized
Comment: 60309 sq. ft., 3 story brick frame, selsmic reinforcement defics., underutil. port of bldg. used intermitly., needs rehab, poss. asbestos in pipes/floor tiles, site access lim.

Bldg. 263
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979110010
Status: Unutilized
Comment: 1600 sq. ft., 1 story wood frame w/ stucco exterior, needs rehab, poss. asbestos on pipes/floor tiles, site access limitations, no operating utilities.

Florida

Bldg. CN7
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010012
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; security with alternate access.

Bldg. CN8
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010013
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Bldg. SF–83
Moore Haven Lock & Dam
Ockeechobee Waterway
Moore Haven Co: Glades FL 33471–
Landholding Agency: COE
Property Number: 319310006
Status: Unutilized
Comment: 1441 sq. ft., 1-story frame residence, average condition, restricted access.

Bldg. 24, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230008
Status: Underutilized
Comment: Portion of 6150 sq. ft., 3 story concrete frame bldg., needs rehab, presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Bldg. 36, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230009
Status: Underutilized
Comment: portion of 15,984 sq. ft., 1 story concrete frame bldg., needs rehab, presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Bldg. 37, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230010
Status: Underutilized
Comment: Third floor of a concrete frame bldg. (13,900 sq. ft.), presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Guam

Bldg. 99, Loran Station—C
Barrigada GU 96913–
Landholding Agency: DOT
Property Number: 879220002
Status: Excess
Comment: 3960 sq. ft. concrete block transmitting station with tower.

Idaho

Bldg.
Albeni Falls Dam
U.S. Highway 2, Priest River
Bonner Co: Bonner ID 83856–
Location: 3½ miles west of Priest River.
Landholding Agency: COE
Property Number: 319110028
Status: Unutilized
Comment: 2989 sq. ft.; 3 story log construction with wood frame; off-site removal only; needs rehab.

Indiana

Bldg. 28, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230005
Status: Underutilized
Comment: portion of 4135 sq. ft. 2-story wood structure, needs major rehab, no sanitary or heating facilities, presence of asbestos, access restrictions.

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230006
Status: Underutilized
Comment: 310 sq. ft., 1 story stone structure, needs major rehab, no sanitary or heating facilities, access restrictions.

Maine

Mount Desert Rock Light
U.S. Coast Guard
Southwest Harbor Co: Hancock ME 04679–
Landholding Agency: DOT
Property Number: 879240023
Status: Unutilized
Comment: 1600 sq. ft., 2-story wood frame dwelling, needs rehab, limited utilities, limited access, property is subject to severe storms.

Little River Light
U.S. Coast Guard
Cutler Co: Washington ME
Landholding Agency: DOT
Property Number: 879240026
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, well is contaminated, limited utilities.

Burnt Island Light
U.S. Coast Guard
Southport Co: Lincoln ME 04576–
Landholding Agency: DOT
Property Number: 879240027
Status: Unutilized
Comment: 750 sq. ft., 2-story wood frame dwelling.

Massachusetts

Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 879240024
Status: Unutilized
Comment: 1000 sq. ft., 2-story brick dwelling, large wave action with severe ocean storms.

Assistant Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 879240025
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, large wave action with severe ocean storms.

Michigan

Bldg. 20
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010775
Status: Excess

Comment: 13404 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—warehouse/supply facility.

Bldg. 21
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010776
Status: Excess
Comment: 2146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—storage.

Bldg. 22
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010777
Status: Excess
Comment: 1546 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 28
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010778
Status: Excess
Comment: 1000 sq. ft.; 1 floor; possible asbestos; potential utilities; most recent use—maintenance facility.

Bldg. 40
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010780
Status: Excess
Comment: 2069 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use—of administrative facility.

Bldg. 41
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010781
Status: Excess
Comment: 2069 sq. ft.; 1 floor; concrete block, potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 42
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010782
Status: Excess
Comment: 4017 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dining hall.

Bldg. 43
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010783
Status: Excess
Comment: 3674 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos most recent use—dormitory.

Bldg. 44
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010784
Status: Excess
Comment: 7216 sq. ft.; 2 story; concrete block; possible asbestos; potential utilities; most recent use—dormitory.

Bldg. 45
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010785
Status: Excess
Comment: 6070 sq. ft.; 2 story; concrete block, potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 47
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010787
Status: Excess
Comment: 83 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 48
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010788
Status: Excess
Comment: 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 49
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010789
Status: Excess
Comment: 1944 sq. ft.; 1 story; concrete block; potential utilities; most recent use—dormitory.

Bldg. 50
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010790
Status: Excess
Comment: 6171 sq. ft.; 1 story; concrete block; potential utilities; possible asbestos; most recent use—Fire Department vehicle parking building.

Bldg. 14
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010833
Status: Excess
Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymnasium.

Bldg. 16
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010834
Status: Excess
Comment: 3000 sq. ft.; 1 floor concrete block; most recent use commissary facility.

Bldg. 9
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010835
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.

Bldg. 11
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010837
Status: Excess
Comment: 1056 sq. ft.; 1 floor wood frame residence.

Bldg. 12
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010838
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.

Bldg. 13
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010839
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.

Bldg. 5
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010840
Status: Excess
Comment: 864 sq. ft.; 1 floor wood frame residence; possible asbestos.

Bldg. 6
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010841
Status: Excess
Comment: 864 sq. ft.; 1 floor wood frame residence; possible asbestos.

Bldg. 7
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010842
Status: Excess
Comment: 864 sq. ft.; 1 story wood frame residence; possible asbestos.

Bldg. 8
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 1890108443
Status: Excess
Comment: 864 sq. ft.; 1 floor wood frame residence; possible asbestos.

Bldg. 4
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010844
Status: Excess
Comment: 2340 sq. ft.; 1 floor concrete block; most recent use—heating facility.

Bldg. 3
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010845
Status: Excess
Comment: 5314 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—maintenance shop and office.

Bldg. 1

Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010846
Status: Excess
Comment: 4528 Sq. ft.; 1 floor concrete block; possible asbestos; most recent use—office.
Bldg. 158
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010857
Status: Excess
Comment: 3603 sq. ft.; 1 story concrete/steel; possible asbestos; most recent use—electrical power station.
Bldg. 15
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010864
Status: Excess
Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use—gymnasium facility.
Bldg. 31
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010867
Status: Excess
Comment: 36 sq. ft.; 1 story; metal frame, prior use—storage of fire hoses.
Bldg. 32
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010868
Status: Excess
Comment: 36 sq. ft.; 1 story metal frame; prior use—storage of fire hoses.
Bldg. 33
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010869
Status: Excess
Comment: 36 sq. ft.; 1 story metal frame; prior use—storage of fire hoses.
Bldg. 34
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010870
Status: Excess
Comment: 36 sq. ft.; 1 story metal frame; prior use—storage of fire hoses.
Bldg. 35
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010871
Status: Excess
Comment: 36 sq. ft.; 1 story metal frame; prior use—storage of fire hoses.
Bldg. 39
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010874
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 202
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010880
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 203
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010881
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 204
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010882
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 205
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010883
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 206
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010884
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 207
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010885
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 153
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010886
Status: Excess
Comment: 4314 sq. ft.; 2 story concrete block facility; (radar tower bldg.) potential use—storage.
Bldg. 154
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010887
Status: Excess
Comment: 8960 sq. ft.; 4 story concrete block facility; (radar tower bldg.) potential use—storage.
Bldg. 157
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010888
Status: Excess
Comment: 3744 sq. ft.; 1 story concrete/steel facility; (radar tower bldg.) potential use—storage.

Minnesota
Bldg. 43
VA Medical Center
Minneapolis Co: Hennepin MN 55441–7
Location: 54th Street and 48th Avenue S.
Landholding Agency: VA
Property Number: 979010032
Status: Underutilized
Comment: 26000 sq. ft., 8 story brick/steel frame, asbestos present on pipe insulation most recent use—office/storage.
Bldg. 227
Va Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010033
Status: Unutilized
Comment: 850 sq. ft.; 2 story wood frame and brick residence, utilities disconnected.

Missouri
Jefferson Barracks ANG Base
Missouri National Guard
1 Grant Road
St. Louis Co: St. Louis MO 63125–4118
Landholding Agency: Air Force
Property Number: 189010081
Status: Underutilized
Comment: 20 acres; portion near flammable materials; portion on archaeological site; special fencing required.

Nebraska
Bldg. 4, Hastings Family Hsg.
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320059
Status: Excess
Comment: 19370 sq. ft.; brick frame, 1-story possible asbestos, most recent use—recreation.
Bldg. 500
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320060
Status: Excess
Comment: 4984 sq. ft.; 2-story plus ½ basement, wood frame family housing, possible asbestos.
Bldg. 502
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320061
Status: Excess
Comment: 2108 sq. ft.; 2-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 504
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320062
Status: Excess
Comment: 2852 sq. ft.; 2-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 506
Hastings Family Housing

Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320063
Status: Excess
Comment: 2960 sq. ft.; 2-story plus ¾ basement wood frame family housing, possible asbestos.
Bldg. 507
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320064
Status: Excess
Comment: 2154 sq. ft.; 2-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 509
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320065
Status: Excess
Comment: 2404 sq. ft.; 2-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 511
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320066
Status: Excess
Comment: 3156 sq. ft.; 2-story plus full basement wood frame family housing, possible asbestos.
Bldg. 512
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320067
Status: Excess
Comment: 2948 sq. ft.; 2-story plus ¾ basement wood frame family housing, possible asbestos.
Bldg. 515
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320068
Status: Excess
Comment: 2554 sq. ft.; 2-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 517
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320069
Status: Excess
Comment: 2,554 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 519
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320070
Status: Excess
Comment: 2,800 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.
Bldg. 521
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320071
Status: Excess
Comment: 2,268 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 523
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320072
Status: Excess
Comment: 2,718 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.
Bldg. 525
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320073
Status: Excess
Comment: 2,718 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.
Bldg. 526
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320074
Status: Excess
Comment: 3,720 sq. ft., 1-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 529
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320075
Status: Excess
Comment: 2,252 sq. ft., 1-story plus ¾ basement wood frame family housing, possible asbestos.
Bldg. 531
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320076
Status: Excess
Comment: 2,782 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.
Bldg. 533
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320077
Status: Excess
Comment: 2,324 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.
Bldg. 534
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320078
Status: Excess
Comment: 3,276 sq. ft., 1-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 536
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320079
Status: Excess
Comment: 2,228 sq. ft, 2-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 538
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320080
Status: Excess
Comment: 2,228 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.
Bldg. 541
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320081
Status: Excess
Comment: 2,452 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.
Bldg. 542
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320082
Status: Excess
Comment: 2,566 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.
Bldg. 544
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320083
Status: Excess
Comment: 3,488 sq. ft., 1-story plus full basement wood frame family housing, possible asbestos.
Bldg. 546
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320084
Status: Excess
Comment: 3,724 sq. ft., 1-story plus full basement wood frame family housing, possible asbestos.
Bldg. 549
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320085

Status: Excess
Comment: 2,624 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 550
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320086
Status: Excess
Comment: 2,270 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 552
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320087
Status: Excess
Comment: 2,358 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 553
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320088
Status: Excess
Comment: 2,012 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 555
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320089
Status: Excess
Comment: 2,286 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.
Bldg. 557
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320090
Status: Excess
Comment: 2,176 sq. ft., 1-story plus full basement wood frame family housing, possible asbestos.
Bldg. 558
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320091
Status: Excess
Comment: 2,052 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.
Bldg. 560
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320092
Status: Excess
Comment: 2,600 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.
27 Detached Garages
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320093
Status: Excess
Comment: 280–708 sq. ft., wood frame, accommodates 1 to 3 vehicles, possible asbestos.
Bldg. 17
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320094
Status: Excess
Comment: 2,225 sq. ft., 1-story wood frame, most recent use—offices, needs rehab, possible asbestos.
Bldg. 16
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320095
Status: Excess
Comment: 3,278 sq. ft., 1-story plus basement brick frame, most recent use—storage, possible asbestos.
Bldg. 18
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320096
Status: Excess
Comment: 115 sq. ft., 1-story metal frame, most recent use—storage, no known utility potential.
Bldg. 6
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320097
Status: Excess
Comment: 256 sq. ft., 1-story wood frame, most recent use—storage, possible asbestos.
Bldg. 547
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320098
Status: Excess
Comment: 731 sq. ft., 1-story plus full basement wood frame, most recent use—storage, possible asbestos.
Bldg. 604
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320099
Status: Excess
Comment: 224 sq. ft., 1-story wood frame, most recent use—storage.

New Hampshire

Bldg. 114
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320055
Status: Excess
Comment: 2,606 sq. ft., 1-story, concrete block frame, possible asbestos, access restrictions, most recent use—storage.
Bldg. 115
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320056
Status: Excess
Comment: 2,606 sq. ft., 1-story, concrete block frame, possible asbestos, access restrictions, most recent use—storage.
Bldg. 127
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320057
Status: Excess
Comment: 698 sq. ft., 1-story, concrete and metal frame, possible asbestos, access restrictions, most recent use—storage.

New York

Bldg. 5
VA Medical Center
Redfield Parkway
Batavia Co: Genesee NY 14020–
Landholding Agency: VA
Property Number: 979030001
Status: Underutilized
Comment: Portion of 16,800 sq. ft., 3 story, brick and masonry bldgs., needs minor repairs.
Bldg. 144, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425–
Landholding Agency: VA
Property Number: 979210004
Status: Unutilized
Comment: 5,215 sq. ft., 2 story wood frame residence, needs rehab, potential utilities.
Bldg. 143, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425–
Landholding Agency: VA
Property Number: 979210005
Status: Unutilized
Comment: 5,215 sq. ft., 2 story wood frame residence, needs rehab, potential utilities.
Bldgs. 142/146, VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425–
Landholding Agency: VA
Property Number: 979210006
Status: Unutilized
Comment: 5,215 sq. ft., 2 story wood frame residence with 380 sq. ft. attached garage, needs rehab, potential utilities.

Pennsylvania

Bldg. 3—VA Medical Center
University Drive C
Pittsburgh Co: Allegheny PA 15240–
Landholding Agency: VA
Property Number: 979210002
Status: Unutilized
Comment: Approx. 2,765 sq. ft., two story brick residence, needs rehab.
Bldg. 2, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 979230011
Status: Underutilized
Comment: Portion of 16,360 sq. ft. 3-story structure, most recent use—storage.
Bldg. 3, VAMC
1700 South Lincoln Avenue

Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 979230012
Status: Underutilized
Comment: Portion of bldg. (3,850 and 4,360 sq. ft.), most recent use—storage.
Bldg. 27, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 979230013
Status: Underutilized
Comment: Second floor of bldg. (3,410 sq. ft.).
Bldg. 103, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 979230014
Status: Underutilized
Comment: Portion of 1,215 sq. ft. 2-story stone farm house, needs repair.

South Carolina

Bldg. 10
WJBD Veterans' Hospital
Columbia Co: Richland SC 29201–
Landholding Agency: VA
Property Number: 979340002
Status: Underutilized
Comment: Portion of a 21,512 sq. ft. brick 3-story building, located within medical facility, needs repair, bldg. has historical significance.

Tennessee

Transient Quarters
Dale Hollow Lake and Dam Project
Dale Hollow Resource Mgr Office, Rt 1, Box 64
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140005
Status: Unutilized
Comment: 1,400 sq. ft., concrete block, possible security restrictions, subject to existing easements.

Texas

Bldg. 605
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110090
Status: Unutilized
Comment: 392 sq. ft.; 1 story sheet metal building; most recent use—storage; possible asbestos; needs rehab.
Bldg. 696
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110091
Status: Unutilized
Comment: 1,344 sq. ft.; possible asbestos; most recent use—auto hobby shop; needs rehab.
Bldg. 697
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110092
Status: Unutilized
Comment: 770 sq. ft.; possible asbestos; most recent use—supply store; needs rehab.
Bldg. 698
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110093
Status: Unutilized
Comment: 5,815 sq. ft.; 1 story corrugated iron; possible asbestos; needs rehab; most recent use—recreation, workshop.
Bldg. 699
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110094
Status: Unutilized
Comment: 2,659 sq. ft.; 1 story; possible asbestos; most recent use—arts and crafts center.
Brownsville Urban System (Grantee)
700 South Iowa Avenue
Brownsville Co: Cameron TX 78520–
Landholding Agency: DOT
Property Number: 879010003
Status: Unutilized
Comment: 3,500 sq. ft., 1 story concrete block, (2nd floor of Admin. Bldg.) on 10,750 sq. ft. land, contains underground diesel fuel tanks.

Wisconsin

Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere Co: Brown WI 54115–
Landholding Agency: COE
Property Number: 319011526
Status: Unutilized
Comment: 1,224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Wyoming

Bldg. 13
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110001
Status: Unutilized
Comment: 3,613 sq. ft., 3 story wood frame masonry veneered, potential utilities, possible asbestos, needs rehab.
Bldg. 79
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110003
Status: Unutilized
Comment: 45 sq. ft., 1 story brick and tile frame, limited utilities, most recent use—reservoir house, use for storing purposes.

Land (by State)

California

Camp Kohler Annex
McCellan AFB
Sacramento Co: Sacramento CA 95652–5000
Landholding Agency: Air Force
Property Number: 189010045
Status: Unutilized
Comment: 35.30 acres +.11 acres easement; 30+ acres undeveloped; potential utilities; secured area; alternate access.
Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010194
Status: Excess
Comment: 30.3 acres; most recent use—recreational area; portion subject to easements.
Land—VA Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979010077
Status: Underutilized
Comment: Approx. 30 acres of 80 acre tract, 7 acre portion contaminated, portions may be environmentally protected.

Florida

Parcel A & B
U.S. Coast Guard Light Station
Lots 1, 8 & 11, Section 31
Jupiter Inlet Co: Palm Beach FL 33420–
Location: Township 40 south, range 43 east.
Landholding Agency: DOT
Property Number: 879010009
Status: Unutilized
Comment: 56.61 acres, area is uncleared, vegetation growth is heavy, no utilities.
Buffer Zone, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230016
Status: Underutilized
Comment: Approx. 20 acres, storm water retention area.
Compound, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230017
Status: Underutilized
Comment: Approx. 7 acres, storage compound, partially wooded.

Illinois

VA Medical Center
3001 Green Bay Road
North Chicago Co: Lake IL 60064–
Landholding Agency: VA
Property Number: 979010082
Status: Underutilized
Comment: 2.5 acres, currently being used as a construction staging area for the next 6–8 years, potential utilities.

Kentucky

Carr Fork Lake
5 miles SE of Hindman, KY, Hwy. 60
Hindman Co: Knott KY
Landholding Agency: COE
Property Number: 319240003
Status: Unutilized
Comment: 2.81 acres, most recent use—drainage area for bank stabilization for adjacent cemetery.

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 979010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities.

Minnesota

Bldg. 43 Land Site
VA Medical Center
54th Street & 48th Avenue South
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010005
Status: Underutilized
Comment: 8.9 acres, most recent use—parking, potential utilities.

Bldg. 227–229 Land
VA Medical Center
Fort Snelling
St Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010006
Status: Underutilized
Comment: 2.0 acres, potential utilities, buildings occupied, residence/garage.

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Location: Land (Site of Building 15, 16, 21, 48, 64, T10)
Landholding Agency: VA
Property Number: 979010024
Status: Underutilized
Comment: 12.1 acres, most recent use—parking, potential utilities.

Land—12 acres
VAMC
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010031
Status: Unutilized
Comment: 12 acres, possible asbestos, leased to Department of Natural Resources as a park walking trail.

Montana

0.01 acre, Fort Peck Lake Proj Co: Valley MT
Location: Twp. 27 north, RNG 41 east, Section 33, E/2SE/4NW/4NE/4
Landholding Agency: COE
Property Number: 319220002
Status: Excess
Comment: 0.01 acre, small triangular parcel, rough/steep terrain.

0.05 acre, Fort Peck Lake Proj Co: Valley MT
Location: Twp 27 north, RNG 41 east, Section 33, E/2SE/4NW/4NE/4
Landholding Agency: COE
Property Number: 319220003
Status: Excess
Comment: 0.05 acre, narrow strip next to highway, steep/rough terrain
GSA Number: 7–D–MT–4137–FF

122.60 acres
Fort Peck Lake Project Co: McCone MT
Location: Twp 26 north, RNG 42 east, Section 4, Lot 3; SW/4NE/4SE/4NW/4
Landholding Agency: COE
Property Number: 319220004
Status: Excess
Comment: 122.60 acres, rough & rugged terrain, grazing allotment administered by Bureau of Land Management
GSA Number: 7–D–MT–4137–FF.

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 979010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased.

Oklahoma

45 acre parcel, Sardis Lake
SE¼ NE¼ Section 4, T 2 N, R 18 E Co: Pushmataha OK 74521–
Landholding Agency: COE
Property Number: 319140004
Status: Excess
Comment: Approx. 45 acres, most recent use—fish and wildlife conservation.

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 319011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground.

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 979010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities.

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets.
Landholding Agency: VA
Property Number: 979010080
Status: Unutilized
Comment: 52.42 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls.

Land—34.16 acres
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320–
Landholding Agency: VA
Property Number: 979340001
Status: Underutilized
Comment: 34.16 acres, open field, most recent use—recreation/buffer

Texas

Part of Tract A–10
(See County) Co: Tarrant TX
Location: Off FM 2499 at north end of dam embankment
Landholding Agency: COE
Property Number: 319010390
Status: Excess
Comment: 0.29 acres; most recent use—parking lot.

Part of Tract 340
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010400
Status: Unutilized
Comment: 1 acre; future use—recreation.

Suitable/To Be Excessed

Buildings (by State)

Arizona

Control Bldg.
U.S. 666
Cochise Co: Cochise AZ 85606–
Landholding Agency: Energy
Property Number: 419320005
Status: Excess
Comment: 800 sq. ft., masonry frame, no utilities, presence of PCB's & asbestos, most recent use—control bldg for electrical substation.

Warehouse & Service Bldg.
University Road
Mesa Co: Maricopa AZ 85201–
Landholding Agency: Energy
Property Number: 419320007
Status: Excess
Comment: 368 & 600 sq. ft., 1 story steel & masonry frame, no utilities, presence of PCB's & asbestos, most recent use—storage/service for electrical substation.

Massachusetts

Cuttyhunk boathouse
South Shore of Cuttyhunk Pond
Gosnold Co: Dukes MA 02713–
Landholding Agency: DOT
Property Number: 879310001
Status: Unutilized
Comment: 2,700 sq. ft., wood frame, one story, needs rehab, limited utilities, off-site use only

Michigan

Former C.G. Lightkeeper Sta.
Little Rapids Channel Project
St. Marys River
Sault Ste. Marie Co: Chippewa MI 49783–
Location. 3 miles east of downtown Sault Ste. Marie.
Landholding Agency: COE
Property Number: 319011573
Status: Excess
Comment: 1,411 sq. ft.; 2 story; wood frame on .62 acres; needs rehab; secured area with alternate access.

Nevada

Bldg. 300
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120001
Status: Unutilized
Comment: 1,573 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only

Bldg. 301
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120002
Status: Unutilized
Comment: 1,573 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only

Bldg. 302
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120003
Status: Unutilized
Comment: 1,573 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 303
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120004
Status: Unutilized
Comment: 2,750 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 304
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120005
Status: Unutilized
Comment: 2,750 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 305
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120006
Status: Unutilized
Comment: 2,750 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 306
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120007
Status: Unutilized
Comment: 2,750 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 307
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120008
Status: Unutilized
Comment: 2,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 308
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120009
Status: Unutilized
Comment: 2,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 309
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120010
Status: Unutilized
Comment: 2,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 310
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120011
Status: Unutilized
Comment: 2,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 311
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120012
Status: Unutilized
Comment: 2,424 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 312
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120013
Status: Unutilized
Comment: 2,424 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 313
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120014
Status: Unutilized
Comment: 2,424 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 314
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120015
Status: Unutilized
Comment: 2,424 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 315
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120016
Status: Unutilized
Comment: 2,424 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 316
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120017
Status: Unutilized
Comment: 2,424 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 317
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120018
Status: Unutilized
Comment: 2,424 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 318
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120019
Status: Unutilized
Comment: 2,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 319
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120020
Status: Unutilized
Comment: 2,424 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 320
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120021
Status: Unutilized
Comment: 2,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 321
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120022
Status: Unutilized
Comment: 2,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 322
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120023
Status: Unutilized
Comment: 2,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 323
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120024
Status: Unutilized
Comment: 1,233 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 324
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120025
Status: Unutilized
Comment: 2,424 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 325

Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120026
Status: Unutilized
Comment: 2,424 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 326
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120027
Status: Unutilized
Comment: 2,424 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 331
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120028
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 332
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120029
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 333
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120030
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 334
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120031
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 335
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120032
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 336
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120033
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 337
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120034
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 338
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120035
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 339
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120036
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 340
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120037
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 341
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120038
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 343
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120039
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 345
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120040
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 346
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120041
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 348
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120042
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 349
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120043
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 350
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120044
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 351
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120045
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 352
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120046
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 353
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120047
Status: Unutilized
Comment: 1,170 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 400
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120048
Status: Unutilized
Comment: 2,464 sq. ft., one story, most recent use—maintenance shop, easement restrictions, potential utilities, off-site removal only.

Bldg. 402
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120049
Status: Unutilized
Comment: 2,570 sq. ft., one story, most recent use—Chapel, easement restrictions, potential utilities, off-site removal only.

Bldg. 404
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120050
Status: Unutilized
Comment: 2,376 sq. ft., one story, most recent use—religious education facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 406
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120051
Status: Unutilized
Comment: 2,605 sq. ft., one story, most recent use—child care facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 3027
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120052
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3028
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120053
Status: Unutilized
Comment: 60 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3029
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120054
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3030
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120055
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3031
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120056
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3032
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120057
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3033
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120058
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3034
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120059
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3035
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120060
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3036
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120061
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3037
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120062
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3038
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120063
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3039
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120064
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3040
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120065
Status: Unutilized
Comment: 120 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

North Dakota

Bldg. 101
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110095
Status: Excess
Comment: 768 sq. ft., 2 bedroom single family housing unit; needs rehab; off-site use only.

Bldg. 102
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110096
Status: Excess
Comment: 988 sq. ft., 3 bedroom single family housing unit; needs rehab; off-site use only.

Bldg. 103
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110097
Status: Excess
Comment: 988 sq. ft.; 3 bedroom single family housing unit; needs rehab; off-site use only.

Bldg. 104
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and

approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110098
Status: Excess
Comment: 988 sq. ft.; 3 bedroom single family housing unit; needs rehab; off-site use only.

Bldg. 110
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110102
Status: Excess
Comment: 768 sq. ft.; 2 bedroom single family housing unit; needs rehab; off-site use only.

Bldg. 105
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110099
Status: Unutilized
Comment: 988 sq. ft.; 3 bedroom single family housing unit; needs rehab; off-site use only.

Bldg. 106
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110100
Status: Excess
Comment: 988 sq. ft.; 3 bedroom single family housing unit; needs rehab; off-site use only.

Bldg. 107
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110101
Status: Excess
Comment: 768 sq. ft.; 2 bedroom single family housing unit; needs rehab; off-site use only.

Bldg. 111
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110103
Status: Excess
Comment: 768 sq. ft.; 2 bedroom single family housing unit; needs rehab; off-site use only.

Bldg. 112
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110104
Status: Excess
Comment: 1510 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 113
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110105
Status: Excess
Comment: 1510 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 114
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110106
Status: Excess
Comment: 1,510 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 115
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110107
Status: Excess
Comment: 1,510 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 116
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110108
Status: Excess
Comment: 1,510 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 117
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110109
Status: Excess
Comment: 1,595 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 118
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110110
Status: Excess
Comment: 2,295 sq. ft.; 4 bedroom single family housing unit, needs rehab; off-site use only.

Bldg. 119
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110111
Status: Excess
Comment: 1,595 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 120
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110112
Status: Excess
Comment: 1,595 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 121
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110113
Status: Excess
Comment: 1,595 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 122
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110114
Status: Excess
Comment: 1,595 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 123
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force.
Property Number: 189110115
Status: Excess

Comment: 1,510 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 124
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110116
Status: Excess
Comment: 1,510 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 125
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110117
Status: Excess
Comment: 1,510 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 126
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110118
Status: Excess
Comment: 1,510 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 127
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110119
Status: Excess
Comment: 1,510 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 128
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110120
Status: Excess
Comment: 1,510 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 129
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110121
Status: Excess
Comment: 1,510 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.

Bldg. 141
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110122
Status: Excess
Comment: 364 sq. ft.; 1 stall vehicle garage; needs rehab; off-site use only.

Bldg. 142
Fortuna Air Force Base
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110123
Status: Excess
Comment: 624 sq. ft.; 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 143
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110124
Status: Excess
Comment: 624 sq. ft.; 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 144
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110125
Status: Excess
Comment: 624 sq. ft.; 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 145
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110126
Status: Excess
Comment: 624 sq. ft.; 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 201
Fortuna Air Force Base
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110127
Status: Excess
Comment: 1203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 202
Fortuna Air Force Base
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110128
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 203
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110129
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 204
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110130
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 205
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110131
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 206
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110132
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 207
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.

Landholding Agency: Air Force
Property Number: 189110133
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 208
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110134
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 209
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110135
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 210
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110136
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 211
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110137
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 212
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110138
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 213
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110139
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 214
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110140
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 215
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110141
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 216
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110142
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 217
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110143
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 218
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110144
Status: Excess
Comment: 1,203 sq. ft.; 3 bedroom single family relocatable housing unit; needs rehab; off-site use only.

Bldg. 221
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110145
Status: Excess
Comment: 672 sq. ft.; 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 222
Fortuna Air Force Base
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110146
Status: Excess
Comment: 672 sq. ft.; 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 223
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110147
Status: Excess
Comment: 672 sq. ft.; 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 224
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110148
Status: Excess
Comment: 672 sq. ft.; 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 225
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110149
Status: Excess
Comment: 672 sq. ft.; 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 226
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110150
Status: Excess
Comment: 672 sq. ft.; 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 227
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110151
Status: Excess
Comment: 672 sq. ft.; 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 228
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110152
Status: Excess
Comment: 672 sq. ft.; 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 229
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110153
Status: Excess
Comment: 672 sq. ft.; 2 stall vehicle garage; needs rehab; off-site use only.

Bldg. 1
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310066
Status: Excess
Comment: 10,859 sq. ft., 1-story concrete, needs extensive repairs, presence of asbestos.

Bldg. 2
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310067
Status: Excess
Comment: 1,543 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 4
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310068
Status: Excess
Comment: 1,759 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 5
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310069
Status: Excess
Comment: 368 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 7
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310070
Status: Excess
Comment: 694 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 8
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310071
Status: Excess
Comment: 867 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 10
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310072
Status: Excess
Comment: 112 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 11
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310073
Status: Excess
Comment: 96 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 12
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310074
Status: Excess
Comment: 2,198 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 13
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310075
Status: Excess
Comment: 2,118 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 14
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310076
Status: Excess
Comment: 3,462 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 15
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310077
Status: Excess
Comment: 4,182 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 16
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310078
Status: Excess
Comment: 3,772 sq. ft., 2-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 17
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310079
Status: Excess
Comment: 2,925 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 18
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310080
Status: Excess
Comment: 5,806 sq. ft., 2-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 19
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310081
Status: Excess
Comment: 5,806 sq. ft., 2-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 20
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310082
Status: Excess
Comment: 1,882 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.

Bldg. 21
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310083
Status: Excess
Comment: 192 sq. ft., 1-story wood frame, needs extensive repairs, presence of asbestos.

Bldg. 22
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310084
Status: Excess
Comment: 1,571 sq. ft., 1-story wood frame, needs extensive repairs, presence of asbestos.

Bldg. 23

Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310085
Status: Excess
Comment: 1,212 sq. ft., 1-story wood frame, needs extensive repairs, presence of asbestos.
Bldg. 24
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310086
Status: Excess
Comment: 2,758 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.
Bldg. 26
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310087
Status: Excess
Comment: 302 sq. ft., 1-story wood frame, needs extensive repairs, presence of asbestos.
Bldg. 27
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310088
Status: Excess
Comment: 64 sq. ft., 1-story metal, needs extensive repairs, presence of asbestos.
Bldg. 28
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310089
Status: Excess
Comment: 4,967 sq. ft., 1-story wood frame, needs extensive repairs, presence of asbestos.
Bldg. 30
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310090
Status: Excess
Comment: 4,795 sq. ft., 1-story concrete, needs extensive repairs, presence of asbestos.
Bldg. 31
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310091
Status: Excess
Comment: 1,800 sq. ft., 1-story pre-fab metal, needs extensive repairs, presence of asbestos.
Bldg. 32
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310092
Status: Excess
Comment: 6,615 sq. ft., 1-story pre-fab metal, needs extensive repairs, presence of asbestos.
Bldg. 35
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310093
Status: Excess
Comment: 14,520 sq. ft., 5-story concrete block, needs extensive repairs, presence of asbestos.
Bldg. 36
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310094
Status: Excess
Comment: 949 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.
Bldg. 37
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310095
Status: Excess
Comment: 288 sq. ft., pre-fab metal, needs extensive repairs, presence of asbestos.
Bldg. 38
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310096
Status: Excess
Comment: 5,687 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.
Bldg. 40
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310097
Status: Excess
Comment: 576 sq. ft., 1-story metal, needs extensive repairs, presence of asbestos.
Bldg. 52
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310098
Status: Excess
Comment: 160 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.
Bldg. 55
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310099
Status: Excess
Comment: 1,003 sq. ft., 1-story metal, needs extensive repairs, presence of asbestos.
Bldg. 56
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310100
Status: Excess
Comment: 448 sq. ft., 1-story steel, needs extensive repairs, presence of asbestos.
Bldg. 57
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310101
Status: Excess
Comment: 3,854 sq. ft., 1-story wood frame, needs extensive repairs, presence of asbestos.
Bldg. 98
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310102
Status: Excess
Comment: 62 sq. ft., 1-story concrete block, needs extensive repairs, presence of asbestos.
Bldg. 100
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310103
Status: Excess
Comment: 768 sq. ft., 1-story wood frame, needs extensive repairs, presence of asbestos.
Bldg. 912
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310104
Status: Excess
Comment: 960 sq. ft., 1-story wood frame, needs extensive repairs, presence of asbestos.
Bldg. 300
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310105
Status: Excess
Comment: 2,730 sq. ft., 1-story concrete, needs extensive repairs, presence of asbestos.
Bldgs. 41–49, 51, 61, 62
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310106
Status: Excess
Comment: 36–40 sq. ft., wood frame, no utilities, need extensive repairs, presence of asbestos, most recent use—fire hose storage.

South Carolina

Bldg. #1 U.S. Coast Guard
Folly Island Loran Station
Folly Island Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120096
Status: Unutilized

Comment: 2,340 sq. ft., 1-story concrete block, most recent use—communications station.
Bldg. #2 U.S. Coast Guard
Folly Island Loran Station
Folly Island Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120097
Status: Unutilized
Comment: 2,050 sq. ft., 1-story concrete block, most recent use—communications station.

Land (by State)

Florida

Springfield Annex (VZTD)
Tyndall Air Force Base
Springfield Co: Bay FL
Landholding Agency: Air Force
Property Number: 189240053
Status: Unutilized
Comment: 7.55 acres; improved w/parking lot, 2 loading ramps and railroad tracks.

Indiana

Cecil M. Harden Lake Project
Rockville Co: Parke IN 47872–
Location: Route 57 at intersection w/county road 910E.
Landholding Agency: COE
Property Number: 319011689
Status: Excess
Comment: 2.68 acres; narrow triangular shaped area of land.

Kansas

Parcel #1
Fall River Lake
Section 26 Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010065
Status: Unutilized
Comment: 155 acres; most recent use—recreation and leased cottage sites.
Parcel #2
Fall River Lake
Section 25 and 26 Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010066
Status: Excess
Comment: 38.62 acres; most recent use—recreation.
Parcel #3
Fall River Lake
Section 26 Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010067
Status: Excess
Comment: 22.44 acres; most recent use—recreation.
Parcel #2, El Dorado Lake
Approx. 1 mi east of the town of El Dorado
Co: Butler KS
Landholding Agency: COE
Property Number: 319210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area.

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Location: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 319010016
Status: Excess
Comment: 1.45 acres.
Conant Brook Dam
Flood Control Dam
Wales Road
Monson Co: Hampden MA 01057-
Location: Portion of Tract 211
Landholding Agency: COE
Property Number: 319010017
Status: Excess
Comment: 5.27 acres.
Hodges Village
Dam Flood Control Project
Old Howarth Road
Oxford Co: Worcester MA 01540–0500
Location: Portion of Tract A–108, See Project Manager at Hodges Village Dam, Oxford, MA (508) 987–2600.
Landholding Agency: COE
Property Number: 319011006
Status: Excess
Comment: 3.22 acres.

Michigan

U.S. Coast Guard—Air Station
Traverse City Co: Grand Traverse MI 49684–
Landholding Agency: DOT
Property Number: 879120099
Status: Underutilized
Comment: 21.7 acres, most recent use—helo landings.

Minnesota

Tract #3
Lac Qui Parle Flood Control Project County Rd. 13
Watson Co: Lac Qui Parle MN 56295–
Landholding Agency: COE
Property Number: 319340006
Status: Unutilized
Comment: approximately 2.9 acres, fallow land.
Tract #34
Lac Qui Parle Flood Control Project
Marsh Lake
Watson Co: Lac Qui Parle MN 56295–
Landholding Agency: COE
Property Number: 319340007
Status: Unutilized
Comment: approx. 8 acres, fallow land.
Land around Bldg. 240–249, 253
VA Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010007
Status: Unutilized
Comment: 3.76 acres, potential utilities.

Ohio

Middleport Public Access Site
Gallipolis Locks & Dam
Middleport Co: Meigs OH 45760–
Landholding Agency: COE
Property Number: 319230001
Status: Underutilized
Comment: approximately 17.23 acres including parking lot, flowage easement, right-of-way for city street and utilities.

Oklahoma

Parcel #7
Kaw Lake
Section 27 Co: Kay OK
Landholding Agency: COE
Property Number: 319010842
Status: Excess
Comment: 21 acres; potential utilities; most recent use—recreation.

Pennsylvania

Dashields Locks and Dam (Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Landholding Agency: COE
Property Number: 319210009
Status: Unutilized
Comment: 0.58 acres, most recent use—baseball field.

South Carolina

Land—U.S. Coast Guard
Folly Island Loran Station
Folly Island Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120098
Status: Unutilized
Comment: 55 acres (88 acres submerged) tidal marshland, potential utilities.

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015–
Location: Right downstream bank of Sycamore Creek.
Landholding Agency: COE
Property Number: 319010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.

Texas

Tract J–957
Whitney Lake
Bosque Co: Bosque TX
Location: Via Avenue B within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110029
Status: Unutilized
Comment: .18 acres; potential utilities; encroachments on large portion of property.
Tract J–936
Whitney Lake
Bosque Co: Bosque TX
Location: Off F. M. Highway 56 within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110032
Status: Unutilized
Comment: 5.4 acres; potential utilities.
Tract F–516 O.C. Fisher Lake
Parallel with Grape Creek Road
San Angelo Co: Tom Green TX 76902–3085
Landholding Agency: COE
Property Number: 319120002
Status: Unutilized
Comment: 2.13 acres, potential limited utilities
GSA Number: 7–D–TX–0968–A.
Part of Tract 102 Segment 1
Bardwell Dam Road
Ennis Co: Ellis TX 75119–
Landholding Agency: COE
Property Number: 319140014
Status: Unutilized
Comment: approx. 6.38 acres
GSA Number: 7–D–TX–738–D.
Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX

Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi.
Landholding Agency: COE
Property Number: 319240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land.

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 913
Maxwell AFB
Avenue "C"
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189010002
Status: Unutilized
Reason: Secured Area.

Bldg. 927
Maxwell AFB
Montgomery Co: Montgomery AL 36112–
Location: Off Avenue "C"
Landholding Agency: Air Force
Property Number: 189010003
Status: Unutilized
Reason: Secured Area.

Bldg. 935
Maxwell AFB
Montgomery Co: Montgomery AL 36112–
Location: Off Selfridge Street
Landholding Agency: Air Force
Property Number: 189010004
Status: Unutilized
Reason: Secured Area.

Bldg. 936
Maxwell AFB
Selfridge Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189010005
Status: Unutilized
Reason: Secured Area.

Bldg. 809
Gunter AFB
Montgomery Co: Montgomery AL 36114–
Location: Off Renfroe Street
Landholding Agency: Air Force
Property Number: 189010011
Status: Underutilized
Reason: Secured Area.

Bldg. 861
Gunter AFB
South Drive
Montgomery Co: Montgomery AL 36114–
Landholding Agency: Air Force
Property Number: 189010012
Status: Unutilized
Reason: Secured Area.

Bldg. 1011
Gunter AFB
Avenue "A"
Montgomery Co: Montgomery AL 36114–
Landholding Agency: Air Force
Property Number: 189010013
Status: Unutilized
Reason: Secured Area.

Bldg. 1022
Gunter AFB
Montgomery Co: Montgomery AL 36114–
Location: Adjacent to Avenues "A" and "C"
Landholding Agency: Air Force
Property Number: 189010015
Status: Underutilized
Reason: Secured Area.

Bldg. 1042
Gunter AFB
Montgomery Co: Montgomery AL 36114–
Location: Between Avenues "A" and "C"
Landholding Agency: Air Force
Property Number: 189010016
Status: Underutilized
Reason: Secured Area.

Bldg. 1052
Gunter AFB
Montgomery Co: Montgomery AL 36114–
Location: Between Avenues A and C
Landholding Agency: Air Force
Property Number: 189010019
Status: Underutilized
Reason: Secured Area.

Bldg. 1060
Gunter AFB
4th Street at Avenue C
Montgomery Co: Montgomery AL 36114–
Landholding Agency: Air Force
Property Number: 189010020
Status: Unutilized
Reason: Secured Area.

Bldg. 1061
Gunter AFB
Avenue C
Montgomery Co: Montgomery AL 36114–
Landholding Agency: Air Force
Property Number: 189010022
Status: Unutilized
Reason: Secured Area.

Bldg. 1435
Maxwell Air Force Base
Mimosa Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189030220
Status: Unutilized
Reason: Floodway Secured Area.

Bldg. 1436
Maxwell Air Force Base
Mimosa Road
Montgomery Co: Montgomery AL 36114–
Landholding Agency: Air Force
Property Number: 189030221
Status: Unutilized
Reason: Floodway Secured Area.

Bldg. 1440
Maxwell Air Force Base
Mimosa Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189030222
Status: Unutilized
Reason: Floodway Secured Area.

Bldg. 1441
Maxwell Air Force Base
Mimosa Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189030223
Status: Unutilized
Reason: Floodway Secured Area.

Bldg. 830
Gunter Air Force Base
Ramp Road
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189040853
Status: Underutilized
Reason: Secured Area.

Bldg. 421
Gunter Air Force Base
Avenue D
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189040854
Status: Underutilized
Reason: Secured Area.

Bldg. 426
Gunter Air Force Base
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189040855
Status: Underutilized
Reason: Secured Area.

Petrol OPS Bldg.
Maxwell Air Force Base
1101 Chanute Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189110165
Status: Unutilized
Reason: Secured Area.

Law Center
Maxwell Air Force Base
519 10th Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189110166
Status: Unutilized
Reason: Secured Area.

Bldg. 1011
Maxwell Air Force Base
Dannelly Street
Montgomery Co: Montgomery AL 36112–5000
Landholding Agency: Air Force
Property Number: 189110167
Status: Unutilized
Reason: Secured Area.

HQ Specified Bldg
Maxwell AFB
677 Third Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189120231
Status: Unutilized
Reason: Secured Area.

Base Personnel Office
Maxwell AFB
853 Second Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189120232
Status: Unutilized
Reason: Secured Area.

Bldg. 932
932 3rd St. & Ave. D, West
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130335
Status: Unutilized
Reason: Secured Area.

Bldg. 8
8 Maxwell Blvd., East
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130336
Status: Unutilized
Reason: Secured Area.

Bldg. 712
Avenue "E"
Gunter Air Force Base
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189130349
Status: Unutilized
Reason: Secured Area.

Bldg. 1004
Reserves Forces Training Facility
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Location: 1004 Maxwell Blvd. & Kelly Street
Landholding Agency: Air Force
Property Number: 189130369
Status: Unutilized
Reason: Secured Area. Within airport runway clear zone.

Bldg. 1006, Reproduction Plant
1006 Kelly Street
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130370
Status: Unutilized
Reason: Secured Area.

Bldg. 72, Storage Shed
72 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130371
Status: Unutilized
Reason: Secured Area.

Bldg. 95, Storage Shed
95 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130372
Status: Unutilized
Reason: Secured Area.

Bldg. 96, Storage Shed
96 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130373
Status: Unutilized
Reason: Secured Area.

Bldg. 97, Storage Shed
97 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130374
Status: Unutilized
Reason: Secured Area.

Bldg. 78, Maintenance Shop
78 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130375
Status: Unutilized
Reason: Secured Area.

Bldg. 79, Warehouse
79 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130376
Status: Unutilized
Reason: Secured Area.

Bldg. 82, Storage CV Facility
82 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130377
Status: Unutilized
Reason: Secured Area.

Bldg. 83, Storage CV Facility
83 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130378
Status: Unutilized
Reason: Secured Area.

Bldg. 88, Maintenance Shop
88 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130379
Status: Unutilized
Reason: Secured Area.

Bldg. 90, Storage CV Facility
90 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130380
Status: Unutilized
Reason: Secured Area.

Bldg. 94, Storage CV Facility
94 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130381
Status: Unutilized
Reason: Secured Area.

Bldg. 135
Gunter Air Force Base
1st Street
Montgomery Co: Montgomery AL 36112–5000
Landholding Agency: Air Force
Property Number: 189140001
Status: Underutilized
Reason: Secured Area.

Bldg. 206
Gunter Air Force Base
Off 1st Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140002
Status: Underutilized
Reason: Secured Area.

Bldg. 208
Gunter Air Force Base
1st Street and "D" Streets
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140003
Status: Unutilized
Reason: Secured Area.

Bldg. 420
Gunter Air Force Base
2nd Street at Avenue "D"
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140004
Status: Underutilized
Reason: Secured Area.

Bldg. 559
Gunter Air Force Base
4th Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140005
Status: Underutilized
Reason: Secured Area.

Bldg. 560
Gunter Air Force Base
4th Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140006
Status: Underutilized
Reason: Secured Area.

Bldg. 561
Gunter Air Force Base
Off 4th Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140007
Status: Unutilized
Reason: Secured Area.

Bldg. 562
Gunter Air Force Base
4th Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140008
Status: Underutilized
Reason: Secured Area.

Bldg. 818
Gunter Air Force Base
Foster Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140009
Status: Unutilized
Reason: Secured Area.

Bldg. 807
Maxwell Air Force Base
Maxwell Blvd. & Third Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189140010
Status: Unutilized
Reason: Secured Area.

Bldg. 1001
Maxwell Air Force Base
Kelly St., North & Airplane Park, Apron 3001
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189140011
Status: Unutilized
Reason: Secured Area.

Bldg. 1010
Maxwell Air Force Base
Bet. Maxwell Blvd. & Dannelly St.
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189140012
Status: Unutilized
Reason: Secured Area.

Bldg. 1039
Maxwell Air Force Base
Kelly St. at Taxiway 3004

Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189140013
Status: Unutilized
Reason: Secured Area.

Bldg. 1215
Maxwell Air Force Base
March St. bet. Willow St. & Beech St.
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189140014
Status: Unutilized
Reason: Secured Area.

Bldg. 823
Gunter Air Force Base
Ramp Road at Second Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140021
Status: Unutilized
Reason: Secured Area.

Bldg. 81
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220005
Status: Unutilized
Reason: Secured Area.

Bldg. 1041
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220006
Status: Unutilized
Reason: Secured Area.

Bldg. 1042
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220007
Status: Unutilized
Reason: Secured Area.

Bldg. 1114
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220008
Status: Unutilized
Reason: Secured Area.

Bldg. 1208
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220009
Status: Unutilized
Reason: Secured Area.

Bldg. 1210
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220010
Status: Unutilized
Reason: Secured Area.

Bldg. 1211
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220011
Status: Unutilized
Reason: Secured Area.

Bldg. 1214
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220012
Status: Unutilized
Reason: Secured Area.

Bldg. 1229
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220013
Status: Unutilized
Reason: Secured Area.

Bldg. 1245
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220014
Status: Unutilized
Reason: Secured Area.

Bldg. 906
Maxwell Air Force Base
Bet. Avenue B & C on Second Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240013
Status: Unutilized
Reason: Secured Area. Other.
Comment: Extensive Deterioration.

Bldg. 907
Maxwell Air Force Base
Bet. Avenue B & C on Second Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240014
Status: Unutilized
Reason: Secured Area. Other.
Comment: Extensive Deterioration.

Bldg. 931
Maxwell Air Force Base
Corner of Selfridge & 3rd Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240015
Status: Unutilized
Reason: Secured Area. Other.
Comment: Extensive Deterioration.

Bldg. 933
Maxwell Air Force Base
Corner of Selfridge & 3rd Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240016
Status: Unutilized
Reason: Secured Area. Other.
Comment: Extensive Deterioration.

Bldg. 934
Maxwell Air Force Base
Corner of Selfridge & 3rd Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240017
Status: Unutilized
Reason: Secured Area. Other.
Comment: Extensive Deterioration.

Bldg. 143
Maxwell Air Force Base
Avenue D
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240018
Status: Unutilized
Reason: Secured Area.

Bldg. 839
Maxwell Air Force Base
1st & Bay Streets at Ash Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240019
Status: Unutilized
Reason: Secured Area.

Bldg. 603, Maxwell AFB
Gunter Annex
Montgomery Co: Montgomery AL 36114–3112
Landholding Agency: Air Force
Property Number: 189310042
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 315, Maxwell AFB
Gunter Annex
Montgomery Co: Montgomery AL 36114–3112
Landholding Agency: Air Force
Property Number: 189310043
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 314, Maxwell AFB
Gunter Annex
Montgomery Co: Montgomery AL 36114–3112
Landholding Agency: Air Force
Property Number: 189310044
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 301, Maxwell AFB
Gunter Annex
Montgomery Co: Montgomery AL 36114–3112
Landholding Agency: Air Force
Property Number: 189310045
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Water Supply Bldg., Maxwell AFB
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189310046
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Recrea./Library, Maxwell AFB
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189310047
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

BE Storage Shed, Maxwell AFB
1043 Kelly Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189310048
Status: Unutilized
Reason: Secured Area.

Data Proc. Bldg., Maxwell AFB
908 Avenue B at Avenue C
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189310049
Status: Unutilized
Reason: Secured Area.

Youth Center, Maxwell AFB
712 6th Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189310050
Status: Unutilized
Reason: Secured Area.

Education Center
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189320044
Status: Unutilized
Reason: Secured Area. Other.
Comment: Extensive Deterioration.

Admin. Office
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189320045
Status: Unutilized
Reason: Secured Area. Other.
Comment: Extensive Deterioration.

Bldg. 830, Gunter Annex
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189320046
Status: Unutilized
Reason: Secured Area.

Chaplain School
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189320047
Status: Unutilized
Reason: Secured Area.

Recreation Bldg.
Maxwell Air Force Base
690 Ash Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330045
Status: Unutilized
Reason: Secured Area.

Storage Shed
Maxwell Air Force Base
1068 Kelly Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330046
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Storage Shed
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330047
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 400
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330048
Status: Unutilized
Reason: Secured Area.

Bldg. 402
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330049
Status: Unutilized
Reason: Secured Area.

Bldg. 408
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330050
Status: Unutilized
Reason: Secured Area.

Bldg. 410
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330051
Status: Unutilized
Reason: Secured Area.

Bldg. 502
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330052
Status: Unutilized
Reason: Secured Area.

Bldg. 503
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330053
Status: Unutilized
Reason: Secured Area.

Bldg. 504
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330054
Status: Unutilized
Reason: Secured Area.

Bldg. 505
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330055
Status: Unutilized
Reason: Secured Area.

Bldg. 506
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330056
Status: Unutilized
Reason: Secured Area.

Bldg. 508
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330057
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 509
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330058
Status: Unutilized
Reason: Secured Area.

Bldg. 512
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330059
Status: Unutilized
Reason: Secured Area.

Bldg. 513
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330060
Status: Unutilized
Reason: Secured Area.

Bldg. 715
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330061
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 718
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330062
Status: Unutilized
Reason: Other. Secured Area.

Bldg. 820
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330063
Status: Unutilized
Reason: Secured Area.
Comment: Extensive deterioration.

Bldg. 864
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330064
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Facility 875
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330065
Status: Unutilized
Reason: Secured Area.

Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120001
Status: Excess
Reason: Floodway.

Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120002
Status: Excess
Reason: Floodway.

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120003
Status: Excess
Reason: Floodway.

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120004
Status: Excess
Reason: Floodway.

Shop Building
USCG Mobile Pt. Station

Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120005
Status: Excess
Reason: Floodway.

Alaska

Bldg. 203
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010296
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 165
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010298
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 150
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010299
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 130
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010300
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010301
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 11–230
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010303
Status: Unutilized
Reason: Secured Area. Contamination.

Bldg. 21–116
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010304
Status: Unutilized
Reason: Secured Area. Contamination.

Bldg. 43–010
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010306
Status: Unutilized
Reason: Secured Area. Contamination.

Bldg. 63–320
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010307
Status: Unutilized
Reason: Secured Area. Contamination.

Bldg. 63–325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010308
Status: Unutilized
Reason: Secured Area. Contamination.

Bldg. 103
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010309
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 110
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010310
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 112
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010311
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 113
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010312
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 114
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010313
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 115
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010314
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 118
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010315
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 1018
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010317
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 1025
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010318
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010319
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 107
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010320
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 115
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010321
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 113

Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010322
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 150
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010323
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 152
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010324
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 301
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010325
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 1001
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010326
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 1003
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010327
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 1055
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010328
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010329
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 103
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010330
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 104
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010331
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 105
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010332
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 110
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010333
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 114
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010334
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 202
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010335
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 204
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010336
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 205
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010337
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 1001
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010338
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010339
Status: Unutilized
Reason: Secured Area. Isolated area. Not accessible by road. Contamination.

Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010433
Status: Unutilized
Reason: Other. Isolated area. Not accessible by road.
Comment: Isolated and remote; Arctic environment.

Bldg. 28
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210126
Status: Excess
Reason: Within airport runway clear zone. Secured Area.

Bldg. 24
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210127
Status: Excess
Reason: Within airport runway clear zone. Secured Area. Within 2000 ft. of flammable or explosive material.

Bldg. 19
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210128
Status: Excess
Reason: Within airport runway clear zone. Secured Area. Other.
Comment: Extensive deterioration.

Bldg. 94
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210129
Status: Excess
Reason: Secured Area. Other.
Comment: Extensive deterioration.

Bldg. 85
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210130
Status: Excess
Reason: Secured Area. Other.
Comment: Extensive deterioration.

Bldg. 18
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210132
Status: Excess
Reason: Secured Area. Within airport runway clear zone.
GSA Number: U–ALAS–655A.

Bldg. A512
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210133
Status: Excess
Reason: Secured Area. Within airport runway clear zone. Within 2000 ft. of flammable or explosive material.

Bldg. R1, Holiday Beach
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310014
Status: Unutilized
Reason: Secured Area.

Bldg. S–3
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310015
Status: Unutilized
Reason: Secured Area.

Bldg. S–16
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310016
Status: Unutilized
Reason: Secured Area.

Bldg. 82
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310017
Status: Unutilized
Reason: Secured Area.

Bldg. 86
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310018
Status: Unutilized
Reason: Secured Area.

Bldg. 98
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310019
Status: Unutilized
Reason: Secured Area.

Bldg. 524A
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310020
Status: Unutilized
Reason: Within airport runway clear zone. Secured Area.

Bldg. 624
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310021
Status: Unutilized
Reason: Within airport runway clear zone. Secured Area.

Housing Ketchikan (Naushon UPH)
3615 Baranof Avenue
Ketchikan Co: Ketchikan AK 99801–
Landholding Agency: DOT
Property Number: 879320005
Status: Unutilized
Reason: Other.
Comment: Extensive Deterioration.

Old Petersburg Moorings
Cannery Wharf
Petersburg AK 99833–
Landholding Agency: DOT
Property Number: 879330002
Status: Unutilized
Reason: Other.
Comment: Extensive Deterioration.

Arizona

Facility 90002
Holbrook Radar Site
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340049
Status: Unutilized
Reason: Within airport runway clear zone.

California

Bldg. 4052
March AFB
Ice House in West March
Riverside Co: Riverside CA 92518–
Landholding Agency: Air Force
Property Number: 189010082
Status: Unutilized
Reason: Within airport runway clear zone.

Bldg. 192 60 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010187
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 1182 60 ABG/DE
Travis Air Force Base
Perimeter Road
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010188
Status: Unutilized
Reason: Within Airport runway clear zone. Secured Area.

Bldg. 152 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010190
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 159 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010191
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 384 60 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010192
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 707 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010193
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernardino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010195
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 502 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernardino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010196
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 23 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernardino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010197
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 100
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010233
Status: Unutilized
Reason: Secured Area.

Bldg. 101
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010234
Status: Underutilized
Reason: Secured Area.

Bldg. 116
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010235
Status: Unutilized
Reason: Secured Area.

Bldg. 202
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010236
Status: Unutilized

Reason: Secured Area
Bldg. 201
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010546
Status: Unutilized
Reason: Secured Area.

Bldg. 202
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010547
Status: Unutilized
Reason: Secured Area.

Bldg. 203
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010548
Status: Unutilized
Reason: Secured Area.

Bldg. 204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010549
Status: Unutilized
Reason: Secured Area.

Bldg. 1100
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010567
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 1101
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010568
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 1103
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010569
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 1104
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010571
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 1105
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010572
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 1106
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010573
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 1107
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010574
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 1110
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010579
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 1108
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189010580
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Bldg. 1823
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Loction: Hwy 1, Hwy 246, Coast Road, PT Sal Rd., Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189130360
Status: Excess
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material.

Bldg. 11443
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246, Coast Rd. Pt Sal Rd, Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189140029
Status: Unutilized
Reason: Secured Area.

Bldg. 6105
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210019
Status: Unutilized
Reason: Secured Area.

Bldg. 8141
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210024
Status: Unutilized
Reason: Secured Area.

Bldg. 10312
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210026
Status: Unutilized
Reason: Secured Area.

Bldg. 10314
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210027
Status: Unutilized
Reason: Secured Area.

Bldg. 10503
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210028
Status: Unutilized
Reason: Secured Area.

Bldg. 10748
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210029
Status: Unutilized
Reason: Other.
Comment: Extensive deterioration.

Bldg. 10004, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189230007
Status: Underutilized
Reason: Secured Area.

Bldg. 10702, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189230008
Status: Underutilized
Reason: Secured Area.

Bldg. 10704, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189230009
Status: Underutilized
Reason: Secured Area.

Bldg. 10706, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189230010
Status: Underutilized
Reason: Secured Area.

Bldg. 10710, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189230011
Status: Underutilized
Reason: Secured Area.

Bldg. 10726, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189230012
Status: Underutilized
Reason: Secured Area.

Bldg. 10742, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189230013
Status: Underutilized
Reason: Secured Area.

Bldg. 16104, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189230020
Status: Underutilized
Reason: Secured Area.

Bldg. 1791
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189240044
Status: Unutilized
Reason: Secured Area.

Bldg. 10721
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189240048
Status: Underutilized
Reason: Secured Area.

Bldg. 11026
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189240049
Status: Underutilized
Reason: Secured Area.

Bldg. 13028
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189240050
Status: Unutilized
Reason: Secured Area.

Bldg. 5426, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310013
Status: Unutilized
Reason: Secured Area.

Bldg. 5427, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310014
Status: Unutilized
Reason: Secured Area.

Bldg. 5428, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310015
Status: Unutilized
Reason: Secured Area.

Bldg. 5430, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310016
Status: Unutilized
Reason: Secured Area.

Bldg. 5431, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310017
Status: Unutilized
Reason: Secured Area.

Bldg. 6407, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310024
Status: Unutilized
Reason: Secured Area.

Bldg. 6424, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310025
Status: Unutilized
Reason: Secured Area.

Bldg. 6425, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310027
Status: Unutilized
Reason: Secured Area.

Bldg. 6444, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310028
Status: Unutilized
Reason: Secured Area.

Bldg. 7303, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310029
Status: Unutilized
Reason: Secured Area.

Bldg. 7304, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310030
Status: Unutilized
Reason: Secured Area.

Bldg. 12406, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310034
Status: Unutilized
Reason: Secured Area.

Bldg. 12407, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310035
Status: Unutilized
Reason: Secured Area.

Bldg. 13010, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310036
Status: Unutilized
Reason: Secured Area.

Bldg. 13014, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310039
Status: Unutilized
Reason: Secured Area.

Bldg. 9101
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320009
Status: Excess
Reason: Secured Area.

Bldg. 9102
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320010
Status: Excess
Reason: Secured Area.

Bldg. 9103
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320011
Status: Excess
Reason: Secured Area.

Bldg. 9106
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320014
Status: Excess
Reason: Secured Area.

Bldg. 9107
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320015
Status: Excess
Reason: Secured Area.

Bldg. 9108
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320016
Status: Excess
Reason: Secured Area.

Bldg. 9109
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320017
Status: Excess
Reason: Secured Area.

Bldg. 9117
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320019
Status: Excess
Reason: Secured Area.

Bldg. 12205
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320020
Status: Excess
Reason: Secured Area.

Bldg. 12206
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320021
Status: Excess
Reason: Secured Area.

Bldg. 12207
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320022
Status: Excess
Reason: Secured Area.

Bldg. 12209
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320023
Status: Excess
Reason: Secured Area.

Bldg. 12210
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320024
Status: Excess
Reason: Secured Area.

Bldg. 12306
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320025
Status: Excess
Reason: Secured Area.

Bldg. 12307
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320026
Status: Excess
Reason: Secured Area.

Bldg. 12309
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320027
Status; Excess
Reason: Secured Area.

Bldg. 12310
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320028
Status: Excess
Reason: Secured Area.

Bldg. 12313
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320029
Status: Excess
Reason: Secured Area.

Bldg. 12314
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320030
Status: Excess
Reason: Secured Area.

Bldg. 12503
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320031
Status: Excess
Reason: Secured Area.

Bldg. 5437
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330011
Status: Unutilized
Reason: Other Secured Area.
Comment: Extensive deterioration.

Bldg. 6206
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330013
Status: Unutilized
Reason: Secured Area.

Bldg. 8114
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330014
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 8115
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330015
Status: Unutilized
Reason: Secured Area.

Bldg. 8215
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330016
Status: Unutilized
Reason: Secured Area.

Bldg. 8220
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330019
Status: Unutilized
Reason: Secured Area.

Bldg. 8221
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330020
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 8222
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330021
Status: Unutilized
Reason: Secured Area.

Bldg. 8227
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330025
Status: Unutilized
Reason: Secured Area.

Bldg. 8229
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force

Property Number: 189330026
Status: Unutilized
Reason: Secured Area.
Bldg. 8230
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330027
Status: Unutilized
Reason: Secured Area.
Bldg. 9001
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330028
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Bldg. 9003
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330029
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Bldg. 11435
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330030
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Bldg. 13006
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330031
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Bldg. 13025
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330032
Status: Unutilized
Reason: Secured Area.
Bldg. 13027
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330033
Status: Unutilized
Reason: Secured Area.
Bldg. 17595
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330034
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Bldg. 4412
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340001
Status: Unutilized
Reason: Within airport runway clear zone. Secured Area.
Bldg. 4415
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340002
Status: Unutilized
Reason: Within airport runway clear zone. Secured Area.
Bldg. 1988
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340003
Status: Unutilized
Reason: Other. Secured Area.
Comment: Electrical Power Generator Bldg.
Bldg. 11147
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340004
Status: Unutilized
Reason: Other. Secured Area.
Comment: Detached latrine.
Bldg. 1130
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340005
Status: Unutilized
Reason: Secured Area.
Bldg. 1324
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340006
Status: Unutilized
Reason: Secured Area.
Bldg. 1341
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340007
Status: Unutilized
Reason: Secured Area.
Bldg. 1955
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340008
Status: Unutilized
Reason: Secured Area.
Bldg. 5007
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340009
Status: Unutilized
Reason: Secured Area.
Bldg. 5107
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340010
Status: Unutilized
Reason: Secured Area.
Bldg. 5118
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340011
Status: Unutilized
Reason: Secured Area.
Bldg. 5120
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340012
Status: Unutilized
Reason: Secured Area.
Bldg. 5132
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340013
Status: Unutilized
Reason: Secured Area.
Bldg. 6008
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340014
Status: Unutilized
Reason: Secured Area.
Bldg. 6418
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340015
Status: Unutilized
Reason: Secured Area.
Bldg. 6420
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340016
Status: Unutilized
Reason: Secured Area.
Bldg. 6429
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340017
Status: Unutilized
Reason: Secured Area.
Bldg. 6441
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340018
Status: Unutilized
Reason: Secured Area.
Bldg. 6442
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340019
Status: Unutilized
Reason: Secured Area.
Bldg. 6443
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340020
Status: Unutilized
Reason: Secured Area.
Bldg. 7301
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340021
Status: Unutilized
Reason: Secured Area.
Bldg. 7306
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340022
Status: Unutilized
Reason: Secured Area.
Bldg. 8309
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340023
Status: Unutilized
Reason: Secured Area.
Bldg. 9310
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340024
Status: Unutilized
Reason: Secured Area.
Bldg. 11190
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340025
Status: Unutilized
Reason: Secured Area.
Bldg. 11308
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340026
Status: Unutilized
Reason: Secured Area.
Bldg. 13001
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340027
Status: Unutilized
Reason: Secured Area.
Bldg. 16164
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340028
Status: Unutilized
Reason: Secured Area.
Bldg. 6521
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189410004
Status: Unutilized
Reason: Secured Area.
Bldg. 13019
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189410005
Status: Unutilized
Reason: Secured Area.
Bldg. 10, USCG Support Center
Coast Guard Island
Alameda Co: Alameda CA 94501–5100 93438–
Landholding Agency: DOT
Property Number: 879210134
Status: Excess
Reason: Secured Area.
Bldg. 20
Support Center San Pedro
Terminal Island
San Pedro Co: Los Angeles CA 90731–
Landholding Agency: DOT
Property Number: 879320021
Status: Unutilized
Reason: Secured Area.
Bldg. 22
Support Center San Pedro
Terminal Island
San Pedro Co: Los Angeles CA 90731–
Landholding Agency: DOT
Property Number: 879320022
Status: Unutilized
Reason: Secured Area.
Bldg. 23
Support Center San Pedro
Terminal Island
San Pedro Co: Los Angeles CA 90731–
Landholding Agency: DOT
Property Number: 879320023
Status: Unutilized
Reason: Secured Area.
Fuel Oil Bldg.
Los Angeles Light Station
San Pedro Co: Los Angeles CA
Landholding Agency: DOT
Property Number: 879410001
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Quarters Bldg.
Lost Angeles Light Station
San Pedro Co: Los Angeles CA
Landholding Agency: DOT
Property Number: 879410002
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Colorado

Bldg. 712
Buckley Air National Guard Base,
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330002
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Bldg. 518
Buckley Air National Guard Base,
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330003
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Bldg. 505
Buckley Air National Guard Base,
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330004
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Bldg. 504
Buckley Air National Guard Base,
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330005
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Bldg. 503
Buckley Air National Guard Base,
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330006
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Bldg. 502
Buckley Air National Guard Base,
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330007
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Bldg. 32
Buckley Air National Guard Base,
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330008
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Bldg. 27
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330009
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Bldg. 23
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330010
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.
Alemeda Facility
350 S. Santa Fe Drive
Denver Co: Denver CO 80223–
Landholding Agency: DOT
Property Number: 879010014
Status: Unutilized
Reason: Other environmental.

Comment: Contamination.

Connecticut

Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512–
Landholding Agency: DOT
Property Number: 879240031
Status: Unutilized
Reason: Floodway.

Delaware

Bldg. 1900
436 CSG Dover AFB
Dover Co: Kent DE 19902–5516
Landholding Agency: Air Force
Property Number: 189120230
Status: Unutilized
Reason: Within airport runway clear zone. Secured Area.

Bldg. 1304 (436 CSG)
Dover Air Force Base
Dover Co: Kent DE 19902–5065
Landholding Agency: Air Force
Property Number: 189140018
Status: Unutilized
Reason: Secured Area. Within airport runway clear zone.

Florida

Bldg. 902
Tyndall Air Force Base
Panama City Co: Bay FL 32403–5000
Landholding Agency: Air Force
Property Number: 189130348
Status: Underutilized
Reason: Secured Area.

Bldg. 400
Patrick Air Force Base
C Street bet. First & Second Streets
Cocoa Beach Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189220001
Status: Unutilized
Reason: Secured Area.

Bldg. 430
Patrick Air Force Base
Third Street bet. B and C Streets
Cocoa Beach Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189220002
Status: Underutilized
Reason: Secured Area.

Bldg. 1176
Patrick Air Force Base
1176 School Avenue Co: Brevard FL 32935–
Landholding Agency: Air Force
Property Number: 189240029
Status: Unutilized
Reason: Secured Area. Other.
Comment: Extensive deterioration.

Bldg. 1179
Patrick Air Force Base
1179 School Avenue Co: Brevard FL 32935–
Landholding Agency: Air Force
Property Number: 189240030
Status: Unutilized
Reason: Secured Area. Other.
Comment: Extensive deterioration.

Bldg. 321
Patrick Air Force Base Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189320001
Status: Unutilized
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material. Other.
Comment: Extensive deterioration.

Bldg. 510
Patrick Air Force Base Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189320002
Status: Unutilized
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material. Other.
Comment: Extensive deterioration.

Bldg. 558
Patrick Air Force Base Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189320003
Status: Unutilized
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material. Within airport runway clear zone. Other.
Comment: Extensive deterioration.

Bldg. 575
Patrick Air Force Base, Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189320004
Status: Unutilized
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material. Within airport runway clear zone. Other.
Comment: Extensive deterioration.

Bldg. 184, MacDill AFB
MacDill AFB Co: Hillsbourgh FL 33608–
Landholding Agency: Air Force
Property Number: 189320100
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Facility 90523
Cape Canaveral AFS
Cape Canaveral AFS Co: Brevard FL
Landholding Agency: Air Force
Property Number: 189330001
Status: Underutilized
Reason: Secured Area.

Bldg. #3, Recreation Cottage.
USCG Station
Marathon Co: Monroe FL 33050–
Landholding Agency: DOT
Property Number: 879210008
Status: Unutilized
Reason: Secured Area, Floodway.

Bldg. 103, Trumbo Point
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 879230001
Status: Unutilized
Reason: Floodway. Secured Area.

LORAN "A" Station
Radio Beacon Hobe Sound
Jupiter Island Co: Martin FL
Landholding Agency: DOT
Property Number: 879230003
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Fuel Facility, Coast Guard
Miami Air Station, OPA Locka Airport
OPA Locka Co: Dade FL 33054–2397
Landholding Agency: DOT
Property Number: 879240004
Status: Unutilized
Reason: Secured Area.

Pyro & Paint Locker Bldgs.
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 879240017
Status: Unutilized
Reason: Floodway. Secured Area.

Cosgrove Shoal Light (offshore) Straits of Florida Co: Monroe FL
Landholding Agency: DOT
Property Number: 879320007
Status: Unutilized
Reason: Floodway. Other.
Comment: Extensive deterioration.

Smith Shoal Light (offshore) Straits of Florida Co: Monroe FL
Landholding Agency: DOT
Property Number: 879320008
Status: Unutilized
Reason: Floodway. Other.
Comment: Extensive deterioration.

Pulaski Shoal Light (offshore) Gulf of Mexico Co: Monroe FL
Landholding Agency: DOT
Property Number: 879320009
Status: Unutilized
Reason: Floodway. Other.
Comment: Extensive deterioration.

Hawaii

Kahoolawe SW Point Light
Kahoolawe Island Co: Maui HI
Landholding Agency: DOT
Property Number: 879340003
Status: Underutilized
Reason: Other
Comment: Inaccessible.

Idaho

Bldg 1012
Mountain Home Air Force Base, 7th Avenue, (See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030004
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 923
Mountain Home Air Force Base, 7th Avenue, (See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030005
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg 604
Mountain Home Air Force Base, Pine Street, (See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030006
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg 229
Mountain Home Air Force Base, 1st Avenue and A Street, Mt. Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189040857
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Within airport runway clear zone.

Illinois

Bldg. 3191
Scott Air Force Base, East Drive 375/ABG/DE
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Number: 189010247
Status: Unutilized
Reason: Within airport runway clear zone. Secured Area.

Bldg. 3670
Scott Air Force Base, East Drive 375/ABG/DE
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Number: 189010248
Status: Unutilized
Reason: Secured Area.

Bldg. 503
Scott Air Force Base
Scott AFB Co: St. Clair IL 62225–
Landholding Agency: Air Force
Property Number: 189010725
Status: Unutilized
Reason: Secured Area.

Bldg. 869
Scott Air Force Base
375 CSG/DEER
Scott AFB Co: St. Clair IL 62225–5045
Landholding Agency: Air Force
Property Number: 189110087
Status: Unutilized
Reason: Secured Area.

Bldg. 865
Scott Air Force Base
Belleville Co: St. Clair IL 62225–
Landholding Agency: Air Force
Property Number: 189130347
Status: Unutilized
Reason: Secured Area.

Calumet Harbor Station
U.S. Coast Guard
Chicago Co: Cook IL
Landholding Agency: DOT
Property Number: 879310005
Status: Excess
Reason: Secured Area.

Indiana

Bldg. 21, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230001
Status: Underutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 22, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230002
Status: Underutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 62, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230003
Status: Underutilized
Reason: Other
Comment: Extensive deterioration

Iowa

Bldg. 00273
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310008
Status: Unutilized
Reason: Secured Area.

Bldg. 00671
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310009
Status: Unutilized
Reason: Other
Comment: Fuel pump station.

Bldg. 00736
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310010
Status: Unutilized
Reason: Other
Comment: Pump station.

Kansas

Bldg. 1407
McConnell Air Force Base
Wichita Co: Sedgwick KS 67221–
Landholding Agency: Air Force
Property Number: 189340029
Status: Unutilized
Reason: Within airport runway clear zone. Secured Area.

Bldg. 186
McConnell Air Force Base
Wichita Co: Sedgwick KS 67221–
Landholding Agency: Air Force
Property Number: 189340030
Status: Unutilized
Reason: Other, Secured Area.
Comment: Extensive deterioration.

Bldg. 187
McConnell Air Force Base
Wichita Co: Sedgwick KS 67221–
Landholding Agency: Air Force
Property Number: 189340031
Status: Unutilized
Reason: Other, Secured Area.
Comment: Extensive deterioration.

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008–
Landholding Agency: COE
Property Number: 219040416
Status: Unutilized
Reason: Other
Comment: Spring House.

Building
Kentucky River Lock and Dam No. 4, 1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 219040417
Status: Unutilized
Reason: Other
Comment: Coal Storage.

Building
Kentucky River Lock and Dam No. 4, 1021 Kentucky Avenue
Frankfort Co: Franklin KY40601–9999
Landholding Agency: COE
Property Number: 219040418
Status: Unutilized
Reason: Other
Comment: Coal Storage.

Barn
Kentucky River Lock and Dam No. 3, Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 219040419
Status: Unutilized
Reason: Other
Comment: 110 year old barn with crumbled foundation.

Tract 111—Building
Martins Fork Lake
Smith Co: Harlan KY 40867–
Location: 13 miles southeast of Harlan on Highway 987.
Landholding Agency: COE
Property Number: 319010062
Status: Unutilized
Reason: Floodway.

Latrine
Kentucky River Lock and Dam Number 3, Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 319040009
Status: Unutilized
Reason: Other.
Comment: Detached Latrine.

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120010
Status: Unutilized
Reason: Floodway.

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120011
Status: Unutilized
Reason: Floodway.

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120012
Status: Unutilized
Reason: Floodway.

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Landholding Agency: COE
Property Number: 319120013
Status: Unutilized
Reason: Floodway.

Louisiana

Bldg. 3477
Barksdale Air Force Base, Davis Avenue
Barksdale AFB Co: Bossier LA 71110–5000
Landholding Agency: Air Force
Property Number: 189140015
Status: Unutilized
Reason: Secured Area.

Transmitter Hut #1
U.S. Coast Guard Communications Station
Belle Chasse Co: Orleans Parish LA 70037–
Landholding Agency: DOT
Property Number: 879320006
Status: Unutilized
Reason: Secured Area.

Maine

Supply Bldg., Coast Guard
Southwest Harbor

Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240005
Status: Unutilized
Reason: Floodway.

Base Exchange, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240006
Status: Unutilized
Reason: Floodway.

Engineering Shop, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240007
Status: Unutilized
Reason: Floodway.

Storage Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240008
Status: Unutilized
Reason: Floodway

Herron Neck Light
U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 879240028
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Burnt Coat Harbor Light
U.S. Coast Guard
Swans Island Co: Hancock ME 04685–
Landholding Agency: DOT
Property Number: 879240030
Status: Unutilized
Reason: Floodway

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sayadahoc ME 04530–
Landholding Agency: DOT
Property Number: 879240032
Status: Unutilized
Reason: Floodway

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 879240035
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Fort Popham Light
Phippsburg Co: Sagadahoc ME 04562–
Landholding Agency: DOT
Property Number: 879320024
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Maryland

Bldg. 4
Brandywine Storage Annex 1776 ABW/DE
Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 189010261
Status: Unutilized
Reason: Secured Area.

Bldg. 5
Brandywine Storage Annex 1776 ABW/DE
Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 189010264
Status: Unutilized
Reason: Secured Area.

Bldg. 3427
Andrews Air Force Base, 3427 Pennsylvania Avenue
Andrews AFB Co: Prince Georges MD 20335–
Landholding Agency: Air Force
Property Number: 189140016
Status: Unutilized
Reason: Secured Area.

Bldg. 3492
Andrews Air Force Base
Andrews AFB Co: Prince Georges MD 20335–
Landholding Agency: Air Force
Property Number: 189340050
Status: Unutilized
Reason: Secured Area.

Massachusetts

Bldg. 1900
Westover Air Force Base
Chicopee Co: Hampden MA 01022–
Landholding Agency: Air Force
Property Number: 189010438
Status: Unutilized
Reason: Secured Area.

Bldg. 1433
Westover Air Force Base
Chicopee Co: Hampden MA 01022–5000
Landholding Agency: Air Force
Property Number: 189040002
Status: Unutilized
Reason: Secured Area.

Bldg. 4, USCG Support Center, Commercial Street
Boston Co: Suffolk MA 02203–
Landholding Agency: DOT
Property Number: 879240001
Status: Underutilized
Reason: Secured Area.

Eastern Point Light
U.S. Coast Guard
Gloucester Co: Essex MA 01930–
Landholding Agency: DOT
Property Number: 879240029
Status: Unutilized
Reason: Floodway, Secured Area.

Michigan

Bldg. 550
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: North end of airfield.
Landholding Agency: Air Force
Property Number: 189010522
Status: Unutilized
Reason: Secured Area.

Bldg. 5858
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: Near South Perimeter Road, near Building 590.
Landholding Agency: Air Force
Property Number: 189010523
Status: Unutilized
Reason: Secured Area.

Bldg. 580
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: South end of airfield.
Landholding Agency: Air Force
Property Number: 189010524
Status: Unutilized
Reason: Secured Area.

Bldg. 856
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010525
Status: Unutilized
Reason: Secured Area.

Bldg. 1005
Selfridge Air National Guard Base, 1005 C. Street
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010526
Status: Unutilized
Reason: Secured Area.

Bldg. 1012
Selfridge Air National Guard Base, 1012 A. Street
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010527
Status: Unutilized
Reason: Secured Area.

Bldg. 1041
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010528
Status: Unutilized
Reason: Secured Area.

Bldg. 1412
Selfridge Air National Guard Base, 1412 Castle Avenue
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010529
Status: Unutilized
Reason: Secured Area.

Bldg. 1434
Selfridge Air National Guard Base, 1434 Castle Avenue
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010530
Status: Unutilized
Reason: Secured Area.

Bldg. 1688
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: Near South Perimeter Road, near Building 1694.
Landholding Agency: Air Force
Property Number: 189010531
Status: Unutilized
Reason: Secured Area.

Bldg. 1689
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: Near South Perimeter Road, near Building 1694.
Landholding Agency: Air Force
Property Number: 189010532
Status: Unutilized
Reason: Secured Area.

Bldg. 5670
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010533
Status: Unutilized
Reason: Secured Area.

Bldg. 71
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010810
Status: Excess
Reason: Other
Comment: Sewage treatment and disposal facility.

Bldg. 99 (WATER WELL)
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010831
Status: Excess
Reason: Other
Comment: Water well.

Bldg. 100 (WATER WELL)
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010832
Status: Excess
Reason: Other
Comment: Water well.

Bldg. 118
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010875
Status: Excess
Reason: Other
Comment: Gasoline Station.

Bldg. 120
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010876
Status: Excess
Reason: Other
Comment: Gasoline station.

Bldg. 166
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010877
Status: Excess
Reason: Other
Comment: Pump lift station.

Bldg. 168
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010878
Status: Excess
Reason: Other
Comment: Gasoline station.

Bldg. 69
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010889
Status: Excess
Reason: Other
Comment: Sewer pump facility.

Bldg. 2
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010890
Status: Excess
Reason: Other
Comment: Water pump station.

Bldg. 402, U.S. Air Station
Traverse City Co: Grand Traverse MI 49684–3586
Landholding Agency: DOT
Property Number: 879220001
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Minnesota

Bldg. 641
Minnesota Air National Guard
934th Airlift Group
Minneapolis Co: Hennepin MN 55111–4098
Landholding Agency: Air Force
Property Number: 189310003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 643
Minnesota Air National Guard
934th Airlift Group
Minneapolis Co: Hennepin MN 55111–4098
Landholding Agency: Air Force
Property Number: 189310004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 646
Minnesota Air National Guard
934th Airlift Group
Minneapolis Co: Hennepin MN 55111–4098
Landholding Agency: Air Force
Property Number: 189310005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 665
Minnesota Air National Guard
934th Airlift Group
Minneapolis Co: Hennepin MN 55111–4098
Landholding Agency: Air Force
Property Number: 189310006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Mississippi

Natchez Moorings, 82 L.E. Berry Road
Natchez Co: Adams MS 39121–
Landholding Agency: DOT
Property Number: 879340002
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 6, Boiler Plant
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410001
Status: Unutilized
Reason: Floodway.

Bldg. 51
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410002
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 52
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410003
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 53
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410004
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 54
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410005
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 55
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410006
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 56
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410007
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 67
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410008
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 68
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410009
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 107
Biloxi VA Medical Center
Biloxi Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 979410010
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Missouri

Bldg. 42
Jefferson Barracks ANG Base, 1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010726
Status: Unutilized
Reason: Secured Area.

Bldg. 45
Jefferson Barracks ANG Base, 1 Grant Road, Missouri National Guard

St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010728
Status: Unutilized
Reason: Secured Area.

Bldg. 46
Jefferson Barracks ANG Base, 1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010729
Status: Unutilized
Reason: Secured Area.

Bldg. 47
Jefferson Barracks ANG Base, 1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010730
Status: Unutilized
Reason: Secured Area.

Bldg. 61
Jefferson Barracks ANG Base, 1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010731
Status: Unutilized
Reason: Secured Area.

Montana

Bldg. 140
Malmstrom AFB
Between Goddard Avenue & 2nd Street
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010076
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Within airport runway clear zone. Secured area. Other environmental.

Bldg. 280
Malmstrom AFB
Flightline & Avenue G
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010077
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material. Within airport runway clear zone. Secured area. Other environmental.

Bldg. 621
Malmstrom AFB
1st Street & Avenue I
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010078
Status: Unutilized
Reason: Other environmental. Secured Area.
Comment: Friable asbestos.

Bldg. 1500
Malmstrom AFB
Perimeter Road
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010079
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured area. Other environmental.

Bldg. 1502
Malmstrom AFB
Perimeter Road
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010080
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured area. Other environmental.

Bldg. 627
Malmstrom
2nd St. and I Avenue
Great Falls Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010722
Status: Unutilized
Reason: Secured Area. Other environmental.

Bldg. 677
Malmstrom
Avenue F between Goddard and 1st Avenue
Great Falls Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010723
Status: Unutilized
Reason: Secured Area. Other environmental.

Bldg. 1991
Malmstrom AFB
Between Avenue G and H
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189040057
Status: Underutilized
Reason: Secured Area. Other environmental.

Nebraska

Offutt Communications Annex–#3
Offutt Air Force Base
Scribner Co: Dodge NE 68031–
Landholding Agency: Air Force
Property Number: 189210006
Status: Unutilized
Reason: Other
Comment: Former sewage lagoon.

Bldg. 637
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524–
Landholding Agency: Air Force
Property Number: 189230021
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 639
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524–
Landholding Agency: Air Force
Property Number: 189230022
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 31
Offutt Air Force Base
Sac Boulevard
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240007
Status: Unutilized
Reason: Secured Area.

Bldg. 311
Offutt Air Force Base
Nelson Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240008
Status: Unutilized
Reason: Secured Area.

Bldg. 401
Offutt Air Force Base
Custer Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240009
Status: Unutilized
Reason: Secured Area.

Bldg. 416
Offutt Air Force Base
Sherman Turnpike
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240010
Status: Unutilized
Reason: Secured Area.

Bldg. 417
Offutt Air Force Base
Sherman Turnpike
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240011
Status: Unutilized
Reason: Secured Area.

Bldg. 545
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240012
Status: Unutilized
Reason: Secured Area.

Bldg. 21
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320058
Status: Excess
Reason: Other.
Comment: Generator.

New Hampshire

Bldg. 101
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 102
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 104
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

New Jersey

Piers and Wharf
Station Sandy Hook
Highlands Co: Monmouth NJ 07732–5000
Landholding Agency: DOT
Property Number: 879240009
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

New Mexico

Bldg. 831
833 CSG/DEER
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189130333
Status: Unutilized
Reason: Secured Area.

Bldg. 21
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240032
Status: Unutilized
Reason: Secured Area.

Bldg. 80
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240033
Status: Unutilized
Reason: Secured Area.

Bldg. 98
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240034
Status: Unutilized
Reason: Secured Area.

Bldg. 324
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240035
Status: Unutilized
Reason: Secured Area.

Bldg. 598
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240036
Status: Unutilized
Reason: Secured Area.

Bldg. 801
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240037
Status: Unutilized
Reason: Secured Area.

Bldg. 802
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240038
Status: Unutilized
Reason: Secured Area.

Bldg. 1095
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240039
Status: Unutilized
Reason: Secured Area.

Bldg. 1096
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240040
Status: Unutilized
Reason: Secured Area.

Facility 321
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240041
Status: Unutilized
Reason: Secured Area.

Facility 75115
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240042
Status: Unutilized
Reason: Secured Area.

Bldg. 874
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189320041
Status: Unutilized
Reason: Secured Area. Other.
Comment: Extensive deterioration.

Bldg. 1258
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189320042
Status: Unutilized
Reason: Secured Area. Other.
Comment: Extensive deterioration.

New York

Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14303–5000
Landholding Agency: Air Force
Property Number: 189010075
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. 272
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189140022
Status: Excess
Reason: Secured Area.

Bldg. 888
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189140023
Status: Excess
Reason: Secured Area.

Facility 814, Griffiss AFB
NE of Weapons Storage Area
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230001
Status: Excess
Reason: With airport runway clear zone. Secured Area.

Facility 808, Griffiss AFB
Perimeter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230002
Status: Excess
Reason: Within airport runway clear zone. Secured Area.

Facility 807, Griffiss AFB
Perimeter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230003
Status: Excess
Reason: Within airport runway clear zone. Secured Area.

Facility 126
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240020
Status: Unutilized
Reason: Secured Area.

Facility 127
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240021
Status: Unutilized
Reason: Secured Area.

Facility 135
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240022
Status: Unutilized
Reason: Secured Area.

Facility 137
Griffiss Air Force Base
Otis Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240023
Status: Unutilized
Reason: Secured Area.

Facility 138
Griffiss Air Force Base
Otis Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240024
Status: Unutilized
Reason: Secured Area.

Facility 173
Griffiss Air Force Base
Selfridge Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240025
Status: Unutilized
Reason: Secured Area.

Facility 261
Griffiss Air Force Base
McDill Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240026
Status: Unutilized
Reason: Secured Area.

Facility 308
Griffiss Air Force Base
205 Chanute Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240027
Status: Unutilized
Reason: Secured Area.

Facility 1200
Griffiss Air Force Base
Donaldson Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240028
Status: Unutilized
Reason: Secured Area.

Bldg. 759, Hancock Field
6001 East Molloy Road
Syracuse Co: Onondaga NY 13211–7099
Landholding Agency: Air Force
Property Number: 189310007
Status: Unutilized
Reason: Other Secured Area.
Comment: Extensive deterioration.

Facility 841
Griffiss Air Force Base
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189330097
Status: Unutilized
Reason: Secured Area.

2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477–
Landholding Agency: DOT
Property Number: 879230005
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 605, USCG Station
Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240010
Status: Excess
Reason: Secured Area.

Bldg. 606, USCG Station
Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240011
Status: Excess
Reason: Secured Area.

Bldg. 607, USCG Station
Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240012
Status: Excess
Reason: Secured Area.

Bldg. 606, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240020
Status: Unutilized
Reason: Secured Area.

Bldg. 607, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240021
Status: Unutilized
Reason: Secured Area. Other
Comment: Extensive deterioration.

Bldg. 605, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240022
Status: Unutilized
Reason: Secured Area. Other.
Comment: Extensive deterioration.

Eatons Neck Station
U.S. Coast Guard
Huntington Co: Suffolk NY 11743–
Landholding Agency: DOT
Property Number: 879310003
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 517, USCG Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 879320025
Status: Unutilized
Reason: Secured Area.

Bldg. 130
U.S. Coast Guard Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 879410003
Status: Unutilized
Reason: Secured Area.

North Carolina

Bldg. 187
Pope Air Force Base
317 CSG/DE Reilly Road
Pope AFB Co: Cumberland NC 28308–5045
Landholding Agency: Air Force
Property Number: 189010262
Status: Unutilized
Reason: Secured Area.

Bldg. 4290—Youth Center
Cannon Ave.
Goldsboro Co: Wayne NC 27531–5005
Landholding Agency: Air Force
Property Number: 189120233
Status: Underutilized
Reason: Secured Area.

Bldg. 600, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330035
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 602, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330036
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 603, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330037
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 604, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330038
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 605, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330039
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 606, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330040
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 607, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330041
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 612, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330042
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 619, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330043
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 6606, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330044
Status: Unutilized
Reason: Other. Secured Area.
Comment: Extensive deterioration.

Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879240018
Status: Unutilized
Reason: Secured Area.

Group Cape Hatteras
Bowling Alley
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879240019
Status: Unutilized
Reason: Secured Area.

Bldg. 21, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320010
Status: Unutilized
Reason: Floodway. Secured Area.

Bldg. 22, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320011
Status: Unutilized
Reason: Floodway Secured Area.

Bldg. 25, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320012
Status: Unutilized
Reason: Floodway. Secured Area.

Bldg. 27, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320013
Status: Unutilized
Reason: Floodway. Secured Area.

Bldg. 32, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT

Property Number: 879320014
Status: Unutilized
Reason: Floodway. Secured Area.

Bldg. 67, USGC Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320016
Status: Unutilized
Reason: Secured Area.

Bldg. 69, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320017
Status: Unutilized
Reason: Secured Area.

Bldg. 71, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320018
Status: Unutilized
Reason: Secured Area.

Bldg. 73, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320019
Status: Unutilized
Reason: Secured Area.

Bldg. 54
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340004
Status: Unutilized
Reason: Secured Area.

Bldg. 83
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340005
Status: Unutilized
Reason: Secured Area.

Water Tanks
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340006
Status: Unutilized
Reason: Secured Area.

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co: Buncombe NC 28805–
Landholding Agency: VA
Property Number: 979010008
Status: Underutilized
Reason: Other
Comment: Friable asbestos.

North Dakota

Bldg. 422
Minot Air Force Base
Minot Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 189010724
Status: Underutilized
Reason: Secured Area.

Bldg. 50
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310107
Status: Excess
Reason: Other
Comment: Garbage incinerator.

Bldg. 119
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320034
Status: Unutilized
Reason: Secured Area.

Bldg. 191
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320035
Status: Unutilized
Reason: Secured Area.

Bldg. 490
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320036
Status: Unutitilized
Reason: Secured Area.

Bldg. 509
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320037
Status: Unutilized
Reason: Secured Area.

Bldg. 526
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320038
Status: Unutilized
Reason: Secured Area.

Bldg. 895
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320039
Status: Unutilized
Reason: Secured Area.

Bldg. 1019
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320040
Status: Unutilized
Reason: Secured Area.

Ohio

Bldg. 404, Hydrant Fuel
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220015
Status: Unutilized
Reason: Secured Area.

Bldg. 405, Test Cell
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220016
Status: Unutilized
Reason: Secured Area.

Oklahoma

Bldg. 604
Vance Air Force Base
Enid Co: Garfield OK 73705–5000
Landholding Agency: Air Force
Property Number: 189010204
Status: Unutilized
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material.

Puerto Rico

Bldg. 10
Punta Salinas Radar Site
Toa Baja Co: Toa Baja PR 00759–
Landholding Agency: Air Force
Property Number: 189010544
Status: Underutilized
Reason: Secured Area.

NAFA Warehouse
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 879310011
Status: Unutilized
Reason: Secured Area.

Storage Equipment Bldg.
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 879330001
Status: Unutilized
Reason: Secured Area.

Rhode Island

Station Point Judith Pier
Narranganset Co: Washington RI 02882–
Landholding Agency: DOT
Property Number: 879310002
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

South Dakota

Bldg. 88513
Ellsworth Air Force Base
Porter Avenue
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189210001
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 88501
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189210002
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 200, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320048
Status: Unutilized
Reason: Other
Comment: Exte sive deterioration.

Bldg. 201, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320049
Status: Unutilized
Reason: Other
Comment: Extensive deterioraton.

Bldg. 203, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–

Landholding Agency: Air Force
Property Number: 189320050
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 204, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320051
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 205, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320052
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 206, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320053
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00605
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320054
Status: Underutilized
Reason: Secured Area.

Bldg. 88535
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340032
Status: Unutilized
Reason: Secured Area.

Bldg. 88470
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340033
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Bldg. 88304
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340034
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 9011
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340035
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 9010
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340036
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 7506
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340037
Status: Unutilized
Reason: Secured Area.

Bldg. 6908
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340038
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 6904
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340039
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Other. Secured Area.
Comment: Extensive deterioration.

Bldg. 4102
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340040
Status: Unutilized
Reason: Secured Area.

Bldg. 4101
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340041
Status: Unutilized
Reason: Secured Area.

Bldg. 4100
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340042
Status: Unutilized
Reason: Secured Area.

Bldg. 3016
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340043
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Other. Secured Area.
Comment: Waste treatment bldg.

Bldg. 1115
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340044
Status: Unutilized
Reason: Secured Area.

Bldg. 1210
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340045
Status: Unutilized
Reason: Secured Area.

Bldg. 1112
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340046
Status: Unutilized
Reason: Secured Area.

Bldg. 1110
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340047
Status: Unutilized
Reason: Secured Area.

Bldg. 606
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340048
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011499
Status: Unutilized
Reason: Floodway.

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 319011503
Status: Underutilized
Reason: Floodway.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140011
Status: Excess
Reason: Other
Comment: Water treatment plant.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston Co; Clay TN 38351–
Landholding Agency: COE
Property Number: 319140012
Status: Excess
Reason: Other
Comment: Water treatment plant.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140013
Status: Excess
Reason: Other
Comment: Water treatment plant.

Bldg. 60, VAMC Mountain Home
Johnson Co: Washington TN 37604–
Landholding Agency: VA
Property Number: 979220005
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Texas

Bldg. 400
Laughlin Air Force Base
Val Verde Co. Co: Val Verde TX 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Landholding Agency: Air Force
Property Number: 189010173
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Within airport runway clear zone.

Bldg. 645
Reese Air Force Base
Lubbock Co: Lubbock TX 79489–
Location: West of Lubbock
Landholding Agency: Air Force
Property Number: 189010210
Status: Excess
Reason: Secured Area.

Bldg. 02106
Reese Air Force Base
Lubbock Co: Lubbock TX
Landholding Agency: Air Force
Property Number: 189210005
Status: Unutilized
Reason: Secured Area.

Old Exchange Bldg.
U.S. Coast Guard
Galveston Co: Galveston TX 77553–3001
Landholding Agency: DOT
Property Number: 879310012
Status: Unutilized
Reason: Secured Area.

Paint Locker/Flammable Storage
U.S. Coast Guard
Galveston Co: Galveston TX 77553–3001
Landholding Agency: DOT
Property Number: 879310013
Status: Unutilized
Reason: Secured Area.

3 Storage Bldgs.
USCG Corpus Christi Group Detachment
Corpus Christi Co: Nueces TX 78407–
Landholding Agency: DOT
Property Number: 879320015
Status: Unutilized
Reason: Floodway. Secured Area.

Bldg. 24
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010050
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Bldg. 25
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010051
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Bldg. 26
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010052
Status: Unutilized
Reason: Other
Comment: Friable asbestos.

Utah

Bldg. 789
Hill Air Force Base
(See County) Co: Davis UT 84056–
Landholding Agency: Air Force
Property Number: 189040659
Status: Unutilized
Reason: Within airport runway clear zone. Secured Area.

Vermont

Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401–5226
Landholding Agency: DOT
Property Number: 879220003
Status: Excess
Reason: Floodway.

Virginia

Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York VA 23690–
Landholding Agency: DOT
Property Number: 879230004
Status: Excess
Reason: Secured Area.

Damage Control Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240013
Status: Unutilized
Reason: Secured Area.

Admin. Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240014
Status: Unutilized
Reason: Secured Area.

Storage Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240015
Status: Unutilized
Reason: Secured Area.

Little Creek Station
Navamphib Base, West Annex, U.S. Coast Guard
Norfolk Co: Princess Anne VA 23520–
Landholding Agency: DOT
Property Number: 879310004
Status: Unutilized
Reason: Secured Area.

Washington

Bldg. 640
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010139
Status: Unutilized
Reason: Secured Area.

Bldg. 641
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010140
Status: Unutilized
Reason: Secured Area.

Bldg. 642
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010141
Status: Unutilized
Reason: Secured Area.

Bldg. 643
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010142
Status: Unutilized
Reason: Secured Area.

Bldg. 645
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010143
Status: Unutilized
Reason: Secured Area.

Bldg. 646
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010144
Status: Unutilized
Reason: Secured Area.

Bldg. 647
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010145
Status: Unutilized
Reason: Secured Area.

Bldg. 1415
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010146
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Bldg. 1429
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010147
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Bldg. 1464
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010148
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Bldg. 1465
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010149
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Bldg. 1466
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010150
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Bldg. 3503

Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010151
Status: Unutilized
Reason: Secured Area.

Bldg. 3504
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010152
Status: Unutilized
Reason: Secured Area.

Bldg. 3505
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010153
Status: Unutilized
Reason: Secured Area.

Bldg. 3506
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010154
Status: Unutilized
Reason: Secured Area.

Bldg. 3507
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010155
Status: Unutilized
Reason: Secured Area.

Bldg. 3510
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010156
Status: Unutilized
Reason: Secured Area.

Bldg. 3514
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010157
Status: Unutilized
Reason: Secured Area.

Bldg. 3518
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010158
Status: Unutilized
Reason: Secured Area.

Bldg. 3521
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010159
Status: Unutilized
Reason: Secured Area.

Bldg. 100, Geiger Heights
Grove and Hallet Streets
Fairchild AFB Co: Spokane WA 99204–
Landholding Agency: Air Force
Property Number: 189210004
Status: Unutilized
Reason: Other.
Comment: Extensive deterioration.

Bldg. 261
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310053
Status: Unutilized
Reason: Secured Area.

Bldg. 284
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310054
Status: Unutilized
Reason: Secured Area.

Facility 923
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310055
Status: Unutilized
Reason: Secured Area.

Bldg. 1330
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310056
Status: Unutilized
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material.

Bldg. 1336
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310057
Status: Unutilized
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material.

Bldg. 2000
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310058
Status: Unutilized
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material.

Bldg. 2143
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310059
Status: Unutilized
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material.

Bldg. 2385
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310060
Status: Unutilized
Reason: Secured Area.

Bldg. 3509
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310061
Status: Unutilized
Reason: Secured Area.

Bldg. 1405
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310062
Status: Underutilized
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material.

Facility 1468
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310063
Status: Unutilized
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material.

Facility 1469
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310064
Status: Unutilized
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material

Facility 2450
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310065
Status: Unutilized
Reason: Secured Area. Within 2,000 ft. of flammable or explosive material.

Bldg. 1, Waste Annex
West of Craig Road Co: Spokane WA 99022–
Landholding Agency: Air Force
Property Number: 189320043
Status: Unutilized
Reason: Secured Area.

Bldg. 1220
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330091
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Bldg. 1224
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330092
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Bldg. 2004
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330093
Status: Unutilized
Reason: Secured Area.

Bldg. 2018
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330094
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Bldg. 2150
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330095
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Bldg. 2164
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330096
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Wisconsin

Bldg. 204, 440 Airlift Wing
Gen. Mitchell IAP
Milwaukee Co: Milwaukee WI 53207–6299
Landholding Agency: Air Force
Property Number: 189320032
Status: Unutilized
Reason: Secured Area.

Bldg. 306, 440 Airlift Wing
Gen. Mitchell IAP
Milwaukee Co: Milwaukee WI 53207–6299
Landholding Agency: Air Force
Property Number: 189320033
Status: Unutilized
Reason: Secured Area.

Wyoming

Bldg. 31
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010198
Status: Unutilized
Reason: Secured Area.

Bldg. 34
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010199
Status: Underutilized
Reason: Secured Area.

Bldg. 37
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010200
Status: Unutilized
Reason: Secured Area.

Bldg. 284
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010201
Status: Unutilized
Reason: Secured Area.

Bldg. 385
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010202
Status: Unutilized
Reason: Secured Area.

Bldg. 803
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010203
Status: Unutilized
Reason: Secured Area.

Bldg. 802
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240001
Status: Unutilized
Reason: Secured Area.

Bldg. 804
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240002
Status: Unutilized
Reason: Secured Area.

Bldg. 805
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240003
Status: Unutilized
Reason: Secured Area.

Bldg. 806
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240004
Status: Unutilized
Reason: Secured Area.

Bldg. 2780
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240005
Status: Unutilized
Reason: Secured Area.

Bldg. 2781
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240006
Status: Unutilized
Reason: Secured Area.

Bldg. 808
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189410001
Status: Unutilized
Reason: Secured Area.

Bldg. 844
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189410002
Status: Unutilized
Reason: Secured Area.

Bldg. 848
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189410003
Status: Unutilized
Reason: Secured Area.

Bldg. 95
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110004
Status: Unutilized
Reason: Other
Comment: Sewage digester for disposal plant.

Bldg. 96
Medical Center
N.W. of town at end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110005
Status: Unutilized
Reason: Other
Comment: Pump house for sewage disposal plant.

Structure 99
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110006
Status: Unutilized
Reason: Other
Comment: Mechanical screen for sewage disposal plant.

Structure 100
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110007
Status: Unutilized
Reason: Other
Comment: Dosing tank for sewage disposal plant.

Structure 101
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110008
Status: Unutilized
Reason: Other
Comment: Chlorination chamber for sewage disposal plant.

Bldg. 97, Medical Center
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979410011
Status: Unutilized
Reason: Other
Comment: Sewage disposal plant.

Structure 98, Medical Center
Sheridan Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979410012
Status: Unutilized
Reason: Other
Comment: Sludge bed/sewage disposal plant.

Land (by State)

Alaska

Campion Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010430
Status: Unutilized
Reason: Other. Isolated area. Not accessible by road.
Comment: Isolated and remote area; Arctic environment.

Lake Louise Recreation
21 CSG–DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010431
Status: Unutilized
Reason: Other. Isolated area. Not accessible by road.
Comment: Isolated and remote area; Arctic coast.

Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010432
Status: Unutilized
Reason: Other. Isolated area. Not accessible by road.
Comment: Isolated and remote area; Arctic coast.

California

DVA Medical Center

4951 Arroyo Road
Livermore Co: Alameda CA 94550–
Landholding Agency: VA
Property Number: 979010023
Status: Unutilized
Reason: Other.
Comment: 750,000 gallon water reservoir.

Florida

Land
MacDill Air Force Base
6601 S. Manhattan Avenue
Tampa Co: Hillsborough FL 33608–
Landholding Agency: Air Force
Property Number: 189030003
Status: Excess
Reason: Floodway.

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230004
Status: Underutilized
Reason: Other.
Comment: Inaccessible.

Indiana

Portion of Tract No. 1224
Salamonie Lake
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310001
Status: Unutilized
Reason: Other.
Comment: Landlocked.

Kentucky

Tract 4626
Barkley Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211–
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 319010030
Status: Underutilized
Reason: Floodway.

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US Hwy. 27 to Blue John Road
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010038
Status: Underutilized
Reason: Floodway.

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
KY Hwy. 80 to Route 769
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010039
Status: Underutilized
Reason: Floodway.

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038–
Location: US Highway 62 to state highway 93.
Landholding Agency: COE
Property Number: 319010043
Status: Excess
Reason: Floodway.

Red River Lake Project
Stanton Co: Powell KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613..
Landholding Agency: COE
Property Number: 319011684
Status: Underutilized
Reason: Floodway.

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270–
Landholding Agency: COE
Property Number: 319120008
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120009
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 4
Woodbury Co: Bulter KY 42288–
Location: Off State Hwy 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 319120014
Status: Underutilized
Reason: Floodway.

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275–
Location: Off State Highway 185
Landholding Agency: COE
Property Number: 319120015
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210–
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 319120016
Status: Underutilized
Reason: Floodway.

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144–
Landholding Agency: COE
Property Number: 319120017
Status: Unutilized
Reason: Floodway.

Tract 6404, Cave Run Lake
U.S. Hwy 460
Index Co: Morgan KY
Landholding Agency: COE
Property Number: 319240005
Status: Underutilized
Reason: Floodway.

Tract 6803, Cave Run Lake
State Road 1161
Pomp Co: Morgan KY
Landholding Agency: COE
Property Number: 319240006
Status: Underutilized
Reason: Floodway.

Louisiana

Land—3.4 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010010
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material.

Maryland

Land
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 189010263
Status: Unutilized
Reason: Secured Area.

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 319240007
Status: Underutilized
Reason: Floodway.

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw MI 48198–
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 879120006
Status: Unutilized
Reason: Within airport runway clear zone.

Minnesota

Parcel G
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011037
Status: Excess
Reason: Other
Comment: Highway right of way.

VAMC
VA Medical Center
4801 8th Street No.
St. Cloud Co: Storns MN 56303–
Landholding Agency: VA
Property Number: 979010049
Status: Underutilized
Reason: Within 2,000 ft. of flammable or explosive material.

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenda MS 38901–0903
Landholding Agency: COE
Property Number: 319011018
Status: Underutilized
Reason: Within airport runway clear zone.

Missouri

Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project
2½ miles west of Malden Co: Dunklin MO
Landholding Agency: COE
Property Number: 319130001
Status: Unutilized
Reason: Floodway.

Union Lake
Sec 7, Twshp 42 north, Ranger West
Beaufort Co: Franklin MO
Landholding Agency: COE
Property Number: 319240008
Status: Unutilized
Reason: Floodway.

New Mexico

Facility 75100
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240043
Status: Unutilized
Reason: Secured Area.

New York

Tract 1
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010011
Status: Unutilized
Reason: Secured Area.

Tract 2
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010012
Status: Underutilized
Reason: Secured Area.

Tract 3
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010013
Status: Underutilized
Reason: Secured Area.

Tract 4
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010014
Status: Unutilized
Reason: Secured Area.

North Carolina

Land
Atlantic Intracoastal Waterway Co: Corrituck NC
Location: Near old Coinjack Bridge.
Landholding Agency: COE
Property Number: 319011537
Status: Unutilized
Reason: Floodway.

North Dakota

Tracts 1 & 2
Garrison Dam
Lake Sakakawea
Williston Co: Williams ND 58801–
Landholding Agency: COE
Property Number: 319410015
Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material, Floodway.

Ohio

Ohio River
Pike Island Lock and Dam
RD #1, Box 33
Tiltonsville Co: Jefferson OH
Landholding Agency: COE
Property Number: 319011561
Status: Underutilized
Reason: Floodway.

Pennsylvania

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project.
Landholding Agency: COE
Property Number: 319011564
Status: Unutilized
Reason: Floodway.

Lock and Dam #3
Monongahela River
Elizabeth Co: Allegheny PA 15037–0455
Landholding Agency: COE
Property Number: 319240014
Status: Unutilized
Reason: Floodway.

South Dakota

Badlands Bomb Range
60 miles southeast of Rapid City, SD
1½ miles south of Highway 44
Co: Shannon SD
Landholding Agency: Air Force
Property Number: 189210003
Status: Unutilized
Reason: Secured Area.

Tennessee

McClure Bend
Cordell Hull Dam and Reservoir
Carthage Co: Smith TN 37030–
Location: Highway 85 to McClure Bend Road.
Landholding Agency: COE
Property Number: 219040412
Status: Underutilized
Reason: Floodway.

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562–
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Landholding Agency: COE
Property Number: 219040413
Status: Underutilized
Reason: Floodway.

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 219040415
Status: Underutilized
Reason: Floodway.

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 319011478
Status: Underutilized
Reason: Floodway.

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011479
Status: Excess
Reason: Floodway.

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 319011480
Status: Unutilized
Reason: Floodway.

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011481
Status: Unutilized
Reason: Floodway.

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011482
Status: Underutilized
Reason: Floodway.

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith TN 38564–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011483
Status: Underutilized
Reason: Floodway.

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 319011484
Status: Underutilized
Reason: Floodway.

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011485
Status: Underutilized
Reason: Floodway.

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011486
Status: Unutilized
Reason: Floodway.

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011487
Status: Unutilized
Reason: Floodway.

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011488

Status: Underutilized
Reason: Within airport runway clear zone. Floodway.

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011489
Status: Unutilized
Reason: Floodway.

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011490
Status: Unutilized
Reason: Floodway.

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562–
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 319011491
Status: Unutilized
Reason: Floodway.

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011492
Status: Unutilized
Reason: Floodway.

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214–
Location: Interstate 40 to S. Mount Juliet Road.
Landholding Agency: COE
Property Number: 319011493
Status: Underutilized
Reason: Floodway.

Tract 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167–
Location: Florence road near Enon Springs Road
Landholding Agency: COE
Property Number: 319011494
Status: Underutilized
Reason: Floodway.

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167–
Location: Lamon Road
Landholding Agency: COE
Property Number: 319011495
Status: Underutilized
Reason: Floodway.

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167–
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 319011496
Status: Underutilized
Reason: Floodway.

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214–
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 319011497
Status: Underutilized
Reason: Floodway.

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011498
Status: Unutilized
Reason: Floodway.

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562–
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 319011500
Status: Unutilized
Reason: Floodway.

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson TN 38564–
Landholding Agency: COE
Property Number: 319011501
Status: Unutilized
Reason: Floodway.

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011502
Status: Unutilized
Reason: Floodway.

Tract 104 et. al.
Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage Co: Smith TN 37030–
Location: Highway 70 N
Landholding Agency: COE
Property Number: 319011504
Status: Underutilized
Reason: Floodway.

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087–
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 319130007
Status: Underutilized
Reason: Floodway.

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138–
Landholding Agency: COE
Property Number: 319130008
Status: Underutilized
Reason: Floodway.

Texas

Tracts 104, 105–1, 105–2 & 118
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010397
Status: Underutilized
Reason: Floodway.

Part of Tract 201–3
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010398
Status: Underutilized
Reason: Floodway.

Part of Tract 323
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010399
Status: Underutilized
Reason: Floodway.

Tract 702–3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 319010401
Status: Unutilized
Reason: Floodway.

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 319010402
Status: Unutilized
Reason: Floodway.

Virginia

Parcel 1 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010435
Status: Unutilized
Reason: Floodway.

Parcel 3 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010436
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material.

Parcel 2, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010437
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

ANG Site
Camp Pendleton
Virginia Air National Guard
Virginia Beach Co: (See County) VA 23451–
Landholding Agency: Air Force
Property Number: 189010589
Status: Unutilized
Reason: Secured Area.

0.07 Acre, Dismal Swamp Canal
West of U.S. Rt. 17
Chesapeake VA
Landholding Agency: COE
Property Number: 319210012
Status: Unutilized
Reason: Other
Comment: Inaccessible.

Washington

Fairchild AFB
SE corner of base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010137
Status: Unutilized
Reason: Secured Area.

Fairchild AFB
Fairchild AFB Co: Spokane WA 99011–
Location: NW corner of base
Landholding Agency: Air Force
Property Number: 189010138
Status: Unutilized
Reason: Secured Area.

West Virginia

Ohio River
Pike Island Locks and Dam
Buffalo Creek
Wellsburg Co: Brooke WV
Landholding Agency: COE
Property Number: 319011529
Status: Unutilized
Reason: Floodway.

Morgantown Lock and Dam
Box 3 RD #2
Morgantown Co: Monongahelia WV 26505–
Landholding Agency: COE
Property Number: 319011530
Status: Unutilized
Reason: Floodway.

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126–
Location: 20 miles east of Charleston, W. Virginia
Landholding Agency: COE
Property Number: 319011690
Status: Unutilized
Reason: Other
Comment: .03 acres; very narrow strip of land located too close to busy highway.

[FR Doc. 94–3568 Filed 2–17–94; 8:45 am]
BILLING CODE 4210–29–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket Nos. N–94–3388; FR–3151–N–02 and N–94–3622; FR–3416–N–03]

Public and Indian Housing Resident Management Program Technical Assistance Program; Announcement of Funding Awards FY 1992 and FY 1993

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in the FY 1992 and FY 1993 competition for funding under the NOFAs for Public and Indian Housing Resident Management Technical Assistance Grant Program. This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Christine Jenkins, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3611. A telecommunication device for hearing or speech impaired persons (TDD) is available at (202) 708–9300. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide funds for Technical Assistance Grants under the Public and Indian Housing Program for Resident Councils, Resident Management Corporations, and Resident Organizations. These funds will assist in training and other activities for resident management of public and Indian housing. This program is authorized under section 20 of the United States Housing Act of 1937 (42 U.S.C. 1437r); section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). The Department announced the availability of approximately $4.4 million for FY 1992 and $4.7 million for FY 1993.

The 1992 and 1993 awards announced in this Notice were selected for funding in competitions announced in Federal Register Notices published on April 14, 1992 (57 FR 12970); June 8, 1993 (58 FR 32254); and an extension Notice published August 11, 1993 (58 FR 42739). Recipients were chosen in a national competition based on criteria contained in the Notices.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names, addresses, and amount of funds awarded, as listed at the end of this Notice.

Dated: February 4, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

FISCAL YEAR 1992; PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS

Program Name: Public and Indian Housing Resident Management Technical Assistance Grant Program (RMTAG)

[Statute: Public Law 100–42, February 5, 1988]

Funding recipient (name and address)	Amount approved
Riverside Tenants Association Inc., 15 Olson Drive, Ansonia, CT 06401–	$40,000
Birch Carmichael Howard Tenants Council, 22A Birch Street, Presque Isle, ME 04769–	40,000
Morin Heights & Veteran's Memorial Tenant Assn., 679 Social Street, Woonsocket, RI 02895–	40,000
Codding Court Tenants Assn., 92 Lester Court #1C, Providence, RI 02907–	40,000
Newark Tenants Council, 303 Washington Street, Newark, NJ 07102–	40,000
Jersey City Tenant Affairs Board, 400 U.S. Hwy. 1, Jersey City, NJ 07306–	38,000
White Plains PH Tenant Council, P.O. Box 547, White Plains, NY 10602–	40,000
Buffalo Public Housing Resident Council Corp., 359 Suffolk Street, Buffalo, NY 14215–	40,000
Kenilworth Parkside RMC, 4417 Quarles Street, N.E., Washington, DC 20019–	100,000
Southwest Public Housing Coalition, 124 "P" Street, S.W., Washington, DC 20024–	100,000
Valley Green Resident Council, 916 Varney Street, S.E., Washington, DC 20032–	60,000
Claremont Homes Tenant Council, 4458 Clareway, Baltimore, MD 21213–	40,000
Ohio View Acres Resident Council, 17–D Denver Drive, McKees Rocks, PA 15136–	40,000
South Hills Terrace Tenant Organization, 116 South Hills Terrace, Brownsville, PA 15417–	39,100
Sheldon Park Resident Council, 424 Park Street, Natrona Heights, PA 15065–	40,000
Broadhead Manor Resident Council, 1900 Broadhead Fording Rd, Pittsburgh, PA 15205–	100,000
Harbor Heights & Grant Street Organization, 720 Altman Road, New Castle, PA 16101–	40,000
Northview Heights Tenant Council, 600 Mount Pleasant Road, Pittsburgh, PA 15214–	40,000
Coopersdale RMC, 17–441 Coopersdale Homes, Johnstown, PA 15906–8154	10,500
Harrison Plaza Tenant Council, 1240 N. 10th Street, Philadelphia, PA 19122–	60,000

Program Name: Public and Indian Housing Resident Management Technical Assistance Grant Program (RMTAG)—Continued

[Statute: Public Law 100–42, February 5, 1988]

Funding recipient (name and address)	Amount approved
Southwark Tenant Council, 423 Carpenter Way, Philadelphia, PA 19147–	40,000
William Penn Resident Council, Union and Fulton St., Chester, PA 19016–	100,000
Westpark Tenant Council, 400 North Busti Street, Philadelphia, PA 19104–	40,000
Fairview Tenant Action Committee, 407 Fairview Street, Phoenixville, PA 19460–	60,000
Linmar Griffith Heights Resident Council, 374 Linmar Terrace, Aliquippa, PA 15001–	40,000
Calvert Square Advisory Council, Inc., 975 Bagnall Road, Norfolk, VA 23504–	40,000
Swanson Homes Tenant Council, 68 Swanson Parkway, Portsmouth, VA 23704–	40,000
Bowling Green TMC, 1218 Godfrey Avenue, Norfolk, VA 23504–	100,000
Oakleaf Forest TMC, 1883 Greenleaf Drive, Norfolk, VA 23523–	40,000
Tidewater Gardens Tenant Management Corporation, 825 Mariner Street, Norfolk, VA 23504–	40,000
Trenholm Court Resident Council, 616 No. Bainbridge St., Montogomery, AL 36104–	40,000
Overall Tenant Advisory Council, Inc., 1401 N.W. 7th Street, Miami, FL 33125–	23,800
Key West Housing Authority Resident Assoc., 1400 Kennedy Drive, Key West, FL 33040–	40,000
Neighborhood Action United Tenant Association, 44 Carlton Drive, Fort Walton Beach, FL 32548–	40,000
Centennial Towers Resident Management Corp., Inc., 230 East First Street, Jacksonville, FL 32206–	40,000
Central Park Village Resident Council Mgt. Corp., 1000 Iodia Street, Tampa, FL 33602–	49,940
College Hill Resident Management Corp., 2205 East 32nd Ave, #360, Tampa, FL 33605–	54,500
Harris Homes Resident Association, 1019 Sells Avenue, S.W., Atlanta, GA 30310–	40,000
Lawrence County Resident Council, Rt. #2, Box 300, Louisa, KY 41230–	40,000
Yazoo Housing Resident Council Inc., 274 Magnola Drive, Yazoo City, MS 39194–	60,000
Residents of Brairfield/Robertson Place, PO Box 832, Hattiesburg, MS 39403–0832	40,000
Piedmont Park, Inc., 231 West Fifth Street, Winston-Salem, NC 27101–	100,000
Cleveland Avenue Homes, Inc., 231 West Fifth Street, Winston-Salem, NC 27101–	100,000
Happy Hill Gardens, Inc., 231 West Fifth Street, Winston-Salem, NC 27101–	100,000
Residents Promoting a Better Community, 501–D Walrond Court, Lafayette, TN 37083–	40,000
Harriet Tubman Resident Association, 1918 Hardy Street, Chattanooga, TN 37406–	40,000
Hollywood Resident Association, 3101 N. 63rd Avenue, Hollywood, FL 33024–	39,950
William Green Homes Resident Management Corp, 1230 North Larabee, Chicago, IL 60610	40,000
Lake Park Place Resident Mgmt Organization, 3939 South Lake Park, Chicago, IL 60653	40,000
Martin Luther King Drive Resident, 3723 South King Drive, Chicago, IL 60623	40,000
St. Agatha Schattered Sites Resident Organization, 1404 South Albany, Chicago, Il 60623	40,000
Brooklyn Resident Council, 300 South 6th Street, Brooklyn, IL 62059	40,000
Lebanon Resident Council, 503 So. Plum St., Suite A, Lebanon, IL 62254	40,000
Concerned Neighbors of Williamson County, 601 North 6th Street, Herrin, IL 62948	40,000
Executive Resident Council of Bloomington, 1422 West Market, Bloomington, IL 61701	40,000
North East Centralia Resident Council, 607 North McKee, Centralia, IL 62801	40,000
Robert A. Taft Homes Resident Council Org., 610 N.E. Washington, Peoria, IL 61603	40,000
Joint Resident Management Council, 1215 North Hill Street, Springfield, IL 62702	40,000
Gary Housing Authority City-Wide Resident Council, 2164 Harrison Street, Gary, IN 46407	40,000
Executive Council Sr. High-rise Communities, 901 Ft. Wayne Avenue, Indianapolis, IN 46202	40,000
Unity Resident Management Corporation, 1711 Green Road, Ann Arbor, MI 48105	85,000
City-Wide Residents Council, 1575 Ames Avenue, St. Paul, MN 55106	40,000
Harborview Residents Council, 1202 North Lake Avenue, Duluth, MN 55805	40,000
Leech Lake Reservation Resident Organization, Route 3, Box 100, Cass Lake, MN 56633–	40,000
City Wide Public Housing Resident Council (MLW), 5163 North 20th Street, Milwaukee, WI 53209	40,000
Norman Housing Authority Resident Council, Inc., 700 North Berry Rd., Norman, OK 73069–	40,000
Falls Acres Neighborhood Association, 213 Butler Drive, Shawnee, OK 74801–	95,000
Residents United, 1708 East 3rd Street, Austin, TX 78702–	100,000
Roseland Homes Resident Management Corporation, 2021 N. Washington, Dallas, TX 75204–	45,600
Bryan Public Housing Resident Council, 1016 Bryant Street, Bryan, TX 77803–	37,900
Riley Arnold Apts/J.A. Cavile Resident Association, 500 West Belknap, Fort Worth, TX 76102–	100,000
Our Casas Resident Council, 301 S. Frio, Suite 229, San Antonio, TX 78207–	12,000
Wilmington House Resident Council, 4220 Wilmington, Houston, TX 77051–	40,000
Central Iowa Regional Advisory Council, 1111 Ninth St., Suite 390, Des Moines, IA 50314–	40,000
Riverview Resident Management Corporation, 313 Paseo, Kansas City, MO 64106–	100,000
Elmwood Park Resident Council, 1400 Wibracht, St. Louis, MO 63132–	40,000
Blumeyer Tenant Association, 801 N. Compton, St. Louis, MO 63103–	100,000
Gothenburg Tenant Association, 810 20th Street, Gothenburg, NE 69138–	40,000
Missoula Housing Authority Resident Council, 1319 E. Broadway, Missoula, MT 59802–	40,000
Omaha Tribal Tenants Organization, P.O. Box 277, Macy, NE 68039–	38,490
Resident Councils of Casas de Esperanza, 130 North Hamilton, #1, Chandler, AZ 85225–	40,000
Dos Rios Resident Management Firm, Inc., 1233 Richards Blvd., Sacramento, CA 95814-	88,000
Sierra Vista Resident Council, 1602 E. Eleventh Street, Stockton, CA 95206–	22,000
Esperanza Resident Management Council, 1907 3rd Street, Alameda, CA 94501–	40,000
Robert B. Pitts Plaza Resident Council, 1150 Scott Street, San Francisco, CA 94115–	40,000
Normont Terrace Coordinating Council, 938 West 256th St., #386, Harbor City, CA 90710–	11,400
Spruce Park Resident Council, 1608 21st Avenue, F–Q, Fairbanks, AK 99701–	40,000
Geneva Woods Resident Council, P.O. Box 241054, Douglas, AK 99824–	40,000
Yakima Nation Housing Resident Council, 617 Larena Lane, Wapato, WA 98951–	60,000

Program Name: Public and Indian Housing Resident Management Technical Assistance Grant Program (RMTAG)—Continued

[Statute: Public Law 100–42, February 5, 1988]

Funding recipient (name and address)	Amount approved
Makah Housing Resident Council, P. O. Box 888, Neah Bay, WA 98357–	100,000
Residents Action Council Seattle Housing Authority, 2445 NW 57th St. #611, Seattle, WA 98107–	100,000
Salishan Alliance for Community Services, 1720 East 44th Street, Tacoma, WA 98404–	51,000
Clark County Residents Council Board, 603 Council Bluffs Way, Vancouver, WA 98661–	40,000

FISCAL YEAR 1993; PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS

Program Name: Public and Indian Housing Resident Management Technical Assistance Grant Program (RMTAG)

[Statute: Public Law 100–42, February 5, 1988]

Funding recipient (name and address)	Amount approved
Oakwood Knoll Tenant Association, 1 Oakwood Knoll #1, Norwich, CT 06360–6699	$40,000
Berkeley Heights Tenants Council, 32 Harris Circle, Waterbury, CT 06704–	30,000
RC of the Housing Authority, City of Newport, 97 Sims Street, Newport, RI 02840–1212	100,000
Senior Citizens Group of Sunset Terrace, 415 Sunset Ave., #1, North Providence, RI 02904–5654	40,000
Solfield and Gelber Tenants Association, 233 Huntington, Perth Amboy, NJ 08861–0390	40,000
Delaney-Dunlap Residents Association, 919 Convery Boulevard, Perth Amboy, NJ 08862–0390	60,000
Speer Vreeland and Chestnut Residents Organization, 11 Aspen Place, Passaic, NJ 07055–5896	40,000
Johnson Houses Resident Council, 175 East 112th St., New York, NY 10007–2516	40,000
Wilmington Family Tenant Council, 2800 Tatnall St. B2, Wilmington, DE 19802–	40,000
Church and Farnum Resident Organization, 33 E. Farnum St #103, Lancaster, PA 17602–4253	40,000
Erie Tenant Council, 1902–G Buffalo Road, Erie, PA 16510–	60,000
Waynesboro Resident Organization, 997 Tenth Street, Waynesboro, VA 22980	40,000
Lansdowne Park Resident Council, 2804 Salem Turnpike, Roanoke, VA 24017–	40,000
Bristol R&HA Tenants Committee, Inc., 650 Quarry Street, Bristol, VA 24201–	40,000
The Danville Four Umbrella Organization, 149 Cedar Terrace #2, Danville, VA 24541–	68,200
Brookside Resident Council, 89 Belle Terre #205, Lynchburg, VA 24501–	40,000
Birchwood Resident Council, Inc., 3001–D Birchwood Dr., Lynchburg, VA 24501–	60,000
Association of Concerned Tenants of Fox Meadow, P. O. Box 2511, Lebanon, VA 24266–	35,000
Franklin Resident Council, 933 Pretlow Street, Franklin, VA 23851–	40,000
Jamestown Place Resident Council, 1533 Pike Ln., SE, Roanoke, VA 24014–	40,000
Roberts Village RMC, 2733 Monrovia Drive, Norfolk, VA 23504–	66,666
Diggs Town Tenant Management Corporation, 1616 Vernon Drive, Norfolk, VA 23523–	23,712
Young Terrace Tenant Management Corporation, 1823 Smith Street, Norfolk, VA 23510–	60,000
Grandy Village Tenant Management Corporation, 3173 Kimball Terrace, Norfolk, VA 23504–	40,000
East Roberts Village RMC, 2733 Monrovia Dr., Norfolk, VA 23501	66,666
Moton Circle RMC, 2733 Monrovia Dr., Norfolk, VA 23501–	66,668
Crestview Public Housing Tenant Association, 398 School Avenue, Crestview, FL 32536–3305	40,000
Gainesville Public Housing Resident Council, 100 NE. Main St #411, Gainesville, FL 32601–	40,000
Washington Park Resident Council, 1420 N. Florida Ave., Lakeland, FL 33805–	40,000
Riverview Terrace Resident Council, 417 East Hanlon St., Tampa, FL 33604–	34,400
James Park/Clearview RMC Association, 1051 3rd Ave. N. C–1, St. Petersburg, FL 33705–	60,000
Herndon Homes Resident Association, 508 Kennedy St. #117, Atlanta, GA 30318–	40,000
Neighborhood Residents at Work, Inc., 451 Francis Bartow PL, Savannah, GA 31401–	100,000
Greenwood Housing Authority Resident Council, 15–B Thurman Drive, Greenwood, MS 38930–	40,000
Inter-Project Council, Incorporated, PO Box 28007, Raleigh, NC 27611–	100,000
Cornwallis Community Neighborhood Council, 3000 Waver Street, Durham, NC 27707–	98,077
Statesville Housing Authority Resident's Corp., 601 Grove Street, Statesville, NC 28677–	100,000
Davila Freytes Public Project Resident Council, Davila, Edif 12, Apt 47, Barceloneta, PR 00817–	40,000
El Coqui Public Project Residents Council, El Coqui Calle I G84, Catano, PR 00962–	40,000
Residents United Hand in Hand, Inc., San Antonio, San Antonio, EDIF D, #674, San Juan, PR 00901–	100,000
Jardines de Cupey Resident Council, Jardines, EDIF10, #120, San Juan, PR 00926–	100,000
Committee of Initiatives Jose N. Gandara Project, Gandara, EDIF 11, #183, Ponce, PR 00730–	40,000
West Riverside Resident Association, 115 Hamilton Street, McMinnville, TN 37110–	40,000
HiSITS, Inc., 912–A First Ave. So., Nashville, TN 37210–	40,000
Cabrini Green Rowhouse Council, 931 N. Cleveland, Chicago, IL 60610–	40,000
Wells Extension Resident Management Organization, 551 E. 36th Place, Apt. #601, Chicago, IL 60653	40,000
2450 W. Monroe Street Resident Organization, 2450 W. Monroe #702, Chicago, IL 60612–	40,000
Concord Village Resident Management Corporation, 3136 Concord Court, Indianapolis, IN 46222–	40,000
City-Wide Resident Management Corporation, 910 West 22nd Place, Gary, IN 46407–	60,000
R.I.S.E. at Pleasant Point, P.O. Box 339 (Shore Front, Perry, ME 04667–	40,000
Harbor View Resident Management Corp., 1202 N. Lake Ave., Duluth, MN 55805—	59,000
Resident Management Corporation—MPHA, 1707 Third Ave. S., Minneapolis, MN 55404–	50,070
Brand Whitlock, Albertus Brown, McClinton Nunn RA, 630 McClinton Nunn, Toledo, OH 43602–	40,000
Addison Square Resident Council, 8601 Hough Avenue, Cleveland, OH 44106–	100,000
Ironton Metropolitan HA Resident Council, 628 S. Ninth Sreet, Ironton, OH 45638	40,000
Columbus PHA Communities United, 590 Van Buren Ave, Columbus, OH 43201	40,000
Truax Area Resident Management Assn., Inc. (TARMA), 11 Straubel Ct. #406, Madison, WI 53704–	35,000

Program Name: Public and Indian Housing Resident Management Technical Assistance Grant Program (RMTAG)—Continued

[Statute: Public Law 100–42, February 5, 1988]

Funding recipient (name and address)	Amount approved
Menominee Housing Resident Organization, P.O. Box 261, Keshena, WI 54135–	33,650
Arkadelphia Resident Council, 670 S. 6th Street, Arkadelphia, AR 71923	40,000
Resident Association, 1000 Wolfe Street, Little Rock, AR 72202–	40,000
Neighbors Who Care, Box 137, Paragould, AR 72450–0137	40,000
Kickapoo Resident Assoc., Rt. 1, Box 800A, Horton, KS 66439	40,000
Woodbrook Estates HO Assc, Route 7, Lot B–35, Ada, OK 74820	40,000
Resident Council of the Lubbock Housing Authority, PO Box 2568, Lubbock, TX 79408–2568	40,000
Butler/Whispering Oaks RMC, PO Box 430, Fort Worth, TX 76101–0430	60,000
Magnolia Homes Resident Council, 1601 Strand #8–H, Galveston, TX 77551–1099	35,000
Grandview Park Manor Resident Association, 1244 Ray, Kansas City, KS 66102–	40,000
Bellevue Housing Resident Council, 8214 Armstrong Circle, Omaha, NE 68147–	28,000
Gothenburg Tenant Association, 810–20th Street, Gothenburg, NE 69138–0035	56,000
Hall County Housing Residents Council, 915 Baumann Drive, Grand Island, NE 68803–	40,000
HOPE Resident Council, 6683 Kalua Road, Boulder, CO 80301–	40,000
Blackfeet Resident Organization, PO Box 864, Browning, MT 59417	40,000
Kenel Resident Organization, HC 61 Box 35, McLaughlin, SD 57642–	39,876
Neighborhood Assistance Council, 1981 East 'A' Street, Casper, WY 82601	60,000
Siler Homes Resident Council, Inc., 3270 Miller Rd, Flagstaff, AZ 86004–	40,000
Hayes Valley Tenant's Association, 749–A Hayes Street, San Francisco, CA 94102–	32,085
Redlands Resident Advisory Group, 131 W. Lugonia Street, Redlands, CA 92373,	40,000
Medical Center Advisory Group, 1650 W. 10th Street, San Bernardino, CA 92411–	40,000
Colton Resident Advisory Group, 772 Pine Street, Colton, CA 92324–	40,000
Waterman Gardens Resident Advisory Group, 382 Crestview, San Bernardino, CA 92410–	40,000
Chino Resident Advisory Group, 13088 Monte Vista, Chino, CA 91710–	40,000
RC of the HA of the City of Calexico, 1840 Rockwood Avenue #99, Calexico, CA 92231	92,300
Carmelitos Tenants' Association, 1041 Via Wanda Bldg. 51, Long Beach, CA 90805–	40,000
Leggett Court Resident Council, 1860 Los Feliz Drive #23, Thousand Oaks, CA 91362–	32,500
Hacienda Village Resident Advisory Council, 1515 E. 105th Street, Los Angeles, CA 90002–	95,000
William Mead Homes Resident Advisory Council, 1300 N. Cardinal Street, Los Angeles, CA 90012–	100,000
Pleasant Valley Tenant Association, 5111 Squires Drive, Oxnard, CA 93030–	40,000
Colonia Village Tenants Association, 226 N. Marquita Street, Oxnard, CA 93030–	40,000
Organizacion de Residentes de Nueva Maravilla, 4909 Brooklyn Ave., Rm. 7, Los Angeles, CA 90022–	99,500
Pico Aliso Resident Advisory Council, 535 S. Gless #96, Los Angeles, CA 90033–	41,143
Riverside Housing Council, 500 Sparkman Ct, West Sacramento, CA 95606–	40,000
Kent Executive Empowerment Program (KEEP), 10628 SE 206th, Kent, WA 98031–	100,000
Auburn Resident Council, 1748 I Pl NE, Apt. 25, Auburn, WA 98002–	40,000
Bellingham/Whatcom Resident Council, 1808 16th St, Apt B, Bellingham, WA 98225–	40,000

[FR Doc. 94–3686 Filed 2–17–94; 8:45 am]

BILLING CODE 4210–33–P

[Docket No. D–94–1049; FR–3597–D–01]

Redelegation of Authority for the Issuance of Waivers of Office of Public and Indian Housing Directives

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

NOTICE: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Public and Indian Housing is redelegating to all HUD Field Office Public Housing Division Directors, and the Director, Office of Native American Programs, and, in turn the Directors, Offices of Indian Programs (waiver officials), the authority to issue waivers of Office of Public and Indian Housing directives. A similar redelegation of authority for Office of Housing Directives was recently signed by the Assistant Security for Housing-Federal Housing Commissioner and published in the **Federal Register**.

EFFECTIVE DATE: Februry 9, 1994.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, Directives Management Officer, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4244, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–0846. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (HUD Reform Act), amended section 7 of the Department of Housing and Urban Development Act (42 U.S.C. 3535) (HUD Act) by adding section 7(q), governing circumstances upon which the Department may issue waives of regulations and handbooks. According to section 7(q)(2), only an individual of Assistant Secretary rank or the equivalent may waive a regulation. This redelegation of authority does not address the authority to waive regulations.

With respect to handbooks, section 7(q)(4) states that a waiver of a provision of a handbook must:

(A) Be in writing;

(B) Specify the grounds for approving the waivers; and

(C) Be maintained in indexed form and made available for public inspection for not less than the 3-year period beginning on the date of the waiver.

On April 22, 1991, at 56 FR 16337, HUD published a Statement of Policy implementing section 106 of the HUD Reform Act. The notice stated that although new section 7(q)(4) of the HUD Act only addressed "handbooks", HUD would apply this term to all of the Department's directives in order to give section 7(q)(4) "the widest possible coverage." Therefore, the term "directive" was defined in the notice as follows:

Directives means a Handbook (including a change or supplement), notice, interim notice, special directive, and any other issuance that the Department may classify as a directive.

HUD's Statement of Policy also indicated that the authority to waive directives may be delegated to any officer or employee in the issuing official's organization, as well as to any officer or employee in a Field or Regional Office. This Statement of Policy, therefore, effectively delegated to each Assistant Secretary, the official responsible for issuing directives, the authority to waive directives.

The current process of reviewing waiver requests in headquarters frequently adds an unnecessary layer to a procedure that can be adequately carried out at the field level. Officials in the field are often best situated to assess, and react promptly to, requests for relief from administrative requirements of general application, where specific circumstances, unanticipated under the directive, warrant a departure from the ordinary standard.

Therefore, in keeping with the stated objectives of the Secretary of Housing and Urban Development to improve the efficiency and enhance the productivity of the Department, the Assistant Secretary for Public and Indian Housing is redelegating the authority to waive Office of Public and Indian Housing directives to all waiver officials, effective immediately, with the following exceptions:

1. A directive, or portion thereof, that restates a statutory, regulatory or contractual provision;

2. A directive, or portion thereof, that requires a HUD field office action to be performed (such as a mandatory process to determine the frequency of monitoring visits at housing agencies);

3. OMB approved HUD forms, reporting requirements, and the use of prescribed forms for the collection and reporting of national data; and

4. A Notice of Funding Availability and associated processing instructions.

All Directors to whom waiver authority is hereby redelegated must comply with the policies and procedures for waiving directives set out in the Statement of Policy. Waiver officials are cautioned against the development of local requirements, processes, or procedures to replace those that are waived, which would counteract the intent of the waiver process.

This redelegation of the authority does not except any public and Indian housing programs or program components. If, however, the Assistant Secretary elects at a later time to except a new program, the redelegation accompanying the new program will state that the authority to waive directives concerning this program is not redelegated. Also, the Assistant Secretary may at a later time elect to modify or withdraw in its entirety the authority to waive directives redelegated herein.

Before approval of a request for a waiver of a directive, the waiver official will consult with the HUD counsel in the field office and request written approval that the directive at issue is one that can be lawfully waived. For example, a directive, or portion thereof, which restates provisions of a regulation cannot be waived by waiver officials. Finally, waiver officials must observe management control procedures designed to prevent fraud, waste and mismanagement when considering a waiver request.

Waiver officials are required to submit a copy of each waiver justification both to the Departmental Directives Management Officer, Office of Administrative and Management Services—ASES, Office of Administration, room 5286 and to Office of Public and Indian Housing, Attention: Directives Management Officer, within 30 calendar days after issuance of the waiver. The waiver justification must cite the specific directive, or provision thereof, being waived, include a statement that the HUD field office counsel considers the waiver lawful, the time period the waiver shall be in effect (if not indefinitely), as well as the reason(s) for granting the waiver. This is so because HUD is required by statute to maintain a record of all such waivers and make them available for public inspection. The Office of Public and Indian Housing will periodically review all waivers to assess such matters as: (a) Whether a particular directive (or provision thereof) warrants revision (because, for example, the exception should become the rule), and (b) whether there is consistency.

Accordingly, the Assistant Secretary for Public and Indian Housing redelegates as follows:

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing redelegates to all HUD Field Office Public Housing Division Directors, the Director, Office of Native American Programs and, in turn, the Directors, Offices of Indian Programs (waiver officials), the authority to issue waivers of Office of Public and Indian Housing directives.

Section B. Authority Excepted

1. A directive, or portion thereof, that restates a statutory, regulatory or contractual provision;

2. A directive, or portion thereof, that requires a HUD field office action;

3. OMB approved HUD forms, reporting requirements, and the use of prescribed forms for the collection and reporting of national data; and

4. A Notice of Funding Availability and associated processing instructions.

Section C. No Further Redelegation

The authority granted to waiver officials under this redelegation may not be further redelegated pursuant to this redelegation.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)), and sec. 7(q), Department of Housing and Urban Development Act (42 U.S.C. 3535(q).

Dated: February 9, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–3687 Filed 2–17–94; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100–6310–02; GP4–076]

DEPARMENT OF AGRICULTURE

Forest Service

Wild and Scenic River Management Plan and Final Corridor Boundary, Oregon

AGENCIES: Bureau of Land Management; Roseburg District, Roseburg, Oregon, Department of the Interior, and U.S. Forest Service; Roseburg, Oregon, Department of Agriculture.

ACTION: Notice.

SUMMARY: In compliance with the Wild and Scenic Rivers Act, this notice announces the availability of the Final Management Plan and Corridor Boundary for the designated segment of The North Umpqua River, a component of the Wild and Scenic Rivers System. The final corridor boundary of the designated segment of the North Umpqua River runs from the Soda Springs Powerhouse in Section 18, T. 26 S., R. 3 E., WM., downstream to Rock Creek in Section 1, T. 26 S., R. 2 W., WM, and averages one-quarter mile either side of the river. A detailed legal description is available upon request.

ADDRESSES:
Bureau of Land Management, Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, OR. 97470
Umpqua National Forest, P.O. Box 1008, Roseburg, OR. 97470

FOR FURTHER INFORMATION CONTACT: (1) Gail Schaefer, Area Manager; Mt Scott Resource Area; Bureau of Land Management; Roseburg District Office; 777 NW Garden Valley Blvd.; Roseburg, OR. 97470. Telephone (503) 440–4930. (2) Don Ostby, Forest Supervisor; Umpqua National Forest; P.O. Box 1008; Roseburg, OR. 97470. Telephone (503) 672–6601.

Dated: January 24, 1994.

James Moorhouse,
District Manager, Bureau of Land Management.

Don Ostby,
Forest Supervisor, Forest Service.

[FR Doc. 94–3664 Filed 2–17–94; 8:45 am]
BILLING CODE 4310–33–M

[ES 940–04–4120–14–241A; ALES 44853]

Competitive Coal Lease Offering by Sealed Bid; Jefferson, Tuscaloosa and Walker Counties, AL

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive coal lease offering by sealed bid.

SUMMARY: Notice is hereby given that as a result of an application filed by Drummond Company, Incorporated, certain coal resources located on scattered tracts located in Jefferson, Tuscaloosa and Walker Counties, Alabama will be offered for competitive leasing by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*). The application area consists of private surface area with federally-owned coal intermingled with private coal. The coal resource being offered is underground mineable, bypass, coal. The lands contained in the application have been designated the Shoal Creek Bypass Tract and are described as follows:

Jefferson County
T. 18 S., R. 7 W., Huntsville Meridian
Sec. 19, NESE, SENE;
Sec. 20, E2NE, NESE, W2SW;
Sec. 21, SWNW;
Sec. 33, NW;

Tuscaloosa County
T. 18 S., R. 7 W., Huntsville Meridian
Sec. 5, S2NW;
Sec. 7, NWNW;
T. 17 S., R. 8 W., Huntsville Meridian
Sec. 25, SENE, NESE;
Sec. 26, NENE;
T. 18 S., R. 8 W., Huntsville Meridian
Sec. 1, S2SW, NWSW, SWNW;
Sec. 11, N2NE, SWNE, NESW, SENE, E2SE, NWSE;
Sec. 13, Fractional NWNW;

Walker County
T. 17 S., R. 7 W., Huntsville Meridian
Sec. 30, N2NE, N2NW, SWNW, NWSW;
Sec. 32, NW;
Containing 1,609.5 acres.

The Shoal Creek Bypass Tract will be leased to the qualified bidder of the highest cash amount, provided that the high bid for the tracts equals or exceeds the fair market value (FMV) for the tracts as determined by the authorized officer after the sale. The Department has established a minimum bid of $100 per acre for the tract. The minimum bid is not to be considered as representing the amount for which the tracts may actually be leased, since FMV will be determined in a separate postsale analysis. If identical high-sealed bids are received, the tying high bidders will be asked to submit followup sealed bids until a high bid is received. All tie-breaking bids must be submitted within the 15 minutes following the authorized officer's announcement at the sale that high bids have been received.

DATES: The sale will be held at 10 a.m., Friday, March 18, 1994, in the Public Room of the Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Each bid must be clearly identified on the outside of the sealed envelope containing the bid. The bids should be sent by certified mail, return receipt or be hand delivered on or before 5 p.m., Thursday, March 17, 1994. Any bids received after 5 p.m., March 17, 1994, will not be considered.

SUPPLEMENTARY INFORMATION: The coal resource being offered is limited to the Mary Lee-Blue Creek Seam. The proximate analysis for the coal resource being offered is as follows:

MARY LEE-BLUE CREEK SEAM
[Proximate Analysis (%) Dry Basis]

Moisture	.....
Ash	9.44
Volatile	25.34
Fixed Carbon	65.20
Btu/lb	13,872
Sulfur	0.66

(Float composite for the two coal beds)

The coal contained in the Shoal Creek Bypass Tract contains approximately 8.065 million short tons of recoverable coal.

RENTAL AND ROYALTY: Any lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre and a royalty payable to the United States of 8 percent of the value of the coal mined by underground methods and shall be determined in accordance with 43 CFR 3485.2.

NOTICE OF AVAILABILITY: Bidding instructions and bidder qualifications are included in the Detailed Statement of Lease Sale. Copies of the Detailed Statement and of the proposed coal lease are available at the Bureau of Land Management, Eastern States. Case file documents are also available for public inspection at Eastern States.

FOR FURTHER INFORMATION CONTACT: For more complete data on this lease application, please contact Ms. Pearl Flaver Tillman at (703) 440–1511 or Mr. Ian J. Senio at (703) 440–1526 at the Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153.

Dated: February 14, 1994.

Carson W. Culp, Jr.,
State Director.

[FR Doc. 94–3787 Filed 2–17–94; 8:45 am]
BILLING CODE 4310–GJ–M

[NM–010–4333–04/G910–G40012]

Emergency Off-Road Vehicle Closures; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: (1) Emergency off-road vehicle closure in the Sombrillo Area of Critical Environmental Concern and near the community of La Puebla, approximately five miles northeast of Española, New Mexico; (2) Emergency off-road vehicle closure near Dixon, New Mexico, amending the **Federal Register** notice dated May 20, 1993; (3) Emergency off-road vehicle designation of the Santa Cruz Lake Overlook access road, with a seasonal closure from mid-November through mid-March.

DATES: Effective February 18, 1994.

FOR FURTHER INFORMATION CONTACT: Terry Humphrey, Outdoor Recreation Planner, Taos Resource Area, 224 Cruz Alta Road, Taos, NM 87571. Phone (505) 758–8851.

SUPPLEMENTARY INFORMATION: (1) A total of 9,485 acres of public lands within T. 20 N., R. 9 E., an area bounded by New Mexico Highway 76 to the north, New Mexico Highway 520 to the east, Nambe Indian Reservation to the south, and U.S. Highway 84 to the west will be closed to off-road vehicles for a period of two years from the date of this notice, or until completion of transportation planning for the area. This closure amends the emergency closure of 520 acres of public lands as noted in the **Federal Register** (May 20, 1993) to: (a) Include the Sombrillo Area of Critical Environmental Concern and isolated public tracts near La Puebla, New Mexico; (b) allow for a designated motorcycle/all terrain vehicle trail parallel to Santa Fe County Road 88 between the 160 acre area open to off-road vehicle use and extending for approximately 0.75 miles to the northeast to tie in with a residential area access road; if unauthorized off-road activity occurs as a consequence of opening this trail, the trail will be closed to off-road vehicles. Off-road vehicle use is causing serious conflicts with adjacent property owners through noise and dust generated by vehicle activity, as well as concerns for visual and natural resource degradation. A recent inventory of the area revealed a large number of new trails and multiple trailing, compromising soil, vegetation, watershed, cultural, paleontological, and scenic resources in the area. The emergency restrictions are necessary to prevent any further degradation to these resources. (2) An emergency off-road vehicle closure of approximately 3,950 acres of public lands near Dixon, New Mexico, amending the **Federal Register** notice dated May 20, 1993, lies within T. 23 E., R. 10 E., S½ Sec. 19, SE¼ Sec. 22, SW¼ Sec. 23, Sec. 27–30, Sec. 33–35, and is necessary to prevent further deterioration of natural and cultural resources. This closure will be in effect for a period of two years from the date of this notice, or until completion of transportation planning for the area. Recent monitoring has shown a large number of new trails and multiple trailing, compromising soil, vegetation, watershed, cultural, paleontological, and scenic resources in the area. (3) A seasonal road closure from mid-November through mid-March of the Santa Cruz Lake Overlook access road, within T. 20 N., R. 10 E., Sections 18 and 19, is necessary to prevent serious acts of vandalism during periods when the Recreation Area is unsupervised.

The closures are necessary to mitigate resource conflicts while allowing BLM to work with local residents and other public land users to work out a long-term resolution of the conflicts created by off-road vehicle use in these areas. The affected areas will be signed at all key access points following publication of this notice. Once transportation planning is completed with public involvement, the emergency designations will be replaced.

These actions comply with regulations contained in 43 CFR 8364.1 (closure and restriction orders). Persons who violate the closures/limitations may be subject to fines of not more than $1,000 or imprisonment for not longer than 12 months, or both. Right-of-way holders or permittees may use established routes as part of their normal business.

Maps of the affected area are available for public inspection at the Bureau of Land Management's office in Santa Fe, 1474 Rodeo Road, and in Taos, 224 Cruz Alta Road.

Dated: February 4, 1994.

Michael R. Ford,
District Manager.

[FR Doc. 94–3410 Filed 2–17–94; 8:45 am]
BILLING CODE 4310–FB–M

[NM–030–4210–01; NMNM90603]

Recreation and Public Purposes Act Classification, Sierra County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Recreation and Public Purposes (R&PP) Act Classification.

SUMMARY: The following public land in Sierra County, New Mexico has been examined and found suitable for classification for lease or conveyance to Sierra County for a rifle range under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*).

T. 13 S., R. 4 W.,
Sec. 29, NMPM W½SE¼
Containing 80 acres, more or less.

Sierra County proposes to use the subject land for a rifle range. The proposed project is in conformance with the White Sands Resource Area Resource Management Plan.

DATES: Comments on the proposed lease/conveyance or classification of public land must be submitted on or before April 4, 1994.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico, 88005.

FOR FURTHER INFORMATION CONTACT: Bernie Creager at the address above or at (505) 525–4324.

SUPPLEMENTARY INFORMATION: The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. All valid existing rights of record.

2. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of lands to the Las Cruces District Manager. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: February 9, 1994.

Stephanie Hargrove,
Associate District Manager.

[FR Doc. 94–3804 Filed 2–17–94; 8:45 am]
BILLING CODE 4310–FB–M

[WY–930–4210–06; WYW 131654]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 80.22 acres of National Forest System lands for 40 years to protect the recreational resources and planned facilities for the proposed Garden of the Gods Campground. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to mineral leasing and to all other uses which may be made of National Forest System lands.

DATES: Comments and request for meeting should be received on or before May 19, 1994.

ADDRESSES: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82001.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, (307) 775–6124.

SUPPLEMENTARY INFORMATION: On January 10, 1994, the U.S. Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United

States mining laws, subject to valid existing rights:

Sixth Principal Meridian, Wyoming

Bighorn National Forest

T. 55 N., R. 89 W.,
Sec. 2, S½ of lots 2 and 3, N½SW¼NE¼, N½SE¼NW¼.

The area described contains 80.22 acres in Sheridan County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Fedral Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During the segregative period, the Forest Service will continue to permit uses within the statutory authorities pertinent to National Forest lands and subject to discretionary approval.

Dated: February 11, 1994.

David J. Walter,

Acting State Director.

[FR Doc. 94-3801 Filed 2-17-94; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Reopening of Comment Period on the Draft Recovery Plan for the Large-Flowered Fiddleneck

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period will be reopened on the draft recovery plan for the large-flowered fiddleneck (*Amsinckia grandiflora*). The reopening of the comment period will allow comments on this plan to be submitted from all interested parties.

DATES: The comment period on the draft recovery plan is reopened February 18, 1994. Comments from all interested parties must be received by April 4, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery may obtain a copy by contacting the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846 or by calling (916) 978-4866. Written comments and materials regarding the draft recovery plan should be addressed to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service at the address listed above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp at the above address (telephone 916/978-4866).

SUPPLEMENTARY INFORMATION:

Background

Historically known from a few locations in the northern Diablo Range, part of the Inner South Coast Range of California, natural populations of the large-flowered fiddleneck are currently restricted to western San Joaquin and eastern Alameda Counties. Reintroductions have been made in San Joaquin and Contra Costa Counties. Critically low number of individuals due to the loss of habitat from urban and agricultural conversion and live-stock grazing, environmental and genetic stochasticity, and competition or interference from associated plants (mostly non-native weeds) imminently threaten the continued existence of *Amsinckia grandiflora*. The primary objectives of the draft recovery plan are to stabilize the long-term status and ensure the viability of the species in the wild, thereby enabling the large-flowered fiddleneck to be downlisted.

The comment period on the draft recovery plan originally closed on February 8, 1994 (58 FR 64963). Written comments may now be submitted until April 4, 1994, to the above Sacramento, California address.

Author

The author of this notice is Kirsten Tarp (See above Sacramento, California address (telephone: 916-978-4866)).

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 11, 1994.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94-3802 Filed 2-17-94; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation, address of principal office and state of incorporation: ConAgra, Inc., One ConAgra Drive, Omaha, NE 68102-5001 (a Delaware corporation)

2. Wholly owned subsidiaries which will participate in the operations, and state of incorporation:

	Corporation	State
1	Ag-Chem, Inc	Maryland.
2	Arrow Industries, Inc	Texas.
3	Atwood Commodities, Inc	Nebraska.
4	Atwood-Kellogg Co	Minnesota.
5	Balcom Chemicals, Inc	Colorado.
6	Beatrice Cheese, Inc	Delaware.
7	Beatrice Cheese Trucking, Inc	Delaware.
8	Berger and Company	California.

	Corporation	State
9	Berliner & Marx, Inc	Delaware.
10	Blue Coach Foods, Inc	Delaware.
11	Central Valley Chem., Inc	Texas.
12	ConAgra, Inc	Delaware.
13	ConAgra Fertilizer Company	Nebraska.
14	ConAgra International Fertilizer Company	Delaware.
15	ConAgra International Inc	Delaware.
16	ConAgra Pet Products, Inc	Delaware.
17	ConAgra Poultry Company	Delaware.
18	ConAgra Transportation, Inc	Delaware.
19	Cook Family Foods, Ltd	Pennsylvania.
20	Country Skillet Catfish Company	Delaware.
21	County Line Cheese Co., Inc	Indiana.
22	Cropmate Company	Delaware.
23	CSK Enterprises, Inc	Delaware.
24	CTC North America, Inc	Delaware.
25	Dartec, Inc	Colorado.
26	Dixie Ag Supply, Inc	Alabama.
27	Donnell Ag Products, Inc	Texas.
28	Estronics, Inc	Delaware.
29	Golden Valley Microwave Foods, Inc	Minnesota.
30	Gotham Asset Management, Inc	Delaware.
31	Grower Service Corp (NY)	New York.
32	HACCO, Inc	Wisconsin.
33	HACO, Inc	Illinois.
34	Hanau Meat Company, Inc	New York.
35	Heartland Ag Agency, Inc	Minnesota.
36	Hess & Clark, Inc	Ohio.
37	Hunt-Wesson, Inc	Delaware.
38	J.R.R.W. Transport, Inc	Iowa.
39	Klein-Berger Company	Colorado.
40	Lamb Weston, Inc	Delaware.
41	Longmont Transportation, Inc	Colorado.
42	Loveland Ind., Inc	Colorado.
43	Lynn Transportation	Iowa.
44	L.L. Cheese Co., Inc	Delaware.
45	Mapelli Food Distribution Company	Colorado.
46	Mid Valley Chem., Inc	Texas.
47	Midwest Agriculture Warehouse Co	Nebraska.
48	Miller Bros. Co	Utah.
49	Monfort, Inc	Delaware.
50	Monfort International Sales Corp	Colorado.
51	Monfort Transportation Company	Colorado.
52	National Foods Inc	New York.
53	National Foods Transportation Co., Inc	New York.
54	Northwest Chemical Corporation	Oregon.
55	Oat Ventures, Inc	Delaware.
56	Omaha Vaccine Co., Inc	Nebraska.
57	Ostlund Chemical Company	North Dakota.
58	Platte Chem. Corp	Nebraska.
59	PRO-VET Companies, Inc	Delaware.
60	Public Grain Elevator of New Orleans, Inc	Louisiana.
61	Pueblo Chemical & Supply Co	Colorado.
62	Ravan Products, Inc	Georgia.
63	Snake River Chem., Inc	Idaho.
64	Spencer Beef Corporation	Nebraska.
65	Swift-Eckrich, Inc	Delaware.
66	Swissrose International, Inc	New Jersey.
67	S.E. Enterprises, Inc	Delaware.
68	Transbas, Inc	Tennessee.
69	Transquip Resources, Inc	Oklahoma.
70	Tri River Chemical Company, Inc	Washington.
71	Tri State Chemicals, Inc	Texas.
72	Tri State Delta Chemicals, Inc	Mississippi.
73	Tropmi Import Co	Florida.
74	UAP Special Products, Inc	Nebraska.
75	UAPLP, Inc	Delaware.
76	UAP/GA Ag Chem, Inc	Georgia.
77	United Agri Products, Inc	Delaware.
78	United Plastic Films, Inc	Georgia.
79	UPF, Inc	Georgia.
80	U.A.P. Florida	Florida.
81	Valencia Advertising Co	Delaware.
82	Valencia Foods Inc	California.

	Corporation	State
83	Westchem Agricultural Chemicals, Inc	Montana.
84	Yellowstone Valley Chemicals Inc	Montana.

B. 1. Parent corporation and address of principal office: Furst McNess Company, 120 East Clark St., Freeport, IL 61032
2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:
(1) Regal Crown Corporation, an Illinois Corporation
(2) J T Merchandising Services, Inc., an Illinois Corporation
(3) Miracle Feeds, Inc., an Illinois Corporation
(4) Miracle Feeds of Canada, Limited, an Ontario Corporation

C. 1. Parent corporation and address of principal office: The Scotts Company, 14111 Scottslawn Road, Marysville, Ohio 43041.
2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

The O. M. Scott & Sons Company, Delaware
Hyponex Corporation, Delaware
Republic Tool & Manufacturing Corp., Delaware
Scotts Grass Co., Ohio
Scotts Sod Co., Ohio
Scotts Energy Co., Ohio
Scotts Pesticide Co., Ohio
Scotts Green Lawns Co., Ohio
Scotts Plant Co., Ohio
Scotts Tree Co., Ohio
Scotts Service Co., Ohio
Scotts Products Co., Ohio
Scotts Fertilizer Co., Ohio
Scotts Park Co., Ohio
Scotts ProTurf Co., Ohio
Scotts Control Co., Ohio
Scotts Professional Products Co., Ohio
Scotts Turf Co., Ohio
Scotts Best Lawns Co., Ohio
Scotts Weed Control Co., Ohio
Scotts Golf Co., Ohio
Scotts Garden Co., Ohio
Scotts Design Co., Ohio
Scotts Tech Rep Co., Ohio
Scotts Broad Leaf Co., Ohio
Scotts Insecticide Co., Ohio
Scotts Spreader Co., Ohio
Scotts Improvement Co., Ohio
Hyponex Corporation, California
Hyponex Corporation, Florida
Hyponex Corporation, Texas
Hyponex Corporation, Colorado
Bunyon Enterprises, Inc., Georgia
Old Fort Financial Corp., Delaware
Hyper Humus, Inc., New Jersey
Scotts-Sierra Horticultural Products Company, California
Scotts-Sierra Crop Protection Company, California

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc 94–3769 Filed 2–17–94; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55; Sub-No. 483X]

CSX Transportation, Inc.—Discontinuance of Trackage Rights Exemption—in Orange, Culpeper, Fauquier, Prince William, and Fairfax Counties, VA

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Trackage Rights* to discontinue its trackage rights on approximately 76.5 miles of rail line owned by Norfolk Southern Railway Company (NS) from milepost 84.7, at Orange, to milepost 8.2, at Alexandria, in Orange, Culpeper, Fauquier, Prince William, and Fairfax Counties, VA. NS will continue to provide rail service on the line.

CSXT has certified that: (1) No CSXT local traffic has moved pursuant to the trackage rights operation over the line for at least 2 years; (2) there is no CSXT overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the 49 CFR 1105.7 (environmental), 49 CFR 1105.8 (historic requirement), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on March 20, 1994, unless stayed pending reconsideration. Petitions to stay must be filed by February 28, 1994. Petitions to reopen must be filed by March 10, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[1]

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Decided: February 10, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–3770 Filed 2–17–94; 8:45 am]

BILLING CODE 7035–01–P

[1] Because NS will continue to provide service over the line, there is no need to provide for trail use/rail banking or public use conditions, or to include offer of financial assistance language, routinely provided for in abandonment proceedings.

DEPARTMENT OF JUSTICE

Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Institution Near Scranton, PA

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The U.S. Department of Justice, Federal Bureau of Prisons has determined that, in order to meet increasing demands for additional inmate capacity, a new Federal Correctional Institution (FCI) is needed in its system.

The Bureau of Prisons proposes to construct and operate a medium security Federal Correctional Institution, with an adjacent minimum security satellite camp, in Lackawanna County, Pennsylvania. The main medium security facility would be designated to have a rated capacity of approximately 1,200 inmates, and the minimum security component approximately 500. The Bureau of Prisons is proposing to build the facility near Scranton, Pennsylvania, on a 413 acre site located Jessup Borough, Lackawanna County, Pennsylvania. The 413 acre tract is located approximately one mile within the locally proposed

1,124 acre Moosic Mountain Business Park northeast of the intersection of Marshwood Road and State Route 247. Additionally, the site would be used for road access, administration, programs and services, parking, and support facilities.

In the process of evaluating the tract of land, several aspects will receive a detailed examination including utilities, traffic patterns, noise levels, visual intrusions, threatened and endangered species, cultural resources, and socio-economic impacts.

Alternatives

In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facility will be fully and thoroughly examined.

Scoping Process

Several informal public meetings have already been held on the proposed project, and during the preparation of the DEIS, there will be numerous other opportunities for public involvement. The public scoping meeting will begin at 7:30 p.m. on Thursday, February 22, 1994, at Fiorelli's Restaurant, 1501 Main Street, Peckville, Pennsylvania. The meeting will be well publicized and is scheduled at a time that will make the meeting possible for the public and interested agencies or organizations to attend.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS can be answered by: David J. Dorworth, Senior Site Selection Specialist, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 514–6470.

Dated: February 9, 1994.

Patricia K. Sledge,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 94–3444 Filed 2–17–94; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202) 219–5095).

Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 (202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 80–83
1210–0064
Recordkeeping
Businesses or other for-profit; Small businesses or organizations
1 respondent; 1 hour per response; 1 total hour

This class exemption exempts from the prohibited transaction provisions of the Employee Retirement Income Security Act (ERISA) of 1974 certain transactions involving an employee benefit plan's purchase of securities which may aid the issuer of the securities to reduce or retire indebtedness to a party in interest.

Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 77–10
1210–0081
Recordkeeping
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
1 respondent; 1 hour per response; 1 total hour

This class exemption complements class exemption 76–1. It permits participating employers, unions, or another plan to lease office space from or to obtain administrative services or goods from a multiple employer or multiemployer plan.

Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 80–51
1210–0082
Recordkeeping
Businesses or other for-profit
1 respondent; 1 hour per response; 1 total hour

This class exemption exempts from the prohibited transaction provisions of Employee Retirement Income Security Act (ERISA) of 1974 certain transactions between a bank collective investment fund and persons who are parties in interest with respect to a plan as long as the plan's participation in the collective investment fund does not exceed a specified percentage of the total assets in the collective investment fund.

Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 90–1
1210–0083
Recordkeeping (six years)
Businesses or other for-profit; Small businesses or organizations
1 respondent; 1 hour per response; 1 total hour

This class exemption allows parties in interest of an employee benefit plan that

invests in an insured pooled separate account to engage in transactions with the separate account if the plan's participation in the separate account does not exceed certain limits.

Employment and Training Administration

Attestation by Employers for Off-Campus Work Authorization for F–1 Students

1205–0315; ETA 9034

On Occasion

Individuals or households; State or local governments; Business or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

13,008 respondents; .998 hours per response; 13,002 total hours; 1 form

The information provided on this form by employers seeking to use aliens admitted as students on F–1 visas in off-campus work will permit the Department of Labor to meet Federal responsibilities for program administration, management and oversight.

Employment and Training Administration

Quarterly Determinations, Allowance Activities and Employability Services under the Trade Act: Training Waivers Issued and Revoked

1205–0016; ETA 563 and 9027

Quarterly

Form No.	Affected public	Respondents	Reports	Average time per response (minutes)
ETA 563	State or local governments	45	95	12
ETA 9027	.....do	52	1	15

3,472 total hours

Quarterly data on Trade Adjustment Assistance (TAA) and the North American Free Trade Agreement (NAFTA) activity is needed for timely program evaluation necessary for competent administration and for providing legally mandated reports to the Congress on the TAA Program. Quarterly number of training waivers issued and revoked by reason are needed for proper administration and to provide statutorily required reports to the Congress.

Signed at Washington, DC, this 8th day of February, 1994.

Kenneth A. Mills,

Departmental Clearance Officer

[FR Doc. 94–3774 Filed 2–17–94; 8:45 am]

BILLING CODE 4510–29–P

All Items Consumer Price Index for All Urban Consumers, United States City Average

Pursuant to section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94–283, 2 U.S.C. 441a), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 193.0 percent from its 1974 annual average of 147.7 to its 1993 annual average of 432.7. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 193.0 percent from its 1974 annual average of 100 to its 1993 annual average of 293.0.

Signed at Washington, D.C., on the 31st day of January 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–3773 Filed 2–17–94; 8:45 am]

BILLING CODE 4510–24–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency have an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

New York
NY940049 (Feb. 18, 1994)
NY940050 (Feb. 18, 1994)
NY940051 (Feb. 18, 1994)
NY940052 (Feb. 18, 1994)
NY940053 (Feb. 18, 1994)
NY940054 (Feb. 18, 1994)
NY940055 (Feb. 18, 1994)
NY940056 (Feb. 18, 1994)
NY940057 (Feb. 18, 1994)
NY940058 (Feb. 18, 1994)
NY940059 (Feb. 18, 1994)

Volume II

Maryland
MD940050 (Feb. 18, 1994)
Pennsylvania
PA940063 (Feb. 18, 1994)

Volume V

Iowa
IA940044 (Feb. 18, 1994)
IA940045 (Feb. 18, 1994)
IA940046 (Feb. 18, 1994)
IA940047 (Feb. 18, 1994)
IA940048 (Feb. 18, 1994)
IA940049 (Feb. 18, 1994)
IA940050 (Feb. 18, 1994)
IA940051 (Feb. 18, 1994)
IA940052 (Feb. 18, 1994)

Volume VI

Arizona
AZ940014 (Feb. 18, 1994)
AZ940015 (Feb. 18, 1994)
AZ940016 (Feb. 18, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania
PA940023 (Feb. 11, 1994)
PA940028 (Feb. 11, 1994)
Virginia
VA940011 (Feb. 11, 1994)
VA940022 (Feb. 11, 1994)

Volume III

None

Volume IV

None

Volume V

Iowa
IA940031 (Feb. 11, 1994)
IA940037 (Feb. 11, 1994)
New Mexico
NM940001 (Feb. 11, 1994)

Volume VI

Alaska
AK940001 (Feb. 11, 1994)
AK940005 (Feb. 11, 1994)
AK940006 (Feb. 11, 1994)
AK940008 (Feb. 11, 1994)
AK940009 (Feb. 11, 1994)
Arizona
AZ940002 (Feb. 11, 1994)
Washington
WA940001 (Feb. 11, 1994)
WA940002 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 14th day of February 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–3669 Filed 2–17–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 28, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 28, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 7th day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Beloit Corp. (IAM)	Beloit, WI	2/07/94	1/28/94	29,459	Paper Making Machinery.
Elgin Electronics (Wkrs)	Erie, PA	2/07/94	1/24/94	29,460	Telephones.
Dahlberg, Inc. (Wkrs)	Golden Valley, MN	2/07/94	2/19/94	29,461	Hearing Aids.
Intermet Foundries Inc., Lower Basin (Wkrs).	Lynchburg, VA	2/07/94	1/15/94	29,462	Castings—Automobile.
Geosignal, Inc. (Wkrs)	Denver, CO	2/07/94	1/24/94	29,463	Exploration, Oil and Gas.
Marilynn Management Corp. (ILGWU)	Bishopville, SC	2/07/94	1/26/94	29,464	Ladies' Dresses.
Northrop Corp. (UAW)	Norwood, MA	2/07/94	1/21/94	29,465	Missile Components.
Anthony Fashions, Inc. (Wkrs)	Pittston, PA	2/07/94	1/24/94	29,466	Women's Dresses.
Pacific Western Forest Industries (Wkrs).	St. Helens, OR	2/07/94	1/10/94	29,467	Softwood Plywood.
Sensor Systems, Inc. (Wkrs)	Chatsworth, CA	2/07/94	1/21/94	29,468	Aircraft Antenna.
Thomas Cook Travel Money Service (Co).	Princeton, NJ	2/07/94	1/11/94	29,469	Service (Financial).
ICI/Fiberlite (Co)	Greenville, TX	2/07/94	1/18/94	29,470	Graphite Composite Material.
Wainoco Oil & Gas Co. (Wkrs)	Houston, TX	2/07/94	1/17/94	29,471	Oil and Gas.
White Hall—Robbins (Wkrs)	Hammonton, NJ	2/07/94	1/25/94	29,472	Pharmaceutical Products.
Smith Industries, Inc. (Co)	Houston, TX	2/07/94	1/13/94	29,473	Oil & Gas Equipment.
Leslie Fay Co. (ILGWU)	Morrow, GA	2/07/94	1/19/94	29,474	Ladies' Sportswear, Warehouse & Services.
Mewbourne Oil (Wkrs)	Oklahoma City, OK	2/07/94	1/03/94	29,475	Oil and Gas.
Mewbourne Oil (Wkrs)	Midland, TX	2/07/94	1/03/94	29,476	Oil and Gas.
Service Fracturing Co. (Co/Wks)	Hays, KS	2/07/94	2/07/94	29,477	Oil Field Services.

[FR Doc. 94–3775 Filed 2–17–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,043]

Litton Systems, Inc., Litton Guidance & Control Systems Division, Grants Pass, OR; Negative Determination on Reconsideration

On January 13, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. This notice was published in the **Federal Register** on January 21, 1994 (59 FR 3378).

The former workers stated that production and employment declines occurred because production on the LN 93 and LN 94 systems was transferred to Korea.

New findings on reconsideration show that the major portion of the worker separations occurred in the 1989 to 1991 period. Section 223(b)(1) of the Trade Act does not permit the certification of workers who were separated more than one year from the date of the petition. The date of the instant petition is September 7, 1993.

Other findings on reconsideration show that although production on the LN 93 and LN 94 programs was transferred from Grants Pass to Korea with the completed portion being shipped back to the U.S., it did not account for a sufficient portion of the production at Grants Pass to warrant certification.

Further, the findings show that the workers at Grants Pass are not separately identifiable by product.

Lastly, worker separations on the SNAP and PADS programs stated in the petition were negligible in the period relevant to the petition.

The Trade Act was not intended to provide TAA benefits to everyone who is in some way affected by increased imports but only to those accounting for a substantial portion of the workers' firm and who experienced a decline in sales or production and employment and an increase in imports of like or directly competitive products which contributed importantly to declines in sales or production and employment in the period relevant to the petition.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of Litton Systems, Inc., Litton Guidance & Control Systems Division in Grants Pass, Oregon.

Signed at Washington, DC, this 8th day of February 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–3776 Filed 2–17–94; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–012]

NASA Advisory Council (NAC), Space Science Advisory Committee; Space Physics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Space Physics Subcommittee.

DATES: March 2–4, 1994, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC–5, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. George L. Withbroe, Code SS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1544.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Space Physics Division Overview: Budget, Ongoing Program, Future Activities
—Program Reports for Magnetospheric, Cosmic and Heliospheric Physics, Solar Physics, and Ionosphere-Thermosphere-Mesophere
—Space Physics Research and Analysis Program
—Strategic Planning
—Discussion and Writing Groups

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: February 10, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 94–3734 Filed 2–17–94; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: Monday, March 14, 1994; 9 a.m.–3 p.m.

Place: Room 1295, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, Room 1225, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703/306–1096.

Purpose of Meeting: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: February 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–3796 Filed 2–17–94; 8:45 am]
BILLING CODE 7555–01–M

DOE/USGS/NSF Council for Continental Scientific Drilling; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Council for Continental Scientific Drilling (30).

Date and Time: March 9 & 10, 1994; 8 a.m. to 6 p.m. each day.

Place: Room 3753; National Science Foundation; 4201 Wilson Boulevard; Arlington, VA 22230.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Contact: Dr. James F. Hays, Division Director, Division of Earth Sciences, room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1550; and Donald W. Klick, ICG/CSD Executive Secretary, 922 National Center, U.S. Geological Survey, Reston, VA 22092, (703) 648–6346.

Minutes: May be obtained from the Contact Person(s) listed above.

Agenda: Briefings on accomplishments, current activities, and future plans of the DOE, NSF, and USGS and CSD programs; discussions of recommendations for organizational structure, procedures, schedule, and related matters for the U.S. CSDP overview by the Council for CSD.

Dated: February 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–3797 Filed 2–17–94; 8:45 am]
BILLING CODE 7555–01–M

Earth Sciences Proposal Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).

Date: March 16, 17 & 18, 1994.

Time: 8 a.m. to 6 p.m. each day.

Place: Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alan M. Gaines, Section Head, Division of Earth Sciences, room 785, National Science Foundation, Arlington, VA, (703) 306–1553.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–3794 Filed 2–17–94; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Human Resource Development.

Date & Time: March 10, 1994: 8:30 a.m. to 5 p.m.; March 11, 1994: 8:30 a.m. to 3 p.m.; March 12, 1994: 8:30 a.m. to 12:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd. room 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lola E. Rogers, Program Director, 4201 Wilson Blvd, suite 815, Arlington, VA 22230. Telephone: 703/306–1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Model Projects for Women and Girls Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–3793 Filed 2–17–94; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resource Development.

Date and Time: Monday, March 14; Tuesday, March 15, 1994; 8 a.m.–5 p.m.

Place: Room 3751, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Drs. Costello, Brown & Betty Ruth Jones, Program Directors, HRD, room 815, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1633.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Partnerships for Minority Student Achievement proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including

technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–3795 Filed 2–17–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR).

Date and Time: March 4, 1994, 8:30 am—5 pm.

Place: National Science Foundation, 4201 Wilson Blvd., room 340, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Lorretta J. Inglehart, Program Director, Instrumentation for Materials Research Program, Division of Materials Research, room 1065 National Science Foundation, Arlington, VA 22230. Telephone (703) 306–1817.

Purpose of Meetings: To provide advice and recommendations concerning support for DMR Instrumentation Proposals.

Agenda: Evaluation of proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial Data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–3798 Filed 2–17–94, 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Materials Research (DMR).

Date and Time: March 3, 1994, 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., room 3102, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Lorretta J. Inglehart, Program Director, Instrumentation for Materials Research Program, Division of Materials Research, room 1065, National Science Foundation, Arlington, VA 22230. Telephone (703) 306–1817.

Purpose of Meeting: To provide advice and recommendations concerning support for DMR Instrumentation Proposals.

Agenda: Evaluation of proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–3799 Filed 2–17–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Co., Millstone Nuclear Power Station, Unit No. 2; Notice of Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission is considering issuance of an amendment to Operating License No. DPR–65 to Northeast Nuclear Energy Company, (the licensee) for Millstone Nuclear Power Station, Unit No. 2 located in Waterford, Connecticut.

Identification of Proposed Action

The amendment would consist of changes to the operating license and Technical Specifications (TS). The changes would modify the spent fuel pool (SFP) by introducing neutron absorbing (poison) rodlets (pins) into the stored fuel and increase the required burnup in Region C to permit removal of the cell blockers, thus increasing by 234 fuel assemblies the storage capacity of the SFP.

The amendment to the TS is responsive to the licensee's application dated May 14, 1993, as supplemented by letters of July 10, July 16, November 30, December 1, 1993, and January 27, 1994. The NRC staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment By the Office of Nuclear Rector Regulation Relating to the Modification of the Spent Fuel Storage Pool, Operating License No. DPR–65, Northeast Nuclear Energy Company, Millstone Nuclear Power Station, Unit No. 2. Docket No. 50–336" dated February 14, 1994.

Summary of Environmental Assessment

The Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575) concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in SFP designs, the FGEIS recommended licensing SFP expansion on a case-by-case basis.

For Millstone Unit 2, the SFP modification will not create any significant additional radiological effects or measurable nonradiological environmental impacts. The licensee has evaluated the effect of the changes on the calculated consequences of a spectrum of postulated design basis accidents and concludes that the effect of the proposed TS changes are small and that the calculated consequences are within regulatory requirements and staff guideline dose values. The total occupational exposure for the modification and the additional occupational exposure for subsequent operation of the modified SFP will not significantly increase since the radiation fields in the area near the pool are not expected to increase during the SFP modification. Divers will not be used during the modifications and the licensee will prepare and follow specific procedures that are consistent with good ALARA principles and practices. Therefore, the staff concludes that the exposure to workers is as low as is reasonably achievable (ALARA) and is acceptable.

Finding of No Significant Impact

The staff has reviewed this proposed facility modification relative to the requirements set forth in 10 CFR part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for the amendment to the Technical Specifications dated May 14, 1993, as supplemented by letters of July 10, July 16, November 30, December 1, 1993, and January 27, 1994, (2) the FGEIS on Handling and Storage of Spent Light Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for Milestone, Unit No. 2 issued June 1973, and (4) the Environmental Assessment dated February 14, 1994. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 14th day of February 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–3728 Filed 2–17–94; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Notice of Commission Visit

February 14, 1994.

Notice is hereby given that on February 22, through February 25, 1994, members of the Commission and certain advisory staff personnel will visit the offices and/or mailing operations of Donnelley Marketing in Stamford, Connecticut; Readers Digest in Pleasantville, New York; and, officials of McGraw-Hill and Time Warner in New York City.

A report of the visits will be on file in the Commission's Docket Room. For further information contact Charles L. Clapp, Secretary of the Commission at 202–789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 94–3852 Filed 2–17–94; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33609; File No. SR–Amex–94–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Expiring Equity Option Exercise Advices

February 9, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 11, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 980 relating to the exercise of expiring equity option contracts to require members and member organizations to advise the Exchange of their final exercise decisions for such options prior to the Exchange's exercise cut-off time. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Exchange Rule 980 specifies that the cut-off time for all members and member organizations to exercise outstanding expiring equity options contracts is 5:30 p.m. Eastern Standard Time ("EST") ("exercise cut-off time") on the business day immediately prior to the expiration date of such options. This is the latest time that a member organization can accept instructions to exercise an expiring options contract from a customer or a non-clearing member. The rule also provides that 5:30 p.m. EST is the latest time that a member organization can prepare an internal notice with instructions to either not exercise an options position which would otherwise automatically be exercised, or exercise an options position that would not be automatically exercised pursuant to Options Clearing Corporation ("OCC") Rule 805.[1]

While all options exchanges have a uniform 5:30 p.m. EST exercise cut-off time on the last business day prior to the expiration date of the options,[2] OCC rules permit exchanges to accept exercise instructions for expiring options from clearing firms until 12 a.m. EST on the options' expiration date. The Exchange believes that this additional time within which to receive instructions was provided to accommodate: (1) Corrections or errors made in good faith; (2) trade reconciliations; and (3) certain exceptional circumstances that either restrict a customer's ability to inform his brokerage firm or impact a firm's ability to receive final exercise decisions before the exercise cut-off time.

According to the Exchange, however, there have been some situations where members and member firms have either delayed making exercise decisions until after the exercise cut-off time in anticipation of the release of significant news concerning a particular underlying company, or having made decisions prior to the exercise cut-off time, changed these decisions based upon such news. In one notable situation, certain firms that anticipated the release of material news regarding a particular company allegedly delayed making their exercise decisions until after the exercise cut-off time, causing firms who claimed to have been disadvantaged by such conduct to commence a series of highly publicized arbitration proceedings and lawsuits.

To enable the Exchange to determine whether options holders have made their final decisions no later than the prescribed exercise cut-off time and not on the basis of market developments occurring after the exercise cut-off time, the Exchange proposes that Rule 980 be amended to provide for an exercise advice procedure. Specifically, the procedure would require that any determination to exercise or not exercise an expiring equity option that does not meet the parameters for OCC's Exercise by Exception system must be indicated to the Exchange either by submitting a "Contrary Exercise Advice Form" to a designated place on the Exchange Floor or by transmitting the contrary exercise advice electronically to OCC prior to the 5:30 p.m. EST exercise cut-off time. The

[1] The automatic exercise system ("Exercise by Exception") allows OCC clearing members to exercise in-the-money options at expiration which are at or above a predetermined threshold without submitting input entries into OCC.

[2] See, e.g., Philadelphia Stock Exchange, Inc. Rule 1042.

proposed amendment does not affect procedures for expiring options that meet the parameters of OCC's Exercise by Exception system and which are to be exercised or not exercised in reliance on that system.

The Exchange represents that the proposed rule change reflects a coordinated effort among all the options exchanges and the OCC. The Exchange states that the proposed exercise advice procedure has been reviewed and endorsed by the Intermarket Surveillance Group ("ISG")[3] which, upon the Commission's approval of the applicable rule changes, will issue a joint exchange circular to explain the operation of the new provisions to members and member organizations. It is anticipated that each of the options exchanges will be submitting (or have submitted) rule proposals requiring the submission of advices for expiring equity options in the same manner.[4]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file No. SR–Amex–94–01 and should be submitted by March 11, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3700 Filed 2–17–94; 8:45 am]

BILLING CODE 8010–01–M

[3] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The members of the ISG are: the Amex; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the Cincinnati Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. ("Phlx").

[4] *See, e.g.*, File No. SR–Phlx–93–37.

[5] 17 CFR 200.30–(a)(12) [1993].

[Release No. 34–33610; File No. SR–Phlx–93–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Exercise Cut-Off Procedure for Equity Options Contracts

February 9, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 196–4 of the Act, proposes to amend Phlx Rule 1042 (Exercise of Option Contracts) by incorporating a new exercise cut-off procedure.

Specifically, the Exchange proposes to require that an option holder's final exercise decision (*i.e.*, whether or not to exercise an expiring equity option)[1] be indicated to the Exchange by either submitting a Contrary Exercise Advice ("Advice") form (to a designated place at the Exchange or to the Options Clearing Corporation ("OCC") pursuant to OCC procedures) or by choosing to rely on OCC's exercise-by-exception procedure, which automatically makes an exercise determination for applicable option holders.[2] The deadline for the submission of a final exercise decision would remain at 5:30 p.m. Eastern Standard Time on the business day immediately preceding the expiration date ("exercise cut-off time").

To implement this new procedure, proposed Rule 1042(b) would require members and member organizations to take steps to ensure that final exercise decisions respecting their proprietary positions, and the positions of members and non-members for whom the responsibility to make such indications has been accepted by them, are properly indicated to the Exchange. In addition, to allow time for processing, each member organization would be required to establish a deadline prior to the exercise cut-off time after which it will no longer accept final exercise decisions in expiring equity options from customers.

Rule 1042(b) will continue to provide the following exceptions to the exercise cut-off procedure: (i) To remedy mistakes made in good faith; (ii) to respond to a failure to reconcile an unmatched Exchange option transaction; and (iii) where exceptional circumstances restricted either a customer's ability to inform the respective member organization or a member organization's ability to receive final exercise decisions before the exercise cut-off time.[3] The current exception respecting foreign currency options is proposed to be deleted and replaced with Commentary .03 to Rule 1042, which provides that Rule 1042(b) does not apply to foreign currency options or index options. In this regard, the following new title to Rule 1042 is proposed: "Exercise of Equity Option Contracts."

In addition, Rule 1042 as amended would require that a memorandum setting forth the circumstances surrounding the exercise be prepared and a copy filed with the Exchange's Market Surveillance Department in any instance of an equity option exercise not submitted "automatically" through OCC's exercise-by-exception procedure, and for which a Contrary Exercise Advice was either not timely submitted or amended after the exercise cut-off time. Each such memorandum must reflect the time the final exercise decision was made, or in the case of a customer, the time the final exercise decision was received, and must be kept in accordance with SEC Rules 17a–3(a)(6) and 17a–4. Under the proposal, all of the exceptions listed in Rule 1042(b) would require a written memorandum setting forth the circumstances giving rise to the exception.[4]

Pursuant to the proposed rule change, the burden of establishing an exception would rest solely on the member or member organization seeking to rely on one of the exemptive provisions. Current procedure requires clearing organizations to record the receipt of exercise decisions in connection with the exercise cut-off rule. The proposed procedure would allow members to either submit Contrary Exercise Advices directly to the Exchange or to the firm responsible for processing such Advices on their behalf. Thus, since members would have the ability to submit Advices directly to the Exchange, it is the member (and not necessarily the clearing agent) who must establish that an exception relied upon by that member is consistent with the rule. To address possible instances where no Advice is submitted while an exercise notice is nonetheless tendered for a strike price outside the exercise-by-exception parameters and where none of the exceptions apply, Commentary .02 specifies that such exercises would be deemed conduct inconsistent with just and equitable principles of trade if effected on the basis of material information obtained after the exercise cut-off time.

The Exchange notes that the exercise cut-off time as well as the actual exercise procedure remain unchanged, including the submission of exercise notices to OCC contained in Rule 1042(a), which would still be governed by OCC rules.[5] In this regard, Commentary .01 as amended expressly states that the reporting of final exercise decisions pursuant to Rule 1042 does not serve to substitute as the effective "exercise notice" to OCC regarding the exercise or non-exercise of expiring equity options. A technical amendment changing several references in Rule 1042(a) to read "OCC" is also proposed herein.

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Phlx Rule 1042 governs the exercise of option contracts traded on the Exchange. Specifically, Rule 1042(a) refers to OCC rules and procedures regarding the actual exercise of option contracts as well as the submission of exercise notices to OCC for trade dates prior to the last day of business prior to expiration. Rule 1042(b) concerns the exercise cut-off time and submission of exercise instructions to the Exchange for expiring options on the last day of trading in such options. At this time, the Phlx proposes to incorporate a new exercise cut-off procedure into Rule 1042, featuring the use of a Contrary Exercise Advice for the submission of final exercise decisions and the ability to submit such Advices directly to the Exchange. The Exchange represents that the purposes behind these amendments are to bolster the audit trail requirements of Rule 1042, to incorporate a more convenient process for members to indicate exercise intentions to the Exchange, and to further ensure that the exercise cut-off time efficiently provides a level playing field among market participants with respect to final exercise decisions.

The new procedure would enable option holders to bypass the clearing firm when submitting a Contrary Exercise Advice directly to the Exchange. The Exchange will designate a place on the trading floor for the submission of these Advices, similar to the current procedure for the submission of index option exercise notices.[6] In those instances where a member holding an expiring option submits an Advice directly to the Exchange, the responsibility for the timely and proper submission of such Advice shifts from the option holder's clearing agent to the option holder himself. For example, a Registered Option Trader's ("ROT") clearing agent would not be held responsible for direct submissions by the ROT to the Exchange.

Under the proposal, Exchange members would still be able to submit their final exercise decisions, on a Contrary Exercise Advice, to the respective clearing member. The clearing member would then be required to either submit the Advice directly to the Exchange at the designated place or to OCC pursuant to OCC procedures, and would be required to do so prior to the exercise cut-off time. Regardless of to whom the submission is made, the Exchange believes that the proposed changes would result in an efficient audit trail being generated for purposes of identifying late entries. The Exchange believes the proposal would constitute an important change in current procedures by enabling a self-regulatory organization ("SRO") to confirm the

[1] The term "final exercise decision" would generally replace the term "exercise instructions" in the amended rule.

[2] Specifically, exercise-by-exception is the system which allows OCC clearing members to exercise in-the-money options at expiration which are at or above the predetermined threshold without submitting input entries into OCC. *See* OCC Rule 805.

[3] Under the current rule, only a customer's ability to send and a member's ability to receive final exercise decisions could serve as an exception. Because a customer can submit exercise decisions to a member organization who in turn submits them to OCC, that member organization's ability to receive the customer's decision can also qualify as an exemption under the rule. Under the proposal, a member's ability to send decisions could also qualify as an exception.

[4] Rule 1042 currently only requires a memorandum with respect to the first and third exception to the Rule. *See* Rule 1042, Commentary .02.

[5] See generally OCC rules and Phlx Rules 1002, 1004, and 1005.

[6] See Phlx Rule 1042A and Floor Procedure Advice G–1.

timeliness of option exercise instruction submissions.

The Exchange further believes that the proposed memorandum requirement of Rule 1042 should also bolster the Exchange's audit trail by requiring that a memorandum be prepared and filed with the Exchange's Market Surveillance Department detailing the circumstances surrounding any non-automatic exercise that was not submitted on a Contrary Exercise Advice in a timely manner. In addition, with respect to the exceptions to the exercise cut-off procedure, the Exchange believes that the proposed change expressly stating that the burden of establishing such an exception lies with the person seeking the exception should also improve the Exchange's ability to surveil for violations of the procedure.

The Exchange believes that the proposed changes to the exercise cut-off procedure for expiring equity options reflect a coordinated effort among the options exchanges and OCC. Accordingly, because the Phlx expects similar proposed rule changes to be filed with the Commission in the near future,[7] uniformity among options exchanges should help option holders and other members adjust to the new procedure and incorporate the changes into their respective procedures. In this regard, the Exchange will recognize Contrary Exercise Advices submitted to other national options exchanges for any option listed both on the Phlx and that other exchange.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act in general, and with section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. Specifically, the Exchange believes that consistent with section 6(b)(5) of the Act, the proposed change to Rule 1042 should improve the Exchange's ability to surveil for violations of the exercise cut-off time because the submission of Contrary Exercise Advices directly to the Exchange as well to OCC should provide an accurate audit trail to identify late entries. In addition, the Exchange believes that the proposed procedure should reduce the onus on clearing firms of collecting exercise instructions, because the new procedure will enable option holders to bypass the clearing firm by submitting a Contrary Exercise Advice directly to the Exchange.

In summary, the Exchange believes that Phlx investigations into late entries of exercise decisions should ensure compliance with Rule 1042, and, accordingly, promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–37 and should be submitted March 11, 1994.

For the Commission, by the Division of market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3701 Filed 2–17–94; 8:45 am]

BILLING CODE 8010–01–M

[7] See, *e.g.*, File No. SR–Amex–94–01.

[8] 17 CFR 200.30–3(a)(12) (1993).

[Release No. IC–20070; 812–8384]

IDS Bond Fund, Inc., et al.; Notice of Application

February 14, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: IDS Bond Fund, Inc., IDS California Tax-Exempt Trust, IDS Discovery Fund, Inc., IDS Equity Plus Fund, Inc., IDS Extra Income Fund, Inc., IDS Federal Income Fund, Inc., IDS Global Series, Inc., IDS Growth Fund, Inc., IDS High Yield Tax-Exempt Fund, Inc., IDS International Fund, Inc., IDS Investment Series, Inc., IDS Managed Retirement Fund, Inc., IDS Market Advantage Series, Inc., IDS New Dimensions Fund, Inc., IDS Precious Metals Fund, Inc., IDS Progressive Fund, Inc., IDS Selective Fund, Inc., IDS Special Tax-Exempt Series Trust, IDS Stock Fund, Inc., IDS Tax-Exempt Bond Fund, Inc., IDS Utilities Income Fund, Inc. (each series is referred to as a "Front-End Load Fund"), IDS Money Market Series, Inc. and IDS Tax-Free Money Fund, Inc. (each series is referred to as a "Money Market Fund"), IDS Strategy Fund, Inc. (each series is referred to as a "Back-End Load Fund") (collectively, the "Funds"), and IDS Financial Corporation ("IDS" or the "Investment Manager") and IDS Financial Services Inc. ("IDS Financial" or the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would supersede two prior orders that permit some of the Funds to assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of shares. The present order would (1) expand the investment companies eligible to assess a CDSC, and (2) permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities.

FILING DATES: The application was filed on May 6, 1993, and amended on October 1, 1993, and December 15, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 14, 1994 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549; Applicants, Laura M. Moret, IDS Financial Corporation, IDS Tower 10—Unit 52, Minneapolis, Minnesota 55440.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 272–3809 or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is an open-end management investment company registered under the Act. The Funds currently have different distribution structures. Shares of the Back-End Load Funds are offered to investors subject to a CDSC and distribution fees adopted pursuant to rule 12b–1 under the Act. Shares of the Front-End Load Funds are offered to investors subject to a front-end sales load and rule 12b–1 fees that are lower than those applicable to the Back-End Load Funds.

2. Each Fund has entered into or will enter into an investment management agreement with IDS pursuant to which IDS provides investment management services. Each Fund also has entered into or will enter into a distribution agreement with IDS Financial pursuant to which IDS Financial Acts as principal underwriter for the Fund.

3. Applicants request an exemption that would permit the Funds (a) to issue multiple classes of shares representing interests in the same portfolio of securities and (b) to assess and, under certain circumstances, waive a CDSC on certain redemptions of shares. The order would supersede two prior orders that permit some of the Funds to assess and, under certain circumstances, waive a CDSC.[1] Applicants also request that any relief apply to any open-end management investment company or series within those companies that are advised by IDS and in the same "group of investment companies" with the Funds, as defined in rule 11a–3, that operate in a manner identical in all material respects to that of the Funds.

A. The Multiple Pricing System

1. Applicants propose to establish multiple distribution arrangements (the "Multiple Pricing System") using different classes of shares within the same Fund. Under the Multiple Pricing System, each Fund, except the Money Market Funds, will offer investors the option of purchasing shares with a front-end sales load and a rule 12b–1 service fee of up to .25% of the average daily net asset value ("Class A shares" or the Front-End Load Option"). Certain large purchasers of Class A shares and participants in qualified plans purchasing Class A shares will not be subject to a front-end sales load but will be subject to a CDSC not to exceed 4%. The CDSC will be eliminated in plans with more than 100 participants or plan assets of more than $1 million. In addition, each Fund will offer investors the option of purchasing shares with a CDSC, an annual distribution charge of up to .75% of average daily net assets and an annual service fee of up to .25% of average daily net assets under a rule 12b–1 plan ("Class B shares" or the "Deferred Option"). Some Funds will offer Class C shares that will be offered without imposition of either a sales load, distribution charge, or service fee ("Class C shares"). Class C shares will be offered exclusively to participants and trustees in employee benefits plans which meet minimum requirements, and to certain investors that will be specified in a Fund's prospectus. The Money Market Funds will offer one class of shares, which may have a service fee.

2. Applicants request the authority to create additional classes that may differ from Class A, Class B, and Class C shares only in the following respects: (a) the impact of the disproportionate payments made under the rule 12b–1 distribution plan; (b) the impact of the disproportionate payments made because of a non-rule 12b–1 service fee; (c) any different expenses for each class of shares ("Class Expenses"), which are set forth in condition 1 below; (d) the fact that the classes will vote separately with respect to the Fund's rule 12b–1 distribution plan; (e) the different exchange privileges of the classes; and (f) the designation of each class.

3. Class B shares will have a conversion feature providing for automatic conversion to Class A shares after a certain holding period of up to eight years. Upon the expiration of the holding period, Class B shares (except those purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares of that Fund) will automatically convert to Class A shares of the Fund at the relative net asset values of each of the classes. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares are also Class B shares. However, for purposes of conversion to Class A, all Class B shares in a shareholder's Fund account that were purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares (and that have not converted to Class A shares as provided in the following sentence) will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's Fund account (other than those in the sub-account referred to in the preceding sentence) convert to Class A, a *pro-rata* portion of Class B shares then in the sub-account will also convert to Class A. The portion will be determined by the ratio that the shareholder's Class B shares converting to Class A bears to the shareholder's total Class B shares not acquired through dividends and distributions.

4. Applicants contemplate that Class A shares of a Fund will be exchangeable only for Class A shares of the other Funds, except for Class A shares of the Money Market Funds which may be exchanged for Class B shares at the request of the shareholder. Class B shares of a Fund will be exchangeable only for Class B shares of the other Funds. Class C shares of a Fund will be exchangeable only for Class C shares of the other Funds. The exchange

[1] *Investors Mutual, Inc. et al.* Investment Company Act Releases Nos. 13906 (April 26, 1984) (notice) and 13974 (May 31, 1984) (order), and *IDS Financial Corporation, et al.* Investment Company Act Releases Nos. 17059 (July 10, 1989) (notice) and 17099 (August 4, 1989) (order).

privileges will comply with rule 11a–3 under the Act.

5. Under the Multiple Pricing System, the net asset value of each class will reflect the expenses allocated to it. All expenses incurred by a Fund will be allocated based on the relative net asset values of each class, except to the extent that each class's net asset value and expenses will reflect the expenses of rule 12b–1 plans and any Class Expenses.

B. The CDSC

1. Applicants also request an exemption to permit the Funds to assess a CDSC on certain redemptions of Class B shares, and waive the CDSC with respect to certain types of redemptions. The CDSC will be imposed by each Fund on a redemption of Class B shares during a specified period up to eight years. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of amounts representing capital appreciation, next of shares representing reinvestment of dividends and capital gains distributions, and finally of other shares held for the longest period of time. This will result in the charge, if any, being imposed at the lowest possible rate.

2. The amount of the CDSC charged to a Class B shareholder of a Fund will depend on the number of years that have elapsed since the shareholder made the purchase payment from which an amount is being redeemed. Any changes in CDSC amounts, rates of reduction or the CDSC period will be reflected in the prospectus of the affected Fund, and the change will not adversely affect shares that were issued prior to the date of the change. The sum of any front-end sales charge, asset based sales charge, and CDSC will not exceed the maximum sales charge provided for in Article III, Section 26 of the Rules of Fair Practice of the NASD.

3. The CDSC for Class B will be waived on redemptions of shares: (1) In the event of the shareholder's death; (2) held in IRAs and qualified plans for which IDS Acts as custodian, such as Keogh plans, tax-sheltered custodial accounts or corporate pension plans if the shareholder is at least 59½ years old, and the redemption is not part of a custodian-to-custodian transfer (unless a taxable retirement distribution), or if the redemption is part of an approved "substantially equal periodic payment" arrangement; or (3) held in a trusteed employee benefit plan.

4. Class A shareholders who are participants in qualified plans with the daily transfer recordkeeping service also maybe charged a CDSC on certain redemptions. In no event will the CDSC exceed 4% of the purchase payments made by the shareholder. The CDSC for Class A will be eliminated for plans with more than $1 million in plan assets or more than 100 participants.

5. Class A shareholders who invest or who have aggregate investments in the Funds of $1 million or more may purchase Class A shares without paying a front-end sales load. If that investment is redeemed in the first two years after purchase, a CDSC of 1% may be imposed on the redemption.

6. The CDSC for Class A shares will be waived: (1) In the event of the shareholder's death; (2) in connection with lump-sum or other distributions following retirement or attaining age 59½, and the redemption is not part of a custodian-to-custodian transfer (unless a taxable retirement distribution), or if the redemption is part of an approved "substantially equal periodic payment" agreement; or (3) with respect to loans or hardship withdrawals.

7. The CDSC for the additional classes of shares may be different than the one described for Classes A and B, but will be calculated in the same manner.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(f)(1), 18(g), and 18(i) to the extent the Multiple Pricing System may result in a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1), and to the extent the allocation of voting rights under the Multiple Pricing System may violate the provisions of 18(i). Applicants believe that the Multiple Pricing System does not raise any of the legislative concerns that section 18 was designed to ameliorate. The proposal does not involve borrowings and does not affect the Funds' existing assets or reserves. Applicants believe that the proposed allocation of expenses and voting rights relating to the rule 12b–1 plans in the manner described above is equitable and would not discriminate against any group of shareholders.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants believe that the imposition of the CDSC is fair and in the best interests of their shareholders because it applies only to amounts representing purchase payments and does not apply to amounts representing increases in the value of an investor's account through capital appreciation or to amounts representing reinvestment of distributions.

Applicant's Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions.

1. Each class of shares will represent interests in the same portfolio of investments of the Fund, and be identical in all respects, except as set forth below. The only differences among the classes of shares of the Fund will relate solely to: (a) the impact of the disproportionate payments made under the rule 12b–1 distribution plan; (b) the impact of the disproportionate payments made because of a non-rule 12b–1 service fee; (c) any different Class Expenses which are limited to: (i) Any transfer agency fees identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; (vii) fees and expenses of members of boards incurred as a result of issues relating to one class of shares; (viii) costs relating to obtaining shareholder approval of a rule 12b–1 plan for a class or an amendment to a rule 12b–1 plan; (ix) and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order; (d) the fact that the classes will vote separately with respect to the Fund's rule 12b–1 distribution plan, except as provided in condition 15 below; (e) the different exchange privileges of the classes of shares; and (f) the designation of each class of shares of the Fund.

2. The members of the board of each Fund, including a majority of the independent board members, shall have approved the Multiple Pricing System. The minutes of the meetings of the board of the Fund regarding the deliberation of the board with respect to the approvals necessary to implement the Multiple Pricing System will reflect in detail the reasons for determining that the proposed Multiple Pricing System is in the best interests of the Fund and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the board of the affected Fund, including a majority of the independent board members. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the board, and the board shall review, at least quarterly, a written report of the amounts so expended and the purpose for which the expenditures were made.

4. On an ongoing basis, the members of the boards of each of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The members of the boards of each Fund, including a majority of the independent board members, shall take such action as is reasonably necessary to eliminate any conflicts that may develop. The Investment Manager and the Distributor will be responsible for reporting any potential or existing conflicts to the members of the boards. If a conflict arises the Investment Manager and the Distributor at their own costs will remedy the conflict up to and including establishing a new registered management investment company.

5. The shareholders services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

6. The members of the boards of the Funds will receive quarterly and annual Statements concerning distribution expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the Statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a specific class of shares will not be presented to the members of the boards to support rule 12b–1 fees charged to shareholders of that class of shares. The Statements, including the methods of allocations upon which they are based, will be subject to the review and approval of the independent board members in the exercise of their fiduciary duties.

7. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time and on the same day and will be in the same amount, except for fee payments made under the rule 12b–1 plans and any Class Expenses.

8. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of expenses among the various classes has been reviewed by an independent examiner. The independent examiner has rendered a report to applicants which has been provided to the staff of the Commission, filed as exhibit E to the application stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. On an ongoing basis, the independent examiner, or an appropriate substitute independent examiner, will monitor the manner in which the calculations and allocations are being made and, based upon this review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the independent examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the independent examiner with respect to these reports, following a request by the Funds that the Funds agree to make, will be available for inspection by the Commission's staff upon the written request for these work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the independent examiner is a "report on policies and procedures placed in operation" and ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the several classes of shares and the proper allocation of expenses among the several classes of shares and the independent examiner has concurred with this representation in the initial report referred to in condition (7) above and the Funds will be concurred with by the independent examiner, or an appropriate substitute independent examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants will take immediate corrective measures if this representation is not concurred in by the independent examiner, or appropriate substitute independent examiner.

10. The prospectuses of the Funds will include a statement to the effect that a financial planner and any other person entitled to receive compensation for selling or servicing shares of the Funds may receive a different amount of compensation for selling one particular class of shares of the Fund over another.

11. The Distributor will adopt compliance standards as to when shares of a particular class may be sold to particular investors. The applicants will require all persons selling shares of the Funds to agree to conform to these standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the members of the Boards of the Funds with respect to the Multiple Pricing System will be furnished to the members of the Boards.

13. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, conversion features and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of the Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present each class of shares.

14. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization or

acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans in reliance on the exemptive order.

15. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in ART III Sec. 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If a Fund implements any amendment to its rule 12b–1 plan or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan that would increase materially the amount that may be borne by the Target Class (the class into which the shares of another class convert) shares under the plan, existing Purchase Class (the class from which shares convert) will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The members of the board shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class shares as they existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the members of the board to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. New Target Class or New Purchase Class shares may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the members of the board reasonably believe will not be subject to federal taxation. In accordance with Condition 4, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shares shall be borne solely by the Investment Manager and the Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (see Investment Company Release No. 16619) (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3763 Filed 2–17–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20069; No. 812–8576]

New York Life MFA Series Fund, Inc., et al.

February 10, 1994.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: New York Life MFA Series Fund, Inc. (the "Fund"); New York Life Insurance and Annuity Corporation ("NYLIAC"); and NYLIAC's separate accounts, MFA Separate Account I ("MFA I"), NYLIAC MFA Separate Account II ("MFA II"), NYLIAC Variable Annuity Separate Account I ("NYLIAC I"), NYLIAC Variable Annuity Separate Account II ("NYLIAC II"), New York Life Insurance and Annuity Corporation VLI Separate Account ("NYLIAC VLI"), NYLIAC Variable Universal Life Separate Account I ("NYLIAC VUL I"), and NYLIAC Variable Universal Life Separate Account II ("NYLIAC VUL II") (together, "Separate Accounts"); (collectively, "Applicants").

RELEVANT 1940 ACT SECTION: Order requested under section 17(b) granting exemptions from the provisions of section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Fund's Money Market Portfolio to merge into the Fund's Cash Management Portfolio.

FILING DATE: The application was filed on September 15, 1993 and amended and restated on January 7, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 8, 1994, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reasons for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, 1740 Broadway, New York, 10019.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel (202) 272–2676, or Michael V. Wible, Special Counsel (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. NYLIAC, a stock life insurance company, is a wholly-owned subsidiary of New York Life Insurance Company ("New York Life"), a mutual life insurance company. NYLIAC is licensed to sell insurance and annuities in all states and in the District of Columbia.

2. The Fund is an open-end, diversified management investment company, organized as a series investment company as defined by Rule 18f-2 under the 1940 Act. The Fund currently is comprised of eight portfolios: Capital Appreciation, Government, Indexed Equity, Bond, Total Return, Cash Management, Money Market, and Common Stock Portfolios (collectively, "Portfolios"). Fund shares have been sold only to Separate Accounts established by NYLIAC to fund its variable life insurance and variable annuity contracts. Fund shares also will be sold in the future to other separate accounts of NYLIAC or its affiliates, or separate accounts of unaffiliated insurance companies.

3. MFA I, MFA II, NYLIAC I, and NYLIAC II are the Separate Accounts that fund NYLIAC's variable annuity contracts, while NYLIAC VLI, NYLIAC VUL I and NYLIAC VUL II fund NYLIAC's variable life insurance contracts (together, "Contracts"). Each Separate Account is a registered unit investment trust under the 1940 Act.

Contract owners may elect to have their investment allocated among the Separate Accounts' investment divisions ("Divisions"), which correspond to the Fund's eight portfolios. Presently, MFA I and II and NYLIAC VLI invest in the Money Market, Common Stock and Bond Portfolios, while NYLIAC I and II, and NYLIAC VUL I and II invest in the Cash Management, Indexed Equity, Capital Appreciation, Total Return, and Government Portfolios. As of December 15, 1993, NYLIAC I and II also made available the Common Stock and Bond Portfolios as investment options.

4. Two of the Fund's eight Portfolios, the Money Market and Cash Management Portfolios, are proposed to be merged. Money Market Portfolio shares currently are held only by MFA I, MFA II and NYLIAC VLI shareholders. New Contracts which invest in the Money Market Portfolio are being sold by MFA I and MFA II in only one state, and only until NYLIAC's new variable annuity is approved in that state. Sales of variable life insurance contracts funded by NYLIAC VLI ceased on July 1, 1988. The Cash Management Portfolio is currently available to present and future shareholders of NYLIAC I, NYLIAC II, NYLIAC VUL I, and NYLIAC VUL II.

5. The Money Market and Cash Management Portfolios' investment objectives are nearly identical: "maximum current income consistent with preservation of capital and maintenance of liquidity" for the Money Market Portfolio, and "as high a level of current income as is considered consistent with the preservation of capital and liquidity" for the Cash Management Portfolio.

6. Net assets as of June 30, 1993 and November 30, 1993, were $19,196,617 and $23,701,649, respectively, for the Cash Management Portfolio, and $45,853,329 and $41,114,420, respectively, for the Money Market Portfolio. As of June 30, 1993, the combined pro forma assets were $65,049,946, giving effect to the proposed reorganization at the then net asset value per share.

7. Both the Money Market and the Cash Management Portfolios rely on Rule 2a-7 under the 1940 Act to value their portfolio securities on the amortized cost basis. Rule 2a-7 requires, among other things, that all portfolio securities have at the time of purchase a maximum remaining maturity of 13 months and that a portfolio maintain a dollar weighted portfolio maturity of not more than 90 days. As of June 30, 1993, the dollar weighted portfolio maturities were 27.13 days for the Money Market Portfolio and 60.53 days for the Cash Management Portfolio. For the 7-day period ending June 30, 1993, the yields on an annual basis before expenses, including investment advisory and other expenses, were 3.17% for the Money Market Portfolio and 3.23% for the Cash Management Portfolio. After payment of such expenses, the yields were 2.90% and 2.61%, respectively, with an expense reimbursement (applicable only to the Cash Management Portfolio), and would have been 2.90% and 2.11%, respectively, without reimbursement. The rates of return for the Money Market Portfolio for the past 5 years are as follows:

	Rate of return (percent)
Eleven Months Ending 11/30/93 ..	2.62
Year Ending 1992	3.49
Year Ending 1991	5.74
Year Ending 1990	7.95
Year Ending 1989	8.93
Year Ending 1988	7.36

The rate of return for the Cash Management Portfolio for the ten month, one day period from January 29, 1993 (inception) to November 30, 1993, is 2.17%.

8. New York Life provides investment advice and related services to the Money Market Portfolio under an investment advisory agreement approved on October 23, 1984, for a fee equal on an annual basis to 0.25% of the average daily value of the aggregate net assets of the Portfolios. The Money Market Portfolio also must pay certain additional operating expenses, which amounted to .01% during 1992. For years ended December 31, 1990, 1991, and 1992, the Money Market Portfolio's ratio of expenses to average net assets was 0.26% in each year. The Money Market Portfolio is not subject to an expense reimbursement agreement.

9. MacKay-Shields Financial Corporation ("MacKay-Shields"), an indirect wholly-owned subsidiary of New York Life, is the investment adviser to the Cash Management Portfolio, for which it is paid a fee equal to 0.25% annually of the average daily net assets. NYLIAC is the administrator of the Cash Management Portfolio and is paid an annual fee for its services equal to 0.20% of the Portfolio's average daily net assets. NYLIAC has entered into an expense reimbursement agreement effective through the earlier of (1) December 31, 1996, or (ii) such time as the Cash Management Portfolio has $250 million in assets, limiting to 0.17% annually the "other expenses" of the Cash Management Portfolio (i.e., expense incurred in addition to the investment advisory and administration fees). The total expense ratio for the Cash Management Portfolio, for the period from inception of the Portfolio on January 29, 1993 and ending June 30, 1993, would have equaled 1.24% before reimbursement and was .62% after reimbursement. The combined total expense ratio for the Cash Management and Money Market Portfolios, absent reimbursement, would have been 1.062%, if the merger had taken place at the beginning of the year.

10. Applicants submit that the total fees paid by the Money Market Portfolio are at lower rates than the current industry standard for similar products and lower than the fees paid by the Cash Management Portfolio because insurance related investment products represented a new direction for New York Life when shares of the Money Market Portfolio were initially offered. New York Life has since delegated most of its advisory functions to its subsidiary, MacKay-Shields. New York Life also has determined that it will only manage new insurance related investment products at a fee which is similar to the rates charged by it to most of the other investment companies in the NYLIAC group of funds.

11. The Applicants propose to merge the Money Market and Cash Management Portfolios under a Plan of Merger ("Plan") that was unanimously approved by the Fund's Board of Directors ("Board"), including a majority who are not interested persons of the Fund of NYLIAC. The stated principal purposes of the merger are to eliminate the redundancy caused by the similarity of the Money Market and Cash Management Portfolios' investment objectives, to counter the effects of the anticipated decline in premium payments received under Contracts which permit allocation to the Money Market Portfolio, reduce management and transaction costs and improve investment performance.

12. The Board has determined that the interests of Contract owners indirectly invested in the Money Market and Cash Management Portfolios will not be diluted and that the proposed merger is in the best interests of each affected Portfolio and its shareholders. The Board unanimously concluded that the benefits of the merger to Contract owners who can currently allocate premiums to the Money Market Portfolio outweigh the benefit of the lower fee currently assessed on the Money Market Portfolio (compared to the higher fees of the Cash Management Portfolio) because of expected economies of scale and cost savings

which will be reflected in improved future performance of the Cash Management Portfolio. Because shares of the Money Market Portfolio are no longer being sold, the assets in that Portfolio, absent the merger, would decline as a result of surrenders and annuitizations. The merger allows new monies from the sale of shares of the Cash Management Portfolio to be combined with the existing Money Market Portfolio assets resulting in economies of scale. The investment adviser also will be better equipped to make investment decisions and manage cash flows where the size of the Portfolio is larger and where monies are flowing in, as well as out, of the fund. Additionally, certain expenses incurred by each Portfolio will be reduced on a percentage basis as the funds are combined.

13. The Plan was approved at a Special Meeting of Fund shareholders held on December 14, 1993, with 77.6% voting in favor, 15.6% opposing and 6.8% abstaining. The affirmative vote of two-thirds of the outstanding shares of the Money Market Portfolio was required to approve the transaction. Contract owners with cash value in the Divisions of the Separate Accounts that invest in the Money Market Portfolio as of the record date were sent a proxy statement containing information relating to the proposed Merger and related transactions and were asked to vote on the proposed Merger.

14. Under the Plan, on the closing date (December 14, 1993, or such later date as may be agreed upon by the parties), the Cash Management Portfolio would acquire all the assets and liabilities of the Money Market Portfolio in exchange for issuance of shares of the Cash Management Portfolio. Each shareholder of the Money Market Portfolio will receive shares of the Cash Management Portfolio equal in net asset value at the date of the exchange to the net asset value of the shareholder's Money Market Portfolio shares then outstanding. Thereafter, expenses paid by such shareholders will be those applicable to the Cash Management Portfolio, which are higher than those of the Money Market Portfolio. The shares of the Cash Management Portfolio issued under the Plan have been registered under the 1933 Act.

15. The future cash value of Contracts indirectly invested in the Money Market Portfolio will reflect the investment performance and expenses of the Cash Management Portfolio. Otherwise, the proposed merger will have no economic impact on Contract values, fees or charges under these Contracts or the rights or interest of owners. The proposed merger also will not have adverse tax consequences for the Contract owners. No gain or loss will be recognized by the Money Market or Cash Management Portfolios or the shareholders thereof as a result of consummation of the merger. Applicants will receive an opinion of tax counsel as to these representations. The holding period and tax basis of the shares of the Cash Management Portfolio received by a shareholder will be the same as the holding period and tax basis of the shareholder's shares of the Money Market Portfolio.

Applicants' Legal Analysis

1. The Applicants request that the Commission issue an order under section 17(b) of the 1940 Act exempting the proposed Plan from the provisions of section 17(a) of the Act to the extent necessary to permit the Cash Management Portfolio to acquire substantially all of the assets of the Money Market Portfolio in exchange for shares of the Cash Management Portfolio.

2. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such person acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits such affiliated persons from knowingly purchasing any security or other property from the registered investment company.

3. The proposed Merger may result in transactions prohibited by section 17(a) because of potential affiliations among the Portfolios. NYLIAC, through the Separate Accounts, technically owns 100% of the outstanding shares of each Portfolio and, thus, may be considered a "5% affiliate" of each Portfolio, as defined in section 2(a)(3) of the 1940 Act.[1] Each Portfolio consequently would be an affiliated person of an affiliated person (i.e., NYLIAC), and transactions between the Portfolios thus may be subject to the prohibitions of Section 17(a).

An affiliation between the Portfolios also may arise if they are considered to be under the "common control" of NYLIAC. As part of the same Fund, the Portfolios each have common directors and officers as well as a common investment adviser. Because NYLIAC organized the Fund, each Portfolio also could be deemed under NYLIAC's common control. If the Portfolios are considered under common control, they would be affiliated persons of one another.

4. Section 17(b) of the 1940 Act requires the Commission to grant an order, upon application, exempting proposed transactions otherwise prohibited by section 17(a), if evidence establishes that:

(1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) The proposed transaction is consistent with the policies of each registered investment company concerned, as recited in its registration statements and reports filed under the 1940 Act; and

(3) The proposed transaction is consistent with the general purposes of the 1940 Act.

The Applicants represent that the Plan and the proposed transactions satisfy these tests.

5. The Fund's Board, including a majority of the disinterested Directors, reviewed, evaluated and approved the terms of the proposed merger, including the consideration to be paid or received by all parties. The Board determined that the Plan will be in the best interests of the shareholders of, and of Contractowners indirectly invested in, each affected Portfolio. The Board also determined that the consummation of the proposed Plan will not result in the dilution of the current interests of any such shareholder or Contractowner.

6. The Board considered the following factors, among others: expense ratios and published information regarding the fees and expenses of the affected Portfolios and of similar funds; the comparative investment performance of the Money Market and Cash Management Portfolios; the terms and conditions of the proposed Plan and whether it would result in a dilution of shareholder interests; costs incurred by the Portfolios as a result of the proposed transactions; and tax consequences of the proposed Plan. The Board noted, in particular: (a) The potential benefits to shareholders and owners; (b) the virtual indistinguishable investment objectives, policies, restrictions and investment holdings of the affected Portfolios; (c) the terms and conditions of the proposed Plan which might affect the price of shares (or owner interests) to be exchanged; and (d) direct or indirect costs to be incurred by the affected Portfolios or shareholders or owners invested in such Portfolios.

[1] Section 2(a)(3) of the 1940 Act defines the term "affiliated person," in relevant part, as: (A) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other persons: • • •

7. As noted above, the Money Market Portfolios is available for allocation by owners of variable annuities funded by MFA I and MFA II and by owners of variable life insurance contracts funded by NYLIAC VLI. Sales of flexible premium annuity contracts commenced on January 23, 1984 and ceased on September 1, 1989. Sales of the single premium annuity contracts are being suspended on a state-by-state basis as variable annuities issued out of NYLIAC I and NYLIAC II are introduced. Sales of such Contracts are currently being made in only one state. Premiums received under new contracts and additional premiums under old contracts have been at the following levels during the past three and one-half years:

PREMIUMS RECEIVED UNDER CONTRACTS

[In thousands of dollars]

	New	Old	Total
Year Ending 12/31/90	$42,979	$39,468	$82,447
Year Ending 12/31/91	34,926	35,074	70,000
Year Ending 12/31/92	55,821	34,009	89,830
Six Months Ending 06/30/93	23,259	21,165	44,424

Sales of variable life insurance policies commenced on February 1, 1984 and ceased on July 1, 1988. Additional premiums received under old policies have been at the following levels during the past three and one-half years:

PREMIUMS RECEIVED UNDER CONTROLS

	New	Old	Total
Year Ending 12/31/90	N/A	$6,207,877	$6,207,877
Year Ending 12/31/91	N/A	5,623,161	5,623,161
Year Ending 12/31/92	N/A	5,059,180	5,059,180
Six Months Ending 06/30/93	N/A	2,330,924	2,330,924

8. The Board considered the recent trend of premium payments and expectations of future premium payments under the Contracts offering the Money Market Portfolio as an investment option. The Board concluded that action is necessary to provide Contract owners certain benefits and avoid certain adverse impact on these owners. The Board believes that less money will be allocated to the Money Market Portfolio as new premiums decline and existing contracts are surrendered. Consequently, Contract owners invested in the Money Market Portfolio would be adversely affected because a smaller portfolio cannot achieve the portfolio diversification and other management efficiencies associated with a larger portfolio. In contrast, a merger of the Money Market and Cash Management Portfolios, together with the expectation of additional premiums being allocated to the Cash Management Portfolio through receipt of new premiums under old Contracts, and sales of new contracts which permit allocation to that portfolio, should result in a larger portfolio which can be managed more effectively.

9. As noted above, the expense ratio of the Cash Management Portfolio currently is higher than that of the Money Market Portfolio. The Board believes, however, that this small detriment is outweighed by the benefits of having a larger portfolio. Moreover, New York Life provides advisory services and bears almost all of the expenses of the Money Market Portfolio under an advisory agreement which it can terminate without penalty on 60 days notice. Although the Board has no reason to believe that New York Life intends to do so, if the proposed merger is not consummated and New York Life terminates the current advisory agreement, the Board will consider such alternative advisory arrangements as are deemed appropriate and submit their recommendations to the shareholders of the Money Market Portfolio.

10. As noted above, the investment objectives of the Portfolios to be merged, although not the same, are, in the opinion of the Board, for all intent and purposes, identical as are the expected rates of return. For the seven-day period ending June 30, 1993, the annualized gross yields (excluding investment advisory and other expenses) were 3.17% for the Money Market Portfolio, and 3.23% for the Cash Management Portfolio.

11. The proposed merger will not affect the price of outstanding shares of the Cash Management Portfolio, or the Contract values or interests of Contract owners indirectly invested therein. The transfer of Money Market Portfolio assets to the Cash Management Portfolio in exchange for issuance of Cash Management Portfolio shares will be made at relative net asset values of the Portfolios on the closing date. The aggregate value of shares to be issued to the Money Market Divisions will equal the aggregate value of shares held by those Divisions immediately prior to the proposed merger. Thus, the aggregate value of outstanding units of interest of the Money Market Division will not change on the closing date as a result of the share exchange phase of the proposed merger. Further, the aggregate value of such units supporting the cash value of each Contractowner invested in those Divisions immediately prior to the merger will remain unchanged immediately after the share exchange phase of the merger. The share exchange phase of the proposed merger will impose no tax liability upon any shareholders or Contract owners and will not dilute the interests of shareholders or Contract owners currently invested in the Money Market or Cash Management Portfolios.

12. NYLIAC will pay all of the direct and indirect expenses of the proposed Plan. Although MacKay-Shields, New York Life and NYLIAC may derive some benefits as a result of the proposed Plan, the expenses of that Plan will not dilute investors' interests.

13. Notwithstanding the prohibitions of section 17(a), Rule 17a–8 under the 1940 Act permits mergers, consolidations or purchases or sales of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser, common directors and/or common officers. The exemption provided by Rule 17a–8 is conditioned upon a determination by a majority of Directors who are not interested persons that (a) participation in the transaction is in the best interests of that registered investment company, and (b) the interests of the existing shareholders of that registered investment company will not be diluted as a result of the transaction.

14. Given the potential affiliations described above, the Portfolios may be deemed to be affiliated persons of one another for reasons other than that they have a common investment adviser, common directors, and/or common officers. The Portfolios each may be an affiliated person of an affiliated person because NYLIAC may be a 5% affiliate of each Portfolio. Further, the Portfolios may be direct affiliates of each other if they are considered under the common control of NYLIAC. Because of these potential affiliations, the Fund and the Portfolios may not be able to rely on

Rule 17a–8. Nevertheless, the Board evaluated the relevant considerations and determined that the Plan will comply with the conditions that Rule 17a–8 requires for the protection of investment companies and their shareholders. Applicants believe that the Plan more closely resembles the situations encompassed by Rule 17a–8, rather than other situations which the Rule deliberately excludes, because NYLIAC does not have voting control of any shares and, therefore, the share exchange phase of the proposed merger is no more susceptible to overreaching or to the taking of unfair advantage of investors than is any transaction covered by Rule 17a–8.

15. The Fund submits that the share exchange phase of the Plan will comply with all of the conditions that Rule 17a–8 requires for the protection of investment companies and their shareholders and agrees to the grant of the order requested herein being specifically conditioned on the Fund's Board having made the requisite determinations that the participation of the Money Market and Cash Management Portfolios in the proposed Plan is in the best interests of each Portfolio and that such participation will not dilute the interests of shareholders or owners invested in the affected Portfolios. The basis of these findings will be recorded in the Fund's minute book.

16. For the reasons set forth above, the merger, which has been approved by the shareholders and Contract owners invested in the Money Market Portfolio, will be consistent with the policies of the Money Market and Cash Management Portfolios as recited in the Fund's registration statement and reports filed under the 1940 Act. Further, the Plan is consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. The merger does not present any of the conditions or abuses that the 1940 Act was designed to mitigate or eliminate. In particular, Section 1(b)(6) of the 1940 Act states that the national public interest and the interest of investors are adversely affected when investment companies are reorganized without the consent of their security holders. The proposed merger, as noted above, has been approved by the owners of two-thirds of the outstanding shares of the Money Market Portfolio. Contract owners with cash value in the Money Market Divisions received a proxy statement containing all material disclosures, including a description of all material aspects of the merger and copies thereof. The shares of the Money Market Portfolio held by MFA I and II, and NYLIAC VLI, will be replaced with shares of the Cash Management Portfolio simultaneously with the proposed merger of the two Portfolios. The share exchange phase of the proposed merger is, thus, consistent with the general purposes of the 1940 Act.

Conclusion

1. Applicants represent that the terms of the proposed merger, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. In particular, the share exchange phase will not dilute the interests of shareholders or Contract owners currently invested in any of the Portfolios involved in the merger. Further, the merger will result in no tax liability to Contract owners.

2. Applicants also represent that the proposed merger will be consistent with the policies of the Separate Accounts as recited in their current registration statements and reports filed under the 1940 Act and with the general purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3704 Filed 2–17–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1951]

Defense Trade Advisory Group; Open Meeting

SUMMARY: Pursuant to section 10(a)(1) of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting of the Defense Trade Advisory Group (DTAG). The DTAG, established in February 1992 pursuant to the FACA (Public Law 92–463; 5 U.S.C. app. I), is an advisory committee consisting of private sector defense trade specialists. They advise the Department on policies, regulations, and technical issues affecting defense trade.

The meeting will include speakers from the Bureau of Political-Military Affairs; reports on DTAG Working Group progress, accomplishments, and future projects; and unclassified briefings on topics of interest to defense exporters.

DATES: The open session will take place on Thursday, March 17, 1994 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the Loy Henderson Conference Room, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520.

SUPPLEMENTARY INFORMATION: Members of the public may attend the open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions.

As access to the Department of State is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by Friday, February 25, 1994. Each person should provide his or her name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat at telephone number (202) 647–4231 or fax number (202) 647–4232 (Attention: Eva Chesteen). Attendees must carry a valid photo ID with them. They should enter the building through the C Street diplomatic entrance (21st and C Streets, NW.), where Department personnel will direct them to the Loy Henderson auditorium.

For further information, contact Linda Lum of the DTAG Secretariat, U.S. Department of State, Office of Export Control Policy (PM/EXP), Room 2422 Main State, Washington, DC 20520–2422. She may be reached at telephone number (202) 647–4231 or fax number (202) 647–4232).

Dated: February 8, 1994.

Martha C. Harris,

Deputy Assistant Secretary for Export Controls, Bureau of Political-Military Affairs.

[FR Doc. 94–3805 Filed 2–17–94; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–94–8]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections.

The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 10, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on February 14, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 26610
Petitioner: Mr. Dennis Buehn
Sections of the FAR Affected: 14 CFR 91.313(a)
Description of Relief Sought/ Disposition: To continue to permit Flying Boat, Inc., d.b.a. Chalks International Airline, to conduct air carrier flight crew member training in their Grumman HU–16B, which holds a restricted airworthiness certificate.
Grant, February 4, 1994, Exemption No. 5428A

Docket No.: 26730
Petitioner: New York Helicopter
Sections of the FAR Affected: 14 CFR 135.244(a)(1)
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5507 which granted relief from the operating requirements of § 135.244(a)(1) of the FAR to the petitioner and its pilots-in-command.
Denial, February 7, 1994, Exemption No. 5839

Docket No.: 26780
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.337
Description of Relief Sought: To extend Exemption No. 5407 to continue to allow the petitioner and other similarly situated all cargo operators relief from the requirement to install Protective Breathing Equipment in each Class A, B, and E cargo compartment.
Grant, January 28, 1994, Exemption No. 5407B

Docket No.: 27555
Petitioner: Suburban Air Freight, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought: To allow the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, February 1, 1994, Exemption No. 5837

[FR Doc. 94–3738 Filed 2–17–94; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–94–7]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 10, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on February 14, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 24041
Petitioner: Butler Aircraft Co.
Sections of the FAR Affected: 14 CFR 91.529(a)(1)
Description of Relief Sought/ Disposition: To extend Exemption No. 2989 to continue to permit the petitioner to operate its McDonnell Douglas DC–6 and DC–7 aircraft without a flight engineer during flight crew training, ferry, and test flights conducted in preparation for firefighting operations under part 137.

Dispositions of Petitions

Docket No.: 26936
Petitioner: Woods Air Fuel, Inc.
Sections of the FAR Affected: 14 CFR 91.1
Description of Relief Sought/ Disposition: To permit the petitioner to operate its McDonnell Douglas DC–6A, S/N 43522, aircraft at a 5 percent increased zero fuel weight and landing weight for the purpose of distributing fuel by air service within the State of Alaska under the terms of part 91.
Denial, December 17, 1993, Exemption No. 5812

[FR Doc. 94–3739 Filed 2–17–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Multiple Counties, Alabama

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that two Environmental Impact Statements will be prepared for a proposed highway that will traverse the northern section of the State of Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117–2018, Telephone (205) 223–7370.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Department of Transportation, will prepare two Environmental Impact Statements (EIS's) for Project DPS–A002(001). The proposal is to construct a multi-lane, limited access roadway that will function as a major segment of a Memphis to Atlanta transportation corridor. The facility will provide a direct link between the two metropolitan areas.

The facility, approximately 273.58 kilometers (170 miles) in length, will be divided into two segments for location studies and assessment of environmental impacts. Two Environmental Impact Statements will be prepared, one for the western part of the route, approximately 120.7 kilometer (75 miles) in length, from the existing four-lane facility near the Alabama/Mississippi State line and extending to an undetermined point near Interstate Highway 65 near Huntsville, Alabama and the second Impact Statement written for the eastern part of the project, approximately 152.9 kilometers (95 miles) in length, beginning at an undetermined point near Interstate Highway 65 near Huntsville, Alabama, and extending to the four-lane facility near the Alabama/Georgia border. There will be coordination in the location and environmental studies to establish a common location at I–65.

Alternatives under consideration include: (1) Alternate route locations, (2) a no action alternative, and (3) postponing the action Alternative.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A series of public meetings will be held beginning in early 1994. In addition, public hearings will also be held. Public notice will be given of the time and place of the meetings and hearings. The Draft Environmental Impact Statements will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS's should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Joe D. Wilkerson,

Division Administrator, Montgomery, Alabama.

[FR Doc. 94–3698 Filed 2–17–94; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects and requests suggestions for agenda topics.

DATES AND TIMES: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on March 23, 1994, beginning at 1:30 p.m. and ending at approximately 5 p.m. The deadline for interested parties to suggest agenda topics is 4:15 p.m. on March 1, 1994. Questions may be submitted in advance regarding the Agency's research and development projects. They must be submitted in writing by March 16, 1994 to the address given below. If sufficient time is available, questions received after the March 16 date will be answered at the meeting in the discussion period. The individual, group or company asking a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by March 16 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Ramada Inn, near Detroit Metro, 8270 Wickham Rd., Romulus, MI 48174. Suggestions for specific R&D topics as described below and questions for the March 23, 1994, meeting relating to the Agency's research and development programs should be submitted to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, room 6206, 400 Seventh St. SW., Washington, DC 20590. The fax number is 202–366–5930.

SUPPLEMENTARY INFORMATION: NHTSA intends to provide detailed presentations about its research and development programs in a series of quarterly public meetings. The series started in April, 1993. The purpose is to make available more complete and timely information regarding the Agency's research and development programs. This fifth meeting will be held on March 23, 1994.

NHTSA requests suggestions from interested parties on the specific agenda topics. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by close of business at 4:15 p.m. on March 1, 1994. Before the meeting, it will publish a notice with an agenda listing the research and development topics to be discussed. NHTSA asks that the suggestions be taken from the list below and that they be limited to five, in priority order, so that the presentations at the March 23 R&D meeting can be most useful to the audience. Please note that almost all of these topics have been discussed at the previous four meetings to some extent and that presentations at the fifth meeting will be reports on current status, results, and plans.

Specific Crashworthiness R&D topics are:

Improved frontal crash protection
Highway traffic injury studies
Head and neck injury research
Thorax injury research
Human injury simulation and analysis
Crash test dummy component development
Vehicle agressivity and fleet compatibility
Upgrade side crash protection
Upgrade seat and occupant restraint systems
Child safety research
Electric and alternate fuel vehicle safety

Specific Crash Avoidance R&D topics are:

Truck crashworthiness/occupant protection
Truck tire traction
Portable data acquisition system for crash avoidance research
Systems to enhance EMS response (automatic collision notification)
Vehicle motion environment
Crash causal analysis
Longer combination vehicle safety
Drowsy driver monitoring
Driver workload assessment
Performance guidelines for IVHS systems (approach)

Specific topics from the National Center for Statistics and Analysis are:

New data elements for FARS and NASS
Special crash investigations program regarding air bag performance
Pedestrian special NASS data collection project
Critical Outcome Data Evaluation System (CODES)—Linkage of databases on police accident reporting and medical outcomes.

This meeting is following on the next day by the regular quarterly NHTSA Technical Industry Meeting, which is being announced in a separate notice.

Questions regarding research projects that have been submitted in writing not later than close of business on March 16, 1994, will be answered as time permits. A transcript of the meeting, copies of materials handed out at the meeting, and copies of the suggestions offered by commenters will be available for public inspection in the NHTSA Technical Reference Section, room 5108, 400 Seventh Street, SW., Washington, DC 20590. Copies of the transcript will then be available at 10 cents a page, upon request to NHTSA Technical Reference Section. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

NHTSA will provide technical aids to participants as necessary, during the NHTSA Industry Research and Development Meeting. Thus any person desiring assistance of "auxiliary aids" (e.g. sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Barbara Coleman on 202/366–1537 by COB March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Special Assistant for Technology Transfer Policy and Programs, Office of Research and Development, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–4730. Fax number: 202–366–5930.

Issued: February 10, 1994.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 94–3710 Filed 2–17–94; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

International Standards on the Transport of Radioactive Materials; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to discuss U.S. positions for issues to be considered at the tenth meeting of the International Atomic Energy Agency Standing Advisory Group on Safe Transport of Radioactive Material (SAGSTRAM).

DATES: March 9, 1994.

ADDRESSES: Room 6204, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: George Brown, Chief, Radioactive Materials, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590–0001; (202) 366–4545.

SUPPLEMENTARY INFORMATION: This meeting will be held to discuss U.S. positions for issues to be considered at the upcoming tenth meeting of SAGSTRAM to be held March 21 to 25, 1994, in Vienna, Austria. Topics to be covered include—

1. The impact of the new recommendations proposed by the International Commission on Radiological Protection (ICRP) and the draft of the IAEA Basic Safety Standards on the "Regulations for Safe Transport of Radioactive Material," IAEA Safety Series #6;
2. Mode-related aspects of the Regulations e.g. air transport of large quantities of radioactive materials and sea transport of irradiated nuclear fuel and other hazardous radioactive materials; and
3. Provisions for the transport of uranium hexafluoride also covering the chemical hazards.

The public is invited to attend without prior notification.

Documents

Copies of documents related to the issues to be covered at the tenth meeting of SAGSTRAM may be obtained from RSPA. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an on-line request form on the HMIX or by contacting RSPA's Dockets Unit (202–366–4453). For more information on the use of the HMIX system, contact the HMIX information center; 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5 p.m. Central time.

Issued in Washington, DC, on February 15, 1994.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94–3731 Filed 2–17–94; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

AR Local Government Project

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

TITLE: Public Administration at the Municipal Level: A Program for the American Republics.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a competitive grants program for non-profit organizations to develop programs in the area of local government/public administration. The project should link the U.S. organization's international exchange interests with counterpart institutions or groups in the American Republics.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. After the deadline for submitting proposals, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

ANNOUNCEMENT NAME AND NUMBER: All communications concerning this announcement should refer to the AR LOCAL GOVERNMENT PROJECT. This announcement number is *E/P–94–24*. Please refer to this title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m., Washington, DC time on March 24, 1994. Faxed documents will not be accepted, nor will documents postmarked March 24, 1994, but received at a later date.

It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. The grant project activity should begin after July 1, 1994.

ADDRESSES: The original and 14 copies of the completed application and

required forms should be submitted by the deadline to: U.S. Information Agency, Ref: AR Local Government Project (E/P–94–24), Grants Management Division (E/XE), 301 4th Street, SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations, institutions should contact: Benjamin Cromer, American Republics and East Asia and Pacific Division, Office of Citizen Exchanges (E/P), room 220, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547. Please telephone 202–619–5326 or fax 202–619–4350 to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation.

Objectives of the AR Local Government Training Program

The Office of Citizen Exchanges (E/P) of the United States Information Agency proposes a two-way exchange program for municipal officials from the American Republics to study U.S. public administration. This exchange will involve two components: A two-week U.S. study tour by a delegation from the American Republics with a follow-on visit to the region by U.S. public administration experts. The U.S. tour will include stops in Washington and several small and large cities and towns; in Washington, the delegation would meet with officials of such organizations such as the U.S. League of Cities and the U.S. Conference of Mayors.

Program Guidelines: National governments in the American Republics are increasingly decentralizing government, transferring such essential services as health care and education from the federal and state level to the cities. Moreover, these governments are looking toward the U.S. for successful models to assist them in these efforts.

Reforms currently underway in the region include modernization of local administrative operations, and improvements in sanitation, education, and social services. Furthermore, in Argentina, the Interior Ministry has unveiled new political reforms aimed at cities, such as granting legal status to municipal political parties and giving voters the power to recall elected officials. Assisting and influencing these developments is an invaluable investment in democracy building and another tool in the fight against official corruption in Latin America.

USIA is interested in proposals for programs that will foster effective administration of local and regional governments in the region. Programs might examine and seek to improve relationships among local executive, legislative, and judicial elements, or they might address the knowledge and skills necessary to administer one or more of these branches of local government.

Program topics could include judicial administration, budget development, financial management, tax policies and mechanisms, election practices, management of municipal services, privatization of government property, consumer protection, business regulation (as opposed to control), licensing, or environmental protection. Programs might further the development of information and library systems relevant to local government or improve committee and staff structures of local governments.

Study tours could examine specific issues such as city-state and state-federal relations, explaining how local governments implement state and federal programs, and the workings of city administrations, exploring how cities can increase efficiency, reduce costs, improve services, and satisfy local environmental concerns such as sewage treatment and recycling requirements.

Training in the American Republics should be conducted mostly in local centers, preferably those outside the capital city. Projects should lay the groundwork for new and continuing links between professional organizations in the U.S. and the American Republics.

The political climate facing U.S. cities, including municipal elections participation by citizens in local elections, and the roles of city managers, mayors, and city councils, is another aspect that should be addressed.

Pursuant to the Bureau's authorizing legislation, grant programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Selection of Participants: Participants will be selected by USIS Posts. Delegates should speak Spanish, or if they are from a non-Spanish speaking country in Latin America, understand Spanish. Elected and appointed officials from the Southern Cone region will be given higher priority in the selection process, however, delegates from other countries in the American Republics such as Colombia and Venezuela can be included. Moreover, countries such as Honduras and Venezuela that have recently introduced direct elections of local officials will be given higher priority.

Delegates will also be selected for their ability to influence local public administration in their home country. For instance, Argentinean participants may be members of the National Academy of Public Administration, which is establishing an Institute of City Administration in Argentina, or from provinces where reforms are in place. A byproduct of the program will be the interaction among delegates who will be able to discuss common problems, and potential solutions, with their peers.

This project will be executed by a U.S. not-for-profit institution that, through its proposal, illustrates extensive experience and success in coordinating international exchange programs. U.S. organizations with established working relationships with counterpart institutions in the American Republics will receive priority consideration under this competition. At the conclusion of this exchange, the grantee will conduct participant evaluations and submit a final report to USIA.

Funding: Competition for USIA funding support is intense. Selection of a grantee institution is based on the substantive nature of the program proposal; the applicant's professional capability to carry the program through to successful conclusion; and cost effectiveness such as in-kind contributions and the ability to keep overhead costs at a minimum.

USIA can devote up to $175,000 for this project; however, organizations with fewer than four years of successful experience in managing international exchange programs are limited to $60,000, and their budget submission should correspond to this limitation.

All proposals should demonstrate in-depth, substantive knowledge of the relevant issues, established connections with partner institutions, and the capacity to organize and conduct the program. Organizational abilities include: appropriate orientation activities for the participants; detailed work plan for all phases of the project, tentative agendas for study tours, workshops, and internships; letters of commitment from internship hosts; and selection procedures.

Applicants may wish to consult the USIS office at the appropriate U.S. Embassy before submitting proposals.

USIA will give priority to proposals from U.S. organizations with partner organizations in the American Republics that can help ensure the program meets its goals and objectives. Applicants are encouraged to demonstrate partner relationships by providing copies of correspondence or other materials as appendices to proposals.

Moreover, these partner institutions are encouraged to provide cost-sharing or significant in-kind contributions such as local housing, transportation, interpreting, translating and other local currency costs and to assist with the organization of projects.

Materials Development: USIA encourages the development, where needed, of written, audio and video materials in the local language to enhance the programs. For example, if not already available, glossaries of specialized terms in local government or public administration might be developed.

Scope: Proposals should limit their focus to local governance. Proposals for programs that are broader in scope will be eligible, but are less likely to receive USIA support. USIA encourages proposals that feature "train the trainers" models; the creation of indigenous training centers; schemes to create professional networks or professional associations to disseminate information; and other enduring aspects.

Participant Selection: All grant proposals must clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected.

Programs in support of internships in the U.S. must include letters tentatively committing host institutions to support the internships. In the selection of all foreign participants, USIA and USIS Posts retain the right to nominate participants and to accept or deny participants recommended by the program institution.

While applicants must provide an all-inclusive budget with the proposal, they may also include separate sub-budgets for each program component, phase, location, or activity. Competition for USIA funding support is keen. Please note: All participants will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

The following costs are eligible for funding:

1. Transportation costs. International and domestic air fares, visas, transit costs, and ground transportation costs are eligible for funding.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published federal per diem rates must be used.

Note: Grantee staff must use the published federal per diem rates, not the flat rate.

3. Interpreters. Interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Generally, two simultaneous interpreters are provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State (DOS) interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses for interpreters are covered elsewhere and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to a one-time cultural allowance of $150 per person, in addition to a book allowance of $50. Escorts are reimbursed for actual cultural expenses up to $150. U.S. staff do not receive these allowances.

5. Consultants. Consultants may be employed to provide specialized expertise or to make presentations. Generally, honoraria should not exceed $250 per day.

Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included with the proposal.

6. Room rental. Room rental generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–$8 for a lunch and $14–$20 for a dinner; this amount includes room rental if applicable. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant. This allowance is for incidental expenditures incurred during international travel.

10. Costs for an audit. The proposal MUST include the cost of an audit that:

a. Complies with the requirements of OMB circular No. 1–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

b. Complies with the requirements of the American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

c. Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

a. Preparation of basic financial statements, and other accounting services; and

b. Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

11. Cost-sharing. Cost-sharing in the form of allowable direct or indirect costs is encouraged. The recipient must maintain written records to support all allowable costs claimed as being its contribution to cost participation, as well as costs to be paid by the U.S. government. Such records are subject to audit.

The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E, "Cost-sharing and Matching" and should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

Application Requirements: Proposals must be structured in accordance with the instructions contained in the application package.

Review Process: USIA acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS posts and by USIA's Office of American Republics. Proposals may also be reviewed by the Office of General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

The award of any grant is subject to availability of funds. The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant all preparation and submission costs are at the applicant's expense.

USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria: USIA will consider proposals based on the objectives stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality and relevance to USIA's mission, and demonstrate a clearly defined need.

2. *Institutional Ability/Capacity/Record:* Applicants should demonstrate the potential for program excellence by documenting previous successful programs. If an organization is a former USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past USIA grants is essential.

3. *Project Personnel:* Thematic and logistical expertise should be relevant to the proposed program. Resumes included with the proposal should reflect this relevance.

4. *Program Planning:* A detailed work plan should provide time-lines for the accomplishment of each phase of the project and clearly demonstrate how the grantee institution will meet these deadlines. In addition, the work plan should indicate how it will accomplish project goals.

5. *Thematic Expertise:* Proposals should demonstrate the organization's expertise in the subject area.

6. *Cross-Cultural Expertise and Area Expertise:* Proposals should show evidence of sensitivity to historical, linguistic, and other cross-cultural factors, as well as relevant knowledge of the target area/country.

7. *Multiplier Effect/Follow-On Activities:* Proposed programs should strengthen long-term mutual understanding, facilitate sharing of information, and establish long-term institutional and individual relationships. Proposals should also reflect an institution's commitment to continued exchange activity beyond the term of the USIA grant.

8. *Cost-Effectiveness:* Overhead and administrative costs should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

9. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution.

10. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success. The applicant should include a draft of a questionnaire or other evaluation technique to demonstrate which evaluation method will be utilized. Applicants will be expected to submit intermediate reports after each project component is concluded, or quarterly, whichever is less frequent.

Note: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by the U.S. Congress and allocated and committed through internal USIA procedures. Applicants will be notified of the results of the review process on or about June 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 10, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

FR Doc. 94-3679 Filed 2-17-94; 8:45 am]

BILLING CODE 8230-01-M

Title: Russia-U.S. Teacher Exchange Program (RUSTEP)

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Academic Programs [E/A] of the United States Information Agency [USIA] invites applications from U.S. educational, cultural, and other not-for-profit organizations, with a minimum of four years experience in successfully administering international exchange programs, to arrange U.S. teaching assignments and programming for 25 experienced Russian teachers in U.S. schools, colleges, and universities; to monitor the Russian teachers in the participating U.S. schools and colleges/universities during academic year 1994–95; to identify five experienced American teachers to teach in Russia; and to provide program evaluations. Consortia of U.S. non-profit organizations may also collaboratively develop program proposals in response to this announcement. Only one organization or consortium will be awarded the grant.

This program may be funded by the Freedom Support Act and final awards are subject to the availability of FY94 funds.

DATES: *Deadline for proposals:* All copies of proposals for grants under this request must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on March 18, 1994. Faxed documents will not be accepted, nor will documents postmarked on March 18 but received at a later date. It is the responsibility of each grant applicant to ensure that its proposal is received by the above deadline.

Approximate program dates (participants' arrival and departure): August, 1994 to end of the academic year in May or June 1995.

Duration: The award will begin approximately four months prior to participants' arrival date in August, 1994, for which period only administrative costs concerned with recruitment, placement and orientation planning will be allowed. The termination date will be approximately three months following participants' departure to their home countries. No funds may be expended until the agreement is signed.

ADDRESSES: The original, four fully tabbed copies (Tabs A–U), and 10 copies (Tabs A–D) of the completed application, including required forms, should be submitted in the format described in the Bureau's application package and mailed to: U.S. Information Agency, Ref: Freedom Support—Teacher Exchange, Grants Management Division, E/XE, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Ilo-Mai Harding, Teacher Exchange Branch, E/ASX, room 353, 301 4th Street SW., Washington, DC 20547, telephone: (202) 619–4556, fax (202) 401–1433, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information, and the Attachment Checklist outlining the contents of a complete application package.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life.

Overview

Grant funding is intended to provide an opportunity for 25 experienced Russian teachers from secondary schools and pedagogical institutes to actively teach in U.S. classrooms, experience community life in the United States, and develop projects in such areas as teaching methodologies, curricula, and/or text book writing for use in Russia. The grant also provides for five experienced U.S. teachers to introduce teaching methodologies, curricula, and/or text book writing approaches to Russian secondary schools and pedagogical institutes. USIA is interested in proposals that foster long-term linkages between U.S. high schools and colleges/universities and comparable Russian schools and pedagogical institutes. The participating U.S. schools and colleges/universities should reflect a broad institutional and geographic diversity. Additionally, in selecting the participating host institutions, the recipient institution should be mindful of USIA's goal to reflect the cultural and ethnic diversity of the U.S. in all programs. While the benefits of the exchange may be directly enjoyed by the Russian participants, the American institutions and individuals will also gain from the cultural and professional expertise which these Russian educators are able to offer.

Guidelines

Eligibility: U.S. non-profit educational, cultural, and other not-for-profit organizations with a minimum of four years experience in successfully administering international exchange programs are eligible to apply.

Program planning and administration: The recipient organization will be responsible for activities related to the identification of host U.S. educational institutions, placement of Russian teachers therein, identification of U.S. teachers to be assigned in Russia, and all program logistics, as described below, orientation coordination, coordination of one mid-program seminar, monitoring in the U.S., and program evaluation.

The following factors should be considered and addressed in detail in proposals which are submitted by applicants:

A. The recruitment and selection of host U.S. educational institutions: USIA will be responsible for the final approval of all participating host institutions. The recipient organization will be responsible for:

—Identifying U.S. secondary schools and accredited institutions of higher education to host the selected Russian participants;
—Working with U.S. institutions to devise constructive teaching assignments in the teachers' fields of expertise; and
—Assuring that host institution officials will identify affordable housing, to be paid for with each participant's USIA stipend.

The recipient organization will place no fewer than 25 teachers in separate schools/colleges. Some placements will be for one full academic year and some for one semester. The specific number of each will be determined by USIA. The organization must demonstrate the capacity to secure quality school/college placements. The proposal must include a description of the process the organization will use to make school/college placements.

To reflect the diversity of the country, placements will be spread all across the U.S. At the same time, the recipient organization may concentrate groups of teachers in clusters of two to three in a given area or region. The purpose of clustering is to facilitate periodic gatherings, networking among participants, and coordination of programming and excursions, as well as monitoring and feedback. All proposals must identify the target regions, states and/or communities in which placements will be sought.

During the exchange period, participants should have sole responsibility for no more than three courses (two at the post-secondary level) at one time and should be given opportunities to observe, team teach and serve as cultural resources. Outside of the assigned school setting, participants should be provided opportunities to visit other school systems, interact in the community and possibly attend courses at local universities.

The host institution will be expected to provide a buddy system and mentorship by at least one administrator, appropriate orientation activities, appropriate days of leave for professional development and language training, and other considerations which are valuable to international visitors.

Each teacher will be required to work on and complete by the end of his/her tenure a project designed to capture his/her educational experiences in the United States and to enhance teaching practices in Russia. Examples of such projects are: Writing textbooks, developing new curriculum, or comparing methodologies. Following guidelines provided by USIA, through the recipient organization, the host institutions will be expected to provide support and guidance as well as sufficient time to complete the project.

B. The placement of Russian candidates: USIA will be responsible for final selection of all Russian participants. Candidates will be recruited by an independent organization based in Russia, under contract with USIA. The U.S. recipient organization will be responsible for:

—Reviewing the Russian dossiers; and
—Placing the teachers in appropriate institutions after securing the approval of a candidate by the host institution.

Selected participants will be fluent in English. The majority of participants will be experienced teachers of social sciences. Other fields from which participants will be drawn include English as a foreign language, business, math and science. Courses to be taught could include topics such as English as a Second Language, Russian culture and/or Russian literature, and statistics.

C. The identification of American educators to teach in Russia: USIA will be responsible for final selection of all U.S. participants. The U.S. recipient institution will be responsible for:

—Soliciting applications from secondary and post-secondary educators associated with the participating institutions (U.S. institutions hosting Russian educators);
—Developing an application form using existing USIA models; and
—Communicating with an independent organization based in Russia, contracted by USIA, who is responsible for the placement of U.S. teachers in Russian institutions.

Applicants must meet the qualifications deemed necessary by USIA. Some placements will be for an academic year and some for one semester. The specific number of each will be determined by the recipient institution in consultation with USIA.

D. Logistics, Orientation and Maintenance in the U.S.: The recipient will be responsible for:

—Arranging in-bound and out-bound international travel for all participants;
—Coordinating domestic transportation in Russia to and from the point of international travel with USIA designated organization in Moscow;
—Arranging U.S. domestic and local travel for all participants;
—Preparing and sending necessary pre-departure orientation materials to all participants;
—Assisting U.S. teachers in acquiring Russian visas;
—Conducting a three-day orientation program in Washington, D.C. for all participants;
—Conducting a two-day, mid-program seminar on teaching methodologies and curriculum development for the Russian participants;
—Providing sufficient guidelines (such as time-lines, standards, and responsibilities) to both the host institution and the Russian educator throughout the conception, development and completion of the individual projects;
—Gathering these projects to be part of the final evaluation report to USIA;

—Disbursing stipend in three installments, with the first installment larger than subsequent amounts to allow for "settling-in" expenses;
—Administering tax withholding and reporting as required by Federal, State, and local authorities and in accordance with relevant tax treaties;
—Providing assistance to Russian participants regarding tax procedures;
—Disbursing books/materials allowance checks and providing teachers with guidance for use of this materials grant;
—Purchasing computers and software, including electronic communication capabilities (which will be usable and serviceable in Russia) for use during and after the program;
—Providing more than adequate training for Russian participants in the use of basic software, especially electronic communications; and
—Communicating clearly the guidelines and information regarding visa regulations and the participants' expedient return upon completion of the program;
—Enrolling participants in USIA insurance programs and preparing insurance identification cards.

The organization's approach to the Washington, D.C. orientation and mid-term seminar, in terms of program and logistics, should be described.

Proposed Budget: Grant-funded items of expenditure will include, but are not limited to, the following categories:

Program Costs:

—A stipend of $2,000 per month for each Russian and U.S. teacher for basic support and housing expenses;
—A book allowance of $1,000 for each Russian and U.S. teacher to purchase U.S. educational materials for donation to the Russian home/host institutions;
—A personal computer for each Russian and U.S. teacher to use during the program and subsequently donate to the Russian home/host institution;
—International and domestic (in Russia and U.S.) transportation for each Russian and U.S. teacher from the home city to orientation, from orientation to the city of assignment, and return to the home city;
—A three-day orientation program in Washington, DC for U.S. and Russian participants, including lodging, meals, speaker fees, materials, facilities, local transportation, etc.;
—Preparation and shipment of pre-department orientation materials;
—A two-day, mid-program seminar for the Russian participants, including domestic and local transportation, lodging, meals, speaker fees, materials, facilities, etc.;
—Computer training and other professional development; and
—Tax withholdings, if necessary.

Administrative costs:

—Salaries and benefits;
—Communications (e.g., fax, telephone, postage);
—Office supplies;
—If necessary, administration of tax withholding and reporting as required by Federal, State, and local authorities and in accordance with relevant tax treaties;
—Audit expenses, as outlined below;
—Other direct costs; and
—Indirect costs.

Administrative costs should be kept low; this will be an important factor in the grant competition. Organizations must submit a comprehensive line item budget. Details are available in the application packet. Organizations should be familiar with OMB Circulars A110, A122/A–21 and A133/A–128 on cost accounting principles.

Cost sharing is strongly encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as begin its contribution to cost participation, as well as costs to be paid by the federal government. Such records are subject to audit.

The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E. Cost sharing and matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

The recipient's proposal shall include the cost of an audit that:

(1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

(3) Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statement and other accounting services; and

(2) Preparation of the supplemental reports and schedules required by OMB Circular No., A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Review process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contract offices. Proposals may also be reviewed by the Agency's Office of General Counsel.

Funding decisions are at the discretion of the Associate Director of Educational and Cultural Affairs. Final technical authority for grant awards resides with the Agency's Office of Contracts.

Review Criteria: Technically eligible applications will be competitively reviewed according to the following criteria:

1. Reasonable, Feasible, and Flexible Objectives: Proposals should clearly demonstrate how the institution will meet the program's purposes as outlined in this RFP.

2. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages.

3. Cost Effectiveness: The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contribution.

4. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. Institution's Track Record/Ability: Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior recipients and the demonstrated potential new applicants.

6. Follow-on Activities: proposals may provide an independent plan for continued activity (without USIA support) and communication which insures that USIA supported programs are not isolated events.

7. Evaluation Plan: Proposals should provide a plan for evaluation by the recipient institution.

8. Geographic Diversity: The Agency will seek to provide geographic diversity through the placement in the United States.

9. Organizational Restrictions: The Agency will need to consider any restrictions an organization may have on their acceptance of teachers for the placement program. If no restrictions are mentioned and explained in the proposal, the organization is obligated to accept any participant assigned by the Agency.

10. Organizational Standing: An organization submitting a proposal should be in good standing with USIA and the Council on Standards for International Educational Travel.

11. Re-entry Training: The proposal should demonstrate the organization's understanding of the importance of re-entry training and describe the content of the proposed program.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

The winning organization may be asked to conduct a second and possibly third year of the RUSTEP, depending upon the organization's performance during year one and the availability of program funds.

Notification: All applicants will be notified of the results of the review process in April, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 10, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–3678 Filed 2–17–94; 8:45 am]

BILLING CODE 8230–01–M

Russian Teaching Assistants Program (RTAP) in the United States

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit organizations, to arrange a teaching assistantship program primarily for a full academic year for up to 60 young Russian graduate students and recent graduates of pedagogical institutions. The program should provide participants with assistantships to teach at U.S. post-secondary institutions under professional supervision and expose them to U.S. teaching methods, teaching aids, curricula, and technology used at both the secondary and post-secondary levels.

This program is funded by the Freedom Support Act, and final awards are subject to the availability of FY 94 funds.

DATES: Deadline for proposals. All copies must be received at USIA by 5 p.m. Washington, DC time, on March 18, 1994. Faxed documents will not be accepted, nor will documents postmarked March 18 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

Approximate program dates (participants' arrival and departure): August 26, 1994, to end of the academic year in May or June 1995.

Duration: The award will begin approximately four months prior to participants' arrival date in August 1994. The termination date will be approximately three months following participants' departure. No funds may be expended until the agreement is signed.

ADDRESSES: Three originals, containing tabs A–U (see "Application Checklist" in Application Package), and 10 copies, containing tabs A–D, of the completed proposal are to be submitted in the format described in the Bureau's Application Package and mailed to: U.S. Information Agency, Ref.: Russian Teaching Assistants Program (RTAP) in the U.S., Grants Management Division, E/XE, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should contact Dr. Katherine Passias at the U.S. Information Agency, Advising, Teaching, and Specialized Programs Division, Fulbright Teacher Exchange Branch (E/ASX), room 353, 301 4th St., SW., Washington, DC 20547, telephone: (202) 619–4556, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information, and the Attachment Checklist outlining the contents of a complete application package.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social, and cultural life.

Overview

U.S. institutions applying for the Russian Teaching Assistants Program (RTAP) cooperative agreement must have a minimum of four years experience in successfully administering international exchange programs. The RTAP should provide assistantships in U.S. post-secondary institutions for up to 60 Russian graduate students and recent graduates of pedagogical institutions in the fields of social sciences, business education, and English as a foreign language. The program should expose teaching assistants to U.S. teaching methods and approaches at both secondary and post-secondary levels under the supervision of experienced U.S. teachers in the respective fields of specialization. The program should provide opportunities for participants to take courses for credit or non-credit to broaden their knowledge in their field(s) of specialization and about U.S. institutions, culture and society. The RTAP experience should also enhance the teaching assistants' understanding of the U.S. educational and political institutions, society and culture. While the benefits of the exchange will be directly felt by the Russian teaching assistants, U.S. institutions and individuals will also gain from the cultural and professional expertise which these Russian teaching assistants have to offer. The host institution may also utilize the teaching assistants as resource persons in Russian language and culture or as occasional lecturers in courses related to the Russian language, society and culture. Participants will have a good working knowledge of English.

Placements should be primarily for a full academic year in two-year and four-year U.S. colleges and universities, which may include accredited schools of business and technical institutes. Under special circumstances, one semester placements may be considered, but should be kept to a minimum. Participants should be placed as assistants to one or two professors for no more than three different courses, preferably two, in a given subject area,

and allowed to take a minimum of two courses for credit or non-credit.

Host institutions' cost sharing of educational and living expenses of the teaching assistants while they are on campus is mandatory in this program. The recipient organization will be responsible for the following functions:

1. Negotiating host institutions' tuition waivers and campus or other housing costs;

2. Making round-trip international travel arrangements for participants from points of departure in Russia to Washington, DC;

3. Meeting participants upon arrival;

4. Arranging a three-day orientation program in Washington, DC, at the beginning of the program and a one-day debriefing/re-entry program in Washington, DC, prior to participants departure for Russia;

5. Disbursing the following stipends under the cooperative agreement:

a. A monthly stipend of $900 for each participant to cover meals, incidentals and miscellaneous educational costs,

b. A one-time settling-in allowance of $200, and

c. A one-time educational book allowance of $300; and

6. Procuring from U.S. private-sector donations, or purchasing at minimal cost, new or used personal computers for the Russian participants.

Guidelines

Eligibility: U.S. non-profit educational, cultural, and other not-for-profit organizations that have a minimum of four years experience with international exchange programs are eligible to apply. The project director or key program staff responsible for the administration of RTAP must have demonstrated expertise in conducting successful exchange programs, preferably with some expertise in U.S.-Russian exchanges. The recipient organization's staff traveling under USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

Program planning and administration: The recipient organization will perform administrative and program functions to successfully place up to 60 Russian teaching assistants in regionally accredited post-secondary institutions with the review and approval of USIA.

Proposals submitted by applicants must address in detail the activities listed below as well as other administrative activities deemed necessary to successfully carry out this program:

A. The recruitment, selection, and placement in U.S. post-secondary institutions: The recipient organization will be solely responsible for identifying accredited two-year and four-year colleges and universities, including schools of business and technical institutes, to host selected participants and for negotiating the terms of the assistantships. Placements should be for one full academic year at the post-secondary level. Single semester placements may be considered but should be kept to a minimum. The recipient organization must demonstrate the capability to secure quality post-secondary placements and ensure that host institutions will abide by the RTAP guidelines and accept the cost-sharing arrangements required by the program.

U.S. colleges and universities participating in RTAP should reflect broad institutional and geographic diversity throughout the U.S. Additionally, in selecting participating host institutions, the recipient organization should be mindful of USIA's goal to reflect the cultural and ethnic diversity of the U.S.

The recipient organization will generate an application packet for U.S. host institutions. Application packets going to prospective host institutions should request detailed information about the availability of assistantships for the Russian participants, including the title of the course(s), the department within the institution awarding the assistantship, the terms of their cost-sharing agreement signed by an authorizing official, and how they will use the participants as resource persons. The USIA Fulbright Teacher Exchange Branch can offer guidance on developing application packets for the host institutions.

Note: USIA contacts in Russia will generate an application packet for the Russian teaching assistants and recruit and screen applicants. Applications with supporting documents to be used for placement purposes in the U.S. will be sent to the U.S. recipient organization through USIA.

B. Orientation and Debriefing/re-entry Programs: The recipient organization will be responsible for planning and organizing, in consultation with USIA, a three-day orientation program at the beginning of the program and a one-day debriefing/re-entry program at the end of the program in Washington, DC.

Note: These are program days and do not include arrival and departure days to respective sites.

A campus site in the D.C. area is highly recommended for these activities. The orientation program content and format will be subject to approval by the USIA program office and should be planned in consultation with that office. The orientation activities should include a general introduction to American culture, society, education systems and institutions; teaching methods in the social sciences, business education, and English as a foreign language; and a thorough briefing of the RTAP program requirements and guidelines.

For the debriefing/re-entry program at the end of the academic year, the recipient organization will be responsible for a two- to three-hour re-entry discussion session USIA program office staff present. The USIA program office will be responsible for conducting an oral evaluation of the program and a briefing about Agency educational materials and resources available to participants abroad through the USIA cultural service in Russia, the U.S. Information Service (USIS).

The recipient organization will also generate an orientation packet for the Russian teaching assistants about the RTAP program and studying and living in the U.S., which may be mailed to the participants prior to their departure for the U.S. The USIA program office can provide the recipient organization with sample orientation materials of similar programs.

C. Evaluation and Follow-up: The recipient organization will be required to evaluate the effectiveness of the program and submit a summary of the findings to the USIA program office. Two evaluation instruments should be developed, one to be completed by the RTAP participants and another by the host institutions. The evaluation instruments should be submitted to USIA for review and approval.

D. Administration Logistics: The recipient organization will be responsible for arranging round-trip international travel from points of departure to Washington, DC, and U.S. domestic travel from Washington, DC, to the campus site of assigned host institutions; assisting participants with their return travel when necessary; coordinating all aspects of the orientation and debriefing/re-entry programs; meeting participants upon arrival in Washington, DC; disbursing monthly stipends (which may be disbursed on a quarterly basis) and other allowances; preparing and sending necessary pre-departure orientation materials; briefing participants on USIA medical insurance coverage and U.S. government tax regulations; and monitoring the teaching assistants while on campus to ensure that the program guidelines are observed.

The recipient organization will also be required to liaise with the USIA contact office in Moscow responsible for recruiting the Russian participants to coordinate international travel arrangements and orientation program dates in Washington, DC.

Application Requirements: Proposals must be submitted by the deadline and must conform to the eligibility requirements and academic fields identified in this announcement. In addition to the required tabs (A–U) of the "Application Checklist" included in the complete application package, proposals should also include:

1. A complete program schedule and timeline and a plan for reviewing and selecting U.S. colleges and universities. (Note: The Agency will participate in the final review process.)

2. Provisions for a "multiplier effect," i.e., future follow-up and networking between the Russian participants and the appropriate U.S. educational, community and scholarly organizations and institutions.

Proposed Budget

Applicant organizations must submit a comprehensive line item budget, including derivational costs for each item. Administrative and participant program costs must be listed separately. Budget details are available in the application packet. Administrative costs, including indirect costs, should be kept as low as possible. Administrative costs should be prorated over the entire grant period (approximately fifteen months), indicating percentage of time required for each major administrative function within the required time frame to successfully carry out that function, e.g., percent of time required for recruitment, placement, and planning and organizing the Washington orientation and debriefing/re-entry programs, etc.

The USIA cooperative agreement will provide a stipend of $900 per month for each participant for the entire grant period, which should not exceed ten months, to cover meals, other educational and living expenses, and incidental expenses, a one-time settling-in allowance of $200, and a one-time book allowance of $300. Host institutions' tuition waiver and campus or other housing accommodations, should be included in the budget as host institutions' estimated cost-sharing for each item. Procurement of private-sector-donated personal computers should also be included as a cost-sharing item, or as a cost item as appropriate. Administration of tax withholding and reporting required by Federal, State and Local authorities and in accordance with relevant tax treaties are allowable costs.

Per diem and domestic travel for the Washington, DC programs should be budgeted as separate items. Budgets that do not allocate administrative and program costs consistent with the budget instructions will not be considered. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, which may be imposed by social or economic changes in Russia during the grant period. Administrative costs should be kept as low as possible. Cost effectiveness should be an important consideration in developing total budget costs. Organizations should be familiar with grant regulations described in OMB Circulars A110, A122/A–21 and A133/A128.

Cost-sharing of the recipient organization may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E—Cost Sharing and Matching and should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution. Programs must conform to all Agency requirements, eligibility factors and budget guidelines contained in the application package, and are subject to final review by the USIA contracting officer.

The recipient's proposal shall include the cost of an audit that:

(1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

(3) Includes review of the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by USIA's geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for USIA cooperative agreement awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Overall quality: The content, definition, organization, and detailed planning of all aspects of the program; appropriateness of program plan and content to program objectives; in-depth knowledge of the U.S. educational community; experience and expertise of the project director and professional staff assigned to the program; evidence of understanding of Russian culture and civilization and cross-cultural needs of participants.

2. Program planning: Rigor of logistical planning of all components of the program, including the Washington, DC, orientation; adequacy, relevancy and appropriateness of the program plan to achieve program objectives; evidence of administrative capabilities (with specific discussion of how administrative and logistical arrangements will be undertaken); and strategy to ensure availability, adequacy, and appropriateness of host institutions' housing and other institutional support consistent with program guidelines and objectives.

3. Institutional capacity: Adequacy of proposed resources, including professional staff and available educational network(s), to successfully administer RTAP.

4. Institution's Track Record/Ability: Clear evidence of applicant institution's track record of successful programs and experience with similar international exchange programs and preferably with some experience with U.S.-Russian exchanges. Demonstrated expertise of

the Project Director to assume the administration of this program.

5. Evaluation and follow-up: Adequacy of an evaluation plan to determine the effectiveness of the program, which should include monitoring procedures and evaluation instruments to be completed at the end of the program by RTAP teaching assistants and host institutions; and adequacy of the follow-up procedures and provisions for "multiplier effect," i.e., future follow-up and networking between the Russian participants and the appropriate U.S. educational, community and scholarly organizations and institutions.

6. Cost-effectiveness: The overhead and administrative components of the program, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. In-kind contributions should also be considered.

7. Cost-sharing: Proposals should maximize cost-sharing through host institutions and other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

The winning organization may be asked to conduct a second and possibly third year of the RTAP, depending upon performance during year one and the availability of funds.

Notification

All applicants will be notified of the results of the review process in April 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 10, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–3677 Filed 2–17–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held February 23 and 24, 1994, by the Department of Veterans Affairs, in the Omar Bradley Conference Room at TechWorld, Room 1105, 801 I Street, NW., Washington, DC. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Secretary of Veterans Affairs and the Acting Under Secretary for Health relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers. The committee will meet on February 23 from 8:30 a.m. until 4:30 p.m. and will reconvene on February 24 at 8:30 a.m. and adjourn at 12 noon. The meeting is open to the public up to the seating capacity of the room. For those wishing to attend contact Jacqueline Holmes, Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care (phone 202–535–7164) prior to February 18, 1994.

VA's health care reform, Long-term Care Resident Training, Aging and Geriatrics Merit Review, VA and private sector collaboration in long-term care and National VA Geriatrics Data Base Pilot Study will be the primary topics for discussion.

Dated: February 3, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–3751 Filed 2–17–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 34

Friday, February 18, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Tuesday, February 22, 1994

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, February 22, 1994, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Item No., Bureau, and Subject

1—Cable Services—Title: Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation (MM Docket No. 92–266). Summary: The Commission will consider adoption of a *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking* concerning regulation of rates for regulated cable service, rate regulation of small systems, and issues raised on reconsideration of initial rules establishing rate regulation of cable service.

2—Cable Services—Title: Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation (MM Docket No. 93–215). Summary: The Commission will consider adoption of a *Report and Order and Second Notice of Proposed Rulemaking* concerning requirements governing cost-of-service showings for regulated cable service.

3—Cable Services—Title: Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation (MM Docket No. 92–266) and Tier Buy-Through Prohibition (MM Docket No. 92–262). Summary: The Commission will consider adoption of a *Third Order on Reconsideration* in MM Docket No. 92–266 addressing issues raised on reconsideration concerning initial rules establishing rate regulation of cable service, and issues raised on reconsideration in MM Docket No. 92–262 concerning the tier buy-through prohibition.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Dated: February 15, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–3855 Filed 2–16–94; 11:08 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, February 22, 1994, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

FDIC's 1993 Year-end Financial Management Report.

Discussion Agenda

Memorandum and resolution re: Proposed amendments to Part 348 of the Corporation's rules and regulations, entitled "Management Official Interlocks," which would provide an exemption from the regulation for any management interlock between two depository institutions located in a relevant metropolitan statistical area ("RMSA") or community if their combined share of the total deposits in the RMSA or community is no more than 20 percent.

Memorandum and resolution re: Proposed amendment to section 327.4 of Part 327 of the Corporation's rules and regulations, entitled "Assessments," which would exclude certain liabilities arising under depository institution investment contracts from the insurance assessment base.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: February 15, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–3828 Filed 2–15–94; 4:44 pm]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 59, No. 34
Friday, February 18, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF PERSONNEL MANAGEMENT

The President's Pay Agent

Correction

In notice document 94-670 beginning on page 2216 in the issue of Thursday, January 13, 1994, several salary tables contained incorrect headings and pay rates. For the convenience of the reader, the tables are reprinted below in their entirety.

1994 Salary Tables—General Schedule and Locality Rates of Pay

January 1994

SALARY TABLE NO. 94–CHI—INCORPORATING THE 5.34 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF CHICAGO-GARY-KENOSHA, IL–IN–WI

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,539	$12,957	$13,373	$13,789	$14,207	$14,453	$14,862	$15,277	$15,296	$15,686
GS–2	14,097	14,433	14,900	15,296	15,467	15,922	16,377	16,832	17,287	17,742
GS–3	15,383	15,896	16,409	16,922	17,435	17,948	18,461	18,974	19,487	20,000
GS–4	17,268	17,844	18,419	18,994	19,569	20,144	20,719	21,294	21,870	22,445
GS–5	19,319	19,963	20,607	21,250	21,894	22,537	23,181	23,825	24,468	25,112
GS–6	21,535	22,252	22,969	23,687	24,404	25,121	25,839	26,556	27,274	27,991
GS–7	23,930	24,728	25,525	26,322	27,120	27,917	28,715	29,512	30,309	31,107
GS–8	26,502	27,386	28,270	29,154	30,038	30,922	31,805	32,689	33,573	34,457
GS–9	29,273	30,248	31,224	32,199	33,175	34,150	35,126	36,101	37,077	38,052
GS–10	32,237	33,312	34,386	35,461	36,535	37,610	38,684	39,758	40,833	41,907
GS–11	35,418	36,599	37,780	38,961	40,142	41,323	42,504	43,684	44,865	46,046
GS–12	42,450	43,865	45,279	46,694	48,109	49,523	50,938	52,353	53,768	55,182
GS–13	50,479	52,161	53,843	55,526	57,208	58,890	60,573	62,255	63,937	65,619
GS–14	59,651	61,640	63,629	65,617	67,606	69,595	71,584	73,573	75,561	77,550
GS–15	70,166	72,504	74,843	77,182	79,520	81,859	84,197	86,536	88,874	91,213

Note: Law enforcement officers receiving statutory special salary rates are entitled to higher rates of pay under salary table 94–CHI (LEO). Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–DET—INCORPORATING THE 4.84 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DETROIT-ANN ARBOR-FLINT, MI

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,479	$12,895	$13,309	$13,724	$14,140	$14,384	$14,792	$15,205	$15,224	$15,612
GS–2	14,030	14,364	14,830	15,224	15,394	15,847	16,299	16,752	17,205	17,658
GS–3	15,310	15,820	16,331	16,841	17,352	17,863	18,373	18,884	19,394	19,905
GS–4	17,186	17,759	18,331	18,904	19,476	20,049	20,621	21,193	21,766	22,338
GS–5	19,228	19,868	20,509	21,149	21,790	22,431	23,071	23,712	24,352	24,993

SALARY TABLE NO. 94–DET—INCORPORATING THE 4.84 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DETROIT-ANN ARBOR-FLINT, MI—CONTINUED

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–6	21,432	22,146	22,860	23,574	24,288	25,002	25,716	26,430	27,144	27,858
GS–7	23,817	24,610	25,404	26,197	26,991	27,785	28,578	29,372	30,166	30,959
GS–8	26,377	27,256	28,136	29,016	29,895	30,775	31,654	32,534	33,414	34,293
GS–9	29,134	30,105	31,076	32,046	33,017	33,988	34,959	35,930	36,901	37,871
GS–10	32,084	33,154	34,223	35,292	36,362	37,431	38,500	39,570	40,639	41,708
GS–11	35,250	36,426	37,601	38,776	39,951	41,127	42,302	43,477	44,652	45,828
GS–12	42,248	43,656	45,064	46,472	47,880	49,288	50,696	52,104	53,512	54,920
GS–13	50,239	51,914	53,588	55,262	56,937	58,611	60,285	61,959	63,634	65,308
GS–14	59,368	61,347	63,327	65,306	67,285	69,265	71,244	73,223	75,203	77,182
GS–15	69,833	72,160	74,488	76,815	79,143	81,470	83,798	86,125	88,452	90,780

Note; Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–NY—INCORPORATING THE 5.77 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF NEW YORK-NORTHERN NEW JERSEY-LONG ISLAND, NY–NJ–CT–PA

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,590	$13,010	$13,428	$13,845	$14,265	$14,512	$14,923	$15,340	$15,359	$15,750
GS–2	14,154	14,492	14,961	15,359	15,530	15,987	16,444	16,901	17,358	17,815
GS–3	15,446	15,961	16,476	16,991	17,506	18,021	18,536	19,051	19,566	20,081
GS–4	17,339	17,916	18,494	19,071	19,649	20,226	20,804	21,381	21,959	22,536
GS–5	19,398	20,044	20,691	21,337	21,983	22,629	23,276	23,922	24,568	25,215
GS–6	21,623	22,343	23,063	23,783	24,504	25,224	25,944	26,665	27,385	28,105
GS–7	24,028	24,828	25,629	26,430	27,230	28,031	28,832	29,633	30,433	31,234
GS–8	26,611	27,498	28,385	29,273	30,160	31,048	31,935	32,823	33,710	34,597
GS–9	29,392	30,372	31,351	32,331	33,310	34,290	35,269	36,248	37,228	38,207
GS–10	32,369	33,448	34,527	35,605	36,684	37,763	38,842	39,921	41,000	42,078
GS–11	35,563	36,749	37,934	39,120	40,306	41,491	42,677	43,863	45,049	46,234
GS–12	42,623	44,044	45,464	46,885	48,305	49,726	51,146	52,567	53,987	55,408
GS–13	50,685	52,374	54,063	55,752	57,442	59,131	60,820	62,509	64,198	65,887
GS–14	59,894	61,891	63,888	65,885	67,882	69,879	71,876	73,873	75,870	77,867
GS–15	70,452	72,800	75,149	77,497	79,845	82,193	84,541	86,889	89,237	91,585

Note: General Schedule employees in the New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA are entitled to higher rates of pay under salary table 94–IGA. Law enforcement officers are entitled to higher rates of pay under salary table 94–NY (LEO). Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94—OKC-INCORPORATING THE 3.34 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF OKLAHOMA CITY, OK

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,301	$12,711	$13,119	$13,527	$13,937	$14,178	$14,580	$14,987	$15,006	$15,388
GS–2	13,829	14,159	14,617	15,006	15,173	15,620	16,065	16,513	16,959	17,406
GS–3	15,091	15,594	16,097	16,601	17,104	17,607	18,110	18,614	19,117	19,620
GS–4	16,941	17,505	18,069	18,633	19,197	19,762	20,326	20,890	21,454	22,019
GS–5	18,953	19,584	20,215	20,847	21,478	22,110	22,741	23,372	24,004	24,635
GS–6	21,126	21,830	22,533	23,237	23,941	24,645	25,348	26,052	26,756	27,460
GS–7	23,476	24,258	25,040	25,823	26,605	27,387	28,169	28,952	29,734	30,516
GS–8	25,999	26,866	27,733	28,600	29,467	30,334	31,201	32,068	32,935	33,803
GS–9	28,717	29,674	30,631	31,588	32,545	33,502	34,459	35,416	36,373	37,330
GS–10	31,625	32,679	33,733	34,787	35,841	36,895	37,950	39,004	40,058	41,112
GS–11	34,746	35,904	37,063	38,221	39,380	40,538	41,697	42,855	44,014	45,172
GS–12	41,644	43,032	44,420	45,808	47,195	48,583	49,971	51,359	52,747	54,135
GS–13	49,521	51,171	52,821	54,472	56,122	57,772	59,423	61,073	62,723	64,374
GS–14	58,518	60,469	62,420	64,372	66,323	68,274	70,225	72,176	74,127	76,078

SALARY TABLE NO. 94—OKC-INCORPORATING THE 3.34 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF OKLAHOMA CITY, OK—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–15	68,834	71,128	73,422	75,716	78,010	80,304	82,599	84,893	87,187	89,481

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–SLC—INCORPORATING THE 3.09 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF SALT LAKE CITY-OGDEN, UT

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,271	$12,680	$13,087	$13,494	$13,904	$14,144	$14,545	$14,951	$14,970	$15,351
GS–2	13,796	14,124	14,582	14,970	15,137	15,582	16,027	16,473	16,918	17,363
GS–3	15,054	15,556	16,058	16,560	17,062	17,564	18,067	18,569	19,071	19,573
GS–4	16,900	17,462	18,025	18,588	19,151	19,714	20,277	20,840	21,403	21,965
GS–5	18,907	19,537	20,166	20,796	21,426	22,056	22,686	23,316	23,946	24,576
GS–6	21,075	21,777	22,479	23,181	23,883	24,585	25,287	25,989	26,691	27,393
GS–7	23,419	24,199	24,980	25,760	26,541	27,321	28,101	28,882	29,662	30,442
GS–8	25,936	26,801	27,666	28,531	29,396	30,261	31,126	31,991	32,856	33,721
GS–9	28,648	29,602	30,557	31,512	32,466	33,421	34,375	35,330	36,285	37,239
GS–10	31,549	32,600	33,652	34,703	35,755	36,806	37,858	38,909	39,961	41,012
GS–11	34,662	35,818	36,973	38,129	39,285	40,440	41,596	42,751	43,907	45,063
GS–12	41,543	42,928	44,312	45,697	47,081	48,466	49,850	51,235	52,619	54,004
GS–13	49,401	51,047	52,693	54,340	55,986	57,632	59,279	60,925	62,572	64,218
GS–14	58,377	60,323	62,269	64,216	66,162	68,108	70,055	72,001	73,947	75,894
GS–15	68,667	70,956	73,244	75,533	77,822	80,110	82,399	84,687	86,976	89,265

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–SF—INCORPORATING THE 6.18 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF SAN FRANCISCO-OAKLAND-SAN JOSE, CA

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,639	$13,060	$13,480	$13,899	$14,320	$14,568	$14,981	$15,399	$15,418	$15,811
GS–2	14,209	14,548	15,019	15,418	15,590	16,049	16,508	16,967	17,425	17,884
GS–3	15,505	16,023	16,540	17,057	17,574	18,091	18,608	19,125	19,642	20,159
GS–4	17,406	17,986	18,566	19,145	19,725	20,305	20,885	21,464	22,044	22,624
GS–5	19,473	20,122	20,771	21,420	22,068	22,717	23,366	24,015	24,663	25,312
GS–6	21,706	22,429	23,153	23,876	24,599	25,322	26,045	26,768	27,491	28,214
GS–7	24,121	24,925	25,728	26,532	27,336	28,140	28,944	29,747	30,551	31,355
GS–8	26,714	27,605	28,496	29,386	30,277	31,168	32,059	32,950	33,841	34,731
GS–9	29,506	30,490	31,473	32,456	33,439	34,422	35,406	36,389	37,372	38,355
GS–10	32,494	33,577	34,660	35,743	36,826	37,909	38,992	40,076	41,159	42,242
GS–11	35,701	36,891	38,081	39,272	40,462	41,652	42,843	44,033	45,223	46,413
GS–12	42,788	44,214	45,640	47,066	48,492	49,918	51,344	52,770	54,196	55,622
GS–13	50,881	52,577	54,273	55,969	57,664	59,360	61,056	62,751	64,447	66,143
GS–14	60,127	62,131	64,136	66,141	68,145	70,150	72,155	74,159	76,164	78,169
GS–15	70,725	73,083	75,440	77,797	80,154	82,511	84,869	87,226	89,583	91,940

Note: General Schedule employees in the San Francisco-Oakland-San Jose, CA CMSA are entitled to higher rates of pay under salary table 94–IGA. Law enforcement officers are entitled to higher rates of pay under salary table 94–SF (LEO). Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–RUS—INCORPORATING THE 3.09 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF REST OF U.S.

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,271	$12,680	$13,087	$13,494	$13,904	$14,144	$14,545	$14,951	$14,970	$15,351
GS–2	13,796	14,124	14,582	14,970	15,137	15,582	16,027	16,473	16,918	17,363
GS–3	15,054	15,556	16,058	16,560	17,062	17,564	18,067	18,569	19,071	19,573
GS–4	16,900	17,462	18,025	18,588	19,151	19,714	20,277	20,840	21,403	21,965
GS–5	18,907	19,537	20,166	20,796	21,426	22,056	22,686	23,316	23,946	24,576
GS–6	21,075	21,777	22,479	23,181	23,883	24,585	25,287	25,989	26,691	27,393
GS–7	23,419	24,199	24,980	25,760	26,541	27,321	28,101	28,882	29,662	30,442
GS–8	25,936	26,801	27,666	28,531	29,396	30,261	31,126	31,991	32,856	33,721
GS–9	28,648	29,602	30,557	31,512	32,466	33,421	34,375	35,330	36,285	37,239
GS–10	31,549	32,600	33,652	34,703	35,755	36,806	37,858	38,909	39,961	41,012
GS–11	34,662	35,818	36,973	38,129	39,285	40,440	41,596	42,751	43,907	45,063
GS–12	41,543	42,928	44,312	45,697	47,081	48,466	49,850	51,235	52,619	54,004
GS–13	49,401	51,047	52,693	54,340	55,986	57,632	59,279	60,925	62,572	64,218
GS–14	58,377	60,323	62,269	64,216	66,162	68,108	70,055	72,001	73,947	75,894
GS–15	68,667	70,956	73,244	75,533	77,822	80,110	82,399	84,687	86,976	89,265

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

1994 Salary Tables for Law Enforcement Officers

January 1994

SALARY TABLE NO. 94–BOS (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 16 PERCENT LEO SPECIAL PAY ADJUSTMENT FOR THE BOSTON-WORCESTER-LAWRENCE, MA–NH–ME–CT CMSA

[Effective January 1993]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,807	$14,268	$14,726	$15,184	$15,645	$15,915	$16,366	$16,823	$16,844	$17,274
GS–2	15,523	15,893	16,408	16,844	17,032	17,533	18,035	18,536	19,037	19,538
GS–3	20,329	20,894	21,459	22,024	22,589	23,154	23,719	24,283	24,848	25,413
GS–4	22,816	23,449	24,083	24,716	25,349	25,983	26,616	27,250	27,883	28,516
GS–5	26,236	26,944	27,653	28,362	29,071	29,780	30,488	31,197	31,906	32,615
GS–6	27,664	28,454	29,244	30,034	30,824	31,613	32,403	33,193	33,983	34,773
GS–7	29,864	30,742	31,620	32,499	33,377	34,255	35,133	36,011	36,889	37,767
GS–8	31,131	32,104	33,077	34,051	35,024	35,997	36,970	37,944	38,917	39,890
GS–9	33,309	34,384	35,458	36,532	37,606	38,680	39,754	40,829	41,903	42,977
GS–10	36,683	37,866	39,049	40,232	41,415	42,599	43,782	44,965	46,148	47,331
GS–11	39,003	40,303	41,603	42,904	44,204	45,504	46,805	48,105	49,406	50,706
GS–12	46,746	48,304	49,861	51,419	52,977	54,535	56,093	57,651	59,209	60,767
GS–13	55,587	57,440	59,292	61,145	62,997	64,850	66,702	68,555	70,407	72,260
GS–14	65,687	67,877	70,067	72,258	74,448	76,638	78,828	81,018	83,208	85,398
GS–15	77,266	79,842	82,417	84,992	87,567	90,142	92,718	95,293	97,868	100,443

Note: Special law enforcement adjusted rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–CLE (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.34 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF CLEVELAND-AKRON, OH

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,301	$12,711	$13,119	$13,527	$13,937	$14,178	$14,580	$14,987	$15,006	$15,388
GS–2	13,829	14,159	14,617	15,006	15,173	15,620	16,066	16,513	16,959	17,406
GS–3	18,110	18,614	19,117	19,620	20,123	20,627	21,130	21,633	22,136	22,640
GS–4	20,326	20,890	21,454	22,019	22,583	23,147	23,711	24,276	24,840	25,404
GS–5	23,372	24,004	24,635	25,267	25,898	26,529	27,161	27,792	28,424	29,055

SALARY TABLE NO. 94–CLE (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO's), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.34 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF CLEVELAND-AKRON, OH—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–6	24,645	25,348	26,052	26,756	27,460	28,163	28,867	29,571	30,274	30,978
GS–7	26,605	27,387	28,169	28,952	29,734	30,516	31,299	32,081	32,863	33,645
GS–8	27,733	28,600	29,467	30,334	31,201	32,068	32,935	33,803	34,670	35,537
GS–9	29,674	30,631	31,588	32,545	33,502	34,459	35,416	36,373	37,330	38,286
GS–10	32,679	33,733	34,787	35,841	36,895	37,950	39,004	40,058	41,112	42,166
GS–11	34,746	35,904	37,063	38,221	39,380	40,538	41,697	42,855	44,014	45,172
GS–12	41,644	43,032	44,420	45,808	47,195	48,583	49,971	51,359	52,747	54,135
GS–13	49,521	51,171	52,821	54,472	56,122	57,772	59,423	61,073	62,723	64,374
GS–14	58,518	60,469	62,420	64,372	66,323	68,274	70,225	72,176	74,127	76,078
GS–15	68,834	71,128	73,422	75,716	78,010	80,304	82,599	84,893	87,187	89,481

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

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SALARY TABLE NO. 94–DET (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO's), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 4.84 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DETROIT-ANN ARBOR-FLINT, MI

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,479	$12,895	$13,309	$13,724	$14,140	$14,384	$14,792	$15,205	$15,224	$15,612
GS–2	14,030	14,364	14,830	15,224	15,394	15,847	16,299	16,752	17,205	17,658
GS–3	18,373	18,884	19,394	19,905	20,415	20,926	21,437	21,947	22,458	22,968
GS–4	20,621	21,193	21,766	22,338	22,911	23,483	24,056	24,628	25,200	25,773
GS–5	23,712	24,352	24,993	25,633	26,274	26,915	27,555	28,196	28,836	29,477
GS–6	25,002	25,716	26,430	27,144	27,858	28,572	29,286	30,000	30,714	31,428
GS–7	26,991	27,785	28,578	29,372	30,166	30,959	31,753	32,547	33,340	34,134
GS–8	28,136	29,016	29,895	30,775	31,654	32,534	33,414	34,293	35,173	36,052
GS–9	30,105	31,076	32,046	33,017	33,988	34,959	35,930	36,901	37,871	38,842
GS–10	33,154	34,223	35,292	36,362	37,431	38,500	39,570	40,639	41,708	42,778
GS–11	35,250	36,426	37,601	38,776	39,951	41,127	42,302	43,477	44,652	45,828
GS–12	42,248	43,656	45,064	46,472	47,880	49,288	50,696	52,104	53,512	54,920
GS–13	50,239	51,914	53,588	55,262	56,937	58,611	60,285	61,959	63,634	65,308
GS–14	59,368	61,347	63,327	65,306	67,285	69,265	71,244	73,223	75,203	77,182
GS–15	69,833	72,160	74,488	76,815	79,143	81,470	83,798	86,125	88,452	90,780

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

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SALARY TABLE NO. 94–IND (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO's), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.68 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF INDIANAPOLIS, IN

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,341	$12,753	$13,162	$13,572	$13,983	$14,225	$14,628	$15,037	$15,055	$15,439
GS–2	13,874	14,205	14,666	15,055	15,223	15,671	16,119	16,567	17,015	17,463
GS–3	18,170	18,675	19,180	19,685	20,190	20,695	21,199	21,704	22,209	22,714
GS–4	20,393	20,959	21,525	22,091	22,657	23,223	23,789	24,355	24,922	25,488
GS–5	23,449	24,083	24,716	25,350	25,983	26,617	27,250	27,884	28,517	29,151
GS–6	24,726	25,432	26,138	26,844	27,550	28,256	28,962	29,668	30,374	31,080
GS–7	26,692	27,477	28,262	29,047	29,832	30,617	31,402	32,186	32,971	33,756
GS–8	27,825	28,694	29,564	30,434	31,304	32,174	33,044	33,914	34,784	35,653
GS–9	29,772	30,732	31,692	32,652	33,612	34,572	35,532	36,492	37,452	38,412
GS–10	32,787	33,844	34,902	35,959	37,017	38,074	39,132	40,189	41,247	42,305
GS–11	34,860	36,023	37,185	38,347	39,509	40,672	41,834	42,996	44,158	45,321
GS–12	41,781	43,173	44,566	45,958	47,351	48,743	50,136	51,528	52,920	54,313

SALARY TABLE NO. 94–IND (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO's), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.68 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF INDIANAPOLIS, IN—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–13	49,683	51,339	52,995	54,651	56,307	57,962	59,618	61,274	62,930	64,585
GS–14	58,711	60,668	62,626	64,583	66,541	68,498	70,456	72,413	74,371	76,328
GS–15	69,060	71,362	73,664	75,965	78,267	80,569	82,870	85,172	87,474	89,775

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers"

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SALARY TABLE NO. 94–LA (LEO 1)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO's), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 16 PERCENT LEO SPECIAL PAY ADJUSTMENT FOR THE LOS ANGELES-RIVERSIDE-ORANGE COUNTY, CA CMSA

[Effective January 1993]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,807	$14,268	$14,726	$15,184	$15,645	$15,915	$16,366	$16,823	$16,844	$17,274
GS–2	15,523	15,893	16,408	16,844	17,032	17,533	18,035	18,536	19,037	19,538
GS–3	20,329	20,894	21,459	22,024	22,589	23,154	23,719	24,283	24,848	25,413
GS–4	22,816	23,449	24,083	24,716	25,349	25,983	26,616	27,250	27,883	28,516
GS–5	26,236	26,944	27,653	28,362	29,071	29,780	30,488	31,197	31,906	32,615
GS–6	27,664	28,454	29,244	30,034	30,824	31,613	32,403	33,193	33,983	34,773
GS–7	29,864	30,742	31,620	32,499	33,377	34,255	35,133	36,011	36,889	37,767
GS–8	31,131	32,104	33,077	34,051	35,024	35,997	36,970	37,944	38,917	39,890
GS–9	33,309	34,384	35,458	36,532	37,606	38,680	39,754	40,829	41,903	42,977
GS–10	36,683	37,866	39,049	40,232	41,415	42,599	43,782	44,965	46,148	47,331
GS–11	39,003	40,303	41,603	42,904	44,204	45,504	46,805	48,105	49,406	50,706
GS–12	46,746	48,304	49,861	51,419	52,977	54,535	56,093	57,651	59,209	60,767
GS–13	55,587	57,440	59,292	61,145	62,997	64,850	66,702	68,555	70,407	72,260
GS–14	65,687	67,877	70,067	72,258	74,448	76,638	78,828	81,018	83,208	85,398
GS–15	77,266	79,842	82,417	84,992	87,567	90,142	92,718	95,293	97,868	100,443

Note: This salary table applies only to law enforcement officers whose official duty stations are located within the Los Angeles-Riverside-Orange County, CA CMSA. Law enforcement officers whose official duty stations are located in Santa Barbara County or that portion of Edwards Air Force Base outside the Los Angeles-Riverside-Orange County, CA CMSA are entitled to the rates of pay under salary table 94–LA (LEO 2). Special law enforcement adjusted rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

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SALARY TABLE NO. 94–PHL (LEO) RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO's) INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 4.96 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF PHILADELPHIA-WILMINGTON-ATLANTIC CITY, PA–NJ–DE–MD

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,493	$12,910	$13,325	$13,739	$14,156	$14,401	$14,809	$15,222	$15,241	$15,630
GS–2	14,046	14,381	14,847	15,241	15,411	15,865	16,318	16,772	17,225	17,678
GS–3	18,394	18,905	19,417	19,928	20,439	20,950	21,461	21,972	22,483	22,995
GS–4	20,645	21,218	21,791	22,364	22,937	23,510	24,083	24,656	25,229	25,802
GS–5	23,739	24,380	25,021	25,663	26,304	26,945	27,587	28,228	28,869	29,511
GS–6	25,031	25,746	26,460	27,175	27,890	28,605	29,320	30,034	30,749	31,464
GS–7	27,022	27,816	28,611	29,406	30,200	30,995	31,789	32,584	33,378	34,173
GS–8	28,168	29,049	29,929	30,810	31,691	32,571	33,452	34,332	35,213	36,094
GS–9	30,139	31,111	32,083	33,055	34,027	34,999	35,971	36,943	37,915	38,887
GS–10	33,192	34,262	35,333	36,403	37,474	38,544	39,615	40,686	41,756	42,827
GS–11	35,291	36,467	37,644	38,821	39,997	41,174	42,350	43,527	44,704	45,880
GS–12	42,297	43,706	45,116	46,526	47,935	49,345	50,754	52,164	53,574	54,983
GS–13	50,297	51,973	53,649	55,325	57,002	58,678	60,354	62,030	63,707	65,383
GS–14	59,436	61,417	63,399	65,381	67,362	69,344	71,326	73,307	75,289	77,271

SALARY TABLE NO. 94–PHL (LEO) RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO's) INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 4.96 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF PHILADELPHIA-WILMINGTON-ATLANTIC CITY, PA–NJ–DE–MD—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–15	69,913	72,243	74,573	76,903	79,233	81,563	83,893	86,224	88,554	90,884

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–SD (LEO)— RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 8 PERCENT LEO SPECIAL PAY ADJUSTMENT FOR THE SAN DIEGO, CA METROPOLITAN STATISTICAL AREA

[Effective January 1993]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,855	$13,284	$13,711	$14,137	$14,566	$14,818	$15,238	$15,663	$15,683	$16,082
GS–2	14,453	14,797	15,277	15,683	15,858	16,324	16,791	17,257	17,724	18,190
GS–3	18,927	19,453	19,979	20,505	21,031	21,557	22,083	22,609	23,135	23,661
GS–4	21,243	21,832	22,422	23,012	23,601	24,191	24,781	25,370	25,960	26,550
GS–5	24,426	25,086	25,746	26,406	27,066	27,726	28,386	29,046	29,705	30,365
GS–6	25,756	26,491	27,227	27,962	28,698	29,433	30,169	30,904	31,640	32,375
GS–7	27,805	28,622	29,440	30,257	31,075	31,892	32,710	33,528	34,345	35,163
GS–8	28,984	29,890	30,796	31,702	32,608	33,515	34,421	35,327	36,233	37,139
GS–9	31,012	32,012	33,012	34,012	35,013	36,013	37,013	38,013	39,013	40,013
GS–10	34,153	35,254	36,356	37,458	38,559	39,661	40,762	41,864	42,966	44,067
GS–11	36,313	37,524	38,734	39,945	41,156	42,366	43,577	44,788	45,998	47,209
GS–12	43,522	44,972	46,423	47,873	49,324	50,774	52,224	53,675	55,125	56,576
GS–13	51,754	53,478	55,203	56,928	58,653	60,377	62,102	63,827	65,552	67,276
GS–14	61,157	63,196	65,235	67,274	69,313	71,352	73,391	75,430	77,469	79,509
GS–15	71,938	74,335	76,733	79,131	81,528	83,926	86,323	88,721	91,119	93,516

Note: Special law enforcement adjusted rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–SF (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 16 PERCENT LEO SPECIAL PAY ADJUSTMENT FOR THE SAN FRANCISCO-OAKLAND-SAN JOSE, CA CMSA

[Effective January 1993]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,807	$14,268	$14,726	$15,184	$15,645	$15,915	$16,366	$16,823	$16,844	$17,274
GS–2	15,523	15,893	16,408	16,844	17,032	17,533	18,035	18,536	19,037	19,538
GS–3	20,329	20,894	21,459	22,024	22,589	23,154	23,719	24,283	24,848	25,413
GS–4	22,816	23,449	24,083	24,716	25,349	25,983	26,616	27,250	27,883	28,516
GS–5	26,236	26,944	27,653	28,362	29,071	29,780	30,488	31,197	31,906	32,615
GS–6	27,664	28,454	29,244	30,034	30,824	31,613	32,403	33,193	33,983	34,773
GS–7	29,864	30,742	31,620	32,499	33,377	34,255	35,133	36,011	36,889	37,767
GS–8	31,131	32,104	33,077	34,051	35,024	35,997	36,970	37,944	38,917	39,890
GS–9	33,309	34,384	35,458	36,532	37,606	38,680	39,754	40,829	41,903	42,977
GS–10	36,683	37,866	39,049	40,232	41,415	42,599	43,782	44,965	46,148	47,331
GS–11	39,003	40,303	41,603	42,904	44,204	45,504	46,805	48,105	49,406	50,706
GS–12	46,746	48,304	49,861	51,419	52,977	54,535	56,093	57,651	59,209	60,767
GS–13	55,587	57,440	59,292	61,145	62,997	64,850	66,702	68,555	70,407	72,260
GS–14	65,687	67,877	70,067	72,258	74,448	76,638	78,828	81,018	83,208	85,398
GS–15	77,266	79,842	82,417	84,992	87,567	90,142	92,718	95,293	97,868	100,443

Note: Special law enforcement adjusted rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

1994 Salary Table for Interim Geographic Adjustments—Salary Table No. 94–IGA

January 1994

SALARY TABLE NO. 94–IGA—INCLUDING 8 PERCENT INTERIM GEOGRAPHIC ADJUSTMENTS

[Effective January 1993]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,855	$13,284	$13,711	$14,137	$14,566	$14,818	$15,238	$15,663	$15,683	$16,082
GS–2	14,453	14,797	15,277	15,683	15,858	16,324	16,791	17,257	17,724	18,190
GS–3	15,771	16,297	16,823	17,349	17,875	18,401	18,927	19,453	19,979	20,505
GS–4	17,704	18,294	18,884	19,473	20,063	20,653	21,243	21,832	22,422	23,012
GS–5	19,807	20,467	21,127	21,787	22,447	23,107	23,766	24,426	25,086	25,746
GS–6	22,078	22,814	23,549	24,285	25,020	25,756	26,491	27,227	27,962	28,698
GS–7	24,534	25,352	26,169	26,987	27,805	28,622	29,440	30,257	31,075	31,892
GS–8	27,172	28,078	28,984	29,890	30,796	31,702	32,608	33,515	34,421	35,327
GS–9	30,012	31,012	32,012	33,012	34,012	35,013	36,013	37,013	38,013	39,013
GS–10	33,051	34,153	35,254	36,356	37,458	38,559	39,661	40,762	41,864	42,966
GS–11	36,313	37,524	38,734	39,945	41,156	42,366	43,577	44,788	45,998	47,209
GS–12	43,522	44,972	46,423	47,873	49,324	50,774	52,224	53,675	55,125	56,576
GS–13	51,754	53,478	55,203	56,928	58,653	60,377	62,102	63,827	65,552	67,276
GS–14	61,157	63,196	65,235	67,274	69,313	71,352	73,391	75,430	77,469	79,509
GS–15	71,938	74,335	76,733	79,131	81,528	83,926	86,323	88,721	91,119	93,516

Note: The adjusted rates of pay above apply only to General Schedule employees in the New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA, San Francisco-Oakland-San Jose, CA CMSA, and Los Angeles-Riverside-Orange County, CA CMSA. Law enforcement officers are entitled to higher rates of pay under salary tables 94–NY (LEO), 94–SF (LEO), and 94–LA (LEO 1). The adjusted rates of pay are considered basic pay only for certain purposes—see "1994 Salary Table for Interim Geographic Adjustments" cover sheet.

LOCALITY RATES OF PAY FOR MEMBERS OF THE SENIOR EXECUTIVE SERVICE AND EMPLOYEES IN SENIOR-LEVEL AND SCIENTIFIC OR PROFESSIONAL POSITIONS

[Effective January 1994]

Locality pay area	Salary Table No. 94–ES (LOC)—Senior Executive Service (SES)						Salary table No. 94–SL/ST (LOC)—Senior-level (SL) and Scientific or Professional (ST) Positions	
	ES–1	ES–2	ES–3	ES–4	ES–5	ES–6	Minimum	Maximum
Atlanta, GA	$96,486	$101,160	$105,729	$111,442	$116,115	$120,166	$83,016	$120,166
Boston-Worcester-Lawrence, MA–NH–ME–CT	97,982	102,728	107,368	113,169	117,915	122,029	84,303	122,029
Chicago-Gary-Kenosha, IL–IN–WI	97,861	102,601	107,236	113,030	117,770	121,878	84,199	121,878
Cincinnati-Hamilton, OH–KY–IN	96,820	101,510	106,096	111,828	116,518	120,583	83,304	120,583
Cleveland-Akron, OH	96,003	100,653	105,200	110,884	115,534	119,564	82,601	119,564
Dallas-Fort Worth, TX	96,811	101,501	106,086	111,817	116,507	120,571	83,296	120,571
Dayton-Springfield, OH	96,402	101,072	105,638	111,345	116,015	120,062	82,944	120,062
Denver-Boulder-Greeley, CO	97,118	101,822	106,422	112,171	116,876	120,953	83,560	120,953
Detroit-Ann Arbor-Flint, MI	97,396	102,114	106,727	112,493	117,211	121,300	83,800	121,300
Houston-Galveston-Brazoria, TX	98,957	103,750	108,437	114,296	119,089	1123,100	85,143	1123,100
Huntsville, AL	96,709	101,393	105,974	111,699	116,384	120,444	83,208	120,444
Indianapolis, IN	96,319	100,984	105,546	111,249	115,914	119,958	82,872	119,958
Kansas City, MO–KS	95,966	100,614	105,159	110,841	115,489	119,518	82,569	119,518
Los Angeles-Riverside-Orange County, CA	98,186	102,942	107,592	113,405	118,161	122,283	84,479	122,283
Memphis, TN–AR–MS	95,771	100,410	104,946	110,616	115,255	119,275	82,401	119,275
New York-N. New Jersey-Long Island, NY–NJ–CT–PA	98,260	103,020	107,674	113,491	118,251	122,376	84,543	122,376
Norfolk-Virginia Beach-Newport News, VA–NC	95,947	100,595	105,139	110,819	115,467	119,495	82,553	119,495
Oklahoma City, OK	96,003	100,653	105,200	110,884	115,534	119,564	82,601	119,564
Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD	97,508	102,231	106,849	112,622	117,345	121,439	83,896	121,439
Sacramento-Yolo, CA	96,328	100,994	105,556	111,259	115,925	119,969	82,880	119,969
St. Louis, MO–IL	95,771	100,410	104,946	110,616	115,255	119,275	82,401	119,275
Salt Lake City-Ogden, UT	95,771	100,410	104,946	110,616	115,255	119,275	82,401	119,275
San Antonio, TX	95,771	100,410	104,946	110,616	115,255	119,275	82,401	119,275
San Diego, CA	96,505	101,179	105,750	111,463	116,138	120,189	83,032	120,189
San Francisco-Oakland-San Jose, CA	98,641	103,419	108,091	113,931	118,709	122,850	84,871	122,850
Seattle-Tacoma-Bremerton, WA	96,542	101,218	105,791	111,506	116,183	120,235	83,064	120,235

LOCALITY RATES OF PAY FOR MEMBERS OF THE SENIOR EXECUTIVE SERVICE AND EMPLOYEES IN SENIOR-LEVEL AND SCIENTIFIC OR PROFESSIONAL POSITIONS—Continued

[Effective January 1994]

Locality pay area	Salary Table No. 94–ES (LOC)—Senior Executive Service (SES)						Salary table No. 94–SL/ST (LOC)—Senior-level (SL) and Scientific or Professional (ST) Positions	
	ES–1	ES–2	ES–3	ES–4	ES–5	ES–6	Minimum	Maximum
Washington-Baltimore, DC–MD–VA–WV	96,830	101,520	106,106	111,839	116,529	120,594	83,312	120,594
Rest of U.S	95,771	100,410	104,946	110,616	115,255	119,275	82,401	119,275

[1] Rate limited to the rate for level III of the Executive Schedule (5 U.S.C. 5304(g)(2)).

NOTE: Law enforcement officers are entitled to the rates on salary tables 94–ES (LEO) or 94–SL/ST (LEO), as appropriate. Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Members of the Senior Executive Service, Employees in Senior-Level and Scientific or Professional Positions, Administrative Law Judges, and Members of Boards of Contract Appeals" cover sheet.

LOCALITY RATES OF PAY FOR ADMINISTRATIVE LAW JUDGES AND MEMBERS OF BOARDS OF CONTRACT APPEALS

[Effective January 1994]

Locality pay area	Salary table No. 94–ALJ (LOC)—Administrative Law Judges								Salary table No. 94–BCA (LOC)—Members of Boards of Contract Appeals (BCA)		
	AL–3/A	AL–3/B	AL–3/C	AL–3/D	AL–3/E	AL–3/F	AL–2	AL–1	Chairman	Vice chairman	Other members
Atlanta, GA	$78,108	$84,116	$90,125	$96,133	$102,141	$108,149	$114,158	$120,166	$120,166	$116,561	$112,956
Boston-Worcester-Lawrence, MA–NH–ME–CT	79,319	85,420	91,522	97,623	103,724	109,826	115,927	122,029	122,029	118,368	114,707
Chicago-Gary-Kenosha, IL–IN–WI	79,221	85,315	91,409	97,503	103,597	109,691	115,784	121,878	121,878	118,222	114,566
Cincinnati-Hamilton, OH–KY–IN	78,379	84,408	90,437	96,466	102,495	108,524	114,553	120,583	120,583	116,965	113,348
Cleveland-Akron, OH	77,717	83,695	89,673	95,652	101,630	107,608	113,586	119,564	119,564	115,977	112,391
Dallas-Fort Worth, TX	78,371	84,400	90,428	96,457	102,485	108,514	114,542	120,571	120,571	116,954	113,337
Dayton-Springfield, OH	78,040	84,043	90,046	96,050	102,053	108,055	114,059	120,062	120,062	116,460	112,858
Denver-Boulder-Greeley, CO	78,619	84,667	90,715	96,762	102,810	108,858	114,905	120,953	120,953	117,324	113,696
Detroit-Ann Arbor-Flint, MI	78,845	84,910	90,975	97,040	103,105	109,170	115,235	121,300	121,300	117,661	114,022
Houston-Galveston-Brazoria, TX	80,108	86,271	92,433	98,595	104,757	110,919	117,081	123,100	123,100	119,546	115,849
Huntsville, AL	78,288	84,311	90,333	96,355	102,377	108,399	114,422	120,444	120,444	116,830	113,217
Indianapolis, IN	77,973	83,970	89,968	95,966	101,964	107,962	113,960	119,958	119,958	116,359	112,760
Kansas City, MO–KS	77,687	83,663	89,639	95,614	101,590	107,566	113,542	119,518	119,518	115,933	112,347
Los Angeles-Riverside-Orange County, CA	79,484	85,598	91,712	97,827	103,941	110,055	116,169	122,283	122,283	118,615	114,946
Memphis, TN–AR–MS	77,529	83,493	89,456	95,420	101,384	107,348	113,311	119,275	119,275	115,697	112,119
New York-N. New Jersey-Long Island, NY–NJ–CT–PA	79,544	85,663	91,782	97,901	104,020	110,138	116,257	122,376	122,376	118,705	115,033
Norfolk-Virginia Beach-Newport News, VA–NC	77,672	83,646	89,621	95,596	101,571	107,545	113,520	119,495	119,495	115,910	112,325
Oklahoma City, OK	77,717	83,695	89,673	95,652	101,630	107,608	113,586	119,564	119,564	115,977	112,391
Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD	78,935	85,007	91,079	97,151	103,223	109,295	115,367	121,439	121,439	117,796	114,152
Sacramento-Yolo, CA	77,980	83,979	89,977	95,975	101,974	107,972	113,971	119,969	119,969	116,370	112,771
St. Louis, MO–IL	77,529	83,493	89,456	95,420	101,384	107,348	113,311	119,275	119,275	115,697	112,119
Salt Lake City-Ogden, UT	77,529	83,493	89,456	95,420	101,384	107,348	113,311	119,275	119,275	115,697	112,119
San Antonio, TX	77,529	83,493	89,456	95,420	101,384	107,348	113,311	119,275	119,275	115,697	112,119
San Diego, CA	78,123	84,132	90,142	96,151	102,161	108,170	114,180	120,189	120,189	116,583	112,978
San Francisco-Oakland-San Jose, CA	79,853	85,995	92,138	98,280	104,423	110,565	116,708	122,850	122,850	119,165	115,479
Seattle-Tacoma-Bremerton, WA	78,153	84,165	90,177	96,188	102,200	108,212	114,224	120,235	120,235	116,628	113,021
Washington-Baltimore, DC–MD–VA–WV	78,386	84,416	90,446	96,475	102,505	108,535	114,564	120,594	120,594	116,976	113,358
Rest of U.S.	77,529	83,493	89,456	95,420	101,384	107,348	113,311	119,275	119,275	115,697	112,119

[1] Rate limited to the rate for level III of the Executive Schedule (5 U.S.C. 5304(g)(2)).

NOTE: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Members of the Senior Executive Service, Employees in Senior-Level and Scientific or Professional Positions, Administrative Law Judges, and Members of Boards of Contract Appeals" cover sheet.

SPECIAL LAW ENFORCEMENT ADJUSTED RATES OF PAY FOR MEMBERS OF THE SENIOR EXECUTIVE SERVICE AND EMPLOYEES IN SENIOR-LEVEL AND SCIENTIFIC OR PROFESSIONAL POSITIONS

[Effective January 1994]

Special pay adjustment area	Salary table No. 94–ES (LEO)—Senior Executive Service (SES)						Salary table No. 94–SL/ST (LEO)—Senior-Level (SL) and Scientific or Professional (ST) Positions	
	ES–1	ES–2	ES–3	ES–4	ES–5	ES–6	Minimum	Maximum
Boston-Worcester-Lawrence, MA–NH–ME–CT	$107,764	$112,984	$118,088	[1] $123,100	[1] $123,100	[1] $123,100	$92,720	[1] $123,100
Los Angeles-Riverside-Orange County, CA [2]	107,764	107,764	112,984	118,088	[1] 123,100	[1] 123,100	[1] 123,100	92,720
New York-N. New Jersey-Long Island, NY–NJ–CT–PA	107,764	112,984	118,088	[1] 123,100	[1] 123,100	[1] 123,100	92,720	[1] 123,100
San Diego, CA	100,332	105,192	109,944	115,884	120,744	[1] 123,100	86,325	[1] 123,100
San Francisco-Oakland-San Jose, CA	107,764	112,984	118,088	[1] 123,100	[1] 123,100	[1] 123,100	92,720	[1] 123,100

[1] Rate limited to the rate for level III of the Executive Schedule (5 U.S.C. 5304(g)(2)).

[2] Does not include Santa Barbara County or that portion of Edwards Air Force Base outside the Los Angeles-Riverside-Orange County, CA CMSA.

NOTE: Special law enforcement adjusted rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Members of the Senior Executive Service, Employees in Senior-Level and Scientific or Professional Positions, Administrative Law Judges, and Members of Boards of Contract Appeals" cover sheet.

1994 Salary Table for the Executive Schedule

January 1994

The scheduled rates of pay for the Executive Schedule were authorized under 5 U.S.C. 5318 and Executive Order 12826 of December 30, 1992. Public Law 103–123 canceled the general pay adjustment for the General Schedule for 1994, which resulted in no adjustment in the Executive Schedule for 1994.

Rates of Pay for the Executive Schedule

Effective January 1993

SALARY TABLE NO. 94–EX—EXECUTIVE SCHEDULE (EX)

	Annual rate
Level I	$148,400
Level II	133,600
Level III	123,100
Level IV	115,700
Level V	108,200

Definitions of Locality Pay Areas

The regulation defining the locality pay areas (5 CFR § 531.603) was issued by the Office of Personnel Management under the authority in 5 U.S.C. 5304(i). With two exceptions, the geographic boundaries of the pay localities for the first locality payments coincide with the boundaries of the 27 Metropolitan Statistical Areas (MSA's) and Consolidated Metropolitan Statistical Areas (CMSA's) within which the Bureau of Labor Statistics conducted salary surveys for locality pay purposes, plus 1 additional area composed of the "Rest of the United States." MSA's and CMSA's are defined by the Office of Management and Budget in OMB Bulletin No. 93–17, June 30, 1993.

The two exceptions are the Los Angeles-Riverside-Orange County, CA, and the Washington-Baltimore, DC–MD–VA–WV, locality pay areas. These two areas also include certain areas outside the corresponding CMSA's.

The definitions of the locality pay areas follow. Unless otherwise noted, all of the components listed below are counties. The geographic codes are maintained by the General Services Administration, which periodically publishes them in *Worldwide Geographic Location Codes*. The geographic codes listed for the majority of the pay areas consist of a 2-digit State and a 3-digit county identifier. When necessary, city codes were added to the geographic code. These areas are identified by a 2-digit State, a 4-digit city, and a 3-digit county code. The District of Columbia is identified by its 2-digit State code only.

In parts of the Boston and New York pay areas where nine-digit codes are used, this list covers all locations within the boundaries of the pay area that are listed in *Worldwide Geographic Location Codes*. Some minor civil divisions that are part of the OMB definition of the CMSA do not appear here because they have no geographic code. In some instances, there are multiple locations within a single minor civil division that have a geographic code. Each is listed here separately.

Atlanta, GA

13–013 Barrow
13–015 Bartow
13–045 Carroll
13–057 Cherokee
13–063 Clayton
13–067 Cobb
13–077 Coweta
13–089 DeKalb
13–097 Douglas
13–113 Fayette
13–117 Forsyth
13–121 Fulton
13–135 Gwinnett
13–151 Henry
13–217 Newton
13–223 Paulding
13–227 Pickens
13–247 Rockdale
13–255 Spalding
13–297 Walton

Boston-Worcester-Lawrence, MA–NH–ME–CT

Massachusetts

25–009 all of Essex County
25–017 all of Middlesex County
25–021 all of Norfolk County
25–023 all of Plymouth County
25–025 all of Suffolk County

The following parts of Bristol County:
250007005 Acushnet
250039005 Assonet
250096005 Berkley
250188005 Chartley
250251005 Dartmouth

250254005 Dighton
250281005 East Freetown
250299005 Easton
250315005 Fairhaven
250385005 Freetown
250670005 Mansfield
250850005 New Bedford
250911005 North Dartmouth
250912005 North Dighton
250913005 North Easton
250924005 Norton
251064005 Raynham
251062005 Raynham Center
251135005 Segreganset
251219005 South Dartmouth
251225005 South Easton
251280005 Taunton

The following part of Hampden County:
250489013 Holland

The following parts of Worcester County:
250032027 Ashburnham
250055027 Auburn
250079027 Barre
250080027 Barre Plains
250098027 Berlin
250110027 Blackstone
250117027 Bolton
250123027 Boylston
250150027 Brookfield
250185027 Charlton
250186027 Charlton City
250189027 Charlton Depot
250220027 Clinton
250252027 Douglas
250263027 Dudley
250272027 East Brookfield
250280027 East Douglas
250297027 East Princeton
250332027 Fayville
250350027 Fitchburg
250390027 Gardner
250436027 Grafton
250467027 Harvard
250480027 Holden
250510027 Hopedale
250555027 Jefferson
250565027 Lancaster
250585027 Leicester
250610027 Leominster
250619027 Linwood
250640027 Lunenburg
250664027 Manchaug
250745027 Mendon
250780027 Milford
250785027 Millbury
250820027 Millville
250834027 Morningdale
250900027 Northborough
250902027 Northbridge
250910027 N. Brookfield
250916027 N. Grafton
250918027 N. Oxford
250927027 N. Uxbridge
250944027 Oakdale
250943027 Oakham
250980027 Oxford
250999027 Paxton
251045027 Princeton
251080027 Rochdale
251100027 Rutland
251172027 Shrewsbury
251200027 South Barre
251203027 South Berlin
251204027 Southborough
251210027 Southbridge
251228027 South Grafton
251240027 South Lancaster
251260027 Spencer
251273027 Sterling
251266027 Sterling Junction
251271027 Still River
251278027 Sturbridge
251269027 Sutton
251283027 Templeton
251310027 Upton
251320027 Uxbridge
251376027 Waterville
251380027 Webster
251390027 Westborough
251395027 West Boylston
251410027 West Brookfield
251439027 Westminster
251455027 West Upton
251470027 Whitinsville
251500027 Winchendon
251520027 Worcester

New Hampshire

The following parts of Hillsborough County:
330011011 Amherst
330018011 Bedford
330031011 Brookline
330160011 Goffstown
330180011 Greenville
330234011 Hollis
330240011 Hudson
330299011 Litchfield
330310011 Manchester
330324011 Mason
330334011 Merrimack
330340011 Milford
330344011 Mont Vernon
330350011 Nashua
330357011 New Ipswich
330401011 Pelham
330434011 Reeds Ferry
330509011 Weare
330540011 Wilton

The following part of Merrimack County:
330236013 Hooksett

The following parts of Rockingham County:
330012015 Atkinson
330013015 Auburn
330025015 Brentwood
330032015 Candia
330045015 Chester
330087015 Danville
330085015 Derry
330105015 East Derry
330108015 East Hampstead
330112015 East Kingston
330123015 Epping
330130015 Exeter
330153015 Fremont
330176015 Greenland
330195015 Hampstead
330200015 Hampton
330199015 Hampton Beach
330201015 Hampton Falls
330252015 Kensington
330255015 Kingston
330305015 Londonderry
330355015 New Castle
330354015 Newfields
330356015 Newington
330370015 Newmarket
330381015 Newton
330382015 Newton Junction
330391015 North Hampton
330384015 North Salem
330417015 Plaistow
330430015 Portsmouth
330435015 Raymond
330445015 Rye
330447015 Rye Beach
330448015 Salem
330462015 Sandown
330466015 Seabrook
330474015 South Danville
330475015 South Hampton
330478015 Stratham
330533015 West Rye
330527015 Westville
330551015 Windham

The following parts of Strafford County:
330029017 Barrington
330090017 Dover
330100017 Durham
330140017 Farmington
330281017 Lee
330311017 Madbury
330342017 Milton
330345017 Milton Mills
330440017 Rochester
330443017 Rollinsford
330470017 Somersworth

Maine

The following parts of York County:
230450031 Berwick
231445031 Cape Neddick
232450031 Eliot
234250031 Kittery
234300031 Kitterypoint
237450031 South Berwick
239800031 York
239900031 York Beach
239950031 York Harbor

Connecticut

The following parts of Windham County:
090231015 Fabyan
090259015 Grosvenordale
090373015 Mechanicsville
090500015 N. Grosvenordale
090603015 Quinebaug
090749015 Thompson

Chicago-Gary-Kenosha, IL–IN–WI

Illinois

17–031 Cook
17–037 DeKalb
17–043 DuPage
17–063 Grundy
17–089 Kane
17–091 Kankakee
17–093 Kendall
17–097 Lake
17–111 McHenry
17–197 Will

Indiana

18–089 Lake
18–127 Porter

Wisconsin

55–059 Kenosha

Cincinnati-Hamilton, OH–KY–IN

Ohio

39–015 Brown
39–017 Butler
39–025 Clermont
39–061 Hamilton
39–165 Warren

Kentucky

21–015 Boone
21–037 Campbell
21–077 Gallatin
21–081 Grant
21–117 Kenton
21–191 Pendleton

Indiana

18–029 Dearborn
18–115 Ohio

Cleveland-Akron, OH

39–007 Ashtabula
39–035 Cuyahoga
39–055 Geauga
39–085 Lake
39–093 Lorain
39–103 Medina
39–133 Portage
39–153 Summit

Dallas-Fort Worth, TX

48–085 Collin
48–113 Dallas
48–121 Denton
48–139 Ellis
48–213 Henderson
48–221 Hood
48–231 Hunt
48–251 Johnson
48–257 Kaufman
48–367 Parker
48–397 Rockwall
48–439 Tarrant

Dayton-Springfield, OH

39–023 Clark
39–057 Greene
39–109 Miami
39–113 Montgomery

Denver-Boulder-Greeley, CO

08–001 Adams
08–005 Arapahoe
08–013 Boulder
08–031 Denver
08–035 Douglas
08–059 Jefferson
08–123 Weld

Detroit-Ann Arbor-Flint, MI

26–049 Genesee
26–087 Lapeer
26–091 Lenawee
26–093 Livingston
26–099 Macomb
26–115 Monroe
26–125 Oakland
26–147 St. Clair
26–161 Washtenaw
26–163 Wayne

Houston-Galveston-Brazoria, TX

48–039 Brazoria
48–071 Chambers
48–157 Fort Bend
48–167 Galveston
48–201 Harris
48–291 Liberty
48–339 Montgomery
48–473 Waller

Huntsville, AL

01–083 Limestone
01–089 Madison

Indianapolis, IN

18–011 Boone
18–057 Hamilton
18–059 Hancock
18–063 Hendricks
18–081 Johnson
18–095 Madison
18–097 Marion
18–109 Morgan
18–145 Shelby

Kansas City, MO–KS

Missouri

29–037 Cass
29–047 Clay
29–049 Clinton
29–095 Jackson
29–107 Lafayette
29–165 Platte
29–177 Ray

Kansas

20–091 Johnson
20–103 Leavenworth
20–121 Miami
20–209 Wyandotte

Los Angeles-Riverside-Orange County, CA

06–037 Los Angeles
06–059 Orange
06–065 Riverside
06–071 San Bernardino
06–083 Santa Barbara
06–111 Ventura
061077029 Edwards Air Force Base

Memphis, TN–AR–MS

Tennessee

47–047 Fayette
47–157 Shelby
47–167 Tipton

Arkansas

05–035 Crittenden

Mississippi

28–033 DeSoto

NewYork-Northern New Jersey-Long Island, NY–NJ–CT–PA

New York

36–005 Bronx
36–027 Dutchess
36–047 Kings
36–059 Nassau
36–061 New York
36–071 Orange
36–079 Putnam
36–081 Queens
36–085 Richmond
36–087 Rockland
36–103 Suffolk
36–119 Westchester

New Jersey

34–003 Bergen
34–013 Essex
34–017 Hudson
34–019 Hunterdon
34–021 Mercer
34–023 Middlesex
34–025 Monmouth
34–027 Morris
34–029 Ocean
34–031 Passaic
34–035 Somerset
34–037 Sussex
34–039 Union
34–041 Warren

Connecticut

09–001 all of Fairfield County
09–009 all of New Haven County

The following parts of Litchfield County:
090051005 Bethlehem
090083005 Bridgewater
090247005 Gaylordsville
090372005 Marbie Dale
090450005 New Milford
090454005 New Preston
090535005 Oakville
090629005 Roxbury
090740005 Thomaston
090802005 Washington
090805005 Washington Depot
090817005 Watertown
090857005 Woodbury

The following parts of Middlesex County:

090130007 Clinton
090332007 Killingworth

Pennsylvania

42–103 Pike

Norfolk-Virginia Beach-Newport News, VA–NC

Virginia

51–073 Gloucester
51–093 Isle of Wight
51–095 James City County
51–115 Mathews
51–199 York
51–550 Chesapeake city
51–650 Hampton city
51–700 Newport News city
51–710 Norfolk city
51–735 Poquoson city
51–740 Portsmouth city
51–800 Suffolk city
51–810 Virginia Beach city
51–830 Williamsburg city

North Carolina

37–053 Currituck

Oklahoma City, OK

40–017 Canadian
40–027 Cleveland
40–083 Logan
40–087 McClain
40–109 Oklahoma
40–125 Pottawatomie

Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD

Pennsylvania

42–017 Bucks
42–029 Chester
42–045 Delaware
42–091 Montgomery
42–101 Philadelphia

New Jersey

34–001 Atlantic
34–005 Burlington
34–007 Camden
34–009 Cape May
34–011 Cumberland
34–015 Gloucester
34–033 Salem

Delaware

10–003 New Castle

Maryland

24–015 Cecil

Sacramento-Yolo, CA

06–017 El Dorado
06–061 Placer
06–067 Sacramento
06–113 Yolo

St. Louis, MO-IL

Missouri

The following part of Crawford County:

297630055 Sullivan City
29–071 Franklin
29–099 Jefferson
29–113 Lincoln
29–183 St. Charles
29–189 St. Louis
29–219 Warren
29–510 St. Louis city

Illinois

17–027 Clinton
17–083 Jersey
17–119 Madison
17–133 Monroe
17–163 St. Clair

Salt Lake City-Ogden, UT

49–011 Davis
49–035 Salt Lake
49–057 Weber

San Antonio, TX

48–029 Bexar
48–091 Comal
48–187 Guadalupe
48–493 Wilson

San Diego, CA

06–073 San Diego

San Francisco-Oakland-San Jose, CA

06–001 Alameda
06–013 Contra Costa
06–041 Marin
06–055 Napa
06–075 San Francisco
06–081 San Mateo
06–085 Santa Clara
06–087 Santa Cruz
06–095 Solano
06–097 Sonoma

Seattle-Tacoma-Bremerton, WA

53–029 Island
53–033 King
53–035 Kitsap
53–053 Pierce
53–061 Snohomish
53–067 Thurston

Washington-Baltimore, DC-MD-VA-WV

11 District of Columbia

Maryland

24–003 Anne Arundel
24–005 Baltimore
24–009 Calvert
24–013 Carroll
24–017 Charles
24–021 Frederick
24–025 Harford
24–027 Howard
24–031 Montgomery
24–033 Prince George's
24–035 Queen Anne's
24–037 St. Mary's
24–043 Washington
24–510 Baltimore city

Virginia

51–013 Arlington
51–043 Clarke
51–047 Culpeper
51–059 Fairfax
51–061 Fauquier
51–099 King George
51–107 Loudoun
51–153 Prince William
51–177 Spotsylvania
51–179 Stafford
51–187 Warren
51–510 Alexandria city
51–600 Fairfax city
51–610 Falls Church city
51–630 Fredericksburg city
51–683 Manassas city
51–685 Manassas Park city

West Virginia

54–003 Berkeley
54–037 Jefferson

Rest of U.S.

Those portions of the 48 contiguous States and the District of Columbia not located within another locality pay area.

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Federal Register

Friday
February 18, 1994

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 56, et al.
Air Quality: Health Standards for Abrasive Blasting and Drill Dust Control; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 58, 70, and 72

RIN 1219–AA48

Air Quality; Health Standards for Abrasive Blasting and Drill Dust Control

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule addresses abrasive blasting and drill dust control at all metal and nonmetal and coal mines. The final rule retains existing requirements for rock drilling operations at metal and nonmetal mines and establishes new requirements for rock drilling operations at surface coal mines and surface work areas of underground coal mines. The final rule also revises existing requirements for rock drilling operations at underground coal mines. In addition, it establishes new specific standards for abrasive blasting operations at coal mines and expands existing provisions at metal and nonmetal mines.

EFFECTIVE DATE: April 19, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey; Director, Office of Standards, Regulations and Variances; MSHA; (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

On August 29, 1989 (54 FR 35760), MSHA published a notice in the **Federal Register** inviting public comment on a proposed rule on air quality, chemical substances, and respiratory protection in mining. The proposed rule addressed means of controlling exposure to hazardous substances, permissible exposure limits, exposure monitoring, dangerous atmospheres, respiratory protection, carcinogens, asbestos construction work, drill dust control, abrasive blasting, and prohibited areas for food and beverages. This final rule addresses abrasive blasting and drill dust control, which are the first of these sections to be completed.

In comments on the proposal, the Agency received requests to hold public hearings. In response, the Agency held three sets of public hearings on the proposed rule. The first set of public hearings, which specifically addressed abrasive blasting and drill dust control, was held in Denver, Colorado, on June 4, 1990, and in Pittsburgh, Pennsylvania, on June 7, 1990. Following the public hearings, the record remained open until August 30, 1991, to allow interested persons to submit supplementary statements and data.

During the rulemaking process, MSHA received written and oral comments from all segments of the mining community. The Agency's final rule addresses the comments received and is consistent with the goals of the Federal Mine Safety and Health Act of 1977 (Mine Act), Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

After analyzing the comments received, the public hearing testimony, and technical and health data, the Agency is issuing this final rule on abrasive blasting and drill dust control to address immediate health concerns. The final rule makes no substantive changes to existing regulations for drill dust control at metal and nonmetal mines and at underground coal mines. However, the final rule establishes new requirements for drill dust control at surface coal mines. The final rule also expands existing requirements for abrasive blasting at metal and nonmetal mines and establishes new requirements for both surface and underground coal mines. The existing respirable coal mine dust standards in parts 70, 71, and 90 are unaffected by this final rule.

This final rule is consistent with section 101(a)(6)(A) of the Mine Act, which mandates the development of standards dealing with toxic substances to attain the highest degree of protection possible for miners. Section 101(a)(6)(A) also requires MSHA to take into consideration the latest available scientific data in the field, the feasibility of the standards, and experience gained under the Mine Act and other health and safety laws.

This rulemaking codifies health standards for abrasive blasting and drill dust control in a new part 58 for metal and nonmetal mines and a new part 72 for coal mines. In the following discussion, the designation "58/72" indicates that a standard appears in both parts 58 and 72.

In an effort to fully explore the issues presented by this rulemaking, MSHA has included in the rulemaking record several scientific studies concerning abrasive blasting and drill dust control that were published after the close of the comment period on August 30, 1991. These references are CDC/NIOSH Alert * * * Lead Poisoning in Construction Workers, April 1992; CDC/NIOSH Alert * * * Silicosis and Deaths in Rock Drillers, August 1992; CDC/NIOSH Alert * * * Silicosis and Deaths From Sandblasting, August 1992; Goodman et al., 1992; and Mickelsen and Froehlich, May 1993. None of these references are entirely new data, but rather they further confirm the Agency's rulemaking decision and address concerns raised by commenters. MSHA reviewed these documents in order to attain its statutory obligation to consider the latest available scientific data in the field.

II. General Introduction

Whenever miners conduct abrasive blasting or drilling they are exposed to serious health hazards that require implementation of specific dust controls before engaging in the activity. Enforcement by using the permissible exposure limits alone would provide inadequate protection for miners in these activities. During abrasive blasting and drilling, there is the potential for extremely high exposures in short periods of time to both the miners doing the abrasive blasting or drilling and to other miners in the immediate area. Relying on samples could allow miners to receive extremely hazardous doses of contaminants before sampling results could be analyzed. In addition, miners could face rapidly changing environments, all having potential for high exposure. In addition, during abrasive blasting, although the type of abrasive material may remain constant, the coatings of the base material and the accumulated contaminants in the recycled abrasive material may cause exposure to vary widely (Rekus, 1988; Mickelsen and Froehlich, 1993).

Administrative controls, which control exposures by limiting the amount of time a miner is in a contaminated atmosphere, are not appropriate for abrasive blasting and drilling operations. Inherent in the effective use of administrative controls is the assumption that the environmental exposure will remain constant or predictable. This is not characteristic of these two operations.

Due to the nature of the work being performed, the location of these activities can change rapidly. The frequent change of location also can make it extremely difficult to get sampling results quickly enough to effectively evaluate a miner's current exposure. This is particularly true in the case of independent contractors who, by the time sampling results are evaluated, may have moved to another location or mine. There also exists the problem of maintaining sample integrity during abrasive blasting operations. When sampling is done outside of an abrasive blasting hood, high velocity rebounding or ricocheting abrasive material from the blasted surface can destroy the sample.

Because of these factors, the final rule specifies engineering controls for drill dust control at all mines and requires a totally enclosed system or an abrasive blasting respirator during abrasive blasting operations.

Exposure to silica is a significant health hazard in abrasive blasting and in drilling. When workers inhale silica, the lungs react by developing fibrotic nodules and scarring around the trapped silica particles. This condition is known as silicosis and can result in respiratory difficulty and eventually death. Symptoms associated with silicosis include shortness of breath, fever, and cyanosis. Severe fungal or mycobacterial infections, such as tuberculosis, often cause complications and may be fatal. Dust-impaired macrophages can no longer function effectively in fighting disease by killing mycobacteria and other organisms.

It is generally believed that the silica dust overwhelms macrophages in the lungs (Craighead et al., 1988). This can be due to silica toxicity or to a combination of toxicity and dust overload (Morrow, 1988; Claypool, 1988; Berkow, 1987). When a person is exposed to respirable dust containing crystalline silica, three types of silicosis may occur, depending on the dust concentration. Chronic silicosis usually occurs following relatively low exposures over 10 or more years. Accelerated silicosis results from exposure to high concentrations over 5 to 10 years. Acute silicosis or silico-proteinosis occurs from exposure to the highest concentrations, with symptoms developing within a few weeks to 4 or 5 years from initial exposure (Merchant, 1986). Acute silicosis is characterized by the accumulation of an amorphous granular lipoprotein released into the air spaces and rapid development of respiratory disability in a few years (Vallyathan, 1988). Silico-proteinosis results from dust overload as well as silica toxicity (Claypool, 1988; Morrow, 1988; Heppleston et al., 1970; Rubin et al., 1980).

When particles impact a surface during abrasive blasting, they typically fracture into finer particles and become airborne. Inhalation of freshly fractured silica particles appears to produce a more severe lung reaction. Vallyathan (1988) studied freshly fractured silica dust and found it exhibited more toxic characteristics than silica that had aged at least 30 hours. Freshly fractured silica can react with water to release short-lived oxygenated free radicals. Alveolar macrophages are stimulated to a greater extent by freshly fractured free silica than silica that has been aged. Vallyathan theorizes that this freshly fractured silica and macrophage interaction may contribute to development of acute silicosis, which is associated with sandblasting, rock drilling, tunnelling, and silica flour mill operations.

III. Abrasive Blasting

A. Introduction

Abrasive blasting is the technique of projecting particles to remove paint or other unwanted substances from a surface for the purpose of preparing it for painting, welding, or other activities. In mining, the location and type of equipment being cleaned by abrasive blasting may change during every operation. The abrasive material can be composed of a single substance, such as silica, or a composite material, such as slag. The abrasive material, as well as anything removed from the object or surface, can become airborne. In some instances, the abrasive material can be collected and reused. This process has the potential for accumulation of various toxic substances, such as lead from paint (Rekus, 1988; CDC/NIOSH Alert, April 1992; Mickelsen and Froehlich, 1993). The exposure hazard associated with abrasive blasting is dependent on the type of abrasive blasting conducted, the type of abrasive material used, and the substance being abraded. Abrasive blasting represents a unique situation in mining that is difficult to control by using traditional means.

There are several different methods of abrasive blasting. Air pressure blasting is the most commonly used technique in mining. In this process, air pressure is used to propel abrasive material at a high velocity against an object to abrade unwanted substances from its surface. This type of abrasive blasting has the greatest potential to cause overexposure to toxic substances resulting from the abrasive material itself or the substances removed.

Another abrasive blasting method uses abrasive material entrained in water or other liquid media. The abrasive material is propelled by either liquid pressure or a combination of liquid and air pressure. The abrasive material entrained in the liquid media is forced to strike an object at a high velocity, which causes unwanted substances to be abraded. Though the potential for overexposure is reduced by the water used in this method, a health hazard still exists due to small fractured particles found in the mist that is generated. After blasting, cleanup of dried materials also can be a potential exposure problem (Craighead et al., 1988).

In mining, abrasive blasting is a commonly used method of cleaning surfaces in preparation for painting or welding. It is generally done on a periodic basis, most commonly during maintenance procedures and plant overhaul. For these activities, the hazards of abrasive blasting in mining are the same as those in general industry. The references cited in this preamble generally relate to studies conducted on non-miners. Documentation of similar disease prevalence in miners performing abrasive blasting is limited because miners who perform abrasive blasting are grouped into maintenance or general laborer job categories and, thus, are often difficult to identify. Also, many mine operators employ independent contractors to perform these activities, and disease prevalence among such contractors is difficult to track. Because the process and materials are essentially the same in mining as in general industry, MSHA believes that miners performing abrasive blasting experience risks similar to those described in the scientific studies cited in this preamble that address industries other than mining.

B. Background

1. Metal and Nonmetal Mining

Existing metal and nonmetal standards at 30 CFR 56/57.5010 prohibit the use of silica sand or other materials containing more than 1 percent free silica as an abrasive material in abrasive blasting at all surface mines and at the surface areas of underground mines, unless all exposed persons are protected by a full-flow respirator or equivalent. Existing § 57.5016 prohibits the use of silica sand or other materials containing more than 1 percent free silica as an abrasive substance in abrasive blasting operations underground.

The majority of abrasive blasting performed at metal and nonmetal mines is conducted on the surface and most of these operations are carried out by hand-held dry blasting methods. In almost all of these operations, abrasive blasting hoods with supplied air are used to protect the worker. These hoods are approved by the National Institute for Occupational Safety and Health (NIOSH). Also, small abrasive blasting work boxes are used in some maintenance shops.

2. Coal Mining

Currently, MSHA does not specifically regulate abrasive blasting at surface and underground coal mines. However, 30 CFR 75.1720 and 77.1710 require protective clothing for protection against the impact of particles from such operations at coal mines. Abrasive blasting occurs at a

small number of surface and underground coal mines and then only on an infrequent basis. These operations may be performed by either the mine operator or an independent contractor. MSHA has observed abrasive blasting at coal mines where adequate respiratory protection was not being worn. Due to the serious health risk of overexposure to crystalline silica and other materials being used, the final rule requires the use of engineering controls or personal protective equipment at all abrasive blasting operations.

C. Abrasive Blasting—Toxicity

For many years, abrasive blasters have been considered to be at high risk of developing silicosis (Craighead et al., 1988). The use of sandblasting for the purpose of cleaning metal surfaces before painting has been prohibited by law in the United Kingdom since 1949 and in the European Economic Community since 1966 (Ziskind, 1976). The increased use of sand as an abrasive in the United States since World War II was noted to have produced a resurgence of accelerated silicosis in sandblasters (Ziskind, 1976). In 1974, NIOSH recommended that silica (or other substances containing more than 1 percent free silica) be prohibited as an abrasive blasting material (NIOSH, 1974).

Early reports of acute silicosis among sandblasters include Buechner and Ansari (1969), who reported evidence of an alveolar proteinosis-like response of pulmonary tissue to occupational silica exposure. Autopsy examination of four sandblasters revealed silica crystals and a protein material in the lungs. The workers had sandblasted for an average period of 4 years.

Abrasive blasters are also at high risk of developing active tuberculosis (Bailey et al., 1974). Merewether (1936) found that the average duration of employment at the time of death was 8.3 years for abrasive blasters with silico-tuberculosis, compared to 32 years for this fatal combination in other occupations. Bailey et al. (1974) also found similar results. Merewether (1936) reported that 5.4 percent (24 of 441) of the sandblasters in his study in Great Britain died from silicosis or silicosis with tuberculosis in a 3.5-year period.

In 1988, a physician reported three cases of silicosis in sandblasters (CDC MMWR, 1990). One of these individuals, a 34-year-old man, died with acute silicotic alveolar proteinosis. Later investigations revealed an additional seven sandblasters who had silicosis. All worked at one facility that used a mixture of flint and garnet to sandblast oil pipe. The mean duration of exposure was 4.5 years, with one case as short as 18 months. Blast cabinets and protective booths were poorly designed and not maintained. Workers wore only disposable respirators and none had been fit tested.

In another case, a 49-year-old nonsmoker with a 6-year history as a sandblaster was admitted to a hospital complaining of difficulty in breathing, cough, lack of appetite, fever and a 20-lb weight loss (Owens et al., 1988). He was diagnosed with chronic silicosis and bacterial pneumonia and died on the twentieth day of his hospital stay.

Four sandblasters in a tombstone factory developed acute silicosis after an average of 3-years' exposure at ages 23, 37, 38, and 47 (Suratt et al., 1977). Three of the four are known to have died from silicosis. It was determined that the blasting agent used during sandblasting contained 98 percent crystalline free silica. The employees worked inside enclosed but vented blasting chambers and wore negative pressure half-mask respirators with disposable filters.

Bailey et al. (1974) examined the records of 88 sandblaster-painters who were admitted to Charity Hospital in New Orleans. Of these, 83 had silicosis and 22 were confirmed as having tuberculosis. The mean age of these 22 individuals was 44, with an average exposure of 10 years. At the time of the study, 27 percent (8 of 22) had died. Three of these individuals died of "acute" silicosis, which had characteristics of pulmonary alveolar proteinosis. The average age at the time of death was 44.2 years, with an average exposure of 8.3 years. The authors note that in almost all of the 22 cases, the sandblaster hoods were not attached to an external air supply.

Samimi et al. (1974) studied sandblasting and associated workers on steel fabrication yards. They sampled sandblasters and workers physically located near the abrasive blasting operations. Personal exposure of helpers, pot handlers, painters, and welders indicated an average exposure from 1.9 to 7.4 times the permissible threshold limit value (TLV), with the helper having the highest exposure among the secondary occupations. Environmental samples on the outside of abrasive blasting hoods were as high as 37.25 mg/m³, which was 318 times the TLV. Samples taken inside non-supplied-air abrasive blasting hoods exceeded the TLV in all cases, with the highest exposure being 80 times the TLV. Although sampling data indicated that overexposures occurred with supplied-air respirators being used, the authors noted that this may have been due to sampling during times when the respirator was not continually worn, as well as to poorly maintained equipment. Samples taken under modern and well-maintained hoods indicate exposures would be only one-third of the TLV.

In studies, other abrasives used instead of silica also have been demonstrated to be fibrogenic. MacKay et al. (1980) found that commercial coal-slag derived grit produced pulmonary fibrosis in rats. The copper slag tested did not produce fibrosis, but did produce granulomas.

Stettler et al. (1988) studied the fibrogenic and carcinogenic potential of copper and nickel smelter slags that have been used as a substitute for sand in abrasive blasting. The copper slags not only produced some fibrosis, but also produced lung tumors in the rats. The authors were unable to determine the exact causative agent because many trace elements, such as arsenic and beryllium, were present in the slags.

D. Control Technology

Abrasive blasting creates high particulate concentrations within open or enclosed spaces where the work is performed. The force of the abrasive stream (60 to 120 pounds per square inch (psi)) produces fine fragments of respirable size (less than 10 micrometers (μm) in diameter). A high percentage of the particles are in the 1 to 3 μm range in which alveolar deposition is significant (Bailey et al., 1974).

MSHA recognizes that there are limitations in the engineering controls for abrasive blasting in mining. Abrasive blasting, by its nature, is used to prepare equipment for maintenance. Because the equipment to be prepared can vary considerably in size and location at the mine, it would be extremely costly and technically very difficult to build temporary enclosures around the equipment with properly designed ventilation and dust filtration equipment to prevent exposure to miners. Some small equipment can be easily moved, which allows for abrasive blasting of that equipment to be performed in commercially available boxes, cabinets, or blasting rooms. Blast cleaning cabinets are used to clean relatively small objects that can be manipulated by hand. When using blasting cabinets, the operator stands outside of the enclosed cabinet and uses a set of attached gloves or remote controls to perform the blasting operation inside the enclosure. The blasting media is maintained inside the enclosed cabinet by negative pressure. When operators use a properly designed and maintained blasting cabinet, exposure to hazardous material is minimal.

The majority of abrasive blasting in mining is done on large equipment at varied locations on the mine site. In these cases, the primary means of controlling exposure is the NIOSH-approved abrasive blasting hood. This hood has the advantage of providing safety protection from the impact of projected particles, as well as respiratory protection from toxic materials.

E. Summary and Explanation of Rule

Paragraph (a) of §§ 58/72.610 is derived from existing §§ 56/57.5010 for metal and nonmetal mines. Sections 56/57.5010 prohibit the use of materials containing more than 1 percent free silica as an abrasive substance in abrasive blasting operations at surface areas of metal and nonmetal mines, unless all exposed persons are protected with full-flow respirators or equivalent. Under the final rule, when an abrasive blasting operation is performed, all exposed miners must properly use respirators approved for abrasive blasting by NIOSH or the operation must be done in a totally enclosed device.

A commenter to the proposed rule recommended that MSHA require supplied-air respirators at surface mines, unless the work being performed was in a totally enclosed device with the operator outside the device. This commenter stated that eliminating silica-containing materials from abrasive blasting will not necessarily eliminate the associated health hazards, because animal experiments with other abrasive substitutes have produced fibrosis or scarring of the lungs. In addition, NIOSH recommended that abrasive blasting respirators be used whenever there is detectable silica in the abrasive blasting material, even when it constitutes less than 1 percent.

MSHA agrees with the commenter that other abrasive materials can present a health hazard in abrasive blasting. The final rule, therefore, expands the scope of the proposed rule to address these hazards by requiring respirators approved for abrasive blasting to be used when abrasive blasting is conducted, unless the work is performed in a totally enclosed device with the operator outside the device. Abrasive blasting respirators will also provide the necessary safety protection because they are designed to protect the wearer's head and neck against impact and abrasion from rebounding material, as well as provide respiratory protection. The impact of high-velocity rebounding or ricocheting abrasive material from the blasted surface can penetrate other types of personal protective equipment.

Existing metal and nonmetal §§ 56/57.5010 require the use of "full-flow respiratory protection or equivalent" when using abrasives containing more than 1 percent free silica. "Full-flow" is an outdated term referring to a respirator that had a flow of air mechanically forced into the facepiece, as opposed to a negative-pressure respirator that requires inhalation by the wearer to bring air through the filter into the facepiece. A "full-flow" respirator does not easily correspond to current NIOSH certification of respiratory protection. The proposed rule replaced "full-flow respiratory protection or equivalent" with "supplied-air respirator approved for abrasive blasting" which required NIOSH approval for that use.

Since the publication of the proposed rule, powered air-purifying respirators have received NIOSH approval for use in abrasive blasting operations. Powered air-purifying respirators approved by NIOSH for abrasive blasting would meet the current standard of "full-flow respiratory protection or equivalent." Therefore, MSHA is deleting the words "supplied-air" in the final rule to permit the use of any respirator approved by NIOSH for abrasive blasting. This will not result in any diminution of safety for the miner, but will permit the use of any new respiratory protection that has been approved by NIOSH for abrasive blasting operations.

NIOSH recommended banning the use of any product containing more than 1 percent free silica as an abrasive substance at all mines. They also recommended banning the use underground of any product that contained any detectable silica, including those containing less than 1 percent. NIOSH suggested that at surface operations where abrasive blasting products containing any detectable silica up to 1 percent are used, MSHA should require the use of abrasive blasting respirators.

In the preamble to the proposed rule, MSHA used the terms "quartz" and "free silica" interchangeably in the discussion on abrasive blasting, although the term "1 percent quartz" was used in the proposed rule itself. NIOSH in its comments expressed concern about the proposed exemption of material containing "1 percent free silica or less." In the final rule, MSHA is using "1 percent free silica" which is consistent with the wording of the current metal and nonmetal standard and is the term used by NIOSH.

MSHA disagrees with the suggestion that substances containing more than 1 percent free silica be banned at surface locations. Adequate protection will be provided to miners with the requirement that miners exposed to abrasive blasting use respirators approved for abrasive blasting or the operation be conducted in totally enclosed devices. Several types of abrasive blasting enclosures are commercially available and can be used successfully to control exposure to all contaminants, not just silica. Alternatively, abrasive blasting respirators also offer protection against all contaminants, including silica. As a result, the final rule does not ban the use of abrasive blasting materials containing silica at surface operations.

One commenter recommended monitoring of the environment when abrasive blasting products containing less than 1 percent free silica are used. This commenter suggested that abrasive blasting respirators or engineering controls be required if the level of exposure to respirable quartz dust at surface operations exceeds 50 μg/m³. The requirement in the final rule requiring enclosure or abrasive blasting respirators affords more protection to the miners.

Other commenters recommended that the proposed section on abrasive blasting be deleted and that an exposure limit for silica sand govern the exposure during abrasive blasting operations. Because of factors previously discussed, specifying controls is necessary. Generally, it is not practical to conduct monitoring in an abrasive blasting zone because the sampling device could be destroyed or damaged by rebounding material. In addition, because of the wide variability in blasting operations, sampling is often inadequate as a means of assessing the miners' exposures. The safety hazard associated with abrasive blasting is such that hoods or enclosures are necessary to ensure better protection for miners engaged in abrasive blasting activities.

Paragraph (b) of §§ 58/72.610 is derived from existing metal and nonmetal § 57.5016 and prohibits the use of silica sand or other materials containing more than 1 percent free silica as an abrasive substance in abrasive blasting at underground mines. Currently, MSHA does not explicitly regulate abrasive blasting underground at coal mines. However, § 75.1720 requires protective clothing for protection against the impact of particles from such operations. NIOSH and the majority of commenters recommended that abrasive blasting materials containing more than 1

percent free silica be banned underground. MSHA agrees because airborne respirable silica could be carried from an abrasive blasting operation throughout the mine by the ventilation system, thus exposing unprotected miners. In addition, there are substitute abrasives that have been used effectively for this type of work underground. Accordingly, the Agency has retained the provision from the proposed rule which would ban the use underground of abrasive blasting materials containing more than 1 percent free silica.

Because §§ 58/72.500, respiratory protection, of the proposed Air Quality standard have not been promulgated, MSHA uses the term "properly used" and "approved by NIOSH" in § 72.610(a) to assure protection. Section 58.610 refers to §§ 56/57.5005 to assure continued proper use of respiratory protection. When the respiratory protection provisions of the Air Quality rulemaking are promulgated, §§ 58/72.610 will be modified to refer to that section.

IV. Drill Dust Control

A. Introduction

Drilling operations have long been recognized as causing respiratory hazards in mining. Most rock drilling produces respirable, silica-bearing dust that can cause silicosis and alveolar proteinosis. All types of silicosis have been documented in drillers. In 1958, the Public Health Service, in conjunction with the Bureau of Mines, issued a report on silicosis in metal and nonmetal mining that identified drilling as one of the most prolific dust-producing operations. In August 1992, the CDC/NIOSH of the Public Health Service again reemphasized its earlier warnings on silicosis occurring in rock drillers. In this Alert, NIOSH described 23 cases of silicosis occurring in rock drillers, including 11 rock drillers in coal mines. MSHA believes that control of drill dust also will prevent the development of pulmonary alveolar proteinosis, as well as a mixed dust fibrosis and silico-proteinosis.

MSHA has recognized the health hazard presented by drilling in underground coal mining and that surface coal mines also need the additional protection set forth in this final rule. In metal and nonmetal mines under existing regulations over the past 13 years, MSHA had three reports of pneumoconiosis in rock drillers and two cases in driller helpers. Over the past 10 years, there were 30 cases of pneumoconiosis reported to MSHA in highwall drill operators and helpers at surface coal mines.

In addition, Banks (1983) identified three cases of acute silicosis in coal miners. Parker et al. (1989) identified nine cases of silicosis in surface miners in a 10-year period in West Virginia. The median age of the miners was 35 years. All were drillers, driller helpers, or supervisors with a median of 6 years above-ground exposure. Four were nonsmokers. Two had acute silicosis, one of whom died within 2 years of diagnosis. Five had accelerated silicosis, one of whom had silico-tuberculosis. Two with longer periods of exposure were diagnosed as having chronic silicosis. Parker concluded that there were a number of inadequately protected individuals among above-ground workers.

All drillers and other miners must be protected from the inhalation hazard of respirable drill dust. In the history of rock drilling, various control techniques have been developed to reduce the amount of dust emitted from the drill. Installing drill dust controls at the source can reduce the amount of dust emitted and is effective in protecting all miners at a mine. Many of these source-control techniques are readily available and effective in the prevention of pneumoconiosis.

B. Background

1. Metal and Nonmetal Mining

The Public Health Service has reported that drilling was one of the most prolific dust-producing operations to which miners were exposed (Silicosis in the Metal Mining Industry, 1963). In that study, 11 percent of the samples collected for drilling operations contained excessive concentrations of silica-bearing dust. The study also cited improper ventilation, dry collaring of holes, and defective equipment as the primary causes of overexposure. In Medicine in the Mining Industries (1972), wet drilling was recognized as an efficient means of dust control.

Existing §§ 56/57.5003 for metal and nonmetal mines require that drill holes be collared and drilled wet or that other efficient dust control measures be used when drilling non-water-soluble materials. Efficient dust control measures also are required when drilling water-soluble materials. MSHA issues a citation when a drill dust control is missing, defective, or obviously ineffective by sight. In those cases where it is not obvious that a control is ineffective, an MSHA inspector has the option of reviewing the manufacturer's specifications or other pertinent data, or sampling to determine its effectiveness. Currently, MSHA issues about 90 citations and 3 orders per year for violations of §§ 56/57.5003.

2. Coal Mining

The development of silicosis and pneumoconiosis among underground coal miners has been well documented, particularly among roof bolters and transportation workers. Existing §§ 70.400 through 70.400–3 address drill dust controls at underground coal mines. MSHA issues a citation for a violation of § 70.400 if visual observation indicates that the drill dust controls on the equipment are not functioning properly. Currently, MSHA issues about 15 such citations per year. Section 72.630 of the final rule is comparable to existing §§ 70.400 through 70.400–3 and MSHA's current interpretation of the regulation. Likewise, § 72.630 is a work practice standard that does not require sampling.

Surface coal miners were not recognized as facing as serious a risk as underground coal miners for many years (Parker et al., 1989). Evidence has indicated that highwall drill operators and helpers at surface coal mines have an increased risk of pneumoconiosis. Re-analysis by Banks et al. (1983) of data from a previous U.S. Public Health Service survey of surface coal miners, after exclusion of miners with underground mining experience, showed that 38 percent of the cases of pneumoconiosis in surface coal miners occurred in drill-crew members even though this group comprised only 11 percent of the study population.

In a 1984 evaluation of the prevalence of pneumoconiosis in surface coal mine drillers, Amandus et al. found a significantly higher incidence of category 1 or higher pneumoconiosis in persons with more than 10 years surface drilling experience than in those with less than 10 years or no drilling experience. Results of this study also indicated that the average coal mine dust level was significantly higher among drillers than that found for all miners.

Later Piacitelli et al. (1990) reported that the respirable coal mine dust samples submitted by coal mine operators and MSHA inspectors from 1982 to 1986 were usually well below the 2.0 mg/m³ allowable limit for all surface job categories. However, samples collected for highwall drillers and helpers indicated that 78 percent and 77 percent, respectively, exceeded the quartz exposure limit and that 10 to 15 percent of miners in both categories exceeded the 2.0 mg/m³ respirable coal mine dust standard.

Between 1989 and 1993, MSHA issued 112 citations for exceeding the allowable limit for respirable dust on highwall drill operators and helpers, of which 62 were for exceeding the 2.0 mg/m³ respirable dust standard. The remaining 50 citations were issued for exceeding the reduced respirable dust standard due to quartz content. As of July 1993, MSHA had placed 79 active highwall drills on a reduced respirable dust standard due to the quartz concentration in respirable dust samples collected on the drill operators. Also, there are 410 active roof bolters in underground coal mines on a reduced respirable dust standard due to quartz concentration on collected respirable dust samples.

Notwithstanding Agency enforcement efforts, cases of silicosis continue to be reported among surface coal miners. Therefore, in 1989, MSHA proposed that drillers be protected at surface operations and that the requirements be clarified for underground drillers. The final rule is a work practice standard that does not require sampling. This standard, in conjunction with existing regulations, is intended to provide miners with more protection from exposures to harmful amounts of silica and respirable coal mine dust.

C. Drill Dust—Toxicity

Pneumoconiosis began to receive increased attention toward the end of the last century as a result of the introduction of machine drills and the large quantities of dust they generate. Silicosis has long been recognized as a health risk in rock drillers (Silicosis in the Metal Mining Industry, 1963). In the past, rock drillers in underground coal mines were known to have developed silicosis, but drillers at surface coal mines were not considered to be at significant risk (Fairman et al., 1977). However, more recent studies indicate that surface rock drillers are being diagnosed with silicosis as well as other pneumoconioses (Banks et al., 1983; Parker et al., 1989; Goodman et al., 1992; Amandus et al., 1984; Piacitelli et al., 1990). A study conducted by NIOSH in 1987 of silica dust exposure to drill crews drilling overburden on a highwall at a surface coal mine indicated the occurrence of significant overexposures and a prevalence of pneumoconiosis five times greater than other surface workers (NIOSH MHETA 87–173–1882).

The August 1992 CDC/NIOSH Alert on Rock Drillers referenced a number of cases of silicosis among miners. One case involved an individual who first experienced respiratory symptoms in 1986 at age 33 (Goodman et al., 1992). The subject was a quarry driller using wet methods to suppress drill dust from 1973 to 1983. After 1983, he worked primarily as a driller at a surface coal mine using no controls. The miner died in 1991 of progressive respiratory failure.

Another driller reported respiratory problems in 1979 at age 34 (Banks et al., 1983). His history indicated that for the previous 5 years he had operated a rotary drill at a surface coal mine using dry drilling methods. This miner died of respiratory failure in 1981. A medical survey of nine other drillers working for the same company found two additional miners, ages 28 and 31, with accelerated silicosis after fewer than 6 years exposure.

One hospital in West Virginia reported seven cases of silicosis in surface miners from 1978 to 1988. The cases involved miners with a median age of 35 working in surface drilling for an average of 6 years (Parker et al., 1989). One case had active tuberculosis. In addition, a second possible case of tuberculosis was identified.

Ezenwa (1982) studied environmental and host factors in mines and mills. In Quebec metal mines, Ezenwa found that a significantly larger portion of miners who worked in drilling and crushing (associated with high dust levels) developed silicosis in 15 years relative to other occupations over the same time period. Of the 35 men with accelerated silicosis, 37 percent had working experience as drillers.

D. Drill Dust Control—Technology

Various effective drill dust control techniques have been developed that control the dust at the source. Many of these techniques are readily available and effective in the prevention of respirable drill dust overexposures. In addition, these dust control techniques can reduce the hazard from drill dust for other miners in the mine as opposed to personal respiratory protection equipment that only protects the individual wearing it, and then only if worn properly.

Most failures of drill dust controls are readily identified and easily corrected. Rather than mechanical breakdown of the controls, malfunctions are generally the result of oversights or poor maintenance, such as failure to turn on water, to fill water-holding tanks, or to empty filters.

The general types of dust controls for rock drilling are wet methods, dry methods, and ventilation control in underground coal mines. Wet drilling methods are known to be effective for dust control with non-water-soluble materials. These methods have been used as early as 1922 and are inexpensive, practical, reliable, and effective in controlling drill dust (Silicosis in the Metal Mining Industry, 1963). Examples of wet drilling controls include the introduction of water through a hollow drill stem, flooding of drill-holes, and water sprays. Dry methods include various methods to capture the dust at the source (the drill-hole), usually by vacuum, with subsequent removal of the dust from the work area air by filtration or other means. Effective dry dust collectors are readily available from several equipment manufacturers for drilling both water-soluble and non-water-soluble materials. General ventilation is not usually effective in underground coal mines for drill dust control, unless it can rapidly disperse and carry away the drill dust as well as direct the dust away from any workers in the area.

E. Summary and Explanation of Rule

1. Sections 58/72.620

Section 58.620 is a recodification with no substantive change of existing §§ 56/57.5003, which addresses drill dust control at metal and nonmetal mines. Section 72.620 established new requirements for drill dust control at surface coal mines and surface areas of underground coal mines. The final rule provides that drill holes be collared and drilled wet or that other effective dust control measures be used when drilling non-water-soluble material. The final rule also requires effective dust control measures when drilling water-soluble material.

NIOSH supported establishing rules for drill dust control at surface coal mines because the potential exists for significant overexposure to respirable free silica.

Many commenters objected to the specific control requirements contained in proposed §§ 58/72.620. These commenters recommended that MSHA delete all of the existing and proposed drill dust control standards and suggested that any new regulations addressing this issue be performance oriented. Commenters stated that when judging how to reduce miners' exposure to drill dust, operators should be given wide discretion and be allowed to take into account differences in mine conditions and mining operations.

Other commenters stated that MSHA should provide the same compliance options to metal and nonmetal and surface coal mine operators as are currently provided to underground coal mine operators. These commenters recommended that the language of proposed § 72.630 be made applicable to all mines. These commenters stated that

by requiring wet drilling, MSHA would be suppressing the development of new technology and that the Agency was not taking into consideration other effective measures of dust control, such as positive pressure cabs.

The final rule allows mine operators the option of using controls that are both practical and effective in controlling miners' exposures to drill dust. The methods listed in the final rule are basic and effective control technologies that are readily available to mine operators. In addition, the phrase "or other effective dust control measures" is included in the final rule to enable mine operators to use methods other than those specifically listed in the standard.

MSHA's primary concern is that any drill dust control method relied upon by the operator for the protection of miners' health have a level of proven effectiveness. As a result, the proposed language in §§ 58/72.620 is retained in the final rule.

Likewise, it is MSHA's intent that the final rule allow new technology. New methods of drill dust control may be used if their effectiveness can be demonstrated. In the same manner, new types of drilling may be developed and used if they include controls that are effective in controlling drill dust. Metal and nonmetal and surface coal mine operators do not have to seek MSHA approval before installing "effective" dust control technology.

MSHA agrees that positive pressure cabs are effective in controlling exposures to dust for persons located within the cabs. However, other miners may be working in the area. Because cabs do not control drill dust at the source of generation, they are not adequate to protect the health of miners located outside the cabs who are exposed to the drill dust.

Many commenters also stated that the proposed standards would be redundant and burdensome. They expressed concern that controls would be required without regard to actual exposures which mine operators are otherwise required to maintain within permissible exposure limits. These commenters stated that the presumption that all drill operators are overexposed unless there is a dust control system installed on the drill is not valid. These commenters recommended that citations for drill dust control be issued only when sampling data indicates that a miner is overexposed.

MSHA disagrees with these commenters because the hazard associated with drilling operations is so serious and the exposure so variable that a permissible exposure limit alone cannot be relied upon as the primary means of controlling drill dust exposure. The final rule requires that effective drill dust controls be provided, regardless of exposure. MSHA's experience has shown that drilling without effective dust controls is highly likely to result in overexposure, not only to the drill operator but also to other workers in the drilling area. Dust generated by drills underground can be carried to other areas of the mine by the ventilation system, creating contaminated air throughout the mine and exposing unprotected miners. There is evidence that the percentage of time that drill operators are overexposed is high enough to warrant controls (Banks et al., 1983). In addition, due to the nature of the drilling activity, the exposure concentration is not always consistent and, in some instances, a miner can be acutely exposed before sampling data indicates an overexposure.

One commenter recommended deleting the second sentence of §§ 58/72.620, "or other effective dust control measures," and stated that collaring and wet drilling should be the preferred means of drill dust control. This commenter stated that a standard requiring only collaring and wet drilling would be easier for MSHA to enforce because the provision for "alternative methods" would require the Agency to assess data. This commenter also suggested that operators could file a petition for modification with MSHA if they wanted to use an alternative dust control method.

MSHA recognizes that wet drilling is an established practice at metal and nonmetal mines. However, there are other methods of drill dust control, such as dry dust collectors, which are also effective in controlling drill dust. A requirement permitting only wet drilling and dry dust collection could stifle new technology that could be effective in the control of drill dust. MSHA has had experience enforcing this standard at metal and nonmetal mines and will enforce the requirements similarly at surface operations of coal mines. In addition, the Mine Act does not allow mine operators to petition for modification of health standards.

Some commenters expressed concern that the proposed standards on drill dust control would give too much discretion to MSHA inspectors. One commenter stated that an inspector could arrive at a mine, observe some dust coming from a drill, and issue a citation based solely on his subjective conclusion that the dust control method being used was "not effective." Some commenters recommended that an inspector be allowed to issue a citation only when an operator fails to have drill dust controls in place or when sampling results indicate an overexposure.

Under the final rule, MSHA will cite a mine operator when a dust control is missing, defective, or obviously ineffective by visual inspection. In those cases where it is not obvious that a control is effective, MSHA inspectors would have the option of reviewing manufacturer's specifications or other pertinent data relative to the design and operation of the dust control or, if practical, collecting samples to evaluate its effectiveness.

One commenter stated that MSHA needed to consider that climatic conditions play an important role in "effective" dust control. This commenter used wet and dry dust-collection systems and, under certain conditions, each method could be rendered inoperable. This commenter stated that the wet systems fail in cold temperatures, and the dry vacuum systems tend to plug when the drill bit enters moist areas. This commenter recommended that, as a temporary solution, operators be allowed to issue respiratory protection to the affected miners when controls fail due to temporary weather conditions.

MSHA agrees that problems can be encountered by drillers when using wet or dry drilling methods. However, there are precautions that the operator can take to reduce these problems, such as adding antifreeze to the water. Because of the need to control drill dust at the source, effective drill dust controls would not include personal protective equipment or administrative controls. After reviewing the comments received, MSHA has retained the proposed language in the final rule.

2. Section 72.630

Section 72.630, which addresses drill dust control at underground coal mines, recodifies existing §§ 70.400 through 70.400–3 and strengthens the maintenance requirement for dust collectors.

Paragraph (a) recodifies existing § 70.400 and requires that dust resulting from drilling in rock be controlled by use of permissible dust collectors, or by water, or water with a wetting agent, or by ventilation, or by any other method or device approved by the Secretary in the ventilation plan that is as effective in controlling the dust. This requirement is not intended to limit the introduction of new technology into the mining environment. However, because of health and safety concerns at underground coal mines, MSHA believes that the Agency should evaluate the effectiveness of new technology before it is used.

Some commenters objected to the specific control requirements contained in the standard. Many recommended that MSHA delete all of the existing and proposed drill dust control standards and suggested that any new regulations addressing this issue be performance oriented. Some stated that, when judging how to reduce miners' exposure to drill dust, operators should be given wide discretion to take into account differences in mine conditions and mining operations.

A specific standard addressing the health hazards associated with drill dust continues to be necessary due to the likelihood of overexposure inherent in such operations. Underground coal mine operators have the option of using controls which are both practical and effective in controlling miners' exposure to drill dust. The methods listed in the final rule are basic and effective control technologies that are readily available to underground coal mine operators. In addition, the phrase "or by any other method or device approved by the Secretary that is as effective in controlling the dust" is included in the final rule in order to enable mine operators to use methods other than those specifically listed in the standard. As a result, the final rule makes only nonsubstantive editorial changes to §§ 70.400 through 70.400–3 and recodifies them as § 72.630.

As with § 72.620, many commenters stated that the proposed standard would be redundant and burdensome because controls would be required with no consideration of actual exposures. These commenters stated that the presumption that all drill operators are overexposed unless there is a dust control system installed on the drill is not valid. These commenters recommended that citations for drill dust control be issued only when sampling data indicates that a miner is overexposed. As stated above, because the hazard associated with drilling operations is so serious and exposure so variable, a permissible exposure limit alone cannot be relied upon as the primary means of controlling drill dust exposure.

As stated previously, MSHA will continue to cite a mine operator when a dust control is missing, defective, or obviously visually ineffective. In those cases where it is not obvious that a control is effective, MSHA inspectors will continue to have the option of reviewing manufacturer's specifications or other pertinent data relative to the design and operation of the dust control, or of sampling to determine its effectiveness.

Paragraph (b) recodifies existing § 70.400–1 which requires control of drill dust through the use of permissible dust collectors. In addition, as proposed, a new provision clarifies that dust collectors must be maintained in permissible and operating condition when they are provided as a method of controlling dust. The majority of commenters supported MSHA in requiring that dust collectors be maintained in permissible and operating condition. NIOSH commented that they supported MSHA's proposed rule for drill dust control at underground coal mines and that the proposed addition of maintenance requirements for dust collectors was appropriate for limiting the exposure of miners in these operations to respirable free silica.

Paragraph (c) recodifies § 70.400–2 with no change in the existing requirement that water used to control drill dust be applied through a hollow drill steel or stem or by the flooding of vertical drill holes in the floor. Some commenters recommended that paragraph (c) be deleted because they stated that the provision would place limits on the options available to mine operators for the control of drill dust at underground coal mines. One commenter stated that the wording in the proposed rule would place unnecessary limits on the methods by which water could be used to control dust. Another commenter stated that the wording in the proposed rule would limit the use of new technology and that the requirement to wet drill would be infeasible and difficult to implement in areas of low water availability and high altitude.

MSHA does not intend for this standard to be technology stifling. As indicated earlier, the operator is not restricted to the methods listed in the standard and, if circumstances are such that wet drilling is not practical or feasible, the operator has the option of using other effective methods approved by the Secretary of Labor. Wet drilling can be an inexpensive, practical, and effective means of controlling miners' exposure to drill dust at underground coal mines. This practice is currently in use at underground coal mines for drilling non-water-soluble materials.

Paragraph (d) recodifies existing § 70.400–3 with no change in the existing requirement that air currents be so directed that the dust is readily dispersed and carried away from the drill operator or other workers in the area. Many commenters stated that this provision was unnecessary because a mine operator would be instructed by MSHA not to direct the ventilation current toward a drill operator. Other commenters stated that the provision that permits the use of "ventilation * * * that is effective in controlling the dust" implies that MSHA will have to determine noncompliance through the demonstration of an overexposure to a permissible exposure limit. One commenter recommended deleting paragraph (d), stating that the preferred means of drill dust control should be limited to permissible dust collectors, water, or water with a wetting agent. This commenter stated that ventilation is less effective in the control of drill dust and harder for MSHA to enforce.

MSHA recognizes that ventilation may not always be a practical method of drill dust control and that it is not the predominant method used in underground coal mines. Under some circumstances, continuous mining machines and roof bolters work on a single split of air, and this can result in only the drillers being protected while persons working downwind could be exposed. If proper precautions are taken, however, ventilation can be an effective method of drill dust control. MSHA, therefore, has not deleted paragraph (d). MSHA will continue to determine compliance with this requirement under the final rule as it has enforced § 70.400–3; i.e., through the measurement of air quantity or other measures set forth in a mine's ventilation and methane and dust control plan. MSHA does not intend that exposure samples be the routine method of determining compliance with this paragraph.

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VI. Executive Order 12866 and the Regulatory Flexibility Act

In accordance with Executive Order 12866, MSHA prepared a final regulatory impact analysis (RIA) to determine the incremental costs and benefits associated with the final rule on drill dust control and abrasive blasting. MSHA has determined in its RIA that this rule would neither result in major cost increases nor have an effect of $100 million or more on the economy. The RIA, which is available from MSHA upon request, is summarized as follows.

Benefits

The final rule enhances safety and health, and none of these revisions reduce miner protection. In providing an estimate of the potential benefits that is based on previous coal miner cases, it needs to be noted that some of these miners may have received a majority of their exposures in mining activities other than highwall drilling. In addition, metal and nonmetal mines, which have had to comply with these drill dust controls, perform considerably more highwall drilling than do coal mines. Whereas 30 surface coal miner pneumoconiosis cases were reported to MSHA during the previous 10 years, only 5 metal and nonmetal pneumoconiosis cases were reported to MSHA during this period. As a result, MSHA determined that compliance with the new requirements for drill dust controls at surface coal mines would have prevented between 10 and 20 of the 30 surface coal miner pneumoconiosis cases reported to MSHA during the preceding 10 years, for an average of 1 to 2 cases prevented annually.

Even though MSHA was unable to identify any specific case that would have been prevented by the new abrasive blasting requirements, compliance with the final rule will help to prevent potential future cases of silicosis and other dust diseases of the lungs.

Costs

MSHA has compared the costs associated with the existing requirements with the costs of the new requirements. Noting that approximately 250 coal highwall drillers will require some retrofitting at unit costs of about $2,500 for adding a collector or baghouse, about $8,000 for installing a dry dust collecting system, and about $7,000 for installing a wet drilling system, MSHA calculated that compliance with the final rule for drill dust controls will cost the coal mining industry about $950,000 in first-year costs, which would translate into about $155,000 in annualized costs. Annual costs for such items as maintenance of dust-collection systems, filter replacement, etc., are estimated to be about $95,000. Thus, the total annualized plus annual compliance cost is projected to be about $250,000.

With respect to the abrasive blasting requirements, MSHA determined that about 55 metal and nonmetal mines and 20 coal mines would be required to purchase new respiratory protective equipment. The unit costs for this equipment can range from $900 for a powered, air-purifying respirator (PAPR); $1,450 for an air-supplied hood retrofitted with an existing air compressor; $2,200 for an air-supplied hood retrofitted with an air distribution system; and between $1,000 and $1,500 for an abrasive blasting cabinet.

MSHA calculated that compliance with the final rule for abrasive blasting will cost the metal and nonmetal mining industry about $103,000 in first-year costs, which would translate into about $17,000 in annualized costs. Annual costs for such items as maintenance, filter replacement, etc., are estimated to be about $10,000. Thus, the total metal and nonmetal annualized plus annual compliance cost is projected to be about $27,000.

For coal mining, MSHA calculated that compliance with the final rule for abrasive blasting will cost about $40,000 in first-year costs, which would translate into about $7,000 in annualized costs. Annual costs for such items as maintenance, filter replacement, etc., will be about $4,000. Thus, the total coal annualized plus annual compliance cost will be about $11,000.

MSHA's final rule will have a minimal impact upon labor productivity, profits, prices, mining output, and mining employment. The Agency foresees no detrimental economic impact to this industry.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulatory standards. This final rule includes alternative compliance methods, several of which will directly affect small mining operations.

MSHA determined that small mines will incur first-year costs of about $248,000, or annualized costs of about $41,000. Annual costs for small mines will be about $25,000. At the same time, MSHA determined that large mines will incur first-year costs of about $846,000, or annualized costs of about $138,000. Annual costs for large mines will be about $84,000.

MSHA determined that these new provisions will not generate a substantial cost increase for small mines. The lack of a substantial cost increase for small mines in conjunction with the fact that similar hazards exist in both large and small mining operations indicates that regulatory relief is not warranted for small mining operations. Therefore, MSHA has determined that the final rule will not have a significantly adverse impact upon a substantial number of small entities.

VII. Paperwork Reduction Act

This final rule contains no information paperwork requirements subject to the Paperwork Reduction Act of 1980.

Derivation Table

The following derivation table lists the final rule with the existing standard numbers from which it is derived.

New section	Old section
58.610(a)	56 and 57.5010.
58.610(b)	57.5016.
58.620	56 and 57.5003.
72.610	New.
72.620	New.
72.630(a)	70.400.
72.630(b)	70.400–1.
72.630(c)	70.400–2.
72.630(d)	70.400–3

Redesignation Table

The following redesignation table lists the existing standard with the final rule standard numbers.

Old section	New section
56 and 57.5003	58.620
56 and 57.5010	58.610(a)
57.5016	58.610(b)
70.400	72.630(a)
70.400–1	72.630(b)
70.400–2	72.630(c)
70.400–3	72.630(d)

List of Subjects in 30 CFR Parts 56, 57, 58, 70, and 72

Mine safety and health, Surface mining, Underground mining.

Dated: February 11, 1994.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, chapter I of title 30 of the Code of Federal Regulations is amended as set forth below:

PART 56—[AMENDED]

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

§ 56.5003 [Removed]

2. Section 56.5003 is removed.

§ 56.5010 [Removed]

3. Section 56.5010 is removed.

PART 57—[AMENDED]

4. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

§ 57.5003 [Removed]

5. Section 57.5003 is removed.

§ 57.5010 [Removed]

6. Section 57.5010 is removed.

§ 57.5016 [Removed]

7. Section 57.5016 is removed.

8. A new part 58 is added to subchapter N, 30 CFR chapter I to read as follows:

PART 58—HEALTH STANDARDS FOR METAL AND NONMETAL MINES

Subpart A—General

Sec.
58.1 Scope.

Subparts B Through D—[Reserved]

Subpart E—Miscellaneous

58.610 Abrasive blasting.
58.620 Drill dust control.

Authority: 30 U.S.C. 811, 957, and 961.

Subpart A—General

§ 58.1 Scope.

The health standards in this part apply to all metal and nonmetal mines.

Subpart E—Miscellaneous

§ 58.610 Abrasive blasting.

(a) *Surface and underground mines.* When an abrasive blasting operation is performed, all exposed miners shall use in accordance with §§ 56/57.5005 respirators approved for abrasive blasting by NIOSH or the operation shall be performed in a totally enclosed device with the miner outside the device.

(b) *Underground areas of underground mines.* Silica sand or other materials containing more than 1 percent free silica shall not be used as an abrasive substance in abrasive blasting.

§ 58.620 Drill dust control.

Holes shall be collared and drilled wet, or other effective dust control measures shall be used, when drilling non-water-soluble material. Effective dust control measures shall be used when drilling water-soluble materials.

PART 70—[AMENDED]

9. The authority citation for part 70 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, and 961.

§§ 70.400, 70.400–1, 70.400–2 and 70.400–3 [Removed].

10. Sections 70.400, 70.400–1, 70.400–2, and 70.400–3 are removed.

11. A new part 72 is added to subchapter O to read as follows:

PART 72—HEALTH STANDARDS FOR COAL MINES

Subpart A—General

Sec.
72.1 Scope.

Subparts B Through D—[Reserved]

Subpart E—Miscellaneous

72.610 Abrasive blasting.
72.620 Drill dust control at surface mines and surface areas of underground mines.
72.630 Drill dust control at underground areas of underground mines.

Authority: 30 U.S.C. 811, 813(h), 957, and 961.

Subpart A—General

§ 72.1 Scope.

The health standards in this part apply to all coal mines.

Subpart E—Miscellaneous

§ 72.610 Abrasive blasting.

(a) *Surface and underground mines.* When an abrasive blasting operation is performed, all exposed miners shall properly use respirators approved for

abrasive blasting by NIOSH, or the operation shall be performed in a totally enclosed device with the miner outside the device.

(b) *Underground areas of underground mines.* Silica sand or other materials containing more than 1 percent free silica shall not be used as an abrasive substance in abrasive blasting.

§ 72.620 Drill dust control at surface mines and surface areas of underground mines.

Holes shall be collared and drilled wet, or other effective dust control measures shall be used, when drilling non-water-soluble material. Effective dust control measures shall be used when drilling water-soluble material.

§ 72.630 Drill dust control at underground areas of underground mines.

(a) Dust resulting from drilling in rock shall be controlled by use of permissible dust collectors, or by water, or water with a wetting agent, or by ventilation, or by any other method or device approved by the Secretary that is as effective in controlling the dust.

(b) *Dust collectors.* Dust collectors shall be maintained in permissible and operating condition. Dust collectors approved under Part 33—Dust Collectors for Use in Connection with Rock Drilling in Coal Mines of this title or under Bureau of Mines Schedule 25B are permissible dust collectors for the purpose of this section.

(c) *Water control.* Water used to control dust from drilling rock shall be applied through a hollow drill steel or stem or by the flooding of vertical drill holes in the floor.

(d) *Ventilation control.* To adequately control dust from drilling rock, the air current shall be so directed that the dust is readily dispersed and carried away from the drill operator or any other miners in the area.

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federal register

Friday
February 18, 1994

Part III

Department of Education

34 CFR Part 363, et al.
Rehabilitation Services Administration Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 363, 369, 371, 373, 374, 375, 376, 377, 378, 379, 380, 381, 385, 387, 389, and 390

RIN 1820–AB11

Rehabilitation Services Administration Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing a variety of programs administered by the Rehabilitation Services Administration (RSA). These regulations implement technical amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992 and by the Rehabilitation Act Amendments of 1993.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 373.30, 379.43, 381.10, and 385.45. Sections 373.30, 379.43, 381.10, and 385.45 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Beverlee Stafford, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028 Switzer Building, Washington, DC 20202–2531. Telephone: (202) 205–9331. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Rehabilitation Act Amendments of 1992 (the Amendments) included a number of technical changes to make the Act more consistent with other Federal legislation affecting individuals with disabilities. In addition, the Amendments strengthen the focus on serving those individuals with the most severe disabilities and individuals with disabilities from minority backgrounds. Significant changes include:

—*Terminology and Definitional Changes.* The Rehabilitation Act Amendments of 1992 replaced the terms "handicap," "rehabilitation facility," and "employability" throughout the Act with the terms "disability," "community rehabilitation program," and "employment outcome," respectively. In addition, new or revised definitions of certain terms such as "individual with a disability," "supported employment," "ongoing support services," and "extended services" necessitated technical changes to various program regulations.

—*Outreach to Minorities.* A new provision was added that requires all applicants for new and continuation funding under the Act to demonstrate how they will address the needs of individuals with disabilities from minority backgrounds.

—*Client Assistance Information.* A new provision was added that requires all programs and projects funded under the Act to advise the individuals that they serve of the availability of the State Client Assistance Program and to provide information on how to obtain access to that program. The 1993 Amendments expanded this requirement to cover applicants for services as well as recipients of services.

—*State Supported Employment Services Program.* Each State is now required to serve only those individuals with the most severe disabilities under this program. In addition, States can now begin to serve individuals in supported employment as long as there is a reasonable expectation that an extended funding source will be identified during the course of the individual's rehabilitation program.

—*Projects for Migratory Agricultural Workers and Seasonal Farmworkers with Disabilities.* Nonprofit organizations, working in collaboration with State vocational rehabilitation agencies, can now apply for these project grants.

—*Projects with Industry.* These projects can now focus on careers and career advancement for individuals with disabilities. Eligibility for services must be determined by the project and confirmed, within 60 days, by the State vocational rehabilitation agency.

—*Protection and Advocacy of Individual Rights.* Although final regulations were issued for this program on August 12, 1993, additional statutory amendments were made to this program by Public Law 103–73. Changes with regard to eligible agencies, application requirements and limits on administrative costs have been incorporated.

—*Special Projects and Demonstrations.* The funding of construction and construction-related activities under the Special Demonstration Programs under parts 373 and 374 was eliminated by statute (Public Law 102–569).

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these amendments merely incorporate statutory changes into the regulations and do not implement substantive policy. Therefore, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations contain only technical amendments and would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Sections 363.11, 363.52, 369.21, 373.30, 379.43, 380.15, 381.10, and 385.45 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

State, public, and other nonprofit agencies and organizations, governing bodies of Indian tribes, and institutions of higher education are eligible to apply for grants under these regulations, as indicated in the various parts. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to be as follows:

(1) Sections 363.11 and 363.52—average 10 hours per response for 81 respondents.

(2) Section 369.21—average 1.5 hours per response for 425 respondents.

(3) Section 373.30—average 2 hours per response for 125 respondents.

(4) Section 379.43—average 40 hours per response for 125 respondents.

(5) Section 380.15—average 1.5 hours per response for 120 respondents.

(6) Section 381.10—average 1.5 hours per response for 57 respondents.

(7) Section 385.45—average 3.5 hours per response for 1,150 respondents.

These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

These programs, with the exception of Vocational Rehabilitation Service Projects for American Indians with Disabilities, are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from another agency or authority of the United States.

List of Subjects

34 CFR Part 363

Education, Grant programs—education, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 369

Education, Grant programs—education, Grant programs—social programs, Manpower training programs, Reporting and recordkeeping requirements, Research, Technical assistance, Vocational rehabilitation.

34 CFR Part 371

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 373

Education, Grant programs—education, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 374

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 375

Education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 376

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 377

Education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 378

Education, Grant programs—recreation, Recreation, Disability or individuals with disabilities.

34 CFR Part 379

Business and industry, Education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 380

Education, Grant programs—education, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 381

Education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 385

Education, Grant programs—education, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 387

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 389

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 390

Education, Grant programs—education, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Numbers: 84.128 Vocational Rehabilitation Service Projects; 84.128 Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with the Most Severe Disabilities and Technical Assistance Projects; 84.128 Special Projects and Demonstrations for Making Recreational Activities Accessible to Individuals with Disabilities; 84.128 Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth with Disabilities; 84.128G Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers; 84.128J Projects for Initiating Recreational Programs for Individuals with Disabilities; 84.129 Rehabilitation Training; 84.187 The State Supported Employment Program; 84.234 Projects With Industry; 84.235 Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities; 84.235D Demonstration Projects to Increase Client Choice Program; 84.240 Protection and Advocacy of Individual Rights; 84.246 Rehabilitation Short-Term Training; 84.250 Vocational Rehabilitation Service Projects for American Indians with Disabilities; 84.263 Experimental and Innovative Training; and 84.264 Rehabilitation Continuing Education Programs)

Dated: February 4, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary amends Parts 363, 369, 371, 373, 374, 375, 376, 377, 378, 379, 380, 381, 385, 387, 389, and 390 of Title 34 of the Code of Federal Regulations as follows:

1. Part 363 is revised to read as follows:

PART 363—THE STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

Subpart A—General

Sec.
363.1 What is the State Supported Employment Services Program?
363.2 Who is eligible for an award?
363.3 Who is eligible for services?
363.4 What are the authorized activities under a State Supported Employment Services grant?
363.5 What regulations apply?
363.6 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

363.10 What documents must a State submit to receive a grant?
363.11 What information and assurances must be included in the State plan supplement?

Subpart C—How Does the Secretary Make a Grant?

363.20 How does the Secretary allocate funds?
363.21 How does the Secretary reallocate funds?

Subparts D–E—[Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

363.50 What collaborative agreements must the State develop?
363.51 What are allowable administrative costs?
363.52 What are the information collection and reporting requirements?
363.53 What special conditions apply to services and activities under this program?
363.54 What requirements must a State meet before it provides for the transition of an individual to extended services?
363.55 What are the requirements for successfully rehabilitating an individual in supported employment?
363.56 What notice requirements apply to this program?

Authority: 29 U.S.C. 795j–q, unless otherwise noted.

Subpart A—General

§ 363.1 What is the State Supported Employment Services Program?

Under the State Supported Employment Services Program, the Secretary provides grants to assist States in developing and implementing collaborative programs with appropriate

entities to provide programs of supported employment services for individuals with the most severe disabilities who require supported employment services to enter or retain competitive employment.

(Authority: 29 U.S.C. 795j)

§ 363.2 Who is eligible for an award?

Any State is eligible for an award under this program.

(Authority: 29 U.S.C. 795n)

§ 363.3 Who is eligible for services?

A State may provide services under this program to any individual if—

(a) The individual has been determined eligible for vocational rehabilitation services in accordance with the criteria in section 102(a)(1) of the Act;

(b) The individual has been determined to be an individual with the most severe disabilities; and

(c) Supported employment has been identified as the appropriate rehabilitation objective for the individual on the basis of a comprehensive assessment of rehabilitation needs, including an evaluation of rehabilitation, career, and job needs.

(Authority: 29 U.S.C. 795m)

§ 363.4 What are the authorized activities under a State Supported Employment Services grant?

Under this program, the following activities are authorized:

(a) Any particularized assessment that is needed to supplement the comprehensive assessment of rehabilitation needs done under 34 CFR part 361 and that is provided subsequent to the development of the individualized written rehabilitation program. The supplementary assessment may be provided in circumstances such as the following:

(1) A reassessment of the suitability of the placement is warranted.

(2) There is a change in the individual's medical condition.

(b) Development of and placement in jobs for individuals with the most severe disabilities.

(c) Provision of supported employment services that are needed to support individuals with the most severe disabilities in employment, such as—

(1) Intensive on-the-job skills training and other training provided by skilled job trainers, co-workers, and other qualified individuals, and other services specified in section 103(a) of the Act in order to achieve and maintain job stability;

(2) Follow-up services, including regular contact with employers, trainees with the most severe disabilities, parents, guardians or other representatives of trainees, and other suitable professional and informed advisors in order to reinforce and stabilize the job placement; and

(3) Discrete post-employment services following transition that are unavailable from an extended services provider and that are necessary to maintain the job placement, such as job station redesign, repair and maintenance of assistive technology, and replacement of prosthetic and orthotic devices.

(Authority: 29 U.S.C. 795l)

§ 363.5 What regulations apply?

The following regulations apply to the State Supported Employment Services Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 76 (State-Administered Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 363.

(c) The following regulations in 34 CFR Part 361 (The State Vocational Rehabilitation Services Program): §§ 361.31; 361.32; 361.33; 361.34; 361.35; 361.39; 361.40; 361.41; 361.42; 361.47(a); 361.48; and 361.49.

Note: Many of the regulatory provisions cross-referenced in § 363.5(c) are affected by statutory changes made by the Rehabilitation Act Amendments of 1992. If these provisions conflict with statutory language, they are superseded by the statutory language. Program regulations for part 361 are being amended to implement statutory changes. When final regulations for part 361 are published, these cross-references will be corrected, if necessary.

(Authority: 29 U.S.C. 795j and 711(c))

§ 363.6 What definitions apply?

(a) *Definitions in 34 CFR part 361.* The following terms used in this part are defined in 34 CFR 369.4(b):

Act
Designated State unit
Individual with disabilities
Individual with severe disabilities
State plan

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Fiscal Year
Nonprofit
Private Secretary
State

(c) *Other definitions.* The following definitions also apply to this part:

(1) *Supported employment* means—

(i)(A) Competitive work in integrated work settings for individuals with the most severe disabilities—

(*1*) For whom competitive employment has not traditionally occurred; or

(*2*) For whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(B) Who, because of the nature and severity of their disability, need intensive supported employment services from the designated State unit and extended services after transition in order to perform this work.

(ii) Transitional employment for individuals with the most severe disabilities due to mental illness.

(2) As used in the definition of "Supported employment"—

(i) *Competitive work* means work that at the time of transition is performed weekly on a full-time basis or on a part-time basis, as determined in each individualized written rehabilitation program, and for which an individual is compensated consistent with the wage standards provided for in the Fair Labor Standards Act;

(ii)(A) *Integrated work setting* means job sites where either—

(*1*)(*i*) Most employees are not disabled; and

(*ii*) An individual with the most severe disabilities interacts on a regular basis, in the performance of job duties, with employees who are not disabled; and

(*iii*) If an individual with the most severe disabilities is part of a distinct work group of only individuals with disabilities, the work group consists of no more than eight individuals; or

(*2*) If there are no other employees or the only other employees are individuals who are part of a work group as described in paragraph (c)(2)(ii)(A)(*1*)(*iii*) of this section of an individual with the most severe disabilities interacts on a regular basis, in the performance of job duties, with individuals who are not disabled, including members of the general public.

(B) The interaction required by paragraphs (c)(2)(ii)(A)(*1*)(*ii*) and (c)(2)(ii)(A)(*2*) of this section may not be satisfied by contact between an individual with the most severe disabilities and individuals who provide on-going support services at the job site;

(iii) *Supported employment services* means on-going support services provided by the designated State unit with funds under this part—

(A) For a period not to exceed 18 months, unless under special circumstances a longer period to achieve job stabilization has been jointly agreed to by the individual and the rehabilitation counselor and established in the individualized written rehabilitation program, before an individual with the most severe disabilities makes the transition to extended services; and

(B) As discrete post-employment services following transition in accordance with § 363.4(c)(3);

(iv) *Extended services* means on-going support services and other appropriate services provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part, Part 381, Part 376, or Part 380, after an individual with the most severe disabilities has made the transition from State vocational rehabilitation agency support; and

(v) *Transitional employment* means a series of temporary job placements in competitive work in an integrated work setting with on-going support services for individuals with the most severe disabilities due to mental illness. In transitional employment, the provision of on-going support services must include continuing sequential job placements until job permanency is achieved.

(3) *On-going support services* means services that are—

(i) Needed to support and maintain an individual with the most severe disabilities in supported employment;

(ii) Based on a determination by the designated State unit of the individual's needs as specified in an individualized written rehabilitation program; and

(iii) Furnished by the designated State unit from the time of job placement until transition to extended services, except as provided in § 363.4(c)(3) and, following transition, by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment. On-going support services must include, at a minimum, twice-monthly monitoring at the work site of each individual in supported employment to assess employment stability, unless under special circumstances, especially at the request of the individual, the individualized written rehabilitation program provides for off-site monitoring, and, based upon that assessment, the coordination or provision of specific services at or away from the work site, that are needed to maintain employment stability. If off-site monitoring is determined to be appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month. On-going support services consist of—

(A) Any particularized assessment needed to supplement the comprehensive assessment of rehabilitation needs;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and placement;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services such as regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of rehabilitation services described in 34 CFR part 361; and

(I) Any service similar to the foregoing services.

(Authority: 29 U.S.C. 706(18), 706(27), 706(33), 706(34), 711(c), and 795j)

Subpart B—How Does a State Apply for a Grant?

§ 363.10 What documents must a State submit to receive a grant?

To receive a grant under this part, a State must submit to the Secretary, as part of the State plan under 34 CFR part 361, a State plan supplement that meets the requirements of § 363.11.

(Authority: 29 U.S.C. 795n)

§ 363.11 What information and assurances must be included in the State plan supplement?

Each State plan supplement must include the following:

(a) *Designated State agency.* Designate the State unit or units for vocational rehabilitation services identified in the State plan submitted under 34 CFR part 361 as the State agency or agencies to administer this program.

(b) *Results of needs assessment.* Summarize the results of the needs assessment of individuals with severe disabilities conducted under title I of the Act with respect to the rehabilitation and career needs of individuals with severe disabilities and the need for supported employment services. The results of the needs assessment must address the coordination and use of information within the State relating to section 618(b)(1)(c) of the Individuals with Disabilities Education Act.

(c) *Quality, scope, and extent of services.* Describe the quality, scope, and extent of supported employment services to be provided to individuals with the most severe disabilities under this program. The description must address the timing of the transition to extended services referred to in § 363.50(b)(2).

(d) *Distribution of funds.* Describe the State's goals and plans with respect to the distribution of funds received under § 363.20.

(e) *Collaboration.* Demonstrate evidence of the efforts of the designated State unit to identify and make arrangements, including entering into cooperative agreements, with—

(1) Other State agencies and other appropriate entities to assist in the provision of supported employment services; and

(2) Other public or non-profit agencies or organizations within the State, employers, natural supports, and other entities with respect to the provision of extended services.

(f) *Minority outreach.* Describe the designated State unit's outreach procedures for identifying and serving individuals with the most severe disabilities who are minorities.

(g) *Assurances.* Provide assurances that—

(1) Funds made available under this part will only be used to provide supported employment services authorized under the Act to individuals who are eligible under this part to receive the services;

(2) The comprehensive assessments of individuals with severe disabilities conducted under section 102(b)(1)(A) and funded under title I of the Act will include consideration of supported

employment as an appropriate rehabilitation objective;

(3) An individualized written rehabilitation program, as required by section 102 of the Act, will be developed and updated, using funds under title I, that—

(i) Specifies the supported employment services to be provided to each individual served under this program, including a description of the expected extended services needed, which may include natural supports, and an identification of the State, Federal, or private programs or other resources that will provide the extended services, including a description of the basis for determining that extended services are available, or to the extent that it is not possible to identify the source of extended services at the time the individualized written rehabilitation program is developed, a statement describing the basis for concluding that there is a reasonable expectation that sources will become available;

(ii) Provides for periodic monitoring to ensure that each individual with severe disabilities is making satisfactory progress toward meeting the weekly work requirement established in the individualized written rehabilitation program by the time of transition to extended services;

(4) The State will use funds provided under this part only to supplement, and not supplant, the funds provided under title I of the Act, in providing supported employment services specified in the individualized written rehabilitation program;

(5) Services provided under an individualized written rehabilitation program will be coordinated with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent job skills training is provided, the training will be provided on-site;

(7) Supported employment services will include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, interests, concerns, abilities, and capabilities of individuals with the most severe disabilities;

(8) The designated State agency or agencies will expend no more than 5 percent of the State's allotment under this part for administrative costs of carrying out this program; and

(9) The public participation requirements of section 101(a)(23) are met.

(h) *Other information.* Contain any other information and be submitted in the form and in accordance with the procedures that the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820–0500)

(Authority: 29 U.S.C. 795n)

Subpart C—How Does the Secretary Make a Grant?

§ 363.20 How does the Secretary allocate funds?

The Secretary allocates funds under this program in accordance with section 632(a) of the Act.

(Authority: 29 U.S.C. 795k)

§ 363.21 How does the Secretary reallocate funds?

The Secretary reallocates funds in accordance with section 632(b) of the Act.

(Authority: 29 U.S.C. 795k)

Subparts D–E—[Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

§ 363.50 What collaborative agreements must the State develop?

(a) A designated State unit must enter into one or more written cooperative agreements or memoranda of understanding with other appropriate State agencies, private nonprofit organizations, and other available funding sources to ensure collaboration in a plan to provide supported employment services and extended services to individuals with the most severe disabilities.

(b) A cooperative agreement or memorandum of understanding must, at a minimum, specify the following:

(1) The supported employment services to be provided by the designated State unit with funds received under this part.

(2) The extended services to be provided by relevant State agencies, private nonprofit organizations, or other sources following the cessation of supported employment services under this part.

(3) The estimated funds to be expended by the participating party or parties in implementing the agreement or memorandum.

(4) The projected number of individuals with the most severe disabilities who will receive supported employment services and extended services under the agreement or memorandum.

(Authority: 29 U.S.C. 795n)

§ 363.51 What are the allowable administrative costs?

(a) *Administrative costs—general.* Expenditures are allowable for the following administrative costs:

(1) Administration of the State plan supplement for this program.

(2) Planning program development, and personnel development to implement a system of supported employment services.

(3) Monitoring, supervision, and evaluation of this program.

(4) Technical assistance to other State agencies, private nonprofit organizations, and businesses and industries.

(b) *Limitation on administrative costs.* Not more than five percent of a State's allotment may be expended for administrative costs for carrying out this program.

(Authority: 29 U.S.C. 795n)

§ 363.52 What are the information collection and reporting requirements?

(a) A State shall collect and report information as required under section 13 of the Act for each individual with the most severe disabilities served under this program.

(b) The State shall collect and report separately information for

(1) Supported employment clients served under this program; and

(2) Supported employment clients served under 34 CFR part 361.

(Approved by the Office of Management and Budget under control number 1820–0551)

(Authority: 29 U.S.C. 712 and 795o)

§ 363.53 What special conditions apply to services and activities under this program?

Each grantee shall coordinate the services provided to an individual under this part and under 34 CFR part 361 to ensure that the services are complementary and not duplicative.

(Authority: 29 U.S.C. 711(c) and 795p)

§ 363.54 What requirements must a State meet before it provides for the transition of an individual to extended services?

A designated State unit must provide for the transition of an individual with the most severe disabilities to extended services no later than 18 months after placement in supported employment, unless a longer period is established in the individualized written rehabilitation program, and only if the individual has made substantial progress toward meeting the hours-per-week work goal provided for in the individualized written rehabilitation program, the individual is stabilized in the job, and extended services are available and can be provided without a hiatus in services.

(Authority: 29 U.S.C. 795n and 711(c))

§ 363.55 What are the requirements for successfully rehabilitating an individual in supported employment?

An individual with the most severe disabilities who is receiving supported employment services is considered to be successfully rehabilitated if the individual maintains a supported employment placement for 60 days after making the transition to extended services.

(Authority: 29 U.S.C. 711(c))

§ 363.56 What notice requirements apply to this program?

Each grantee must advise applicants for or recipients of services under this part, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State's Client Assistance Program, including information on seeking assistance from that program.

(Authority: 29 U.S.C. 718a)

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

2. The authority citation for part 369 continues to read as follows:

Authority: 29 U.S.C 711(c), 732, 750, 775, 777(a)(1), 777(a)(3), 777(b), 777f, and 795g, unless otherwise noted.

3. In 34 CFR part 369 the word "handicaps" is removed, and the word "disabilities" is added, in its place, in the following places:

(a) Section 369.1(a);

(b) Section 369.2(a) (twice), (c) (twice), (d) (twice), and (f) (twice);

(c) Section 369.31(a)(2)(v)(A) and (b)(2)(iv)(A);

(d) Section 369.43;

(e) Section 369.46; and

(f) Section 369.48.

§ 369.1 [Amended]

4. Section 369.1 is further amended by removing the word "Handicaps", and adding, in its place, the word "Disabilities" in paragraphs (b)(1), (b)(4), (b)(5), and (b)(7); removing the words "Severe Handicaps", and adding, in their place, the word "Disabilities" in paragraph (b)(3); removing the words "Handicapped Youth", and adding, in their place, the words "Youths with Disabilities" in paragraph (b)(6); and revising the authority citation following the section to read as follows:

(Authority: Secs. 112, 130, 305, 308, 311a, 311(a)(3), 311(a)(4), 312, 316, and 621 of the Act; 29 U.S.C. 732, 750, 775, 776, 777(a)(1), 777(a)(3), 777(a)(4), 777(b), 777f, and 795g)

5. Section 369.2 is further amended by removing the word "severe" in paragraph (c), removing the words "handicapped youth", and adding, in their place, the words "youths with disabilities" in paragraph (h), and revising paragraphs (e) and (g) to read as follows:

§ 369.2 Who is eligible for assistance under these programs?

* * * * *

(e) *Vocational rehabilitation service projects for migratory agricultural workers and seasonal farmworkers with disabilities.* State vocational rehabilitation agencies, local agencies administering vocational rehabilitation programs under written agreements with State agencies, and nonprofit agencies working in collaboration with State vocational rehabilitation agencies are eligible for assistance to support projects for providing vocational rehabilitation services to migratory agricultural workers or seasonal farmworkers with disabilities.

* * * * *

(g) *Projects with industry.* Any designated State unit, labor union, community rehabilitation program provider, Indian tribe or tribal organization employer, trade association, or other agency or organization with the capacity to create and expand job and career opportunities for individuals with disabilities is eligible for assistance to support a project with industry.

* * * * *

6. Section 369.3 is amended by revising paragraph (a) to read as follows:

§ 369.3 What regulations apply to these programs?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities); except the Part 79 does not apply to the Vocational Rehabilitation Service Program for American Indians with Disabilities.

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

* * * * *

7. Section 369.4 is amended by revising paragraph (b) to read as follows:

§ 369.4 What definitions apply to these programs?

* * * * *

(b) The following definitions also apply to programs under Vocational Rehabilitation Service Projects:

Act means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.

Community rehabilitation program means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement—

(1) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(3) Recreational therapy;

(4) Physical and occupational therapy;

(5) Speech, language and hearing therapy;

(6) Psychiatric, psychological and social services, including positive behavior management;

(7) Assessment for determining eligibility and vocational rehabilitation needs;

(8) Rehabilitation technology;

(9) Job development, placement, and retention services;

(10) Evaluation or control of specific disabilities;

(11) Orientation and mobility services for individuals who are blind;

(12) Extended employment;

(13) Psychosocial rehabilitation services;

(14) Supported employment services and extended services;

(15) Services to family members when necessary to the vocational rehabilitation of the individual;

(16) Personal assistance services; or

(17) Services similar to the services described in paragraphs (1) through (16) of this definition.

(Authority: Sec. 7(25) of the Act; 29 U.S.C. 706(25))

Employment outcome means entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, the practice of a profession, self-employment, homemaking, farm or family work (including work for which payment is in kind rather than cash), extended employment in a community rehabilitation program, supported employment, or other gainful work.

(Authority: Sec 7(5) of the Act; 29 U.S.C. 706(5))

Individual who is blind means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Individual with a disability means any individual who—

(1) Has a physical or mental impairment that for that individual constitutes or results in a substantial impediment to employment; and

(2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided under Titles I, III, VI, or VIII of the Act.

(Authority: Sec. 7(8)(A) of the Act; 29 U.S.C. 706(8)(A))

Individual with a severe disability means an individual with a disability—

(1) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined to cause comparable substantial functional limitation.

(Authority: Sec. 7(15)(A) of the Act; 29 U.S.C. 706(15)(A))

Physical and mental restoration services means—

(1) Medical or corrective surgical treatment for the purpose of correcting or modifying substantially a physical or mental condition that is stable or slowly progressive and constitutes a substantial impediment to employment and that is likely, within a reasonable period of time, to be corrected or substantially modified as a result of the medical or surgical treatment;

(2) Diagnosis and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(3) Dentistry;

(4) Nursing services;

(5) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(6) Convalescent or nursing home care;

(7) Drugs and supplies;

(8) Prosthetic, orthotic, or other assistive devices, including hearing aids essential to obtaining or retaining employment;

(9) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by qualified persons under State licensure laws, that are selected by the individual;

(10) Podiatry;

(11) Physical therapy;

(12) Occupational therapy;

(13) Speech and hearing therapy;

(14) Psychological services;

(15) Therapeutic recreation services;

(16) Medical or medically related social work services;

(17) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment;

(18) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(19) Other medical or medically related rehabilitation services, including art therapy, dance therapy, music therapy, and psychodrama.

(Authority: Sec. 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

Physical or mental impairment means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Authority: Sec. 7(8)(A) of the Act; 29 U.S.C. 706(8)(A))

Reservation means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Authority: Sec. 130(c) of the Act; 29 U.S.C. 750(c))

State agency means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: Sec. 7(3)(A) and 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

State plan means the State plan for vocational rehabilitation services. (34 CFR Part 361)

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

State unit, State vocational rehabilitation unit or designated State unit means either—

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency that has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Authority: Sec. 7(3) of the Act; 29 U.S.C. 706(3))

Substantial impediment to employment means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) significantly restricts an individual's occupational performance by preventing his preparing for, obtaining, or retaining employment consistent with his capacities and abilities.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Vocational rehabilitation services: (1) When provided to an individual, means any goods or services necessary to render an individual with a disability

employable, including, but not limited to, the following—

(i) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(ii) Counseling, guidance, and work-related placement services for individuals with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services, and follow-up, follow-along, and specific diagnosis services necessary to assist such individuals to maintain, regain, or advance in employment;

(iii) Vocational and other training services for individuals with disabilities, including personal and vocational adjustment, books, or other training materials;

(iv) Services to the families of such individuals with disabilities, if necessary to the adjustment or rehabilitation of such individuals;

(v) Physical and mental restoration services;

(vi) Maintenance for additional costs incurred while participating in rehabilitation;

(vii) Interpreter services and note-taking services for individuals who are deaf, including tactile interpreting for individuals who are deaf-blind;

(viii) Reader services and note-taking services for those individuals who are determined to be blind after an examination by qualified personnel under State licensure laws;

(ix) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety and law enforcement, and other appropriate service employment;

(x) Rehabilitation teaching services and orientation and mobility services for individuals who are blind;

(xi) Occupational licenses, tools, equipment, and initial stocks and supplies;

(xii) Transportation in connection with the rendering of any vocational rehabilitation service;

(xiii) Telecommunications, sensory, and other technological aids and devices;

(xiv) Rehabilitation technology services;

(xv) Referral and other services designed to assist individuals with disabilities in securing needed services from other agencies;

(xvi) Transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives;

(xvii) On-the-job or other related personal assistance services provided while an individual with a disability is receiving vocational rehabilitation services; and

(xviii) Supported employment services.

(Authority: Sec. 103(a) of the Act; 29 U.S.C. 723(a))

(2) When provided for the benefit of groups of individuals, *Vocational rehabilitation services* also means—

(i) In the case of any type of small business enterprise operated by individuals with the most severe disabilities under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

(ii) The establishment, development, or improvement of community rehabilitation programs, including, under special circumstances, the construction of a rehabilitation facility to provide services that promote integration and competitive employment;

(iii) The provision of services, including services provided at community rehabilitation programs, that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized written rehabilitation program of any one individual with disabilities;

(iv) The use of existing telecommunications systems;

(v) The use of services providing recorded material for persons who are blind and captioned films or video cassettes for persons who are deaf; and

(vi) Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals with disabilities.

(Authority: Sec. 103(b) of the Act; 29 U.S.C. 723(b))

8. A new § 369.21 is added to subpart C to read as follows:

§ 369.21 What application requirement applies to these programs?

Each applicant for a grant under a program under 34 CFR Parts 372, 373, 374, 375, 376, 378, or 379 must include in its application a description of the manner in which it will address the needs of individuals with disabilities from minority backgrounds.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: Sec. 21(b)(5) of the Act; 29 U.S.C. 718b)

9. Section 369.42 is amended by revising the heading, designating the existing text as paragraph (a), adding a new paragraph (b), and revising the authority citation following the section to read as follows:

§ 369.42 What special requirements affect provision of services to individuals with disabilities?

* * * * *

(b) Each grantee under 34 CFR parts 371, 372, 373, 374, 375, 376, 378, or 379 must advise applicants for or recipients of services under its project, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State's Client Assistance Program, including information on seeking assistance from that program.

(Authority: Secs. 20 and 306(h) of the Act; 29 U.S.C. 718a and 776(h))

§ 369.44 [Removed]

10. Section 369.44 is removed.

§ 369.45 [Redesignated as § 369.44 and amended]

11. Section 369.45 is redesignated as § 369.44 and amended by removing the word "workshops" in the heading and text, and adding, in its place, the words "community rehabilitation programs".

§ 369.46 [Redesignated as § 369.45]

12. Section 369.46, as amended, is redesignated as § 369.45.

§ 369.47 [Redesignated as § 369.46]

13. Section 369.47 is redesignated as § 369.46.

§ 369.48 [Redesignated as § 369.47]

14. Section 369.48, as amended, is redesignated as § 369.47.

15. The title of part 371 is revised to read as follows:

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES

16. The authority citation for part 371 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 750, unless otherwise noted.

17. In 34 CFR part 371 the word "handicaps" is removed, and the word "disabilities" is added, in its place, in the following places:

(a) Section 371.1;

(b) Section 371.21(d) (twice), (e), (f), (g), (h), and (i);

(c) Section 371.30(f)(2) (i) and (ii);

(d) Section 371.41(a)(2) and (b);

(e) Section 371.42 (a) and (c); and

(f) Section 371.43 (a) and (b).

18. Section 371.1 is amended by revising the heading to read as follows:

§ 371.1 What is the Vocational Rehabilitation Service Program for American Indians with Disabilities?

* * * * *

§ 371.4 [Amended]

19. Section 371.4 is amended by revising the authority citation following the definition for "Reservation" in paragraph (b) to read as follows:

(Authority: Secs. 12(c) and 130(c) of the Act; 29 U.S.C. 711(c) and 750(c))

20. Section 371.10 is revised to read as follows:

§ 371.10 What types of projects are authorized under this program?

The Vocational Rehabilitation Service Program for American Indians with Disabilities provides financial assistance for the establishment and operation of tribal vocational rehabilitation service programs for American Indians with disabilities who reside on Federal or State reservations.

(Authority: Sec. 130(a) of the Act; 29 U.S.C. 750(a))

21. Section 371.21 is amended by revising paragraph (c), removing the word "facilities" in paragraph (j), and adding, in its place, the words "community rehabilitation programs", and revising the authority citation following paragraph (j) to read as follows:

§ 371.21 What are the special application requirements related to the State plan program?

* * * * *

(c) Priority in the delivery of vocational rehabilitation service will be given to those American Indians with disabilities who are the most severely disabled.

* * * * *

(j) * * *

(Authority: Secs. 12(c) and 101(a) (6) and (7) of the Act; 29 U.S.C. 711(c) and 721(a) (6) and (7))

* * * * *

§ 371.40 [Amended]

22. Section 371.40 is amended by revising the authority citation following the section to read as follows:

(Authority: Secs. 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(a))

§ 371.42 [Amended]

23. Section 371.42 is amended by removing the words "rehabilitation facility" in paragraph (a), and adding, in their place, the words "community rehabilitation program".

§ 371.43 [Amended]

24. Section 371.43 is amended by revising the authority citation following the section to read as follows:

(Authority: Secs. 12(c) and 130(b)(2) of the Act; 29 U.S.C. 711(c) and 750(b)(2))

PART 373—[AMENDED]

25. The title of part 373 is revised to read as follows:

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO INDIVIDUALS WITH DISABILITIES

26. The authority citation for part 373 continues to read as follows:

Authority: 29 U.S.C. 711(c), 777a(a)(1), and 777a(a)(4), unless otherwise noted.

27. Section 373.1 is revised to read as follows:

§ 373.1 What is the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities?

This program is designed to provide financial assistance to projects for expanding or otherwise improving vocational rehabilitation services and other rehabilitation services for individuals with disabilities, especially individuals with the most severe disabilities.

(Authority: Sec. 311(a) of the Act; 29 U.S.C. 777(a))

28. Section 373.10 is revised to read as follows:

§ 373.10 What types of projects are authorized under this program?

(a) Authorized activities under this program include carrying out special projects concerned with establishing programs for expanding or otherwise improving vocational rehabilitation services and other rehabilitation services to individuals with disabilities, especially those individuals with the most severe disabilities.

(b) Projects also may be conducted to meet the special needs of isolated populations of individuals with disabilities, particularly among American Indians residing on or outside of reservations.

(c) Individuals with disabilities served under this program include individuals who are blind, individuals who are deaf, and other groups of individuals with disabilities who are members of populations that are unserved or underserved by programs under the Act, as identified by the Secretary in a notice published in the **Federal Register**.

(Authority: Sec. 311(a)(1) and 311(a)(4) of the Act; 29 U.S.C. 777(a)(1) and 777a(a)(4))

29. Section 373.11 is amended by revising the heading, the undesignated introductory text, and paragraphs (a) and (c) to read as follows:

§ 373.11 What specific activities must be supported under this program to provide services to individuals who are blind?

Projects in which services are provided to individuals who are blind must—

(a) Demonstrate innovative methods of providing intensive rehabilitation services needed to rehabilitate individuals who are blind; or

* * * * *

(c) Conduct coordinated rehabilitation service activities with other public or nonprofit agencies serving individuals who are blind in the same area.

30. Section 373.12 is revised to read as follows:

§ 373.12 What specific activities must be supported under this program to provide services to individuals who are deaf?

Projects in which services are provided to individuals who are deaf must—

(a) Demonstrate innovative methods of providing the specialized services needed to rehabilitate and make maximum use of the vocational potential of individuals who are deaf; or

(b) Conduct coordinated activities with other public and nonprofit agencies administering programs for people who are deaf in the same area in order to expand or improve rehabilitation services for individuals who are deaf.

(Authority: Sec. 311(a) of the Act; 29 U.S.C. 777a)

31. Section 373.30 is amended by revising paragraphs (f)(2)(i), (g)(2)(i), (g)(2)(iv), and (h)(2) to read as follows:

§ 373.30 What selection criteria does the Secretary use under this program?

* * * * *

(f) * * *

(2) * * *

(i) A broad range of vocational rehabilitation services and other rehabilitation services will be available to individuals with disabilities, especially individuals with the most severe disabilities, within the project;

* * * * *

(g) * * *

(2) * * *

(i) The project will be designed primarily for individuals with the most severe disabilities being provided vocational rehabilitation services by State vocational rehabilitation units;

* * * * *

(iv) All comparable benefits for which project clients might be eligible will be utilized.

(h) * * *

(2) The Secretary looks for information that shows that the approach to be used in providing vocational rehabilitation services and other rehabilitation services will be innovative and appropriate to the groups of individuals with severe disabilities being served.

* * * * *

32. Section 373.40 is revised to read as follows:

§ 373.40 What are the matching requirements?

Grants may be made for paying all or part of the cost of activities covered under this program. If part of the costs is to be paid by the grantee, the amount of grantee participation is specified in the application notice and will not be more than 10 percent of the total cost of the project.

(Authority: Secs. 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

§§ 373.41 and 373.42 [Removed]

33. Sections 373.41 and 373.42 are removed.

PART 374—[AMENDED]

34. The title of part 374 is revised to read as follows:

PART 374—SPECIAL PROJECTS AND DEMONSTRATIONS FOR MAKING RECREATIONAL ACTIVITIES ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES

35. The authority citation for part 374 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 777a(a)(3), unless otherwise noted.

36. Section 374.1 is revised to read as follows:

§ 374.1 What is the Program of Special Projects and Demonstrations for Making Recreational Activities Accessible to Individuals with Disabilities?

This program is designed to provide financial assistance to projects to demonstrate methods of making recreational activities fully accessible to individuals with disabilities.

(Authority: Sec. 311(a)(3) of the Act; 29 U.S.C. 777a(a)(3)).

§ 374.3 [Amended]

37. Section 374.3 is amended by removing "734" in paragraph (b), and adding, in its place, "374".

38. Section 374.10 is amended by revising paragraph (a) and by removing the word "handicaps" both times it appears in paragraph (c), and adding, in its place, the word "disabilities" to read as follows:

§ 374.10 What types of projects are authorized under this program?

(a) This program provides financial assistance for the support of special projects and demonstrations, and related research and evaluation, to demonstrate methods of making recreational activities fully accessible to individuals with disabilities.

* * * * *

§ 374.30 [Amended]

39. Section 374.30 is amended by removing the word "handicaps", and adding, in its place, the word "disabilities" in paragraphs (f)(1), (g)(1), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v).

40. Section 374.40 is revised to read as follows:

§ 374.40 What are the matching requirements?

Grants may be made for paying all or part of the costs of activities covered under this program. If part of the costs is to be paid by the grantee, the amount of grantee participation is specified in the application notice and will not be more than 10 percent of the total cost of the project.

(Authority: Secs. 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3)).

§ 374.41 [Removed]

41. Section 374.41 is removed.

§ 374.42 [Redesignated as § 374.41 and amended]

42. Section 374.42 is redesignated as § 374.41 and amended by removing the word "handicaps", and adding, in its place the word "disabilities".

§ 374.43 [Removed]

43. Section 374.43 is removed.

PART 375—[AMENDED]

44. The heading for part 375 is revised to read as follows:

PART 375—VOCATIONAL REHABILITATION SERVICE PROJECTS PROGRAM FOR MIGRATORY AGRICULTURAL WORKERS AND SEASONAL FARMWORKERS WITH DISABILITIES

45. The authority citation for part 375 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 777b, unless otherwise noted.

46. The authority citations for §§ 375.30, 375.40, 375.41, and 375.42 are revised to read as follows:

(Authority: Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b).

47. In 34 CFR part 375 the word "handicaps" is removed, and the word "disabilities" is added, in its place, in the following places:

(a) Section 375.1;

(b) Section 375.10 (twice); and

(c) Section 375.41 (a) and (b).

48. Section 375.1 is amended by revising the heading and the authority citation following the section to read as follows:

§ 375.1 What is the Vocational Rehabilitation Service Projects Program for Migratory Agricultural Workers and Seasonal Farmworkers with Disabilities?

* * * * *

(Authority: Sec. 312 of the Act; 29 U.S.C. 777b)

§ 375.2 [Amended]

49. Section 375.2 is amended by adding ", nonprofit agencies working in collaboration with State vocational rehabilitation agencies," before the word "or" in paragraph (a).

§ 375.4 [Amended]

50. Section 375.4 is amended by removing the word "handicaps" in paragraph (b)(1) both times it appears, and adding, in its place, the word "disabilities".

§ 375.10 [Amended]

51. Section 375.10 is amended by removing the word "handicapped" and adding, in its place, the word "disabled".

§ 375.30 [Amended]

52. Section 375.30 is amended by removing the words "State or local" in paragraph (g)(2), and adding, in their place, the word "applicant".

§ 375.41 [Amended]

53. Section 375.41 is amended by adding the words "or nonprofit" after the word "local" in paragraph (a).

§ 375.42 [Amended]

54. Section 375.42 is amended by removing "1964," and adding, in its place, "1965, section 311 of the Economic Opportunity Act of 1964,".

PART 376—[AMENDED]

55. The title of part 376 is revised to read as follows:

PART 376—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING TRANSITIONAL REHABILITATION SERVICES TO YOUTH WITH DISABILITIES

56. The authority citation for part 376 is revised to read as follows:

Authority: 29 U.S.C. 777a(b), unless otherwise noted.

57. In 34 CFR part 376 the words "handicapped youth" or "handicapped youths" are removed, and the words "youths with disabilities" are added, in their place, in the following places:

(a) Section 376.1;

(b) Section 376.10 (a)(1) and (a)(2);

(c) Section 376.30 (a), (b)(twice), (e)(twice), and (f); and

(d) Section 376.31 (f)(1), (f)(2)(ii), and (g)(2)(i).

58. Section 376.1 is further amended by revising the heading and the authority citation following the section to read as follows:

§ 376.1 What is the program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youths with Disabilities?

* * * * *

(Authority: Sec. 311(b); 29 U.S.C. 777a(b))

§ 376.2 [Amended]

59. Section 376.2 is amended by revising the authority citation following the section to read as follows:

(Authority: Sec. 311(b); 29 U.S.C. 777a(b))

§ 376.3 [Amended]

60. Section 376.3 is amended by revising the authority citation following the section to read as follows:

(Authority: Secs. 12(c) and 311(b); 29 U.S.C. 711(c) and 777a(b))

61 Section 376.4 is amended by revising the definition of "Extended services" in paragraph (d)(1), removing the definition of "Handicapped youth" in paragraph (d)(2), redesignating paragraph (d)(3) as (d)(2), adding a new definition of "Youths with disabilities" as paragraph (d)(3), and revising the authority citation following the section to read as follows:

§ 376.4 What definitions apply to this program?

* * * * *

(d) * * *

(1) *Extended services* means on-going support services and other appropriate services provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds under this part, part 361, part 363, or part 380, after an individual with the most severe disabilities has made the transition from project support.

* * * * *

(3) *Youths with disabilities* means individuals with disabilities between the ages of 12 and 26.

(Authority: Secs. 12(c) and 311(b); 29 U.S.C. 711a(c) and 777(b))

§ 376.10 [Amended]

62. Section 376.10 is further amended by removing the word "facilities" in paragraph (a)(2), and adding, in its place, the words "community rehabilitation programs", removing the words "handicapped youths" in paragraph (c), and adding, in their place, the words "youths with disabilities", and revising the authority citation following the section to read as follows:

(Authority: Secs. 12(c) and 311(b); 29 U.S.C. 711a(c) and 777(b))

§ 376.30 [Amended]

63. Section 376.30 is further amended by removing the words "handicapped youth with" in the heading of paragraph (c), and adding, in their place, the words "youths with disabilities who have", and revising the authority citation following the section to read as follows:

(Authority: Sec. 311(b); 29 U.S.C. 777 (a), (b))

§ 376.31 [Amended]

64. Section 376.31 is further amended by removing the words "handicapped youths" in paragraph (h)(2)(ii), and adding, in their place, the words "youths with disabilities", and revising the authority citation following the section to read as follows:

(Authority: Sec. 311(b); 29 U.S.C. 777a(b))

65. Section 376.40 is revised to read as follows:

§ 376.40 What are the matching requirements?

The Secretary may pay all or part of the costs of activities funded under this program. If part of the costs is to be paid by a grantee, the amount of grantee participation is specified in the application notice and will not be more than 10 percent of the total cost of the project.

(Authority: Secs. 12(c) and 311(b); 29 U.S.C. 711(c) and 777a(b))

66. Section 376.41 is amended by revising the authority citation following the section to read as follows:

(Authority: Sec. 311(b); 29 U.S.C. 777a(b))

PART 377—DEMONSTRATION PROJECTS TO INCREASE CLIENT CHOICE PROGRAM

67. The authority citation for Part 377 continues to read as follows:

Authority: Sec. 802(g) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g), unless otherwise noted.

§ 377.5 [Amended]

68. Section 377.5 is amended by removing "II," in paragraph (2) of the definition of "Individual with a disability" in paragraph (a).

§ 377.11 [Amended]

69. Section 377.11 is amended by revising the authority citation following the section to read as follows:

(Authority: Secs. 21(b)(6), 802(g)(2), 802(g)(3), 802(g)(5), 802(g)(6), and 802(g)(7) of the Rehabilitation Act of 1973; 29 U.S.C. 718b and 29 U.S.C. 797a(g)(2), (3), (5), (6), and (7)).

PART 378—PROJECTS FOR INITIATING RECREATIONAL PROGRAMS FOR INDIVIDUALS WITH DISABILITIES

70. The authority citation for part 378 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 777(f), unless otherwise noted.

§ 378.3 [Amended]

71. Section 378.3 as revised by the regulations published in the **Federal Register** on July 1, 1993 (58 FR 35764) (effective date pending) is amended by revising the authority citation following the section to read as follows:

(Authority: Secs. 21(b)(6) and 316(a)(4) of the Act; 29 U.S.C. 718b and 777(f))

PART 379—PROJECTS WITH INDUSTRY

72. The authority citation for part 379 continues to read as follows:

Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g, unless otherwise noted.

73. Section 379.1 is revised to read as follows:

§ 379.1 What is the Projects with Industry program?

This program is designed to—

(a) Create and expand job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process;

(b) Identify competitive job and career opportunities and the skills needed to perform these jobs;

(c) Create practical settings for job readiness and training programs; and

(d) Provide job placements and career advancement.

(Authority: Sec. 621(a) of the Act; 29 U.S.C. 795(a))

74. Section 379.2 is revised to read as follows:

§ 379.2 Who is eligible for assistance under this program?

Employers and profit-making and nonprofit organizations with which the Secretary may enter into an agreement include any—

(a) Designated State unit;

(b) Labor union;

(c) Employer;

(d) Community rehabilitation program provider;

(e) Trade association;

(f) Indian tribe or tribal organization; or

(g) Other agency or organization with the capacity to create and expand job and career opportunities for individuals with disabilities.

(Authority: Sec. 621(a)(2) of the Act; 29 U.S.C. 795g(a)(2))

§§ 379.3 and 379.4 [Redesignated as §§ 379.4 and 379.5]

75. Sections 379.3 and 379.4 are redesignated as §§ 379.4 and 379.5, respectively.

76. A new § 379.3 is added to read as follows:

§ 379.3 Who is eligible for services under this program?

(a) An individual is eligible for services under this program if the appropriate State vocational rehabilitation unit determines the individual to be an individual with a disability or an individual with a severe disability.

(b) In making the determination under paragraph (a) of this section, the State vocational rehabilitation unit shall rely on the determination made by the recipient of the grant under which the services are provided.

(c) If a State vocational rehabilitation unit does not notify a recipient of a grant within 60 days that the determination of the recipient is inappropriate, the recipient of the grant may consider the individual to be eligible for services.

(Authority: Sec. 621(a)(3) of the Act; 29 U.S.C. 795g(a)(3))

77. Section 379.10 is amended by revising paragraphs (a), (b), (c), and (d) and adding paragraph (e) to read as follows:

§ 379.10 What types of project activities are required under this program?

* * * * *

(a) Providing individuals with disabilities with training and employment in a realistic work setting in order to prepare them for employment and career advancement in the competitive market;

(b) Providing individuals with disabilities with job placement and career advancement services;

(c) Providing individuals with disabilities with supportive services that are necessary to permit them to maintain the employment and career advancement for which they have received training under this program; and

(d) To the extent appropriate, providing for—

(1) The development and modification of jobs and careers to accommodate the special needs of the individuals with disabilities being trained and employed under this program;

(2) The purchase and distribution of rehabilitation technology to meet the needs of individuals with disabilities at job sites; and

(3) The modification of any facilities or equipment of the employer which are to be used by individuals with disabilities under this program; and

(e) Providing for the establishment of business advisory councils comprised of representatives of private industry, business concerns, organized labor, and individuals with disabilities and their representatives who will identify job and career availability within the community, the skills necessary to perform those jobs and careers, and prescribe appropriate training programs.

78. A new § 379.11 is added to Subpart B to read as follows:

§ 379.11 What additional types of project activities may be authorized under this program?

The Secretary may include, as part of agreements with grant recipients under this program, authority for such grant recipients to provide the following types of technical assistance:

(a) Assisting employers in hiring individuals with disabilities; or

(b) Improving or developing relationships between grant recipients or prospective grant recipients and employers or organized labor; or

(c) Assisting employers in understanding and meeting the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C 12101 *et seq.*) as the Act relates to employment of individuals with disabilities.

(Authority: Sec. 621(a) of the Act; 29 U.S.C 795g)

§ 379.30 [Amended]

79. Section 379.30 is amended by removing the word "handicaps" in paragraphs (f)(1), (f)(2)(i), (f)(2)(ii), (f)(2)(iii), and (h)(1), and adding, in its place, the word "disabilities", and by removing the words "similar benefits" in paragraph (g)(2)(i), and adding, in their place, the words "comparable benefits and services".

80. Section 379.31 is amended by revising paragraph (a) and the authority citation following the section to read as follows:

§ 379.31 What other factors does the Secretary consider in reviewing an application?

* * * * *

(a) The equitable distribution of projects among the States and awards new grants to new projects that will serve individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations that are currently unserved or underserved by the Projects with Industry program; and

* * * * *

(Authority: Secs. 621(e)(2) and 621(f)(4) of the Act; 29 U.S.C. 795g(e)(2) and 795g(f)(4))

81. Section 379.41 is amended by revising paragraphs (f) and (g) to read as follows:

§ 379.41 What are allowable costs?

* * * * *

(f) The purchase or modification of rehabilitation technology to meet the needs of individuals with disabilities; and

(g) Alteration and renovation appropriate and necessary to ensure access to and utilization of buildings by persons with disabilities.

§ 379.42 [Amended]

82. Section 379.42 is amended by removing the word "handicaps" in the undesignated introductory text and in paragraph (a), and adding, in its place, the word "disabilities".

83. Section 379.43 is amended by removing the words "handicapped individual" in paragraph (d), and adding, in their place, the words "individual with a disability", by removing paragraphs (f) and (i), and redesignating paragraphs (g), (h), (j), (k), (l), (m), and (n) as paragraphs (f), (g), (h), (i), (j), (k), and (l), respectively, and by revising the redesignated paragraphs to read as follows:

§ 379.43 What general provisions are required in agreements?

* * * * *

(f) Provide reasonable assurance that individuals with disabilities successfully completing the training program will be employed by the employer or within a similar enterprise;

(g) Specify the duration of the project, not to exceed five years;

(h) Provide that any individual with disabilities placed with an employer under this program will be given terms and benefits of employment equal to those which are given to similarly situated co-workers of the individual;

(i) Provide that employees with disabilities will not be segregated from their co-workers;

(j) Contain an agreement to make reports and to keep any records and

accounts required by the Secretary and to make records and accounts available for audit purposes;

(k) Contain a description of an annual evaluation plan which contains, at a minimum, the following elements:

(1) The numbers and types of individuals with disabilities served.

(2) The types of services provided.

(3) The sources of funding.

(4) The percentage of resources committed to each type of service provided.

(5) The extent to which the employment status and earning power of individuals with disabilities changed following services.

(6) The extent of capacity building activities, including collaboration with business and industry and other organizations, agencies, and institutions.

(7) A comparison, if appropriate, of activities in prior years with activities in the most recent year.

(8) The number of project participants who were terminated from project placements and the duration of those placements; and

(l) Provide assurance that an evaluation report containing the data specified in paragraph (k) of this section will be submitted to the Secretary.

84. Section 379.44 is amended by adding a new paragraph (c) to read as follows:

§ 379.44 What wage rates are required under agreements?

* * * * *

(c) The agreement must also provide that individuals with disabilities who are placed in competitive employment must receive at least the applicable minimum wage.

PART 380—[AMENDED]

85. The title of part 380 is revised to read as follows:

PART 380—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING SUPPORTED EMPLOYMENT SERVICES TO INDIVIDUALS WITH THE MOST SEVERE DISABILITIES AND TECHNICAL ASSISTANCE PROJECTS

86. The authority citation for part 380 is revised to read as follows:

Authority: 29 U.S.C 711(c) and 777a(c), unless otherwise noted.

87. In 34 CFR part 380 the words "severe handicaps" are removed, and the words "the most severe disabilities" are added, in their place, in the following places:

(a) Section 380.3(a) and (b);

(b) Section 380.4(b)(1), (b)(2) introductory text, (b)(2)(i), and (b)(2)(ii);

(c) Section 380.6(b);

(d) Section 380.11(h)(2)(i);

(e) Section 380.12(f) and (g)(1);

(f) Section 380.13(h)(1)(twice), (h)(2)(i), and (h)(2)(ii); and

(g) Section 380.20.

88. Sections 380.2, 380.5, 380.10, 380.12, and 380.20 are amended by revising the authority citation following the section to read as follows:

(Authority: 29 U.S.C. 777a(c))

89. Sections 380.3, 380.4, 380.11 and 380.14 are amended by revising the authority citation following the section to read as follows:

(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))

90. Section 380.1 is revised to read as follows:

§ 380.1 What is the program of special projects and demonstrations for providing supported employment services to individuals with the most severe disabilities and technical assistance projects?

This program is designed to provide grants for special projects and demonstrations to expand or otherwise improve the provision of supported employment services to individuals with the most severe disabilities, including projects that demonstrate the effectiveness of natural supports or other alternative approaches for supporting and maintaining individuals in supported employment, and grants for technical assistance projects.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))

§ 380.2 [Amended]

91. Section 380.2 is amended by removing the words "rehabilitation facilities" in paragraphs (a) and (b), and adding, in their place, the words "community rehabilitation programs".

§ 380.4 [Amended]

92. Section 380.4 is further amended by removing the word "statewide" in the heading, and adding, in its place, the word "Statewide".

93. Section 380.5 is amended by revising paragraphs (a)(5) and (a)(6) to read as follows:

§ 380.5 What activities may the Secretary fund under community-based supported employment projects?

(a) * * *

(5) Application of rehabilitation technology in providing supported employment services.

(6) Provision of supported employment services for individuals placed in employment.

* * * * *

94. Sections 380.6, 380.7 and 380.13 are amended by revising the authority citations following the sections to read as follows:

(Authority: 29 U.S.C. 777a(c)(2))

95. Section 380.8 is amended by removing the words "Severe Handicaps" in the undesignated introductory text, and adding, in their place, the words "the Most Severe Disabilities", and by revising paragraphs (a) and (c) and the authority citation following the section to read as follows:

§ 380.8 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

* * * * *

(c) The regulations in 34 CFR 369.46

(Authority: 29 U.S.C. 711(c) and 777a(c))

96. Section 380.9 is amended by revising paragraphs (b) and (c) and the authority citation following the section to read as follows:

§ 380.9 What definitions apply?

* * * * *

(b) The following terms used in this part are defined in 34 CFR part 369:

Designated State unit
Community rehabilitation program
Individual with a severe disability

(c) *Other definitions.* The following definitions also apply to this part:

(1) As used in the definition of "supported employment"—

(i) *Competitive work* means work that at the time of transition is performed weekly on a full-time basis or on a part-time basis, as determined in each individual's program of services, and for which an individual is compensated consistent with the wage standards

provided for in the Fair Labor Standards Act;

(ii)(A) *Integrated work setting* means job sites where either—

(*1*)(*i*) Most employees are not disabled; and

(*ii*) An individual with the most severe disabilities interacts on a regular basis, in the performance of job duties, with employees who are not disabled; and

(*iii*) If an individual with the most severe disabilities is part of a distinct work group of only individuals with disabilities, the work group consists of no more than eight individuals; or

(*2*) If there are no other employees or the only other employees are individuals who are part of a work group as described in paragraph (c)(1)(ii)(A)(*1*)(*iii*) of this section an individual with the most severe disabilities interacts on a regular basis, in the performance of job duties, with individuals who are not disabled, including members of the general public.

(B) The interaction required by paragraphs (c)(1)(ii)(A)(*1*)(*ii*) and (c)(1)(ii)(A)(*2*) of this section may not be satisfied by contact between an individual with the most severe disabilities and individuals who provide on-going support services at the job site;

(iii) *Supported employment services* means on-going support services provided by the grantee with funds under this part—

(A) For a period not to exceed 18 months, unless under special circumstances a longer period to achieve job stabilization has been jointly agreed to by the individual and the rehabilitation counselor and established in the individual's program of services, before an individual with the most severe disabilities makes the transition to extended services; and

(B) As discrete post-employment services following transition in accordance with 34 CFR 363.4(c)(3);

(iv) *Extended services* means on-going support services and other appropriate services provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part, part 361, part 363, or part 376 after an individual with the most severe disabilities has made the transition from project support; and

(v) *Transitional employment* means a series of temporary job placements in competitive work in an integrated work setting with on-going support services for individuals with the most severe disabilities due to mental illness. In transitional employment, the provision of on-going support services must include continuing sequential job placements until job permanency is achieved.

(2) *On-going support services* means services that are—

(i) Needed to support and maintain an individual with the most severe disabilities in supported employment;

(ii) Based on a determination by the grantee of the individual's needs as specified in a program of services; and

(iii) Furnished by the grantee from the time of job placement until transition to extended services, except as provided in 34 CFR 363.4(c)(3) and, following transition, by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment. On-going support services must include, at a minimum, twice-monthly monitoring at the work site of each individual in supported employment to assess employment stability, unless under special circumstances, especially at the request of the individual, the individual's program of services provides for off-site monitoring, and, based upon that assessment, the coordination or provision of specific services, at or away from the work site, that are needed to maintain employment stability. If off-site monitoring is determined to be appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month. On-going support services consist of—

(A) Any particularized assessment needed to supplement the comprehensive assessment of rehabilitation needs;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and placement;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services such as regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representative of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of rehabilitation services described in 34 CFR part 361; and

(I) Any service similar to the foregoing services.

(Authority: 29 U.S.C. 777a(c))

§ 380.11 [Amended]

97. Section 380.11 is further amended by removing the word "statewide" in the heading, and adding, in its place, the word "Statewide" and by removing the word "handicapping" in paragraphs (a)(2) and (b)(1)(iv), and adding, in its place, the word "disabling".

98. A new 380.15 is added to subpart B to read as follows:

§ 380.15 What application requirement applies to this program?

Each applicant for a grant under this program must include in its application a description of the manner in which it will address the needs of individuals with the most severe disabilities from minority backgrounds.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 718b)

99. A new § 380.21 is added to subpart C to read as follows:

§ 380.21 What information requirement applies to this program?

Each grantee must advise recipients of services under its project or, as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State's Client Assistance Program, including information on seeking assistance from that program.

(Authority: 29 U.S.C. 718a)

PART 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

100. The authority citation for part 381 continues to read as follows:

Authority: 29 U.S.C 794e, unless otherwise noted.

101. Section 381.2 is amended by removing the word "State" in paragraph (a); removing the word "receive" in paragraph (a) and adding, in its place, the words "apply for"; revising paragraph (b); and removing the words "may receive the amount" in paragraph (c), and adding, in their place, the words "may apply to receive the amount" to read as follows:

§ 381.2 Who is eligible for an award?

* * * * *

(b) In any fiscal year in which the amount appropriated to carry out this section is less than $5,500,000, a protection and advocacy system from any State or from Guam, American Samoa, the United States Virgin Islands,

the Commonwealth of the Northern Mariana Islands, or the Republic of Palau may apply for a grant under the Protection and Advocacy of Individual Rights (PAIR) program to plan for, develop outreach strategies for, and carry out a protection and advocacy program authorized under this part, except that the Republic of Palau may not apply for a grant under the PAIR program after the Compact of Free Association with Palau takes effect.

* * * * *

101. Section 381.3 is amended by revising paragraph (a)(4) to read as follows:

§ 381.3 What activities may the Secretary fund?

(a) * * *

(4) Coordinating the protection and advocacy program provided through an eligible system with the advocacy programs under—

(i) Section 112 of the Act (the Client Assistance Program (CAP));

(ii) The Older Americans Act of 1965 (the State long-term care ombudsman program);

(iii) Part C of the DDA; and

(iv) The Protection and Advocacy for Individuals with Mental Illness Act of 1986 (PAIMI), 42 U.S.C. 10801–10851.

102. In § 381.5 paragraph (b) is amended by removing the comma before the word "organizations" in the definition of "Advocacy", and adding, in its place, the word "or", and adding a comma after the word "organizations"; revising paragraph (3) of the definition of "Advocacy"; revising the definition of "Eligible individual with a disability"; revising the first sentence of the definition of "Mediation", and adding the word "independent" before "third party mutually"; and by removing "the allotments under sections 509(b)–(e)" in the definition of "State", and adding, in its place, "section 509 (c)(3)(B) and (c)(4)", to read as follows:

§ 381.5 What definitions apply?

* * * * *

(b) * * *

Advocacy * * *

(3) Oneself, in which case it is *self advocacy.*

Eligible individual with a disability means an individual who—

(1) Needs protection and advocacy services that are beyond the scope of services authorized to be provided by the CAP under section 112 of the Act; and

(2) Is ineligible for—

(i) Protection and advocacy programs under Part C of the DDA; and

(ii) Protection and advocacy programs under the PAIMI.

* * * * *

Mediation means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to settle differences or disputes between persons or parties.

* * * * *

103. Section 381.10 is amended by revising paragraph (a)(6)(ii) to read as follows:

§ 381.10 What are the application requirements?

(a) * * *

(6) * * *

(ii) The coordination of programs provided through eligible systems with the advocacy programs under—

(A) Section 112 of the Act (CAP);

(B) The Older Americans Act of 1965 (the State long-term care ombudsman program);

(C) Part C of the DDA; and

(D) The PAIMI;

104. Section 381.21 is amended by removing the words "agency designated to operate the PAIR program" in paragraph (h)(1), and adding, in their place, the words "eligible system".

105. Section 381.30 is amended by revising paragraph (c) introductory text and paragraph (c)(1) to read as follows:

§ 381.30 How are services to be administered?

* * * * *

(c) An eligible system may contract with another agency, entity, or individual to carry out the PAIR program in whole or in part, but only if the agency, entity, or individual with whom the eligible system has contracted—

(1) Does not provide services under the Act or does not provide treatment, services, or habilitation to persons with disabilities; and

* * * * *

§ 381.31 [Amended]

106. Section 381.31 is amended by removing the words "designated agency" in paragraph (b), and adding, in their place, the words "eligible system".

107. Section 381.33 is amended by revising paragraph (b) and removing the last sentence of paragraph (d), to read as follows:

§ 381.33 What are the requirements related to the use of funds provided under this part?

* * * * *

(b) In any State in which an eligible system is located within a State agency, that State or State agency may not use more than five percent of any allotment for the costs of administration of the eligible system supported under this part. For purposes of this paragraph, "costs of administration" include, but are not limited to, administrative salaries (including salaries for clerical and support staff), supplies, depreciation or use allowances, the cost of operating and maintaining facilities, equipment, and grounds (e.g., rental of office space or equipment, telephone, postage, maintenance agreements), and other similar types of costs that may be incurred by the State or State agency to administer the eligible system.

* * * * *

PART 385—REHABILITATION TRAINING

108. The authority citation for part 385 is revised to read as follows:

Authority: 29 U.S.C. 711(c), 772, and 774, unless otherwise noted.

109. Section 385.1 is revised to read as follows:

§ 385.1 What is the Rehabilitation Training program?

(a) The Rehabilitation Training program is designed to—

(1) Ensure that skilled personnel are available to provide rehabilitation services to individuals with disabilities through vocational, medical, social, and psychological rehabilitation programs, through supported employment programs, through independent living services programs, and through client assistance programs;

(2) Maintain and upgrade basic skills and knowledge of personnel employed to provide state-of-the-art service delivery systems and rehabilitation technology services; and

(3) Provide training and information to individuals with disabilities, the parents, families, guardians, advocates, and authorized representatives of the individuals, and other appropriate parties to develop the skills necessary for individuals with disabilities to access the rehabilitation system and to become active decisionmakers in the rehabilitation process.

(b) The Secretary awards grants and contracts to pay part of the costs of projects for training, traineeships, and related activities, including the provision of technical assistance, to assist in increasing the numbers of qualified personnel trained in providing rehabilitation services and other services provided under the Act, to individuals with disabilities. Financial assistance is provided through six categories of training programs.

(1) Rehabilitation Long-Term Training (34 CFR Part 386).

(2) Experimental and Innovative Training (34 CFR Part 387).

(3) State Vocational Rehabilitation Unit In-Service Training (34 CFR Part 388).

(4) Rehabilitation Continuing Education Programs (34 CFR Part 389).

(5) Rehabilitation Short-Term Training (34 CFR Part 390).

(6) Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind (34 CFR Part 396).

(Authority: Secs. 301 and 302 of the Act; 29 U.S.C. 770 and 774)

110. Section 385.2 is revised to read as follows:

§ 385.2 Who is eligible for assistance under these programs?

States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Training program.

(Authority: Secs. 7(19) and 302 of the Act; 29 U.S.C. 706(19) and 774)

111. Section 385.3 is revised to read as follows:

§ 385.3 What regulations apply to these programs?

The following regulations apply to the Rehabilitation Training program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 385.

(c) The regulations in 34 CFR Parts 386, 387, 388, 389, 390, and 396, as appropriate.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

112. Section 385.4 is amended by revising paragraph (b) and the authority citation following the section to read as follows:

§ 385.4 What definitions apply to these programs?

* * * * *

(b) The following definitions also apply to programs under the Rehabilitation Training program:

Act means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

Assistive technology service means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for an individual with disabilities, or, if appropriate, the family of an individual with disabilities; and

(6) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

Community rehabilitation program means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement—

(1) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(3) Recreational therapy;

(4) Physical and occupational therapy;

(5) Speech, language, and hearing therapy;

(6) Psychiatric, psychological, and social services, including positive behavior management;

(7) Assessment for determining eligibility and vocational rehabilitation needs;

(8) Rehabilitation technology;

(9) Job development, placement, and retention services;

(10) Evaluation or control of specific disabilities;

(11) Orientation and mobility services for individuals who are blind;

(12) Extended employment;

(13) Psychosocial rehabilitation services;

(14) Supported employment services and extended services;

(15) Services to family members when necessary to the vocational rehabilitation of the individual;

(16) Personal assistance services; or

(17) Services similar to the services described in paragraphs (1) through (16) of this definition.

Designated State agency means an agency designated under section 101(a)(1)(A) of the Act.

Designated State unit means (1) Any State agency unit required under section 101(a)(2)(A) of the Act, or

(2) In cases in which no State agency unit is required, the State agency described in section 101(a)(2)(B)(i) of the Act.

Independent living core services means—

(1) Information and referral services;

(2) Independent living skills training;

(3) Peer counseling, including cross-disability peer counseling; and

(4) Individual and systems advocacy

Independent living services includes—

(1) Independent living core services; and

(2)(i) Counseling services, including psychological, psychotherapeutic, and related services;

(ii) Services related to securing housing or shelter, including services related to community group living, and supportive of the purposes of this Act and of the titles of this Act, and adaptive housing services (including appropriate accommodations to and modifications of any space used to

serve, or occupied by, individuals with disabilities);

(iii) Rehabilitation technology;

(iv) Mobility training;

(v) Services and training for individuals with cognitive and sensory disabilities, including life skills training, and interpreter and reader services;

(vi) Personal assistance services, including attendant care and the training of personnel providing these services;

(vii) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(viii) Consumer information programs on rehabilitation and independent living services available under this Act, especially for minorities and other individuals with disabilities who have traditionally been unserved or underserved by programs under this Act;

(ix) Education and training necessary for living in the community and participating in community activities;

(x) Supported living;

(xi) Transportation, including referral and assistance for transportation;

(xii) Physical rehabilitation;

(xiii) Therapeutic treatment;

(xiv) Provision of needed prostheses and other appliances and devices;

(xv) Individual and group social and recreational services;

(xvi) Training to develop skills specifically designed for youths who are individuals with disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

(xvii) Services for children;

(xviii) Services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with disabilities;

(xvix) Appropriate preventive services to decrease the need of individuals assisted under this Act for similar services in the future;

(xx) Community awareness programs to enhance the understanding and integration of individuals with disabilities; and

(xxi) Such other services as may be necessary and not inconsistent with the provisions of this Act.

Individual with a disability means any individual who—

(1) Has a physical or mental impairment, which for that individual constitutes or results in a substantial impediment to employment; and

(2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to titles I, II, III, VI, or VIII of the Act.

Individual with a severe disability means an individual with a disability—

(1) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs.

Institution of higher education has the meaning given the term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Personal assistance services means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. The services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

Qualified personnel: (1) For designated State agencies or designated State units, means personnel who have met standards that are consistent with existing national or State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing vocational rehabilitation services.

(2) For other than designated State agencies or designated State units, means personnel who have met existing State certification or licensure requirements, or in the absence of State requirements, have met professionally accepted requirements established by national certification boards.

Rehabilitation technology means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

State includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and the Republic of Palau (until the Compact of Free Association with Palau takes effect).

Stipend means financial assistance on behalf of individuals in support of their training, as opposed to salary payment for services provided within the project.

Supported employment means—

(1) Competitive work in integrated work settings for individuals with the most severe disabilities—

(i)(A) For whom competitive employment has not traditionally occurred; or

(B) For whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(ii) Who, because of the nature and severity of their disability, need intensive supported employment services from the designated State unit and extended services after transition in order to perform this work.

(2) Transitional employment for individuals with the most severe disabilities due to mental illness.

Supported employment services means ongoing support services and other appropriate services needed to support and maintain an individual with most severe disability in supported employment, that are—

(1) Provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in entering or maintaining integrated, competitive employment;

(2) Based on a determination of the needs of an eligible individual, as specified in an individualized written rehabilitation program; and

(3) Provided by the designated State unit for a period of time not to extend beyond 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the individualized written rehabilitation program.

Vocational rehabilitation services means the same as the term is defined in 34 CFR 369.4(b).

(Authority: Secs. 7, 12(c), and 101(a)(7) of the Act; 29 U.S.C. 706, 711(c), and 721(a)(7))

§ 385.20 [Amended]

113. Section 385.20 is amended by removing the words "State vocational rehabilitation unit", and adding, in their place, the words "designated State agency".

114. Section 385.32 is amended by revising paragraphs (a)(2)(V)(A) and (b)(2)(iv)(A), adding "(b)" before "(2)(i)" in paragraph (b)(2)(iii), and revising the authority citation following the section to read as follows:

§ 385.32 What general selection criteria does the Secretary use in reviewing an application?

* * * * *

(a) * * *

(b) * * *

(v) * * *

(A) Persons with disabilities;

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(A) Persons with disabilities;

* * * * *

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

115. Section 385.40 is revised to read as follows:

§ 385.40 What are the requirements pertaining to the membership of a project advisory committee?

If a project funded under 34 CFR parts 386 through 390 or 396 establishes an advisory committee, its membership must include individuals with disabilities or parents, family members, guardians, advocates, or other authorized representatives of the individuals; members of minority groups; trainees; and providers of vocational rehabilitation and independent living rehabilitation services.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 385.41 [Amended]

116. Section 385.41 is amended by adding the word "designated" before the words "State agencies" in the heading and the text, and by removing the word "handicaps", and adding, in its place, the word "disabilities".

117. Section 385.43 is revised to read as follows:

§ 385.43 What requirements apply to the training of rehabilitation counselors and other rehabilitation personnel?

Any grantee who provides training of rehabilitation counselors or other rehabilitation personnel under any of the programs in 34 CFR parts 386 through 390 shall train those counselors and personnel on the services provided under this Act, and, in particular, services provided in accordance with amendments made by the Rehabilitation Act Amendments of 1992. The grantee shall also furnish training to these counselors and personnel regarding the applicability of section 504 of this Act, title I of the Americans with Disabilities Act of 1990, and the provisions of titles II and XVI of the Social Security Act that are related to work incentives for individuals with disabilities.

(Authority: Sec. 302(a)(3) of the Act; 29 U.S.C. 774(a)(3))

118. Section 385.44 is revised to read as follows:

§ 385.44 What requirement applies to the training of individuals with disabilities?

Any grantee or contractor who provides training under any of the programs in 34 CFR parts 386 through 390 and 396 shall give due regard to the training of individuals with disabilities as part of its effort to increase the number of qualified personnel available to provide rehabilitation services.

(Authority: Sec. 302(a)(1) of the Act; 29 U.S.C. 774(a)(1))

119. A new § 385.45 is added to subpart E to read as follows:

§ 385.45 What additional application requirements apply to the training of individuals for rehabilitation careers?

(a) All applicants for a grant or contract to provide training under any of the programs in 34 CFR parts 386 through 390 and 396 shall demonstrate how the training they plan to provide will prepare rehabilitation professionals to address the needs of individuals with disabilities from minority backgrounds.

(b) All applicants for a grant under any of the programs in 34 CFR parts 386 through 390 and 396 shall include a detailed description of strategies that will be utilized to recruit and train persons so as to reflect the diverse populations of the United States, as part of the effort to increase the number of individuals with disabilities, and individuals who are members of minority groups, who are available to provide rehabilitation services.

(Authority: Secs. 21(b)(5) and 302(a)(5) of the Act; 29 U.S.C. 718b(b)(6) and 774(a)(6))

120. A new § 385.46 is added to subpart E to read as follows:

§ 385.46 What limitations apply to the rate of pay for experts or consultants appointed or serving under contract under the Rehabilitation Training program?

An expert or consultant appointed or serving under contract pursuant to this section shall be compensated at a rate subject to approval of the Commissioner which shall not exceed the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code. Such an expert or consultant may be allowed travel and transportation expenses in accordance with section 5703 of title 5, United States Code.

(Authority: Sec. 302(g)(2) of the Act; 29 U.S.C. 774(g)(2))

PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

121. The authority citation for part 387 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§ 387.1 [Amended]

122. Section 387.1 is amended by removing the words "persons with severe handicaps", and adding, in their place, the words "individuals with disabilities", and by revising the authority citation following the section to read as follows:

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§§ 387.2, 387.3, and 387.10 [Amended]

123. The authority citations following §§ 387.2, 387.3, and 387.10 are revised to read as follows:

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§ 387.30 [Amended]

124. Section 387.30 is amended by removing the word "handicaps" in paragraph (g)(2) and both times it appears in paragraph (h)(2)(iii), and adding, in its place, the word "disabilities", and by revising the authority citation following the section to read as follows:

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

125. Sections 387.40 and 387.41 are amended by revising the authority citations following the sections to read as follows:

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

PART 389—REHABILITATION CONTINUING EDUCATION PROGRAMS

126. The authority citation for Part 389 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

§§ 389.1, 389.2, and 389.3, and 389.10 [Amended]

127. Sections 389.1, 389.2, 389.3, and 389.10 are amended by revising the authority citations following the sections to read as follows:

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§§ 389.30 [Amended]

128. Section 389.30 is amended by removing the word "program" in paragraphs (g) introductory text and (g)(1), and adding, in its place, the word "programs", and removing the word "handicaps" in paragraph (g)(2), and adding, in its place, the word "disabilities".

§§ 389.40 and 389.41 [Amended]

129. Sections 389.40 and 389.41 are amended by revising the authority citations following the sections to read as follows:

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774).

PART 390—REHABILITATION SHORT-TERM TRAINING

130. The authority citation for Part 390 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

131. Section 390.1 is revised to read as follows:

§ 390.1 What is the Rehabilitation Short-Term Training program?

This program is designed for the support of special seminars, institutes, workshops, and other short-term courses in technical matters relating to the vocational, medical, social, and psychological rehabilitation programs, independent living services programs, and client assistance programs.

(Authority: Secs. 12(a)(2) and 302 of the Act; 29 U.S.C. 711(a)(2) and 774)

§§ 390.2 and 390.3 [Amended]

132. Sections 390.2 and 390.3 are amended by revising the authority citations following the sections to read as follows:

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

133. Section 390.10 is amended by revising paragraph (a) and the authority citation following the section to read as follows:

§ 390.10 What types of projects are authorized under this program?

(a) Projects under this program are designed to provide short-term training and technical instruction in areas of special significance to the vocational, medical, social, and psychological rehabilitation programs, supported employment programs, independent living services programs, and client assistance programs.

* * * * *

(Authority: Secs. 12(a)(2) and 302 of the Act; 29 U.S.C. 711(a)(2) and 774)

§ 390.30 [Amended]

134. Section 390.30 is amended by removing the word "program" in the heading of paragraph (g) and paragraphs (g)(1) and (g)(2), and adding, in its place, the word "programs".

§§ 390.40 and 390.41 [Amended]

135. Sections 390.40 and 390.41 are amended by revising the authority citations following the sections to read as follows:

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

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federal register

Friday
February 18, 1994

Part IV

Department of Education

34 CFR Part 396
Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 396

RIN 1820–AB25

Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The regulations are needed to implement changes made to the above-captioned program by the Rehabilitation Act Amendments of 1992. The purpose of this discretionary grant program is to assist in providing a sufficient number of skilled interpreters throughout the country for employment in public and private agencies, schools, and other service-providing institutions to meet the communication needs of individuals who are deaf and individuals who are deaf-blind by: (1) Training manual, tactile, oral, and cued speech interpreters; (2) ensuring the maintenance of the skills of interpreters engaged in programs serving individuals who are deaf and individuals who are deaf-blind; and (3) providing opportunities for interpreters to raise their level of competence.

DATES: Comments must be received on or before March 21, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mark Shoob, U.S. Department of Education, 400 Maryland Avenue, SW., room 3036, Switzer Building, Washington, DC 20202–2578.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Charlotte Coffield, U.S. Department of Education, 400 Maryland Avenue, SW., room 3221, Switzer Building, Washington, DC 20202–2736. Telephone: (202) 205–9001. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: The Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program is authorized by section 302(f) of the Act. These proposed regulations would implement the changes to the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program made by the Rehabilitation Act Amendments of 1992, Public Law 102–569, enacted October 29, 1992. The principal change is an expansion of the purpose and scope of the program to include a requirement that each funded project train interpreters for "individuals who are deaf-blind" as well as interpreters for "individuals who are deaf." Each project has the discretion, however, to propose to provide training for interpreters for these two disability populations in the specific communication modes appropriate to the needs of these populations in the geographical area to be served.

The Secretary proposes additional changes to the current regulations by adding definitions of the terms "individual who is deaf-blind," "individual who is deaf," "interpreter for individuals who are deaf-blind," and "qualified professional," as used in the definitions of "interpreter for individuals who are deaf" and "interpreter for individuals who are deaf-blind." The proposed regulations would also amend existing definitions of the terms "interpreter for individuals who are deaf" and "existing program that has demonstrated its capacity for providing interpreter training services."

The proposed definition of "individual who is deaf-blind" is drawn from the Helen Keller National Center Act. The proposed definition of "individual who is deaf" is derived from the Model State Plan for Rehabilitation of Individuals Who Are Deaf and Hard of Hearing (1990, University of Arkansas). The proposed definition of "interpreter for individuals who are deaf-blind" was developed by the Department in the absence of any existing statutory or other authoritative definition.

The regulations in 34 CFR part 385 referenced in this notice of proposed rulemaking are revised in the final regulations implementing technical amendments made by the Rehabilitation Act Amendments of 1992 and 1993 published elsewhere in this issue of the Federal Register.

This program supports National Education Goal 5: By the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected are small colleges and universities. However, the regulations would not have a significant economic impact on the small colleges and universities affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 396.20 and 396.31 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, that participate in the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program would have to comply with the information collection requirements in these proposed regulations.

Annual public reporting and recordkeeping burden for this collection of information is estimated to average 8 hours per response for 20 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3221, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 386

Education, Grant programs—education, Vocational rehabilitation, Training, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.160 Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind)

Dated: February 4, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 396 to read as follows:

PART 396—TRAINING OF INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF AND INDIVIDUALS WHO ARE DEAF-BLIND

Subpart A—General

Sec.

396.1 What is the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind Program?
396.2 Who is eligible for an award?
396.3 What regulations apply?
396.4 What definitions apply?
396.5 What activities may the Secretary fund?

Subpart B—[Reserved]

Subpart C—How Does One Apply for an Award?

396.20 What must be included in an application?

Subpart D—How Does the Secretary Make an Award?

396.30 How does the Secretary evaluate an application?
396.31 What selection criteria does the Secretary use?
396.32 What additional factors does the Secretary consider in making awards?
396.33 What priorities does the Secretary apply in making awards?

Authority: Sec. 302(f) of the Act; 29 U.S.C. 771a(f) unless otherwise noted.

Subpart A—General

§ 396.1 What is the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program?

The Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program is designed to establish interpreter training programs or to assist ongoing programs to train a sufficient number of skilled interpreters throughout the country in order to meet the communication needs of individuals who are deaf and individuals who are deaf-blind by—

(a) Training manual, tactile, oral, and cued speech interpreters;

(b) Ensuring the maintenance of the skills of interpreters; and

(c) Providing opportunities for interpreters to raise their level of competence.

(Authority: Sec. 302(f) of the Act; 29 U.S.C. 771a(f))

§ 396.2 Who is eligible for an award?

Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under this program.

(Authority: Sec. 302(f) of the Act; 29 U.S.C. 771a(f))

§ 396.3 What regulations apply?

The following regulations apply to the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act— Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Government Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 396.

(c) The following regulations in 34 CFR part 385:

(1) Section 385.32.

(2) Section 385.40.

(3) Section 385.44.

(4) Section 385.45.

(5) Section 385.46.

(Authority: Sec. 302(f) of the Act; 29 U.S.C. 771a(f))

§ 396.4 What definitions apply?

(a) *Definitions in EDGAR.* The following terms defined in 34 CFR 77.1 apply to this part:

Applicant
Application
Award
Equipment
Grant
Nonprofit
Private
Project
Public
Secretary
Supplies

(b) *Definitions in the Rehabilitation Training regulations.* The following terms defined in 34 CFR 385.4(b) apply to this part:

Individual With a Disability
Institution of Higher Education

(c) *Other Definitions.* The following definitions also apply to this part:

Existing program that has demonstrated its capacity for providing interpreter training services means an established program with—

(1) A record of training interpreters who are serving the deaf and deaf-blind communities; and

(2) An established curriculum that is suitable for training interpreters.

Individual who is deaf means an individual who has a hearing impairment of such severity that the individual must depend primarily upon visual modes, such as sign language, lip reading, and gestures, or reading and writing to facilitate communication.

Individual who is deaf-blind means an individual—

(1)(i) Who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both of these conditions;

(ii) Who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and

(iii) For whom the combination of impairments described in paragraphs

(1)(i) and (ii) of this definition causes extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation;

(2) Who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining vocational objectives; or

(3) Who meets any other requirements that the Secretary may prescribe.

Interpreter for individuals who are deaf means a qualified professional who uses sign language skills, cued speech, or oral interpreting skills to facilitate communication between individuals who are deaf and other individuals.

Interpreter for individuals who are deaf-blind means a qualified professional who uses tactile or other manual language or fingerspelling modes to facilitate communication between individuals who are deaf-blind and other individuals.

Qualified professional means an individual who has either—

(1) Met existing national or state certification or evaluation requirements; or

(2) Successfully demonstrated equivalent interpreting skills through prior work experience.

(Authority: Secs. 12(c) and 302(f) of the Act; 29 U.S.C. 711(c) and 771a(f); Sec. 206(a) of the Helen Keller Center Act; 29 U.S.C. 1905)

§ 396.5 What activities may the Secretary fund?

The Secretary provides assistance for projects that provide training in interpreting skills for persons preparing to serve, or who are already serving, as interpreters for individuals who are deaf and as interpreters for individuals who are deaf-blind in public and private agencies, schools, and other service-providing institutions.

(Authority: Sec. 302(f) of the Act; 29 U.S.C. 771a(f))

Subpart B—[Reserved]

Subpart C—How Does One Apply for an Award?

§ 396.20 What must be included in an application?

Each applicant shall include in the application—

(a) A description of the manner in which the proposed interpreter training program will be developed and operated during the five-year period following the award of the grant;

(b) A description of the geographical area to be served by the project;

(c) A description of the applicant's capacity or potential for providing training for interpreters for individuals who are deaf and interpreters for individuals who are deaf-blind;

(d) Assurances that any interpreter trained or retrained under this program shall meet any minimum standards of competency that the Secretary may establish; and

(e) The descriptions required in 34 CFR 385.45 with regard to the training of individuals with disabilities, including those from minority groups, for rehabilitation careers.

(Authority: Secs. 21(b)(6), 302(a)(5), and 302(f) of the Act; 29 U.S.C. 718b(b)(6), 777a(a)(5), and 771a(f))

Subpart D—How Does the Secretary Make an Award?

§ 396.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 396.31.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: Sec. 302(f) of the Act; 29 U.S.C. 771a(f))

§ 396.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (10 points) The Secretary reviews each application to determine whether there is a shortage of interpreters in the geographical area to be served by the proposed project and the extent to which the project addresses the shortage.

(b) *Plan of operation.* (20 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(c) *Quality of key personnel.* (20 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(d) *Budget and cost effectiveness.* (10 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(e) *Evaluation plan.* (5 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(f) *Adequacy of resources.* (5 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(g) *Technical and programmatic soundness.* (10 points) The Secretary reviews each application to determine if—

(1) The training activities described in the application reflect practices of professional soundness and efficacy or new and innovative activities that may reasonably be expected to result in the training of interpreters who will display a high level of skill;

(2) The training includes a practicum, or field experience, with potential employers of interpreters; and

(3) There appear to be no substantial obstacles to carrying out the activities described in the application.

(h) *Specialized capabilities of the applicant.* (10 points) The Secretary reviews each application to determine if the applicant has the capacity for providing training for interpreters for individuals who are deaf and interpreters for individuals who are deaf-blind. In determining whether an applicant has that capacity, the Secretary considers the adequacy of the experience of the applicant organization, in addition to the experience of the staff described under paragraph (c) of this section, in conducting activities that are similar, or have significant relevance, to those proposed in the application.

(i) *Demonstrated relationships with service providers and consumers.* (10 points) The Secretary reviews each application to determine if—

(1) The proposed interpreter training project was developed in consultation with service providers;

(2) The training is appropriate to the needs of both individuals who are deaf and individuals who are deaf-blind and to the needs of public and private agencies that provide services to either individuals who are deaf or individuals who are deaf-blind in the geographical area to be served by the training project;

(3) There is a working relationship between the interpreter training project and service providers; and

(4) There are opportunities for individuals who are deaf and individuals who are deaf-blind to be involved in the training project.

(Authority: Sec. 302(f) of the Act; 29 U.S.C. 771a(f))

§ 396.32 What additional factors does the Secretary consider in making awards?

In addition to the selection criteria listed in § 396.31, the Secretary, in making awards under this part, considers the geographical distribution of projects throughout the country, as appropriate, in order to best carry out the purposes of this program.

(Authority: Sec. 302(f) of the Act; 29 U.S.C. 771a(f))

§ 396.33 What priorities does the Secretary apply in making awards?

The Secretary, in making awards under this part, gives priority to public or private nonprofit agencies or organizations with existing programs that have demonstrated their capacity for providing interpreter training services.

(Authority: Sec. 302(f) of the Act; 29 U.S.C. 771a(f))2

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Friday
February 18, 1994

Part V

Department of Labor

Mine Safety and Health Administration

Department of Health and Human Services

Centers for Disease Control and Prevention

Mine Shift Atmospheric Conditions; Coal Mine Respirable Dust Standard Determinations; Notices

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Coal Mine Respirable Dust Standard Noncompliance Determinations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the Mine Safety and Health Administration's (MSHA) intention to use single, full-shift respirable dust measurements in addition to the average of multiple, full-shift respirable dust sample results to determine noncompliance and issue citations for violations of the respirable dust standard under the MSHA coal mine respirable dust program. This notice should be read in conjunction with the joint notice published elsewhere in today's **Federal Register** by the Department of Labor and the Department of Health and Human Services.

DATES: Written comments must be submitted on or before April 19, 1994.

ADDRESSES: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Ronald J. Schell, Chief, Division of Health, Coal Mine Safety and Health, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235–1358.

SUPPLEMENTARY INFORMATION: The Secretary of Labor and the Secretary of Health and Human Services are jointly publishing a notice today elsewhere in the **Federal Register** announcing that the Secretaries find that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift in accordance with section 202(f)(2) of the Federal Mine Safety and Health Act of 1977 (Mine Act). Based on this finding, the Secretaries are proposing to rescind the finding issued on July 17, 1971, and affirmed on February 23, 1972. In order to implement this finding for MSHA's respirable dust program, the Agency proposes to issue citations based on either single, full-shift measurements or on the average of multiple-sample results that meet or exceed the minimum values listed in the Values Table published today.[1]

MSHA believes that the use of single, full-shift measurements will enhance mine operators' compliance with the Mine Act requirement pursuant to section 202(b)(2) to continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift where miners work and travel, at or below the applicable standard.

In May, 1991, the Secretary of Labor directed MSHA to conduct a thorough review of its program to control respirable coal mine dust and develop recommendations for program improvements. In response, MSHA established the Coal Mine Respirable Dust Task Group which conducted a comprehensive examination of the Agency's respirable dust program. The Task Group questioned the reliability of the respirable dust samples, which are submitted to the Agency in accordance with the requirements of the Mine Act, to accurately measure dust exposures in the Nation's coal mines. As a result, in July, 1991, the respirable dust Spot Inspection Program was initiated. This inspection program allowed the Agency to gather significant information on dust levels to which miners were exposed. MSHA sampled 615 underground coal mines involving approximately 50 percent of the mechanized mining units (MMUs) in operation. During these spot inspections, five different occupations and the intake air were sampled on each MMU for one full shift.

Because samples were being collected on only one day during the Spot Inspection Program, citations were issued on individual measurements that demonstrated, after applying valid statistical techniques, that the applicable respirable dust standard was exceeded. Data from these spot inspections show that 203 out of 718 MMUs (28 percent) had single, full-shift measurements that, from a statistical standpoint, significantly exceeded the applicable standard for those MMUs. When the average of multiple samples for those MMUs was examined, however, only 88 out of 717 MMUs (12 percent) exceeded the applicable standard.

Based on these data, MSHA concluded in the June 1992 report of the Coal Mine Respirable Dust Task Group that the then-current Agency sampling strategy used by its inspection staff, which used only the averaging of multiple samples results as the basis for issuing citations, did not always respond to known overexposures to respirable coal mine dust. Specifically, if the average concentration determined from measurements obtained for five occupations working on the same shift is below the applicable dust standard, but one or more individual samples significantly exceed this standard, the then-current MSHA policy did not provide for enforcement action to be taken. For example, if the following five samples were obtained, 4.1, 1.0, 1.0, 2.5, and 1.4 mg/m³, the average concentration would be 2.0 mg/m³. Even though two of these measurements significantly exceed the applicable standard, MSHA would not issue a citation or require corrective action because the average of the concentration measurements is not above the standard. As seen in this example, the sole use of the average of multiple, full-shift sample results would not recognize cases where there is clear evidence that the standard has been exceeded.

Since the implementation of the one day respirable dust spot inspection program, MSHA has continued to use full-shift, single-measurements in making noncompliance decisions under the Agency's respirable coal dust program. Single-sample enforcement strategies are also being used currently by the Agency to determine noncompliance with permissible exposure standards in metal/nonmetal mining and mineral processing operations and by the Occupational Safety and Health Administration (OSHA) in non-mining industries. Therefore, consistent with the joint finding of the Secretary of Labor and the Secretary of Health and Human Services, as well as with recognized industrial hygiene and public health practice, MSHA believes that a single, full-shift measurement can be used reliably to detect violations of the dust standard on the shift during which the sample was taken. Accordingly, single, full-shift measurements should be used for this purpose.

Statistical Basis for and Application of the Single-Sample Enforcement Strategy

The statistical test for noncompliance determinations is based on the calculation of a one-sided, 95-percent confidence interval for different applicable respirable dust standards. The calculation includes variability associated with the sampling and analytical methods. The sampling and analytical variability is expressed as the coefficient of variation, computed by combining random variability associated with the pre- and post-weighing of the filter capsule (.14 mg/m³), flowrate variability (5 percent), and variability associated with flowrate adjustment (5 percent). Using an overall coefficient of variation of 10 percent at 2.0 mg/m³, MSHA has determined using standard statistical methods that a single-shift measurement of 2.4 mg/m³, for example, would indicate noncompliance with a 2.0 mg/m³ dust standard with (at least) 97.5 confidence. Other minimum values at which MSHA would issue citations for violations of the applicable dust standard are listed in the Values Table below. Therefore, when a single, full-shift measurement is at or above the minimum value listed in column 1 of the Values Table, it can be concluded, with at least 95 percent confidence, that the applicable dust standard has been exceeded.

Additionally, to provide the level of health protection to miners required by the Mine Act, MSHA proposes to continue to cite violations of the dust standard based on the average of multiple, full-shift sample results. For example, if five sample results of 2.2, 2.3, 2.3, 2.3, and 2.2 mg/m³ were obtained from a mechanized mining unit on a 2.0 mg/m³ dust standard, the average measurement would be 2.26 mg/m³. If MSHA were to issue citations based solely on single, full-shift measurements by using the Values Table, no citations would be issued and no corrective action would be required because no individual sample result was at or above 2.4 mg/m³. However, the average measurement of 2.26 mg/m³ would indicate (at a confidence level greater than 99 percent) that the applicable dust standard was exceeded. In such cases, when noncompliance is indicated with a high degree of confidence, MSHA would take enforcement action, and require the mine operator to take corrective action to reduce the dust levels in the working environment.

For cases when four or fewer valid measurements are available, the Values Table contains the minimum values at which an average of the measurements would indicate noncompliance with the applicable standard at a confidence level of at least 95 percent. When, for example, the average of three measurements equals or exceeds the minimum value listed in column 3 of the Values Table, MSHA would issue a citation for a violation of the applicable dust standard.

In considering enforcement action, MSHA would first examine the average of multiple, full-shift sample results to determine if the applicable dust standard has been exceeded. If the average measurement is less than the minimum value listed in the Values Table, the Agency would then examine the samples on an individual basis and issue a citation when any measurement is greater than or equal to the column 1 minimum value. Thus, in assessing noncompliance, MSHA intends to use both the average of multiple, full-shift sample results and single, full-shift measurements, and will issue citations based on either criterion, not both, for any given set of samples.

MSHA specifically requests that interested persons submit comments concerning this notice to the address listed above. Written comments submitted on or before April 19, 1994 will be considered before MSHA finalizes this notice on the use of single, full-shift measurements and the average of multiple, full-shift sample results.

Dated: February 11, 1994

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

VALUES TABLE—MINIMUM VALUES FOR CITING VIOLATIONS BASED ON FOUR OR FEWER FULL-SHIFT MEASUREMENTS

Applicable standard	No. of measurements			
	1	2	3	4
2.0	2.33	2.23	2.19	2.17
1.9	2.22	2.13	2.08	2.06
1.8	2.11	2.02	1.98	1.96
1.7	2.00	1.91	1.87	1.85
1.6	1.90	1.81	1.77	1.75
1.5	1.79	1.71	1.67	1.65
1.4	1.68	1.60	1.56	1.54
1.3	1.58	1.50	1.46	1.44
1.2	1.47	1.39	1.36	1.34
1.1	1.36	1.28	1.25	1.23
1.0	1.26	1.18	1.15	1.13
0.9	1.15	1.08	1.04	1.03
0.8	1.05	0.98	0.94	0.93
0.7	0.94	0.87	0.84	0.82
0.6	0.84	0.77	0.74	0.72
0.5	0.74	0.67	0.64	0.62
0.4	0.64	0.57	0.54	0.52
0.3	0.53	0.46	0.43	0.42
0.2	0.43	0.36	0.33	0.32
0.1	0.33	0.26	0.23	0.22

[FR Doc. 94–3593 Filed 2–17–94; 8:45 am]

BILLING CODE 4510–43–P

[1] MSHA recognizes that any change to the substantive procedures for operator sampling governed by 30 CFR part 70 would require rulemaking by the Agency. Therefore, the use of multiple-shift averaging of operator samples will continue under the regulations currently in effect to be the sole method of determining noncompliance. The Agency is studying the appropriateness of utilizing single, full-shift measurements in the operator's sampling program.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Shift Atmospheric Conditions; Respirable Dust Sample

AGENCIES: Mine Safety and Health Administration, Labor, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, HHS.

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Labor and the Secretary of Health and Human Services[1] (the Secretaries) find that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be measured over a single shift in accordance with section 202(f)(2) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 801 et seq. Based on this finding, the Secretaries propose to rescind the notice of finding which was published on July 17, 1971, and affirmed on February 23, 1972. This finding is governed by the provisions of section 101 of the Mine Act. This notice should be read in conjunction with the notice published separately by the Mine Safety and Health Administration (MSHA) today elsewhere in the **Federal Register.**

DATES: Written comments must be submitted on or before April 19, 1994.

ADDRESSES: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Ronald J. Schell, Chief, Division of Health, Coal Mine Safety and Health, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235–1358.

SUPPLEMENTARY INFORMATION: In accordance with section 202(f)(2) and under section 101 of the Mine Act, this notice is published jointly by the Secretaries of the Departments of Labor and Health and Human Services.

[1] This notice is signed by the Assistant Secretary for Mine Safety and Health, and the Director, National Institute for Occupational Safety and Health under authority delegated to them by the Secretary of Labor and the Secretary of Health and Human Services.

Statutory Framework

Section 202(b) of the Mine Act requires that:

Each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air.

Section 202(f) of the Mine Act provides that:

* * * the term average concentration means a determination which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed (1) as measured during an 18 month period following the date of enactment of this Act, over a number of continuous productions shifts to be determined by the Secretary and the Secretary of Health, Education and Welfare, and (2) as measured thereafter, over a single shift only, unless the Secretary of Labor and the Secretary of Health, Education and Welfare find, in accordance with the provisions of Section 101 of the Act, that such single-shift measurement will not, after applying valid statistical techniques to such measurement, accurately represent such atmospheric conditions during such shift.

The plain meaning of the statutory requirements show clear Congressional intent that the atmospheric conditions to which miners are exposed be maintained at or below the applicable standard during any single working shift. (The use of the term "applicable standard" recognizes that some mines have respirable dust in the mine atmosphere of the active workings that contains more than five percent quartz, and that, under the regulations of the Mine Safety and Health Administration at 30 CFR 70.101, 71.101 and 90.101, the applicable standard for respirable dust in those mines may be reduced because of the quartz content). This intent is also clearly reflected in the legislative history of the Coal Mine Health and Safety Act of 1969 (Coal Act). The Senate Committee in its Report noted that the dust level should "not exceed the specified standard during *any* shift" (emphasis added). Senate Report No. 91–411, 91st congress, 1st Sess., p. 20. The Report also specified that:

It is the Committee's intention that the average dust level at any job, for any miner, in any active working place during each and every shift, shall be no greater that the standard. Since some mine operations involve a varying pace of activity, the dust level could significantly differ from one shift to another. It is expressly noted, therefore, that the bill does not allow multiple shift averaging.

However, the final version of the bill was amended by a joint House and Senate conference committee which mandated an 18 month period for the determination of "average concentration" over a number of continuous production shifts, and thereafter as measured over a single shift unless a specific finding was made pursuant to section 202(f) of the Coal Act that such measurements were not reliable. Thus, the statutory language clearly indicates that the use of multiple-shift averaging was not the preferred method of determining the average concentration. The National Institute for Occupational Safety and Health (NIOSH) and MSHA have jointly developed the finding set forth below.

Finding

The Secretaries find that a single full-shift measurement, after applying valid statistical techniques to such measurement accounting for the precision of the analytical and sampling method, will accurately represent the atmospheric conditions with regard to the respirable dust concentration during the shift in which it was taken.

Rescission of the 1971 Notice

Based on the preceding joint finding, the Secretaries propose to rescind the July 17, 1971, notice of finding (36 FR 13286) by their predecessors under the authority which is now section 202(f)(2) of the Mine Act. The 1971 Finding concluded that "[a] single shift measurement of respirable dust would not, after applying valid statistical techniques to such measurement, accurately represent the atmospheric conditions to which the miner is continuously exposed." The finding did not address the average dust concentration during the shift the sample was taken. Comments were received and considered, and on February 23, 1972, the finding was affirmed by the then Secretaries of the Interior and of Health, Education, and Welfare (37 FR 3833). The Secretaries now propose to rescind the 1971 finding by superseding it with the new finding contained in this notice.

Comments

MSHA and NIOSH specifically request that interested persons submit comments concerning this notice to the address listed above. Written comments submitted on or before April 19, 1994 will be considered before issuing a final finding.

Dated: February 1, 1994.

Edward C. Hugler,

Acting Assistant Secretary for Mine Safety and Health.

Dated: February 1, 1994.

Richard A. Lemen,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 94–3592 Filed 2–17–94; 8:45 am]

BILLING CODE 4510–43–M

federal register

Friday
February 18, 1994

Part VI

Department of Education

Online and Dial-In Access to Statewide Multitype Library Database Demonstration Project; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.039]

Library Research and Demonstration: Online and Dial-in Access to a Statewide Multitype Library Database Demonstration Project; Notice Inviting Applications for a New Award for Fiscal Year (FY) 1994

Purpose of Program: The Library Research and Demonstration Program provides grants to institutions of higher education and other public or private agencies, institutions, and organizations for research and demonstration programs related to the improvement of libraries, including the promotion of economical and efficient delivery of information, cooperative efforts, developmental projects, education in library and information science, and dissemination of information derived from such projects. The competition announced in this notice is for demonstration of online and dial-in access to a statewide, multitype library bibliographic database through a statewide fiber optic network.

Eligible Applicants: Institutions of higher education that meet the definition of eligibility under the terms of 20 U.S.C. 1141(a) and other public or private agencies, institutions, and organizations.

Deadline for Transmittal of Applications: April 28, 1994.

Deadline for Intergovernmental Review: June 28, 1994.

Applications Available: February 28, 1994.

Available Funds: $2.5 million.

Estimated Average Size of Award: $2.5 million.

Estimated Number of Awards: One.

Project Period: Up to 24 months.

Budget Period: October 1, 1994 to December 30, 1995.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86; and (b) the regulations for this program in 34 CFR part 777.

Priority: Under 34 CFR 75.105(c)(3) and the FY 1994 appropriations act (Pub. L. 103–112), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Demonstration of on-line and dial-in access to a statewide, multitype library bibliographic data base through a statewide fiber optic network housing a point of presence in every county, connecting library services in every municipality.

SUPPLEMENTARY INFORMATION: Public Law 103–112, enacted October 21, 1993, provides FY 1994 appropriations for federally assisted library programs. That legislation specifies that, of the total funds appropriated for federally assisted library programs, $2.5 million shall be used to address the priority as stated above.

Any institution of higher education that wishes to apply for funds under one of the programs authorized by title II of the Higher Education Act (HEA) (20 U.S.C. 1021 *et seq.*) must be an eligible institution under the terms of 20 U.S.C. 1141(a). If you wish to apply to the Department of Education for a determination of institutional eligibility, you may contact: Ms. Lois Moore, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue, SW., room 3522, Washington, DC 20202–5323.

For Applications or Information Contact: Neal Kaske or Louise V. Sutherland, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Dual Party Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notice for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board, telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Release). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1033.

Dated: February 14, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–3711 Filed 2–17–94; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Friday
February 18, 1994

Part VII

Environmental Protection Agency

40 CFR Part 261

Identification and Listing of Hazardous Waste, Treatability Studies Sample Exclusion; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–4838–5]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Treatability Studies Sample Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On July 7, 1993, the Environmental Protection Agency (EPA) proposed revisions to the Treatability Studies Sample Exemption Rule. The rule conditionally exempts small scale treatability studies from Subtitle C regulation.

EPA is today issuing a final rule. The principal change to the existing rule is to increase the quantity of contaminated media which are conditionally exempt from Subtitle C regulation when used in conducting treatability studies.

EFFECTIVE DATE: This rule becomes effective on February 18, 1994.

ADDRESSES: The public docket for this rulemaking is located in the RCRA docket, located in room M2427 at the U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. The telephone number for the docket is (202) 260–9327. The record is available for inspection by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. Viewers may copy up to 100 pages free of charge, after which copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: Questions relating to the technical content of this rule should be directed to Jim Cummings or John Kingscott, Technology Innovation Office (5102W), U.S. Environmental Protection Agency at (703) 308–8796 or (703) 308–8749. Other inquiries should be directed to the RCRA/Superfund Hotline at (800) 424–9346 or (703) 920–9810.

SUPPLEMENTARY INFORMATION:

Outline

I. Background
II. Discussion
A. Summary of Existing Treatability Sample Exclusion Rule
B. Need and Rationale for This Rulemaking
C. Response to Major Comments
1. Quantity Limits
2. Scope of the Exemption
3. Time Limits for Sample Retention
4. Variances for Processing Additional Quantities and Extended Time Limits
5. Treatability Studies at Federal Facilities
6. Promulgation/State Adoption
III. State Authority
IV. Effective Date
V. Regulatory Analyses
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

I. Background

On July 19, 1988 (52 FR 27290), EPA issued a rule that conditionally exempted from Subtitle C hazardous waste regulation waste samples collected for purposes of conducting small-scale treatability studies. 40 CFR 261.4 (e)–(f). This rule was promulgated in recognition of the inhibiting effect of the stringent Resource Conservation and Recovery Act (RCRA) Subtitle C requirements on the development of new treatment capacity, and the minimal public health and environmental risks involved in conducting small-scale treatability studies. The rule identified specific quantities of various types of wastes which could be transported, stored and used in treatability studies without the need for RCRA Subtitle C regulation.

On July 7, 1993 (58 FR 36367), EPA proposed amendments to the existing rule which would increase the quantity limits for major classes of contaminated media (specifically soil and debris) which could be employed in treatability studies without triggering RCRA Subtitle C requirements. The proposal was based in part on the recognition that larger quantities of soil and debris were often needed for treatability testing by technology developers. Larger-scale testing also greatly increases the confidence with which remedial action decision-makers make remedy selection decisions, thus improving CERCLA response activities and RCRA corrective actions, see 58 FR 36367, 36370.

EPA also requested comment on the desirability of an amendment to increase the quantity limits for other forms of remediation waste in addition to soil and debris. The proposal also included an amendment which would allow longer time frames for conducting treatability studies involving bioremediation, and solicited comment on appropriate time limits for other technologies. EPA did not request comment on, or reopen the comment period on, the propriety of the existing exemption.

Twenty-seven comments were received in response to the proposed rule. The comments were universally favorable regarding the need for and desirability of increasing the treatability study quantity limits. A substantial majority of the comments favored extending the scope beyond soil and debris to other forms of remediation and/or hazardous waste. General reasons offered by commenters mirror those stated in the proposed rule, e.g., assisting technology development and increasing confidence in remedy selection.

EPA is today issuing a final rule which increases the quantity and time limits for contaminated media to be used in treatability studies. The rule would increase the exempt amounts from 1000 kg up to 10,000 kg of media contaminated with non-acute hazardous waste and from 250 kg to 2500 kg of media contaminated with acute hazardous, when used in treatability studies.

The existing case-by-case variance provision (40 CFR 261.4(e)(3)) is increased from 500 kg to 5000 kg for media contaminated with non-acute hazardous waste and from 250 kg to 2500 kg for media contaminated with acute hazardous waste. The existing variance provision focuses on allowing limited additional quantities after the initial increment of material is processed. EPA is adding criteria to the variance provision to allow the additional quantity to be requested in advance.

EPA is also increasing the time limits for treatability studies involving bioremediation. Treatability studies involving bioremediation have an initial period of two years to complete testing, and under the case-by-case variance provisions discussed below, may request up to an additional two years.

The remainder of the preamble discusses the major comments received on the proposed rule and EPA's response to them. All other comments are discussed in a background document that is available in the RCRA docket.

II. Discussion

A. Summary of the Existing Treatability Sample Exclusion Rule

The existing Treatability Sample Exclusion rule imposes limits on the quantity of material which may be shipped, stored or treated under the exemption. In order to qualify for the conditional exclusion, laboratory and test facilities must comply with the following quantity and time limitations as well as notification, reporting and record-keeping requirements:

Shipment—The mass of each sample shipment may not exceed 1000 kg of "as received" hazardous waste, 1 kg of acute hazardous waste, or 250 kg soils, water, or debris contaminated with acute hazardous waste. 40 CFR 261.4(e)(2)(ii). "As received" refers to the waste shipped by the generator or sample collector as it arrives at the laboratory or testing facility. 40 CFR 261.4(f)(3).

Storage—The laboratory or testing facility may store up to 1000 kg of non-acute hazardous waste. This limitation can include 500 kg of soils, water, or debris contaminated with acute hazardous waste or 1 kg of acute hazardous waste. 40 CFR 261.4(f)(4).

Treatment—The laboratory or testing facility, on a per waste stream per treatment process basis, may conduct treatability tests on up to 1000 kg of non-acute hazardous waste, 250 kg of soils, water, or debris contaminated with acute hazardous waste, or 1 kg of acute hazardous waste. 40 CFR 261.4(e)(2)(i). The rule imposes a treatment initiation rate limit of 250 kg per day of "as received" waste for the entire laboratory or testing facility.

Time Limits—The existing exclusion requires that the laboratory or testing facility return the sample to the generator or sample collector, or send it to a designated facility within 90 days of completion of the treatability study, or no more than one year from the time the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. 40 CFR 261.4(f)(5).

EPA did not seek comment on the propriety of these exemption levels or criteria, but merely sought comment on amendments that would expand the scope of the existing rule.

B. Need and Rationale for Amendments to the Existing Rule

The preamble to the proposed rule contained an extensive discussion of the reasons the Agency felt that amendments to the existing rule were desirable. 58 FR 36367 (July 7, 1993). Interested readers are referred to that document for further information.

C. Response to Major Comments

1. Quantity Limits

All commenters supported an amendment to increase the quantity limits in the exemption for soil and debris samples by at least the quantities proposed. Almost 50% of the comments suggested adopting higher exemption limits on either an across-the-board or a case-by-case basis.

Commenters noted the significant challenges posed in designing and verifying the operational performance of treatment processes. Commenters also noted the challenges encountered in designing and testing ancillary system components—e.g., material handling equipment (getting the waste material into the treatment unit in an appropriate physical state and condition), and emission control equipment. Smaller-scale tests conducted at the laboratory or bench scale often do not involve ancillary system components, or may not utilize sufficient throughput to adequately test these components.

Suggestions to further increase the quantity limits ranged as high as 25,000 kg. Other comments suggested that quantity limits higher than those proposed be set on a case-by-case basis. These comments identified site size, the nature of the waste and/or the remediation technology, the concentration of hazardous constituents in the waste matrix, and the intent of the study as possible factors to be considered in these case-by-case determinations.

EPA is aware that the larger the scale of the technology development or remedy selection treatability study, the more likely the results will represent the performance of full-scale remedial equipment. Furthermore, EPA's proposal identified the need to address materials handling problems as a major basis for the proposed revision.

The data adduced by EPA in the proposed rule support the conclusion that many of the technologies can be tested within the limits proposed. Nevertheless, EPA's own data also confirm that there are situations where additional quantities may be necessary in order to conduct treatability studies at an appropriate scale.

The existing rule has a provision for case-by-case approval of additional quantities. 40 CFR 261.4(e)(3). As discussed further below, EPA is modifying the variance provision to allow advance approval, on a case-by-case basis, of conducting studies on additional quantities of contaminated media. Due to the potential for delay in processing case-by-case applications, laboratory and testing facilities should carefully consider the tradeoffs in seeking advance approval of additional quantities.

2. Scope of the Exemption

All comments supported the basic proposal to increase the quantity limits for soil and debris. In response to EPA's solicitation of comment on increasing the scope of the revision beyond soil and debris, a substantial majority of the comments recommended extending the quantity increases to various other forms of hazardous waste. Comments differed on the exact scope beyond soil and debris—e.g., all hazardous waste, 'remediation waste', wastewater and/or groundwater.

Reasons suggested for increasing the scope beyond soil and debris included the difficulty of determining the boundary between sludge and media in, for example, unlined lagoons; the low concentration of contaminants in groundwater; the need for longer-duration continuous flow tests; and the need to develop integrated, optimized remediation approaches in the case of 'remediation waste' in general. A number of commenters also suggested extending the increases to all forms of hazardous waste, which would include newly-generated industrial hazardous wastes.

In response to these comments, and in light of EPA's own experience regarding the variety of contaminated media encountered in cleanup efforts, EPA is at this time modifying the scope of the exemption to reach contaminated media, including groundwater, surface water, soils, sediment and debris that contain listed hazardous waste or that themselves exhibit a characteristic. However, the proposal did not focus on samples of newly-generated waste or waste sludges, and the Agency is not taking final action of those materials at this time. EPA is considering additional rulemaking to address larger scale treatability studies on other forms of hazardous waste.[1]

3. Time Limits for Sample Retention

As discussed above, EPA proposed to allow up to two years for treatability studies involving bioremediation. EPA solicited comment on whether these time frames were sufficient, and whether testing involving other technologies also required longer time frames. No negative comments were received on this proposal. Comments included suggestions that the allowable time period be even longer and/or that additional technologies (e.g., phytoremediation and solidification/stabilization) be eligible for longer duration studies.

With regard to the time limits, EPA believes that two years should be adequate for most treatability testing involving bioremediation.[2] Nevertheless, as discussed below, EPA is modifying the case-by-case variance provisions to allow up to an additional

[1] As noted by several commenters, sludges will have often become commingled with underlying media, and present difficulty for those attempting to collect media samples for shipment. EPA agrees that it may be difficult to distinguish sludges from underlying media. Where uncontainerized sludges have come into contact with underlying media, EPA does not expect sample collectors to undertake extraordinary efforts to assure that samples consist only of contaminated media.

[2] As a point of clarification, for purposes of this rule, EPA considers phytoremediation to be a form of bioremediation.

two years for completion of such studies.

EPA expects that this provision will be used judiciously. Laboratory and testing facilities cannot exceed the limits in the rule on the amount of material which may be stored and treated. (e.g , 10,000 kg of media contaminated with non-acute hazardous waste plus 5000 kg if a full variance quantity request is granted). On-going studies reduce the quantity of materials which may be stored for use in new studies.

With regard to stabilization/solidification, EPA's experience in the Superfund Innovative Technology Evaluation (S.I.T.E.) program indicates that a one-year time frame is generally adequate. Modifications discussed below which allow retaining small samples of treated materials should address some of the concerns underlying suggestions for allowing longer duration studies for this technology (e.g., to ensure the long-term efficacy of the stabilization).

Several comments addressed the desirability of retaining samples of treated material for future analysis. EPA understands that such a provision may be useful for technologies such as solidification/stabilization where the attributes of treated material such as compressive strength and leachability of contaminants may change over time, or solvent extraction where there may be issues of the long-term biodegradability of residual solvent in treated soil.

In response to these comments, EPA is promulgating a provision allowing up to 500 kg of treated material from a particular wastestream from treatability studies to be stored by the laboratory or testing facility for up to 5 years. Material archived for future analysis must be included in the storage quantity limit for the facility—e.g., a facility which archives two 500 kg samples from separate waste streams may only store up to 9,000 kg (plus 5000 kg if a variance is granted) of additional material, and must be identified as such in facility records and reports.

4. Variances for Requesting Additional Quantities and Extended Time Limits

Several commenters suggested that the variance provisions in the existing rule (40 CFR 261.4(e)(3)) be increased by the same factor applied to the base quantity allowed. For example, under the existing rule laboratories or testing facilities could request approval for further testing on up to an additional 500 kg from a particular wastestream. Comments included raising the variance limit for contaminated media by the same amount as the basic proposal. The variance provisions allow additional quantities of materials to be used in treatability studies on a case-by-case basis if specified conditions are met—e.g., mechanical failure during the initial treatability study or need to verify the results of a previously conducted study. As with the comments relating to quantity limits in general, commenters suggested across-the-board and case-by-case approaches to variances.

EPA finds the suggestion to allow increased quantities of contaminated media to a set maximum on a case-by-case basis to be reasonable. EPA is modifying the variance quantity by the same factor by which it is increasing the basic quantity limit.

Thus, laboratory and testing facilities may request up to an additional 5000 kg of media contaminated with non-acute hazardous waste, or 2500 kg of media contaminated with acute hazardous waste. The Agency considers this to be a conforming change to the general concept of allowing larger quantity studies, and views it as a logical outgrowth of the proposed rule.

Furthermore, as discussed above, in response to comments that quantities beyond those proposed be allowed on a case-by-case basis, EPA is also adding a provision that will allow laboratory and testing facilities to apply for advance authorization for variances. Factors to be considered in reviewing advance requests for additional quantities include the nature of the technology, the type of process (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), time/quantity of material required to reach steady-state operating conditions, and test design considerations such as mass balance calculations.

Finally, the case-by-case variance provision has been modified to allow laboratory and testing facilities conducting bioremediation treatability studies to request a variance of up to two additional years to complete their studies.

5. Treatability Studies at Federal Facilities

Several comments requested clarification of the status of federal facilities for purposes of eligibility for the treatability study sample exclusion. Federal facilities are often large in size, with numerous different contamination problems for which solutions must be developed and applied. EPA notes that the rule identifies "laboratory or test facilities" as the entities which may take advantage of the conditional exclusion. The Agency would not consider a large federal installation with numerous laboratories or testing sites to be a single "laboratory or test facility" for purposes of this rule. Distinguishing attributes include the requirement to obtain an EPA Identification number for each laboratory or test facility. 40 CFR 261.4(f)(2).

6. Promulgation/State Adoption

Comments on State Authorities are addressed below in the "State Authority" section.

III. State Authority

A number of comments indicated that the efficacy of this rule depends to a considerable extent on the availability of the exclusion at the State level. Since the original treatability sample exclusion rule was promulgated under RCRA and not the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), this revision is also promulgated pursuant to RCRA. As with the existing rule, the revisions promulgated today are not immediately effective in authorized States, since this rulemaking does not impose requirements or prohibitions contained in HSWA. Thus this regulation will be applicable only in those States that do not have final authorization for the non-HSWA base RCRA program.

In a State authorized to implement the base RCRA program, the proposed regulation would not be applicable until the State revises its program to adopt equivalent regulations under State law. However, as with the original rule these proposed changes are less stringent or reduce the scope of the Federal program. Therefore, although EPA strongly encourages timely adoption, authorized States are not required to modify their programs to adopt regulations consistent with and equivalent to this rulemaking. The Agency plans to work with States to encourage timely adoption of this rule because of its benefits to the development of treatment capacity.

IV. Effective Date

This rule is effective immediately upon publication. HSWA amended section 3010 of RCRA to allow rules to become effective in less than 6 months when the regulated community does not need the 6-month period to come into compliance. This is the case here, because this rule reduces the existing requirements for laboratories and test facilities conducting treatability studies on contaminated media. An effective date 6 months after publication would impose unnecessary expense and regulatory burden upon those persons the rule is designed to benefit, and might delay the achievement of the rule's objective of improving CERCLA response activities and RCRA corrective actions by facilitating treatability studies. These reasons also provide a basis for making this rule effective immediately upon final promulgation under the Administrative Procedures Act, 5 U.S.C. 553(d).

V. Regulatory Analyses

A. Executive Order 12866

OMB has determined that this rule is not a significant rule within the meaning of Executive Order 12866.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an Agency is required to publish general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions).

The purpose of the original rule was to eliminate time-consuming and costly permitting requirements. This revision extends the scope of activities which may be conducted without requirements to obtain permits, and will thus have additional positive effects on small entities.

This amendment will have no adverse economic impact on small entities. In fact, it should reduce the burden imposed on small entities that conduct treatability studies and comply with the provisions of this rulemaking. Accordingly, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

To the extent that this rule discusses information collection requirements imposed under existing regulations, these requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: February 9, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended to read as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.4 is amended by revising paragraphs (e)(2)(i) and (e)(2)(ii), (e)(3), (f)(3), (f)(4), and (f)(5) to read as follows:

§ 261.4 Exclusions.

* * * * *

(e) * * *

(2) * * *

(i) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

* * * * *

(3) The Regional Administrator may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Regional Administrator may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)(2) (i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatabilty studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and timeframes allowed in paragraph (e)(3)(i) and (ii) of this section are subject to all the provisions in paragraphs (e) (1) and (e)(2) (iii) through (vi) of this section. The generator or sample collector must apply to the Regional Administrator in the Region where the sample is collected and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Regional Administrator considers necessary.

(f) * * *

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500

kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

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Friday
February 18, 1994

Part VIII

Securities and Exchange Commission

17 CFR Parts 240 and 249
Recordkeeping and Reporting Requirements for Trading Systems Operated by Brokers and Dealers, and Proprietary Trading Systems; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–33605; File No. S7–3–94]

RIN 3235–AG03

Recordkeeping and Reporting Requirements for Trading Systems Operated by Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission") proposes Rule 17a-23 ("Rule") under the Securities Exchange Act of 1934 to establish recordkeeping and reporting requirements for brokers and dealers that operate automated trading systems. Registered broker-dealers sponsors of these systems would be required to maintain participant, volume and transaction records, and to report system activity periodically to the Commission. The Rule would provide the Commission with the information necessary to effectively monitor and evaluate these systems.

DATES: Comments must be received on or before April 19, 1994.

ADDRESSES: Comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–3–94, and will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gordon K. Fuller, Special Counsel, Sheila C. Slevin, Branch Chief, or Kristen N. Geyer, Attorney Advisor, 202/272–2067, Office of Automation and International Markets, Division of Market Regulation, Securities and Exchange Commission, room 5040 (Mail stop 5–1), 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission solicits comment on proposed Rule 17a–23 ("Rule")[1] under the Securities Exchange Act of 1934 ("Act").[2] Rule 17a–23 would require specific recordkeeping and reporting by broker-dealer sponsors of screen-based automated trading systems ("Broker-Dealer Trading System," or "BDTS").

Under the Act, sponsors of BDTSs must register as broker-dealers, and, accordingly, are subject to the general recordkeeping and reporting requirements of Section 17 of the Act and the rules thereunder. While these rules require broker-dealers to keep records relating to general brokerage activity and provide the Commission and self-regulatory organizations ("SROs") access to those records, they do not require BDTS sponsors to keep records that separately identify transactions effected through an automated trading system or provide readily accessible summaries of system volume, identification of securities trading on such system, or descriptions of system operation. This lack of system-specific information makes it difficult for the Commission to evaluate the operation of BDTSs with regard to national market system goals, to monitor the competitive effects of these systems, to ascertain whether broker-dealer regulation remains appropriate for the operation of such systems, and to identify areas where monitoring of such systems may be improved and where SRO surveillance may be more appropriately tailored to the detection of fraudulent, deceptive and manipulative practices in an automated environment.

The Rule would establish a uniform recordkeeping and reporting structure for all broker-dealer sponsors of BDTSs and would provide prospective sponsors of BDTSs with certainty as to their responsibilities under the Act.

II. Existing Reporting and Recordkeeping by BDTSs

Broker-dealers operate a variety of automated systems, not all of which would be considered BDTSs under the Rule. The Rule as proposed would apply to two types of automated systems: (1) Systems that automatically execute orders to buy or sell securities based on quotations of the system sponsor or its affiliates; and (2) systems that both automate the dissemination or collection of quotations, orders, or indications of interest, and provide a mechanism for matching or crossing orders (or for otherwise facilitating agreement between participants to the basic terms of securities transactions through use of the system). This would include trading systems that have been referred to in previous Commission releases as proprietary trading systems ("PTSs"),[3] as well as some automated trading systems operated by third market makers.

Currently, BDTSs are subject to Commission oversight through broker-dealer registration, recordkeeping, and reporting requirements in the Act. In addition, sponsors of a number of systems have obtained no-action letters as discussed below that require supplemental recordkeeping and reporting.

A. Broker-dealer Requirements

Like any other entity effecting securities transactions, sponsors of BDTSs must comply with the broker-dealer registration requirements of the Act.[4] As registered broker-dealers, sponsors are subject to Section 17(a) of the Act and rules thereunder, which require them to keep current records regarding their brokerage activity and to file certain reports with the Commission.[5] These sponsors also are subject to oversight by an SRO,[6] including inspection by the SRO of a sponsor's internal transaction records. These regulations require broker-dealers to record, maintain and make available to the Commission and the SROs information about any trade executed by a registered broker-dealer, including trades executed through BDTSs, but do not require broker-dealers to keep records that present BDTS activity separately from other brokerage activity, summarize system volume, describe securities trading on the system, or describe system operation and execution methods or to report such information on a regular basis in a usable format to the Commission.

B. No-action Letters

The automation of a broker-dealer's order handling through BDTSs often involves the use of order execution algorithms and methodologies that differ from traditional broker-dealer operations. Sponsors of these BDTSs have requested and received assurances in the form of no-action letters from the Division that it will not recommend enforcement action if the system operates without registering as an exchange or other registered entity.[7]

In addition to the broker-dealer requirements applicable to BDTS sponsors generally, these systems are monitored through conditions incorporated into such no-action letters, which are substantially similar to the requirements of Rule 17a–23.[8]

The Commission previously has considered formalizing its oversight of automated trading systems. Most recently, the Commission proposed rule 15c2–10, which would have subjected sponsors to a number of procedural and substantive requirements.[9]

The Commission does not believe it is necessary at this time to adopt proposed rule 15c2–10.[10] At the same time, the Commission believes there is a need for enhanced recordkeeping and reporting by sponsors of BDTSs, as described below.

III. Need For Oversight of Broker-Dealer Trading Systems

In adopting the Act, Congress recognized the need for oversight of the securities markets and participants, including requiring appropriate reports, to ensure the maintenance of fair and honest markets and to protect the public interest.[11] The Rule will further these goals by enabling the Commission to evaluate the operation of BDTSs with regard to national market system goals, to monitor the competitive effects of these systems, to ascertain whether broker-dealer regulation remains appropriate for the operation of such systems, and to identify areas where monitoring of such systems may be improved and where SRO surveillance may be more appropriately tailored to the detection of fraudulent, deceptive and manipulative practices in an automated environment.

Automation of securities trading provides significant benefits.[12] Computerization, however, has undeniably changed the operation of the securities industry, and the operation of BDTSs appears to be a significant and growing part of such change. The Commission's efforts to gauge the impact of automation are hindered if critical information regarding the activity of automated systems is not recorded by system sponsors and regularly reported to the Commission in a useful form.

Because existing recordkeeping and reporting rules do not require broker-dealers to record BDTS volume and

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[1] 17 CFR 240.17a–23.

[2] 15 U.S.C. 78a et seq.

[3] See Securities Exchange Act Release No. 26708 (April 13, 1989), 54 FR 15429.

[4] The activities inherent in the operation of BDTSs generally require the system sponsor to register with the Commission as a broker-dealer under Section 15 of the Act. Section 15(a) of the Act generally provides that a "broker" or "dealer" who uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission, unless an exemption applies. Section 3(a)(4) of the Act defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank." Section 3(a)(5) of the Act defines a "dealer" as "any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business." See sections 3(a)(4), 3(a)(5) and 15 of the Act, 15 U.S.C. 78c(a)(14), 78c(a)(15) and 78o. *Cf.* Letter regarding Security Pacific National Bank (July 19, 1985).

[5] See, *e.g.*, Rules 17a–3, 17a–4, 17a–5, and 17a–11 (17 CFR 240.17a–3, 17a–4, 17a–5, and 17a–11); and 17 CFR Parts 400–405, 449–450. Section 17(a) authorizes the Commission to require broker-dealers to make and keep such records and to make such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act, such as removing impediments to the national market system for securities and for the clearance, settlement, and safeguarding of securities and funds, and imposing requirements necessary to make such regulation and control reasonably complete and effective. 15 U.S.C. 78q(a).

[6] Registered broker-dealers that effect transactions in the over-the-counter ("OTC") market are required to become members of the National Association of Securities Dealers ("NASD"). 15 U.S.C. 78o(b)(8).

[7] The Division has issued no-action letters in this context to sponsors of 22 trading systems, 9 of which are operating currently. See letters regarding: Cantor Fitzgerald G.P. (October 1, 1993); Lattice Network (September 9, 1993); Crosscom Trading Network (November 24, 1992); Instinet Corporation's "Market Match" Crossing Session (December 6, 1991); LIMITrader (November 25, 1991); Franklin Advantage Crossing Networks (November 22, 1991); POSIT's Refined Pricing Feature (October 28, 1991); Exchange Services, Inc. (September 11, 1991), (May 22, 1985), and (September 5, 1985); Portfolio Trading Services, Inc. (May 16, 1991); Wunsch Auction Systems, Inc. (February 28, 1991); NYSAC (June 15, 1990); CapitaLink Bond Auctions, Inc. (December 11, 1989); RMJ Securities/Delta Government Options (January 12, 1989); ECON Investment Software (October 11, 1988); POSIT (July 28, 1987); Instinet (August 8, 1986); Security Pacific National Bank (July 19, 1985), (August 8, 1986); Robert L. Adler & Co. (August 7, 1985); NAPEX (August 2, 1985), (July 14, 1986); Troster Singer Corporation (May 23, 1985), (September 3, 1985); Transaction Services, Inc. (May 15, 1985), (September 5, 1985); and B&K Securities, Inc. (March 18, 1985), (September 5, 1985).

The 9 active BDTSs which have been issued no-action letters are: (1) Instinet, which permits participants to enter indications of trading interest and permits other subscribers to execute against those indications of interest automatically through the System; (2) Instinet Crossing Network, a daily after-hours session to match trades for execution at the day's closing price on the primary market for exchange-listed stocks, and the mean of the closing inside bid and ask prices on NASDAQ for issues traded in the over-the-counter market. A subcomponent of the Crossing Network, Instinet Market Match, matches orders to buy securities in a session that occurs prior to the opening of trading on registered exchanges and NASDAQ, and subsequently executes the orders after the close of the day's regular trading at a volume-weighted average price; (3) POSIT, which provides order matching and execution of exchange-listed and OTC securities by institutional customers for single stocks or substantial securities portfolios. A subcomponent of POSIT, POSIT's Volume Weighted Average Pricing Session, matches participants' orders to trade equity securities prior to the opening of registered exchanges and the NASDAQ system and executes matched trades at volume-weighted average prices at the close of the day's regular trading on the exchanges and NASDAQ; (4) RMJ—Delta, which permits users of the system to effect trades on U.S. Treasury options through an intermediary or "blind broker," or on a fully disclosed basis through an automated communications network; (5) AZX, Inc., a single-price auction system that is an exchange operating pursuant to a so-called "limited volume" exemption; (6) CrossCom, which permits a network of subscribers linked by computers to enter bids and offers in high-yield and other fixed-income bonds to be matched and automatically executed by the System; (7) The Lattice Network, which facilitates trading in registered equity securities by combining order-routing and order matching features to execute transactions; (8) NAPEX, which gathers and disseminates indications of interest for registered limited partnerships; and (9) a system operated by Cantor Fitzgerald G.P., which facilitates trading in limited partnership interest by displaying offers to sell and bids to purchase publicly registered limited partnership interest.

[8] These conditions require system sponsors to submit periodic reports to the staff setting forth volume information, names of system participants and applicants denied participation, and affiliations between the sponsor and system participants. The letters also require sponsors to notify the staff prior to implementing material system changes.

[9] See Securities Exchange Act Release No. 26708 (April 13, 1989), 54 FR 15429. The Commission received comments from 32 commenters in response to the 1989 proposal of rule 15c2–10 and the Division's *Market 2000* concept release addressing regulation of PTSs. See Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32587 ("*Market 2000 concept release*") at 32594–32595. Sponsors of PTSs generally opposed the rule, while SROs generally supported the rule (except to the extent they questioned the authority of the Commission to regulate PTSs as broker-dealers or otherwise believed PTSs should be subject to the same regulation as SROs). A summary of comments that were made on the 1989 proposal and the *Market 2000 Study* has been prepared by the Commission's staff and is available in public reference file S7–3–94. *See also Market 2000: An Examination of Current Equity Market Developments*, Division of Market Regulation, SEC (January 1994) ("*Market 2000 Study*"), Appendix VI (Summary of Comments), pp. 32–38.

[10] Some commenters to proposed rule 15c2–10 and the Division's *Market 2000 Study* have objected to the Commission's regulation of BDTSs as broker-dealers. They have argued that certain BDTSs compete for order flow with the exchanges and should be subject to exchange registration and regulation. *See Market 2000 Study*, Appendix VI (Summary of Comments), pp. 32–38. The Commission disagrees. There are many different competitors for order flow, *e.g.*, derivative products, upstairs dealers, third market makers, and BDTSs. These should not all be regulated identically simply because they compete for market share. The level of regulation should be tailored to the functions being performed by an entity and the corollary need for regulation. The functions performed by BDTSs are most closely aligned with the functions performed by broker-dealers; consequently, broker-dealer regulation of BDTS sponsors is appropriate.

[11] 15 U.S.C. 78b.

[12] Automation of securities trading reduces transaction costs, promotes competition, improves transparency of markets, increases opportunities for best execution and enlarges the opportunities for orders to be executed without the participation of a dealer. *See* Letter from Richard C. Breeden, Chairman, SEC, to Edward J. Markey, Chairman, Subcomm. on Telecommunications and Finance, Comm. on Energy and Commerce, U.S. House of Representatives, July 11, 1991, attaching memorandum to Chairman Breeden from the Division ("Breeden Letter"), at 11–15 (discussing how computerization of trading generally is consistent with national market system goals) reprinted in Market 2000 Concept Release, 57 FR 32587 (July 22, 1992). Technology is not infallible, however. Automated markets are vulnerable to myriad difficulties which could affect market operation and stability, including hardware failure, telecommunications interruptions, software failure and design flaws, and intrusion by unauthorized persons.

activity information separately from other brokerage activity or to report such information to the Commission on a regular basis, the Commission receives system-specific information only through conditions to no-action letters, as described above. The no-action letter process is an imperfect vehicle for these purposes: it provides the Commission with information on a limited number of BDTSs, and does not provide sufficient clarity and guidance to enable prospective sponsors of BDTSs to assess accurately their potential obligations under the Act. In order to review trading effected through an automated system that is not subject to a no-action letter,[13] or to analyze trading patterns in BDTSs as a whole, the Commission or SROs currently would have to cull system-specific information from each sponsor's extensive brokerage activity records or rely on system sponsors to do so voluntarily each time the Commission needed such information, an inefficient and time-consuming task.[14]

A. Market Structure and Competitive Concerns

In the Securities Acts Amendments of 1975 ("1975 Amendments"), Congress clearly intended that the Commission actively evaluate its own regulations, the regulations of SROs, and the functioning of the securities market in general to further national market system goals and ensure that the public interest is protected as the national market system develops.[15] Although the Act recognizes that computerized trading generally has positive implications for the National Market System,[16] the Commission must thoroughly examine the implications of automated trading systems in order to fulfill its responsibilities under the 1975 Amendments.[17]

As the number, variety, complexity, and trading volume of BDTSs continues to expand, these systems have the potential to significantly affect over-the-counter trading markets,[18] and trading patterns in listed securities.[19] Volume statistics and other information obtained from these systems would enable the Commission on an ongoing basis to assess the effects of these systems on the national market system structure.[20] Because market reporting mechanisms do not separately identify trades occurring through BDTSs,[21] absent a review of each system sponsor's records the Commission obtains incomplete information about industry-wide BDTS volume and trading activity, making it difficult to measure accurately the effect of these systems on market transparency, competition, and the distribution of trading activity among different markets.

Not only may a significant amount of trading in national market system securities occur through BDTSs, it is probable that sponsors will continue to create BDTSs to facilitate transactions in products not trading in organized markets, including various derivative products. Standardized reporting requirements would assist the Commission in monitoring the interaction between activity in these markets and activity in underlying markets. In addition, some of these "niche" systems may provide the only readily identifiable source of trading opportunity in a particular over-the-counter instrument.[22] A reporting mechanism such as Rule 17a–23 would help alleviate the difficulty of obtaining accurate information on a regular basis about cumulative trading in these instruments.

B. Adequacy of Broker-dealer Regulation and the Detection of Fraudulent or Manipulative Activity

The information required by the Rule is necessary to understand the implications of the ongoing integration of BDTSs into existing market structures and to evaluate the appropriateness of current regulations and oversight as applied to non-traditional market participants,[23] such as automated third market makers. In its Market 2000 Study, the Division recommended trading principles to which third market makers should adhere and the development by SROs of examination modules tailored to third market makers.[24] Recordkeeping and reporting that specifically identifies trading activity in BDTSs operated by third market makers is a crucial element in enhancing current oversight programs of these automated dealers. Comprehensive examination of these market makers would be enhanced by the ready availability of information about execution algorithms, transaction records, and activity summaries. Without such information, it is difficult for the SROs to evaluate and monitor the trading activity of automated third-market makers and other BDTSs accurately.[25] This difficulty inhibits the ability of the SROs and the Commission to ensure that broker-dealer regulation keeps pace with the changing attributes of technologically advanced broker-dealers.

The lack of routinely reported, system-specific information in a useful format also hampers the Commission's ability to identify areas where SRO surveillance may be more appropriately tailored to the detection of fraudulent, deceptive and manipulative practices in an automated environment. Although sponsors of BDTSs are regulated as broker-dealers, automation of their activities has enabled these entities to collect, disseminate, and process trading interest and activity in a manner that is not customary of (and often not possible with) traditional non-automated broker-dealer trading techniques. This has the potential to expose these non-traditional broker-dealer systems to manipulative practices typically associated with markets, not with traditional broker-dealers. The availability of system-specific trading information to appropriate SROs will provide better tools to detect potential trading abuses.[26]

The Rule also would enable the Commission to identify ways in which securities law violations can occur in an automated environment. For example, the availability of automated means for a broker-dealer to broadcast interest in securities, to groups whose composition is not determined by the broker-dealer, may make it more difficult for the broker-dealer to satisfy the conditions of Rule 144A under the Securities Act.[27] The Rule would provide the Commission with information necessary to its evaluation of the effectiveness and enforceability of the securities laws in an automated trading environment, which is currently not readily available.

IV. Description of the Rule

The proposed Rule would require a registered broker-dealer who acts as the sponsor of a "broker-dealer trading system" to make and keep current specified records, and file reports with the Commission and the appropriate SRO on proposed Form 17A–23. The records that system sponsors would be required to keep under the Rule consist of: (1) daily summaries of trading in the system and time-sequenced records of trades; (2) information regarding system participants and applicants who have been refused participation in the system; and (3) notices sent by the sponsor to participants.[28] The reports that system sponsors would be required to file under the Rule consist of: (1) An initial description of the system, including its organization, operation, automated facilities, and date of commencement of operation; (2) quarterly summaries of activity in the system; and (3) notification, when appropriate, of material changes to the system and its cessation of operations.[29]

A. Scope

1. Application to Registered Broker-Dealers

Rule 17a–23 applies to any "registered broker or dealer" that acts as the sponsor of a trading system. "Registered broker or dealer" is defined in Section 3(a)(48) of the Act to include any broker or dealer registered or required to register pursuant to section 15(b) (the majority of broker-dealers) or 15B (municipal securities broker-dealers) of the Act.[30] As noted earlier, absent an exemption from or exception to the broker-dealer registration provisions of the Act, the types of activities conducted by BDTSs can be lawfully conducted only by a broker-dealer registered with the Commission pursuant to the Act.

2. Sponsor

The Rule defines a sponsor as "any entity that organizes, operates, administers, or otherwise directly controls a broker-dealer trading system." In addition, the Rule includes within this term any registered broker-dealer that regularly executes or processes transactions on behalf of participants of a system operated by a non-registered entity. This provision is designed to prevent the operator of a BDTS from avoiding applicability of the Rule to its system by avoiding registration as a broker-dealer. Some entities that operate BDTSs may attempt to do this by "contracting out" responsibility for executing system transactions to another entity (which generally would not be considered to operate, administer or control the system).[31] In such circumstances Rule 17a–23 would apply to the registered broker-dealer executing transactions on behalf of the system sponsor. Although the Commission recognizes the need to allow for flexibility in a trading system's operational structure, improved oversight of BDTSs can be achieved only if automated trading systems provide uniform and consistent information to the Commission and the SROs on a regular basis, regardless of organizational structure.

3. Broker-dealer Trading System

The term "broker-dealer trading system" is defined as "(i) any system that automatically executes orders to buy or sell securities against quotations of the system sponsor or its affiliates * * * or (ii) any system that *both* automates the dissemination or collection of quotations, orders to buy or sell securities, or indications by any person announcing a general interest in buying or selling a security, submitted by entities other than the system sponsor and its affiliates, *and* provides a mechanism for matching or crossing

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[13] In this release, the concept of transactions being "effected through" a trading system includes the matching, crossing or other negotiating of execution terms through the communication facilities of such a system. For these purposes, transactions can be considered "effected through" BDTSs even if a transaction that is matched, crossed, or negotiated through system facilities ultimately is executed, compared, confirmed, cleared and/or settled through means other than the system.

[14] These concerns are minimized to some extent with regard to broker-dealers which operate solely as a BDTS:

[15] See, *e.g.*, S. Rep. No. 75, 94th Cong., 1st Sess. (1975) ("Senate Report") at 12–14.

[16] See Section 11A(a)(1)(B) of the Act ("new data processing and communications techniques create the opportunity for more efficient and effective market operations"); Breeden Letter, 57 FR 32587 at 32601.

[17] *Cf.* Senate Report, at 9; Breeden Letter, 57 FR 32587, at 32601.

[18] For example, trade volume on PTSs has steadily increased since 1989. The total share volume on PTSs was almost the same in the first half of 1993 (4.7 billion) as for the entire 1992 year (4.9 billion), which was itself an increase of more than 60% over the previous year's volume of 2.9 billion. Almost 67% of the PTS volume in the first half of 1993 was in NASDAQ stocks, 13% was in listed stocks. Although still relatively low, the rising trend in PTS volume is consistent with the increasing volume occurring in the equity markets as a whole. During the first half of 1993, PTSs captured 1.4% of the volume in NYSE stocks and 13% of the volume in NASDAQ/NMS stocks. Market 2000 Study, Study II (Structure of U.S. Equity Markets), p. 13.

[19] For example, third market makers handled 7.4% of reported NYSE volume in 1993 and 9.3% of the reported trades. Market 2000 Study, Study II (Structure of U.S. Equity Markets), p. 11. Under current reporting requirements, the Commission cannot readily identify how much of third market volume is attributable to transactions effected through BDTSs.

[20] In particular, Rule 17a–23 can provide the Commission with information not currently available about technological developments and market structure changes that could affect national market systems. For example, no current recordkeeping or reporting requirement provides a means for assessing the potential impact of redirecting order flow from trading systems operated by SROs, which are fully integrated into the national market system, to BDTSs.

[21] Trades occurring through BDTSs are subject to the same reporting requirements as other trades executed by registered broker-dealers, and therefore are generally reported to consolidated reporting systems during normal trading hours and to SROs for regulatory purposes after normal trading hours. These reported trades, however, are not identified as occurring through BDTSs, making it difficult to obtain accurate trading volume data for BDTSs which are not otherwise providing data to the Commission.

[22] The Division has issued no-action letters to four automated trading systems which provide a trading facility for securities otherwise trading in a dispersed manner: RMJ-Delta (Treasury options); CrossCom (high-yield debt); and NAPEX and Cantor Fitzgerald's system (limited partnership interests).

[23] The fact that BDTSs do not conform to traditional conceptions of broker-dealer activity does not, by itself, mean that such systems are securities "exchanges." The Commission has interpreted the definition of "exchange" primarily to encompass those entities that have been designed, whether through trading rules, operational procedures, or business incentives, to centralize trading and provide buy and sell quotations on a regular or continuous basis so that purchasers or sellers have a reasonable expectation that they can regularly execute their orders at those price quotations. For a discussion of factors relevant to applicability of exchange definition, see Securities Exchange Act Release No. 27611 (January 12, 1990), 55 FR 1690; *Board of Trade of the City of Chicago* v. *SEC*, 923 F.2d 1270 (7th Cir. 1991), rehearing en banc denied, No. 90–1246 (7th Cir. 1991); and In re Wunsch Auction Systems, Inc., Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377.

[24] Market 2000 Study, Main Report, pp. 25–26.

[25] For example, understanding the execution algorithms of a BDTS is necessary to evaluate whether the automated execution provided by the system complies with SRO fair practice rules. The Rule would require a BDTS sponsor to provide the Commission with information describing the system's operation and execution procedures, so that the Commission may evaluate the system's volume and activity information accurately.

[26] The Commission recognizes that there are significant economic incentives for BDTSs to provide reliable and fair facilities for experienced market participants to effect transactions. Economic incentives, however, will not always provide sufficient motivation to prevent fraudulent practices. See Oversight Hearings on the Future of the Stock Market Focusing on Proprietary Trading Systems Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce, 103d Cong., 1st Sess. (May 26, 1993).

[27] In this context, sponsors should consider that requirements of the Securities Act may make it inappropriate for broker-dealers to trade certain restricted or unregistered securities on BDTSs unless the system is configured to accommodate Securities Act regulations governing trading of such securities.

[28] The Rule would not require sponsors of BDTSs to duplicate trading records maintained in the course of its normal recordkeeping operations; however, the Rule would require that sponsors develop and maintain the ability to sort and retrieve system records separately.

[29] The Rule does not dictate a format for submitting the required information. This will enable a BDTS sponsor to comply with this requirement without significant adjustment to its own internal volume monitoring systems.

[30] The Rule would not apply to government securities brokers or government securities dealers registered under Section 15C of the Act, which are required to comply with the recordkeeping and reporting requirements of regulations promulgated by the Department of the Treasury under the Government Securities Act of 1986, 17 CFR 400 et seq. In addition, the Rule would not apply to operators of systems that do not involve activities requiring broker-dealer registration, such as "bulletin board" systems displaying quotations and orders, and identifying telephone numbers or other information to allow participants to contact an entity displaying quotations or orders without further intercession and without receipt of transaction-based compensation by the system operator. See Letters regarding Farmland Industries, Inc. (Aug. 26, 1991); Troy Capital Services, Inc. (May 1, 1990); Real Estate Financing Partnership (May 1, 1990); Ivestex Investment Exchange, Inc. (April 9, 1990); and Petroleum Information Corporation (Nov. 28, 1989). *Cf.* Securities Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, text accompanying n. 66.

[31] Such an arrangement may be permissible in certain circumstances, however the Division will evaluate such arrangements based on the facts and circumstances of each case.

orders in the system, or for otherwise facilitating agreement between participants to the basic terms of a purchase or sale of a security through use of the system." (Emphasis added.)

This definition is intentionally broad. Part (i) of the definition would include systems that provide automated access to, and execution against, proprietary two-sided quotations of market makers. This would make the Rule applicable to large, integrated dealers in NASDAQ and exchange-listed securities that offer automated execution of the market orders of other brokers and dealers at the best consolidated bid and ask price.[32]

Part (ii) of the definition would only apply to systems that *both* automate the collection or dissemination of orders, interest, or quotations, and provide a mechanism for matching, crossing, or otherwise facilitating execution of orders through the system. In order for a system to fall within this part of the definition, it must provide a mechanism for facilitating participant agreement to the terms of a transaction through use of the system.[33] Broker-dealer operated systems that automate the collection of orders, but do not provide a mechanism for matching, crossing, or facilitating participant agreement to terms of a transaction through use of the system would not be included in this definition.[34] The definition would include systems that automate the collection of orders and match those orders against other participant trading interest, regardless of whether or not those orders are disseminated to system participants prior to matching.[35]

[32] Some of these systems also offer the possibility of price improvement for orders in securities whose bid/ask spread exceeds defined parameters and limit order protection for priced orders that are "away" from the inside market.

[33] The term "use of the system" includes contacting the sponsor of a system to finalize a transaction based on trading interest displayed in the system, whether such contact is telephonic or automated. See note 34, *infra*.

[34] Several broker-dealers operate "bulletin board" systems on which participants display indications of interest or orders and provide telephone numbers or other identifying information. Other system users may then utilize this information to contact that participant directly and execute a transaction without intercession by the system or the system operator. Such an arrangement does not allow participants to agree to the terms of a transaction "through use of the system"; participants must contact each other outside of system facilities or the system sponsor to conclude a transaction. Therefore, the Rule would not apply to these systems. In contrast, the Rule would apply to broker-dealer operated systems that automate the collection of orders, and display those orders to participants, but require a participant to contact the system sponsor telephonically or otherwise (rather than another participant) in order to finalize a transaction through the system.

[35] If a match of trading interest occurs in listed securities subject to off-exchange trading restrictions, the system would generally send those matched orders to an exchange or other market center to be "printed" as an "agency cross."

[36] This exclusion would only apply to systems that route customer orders to other execution centers without any intervening matching or crossing by the system. Systems which match or cross orders internally and then route the matched orders to an exchange or other execution center for execution as an "agency cross" would not be excluded from application of the Rule under this exclusion. See note 35.

[37] As proposed, the Rule would apply to interdealer brokers facilitating trading in municipal or government securities registered under Sections 15 or 15B. The Rule would not apply to interdealer brokers registered under Section 15C. See note 30.

4. Exclusions

A number of broker-dealer automated systems have been expressly excluded from the definition of "broker-dealer trading systems" to clarify application of the Rule. The Commission recognizes that many broker-dealers have automated their internal operations without significantly changing the nature of traditional broker-dealer operations. For this reason, the Rule would not apply to a system that merely automates the collection and routing of orders to the sponsor's trading desk, through automation of the sponsor's order entry, order collection or internal order-routing functions. Nor would it apply to a system that merely routes customer orders to the execution facilities of another dealer, a registered national securities exchange, or a trading system operated by a person other than the routing system operator.[36] These exclusions are premised on the Commission's view that these routing systems do not require the same degree of Commission oversight and SRO surveillance as systems that have automated mechanisms for facilitating securities transactions outside of traditional organized markets or traditional over-the-counter brokerage activities. Because routing systems direct orders to organized markets such as exchanges, these systems are integrally tied into existing market oversight structures and do not pose the same concerns regarding potential effects on the national market system.

The Commission solicits comment on whether the Rule should also exclude interdealer brokers that facilitate trading of municipal or government securities.[37]

B. Requirements of the Rule

1. Recordkeeping

Under the Rule, system sponsors would be required to keep and make available to the Commission and the appropriate SRO, upon request, records of: (1) daily summaries of trading in the system (including number of transactions, transaction volume, securities traded, and number of quotations and orders placed by participants); (2) the identities of system participants (including any affiliations between those participants and the sponsor) and applicants who have been refused participation in the system; and (3) time-sequenced records of each transaction effected through the system. The sponsor would be required to keep these records, as well as any notices provided by the sponsor to participants, for three years (the first two years in an easily accessible place).

Sponsors of BDTSs already may be maintaining some or all of the transaction information pursuant to the requirements of Rules 17a–3 or 17a–4 under the Act. The Rule does not require a sponsor to keep duplicate records in such circumstances, if the sponsor's recordkeeping system can sort and retrieve the information required under the Rule from its other records promptly upon request.

2. Reporting

Sponsors also would be required to file confidential reports with the Commission (with duplicate originals filed simultaneously with the appropriate SRO) in accordance with proposed Form 17A–23. This Form would contain three parts: (1) an initial report filed at least 20 calendar days prior to the operation of the system; (2) quarterly reports filed within 20 calendar days after the end of the calendar quarter; and (3) a final report filed within 10 calendar days after a sponsor ceases to operate the trading system. The pre-operational report would describe the system, its procedures for reviewing capacity, security and contingency planning, and protecting participant funds and securities (if an entity other than the sponsor will hold or safeguard participant funds or securities on a regular basis). It also would identify an appropriate system contact. The quarterly reports would contain volume information, notification of the intent to offer (or the current availability of) services to U.S. customers that would allow them to trade with entities outside the U.S. otherwise than through a registered broker or dealer,[38] and notification of material system changes. The report notifying the Commission of cessation of operations would contain,

[38] See Securities Exchange Act Release No. 27017 (July 13, 1989), 54 FR 30013 (foreign broker-dealers whose quotes are distributed through third-party systems may not initiate contacts with U.S. persons without registering as broker-dealers under § 15 of the Act, except as allowed by Rule 15a–6).

in addition to the notification, a final transaction summary.

3. Record Maintenance

Records may be produced, reproduced, and maintained pursuant to the provisions of Rule 17a–4(f) under the Act.[39] Although record maintenance under the Rule is the sole responsibility of the sponsor, records required to be maintained and preserved under the Rule may be prepared or maintained by a service bureau, depository or other recordkeeping service on behalf of the sponsor, provided such entity complies with Rule 17a–4(i) under the Act.

4. Exemptions

The Commission could exempt any system sponsor from any or all of these requirements, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system for securities and a national system for the clearance and settlement of securities transactions.

C. Effect of the Rule on Existing No-Action Letters[40]

The Commission recognizes that BDTS sponsors subject to no-action letters already may comply with many of the reporting requirements of the Rule pursuant to conditions of such letters. The Commission anticipates that the Rule would become effective six months after adoption. Sponsors of BDTSs subject to reporting requirements pursuant to no-action letters or other Commission orders may contact the Division to discuss the continuing applicability of such conditions if the Rule is adopted.

V. Request for Comments

The Commission requests comment on the issues raised in the release, including without limitation the consistency of the Rule's approach with the policies underlying the Act, and the scope of terms defined in the proposed Rule, including "broker-dealer trading system" and "sponsor." Commenters are encouraged to focus on the following matters:

(1) The number of entities that would be required to comply with the Rule as proposed;

(2) Whether the Rule should apply to systems excluded in the proposed Rule from the definition of broker-dealer trading systems and, if so, why;

(3) Whether the Rule should apply to bulletin board information systems, or whether the Commission should separately adopt a rule for bulletin board systems pursuant to its authority under section 11A(b)(1) of the Act[41] relating to securities information processors, and what the content of any such rule should include; and

(4) Whether government or municipal securities brokers, dealers, or interdealer brokers registered under section 15 or 15B of the Act should be excluded from application of the Rule and, if so, why;

(5) The interval at which sponsors should file reports required by the Rule (i.e., quarterly, semi-annually, etc.);

(6) whether the Rule should require a sponsor to provide the Commission with direct, on-line access to its system upon request; and

(7) the costs and benefits of the proposed Rule, especially whether the Rule's requirements are duplicative or burdensome.

With regard to this last issue, based upon the Commission's experience, the anticipated costs to sponsors of existing BDTSs and the developers of new BDTSs if the Commission adopts the Rule do not appear to be significant or to unduly impede the development or viability of new systems. The complete automation of trading which characterizes BDTSs is particularly well suited for maintaining comprehensive and accurate records. Many BDTS sponsors already maintain records and provide information to the Commission pursuant to no-action letters which are substantially similar to the requirements of the Rule. Some BDTS sponsors that are not subject to conditions of a no-action letter nonetheless currently maintain many of the records required by Rule 17a–23. Thus, compliance with the Rule would appear to require little adjustment to their current recordkeeping. Similarly, for BDTS sponsors that have automated all of their trading operations, the Rule would appear to entail few operational changes or additional costs.

VI. Competition Findings

Section 23(a)(2) of the Act[42] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effects, if any, of such rules and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the proposed Rule in light of the standard cited in Section 23(a)(2) and preliminarily believes that adoption of the proposed Rule will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

VII. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory flexibility Analysis ("IRFA") in accordance with 5 U.S.C. sec. 603 regarding the proposed Rule. The following summarizes the conclusions of the IRFA.

The IRFA uses certain definitions of "small entities" adopted by the Commission for purposes of the Regulatory Flexibility Act. The IRFA states that the Commission currently has no uniform reporting mechanism regarding the number of broker-dealers that operate automated trading systems as defined by the proposed Rule, and the Commission is, therefore, unable to reasonably estimate the number of small entities that would be required to comply with the Rule. The Division's experience with PTSs has indicated that the implementation of automated trading systems requires large capital expenditures. Therefore, the Commission believes BDTSs that operate pursuant to the proposed Rule will be sponsored, with few exceptions, by larger, well-capitalized broker-dealer firms.

The IRFA states that the proposed Rule would allow the Commission to confirm that investors effecting trades through BDTSs are adequately protected, the systems do not impede the maintenance of fair and orderly markets, or otherwise operate in a manner that is inconsistent with the federal securities laws. The IRFA sets forth the concerns with the current regulatory approach, and discusses possible alternatives to the proposed Rule for the regulation of small entities. Finally, the IRFA solicits comments on any possible costs the proposed Rule might have on small entities, and on possible alternatives with regard to small entities.

A copy of the IRFA may be obtained from Sarrita J. Cypress, Office of

[39] Rule 17a–4(f) provides for the maintenance of records on microfilm. The Commission recognizes that BDTS sponsors generally will wish to maintain records in electronic formats. The Commission has proposed and published for comment an amendment to Rule 17a–4 which would provide for optical disk storage if certain protective safeguards are employed to preserve the data. See Securities Exchange Act Release No. 32609 (July 9, 1993), 58 FR 38092. See also Letter to Michael D. Udoff, Chairman, Ad Hoc Record Retention Committee, Securities Industry Association, Re: Optical Storage Technology (June 18, 1993).

[40] The Rule does not address the issue of whether a particular trading system may be required to register as a national securities exchange, clearing agency, or other SRO. Sponsors of BDTSs seeking relief from exchange, clearing agency, and other SRO registration requirements may continue to request no-action positions from the Division.

[41] 15 U.S.C. 78k–1(b)(1).

[42] 15 U.S.C. 78w(a)(2).

Automation and International Markets, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, 202/272–2827.

VIII. Statutory Basis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 2, 3, 11A, 15(c), 17, and 23(a) thereof, 15 U.S.C. 78b, 78c, 78k–1, 78o(c), 78q, and 78w(a), the Commission proposes to add § 240.17a–23 in chapter II of title 17 of the Code of Federal Regulations.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule 17a–23

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.17a–23 also issued under 15 U.S.C. 78b, 78c, 78o, 78q, and 78w(a);

* * * * *

2. Section 240.17a–23 is added to read as follows:

§ 240.17a–23 Recordkeeping and reporting requirements relating to broker-dealer trading systems.

(a) *Scope of section.* This section shall apply to any registered broker or dealer that acts as the sponsor of a broker-dealer trading system.

(b) *Definitions.* For purposes of this section:

(1) The term *registered broker or dealer* shall have the meaning ascribed to it in Section 3(a)(48) of the Act.

(2) The term *broker-dealer trading system* means:

(i) Any system that automates the execution of orders to buy or sell securities based on quotations of the system sponsor or its affiliates (whether such quotations are disseminated through the system, a quotation consolidation system operated pursuant to a plan approved by the Commission under Section 11A of the Act, an electronic interdealer quotation system operated by a registered national securities association, or otherwise); or

(ii) Any system that both automates the dissemination or collection of quotations, orders to buy or sell securities, or indications by any person announcing a general interest in buying or selling a security, submitted by entities other than the system sponsor and its affiliates, and provides a mechanism for matching or crossing, or for otherwise facilitating agreement between participants to the basic terms of a purchase or sale of a security through use of the system. "Broker-dealer trading system" does not include:

(A) A system that automates the collection and routing of orders to a broker or dealer's trading desk or individual trading personnel, through automation of the broker or dealer's order entry, order collection or internal order-routing functions, where the system does not provide automated matching, crossing, or execution of orders in the system based on preset or programmed parameters without intervention by individual trading personnel; or

(B) An automated system that routes customer orders to the execution facilities of a dealer other than the operator of such routing system, of a registered national securities exchange, or of a broker-dealer trading system operated by a person other than the operator of such routing system, where the operator of the routing system does not provide a mechanism for matching, crossing, or executing orders in the system against other orders in the system, or for otherwise allowing agreement to the basic terms of a transaction in a security through use of the system, apart from the execution facilities of those other entities.

(3) The term *sponsor* means any entity that organizes, operates, administers, or otherwise directly controls a broker-dealer trading system; and any registered broker or dealer that, pursuant to contract, affiliation, or other agreement with the system operator, is involved materially on a regular basis with effecting or processing transactions executed in connection with use of the system, other than for its own account or as a participant in the system, if the sponsor of such broker-dealer trading system is not a broker or dealer registered pursuant to Section 15 of the Act.

(c) *Recordkeeping.* Every registered broker or dealer subject to this section pursuant to paragraph (a) of this section shall:

(1) Make and keep current the following records relating to the broker-dealer trading system:

(i) A record of participants in the system (identifying any affiliations between system participants and the system sponsor) and applicants who have been refused participation in the system;

(ii) Daily summaries of trading in the system, including:

(A) Securities trading in the system;

(B) Transaction volume (separately stated for trading occurring during hours when consolidated trade reporting facilities are not in operation), expressed in trades, shares and in dollar value with respect to stock, and for other securities, expressed in trades, number of units of securities, par value, dollar value, or any other commonly used measure of amounts of securities; and

(C) Number of quotations and orders placed in the system by persons other than the sponsor and its affiliates, if applicable (expressed separately for limit and market orders and for any other relevant order specification required or allowed by the system other than price and size);

(iii) Time-sequenced records of each transaction effected through the broker-dealer trading system, including date and time executed, price, size, security traded, counterparty identification information, and method of execution (if broker-dealer trading system allows alternative means or locations for execution, such as routing to another market, matching with limit orders, or executing against the system sponsor's quotations); and

(2) Preserve, for a period of not less than three years, the first two years in an easily accessible place, the following records relating to the broker-dealer trading system:

(i) All records required to be made pursuant to paragraph (a)(1) of this section; and

(ii) Any notices provided by the system sponsor to system participants, including, but not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the system, and notices of denials or limitations of access to the system.

(d) *Reporting.* (1) Every registered broker or dealer subject to this section pursuant to paragraph (a) of this section shall:

(i) At least 20 calendar days prior to operating a broker-dealer trading system, file Part I of Form 17A–23 (§ 249.636 of this chapter);

(ii) During the operation of a broker-dealer trading system of which the broker or dealer is the sponsor, file the information described in Part II of Form 17A–23 (§ 249.636 of this chapter) within 20 calendar days after the end of the calendar quarter; and

(iii) Within 10 calendar days after a broker-dealer trading system of which the broker or dealer is the sponsor ceases to operate, file the notice described in Part III of Form 17A–23 (§ 249.636 of this chapter).

(2) The reports provided for in this paragraph (d) shall be considered filed upon receipt at the Commission's principal office in Washington, DC. Duplicate originals of such reports must be filed with the self-regulatory organization designated as the examining authority for the broker or dealer pursuant to § 240.17d–1 simultaneously with filing with the Commission. All reports filed pursuant to this paragraph (d) shall be deemed to be confidential.

(e) *Maintenance of records in alternative form.* The records required to be maintained and preserved pursuant to this section may be produced, reproduced and maintained pursuant to the provisions of § 240.17a–4(f).

(f) *Compliance with other recordkeeping and reporting rules.* Nothing in this section obviates the need for any broker or dealer to comply with any other applicable recordkeeping or reporting requirement under the Act and the rules and regulations thereunder. If the information in a record required to be made pursuant to this section is preserved in a record made pursuant to § 240.17a–3 or § 240.17a–4, paragraph (c) of this section shall not require the sponsor to maintain such information in a separate file, if the sponsor can promptly sort and retrieve the information as if it had been kept in a separate file as a record made pursuant to this section.

(g) *Maintenance of records by others.* The records required to be maintained and preserved pursuant to this section may be prepared or maintained by a service bureau, depository or other recordkeeping service on behalf of the sponsor of a broker-dealer trading system, provided such entity complies with the provisions of § 240.17a–4(i). Agreement with such an entity shall not relieve the sponsor of a broker-dealer trading system from the responsibility to prepare and maintain records as specified in this section.

(h) *Furnishing copies of records.* Every broker or dealer subject to this section pursuant to paragraph (a) of this section shall furnish to any representative of the Commission and of the self-regulatory organization designated as its examining authority pursuant to § 240.17d–1, promptly upon request, legible, true and complete copies of those records of the sponsor that are required to be preserved under this section.

(i) *Exemption from this section.* The Commission, by rule or order, may exempt any sponsor of a broker-dealer trading system from all or any of the provisions of this section, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system for securities and a national system for the clearance and settlement of securities transactions.

(j) *Effective date.* The effective date of this section shall be [six months after date of adoption of final rule].

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

4. Section 249.636 and Form 17A–23 are added to read as follows:

Note: The text of proposed form 17A–23 appears in Appendix A to this document and will not appear in the Code of Federal Regulations.

§ 249.636 Form 17A–23, information required of certain brokers and dealer sponsors of trading systems pursuant to section 17 of the Securities Exchange Act of 1934 and § 240.17a–23 of this chapter.

This form shall be used by every registered broker and dealer that is required to file reports under § 240.17a–23 of this chapter.

Dated: February 9, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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Official Use Only

APPENDIX A

OMB Approval
OMB No.:
Expires

U.S. SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 17A-23

Information Required of Registered Broker or Dealer Sponsor of Broker-Dealer Trading System Pursuant to Section 17 of the Securities Exchange Act of 1934 and Rule 17a-23 Thereunder

READ ALL INSTRUCTIONS PRIOR TO COMPLETING FORM

FORM 17A-23 Page 1	Indicate if this Report is Initial Report (Part I) _____ Quarterly Report (Part II) _____ Final Report (Part III) _____
	If Quarterly or Final Report, state period covered by Report _____ (mm/dd/yy) through _____ (mm/dd/yy)

SPONSOR INFORMATION

NAME OF BROKER-DEALER TRADING SYSTEM

NAME OF REGISTERED BROKER OR DEALER SPONSOR OF SYSTEM FIRM CRD NO _____

NAME OF SYSTEM OPERATOR
(If different from Registered Broker or Dealer Sponsor of System)

ADDRESS OF PRINCIPAL PLACE OF BUSINESS OF REGISTERED BROKER OR DEALER SPONSOR
(Do not use P.O. Box No.)

(No. and Street)

(City) (State) (Zip Code)

NAME AND TELEPHONE NUMBER OF PERSON TO CONTACT WITH REGARD TO THIS REPORT.

EXECUTION

The registered broker or dealer sponsor submitting this form and the executing official hereby represent that all the information contained herein is true, correct and complete.

Manual signature of Official responsible for form	Title
Name of Official responsible for form	Date executed (Month/Day/Year)

FORM 17A-23 Page 2 — READ ALL INSTRUCTIONS PRIOR TO COMPLETING FORM

PART I: INITIAL OPERATION REPORT
(To be filed at least 20 calendar days prior to operation)

Provide the following information:

1. State the securities or types of securities eligible for trading on or through the facilities of the system.
2. State the name and address of any entity that will be involved in the operation of the system, or will execute, clear or settle transactions on behalf of the sponsor or system participants in connection with operation of the system (other than system sponsor). Briefly describe the nature of such involvement and the responsibilities of such entity with respect to operation of the system and/or execution, clearance, or settlement of transactions in connection with operation of the system.
3. Briefly describe the manner of operation of the system, including the procedures governing entry of quotations and orders into the system, access to the system; execution, reporting, clearance and settlement of transactions in connection with the system, and procedures for ensuring participant compliance with system usage guidelines. Attach copy of system user's manual, if available.
4. Briefly describe the sponsor's procedures for reviewing system capacity, and security and contingency planning procedures.
5. If any entity other than the sponsor will hold or safeguard participant funds or securities on a regular basis, briefly describe the controls that will be implemented to ensure the safety of those funds and securities.
6. State the date the sponsor (or system operator, if other than sponsor) will begin operating the System.

PART II: QUARTERLY REPORT
(To be filed within 20 calendar days after end of calendar quarter)

Provide the following information:

1. Total volume and average daily volume of transactions effected through the system during the period covered by this report and year-to-date aggregates of these numbers, expressed in (a) number of shares, (b) number of transactions; and (c) monetary value. Provide separate share transaction, and monetary volume and average daily volume information for the period covered by the report reflecting: (a) system activity in securities listed on a registered national securities exchange, (b) system activity in securities quoted on the National Association of Securities Dealers' Automated Quotation service, (c) system activity occuring during regular trading hours of the New York Stock Exchange and (d) system activity occurring outside regular trading hours of the New York Stock Exchange.
2. List of securities trading in the system during the period covered by this report.
3. Total number of quotations and orders placed in the system by persons other than the sponsor, system operator (if other than the sponsor) and their affiliates during the period covered by this report, if applicable, and year-to-date aggregates of this number. Express separately for limit and market orders and for any other relevant order specification required or allowed by the System other than price and size.
4. State if sponsor (or system operator, if other than sponsor) intends to offer, or has offered, services that allow system participants located within the jurisdiction of the United States to enter into securities transactions with entities outside of the jurisdiction of the United States, other than through a registered broker or dealer.
5. Describe any material changes to the information previously filed by sponsor with the Commission pursuant to Part I of this Form.

PART III: REPORT OF CEASING TO OPERATE OR SPONSOR SYSTEM
(To be filed within 10 calendar days after sponsor ceases to operate or sponsor System)

Provide the following information:

1. State the date the sponsor ceased to operate or sponsor the System. State whether another entity will continue to operate or sponsor the System and provide the name, address, and telephone number of such entity if available.
2. Provide information requested in items 1-3 of Part II for the period beginning on the day after the period covered by the most recent Form 17A-23 Part II filing and ending on the date stated in item 1 of this Part (date sponsor ceased to operate or sponsor the System).

U.S. SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

INSTRUCTIONS FOR COMPLETING FORM 17A-23

I. Terms

Unless the context clearly indicates otherwise, terms used in this Form have the meaning ascribed to them in the Securities Exchange Act of 1934 and Rule 17a-23 thereunder.

II. Who Must File; When to File

Rule 17a-23 requires that every registered broker or dealer that acts as the sponsor of a broker-dealer trading system file Part I of Form 17A-23 at least 20 calendar days prior to operating or sponsoring a broker-dealer trading system, file Part II of Form 17A-23 within 20 calendar days after the end of each calendar quarter during which the sponsor operates or sponsors a broker-dealer trading system, and file Part III of Form 17A-23 within 10 calendar days after the sponsor ceases to operate or sponsor a broker-dealer trading system.

III. Number of Copies; How and Where to File

File the original and one copy of each Form 17A-23 filing with the SEC at Office of Automation and International Markets, Division of Market Regulation, 450 5th Street, N.W., Washington, D.C. 20549, and one duplicate copy with the self-regulatory organization designated as the examining authority for the sponsor pursuant to Rule 17d-1 simultaneously with the filing of the original with the SEC. The sponsor must keep an exact copy of the filing for its records. All copies must be legible. The filing date of any Form 17A-23 filing is the date of its actual receipt by the SEC, provided that the filing complies with applicable requirements.

IV. Format of Filing

A sponsor may use the printed Form 17A-23 or a reproduction of it. In either case, complete page 1 of Form 17A-23 in the format provided. Number each page following page 1 consecutively, and give the name of the broker-dealer trading system and the date at the top of each page, and identify the Part to which the information on that page relates.

V. Completing Form

If the sponsor of a broker-dealer trading system has not previously filed a Form 17A-23 with respect to the system, complete page 1 and Part I. If the sponsor has previously completed Part I in a Form 17A-23 filed with respect to the system, and continues to operate or sponsor the system, complete page 1 and Part II only. If the sponsor has ceased to operate or sponsor the system, complete page 1 and Part III only. Provide information required by each Part of the Form by typing or printing the text of each item followed by the response thereto. Numerical information required by Parts II and III (item 2) may be provided in chart form. For numerical responses clearly indicate the information each number represents and the item number in the Form which requests such information. State all non-numerical answers to items as briefly as completeness will permit. Print or type all items and responses. If the information requested by any item is available in printed form, the printed material may be attached as an exhibit and referenced in the response to the item.

[FR Doc. 94-3703 Filed 2-17-94; 8:45 am]
BILLING CODE 8010-01-C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-33621]

Proprietary Trading Systems

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule, proposed rule amendment; withdrawal.

SUMMARY: The Commission today is withdrawing proposed Rule 15c2-10 under the Securities Exchange Act of 1934 ("Act"), published in the Federal Register on April 18, 1989, which would have applied to the operation of securities trading systems that are not operated as facilities of national securities exchanges or associations. The Commission is also withdrawing a proposed amendment to Rule 3a12-7 under the Act, which would have conformed that rule to the provisions of proposed Rule 15c2-10. The Commission is withdrawing these proposals because: a substantial period of time has lapsed since their publication by the Commission; subsequent developments suggest that consideration of Rule 15c2-10 as proposed may not be appropriate at this time; and the Commission has proposed Rule 17a-23 under the Act, which would apply to certain automated systems that would also have been subject to proposed Rule 15c2-10.

FOR FURTHER INFORMATION CONTACT: Gordon K. Fuller, Esq., Special Counsel, Division of Market Regulation, Securities and Exchange Commission, room 5205 (Mail Stop 5-1), 450 Fifth Street, NW., Washington, DC 20549, 202/272-2414.

SUPPLEMENTARY INFORMATION: Rule 15c2-10, proposed in 1989,[1] would have applied to certain securities trading and information systems that are not operated as facilities of a registered national securities exchange or association ("proprietary trading systems"). Among other things, the proposed Rule would have required each operator of a proprietary trading system to submit to the Commission a plan covering the system. The Commission would publish and review the plan, and, if the Commission determined that it met the requirements of the Rule, it would declare the plan effective. Under the Commission's proposal, a broker or dealer or municipal securities dealer or government securities dealer would be prohibited from sponsoring or entering an indication of interest, quotation, or order to purchase or sell a security in the trading system unless the plan had been declared effective.

A companion proposal to amend Rule 3a12-7 under the Act also was published with Rule 15c2-10. That proposal would have conformed Rule 3a12-7 to the provisions of Rule 15c2-10. The effect of this amendment would have been to require that government securities options systems comply with the proposed rule if adopted, and to clarify that entities that meet the definition of "clearing agency" set forth in the Act and that clear transactions in options on government securities executed through proprietary trading systems may be subject to the clearing agency registration requirements of the Act.

In light of the Commission's experience since 1989, the Commission does not believe that it would be appropriate to adopt the structure contemplated by Rule 15c2-10 at this time.[2] The Commission has proposed Rule 17a-23 under the Act,[3] which would require enhanced recordkeeping and reporting by sponsors of proprietary trading systems and other automated trading systems, which are defined in proposed Rule 17a-23 as "broker-dealer trading systems."

For these reasons, and because five years have passed since the Commission proposed Rule 15c2-10, the Commission has determined to withdraw Proposed Rule 15c2-10, and the proposed amendment to Rule 3a12-7 at this time pursuant to its statutory authority under Section 23 of the Act.[4]

Dated: February 14, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-3702 Filed 2-17-94; 8:45 am]
BILLING CODE 8010-01-P

[1] Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429. The Commission received substantial comment on this proposal. A summary of these comments is available in File S7-3-94 in the Commission's Public Reference Room.

[2] Cf. Market 2000: An Examination of Current Equity Market Developments, Division of Market Regulation, pp. 27 and III-12-III-13 (January 1994) (Division recommended that the Commission adopt enhanced recordkeeping and reporting requirements).

[3] Securities Exchange Act Release No. 33605 (February 9, 1994).

[4] 15 U.S.C. 78w.

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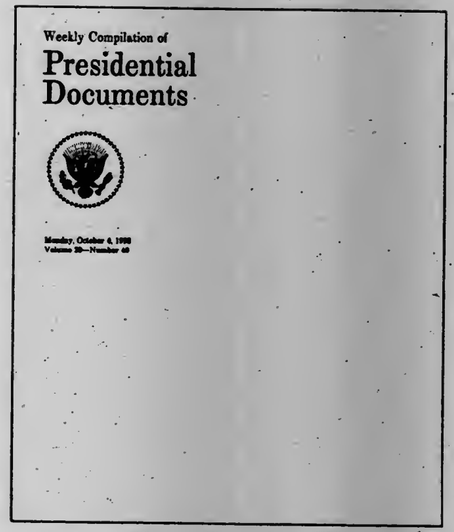
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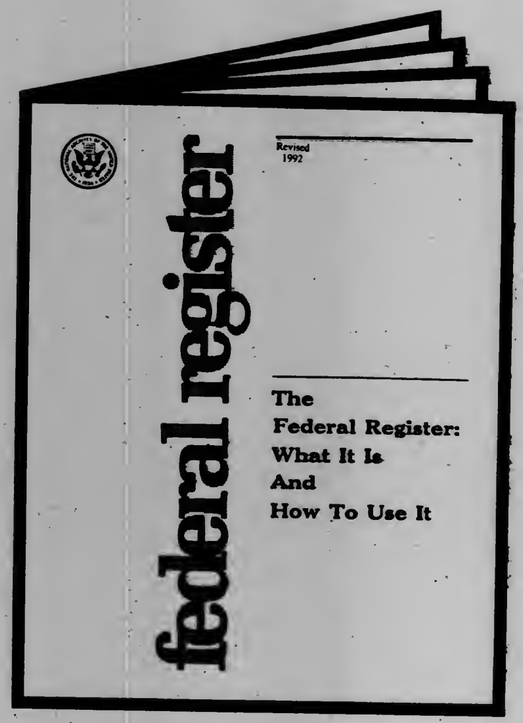
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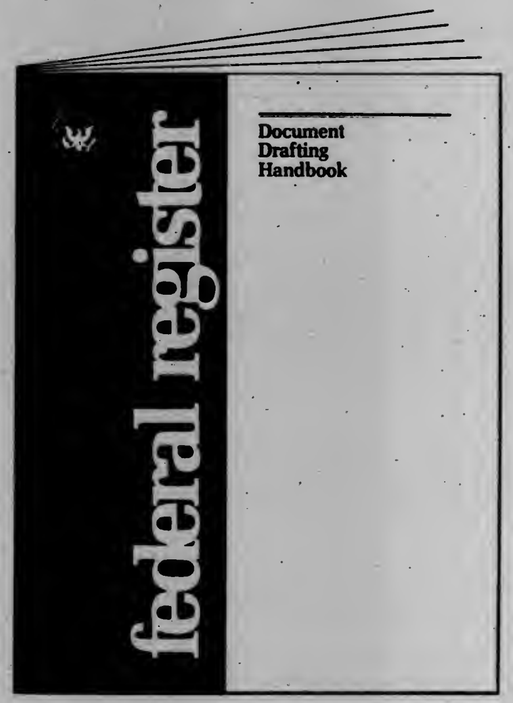
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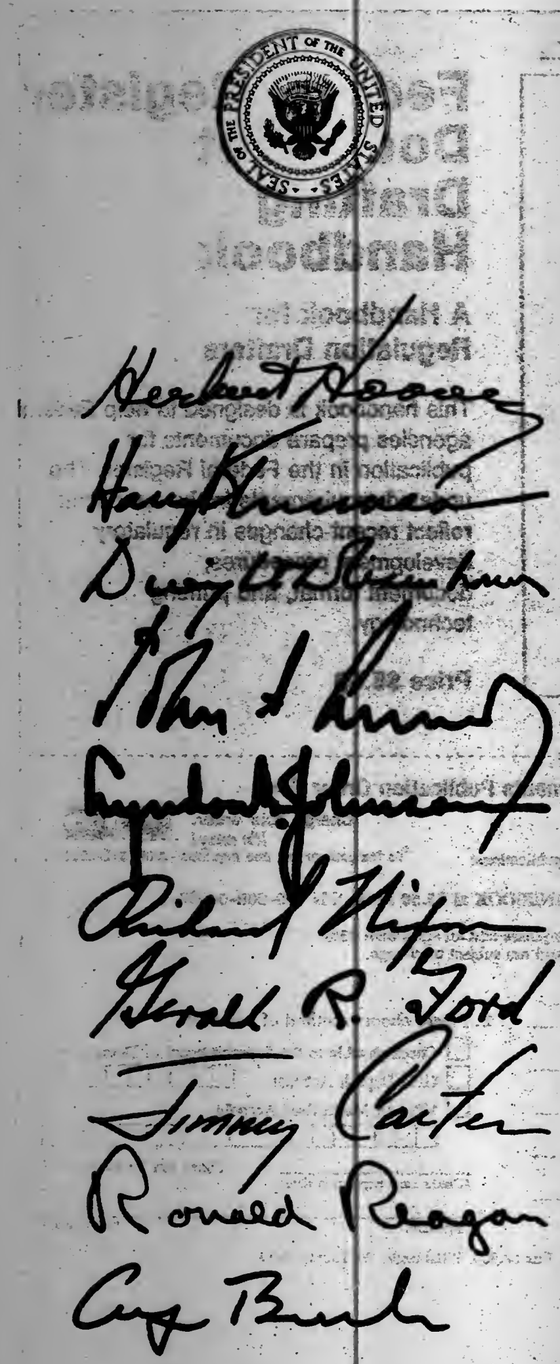
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–38–AD; Amdt. 39–8832; AD 94–04–12]

Airworthiness Directives: Twin Commander Aircraft Corporation Models 685, 690, 690A, and 690B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Twin Commander Aircraft Corporation (Twin Commander) Models 685, 690, 690A, and 690B airplanes. This action requires modifying the wing ribs at Wing Station (WS) 39, inspecting (one-time) WS 39 for cracks or corrosion, treating any corrosion found, and replacing any cracked wing front spar lower cap (spar cap). Several reports of cracked spar caps and cracked and deformed wing ribs at WS 39 on the affected airplanes prompted this action. The actions specified by this AD are intended to prevent failure of the wing structure caused by a cracked spar cap or cracked or deformed wing rib at WS 39.

DATES: Effective April 12, 1994. The incorporation by reference of Twin Commander Service Bulletin (SB) No. 211, Revision 1, dated July 7, 1992, is approved by the Director of the Federal Register as of April 12, 1994.

The incorporation by reference of the instructions to Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992, was previously approved by the Director of the Federal Register as of April 11, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2594; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Twin Commander Models 685, 690, 690A, and 690B airplanes was published in the **Federal Register** on June 30, 1993 (58 FR 34959). The proposed AD would require (1) modifying the wing ribs at Wing Station (WS) 39; (2) inspecting (one-time) the main spar lower cap and lower wing stringer No. 7 at WS 39 for cracks or corrosion; and (3) replacing the spar cap if any cracks are found and treating any corrosion found. The proposed inspections would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 211, Revision 1, dated July 7, 1992. Replacing the spar cap, if required, would be accomplished in accordance with Twin Commander Custom Kit 144, Revision A, dated November 12, 1992; or AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM, dated July 16, 1992, as applicable.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the 10 comments received.

Five commenters concur with the proposal as written.

One commenter recommends excluding Model 685 airplanes that show no signs of corrosion based on the inspection required by AD 91–08–09. The commenter feels that the proposal is unreasonably burdensome to private aviation (i.e., 14 CFR part 91 operators) and should not be mandatory. The FAA does not concur. AD 91–08–09 requires inspecting for corrosion on the main wing spar lower cap, but the inspection procedure will not detect cracks in the wing front spar lower cap (spar cap). Even if the inspection required by AD 91–08–09 reveals corrosion, there is no assurance that cracks at WS 39 do not exist. The purpose of the proposal is to provide a way to detect and correct cracks at WS 39. The FAA has determined that these cracks or failures of the WS 39 wing rib can occur on airplanes in any type of operation, and that this action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety. The proposed AD is unchanged as a result of this comment.

Another commenter, the Civil Aviation Authority of Australia (CAA), recommends replacing the wing spar cap before the next 500 hours time-in-service (TIS) if corrosion is found, instead of treating any corrosion found. The CAA states that, if a corroded spar is not replaced, then the small fatigue crack formed as a result of the corrosion will grow to weaken the spar to a level below its design strength. The FAA is currently conducting a study to determine the fatigue crack growth rates from irregular corroded surfaces. Part of this study includes the consideration of a replacement time period for spar caps found corroded. When this study is complete, the FAA will consider taking further AD action to cover this issue. The proposed AD is unchanged as a result of this comment.

A third commenter states that the inspection should be repetitive. This is one of the items the FAA is considering in the current study to determine the fatigue crack growth rates from irregular corroded surfaces. When this study is complete, the FAA will consider taking further AD action to cover this issue. The proposed AD is unchanged as a result of this comment.

A fourth commenter requests a change in the compliance time from 50 hours TIS to 180 days. This commenter believes that there will be a jam of airplanes in service shops, causing a possible parts shortage or forcing airplane owners/operators to utilize less qualified shops in order to meet the deadline. The FAA does not concur. Twin Commander has assured the FAA that there are adequate parts available for all repairs that could be required. In addition, the FAA has determined that there is an adequate number of certified maintenance shops available to accomplish the actions on all airplanes

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within the proposed compliance time. The proposed AD is unchanged as a result of this comment.

A fifth commenter, the Twin Commander Aircraft Corporation, requests that the preamble of the proposal change to reflect that, of the 13 airplanes reported to have cracked spar caps, 12 were examined in detail and none had cracks exceeding the specified limits. The FAA concurs, and, because the entire preamble of the proposal is not repeated in the final rule action, the FAA is so noting this fact.

After careful review of all available information including the comments referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 439 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 168 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour (total labor cost of $9,240 per airplane). Parts cost approximately $1,300 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $4,627,060 ($10,540 per airplane). As previously discussed, 89 of the 439 affected airplanes have already accomplished the required actions. This reduces the cost impact of this AD upon U.S. operators from $4,627,060 to $3,689,000.

In addition, if the required inspection reveals cracks or corrosion that exceeds a certain amount, replacing the spar cap will be required at a cost of approximately $100,000 per airplane, parts and labor included. An airplane affected by this AD could have a compliance cost as low as approximately $10,540 (labor + parts) if cracks or corrosion is not found during the inspection, and as high as approximately $110,540 (inspection and modification + spar cap replacement) if the operator replaces the spar cap.

Based on an expected average remaining operating life of 30 years per affected airplane, the annualized compliance cost would be:

- If only inspecting the spar cap and wing rib at WS 39 and modifying at WS 39 are necessary: $10,540 × 0.8145 (capital recovery factor at a 7 percent interest rate) = $858 annualized cost; or
- If replacing the spar cap is necessary: approximately $110,540 × 0.8145 (capital recovery factor at a 7 percent interest rate) = $9,003 annualized cost.

The required AD's from Dockets No. 92–CE–26–AD (for Model 690B and No. 92–CE–58AD (for Models 685, 690, 690A, and 690B) will also affect certain airplanes included in this AD. The compliance costs of these other AD's will add to the cost discussed above. However, replacing the spar cap will only be required once, so the $100,000 replacement cost, if required, is a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions.

The 350 U.S.-registered airplanes affected by this AD that have not complied with Twin Commander SB No. 211, Revision 1, dated July 7, 1992, are owned according to the following breakdown: 60 by individuals, 2 by U.S. government agencies, 9 by states or local governments, and 279 by other entities. Twenty entities own more than one of the affected airplanes: one owns 7, one owns 5, another owns 4, and the other seventeen own 2 each.

The FAA cannot determine the sizes of all the affected non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. Based on the possibility that this AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does costs not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this action that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**. After careful consideration, the FAA has determined that the required action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD to read as follows:

94–04–12 Twin Commander Aircraft Corporation: Amendment 39–8832; Docket No. 92–CE–38–AD.

Applicability: The following Model and serial number airplanes that do not have the wing front spar lower cap replaced in accordance with the procedures of one of the two specified in paragraph (b)(2) of this AD, certificated in any category:

Model	Serial Nos.
685	12000 through 12066.
690, 690A, and 690B	11001 through 11566.

Note 1: The serial number of the Model 685 airplanes differs from that specified in Twin Commander Service Bulletin (SB) No. 211, Revision 1, dated July 7, 1992. This AD takes precedence over that service information.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the wing structure caused by a cracked wing front spar lower cap or cracked or deformed wing rib at Wing Station (WS) 39, accomplish the following:

(a) Modify the wing ribs at WS 39 in accordance with Part II of the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 211, Revision 1, dated July 7, 1992.

(b) Eddy current inspect the wing front spar lower cap and lower wing stringer No. 7 at WS 39 for cracks or corrosion in accordance with Part I of the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 211, Revision 1, dated July 7, 1992.

(1) If any corrosion is found that is less than .031 inch in the thin flange or .063 inch in the thick section of the wing front lower spar cap, prior to further flight, treat the wing front spar lower cap area that is corroded with corrosion inhibitor such as LPS–3 or ACF–50.

(2) If any cracks are found or any corrosion is found that is equal to or exceeds .031 inch in the thin flange or .063 inch in the thick section of the wing front spar lower cap, prior to further flight, replace the wing front spar lower cap in accordance with the instructions in one of the following, as applicable:

(i) For Models 685, 690, 690A, and 690B—Twin Commander Custom Kit 144, Revision A, dated November 12, 1992; or

(ii) For Models 690, 690A, and 690B—AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM, dated July 16, 1992.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO, FAA, Northwest Mountain Region.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO, FAA, Northwest Mountain Region.

(e) The inspections required by this AD shall be done in accordance with Twin Commander Service Bulletin No. 211, Revision No. 1, dated July 7, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The replacement (as applicable) required by this AD shall be done in accordance with the instructions to either Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992; or Twin Commander Custom Kit No. CK–145, dated August 21, 1992, whichever is applicable. This incorporation by reference was previously approved as of April 11, 1994 by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Twin Commander Aircraft Corporation, 19003 59th Drive, NE, Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–8832) becomes effective on April 12, 1994.

Issued in Kansas City, Missouri, on February 14, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3841 Filed 2–18–94; 8:45 am]

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14 CFR Part 39

[Docket No. 92–CE–26–AD; Amdt. 39–8831; AD 94–04–11]

Airworthiness Directives: Twin Commander Aircraft Corporation Models 500S and 690B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Twin Commander Aircraft Corporation (Twin Commander) Models 500S and 690B airplanes. This action requires removing a sample of the wing front spar lower cap (spar cap) material for examination, and, depending upon the results of that examination, inspecting or replacing the spar cap. Reports of cracks caused by stress corrosion in the spar cap on several of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent failure of the wing structure caused by cracks in the spar cap.

DATES: Effective April 11, 1994. The incorporation by reference of certain documents in the regulations is approved by the Director of the Federal Register as of April 11, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2594; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Twin Commander Models 500S and 690B airplanes was published in the **Federal Register** on June 30, 1993 (58 FR 34957). The action proposed to require removing a sample of the spar cap material for examination, and, depending upon the results of the examination, inspecting or replacing the spar cap. The proposed inspections would be accomplished in accordance with Twin Commander SB No. 215, dated March 3, 1992. The proposed replacements, if necessary, would be accomplished in accordance with one of the following, as applicable:

- Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992, which applies to Twin Commander Model 690B airplanes;
- Twin Commander Custom Kit No. CK–145, dated August 21, 1992, which applies to Twin Commander Model 500S airplanes; or
- AVIADESIGN, Inc. Supplemental Type Certificate (STC), dated July 16, 1992, which applies to Twin Commander Model 690B airplanes.

Of the 80 affected airplanes registered in the United States, 34 have already accomplished this inspection in accordance with Twin Commander SB No. 215, dated March 3, 1992. For five of these airplanes, or approximately 15 percent, the examination revealed a grain structure that would require spar cap replacement under the criteria of this proposed AD. These five airplane operators voluntarily replaced the spar cap in order to assure safety of their airplane.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the 10 comments received.

Eight commenters concur with the proposed rule as written.

One commenter recommends deleting the terms "fine equi-axed" and

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"unusual cap grain structure" from the proposal. This commenter states that there is no standard for grain structure in aluminum alloy products and believes that characterizing the spar cap grain structure as unusual is inappropriate and may not focus on the best course of corrective action. The Commenter also states that the word fine in "fine equi-axed grain structure" is so imprecise that the structure is unable to be accurately measured. The FAA concurs that "unusual grain structure" could be inappropriate and has changed the wording in the final rule AD to "smaller than the large elongated grains, but not fine equi-axed". The FAA does not concur that the term "fine equi-axed" is imprecise because the FAA included in the proposal (Note 2) a definition of this term. In addition, the EMTEC Corporation, which is the laboratory conducting the metallurgical examinations, has established, with the FAA and Twin Commander, the acceptable grain structure size of the spar cap.

This commenter also states that the grain structure should not be the sole indicator of susceptibility to stress corrosion. The FAA concurs. The affected airplanes are also included in the applicability of the actions specified in Dockets No. 92–CE–38–AD and No. 92–CE–43–AD, which require other inspections of the spar cap. The proposed AD is unchanged as a result of this comment.

The same commenter also recommends consideration of other comprehensive corrective actions that deal with the impact of design and operating stress and sources of bi-metallic-initiated general corrosion. The FAA has determined that the current corrective action is one that will return the airplane to its original certification level of safety. The FAA will evaluate any detailed corrective action, and, if determined to provide an equivalent level of safety, will approve it as an alternative method of compliance to that portion of the required action. The proposed AD is unchanged as a result of this comment.

Another commenter, the Civil Aviation Authority of Australia (CAA), recommends that the FAA expand the range of serial numbers in the applicability and expand the spar cap replacement to include all unusual grain structures as well as fine equi-axed grain structures. The FAA has re-examined all information related to this subject and has determined that the airplanes manufactured with spars of the fine equi-axed grain structure are limited to those manufactured between May 1978 and October 1979. The results of inspections received to date including those from the CAA verify this conclusion. The proposed AD is unchanged as a result of this comment.

After examining all available information including the comments referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the minor wording change and minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 80 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 15 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $32 per airplane, and the metallurgical inspection will cost approximately $150. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $81,360. As previously discussed, 34 of the 80 affected airplanes have already accomplished the required actions. This reduces the cost impact of this AD upon U.S. operators to $56,392. The manufacturer will also incur the cost of the required metallurgical examination. The EMTEC Corporation will bill the manufacturer and send the results of the required inspection to the airplane owner/operator. This will further reduce the cost impact upon U.S. operators by $8,400 from $56,392 to $47,992.

In addition, if the required examination reveals a fine equi-axed grain structure, replacing the spar cap will be required at a cost of approximately $100,000, parts and labor included. If the required examination reveals an unusual grain structure that was not a fine equi-axed structure, inspecting the spar cap for stress corrosion will be required at a cost of approximately $2,750 (50 workhours at $55 per hour). An airplane affected by this AD could have a compliance cost as low as $1,007 if the spar cap was found acceptable during the metallurgical examination, and as high as approximately $100,857 if the operator replaces the spar cap.

Based on an expected average remaining operating life of 30 years per affected airplane, the annualized compliance cost would be:

- If only a metallurgical examination is necessary: $1,007 − $150 (cost incurred by manufacturer)=$857×0.8145 (capital recovery factor at an interest rate of 7 percent)=$70 annualized cost; or
- If replacing the spar cap is necessary: approximately $100,857×0.8145 (capital recovery factor at an interest rate of 7 percent)=$8,215 annualized cost.

The required AD's from Dockets No. 92–CE–38–AD (for Model 690B), No. 92–CE–43–AD (for Model 500S), and 92–CE–58–AD (for both Models 500S and 690B) also affect certain airplanes included in this AD. The compliance costs of these other AD's add to the cost discussed above. However, replacing the spar cap is only required once, so the $100,000 replacement cost, if required, would be a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations.The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions.

Of the 56 U.S.-registered airplanes affected by this AD that have not complied with Twin Commander SB No. 215, dated March 3, 1992, no owner owns more than one. Of these 56 different owners, 50 are businesses, not-for-profit enterprises, or state or local governments; and six are individuals.

The FAA cannot determine the sizes of all the 50 non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. Based on the possibility that this AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and (3) may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this action that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.** After careful consideration, the FAA has determined that the required action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

94–04–11 Twin Commander Aircraft Corporation: Amendment 39–8831; Docket No. 92–CE–26–AD.

Applicability: The following Model and serial number airplanes, certificated in any category:

Model	Serial Nos.
500S	3314 through 3323.
690B	11480 through 11566.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the wing structure caused by stress corrosion cracks in the wing front spar lower cap, accomplish the following:

(a) Remove a sample (coupon) of the wing front spar lower cap in accordance with the INSTRUCTIONS: PART I section (Model 500S airplanes) or the INSTRUCTIONS: PART II section (Models 690B airplanes) of Twin Commander Service Bulletin (SB) No. 215, dated March 3, 1992, as applicable. Prior to further flight, send this coupon for a metallurgical examination to the EMTEC Corporation, 124 East Sheridan, suite 101, Oklahoma City, Oklahoma 73104, and wait for the results of the examination.

Note 1: The manufacturer will incur the cost of the required metallurgical examination. The EMTEC Corporation will bill the manufacturer and send the results of the inspection to the airplane owner/operator.

(b) If the results of the metallurgical examination required by paragraph (a) of this AD reveal a fine equi-axed grain structure, prior to further flight, replace the wing front spar lower cap in accordance with the instructions in one of the following, as applicable:

(1) For Model 690B, Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992;

(2) For Model 500S, Twin Commander Custom Kit No. CK–145, dated August 21, 1992; or

(3) For Model 690B, AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM.

Note 2: A fine equi-axed grain structure refers to a grain structure that is approximately equal in all three axes and the grains are considerably smaller than what is typical of the wing spar extrusion. This is in contrast to the elongated, highly directional grain structure with relatively large grains typical of the wing spar extrusion.

(c) If the results of the metallurgical examination required by paragraph (a) of this AD reveal a grain structure that is smaller than the large elongated grains, but not fine equi-axed, prior to further flight, inspect the wing front spar lower cap for stress corrosion cracking in accordance with an inspection procedure approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region.

(1) Send the result of this inspection in writing to the FAA at the address specified in paragraph (e) of this AD, within 10 days after the inspection or 15 days after the effective date of this AD, whichever occurs later. State whether any cracks or corrosion was found, the location and length of any cracks found, and the location and depth of any corrosion found. (Reporting approved by the Office of Management and Budget under OMB No. 2120–0056).

(2) If any cracks are found, prior to further flight, replace the wing front spar lower cap in accordance with the instructions in one of the following, as applicable:

(i) For Model 690B, Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992;

(ii) For Model 500S, Twin Commander Custom Kit No. CK–145, dated August 21, 1992; or

(iii) For Model 690B, AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle ACO, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO, FAA, Northwest Mountain Region

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO, FAA, Northwest Mountain Region.

(f) The inspections required by this AD shall be done in accordance with Twin Commander Service Bulletin, No. 215, dated March 3, 1992. The replacement (as applicable) required by this AD shall be done in accordance with the instructions to either Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992; or Twin Commander Custom Kit No. CK–145, dated August 21, 1992, whichever is applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Twin Commander Aircraft Corporation, 19003 59th Drive, NE, Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–8831) becomes effective on April 11, 1994.

Issued in Kansas City, Missouri, on February 14, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-3842 Filed 2-18-94; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 92–CE–57–AD; Amdt 39–8835; AD 94–04–15]

Airworthiness Directives: Twin Commander Aircraft Corporation Models 500, 560A, 560E, 680, 680E, and 720 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Twin Commander Aircraft Corporation (Twin Commander)

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Models 500, 560A, 560E, 680, 680E, and 720 airplanes. This action requires inspecting the wing front spar lower cap (spar cap) for interference, fretting, or corrosion between the firewall flange and spar cap flange at Wing Station (WS) 96, and clearing any interference, repairing any fretting or corrosion damage, and replacing any cracked spar cap. Reports of two of the affected airplanes have cracked spar caps at WS 96 prompted this action. The actions specified by this AD are intended to prevent failure of the wing structure caused by a cracked spar cap at WS 96.

DATES: Effective April 12, 1994. The incorporation by reference of certain documents listed in the regulations is approved by the Director of the Federal Register as of April 12, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 277–2594; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Twin Commander Models 500, 560A, 560E, 680, 680E, and 720 airplanes was published in the **Federal Register** on June 30, 1993 (58 FR 34950). The action proposed to require inspecting the spar cap for interference, fretting, or corrosion between the firewall flange and spar cap flange at WS 96, and clearing any interference, repairing any fretting or corrosion damage, and replacing any cracked spar cap. The proposed inspection and repair, if applicable, would be accomplished in accordance with Twin Commander SB No. 212, dated November 3, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the nine comments received.

Seven commenters concur with the proposal as written.

One commenter, the Civil Aviation Authority of Australia (CAA), states that the proposal should require an eddy current inspection of the spar cap. The CAA questions whether fretting and corrosion are the sole contributors to fatigue damage to WS 96, or if these merely aggravate what is already a fatigue-sensitive location. The CAA goes on to state that, if a crack can start from a corrosion pit as small as 0.006 inches (as happened on a Swedish airplane), then there is a good chance that even a clean airplane will crack over time. Also, the CAA states that, if a fatigue crack has started at the base of a corrosion pit, the blending of the corrosion will smear over the crack and conceal it from the dye penetrant inspection (which is called for in the SB), and that an eddy current inspection is the only method for detection of this crack. The FAA does not concur. The proposal relates to fretting that may occur because interference between a firewall stiffener and the forward flange of the lower spar cap. It would require action for fatigue cracks found as a result of this interference and fretting. Fretting does have a synergistic relationship with corrosion and fatigue, and its existence greatly accelerates fatigue crack growth. The FAA has received no reports of fatigue cracks in the affected area that were not a direct result of fretting. Also, the spar cap at WS 96 is extremely difficult to inspect using eddy current methods because of other structures in the area interfering with placement of the eddy current probe. Dye penetrant inspections are used extensively in the aviation industry and have proved very reliable in detecting cracks. The proposed AD is unchanged as a result of this comment.

Another commenter, the Twin Commander Aircraft Corporation states that owners/operators should have their airplanes inspected regardless of whether the spar cap has been replaced because interference may even exist on a new spar. The FAA concurs that interference may exist if a new spar is installed, unless it was installed in accordance with replacement procedures obtained from the manufacturer through the Manager, Seattle Aircraft Certification Office (as specified in paragraph (a)(3) of the proposed AD). The Seattle Aircraft Certification Office has not issued any of these procedures to airplane owners/operators; therefore, no airplane has the spar cap replaced in accordance with paragraph (a)(3) of the proposal and the proposal would affect all of the airplanes listed under the Applicability section. The proposed AD is unchanged as a result of this comment.

After careful review of all available information including the comments referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 332 airplanes in the U.S. registry will be affected by the proposed AD, that it will take approximately 20 workhours per airplane to accomplish the required inspection, and that the average labor rate is approximately $55 an hour. Parts to accomplish the required inspection cost approximately $20. Based on these figures, the total cost impact of the inspection specified in this AD on U.S. operators is estimated to be $371,840. One airplane owner has already accomplished the required inspection, and found no damage or cracks.

In addition, if the required inspection reveals cracks, or corrosion that exceeds certain limits, replacing the spar cap would be required at a cost of approximately $100,000, parts and labor included. An airplane affected by this AD could have a compliance cost as low as approximately $1,120 (labor + parts) if no cracks, interference, or corrosion damage is found during the inspection, and as high as approximately $101,120 (inspection + spar cap replacement) if the operator replaces the spar cap.

Based on these airplanes having an expected average remaining operating life of 10 years or 15 years, the annualized compliance cost would range between:

- If only inspecting the spar cap at WS 96 is necessary for airplanes with an average remaining operating life of 10 years: $1,120×0.14349 (10-year capital recovery factor at a 7 percent interest rate)=$168 annualized cost;
- If only inspecting the spar cap at WS 96 is necessary for airplanes with an average remaining operating life of 15 years: $1,120×0.11434 (15-year capital recovery factor at a 7 percent interest rate)=$126;
- If replacing the spar cap is necessary for airplanes with an average remaining operating life of 10 years: approximately $101,120×0.15349 (capital recovery factor at a 7 percent interest rate)=$15,520; or
- If replacing the spar cap is necessary for airplanes with an average remaining operating life of 15 years: approximately $101,120×0.11434 (capital recovery factor at a 7 percent interest rate)=$11,562.

The required AD's from Dockets No. 92–CE–43–AD (for Models 500, 560A, 560E, 680, 680E, and 720) and No. 92–CE–58–AD (for Models 685, 690, 690A, and 690B) will also effect certain airplanes included in this AD. The compliance costs of these other required AD's would add to the cost discussed above. However, replacing the spar cap would only be required once, so the $100,000 replacement cost, if required, would be a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions.

The 331 U.S.-registered airplanes affected by the required AD that have not complied with Twin Commander SB No. 212, dated November 3, 1992, are owned according to the following breakdown: 196 by individuals, 2 by U.S. government agencies, 7 by states or local governments, and 126 by other entities. Six entities own 2 airplanes each.

The FAA cannot determine the sizes of all the affected non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. Based on the possibility that this AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this action that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**". After careful consideration, the FAA has determined that the required action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD to read as follows:

94–04–15 Twin Commander Aircraft Corporation: Amendment 39–8835; Docket No. 92–CE–57–AD.

Applicability: The following model and serial number airplanes that do not have the wing front spar lower cap replaced in accordance with procedures specified in paragraph (a)(3) of this AD, certificated in any category:

Model	Serial No.
500	618 through 750.
560A	231 through 450.
560E	433 through 750.
680	242 through 658.
680E	623 through 750.
720	501 through 750.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the wing structure caused by a cracked wing front spar lower cap at Wing Station (WS) 96, accomplish the following:

(a) Inspect the wing front spar lower cap of each wing for corrosion or interference between the firewall flange and spar flange in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander Service Bulletin (SB) No. 212, dated November 3, 1992.

(1) If any interference is found between the firewall flange and spar flange, prior to further flight, clear this interference in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 212, dated November 3, 1992.

(2) If any corrosion damage is found, prior to further flight, repair any corrosion damage to the wing front spar lower cap in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 212, dated November 3, 1992.

(3) If any cracks are found, prior to the further flight, replace the wing front spar lower cap in accordance with replacement procedures obtained from the manufacturer through the Manager, Seattle Aircraft Certification Office (ACO), at the address specified in paragraph (c) of this AD.

(b) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle ACO, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO, FAA, Northwest Mountain Region.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO, FAA, Northwest Mountain Region.

(d) The inspection and repair required by this AD shall be done in accordance with Twin Commander Service Bulletin No. 212, dated November 3, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–8835) becomes effective on April 12, 1994.

Issued in Kansas City, Missouri, on February 14, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3840 Filed 2–18–94; 8:45 am]

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14 CFR Part 39

[Docket No. 92–CE–43–AD; Amendment 39–8833; AD 94–04–13]

Airworthiness Directives: Twin Commander Aircraft Corporation 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 65–06–01, which currently requires repetitively inspecting the wing front spar lower cap (spar cap) of both the left and right wings on certain Twin Commander Aircraft Corporation (Twin Commander) 500 and 600 series airplanes, and replacing any cracked spar cap. Front spar cap cracks developing on certain Twin Commander model airplanes not affected by that AD prompted this action. In addition, the manufacturer has updated the inspection procedures through improved service information. This action retains the inspection and repair requirements of AD 65–06–01, and requires inspecting in accordance with updated service information and increases the applicability to include other model airplanes. The actions specified by this AD are intended to prevent failure of the wing structure caused by cracks in the spar cap.

DATES: Effective April 12, 1994.

The incorporation by reference of Twin Commander Service Bulletin (SB) No. 90C, dated March 30, 1992, and Twin Commander Service Publications revision notice of SB 90C, Revision 1, dated June 5, 1992, is approved by the Director of the Federal Register as of April 12, 1994.

The incorporation by reference of the instructions to Twin Commander Custom Kit No. CK–145, dated August 21, 1992, was previously approved by the Director of the Federal Register as of April 11, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2594; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Twin Commander 500, 600, and 700 series airplanes was published in the **Federal Register** on June 30, 1993 (58 FR 34955). The action proposed to supersede AD 65–06–01 with a new AD that would (1) retain the inspection and repair requirements of the spar caps required by AD 65–06–01; (2) incorporate the updated service information into the proposed AD; and (3) increase the effectivity of the current AD to include other airplane models of the Twin Commander 500, 600, and 700 series. The proposed inspections would be accomplished in accordance with Twin Commander SB No. 90C, dated March 30, 1992, and Twin Commander Service Publications revision notice of SB No. 90C, Revision 1, dated June 5, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the 10 comments received.

Nine commenters concur with the proposal as written.

Twin Commander supports the proposal and makes recommendations. Twin Commander states that the Compliance section of the proposal contains the following: "* * * or 500 hours after the wing front lower spar cap was replaced in accordance with one of the three modifications referenced in paragraph (b) of this AD * * *", and points out that paragraph (b) of this AD only specifies two modifications and that the wording in the Compliance section of the proposal should be changed accordingly. The FAA concurs and has changed the proposed AD by inserting the words "in accordance with one of the two modifications" in place of "in accordance with one of the three modifications" under the Compliance section.

Twin Commander also states that the proposed AD should include the Model 680F(P) airplanes in the applicability to coincide with SB 90C. The FAA concurs that these airplanes should be included. Adding this airplane model to the applicability goes beyond the scope of what was originally proposed, and would obligate the FAA to issue a supplemental notice of proposed rulemaking (NPRM) to allow additional time for the public to comment. The FAA has determined that the additional comment time is unnecessary for the model airplanes included in the applicability of the proposed AD, and, after the proposed rule becomes final, the FAA will issue an NPRM to add the Model 680F(P) airplanes into the applicability of that AD. The proposed rule is unchanged as a result of this comment.

After careful review of all available information including the comments referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the minor wording change and other minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 1,303 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 32 (average) workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts are not required for 1,054 airplanes, and parts cost approximately $700 per airplane for 105 airplanes and $1,700 per airplane for 144 airplanes. Based on these figures, the total cost impact of the inspections specified in this AD on U.S. operators is estimated to be $2,611,580 (cost per airplane varies by model).

AD 65–06–01 currently requires the same actions as this AD on 1,025 of 1,303 airplanes. Of the remaining 307 airplanes affected by this AD, the FAA estimates that it will take approximately 18 workhours for 156 airplanes and 100 workhours for 151 airplanes, depending upon the particular model. Parts are not required for 156 airplanes and cost approximately $1,700 for 151 airplanes. Based on these figures, the cost impact of this AD upon U.S. operators not already affected by AD 65–06–01 is approximately $1,241,640 (cost per airplane varies by model).

In addition, if the required inspection reveals cracks in the spar cap, replacing the spar cap is required at a cost of approximately $100,000, parts and labor included. An airplane affected by this AD could have a compliance cost as low as approximately $990 (18 workhours) or $7,200 (100 workhours) if cracks were not found during the inspection, and as high as approximately $100,990 (inspection using 18 workhours + spar replacement) to $107,200 (inspection using 100 workhours + spar replacement) if the operator replaces the spar cap.

The FAA estimates that the airplanes affected by the required AD are utilized an average of approximately 200 hours time-in-service per year, or an average time-interval between the required inspections of 2.5 years.

Based on an expected average remaining operating life of 20 years per affected airplane, the annualized compliance cost would be:

- If only repetitively inspecting the spar cap is necessary at 18 workhours: $456 annualized cost (using a 7 percent interest rate);
- If only repetitively inspecting the spar is necessary at 100 workhours: $2,700 annualized cost (using a 7 percent interest rate); or
- If replacing the spar cap is necessary: approximately $9,971 annualized cost (with 18 workhours for inspection and using a 7 percent interest rate) and $10,372 annualized cost (with 100 workhours for inspection and using a 7 percent interest rate) if the spar cap is replaced during the first inspection.

The required AD's from Dockets No. 92–CE–26–AD (for Model 500S), No. 92–CE–57–AD (for Models 500, 560A, 560E, 680, 680E, and 720), and No. 92–CE–58–AD (for Models 500S, 500U, 680FL, 680W, and 681), also affect certain airplanes included in this AD. The compliance costs of these AD's add to the cost discussed above. However, replacing the spar cap is only required once, so the $100,000 replacement cost, if required, would be a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports by small governmental jurisdictions.

The 307 U.S.-registered airplanes affected by this AD that are not already affected by AD 65–06–01 are owned according to the following breakdown: 80 by individuals, 3 by U.S. government agencies, 9 by states or local governments, and 215 by other entities. Four entities own more than one of the affected airplanes that are not affected by AD 65–06–01: two own 2 each, and two own 5 each. Three entities own models that will be affected by this AD, as well as AD 65–06–01.

The FAA cannot determine the sizes of all the affected non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. The FAA solicited comments concerning the impact of the NPRM on owners of affected airplanes, and received no comments on this matter. Based on the possibility that this AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) if promulgated, may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this action that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**". After careful consideration, the FAA has determined that the required action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 65–06–01, Amendment 39–1053, and by adding the following new airworthiness directive to read as follows:

94–04–13 Twin Commander Aircraft Corporation: Amendment 39–8833; Docket No. 92–CE–43–AD. Supersedes AD 65–06–01, Amendment 39–1053.

Applicability: All serial numbers of the following model airplanes, certificated in any category: 500, 500A, 500B, 500S, 500U, 520, 560, 560A, 560E, 560F, 680, 680E, 680F, 680FL(P), 680FL, 680T, 680V, 680W, 681, and 720.

Compliance: Required initially within the next 50 hours time-in-service (TIS), unless already accomplished (compliance with superseded AD 65–06–01), or 500 hours after the wing from lower spar cap was replaced in accordance with one of the two modifications referenced in paragraph (b) of this AD, whichever occurs later, and thereafter at intervals not to exceed 500 hours TIS.

Note 1: Although not required, it is recommended that airplanes utilized for survey usage and low altitude usage (below 1,000 feet AGL) reinspect at more periodic intervals described below and specified in Twin Commander Service Publications revision notice of Service Bulletin No. 90C, Revision 1, dated June 5, 1992:

Usage	Hours TIS
Survey	200
Low Altitude	100

To prevent failure of the wing structure caused by cracks in the lower front spar cap, accomplish the following:

(a) Inspect the wing front spar lower cap at left and right Wing Station 24 in accordance with the instructions in the applicable part of Twin Commander SB No. 90C, dated March 30, 1992, and Twin Commander Service Publications revision notice of SB No. 90C, Revision 1, dated June 5, 1992. The applicable part of the referenced service bulletin is outlined below:

(1) Part I: Models 500, 500A, 500B, 500S, 500U, 520, 560, 560A, 560E, 560F, 680, 680E, 680F, 680F(P), and 720 airplanes.

(2) Part II: Models 680FL and 680FL(P) airplanes.

(3) Part III: Models 680FL, 680FL(P), 680T, 680V, 680W, and 681 airplanes.

(b) If cracks are found, prior to further flight, replace the wing front spar lower cap in accordance with one of the following, as applicable:

(1) For models 500S, 500U, 680FL, 680FL(P), 680W, and 681—the instructions

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in Twin Commander Custom Kit No. CK–145, dated August 21, 1992; or

(2) For models 500, 500A, 500B, 520, 560, 560A, 560E, 560F, 680E, 680F, 680T, 680V, 680W, and 720—obtain replacement procedures from the manufacturer through the Manager, Seattle Aircraft Certification Office, at the address specified in paragraph (d) of this AD.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO, FAA, Northwest Mountain Region.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO, FAA, Northwest Mountain Region.

(e) The inspections required by this AD shall be done in accordance with Twin Commander Service Bulletin No. 90C, dated March 30, 1992, and Twin Commander Service Publications revision notice of Service Bulletin No. 90C, Revision 1, dated June 5, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The replacement (as applicable) required by this AD shall be done in accordance with the instructions to Twin Commander Custom Kit No. CK–145, dated August 21, 1992. This incorporation by reference was previously approved as of April 11, 1994, by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Twin Commander Aircraft Corporation, 19003 59th Drive, NE, Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–8833) supersedes AD 65–06–01, Amendment 39–1053.

(g) This amendment (39–8833) becomes effective on April 12, 1994.

Issued in Kansas City, Missouri, on February 14, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3836 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92–CE–58–AD; Amendment 39–8834; AD 94–04–14]

Airworthiness Directives: Twin Commander Aircraft Corporation 500, 680, 681, 685, and 690 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 91–08–09, which currently requires the following on certain Twin Commander Aircraft Corporation (Twin Commander) 500, 680, 681, 685, and 690 series airplanes: Repetitively inspecting the wing front spar lower cap (spar cap) for corrosion; and replacing the spar cap if corrosion exceeds certain limits. This action incorporates updated and more detailed inspection procedures, extends the repetitive inspection intervals, and provides the option of incorporating one of three modifications as terminating action for the repetitive inspections. The actions specified by the AD are intended to prevent wing structural damage that, if not detected, could progress to the point of failure.

DATES: Effective April 12, 1994. The incorporation by reference of Twin Commander Service Bulletin No. 208A, dated November 9, 1992, is approved by the Director of the Federal Register as of April 12, 1994.

The incorporation by reference of the instructions to Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992; and Twin Commander Custom Kit No. CK–145, dated August 21, 1992, was previously approved by the Director of the Federal Register as of April 11, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE, Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2594; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Twin Commander Models 685, 690, 690A, and 690B airplanes was published in the **Federal Register** on June 30, 1993 (58 FR 34952). The proposed AD would supersede AD 91–08–09 with a new AD that would (1) retain the requirement of repetitively inspecting the spar cap, and replacing the spar cap if certain corrosion limits are exceeded; (2) incorporate Twin Commander SB No. 208A, dated November 9, 1992; and (3) incorporate spar cap replacement procedures specified in Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992; Twin Commander Custom Kit No. CK–145, dated August 21, 1992; and AVIADESIGN, Inc. Supplemental Type Certificate (STC), dated July 16, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the 10 comments received.

Seven commenters concur with the proposal as written.

Twin Commander states that the proposal should be changed to reflect that Custom Kit–145, which specifies procedures for replacing the spar cap for certain airplanes, also affects Models 680W and 681. The FAA concurs and has added these models to paragraph (b)(2) of the proposal, and has deleted paragraph (b)(4).

Another commenter, the Civil Aviation Authority of Australia (CAA), recommends replacing the wing spar cap before the next 500 hours time-in-service (TIS) if corrosion is found, instead of treating any corrosion found. The CAA states that, if a corroded spar is not replaced, then the small fatigue crack formed as a result of the corrosion will grow to weaken the spar to a level below its design strength. The FAA is currently conducting a study to determine the fatigue crack growth rates from irregular corroded surfaces. Part of this study includes the consideration of a replacement time period for spar caps found corroded. When this study is complete, the FAA will consider taking further AD action to cover this issue. The proposed AD is unchanged as a result of this comment.

A third commenter requests an extension of the time period for reinspection of a spar cap found not corroded from 36 calendar months to 60 calendar months. This commenter states that a well-maintained airplane that is always hangared and removed from a coastal environment should only have these inspections every 60 months. The FAA does not concur that this compliance time should be extended. The FAA has determined that the majority of airplanes affected by this proposal are not maintained and operated in the conditions referenced above, and that the 36-month inspection interval is suitable for the typical affected airplane when found corrosion-free. In addition, establishing a reliable corrosion growth rate for these airplanes is extremely difficult, especially considering the diverse environment and operating conditions these airplanes are approved for. The proposed AD is unchanged as a result of this comment.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the minor change discussed above and minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

Of the 562 affected airplanes registered in the United States, 10 have already accomplished the required inspection in accordance with Twin Commander SB No. 208A, dated November 9, 1992. None of these airplanes required spar cap replacement.

The compliance time for this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance would be the most desirable method because the unsafe condition described by the AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service.

The FAA estimates that 562 airplanes in the U.S. registry would be affected by this AD, that it would take between 110 and 162 workhours per airplane (varies by model; a weighted average of 146 workhours) to accomplish the required inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total initial cost impact of the inspection specified by this AD on U.S. operators is estimated to be $4,688,980 ($8,343 per airplane). As previously discussed, 10 of the 562 affected airplanes have already accomplished the required inspection. This reduces the initial cost impact of the inspection specified by this AD on U.S. operators to $4,432,560.

The inspections currently required by AD 91–08–09 carry an earlier FAA-estimated cost impact on U.S. operators of $880 (16 workhours × $55 per hour) per airplane. In actuality, those inspections range from $1,100 (20 workhours × $55 per hour) to $1,980 (36 workhours × $55 per hour) depending on the airplane model. Because of the more comprehensive inspection procedures specified in Twin Commander SB No. 208A, the initial cost impact of the inspections of this AD carries an additional cost impact of between $4,950 to $6,930 per airplane over that which is already required by AD 91–08–09. This AD provides owners of the affected airplanes some relief from some of the provisions of AD 91–08–09. For example:

- If no corrosion is found, this AD would require repetitive inspections at 36-calendar month intervals instead of 12-calendar month intervals, which is a savings of between $2,200 to $3,960 over the next 24 calendar months depending on the airplane model.
- If corrosion is less than 50 percent of the allowable service limits referenced in Twin Commander SB 208A, this AD would require reinspection at 30-calendar month intervals instead of 12-calendar month intervals, which is a savings of between $2,750 to $4,950 over the next 30 calendar months depending on the airplane model.
- Replacing the spar cap terminates this repetitive inspection requirement, which is a savings of $1,100 to $1,980 per year depending on the airplane model.

In addition, if the required inspection revealed corrosion in excess of certain established limits, then replacing the spar cap would be required at a cost of approximately $100,000, parts and labor included. If the spar cap did not reveal corrosion in excess of certain established limits, then an airplane affected by this AD could have an incremental compliance cost as low as $4,950 (proposed inspection cost at 110 workhours minus the cost of the inspection required by AD 91–08–09) or $6,930 (required inspection cost at 162 workhours minus the cost of the inspection required by AD 91–08–09). If replacing the spar cap would be necessary, an airplane affected by this AD could have an incremental compliance cost as high as approximately $104,950 (required inspection at 110 workhours minus the cost of the inspection required by AD 91–08–09 plus spar cap replacement) to $106,930 (required inspection at 162 workhours minus the cost of the inspection required by AD 91–08–09 plus spar cap replacement).

The FAA cannot predict the results of the required inspections, especially as the airplanes continue to age. Approximately 61 percent of the airplanes inspected in accordance with Twin Commander SB No. 208 (AD 91–08–09) had no significant spar cap corrosion, 24 percent had less than 50 percent of the established corrosion service limits, and 13 percent had between 50 to 100 percent of the established corrosion service limits. Less than 3 percent of the airplanes exceeded the established corrosion service limits.

Based on an expected average remaining operating life of 20, 25, or 30 years per affected airplane (depending on the model), the incremental annualized compliance cost would be:

- If only repetitively inspecting the spar cap is necessary for airplanes with an average operating life of 20 years: $904 to $7,239 incremental annualized cost (depending on the airplane model and frequency of inspection, and using a 7 percent interest rate);
- If only repetitively inspecting the spar cap is necessary for airplanes with an average operating life of 25 years: $1,195 to $7,176 incremental annualized cost (depending on the airplane model and frequency of inspection, and using a 7 percent interest rate);
- If only repetitively inspecting the spar cap is necessary for airplanes with an average operating life of 30 years: $1,290 to $7,495 incremental annualized cost (depending on the airplane model and frequency of inspection, and using a 7 percent interest rate);
- If replacing the spar cap is necessary for airplanes with an average operating life of 20 years: approximately $9,675 incremental annualized cost (using a 7 percent interest rate) if the spar cap is replaced during the first inspection;
- If replacing the spar cap is necessary for airplanes with an average operating life of 25 years: approximately $8,719 incremental annualized cost (using a 7 percent interest rate) if the spar cap is replaced during the first inspection; and
- If replacing the spar cap is necessary for airplanes with an average operating life of 30 years: approximately $8,145 incremental annualized cost (using a 7 percent interest rate) if the spar cap is replaced during the first inspection.

The required AD's from Dockets No. 92–CE–26–AD (for Model 500S and 690B), No. 92–CE–38–AD (for Models 685, 690, 690A, and 690B), and No. 92–CE–43–AD (for Models 500S, 500U, 680FL, 680FL(P), 680W, and 681) will also affect certain airplanes included in this AD. The compliance costs of these other required AD's will add to the cost discussed above. However, replacing the spar cap would only be required once, so the $100,000 replacement cost, if required, would be a one-time action.

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The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions.

The 562 U.S.-registered airplanes affected by this AD are owned according to the following breakdown: 92 by individuals, 7 by U.S. government agencies, 20 by states or local governments, and 443 by other entities. Twenty seven entities each own more than one of the affected airplanes: One owns 7, four own 5 each, three own 3 each and nineteen own 2 each.

The FAA cannot determine the sizes of all the affected non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. Based on the possibility that this AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this action that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES. After careful consideration, the FAA has determined that the required action is the best course to achieve the safety objective of returning the airplane to this original certification level of safety.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation of part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91–08–09, Amendment 39–6965 (56 FR 14307, April 9, 1991), and by adding the following new airworthiness directive to read as follows:

94–04–14 Twin Commander Aircraft Corporation: Amendment 39–8834; Docket No. 92–CE–58–AD. Supersedes AD 91–08–09, Amendment 39–6965.

Applicability: The following model and serial number airplanes that do not have the wing front spar lower cap replaced in accordance with the procedures of one of the three modifications specified in paragraph (b) of this AD, certificated in any category:

Models	Serial No.
500U, 680FL, 680FL(P), and 680W.	1731 through 1854.
500S	1755 through 3323.
681	6001 through 6072.
685	12000 through 12066.
690, 690A, and 690B	11001 through 11566.

Compliance: Required within the next 90 calendar days after the effective date of this AD or within 12 calendar months after the last inspection required by AD 91–08–09, whichever occurs later, unless already accomplished, and thereafter as indicated.

To prevent wing structural damage that, if not detected, could progress to the point of failure, accomplish the following:

Note 1: The serial number of the Model 685 airplanes differs from that specified in Twin Commander Service Bulletin (SB) No. 208A, dated November 9, 1992. This AD takes precedence over that service information.

(a) Ultrasonically inspect each area of the wing front spar lower cap for corrosion in accordance with the instructions in Twin Commander SB No. 208A, dated November 9, 1992.

(1) If no corrosion is found, reinspect within the next 36 calendar months.

(2) If corrosion is found that is less than 50 percent of the allowable service limits referenced in Table 1 of Twin Commander SB No. 208A, dated November 9, 1992, reinspect within the next 30 calendar months.

(3) If corrosion is found to be between 50 to 100 percent of the allowable service limits referenced in Table 1 of Twin Commander SB No. 208A, dated November 9, 1992, reinspect within the next 12 calendar months.

(4) If corrosion is found to be greater than 100 percent of the allowable service limits referenced in Table 1 of Twin Commander SB No. 208A, dated November 9, 1992, prior to further flight, replace the wing front spar lower cap in accordance with one of the replacement modifications referenced in paragraph (b) of this AD.

(b) The repetitive inspection requirement of this AD may be eliminated by replacing the wing front lower spar cap in accordance with the instructions in one of the following, as applicable:

(1) For Models 685, 690, 690A, and 690B: Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992;

(2) For Models 500S, 500U, 680W, 681, 680FL, and 680FL(P): Twin Commander Custom Kit No. CK–145, dated November 21, 1992; or

(3) For Models 690, 690A, and 690B: AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO, FAA, Northwest Mountain Region.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO, FAA, Northwest Mountain Region.

(e) The inspections required by this AD shall be done in accordance with Twin Commander Service Bulletin No. 208A, dated November 9, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The replacement (as applicable) required by this AD shall be done in accordance with the instructions to either Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992; or Twin Commander Custom Kit No. CK–145, dated August 21, 1992, whichever is applicable. This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of April 11, 1994. Copies may be obtained from Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–8834) supersedes AD 91–08–09, Amendment 39–6965.

(g) This amendment (39–8834) becomes effective on April 12, 1994.

Issued in Kansas City, Missouri, on February 14, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3839 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–149–AD; Amendment 39–8829; AD 94–04–09]

Airworthiness Directives; de Havilland, Inc., Model DHC–8–100 and DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100 and DHC–8–300 series airplanes, that requires inspections to detect breakage in the engine rear mount strut assemblies, and replacement of broken struts. This amendment also requires eventual replacement of all currently installed struts with new and/or reworked struts, as terminating action for the inspections. This amendment is prompted by several reports of failure of the engine rear mount struts, due to fracture at one of the rosette welds on the shank of the strut where full weld depth was not achieved during manufacture. The actions specified by this AD are intended to prevent fracture of the engine rear mount struts, which could reduce the structural integrity of the nacelle and engine support structure.

DATES: Effective March 24, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100 and DHC–8–300 series airplanes was published in the **Federal Register** on October 25, 1993 (58 FR 55031). That action proposed to require repetitive detailed visual inspections to detect breakage in the engine strut assemblies, and replacement of broken struts with new and/or reworked struts. That action also proposed to require eventual replacement of the currently installed struts with new and/or reworked struts; when accomplished, this replacement would terminate the need for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 125 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $110,000, or $880 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-04-09 De Havilland, Inc.: Amendment 39-8829. Docket 93-NM-149-AD.

Applicability: Model DHC-8-102 and -103 series airplanes, serial numbers 003 through 310 inclusive; and Model DHC-8-301, -311, and -314 series airplanes, serial numbers 100 through 311 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the engine rear mount struts, and subsequent reduced structural integrity of the nacelle and engine support structure, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, perform a detailed visual inspection to detect breakage in the engine strut assemblies, part number 8711016-001, -003, -005, or -007, in accordance with De Havilland, Inc., Service Bulletin S.B. 8-71-17, dated April 3, 1992.

(1) If any broken strut is detected, prior to further flight, replace the broken strut with a new strut, part number 87110016-009, or a reworked strut, part number 8DK1763-001; Post-Modification 8/1763; in accordance with the service bulletin.

Note 1: The Post-Modification 8/1763 struts are either new struts, part number 87110016-009, or reworked struts, part number 8DK1763-001.

(2) If no broken strut is detected, repeat the inspection thereafter at intervals not to exceed 50 flight hours.

(b) Within 24 months after the effective date of this AD, replace all of the currently installed engine rear mount struts with new struts, part number 87110016-009, and/or reworked struts, part number 8DK1763-001; Post-Modification 8/1763; in accordance with de Havilland, Inc., Service Bulletin S.B. 8-71-17, dated April 3, 1992. This replacement constitutes terminating action for the repetitive inspection requirements of this AD.

(c) As of the effective date of this AD, no person shall install an engine rear mount strut, part number 8711016-001, -003, -005, or -007, on any airplane.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and replacements shall be done in accordance with de Havilland, Inc., Service Bulletin S.B. 8-71-17, dated April 3, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 24, 1994.

Issued in Renton, Washington, on Feburary 14, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-3752 Filed 2-18-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 93-NM-134-AD; Amendment 39-8828; AD 94-04-08]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and -40F Series Airplanes, and Model KC-10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10 series airplanes and Model KC-10A (military) airplanes, that requires inspections to detect cracking in the No. 2 engine pylon lower spar forward mount and thrust link fitting attach bolts, replacement of cracked bolts, and the eventual replacement of all bolts made of H-11 material with bolts made of Inconel. This amendment is prompted by reports of failures of these attach bolts due to stress corrosion. The actions specified by this AD are intended to prevent failure of the attach bolts, which could reduce the fail-safe capability of the attachment assembly.

DATES: Effective March 24, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, Mail Code 2-98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5322; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-10 series airplanes and Model KC-10A (military) airplanes was published in the **Federal Register** on October 26, 1993 (58 FR 57568). That action proposed to require inspections to detect cracking in the No. 2 engine pylon lower spar forward mount and thrust link fitting attach bolts, replacement of cracked bolts, and the eventual replacement of all bolts made of H-11 material with bolts made of Inconel.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Two commenters request that the proposed compliance time for the inspections be extended to coincide with normally scheduled maintenance intervals. These commenters suggest that if the compliance times were extended to 24 months, the confusion and expense of special scheduling could be avoided. The FAA does not concur. In developing the proposed compliance time, the FAA primarily considered analyses of the mode of failure of the subject bolts due to stress corrosion, as well as the service history of the fleet. Based on this data and the safety implications presented by loss of fail-safe capability of the attachment assembly should the bolts fail, the FAA has determined that the proposed compliance times of 12 months for the initial inspection and 18 months for the repetitive inspection interval are both appropriate and warranted. Further, the FAA took into account the average utilization rate of the affected fleet, the practical aspects of an orderly inspection of the fleet during regular maintenance periods, and the availability of required replacement parts. The compliance times as proposed should allow ample time for the inspections to be conducted concurrently with scheduled maintenance, thereby minimizing the costs associated with special airplane scheduling. In light of all of these factors, the FAA considers that any extension of the compliance intervals to be unacceptable.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 354 Model DC-10 series airplanes and Model KC-10A airplanes of the affected design in the worldwide fleet. The FAA estimates that 206 airplanes of U.S. registry will be affected by this AD

The inspections required by this AD will take approximately 8 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the inspections requirements of this AD on U.S. operators is estimated to be $90,640, or $440 per airplane, per inspection cycle.

The replacement actions required by this AD will take approximately 8 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Required parts will cost approximately $2,700 per airplane. Based on these figures, the total cost impact of the replacement actions of this AD on U.S. operators is estimated to be $646,840, or $3,140 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-04-08 McDonnell Douglas: Amendment 39-8828. Docket 93-NM-134-AD.

Applicability: Model DC-10-10, -10F, -15, -30, -30F, -40, and -40F series airplanes, and KC-10A (military) airplanes; having fuselage numbers 1 though 374 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the No. 2 engine pylon lower spar forward mount and thrust link fitting attach bolts, which could reduce the fail-safe capability of the attachment assembly, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform an ultrasonic inspection to detect cracking of the No. 2 engine pylon lower spar forward mount and thrust link fitting attach bolts made of H-11 material, in accordance with McDonnell Douglas DC-10 Service Bulletin 54-100, Revision 1, dated September 17, 1993.

(1) If no cracking is detected, repeat the ultrasonic inspection thereafter at intervals not to exceed 18 months, until the requirements of paragraph (b) of this AD are accomplished.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii):

(i) Replace the cracked bolt with a new bolt made of H-11 material and continue to inspect in accordance with this paragraph at intervals not to exceed 18 months, until the requirements of paragraph (b) of this AD are accomplished. Or

(ii) Replace the cracked bolt with a bolt made of Inconel, and replace the associated hardware, in accordance with the service bulletin. Such replacement constitutes terminating action for required ultrasonic inspections for that bolt.

(b) Within 5 years after the effective date of this AD, replace all No.2 engine pylon lower spar forward mount and thrust link fitting attach bolts made of H-11 material, with bolts made of Inconel, and replace the associated hardware, in accordance with McDonnell Douglas DC-10 Service Bulletin 54-100, Revision 1, dated September 17, 1993. Such replacement constitutes terminating action for the inspections required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacement shall be done in accordance with McDonnell Douglas DC-10 Service Bulletin 54-100, Revision 1, dated September 17, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, Mail Code 2-98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 24, 1994.

Issued in Renton, Washington, on February 14, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-3754 Filed 2-18-94; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 71

[Airspace Docket No. 93–ASW–55]

Modification of Class D Airspace: Hood Army Air Field and Robert Gray Army Airfield, TX, and Establishment of Class E Airspace: Killeen Municipal Airport, Killeen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace at Hood Army Airfield (AAF) and Robert Gray AAF, and establishes Class E airspace at Killeen Municipal Airport, Killeen, TX. In accordance with airspace reclassification, effective September 16, 1993, the Class D airspace encompassing Killeen Municipal Airport required aircraft operators to establish two-way communications with Hood AAF Airport Traffic Control Tower (ATCT), or when Hood ATCT was closed, Robert Gray AAF ATCT. This action removes the airspace surrounding Killeen Municipal Airport from Hood AAF's Class D airspace, and establishes Class E airspace around Killeen Municipal Airport. This action is intended to maintain adequate Class D airspace and two-way radio communications at Hood AAF and Robert Gray AAF, while removing Killeen Municipal Airport, TX, from the current Class D airspace, and establishing Class E airspace around Killeen Municipal Airport, Killeen, TX.

EFFECTIVE DATE: 0901 u.t.c., April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 222–5595.

SUPPLEMENTARY INFORMATION:

History

On January 12, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace at Hood AAF and Robert Gray AAF and to establish Class E airspace at Killeen Municipal Airport, TX, was published in the **Federal Register** (59 FR 1679).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for the addition of some descriptive information in the narrative portion of the rule for the Class D airspace at Robert Gray AAF, Texas, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in paragraph 5000, and Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298 July 6, 1993). The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations, modifies the Class D airspace at Hood Army Airfield (AAF) and Robert Gray AAF to remove the Class D airspace surrounding Killeen Municipal Airport from Hood AAF's Class D airspace and establishes Class E airspace around Killeen Municipal Airport, Killeen, TX.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000: General

* * * * *

ASW TX D Hood Army Airfield (AAF), TX
[Modify]
Hood Army Airfield (AAF), TX
(lat. 31°08'16" N., long. 97°42'51" W.)
Killeen Municipal Airport, TX
(lat. 31°05'08" N., long. 97°41'12" W.)
Robert Gray Army Airfield (AAF), TX
(lat. 31°03'54" N., long. 97°49'40" W.)

That airspace extending upward from the surface to and including 3,500 feet within a 3.8-mile radius of the Hood AAF excluding that airspace within the Robert Gray AAF, TX, Class D surface area and excluding that airspace southeast of a direct line between latitude 31°04'39" N., longitude 97°44'16" W., and the northeast intersection of the 4.0-mile radius of Killeen Municipal Airport and the 3.8-mile radius of Hood AAF. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX D Robert Gray Army Airfield (AAF), TX
Robert Gray Army Airfield (AAF), TX
(lat. 31°03'54" N., long. 97°49'40" W.)
Hood Army Airfield (AAF), TX
(lat. 31°08'16" N., long. 97°42'51" W.)
Killeen Municipal Airport, TX
(lat. 31°05'08" N., long. 97°41'12" W.)

That airspace extending upward from the surface to and including 3,500 feet within a 4.7-mile radius of Robert Gray AAF and within a 3.8-mile radius of Hood AAF, excluding that airspace southeast of a direct line between latitude 31°04'39" N., longitude 97°44'16" W., and the northeast intersection of the 4.0-mile radius of Killeen Municipal Airport and the 3.8-mile radius of Hood AAF, and excluding that airspace within the Hood AAF, TX, Class D surface area when it is effective. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ASW TX E2 Killeen, TX [New]
Killeen Municipal Airport, TX
(lat. 31°05'08" N., long. 97°41'12" W.)
Hood Army Airfield (AAF), TX
(lat. 31°08'16" N., long. 97°42'51" W.)
Robert Gray Army Airfield (AAF), TX
(lat. 31°03'54" N., long. 97°49'40" W.)

That airspace extending upward from the surface within a 4-mile radius of Killeen Municipal Airport excluding that airspace within the Robert Gray AAF, TX, Class D surface area and excluding that airspace

northwest of a direct line between latitude 31°04'39" N., longitude 97°44'16" W., and the northeast intersection of the 4.0-mile radius of Killeen Municipal Airport and the 3.8-mile radius of Hood AAF.

* * * * *

Issued in Fort Worth, TX on February 14, 1994.

Larry D. Gray,
Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–3888 Filed 2–18–94; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 442, 444, 448, and 455

[Docket No. 93N–0364]

Antibiotic Drugs; Updates, Technical Changes, and Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by updating, making noncontroversial technical changes, and making corrections in accepted standards of antibiotic and antibiotic-containing drugs for human use. These changes will result in more accurate and usable regulations.

DATES: Effective February 22, 1994; written comments, notice of participation, and request for a hearing by March 24, 1994; data, information, and analyses to justify a hearing by April 25, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0335.

SUPPLEMENTARY INFORMATION: FDA is amending the antibiotic drug regulations by updating, making noncontroversial technical changes, and making corrections in certain antibiotic drug regulations that provide for accepted standards of antibiotic and antibiotic-containing drugs intended for human use.

In § 442.216a(a)(1) (21 CFR 442.216a(a)(1)), separate limits for the pyridine content are being given for the *L*-arginine formulation and the sodium carbonate formulation. Separate limits are needed because the current limits allow the *L*-arginine formulation to contain up to 5.2 milligrams (mg) of pyridine per gram (g) of ceftazidime activity, while the sodium carbonate formulation may not contain more than 4.4 mg of pyridine per g of ceftazidime activity.

In § 442.216a(b)(1)(ii)(*a*), different loss on drying procedures are given for the *L*-arginine formulation and the sodium carbonate formulation. This is necessary because the procedure in the current monograph would not remove all of the water from the sodium carbonate formulation of the product (some water is "trapped" as sodium hydrogen carbonate), and the procedure will thus lead to falsely high potency values. Because the two formulations contain differing amounts of ceftazidime pentahydrate as a percent weight by weight of the powder blend, different loss on drying limits are now being given for each formulation. The loss on drying limits are now not more than 12.5 percent if it contains *L*-arginine and not more than 13.5 percent if it contains sodium carbonate. The asymmetry of the arginine peak is also revised from the current limit of 2.5 to a limit of 4.0. This limit is more realistic of the values obtained in this assay.

Revisions are being made in the descriptions of certain ophthalmic products (21 CFR part 444) and peptide products (21 CFR part 448). FDA has discovered that some of these monographs contain errors that would allow formulation without preservatives and other essential inactive ingredients to fit the monographs. FDA has not reviewed any of these products without these ingredients and does not know if they are safe and effective. The agency is, therefore, revising certain ophthalmic monographs to correct these errors.

In § 455.185a(a)(1) (21 CFR 455.185a(a)(1)), FDA is making a revision to allow vancomycin hydrochloride for oral solution to contain a suitable stabilizing agent. The agency has reviewed this formulation and found it to be safe and effective.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

These amendments institute changes that are corrective, editorial, or of a minor technical nature. Because the amendments are not controversial, and because when effective they provide notice of accepted standards, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. This final rule, therefore, becomes effective February 22, 1994. However, interested persons may, on or before March 24, 1994, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before March 24, 1994, a written notice of participation and request for a hearing, and (2) on or before April 25, 1994, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

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All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Parts 442, 444, 448, and 455

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 442, 444, 448, and 455 are amended as follows:

PART 442—CEPHA ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 442.216a is amended by revising paragraphs (a)(1), (b)(1)(ii)(*a*), and (b)(4) to read as follows:

§ 442.216a Ceftazidime pentahydrate for injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Ceftazidime pentahydrate for injection is a dry mixture of ceftazidime pentahydrate and sodium carbonate or *L*-arginine. Its ceftazidime potency is satisfactory if each milligram of ceftazidime pentahydrate for injection contains not less than 900 micrograms and not more than 1,050 micrograms of cefazidime activity when corrected for both loss on drying and its sodium carbonate or *L*-arginine content, as appropriate for the formulation. Its ceftazidime content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of ceftazidime that it is represented to contain. It is sterile. It is nonpyrogenic. Its loss on drying is not more than 12.5 percent if it contains *L*-arginine and not more than 13.5 percent if it contains sodium carbonate. The pH of its aqueous solution is not less than 5.0 and not more than 7.5. Its pyridine content, if it contains sodium carbonate, is not more than 0.4 percent, except that for the issuance of a certificate for each batch of the sodium carbonate formulation, the pyridine content is not more than 0.12 percent. Its pyridine content, if it contains *L*-arginine, is not more than 0.3 percent, except that for the issuance of a certificate, the pyridine content of the *L*-arginine formulation is not more than 0.10 percent. The ceftazidime pentahydrate conforms to the standard prescribed by § 442.16a(a)(1).

* * * * *

(b) * * *

(1) * * *

(ii) *Calculations*—(*a*) *Ceftazidime potency (micrograms per milligram).* Calculate the micrograms of ceftazidime per milligram as follows:

$$\text{Micrograms of ceftazidime per milligram} = \frac{A_u \times P_s \times 100}{A_s \times C_u \times (100\text{-}m\text{-}S\text{-}A)}$$

where:

A_u = Area of the ceftazidime peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ceftazidime peak in the chromatogram of the ceftazidime working standard;

P_s = Ceftazidime activity in the ceftazidime working standard solution in micrograms per milliliter;

C_u = Milligrams of sample per milliliter of sample solution;

m = Percent loss on drying (determined as directed in § 436.200(h) of this chapter if the formulation contains sodium carbonate end determined as directed in § 436.200(g) of this chapter if the formulation contains *L*-arginine);

S = Percent sodium carbonate content of the sample (determined as directed in § 436.357 of this chapter); and

A = Percent *L*-arginine content of the sample (determined as directed in § 455.204 of this chapter, except use ceftazidime instead of aztreonam in the working standard solution and use water instead of mobile phase). Prepare the sample solution by diluting an accurately weighed portion of the contents of a vial with water to 0.2 milligram per milliliter (estimated). The resolution between the ceftazidime peak and the arginine peak is not less than 6.0, the asymmetry factor for the arginine peak is not more than 4.0).

* * * * *

(4) *Loss on drying.* Proceed as directed in § 436.200(h) of this chapter if the formulation contains sodium carbonate and as directed in § 436.200(g) of this chapter if the formulation contains *L*-arginine.

* * * * *

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR part 444 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

4. Section 444.320c is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 444.320c Gentamicin sulfate-prednisolone acetate ophthalmic suspension.

(a) * * *

(1) * * * It contains suitable and harmless chelating agents, tonicity agents, buffers, and preservatives. * * *

* * * * *

5. Section 444.342a is amended by revising the first sentence of the undesignated paragraph under paragraph (a)(1)(v) to read as follows:

§ 444.342a Neomycin sulfate-_____ ophthalmic suspension; neomycin sulfate-_____ ophthalmic solution (the blanks being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragraph (a)(1) of this section).

(a) * * *

(1) * * *

(v) * * *

It contains suitable and harmless buffers, dispersants, and preservatives. * * *

* * * * *

6. Section 444.342c is amended by revising the first sentence of the undesignated paragraph under paragraph (a)(1)(ii) to read as follows:

§ 444.342c Neomycin sulfate-gramicidin _____ ophthalmic solution; neomycin sulfate-gramicidin _____ ophthalmic suspension (the blanks being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragraph (a)(1) of this section).

(a) * * *

(1) * * *

(ii) * * *

It contains suitable and harmless buffers, dispersants, irrigants, and preservatives. * * *

* * * * *

7. Section 444.342d is amended by revising the first sentence of the undesignated paragraph under paragraph (a)(1)(iv) to read as follows:

§ 444.342d Neomycin sulfate-polymyxin B sulfate _____ ophthalmic suspension (the blank being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragraph (a)(1) of this section).

(a) * * *

(1) * * *

(iv) * * *

It contains suitable and harmless buffers, dispersants, irrigants, and preservatives. * * *

* * * * *

8. Section 444.342i is amended by revising the second sentence of paragraph (a)(1)(ii) to read as follows:

§ 444.342i Neomycin sulfate-polymyxin B sulfate ophthalmic solution.

(a) * * *

(1) * * *

(ii) * * * It contains suitable and harmless buffers, dispersants, irrigants, and preservatives. * * *

* * * * *

9. Section 444.342j is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 444.342j Neomycin sulfate-polymyxin B sulfate-dexamethasone ophthalmic suspension.

(a) * * *

(1) * * * It contains suitable and harmless buffers, dispersants, irrigants, and preservatives. * * *

* * * * *

10. Section 444.380a is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 444.380a Tobramycin ophthalmic solution.

(a) * * *

(1) * * * It contains suitable and harmless buffers, dispersants, preservatives, and tonicity agents. * * *

* * * * *

11. Section 444.380c is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 444.380c Tobramycin-dexamethasone ophthalmic suspension.

(a) * * *

(1) * * * It contains suitable and harmless buffers, dispersants, preservatives, and tonicity agents. * * *

* * * * *

PART 448—PEPTIDE ANTIBIOTIC DRUGS

12. The authority citation for 21 CFR part 448 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, Cosmetic Act (21 U.S.C. 357).

13. Section 448.330 is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 448.330 Polymyxin B sulfate-trimethoprim hemisulfate ophthalmic solution.

(a) * * *

(1) * * * It contains suitable and harmless buffers and preservatives. * * *

* * * * *

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

14. The authority citation for 21 CFR part 455 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

15. Section 455.185a is amended in paragraph (a)(1) by adding a new sentence after the first sentence to read as follows:

§ 455.185a Vancomycin hydrochloride for oral solution.

(a) * * *

(1) * * * It may contain a suitable stabilizing agent. * * *

* * * * *

Dated: February 9, 1994.

Stephanie R. Gray,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research

[FR Doc. 94–3856 Filed 2–18–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 455

[Docket No. 93N–0365]

Antibiotic Drugs; Vancomycin Hydrochloride Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of vancomycin hydrochloride, vancomycin hydrochloride injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective March 24, 1994; written comments, notice of participation, and request for a hearing by March 24, 1994; data, information, and analyses to justify a hearing by April 25, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0335.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of vancomycin hydrochloride, vancomycin hydrochloride injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR part 455 to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective March 24, 1994. However, interested persons may, on or before March 24, 1994, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1)

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on or before March 24, 1994, a written notice of participation and request for a hearing, and (2) on or before April 25, 1994, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 455

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 455 is amended as follows:

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 455 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 455.86 is added to subpart A to read as follows:

§ 455.86 Vancomycin.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Vancomycin is a tricyclic glycopeptide. It is a free flowing white to off-white colored powder. It is so purified and dried that:

(i) It contains not less than 925 micrograms of vancomycin per milligram, calculated on the anhydrous basis.

(ii) It contains not less than 92 percent vancomycin factor B and not more than 3 percent of any individual vancomycin related factor.

(iii) Its moisture content is not more than 20 percent.

(iv) Its heavy metals content is not more than 30 parts per million.

(v) It gives a positive identity test for vancomycin.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, chromatographic purity, moisture, heavy metals, and identity.

(ii) Samples required: 12 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place an accurately weighed sample of approximately 100 milligrams in a 100-milliliter volumetric flask and dissolve in approximately 50 milliliters of distilled water and 1.0 milliliter of 0.1*N* hydrochloric acid. Swirl or sonicate to dissolve the sample and bring to volume with distilled water. Further dilute an aliquot of this solution with 0.1*M* potassium phosphate buffer, pH 4.5 (solution 4), to the reference concentration of 10 micrograms of vancomycin per milliliter (estimated).

(2) *Chromatographic purity.* Proceed as directed in § 436.366 of this chapter. The relative amount of vancomycin B is not less than 92 percent, and the relative amount of any related substance is not more than 3 percent.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *Heavy metals.* Proceed as directed in § 436.208 of this chapter.

(5) *Identity.* Proceed as directed in § 436.211 of this chapter, using the 0.5 percent potassium bromide disc preparation as described in § 436.211(b)(1).

3. Section 455.285c is added to subpart C to read as follows:

§ 455.285c Vancomycin hydrochloride injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Vancomycin hydrochloride injection is a frozen, aqueous, isosmotic solution of vancomycin hydrochloride and a tonicity adjusting agent. Each milliliter contains vancomycin hydrochloride equivalent to 5 milligrams of vancomycin. Its vancomycin content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of vancomycin that it is represented to contain. It contains not less than 88 percent vancomycin factor B. It contains not more than 4 percent of any individual vancomycin related factor. It is sterile. It contains not more than 0.33 U.S.P. Endotoxin Unit per milligram of vancomycin hydrochloride. Its pH is not less than 3.0 and not more than 5.0. The vancomycin used conforms to the standards prescribed by § 455.86.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter. In addition, this drug shall be labeled "vancomycin hydrochloride injection."

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The vancomycin used in making the batch for vancomycin potency, chromatographic purity, moisture, heavy metals, and identity.

(B) The batch for vancomycin content, chromatographic purity, sterility, bacterial endotoxins, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The vancomycin used in making the batch: 10 packages, each containing approximately 300 milligrams.

(B) The batch:

(*1*) For all tests except sterility: A minimum of 12 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay.* Thaw the sample as directed in the labeling. The sample solution used for testing must be at room temperature.

(1) *Vancomycin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample solution as follows: Using a suitable hypodermic needle and syringe, remove an accurately measured representative portion from each container immediately after thawing and reaching room temperature. Dilute with 0.1*M* potassium phosphate buffer, pH 4.5 (solution 4), to the reference concentration of 10 micrograms of vancomycin per milliliter (estimated).

(2) *Chromatographic purity.* Proceed as directed in § 436.366 of this chapter. The relative amount of vancomycin B is not less than 88 percent and the relative amount of any related substance is not more than 4 percent.

(3) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in § 436.20(e)(1), except use sterile distilled water in lieu of diluting fluid A.

(4) *Bacterial endotoxins.* Proceed as directed in the U.S.P. bacterial endotoxins test. The specimen under test contains not more than 0.33 U.S.P. Endotoxin Unit per milligram of vancomycin hydrochloride.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

(6) *Identity.* The high-performance liquid chromatogram of the sample determined as directed in paragraph (b)(2) of this section compares qualitatively to that of the vancomycin working standard.

Dated: February 9, 1994.

Stephanie R. Gray,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–3815 Filed 2–18–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RINS–0720–AA08–0720–AA10–0720–AA13

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Coverage of Screening Mammography and Papanicolaou (PAP) Tests, Certified Marriage and Family Therapists, and Requirements for Coverage and Reimbursement of Services of Physicians in Teaching Settings

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises the exclusions and limitations of the CHAMPUS regulation pertaining to preventive care and unnecessary diagnostic tests not related to a specific illness, injury, or definitive set of symptoms, to allow coverage for screening mammography and PAP tests on a preventive basis initially following the recommended guidelines of the American Cancer Society as a basis for coverage. The final rule also removes the requirement for physician supervision and referral for certified marriage and family therapists; requires all certified marriage and family therapists to accept CHAMPUS payment as payment in full; ensures that the relationship of certified marriage and family therapists is consistent with other mental health practitioners with comparable education and training; protects the CHAMPUS beneficiary from incurring added out-of-pocket costs for care rendered that is not part of the current CHAMPUS mental health benefits package; and better defines the specific requirements of existing CHAMPUS policies for coverage and reimbursement of services of teaching physicians and physicians in training.

EFFECTIVE DATE: This part is effective February 22, 1994. The effective date for changes in § 199.4, paragraphs (g)(1), (g)(2), (g)(37)(vii) and (g)(37)(viii) and (g)(39), and section 199.8, paragraph (d)(6), related to screening PAP tests and mammography on a preventive basis is November 5, 1990; the effective date for changes in § 199.2(b), "marriage and family therapist, certified," "pastoral counselors," "mental health counselor," § 199.4, paragraph (c)(3)(ix)(A), and § 199.6, paragraphs (c) (1)(iv) and (3)(iv), related to certified marriage and family therapists is May 23, 1994; and the effective date for changes in § 199.2(b), "approved teaching programs," "attending physician," "physician in training" and "teaching physician," § 199.4, paragraphs (b)(1)(i), (c)(1)(i), (c)(3)(xiii), and 199.8, paragraph (c)(1), related to services of teaching physicians and physicians in training is March 24, 1994.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Judy Carroll, Program Development Branch, OCHAMPUS, telephone (303) 361–1089.

SUPPLEMENTARY INFORMATION: On August 21, 1991 (56 FR 41498), and November 12, 1991 (56 FR 57501), the Office of Secretary of Defense published for public comment notices of proposed rulemaking to comply with sections 701 and 702 of the National Defense Authorization Act for Fiscal Year 1991. These statutory provisions are codified at 10 U.S.C. 1079 (a) (2), (8), and (13). This final rule consolidates the comments and the changes based on comments of three proposed rule amendments to implement sections 701 and 702 of the Defense Authorization Act for Fiscal Year (FY) 1991 (Pub. L. 101–510), and to revise requirements for coverage and reimbursement of services of physicians in teaching settings. The publication of the final rule amendments was delayed as a result of the Presidential moratorium on regulation changes. This final rule completes the action required to amend this part as outlined in the three previously published proposed rules. The proposed rules provided specific coverage requirements, screening frequencies, payment limitations and provider certification requirements, for mammography and PAP tests, removed the requirement for physician supervision and referral for certified marriage and family therapists and required all certified marriage and family therapists to accept CHAMPUS payment as payment in full. Additionally, in FR Doc. 91–28934, appearing in the **Federal Register** on December 10, 1991 (56 FR 64491), the Office of Secretary of Defense also published for public comment a notice of proposed rulemaking to revise the comprehensive CHAMPUS regulation, DoD 6010.8–R, pertaining to basic CHAMPUS benefits to better define the specific requirements for coverage and reimbursement of services of teaching physicians and physicians in training. We refer the reader to the proposed rules for a more detailed explanation of this change. We provided a 30-day comment period on each of the proposed amendments to the CHAMPUS regulation. The following summarizes the comments received following publication of each proposed rule amendment, and the actions taken based on these comments.

Discussion of Comments for

1. Screening Mammographies and PAP Smears

We received two (2) public comments and one (1) comment from the government agencies which by law we are required to consult with during the rulemaking process in response to the proposed rule regarding CHAMPUS coverage for screening mammography and papanicolaou (PAP) tests related to the proposed screening frequencies for mammography and PAP testing. A summary of the comments and our responses to them are listed below.

Comment: The coverage limitations for screening mammography set out in section II of the proposed rule are virtually identical to the Medicare requirement. However, we wish to point out that the American College of Radiology and other groups including the National Cancer Institute, American Cancer Society, American Medical Association, and other physician organizations recommend that women 65 years of age or older have mammograms on an annual basis. We

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recommend adopting the position of national professional organizations over Medicare current coverage policy.

Response: We have found your argument persuasive and have amended the language in the Final Rule to follow the expert opinion and recommendation of national professional organizations. The amended language will allow annual screening for women 65 years of age or older.

Comment: The Department of Defense has proposed adopting current Medicare regulations for use in the CHAMPUS program. Under these regulations, screening mammography would be allowed only once every two years for "asymptomatic women over the age of 65." Mammography is the only screening device currently available that detects breast cancers before they become palpable. Diagnosed in the early stages, breast cancer is more amenable to less invasive medical therapies. This translates into money saved as a result of fewer and shorter hospitalizations, less radical and more inexpensive treatments, and a lower recurrence rate. This organization believes that all women over the age of 50 should undergo annual screening mammography and clinical breast examination as part of their overall preventive health-care plan.

Response: In order to remain in keeping with nationally recognized breast cancer screening frequencies which recommend that annual mammograms should be allowed for all women age 50 and over, we have added clarifying language to the final rule. The new language allows women between the ages of 50 and 64 years of age to have annual mammography screening.

Comment: Because of greater risk, annual screening mammography is important for women 65 and over. Additionally, the proposed rule which allowed coverage for screening PAP tests on an annual basis is inconsistent with the consensus of the scientific community, which suggests that following three consecutive annual PAP tests with negative findings, and in the absence of risk factors, screening may safely be decreased to every two (2) to (3) years.

Response: We have amended language in the final rule to allow coverage of screening PAP tests every two (2) years after three consecutive annual exams with normal findings and in the absence of risk factors.

2. Certified Marriage and Family Therapists

We received twelve (12) public comments from five (5) interested professional organizations and three (3) comments from the Government agencies which by law we are required to consult with during the rulemaking process in response to the proposed rule to remove the requirement for physician supervision and referral for certified marriage and family therapists and require all certified marriage and family therapists to accept CHAMPUS payment as payment in full. Three (3) of the professional organizations provided similar comments. A summary of the comments and our responses to them are listed below:

Comment: One commentor expressed great concern that the proposed rule contained no provision to address the need for either medical differential diagnosis by a physician or evaluation by a mental health professional of the level of clinical psychologist or clinical social worker. The commenter strongly urged that OCHAMPUS require that patients being seen by any of these various categories of nonphysician mental health practitioners be evaluated by physicians, including psychiatrists, to assure that appropriate medical care will be provided.

Response: We, too, share the concerns of this professional organization. However, based upon the provisions of the FY 1991 Defense Authorization Act, as cited above, we can no longer require physician referral and supervision. We have added language which states that patients with medical conditions must receive appropriate concurrent management by a physician. Additionally, claims for services by certified marriage and family therapists shall continue to be reviewed in accord with appropriate medical concepts.

Comment: One commenter questioned by OCHAMPUS would forward with this proposal, knowing assuredly that costs will inevitably increase. Even with the "payment in full" requirements for this proposed regulation, the expansion to independent practice and billing will be costly.

Response: As previously stated, this change was mandated by Congress. Program costs associated with this final amendment are not expected to be substantial, since this amendment will eliminate administrative requirements for CHAMPUS, the beneficiary, and the provider population.

Comment: The proposed rule would also permit mental health counselors and pastoral counselors to be certified and removed from physician supervision and referral requirements. There certainly is no legislative authority for the proposed expansion for others than marriage and family therapists, and we think this effort is misguided.

Response: Neither the proposed nor final rules permit mental health or pastoral counselors to practice without physician supervision and referral. Both rules keep the requirement for physician supervision and referral for mental health and pastoral counselors.

Comment: We believe it inappropriate that OCHAMPUS has gone ahead and promulgated federal criteria that would recognize independent practice and payment under CHAMPUS for practitioners that are not permitted such legal right under state law. We do not believe that OCHAMPUS should be usurping the traditional state role and responsibility to regulate individual professions. This permits unregulated practice without any quality assurance to protect patients.

Response: CHAMPUS requires all providers comply with state licensure and certification requirements, and to practice within the parameters of their scope of licensure. This means that if a state requires a certified marriage and family therapist to practice with physician involvement, OCHAMPUS would also require the provider to practice within the state standard.

Comment: We strongly request that you add mental health counselors as mental health providers not needing physician referral.

Response: The legislation which mandated the removal of physician supervision and referral only authorized removal of the requirement for one category of provider, that is, certified marriage and family therapists. By law, the physician supervision and referral requirement is still required for services rendered by pastoral counselors and mental health counselors under CHAMPUS.

Comment: We recommend correcting the national organization which offers clinical membership for marriage and family therapists to the American Association for Marriage and Family Therapy rather than the American Association of Marriage and Family Counselors which was listed in proposed paragraph (c)(3)(iv)(D)(*2*).

Response: We have revised the regulatory language to reflect the correct name of the national organization which offers clinical membership for marriage and family therapists.

Comment: The experience requirements delineated in § 199.6(c)(3)(iv)(A)(*2*) are outdated and cumbersome to administer given the many specific requirements detailed. We recommend that CHAMPUS change the experience requirement to reflect current American Association of Marriage and Family Therapy clinical membership criteria. Such a change would be consistent not only with the current standards established by the nationally recognized credentialing organization for marriage and family therapy, but it would also establish criteria consistent with other independent CHAMPUS providers.

Response: We do not find this argument persuasive. A comparison of the requirements shows that the hours of training for marriage and family therapists are identical. However, the American Association of Marriage and Family Therapy standards do not include the requirement for psychotherapy experience even though psychotherapy is one of the major services certified marriage and family therapists provide. Since the CHAMPUS benefit does not include counseling services and certified marriage and family therapists will primarily be providing psychotherapy services to CHAMPUS beneficiaries, we feel a requirement for psychotherapy experience is critical.

Comment: We recommend that certified marriage and family therapists be removed from the "extramedical" provider category (§ 199.6(c)(3)(iv)(A)) and be listed under "Other allied health professionals" as § 199.6(c)(3)(iii)(H)(*3*). The American Association of Marriage and Family Therapy is concerned that the extramedical designation may lead beneficiaries and providers to believe that a certified marriage and family therapist still requires a physician's supervision and referral.

Response: CHAMPUS beneficiaries will be advised of the elimination of the physician supervision and referral requirement for certified marriage and family therapists through changes in the beneficiary's handbook and other public news releases. This should eliminate any confusion.

Comment: In paragraph (c)(3) to § 199.6(c)(3)(iv), the proposed rule refers to "paragraph (c)(3)(iv) of this section for more specific information regarding licensure." We assume that this paragraph refers to paragraph (c)(3)(iv)(D) of the proposed rule which discusses additional information applicable to each of the extramedical providers.

Response: Your assumption is correct.

Comment: For the sake of clarity, we believe that paragraph (c)(3) to § 199.6(c)(3)(iv) should explicitly state that "In jurisdictions that do not provide for licensure or certification, the provider must be certified by or eligible for full clinical membership in the appropriate national professional association that sets standards for the specific profession." Currently, the proposed rule could be mistakenly interpreted to mean that if providers live in a state that does not regulate marriage and family therapy, they cannot be CHAMPUS authorized providers.

Response: We have incorporated the above technical revision.

Comment: Paragraph (c)(3) to § 199.6(c)(3)(iv) also does not address the professional status of marriage and family therapists licensed or certified in California, Michigan, and New Jersey. Although marriage and family therapists in each of these jurisdictions meet CHAMPUS' educational and experience requirements, they are technically regulated as marriage, family and child counselors or marriage and family counselors. We fear that California, Michigan, and New Jersey's marriage and family therapists may be denied CHAMPUS provider status based on the semantics of a professional title, despite the fact that the credentials and scope of practice are the same in these states as they are for marriage and family therapists in other regulated jurisdictions.

Response: CHAMPUS denial of provider status is not based solely on professional title. Licensing is but one part of the marriage and family certification and review process. Authorization as a certified marriage and family therapist under CHAMPUS includes licensure, graduation from a regionally accredited school, a degree in an appropriate field, and post-graduate clinical training.

Comment: We assume and would like to clarify that CHAMPUS providers who currently qualify as marriage and family counselors will qualify as certified marriage and family therapists without having to redocument their credentials. We understand that they must agree to accept the CHAMPUS allowable charge as payment in full as stipulated by proposed paragraph 4 (now paragraph 5) of § 199.6(c)(3)(iv)(A)(*4*), (now paragraph (*5*)), but we do not understand the change to be a requirement for the resubmission of credential materials. We feel it would be an administrative burden to both OCHAMPUS and individual providers to require such redocumentation of professional qualifications. We recommend language be incorporated within the final rule to circumvent the possibility for such an administrative nightmare.

Response: The legislation required that all marriage and family therapists be certified. We have interpreted this to mean that only providers who meet the very minimum level of requirements should remain authorized under CHAMPUS. Additionally, the legislation did not provide grandfathering provisions for marriage and family counselors already authorized under CHAMPUS. We feel recertification will ensure CHAMPUS beneficiaries receive care provided by both certified and qualified providers.

Comment: Will certified marriage and family therapists who have signed a participation agreement with OCHAMPUS be able to terminate the agreement.

Response: Certified marriage and family therapists who have signed a participation agreement with OCHAMPUS may terminate the agreement upon notification to OCHAMPUS. The participation agreement will stipulate the number of days required for notification to terminate.

Comment: Will certified marriage and family therapists who have terminated their participation agreement be eligible to qualify as another category of provider under CHAMPUS? If this allowed, we foresee a number of problems in the adjudication of claims, particularly if they choose to switch to a category of provider which still requires physician supervision and referral and continue to treat the same patients.

Response: Upon application to OCHAMPUS, a provider must indicate under which category of provider he/she wishes to be authorized. Once a determination by OCHAMPUS is made that the applicant meets the qualifications of the provider category for which he/she is applying, switching from one group to another seldom occurs. Switching could be allowed if the provider has continued his/her education and such additional education qualifies him/her for a different provider category (i.e., nurse to M.D., clinical psychologist to psychiatrist, or M.D. to psychiatrist). Such upward or changed speciality movement generally does not create an adjudication problem. However, we agree that the new legislative provisions regarding certified marriage and family therapists may create adjudication problems, since the provisions of the law allow certified marriage and family therapists to practice without physician supervision and referral. Switching and movement within any other extramedical provider category where physician supervision and referral is required would result in CHAMPUS beneficiaries incurring costs for denied care. Care denied for lack of physician supervision and referral would not be subject to the hold harmless provisions of the new legislation since these provisions only apply to the certified

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marriage and family therapists provider category. We feel it would be inappropriate to require retroactive physician supervision and referral for care that has already been rendered, or for continuing care. To prevent CHAMPUS beneficiaries from incurring costs Congress did not intend them to incur with this change, we have added language to the final rule which precludes marriage and family therapists from switching within the extramedical provider category. As of the effective date of termination, the certified marriage and family therapist will no longer be recognized as an authorized provider under CHAMPUS. Subsequent to termination, the certified marriage and family therapist may only be reinstated as an authorized CHAMPUS extramedical provider by entering into a new participation agreement as a certified marriage and family therapist.

3. Services of Physicians in Teaching Settings

We received one (1) public comment from a national physician organization and one (1) comment from one of the government agencies which by law we are required to consult with during the rulemaking process.

Comment: It is not uncommon for physicians to have a contract with an academic hospital to provide individual, personal services to hospital patients and for the contract to provide for the physicians to bill the patient or their insurer directly for those services. In these cases, the hospital does not bill patients/insurers and makes no payment to the physician for the services. To require hospitals to change such billing arrangements serves no useful purpose.

Response: We agree, and it was not our intent to require hospitals to change their billing arrangements. The CHAMPUS regulation has always had the requirement that physicians who are employed by or under contract to the hospital cannot bill for their services. This, however, is intended to apply only to those contracts which incorporate payment to the physicians. It does not include contracts which only provide physicians with normal privileges to admit patients and to render services in the hospital on a fee-for-service basis. In order to reflects this intent, we have modified the language in § 199.4 (c)(3)(xiii)(A)(*4*) as well as in § 199.6 (c)(1).

Comment: In addition to interns and residents, fellows in certain subspecialties are also "physicians in training." It is unclear from the document whether or not a fellow in a subspecialty would be considered a "physician in training."

Response: We consider fellows to be physicians in training, and we have added them to the definition in § 199.2.

Section 605(b) of the Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354) requires that each federal agency prepare and make available for public comment a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. The Department of Defense certifies, pursuant to section 605(b) of title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this final amendment will not have a significant impact on a substantial number of small businesses, organizations, or government jurisdictions. For purposes of the RFA, we consider small entities to include all hospitals and third-party payers.

We have determined that this final amendment is a routine amendment necessary to provide specific requirements for existing policies and to implement legislation which authorized expanded CHAMPUS benefits, and relieved administrative requirements for the CHAMPUS beneficiary and provider community. It is not, therefore, a "major rule" under Executive Order 12291. This final rule only provides specific requirements for existing policies; expands benefits; and ensures equitable administration of CHAMPUS requirements among mental health providers with comparable education and training while also protecting CHAMPUS beneficiaries from incurring added costs for mental health care not normally covered under the CHAMPUS program. It will not involve any significant burden on CHAMPUS beneficiaries or providers.

Although this change does not qualify as a "major rule" under Executive Order 12291, a cost analysis for costs associated with implementing screening mammogram and Pap tests was provided in the proposed rule amendment on screening mammogram and PAP tests. Additionally, an increase in program costs related to implementation of this final amendment for the issues related to certified marriage and family therapists and physicians in teaching settings are not expected to be substantial, since this amendment will eliminate administrative requirements for certified marriage and family therapists for CHAMPUS, the beneficiary and the provider population and only better defines the specific requirements for coverage of existing policies related to physicians in teaching settings.

This final rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1079, 1086.

2. Section 199.2(b) is amended by adding the new definitions, "approved teaching programs," "pastoral counselors," "physician in training," and "teaching physician," by removing the definition for "marriage and family counselor or pastoral counselor," by adding the definition "marriage and family therapist, certified," in alphabetical order, and by revising the definitions for "attending physician," and "mental health counselor" to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Approved teaching programs. For purposes of CHAMPUS, an approved teaching program is a program of graduate medical education which has been duly approved in its respective specialty or subspecialty by the Accreditation Council for Graduate Medical Education of the American Medical Association, by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, by the Council on Dental Education of the American Dental Association, or by the Council on Podiatry Education of the American Podiatry Association.

* * * * *

Attending physician. The physician who has the primary responsibility for the medical diagnosis and treatment of the patient. A consultant or an assistant surgeon, for example, would not be an attending physician. Under very extraordinary circumstances, because of the presence of complex, serious, and multiple, but unrelated, medical conditions, a patient may have more than one attending physician concurrently rendering medical treatment during a single period of time.

An attending physician also may be a teaching physician.

* * * * *

Marriage and family therapist, certified. An extramedical individual provider who meets the requirements outlined in § 199.6.

* * * * *

Mental health counselor. An extramedical individual provider who meets the requirements outlined in § 199.6

* * * * *

Pastoral counselor. An extramedical individual provider who meets the requirements outlined in § 199.6.

* * * * *

Physician in training. Interns, residents, and fellows participating in approved postgraduate training programs and physicians who are not in approved programs but who are authorized to practice only in a hospital or other institutional provider setting, e.g., individuals with temporary or restricted licenses, or unlicensed graduates of foreign medical schools.

* * * * *

Teaching physician. A teaching physician is any physician whose duties include providing medical training to physicians in training within a hospital or other institutional provider setting.

* * * * *

3. Section 199.4 is amended by revising paragraphs (b)(1)(i), (c)(1)(i), (c)(3)(ix)(A), by adding a new paragraph (c)(3)(xiii) after the Note, (g)(37)(vii), and (g)(37)(viii), and by revising paragraphs (g)(1), (g)(2), and (g)(39) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(b) * * *

(1) * * *

(i) *Billing practices.* To be considered for benefits under § 199.4(b), covered services and supplies must be provided and billed for by a hospital or other authorized institutional provider. Such billings must be fully itemized and sufficiently descriptive to permit CHAMPUS to determine whether benefits are authorized by this part. Depending on the individual circumstances, teaching physician services may be considered an institutional benefit in accordance with § 199.4(b) or a professional benefit under § 199.4(c). See paragraph (c)(3)(xiii) of this section for the CHAMPUS requirements regarding teaching physicians. In the case of continuous care, claims shall be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days either by the beneficiary or sponsor or, on a participating basis, directly by the facility on behalf of the beneficiary (refer to § 199.7).

* * * * *

(c) * * *

(1) * * *

(i) *Billing practices.* To be considered for benefits under paragraph (c) of this section, covered professional services must be performed personally by the physician or other authorized individual professional provider, who is other than a salaried or contractual staff member of a hospital or other authorized institution, and who ordinarily and customarily bills on a fee-for-service basis for professional services rendered. Such billings must be itemized fully and be sufficiently descriptive to permit CHAMPUS to determine whether benefits are authorized by this part. See paragraph (c)(3)(xiii) of this section for the requirements regarding the special circumstances for teaching physicians. For continuing professional care, claims should be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days either by the beneficiary or sponsor, or directly by the physician or other authorized individual professional provider on behalf of a beneficiary (refer to § 199.7).

* * * * *

(3) * * *

(ix) * * *

(A) *Covered diagnostic and therapeutic services.* Subject to the requirements and limitations stated, CHAMPUS benefits are payable for the following services when rendered in the diagnosis or treatment of a covered mental disorder by a CHAMPUS-authorized, qualified mental health provider practicing within the scope of his or her license. Qualified mental health providers are: psychiatrists or other physicians; clinical psychologists, certified psychiatric nurse specialists, clinical social workers, and certified marriage and family therapists; and pastoral and mental health counselors under a physician's supervision. No payment will be made for any service listed in paragraph (c)(3)(ix)(A) of this section rendered by an individual who does not meet the criteria of § 199.6 for his or her respective profession, regardless of whether the provider is an independent professional provider or an employee of an authorized professional or institutional provider.

* * * * *

(xiii) *Physicians in a teaching setting.*

(A) *Teaching physicians.*

(*1*) *General.* The services of teaching physicians may be reimbursed on an allowable charge basis only when the teaching physician has established an attending physician relationship between the teaching physician and the patient or when the teaching physician provides distinct, identifiable, personal services (e.g., services rendered as a consultant, assistant surgeon, etc.). Attending physician services may include both direct patient care services or direct supervision of care provided by a physician in training. In order to be considered an attending physician, the teaching physician must:

(*i*) Review the patient's history and the record of examinations and tests in the institution, and make frequent reviews of the patient's progress; and

(*ii*) Personally examine the patient; and

(*iii*) Confirm or revise the diagnosis and determine the course of treatment to be followed; and

(*iv*) Either perform the physician's services required by the patient or supervise the treatment so as to assure that appropriate services are provided by physicians in training and that the care meets a proper quality level; and

(*v*) Be present and ready to perform any service performed by an attending physician in a nonteaching setting when a major surgical procedure or a complex or dangerous medical procedure is performed; and

(*vi*) Be personally responsible for the patient's care, at least throughout the period of hospitalization.

(*2*) *Direct supervision by an attending physician of care provided by physicians in training.* Payment on the basis of allowable charges may be made for the professional services rendered to a beneficiary by his/her attending physician when the attending physician provides personal and identifiable direction to physicians in training who are participating in the care of the patient. It is not necessary that the attending physician be personally present for all services, but the attending physician must be on the provider's premises and available to provide immediate personal assistance and direction if needed.

(*3*) *Individual, personal services.* A teaching physician may be reimbursed on an allowable charge basis for any individual, identifiable service rendered to a CHAMPUS beneficiary, so long as the service is a covered service and is normally reimbursed separately, and so long as the patient records substantiate the service.

(*4*) *Who may bill.* The services of a teaching physician must be billed by the institutional provider when the physician is employed by the provider or a related entity or under a contract which provides for payment to the

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physician by the provider or a related entity. Where the teaching physician has no relationship with the provider (except for standard physician privileges to admit patients) and generally treats patients on a fee-for-service basis in the private sector, the teaching physician may submit claims under his/her own provider number.

(B) *Physicians in training.* Physicians in training in an approved teaching program are considered to be "students" and may not be reimbursed directly by CHAMPUS for services rendered to a beneficiary when their services are provided as part of their employment (either salaried or contractual) by a hospital or other institutional provider. Services of physicians in training may be reimbursed on an allowable charge basis only if:

(*1*) The physician in training is fully licensed to practice medicine by the state in which the services are performed, and

(*2*) The services are rendered outside the scope and requirements of the approved training program to which the physician in training is assigned.

* * * * *

(g) * * *

(1) *Not medically or psychologically necessary.* Services and supplies that are not medically or psychologically necessary for the diagnosis or treatment of a covered illness (including mental disorder) or injury, for the diagnosis and treatment of pregnancy or well-baby care except as provided in the following paragraph.

(2) *Unnecessary diagnostic tests.* X-ray, laboratory, and pathological services and machine diagnostic tests not related to a specific illness or injury or a definitive set of symptoms except for cancer screening mammography and cancer screening papanicolaou (PAP) tests provided under the terms and conditions contained in the guidelines adopted by the Director, OCHAMPUS.

* * * * *

(37) * * *

(vii) Screening mammography for asymptomatic women 35 years of age and older when provided under the terms and conditions contained in the guidelines adopted by the Director, OCHAMPUS.

(viii) Cancer screening papanicolaou (PAP) test for women who are or have been sexually active, and women 18 years of age and older when provided under the terms and conditions contained in the guidelines adopted by the Director, OCHAMPUS.

* * * * *

(39) *Counseling.* Counseling services that are not medically necessary in the treatment of a diagnosed medical condition: For example, educational counseling, vocational counseling, nutritional counseling, and counseling for socioeconomic purposes, diabetic self-education programs, stress management, lifestyle modification, etc. Services provided by a certified marriage and family therapist, pastoral or mental health counselor in the treatment of a mental disorder are covered only as specifically provided in § 199.6. Services provided by alcoholism rehabilitation counselors are covered only when rendered in a CHAMPUS-authorized treatment setting and only when the cost of those services is included in the facility's CHAMPUS-determined allowable cost rate.

* * * * *

4. Section 199.6 is amended by revising the introductory text of paragraphs (c)(1), (c)(1)(iv) and (3)(iv), and by adding a new paragraph (d)(6), to read as follows:

§ 199.6 Authorized providers.

* * * * *

(c) * * *

(1) *General.* Individual professional providers of care are those providers who bill for their services on a fee-for-service basis and who are not employed by an institutional provider or under a contract which provides for payment to the individual professional provider by an institutional provider. This category also includes those individuals who have formed professional corporations or associations qualifying as a domestic corporation under 26 CFR 301.7701–5. Such individual professional providers must be licensed or certified by the local licensing or certifying agency for the jurisdiction in which the care is provided; or in the absence of state licensure/certification, be a member of, or demonstrate eligibility for full clinical membership in, the appropriate national or professional certifying association that sets standards for the profession of which the provider is a member. Services provided must be in accordance with good medical practice and prevailing standards of quality of care and within recognized utilization norms.

* * * * *

(iv) *Physician referral and supervision.* Physician referral and supervision is required for the services of paramedical providers as listed in paragraph (c)(3)(iii)(H) of this section and for pastoral counselors and mental health counselors. Physician referral means that the physician must actually see the patient, perform an evaluation, and arrive at an initial diagnostic impression prior to referring the patient. Documentation is required of the physician's examination, diagnostic impression, and referral. Physician supervision means that the physician provides overall medical management of the case. The physician does not have to be physically located on the premises of the provider to whom the referral is made. Communication back to the referring physician is an indication of medical management.

* * * * *

(3) * * *

(iv) *Extramedical individual providers.* Extramedical individual providers are those who do counseling or nonmedical therapy and whose training and therapeutic concepts are outside the medical field. The services of extramedical individual professionals are coverable following the CHAMPUS determined allowable charge methodology provided such services are otherwise authorized in this or other sections of the regulation.

(A) *Certified marriage and family therapists.* For the purposes of CHAMPUS, a certified marriage and family therapist is an individual who meets the following requirements:

(*1*) Recognized graduate professional education with the minimum of an earned master's degree from a regionally accredited educational institution in an appropriate behavioral science field, mental health discipline; and

(*2*) The following experience:

(*i*) Either 200 hours of approved supervision in the practice of marriage and family counseling, ordinarily to be completed in a 2- to 3-year period, of which at least 100 hours must be in individual supervision. This supervision will occur preferably with more than one supervisor and should include a continuous process of supervision with at least three cases; and

(*ii*) 1,000 hours of clinical experience in the practice of marriage and family counseling under approved supervision, involving at least 50 different cases; or

(*iii*) 150 hours of approved supervision in the practice of psychotherapy, ordinarily to be completed in a 2- to 3-year period, of which at least 50 hours must be individual supervision; plus at least 50 hours of approved individual supervision in the practice of marriage and family counseling, ordinarily to be completed within a period of not less than 1 nor more than 2 years; and

(*iv*) 750 hours of clinical experience in the practice of psychotherapy under approved supervision involving at least 30 cases; plus at least 250 hours of clinical practice in marriage and family counseling under approved supervision, involving at least 20 cases; and

(*3*) Is licensed or certified to practice as a marriage and family therapist by the jurisdiction where practicing (see paragraph (c)(3)(iv)(D) of this section for more specific information regarding licensure); and

(*4*) Agrees that a patients' organic medical problems must receive appropriate concurrent management by a physician.

(*5*) Agrees to accept the CHAMPUS determined allowable charge as payment in full, except for applicable deductibles and cost-shares, and hold CHAMPUS beneficiaries harmless for noncovered care (i.e., may not bill a beneficiary for noncovered care, and may not balance bill a beneficiary for amounts above the allowable charge). The certified marriage and family therapist must enter into a participation agreement with the Office of CHAMPUS within which the certified marriage and family therapist agrees to all provisions specified above.

(*6*) As of the effective date of termination, the certified marriage and family therapist will no longer be recognized as an authorized provider under CHAMPUS. Subsequent to termination, the certified marriage and family therapist may only be reinstated as an authorized CHAMPUS extramedical provider by entering into a new participation agreement as a certified marriage and family therapist.

(B) *Pastoral counselors.* For the purposes of CHAMPUS, a pastoral counselor is an individual who meets the following requirements:

(*1*) Recognized graduate professional education with the minimum of an earned master's degree from a regionally accredited educational institution in an appropriate behavioral science field, mental health discipline; and

(*2*) The following experience:

(*i*) Either 200 hours of approved supervision in the practice of pastoral counseling, ordinarily to be completed in a 2- to 3-year period, of which at least 100 hours must be in individual supervision. This supervision will occur preferably with more than one supervisor and should include a continuous process of supervision with at least three cases; and

(*ii*) 1,000 hours of clinical experience in the practice of pastoral counseling under approved supervision, involving at least 50 different cases; or

(*iii*) 150 hours of approved supervision in the practice of psychotherapy, ordinarily to be completed in a 2- to 3-year period, of which at least 50 hours must be individual supervision; plus at least 50 hours of approved individual supervision in the practice of pastoral counseling, ordinarily to be completed within a period of not less than 1 nor more than 2 years; and

(*iv*) 750 hours of clinical experience in the practice of psychotherapy under approved supervision involving at least 30 cases; plus at least 250 hours of clinical practice in pastoral counseling under approved supervision, involving at least 20 cases; and

(*3*) Is licensed or certified to practice as a pastoral counselor by the jurisdiction where practicing (see paragraph (c)(3)(iv)(D) of this section for more specific information regarding licensure); and

(*4*) The services of a pastoral counselor meeting the above requirements are coverable following the CHAMPUS determined allowable charge methdology, under the following specified conditions:

(*i*) The CHAMPUS beneficiary must be referred for therapy by a physician; and

(*ii*) A physician is providing ongoing oversight and supervision of the therapy being provided; and

(*iii*) The pastoral counselor must certify on each claim for reimbursement that a written communication has been made or will be made to the referring physician of the results of the treatment. Such communication will be made at the end of the treatment, or more frequently, as required by the referring physician (refer to § 199.7).

(*5*) Because of the similarity of the requirements for licensure, certification, experience, and education, a pastoral counselor may elect to be authorized under CHAMPUS as a certified marriage and family therapist, and as such, be subject to all previously defined criteria for the certified marriage and family therapist category, to include acceptance of the CHAMPUS determined allowable charge as payment in full, except for applicable deductibles and cost-shares (i.e., balance billing of a beneficiary above the allowable charge is prohibited; may not bill beneficiary for noncovered care). The pastoral counselor must also agree to enter into the same participation agreement as a certified marriage and family therapist with the Office of CHAMPUS within which the pastoral counselor agrees to all provisions including licensure, national association membership and conditions upon termination, outlined above for certified marriage and family therapist.

Note: No dual status will be recognized by the Office of CHAMPUS. Pastoral counselors must elect to become one of the categories of extramedical CHAMPUS provides specified above. Once authorized as either a pastoral counselor, or a certified marriage and family therapist, claims review and reimbursement will be in accordance with the criteria established for the elected provider category.

(C) *Mental health counselor.* For the purposes of CHAMPUS, a mental health counselor is an individual who meets the following requirements:

(*1*) Minimum of a master's degree in mental health counseling or allied mental health field from a regionally accredited institution; and

(*2*) Two years of post-masters experience which includes 3000 hours of clinical work and 100 hours of face-to-face supervision; and

(*3*) Is licensed or certified to practice as a mental health counselor by the jurisdiction where practicing (see paragraph (c)(3)(iv)(D) of this section for more specific information); and

(*4*) May only be reimbursed when:

(*i*) The CHAMPUS beneficiary is referred for therapy by a physician; and

(*ii*) A physician is providing ongoing oversight and supervision of the therapy being provided; and

(*iii*) The mental health counselor certifies on each claim for reimbursement that a written communication has been made or will be made to the referring physician of the results of the treatment. Such communication will be made at the end of the treatment, or more frequently, as required by the referring physician (refer to § 199.7).

(D) The following additional information applies to each of the above categories of extramedical individual providers:

(*1*) These providers must also be licensed or certified to practice as a certified marriage and family therapist, pastoral counselor or mental health counselor by the jurisdiction where practicing. In jurisdictions that do not provide for licensure or certification, the provider must be certified by or eligible for full clinical membership in the appropriate national professional association that sets standards for the specific profession.

(*2*) Grace period for therapists or counselors in states where licensure/certification is optional. CHAMPUS is providing a grace period for those therapists or counselors who did not obtain optional licensure/certification in their jurisdiction, not realizing it was a CHAMPUS requirement for authorization. The exemption by state law for pastoral counselors may have misled this group into thinking licensure was not required. The same situation may have occurred with the

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other therapist or counselor categories where licensure was either not mandated by the state or was provided under a more general category such as "professional counselors." This grace period pertains only to the licensure/certification requirement, applies only to therapists or counselors who are already approved as of October 29, 1990, and only in those areas where the licensure/certification is optional. Any therapist or counselor who is not licensed/certified in the state in which he/she is practicing by August 1, 1991, will be terminated under the provisions of § 199.9. This grace period does not change any of the other existing requirements which remain in effect. During this grace period, membership or proof of eligibility for full clinical membership in a recognized professional association is required for those therapists or counselors who are not licensed or certified by the state. The following organizations are recognized for therapists or counselors at the level indicated: Full clinical member of the American Association of Marriage and Family Therapy; membership at the fellow or diplomate level of the American Association of Pastoral Counselors; and membership in the National Academy of Certified Clinical Mental Health Counselors. Acceptable proof of eligibility for membership is a letter from the appropriate certifying organization. This opportunity for delayed certification/licensure is limited to the counselor or therapist category only as the language in all of the other provider categories has been consistent and unmodified from the time each of the other provider categories were added. The grace period does not apply in those states where licensure is mandatory.

(E) *Christian Science practitioners and Christian Science nurses.* CHAMPUS cost-shares the services of Christian Science practitioners and nurses. In order to bill as such, practitioners or nurses must be listed or be eligible for listing in the Christian Science Journal [1] at the time the service is provided.

* * * * *

(d) * * *

(6) *Mammography suppliers.* Mammography services may be cost-shared only if the supplier is certified by Medicare for participation as a mammography supplier, or is certified by the American College of Radiology as having met its mammography supplier standards.

* * * * *

Dated: February 4, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–2921 Filed 2–18–94; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies of this journal can be obtained through the Christian Science Publishing Company, 1 Norway Street, Boston, MA 02115–3122 or the Christian Science Publishing Society, P.O. Box 11369, Des Moines, IA 50340.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11–93–001]

Drawbridge Operation Regulations; Eureka Slough, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the North Coast Railroad, the Coast Guard is amending the regulation for the North Coast Railroad Bridge crossing Eureka Slough, mile 0.3 at Eureka. The existing regulation requires 24 hour advance notice for openings. The amended regulation stipulates that the draw need not open for the passage of vessels, however the draw must be restored to full operation within six months of notification to take such action from the District Commander. This amendment will relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw, and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective March 24, 1994.

FOR FURTHER INFORMATION CONTACT: Jerry P. Olmes, Bridge Section, Eleventh Coast Guard District, at (510) 437–3514.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Jerry P. Olmes, Project Manager, and Lieutenant Robin Barber, Project Attorney.

Regulatory History

In 58 FR 7497, Feb. 8, 1993, the Coast Guard published a notice of proposed rulemaking to amend the regulation that the draw no longer need open for the passage of vessels. In addition, the Commander, Eleventh Coast Guard District also published the proposal in a Public Notice dated February 16, 1993. Six comments were received on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Presently, the North Coast Railroad Bridge is required to open on signal if at least 24 hours advance notice is given. The North Coast Railroad had requested that the draw no longer need open for vessels since there had been no requests for opening for at least eight years. Except for tests, Coast Guard bridge records show no bridge openings for at least thirty-six years.

Discussion of Comments and Changes

The Coast Guard received 6 comments on the Notice of Proposed Rulemaking. Four offered no objection. The California Department of Boating and Waterways (CalBoating) requested that the Coast Guard reevaluate the need for persons to be available to operate the bridge if boating activities increase. The Humboldt County Association of Governments (HCAOG) objected to the original proposal, as they felt that permanent closure was too final an action to take. Even though no vessel had requested an opening for many years, the HCAOG's Technical Advisory Committee (TAC) felt that the bridge should remain functional, and suggested possibly a 30 day window for notice of opening. The TAC advised that many business and properties upstream of the bridge had dikes which were in some disrepair, that fuel spills or hazardous material in the slough could be inapproachable should the bridge be closed on a permanent basis, and that bridge closure could impact future economic development along reaches of the Eureka Slough by eliminating waterfront access.

The Coast Guard found that dike and levee maintenance is presently done by dragline instead of dredges and that pollution response would likely be done from landside as well. The bridge would not prevent small motorboats from reaching sites upstream of the bridge to transport pollution containment booms or investigate spills. The regulation would prevent larger vessels from travelling upstream or mooring upstream. The CalBoating and HCAOG comments prompted the Coast Guard to develop a compromise proposal that the bridge need not open for vessels, but in the event of development requiring bridge openings, the bridge would be restored to service in six months upon order of the District Commander. On September 22, 1993, the HCAOG agreed to the compromise, and on January 6, 1994, the North Coast Railroad also agreed.

Regulatory Evaluation

This rule is not considered a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impacts of this change to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; and 33 CFR 1.05–1(g).

2. Section 117.155 is revised to read as follows:

§ 117.155 Eureka Slough.

The draw of the North Coast Railroad Bridge, mile 0.3 at Eureka, need not be opened for the passage of vessels. The owner or agency controlling the bridge shall restore the draw to full operation within six months of notification to take such action from the District Commander.

Dated: February 3, 1994.

R.D. Herr,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 94–3925 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Louisville 94–002]

RIN 2115–AA97

Safety Zone; Ohio River Miles 468.5 to 473.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River. The regulation is needed to control vessel traffic in the regulated area to prevent potential environmental and safety hazards associated with commercial vessels transporting cargoes regulated under title 46 Code of Federal Regulations Subchapters D and O, while transiting downbound at night during high water conditions. The regulation will restrict commercial navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATES: This regulation is effective on February 11, 1994 at 10 a.m. e.s.t. It will terminate at 6 p.m. e.s.t. on February 22, 1994 unless sooner terminated by the captain of the Port, Louisville, Kentucky.

FOR FURTHER INFORMATION CONTACT: LT Dale L. Hutchinson, Operations Officer, Captain of the Port, Louisville, Kentucky at (502) 582–5194.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafter of this regulation is LT Dale L. Hutchinson, Project Officer, Marine Safety Office, Louisville, Kentucky, and LCDR A. O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the high water periods in the Cincinnati, Ohio area are natural events which cannot be predicted with any reasonable accuracy. The Coast Guard deems it to be in the public's best interest to issue a regulation now as the situation presents an immediate hazard to navigation, life, and property.

Background and Purpose

The situation requiring this regulation is high water in the Ohio River in the vicinity of Cincinnati, Ohio. The Ohio River in the Cincinnati area is hazardous to transit under the best of conditions. To transit the area, mariners must navigate through several sweeping turns and seven bridges. When the water level in the Ohio River reaches 45 feet, on the Cincinnati gage, river currents increase and become very unpredictable, making it difficult for downbound vessels to maintain steerageway. During hours of darkness the background lights of the city of Cincinnati hamper mariners' ability to maintain sight of the front of their tow. The regulation is intended to protect the public and the environment, at night, during periods of high water, from a potential hazard of large downbound tows carrying hazardous material through the regulated area.

Regulatory Evaluation

This rule is not considered a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

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Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action required to protect the public and the environment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T02–011 is added, to read as follows:

§ 165.T02–011 Safety Zone: Ohio River.

(a) *Location.* The Ohio River between mile 468.5 and mile 473.0 is established as a safety zone.

(b) *Effective dates.* This section becomes effective on February 11, 1994 at 10 a.m. e.s.t. It will terminate at 6 p.m. e.s.t. on February 22, 1994 unless sooner terminated by the Captain of the Port Louisville, Kentucky.

(c) *Regulations.* In accordance with the general regulations under § 165.23 of this part, entry into the described zone by all downbound vessels towing cargoes regulated by Title 46 Code of Federal Regulations Subchapters D and O with a tow length exceeding 600 feet excluding the tow boat is prohibited from one-half hour before sunset to one-half hour after sunrise.

Dated: February 11, 1994, 2 a.m. e.s.t.

W.J. Morani, Jr.,

Commander, U.S. Coast Guard, Captain of the Port, Louisville, Kentucky.

[FR Doc. 94–3923 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–94–009]

RIN 2115–AA97

Safety Zone Regulations; Kill Van Kull, NY and NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; termination.

SUMMARY: The Coast Guard is canceling the temporary final rule (CGD01–93–152) that established a safety zone in the waters near Bergen Point West Reach, in the Kill Van Kull of New York and New Jersey, from 8 a.m. December 7, 1993, until 8 a.m. on March 1, 1994. This safety zone was established as part of the Kill Van Kull dredging project. On January 24, 1994, the U.S. Army Corps of Engineers certified this portion of the dredging project and notified the Coast Guard that dredging operations in this area were completed.

DATES: This rule is effective on January 31, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant Rosanne Trabocchi, Project Manager, Captain of the Port, New York, (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On December 7, 1993, the U.S. Coast Guard Captain of the Port, New York established a safety zone in the waters near Bergen Point West Reach in the Kill Van Kull. This safety zone was in effect from December 7, 1993, until March 1, 1994. This safety zone placed restrictions in all waters of Kill Van Kull west of the Bayonne Bridge and east of Shooters Island.

On January 24, 1994, the U.S. Coast Guard Captain of the Port, New York, received written notification that the U.S. Army Corps of Engineers certified this portion of the dredging project and that the dredging operations in this area were completed. Therefore, this rule is no longer needed and is terminated. This rule cancels the safety zone in this area of the Kill Van Kull.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. Temporary § 165.T01–152 is removed.

Dated: January 31, 1994.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 94–3924 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

RIN 2115–AA97

COTP Pittsburgh 94–002; Safety Zone; Ohio River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River back channel that separates Coraopolis, Pennsylvania from Neville Island, Pennsylvania. This regulation is needed to control vessel traffic in the regulated area during demolition of the main span of a bridge at Ohio River back channel mile 9.6. This regulation will restrict general navigation in the regulated area during demolition operations for the safety of vessel traffic.

EFFECTIVE DATES: This regulation is effective from 8 a.m. to 4 p.m. on February 14, 1994, and from 8 a.m. on February 28, 1994 to 4 p.m. on March 4, 1994.

FOR FURTHER INFORMATION CONTACT: LT John Meehan, Port Operations Officer, Captain of the Port, Pittsburgh, Pennsylvania at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LT John Meehan, Project Officer, Marine Safety Office, Pittsburgh, Pennsylvania and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, a bridge is being removed from a navigable waterway. Bridge removal operations pose inherent risks to the waterway because the structure is progressively weakened as the operation proceeds. Once commenced, such operations should be completed as quickly as possible. Removal operations involving structural supports for this bridge have proceeded ahead of schedule, leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue a regulation without waiting for a comment period, as immediate implementation of navigation restrictions is needed to ensure the safety of vessels transitting the area and to minimize the time a bridge in a weakened condition remains over the waterway.

Background and Purpose

The Coraopolis Highway Bridge at mile 9.6 on the Ohio River back channel between Coraopolis, Pennsylvania and Neville Island, Pennsylvania is no longer an active highway bridge and must be removed. The bridge consists of several small spans that are located over land and two 300 foot main spans that cross over the waterway and meet atop a stone pier at the center of the channel. As part of the overall bridge removal operation, each main span will be demolished with seven simultaneously detonated explosive charges. The first main span demolition will occur at approximately 9:00 a.m. on February 14, 1994 for Span #3 on the left descending bank (Coraopolis side) of the back channel. Since this explosive demolition will pose obvious hazards to vessels in the area, vessel traffic will be prohibited from entering the Ohio River back channel from mile 9.3 to mile 9.9 during the day of the demolition. The second main span demolition for Span #4 on the right descending bank (Neville Island side) of the back channel is scheduled for approximately 9 a.m. on February 28, 1994. Steel members and debris from the demolition of Span #4 will fall into the sailing line of the channel, creating an unsafe condition for vessels attempting to transit. The contractor will immediately commence clearing operations in the channel, but it will require 4 days to restore the navigability of this section of the Ohio River back channel. Accordingly, no vessel traffic will be permitted in the safety zone extending from Ohio River back channel mile 9.3 to mile 9.9 during this second demolition and subsequent channel clearing operations from 8 a.m. on February 28, 1994 to 4 p.m. on March 4, 1994. For the remaining period that this safety zone is in effect, vessel traffic will be permitted to proceed without restriction with vessels transmitting the bridge site along the sailing line of the channel. In the event of unanticipated delays involving the demolitions discussed above, the Captain of the Port Pittsburgh will notify the marine community of schedule changes affecting the duration of vessel traffic restrictions within the safety zone via marine Safety Information Radio Broadcasts on VHF Marine Band Radio, Channel 22 (157.1 MHz) and via on site broadcast advisors on Channel 13 (156.650 MHz).

Regulatory Evaluation

This rule is not considered a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to the relatively short duration of vessel traffic restrictions, the relatively small size of the area regulated, and the infrequency of commercial vessel transits along this section of Ohio River back channel.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action required to protect public safety.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T02–003 is added, to read as follows:

§ 165.T02–003 Safety Zone: Ohio River.

(a) *Location.* the Ohio River back channel (channel dividing Coraopolis, Pennsylvania from Neville Island, Pennsylvania) between mile 9.3 and mile 9.9 is established as a safety zone.

(b) *Effective dates.* This section is effective from 8 a.m. to 4 p.m. on February 14, 1994, and from 8 a.m. on February 28, 1994 to 4 p.m. on March 4, 1994.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port. The Captain of the Port Pittsburgh will notify the marine community of times when vessel traffic will be permitted within the safety zone via Marine Safety Information Radio Broadcasts on VHF Marine Band Radio, Channel 22 (157.1 MHz) and via on site broadcast advisories on Channel 13 (156.650 MHz).

Dated: February 8, 1994.

M.W. Brown,

Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh, Pennsylvania.

[FR Doc. 94–3940 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–4839–5]

OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: In compliance with the Paperwork Reduction Act, this document displays the Office of Management and Budget (OMB) control numbers issued under the Paperwork Reduction Act (PRA) for Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

EFFECTIVE DATE: This final rule is effective on February 22, 1994.

FOR FURTHER INFORMATION CONTACT: Doug Grano (telephone 919/541–3292).

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved Information collection request (ICR) control numbers issued by OMB

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for various regulations. Today's amendment updates the table to accurately display those information requirements promulgated under the Determining Conformity of General Federal Actions to State or Federal Implementation Plans rule which appeared in the **Federal Register** on November 30, 1993 (58 FR 63214). The affected regulations are codified at 40 CFR part(s) 51, Subpart W and 93, Subpart B. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 7, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table after the heading "Requirements for Preparation, Adoption, and Submittal of Implementation Plans", and by adding a new heading: "Determining Conformity of Federal Actions to State or Federal Implementation Plans" followed by a new entry to the table, to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Requirements for Preparation, Adoption, and Submittal of Implementation Plans	
* * * * *	
51.850–51.860	2060–0279
* * * * *	
Determining Conformity of Federal Actions to State or Federal Implementation Plans	
93.150–93.160	2060–0279
* * * * *	

[FR Doc. 94–3893 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

DEPARTMENT OF TRANSPORTATION

44 CFR Part 403

[Docket No. 49421]

RIN 2105–AC04

Lifting of Shipping Restrictions to Vietnam

AGENCY: Office of the Secretary, DOT, and Department of Commerce.

ACTION: Final rule.

SUMMARY: The Departments of Commerce and Transportation imposed a shipping restriction prohibiting any ships documented under the laws of the United States or any aircraft registered under the laws of the United States from transporting goods or traveling to Vietnam. On February 3, 1994, President Clinton announced the lifting of the ban on Vietnam. Pursuant to the President's announcement, the restriction in the regulation is being removed.

EFFECTIVE DATE: 5:05 p.m. EST, February 3, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher (Kip) Tourtellot, Office of General Counsel for International Law, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–2972. Anne Connaughton, Department of Commerce, Office of the Chief Counsel for Export Administration, 14th & Constitution Avenue, NW., room 3839, Washington, DC 20230. Telephone: (202) 482–5304.

SUPPLEMENTARY INFORMATION: 44 CFR part 403 currently imposes a shipping restriction prohibiting any ships documented under the laws of the United States or any aircraft registered under the laws of the United States from transporting goods or traveling to North Korea and Vietnam. On February 3, 1994, President Clinton signed a memorandum directing the Secretary of State, the Secretary of Treasury, and the Secretary of Commerce to lift the embargo against Vietnam.

Pursuant to the President's memorandum, the Departments of Commerce and Transportation are revising their regulations to reflect this change in policy, effective at the time of the President's announcement. 44 CFR part 403 is being revised to remove all references to Vietnam.

Pursuant to the foreign affairs exception in title 5 U.S.C. 553(a)(1), this rulemaking is exempt from the Administrative Procedure Act.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

DOT has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, DOT has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 44 CFR Part 403

Shipping restrictions.

PART 403—SHIPPING RESTRICTIONS; NORTH KOREA

In consideration of the foregoing, 44 CFR Part 403 is amended as follows:

1. The authority citation for part 403 of title 44 continues to read as follows:

Authority: Sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154. Interpret or apply sec. 101, 64 Stat. 799, as amended; 50 U.S.C. App. 2071; E.O. 10480, 18 FR 4939, 3 CFR 1953. Supp.; and sec. 4(a) Pub. L. 89–670, 80 Stat. 933; 49 U.S.C. 1653.

2. Section 403.1 is revised to read as follows:

§ 403.1 Prohibition of movement of American carriers to North Korea.

No person shall sail, fly, navigate, or otherwise take any ship documented under the laws of the United States or any aircraft registered under the laws of the United States to North Korea.

3. Section 403.2 is revised to read as follows:

§ 403.2 Prohibition on transportation of goods destined for North Korea.

No person shall transport, in any ship documented under the laws of the United States, or in any aircraft registered under the laws of the United States, to North Korea, any material, commodity, or cargo of any kind. No person shall take on board any ship documented under the laws of the United States or any aircraft registered under the laws of the United States any material, commodity, or cargo of any kind if that person knows or has reason to believe that the material, commodity, or cargo is destined, directly or indirectly for North Korea. No person shall discharge from any ship documented under the laws of the United States or from any aircraft registered under the laws of the United States, at any place other than the port where the cargo was loaded, or within territory under the jurisdiction of the United States any material, commodity, or cargo of any kind which that person knows or has reason to believe is destined for North Korea.

Issued in Washington, DC.

Dated: February 16, 1994.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration, Department of Commerce.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs, Department of Transportation.

[FR Doc. 94–3995 Filed 2–17–94; 12:13 pm]

BILLING CODE 4910–62–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 93–266; FCC 93–551]

Review of the Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In October 1993, the Commission initiated a review of its pioneer's preference rules to assess the effect of competitive bidding authority recently enacted by Congress. In this First Report and Order the Commission concludes that any changes to its pioneer's preference rules will not be applied to the three proceedings in which Tentative Decisions have been issued. The action is intended to ensure the equitable treatment of pioneer's preference applicants in these proceedings.

EFFECTIVE DATE: February 22, 1994.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 653–8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order adopted December 23, 1993, and released January 28, 1994. A summary of the Notice of Proposed Rule Making (Notice) initiating this proceeding may be found at 58 FR 57578 (October 26, 1993). This action will not change the public reporting burden. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of the decision also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Summary of First Report and Order

1. In the Notice the Commission initiated a review of the effect on its pioneer's preference rules of new authority to assign licenses by competitive bidding. Comment was solicited, *inter alia*, on whether repeal or amendment of the pioneer's preference rules should apply to the three proceedings in which Tentative Decisions, but not final Orders, have been issued that address preference requests.

2. In response to the Notice, American Personal Communications (APC) requested that the Commission address early and separately whether to apply to the 2 GHz broadband Personal Communications Services (PCS) proceeding, GEN Docket No. 90–314, any changes or repeal of the pioneer's preference rules. Most parties concurred with APC that it would be unfair to apply any modifications to the pioneer's preference rules to the 2 GHz broadband PCS proceeding and to two additional proceedings in which Tentative Decisions have been made. With regard to amending or repealing the rules with respect to the 2 GHz PCS preference applicants in particular, several parties expressed agreement with APC that it would be arbitrary for the Commission to treat the 2 GHz PCS preference applicants different from the 900 MHz PCS applicants solely because the Commission bifurcated its PCS proceeding and reached conclusions on narrowband issues first. See GEN Docket No. 90–314/ET Docket No. 92–100.

3. The Commission has issued Tentative Decisions in two proceedings in addition to 2 GHz PCS. With respect to the 28 GHz Local Multipoint Distribution Services (LMDS) proceeding, CC Docket No. 92–297, the Commission tentatively awarded a pioneer's preference to Suite 12 Group. Suite 12 argued that if the Commission decides to eliminate or alter significantly the pioneer's preference rules, equity demands that the tentative grants, including that for LMDS, be judged in accordance with the existing rules. With respect to the 1.6/2.4 GHz Mobile Satellite Service (MSS) proceeding, ET Docket No. 92–28, the Commission tentatively decided that no pioneer's preference award was merited. Motorola Satellite Communications, Inc. argued that there is no reason to change the preference rules as they apply to this proceeding and that authorization of competitive bidding does not undermine the basis of the Commission's decision to consider pioneer's preference requests in this proceeding because the MSS applications are not mutually exclusive.

4. Nextel Communications, Inc., Paging Network, Inc., and PageMart, Inc. (PageMart) maintained that under the notice and comment rule making procedures involved, the Commission may revise, modify, and even reverse its tentative conclusions based on the record developed in response to its solicitation for comments. BellSouth, PageMart, and Southwestern Bell Corporation also argued that it would be more equitable to charge pioneers in proceedings in which Tentative Decisions have been made if other licensees in the same service generally will be selected using competitive bidding.

5. The Commission concluded that it would be inequitable to apply any changes in the pioneer's preference rules to pending proceedings in which Tentative Decisions have been issued. The Commission found that notwithstanding that other licensees in the three proceedings at issue may have to bid at auction and pay for their licenses, preference applicants in these proceedings submitted their requests and publicly disclosed substantial detail of their system designs in reliance on the continued applicability of the pioneer's preference rules. The

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Commission stated that had the rules been different, these applicants might have structured their requests differently; or conducted research, development, and experimentation differently; or elected not to disclose detailed information about their systems. The Commission concluded that notwithstanding its legal authority to treat 2 GHz broadband PCS pending applicants differently than the 900 MHz narrowband PCS applicants and also to apply changed rules to pending applicants in the 28 GHz LMDS and 1.6/2.4 GHz MSS proceedings, to do so would be inequitable. Accordingly, the Commission decided to render final decisions on pioneer's preference requests in these proceedings based on the existing pioneer's preference rules.

6. This action concluded the Commission's review of the pioneer's preference rules with respect to proceedings in which Tentative Decisions have been made. The Commission anticipates concluding its review of the pioneer's preference rules with respect to other proceedings in a separate Report and Order.

Ordering Clause

7. Accordingly, *It is ordered* that this First Report and Order IS ADOPTED. IT IS FURTHER ORDERED that the Request for Separate and Expedited Treatment of "Existing Pioneer Preference" Issues, filed by American Personal Communications, IS GRANTED to the extent indicated herein. This action is taken pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), and 309(j).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Pioneer's preference.

Federal Communications Commission:

William F. Caton,

Acting Secretary.

[FR Doc. 94–3820 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–237; RM–8312]

Radio Broadcasting Services; Jeffersonville, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Michael S. Celenza, allots Channel 271A to Jeffersonville, New York, as the community's second local commercial FM service. See 58 FR 46152, September 1, 1993. Channel 271A can be allotted to Jeffersonville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at coordinates North Latitude 41–46–51 and West Longitude 74–56–03. Canadian concurrence has been received since Jeffersonville is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective March 28, 1994. The window period for filing applications will open on March 29, 1994, and close on April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–237, adopted January 31, 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 271A at Jeffersonville.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3816 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–217; RM–8286]

Radio Broadcasting Services; Grand Gorge, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sound of Life, Inc., allots Channel 287A to Grand Gorge, New York, as the community's first local aural transmission service. See 58 FR 41680, August 5, 1993. Channel 287A can be allotted to Grand Gorge in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (6.9 miles) northeast, at coordinates North Latitude 42–26–39 and West Longitude 74–24–54, to avoid a short-spacing to Station WYCY, Channel 287A, Hawley, Pennsylvania. Canadian concurrence has been received since Grand Gorge is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective March 28, 1994. The window period for filing application will open on March 29, 1994, and close on April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–217, adopted January 31, 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York is amended by adding Grand Gorge, Channel 287A.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3817 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–213; RM–7214, RM–8351]

Radio Broadcasting Services; Menomonie and Balsam Lake, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Yvonne L. Baum-Olson (RM–8351), allots Channel 285C3 at Balsam Lake, Wisconsin. Channel 285C3 can be allotted to Balsam Lake in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 kilometers (9.1 miles) east in order to avoid a short-spacing with Station KCLD–FM, Channel 284A, St. Cloud, Minnesota. The coordinates for Channel 285C3 at Balsam Lake are 45–26–05 and 92–16–02. The proposal filed by Jay Lellman (RM–7214), requesting the allotment of Channel 285A at Menomonie, Wisconsin, is dismissed. See 58 FR 40401, July 28, 1993. With this action, this proceeding is terminated.

DATES: Effective March 28, 1994. The window period for filing applications will open on March 29, 1994, and close on April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–213, adopted January 31, 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended adding Channel 285C3 at Balsam Lake.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3818 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–184; RM–8277]

Radio Broadcasting Services; Norlina, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Robert Carver and Frank White, d/b/a Carver-White Broadcasting Company, allots Channel 232A to Norlina, North Carolina, as the community's first local aural transmission service. See 58 FR 37455, July 12, 1993. Channel 232A can be allotted to Norlina in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) north, at coordinates North Latitude 36–29–02 and West Longitude 78–11–23, to avoid short-spacings to Stations WRQR, Channel 232A, Farmville, NC, and WQDR, Channel 243C, Raleigh, NC. With this action, this proceeding is terminated.

DATES: Effective March 28, 1994. The window period for filing applications will open on March 29, 1994, and close on April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–184, adopted January 31, 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Norlina, Channel 232A.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3861 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–315; RM–8320]

Radio Broadcasting Services; Pella, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Station KFMG(FM), Pella, Iowa, was previously licensed on Channel 277C which was short spaced to Channel 278C1 at Huntsville. Station KFMG(FM) has recently been downgraded to Class C1 facilities. Since § 73.202(b) of the Rules has not been editorially amended to reflect the downgrading of Channel 277 at Pella, we will make the change in this proceeding. Since the change is editorial in nature, a public notice and comment proceeding is unnecessary. See 5 U.S.C. 553(b) (A) and (B). With this action, this proceeding is terminated.

EFFECTIVE DATE: February 22, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–315, adopted January 24, 1994, and released February 9, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

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List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 277C and adding Channel 277C1 at Pella.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3584 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–238; RM–8305]

Radio Broadcasting Services; Templeton, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 263A to Templeton, California, as that community's first local FM service, in response to a petition for rule making filed by Radio Representatives, Inc. See 58 FR 45877, August 31, 1993. Coordinates used for Channel 263A at Templeton are 35–34–45 and 120–42–41. With this action, the proceeding is terminated.

DATES: Effective March 28, 1994. The window period for filing applications on Channel 263A at Templeton, California, will open on March 29, 1994, and close on April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process for Channel 263A at Templeton, California, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–238, adopted January 31, 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Templeton, Channel 263A.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3858 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–208; RM–8261, RM–8346, RM–8347, RM–8348, RM–8349]

Radio Broadcasting Services; Bonanza, Keno, Lakeview, Malin, Merrill, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Brett E. Miller, allots Channel 253A to Keno, Oregon, as the community's first local FM service. See 58 FR 40399, July 28, 1993. At the request of Goldrush Broadcasting, the Commission allots Channel 275A to Bonanza, Oregon, as its first local FM service. At the request of Big Tree Broadcasting, the Commission allots Channel 289A to Merrill, Oregon, as its first local FM service. At the request of The Jesuit Mission, the commission allots Channel 263A to Malin, Oregon, as its first local FM service. At the request of Contour Communications, the Commission allots Channel 237C2 to Lakeview, Oregon, as its second local FM service. See also Supplementary Information, *Infra*. With this action, this proceeding is terminated.

DATES: Effective March 28, 1994. The window period for filing applications will open on March 29, 1994, and close on April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: Channel 253A can be allotted to Keno in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 42–07–30; 121–55–42. Channel 237C2 can be allotted to Lakeview without the imposition of a site restriction, at coordinates 42–11–24; 120–21–00. Channel 275A can be allotted to Bonanza without the imposition of a site restriction, at coordinates 42–12–00; 121–24–00. Channel 289A can be allotted to Merrill without the imposition of a site restriction, at coordinates 42–01–24; 121–36–00. Channel 263A can be allotted to Malin without the imposition of a site restriction, at coordinates 42–00–36, 121–24–24.

This is a synopsis of the Commission's Report and Order, MM Docket No. 93–208, adopted January 31 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel 237C2 at Lakeview and is amended by adding Bonanza, Channel 275A, Keno, Channel 253A Malin, Channel 263A, and Merrill, Channel 289A.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3862 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–30; RM–8171]

Radio Broadcasting Services; South Hill, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Old Belt Broadcasting Corporation, licensee of Station WSHV–FM, Channel 255A, South Hill, Virginia, substitutes Channel 255C3 for Channel 255A at South Hill and modifies Station WSHV–FM's authorization to specify operation on the higher powered channel. See 58 FR 13436, March 11, 1993. Channel 255C3 can be allotted to South Hill in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.3 miles) north to accommodate Old Belt's desired site. The coordinates for Channel 255C3 are North Latitude 36–48–11 and West Longitude 78–08–45. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–30, adopted February 2, 1994, and released February 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia is amended by removing Channel 255A and adding Channel 255C3 at South Hill.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–3859 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 940240–4040; I.D. 020394B]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure and notice of a court-ordered prohibition.

SUMMARY: The Secretary of Commerce announces a prohibition on the taking of any dolphins under the general permit issued to the American Tunaboat Association (ATA) in the U.S. yellowfin tuna fishery in the eastern tropical Pacific Ocean (ETP) beginning at 0001 hours local time, February 8, 1994, to ensure that the aggregate dolphin mortality quota for 1994 is not exceeded. The Assistant Administrator for Fisheries, NOAA, has determined that the 1994 calendar year aggregate maximum allowable quota mandated by the International Dolphin Conservation Act (IDCA) would have been reached if additional taking of dolphins under the permit was allowed to continue.

In addition, NMFS issues a notice of a January 27, 1994, court-ordered prohibition on the taking of any of the northeastern stock of offshore spotted dolphins under the ATA permit, implemented by NMFS on February 1, 1994, and expanded by NMFS on February 4, 1994, to include all stocks of offshore spotted dolphins. This prohibition is being incorporated as a new element in the marine mammal program of the United States.

DATES: The prohibition on the taking of any dolphins under the ATA permit was effective at 0001 hours local time, February 8, 1994, until 0001 hours local time, January 1, 1995. Comments on this notice must be received March 24, 1994. The prohibition on the setting on the northeastern stock of offshore spotted dolphin was effective February 1, 1994. The prohibition on the taking of all offshore spotted dolphin was effective February 4, 1994.

ADDRESSES: Comments should be sent to Ms. Anneka W. Bane, Acting Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802; telephone 310–980–4001; fax 310–980–4018.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Lecky, Chief, Protected Species Division, Southwest Region, NMFS, telephone 310–980–4015.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act (MMPA), as amended in 1992 by the IDCA, established various overall quotas applicable to the U.S. tuna purse seine fleet fishing under the ATA general permit in the ETP. One of the primary purposes of the IDCA was to secure multilateral agreements between the United States and other purse seine fishing nations, establishing a 5-year moratorium on the use of purse seines to encircle marine mammals. Such a moratorium was to have taken effect beginning March 1, 1994, on which date the ATA permit would have expired. The IDCA set a maximum allowable mortality at 800 during the 14-month period beginning January 1, 1993, and ending March 1, 1994. The IDCA also required that, if there was no international agreement and the permit did not expire on March 1, 1994, the maximum allowable mortality each year could not exceed the number of dolphin mortalities that occurred under the permit during the previous year. Furthermore, total dolphin mortalities occurring under the permit each year must continue to be reduced by statistically significant amounts each year to levels approaching zero by December 31, 1999.

The U.S. fleet killed 115 dolphins in calendar year 1993. In the process of determining what would constitute a "statistically significant" reduction in the maximum allowable mortality under the ATA permit for the calendar year 1994, NMFS determined that the U.S. fleet had killed 107 dolphins in the period from January 1, 1994, through February 6, 1994. Given that the maximum allowable mortality under the ATA permit could not exceed 114 dolphins for the period January 1 to December 31, 1994, and given that NMFS predicts that the number of dolphins killed incidentally in the U.S. tuna purse seine fishery in the ETP would have reached 114 within a matter of days, NMFS prohibited the taking of any dolphins under the ATA permit by notice to the vessels on February 7, 1994. This prohibition will remain in effect until 0001 hours local time January 1, 1995, when the next year's dolphin quota becomes available.

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On January 27, 1994, the United States Court for the Northern District of California ordered NMFS to prohibit, effective immediately, the incidental taking under the ATA permit, of any northeastern offshore spotted dolphins in the ETP. The court order also requires NMFS to issue final regulations within 40 days of the date of the order, prohibiting the encirclement of any schools of dolphins in which northeastern offshore spotted dolphin are observed prior to release of the net skiff, and incorporating such prohibition into the comparability standards developed pursuant to section 1371(a)(2)(B) of the MMPA.

Pursuant to the January 27 court order, NMFS, on February 1, 1994, advised U.S. vessels fishing under the ATA general permit that all sets on the northeastern stock of offshore spotted dolphin were prohibited due to their recently determined status as depleted under the MMPA (58 FR 58285, Nov. 1, 1993). On February 4, 1994, these U.S. vessels were further advised that the take of all offshore spotted dolphin was prohibited effective immediately, under provisions of the court order requiring NMFS to minimize the take of northeastern offshore spotted dolphin. NMFS is developing regulations pursuant to the court order to implement these new elements of its marine mammal program. NMFS is also notifying affected foreign harvesting nations, as required by the court order, of the effective dates of the changes to the U.S. marine mammal program.

This action is not subject to review under E.O. 12866.

Dated: February 15, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 94–3835 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 59, No. 35

Tuesday, February 22, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AF80

Employment (General)

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations to reflect that agency heads must ensure that employees and applicants for employment at their agencies are notified of the recently enacted provisions in the Hatch Act Reform Amendments of 1993, which prohibit individuals from requesting, making, transmitting, accepting, or considering political recommendations in effecting personnel actions.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Comments may be mailed to Lorraine Lewis, General Counsel, Office of Personnel Management, room 7355, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot or Gail Goldberg, (202) 606–1700.

SUPPLEMENTARY INFORMATION: In the Hatch Act Reform Amendments of 1993, Public Law 103–94, Congress amended section 3303 of title 5, United States Code, to expand and strengthen the existing prohibition against political recommendations, i.e., recommendations based on party affiliation, in examinations and appointments. Section 3303 originally applied to examination for, or appointment to, positions in the competitive service. It prohibited examining and appointing officials from accepting or considering congressional recommendations of applicants, except for recommendations about their character or residence.

Section 3303, as amended, expands the scope of the prohibition by including employees as well as applicants, and covering the excepted service and career Senior Executive Service as well as the competitive service. Although section 3303 still prohibits agency officials from considering or accepting political recommendations, it also prohibits them from soliciting and requesting these recommendations. It further specifies that an agency official who receives a political recommendation must return the recommendation to the person who sent it with a notation that the recommendation violates section 3303.

The previous version of the law focused its prohibition on agency officials, and did not prohibit Senators and Congressmen from making recommendations. The amended version prohibits Senators, Congressmen, congressional employees, elected State and local officials, political party officials, and other individuals or organizations from making or transmitting political recommendations. It also prohibits employees and applicants from soliciting or requesting political recommendations, and prohibits agency officials from soliciting, requesting, considering or accepting such recommendations.

Where the previous law was limited to examinations and appointments, the amended version includes personnel actions as well. Section 3303, as amended, defines "personnel action" as any action described in 5 U.S.C. 2302(a)(2)(A) (i)–(ix), including appointments, promotions, disciplinary or corrective actions, details, transfers, reassignments, reinstatements, restorations, reemployments, performance evaluations, and decisions concerning pay, benefits, or awards.

The amended version permits agencies and agency officials to consider statements of recommendation under limited, narrowly drawn circumstances. Recommendations may be considered if they result from an agency request and consist solely of an evaluation of the work performance, ability, aptitude, and general qualifications of the employee or applicant, or if they relate solely to the character and residence of an individual. Recommendations consisting of statements requested by authorized Government officials to determine whether an individual meets security or suitability standards, or furnished under a law or regulation authorizing consideration of the statement with respect to a specific category of positions also are permitted.

Where section 3303 previously did not provide for remedial action for violations, it now authorizes agencies to take adverse action to enforce its provisions. Moreover, the amended version specifies that violations of its prohibitions are prohibited personnel practices. Finally, the United States Postal Service is excluded from the amended version because it is subject to similar requirements in 39 U.S.C. 1002.

Section 3303, as amended, specifically authorizes OPM to promulgate regulations requiring agency heads to ensure that employees and applicants receive notice of its provisions. Therefore, OPM proposes to amend part 300 by adding a new Subpart H—Notification Requirements Relating to the Statutory Prohibitions on Political Recommendations in Personnel Actions. Section 300.801 of the new Subpart H states that agency heads must ensure that applicants and employees are notified of the provisions of 5 U.S.C. 3303, as amended. Section 300.802 lists strategies for issuing notifications, but it also specifies that the list is not exclusive and gives agency officials the discretion to consider and implement other means of notification.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they relate to internal personnel matters within the Federal Government.

List of Subjects in 5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 300 as follows:

1. The authority citation is revised to read as follows:

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803.

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Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

Secs. 300.801 through 300.802 issued under 5 U.S.C. 3303(e).

2. Subpart H is added to read as follows:

Subpart H—Notification Requirements Relating to the Statutory Prohibitions on Political Recommendations

Sec.

300.801 Notification of employees and applicants
300.802 Methods of notification

Subpart H—Notification Requirements Relating to the Statutory Prohibitions on Political Recommendations

§ 300.801 Notification of employees and applicants.

The head of an agency, as defined in 5 U.S.C. 3303(a)(1), shall ensure that employees of and applicants for employment with the agency are notified of the provisions of 5 U.S.C. 3303 concerning political recommendations in effecting personnel actions.

§ 300.802 Methods of notification.

Methods of notifying employees and applicants of these provisions include, but are not limited to:

(a) Posters displayed in prominent places throughout the agency;

(b) Pamphlets for distribution to employees and applicants;

(c) Notices printed on vacancy announcements or posted on computer bulletin boards; or

(d) Notices printed on application forms, examinations, or each employment form used in connection with appointment actions.

[FR Doc. 94-3764 Filed 2-16-94; 8.45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 94-01]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R-0764]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AB15

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 93-90]

RIN 1550-AA59

Risk-Based Capital Standards; Concentration of Credit Risk and Risks of Nontraditional Activities

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, the Board, the FDIC and the OTS (collectively "the agencies") are issuing this proposed rule to implement the portions of section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) that require the agencies to revise their risk-based capital standards for insured depository institutions to ensure that those standards take adequate account of concentration of credit risk and the risks of nontraditional activities. The intended effect of this proposed rule is to ensure that the agencies take adequate account of concentration of credit risk and the risks of nontraditional activities in assessing an institution's capital adequacy. The proposed rule amends the risk-based capital standards by explicitly identifying concentration of credit risk and certain risks arising from nontraditional activities, as well as an institution's ability to manage these risks, as important factors in assessing an institution's overall capital adequacy.

DATES: Written comments must be received on or before March 24, 1994.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments will be shared among the agencies.

OCC: Written comments should be submitted to Docket No. 94-01, Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

Board: Comments, which should refer to Docket No. R-0764, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FDIC: Robert E. Feldman, Acting Executive Secretary, Attention: room F-402, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F-400, 1776 F Street NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. (FAX number (202) 898-3838). Comments will be available for inspection and photocopying in room 7118, 550 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

OTS: Written comments should be submitted to Director, Information Services Division; Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 93-90. These submissions may be hand delivered at 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late filed, misaddressed or misidentified submissions will not be considered in this notice of proposed rulemaking. Comments will be available for public inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT:

OCC: For issues relating to concentration of credit risk and the risks of nontraditional activities, Roger Tufts, Senior Economic Advisor (202/874-5070), Office of the Chief National Bank Examiner. For legal issues, Ronald Shimabukuro, Senior Attorney, Bank Operations and Assets Division (202/874-4460), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: For issues related to concentration of credit risk, David Wright, Supervisory Financial Analyst, (202/728-5854) and for issues related to the risks of nontraditional activities, William Treacy, Supervisory Financial Analyst, (202/452-3859), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452-3583), Gregory A. Baer, Senior Attorney (202/452-3236). Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Daniel M. Gautsch, Examination Specialist (202/898-6912), Stephen G. Pfeifer, Examination Specialist (202/898-8904), Division of Supervision, or Fred S. Carns, Chief, Financial Markets Section, Division of Research and Statistics (202/898-3930). For legal issues, Pamela E. F. LeCren, Senior Counsel (202/898-3730) or Claude A. Rollin, Senior Counsel (202/898-3985), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: John F. Connolly, Senior Program Manager, Capital Policy (202) 906-6465; Robert Fishman, Senior Program Manager, Supervision Policy (202) 906-5672; Dorene Rosenthal, Senior Attorney, Regulations, Legislation and Opinions Division (202) 906-7268, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

The risk-based capital standards tailor an institution's minimum capital requirement to broad categories of credit risk embodied in its assets and off-balance-sheet instruments. These standards require institutions to have total capital equal to at least 8 percent of their risk-weighted assets.[1] Institutions with high or inordinate levels of risk are expected to operate above minimum capital standards.

Section 305(b) of FDICIA, (12 U.S.C. 1828 note) requires the agencies to revise their risk-based capital standards for insured depository institutions to ensure that those standards take adequate account of interest rate risk, concentration of credit risk and the risks of nontraditional activities. This proposed rule addresses concentration of credit risk and the risks of nontraditional activities. Rulemakings regarding interest rate risk are being issued separately.

Advance notices of proposed rulemaking issued by the agencies with respect to section 305 requested comment through a series of questions on possible approaches to defining, measuring and incorporating these risks in the risk-based capital standards. Comments received in response to the notices are summarized in the following discussions of each risk.

Currently, each agency addresses capital adequacy through a variety of supervisory actions and considers the risks of credit concentrations and nontraditional activities in taking those varied supervisory actions.

B. Concentration of Credit Risk

Summary of Comments

The agencies received 107 responses to the advance notice of proposed rulemaking on concentration of credit risk, with some duplication among agencies. In response to the question of what factors should be used in defining concentrations, most commenters agreed that borrower, industry, geography, collateral and loan type are relevant factors to define concentration risk. There was less consensus on which of these factors is the most significant or how to apply these factors in determining concentrations. Some commenters suggested using a narrow definition for concentrations to make any rule the agencies might adopt easier to implement and less burdensome to the industry. Others suggested caution in defining concentrations given data limitations and differences in the way definitions are applied by institutions in managing risk.

Few commenters offered specific guidance as to an appropriate objective formula to assess capital for concentration risk. However, many commenters indicated that determinations should be performed on a case-by-case basis because of the high variability in type and riskiness of concentrations among institutions. Regarding the general levels of capital appropriate for concentrations, some commenters suggested requiring higher than minimum capital ratios for affected institutions, while others suggested reducing reported capital to reflect the additional risk. Other commenters indicated that concentration risk should be viewed in the context of all other factors affecting the capital adequacy of the institution, including the size of the allowance for loan losses, profitability, liquidity, and internal controls.

Some commenters were concerned that proposed regulations might be overly burdensome or provide incentives for institutions to engage in activities such as out-of-territory lending that, while adding to diversity, also add to an institution's overall risk. Some commenters were also concerned that new regulations might place the banking industry at a competitive disadvantage.

Proposed Approach

Most institutions, large and small, can identify and track large concentrations of credit risk by individual or related groups of borrowers. Many institutions are also able to identify concentrations by either industry, geography, country, loan type or other relevant factors. However, because of practical and theoretical problems, there is no generally accepted approach to identify and quantify the magnitude of risk associated with concentrations of credit. In particular, definitions and analyses of concentrations are not uniform within the industry and are based in part on the subjective judgments of each institution using its experience and knowledge of its specific borrowers, market area and products. For these reasons, it is not feasible at this time to quantify the risk related to concentrations of credit for use in a formula-based capital calculation. However, techniques do exist to identify broad classes of concentrations and to recognize significant exposures.

The volatile and unpredictable nature of the timing and magnitude of losses associated with concentrations suggests that the effective tracking and management of such risk is important to ensuring the safety and soundness of financial institutions. Moreover, the agencies believe that institutions with significant levels of concentrations of credit risk should hold capital above the regulatory minimums.

With these considerations in mind, the agencies propose to take account of concentration of credit risk in their risk-based capital guidelines or regulations by amending the standards to explicitly identify concentrations of credit risk and an institution's ability to manage

[1] As defined, risk-weighted assets include credit exposures contained in off-balance-sheet instruments.

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them as important factors in assessing an institution's overall capital adequacy.

In addition to reviewing concentrations of credit risk pursuant to section 305, the agencies also may review an institution's management of concentrations of credit risk for adequacy and consistency with safety and soundness standards regarding internal controls, credit underwriting or other relevant operational and managerial areas to be promulgated pursuant to section 132 of FDICIA (12 U.S.C. 1831p–1).

In implementing regulations concerning concentration of credit risk, the agencies recognize the need to ensure that any treatment does not inadvertently create false incentives or unintended consequences that might decrease the safety and soundness of the banking and thrift industries or unnecessarily reduce the availability of credit to potential borrowers. For example, while portfolio diversification is a desirable goal, it may also increase an institution's overall risk if accomplished by lending in unfamiliar market areas to out-of-territory borrowers or by rapid expansion of new loan products for which the institution does not have adequate expertise. In addition, to the extent certain loan products, geographic areas or borrowers are perceived to fit into generic designations of concentrations, credit availability to certain groups of borrowers might be severely limited, despite the creditworthiness of individual borrowers, or the neutral or beneficial impact a single credit might have on the overall risk of the institution's portfolio.

Another consideration in evaluating credit concentrations is the "Qualified Thrift Lender" test that requires thrifts by statute to hold 65 percent of their assets in qualifying categories. This requirement necessarily "concentrates" a thrift's portfolio in certain types of assets. OTS does not intend to implement section 305 in such a way as to penalize thrift institutions for fulfilling this obligation.

C. Risks of Nontraditional Activities

Summary of Comments

The agencies received 69 comment letters on nontraditional activities, with some duplication among the agencies. Many commenters believed that it would be very difficult to create a definitive list of activities that should be considered nontraditional. Some commenters indicated that the risks of nontraditional activities depend on both the activity and the institution involved, and thus that each depository institution should be addressed on a case-by-case basis through the examination process. It was also observed that, while the activities themselves might be new or nontraditional, the risks of these activities can be segmented into components (e.g., credit risk, interest-rate risk, operating risk) that are normally associated with traditional banking activities.

Commenters also raised concerns that explicit capital requirements for nontraditional activities might affect the competitive balance between insured depository institutions and non-bank financial firms such as securities firms. In particular, concern was raised that restricting new activities could limit the ability of banks and thrifts to compete with non-bank competitors, or alternatively restrictions might unduly discourage depository institutions from undertaking otherwise prudent initiatives. Some commenters also indicated that capital standards imposed for an activity should be parallel to standards imposed on non-banks that compete in the same activity.

Some commenters expressed concern about the potential risks that arise from inexperience when a smaller or less-sophisticated institution first embarks on a new business venture, while others believed that the activities undertaken by the larger and more experienced institutions present greater risks.

Proposed Approach

New developments in technology and financial markets have introduced significant changes to the banking industry, and in some cases have led institutions to engage in activities not traditionally considered part of their business. Both in the risk-based capital regulations and guidelines adopted by the agencies in 1989, and in subsequent revisions and interpretations, the agencies have adopted measures to take adequate account of the risks of nontraditional activities under the risk-based capital standards. Thus, to the extent that section 305 constitutes a mandate to the agencies to make certain that risk-based capital standards are kept current with industry practices, the agencies have been acting consistently with section 305. Furthermore, in keeping with section 305, the agencies will continue their efforts to incorporate nontraditional activities into risk-based capital.

The agencies propose to take account of the risks posed by nontraditional activities by ensuring that, as members of the industry begin to engage in, or significantly expand their participation in, a nontraditional activity, the risks of that activity are promptly analyzed and the activity is given appropriate capital treatment. Moreover, the agencies recognize that an institution's ability to adequately manage the risks posed by nontraditional activities affects its risk exposure. Therefore, the agencies also propose to amend their risk-based capital standards to explicitly identify the management of nontraditional activities as an important factor to consider in assessing an institution's overall capital adequacy.

D. Biennial Review of Risk-Based Capital Standards

Section 305(a) of FDICIA requires the agencies to review their capital standards biennially to determine whether those standards are sufficient to facilitate prompt corrective action under section 38 of FDICIA, 12 U.S.C. 1831o. As part of any such review, the agencies expect that they will consider the asset coverage of the risk-based capital standards, including in particular the coverage of concentrations of credit and nontraditional activities. The agencies, though, do not intend to wait until the next biennial review should a nontraditional activity evolve rapidly in the industry; rather, such products will be promptly reviewed for proper treatment under risk-based capital. Similarly, as new developments in identifying and measuring concentration of credit risk emerge, potential refinements to risk-based capital standards will be considered.

In addition, to the extent appropriate, the agencies will issue examination guidelines on new developments in nontraditional activities or concentrations of credit to ensure that adequate account is taken of the risks of these activities.

E. Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

F. Regulatory Flexibility Act Statement

Each agency has concluded after reviewing the proposed regulation that the regulation, if adopted, will not impose a significant economic hardship on small institutions. The proposal does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. Each agency

therefore hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

G. Executive Order 12866

The OCC and the OTS have determined that this proposed rule does not constitute a "significant regulatory action." This proposed rule will amend the risk-based capital guidelines to clarify that the agencies may impose additional capital requirements above the minimum capital leverage and risk-based capital requirements where an institution has significant concentration of credit risk or risks from nontraditional activities. This proposed rule is consistent with the current practice and policies of the agencies and is required by section 305 of FDICIA.

H. Proposed Regulation

In consideration of the foregoing, the OCC, the Board, the FDIC and the OTS hereby propose to amend title 12 of the Code of Federal Regulations by amending their respective parts as follows:

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR CHAPTER I

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 3 of title 12, chapter I, of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907 and 3909.

2. In part 3, § 3.10 is revised to read as follows:

§ 3.10 Applicability.

The OCC may require higher minimum capital ratios for an individual bank in view of its circumstances. For example, higher capital ratios may be appropriate for:

(a) A newly chartered bank;

(b) A bank receiving special supervisory attention;

(c) A bank that has, or is expected to have, losses resulting in capital inadequacy;

(d) A bank with significant exposure due to interest rate risk, the risks from concentrations of credit, certain risks arising from nontraditional activities, or management's overall inability to monitor and control financial and operating risks presented by concentrations of credit and nontraditional activities;

(e) A bank with significant exposure due to fiduciary or operational risk;

(f) A bank exposed to a high degree of asset depreciation, or a low level of liquid assets in relation to short-term liabilities;

(g) A bank exposed to a high volume of, or particularly severe, problem loans;

(h) A bank that is growing rapidly, either internally or through acquisitions; or

(i) A bank that may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships.

FEDERAL RESERVE SYSTEM

12 CFR CHAPTER II

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Reporting and record keeping requirements, Securities.

For the reasons set forth in the preamble, the Board is proposing to amend 12 CFR part 208 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338, 461, 481–486, 601, and 611, 1814 and 1823(j); 3105; 3310 and 3331–3351, 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c) (5), 78q, 78q–1, and 78w.

2. Appendix A to part 208 is amended by revising the fifth and sixth paragraphs under "*I. Overview*" to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

I. Overview

* * * * *

The risk-based capital ratio focuses principally on broad categories of credit risk, although the framework for assigning assets and off-balance-sheet items to risk categories does incorporate elements of transfer risk, as well as limited instances of interest rate and market risk. The framework incorporates risks arising from traditional banking activities as well as risks arising from nontraditional activities. The risk-based ratio does not, however, incorporate other factors that can affect an institution's financial condition. These factors include overall interest-rate exposure; liquidity, funding and market risks; the quality and level of earnings; investment, loan portfolio, and other concentrations of credit risk; certain risks arising from nontraditional activities; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control financial and operating risks, including the risks presented by concentrations of credit and nontraditional activities.

In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of those factors, including, in particular, the level and severity of problem and classified assets. For this reason, the final supervisory judgement on a bank's capital adequacy may differ significantly from conclusions that might be drawn solely from the level of its risk-based capital ratio.

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR CHAPTER III

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to amend part 325 of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 is revised to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Pub. L. 102–233, 105 Stat. 1761, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2386 (12 U.S.C. 1828 note).

§ 325.3 [Amended]

2. Section 325.3(a) is amended in the fourth sentence by adding "significant risks from concentrations of credit or nontraditional activities," immediately after "funding risks," and by adding "will take these other factors into account in analyzing the bank's capital adequacy and" immediately after the

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third time "FDIC" appears in the section.

3. The fifth paragraph of the undesignated text of appendix A to part 325 is revised to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

The risk-based capital ratio focuses principally on broad categories of credit risk; however, the ratio does not take account of many other factors that can affect a bank's financial condition. These factors include overall interest rate risk exposure; liquidity, funding and market risks; the quality and level of earnings; investment, loan portfolio, and other concentrations of credit risk; certain risks arising from nontraditional activities; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control financial and operating risks, including the risk presented by concentrations of credit and nontraditional activities. In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of each of these other factors, including, in particular, the level and severity of problem and adversely classified assets. For this reason, the final supervisory judgement on a bank's capital adequacy may differ significantly from the conclusions that might be drawn solely from the absolute level of the bank's risk-based capital ratio.

* * * * *

OFFICE OF THRIFT SUPERVISION

12 CFR CHAPTER V

List of Subjects in 12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 567, chapter V, title 12, Code of Federal Regulation as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.3 is amended by revising paragraphs (b)(3) and (9) to read as follows:

§ 567.3 Individual minimum capital requirements.

* * * * *

(b) *Appropriate considerations for establishing individual minimum capital requirements.* * * *

* * * * *

(3) A savings association that has a high degree of exposure to interest rate risk, prepayment risk, credit risk, concentration of credit risk, certain risks arising from nontraditional activities, or similar risks; or a high proportion of off-balance sheet risk, especially standby letters of credit;

* * * * *

(9) A savings association that has a record of operational losses that exceeds the average of other, similarly situated savings associations; has management deficiencies, including failure to adequately monitor and control financial and operating risks, especially the risks presented by concentrations of credit and nontraditional activities; or has a poor record of supervisory compliance.

* * * * *

Dated: September 14, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

Dated: June 14, 1993.

William W. Wiles,

Secretary of the Board of Governors of the Federal Reserve System.

By order of the Board of Directors.

Dated at Washington, DC, this 11th day of May, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

By the Office of Thrift Supervision.

Dated: June 7, 1993.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–3605 Filed 2–18–94; 8:45 am]

BILLING CODES 4810–33–P; 6210–01–P; 0714–01–P; 6720–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Organization and Operation of Federal Credit Unions and Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would amend NCUA's Regulations in order to conform them to the new NCUA Fiscal and National Credit Union Share Insurance Fund (NCUSIF) Insurance year. These changes to the fiscal and insurance years were approved by the NCUA Board on November 15, 1993 and are effective January 1, 1995.

DATES: Comments must be postmarked by April 25, 1994.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, Controller, Office of the Controller, at the above address or telephone: (703) 518–6570 or Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6553.

SUPPLEMENTARY INFORMATION: The NCUA Board on November 15, 1993, voted to change NCUA's fiscal year and NCUSIF's insurance year to coincide with the calendar year effective January 1, 1995. This change requires the NCUA to amend its regulations dealing with operating fees and insurance assessments to conform to the calendar year.

Currently under § 701.6 of NCUA's Rules and Regulations, an operating fee is assessed on federal credit unions based on a fiscal year of October 1 to September 30. This section must be changed to reflect the change to the calendar year. Further, the operating fee assessed as a result of a conversion or merger will now be based on the calendar year and those sections must be changed to delete references to the former fiscal year and reflect the new calendar year. 12 CFR 701.6(b) (2) and (3). The change will result in a transition quarter that begins on October 1, 1994 and ends on December 31, 1994 for which no operating fee would be assessed.

Currently under § 741.11 of NCUA's Rules and Regulations, an insurance premium and one percent deposit are assessed for all federally insured credit unions based on an insurance year of July 1 through June 30. 12 CFR 741.11(b)(1). This definition must be amended to reflect the change to the calendar year. Further, the due dates for the deposits and premiums must be changed from January 31 to a date as set by the NCUA Board in order to coincide with the calendar year. 12 CFR 741.11 (c), (d) and (g).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a potential number of small credit unions (primarily those under $1 million in assets). Preliminary analysis concerning the effect the proposed rule will have on small credit unions indicates that no significant economic impact will result if the rule is promulgated in final form by the NCUA Board. The proposed rule simply repeats the preexisting requirements of federal credit unions to pay operating fees and federally insured credit unions to pay one percent deposit and insurance premiums with the only modification being the dates when these fees and premiums must be paid. Therefore, the NCUA Board has determined and certifies under the authority granted in 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

These amendments have no effect on paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed regulation dealing with insurance premiums applies to all federally insured credit unions. However, it makes no substantive changes except to change the dates for certain filings and assessments of fees. The NCUA Board has determined that this amendment is not likely to have any direct effect on states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government because federally insured credit unions are currently required to pay an insurance premium.

List of Subjects

12 CFR Part 701

Civil rights, Conflicts of interest, Credit, Credit unions, Fair housing, Insurance, Mortgages, Reporting and recordkeeping requirements, Signs and symbols, Surety bonds.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on February 15, 1994.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR parts 701 and 741 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787 and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.6 is amended by revising paragraphs (a), (b) (2) and (3) to read as follows:

§ 701.6 Fees paid by Federal Credit Unions.

(a) *Basis for assessment.* Each calendar year or as otherwise directed by the Board, each Federal credit union shall pay to the Administration for the current National Credit Union Administration fiscal year (January 1 to December 31) an operating fee in accordance with a schedule as fixed from time to time by the National Credit Union Administration Board based on the total assets of each Federal credit union as of December 31 of the preceding year or as otherwise determined pursuant to paragraph (b) of this section.

(b) * * *

(1) * * *

(2) *Conversions.* A state chartered credit union that converts to Federal charter will pay an operating fee in the year following the conversion. Federal credit unions converting to state charter will not receive a refund of the operating fee paid to the Administration in the year in which the conversion takes place.

(3) *Mergers.* A continuing Federal credit union that has merged with another credit union will pay an operating fee in the following year based on the combined total assets of the merged credit union and the continuing Federal credit union as of December 31. For purposes of this requirement, a purchase and assumption transaction wherein the continuing Federal credit union purchases all or essentially all of the assets of another credit union shall be deemed a merger. Federal credit unions merging with other Federal or state credit unions will not receive a refund of the operating fee paid to the Administration in the year in which the merger took place.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, and 1781–1790. Section 741.11 is also authorized by 31 U.S.C. 3717.

4. Section 741.11 is amended by revising paragraphs (b)(1), (c), (d) and (g) to read as follows:

§ 741.11 Insurance premium and one per cent deposit.

* * * * *

(b) * * *

Insurance year means the period from January 1 through December 31.

* * * * *

(c) *One percent deposit.* Each insured credit union shall maintain with the NCUSIF during each insurance year a deposit in an amount equaling one percent of the total of the credit union's insured shares as of the close of the preceding insurance year. The deposit shall be adjusted annually on a date to be determined by the NCUA Board.

(d) *Premium.* Each insured credit union shall pay to the NCUSIF, on a date to be determined by the NCUA Board, an insurance premium for that insurance year in an amount equaling one twelfth of one percent of the credit union's total insured shares as of the close of the preceding insurance year.

* * * * *

(g) *New charters.* A newly-chartered credit union that obtains share insurance coverage from the NCUSIF during the insurance year in which it has obtained its charter shall not be required to pay an insurance premium for that insurance year. The credit union shall fund its one percent deposit on a date to be determined by the NCUA Board in the following insurance year, but shall not participate in any distribution from NCUSIF equity related to the period prior to the credit union's funding of its deposit.

* * * * *

[FR Doc. 94–3933 Filed 2–18–94; 8:45 am]

BILLING CODE 7535–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 108 and 120

Development Companies and Business Loans; Passive Business

AGENCY: Small Business Administration (SBA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would allow certain passive businesses to be eligible for SBA financial assistance under both the SBA's development company and 7(a) business loan programs if the real estate (or personal property) it holds would be used by an eligible small business concern in which any owner of at least 20 percent of the passive business owns at least 20 percent of the small business concern. The proposed rule would eliminate many requirements and restrictions which presently limit the use of real estate holding entities in SBA's business loan and development company programs.

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DATES: Comments must be submitted on or before April 25, 1994.

ADDRESSES: Comments may be mailed to John R. Cox, Acting Assistant Administrator for Financial Assistance, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John R. Cox, 202/205–6490.

SUPPLEMENTARY INFORMATION: Section 120.101–2(e) of SBA's regulations (13 CFR 120.101–2(e) (1993)) provides that a real estate holding entity (known as an alter ego) may be eligible as an applicant for financial assistance under the SBA business loan program if it is organized and operated for profit as a corporation, partnership or individual proprietorship. It must be in the business of owning and leasing property to an operating small business concern for the latter's exclusive use. There must be an identity of ownership in the borrower and the small business concern. The regulation also contains a complicated description of certain familial relationships which qualify as identical for purposes of ownership interest. The regulation also requires as collateral for the assistance that: (1) The applicant pledge the lease between it and the operating concern, (2) the operating concern must be a guarantor or coborrower on the loan, and (3) the owners of the operating concern must guarantee the loan.

Section 108.8(d) of the regulations governing SBA's development company program (13 CFR 108.8(d) (1993)) allows a real estate holding entity (known as an alter ego) to be eligible for a loan made pursuant to that program if, among other requirements, it is a business organized for profit, the ownership interests in the holding entity and the small business concern to which it leases the property are identical except for the complicated exceptions with respect to selected family owners, the collateral for the assistance includes an assignment of the lease between the holding entity and the small business, and the small business guarantees the loan or is a co-borrower. In addition, there is a provision which covers the possibility that the operating concern could sublease part of the property to a third party.

These detailed requirements and restrictions are confusing and burdensome for the public. Numerous interpretations and guidelines have failed to eliminate inconsistent treatment by SBA of applicant holding entities from program to program. The public has become frustrated by some of the subtle distinctions between the two programs with respect to these real estate holding entities, and the SBA servicing of loans which have been made to them has added to the general confusion.

SBA recognizes that valid business reasons (such as estate planning or tax purposes) may exist for an operating small business concern to spin off into an affiliate the real estate on which the operating concern operates its business, and SBA wants to provide assistance in such situations where possible. The Agency, at the same time, wants to ensure that it will not finance purely passive investments in real or personal property. The holding entity regulations were initially promulgated fifteen years ago to accomplish this intent, but the changes, revisions and amendments to the regulations have caused confusion, inconsistency and frustration by the public and SBA personnel.

Therefore, the Agency is proposing to simplify the present regulations by eliminating many of the above referenced limitations and restrictions. This proposed regulation, if enacted in final form, would eliminate the inconsistency which is inherent under the present rules, and it would greatly assist potential small business applicants which seek SBA financial assistance through their real estate holding affiliates. The Agency will no longer refer to the real estate holding entity as an alter ego, but will consider it to be the passive business.

It must be reiterated that SBA does not intend under this proposal to finance a passive business or investment property which requires no active involvement by the business owners. A passive business would be an acceptable and eligible applicant under these proposed regulations because it is a holding entity affiliated with an otherwise eligible small business concern.

Under this proposal, a passive business applicant would be eligible if the real estate (or personal property) it holds would be used by an eligible small business concern and at least one 20 percent owner of the passive business also owns at least 20 percent of the small business concern. Under this proposal, a trust could qualify as an eligible passive business if the grantor or trustee of the trust owns at least 20 percent of the small business concern, or if a beneficiary of at least 20 percent of the trust assets has at least a 20 percent ownership in the small business concern. This ownership requirement would identify the passive business with the operating business for SBA regulatory purposes. The proposed regulation does not require that there be more than one 20 percent owner of both entities or that the principals control either entity. As long as one person is a 20 percent owner in both entities that would be sufficient to make an entity the eligibility passive business affiliate of the small business concern since that person would be considered to be a principal in both entities. Alternatively, if members of the same family (father, mother, son, daughter, wife, husband, brother or sister) meet the 20 percent ownership requirement in both the passive business and the small business concern they would be considered to be the same principal for SBA purposes.

Both the passive business and the small business concern would be required to be obligated on the vote evidencing the assistance, and any person who has a 20 percent ownership interest in both entities would provide a personal guarantee to support the SBA financial assistance. Proprietors, partners, officers, directors and owners of 20 percent or more in either entity would also be subject to the collateral provisions set forth in § 120.103–2(c) of the SBA regulations.

Under this proposed rule, SBA would eliminate the present requirement in the business loan program that the passive business must only be a proprietorship, partnership or corporation in order to accommodate SBA's policy that a trust can be an eligible passive business if it otherwise comports with the requirements of this regulation. It would eliminate the present convoluted and complicated provisions which detail the listed family members who can hold ownership interests in the passive business and small business concern in varying percentages of ownership. It would also eliminate the present requirement which mandates that non-family owners have complete identity of interests. The purpose of these proposed changes is to simplify the rules and to ensure that SBA financial assistance remains available for a legitimate passive business affiliate of an eligible small business concern when the affiliate holds real estate or personal property leased to the small business concern and utilized for business purposes. SBA has proceeded in its business assistance programs on the assumption that a principal owns at least 20 percent of a business and, under § 120.103–2(c) of its regulations, SBA generally requires a proprietor, partner, officer, director, or 20 percent owner to execute a personal guarantee as collateral for the assistance. This requirement would apply to such enumerated persons in either entity. Prudent standards of banking practice will continue to dictate the rules in providing SBA financial assistance to eligible passive businesses. In addition, SBA would evaluate on a case by case basis whether the small business concern must make use of all the real property subject to the lease immediately after execution or whether it could sublease part of the property for an interim period of time. SBA does not want to interpose itself into the details of the arrangements, so long as the Agency is assured, pursuant to the statutory provisions, that the financial assistance will be repaid.

Compliance With Executive Orders 12612, 12778 and 12866, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final form, will not have a significant impact on a substantial number of small entities.

SBA certifies that this proposed rule, if promulgated in final form, will not constitute a significant regulatory action for the purposes of Executive Order 12866, since the proposed change is not likely to result in an annual effect on the economy of $100 million or more.

SBA certifies that the proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

SBA certifies that this proposed rule would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Further, for purposes of Executive Order 12778, SBA certifies that this proposed rule, if promulgated in final form, is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

(Catalog of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans and No. 59.013, State and Local Development Loans)

List of Subjects

13 CFR Part 108

Loan programs—business, Small businesses.

13 CFR Part 120

Loan programs—business, Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA hereby proposes to amend parts 108 and 120, chapter I, title 13, Code of Federal Regulations, as follows:

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

1. The authority citation for part 108 would continue to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.8 would be amended by revising paragraph (d) to read as follows:

§ 108.8 Borrower requirements and prohibitions.

* * * * *

(d) *Eligibility of passive business.* A concern is ineligible if it is a passive business primarily engaged in investing in property. *Provided, however,* That a passive business is eligible if it owns and leases or it proposes to own and lease real or personal property to an otherwise eligible small business concern so long as:

(1) The passive business and the small business concern share a common principal, as defined in this paragraph (d);

(2) The passive business engages in no activity other than acquiring or owning property which it leases to the small business concern for its exclusive use within a reasonable period of time, and the proceeds of any section 502 or 503 assistance are used only for this purpose;

(3) The passive business and the small business concern are both obligated on the note evidencing the SBA assistance;

(4) The collateral for the financial assistance includes a lien on the property and an assignment of the lease (including options exercisable by the small business concern) between the passive business and the small business concern, and such lease has a remaining term at least equal to the term of the section 502 or 503 loan;

(5) Each person who is a principal as defined in this paragraph (d) must provide a personal guarantee, and § 120.103–2(c) of this title (relating to collateral) is applicable to all persons enumerated therein who are associated with either entity; and

(6) For purposes of this paragraph (d), a person is a "principal" if he or she is the legal or beneficial owner of at least 20 percent of both the passive business and the small business concern to which the passive business intends to lease real or personal property. If the passive business exists in the form of a trust, the trust's grantor or trustee would be a "principal" if he or she owns at least 20 percent of the small business concern, and a beneficiary of at least 20 percent of the trust's assets would be a "principal" if he or she owns at least 20 percent of the small business concern. If members of the same family (father, mother, son, daughter, wife, husband, brother or sister) meet the 20 percent ownership requirement in both the passive business and the small business concern they would be considered to be the same "principal" for SBA purposes.

* * * * *

PART 120—BUSINESS LOAN POLICY

1. The authority citation for part 120 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Section 120.101–2 would be amended by revising the introductory text and paragraph (e) to read as follows:

§ 120.101–2 Type of business.

Most small concerns are eligible for Financial Assistance. The following types of businesses, however, are not eligible for SBA assistance except where otherwise stated in this section.

* * * * *

(e) *Lending or investment; eligibility of passive business.* Concerns which are primarily engaged in the business of lending or investing. However, an applicant business passively engaged in investing in property is eligible for SBA financing or refinancing if it owns and leases or it proposes to own and lease real or personal property to an otherwise eligible small business concern, so long as:

(1) The passive business and the small business concern share a common principal, as defined in this paragraph (e);

(2) The passive business engages in no activity other than acquiring or owning property which it leases to the small business concern for its exclusive use within a reasonable period of time, and the proceeds of any SBA guaranteed loan shall be used only for this purpose or for working capital by the small business concern;

(3) The passive business and the small business concern are both obligated on the note evidencing the SBA guaranteed loan;

(4) The collateral for the financial assistance includes a lien on the property and an assignment of the lease (including options exercisable by the small business concern) between the passive business and the small business concern, and such lease has a remaining term at least equal to the term of the SBA guaranteed loan;

(5) Each person who is a principal as defined in this paragraph (e) must provide a personal guarantee, and § 120.103–2(c) (relating to collateral) is applicable to all persons enumerated

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therein who are associated with either entity; and

(6) For purposes of this paragraph (e), a person is a "principal" if he or she is the legal or beneficial owner of at least 20 percent of both the passive business and the small business concern to which the passive business intends to lease real or personal property. If the passive business exists in the form of a trust, the trust's grantor or trustee would be a "principal" if he or she owns at least 20 percent of the small business concern, and a beneficiary of at least 20 percent of the trust's assets would be a "principal" if he or she also owns at least 20 percent of the small business concern. If members of the same family (father, mother, son, daughter, wife, husband, brother or sister) meet the 20 percent ownership requirement in both the passive business and the small business concern they would be considered to be the same "principal" for SBA purposes.

* * * * *

Dated: November 16, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–3670 Filed 2–18–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–93–110]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change regulations governing the operation of the State Road 402, Max Brewer bridge, at mile 878.9, at Titusville, Florida, by permitting the draw to remain closed during different periods. This proposal is being made to synchronize the existing closed periods with the periods of peak vehicular traffic. This action should accommodate the needs of vehicular traffic, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (305) 536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking.

Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Walter Paskowsky, Project Manager, Bridge Section at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07–93–110] and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Walt Paskowsky at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial.

If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Walter Paskowsky, Project Manager, and LT J.M. Losego, Project Counsel.

Background and Purpose

This bridge presently opens on signal except that from 6:15 a.m. to 7:15 a.m. and 3 p.m. to 4:30 p.m., Monday through Friday, except federal holidays, the draw need not open. NASA, whose employees commute to and from the John F. Kennedy Space Center across the bridge, requested a 30 minute increase in the morning closed period extending from 6 a.m. to 7:30 a.m. This change was requested to ensure continuous uninterrupted flow of highway traffic during the heaviest daily commuter traffic periods. The bridgeowner, Brevard County, concurred with this proposal.

Discussion of Proposed Amendment

A Coast Guard analysis of highway traffic showed the bridge is used almost exclusively by commuter traffic (90% flow in one direction) for about an hour each morning and afternoon. The drawbridge is opened frequently due to its substandard clearance (9 feet closed), especially during the fall and spring vessel migration periods.

Holding conditions for vessels near the bridge are considered adequate to allow vessels to safely wait for a bridge opening during the commuter closed periods. A review of the traffic data indicates there has been a change in the timing and density of commuter traffic which requires an earlier morning closure period. In addition, the data shows there has been a reduction in the volume of afternoon commuter traffic which would allow a change in the closure periods without requiring an increase in the length of time vessels are required to wait for an opening.

Regulatory Evaluation

This proposal is not considered a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the proposed rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since the proposed rule exempts tugs with tows, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261 is amended by revising paragraph (k) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(k) State Road 402, Max Brewer bridge, mile 878.9, at Titusville. The draw shall open on signal; except that, from 6 a.m. to 7:15 a.m. and 3:15 p.m. to 4:30 p.m. Monday through Friday, except federal holidays, the draw need not open.

* * * * *

Dated: January 26, 1994.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 94–3927 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–4837–1]

National Emission Standards for Hazardous Air Pollutants; Permits for Early Reductions Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the comment period for a proposed rule for Early Reductions Permits published in the **Federal Register** of December 29, 1993 (58 FR 68804). Several persons who intend to submit comments concerning the proposed rule for Early Reductions Permits requested additional time to prepare their responses, beyond the 30 days originally provided. In consideration of these requests, EPA is reopening the comment period in order to give all interested persons the opportunity to comment fully.

DATES: *Comments.* The comment period is reopened. Comments must be received on or before March 3, 1994.

ADDRESSES: *Docket.* Docket No. A–93–08, containing supporting information used in developing the proposed rule is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Beck, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5421.

SUPPLEMENTARY INFORMATION: Comments on the proposed rule were to be received on or before January 28, 1994 (a 30 day comment period). The comment period is reopened until March 3, 1994. This extension of the comment period is consistent with Executive Order 12866, which states that "each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days." Reopening the comment period until March 3, 1994 will provide the public slightly more than the suggested 60 days.

Dated: February 4, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–3894 Filed 02–18–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[BPD–732–P]

RIN 0938–AF76

Medicare Program; Health Maintenance Organization and Competitive Medical Plan National Coverage Decisions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would affect health maintenance organizations (HMOs) and competitive medical plans (CMPs) that contract with HCFA to furnish health care services to Medicare beneficiaries and to receive payment on a risk basis. These HMOs and CMPs would no longer be required to absorb the expense of furnishing a new or additional benefit if all the following conditions apply:

The benefit was established by a national coverage decision (NCD);

The cost of furnishing the service would be significant and was not taken into account in calculating the per capita rate to be paid by HCFA during the current calendar year;

The NCD was not published until on or after the date of the announcement of the current calendar year's per capita rate of payment.

This rule is necessary to implement section 4204(c) of the Omnibus Budget Reconciliation Act of 1990, commonly referred to as "OBRA '90," which is effective for calendar years beginning on or after January 1, 1991.

The purpose of the amendment is to encourage HMOs and CMPs to contract on a risk basis by ensuring that the actual scope of services covered under the contract would not change significantly during the year.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 25, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health

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and Human Services, Attention: BPD–732–P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–732–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Joanne Sinsheimer, (410) 966–4620.

SUPPLEMENTARY INFORMATION:

I. Background

A. National Coverage Decisions

The intention of the Congress, at the time the Medicare law was enacted in 1965, was that Medicare would provide health insurance to protect the elderly (and later, the disabled) from the substantial costs of acute health care services, principally hospital care. The law was designed generally to cover services ordinarily furnished by hospitals, skilled nursing facilities (SNFs), and physicians licensed to practice medicine. The Congress understood that questions as to coverage of specific services would invariably arise and would require a specific decision by those administering the program. Thus, it vested in the Secretary the authority to make those decisions (section 1862(a)(1)(A) of the Act). Section 1862(a)(1)(A) of the Act authorizes Medicare payment for items or services that are determined to be reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. While the Congress provided for the coverage of services such as inpatient hospital care and physicians' services, coverage for these services is prohibited unless they are "reasonable" and "necessary."

We have interpreted section 1862(a)(1)(A) of the Act to exclude from Medicare coverage those medical and health care services that are not demonstrated to be safe and effective. Medicare contractors (that is, fiscal intermediaries, carriers, and Utilization and Quality Control Peer Review Organizations (PROs)) are charged with the responsibility of ensuring that payments are made only for services that are covered under Medicare Part A or Part B. Therefore, in adjudicating a Medicare claim or conducting utilization and quality review, they must determine whether a service that has been furnished to a Medicare beneficiary is included in the scope of Medicare benefits and, if it is, whether it is "reasonable" and "necessary" for the particular medical condition of this particular patient.

The term "national coverage decision" (NCD) refers to a coverage decision that we make and issue as national policy under section 1862(a)(1)(A) of the Act. We have issued over 200 NCDs on specific services. We publish NCDs in the Medicare Coverage Issues Manual (HCFA-Pub. 6), and in other HCFA program manuals or as notices or HCFA Rulings in the **Federal Register**. Under section 1871(a)(2) of the Act, NCDs are exempt from the general requirement that no rule, requirement, or other statement of policy that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive benefits under title XVIII will take effect unless it is promulgated by the Secretary through regulations.

B. HMOs and CMPs

HMOs and CMPs enter into contracts with HCFA to furnish Medicare covered services to Medicare beneficiaries who enroll in them in accordance with section 1876 of the Act. The contracts provide for payment to the HMOs and CMPs on either a risk or a reasonable cost basis. The provisions in this proposed rule apply only to HMOs and CMPs that contract on a risk basis.

Risk HMOs and CMPs are paid a predetermined, per capita rate for each enrolled Medicare beneficiary. Under section 1876(a)(1)(A) of the Act, we annually determine and announce by September 7 for the following calendar year, a per capita rate of payment for each class of Medicare beneficiaries enrolled in a risk HMO or CMP. The per capita rate is set at 95 percent of the adjusted average per capita cost (AAPCC). (The AAPCC is an actuarial estimate that we make in advance of an HMO's or CMP's contract period and that represents an estimate of what the average per capita cost would be to the Medicare program for each class of Medicare enrollees if the enrollees had received covered services in the same geographic area or a similar area, from sources other than the HMO or CMP.)

We define the classes on the basis of county of residence (State of residence, for end-stage renal disease beneficiaries), age, sex, disability, institutional status, and welfare status. Within each class, we establish two rates, one for beneficiaries entitled to Medicare Part A and Part B, and one for those entitled only to Medicare Part B.

C. Statutory Provisions

Under section 1876(c)(2)(A) of the Act, an HMO or CMP is required to furnish to Medicare enrollees the Medicare covered services to which they are entitled, but only to the extent that those services are available to beneficiaries who reside in the geographic area served by the HMO or CMP but are not enrolled in the organization. The only exceptions to this general rule are: (1) That risk contracting HMOs and CMPs are not required to provide hospice care services, or to assume financial responsibility for inpatient care furnished to an enrollee who, on the effective date of enrollment, was an inpatient in a hospital paid under the prospective payment system; and (2) risk contractors are not required to enroll Medicare beneficiaries who have end-stage renal disease (whether aged, disabled, or entitled to Medicare solely because of having end-stage renal disease).

In summary, before enactment of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), under sections 1876(c)(2)(A), 1876(a)(6), 1876(a)(1)(D), and 1876(a)(3) of the Act, respectively—

- Risk HMOs and CMPs were responsible for furnishing NCD services of significant cost even though that cost had not been taken into account in determining the per capita rate that HCFA paid the HMO or CMP during that year;
- Payment for services furnished to Medicare enrollees of a risk HMO or CMP could be made only to the HMO or CMP, and only in the form of advance monthly per capita payments; and
- Those per capita payments were made instead of the amounts that would have been made on a fee-for-service basis.

II. Changes Made by OBRA '90

Section 4204(c)(1) of OBRA '90 added section 1876(c)(2)(B) of the Act, applicable to contract periods beginning on or after January 1, 1991. Under section 1876(c)(2)(B), if HCFA projects that the cost of furnishing the NCD service will be significant, and the cost of the service was not taken into account in calculating the most recently announced per capita payment rates, then, unless otherwise required by law—

- The risk HMO or CMP is not required to furnish the new or expanded benefit established by the NCD until the first contract year that begins after the next payment rate announcement (that takes into account the cost of the NCD service); and
- If the risk HMO or CMP does furnish the new or expanded benefit during the current contract period, the prohibition of section 1876(a)(3) does not apply, and HCFA's intermediary or carrier would pay the risk HMO or CMP for the NCD service (under the usual Medicare payment rules and methods) in addition to the monthly capitation payment. (Usual Medicare payment methods require that payment for services furnished by a participating provider such as a hospital be made only to the provider.)

Section 4204(c) of OBRA '90 also amended section 1876(a)(6) of the Act (the general prohibition against paying any entity other than the risk HMO or CMP for services furnished to a Medicare enrollee) by providing an exception for NCD services in section 1876(c)(2)(B)(ii) of the Act. Under that exception, if a Medicare enrollee chooses to obtain an NCD service from a source other than the risk HMO or CMP, HCFA may make payment under the usual Medicare payment methods and rules to the beneficiary, or to the qualified provider, physician, or supplier, as appropriate.

III. Provisions of the Proposed Rule

To implement the provisions of section 4204(c) of OBRA '90, we propose to make the following revisions to 42 CFR part 417 ("Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans"). We also plan to make various technical changes.

A. Definitions

In § 417.401 we would add definitions of "National coverage decision" and "significant cost."

National coverage decision (NCD) means—a statement of national policy regarding the Medicare coverage status of a service that we make under section 1862(a)(1) of the Act and publish in the **Federal Register** as a notice or HCFA Ruling, issue as a manual instruction, or announce by other formal notice. The term does not include coverage changes mandated by statute.

Significant cost, as it relates to a particular NCD, means either of the following:

(1) The average cost of furnishing a single service exceeds a cost threshold that—

(i) For calendar years 1991 and 1992, is $100,000; and

(ii) For 1993 and subsequent calendar years, is the preceding year's dollar threshold, adjusted to reflect the increase or decrease in the United States per capita cost (USPCC) for the preceding year.

(2) The cost of all of the services furnished nationwide as a result of the particular NCD represents at least 0.1 percent of the USPCC multiplied by the total number of Medicare beneficiaries nationwide for the applicable calendar year.

(We would actuarially determine the significant cost of an NCD and include that information in the formal notice of the decison). In section IV, below, we discuss our reasoning for proposing these thresholds for significant cost.

B. Range of Services Furnished by HMOs and CMPs

In § 417.414 Qualifying condition: Range of services, we would redesignate paragraph (b)(4), concerning selection of practitioners, as paragraph (b)(3) of § 417.416 (which deals with furnishing of services and is thus a more appropriate location than "Range of services"), and add to § 417.414 a new paragraph (b)(4) to specify that a risk HMO or CMP is not required to furnish an NCD service until the contract year beginning after the next per capita rate announcement if all of the following conditions apply:

- HCFA has determined and announced that the NCD service meets the definition of "significant cost."
- The cost of that service was not included in the determination of the per capita rate of payment that HCFA pays the HMO or CMP.
- The NCD that established coverage of the service was issued on or after the date of the announcement of the per capita rate of payment for that contract year.

Starting with the beginning of the next contract year, the HMO or CMP would be responsible for furnishing or paying for the NCD service.

We considered that these proposed revisions could have an adverse effect on the ability of the risk HMO or CMP to manage the enrollee's health care, but believe the changes are required by the wording of the statute.

C. Deductible and Coinsurance Amounts

We would amend § 417.452, which deals with Medicare enrollees' liability for Medicare deductible and coinsurance amounts—

- To clarify that the HMO or CMP may reduce these charges under the "additional benefits" provision in § 417.440(b)(4)(i); and
- To provide exemption from deductibles for "significant cost" NCD services that the risk HMO or CMP is not required to furnish, regardless of whether the service is furnished by the HMO or CMP or obtained by the enrollee from another source.

We considered also waiving coinsurance for these services because we believe that beneficiaries enroll in an HMO or CMP, in part, to protect themselves from significant unanticipated costs. (In HMOs and CMPs, the actuarial equivalent of deductible and coinsurance amounts is spread among all enrollees and enrollees know in advance what the charge will be for particular services.) We believe that imposition of such costs for enrollees who need a significant cost NCD service could discourage beneficiaries from enrolling or remaining enrolled in an HMO or CMP.

We would prefer to encourage beneficiaries to enroll and remain enrolled in Medicare risk contracting HMOs and CMPs, by relieving beneficiaries' liability for coinsurance amount. However, we believe the law requires that beneficiaries be liable for coinsurance amounts because, unlike deductibles, these amounts are attributable to particular services received. We are especially interested in comments on this issue, including other legal interpretations of beneficiary liability for coinsurance amounts.

D. Payment for NCD Services

We would remove current § 417.586 because it provides an option (electing to have Medicare intermediaries process and pay hospital and nursing facility bills for services furnished to Medicare enrollees of a risk HMO or CMP) that was repealed by section 4012(b) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87).

We would add a new § 417.586 (Special rules: Payment for significant cost national coverage decision (NCD) services). Under this new section, for significant cost NCD services whose cost was not included in calculating the per capita payment rate for a risk HMO or CMP, payment would be made under the usual Medicare payment rules and methods. Usual Medicare payment

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methods require that payments for services furnished by a participating provider, for example, a hospital, be made only to that provider. The carrier may make payment for Part B services of physicians and other suppliers such as other practitioners and entities that are not providers, under usual carrier procedures, directly to any of the following:

- The beneficiary who obtained the service from a qualified source other than the risk HMO or CMP.
- The qualified provider, physician, or supplier that furnished the service.
- The risk HMO or CMP that chose to furnish the service even though not required to do so.

We would specify, in § 417.586(c), that HCFA does not make an additional payment for a significant cost NCD service furnished by the HMO or CMP (even though it is excepted during the current calendar year) if the HMO or CMP furnishes the NCD service as an optional or required supplemental service under § 417.440(b)(2), or as an additional benefit under § 417.592. The reason for the exclusion is that the costs of both of these types of services are already provided for under the contract, and the statute specifies that the NCD "shall not apply" to the contract. Optional or required supplemental services are paid for by the enrollees. The HMO or CMP may provide "additional benefits" as one way to compensate the beneficiary if the per capita payments it receives from HCFA are higher than the HMO's or CMP's adjusted community rate (ACR), which is what the HMO or CMP would charge its non-Medicare enrollees for a package of benefits limited to Medicare-covered services. We note that, if the NCD services are already provided under the contract as additional benefits or supplemental services, the beneficiary would not be required to pay any additional Medicare coinsurance due to the NCD.

E. Other Clarifying Changes

1. Throughout the affected sections, we would use the more precise term "HMO" or "CMP" in preference to the generic term "organization".
2. In § 417.440, we would amend paragraph (a) to update a cross-reference, and paragraph (b)(1) to break down a too-long sentence.

IV. Significant Cost

For 1991 and 1992, we propose that the cost of an NCD service be considered "significant" if the average cost of furnishing that service exceeds $100,000 or represents a change of at least 0.1 percent in the United States per capita cost (USPCC) determined for the nation as a whole. The USPCC is defined in § 417.582 as the average per capita cost, including intermediary or carrier administrative costs, incurred by Medicare, as determined on an accrual basis, for services furnished to Medicare beneficiaries nationwide during the most recent period for which HCFA has complete data. AAPCCs derived from the USPCC are the basis for Medicare payments to HMOs and CMPs. We also propose that beginning with calendar year 1993 the preceding year's threshold be adjusted to reflect any increase or decrease in the USPCC. The purpose of the annual adjustment is to keep pace with inflation. The average annual increase or decrease in the USPCC represents the change in the average per capita cost of furnishing services to Medicare beneficiaries.

We would actuarially determine the average cost of an individual NCD service and include it at the time the NCD is issued in manuals, published in the **Federal Register**, or announced by other formal notice.

The $100,000 threshold is proposed because it approximates the 1991 Medicare Part A cost of a liver transplant, a recent and important national coverage decision that was included in the adjusted average per capita cost (AAPCC) for 1991. The AAPCC is defined in § 417.401 as an actuarial estimate made by HCFA in advance of an organization's contract period that represents what the average per capita cost to the Medicare program would be for each class (that is, Medicare beneficiary designated by age, sex, disability, institutional, and welfare status) of the organization's Medicare enrollees if they had received covered services other than through the organization in the same geographic area or in a similar area. We are especially interested in receiving public comments concerning the thresholds we are proposing.

A 0.1 percent annual change in the 1993 USPCC would represent an annual increase of approximately $4.30 or about $156 million in additional annual outlays for the Medicare program as a whole. We believe these figures represent the minimum threshold of significant financial outlay for the average risk contracting HMO or CMP that has a mean enrollment of nearly 15,800 Medicare beneficiaries and an average monthly payment from Medicare of approximately $339 per Medicare beneficiary or $5.37 million. We also believe it would protect small organizations from unanticipated financial outlays sufficiently to induce their continued participation in the Medicare program under section 1876 of the Act.

The section that follows describes the NCDs announced in calendar years 1991 and 1992. During that period, HCFA announced the addition of six new services and the removal of one service. By combining Medicare payment data for physician services with facility costs data, we were able to estimate the relative costs associated with providing these services. The coverage of liver transplantation for adults was estimated to cost over $100,000 per procedure, which meets the threshold to be considered "of significant cost" under this proposed rule. Adult liver transplantation is covered for specific conditions when performed in a facility approved by HCFA as meeting certain institutional coverage criteria.

The remaining services were estimated to have average costs that are well below the $100,000 threshold. These services are described below.

Extracorporeal Immunoadsorption (ECI)

This procedure, which uses Protein A columns, is covered only for the treatment of patients with Idiopathic Thrombocytopenia Purpura (ITP) failing other treatments.

Implantation of Automatic Defibrillators

Patient selection criteria were changed to remove requirements that patients had to have inducible tachyrhythmia before implantation or that this technology be used as a treatment of last resort. Although additional patients may be covered, we believe that the savings in diagnostic costs offset additional costs.

Percutaneous Transluminal Angioplasty (PTA)

This procedure is used in the treatment of obstructive lesions of arteriovenous dialysis fistulas.

Laparoscopic Cholecystectomy

This surgical procedure is covered for the removal of the gall bladder.

Apheresis (Therapeutic Pheresis)

This autologous medical procedure is covered for specific conditions. Medicare coverage criteria have been updated to include coverage for procedures performed in a hospital setting (inpatient or outpatient) or in a nonhospital setting if the patient is under the care of a physician and a physician is also present to direct and supervise the nonphysician services.

Extracranial-intracranial (EC–IC) Arterial Bypass

In 1991 this surgical procedure was removed from the list of Medicare covered procedures.

The only "significant cost" NCD service among those listed above is the liver transplant for adults. That NCD was published in the **Federal Register** as a final notice on April 12, 1991, at 56 FR 15006. The decision to cover liver transplants for adults was based on our determination that liver transplants are medically reasonable and necessary services if furnished to adult patients with certain conditions and if furnished by participating facilities that meet specific criteria including patient selection criteria. Under certain circumstances, coverage of these liver transplants could be effective as early as March 8, 1990, which was the publication date of the proposed notice in the **Federal Register**. However, Medicare payment for liver transplants for beneficiaries enrolled in risk HMOs and CMPs was not included in the per capita rates of payment until January 1991. Consequently, risk HMOs and CMPs were forced to absorb any liver transplant costs (approximately $100,000 per transplant) from March 8, 1990, through December 31, 1990.

Items and services necessary to diagnose a condition for which the recommended therapy is a noncovered service, and most services furnished as followup care to the noncovered service, are not considered part of that service and are not included in the payment for that service. Medicare already covers certain diagnostic services, which may lead to a recommendation that a beneficiary receive therapy that is not covered. In addition, Medicare covers certain medically necessary services that relate to follow-up care to a noncovered service. For example, for patients who received liver transplants before March 8, 1990, outpatient diagnostic services preceding the transplant procedure were covered, as was medically necessary follow-up care after discharge from the hospital for the noncovered transplant procedure.

The hospitalization for the transplant procedure would not have been covered, nor would other services received directly related to the noncovered procedure, such as the surgeon's fee for the transplant surgery itself. We consider services that would not have been covered as part of the NCD occurrence. An occurrence includes the actual provision of a discrete item or service that is the subject of an NCD.

Any item or service that is already covered, such as diagnostic services followed by a noncovered therapy, as discussed above, would not be considered as part of the NCD service and thus would not be eligible for payment outside the HMO's or CMP's monthly rate. An item or service that would not have been covered if furnished as part of a noncovered procedure, such as the surgeon's fee for a noncovered liver transplant, would qualify for payment outside the HMO's or CMP's monthly rate, even though it is not itself the subject of the NCD.

Section 1861(s)(2)(J) of the Act provides for coverage of prescription drugs used in immunosuppressive therapy for 1 year following a transplant, only if the organ transplant procedure is a covered service. Therefore, if future NCDs provide for coverage of transplantation of organs other than the presently covered kidney, liver, and heart, and are announced after publication of AAPCC rates for the contract period, immunosuppressive therapy following those organ transplants would also qualify for payment outside the HMO's or CMP's monthly rates.

V. Collection of Information Requirements

This rule contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

VII. Regulatory Impact Statement

A. Introduction

This proposed rule would affect those HMOs and CMPs (90 as of January 1993) that contract with HCFA to furnish health care services to Medicare enrollees that are paid on a risk basis. Four demonstration projects are also subject to the risk contract rules. As of January 1993, there were 21,908 Medicare enrollees in the four demonstration projects. As a result of the OBRA '90 amendments discussed under section II of this preamble, for NCD services that the risk HMO or CMP is not required to furnish (because the cost of furnishing the service is significant and was not taken into account in determining the per capita rate that HCFA pays the HMO or CMP), additional payments may be made as explained in section III.D. of the preamble.

It is clear that these additional payments constitute additional program expenditures. However, estimation of the amount is difficult because we cannot accurately predict—

- How many of the services added or expanded through NCDs in any year will be of "significant cost"; and
- How many of the Medicare enrollees of risk HMOs and CMPs (approximately 1.5 million as of January 1993) will need a "significant cost" NCD service.

We do know that only six NCD services were added by HCFA during 1991 and 1992, and that only one of those six services (liver transplants for adults) would have met a "significant cost" criterion (average cost in excess of $100,000). We do not anticipate a significant increase in the number of liver transplants performed on Medicare beneficiaries because livers for transplantation purposes are not readily available. We believe this surgery will continue to be performed relatively infrequently.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Analysis

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HMOs and CMPs that have entered into risk contracts with HCFA are considered to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule would have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As noted earlier in this preamble, we believe that, by ensuring that the cost of furnishing required Medicare services

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would not increase substantially during a contract period, the new rules might encourage HMOs and CMPs to contract on a risk basis. We anticipate an increase in the number of risk-contracting organizations, but recognize that this proposed rule would not constitute a significant economic impact on a substantial number of HMOs and CMPs. These rules would not affect the operations of small rural hospitals.

We are not preparing analyses under either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not result in a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs—health, Medicare, Reporting and recordkeeping requirements.

42 CFR part 417 would be amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1866(a), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395cc(a), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e–17), unless otherwise noted.

2. In § 417.401, the introductory text is republished, and the following definitions are added in alphabetical order:

§ 417.401 Definitions.

As used in this subpart, and in subparts K through R of this part, unless the context indicates otherwise—

* * * * *

National coverage decision (NCD) means a national policy statement regarding the coverage status of a specified service, that HCFA makes under section 1862(a)(1) of the Act, publishes in the **Federal Register** as a notice or HCFA Ruling, or announces by other formal notice. (The term does not include coverage changes mandated by statute.)

Significant cost, as it relates to a particular NCD, means either of the following:

(1) The average cost of furnishing a single service exceeds a cost threshold that—

(i) For calendar years 1991 and 1992, is $100,000; and

(ii) For 1993 and subsequent calendar years, is the preceding year's dollar threshold, adjusted to reflect the increase or decrease in the United States per capita cost (USPCC) for the preceding year.

(2) The cost of all of the services furnished nationwide as a result of the particular NCD represents at least 0.1 percent of the USPCC multiplied by the total number of Medicare beneficiaries nationwide for the applicable calendar year.

* * * * *

3. In § 417.414, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 417.414 Qualifying condition: Range of services furnished by an HMO or CMP.

(a) *Condition.* The HMO or CMP must demonstrate that it is capable of delivering to Medicare enrollees the range of services required in accordance with this section.

(b) *Standard: Range of services*—(1) *Basic requirement.* Except as specified in paragraphs (b)(3) and (b)(4) of this section, an HMO or CMP must furnish to its Medicare enrollees (directly or through arrangements with others) all Medicare services to which those enrollees are entitled, to the extent that those services are available to Medicare beneficiaries who reside in the HMO's or CMP's geographic area but are not enrolled in the HMO or CMP.

(2) *Availability.* The services are considered available if either of the following criteria is met:

(i) The sources are located within the geographic area of the HMO or CMP.

(ii) It is common practice to refer patients to sources outside that geographic area.

(3) *Exception and requirement for hospice care.* An HMO or CMP is not required to furnish hospice care as described under part 418 of this chapter. However, HMOs and CMPs must inform their Medicare enrollees concerning the availability of hospice care if either of the following criteria is met:

(i) A hospice that participates in Medicare is located within the geographic area of the HMO or CMP.

(ii) It is common practice to refer patients to hospices outside that geographic area.

(4) *Exception for national coverage decision (NCD) services: Risk HMOs and CMPs.* A risk HMO or CMP is not required to furnish or pay for an NCD service until the contract year beginning after the next per capita rate announcement if all of the following conditions are met:

(i) HCFA has determined and announced that the NCD service meets the definition of "significant cost" in § 417.401.

(ii) The cost of that service was not included in the determination of the per capita rate of payment that HCFA pays the HMO or CMP.

(iii) The NCD that established coverage of the service was issued on or after the date of the announcement of the per capita rate of payment for that contract year.

(5) *Examples.* The following examples apply to NCD services of significant cost and show how the NCD announcement date (which determines whether the cost of that service is taken into account in calculating the per capita rate of payment) in turn determines when the HMO or CMP becomes responsible for furnishing or paying for the NCD service.

Example A: An NCD is announced on September 1, 1993, effective on the date of announcement. Because this NCD was announced before September 7, 1993, the announcement date of the per capita rate of payment for calendar year 1994, a risk HMO or CMP is responsible for furnishing or paying for the NCD service beginning with calendar year 1994.

Example B: An NCD is announced on December 1, 1993, effective on date of announcement. Because this NCD was announced after September 7, 1993, the announcement date of the per capita rate of payment for calendar year 1994, the risk HMO or CMP is not responsible for furnishing or paying for the NCD service until the beginning of calendar year 1995.

* * * * *

4. In § 417.416, a new paragraph (b)(3) is added to read as follows:

§ 417.416 Qualifying condition: Furnishing of services.

* * * * *

(b) * * *

(3) If more than one type of practitioner is qualified to furnish a particular service, the organization may select the type of practitioner to be used.

* * * * *

5. In § 417.440, the section heading and paragraphs (a) and (b)(1) are revised to read as follows:

§ 417.440 Entitlement to health care services from an HMO or CMP.

(a) *Basic rules.* (1) Subject to the conditions and limitations set forth in this part, a Medicare enrollee of an HMO or CMP is entitled to receive health care services directly from, or through arrangements made by, the HMO or CMP, as specified in this section and § § 417.442 and 417.444.

(2) A Medicare enrollee is also entitled to receive timely and reasonable payment directly (or have payment made on his or her behalf) for services he or she obtained from a provider or supplier outside the HMO or CMP if those services meet either of the following conditions:

(i) They are emergency services or urgently needed unforeseen services as defined in § 417.401.

(ii) They are services denied by the HMO or CMP and found (upon appeal under subpart Q of this part) to be services the enrollee was entitled to have furnished by the HMO or CMP.

(b) *Scope of services.* (1) *Part A and Part B services.* Except as specified in paragraphs (c) through (e) of this section, a Medicare enrollee is entitled to receive from the HMO or CMP all the Medicare-covered services that are available to individuals residing in the HMO's or CMP's geographic area, as follows:

(i) Medicare Part A and Part B services if the enrollee is entitled to benefits under both programs.

(ii) Medicare Part B services if the enrollee is entitled only under that program.

* * * * *

6. In § 417.452, paragraph (a) is revised to read as follows:

§ 417.452 Liability of Medicare enrollees.

(a) *Deductibles and coinsurance*—(1) *General rules.*

(i) A Medicare enrollee of an HMO or CMP is responsible for HMO or CMP charges that represent applicable Medicare deductible and coinsurance amounts.

(ii) The amounts that the HMO or CMP charges its Medicare enrollees under paragraph (a)(1)(i) of this section may not exceed, on the average, the actuarial value of the deductibles and coinsurance for which the Medicare enrollees would be responsible if they were not enrolled in an HMO or CMP.

(2) *Special rules: Medicare enrollees of risk HMOs and CMPs.* (i) If a risk HMO or CMP reduces the deductible and coinsurance charges in accordance with the "additional benefits" option provided in § 417.440(b)(4)(i), the enrollee pays less than would otherwise be required under paragraph (a)(1) of this section.

(ii) A Medicare enrollee of a risk HMO or CMP is not responsible for deductibles applicable to national coverage decision (NCD) services that the HMO or CMP is not required to furnish because they are excepted under § 417.414(b)(4). The exemption applies regardless of whether the HMO or CMP furnishes the services or the enrollee obtains them from other sources.

(3) *Type of charge and source of payment.* (i) The deductible and coinsurance charges imposed by an HMO or CMP may be in the form of premiums, membership fees, or per-unit or similar charges.

(ii) The deductible and coinsurance charges may be paid by the enrollee or on his or her behalf by another individual, organization, or entity.

* * * * *

7. Section 417.586 is revised to read as follows:

§ 417.586 Special rules: Payment for significant cost national coverage decision (NCD) services.

(a) *Applicability.* This section applies to NCD services that a risk HMO or CMP is not required to furnish because they are excepted under § 417.414(b)(4).

(b) *Method of payment.* If a Medicare enrollee of a risk HMO or CMP receives an NCD service specified in paragraph (a) of this section, payment for that service—

(1) Is in addition to the per capita payments to the HMO or CMP; and

(2) Is made by the fiscal intermediary or carrier under the usual Medicare rules and methods set forth in part 405; part 410, subpart E; part 412, 413, or 415, as appropriate; and subject to the requirements of part 424 of this chapter.

(c) *Exceptions.* HCFA does not make additional payments under paragraph (b) of this section if the HMO or CMP—

(1) Is obligated to furnish the NCD service as an "additional benefit" under § 417.592; or

(2) Furnishes the NCD service as an optional or required supplemental service paid for by the Medicare enrollee under § 417.440 (b)(2) or (b)(3).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 28, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 3, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–3609 Filed 2–18–94; 8:45 am]

BILLING CODE 4120–01–P

42 CFR Part 417

[OCC–018–P]

RIN 0938–AF16

Medicare Program; Limits on Payment to Health Maintenance Organizations (HMOs), Competitive Medical Plans (CMPs), and Health Care Prepayment Plans (HCPPs)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove the provision (never implemented) that would have made the adjusted average per capita cost (AAPCC) the absolute limit on payment for services furnished to Medicare enrollees by an HMO or CMP with a cost contract.

This change is necessary to conform our rules to the interpretation of the statute as set forth in court decisions relating to payment of reasonable costs.

This rule would also provide for using the AAPCC as a presumptive limit, subject to exceptions, for HMOs and CMPs with cost contracts, and for health care prepayment plans (HCPPs) that furnish inpatient hospital care as well as part B services;

Eliminate the effective incentives exception that is currently available to HCPPs;

Require HCPPs that do not furnish inpatient hospital services to document that their costs do not exceed what Medicare's cost would have been if the Medicare beneficiaries who received the services had not enrolled in the HCPP; and revise the rules for reporting costs.

DATES: Comment date: We will consider comments received no later than 5 p.m. on April 25, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: OCC–018–P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code

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OCC–18–F. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

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FOR FURTHER INFORMATION CONTACT: Jennifer Messersmith, (202) 401–2325; Alfred D'Alberto, (410) 966–7610 (For full reporting of costs).

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Medicare program (title XVIII of the Social Security Act (the Act)), HCFA helps pay for health services furnished to eligible beneficiaries. Under "part A" (Hospital Insurance), HCFA pays hospitals and other providers of services for inpatient hospital services, and some skilled nursing facility services, home health care, and hospice care. Under "part B" (Supplementary Medical Insurance), HCFA helps pay for physicians' services, as well as hospital outpatient and certain other medical services.

In general, HCFA pays for Medicare part A and part B services under a fee-for-service system that includes a variety of payment methods such as—

- Fee schedules for physician and laboratory services and durable medical equipment;
- Diagnosis-related groups for most hospital services under the prospective payment system (PPS);
- Reasonable costs for skilled nursing care, home health services and the services of certain hospitals not subject to the PPS; and
- Reasonable charges for some supplier services.

For part A services, HCFA usually pays the provider and, for part B services, the supplier who has accepted assignment or, if assignment has not been made, the beneficiary. Payment is on the basis of claims submitted by the provider, supplier, or beneficiary after the service has been furnished.

Title XVIII of the Act also permits beneficiaries to enroll in, and receive their Medicare benefits through, prepaid health care organizations. These include health maintenance organizations (HMOs), and competitive medical plans (CMPs), with contracts under section 1876 of the Act, and health care prepayment plans (HCPPs) with agreements under section 1833 of the Act. HMOs and CMPs are required to furnish the full range of Medicare benefits, and do not bill on a fee-for-service basis for covered services furnished to their Medicare enrollees. Rather, HCFA pays the organization in advance a monthly amount for each enrolled beneficiary. If the HMO or CMP contracts to be paid on a reasonable cost basis, there is a cost reconciliation at the end of the year. HCFA also pays HCPPs on a reasonable cost basis, following procedures similar to those used for HMOs and CMPs, but only for part B services. If an HCPP arranges for part A services for its enrollees, the Medicare intermediary pays the provider for these services on a fee-for-service basis.

As of March 1993, about 2.4 million of the 33 million Medicare beneficiaries had chosen to enroll in an HMO, CMP, or HCPP.

This proposed rule would impose presumptive limits on reasonable costs—

- For HMOs and CMPs that choose to contract with HCFA on a reasonable cost basis; and
- For HCPPs that furnish (to Medicare enrollees) services in general acute-care hospitals.

These presumptive limits replace absolute limits that were promulgated in 1985 but were never put into effect for reasons given in HCFA Ruling No. 89–2, and explained below under section II.B.2. This rule would establish bases for exceptions to the presumptive limit and would also establish limits on reasonable costs for HCPPs that do not furnish inpatient hospital services.

II. Background

A. HMOs, CMPs, and HCPPs

1. HMOs and CMPs

Under section 1876 of the Act we are authorized to contract with HMOs and CMPs to pay them either on a risk basis or on a cost basis for services they furnish to Medicare enrollees. HMOs and CMPs must provide all part A and part B services to Medicare enrollees entitled to both part A and part B, but HCPPs may limit the services they provide. Risk HMOs and CMPs receive monthly capitation payments equivalent to 95 percent of the adjusted average per capita cost (AAPCC).

The AAPCC is an estimate of the average per capita cost, under the fee-for-service system, for Medicare-covered services furnished to Medicare beneficiaries who are not enrolled in HMOs, CMPs, or HCPPs. HCFA's Office of the Actuary prepares an AAPCC for both aged and disabled beneficiaries for each county in the United States and adjusts the AAPCC rates demographically by age, sex, Medicaid status, and institutional status. For example, a 65–69 year old female, who is not eligible for Medicaid and not in an institution, might have a monthly AAPCC rate of $300 in a given county. An 80–84 year old female, institutionalized in the same county, might have an AAPCC rate of $680. These rate differences reflect the lower average Medicare costs for the younger, non-institutionalized beneficiary. There are 30 demographic groups for the aged Medicare population and 30 for the disabled Medicare population.

Cost HMOs and CMPs receive monthly interim payments based on the annual operating budget they submit before the beginning of their contract year. At the end of the contract year, they must submit a cost report to document their actual costs, as a basis for a final settlement.

As of March 1993, there were 93 risk HMOs and CMPs with 1,603,178 Medicare enrollees and 22 cost HMOs and CMPs with 140,415 enrollees.

2. HCPPs

HCPPs are prepaid health care organizations that have agreements with HCFA to be paid in accordance with section 1833(a)(1)(A) of the Act. Under such an agreement, HCFA pays the HCPP only for part B services. Payment is based on "reasonable costs" and those costs are generally determined following the methods used for cost HMOs and CMPs, as described under section II.A.1. of this preamble. Some HCPPs provide the full range of part B services, while others offer a much more limited scope.

HCPPs are not required to provide part A services and cannot be paid for those services under the HCPP agreement. Some HCPPs are organized to furnish comprehensive health care services to their Medicare enrollees and to their commercial enrollees. Those HCPPs, which could elect to contract as HMOs or CMPs, furnish or arrange for all or most part A services. The providers of those part A services submit their claims to, and are paid by, Medicare intermediaries.

In March 1993, there were 57 HCPPs with 640,633 Medicare enrollees.

B. History of Cost Limits

1. Statutory basis for setting cost limits

Section 1861(v)(1)(A) of the Act authorizes us to establish limits on reasonable costs for entities that are paid on a reasonable cost basis. The limits must be based on estimates of the costs necessary in the efficient delivery of health care services. Our basic goal in establishing limits on costs for HMOs, CMPs, and HCPPs is to ensure that the Medicare program pays no more for care furnished to beneficiaries enrolled in these organizations than it would pay for services for beneficiaries not enrolled in an HMO, CMP, or HCPP. We consider that to pay more than we would have paid under the fee-for-service system would be inefficient and, thus, an inappropriate use of Medicare funds.

2. Provisions of the Regulations

Before 1986, the regulations provided that, for HMOs and CMPs paying physicians on a salaried basis, costs were reasonable if they did not exceed the costs for comparable services in the HMO's or CMP's geographic area. Those costs, however, were not subject to the reasonable charge levels of the Medicare fee-for-service payment system, and HMOs and CMPs were not required to document the comparability of their costs to the costs allowed under that system.

Costs incurred for payment to groups of physicians (organized either on a group practice or an individual practice basis) and for payment for other part B services could not exceed the Medicare reasonable charge levels. However, with respect to physicians' services, most HMOs and CMPs were exempted from this limit, under the "effective incentives" policy. Under this policy, the exemption was available if the members of the group of physicians accepted effective incentives, such as risk-sharing, designed to discourage unnecessary or unduly costly utilization of health services. In connection with these rules, the AAPCC was used as a guideline, but not as a limit, in assessing the reasonableness of the total costs incurred by HMOs and CMPs.

The rules for HCPPs were similar and are still in effect. For HCPPs that pay physicians on a basis other than fee-for-service, such as capitation, costs are not measured against the reasonable charge or other fee-for-service rate. Rather, costs are measured against what a "prudent buyer" would pay for comparable services in the geographic area. Payments based on fee-for-service are generally subject to Medicare reasonable charge levels. However, if the payments are to a medical group whose members accept "effective incentives" to control utilization, the payments are subject to the "prudent buyer" standard rather than reasonable charge levels.

On January 10, 1985, at 50 FR 1314, we published a final rule that established a new part 417 containing the rules applicable to prepaid health care. Section 417.532 provided that, beginning in 1986, 100 percent of the weighted average of the AAPCCs of each class of a cost HMO's or CMP's Medicare enrollees would be applied as an absolute limit on the total amount payable to that HMO or CMP. There would be no exceptions and no possibility of payments in excess of that limit. The provisions relating to effective incentives were removed from the rules for HMOs and CMPs as no longer necessary, but retained for HCPPs, to which the new absolute limit would not apply. Although the new absolute limit never went into effect, the effective incentives policy was not restored for HMOs and CMPs, and the inoperative rule (§ 417.532(a)(3)) was not removed from the CFR.

In October 1989, HCFA issued HCFA Ruling (HCFAR) No. 89–2, which stated that: "Since the time that § 417.532 of the regulations was promulgated, the courts have construed the authority to set cost limits under section 1861(v)(1)(A) [of the Act] to support generalized cost limits applied on a presumptive basis, but not absolute cost limits applied on a final or conclusive basis * * *." The courts have interpreted section 1861(v)(1)(A) of the Act as requiring that a Medicare provider be afforded an opportunity under the regulations to show that in its particular case, costs in excess of the applicable cost limits were reasonable and therefore reimbursable. Thus, the court decisions support application of presumptive limits, that is, limits with an exception process that affords the cost-contracting entity the opportunity to qualify for additional payments if it can show that its excess costs are justified as "reasonable."

As a result of the policies discussed above, we have not accumulated data that would show whether the furnishing of health care services by cost HMOs and CMPs, and HCPPs is cost-effective as compared to the furnishing of those services under the Medicare fee-for-service system.

III. Provisions of the Proposed Rule

A. Provisions Applicable to HMOs and CMPs, and to HCPPs That Furnish Inpatient Hospital Services

1. Background

Since HCPP agreements pertain only to part B services, HCFA makes payment directly to the providers for part A services furnished to HCPP enrollees. However, some HCPPs "furnish inpatient services" in the sense that they make the arrangements for enrollees to receive those services, and pay applicable Medicare coinsurance and deductibles in return for a premium from the enrollee. Like HMOs, HCPPs that furnish both part A and part B services would generally have an incentive to use more cost-effective part B services when possible, rather than more expensive part A services.

However, if we imposed a cost limit only on the services we reimburse through the HCPP agreement (that is, part B services), it would create an incentive for the HCPP to shift costs by authorizing more expensive part A services (which will be reimbursed directly to the provider), rather than part B services that would be subject to the limit. Accordingly, to avoid potentially inappropriate increases in part A utilization, we propose to apply the aggregate part A and part B presumptive limit to all costs incurred for Medicare beneficiaries enrolled in HCPPs that furnish inpatient hospital services. If the aggregate costs exceed the limit, the HCPP would be considered to have an overclaim for its part B services. (The limit would apply to HCPPs that furnish inpatient care in hospitals commonly referred to as "general acute-care" or "short-stay" hospitals, as distinguished from psychiatric or rehabilitation hospitals or other chronic or long-term hospitals.)

2. Presumptive Limit

The presumptive limit on costs would be 100 percent of the weighted average of the AAPCCs of each class of Medicare enrollees. Since the AAPCC is based on the costs of all Medicare services received by beneficiaries, as a presumptive limit it must be applied to the total cost of all Medicare-covered services received by the Medicare enrollees, including all part A and part B services, whether furnished by the prepaid health care organization or obtained from other sources. In other words, all costs attributable to Medicare enrollees, whether paid by the organization or paid by Medicare's

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intermediaries and carriers, would be totaled and compared to the presumptive limit.

We note that we plan to consider adjustment to, or a replacement for, the AAPCC as the basis for payment to risk HMOs and CMPs. If we make any such changes, we might also need to modify using the AAPCC as the basis for the presumptive limit. This would involve additional rulemaking activity.

3. Exception Process

If costs exceed the presumptive limit, there would be an exceptions process that would permit payments in excess of the limit, for either of the following reasons:

a. Special needs. The Medicare enrollees have special needs that require a volume and intensity of services that exceeds the average for Medicare beneficiaries of the same age and sex living in the same service area.

- For exceptions based on special needs, we are proposing the methodology discussed under section IV of this preamble.
- If, after application of that methodology, the organization wished further review, it could present additional documentation for HCFA's consideration. The organization could seek such further review if HCFA found that the organization did not meet HCFA's standards for special needs or the HMO or CMP believed that not enough money was being allowed for its special needs enrollees.

b. Extraordinary circumstances. There were extraordinary circumstances beyond the control of the organization. The circumstances include, but are not limited to, strikes, fire, earthquake, flood or similar unusual occurrences with substantial cost effects.

For exceptions based on extraordinary circumstances, the HMO or CMP would be required to submit to HCFA information documenting the particular extraordinary circumstances that it believes constitute justification for additional payments and the amount of additional payments justified by the extraordinary circumstances.

4. Decision Not to Restore the Effective Incentives Exception

We would not restore the effective incentives exception that was deleted from the regulations when we promulgated the absolute limitation on payment to cost HMOs and CMPs in 1985.

The existence of "effective incentives" was used by HCFA as a proxy for efficiency. We are now using the presumptive limit as a proxy for efficiency, and we believe this is a more appropriate standard.

5. Exemption Based on Number of Medicare Enrollees

Under the proposed rule, HCFA could exempt organizations with fewer than 500 Medicare enrollees from the cost limits for up to 2 consecutive years. HCFA could specify additional criteria that these organizations must meet in order to qualify for this exemption.

6. Effect of Having a Final Overclaim for 2 Consecutive Years

HCFA could terminate contracts with organizations that have a final overclaim for at least 2 consecutive years. Final overclaim means that, after application of the exception process, the organization still has excess claims that it cannot justify as "reasonable." The rationale for termination is that organizations with final overclaims are inefficient as compared to the fee-for-service system, and it is not prudent for HCFA to continue to contract with inefficient organizations.

B. Provisions Applicable to HCPPs That do not Furnish Inpatient Hospital Services

1. Criteria for Reasonableness

The costs incurred by the HCPP for physicians' services and other part B supplier services would be considered reasonable if they did not exceed, in the aggregate, the amount that HCFA would pay, in the aggregate, for those services if they were furnished to beneficiaries not enrolled in the HCPP or any other prepaid health care plan. HCPP costs would be compared to costs under the usual fee-for-service payment methods, based on fee schedules, reasonable charge limits, or reasonable cost limits, whichever is appropriate for the particular services. The aggregate amount would include an amount equivalent to the costs of claims processing.

2. Documentation of Services

- Participating HCPPs would be required to include in their cost reports documentation of each service furnished to their Medicare enrollees, using the Medicare billing codes.
- Organizations seeking an agreement for participation as an HCPP would be required to demonstrate that they have in place a system that enables them to comply with the documentation requirement.
- Failure to comply with the documentation requirement would be a basis for termination or nonrenewal of the agreement.

We would amend § 417.800(b), to include the documentation requirement.

3. Removal of "Effective Incentives" Provision

We would remove the effective incentives provisions that appear in § 417.802(2)(ii)(B) and (b)(3)(ii) of the current HCFA rules. We believe that all HCPPs should be subject to the requirement that payment for services furnished to their Medicare enrollees not exceed the estimate of what HCFA would have paid for those services under the fee-for-service system. We believe that a more effective way to ensure that outcome is to use the presumptive limit for HCPPs that furnish inpatient hospital services, and to use reasonable charges to define reasonable costs for other HCPPs.

IV. Methodology for Calculating Payments in Excess of the Presumptive Limit (Additional Payments)

Note: We believe that HMOs, CMPs, and HCPPs will be particularly interested in this methodology, and we are receptive to suggestions for alternative methodologies. Any proposed alternatives must specifically address how that methodology would ensure that HCFA pays no more for care to beneficiaries enrolled in these organizations than it would pay for their care if the beneficiaries were not so enrolled.

The methodology discussed below applies only to HMOs and CMPs, and to HCPPs that furnish inpatient hospital services. It pertains only to determining whether we can make additional payments based on special needs of Medicare enrollees. We use the term "sicker than average enrollment" to mean enrollees who require a volume and intensity of services that exceeds the average for Medicare beneficiaries of the same age and sex, living in the same geographic area.

A. Background

1. The Act

Section 1861(v)(1)(A) of the Act authorizes us to establish limits on costs for entities paid on a reasonable cost basis so that the Medicare payment does not exceed the "estimates of the costs necessary in the efficient delivery of needed health services". Section 1861(v)(1)(A) also gives us flexibility for setting those limits.

2. The Courts

The courts have indicated that absolute limits on costs are not acceptable, but, to date, appear to approve of presumptive limits. A presumptive limit means that the organization may obtain additional payments, that is, payments above that limit, if it can document that such payments are justified, using reasonable

criteria to estimate payable amounts in excess of the limits.

3. Proposal

We are proposing to establish 100 percent of the weighted average of the AAPCC as the presumptive limit for HMOs and CMPs, and for HCPPs that furnish inpatient hospital services. We consider the presumptive limit to be a proxy for whether or not the HMO, CMP, or HCPP is delivering needed health services efficiently. In other words, we consider an organization with total costs below the presumptive limit to be operating more efficiently than Medicare operates under the fee-for-service system. Conversely, we consider organization with costs above the presumptive limit to be operating less efficiently.

B. Methodology

The methodology discussed below is based on the fact that, generally in health care financing, a small number of high-cost cases, called "outliers," account for a large percentage of outlays. For example, in 1989, in the Medicare program, about 90 percent of persons served accounted for only 37 percent of the outlays, while the remaining 10 percent of persons served required 63 percent of the outlays.

In order to estimate what percentage, if any, of an organization's costs is attributable to inefficiency, we would compare the average annual per capita cost for the organization's non-outliers with the average annual per capita cost for non-outliers under the fee-for-service system. If the organization's average for non-outliers were less than the fee-for-service average, we would consider the organization to be operating more efficiently than Medicare operates under the fee-for-service system. We would make the assumption that, since the organization operates efficiently for its non-outliers (who constitute the majority of its enrollment) its costs in excess of the presumptive limit are attributable to a sicker than average enrollment. We would pay any excess costs that are otherwise allowable.

However, if the organization's average for non-outliers exceeded the fee-for-service average, we would consider it to be operating less efficiently than Medicare operates under the fee-for-service system. If, for example, the organization's average exceeded the fee-for-service average by 3 percent, we would consider that the organization's services cost 3 percent more than Medicare would have paid for those services under the fee-for-service system. We would assess a presumptive overpayment of 3 percent on the organization's total costs for services to Medicare enrollees, that is, costs for both outliers and non-outliers.

C. Application and Example

The methodology consists of 3 stages:

Stage 1. Determine whether the organization's total costs exceed the presumptive limit.

Example of Stage 1: (a) Determine the presumptive limit on the organization's costs for Medicare enrollees, which is 100 percent of the weighted average of the AAPCC's of each class of Medicare beneficiaries.

Presumptive limit: $4,230,000.

b. Determine the organization's total costs for its Medicare enrollees, that is, part A and part B costs, both in-plan and out-of-plan, and administrative costs.

Audited Cost Report Costs[1] ...	$1,500,000
In-plan hospital & SNF costs ..	2,700,000
Out-of-plan costs, parts A & B	800,000
Total Costs	5,000,000

[1] Costs on the cost report currently include costs for in-plan part B services (except hospital outpatient department services), costs for part A services other than hospital and SNF, and administrative costs.

c. Determine whether the organization's total costs exceed the presumptive limit.

Total costs	$5,000,000
Presumptive limit	(4,230,000)
Presumptive overpayment ...	770,000

- If the costs were equal to, or less than, the presumptive limit, HCFA would pay the total allowable costs for the organization's Medicare enrollees.
- Since there is a presumptive overpayment, the process would continue to Stage 2. (HCFA would give the organization written notice and opportunity to respond in accordance with § 417.532(a)(6) of the proposed rules.)

To carry out Stage 2, we need the annual outlier cost threshold, which HCFA establishes on a national or regional basis, to distinguish "outlier costs" from "non-outlier costs." For example, if the threshold is $39,000, the costs for all beneficiaries whose costs exceed $39,000 would be outlier costs, and the costs for all beneficiaries whose annual costs are equal to, or less than, $39,000 would be considered "non-outlier costs." HCFA's determination of the outlier threshold is discussed under section VI of this preamble. The organization would determine its costs for outliers using HCFA's payment methods such as fee schedules, reasonable charge limits, and reasonable cost limits, as appropriate.

Stage 2. Determine whether the average annual per capita non-outlier cost for the organization's Medicare enrollees exceeds the average non-outlier costs for the fee-for-service beneficiaries in the organization's service area.

a. If the average for the organization's enrollees is equal to, or less than, the average for the fee-for-service beneficiaries, there is no final overpayment. As noted above, the presumption is that the organization is also efficient in furnishing services to outlier enrollees.

b. If the average cost for the organization's non-outlier enrollees exceeds the average cost for the fee-for-service beneficiaries, the process continues to stage 3.

Stage 3. Determine how much of the organization's presumptive overpayment is attributable to sicker than average enrollment, and how much to inefficiency.

Examples of stages 2 and 3.
Stage 2:

	Fee-for-service beneficiaries	Plan enrollees
Total costs	$100,000,000	$5,000,000
Outlier costs	(25,000,000)	(1,500,000)
Non-outlier costs	75,000,000	3,500,000
Number of non-outliers	30,000	1,375
Average annual cost for non-outliers, weighted by the AAPCC factors: age, sex, institutional status, Medicaid status, and geographic area.	2,500	2,545

The average non-outlier cost for the organization's Medicare enrollees exceeds the average non-outlier costs for fee-for-service beneficiaries by $45.

Stage 3: Divide the excess average cost by the average claimed costs to determine the inefficiency factor:

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$$\frac{\$45}{\$2545} = 1.77 \text{ percent inefficiency factor}$$

The inefficiency factor represents HCFA's estimate of the percentage by which the organization's costs exceeded HCFA's estimate of the costs for all the organization's Medicare enrollees if HCFA had paid for their care under the fee-for-service system. Determine the final overclaim amount by applying the 1.77 percent "inefficiency factor" to the total costs attributable to the organization's Medicare enrollees, as follows:

Total Costs	$5,000,000
Inefficiency Factor	× .0177
Final Overclaim	$88,500

If the organization chooses to submit additional documentation in support of higher additional payments after application of this methodology, the final overclaim amount may be adjusted.

In this example of a presumptive overpayment of $770,000, the final overclaim or disallowance is $88,500. The organization would receive $681,500 ($770,000 minus $88,500) in additional payments because of the exceptions process. In other words, HCFA would estimate that $681,500 of the presumptive overpayment is attributable to a sicker than average enrollment and $88,500 is attributable to inefficiency. HCFA would pay the amount attributable to a sicker than average enrollment.

V. Options Considered

A. Options Considered for the Presumptive Limit

Our primary goal in setting limits for coordinated care organizations is to ensure that we do not pay more for Medicare beneficiaries enrolled in these organizations than we would pay if the beneficiaries were not so enrolled. The AAPCC is an estimate of the average per capita cost for Medicare beneficiaries who receive their Medicare-covered services in the fee-for-service sector, that is, Medicare beneficiaries who are not enrolled in HMOs, CMPs, or HCPPs. Because it is a per capita estimate based on 100% of the costs for these beneficiaries in a geographic area, we consider it to be an excellent basis for estimating the aggregate amount that HCFA would have paid for HMO, CMP, and HCPP enrollees if they had not been so enrolled.

HCFA has used the AAPCC in connection with cost limits or other controls for prepaid health care organizations as follows:

1. Before 1985, under a demonstration, as the basis for payment to risk HMOs.
2. Beginning in 1985, as the basis for payment to risk HMOs and CMPs.
3. As the basis for calculating payments for an earlier model of risk HMO that was repealed when the current HMO and CMP risk program was enacted.
4. Before 1986, as a guideline for cost HMOs.
5. As the basis for a proposed absolute cost limit for cost HMOs and CMPs promulgated to be effective in 1986, but never implemented.

In HCFA Ruling 89–2, we indicated that the courts "have construed the authority to set cost limits under section 1861(v)(1)(A) [of the Act] to support generalized cost limits applied on a presumptive basis."

We considered two options. First, we considered using 100 percent of the AAPCC as a guideline, as we had done before promulgation of the 1985 regulation establishing the AAPCC as an absolute limit. Second, we considered using 100% of the AAPCC as a presumptive limit.

Application of a guideline simply triggers a closer scrutiny of the claimed costs. Use of a presumptive limit with an exceptions process provides a clearer standard for determining the amount of payment. We expect that a presumptive limit will provide incentives for more efficient operation, because overpayments will be determined unless the organization can document that additional payments are appropriate either (1) because of a sicker than average enrollment or (2) because of extraordinary circumstances. For this reason, we believe the use of a presumptive limit better serves the intent, articulated in section 1861(v)(1)(A) of the Act, of using Medicare monies only to pay for the efficient delivery of needed health services.

B. Options Considered for Methodology for Calculating Exceptions for a Sicker Than Average Enrollment

We considered four options for a methodology to use in estimating what portion, if any, of an organization's presumptive overpayment was attributable to inefficiency. Two of the options addressed only part B costs, and administrative costs. The other two approaches addressed the full range of costs for Medicare enrollees.

First, we considered setting absolute limits for the organization's administrative and part B costs based on fee-for-service payments. The final overpayment or disallowance would have been the amount by which (1) the organization's aggregate payments for part B services exceeded Medicare's aggregate payments for the same services and (2) the organization's relative administrative costs exceeded Medicare's relative administrative costs. This approach did not address our concerns about the inappropriate utilization of part A services and would not have recognized the efficiencies that can be achieved by using outpatient services rather than inpatient services, as most prepaid health care organizations do.

Second, we considered calculating averages of volume and price for part B services, comparing the organization's average price and volume with the Medicare fee-for-service average. The final overpayment or disallowance would have been based on whether the organization exceeded Medicare averages for price, or volume, or both. The disallowance for overpayments on the price side would have been the amount by which the organization's average price exceeded Medicare's fee-for-service average. The disallowance for overpayments on the volume side would have been in the form of reductions to allowable administrative costs, using the rationale that we should not pay 100% of administrative costs to an organization that is not managing care, as evidenced by its higher volume.

Both of these options would have required organizations to document all services on an individual basis. However, they focused only on part B and administrative costs. They did not take into consideration the entire range of services. We believe that HMOs and CMPs and HCPPs that furnish inpatient hospital services should be held accountable for all of the Medicare-covered services received by their Medicare enrollees, whether furnished by the plan or obtained from other sources. For this reason, we considered the two following options, both of which use an outlier-based approach. The first option looked only at the organization's outlier costs in relation to outlier costs in the comparable fee-for-service area. We realized that we could not limit our review to outlier costs because outliers are, by definition, not representative of the relevant costs by which HCFA may judge whether a prepaid health care organization is efficient or inefficient in comparison with the fee-for-service sector overall.

The second option was the one described in this preamble. We concluded it was the best approach for three reasons.

- When compared to the other outlier approach, it was more in consonance with the statutory directive to make estimates of the costs for the efficient provision of needed health services.
- A calculation based on outliers imposes manageable administrative requirements on the organization because outliers comprise a small percentage of enrollees and because most coordinated care organizations must track costs for outliers in order to receive payments from their reinsurers.
- Unlike the first two options, this approach examines all of the Medicare services and costs and thus holds the organization accountable for all the Medicare-covered services received by its enrollees.

C. Options Considered for HCPPs That do not Furnish Inpatient Hospital Services

Our primary goal in setting limits for prepaid health care organizations is to ensure that we do not pay more for Medicare beneficiaries enrolled in these organizations than we would pay if the beneficiaries were not so enrolled. We consider Medicare fee-for-service payment amounts for individual services to be the most appropriate proxy for the amount that Medicare would have paid for a group of HCPP enrollees if those beneficiaries were not so enrolled. As discussed above, we also consider the AAPCC, which is derived from Medicare fee-for-service payment amounts, to be an appropriate estimate of total Medicare fee-for-service costs for a group of Medicare beneficiaries. In addressing changes to the regulations governing allowable payments to these HCPPs, we considered three options.

First, we considered making only technical changes to the current regulations by updating them to reflect the movement in fee-for-service Medicare away from reasonable charge-based payment to fee schedules for physician and lab services and durable medical equipment. Under this option, we would have retained the effective incentives provisions. This approach was not consistent with our primary goal.

Second, we considered using the part B AAPCC plus an appropriate amount for administrative costs. We discarded this option because it might constitute an incentive for these HCPPs to allow or encourage their Medicare enrollees to seek part A services for medical conditions for which part B services would be equally or even more appropriate, but might bring the HCPPs' incurred costs above the part B AAPCC.

Third, we considered using aggregate Medicare payment levels for individual part B services to define "reasonable cost" for these HCPPs. We selected this approach because we believe it is consistent with our primary goal. We also considered whether it would be feasible to specify an appropriate volume of services. We concluded that, at this time, we do not have sufficient data to determine appropriate volume for part B services for HCPP enrollees, so a volume formula is not included in this proposed rule.

VI. Outlier Threshold

In setting the amount of the outlier threshold, we are concerned that it include an adequate number of high cost beneficiaries, without including such a substantial proportion of costs that its utility as a measure of efficient behavior is limited. Because in general in health care financing a small number of individuals account for a large percentage of outlays, finding an appropriate balance between the percentage of total costs represented by the outlier threshold and the percentage of beneficiaries represented is difficult. There is a range of reasonable choices.

Using 1989 data summarized in the table below, we examined the relationship between the cumulative percentage of persons served and the cumulative percentage of program payments to determine a reasonable outlier threshold. At the low end for a potential outlier threshold, we believe a figure that accounts for about 2 percent of beneficiaries and about 25 percent of outlays is reasonable. At the high end, we believe a figure that accounts for about 0.3 percent of beneficiaries and about 7 percent of total outlays is reasonable. The approximate mid-point between these two ends is the 1 percent of beneficiaries who account for about 16 percent of total payments.

We are proposing to set the outlier threshold at the lowest annual per capita amount that we project to account for the 1 percent of Medicare beneficiaries with the highest annual per capita outlays. In 1989, that amount was about $39,000.

For 1993, the annual per capita amount that we project to account for the 1 percent of Medicare beneficiaries with the highest annual per capita outlays is $55,000. Outlays on behalf of this group of Medicare beneficiaries would account for about 16 percent of total outlays.

1989 DATA

Part A and Part B payments per person served	Cumulative percent person served	Cumulative percent program payments
$5,000	82.4	21.6
10,000	90.4	37.9
20,000	96.2	61.7
30,000	98.2	76.2
39,000	99.0	84.0
40,000	99.1	84.9
50,000	99.5	90.0
60,000	99.7	93.0
70,000	99.8	94.7
100,000	99.9	97.6

Using a set percentage of beneficiaries, for example, 1 percent as we are proposing here, instead of a set dollar figure eliminates the need to determine an inflation factor. The amount of the outlier threshold would increase by the change in the annual per capita amount that we project to account for the 1 percent of Medicare beneficiaries with the highest annual per capita outlays.

VII. Other Proposed Changes

A. Full Reporting

1. Background

Most HMOs and CMPs paid on a cost basis have elected under section 1876(h)(2) of the Act (as implemented by § 417.532(c) of the regulations) to allow HCFA to process all bills for hospital and skilled nursing facility services furnished to their Medicare enrollees. Under this election, HCFA simply performs a service (bill processing and payment) for the HMO or CMP. The HMO or CMP authorizes the services and retains responsibility for coordination of those services with other services it furnishes to its Medicare enrollees.

Section 417.576(b)(2)(i) implements the requirement of section 1876(h)(4)(A) of the Act that the HMO or CMP report its "per capita incurred cost". However, cost HMOs and CMPs have not been reporting the part A costs paid by the Medicare intermediaries. For those services, they currently report only the deductibles and coinsurance. When the regulations that would have imposed an absolute limit were developed, the cost report was revised to include the part A costs paid by Medicare intermediaries. However, because the absolute limit policy was never implemented, the revised cost report instructions were not implemented either.

We propose to amend § 417.576 to make clear that the incurred per capita costs in the cost report must include the costs of hospital and skilled nursing facility services paid by Medicare intermediaries at the election of the HMO or CMP.

B. Technical Amendments

1. In § 417.1, we would add a definition of "furnished", to make clear that in part 417, the term means made available by the HMO, CMP, or HCPP either directly or under arrangements it makes with other entities.

2. In § 417.800, we would revise paragraph (c)(2)(ii) to conform to the statutory provision and long-standing practice, under which the following are deducted from the reasonable cost incurred by the HCPP:

- An amount equal to 20 percent of that cost, representing the Medicare coinsurance.
- The actuarial equivalent of the Medicare part B deductible.

3. We also propose to remove, as outdated, the following sections and

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paragraphs that were applicable to contract periods that began before January 1, 1986, and to realign the designation schemes as necessary:

- (b) Paragraph (b) of § 417.546 (Physicians' services and other part B supplier services furnished under arrangements) and the Editorial note at the end of the section.
- Paragraph (d)(2) of § 417.560 (Apportionment: part B physician and supplier services).
- All of § 417.562 (Weighing of direct services furnished by physicians and other practitioners).

VIII. Other Required Information

A. Paperwork Reduction Act

Section 417.532(b) (with respect to HMOs and CMPs) and § 417.800(c) (with respect to HCPPs) require those organizations to submit the information necessary for HCFA to determine whether payment in excess of the presumptive limit is appropriate, because of the health condition of the organization's Medicare enrollees, or because of extraordinary occurrences. The time needed to prepare the information would depend on the particular circumstances but would not, we believe, exceed 8 hours per organization. Section 417.576 requires HMOs and CMPs to submit certified cost reports as a basis for final settlement. We estimate that preparation of the full cost report will require 100 hours.

If you comment on the information collection requirements, please send a copy of those comments directly to:

Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Bldg., Washington, DC 20503, Attention: Allison Herron Eydt, Desk Officer for HCFA.

B. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

IX. Regulatory Impact Statement and Flexibility Analysis

This proposed rule would establish a presumptive limit on payment to HMOs, CMPs, and HCPPs. We anticipate the following savings in Medicare expenditures for the next 5 fiscal years as a result of this proposed policy:

Medicare Program Savings

[In millions of dollars]

Fiscal year:	
1994	14
1995	15
1996	17
1997	19
1998	21

This rule would also require HMOs and CMPs to include in their cost reports the costs of inpatient hospital services and SNF care furnished to their Medicare enrollees, for which payment is made by Medicare intermediaries directly to the providers.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HMOs, CMPs, and HCPPs are considered to be small entities. Individuals are not considered small entities under the RFA.

Since this proposed rule represents a significant change in the application of cost limits for cost of HMOs, CMPs, and HCPPs, and would also require HMOs and CMPs to make minor changes in the reporting of their per capita costs, we are providing the following voluntary regulatory flexibility analysis.

1. Effect of the Presumptive Limit on Cost HMOs and CMPs and on HCPPs That Provide Inpatient Hospital Services

We believe that the costs of services furnished by these prepaid health care organizations should not exceed the costs for services furnished to an actuarially similar group of Medicare beneficiaries whose services are paid for under the Medicare fee-for-service payment systems. Excess cost can often be avoided by reducing unnecessary utilization and by selecting effective but less expensive treatment modalities.

There are approximately 55 plans (22 HMOs and CMPs, and an estimated 33 HCPPs) that would be subject to the proposed presumptive limit. Program data from 1989, the most recent year for which we have audited cost report data, indicate that, in 1989, 38 percent of these organizations would have exceeded a presumptive limit of 100 percent of the AAPCC, half of them by 0 to 10 percent. These organizations had, at that time, little incentive to monitor costs. This proposed rule makes two changes that should encourage them to pay more attention to costs incurred on behalf of Medicare enrollees:

- The imposition of the presumptive limit on all these organizations; and
- The elimination of the effective incentives policy that had remained in effect for HCPPs.

We believe that many of these organizations would respond promptly to these incentives and reduce expenditures. Consequently, we anticipate that, in the first year of implementation of these proposed rules, only 25 percent of the HMOs, CMPs, and HCPPs would exceed the presumptive limit, that is, for only 25 percent would all the costs incurred on behalf of their Medicare enrollees exceed 100 percent of the AAPCC. In subsequent years, we expect that this percentage would decline, as more of these organizations modify their practices in response to the incentives.

There are two basic methods for reducing costs. First, the organizations can implement utilization controls, particularly for inpatient hospital care. Currently these organizations are not reporting inpatient hospital and SNF costs and hence have no reason to opt for lower-cost alternatives. However, the proposed full reporting requirement would change this. HMOs and CMPs would be required to report all services furnished to Medicare beneficiaries. (See section B.3. of this voluntary regulatory flexibility analysis.)

Second, the organizations can review claims more aggressively to identify and remove duplicate claims that result in payment both from the organizations and the Medicare carrier to a physician or other supplier for the same service. Although organizations are currently required to identify duplicate claims, they have no incentive to do a thorough job. Although we do not have data on what percentage of total costs is represented by duplicate payments, we believe that the elimination of those payments could, in many cases, bring costs below the presumptive limit.

The proposed presumptive limit rules would provide exceptions of two kinds. In the first place, HCFA could exempt small organizations (those with fewer than 500 Medicare enrollees) from the presumptive cost limit for up to two consecutive years. The rationale is that a small enrollment is less likely (than a large enrollment) to be representative of the general Medicare population in the area served by the organization. The small enrollment could be more healthy or less healthy, and if less healthy, could lead to costs in excess of the limit.

In the second place, organizations that exceed the presumptive limit have the opportunity to document that their Medicare enrollees have health care needs that exceed those of the average mix of Medicare beneficiaries who reside in their service areas but, since

they are not enrollees, have their services paid for under the Medicare fee-for-service payment systems. An HMO, CMP, or HCPP that exceeded the presumptive limit would have the option of providing to HCFA data to document that its costs in excess of the limit are justified because of the greater health care needs of its Medicare enrollees. The full reporting requirement would assist HMOs and CMPs in this endeavor.

The organizations could also document unusual circumstances beyond their control (such as fire, flood, earthquake, strike) that had significant impact on their costs.

Upon documentation and verification by HCFA, the organization would receive payment for costs in excess of the limit if it could show that the excess costs were "reasonable."

Some organizations may feel disadvantaged because they are located in areas where there is a relatively low AAPCC. However, in all geographic areas, the basis for the AAPCC is precise data on Medicare costs for Medicare beneficiaries who are not enrolled in HMOs, CMPs, or HCPPs. In areas where the AAPCC is relatively low because the delivery of services under the fee-for-services systems is very efficient, prepaid health care organizations are still expected to be at least as efficient as the fee-for-service payment system. Only if the group of Medicare enrollees is less healthy than the Medicare average in the area could costs in excess of the presumptive limit be justified. In other words, a managed care system, as represented by prepaid health care organizations, is expected to be at least as efficient as the fee-for-service system.

This proposed rule could have a positive effect on the revenues of organizations that meet the criteria for payments in excess of the presumptive limit; organizations that do not meet those criteria may face reduced revenues. We estimate that the loss of revenue for HMOs, CMPs, and HCPPs that exceed the presumptive limit would be approximately 5 percent on the average. However, we believe that many of these organizations will change their practices in ways that will reduce their costs to correspond to the reduction in revenues. This would achieve the purpose of the proposed rule, which is to protect the Medicare program against excessive payments by giving the affected organizations an incentive to hold their costs to reasonable levels.

HCPPs that furnish hospital services are subject to the presumptive limit, which applies to all services, part B as well as part A. For these HCPPs, therefore, the removal of the "effective incentives" exception (under which these HCPPs were exempt from reasonable charge limits for physicians' services) does not have any additional impact.

2. Effect of Cost-Reporting Changes on HMOs, CMPs, and HCPPs

The change in reporting per capita costs (referred to as full reporting) would affect all 26 cost HMOs and CMPs. HCPPs that furnish inpatient hospital care would also have to monitor part A costs. As explained earlier in this regulatory flexibility analysis, inpatient hospital and SNF costs are not being reported. This may constitute an incentive to use more costly inpatient (part A) services, when outpatient (part B) services may be as, or even more appropriate. Under this proposed rule, HMOs and CMPs and the specified HCPPs would be required to report or monitor these costs. Although full reporting may cause a slight decrease in Medicare payments to HMOs and CMPs, accounting for these costs should be the first step in establishing utilization controls and determining the most appropriate use of resources for the least cost.

The time needed for compliance with this requirement would depend on what systems the plan already has in place, how much modification, if any, they require, and, for an HCPP, the number of particular part B services the HCPP furnishes to its Medicare enrollees.

3. Effect of Increased Reporting Requirements on HCPPs that do not Furnish Inpatient Hospital Services

For HCPPs that do not furnish inpatient hospital services, the elimination of the effective incentives policy requires major changes. As noted above, under this policy, HCPPs were in some cases exempt from reasonable charge limits and therefore were not required to document what they paid for individual services. Under the proposed rule, these HCPPs would be required to document what they paid for services using the Medicare coding systems and to determine the Medicare payment level for all services. This would require changed procedures for these HCPPs, most of which are currently exempt from such documentation either because they provide services on other than a fee-for-service basis, or because they contract with physician groups that use effective incentives and thus are subject to the prudent buyer standard of current § 417.802(b) of the rules. Since the information is readily available from the Medicare contractor, we estimate that not more than 40 hours would be required to include it in the annual cost report. However, for a staff or group plan that does not pay its physicians on a fee-for-service basis, the conversion may be more time-consuming.

4. Effect on Physicians

Physicians would be affected by the presumptive limit, if an HMO, CMP, or HCPP—

- Terminates its contract with HCFA; or
- In order to keep costs within the presumptive limit—
  - Reduces its payments to physicians;
  - Controls utilization so that the fewer services are furnished; or
  - Reduces the number of physicians on staff or under contract.

5. Effect on Medicare Enrollees

Medicare enrollees could be affected if the organization in which they are enrolled decides, because its costs exceed the presumptive limit, not to contract with Medicare. However, many HMOs and CMPs entered into contracts or retained contracts when the AAPCC was to be applied as an absolute limit, so it does not seem likely this proposed regulation alone would lead them to drop their cost contracts.

6. Effect on Medicare Intermediaries and Carriers

If an organization exceeds the presumptive limit and seeks payment under the special circumstances exception, intermediaries and carriers might be required to provide information necessary to verify a plan's documentation of special circumstances. However, this would not significantly affect intermediary or carrier workload and would not require renegotiation of their contracts. If organizations terminate their cost contracts, carriers (and intermediaries for home health claims) would have to process claims for those Medicare enrollees who do not enroll in another prepaid health care organization.

7. Conclusion

The chief objective of the presumptive limit is to ensure that HMOs, CMPs, and HCPPs are paid no more for services than would have been paid under the Medicare fee-for-service payment systems. We believe that this proposed rule would move the Medicare program toward this objective by encouraging HMOs, CMPs, and HCPPs to operate more efficiently without impeding reasonable and necessary service to Medicare enrollees.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of

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a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866 this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organizations (HMOs), Medicare, and Reporting and record keeping requirements.

42 CFR part 417 would be amended as set forth below:

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1866(a), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395cc(a), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97–248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e–17), unless otherwise noted.

2. In § 417.1, the following definition is added in alphabetical order:

§ 417.1 Definitions.

* * * * *

Furnished, when used in connection with prepaid health care services, means services that are made available to an enrollee either directly by, or under arrangements made by, the HMO, CMP, or HCPP.

* * * * *

3. In § 417.494, revise paragraph (b)(1) introductory text, revise paragraph (b)(1)(iv), and add a new paragraph (b)(1)(v), to read as follows:

§ 417.494 Modification or termination of contract.

* * * * *

(b) *Termination by HCFA.* (1) HCFA may terminate a Medicare contract with an HMO or CMP for any of the following reasons: * * *

(iv) HCFA determines that the HMO or CMP no longer meets the requirements of section 1876 of the Act for entering into a Medicare contract.

(v) The HMO or CMP has had, for two consecutive years, a final overclaim as determined under § 417.532.

* * * * *

4. Throughout subpart O, except in § 417.532(a)(2), all forms of the verb "reimburse" are changed to the corresponding forms of the verb "pay", "reimbursement" is changed to "payment", and "reimbursable" is changed to "payable".

5. In § 417.532, paragraphs (a) through (d) and paragraph (e) introductory text are revised to read as follows:

§ 417.532 General considerations.

(a) *Conditions and criteria for payment*—(1) *Basic criteria.* The costs incurred by an HMO or CMP to furnish services covered by Medicare are payable if they are—

(i) Proper and necessary;

(ii) Reasonable in amount; and

(iii) Except as provided in § 417.550, appropriately apportioned among the Medicare enrollees, other enrollees, and nonenrolled patients of the HMO or CMP.

(2) *Cost reimbursement principles.* In determining fair and equitable payment to the HMO or CMP, HCFA generally applies the cost reimbursement principles set forth in § 413.5 of this chapter.

(b) *Presumptive limit*—(1) *Applicability.* The provisions of this paragraph apply to cost HMOs and CMPs and to HCPPs that furnish any inpatient services in general, acute care, short stay hospitals (as distinguished from psychiatric, chronic, or rehabilitation hospitals that are long-stay hospitals). In this paragraph, references to HMOs and CMPs must be read as applicable also to HCPPs that furnish inpatient services in acute care hospitals.

(2) *Criteria for reasonableness.* In judging whether costs are reasonable, HCFA applies, as a presumptive limit on the total amount payable on behalf of Medicare enrollees, the weighted average of the AAPCCs for those enrollees.

(3) *Terminology.* As used in this paragraph—(i) *Overclaim* means a claim for costs in excess of the presumptive limit; and

(ii) *Final overclaim* means that portion of an overclaim that the HMO or CMP cannot document as "reasonable" under paragraph (b)(4) of this section.

(4) *Exceptions to presumptive limit.* HCFA may accept and pay claims for costs that exceed the presumptive limit if the HMO or CMP documents that those excess costs are reasonable because of either of the following circumstances:

(i) The Medicare enrollees of the HMO or CMP have special needs and require a volume and intensity of services that exceed the average for Medicare beneficiaries of the same age and sex living in the same geographical area.

(ii) There were extraordinary occurrences beyond the control of the HMO or CMP including, but not limited to, strikes, fire, earthquake, flood, or similar unusual happenings that had substantial cost effects.

(5) *Conditions for additional payments.* If an HMO or CMP seeks additional payments as an exception to the presumptive limit, it must comply with HCFA instructions for the exception process described in paragraphs (a)(6) through (a)(10) of this section.

(6) *Response to first notice*—(i) *Timing of response.* Within 60 days after receipt of a first notice indicating that its costs exceed the presumptive limit, the HMO or CMP must submit the required information to HCFA.

(ii) *Required information.* The required information is any information that HCFA identifies as necessary for it to evaluate whether the HMO or CMP qualifies for an exception to the presumptive limit. It may include, but is not limited to, data on costs of services furnished to individual enrollees, documenting the volume and intensity of services required by the Medicare enrollees.

(iii) *Consequences of failure to provide required information.* If the HMO or CMP fails to submit the information requested by HCFA, the HMO or CMP forgoes the option of seeking additional payments, and is subject to the final adjustment procedures of § 417.576(c).

(7) *Determination and notice of determination.* If the HMO or CMP submits the information requested by HCFA, HCFA considers that information, determines whether the HMO or CMP meets the conditions for additional payments, and gives the HMO or CMP notice of that determination.

(8) *Response to notice of adverse determination.* (i) If HCFA's determination under paragraph (a)(7) of this section does not provide for additional payments, or provides for them in amounts that the HMO or CMP considers to be less than the special needs of its Medicare enrollees justify, the HMO or CMP may submit additional materials to support its position that its costs in excess of the presumptive limit are the result of one of the circumstances specified in paragraph (b)(4) of this section, or that the special needs specified in that paragraph justify larger additional payments.

(ii) The HMO or CMP must submit the additional materials within 60 days of receipt of the notice of adverse determination.

(9) *Verification.* All information submitted by HMOs and CMPs seeking additional payments is subject to verification by HCFA or its authorized representatives. HCFA may seek verification from sources such as Medicare intermediaries or carriers and State and local agencies. For example, the local chapter of the American Red Cross might be able to confirm the impact of a natural disaster.

(10) *Determination and notice of final overclaim.* HCFA determines whether there is a final overclaim and gives the HMO or CMP written notice of that determination as follows:

(i) After the notice of presumptive overclaim, if the HMO or CMP does not timely submit required information under paragraph (b)(6) of this section.

(ii) After a notice of adverse determination under paragraph (b)(7) of this section, if the HMO or CMP does not submit additional justification under paragraph (b)(8) of this section.

(iii) After consideration of any additional material submitted by the HMO or CMP under paragraph (b)(8) of this section.

(11) *Adjustment for final overclaim.* (i) If the HMO or CMP has a contract with HCFA under subpart L of this part, the rules of § 417.576(c) apply.

(ii) If the HMO or CMP no longer has any contract under subpart L of this part, it must, unless other arrangements are mutually agreed upon, reimburse within 30 days after receipt of the notice, any amounts due HCFA under the final overclaim determination.

(12) *Exemptions based on size.* HCFA may exempt an HMO or CMP from the presumptive limit requirements for up to 2 consecutive years if the HMO or CMP has 500 or fewer Medicare enrollees at the beginning of its contract period. HCFA may establish additional criteria that these HMOs or CMPs must meet in order to qualify for this exception.

(13) *Termination of contact.* As provided in § 417.494(b)(1)(v), HCFA may terminate its Medicare contact with an HMO or CMP that has a final overclaim for 2 consecutive years, on the grounds that the HMO or CMP is inefficient and that it is not prudent for HCFA to contract with inefficient entities.

(c) *Method and amount of payment to the HMO or CMP.* (1) HCFA makes interim per capita payments each month for each Medicare enrollee, equivalent to the interim per capita cost rate determined in accordance with § 417.570.

(2) HCFA adjusts the interim per capita rate as necessary during the contract period and makes final adjustments at the end of the contract period.

(3) In determining the amount due the HMO or CMP, HCFA deducts from the reasonable cost that the HMO or CMP actually incurs for covered services furnished to its Medicare enrollees, an amount equal to the actuarial value of the applicable Medicare part A and part B deductible and coinsurance amounts that would have applied to the covered services for which payment is being made if these enrollees had not enrolled in this or another HMO or CMP.

(d) *Payment for hospital and SNF services*—(1) *Election by the HMO or CMP.* An HMO or CMP must elect, for each provider that furnishes hospital or SNF services to the HMO's or CMP's Medicare enrollees, either direct payment or payment by HCFA.

(2) *Timing, notice, and effect of election.* (i) The HMO or CMP must make the election and notify HCFA in writing before the beginning of its contract period.

(ii) The election is binding for the full contract period.

(e) *Reimbursement by organization.* If the HMO or CMP elects to pay providers directly, as provided in paragraph (d) of this section, it must—

* * * * *

6. In § 417.576, paragraph (b)(2)(i) is revised to read as follows:

§ 417.576 Final settlement.

* * * * *

(b) * * *

(2) * * *

(i) The per capita costs incurred in furnishing covered services to its Medicare enrollees, determined in accordance with § 417.532 through 417.568, and including—

(A) The costs incurred by entities related to the HMO or CMP by common ownership or control; and

(B) The costs of hospital and skilled nursing facility services paid by HCFA's intermediaries under the option provided in § 417.532(d).

* * * * *

7. In § 417.800, the section heading is revised, the definition of *reporting period* is added, and paragraphs (b), (c), and (d) are revised to read as follows:

§ 417.800 Payment to HCPPs: Definitions and basic rules.

(a) *Definitions.*

* * * * *

Reporting period means a period specified by HCFA, for which the HCPP must report its cost and utilization data.

(b) *Qualifying conditions.* An organization wishing to participate as an HCPP must—

(1) Enter into a written agreement with HCFA as specified in § 417.801;

(2) Furnish physicians' services through its employees or under a formal arrangement with a medical group, individual practice association, or individual physicians;

(3) Furnish covered part B services to its Medicare enrollees through institutions, entities, and persons that have qualified under the applicable requirements of title XVIII of the Social Security Act; and

(4) If it does not furnish inpatient hospital services as specified in paragraph (c)(1) of this section, demonstrate to HCFA's satisfaction that it has in place systems that will enable it to use the Medicare billing codes to document on its cost reports the cost of each part B service furnished to its Medicare enrollees.

(c) *Payment of reasonable costs*—(1) *Applicability.* This paragraph applies to HCPPs that do not furnish inpatient services in general acute-care, short-term hospitals. For HCPPs that furnish inpatient services in those hospitals, the rules of § 417.532(b) apply.

(2) *Payment for part B services: Basic rules*—(i) *Cost basis payment.* Except as provided in paragraph (d) of this section, HCFA pays an HCPP on the basis of the reasonable cost it incurs, as specified in subpart O of this part, for the covered part B services furnished to its Medicare enrollees.

(ii) *Deductions.* In determining the amount due an HCPP for covered part B services furnished to its Medicare enrollees, HCFA deducts, from the reasonable cost actually incurred by the HCPP—

(A) An amount equal to 20 percent of the incurred cost, representing the Medicare coinsurance; and

(B) The actuarial value of the part B deductible.

(3) *Criteria for reasonableness.* The costs incurred by the HCPP in furnishing physicians' services and other part B supplier services may be considered reasonable if they—

(i) Are comparable to costs incurred for similar services furnished by similar physicians and other suppliers in the same or a similar location; and

(ii) Do not exceed what HCFA would pay, in the aggregate (as determined under subpart E of part 405 or part 415 of this chapter, as appropriate), for the same services under the fee-for service system.

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(4) An HCPP must use the Medicare billing codes to document, on its cost reports, the cost of each part B service furnished to its Medicare enrollees.

(5) *Verification by HCFA.* All information furnished by the HCPP is subject to verification by HCFA or its authorized representatives. Methods of verification may include but are not limited to on-site visits and audits.

(d) *Payment for services furnished by providers.* For part A or part B services furnished to the HCPP's Medicare enrollees by a provider, HCFA pays the provider through the provider's Medicare intermediary.

* * * * *

8. In § 417.801, paragraphs (a), (b)(4) and (b)(5) are revised and paragraph (b)(7) is added; and revise paragraphs (d)(1)(ii) and (d)(1)(iii) and add a paragraph (d)(1)(iv), to read as follows:

§ 417.801 Agreements between HCFA and health care prepayment plans.

(a) *Basic requirement.* In order to participate and receive payment under the Medicare program as an HCPP, an organization must enter into a written agreement with HCFA.

(b) * * *

(4) Not impose any limitations on the acceptance of Medicare enrollees or beneficiaries for care and treatment that it does not impose on all other individuals;

(5) Consider any additional requirements that HCFA finds necessary or desirable for efficient and effective program administration; and

* * * * *

(7) Document the cost of part B services as required by § 417.800(c)(4).

* * * * *

(d) * * *

(1) * * *

(ii) The HCPP is not in substantial compliance with the provisions of the agreement, applicable HCFA regulations, or applicable provisions of the Medicare law;

(iii) The HCPP undergoes a change of ownership as specified in subpart M of this part; or

(iv) An HCPP that furnishes inpatient hospital care has had a final overclaim, as determined under § 417.532(b), for 2 consecutive years.

* * * * *

9. Section 417.802 is revised to read as follows:

§ 417.802 Other applicable regulations.

(a) *General rule.* The payment rules set forth in §§ 417.530 through 417.550 for cost HMOs and CMPs also apply to HCPPs except as specified in paragraph (b) of this section.

(b) *Exceptions*—(1) § 417.532(d). HCPPs do not have the option of paying providers that furnish inpatient hospital services, SNF services, or part B services to the HCPP's Medicare enrollees. HCFA pays the providers, as indicated in § 417.800(d).

(2) *§ 417.536(i).* Return on equity capital of proprietary providers owned by the HCPP is not an allowable cost.

(3) *§ 417.536(m).* These limitations on payment do not apply to HCPPs. The limitations that do apply are set forth in this subpart.

(4) *§ 417.548.* The rules governing payment for provider services furnished through arrangements do not apply because HCPPs do not pay providers.

(5) *§ 417.550(b)(2).* Payment of reasonable cost for independent certification of cost reports does not apply because HCPPs are not required to have their cost reports independently certified.

§ 417.546 [Amended]

10. In § 417.546, the following changes are made:

a. Paragraph (b) and the Editorial Note are removed.

b. In paragraph (a), the "(a)" designation is removed, and the "(1)" and "(2)" designations are changed to "(a)" and "(b)", respectively.

§ 417.560 [Amended]

11. In § 417.560, the following changes are made:

a. Paragraph (d)(2) is removed.

b. In paragraph (d)(1), the designation "(1)" and the clause "Except as provided in paragraph (d)(2) of this section" are removed, and the word "the", preceding "Medicare share" is revised to "The".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 28, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 3, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–3810 Filed 2–18–94; 8:45 am]

BILLING CODE 4120–01–P

42 CFR Part 421

[BPO–111–P]

RIN 0938–AG06

Medicare Program; Intermediary and Carrier Functions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would bring certain sections of the regulations concerning Medicare fiscal intermediaries and carriers into conformity with the appropriate sections of Title XVIII of the Social Security Act. The rule would distinguish between those functions which applicable statutory authorities require to be included in agreements with fiscal intermediaries and those functions that, while not required to be performed by organizations that have entered into intermediary agreements with the Secretary pursuant to section 1816 of the Social Security Act, may be included in such agreements at our discretion.

We would require that the intermediary agreements include, as functions, requirements that intermediaries determine proper payment amounts and pay bills. All other functions would be optional. We propose that all functions for carriers are optional. These changes would provide us with the flexibility to transfer functions from one intermediary or carrier to another or to otherwise limit the functions an intermediary or carrier performs when we determine to do so would result in more effective and efficient program administration.

In addition, we propose a number of technical or clarifying revisions concerning carrier payment on a fee schedule basis and the distinction between nonrenewal and termination of intermediary agreements and carrier contracts.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 25, 1994.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–111–P, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) transmissions. In commenting, please refer to file code BPO–111–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (410) 966–7411).

FOR FURTHER INFORMATION CONTACT: Alan Bromberg, (410) 966–7441

SUPPLEMENTARY INFORMATION:

I. Background

Intermediary Agreements and Carrier Contracts—Under sections 1816(a) and 1842(a) of the Social Security Act (the Act), public or private organizations and agencies may participate in the administration of the Medicare program under agreements or contracts entered into with us (on the Secretary's behalf). These Medicare contractors are known as fiscal intermediaries (section 1816(a) of the Act) and carriers (section 1842(a) of the Act). With certain exceptions, intermediaries perform bill processing and benefit payment functions for part A of the program (Hospital Insurance) and carriers perform claims processing and benefit payment functions for part B of the program (Supplementary Medical Insurance).

Our regulations at 42 CFR 421.100, Intermediary functions, require that the agreement between us and a fiscal intermediary specify the functions the intermediary is to perform. In addition to any items specified by us unique to that intermediary, the regulations require that all intermediaries perform activities relating to Medicare coverage, fiscal management, provider audits, utilization patterns, resolution of cost report disputes, and reconsideration of determinations. In addition, the regulations require that all intermediaries furnish information and reports, undertake dual intermediary responsibilities for service to provider-based Home Health Agencies (HHAs) and provider-based hospices, and comply with all applicable laws and regulations and with any other terms and conditions included in their agreements.

Similarly, our regulations at 42 CFR 421.200, Carrier functions, require that the contract between HCFA and a part B carrier specify the functions the carrier is to perform. In addition to any items specified by us unique to that carrier, the regulations require that all part B carriers perform activities relating to Medicare coverage, payment on a cost basis, payment on a charge basis, fiscal management, provider audits, utilization patterns and hearings to part B beneficiaries. In addition, the regulations require that all carriers furnish information and reports, maintain and make available records, and comply with any other terms and conditions included in their contracts.

For both intermediaries and carriers, our regulations at 42 CFR 421.5, General provisions, state that HCFA has the authority not to renew a part A agreement or a part B Contract when it expires. Our regulations at 42 CFR 421.126, Termination of agreements, provide the Secretary with the authority to terminate fiscal intermediary agreements in certain circumstances, while the regulations at 42 CFR 421.205, Termination by the Secretary, give the Secretary similar authority to terminate carrier contracts.

II. Proposed Changes to the Regulations

As noted earlier, our regulations at § 421.100 for intermediaries and § 421.200 for carriers specify a list of functions that must, at a minimum, be included in all intermediary agreements and carrier contracts. These requirements far exceed those of the statute. Section 1816(a) of the Social Security Act requires only that an intermediary agreement provide for determination of the amount of payments to be made to providers and for the making of such payments. Section 1816(a) permits, but does not require, an intermediary agreement to include provisions for the intermediary to provide consultative services to providers to enable them to establish and maintain fiscal records or to otherwise qualify as providers and, for those providers to which it makes payments, to serve as a channel of communications between us and the providers, to make audits of the records of the providers, and to perform such other functions as are necessary.

We believe that section 1816(a) mandates only that an intermediary agreement include the functions currently required by § 421.100 paragraph (a) (Coverage) and paragraph (b) (Fiscal management) of the regulations. We believe that the other functions (§ 421.100 paragraphs (c) through (i)) that the regulations currently require to be included in all intermediary agreements are not required by statute and the mandatory inclusion of them in all agreements limits our ability to efficiently and effectively administer the Medicare program.

Paragraph (a) of section 1842 of the Act, which pertains to carrier contracts, requires that the contracts must provide for some or all of the functions listed in that paragraph, but does not specify any functions which must be included in a carrier contract. As in the case of intermediary agreements, our experience has been that mandatory inclusion of a long list of functions in all contracts restricts our ability to administer the carrier contracts with optimum efficiency and effectiveness. We believe that the requirements of the regulations for both intermediaries and carriers should be brought into conformity with the statutory requirements. Moreover, we believe that such action would substantially enhance the efficient and effective administration of the Medicare program by giving both HCFA and the contractor community more flexibility in their approaches to the performance of intermediary and carrier functions.

We further believe that intermediaries and carriers would benefit from the ability to enter voluntarily into regional arrangements for the performance of some functions. Intermediaries and carriers have shown interest in entering into agreements with other contractors in their regions to shift the performance of a given function to a single intermediary or carrier that is able to perform the function with the greatest efficiency or at the least cost, while another function might in turn be shifted to a second contractor. For example, one intermediary in a region might perform medical review for the entire region, while another would assume the audit function. Under the existing requirement that all intermediaries and carriers perform all functions, such arrangements are not permitted, except through subcontracts, which must be awarded through the competitive procurement process and which leave the final responsibility for the performance of the function with the original contractor. The proposed change in the regulations would provide the intermediaries and carriers with the ability to enter into arrangements to transfer formally the entire responsibility for performance of a function to other intermediaries and carriers, subject to our approval.

The change would also simplify the process of our paying the intermediary or carrier actually performing the function. Under a subcontracting arrangement, we pay the contractor that subcontracts out the function and that entity, in turn, pays the subcontractor

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which is actually doing the work. Under the proposed change, we would make direct payment to the intermediary or carrier performing the function.

Our conclusion is that the existing regulations, which state that intermediary agreements and carrier contracts must include all of the functions cited, are not only inconsistent with applicable statutory authority, but also are too restrictive. They deny us the flexibility to improve the administration of the Medicare program by removing some of the functions from an intermediary's agreement or a carrier's contract and transferring them to another intermediary or carrier where either we or the contractors themselves determine that such action would be more efficient than having every intermediary and carrier perform all functions specified in the regulations.

We are proposing to redesignate § 421.100, Intermediary functions, as § 421.101, Optional intermediary functions. In a new § 421.100, Required intermediary functions, we would specify that all agreements must include the functions of coverage (current content of § 421.100(a)) and fiscal management (current § 421.100(b)). We believe these functions are required to be included in all agreements by section 1816(a) of the Act. In the redesignated § 421.101, Optional intermediary functions, we would indicate that the intermediary agreement may include the functions currently contained in § 421.100(c) through 421.100(i). That is, the cumulative effect of the change would be to separate the two required functions that must be in all intermediary agreements from the remaining functions that may or may not be included.

In § 421.200, Carrier functions, we would change the word "must" to "may" in the first sentence, making all the functions listed for inclusion in carrier contracts optional. This change would reflect section 1842(a) of the Act, which does not list specific functions that must be included.

Our use of the term "optional" does not mean that some functions might not be performed in some jurisdictions. All functions will continue to be performed in all intermediary and carrier jurisdictions. "Optional" in this case means only that HCFA will have the option of determining whether a given function should be performed in a specific jurisdiction by the intermediary or carrier which normally serves that jurisdiction and therefore included in that intermediary's agreement or carrier's contract, or should be performed by some other intermediary or carrier.

In § 421.200, we propose to add payment on a fee schedule basis as a new function which may be performed by carriers. While the original carrier functions included payment on a cost basis and on a charge basis, recent statutory changes and corresponding changes in the regulations have shifted some classes of physician and Medicare suppliers to payment according to fee schedules. However, § 421.200 has never been updated to recognize these changes. Accordingly, the addition of payment on a fee schedule basis as a function which may be included in carrier contracts will bring this section of the regulations into conformity with current statutory provisions for Medicare part B payment.

In addition, 42 CFR 421.5(d) states that, notwithstanding any of the provisions of part 421, HCFA has the authority not to renew an agreement or contract when its term expires. Section 421.126(b) allows the Secretary to terminate intermediary agreements under certain circumstances, while § 421.205 gives the Secretary the authority to terminate carrier contracts at any time for cause. The distinction between the termination and nonrenewal of an agreement or contract is important because the right of an intermediary or carrier to a hearing applicable to terminations does not apply to nonrenewals. Consequently, we are proposing to revise §§ 421.5, 421.126, and 421.205 to make certain that the distinction between nonrenewals and terminations is clear. The proposed changes are not substantive. They are meant to reflect existing statutory and regulatory requirements, as well as HCFA's longstanding policy and practice, as expressed in the standard intermediary agreements and carrier contracts.

The objective of these proposed changes is to make the regulations fully consistent with the relevant statutory authority and to provide, as necessary, clarification of the distinction between contract nonrenewals and terminations. In addition, the change to the regulations concerning mandatory and optional functions will provide us with the flexibility to shift non-mandatory functions among intermediaries and carriers so that the Medicare program may be administered in the most efficient and effective manner possible. We anticipate using the authority granted us by this change sparingly. Any transfer or consolidation of functions will be determined on a case-by-case basis, and, prior to taking action in any specific case, we will closely study the situation to determine whether the benefits to the effective administration of the Medicare program warrant the action. It is not our intent at this time to shift functions from intermediaries and carriers to any entities except other intermediaries and carriers.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and we will respond to them in the preamble to the final rule.

IV. Collection of Information Requirement

This rule contains no information collection requirements. Consequently, this rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

V. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, intermediaries and carriers are not considered to be small entities that will be affected as a result of these regulations. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would potentially affect the 47 Medicare part A intermediaries and 33 part B carriers with agreements or contracts with HCFA to make payments to Medicare providers and beneficiaries for covered services and to perform certain other functions currently described in § 421.100 for intermediaries and § 421.200 for carriers. Under this proposed rule, we would have authority to redefine intermediary agreement and carrier contract requirements and remove functions from some contractors and transfer them to other contractors. We would also be able to consolidate some tasks under one contractor in regions where several contractors are all performing the same functions simultaneously.

The proposed rule would also add payment on a fee schedule basis as a function which may be included in carrier contracts and distinguishes between contract nonrenewals and terminations. This proposed rule would make the regulations more consistent with the relevant statutory authority and promote the more effective and efficient administration of the Medicare program. Service to beneficiaries and Medicare providers would not be disrupted in the affected regions.

Implementing this proposed rule would not create any additional expenses but should enable the Medicare program to realize savings in administrative costs. At present, we are unable to estimate the potential dollar amount of these savings.

We evaluated the potential impact of these regulations changes on intermediaries and carriers for purposes of determining whether a regulatory flexibility analysis is required. We believe that the effects or the changes will be minimal. Almost all of the present contractors have been performing the functions for a number of years and have developed efficiencies that would argue against our needlessly altering their functions. Therefore, it is not our intention to use the flexibility of this regulation to make wholesale changes.

Consequently, we have determined, and the Secretary certifies, that this proposed rule would not result in a significant impact on a substantial number of small entities. Similarly, the Secretary certifies that it would not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

In accordance with the provisions of Executive Order 12866 this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR part 421 would be amended as set forth below.

PART 421—INTERMEDIARIES AND CARRIERS

1. The authority citation for part 421 continues to read as follows:

Authority: Secs. 1102, 1815, 1816, 1833, 1834 (a) and (h), 1842, 1861(u), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395h, 1395l, 1395m (a) and (h), 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b–1.

2. Section 421.5(d) is revised to read as follows:

§ 421.5 General provisions.

* * * * *

(d) *Nonrenewal of agreement or contract.* Notwithstanding any of the provisions of this part, HCFA has the authority to nonrenew an agreement or contract when its term expires. An intermediary or carrier has the authority to nonrenew an agreement or contract when its term expires. The notice and hearing requirements for the termination of an agreement or contract set forth in §§ 421.126, 421.128, and 421.205 do not apply to such nonrenewal of an agreement or contract. An intermediary or carrier also has the authority to nonrenew an agreement or contract when its term expires.

* * * * *

3. Section 421.100 is redesignated as § 421.101 and revised to read as follows:

§ 421.101 Optional intermediary functions.

An agreement between HCFA and an intermediary may specify the optional functions to be performed by the intermediary, which may include, but are not necessarily limited to, the following:

(a) *Provider audits.* The intermediary must audit the records of providers of services as necessary to assure proper payments.

(b) *Utilization patterns.* The intermediary must assist providers to—

(1) Develop procedures relating to utilization practices;

(2) Make studies of the effectiveness of those procedures and recommend methods to improve them;

(3) Evaluate the results of utilization review activity; and

(4) Assist in the application of safeguards against unnecessary utilization of services.

(c) *Resolution of cost report disputes.* The intermediary must establish and maintain procedures approved by HCFA to consider and resolve any disputes that may result from provider dissatisfaction with an intermediary's determinations concerning provider cost reports.

(d) *Reconsideration of determinations.* The intermediary must establish and maintain procedures approved by HCFA for the reconsideration of its determinations to deny payments to an individual or to the provider that furnished services to the individual. The PRO performs reconsideration of cases in which it made a determination subject to reconsideration.

(e) *Information and reports.* The intermediary must furnish to HCFA any information and reports that HCFA requests in order to carry out its responsibilities in the administration of the Medicare program.

(f) *Other terms and conditions.* The intermediary must comply with all applicable laws and regulations and with any other terms and conditions included in its agreement.

(g) *Dual intermediary responsibilities.* With respect to the responsibility for service to provider-based HHAs and provider-based hospices, where the HHA or hospice and its parent provider will be served by different intermediaries under § 421.117 of this part, the designated regional intermediary will process bills, make coverage determinations and make payments to the HHAs and hospices. The intermediary serving the parent provider will perform all fiscal functions, including audits and settlement of the Medicare cost reports and the HHA and hospice supplement worksheets.

4. A new § 421.100 is added to subpart B to read as follows:

§ 421.100 Required intermediary functions.

An agreement between HCFA and an intermediary specifies the functions to be performed by the intermediary, which must include the following required functions and may include optional functions listed in § 421.101 of this part and any others agreed to by HCFA. The required functions are:

(a) Coverage. (1) The intermediary ensures that it makes payments only for services that are:

(i) Furnished to Medicare beneficiaries;

(ii) Covered under Medicare; and

(iii) In accordance with PRO determinations when they are services for which the PRO has assumed review responsibility under its contract with HCFA.

(2) The intermediary takes appropriate action to reject or adjust the claim if—

(i) The intermediary or the PRO determines that the services furnished were not reasonable, not medically necessary, or not furnished in the most appropriate setting; or

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(ii) The intermediary determines that the claim does not properly reflect the kind and amount of services furnished.

(b) Fiscal management.

The intermediary must receive, disburse, and account for funds in making Medicare payments.

5. Section 421.126 is amended by revising the heading and by adding a new paragraph (c) to read as follows:

§ 421.126 Termination or nonrenewal or agreements.

* * * * *

(c) *Nonrenewal by the intermediary or Secretary.* (1) An intermediary may nonrenew an agreement with the Secretary by giving the Secretary written notice of the intermediary's intention to nonrenew the agreement at least 90 days before the end of the current period of the agreement.

(2) The Secretary may nonrenew an agreement with an intermediary by giving the intermediary written notice of the Secretary's intention to nonrenew the agreement at least 90 days before the end of the current period of the agreement.

(3) In the event that either the Secretary or intermediary gives notice of intention to nonrenew an agreement, the Secretary may extend the agreement for such time and under such conditions as may be specified in the agreement.

(4) The providers served by an intermediary whose contract is not being renewed have the opportunity to nominate another intermediary, in accordance with § 421.104.

(5) The provisions for notice and the opportunity for a hearing in connection with the termination of an intermediary agreement, set forth in paragraph (b)(2) of this section and § 421.128, do not apply to any nonrenewal of an intermediary agreement.

6. Section 421.200 is amended by redesignating paragraphs (d) through (j) as (e) through (k), respectively. The introductory text is revised and a new paragraph (d) is added to read as follows:

§ 421.200 Carrier functions.

A contract between HCFA and a carrier, other than a regional DMEPOS carrier, specifies the functions to be performed by the carrier, which may include, but are not necessarily limited to the following:

* * * * *

(d) *Payment on a fee schedule basis.* If payment is on a fee schedule basis, the carrier must assure that payments are made in accordance with the applicable provisions of parts 414 and 415 of this chapter.

* * * * *

7. Section 421.205 is revised to read as follows:

§ 421.205 Termination or nonrenewal of contracts.

(a) *Termination by the carrier.* A carrier may terminate its contract at any time upon written notice to the Secretary of its intention to terminate. Upon notice to terminate, the contract continues for 180 days after such notice unless the Secretary decides to terminate at an earlier date.

(b) *Termination by the Secretary.* (1) The Secretary may terminate a contract with a carrier at any time if he or she determines that the carrier has failed substantially to carry out any material terms of the contract or has performed its functions in a manner inconsistent with the effective and efficient administration of the Medicare Part B program.

(2) Upon notification of the Secretary's intent to terminate the contract, the carrier may request a hearing within 20 days after the date of the notice of intent to terminate.

(3) The hearing procedures will be those specified in § 421.128(c).

(c) *Nonrenewal by the Secretary or carrier.* (1) A carrier may nonrenew a contract with the Secretary by giving the Secretary written notice of its intention to nonrenew the contract at least 90 days before the end of the current period of the contract.

(2) The Secretary may nonrenew a contract with a carrier by giving the carrier written notice of the Secretary's intention to nonrenew the contract at least 90 days before the end of the current period of the contract.

(3) In the event that either the Secretary or the carrier gives notice of intention to nonrenew a contract for an additional period, the Secretary may extend the contract for such time and under such conditions as may be specified in the contract.

(4) The provisions for notice and the opportunity for a hearing in connection with the termination of a carrier contract, set forth in paragraph (b) of this section and § 421.128, do not apply to the nonrenewal of a carrier contract.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicare Assistance Program; 13.773, Medicare—Hospital Insurance Program; No. 93.774, Medicare-Supplemental Medical Insurance)

Dated: August 5, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: December 10, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–3608 Filed 02–18–94; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC10

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Public Comment Period on Proposed Threatened Status for the Flat-Tailed Horned Lizard

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of public comment period.

SUMMARY: The Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended, gives notice that a public hearing will be held on the proposed threatened status for the flat-tailed horned lizard (*Phrynosoma mcallii*). At the hearing, the Service will allow all interested parties to submit oral or written comments on the proposal. The public comment period is extended to provide the public with more time to comment.

DATES: A public hearing will be held from 6 to 8 p.m. on Tuesday, March 22, 1994, in Imperial, California. The public comment period, which closed on January 28, 1994, will be reopened from February 22, 1994 until April 22, 1994. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The hearing will be held on Tuesday, March 22, 1994, at Imperial Valley College, 380 Ira Aten Road, Health Sciences Building Assembly Room 2131, Imperial, California.

Written comments and materials may be submitted at the hearing or sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection during business hours by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich, Field Supervisor, at the address listed above (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The flat-tailed horned lizard (*Phrynosoma mcallii*) is a small iguanid lizard restricted to flats and valleys of the western Sonoran desert. Its maximum length, excluding the tail, is about 8 centimeters (3 inches) (Stebbins 1985). The range of the flat-tailed horned lizard includes portions of Riverside, Imperial and extreme eastern San Diego Counties, California; northeastern Baja California, Mexico; Yuma County, Arizona; and northwestern Sonora, Mexico. An estimated 34 percent of historically occupied flat-tailed horned lizard habitat has been lost. About 95 percent of remaining optimal habitat in California is threatened by one or more factors. Various human activities threaten 36 percent of the remaining habitat in Arizona. The flat-tailed horned lizard and its habitat are also being adversely affected in Mexico, but to a lesser degree. The Service published the proposed rule detailing these factors in the **Federal Register** on November 29, 1993 (58 FR 62629).

The Service has scheduled a public hearing on Tuesday, March 22, 1994, in response to formal requests from the public. Those parties wishing to make a statement for the record should bring a copy of their statement to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. However, the length of written comments or materials presented at the hearing or mailed to the Service are not limited. Written comments will be given the same weight as oral comments. Written comments may be submitted at the hearing or mailed to the address given in the **ADDRESSES** section of this notice. The comment period closes on April 22, 1994.

Author

The primary author of this notice is Larry Salata, U.S. Fish and Wildlife Service, Carlsbad Field, Office, 2730 Loker Avenue West, Carlsbad, California, 92008.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: February 14, 1994.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94–3837 Filed 2–18–94; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[I.D. 021494E]

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS issues this notice that the New England Fishery Management Council has submitted Amendment 5 to the Fishery Management Plan for American Lobster (FMP) for Secretarial review and is requesting comments from the public.

DATES: Written comments will be accepted through April 15, 1994.

ADDRESSES: Send comments to Richard B. Roe, Regional Director, National Marine Fisheries Service, 1 Blackburn Dr., Gloucester, Massachusetts 01930. Clearly mark the outside of the envelope "Comments on Lobster FMP." Copies of the Amendment and Draft Supplemental Environmental Impact Statement are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that it is available for public review and comment. The Secretary will consider the public comments in determining whether to approve, disapprove, or partially disapprove the FMP amendment.

Amendment 5 would implement: (1) A freeze of the minimum size limit for lobsters at the current carapace size of 3¼ inches; (2) a five year moratorium on new Federal vessel permits; (3) new permit requirements for vessel operators and dealers; (4) several categories of Federal vessel permits and limits on lobster landings according to a vessel's permit category; (5) the development a stock rebuilding program for all segments of the lobster fishery; (6) mandatory reporting for permitted vessels and dealers; (7) changes to the width of the escape vent size from 6 inches to 5¾ inches; and (8) framework measures to adjust the effort control and other measures in the proposed amendment and provisions in the plan. This amendment also includes a revised definition of overfishing for lobster and a determination, based on this definition, that the resource is overfished. The intent of this amendment is to reduce the fishing mortality rate and rebuild the American lobster resource.

This proposed amendment also included a provision that would allow moratorium qualification for vessels with state endorsed permits in states that did not notify vessel owners of the control date for lobster. This provision has been disapproved based on National Standard 4 and the determination that it would discriminate against individuals from different states.

A notice of proposed rulemaking will be published within 15 days after the submission of the amendment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–3811 Filed 2–15–94; 4:46 pm]

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Notices

Federal Register
Vol. 59, No. 35
Tuesday, February 22, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93-116-2]

Availability of Determination of Nonregulated Status of Calgene, Inc., Genetically Engineered Cotton Lines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of determination.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is announcing the issuance of a determination that certain trademarked cotton lines, designated BXN™ cotton, do not present a plant pest risk and are therefore no longer regulated articles under its regulations. APHIS' determination has been made in response to a petition received from Calgene, Inc., of Davis, CA, on July 15, 1993, seeking a determination from APHIS that BXN™ cotton does not present a plant pest risk and is therefore no longer a regulated article. The effect of this determination is that cotton lines meeting the definition of BXN™ cotton and that have been field tested under permit, will no longer be subject to regulation. This notice also announces the availability of the determination that provides the basis for the ruling, as well as the availability of an environmental assessment of this action.

EFFECTIVE DATE: February 15, 1994.

ADDRESSES: The determination, the environmental assessment, the Calgene, Inc. submission, and written comments received in response to our September 8, 1993, notice published in the **Federal Register** may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to this room are requested to call ahead on (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Schechtman, Senior Microbiologist, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7601. For a copy of the determination or the environmental assessment, please write or call Ms. Kay Peterson at this same address and telephone number.

SUPPLEMENTARY INFORMATION: On September 8, 1993 (58 FR 47249–47250, Docket No. 93–116–1), the Animal and Plant Health Inspection Service (APHIS) published a notice announcing receipt of a petition from Calgene, Inc. (Calgene) of Davis, CA, that requested a determination on the regulatory status of BXN™ cotton. This notice also indicated the role of the Food and Drug Administration and the United States Environmental Protection Agency in the regulation of food products derived from BXN™ cotton and the potential use of the herbicide bromoxynil on BXN™ cotton, respectively. This notice further announced that the petition was available for public review and invited written comments on whether BXN™ cotton poses a plant pest risk, to be submitted on or before November 8, 1993.

Comments

APHIS received a total of 45 comments from State officials, universities, farmers associations and cooperative extension services, environmental and consumer organizations, and business and professional associations. Among these commenters, 34 were in favor of granting the petition, 9 were opposed, and 2 others addressed APHIS' decision on the petition itself only parenthetically. APHIS has provided a complete discussion of the comments and any issues raised by the commenters in the determination document, which is available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

BXN™ cotton, as defined by its developer (Calgene, Inc., of Davis, CA), is any cotton cultivar or progeny of a cotton line containing the BXN gene (a gene, derived from the soil microbe *Klebsiella pneumoniae* subsp. *ozaenae* that encodes the enzyme nitrilase, which can degrade the herbicide bromoxynil) with its associated regulatory sequences, i.e., sequences that allow for expression of the gene's enzyme product. By definition, BXN™ cotton may also contain: the *kan*^{r} marker gene (encoding the enzyme aminoglycoside 3'-phosphotransferase II, which confers resistance to the antibiotic kanamycin) with its associated regulatory sequences; a DNA fragment containing the origin of replication of the pRi plasmid from *Agrobacterium rhizogenes*; T–DNA left and right border sequences from an *Agrobacterium tumefaciens* Ti plasmid; a segment of DNA from transposon Tn*5*; a portion of a synthetic polylinker sequence from *lacZ'*; and a segment of DNA containing the origin of replication of plasmid pBR322. Expression of the BXN™ gene and the *kan*^{r} gene is directed by copies of the promoter from the *35S* gene from cauliflower mosaic virus and terminated using sequences derived from the *tml* gene from the octopine-type Ti plasmid pTiA6 from *A. tumefaciens*.

BXN™ cotton contains components from organisms that are known plant pathogens, i.e., the bacterium *Agrobacterium tumefaciens* and cauliflower mosaic virus. BXN™ cotton has therefore been a regulated article under APHIS jurisdiction, and its field tests in 1989, 1990, 1991, 1992, and 1993 have been in accordance with APHIS regulations at 7 CFR part 340. APHIS' determination that BXN™ cotton that has been field tested under permit does not present a plant pest risk is based on an analysis of data provided to APHIS by Calgene and other relevant published scientific data obtained by APHIS concerning the components of BXN™ cotton and observable properties of the cotton lines themselves. From this review, we have determined that these BXN™ cotton lines: (1) Exhibit no plant pathogenic properties; (2) are no more likely to become a weed than their non-engineered parental varieties; (3) are unlikely to increase the weediness potential for any other cultivated plant or native wild species with which the organism can interbreed; (4) will not cause damage to processed agricultural commodities; and (5) are unlikely to harm other organisms, such as bees and earthworms, that are beneficial to agriculture. In addition, we have determined that there is a reasonable

certainty that progeny BXN™ cotton lines bred from these lines will not exhibit new plant pest properties, i.e., properties substantially different from any observed for the BXN™ cotton lines already field tested, or those observed for cotton in traditional breeding programs. However, APHIS believes that it is prudent to require information to corroborate that new BXN™ cotton lines, not derived from BXN™ lines already field tested under permit, do not exhibit unexpected qualities.

Calgene has provided information and data from field testing of some of the cotton lines fitting their definition of BXN™ cotton and intended to be representative of all those lines. Our determination, however, applies only to cotton lines that fit Calgene's definition of BXN™ cotton and that have been field tested under permit. The effect of this determination is that such cotton lines will no longer be considered regulated articles under the APHIS regulations at 7 CFR part 340. Permits under those regulations will no longer be required from APHIS for field testing, importation, or interstate movement of BXN™ cotton lines that have been field tested under permit or their progeny. Normal agronomic practices involving these BXN™ cotton lines, e.g., cultivation, propagation, movement, and cross-breeding with other non-regulated cotton lines, can now be conducted without an APHIS permit. (Importation of BXN™ cotton (and nursery stock or seeds capable of propagation) is still, however, subject to the restrictions found in the Foreign Quarantine Notices regulations at 7 CFR part 319.) Variety registration and/or seed certification for individual cotton lines carrying the BXN™ gene may involve future actions by the U.S. Plant Variety Protection Office and State Seed Certification officials.

The potential environmental impacts associated with this determination have been examined in accordance with regulations and guidelines implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*; 40 CFR parts 1500–1508; 7 CFR part 1b; 44 FR 50381–50384; and 44 FR 51272–51274). An Environmental Assessment (EA) was prepared and a Finding of No Significant Impact (FONSI) was reached by APHIS for the determination that BXN™ cotton that has been field tested under permit is no longer a regulated article under its regulations at 7 CFR part 340.

Done in Washington, DC, this 15th day of February 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–3886 Filed 2–18–94; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 94–002–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
94–006–01	U.S. Department of Agriculture, Agricultural Research Service.	01–06–94	*Fusarium graminearum* genetically engineered to block synthesis of trichothecene toxins.	Illinois.
94–006–02, renewal of permit 92–037–07, issued on 05–18–92.	Upjohn Company	01–06–94	Cantaloupe and squash plants genetically engineered to express the coat protein genes of cucumber mosaic virus (CMV), watermelon virus 2 (WMV2), and zucchini yellow mosaic virus (ZYMV) for resistance to these viruses.	Florida.
94–010–01	Connecticut Agricultural Experiment Station	01–10–94	*Cryphonectria parasitica*, a causal agent of chestnut blight, genetically engineered to be hypovirulent.	Connecticut, West Virginia.

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Done in Washington, DC, this 15th day of February 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–3887 Filed 2–18–94; 8:45 am]

BILLING CODE 3410–34–P

ARMS CONTROL AND DISARMAMENT AGENCY

U.S. Government Sponsored Chemical Weapons Convention (CWC) Seminars for the Chemical and Related Industry

AGENCY: United States Arms Control and Disarmament Agency (ACDA).

ACTION: ACDA will sponsor seminars to explain the CWC and its significance for U.S. industry.

SUMMARY: The Chemical Weapons Convention (CWC) will directly affect private sector chemical producers, consumers and processors. The CWC imposes requirements on certain industrial facilities.

Depending on the specific chemical, the CWC requires:

- Detailed reports of the quantities produced, processed, or consumed in your facilities;
- Detailed production plans and site (plant) information;
- Short-notice on-site inspections of industry facilities and records by international inspection teams.

The key issues for U.S. chemical and related industry managers:

- Compliance with CWC Requirements;
- Protection of confidential/proprietary business information;
- Prevention of adverse publicity/controversy;
- Prevention of unnecessary costs/production disruptions;
- Inspection readiness;
- Schedule for implementation.

The U.S. Arms Control and Disarmament Agency is sponsoring regional one-day seminars to explain the CWC, the domestic draft implementation legislation that is currently being reviewed by the Senate, and their significance to U.S. industry. You are invited to attend one of the following:

Atlanta, GA	April 12, 1994.
New Orleans, LA	April 15, 1994.
Las Vegas, NV	April 29, 1994.
Baltimore, MD	May 3, 1994.
Boston, MA	May 5, 1994.
Chicago, IL	May 11, 1994.

FOR FURTHER INFORMATION CONTACT: For registration materials and more information on how the CWC affects your company, contact: Geoff Nagler, EAI Corporation, 2111 Eisenhower Avenue, suite 301, Alexandria, VA 22314–4679, Telephone: (800) 528–1041 or (703) 739–1033, Fax: (703) 739–1525.

Cathleen E. Lawrence,

Director of Administration.

[FR Doc. 94–3878 Filed 2–18–94; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Berkeley, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–003R. *Applicant:* University of California, Berkeley, Berkeley, CA 94720. *Instrument:* Blackbody Furnace with Internationally Accredited Absolute Reference. *Manufacturer:* National Physical Laboratory, United Kingdom. *Intended Use:* See notice at 58 FR 14559, March 18, 1993. *Reasons:* The foreign instrument provides: (1) highly flat spectral emissivity over the 3–30 μm range, (2) an isothermal emissivity to 0.999, (3) characterization relative to an absolute standard cavity and (4) operability in an airborne observatory. *Advice Received From:* National Institute of Standards and Technology, January 4, 1994.

Docket Number: 93–138. *Applicant:* Argonne National Laboratory, Argonne, IL 60439. *Instrument:* Scintillometer, Model SLS 20. *Manufacturer:* Scintec, Germany. *Intended Use:* See notice at 58 FR 63924, December 3, 1993. *Reasons:* The foreign instrument provides measurement of the refractive index, provides continuous measurement of the refractive index parameter (C_n^2) and the inner scale of turbulence (l_o) for estimating heat and momentum flux in the atmosphere along light propagation distances of tens to hundreds of meters. *Advice Received From:* National Oceanic and Atmospheric Administration, January 10, 1994.

Docket Number: 93–144. *Applicant:* Duke University, Durham, NC 27708–0227. *Instrument:* Electron Microprobe (Used), Model CAMEBAX. *Manufacturer:* Cameca, France. *Intended Use:* See notice at 58 FR 65158, December 13, 1993. *Reasons:* The foreign instrument provides (1) non-destructive chemical analysis of micron-sized regions with detection limits of 0.01% and precision to 1.0% for major elements and (2) four wavelength dispersive spectrometers. *Advice Received From:* National Institute of Standards and Technology, November 10, 1993 (comparable case).

The National Institute of Standards and Technology and National Oceanic and Atmospheric Administration advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–3913 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–DS–F

Minority Business Development Agency

Business Development Center Application: State of South Carolina With the Exceptions of Greenville, Charleston, and Columbia MSAs

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center program (MBDC) to operate a Rural Minority Business Development Center (RMBDC) for approximately a 3-year period, subject to agency priorities, recipient performance and the availability of funds. The total cost of performance for the first budget period (12 months) from July 1, 1994 to June 30, 1995 is estimated at $411,765. The application must include a minimum cost-share of 15% of the total project cost, through non-Federal contributions. The Federal amount includes $8,540 for an annual audit fee. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The RMBDC will operate in the State of South Carolina geographic service area with the exceptions of Greenville, Charleston and Columbia, MSAs. The headquarters of the RMBDC will be located in Orangeburg, South Carolina.

The award number for this RMBDC will be 04–10–94007–01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The RMBDC will provide business development services to the rural minority business community to help establish and maintain viable rural minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of rural minority individuals and firms; to offer a full range of management and technical assistance to rural minority entrepreneurs; and to serve as a conduit of information and assistance regarding rural minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of rural minority businesses, individuals and organizations (50 points); the resources available to the firm in providing rural business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must received at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDC program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest points score will not necessarily receive the award.

If an application is select for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. Award under this program shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

The RMBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the RMBDC may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the RMBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine is funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the RMBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is March 24, 1994. Applications must be postmarked on or before March 24, 1994.

ADDRESSES:

Atlanta Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street NW., suite 1715, Atlanta, Georgia 30308–3516, (404) 730–3300.

FOR FURTHER INFORMATION CONTACT: Robert M. Henderson, Acting Regional Director, Atlanta Regional Office, telephone (404) 730–3300.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-application conference to assist all interested applicants will be held on March 9, 1994, 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street NW., room 1715, Atlanta, Georgia 30308–3516. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honestly or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the RMBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility

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Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the ward document.

11.800 Minority Business Development Centers

(Catalog of Federal Domestic Assistance)

Dated: February 15, 1994.

Robert Henderson,

Acting Regional Director, Atlanta Regional Office.

[FR Doc. 94–3843 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: San Antonio MBDC I.D. No. 06–10–94006–01

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from July 1, 1994 to June 30, 1995 is estimated at $283,156. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the San Antonio, Texas geographic service area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project costs through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is March 31, 1994.

Applications must be postmarked on or before March 31, 1994

ADDRESSES: Dallas Regional Office, 1100 Commerce St., Room 7B23, Dallas, Texas 75242, (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Bobby Jefferson, Acting Regional Director, Dallas Regional Office, telephone (214) 767–8001.

A pre-bid conference will be held on March 10, 1994, in the Earl Cabell Federal Building, room 7B23, 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Office may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 15, 1994.

Bobby Jefferson,

Acting Regional Director, Dallas Regional Office.

[FR Doc. 94–3870 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[Docket No. 940229–4029; I.D. 120893A]

Atlantic Shark Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of control date for entry into the Atlantic shark fisheries.

SUMMARY: This notice announces that anyone entering any Atlantic shark fishery after February 22, 1994 (control date), may not be assured of future access to or an allocation of the shark resource in the Atlantic Ocean under the Fishery Management Plan for Atlantic Sharks (FMP). This notice is intended to promote awareness of potential eligibility criteria for access to the Atlantic shark fisheries and to discourage new entries into the fisheries based on economic speculation while the Secretary of Commerce (Secretary) contemplates whether and how access to the Atlantic shark resources should be controlled.

ADDRESSES: Comments on the control date established herein should be directed to: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD, 20910.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347, FAX 301–713–2299, Kevin Foster, 508–281–9260 or Michael E. Justen, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are defined and managed under regulations at 50 CFR part 678 under the authority of the Magnuson Fisheries Conservation and Management Act (Magnuson Act). The Magnuson Act Amendments of 1990, Pub. L. 101–627, transferred management authority over the Atlantic shark fisheries to the Secretary as of November 28, 1990.

One of the concerns of the Atlantic shark industry, and the Secretary, is that current participants in the fisheries who will bear the brunt of the management restrictions on the fisheries, which are necessary for stock rebuilding, may not be the ones to whom future benefits accrue. To address these concerns, and to avoid speculative entry into a fishery that is overfished and may be overcapitalized, the Secretary is establishing a control date of February 22, 1994, for possible limited entry. The date selected is the date of publication. Vessels that have not entered the shark fishery prior to this date may not be allowed entry if a limited entry program, based on any criteria (such as individual catch levels or gear type used) that is developed. Also, NMFS advises that vessels already in the fishery may not meet eligibility criteria when and if these criteria are established.

For the purposes of this notice, NMFS has not developed specific criteria to define entry into a shark fishery. Entry

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into the fishery may mean either purchase of a shark vessel or fishery permit, investment in the construction or modification of a vessel or gear for the purpose of fishing for Atlantic sharks (directly or incidentally), the documented landing of a specified quantity of Atlantic sharks, or a specified number of Atlantic shark landings. The Secretary, after full public process, may adopt one or more of these definitions of entry into the shark fishery at the time a limited access regime is proposed, but may choose other options as well.

Speculative entry into a fishery often is responsible for a rapid increase in fishing effort in fisheries already fully- or over-developed. Those seeking possible windfall gain from a potential management change can exacerbate the original problems. To help distinguish *bona fide* and established Atlantic shark fishermen from speculative entrants into the fishery, a control date may be set before beginning discussions and planning of limited access regimes. As a result, fishermen are notified that entering an Atlantic shark fishery after that date will not necessarily assure them of future access to the fishery resource on grounds of previous participation.

This establishment of a control date does not commit the Secretary to any particular management regime or criterion for entry into Atlantic shark fisheries. Fishermen are not guaranteed future participation in the Atlantic shark fisheries regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Secretary may subsequently choose a different control date, or he may choose a management regime that does not make use of such a date. The Secretary is free to apply other qualifying criteria for fishery entry. The Secretary may give varying considerations to fishermen in the fisheries before and after the control date. Finally, the Secretary may choose to take no further action to control entry or access to the fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 15, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–3832 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 021594D]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Demersal Species Committee (in conjunction with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board), Habitat Committee, Large Pelagic Committee, and Enforcement Committee will hold public meetings on March 8–10, 1994, at Gurney's Inn, Old Montauk Highway, Montauk, NY; telephone: (516) 668–2345. On March 8, the Demersal Committee and the ASMFC Board will begin their meeting at 1 p.m. On March 9, meetings will begin at 8 a.m. and continue until 5 p.m. On March 10, the meeting will begin at 8 a.m. and continue until noon.

The following topics will be discussed:

1. Summer flounder recreational management measures for 1994,
2. Scup and black sea bass management alternatives,
3. Tuna management,
4. Swordfish scoping, and
5. Enforcement workshop.

The Council meeting may be lengthened or shortened based on the progress of the meeting. The Council may go into closed session to discuss personnel or national security matters.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: February 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–3938 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 021594B]

North Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's Halibut Working Group will hold a meeting on March 10–11, 1994, in NMFS main conference room on the 4th floor of the Federal Building, 907 West 9th Street, Juneau, AK. The meeting will begin at 1 p.m. on March 10, and adjourn by 4 p.m. on March 11.

The Working Group will begin to develop appropriate elements and options for a proposed moratorium on the entry of new charter vessels into the halibut fishery off Alaska.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: David Witherell, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: February 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–3937 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 021594C]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will meet on March 7–11, 1994, at the Columbia River Red Lion, 1401 North Hayden Island Drive, Portland, OR; telephone: (503) 283–2111. The meeting will begin on March 8, at 8 a.m. in closed session (not open to the public) to discuss personnel matters and litigation. An open session will begin at 8:30 a.m. The Council meeting will then reconvene at 8 a.m. each day from March 9 through Friday, March 11. The meeting may continue each day into the evening hours if necessary to complete business.

The following items are on the Council's agenda:

A. Call to Order

1. Opening Remarks, Introductions, Roll Call.
2. Remarks by Admiral John W. Lockwood, Coast Guard.
3. Approve Proposed Agenda.
4. Approve November 1993 Minutes.

B. Salmon Management

1. Review of 1993 Fisheries and Summary of 1994 Stock Abundance Estimates.
2. Reports of the Klamath and Sacramento Review Groups.
3. Endangered Species Act Considerations for 1994.
4. Report of the Working Group on Inseason.

Modification of Hook-and-Release Mortality Estimates

5. Preliminary Definition of 1994 Management Options.
6. Adopt 1994 Management Options for Analysis.
7. Preliminary Discussion of a Salmon Plan Amendment.
8. Adopt 1994 Options for Public Review.
9. Adopt Schedule of Hearings on 1994 Options.

C. Administrative and Other Matters

1. Request of the Western Pacific Fishery Management Council for Authority to Manage Pacific Ocean Pelagic Fish Resources.
2. Report of the Budget Committee.
3. Status of Legislation.
4. Appointments to Council Advisory Groups.
5. Work Load Priorities for 1994.
6. Adopt Draft Agenda for April 1994 Meeting

D. Pacific Halibut Allocation

1. Report of the Scientific and Statistical Committee on Halibut Bycatch and Stock Assessment.
2. Status of the 1994 Catch Sharing Plan.
3. Summary of International Pacific Halibut Commission Meeting.
4. Catch Sharing Plan for 1995 and Beyond.

E. Groundfish Management

1. Status of Federal Regulations.
2. Recommendations of the Groundfish Permit Review Board.
3. Status of the Proposed Fixed Gear Sablefish Individual Quota Program.
4. Data Collection Program for the Shore-based Whiting Fishery in 1994.
5. Report of Industry Workshops.
6. Black Rockfish Management off Oregon.

F. Habitat Issues

1. Report of the Snake River Salmon Recovery Team.
2. Report of the Habitat Steering Group.

Other Meetings

The Scientific and Statistical Committee will meet March 7 beginning at 1 p.m. and March 8 at 8 a.m. to address scientific issues on the Council agenda.

The Groundfish Permit Review Board will meet March 7 beginning at 8 a.m. to review appeals on applications for West Coast groundfish limited entry permits which were denied by NMFS.

The Salmon Technical Team will meet as necessary (irregular hours) throughout the March 7–11 period to prepare impact analyses of the proposed salmon management measures for 1994.

The Salmon Advisory Subpanel will convene at 9 a.m. on March 7 and at 8 a.m. each day thereafter through March 11 to address salmon management items on the Council agenda.

The Habitat Steering Group will meet from 1 p.m. to 5 p.m. on March 7 to consider activities affecting the habitat of fish stocks managed by the Council.

The Budget Committee will convene at 3 p.m. on March 7 to review the status of the fiscal year 1994 Council budget and other related issues.

The Enforcement Consultants will meet at 7 p.m. on March 8 to address enforcement issues related to Council agenda items.

Detailed agendas for the above advisory meetings will be available after February 24, 1994.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352, at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, OR; telephone (503) 326–6352.

Dated: February 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–3939 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–22–P

Category	Twelve-month limit
Group I:	
200–229, 300–326, 360–369, 400–414, 464–469, 600–629 and 665–670, as a group.	215,874,132 square meters equivalent.
Sublevels in Group I:	
200	295,943 kilograms.
219	34,325,660 square meters.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing 1994 Agreement Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

February 15, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement of August 4, 1986, as amended and extended, and Memoranda of Understanding (MOUs) dated July 29, 1992, August 18, 1992 and November 23, 1992 between the Governments of the United States and Hong Kong establish limits for the period January 1, 1994 through December 31, 1994. A complete list of the limits is published below.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645 published on November 29, 1993).

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Category	Twelve-month limit
218/225/317/326	63,593,846 square meters of which not more than 3,502,500 square meters shall be in Category 218(1)—yarn dyed fabric other than denim and jacquard. [1]
226/313	61,572,862 square meters.
314	16,605,462 square meters.
315	8,209,797 square meters.
369(1) [2] (shoptowels)	674,679 kilograms.
604	203,145 kilograms.
611	5,411,903 square meters.
617	3,414,531 square meters.
Group II:	
237, 239, 330–359, 431–459, 630–659 and 843/844(1), as a group.	785,797,689 square meters equivalent.
Sublevels in Group II:	
237	992,605 dozen.
239	4,550,232 kilograms.
331	3,803,846 dozen pairs.
333/334	263,093 dozen.
335	314,397 dozen.
336	191,711 dozen.
338/339 [3] (shirts and blouses other than tank tops and tops, knit).	2,672,285 dozen.
338/339(1) [4] (tank tops and knit tops)	2,007,701 dozen.
340	2,558,995 dozen.
341	2,590,291 dozen.
342	489,201 dozen.
345	400,205 dozen.
347/348	6,116,749 dozen of which not more than 3,010,431 dozen shall be in Category 347; not more than 4,635,504 dozen shall be in Category 348.
350	120,853 dozen.
351	1,094,023 dozen.
352	5,838,370 dozen.
359(1) [5] (coveralls, overalls and jumpsuits)	525,282 kilograms.
359(2) [6] (outer vests)	1,094,796 kilograms.
433	9,181 dozen.
434	9,856 dozen.
435	70,350 dozen.
436	91,626 dozen.
438	752,516 dozen.
442	81,434 dozen.
443	57,811 numbers.
443/444/643/644/843/844(1) (made-to-measure suits).	51,977 numbers.
444	36,873 numbers.
445/446	1,243,809 dozen.
447/448	62,551 dozen.
631	550,910 dozen pairs.
633/634/635	1,180,105 dozen of which not more than 441,385 dozen shall be in Categories 633/634 and not more than 906,188 dozen shall be in Category 635.
636	258,011 dozen.
638/639	4,486,213 dozen.
640	818,017 dozen.
641	775,199 dozen.
642	205,180 dozen.
644	37,366 numbers.
645/646	1,289,860 dozen.
647	458,284 dozen.
648	986,119 dozen.
649	705,573 dozen.
650	145,910 dozen.
651	279,420 dozen.
652	4,227,137 dozen.
659(1) [7] (coveralls, overalls and jumpsuits)	580,574 kilograms.
659(2) [8] (swimsuits)	232,999 kilograms.
Group III:	
831–842, 843/844 (excluding made-to-measure suits), and 847–859, as a group.	43,781,993 square meters equivalent.
Sublevels in Group III:	
835	102,140 dozen.
836	141,109 dozen.
840	606,721 dozen.
842	227,787 dozen.
847	325,830 dozen.
Limits not in a group:	
845(1) [9] (sweaters made in Hong Kong)	1,101,878 dozen.

Category	Twelve-month limit
845(2) [10] (sweaters assembled in Hong Kong from knit-to-shape component parts knitted elsewhere).	2,637,477 dozen.
846(1) [11] (sweaters made in Hong Kong)	178,184 dozen.
846(2) [12] (sweaters assembled in Hong Kong from knit-to-shape component parts knitted elsewhere).	429,356 dozen.

[1] Category 218(1):The Government of Hong Kong will continue to visa these products as 218.
[2] Category 369(1): only HTS number 6307.10.2005.
[3] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.
[4] Categories 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.
[5] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.
[6] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010. 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.
[7] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.
[8] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.
[9] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.0024, 6110.90.0042 and 6117.90.0021.
[10] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.0022 and 6110.90.0040.
[11] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.0020, 6110.90.0038 and 6117.90.0018.
[12] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.0018 and 6110.90.0036.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Rita D. Hayes,

Chairman, Committee for the Implementotion of Textile Agreements.

[FR Doc. 94–3914 Filed 2–18–94; 8:45 am]

BILLING CODE 3510–DR–F–M

Request for Public Comments on Bilateral Textile Consultations with Egypt on Certain Cotton and Man-Made Fiber Textile Products

February 15, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On January 31, 1994, under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated March 15, 1992 and June 9, 1992, between the Governments of the United States and Egypt, the United States Government requested consultations with the Government of the Arab Republic of Egypt with respect to cotton and man-made fiber woven shirts in Categories 340/640, produced or manufactured in Egypt.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Categories 340/640, the Government of the United States has decided to control imports during the period which began on January 31, 1994 and extends through December 31, 1994.

A summary market statement concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640, under the agreement with the Government of the Arab Republic of Egypt, or to comment on domestic production or availability of products included in Categories 340/640, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the Arab Republic of Egypt.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of the Arab Republic of Egypt, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

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Federal Register notice 58 FR 62645, published on November 29, 1993).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Egypt

Category 340/640—Men's and Boys' Cotton and Man-Made Fiber Woven Shirts

January 1994

Import Situation and Conclusion

U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, from Egypt reached 424,073 dozen during the year ending October 1993, more than six and one half times the 62,423 dozen imported from Egypt in the year ending October 1992. In the first ten months of 1993, imports of Category 340/640 from Egypt reached 402,042 dozen, nearly seven times the January-October 1992 level and nearly five times Egypt's total calendar year 1992 Category 340/640 imports.

The sharp and substantial increase of Category 340/640 imports from Egypt is causing a real risk of disruption in the U.S. market for men's and boys' cotton and man-made fiber woven shirts.

U.S. Production, Import Penetration and Market Share

U.S. production of men's and boys' cotton and man-made fiber woven shirts fell from 16,956,000 dozen in 1989 to 12,850,000 dozen in 1992, a decline of 24 percent. This decline continued in 1993, with U.S. production falling to 6,320,000 dozen in the first half of 1993, 3 percent below the January-June 1992 level. In contrast, U.S. imports of Category 340/640 increased from 26,637,000 dozen in 1989 to 30,395,000 dozen in 1992, a 14 percent increase. Category 340/640 imports continued to increase in 1993, reaching 27,275,000 dozen during the first ten months of 1993, five percent above the January-October 1992 level.

The ratio of imports to domestic production increased from 157 percent in 1989 to 236 percent in 1992. This trend continued in 1993, with the ratio of imports to domestic production reaching 238 percent during January-June 1993. The domestic manufacturers' share of this market fell from 39 percent in 1989 to 30 percent during the first half of 1993, a decline of 9 percentage points.

Duty-Paid Value and U.S. Producers' Price

Approximately 77 percent of Category 340/640 imports from Egypt during the year ending in October 1993 entered the U.S. under HTSUSA 6205.20.2046—men's and boys' yarn dyed, napped woven cotton shirts, other than dress and corduroy; HTSUSA 6205.20.2065—men's woven cotton shirts, other than dress and corduroy, with one color in the warp and/or the filling; and HTSUSA 6205.20.2075—boys' woven cotton shirts, other than dress and corduroy, with one color in the warp and/or the filling, other than imported as a part of a playsuit. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable men's and boys' woven shirts.

Committee for the Implementation of Textile Agreements

February 15, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated March 15, 1992 and June 9, 1992, between the Governments of the United States and the Arab Republic of Egypt; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 23, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Egypt and exported during the period beginning on January 31, 1994 and extending through December 31, 1994, in excess of 467,062 dozen.[1]

Textile products in Categories 340/640 which have been exported to the United States prior to January 31, 1994 shall not be subject to the limit established in this directive.

Textile products in Categories 340/640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-3915 Filed 2-18-94; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after January 30, 1994.

DEPARTMENT OF ENERGY

Invitation for Proposals For Projects Designed To Support Decisionmaking Process Associated With DOE's Environmental Restoration and Waste Management Programs

AGENCY: Office of Environmental Restoration and Waste Management, U.S. Department of Energy.

ACTION: Notice of program interest.

SUMMARY: The U.S. Department of Energy (DOE), Office of Environmental Restoration and Waste Management (EM) may award grants or cooperative agreements to companies and universities, to fund (in whole or part) projects or cost share in projects that will provide for planning, conducting, and communicating environmental risk assessments at DOE facilities and sites in order to determine the public health and environmental risk associated with DOE's environmental management programs. DOE is interested in receiving proposals that describe capabilities, experience, and proposed methods for conducting credible risk assessments. DOE is specifically interested in receiving proposals that include statements of the proposer's capabilities, experience, and proposed methods for assessing risk to human health and the environment. Proposals must also show experience in effective and efficient management of the tasks required in support of risk assessments, in preparing and presenting reports, and in working with stakeholders and decision makers at all levels. Proposals must also identify the technical and scientific staff, their professional experience and their level of program involvement.

Applicants must demonstrate that they can apply the most recent, cost-effective technology in their approach for evaluating and managing risk assessments for environmental management. The proposal must demonstrate that:

1. The offeror is capable of conducting scientifically valid and responsible risk assessments without bias or organizational conflicts of interest in protecting the public health and environment. These risk assessments must include clear statements of what is known and the level of uncertainty of the risk data.

2. The offeror's risk assessments will be supportable by independent external review by technical experts.

3. The offeror has the experience and capability to plan, organize, manage, and facilitate local and national stakeholders' involvement in the development of credible risk assessments.

4. The offeror has the experience and ability to effectively communicate complicated scientific information on potential risks and uncertainties, to local and national stakeholders, other concerned citizens, and decision makers at all levels.

5. The offeror presently has or is capable of obtaining staff with the training, expertise, and experience needed to conduct scientifically complex risk assessments. Such assessments should include statements that clearly identify sensitive populations and exposed populations, and that characterize the degree of risk and the level of uncertainty in the process and assessments.

6. The offeror has the ability to integrate the activities of all organizations conducting risk assessments.

7. The offeror has management capability for both financial and scientific management and a demonstrated skill in planning and scheduling.

DATES: Due to programmatic constraints, proposals related to credible risk assessment at DOE facilities need to be received as early as possible. To be assured of consideration, these proposals should be received by the Department within 45 days after the date of this notice. Proposals shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date or (2) postmarked on or before the deadline date and received in time for submission to the review panel. Applications which do not meet the deadline will be considered as late applications and may not be considered. Proposals should be submitted to the Unsolicited Proposals Management Section, Reports and Analysis Branch, HR-532; Procurement and Assistance Management Directorate, Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

For more information about risk assessment, interested institutions or corporations are referred to the National Research Council's report "Building Consensus Through Risk Assessment and Management of the Department of Energy's Environmental Remediation Program," National Academy Press, 1994, and the presentations contained therein by Assistant Secretary Thomas Grumbly and concerned stakeholders. This booklet may be obtained by contacting the National Academy of Sciences at (800) 624-6242 or at (202) 334-3313 in the Washington Metropolitan Area.

FOR FURTHER INFORMATION: Requests for technical information about this notice of program interest should contact Dr. Michael Heeb, EM-6, Department of Energy, Office of Environmental Restoration and Waste Management, Washington, DC 20585, telephone (202) 586-6173. For procurement related information, contact Mr. Ron Logerwell, Department of Energy, Office of Environmental Restoration and Waste Management, Office of Acquisition Management, (EM-16), Washington, DC 20585, (202) 586-1031.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope
II. Responsible Official
III. Deviations
IV. Evaluation Process

I. Purpose and Scope

A. The Department of Energy desires to work towards environmental excellence, and science and technology leadership. DOE intends to progress towards EM's goal and involve the best national science and engineering communities. The primary objective of the Office of Environmental Restoration and Waste Management is to meet the challenge of greater environmental responsibility.

B. This announcement incorporates the merit review process for EM review of financial assistance applications as published in the **Federal Register** on May 6, 1991 (56 FR 20602) and fulfills the requirements set forth in DOE Financial Assistance Rules 10 CFR part 600.

C. Merit review is the process of evaluating applications for discretionary financial assistance using predetermined criteria. The review is thorough, consistent, and independent and is completed by individuals with expert knowledge in the field in question. The purpose of the review is to provide analysis on the merits of applications to a Program Official having decision-making authority (the Selection Official) over the award of discretionary financial assistance.

II. Responsible Official

The EM Director of the Office of Integrated Risk Management or his/her designee will be responsible for this system of objective merit review of discretionary financial assistance applications funded by EM.

III. Deviations

Single-case deviations from the following procedures may be authorized in writing by EM's Responsible Official upon the written request by a member of the EM staff. Whenever a proposed review would deviate from 10 CFR part 600, the deviation must also be authorized in accordance with the procedures prescribed in that part.

IV. Evaluation Process

A. Initial Screening Procedure

1. Applications will normally be submitted to the Department of Energy, Office of Management Support, HR-532, Washington, DC 20585. Applications will be assigned a control number by HR-532 and those pertaining to the Office of Environmental Restoration and Waste Management (EM) will be provided to EM. EM will assign an EM Project Office for initial screening to assure the following standards are met before conducting a detailed merit review and evaluation:

a. *Appropriateness to the EM Mission:* Applications must be relevant to EM mission requirements as stated in this notice.

b. *Technical/Scientific Content and Merit:* Those applications judged to be without sufficient detail for evaluation will not be considered.

c. *No Unnecessary Duplications or Overlap:* Applications proposing to perform research already being supported by DOE or other Federal agencies generally will not be subjected to formal merit review unless there is a convincing programmatic reason to do so.

d. *Completeness:* Applications not meeting the requirements of 10 CFR 600, subpart A, may be returned to the sender for correction or modification. Until the application meets the above standards, it will not be given detailed merit review.

B. Proposal Format

The proposal must consist of two sections, technical and cost.

Technical Proposal will be no more than 50 pages in length; resumes of key personnel involved should be submitted as an appendix and will not be considered part of the technical proposal 50 page limit. It is left to the proposer to determine how best to use the 50 pages: however the technical proposal should be divided into the following four sections:

Section 1—Executive Summary

Section 2—Proposal

This section will provide the detailed technical explanation of the proposed activities. The activities should be addressed with respect to the preliminary screening standards and technical evaluation criteria listed in Subsection G, Evaluation Criteria.

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Section 3—Statement of Work

A statement of work is to be supplied that discusses the specific tasks to be carried out to achieve the goals stated in Section I.

Section 4—Selection Criteria Index

An index must be provided showing the pages on which each of the selection criteria are addressed.

Appendix A.—Key Personnel

Résumés should be succinct and clearly illustrate how the individuals technical background and experience are related achieving the proposals objectives.

Cost Proposals will have no page limit or page layout requirement. However, the cost proposal must include a summary breakdown of all costs, and give a detailed breakdown of costs on a task-by-task basis for each task appearing in the Statement of Work. In addition, any expectation concerning cost sharing shall be clearly stated. While cost sharing is encouraged, it shall not be consideration in the selection process and shall be considered only at the time the award is negotiated.

2. The determination to return an application based on the above standards will be made in writing by the EM Project Officer. In cases where the Project Officer is also the selection official, approval will be obtained from at least one level higher than that of the Project Officer.

C. Qualifications of Reviewers and Selection Official

1. The members of the reviewing group may be a mixture of Federal or non-Federal experts. The review group, when possible, will consist of at least three qualified persons from outside the Office of Integrated Risk Management in addition to the designated Project Officer if the Project Officer serves on the group. When possible, the merit review group will exclude anyone who, on behalf of the Federal Government, performs any of the following functions:

a. Providing substantial technical assistance to the applicant.

b. Approval/disapproval or having any other decision-making role regarding the application.

c. Serving as the project manager or otherwise monitoring, auditing, evaluating the recipient's programmatic performance.

d. Exercising line authority over anyone ineligible to serve as reviewers because of the above limitations.

2. Reviewers will be chosen by the Director of the Office of Integrated Risk Management based on their expertise and professional qualifications as related to the proposed work.

3. Reviewers may be Federal employees, including those from EM that are neither the selection official nor those in a direct line of supervision above the Project Office. Non-Federal employees may also be reviewers.

4. Reviewers will not include former employees of the Project Officer's immediate office or any former employee having line authority over that immediate office within the past 1 year.

5. The designated Project Officer will not serve on the review group or be an external reader unless specifically approved by the Responsible Official.

6. Selection officials and reviewers must comply with the requirements of 10 CFR 1010 (a) and 1010.302(a)(1) concerning conflict of interest. Individuals who cannot meet these requirements with regard to a particular application may not review, discuss, or make an evaluation of an application in which they have a conflict of interest; and may not participate in any meeting involving the review of an application in which there is a conflict of interest.

D. Project Officer/Contracting Officer Representative

1. The Project Officer will be a Federal Employee, from Headquarters or the field, assigned to review the application. The Project Officer may also be designated as the Contracting Officer Representative (COR) from an eventual contract action. This assignment will be made in writing by, or with the concurrence of, the employee's supervisor.

2. The Project Officer will be responsible for coordinating the Merit Review and providing guidance to external reviewers as described in this notice.

3. The Project Officer is responsible for conducting the initial screening. If the application does not satisfy the initial screening, the Project Officer will provide the applicant a rejection letter (informing appropriate officials) or request additional information if required.

4. The Project Officer will be responsible for compiling the information from the Merit Review and preparing the Selection Report/ Justification for Acceptance for the Selection Official. This report should address the evaluation criteria including the information from the initial screening, any programmatic comments reflecting a Federal policy perspective, and the rationale for selection or rejection.

5. For solicited applications, once the Selection Official approves the Selection Report, the Contracting Officer will inform the applicant. For other applications, once the Selection Official approves the Justification for Selection, the Project Officer is then responsible for preparing the rejection letter or Procurement request documents. The Project Officer will also recommend assignment to a field office for award and implementation if the award is not made at Headquarters.

E. Formal Review Mechanism

There will be one mechanism available to accomplish a merit review. At least three qualified individuals will perform the review. In those instances where three or more qualified reviewers cannot be obtained to conduct a formal merit review, the selection official must issue a waiver, which is based upon a written explanation of the situation by the assigned Project Officer. In the event that the Project Officer is a reviewer and is also the selection official, this waiver shall be considered and issued by an EM official one level higher than that of the Project Officer or selection official. The formal review mechanism is as follows:

1. Review Group

a. An organization of standing committees called Technical Peer Review Groups (TPRGs) will be the principal method of application review. These review groups are appropriate when required by legislation or when:

(1) Sufficient number of applications on a specific topic is received on a regular basis in accordance with a predetermined review schedule.

(2) Sufficient number of people is available to accept appointments, serve over reasonably protracted periods of time, and convene regularly or at the call of the chairperson.

(3) Legislative authority for particular programs extends for more than 1 year.

b. persons outside the cognizant program office shall constitute at least one half the reviewers unless a deviation has been approved under 10 CFR 600.18(g).

c. Members of TPRGs will independently review applications and will individually present results of their reviews to the Project Officer. Reviewers will not meet to review and present a general recommendation. Reviewers may be called together by the Project Officer to receive material, review issues, or share information, but no attempt will be made to achieve a group consensus.

2. Field Readers

a. Field readers may be used for applications that cannot be effectively reviewed by the TPRG. This may include applications which are outside the scope of TPRGs, when the workload of TPRGs requires augmentation, or when specific expertise is required.

b. Field readers will follow the guidance provided by the Project Officer for conducting their review. Field readers will independently review applications and will individually present results of their reviews to the Project Officer.

c. Field readers may be called together by the Project Officer to reassess material, review issues, or share information but no attempt will be made to achieve a group consensus.

F. Review Process

1. The EM Project Officer will provide reviewers with a copy of the application, programmatic guidance, conflict of interest disclosures, certificates of confidentiality, and other information needed to conduct the review (such as site-specific needs and schedules for technologies). The Project Officer may provide instructions to comparatively evaluate proposals if there are multiple proposals.

2. Reviewers should sign the certificate of confidentiality and conflict of interest disclosures and return them before initiating their review.

3. Based upon his/her review of the application and related documents, the reviewer is expected to provide the EM Project Officer with a written analysis based on the guidance and/or other program information for each application.

4. All reviews serve as input for the decision by the selection official and are not binding. Significant adverse evaluations will be addressed in writing in a selection statement document.

5. Upon request by applicants, a written summary will be provided to the applicants on the evaluation of their applications.

G. Evaluation Criteria

Review criteria include, but are not limited to, the following list. These criteria will be used by reviewers after the application has been through the initial screening. For unsolicited applications, this review may also address guidance the Project Officer provides from the initial screening.

1. Capabilities, experience, and proposed methods for conducting credible risk assessments and proposed methods for assessing risks to human health and the environment.

2. Experience in effective and efficient management of the tasks required in support of risk assessments in preparing and presenting reports, and in working with stakeholders and decisionmakers at all levels.

3. Quality, availability, and experience of organization, technical and administrative staff and their level of involvement.

4. The appropriateness and adequacy of the proposed budget.

H. Awards

Approximately one to ten awards may be made during FY 1994. An award will not exceed $5 million in total award value. If sufficient acceptable applications are submitted available funding may determine the number of awards. Awards, if any, will be determined through evaluation of applications received against the evaluation criteria and the availability of funds. Awards for either grants or cooperative agreements will be made only to technically acceptable applicants. Awards will be on a schedule to be agreed to by DOE and the awardee. Budget and project periods may be negotiated to meet the needs of particular projects. DOE reserves the right to support or not support any portion, all, or none of the proposals submitted.

I. Selection

Selection of an application for award will be based on the findings of the conformance to elements 1 through 4 of the Summary, Section IV.A.a–d, adherence to the proposal format as stated under Subsection B and G, and finally, how well the application serves the EM program objectives. Furthermore, selection of an application for award is subject to the availability of funds.

Issued in Washington, on February 15, 1994.

Richard J. Guimond,

Rear Admiral, USPHS, Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 94–3904 Filed 2–18–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 11262–002 Colorado]

Continental Energy Company, Inc.; Surrender of Preliminary Permit

February 15, 1994.

Take notice that Continental Energy Company, Inc., Permittee for the Mesa Creek Project No. 11262, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11262 was issued June 8, 1992, and would have expired May 31, 1995. The project would have been located partially within Grand Mesa National Forest, on Mesa Creek, in Mesa County, Colorado.

The Permittee filed the request on February 7, 1994, and the preliminary permit for Project No. 11262 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 94–3868 Filed 2–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–131–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 15, 1994.

Take notice that on February 9, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Seventh Revised Sheet No. 20A
Original Sheet No. 95C

The proposed effective date of Sheet Nos. 20A and 95C is March 11, 1994.

Algonquin states that the purpose of this filing is to provide for the recovery of transition costs to be paid by Algonquin to Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Texas Eastern's fourth direct bill of Account No. 191 purchased gas costs filed on February 9, 1994. Algonquin requests that the Commission grant any waiver of the Commission's regulations that may be necessary to permit this application to take effect as requested.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations.

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All such motions or protests should be filed on or before February 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–3865 Filed 2–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–132–000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 15, 1994.

Take notice that on February 9, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to be effective February 1, 1994:

First Revised Sheet No. 136
First Revised Sheet No. 138

Southern states that the purpose of this filing is to change its delivery point allocation methodology in its transportation tariff to allow it to reallocate the volumes of gas delivered for a shipper under its firm and interruptible agreements to maximize the allocation to the shipper's firm agreement for billing purposes. A change has also been proposed that will allow the allocation of no-notice volumes to a shipper's two-part FT–NN agreement prior to allocating the no-notice volumes to the same shipper's one-part FT–NN agreement.

Southern has requested all waivers necessary to make these sheets effective February 1, 1994; provided, however, that if Southern does not receive an order by March 1, 1994, approving these revisions, it has requested that the Commission approve the revised tariff sheets to be effective March 1, 1994.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 and 385.214). All such motions and protests should be filed on or before February 23, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–3866 Filed 2–18–94; 8:45 am]

BILLING CODE 6717–01–M

[1] See Florida Gas Transmission Co., 65 FERC ¶ 61,336 at 62,597 (1994).

[Docket No. CP94–197–000]

Williams Gas Processing-Mid-Continent Region Co.; Petition for Declaratory Order

February 15, 1994.

Take notice that on January 24, 1994, Williams Gas Processing-Mid-Continent Region Company (WGP–MCR), Post Office Box 3102, Tulsa, Oklahoma 74101, filed a petition for a declaratory order in Docket No. CP94–197–000, requesting that the Commission declare that certain natural gas gathering facilities currently owned by Williams Natural Gas Company (WNG) are exempt from the Commission's Regulations pursuant to Section 1(b) of the Natural Gas Act (NGA) upon WGP–MCR acquiring, owning, and operating such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WGP–MCR will acquire most of WNG's gathering systems. The facilities are located in Kansas, Oklahoma, and Texas. The acquisition will include two small processing facilities (the Guymon Drip Control Plant and the Pampa Drip Control Plant). The facilities are approximately 800 miles of two-inch through twenty-six-inch.

Any person desiring to be heard or to make a protest with reference to said petition should, on or before March 8, 1994, file with the Federal Energy Regulatory Commission (825 North Capitol Street NE., Washington, DC 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–3867 Filed 2–18–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4838–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before March 24, 1994.

FOR FURTHER INFORMATION CONATCT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Requirements for the use of 1080 Collars for Livestock Protection (EPA ICR No. 1249.04; OMB No. 2070–0074). This is a request for extension of the expiration date of a currently approved collection.

Abstract: Sodium monoflouroacetate (Compound 1080), a previously banned pesticide, was re-approved for use in a new delivery mechanism, the toxic collar. The EPA requires certified applicators, States, and registrants to monitor the use and effectiveness of the collar. The respondents are required to submit to the EPA an annual report containing the monitoring data. In addition, certified applicators must report to the States or the EPA all incidents of accidental poisoning of humans and domestic animals, as well as non-target species, and they must keep records of any hazards caused by the collar. The Agency uses these data to monitor the use of the collar, and to ensure the safety of livestock.

Burden Statement: The burden for this collection of information is estimated to average 37.1 hours per response for reporting, and 2.9 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Toxic collar applicators.

Estimated No. of Respondents: 151 Certified pesticide applicators, 4 states, and 6 registrants.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,439 hours.

Frequency of Collection: Annually and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: February 14, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–3896 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4836–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 24, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, including Light-Duty Trucks (EPA ICR No. 1285.04; OMB No. 2060–0132). This ICR requests renewal of the existing clearance.

Abstract: Manufacturers may choose to pay a monetary penalty in order to sell heavy-duty engines, heavy-duty vehicles, including light-duty trucks, which fail to conform with certain emission standards. Before selling these engines, manufacturers must perform a Production Compliance Audit to establish the amount of the penalty.

Burden Statement: The public reporting burden for this collection of information is estimated to average 144 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Manufacturers of heavy-duty engines and heavy-duty vehicles (SIC #371).

Estimated Number of Respondents: 6.

Estimated Total Annual Burden on Respondents: 906 hours.

Frequency of Collection: Quarterly and on occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: February 14, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–3895 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4838–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before March 24, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, and Distribution in Commerce Exemptions. (EPA ICR No.: 0857.06; OMB No.: 2070–0021). This is a request for extension of the expiration date of a currently approved collection.

Abstract: The Toxic Substances Control Act (TSCA) prohibits the manufacture of PCBs, or their processing or distribution in commerce. However, the statute sets conditions under which EPA may grant exemptions to this prohibition. Companies wishing to obtain the exemption must petition EPA by submitting certain information to the Agency. The information includes name and address of the petitioner, and amount and use of PCBs the petitioner wishes to manufacture, process, or distribute in commerce. The petitioner must provide evidence that the use of PCBs will not result in an unreasonable risk of injury to human health or the environment. The petitioner must also provide evidence that demonstrates good faith efforts to develop a chemical substitute for PCBs which does not pose

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an unreasonable risk of injury to human health or the environment.

To renew an existing exemption, a petitioner must submit to the Agency a letter stating that there are no changes in the original petition for exemption. The letter must be submitted at least six months prior to the date the existing exemption expires, it must be signed by a designated official, and it must be sent to the EPA by certified mail.

EPA uses the information to determine whether petitioners have met the exemption requirements prescribed by TSCA.

Burden Statement: The burden for this collection of information is estimated to average 8 hours per response for new petitions and 2 hours per response for renewal petitions. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Companies wishing to obtain an exemption from prohibitions against the manufacture, processing or distribution of PCBs in commerce.

Estimated No. of Respondents: 6 respondents for new petitions and 5 respondents for renewal petitions.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 58 hours.

Frequency of Collection: Annually and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: February 14, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–3897 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4839–4]

Acid Rain Program: Public Comment Period and Proposed Retired Unit Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed retired unit exemptions.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment a draft, five-year retired unit exemption to a utility unit under the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on the retired unit exemption must be received no later than 30 days after the date of this notice or the publication date of this notice in a local newspaper.

ADDRESSES: *Administrative Records.* The administrative record, except information protected as confidential, may be viewed during normal business hours at EPA Region 5, 17th floor, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning the retired unit exemption to David Kee, Director, Air and Radiation Division, EPA Region 5 (A–18J), Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Submit all comments in duplicate and identify the unit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the exemption.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decisionmaking process by clarifying significant issues affecting the exemption.

FOR FURTHER INFORMATION CONTACT: Call Pat Gimino, EPA Region V, at (312) 353–8651.

SUPPLEMENTARY INFORMATION: EPA proposes to issue exemptions from the Acid Rain permit and continuous emission monitoring requirements for Breed unit 1 in Indiana. The designated representative for Breed is John McManus.

Dated: February 10, 1994.

Brian McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–3883 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4837–8]

Access to Confidential Business Information by Enrollees Under the Senior Environmental Employment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized grantee organizations under the Senior Environmental Employment (SEE) Program, and their enrollees, for access to information which has been submitted to EPA under several of the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted five days from February 22, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia Powers, National Program Director, Senior Environmental Employment Program (8701), Environmental Protection Agency, 401 M Street SW., Washington, DC 20560. Telephone (202) 260–2573.

SUPPLEMENTARY INFORMATION: The Senior Environmental Employment (SEE) program is authorized by the Environmental Programs Assistance Act of 1984 (Pub. L. 98–313), which provides that the Administrator may "make grants or enter into cooperative agreements" for the purpose of "providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control." Cooperative agreements under the SEE program provide support for many functions in the Agency, including clerical support, staffing hot lines, providing support to Agency enforcement activities, providing library services, compiling data, and support in scientific, engineering, financial, and other areas.

In performing these tasks, grantees and cooperators under the SEE program and their enrollees may have access to potentially all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, Federal Insecticide, Fungicide, and Rodenticide Act, and Comprehensive Environmental Response, Compensation, and Liability Act, to the extent that these statutes allow disclosure of confidential information to authorized representatives of the United States (or to "contractors" under the Federal Insecticide, Fungicide, and Rodenticide Act). Some of these documents may contain information claimed as confidential.

EPA may provide confidential information to enrollees working under the following cooperative agreements:

Cooperative agreement No.	Organization
CQ815413–01	National Pacific/Asian Resource Center on Aging.
CQ815485–01	National Caucus and Center on Black Aged.
CQ815923–01	American Association of Retired Persons.
CQ816164–01	National Caucus and Center on Black Aged.
CQ816300–01	American Association of Retired Persons.
CQ816301–01	American Association of Retired Persons.
CQ816365–01	National Council of Senior Citizens.
CQ816382–01	American Association of Retired Persons.
CQ816383–01	American Association of Retired Persons.
CQ816384–01	American Association of Retired Persons.
CQ816480–01	American Association of Retired Persons.
CQ816493–01	American Association of Retired Persons.
CQ816510–01	American Association of Retired Persons.
CQ816529–01	American Association of Retired Persons.
CQ816734–01	National Council of Senior Citizens.
CQ816989–01	National Caucus and Center on Black Aged.
CQ816990–01	National Caucus and Center on Black Aged.
CQ817139–01	American Association of Retired Persons.
CQ817380–01	National Council on the Aging.
CQ817464–01	National Council on the Aging.
CQ817522–01	National Council of Senior Citizens.
CQ817736–01	American Association of Retired Persons.
CQ817738–01	American Association of Retired Persons.
CQ817782–01	National Caucus and Center on Black Aged.
CQ817783–01	National Caucus and Center on Black Aged.
CQ817801–01	National Council of Senior Citizens.
CQ818131–01	National Caucus and Center on Black Aged.
CQ818132–01	National Caucus and Center on Black Aged.
CQ818186–01	American Association of Retired Persons.
CQ818570–01	National Council of Senior Citizens.
CQ818587–01	National Pacific/Asian Resource Center on Aging.
CQ818634–01	National Pacific/Asian Resource Center on Aging.
CQ818638–01	National Pacific/Asian Resource Center on Aging.
CQ818697–01	Asociacion Nacional pro Personas Mayores.
CQ818851–01	Asociacion Nacional pro Personas Mayores.
CQ818917–01	National Council of Senior Citizens.
CQ818939–01	American Association of Retired Persons.
CQ819088–01	National Caucus and Center on Black Aged.
CQ819103–01	National Council of Senior Citizens.
CQ819187–01	National Caucus and Center on Black Aged.
CQ819369–01	American Association of Retired Persons.
CQ819370–01	American Association of Retired Persons.
CQ819404–01	American Association of Retired Persons.
CQ819519–01	American Association of Retired Persons.
CQ819520–01	American Association of Retired Persons.
CQ819521–01	American Association of Retired Persons.
CQ819522–01	American Association of Retired Persons.
CQ819523–01	American Association of Retired Persons.
CQ819524–01	American Association of Retired Persons.
CQ819525–01	American Association of Retired Persons.
CQ819526–01	American Association of Retired Persons.
CQ819527–01	National Caucus and Center on Black Aged.
CQ819613–01	American Association of Retired Persons.
CQ819690–01	American Association of Retired Persons.
CQ819702–01	American Association of Retired Persons.
CQ819705–01	National Council of Senior Citizens.
CQ819851–01	National Council on the Aging.
CQ819874–01	American Association of Retired Persons.
CQ820372–01	American Association of Retired Persons.
CQ820550–01	National Council of Senior Citizens.
CQ820551–01	National Council of Senior Citizens.
CQ820552–01	National Council of Senior Citizens.
CQ820665–01	American Association of Retired Persons.
CQ820829–01	National Council on the Aging.
CQ820916–01	National Council of Senior Citizens.
CQ820932–01	American Association of Retired Persons.
CQ820934–01	American Association of Retired Persons.

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Cooperative agreement No.	Organization
CQ820962–01	American Association of Retired Persons.
CQ821058–01	National Caucus and Center on Black Aged.
CQ821104–01	National Caucus and Center on Black Aged.
CQ821110–01	National Council on the Aging.
CQ821346–01	National Caucus and Center on Black Aged.
CQ821547–01	National Caucus and Center on Black Aged.
CQ821548–01	National Caucus and Center on Black Aged.
CQ821549–01	National Caucus and Center on Black Aged.
CQ821572–01	National Caucus and Center on Black Aged.
CQ821598–01	American Association of Retired Persons.
CQ821982–01	National Council on Aging.
CQ822261–01	Asociacion Nacional pro Personas Mayores.
CQ822511–01	Asociacion Nacional pro Personas Mayores.
CQ822533–01	National Council of Senior Citizens.
CQ822540–01	National Caucus and Center on Black Aged.
CQ822541–01	National Caucus and Center on Black Aged.
CQ822542–01	National Caucus and Center on Black Aged.
CQ822545–01	Asociacion Nacional pro Personas Mayores.
CQ822594–01	Asociacion Nacional pro Personas Mayores.
CQ822612–01	National Council on Aging.
CQ822631–01	National Pacific/Asian Resource Center on Aging.
CQ822645–01	National Pacific/Asian Resource Center on Aging.
CQ822646–01	National Council on Aging.
CQ822647–01	National Pacific/Asian Resource Center on Aging.
CQ822652–01	American Association of Retired Persons.

All organizations are located in Washington, DC, with the exceptions of the National Pacific/Asian Resource Center on Aging (Seattle, WA) and Asociacion Nacional pro Personas Mayores (Los Angeles, CA).

EPA amended its confidentiality regulations at 40 CFR part 2, subpart B to authorize SEE enrollees for access to confidential business information (58 FR 7187, February 5, 1993). As discussed in that notice, EPA offices had been giving SEE enrollees access to confidential information under the impression that Agency confidentiality regulations allowed such access. The February 5, 1993 **Federal Register** notice rectified that error by amending these regulations to provide for such access. Among the procedures established by EPA confidentiality regulations for granting access is notification to the submitters of confidential data that SEE grantee organizations and their enrollees will have access. 40 CFR 2.301(h)(2)(iii). This notice is intended to fulfill that requirement.

The grantee organizations are required by the cooperative agreements to protect confidential information. SEE enrollees are required to sign confidentiality agreements and to adhere to the same security procedures as Federal employees.

Dated: February 4, 1994.

Karen Morehouse,

Acting Director, Office of Exploratory Research.

[FR Doc. 94–3898 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4840–1]

Access to Confidential Business Information

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is authorizing Booz-Allen, & Hamilton to conduct reviews of selected recipients' procurement, property, financial, and general administrative management systems. During the review of these systems, the contractor will have access to information which has been submitted to EPA under 40 CFR parts 31 and 35. Some of this information may be claimed or determined to be Confidential Business Information (CBI).

DATES: The Contractor (Booz-Allen, & Hamilton, Inc.) will have access to this data five working days from February 22, 1994.

ADDRESSES: Send or deliver written comments to Martha Nicodemus, Grants, Audit & Contracts Branch (8PM–GAC), 999 18th Street, Suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Martha Nicodemus, Grants, Audit and Contracts Branch, 999 18th Street, Suite 500, Denver, Colorado 80202. Telephone (303) 293–1672.

SUPPLEMENTARY INFORMATION: Under Contract 68–W3–0002, Delivery Order 003, Booz-Allen, & Hamilton, Inc., will be conducting on-site technical assistance reviews of the financial, property, procurement, and administrative systems in the States offices of Colorado Department of Health, Wyoming Department of Environmental Quality, and Utah Department of Environmental Quality to determine whether their systems comply with EPA regulations and policies. These reviews involve conducting transaction testing to evaluate recipient conformance with applicable regulations and acceptable business practices and documenting findings. The contractor will examine transactions for the following:

(1) *Expenditures.* Review expenditure documentation such as expense reports, time sheets, and purchase requests from the point of origination to the point of payment to determine compliance with such requirements as site-specific accounting data, authorizing signature, and reconciliation of time sheets to expense reports;

(2) *Financial Reports.* Review financial drawdowns, Financial Status Reports, and internal status reports to determine if information is consistent between these documents, if recipient is properly using information, and if the reports are submitted when required;

(3) *Procurement Transactions.* Review a sample of bid requests and/or requests for proposals, and the resulting contracts to determine compliance with EPA procurement requirements;

(4) *Property.* Review a sample of property purchased with EPA money (including how the property was used) to determine the degree of compliance with property requirements to acquire, manage, and dispose of the property; and

(5) *Recordkeeping Procedures.* Review a sample of documentation to determine the effectiveness of the recipient procedures to manage and reconcile this documentation.

In providing this support, Booz-Allen, & Hamilton, Inc., employees may have access to recipient documents which potentially include financial documents submitted under 40 CFR parts 31 and 35, some of which may contain information claimed or determined to be Confidential Business Information.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that Booz-Allen, & Hamilton, Inc., requires access to Confidential Business Information to provide the support and services required under this Delivery Order. These regulations provide for five working days notice before contractors are given access to CBI.

Booz-Allen, & Hamilton, Inc., will be required by contract to protect confidential information. These documents are maintained in recipient office and file space.

Dated: February 4, 1994.

Kerrigan G. Clough,

Assistant Regional Administrator for Policy & Management.

[FR Doc. 94–3899 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4839–9]

Technology Innovation and Economics Committee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a one-day meeting of the Technology Innovation and Economics (TIE) Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and the TIE Committee identifies actions that EPA can take to speed the development, commercialization, and use of technologies that will result in environmental improvement and economic growth.

Five topics will be discussed during the meeting:

1. The Draft EPA Technology Innovation Strategy.
2. The FY 1994 Program Plan for the President's Environmental Technology Initiative (ETI).
3. Priorities that should be considered for funding in FY 1995 under the ETI.
4. The Draft Report and Recommendations of the Effluent Guidelines Task Force on Selection Criteria for Preliminary Industry Studies.
5. Draft Recommendations from the Information Resources Management Task Force.

Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Committee members for consideration.

DATES: The public meeting will be held on Wednesday, March 2, 1994, from 9 a.m. to 5 p.m. in room 383 at the National Governors' Association Hall of the States, 444 North Capitol Street, Washington, DC.

ADDRESSES: Written comments should be sent to: Mark Joyce 1601F, Office of Cooperative Environmental Management, U.S. EPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Official, Direct line (202) 260–6889, Secretary's line (202) 260–6892.

Dated: February 10, 1994.

Mark Joyce,

Designated Federal Official.

[FR. Doc. 94–3882 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–M

Science Advisory Board

[FRL–4839–8]

Environmental Engineering Committee and Subcommittee; Two Open Meetings

Pursuant to the Federal Advisory Committee Act, Public law 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), will meet on Wednesday, March 2 through Thursday, March 3, 1994. The meeting will be at the Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

At this meeting, the primary activities of the EEC are: (1) To hear, review, and possibly approve in substance or in whole the report of its Environmental Futures Writing Subcommittee; and (2) to provide a consultation to EPA's Office of Emergency and Remedial Response on Selected Issues in Ground-Water Modeling for Superfund's Soil Screening Levels. The EEC will also be briefed on other engineering technology activities and will engage in planning for subsequent meetings. On Friday, March 4, 1994, the EEC's Environmental Futures Writing Subcommittee will meet at the same location to make any necessary corrections to their report.

Both meetings are open to the public and seating will be on a first come basis. Any member of the public wishing further information, such as a proposed agenda on the meeting should contact Mrs. Dorothy Clark, Secretary, Science Advisory Board (1400F), US EPA, Washington, DC 20460, at 202/260–6552. Written comments of any length may be provided up until the meeting, but 35 copies must be supplied. Members of the public who wish to make a brief oral presentation should contact Mrs. Kathleen Conway (202/260–2558) no later than noon Wednesday February 23.

Dated: February 9, 1994.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 94–3881 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–300224A; FRL–4751–3]

Abandoned and Incomplete Pesticide Petitions; Policy Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing that it will subject to a final review all pesticide petitions for tolerances, exemptions from the requirement of a tolerance, and food or feed additive regulations currently pending with the Agency where the petitioner has failed to respond to a notice of deficiency within 75 days of receipt of the notice. At the time of a final review, pesticide petitions that do not provide sufficient evidence for the Agency to find that the tolerance or exemption is protective of the public health will be denied. The policies reflected in this Statement will be applied by the Agency on a case-by-case basis.

DATES: The policies announced in this Statement are currently in effect.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins or Melissa L. Chun, Registration Division (7505W), Office of Pesticide Programs,

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Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone numbers: 6th Fl., Westfield Building, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8358 (Tompkins) or (703)-308-8318 (Chun).

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of September 4, 1991 (56 FR 43759), EPA issued a Policy Statement concerning its procedures for reviewing petitions for tolerances, exemptions from the requirement of a tolerance, and food or feed additive regulations under section 408 or 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (as amended). In the Statement, EPA said it would subject certain pesticide petitions to a final review unless, within a specified period, the petitioner submits the necessary data or a reasonable timetable for supplying data to correct deficiencies. Additionally, EPA announced that it would subject all other pending and future petitions to such a final review annually. If, at the time of any final review, there is insufficient scientific data before the Administrator to establish a tolerance, exemption from a tolerance, or a food or feed additive regulation capable of protecting the public health, the petition will be denied.

EPA received comments from the Mobay Corp. (Mobay) in response to the Policy Statement. This notice clarifies the intent of the previous policy statement and responds to the comments. Mobay's primary concern appeared to be that EPA would deny petitions simply for failure to comply with timeframes for responding to notices of deficiency or for submitting data, but this was not EPA's intent, and the timeframes outlined in the Statement are for etablishing internal administrative guidelines for final rulings on petitions.

II. Background and Clarification of Policy

EPA is responsible for processing tolerance petitions for residues of pesticides in or on raw agricultural commodities under section 408 of the FFDCA and petitions for food additive regulations for residues of pesticides in or on processed food or feed under section 409 of the FFDCA. Under section 408(d) of the act, the Administrator may establish a tolerance or an exemption from the requirement of a tolerance for a raw agricultural commodity upon the request of a person who has submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under FFDCA sec. 408(e), the Administrator may on his or her own initiative or upon the request of an interested person, establish a tolerance or an exemption from the requirement of a tolerance. Under FFDCA sec. 409(c), the Administrator may establish a food additive regulation for pesticide residues in or on food or feed upon the request of any person, or the Administrator may deny a petition.

Over the last 20 years, EPA has accumulated a large inventory of pending petitions for pesticide tolerances, exemptions from the requirement of a tolerance, and food or feed additive regulations (hereafter referred to collectively in this notice as "pesticide petitions"). By the end of 1989 the Agency had in its inventory approximately 1,000 pending petitions. Although the Agency has reviewed 750 of these petitions and notified the petitioners that these petitions lack sufficient data to establish the requested tolerance, exemption or food or feed additive regulation, petitioners have failed to respond in the case of 386 petitions. As a matter of course, EPA has treated such deficient petitions as pending until the petitioner either provides the required information or withdraws the petition.

Until the petitioner provides EPA with the required data, the Agency cannot establish an exemption from the requirement of a tolerance or establish a tolerance above zero for the use described in the petition. While it may establish zero tolerances, EPA is reluctant to do so for the uses described in the hundreds of deficient pesticide petitions. Use of the zero tolerance concept for so many deficient pesticide petitions would cause the Agency to establish hundreds of unnecessary tolerances and clutter the tolerance regulations.

EPA's former policy, which allowed deficient pesticide petitions to remain extant, and its general reluctance to establish unnecessary zero tolerances have resulted in a backlog of hundreds of pending petitions. This backlog has created serious administrative problems for the Agency. (See 56 FR 43759; Sept. 4, 1991.) To alleviate these problems, EPA has revised its internal administrative procedures for reviewing pesticide petitions.

To restate and clarify the policy announced, the Agency requested that petitioners who had filed petitions that had been pending with EPA for 5 years or more and for which 4 years had passed since the petitioner has responded to the Agency's last correspondence to provide the Agency with a reasonable timetable within 75 days of that notice for submitting the missing information. If the petitioner did not respond to the notice, submitted a response found inadequate, or requested that the petition be reviewed "as is," the Agency announced that it would generally exercise its discretion and subject the petition to a final review. EPA may make internal policy decisions, such as when to subject a pesticide petition to a final review, on a case-by-case basis. In the Policy Statement, EPA identified in a table those petitions for which it was requesting some response within 75 days.

In addition, for all other pending and future petitions, as soon as the Agency identifies a petition as being deficient, the Agency will notify the petitioner, either by letter or by notice in the **Federal Register**, requesting that the petitioner respond within 75 days by providing a reasonable timetable for supplying the Agency with the needed data. If the petitioner demonstrates in his or her response that it will supply the data to the Agency within a reasonable period of time, the Agency may in its discretion postpone a final review. However, if the petitioner does not respond or does not respond adequately, EPA will generally schedule a final review of the petition.

If at the time of any final review there are insufficient scientific data before the Administrator to establish a tolerance, exemption from a tolerance, or a food or feed additive regulation capable of protecting the public health, the petition will be denied.

III. Response to Mobay's Comments

A. Authority to Deny Petitions Under Section 408 of FFDCA.

Mobay comments that unlike FFDCA sec. 409(c)(1)(B), the FFDCA provides the Agency with no authority to deny petitions submitted pursuant to section 408(d) or 408(e) of the act.

EPA disagrees with Mobay's conclusion. First, section 408(e) of the FFDCA states that on its own initiative or upon request by an interested person, "the Administrator may *** propose the issuance of a regulation establishing a tolerance" or an exemption from a tolerance requirement. Proposal of a tolerance under FFDCA sec. 408(e), even one requested by interested persons, is entirely discretionary to the Administrator. If the Agency is free not to propose a requested tolerance, it is also permitted to deny such a requested tolerance. According to the Court in *Nader v. EPA*, "[s]o deferential is

subsection (e) that the Administrator is not only free to deny the requested regulation, she need not even propose it. See 40 CFR § 180.29(a) (1987)." 859 F.2d 747, 752 (d.c. Cir. 1988).

Further, although the FFDCA does not provide explicit authority for denial of section 408(d) petitions, neither does it or its legislative history discuss whether EPA may deny pesticide petitions that do not provide sufficient information to establish a tolerance or exemption capable of protecting the public health. Due to Congress' silence on this precise issue, any reasonable interpretation that is consistent with the purpose of the statute is valid. *Chevron v. EPA*, 467 U.S. 837, 842-844 (1984). See also *Young v. Community Nutrition Institute*, 476 U.S. 974, 981-982 (1986). Even while Mobay argues against EPA's denial authority, it admits that denial is a reasonable means for responding to what it has classified as "abandoned" section 408 petitions.

B. Basis for Denial of Section 408 or 409 Petitions

Mobay argues that, even if there is an implicit authority "to deny petitions for tolerances under section 408(b), EPA cannot deny a petition on the basis of administrative convenience and to enhance the Agency's revenues." Mobay also maintains that EPA may deny a petition for a food additive regulation under section 409 of the FFDCA only if the scientific data "fails to establish that the proposed use of the food additive *** will be safe *** or shows that the proposed use of the additive would promote deception of the consumer ***."

Contrary to Mobay's conclusion, EPA does not intend to deny petitions for administrative convenience or to raise revenues. Rather, EPA is changing its internal procedures for reviewing pesticide petitions due to the large number of petitions still pending with the Agency. EPA will be reviewing the pending petitions identified in Table 1 of the Policy Statement (56 FR 43759; Sept. 4, 1991). In addition, it will attempt to make a final review of all other pending and future petitions after 75 days from the receipt of the notice of deficiency if EPA receives no response or an inadequate response from the petitioner, or if the petitioner requests that EPA review the petition "as is." Subsequent to such reviews some petitions will be denied where there is insufficient information for the Agency to find that the proposed tolerance or exemption is protective of the public health. However, at no time will pesticide petitions be denied for administrative convenience or to raise revenues.

C. The Impact of Denial of a Petition Versus Setting a Zero Tolerance

Mobay disagrees with the Agency's position that denial of a tolerance petition is equivalent, for practical purposes, to setting a zero tolerance. Mobay provided no explanation as to how the two actions could have a different impact from a petitioner's perspective.

EPA believes there is no functional difference between the denial of a petition and establishing a zero tolerance. A commodity bearing a pesticide residue for which a tolerance has been denied or for which a zero tolerance has been established would be considered unsafe under section 408 of the FFDCA and adulterated under section 402(a)(2)(B) of the FFDCA. No rights or burdens would be created, imposed, or removed by denying a petition rather than setting a zero tolerance. The legal and practical implications of both actions are the same.

D. Complionce With Rulemaking Procedures Set Forth in the Administrative Procedures Act (APA)

Mobay states that "EPA's decision to deny petitions under Sections 408 and 409 of the FFDCA if a petitioner either fails to (1) respond to EPA's notice of deficiency within 75 days, or (2) supplement the data within a 4 year time period is clearly a rule under the Administrative Procedure Act (APA)." According to Mobay, EPA's intended action is a substantive rule requiring compliance with the notice and comment opportunities provided in section 553 of the APA because EPA's intended action is of future effect and of general applicability, and acts as an amendment to 40 CFR 180.7(d) which "provides a petitioner with an indefinite period of time to supplement a deficient petition after notification of deficiencies."

Contrary to Mobay's assertions, EPA's publication of this policy is designed to establish internal guidelines for identifying "stale" petitions that require formal action. It does not affect any rights of petitioners or bind EPA's discretion. EPA is not under any obligation to publish for comment its internal guidelines for review of petitions and could at any time, and at its sole discretion, take formal action denying a petition failing to meet statutory criteria.

EPA does not, as Mobay assumed, intend to deny petitions for failure to comply with the 75 day or 4 year timeframes. As previously mentioned, these timeframes are internal guidance as to when a petition is probably stale and thus should be considered for formal action removing it from the pending status. Any formal action will be based on the applicable statutory criteria.

This policy does not amend the EPA regulation which allows petitioners to supplement deficient petitions. While 40 CFR 180.7(d) permits a petitioner to correct a deficiency prior to filing, nothing in that section prescribes when EPA can or must make a decision on a pesticide petition that has been filed. Neither the statute nor regulations in 40 CFR part 180 give a petitioner the right to maintain a deficient petition before the Agency indefinitely. In fact, FFDCA sec. 408 anticipates EPA final action on petitions in 180 days, a considerably shorter timeframe than those outlined in this policy for scheduling a final review. The goal of reviewing petitions within 4 years and the proposed internal procedure of sending deficiency notices with a request for a response do not affect in any meaningful way the petitioner's ability to supplement deficient petitions. An adequate response to the Agency's request within 75 days preserves the petitioner's right to provide supplemental data for up to 4 years without the Agency's taking formal action to review the petition. Given that the statute contemplates an Agency decision within 180 days, the Agency's policy of allowing a petition to remain extant up to 4 years from the date EPA approves the schedule for generation of data is reasonable, even generous.

E. Incomplete Petitions and the Potential for Error in EPA's Files

Mobay argues that the Agency has not presented any compelling reason why incomplete versus abandoned petitions should be denied. Further, Mobay comments that, even should the Agency have some compelling reason to deny incomplete petitions, the inaccuracy of the Agency's files and records is evidence that the "potential for erroneous decisions far outweighs any need the Agency may have to cleanse its records."

Mobay's comment assumes a distinction between incomplete and abandoned pesticide petitions not made by EPA in this policy, and Mobay does not explain the distinction. As previously noted, EPA is applying the policy announced in this Notice to reform its internal procedures for timing the final review of all pesticide petitions. At the point at which EPA determines that a petition is deficient, it

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will notify the petitioner. Failing an adequate response, the deficient petition will be subject to a final review. Upon a final review, EPA will deny those pesticide petitions which do not provide sufficient data to establish a tolerance, exemption from a tolerance, or food or feed additive regulation capable of protecting the public health.

Further, the potential inaccuracies in EPA's files argue in favor of instituting this policy rather than against it. One of the main objectives of the policy is to ensure that EPA has accurate records to determine which pending petitions are still active and what their deficiencies may be. The accuracy of EPA's files will be increased by regularizing the Agency's monitoring of the status of pesticide petitions. If EPA has made an error, then the petitioner has the opportunity to notify EPA of the error well before a final review of the petition.

IV. Implementation

EPA will be subjecting to a final review those pending petitions identified at 56 FR 43759 in Table 1 of the Policy Statement for which it received no response, an inadequate response, or a request to review the petition "as is." In addition, EPA will notify all other petitioners of any deficiencies in their petitions and allow 75 days to respond to the notification. EPA will attempt to make a final review of all other pending and future petitions after 75 days from the receipt of the notice of deficiency if EPA receives no response or an inadequate response from the petitioner, or if the petitioner requests that EPA review the petition "as is." If EPA determines, upon a final review, that a petition does not include sufficient information to find that the requested tolerance or exemption from a tolerance is protective of the public health, it will notify the petitioner by letter or FR notice that the petition is being denied.

V. Format of Submissions

A. Request to Withdraw a Pesticide Petition

All requests to withdraw a pesticide petition should be submitted on company letterhead and specify the pesticide petition number which the Agency assigned to the petition, the active ingredient of the chemical, and the raw agricultural commodities and food or feed items involved.

B. Requests to Retain Petitions

All requests to retain a pesticide petition should be submitted on company letterhead and specify the pesticide petition number which the Agency assigned to the petition, the active ingredient of the chemical, and raw agricultural commodities and food or feed items involved. The request should contain a timetable listing data deficiencies identified by EPA letters and the date the company expects to submit these data. This timeframe should not exceed a 4-year period.

C. Where to Send Requests

All requests should be submitted to the following address: Front End Processing Staff, Registration Division (7505C), 401 M St., SW., Washington, DC 20460.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests.

Dated: December 23, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–3758 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–60–F

[OPPTS–44606; FRL–4760–9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on isopropanol (CAS No. 67–63–0), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for isopropanol were submitted by the Chemical Manufacturers Association Isopropanol Panel on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.2325. They were received by EPA on January 21, 1994. The submission describes a vapor inhalation oncogenicity study in mice. This chemical is used as a solvent in consumer products and industrial products and procedures.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44606). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. ET–G102, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: February 8, 1994.

Denise M. Keehner,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–3830 Filed 2–18–94; 8:45 am]

BILLING CODE 6560–60–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 14, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

Please note: The Commission has requested emergency OMB review of this item by February 15, 1994, under the provisions of 5 CFR 1320.18.

OMB Number: None.

Title: Transport Rate Structure and Pricing, CC Docket No. 91–213, Second Report and Order.

Action: New collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting requirement and one-time collection.

Estimated Annual Burden: 55 responses; 2 hours average burden per response; 110 hours total annual burden.

Needs and Uses: In the Second Report and Order, CC Docket No. 91–213 (released 1/31/94), the Commission modified certain features of the price cap regulatory system applicable to local exchange carriers (LECs) to accommodate the recent restructure of the LECs local transport rates. Transport services, including all the transmission-related elements, the tandem switching charge, and the interconnection charge, were moved out of the price cap basket for traffic sensitive services and placed into a combined "trunking" basket containing transport and special access services. The Commission realigned the service categories and subcategories within the trunking basket to reflect the similarities between certain special access and flat-related transport services, and to accommodate the new density zone pricing system that were adopted for both special access and transport. The pricing bands applicable to the service categories and subcategories were also adapted. All LECs subject to the price cap rules are required to file a supplemental tariff review plan to recalculate their price cap indexes pursuant to the decision in the Order. The recalculated indexes should be used as the basis of any price cap filing that changes rates of services in the trunking or traffic sensitive baskets subsequent to the effective date of the initial restructured transport tariffs. Subsequent tariff filings must be made pursuant to the modified rules. The information will be used to aid in the review of the LECs' transport service restructure by the Commission and interested parties.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–3819 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1999]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

February 17, 1994.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc., (202) 857–3800. Opposition to these petitions must be filed March 9, 1994. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject

Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929–930 MHz. (PR Docket No. 93–35)

Petition for Reconsideration

Number of Petitions Filed: 7

Request for Waiver

Number of Petitions Filed: 2

Federal Communications Commission.

William F. Caton.

Acting Secretary.

[FR Doc. 94–3863 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

Renewal Applications Designated for Hearing

1. The Commission has before it the following regulations for renewal of license:

Applicant	City/State	File Nos.	MM docket No.
The Lutheran Church/Missouri Synod	Clayton, MO	BR–890929VC BRH–890929VB	94–10

(Seeking renewal of the licenses of Stations KFUO/KFUO–FM)

2. Pursuant to section 309(e) of the communications Act of 1934, as amended, the above application has been designated for hearing on the issues set forth below:

a. To determine the extent to which the licensee of Stations KFUO/KFUO–FM complied with the affirmative action provisions specified in § 73.2080(b) of the Commission's Rules, 47 CFR 73.2080.

a. To determine whether the licensee of Stations KFUO/KFUO–FM made misrepresentations of fact or was lacking in candor in violation of § 73.1015 of the Commission's Rules, 47 CFR 73.1015, with regard to the stations' EEO program and documents submitted in support thereof.

c. To determine whether, in light of evidence adduced pursuant to the foregoing issues, a grant of the subject license renewal applications would serve the public interest, convenience and necessity.

A copy of the complete Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 32), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–3857 Filed 2–18–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets to Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance

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Corporation (FDIC) was duly appointed receiver for each of the financial institutions specified in **SUPPLEMENTARY INFORMATION.** The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of these receivership estates are insufficient to satisfy all classes of claims, asserted or unasserted against the receivership estate. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable state and federal law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any other creditor and therefore the claim of any such creditor is worthless.

FOR FURTHER INFORMATION CONTACT: Keith Ligon, Counsel, Legal Division, FDIC, 1717 H Street, NW., Washington, DC 20006. Telephone: (202) 736–0160.

SUPPLEMENTARY INFORMATION:

Financial Institutions in Receivership Determined to Have Insufficient Assets to Satisfy All Claims

Union Bank & Trust, #2813, Dallas, Texas
Western State Bank of Denton, #2499, Denton, Texas
Peoples State Bank, #4306, Dallas, Texas.

Dated: February 15, 1994.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Acting Executive Secretary.
[FR Doc. 94–3825 Filed 2–18–94; 8:45 am]
BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before April 25, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0166.

Title: Crisis Counseling Assistance and Training.

Abstract: Public Law (PL) 93–288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 100–707, authorizes the President to provide financial assistance to State and local governments for professional counseling services to victims of major disasters in order to relieve mental health problems caused or aggravated by a major disaster or its aftermath. The Department of Health and Human Services Center for Mental Health Services and FEMA monitor State Crisis Counseling and Assistance Training program's (CCP's) to ensure that the goals of the program for people affected by disasters are met, special problems in areas where technical assistance might be necessary are identified, grants are properly managed, and technical assistance and guidance are provided on mental health matters as they relate to the crisis counseling assistance.

FEMA provides funds in the form of a Federal grant to State or local mental health agencies or private mental health organizations designated by the Governor to provide crisis counseling services to the Presidentially declared communities. Assistance is provided under two separate programs: Immediate Services Program and Regular Program. To obtain a grant, a State agency must submit a grant application. If approved and funded, the State agency must provide progress and financial reports on a quarterly basis.

Type of Respondents: State or local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 5,272 hours.

Number of Respondents: Immediate Services—17; Regular Program—7.

Estimated Average Burden Time Per Response: Immediate Services—24 hours reporting and 48 hours recordkeeping; Regular Program—52 hours reporting and 260 hours recordkeeping.

Frequency of Response: Other—application, final report; Quarterly, and Recordkeeping.

Dated: February 14, 1994.

Wesley C. Moore,
Director, Office of Administration Support.
[FR Doc. 94–3900 Filed 2–18–94; 8:45 am]
BILLING CODE 6718–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before April 25, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0223.

Title: Damage Survey Report.

Abstract: The information will be collected with input from State and local governments describing in detail facilities that have been damaged in a major disaster. Following a major disaster declaration by the President, the State and Disaster Recovery Manager arranges for damage surveys to be made by teams of Federal and State inspectors and a local representative. The following FEMA forms are completed and are attached as supporting justification to the applicant's project application: FEMA Form 90–91, Damage Survey Report—Data Sheet, completed for each damaged facility and for each item of emergency and permanent work identified by the local representative for each damaged facility; FEMA Form 90–3, Pumping Equipment, provides information on any damaged pumping equipment; FEMA Form 90–51, Building Survey, provides information on damage to buildings; and FEMA Form 90–53, Bridge Survey, provides information on any damage to bridges. Prior to the survey team beginning their inspections, the local representative must compile information in accordance with the checklist requirements for damage surveys in DAP 1, Public Assistance Guide for Applicants.

Type of Respondents: State or local governments, Federal agencies or employees.

Estimote of Total Annual Reporting and Recordkeeping Burden: 6,155 hours.

Number of Respondents: 12,160.

Estimated Average Burden Time per Response: 30 minutes each to complete FEMA Forms, and 8 hours each to compile checklist information.

Frequency of Response: On occasion.

Dated: February 14, 1994.

Wesley C. Moore,
Director, Office of Administrative Support.
[FR Doc. 94–3901 Filed 2–18–94; 8:45 am]
BILLING CODE 6718–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before April 25, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

Type: Reinstatement of 3067–0222.

Title: Mobile Home Assistance—Request for the Site Inspection and Landowner's Authorization/Ingress-Egress Agreement.

Abstract: Information collected to determine site feasibility for the placement of a mobile home; to obtain written permission from the property owner to allow the mobile home on his/her land; and to obtain from adjacent property owners rights of ingress/egress for movement of the mobile home to and from the land.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 333 hours.

Number of Respondents: 1,000.

Estimated Average Burden Time Per Response: 20 minutes.

Frequency of Response: On occasion.

Dated: February 8, 1994.

Wesley C. Moore,
Director, Office of Administrative Support.
[FR Doc. 94–3902 Filed 2–18–94; 8:45 am]
BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Ambank Company, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Ambank Company, Inc., Sioux Center, Iowa; to engage *de novo* through its subsidiary, Northwest Appraisal Services, Sioux Center, Iowa, in performing real estate appraisal services pursuant to § 225.25(b)(13) of the Board's Regulation Y.

2. First Midwest Corporation of Delaware, Melrose Park, Illinois; to engage *de novo* through its subsidiary, Midwest Trust Services, Inc., Elmwood Park, Illinois, in accepting and executing trusts and carrying on a general trust company business pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities are intended to serve the Chicago metropolitan area including Cook, Lake, Will, DuPage and McHenry Counties.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Cass Commercial Corporation, St. Louis, Missouri; to engage *de novo* through its subsidiary, Cass Logistics, Inc., Bridgeton, Missouri, in acquiring, holding, and disposing of loans or other extensions of credit extended by Cass Commercial Corporation's subsidiary bank, Cass Bank & Trust Company, St. Louis, Missouri, and providing necessary servicing activities in connection therewith pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Wabasha Holding Company, Wabasha, Minnesota; to engage *de novo* in the purchase of participations in loans and/or loan pools collateralized with leases pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

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1. First Community Bancshares, Inc., Winnfield, Louisiana; engage *de novo* in acting as principal, agent, or broker for insurance that is directly related to an extension of credit by the bank holding company or any of its subsidiaries and limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the State of Louisiana.

2. Winn Bancshares, Inc., Winnfield, Louisiana; to engage *de novo* in acting as principal, agent, or broker for insurance that is directly related to an extension of credit by the bank holding company or any of its subsidiaries and limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the State of Louisiana.

Board of Governors of the Federal Reserve System, February 15, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-3844 Filed 2-18-94; 8:45 am]

BILLING CODE 6210-01-F

Hancock Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 18, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Hancock Bancorp, Inc., Plymouth, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Community State Bank of Plymouth, Plymouth, Illinois.

2. Ida Grove Bancshares, Inc., Ida Grove, Iowa; to acquire 100 percent of the voting shares of P.S.B. Corporation, Odebolt, Iowa, and thereby indirectly acquire Liberty Bank & Trust, Odebolt, Iowa.

3. LSBancorp, Inc., LaSalle, Illinois; to acquire 100 percent of the voting shares of Community Bank of Utica, Utica, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Banks, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Farmers Bancshares, Inc., Breese, Illinois, and thereby indirectly acquire State Bank of Breese, Breese, Illinois, and Farmers State Bank of Valmeyer, Valmeyer, Illinois.

2. Mark Twain Bancshares, Inc., St. Louis, Missouri; to acquire at least 66.7 percent of the voting shares of C.B. Bancshares, Inc., St. Louis, Missouri, and thereby indirectly acquire Century Bank, St. Louis, Missouri.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community Investment Services, Inc., North Branch, Minnesota; to acquire 94.43 percent of the voting shares of A & P Bank Holding Company, and thereby indirectly acquire 84.51 percent of the voting shares of Community National Bank, North Branch, Minnesota, and directly acquire 7.66 percent of Community National Bank.

2. Kelliher Bancshares, Inc., Kelliher, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank of Kelliher, Kelliher, Minnesota.

Board of Governors of the Federal Reserve System, February 15, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-3845 Filed 2-18-94; 8:45 am]

BILLING CODE 6210-01-F

Joyce Williams Porter, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 14, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Joyce Williams Porter, Alpharetta, Georgia; to acquire an additional 14.06 percent of the voting shares of First Colony Bancshares, Inc., Atlanta, Georgia, for a total of 14.13 percent, and thereby indirectly acquire First Colony Bank, Atlanta, Georgia.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. James Levendofsky, Belleville, Kansas; to acquire an additional 18 percent of the voting shares of Peoples BanCorp of Belleville, Inc., Belleville, Kansas, for a total of 32.25 percent, and thereby indirectly acquire Peoples National Bank of Belleville, Belleville, Kansas.

2. A.P. Martin and Lloyd M. Pickering, Jr., Trustees of the A.P. Martin Trust, Okemah, Oklahoma; to acquire 37.33 percent of the voting shares of OK Bancorporation, Inc., Okemah, Oklahoma, and thereby indirectly acquire Okemah National Bank, Okemah, Oklahoma.

Board of Governors of the Federal Reserve System, February 15, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-3846 Filed 2-18-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Post-FTS2000 Development Record Conference Proceedings; Availability Date Change

February 4, 1994.

AGENCY: GSA.

ACTION: Notice for Request for Post-FTS2000 Ideas/Comments—Inter-city Telecommunications Services—Public Review of the Post-FTS2000 Concept Development Record (Release #2)—Conference Proceedings.

SUMMARY: The response date for written responses to the Concept Development Record—Release #2 publicized in the Commerce Business Daily on January 18, 1994, and in the **Federal Register** on January 26, 1994, is changed from February 15, 1994, to March 1, 1994. Written responses may be submitted to the General Services Administration, Attn: Concept Development Conference, 7980 Boeing Court, Vienna, VA 22182, by FAX at (703) 760–7523, or electronically at concept @access.digex.com. The Transcript of the three-day Concept Development Conference proceedings (October 19–21, 1993) is now available on 3.5" MS–DOS diskettes for $90.00/set under document ordering No. PB94–500881. Also, Appendices A through D (list of attendees, questions/answers, speaker's view-graphs, and misc items) can be purchased separately in hard copy format for $44.50/ea. and on microfiche for $17.50/ea. under document ordering number PB94–136645. To place your order for a copy of the Concept Development Record (Release #2), please call the NTIS Sales Desk (with the document ordering number) at (703) 487–4650. The address for NTIS is: Department of Commerce, National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

DATES: The due date for written responses to the Concept Development Record (Release #2) is March 1, 1994.

ADDRESSES: Please mail all responses pertaining to the Concept Development Record (Release #2) to: General Services Administration, Attn: Concept Development Conference, 7980 Boeing Court, Vienna, VA 22182.

FOR FURTHER INFORMATION CONTACT: Richard J. Kosko at (703) 760–7562.

Dated: February 4, 1994.

Barbara R. Norsworthy,

Deputy Director, Network Telecommunications Procurement Division.

[FR Doc. 94–3873 Filed 2–18–94; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Safe Medical Devices Act of 1990; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under the Safe Medical Devices Act of 1990, Public Law 101–629, as amended hereafter. This delegation excludes the authority to submit reports to the Congress.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Assistant Secretary for Health or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: February 10, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–3872 Filed 2–18–94; 8:45 am]

BILLING CODE 4160–15–M

Food and Drug Administration

[Docket No. 94N–0034]

Drug Export; Acellular Pertussis Vaccine Adsorbed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that American Cyanamid Co., Lederle-Praxis Biologicals Division, has filed an application requesting approval for the export of the human biological product Acellular Pertussis Vaccine Adsorbed to the Federal Republic of Germany.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center of Biologics Evaluation and Research (HFM–660), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–1070.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that American Cyanamide Co., Lederle-Praxis Biologicals Division, 401 North Middletown Rd., Pearl River, NY 10965, has filed an application requesting approval for the export of the human biological product Acellular Pertussis Vaccine Adsorbed to the Federal Republic of Germany. The Acellular Pertussis Vaccine Adsorbed is for active immunization against pertussis (whooping cough) in children from 15 months to 6 years of age. The application was received and filed in the Center for Biologics Evaluation and Research on January 24, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 4, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

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Dated: February 9, 1994.

P. Michael Dubinsky,

Acting Deputy Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 94–3814 Filed 2–18–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of two FDA advisory committees by the Commissioner of Food and Drugs. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the date indicated below unless the Commissioner formally determines that the renewal is in the public interest.

Name of the committee	Date of expiration
Food Advisory Committee	December 18, 1995
Vaccines and Related Biological Products Advisory Committee	December 31, 1995

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: February 14, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–3854 Filed 2–18–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute; Meeting of the Cancer Education Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Education Review Committee, National Cancer Institute, on March 1, 1994, The Georgetown Inn, 1310 Wisconsin Avenue NW., Washington, DC 20007.

This meeting will be open to the public on March 1, 1994, from 8 a.m. to 8:30 a.m., to review administrative details and other cancer education review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on March 1 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Executive Boulevard, room 630E, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Neal B. West, Scientific Review Administrator, Cancer Education Review Committee, National Cancer Institute, Executive Boulevard, room 611D, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/402–2785) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Neal B. West in advance of meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 92.292, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.395, Cancer Biology Research; 03.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3910 Filed 2–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Research Manpower Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, on March 6–9, 1994, The Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209.

This meeting will be open to the public on March 6, 1994, from 7:30 pm to 8:30 pm, to review administrative details and other cancer research manpower review issues. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on March 6 from 8:30 pm to recess, on March 7 from 8 am to recess, on March 8 from 8 am to recess, and on March 9 from 8 am to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630E, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Bell, Scientific Review Administrator, Cancer Research Manpower Review Committee, National Cancer Institute, Executive Plaza North, room 611A, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7978) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Mary Bell in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3918 Filed 2–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the March 1, 1994, meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, which was published in the **Federal Register** on January 31, 1994, 59 FR 4289.

This Special Emphasis Panel was to have convened at 8 a.m. on March 1, 1994, at the Chevy Chase Holiday Inn, but has been changed to 8 a.m., March 11, 1994, at the Bethesda Marriott, 5151 Pooks Hills Road, Bethesda MD.

The meeting will be closed to the public.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: February 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3907 Filed 2–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sections 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and their discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates of Meeting: March 14–16, 1994.

Time of Meeting: March 14: 8 p.m.–10 p.m. March 15: 3 p.m.–8 p.m. March 16: 8 a.m.–11 a.m.

Place of Meeting: La Guardia Marriott Hotel, East Elmhurst, NY.

Agenda: Review of grant application.

Contact Person: Dr. Marilyn Semmes, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400C, Bethesda, Maryland 20892, (301) 496–8683.

(Catalog of Federal Domestic Assistance Program No. 93,173, Biological Research Related to Deafness and Other Communication Disorders.)

Dated: February 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3919 Filed 2–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute on Drug Abuse for March 1994.

The Extramural Science Advisory Board will discuss NIDA's program areas and monograph series. This meeting will be open on the dates indicated below; however, attendance by the public will be limited to space available.

The initial review groups will be open to the public for approximately one-half hour at the beginning of the first day of the meeting for announcements and reports of administrative, legislative, and program development. Attendance by the public will be limited to space available.

As indicated below in accordance with provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the initial review groups will be closed to the public for the review, discussion, and evaluation of individual grant applications on the dates indicated below. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Extramural Science Advisory Board, NIDA.

Meeting Date: March 1–2, 1994.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: March 1–2, 9 a.m. to 5 p.m.

Contact: Jacqueline P. Downing, room 10A–55, Parklawn Building, Telephone (301) 443–1056.

Committee Name: Biobehavioral/Clinical Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: March 8–9, 1994.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, Maryland 20852.

Open: March 8, 9 a.m. to 9:30 a.m.

Closed: 9:30 a.m., March 8, to adjournment on March 9.

Contact: Mary Custer, Ph.D., Room 10–42, Parklawn Building, Telephone (301) 443–2620.

Committee Name: Sociobehavioral Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: March 8–10, 1994.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: March 8, 9 a.m. to 8:30 a.m.

Closed: 9:30 a.m., March 8, to adjournment on March 10.

Contact: H. Noble Jones, room 10–22, Parklawn Building, Telephone (301) 443–9042.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact persons named above in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: February 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3909 Filed 2–18–94; 8:45 am]

BILLING CODE 4140–01–M

INTERAGENCY FLOODPLAIN MANAGEMENT REVIEW COMMITTEE

Mississippi River Basin Floodplain Management; Request for Comments

SUMMARY: Damages resulting from the heavy rainfalls and related flooding of 1993 in the Upper Mississippi and Lower Missouri River basins were some of the most devastating in the history of the Nation. The magnitude of these floods has raised serious concerns about this country's ability to provide adequate flood protection and to respond quickly and effectively during post-flood recovery. Perhaps most significantly, it has forced the Nation to reconsider its best long-term strategy, not only to prevent a recurrence of the 1993 experience, but to ensure that floodplains and related watersheds function to the fullest extent possible in

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ways that achieve environmental, economic, and socio-cultural objectives.

In response to the Flood of 1993, an Interagency Floodplain Management Review Committee was formed by the Administration to examine what happened and why, to solicit opinions, and to make recommendation as to what changes in current policies would most effectively achieve the goals of floodplain management; this Review Committee is part of the Administration's larger Floodplain Management Task Force. A final report of this Review Committee will include: a description of the flood event, including quantitative assessments of the damages incurred; an assessment of the performance of Federal flood control measures; a summary of the concerns of affected parties as expressed during the public input phase of this study; the identification of attributes which could be used to identify areas where alternative flood, floodplain, and watershed management measures might be taken to yield the highest overall socio-cultural, economic, and environmental payoff; proposals for administrative or legislative change which would enhance the flexibility and effectiveness of floodplain and watershed management; and a framework to focus and guide development of comprehensive answers for improved floodplain and watershed management by describing questions that remain to be addressed and identifying data and resource needs.

As part of the Review Committee's outreach efforts, interested parties are invited to submit comments and recommendations related to floodplain and watershed management policies and programs.

DATES: Comments must be received on or before April 1, 1994. The draft report from this Committee is due on May 1, 1994. The final report is to be submitted on June 1, 1994.

ADDRESSES: Send written comments to BG Gerald E. Galloway, Executive Director, Floodplain Management Review Committee, 730 Jackson Place NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: BG Gerald E. Galloway, Executive Director, 202 408–5295.

BG Gerald E. Galloway,

Executive Director.

[FR Doc. 94–3822 Filed 2–18–94; 8:45 am]

BILLING CODE 3125–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–702631

Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 1.

Applicant requests amendment to their current permit to include take activities for: Callippe silverspot butterfly (*Speyeria callippe callippe*), Behren's silverspot butterfly (*Speyeria zerene behrensii*) and Alameda whipsnake (*Masticophis lateralis euryxanthus*) for the purpose of scientific research and enhancement of propagation or survival, if or when they become Federally protected as endangered or threatened by the Endangered Species Act.

PRT–784974

Applicant: Ohio State University, Columbus, OH.

The applicant requests a permit to export eight captive-bred Cotton-top tamarins to (*Saguinus oedipus*) to Columbia, South America, for the purpose scientific research aimed at the conservation of the species.

PRT–786485

Applicant: Dr. Charles Bechert II, Fort Lauderdale, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by H.Z. Kock, "Verborgenfontein", Merriman, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–784254

Applicant: AAZPA SSP for Black Rhino, Brownsville, TX.

The applicant requests a permit to import two captive-held Black rhinoceros (*Diceros bicornis minor*) from Zimbabwe to enhance the propagation or survival of the species through captive-breeding. These rhinos were wild-caught during a rhino conservation translocation operation undertaken by Zimbabwe's Department of National Parks and Wildlife.

PRT–786600

Applicant: National Marine Fisheries Service, Southwest Region, Long Beach, CA.

The applicant requests a permit to import 50 dead specimens of the following sea turtle species: green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), olive ridley (*Lepidochelys olivacea*) and loggerhead (*Caretta caretta*), for biometrics, necropsy, and analysis of stomach contents to enhance the propagation and survival of the species.

PRT–784960

Applicant: Dr. Kenneth Counts, Vilonia, AR.

The applicant requests a permit to purchase in interstate commerce 3 captive-bred San Francisco Garter snakes (*Thamnophis sirtalis tetrataenia*) from Lloyd Lemke, Visalia, California to enhance the propagation or survival of the species through captive-breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 15, 1994.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–3848 Filed 2–18–94; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[OR–942–00–4730–02: G4–077; 0–00151]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Williamette Meridian

Oregon

T. 14 S., R. 1 E., accepted January 5, 1994.
T. 9 S., R. 2 E., accepted December 15, 1993.
T. 18 S., R. 5 W., accepted January 3, 1994.
T. 30 S., R. 5 W., accepted January 4, 1994.
T. 20 S., R. 10 W., accepted December 15, 1993.
T. 28 S., R. 11 W., accepted December 1, 1993.
T. 41 S., R. 12 W., accepted December 7, 1993.
T. 40 S., R. 13 W., accepted January 3, 1994.

Washington

T. 10 N., R. 5 E., accepted January 12, 1994.
T. 11 N., R. 5 E., accepted January 12, 1994.

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: February 7, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–3833 Filed 2–18–94; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–359 (Preliminary) and 731–TA–686–687 (Preliminary)]

Certain Steel Wire Rod From Belgium and Germany

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of preliminary countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701–TA–359 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) and of preliminary antidumping investigations Nos. 731–TA–684–685 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium and Germany of certain steel wire rod,[1] provided for in subheadings 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00, 7213.50.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States that are alleged to be subsidized by the Government of Germany and to be sold in the United States at less than fair value. The Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by March 31, 1994.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on February 14, 1994, by Connecticut Steel Corp., Wallingford, CT; Georgetown Steel Corp., Georgetown, SC; North Star Steel Texas, Inc., Beaumont, TX; Co-Steel Raritan River Steel Co., Perth Amboy, NJ; Keystone Steel & Wire Corp., Peoria, IL; and Northwestern Steel & Wire Co., Sterling, IL.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this

[1] For purposes of these investigations, certain steel wire rod is defined as hot-rolled carbon steel and alloy steel wire rod, in irregularly wound coils, of approximately round cross section, between 5.08 mm (0.20 inch) and 19.0 mm (0.75 inch) in diameter. The following products are excluded from the scope of these investigations:

—steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and having the following chemical content, by weight: carbon greater than or equal to 0.79 percent, aluminum less than or equal to 0.005 percent, phosphorus plus sulfur less than or equal to 0.04 percent, and nitrogen less than or equal to 0.006 percent (termed "1080 tire cord" quality wire rod);

—free-machining steel containing 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium;

—stainless steel rods, tool steel rods, free-cutting steel rods, resulfurized steel rods, ball bearing steel rods, high-nickel steel rods, and concrete reinforcing bars and rods; and

—wire rod 7.9 to 18 mm in diameter, containing 0.43 to 0.73 percent carbon by weight, and having partial decarburization and seams no more than 0.75 mm in depth.

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notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 4, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brad Hudgens (202–205–3189) not later than March 1, 1994, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 9, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: February 16, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–3987 Filed 2–18–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–33 (Sub–No. 66X)]

Boston and Maine Corp.—Discontinuance of Trackage Rights Exemption—in Middlesex County, MA

Boston and Maine Corporation (B&M) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Trackage Rights* to discontinue trackage rights over approximately 1.90 miles of railroad owned by the Massachusetts Bay Transportation Authority (MBTA) on its "Central Massachusetts Branch" line, extending between milepost 8.30 and milepost 10.20, in Waltham, Middlesex County, MA.

B&M has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) that the requirements at 49 CFR 1105.7 (service of environmental report on agencies); 49 CFR 1105.8 (historic reports); 49 CFR 1105.11 (transmittal letter); 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on March 24, 1994, unless stayed pending reconsideration. Petitions to stay must be filed by March 4, 1994. Petitions to reopen must be filed by March 14, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[1]

A copy of any petition filed with the Commission should be sent to applicant's representative: John R. Nadolny, Esq., Vice President and General Counsel, Law Department, Boston and Maine Corporation, Iron Horse Park, No. Billerica, MA 01862.

If this notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Decided: February 15, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–3921 Filed 2–18–94; 8:45 am]

BILLING CODE 7035–01–P

[1] Because MBTA will continue to provide service over the line, there is no need to provide for trail use/rail banking or public use conditions, or to include offer of financial assistance language, routinely provided for in abandonment proceedings.

[Docket No. AB–213 (Sub-No. 4)]

Canadian Pacific Limited—Abandonment—Line Between Skinner and Vanceboro, ME

The Commission's Section of Environmental Analysis (SEA) hereby notifies all interested parties that SEA will prepare a Draft Environmental Impact Statement (DEIS) and conduct scoping meetings in this proceeding. The Canadian Pacific Limited (CP) filed an application for authority to abandon and discontinue all freight and passenger operations over 201.2 miles of rail line between Skinner and Vanceboro, in Franklin, Somerset, Piscataquis, Penobscot, Aroostook, and Washington Counties, Maine. Because of the proposed abandonment's potential for significant environmental impacts, SEA has determined that preparation of a DEIS is necessary.

The DEIS will address the environmental impacts associated with this proposed abandonment and will be served on all the parties to the proceeding and made available to the public. There will be a 45 day comment period from the date the DEIS is served to allow the public opportunity to comment. After assessing all of the comments to the DEIS and any other comments filed during the environmental review process, SEA will issue a Final Environmental Impact Statement (FEIS) that will include SEA's final recommendations to the Commission. The Commission will consider the FEIS and the environmental record in making its decision.

The purpose of the scoping process is to identify significant environmental issues and determine the scope of issues to be addressed in the DEIS. Issues typically addressed in DEIS's include alternatives to the proposed action, impacts on transportation systems, land use, socio-economic impacts, energy resources, air quality, noise quality, public health and safety, biological resources, water quality, historic resources, coastal zone management consistency review, and mitigation to reduce or avoid impacts on the environment. Persons that cannot attend the scoping meetings may submit questions and comments in writing up to 30 days after the scoping meetings. Written comments may be submitted directly to the Commission no later than April 15, 1994. Public scoping meetings will be held on the following dates.

- March 15, 1994, from 2 p.m. to 6 p.m. at The American Legion Hall, Maine Street, Woodland, ME, and
- March 16, 1994, from 10 a.m. to 12 p.m. at City Hall, City Council Chambers, 73 Harlow Street, Bangor, ME.

FOR FURTHER INFORMATION CONTACT: Phillis Johnson-Ball at (202) 927–6213 or Vicki Dettmar at (202) 927–6211, Section of Environmental Analysis, room 3219, Office of Economic and Environmental Analysis, 12th and Constitution Avenue, NW., Interstate Commerce Commission, Washington, DC TDD for hearing impaired: (202) 927–5721.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–3922 Filed 2–18–94; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before April 8, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Commerce, Patent and Trademark Office (N1–241–90–5). Electronic and textual records of the Automated Patent Search System.

2. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–93–2). Comprehensive records schedule for the Arabian Gulf Program Office.

3. Department of Education, Office of Educational Research and Improvement (N1–441–94–1). Data filed relating to kindergarten, 1971–1975.

4. Department of Education, Routine and facilitative financial and administrative records relating to the Federal real property assistance program (N1–441–93–5).

5. Department of Health and Human Service, Centers for Disease Control and Prevention (N1–442–91–11). Comprehensive schedule for National Institute of Occupational Safety and Health electronic records.

6. Department of Health and Human Service, Centers for Disease Control and Prevention. (N1–442–91–12). Comprehensive schedule of electronic records of the Center for Infectious Diseases.

7. Department of Health and Human Services, Public Health Service, National Institutes of Health (N1–443–93–1). Medical Staff credentials.

8. Department of Health, Education and Welfare, Office of the Secretary (N1–235–93–1). Completed job satisfaction surveys filled out by Departmental employees, 1971.

9. Department of the Interior, U.S. Geological Survey (N1–57–93–1). Hard copy seismograms.

10. Department of the Interior, Bureau of Mines (N1–70–93–1). Revisions to the records schedule for the Division of Organization and Management.

11. Department of Labor, Office of the Executive Secretariat (N1–174–93–3). Miscellaneous subject files, 1991–1993.

12. Department of State, Bureau of Politico-Military Affairs (N1–59–94–2). Compliance tracking system used by the Office of Defense Trade Controls.

13. Department of Treasury, Office of Thrift Supervision (N1–483–92–7). Records of the Controller's Division.

14. Department of Treasury, Office of Thrift Supervision (N1–483–93–16). Summary reports on financial institutions.

15. Department of Treasury, Office of Thrift Supervision (N1–483–93–18). Summary reports produced by the Branch Office Survey System.

16. ACTION, Office of Management and Budget (N1–362–94–3). General correspondence of the Inspector General.

17. Environmental Protection Agency, Office of Pesticides (N1–412–93–3). Records relating to the National Pesticides Survey.

18. National Archives and Records Administration (N2–107–94–1). Routine

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and facilitative records accumulated by the Office of the Secretary of War.

19. National Archives and Records Administration (N2–145–94–1). Routine sound recordings used for training by the Agricultural Stabilization & Conservation Service.

20. Peace Corps (N1–490–93–2). Volunteer training evaluation files relating to projects in El Salvador and Honduras, 1965–67.

21. Securities and Exchange Commission. (N1–266–93–1). Records relating to the Study of Investment Trusts and Companies, 1935–38.

22. Tennessee Valley Authority, Resource Group (N1–142–92–17. Computer cassette tapes and engineering drawings relating to the Ammonia from Coal Project.

Dated: February 10, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–3917 Filed 2–18–94; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a planning meeting for the Professional Theater Companies Section of the Theater Advisory Panel will be held on February 28, 1994 from 10 a.m. to 4 p.m., in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 16, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–4073 Filed 2–18–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Astronomy Subcommittee to Advisory Committee for Mathematical and Physical Science and National Astronomy Centers Presentation; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Mathematical and Physical Sciences, Subcommittee on Astronomy.

Date and Time: March 2, 3, and 4, 1994 8:30 am–5 pm.

Place: National Science Foundation, room 375.1.

Type of Meeting: Open.

Contact Person: Morris L. Aizenman, EO/AST, room 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1820.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: Budget and Long-Range Planning Discussions with Subcommittee and Annual Presentations by National Astronomy Centers.

Agenda

Wednesday, March 2, 1994

All day: Budget and Long-Range Planning Discussions with Subcommittee.

Thursday, March 3, 1994

8:30 am: National Astronomy & Ionosphere Center Presentation.

1:00 pm: National Radio Astronomy Observatory Presentation.

Friday, March 4, 1994

8:30 am: National Optical Astronomy Observatories Presentation.

1:00 pm: General Discussions with Subcommittee.

Reason for Late Notice: Weather conditions have made it difficult to determine meeting date suitable for members and NSF staff.

Dated: February 15, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–3916 Filed 2–18–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on Wednesday, March 9, 1994, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would represent a clearly unwarranted invasion of personnel privacy.

The agenda for the subject meeting shall be as follows: Wednesday, March 9, 1994—2:15 p.m. until 4:45 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conducting the Committee business, and organizational and personnel matters relating to ACRS and its staff. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m. (est). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: February 13, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–3851 Filed 2–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Co.; Donald C. Cook Nuclear Plant Units 1 and 2

Exemption

I

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating Licenses Nos. DPR–58 and DPR–74 which authorize operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, at steady-state reactor power levels not in excess of 3250 and 3411 megawatts thermal, respectively. The Donald C. Cook facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. These licenses provide, among other things, that they are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Pursuant to 10 CFR 55.59(a)(1), "Each licensee shall—(1) Successfully complete a requalification program developed by the facility licensee that has been approved by the Commission. This program shall be conducted for a continuous period not to exceed 24 months in duration."

III

By letter dated October 4, 1993, the licensee requested an exemption from administering the operating portion of the annual operator requalification examination in January–February, 1994 due to the installation of modifications in the control room. The modifications, which include replacing all Foxboro controllers with Taylor model 30 controllers and a reconfiguration of the control room, have been completed in the simulator but will not be installed in the Unit 1 and Unit 2 control rooms until the refueling outages in February and August, 1994, respectively.

The licensee is requesting the exemption from the operational portion of the requalification examination in order to provide more simulator training time on the new modifications and to avoid administering a requalification examination on a simulator which is configured differently from the plant control rooms. The licensee will administer the operating portion of the requalification examination on the simulator in the May–June, 1994 time frame. The licensee's 24-month requalification cycle ends February 11, 1994; therefore, the exemption from the requirements of the regulation would be for a period of approximately 4 months.

Pursuant to 10 CFR 55.11, "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

IV

Currently, the Donald C. Cook Licensed Operator Requalification Training Program beings and ends in early February of even years. This one-time exemption would permit an operating examination from the current 24-month requalification cycle to be administered approximately 4 months into the next cycle. The next examination will be administered on schedule in January 1995, which will be consistent with the annual examination requirement cited in 10 CFR 55.59(a)(2).

V

The staff has reviewed the licensee's request and concluded that issuance of this exemption will not endanger life or property and will have no significant effect on the safety of the public or the plant.

Accordingly, the Commission has determined, pursuant to 10 CFR 55.11, that this exemption as described in section III is authorized by law, will not endanger life or property and is otherwise in the public interest. Therefore, the Commission hereby grants a one-time exemption from the requirements of 10 CFR 55.59(a)(1) for a period of February 1994 to June 1994, with respect to the 24-month requalification program. This exemption applies only to the operational examination portion of the requalification program. No changes to the written portion of the requalification program have been requested by the licensee or granted by this exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant impact on the environment (February 14, 1994, 59 FR 6978).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 15th day of February, 1994.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–3850 Filed 2–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–305]

Wisconsin Public Service Corp., et. al.; Kewaunee Nuclear Power Plant

Exemption

I

The Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensee), are the holders of Facility Operating License No. DPR–43 which authorizes operation of the Kewaunee Nuclear Power Plant (KNPP). The licensee provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The facility consists of a pressurized water reactor located at the licensee's site in Kewaunee County, Wisconsin.

II

In a letter dated November 16, 1993, the licensee applied for a partial exemption from the Commission's regulations. The subject exemption is from the requirements of 10 CFR part 50, Appendix J, Section III.D.1.(a). This Section requires, in part, that ". . . a set of three Type A tests shall be performed at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspection." The licensee proposes to perform the three Type A tests at approximately equal intervals within each 10-year period, with the third test of each set conducted as close as practical to the end of the 10-year period. However, there would be no required connection between the Appendix J 10-year interval and the inservice inspection 10-year interval. Kewaunee's 10-year Appendix J interval ends in 1994 and the third Type A test is scheduled for the 1994 refueling outage.

The 10-year plant inservice inspection (ISI) is the series of inspections performed every 10 years in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a. The licensee performs the ISI volumetric, surface and visual examinations of components and system pressure tests in accordance with 10 CFR 50.55a(g)(4) throughout the

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10-year inspection interval. The major portion of this effort is presently being performed every 12 months during the refueling outages. Kewaunee's second 10-year ISI interval ends in June 1994. Kewaunee is scheduled to complete the second 10-year ISI program during the spring of 1995, as allowed by section XI IWA 2400(c). The reactor vessel inspection during the 1995 refueling outage will complete the second 10-year ISI program. Kewaunee is also scheduled to begin the third 10-year program during the 1995 refueling outage. As a result, the completion of the second 10-year ISI program will occur in 1995 and the 10-year Appendix J interval will end in the spring of 1994.

There is no benefit to be gained by the coupling requirement cited above in that elements of the ISI program are conducted throughout each 10-year cycle rather than during a refueling outage at the end of the 10-year cycle. Consequently, the subject coupling requirement offers no benefit either to safety or to the economical operation of the facility.

Moreover, each of these two surveillance tests (i.e., the Type A tests and the 10-year ISI program) is independent of the other and provides assurances of different plant characteristics. The Type A test assures the required leak-tightness to demonstrate compliance with the guidelines of 10 CFR part 100. The 10-year ISI program provides assurance of the integrity of the structures, systems, and components in compliance with 10 CFR 50.55a. There is no safety-related concern necessitating their coupling in the same refueling outage. Accordingly, the staff finds that application of the regulation is not necessary to achieve the underlying purpose of the rule.

On this basis, the staff finds that the licensee has demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that the uncoupling of the Type A tests from the 10-year ISI program will not present an undue risk to the public health and safety.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption as described in Section II is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the exemption with respect to the requirements of 10 CFR part 50, Appendix J, Paragraph III.D.1.(a). Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (59 FR 1037).

Dated at Rockville, Maryland, this 14th day of February 1994.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–3849 Filed 2–18–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of OPM Form 1593 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, Chapter 35), this notice announces a proposed unchanged extension to a form which collects information from the public. OPM Form 1593, Survey of Federal Applicants and Recently Hired Employees, is used to collect quality indicator data from Federal applicants and recently hired employees. The form is part of a series of studies to assess and monitor the quality of the Federal workforce that has been implemented by the Office of Personnel Research and Development to improve the quality and image of the Federal service through more effective recruitment, retention, performance evaluation, and compensation practices. Approximately 75,000 Federal applicants and recently hired employees are expected to complete the questionnaire form and the form takes approximately 15 minutes to complete, for a total public burden of 18,750 hours. For copies of this proposal, call C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before March 24, 1994.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, CHP 500, 1900 E Street NW., Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Karen Kelly, (202) 606–1926.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–3765 Filed 2–18–94; 8:45 am]

BILLING CODE 6325–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Request for Proposals

AGENCY: Prospective Payment Assessment Commission.

ACTION: Notice.

The Prospective Payment Assessment Commission (ProPAC) is seeking a contractor to provide computer programming support services including data base development/management and empirical analysis. These services will support ProPAC's evaluation and monitoring of Medicare's Prospective Payment System (PPS) for inpatient care and other Medicare facility-related payment policies. A single contractor is being sought to provide these services under a time-and-materials contract for a period of one year with options to extend the contract for up to two additional years. RFP 02–94–ProPAC will be issued on or about March 7, 1994. Interested sources must submit a written request to the address below for a copy of this RFP.

Roles and Responsibilities of ProPAC

ProPAC was created in the same legislation that enacted Medicare's prospective payment system for hospital inpatient care. ProPAC's responsibilities include analyzing payment policies for all facility services furnished to Medicare beneficiaries. Congress also has asked ProPAC to examine and report on the Medicaid program, and on broader issues regarding the effectiveness and quality of health care delivery in the Untied States. ProPAC writes reports on various aspects of health care reform, such as issues relating to expanding the PPS system to all payers, and on issues pertaining to implementing a global budget for health care service.

Criteria for Proposals

Applicants are requested to submit proposals to provide computer programming support services in support of ProPAC's intramural research activities (database development and empirical analyses) in the general areas defined above. Work completed under this contract will be on an as-required basis and shall be performed upon the issuance of task requests by ProPAC's Project Officer and designated staff of the Commission. The following provides a basic outline of what should be included in a formal proposal:

1. Proposed personnel available to work on the contract.

2. Corporate qualifications, including documentation of the offeror's experience with the skills and techniques required to perform the required analyses using large Medicare databases.

3. Management plan, including a description of how the offeror plans to use project staff, together with corporate resources, to complete task requests. Special attention should be paid to describing how the Contractor will meet ProPAC's peak work loads.

4. Technical approach, including a description of the offeror's technical approach that is specific, detailed and complete enough to clearly and fully demonstrate that the offeror thoroughly understands the intent of the Statement of Work, together with proposed approaches. It is recognized that all the technical factors cannot be detailed in advance, but the technical proposal must be sufficient as to how it is proposed to comply with the applicable Statement of Work, including a full explanation of the techniques and procedures you propose to follow. This discussion will describe the offeror's previous experience with editing and manipulating Medicare Part A and Part B provider-level and patient-level files, including a discussion of problems encountered and how these problems were dealt with.

ProPAC currently uses the computer facilities of the House Information Systems (HIS), U.S. House of Representatives. HIS provides ProPAC with on-line and batch processing computer services using an IBM 9021–620, four-way multiprocessor, operating under Multiple Virtual Storage, Enterprise System (MVS/ES). The Contractor shall be able to carry out the programming tasks defined in this statement of work using these facilities.

The Contractor shall expect that during the term of the contract there will be special projects that will require the use of special programs, hardware, and data. These projects will also require that the Contractor transfer data across hardware platforms. The Contractor will be required to respond to changing priorities as the Commission adjust its analytic agenda. The types of tasks to be performed by the Contractor under the contract are summarized as follows:

Database development. The Contractor shall provide programming services supporting file establishment, testing, and documentation of new data sets. These data sets include, but are not limited to:

Health Care Financing Administration (HCFA) patient record data files—for example, PATBILL, MEDPAR (for hospital, SNF, and HHA patients), BMAD Beneficiary files, and National Claims History files;

HCFA facility data files—for example, Medicare Cost Reports (for PPS and excluded hospitals, SNFs, HHAs, and dialysis facilities), BMAD Provider file and Provider of Service (POS) files;

American Hospital Association (AHA) Annual and Panel surveys of hospitals;

Other patient and provider data files—for example, California Office of Statewide Health Planning and Development Disclosure Reports for hospitals or skilled nursing facilities;

Geographic data files—for example, geographic information system spatial databases (including state and county boundary files and roadway networks) and socio-economic databases (such as the Area Resource File).

Data base development activities include copying tapes and creating HIS (disk or cartridge) files, comparing file documentation with actual file structure (and updating documentation where necessary), editing files, and preparing descriptive statistics (on file variables to check variable ranges, etc.). The Contractor will also be required to key-in data elements not readily available in machine-readable form.

User-file creation. The Contractor will create analysis files for statistical applications software (e.g., SAS), other applications software (e.g. TransCAD geographic information microcomputer software) or programming languages (e.g., PL/I). The construction of analysis files will involve merging and extracting data elements from multiple sources, such as the linking of multiple claims files to create episodes of service. In addition to file construction, activities will include developing documentation and file layouts for analysis files and conducting edit checks of existing and created variables in analysis files.

Empirical analysis of data files. The Contractor shall develop analytical programs using either statistical software packages or programming languages. ProPAC project analysts will provide written requests for empirical analysis with specifications such as the data files to use, calculations to perform, procedures to use, tables to generate, and statistical tests to conduct. The analytical programming will support ProPAC analyses in the project areas including, but not limited to the following:

1. Facility Costs and Payments;
2. Variations in Resource Use;
3. Studies of Medical Technologies, Procedures, and Practice;
4. Beneficiary Access to and Quality of Care;
5. Patterns of Care Across Providers;
6. Outpatient and Post-Acute (SNF and Home Health) Services;
7. End-stage Renal Disease;
8. Other Topic Areas, including analysis of PPS outlier payment policy, hospital productivity, changes in case mix, rural hospitals and cost-shifting.

The Contractor shall ensure that data are provided accurately and on time. This includes ensuring the programs are debugged, proper screens are applied to the data, and the final product represents what the analyst requested.

Developing and Updating Simulation Models

The Contractor will develop and update models (programs) that simulate payments to hospitals under PPS and additional models related to PPS or other Medicare payment systems (for example simulation of alternative payment systems for payments to hospitals for ambulatory surgery or radiology provided on an outpatient basis). These models will incorporate policy parameters such as payments for medical education and capital; changes in hospital labor market area definitions and wage indexes; changes in the DRG classification system; and changing from national to regional limits on allowable costs for payments to SNFs.

Submission of Proposals

Applicants will be given approximately 30 days to submit a formal proposal.

Review of Proposals

Proposals will be reviewed by a panel of at least four (4) individuals. Reviewers will score applications, basing their scoring decisions and approval recommendations on the criteria established in the RFP. Foremost consideration will be given to the technical evaluation, however, a proposal must be fairly and reasonably priced to win the award.

General Information

Number and Size of Project

One contract will be awarded in response to this RFP. The period of performance of the basic contract will be for one year from the date of award. At the option of the government, the period of performance may be extended for up to two additional one-year periods.

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Authority

The Commission's authority for issuing this RFP is based on Section 1886(e)(6)(c)(iii) of the Social Security Act.

Submission Address

For a copy of this RFP, all interested sources must submit a written request to the following address: Prospective Payment Assessment Commission, 300 7th Street, SW., Suite 301B, Washington, DC 20024, ATTN: Mrs. Jeannette A. Younes.

Obligation

This notice in no way commits ProPAC to obligate funds to any offeror.

Dated: February 15, 1994.

Donald A. Young,

Executive Director.

[FR Doc. 94-3838 Filed 2-18-94; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-20074; 812-7613]

Cityfed Financial Corp.; Notice of Application

February 15, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Cityfed Financial Corp. ("Cityfed").

RELEVANT ACT SECTIONS: Exemption requested under sections 6(c) and 6(e) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would exempt it from all provisions of the Act, except sections 9, 17(a) (modified as discussed herein), 17(d) (modified as discussed herein), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder. Applicant would be exempt until the earlier of one year from the date of the requested order or such time as applicant would no longer be required to register as an investment company.

FILING DATE: The application was filed on October 19, 1990 and amended on September 23, 1993 and January 18, 1994. Applicant has agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 14, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 4 Young's Way, P.O. Box 3126, Nantucket, MA 02584.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272-2190, or Robert A. Robertson, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Cityfed was a savings and loan holding company that conducted its savings and loan operations through its wholly-owned subsidiary, City Federal Savings Bank ("City Federal"). City Federal was the source of substantially all of Cityfed's revenues and income. As a result of substantial losses in its mortgage banking and real estate operations, City Federal was unable to meet its regulatory capital requirements. Accordingly, on December 7, 1989, the Office of Thrift Supervision (the "OTS") placed City Federal into receivership and appointed the Resolution Trust Corporation (the "RTC") as City Federal's receiver. City Federal's deposits and substantially all of its assets and liabilities were acquired by a newly created federal mutual savings bank, City Savings Bank, F.S.B., whose deposits, assets, and liabilities in turn were acquired by City Savings, F.S.B. ("City Savings"). The OTS appointed the RTC as receiver of City Savings.

2. Once City Federal was placed into receivership, Cityfed no longer conducted savings and loan operations through any subsidiary and substantially all of its assets consisted of cash that has been invested in money market instruments with a maturity of one year or less and money market mutual funds. On September 30, 1993, Cityfed held cash and securities of approximately $9.7 million. Because of Cityfed's asset composition, it may be an investment company under the Act. Rule 3a-2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to engage in a business other than investing in securities. Because of various claims against Cityfed and certain Cityfed officers and directors, Cityfed could not acquire an operating company within the one year safe harbor. The expiration of the safe harbor period necessitated the filing of an application for exemption from all provisions of the Act, with certain exceptions.

3. While Cityfed's board of directors has considered from time to time whether to engage in an operating business, the board has determined not to engage in an operating business at the present time because of the claims filed against Cityfed, whose liability thereunder cannot be reasonably estimated and may exceed its assets.

4. On December 7, 1992, the RTC filed suit against Cityfed and two former officers of City Federal seeking damages of $12 million dollars for failure to maintain the net worth of City Federal (the "First RTC Action"). In connection with this action, the RTC sought a court order to place Cityfed's assets under the control of the court. On January 5, 1993, the RTC and Cityfed entered into an agreement (the "Agreement") whereby the RTC would refrain from seeking the above order and Cityfed could continue to make payments for ordinary and reasonable business expenses and certain legal fees. Cityfed, however, must give a monthly accounting of its expenditures to the RTC, and the RTC may apply to the court for an appropriate order to prohibit an expenditure. In addition, Cityfed must give the RTC written notice before paying extraordinary expenses of more than $5,000 and before making certain payments for defense costs, attorneys' fees and other legal disbursements.

5. On September 30, 1993, the OTS staff advised Cityfed that it intended to recommend that the OTS initiate an administrative enforcement proceeding against Cityfed. Applicant represents that in such a proceeding, the OTS will likely assert claims similar to the RTC in the First RTC Action and may attempt to freeze Cityfed's assets. Because such a proceeding may render moot the issues in the First RTC Action, the court entered an order on October 15, 1993 to stay that action for 60 days. The court subsequently ordered the stay extended to January 28, 1994. The orders do not affect the Agreement, except to provide that the Agreement will terminate upon the effective date of any order issued by the OTS, or of any consent order or agreement between the OTS and Cityfed, that addresses the subject matter of the Agreement. As of the date of filing the last amendment to this application, the OTS has not initiated any administrative enforcement proceeding against Cityfed.

6. In addition, the RTC filed suit against several former directors and officers of City Federal alleging gross negligence and breach of fiduciary duty with respect to certain loans (the "Second RTC Action"). The RTC seeks in excess of $200 million in damages. Under Cityfed's bylaws, Cityfed may be obligated to indemnify these former officers and directors and advance their legal expenses. Currently, Cityfed is advancing reasonable defense costs to the former directors and officers named in the First and Second RTC Actions. Furthermore, Cityfed is currently aware of several other legal actions involving former officers, directors, or employees of Cityfed who have requested that Cityfed advance expenses and indemnify them. Cityfed generally has agreed to advance expenses in connection with these requests. Cityfed is unable to determine with any accuracy the extent of its liability with respect to these indemnification claims, although the amount may be material.

7. Currently, Cityfed's stock is traded sporadically in the over-the-counter market. Cityfed has one employee who is president, chief executive officer and treasurer. Cityfed's secretary does not receive any compensation for her service. If Cityfed is unable to resolve the above claims successfully, Cityfed may seek protection from the bankruptcy courts or liquidate. Cityfed asserts that it probably will not be in a position to determine what course of action to pursue until most, if not all, of its contingent liabilities are resolved.

8. During the term of the proposed exemption, Cityfed will comply with sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder, subject to the following modifications. With respect to section 17(d), Cityfed represents that it established a stock option plan when it was an operating company. Although the plan has been terminated, certain former employees of City Federal have existing rights under the plan. Cityfed asserts that the plan may be deemed a joint enterprise or other joint arrangement or profit-sharing plan within the meaning of section 17(d) and rule 17d-1 thereunder. Because the plan was adopted when Cityfed was an operating company and to the extent there are existing rights under the plan, Cityfed seeks an exemption to the extent necessary from section 17(d). In addition, Cityfed may become subject to the jurisdiction of a bankruptcy court. With respect to transactions approved by the bankruptcy court, applicants request an exemption from sections 17(a) and 17(d) as further described in condition 3 below.

Applicant's Legal Analysis

1. Section 3(a)(1) defines an investment company as any issuer of a security who "is or holds itself out as being engaged primarily * * * in the business of investing, reinvesting or trading in securities." Section 3(a)(3) further defines an investment company as an issuer who is engaged in the business of investing in securities that have a value in excess of 40% of the issuer's total assets (excluding government securities and cash). Cityfed acknowledges that it may be deemed to fall within one of the Act's definitions of an investment company. Accordingly, applicant requests an exemption under sections 6(c) and 6(e) from all provisions of the Act, subject to certain exceptions.

2. In determining whether to grant an exemption for a transient investment company, the Commission considers such factors as whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and whether the company invested in securities solely to preserve the value of its assets. Cityfed asserts that it meets these criteria.

3. Cityfed's failure to become primarily engaged in a non-investment business by the end of the one year safe harbor of rule 3a-2 is due to factors beyond its control. Because of outstanding and potential claims against Cityfed and certain of its officers and directors, Cityfed cannot acquire an operating company. Cityfed has diligently pursued its claims against others and has taken steps to determine the extent of its contingent liabilities. Since the filing of this application on October 19, 1990, Cityfed has invested in money market instruments and money market mutual funds solely to preserve the value of its assets.

4. Cityfed requests an order that would exempt it from all provisions of the Act, subject to certain exemptions, until the earlier of one year from the date of any order issued on this application or such time as Cityfed would no longer be required to register as an investment company under the Act.

Applicant's Conditions

Cityfed agrees that the requested exemption will be subject to the following conditions, each of which will apply to Cityfed from the date of the order until it no longer meets the definition of an investment company or during the period of time it is exempt from registration under the Act:

1. Cityfed will not purchase or otherwise acquire any additional securities other than securities that are rated investment grade or higher by a nationally recognized statistical rating organization or, if unrated, deemed to be of comparable quality under guidelines approved by Cityfed's board of directors, subject to two exceptions:

a. Cityfed may make an equity investment in issuers that are not investment companies as defined in section 3(a) of the Act (including issuers that are not investment companies because they are covered by a specific exclusion from the definition of investment company under section 3(c) of the Act other than section 3(c)(1)) in connection with the possible acquisition of an operating business as evidenced by a resolution approved by Cityfed's board of directors; and

b. Cityfed may invest in one or more money market mutual funds that limit their investments to "Eligible Securities" within the meaning of rule 2a-7(a)(5) promulgated under the Act.

2. Cityfed's Form 10-KSB, Form 10-QSB and annual reports to shareholders will state that an exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that Cityfed and other persons, in their transactions and relations with Cityfed, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act, and the rules thereunder, as if Cityfed were a registered investment company, except insofar as permitted by the order requested hereby.

3. Notwithstanding sections 17(a) and 17(d) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of Cityfed may engage in a transaction that otherwise would be prohibited by these sections with Cityfed:

(a) if such proposed transaction is first approved by a bankruptcy court on the basis that (i) the terms thereof, including the consideration to be paid or received, are reasonable and fair to Cityfed, and (ii) the participation of Cityfed in the

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proposed transaction will not be on a basis less advantageous to Cityfed than that of other participants; and

(b) in connection with each such transaction, Cityfed shall inform the bankruptcy court of (i) the identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction; (ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3874 Filed 2–18–94; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Commercial Net Lease Realty, Inc., Common Stock, $0.01 Par Value) File No. 1–11290

February 15, 1994.

Commercial Net Lease Realty, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on January 7, 1994 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before March 9, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–3875 Filed 2–18–94; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 20075; 812–8442]

PFAMCo Funds, et al.

February 15, 1994.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "Act").

APPLICANTS: PFAMCo Funds, Pacific Financial Asset Management Corporation ("PFAMCo"), Pacific Equities Network (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for a conditional exemption from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d), and rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit certain open-end management investment companies to issue multiple classes of shares representing interests in the same portfolio of securities, and assess a contingent deferred sales charge (a "CDSC") on certain redemptions of shares, and waive the CDSC under certain circumstances.

FILING DATE: The application was filed on June 14, 1993, and amended on October 21, 1993, and December 22, 1993. By letters dated February 14, 1994, and February 15, 1994, applicants have agreed to make certain technical changes to the application, and to file an amendment prior to the issuance of any order granting the requested relief. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 14, 1994, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request a notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 700 Newport Center Drive, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. PFAMCo Funds is a Massachusetts business trust that is a registered open-end management investment company. PFAMCo Funds currently consists of fourteen portfolios. Shares of PFAMCo Funds generally are distributed through the Distributor, a registered broker-dealer and an indirect subsidiary of Pacific Mutual Life Insurance Company.

2. PFAMCo is a registered investment adviser and also an indirect subsidiary of Pacific Mutual Life Insurance Company. PFAMCo serves as investment adviser under an investment advisory agreement, and as administrator under an administration agreement, to the portfolios of PFAMCo Funds. Under the administration agreement, PFAMCo has overall responsibility, subject to the supervision of PFAMCo Funds' board of trustees, for providing or procuring, at PFAMCo's expense, the administrative and other services necessary for the operation of PFAMCo Funds and its portfolios. These services include custodial, administrative, transfer agency, portfolio accounting, dividend disbursing, auditing, and ordinary legal services. PFAMCo also acts as a liaison among the various service providers. PFAMCo Funds differs from most mutual funds in that the services provided under the administration agreement are paid by PFAMCo, as administrator, whereas most mutual funds pay for these services directly from fund assets.

3. Applicants request an exemption on behalf of themselves, the portfolios of PFAMCo Funds, and any other open-end investment company, or portfolio thereof, that may be established in the future that is advised or administered by PFAMCo (or any entity controlling, controlled by, or under common control with PFAMCo) or for which the Distributor (or any entity controlling, controlled by, or under common control with the Distributor) serves as principal underwriter and that becomes part of the same "group of investment companies," as that term is defined in rule 11a–3 (collectively, the "Funds"). Pursuant to the requested exemption, each Fund would be able to offer multiple classes of shares that would be identical in all respects to shares of the other classes of shares of the Fund, except for class designation, the allocation of certain expenses, voting rights, and exchange privileges.

4. Applicants propose that each Fund would enter into an agreement (the "Administration Agreement") with its administrator, which may be PFAMCo or another person, for the provision or procurement of the administrative and other services necessary for the ordinary operation of the Fund. These services would include transfer agency, custodian, recordkeeping, dividend disbursing, auditing, and ordinary legal services. The administrator would provide or procure such services for a fee (the "Administration Fee") to be agreed upon by the administrator and the Fund. The Administration Agreement will provide that the services that are rendered to the Fund will be rendered to each class of the Fund, and each such class will be obligated to pay the applicable Administration Fee.

5. Any services required for the operation of a class in addition to those provided in the Administration Agreement would be provided for in a separate agreement or addendum (the "Class Addendum"). Under the Class Addendum, the Fund's administrator would provide or procure the services contracted for in the Class Addendum for a specified fee (the "Class Addendum Fee"). The services rendered under the Class Addendum will relate only to the class or classes specified in that Class Addendum, and only such class or classes shall be obligated to pay the Class Addendum Fee. Different classes may have different Class Addenda, each of which would reflect the different servicing needs of those classes that require service beyond that provided in the Administration Agreement. If a class is offered in connection with a 12b–1 plan, the expenses payable for distribution services would not be included in a Class Addendum, but would be payable under a separate 12b–1 agreement. A class could have a 12b–1 plan and a Class Addendum.

6. Each Fund could offer one class (the "Institutional Class") solely to pension and profit sharing plans, employee benefit trusts, endowments, foundations, corporations, other institutions, and high net worth individuals. The Institutional Class would be similar or identical to the shares currently offered by PFAMCo Funds. There would be no sales charge imposed on the purchase and redemption of shares of the Institutional Class, and no 12b–1 fees. There would be a significant minimum initial investment, which currently is $200,000 for PFAMCo Funds. Applicants anticipate that the Institutional Class will be the only class without a Class Addendum; all of the administrative services for the Institutional Class would be provided under the Administration Agreement.

7. Each Fund could offer one class (the "Benefit Plan Class") only to qualified or nonqualified employee benefit plans. In addition to the services provided under the Administration Agreement, a Fund's administrator would provide or procure additional administrative and recordkeeping services necessary for the employee benefit plans to invest in the Funds. The administrator would charge a Class Administration Fee for the services, which fee is expected to be no more than 35 basis points of the net assets attributable to the Benefit Plan Class. The services are limited to: furnishing participant sub-accounting; maintaining separate records for each plan; assistance in processing purchase and redemption transactions; disbursing or crediting to the plans and maintaining records of all proceeds of redemptions of shares and all other distributions not reinvested in shares; preparing and transmitting to the plans, plan participants, or the trustees of the plans periodic account statements, and the integration of such statements with those of other transactions and balances in other accounts of the plan or participant; transmitting to the plans prospectuses, proxy materials, reports, and other information required to be sent to shareholders under the federal securities laws; transmitting to the transfer agent purchase orders and redemption requests placed by the plans; transmitting to a Fund or its agents periodic reports necessary to enable the Fund to comply with state Blue Sky requirements; transmitting to the plans or the trustees of the plans confirmations of purchase orders and redemption requests placed by the plans; maintaining all account balance information for the plans and daily and monthly purchase summaries expressed in shares and dollar amounts; and preparing, filing, and transmitting all federal, state, and local government reports and returns as required by law with respect to each account maintained on behalf of a plan; providing information to plans and participants about a Fund and its portfolios; and maintaining account designations and addresses.

8. A Fund may offer Benefit Plan Classes whose shares only are offered to qualified retirement plans for which a trustee is vested with investment discretion as to plan assets ("Excluded Classes") by means of a separate prospectus. The Excluded Classes do not include Benefit Plan Classes whose shares are offered to self-directed plans in which an individual plan beneficiary can make an investment decision. As a result, there will be no overlap between the investors eligible to invest on their own behalf in Excluded Classes and any other class of a Fund.

9. Each Fund may offer one class of shares (the "Administrative Services Class") to the clients, members, or customers of banks, broker-dealers, consultants, administrators, and other financial institutions ("Organizations"), which would provide certain services to their customers who purchase shares of the Administrative Services Class. Arrangements between the administrator and the Fund relating to such additional services are "Administrative Services Arrangements." The administrator would either provide these additional services directly or would procure these services by entering into agreements with the Organizations. The services would be limited to: receiving, aggregating, and processing shareholder orders; furnishing shareholder sub-accounting; providing and maintaining elective shareholder services such as check writing and wire transfer services; providing and maintaining pre-authorized investment plans; communicating periodically with shareholders; acting as the sole shareholder of record and nominee for shareholders; maintaining account records for shareholders; answering questions and handling correspondence from shareholders about their accounts; issuing confirmations for transactions by shareholders; and performing similar account administrative services.

10. Each Fund also could offer classes with a 12b–1 plan (the "12b–1 Classes"). Under a 12b–1 plan, a Fund

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would enter into agreements with certain financial institutions ("Service Agents") providing for distribution or distribution assistance of the shares of the 12b–1 Class. A Fund typically would make payments (the "12b–1 Plan Payments") to the Distributor or the Service Agent for such services.

11. The Funds may in the future offer classes in addition to those described above, provided the Funds met the conditions imposed in any order of the SEC granting the requested relief.

12. The net asset value of all shares of a Fund would be computed on the same days and at the same times. The gross income of a Fund would be allocated to each class on the basis of the relative net assets of each class. Expenses specifically attributable to the particular class ("Class Expenses") and 12b–1 Plan Payments would be charged directly to the particular class to which they are attributable. Class Expenses would consist of fees under a Class Addendum that relates to the class; litigation and indemnification expenses, if any, relating solely to one class; and fees of independent directors/trustees ("trustees") incurred as a result of issues relating to one class. Class Expenses will be limited to those above, and the fees under a Class Addendum will be limited to fees payable for services set forth in the description of the Class Addenda for the Benefit Plan Class and the Administrative Services Class. Expenses incurred by a Fund not attributable to a particular class would be subtracted from the gross income on the basis of the relative net assets of each class of the Fund. Such expenses include litigation and indemnification expenses, if any, relating to a Fund, independent trustees' fees, and fees under the applicable Administration Agreement.

13. Because any 12b–1 Plan Payments and any Class Expenses that would be borne by a class of shares may vary for each class, the net income of (and dividends payable to) each class may vary from that of the other class or classes of the same Fund. Accordingly, for Funds that do not declare dividends daily (such as non-money market funds), the net asset value per share attributable to each class would differ between dividend declaration dates.

14. Applicants also request an exemption to permit the Funds to assess a CDSC on redemptions of shares of a 12b–1 Class. The CDSC will not be imposed on redemptions of shares that were purchased after a specified period prior to the redemption, which is expected to be six years, or on CDSC shares derived from reinvestment of dividends and distributions. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for the shares. In addition, no CDSC will be imposed on shares purchased prior to any order granting the requested exemption.

15. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase or the time of redemption. In determining the applicability and rate of any CDSC, it will be assumed that redemption is made first of shares or amounts representing capital appreciation, or reinvestment of dividends and capital gain distributions. Other shares or amounts then would be considered to be redeemed in the order purchased, unless the Fund chose to redeem in another order that would result in a lower sales load. This will result in the charge, if any, being imposed at the lowest possible rate. In all cases, the sum of any front-end sales charge, asset-based sales charge, shareholder services charge, and CDSC will not exceed the maximum sales charge provided for in article III, section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

16. No CDSC will be imposed in connection with an exchange privilege whereby an investor exchanges CDSC shares of a Fund for CDSC shares of another Fund. All exchanges would be effected in accordance with rule 11a–3.

17. The Funds request the ability to waive the CDSC in connection with (a) redemptions by officers, directors, trustees, and employees of Pacific Mutual Life Insurance Company, and any of its affiliates, and such persons' immediate families, (b) involuntary redemptions effected pursuant to the Fund's right to liquidate shareholder accounts having an aggregate net asset value of less than the minimum account balance set forth in the Fund's then-current prospectus, and (c) total or partial redemptions made in connection with the following distributions permitted to be made under the Internal Revenue Code ("Code") from an IRA or other qualified retirement plan: (i) Any redemption in connection with a lump sum or other distribution following retirement, or, in the case of an IRA or Keogh Plan or a custodial account pursuant to section 403(b)(7) of the Code, after attaining age 59½; and (ii) any redemption that results from a tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code, or from the death or disability of the employee (see sections 72(m)(7) and 408(f)(3) of the Code). As an alternative to waiver category (c), and if the trustees of the Fund determine to adopt this alternative, the Fund could waive the CDSC with respect to any partial or complete in connection with a distribution following retirement under a tax-deferred retirement plan or attaining age 70½ in the case of an IRA or Keogh Plan, or custodial account resulting from the tax-free return of an excess contribution to an IRA.

18. Applicants also could provide a *pro rata* credit paid by the Fund's distributor for any CDSC paid in connection with a redemption of shares followed by a reinvestment effected within a specified period after the redemption. To effect this credit, the distributor would purchase additional shares for the account of an investor who reinvests the redemption proceeds on which a CDSC was paid, in an amount equal to the CDSC charged on the redemption.

Applicants' Legal Analysis

1. Applicants requests an exemption under section 6(c) from sections 18(f)(1), 18(g), and 18(i) to issue multiple classes of shares representing interests in the same portfolio of securities. Applicants believe that, by implementing the multiple class distribution system, the Funds would be able to facilitate the distribution of their shares and provide a broad array of services without assuming excessive accounting and bookkeeping costs. Applicants also believe that the proposed allocation of expenses and voting rights is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowings, affect the Funds' existing assets or reserves, or increase the speculative character of the shares of a Fund.

2. In addition, applicants believe that the establishment of a multi-class distribution system with the proposed fee structure benefits shareholders by providing predictability of expenses and ease of understanding the expenses that will be paid. The proposed arrangement provides an additional choice for investors to whom such predictability is important. The structure makes a party other than the Fund assume the economic risks of paying a Fund's operating expenses during the start-up phase, and bear the expenses of providing services to the classes.

3. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c-1, to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants believe that their request to permit the CDSC arrangement would place the purchaser in a better position than if a sales load were imposed at the time of sale, since the shareholder may have to pay only a reduced sales charge, or no sales charge at all.

Applicant's Conditions

Applicants agree that any order granting the requested exemption shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between the classes of shares of a Fund relate solely to: (a) The impact of the disproportionate 12b-1 Payments and Class Expenses; (b) voting rights as to matters exclusively affecting one class of shares; (c) exchange features; and (d) class designation differences. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order or other relief from the SEC.

2. The trustees of PFAMCo Funds and of any subsequently created Funds, including a majority of the independent trustees, will approve the offering of multiple classes of shares (the "Multi-Class System"). The minutes of the meetings of the trustees regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the trustees' determination that the proposed Multi-Class System is in the best interests of the Funds and their shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the relevant Fund, including a majority of the independent trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to such Fund's trustees, and the trustees shall review, at least quarterly after such initial determination, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. The board of trustees of each Fund, including a majority of the independent trustees, will review the services to be provided and fees to be charged to a class pursuant to a proposed Class Addendum, and will make a determination (i) that the Class Addendum is in the best interests of the class of the Fund subject to the Class Addendum and the shareholders of the class; (ii) that the fees charged to the class by the administrator in relation to the services to be provided to the class under the Class Addendum are fair and reasonable; and (iii) that the services to be provided for the class and the Class Administration Fee to be charged for such services are reasonably designed so that such services that benefit only a class, as opposed to the Fund generally, would augment (and not be duplicative of) services rendered to the Fund pursuant to the Administration Agreement.[1]

5. On an ongoing basis, a Fund's trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the various classes of shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each Fund's investment adviser, sub-investment adviser (if any), administrator (if separate), and distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the adviser and the distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

6. The Administrative Services Arrangements will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

7. The trustees of each Fund will receive quarterly and annual statements concerning expenditures of a Fund or class thereof pursuant to 12b–1 plans and Administrative Services Arrangements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that payments made by a class under its 12b–1 plan or administrative fees, and any Class Expenses will be borne exclusively by that class.

9. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by applicants (which applicants agree to provide), will be available for inspection by the SEC staff upon written request by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation" and ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in Statement of Accounting Standards No. 70 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure

[1] Applicants represent that, to enable the board to make such determinations, the board would be provided with information regarding all of the expenses borne by the Administrator in providing or procuring services for each class.

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implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 9 above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the ongoing reports referred to in condition 9 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

11. The prospectus of each class of a Fund will contain a statement to the effect that a salesperson or any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in that Fund.

12. The distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards. Such compliance standards will require that all investors eligible to purchase shares of the Excluded Classes be sold only shares of the Excluded Classes, rather than any other class of shares offered by the Fund.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the Multi-Class System will be set forth in guidelines to be furnished to the trustees.

14. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, CDSCs, and exchange privileges (if any) applicable to each class of shares in each prospectus, regardless of whether each class of shares are offered through each prospectus, except that such disclosure need not be made with respect to any Excluded Classes. Excluded Classes will be offered solely pursuant to a separate prospectus. Each prospectus for Excluded Classes will disclose the existence of the Fund's other classes, and the prospectuses for the Fund's other classes will identify the persons eligible to purchase shares of the Excluded Classes. Each Fund will disclose the respective expenses and performance data applicable to all other classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all other classes of shares, except the Excluded Classes. Advertising materials reflecting the expenses or performance data for an Excluded Class will be available only to those persons eligible to purchase that class. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value or public offering price will present each class of shares separately, except for the Excluded Classes.

15. Applicants acknowledge that the grant of the requested exemptive order will not imply SEC approval, authorization of or acquiescence in any particular level of payments that applicants may make pursuant to any Administration Agreement, Class Addendum, or any 12b–1 plan, in reliance on the exemptive order.

16. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (see Investment Company Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3876 Filed 2–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20071; No. 811–2583]

The Travelers Fund B–1 for Variable Contracts; Application for Order

February 14, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: The Travelers Fund B–1 for Variable Contracts ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on December 8, 1993, and amended on January 27, 1984.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 11, 1994, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, One Tower Square, Hartford, Connecticut 06183.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, on (202) 272–2676, or Michael V. Wible, Special Counsel, on (202) 272–2060, Office of Insurance Products (Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a diversified open-end management company, is a Separate Account formed under Connecticut insurance laws by The Travelers Insurance Company ("Travelers"), a life insurance company domiciled in Connecticut.

2. On July 3, 1975, Applicant filed a Notice of Registration on Form N–8B–1 under section 8(b) of the 1940 Act (File No. 811–2583) and a Registration Statement on Form S–5 under the Securities Act of 1933 (File No. 2–54173) to register units of interest of variable annuity contracts ("Contracts"). Applicant's Registration Statement became effective on April 30, 1976. The initial public offering commenced on May 1, 1976.

3. On November 19, 1993, the Contracts were exchanged for another Travelers' variable annuity contract ("New Contract") pursuant to an offer of exchange extended by Travelers to Contractowners on September 10, 1992. All Contractowners contacted either consented to the offer to exchange or surrendered their contracts. The New Contract has as an investment option The Travelers Quality Bond Account for Variable Annuities ("Account QB"). Account QB is an investment company with identical investment objectives, adviser and management fees as that of the Applicant. All units in Applicant held under the existing contracts were exchanged for units of equal value in Account QB under the New Contract. The offer of exchange was made in compliance with Rule 11a–2 under the 1940 Act. All portfolio securities of the Applicant were transferred to Account QB, valued on the basis of net asset values of the securities as determined in accordance with the methods set forth in the Statement of Additional Information of the Applicant and Account QB. No brokerage commissions were paid. The transfer of portfolio securities was made pursuant to a Commission order under section 17(b) granting an exemption from section 17(a) of the 1940 Act. (Release No. IC–19232, File No. 812–8172.)

4. As of November 18, 1993, Applicant had 630,239.9891 units of interest outstanding and net assets of $2,773,229.14, representing 4.388301 Contracts issued prior to December 23, 1983 and 4.284953 Contracts issued subsequent to that date.

5. Any expenses connected with the offer of exchange or the liquidation of the Applicant will be paid by Travelers.

6. Applicant has not remaining assets, and no debts or liabilities remain outstanding. No distributions were made to Applicant's security holders. Applicant is not a party to any litigation or administrative proceedings. There are no security holders of Applicant.

7. Applicant is not now engaged nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of Applicant.

9. Travelers intends to notify the Connecticut and New York Insurance Departments, each having approved the transfer of assets, that it no longer intends to utilize the Applicant as a separate account.

10. Applicant has made on a timely basis all filings required on Form N–SAR. Applicant's last filing on Form N–SAR for the period ended June 30, 1993, was made on or before August 30, 1993.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3877 Filed 2–18–94; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Request for Comments Concerning Foreign Government Discrimination in Procurement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comments.

SUMMARY: This notice requests written submissions from the public concerning discrimination against United States products and services by foreign governments in their procurement practices. This information will be used in compiling the annual report on foreign discrimination in government procurement specified by section 305 of the Trade Agreements Act of 1979 (Trade Agreements Act), as amended by Title VII of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2515).

Section 305 of the Trade Agreements Act requires the President to submit an annual report on the extent to which foreign countries discriminate against United States products or services in making government procurements. In the annual report, the President is required to identify any countries that:

(a) Are signatories to the GATT Agreement on Government Procurement (Agreement) and are not in compliance with the requirements of the Agreement;

(b)(i) Are signatories to the Agreement; (ii) are in compliance with the Agreement, but maintain a significant and persistent pattern or practice of discrimination in the government procurement of products or services from the United States not covered by the Agreement, which results in identifiable harm to U.S. business; and (iii) whose products or services are acquired in significant amounts by the United States Government; or

(c) Are not Signatories to the Agreement and maintain a significant and persistent pattern or practice of discrimination in government procurement of products or services from the United States, which results in identifiable harm to U.S. business, and whose products or services are acquired in significant amounts by the United States Government.

The functions vested in the President under Section 305 of the Trade Agreements Act were delegated to the United States Trade Representative (USTR) pursuant to Section 4–101 of Executive Order 12661 (54 FR 779).

DATES: Submissions containing the information described below must be received on or before March 15, 1994

ADDRESSES: Comments must be submitted to the Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506, and must include not less than twenty (20) copies. Submissions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. Any business confidential material must be clearly marked as such at the top of the cover page or letter and each succeeding page and must be accompanied by a nonconfidential summary.

FOR FURTHER INFORMATION CONTACT: Elena Bryan (202–395–5097) or Mark Linscott (202–395–3063), Office of GATT Affairs, or Laura B. Sherman (202–395–3150), Office of the General Counsel, Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: Section 305 of the Trade Agreements Act requires an annual report to be submitted no later than April 30, 1993 to the appropriate Committees of the House of Representatives and the Senate. The USTR is required to request consultations with any countries identified in the report to obtain their compliance with the Agreement or the elimination of their discriminatory procurement practices.

USTR invites submissions from interested parties concerning foreign government procurement practices that should be considered in developing the annual report. Pursuant to section 305(d)(5) of the Trade Agreements Act, submissions are sought from any interested parties in the United States and in countries that are signatories to the Agreement, as well as in other foreign countries whose products or services are acquired in significant amounts by the United States Government.

Each submission should provide, in order, the following general information: (1) The party submitting the information; (2) the foreign country or countries that are the subject of the

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submission and the entities of each subject country's government whose practices are being identified, and (3) the U.S. products or services that are affected by the non-compliance or discrimination.

Each submission should provide, in order, the following specific information on non-compliance with the Agreement or discrimination: (1) The circumstances under which discrimination has occurred, including information regarding the date and nature of procurement(s) where discrimination was encountered; (2) policies or practices which are deemed to be discriminatory (where possible, include copies of discriminatory laws, policies or regulations), and (3) the extent to which noncompliance with the Code or discrimination has impeded the ability of U.S. suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when they are seeking to sell goods or services to the United States Government. Wherever possible, submissions should address the extent to which countries identified: (i) Use sole-sourcing or otherwise noncompetitive procedures for procurements that could have been conducted using competitive procedures; (ii) conduct what normally would have been one procurement as two or more procurements, in order to decrease the anticipated contact value below the Agreement's value threshold or to make the procurement less attractive to U.S. businesses; (iii) announce procurement opportunities without adequate time for U.S. businesses to submit bids, and (iv) employ specifications in such a way as to limit the ability of U.S. suppliers to participate in procurements.

Finally, each submission should: (1) Identify requirements of the Agreement which are not being observed by the country identified or describe how the country identified has maintained a significant and persistent pattern or practice of discrimination in government procurement of non-Code-Covered goods; (2) identify the specific impact of the discriminatory policy or practice on United States businesses (including an estimate of the value of market opportunities lost and, if any, the cost of preparing bids which are rejected during the course of a procurement evaluation for discriminatory reasons), and (3) describe the extent to which the products or services of the country identified are acquired in significant amounts by the United States Government.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 94-3812 Filed 2-16-94; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 11, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49409

Date filed: February 9, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 9, 1994

Description: Application of Evergreen International Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to engage in foreign air transportation of property and mail between the U.S. and Russia and beyond to China, Hong Kong, South Korea, Singapore and Taiwan.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-3827 Filed 2-18-94; 8:45 am]

BILLING CODE 4910-62-P

Coast Guard

[CGD02-94-010]

Second Coast Guard District Industry Day

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Commander, Second Coast Guard District is sponsoring an Industry Day event in St. Louis, Missouri. This notice will advertise the event which is open to the public.

DATES: Industry Day will be held on March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant Charles L. McAllister or Lieutenant Patrick G. Gerrity at Commander (mpb), Second Coast Guard District, 1222 Spruce Street, room 2.102G, St. Louis, Missouri 63103-2832. The telephone number is: (314) 539-2655.

SUPPLEMENTARY INFORMATION: Industry Day is designed to provide an open exchange of information, ideas, and opinions on matters of mutual interest or concern to the inland marine community and the Coast Guard. Industry Day activities will be held at the Frontenac Hilton Hotel, 1335 South Lindbergh Blvd., St. Louis, Missouri. The schedule of events follows:

Wednesday, 9 March

5-7 p.m. Registration for early arrivals.

Thursday, 10 March

7:30 a.m. Registration continues.

8:30 a.m. General Session: Opening comments and Selected Presentations.

10 a.m. Panel Discussions: Three separate small group panels will focus on the towing industry, shoreside facilities, and the small passenger industry.

12 p.m. Luncheon.

1:30 p.m. Panel Discussions continue.

5 p.m. Industry Day concludes.

Advance registration and payment of a $25.00 conference fee is required. The fee includes the cost of a luncheon and refreshments.

Persons interested in attending Industry Day may request registration forms or additional information on the Industry Day activities and on events scheduled by other groups to coincide with Industry Day at the address provided above. Persons interested in submitting written recommendations for agenda discussion topics should mail their recommendations directly to Commander (mpb), also at the address provided above.

Completed registration forms and fees should be mailed directly to the Frontenac Hilton Hotel, Attn: Reservations, c/o Laura Arbet, 1335 S. Lindbergh, St. Louis, Missouri 63131. Registration forms and fees must be received by March 7, 1994.

Dated: February 8, 1994.

Paul M. Blayney,

Rear Admiral (Lower Half), United States Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 94-3926 Filed 2-18-94; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Bishop International Airport, Flint, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Bishop International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by Bishop International Airport Authority. This program was submitted subsequent to a determination by the FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Bishop International Airport were in compliance with applicable requirements effective March 1, 1993. The proposed noise compatibility program will be approved or disapproved on or before July 25, 1994.

EFFECTIVE DATES: The effective date of the start of the FAA's review of the noise compatibility program is January 26, 1994. The public comment periods ends March 27, 1994.

FOR FURTHER INFORMATION CONTACT: Ernest P. Gubry, Community Planner, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Bishop International Airport which will be approved or disapproved on or before July 25, 1994. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Bishop International Airport, effective on January 26, 1994. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 25, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing no compatible land uses and preventing the introduction of additional noncompatible land uses. Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111,

Bishop International Airport, G-3425 W. Bristol Road, Flint, Michigan 48507.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, on January 26, 1994.

Dean C. Nitz,

Manager, Detroit Airports District Office, FAA Great Lakes Region.

[FR Doc. 94-3889 Filed 2-18-94; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the La Crosse Municipal Airport, La Crosse, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 24, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Duane Haataja, Airport Manager, of the City of La Crosse at the following address: La Crosse Municipal Airport, 2850 Airport Drive, La Crosse, Wisconsin 54603.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of La Crosse under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450, (612) 725-4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 31, 1994 the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of La Crosse was substantially complete within the requirements of § 158.25 of part 158.

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The FAA will approve or disapprove the application, in whole or in part, no later than April 28, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: July 1, 1994
Proposed charge expiration date: July 31, 1997
Total estimated PFC revenue: $795,299
Brief description of proposed projects:
Conduct planning studies; Acquire snow removal equipment; Install card access system; Construct taxiway and runway improvements; Acquire land; Construct ARFF building.
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of La Crosse.

Issued in Des Plaines, Illinois on February 9, 1994.

Larry H. Ladendorf,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 94–3890 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Outagamie County Airport, Appleton, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Outagamie County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 24, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Arthur E. Borchardt, Manager of the Outagamie County Airport at the following address: Outagamie County Airport, W6390 Challenger Drive, Suite 201, Appleton, Wisconsin 54915.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Outagamie County under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450, 612–725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Outagamie County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 27, 1994 the FAA determined that the application to impose and use the revenue from a PFC submitted by Outagamie County was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 26, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: June 1, 1994
Proposed charge expiration date: May 30, 2001
Total estimated PFC revenue: $3,811,673
Brief description of proposed project(s):

Projects To Impose and Use a PFC

Acquire Land; Install Security Fencing; Runway Signs; Terminal Building Water Line; Grove Runway 11/29; Acquire Snow Removal Equipment; Reconstruct General Aviation Apron and Taxiways "D" and "G"; Expend ARFF Building; Reconstruct and Expand Terminal Apron; Prepare PFC Application.

Projects Only To Impose a PFC

Terminal Baggage Claim Expansion; Improve Stormwater Drainage; Emergency Generator; Reconstruct Taxiway "B"; Acquire Land; Friction Testing Vehicle.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Not Applicable.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT."**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Outagamie County Airport.

Issued in Des Plaines, Illinois on February 9, 1994.

Larry Ladendorf,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 94–3891 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenues From a Passenger Facility Charge (PFC) at Washington National Airport, Washington, DC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Washington National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 24, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 101 West Broad Street, suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James A. Wilding, General Manager of the Metropolitan Washington Airports Authority, at the following address: Metropolitan Washington Airports Authority, 44 Canal Center Plaza, Alexandria, Virginia 22314.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Washington Airports Authority under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Manager, Washington Airports District Office 101 West Broad Street, Suite 300 Falls Church, Virginia 22046. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenues from a PFC at Washington National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part III 158 of the Federal Aviation Regulations (14 CFR part 158.)

On December 22, 1993, the FAA determined that the application to use the revenue from a PFC submitted by The Metropolitan Washington Airports Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 14, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: November 1, 1993
Proposed charge expiration date: November 1, 2000
Total estimated PFC revenue: $166,739,071
Brief description of proposed project(s):

—New Thirty-five Gate North Passenger Terminal Complex including Metro Station, utility relocation, connector and signage.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 On Demand Air Taxis filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at The Metropolitan Washington Airports Authority.

Issued in Jamaica, New York on February 10, 1994.

Peter A. Nelson,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 94–3892 Filed 2–18–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 94–11; Notice 01]

Evaluation Report on Glass-Plastic Windshield Glazing, Federal Motor Vehicle Safety Standards, Motor Vehicle Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of an Evaluation Report concerning Federal Motor Vehicle Safety Standard No. 205, "Glazing Materials." This staff report evaluates the safety, durability, and cost of glass-plastic windshield glazing which was introduced, for a limited time, in selected new passenger car models. The report was developed in accordance with Executive Order 12866, which requires Federal agencies to carry out periodic reviews of regulations that they have promulgated. NHTSA seeks public review and comment on this evaluation. Comments will be used to complete the review as required by the Executive Order.

DATES: Comments must be received no later than May 23, 1994.

ADDRESSES:

Report: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to: Ms. Glorious Harris (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Comments: All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. [Docket Hours, 9:30 a.m.–4 p.m., Monday through Friday.] It is requested but not required that 10 copies of comments be submitted.

Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street SW., Washington, DC 20590, and 7 copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Chief, Evaluation Division, Office of Strategic Planning and Evaluation, Plans and Policy, National Highway Traffic Safety Administration, room 5208, 400 Seventh Street, SW., Washington, DC 20590 (202–366–1574).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) No. 205 (49 CFR 571.205), "Glazing Materials," issued by NHTSA in January 1968, prescribes safety requirements for all glazing materials used in motor vehicles, including the windshield, the windows, and any interior partitions. The purpose of the standard is to reduce injuries resulting from impact with glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windshield in collisions.

In 1985, the agency published an evaluation study (DOT HS 806 693, February 1985) of conventional windshield glazing which has been standard equipment in American-made vehicles since the mid-1960's. Conventional glazing, often referred to as "HPR" (or High Penetration Resistant) glazing, was found to be a significant safety improvement over prior glazing designs, and was credited with bringing about a major reduction in the frequency and severity of head and facial injuries which resulted from occupants being thrown against the windshield in crashes. The primary benefit of the HPR design was a large reduction in the more severe facial lacerations and fractures, with a more modest reduction in minor lacerations, the majority of which still remained after HPR glazing was introduced.

In 1983, NHTSA amended FMVSS No. 205 to permit (but not require) the use of a new type of glazing, known as "glass-plastic" glazing. Glass-plastic glazing is similar in construction to the type used in the HPR windshield design except for the addition of a thin sheet of plastic bonded to the inside surface of the windshield. This feature was believed to have a high potential for reducing lacerative injuries to occupants who struck the windshield during crashes. At the same time, there was some concern over the durability of the softer plastic liner of the glass-plastic windshield relative to the inner glass surface of the standard HPR windshield.

Following NHTSA's amendment of FMVSS No. 205, two motor vehicle manufacturers equipped a number of their cars with glass-plastic windshields for field testing in rental fleets. One of the manufacturers also introduced the windshield to the general public by making it standard equipment on selected make models for a limited period of time.

NHTSA is conducting an evaluation study of glass-plastic glazing to assess its potential for lacerative injury reduction, its durability characteristics,

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and its costs. The report is based on analyses of data from State crash files; fleet tests; and on information from vehicle manufacturers, glass companies, and other sources. The primary findings and conclusions of the study are:

• *Safety.* Although insufficient to support firm conclusions, crash data from both State files and fleet tests indicate that lacerative injury reduction benefits from glass-plastic windshields are substantially less than the virtual elimination of these injuries, originally projected by the agency. While the plastic inner liner does reduce cuts from broken glass, lacerations can still occur from blunt impact with the plastic liner.

• *Durability.* Data from rental fleet operations and manufacturer warranty claims indicate that durability problems are greater than anticipated. Primarily, these problems involve the susceptibility of the plastic inner liner to damage (cuts, scratches) from the everyday motor vehicle environment.

• *Costs.* In volume quantities, it is estimated that a glass-plastic windshield will add $65 to the cost of a new car. Additional consumer costs would accrue due to the lower durability of the windshield compared to the conventional windshield. The cost of replacing a glass-plastic windshield is estimated to be over $1,700, compared to about $500 for replacing a conventional windshield. This high cost difference has caused most replacements of glass-plastic windshields to be made with conventional windshields, thereby negating any safety benefit inherent in the glass-plastic glazing.

• Today's high rates of safety belt use, together with the high installation rates of air bags—in contrast to the situation a decade ago when the agency authorized the use of glass-plastic glazing means that the size of the lacerative injury problem due to windshield contact in crashes is now substantially smaller and will continue to decrease.

NHTSA invites comments from interested persons on the evaluation study summarized in this notice and on other relevant issues.

Comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary comments in a concise fashion.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: February 9, 1994.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 94-3871 Filed 2-18-94; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 35

Tuesday, February 22, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting[1] is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), U.S.C. 552b:

DATE AND TIME: February 23, 1994, 2:00 p.m.

PLACE: 825 North Capitol Street NE., room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 995th Meeting—February 23, 1994, Regular Meeting (2:00 p.m.)

CAH-1.
Project No. 1333-003, Pacific Gas and Electric Company
CAH-2.
Project No. 10684-001, Lansing Board of Water and Light
CAH-3.
Project No. 11370-001, BAE Energy, Inc.
CAH-4.
Docket Nos. HB08-93A-75-001 and HB08-93A-76-001, Virginia Electric and Power Company
CAH-5.
Project No. 485-032, Georgia Power Company
CAH-6.
Project No. 2535-002, South Carolina Electric & Gas Company
CAH-7.
Project No. 9759-007, Centreville Hydro, Inc.
CAH-8.
Docket No. RM94-11-000, Deletion of Definition
CAH-9.
Project No. 3862-003, City of LeClaire, Iowa
CAH-10.
Project No. 7218-006, Bluestone Energy Design, Inc.
CAH-11.
Project No. 2471-011, Wisconsin Electric Power Company

Consent Agenda—Electric

CAE-1.
Docket No. QF94-9-000, Bayside Cogeneration, L.P.
CAE-2.
Docket No. AC94-17-001, Midwest Power Systems, Inc.
CAE-3.
Docket No. EL90-48-004, City of New Orleans, Louisiana v. Energy Corporation, Arkansas Power and Light Company, New Orleans Public Service, Inc., Louisiana Power & Light Company System Energy Resources, Inc.
CAE-4.
Docket Nos. EL94-3-001 and QF84-433-005, New Charleston Power I, L.P.
CAE-5.
Docket No. ER79-97-016, Century Power Corporation
CAE-6.
Docket No. EL93-28-001, Seminole Electric Cooperative, Inc. v. Florida Power & Light Company
Docket No. EL93-40-001, Flordia Municipal Power Agency v. Florida Power & Light Company
Docket Nos. ER93-465-005, ER93-507-002, ER93-922-003 and EL94-12-001, Florida Power & Light Company
CAE-7.
Docket No. ER94-24-001, Enron Power Marketing, Inc.
CAE-8.
Docket No. EG94-14-000, Southern Electric Wholesale Generators, Inc.
CAE-9.
Docket No. ER93-498-000, Central Louisiana Electric Company
Docket No. EL93-33-000, Louisiana Electric Power Authority v. Central Louisiana Electric Company
CAE-10.
Docket No. ER93-159-002, Puget Sound Power & Light Company
CAE-11.
Docket No. ER94-652-000, Florida Power & Light Company
CAE-12.
Omitted

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP94-123-000, Mississippi River Transmission Corporation
CAG-2.
Docket No. RP94-125-000, Texas Gas Transmission Corporation
CAG-3.
Docket No. GT94-21-000, Texas Eastern Transmission Corporation
CAG-4.
Docket No. RP94-116-000, Texas Eastern Transmission Corporation
CAG-5.
Docket No. RP94-120-000, Koch Gateway Pipeline Company
CAG-6.
Docket No. RP94-122-000, Natural Gas Pipeline Company of America
CAG-7.
Docket No. RP94-68-001, Mississippi River Transmission Corporation
CAG-8.
Docket No. RP94-127-000, Tennessee Gas Pipeline Company
CAG-9.
Docket No. RP94-121-000, Northwest Pipeline Corporation
CAG-10.
Docket No. RP94-128-000, South Georgia Natural Gas Company
CAG-11.
Docket Nos. RP91-106-000, RP91-109-000, RP91-215-000, RP92-8-000, RP92-49-000 and RP92-103-000, Transwestern Pipeline Company
CAG-12.
Docket No. RP93-147-000, Tennessee Gas Pipeline Company
CAG-13.
Omitted
CAG-14.
Docket Nos. RP94-1-000, RP94-1-004 and RP93-161-004, Columbia Gas Transmission Corporation
CAG-15.
Docket Nos. TA92-1-63-004, TM92-5-63-002 and TQ92-7-63-002, Carnegie Natural Gas Company
CAG-16.
Omitted
CAG-17.
Docket No. PR91-1-001, Tejas Gas Pipeline Company
CAG-18.
Docket No. PR93-5-000, Pontchartrain Natural Gas System
CAG-19.
Docket No. RP88-44-038, El Paso Natural Gas Company
CAG-20.
Docket No. RP92-185-010, El Paso Natural Gas Company
CAG-21.
Omitted
CAG-22.
Docket Nos. RP94-111-000, RP94-97-000 and RS92-87-000, Transwestern Pipeline Company
CAG-23.
CP92-203-004, K N Wattenberg Transmission, Ltd.
CAG-24.
Docket No. RP85-39-015, Wyoming Interstate Company, Ltd
CAG-25.

[1] Note: The Commission meeting has been changed to 2:00 p.m.

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Docket Nos. RP94–76–002, RP93–184–003 and RP93–185–003, Carnegie Natural Gas Company
CAG–26.
Docket Nos. RP91–41–019 and RP91–90–011, Columbia Gas Transmission Corporation
CAG–27.
Omitted
CAG–28.
Docket No. RP94–60–003, Transwestern Pipeline Company
CAG–29.
Docket No. RP93–163–001, Aquila Energy Marketing Corporation v. Natural Gas Pipeline Company of America
CAG–30.
Docket No. RP93–160–001, Tennessee Gas Pipeline Company
CAG–31.
Omitted
CAG–32.
Docket Nos. RP93–56–002, RP93–86–002 and RP93–139–002, Transwestern Pipeline Company
CAG–33.
Docket No. RP91–203–031, Tennessee Gas Pipeline Company
CAG–34.
Docket No. RP88–44–044, El Paso Natural Gas Company
CAG–35.
Docket Nos. RP91–104–005, RP91–106–004, RP91–109–005, RP91–215–005, RP91–217–003 and RP92–8–003, Trunkline Gas Company
CAG–36.
Docket No. GP90–11–002, NICOR Exploration Company
CAG–37.
Omitted
CAG–38.
Docket Nos. RP90–137–013, TM93–6–49–005, RP93–175–003, RS92–13–000 Williston Basin Interstate Pipeline Company
CAG–39.
Docket No. RP92–166–012, Panhandle Eastern Pipe Line Company
CAG–40.
Omitted
CAG–41.
Docket No. PR91–23–001, Midcoast Ventures I
CAG–42.
Omitted
CAG–43.
Docket No. RM87–34–071, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol Docket Nos. TA91–1–21–004 and TM91–8–21–004, Columbia Gas Transmission Corporation
Docket No. RM85–1–185, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol
Docket No. CP87–115–010, Tennessee Gas Pipeline Company
CAG–44.
Docket Nos. RP93–151–004, RS92–23–014, RP91–132–035, RP91–203–035 and RP94–39–001, Tennessee Gas Pipeline Company
CAG–45.
Docket No. RM91–8–004, Qualifying Certain Tight Formation Gas for Tax Credits
CAG–46.
Docket No. RS92–1–009, ANR Pipeline Company
CAG–47.
Docket No. RS92–63–008 and 010, Great Lakes Gas Transmission Limited Partnership
CAG–48.
Docket Nos. CP93–690–001 and CP93–697–001, High Island Offshore System
CAG–49.
Docket No. CP89–710–013, Transcontinental Gas Pipeline Corporation
Docket No. CP88–171–029, Tennessee Gas Pipeline Company
CAG–50.
Docket Nos. CP92–184–006 and CP92–459–005, Texas Eastern Transmission Corporation
CAG–51.
Docket No. CP93–707–001, Transcontinental Gas Pipe Line Corporation
CAG–52.
Docket No. CP93–541–000, Young Gas Storage Company, Ltd
CAG–53.
Omitted
CAG–54.
Docket No. CP94–68–000, Transcontinental Gas Pipeline Corporation
CAG–55.
Docket No. CP94–123–000, Questar Pipeline Company
CAG–56.
Omitted
CAG–57.
Docket No. CP94–166–000, Viosca Knoll Gathering System
CAG–58.
Docket No. RP94–119–000, Texas Gas Transmission Corporation
CAG–59.
Docket Nos. RP92–137–011 and RP92–108–004, Transcontinental Gas Pipe Line Corporation
CAG–60.
Docket No. RM93–4–001, Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket No. TX94–3–000, Minnesota Municipal Power Agency v. Southern Minnesota Municipal Power Agency. Order on complaint under Section 211 of the Federal Power Act.
E–2.
Docket Nos. ER93–465–000 and ER93–922–000, Florida Power & Light Company. Supplemental order on policy issues.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket No. RO89–2–001, Cities Service Oil and Gas Corporation. Order on reconsideration.

II. Restructuring Matters

RS–1.
Docket Nos. RS92–10–007, CP71–273–006, RP92–134–008 and RP93–15–005, Southern Natural Gas Company. Order on rehearing.
RS–2.
Docket Nos. RS92–26–010 and 011, Koch Gateway Pipeline Company. Order on rehearing.
RS–3.
Docket No. RS92–4–008, Colorado Interstate Gas Company. Order on compliance.
RS–4.
Docket Nos. RS92–43–011, RP93–4–014 and RS92–43–009, Mississippi River Transmission Corporation. Order on compliance and rehearing.
RS–5.
Docket Nos. RS92–15–008, 009, 010, 011, RP93–62–008, 009 and 010, Equitrans, Inc. Order on compliance and rehearing.
RS–6.
Docket Nos. RS92–30–006 and RS92–30–007, Carnegie Natural Gas Company. Order on compliance and rehearing.
RS–7.
Docket Nos. RS92–5–012, 013, 014, RP90–180–023, 024, RP91–82–014, 015, RP91–161–019, 020, RP92–3–010, 011, RP93–66–003, 004, RP93–115–003 and 004, Columbia Gas Transmission Corporation
Docket Nos. RS92–6–011, 012, 013, 014, RP90–170–020, 021, RP91–160–016, 017, RP92–2–010, 011, CP93–736–002 and 003, Columbia Gulf Transmission Company. Order on compliance and rehearing.

III. Pipeline Certificate Matters

PC–1.
Reserved

Dated: February 16, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4061 Filed 2–17–94; 3:16 pm]

BILLING CODE 6717–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, February 24, 1994.

PLACE: 9th Floor, 1120 Twentieth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *W–P Coal Co.*, Docket No. WEVA 92–746 (Issues include whether the judge erred in concluding that the Secretary of Labor acted improperly in citing W–P for violations of the Mine Act committed its contractor.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *W–P Coal Co.*, Docket No. WEVA 92–746 (See Oral Argument Listing)

It was determined by unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: February 16, 1994.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–4062 Filed 2–17–94; 3:17 pm]

BILLING CODE 6735–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Monday, February 28, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6110A—Highway Accident Report: Tractor-Semitrailer Collision with Bridge Columns on Interstate 65 near Evergreen, Alabama, on May 19, 1993.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: February 17, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94–4085 Filed 2–17–94; 3:40 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 21, 28, March 7, and 14, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 21

Thursday, February 24

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 28—Tentative

Monday, February 28

2:00 p.m.
Briefing by Commonwealth Edison (Public Meeting)

Tuesday, March 1

10:00 a.m.
Briefing on Proposed Changes to Part 100 (Public Meeting)
(Contact: Leonard Soffer, 301–492–3916)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 7—Tentative

Thursday, March 10

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–492–4516)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 14—Tentative

Monday, March 14

2:00 p.m.
Briefing by Nuclear Waste Technical Review Board (NWTRB) (Public Meeting)
(Contact: Paula N. Alford, 703–235–4473)

Friday, March 18

10:00 a.m.
Briefing on Status of Action Plan for Fuel Cycle Facilities (Public Meeting)
(Contact: Ted Sherr, 301–504–3371)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

ADDITIONAL INFORMATION: "Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS)" (Public Meeting) scheduled for February 10 was *postponed.*

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: February 17, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–4086 Filed 2–17–94; 3:41 pm]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Amend Agenda

At the February 7, 1994, meeting of the Board of Governors, noticed in the **Federal Register** on January 28, 1994, (59 FR 4138) the members voted unanimously to add to the agenda consideration of a contract for consulting services for the design of an EVA program for the Postal Service and that no earlier public announcement of the new item on the agenda was possible. The Governors were of the opinion that public access to the discussion would likely disclose information, the premature disclosure of which could significantly frustrate possible future actions by the Postal Service.

Accordingly, the members unanimously determined that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, discussion of the matter was properly closed to public observation.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39 Code of Federal regulations, the General Counsel of the Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 94–4063 Filed 2–17–94; 3:18 pm]

BILLING CODE 7710–12–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1464]

TIME AND DATE: 10 a.m. (EST), February 23, 1994.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on January 19, 1994.

Action Items

New Business

C—Energy

C1. Award of a 3-year Contract to Norfolk Southern Railway Company for Transportation of Coal to John Sevier Fossil Plant.

C2. Contract Extension with CSX Transportation for Transportation of Coal to Kingston Fossil Plant.

E—Real Property

E1. Sale of Permanent and Temporary Construction Easements to the City of Tupelo

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Affecting Approximately 1.1 Acre of Land in Lee County, Mississippi.

E2. Sale of Land at Public Auction Affecting Approximately an Acre Portion of TVA's Bowling Green, Kentucky, Customer Service Center Property in Warren County, Kentucky.

E3. Sale at Public Auction of a Coal Lease Affecting Approximately 1,690 Acres of the Red Bird Coal Reserves in Clay and Leslie Counties, Kentucky.

E4. Addition of Commercial Recreation to Planned Tract Allocation and Proposed 19-Year Commercial Recreation Lease Affecting Approximately 11.98 Acres of Land on Chickamauga Reservoir, Meigs County, Tennessee.

E5. Sale of Noncommercial, Nonexclusive Permenent Easements to Three Individuals for Construction and Maintenance of Recreational Water-Use Facilities Affecting Approximately 0.46 Acre of Tellico Lake Shoreline, Monroe and Loudon Counties, Tennessee.

F—Unclassified

F1. Approval to Enter into a Contract with Stone and Webster Engineering Corporation, Subject to Satisfactory Negotiations and Final Review Prior to Execution.

F2. Supplement No. 1 to Procurement Contract Nos. TV–92PGN77052E–01 and –02 with FD Engineers and Constructors, Subject to Satisfactory Negotiations and Final Review Prior to Execution.

F3. Proposed TVA Policy on Contracting Decisions.

F4. Proposed Policy for Utilization of Tennessee Valley Region Businesses.

CONTACT PERSON FOR MORE INFORMATION:

Ron Loving, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 732–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: February 16, 1994.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 94–4074 Filed 2–17–94; 3:19 pm]

BILLING CODE 8120–08–M

Corrections

Federal Register

Vol. 59, No. 35

Tuesday, February 22, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendations and Statement Regarding Administrative Practice and Procedure

Correction

In notice document 94-2225 beginning on page 4669 in the issue of Tuesday, February 1, 1994 make the following correction:

On page 4672, in the third column, in the last line, after "access to it).[32]" insert "The file should, to the extent feasible, contain notices of the rulemaking, all written[33] comments submitted to the agency, and copies or an index of all written factual material, studies, or reports substantially relied on or seriously considered by the agency in formulating its proposed and final rule (except insofar as disclosure is prohibited by law). Materials substantially relied on or seriously considered need not encompass every study, report, or other document that the agency may have in its files or has otherwise used, but they should include those that exerted a significant impact on the agency's thinking, even if they represent an approach that the agency ultimately did not accept."

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL91-28-002, et. al.]

Carolina Power & Light Co., et. al.; Electric Rate and Corporate Regulation Filings

Correction

In notica document 94-3221 beginning on page 6627, in the issue of Friday, February 11, 1994, make the following correction:

On page 6628, in the first column, under the heading **Northern States Power Company**, in the first line, "[Docket No. ER92-412-001]", should read "[Docket No. ER93-412-001]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 92C-0295]

Listing of Color Additives Subject to Certification; FD&C Blue No. 1

Correction

In rule document 93-3554 beginning on page 7636 in the issue of Wednesday, February 16, 1994 make the following correction.

On page 7636, in the third column, in the **DATES:**, in the first line, "February 17, 1994," should read "March 19, 1994,".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 92C-0292]

Listing of Color Additives Subject to Certification; FD&C Red No. 40

Correction

In rule document 94-3553 beginning on page 7635 in the issue of Wednesday, February 16, 1994 make the following correction.

On page 7635, in the first column, in the **DATES:**, in the first line, "February 17, 1994," should read "March 19, 1994,".

BILLING CODE 1505-01-D

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Part II

Department of the Interior

Bureau of Indian Affairs

Salinan Tribe of Monterey County, California; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Salinan Tribe of Monterey County, c/o Rosie Shaffer, P.O. Box 403, King City, California 93930, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on November 15, 1993, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: January 27, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–3936 Filed 2–18–94; 8:45 am]

BILLING CODE 4310–02–P

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Part III

The President

Memorandum of January 17—Federal Leadership of Fair Housing

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Presidential Documents

Title 3—

The President

Memorandum of January 17, 1994

Federal Leadership of Fair Housing

Memorandum for the Heads of Executive Departments and Agencies

On April 11, 1968, one week after the assassination of the great civil rights leader Martin Luther King, Jr., the Fair Housing Act was enacted (1) to prohibit discrimination in housing, and (2) to direct the Secretary of Housing and Urban Development to affirmatively further fair housing in Federal housing and urban development programs. Twenty-five years later, despite a strengthening of the Fair Housing Act 5 years ago, hundreds of acts of housing discrimination occur in our Nation each day.

Americans of every income level, seeking to live where they choose, feel the weight of discrimination because of the color of their skin, their race, their religion, their gender, their country of origin, or because they are disabled or have children.

An increasing body of evidence indicates that barriers to fair housing are pervasive. Forty percent of all families move every 5 years. This statistic is significant given the results of a recent study, commissioned by the Department of Housing and Urban Development (HUD), which found that more than half of the African Americans and Latinos seeking to rent or buy a home are treated differently than whites with the same qualifications. Moreover, based upon Home Mortgage Disclosure Act data, the number of minority persons who are rejected when attempting to obtain loans to purchase homes is two to three times higher than it is for nonminorities in almost every metropolitan area of this country.

Racial and ethnic segregation, both in the private housing market and in public and assisted housing, has been well documented. Despite legislation (the Fair Housing Act) and Executive action (Executive Order No. 11063), the divisive impact of housing segregation persists in metropolitan areas all across this country. Too many lower income and minority Americans face barriers to housing outside of central cities. Segregation in housing and schools deprives too many of our children and youth of an opportunity to enter the marketplace or work on an equal footing. For too many families, our cities are no longer the launching pads for economic self-sufficiency and upward mobility that they have been for countless immigrants and minorities since the country's birth. And many Americans who are better off abandon the cities.

The resulting decline in the very heart of too many of our metropolitan areas threatens all of us: the health of our dynamic regional economies—the very lifeblood of future national economic growth and higher living standards for all of us and all of our children—is placed at risk.

We can do better. We can start by making sure that our own Federal policies and programs across all of our agencies support the fair housing and equal opportunity goals to which all Americans are committed. If all of our executive agencies affirmatively further fair housing in the design of their policies and administration of their programs relating to housing and urban development, a truly nondiscriminatory housing market will be closer to achievement.

By an Executive Order ("the Order") I am issuing today and this memorandum, I am addressing those needs. The Secretary of Housing and Urban Development and, where appropriate, the Attorney General—the officials

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with the primary responsibility for the enforcement of Federal fair housing laws—will take the lead in developing and coordinating measures to carry out the purposes of this Order.

Through this Order, I am first expanding Executive Order No. 11063 to provide protection against discrimination in programs of Federal insurance or guaranty to persons who are disabled and to families with children.

Second, I am revoking the old Executive Order No. 12259 entitled "Leadership and Coordination of Fair Housing in Federal Programs." The new Executive order reflects the expanded authority of the Secretary of Housing and Urban Development and I am directing him to take stronger measures to provide leadership and coordination in affirmatively furthering fair housing in Federal programs.

Third, I ask the heads of departments and agencies, including the Federal banking agencies, to cooperate with the Secretary of Housing and Urban Development in identifying ways to structure agency programs and activities to affirmatively further fair housing and to promptly negotiate memoranda of understanding with him to accomplish that goal.

Further, I direct the Secretary of Housing and Urban Development to review all of HUD's programs to assure that they truly provide equal opportunity and promote economic self-sufficiency for those who are beneficiaries and recipients of those programs.

I also direct the Secretary to review HUD's programs to assure that they contain the maximum incentives to affirmatively further fair housing and to eliminate barriers to free choice where they continue to exist. This review shall include Federally assisted housing, Federally insured housing and other housing and housing related programs, including those of the Government National Mortgage Association and the Federal Housing Administration.

Today, I am establishing a new Cabinet-level organization to focus the cooperative efforts of all agencies on fair housing. The President's Fair Housing Council will be chaired by the Secretary of Housing and Urban Development and will consist of the Secretary of Health and Human Services, the Secretary of Transportation, the Secretary of Education, the Secretary of Labor, the Secretary of Defense, the Secretary of Agriculture, the Secretary of Veterans Affairs, the Secretary of the Treasury, the Attorney General, the Secretary of the Interior, the Chair of the Federal Reserve, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Chair of the Federal Deposit Insurance Corporation.

The President's Fair Housing Council shall review the design and delivery of Federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing. The Council shall propose revisions to existing programs or activities, develop pilot programs and activities, and propose new programs and activities to achieve its goals.

I direct the Secretary of Housing and Urban Development and the President's Fair Housing Council to develop a pilot program to be implemented in selected metropolitan areas. This initiative will promote fair housing choice by helping inner-city families to move to suburban neighborhoods and by making the central city more attractive to those who have left it. I direct the members of the Council to undertake a demonstration program that will reinvent the way assisted housing is offered to applicants, will break down jurisdictional barriers in housing opportunities, and will promote the use of subsidies that diminish residential segregation, and will combine these initiatives with refined educational incentives aimed at improving the effectiveness of inner-city schools. I am directing that transportation alternatives be considered along with targeted social service and job training programs as part of the support necessary to create a one-stop, metropolitan area-wide fair housing opportunity pilot program that will effectively offer Federally assisted housing, Federally insured housing, and private market housing within a metropolitan area to all residents of the area. The pilot

program should call upon realtors, mortgage lenders, housing providers, and local governments, among others, to assist in expanding housing choices.

To address the findings of recent studies, I hereby direct the Secretary of Housing and Urban Development and the Attorney General and, where appropriate, the heads of the Federal banking agencies to exercise national leadership to end discrimination in mortgage lending, the secondary mortgage market, and property insurance practices. The Secretary is directed to issue regulations to define discriminatory practices in these areas and the Secretary and the Attorney General are directed to aggressively enforce the laws prohibiting these practices.

In each of these areas, I direct the Secretary of Housing and Urban Development to take the lead with the other Federal agencies in working to gain the voluntary cooperation, participation, and expertise of all of those in private industry, the States and localities who can assist in achieving the Nation's fair housing goals.

The Secretary of Housing and Urban Development is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 17, 1994.

[FR Doc. 94–4136
Filed 2–18–94; 10:53 am]
Billing code 4210–01–M

Editorial note: For the text of Executive Order 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," see issue Jan. 20, p. 2939 of the **Federal Register**. See also the *Weekly Compilation of Presidential Documents* (vol. 30, p. 110).

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H.R. 1303/P.L. 103–212

To designate the Federal Building and United States Courthouse located at 402 East State Street in Trenton, New Jersey, as the "Clarkson S. Fisher Federal Building and United States Courthouse". (Feb. 16, 1994; 108 Stat. 43; 1 page)

H.R. 2223/P.L. 103–213

To designate the Federal building located at 525 Griffin Street in Dallas, Texas, as the "A. Maceo Smith Federal Building". (Feb. 16, 1994; 108 Stat. 44; 1 page)

H.R. 2555/P.L. 103–214

To designate the Federal building located at 100 East Fifth Street in Cincinnati, Ohio, as the "Potter Stewart United States Courthouse". (Feb. 16, 1994; 108 Stat. 45; 1 page)

H.R. 3186/P.L. 103–215

To designate the United States courthouse located in Houma, Louisiana, as the "George Arceneaux, Jr., United States Courthouse". (Feb. 16, 1994; 108 Stat. 46; 1 page)

H.R. 3356/P.L. 103–216

To designate the United States courthouse under construction at 611 Broad Street, in Lake Charles, Louisiana, as the "Edwin Ford Hunter, Jr., United States Courthouse". (Feb. 16, 1994; 108 Stat. 47; 1 page)

Last List February 17, 1994

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-019-00001-1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869-019-00002-0)	17.00	[1] Jan. 1, 1993
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1200-End, 6 (6 Reserved)	(869-019-00006-2)	21.00	Jan. 1, 1993
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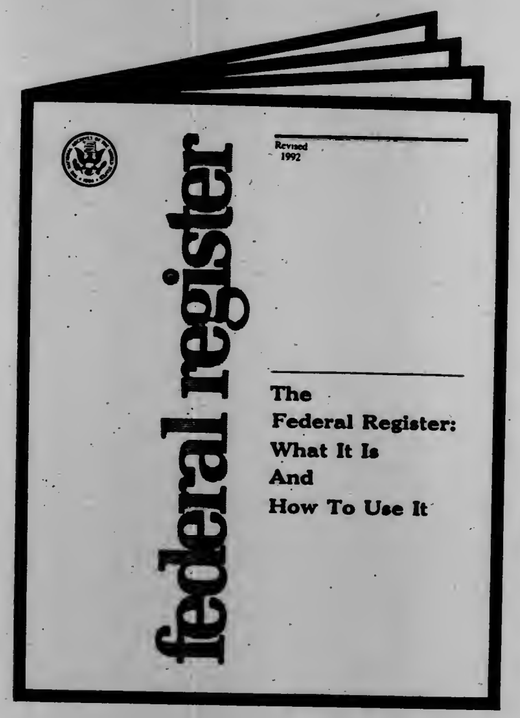
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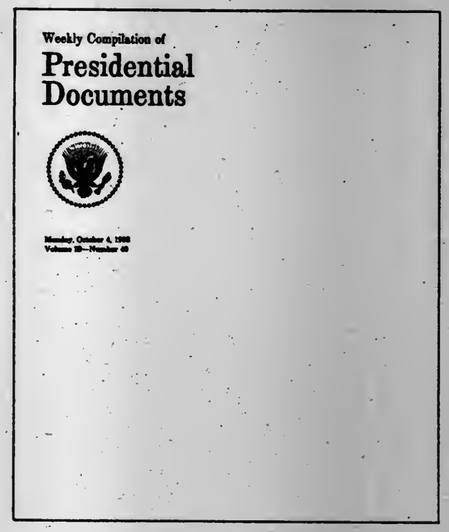
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Federal Register
Vol. 59, No. 36
Wednesday, February 23, 1994

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV93-993-3IFR]

Dried Prunes Produced in California; Changes in Producer District Boundaries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the administrative rules and regulations established under the Federal marketing order for dried prunes produced in California. This rule realigns the boundaries of seven districts established for independent producer representation on the Prune Marketing Committee (Committee). The realignment provides for more equitable representation for those members, and makes provisions of the order consistent with current industry demographics. This rule is based on a unanimous recommendation of the Committee, which is responsible for local administration of the order.

EFFECTIVE DATE: The interim final rule is effective February 23, 1994. Comments which are received by March 25, 1994 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX number (202) 720–5698. Comments should reference this docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, or FAX (209) 487–5906; or Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20050–6456; Telephone: (202) 205–2829, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 993 (7 CFR part 993), regulating the handling of dried prunes produced in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of dried prunes who are subject to regulation under the dried prune marketing order and approximately 1,360 producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This interim final rule realigns the boundaries of the seven districts established for independent producer representation on the Committee. To be consistent with current industry demographics, this interim rule ensures that, insofar as practicable, each district represents an equal number of independent producers and an equal volume of prunes grown by such producers. The change will not impose any additional regulatory, informational, or cost requirements on handlers or producers.

This action revises § 993.128 of Subpart—Administrative Rules and Regulations and is based on a unanimous recommendation of the Committee and other available information.

Section 993.24 of the order provides that the Committee shall consist of 22 members, of which 14 shall represent producers, 7 shall represent handlers, and 1 shall represent the public. The 14 producer member positions are apportioned between cooperative producers and independent producers in the same proportion, insofar as is

practicable, as the percentage of the total prune tonnage handled by the cooperative and independent handlers during the year preceding the year in which nominations are made is to the total handled by all handlers. In recent years and currently, cooperative producers and independent producers each have been eligible to nominate seven members.

Section 993.28 of the order provides that, for independent producers, the Committee shall, with the approval of the Secretary of Agriculture, divide the production area into districts, giving, insofar as practicable, equal representation throughout the production area by numbers of independent producers and production of prune tonnage by such producers. When revisions are required, the Committee must make its recommendations to the Secretary of Agriculture to change the district boundaries prior to January 31 of any year in which nominations are to be made. Nominations are made in all even-numbered years, including 1994.

The Committee recommended this change at its December 8, 1993, meeting. Since the last redistricting in 1990, the number of producers and volume of production in most districts has changed, causing imbalances among some districts. Thus, redistricting is needed to bring the districts in line with order requirements and current California prune industry demographics.

This interim final rule establishes Colusa and Glenn counties as District 1 and adds Tehama and Shasta counties to District 4. It also moves the boundary between the central Sutter and southern Sutter districts north from Oswald Road to Bogue Road, and makes the central Sutter County area a part of District 2. This rule also designates the portion of District 4, which includes the San Joaquin Valley counties, as District 7. This rule also adds northern Sutter County to Butte County to become a new District 5. District 6 will continue to be Yuba County.

The Committee calculated the percentage of total independent prune growers and the percentage of total independent grower prune tonnage for each proposed new district. The two percentages were averaged for each district to determine a representation factor for each district. The optimal representation factor is determined to be 14.29 percent (100 percent divided by 7 districts).

The representation factors for the seven old and the seven new districts are shown below, based on the 1992–93 crop year.

District	Representation factor	
	Old districts (percent)	New districts (percent)
1	7.52	12.81
2	21.02	14.89
3	11.07	15.09
4	14.27	12.78
5	9.15	16.67
6	16.10	16.10
7	20.88	11.67

The redistricting recommendation is desirable because it allows each district to approximate the optimal representation factor, while maintaining a continuous geographic boundary for each district. In addition, several of the districts whose representation factors are below the optimum are expected to experience production increases in the next few years which are likely to be above the industry average.

Based on the above, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's unanimous recommendation and other available information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The order requires that independent producer nomination meetings be held for each of the seven districts prior to March 8, 1994, for the term of office beginning June 1, 1994 and this action should be in place before those meetings; (2) this action does not impose additional regulatory requirements on handlers or producers and, therefore, neither handlers nor producers need additional time to comply; (3) the industry is aware of this action, which was unanimously recommended by the Committee at an open meeting; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 993.128 is amended by revising paragraph (a) to read as follows:

§ 993.128 Nominations for membership.

(a) *Districts.* In accordance with the provisions of § 993.28, the districts referred to therein are described as follows:

District No. 1. The counties of Glenn and Colusa.

District No. 2. That portion of Sutter County north of a line extending along Bogue Road easterly to the Yuba County line and westerly to the Colusa County line and south of a line extending along Clark Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 3. All of Yolo County and that portion of Sutter County south of a line extending along Bogue Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 4. The counties of Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.

District No. 5. All of Butte County, and that portion of Sutter County north of a line extending along Clark Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 6. Yuba County.

District No. 7. The counties of Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Solano, Tulare and all other counties not included in Districts 1, 2, 3, 4, 5 and 6.

* * * * *

Dated: February 17, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–4120 Filed 2–22–94; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

7 CFR Part 1924

Limited Resource Loan Reviews

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation with regard to the annual review of borrowers with limited resource Farm Ownership (FO), Soil and Water (SW), and Operating (OL) loans. The amendments are necessary to clarify annual review procedures for limited resource loan borrowers. The intended effect is to reduce the number of borrowers who are past due for limited resource loan reviews.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Aleta Rhone-Williams, Accounting Policy and Procedures Branch, FmHA, USDA, Finance Office, 1520 Market Street, St. Louis, Missouri 63103, telephone 314–539–6026.

SUPPLEMENTARY INFORMATION: This rule is not subject to the provisions of Executive Order 12866 because it has no impact on FmHA borrowers or other members of the public. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking because it involves only internal Agency management and publication for comment is unnecessary.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575–0061 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This final rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Environmental Impact Statement

This document has been revised in accordance with 7 CFR 1940, Subpart G, Environmental Program. FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an environmental impact statement is not required.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Numbers: 10.406 Farm Operating Loans. 10.407 Farm Ownership Loans. 10.416 Soil and Water Loans.

Intergovernmental Consultation

For the reasons set forth in the final rule related to notice 7 CFR part 3015, Subpart V, (48 FR 29115, June 24, 1983), Farm Ownership Loans and Farm Operating Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials. The Soil and Water program, however, is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

Accordingly, part 1924, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Management Advice to Individual Borrowers and Applicants

2. Section 1924.60 is amended by adding the words "(The date of the Farm and Home Plan will become the anniversary date for the limited resource loan review.)" at the end of paragraph (c)(3); revising the reference "paragraph (c)" to read "paragraphs (c)(1), (c)(2), and (c)(4)," in the first sentence of paragraph (d)(2); and adding the words "For borrowers receiving limited resource rates of interest, complete the initial analysis within the 18-month period after loan closing and near the end of the borrower's production/marketing cycle (period of the Farm and Home Plan)." after the first sentence in paragraph (d)(2).

Dated: February 4, 1994.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–3957 Filed 2–22–94; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–60–AD; Amendment 39–8799; AD 94–02–02]

Airworthiness Directives: Rockwell International/Collins Air Transport Division DME–700 Distance Measuring Equipment; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 94–02–02 concerning Rockwell International/Collins Air Transport Division (Collins) DME–700 distance measuring equipment (DME) installed on aircraft, which was published in the **Federal Register** on January 18, 1994 (59 FR 2519). That publication inadvertently referenced Collins Service Bulletin (SB) 25, DME–700–34–25, as Collins SB 25, DME–600–34–25, in paragraph (f) of the AD. All other reference to this service bulletin is correct. This action changes the AD to correctly identify this service bulletin in paragraph (f) of the AD.

EFFECTIVE DATE: February 21, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4134; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: On January 11, 1994, the Federal Aviation Administration (FAA) issued AD 94–02–02, Amendment 39–8799 (59 FR 2519), which applies to certain Collins DME–700 distance measuring equipment installed on aircraft. This AD requires modifying these DME units to ensure that they are functioning properly.

The AD inadvertently referenced Collins Service Bulletin (SB) 25, DME–700–34–25, as Collins SB 25, DME–600–34–25, in paragraph (f) of the AD. All other reference to this service bulletin is correct. This action changes the AD to correctly identify this service bulletin in paragraph (f) of the AD.

Need for Correction

As published, the final regulations have incorrectly referenced Collins SB 25, DME–700–34–25, as SB 25, DME–600–34–25, in paragraph (f) of AD 94–02–02. This could cause confusion when obtaining the proper procedures

to follow in accomplishing the required modifications.

Correction of Publication

Accordingly, the publication of January 18, 1994 (59 FR 2519) of Amendment 39–8799; AD 94–02–02, which was the subject of FR Doc. 94–1088, is corrected as follows:

§ 39.13 [Corrected]

On page 2521, in the first column, in § 39.13, in line 5 of paragraph (f) of AD 94–02–02, replace:

"Service Bulletin 25, DME–600–34–25, dated"

with:

"Service Bulletin 25, DME–700–34–25, dated"

Issued in Kansas City, Missouri, on February 15, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3964 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92–CE–50–AD; Amendment 39–8836; AD 94–04–16]

Airworthiness Directives: Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Mitsubishi Heavy Industries, Ltd. (Mitsubishi), MU–2B series airplanes. This action requires reducing the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range. Analysis of service history on the affected airplanes has revealed one accident and two incidents where the existing elevator nose-down trim deflection caused excessive control wheel force. The actions specified by this AD are intended to prevent excessive control wheel force caused by extreme elevator nose-down trim deflection, which could result in loss of control of the airplane.

DATES: Effective April 11, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 11, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Roberts, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806; telephone (310) 988–5228; facsimile (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Mitsubishi MU–2B series airplanes was published in the **Federal Register** on December 14, 1992 (57 FR 58999). The action proposed to require reducing the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range. The proposed action would be accomplished in accordance with Mitsubishi Service Bulletin No. 216, dated September 11, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter supports the proposed action, but recommends that, to eliminate any applicability questions from the field, the FAA issue one AD to cover the Mitsubishi MU–2B series airplanes covered under two FAA Type Certificates: A2PC and A10SW. The FAA concurs that one AD may eliminate applicability questions from the field; however, ADs are issued against airplanes of the same type design. Since these airplanes are certificated under two separate type designs, the FAA is issuing an AD on each type design. The proposed AD is unchanged as a result of this comment.

No comments were received on the FAA's determination of the cost impact on the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 252 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $300 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $158,760. This figure is based on the assumption that none of the affected airplane operators have accomplished the required action.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, in a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD to read as follows:

94–04–16 Mitsubishi Heavy Industries, Ltd.: Amendment 39–8836; Docket No. 92–CE–50–AD.

Applicability: The following model and serial number airplanes, certificated in any category.

Model	Serial Nos.
MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, and MU–2B–26.	008 through 312, 314 through 320, and 322 through 347.
MU–2B–30, MU–2B–35, and MU–2B–36.	501 through 651, 653 through 660, and 662 through 696.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent excessive control wheel force caused by extreme elevator nose-down trim deflection, which could result in loss of control of the airplane, accomplish the following:

(a) Reduce the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range in accordance with the Instructions section of Mitsubishi Service Bulletin No. 216, dated September 11, 1992.

(b) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, 3229 E. Spring Street, Long Beach, California 90806. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) The modification required by this AD shall be done in accordance with Mitsubishi Service Bulletin No. 216, dated September 11, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–8836) becomes effective on April 11, 1994.

Issued in Kansas City, Missouri, on February 14, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3965 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–13–U–M

14 CFR Part 71

[Airspace Docket No. 93–AGL–19]

Establishment of Class E Airspace; Appleton, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace near Appleton, MN, to accommodate a new Nondirectional Beacon (NDB) runway 13 Standard Instrument Approach Procedure (SIAP) to Appleton Municipal Airport, Appleton, MN. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Frink, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, November 30, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to accommodate a new Nondirectional Beacon (NDB) runway 13 Standard Instrument Approach Procedure (SIAP) to Appleton Municipal Airport, Appleton, MN (58 FR 63127). The proposal was to add controlled airspace extending from 700 feet to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Appleton, MN, to accommodate a new Nondirectional Beacon (NDB) runway 13 Standard Instrument Approach Procedure (SIAP) to Appleton Municipal Airport, Appleton, MN. Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Appleton, MN [New]

Appleton Municipal Airport, MN
(lat. 45°13'41"N, long. 96°00'19"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Appleton Municipal Airport, MN, and within 2.5 miles each side of the 326° bearing from the airport extending from the 6.4-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on February 4, 1994.

James H. Washington,

Acting Manager, Air Traffic Division.

[FR Doc. 94–4006 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–38]

Amendment of Class E Airspace; West Yellowstone, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the West Yellowstone, Montana, Class E airspace. This action corrects an error in the airspace description inadvertently omitted during the airspace reclassification process. This action amends the West Yellowstone, Montana Class E airspace from full-time back to part-time. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace."

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: James E. Riley, ANM–537, Federal Aviation Administration, Docket No. 93–ANM–38, 1601 Lind Avenue SW., Renton, Washington 98055–4056; Telephone: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On December 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the West Yellowstone, Montana, Class E airspace (58 FR 63905). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. Class E airspace designations for airspace areas extending 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Class E airspace at West Yellowstone, Montana, to correct an error in the airspace description inadvertently omitted during the airspace reclassification process. This action amends the West Yellowstone Class E airspace from full-time back to part-time.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 West Yellowstone, MT [Amended]

West Yellowstone, Yellowstone Airport, MT
(lat. 44°41'19"N, long. 111°07'04"W)
Targy NDB
(lat. 44°34'32"N, long. 111°11'51"W)

That airspace extending upward from 700 feet above the surface within 4.3 miles west and 8.3 miles east of the 026 degree and 206 degree bearings from the Targy NDB extending from 15.7 miles northeast to 16.1 miles southwest of the NDB; that airspace extending upward from 1,200 feet above the surface within 4.3 miles each side of the 209 degree bearing from the NDB extending from the NDB to 36.2 miles southwest of the NDB, and within 4.3 miles each side of the 304 degree bearing from the NDB extending from the NDB to the east edge of V–343; that airspace extending upward from 10,700 feet MSL within a 25.3-mile radius of the Targy NDB extending clockwise from the 081 degree bearing from the NDB to 4.3 miles east of the 236 degree bearing from the NDB and within 4.3 miles each side of the 236 degree bearing from the NDB extending from the NDB to 43.5 miles southwest of the NDB; that airspace extending upward from 12,000 feet MSL within a 30.5-mile radius of the Targy NDB extending clockwise from the 026 degree bearing from the NDB to the 081 degree bearing from the NDB; that airspace extending upward from 13,000 feet MSL, within a 30.5-mile radius of the Targy NDB, extending clockwise from the 313 degree bearing to the 026 degree bearing from the NDB, excluding that portion that overlies V–298 and V–343. The Class E airspace shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective dates and times thereafter, will be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on February 4, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–4007 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–AWP–17]

Establishment of Class D Airspace, Barking Sands, Kauai, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published on December 10, 1993. This final rule established Class D airspace at Barking Sands Pacific Missile Range Facility (PMRF), Kekaha, Kauai, Hawaii, effective March 3, 1994. This correction to the final rule will establish the effective dates and times as continuously published in the Airport/Facility Directory, Pacific Chart Supplement. The Pacific Chart Supplement had been omitted from the original proposal.

EFFECTIVE DATE: 0901 U.T.C., March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION: On December 10, 1993, the Federal Aviation Administration (FAA) published a final rule that established Class D airspace at Barking Sands Pacific Missile Range Facility, Kekaha, Kauai, Hawaii (FR Vol. 58, page 64880). The description of the Class D Airspace omitted any mention of the Pacific Chart Supplement in describing the publication where the effective dates and times of the Class D airspace are published.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication on December 10, 1993 (58 FR 64880), and the description in FAA Order 7400.9A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

On page 64881, in the first column, last sentence of the description for the Class D airspace is corrected to read "The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement."

Issued in Lawndale on February 10, 1994.

Richard R. Lien,

Manager, Air Traffic Division, AWP–500.

[FR Doc. 94–4003 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–21]

Establishment of Class E Airspace; Port Huron, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Port Huron, MI. A standard instrument approach procedure (SIAP) has been developed at St. Clair County International Airport. Controlled airspace to the surface is needed to contain instrument flight rules (IFR) operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the recently established SIAP.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Manager, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois, 60018, telephone 708–294–7568.

SUPPLEMENTARY INFORMATION:

History

On December 9, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Port Huron, MI (58 FR 64710). An Automated Weather Observation System (AWOS) has been installed at the St. Clair County International Airport that will continuously provide weather data, and a non-federal ILS SIAP has been established. Controlled airspace to the surface is needed to contain IFR operations at the airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Minor changes have been made to the legal description to add an exclusion for the portion overlying Canadian airspace, to eliminate specification of dates and times of operation since this Class E airspace will operate continuously, and to correct the latitude coordinates. Other than these editorial changes, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E2 airspace designations are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Port Huron, MI, to provide controlled airspace to the surface for aircraft executing the ILS SIAP into the St. Clair County International Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 16, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Section 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * * *

AGL MI E2 Port Huron, MI [New]
St. Clair County International Airport, MI
(lat. 42°54'39" N., long. 82°31'44" W.)
Within a 4-mile radius of the St. Clair County International Airport, excluding the airspace within Canada.

* * * * * *

Issued in Des Plaines, Illinois on February 7, 1994.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 94–3996 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27604; Amdt. No. 1586]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, and effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air), Standard instrument approaches, Weather.

Issued in Washington, DC, on February 11, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective April 28, 1994*

Oxford, CT, Waterbury-Oxford, VOR/DME RNAV RWY 18, Amdt. 6
Atchison, KS Amelia Earhart, VOR/DME–A, Amdt. 3
Beloit, KS, Moritz Memorial, VOR/DME RWY 17, Amdt. 3
Smith Center, KS, Smith Center Muni, VOR/DME–A, Amdt. 1
Rockland, ME, Knox County Regional, NDB RWY 3, Amdt. 7, Cancelled
Wiscasset, ME, Wiscasset, VOR/DME RWY 25 Orig., Cancelled
Provincetown, MA, Provincetown Muni, NDB RWY 25, Amdt. 1
Louisburg, NC, Franklin County, VOR/DME–A, Orig.
New Philadelphia, OH, Harry Clever Field, VOR/DME–A, Amdt. 3, Cancelled
New Philadelphia, OH, Harry Clever Field, VOR/DME–B, Amdt. 2
New Philadelphia, OH, Harry Clever Field, VOR–A, Orig.

* * * *Effective March 31, 1994*

Algona, IA, Algona Muni, VOR/DME–A, Amdt. 5
Algona, IA, Algona Muni, NDB RWY 12, Amdt. 4
Monroe, MI, Custer, VOR RWY 3, Amdt. 1
Monroe, MI, Custer, VOR RWY 21, Amdt. 1
Drummond Island, MI, Drummond Island, NDB RWY 26, Amdt. 1
Red Wing MN, Red Wing Muni, NDB RWY 9, Amdt. 3
Sullivan, MO, Sullivan Regional, NDB RWY 24, Orig.
Anderson, SC, Anderson County, LOC RWY 5, Amdt. 1A, Cancelled
Anderson, SC, Anderson County, ILS RWY 5, Orig.

* * * *Effective March 3, 1994*

Denver, CO, Front Range, ILS RWY 35, Orig.
Detroit, MI, Detroit Metropolitan Wayne County, ILS RWY 27L, Orig.
Detroit, MI, Detroit Metropolitan Wayne County, ILS RWY 27R, Amdt. 10
Warroad, MN, Warroad Intl-Swede Carlson Field, NDB RWY 31, Amdt. 6, Cancelled
Warroad, MN, Warroad Intl-Swede Carlson Field, NDB RWY 31, Orig.
Warroad, MN, Warroad Intl-Swede Carlson Field, ILS RWY 31, Orig.,
Warroad, MN, Warroad Intl-Swede Carlson Field, VOR/DME RNAV RWY 31, Amdt. 3

* * * *Effective February 9, 1994*

Rocky Mount, NC, Rocky Mount-Wilson, NDB RWY 4, Amdt. 8
Rocky Mount, NC, Rocky Mount-Wilson, ILS RWY 4, Amdt. 15

* * * *Effective February 4, 1994*

Pittsburgh, PA, Pittsburgh International, ILS RWY 28L, Amdt. 6

* * * *Effective February 3, 1994*

Los Angeles, CA, Whiteman, VOR–A, Orig.

* * * *Effective February 1, 1994*

Hilton Head Island, SC, Hilton Head, LOC/DME RWY 21, Amdt. 1

[FR Doc. 94–3998 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27603; Amdt. No. 1585]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from: 1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific

changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control Approaches, Standard Instrument, Incorporation by reference (1) navigation.

Issued in Washington, DC on February 11, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2)

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective	State	City	Airport	FDC No.	SIAP
02/01/94	AK	Galena	Galena	FDC 4/0577	VOR Rwy 25 Amdt 9A...
02/01/94	AK	Galena	Galena	FDC 4/0578	ILS/DME Rwy 25 Orig...
02/01/94	TX	Georgetown	Georgetown Muni	FDC 4/0580	NDB Rwy 18 Amdt 4...
02/02/94	RI	Providence	Theodore Francis Green State	FDC 4/0587	VOR Rwys 5L/R Amdt 11...
02/04/94	LA	Patterson	Harry P. Williams Memorial	FDC 4/0642	NDB Rwy 5 Amdt 8...
02/04/94	LA	Patterson	Harry P.Williams Memorial	FDC 4/0643	LOC/DME Rwy 23 Amdt 2...
10/28/93	NE	Valentine	Miller Field	FDC 3/5907	NDB Rwy 31 Amdt 6...

Galena

Galena

Alaska

VOR Rwy 25 Amdt 9A ...
Effective: 02/01/94

FDC 4/0577/GAL/FI/P Galena, Galena, AK. VOR Rwy 25 Amdt 9A... VOR/DME or Tacan Rwy 7 Amdt 6A; CIRC CAT A MDA/HAA 620/468. These become VOR Rwy 25 Amdt 9B; and VOR/DME or Tacan Rwy 7 Amdt 6B.

Galena

Galena

Alaska

ILS/DME Rwy 25 Orig...
Effective: 02/01/94

FDC 4/0578/GAL/FI/P Galena, Galena, AK. ILS/DME Rwy 25... HOL D IN Lieu of PT... 2000; 10 DME ARC ALT... 2300; CAT A Circ MDA/HAA 620/648; DLT CAT E MINS. This becomes ILS/DME Rwy 25 Orig-A.

Patterson

Harry P. Williams Memorial

Louisiana

NDB Rwy 5 Amdt 8...
Effective: 02/04/94

FDC 4/0642/PTN/FI/P Harry P. Williams Memorial, Patterson, LA. NDB Rwy 5 Amdt 8...Delete All Reference to Rwys 5/23; Chg all reference to Rwy 6/24. This Is NDB Rwy 6 Amdt 8A.

Patterson

Harry P. Williams Memorial

Louisiana

LOC/DME Rwy 23 Amdt 2...
Effective: 02/04/94

FDC 4/0643/PTN/ FI/P Harry P. Williams Memorial, Patterson, LA. LOC/DME Rwy 23 Amdt 2...Delete All Reference to Rwys 5/23; Chg All Reference to Rwys 6/24. This is LOC/DME Rwy 24 Amdt 2A

Valentine

Miller Field

Nebraska

NDB Rwy 31 Amdt 6...
Effective: 10/28/93

FDC 3/5907/VTN/FI/P Miller Field, Valentine, NE. NDB Rwy 31 Amdt 6...MSA VTN 25NM 350-170 4000, 170-350 4600. This is NDB Rwy 31 Amdt 6A.

Providence

Theodore Francis Green State

Rhode Island

VOR Rwys 5L/R Amdt 11...
Effective: 02/02/94

FDC 4/0587/PVD/FI/P Theodore Francis Green State, Providence, RI. VOR Rwys 5L/R Amdt 11...Change procedure identification to VOR Rwy 5. Delete S-5L CAT A-D AND S-5L DME CAT A-D Minimums. This is VOR Rwy 5 Amdt 11A.

Georgetown

Georgetown Muni

Texas

NDB Rwy 18 Amdt 4...
Effective: 02/01/94

FDC 4/0580/T04/FI/P Georgetown Muni, Georgetown, TX. NDB Rwy 18 Amdt 4...Remove Note...If LCL ALTM Not Received, Use Austin ALSTG and Increase all MDAS 100 Ft. This is NDB Rwy 18 Amdt 4a.

[FR Doc. 94-3997 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 244

Industry Guide: Guides for the Greeting Card Industry Relating to Discriminatory Practices

AGENCY: Federal Trade Commission.

ACTION: Final rules; Notice of repeal of industry guide.

SUMMARY: The Federal Trade Commission announces the repeal of the guides concerning discriminatory practices in the greeting card industry, hereinafter referred to as the "Greeting Card Guides" or the "Guides." The Commission has reviewed the provisions of the Guides, and has concluded that due to substantial duplication by later-adopted statements of policy of general application, the Guides are no longer in the public interest and should be withdrawn. Accordingly, the Greeting Card Guides are rescinded.

EFFECTIVE DATE: February 23, 1994.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Neil W. Averitt, Esq., Office of Policy & Evaluation, Bureau of Competition, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326-2885.

SUPPLEMENTARY INFORMATION:

Background

The "Guides for the Greeting Card Industry Relating to Discriminatory Practices" were published in 1968. They discuss the ways in which the Robinson-Patman Act, 15 U.S.C. 13, will apply to that industry. The primary purpose of the Guides was to describe the principles that the Federal Trade Commission would follow in applying sections 2 (d) and (e) of the Act, which require that promotional allowances and services be made available on nondiscriminatory terms.[1]

The same year that the Guides were issued, the Supreme Court decided the case of *FTC* v. *Fred Meyer, Inc.*, 390 U.S. 341 (1968). In that opinion the Court suggested that the Commission might wish to expand on earlier guidance and issue detailed guidelines to promotional allowances under sections 2 (d) and (e). The Commission accepted this invitation the following year by publishing the so-called "Fred Meyer Guides." See 16 CFR part 240. These set out general standards for promotional allowances, applicable to all industries. The Fred Meyer Guides have since been amended as necessary to keep them current, most recently in 1990.

With the Fred Meyer Guides in place, the Commission grew concerned that earlier, industry-specific guidelines had become redundant and a potential source of confusion. In July of 1993 it therefore requested public comment on a proposal to repeal the Greeting Card Guides. Only one comment was received.

Analysis

The Commission believes that the Greeting Card Guides are duplicated and made redundant by the Fred Meyer Guides. Although the Greeting Card Guides are tailored for the industry (e.g., "'supplier' means any greeting card publisher or distributor," 16 CFR 240.0(d)), the legal principles reflected in the Guides are not specific to that industry. The applicable law is set out in the Robinson-Patman Act, as interpreted and applied in Commission and judicial precedent. The same principles are reflected in the Fred Meyer Guides. The retention of the separate Greeting Card Guides therefore serves no purpose.

No members of the greeting card industry have requested that the Guides be retained, suggesting that industry members do not perceive a need to continue the Guides. The Commission has received a letter from the Executive Vice President of the Greeting Card Association, reporting that the Association "has no objection" to repeal of the Guides, the some retailer members of the Association are already familiar with the Fred Meyer Guides, and that "it seems superfluous to have two sets of the same guidelines."[2]

In view of these facts the Commission has concluded that the Greeting Card Guides serve no present function and, therefore, has determined to withdraw those Guides.

List of Subjects in 16 CFR Part 244

Greeting card industry, Price discrimination, Promotional allowances, Trade practices, Unfair methods of competition.

PART 244—[REMOVED]

Accordingly, under the authority of 15 U.S.C. *et seq.* and 15 U.S.C. 13, title 16, chapter I, of the Code of Federal Regulations is amended by removing part 244.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-4039 Filed 2-22-94; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 412

Trade Regulation Rule: Discriminatory Practices In Men's and Boys' Tailored Clothing Industry

AGENCY: Federal Trade Commission.

ACTION: Final rule; Notice of repeal of rule.

SUMMARY: The Federal Trade Commission announces the rescission of the rule concerning the need for a written plan to guide a seller's promotional allowances in the men's and boys' tailored clothing industry (hereinafter the "Tailored Clothing

[1] See 15 U.S.C. 13(d), (e). One other portion of the Guides discussed the standards of price discrimination under section 2(a). See 16 CFR 244.1. The discussion of these issues was cast in fairly general terms, however.

[2] Letter from Marianne McDermott, Executive Vice President, Greeting Card Association, to Neil Averitt, Office of Policy & Evaluation, Federal Trade Commission (Sept. 14, 1993).

Rule" or the "Rule"). The Commission has reviewed the provisions of the Rule, and has concluded that due to inconsistencies with and duplication by later-adopted statements of policy of general application, the Tailored Clothing Rule is no longer in the public interest and should be repealed. This notice contains a Statement of Basis and Purpose for the repeal of the Rule, and incorporates a regulatory analysis.

EFFECTIVE DATE: March 25, 1994.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to the Public Reference Branch, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Neil W. Averitt, Esq., Office of Policy & Evaluation, Bureau of Competition, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–2885.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

Background

The Tailored Clothing Rule, promulgated in 1967, was intended to clarify the way in which the Robinson-Patman Act, 15 U.S.C. 13, applies to that industry. Section 2(d) and (e) of the Act require that promotional allowances and services be made available to competing sellers on proportionately equal terms. The Rule established a presumption that allowances in the tailored clothing industry that were not provided in accordance with a written plan were not available on proportionately equal terms.

The year after the Rule was promulgated, the Supreme Court decided the case of *FTC* v. *Fred Meyer, Inc.*, 390 U.S. 341 (1968). In that option the Court suggested that the Commission might wish to expand on earlier guidance and issue detailed guidelines to promotional allowances under sections 2(d) and (e). The Commission accepted this invitation the following year by publishing the so-called "Fred Meyer Guides." See 16 CFR part 240. These set out general standards for promotional allowances, applicable to all industries. The Fred Meyer Guides suggest that sellers "would be well advised" to put complex plans in writing, but they do not penalize the failure to have a written plan. The Fred Meyer Guides have been revised as needed to keep them current, most recently in 1990.

With the Fred Meyer Guides in place, the Commission was concerned that the earlier, industry-specific Rule was unnecessary, and that its different substantive provisions could be a source of potential confusion. In July of 1993 the Commission therefore requested public comment on a proposal to repeal the Tailored Clothing Rule. No comments were received in response to this request.

The Rulemaking Record

The rulemaking record in this proceeding consists of the Notice of Proposed Rulemaking and Request for Comment dated July 2, 1993 (58 FR 35907), and a memorandum from the Office of the Secretary reporting that no comments were received in response to that request. In addition, the Commission takes notice of published court and agency decisions, and of the existence and provisions of the Fred Meyer Guides.

Analysis of the Rulemaking Record

The rulemaking record indicated that the Tailored Clothing Rule no longer appears to be useful or justified. Since the Rule was promulgated, it does not appear that the agency has ever relied on the Rule in a law enforcement matter, or that any litigant has ever made use of it in a reported private action. Moreover, no industry members responded to the Notice of Proposed Rulemaking to urge retention of the Rule.

Repeal would also resolve the inconsistency between the Rule and the Fred Meyer Guides. The Fred Meyer Guides encourage but do not require sellers to have a written plan for promotional allowances.[1] The Robinson-Patman Act also does not require sellers to have a written plan. The Tailored Clothing Rule, on the other hand, states that promotional payments "will be presumed not to have been made available on proportionately equal terms" unless they are made available under a written plan.[2]

Although this dichotomy creates no inconsistent legal obligations, there is a significant policy discrepancy in that the tailored clothing industry is treated differently from other industries. Since the Commission's post-enactment experience has not confirmed the relevance or utility of treating this industry differently, this is an additional reason for repeal of the Rule.

Final Regulatory Analysis

The following discussion constitutes the Commission's Final Regulatory Analysis of the proposed repeal of the Rule, as called for by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and by section 22 of the Federal Trade Commission Act, 15 U.S.C. 57b–3.

A description of the reasons why action is being considered and the objectives of and legal basis for the repeal of the Rule have been explained in prior parts of this Statement of Basis and Purpose.

Repeal of the Rule would appear to have little or no effect on small business. Because it does not appear that the Rule is currently relied upon, its repeal should not have significant effects on business in general, and therefore should not have any significant effects on small businesses in particular.

The Tailored Clothing Rule contains no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501–18. Repeal of the Rule would remove any other compliance requirements that are associated with the Rule, such as the costs associated with becoming familiar with its provisions.

The only significant alternative to repeal of the Rule is to take no action and preserve the Rule in its present form. Due to the subsequent publication of the Fred Meyer Guides, however, the Rule no longer serves a meaningful purpose. Under these circumstances, retaining the Rule would run counter to the goal of achieving efficiencies by repealing rules that are no longer useful.

The benefits of repealing this Rule include removal of an unnecessary provision from the Code of Federal Regulations, the increased efficiency of law enforcement when uniform standards are applicable, and the increased respect for the law that may be anticipated when regulations are current and relevant.

The Commission believes that the above benefits are sufficient to support its determination to rescind this Rule.

List of Subjects in 16 CFR Part 412

Advertising, Clothing, Promotional allowances, Trade practices, Unfair methods of competition.

PART 412—[REMOVED]

Accordingly, under the authority of 15 U.S.C. 41 *et seq.* and 15 U.S.C. 13, title 16, chapter I, of the Code of Federal Regulations is amended by removing part 412.

[1] See 16 CFR 240.8 ("If there are many competing customers to be considered or if the plan is complex, the seller would be well advised to put the plan in writing.")

[2] 16 CFR 412.6.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–4040 Filed 2–22–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

RIN 1215–AA

Claims for Medical Benefits Under the Federal Employees' Compensation Act

AGENCY: Employment Standards Administration, Office of Workers' Compensation Programs, Labor.

ACTION: Final rule.

SUMMARY: On November 24, 1993, the Department of Labor published proposed revisions to the rules establishing a fee schedule and procedures for submitting bills for reimbursement for medical procedures and services provided to injured federal employees under the Federal Employees' Compensation Act (FECA) (58 FR 62063). The Office of Workers' Compensation Programs (OWCP) proposed to: Adopt where applicable the relative value units (RVUs) devised by the Department of Health and Human Services, Health Care Finance Administration (HCFA), published most recently on December 2, 1993, 58 FR 63626; eliminate the requirement to use the Washington State conversion factors; and allow the use of Geographic Practice Cost Indices (GPCIs) developed by the Urban Institute for HCFA to determine geographic adjustment factors. The rules also climate the requirement for original signatures on the bills.

The comment period closed January 24, 1994, and no comments were received; the rules are now published in final in the same form as they were proposed.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, room S–3229, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523–7552.

SUPPLEMENTARY INFORMATION: The preamble to the proposed rule explained in detail the background of the schedule of maximum allowable charges for most medical services provided to injured workers under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.* See 51 FR 8276, for a complete explanation of the background and purpose of the schedule.

Under the fee schedule and billing system individual procedures are assigned a descriptor code using the Physicians' Current Procedural Terminology (CPT) scheme developed by the American Medical Association. Each code is then assigned a relative value unit (RVU) reflecting the relative skill, effort, risk, and time required to perform the procedure. The maximum allowable amount payable for a given service is calculated by multiplying the RVU by a conversion factor (CF). This product is in turn multiplied by a geographic index (GI) which allows for regional variations in medical costs.

The components of the fee schedule served OWCP well until recently, when the State of Washington (the system on which several factors of the fee schedule were based), announced that it was adopting a new fee schedule based on the newly published Health Care Financing Administrations (HCFA) RVUs for physicians' services, with modifications peculiar to Washington State.

Rather than continue to use the Washington State system, the Office of Workers' Compensation Programs (OWCP) proposed to adopt elements of the HCFA fee schedule directly. OWCP will continue to use geographic localities (using Metropolitan Statistical Areas) designed by the Urban Institute for application of Geographic Practice Cost Indices (GPCIs), since Medicare pricing localities are carrier specific. Finally, the conversion factors (see 57 FR 5186) will be changed to accommodate the change in scale of the relative unit values.

The proposed rules also change the provision requiring that the medical provider sign the billing form, in order to accommodate the practice of electronic transmission of medical bills and other similar practices.

No comments at all were received on the proposed rules. Accordingly, the proposed changes are being implemented in final unchanged, except for minor changes to correct grammatical and typographical errors.

Statutory Authority

5 U.S.C. 8149 provides the general statutory authority for the Secretary to prescribe rules and regulations necessary for administration and enforcement of the Federal Employees' Compensation Act.

5 U.S.C. 8145 provides that the Secretary of Labor shall administer the Act, may appoint employees to administer it, and may delegate powers conferred by the Act to any employee of the Department of Labor.

5 U.S.C. 8103 (a) and (b) specifies that the Secretary may approve or authorize "necessary and reasonable" expenses to be paid from the Employees' Compensation Fund; may issue regulations governing the provision of services, appliances and supplies; and may prescribe the form and content of the authorization certificate.

Classification

The Department of Labor has concluded that the regulatory proposal is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866.

Paperwork Reduction Act

The information collection requirements entailed by the proposed regulations have previously been approved by OMB.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). Although this rule will be applicable to small entities it should not result in or cause any significant economic impact, since the changes in the method of calculating the maximum allowable payments will not result in a significant difference in the outcome from that in the present method. The Secretary has so certified to the Chief Counsel for Advocacy of the Small Business Administration. Accordingly, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 10

Claims, Government employees, Labor, Workers' compensation.

For the reasons set out in the preamble, part 10 of chapter 1 of title 20 of the Code of Federal Regulations is amended as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

1. The authority citation for part 10 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8149; Secretary's Order 1–93, 58 FR 21190.

2. Section 10.411 is amended by revising paragraphs (b) and (d)(3) to read as follows:

10.411 Submission of bills for medical services, appliances and supplies; limitation on payment for services

* * * * *

(b) By submitting a bill and/or accepting payment, the physician or other medical provider signifies that the service for which reimbursement is sought was performed as described and was necessary. In addition, the physician or other provider thereby agrees to comply with all rules and regulations set forth in this subchapter concerning the rendering of treatment and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services.

* * * * *

(d) * * *

(3) The Director shall assign the relative value units (RVUs) published by the Health Care Finance Administration (HCFA) to all services for which HCFA has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, the Director may develop and assign any that he/she considers to be appropriate RVUs. The Director will also devise conversion factors for each category of service, and in devising such factors the Director may adapt the HCFA conversion factors as appropriate using OWCP processing experience and internal data. The geographic adjustment factor shall be that designated by Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for HCFA by the Urban Institute and published February 1, 1991, as *Refining the Malpractice Geographic Cost Index*, as updated or revised from time to time.

* * * * *

Signed at Washington, DC, this 15th day of February, 1994.

Shelby Hallmark,

Acting Director, Office of Workers' Compensation Programs.

[FR Doc. 94-4069 Filed 2-22-94; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960-AD46

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Limitation of Travel Expenses for Representation of Claimants at Administrative Proceedings

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are amending our regulations concerning payment of certain travel expenses to implement section 5106(c) of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990). Section 5106(c) amends certain sections of the Social Security Act (the Act) to limit the amount available for payment under those sections for travel expenses of individuals who represent claimants at certain administrative proceedings.

EFFECTIVE DATE: These final rules are effective February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1769.

SUPPLEMENTARY INFORMATION: We published proposed rules to implement section 5106(c) of OBRA 1990, Public Law 101-508, in a Notice of Proposed Rulemaking in the **Federal Register** on January 19, 1993 (58 FR 4950). We provided interested individuals and organizations 60 days within which to submit comments on the proposed rules. The comment period closed March 22, 1993. We did not receive any comments on the proposed rules. Therefore, except for a technical correction discussed below and some editorial changes, these final rules are the same as the proposed rules.

These final rules amend our regulations on the payment of travel expenses of individuals who represent claimants at certain administrative proceedings to implement the amendments to sections 201(j), 1631(h) and 1817(i) of the Act made by section 5106(c) of OBRA 1990. In general, sections 201(j), 1631(h) and 1817(i) of the Act provide authority to reimburse certain persons for certain travel expenses which they incur in connection with the Social Security, Supplemental Security Income (SSI) or Medicare program under titles II, XVI and XVIII of the Act, respectively. Among other things, these sections of the Act authorize the payment of certain travel expenses to a claimant's representative for travel to attend a reconsideration interview or a proceeding before an administrative law judge (ALJ).

Section 5106(c) of OBRA 1990 amends sections 201(j), 1631(h) and 1817(i) of the Act to limit the amount available for payment under these sections of the Act for travel by a representative to attend an administrative proceeding before an ALJ or other adjudicator. The amendments under section 5106(c) specify that the amount available for such payment shall not exceed the maximum amount allowable under these sections of the Act for a representative's travel originating within the geographic area of the office having jurisdiction over the proceeding. The Conference Committee Report on OBRA 1990 states that under the amendments the reimbursement for travel by a representative "could not exceed the maximum amount that would be payable for travel to the site of the reconsideration interview or proceeding before an ALJ from a point within the geographical area served by the office having jurisdiction over the interview or proceeding." H.R. Rep. No. 964, 101st Cong., 2d Sess. 934 (1990).

The final regulations amend our regulations relating to the payment of travel expenses of a claimant's representative for travel to attend a disability hearing or hearing before an ALJ under the Social Security or SSI programs to implement the amendments made by section 5106(c) of OBRA 1990. The title II regulations on travel reimbursement, like the rules in subpart J of 20 CFR part 404 generally, are made applicable to certain proceedings under the Medicare program pursuant to 42 CFR 405.701(c). Therefore, the changes to the title II regulations on travel reimbursement also affect reimbursement of travel expenses of a representative in connection with those Medicare proceedings under the Medicare program and, thus, implement the amendment to section 1817(i) of the Act made by section 5106(c) of OBRA 1990.

Our existing regulations on the payment of certain travel expenses, §§ 404.999a *et seq.* and §§ 416.1495 *et seq.*, implement the pertinent provisions of the Act regarding travel reimbursement that were in effect prior to April 1, 1991, the effective date of section 5106(c) of OBRA 1990. With respect to travel expenses incurred prior

to that date, we reimbursed a representative for allowable expenses for travel to a disability hearing or ALJ hearing site from the representative's residence or office (depending upon whether the representative's travel originated from his or her residence or from the office) regardless of its geographic location. Based on travel distance between the hearing site and the representative's travel origination point (residence or office) and subject to the limitations in §§ 404.999c(d) and 416.1498(d), we determined the amount allowable for reimbursement for the ordinary expenses of transportation (§§ 404.999c(a) and 416.1498(a)) and for unusual travel costs (§§ 404.999c(b) and 416.1498(b)) pursuant to the applicable rules governing rates and conditions of payment (§§ 404.999c(c) and 416.1498(c)).

Effective with travel expenses incurred by a representative on or after April 1, 1991, however, section 5106(c) of OBRA 1990 provides that the amount of reimbursement for such expenses shall not exceed the allowable amount that we could reimburse the representative for travel originating within the geographic area of the office having jurisdiction over the proceeding. Accordingly, the final regulations amend our regulations to provide that the amount available to reimburse a representative for travel to attend a disability hearing or a hearing before an ALJ shall not exceed the maximum amount allowable for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing.

The final rules explain that the geographic area of the office having jurisdiction over the hearing means, as appropriate—

—The designated georgraphic service area of the State agency adjudicatory unit having responsibility for providing the disability hearing;

—If a Federal disability hearing officer holds the disability hearing, the geographic area of the State in which the claimant resides or, if the claimant is not a resident of a State, in which the hearing officer holds the disability hearing; or

—The designated geographic service area of the Office of Hearings and Appeals hearing office having responsibility for providing the hearing before an ALJ.

In cases in which a Federal disability hearing officer holds the disability hearing, the hearing officer travels to the State in which the claimant resides to hold the hearing. In those infrequent cases in which the claimant is not a resident of a State, the Federal disability hearing officer holds the disability hearing in a location in a State that is convenient for the claimant and the hearing officer. With respect to these cases, the final regulations define the geographic area of the office having jurisdiction over the hearing to mean the geographic area of the State in which the claimant resides or, if the claimant is not a resident of a State, in which the hearing officer holds the disability hearing. This definition is consistent with the congressional intent underlying section 5106(c) of OBRA 1990 in that it treats the claimant and his or her representative in the same manner as if a State agency hearing officer held the disability hearing. In the final title II regulations relating to cases in which a Federal disability hearing officer holds the disability hearing, the term "State" has the meaning assigned to it in current § 404.2(c)(5), except that the term also includes the Northern Mariana Islands. In the final title XVI regulations relating to such cases, the term "State" means a State as defined in current § 416.120(c)(9). This definition of "State" in the final title XVI regulations § 416.1498(d)(3)(i)(B), was omitted from the text of the proposed rules, although it was discussed in the preamble to those rules (58 FR 4950, 4951). Its inclusion in the final rules represents a technical correction.

We are basing the maximum amount allowable on the distance to the hearing site from the farthest point within the appropriate geographic area. We will determine the maximum amount allowable for travel between these two points under the existing regulations, i.e., subject to the existing limitations in paragraph (d)(1) and paragraph (d)(3) (herein to be redesignated as paragraph (d)(4)) of §§ 404.999c and 416.1498 (relating to travel within the United States and a claimant's request for a change to a more distant hearing site) and pursuant to the applicable rules governing rates and conditions of payment under paragraphs (a) through (c) of §§ 404.999c and 416.1498. Under our existing regulations, we will not reimburse a representative's travel expenses unless the distance he or she travels, i.e., the distance to the hearing site from the representative's residence or office (whichever he or she travels from), exceeds 75 miles (§§ 404.999c(d)(2) and 416.1498(d)(2)). The final regulations provide a similar limitation. Under the final rules, we will use the point within the appropriate geographic area that is the farthest point from the hearing site as the representative's travel origination point (equivalent to residence or office under the existing regulations) for purposes of determining the maximum amount allowable for reimbursement. The final rules provide that if the distance to the hearing site from the farthest point within the appropriate geographic area does not exceed 75 miles, we will not reimburse a representative for any travel expenses. This is consistent with the 75-mile rule in the current regulations.

Under the final regulations, actual reimbursement for a representative's travel expenses is limited to the lesser of: (1) Actual travel expenses incurred and allowable under the regulations (whether travel actually originates within the designated geographic area or outside that area); or (2) the maximum amount allowable for travel to the hearing site from the farthest point within the geographic area of the office having jurisdiction over the hearing.

In practice, the final rules will not affect reimbursement of travel expenses of a representative whose travel originates within the geographic area of the office having jurisdiction over the hearing. This is because the expenses incurred and allowable under the regulations for such travel would be less than, or equal to, the maximum amount allowable for travel to the hearing site from the farthest point within the appropriate geographic area.

We are amending §§ 404.999c and 416.1498 by redesignating paragraph (d)(3) as (d)(4) and adding a new paragraph (d)(3) to state and define the limit on the amount of reimbursement for a representative's travel expenses mandated by section 5106(c) of OBRA 1990. The final regulations state that the amount of reimbursement for travel expenses for a representative shall not exceed the maximum amount allowable for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing; define the geographic area of the office having jurisdiction over the hearing; and explain how we determine the maximum amount allowable for travel by a representative based on the distance to the hearing site from the farthest point within the appropriate geographic area.

We also are amending §§ 404.999c(c) and 416.1498(c) to change the reference from 41 CFR Part 101-7 to 41 CFR chapter 301, where the Federal Travel Regulations are now codified.

Regulatory Procedures

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities

because these rules will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.773 and 93.774, Medicare; 93.802–93.805, Social Security; and 93.807, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Death benefits, Disability benefits, Insurance, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public Assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: November 19, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: February 8, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of 20 CFR chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITYINSURANCE (1950–)

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205 (a), (b), and (d)–(h), 221(d), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405 (a), (b), and (d)–(h), 421(d), and 1302.

§ 404.999c [Amended]

2. In § 404.999c(c) introductory text, the reference to "41 CFR part 101–7" is revised to read "41 CFR chapter 301".

3. Section 404.999c is amended by redesignating paragraph (d)(3) as (d)(4) and adding a new paragraph (d)(3) to read as follows:

§ 404.999c What travel expenses are reimbursable.

* * * * *

(d) * * *

(3) For travel expenses incurred on or after April 1, 1991, the amount of reimbursement under this section for travel by your representative to attend a disability hearing or a hearing before an administrative law judge shall not exceed the maximum amount allowable under this section for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing.

(i) The geographic area of the office having jurisdiction over the hearing means, as appropriate—

(A) The designated geographic service area of the State agency adjudicatory unit having responsibility for providing the disability hearing;

(B) If a Federal disability hearing officer holds the disability hearing, the geographic area of the State (which includes a State as defined in § 404.2(c)(5) and also includes the Northern Mariana Islands) in which the claimant resides or, if the claimant is not a resident of a State, in which the hearing officer holds the disability hearing; or

(C) The designated geographic service area of the Office of Hearings and Appeals hearing office having responsibility for providing the hearing before an administrative law judge.

(ii) We or the State agency determine the maximum amount allowable for travel by a representative based on the distance to the hearing site from the farthest point within the appropriate geographic area. In determining the maximum amount allowable for travel between these two points, we or the State agency apply the rules in paragraphs (a) through (c) of this section and the limitations in paragraph (d) (1) and (4) of this section. If the distance between these two points does not exceed 75 miles, we or the State agency will not reimburse any of your representative's travel expenses.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart N of part 416 is revised to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b.

§ 416.1498 [Amended]

2. In § 416.1498(c) introductory text, the reference to "41 CFR part 101–7" is revised to read "41 CFR chapter 301".

3. Section 416.1498 is amended by redesignating paragraph (d)(3) as (d)(4) and adding a new paragraph (d)(3) to read as follows:

§ 416.1498 What travel expenses are reimbursable.

* * * * *

(d) * * *

(3) For travel expenses incurred on or after April 1, 1991, the amount of reimbursement under this section for travel by your representative to attend a disability hearing or a hearing before an administrative law judge shall not exceed the maximum amount allowable under this section for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing.

(i) The geographic area of the office having jurisdiction over the hearing means, as appropriate—

(A) The designated geographic service area of the State agency adjudicatory unit having responsibility for providing the disability hearing;

(B) If a Federal disability hearing officer holds the disability hearing, the geographic area of the State (as defined in § 416.120(c)(9)) in which the claimant resides or, if the claimant is not a resident of a State, in which the hearing officer holds the disability hearing; or

(C) The designated geographic service area of the Office of Hearings and Appeals hearing office having responsibility for providing the hearing before an administrative law judge.

(ii) We or the State agency determine the maximum amount allowable for travel by a representative based on the distance to the hearing site from the farthest point within the appropriate geographic area. In determining the maximum amount allowable for travel between these two points, we or the State agency apply the rules in paragraphs (a) through (c) of this section and the limitations in paragraph (d) (1) and (4) of this section. If the distance between these two points does not exceed 75 miles, we or the State agency will not reimburse any of your representative's travel expenses.

* * * * *

[FR Doc. 94–3961 Filed 2–22–94; 8:45 am]

BILLING CODE 4190–29–P

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20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AD12

Reopening Determinations and Decisions

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules revise our regulations to clarify the longstanding policy of the Social Security Administration (SSA) that the Agency on its own initiative, as well as at the request of any person claiming a right under the Social Security or supplemental security income (SSI) programs, may reopen and revise a final administrative determination or decision.

EFFECTIVE DATE: The final regulations are effective February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–1762.

SUPPLEMENTARY INFORMATION: We are revising §§ 404.987 and 416.1487 of our regulations to clarify that we may reopen and revise a final administrative determination or decision either on our own initiative or at the request of a person who was a party to the determination or decision.

Prior to August 5, 1980, our regulations expressly provided that we had the discretion to reopen and revise a final determination or decision, including a final revised determination or decision, either on our own motion or upon the request of any party to the determination or decision. See 20 CFR 404.956, 404.957, 416.1475 and 416.1477 (1980). On August 5, 1980, however, we published, pursuant to the notice of proposed rulemaking procedures, final regulations which reorganized and restated in simpler language our rules on the administrative review process, including our rules for reopening and revising final determinations and decisions. This recodification was undertaken as part of a Department-wide effort to make the rules clearer and easier for the public to use and understand (45 FR 52078, August 5, 1980).

Our existing regulations on the procedures for reopening and revising a determination or decision were a part of the recodification that was published and became effective on August 5, 1980. Although no substantive changes were intended with regard to the authority to reopen on our own initiative, the regulations, as recodified, have been read by some to permit reopening and revision of a final determination or decision only when the beneficiary or claimant requests reopening.

With respect to the reopening and the revising of a final determination or decision, §§ 404.987 and 416.1487 of our existing regulations state that "[y]ou may ask that a determination or a decision to which you were a party be revised." These sections have created some confusion and have been read by some courts to mean that we may not reopen and revise a final determination or decision on our own initiative.

The final rules eliminate the ambiguity that exists in our regulations regarding our authority to reopen and revise a final determination or decision on our own initiative. The final rules revise §§ 404.987 and 416.1487 to state explicitly that we may reopen a determination or decision that has become final on our own initiative or at the request of an individual who was a party to the determination or decision.

Public Comments

We published the proposed rules with a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 28, 1991 (56 FR 55477). Interested persons and organizations were given 60 days to comment. The comment period closed on December 27, 1991. We received comments from six commenters: Two State agencies which make disability determinations, and three legal services organizations and one private attorney who represent claimants and beneficiaries.

One commenter supported the proposed rules without modification. This commenter agreed with our view that the proposed rules clarified our longstanding policy regarding our authority to reopen a final determination or decision on our own initiative.

The other commenters either opposed the proposed changes to the regulations or conditioned their support for the proposed rules upon our making additional changes to our regulations. Most of these commenters generally perceived the proposed rules to be a policy change that would confer upon SSA a new or expanded authority to reopen and revise determinations or decisions on its own initiative. Many of the comments which were provided by these commenters also reflected a misunderstanding of the requirements and procedures for reopening a determination or decision. Some of these commenters recommended that the proposed rules be modified or withdrawn. Some recommended that they be expanded to clarify or further limit the specific conditions, which are stated elsewhere in our regulations, under which a final determination or decision may be reopened.

We considered carefully all of the comments which we received on the proposed rules. However, for the reasons stated below, we did not adopt the recommendation to withdraw the proposed rules or any of the recommendations to modify or expand the changes to the regulations. The changes to the regulations do not represent a substantive change in policy. The sole purpose of the changes is to clarify in the regulations our longstanding policy that we may reopen and revise a final determination or decision on our own initiative as well as upon the request of a party to the determination or decision. Accordingly, the final rules are the same as the proposed rules.

A summary of the comments that raised issues concerning the proposed rules and our responses to the comments are provided below. For ease of comprehension, we have consolidated the comments and organized them according to the general issues raised in the comments.

Comment: Three commenters thought that the proposed rules would be inconsistent with a decision of a circuit court which had concluded that our regulations should be interpreted to allow the Appeals Council to reopen a final decision of an administrative law judge (ALJ) only on the basis of a request by a claimant or beneficiary. One commenter stated that the proposed rules would circumvent judicial decisions, but did not mention any specific court decisions.

Response: As discussed earlier in this preamble and in the preamble to the NPRM, the regulations which we are revising, §§ 404.987 and 416.1487, were a part of the regulations that were published on August 5, 1980, which reorganized and restated in simpler language all of our rules on the administrative review process. Although no substantive changes were intended with regard to our authority to reopen final determinations or decisions on our own initiative, this authority was not stated as clearly in the recodified rules as it had been in the longer, more detailed prior rules. As a result, several lawsuits were brought challenging our authority under the recodified regulations to continue our longstanding policy to reopen and revise final determinations or decisions on our own initiative. All but one of the circuit courts that have directly addressed this issue have concluded, however, that our regulations on reopening do provide authority for us to reopen and revise final determinations or decisions on our own initiative, including authority for the Appeals Council to reopen and revise a final decision of an ALJ on its own initiative. Only the circuit court mentioned by the three commenters above and some Federal district courts have concluded that our existing regulations should be interpreted to allow the reopening and revision of a final determination or decision only

when a claimant or beneficiary requests reopening. These final rules revise the regulations to eliminate the ambiguity which led these courts to interpret the regulations to mean that only a claimant or beneficiary may initiate reopening. We are revising §§ 404.987 and 416.1487 to state explicitly that we may reopen a final determination or decision either on our own initiative or at the request of a party to the determination or decision.

Comment: Several commenters thought that the time periods within which a final decision of an ALJ may be reopened under current § 404.988 (a) or (b) or § 416.1488 (a) or (b), which we did not propose to change, are measured from the date of the ALJ decision. Some commenters opposed the proposed revisions of §§ 404.987 and 416.1487 because they believed that the Appeals Council would have the discretion under § 404.988(b) or § 416.1488(b) to reopen a final decision of an ALJ on its own initiative within 4 years of the date of the ALJ decision if the Council finds good cause to reopen. One commenter stated that the proposed rules would render meaningless the 60-day time limit within which the Appeals Council may decide to review a decision by an ALJ on its own initiative under §§ 404.969 and 416.1469. This statement was based on the commenter's belief that §§ 404.988(a) and 416.1488(a), when read together with the proposed rules, give the Appeals Council the discretion to reopen a final decision of an ALJ on its own initiative within 1 year of the date of the ALJ decision for any reason.

Response: Sections 404.988 and 416.1488 state the conditions under which we may reopen final determinations or decisions under the Social Security and SSI programs, respectively. We are not making any changes to these sections of our regulations. Sections 404.988(a) and 416.1488(a) provide that a determination or decision may be reopened within 12 months of the date of the notice of the initial determination for any reason. Sections 404.988(b) and 416.1488(b) provide that a determination or decision may be reopened within 4 years (2 years for SSI cases) of the date of the notice of the initial determination if we find good cause, as defined in §§ 404.989 and 416.1489, to reopen the case. The time periods within which a final decision of an ALJ may be reopened under these sections, therefore, are measured from the date of the notice of the initial determination, not from the date of the ALJ decision. Under these sections, the Appeals Council may reopen a final decision of an ALJ within 12 months of the date of the notice of the initial determination for any reason, or within 4 years (only 2 years for SSI cases) of the date of the notice of the initial determination if the Council finds good cause to reopen.

These final rules, like the proposed rules, revise §§ 404.987 and 416.1487 to clarify that we may reopen and revise a final determination or decision either on our own initiative or upon the request of a person who was a party to the determination or decision. While the final rules clarify that the Appeals Council has the discretion to reopen a final decision of an ALJ on its own initiative, as well as at the request of a party to the decision, under the conditions specified in §§ 404.988 and 416.1488, they do not make the reopening authority under §§ 404.988(a) and 416.1488(a) inconsistent with the authority provided under §§ 404.969 and 416.1469 for Appeals Council own-motion review of an ALJ decision. Sections 404.988 and 416.1488 state the conditions under which a determination or decision that has become final may be reopened. Sections 404.969 and 416.1469, on the other hand, authorize the Appeals Council to initiate review of an ALJ decision that has not become final. A decision by an ALJ becomes final unless a person who was a party to the decision requests Appeals Council review of the decision within the stated time period, see §§ 404.968 and 416.1468, or the Council itself decides to review the decision within the time period provided in §§ 404.969 and 416.1469. The latter sections provide that any time within 60 days after the date of an ALJ decision or dismissal of a hearing request, the Appeals Council may decide on its own initiative to review the decision or dismissal. By contrast, §§ 404.988(a) and 416.1488(a) allow the Appeals Council to reopen a final decision of an ALJ for any reason only within 12 months of the date of the notice of the initial determination made in the case. In almost all cases in which an ALJ decision becomes final, this 12-month period for reopening for any reason will have expired due to the normal processing time required for the disposition of the case through the reconsideration and ALJ hearing steps of the administrative review process. Therefore, a final decision of an ALJ seldom can be reopened under the conditions specified in §§ 404.988(a) and 416.1488(a).

Comment: Some commenters expressed the view that the proposed rules were unfair to claimants and beneficiaries because they permitted SSA to reopen on its own initiative a final determination or decision that was favorable to the individual and make a revised determination or decision that could be unfavorable to the individual. One commenter stated that fairness requires that only claimants and beneficiaries be permitted to initiate the reopening and revision of a final determination or decision.

Response: Our authority to initiate reopening gives us the discretion to reopen and revise a final determination or decision on our own initiative under the conditions described in §§ 404.988 and 416.1488 whether such final determination or decision was favorable or unfavorable to the individual. The revised determination or decision which we make may be less favorable or more favorable to the individual than the prior determination or decision, or it may involve merely a technical revision that does not affect the ultimate conclusion regarding the individual's rights under the Social Security or SSI program.

The policy that we may reopen and revise final determinations or decisions on our own initiative is advantageous to many claimants and beneficiaries. While an individual may request that a final determination or decision that was unfavorable to the individual be reopened and revised, it is often SSA, and not the individual, that discovers that an error was made, or that new and material evidence exists, that provides a basis to reopen and revise a final determination or decision that was unfavorable to the individual. The authority to reopen on our own initiative allows us to reopen and revise the determination or decision in these cases even though the individual has not requested reopening. Indeed, in many, if not most, cases in which we reopen and revise a final determination or decision on our own initiative, we do so for the sole purpose of making a revised determination or decision that would be more favorable to the individual than the prior determination or decision.

Our longstanding policy regarding the authority to reopen on our own initiative is intended to ensure that the final determinations and decisions which we make about the rights of individuals under the Social Security and SSI programs are fair and proper. It enables us to protect the integrity of these programs by allowing us to reopen and revise final determinations or decisions on our own initiative, as well as at the request of a party to the determination or decision, in cases where, for example, the determination or decision was obtained by fraud, the evidence that was considered in making the determination or decision clearly shows on its face that an error was made in the determination or decision, or new and material evidence shows that the determination or decision is incorrect. See §§ 404.988, 404.989, 416.1488 and 416.1489. In addition, if we reopen and revise a final determination or decision on our own initiative, any person who was a party to the revised determination or decision has the opportunity under §§ 404.994 and 416.1494 to request that the revision be reviewed. Under these sections, if an individual is dissatisfied with a revised determination or decision made in his or her case, he or she may request further administrative or judicial review, as appropriate, of our revised determination or decision.

Comment: Two commenters believed that some of the conditions for reopening determinations and decisions provided in §§ 404.988 and 416.1488 are too broad. One of the commenters stated that the criteria in §§ 404.989 and 416.1489 for determining whether good cause exists to reopen under §§ 404.988(b) and 416.1488(b) should be clarified to provide more precise standards for determining good cause to reopen. The other commenter urged that the criteria for determining good cause be modified to limit further the conditions under which a determination or decision may be reopened. This commenter also recommended the elimination of the provisions of §§ 404.988(a) and 416.1488(a) which permit the reopening of a determination or decision within 12 months of the date of the notice of the initial determination for any reason.

Response: We do not believe that there is any need at this time to modify or clarify the specific criteria in §§ 404.989 and 416.1489 for determining whether good cause exists to reopen a determination or decision under §§ 404.988(b) and 416.1488(b). In addition, we believe that the conditions for reopening provided in §§ 404.988 and 416.1488, including the provisions of §§ 404.988(a) and 416.1488(a), are sufficiently restrictive. These sections of the regulations provide that a determination or decision may be reopened only within limited time periods and/or under limited circumstances. They limit the conditions under which we may reopen a final determination or decision either on our own initiative or on the request of a person who was a party to the determination or decision.

The final rules, like the proposed rules, only revise §§ 404.987 and 416.1487. The sole purpose of the revisions is to clarify our longstanding policy that we may reopen and revise final determinations or decisions on our own initiative as well as at the request of a party to the determination or decision. These final rules, therefore, do not make any changes to § 404.988, § 404.989, § 416.1488 or § 416.1489. For the foregoing reasons, the proposed rules are being adopted as final regulations.

Regulatory Procedures

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect determinations or decisions about the rights of individuals under the Social Security and SSI programs. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 93.602, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance; 93.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Reporting and recordkeeping requirements, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: November 4, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: February 7, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

20 CFR part 404, subpart J, is amended as follows:

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205 (a), (b), and (d)–(h), 221(d), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405 (a), (b), and (d)–(h), 421(d), and 1302.

2. Section 404.987 is revised to read as follows:

§ 404.987 Reopening and revising determinations and decisions.

(a) *General.* Generally, if you are dissatisfied with a determination or decision made in the administrative review process, but do not request further review within the stated time period, you lose your right to further review and that determination or decision becomes final. However, a determination or a decision made in your case which is otherwise final and binding may be reopened and revised by us.

(b) *Procedure for reopening and revision.* We may reopen a final determination or decision on our own initiative, or you may ask that a final determination or a decision to which you were a party be reopened. In either instance, if we reopen the determination or decision, we may revise that determination or decision. The conditions under which we may reopen a previous determination or decision, either on our own initiative or at your request, are explained in § 404.988.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

20 CFR part 416, subpart N, is amended as follows:

1. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

2. Section 416.1487 is revised to read as follows:

§ 416.1487 Reopening and revising determinations and decisions.

(a) *General.* Generally, if you are dissatisfied with a determination or decision made in the administrative review process, but do not request further review within the stated time period, you lose your right to further review and that determination or decision becomes final. However, a

determination or a decision made in your case which is otherwise final and binding may be reopened and revised by us.

(b) *Procedure for reopening and revision.* We may reopen a final determination or decision on our own initiative, or you may ask that a final determination or a decision to which you were a party be reopened. In either instance, if we reopen the determination or decision, we may revise that determination or decision. The conditions under which we may reopen a previous determination or decision, either on our own initiative or at your request, are explained in § 416.1488.

[FR Doc. 94–3958 Filed 2–22–94; 8:45 am]

BILLING CODE 4190–29–P

20 CFR Part 416

RIN 0960–AB86

Supplemental Security Income For the Aged, Blind, and Disabled; Indian Judgment Funds and Per Capita Distributions

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations update the lists of types of income and resources that are excluded under the supplemental security income (SSI) program by Federal laws other than the Social Security Act (the Act) by reflecting the provisions of Public Law 97–458, enacted January 12, 1983, Public Law 98–64, enacted August 2, 1983, and Public Law 100–241, enacted February 3, 1988. In addition, we are making two minor technical changes. The effects of these final regulations are, in certain cases, to provide additional exclusions from income and resources permitting eligibility for, or increases in the payment of, SSI benefits.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8470.

SUPPLEMENTARY INFORMATION:

Background:

Public Law 97–458

Public Law 97–458 was enacted January 12, 1983. Section 4 of this legislation provides that certain Indian judgment funds held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress are excluded from income and resources under the SSI program. Indian judgment funds include interest and investment income accrued while the funds are held in trust. The exclusion extends to initial purchases made with Indian judgment funds. The exclusion does not apply to the proceeds from sales or conversions of initial purchases or to subsequent purchases made with funds derived from sales or conversions of originally excluded purchases, because Congress sought to protect only the distributions made by the Secretary of the Interior.

Section 4 of Public Law 97–458 also excludes from resources any interests of Indians in trust or restricted Indian lands. Our current regulations address only those lands that such individuals may possess. These final regulations now also exclude from resources nonpossessory interests in such lands.

Public Law 98–64

Public Law 98–64 was enacted August 2, 1983. This legislation excludes all funds held in trust by the Secretary of the Interior for an Indian tribe and distributed on a per capita basis from income and resources for SSI purposes.

The Social Security Administration (SSA) sought advice from the Department of the Interior on the issue of whether Alaska Native Regional and Village Corporation (ANRVC) dividends not excluded under the Alaska Native Claims Settlement Act (ANCSA) could be excluded under Public Law 98–64. SSA issued interim instructions directing that ANRVC dividend distributions paid on or after August 2, 1983, whether or not excluded under ANCSA, would be excluded for SSI purposes pending resolution of the issue.

The Department of the Interior has since advised SSA that funds held by ANRVCs are not "funds held in trust by the Secretary of the Interior" within the purview of Public Law 98–64. We therefore concluded that these ANRVC dividend distributions could not qualify for exclusion for SSI purposes under that law.

Public Law 100–241

A new law, Public Law 100–241, was enacted on February 3, 1988. Under this law, none of the following, received from a Native Corporation, is considered income or resources of an individual Alaska Native or a descendant of an Alaska Native: cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per year (the exclusions are applied each year to the amount received in such year); stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and an interest in a settlement trust.

Public Law 100–241 specifically provides that cash received from a Native Corporation (including cash dividends on stock received from a Native Corporation), to the extent that it does not, in the aggregate, exceed $2,000 per individual per year, shall not be considered or taken into account as an asset or resource. Although this statutory provision does not explicitly mention "income," the legislative history clearly shows that such cash should not be considered a resource or "otherwise utilized in determining eligibility." H.R. Rep. No. 31, 100th Cong., 1st Sess. 20 (1987). This language seems to require the exclusion of the distributions from income as well as resources, to the extent that they do not, in the aggregate, exceed $2,000 per individual per year in determining eligibility and payment amount. To exclude a portion of the distributions only from resources would result in benefit reductions or ineligibility in months in which the distributions are received and would be contrary to congressional intent. Therefore, we have changed the income provisions of the appendix to subpart K to reflect the exclusion.

In accordance with Public Law 100–241, we exclude ANRVC cash (including cash dividends on stock received from a Native Corporation) to the extent that this ANRVC cash does not, in the aggregate, exceed $2,000 per individual per year. With respect to resources, we apply the exclusion to each calendar year without regard to the prior year, so that retained cash not exceeding $2,000 which an individual received from a Native Corporation in a prior year will not be counted in a subsequent year. This interpretation is consistent with the policy of the Aid to Families with Dependent Children program. Any retained cash exceeding $2,000 per year will be counted toward the SSI resource limit.

Regulations Changes

The appendix to subpart K lists the types of income that are excluded under the SSI program by Federal laws other than the Act and explains how exclusions provided by other Federal statutes apply to income deemed from a sponsor to an alien. We are amending

the appendix to subpart K, *IV. Native Americans*, on the basis of the legislation discussed above by revising paragraph (a), deleting paragraph (b)(4), redesignating paragraphs (b)(5) through (b)(13) as (b)(4) through (b)(12), and adding new paragraphs (g) and (h). In addition, paragraphs (g) and (h) provide that the exclusion applies to the sponsor's income only if the alien lives with the sponsor, because the statute authorizing the exclusions applies only to benefits to which the household or member of the household would be eligible.

Similarly, we are amending subpart L of the regulations, which deals with resources and exclusion of resources under the SSI program, to reflect the above legislation. Specifically, we are amending § 416.1234 regarding exclusion of Indian lands and, § 416.1236, which encompasses resource exclusions provided by other statutes.

Public Comment

A Notice of Proposed Rulemaking (NPRM) was published on July 27, 1992 (57 FR 33137). A 60-day comment period was provided. The comment period ended September 25, 1992. We received 9 comments. The comments generally supported the NPRM. We have summarized and responded to the issues raised in the comments below.

Comment: Seven commenters expressed concern that the Secretary of Health and Human Services (the Secretary) might begin to apply a $2,000 annual limit to all exclusions of Indian judgment funds and per capita distributions. They stated that the proposed regulations were unclear as to whether ANCSA, as amended by Public Law 100–241, might adversely affect the SSI benefits of Native Americans other than Alaska natives.

Response: ANCSA provides for the exclusion of ANRVC cash to the extent that it does not, in the aggregate, exceed $2,000 per individual per year. The provisions of ANCSA apply only to ANRVC distributions to Alaska Natives. We believe this is clearly explained in the amended regulations at paragraph IV(a) of the appendix to subpart K and at § 416.1236(a)(10). In accordance with Public Law 97–458 and Public Law 98–64, the Secretary totally excludes all judgment fund and per capita distributions made pursuant to those public laws.

Comment: One commenter asked why the proposed regulations did not refer to a $2,000 limit for per capita distributions to Indian tribal members other than Alaska Natives, because Public Law 97–458 appears to include such a limit. Five commenters suggested that instead of applying a $2,000 annual limit on Indian judgment fund and per capita distributions, the Secretary should apply a $2,000 per payment limit, in accordance with Public Law 97–458 and Public Law 98–64. Consequently, only Indian judgment funds or per capita distributions in excess of $2,000 per payment would be countable for SSI purposes.

Response: There appears to be some confusion over whether, as a result of the proposed regulations, SSA would or could begin to apply a $2,000 exclusion limit to other than ANSCA distributions. SSA never intended to apply a $2,000 limit to such other distributions and these final regulations clearly do not do so.

Public Law 97–458 provides that any Federal or federally assisted program, other than Social Security Act programs, shall not consider Indian judgment funds except for per capita shares in excess of $2,000, as income or resources. However, the statute does not limit the amount of payments that can be excluded under the Social Security Act programs. Public Law 98–64 does not provide a $2,000 limit on exclusion of funds covered by that statute.

Accordingly, for SSI purposes the Secretary excludes from income and resources all judgment fund and per capita distributions made under Public Law 97–458 and Public Law 98–64.

Comment: One commenter proposed that foster care payments paid to tribal members to help defray the costs of basic needs, and that General Assistance payments from the Bureau of Indian Affairs be excluded from income and resources under the SSI program.

Response: We believe that the exclusions proposed by the commenter would require the enactment of new legislation. Accordingly, in the absence of such authority, we have not revised the regulations to incorporate such exclusions.

Comment: One commenter suggested that the proposed regulations not limit the exclusion of purchases contained in Pub. L. 97–458 to initial purchases made with Indian judgment funds and per capita distributions, because that law refers to "* * * any purchases made with such funds * * *"

Response: The exclusion of purchases in Pub. L. 97–458 does not apply to proceeds from the sales or conversions of initial purchases or to purchases made with the money derived from the sales or conversions of initial purchases. As indicated earlier in this preamble, this policy reflects Congressional intent to protect only the distributions made by the Secretary of the Interior. Any purchases made subsequent to initial purchases would not be made from distributions made by the Secretary of the Interior. Furthermore, tracking the funds beyond the initial purchase would be administratively difficult, if not impossible.

Comment: One commenter suggested that the Secretary correct a conflict between § 416.1210(i) and § 416.1234 as proposed. Section 416.1210 provides a list of resource exclusions with corresponding regulatory citations. Specifically, § 416.1210(i), states that the resource exclusion of restricted allotted land applies to "an enrolled member of an Indian tribe as provided in § 416.1234." Section 416.1234 states that the exclusion applies to "an individual * * * who is of Indian descent from a federally recognized Indian tribe," and does not limit its exclusion to an enrolled member of an Indian tribe.

Response: We agree that § 416.1210(i) may appear to be in conflict with § 416.1234. Although a change to correct this possible inconsistency was not included in the NPRM, we believe a technical change to correct our oversight and make our intent clear is appropriate. Therefore, we are making a technical change to the regulations at § 416.1210(i) to read, "Restricted allotted Indian lands as provided in § 416.1234;" to provide a simplified and more accurate cross-reference.

Other Regulations Changes

The provisions of Public Law 98–64 regarding the exclusion of certain funds from income are reflected in the appendix to Subpart K, *IV. Native Americans*, by the addition of paragraph (h) to these final regulations. This obviates the need for continuance of paragraph (c)(3) which only partially reflects the income exclusion provisions of Public Law 98–64. Paragraph (c)(3) is duplicative and no longer needed. Therefore, we are making a technical change to the regulations by deleting paragraph (c)(3).

Except for the technical change in response to an issue raised by a public comment and the technical change to remove a duplicative provision, we are adopting these regulations as proposed.

Regulatory Procedures

Regulatory Flexibility Act

We certify that these regulations will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

These regulations impose no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance: Program No. 93.807—Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: November 19, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: February 8, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart K of Part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. In the appendix following subpart K of part 416, under the heading *IV. Native Americans*, the text preceding the note in paragraph (a) is revised, paragraph (b)(4) and the note following it are removed, paragraphs (b)(5) through (b)(13) are redesignated (b)(4) through (b)(12) respectively, paragraph (c)(1) is amended by adding the word "and" after the semicolon, paragraph (c)(2) is amended by removing the semicolon and the word "and" and adding a period, paragraph (c)(3) is removed, and new paragraphs (g) and (h) are added to read as follows:

Appendix to Subpart K of Part 416—List of Types of Income Excluded Under the SSI Program as Provided by Federal Laws Other Than the Social Security Act

* * * * *

IV. Native Americans

(a) Distributions received by an individual Alaska Native or descendant of an Alaska Native from an Alaska Native Regional and Village Corporation pursuant to the Alaska Native Claims Settlement Act, as follows: cash, including cash dividends on stock received from a Native Corporation, to the extent that it does not, in the aggregate, exceed $2,000 per individual each year; stock, including stock issued or distributed by a Native Corporation as a dividend or distribution on stock; a partnership interest; land or an interest in land, including land or an interest in land received from a Native Corporation as a dividend or distribution on stock; and an interest in a settlement trust. This exclusion is pursuant to section 15 of the Alaska Native Claims Settlement Act Amendments of 1987, Public Law 100–241 (43 U.S.C. 1626(c)), effective February 3, 1988.

* * * * *

(g) Indian judgment funds that are held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress under Public Law 93–134 as amended by Public Law 97–458 (25 U.S.C. 1407). Indian judgment funds include interest and investment income accrued while such funds are so held in trust. This exclusion extends to initial purchases made with Indian judgment funds. This exclusion does not apply to sales or conversions of initial purchases or to subsequent purchases.

Note—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

(h) All funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe are excluded from income under Public Law 98–64 (25 U.S.C. 117b). Funds held by Alaska Native Regional and Village Corporations (ANRVC) are not held in trust by the Secretary of the Interior and therefore ANRVC dividend distributions are not excluded from countable income under this exclusion. For ANRVC dividend distributions, see paragraph IV(a) of this Appendix.

Note—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

3. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

4. Section 416.1210(i) is revised to read as follows:

§ 416.1210 Exclusions from resources; general.

* * * * *

(i) Restricted allotted Indian lands as provided in § 416.1234;

* * * * *

5. Section 416.1234 is revised to read as follows:

§ 416.1234 Exclusion of Indian lands.

In determining the resources of an individual (and spouse, if any) who is of Indian descent from a federally recognized Indian tribe, we will exclude any interest of the individual (or spouse, if any) in land which is held in trust by the United States for an individual Indian or tribe, or which is held by an individual Indian or tribe and which can only be sold, transferred, or otherwise disposed of with the approval of other individuals, his or her tribe, or an agency of the Federal Government.

6. In § 416.1236, paragraphs (a)(3) and (a)(10) are revised and paragraph (a)(12) is added to read as follows:

§ 416.1236 Exclusions from resources; provided by other statutes.

(a) * * *

(3) Indian judgment funds held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress under Public Law 93–134, as amended by Public Law 97–458 (25 U.S.C. 1407). Indian judgment funds include interest and investment income accrued while the funds are so held in trust. This exclusion extends to initial purchases made with Indian judgment funds. This exclusion will not apply to proceeds from sales or conversions of initial purchases or to subsequent purchases.

* * * * *

(10) Distributions received by an individual Alaska Native or descendant of an Alaska Native from an Alaska Native Regional and Village Corporation pursuant to the Alaska Native Claims Settlement Act, as follows: cash, including cash dividends on stock received from a Native Corporation, is disregarded to the extent that it does not, in the aggregate, exceed $2,000 per individual each year (the $2,000 limit is applied separately each year, and cash distributions up to $2,000 which an individual received in a prior year and retained into subsequent years will not be counted as resources in those years); stock, including stock issued or distributed by a Native Corporation as a dividend or distribution on stock; a partnership interest; land or an interest in land, including land or an interest in land received from a Native Corporation as a dividend or distribution on stock; and an interest in a settlement trust. This exclusion is pursuant to the exclusion under section 15 of the Alaska Native Claims Settlement Act Amendments of 1987, Public Law 100–241 (43 U.S.C. 1626(c)), effective February 3, 1988.

* * * * *

(12) All funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe under Public Law 98–64. Funds held by Alaska Native Regional and Village Corporations (ANRVC) are not held in trust by the Secretary of the Interior and therefore ANRVC dividend distributions are not excluded from resources under this exclusion. For treatment of ANRVC dividend distributions, see paragraph IV(a)(10) of this appendix.

* * * * *

[FR Doc. 94–3960 Filed 2–22–94; 8:45 am]

BILLING CODE 4190–29–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2625

Restoration of Terminating and Terminated Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations regarding plan restoration obligations and procedures to reflect a change in the Treasury regulations that are referenced therein and to make several corrections.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Judith Neibrief, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (29 U.S.C. 1301 *et seq.*). Part 2625 of its regulations (29 CFR part 2625), along with Treasury regulations under section 412 of the Internal Revenue Code (26 U.S.C. 412, minimum funding standards), describes certain legal obligations that arise incidental to a plan restoration under section 4047 of ERISA (29 U.S.C. 1347) and establishes procedures with respect to these obligations.

Provisions of part 2625 currently reference temporary Treasury regulations for applying the minimum funding requirements to terminating or terminated single-employer plans restored by the PBGC (26 CFR 1.412(c)(1)–3T). The Internal Revenue Service ("IRS") has now issued final regulations (26 CFR 1.412(c)(1)–3, TD 8494, 58 FR 54489, October 22, 1993). (The provisions of the final regulations on the restoration funding method differ from those referenced in part 2625 only in minor clarifications made by the IRS in response to comments.) The PBGC is amending §§ 2625.1(a) and 2625.2 (b) through (d) to reflect that action by substituting the final Treasury regulations for the temporary regulations.

This rule also corrects the spelling of two words in § 2625.2(b) ("amortization" and "restoration") and adds language erroneously omitted from § 2625.3(c) ("following a plan year"). (As worded, § 2625.3(c) states that a restored plan may not use the alternative calculation method in § 2610.23(c) of the premium regulation for any plan year for which Form 5500, Schedule B was not filed because the plan was terminated. However, as indicated in the premium regulation, the alternative calculation method requires use of a plan's Schedule B for the preceding plan year. Hence, this method is not available for a plan year that follows a plan year for which Schedule B was not filed, rather than for that plan year.)

Because these amendments only reflect a change in the pertinent Treasury regulations (which were the subject of notice and comment rulemaking) and make corrections, the PBGC has for good cause found advance notice and public procedure thereon and a delayed effective date to be unnecessary (5 U.S.C. 553 (b)(B) and (d)(3)), and it is issuing these amendments as a final rule, effective immediately.

E.O. 12866

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

List of Subjects in 29 CFR Part 2625

Employee pension plans, Pension insurance, Pensions.

For the reasons set forth above, the PBGC is amending 29 CFR part 2625 as follows:

PART 2625—RESTORATION OF TERMINATING AND TERMINATED PLANS

1. The authority citation for part 2625 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1347.

§ 2625.1 and § 2625.2 [Amended]

2. Paragraph (a) of § 2625.1 and paragraphs (b), (c), and (d) of § 2625.2 are amended by removing "26 CFR 1.412(c)(1)–3T" each time it appears and adding, in its place, "26 CFR 1.412(c)(1)–3".

§ 2625.2 [Amended]

3. Paragraph (b) of § 2625.2 is amended by removing "amoratization" and adding, in its place, "amortization" in the first sentence and by removing "restorative" and adding, in its place, "restoration" in the second sentence.

§ 2625.3 [Amended]

4. Paragraph (c) of § 2625.3 is amended by adding "following a plan year" after "for any plan year".

Issued in Washington, DC, this 17th day of February 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–4065 Filed 2–22–94; 8:45 am]

BILLING CODE 7708–01–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM94–2; Order No. 1004]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Final Rule.

SUMMARY: In order to expedite litigation of revenue-related issues presented by Postal Service rate change requests, the Commission amends its rules governing the Postal Service's rate filings to require that they include complete descriptions of the data, procedures, and assumptions that underlie the Postal Service's estimate of domestic mail revenues.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen Sharfman, Legal Advisor, Postal Rate Commission, suite 300, 1333

H Street, NW., Washington, DC. 20268–0001 (telephone: (202)/789–6820).

SUPPLEMENTARY INFORMATION: The Commission published its Notice of Proposed Rulemaking in this docket on November 2, 1993 [58 FR 58519]. In our Notice we proposed amendments to 39 CFR 3001.54(j), which governs Postal Service presentations concerning estimated volumes and revenues in our proceedings. As discussed in our Notice, during the post-hearing phase of Docket No. R90–1 an issue emerged as to whether the assumptions underlying the billing determinants that the Postal Service used to project revenues were compatible with those underlying the billing determinants that were implicit in the indexed prices that the Postal Service used to project volumes. This caused us to review our rules governing the Postal Service's volume and revenue presentations to see if more complete initial documentation would expedite hearings on these issues in future rate filings.

As part of that review, we noticed that our current rules do not require the Postal Service's revenue presentation to be disaggregated to the billing determinant level, although the Postal Service has done so in recent rate filings. Nor do our current rules specifically require the Postal Service to source the data underlying its revenue presentation. We therefore proposed amendments to Rule § 3001.54(j) designed to bring it into conformity with current practice in these respects.

The amendments that we initially proposed in this docket had three basic objectives: (1) To require that revenue presentations be disaggregated to the billing determinant level [proposed rule § 3001.54(j)(3)], (2) to require that the method of calculating revenues be explained in detail, especially where the calculation involved redesigned rates [proposed rule § 3001.54(j)(4)], and (3) where the assumptions underlying the billing determinants used to calculate revenue differ from those underlying the billing determinants implicit in the corresponding volume estimate that the Postal Service provide an explanation for the difference [proposed rules § 3001.54(j)(5)(iv),(v), and (vi)].

As a result of comments received in response to our Notice of Proposed Rulemaking, we have simplified our proposed amendments in ways that still accomplish the objectives described above. Final rules § 3001.54(j)(3) and § 3001.54(j)(4), as we adopt them here, accomplish the first and second objectives, respectively, with simpler and more concrete language. To accomplish the third objective, we have deleted proposed rules § 3001.54(j)(5)(iv) through (vi) in favor of a simpler provision that we have incorporated in the preamble of rule § 3001.54(j)(6).

As a result, our final rules largely eliminate the basis for the Postal Service's generalized complaint in its Comments of December 2, 1993, and Reply Comments of December 13, 1993, that our proposed amendments are needlessly burdensome. Final rules § 3001.54(j)(3) and (4) bring our rules into conformity with what is essentially the Postal Service's current practice. Proposed rules § 3001.54(j)(5)(iv) and (v) had asked for revenue presentations for interim years, and the year following the test year. These proposals might have added moderately to the Postal Service's documentation burden. They have been deleted from our final rules.

Only a minor addition to the Postal Service's documentation burden remains in our final rules. That is the simplified requirement, incorporated in final rule § 3001.54(j)(6), that the Postal Service provide supporting rationale where its revenue estimate is based upon billing determinants that differ from those that are implicit in its volume forecast.

Final Rule § 3001.54(j)(3)

The purpose of proposed rule § 3001.54(j)(3) was to require that the Postal Service's revenue presentation be disaggregated to the billing determinant level, consistent with rule § 3001.54(l), which requires the Postal Service to provide class and subclass billing determinants for each "rate element" that it uses to determine revenues. The Office of the Consumer Advocate (OCA) observes that the wording of proposed rule § 3001.54(j)(3) could have been interpreted as applying to elements other than those covered by rule § 3001.54(l). OCA Comments of November 24, 1993, at 3–4. Final rule § 3001.54(j)(3), therefore, adopts the alternate language proposed by the OCA, which requires that the Postal Service's revenue presentation be disaggregated to "each unique rate element."

Final Rule § 3001.54(j)(4)

The purpose of proposed rule § 3001.54(j)(4) was to require that the method of calculating revenues be described in detail, especially where the calculation involved restructured rates. The OCA's comments propose alternative language that is more concrete and less susceptible to subjective interpretation. Instead of requiring an "identification" or "specific description" of its methods of calculating revenue, the OCA's proposed language would require the Postal Service to document its revenue calculations in such a way that they can be replicated from "primary data sources." OCA Comments of November 24, 1993, at 4–5.

Final Rule § 3001.54(j)(4) adopts the essence of the OCA's proposed alternative. Appropriate sourcing of revenue presentations, however, is most often to companion volume testimony and supporting documents, rather than to "primary data sources." We have modified the OCA's proposed language accordingly. The OCA incorrectly inferred from our Notice an intent to limit rule § 3001.54(j)(4) to estimates of "per piece" revenue. Final rule § 3001.54(j)(4) applies to revenue estimates generally, not just to estimates of "per piece" revenue.

Proposed Rules § 3001.54(j)(5)(iv)–(v)

Proposed rules § 3001.54(5)(j)(iv) and (v) would have required that the Postal Service's revenue presentations include fully disaggregated revenue estimates for interim years (years between the base year and the test year), and for the year following the test year. Interim year estimates would have facilitated tracking of the Postal Service's revenue estimate against actual revenues as a rate hearing progresses. Post-test year estimates would have assisted in evaluating any proposed changes.

Since the added value of either exercise is relatively minor, we have decided to drop these proposed rules. They were the focus of the generalized complaints expressed in the Postal Service's Comments of December 2, 1993, and Reply Comments of December 13, 1993, that the amendments to rule § 3001.54(j) that we propose in this docket are burdensome and unnecessary.

Proposed Rule § 3001.54(j)(5)(vi) and Final Rule § 3001.54(j)(6)

As we discussed in our Notice of Proposed Rulemaking, the Postal Service uses average, or indexed, subclass prices as key variables in its volume forecasting models. Billing determinants are implicit in an indexed price.

The broad purpose of proposed rule § 3001.54(j)(5)(vi) was to ensure that the Postal Service's volume presentation includes a detailed description of how the indexed prices were constructed, especially where they reflected restructured rates. The specific purpose of the proposed rule was to require that the Postal Service identify instances where the billing determinants implicit in the price indices used to forecast

subclass volumes differ from those used to estimate subclass revenues, and that it explain such differences.

Partly in response to the Postal Service's general plea that we not add to the complexity of rule § 3001.54(j) unless it is clearly necessary, we have decided to delete proposed rule § 3001.54(j)(5)(vi) from our final rules. The broad purpose of the proposed rule was to ensure that the Postal Service provides full narrative explanations of how its price indices are constructed. Having focused attention on that purpose with this rulemaking, we believe that current rule § 3001.54(j)(6)(i) and (ii) will be adequate to achieve it.

As noted, the specific purpose of proposed rule § 3001.54(j)(5)(vi) was to require the Postal Service to explain why it sometimes bases its revenue estimates on billing determinants that differ from those implicit in its volume forecasts. We believe that this purpose can be accomplished more economically by adding the following sentence at the end of the current preamble to rule § 3001.54(j)(6): Supporting rationale shall be provided for using billing determinants to estimate revenues for any class, subclass, or rate category of mail that differ from the billing determinants implicit in the estimate of volumes for that class, subclass, or rate category.

We simplified this requirement in response to comments from the Postal Service. The Postal Service interpreted proposed rule § 3001.54(j)(5)(vi) to require it to (1) Multiply the after-rate fixed weight price index by the after-rate volume forecast for each subclass, (2) compare the result with the after-rate revenue forecast for that subclass, (3) determine if the difference exceeded specified thresholds, and (4) explain differences that exceeded the thresholds.

The Postal Service asserts that "comparisons to the suggested thresholds (three percent of subclass revenue or $20 million) add nothing to the ultimate answer." It characterizes steps "1" through "3," above, as a "wasteful and burdensome exercise." Postal Service Comments of December 2, 1993, at 5. Although the added burden would have been slight, in our view, we have nevertheless decided to delete the requirement that the Postal Service inventory instances in which such differences exceed a threshold.

The Postal Service also asserts that explanations of the difference between estimated and implied subclass revenues would not be "meaningful because, in every instance, the explanation would be the same: any difference between the two numbers will be attributable to the different billing determinants (before rate and after rates) used in their calculation." Id. at 4.

Apparently because proposed rule § 3001.54(j)(5)(vi)(e) asked the Postal Service to "explain" differences between its estimated revenues and those implied by its volume forecasts, the Postal Service interpreted that rule merely to require a recitation that different billing determinants give rise to different revenue results. We agree that such a recitation would not be meaningful. The "explanation" intended by the proposed rule was not the perfunctory one assumed by the Postal Service. The intent of the proposed rule was to elicit from the Postal Service a theoretical or conceptual justification for using different billing determinants to forecast volume than it does to estimate revenue for the same period. If the Postal Service based volume and revenue forecasts on different assumptions as to, for example, the portion of the mailstream impacted by a proposed new rate category, or its implementation date, the proposed rule contemplated that the Postal Service would provide supporting reasons. To clarify this intent, final rule § 3001.54(j)(6) asks for "supporting rationale" rather than an "explanation."

The Postal Service's comments appear to recognize that the Commission's concern is that the Postal Service articulate a rationale for basing volume and revenue forecasts on different assumptions. It argues, however, that it would be more efficient if the desired rationale were asked for and provided after a general rate hearing begins. Id. at 5. We disagree. Where it is foreseeable that an aspect of an analytical method will routinely be placed in issue during the hearing, it expedites the hearing if supporting rationale for that method is elicited "up front," through standard filing requirements.

Other Proposals and Comments

The OCA proposes that this docket include rules that would identify a minimum level of sampling error that the Commission will tolerate in the Postal Service's volume estimates. The premise of the OCA's proposal is that the amendments proposed in this docket might require further disaggregation of the volume and revenue estimates presented by the Postal Service, potentially reducing their reliability. OCA Comments of November 24, 1993, at 1.

Although the OCA's objective has merit, it is only indirectly related to the initial proposals in this docket. The focus of the rules that we adopt in this docket is on documentation of the Postal Service's revenue estimates. Their effect is not to further disaggregate those estimates, but merely to bring our rules into conformity with the Postal Service's recent practice. They do not satisfy the premise of the OCA's proposal. The OCA's proposal should be the focus of a separate rulemaking where its ramifications could be explored in depth.

The Council of Public Utility Mailers (CPUM) proposes that current rule 54 be amended throughout to add "rate categories" to each reference to "all classes and subclasses of mail and service." The objective of CPUM's proposal is to require the Postal Service to present data "at the most discrete, disaggregated level that is feasible." CPUM Comments of November 29, 1993, at 3.

We agree with the objective of CPUM's proposal, but do not think that requiring rate category data throughout rule 54 is feasible or wise. The final rules adopted in this docket require that revenue estimates be disaggregated further than the rate category level. Consequently, the primary impact of CPUM's proposal would be on volumes. Current rules § 3001.54(j) (5) and (6) require that volume forecasts at the class and subclass level be derived from an econometric demand study. It would not be appropriate to extend that requirement indiscriminately to rate categories as well. For small rate categories, sample data are too thin to allow reliable econometric modelling. In this respect, CPUM's proposed language could require data disaggregated beyond the maximum feasible level.

Final rule § 3001.54(j)(6), which applies to both volumes and revenues, moves in the direction of CPUM's proposal, since some of the requirements contained in its preamble now apply at the rate category level. The amended preamble reiterates that estimates required by rules § 3001.54(j) (2), (3), and (5), must be derived from econometric demand studies at the class and subclass level. It is not required that estimates at the rate category level be derived from econometric studies. If they are derived from econometric studies, however, the amended preamble language applies to them the requirement that supporting rationale be provided if the assumptions underlying the estimate depart from those underlying the econometrics. As discussed above, the amended preamble language also requires supporting rationale where the billing determinants underlying a rate category revenue

estimate differ from those implicit in the corresponding volume forecast.

McGraw-Hill, Inc. proposed two refinements to the language of proposed rule § 3001.54(j)(5)(vi). One would have refined the language of paragraph (a) of the proposed rule, which would have required the Postal Service to identify its methods for deriving its price indices. McGraw-Hill's proposed refinement would have specifically required the Postal Service to identify the time period and the rate schedule applicable to the billing determinants reflected in the price indices. Comments of McGraw-Hill, Inc., of December 2, 1993, at 3.

Where price indices reflect billing determinants of a specific time period and rate schedule, the Postal Service should, of course, identify them. But McGraw-Hill's refined language might have been too restrictive to accommodate price indices based on median, composite, or other adjusted billing determinant values. As noted above, we have deleted specific references to price indices in our final rules, with the understanding that full documentation of the manner in which they are derived is required by current rules § 3001.54(j)(6). McGraw-Hill's proposed refinement is therefore moot.

McGraw-Hill also proposed refined language for paragraph (e) of proposed rule § 3001.54(j)(5)(vi), which proposed thresholds that would have triggered the requirement that the Postal Service explain differences between estimated and implied subclass revenue. McGraw-Hill's refinement, though well considered, is moot, since we have deleted threshold tests from our final rules.

McGraw-Hill also proposed that we make the following additions to the Postal Service's ongoing data reporting requirements: (i) the Postal Service shall furnish annually a pro forma Cost and Revenue Analysis ("CRA") report that tracks the determinations made in the preceding omnibus rate case decision; (ii) the CRA report shall identify any change in attribution assumptions from the previous year's report; (iii) if the attribution assumptions employed in a CRA report differ from those used in the Commission's decision in the preceding rate case, the Postal Service shall file a pro forma report that uses the assumptions employed in the Commission's decision; and (iv) billing determinants shall be reported on a quarterly rather than annual basis. [Comments of McGraw-Hill, Inc., of December 2, 1993, at 4–5.]

As McGraw-Hill notes, these requirements were first proposed in Docket No. RM91–1 [57 FR 39160, 39163–39164], but were not actively considered because of subsequent changes in the focus of that docket. Id. at 5. We will defer their consideration. The proposals relating to the CRA are well considered, but are more appropriately dealt with after the impending omnibus rate case has been processed. The proposals regarding billing determinant reports may also be taken up at that time.

Regulatory Evaluation

It has been determined pursuant to 5 U.S.C. § 605(b) that these rules will only affect informational requirements applicable to the United States Postal Service, and it is certified that these rules will not have a significant impact on a substantial number of small entities under the terms of the Regulatory Flexibility Act, 5 U.S.C. § 501 *et seq.* Since these rules apply only to the Postal Service, it has also been determined that these rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612. The rules, which would apply only to the Postal Service in postal rate proceedings, do not contain any information collection requirements as defined in the Paperwork Reduction Act 44 U.S.C. § 3502(4)(B), and consequently the review provisions of 44 U.S.C. § 3507 and the implementing regulations in 5 CFR part 1320 do not apply.

List of Subjects in 39 CFR Part 3001

Administrative practices and procedure, Postal service.

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 is revised to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662.

2. Section 3001.54 is amended by revising paragraphs (j)(3), (j)(4), and the introductory text to (j)(6) to read as follows:

§ 3001.54 Contents of formal requests.

* * * * *

(j) * * *

(3) Subject to paragraphs (a)(2) of this section, the actual and estimated revenues referred to in paragraphs (j) (1) and (2) of this section shall be shown in total and separately for each class and subclass of mail and postal service and for all other sources of revenue. Revenues derived from classes and subclasses of mail shall be disaggregated to each unique rate element.

(4) Each revenue presentation required by paragraph (j)(1), (j)(2), and (j)(3) of this section shall, subject to paragraph (a)(2) of this section, be documented in sufficient detail to allow independent replication. Revenue estimates shall be supported by exhibits or workpapers that reference the source of all data used, including volume levels, billing determinants, and adjustment factors. References may be to published documents, library references, or companion testimony, and shall include document identity, page, and line, as appropriate. All assumptions used to estimate revenue for new or redesigned rate elements shall be identified and explained.

* * * * *

(6) The estimated volumes and revenues referred to in paragraphs (j)(2). (j)(3), and (j)(5) of this section shall be derived from the econometric demand study referred to in paragraph (j)(5)(i) of this section. Supporting rationale shall be provided for any departure from the assumptions and specifications in the demand study made in estimating volumes of any class, subclass, or rate category of mail. Supporting rationale shall be provided for using billing determinants to estimate revenues for any class, subclass, or rate category of mail that differ from the billing determinants implicit in the estimate of volumes for that class, subclass, or rate category.

* * * * *

Issued by the Commission on February 10, 1994.

Charles L. Clapp,

Secretary.

[FR Doc. 94–3675 Filed 2–22–94; 8:45 am]

BILLING CODE 7715–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–53–5923; FRL–4836–8]

Approval and Promulgation of Implementation Plans Florida: Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan (SIP) submitted by the State of Florida through the Florida Department of Environmental Regulation (FDER) for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), which will be fully implemented by November 1994. This implementation plan was submitted by FDER on February 24, 1993, to satisfy the federal mandate, found in section 507 of the Clean Air Act as amended in 1990 (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA.

EFFECTIVE DATES: This action will be effective April 25, 1994, unless notice is received by March 25, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Ms. Carol L. Kemker at the EPA Region IV address listed. Copies of the material submitted by FDER may be examined during normal business hours at the following locations:

Environmental Protection Agency, Attn: Jerry Kurtzweg, ANR 443, 401 M Street, SW., Washington, DC 20460.
Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.
Air Resources Management Division, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Ms. Carol L. Kemker of the EPA Region IV Air Programs Branch at 404–347–2864 or at the above address.

SUPPLEMENTARY INFORMATION:

Implementation of the CAA will require small businesses to comply with specific regulations in order for areas to attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a PROGRAM, and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the EPA to oversee the small business assistance program and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of Ttitle V of the CAA and the EPA guidance document Guidelines for the Implementation of section 507 of the 1990 Clean Air Act Amendments. In order to gain full approval, the state submittal must provide for each of the following PROGRAM elements:

(1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses;

(2) The establishment of a state Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and

(3) The creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

FDER has met the following requirements of section 507 of Title V of the CAA by submitting a SIP revision that implements the following required PROGRAM elements and implementation schedules. The PROGRAM will be fully implemented by November 15, 1994.

1. Small Business Assistance Program

FDER has established a Small Business Section (SBS) which will incorporate the following six requirements set forth in section 507 of Title V of the CAA:

A. The establishment of adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further comply with the CAA;

B. The establishment of adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution;

C. The development of a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable permit requirements under the CAA in a timely and efficient manner;

D. The development of adequate mechanisms to assure that small business stationary sources receive notice of their rights under the CAA in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the CAA;

E. The development of adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors, or at the option of the state, for providing audits of the operations of such sources to determine compliance with the CAA; and

F. The development of procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source.

2. Ombudsman

FDER has appointed a Small Business Ombudsman and established a Small Business Ombudsman's office which will act as the small business community's representative as required by section 507(a)(3) of Title V of the CAA.

3. Compliance Advisory Panel

FDER established a Small Business Air Pollution Compliance Advisory Council (SBAP CAP) effective on July 7, 1993, to meet the required November 1994 deadline of section 507(e) of title V of the CAA. The SBAP CAP is composed of seven members as follows:

Two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program.

The SBAP CAP has the following four responsibilities:

(1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions;

(2) To periodically report to EPA concerning the SBAP's edherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act; [1]

(3) To review and assure that information for small business stationary sources is easily understandable; and

(4) To develop and disseminate the reports and advisory opinions made through the SBAP.

[1] Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three Federal statutes. However, since state agencies are not required to comply with them, EPA believes that the state PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these federal statutes.

4. Eligibility

FDER has incorporated section 507(c)(1) and defined a Small Business Stationary Source as a source that:

(A) Operates in Florida;
(B) Is owned or operated by a person who employs 100 or fewer individuals,
(C) Is a small business concern as defined in the Small Business Act;
(D) Is not a major stationary source;
(E) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and
(F) Emits less than 75 tpy of all regulated pollutants.

FDER has established the following mechanisms as required by section 507:

(1) A process for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA;

(2) A process for public notice and comment on grants of eligibility to sources that do not meet the provisions of Sections 507(c)(1) (C), (D), and (E) of the CAA, but do not emit more than 100 tpy of all regulated pollutants; and

(3) A process for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the FDER determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

Final Action

In this action, EPA is approving the PROGRAM SIP revision submitted by the State of Florida through the FDER. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective April 25, 1994. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. Approval of this action relieves EPA of any obligation to promulgate a Federal Implementation Plan for the SBA PROGRAM.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Small business stationary source technical and environmental assistance program.

Dated: January 28, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520, is amended by adding paragraph (c) (80) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(80) The Florida Department of Environmental Regulation has submitted revisions to chapter 403.0852 of the Florida Statute on February 24, 1993. These revisions address the requirements of section 507 of title V of the CAA and establish the Small Business Stationary Source Technical and Environmental Assistance Program (PROGRAM).

(i) Incorporation by reference.

(A) Florida Statute 403.031(20), 403.0852(1), (2), (3), (4), 403.0872(10)(b), 403.0873, 403.0851, approved on April 8, 1992.

(ii) Additional information—None.

[FR Doc. 94–3944 Filed 2–22–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–4840–2]

Missouri; Interim Authorization of State Hazardous Waste Management Program; Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Missouri has applied for interim authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Missouri's application and has made a decision, subject to public review and comment, that Missouri's hazardous waste program revision satisfies all of the requirements necessary to qualify for interim authorization. Thus, EPA intends to approve Missouri's hazardous waste program revisions. Missouri's application for program revision is available for public review and comment.

DATES: Interim authorization for Missouri shall be effective April 25, 1994, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Missouri's program revision application must be received by the close of business March 25, 1994.

ADDRESSES: Written comments should be sent to Gary Bertram, USEPA Region VII, RCRA Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of Missouri's program revision application are available for inspection and copying during normal business hours at the following addresses: Hazardous Waste Program, Missouri Department of Natural Resources, Jefferson Building, 205 Jefferson Street, Jefferson City, Missouri 65102, Phone: 314–751–3176; USEPA Region VII Library, 726 Minnesota Avenue, Kansas City, Kansas 66101, Phone: 913–551–7241.

FOR FURTHER INFORMATION CONTACT: Gary Bertram, USEPA Region VII, RCRA Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; 913–551–7533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268 and 270.

B. Missouri

On November 20, 1985, EPA published a **Federal Register** notice announcing its decision to grant final authorization for the RCRA base program to the State of Missouri (50 FR 47740). Authorization revisions to the Missouri hazardous waste program were published on February 27, 1989 (54 FR 8190) and January 11, 1993 (58 FR 3497). Today, Missouri is seeking interim authorization of its program revision in accordance with 40 CFR 271.24.

EPA has reviewed Missouri's application, and has made an immediate final decision that Missouri's hazardous waste program revision satisfies all of the requirements necessary to qualify for interim authorization. Consequently, EPA intends to grant interim authorization for the additional program modifications to Missouri. The public may submit written comments on EPA's immediate final decision up until March 25, 1994. Copies of Missouri's application for program revision are available for inspection and copying at the locations identified in the "**ADDRESSES**" section of this action.

Approval of Missouri's program revision shall become effective April 25, 1994, unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The State has adopted and applied for interim authorization for the corrective action portion of the HSWA Codification Rule (July 15, 1985, 50 FR 28702). For a full discussion of the HSWA Codification Rule, the reader is referred to the **Federal Register** cited above.

The State will assume lead responsibility for issuing permits for those program areas authorized today. For those permits which will now change to State lead from EPA, EPA will transfer copies of any pertinent file information to the State. EPA will be responsible for enforcing the terms and conditions of federally issued permits while they remain in force. When the State reissues federally issued permits as State permits, EPA will rely on the State to enforce them.

C. Decision

I conclude that Missouri's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Missouri is granted interim authorization to operate its hazardous waste program as revised. Missouri now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Missouri also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Missouri's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 25, 1994.

William Rice,

Acting Regional Administrator.

[FR Doc. 94–4055 Filed 2–22–94; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 59, No. 36
Wednesday, February 23, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1124 and 1135

[Docket Nos. AO–368–A21, AO–380–A11; DA–92–07]

Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Area; Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts a proposal for pricing milk on the basis of nonfat solids and protein, in addition to butterfat, for the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing orders, respectively. In addition, it reduces the supply plant shipping percentage for the Pacific Northwest order and modifies the producer-handler regulation to permit a State institution with outside distribution to purchase an average of 1,000 pounds of milk per day from pool plants. The decision denies a proposal to change location adjustments in Yakima County, Washington.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

These proposed amendments have been reviewed under Executive Order 12278, Civil Justice Reform. This action is not intended to have retroactive effect, nor will it preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the entry of the ruling.

Prior Documents in This Proceeding

Notice of Hearing: Issued July 31, 1992; published August 6, 1992 (57 FR 34694).

Recommended Decision: Issued October 7, 1993; published October 15, 1993 (58 FR 53439).

Preliminary Statement

A public hearing was held to consider proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Pacific Northwest (Order 1124) and Southwestern Idaho-Eastern Oregon (Order 1135) marketing areas. The hearing was held pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900) in Portland, Oregon, on September 9 and 10, 1992.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Administrator, on October 7, 1993, issued a recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. One paragraph is added at the conclusion of the discussion of Issue No. 1, and paragraphs 41–42 are modified.

2. One paragraph is added at the conclusion of the discussion of Issue No. 2.

3. One paragraph is added at the conclusion of the discussion of Issue No. 3.

4. Under Issue No. 4, the sixth-to-last, third-to-last, and last paragraphs are revised, the second-to-last paragraph is deleted, and a new paragraph is added at the conclusion of the discussion.

The material issues on the record of the hearing relate to:

1. Multiple component pricing of milk under both orders.

2. Performance standards for supply plants under the Pacific Northwest order.

3. Status of a milk plant operated by a state institution under the Pacific Northwest order.

4. Plant location adjustments for Yakima County, Washington, under the Pacific Northwest order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Multiple component pricing of milk under the Pacific Northwest and Southwestern Idaho-Eastern Oregon orders.*

The Pacific Northwest and Southwestern Idaho-Eastern Oregon orders should be amended to provide for multiple component pricing of Class II and Class III (including Class III–A) milk to handlers and for establishing minimum pay prices to producers. Under the Pacific Northwest order, the components to be priced will be nonfat milk solids and butterfat. Under the Southwestern Idaho-Eastern Oregon order, the components to be priced will be protein and butterfat.

Multiple component pricing for both orders was proposed by Darigold Farms, and Western Dairymen Cooperative, Inc., joined as a co-proponent for the Southwestern Idaho-Eastern Oregon proposal. The basic thrust of the proposal was that it was time to change the way milk is priced under both orders such that the pricing system would send a clear economic signal to producers as to which milk components are in the greatest demand and which ones have the greatest economic value in the marketplace.

Two witnesses testified on behalf of Darigold. One witness testified extensively on the general concept of multiple component pricing. He stated that the current pricing system, which is based on the value of butterfat and skim milk, does not reflect changes that have occurred over time in the value of certain milk components. In his view, the current system is based on market conditions that prevailed more than 50 years ago.

The current system, in his opinion, simply encourages producers to increase the volume of skim milk produced without regard to the content of such milk.

The Darigold witness indicated that under the current pricing system, given the current levels of milk prices and fat differentials, one pound of protein, lactose, other solids, or even milk water is now valued at somewhere between nine and ten cents per pound. Thus, the price of one pound of butterfat is about equal to the value attributed to one gallon of milk water. He also indicated that one pound of butterfat is said to be worth seven to eight times as much as one pound of milk protein, even though that appears to be unreasonable. He maintained that these unrealistic price comparisons are nonetheless actual measurements of the incentives that dairymen are expected to respond to under present regulations when they plan their breeding and production activities. He further indicated his strong belief that the present system stands in the way of achieving optimum efficiency. Thus, he urged the adoption of multiple component pricing wherein the marketplace values of various milk components will be reflected in pricing milk to handlers and to producers. In this way, consumers' demands and preferences for milk and other dairy products can be translated into real signals that indicate to producers the milk components consumers want and are willing to pay for.

A second witness spoke on behalf of Darigold Farms, Western Dairymen Cooperative, Inc., Farmers Cooperative Creamery, Northwest Independent Milk Producers Association, Tillamook County Creamery Association, and Magic Valley Quality Milk Producers, Inc. He indicated that in July 1991 these cooperatives represented 88 percent of the producers for the Pacific Northwest market (Order 124) and 84 percent of producers for the Southwestern Idaho-Eastern Oregon market (Order 135). This witness discussed how the proposed multiple component pricing (MCP) system would work, why it should be adopted, and the form it should take for these two markets. He stated that in order for a MCP program to work well it needed to be mandatory under the Federal order. Currently, just over 90 percent of the producers for Order 124 and just over 88 percent of the producers for Order 135 are eligible to receive some component pricing premium. He further stated that the premium programs result from inadequacies inherent in the current butterfat and skim pricing programs.

The witness indicated that another reason why MCP is needed is because of increasing interest by consumers in their diet, especially noting concerns about cholesterol and fat levels in dairy products. He said that consumers now prefer milk products with lower fat content. He went on to say that over the years there has been a general emphasis on the value of fat, but that so far there has been only a general offset of this as values of the nonfat fluid portion of milk, which is largely water, have increased. He stated that the values of specific nonfat components should be recognized and increased so that consumer preferences could be more directly translated into indicating the milk components that dairy farmers should be producing for the market. MCP would achieve this and at the same time promote more orderly marketing for both producers and handlers, according to Darigold's spokesman.

Darigold's witness stated that MCP would contribute to orderly marketing by providing more equity among plants making Class II and Class III products because their raw milk costs would be more uniform. Also, marketing organizations would have more options in marketing individual loads of milk. He explained that plants would be less reluctant to receive a low-testing load of milk because they would pay only for the components received rather than for water that must be removed from the milk. He said that, in turn, producers in effect will have more options in choosing marketing organizations or plants to take their milk.

The witness also pointed to the changing relationship over time between the values of the butterfat and skim portions of milk. For example, he noted that during the 1960's butterfat accounted for about 75 percent of the total value of milk, while the skim value was only about 25 percent. Currently, over 70 percent of the total value of milk is associated with the skim component because over time the value of butterfat has declined and the Commodity Credit Corporation has changed the support prices of butter and nonfat dry milk. He expected that the trend to lower fat values will continue.

The proposed MCP program was modeled after the one now in effect in the Great Basin Federal milk order. It was chosen because it would maintain the current Class I price structure, while applying MCP to Class II and Class III uses of milk where there is a direct relationship between the component content of raw milk and its yield of manufactured milk products.

Because the principal product manufactured from milk not needed for Class I or Class II uses in the Order 124 market is nonfat dry milk, the proponents proposed that the MCP program for that market should be based on butterfat and nonfat milk solids. On the other hand, in the Order 135 market the principal use for surplus milk is in hard cheeses. For that reason, the proponents proposed that the MCP program for that order should be based on butterfat and protein.

As proposed, MCP would not apply to Class I milk, which would continue to be priced to handlers as it now is. Handlers would account for the components (butterfat and nonfat milk solids or protein) used in Class II and Class III at prices per pound as specified in the order. Each producer would be paid a weighted average of the Class I and Class II differentials, plus the value per pound for the components in the producer's milk.

Butterfat would be priced on a per-pound basis. The butterfat price, as proposed, would be the sum of the skim milk value (based on the basic formula price) divided by 100 plus the butterfat differential for the month multiplied by 10.

The prices per pound for nonfat solids or protein, as the case may be, would be determined by subtracting from the basic formula price the value of the butterfat, and dividing the remainder by the market average test for nonfat milk solids or protein in producer milk for the current month.

There were three proposed modifications for determining the value of the components other than butterfat.

One, advocated by a spokesman for Kraft General Foods, would use the average component values (tests) of the milk included in the survey of pay prices that make up the Minnesota-Wisconsin (M-W) estimated price for manufacturing grade milk. The M-W price is the basic formula price for the orders. According to the Kraft witness, use of the M-W milk component tests would provide uniformity of component prices among orders, whereas using market average tests could result in component prices that were not uniform among orders. Darigold's witness indicated that Darigold would accept this approach.

A second modification was advanced by the witness for Northwest Independent Milk Producers (NWI). As proposed, the Class III milk price would be a formula price based on the prices for 40-pound blocks of cheddar cheese, plus a value for whey cream, minus the make allowance used by the Commodity Credit Corporation. The proponent claimed that the current Class III price (the M-W price) may be reflective of cheese production and manufacturing in Minnesota and Wisconsin, but is totally out of sync. with the real market situation in the Pacific Northwest region. The proposed Class III price is needed to improve the competitive relationship between cheesemakers in the Northwest and those in California, according to the proponent.

NWI also proposed that the basic formula price provision should be amended by adding the words "or $12.10 per hundredweight, whichever is higher for the month." In the view of NWI's witness, this proposal would decouple Class I prices from the radical price fluctuations that have occurred.

A witness for Swiss Village Cheese, a proprietary bulk tank handler under Order 135, supported MCP for that market. The witness stated that the failure to recognize varying protein tests for raw milk produces a great inequity in the Federal milk order pricing system and sends the wrong economic message to producers. He noted that the August 1992 M-W price of $12.54 per hundredweight yields a skim milk price of $10.09 with a seven cents butterfat differential. The $10.09 figure is the same, regardless of the protein content of the milk.

This being the case, he said, the value of a pound of protein thus varies as the test varies. If milk tests 4 percent protein, dividing the $10.09 by 4 yields a value per pound of $2.52. However, if the test is only 3 percent, the per-pound value is $3.36, or a difference of 84 cents. Thus, when a cheese plant wants the lowest-priced protein, it would want to attract the highest testing milk. In order to attract high-testing milk, cheese plant operators pay producers protein premiums or base their price on a cheese yield formula. He stressed that plants can pay a premium over the Federal order price, but cannot lower the price to a producer below the minimum Federal order price based on butterfat content. In his view, this causes handlers or cheese plants to play a price averaging game, which results in producers of low-testing milk getting paid more than their milk is worth, while producers of high-testing milk are paid less than their milk is worth. Adoption of multiple component pricing would correct this situation and provide a basis for making economically correct decisions at both the dairy farm and the plant, he concluded.

The Swiss Village Cheese representative presented what he believes are important factors regarding the future of the dairy industry in Idaho, and in the West in general. He indicated that: (1) Herd size will be large; (2) production per cow will be high; (3) total milk production increases will exceed population increases; (4) nearly all of the increased production will be used to make cheese; and (5) most of this "new" cheese will be sold to consumers in the East. In view of these factors, the witness proposed modifications to the MCP plan proposed for Order 135.

The first proposed modification would use the protein test for milk that is included in estimating the M-W price. The second modification proposes adjusting the M-W price for a transportation differential (minus 10 cents) prior to determining the protein price. This proposal is based on the belief that the market for additional quantities of cheese produced in Idaho will be population centers in the eastern United States. Therefore, a price adjustment is warranted, in the view of this witness, because the cheese produced in Idaho will have to be moved long distances to find customers, and a lower price would help Idaho cheese plants be more competitive with California cheese plants.

A third proposed modification by the Swiss Village Cheese witness called for giving milk buyers the right to reduce a producer's payment if the producer's milk had a high somatic cell count. He testified that cheese yields and cheese quality both suffer when raw milk has somatic cell counts above 300,000 per milliliter. The money deducted from payments for milk with a high somatic cell count would be returned to other producers in the pool whose milk had lower somatic cell counts.

A witness for Avonmore West, a handler under Order 135, testified in support of MCP and urged also that if MCP is adopted, the pricing must recognize the relationship of somatic cells to the true value of protein in the milk. The witness cited the Recommended Decision (57 FR 36536) to adopt MCP in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana orders. The Recommended Decision in that proceeding adopted MCP for the three orders and included adjustments for somatic cells both in prices paid to producers and in prices paid by handlers. He urged USDA to follow its own lead and adopt adjustments for somatic cells based on the evidence presented at this hearing and the Recommended Decision for the three orders noted above. He contended that if MCP is adopted for Orders 124 and 135 without adjustments for somatic cells, producers with a low somatic cell count in their milk will be subsidizing producers with high somatic cell counts in their milk.

The only brief filed on this issue was filed jointly by Darigold, Farmers Cooperative Creamery, and Northwest Independent Milk Producers Association. The brief supported adoption of MCP for both orders and recapped the alternative proposals made at the hearing. The brief concluded that the preferred basis of determining component values (other than butterfat) would be as proposed by NWI, i.e., the Class III price would be based on the Green Bay National Cheese Exchange price. This approach was preferred but the brief also indicated that either the original proposal or the proposal to use the average M–W component tests as the divisor of the skim value to get the per-pound prices for protein or solids nonfat would be acceptable. However, the brief expresses the view that a somatic cell adjustor for paying producers should not be adopted on the basis of the record in this proceeding.

The orders should be amended to provide Class II and Class III milk prices to handlers and payments to producers based on multiple component values. This concept is widely supported and is justified by evidence contained in the hearing record.

MCP should be adopted as a step towards improving the way the Federal order translates market values for dairy products into milk prices that indicate to producers how these products are valued in the marketplace.

As the record indicates, the current pricing system has, over time, placed a greater share of milk value on the skim portion of milk, and a lesser value on the butterfat portion. Nevertheless, a

further recognition of market value as it relates to the value of milk components can be achieved by converting the skim milk value into components, either protein or solids nonfat, on a per-pound basis. As the testimony indicates, it is not sound pricing practice to consider that all skim milk has the same value, regardless of its level of protein or solids nonfat content. The varying values for the components in skim milk can be more properly reflected in handler prices for Class II and Class III milk, and prices to individual producers, if MCP is incorporated into the order. Moreover, incorporating MCP into the orders will tend to insure at least a minimum value of the components for all handlers and producers. This element may be lacking where there are varying premium plans in use in the market, and where perhaps not all producers are involved. Also, providing for MCP in the Federal orders will allow handlers to pay lower prices to producers whose milk tests low for the component other than butterfat. Thus, pricing equity among producers and handlers should be enhanced by adoption of MCP.

Another reason for adopting MCP is that, as a pricing system, MCP will improve how well the pricing system in the orders translates consumer preferences into economic signals that indicate to dairy farmers exactly what consumers want. Data presented at the hearing show clearly that, over time, consumers prefer milk products with less fat. Adopting MCP for Orders 124 and 135 will facilitate sending clear signals to producers that consumers want less fat and more protein or solids nonfat in their dairy products.

Clearly, the vast majority of the milk pooled in these two markets is used for Class II and Class III uses. In the Pacific Northwest market, almost two-thirds of the milk pooled annually in 1989, 1990, and 1991 was classified in Classes II and III combined; and the percentage is increasing, going from 62.51 for 1989 to 64.47 percent for 1991. In the Southwestern Idaho-Eastern Oregon market, over 80 percent of the total milk pooled in the years 1989 through 1991 was used in Class II and Class III products.

As proposed, MCP for Order 124 will utilize a solids nonfat component and MCP for Order 135 will utilize a protein component. Not only will such pricing plans recognize that these markets utilize most of their milk in Class II and Class III uses, they also will recognize the particular principal dominant product manufactured from surplus milk supplied in each market. Moreover, the use of protein as the second component in Order 135 will make the provisions of that order more compatible with provisions of the neighboring Great Basin Order.

The proponents indicated that at the time of the hearing 59 percent of the Class II and Class III milk pooled under the Pacific Northwest order was being made into nonfat dry milk and 26 percent into cheese. Thus, the use of solids nonfat is appropriate since the majority of manufactured milk is oriented more toward the products and uses in which all the solids nonfat are consumed together.

On the other hand, in the Southwestern Idaho-Eastern Oregon market, nearly 80 percent of the milk is made into cheese, in which protein is an important component. Thus, the use of butterfat and protein for MCP is appropriate for Order 135.

Under the plan adopted herein, the price for a pound of butterfat will be the same for both orders, i.e., the sum of the skim milk price divided by 100 and the butterfat differential multiplied by 10. Since each producer will receive payment for the milkfat on a price-per-pound basis, there will no longer be a need for a producer butterfat differential in either order. Thus, the proposed order language does not contain a provision for a "producer butterfat differential."

The prices per pound for solids nonfat and protein should be based on the basic formula price (i.e., the M–W price). For each component, the skim milk value will be determined by subtracting from the M–W price the butterfat price multiplied by 3.5, and dividing the result by the average percent of solids nonfat or protein (as appropriate) for the month in the milk upon which the M–W price is based, as announced by the Dairy Division. Use of the average tests for the components (other than butterfat) in the M–W milk will be consistent with such a provision recently adopted for the Great Basin, Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana markets. This approach was suggested by several people and was supported in briefs. No one specifically opposed it.

There are two related issues that also should be addressed in connection with determining component prices. First, we should point out that the solids nonfat content of producer milk in the Pacific Northwest market may be higher than the solids nonfat content of the milk that is the basis for the M–W price, based on limited information in the record. For example, Exhibit Number 7, Table 1, shows that Darigold Farms' solids nonfat tests averaged 8.69 percent for the months of January through July 1992. On a monthly basis, the Darigold tests were from .04 to .19 higher than the M–W milk solids nonfat content for the same period. Also, page two of Exhibit 10–B shows that NWI's solids nonfat tests averaged 9.10 percent during January through July 1992. Each of the monthly tests of NWI's milk was more than .5 above the nonfat solids content of the M–W milk. The average percent solids nonfat tests of producer milk included in the M–W "Base Month" Price Series during January through July 1992 were: January, 8.55; February, 8.52; March, 8.55; April, 8.57; May, 8.56; June, 8.56; and July 8.53. Official notice is taken of page 2 of Dairy Market News, Volume 59, Report 46, dated November 13, 1992, issued by the Department of Agriculture, Agricultural Marketing Service, Dairy Division, P.O. Box 8911, Madison, Wisconsin 53708–8911.

The record does not contain data showing the average solids nonfat content of all producer milk for the Pacific Northwest market. Thus, the comparisons made above are not conclusive. However, if the comparison reflects the actual market situation, the price for a pound of solids nonfat would be higher if the M–W test is used as a divisor in the proposed formula for calculating the price than if the market average test is used. As a result, the value of Class II and Class III milk in the pool would increase from current levels.

A second related issue that must be kept in mind is that USDA has already conducted a hearing to consider proposed alternatives to the M–W price as the basic formula price for all the orders. If the Secretary decides to replace the M–W price with some other factor or factors to establish the basic formula price, a question may arise as to what tests for solids nonfat or protein should then be used. Absent any knowledge at this time as to the outcome of that proceeding, it would seem appropriate to continue to use the tests prescribed in this decision. Later, it may be necessary to consider amending the orders in this regard.

NWI's proposal to put a $12.10 per hundredweight floor under the basic formula price is not adopted. The principal purpose of this proposal relates to Class I milk prices. However, Class I milk prices are not an issue in this proceeding.

Several other proposed modifications to the initial proposal on component prices were offered at the hearing. However, none of these modifications should be adopted.

One of the modifications would provide a location adjustment to the basic formula price for Order 135

because additional milk supplies likely would be made into cheese that would have to be transported elsewhere to be sold. Another reason advanced is because a lower price would improve competition with cheese made from milk priced under the California State milk order, which has a lower price.

This proposed modification should not be adopted. The purpose of the basic formula is to move prices for milk in most uses in all Federal order markets. It should not be modified for the purpose of accommodating expected sales competition for one product under one order.

Similarly, the Class III cheese formula price modification advanced by NWI and endorsed by Darigold in its brief also must be denied. With the exception of consideration of a lower price for milk used to make nonfat dry milk (Class III–A), it has long been the policy of USDA that the lowest-priced class of use under the Federal order program is based on the concept of a national market for products (butter, powder, and cheese) made from milk not needed for Class I use. Those products made from Grade A milk marketed under Federal orders compete with products made from non-grade A milk. Since these products compete in a national market, there has been a common surplus class price in almost all Federal orders for many years. It should be noted, of course, that the policy of uniformly pricing surplus milk was modified with the adoption of a Class III–A pricing formula that was implemented in 27 Federal orders, including the Pacific Northwest order, on December 1, 1993. Despite this change, however, the policy of uniformly pricing all surplus milk, except skim milk used in the production of nonfat dry milk, should be continued, at least for the present.

There are other considerations as well. As noted earlier, a hearing has already been held on a replacement or an alternative to the M–W price for the basic formula price under the orders. Also, as noted above, there is now a separate Class III–A price for skim milk used to produce nonfat dry milk in the Pacific Northwest order. There appears to be a question about whether a separate Class III–A price could be justified if the proposed price to be derived from the cheese exchange prices were adopted as a basic formula price. The record in this proceeding is not adequate to deal with this question.

Also, there appears to be a dilemma in the difference between handler prices for milk to make cheese prescribed under the Federal orders and those provided under the California milk pricing program. However, we do not feel the proper approach to this problem is to lower the surplus milk price to handlers under one particular order.

Another reason not to adopt the NWI proposal is that it is a product formula price based on cheese, yet the principal use of surplus milk in the Pacific Northwest order is nonfat dry milk. The record simply contains no explanation as to why a proposal for multiple component pricing in this market situation should have the component values based on a price derived from the cheese market only.

Finally, on the basis of the record in this proceeding there should be no adjustments to prices under Order 135 based on the level of somatic cells present in the market's raw milk supply. While the record evidence indicates that somatic cell levels are important, the record lacks sufficient evidence to develop appropriate provisions to implement a price adjustment based on somatic cell levels.

In should also be noted that the brief filed on behalf of Darigold, NWI, and Farmers Cooperative Creamery also concluded that "there is insufficient evidence to warrant adopting an 'SCC Adjuster' in either Order 124 or Order 135." Finally, we would point out that some proponents expressed a desire to keep the MCP provisions in Order 135 compatible with those in the Great Basin order. Since the Great Basin MCP provisions do not include a somatic cell adjustor, it would be contrary to compatibility to include such an adjustor in Order 135.

Incorporation of component pricing in Orders 124 and 135 will necessitate amending provisions of the orders dealing with handler reports, class (and component) prices, the computation of handler's obligations and payments to the producer-settlement fund, and the determination of payments to producers.

For purposes of allocating nonfat milk solids and protein, it is assumed that both components remain evenly distributed within the skim milk portion of milk receipts. This assumption will allow the proration of nonfat solids and protein to skim milk for purposes of determining shrinkage and allocating receipts to utilization.

In addition to the information that is already reported each month to the Market Administrator, each handler under Order 124 will be required to report the average nonfat solids content of milk received from each producer during the month, the amount of nonfat solids in the handler's other receipts, except receipts of other source milk, and the nonfat solids contained in bulk transfers of milk and cream to other handlers. Partially regulated distributing plant operators will not be required to report information regarding the nonfat solids of their milk receipts unless they elect to have their obligations calculated under the provision that would determine obligations on the same basis as those of fully regulated handlers. Handlers under Order 135 will have to report the protein content of their milk receipts in a similar fashion as that described above.

The amended orders will contain definitions for a skim milk price, a butterfat price, a nonfat dry milk price for Order 124, a milk protein price for Order 135, and the usual class and producer prices. The "skim milk price" will be used to determine the value of the skim milk portion of producer milk that is allocated to Class I. Value adjustments for determining payments by handlers for milk used in Class II and Class III, and to producers, will be made by prices per pound for the butterfat and nonfat dry milk (for Order 124) or protein (for Order 135) contained in the milk. The skim milk price, the butterfat price, the nonfat milk solids price, and the milk protein price will be derived from the Class III price and the butterfat differential.

Payments to producers for deliveries of milk will be determined through the operation of two marketwide pools for each order. Both orders will contain a "differential pool" which will be used to determine producers' share of the Class I and II market. A second pool—the "skim milk nonfat milk solids pool" in the case of Order 124 and the "skim milk protein pool" for Order 135—will be used to determine the price to be paid producers for the nonfat solids or protein in their milk.

Each handler's net obligation to the pool (i.e., the handler's payment to the producer-settlement fund) will be determined by subtracting the differential and nonfat solids (or protein) values due to the handler's producers from the differential and nonfat solids (or protein) values of the producers' milk used by the handler. The value of butterfat in each producer's milk will not be pooled, but will be paid directly to the producer.

The differential value of each handler's receipts of producer milk assigned to Class I and Class II will be calculated by multiplying the hundredweights of producer milk allocated to these classes by the difference between the respective class prices applicable at the location of the plant and the Class III price. In addition, the adjustments to the class values of producer milk that currently are included in determining a handler's obligation would be included in the differential value. The adjustments include the values of overage, beginning Class III inventory allocated to a higher class, other source and filled milk receipts allocated to Class I, certain receipts from unregulated supply plants that are allocated to Class I, and receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use. Each handler's differential value will be combined and then divided by the hundredweight of producer milk in the differential pool to determine the "weighted average differential price." An "estimated uniform price" can be derived by adding the weighted average differential price to the basic formula price for the month. Although the uniform price would not be applicable to producers under the component pricing plan, it is of value for price comparison purposes with other Federal orders.

Each handler's skim milk-nonfat milk solids value for Order 124 and skim milk-protein value for Order 135 will be determined by combining the skim milk value of the handler's producer milk in Class I with the nonfat solids value (or milk protein value) of the handler's milk in Class II and III. The skim milk value will be determined by multiplying the skim milk in producer milk assigned to Class I by the skim milk price. The nonfat milk solids (or protein) value will be determined by multiplying the nonfat milk solids (or protein) in producer milk assigned to Class II and III by the nonfat milk solids price (or the milk protein price). The amount of nonfat solids or protein in each class will be determined by multiplying the skim milk portion of producer milk allocated to each class by the nonfat solids (or protein) content of all of the handler's producer milk. The price to be paid to producers for the nonfat solids (or protein) in their milk will be determined by combining the individual handler values of skim milk in Class I milk and nonfat solids (or protein) in Class II and III milk, and dividing the resulting total by the pounds of nonfat solids (or protein) in all producer milk. The resulting price will be the "producer nonfat milk solids price" (or the "producer milk protein price").

As a result of the order amendments described, payments to producers will be based on three factors: (1) The weighted average differential price for all of their milk; (2) the nonfat milk solids or protein contained in their milk multiplied by the respective producer nonfat milk solids price or producer protein price; and (3) the butterfat in their milk multiplied by the butterfat price.

Adoption of multiple component pricing plans requires amending provisions of the orders dealing with handler reports, shrinkage, computation of class and component prices, the computation of a handler's obligation to the pool, computation of a weighted average differential price, and the computation of a producer nonfat milk solids price for Order 124 and a producer protein price for Order 135. These changes have already been discussed.

Several conforming changes must be made in the order language of both orders to implement component pricing. Other minor changes, though not strictly of a conforming nature, have been made to clarify and improve order language.

Other sections of the orders, however, have been changed to accommodate reference changes, date changes, and minor terminology changes resulting from component pricing. These changes require some explanation here.

Section 19 ("product prices") of both orders has been modified to accommodate reference changes, eliminate unnecessary language, and to include the butterfat differential that previously was described in section 74 of both orders. The latter change was made because the description of the butterfat differential fits better with the product prices which are used to compute the butterfat differential and because of the diminished importance of the butterfat differential under a component pricing system. This change also eliminates redundant language that was included in both sections. As a result of making this change, several sections following section 74 (i.e., §§ 1124.75–1124.78 and §§ 1135.75–1135.79) had to be redesignated to close the gap created and several reference changes had to be made as a result.

Sections 30 and 31 of both orders were modified to accommodate the reporting of nonfat milk solids in Order 124 and protein content in Order 135. In addition, under Order 135 the date for filing reports of receipts and utilization was changed from the 7th day to the 9th day after the end of the month, and the date for filing payroll reports was changed from the 20th to the 22nd day after the end of each month. In support of these changes, the spokesman for Darigold Farms testified that the present reporting date for the report of receipts and utilization leaves no time to review the report, investigate apparent errors, or make corrections. He also stated that the modified reporting dates will correspond to those of the Pacific Northwest order. There was no opposition to these proposals.

The "other reports" section of Order 124 was modified to improve the language of that section. There was no intention to substantively change the meaning of this section.

The present §§ 1124.51a and 1135.51a have been eliminated, but the contents of those sections have been incorporated in §§ 1124.51 and 1135.51, respectively. These changes, which are also of a non-substantive nature, were made in conformance with **Federal Register** guidelines.

Comments on the component pricing portion of the recommended decision were filed on behalf of Darigold Farms, Farmers Cooperative Creamery, Magic Valley Quality Milk Producers Association, Tillamook Cooperative Creamery Association, and Western Dairy Cooperative, Inc. The commentors stated that they endorsed all aspects of the Recommended Decision which pertain to MCP and urged its prompt implementation.

2. Performance standards for supply plants under the Pacific Northwest order.

The Pacific Northwest order should be amended to provide that the delivery requirements for qualification as a supply plant be not less than 20 percent of the total quantity of milk that is (1) physically received at the plant from dairy farmers eligible to be producers or (2) is diverted as producer milk to another plant.

To qualify as a pool plant, the order currently requires a supply plant to ship "not less than 30 percent" of the total quantity of milk that is physically received at the plant from producers or that is diverted as producer milk to another plant.

Tillamook County Creamery Association (TCCA) proposed a decrease in the shipping percentage from 30 percent to 20 percent. TCCA requested, and was granted, a temporary reduction in the delivery requirements in 1990, 1991, and 1992.

A TCCA spokesman testified that the request to reduce the supply plant shipping percentage was made by TCCA as a result of continuing changes in the industry. He pointed out that the present 30 percent shipping percentage was adopted when the Federal order was adopted February 1, 1989. The witness noted that at the time of order implementation (early 1989), Class I utilization was 155 million pounds, which represented in excess of 39 percent of total producer milk in the Pacific Northwest market. By February 1992, however, Class I utilization was 164 million pounds in the Pacific

Northwest market, and the Class I pool utilization had dropped to 35 percent. By May of 1992, the percent Class I utilization decreased even further to 30.8 percent.

Two other witnesses, one representing Darigold Farms and the other Northwest Independent Milk Producers, testified in favor of TCCA's proposal. No one testified in opposition to it.

The proposal to amend the delivery requirements for qualification as a supply plant should be adopted due to the changing conditions in the market. As a result of increases in milk production, pool supply plants are utilized less by pool distributing plants as a source of milk for bottling. Consequently, they may be unable to meet the order's present shipping requirements and maintain the producer status of dairy farmers that have been historically associated with this market.

Currently, three options are open to the operators of pool supply plants who find that their milk is not needed at pool distributing plants. First, despite the fact that the milk is not needed, they can move milk from the production area to pool plants in the metropolitan area, unload it, and pick up an equal amount of milk from the pool plant and return it to the pool supply plant location where the milk can then be processed into Class III products. This adversely affects the milk quality without even considering the costs of transportation, yield reduction, and milk volume loss. When milk is handled, abuse occurs to some extent. When milk is pumped into a plant, through equipment, and then reloaded and hauled back or hauled to another plant, this process affects the quality of the product. That can affect the milk's use for fluid products, depending on the amount of handling involved. It can also affect the quality of cheese that can be made from milk.

The second alternative is to find another pool plant that has adequate pool sales and combine the two marketing reports. If the combined delivery percentage reaches 30 percent of the total production of the combined supply plants, then both plants qualify to participate in the pool. This option depends entirely on the pool supply plant's ability to find another supplier with adequate sales to cover the deficit and one who is willing to cooperate by allowing its volume to be used.

The third option available to the supply plant operator is to request a temporary reduction in the delivery requirements. Paragraph 1124.7 3(c) allows the director of the Dairy Division to reduce or increase the delivery percentage by 10 percent upon request.

After carefully reviewing the testimony on this issue, it is concluded that the delivery requirements for qualification as a supply plant should be decreased from not less than 30 percent to not less than 20 percent. In view of the increases in milk production and the lower Class I utilization percentage, it is much more appropriate to permanently change the delivery requirements of the order than to rely on temporary revisions in shipping percentages.

The evidence shows that TCCA is committed to meet the needs of the fluid market. For example, on several occasions it has reduced its cheese production to supply loads of fluid milk to the Portland market.

TCCA is the largest Oregon-based dairy cooperative, handling approximately one-third of the milk produced in the State each day. Of the one and a half million pounds of milk handled daily, roughly 1.1 million pounds are used to produce cheese for the retail market and 400,000 pounds are shipped to the Portland market for sale to Class I milk handlers.

The lower shipping percentage for pool supply plants will not jeopardize the needs of the fluid market, particularly with the provision now in the order that permits the Director of the Dairy Division to increase the percentage on short notice should additional shipments become necessary. The lower percentage will, however, permit milk that has been historically associated with this market to continue to participate in the marketwide pool and, for this reason, it should be adopted.

One comment letter was received with respect to this part of the recommended decision. Darigold Farms stated that it was pleased with the adoption of this proposal and urged that it be implemented.

3. Status of a milk plant operated by a State institution under the Pacific Northwest order.

The Pacific Northwest order should be amended to provide that a milk plant operated by a State institution, but which is not exempt from the provisions applicable to a producer-handler, may receive up to an average of 1,000 pounds per day of Class I milk from fully regulated handlers.

The order currently provides that "any State institution shall be a producer-handler exempt from the provisions of this Section and §§ 1124.30 and 1124.32 with respect to milk of its own production and receipts from pool plants processed or received for consumption in State institutions and with respect to movements of milk to or from a pool plant." Thus, a State institution plant may buy bulk milk or packaged milk products as Class I milk without limits from pool plants for use in State institutions. If such a plant has sales to outlets other than State institutions, a limit on such purchases of 100 pounds per day average is applicable, and the plant must file reports, the same as any other producer-handler.

The Washington State Department of Corrections proposed amending the producer-handler and nonpool plant provisions to provide total exemption from all provisions of the order for "a plant owned and operated by a State institution or establishment which processes or packages fluid milk products."

The witness for the proponent testified that because the Department of Corrections buys milk products from pool plants, there is a continuing conflict between the State law under which the prison dairy is operated, and the Federal order's definition of a producer-handler. He explained that under Chapter 72, Correction Reform Act of 1981, Revised Code of Washington, the Washington State Reformatory Dairy (WSRD) is mandated to "(1) provide a work training program for inmates, (2) imitate private industry as much as possible and thereby be self-supporting, and (3) provide quality products to government and nonprofit agencies at or below market prices." Thus, the WSRD is allowed, under the State law, to buy whatever milk products it needs in order to serve its clients. Such purchases have, on occasion, exceeded the quantity that a producer-handler is allowed to acquire under the Pacific Northwest order, according to the testimony.

The only other witness that testified in favor of the proposal represented the Oregon Department of Corrections. Under cross examination, he indicated that there are no Oregon statutes that apply to the Department of Corrections' dairy facility. On the other hand, he also indicated that the Dairy is prohibited from selling to the private sector.

The proposal to exempt State institutions was opposed by one proprietary handler and by three cooperative associations. The principal thrust of the opposition testimony was that adoption of the proposal would open the door for State institutions to compete against fully regulated handlers for Class I and Class II sales, and that the State institutions would have a competitive advantage by being exempted from the Federal order pricing and pooling regulations.

The proposal to totally exempt a plant operated by a State institution should not be adopted because it would make it possible for the operations to compete for commercial sales against fully regulated handlers. On the other hand, there appears to be a need to provide some relief from the very limited amount of Class I fluid milk products that such a plant may receive from pool plants under the producer-handler provisions of the order.

After reviewing the testimony on this issue, it is concluded that a State institution that is not exempt from the producer-handler limits on receipts of milk from pool plants should be able to receive more fluid milk products from pool sources than the amount allowed for other producer-handlers.

The evidence shows that the WSRD has had problems in conducting its operation in accord with its operating mandate while, at the same time, staying within the limits that the order places on receipts by a producer-handler.

The current limit on receipts of fluid milk products from pool plants by a producer-handler has been in effect for many years (Official Notice is taken of the Order Amending The Order Regulating The Handling Of Milk In The Puget Sound, Washington, Marketing Area, effective September 1, 1959, as published in the **Federal Register** on July 29, 1959, beginning at page 6027).

While this proceeding does not deal with producer-handlers as such, it is clear that the 100 pounds per day limit as applied to a State institution is unreasonably low. This is clearly demonstrated in the testimony that in the last five years the number of inmates in the Washington State Department of Corrections institutions has increased from 6,000 to 10,000 inmates, and that growth to 12,000 is expected in the next three years. Since the Department of Corrections is authorized to purchase products that it does not process or manufacture, the need for greater supplemental purchases is clear. Accordingly, a State institution milk plant should be permitted to receive an average of 1,000 pounds per day of Class I fluid milk products from pool plants during the month. However, no change in the limit should be provided for producer-handlers that are not State institutions.

In commenting on the Department's handling of Issue No. 3, Darigold Farms, the only party commenting on this issue, indicated that it supported the position reached in the recommended decision.

4. Plant location adjustments for Yakima County, Washington, under the Pacific Northwest order.

The proposal to change the location adjustment (No. 3 in the Notice of Hearing) on all producer milk received at plants in Yakima County in Federal Milk Order 124 is denied.

The order defines zones for the purpose of determining location adjustments. The order currently states that Yakima County, Washington, is in Zone 4, which has a 15 cents per hundredweight location adjustment.

Darigold Farms proposed a decrease in the location adjustment from 15 cents per hundredweight to 6 cents per hundredweight, a change of 9 cents. Accordingly, Yakima County would move from Zone 4 to Zone 2.

The witness for the proponent testified that the theory behind a location adjustment is to be able to attract producer milk from outlying areas to market centers or alternatively to attract packaged milk from a pool plant located in outlying areas. The Pacific Northwest order has four market centers: Portland, Oregon; Eugene, Oregon; Seattle, Washington; and Spokane, Washington. Yakima County is roughly in the center of the triangle formed by Portland, Seattle, and Spokane.

The witness noted that the Pacific Northwest Order has relatively low Class I utilization, about 35 percent. There is more than an adequate supply of bulk milk to serve both fluid and manufacturing markets. He also pointed out that in a low utilization market such as Pacific Northwest, location adjustments are seldom needed. There has been no history of handlers in the Pacific Northwest market not being able to obtain bulk milk.

The witness testified that Darigold was not proposing the elimination of location adjustments, but rather to maintain the status quo for all the other fluid milk handlers in the market. The only fluid plant that would be affected is the Darigold plant in Yakima County, which would pay an added nine cents per hundredweight.

The witness' testimony drew a parallel between Yakima County, Washington, and Whatcom County. The two counties are very similar, he noted, in that there's a large concentration of milk in a small area. Moreover, both plants are located outside major market centers, and both counties have small fluid operations which serve the county area but not the market centers.

The witness for the proponent testified that the proposal was being made because of the opening of the Darigold plant in Sunnyside in December of 1991. The plant was needed to help balance the increased production in the Pacific Northwest and the increase of milk in Yakima County. Comparing December of 1980 to December of 1990, Yakima County dairymen increased their deliveries of producer milk from 18.9 million pounds to 49.7 million pounds per month. The Yakima County producers currently account for 13.5 percent of the milk marketed in the Pacific Northwest order.

The witness noted that, prior to the opening of the Darigold/Sunnyside plant, the milk from Yakima County was sent to plants in Seattle and Chehalis, Washington, which have no location adjustment. No location adjustment was needed since milk production increases in western Washington are expected to keep all plants full.

The witness testified that the 15-cent-per-hundredweight location adjustment at Sunnyside, in effect, constitutes a "penalty" to the Darigold producers who financed the Sunnyside plant, which was needed by all producers to ensure outlets for all milk produced in the marketing area. Had the plant not been built, disorderly market operations surely would have developed, he said. The witness argued that this "penalty" is unnecessary because hauling costs will move the milk to market centers without location adjustments. He pointed out, for example, that Darigold's hauling costs from Sunnyside to Spokane, the closest market center, is 76 cents per hundredweight for a distance of 120 miles, or .6 cents per mile. In comparison, the proposed decrease from 15 cents to 6 cents would move the milk only about 15 miles at the .6-cent-per-hundredweight cost.

The witness testified that for any producer farm located closer to Spokane than to Sunnyside, it is cheaper to move milk to Spokane than to Sunnyside even with no location adjustment. Reducing the location adjustment to six cents merely moves the geographic break-even point 15 miles closer to Sunnyside and enlarges by the same 15 miles the area from which Spokane pool plants can readily attract milk.

The witness testified that within the original area, without the 15-mile adjustment, there already is enough milk to satisfy the needs of Spokane pool plants, so there is no need to provide a further incentive to move milk that is located in that 15-mile area closer to Sunnyside. The Sunnyside milk also can and does supply Seattle pool plants and could service plants in Portland and Spokane. A similar analysis shows that there is far more milk in the areas closer to Seattle and Portland than needed by pool plants in those areas. Therefore,

the 15-mile incentive which the 6-cent location adjustment represents is not really needed as an incentive to move milk to those market centers. The witness noted that the combination of some Yakima Valley milk that is surplus to the Sunnyside plant's capacity, plus the western Washington milk, is adequately supplying the needs of all the plants in western Washington.

Three other witnesses testified on Proposal No. 3. The witnesses for Portland Independent Milk Producers Association and Olympia Cheese Company were opposed to Proposal No. 3, and the witness from Inland Northwest Dairies, Inc., also expressed reservations. Two briefs discussing Proposal No. 3 were filed, one by Darigold Farms in favor of the proposal, and one by Portland Independent Milk Producers Association opposed to the proposal.

Portland Independent Milk Producers Association opposed Proposal No. 3 to change the zone classification for plants in Yakima County from Zone 4 to Zone 2 to reflect the same location adjustment that Whatcom County currently enjoys. The witness testified that the theory behind a location adjustment is to be able to attract producer milk from outlying areas to market centers. He pointed out that the proposed zone change in the proposal appears to have the opposite effect in that it would increase the return to producers delivering milk to plants located in Yakima County.

The witness noted that increased returns could send two signals. One signal is that there is actually an additional demand for fluid milk to be delivered to Yakima County, which is not believed to be the case. There appears to be more than an adequate supply of milk for the Yakima County fluid operations. The second signal sent to producers when there is a situation of increasing returns is to increase production. The witness did not feel that either of these signals is appropriate in light of the theory behind a functioning location adjustment program or the already increasing supplies of milk surplus to fluid market needs in these areas.

The witness also expressed concern that there is an increasing imbalance between freight costs of milk produced in the Yakima Valley area and delivered to local plants and that milk which moves up to 200 miles to the market center. He argued that acceptance of Proposal No. 3 further accentuates the potential imbalance. The witness stated that it was their understanding that Yakima County is the type of market situation that a location differential program is designed to protect.

In comparing Whatcom County to Yakima County in this proposal, the witness extended that comparison by quoting from the 1988 final decision (53 FR 4165) which merged the Oregon-Washington and Puget Sound-Inland Federal milk orders into the Pacific Northwest order and established the current location adjustment program under the merged order.

Proponents' arguments for reducing the present six cent location adjustment at locations in Whatcom County, Washington, are less persuasive. The location adjustment should not be reduced. One reason given for such a reduction was that the nearby manufacturing plant in Lynden provides an outlet for milk surplus to the market's fluid needs while location adjustments are still needed at locations in southern and central Oregon and central Washington precisely because no nearby manufacturing plant exists to provide an outlet for surplus milk produced in these areas. In fact, the situation thus described by the Darigold witness should result in a greater location adjustment for Whatcom County, for instance, than Jackson County, Oregon. The receipt of milk at a manufacturing plant located in an area of heavy milk production at some distance from the market's center is the classic situation to which location adjustments were designed to apply. Prices paid for such milk are adjusted downward for location to compensate for the fact that the milk has not been hauled to distant bottling plants but instead has been shipped a relatively short distance at a significantly lower hauling cost.

The witness quoted another passage from that decision where it states,

> these markets, with manufacturing plants located in heavy production areas distant from most distributing plant locations, are more comparable to the situation of Whatcom County. Such increases, that update location adjustments to correspond to the significant increases in hauling costs that have been experienced since most location adjustment provisions were written, are actually the only means of "modernizing" location adjustments. It is very possible that it would be appropriate to modernize or increase the location adjustment at Whatcom County as urged by Northwest Independent Milk Producers Association and Carnation Company. However, there is inadequate data and testimony in the record of this proceeding to determine an appropriate change in the level of location adjustment for Whatcom County.

The witness pointed out that the same theory underlying the 1988 decision relative to Whatcom County is applicable to Proposal No. 3, and expressed the view that based on the current harmonious relationships within the marketplace, the 15-cent location adjustment should be maintained if location adjustments are going to continue to be recognized within this Federal order.

Olympia Cheese Company opposed Proposal No. 3 relative to changing the zone classification for plants in Yakima County from Zone 4 to Zone 2 to reflect the same location adjustment as Whatcom County. The witness testified that Olympia Cheese Company currently procures a substantial portion of its milk supply in Yakima County. That milk has to be shipped over the mountains in order to get to western Washington where its plant is located. The company subsidizes part of those hauling costs. The witness maintains that the proposed reduction in the location adjustment in Yakima County will further add to milk costs because in order to keep the milk supply from that county, hauling costs will have to be subsidized further by the same amount as the reduction in the location adjustment in order to stay competitive in milk procurement in that region.

The witness testified that Olympia Cheese Company's suppliers are going to be competing precisely against those suppliers in the Yakima County area, forcing them to come up with the same amount, even though its suppliers go across the mountains to western Washington. The witness contends that if its suppliers were breaking even before with respect to hauling cost, with the adoption of Proposal No. 3 they would be nine cents worse off.

The Olympia Cheese Company's witness stated that a location adjustment's traditional role is to reduce the payment to individual farmers for any milk that stays in the county—i.e., that milk which is not shipped to a heavily populated area. This provides a disincentive and promotes the shipment of milk from high production/low population areas to high population areas. The witness stated that in the case of Proposal No. 3, it appears the location adjustment is doing the opposite of intended, in the sense that all of a sudden the incentive is reduced, therefore increasing the incentive for the milk to stay in Yakima County. The witness pointed out that location adjustments are there precisely to promote shipment of milk to populated areas, and that they were used as a mechanism by USDA for this purpose.

Inland Northwest Dairies, Inc., also expressed concerns over the adoption of Proposal No. 3. The witness emphasized that there has been a very harmonious relationship in the marketplace. The witness stated that, with the adoption of Proposal No. 3, the company might be in a much tougher position in the future to recruit milk from producers in the Yakima Valley, from where 80 percent of its milk supply comes. He contended that because of competitive conditions, Darigold's producers may not have to pay as much in the future to get their milk to the Sunnyside plant as what others would have to pay to bring milk from the Yakima region to Spokane, Washington.

The witness was further concerned with adjusting the location allowance because of the situation that also exists in Moses Lake, where Safeway 85, Inc., a pool plant, has a 15-cent location adjustment. He stated that reducing the location adjustment in Yakima County could create some disparity in the marketplace because Safeway is definitely competition. The witness emphasized that the majority of its milk comes from the Yakima and Benton County region and that in the long-term there may be some inequities should the amount charged Darigold producers in the future be adjusted by the location adjustment in Proposal No. 3.

The purpose and intention of location adjustments is to provide the incentive to move milk from one area to another for fluid uses only. Generally speaking, this means moving milk from outlying production areas to the more heavily populated market centers. It is not the purpose of location adjustments to facilitate the movement of milk to a distant location for manufacturing uses.

The witness for the proponent testified that the proposal was being made because of the opening of the Darigold plant in Sunnyside in December of 1991 to help balance the increased production in the Pacific Northwest and the increase of milk in Yakima County. Prior to the opening of the Darigold/Sunnyside plant, milk from Yakima County was sent to plants in Seattle and Chehalis, Washington, which have no location adjustment. The witness testified that the 15-cent-per-hundredweight location adjustment at Sunnyside in effect constitutes a "penalty" to the Darigold producers who financed the Sunnyside plant. In light of this, however, Darigold producers now have access to the local Sunnyside plant without having to incur the costs of hauling milk to Seattle and Chehalis, Washington.

Current conditions indicate harmonious relationships within the marketplace. The location adjustment change proposed is not needed to prevent disorderly marketing conditions in Yakima County or anywhere within the marketplace. Fluid milk needs are being more than adequately met, and there appears to be no need to encourage production of milk in the Pacific Northwest market by increasing the level of returns to producers.

In conclusion, we find no compelling reason to reduce the location adjustment in Yakima County based on this record. Yakima County should remain in Zone 4 with a 15-cent-per-hundredweight location adjustment.

While no exception was taken to this conclusion, two cooperative associations did comment on it. Portland Independent Milk Producers Association (PIMPA) stated that the department was correct in denying the proposal, while Darigold Farms wrote that it was "puzzled" by the department's rationale in denying the proposal and would like to revisit the issue of location adjustments at a future hearing.

It was stated in the recommended decision that the record evidence indicated there was no need to move milk for fluid use from Yakima County to any of the population centers in this market: i.e., Seattle, Portland, Eugene or Spokane. However, PIMPA points out in their exception that a significant amount of their Yakima County milk does, in fact, move to a number of handlers in one or more of these population centers, and this point is supported by record evidence. Consequently, it cannot be concluded on the basis of this record that location adjustments are no longer necessary in this market.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when Orders 124 and 135 were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the respective marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreements and Order Amending the Orders

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk, in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Referendum Order To Determine Producer Approval for the Southwestern Idaho-Eastern Oregon Order; Determination of Representative Period; and Designation of Referendum Agents

It is hereby directed that a referendum be conducted and completed on or before the 30th day after the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the order as amended and as hereby

proposed to be amended, regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area is approved or favored by producers, as defined under the terms of each of the orders—as amended and as hereby proposed to be amended—who during the representative period were engaged in the production of milk for sale within the Southwestern Idaho-Eastern Oregon marketing area.

The representative period for the conduct of such referendum is hereby determined to be September 1993. The agent of the Secretary to conduct the referendum is James R. Daugherty, market administrator of the Southwestern Idaho-Eastern Oregon order.

Determination of Producer Approval and Representative for the Pacific Northwest Order

September 1993 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Pacific Northwest marketing area is approved or favored by producers as defined under the terms of the order (as amended and as hereby proposed to be amended) who during the representative period were engaged in the production of milk for sale within the Pacific Northwest marketing area.

List of Subjects in 7 CFR Parts 1124 and 1135

Milk marketing orders.

Dated: February 9, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

Order Amending the Orders Regulating the Handling of Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending the orders contained in the recommended decision issued by the Acting Administrator, Agricultural Marketing Service, on October 7, 1993, and published in the **Federal Register** on October 15, 1993 [58 FR 53439], shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

For the reasons set forth in the preamble, title 7, parts 1124 and 1135, are amended to read as follows:

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. The authority citation for part 1124 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

§ 1124.7 [Amended]

2. In the introductory text of § 1124.7(b), the number "30" is changed to "20".

§ 1124.9 [Amended]

3. In § 1124.9(c), the words "and nonfat milk solids" are added following the word "butterfat".

4. In § 1124.10, paragraph (c)(2) is revised to read as follows:

§ 1124.10 Producer-handler.

* * * * *

(c) * * *

(2) The producer-handler handles fluid milk products from sources other than the milk production facilities and resources specified in paragraph (b) of this section, except as specified as follows:

(i) A producer-handler, other than a State institution, may receive fluid milk products from pool plants if such receipts do not exceed a daily average of 100 pounds during the month; and

(ii) A State institution that otherwise qualifies as a producer-handler, but which processes or receives milk for consumption outside of a State institution, may receive fluid milk products from pool plants if such receipts do not exceed a daily average of 1,000 pounds per day during the month.

* * * * *

5. Section 1124.19 is revised to read as follows:

§ 1124.19 Product prices and butterfat differential.

The prices specified in this section, which are computed by the Director of the Dairy Division, Agricultural Marketing Service, shall be used, where specified, in calculating the basic formula prices pursuant to § 1124.51. The term *workday* as used in this section shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter on the Chicago Mercantile Exchange, using the price reported each week as the price for the day of the report, and for each following workday until the next price is reported.

(b) *Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), using the price reported each week as the price for the day of the report and for each following workday until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the first 15 days of the month computed as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat, and Grade A nonfat dry milk, respectively, for the Central States production area;

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area. The average shall be computed using the price reported each week as the daily price for that day and for each preceding workday until the day such price was previously reported.

(e) The *butterfat differential* is the number that results from subtracting the computation in paragraph (e)(2) of this section from the computation in paragraph (e)(1) of this section and rounding to the nearest one-tenth cent:

(1) Multiply 0.138 times the monthly average Chicago Mercantile Exchange Grade A (92-score) butter price as reported and published by the Dairy Division;

(2) Multiply 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month.

6. In § 1124.30, paragraphs (a)(1)(i), (ii), and (c)(1), (2) and (3) are revised to read as follows:

§ 1124.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Milk received directly from producers (including such handler's own production) and the pounds of nonfat milk solids contained therein;

(ii) Milk received from a cooperative association pursuant to § 1124.9(c) and the pounds of nonfat milk solids contained therein;

* * * * *

(c) * * *

(1) The pounds of skim milk, butterfat, and nonfat milk solids received from producers;

(2) The utilization of skim milk, butterfat, and nonfat milk solids for which it is the handler pursuant to § 1124.9(b); and

(3) The quantities of skim milk, butterfat, and nonfat milk solids delivered to each pool plant pursuant to § 1124.9(c).

* * * * *

7. In § 1124.31, paragraphs (a)(1), (b) introductory text, and (b)(1) are revised to read as follows:

§ 1124.31 Payroll reports.

* * * * *

(a) * * *

(1) The total pounds of milk received from each producer, the pounds of butterfat and nonfat milk solids contained in such milk, and the number of days on which milk was delivered by the producer during the month;

* * * * *

(b) Each handler operating a partially regulated distributing plant who wishes computations pursuant to § 1124.75(a) to be considered in the computation of its obligation pursuant to § 1124.75 shall submit its payroll for deliveries of Grade A milk by dairy farmers which shall show:

(1) The total pounds of milk received from each producer and the pounds of butterfat and nonfat milk solids contained in such milk;

* * * * *

8. Section 1124.32 is revised to read as follows:

§ 1124.32 Other reports.

In addition to the reports required pursuant to §§ 1124.30 and 1124.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligations under the order.

9. Section 1124.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1124.41 Shrinkage.

* * * * *

(c) * * * If the operator of a plant or a commercial food processing establishment pursuant to § 1124.20 purchases such milk on the basis of weights determined from its measurement at the farm, and butterfat tests and nonfat milk solids determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

10. The center heading preceding § 1124.50 is revised to read "Class and Component Prices".

11. Section 1124.50 is revised to read as follows:

§ 1124.50 Class and component prices.

The class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) The *Class I price*, subject to the provisions of § 1124.52, shall be the basic formula price defined in § 1124.51 for the second preceding month plus $1.90.

(b) *The Class II price* shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1124.51(b) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month:

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1124.51(a) and add 25 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1124.51(b).

(c) The *Class III price* shall be the basic formula price for the month.

(d) The *Class III–A price* for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

(e) The *skim milk price* per hundredweight shall be the basic formula price for the month pursuant to § 1124.51(a) less an amount computed by multiplying the butterfat differential computed pursuant to § 1124.19(e) by 35.

(f) The *butterfat price* per pound shall be the total of:

(1) The skim price computed in paragraph (e) of this section divided by 100; and

(2) The butterfat differential computed pursuant to § 1124.19(e) multiplied by 10.

(g) The *nonfat milk solids price* per pound shall be computed by subtracting the butterfat price, multiplied by 3.5, from the basic formula price and dividing the result by the average percentage of nonfat milk solids in the milk on which the basic formula price is based, as announced by the Dairy Division. The resulting price shall be rounded to the nearest whole cent.

12. Section 1124.51 is revised to read as follows:

§ 1124.51 Basic formula prices.

(a) The *basic formula price* shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent using the butterfat differential computed pursuant to § 1124.19(e).

(b) The *basic Class II formula price* for the month shall be the basic formula price determined pursuant to § 1124.51(a) for the second preceding month plus or minus the amount computed pursuant to paragraphs (b)(1) through (4) of this section:

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1124.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(B) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(C) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3)(i) and (ii) of this section:

(i) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

§ 1124.51a [Removed]

13. Section 1124.51a is removed.

14. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class and component prices.

The market administrator shall announce publicly:

(a) On or before the 5th day of each month, the Class I price for the following month and the Class III and Class III–A prices for the preceding month;

(b) On or before the 15th day of each month, the Class II price for the following month; and

(c) On or before the 5th day after the end of each month, the basic formula price, the prices for skim milk and butterfat, and the nonfat milk solids price.

15. The center heading preceding § 1124.60 is revised to read **"Differential Pool and Handler Obligations"**.

16. Section 1124.60 is revised to read as follows:

§ 1124.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1124.9(a) with respect to each of the handler's pool plants, and for each handler described in § 1124.9 (b) and (c), an obligation to the pool by combining the amounts computed as follows:

(a) Multiply the pounds of producer milk in Class I pursuant to § 1124.44 by the difference between the Class I price, adjusted pursuant to § 1124.52, and the Class III price;

(b) Multiply the pounds of producer milk in Class II pursuant to § 1124.44 by the difference between the Class II price and Class III price;

(c) Add or subtract, as appropriate, the amount that results from multiplying the pounds of producer milk in Class III–A by the amount that the Class III–A price is more or less, respectively, than the Class III price;

(d) Multiply the pounds of skim milk in Class I producer milk pursuant to § 1124.44 by the skim milk price for the month;

(e) Multiply the nonfat milk solids price for the month by the pounds of nonfat milk solids associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of nonfat milk solids shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the month for each report filed separately;

(f) With respect to skim milk and butterfat overages assigned pursuant to § 1124.44(a)(15), (b), and paragraph (f)(6) of this section:

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the pounds of nonfat milk solids associated with the skim milk pounds assigned to Class II and III by the nonfat milk solids price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price, adjusted for location, and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and

(6) Overage at a nonpool plant that is located on the same premises as a pool plant shall be prorated between the quantity of skim and butterfat received by transfer from the pool plant and other source milk received at the nonpool plant. The pool plant operator's obligation to the pool with respect to such overage will be computed by adding the prorated pounds of skim milk and butterfat to the amounts assigned pursuant to § 1124.44(a)(15) and (b);

(g) With respect to skim milk and butterfat assigned to shrinkage pursuant to § 1124.44(a)(10) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the pounds of nonfat milk solids associated with the skim milk pounds assigned to Class II and III by the nonfat milk solids price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price, adjusted for location, and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and

(6) Subtract the Class III value of the milk at the previous month's nonfat milk solids and butterfat prices;

(h) Multiply the difference between the Class I price, adjusted for the location of the pool plant, and the Class III price by the combined pounds of skim milk and butterfat assigned to Class I pursuant to § 1124.43(f) and subtracted from Class I pursuant to § 1124.44(a)(8) (i) through (iv), (vii), and § 1124.44(b), excluding:

(1) Receipts of bulk fluid cream products from an other order plant;

(2) Receipts of bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants; and

(3) Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1124.75 (b)(4) or (c);

(i) Multiply the combined pounds of skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(8) (v) and (vi) and § 1124.44(b) by the difference between the Class I price at the transferor plant and the Class III price;

(j) Multiply the difference between the Class I and Class III prices, applicable at the location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1124.43(f) and § 1124.44(a)(8)(v) and the combined pounds of skim milk and butterfat in receipts from an unregulated supply plant assigned pursuant to § 1124.44 (a)(12) and (b), excluding such skim milk or butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the combined pounds of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1124.43(f);

(l) Add or subtract, as appropriate, the amount necessary to correct errors disclosed by the verification of the handler's receipts and utilization of skim milk and butterfat as reported for previous months; and

(m) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

17. Section 1124.61 is revised to read as follows:

§ 1124.61 Computation of weighted average differential price.

A *weighted average differential price* for each month shall be computed by the market administrator as follows:

(a) Combine into one total the value computed pursuant to § 1124.60 (a) through (c) and (f) through (m) for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1124.74;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer settlement fund;

(d) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which a value is computed pursuant to § 1124.60(j); and

(e) Subtract not less than 4 cents per hundredweight nor more than 5 cents per hundredweight. The result shall be the weighted average differential price.

18. Section 1124.62 is redesignated as § 1124.63 and revised to read as follows:

§ 1124.63 Announcement of the weighted average differential price, the producer nonfat milk solids price, and an estimated uniform price.

The market administrator shall announce on or before the 14th day after the end of each month, the following prices for such month:

(a) The weighted average differential price;

(b) The producer nonfat milk solids price; and

(c) An *estimated uniform price* per hundredweight of milk which is computed by adding the weighted average differential price to the basic formula price.

19. A new § 1124.62 is added to read as follows:

§ 1124.62 Computation of producer nonfat milk solids price.

The *producer nonfat milk solids price* shall be computed by the market administrator each month as follows:

(a) Combine into one total the values computed pursuant to § 1124.60 (d) and (e) for all handlers who filed reports pursuant to § 1124.30 and who made payments pursuant to § 1124.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of nonfat milk solids in producer milk; and

(c) Round to the nearest whole cent.

20. Section 1124.70 is revised to read as follows:

§ 1124.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement" fund into which shall be deposited all payments made by handlers pursuant to §§ 1124.71 and 1124.75 and out of which shall be made all payments to handlers pursuant to § 1124.72. Payments due a handler from the fund shall be offset against payments due from such handler.

21. Section 1124.71 is revised to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, which results from subtracting the sum computed pursuant to paragraph (a) of this section from the sum computed pursuant to paragraph (b) of this section:

(a) The sum of:

(1) The total obligation of the handler for such month as determined pursuant to § 1124.60; and

(2) For a cooperative association handler, the amount due from other handlers pursuant to § 1124.73(d);

(b) The sum of:

(1) The value of milk received by the handler from producers at the applicable prices pursuant to § 1124.73(a)(2) (i), (ii), and (iii);

(2) The amount to be paid by the handler to cooperative associations pursuant to § 1124.73(d); and

(3) The value at the weighted average differential price adjusted for the location of the plant(s) at which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which a value was computed for such handler pursuant to § 1124.60(j); and

(c) On or before the 25th day after the end of the month, each handler operating a plant specified in § 1124.7(d) (2) and (3), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in the marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in paragraph (c)(1) of this section to Class I disposition in this area at the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and subtract its value at the Class III price.

22. Section 1124.72 is revised to read as follows:

§ 1124.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(b) exceeds the amount computed pursuant to § 1124.71(a), less any unpaid obligations of such handler to the market administrator pursuant to §§ 1124.71, 1124.75, 1124.85, and 1124.86. However, if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

23. Section 1124.73 is revised to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall make payment pursuant to this paragraph or paragraph (b) of this section to each producer from whom milk is received during the month:

(1) On or before the last day of the month, to each producer who did not discontinue shipping milk to such handler before the 18th day of the month at not less than the Class III price for the preceding month per hundredweight of milk received from the producer during the first 15 days of the month, subject to adjustment for proper deductions authorized in writing by the producer;

(2) On or before the 19th day after the end of each month, an amount computed as follows:

(i) Multiply the butterfat price for the month by the total pounds of butterfat in milk received from the producer;

(ii) Add the amount that results from multiplying the producer nonfat milk solids price for the month by the total pounds of nonfat milk solids in the milk received from the producer;

(iii) Add the amount that results from multiplying the total hundredweight of milk received from the producer by the weighted average differential price for the month as adjusted pursuant to § 1124.74(a);

(iv) Subtract payments made to the producer pursuant to paragraph (a)(1) of this section;

(v) Subtract proper deductions authorized in writing by the producer; and

(vi) Subtract any deduction required pursuant to statute; and

(3) If by the 19th day after the end of the month, a handler has not received full payment from the market administrator pursuant to § 1124.72, the payments to producers required pursuant to paragraph (a)(2) of this section may be reduced uniformly as a percentage of the amount due each producer by a total sum not in excess of the remainder due from the market administrator. The handler shall pay the balance due producers on or before the date for making payments pursuant to such paragraph next following receipt of the full payment from the market administrator.

(b) The payments required in paragraph (a) of this section shall, upon the request of a cooperative association qualified under § 1124.18, be made to the association or its duly authorized agent for milk received from each producer who has given such association authorization by contract or other written instrument to collect the proceeds from the sale of the producer's milk. All payments required pursuant to this paragraph shall be made on or before the second day prior to the dates specified for such payment in paragraph (a)(2) of this section.

(c) Each handler shall pay to each cooperative association which operates a pool plant, or the cooperative's duly authorized agent, for butterfat and nonfat milk solids received from such plant in the form of fluid milk products as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for butterfat and nonfat milk solids received during the first 15 days of the month at not less than the butterfat and nonfat milk solids prices, respectively, for the preceding month; and

(2) On or before the 15th day after the end of the month, an amount of money determined in accordance with computations made on the same basis as those specified in paragraph (a)(2) (i) through (iii) of this section, minus any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler pursuant to § 1124.9(a) that received milk from a cooperative association that was a handler pursuant to § 1124.9(c) shall pay the cooperative association for such milk as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) On or before the 17th day after the end of each month, for milk received during the month an amount of money determined in accordance with the computations specified in paragraphs (a)(2) (i) through (iii) of this section, minus any payment made pursuant to paragraph (d)(1) of this section.

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act.

(f) In making payments to producers pursuant to this section, each handler shall provide each producer, on or before the 19th day of each month, with a supporting statement for milk received from the producer during the previous month in such form that it may be retained by the producer, which shall show:

(1) The identity of the handler and the producer;

(2) The total pounds of milk delivered by the producer, the pounds of butterfat and nonfat milk solids contained therein, and, unless previously provided, the pounds of milk in each delivery;

(3) The minimum rates at which payment to the producer is required under the provisions of this section;

(4) The rate and amount of any premiums or of payments made in excess of the minimums required under this order;

(5) The amount or rate of each deduction claimed by the handler, together with an explanation of each such deduction; and

(6) The net amount of payment to the producer.

(g) In making payments to a cooperative association in aggregate pursuant to this section, each handler shall, upon request, provide the cooperative association, with respect to each producer for whom such payment is made, any or all of the information specified in paragraph (f) of this section.

§ 1124.74 [Removed]

24. Section 1124.74 is removed.

§ 1124.75 [Redesignated as § 1124.74]

25. Section 1124.75 is redesignated as § 1124.74, and paragraph (c) is revised to read as follows:

§ 1124.74 Plant location adjustments for producers and on nonpool milk.

* * * * *

(c) For purposes of the computations pursuant to § § 1124.71(a) and 1124.72, the weighted average differential price for all milk shall be adjusted at the rates set forth in § 1124.52 for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received, except that the adjusted weighted average differential price shall not be less than zero.

§ 1124.76 [Redesignated as § 1124.75 and Amended]

26. Section 1124.76 is redesignated as § 1124.75. In the newly designated § 1124.75(a)(1)(i), in the second sentence the words "or estimated uniform price" are inserted after the words "uniform price"; and in the last sentence the reference "§ 1124.60(f)" is changed to read "§ 1124.60(j)" and the reference "§ 1124.71(a)(2)(iii)" is changed to read "§ 1124.71(b)(3)". In § 1124.75(a)(2)(i), the reference "§ 1124.74" is changed to read "§ 1124.19(e)". In § 1124.75(b)(4), the word "estimated" is inserted before the words "uniform price".

§ 1124.77 [Redesignated as § 1124.76]

27. Section 1124.77 is redesignated as § 1124.76.

§ 1124.78 [Redesignated as § 1124.77 and Amended]

28. Section 1124.78 is redesignated as § 1124.77, and the reference in paragraph (a) introductory text to "§ 1124.77" is changed to read "§ 1124.75".

§ 1124.85 [Amended]

29. In § 1124.85(b), the reference "§ 1124.60(f)" is changed to read "§ 1124.60(h) and (j)" and in § 1124.85(c)(2), the reference "§ 1124.76(b)(2)(ii)" is changed to read "§ 1124.75(b)(2)(ii)".

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. The authority citation for part 1135 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1135.9 [Amended]

1a. In § 1135.9(c), the words "and protein tests" are added following the word "butterfat".

2. Section 1135.19 is revised to read as follows:

§ 1135.19 Product prices and butterfat differential.

The prices specified in this section, which are computed by the Director of the Dairy Division, Agricultural Marketing Service, shall be used, where specified, in calculating the basic formula prices pursuant to § 1135.51. The term "workday" as used in this section shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter on the Chicago Mercantile Exchange, using the price reported each week as the price for the day of the report, and for each following workday until the next price is reported.

(b) *Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the *National Cheese Exchange* (Green Bay, WI), using the price reported each week as the price for the day of the report and for each following workday until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the first 15 days of the month computed as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat, and Grade A nonfat dry milk, respectively, for the Central States production area;

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area. The average shall be computed using the price reported each week as the daily price for that day and for each preceding workday until the day such price was previously reported.

(e) The *butterfat differential* is the number that results from subtracting the computation in paragraph (e)(2) of this section from the computation in

paragraph (e)(1) of this section and rounding to the nearest one-tenth cent:

(1) Multiply 0.138 times the monthly average Chicago Mercantile Exchange Grade A (92-score) butter price, as reported and published by the Dairy Division;

(2) Multiply 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month.

3. In § 1135.30, paragraphs (b) and (d) are redesignated as paragraphs (d) and (e), respectively, and the introductory text of the section and paragraphs (a) and (c) are revised and a new paragraph (b) is added to read as follows:

§ 1135.30 Reports of receipts and utilization.

On or before the 9th day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for such month:

(a) Each handler qualified pursuant to § 1135.9(a) shall report for each pool plant operated by the handler the quantities of skim milk and butterfat contained in or represented by:

(1) Producer milk received at such plants or diverted by the handler to other plants, and the protein content of such milk;

(2) Producer milk received at such plants from handlers qualified pursuant to § 1135.9 (c) and (d), and the protein content of such milk; and

(3) Fluid milk products and bulk fluid cream products from other pool plants and other source milk received at such plants.

(b) Each handler qualified pursuant to § 1135.9 (b), (c), or (d) shall report the quantities of producer milk received and the butterfat and protein contained therein.

(c) Each handler submitting reports pursuant to paragraphs (a) and (b) of this section shall report the utilization or disposition of all milk, filled milk, and milk products required to be reported, and inventories on hand at the beginning and end of each month in the form of fluid milk products and products specified in § 1135.40(b)(1).

* * * * *

4. In § 1135.31(a), the word "20th" is changed to "22nd", the semicolon at the end of paragraph (a) introductory text is changed to a colon, and paragraph (a)(4) is revised to read as follows:

§ 1135.31 Payroll reports.

(a) * * *

(4) The average butterfat and protein content of his/her milk;

* * * * *

5. In § 1135.41, the colon at the end of paragraph (b)(3) is changed to a semicolon and paragraph (c) is revised to read as follows:

§ 1135.41 Shrinkage.

* * * * *

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1135.9 (b) or (c) or a proprietary bulk tank handler is the handler pursuant to § 1135.9(d), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage for the cooperative association or the proprietary bulk tank handler shall be zero.

6. The center heading preceding § 1135.50 is revised to read "**Class and Component Prices**".

7. In § 1135.50, in paragraph (b) introductory text the reference "§ 1135.51a" is revised to read "§ 1135.51(b)"; in paragraph (b)(1), the reference "§ 1135.51" is revised to read "§ 1135.51(a)"; in paragraph (b)(2), the reference "§ 1135.51a" is revised to read "§ 1135.51(b)"; the section heading and paragraph (a) are revised; and new paragraphs (e), (f), and (g) are added to read as follows:

§ 1135.50 Class and component prices.

* * * * *

(a) The *Class I price* shall be the basic formula price pursuant to § 1135.51(a) for the second preceding month plus $1.50.

* * * * *

(e) The *skim milk price* per hundredweight shall be the basic formula price for the month pursuant to § 1135.51(a) less an amount computed by multiplying the butterfat differential computed pursuant to § 1135.19(e) by 35.

(f) The *butterfat price* per pound shall be the total of:

(1) The skim price computed in paragraph (e) of this section divided by 100; and

(2) The butterfat differential computed pursuant to § 1135.19(e) multiplied by 10.

(g) The *milk protein price* per pound shall be computed by subtracting the butterfat price, multiplied by 3.5, from the basic formula price and dividing the result by the percentage of protein in the milk on which the basic formula price is based, as announced by the Dairy Division. The resulting price shall be rounded to the nearest whole cent.

8. Section 1135.51 is revised to read as follows:

§ 1135.51 Basic formula prices.

(a) The *basic formula price* shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent using the butterfat differential computed pursuant to § 1135.19(e).

(b) The *basic Class II formula price* for the month shall be the basic formula price determined pursuant to § 1135.51(a) for the second preceding month plus or minus the amount computed pursuant to paragraphs (b)(1) through (4) of this section:

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1135.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(B) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(C) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3) (i) and (ii) of this section:

(i) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

§ 1135.51a [Removed]

9. Section 1135.51a is removed.

10. Section 1135.53 is revised to read as follows:

§ 1135.53 Announcement of class and component prices.

The market administrator shall announce publicly:

(a) On or before the 5th day of each month, the Class I price for the following month and the Class III and Class III–A prices for the preceding month;

(b) On or before the 15th day of each month, the Class II price for the following month; and

(c) On or before the 5th day after the end of each month, the basic formula price, the prices for skim milk and butterfat, and the milk protein price.

11. A center heading preceding § 1135.60 is added to read "**Differential Pool and Handler Obligations**".

12. Section 1135.60 is revised to read as follows:

§ 1135.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler described in § 1135.9(a) with respect to each of the handler's pool plants and for each handler qualified pursuant to § 1135.9 (b), (c), or (d) an obligation to the pool by combining the amounts computed as follows:

(a) Multiply the hundredweight of producer milk assigned to Class I milk pursuant to § 1135.44(c) by the difference between the Class I price and the Class III price;

(b) Multiply the hundredweight of producer milk assigned to Class II milk pursuant to § 1135.44(c) by the difference between the Class II price and the Class III price;

(c) Add or subtract, as appropriate, the amount that results from multiplying the pounds of producer milk in Class III–A by the amount that the Class III–A price is more or less, respectively, than the Class III price;

(d) Multiply the skim milk price by the hundredweight of producer skim milk assigned to Class I milk pursuant to § 1135.44(a);

(e) Multiply the milk protein price by the pounds of protein in producer skim milk assigned to Class II and Class III pursuant to § 1135.44(a). The pounds of protein shall be computed by multiplying the hundredweight of skim milk so assigned by the average percentage of protein in all producer skim milk received by the handler during the month;

(f) With respect to skim milk and butterfat overages assigned pursuant to § 1135.44(a)(14) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the protein pounds associated with the skim milk pounds assigned to Class II and III by the milk protein price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and

(6) Subtract the Class III value of the milk at the previous month's protein and butterfat prices;

(h) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat assigned to Class I pursuant to § 1135.43(d) and subtracted from Class I pursuant to § 1135.44(a)(7)(i) through (iv) and (b), excluding:

(1) Receipts of bulk fluid cream products from an other order plant;

(2) Receipts of bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants; and

(3) Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1135.76(a)(5) or (c);

(i) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7)(v) and (vi) and § 1135.44(b);

(j) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1135.43(d) and § 1135.44(a)(7)(i) and by the pounds of skim and butterfat subtracted from Class I pursuant to § 1135.44(a)(11) and (b), excluding the skim milk and butterfat in receipts of bulk fluid milk products from unregulated supply plants to the extent an equivalent quantity of skim milk and butterfat disposed of to any such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price and the Class III price) by the combined

pounds of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1135.43(d); and

(l) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

13. Section 1135.61 is revised to read as follows:

§ 1135.61 Computation of weighted average differential price.

A *weighted average differential price* for all milk received from producers shall be computed by the market administrator as follows:

(a) Combine into one total the values computed pursuant to § 1135.60 (a) through (c) and (f) through (l) for all handlers who filed reports pursuant to § 1135.30 for the month, and who made the payments pursuant to § 1135.71 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which values were computed pursuant to § 1135.60(j); and

(d) Subtract not less than 4 cents nor more than 5 cents per hundredweight of milk included under paragraph (c) of this section. The result shall be the weighted average differential price.

§ 1135.62 [Redesignated as § 1135.63]

14. Section 1135.62 is redesignated as § 1135.63 and revised to read as follows:

§ 1135.63 Announcement of the weighted average differential price, the producer protein price, and an estimated uniform price.

The market administrator shall announce on or before the 14th day after the end of each month the following prices for such month:

(a) The weighted average differential price;

(b) The producer protein price; and

(c) *An estimated uniform price* per hundredweight of milk computed by adding the weighted average differential price to the basic formula price.

15. A new § 1135.62 is added to read as follows:

§ 1135.62 Computation of producer protein price.

A *producer protein price* shall be computed by the market administrator each month as follows:

(a) Combine into one total the values computed pursuant to § 1135.60(d) and (e) for all handlers who filed reports pursuant to § 1135.30 and who made payments pursuant to § 1135.71 for the preceding month;

(b) Divide the resulting amount by the total pounds or protein contained in producer milk; and

(c) Round to the nearest whole cent. The result shall be the producer protein price.

16. Section 1135.70 is revised to read as follows:

§ 1135.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1135.71, 1135.74, 1135.75, and 1135.76 and out of which he shall make all payments due handlers pursuant to §§ 1135.72, and 1135.75.

17. Section 1135.71 is revised to read as follows:

§ 1135.71 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount as specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total obligation of the handler for such month as determined pursuant to § 1135.60.

(b) The sum of:

(1) The value computed by multiplying the weighted average differential price by the hundredweight of producer milk received from handlers qualified pursuant to § 1135.9(c) and from producers during the month;

(2) The value computed for the protein contained in the producer milk included under paragraph (b)(1) of this section at the producer protein price; and

(3) The value at the weighted average differential price of the hundredweight of skim milk and butterfat for which a value is computed pursuant to § 1135.60(j).

18. Section 1135.72 is revised to read as follows:

§ 1135.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed for such handler pursuant to § 1135.71(b) exceeds the amount computed pursuant to § 1135.71(a). If at such time the balance in the producer-settlement fund is insufficient to make all of the payments pursuant to this section, the market administrator shall reduce uniformly such payment and shall complete such payment as soon as the necessary funds become available.

19. In 1135.73, paragraphs (b), (d), and (e) (2) through (6) are revised to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

* * * * *

(b) On or before the 19th day after the end of each month, each handler shall pay to each producer from whom milk was received during the month, a sum computed as follows:

(1) Multiply the butterfat price for the month by the total pounds of butterfat in milk received from the producer;

(2) Multiply the producer protein price for the month by the total pounds of protein in such milk;

(3) Multiply the weighted average differential price for the month multiplied by the hundredweight of such milk;

(4) Subtract payments made to the producer pursuant to paragraph (a) of this section;

(5) Subtract deductions for marketing services pursuant to § 1135.86; and

(6) Subtract proper deductions authorized in writing by such producer.

* * * * *

(d) In the event a handler has not received full payment from the market administrator pursuant to § 1135.72 by the 19th day of the month, the handler may reduce pro rata the payments to producers pursuant to paragraphs (b) and (c) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this paragraph.

(e) * * *

(2) The total pounds of milk received from the producer and the pounds of butterfat and protein contained therein;

(3) The minimum rates at which payment is required pursuant to this section;

(4) The rates used in making payment, if such rates are other than the required applicable minimums;

(5) The amount (or rate per hundredweight) of each deduction claimed by the handler, including any deduction claimed under § 1135.86, together with an explanation of each deduction; and

(6) The net amount of the payment to the producer.

§ 1135.74 [Removed]

20. Section 1135.74 is removed.

§ 1135.75 [Removed]

21. Section 1135.75 is removed.

§ 1135.76 [Redesignated as § 1135.74 and Amended]

22. Section 1135.76 is redesignated as § 1135.74 and the following changes are made in that section:

a. In newly designated § 1135.74(a)(4), the word "estimated" is inserted before the words "uniform price";

b. In § 1135.74(b)(1)(ii), the words "or estimated uniform price" are added following the words "uniform price" everywhere it appears;

c. In § 1135.74 (b)(1)(iii) introductory text, the reference "§ 1135.60(f)" is changed to read "§ 1135.60(j)", the reference "§ 1135.71(a)(2)(ii)" is changed to read "§ 1135.71(b)(2)".

d. In § 1135.74, paragraphs (b)(1)(iii) (*a*) through (*c*) are redesignated as (b)(1)(iii) (A) through (C); and

e. In § 1135.74(b)(2) (i) and (ii), the reference "§ 1135.74" is changed to read "§ 1135.19(e)".

§ 1135.77 [Redesignated as § 1135.75]

23. Section 1135.77 is redesignated as § 1135.75.

§ 1135.78 [Redesignated as § 1135.76 and Amended]

24. Section 1135.78 is redesignated as § 1135.76, and the references "1135.76, 1135.77, 1135.78" are changed to read "1135.74, 1135.75, 1135.76", respectively.

§ 1135.85 [Amended]

25. In § 1135.85(b), the reference "§ 1135.60 (d) and (f)" is changed to read "§ 1135.60 (h) and (j)"; and in § 1135.85(c), the reference "§ 1135.76(a)(2)" is changed to read "§ 1135.74(a)(2)".

Marketing Agreement Regulating the Handling of Milk in the Pacific Northwest (or Southwestern Idaho-Eastern Oregon) Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof, as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1124.1 to 1124.86 (or §§ 1135.1 to 1135.86, respectively), all inclusive, of the order regulating the handling of milk in the Pacific Northwest or Southwestern Idaho-Eastern Oregon marketing areas (7 CFR PARTS 1124 or 1135, as applicable), which is annexed hereto; and

II. The following provisions:

§ 1124.87 (or § 1135.87, as the case may be). Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he or she handled during the month of September 1993 _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1124.88 (or § 1135.88, as the case may be). Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature) _____

(Seal)

By (Name) _____

(Title) _____

(Address) _____

Attest

[FR Doc. 94-3502 Filed 2-22-94; 8.45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94-AWP-1]

Proposed Modification of Class D Airspace, El Toro Marine Corps Air Station (MCAS), El Toro, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D airspace at El Toro MCAS, El Toro, CA, designated as an extension to a Class C surface area. The floor was inadvertently lowered from a base of 2500 mean sea level (MSL) down to the surface. This proposed modification would raise the floor between the 10 and 15 mile radius of Class D airspace from the surface up to 2500 feet MSL.

DATES: Comments must be received on or before March 31, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 94-AWP-1, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, room 6007, 15000 Aviation Boulevard, Lawndale, California. An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297-1658.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94-AWP-1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained

in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AWP–530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace as an extension to the Class C airspace at El Toro MCAS, El Toro, CA. During the Reclassification of Airspace effective September 16, 1993 a portion of the Class D extension was inadvertently published as being from the surface to 4400 feet MSL. This proposed amendment would return the airspace to a floor of 2500 feet MSL and a ceiling of 4400 feet. The coordinates for this airspace are based on North American Datum 83. Class D airspace designated as an extension to a Class C surface area is published in paragraph 5000b of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace listed in the document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D El Toro MCAS, CA [Removed]

* * * * *

Paragraph 5000b Class D Airspace Areas Designated as an Extension to a Class C Surface Area

* * * * *

AWP CA D2 El Toro MCAS, CA [New]

El Toro MCAS, CA
(Lat. 33°40'34" N., long. 117°43'52" W.)

That airspace extending upward from the surface to but not including 2,500 feet MSL from the 5-mile radius of El Toro MCAS to a 10-mile radius of the El Toro MCAS between the 164°(T) and the 189°(T) bearings of the El Toro MCAS and that airspace extending upward from 2,500 feet MSL to and including 4,400 feet MSL from the 10-mile radius to 15-mile radius of the airport between the 164°(T) and the 189°(T) bearings of the El Toro MCAS. This Class D airspace area is effective concurrently with the specific dates and times of the MCAS El Toro Class C airspace.

* * * * *

Issued in Los Angeles, California, on January 20, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–3999 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ACE–01]

Proposed Establishment of Class E Airspace; Belle Plaine, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace extending from 700 feet above ground level (AGL) at Belle Plaine, Iowa. The development of new standard instrument approach procedures (SIAPs) at Belle Plaine Municipal Airport, Belle Plaine, Iowa, utilizing the Cedar Rapids, Iowa, Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC) and Belle Plaine, Iowa, non-directional beacon (NDB) located on the airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing these SIAPs at Belle Plaine, Iowa.

DATES: Comments must be received on or before March 21, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ACE–530, Federal Aviation Administration, Docket No. 94–ACE–01, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Regional Office at the address shown above, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Kathy J. Randolph, Airspace Technician, System Management Branch, ACE–530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ACE–01." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 601 East 12th Street, Kansas City, Missouri, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Air Traffic Division, 601 East 12th Street, Kansas City, Missouri 64106. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Belle Plaine, Iowa, extending upward from 700 feet above the surface excluding that portion which overlies the Cedar Rapids, Iowa, Class E airspace. The development of new SIAPs at Belle Plaine Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the NDB or VOR/DME–A SIAPs at Belle Plaine Municipal Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth when designated in conjunction with an airport are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Section 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ACE IA E5 Belle Plaine, IA [New]
Belle Plaine Municipal Airport, IA
(lat. 41°52'39.9" N, long. 92°17'07" W)
Belle Plaine, IA, NDB
(lat. 41°53'05.92" N, long. 92°17'03" W)
Cedar Rapids, IA, VORTAC
(lat. 41°53'15.12" N, long. 91°47'08.54" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Belle Plaine Municipal Airport, Iowa, excluding that portion which overlies the Cedar Rapids, Iowa, Class E airspace.

* * * * *

Issued in Kansas City, Missouri, on January 21, 1994.

Herman J. Lyons,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 94–4000 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ANM–47]

Proposed Modification of Class D Airspace; Moses Lake, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Class D airspace for Grant County Airport by excluding the airspace overlying the Moses Lake Municipal Airport, Washington. This action would allow operations to and from the Moses Lake Municipal Airport without radio communication with the Grant County Airport Control Tower.

DATES: Comments must be received on or before March 26, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–47, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–47, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; Telephone (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the

airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–47." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the Federal Aviation Administration, 1601 Lind Avenue S.W., Renton, Washington 98055–4056 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM'S should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace for Grant County Airport, WA. The reclassification of airspace which became effective September 16, 1993, encompassed the Moses Lake Municipal Airport. The FAA endeavors to exclude satellite airports located within Class D Airspace where safety would not be substantially compromised. This action would avoid any adverse impact on the Moses Lake Municipal Airport and simplify ATC coordination responsibilities between the primary and the satellite airport. The coordinates for this airspace docket are based on North American Datum 83. Class D designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ANM WA D Moses Lake, WA [Revised]
Moses Lake, Grant County Airport, WA
(lat. 47°12'28" N, long. 119°19'13" W)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 5.7-mile radius of the Grant County Airport, excluding that airspace within an area bounded by a line beginning at lat. 47°11'31" N, long. 119°10'59" W., to lat. 47°09'59" N., long. 119°14'55" W., to lat. 47°07'34" N., long. 119°14'55" W., thence counterclockwise via a 5.7 mile radius of the Grant County airport to beginning. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on February 2, 1994.

Temple H. Johnson,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–4004 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ANM–42]

Proposed Amendment of Class E Airspace; Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Portland, Oregon, Class E airspace. This action is necessary to accommodate a new instrument approach procedure at the Portland International Airport. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area," replacing it with the designation "Class E airspace." The airspace would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 26, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–42, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–42, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–42." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace at Portland, Oregon, to accommodate a new instrument approach procedure at the Portland, Oregon International Airport. The area would be depicted on aeronautical charts for pilot reference. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area," replacing it with Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). Class E airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 6003 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 17 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM OR E5 Portland, OR [Revised]
Portland International Airport, OR
(lat. 45°35'19" N., long. 122°35'51" W.)
Newburg VORTAC, OR
(lat. 45°21'11" N., long. 122°58'41" W.)
Corvallis VOR/DME, OR
(lat. 44°29'58" N., long. 123°17'37" W.)
McMinnville Municipal Airport, OR
(lat. 45°11'40" N., long. 123°08'06" W.)

That airspace extending upward from 700 feet above the surface within a line beginning at lat. 45°59'59" N., long. 123°30'04" W; to lat. 45°59'59" N, long. 122°07'50" W; thence via a 6.25-mile radius centered at lat. 45°54'50" N, long. 122°02'50" W clock-wise to lat. 45°49'40" N, long. 121°58'00" W; thence via a line to lat. 45°46'30" N, long. 122°04'00" W; south along long. 122°04'00" W; bounded on the south by lat. 45°09'59" N, and on the west by long. 123°30'04" W, and within a 4.3-mile radius of the McMinnville Municipal Airport and within 2 miles each side of the Newburg VORTAC extending from lat. 45°09'59" N, to 19.8 miles southwest of the Newburg VORTAC; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 46°30'29" N, extending from 2.7 miles offshore to V–25, and on the east by V–25, on the south by V–536 to Corvallis VOR/DME, thence via lat. 44°29'59" N, to a point 2.7 miles offshore, and on the west by a line 2.7 miles offshore to the point of beginning.

* * * * *

Paragraph 6003 Class E Airspace Areas Designated as on Extension to a Class C Surface Area

* * * * *

ANM OR E3 Portland, OR [Revised]
Portland International Airport, OR
(lat. 45°35'19" N., long. 122°35'51" W.)
Battleground VORTAC, WA
(lat. 45°44'52" N., long. 122°35'26" W.)
Portland VOR/DME, OR
(lat 45°35'37" N., long. 122°36'23" W.)
Laker NDB, OR
(lat. 45°32'29" N., long. 122°27'44" W.)
OM
(lat. 45°37'24" N., long. 122°41'48" W.)
Pearson Airpark, WA
(lat. 45°37'14" N., long. 122°39'30" W.)

That airspace extending upward from the surface within 1.8 miles each side of the Battleground VORTAC 180° radius extending from the 5-mile radius of Portland International Airport to 3.1 miles south of the VORTAC and within 2.2 miles each side of the Portland Runway 10R ILS localizer west course extending from the 5-mile radius of the airport to 0.9 miles west of the OM; and that airspace within 3.8 miles each side of the Portland VOR/DME 055° radial extending from the 5-mile radius of the airport to 19 miles northeast of the VOR/DME; and that airspace within 1.8 miles north and 2.7 miles south of the 299° bearing from the Laker NDB, excluding that airspace west of the east bank of the Willamette River; and excluding the airspace within the Portland-Troutdale, OR, Class D airspace area during the dates and times it is effective.

* * * * *

Issued in Seattle, Washington, on January 31, 1994.

Temple H. Johnson,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–4005 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 121

[Docket No. 27532; Notice No. 94–4]

RIN 2120–AF34

Extension of Compliance Date for Installation of Digital Flight Data Recorders on Stage 2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to change the final compliance date for installing improved (11-parameter digital) flight data recorders from May 26, 1994, to the next heavy maintenance check, but no later than May 26, 1995, in Stage 2 airplanes subject to the rules requiring a transition to an all Stage 3 fleet. This change would allow carriers more time to take actions necessary to retrofit Stage 2 airplanes, and would make the flight data recorder replacement rule more compatible with the noise transition requirements without having a significant impact on safety.

DATES: Comments must be received by March 25, 1994.

ADDRESSES: Comments on this notice should be mailed, in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27532, 800 Independence Avenue, Washington, DC 20591. Comments delivered must be marked Docket No. 27532. Comments may be examined in room 915G weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, Project Development Branch, AFS–240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposal in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27532." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

On March 25, 1987, the FAA promulgated a final rule that requires operators, by May 26, 1994, to install improved (11-parameter digital) flight data recorders on all airplanes type certificated on or before September 30, 1969, and operated under part 121 of the Federal Aviation Regulations (52 FR 9622). The final rule, § 121.343(c), was issued in response to a recommendation from the National Transportation Safety Board that was based on accident/incident files for January 1983 to February 1986 that revealed a high failure rate for metal foil flight recorders. The data revealed that 37 recorders (48 percent) had one or more malfunctioning parameters preceding the accident or incident, preventing the recording or readout of pertinent data.

Air Transport Association's Petition for Exemption

In August 1991, the Air Transport Association (ATA) petitioned the FAA for an exemption from § 121.343(c). The ATA stated that the compliance date for the digital flight data recorder (DFDR) retrofit was inappropriate when considering the schedule for either retrofitting airplanes with noise abatement equipment or retiring airplanes in order to comply with the Stage 3 transition mandated in September 1991 (56 FR 48628, September 25, 1991). The FAA denied the ATA exemption request, stating that the Stage 3 transition rule did not mandate the retirement of any Stage 2 airplanes. The FAA pointed out that noise abatement equipment was expected to be available for virtually the entire active fleet.

In June 1992, the ATA again requested that the FAA extend the May 26, 1994, DFDR compliance date for its members and similarly situated operators. In the alternative, the ATA requested that the FAA establish a delayed DFDR retrofit schedule that coincided with the Stage 3 transition interim compliance dates to avoid having to install new DFDR's on airplanes that were scheduled to be retired. The ATA asserted that the compliance deadline would require its members to install DFDR's on Stage 2 airplanes that would be retired within 5½ years of the May 1994 compliance date to remain in compliance with the part 91 noise operating rule. The ATA asserted that this DFDR retrofit requirement for Stage 2 airplanes would impose substantial costs on them with little perceived benefit.

The ATA cited several factors in support of its petition, including the estimated cost of DFDR retrofit, the cost and lead time in accomplishing the engineering work to support the retrofit, the impact of retiring Stage 2 airplanes that were DFDR retrofitted, the required review of agency rules to insure that benefits are maximized, and the argument that flight data recorders do not enhance aircraft safety. The ATA concluded that the DFDR retrofit would no longer be viewed as cost beneficial because of the noted events and circumstances that have occurred since the rule was promulgated in 1987.

A summary of the petition was published in the **Federal Register** on August 12, 1992. Two comments were received, both of which opposed the petitioner's request.

A DFDR manufacturer opposed the exemption, citing the number of unsolved accidents, the extended life of commercial airplanes, and the possibility of further expenses associated with a delay in compliance with § 121.343(c) as its reasons for opposing the exemption.

The National Transportation Safety Board (NTSB) opposed the exemption because (1) it would delay the safety benefits to be gained by the DFDR retrofit; (2) the need for and safety benefits of having 11-parameter recorders were well established; and (3) linking the DFDR requirement to the operating noise rules of part 91 could result in non-complying aircraft being flown beyond the year 2000.

On January 29, 1993, after considering all the data presented by the ATA and the commenters, the FAA determined that a grant of exemption was justified and in the public interest. Exemption No. 5593 permits ATA members to operate certain Stage 2 airplanes equipped with DFDR's that have 6 rather than 11 operational parameters. Operation is allowed subject to certain conditions and limitations, including the requirement that air carriers submit a list of their Stage 2 aircraft that will be retired by December 31, 1998. The terms of the exemption allow non-ATA air carriers to apply for coverage under the exemption if they are similarly situated.

On June 30, 1993, the FAA amended Exemption No. 5593 to clarify certain conditions that were being misinterpreted.

Air Transport Association's Petition for Rulemaking

On November 17, 1993, the ATA submitted a petition for rulemaking to amend § 121.343. The ATA states that the previously granted exemption does not provide the scope of relief necessary for its members and similarly situated air carriers, and that a change to the rule is necessary.

The ATA requests that § 121.343(c) be amended to reflect the following:

1. Installation of 11-parameter DFDR's be required only for those airplanes that will be in the fleet beyond December 31, 1999.

2. Installation of 11-parameter DFDR's in those airplanes (those that will remain in the fleet beyond December 31, 1999, including Stage 3 airplanes) would be accomplished on a phased compliance schedule with the option of retiring or retrofitting a percentage of the operator's fleet as follows:

After December 31, 1994, at least 25 percent of the Operator's fleet on U.S. operations specifications that do not have the 11-parameter DFDR installed must be retired or have the 11-parameter DFDR installed;

After December 31, 1996, at least 50 percent must be retired or have the 11-parameter DFDR installed;

After December 31, 1998, at least 75 percent must be retired or have the 11-parameter DFDR installed;

After December 31, 1999, 100 percent must be retired or have the 11-parameter DFDR installed.

As justification for this proposed change, the ATA states in its petition that, if 10 of its operators were to comply with the retrofit requirements of § 121.343(c) by May 28, 1994, the cost would exceed $29 million. The ATA petition does not specify how these costs were computed, or what portion applies to aircraft that would be retired. The ATA does state that if non-ATA-member carriers were considered, the cost estimate would be at least double.

The ATA also states that the change is justified by problems with the technical requirements of DFDR installation. The ATA notes that retrofit instructions and parts do not yet exist for all aircraft currently in the fleet. These engineering specifications and retrofit kits can cost up to $250,000 per aircraft type to develop, require a 40-week lead time, and must undergo FAA approval. The petition does not give any detail as to the number or type of airplanes affected by these circumstances.

The ATA also restated the justifications presented in its original petition for exemption, including the variable fleet plans of carriers and the fact that the presence of an 11-parameter DFDR on an airplane does not make the operation of that airplane any safer.

In January 1994, to further support its petition, the ATA presented updated information indicating that conditions in the industry have changed further, and that meeting the May 26, 1994, compliance date would be impossible for a significant number of Stage 2 airplanes because of changes in fleet plans, and equipment availability and certification difficulties. A copy of the updated data presented by the ATA has been placed in the docket.

The FAA has reviewed the ATA proposal in detail and is unable to support it for several reasons.

The FAA acknowledges that an economic burden results from the inconsistent timing of the Stage 3 transition rule and DFDR rule requirements, that thee burdens affect part 121 operators to varying extent, and that relief is needed that is beyond the scope of the current exemption. However, the ATA petition seeks to include all aircraft currently in the fleet, whether Stage 2 or Stage 3. The noise transition rule does not affect Stage 3 airplanes currently in the fleet; their status has not changed since the time the DFDR rule was adopted in 1988, and the ATA has presented no justification why these aircraft should be included in any relief.

Further, the ATA has repeatedly argued that its member carriers revise their fleet plans on a weekly basis. However, in its petition, the ATA proposes that aircraft that would leave an operator's fleet by December 31, 1999, would not have to be DFDR retrofitted, and that those that will remain will be phased into DFDR compliance.

The FAA finds it difficult to reconcile these two positions. The ATA proposal would require every affected operator to engage in considerable fleet planning if it is to know in advance which aircraft need not be retrofitted because they will not be in the operator's fleet after 1999. The same would be true of any attempt to retrofit any percentage of a fleet by specific dates. Given the admitted constant shifts in fleet plans, the FAA has determined that to make full use of a rule such as that proposed by the ATA would require complete flexibility for the operator and thus would make compliance almost impossible to monitor or establish at any given time.

Further, the ATA petition is unclear in its starting point for individual operator's fleets. Given the changing fleet plans of operators, the FAA was unable to determine when there would be a "count" of airplanes from which to measure percentage compliance, or how that percentage would be affected by aircraft movements in and out of an individual fleet.

However, as stated previously, the FAA acknowledges that some relief is needed from the combined impact of the Stage 3 transition and DFDR retrofit rules and the current equipment availability problems, at least as far as Stage 2 airplanes are concerned. Accordingly, the FAA is proposing to amend § 121.343(c) to provide some relief to part 121 operators. This proposal seeks to limit the financial burden for DFDR installation while recognizing that there is a safety benefit from the installation of 11-parameter DFDR's. The substance of the exemption granted to the ATA and other petitioning part 121 carriers would not be affected by this proposed extension of the compliance date; a carrier may choose to maintain exemption coverage

for that portion of its Stage 2 fleet listed on the Aircraft Retirement Schedule required by the exemption. Based on the outcome of this rulemaking action, however, the FAA will reexamine the exemption to ensure its continued legal applicability and compatibility with any changes made to § 121.343 and determine whether the date for submission on an Aircraft Retirement Schedule should be amended.

The Proposed Rule

The FAA proposes to extend the compliance date in § 121.343(c) for all Stage 2 airplanes subject to the Stage 3 transition rule (§ 91.801(c)). The proposed rule would require that the DFDR installation be accomplished at the next heavy maintenance check, but in no case later than May 26, 1995. The proposed extension would allow more flexibility in retrofit planning for those carriers that have experienced difficulty in obtaining engineering approval for DFDR retrofit designs, or an inability to obtain parts and installation services before the May 26, 1994, compliance date. This change may also function to bring carriers past the first interim compliance date of the Stage 3 transition rule, possibly eliminating the necessity for any airplanes to be DFDR retrofitted before they are removed from the fleet for noise compliance purposes, depending on the individual circumstances of the carrier.

The proposed rule would also require that by May 26, 1994, each carrier submit to the FAA a list of its Stage 2 airplanes that will be covered under by this proposed rule change, and evidence (i.e., a binding contract) that the carrier has ordered sufficient flight data recorder equipment to meet the May 26, 1995 compliance date, either by aircraft retirement or planned retrofit. This provision is designed to ensure that carriers take full advantage of the time provided by the proposal extension.

The proposed relief would be of economic significance to the industry and is consistent with recent recommendations from the National Commission to Ensure a Strong Competitive Airline Industry (Commission), a Presidential task force formed in April 1993 to make policy recommendations about the financial health and future competitiveness of the U.S. airline and aerospace industries.

In light of the Commission recommendations and the information submitted, the FAA has determined that the ATA has presented a persuasive case concerning the changing conditions and difficulties that carriers have encountered in attempting to meet the May 26, 1994, DFDR compliance date. The FAA does not anticipate any significant impact on safety if this proposal is adopted. Flight data recorders, regardless of the number of operational parameters they record, have no direct effect on the safe operation of an airplane. The importance of flight data recorders lies in their ability to reveal the status and operational parameters of an airplane after it is involved in an accident or other incident. Depending on what is revealed, such data can be used as the basis for altering the operation or physical characteristics of similar airplanes. Thus, for the proposed rule to have a negative impact, one of the airplanes covered by it would have to be involved in an accident in the additional 1 year, and information essential to the determination of cause must be a part of one of the five additional parameters recorded on the upgraded DFDR but not on the currently required six-parameter flight data recorders.

The FAA has concluded that the chance of these particular circumstances occurring is remote. Further, the FAA has sought to limit this possibility by extending the compliance date only for Stage 2 airplanes, some of which are expected to leave the fleet by December 31, 1994, under the noise transition regulations. By requiring all other airplanes to comply with the DFDR rule are promulgated in 1987, the FAA seeks to maximize the benefit of DFDR installation.

The FAA stresses that all airplanes covered under the proposed extension must still be equipped with one or more approved flight data recorders that record those parameters specified in part 121. It is only the upgrade to 11-parameter DFDR's that would be extended for a limited number of airplanes. The FAA also stresses that the proposed relief would have no effect on compliance with the Stage 3 transition. The proposed relief would not be available for Stage 2 airplanes not subject to the Stage 3 transition rule, i.e., Stage 2 airplanes that weigh less than 75,000 pounds.

The proposed rule provision that requires DFDR installation at the time of the next heavy maintenance check after May 26, 1994, is the FAA's admonition to carriers that the agency expects DFDR installation to be accomplished at the earliest feasible time. A "heavy maintenance check" is considered to be any occasion on which the airplane is taken out of service for 4 or more days for maintenance; the FAA recognizes that carriers may have different terminology to describe this concept, and the term "heavy maintenance check" as used in this proposal is not meant to describe a specific recognized circumstance or event.

In petitioning for an exemption from § 121.343(c), the ATA based its argument of cost without benefit on the regulations requiring the transition to an all Stage 3 fleet. In granting the requested exemption, the FAA emphasized that the Stage 3 transition rule does not require the retirement of any Stage 2 airplanes. The exemption was thus limited to those aircraft that operators actually planned to retire rather than retrofit to meet Stage 3 noise levels. However, the operators indicated that the equipment usage and retirement plans mandated by the granted exemption were incompatible with both fleet planning capabilities and the less restrictive compliance requirements of the Stage 3 transition rule.

The FAA acknowledges that the relief proposed here is not as broad as that described in the ATA petition. The FAA seeks comment from affected operators on the extent to which this proposed extension will relieve recent problems experienced in DFDR retrofits of Stage 2 airplanes. The FAA specifically requests economic data that details the costs of compliance with the current May 1994 compliance date and any costs savings anticipated from the extension proposed here. Comments that contain information concerning any quantifiable impact on safety in delaying compliance are also requested.

The FAA stresses that carriers should not consider the extension as a period of deferred retrofit action. The FAA does not anticipate granting any further relief from the DFDR requirements for any airplanes beyond that proposed here. The DFDR rule was promulgated in 1987 and should have been incorporated into fleet planning by part 121 operators. The FAA acknowledges that circumstances such as the Stage 3 transition rules require some reconsideration of rule impacts, and in light of the reported difficulties in obtaining the necessary equipment and support to comply with the DFDR rule, this extension is an example of the kind of relief that the FAA considers to be justified. To date, no other substantial, quantifiable data has been presented to support further delay in compliance with the DFDR regulation.

Paperwork Reduction Act

The information collection requirements associated with this rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. Chapter 35 under

OMB No.: New.

Title: Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft.

Proposed Use of Information: Compliance enforcement.

Frequency: One time per carrier.

Burden estimate: $25 per air carrier.

Respondents: Approximately 50 part 121 air carriers with Stage 2 aircraft.

Form(s): Not applicable.

Average Burden hours per respondent: ½ hours.

For further information, contact: The Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4735. Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for Federal Aviation Administration. It is requested that comments sent to OMB also be sent to the FAA rulemaking docket for this proposed action.

Regulatory Evaluation Summary

Executive Order 12866 established the requirement that, within the extent permitted by law, a Federal regulatory action may be undertaken only if the potential benefits to society for the regulation outweigh the potential costs to society. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. The FAA has determined that this proposed rule is not a "significant rulemaking action," as defined by Executive Order 12866 (Regulatory Planning and Review). The results are summarized in this section.

The proposed rule, by extending the compliance date by up to 1 year, would allow for the installation of DFDR to coincide with the installation of noise suppression kits for those aircraft that are affected by the December 31, 1994, noise compliance date. The current exemption limits the relief from the current deadline for installing DFDR on Stage 2 airplanes that will be retired by the end of the decade, leaving aircraft intended for retrofitting with noise suppression equipment subject to the current deadline of May 1994. Any aircraft that are scheduled for retirement by the end of the decade for which an exemption has not been obtained would also be subject to this deadline.

The potential benefits of this rule change would be the cost savings realized by the operators of Stage 2 aircraft in part 121 service that plan to retrofit these aircraft with noise suppression equipment or have not received an exemption for those Stage 2 aircraft they plan to retire by the end of the decade. The proposal would afford these operators up to an additional year in which to install the required DFDR equipment. Operators that were planning to retrofit their aircraft with noise suppression equipment before May 1995 would derive the greatest cost savings because DFDR retrofit could be accomplished at the same time that the aircraft was being retrofitted with noise suppression equipment. Therefore, no additional non-routine downtime would be required for the upgraded DFDR retrofit.

The amount of the potential cost savings accruing to operators planning to retrofit their aircraft prior to the proposed May 1995 deadline was estimated using industry data. Information provided to the FAA by ATA members indicates that the installation of upgraded DFDR's could require from 2 to 5 days of downtime per airplane, depending on the type of equipment. The major passenger carriers responding to the ATA survey estimated the costs of this downtime from $14,000 to $26,000 per day per airplane. The FAA forecasts that about 250 Stage 2 aircraft will be retrofitted with noise suppression equipment over the next 1½ years. Operators of these aircraft could therefore expect cost savings of between $10 million (based on 2 days of downtime per aircraft and an average cost of $20,000 per day) and $25 million (based on 5 days of downtime per aircraft and a cost of $20,000 per unit) from this proposal. The FAA solicits comments from the industry regarding the cost savings expected from the avoidance of additional downtime solely for the purpose of retrofitting aircraft with upgraded DFDR's.

Operators planning to retrofit their Stage 2 airplanes with noise suppression equipment after May 1995 would not receive as great a benefit in terms of reduced downtime, however, because the additional 1 year afforded by this proposal may not be enough for them to avoid any non-routine downtime. Nevertheless, these operators would be able to benefit from the opportunity to delay incurring installation costs for the upgraded DFDR equipment by up to one year, the value of which is calculated in the following paragraph. Available FAA data indicates that about 490 Stage 2 aircraft would fall in this category. The FAA solicits data from the industry regarding the amount of non-routine downtime that could be avoided if the operators of these aircraft were afforded the proposed additional year to comply with the upgraded DFDR requirements.

The FAA was able to estimate the opportunity cost of capital savings that operators could expect from being able to delay incurring the expense of installing upgraded DFDR equipment by up to 1 year. Responses from a survey of its members conducted by the ATA indicated that the installed cost of the equipment would range from $20,000 to $40,000. Given the expected rate of return on capital of 7 percent that is mandated by the Office of Management and Budget (OMB), the FAA estimates that the opportunity cost savings expected to result from the proposal would amount to about $1.03 million, using the midpoint of the expected range of equipment installation costs (.07 × $30,000 × 490 aircraft). The FAA solicits comments from part 121 air carriers regarding the expected impact of the proposed regulatory relief on their costs of compliance, including the number of airplanes to which this relief would apply. Information pertaining to the scheduling of these retrofits would also be useful in calculating the cost savings.

A number of operators that plan to retire their Stage 2 aircraft over the next 5 years have not taken advantage of the previously granted exemption from the upgraded DFDR requirement. Those operators of aircraft that plan to remove from service some airplanes by the December 31, 1994 noise transition compliance deadline and that are not using the exemption could also benefit from this proposal. Extension of the DFDR deadline would allow them to forego installing upgraded DFDR equipment on some aircraft that would otherwise be retired within 7 months of the installation.

The proposed rule change would impose only a minimal cost on society in the form of a reduction in safety because of the extremely low probability that one of the 740 airplanes potentially affected by this rule will have an accident (which would not be prevented by the new 11-parameter DFDR) during the additional 1 year. Moreover, if there were an accident involving these Stage 2 airplanes, the causes of such an accident would have to be determinable only with the additional data provided by an upgraded DFDR. For a safety benefit to be realized, this information would have to be used in rulemaking or some other agency action that would prevent a second future accident with a chain of causation closely resembling that of the first accident. The resulting probability of these two hypothetical accidents actually occurring, assuming the proposal goes into effect, is

considerably less than the already remote possibility that one of the 740 affected aircraft would have a serious accident over this time frame. The FAA calls for comments on the extent of the potential reduction in safety that could result from this proposal.

The proposal would also require that each air carrier submit to the FAA documentation listing those Stage 2 aircraft scheduled for retrofit as well as evidence that it has ordered a sufficient number of flight data recorders to meet the May 26, 1995, compliance date for all aircraft on the list. The FAA has estimated that this paperwork information requirement would cost each affected air carrier about $25. The total cost of this provision would therefore not appreciably alter the overall balance between the costs and benefits of the proposed rule.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities." The proposed rule is of a cost relieving nature and would therefore afford cost savings to individual part 121 operators.

Under FAA Order 2100.14A, the criterion for a "substantial impact" is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. For operators of aircraft for hire, a small operator is one that owns, but does necessarily operate, nine or fewer aircraft. This proposal would mainly affect part 121 scheduled operators, although some unscheduled operators could be affected as well. The FAA's criterion for a "significant impact" is $116,300 or more per year for a scheduled operator whose entire fleet has a seating capacity of 60 seats or more, $65,000 for a scheduled operator with a fleet including smaller aircraft, and $4,600 or more for an unscheduled operator.

The extent of the annualized cost savings per aircraft resulting from the opportunity cost of capital that would be saved (i.e., what could be earned on alternative investments) would be $2,100 per aircraft, based on the assumptions used in calculating the potential total cost savings resulting from this factor in the previous section (.07×$30,000). A scheduled carrier with a fleet of smaller aircraft would therefore need to convert well over nine aircraft to exceed its threshold value of $65,000, in which case it would not be regarded as a small entity. A scheduled carrier with a fleet of larger aircraft would have to convert even more aircraft to exceed its threshold of $116,300. The threshold value for an unscheduled operator is only $4,600, however, as noted above. A carrier would therefore, only have to convert three airplanes to exceed this threshold, using the estimate of cost savings derived above. To make a determination of a "significant economic impact," the FAA needs information pertaining to the number of Stage 2 aircraft that small unscheduled operators are planning to retrofit with noise suppression equipment. The FAA therefore requests that affected part 121 operators provide information pertaining to the number of aircraft involved and the potential reduction in compliance costs per aircraft.

International Trade Impact Assessment

OMB directs agencies to assess the effects of regulatory changes on international trade. The proposed rule will affect only U.S. air carriers because foreign carriers are not subject to part 121. The economic analysis of the final rule mandating that aircraft receiving an original type certificate before September 30, 1969, install DFDR's capable of recording the required number of parameters by May 1994 concluded that there would not be any trade impact. Therefore, the provision of relief from the original rule in the form of a deadline extension is not expected to have any impact on international trade.

Federalism Implications

The proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with the Standards and Recommended Practices of the International Civil Aviation Organization to the maximum extent practicable. The FAA is not aware of any differences that this proposal would present if adopted. Any differences that may be presented in comments to this proposal, however, will be taken into consideration.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 121

Air carriers, Aviation safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 121 of the Federal Aviation Regulations as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

2. Section 121.343 is amended by revising the first sentence of paragraph (c) and adding a new paragraph (l) to read as follows:

§ 121.343 Flight recorders.

* * * * *

(c) Except as provided in paragraph (l) of this section, no person may operate an airplane specified in paragraph (b) of this section unless it is equipped, before May 26, 1994, with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium.

* * * * * * *

(l) No person may operate an airplane specified in paragraph (b) of this section that meets the Stage 2 noise levels of part 36 of this chapter and is subject to § 91.801(c) of this chapter unless it is equipped with one or more approved flight data recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The information specified in paragraphs (c)(1) through (c)(11) of this section must be able to be determined within the ranges, accuracies and recording intervals specified in appendix B of this part. In addition—

(1) This flight data recorder must be installed at the next heavy maintenance check after May 26, 1994, but no later than May 26, 1995.

(2) By May 26, 1994, each carrier must submit to the FAA documentation listing those airplanes covered under this paragraph and evidence that it has ordered a sufficient number of flight data recorders to meet the May 26, 1995 compliance data for all aircraft on that list.

(3) After May 26, 1994, any aircraft that is modified to meet Stage 3 noise levels must have the flight data recorder described in paragraph (c) of this section installed before operating under this part.

Issued in Washington, DC, on February 17, 1994.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 94–4014 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 111

Classification of Computer-Readable Periodical Publications

AGENCY: Postal Service.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Postal Service seeks comments from interested parties concerning the possible admissibility of periodicals produced on electronic media into second-class mail. This request for comments is prompted by the increasing usage of these electronic media, and may lead to a change in the requirement that second-class mail be formed of printed sheets.

DATES: Comments must be received by April 11, 1994.

ADDRESSES: Address all comments to the Manager, Publications, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–2409.

FOR FURTHER INFORMATION CONTACT: Lyn E. Seidler, (202) 268–2261.

SUPPLEMENTARY INFORMATION: The Postal Service has noted that a number of publications which currently have second-class mailing privileges are also available to subscribers in alternate media, such as floppy diskettes and CD–ROMs. These alternate media, even if containing exactly the same information that is available in the paper version of the second-class publication, are not currently eligible for second-class mailing privileges because the Postal Service has interpreted the requirement that "second-class must be formed of printed sheets" to exclude this material. (See section 200.0103 of the Domestic Mail Classification Schedule, reprinted in 39 CFR part 3001, subpart C, appendix A.) While current usage of these alternate media appears to be limited, it is expected that future usage will increase. It is also expected that new types of information not available in traditional second-class publications (e.g., videos or musical accompaniment) will become available in these alternate media, and that new ways of presenting and using this information may make simple analogies to traditional second-class publications more difficult.

The Postal Service believes it might be useful at this time to review the printed sheet requirement pertaining to the mailing of second-class publications and other aspects of the classification of non-print media. Commenters should keep in mind that the other requirements for second-class matter have not been identified for reconsideration at this time. These requirements include that the matter must be originated and published for the purpose of disseminating information of a public character or devoted to literature, the sciences, art or some special industry; that it must be issued at stated intervals no less than four times per year; that there be limited advertising in issues; and that there be a list of subscribers/requesters, as applicable.

Options available for the classification of non-print media include, but are not limited to:

1. Allowing publications in non-printed sheet formats to be mailed at second-class rates, if they meet all other current requirements of second class.

2. Requiring matter not on printed sheets to be mailed at non-second class rates, such as first-, third-, or fourth-class mail.

3. Allowing only some material, in highly specific formats (such as 100% non-advertising content), to be eligible for second-class rates.

4. Establishing an entirely new classification (class, subclass or rate category) to meet the service and pricing needs of mailers of non-printed sheet publications.

Therefore, in view of the foregoing, the Postal Service requests from interested parties, comments and proposals on the following subjects:

1. How are publications on diskette or CD–ROM currently mailed or distributed (e.g., via first-class mail, third-class mail, alternate delivery services, etc.)?

2. Should publications in non-printed sheet formats be eligible for second-class?

a. Would allowing formats other than printed paper sheets maintain the integrity of second-class?

b. Should computer diskettes and CD–ROMs be considered "printed sheets?"

c. If formats other than printed sheets are to be allowed, should these formats be limited to computer diskettes and CD–ROMS, or should other formats be eligible? What would these other formats be?

d. If additional formats are to be eligible, would the material have to meet the other existing criteria for second-class eligibility, such as periodicity?

e. Should second-class eligibility be limited to media that contain information nearly identical to the paper-based issues already eligible for second class? For example, should publications containing audio or video segments be excluded? If they are not to be excluded, how are they to be measured for postage computation purposes? How much or what kind of variance between the paper and non-paper formats would be appropriate?

f. If additional formats are allowed, there may be an impact, either positive or negative, on postal handling and administrative costs, and subsequently, rates. Therefore, should there be additional machinability and/or preparation requirements for the new formats?

g. How should the Postal Service handle the determination and verification of advertising percentage, postage, weight, and other factors that are physically measurable with printed sheets? Given industry trends, is it likely that publications in additional formats will evolve in such a way as to make both editorial and advertising content increasingly difficult to measure?

h. Should mixed formats be allowed in a mailing (e.g., paper and CD–ROM)?

3. If any commenter believes that the Postal Service should request a recommended decision from the Postal Rate Commission to establish a new classification (class, subclass or rate category) that would include materials in electronic formats that may or may not meet the current requirements for

second-class publications, such as periodicity or a subscriber/requester list, the commenter is asked to also comment on the following:

a. If a new rate category were to be established, what are the current and anticipated future rate and service requirements for materials in additional formats? For example, within how many days of issue do they need to be delivered locally, nationally, etc.?

b. What should be eligible for this new classification? Should eligibility be limited to publications, or should other items in electronic format be included?

c. Should this classification be a new class, subclass or rate category:

The Postal Service will evaluate the comments and proposals received in response to this notice and issue a notice of proposed rulemaking if it determines that such action is appropriate.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94-3920 Filed 2-22-94; 8:45 am]

BILLING CODE 7710-12-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM91-1]

RIN 3209-AA04, 3209-AA15 and 3211-AA00

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking; public comment period.

SUMMARY: This serves as notice of, and a request for, comments on proposed changes to the Commission's rules of practice and procedure that the Commission is considering for adoption. The proposed rules evolved out of the Commission's Docket RM91-1 proceeding. Participants to that proceeding developed specific proposals for improvements to the Commission's rules of practice. Adoption of these proposed rules is expected to enhance the efficiency of Commission proceedings and ease the burdens on participants in Commission proceedings.

DATES: Written comments responding to this document must be submitted on or before April 4, 1994.

ADDRESSES: Comments should be sent to Charles L. Clapp, Secretary of the Commission, Suite 300, 1333 H Street NW., Washington, DC 20268-0001 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: Stephen Sharfman, Legal Advisor, Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268-0001 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: The Commission's Office of the Consumer Advocate (OCA) has filed a motion requesting that the Commission consider a Stipulation and Agreement on proposed changes to the Commission's rules of practice and procedure. All documents relating to the RM91-1 proceeding are available for public inspection at the Commission's H Street offices.

The proposed rule changes resolve some, but not all, of the outstanding issues in this proceeding. Fifteen participants support proposed changes to the Commission's Rules of Practice and Procedure, 39 CFR 3001, which would alter the service requirements applicable to requests for written discovery and the answers thereto; restrict transcript corrections to material, substantive errors; require limited participators to respond to discovery requests specifically directed to testimony they sponsor; alter production specifications relating to margins, line spacing and choice of typeface; and allow a ten-day grace period for filing signature pages to interrogatory responses under specified conditions. Additionally, nine participants support adding a new rule 10(d), 39 CFR 3001.10(d), which would require that certain documents be filed in electronic form (on diskettes) within five working days of their being formally filed in hard copy. Adoption of these proposed rules is expected to enhance the efficiency of Commission proceedings and ease the burdens on participants in Commission proceedings.

Punctuation within the attachment to the Stipulation and Agreement might be interpreted to propose elimination of certain provisions not discussed in the motion. It is the understanding of the Commission that there was no intent to propose changes other than those explained in the proposed Stipulation and Agreement. To avoid any possible misunderstandings, the full text of affected subsections, as they would appear if the changes proposed herein were adopted, are set forth below. Additionally, to improve clarity, an article has been added to the next to last sentence in Rule 26(c), 39 CFR 3001.26(c).

One of the signatories to the Stipulation and Agreement, McGraw-Hill, Inc., also filed a comment noting that the language describing the service requirements of discovery questions and objections differed from the language in the rules applicable to service requirements for discovery answers and compelled answers. Compare for example proposed rule 25 (a)(c), with rule 25(b)(d). The comment indicates that parties to the Stipulation intended that the rules for service of discovery requests, answers, objections, and compelled answers be identical. Conforming adjustments have not been proposed at this time to allow interested persons to comment on the specific language submitted in the Stipulation. Absent comments in opposition submitted in response to this notice, conforming changes would be made in the final rule to reflect that, for documents described in rules 25, 26, and 27, special requests for service will be honored; and the final sentence in proposed rule 12(b), 39 CFR 3001.12(b) would be changed to read as follows:

> Special requests for service are used for obtaining service of discovery requests and answers, and any objections and compelled answers related thereto. Participants may serve special requests for service on any other participant requesting service of discovery requests directed to specified witnesses or participants; or answers provided by specified witnesses or that participant.

Regulatory Evaluation

It has been determined pursuant to 5 U.S.C. 605(b) that these rules will not have a significant impact on a substantial number of small entities under the terms of the Regulatory Flexibility Act, 5 U.S.C. 501 *et seq.* It has also been determined that these rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612. These rules do not contain any information collection requirements as defined in the Paperwork Reduction Act, 44 U.S.C. 3502(4), and consequently the review provisions of 44 U.S.C. 3507 and the implementing regulations in 5 CFR part 1320 do not apply.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons set out in the preamble, 39 CFR part 3001 is proposed to be amended as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622-3624, 3661, 84 Stat. 759-762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

Subpart A—Rules of General Applicability

2. Section 3001.10 would be amended by revising paragraph (a) and by adding paragraph (d) to read as follows:

§ 3001.10 Form and number of copies of documents.

(a) *Production.* If not printed, documents filed with the Commission shall be produced on paper of letter size, 8 to 8½ inches wide by 10½ to 11 inches long, with left- and right-hand margins not less than 1 inch and other margins not less than 0.75 inches, except tables, charts or special documents attached thereto may be larger if required, provided that they are folded to the size of the document to which they are attached. The impression shall be on only one side of the paper unless there are more than ten pages. The text shall be not less than one and one-half spaced except that footnotes and quotations may be single spaced. Any typeface not smaller than 12 pt may be used. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service may be reproduced by any duplicating process that produces clear and legible copies.

* * * * *

(d) *Electronic filings.* (1) All testimony, exhibits, workpapers, library references, briefs and reply briefs which have been prepared on a computer or word processor shall be filed as diskettes (or otherwise electronically transmitted to the Commission) within five business days of the initial filing of the hard copy.

(2) Diskettes filed pursuant to paragraph (d)(1) of this section may be provided in any widely-used format. The preferred formats are IBM-PC compatible diskettes in Word Perfect, Microsoft Word, ASCII text, Lotus (DOS 3.0 or later version), or DIF format. If these formats are not used to produce the initial hard copy, diskettes will be accepted in any format actually used. Documents which have been generated on a mainframe or minicomputer, for example, shall be converted to diskettes, if possible. In such cases as these, where a file translation program must be used to produce a PC-compatible diskette, reasonable conversion programs will satisfy the requirements of this section. If a party has generated hard copy of documents subject to this section on a computer other than a personal computer and lacks the capability of producing a PC-compatible diskette, the party must arrange for other means of conveying the information electronically. Recommended alternatives to the filing of diskettes are transmission by modem or providing the information on magnetic tape.

(3) If documents are not prepared using electronic media, diskettes need not be created and filed. A party that generates documents subject to this section using non-electronic means is to file an affidavit or declaration so stating within five business days of the initial filing of the hard copy. The declaration or affidavit may be the statement of a witness, counsel or an official representative of the participant. Such an affidavit or declaration need be filed only once during the course of a proceeding, within five business days of the filing of the first document subject to this section.

(4) The Commission intends to file within five business days of their initial issuance in hard copy form diskettes of all documents issued by the Commission or the Presiding Officer. This includes Presiding Officer's rulings, Commission orders, notices of inquiry and other notices and Commission opinions and recommended decisions.

(5) Any changes or revisions to electronically-filed documents shall be filed on updated diskettes. The updated diskettes are to be filed within five business days of the initial filing of the hard copy of the revisions.

3. Section 3001.12 would be amended by revising paragraph (b) to read as follows:

§ 3001.12 Service of documents.

* * * * *

(b) *Service by the parties.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer except for discovery requests as governed by §§ 3001.25 to 3001.27. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

* * * * *

4. Section 3001.20a would be amended by revising paragraph (c) to read as follows:

§ 3001.20a Limited participation by persons not parties.

* * * * *

(c) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participators may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-examination on the same terms applicable to that of formal participants. Limited participants may file briefs or proposed findings pursuant to §§ 3001.34 and 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participators having substantially like interests and positions to join together for any or all of the above purposes. Limited participators are not required to respond to discovery requests under § 3001.25 through § 3001.28 except to the extent that those requests are directed specifically to testimony which the limited participators provided in the proceeding; however, limited participators, particularly those making contentions under 39 U.S.C. 3622(b)(4), are advised that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their evidence and arguments.

4. Section 3001.25 would be amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 3001.25 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written interrogatories requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall serve a copy upon the Postal Service. Special requests for service by other participants shall be honored.

(b) *Answers.* Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The party responding to the interrogatories shall serve the answers on the party who served the interrogatories within 20

days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. The answers are to be signed by the person making them. If the person responding to the interrogatory is unavailable to sign the answer when filed, a signature page must be filed within ten days thereafter with the Commission, but need not be served on participants. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants who request them:

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections are to be signed by the attorney making them. The party objecting to interrogatories shall serve the objections on the party who served the interrogatories within 10 days of the service of the interrogatories. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon the proponent of the interrogatory and the Postal Service. Special requests for service by other participants shall be honored.

* * * * *

6. Section 3001.26 would be amended by revising paragraphs (a) and (c) to read as follows:

§ 3001.26 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon whom the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service. Special requests for service by other participants shall be honored.

* * * * *

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections are to be signed by the attorney making them. The party objecting to a request shall serve the objection on the party requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon the Postal Service, within 10 days of the request for production. Special requests for service by other participants shall be honored.

* * * * *

7. Section 3001.27 would be amended by revising paragraphs (a) and (c) to read as follows:

§ 3001.27 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service. Special requests for service by other participants shall be honored.

* * * * *

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections are to be signed by the attorney making them. The party objecting to requests for admissions shall serve the objections on the party requesting admissions, upon the Secretary pursuant to § 3001.9 and upon the Postal Service, within 10 days of the request. Special requests for service by other participants shall be honored.

* * * * *

8. Section 3001.30 would be amended by adding paragraph (i) to read as follows:

§ 3001.30 Hearings.

* * * * *

(i) *Transcript corrections.* Corrections to the transcript of a hearing should not be requested except to correct a material substantive error in the transcription of oral statements made at the hearing.

Issued by the Commission on February 15 1994.

Charles L. Clapp,

Secretary.

[FR Doc. 94–3943 Filed 2–22–94; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN13–1–5623; FRL–4840–8]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a revision to the Minnesota State Implementation Plan (SIP) for new source review in nonattainment areas, submitted to meet longstanding requirements as well as new requirements imposed by the Clean Air Act Amendments of 1990. This revision consists of the State Rules 7005.3010 through 7005.3060, which incorporate by reference the new source review requirements specified in appendix S to title 40 Code of Federal Regulations part 51 (40 CFR part 51), "Emission Offset Interpretive Ruling," except for the deletion of unacceptable exemptions included in appendix S. Final approval of this revision would lift the current ban on permitting major sources and major modifications in Minnesota nonattainment areas.

DATES: Comments on this proposed action must be received in writing by March 25, 1994.

ADDRESSES: Written comments should be sent to: William L. MacDowell, Chief, Regulation Development Section (AE–17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Enforcement Branch, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

Part D of title I of the Clean Air Act sets forth SIP requirements for nonattainment areas. Section 173 and the various subparts of title I contain the program requirements for the review and issuance of permits for the construction of major new sources and major modifications in a nonattainment area. Currently, Minnesota has no approved nonattainment area permitting program. On August 5, 1992, and August 26, 1993, Minnesota submitted revised new source review regulations for the purpose of meeting these requirements.

The statutory requirements that apply to State regulations for new source review in nonattainment areas are set forth at part D of title I of the Clean Air Act, particularly in sections 172(c)(5) and 173. Federal regulations developed prior to enactment of the Clean Air Act Amendments of 1990 for nonattainment area new source review programs are set forth at title 40 Code of Federal Regulations part 51 (40 CFR part 51), particularly 40 CFR 51.165. The Clean Air Act Amendments of 1990 also establish assorted new requirements, for which preliminary guidance was published April 16, 1992 (57 FR 13498), and April 28, 1992 (57 FR 18070). For example, section 189(a)(1)(A) requires that sections 172(c)(5) and 173 be met for fine particulate matter nonattainment areas.

The Minnesota Pollution Control Agency (MPCA) has submitted general permitting regulations to USEPA on various occasions, including January 28, 1972; May 28, 1972; January 23, 1981; and January 7, 1985. USEPA approved the 1972 submittals on May 31, 1972; the 1981 submittal on May 6, 1982; and the 1985 submittal on May 13, 1988. However, these rules did not address the specific requirements for permitting new and modified major sources in nonattainment areas. Consequently, Minnesota has no approved nonattainment area permitting program, and the State continues to be subject to a prohibition against permitting major new sources and major modifications in the State's nonattainment areas, as promulgated by USEPA on July 2, 1979 (44 FR 38583). More recent MPCA submittals, which are the subjects of this proposed rulemaking, were intended to address the requirements for nonattainment area new source permitting and allow USEPA to lift the permitting prohibition.

MPCA has submitted SIP revisions for meeting the permitting requirements of part D on two previous occasions. MPCA's first submittal was on December 22, 1981. USEPA proposed conditional approval of this rule in the July 29, 1982, **Federal Register** (47 FR 32742). Minnesota used the plant-wide definition of source in its rule. Before final rulemaking could be published, the D.C. Circuit Court ruled against the plant-wide definition of source. This decision was later overturned (*Chevron, U.S.A., Inc.* v. *NRDC*, 104 S.Ct. 2778 (1984)), but USEPA never approved this SIP revision because of other concerns. This submittal was ultimately withdrawn, in an August 21, 1990, letter from the Commissioner of MPCA, and USEPA's proposed action on this submittal was withdrawn in the **Federal Register** of November 7, 1990 (55 FR 46829).

MPCA submitted its second revision for meeting the permitting requirements on March 13, 1989. In February 1990, USEPA provided MPCA with comments, stating that the rule would not be approved. In a February 24, 1992, letter, Charles W. Williams, Commissioner, MPCA, withdrew the March 13, 1989, submittal.

The current revisions being addressed in this rulemaking include State submittals of August 5, 1992, and August 26, 1993. These submittals include State Rules 7005.3010 through 7005.3060 ("Offset Rule"). These rules incorporate appendix S to 40 CFR part 51 into these State rules, modified in response to recommendations by USEPA.

Section 173 of the Act identifies four essential requirements that State new source permit regulations must impose in nonattainment areas: (1) New source emissions must be offset by equivalent or greater emission reductions in the area, (2) the new source must have lowest achievable emission rates (LAER), (3) other sources owned by the owner or operator of the new source must be in compliance or on a schedule to achieve compliance with applicable regulations, and (4) the area must not be subject to a finding of failure to implement the SIP.

Incorporation of Appendix S

In general, adoption of appendix S of 40 CFR part 51 into the State's regulations serves to impose the requirements identified in section 173. Part IV. A. of appendix S provides multiple conditions for granting a permit, including a requirement for lowest achievable emission rates (requirement 2 above), a requirement for compliance of commonly owned sources (requirement 3 above), and a requirement for offsets (requirement 1 above). Although appendix S contains no provision prohibiting permits in "failure to implement" areas, USEPA has adequate authority under section 113(a)(5) to take any necessary action to address permits that violate this prohibition.

Nevertheless, the adoption of appendix S by reference as a State rule fails to satisfy permitting requirements under subpart I of 40 CFR part 51. In particular, appendix S exempts certain source types and is insufficiently clear on some issues. A letter from USEPA dated May 17, 1991, recommended the following modifications:

1. The requirement for LAER must apply to all new sources or modifications meeting the applicability requirements of 40 CFR 51.165. Footnotes 4 and 5 must be deleted.
2. Requirements for offsets must be clarified to ensure that offsets are based on actual emissions as defined in 40 CFR 51.165(a)(3). This clarification must also be made in Part IV, section C. Footnote number 7 must be deleted.
3. Footnote 8, which provided an exemption from the requirement for net air quality benefit, must be deleted.
4. Section B of Part IV, which exempts certain source types, must be deleted.
5. Section C, paragraph 5, which allows "banking" of emissions offset

credits, must either be deleted or supplemented with approvable banking regulations.

Minnesota has made each of these modifications to its rules. Most of these modifications were included in the rule revisions submitted August 5, 1992. In addition, pursuant to communications from USEPA subsequent to the May 1991 letter, the State made further modifications, including deletion of the general provisions for banking.

Relationship to Subsequent Rule Revisions

At present, the rules in the Minnesota SIP governing permit processing are the Consolidated Permit Rules adopted by the State on July 24, 1984, and approved by USEPA on May 13, 1988 (53 FR 17033). The subject of today's rulemaking is a supplemental rule known as the "Offset Rule," which establishes the substantive requirements for new sources in nonattainment areas. Minnesota then adopted significant revisions to its regulations on permit processing on August 24, 1993, which it submitted for SIP rulemaking on November 23, 1993. The primary purposes of these regulations were to satisfy requirements in Title V of the Clean Air Act for a State operating permit program and to amend the new source permitting regulations to provide an integrated set of permitting regulations. In developing these regulations, the State incorporated language intended to address various concerns USEPA had identified with respect to the prior permitting rules.

Today's rulemaking does not address the approvability of the submittal of November 23, 1993. Nevertheless, this latter submittal is germane to this rulemaking, insofar as these more recent revisions assure that certain potential problems which could have arisen under the prior general permitting rules will not arise. It should be noted that the November 1993 submittal does not amend the rules under consideration in this action, i.e. the "Offset Rule" submitted by the State in August 1992 and amended in August 1993, but instead revises the general provisions in the Consolidated Permit Rules concerning permit processing. The following paragraphs identify the issues that were of concern and how the November 1993 submittal affects these issues.

The first issue was provision in the prior general permitting regulations for expiration of permits, and a concern that expiration of a permit could cause the construction permit conditions to expire. The State's general permitting regulations now define "Title I conditions" to include conditions established to satisfy new source review requirements, and state that "[a]ny Title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit." Therefore, USEPA believes that requirements imposed on sources during new source review clearly do not expire as a result of permit expiration.

The second issue of concern was the authority granted in State law for the State agency to grant variances, including variances from Federal requirements. However, the revised general permitting regulations state that: (1) The State agency "shall not issue variances from any Federal requirement to obtain an air quality permit, unless explicitly authorized to do so in writing by [USEPA]," and (2) the State agency "shall issue a permit * * * only if [various conditions have been met including that] the permit does not reflect a variance from any federally enforceable applicable requirement * * *." For purposes of this action, these provisions render the second issue moot, insofar as the State agency no longer has the ability to grant variances from Federal requirements. Nevertheless, it is appropriate to state that USEPA believes that the statutory provision for variances is not being approved and that issuance of a variance from Federal requirements would be contrary to both State and Federal regulations and would have no bearing on enforcement of the applicable requirement.

The third issue of concern was that public notice for new source review permits was provided for only in a Memorandum of Understanding (MOU) containing several outdated references. The revised general permitting regulations provide public notification procedures and a 30 day public comment period. Minnesota has clearly committed itself both in the MOU and its regulations to continuing to provide for proper opportunity for public input into permitting decisions in accordance with USEPA requirements.

For all three of these issues, Minnesota has made clear through its revised general permitting regulations that the SIP as revised by the rule under consideration in this action would satisfy Federal requirements. Therefore, USEPA believes that the three issues discussed above are no longer impediments to today's proposed conclusion that Minnesota has satisfied nonattainment area permitting requirements.

The fourth issue of concern was whether Minnesota had satisfied the requirement of 40 CFR 51.160(a) to assure that new sources do not interfere with attainment or maintenance of the air quality standards. The general permitting regulations in Minnesota's SIP require permits for facilities with emissions above 25 tons per year of any criteria pollutant except lead, or with more than ½ ton of lead emissions per year. (At such a facility, any modification would require a permit.) The recently submitted permitting rules raise some of these size cutoffs. In support of the raised cutoffs, the State's recent submittal includes a modeling analysis to show that the revised size cutoffs do not interfere with attainment or maintenance. A preliminary review indicates that this analysis adequately supports the size cutoffs in the current SIP. Consequently, USEPA believes that the general permitting rules in the SIP as supplemented by the Offset Rule satisfy 40 CFR 51.160(a). Nevertheless, USEPA is reserving judgment on the acceptability of the recently raised size cutoffs, which will be addressed in the context of rulemaking on the more recent submittal.

The fifth issue of concern pertained to a provision in the State's Rule 7001.0150 authorizing the State not to enforce "local laws, rules and plans." Although this provision clearly applies to local laws and not Federal laws, this provision is arguably ambiguous as to whether the State is authorized not to enforce Federal as well as local rules and plans. The recent rule revisions did not modify this provision. Nevertheless, the State's intent is presumably that the regulations only authorize nonenforcement of relevant local laws, local rules, and local plans. USEPA is expressly not proposing approval of any provision for State nonenforcement of Federal rules or Federal plans. USEPA solicits public comment on this element of the proposed approval.

USEPA has reviewed whether the new requirements in the Clean Air Act Amendments of 1990 have been satisfied. These new requirements include an analysis of alternatives, and a requirement for submitting information to the RACT/BACT/LAER Clearinghouse. The Amendments also introduce numerous new requirements that are not currently relevant to Minnesota, in part because the State has no ozone nonattainment areas. The TSD provides a more detailed discussion of the new requirements and how these requirements are addressed in Minnesota. The conclusion of this review is that Minnesota has satisfactorily addressed these requirements as they currently apply in the State.

USEPA is currently developing a rule to implement the changes under the Clean Air Act Amendments of 1990 in the new source review provisions in Parts C and D of Title I of the Act. The Agency anticipates that the proposed rule will be published for public comment in the spring or summer of 1994. If USEPA has not taken final action on Minnesota's new source review submittal by that time, USEPA may generally refer to the proposed rule as guidance regarding the approvability of the submittal. USEPA expects to take final action to promulgate a rule to implement the Parts C and D changes sometime during 1994 or 1995. Upon promulgation of those regulations, USEPA will review new source review SIPs to determine whether additional SIP revisions are necessary to satisfy the requirements of the rule.

Section 189(e) states that "control requirements applicable * * * for major stationary sources of PM_{10} shall also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the standard in the area." On June 25, 1993 (at 58 FR 34397), USEPA proposed such a determination of the insignificance of particulate matter precursors in Minnesota. If that proposed action is finalized, section 189(e) would no longer require new source review of major particulate matter precursor sources.

II. Proposed Rulemaking Action

USEPA believes that the regulations submitted by Minnesota on August 5, 1992, and August 26, 1993, satisfy the requirements under Part D for a new source permitting program in nonattainment areas. Therefore, USEPA proposes to approve this SIP revision.

Under the rules in the SIP, permits for nonattainment area sources that satisfy the substantive requirements of the Offset Rule (Rules 7005.3010 through 7005.3060) would be processed in accordance with permit processing provisions in the Consolidated Permit Rules (Rules 7001.0010 through 7001.0210 and Rules 7001.1200 through 7001.1220). Rulemaking of May 13, 1988 (53 FR 17033) approved the Consolidated Permit Rule as satisfying attainment area permitting requirements but noted that nonattainment area permitting requirements were not met. Today's action proposes to lift the current ban on construction of major new sources and major modifications in Minnesota nonattainment areas, and would impose Minnesota's Consolidated Permit Rule and Offset Rule as Federally enforceable requirements for such new sources and modifications. Subsequent rulemaking will address the approvability of more recent revisions to State permitting regulations.

The rules submitted by Minnesota were intended to address nonattainment area new source review requirements and did not address visibility-related permitting requirements specified in 40 CFR 51.307. Therefore, USEPA is retaining the provisions of 40 CFR 52.1236, which note the absence of approvable State regulations for visibility protection and impose the Federally promulgated regulations of 40 CFR 52.28 and 52.28.

Public comment is solicited on all elements of USEPA's proposed rulemaking action. Written comments received by [insert date 30 days from date of publication] will be considered in the development of USEPA's final rulemaking action.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 19, 1994.

David Kee,

Acting Regional Administrator.

[FR Doc. 94–4053 Filed 2–22–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300320; FRL–4754–6]

RIN 2070–AC18

d–Limonene; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of d-limonene (CAS Registry No. 5989-27-5) when used as an inert ingredient (solvent, fragrance) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest. This proposed regulation was requested by Orange Sol, Inc.

DATES: Written comments, identified by the document control number [OPP-300320], must be received on or before March 25, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Environmental Protection

Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: Orange Sol, Inc., 955 N. Fiesta Blvd., Ste. #1, Gilbert, AZ 85234, submitted pesticide petition (PP) number 3E4172, requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of d-limonene (CAS Registry No. 5989-27-5) when used as an inert ingredient (solvent, fragrance) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomacous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Where it can be determined that the inert ingredient will present minimal or no risk, the Agency generally does not need some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that any data, in addition to that described below, for d-limonene will not need to be submitted. The rationale for this decision is described below:

1. d-Limonene is a naturally occurring chemical found in high concentrations in citrus fruits and spices.

2. d-Limonene is widely used as a fragrance in products such as perfumes and soaps.

3. The probable lethal dose of 3-limonene is estimated at 1 pint.

4. d-Limonene has been administered orally to successfully dissolve gall stones with no toxic effects observed after ingesting 1 fluid ounce.

5. A battery of mutagenicity tests conducted on d-limonene resulted in no positive effects.

6. A teratogenicity study in which pregnant rats were fed d-limonene (20 grams per kilogram) during gestation days 6 to 15 yielded results "not considered teratogenic."

7. In a 2-year feeding study conducted by the National Toxicology Program, no carcinogenic activity was noted in female rats and mice and in male mice. Clear evidence of kidney-associated carcinogenic activity was noted in male rats. However, the NTP has concluded that the male rat kidney carcinogenicity is not predictive of mammalian carcinogenicity. Also, the Agency's position regarding compounds producing renal tubule tumors in male rats attributable solely to chemically induced alpha-2u-globuylin accumulation is that these tumors will not be used for human cancer hazard identification and that the associated nephropathy is not an appropriate endpoint for determining noncancer risks in humans.

8. d-,l-, and dl-Limone are generally regarded as safe by the Food and Drug Administration when used as direct food additives (synthetic flavoring substance, adjuvant) under 21 CFR 182.60. The results of the NTP Bioassay did not change its GRAS status.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below. Because of the low toxicity of this chemical, the Agency will consider expanding this exemption to include additional uses.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains this chemical may request, within 30 days after publication of this document in the **Federal Register**, that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300320]. All written comments filed in response to this document will be available for public inspection in the Public Response and Program Resources Branch, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 2, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
d-Limonene (CAS Reg. No. 5989-27-5)		Solvent, fragrance

* * * * *

[FR Doc. 94-3760 Filed 2-22-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 266

[SW-FRL-4841-3]

Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C—Recyclable Materials Used in a Manner Constituting Disposal; Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today proposing to amend § 266.20, which contains provisions for conditionally exempting hazardous waste-derived products used in a manner constituting disposal (*i.e.*, applied to or placed on land) from the Resource Conservation and Recovery Act (RCRA) Subtitle C regulations. Specifically, the Agency is proposing to amend § 266.20 so that non-encapsulated uses of slag residues produced from high temperature metal recovery (HTMR) treatment of electric arc furnace dust (EPA Hazardous Waste No. K061), steel finishing pickle liquor (K062), and electroplating sludges (F006) are not exempt from RCRA Subtitle C regulations. This action is being taken to partially implement a settlement agreement entered into by the Agency on August 13, 1993 with the Natural Resources Defense Council (NRDC) and Hazardous Waste Treatment Council (HWTC). If today's proposed rule is finalized, non-encapsulated uses of HTMR slags derived from K061, K062, and F006, as waste-derived products placed on the land, will be prohibited unless there is compliance with all Subtitle C standards applicable to land disposal. This rule would not prohibit encapsulated uses of wastes that meet § 266.20 requirements. The rule also would not prevent the disposal of HTMR slags in a Subtitle D unit if the residuals can meet the risk-based exclusion levels specified in § 261.3(c)(2). The Agency is currently assessing and also seeks comments on whether the necessary data are available to establish risk-based generic exclusion levels for HTMR slags used in non-encapsulated manner.

DATES: EPA is requesting public comments on today's proposed rule and criteria used for defining non-encapsulated uses. Comments must be submitted by March 25, 1994. Since the Agency has entered into a settlement agreement to promulgate this rule by August 12, 1994, no extension to the comment period will be granted.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F-94-SSHP-FFFFF, room 2616 (Mail Code 5305), 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. A maximum of 100 pages may be copied at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION, CONTACT: For general information contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 412-9810. For specific questions concerning this notice, contact Narendra Chaudhari, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-4787.

SUPPLEMENTARY INFORMATION:

I. Background

A. Existing Regulations for Hazardous Wastes Used in a Manner Constituting Disposal

Currently, hazardous wastes that are used in a manner constituting disposal (applied to or placed on land), as well as waste-derived products that are produced in whole or in part from hazardous wastes and used in a manner constituting disposal, are not subject to hazardous waste disposal regulations provided the products produced meet two conditions. First, the hazardous wastes must undergo a chemical reaction in the course of becoming products so as to be inseparable by physical means (see § 266.20(b)). A second condition for exemption is that the waste-derived products must meet best demonstrated available technology (BDAT) treatment standards under the land disposal restrictions program for every prohibited hazardous waste that they contain before they are placed on land (see § 268.20(b)). Note that hazardous waste-derived fertilizers that utilize hazardous waste K061 as a source of zinc are exempt from regulation without complying with either of these two conditions (see also § 266.20(b)).

The exemption in § 266.20 is used for residuals ("slag") generated from the treatment of hazardous waste K061 (and, to a limited extent, F006) using high temperature metal recovery (HTMR) processes. Section 266.20 is applicable because the majority of this slag is used in highway construction materials (*e.g.*, as road-base), and a limited amount is also used by directly applying it to road surfaces (*i.e.*, as an anti-skid or deicing agent). (See 56 FR 15020, April 12, 1991.)

On August 18, 1992 (see 57 FR 37194), the Agency finalized a generic exclusion for nonwastewater slag residues generated from the HTMR treatment of several metal-bearing hazardous wastes (K061, K062, and F006). This rule expanded a generic exclusion EPA originally published that applied only to HTMR slag from K061 (see 56 FR 41164, August 19, 1991) to include slags from F006 and K062. These HTMR slag residues (i.e., from K061, K062, and F006) are currently excluded from the hazardous waste regulations provided they meet designated concentration levels for 13 metals, are disposed of in subtitle D units, and exhibit no characteristics of hazardous waste (see § 261.3(c)(2)).

The generic exclusion levels for the metals were based on the use of the EPA Composite Model for Landfills (EPACML), which predicts the potential for groundwater contamination from wastes that are placed in a landfill. The Agency limited the generic exclusion to residues disposed of in a Subtitle D unit because it could not properly evaluate concerns over potential releases to other media resulting from uses of the HTMR slag as product, especially as an anti-skid material on road surfaces. In the original rule proposing the generic exclusion for K061 HTMR slag (see 56 FR 15020, April 12, 1991), the Agency solicited comment to identify other significant routes of exposure for product uses of the slag. The rule

specifically sought suggestions for methods to evaluate exposures from the use of the slag as anti-skid material. Although EPA received comments concerning possible risks from road uses, no useful data, methods, or models were submitted to assist the Agency in evaluating exposures from releases to media other than groundwater.

As the Agency noted in the final rule for the initial generic exclusion for K061 residues (see 56 FR 41164, August 19, 1991), the use of HTMR residues as anti-skid material was not prohibited, provided the residue meets the exemption conditions given in § 266.20. The Agency also noted in the same notice that it would further evaluate the uses of K061 HTMR residues that constitute disposal, and would consider amendments to § 266.20 for HTMR slags that might require further controls on such uses.

B. Summary of Petition and Settlement Agreement

The Natural Resources Defense Council (NRDC) and the Hazardous Waste Treatment Council (HWTC), collectively "NRDC Petitioners", filed a petition for review challenging EPA's decision not to apply "generic exclusion levels"—levels at which K061 slags are deemed nonhazardous—to K061 slags used as waste-derived "products" and applied to or placed on land. The generic exclusion levels established for some metals in the K061 HTMR slags are lower than the BDAT standards that apply to K061. Therefore, while the generic exclusion requires that the nonhazardous K061 slag that meets exclusion levels be disposed of in a Subtitle D unit, K061 HTMR slag that may exhibit metal levels above the exclusion levels (but below BDAT) may be used as a product in a manner constituting disposal under the exemption in § 266.20(b). The petitioners pointed out the anomaly of the slag used in an uncontrolled manner being effectively subject to lesser standards than slag disposed in a controlled landfill.

On August 13, 1993, EPA entered into a settlement agreement with NRDC Petitioners which would address their concerns through two separate notice-and-comment rulemakings. EPA agreed to propose the first rule within 6 months of the settlement date (and issue a final rule within 12 months) to either establish generic exclusion levels for "non-encapsulated" uses of K061 slags, or effectively prohibit such uses of K061 slags on the land. EPA also agreed to propose a second rule within 16 months of the settlement date (and issue a final rule within 28 months), to establish generic exclusion levels for encapsulated uses of K061 slags on the land. The agreement specified that the generic exclusion levels for K061 slags will be based on an evaluation of the potential risks to human health and the environment from the use of K061 slags as waste-derived products, taking into account all relevant pathways of exposure.

II. Proposed Decision

This rule proposes to prohibit non-encapsulated uses of products derived from hazardous HTMR slags (K061, K062, and F006), if these products are used in a manner constituting disposal. The term "non-encapsulated" use is being defined in this rule as a use in which the material is not contained, controlled, covered, or capped in a manner that eliminates or significantly reduces its mobility and potential for release into the environment. The uses of HTMR residues on roads as anti-skid or deicing materials are considered to be non-encapsulated product uses.

Accordingly, the Agency is proposing to amend the existing regulations under § 266.20 that conditionally exempt hazardous waste-derived products used in a manner constituting disposal from RCRA Subtitle C regulations to reflect this change. The language of § 266.20 would be revised to prohibit non-encapsulated uses of products derived from hazardous HTMR slags, unless they comply with all of the applicable Subtitle C standards (*i.e.*, permitting, minimum technology standards for land disposal units, financial responsibility, etc.). Since these requirements cannot realistically be met by entities that would use the HTMR slag in a non-encapsulated fashion (*i.e.*, entities are unlikely to seek land disposal permits for the placement of deicing materials on roads), the Agency is effectively proposing to prohibit non-encapsulated uses of the slags.

The Agency is proposing this action for the following reasons. First, non-encapsulated uses of HTMR slags may pose potential risk to human health and the environment, and this risk may be greater for non-encapsulated uses than for any other disposition of the slags. This is because the slags contain significant total concentrations of toxic metals of concern. For example, the concentrations of lead in the slags are typically in the range of 1000–2000 parts per million (ppm) and concentrations of chromium can approach 1000 ppm. (See data from the BDAT Background Document for K061 slag in the RCRA public docket for today's rule.) These slags may also potentially leach metals at levels that would require regulation under subtitle C (*i.e.*, at levels greater than the generic exclusion levels in § 261.3(c)(2)).

Second, non-encapsulated uses of the slags may be viewed as uncontrolled disposition of the material. Thus, this may lead to many potential exposure pathways for the waste, not just those the Agency previously evaluated in assessing this wastes' hazardousness. The major non-encapsulated use of K061 slag is as an anti-skid material on road surfaces. This involves spreading the material on road surfaces during icy or snowy conditions to provide traction for vehicles (see comments from Horsehead Resource Development Company on April 12, 1991 proposal). Although the K061-derived slag as applied to the road surface is initially relatively coarse, the wear caused by vehicular traffic will break down the slag into finer particles. These particles may then be dispersed through particulate releases to the air, or to surface and ground water by run-off during precipitation or melting ice/snow. Some commenters were concerned about potential exposure to metals in the K061 slag through inhalation of air releases and ingestion of nearby contaminated soils, concerns the Agency shares. Without a more detailed assessment of the risks posed by such non-encapsulated uses, the Agency believes it is appropriate to prohibit these uses at this time.

Third, these potential risks are ones that are very difficult for the Agency to evaluate with certainty with available methodology, particularly given the current lack of data the Agency has on non-encapsulated uses of the slags and the tight timeframe for this rule. Because of this, some of the potential exposure pathways, such as ingestion, inhalation or surface water runoff pathways, cannot be readily evaluated. Additionally, commenters to the August 19, 1991 rulemaking did not provide any reliable means for assessing the risks posed by non-encapsulated uses of these slags. (See 56 FR 41172.)

The Agency is again soliciting information that may be used to estimate potential risks for non-encapsulated uses of HTMR slag and the likely exposure pathways of greatest concern. When used as an anti-skid agent, HTMR materials could accumulate on the road surface and travel to nearby receptors. Particulates could be inhaled by people downwind or transported in the air and deposited on land or water bodies. Storms can also wash HTMR materials to the roadside. At the edge of the road, constituents in the slags could either travel overland to water bodies or percolate into the ground and reach the groundwater. Ingestion of contaminated soil could occur either from the deposition of HTMR slag particulates or from highway run-off. The Agency requests comment on other potentially significant exposure pathways.

Although there are techniques that may be used to estimate pollutant loadings from roads, these techniques would have to be tailored to the characteristics of non-encapsulated uses of HTMR slags. The following paragraphs describe potential approaches to estimate the risks from these pathways and the data or assumptions necessary to construct estimates of potential risks.

Airborne Particulates

With the appropriate data, the Agency believes it is possible to estimate the rate at which particulates become airborne from road surfaces. Critical parameters include the traffic volume, the mean vehicle speed, the type of road surface (*e.g.*, unpaved or paved), particle density, and particulate size. The Agency believes that HTMR slags are most likely to be applied as an anti-skid agent on paved roads. Many State transportation departments have traffic volume estimates for most significant roads in their jurisdiction which could be used to estimate particulate generation rates. The Agency does not have adequate data regarding the distribution of particle size in HTMR anti-skid material or how that distribution could change after weathering and vehicular traffic.

Another critical parameter is the frequency at which HTMR slags would be applied to roads as a de-icing agent. The Agency does not have direct measurements of application rates of HTMR materials as de-icing agents. In 1981, the Federal Highway Administration (FHWA) reported that application rates of de-icing salt ranged from 400 to 1200 pounds per mile of two-lane road. The Agency requests comment on whether HTMR materials would be applied at rates comparable to that of de-icing salt or other compounds.

Run-off

Modeling pollutants in run-off from road surfaces requires estimating rainfall and run-off rates, accumulation rates of pollutants on the road surface, pollutant wash-off during run-off, and constituent loading at potential receptors. While the Agency often relies on standard techniques to predict rainfall and run-off (*e.g.*, see docket for approach used to estimate soil run-off in USDA Handbook, No. 282, 1978), accumulation of HTMR slags will depend on the application rates. The FHWA has also developed an approach that relates pollutant accumulation with traffic volume. Combining the FHWA techniques and the loading rates discussed above would yield an estimate of total accumulation of a constituent on a road surface. The FHWA also has estimated pollutant wash-off rates for various types of road surfaces, including rural roads with flush, unpaved shoulders. The Agency requests comment on this approach to estimate run-off rates and pollutant loadings.

Once run-off reaches the side of a road, it can either flow along natural contours or be channeled by engineering controls. Many roads are constructed with catch basins, swales, or other structures designed to control water and sediment flow. (See docket for examples from Chapter 11 in Highway Engineering, by Oglesby and Hicks, 1982.) Engineered barriers may significantly retard or block the flow of constituents of concern from reaching receptors adjacent to the road or from nearby water bodies. The Agency requests comment on the prevalence and effectiveness of these controls.

Groundwater

If HTMR Materials accumulate on a road surface, the paving will likely block any leaching of constituents from the materials into the subsurface. However, if run-off transports the material off the road, constituents could leach into the subsurface. The Agency requests comments on how to estimate the flux rate of metals from the HTMR slag into the subsurface.

The Agency would need adequate estimates of the above key parameters (particulate generation, run-off, and leaching rate), in order to apply fate and transport models to estimate potential concentrations at receptors. EPA also has limited information as to where HTMR residuals are applied as an anti-skid agent, and what potential receptors could be exposed. Further, were the Agency to develop generic exclusion levels for non-encapsulated uses, EPA would need to ensure that these levels would be protective in a wide range of potential settings. Therefore, the Agency requests data on likely receptor points (e.g., water bodies, residences) that would be affected by non-encapsulated uses of HTMR slag, and what, if any, exposure assumptions the Agency could use to ensure an appropriate level of protection.

The Agency's present evaluation is that non-encapsulated uses of the slags may pose potential risks to human health and the environment that may warrant control, and that the Agency lacks the necessary information and time for assuring that these non-encapsulated uses are safe. If the Agency were to receive sufficient data that would allow EPA to carry out a more complete evaluation of non-encapsulated uses, EPA will reconsider its present decision to effectively prohibit non-encapsulated uses of HTMR slag. However, EPA does not anticipate being able to complete the evaluation of any new data and assess the risks posed by non-encapsulated uses until the second rulemaking that EPA agreed to conduct as part of the settlement with the NRDC petitioners (*i.e.*, the rule to establish generic exclusion levels for encapsulated uses of HTMR slags).

The Agency also considered another important factor in making the determination to effectively prohibit non-encapsulated uses of HTMR slags. Information available to EPA indicates that most HTMR slags are in fact used in an encapsulated manner, for example as road-base material with some form of cover or "cap". Encapsulation may prevent dispersal of the slag through the exposure pathways noted above. Indeed, as the Agency noted in the August 19, 1991 rulemaking, use of these slags as road-base may be analogous to a capped disposal unit. (See 56 FR 41172.) In meetings with EPA, industry representatives indicated that non-encapsulated uses account for a relatively small fraction (less than 15%) of the HTMR slag used in a manner constituting disposal. (See memorandum of a March 30, 1993 meeting with Horsehead Resource Development Co., Inc. in the RCRA public docket for today's rule.) Therefore, the Agency believes that there should be adequate capacity for all of the slag to be used in an encapsulated manner. An important part of the basis for today's proposal is the expectation that a prohibition on non-encapsulated uses would result in a more environmentally acceptable means of reuse of the material without significant dislocations.

This proposal would thus effectively prohibit non-encapsulated uses of HTMR slag, whether or not the slag meets the existing exclusion levels in § 261.3(c)(2). As noted earlier in this proposal, the methodology EPA used to set the generic exclusion levels was based on potential risks posed by releases to ground-water from HTMR slag in a landfill setting. The existing exclusion levels do not consider other possible exposures (e.g., through air releases) arising from non-encapsulated uses.

EPA is consequently proposing to amend § 266.20 such that non-encapsulated uses of HTMR slag are no longer exempt from the Subtitle C standards applicable to land disposal. The Agency expects that this will have the effect of essentially prohibiting non-encapsulated uses of HTMR slags derived from K061, K062, and F006. With this proposal, the Agency solicits comment on possible means of demonstrating when these non-encapsulated uses do not pose significant potential risks to human health and the environment. In order to support such a demonstration, the Agency solicits comments on possible generic exclusion levels for HTMR slags used in non-encapsulated manners, and on the basis for setting these exclusion levels. The Agency will consider such comments in the context of the later rulemaking (which EPA also agreed to conduct as part of the settlement with the NRDC petitioners) to establish generic exclusion levels for encapsulated uses of HTMR slags.

III. Request for Information

EPA is also taking the opportunity in this proposal to solicit all available information on product uses of HTMR slag materials derived from K061, K062, and F006, including information that provides responses to the following questions:

- What are the various product uses of HTMR slags that result in placement on the land, and the relative annual volumes of these slags going to each use?
- What, if any, historical data are available with regard to the environmental impact from product uses of HTMR slags?
- How are HTMR slags processed and distributed prior to use?
- What are the similarities or differences in the physical/chemical properties of HTMR slags and materials that may be used as substitutes (e.g., blast furnace slags)?
- What, if any, toxicity tests have been conducted with the HTMR slag material itself (e.g., aquatic toxicity tests), and are data from these tests available for review?
- What requirements, if any, are needed to ensure that the slag is not used for prohibited uses?

IV. Limited Effect of Proposed Rule

The proposed amendment to § 266.20 would effectively prohibit non-encapsulated uses of HTMR slags derived from K061, K062, and F006. Although BDAT standards provide some measure of safety, it is the Agency's intent to further evaluate these uses based on risks posed to human health and the environment and to determine if additional generic exclusion levels should be proposed in the near future. As discussed above, information provided by representatives of the major generator of HTMR slag indicates that the portion of HTMR slags that are currently being processed for non-encapsulated product uses is relatively small (less than 15% of the HTMR slags that are used as waste-derived products). Following the prohibition, this portion of HTMR slags may be used to produce other waste-derived products that are still exempt under § 266.20(b). These other uses (*e.g.*, use as road-base material) are encapsulated uses that appear to present much lower risk to human health and the environment. There also exists a generic exclusion under § 261.3(c)(2) that allows for the disposal of HTMR slags in subtitle D units. Finally, if it is not possible to meet the conditions of the exemption or the generic exclusion, the HTMR slags would be subject to full regulation as hazardous wastes.

The Agency is not changing the notification, record-keeping and reporting requirements contained in existing regulations for hazardous waste being used to produce products used in a manner constituting disposal.

V. Effective Date

The Agency is proposing that this rule be effective six months after the date of publication of the final rule. (See RCRA section 3010(a)). The Agency believes that this would provide sufficient time for affected parties to comply with the proposed change.

VI. State Authority

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect on State Authorization

EPA views today's proposed rule as a HSWA regulation. The proposed rule can be viewed as part of the process of establishing land disposal prohibitions and treatment standards for K061, K062, and F006 hazardous wastes. (See 56 FR 41175). The ultimate goal of the land disposal prohibition provisions is to establish standards, "if any", which minimize short-term and long-term threats to human health and the environment posed by hazardous waste land disposal. (See RCRA section 3004(m)(1)). In this case, the Agency is uncertain what level of treatment would assure that these threats are minimized when HTMR slag is used in a non-encapsulated manner, and consequently is effectively proposing a prohibition on this type of use. (See 57 FR at 37237, August 18, 1992, interpreting "if any" clause in section 3004(m)(1)). Thus, as noted above, EPA will implement today's rule, if finalized, in authorized States until their programs are modified to adopt the new prohibition and the modification is approved by EPA.

Today's proposed rule will result in more stringent Federal standards. Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval.

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, States with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

VII. Regulatory Impact

A. Executive Order 12866

Under Executive Order 12866 (see 58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel policy issues in terms of defining when products used in a manner constituting disposal should be regulated. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an Agency is required to issue a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have any impact on any small entities.

This amendment will not have any impact on any small entities, since the regulated community will continue to have other readily available options for using and managing HTMR slags. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, the Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

The Agency has determined that there are no additional reporting, notification, or recordkeeping provisions associated with this proposed rule. Such provisions, were they included, would be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: February 15, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 266 is proposed to be amended as follows:

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

2. Section 266.20 is amended by adding a new paragraph (c) to read as follows:

§ 266.20 Applicability.

* * * * *

(c) Non-encapsulated uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous waste K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in paragraph (b) of this section and remain subject to regulation. Non-encapsulated uses are those uses in which the HTMR slag is not contained, controlled, covered, or capped in a manner that eliminates or significantly reduces its mobility and potential for release into the environment (e.g., uses as anti-skid or deicing materials).

[FR Doc. 94–4052 Filed 2–22–94; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–26

RIN 3090–AF09

Removing Federal Supply Service Schedule Ordering Instructions

AGENCY: Federal Supply Service, GSA.

ACTION: Proposed rule.

SUMMARY: This document invites written comments on a proposed amendment to the Federal Property Management Regulations (FPMR) that removes Federal Supply Service (FSS) schedule ordering instructions. FSS schedule ordering instructions will be restated in the form of non-regulatory principles. GSA's Federal Supply Service will issue and maintain these non-regulatory principles in the Federal Supply Service Program Guide. This document is issued simultaneously with another notice that similarly affects multiple award schedule ordering instructions contained in the Federal Information Resources Management Regulations (FIRMR).

When combined, these actions will result in uniform set of principles that empower Federal agencies to make "best value" buying decisions in a de-monopolized environment. These proposed changes are consistent with the Report of the National Performance Review (NPR), and are part of GSA's larger plans to create a Government that works better and costs less.

DATES: Comments are due in writing on or before April 25, 1994.

ADDRESSES: Comments should be addressed to Nicholas Economou, FSS Acquisition Management Center (FCO), Crystal Mall Building #4, room 716, Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Nicholas Economou, FSS Acquisition Management Center (703–305–6936).

SUPPLEMENTARY INFORMATION:

A. Background

FPMR subpart 101–26.4 primarily contains FSS schedule ordering instructions. Over time, these instructions have become obsolete.

Hence, it is no longer necessary to retain these instructions in the FPMR. Removing these instructions from FPMR subpart 101–26.4 will carry out the principles of the NPR Report by unburdening all Federal agencies from unnecessary regulations.

A small amount of the information previously contained in subpart 101–26.4 will be retained and relocated in the FPMR: Text permitting the procurement of printing of Standard Form 149 by GSA; text permitting certain fixed-price contractors and lower tier subcontractors to purchase security equipment from GSA sources; and text explaining why GSA supply distribution facilities make multiple award schedule purchases.

B. Executive Order 12866

This rule was submitted to and approved by the Office of Management and Budget (OMB) in accordance with Executive Order 12866, Regulatory Planning and Review.

C. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it only eliminates FSS schedule ordering instructions that are obsolete and no longer necessary, and introduces no new procurement policies or procedures.

D. Paperwork Reduction Act

This proposed rule does not contain information collection requirements that require approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501).

List of Subjects in 41 CFR Part 101–26

Government property management.

Accordingly, 41 CFR part 101–26 is proposed to be amended as set forth below:

PART 101–26—PROCUREMENT SOURCES AND PROGRAMS

1. The authority citation for Part 101–26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101–26.4—Purchase of Items From Federal Supply Schedule Contracts

2. The heading of subpart 101–26.4, consisting of sections 101–26.401 through 101–26.408–5, is revised to read "Federal Supply Schedules", and the subpart is reserved.

Subpart 101–26.5—GSA Procurement Programs

3. Section 101–26.406–7 is redesignated as § 101–26.502 and revised to read as follows:

§ 101–26.502 U.S. Government National Credit Card.

A waiver has been issued by the Government Printing Office to GSA for the procurement of the printing of Standard Form 149, U.S. Government National Credit Card.

4. Paragraph (c) of § 101–26.408–4 is redesignated as § 101–26.503 and revised to read as follows:

§ 101–26.503 Multiple award schedule purchases made by GSA supply distribution facilities.

GSA supply distribution facilities are responsible for quickly and economically providing Government customers with frequently needed common-use items. Stocking a variety of commercial, high-demand items purchased from FSS multiple award schedules is an important way in which GSA supply distribution facilities meet this responsibility.

5. Section 101–26.507 is revised to read as follows:

§ 101–26.507 Security equipment.

Federal agencies and other activities authorized to purchase security equipment through GSA sources shall do so in accordance with provisions of this § 101–26.507. Under section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481), the Administrator of GSA has determined that fixed-price contractors and lower tier subcontractors who are required to protect and maintain custody of security classified records and information may purchase security equipment from GSA sources. Delivery orders for security equipment submitted by such contractors and lower tier subcontractors shall contain a statement that the security equipment is needed for housing Government security classified information and that the purchase of such equipment is required to comply with the security provision of a Government contract. In the event of any inconsistency between the terms and conditions of the delivery order and those of the Federal Supply Schedule contract, the latter shall govern. Security equipment shall be used as prescribed by the cognizant security office.

6. Section 101–26.507–3 is revised to read as follows:

§ 101–26.507–3 Purchase of security equipment from Federal Supply Schedules.

To ensure that a readily available source exists to meet the unforeseen demands for security equipment, Federal Supply Schedule contracts have been established to satisfy requirements that are not appropriate for consolidated procurement and do not exceed the maximum order limitations.

Dated: December 15, 1993.

Nicholas M. Economou,

Director, FSS Acquisition Management Center (FCO).

[FR Doc. 94–3709 Filed 2–22–94; 8:45 am]

BILLING CODE 6820–61–M

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41 CFR Part 201–39

RIN 3090–AF17

Amendment of FIRMR To Remove Provisions for Using GSA Nonmandatory Schedule Contracts for FIP Resources

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed rule to remove provisions for using GSA nonmandatory multiple award schedule (MAS) contracts from the Federal Information Resources Management Regulation (FIRMR). These instructions will be issued in the form of non-regulatory principles. Other notices will similarly affect MAS ordering instructions contained in the Federal Acquisition Regulation (FAR) and Federal Property Management Regulations (FPMR). The non-regulatory principles will be issued and maintained by GSA's Federal Supply Service (FSS) and Information Resources Management Service (IRMS) in the Federal Supply Service Program Guide, and the FIRMR Bulletin series respectively, or by other similar Service issuance.

When combined, the proposed regulatory changes will result in a uniform set of principles that empower Federal agencies to make "best value" buying decisions in a demonopolized environment. The regulatory changes described are consistent with the Report of the National Performance Review and are one part of GSA's larger plan to create a Government that works better and costs less.

DATES: Comments will be considered in the final rule, but must be received on or before April 25, 1994.

ADDRESSES: Comments may be mailed to GSA, Regulations Analysis Division (KMR), 18th & F Streets, NW., room 3224, Washington, DC 20405, Attn: Judy Steele, or delivered to that address between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Judy Steele, FTS/Commercial (202) 501–3194 (v) or (202) 501–0657 (tdd).

SUPPLEMENTARY INFORMATION: (1) GSA initiated a MAS Improvement Project in October 1990. In addition to addressing recurring issues of concern to GSA customer agencies and MAS contractors, one major objective consistent with those concerns was to streamline and unify the procedures for ordering products and services provided under the MAS program. GSA's internal perspectives, the rapid emergence of electronic commerce, the recommendations of the General Accounting Office, and the recommendations of the National Performance Review were all considered. The choices for restructuring GSA procedures offer stark contrast: the imposition of a rigid, decision making regimen or the adoption of a more flexible set of principles which empower purchasing agents and line managers to make "best value" decision in a de-monopolized environment. GSA's own views, since the inception of the project, have been aligned with the adoption of a more customer-oriented, unregulated, less paperbound approach, that also enables ordering officials to take advantage of effective competition within the scope of the MAS contracting system as well as developing electronic ordering capabilities. Unlike open market purchases, GSA schedule prices are the product of a competitive environment where GSA negotiates or otherwise obtains prices determined to be fair and reasonable. Further, the nature of the MAS system is to recognize the variation of functions, quality, and performance inherent in a wide variety of commercial products. In recognition of the foregoing, and in an attempt to recognize the good judgment of our customers, GSA should provide its customers with flexible ordering mechanisms which emulate commercial purchasing practices. Existing ordering rules should be streamlined and stated in the form of principles.

(2) Explanation of the changes being made by this issuance are shown below:

(a) Subpart 201–39.5 is removed to delete the synopsizing requirements related to the FIP MAS contracts.

(b) Subsection 201–39.601–2 is removed to delete the exception to justifying specific make and model specifications for FIP MAS contracts.

(c) Section 201–39.801 is removed to delete procedures for ordering FIP resources from the Federal Supply Service MAS contracts.

(d) Section 201–39.803 is removed to delete the procedures for use of the nonmandatory FIP MAS contracts.

(3) This rule was submitted to, and approved by, the Office of Management and Budget in accordance with Executive Order 12866, Regulatory Planning and Review.

(4) The Paperwork Reduction Act does not apply because the FIRMR changes do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 41 CFR Part 201–39

Archives and records, Computer technology, Federal information processing resources activities, Government procurement, Property management, Records management, and Telecommunications. For the reasons set forth in the preamble, GSA is proposing to amend 41 CFR part 201 as follows:

PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

1. The authority citation for part 201–39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

Subpart 201–39.5—[Removed]

2. Subpart 201–39.5, consisting of sections 201–39.500 through 201–39.501–3, is removed.

§ 201–39.601–2 [Removed]

3. Section 201–39.601–2 is removed and reserved.

§ 201–39.801 [Removed]

4. Section 201–39.801 is removed and reserved.

§§ 201–39.801–1 through 201–39.801–2 [Removed]

5. Sections 201–39.801–1 through 201–39.801–2 are removed.

§ 201–39.803 [Removed]

6. Section 201–39.803 is removed and reserved.

§ 201–39.803–1 through 201–39.803–3 [Removed]

7. Sections 201–39.803–1 through 201–803–3 are removed.

8. The following reference in the FIRMR Index is revised as follows:

FIRMR Index

* * * * *

GSA nonmandatory Schedule contract 201.24.001 201–39.802–3

* * * * *

Dated: December 14, 1993.

Francis A. McDonough,

Assistant Commissioner for Federal Information Resources Management.

[FR Doc. 94–3708 Filed 2–22–94; 8:45 am]

BILLING CODE 6820–25–M

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48 CFR Chapter 5

Reinventing Multiple Award Schedule Ordering Procedures

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Request for comments.

SUMMARY: The General Services Administration (GSA) plans to deregulate, streamline and unify its multiple award schedule (MAS) ordering procedures. GSA establishes MAS contracts to provide Federal agencies a cost-effective mechanism for ordering common use commercial items. Two GSA organizations award and manage MAS contracts, the Federal Supply Service (FSS) and the Information Resources Management Service (IRMS). Three different regulations contain MAS ordering procedures; i.e., the Federal Property Management Regulation (FPMR), the Federal Information Resources Management Regulation (FIRMR), and the Federal Acquisition Regulation (FAR).

This document invites public comment on proposals to eliminate MAS ordering instructions to customer agencies from the FPMR and FIRMR. Applicable regulations, however, will retain pertinent solicitation provisions, contract clauses, and those policies and procedures that govern the Government-contractor relationship. GSA has initiated a case to make similar changes to the Federal Acquisition Regulation. In lieu of the current regulatory scheme, GSA proposes to adopt a uniform set of non-regulatory principles for MAS ordering. FSS and IRMS will issue and maintain the principles in the FSS Program Guide and FIRMR Bulletin series, respectively.

This document also invites public comment on a proposal to revise the Price Reduction Clause currently used in MAS contracts and include it in the General Services Administration Acquisition Regulation (GSAR). Additionally, GSA announces its decision to eliminate regulatorily prescribed mandatory use provisions from the MAS Program.

When combined, the proposed changes described in this document will result in a uniform set of principles that empower ordering activities to make "best value" buying decisions in a de-monopolized environment. The proposed changes are consistent with the Report on the National Performance Review (NPR) and are one part of GSA's larger plan to help create a Government that works better and costs less.

DATES: Comments are due in writing on or before April 25, 1994.

ADDRESSES: Comments should be addressed to Carolyn Harris, Office of Multiple Award Schedule Program Management, 18th and F Streets, NW., room 4040, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Carolyn Harris, Office of Multiple Award Schedule Program Management, (202–501–1043).

SUPPLEMENTARY INFORMATION: GSA, the General Accounting Office (GAO) and the NPR have all recently examined MAS ordering procedures and recommended improvements. Among other things, GAO found that Federal agencies do not consistently comply with existing regulations and recommended that GSA clarify its requirements. The NPR generally recommended that GSA simplify its regulations and eliminate complex administrative requirements. After reviewing the various recommendations, GSA decided to eliminate regulatorily prescribed mandatory use provisions imposed on other agencies. Solicitations that have a closing date after January 13, 1994, will reflect GSA's new position on non-mandatory use. Existing contractual obligations will not be affected by the change. GSA also proposes to "deregulate" MAS ordering procedures and provide agencies with non-regulatory guidance that is simpler, more customer-oriented, and less paperbound than current requirements. These principles will enable ordering officials to take advantage of competition within the scope of the MAS contracting system.

Description of Changes

GSA proposes the following changes:

1. Most of the existing regulatory instructions regarding the use of MAS and single award Federal Supply Schedules will be deleted from the FPMR and FIRMR.

2. GSA regulations will not require agencies to place orders against future MAS contracts.

3. The current requirement that an ordering activity publicize in the Commerce Business Daily its intent to place an order against an MAS contract for federal information processing (FIP) resources valued in excess of $50,000 will be eliminated. This requirement is the product of regulation, (i.e., order synopsis not required by statute) for MAS contracting, and is inconsistent with GSA's efforts to empower its customers, and streamline and maximize the efficiency of the program.

4. GSA will not dictate an across-the-board Maximum Order Limitation (MOL) for MAS schedules. Instead, contracting officers will establish MOL's on a schedule-by-schedule basis. Contracting officers will set MOL's at levels appropriate for negotiation of volume purchasing prices.

5. GSA will generally award MAS contracts as indefinite-delivery, indefinite-quantity type contracts. Indefinite-delivery, indefinite-quantity type MAS contracts will normally obligate the Government to purchase a minimum amount during the contract term. Contractors must deliver up to the MOL for each delivery order they receive.

6. The clause entitled "Price Reductions" will be modified to delete paragraph (c), "Price Reductions to Federal Agencies". The modified clause will be incorporated into the GSAR. Other MAS provisions and clauses will be amended as necessary to reflect revised ordering procedures.

7. GSA will streamline existing ordering procedures and state them in the form of guiding principles. The resulting non-regulatory guidance will read as follows:

a. GSA awards Multiple Award Schedule (MAS) contracts for a variety of commercial products and services at prices determined to be fair and reasonable. The administrative cost of placing a MAS order can be significantly lower than purchasing by other means. Accordingly, for orders of minimal dollar value (e.g., $10,000 or below) ordering activities are given wide latitude to order items at those prices that represent the best value for the money.

b. To reasonably ensure that a selection meets the agency's needs at the lowest overall cost before placing an MAS order of significant dollar value (e.g., greater than $10,000) an ordering activity should:

(1) Consider reasonably available information about products offered under MAS contracts; this standard is met if the ordering activity does the following:

• Consider products and prices contained in any GSA MAS automated information system; (e.g., Information Resources Management—On-line Schedule System, Federal Supply Service—Automated Product Listing Service); or

• If automated information is not available, review at least 3 price lists.

(2) Make reasonable efforts to compare differing functions, performance characteristics and prices of MAS items. The nature and degree of such comparisons should be commensurate with the value of the order. The agency's administrative costs should be considered in making a best value determination.

(3) Give preference to the items of small business and/or labor surplus area concerns by following the order of priority in FAR 14.407–6 when two or more items at the same delivered price will meet an ordering activity's needs.

c. MAS contractors will not be required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order. There may be circumstances where an ordering activity finds it advantageous to request a price reduction, such as where the ordering activity finds that a schedule product is available elsewhere at a lower price, or where the quantity of an individual order clearly indicates the potential for obtaining a reduced price.

d. Ordering activities should document MAS ordering files in accordance with internal agency practices. Agencies should keep documentation to a minimum.

Dated: December 28, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 94–3706 Filed 2–22–94; 8:45 am]

BILLING CODE 6820–61–M

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48 CFR Parts 538 and 552

[GSAR Notice 5–388]

RIN 3090–AF15

General Services Administration Acquisition Regulation; Multiple Award Schedule Price Reductions Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the General Services Administration Acquisition Regulation (GSAR) to prescribe a Price Reductions clause for use in multiple award schedule (MAS) solicitations and contracts. The clause is a modification of that currently in use. The modifications clarify the clause's applicability, reduce contractor reporting requirements and eliminate MAS price reductions based on a low price to an individual Federal agency.

DATES: Comments are due in writing on or before April 25, 1994.

ADDRESSES: Comments should be addressed to the GSA Desk Officer, room 3235, NEOB, Washington, DC 20503 and Marjorie Ashby, Office of GSA Acquisition Policy, 18th and F Streets, NW., room 4006, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Background

On June 14, 1993, GSA solicited comments (58 FR 32890) on proposed changes to the current MAS Price Reductions clause. The proposed clause would have eliminated certain reporting requirements and increased the time given contractors to notify the Government of price reductions. Public comments received generally supported the changes, but felt that further changes should be made to reduce the burden on MAS contractors. To address these comments GSA proposes to further revise the clause to require that the Government be extended price reductions under the same terms and with the same effective dates which the contractor extends to commercial customers.

The National Performance Review recommended that line managers be given greater flexibility to buy the same or comparable MAS products for less. In order to remove any disincentive to MAS contractors offering agencies a lower price on individual orders, GSA proposes to eliminate paragraph (c) of the current clause entitled "Price Reductions to Federal Agencies."

B. Executive Order 12866

This rule was submitted to and approved by the Office of Management and Budget (OMB) in accordance with Executive Order 12866, Regulatory Planning and Review.

C. Regulatory Flexibility Act

An initial regulatory flexibility analysis has been prepared and submitted to the Acting Chief Counsel for Advocacy of the Small Business Administration. Copies of the initial regulatory flexibility analysis are available from the office identified above. The initial regulatory flexibility analysis indicates that the proposed rule will affect contractors, including small businesses, that are awarded contracts under GSA's MAS program. Historically, approximately seventy percent of MAS contractors have been small businesses Based on the number of MAS contracts currently in effect, it is estimated that 4,288 small businesses will be impacted by the new rule.

D. Paperwork Reduction Act

The Price Reductions clause is an information collection subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has been submitted to OMB for approval under the Act. Comments on the information collection requirements may be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503. The title of the information collection is "GSAR 552.238–75 Price Reductions."

The Price Reductions clause is intended to ensure that the Government maintains its price/discount (and/or term and condition) advantage in relation to the contractor's commercial customer(s) upon which the MAS contract is predicated. The customer or category of customer upon which the award is predicated is identified at the conclusion negotiations and reflected in the MAS contract.

The Price Reductions clause requires MAS contractors to notify the contracting officer of price reductions at the same time that commercial customers are notified.

The Price Reductions clause is needed to assure that the Government maintains the relative discount position, negotiated at the time of contract award, throughout the term of the contract.

The estimated annual burden for the Price Reductions clauses is 24,508 hours. This is based upon an estimated average burden per response of 2 hours, a frequency of 2 responses per respondent, and an estimated number of likely respondents of 6,127.

List of Subjects in CFR Parts 538 and 552

Government procurement.

Accordingly, it is proposed that 48 CFR parts 538 and 552 be amended as follows:

1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 538.203–71 is amended by revising the heading and adding paragraph (e) to read as follows:

538.203–71 Solicitation provisions and contract clauses.

* * * * *

(e) Contracting officers shall insert the clause at 552.238–75, Price Reductions, in all MAS solicitations and contracts.

3. Section 538.272 is added to read as follows:

538.272 MAS price reductions.

(a) Prior to the award of an MAS contract, the contracting officer and the offeror shall reach an agreement as to the customer (or category of customer), price lists, and discounts which will serve as the basis of contract award. The award document shall expressly state the price/discount relationship between the Government and the identified commercial customer which is the basis of contract award. The Price Reductions clause is intended to maintain this price/discount relationship (and/or term and condition) between the Government and the offeror's customer or category of customer upon which the MAS contract was predicated, for the contract term.

(b) During the term of the contract any changes in discount/pricing practices by the contractor which result or will result in a less advantageous relationship between the Government and the customer or category of customer upon which the MAS contract discount/price was predicated, shall result in a price reduction to the Government to the extent necessary to reflect the original relationship.

4. Section 552.238–76 is added to read as follows:

552.238–76 Price reductions.

As prescribed in 538.203–71(e), insert the following clause:

Price Reductions (XXX 1994)

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer or category of customers. This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing arrangement applicable to the identified customer or category of customers, which disturbs this relationship, will constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the Contractor's identified customer or category of customers upon which the contract award was predicated. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor:

(1) Reduces prices (or grants any more favorable discounts, or terms and conditions) contained in the commercial catalog, pricelist, schedule or other documents upon which contract award by the Government was predicated; or

(2) Grants special discounts to the identified customer or category of customers, upon which the contract award by the

Government was predicated, so as to disturb the discount/price relationship of the Government to the identified customer or category of customers.

(3) The price reduction shall be offered to the Government with the same effective date, and for the same time period as extended to the commercial customer or category of customers.

(d) The Contractor shall extend to the Government, any general price reductions (including temporary reductions) offered to all customers (or category of customers). The price reduction shall be offered to the Government with the same effective date, under the same terms and conditions, and for the same time period as extended to commercial customers.

(e) The Contractor may offer the contracting officer a voluntary Government wide price reduction at any time during the contract period.

(f) The Contractor will notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.

(g) The contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

(h) This clause does not apply to price reductions based upon: (1) firm fixed price definite quantity contracts with specified delivery in excess of the maximum order limitation specified in this contract, or (2) any sale caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

(End of Clause)

Dated: December 28, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 94-3707 Filed 2-22-94; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 940241-4041; I.D. 013194A]

RIN 0648-AG00

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 6 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). This amendment would allow vessels with moratorium permits to carry on board nets other than the minimum mesh size once the seasonal thresholds for summer flounder are retained, modify the schedule for establishing the annual management measures, provide for an experimental fishery to gather data, prohibit the use of twisted mesh, prohibit interference with any observers, and modify the dimensions of the fish box or tote. The intended effect of this rule is to relieve the industry of a regulatory restriction, use the best available data to assess the fishery, establish conformity with other regulations in the same fishing area, and protect observers.

DATES: Comments on the proposed rule must be received on or before April 11, 1994.

ADDRESSES: Comments on the proposed rule, Amendment 6, or supporting documents should be sent to the Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on Summer Flounder Plan."

Copies of Amendment 6, the environmental assessment, and the regulatory impact review are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Resource Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION:

Background

Amendment 6 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission and the New England and South Atlantic Fishery Management Councils. A notice of availability for the proposed amendment was published in the **Federal Register** on February 4, 1994 (59 FR 5384). Copies of the amendment are available from the Council upon request (see **ADDRESSES**). The amendment revises management of the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

The management unit continues to be summer flounder in U.S. waters in the western Atlantic Ocean from North Carolina northward. The objectives of the FMP as it would be amended continue to be: (1) Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur; (2) reduce fishing mortality on immature summer flounder to increase spawning stock biomass; (3) improve the yield from the fishery; (4) promote compatible management regulations between state and Federal jurisdictions; (5) promote uniform and effective enforcement of regulations; and (6) minimize regulations to achieve the management objectives stated above.

Amendment 1 to the FMP added a definition of overfishing. Amendment 2, which contained the large majority of the management measures implemented by the current regulations, is discussed below. Amendment 3 revised the boundary of the exemption area in the Northeast and increased the minimum mesh threshold to 200 pounds during the winter fishery from November 1 to April 30. Amendment 4 modified the state-specific percentage shares that allocate the coastwide annual commercial quota to the States. Amendment 5 empowered States to combine and transfer commercial quota with the approval of the Director, Northeast Region, NMFS (Regional Director).

Amendment 2 to the FMP instituted a broad spectrum of measures to stop overfishing and to allow the stock to rebuild. These measures are to be revised, if necessary, each year to meet a mortality reduction schedule. One of these measures is a minimum mesh requirement in the cod end of an otter trawl net when certain amounts of summer flounder are retained (i.e., 100 pounds or more from May through October and 200 pounds or more from November through April). Since the regulations allow only nets that meet the minimum mesh size to be on board once the threshold amounts of summer flounder are retained, vessel operators are faced with several choices. The vessel may sail with only nets that meet the minimum mesh requirement and gamble on catching species of a certain size, including summer flounder, that are subject to capture with the minimum mesh size. Vessel operators may put nets with different size mesh on board and fish for several species of fish, including those subject to capture with small mesh, on the same trip. To conduct this mixed trawl fishery, vessel operators have to discard any amount of summer flounder that would result in the retention of the threshold amounts triggering the minimum mesh requirement. If a vessel operator pursuing a mixed trawl fishery wants to continue fishing for summer flounder in excess of the threshold amounts, he/she has to return the vessel to port to offload all nets that do not meet the minimum mesh requirement and return to the fishing grounds to resume fishing.

Certain industry members (industry) approached the Council and claimed that the one-mesh-on-board provision is creating a hardship for those in the mixed trawl fishery without the concomitant benefits to those enforcing the minimum mesh requirement. Industry made a convincing case that the minimum mesh requirement could easily be frustrated by lining a legal size cod end with another legal size cod end, which could be located anywhere on deck, or by cinching off the net above the portion of the net with regulated mesh. As an alternative, the industry proposed that the one-mesh on-board provision be replaced with the net stowage provisions in the regulations governing the Northeast Multispecies fishery, in which a number of summer flounder fishermen participate.

The Council, after hearing industry testimony, reviewing public hearing comments, and engaging in discussion, decided at its December meeting to adopt Amendment 6 and replace the one-mesh-on-board provision with the mesh stowage provision of the Northeast Multispecies regulations. Amendment 6, if approved, would allow vessel operators to carry several nets with different size mesh on board their vessels and exceed the minimum mesh seasonal thresholds, as long as all nets that do not meet the minimum mesh requirement are appropriately stowed once the minimum mesh threshold amounts of summer flounder are retained. Once stowed, these nets cannot be used for the remainder of the fishing trip.

A regulation that would allow the Regional Director to authorize an experimental fishery to collect management information in certain circumstances was recommended by the Council for inclusion in this proposed rule to give effect to section 9.4.2 of the FMP regarding information and data needs. The Council is particularly interested in having additional mesh studies conducted to augment the results of the mesh studies done in New York and New Jersey. However, the Council was firm in its intent that no experimental fishery should result in a quota being exceeded. This restriction would maintain the integrity of the mortality reduction schedule, the central feature of Amendment 2.

The Council also adopted for inclusion in this proposed rule a prohibition on the use of twisted mesh. Nets constructed of twisted mesh, when towed, do not conform to the minimum mesh requirement and violate the prohibition found at 625.8(a)(6). The addition of this prohibition would conform the summer flounder regulations with the Multispecies regulations. Such conformity is desirable since multispecies and summer flounder can be caught on the same fishing trip. The Council adopted another provision to modify the dimensions of the fish box or tote referred to in § 625.25(d), to conform to those used in the Northeast Multispecies regulations.

The prohibition found at § 625.8(c)(9) would be revised to prohibit interference with a sea sampler or observer on board a vessel for any purpose, and not just for the activities under § 625.26 and § 625.27, as currently expressed in this prohibition. Observers placed on board a vessel engaged in an experimental fishery should have the same protection afforded to other observers and sea samplers.

The annual fishing measures schedule found at § 625.20(c) would be modified by this proposed rule. The date on which a certain measure is published in the **Federal Register** would be changed to a later time to allow for more current data to be included in the assessment and monitoring process. The total allowable removals from the stock, translated into a coastwide commercial quota and a recreational harvest limit, as well as additional measures for the commercial fishery must be published on or before October 15 of each year. This is the latest date that these measures can be set and allow states an opportunity to implement them on January 1 of each year. Unlike the commercial fishery, which operates year round, the recreational fishery ceases from October until May. Marine recreational survey data, which allow the recreational harvest limit to be converted into a possession limit and a recreational fishing season, are not available until well after the October 15 date. Sometimes, these data are not available until the beginning of the following year. Thus, the date on which additional measures for the recreational fishery must be published would be changed to February 15 of each year.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of the receipt of the amendment and proposed regulations. At this time, the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities for the reasons set forth in the regulatory impact review prepared by the Council, a copy of which may be obtained from the Council at the address listed above. As a result, a regulatory flexibility analysis was not prepared. The replacement of the one-mesh-on-board restriction with the mesh stowage provision alleviates a regulatory burden on the industry, enabling the industry to operate with greater economic efficiency. The amendment's conformance to the Northeast Multispecies regulations will also standardize certain regulatory requirements imposed on the industry and can be reviewed as relieving a restriction. Revising the schedule for publication of management measures will enable the Council and ASMFC to use the best available data as the basis of their deliberations. This should aid in rebuilding the stock for the benefit of industry. The experimental fishing provision should also aid in assessing the validity of certain measures which, in turn, should assist in rebuilding the stock.

This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: February 16, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 625 is proposed to be amended to read as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 625.8, paragraphs (a)(6), (a)(7), and (c)(9) are revised and a new paragraph (e) is added to read as follows:

§ 625.8 Prohibitions.

(a) * * *

(6) fish with or possess nets or netting that do not meet the minimum mesh

requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 625.24, unless the nets or netting are stowed in accordance with § 625.24(f);

(7) fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if fishing with an exempted net described in § 625.24, unless the nets or netting are stowed in accordance with § 625.24(f);

* * * * *

(c) * * *

(9) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, coercion or refusal of reasonable assistance of an observer or sea sampler conducting his or her duties aboard a vessel; or

* * * * *

(e) It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to § 625.28 or to fail to keep such letter aboard the vessel during the time period of the experimental fishing.

3. Section 625.20, paragraph (c) is revised to read as follows:

§ 625.20 Catch quotas and other restrictions.

* * * * *

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with respect to the measures necessary to assure that the applicable fishing mortality rate specified in paragraph (a) of this sectio is not exceeded. The Council shall review these recommendations. Based on these recommendations, and any public comment, the Council shall make recommendations to the Regional Director with respect to the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded. Included in the recommendation will be supporting documents as appropriate, concerning the environmental and economic impacts of the proposed action. The Regional Director will review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish in the **Federal Register** a proposed rule on or before October 15 to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish in the **Federal Register** a proposed rule on or before February 15 to implement additional management measures for the recreational fishery, if he determines that these measures are necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded. After considering public comment on a proposed rule, the Regional Director will publish a final rule in the **Federal Register** to implement the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded.

* * * * *

4. Section 625.24, is amended by removing paragraph (c), by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), and by adding new paragraphs (e) and (f) to read as follows:

§ 625.24 Gear restrictions.

* * * * *

(e) *Mesh obstruction or constriction.* (1) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (d) of this section, if it obstructs the meshes of the net in any manner.

(2) No vessel may use a net capable of catching summer flounder in which the bars entering or exiting the knots twist around each other.

(f) *Stowage of nets.* Otter trawl vessels retaining 100 pounds or more of summer flounder between May 1 and October 31 or 200 pounds or more of summer flounder between November 1 and April 30 and subject to the minimum mesh requirement may not have available for immediate use any net, or any piece of net, not-meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered not to be "available for immediate use":

(1) A net stowed below deck, provided:

(i) It is located below the main working deck from which the net is deployed and retrieved;

(ii) The towing wires, including the "leg" wires, are detached from the net;

(iii) It is fan-folded (flaked) and bound around its circumference.

(2) A net stowed and lashed down on deck, provided:

(i) It is fan-folded (flaked) and bound around its circumference.

(ii) It is securely fastened to the deck or rail of the vessel; and

(iii) The towing wires, including the leg wires, are detached from the net.

(3) A net that is on a reel and is covered and secured, provided:

(i) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) The codend is removed from the net and stored below deck.

(4) Nets that are secured in a manner approved by the Regional Director, provided that the Regional Director has reviewed the alternative manner of securing nets and has published that alternative in the **Federal Register**.

* * * * *

5. Section 625.25, paragraph (d) is revised to read as follows:

§ 625.25 Possession limit.

* * * * *

(d) Owners or operators of otter trawlers issued a permit (including a moratorium permit) under § 625.4, and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements and that are not stowed in accordance with § 625.24(f), may not retain 100 pounds (45.3 kg) or more of summer flounder between May 1 and October 31, or 200 pounds (90.6 kg) or more of summer flounder between November 1 and April 30. Summer flounder on board these vessels shall be stored in a standard 100-pound (45.3 kg) tote that has a liquid capacity of 18.2 gallons (70 liters), or a volume of not more than 4,320 cubic inches (2.5 cubic feet or 70.79 cubic cm), and that is readily available for inspection.

6. Section 625.28 is added to read as follows:

§ 625.28 Experimental fishery.

(a) The Regional Director, in consultation with the Executive Director of the Council, may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the summer flounder resource or fishery.

(b) The Regional Director may not grant such exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the summer flounder resource and fishery; or

(2) Cause any quota to be exceeded; or

(3) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this FMP except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

[FR Doc. 94–3962 Filed 2–17–94; 8:45 am]
BILLING CODE 3510–22–M

50 CFR Part 671

[I.D. 021494A]

King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 2 to the Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries of the Bering Sea/Aleutian Islands (BSAI) for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the FMP amendment should be submitted on or before April 25, 1994.

ADDRESSES: Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802 (Attn: Lori Gravel), or delivered to the Federal Building, 709 West 9th Street, Juneau, Alaska.

Copies of Amendment 2 and the environmental assessment (EA) and economic analysis prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Kim J. Spitler, Fisheries Management Division, Alaska Region, NMFS, at 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any FMP or FMP amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

Amendment 2 would establish the Norton Sound Section of the Northern District of the king crab fishery as a superexclusive registration area. The operator of any vessel registered and participating in this fishery would not be able to register that vessel and participate in other BSAI king crab fisheries. A proposed rule has been submitted that would remove existing regulations, which supersede State of Alaska regulations that established Norton Sound as a superexclusive registration area in the exclusive economic zone of the BSAI.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: February 15, 1994.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–3932 Filed 2–16–94; 5:12 pm]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 36
Wednesday, February 23, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

Agency for International Development

Loan Guarantees to Israel; Notice of Investment Opportunity

The Government of Israel (the "GOI") wishes to select managing underwriters for the structuring and sale of U.S. Agency for International Development ("USAID")-guaranteed loans. The USAID-guaranteed loans have been authorized by Public Law 102–391, and are being provided in connection with Israel's extraordinary humanitarian effort to resettle and absorb immigrants into Israel from the republics of the former Soviet Union, Ethiopia and other countries.

The legislation authorizes the guaranty by USAID of up to $10 billion principal amount of loans over the next five years, with a maximum of $2 billion in loans, offered in one or more tranches, to be guaranteed in each of the five fiscal years. This Notice is in connection with the GOI's selection of managing underwriters for an offering of up to $1.563 billion contemplated to be made under the authorization for the current fiscal year.

The GOI would like to receive proposals from interested underwriters on an expedited basis. A Request for Proposals ("RFP") will be available from the GOI on or about February 21, 1994. Proposals must be submitted, in accordance with RFP, by 4:00 p.m. on March 1, 1994. For information regarding the submission of proposals, please contact Mr. Eliahu Ziv-Zitouk, Chief Fiscal Officer, Ministry of Finance of the Government of Israel, 350 Fifth Avenue, New York, NY 10118 (fax: 212/736–2759).

To accomplish the GOI's objectives, the GOI's lead manager must at a minimum:

1. Perform and discuss with the GOI and its financial advisor a complete quantitative analysis of the cash flows generated by the proposed structures and proposed pricing of securities;

2. Complete the underwriting of all securities offered for sale;

3. Establish and maintain a post-sale trading market for the securities; and

4. Coordinate all activities relating to the proposed financing plan with the GOI and its financial advisor.

Selection of underwriters and the terms of the loans are initially subject to the individual discretion of the GOI and thereafter subject to approval by USAID. In order to be eligible for selection as a managing underwriter, an institution must be a member of the National Association of Securities Dealers, and otherwise meet legal requirements for serving in such role.

The full repayment of the loans will be guaranteed by USAID. To be eligible for an USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 226 of the Foreign Assistance Act of 1961, as amended. Disbursements under the loans will be subject to certain conditions required of the GOI by USAID as set forth in agreements between USAID and the GOI.

Additional information regarding USAID's responsibilities in this guaranty program can be obtained from the undersigned: Room 3328, New State, Washington, DC 20523–0030, Telephone: 202/647–6504.

Dated: February 17, 1994.

Michael G. Kitay,

Assistant General Counsel, Agency for International Development.

[FR Doc. 94–4135 Filed 2–22–94; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Duke, Highball, Noman, Ryeleven, Turlock, Sandpiper, Umpire, East Fork, Fisher, Lakeview, Roughneck, Southwind Salvage, Alien ET, Highway 20 Hazard Tree, Madrone, South Monty, Bugsy, Mtn.-Var., and Russky Timber Sales in Oregon; Jack, Slide Cr. Heli, and Rusby Two Timber Sales in California, Deer Gulch and Typhoon Dixie in Washington

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of decisions.

SUMMARY: On February 3, 1994, James R. Lyons, Assistant Secretary for Natural Resources and the Environment, decided to offer for sale, pending modification of the injunction in SAS v. Lyons, No. C92–179 (W.D. Washington), 30.861 million board feet of timber from 24 timber sales in Oregon, Washington and California. These decisions resulted from an agreement between Secretaries Espy and Babbit and the plaintiffs to review for possible release from the Court's injunction certain Forest Service timber sales in Pacific Southwest (Region 5) and Pacific Northwest (Region 6) Regions. All 24 sales have been modified to meet the stipulations of the agreement. The plaintiffs agreed not to oppose a motion to release 54 timber sales identified in the agreement. These 24 sales represent a portion of the 54 identified timber sales.

EFFECTIVE DATE: The United States Department of Agriculture will be requesting modification of the injunction against auction and award of timber sales in SAS v. Lyons. These 24 timber sales will be implemented as soon as practicable upon such modification by the Court.

FOR FURTHER INFORMATION CONTACT: For further information, contact John E. Lowe, Regional Forester, Region 6, P.O. Box 3623, Portland, Oregon 97208–3623, (503) 326–3625 (for timber sales in Oregon and Washington) or, Ronald E. Stewart, Regional Forester, Region 5, 630 Sansome Street, San Francisco, California 94111, (415) 705–2874 (for timber sales in California).

SUPPLEMENTARY INFORMATION: A final environmental impact statement (FEIS) on Management for the Northern Spotted Owl in the National Forests was filed with the Environmental Protection Agency (EPA) on January 31, 1992 and the Record of Decision (ROD) for this FEIS was signed on March 3, 1992. A lawsuit was filed by Seattle Audubon Society on March 25, 1992, *(Seattle Audubon Society, et al.* v. *James R. Moseley, et al.)* which challenged the legality of the FEIS and ROD alleging violations of both National Environmental Policy Act (NEPA) and National Forest Management Act. On May 28, 1992 Judge Dwyer found that the Forest Service had not fully complied with NEPA and that it must take further action under that statute.

On May 29, 1992, Judge Dwyer enjoined the Forest Service from auctioning and awarding additional timber sales in suitable spotted owl habitat. On October 6, 1993 an agreement was reached between plaintiffs and Secretaries Espy and Babbit to review for possible release from the Court's injunction certain Forest Service timber sales in Forest Service Regions 5 and 6. All or portions of 54 timber sales were identified in the agreement. The plaintiffs agreed not to oppose a motion to release the 54 timber sales. Environmental analysis and consultation with U.S. Fish and Wildlife Service have been completed for 24 of the 54 sales. In addition, each of the 24 sales has been adjusted to meet the stipulations found in the October 6 agreement with the plaintiffs.

Following is a list of the 24 timber sales, national forests, states, and their approximate volumes:

Timber sale	National forest	State	Volume (millions of board feet)
Duke	Mt Hood	Oregon	.050
Highball	Rogue River	Oregon	2.600
Noman	Rogue River	Oregon	1.000
Ryeleven	Rogue River	Oregon	.380
Sandpiper	Rogue River	Oregon	.500
Umpire	Rogue River	Oregon	1.700
Turlock	Rogue River	Oregon	2.660
East Fork	Umpqua	Oregon	2.100
Fisher	Umpqua	Oregon	.037
Roughneck	Umpqua	Oregon	5.100
Lakeview	Umpqua	Oregon	1.000
Southwind Salvage	Umpqua	Oregon	.250
Alien ET	Willamette	Oregon	1.000
Highway 20 Hazard Tree	Willamette	Oregon	.182
Madrone	Willamette	Oregon	1.340
South Monty	Willamette	Oregon	1.080
Bugsy	Winema	Oregon	0.850
Mtn.-Var	Winema	Oregon	.150
Russky	Winema	Oregon	3.200
Deer Gulch	Wenatchee	Washington	.355
Typhoon Dixie	Wenatchee	Washington	.997
Jack	Klamath	California	.100
Rusby Two	Klamath	California	2.200
Slide Cr. Heli	Klamath	California	2.030
Total			30.861

These decisions are final agency actions and are not subject to administrative appeal.

Dated: February 3, 1994.

James R. Lyons,

Assistant Secretary for Natural Resources and the Environment.

[FR Doc. 94–4012 Filed 2–22–94; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will be held from 10:30 a.m. to 1 p.m. on Saturday, March 26, 1994, at the Laramie Inn, 421 Boswell, Laramie, Wyoming 82070. The purpose of the meeting is to brief Advisory Committee members on Commission and regional activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Oralia G. Mercado or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 14, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–3950 Filed 2–22–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Estimates of the Voting Age Population for 1993

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 1993, for each state and the District of Columbia are as shown in the following table.

I have certified these counts to the Federal Election Commission.

Dated: February 16, 1994.

Ronald H. Brown,

Secretary of Commerce.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 1993

[In thousands]

Area	Population 18 and over
United States	190,776
Alabama	3,111
Alaska	410
Arizona	2,866
Arkansas	1,790
California	22,618
Colorado	2,628
Connecticut	2,503
Delaware	525
District of Columbia	463
Florida	10,510
Georgia	5,076

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 1993—Continued

[In thousands]

Area	Population 18 and over
Hawaii	873
Idaho	767
Illinois	8,630
Indiana	4,244
Iowa	2,080
Kansas	1,847
Kentucky	2,817
Louisiana	3,052
Maine	933
Maryland	3,724
Massachusetts	4,619
Michigan	6,971
Minnesota	3,290
Mississippi	1,885
Missouri	3,871
Montana	607
Nebraska	1,168
Nevada	1,037
New Hampshire	841
New Jersey	5,983
New Mexico	1,136
New York	13,730
North Carolina	5,241
North Dakota	463
Ohio	8,232
Oklahoma	2,362
Oregon	2,251
Pennsylvania	9,177
Rhode Island	765
South Carolina	2,691
South Dakota	507
Tennessee	3,831
Texas	12,848
Utah	1,195
Vermont	432
Virginia	4,903
Washington	3,862
West Virginia	1,386
Wisconsin	3,696
Wyoming	332

Note: These estimates are consistent with the population as enumerated in the 1990 census, and have not been adjusted for census coverage errors.

Source: Population Estimates Branch, Bureau of the Census, Washington, DC.

For a description of methodology see Current Population Reports, P–25 Nos. 1010 and 1106.

[FR Doc. 94–4028 Filed 2–22–94; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–351–820]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0371.

Amendment of Final Determination

In accordance with 19 CFR 353.28(c)(1993), we are amending the final determination of the antidumping duty investigation of ferrosilicon from Brazil (59 FR 732, January 6, 1994) to announce the Department's correction of ministerial errors in the calculations.

Case History

Since publication of the notice of final determination on January 6, 1994 (59 FR 732), the following events have occurred.

On January 21, 1994, petitioners and one of the respondents, Companhia Ferroligas Minas Gerais (Minasligas), alleged that the Department made several ministerial errors in its final determination. On January 24, 1994, respondent Companhia Brasileira Carbureto de Calcio (CBCC) also alleged that the Department made ministerial errors in its final determination. On January 31, 1994, petitioners submitted comments on the ministerial error allegations submitted by CBCC. Also on January 31, 1994, Minasligas submitted comments on the ministerial error allegations submitted by petitioners. All allegations and comments were timely.

Scope of Investigation

The merchandise subject to this investigation is ferrosilicon (FeSi), a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium of any other element. For a complete description of the merchandise covered by this investigation, see Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil (59 FR 732, January 6, 1994).

Ministerial Error Allegations

On January 21, 1994, petitioners alleged that the Department made several ministerial errors in its final determination. First, petitioners state that the Department improperly included home market "credit expenses" reported by two respondents, Minasligas and CBCC, in the price that was compared to the monthly cost of production (COP) for purposes of the COP test.

We agree with petitioners that this constitutes a ministerial error and have recalculated accordingly. In this investigation, we intended to make contemporaneous comparisons by comparing the price at the time of shipment to the replacement cost in the month of shipment. However, our comparisons were not contemporaneous because the COP in one month was compared to a price charged in the same month which included an adjustment for anticipated inflation. We thus determine that this constitutes an unintentional ministerial error as defined at 19 CFR 353.28(d). As a result of our recalculation, U.S. sales for both companies are now being compared to constructed value (CV). For the one U.S. sale made by Minasligas for which Minasligas did not report CV information, we indexed period of investigation (POI) average costs to February 1993 using International Monetary Fund's Brazilian wholesale price index. For two U.S. sales made by CBCC shipped outside the POI, CBCC incorrectly reported direct selling expenses. We calculated the direct selling expenses for these sales as a percentage of cost of manufacture based on CBCC's actual experience for each month of the POI.

Second, petitioners claim the Department erroneously imputed negative U.S. credit expenses for Minasligas by treating the first date on which Minasligas borrowed from U.S. advance exchange contracts as the date of payment by the purchaser (Minasligas received the first draw from the advance exchange contract prior to the date of shipment). In addition, petitioners claim we incorrectly used a cruzeiro-denominated interest rate to calculate Minasligas' negative U.S. credit figures.

We disagree with petitioners. We note that we accounted for actual expenses associated with the advance exchange contracts by making a circumstance of sale adjustment to foreign market value (FMV). Regarding the use of the first versus the second advance exchange contract payment date as well as the use of the monthly cruzeiro-denominated interest rate for calculating U.S. credit, these decisions are discussed in the final determination concurrence memorandum. Accordingly, we do not consider these issues to constitute ministerial errors, as defined in 19 CFR 353.28.

Third, petitioners claim the Department inaccurately imputed home market credit expenses by assuming Minasligas had reported 30 day interest rates for each transaction. We agree with petitioners that this is a ministerial error. We recalculated home market imputed credit expenses to accurately reflect the actual interest rate for each transaction.

Finally, petitioners claim we wrongly allowed a monetary correction offset of loans in our calculation of interest expenses for COP. We disagree with petitioners. We followed our normal practice of adjusting financial expenses to compensate for the effects of hyperinflation so that only the actual interest expenses are reflected. Therefore, petitioners' claim does not constitute a ministerial error as defined by 19 CFR 353.28.

On January 21, 1994, respondent Minasligas alleged that the Department made a ministerial error in its final determination. Minasligas claims that, because we used incorrect figures in two instances, we erroneously calculated Minasligas' general and administrative (G&A) expenses. We agree with Minasligas that this is a ministerial error and have recalculated Minasligas' G&A expenses accordingly.

On January 24, 1994, respondent CBCC alleged that the Department made several ministerial errors in its final determination. First, CBCC claims that we failed to use the correct interest expense ratio for CV purposes. We agree with CBCC that the incorrect interest expense ratio was used for CV purposes, and have changed our calculation accordingly.

Second, CBCC claims that we double-counted inventory holding gain/loss in our calculation of the CV related to a December U.S. sale. We disagree with CBCC. Inventory holding gain/loss was appropriately accounted for in the calculation of CV. However, we have removed inventory carrying costs from our analysis as it is not our policy to include this element in purchase price calculations.

Third, CBCC argues that we used an incorrect monthly "Unidade Fiscal de Referencia" figure in our depreciation calculation. CBCC claims we did not consider the "special depreciation" which was mandated by the Brazilian Government to compensate for the period in which Brazilian companies were prohibited from recognizing depreciation. CBCC claims the result is that we used an incorrect multiplier, thus overstating depreciation expense. We disagree with CBCC that we used an incorrect multiplier and that our depreciation expense calculation was overstated. Thus, we find that the calculation does not contain a ministerial error.

Finally, CBCC alleges that we failed to make proper adjustments to a U.S. price (USP) converted to cruzeiros because USP is compared to costs which are expressed in cruzeiros at a later date. CBCC claims the CV should be adjusted for the lag between the cost calculation and the conversion of the sales price into cruzeiros. We note that we did not convert USP into cruzeiros. Moreover, we followed our normal methodology for hyperinflationary economies of using the CV in the month of shipment of the U.S. sale. Accordingly, we find that this is not a ministerial error.

Therefore, pursuant to section 735(e) of the Act, we are correcting the above ministerial errors made in our final determination of sales at less than fair value.

See memorandum to Barbara R. Stafford from David L. Binder, February 8, 1994, for a detailed explanation of the decisions noted above.

Inclusion of Minasligas

In the final determination, the Department found that Minasligas had a zero dumping margin. In consequence, the Department excluded Minasligas from the results of the investigation, and instructed the Customs Service to terminate suspension of liquidation for all entries of FeSi from Minasligas and to release any bond or other security and to refund any cash deposits with respect to these entries in accordance with section 735(c)(2) of the statute.

However, as noted above, the Department has determined that ministerial errors exist with respect to the calculation of Minasligas' dumping margin. The recalculation of Minasligas' margin results in the finding of sales at less than fair value. Accordingly, we are directing the Customs Service to reinstitute suspension of liquidation of all remaining entries of FeSi from Minasligas, entered or withdrawn from warehouse, for consumption on or after August 16, 1993, which is the date of the publication of our affirmative preliminary determination in the **Federal Register** (58 FR 43323) and before January 6, 1994, which is the date of publication of our final determination in the **Federal Register**. For all unliquidated entries made during the period from August 16, 1993, to January 6, 1994, the Customs Service shall retain the cash deposits collected, or bonds posted, as a result of the preliminary determination.

In addition, as a result of the amended final determination, we are directing the Customs Service to suspend liquidation of all entries of FeSi from Minasligas, entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP as shown in the "Suspension of Liquidation" section below.

Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the U.S. Customs Service to continue to retroactively suspend liquidation of all entries of FeSi from Italmagnesio S.A. Industria e Comercio. Retroactive suspension applies to entries of FeSi, that are entered, or withdrawn from warehouse, for consumption on or after May 18, 1993, which is the date 90 days prior to the date of the publication of our preliminary determination in the **Federal Register**. For CBCC and "All Other Exporters," we are directing the Customs Service to continue to suspend liquidation of all entries of FeSi from Brazil, that are entered, or withdrawn from warehouse, for consumption on or after August 16, 1993.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP as shown below.

Manufacturer/producer/exporter	Margin percent	Critical circumstances
Italmagnesio S.A. Industria e Comercio.	88.86	Yes.
Companhia Brasileira Carbureto de Calcio.	15.53	No.
Companhia Ferroligas Minas Gerais.	3.46	No.
All Others	35.95	No.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This amended final determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.28(c).

Dated: February 15, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4059 Filed 2–22–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–447–801 (FORMERLY A–461–601)]

Solid Urea From Estonia; Joint Notice of Initiation of Antidumping Duty Administrative Review and Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Joint notice of initiation of antidumping duty administrative review and preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) received a request from the Government of Estonia to conduct an administrative review of the antidumping duty order on solid urea from Estonia. In response to this request, and in accordance with the Commerce Regulations, the Department is initiating this administrative review and is concurrently issuing these preliminary results. The review covers the period July 1, 1991, through June 30, 1992. There were no known shipments of this merchandise to the United States from Estonia by any party during the period and there are no known unliquidated entries.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Wendy Frankel, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–5256 and 482–0367, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department published in the **Federal Register** (52 FR 26367) an antidumping duty order on solid urea from the Union of Soviet Socialist Republics (USSR) (52 FR 19557 (May 26, 1987)). On June 29, 1992, following dissolution of the USSR, the Department transferred the order to the Commonwealth of Independent States and the Baltic States, including Estonia. The substance of each new order remained the same and the estimated cash deposit rate of 68.26 percent was applied to exports from each independent state (57 FR 28828 (June 29, 1992)). This was the highest rate established in the LTFV investigation.

On July 31, 1992, in accordance with 19 CFR 353.22(a), the Department received a timely request from the government of Estonia for an administrative review of the order for the time period July 1, 1991, through June 30, 1992. On August 10, 1992, the Department requested the U.S. Customs Service (Customs) to determine whether there was any record of entries of subject merchandise from the former USSR or any of the 15 independent republics during the review period. On August 13, 1992, Customs advised the Department that there was no record of any entries of the subject merchandise under HTS item 3102.10.00 during the period July 1, 1991 to June 30, 1992, from the former USSR or any of the 15 independent republics.

Initiation of Review

In accordance with § 353.22(c) of the Department's regulations, we are initiating an administrative review of the antidumping duty order on solid urea from Estonia (case number A–447–801) and are concurrently issuing these preliminary results. This review covers all manufacturers and exporters, of solid urea from Estonia for the period July 1, 1991 through June 30, 1992, and its results will be applied to all manufacturers and exporters of solid urea from Estonia.

Interested parties must submit requests for disclosure under administrative protective order in accordance with § 353.34(b) of the Department's regulations.

Scope of Review

Imports covered by this review are all shipments of solid urea from Estonia. During the original investigation such merchandise was provided for under item number 480.30 of the Tariff Schedules of the United States (TSUS). This merchandise is currently classifiable under item number 3102.10.00 of the Harmonized Tariff Schedule (HTS) of the United States. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The period of review is July 1, 1991 through June 30, 1992.

Preliminary Results of Review

As stated in the background section of this notice, Customs has advised the Department that there were no entries of the subject merchandise into the United States during the period of review. Therefore, the cash deposit rate for all firms will be maintained at the present rate of 68.26 percent. This rate is the applicable rate transferred to the Republic of Estonia on June 29, 1992. This rate was the highest calculated rate from the original LTFV investigation.

Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 37 days after the date of publication of this notice.

Within 10 days of the date of publication of this notice, interested parties to this proceeding may request a disclosure and/or a hearing. The hearing, if requested, will take place no later than 44 days after publication of this notice. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: the cash deposit rate for all firms shall be 68.26 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This initiation, this review, and this notice are in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1993).

Dated: February 14, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4060 Filed 2–22–94; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Tuesday, March 8, 1994, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. Presentations will be given on the Manufacturing Extension Partnership, the Board of Assessment's report on NIST programs, the Advanced Technology Program: a progress report and industrial input and program definition, laboratory tours, and a discussion on the Institute's budget.

The discussion on NIST Budget, scheduled to begin at 3:50 p.m. and end at 5 p.m. on March 8, 1994, will be closed.

DATES: The meeting will convene March 8, 1994, at 8:30 a.m. and will adjourn at 5 p.m.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 14, 1994, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of Title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: February 16, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–4037 Filed 2–22–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Incidental Take of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of Letters of Authorization.

Notice is given that on February 8, 1994, NMFS issued a Letter of Authorization for a take of ringed seals incidental to on-ice seismic activities in the Beaufort Sea. This letter was issued under the authority of the Marine Mammal Protection Act (MMPA) and 50 CFR part 228, subparts A and B.

A letter was issued to Western Geophysical, 351 E. International Airport Road, Anchorage, Alaska 99518. The letter is valid only for activities conducted in 1994, and is subject to the provisions of the MMPA, regulations governing small takes of marine mammals incidental to specified activities, and regulations governing the taking of ringed seals incidental to on-ice seismic activities in the Beaufort Sea (50 CFR part 228, subparts A and B and 58 FR 4091, January 13, 1993).

Issuances of letters are based on findings that the total takings will have a negligible impact on the ringed seal species or stock and will not have an unmitigable adverse impact on the availability of the species for subsistence uses.

ADDRESSES: These letters are available for review in the following offices: Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910 and Western Alaska Field Office, NMFS, 701 C Street, Anchorage, Alaska 99513.

Dated: February 8, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 94–4026 Filed 2–22–94; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of extensions to four permits.

On April 13, 1993, as authorized by the provisions of the Endangered Species Act, NMFS issued incidental take Permit 829 (P507F) to the Washington Department of Fisheries (WDF), Permit 830 (P250E) to the Washington Department of Wildlife (WDW), Permit 831 (P211G) to the Oregon Department of Fish and Wildlife (ODFW), and Permit 832 (P503D) to the Idaho Department of Fish and Game (IDFG) to incidentally take listed Snake River sockeye salmon (*Oncorhynchus nerka*) and Snake River spring/summer and fall chinook salmon (*O. tshawytscha*) during the operation of artificial propagation hatcheries, subject to certain conditions set forth therein, to be valid through February 15, 1994.

The above permit holders have submitted applications (P507G, P250F, P211H, and P503L, respectively) in due form for new permits to authorize the continued operation of their hatchery programs. NMFS is currently analyzing the activities proposed in those applications in accordance with the Endangered Species Act and the National Environmental Policy Act; however, this process is not yet complete.

Notice is hereby given that on February 14, 1994, NMFS issued extensions to the above permits, authorizing the permit holders to continue the activities therein until July 1, 1994, or until the authorization is superseded by a new permit. All other conditions associated with the permit remain in full force and effect. No release of hatchery fish are authorized at this time.

Issuance of these extensions, as required by the ESA, was based on a finding that: (1) The taking would be incidental; (2) the applicant would, to the maximum extent practicable, monitor, minimize and mitigate the impacts of such taking; (3) the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (4) there were adequate assurances that the conservation plan would be funded and implemented, including any measures required by the Assistant Administrator. These permits were also issued in accordance with and are subject to Parts 217–222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The applications, permits, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, Oregon 97232 (503–230–5400).

Dated: February 14, 1994.
William W. Fox, Jr.,
Director, Office of Protected Resources.
[FR Doc. 94–3955 Filed 2–22–94; 8:45 am]
BILLING CODE 3510–22–M

[I.D. 020894A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Receipt of application for a permit to take marine mammals for the purposes of scientific research and to enhance the survival of a species (P772#65).

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038–0271, has applied in due form for a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research and to enhance the survival of the species.

DATES: Written comments must be received on or before March 25, 1994.
ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);
Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016); and
Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955–8831).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicant proposes to conduct several research/enhancement activities on Hawaiian monk seals (*Monachus schauinslandi*). The various activities requested are primarily those which have been authorized in the past under the applicant's previous permits (e.g., Permit Nos. 657, 729, and 778). These activities include the following: (1) Possible inadvertent harassment (multiple times annually) of up to the entire population of Hawaiian monk seals (approximately 1500) incurred during census activities; (2) mass mortality response activities, including (a) sacrifice of up to 10 moribund pups, (b) collection of samples from up to 20 diseased seals, (c) collection of samples from up to 10 apparently healthy seals (and possible biopsy of up to 5 of these 10), (d) sacrifice of up to 6 apparently normal males, (e) experimental treatment and or removal from the affected island of up to 10 diseased seals, and (f) treatment and/or removal of up to 100 additional seals; (3) collection for rehabilitation and release to the wild of up to 70 immature seals; (4) tagging and marking of up to 1000 pups and juveniles; (5) instrumentation (satellite/VHF transmitters, and time-depth recorders (TDRs)) of up to 25 seals; (6) bleach marking of up to 1500 seals; and (7) stomach lavage of up to 40 seals. Additionally, the applicant is requesting authorization for the accidental mortality of some of these animals.

Dated: February 14, 1994.
William W. Fox, Jr.,
Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 94–3966 Filed 2–22–94; 8:45 am]
BILLING CODE 3510–22–P

[I.D. 020994B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Receipt of application for a scientific research permit (P771#69).

SUMMARY: Notice is hereby given that Dr. Howard Braham, National Marine Fisheries Service, Alaska Fisheries Science Center, National Marine Mammal Laboratory, 7600 Sand Point Way NE., Seattle, Washington 98115, has applied in due form for a permit to take beluga whales (*Delphinapterus leucas*) for purposes of scientific research.

DATES: Written comments must be received on or before March 25, 1994.
ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);
Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and
Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant seeks authorization to tag up to 30 beluga whales (*Delphinapterus leucas*) in Alaska annually, over a 2-year period. Up to 500 additional whales may be harassed incidental to the tagging operations annually.

Dated: February 15, 1994.
William W. Fox, Jr.,
Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 94–3967 Filed 2–22–94; 8:45 am]
BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Consultations with the Government of the People's Republic of China

February 16, 1994.
AGENCY: Committee for the Implementation of Textile Agreements (CITA).
ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In recent consultations between the Governments of the United States and the People's Republic of China, agreement was reached to establish a separate bilateral agreement on silk apparel products, produced or manufactured in China and exported to the United States. Further consultations are scheduled to be held on February 24 and 25, 1994 in Washington, DC, to settle the specifics of this Agreement. A notice will be published in the **Federal Register** following these meetings that will provide the specifics of the new Silk Agreement with the People's Republic of China.

Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 94–4056 Filed 2–22–94; 8:45 am]
BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability, Preparation of a Final Supplement to the 1989 Environmental Impact Statement for Proposed Actions at U.S. Army Kwajalein Atoll (USAKA)

AGENCY: Department of the Army, DOD.
ACTION: Notice of availability.

SUMMARY: This notice of availability is for a Final Supplemental Environmental Impact Statement (FSEIS) to the Environmental Impact Statement prepared for the United States Army Kwajalein Atoll (USAKA) (United States Army Strategic Defense Command, 1989). The FSEIS has assessed potential environmental impacts for two proposed actions: To increase the level of missile defense test and evaluation activities to support the development for deployment of missile defense systems; and to adopt new environmental standards for USAKA.

Lead Agency: U.S. Army Space and Strategic Defense Command (USASSDC).

Cooperating Agency: Ballistic Missile Defense Organization (BMDO).

Proposed Action: The first Proposed Action involves a substantial increase in USAKA activities required to support the development in missile defense systems. These activities would consist of a substantial increase in flight test activities with a corresponding increase in the USAKA infrastructure and support capabilities. USAKA is a national range at which the performance of component, sub-system, and integrated system testing has occurred. The second Proposed Action involves the adoption of new environmental standards for USAKA, which are derived from existing United States and Republic of the Marshall Islands regulations and statutes, and are tailored to protect the specific environmental conditions of the Kwajalein Atoll. The development of these new standards is provided for in the Compact of Free Association between the United States and the Government of the Republic of the Marshall Islands.

ADDRESSES: Request for information may be forwarded to the Commander, U.S. Army Space and Strategic Defense Command, Attn: Kenneth R. Sims, CSSD–EN–V, P.O. Box 1500, Huntsville, AL 35807–3801.

FOR FURTHER INFORMATION CONTACT: Verbal comments and questions regarding the FSEIS may be directed to Mr. Ed Vaughn at (205) 955–3887.

Dated: February 14, 1994.
Lewis D. Walker,
Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I, L&E).
[FR Doc. 94–3976 Filed 2–22–94; 8:45 am]
BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB)
Date of Meeting: 7 March 1994
Time of Meeting: 0830–1100 (classified)
Place: McLean, VA
Agenda: The Threat team of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 94–4075 Filed 2–22–94; 8:45 am]
BILLING CODE 3710–08–M

Department of the Navy

Privacy Act of 1974; Delete Record Systems

AGENCY: Department of the Navy, DOD.
ACTION: Delete record systems.

SUMMARY: The Department of the Navy is deleting three systems of records from its inventory of Privacy Act systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The reason for their deletion is provided below.

DATES: The deletions are effective February 23, 1994.
ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.
FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614–2004 or DSN 224–2004.
SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The deleted systems of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: February 16, 1994.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01746–1

SYSTEM NAME:

Nonappropriated Fund Activity Information Support System *(February 22, 1993, 58 FR 10722).*

Reason: The system of records was established but never implemented within the Department of the Navy.

N05340–2

SYSTEM NAME:

Personal Commercial Affairs Solicitation Privilege File System *(February 22, 1993, 58 FR 10755).*

Reason: Records in the system are retrieved by company name, not a personal identifier.

N07600–1

SYSTEM NAME:

NIF Standard Automated Financial System (STAFS) (February 22, 1993, 58 FR 10810).

Reason: System tested, but never implemented. Sponsoringactivity disestablished May 1990.

[FR Doc. 94–3985 Filed 02–22–94; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of dates for submission of State revenue and expenditure reports for fiscal year 1993 and of revisions to those reports.

SUMMARY: The Secretary of Education announces a date for the submission by State educational agencies (SEAs) of preliminary expenditure and revenue data and average daily attendance statistics for fiscal year (FY) 1993 and establishes a deadline for any revisions to that information. The Secretary sets these dates to ensure that data are available for timely distribution of Federal funds. The data will be published by the Department's National Center for Education Statistics (NCES) and will be used by the Secretary in the calculation of allocations for FY 1995 appropriated funds.

DATES: The suggested date for submission of preliminary data is March 15, 1994. The mandatory deadline for submission of final data is, including revisions to preliminary data, September 6, 1994.

ADDRESSES: SEAs are urged to mail or hand deliver ED Form 2447 (The National Public Education Financial Survey—Fiscal Year 1993) by the first date specified in this notice. SEAs must mail or hand deliver final data and any revisions to preliminary data on or before the mandatory deadline date to—U.S. Department of Education, Office of Educational Research and Improvement, National Center for Education Statistics, Attention: GSAB—Fiscal Survey, 555 New Jersey Avenue, NW., Washington, DC 20208–5651.

An SEA may hand deliver any revisions to room 410 of the address above by 4 p.m. (Washington, DC time) on or before the mandatory deadline date.

If an SEA's submission is received by NCES after the mandatory deadline date, in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Fowler, Jr., at the address specified above or by telephone: (202) 219–1921. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Under the authority of section 406(g) of the General Education Provisions Act, as amended (20 U.S.C. 1221e–1(g)), which authorizes NCES to gather data from States on the financing of elementary and secondary education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average State per pupil expenditure (SPPE) for elementary and secondary education.

In addition to using SPPE data as useful statistics on the financing of elementary and secondary education, the Secretary uses them directly in calculating allocations for certain formula grant programs, including chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (chapter 1), Impact Aid, and Indian Education. Other programs such as title VII of the Stewart B. McKinney Homeless Assistance Act, the Eisenhower Mathematics and Science Education program, and the Drug-Free Schools and Community Act make use of SPPE data indirectly because their formulas are based, in whole or in part, on State chapter 1 allocations.

In December 1993, NCES mailed to SEAs ED Form 2447 with instructions and requested that SEAs submit initial data to the Department by March 15, 1994. If an SEA does not submit initial FY 1993 data on ED Form 2447 on or about March 15, 1994, it should inform NCES, in writing, of the delay and the date by which it will submit FY 1993 data. Submissions by SEAs to NCES are edited by NCES and returned to each SEA for verification. NCES acknowledges that data submitted prior to September 6, 1994, may be preliminary and are subject to revision by an SEA not later than September 6, 1994.

To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, a final date by which ED Form 2447 must be submitted. However, if an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs.

Authority: 20 U.S.C. 1221e–1(g).

Dated: February 17, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–4009 Filed 2–22–94; 8:45 am]

BILLING CODE 4000–01–P–M

DEPARTMENT OF ENERGY

Grant Award to the Nature Conservancy

AGENCY: U.S. Department of Energy, Richland Operations Office.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy, Richland Operations Office, announces that pursuant to Paragraph B of 10 CFR 600.7(b)(2)(i), it intends to issue a noncompetitive grant award to The Nature Conservancy. The award is planned for a three (3) year project cycle, consisting of three (3) separately funded one (1) year budget periods. The initial budget is estimated at $250,000.

FOR FURTHER INFORMATION CONTACT: Melanie P. Fletcher, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, Washington 99352, Telephone: (509) 376–4828.

SUPPLEMENTARY INFORMATION: Grant Award Number: DE–FG06–94RL12858. Scope of Project: The proposed financial assistance award is a grant to The Nature Conservancy to fund a Biodiversity Inventory and Analysis Program on the Hanford Site. The activities will include inventorying plants, animals, and ecologically significant areas. In addition, the inventory work will assist DOE in identifying the location of threatened and endangered species on the Hanford Site and thereby afford the proper protection and/or mitigation required per the Threatened and Endangered Species Act.

The Nature Conservancy is currently performing activities related to those proposed at the Hanford Site utilizing their own resources. The public benefit derived from these activities could be greatly enhanced with Department of Energy financial support. It has been determined that a grant instrument is appropriate since the Department of Energy anticipates limited direct involvement with the program.

Dated: February 3, 1994.

Robert D. Larson,

Director, Procurement Division, Richland Operations Office.

[FR Doc. 94–4020 Filed 2–22–94; 8:45 am]

BILLING CODE 6450–01–M

Grant Award to Prairie View A&M University

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Dallas Support Office, announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to the Texas Engineering Experiment Station at Prairie View A&M University (PVAM), for the implementation of a collaborative program with the Energy Analysis and Diagnostic Center (EADC) at Texas A&M University to provide the necessary training and support for development of an EADC at PVAM.

SUPPLEMENTARY INFORMATION: DOE announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to the Texas Engineering Experiment Station at PVAM, would be based on the acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). There are currently no Historically Black Colleges and Universities (HBCU) participating in the EADC program. Texas A&M University (TAMU) is one of only six EADC program participants that have IAC qualifications to conduct the combined industrial assessment activities of energy efficiency improvement, waste reduction/pollution prevention and productivity improvement. Of the six IACs, TAMU is the only institution in close proximity to an Accreditation Board for Engineering and Technology (ABET) accredited HBCU. The proposed project is deemed meritorious based on the general evaluation in accordance with DOE 600.14(d) and represents a unique approach that would not be eligible for financial assistance under a recent, current, or planned solicitation.

The project period for the grant award is 12 months. DOE plans to provide funding in the amount of $62,000.00.

FOR FURTHER INFORMATION CONTACT: Linda K. Carter, U.S. Department of Energy, Dallas Support Office, 1420 West Mockingbird Lane, suite 400, Dallas, TX 75247.

Issued in Chicago, Illinois, on February 4, 1994.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 94–4021 Filed 2–22–94; 8:45 am]

BILLING CODE 6450–01–M

Floodplain Statement of Findings for Proposed Sampling at Solid Waste Management Units 94 and 95 at the Paducah Gaseous Diffusion Plant, Paducah, KY

AGENCY: Department of Energy (DOE).

ACTION: Floodplain Statement of Findings.

SUMMARY: This is a Floodplain Statement of Findings for the proposed sampling at solid waste management units (SWMUs) 94 and 95. DOE proposes to conduct a Resource Conservation and Recovery Act Facility Investigation (RFI) at SWMUs 94 and 95 at the Paducah Gaseous Diffusion Plant (PGDP) that would involve the collection of surface water, ground water, sediment, and soil samples at these SWMUs. Some sampling is proposed to occur in the floodplains of two creeks near PGDP in McCracken County, Kentucky. DOE prepared a floodplain assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplains. DOE will endeavor to allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Information on the proposed action (including maps of potentially disturbed floodplain areas) is available from:

Mr. Robert C. Sleeman, Director, Environmental Restoration Division, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, Tennessee 37831–8541, (615) 576–0715, (615) 576–6074 (Fax).

Further information on general DOE floodplain/wetlands environmental review requirements is available from:

Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for the proposed RFI sampling at SWMUs 94 and 95 prepared in accordance with 10 CFR part 1022. A Notice of Floodplain/Wetland Involvement for Environmental Restoration and Waste Management Activities at PGDP was published in the **Federal Register** on October 5, 1993, at 58 FR 51812, and a floodplain assessment has been prepared; no wetland will be involved in the proposed action. DOE is proposing to collect surface water, ground water, sediment, and soil samples to define the nature and extent of contamination in these media at two SWMUs on the site of the former Kentucky Ordnance Works near PGDP in McCracken County, Kentucky.

Ground-water wells and deep soil borings would be placed within the 100-year floodplain of an unnamed tributary to Big Bayou Creek at SWMU 94 and within the 100-year floodplain of Big Bayou Creek at SWMU 95 to determine if the floodplains have been contaminated from past releases from the two SWMUs. Sampling would allow DOE to define the nature and extent of potential contamination in floodplain media. Two alternatives were considered—the no action alternative and an alternative that included performing the activities outside of the floodplain. Neither of these alternatives would provide the necessary characterization information and, therefore, are unacceptable alternatives. The proposed action does conform to applicable State floodplain protection standards.

Minor temporary impacts would occur from construction of temporary access roads and drilling pads for heavy equipment used to install deep soil borings and wells. Some trees would have to be cut at SWMU 95 to clear new access routes. Existing roadways and clearings would be used to the greatest

extent possible to minimize new road construction. New temporary roadways and drilling pads would require small amounts of gravel and rock fill for drilling equipment.

All drilling pads and most access roadways would be reclaimed and revegetated at the conclusion of the project. Some roadways would be left in place for continued access to monitoring wells. The number of trees to be cut would be kept to the minimum needed to clear access routes. Standard engineering practices would control potential soil erosion from the sites. Access road and drilling pad construction and clearing vegetation for site access would not reduce the flood storage capacity of the floodplain, interfere with stream flow, or produce hazardous flood velocities. DOE will endeavor to allow 15 days of public review after publication of the statement of findings prior to implementing the proposed action.

James J. Fiore,

Director, Office of Eastern Area Programs, Office of Environmental Restoration.

[FR Doc. 94-4024 Filed 2-22-94; 8:45 am]

BILLING CODE 6450-01-P

Office of Energy Efficiency and Renewable Energy

[Case No. F-067]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Goodman Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Goodman Manufacturing Company (Goodman) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's GMN series central furnaces.

Today's notice also publishes a "Petition for Waiver" from Goodman. Goodman's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Goodman seeks to test using a blower delay time of 40 seconds for its GMN series central furnaces instead of the specified 1.5-minute delay between on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than March 25, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F-067, Mail Stop EE-43, room 5E-066, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, and the Energy Policy Act of 1992 (EPAct), Public Law 102-486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive, temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On November 29, 1993, Goodman filed an Application for Interim Waiver regarding blower time delay. Goodman's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Goodman requests the allowance to test using a 40-second blower time delay when testing its GMN series central furnaces. Goodman states that the 40-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of 0.6 to 1.0 percent. Since current DOE test procedures do not address this variable blower time delay, Goodman asks that the Interim Waiver be granted.

The Department has published a notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; The Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Goodman an Interim Waiver for its GMN series central furnaces. Pursuant to paragraph (e) of Section 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Goodman was issued.

Pursuant to paragraph (b) of 10 CFR part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC, February 10, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

February 14, 1994.

Mr. Peter H. Alexander,

Vice President of Engineering, Goodman Manufacturing Company, 1501 Seamist, Houston, Texas 77008.

Dear Mr. Alexander: This is in response to your November 29, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Goodman Manufacturing Company (Goodman) GMN series central furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; The Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Goodman's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Goodman will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Goodman shall be permitted to test its GMN series central furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103-82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

November 29, 1993.

Assistant Secretary, Conversation and Renewable Energy,
United States Department of Energy,
1000 Independence Ave., SW.,
Washington, DC 20585.

Re: Petition for Waiver and Application for Interim Waiver.

Gentlemen: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27. Waiver is requested from the test procedure for measuring Furnace Energy Consumption as found in Appendix H to Subpart B of part 430.

The current test procedure requires a 1.5 minute delay between burner ignition and

the start of the circulating air blower. Goodman Manufacturing Co., L.P. is requesting waiver and authorization to use a 40 second delay instead of the specified 1.5 minutes for the blower to start after main burner ignition. Goodman Manufacturing intends to use a fixed timing control on our GMN series central furnaces to gain additional energy savings that are achieved with the use of shorter blower on times.

Test data for these furnaces with a 40 second delay indicated an increase in AFUE of 0.6 to 1.0 percentage points. The use of a 40 second delay reduces the appliance flue losses and therefore increases the furnace efficiency. Copies of confidential test data confirming this energy savings will be provided to you at your request.

The current test procedure does not give Goodman Manufacturing credit for energy savings that can be obtained using fixed blower timings. The proposed ASRAE 103–1988 that is under consideration by DOE address the use of timed blower operation.

Goodman Manufacturing is confident that this Waiver will be granted, and therefore we request an Interim Waiver be granted until a final ruling is made. Goodman, as well as other manufacturers of domestic furnaces, have been granted similar waivers.

Manufacturers that domestically market similar products have been sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

Goodman Manufacturing Co., L.P.,

Peter H. Alexander,

Vice President of Engineering.

[FR Doc. 94–4022 Filed 2–22–94; 8:45 am]

BILLING CODE 6450–01–P–M

[Case No. F–066]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Goodman Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Goodman Manufacturing Company (Goodman) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's GMPV series central furnaces.

Today's notice also publishes a "Petition for Waiver" from Goodman. Goodman's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Goodman seeks to test using a blower delay time of 30 seconds for its GMPV series central furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than March 25, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–066, Mail Stop EE–43, room 5E–066, Forrestall Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On November 29, 1993, Goodman filed an Application for Interim Waiver regarding blower time delay. Goodman's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Goodman requests the allowance to test using a 30-second blower time delay when testing its GMPV series central furnaces. Goodman states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.0 percent. Since current DOE test procedures do not address this variable blower time delay, Goodman asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24; 1992, and 57 FR 34560,

August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporations, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 6, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; The Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc. 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992, Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Goodman an Interim Waiver for its GMPV series central furnaces. Pursuant to paragraph (e) of Section 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Goodman was issued.

Pursuant to paragraph (b) of 10 CFR part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC, February 10, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

February 14, 1994.

Mr. Peter H. Alexander,
Vice President of Engineering,
Goodman Manufacturing Company,
1501 Seamist,
Houston, TX 77008.

Dear Mr. Alexander: This is in response to your November 29, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Goodman Manufacturing Company (Goodman) GMPV series central furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; The Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Goodman's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Goodman will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Goodman's Application for an Interim Waiver from the DOE test procedure for its GMPV series central furnaces regarding blower time delay is granted.

Goodman shall be permitted to test its GMPV series central furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

November 29, 1993.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

Re: Petition for Waiver and Application for Interim Waiver.

Gentlemen: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27.

Waiver is requested from the test procedure for measuring Furnace Energy Consumption as found in Appendix H to Subpart B of part 430.

The current test procedure requires a 1.5 minute delay between burner ignition and the start of the circulating air blower. Goodman Manufacturing Co., L.P. is requesting waiver and authorization to use a 30 second delay instead of the specified 1.5 minutes for the blower to start after main burner ignition. Goodman Manufacturing intends to use a fixed timing control on our GMPV series central furnaces to gain additional energy savings that are achieved with the use of shorter blower on times.

Test data for these furnaces with a 30 second delay indicated an increase in AFUE of 1.0 percentage point. The use of a 30 second delay reduces the appliance flue losses and therefore increases the furnace efficiency. Copies of confidential test data confirming this energy savings will be provided to you at your request.

The current test procedure does not give Goodman Manufacturing credit for energy savings that can be obtained using fixed blower timings. The proposed ASRAE 103–1988 that is under consideration by DOE address the use of timed blower operation.

Goodman Manufacturing is confident that this Waiver will be granted, and therefore we request an Interim Waiver be granted until a final ruling is made. Goodman, as well as other manufacturers of domestic furnaces, have been granted similar waivers.

Manufacturers that domestically market similar products have been sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

Goodman Manufacturing Co., L.P.,

Peter H. Alexander,

Vice President of Engineering.

[FR Doc. 94–4023 Filed 2–22–94; 8:45 am]

BILLING CODE 6450–01–P–M

Federal Energy Regulatory Commission

[Docket No. EC94–10–000, et al.]

Commonwealth Edison Co., et al.; Electric Rate and Corporate Regulation Filings

February 15, 1994.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. EC94–10–000]

Take notice that on February 4, 1994, Commonwealth Edison Company (Edison), 10 South Dearborn Street, Post Office Box 767, Chicago, Illinois 60690, submitted an application pursuant to Section 203 of the Federal Power Act for authority to carry out a "disposition of facilities" that would assertedly be deemed to occur as a result of a proposed corporate restructuring, all as more fully set forth in the Application, which is on file with the Commission and open to public inspection.

The Application states that the proposed restructuring would be accomplished through transactions in which Edison would become a subsidiary of CECo Holding Company (Holding Company) through the conversion of Edison's common stock into common stock of Holding Company. It is stated that the proposed restructuring will permit Edison affiliates to engage in non-utility businesses and will not affect Edison's jurisdictional facilities, rates, or services.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. West Texas Utilities Company

[Docket No. ER94–959–000]

Take notice that on February 8, 1994, West Texas Utilities Company (WTU) submitted for filing seven (7) executed Delivery Point and Service Specifications sheets providing for various minor changes to the Service Agreement between WTU and three of its wholesale customers: Midwest Electric Cooperative, Inc., Brazos Electric Power Cooperative, Inc., and Rio Grande Electric Cooperative, Inc., executed under WTU's FERC Electric Tariff, Original Volume No. 1.

WTU states that copies of the filing have been sent to the Public Utility Commission of Texas and the affected full-requirements wholesale customers.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Elkem Metals Company

[Docket No. ER94–966–000]

Take notice that on February 9, 1994, Elkem Metals Company (Elkem), tendered for filing with the Commission as initial rate schedules pursuant to Part 35.12 of the Commission's regulations a Special Contract which provides, *inter alia* for the sale from time to time of electricity by Elkem to Appalachian Power Company (Appalachian).

The Special Contract sets forth terms pursuant to which Elkem will sell to Appalachian excess electric energy generated by its hydroelectric facility. The Special Contract will be effective as of December 1, 1993, and has a term of two years, subject to extension by the parties.

Copies of the filing were served by Elkem upon what will be its sole jurisdictional customer, Appalachian.

The parties have requested a waiver of the Commission's Rules and Regulations to permit the proposed sale to become effective on less than 60 days notice.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. GWF Power Systems, L.P.

[Docket No. QF86–138–005]

On February 7, 1994, GWF Power Systems, L.P. of 225 Lennon Lane, Suite 120, Walnut Creek, California 94598, submitted for filing an application for certification of a facility as a small power production facility pursuant to Section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility is located in Hanford, Kings County, California and consists of a fluidized bed boiler and a steam turbine generator. The maximum net power production capacity of the facility is approximately 25.44 MW. The primary energy source is petroleum coke. The installation of the facility began in November of 1988.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER94–962–000]

Take notice that on February 9, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing an Amended Appendix A to the Settlement Agreement (Agreement) between PG&E and Northern California Power Agency (NCPA) which was previously accepted for filing and designated as PG&E Rate Schedule FERC No. 28.

The Agreement provides for the sale of non-peak firm energy by PG&E to NCPA and includes provisions for adjusting rates. Due to the discontinuation of an index, the Amended Appendix A proposes to change the indices used for adjusting rates.

PG&E has also requested a waiver of the Commission's notice requirements of the Commission's regulations so that the rate change may become effective January 1, 1993 pursuant to the Agreement and Amended Appendix A.

Copies of this filing were served on NCPA and the California Public Utilities Commission.

Comment date: March 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Company

[Docket No. ER94–953–000]

Take notice that on February 7, 1994, Florida Power Corporation (FPC) tendered for filing an agreement between itself and Georgia Power Company (GPC) pursuant to which FPC will sell to GPC between 150 MW and 500 MW of peaking capacity and energy in the months of June through September in each year between 1996 and 1999. The Agreement also provides GPC the option to purchase up to 300 MW of peaking capacity and energy in the summer of 1995. FPC also has tendered as a supplement to the Agreement a unilateral cap on the total revenues to be collected under the Agreement.

FPC proposes to make the Agreement effective 60 days after filing. FPC states that copies of its filing have been served upon GPC and the Public Service Commissions of Georgia and Florida.

Comment date: March 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Corporation

[Docket No. ER94–960–000]

Take notice that New York State Electric & Gas Corporation (NYSEG), on February 8, 1994, tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures, as an initial rate schedule, an agreement with Baltimore Gas and Electric Company (BG&E). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to BG&E and BG&E will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on February 9, 1994, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission, the Maryland Public Service Commission and BG&E.

Comment date: March 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. United Illuminating Company

[Docket No. ER94–195–000]

Take notice that on January 13, 1994, United Illuminating Company tendered for filing an amendment to its November 30, 1993, filing in the above-referenced docket.

Comment date: February 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER92–812–003]

Take notice that on December 14, 1993, Wisconsin Electric Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: March 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Century Power Corporation

[Docket No. ER94–923–000]

Take notice that on January 25, 1994, Century Power Corporation tendered for filing a Service Agreement for the Provision of Short Term Power between Century and Tri-State Generation and Transmission Association under Century's FERC Electric Tariff, Original Volume No. 1 Century requests that this filing be allowed to become effective on May 1, 1994, when service is to commence under the Service Agreement.

Comment date: March 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Eastern Power Distribution, Inc.

[Docket No. ER94–964–000]

Take notice that on February 8, 1994, Eastern Power Distribution, Inc. (EPD), tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207 (1993), a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective the earlier of April 9, 1994, or the date of a Commission order granting approval of this Rate Schedule.

EPD intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where EPD purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, EPD will be functioning as a marketer. In EPD's marking transactions, EPD proposes to charge rates mutually agreed upon by the parties. In transactions where EPD does not take title to the electric power and/or energy, EPD will be limited to the role of a broker and will charge a fee for its services. EPD is not in the business of producing or transmitting electric power. EPD does not currently have or contemplate acquiring title to any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power Corporation

[Docket No. ER94–961–000]

Take notice that on February 8, 1994, Florida Power Corporation (Florida Power), tendered for filing a wholesale rate change in its full requirements, partial requirements and transmission rates. The amount of the rate change, depends on the rates to which the current ones are compared. If compared to the presently effective rates (the 1993 "as proposed" rates in Docket Nos. ER93–299–000 and ER93–18–000), the filed rate accomplish a rate increase in the amount of $10.3 million or 7.5% on a 1994 calendar-year basis. If the rates filed herein are compared to the rates negotiated in settlement of Florida Power's last filing, (Consolidated Docket Nos. ER93-299-000 and EL93-18-000), an increase of $13.3 million per year or 10% on a 1994 calendar-year basis results.

Florida Power requests that the rate change be permitted to become effective on March 2, 1994. Florida Power states that it has served copies of its filing on the affected customers and the Florida Public Service Commission.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Central Louisiana Electric Company

[Docket No. ER94–37–000]

Take notice that on January 25, 1994, Central Louisiana Electric Company (CLECO) tendered for filing an amendment in the above-referenced docket.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4015 Filed 2–22–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RM93–19–000]

Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Establishing Dates for Technical Conference

February 15, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice Establishing Dates For Technical Conference.

SUMMARY: The Federal Energy Regulatory Commission is issuing this notice to establish dates for the technical conference to be held in this proceeding to discuss transmission pricing issues.

DATES: The technical conference will be held on April 8 and 15, 1994. Persons wishing to speak at the technical conference should notify the Commission no later than March 1, 1994, in a pleading referencing Docket No. RM93–19–000 (not exceeding one page) and should identify the entities for whom they propose to speak.

ADDRESSES:

Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary (202) 208–0400.

SUPPLEMENTARY INFORMATION: By order dated June 30, 1993, the Commission initiated this proceeding to consider whether it is appropriate to revise the Commission's present pricing policy for transmission services provided by public utilities under the Federal Power Act. Notice of Technical Conference and Request for Comments, 64 FERC ¶ 61,109 (1993); 58 FR 36400, July 7, 1993 (June 30 Order). In the June 30 Order, the Commission provided for public comment on transmission pricing issues and announced that a technical conference to discuss transmission pricing issues would be scheduled after the Commission had an opportunity to review the comments.

Notice is hereby given that the Commission will hold a technical conference to discuss transmission pricing issues on April 8 and 15, 1994, in Washington, DC. Persons wishing to speak at the technical conference should notify the Commission no later than March 1, 1994, in a pleading referencing Docket No. RM93–19–000 (not to exceed one page) and should identify the entities for whom they propose to speak. A further notice will be issued specifying the agenda and format (including speakers), time and specific location of the technical conference.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3949 Filed 2–22–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP93–261–001]

Algonquin Gas Transmission Co.; Amendment

February 16, 1994.

Take notice that on February 15, 1994, Algonquin Gas Transmission Company (Algonquin), located at 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed an amendment in Docket No. CP93–261–001, pursuant to Section 7(c) of the Natural Gas Act, requesting a certificate of public convenience and necessity authorizing Algonquin to construct and operate facilities and to transport and deliver a total of approximately 14,758 MMbtu of natural gas per day on a firm basis to Bay State Gas Company (Bay State), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin states that the withdrawal of New England Power from the AFT–5 project has resulted in a reduction in the service and facility requirements originally proposed.

Specifically, Algonquin now proposes to: (1) Construct and operate 3.8 miles of 16-inch loop on Algonquin's I–2 system from Valve I–22 to the Brockton Meter Station in Brockton, Massachusetts; (2) upgrade Turbine Nos. C–7 and C–8 to 4,700 hp at the Cromwell Compressor Station in Cromwell, Massachusetts; and (3) make various modifications to metering and regulating facilities in Waterford and Pomfret, Connecticut and in Ashland, Brockton and Norwood, Massachusetts. The cost of Algonquin's proposed facilities is estimated to be $13,139,000.

Algonquin would provide the firm transportation service for Bay State under proposed Rate Schedule AFT–5, and would charge a 100% demand rate of $19.3606 per MMbtu for the incremental service.

Algonquin seeks a shortened notice period and expeditious Commission action in order to construct the necessary facilities and commence the proposed service by November 1, 1994.

Any person desiring to be heard or to make any protest with reference to said petition should, on or before February 23, 1994, file with the Federal Energy Regulatory Commission (Commission), 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person who has heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4017 Filed 2–22–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–219–000]

Tennessee Gas Pipeline Co.; Request Under Blanket Authorization

February 16, 1994.

Take notice that on February 8, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–219–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to establish a new delivery point for deliveries of natural gas for the account of the City of Decatur, Alabama (Decatur Utilities), under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to construct the new delivery point in order to effectuate the delivery of up to 24,000 Dekatherms of natural gas to its existing customer, Decatur Utilities under one or more of Decatur Utilities' existing transportation contracts with Tennessee.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4018 Filed 2–22–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR93–4–000]

Transok, Inc.; Staff Panel

February 16, 1994.

Take notice that a Staff Panel shall be convened in accordance with the Commission order [1] in the above-captioned docket to allow opportunity for written comments and for the oral presentation of views, data, and arguments regarding the fair and equitable rates to be established for system-wide transportation service under section 311 of the Natural Gas Policy Act of 1978 on Transok, Inc.'s system. The Staff Panel will not be a judicial or evidentiary-type hearing and there will be no cross examination of persons presenting statements: Members participating on the Staff Panel before whom the presentations are made may ask questions. If time permits, Staff Panel members may also ask such relevant questions as are submitted to them by participants. Other procedural rules relating to the panel will be announced at the time the proceeding commences.

The Staff Panel will be held on Tuesday, April 26, 1994, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426.

The parties also agreed to certain filing dates prior to the Staff Panel proceeding to assist the Panel in developing a record. Those dates are as follows:

February 23, 1994: Transok files written presentation.
March 4, 1994: Intervenor discovery request.
March 14, 1994: Transok response to discovery.
March 29, 1994: Intervenor files written presentation.
April 5, 1994: Transok discovery request.
April 18, 1994: Intervenor response to discovery.
April 26, 1994: Staff Panel.

Attendance is open to all interested parties and staff. Any questions regarding these proceedings should be directed to Mark Hegerle at (202) 208–0927.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4019 Filed 2–22–94; 8:45 am]

BILLING CODE 6717–01–M

[1] See Transok, Inc., 62 FERC ¶ 61,291 (1993).

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400083; FRL–4755–6]

Notice of Availability of Pollution Prevention Grants and Announcement of Financial Assistance Programs Eligible for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Pollution Prevention Grants.

SUMMARY: EPA is announcing the availability of approximately $6 million in FY 94 grant/cooperative agreement funds under the Pollution Prevention Incentives for States (PPIS) grant program. The purpose of this program is to support State, Tribal, and regional-based programs that address the reduction or elimination of pollution across all environmental media: Air, land, and water. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990.

FOR FURTHER INFORMATION CONTACT: Your EPA Regional Pollution Prevention Coordinator. Contact names for each Regional Office are listed under unit IV of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Since its inception in 1989, approximately $30 million has been awarded to over 100 State, Tribal, and regional organizations under EPA's multimedia pollution prevention grant program.

In November 1990, the Pollution Prevention Act of 1990 (the Act) (Pub. L. 101-508) was enacted, establishing as national policy that pollution should be prevented or reduced at the source whenever feasible. Section 6603 of the Act defines source reduction as any practice that:

(i) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

EPA further defines pollution prevention as the use of other practices that reduce or eliminate the creation of pollutants through: increased efficiency in the use of raw materials, energy, water or other resources, or protection of natural resources by conservation.

Section 6605 of the Act authorizes EPA to make matching grants to States to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed State programs will:

(1) Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide on-site technical advice and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques.

In addition to this grant making authority, the Act authorizes EPA to establish a national source reduction clearinghouse, expands EPA's authority to collect data to better track source reduction activities, and requires EPA to report periodically to Congress on EPA's progress in implementing the Act.

II. Availability of FY 94 Funds

With this publication, EPA is announcing the availability of approximately $6 million in grant/cooperative agreement funds for FY 1994. The Agency has delegated grant authority to the EPA Regional offices which formally transfers the decisionmaking and awarding process for the PPIS grants to the Regions. Regional offices now assume responsibility for the solicitation of interest, screening of proposals, and the actual selection of awards. This sixth round of awards represents a more direct and active Regional role in determining FY '94 awardees. PPIS grant guidance will be developed separately by each Regional program and will be provided to all applicants along with any supplemental information the Regions may wish to provide. Interested applicants should contact their Regional Pollution Prevention Coordinator for more information.

III. Eligibility

In accordance with the Act, eligible applicants for purposes of funding under this grant program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities and all Federally-recognized Indian tribes. For convenience, the term "State" in this notice refers to all eligible applicants. Local governments, private universities, private non-profit entities, private businesses, and individuals are not eligible. These organizations excluded from applying directly are encouraged to work with eligible applicants in developing proposals that include them as participants in the projects. EPA strongly encourages this type of cooperative arrangement.

1. *The Catalogue of Federal Domestic Assistance.* The number assigned to the PPIS program is 66.900. Organizations receiving pollution prevention grant funds are required to match Federal funds by at least 50 percent. For example, the Federal government will provide half of the total allowable cost of the project, the State half of the total allowable cost of the project. A grant request for $100,000 would support a total allowable project cost of $200,000, with the State also providing $100,000. State contributions may include dollars, in-kind goods and services and/or third party contributions.

2. *Eligible activities.* In general, the purpose of the PPIS grant program is to support the establishment and expansion of State-, Regional-, Tribal-, or local-based multimedia pollution prevention programs. EPA specifically seeks to build State pollution prevention capabilities or to test, at the State level, innovative pollution prevention approaches and methodologies. Funds awarded under the PPIS grant program must be used to support pollution prevention programs that address the transfer of potentially harmful pollutants across all environmental media: Air, water, and land. Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts State- or Region-wide and where approporiate, seek to address State environmental equity issues. States might focus on, for example:

a. Developing other multi-media pollution prevention activities, including but not limited to: Providing direct technical assistance to businesses; collecting and analyzing data to target outreach and technical assistance opportunities; conducting outreach activities; developing measures to determine progress in pollution prevention; and identifying regulatory and non-regulatory barriers and incentives to pollution prevention and developing plans to implement solutions, where possible.

b. Institutionalizing multi-media pollution prevention as an environmental management priority, establishing prevention goals, developing strategies to meet those goals, and integrating the pollution prevention ethic within both governmental and non-governmental institutions of the State or region.

c. Initiating demonstration projects that test and support innovative pollution prevention approaches and methodologies.

Proposals accepted for review under this program must qualify as pollution prevention as defined by section 6603 of the Act. In May of 1992, EPA released a "Statement of Definition" as the formal embodiment of the Agency's working definition of pollution prevention, consistent with the Act. (See "EPA Statement of Definition" under unit VI of this notice.)

3. *Program management.* Awards for FY 1994 funds will be managed through the EPA Regional Offices.

4. *Contact.* Interested applicants are requested to contact the appropriate EPA Regional Pollution Prevention Coordinator listed under unit IV of this notice to obtain specific instructions and guidance for submitting proposals. For general information on EPA's Pollution Prevention Grant Program, contact: Lena Hann, Pollution Prevention Division (7409), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 260–2237.

IV. Regional Pollution Prevention Contacts

Mark Mahoney (PAS), US EPA Region 1, JFK Federal Bldg., Room 2203, Boston, MA 02203, (617) 565–1155
Janet Sapadin (2–PM–PPIB), US EPA Region 2, 26 Federal Plaza, New York, NY 10278, (212) 264–1925
Cathy Libertz (3ES43), US EPA Region 3, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–0765
Carol Monell, US EPA Region 4, 345 Courtland St., NE, Atlanta, GA 30365, (404) 347–7109
Cathy Allen, US EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604–3590, (312) 353–3387
Rob Lawrence (6M–PP), US EPA Region 6, 1445 Ross Ave., 12th Floor, Suite 1200, Dallas, TX 75202, (214) 655–6580
Steve Wurtz, US EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101 (913) 551–7315
Sharon Riegel (8PM–SIPO), EPA Region 8, 999 18th St., Suite 500 Denver, CO 80202–2405, (303) 293–1471
Hilary Lauer (H1B), US EPA Region 9, 75 Hawthorne Ave., San Francisco, CA 94105 (415), 744–2189
Robyn Meeker, US EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101, (206) 553–8579

V. Media State Grants

Though the PPIS grant program is an instrumental component for building and maintaining State pollution prevention programs, EPA is seeking to further integrate pollution prevention into the Agency's existing media-specific grant programs. To this end, States are encouraged to access, where appropriate, media grant dollars to support state pollution prevention activities. This new Agency policy provides State programs with the opportunity to utilize grant funds, traditionally targeted for end-of-pipe activities, to support source reduction efforts. In November of 1992, in support of the Act and to further integrate pollution prevention into the Agency's existing regulatory programs, EPA released a Guidance for the Integration of Pollution Prevention into Media State Grants. The Agency-wide pollution prevention Guidance, beginning with the FY 1994 State grants cycle has four goals:

1. Promoting pollution prevention in State programs supported through Federal grants by establishing national principles to guide workplans negotiated between Regional Offices and States.

2. Ensuring that grant requirements as interpreted by EPA/State workplans are flexible enough to support innovative State pollution prevention activities.

3. Establishing a simple accounting process to share information on successful State projects, and identify statutory or other barriers to funding State proposals.

4. Building sustained State capacity in pollution prevention to the extent consistent with statutory grant requirements.

The new Guidance is designed to help integrate pollution prevention into the Agency's activities as required by the Act. In other words, it,will now be possible, as a result of this guidance to use these traditional media State grants to support pollution prevention purposes. By emphasizing flexibility, the Guidance complements other Agency efforts to build a productive environmental management system in partnership with the States, and improve coordination with existing State pollution prevention programs.

EPA's FY 1994 grant programs, in conjunction with the States, should build on the Agency's many successful pollution prevention efforts to explicitly promote pollution prevention in State workplans (also called agreements). This Guidance will be incorporated into the annual Agency Operating Guidance as well as program-specific Guidance developed in conjunction with the State/EPA Operations Committee. Program Guidance, intended to tailor the Agency-wide commitment to each grant program, will be applied by EPA Regional offices and States in the development of grant-assisted work. In general, the Guidance applies to all of the Agency's media-specific State grant programs.

For further information, or for a copy of the Guidance, contact Tom McCully, Acting Director, Pollution Prevention Policy Staff in the Office of the Administrator, at (202) 260–8621, or Lena Hann, Pollution Prevention Division, at (202) 260–2237.

VI. Definition of Pollution Prevention

EPA's "Statement of Definition" as defined in May of 1992 follows:

The following EPA "Statement of Definition" is a formal embodiment of what has been the Agency's working definition of pollution prevention, and is consistent with the Pollution Prevention Act of 1990. It makes clear that prevention is our first priority within an environmental management hierarchy that includes: 1) prevention, 2) recycling, 3) treatment, and 4) disposal or release.

While it is subject to further refinement, this definition should provide a common reference point for all of us. As you review and apply the definition in your work, please keep the following points in mind:

- As always, whether the pollution prevention option is selected in any given situation will depend on the requirements of applicable law, the level of risk reduction that can be achieved, and the cost-effectiveness of that option.
- Accordingly, the hierarchy should be viewed as establishing a set of preferences, rather than an absolute judgment that prevention is always the most desirable option. The hierarchy is applied to many different kinds of circumstances that will require judgment calls.
- Drawing an absolute line between prevention and recycling can be difficult. "Prevention" includes what is commonly called "in-process recycling," but not "out-of-process recycling." Recycling conducted in an environmentally sound manner shares many of the advantages of prevention, e.g. energy and resource conservation, and reducing the need for end-of-pipe treatment or waste containment.

As EPA looks at the "big picture" in setting strategic directions for the decade ahead, it is clear that prevention is key to solving the problems that all our media programs face, including the increasing cost of treatment and cleanup. In the common-sense words of Benjamin Franklin, "an ounce of prevention is worth a pound of cure."

Please keep EPA's definition of pollution prevention in mind as you perform your environmental work.

POLLUTION PREVENTION: EPA STATEMENT OF DEFINITION
(pursuant to the Pollution Prevention Act)

Under the Pollution Prevention Act of 1990, Congress established a national policy that:

- pollution should be prevented or reduced at the source whenever feasible;
- pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible;
- pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and
- disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

Pollution prevention means "source reduction", as defined under the Pollution Prevention Act, and other practices that reduce or eliminate the creation of pollutants through:

– increased efficiency in the use of raw materials, energy, water or other resources, or
– protection of natural resources by conservation.

The Pollution Prevention Act defines "source reduction" to mean any practice which:

– reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and
– reduces the hazards to public health and the environment associated with the release of such substances, pollutants or contaminants.

The term includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

Under the Pollution Prevention Act, recycling, energy recovery, treatment, and disposal are not included within the definition of pollution prevention. Some practices commonly described as "in process recycling" may qualify as pollution prevention. Recycling that is conducted in an environmentally sound manner shares many of the advantages of prevention — it can reduce the need for treatment or disposal, and conserve energy and resources.

Pollution prevention approaches can be applied to all pollution-generating activity: including energy, agriculture, Federal, consumer as well as industrial sectors. The impairment of wetlands, ground water sources, and other critical resources constitutes pollution, and prevention practices may be essential for preserving these resources. These practices may include conservation techniques and changes in management practices to prevent harm to sensitive ecosystems. Pollution prevention does not include practices that create new risks of concern.

In the agricultural sector, pollution prevention approaches include:

– reducing the use of water and chemical inputs;
– adoption of less environmentally harmful pesticides or cultivation of crop strains with natural resistance to pests; and
– protection of sensitive areas.

In the energy sector, pollution prevention can reduce environmental damages from extraction, processing, transport and combustion of fuels. Pollution prevention approaches include:

– increasing efficiency in energy use;
– substituting environmentally benign fuel sources; and
– design changes that reduce the demand for energy.

Dated: February 14, 1994.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–4048 Filed 2–22–94; 8:45 am]
BILLING CODE 6560–50–F

[FRL–4840–9]

Open Meeting of the Environmental Financial Advisory Board

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting on Tuesday, March 15, 1994, from 1 p.m. to 5 p.m. and Wednesday, March 16, 1994, from 9 a.m. to 4 p.m. The meeting will be held at the Radisson Park Terrace Hotel located at 1515 Rhode Island Avenue, NW., Washington, DC 20005.

EFAB is chartered with providing authoritative analysis and advice to the EPA Administrator on environmental finance issues. This meeting will set the agenda regarding directions of EFAB analyses for the remainder of the year. Additionally, EFAB will organize working committees associated with agenda priorities.

The meeting will be open to the public, but seating is limited. For further information, please contact Eugene Pontillo, U.S. EPA on (202) 260–6044 or Joanne Lynch, U.S. EPA on (202) 260–1459.

Dated: February 3, 1994.

David E. Osterman,

Acting Director, Resource Management Division.

[FR Doc. 94–4054 Filed 2–22–94; 8:45 am]
BILLING CODE 6560–50–M

[OPP-50775; FRL-4761-2]

Receipt of an Application for an Experimental Use Permit for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 21, 1993, EPA received an application from Monsanto Company for an Experimental Use Permit (EUP) for a transgenic plant pesticide. This is the fourth EUP application under the Federal Insecticide, Fungicide, and Rodenticide Act for testing with a pesticidal substance that is produced in a plant. The Agency has determined that this application may be of regional and national significance. Therefore in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received by March 25, 1994.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP-50775 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA 22202, (703)305-7690.

SUPPLEMENTARY INFORMATION: On October 21, 1993 EPA received an application for an EUP from Monsanto Company, 700 Chesterfield Village Parkway, St. Louis, Missouri 63198. The application was assigned EPA File Symbol 524-EUP-IE. Monsanto proposes to test the cryIA(b) δ-endotoxin (derived from the soil microbe *Bacillus thuringiensis*) as expressed in a series of corn lines from March 1, 1994, to February 28, 1995. The amino acid sequence of the δ-endotoxin in corn was maintained to be identical to the amino acid sequence produced in *Bacillus thuringiensis*. However, the nucleotide sequence of the cryIA(b) gene was modified to enhance expression in corn. In addition to expressing the cryIA(b) δ-endotoxin, the majority of the corn lines being evaluated also express the 5-enol-pyruvylshikimate-3-phosphate (CP4, ESPS) and/or glyphosate oxidoreductase (GOX) proteins which are used as selectable markers and bestow glyphosate resistance. A minimal number of the cryIA(b) δ-endotoxin expressing corn lines expressed neomycin phosphotranferase II (NPTII) as the selectable marker. NPTII bestows resistance to the common aminoglycoside antibiotics kanamycin, G418, or panomomycin.

Several small-scale field experiments have been conducted under permits granted by the United States Department of Agriculture. Larger scale testing is now required in order to further evaluate the performance of the expressed protein against the European Corn Borer in various geographical areas in which corn is commercially produced. These experiments include: Isopopulation yield trials, gene efficacy, ECB ecological studies, and various evaluations of the Bt δ-endotoxin corn lines in combination with glyphosate. In addition to experiments related to efficacy, breeding nursery and seed increase trials are planned.

Up to 605 acres are proposed for planting with approximately 17,274 pounds of transgenic seed. This amount of seed will contain approximately 205 grams (dry weight) of the cryIA(b) δ-endotoxin. The following States are included in the program: Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, and Wisconsin, and Puerto Rico.

No temporary tolerances are being requested relative to the proposed experimental use permit since any reserved transgenic plant material will be used only for research or future plantings. All other materials will be destroyed. Professionally qualified Monsanto employees will supervise the program, which will be carried out by public and private cooperators in addition to professionals at Monsanto test facilities.

Upon review of the Monsanto application, any comments received in response to this notice and any other relevant information, EPA will set conditions under which the experiments will be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

Dated: February 15, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-4050 Filed 2-22-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66189; FRL 4757-4]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by May 24, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 21 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000016-00058	Dragon 5% Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
000100-00677	Duet Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea 2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000100 MS-92-0007	Curacron 8E Insecticide-Miticide	*O*-(4-Bromo-2-chlorophenyl) *O*-ethyl *S*-propylphosphorothioate
000279-01053	Niagara Malathion 5 EC	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
000279-02821	Dimethoate 267 Systemic Insecticide	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate
000279-02945	Diazinon 4 EC	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000279-02989	Diazinon 14 Granular Code 3386	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000279-03037	Diazinon 50 WP	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000352 FL-78-0051	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 FL-80-0026	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 FL-84-0029	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000655 NJ-89-0004	Rotenox 5 EC	Rotenone Cube Resins other than rotenone Xylene range aromatic solvent
005481-00161	Phosdrin 10.3	2-Carbomethoxy-1-methylvinyl dimethyl phosphate, alpha isomer and related
005905-00228	Helena Phosdrin 4-E	2-Carbomethoxy-1-methylvinyl dimethyl phosphate, alpha isomer and related
005905-00298	Helena Phosdrin 2-E	2-Carbomethoxy-1-methylvinyl dimethyl phosphate, alpha isomer and related
008848-00007	Leader Brand New Super 25	*N*-Octyl bicycloheptene dicarboximide *O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
010650-20001	Mon-O-Clor	Sodium hypochlorite
011715-00146	Better World Gypsy Moth Larvae & Japanese Beetle Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% (1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid,cyano(3-phenoxyphenyl)methyl
034704-00343	Clean Crop Phosdrin 4.0 Miscible	2-Carbomethoxy-1-methylvinyl dimethyl phosphate, alpha isomer and related
062719-00094	Balan E.C.	*N*-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-*p*-toluidin
062719-00114	Balan L.C. Herbicide	*N*-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-*p*-toluidin

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000016	Dragon Corp., Box 7311, Roanoke, VA 24019.
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000279	FMC Corp., ACG Speciality Products, 1735 Market Street, Philadelphia, PA 19103.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
005481	Amvac Chemical Corp., 4100 E. Washington Blvd, Los Angeles, CA 90023.
005905	Helena Chemical Co, 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
008848	Safeguard Chemical Corp., 806 E. 144 St., Bronx, NY 10454.
010650	Monarch Chemicals, Inc., 37 Meadow St., Box 176, Utica, NY 13503.
011715	Speer Products Inc., Box 18993, Memphis, TN 38181.
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
062719	DowElanco, 9330 Zionsville Rd, Indianapolis, IN 46268.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before May 24, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 8, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–3831 Filed 2–22–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30770; FRL–4639–2]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

4581–EUP–41. Issuance. Elf Atochem North America, Inc., Agrichemicals Division, 3 Parkway, Rm. 619, Philadelphia, PA 19102. This experimental use permit allows the use of 100 pounds of the herbicide mono(N,N-dimethylalkylamine) salt of endothall on 74.25 acres of cotton to evaluate the control of desiccation and defoliation. The program is authorized only in the State of Texas. The experimental use permit is effective from June 17, 1993 to June 17, 1994. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–305–7830)).

34147–EUP–3. Renewal. Hoechst-Roussel Agri-Vet Company, Route 202–206, P.O. Box 2500, Sommerville, NJ 08876–1258. This experimental use permit allows the use of 800 pounds of the insecticide (1R,3R)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (s)-alpha-cyano-3-phenoxybenzyl ester on 4,000 acres of cotton to evaluate the control of various cotton insects. The program is authorized only in the States of Alabama, Arkansas, California, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 1, 1993 to June 1, 1994. A temporary tolerance for residues of the active ingredient in or on cotton has been established. (Susan Lewis, PM 21, Rm. 227, CM #2, (703–305–5663)).

524–EUP–75. Issuance. Monsanto Agricultural Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. This experimental use permit allows the use of 1,633.5 pounds (810.0 pounds on citrus and 823.5 pounds on cotton each year) of the herbicide 3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester on 3,615 acres per year of citrus and cotton to evaluate the control of various weeds. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, North Carolina, and Texas. The experimental use permit is effective from July 27, 1993 to July 27, 1995. Temporary tolerances for residues of the active ingredient in or on citrus, cotton forage, and cotton seed have been established. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–305–7830)).

65626–EUP–1. Issuance. Mycotech Corporation, 630 Utah Ave., P.O. Box 4113, Butte, MT 59702. This experimental use permit allows the use of 600 pounds of the microbial insecticide *Beauvaria bassiana* - Mycotech grasshopper strain on 3,390 acres of rangeland to evaluate the control of grasshoppers and mormon crickets. The program is authorized only in the States of Idaho, Montana, Nebraska, North Dakota, South Dakota, and Wyoming. The experimental use permit is effective from June 25, 1993 to July 15, 1994. A temporary exemption from the requirement of a tolerance for residues of the active ingredient in or on rangeland has been established. (Phil Hutton, PM 18, Rm. 213, CM #2, (703–305–7690)).

45639–EUP–49. Issuance. Nor-Am Chemical Company, Little Falls Centre One, 2711 Centerville, Rd., Wilmington, DE 19808. This experimental use permit allows the use of 525 pounds of the herbicides diuron and thidiazuron on 3,500 acres of cotton to be evaluated as a pre-harvest aid through defoliation. The program is authorized only in the States of Arizona, California, and Texas. The experimental use permit is effective from August 12, 1993 to August 12, 1994. Permanent tolerances for residues of the active ingredients in or on cotton have been established (40 CFR 180.106 and 180.403). (Joanne Miller, PM 23, Rm. 237, CM #2, (703–305–7830))

58998–EUP–8. Extension. Novo Nordisk Bioindustrials, Inc., 33 Turner Road, Danbury, CT 06813. This experimental use permit allows the use of 44 pounds of the microbial insecticide *Bacillus thuringiensis* subspecies *israelensis* on 453 acres of catch basins, clean water, curb gutters in residential areas, ditches, flood water, polluted waters, ponds, rivers, salt marshes, storm water retention areas, streams, and tidal water. The program is authorized only in the States of California, Delaware, Florida, Michigan, Minnesota, New York, Pennsylvania, South Carolina, Tennessee, Texas, and Utah. The experimental use permit is effective from July 6, 1993 to January 31, 1994. (Phil Hutton, PM 18, Rm. 213, CM #2, (703–305–7690))

66204–EUP–1. Issuance. Sylvan Foods, Inc., One Moonlight Dr., Worthington, PA 16262. This experimental use permit allows the use of 14 pounds of the *pseudomonas fluorescens* strain NCIB 12089 on 13 acres of mushrooms to evaluate the control of bacterial blotch. The program is authorized only in the State of Pennsylvania. The experimental use permit is effective from June 15, 1993 to June 30, 1994. A temporary exemption from the requirement of a tolerance for residues of the active ingredient in or on mushrooms has been established. (Susan Lewis, PM 21, Rm. 227, CM #2, (703–305–5663))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 24, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–3762 Filed 2–22–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34052; FRL 4753–7]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on May 24, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request. The requests included in this notice were received in response to the Worker Protection Standard (WPS), and are intended to remove the products from the scope of the WPS.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 121 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before [*insert date 90 days after date of publication in the* **Federal Register**] to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Delete From Label
000228–00151	Riverdale MCPP Low Volatile Ester	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete From Label
000228–00168	Riverdale 101 Selective Weed Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228–00169	Riverdale 81 Selective Weed Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228–00178	Riverdale Weedestroy Triamine	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228–00185	Riverdale Weedstroy Tri-Ester	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228–00191	Riverdale 2 MCPP + 2d Amine Turf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228–00192	Riverdale Weedestroy MCPP-4 Amine	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228–00205	Riverdale Weedestroy Tri-Ester II	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228–00206	Riverdale Weedestroy Triamine II	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228–00228	Riverdale Triamine II W.S.	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228–00253	Riverdale Weedestroy MCPP-2 Amine	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228–00262	Riverdale Tri-Power Selective Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228–00264	Riverdale Triplet Selective Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228–00275	Riverdale MCPP-80tm Amine	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000241–00303	Image Herbicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000241–00317	Event Grass Growth Regulator	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000241–00319	Image 70 DG	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000264–00522	Weedar Ivm 44 Broadleaf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000432–00553	Pramex Insecticide E. C. 13.3% for Use on Plants	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00559	Sbp-1382/PYR. / P.B.O. Transparent Emuls. Spray 0.08	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000498–00116	Chase-MM Flying Insect Killer, Formula 2	Nurseries, seed houses
000498–00117	Chase-MM House and Garden Insect Killer Formula 3	Nurseries, seed houses
000498–00137	Spray Pak Flying and Crawling Insect Killer	Nurseries, seed houses
000498–00139	Spray Pak Flying & Crawling Insect Killer 2	Nurseries, seed houses
000498–00142	Spray Pak Flea and Tick Killer for Cats & Dogs	Nurseries, seed houses
000655–00450	Prentox Pyronyl Oil Concentrate #3610	Mushrooms
000655–00584	Prentox Diazinon 1e Insecticide	Commercial production of ornamentals
000655–00587	Prentox Emulsifiable Spray Concentrate #96	Drosophila or fruit fly control
000655–00644	Prentox Pyronyl Oil Concentrate #1233a	Mushrooms
000655–00683	Prentox Pyronyl Oil Concentrate #15a	Use in mushroom production & processing
000655–00684	Prentox Pyronyl Oil Concentrate #15	Mushrooms
000655–00694	Prentox Pyrifos 25% Mfg. Conc.	Use to control mushroom flies & fungus gnats in mushroom production & processing
001386–00451	UNICO 5% Sevin Dust	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete From Label
001386–00627	Red Panther Dursban Granular Turf and Lawn Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
002217–00648	Gordon's Brushkiller 801	Forests
002217–00651	Trimec 800 Herbicide	Forests
002217–00676	Casoron 50W Dichlorobenil Herbicide	Terrestrial food & non-food crops
002217–00678	Barrier 2% Dichlobenil Granules	Terrestrial food crops (fruit in orchards & nurseries)
002217–00751	EH 951 Grass Herbicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
002217–00758	Trimec 937 Herbicide	Forests
003125–00184	Dylox 80% Soluble Powder Crop Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
003125–00381	Morestan 4 Ornamental Miticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003125–00406	Dylox 6.2 Granular	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
003862–00079	Insect Death Mist	Asparagus, beans, broccoli, cabbage, brussel sprouts, cauliflower, celery, leaf tier, cranberries, eggplant, lettuce, mustard greens, kale, collards, turnips, peppers, potatoes, radishes, spinach, tomatoes, ornamentals, drosophila/fruit fly control
004816–00514	Pyrenone 25–5 M.A.G. Concentrate	Use to control mushroom flies & fungus gnats in mushroom production & processing
004816–00534	Pyrenone Food Plant Fogging Insecticide	Use to control mushroom flies & fungus gnats in mushroom production & processing
004816–00567	Pyrenone M.A.G.C. 5–1	Use to control mushroom flies & fungus gnats in mushroom production & processing
004816–00568	Pyrenone M.A.G.C. 10–1	Use to control mushroom flies & fungus gnats in mushroom production & processing
004816–00570	Pyrenone M.A.G.C. 12.5–2.5	Use to control mushroom flies & fungus gnats in mushroom production & processing
004816–00571	Pyrenone MAGC 10–3.34	Use to control mushroom flies & fungus gnats in mushroom production & processing
004816–00688	Permanone Multi-Purpose 10% E.C.	Trees & shrubs
004816–00707	Kicker E.C.	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
007501–00042	Gustafson Apron-Fl Seed Treatment Fungicide	Agricultural establishments in hopper-box, planter box, slurry box, or other seed treatment applications at or immediately before planting
008590–00072	Agway "60" Spray Oil E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
008590–00483	Balan Granular	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009404–00066	Dursban 2-E Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00033	Lescosan 3.6G + Fertilizer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00052	Lesco Pre-M 60 DG Herbicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00053	Lesco Turf Fertilizer with Team	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00062	Lesco Fertilizer W / 4% Sevin Brand Carbaryl Insect	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00063	Turfic for Crabgrass with Ronstar	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00065	Lesco 17–0–17 Elite Fertilizer W / systemic Turf Fungicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete From Label
010404–00066	Lesco Horticultural Oil Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00067	Lesco 1% Dursban Granular	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00069	Lesco Three-Way 53% Dg Selective Broadleaf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00070	Eliminate 47% Dg Selective Broadleaf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00074	LESCO Pre-M WP	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00081	LESCO 0.97 Dursban Granules	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
032802–00022	Dursban 2.32G	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802–00023	Stop Grub Plus W / 20–3–5 Fertilizer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802–00024	Excel-N-Plus W/crabgrass Control + Lawn Food	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802–00031	All Season Triamine Weed and Feed 25–3–3	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802–00039	Dursban .5 Granules Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802–00068	Dimension 0.086 Plus	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
032802–00069	Dimension 0.172 Plus	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
032802–00071	Dimension 0.107 Plus	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
034704–00101	Clean Crop Benefin 2.5 G	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
034704–00131	Clean Crop MCPP Green	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
034704–00209	Clean Crop Betasan 12.5G	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704–00210	Clean Crop Betasan 3.6G	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704–00211	Clean Crop Betasan 4-E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704–00249	Clean Crop Oftanol 1.5g	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
034704–00423	Dursban 2 Coated Granules	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
034704–00720	Dichlorobenil 2G	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
037915–00006	Professional Pest Control Formula DC 500	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
045639–00001	Ficam W	Greenhouses
045639–00066	Ficam Plus	Greenhouses
050534–00011	2 Plus 2 (MCPP + 2,4-D Amine)	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
051793–00029	Elite Quick-Kill Spray Concentrate	Use in mushroom production & processing
051793–00105	Elite Quick Kill Spray Concentrate II	Rural fields or wood lots, roadside edges, pathways, coastal vegatation areas
051793–00106	Elite Aerosol Insect Spray with Permethrin Plus	Seed houses
051793–00170	Elite Rotenone Fire Ant Killer - R100	Agricultural land

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete From Label
051793–00179	Elite Dursban 4E-R143	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
051793–00180	Elite Dursban 1–12 - R144 Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
055947–00144	Barricade F Herbicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
059639–00019	Dibrom Concentrate	Trees being grown for sale or other commercial use, or for commercial seed production, or for the production of timber or wood products, or for research purposes
061282–00010	Snail and Slug LG Pelleted Bait	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
062719–00011	Dursban 4E Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
062719–00065	Dursban 2E Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
062719–00068	Dursban 50W Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
062719–00091	Exetor Herbicide	Forests
062719–00092	Confront Specialty Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00096	Balan 2.5 G	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00127	Balan Dry Flowable	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00137	Team 2-G	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00140	Surflan 0.25 A.S.	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00146	Turf Fertilizer contains Balan 0.92%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00147	Turf Fertilizer contains Balan 1.15%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00148	Turf Fertilizer contains Balan 1.25%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00149	Turf Fertilizer contains Balan 0.575% + Surflan 0.575%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00150	Turf Fertilizer contains Team 1.15%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00151	Turf Fertilizer contains Team 0.92%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00152	Turf Fertilizer contains Team 1.25%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
052719–00155	Cutless 50W Turf Plant Growth Regulator	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00158	Turf Fertilizer contains Surflan 1%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00159	Turf Fertilizer contains Surflan 0.75%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00163	Pageant DF	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
062719–00177	DowElanco Basal Herbicide	Forests
062719–00178	Gallery Turf Fertilizer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete From Label
062719–00192	Turf Fertilizer contains Gallery Plus Team	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719–00193	Turf Fertilizer contains Galley Plus Surflan	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000228	Riverdale Chemical Co., 425 W. 194th St., Glenwood, IL 60425.
000241	American Cyanamid Co., Agri Research Div - U.S. Reg, Box 400, Princeton, NJ 08543.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000432	Roussel UCLAF Corp., 95 Chestnut Ridge Rd., Montvale, NJ 07645.
000498	Chase Products Co., The Quality First Co., Box 70, Maywood, IL 60153.
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.
001386	Universal Cooperatives Inc., Box 460, 7801 Metro Parkway, Minneapolis, MN 55440.
002217	Chemical Consultants Interna., Agent For: PBI / Gordon Corp., 7270 W 98th Terrace, Suite 1, Overland Park, KS 66212.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
003862	ABC Compounding Co, Inc., Box 16247, Atlanta, GA 30321.
004816	Roussel UCLAF Corp., 95 Chestnut Ridge Rd., Montvale, NJ 07645.
007501	Gustafson, Inc., Box 660065, Dallas, TX 75266.
008590	Universal Cooperatives Inc., Agent For: Agway Inc., Box 460, Minneapolis, MN 55440.
009404	Sunniland Corp., Box 1697, Sanford, FL 32771.
010404	Lesco Inc., 20005 Lake Rd., Box 16915, Rocky River, OH 44116.
032802	H. R. McLane Inc., Agent For: Howard Johnson's, 7210 Red Rd., Suite 206, Miami, FL 33143.
034704	William M. Mahlburg, Agent For: Platte Chemical Co., Box 667, Greeley, CO 80632.
037915	Regwest Co., Agent For: Professional Supp, Box 2220, Greeley, CO 80632.
045639	Nor-Am Chemical Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808.
050534	ISK Biotech Corp., 5966 Heisley Rd., Box 8000, Mentor, OH 44061.
051793	RSR Laboratories, Inc., 501 Fifth St., Bristol, TN 37620.
055947	Sandoz Agro Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
059639	Valent U.S.A. Corp., 1333 N. California Blvd., Walnut Creek, CA 94596.
061282	Hacco, Inc., 537 Atlas Ave., Madison, WI 53716.
062719	DowElanco, 9330 Zionsville Rd., Indianapolis, IN 46268.

III. Existing Stocks Provisions

The products listed in this notice are within scope of the Worker Protection Standard (WPS), but the current labeling does not comply with WPS. As a result, after April 21, 1994, except as provided in PR Notice 93–11, registrants cannot distribute or sell products under the current approved labeling.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 26, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–3829 Filed 2–22–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Swiss Bank Corporation; Application to Engage in Certain Nonbanking Activities

Swiss Bank Corporation, Basel, Switzerland (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23 of the Board's Regulation Y (12 CFR 225.23), through its wholly owned subsidiary, SBC Government Securities, Inc., New York, New York (Company), to acquire substantially all the assets and certain of the liabilities of O'Connor & Associates, Chicago, Illinois (OCA), and to engage in the following nonbanking activities:[1]

[1] Applicant's proposal involves, *inter alia*, the consolidation into Company of certain activities currently conducted by OCA and two of Applicant's wholly owned subsidiaries, SBC Derivatives, Inc., Chicago, Illinois (SBC Derivatives), and SBCI Swiss Bank Corporation Investment Banking Inc., New York, New York (SBCI). In connection with, and substantially contemporaneously with, this transaction, OCA proposes to acquire certain assets and liabilities of K K & Company, New York, New York (KK). Company, a primary dealer in government securities, currently engages in (i) underwriting and dealing in obligations of the United States and other obligations that state member banks of the Federal Reserve System are authorized to underwrite and deal in, pursuant to § 225.25(b)(16) of Regulation Y, and (ii) trading in futures, options, and options on futures with respect to certain bank-eligible securities and money market instruments. *See Swiss Bank Corporation*, 77 Federal Reserve Bulletin 759 (1991). OCA engages in trading, for its own account, debt and equity securities, options on debt and equity securities, and options on stock, bond, and commodity indexes. SBC Derivatives currently engages in foreign exchange options trading for its own account. *See Swiss Bank Corporation*, 77 Federal Reserve Bulletin 126 (1990). SBCI currently engages in various nonbanking activities, including underwriting and dealing in corporate debt and equity securities. KK currently engages in executing securities transactions for third party customers.

The activities of Company and SBC Derivatives are conducted pursuant to section 4(c)(8) of the BHC Act. Applicant controls SBCI pursuant to the grandfather provisions of section 8(c) of the International Banking Act of 1978 (12 U.S.C. 3106(c)). SBCI would cease to exist upon consummation of this proposal, and Applicant's grandfather rights relating to SBCI would thereby terminate.

[2] Applicant also proposes that Company engage in certain activities which Applicant maintains are incidental to these proposed underwriting and dealing activities, including engaging in bonds borrowed and other securities lending transactions.

[3] The specific contracts to be traded by Company for its own account in conducting the activities described in paragraphs 7 and 8 are listed either (i) in SR Letter No. 93-27 (FIS) (May 21, 1993), or (ii) in Appendix A attached hereto. Applicant also expects that Company will engage, in the over-the-counter market, in options transactions based on the underlying prices, indexes, and instruments for the contracts referred to in the preceding sentence.

[4] For this purpose, the term "swap derivative products" means caps, floors, collars, and options on swaps, caps, floors, and collars.

[5] Applicant has proposed that both Company and SBC Derivatives engage in the activities listed in paragraphs 10 through 13. Applicant has stated that SBC Derivatives may execute trades that will be given-up at a customer's request to an unaffiliated FCM for clearance, and that SBC Derivatives may also engage in clearing-only activities. Company may conduct the proposed FCM activities through omnibus customer trading accounts.

[6] The specific contracts with respect to which Company and SBC Derivatives will conduct the activities described in paragraphs 12 and 13 are listed either (i) in SR Letter No. 93-27 (FIS) (May 21, 1993), or (ii) in Appendix A attached hereto.

1. Underwriting and dealing in, to a limited extent, all types of debt and equity securities (other than securities issued by open-end investment companies), including sovereign debt securities, municipal revenue bonds, mortgage-related securities, consumer receivable-related securities, commercial paper, corporate debt securities, convertible debt securities, debt securities issued by a trust or other vehicle secured by or representing interests in debt obligations, preferred stock, common stock, American Depositary Receipts, other direct and indirect equity ownership interests in corporations and other entities, and options on debt and equity securities;[2]

2. Providing discount brokerage services, engaging in related securities credit activities, and conducting activities incidental thereto such as offering custodial services, individual retirement accounts, and cash management services, pursuant to § 225.25(b)(15)(i) of Regulation Y;

3. Providing full-service brokerage services, i.e., the discount brokerage activities specified in paragraph 2, above, in combination with investment advisory services permissible under § 225.25(b)(4) of Regulation Y, pursuant to § 225.25(b)(15)(ii) of Regulation Y;

4. Acting as agent in the private placement of all types of securities, including providing related advisory services;

5. Purchasing and selling all types of securities as a "riskless principal" on the order of customers;

6. Providing various types of investment and financial advisory services, including providing financial and transaction advice regarding the structuring and arranging of swaps and similar transactions (including swap derivative products) relating to interest rates, currency rates, and economic and financial indexes, and similar transactions, pursuant to § 225.25(b)(4) of Regulation Y;

7. Trading for its own account in futures, options, and options on futures with respect to certificates of deposit and other money market instruments eligible for investment by national banks;

8. Trading for its own account in futures, options, and options on futures with respect to commodity prices and stock, bond, and commodity indexes;[3]

9. Engaging in the following activities with respect to swaps and swap derivative products:[4]

(A) Intermediating in the international swap markets by acting as originator and principal for interest rate swap and currency swap transactions;

(B) Acting as originator and principal with respect to swap derivative products relating to interest rate swap and currency swap transactions;

(C) Acting as agent or broker with respect to interest rate swap and currency swap transactions and swap derivative products relating thereto;

(D) Intermediating in the international swap markets by acting as originator and principal for commodity price swap transactions and swap transactions linked to stock and/or bond indexes or to a hybrid of interest rates and such indexes;

(E) Acting as originator and principal with respect to swap derivative products relating to the swap transactions described in subparagraph (D), above; and

(F) Acting as agent or broker with respect to the swap transactions and swap derivative products described in subparagraphs (D) and (E), above.

10. Acting as a futures commission merchant (FCM) for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts based on bullion, foreign exchange, government securities, certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account, pursuant to § 225.25(b)(18) of Regulation Y;[5]

11. Providing investment advice with respect to the purchase and sale of futures contracts and options on futures contracts described in paragraph 10, above, pursuant to § 225.25(b)(19) of Regulation Y;

12. Acting as a FCM for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts based on commodity prices, bonds, and stock and bond indexes;[6]

13. Providing investment advice with respect to the purchase and sale of futures contracts and options on futures contracts described in paragraph 12, above;

14. Trading for its own account in gold and silver bullion, bars, rounds, and coins;

15. Trading for its own account in platinum coin and bullion;

16. Trading for its own account in foreign exchange spot, forward, futures, options, and options on futures transactions; and

17. Making, acquiring, or servicing loans or other extensions of credit for its own account or for the account of third parties, pursuant to § 225.25(b)(1) of Regulation Y.

Applicant seeks approval to conduct the proposed activities throughout the United States, and plans to conduct the activities on a world-wide basis.

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or

managing or controlling banks as to be a proper incident thereto." In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are

(1) Whether banks generally have in fact provided the proposed services,

(2) Whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services, and

(3) Whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *See* 518 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 FR 806 (1984).

Applicant states that the Board previously has determined by regulation that certain of the proposed activities, when conducted within the limitations established by the Board in its regulations and in related interpretations and orders, are closely related to banking for purposes of section 4(c)(8) of the BHC Act. *See* 12 CFR 225.25(b)(1) (making, acquiring, and servicing loans and other extensions of credit); 12 CFR 225.25(b)(4) and (15) (certain investment and financial advisory services and discount and full-service brokerage activities); and 12 CFR 225.25(b)(18) and (19) (certain FCM services and related advisory activities).

Applicant also maintains that the Board previously has determined by order that several of the other proposed activities, when conducted within the limitations established by the Board in its previous orders, are closely related to banking, and, where applicable, consistent with section 20 of the Glass-Steagall Act (12 U.S.C. 377). *See, e.g., J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989), *aff'd sub nom. Securities Industries Ass'n v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990), *Order Approving Modifications to the Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989), *Canadian Imperial Bank of Commerce, et al.*, 76 Federal Reserve Bulletin 158 (1990), *Order Approving Modifications to the Section 20 Orders*, 79 Federal Reserve Bulletin 228 (1993), and *Supplement to Order Approving Modifications to Section 20 Orders*, 79 Federal Reserve Bulletin 360 (1993) (underwriting and dealing activities); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) (private placement and riskless principal activities); *Swiss Bank Corporation*, 77 Federal Reserve Bulletin 759 (1991) (trading for own account in futures, options, and options on futures contracts based on U.S. government securities and certain money market instruments); *The Sanwa Bank, Limited*, 77 Federal Reserve Bulletin 64 (1990) (intermediation, origination, principal, agent, and brokerage activities related to interest rate swap and currency swap transactions and swap derivative products related thereto); *Midland Bank, PLC*, 76 Federal Reserve Bulletin 860 (1990) (trading for own account in gold and silver bullion, bars, rounds, and coins); *The Long-Term Credit Bank of Japan, Limited*, 74 Federal Reserve Bulletin 573 (1988) (trading for own account in foreign exchange); and *The Long-Term Credit Bank of Japan, Limited*, 79 Federal Reserve Bulletin 347 (1993) (trading for own account in foreign exchange forward, futures, options, and options on futures transactions). *See also* SR Letter No. 93-27 (FIS) (May 21, 1993) (listing various futures, options, and options on futures contracts previously approved by order or regulation for FCM services and related advisory activities).

Applicant maintains that Company will conduct the foregoing, previously approved activities in conformity with the conditions and limitations established by the Board in prior cases.

Applicant further states that the Board has not previously approved, as closely related to banking within the meaning of the BHC Act, some or all of the activities described in paragraphs 7, 8, 9(D), 9(E), 9(F), 12, 13, and 15, above. Applicant maintains, however, that all of these proposed activities are closely related to banking.

With respect to the proposal for Company to trade for its own account in various futures, options, and options on futures transactions based on certificates of deposit and other money market instruments eligible for investment by national banks, Applicant maintains that the Board has previously determined that trading in derivative instruments which represent the right to purchase or sell bank-eligible securities is closely related to banking. See Swiss Bank Corporation, 77 Federal Reserve Bulletin 759 (1991) (approving such trading for instruments based on U.S. government securities and certain money market instruments).

Applicant also proposes that Company trade for its own account, for purposes other than hedging, in futures, options, and options on futures contracts based on commodity prices and stock, bond, and commodity indexes. With respect to this aspect of the proposal, Applicant maintains that the New York State Banking Department (NYSBD) and the Office of the Comptroller of the Currency (OCC) have permitted banks under their respective jurisdictions to engage in these activities, subject to certain limitations. In this regard, Applicant also states that over-the-counter options contracts entered into by Company would represent a form of financial intermediation of the type in which banks have traditionally engaged. Applicant also maintains that Company's portfolio-wide hedging methodology is consistent with the limitations the NYSBD and the OCC have placed upon trading in exchange-traded derivative instruments. Applicant also argues, *inter alia*, that Company needs to be able to trade in these contracts in order to manage commodity-based risks that may arise from its dealing in securities of issuers with commodity price exposure.

With respect to the swap-related activities that have not previously been determined to be closely related to banking, Applicant states that the NYSBD and the OCC have permitted banks under their respective jurisdictions to engage in commodity-based swap activities, and that the NYSBD has permitted banks to offer swaps linked to financial or economic indexes. Applicant also states that the Board has recognized, in an interpretation of the Board's Regulation H, that banks are engaged as principal or broker in swap transactions based on commodity prices, stock and bond indexes, and hybrids of such indexes and interest rates. *See* 12 CFR 208.128. In addition, Applicant maintains that these types of swap transactions, like interest rate and currency swaps, are a form of the financial intermediation services traditionally offered by banks.

Applicant also proposes that Company and SBC Derivatives engage in FCM activities and provide related advisory services with respect to futures contracts and options on futures contracts based on commodity prices, bonds, and stock and bond indexes. Applicant states that the Board has previously determined by order that offering FCM and related advisory services with respect to certain futures contracts and options on futures contracts based on bonds and stock and bond indexes is an activity closely related to banking. See generally SR Letter No. 93-27 (FIS) (May 21, 1993) (listing various futures, options, and options on futures contracts previously approved by order or regulation for FCM services and related advisory activities). Applicant maintains that the bond- and index-based futures contracts and options on futures contracts in this proposal which have not previously been approved by the Board are substantially similar to those which have been so approved. With respect to the proposed instruments based on commodity prices, Applicant states that the OCC has permitted national banks to execute and clear such contracts. Applicant also maintains that the reasons justifying Company's trading in such contracts for its own account should apply equally to Company's and SBC Derivatives' engaging in execution, clearance, and advisory activities with respect to such contracts. Applicant further states that providing these services with respect to commodity-based contracts is functionally equivalent to providing such services with respect to financial futures and options on futures contracts. Applicant also notes that the clearing function of an FCM is a form of extending credit, a primary banking function.

With respect to its proposal that Company trade for its own account in platinum coin and bullion, Applicant states that the NYSBD and the OCC have approved this activity for banks under their respective jurisdictions. Applicant also maintains that the Board has approved under section 4(c)(8) of the BHC Act the purchase and sale of platinum coins, under limited circumstances. *See Standard Chartered PLC*, 76 Federal Reserve Bulletin 681 (1990). Applicant also states that the Board has approved, under Regulation K (12 CFR part 211), trading in platinum by bank holding company subsidiaries located outside the United States. *See J.P. Morgan & Co. Incorporated*, 76 Federal Reserve Bulletin 552 (1990).

Proper Incident to Banking Standard

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance competition and enable Company to offer its customers a broader range of products. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 14, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, February 15, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

Appendix A

Chicago Mercantile Exchange

FT-SE 100 Share Index Futures, and options thereon
Standard & Poor's Midcap 400 Index Futures, and options thereon
Russell 2000 Stock Price Index Futures, and options thereon
British Pound Rolling Spot Futures, and options thereon

Commodity Exchange, Inc.

Eurotop 100 Index Futures, and options thereon

Mercado de Futuros Financieros, S.A.

Spanish Peseta/Deutsche Mark Futures
Spanish Peseta/U.S. Dollar Futures
Mibor '90 Futures
Mibor '90 Options

Montreal Stock Exchange

One-Month Canadian Bankers' Acceptance Futures
Three-Month Canadian Bankers' Acceptance Futures

London International Financial Futures Exchange

Spanish Government Bond (Bonos) Futures
Three-Month Eurolira Interest Rate Futures
Italian Government Bond (BTP) Futures, and options thereon

New York Mercantile Exchange

Light Sweet Crude Oil Futures, and options thereon
New York Harbor Unleaded Gasoline Futures, and options thereon
Heating Oil Futures, and options thereon
Natural Gas Futures, and options thereon

[FR Doc. 94-3974 Filed 2-22-94; 8:45 am]
BILLING CODE 6210-01-F

Cardinal Bancshares, Inc., Lexington, Kentucky; Application to Engage in Nonbanking Activities

Cardinal Bancshares, Inc., Lexington, Kentucky (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage through its indirect subsidiary, Mutual Service Corporation, Somerset, Kentucky (Company), in securities brokerage activities pursuant to section 225.25(b)(15) of Regulation Y, and to act as riskless principal in buying and selling in secondary market trading all types of securities on the order of investors. Applicant proposes that Company enter into an arrangement with Compulife Investor Services, Inc., Richmond, Virginia (Compulife), whereby joint employees of Company and Compulife will conduct the proposed activities at branches of Applicant's thrift subsidiary, Mutual Federal Savings Bank, Somerset, Kentucky. These activities will be conducted throughout the United States.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board previously has approved the proposed riskless principal activities, and Applicant has stated that it will conduct these activities using the same methods

and procedures and subject to the prudential limitations established by the Board in its previous orders. *See J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990); and *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989).

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than March 18, 1994. Any request for a hearing on this application must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, February 16, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–3975 Filed 2–22–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Docket No. 911 0022]

American Society of Interpreters; and The American Association of Language Specialists; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the two consent agreements, accepted subject to final Commission approval, would prohibit, among other things, two professional associations of interpreters, based in Washington, DC, from fixing or otherwise interfering with any form of price or fee competition among language specialists in the future.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael McNeely, FTC/S–3308, Washington, DC 20580, (202) 326–2904.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721; 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following two consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of American Society of Interpreters, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the American Society of Interpreters, a corporation, and it now appearing that the American Society of Interpreters, hereinafter sometimes referred to as "ASI" or "proposed respondent," is willing to enter into an agreement containing an order to cease and desist from engaging in certain acts and practices being investigated,

It is hereby agreed by and between ASI, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. ASI is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its offices and principal place of business located at Washington, DC.

2. ASI admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. ASI waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by ASI that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered, That for purposes of this order, the following definitions shall apply:

"Respondent" or "ASI" mean American Society of Interpreters, its directors, trustees, general assemblies, councils, committees, working groups, boards, divisions, chapters, officers, representatives, delegates, agents, employees, successors, and assigns.

"Fees" means any cash or non-cash charges, rates, prices, benefits or other compensation received or intended to be received for the rendering of interpretation, translation, or other language services, including but not limited to, salaries, wages, transportation, lodging, meals, allowances, reimbursements for expenses, compensation for time not worked, compensation for travel time and preparation and study time, cancellation fees, and payments in kind.

"Interpretation" means the act of expressing, in oral form, ideas in a language different from an original spoken statement.

"Translation" means the act of expressing, in written form, ideas in a language different from an original writing.

"Other language service" means any service that has as an element the conversion of any form of expression from one language into another or any service incident to or related to interpretation and translation including briefing or conference preparation, equipment rental, conferences organizing, teleconferencing, précis writing, supervision or coordination of interpreters, reviewing or revising translations, or providing recordings of interpretations.

"Interpreter" means one who practices interpretation.

"Translator" means one who practices translation.

"Language specialist" means one who practices interpretation, translation, or any other language service.

"Unbiased" means lacking any systematic errors that would result from the selection or encouragement of one outcome or answer over others.

"Person" means any individual, partnership, association, company, or corporation, and includes any trustee, receiver, assignee, lessee, or personal representative of any person herein defined.

II

It is further ordered, That respondent, directly or indirectly, or through any person, corporation, or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. Creating, formulating, compiling, distributing, publishing, recommending, suggesting, encouraging adherence to, endorsing, publishing letters or articles supporting, or authorizing any list or schedule of fees for interpretation, translation, or any other language service, including but not limited to fee reports, fee guidelines, suggested fees, proposed fees, fee sheets, standards fees, or recommended fees;

B. Entering into, adhering to, or maintaining any contract, agreement, understanding, plan, program, combination, or conspiracy to construct, fix, stabilize, raise, maintain, or otherwise interfere with or restrict the fees for interpretation, translation, or other language services;

C. Suggesting urging, encouraging, recommending, or attempting to persuade in any way interpreters, translators, or other language specialists to charge, pay, file, or adhere to any existing or proposed fee, or otherwise to charge or refrain from charging any particular fee;

D. For a period of ten (10) years after the date this order becomes final, continuing a meeting of interpreters, translators, or other language specialists, after (1) any person makes a statement, addressed to or audible to the body of the meeting, concerning the fees charged or proposed to be charged for interpretation, translation, or any other language service and ASI fails to declare such statement to be out of order, (2) any person makes two such statements and ASI fails to eject him or her from the meeting, or (3) two people make such statements;

E. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against any form of price competition, including but not limited to offering to do work for less remuneration that a specific competitor, undercutting a competitor's actual fee, offering to work for less than a customer's announced fee, advertising discounted rates, or accepting any particular lodging or travel arrangements;

F. Discouraging, restricting, or prohibiting interpreters, translators, or other language specialists from accepting hourly fees, half-day fees, weekly fees, or fees calculated on other than a full-day basis; and

G. Discouraging, restricting, or prohibiting interpreters, translators, or other language specialists from performing services free of charge or at a discount, or from paying their own travel, lodging, meals, or other expenses.

Provided That, nothing contained in this Paragraph II shall prohibit respondent from:

1. Compliance or distributing accurate aggregate historical market information concerning past fees actually charged in transactions completed no earlier than three (3) years after the date this order becomes final, provided that such information is complied and presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions;

2. Collecting or publishing accurate and otherwise publicly available fees paid by governmental and intergovernmental agencies, if such publication states the qualifications and requirements to be eligible to receive such fees; or

3. Continuing a meeting following statements concerning historical, governmental, or intergovernmental fees that are made in order to undertake the activities permitted in Paragraph II.1 and II.2. of this order.

III

It is further ordered That, respondent shall clearly and conspicuously state the following in any publication of fees made pursuant to Paragraphs II.1 and II.2 of this order:

By order of the Federal Trade Commission, ASI is prohibited from recommending, suggesting, or enforcing fees. Under United States Law, interpreters and other language specialists must unilaterally and independently determine their own fees.

IV

It is further ordered, That respondent, directly or indirectly, or through any person, corporation, or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from entering into, adhering to, or maintaining any contract, agreement, understanding, plan, program, combination, or conspiracy to:

A. Limit, restrict, or mandate the length of time that interpreters, translators, or other language specialists work in a given period, or for which they are paid for preparation or study; or

B. Limit, restrict, or mandate the number of interpreters, translators, or other language specialists used for a given job or type of job.

Provided That, nothing contained in Paragraph IV of this order shall prohibit respondent from providing information or its nonbinding and non-coercive views concerning the hours of work or

preparation or the number of language specialists used for types of jobs.

V

It is further ordered, That respondent shall, within thirty (30) days after the date this order becomes final, amend its Code of Professional Standards and all Professional Guidelines, including those found in the annual Membership List of ASI, and all appendices to conform to the requirements of Paragraphs II and IV of this order and amend its bylaws to require each member, chapter, or other subdivision, to observe the provisions of Paragraphs II and IV of this order.

VI

It is further ordered, That respondent shall:

A. Within thirty (30) days after the date this order becomes final, distribute to each ASI member, affiliate, chapter, organizational subdivision, or other entity associated directly or indirectly with ASI, copies of: (1) This order, (2) the accompanying complaint, (3) appendix A to this order, (4) and any document that ASI revises pursuant to this order, with the exception of the annual Membership List; and

B. Within one-hundred eighty (180) days after the date this order becomes final, distribute copies of the annual Membership List as revised pursuant to this order; and

C. For a period of five (5) years after the date this order becomes final, distribute to all new ASI officers, directors, and members, and any newly created affiliates, chapters, or other organizational subdivisions, within thirty days of their admission, election, appointment, or creation, a copy of: (1) This order, (2) the accompanying complaint, (3) appendix A to this order, and (4) any document that ASI revises pursuant to this order.

VII

It is further ordered, That respondent shall:

A. Within ninety (90) days after the date this order becomes final, and annually for three (3) years thereafter on the anniversary of the date this order becomes final, file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order, and any instances in which respondent has taken any action within the scope of the provisos in Paragraphs II.1 or II.2 or II.3 of this order:

B. For a period of five (5) years after the date this order becomes final, notify and provide copies to the Federal Trade Commission staff, within thirty (30) days of any fee reports, fee lists, fee schedules, fee guidelines or similar materials produced by or for any association that come into respondent's possession;

C. For a period of five (5) years after the date this order becomes final, collect, maintain and make available to the Federal Trade Commission staff for inspection and copying: records adequate to describe in detail any action taken in connection with the activities covered in this order; all minutes, records, reports or tape recordings of meetings of the Board General Assembly, and all chapters, committees, subcommittees, working groups, or any other organizational subdivisions of ASI; and all ASI mailings to the ASI Board or general membership;

D. For a period of three (3) years after the date this order becomes final, provide copies to the Federal Trade Commission, within thirty (30) days of its adoption, of the text of any amendment to the ASI Bylaws, ASI Professional Guidelines, ASI Code of Professional Standards, ASI Yearbook Professional Guidelines, and any new rules, regulations or guidelines of respondent; and

E. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution or reorganization of itself or any chapter, division, or of any proposed change resulting in the emergence of a successor corporation or association, or any other change in the corporation or association that may effect compliance obligations arising out of this order.

Appendix A

[Date]

Announcement

The American Society of Interpreters ("ASI") has entered into a consent agreement with the Federal Trade Commission. Pursuant to this consent agreement, the Commission issued an order on [Date] that prohibits ASI, including its chapters, committees, or organizational subdivisions, from:

(1) Creating, distributing, authorizing, or endorsing any list or schedule of fees or other charges for interpretation, translation, or other language services;

(2) Entering into, or maintaining any agreement, plan, or program, to construct, fix, stabilize, raise, maintain, or otherwise interfere with the fees or other charges for interpretation, translation, or other language services;

(3) Suggesting, recommending, or encouraging, in any way, interpreters, translators, or other language specialists that charge, adhere to, or refrain from charging any existing or proposed fee;

(4) For a period of ten (10) years after the date this order becomes final, continuing a meeting after (a) Any person makes a statement to the body of the meeting, concerning the fees charged or proposed to be charged for interpretation, translation, or any other language service and ASI fails to declare such statement to be out of order, (b) any person makes two such statements and ASI fails to eject him or her from the meeting, or (c) two people make such statements;

(5) Prohibiting, restricting, regulating, or advising against any form of price competition among its members or other interpreters, translators, or other language specialists, including undercutting a competitor's actual fee or a customer's announced fee, advertising discounted rates or accepting any particular lodging or travel arrangements;

(6) Discouraging, restricting, or prohibiting interpreters, translators, or other language specialists from accepting hourly fees, weekly fees, or fees calculated on other than a full-day basis; and

(7) Discouraging, restricting, or prohibiting interpreters, translators, or other language specialists from performing services free of charge or from paying their own travel, lodging, meals, or other expenses.

In addition, the order prohibits ASI from maintaining any agreement, understanding, plan or program to:

(1) Limit, restrict, or mandate the length of time that interpreters, translators, or other language specialists work in a given period, or for which they are paid for preparation or study; or

(2) Limit, restrict, or mandate the number of interpreters, translators, or other language specialists hired for a job or type of job.

Under the order, "fees" are defined to include all cash or non-cash charges, rates, benefits, or other compensation for interpretation, translation or other language services, including but not limited to, lodging, meals, subsistence and travel allowances, reimbursements for expenses, cancellation fees, and compensation for time not worked, travel time or briefing time. "Language specialist" means one who performs "other language services," which are defined to refer to any services that involve the conversion of any form of expression from one language into another or any services incident to or related to interpretation and translation. Consequently, when the order mentions "language specialists," it includes anyone who rents equipment, organizes conferences, performs teleconferencing or précis writing, supervises or coordinates interpreters, reviews or revises translations, or provides recordings of interpretations.

Further, under the order, ASI must amend its Code of Professional Standards, Professional Guidelines, and Yearbook Professional Guidelines to conform to the requirements of Paragraphs II and IV of the attached order, which are summarized above. ASI must also amend its bylaws to require each member, chapter, and organizational subdivision to observe the requirements of the order. In addition, the order requires ASI to provide to its members and affiliates and to the Federal Trade Commission the text of each amendment to the ASI Bylaws, the ASI Code of Professional Standards, and all ASI Professional Guidelines, including those found in the ASI Membership Lists, and the texts of any new rules, regulations or guidelines. The order also requires that, within thirty days after obtaining them, ASI must provide to the Federal Trade Commission copies of all lists of fees that have been produced by any associations and come into ASI's possession.

We note, however, that ASI will be permitted to compile and distribute accurate aggregate historical market information concerning past fees that were actually charged no earlier than three years after this order becomes final, if presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions underlying such reports. Similarly, the order does not prohibit ASI from collecting and publishing accurate publicly available information on fees paid by governmental and intergovernmental agencies if such publication states the qualifications and requirements for such fees. With any publication of fees permitted by the order, ASI must include a statement that it is prohibited from recommending fees and that interpreters must independently determine their own fees. In addition, the order states that it does not prohibit ASI from providing information or its nonbinding and non-coercive views concerning the hours of work or preparation or the number of language specialists used for a type of job.

For more specific information, members should refer to the FTC order itself, which is enclosed.

Counsel,

American Society of Interpreters.

Agreement Containing Consent Order To Cease and Desist

In the Matter of the American Association of Language Specialists, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of The American Association of Language Specialists, a corporation, and it now appearing that The American Association of Language Specialists, hereinafter sometimes referred to as "TAALS" or "proposed respondent," is willing to enter into an agreement containing an order to cease and desist from engaging in certain acts and practices being investigated,

It is hereby agreed by and between TAALS, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. TAALS is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its offices and principal place of business located at 1000 Connecticut Avenue NW., Washington, DC 20036.

2. TAALS admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. TAALS waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by TAALS that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered, That for purposes of this order, the following definitions shall apply:

"Respondent" or "TAALS" mean The American Association of Language Specialists, its directors, trustees, general assemblies, councils, committees, working groups, boards, divisions, chapters, officers, representatives, delegates, agents, employees, successors, and assigns.

"Fees" means any cash or non-cash charges, rates, prices, benefits or other

compensation received or intended to be received for the rendering of interpretation, translation, or other language services, including but not limited to, salaries, wages, transportation, lodging, meals, allowances (including subsistence and travel allowances), reimbursements for expenses, cancellation fees, compensation for time not worked, compensation for travel time and preparation or study time, cancellation fees, and payments in kind.

"Cancellation fee" means any fee intended to compensate for the termination, cancellation or revocation of an understanding, contract, agreement, offer, pledge, assurance, opportunity, or expectation of a job.

"Interpretation" means the act of expressing, in oral form, ideas in a language different from the language used in an original spoken statement.

"Translation" means the act of expressing, in written form, ideas in a language different from the language used in an original writing.

"Other language service" means any service that has as an element the conversion of any form of expression from one language into another or any service incident to or related to interpretation or translation, including briefing or conference preparation, equipment rental, conference organizing, teleconferencing, précis writing, supervision or coordination of interpreters, reviewing or revising translations, or providing recordings of interpretations.

"Interpreter" means one who practices interpretation.

"Translator" means one who practices translation.

"Language specialist" means one who practices interpretation, translation, or any other language service.

"Unbiased" means lacking any systematic errors that would result from the selection or encouragement of one outcome or answer over others.

"Person" means any individual, partnership, association, company, or corporation, and includes any trustee, receiver, assignee, lessee, or personal representative of any person herein defined.

II

It is further ordered, That respondent, directly or indirectly, or through any person, corporation, or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. Creating, formulating, compiling, distributing, publishing, recommending, suggesting, encouraging adherence to, endorsing, or authorizing any list or schedule of fees for interpretation, translation, or any other language service, including but not limited to fee guidelines, suggested fees, proposed fees, fee sheets, standard fees, or recommended fees;

B. Entering into, adhering to, or maintaining any contract, agreement, understanding, plan, program, combination, or conspiracy to construct, fix, stabilize, standardize, raise, maintain, or otherwise interfere with or restrict fees for interpretation, translation, or other language services;

C. Suggesting, urging, encouraging, recommending, or attempting to persuade in any way interpreters, translators, or other language specialists to charge, pay, offer, or adhere to any existing or proposed fee, or otherwise to charge or refrain from charging any particular fee;

D. For a period of ten (10) years after the date this order becomes final, continuing a meeting of interpreters, translators, or other language specialists, after (1) any person makes a statement, addressed to or audible to the body of the meeting, concerning the fees charged or proposed to be charged for interpretation, translation, or any other language service and TAALS fails to declare such statement to be out of order, (2) any person makes two such statements and TAALS fails to eject him or her from the meeting, or (3) two people make such statements;

E. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against any form of price competition, including but not limited to offering to do work for less remuneration than a specific competitor, undercutting a competitor's actual fee, offering to work for less than a customer's announced fee, advertising discounted rates, or accepting any particular lodging or travel arrangements;

F. Advising against, restricting, or prohibiting interpreters, translators, or other language specialists from accepting hourly fees, half-day fees, weekly fees, or fees calculated or payable on other than a full-day basis;

G. Advising against, restricting, or prohibiting interpreters, translators, or other language specialists from performing services free of charge or at a discount, or from paying their own travel, lodging, meals, or other expenses; and

H. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against any forms of personal publicity, including but not limited to advertising by interpreters, translators, or other language specialists.

Provided that, nothing contained in this Paragraph II shall prohibit respondent from:

1. Compiling or distributing accurate aggregate historical market information concerning past fees actually charged in transactions completed no earlier than three (3) years after the date this order becomes final, provided that such information is compiled and presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions;

2. Collecting or publishing accurate and otherwise publicly available fees paid by governmental and intergovernmental agencies, if such publication states the qualifications and requirements to be eligible to receive such fees;

3. Continuing a meeting following statements concerning historical, governmental, or intergovernmental fees that are made in order to undertake the activities permitted in Paragraphs II.1 and II.2 of this order; or

4. Formulating, adopting, disseminating to its organizational subdivisions and to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to advertising, including unsubstantiated representations, that respondent reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act.

III

It is further ordered That, respondent shall clearly and conspicuously state the following in any publication of fees made pursuant to Paragraphs II.1 and II.2 of this order:

By order of the Federal Trade Commission, TAALS is prohibited from recommending, suggesting, or enforcing fees applicable in the United States. Under United States law, interpreters and other language specialists must unilaterally and independently determine their own fees.

IV

It is further ordered, That respondent, directly or indirectly, or through any person, corporation, or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and disist from entering into, adhering to, or maintaining any contract, agreement, understanding, plan, program, combination, or conspiracy to:

A. Limit, restrict, or mandate the length of time that interpreters, translators, or other language specialists work in a given period, or for which they are paid for preparation or study;

B. Limit, restrict, or mandate the number of interpreters, translators, or other language specialists used for a given job or type of job;

C. Limit, restrict, or mandate the reimbursement of or payment to interpreters, translators, or other language specialists for travel expenses or time spent traveling, or otherwise prevent consumers from receiving any advantages, based on interpreters', translators', or other language specialists' actual travel arrangements or geographic location, by restricting, requiring declarations of, or regulating the number or duration of residences or domiciles of members or by other means; or

D. Limit, restrict, or mandate the equipment used in performing interpretation, translation, or other language services.

Provided that, nothing contained in Paragraph IV of this order shall prohibit respondent from providing information or its nonbinding and noncoercive views concerning interpretation equipment, the hours of work or preparation, or the number of language specialists used for types of jobs.

V

It is further ordered, That respondent shall, within thirty (30) days after the date this order becomes final, amend its Professional Code For Language Specialists and all appendices to conform to the requirements of Paragraphs II and IV of this order and amend its bylaws to require each member, chapter, or other organizational subdivision, to observe the provisions of Paragraphs II and IV of this order.

VI

It is further ordered, That respondent shall:

A. Within thirty (30) days after the date this order becomes final, distribute to each TAALS member, affiliate, chapter, organizational subdivision, or other entity associated directly or indirectly with TAALS, copies of: (1) This order, (2) the accompanying complaint, (3) appendix A to this order, (4) and any document that TAALS revises pursuant to this order; and

B. For a period of ten years after the date this order becomes final, distribute to all new TAALS officers, directors, and members, and any newly created affiliates, chapters, or other organizational subdivisions, within thirty days of their admission, election, appointment, or creation, a copy of: (1) This order, (2) the accompanying complaint, (3) appendix A to this order, and (4) any document that TAALS revises pursuant to this order.

VII

It is further ordered, That respondent shall:

A. Within ninety (90) days after the date this order becomes final, and annually for five (5) years thereafter on the anniversary of the date this order becomes final, file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order, and any instances in which respondent has taken any action within the scope of the provisos in Paragraphs II.1, II.2, II.3, or II.4 of this order;

B. For a period of five (5) years after the date this order becomes final, collect, maintain and make available to the Federal Trade Commission for inspection and copying: Records adequate to describe in detail any action taken in connection with the activities covered in this order; all minutes, records, reports or tape recordings of meetings of the Council, General Assembly, and all committees, subcommittees, working groups, or any other organizational subdivisions of TAALS; and all TAALS mailings to the TAALS Council or general membership;

C. For a period of five (5) years after the date this order becomes final, provide copies to the Federal Trade Commission, within thirty (30) days of its adoption, of the text of any amendment to the TAALS Bylaws, TAALS Professional Code for Language Specialists or Appendix thereto, Working Conditions for Interpreters, Working Conditions for Translators, Working Conditions for Precis-Writers, and any new rules, regulations or guidelines of respondent; and

D. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution or reorganization of itself or any chapter, division, or of any proposed change resulting in the emergence of a successor corporation or association, or any other change in the corporation or association that may affect compliance obligations arising out of this order.

Appendix A

[Date]

Announcement

The American Association of Language Specialists ("TAALS") has entered into a consent agreement with the Federal Trade Commission. Pursuant to this consent agreement, the Commission issued an order on [Date] that prohibits TAALS, including its chapters, committees, or organizational subdivisions, from:

(1) Creating, distributing, authorizing, or endorsing any list or schedule of fees or other charges for interpretation, translation, or other language services;

(2) Entering into, or maintaining any agreement, plan, or program, to construct, fix, stabilize, raise, maintain, or otherwise interfere with fees or other charges for interpretation, translation, or other language services;

(3) Suggesting, recommending, or encouraging, in any way, that interpreters, translators, or other language specialists charge, adhere to, or refrain from charging any existing or proposed fee;

(4) For a period of ten (10) years after this order becomes final, continuing a meeting after (1) Any person makes any statement to the body of the meeting concerning the fees charged or proposed to be charged for interpretation, translation, or any other language service and TAALS fails to declare such statement to be out of order, (2) any person makes two such statements and TAALS fails to eject him or her from the meeting, or (3) two people make such statements;

(5) Prohibiting, restricting, regulating, or advising against any form of price competition among its members or other interpreters, translators, or other language specialists, including undercutting a competitor's actual fee or a customer's announced fee, advertising discounted rates, or accepting any particular lodging or travel arrangements;

(6) Advising against, restricting, or prohibiting interpreters, translators, or other language specialists from accepting hourly fees, weekly fees, or fees calculated or payable on other than a full-day basis;

(7) Advising against, restricting, or prohibiting interpreters, translators, or other language specialists from performing services free of charge or from paying their own travel, lodging, meals, or other expenses; or

(8) Prohibiting, restricting, impeding, declaring unethical, or advising against any forms of personal publicity, including but not limited to advertising by interpreters, translators, or other language specialists.

In addition, the order prohibits TAALS from maintaining any agreement, understanding, plan or program to:

(1) Limit, restrict, or mandate the length of time that interpreters, translators, or other language specialists

work in a given period, or for which they are paid for preparation or study;

(2) Limit, restrict, or mandate the number of interpreters, translators, or other language specialists used for a job or type of job;

(3) Limit, restrict, or mandate the payment or reimbursement for travel or the travel time of interpreters, translators, or other language specialists, or otherwise prevent consumers from receiving any advantages, based on travel arrangements or geographic location, by regulating domiciles of members or by other means; or

(4) Limit, restrict, or mandate the equipment used in performing interpretation, translation, or other language services.

Under the order, "fees" are defined to include all cash or non-cash charges, rates, benefits, or other compensation for interpretation, translation or other language services, including but not limited to, lodging, meals, subsistence and travel allowances, reimbursements for expenses, cancellation fees, and compensation for time not worked, travel time or briefing time. "Language specialist" means one who performs "other language services," which are defined to refer to any services that involve the conversion of any form of expression from one language into another or any services incident to or related to interpretation and translation. Consequently, when the order mentions "language specialists," it includes anyone who rents equipment, organizes conferences, performs teleconferencing or précis writing, supervises or coordinates interpreters, reviews or revises translations, or provides recordings of interpretations.

Further, under the order, TAALS must amend its professional code to conform to the requirements of paragraphs II and IV of the attached order, which are summarized above. TAALS must also amend its bylaws to require each member, chapter, and organizational subdivision to observe the requirements of the order. In addition, the order requires TAALS to provide to the Federal Trade Commission the text of each amendment to the TAALS Bylaws, Professional Code or Working Conditions, and the text of any new rules, regulations or guidelines.

We note, however, that the order does not prevent TAALS from adopting and enforcing reasonable ethical guidelines prohibiting advertising that would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act. In addition, TAALS will be permitted to compile and distribute accurate aggregate historical market information concerning past fees that were actually charged no earlier than three years after this order becomes final, if presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions underlying such reports. Similarly, the order does not profit TAALS from collecting and publishing accurate publicly available information on fees paid by governmental and intergovernmental agencies if such publication states the qualifications and requirements for such fees. With any publication of fees permitted by the order, TAALS must include a statement that it is prohibited from recommending fees applicable in the United States and that interpreters must independently determine their own fees. In addition, the order states that it does not prohibit TAALS from providing information or its nonbinding and noncoercive views concerning interpretation equipment, the hours of work or preparation, or the number of language specialists used for a type of job.

For some specific information, members should refer to the order itself, which is enclosed.

Counsel,

American Association of Language Specialists.

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted separate agreements to proposed consent orders from the American Society of Interpreters (ASI) and The American Association of Language Specialists (TAALS).

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

ASI and TAALS are professional associations of conference interpreters. The accompanying complaints allege that both TAALS and ASI have been and are acting as combinations or conspiracies of their members to restrain price and other forms of competition in the sale of interpretation services. In particular, the complaint against ASI charges that from as early as 1967, that association annually created and distributed a list of minimum daily fees that members were required to charge. The complaint against TAALS alleges that since 1973, TAALS required its members to refrain from accepting private sector fees below those adopted by vote of the association and then specified in the Fee Reports sent to members. In addition, the complaints allege that both ASI and TAALS have maintained a set of work rules binding on all of their members requiring, among other things, that all interpreters on a team be paid the same rate; that fees be paid in day-long increments; and that members charge for travel, rest, and study days. The complaints further allege that the binding work rules required, among other things, that interpreters work no more than six hours per day and that teams be staffed with a specified number of interpreters. The TAALS complaint also alleges that TAALS established rules limiting its members' use of portable electronic simultaneous interpretation equipment and prohibited its members from engaging in all forms of personal publicity and advertising. The TAALS complaint further alleges that TAALS required members to declare a single professional domicile and charge for travel expenses from that location even if no travel was actually involved. The complaints allege that TAALS' and ASI's lists of fees and work rules restrained competition in violation of section 5 of the FTC Act, and that absent the proposed consent orders, injury to the public will continue.

The proposed consent orders prohibit ASI and TAALS, including their chapters, committees, and any other subdivision, from creating, distributing, or endorsing any list of fees for interpretation, translation, or other language services. They also forbid each of the associations from entering into or maintaining any agreement, plan, or program, to fix or otherwise interfere with fees. In addition, TAALS and ASI are barred from recommending or encouraging, in any way, interpreters, translators, or other language specialists to charge, adhere to, or refrain from charging any existing or proposed fee.

Under the orders, for a period of ten years ASI and TAALS are required to declare out-of-order any person who makes a statement at a meeting concerning fees to be charged. If any person makes two such statements, the association must eject him or her from the meeting. If two people make statements concerning fees, TAALS or ASI must end the meeting.

Under the orders, ASI and TAALS are further barred from prohibiting, regulating, or advising against any form of price competition, including undercutting a competitor's actual fee, advertising discounted fees, or accepting any particular lodging or travel arrangements. The orders also bar TAALS and ASI from advising against or prohibiting hourly fees, weekly fees, or fees calculated on other than a full-day basis. Furthermore, under the orders, the associations cannot prohibit interpreters, translators, or other language specialists from performing services free of charge or from paying their own travel, lodging, meals, or other expenses.

In addition, the orders prohibit both ASI and TAALS from maintaining any agreement, understanding, plan or program to limit, restrict, or mandate the length of time that interpreters, translators, or other language specialists work in a given period, or for which they are paid for preparation or study. Further, under the orders the associations cannot maintain any agreement, understanding, or program to limit, restrict, or mandate the number of interpreters, translators, or other language specialists hired for a job or type of job.

In addition to the restrictions they both share, the TAALS order prohibits further activities not addressed in the ASI order. TAALS may not limit or mandate the equipment used for performing interpretation, translation, or other language services. TAALS is also barred from restricting, regulating, or declaring unethical any form of personal publicity, including advertising. Finally, TAALS may not deprive consumers of any advantages, based on travel arrangements or geographic location, by regulating domiciles of members or by other means.

Under both orders, "fees" are defined to include all cash or non-cash charges, rates, benefits, or other compensation. Thus, the term "fees" includes (but is not limited to): Lodging, meals, subsistence and travel allowances, reimbursements for expenses, cancellation charges, and compensation for time not worked, travel time or briefing time. "Language specialist" means one who performs "other language services," which are defined as any services that involve the conversion of any form of expression from one language into another or any services incident to or related to interpretation and translation. Consequently, when the orders mention "language specialists," they include, among others, anyone who rents equipment, organizes conferences, performs teleconferencing or precis writing, supervises or coordinates interpreters, reviews or revises translations, or provides recordings of interpretations.

Further, ASI must amend its Code of Professional Standards, Professional Guidelines, and Yearbook Professional Guidelines to conform to the requirements of the order, which are summarized above. TAALS must amend its Professional Code for Language Specialists and all appendices to conform to the requirements of its order. Both associations must also amend their bylaws to require each member, chapter, and organizational subdivision to observe the requirements of the respective orders. In addition, the orders require the associations to provide to their members and affiliates and to the Federal Trade Commission the text of each amendment to their bylaws, and the taxes of any new or amended rules, regulations or guidelines. The ASI order also requires that, within thirty days after obtaining them, ASI must provide to the Federal Trade Commission copies of all lists of fees produced by any association that come into ASI's possession.

We note, however, that TAALS and ASI will be permitted to compile and distribute accurate aggregate historical market information concerning past fees that were actually charged in transactions completed no earlier than three years after the orders become final. Such information must be presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions. Similarly, the orders permit the associations to collect and publish accurate publicly available information on fees paid by governmental and intergovernmental agencies, if the publication states the qualifications and requirements to receive such fees. Whenever they publish the fees that are permitted by the orders, ASI and TAALS must include a statement that they are prohibited from recommending fees and that interpreters must independently determine their own fees. In addition, the orders authorize the associations to provide information or their nonbinding and noncoercive views concerning the hours of work or preparation or the number of language specialists used for a type of job.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94-4042 Filed 2-23-94; 8:45 am]

BILLING CODE 6750-01-M

[Docket 9256]

Columbia Hospital Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, any hospital combination in the Charlotte County, Florida, area involving Columbia that would threaten competition. The proposed consent agreement would require the respondent to seek prior Commission approval, for ten years, before consummating any partial or total merger of a hospital in the designated area with any other hospital in that area.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Oscar Voss, FTC/S-3115, Washington, DC 20580. (202) 326-2750.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The agreement herein, by and between Columbia Healthcare Corporation (a corporation into which Columbia Hospital Corporation was merged after the issuance of the complaint in this matter), hereinafter sometimes referred to as "respondent," by its duly designated officer and attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Columbia Healthcare Corporation is a corporation organized, existing and doing business under the laws of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky.

2. Respondent's predecessor Columbia Hospital Corporation has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a record of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. Respondent understands that once the order has become final, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered That, for the purposes of this order, the following definitions shall apply:

A. "Columbia" means Columbia Healthcare Corporation, a corporation organized, existing and doing business under the laws of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky, as well as its officers, employees, agents, parents, divisions, subsidiaries, affiliates, successors and assigns, and the officers, employees, or agents of Columbia's divisions, subsidiaries, affiliates, successors and assigns.

B. "Acute care hospital" means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities. For purposes of this Order, health facilities whose inpatient services are limited to mental health care, rehabilitation or substance abuse are not "acute care hospitals."

C. To "acquire an acute care hospital" means to directly or indirectly acquire the whole or any part of the assets of an acute care hospital; to acquire the whole or any part of the stock or share capital of, the right to designate directly or indirectly directors or trustees of, or any equity or other interest in, any person which operates an acute care hospital; or to enter into any other arrangement to obtain direct or indirect ownership, management or control of an acute care hospital or any part thereof, including but not limited to a lease of or management contract for an acute care hospital.

D. To "operate an acute care hospital" means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

E. "Affiliate" means an entity whose management and policies are controlled or directed in any way, directly or indirectly, by the persons with which it is affiliated.

F. The "Charlotte County area" means the combined area consisting of Charlotte County, Florida, together with those portions of Sarasota and DeSoto Counties, Florida within twelve (12) miles of the present site of Columbia's Fawcett Memorial Hospital in Port Charlotte, Florida, *excluding* the part of that combined area which is west of the Myakka River.

G. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

H. The "Commission" means the Federal Trade Commission.

II

It is further ordered That, for a period of ten (10) years from the date this Order becomes final, Columbia shall not, without the prior approval of the Commission:

A. Acquire any acute care hospital in the Charlotte County area; or

B. Permit any acute care hospital it operates in the Charlotte County area to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in the Charlotte County area.

Provided, however, that such prior approval shall not be required for:

(1) The establishment of a new hospital service or facility (other than as a replacement for a hospital service or facility, not operated by Columbia, in the Charlotte County area, pursuant to an agreement or understanding between Columbia and the person operating the replaced service of facility); or

(2) Any transaction subject to this Paragraph II of this Order if the fair market value of (or, in case of a purchase acquisition, the consideration to be paid for) the hospital, part thereof or interest therein to be acquired does not exceed one million dollars ($1,000,000).

III

It is further ordered That, for a period of ten (10) years from the date this Order becomes final, Columbia shall not, without providing advance notification to the Commission, consummate any joint venture or other arrangement with any other acute care hospital in the Charlotte County area for the joint establishment or operation of any new acute care hospital, hospital medical or surgical diagnostic or treatment service or facility, or part thereof in the Charlotte County area. Such advance notification shall be filed immediately upon Columbia's issuance of a letter of intent for, or execution of an agreement to enter into, such a transaction, whichever is earlier.

The notification required by this Paragraph III of this Order shall be given on the Notification and Report Form set forth in the appendix to part 803 of title 16 of the Code of Federal Regulations (as amended), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of Columbia and not of any other party to the transaction. If the transaction for which notification is required by this Paragraph III of this Order requires state regulatory approval under a health facilities certificate of need law, Columbia may, in lieu of the foregoing notification, submit to the Commission a copy of the application for such state approval.

Columbia shall comply with reasonable requests by the Commission staff for additional information concerning any transaction subject to this Paragraph III of this Order, within fifteen (15) days of service of such requests.

Provided, however, that no transaction shall be subject to this Paragraph III of this Order if:

(1) The fair market value of the assets to be contributed to the joint venture or other arrangement by acute care hospitals not operated by Columbia does not exceed one million dollars ($1,000,000);

(2) The service, facility or part thereof to be established or operated in a transaction subject to this Order is to engage in no activities other than the provision of the following services: Laundry; data processing; purchasing; materials management; billing and collection; dietary; industrial engineering; maintenance; printing; security; records management; laboratory testing; personnel education, testing, or training; or health care financing (such as through a health maintenance organization or preferred provider organization); or

(3) Notification is required to be made, and has been made, pursuant to section 7A of the Clayton Act, 15 U.S.C. 18a, or prior approval by the Commission is required, and has been requested, pursuant to Paragraph II of this order.

IV

It is further ordered, That, for a period of ten (10) years from the date this Order becomes final, Columbia shall not permit all or any substantial part of any acute care hospital it operates in the Charlotte County area to be acquired by any other person unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement Columbia shall require as a condition precedent to the acquisition.

V

It is further ordered, That Columbia shall, one year after the date this Order becomes final and annually for nine (9) years thereafter, file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and intends to comply with this Order.

VI

It is further ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Columbia made at its principal offices, Columbia shall permit any duly authorized representatives of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in Columbia's possession or control relating to any matter contained in this Order; and

2. Upon five days' notice to Columbia and without restraint or interference from Columbia, to interview its officers or employees, who may have counsel present, regarding such matters.

VII

It is further ordered, That Columbia shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment, sale resulting in the emergence of a successor corporation or association, or the creation or dissolution of subsidiaries or affiliates, which may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order To Aid Public Comment

Columbia Hospital Corp. (Docket No. 9256)

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Columbia Healthcare Corporation, successor to respondent Columbia Hospital Corporation (hereinafter collectively "Columbia"). The agreement would settle charges by the Federal Trade Commission that Columbia's proposed acquisition of Medical Center Hospital, in Punta Gorda, Florida, violated section 5 of the Federal Trade Commission Act, and would also have violated section 7 of the Clayton Act if it had been carried out.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or issue and serve the agreement's proposed order.

The Complaint

The Commission issued an administrative complaint against Columbia Hospital Corp. on February 18, 1993. According to the complaint, Columbia operates Fawcett Memorial Hospital, a general acute care hospital in Port Charlotte, Florida, and related health care facilities. Columbia agreed to acquire Medical Center Hospital, a general acute care hospital in Punta Gorda, Florida, about five miles south of Port Charlotte. The complaint alleges that Fawcett and Medical Center were competitors in the market for acute care inpatient hospital services in an area including all but the westernmost portions of Charlotte County, Florida, plus adjacent portions of DeSoto and Sarasota Counties in Florida. That market, according to the complaint, was already highly concentrated, and entry by new competitors would be difficult. The complaint charged that if Columbia carried out its agreement to acquire Medical Center, the effect of that acquisition would be substantially to lessen competition in the Charlotte County area hospital market, in

violation of section 5 of the Federal Trade Commission Act and section 7 of the Clayton Act.

The proposed acquisition challenged in the administrative complaint was never completed. After the Commission issued the complaint, the proposed acquisition was preliminarily enjoined by a Federal court, pursuant to section 13(b) of the FTC Act. *Federal Trade Commission* v. *Columbia Hospital Corp.*, 93–30–Civ–FTM–23D (M.D. Fla., injunction issued May 21, 1993). The court's injunction prohibiting the acquisition will remain in effect until the Commission gives final approval to the proposed consent order, or until the Commission's administrative proceeding against Columbia is otherwise concluded.

The Proposed Consent Order

The first paragraph of the proposed order defines certain other terms used in the order.

Paragraph II would prohibit Columbia from acquiring, without the prior approval of the Federal Trade Commission, all or any significant part of a general acute care hospital in the "Charlotte Country area" (an area including most of Charlotte County, Florida, and some adjacent portions of DeSoto and Sarasota Counties in Florida). It would also prohibit Columbia from transferring, without prior Commission approval, any general hospital or significant part thereof it operates in that area to another person operating (or simultaneously acquiring) a general hospital in the area. These provisions would give the Commission authority to prohibit any substantial combination of the general acute care hospital operations of Columbia with those of any non-Columbia general hospital in the Charlotte County area, unless Columbia convinced the Commission that a particular transaction would not endanger competition in the Charlotte County area hospital market.

Paragraph III would require Columbia to provide advance notice to the Commission of joint ventures with non-Columbia hospitals for the establishment of new hospital facilities or services in the Charlotte County area. This Paragraph would not apply to transactions subject to the prior approval requirement of Paragraph II, or to the Clayton Act's premerger notification requirements.

Both Paragraph II and Paragraph III would not cover acquisitions and joint ventures where the value of the acquired assets, or the assets contributed to a joint venture by participants other than Columbia, is $1 million or less. Nor would Paragraph III apply to joint ventures between Columbia and non-Columbia hospitals that are limited to the provision of certain specified hospital support services (such as laundry or laboratory testing) or the establishment of new health plans (such as health maintenance organizations). In addition, Paragraphs II and III would both expire ten years after the order becomes final.

Paragraph IV of the proposed order would prohibit, for ten years, Columbia from transferring any hospital in the Charlotte County area to any other person without first filing with the Commission an agreement by the transferee to be bound by the order. Paragraphs V and VI of the proposed order would require Columbia to make annual reports to the Federal Trade Commission, and to make certain documents and personnel available to the Commission upon request, so the Commission may verify compliance with the order. Finally, Paragraph VII of the proposed order would require Columbia to notify the Commission at least thirty days before any proposed change in corporate structure that may affect compliance with the order.

The purpose of this analysis is to invite public comment concerning the proposed order, in order to assist the Commission in its determination whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

The agreement is for settlement purposes only and does not constitute an admission by the respondent that its proposed acquisition violated or would have violated the law, as alleged in the Commission's complaint.

Donald S. Clark,

Secretary

Separate Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in Columbia Hospital Corporation, Docket 9256

I concur in the decision to publish the proposed consent agreement for comment, but I would have preferred that the proposed order require Columbia to provide notice of acquisitions outside the relevant market. Prior notice can be useful, the Commission has required such relief in other litigated hospital merger cases, see, *e.g.*, *Hospital Corporation of America*, 106 F.T.C. 361, 524 (1985), *aff'd*, 807 F.2d 1381 (7th Cir. 1986), *cert. denied*, 107 S. Ct. 1975 (1987), and there is no apparent reason for granting more favorable treatment to this respondent.

[FR Doc. 94–4043 Filed 2–22–94; 8:45 am]
BILLING CODE 6750–01–M

[File No. 932 3000]

Eggland's Best, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Pennsylvania company from misrepresenting the amount of nutrients or other ingredients in its eggs or foods containing egg yolks, and would require the respondent to have competent and reliable scientific evidence to substantiate future health-benefit claims for such foods and, for one year, to label certain egg packages with a corrective notice stating that no studies show Eggland's eggs are different from other eggs in their effect on serum cholesterol.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Lee Peeler, FTC/S–4002, Washington, DC 20580, (202) 326–3090.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Eggland's Best, Inc., a corporation, and it now appearing that Eggland's Best, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Eggland's Best, Inc., by its duly authorized officer and attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Eggland's Best, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 842 First Street, King of Prussia, Pennsylvania 19406.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint attached hereto.

3. Proposed respondent waives:

(a) Any procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access To Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft complaint here attached.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Definition

For purposes of this Order, the phrase "food containing egg yolk" shall not include "medical foods" by 21 U.S.C. 360ee(b)(3) as currently in effect as of the date of this Order.

I

It is ordered, That respondent Eggland's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the absolute or comparative amount of cholesterol, total fat, saturated fat or any other nutrient or ingredient in such food.

II

It is further ordered, That respondent Eggland's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the absolute or comparative effect of such food and serum cholesterol, whether or not such food is consumed as part of an unrestricted diet or as part of any specific dietary regimen, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation; *Provided, however*, That any such representation that is specifically permitted in labeling for such food by regulation promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 will be deemed to be substantiated as required by this paragraph. For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

It is further ordered, That respondent Eggland's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the absolute or comparative health benefits of such food, including but not limited to its effect on heart disease, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation; *Provided, however*, That any such representation that is specifically permitted in labeling for such food by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 will be deemed to be substantiated as required by this paragraph.

IV

It is further ordered, That respondent Eggland's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale,

sale, or distribution of any food in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

V

It is further ordered, That respondent Eggland's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Failing to disclose clearly and prominently in any advertisement or promotional material that refers, directly or by implication, to the absolute or comparative amount of cholesterol, fat or saturated fat in such food, the average cholesterol content of such food expressed in the following terms:

1. The number of milligrams; and
2. The percentage of "Maximum Daily Value."

The statements required by subparagraphs A.1 and A.2 of this Part shall appear in close proximity. For purposes of this Part, the term "Maximum Daily Value" shall mean: (1) The daily reference value or other daily intake limit for cholesterol established in an effective final regulation of the Food and Drug Administration; or (2) in the absence of such a regulation, the daily intake limit of cholesterol advised by any one of the following three organizations: the National Academy of Sciences, the Surgeon General of the Public Health Service, or the American Heart Association. In the event that the Food and Drug Administration does not have a final effective regulation and none of the three named organizations advises that daily cholesterol intake be limited to a specific maximum amount, subparagraph A.2 of this Part shall not apply. *Provided, however,* That this Part will not be deemed to apply to any representation that is specifically permitted in labeling for such food product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

B. For a time period of one year, beginning no later than forty-five (45) days from the date this Order becomes final, offering for sale, selling, or distributing eggs unless the package label for such eggs clearly and prominently states, in the exact language that follows, that: "There are no studies showing that these eggs are different from other eggs in their effect on serum cholesterol." *Provided, however,* That this requirement shall apply only in those geographic areas where respondent has disseminated or caused to be disseminated advertising or promotional materials containing any representation, directly or by implication, about the effect of Eggland's Best eggs or other eggs on serum cholesterol over a period of 12 weeks or more, or at any time between January 1, 1993 and the date of the acceptance of this Order by the Commission for public comment, including but not limited to those geographic areas listed in Attachment A to this Order.

For purposes of this Order, "clearly and prominently" shall mean as follows:

1. In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehended it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for a ordinary consumer to read and comprehend it;

2. In a print advertisement, the disclosure shall be in type size which is at least the same size as that in which the principal portion of the text of the advertisement appears, shall be located in close proximity to the statement or other reference requiring the disclosure and shall be of a color or shade that readily contrasts with the background of the advertisement;

3. In a radio advertisement, the disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it;

4. On a package label, the disclosure shall be in a conspicuous and prominent place on the package, in a conspicuous format, and in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the package. *Provided, however,* That if the disclosure is displayed on the top or front panel of a standard twelve-egg carton or on the top, front or side panel of a standard six-egg carton, is in at least ten (10) point type and is either on a separate label or enclosed within a border, and both the type and the border are of a color or shade that readily contrasts with the background of the carton, the disclosure shall be deemed to have been made clearly and prominently for purposes of this Order.

VI

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this Order, respondent Eggland's Best, Inc., or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All test, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify or call into question such representation, or the basis relied upon for such representation, including complaints from consumers and complaints or inquiries from governmental organizations.

VII

It is further ordered, That respondent Eggland's Best, Inc. shall, within thirty (30) days after service upon it of this Order, distribute a copy of the Order to each of its operating divisions, to each of its franchisees, to each of its managerial employees, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertising or other materials covered by this Order and shall secure from each such person a signed statement acknowledging receipt of this Order.

VIII

It is further ordered, That respondent Eggland's Best, Inc. shall, notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other corporate change that may affect compliance obligations arising out of this Order.

IX

It is further ordered, That respondent Eggland's Best, Inc. shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Attachment A.—Geographic Areas With Cholesterol-Related Advertising or Promotion Pursuant to Paragraph V.B of Agreement Containing Consent Order

1. Iowa
2. Maine
3. Rhode Island
4. Western and Central Pennsylvania
5. Virginia
6. Maryland
7. Washington, DC
8. Georgia
9. South Carolina
10. Alabama
11. Mississippi
12. Louisiana
13. Arkansas
14. California
15. Nevada
16. Idaho
17. Michigan
18. Colorado
19. South Dakota
20. Washington
21. Montana
22. Alaska
23. Wyoming
24. Missouri
25. Oklahoma
26. Salt Lake City, Utah
27. Raleigh-Durham, North Carolina
28. Southern Illinois (St. Louis Market)

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Eggland's Best, Inc. ("Eggland's").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns claims made by Eggland's in its advertising and promotional materials for eggs.

The Commission's complaint in this matter charges Eggland's with engaging in unfair or deceptive practices in connection with the advertising of its eggs. According to the complaint, Eggland's falsely represented that it had a reasonable basis for claims that eating its eggs will not increase serum cholesterol in an absolute sense and that eating its eggs will not increase serum cholesterol as much as eating ordinary eggs.

The complaint also alleges that Eggland's falsely represented that clinical studies have proven that adding twelve Eggland's eggs per week to a low-fat diet does not cause an increase in serum cholesterol.

Finally, the complaint alleges that Eggland's falsely represented that its eggs are both low in saturated fat in an absolute sense, and are lower in saturated fat than ordinary eggs.

The consent order contains provisions designed to remedy the violations charged and to prevent Eggland's from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits Eggland's from misrepresenting the absolute or comparative amount of cholesterol, total fat, saturated fat or any other nutrient or ingredient in eggs or in any food containing egg yolk.

Part II of the order prohibits Eggland's from making any claims about the absolute or comparative effect on serum cholesterol of eggs or any food containing egg yolk unless, prior to making such claims, Eggland's has competent and reliable scientific evidence to substantiate the claims. This requirement applies to claims about the effect of such foods on serum cholesterol when consumed either as part of a regular, unrestricted diet or as part of a specific dietary regimen, for instance, a low-fat diet. Part II of the order also provides that representations that would be specifically permitted in food labeling, under regulations issued by the Food and Drug Administration ("FDA") pursuant to the Nutrition and Labeling Education Act of 1990 ("NLEA"), will be deemed to be adequately substantiated.

Part III of the order prohibits Eggland's from making any claims about the health benefits, including the effect on heart disease, of eggs or food containing egg yolk unless, prior to making such claims, England's has competent and reliable scientific evidence to substantiate the claims. This requirement applies to claims about both the absolute and comparative health benefits associated with consuming such foods. Like Part II, this Part provides that claims specifically permitted in food labeling, under regulations issued by FDA pursuant to the NLEA, will be deemed to be adequately substantiated.

Part IV of the order prohibits Eggland's from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test or study.

Part V.A of the order requires a clear and prominent disclosure of the cholesterol content of eggs or any food containing egg yolk, in any advertisement or promotional material that references the absolute or comparative amount of cholesterol, fat or saturated fat in such food. This disclosure of cholesterol content must be expressed both in terms of the number of milligrams and as a percentage of the "Maximum Daily Value" for cholesterol intake as established by FDA or other specified organizations. Part V.A exempts from this disclosure requirement any representation that is specifically permitted in food labeling under regulations issued by FDA pursuant to the NLEA.

Part V.B of the Order requires Eggland's to include a clear and prominent notice on the package label for its eggs that "There are no studies showing that these eggs are different from other eggs in their effect on serum cholesterol." This corrective notice requirement applies for a period of one year beginning forty-five (45) days from the date the order becomes final in those geographic areas where Eggland's disseminated advertising or promotional materials discussing the effect of its eggs on serum cholesterol either for a period of twelve (12) weeks or more, or at any time between January 1, 1993 and to the date of the acceptance of this order by the Commission for public comment.

Part V also includes various specific provisions as to what constitutes a clear and prominent disclosure and corrective notice for purposes of this order.

Part VI of the order requires Eggland's to maintain copies of all materials relied upon in making any representations covered by the order.

Part VII or the order requires Eggland's to distribute copies of the order to its franchisees and to various officers, agents and representatives of Eggland's.

Part VIII of the order requires Eggland's to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part IX of the order requires Eggland's to file with the Commission one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga, Concurring in Part and Dissenting in Part, in Eggland's Best, Inc., File No. 932-3000

The Commission today accepts for public comment a consent agreement

settling charges that Eggland's Best made deceptive advertising claims about its eggs. I agree that there is reason to believe that these claims were deceptive and join in approving the order except for ¶ V.B. I do not agree that the corrective advertising provision contained in ¶ V.B. is warranted, and I dissent from the order to that extent.

In imposing a corrective advertising remedy, the Commission must consider whether an advertisement has played a substantial role in creating in the public's mind a false belief about a product that will linger on after the false advertisement ceases. *Warner-Lambert Co.* v. *FTC*, 562 F.2d 749, 762 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 950 (1978). Corrective advertising is intended to dissipate the lingering effects of a deceptive advertisement so that future advertisements do not become part of a continuing deception of the public. *Id.* at 769.

Here, there is no direct evidence, such as the consumer surveys and expert testimony in *Warner Lambert Co.*, that Eggland's Best's advertisements created a lingering false impression about the effects on serum cholesterol of its eggs. Given the relatively short period of time during which Eggland's Best's advertisements were run, it seems unlikely that any such lingering false impression has been created. Without a stronger showing of the need for corrective advertising under the *Warner-Lambert* test, I cannot support including a corrective advertising provision in the proposed order.

Statement of Commissioner Deborah K. Owen, Concurring in Part and Dissenting in Part, in Eggland's Best Inc., File No. 932-3000

I concur in the Commission's decision to issue a complaint, and to provisionally accept a consent agreement in this matter, except as to section V.B. of the Order. With respect to that Section, which requires corrective advertising, I dissent.

The seminal case on corrective advertising is the Listerine case, *Warner-Lambert Company*, 86 F.T.C. 1398 (1975), where the Commission opined:

[I]f a deceptive advertisement has played a substantial role in creating or reinforcing in the public's mind a false and material belief which lives on after the false advertising ceases, there is clear and continuing injury to competition and to the consuming public as consumers continue to make purchasing decisions based on the false belief. Since this injury cannot be avoided by merely requiring respondent to cease disseminating the advertisement, we may appropriately order respondent to take affirmative action designed to terminate the otherwise continuing ill effects of the advertisement.

86 F.T.C. at 1499–1500.

As the complaint alleges, Eggland's ads, in my judgment, certainly create a false impression that its eggs will not increase serum cholesterol, or, comparatively, increase cholesterol as much as ordinary eggs. However, we must also find that the beliefs created by the challenged ads are likely to linger after the deceptive advertising ceases. As to that likelihood, it seems to me important to compare and contrast the facts in *Warner-Lambert* to the situation here.

In *Warner-Lambert*, decided in 1975, the Commission noted that the challenged advertising claims had been made directly to the consuming public since 1921, and involved expenditures of large sums in print and television media. 86 F.T.C. at 1501. The Commission cited to the ALJ's Findings of Fact, which noted that Listerine had made the contested representations since the product went on the market almost a century before; that cold and sore throat claims had been made continuously on its labelling since prior to 1938; and that over the ten years preceding the decision, Listerine had spent several million dollars on its colds advertising, the vast majority occurring on network and spot television, covering all parts of the day and evening and particularly in network prime time. *Id.* at 1468 (IDFF 219–220); see also *id.* at 1407–1408 (IDFF 5–8). The Commission pointed to record testimony indicating the high percentage of consumers taking such claims that would remain as long as five years after the ads ended. It concluded: "The record demonstrates that *long* after Listerine cold efficacy advertising ceased, a *substantial* proportion of the public would continue to believe in Listerine's efficacy for the treatment and prevention of colds and sore throats." *Id.* at 1503 (emphasis supplied).

If we contrast the length in time, and the magnitude of Listerine's advertising to the instant case, Eggland's advertising would hardly appear to rise to even a two-digit percentage thereof. We have no evidence that Eggland's campaign was so similarly saturated and extended that *long* after it ceases, a *substantial* portion of the public will continue to believe the challenged claims in the absence of the corrective advertising that the Commission has provisionally accepted. Moreover, one significant factor is in evidence here that was not present in the Listerine case: the barrage of contrary information to which the public is exposed.

While the public received little, if any, information from sources other than the advertiser about the true effect of Listerine on colds and sore throats, the vast majority of information available to consumers challenges the Eggland claims, and links egg consumption with increased serum cholesterol. Articles in the popular press, television and radio programs, and many cookbooks recommend that consumers lower their consumption of eggs. Doctors and the American Heart Association advise people to limit their egg consumption for health reasons. The general ambient information and perception is that eggs are unhealthy, and this climate is highly relevant in determining whether the false beliefs created by Eggland's Best advertisements will likely linger. Eggland's Best advertisements attempted to counteract the common wisdom, but ran for only a short time. Because the information that eating eggs is likely to increase serum cholesterol will continue to be widely disseminated to consumers through media sources, it is unlikely that the false beliefs regarding the effects of Eggland's Best eggs on serum cholesterol, or their comparative benefits to other eggs, will be maintained. In sum, the half-life of Eggland's advertising campaign is probably very short.

This is not to suggest, however, that corrective advertising is only appropriate where the ad campaign is decades-old and swamps the public. A classic opportunity for appropriately imposing the remedy was the *Sun Company* case two years ago. File No. 902–3268. There, the Commission challenged claims linking octane and automobile engine performance made by a company that was previously under a Commission order for earlier false performance and uniqueness claims for its gasoline. *Sun Oil Co.*, 84 F.T.C. 247 (1974). Nonetheless, the Commission agreed to merely a cease-and-desist order, despite the fact that the challenged claims took advantage of, and further contributed to, widespread consumer misperception about the relationship between octane and performance. The contrast between the Commission's decision there, and here, suggests that the Commission's current posture on corrective advertising may be more a function of respondents' willingness to agree to the remedy, rather than of a well defined and implemented policy.

Finally, a comment on the remedy itself. The corrective advertising is ordered to be placed on Eggland's Best carton label. Due to other legal limitations, Eggland's Best has not made serum cholesterol or heart health claims on the carton. Thus, while the attempt to limit the breadth of the remedy may be well-intentioned, I find it highly ironic that corrective advertising has been mandated in a medium where the original deceptive claims were never made.

Statement of Roscoe B. Starek, III, in Eggland's Best, Matter No. 932-3000

After very careful deliberation, I have decided to support the corrective advertising provision in this order. I arrived at this decision somewhat reluctantly, since I think this remedy should be used sparingly. The appeals court decision in *Warner-Lambert* accords the Commission substantial discretion in applying such a remedy.[1] The Commission must take great care, however, to exercise such broad discretion judiciously. Thus, the question I had to answer was whether corrective advertising is appropriate in the absence of an extended period of deceptive advertising or extrinsic evidence demonstrating that the false impressions will persist in consumers' minds after the ads cease.[2]

I have determined that a limited corrective advertising requirement is an appropriate remedy here. First, I have reason to believe that the Eggland's ads have created in consumers' minds enduring false impressions about these eggs. Because Eggland's is able to charge for its eggs about 200% of the typical price per dozen, we have strong evidence that the company's ads have been successful in creating in the minds of their consumers a belief that their eggs are meaningfully superior to other eggs. Second, the superiority touted by Eggland's ads—ads disseminated as recently as two months ago—pertains to their effect on serum cholesterol. Common sense tells me that this belief is not going to disappear overnight, simply because advertising making that claim ceases. Third, consumers who continued to believe that Eggland's had a demonstrated superiority over typical eggs would suffer an identifiable injury, again due to the price differential. Corrective advertising placed on the egg package would enable consumers to avoid further injury.

Finally, I am persuaded by the careful crafting of the corrective remedy. In my view, corrective advertising should educate, not punish. The instant notice is designed to reach the Eggland's target (those who are preparing to purchase the product) rather than the population at large. It has a limited dissemination schedule and will not be unreasonably costly. Moreover, the notice itself is a statement of fact that is neither derogatory of Eggland's eggs nor implies criticism of other companies' products.

Although I support the very narrow corrective advertising provision in this case, I am not an advocate of this type of remedy.

Statement of Commissioner Dennis A. Yao, in Eggland's Best, Inc.

I voted to accept the proposed consent agreement for public comment. Although I support the terms of the consent agreement, I would have preferred that the complaint include an implied heart disease allegation.

The Commission alleges in its complaint that, among other things, Eggland's Best falsely represented that it had a reasonable basis for claims that eating its eggs will not increase serum cholesterol in an absolute sense and that eating its eggs will not increase serum cholesterol as much as eating ordinary eggs. I believe that reasonable consumers would interpret the express claim that Eggland's eggs will not increase serum cholesterol to imply that those eggs would therefore not increase the risk of heart disease—especially when the express claim was made for eggs, a product notoriously well known for its negative impact on heart health. Although the proposed order does include a requirement that health claims, including claims about heart disease, be substantiated by competent and reliable scientific evidence, I believe that industry and the public would best be served if the Commission communicated its belief that an implied health claim has been made here.[3]

[1] *Warner-Lambert Co.* v. *F.T.C.*, 562 F.2d 749 (D.C. Cir. 1977). The court suggested that the purpose of advertising is to create enduring beliefs in consumers' minds, such that the FTC might well presume in some cases that the standard for imposing corrective advertising had been met. It stated that it need not rely upon such a presumption in *Warner-Lambert*, however, because the record contained evidence that the Listerine ads had created, in the minds of consumers exposed to the advertising, false beliefs that would persist after the ads ended. *Id.*, 562 F.2d at 762–63; *see*, 86 F.T.C. 1398 (1975), at 1471 n.23 (data relied upon was survey of "consumers who have seen or heard a lot of advertising for Listerine").

[2] It is certainly unrealistic to think that we will have this data when the respondents enter into a consent agreement before a complaint is filed.

[3] I would note that the complaint also alleges that Eggland's Best falsely represented that its eggs are low in saturated fat in an absolute sense, and are lower in saturated fat than ordinary eggs. Although I agree that the implied saturated fat claims challenged in the complaint were made, in my view this claim is further down the spectrum of implied claims towards those needing extrinsic evidence than the implied heart disease claim I discuss here. I thus can discern no reason for excluding the implied heart disease claim from the proposed complaint while including the saturated fat claims.

[FR Doc. 94–4044 Filed 2–22–94; 8:45 am]
BILLING CODE 6750–01–M

[File No. 932 3092]

Jockey International, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Wisconsin-based manufacturer of underwear, hosiery, and sportswear to disclose the country where its clothing is made and to use the correct generic fiber name for clothing in advertisements contained in its mail order catalogs.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert Easton, FTC/S–4631, Washington, DC 20580. (202) 326–3029.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Jockey International, Inc., a corporation (hereinafter referred to as Jockey International, Inc. or proposed respondent) and it now appearing that Jockey International, Inc., is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Jockey International, Inc., by its duly authorized officer and counsel for the Federal Trade Commission that:

1. Proposed respondent Jockey International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin with its office and principal place of business located at 2300 60th Street, Kenosha, Wisconsin.

2. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

6. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered, That respondent Jockey International, Inc., a corporation, its successors and assigns, trading under its own name or under any other name or names, and its officers, agents, licensees, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, selling or advertising of any textile fiber product in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, in commerce, as the terms "textile fiber product" and "commerce" are defined in the Textile Fiber Products Identification Act (15 U.S.C. 70) ("Textile Act"), do forthwith cease and desist from:

1. Failing to state in the description of such textile fiber product in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States of America, or imported, or both; and

2. Mentioning or implying fiber content without using the generic fiber names in a manner consistent with the Textile Act and the rules and regulations thereunder.

II

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other such change in the corporation which may affect compliance obligations arising out of the order.

III

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its employees, agents, licensees and representatives acting in connection with the offering for sale, selling or advertising of any textile fiber product in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, in commerce, as the terms "textile fiber product" and "commerce" are defined in the Textile Fiber Products Identification Act (15 U.S.C. 70) ("Textile Act").

IV

It is further ordered, That respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Jockey International, Inc. ("Jockey").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Jockey is a large, privately owned corporation headquartered in Kenosha, Wisconsin, that uses the mail to sell clothing and other textile products. The complaint alleges that Jockey, in selling textile clothing products through mail order catalogs, did not tell customers whether the products were made in the United States or imported. Further, the complaint alleges that Jockey did not use the generic name "spandex" with the trademark "Lycra" to describe the type of textile fibers used in goods it sold, but instead only used the trademark "Lycra." The complaint alleges that these actions by Jockey violated the Textile Fiber Products Identification Act ("Textile Act") and the Commission's implementing rules, and constituted unfair methods of competition and unfair and deceptive acts and practices in violation of section 5 of the Federal Trade Commission Act.

The Textile Act and the Commission's rules, among other things, require companies that sell textile products by mail order catalogs or mail order promotional materials, such as coupons, to state clearly and conspicuously whether the textile products are made in the United States, or imported, or both. If fiber content is mentioned or implied in a written advertisement, the Textile Act requires disclosure of the generic name of the fiber. Additionally, if a fiber trademark is used in advertising textile products, the Textile Act requires that the generic name of the fiber appear next to the trademark.

The proposed order requires Jockey, in compliance with the Textile Act and the Commission's rules, to inform its customers whether the textile products it sells by mail are made in the United States, or imported, or both, and to use the generic fiber names of such textile products if it mentions or implies fiber content. Jockey does not admit that it violated the law, but agrees to provide the information in the future.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94-4045 Filed 2-22-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 9251]

Synchronal Corporation, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Thomas L. Fenton, a former officer of Synchronal Corporation, from disseminating a purported baldness cure infomerical, for a product called Omexin; from misrepresenting that any commercial is an independent program; and from making unsubstantiated claims for any food, drug or device in the future.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lisa Kopchik, FTC/S-4002, Washington, DC 20580. (202) 326-3139.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of:

Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations,

Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.,

Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation,

Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., and

Ana Blau a/k/a Anushka, and Steven Victor, M.D. individually.

The agreement herein, by and between Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., hereinafter sometimes referred to as respondent, and his attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Thomas L. Fenton is or was at relevant times herein an officer and director of Synchronal Corporation and Synchronal Group, Inc. He formulated, directed, and controlled the policies, acts and practices of said corporations. His home address is 160 East 38th Street, New York, New York 10036.

2. Respondent has been served with copies of the complaint and the amended complaint issued by the Federal Trade Commission charging him with violations of Sections 5(a) and 12 of the Federal Trade Commission Act and the provisions of the Postal Reorganization Act, 39 U.S.C. 3009, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint and amended complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the complaint and the amended complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall

constitute service. Respondent waives any right he might have to any other manner of service. The complaint and the amended complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint, the amended complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purposes of this Order:

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

2. "Video advertisement" shall mean any advertisement intended for dissemination through television broadcast, cablecast, home video, or theatrical release.

I

It is ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting or otherwise disseminating, or assisting others to sell, broadcast or otherwise disseminate, in part or in while, the program-length television advertisement for Omexin described and identified in the Complaint as "Can You Beat Baldness?"

II

It is further ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Omexin or any other substantially similar hair loss treatment product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. Such product or service contains an ingredient that can or will curtail hair loss for a large majority of balding men and women;

2. Such product or service contains an ingredient that can or will promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of men and women;

3. Such product or service contains an ingredient that has been scientifically proven to curtail hair loss for a large majority of men and women;

4. Such product or service contains an ingredient that has been scientifically proven to promote the growth of new, pigmented terminal hairs where hair has previously been lost for a large majority of men and women; or

5. Such product or service has successfully curtailed hair loss and promoted new hair growth for thousands of balding men and women.

For purposes of this Order a "substantially similar hair loss treatment product or service" shall be defined as any product or service that is advertised or intended for sale over-the-counter to treat, cure or curtail hair loss and which contains omentum or any extract thereof.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product or service in or affecting commerce, as "commerce" is defined in The Federal Trade Commission Act, that:

1. The use of the product or service can or will prevent, cure, relieve, reverse, or reduce loss of hair;

2. The use of the product or service can or will promote the growth of hair where hair has already been lost;

3. The product or service is an effective remedy for hair loss in a substantial number of cases; or

4. Any test or study establishes that the product or service relieves, cures, prevents or reverses hair loss,

unless such representation is true and unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

C. Advertising, packaging, labeling, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, *provided that*, this subpart shall not limit the requirements of Part II.A and B herein.

III

It is further ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., and respondent's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

IV

It is further ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any food, drug or device, as those terms are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

V

It is further ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., and respondent's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling, or disseminating:

A. Any advertisement that misrepresents, directly or by implication, that it is not a paid advertisement;

B. Any commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, in a clear and prominent manner and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

The program you are watching is a paid advertisement for [the product or service].

Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein.

VI

It is further ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product or service represents the typical or ordinary experience of members of the public who use the product or service, unless such is the fact.

VII

It is further ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., shall, for three (3) years after the date of the last dissemination to which they pertain, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon by respondent in disseminating any representation covered by this order; and

(B) All reports, tests, studies, surveys, demonstrations or other evidence in respondent's possession or control that contradict, qualify, or call into question such representation, or the basis upon which respondent relied upon for such representation, including complaints from consumers.

VIII

It is further ordered, That respondent Thomas L. Fenton shall, for a period of ten (10) years from the date of entry of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities. The expiration of the notice provision of this Part VIII shall not affect any other obligation arising under this Order.

IX

It is further ordered, That respondent shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Thomas L. Fenton.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising and promotional practices related to the sale of the Omexin System for Hair ("Omexin"), which was advertised on the "Can You Beat Baldness?" infomercial.

The Commission's Amended Complaint, issued on October 13, 1993, charges that respondent Fenton falsely represented that Omexin will curtail hair loss, will promote hair growth, is scientifically proven to curtail hair loss and promote hair growth, and has successfully curtailed hair loss and promoted hair growth for thousands of balding men and women.

According to the allegations of the Amended Complaint, the infomercial was falsely represented to be independent programming, rather than a paid advertisement. The Amended Complaint further charges that consumer testimonials on the infomercial were falsely represented to reflect the typical experience of members of the public who used the product.

The proposed consent order contains provisions which are designed to remedy the advertising violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits respondent from disseminating the "Can You Beat Baldness?" infomercial.

With regard to Omexin or any substantially similar product, Part II.A prohibits Fenton from making the claims alleged in the Complaint to be false. Part II.B prohibits him from representing that any product or service will prevent or reduce hair loss, will promote hair growth, is an effective remedy for hair loss, or is proven through any test or study to relieve hair loss unless the claim is true and substantiated by competent and reliable scientific evidence. Part II.C forbids this respondent from advertising or promoting any hair loss product unless it is the subject of an approved New Drug Application by the Food and Drug Administration.

Part III of the proposed order prohibits respondent from misrepresenting the validity, results, conclusions, or interpretations of any test or study. Part IV prohibits him from making any representation about the performance, benefits, efficacy, or safety of any food, drug, or device unless he possesses competent and reliable scientific evidence that substantiates the representation.

Part V.A of the proposed order prohibits Fenton from disseminating

any advertisement that misrepresents that it is not a paid advertisement. Part V.B requires that any advertisement fifteen minutes or longer display visually, in a clear and prominent manner and for a length of time sufficient for an ordinary consumer to read, within the first thirty seconds of the commercial and immediately before each presentation of ordering instructions, the following disclosure: "The program you are watching is a paid advertisement for [the product or service]." Part V.B specifies that an oral or visual presentation of an ordering address or telephone number shall also require the display of this disclosure.

Under the terms of Part VI, Fenton may not represent that any endorsement of a product or service represents the typical or ordinary experience of members of the public, unless such is the fact.

Parts VII, VIII, and IX relate to respondent's obligation to maintain records, notify the Commission of changes in business or employment status, and file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–4046 Filed 2–22–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3477]

White Castle System, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Ohio-based chain of fast-food restaurants from misrepresenting the extent to which its fast-foot container or any product or package is capable of being recycled or the extent of the availability of recycling collection programs for such products. In addition, the consent order prohibits the respondent from representing the environmental benefit of any product or packaging it uses unless it possesses competent and reliable evidence to substantiate the representation.

DATES: Complaint and Order issued January 6, 1994.[1]

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Theresa McGrew, FTC/Chicago Regional Office, 55 East Monroe St., suite 1437, Chicago, IL 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: On Monday, October 25, 1993, there was published in the **Federal Register**, 58 FR 55072, a proposed consent agreement with analysis In the Matter of White Castle System, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–4041 Filed 2–22–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Vital and Health Statistics National Committee; Meetings

"Federal Register" Citation of Previous Announcement: 58FR67795—dated December 22, 1993.

Change of Time, Date, and Place for the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics: Meeting.

ORIGINAL TIME AND DATE: 9:30 a.m.–4 p.m., January 18, 1994.

NEW TIME AND DATE: 1 p.m.–4 p.m., March 10, 1994.

NEW PLACE: Room 703A–729A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

SUMMARY: Notice is given that the meeting for the NCVHS Subcommittee on Mental Health Statistics has been rescheduled due to inclement weather. The meeting purpose announced in the original notice remains unchanged.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, National Center for Health Statistics, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436–7050.

Dated: February 17, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–4122 Filed 2–22–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Discussion of Activities of the International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop on the progress of activities associated with the International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use (ICH). The agency will present summary information on guidelines developed as a result of ICH harmonization initiatives and will respond to questions.

DATES: The workshop will be held on Wednesday, March 2, 1994, 8 a.m. to 5 p.m.

ADDRESSES: The workshop will be held in conference rms. O, P, and Q, third floor, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Janet Showalter, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1383.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Union, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association.

The ICH Steering Committee includes representatives from each of the organizing bodies and the International Federation of Pharmaceutical Manufacturers Associations (IFPMA), as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area. The ICH Secretariat, which coordinates the preparation of documentation, is provided by IFPMA.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from regulatory and industry representatives and other interested parties. FDA is committed to ensuring that there is an opportunity for public comment through **Federal Register** notices on all of the guidelines developed as a result of the ICH harmonization initiatives. A number of ICH draft guidelines will be published soon in the **Federal Register** for public comment.

The purpose of this public workshop is to provide an opportunity for the agency to present summary information about these documents and to respond to questions. In addition, general background information on ICH will be provided.

This public workshop should be of interest to professional and consumer organizations and to the pharmaceutical industry.

The status of the topics under consideration by ICH is as follows:

ICH Consensus Draft Guidelines (will be published in the **Federal Register** soon for public comment)

1. Guideline for the Validation of Analytical Procedures
2. Toxicokinetics: A Guidance for Assessing Systemic Exposure in Toxicology Studies
3. Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies
4. Dose Selection for Carcinogenicity Studies of Therapeutic Agents
5. Good Clinical Practices: Addenda on Investigators Brochure and Essential Documents
6. Population Exposure to Assess Clinical Safety

ICH Draft Guidelines and Texts in Preparation

7. Impurities in New Drug Substances (guideline)
8. Light Stability Testing (guideline)
9. Genotoxicity Testing Requirements (guideline)
10. Quality of Biotechnology Products: Genetic Stability (guideline)
11. Quality of Biotechnology Products: Stability Testing (annex to guideline on stability testing for new drugs and products)
12. Clinical Study Reports (proposals for a common format based upon a comparison of current FDA and European Community (EC) requirements)
13. Ethnic Factors in the Acceptability of Foreign Data (studies are in progress and a guideline is in preparation)

ICH Consensus Draft Guidelines (released for public comment in the **Federal Register** of July 9, 1993)

14. Dose-Response Information to Support Drug Registration
15. Clinical Safety Data Management: Definitions and Standards for Expedited Reporting

ICH Harmonised Tripartite Guidelines (released for public comment in the **Federal Register** of April 16, 1993)

16. Detection of Toxicity to Reproduction for Medicinal Products
17. Studies in Support of Special Populations: Geriatrics
18. Stability Testing of New Drug Substances and Products

Dated: February 17, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4072 Filed 2–17–94; 3:38 pm]

BILLING CODE 4160–01–F

Health Resources and Services Administration

New Community Health Centers, Expanded Community Health Center Activities, and Integrated Service Network Development Activities for CHCs

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Advance Notice of Application Deadlines for New Community Health Centers, Expanded Community Health Center Activities, and Integrated Service Network Development Activities for CHCs.

SUMMARY: The Health Resources and Services Administration's Bureau of Primary Health Care (BPHC) expects to provide discretionary grant funds of approximately $17 million in fiscal year (FY) 1994 under section 330 of the Public Health Service (PHS) Act to establish new community health centers (CHCs), to expand existing CHCs, and to develop integrated service networks for CHCs. The purpose of this announcement is to give early notice of funding amounts and application deadlines for CHC new start/expansion applicants, as well as to announce the availability of supplemental funds for existing CHCs involved in integrated service network activitles.

Approximately $12.5 million will be available to support the establishment of new CHCs and the expansion of capacity in existing CHCs. For applicants seeking to establish new CHCs and for applicants seeking to expand existing CHCs, the following application deadlines are provided: (1) The application for designation as a medically underserved area (MUA) or medically underserved population (MUP) is March 15, 1994; and (2) the application deadline for grants is June 1, 1994. Applicants are also encouraged to submit Letters of Interest by March 15, 1994, to the PHS Regional Grants Management Officers (RGMOs) whose names and addresses are provided in the appendix to this document. This will enable the RGMOs to provide additional assistance and instructions.

Approximately $4.5 million will be available under Section 330 (d)(1) to support existing CHCs in the development of integrated service networks. As part of their ongoing operational activities, CHCs are permitted to expend a reasonable amount of their grant funds or other revenues for corporate planning activities, including efforts to define their roles within the provider community. This special funding initiative earmarks an additional $4.5 million for grant support of these activities.

Integrated Service Networks are defined as: the collaboration of a Section 330 health center and at least one other health care provider or health care entity (e.g., community health center, migrant health center, health care for the homeless center, center for residents of public housing, other primary care provider, specialty group, hospitals, academic medical center, mental health provider, laboratory,

[1] Copies of the Compliant and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

pharmacy, insurance company, managed care organization and others) to form a horizontally and/or vertically integrated delivery system for managed purposes that will ensure access for the medically underserved.

For applicants interested in Integrated Service Network Development projects, a pre-application is required and may be submitted after the publication of this notice with a final deadline of May 1, 1994. The final deadline for Integrated Service Network Development applications is June 1, 1994. Interested applicants should contact their RGMOs for additional assistance and instructions.

FOR FURTHER INFORMATION CONTACT: For grant information, potential applicants may contact the PHS RGMOs. RGMOS are responsible for distributing application kits and guidance (Form PHS 5161–1 with revised face sheets DHHS Form 424, as approved by the OMB under control number 0937–0189). The RGMO can also provide assistance on business management issues, Letters of Interest and Integrated Service Network Development projects. For general program information and technical assistance, contact Richard C. Bohrer, Director of Division of Community and Migrant Health, BPHC, 4350 East-West Highway, 7th Floor, Rockville, MD 20857 (301) 594–4300.

SUPPLEMENTARY INFORMATION: A notice of Availability of Funds for new CHCs and expanded CHC activities in FY 1994 will be published in the **Federal Register** announcing program provisions, requirements, and evaluation criteria.

Dated: February 16, 1994.

William A. Robinson,

Acting Administrator.

Appendix—Regional Grants Management Officers

Region I: Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–1482.

Region II: Frank DiGiovanni, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278, (212) 264–4496.

Region III: Martin Bree, Acting Grants Management Officer, PHS Regional Office III, P.O. Box 13716, Philadelphia, PA 19101, (215) 596–6653.

Region IV: Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1106, 101 Marietta Tower, Atlanta, GA 30323, (404) 331–2597.

Region V: Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603, (312) 353–8700.

Region VI: Joyce Bailey, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202, (214) 767–3885.

Region VII: Michael Rowland, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64016, (816) 426–5841.

Region VIII: Susan Jaworowski, Acting Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294, (303) 844–4461.

Region IX: Al Tevis, Acting Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–2595.

Region X: James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121, (206) 553–7997.

[FR Doc. 94–3994 Filed 2–22–94; 8:45 am]

BILLING CODE 4160–15–P

Social Security Administration

Rescission of Social Security Acquiescence

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling 88–5(1)—*McCuin* v. *Secretary of Health and Human Services*, 817 F.2d 161 (1st Cir. 1987).

SUMMARY: In accordance with 20 CFR 404.985(e), 416.1485(e) and 422.406(b)(2), published January 11, 1990 (55 FR 1012), the Principal Deputy Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 88–5(1).

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Darlynda Bogle, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–4237.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On October 27, 1988, we issued Acquiescence Ruling (AR) 88–5(1) to reflect the holding in *McCuin* v. *Secretary of Health and Human Services*, 817 F.2d 161 (1st Cir. 1987), that, once the 60-day period for the Appeals Council's own-motion review had expired, the Secretary's reopening regulations (20 CFR 404.987, 404.988, 416.1487 and 416.1488) [1] allowed reopening of an Administrative Law Judge (ALJ) decision only on the claimant's motion. Accordingly, under the McCuin AR, where an ALJ's decision had become final, (*i.e.*, the time for requesting Appeals Council review of the decision had expired and no request for such review had been filed by the claimant and the Appeals Council had not taken own-motion review within the 60-day time limit), the Appeals Council could not reopen and revise the decision on its own initiative under the Secretary's regulations on reopening. The AR applied to cases in which the claimant resided in Maine, Massachusetts, New Hampshire, Rhode Island or, for title II claims only, in Puerto Rico at the time of the ALJ decision.

We indicated in the McCuin AR that the Social Security Administration (SSA) intended to clarify the reopening regulations at issue in the McCuin case through the rulemaking process, and that the AR would continue to apply until such clarification was made. On October 28, 1991, we published a Notice of Proposed Rulemaking and proposed rules (56 FR 55477) that would clarify these regulations. In this issue of the **Federal Register** we are now publishing final rules, which explicitly state that SSA may reopen a determination or decision that has become final either on its own initiative or at the request of an individual who was a party to the determination or decision. Accordingly, since the regulation that was the subject of the McCuin decision has now been revised, we are rescinding the McCuin AR concurrently with the publication of the revised regulations. Adjudicators of claims arising in the First Circuit (Maine, Massachusetts, New Hampshire, Rhode Island or Puerto Rico) will no longer follow the AR, but will decide cases in accordance with the revised regulations on reopening

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

[1] The court based its decision on the reopening regulations applicable to title II cases. However, since the reopening regulations applicable to title XVI cases are similar, the AR extended to both title II and title XVI cases.

Dated: November 4, 1993.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 94–3959 Filed 2–22–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–41–5700; WYW112756]

Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1944.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW112756 for lands in Park County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW112756 effective July 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Jean Mickey,

Acting Supervisory Land Law Examiner.

[FR Doc. 94–4030 Filed 2–22–94; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW112688]

Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW112688 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW112688 effective July 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Jean Mickey,

Acting Supervisory Land Law Examiner.

[FR Doc. 94–4031 Filed 2–22–94; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW111477]

Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW111477 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW111477 effective July 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Victoria B. Jerome,

Acting Supervisory Land Law Examiner.

[FR Doc. 94–4032 Filed 2–22–94; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW111488]

Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW111488 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW111488 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Victoria B. Jerome,

Acting Supervisory Land Law Examiner.

[FR Doc. 94–4033 Filed 2–22–94; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW111438]

Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW111438 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land

Management is proposing to reinstate lease WYW111438 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Victoria B. Jerome,

Acting Supervisory Land Law Examiner.

[FR Doc. 94–4034 Filed 2–22–94; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW111476]

Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW111476 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW111476 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Victoria B. Jerome,

Acting Supervisory Land Law Examiner.

[FR Doc. 94–4035 Filed 2–22–94; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW111519]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW111519 for lands in Park County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW111519 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Victoria B. Jerome,

Acting Supervisory Land Law Examiner.

[FR Doc. 94–4036 Filed 2–22–94; 8:45 am]

BILLING CODE 4310–22–M

Fish and Wildlife Service

Extension of Public Comment Period on the Draft Pacific Coastal Barriers Study and Accompanying Maps of Areas Under Consideration for Inclusion in the Coastal Barrier Resources System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of time period for public comment.

SUMMARY: The U.S. Fish and Wildlife Service (Service), is extending the comment period for review of the Draft Pacific Coastal Barriers Study and accompanying maps, prepared pursuant to the Coastal Barriers Improvement Act of 1990 (Act). The notice of availability for the Draft Study and maps was published on December 17, 1993. Public information meetings were held in the four affected States. Based on requests received from the public and the Governors of California, Oregon, and Washington during the initial public comment period, the Service determined an extended review period is necessary to allow interested parties additional time to submit written comments on the proposal.

DATES: Comments should be received from the appropriate Governors no later than April 25, 1994. Comments from all other interested parties should be received no later than March 25, 1994.

ADDRESSES: Written comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181.

FOR FURTHER INFORMATION CONTACT: Paula Levin, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181, (503) 231–2068. Copies of the Draft Study and accompanying maps are available for public inspection, during normal business hours, at the locations listed under supplementary information.

SUPPLEMENTARY INFORMATION: Reference December 17, 1993, **Federal Register** notice of availability of the Draft Pacific Coastal Barriers Study and Accompanying Maps of Areas Under consideration for Inclusion in the Coastal Barriers Resources System.

On October 18, 1982, President Reagan signed the Coastal Barrier Resources Act (CBRA) into law (Pub. L. 97–348). Section 4 of CBRA establishes the Coastal Barrier Resources System (System) as referred to and adopted by Congress, and sections 5 and 6 prohibit all new Federal expenditures and financial assistance within the units of that System unless specifically excepted by the Act. Coastal barrier units were designated along the Atlantic and Gulf of Mexico coasts.

On November 16, 1990, President Bush signed the Coastal Barrier Improvement Act of 1990 (CBIA) into law (Pub. L. 101–591). The CBIA greatly expanded the size of the System by adding coastal barriers of the Great Lakes, as well as additional areas along the Atlantic and Gulf of Mexico coasts. The CBIA amended section 1321 of the National Flood Insurance Act of 1968 to prohibit the issuance of new Federal flood insurance within "otherwise protected areas" identified on the maps referred to in the CBIA.

Section 6 of the CBIA directed the Secretary of the Interior to prepare a study which examines the need for protecting undeveloped coastal barriers along the Pacific coast of the United States and to prepare maps identifying undeveloped coastal barriers bordering the Pacific Ocean south of 49 degrees north latitude (approximately the Canada-Washington State boundary) which the Secretary and the appropriate Governor consider to be appropriate for inclusion in the System. Furthermore, the study is to examine:

(A) The potential for loss of human life and damage to fish, wildlife, and other natural resources, and the potential for the wasteful expenditure of Federal revenues given the geologic differences of the coastal barriers along the Pacific coast as opposed to those found along the Atlantic and Gulf coasts; and

(B) The differences in extreme weather conditions which exist along the Pacific coast as opposed to those found along the Atlantic and Gulf coasts.

In 1992, The Fish and Wildlife Service (Service) identified and mapped all undeveloped coastal barriers of the Pacific coast which meet the definition of undeveloped coastal barriers as defined by section 2 of the CBIA and defined in the revised criteria published in the **Federal Register**, March 4, 1985 (50 FR 8698). The Service prepared draft maps for the states of Washington, Oregon, California, and Hawaii. The draft maps were released for a 90 day public review and comment period. Separate notices of Availability for each state were published in the **Federal Register** on April 23, 1992 (57 FR 14846) for Oregon; May 29, 1992 (57 FR 22821) for Washington; July 7, 1992 (57 FR 29883) for California; and August 14, 1992 (57 FR 36668) for Hawaii. Following the 90 day public comment periods, the draft maps were subsequently revised to address any technical errors noted during the comment period. The revised draft maps and all comments received were forwarded to the appropriate Governors for their review and use in eventual formulation of their recommendations as to which areas the Governors felt should be included in the System.

With publication of the December 17, 1993, **Federal Register** notice, the Service announced the availability of the Draft Pacific Coastal Barriers Study and the accompanying maps for public review and comment. This notice announces the continued availability for public review. All written comments received during the public comment period will be forwarded to the appropriate State Governors. By the end of the Governor's review period, the Service is soliciting the recommendations of the appropriate Governors for which areas should be included in the System. The recommendations of the Governors will be forwarded to Congress in their entirety along with the recommendations of the Secretary in the final Pacific Costal Barriers Study and accompanying maps.

The Draft Pacific Coastal Barriers Study and accompanying maps can be viewed at the following locations:

All States

U.S. Fish and Wildlife Service, Ecological Services, 700 N.E. Multnomah Street, suite 320, Portland, Oregon 972323–4181, telephone: 503–231–2046.

U.S. Fish and Wildlife Service, Ecological Services, 4401 N. Fairfax Drive, room 400, Arlington, Virginia 22203, telephone: 703–358–2201.

Hawaii

Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, Honolulu, Hawaii 96813, telephone: 808–541–2749.

Kauai National Wildlife Refuge Complex, U.S. Fish and Wildlife Service, Kilauea, Kauai, Hawaii 96754, telephone: 808–828–1413.

Hakalau Forest National Wildlife Refuge, U.S. Fish and Wildlife Service, Federal Building, 154 Waianuenue Avenue, room 219, Hilo, Hawaii 96720, telephone: 808–969–9909.

Hawaii Office of State Planning, State Coastal Zone Management, 1177 Alakea Street, 2nd floor, Honolulu, Hawaii 96813, telephone: 808–587–2880.

Mitchell Pauole Center, 90 Inoa Street, Kaunakakai, Molokai 96748, telephone: 808–553–3204.

Kaunakakai Public Library, P.O. Box 395, Kaunakakai, Molokai 96748, telephone: 808–553–5483 (Across from Molokai family health clinic).

California

Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008, telephone: 619–431–9440.

Ventura Field Office, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, suite 100, Ventura, California 93003, telephone: 805–644–1766.

Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825, telephone: 916–978–4613.

San Francisco Bay National Wildlife Refuge, U.S. Fish and Wildlife Service, 1 Marshlands Road, Fremont, California 94536, telephone: 510–792–0222.

Humboldt Bay National Wildlife Refuge, U.S. Fish and Wildlife Service, 1020 Ranch Road, Loleta, California 95551, telephone: 707–733–5406.

California Coastal Commission, 45 Fremont, suite 2000, San Francisco, California 94105–2219, telephone: 415–904–5280.

California Coastal Commission Legislative Office, 921 11th Street, room 1200, Sacramento, California 95814, telephone: 916–445–6067.

State of California, The Resources Agency, 1416 9th Street, suite 1311, Sacramento, California 95814, telephone: 916–654–2506.

Oregon

Portland Field Office, U.S. Fish and Wildlife Service, 2600 S.E. 98th Avenue, suite 100, Portland, Oregon 97266, telephone: 503–231–6179.

Oregon Coastal Refuges, U.S. Fish and Wildlife Service, 2030 Marine Science Drive, Newport, Oregon 97365–5296, telephone: 503–867–4550.

Oregon Coastal/Ocean Management Program, Department of Land and Conservation Development, 1175 Court Street NE., Salem, Oregon 97310–0590, telephone: 503–373–0092.

Bandon Public Library, P.O. Box 128, Bandon, Oregon 97411, telephone: 503–347–3221, located in the Bandon City Hall on Highway 101.

Tillamook Public Library, 210 Ivy Avenue, Tillamook, Oregon 97141, telephone: 503–842–4792.

Seaside Public Library, 60 N. Roosevelt Boulevard, Seaside, Oregon 97138, telephone: 503–738–6742.

Hatfield Marine Science Center, Guin Library, 2030 Marine Science Drive, Newport, Oregon 97365, telephone: 503–867–0249.

North Bend Public Library, 1600 Sherman Avenue, North Bend, Oregon 97459, telephone: 503–756–0400.

Washington

Olympia Field Office, U.S. Fish and Wildlife Service, 3704 Griffin Lane SE, suite 102, Olympia, Washington 98501–2192, telephone: 206–753–9440.

Willapa National Wildlife Refuge, U.S. Fish and Wildlife Service, HC 01, Box 910, Ilwaco, Washington 98624–9797, telephone: 206–484–3482.

Nisqually National Wildlife Refuge, U.S. Fish and Wildlife Service, 100 Brown Farm Road, Olympia, Washington 98506, telephone: 206–753–9467.

Washington Coastal Refuges, U.S. Fish and Wildlife Service, 1638 Barr Road South, Port Angeles, Washington 98382, telephone: 206–457–8451.

Washington Department of Ecology, Shorelands and Coastal Management Program, 300 Desmond Drive (off of Martin Way), Olympia, Washington 98504, telephone: 206–407–7250.

In addition to the above locations copies of the accompanying maps may be reviewed at the county planning and zoning offices for all coastal counties in each state.

Appendices A through D of this notice list the proposed Coastal Barrier Resources System Units for the Pacific coast which are identified on the accompanying maps.

Public Comments Solicited

The Service solicits written comments on the Draft Pacific Coastal Barriers Study and the accompanying maps described above. All comments received by the dates specified above will be considered prior to the Department's submission to Congress of the final study and maps as required by section 6 of the CBIA.

Appendix A—Proposed Washington Coastal Barrier Resources System Units

County	Unit No.	Unit name
Whatcom	WA–01	Semiahmoo Spit/ Drayton Harbor.
Skagit	WA–04	Sinclair Island.
San Juan	WA–05	Waldron Island.
San Juan	WA–06	Henry Island/Nelson Bay.
San Juan	WA–07	Fisherman Bay North.
San Juan	WA–08	Fisherman Bay South.
San Juan	WA–09	Low Point.
San Juan	WA–10	San Juan Island South.
San Juan	WA–11	Mud Bay/Shoal Bight.
San Juan	WA–12	Spencer Spit.
San Juan	WA–13	Decatur Head.
Skagit	WA–14	Guemes Island.
Skagit	WA–15	Padilla Bay.
Skagit	WA–15A	Ship Harbor.
Island	WA–17	Ben Ure Spit.
Island	WA–18	Cranberry Lake.
Island	WA–19	South of Cranberry Lake.
Island	WA–20	Arrowhead Beach.
Island	WA–21	Polnell Point.
Island	WA–22	Crescent Harbor Area.
Island	WA–23	Oak Harbor Area.
Island	WA–24	Whidbey Island NW.
Island	WA–25	Whidbey Island SW.
Island	WA–26	Crockett Lake.
Island	WA–27	Race Lagoon.
Island	WA–28	Whidbey Island East.
Island	WA–29	Lake Hancock.
Island	WA–30	Useless Bay Area.
Island	WA–31	Cultus Bay.
Kitsap	WA–33	Battle Point.
King	WA–34	Point Heyer.
Pierce	WA–35	McNeil Island.
Mason	WA–37	Buffingtonis Lagoon.
Pierce	WA–38	Vaughn Bay.
Pierce	WA–39	Henderson Bay Area.
Kitsap	WA–40	Stavis Bay.
Jefferson	WA–41	Zelatched Point.
Jefferson	WA–42	Tarboo Bay.
Jefferson	WA–43	Toandos Peninsula East.
Jefferson	WA–44	Thorndyke Bay.
Jefferson	WA–46	Bywater Bay.
Kitsap	WA–47	Fowlweather Bluff East.
Kitsap	WA–48	Fowlweather Bluff.
Jefferson	WA–49	Oak Bay East.
Jefferson	WA–50	Oak Bay.
Jefferson	WA–51	Oak Bay West.
Jefferson	WA–52	Kilisut Harbor.
Jefferson	WA–53	Kala Point.
Jefferson	WA–54	Port Discovery Area.
Clallam	WA–55	Thompson Spit.
Clallam	WA–56	Sequim Bay.
Clallam	WA–57	Kilakala Point.
Clallam	WA–58	Dungeness Spit.
Clallam	WA–60	Crescent Bay.
Clallam	WA–61	Pysht River.
Clallam	WA–62	Clallam Bay.
Clallam	WA–63	Mouth Hoko River.
Grays Harbor.	WA–69	Copalis River.
Grays Harbor.	WA–70	Conner Creek.
Grays Harbor.	WA–71	Ocean Shores.
Grays Harbor.	WA–72	Ocean Shores South.
Grays Harbor.	WA–73	Westport.
Grays Harbor.	WA–74	Grayland North.
Pacific	WA–75	Grayland Beach.
Pacific	WA–75A	Grayland South.
Pacific	WA–76	Empire Spit.
Pacific	WA–77	North Beach Peninsula.
Pacific	WA–78	Jensen Point.
Pacific	WA–79	Long Beach/Seaview.
Pacific	WA–80	Cape Disappointment.

Appendix B—Proposed Oregon Coastal Barrier Resources System Units

County	Unit No.	Unit name
Clatsop	OR–01	Columbia R./Clatsop Spit.
Clatsop	OR–02	Necanicum River.
Clatsop	OR–03	Chapman Beach/ Ecola Creek.
Tillamook	OR–04	Nehalem Spit & Bay.
Tillamook	OR–05	Manhattan Beach.
Tillamook	OR–06	Bayocean Peninsula/Tillamook Bay.
Tillamook	OR–07	Netarts Spit & Bay.
Tillamook	OR–08	Sand Lake Estuary.
Tillamook	OR–09	Nestucca Spit & Bay.
Tillamook	OR–10	Kiwanda Beach.
Tillamook/ Lincoln.	OR–11	Salmon River Estuary.
Lincoln	OR–12	Salishan Spit/Siletz Bay.
Lincoln	OR–13	South Beach.
Lincoln	OR–14	Ona Beach/Beaver Creek.
Lane	OR–15	Baker Beach.
Lane	OR–16	Heceta Beach.
Lane/Douglas.	OR–17	Oregon Dunes.
Douglas	OR–18	North Spit/Umpqua R.
Coos	OR–19	North Spit & Coos Bay/Oregon Dunes.
Coos	OR–20	Bullards Beach/ Coquille River.
Coos/Curry .	OR–21	New River.
Curry	OR–22	Sixes River.
Curry	OR–23	Elk River.
Curry	OR–24	Garrison Lake.
Curry	OR–25	Euchre Creek.
Curry	OR–26	Greggs Creek.
Curry	OR–27	Hunter Creek.
Curry	OR–28	Pistol River.

Appendix C—Proposed California Coastal Barrier Resources Systems Units

County	Unit No.	Unit name
Del Norte	CA–01	Smith River/Lake Earl.
Del Norte	CA–02	Whaler Island.
Del Norte	CA–03	Klamath River.
Humboldt	CA–04	Fern Canyon.
Humboldt	CA–05	Gold Bluffs.
Humboldt	CA–06	Redwood Creek.
Humboldt	CA–07	Freshwater Lagoon.
Humboldt	CA–08	Stone Lagoon.
Humboldt	CA–09	Dry Lagoon.
Humboldt	CA–10	Big Lagoon.
Humboldt	CA–11	Little River.
Humboldt	CA–12	Clam Beach/Mad River.
Humboldt	CA–13A	North Spit.
Humboldt	CA–14	South Spit.
Humboldt	CA–15	Eel River.
Humboldt	CA–16	Mattole Beach.
Mendocino .	CA–17	Usal Creek.
Mendocino .	CA–18	Ten Mile River.
Mendocino .	CA–18A	Inglenook.
Mendocino .	CA–19	Navarro River.
Mendocino .	CA–20	Alder Creek.
Mendocino .	CA–21	Manchester Beach S.P. (north).
Mendocino .	CA–22	Manchester Beach S.P. (center).
Mendocino .	CA–23	Manchester Beach S.P. (south).
Mendocino/ Sonoma.	CA–24	Gualala River.
Sonoma	CA–25	Russian River.
Sonoma	CA–26	Salmon Creek Beach.
Marin	CA–27	Abbotts Lagoon.
Marin	CA–27A	Drakes Beach.
Marin	CA–28	Drakes Estero.
Marin	CA–29	Rodeo Cove.
San Mateo .	CA–30	Laguna Salada.
San Mateo .	CA–31	Elmar Beach.
San Mateo .	CA–32	Pescadero Creek.
Santa Cruz .	CA–33	Waddell Creek.
Santa Cruz .	CA–34	Scott Creek.
Santa Cruz .	CA–35	Sunset State Beach.
Santa Cruz/ Monterey.	CA–36	Zmudowski Beach S.P.
Monterey	CA–37	Moss Landing.
Monterey	CA–38	Salinas River.
Monterey	CA–39	Little River.
Monterey	CA–40	La Cruz Rock.
San Luis Obispo.	CA–41	Morro Bay S.P.
San Luis Obispo.	CA–42	Pismo State Beach (north).
San Luis Obispo.	CA–43	Pismo State Beach (south).
San Luis Obispo.	CA–44	Oso Flaco Lake.
San Luis Obispo/ Santa Barbara.	CA–45	Santa Maria River.
Santa Barbara.	CA–46	Santa Ynez River.
Santa Barbara.	CA–47	Goleta Beach C.P.
Santa Barbara.	CA–47A	Coal Oil Point.
Ventura	CA–48	Santa Clara River.
Ventura	CA–49	Mcgrath Lake.
Ventura	CA–50	Ormond Beach.
Ventura	CA–51	Mugu Lagoon.
Los Angeles	CA–52	Malibu Point.
San Diego ..	CA–53	San Mateo Point.
San Diego ..	CA–54	Las Flores Creek.
San Diego ..	CA–55	Santa Margarita River.
San Diego ..	CA–56	Agua Hedionda.
San Diego ..	CA–57	Batiquitos Lagoon.
San Diego ..	CA–59	Silver Strand.
San Diego ..	CA–60	Tijuana Slough.

Appendix D—Proposed Hawaii Coastal Barrier Resources System Units

County	Unit No.	Unit name
Hawaii .	HI–01	Pololu Valley.
Hawaii .	HI–02	Waimanu Bay.
Hawaii .	HI–03	Waipio Bay.
Hawaii .	HI–03A	Waiopae Ponds.
Hawaii .	HI–04	Honokohau Bay.
Hawaii .	HI–05	Kiholo Bay.
Hawaii .	HI–06	Makaiwa.
Maui	HI–07	Waihee.
Maui	HI–08	Paukukaio.
Maui	HI–09	Kanaha Pond.
Maui	HI–10	Kealia Pond.
Molokai	HI–11	Pipio Fishpond.
Molokai	HI–12	Keawanui Fishpond.
Molokai	HI–13	Paialoa Fishpond.
Molokai	HI–14	Lepelepe.
Molokai	HI–15	Pahoa.
Molokai	HI–16	Pelekunu Bay.
Molokai	HI–17	Alii Fishpond.
Molokai	HI–18	Kamiloloa.
Molokai	HI–19	Kaunakakai.
Molokai	HI–20	Kahanui.
Kauai ...	HI–21	Wainiha Bay.
Kauai ...	HI–22	Lumahai Beach
Kauai ...	HI–23	Puu Poa Point Area.
Kauai ...	HI–24	Kilauea Bay.
Oahu ...	HI–25	Kii NWR.
Oahu ...	HI–26	Kahana Bay.
Oahu ...	HI–27	Molii Pond.
Oahu ...	HI–28	Waiahole Beach.
Oahu ...	HI–29	Heeia.
Oahu ...	HI–30	Nuupia Pond.
Niihau ..	HI–31	Leahi Point.
Niihau ..	HI–32	Nonopapa.
Niihau ..	HI–33	Kiekie.
Niihau ..	HI–34	Kaununui.

Dated: February 15, 1994.

David C. Klinger,

Acting Regional Director, U.S. Fish and Wildlife Service, Region One, Portland, Oregon.

[FR Doc. 94–3986 Filed 2–22–94; 8:45 am]

BILLING CODE 4310–55–P

Availability of a Draft Recovery Plan for the Snake River Aquatic Species for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the Snake River aquatic species. The Snake River species include five Snake River molluscs listed as threatened (Bliss Rapids Snail) or endangered (the Snake River Physa, Banbury Springs lanx or limpet, Utah Valvata Snail and Idaho Springsnail) (57 FR 59244), three additional molluscs and one fish taxa currently listed as Federal candidate species, and two State of Idaho Sensitive fish taxa. The aquatic habitats essential to all these species throughout the Snake River are similar and cannot be isolated for recovery purposes. The primary and immediate recovery objectives of this Plan include implementing the conservation measures to prevent the extinction and/or further decline of existing colonies of the listed snails by eliminating or reducing known threats. Basic information necessary to establish recovery criteria so that the listed species can be reclassified or delisted will also be collected. Long term objectives are to reverse declining habitat trends and restore the Snake River ecosystem so that self-reproducing colonies of the four endangered and one threatened snails are protected to the point that they are delisted. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before April 25, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the State Supervisor, Ecological Services—Idaho State Office, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 3705 or by calling (208) 334–1931. Written comments and materials regarding the draft recovery plan should be addressed to the State Supervisor—Ecological Services, at the above address. Comments and materials received are also available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles H. Lobedell, Fish and Wildlife Service, Ecological Services—Idaho State Office, 4696 Overland Road, Room 576, Boise, Idaho 83705. (208) 334–1931.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting and delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approving recovery plans.

The Snake River sub-basin above C.J. Strike dam provides habitat for a minimum 16 native fish taxa and 42 native molluscs. This includes five Snake River snails listed as threatened or endangered, three additional molluscs and one fish taxa currently listed as Federal candidate species, and two State of Idaho Sensitive fish taxa. With the advent of exploration and development, the Snake River ecosystem has undergone significant transformation from a primarily cold-water lotic system towards a slow-moving warm-water system when compared with its historic fauna. The human-induced environmental stressors to the formerly fast-and cold-water Snake River environment include numerous point and non-point pollution sources, diversion of water for irrigation or hydropower, and construction of several mainstem dams. The draft recovery plan specifically addresses the five Federally listed Snake River snails (December 24, 1992; 57 FR 59244). However, the aquatic habitats essential to these species and other candidate fish and mollusc endemic throughout the Snake River are similar and cannot be isolated for recovery purposes. Therefore, the draft recovery plan and the entire recovery effort is designed to recover the entire Snake River ecosystem from C.J. Strke Dam to the confluence of the Blackfoot River rather than individual species.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 11, 1994.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94–4029 Filed 2–22–94; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0044), Washington, DC 20503, telephone 202–395–7340.

Title: Railroad Agent's Report of Shipments of Minerals and Mineral Products.

OMB Approval Number: 1032–0044.

Abstract: The Bureau's work of collecting and compiling mineral data is supervised by persons who have scientific and practical knowledge of the subject and a personal acquaintance with both the producing and consuming establishments. These personnel use Form 6–1998–Q, Railroad Agent's Report of Shipments of Minerals and Products, to obtain general information on mines not presently on the Bureau's mailing lists. If the information obtained from Form 6–1198–Q indicates that the mine is currently producing a mineral for which the Bureau collects data, the company operating the mine is added to the appropriate survey frame and mailed the corresponding collection.

Bureau form number: 6–1198–Q.

Frequency: Quarterly.

Description of respondents: Railroad agents handling mineral products.

Annual responses: 18.

Annual burden hours: 36.

Bureau clearance officer: Alice J. Wissman (202) 501–9569.

Dated: January 31, 1994.

Hermann Enzer,

Acting Director, Bureau of Mines.

[FR Doc. 94–3952 Filed 2–22–94; 8:45 am]

BILLING CODE 4310–53–M

INTERNATIONAL TRADE COMMISSION

[Investigation 337–TA–345]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Hyundai Electronics Industries, Co. Ltd and Hyundai Electronics America, Inc.

In the Matter of: Certain anisotropically etched one megabit and greater drams, components thereof, and products containing such drams.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on February 15, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

By order of the Commission.

Issued: February 15, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–3989 Filed 2–22–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–677 (Preliminary)]

Coumarin From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China of coumarin,[2] provided for in subheading 2932.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On December 30, 1993, a petition was filed with the Commission and the Department of Commerce by Rhône-Poulenc Specialty Chemicals Co., Cranbury, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of coumarin from the People's Republic of China. Accordingly, effective December 30, 1993, the Commission instituted antidumping investigation No. 731–TA–677 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 7, 1994 (59 F.R. 1026). The conference was held in Washington, DC, on January 20, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 14, 1994. The views of the Commission are contained in USITC Publication 2733 (February 1994), entitled "Coumarin from the People's Republic of China: Investigation No. 731–TA–677 (Preliminary)."

By order of the Commission.

Issued: February 15, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–3988 Filed 2–22–94; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] For purposes of this investigation, coumarin is an aroma chemical with the chemical formula $C_9H_6O_2$. All forms and variations of coumarin are included within the scope of the investigation, such as coumarin in crystal, flake, or powder form, and "crude" or unrefined coumarin (*i.e.* prior to purification or crystallization). Excluded from the scope are ethylcoumarins ($C_{11}H_{10}O_2$) and methylcoumarins ($C_{10}H_8O_2$).

[Investigation No. 337–TA–360]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: MacProducts USA now known as DGR Technologies, Inc.

In the Matter of: Certain Devices for Connecting Computers via Telephone Lines.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on February 16, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

By order of the Commission.

Issued: February 16, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–3992 Filed 2–22–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–360]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Total Technologies.

In the Matter of: Certain Devices for Connecting Computers via Telephone lines.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on February 16, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

By order of the Commission.

Issued: February 16, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–3990 Filed 2–22–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 701–TA–355 and 731–TA–659–660 (Final)]

Grain-Oriented Silicon Electrical Steel From Italy and Japan

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of final countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701–TA–355 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy of grain-oriented silicon electrical steel.[1]

The Commission further gives notice of the institution of final antidumping investigations Nos. 731–TA–659 and 660 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy and Japan of grain-oriented silicon electrical steel.[1]

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 28, 1994.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Italy of grain-oriented silicon electrical steel, and as a result of affirmative preliminary determinations by the Department of Commerce that imports of grain-oriented silicon electrical steel from Italy and Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on August 26, 1993, by counsel on behalf of Allegheny Ludlum Corp., Pittsburgh, PA; Armco, Inc., Butler, PA; the Butler Armco Independent Union, Butler, PA; the United Steelworkers of America, Pittsburgh, PA; and the Zanesville Armco Independent Union, Zanesville, OH.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on March 30, 1994, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on April 12, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 4, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 6, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony in camera.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is April 6, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 20, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 20, 1994. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: February 16, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–3993 Filed 2–22–94; 8:45 am]

BILLING CODE 7020–02–P

[1] The products covered by these investigations are grain-oriented silicon electrical steel, which are flat-rolled alloy steel products containing by weight at least 0.8 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.560 millimeter, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness. The subject products are provided for in subheadings 7225.10.00, 7226.10.10, and 7226.10.50 of the Harmonized Tariff Schedule of the United States. In the scope section of its preliminary antidumping determinations, the Department of Commerce noted that the HTS numbers identified in the scope of the countervailing duty determination will be conformed with those listed in the antidumping determinations.

[Investigations Nos. 731–TA–678 through 682 (Preliminary)]

Stainless Steel Bar From Brazil, India, Italy, Japan, and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, India, Italy, Japan, and Spain of stainless steel bar, provided for in subheadings 7222.10.00, 7222.20.00, and 7222.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[2]

Background

On December 30, 1993, a petition was filed with the Commission and the Department of Commerce by Al Tech Specialty Steel Corp., Dunkirk, NY; Carpenter Technology Corp., Reading, PA; Republic Engineered Steels, Inc., Massillon, OH; Slater Steels Corp., Fort Wayne, IN; Talley Metals Technology, Inc., Hartsville, SC; and the United Steelworkers of America, AFL-CIO/CLC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of stainless steel bar from Brazil, India, Italy, Japan, and Spain. Accordingly, effective December 30, 1993, the Commission instituted antidumping investigations Nos. 731–TA–678 through 682 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 7, 1994 (59 FR 1027). The conference was held in Washington, DC, on January 20, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 14, 1994. The views of the Commission are contained in USITC Publication 2734 (February 1994), entitled "Stainless Steel Bar from Brazil, India, Italy, Japan, and Spain: Investigations Nos. 731–TA–678 through 682 (Preliminary)."

By order of the Commission.

Issued: February 15, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–3991 Filed 2–22–94; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The imported stainless steel bar covered by these investigations comprises articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled, or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Except as specified above, the term does not include stainless steel semifinished products, cut-to-length flat-rolled products (i.e., cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, or sections. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–1 (Sub-No. 240X)]

Chicago and North Western Transportation Company; Abandonment Exemption; In Bellwood, Cook County, IL

Chicago and North Western Transportation Company (CNW) has filed a notice of exemption under 49 CFR part 1152, subpart F—Exempt Abandonments to abandon its 0.5 mile of line of railroad between milepost 12.94 and milepost 13.44, in Bellwood, Cook County, IL.

CNW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) the line is not used for movement of overhead traffic; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to the use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 25, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 7, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 15, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

A copy of any petition filed with the Commission should be sent to applicant's representative: Thomas F. Flanagan, 165 North Canal Street, Chicago, IL 60606-1551.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

CNW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 28, 1994. Interested persons may obtain a copy of the EA by writing to SEA (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 14, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 94-4013 Filed 2-22-94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 82-94]

Privacy Act of 1974; New System of Records

Pursuant to the Privacy Act (5 U.S.C. 552a), the Department of Justice, United States Marshals Service, proposes to establish a new Privacy Act system of records entitled "U.S. Marshals Service (USMS) Key Control Record System, JUSTICE/USM-016."

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on any new routine uses of a system of records. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the system.

Therefore, please submit any comments by March 25, 1994. The public, OMB, and the Congress are invited to submit written comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Dated: February 4, 1994.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/USM-016

SYSTEM NAME:

U.S. Marshals Service (USMS) Key Control Record System.

SYSTEM LOCATION:

Internal Security Division, Office of Inspections, United States Marshals Service, 2611 Jefferson Davis Highway, Arlington, Virginia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the USMS who have been issued office keys for USMS Headquarters locations.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Records contained in this system consist of an automated index which includes the name of the employee to whom a key is issued; the social security number (only when two or more employees have identical names, including middle initial); unique key identification code number; key type (e.g., grand master, master, submaster, change); storage container hook number; description (e.g., number identification) of door(s), room(s), and/or area(s) the key opens or accesses; transaction type and/or status (e.g., key issued, transferred, retrieved, lost, broken) and transaction date; and, any other appropriate comment, e.g., comments regarding key, door, room, area, etc. In addition, a manual index with abbreviated data is maintained as a backup system. This manual index includes the room/suite number, the name of the employee to whom a key is issued, the key identification code number, and date(s) of issuance and retrieval.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE:

The USMS Key Control Record System serves as a record of keys issued and facilitates continuing security at USMS Headquarters locations. Records are maintained to assist in restricting office and work area access to authorized USMS personnel by controlling, monitoring and tracking keys issued. In addition, records assist in identifying any repairs, changes, or additional security measures that may be necessary as a result of lost or broken keys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed: (a) In the event that a record(s) indicate a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order pursuant thereto, the relevant record(s) may be disclosed to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation, and/or charged with enforcing or implementing such statute, rule, regulation or order, (b) in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions, (c) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy, (d) to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record, and (e) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated index records are stored on magnetic disks. Paper copies of automated records are kept in file folders and original paper records of the manual index are stored in card files.

RETRIEVABILITY:

Records are retrieved by name of the individuals covered by the system.

SAFEGUARDS:

Access to these records is restricted to personnel of the USMS Internal Security Division. Computerized records may be accessed only by assigned code and password. Paper records are located in a restricted area and are maintained in metal filing cabinets or safes which are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are retained for 3 years after turn-in of the key, at which time they are destroyed (General Records Schedule 18).

SYSTEM MANAGER AND ADDRESS:

Chief, Internal Security Division, Office of Inspections, United States Marshals Service, 2611 Jefferson Davis Highway, Arlington, Virginia.

NOTIFICATION PROCEDURES:

Direct all inquiries to the system manager identified above. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate the name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual and the system manager.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94-3947 Filed 2-22-94; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Justice Assistance

FY 1994 Discretionary Grant Program Plan

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Department of Justice.

ACTION: Public announcement of the Fiscal Year (FY) 1994 Discretionary Program Plan, enumerating grants to be awarded by the Bureau of Justice Assistance in accordance with the Anti-Drug Abuse Act of 1988.

SUMMARY: The Bureau of Justice Assistance (BJA) is publishing this notice of the FY 1994 Discretionary Program Plan for interested applicants.

DATES: Requests for proposals for competitive programs will be issued under a separate program announcement, with specific due dates for each program.

FOR FURTHER INFORMATION CONTACT:

The Bureau of Justice Assistance Response Center at (202) 307-1480. (This is not a toll-free number.) To obtain the FY 1994 Discretionary Program Plan, interested applicants should call or write the Bureau of Justice Assistance Clearinghouse 1-800-688-4252 at the National Criminal Justice Reference Service (NCJRS), Box 6000, Rockville, MD 20850.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority: This action is authorized under sec. 6091 of the Anti-Drug Abuse Act of 1988, Public Law 100-690, 102 Stat. 4181, 4328, 42 U.S.C. 3742(2).

Jack A. Nadol,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 94-3969 Filed 2-22-94; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103-182), hereinafter called (NAFTA-TAA), have been filed with State Governors under section 250(a) of subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Public Law 103-182) are eligible to apply for NAFTA-TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than March 7, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than March 7, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C-4318, 200 Constitutional Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Hollywood Shake, Inc. (Co)	Forks, WA	02/04/94	02/03/94	NAFTA-00017	Cedar Shakes and Shingles.
Kemet Electronics (Wkrs)	Simpsonville, SC	02/07/94	02/02/94	NAFTA-00018	Capacitors (Electronics).
North American Phillips Lighting Co. (IEU).	Fairmount, WV	02/04/94	02/04/94	NAFTA-00019	Home Lighting Products, Auto Lights.
Northern Telecom, Inc. (Co)	Stone Mountain, GA	02/08/94	02/08/94	NAFTA-00020	Telecommunciations Equipment.
Xerox Imaging Systems (Co)	Peabody, MA	02/09/94	02/08/94	NAFTA-00021	Electronic Reading Decvice.
Litton Systems, Inc. (Wkrs)	Clifton, PA	02/09/94	02/08/94	NAFTA-00022	Appliance Motors.
Bonus Sportswear (Wkrs)	Tampa, FL	02/10/94	02/09/94	NAFTA-00023	Apparel, Sportswear.
Praxair (OCAWIU)	Tonawanda, NY	02/10/94	02/10/94	NAFTA-00024	Air Separation Equipment.
D & R Cedar Products, Inc. (Co).	Forks, WA	02/10/94	02/09/94	NAFTA-00025	Cedar Shakes and Shingles.

[FR Doc. 94-4071 Filed 2-22-94; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Workers Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,222; Mann Industries, Inc., Williamsburg, VA

TA-W-29,247; Greenbrier Industries, Clinton, TN

TA-W-29,098, TA-W-29,099; Northrop Corp., Howthorn, CA and Anaheim, CA

TA-W-29,199; The Robbins Co., Kent, WA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-29,305; Decision Data Service, Inc., Horsham, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,300; Lake Stevens Timber, Lake Stevens, VA

The preponderant portion of production at the subject firm is exported; therefore, imports could not have contributed importantly to the absolute decline in sales or production of the subject firm.

TA-W-29,294; Praxair, Inc., Tonawanda, NY

U.S. imports of gas separators decreased in the twelve month period from November 1992 through October 1993 compared to the previous twelve month period from November 1991 through October 1992.

TA-W-29,257; Ethicon, Inc., San Angelo, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,986; Southern Shipbuilding Corp., Slidell, LA

U.S. imports of tug boats and pushers declined absolutely in the twelve month period of October 1992 through September 1993 as compared to the same period of a year earlier.

TA-W-29,270; Leviton Manufacturing Co., Inc., Brooklyn, NY

Predominate reason for the layoff of workers was a corporate decision to transfer certain product lines from the subject firm to more modern facilities in U.S. affiliates.

TA-W-29,242; B-5 Welding Special Services, Seminole, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,311; The LTV Corp., Dallas, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,341; Olsten Staffing Services, Messena, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,318; National Steel Pellet Co., Keewatin, MN

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA-W-29,253; Plains Petroleum Operating Co., Lakewood, CO

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA-W-29,306; Bhalla Lighting, Inc., West Caldwell, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA-W-29,252; Neste Oil, Inc., Houston, TX

The investigation revealed that the subject firm's parent company, Neste Oy, made the decision to divest itself of all United States oil and gas assets. These assets were managed by workers at the subject firm; when the sale of the assets was completed in mid-1993, the employees of Neste Oil, Inc., were severed from employment.

TA-W-29,240; The ARO Corp, Life Support Products Div., Buffolo, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA-W-29,272; Jo-Ann Apparel Mfg, Inc., Ebensburg, PA

A certification was issued covering all workers separated on or after November 16, 1992.

TA-W-29,192; Parsons Footwear, Parsons, WV

A certification was issued covering all workers separated on or after October 17, 1992.

TA-W-29,236; F-Bruno Faceting Corp., Union, NJ

A certification was issued covering all workers separated on or after November 12, 1992.

TA-W-29,264; Synektron, Portland, OR

A certification was issued covering all workers separated on or after November 16, 1992.

TA-W-28,972; AT&T, Westminster, CO

A certification was issued covering all workers separated on or after August 9, 1992.

TA-W-29,332; Recycled Aluminum Metals Co., Dallesport, WA

A certification was issued covering all workers separated on or after December 7, 1992.

TA-W-29,317: Rexham Graphics, Portland, OR

A certification was issued covering all workers separated on or after November 30, 1992.

TA-W-29,208; Roseburg Forest Products Co., Sawmill #1, Dillard, OR

A certification was issued covering all workers separated on or after September 27, 1992.

Also, pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with section 250(a) subchapter D, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00002; Emerson Electric Co., White Rodgers Div., Logansport, IN

A certification was issued covering all workers engaged in employment related to the production of relays, contactors and solenoids at Emerson Electric Company, White Rodgers Div., Logansport, IN separated on or after December 8, 1993.

NAFTA-TAA-00010; Steward, Inc., ICD (Integrated Components Division), East Ridge, TN

A certification was issued covering all workers at Steward, Inc., ICD, in East Ridge, TN separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of February, 1994. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 15, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-4070 Filed 2-22-94; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NASA's Procurement Policies and Practices; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of public meeting.

SUMMARY: NASA will conduct an open forum meeting to solicit questions, views and opinions of interested persons/firms concerning NASA's procurement policies and practices. The purpose of the meeting is to have an open discussion between NASA's Associate Administrator for Procurement and industry/public. There will be a brief presentation by the Associate Administrator for Procurement, followed by a question and answer period. Procurement issues will be discussed including NASA policies used in the award and administration of contracts.

DATES: March 30, 1994; 2 p.m. to 4:30 p.m. Doors to the auditorium will open at 1:30 p.m. Admittance will be on a first-come, first-served basis. Auditorium capacity is limited to approximately 200 persons, therefore, a maximum of two representatives per firm is requested. No reservations will be accepted. Questions for the open forum should be presented at the meeting and should not be submitted in advance. Position papers are not being solicited. The format for the meeting will be as described above.

ADDRESSES: The meeting will be held at NASA Headquarters, West Lobby

Auditorium, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Susie Marucci, NASA Headquarters Office of Procurement (Code H), Washington, DC 20546, (202) 358-1896.

SUPPLEMENTARY INFORMATION: In addition to the general discussion mentioned above, NASA invites comments or questions relative to its ongoing Procurement Initiatives, some of which include: (i) Small Business and Small Disadvantaged Business Utilization. NASA is committed to an increased focus on developing opportunities for small and disadvantaged business participation in NASA contracting; (ii) Change Order Reduction and Process Change. NASA is attempting to improve overall change order management through the use of better technical definition, realistic cost estimates and more effective and timely negotiations; (iii) Contractor Metrics. The Contractor Metrics initiative has been implemented throughout NASA as a new reporting system to provide summary level reporting on contract performance; (iv) Award Fee Initiative. NASA has published new regulations for Award Fee policy; (v) MidRange Procurement Procedure. A test program for a third category of procurement between $25,000 and $500,000 (annually) is underway. Marshall Space Flight Center is the designated test site; and (vi) Procurement Reinvention Laboratory. The NASA Headquarters Acquisition Division is participating in this initiative which grew out of the National Performance Review. This Procurement Reinvention Laboratory is one of several procurement reinvention labs underway across the Government.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

[FR Doc. 94–3956 Filed 2–22–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Leadership Initiatives

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of grant application availability for Museum Leadership Initiatives Program.

SUMMARY: This grant application announcement applies to a new funding category offered by the Institute of Museum Services (IMS), the Museum Leadership Initiatives award under 45 CFR part 1180 for Fiscal Year 1994.

DEADLINE DATES FOR TRANSMITTAL OF APPLICATIONS: An application for a new grant must be mailed or hand-delivered by Friday, July 1, 1994.

APPLICATIONS DELIVERED BY MAIL: An application sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service Postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-canceled by the U.S. Postal Service.

APPLICATIONS DELIVERED BY HAND: Applications that are hand-delivered must be taken to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., room 609, Washington, DC 20506. Hand-delivered applications will be accepted between 9 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

ADDRESSES: Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, IMS Public Information Officer, (202) 606–8536. Deaf and hearing impaired individuals may call the TDD Line, (202) 606–8636.

SUPPLEMENTARY INFORMATION: The purpose of IMS Museum Leadership Initiatives is to advance outstanding projects that address issues of national concern to museums. In 1994, IMS will invite projects that partner museums, schools and communities to further education reform. Museums can effectively enhance standards-driven systemic reform by providing learning opportunities in every school discipline from history and science to mathematics and art. Museums' collections and exhibitions create an enriched learning environment that is not available in any other educational institution. The purpose of IMS Museum Leadership Initiatives awards will be to unleash and focus museums' potential to be powerful partners in education reform.

In 1994, awards will be made for planning, including needs assessment, program development, pilot testing and analysis of results. IMS anticipates that competitive awards will be available to implement the plans in 1995. The maximum award for 1994 will be $40,000. Successful projects will build on existing museum-school partnerships and will address one or more of the following goals:

- All children in America will start school ready to learn.
- The high school graduation rate will increase to at least 90%.
- American students will be competent in challenging academic content areas such as English, History, Math, Science, Geography, The Arts, Foreign Languages, and prepared for responsible citizenship.
- Teacher education and professional development will be oriented toward and available for teachers to teach to challenging standards and prepare students for the next century.
- U.S. students will be first in the world in science and mathematics achievement.
- Every adult American will be literate and possess the skills necessary to compete in a global economy.
- Children will have safe, disciplined and drug-free learning environments.
- Every school and home will engage in partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

Deadline for proposals is July 1, 1994. Application materials are available from the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 606–8539.

Eligibility

Applicants must include museums, museum organizations, individuals, universities, consortia of museums, or other organizations, depending on the specifications outlined in the proposal.

Available Funds

An award made through the Museum Leadership Initiatives program may not exceed $200,000; average award, $40,000. Awards are for projects that will be completed within an eighteen month period. IMS reserves the option of awarding multiple, single, or no awards as a result of this request for proposals.

Application Forms

Applicants may obtain application packets for the Museum Leadership Initiatives program by writing or telephoning the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., room 609, Washington, DC 20506, (202) 606–8539. Deaf and hearing impaired individuals may call the TDD Line, (202) 606–8636.

Applicable Regulations

None.

(Catalogue of Federal Domestic Assistance No. 45.301, Institute of Museum Services)

Dated: February 14, 1994.

Diane B. Frankel,

Director, Institute of Museum Services.

[FR Doc. 94–3954 Filed 2–22–94; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: March 3&4, 1994.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. James E. Rodman, Division of Environmental Biology, room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1481.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Planning Grants and Career Advancement Award proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Inclement weather.

Dated: February 17, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4066 Filed 2–22–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Meeting

Date and Time: Monday March, 14, 1994 from 8:30 am–6 pm. Tuesday, March 15, 1994 from 8:30 am–6 pm. Wednesday, March 16, 1994 from 8:30 am–5 pm.

Place: National Science Foundation, 4201 Wilson Blvd., room 390, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Machi Dilworth, Program Director, Biological Instrumentation and Resources, room 615, National Science Foundation, Arlington, Virginia 22230, Telephone No. (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Postdoctoral Research Fellowships in Plant Biology proposals as part of the selection process for awards.

Reason of Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 17, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4068 Filed 2–22–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resource Development.

Date and Time: Friday, March 11, 1994; 8 a.m.–5 p.m.

Place: Room 880, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. William McHenry, Program Director, HRD, room 815, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1632.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Careers for Minority Scholars proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 17, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–4067 Filed 2–22–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) scheduled for February 24, 1994, has been canceled. The notice for this meeting appeared in the **Federal Register** on February 9, 1994 (59 FR 6061).

The next meeting of the ACMUI will be held on May 19 and 20, 1994. Information regarding this meeting will be noticed no less than 15 days before the meeting.

FOR FURTHER INFORMATION, CONTACT: Sally L. Merchant, Office of Nuclear Material Safety and Safeguards, MS 6–H–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2637.

Dated: February 17, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–4101 Filed 2–22–94; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information and collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. *Type of submission:* Revision.

2. *The title of the information collection:* 10 CFR Part 34, "Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations" and NRC Form 313, Application for Material License.

3. *The form number, if applicable:* NRC Form 313.

4. *How often the collection is required:* On occasion. Upon submittal of an application for a materials license or renewal, decommissioning review, petition for rulemaking; status as an independent certifying organization, or upon discovery of a leaking source.

5. *Who will be required to report:* Licenses and applicants requesting approvals for actions proposed in accordance with 10 CFR Part 34.

6. *An estimate of the number of responses:* Part 34—729, NRC Form 313–700.

7. *An estimate of the total number of hours needed annually to complete the requirement or request:* Part 34—1,530 hours for reporting (approximately 2.2 hours per response) plus an additional 64,285 hours for recordkeeping (approximately 91.8 hours per licensee); NRC Form 313—9,900 hours for 700 licensees (approximately 14 hours per response).

8. *An indication of whether section 3504(h), Pub. L. 96–511 applies:* Applicable.

9. *Abstract:* NRC regulation, 10 CFR part 34, specifies the information and data to be provided by applicants and licensees using byproduct material for industrial radiography. The 10 CFR part 34 is being revised in its entirety. The revision will add or modify the requirements to include mandatory certification of radiographers, additional training of radiographers' assistants, leak tests of "S" tubes, and specifies records to be kept at field stations, permanent installations, temporary jobsites and use or storage location exceeding 180 days. The proposed revision will require the following additional information to be reported on NRC Form 313, Application for Materials License: locations and descriptions of all field stations and permanent radiographic installations, the designation of a Radiation Safety Officer, and additional information on training and testing. This information is reviewed by NRC to ensure that the safety of radiographers and the public is protected.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20037.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0007 and 3150–0120), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 14th day of February 1994.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 94–3981 Filed 2–22–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on ABB–CE Standard Plant Designs; Meeting

The ACRS Subcommittee on ABB–CE Standard Plant Designs will hold a meeting on March 8, 1994, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, March 8, 1994—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the NRC staff FSER, ABB–CE Standard Safety Analysis Report and Design Certification Material (Design Description/ITAAC) for the ABB–CE System 80+ design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, ABB–CE, and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting the cognizant ACRS staff engineer, Mr. Douglas H. Coe (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: February 16, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–3978 Filed 2–22–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on March 9, 1994, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, March 9, 1994—8:30 a.m. until the conclusion of business.

The Subcommittee will review any residual issues associated with the Advanced Boiling Water Reactor (ABWR) design and prepare a proposed ACRS report on the ABWR Final Design Approval for consideration by the full Committee. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review. Representatives of the General Electric Nuclear Energy and its consultants will participate, as appropriate.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: February 16, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–3979 Filed 2–22–94; 8:45 am]

BILLING CODE 7590–01–M

Consolidation of Region V Office With Region IV Office; Transfer of Emergency Response Functions and Responsibilities

AGENCY: Nuclear Regulatory Commission.

ACTION: General notice.

SUMMARY: The Nuclear Regulatory Commission (NRC) is transferring the emergency response functions and responsibilities of the current Region V office in Walnut Creek, California, to the Region IV office in Arlington, Texas.

EFFECTIVE DATE: March 1, 1994.

FOR FURTHER INFORMATION CONTACT: Samuel J. Collins, USNRC, Region IV, Arlington, Texas, telephone (817) 860–8183.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that the NRC is consolidating its Region V office in Walnut Creek, California, with the Region IV office in Arlington, Texas. Transition planning for this consolidation has established that, effective March 1, 1994, the emergency response functions and responsibilities of the current Region V office will transfer to the Region IV office.

The NRC Incident Response Plan, as stated in NUREG–0728, Rev. 2, will remain unchanged and all response functions and responsibilities currently in place in the Region V office will be transferred to the RIV office in Arlington, Texas. Licensee notifications for emergency response purposes will be unchanged and will be sent to the NRC Headquarters Operations Officer at 301–951–0550.

Sometime shortly after March 1, 1994, the actual realignment of organizational structure will occur eliminating Region V and establishing an NRC Field Office in Walnut Creek, California, as an integral part of the Region IV office in Arlington, Texas. Until the formal realignment, the lead for inspection program responsibility remains with Region V. Separate notification will be provided when Region V is abolished and the Region IV Field Office is established in Walnut Creek, California.

Dated at Arlington, Texas, this 14th day of February 1994.

For the Nuclear Regulatory Commission.

John M. Montgomery,

Deputy Regional Administrator.

[FR Doc. 94–3982 Filed 2–22–94; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 030–29567, License No. 20–27908–01, EA 94–035]

Cameo Diagnostic Centre, Inc., Springfield Massachusetts; Order Modifying Order Imposing Civil Monetary Penalty

I

Cameo Diagnostic Centre, Inc. (Licensee) is the holder of a Byproduct Material License No. 20–27908–01 (License) originally issued by the Nuclear Regulatory Commission (NRC or Commission) on January 30, 1987. The License authorizes the Licensee to perform diagnostic procedures with radioactive byproduct material and to store Promethium-147, in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on December 29, 1992. During the inspection, nine violations of NRC requirements were identified. A Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 16, 1993. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice on June 11 and July 23, 1993. In its response, the Licensee objected to the characterization of Violations I.A and I.B as "willful", and to the classification of these violations at Severity Level III; protested the civil penalty assessed for Violations I.A and I.B; and requested remission of that penalty.

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff determined that the violations occurred as stated in the Notice, the Severity Level classification was appropriate, and the penalty proposed for Violations I.A and I.B should be imposed. Accordingly, the NRC issued an Order Imposing A Civil Monetary Penalty—$1,750 on November 24, 1993. The Licensee responded in a letter dated December 17, 1993 and requested a hearing. On February 1, 1994, the Atomic Safety and Licensing Board (ASLB) designated to preside in this proceeding held a prehearing conference.

Violation I.B., as set forth in the Notice, cited the Licensee against 10 CFR 30.9(a) for a failure to provide to the Commission information that was complete and accurate in all material respects. During the February 1, 1994 prehearing conference, the ASLB ordered the Staff, among other things, to prepare a brief addressing whether a total failure to provide material information to the Commission can, as a matter of law, constitute a violation of 10 CFR 30.9(a).

III

The NRC staff has reconsidered whether Violation I.B. as stated in the Notice fully reflected the facts of this case. The original citation for Violation I.B. did not assert that a statement of the Licensee was inaccurate or incomplete, but rather, that the Licensee's omission constituted a violation of 10 CFR 30.9(a). After reevaluating the facts of this case, and statements made by the inspector and the Licensee, the staff is modifying Violation I.B based on an inaccurate statement made by the Licensee in answer to a question asked during a telephone call on November 12, 1992. This statement was confirmed in a letter issued the next day on November 13, 1992. Thereafter, during calls on November 19 and 25, 1992 the staff reiterated the need to obtain a license amendment before possessing material at the new location. However, the licensee did not correct the staff's understanding after receipt of the letter or during the November 19 and 25, 1992 telephone calls.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that*, Violation I.B of the notice and order be modified to read: 10 CFR 30.9(a) requires, in part; that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, the Licensee did not provide to the Commission information that was complete and accurate in all material respects. Specifically, during a November 12, 1992 telephone conversation in response to a question from Region I as to whether the Licensee had licensed materials at its new address (155 Maple Street, Springfield, MA), the Licensee responded negatively. The licensee response was confirmed in a letter from NRC to the licensee dated November 13, 1992 which stated that it was the NRC "understanding that: * * * 2. You [licensee] do not as yet possess any licensed radioactive material at this new facility." Therefore, the Licensee provided inaccurate information to the Commission in that it had possessed licensed materials at its new address. This information was material because, had the correct information been known, it would have resulted in action by the NRC to prohibit licensed activity at the new address until a license amendment had been granted.

V

The Licensee shall respond to this modified Order within 20 days of the date of this Order by requesting that the NRC proceed with the Licensee's December 17, 1993 request for a hearing or by withdrawing its hearing request. The response to this Order shall be addressed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Atomic Safety and Licensing Board presiding over the proceeding on the December 13, 1993 hearing request and Counsel for the NRC staff in that proceeding at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If the Licensee withdraws its request for a hearing, payment of the civil penalty shall be made within 30 days of the date of this Order. If full payment of the civil penalty has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event that the Licensee requests proceeding with a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violation I.A. of the Notice referenced in Section II above and Violation I.B. as modified in Section IV above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 15th day of February 1994.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 94-3980 Filed 2-22-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-443 (License No. NPF-86)]

North Atlantic Energy Service Corporation (Seabrook Station, Unit No. 1); Order for Modification of Order Approving Transfer of License

I.

Great Bay Power Corporation, formerly EUA Power Corporation, is the holder of a 12.1324 percent ownership share in Seabrook Station, Unit No. 1. Great Bay Power Corporation's interest in Seabrook Station, Unit No. 1, is governed by License No. NPF-86 issued by the U.S. Nuclear Regulatory Commission (NRC), pursuant to part 50 of title 10 of the Code of Federal Regulations (10 CFR), on March 15, 1990, in Docket No. 50-443. Under this license, only North Atlantic Energy Service Corporation, acting as agent and representative of the 11 joint owners listed in the license, has the authority to operate Seabrook Station, Unit No. 1. Seabrook Station, Unit No. 1, is located in Rockingham County, New Hampshire.

II.

The transfer of any right under License No. NPF-86 is subject to the NRC's approval pursuant to 10 CFR 50.80(a). By letter of May 14, 1993, from its counsel, Ropes & Grey, North Atlantic Energy Service Corporation filed two requests with the NRC. One requested NRC approval of the indirect transfer of control of EUA Power Corporation's 12.1324 percent ownership share in Seabrook Station, Unit No. 1. The other requested an amendment to the Operating License to reflect EUA Power Corporation's change of name to Great Bay Power Corporation. The name of EUA Power Corporation was formally changed to Great Bay Power Corporation in February 1993. The name change was filed with the Secretary of State of New Hampshire following the redemption of all outstanding stock in EUA Power Corporation from its corporate patent, Eastern Utility Associates. The stock redemption was one of several interrelated steps in the Plan of Reorganization (of EUA Power Corporation) filed with the Bankruptcy Court. Following the redemption of its outstanding stock, EUA Power Corporation was no longer a subsidiary of Eastern Utility Associates, and the name was changed to remove any implication of a continuing relationship with its former corporate parent. The name change did not affect the corporate entity of the debtor in bankruptcy.

Indirect transfer of control, in this case, results from the elimination of the existing stock of the debtor (now known as Great Bay Power Corporation) and the issuance of new stock to the holders of the debtor's bonds and to others.

On August 16, 1993, the NRC issued Amendment 23 to License No. NPF-86 that incorporated the name change of EUA Power Corporation to Great Bay Power Corporation in the footnote to page 1 of the operating license and issued an order approving the indirect transfer of the ownership interest of EUA Power Corporation. The order was contingent on the transfer of control being completed no later than February 15, 1994, and included the provision that upon application and showing of good cause, the order may be extended for a short period beyond February 15, 1994.

On February 3, 1994, North Atlantic Energy Service Corporation, through their counsel Ropes & Grey, filed an application requesting extension of the order until June 30, 1994, and identified the reasons why the transfer of control can not be completed by February 15, 1994. In that application, North Atlantic Energy Service Corporation asserts that the sole obstacle to final implementation of the Plan of Reorganization has been the difficulty with completing the contemplated $45 million credit facility for the source of funds to cover Great Bay Power Corporation's cash requirements. As an alternative to this credit facility, the bondholders have reached an agreement in principle with Omega Advisors that provides for an investment of $35 million by Omega Advisors in exchange for 60 percent equity of Great Bay Power Corporation. This agreement, reached on February 2, 1994, is a modification to the Plan of Reorganization and requires supplemental disclosure to the creditors and reconfirmation by the Bankruptcy Court.

On the basis of the information provided in North Atlantic Energy Service Corporation's application (Ropes and Grey letter dated February 3, 1994), I find that there is good cause to extend the expiration date of the Order Approving Transfer of License dated August 16, 1993.

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201 et seq., and 10 CFR 50.80, *it is hereby ordered that:* The Order Approving Transfer of License dated August 16, 1993, is modified to change the latest date for completion of the transfer, as specified in section III of the August 16, 1993, Order, to June 30, 1994. The Order of August 16, 1993, except as modified herein, remains in effect.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 15th day of February, 1994.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94-3977 Filed 2-22-94; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Application and Claim for RUIA Benefits Unpaid at Death.

(2) *Form(s) submitted:* UI-63.

(3) *OMB number:* 3220-0055.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 375.

(9) *Total annual responses:* 375.

(10) *Average time per response:* .06100 hours.

(11) *Total annual reporting hours:* 23.

(12) *Collection description:* The collection obtains the information needed by the Railroad Retirement Board to pay, under section 2(g) of the RUIA, benefits under that Act accrued, but not paid because of the death of employee.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 94-3953 Filed 2-22-94; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF STATE

[Public Notice 1949]

Garnishment of Federal Employees Wages for Payment of Debt

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is giving notice that all requests for payments pursuant to court-ordered garnishments as authorized under section 9 of Public Law No. 103-94, Hatch Act Reform Amendments of 1993, for all employees of the Department of State shall be submitted to the Executive Director (L/EX), Office of the Legal Adviser, Department of State, room 5519A, 22nd and C Streets NW., Washington, DC 20520, (202) 647-8323. This is the same agent designated for service of garnishments under 5 CFR part 581.

The Executive Director of the Office of the Legal Adviser, Department of State, is not authorized to accept requests for payments pursuant to court-ordered garnishments for employees of any other Federal agency, and any such requests submitted will be returned.

EFFECTIVE DATE: February 23, 1994.

ADDRESSES: Comments regarding this notice should be sent to the Assistant Legal Adviser for Legislation and General Management (L/LM), Office of the Legal Adviser, Department of State, room 5425, 22nd and C Streets NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila McCoy at (202) 647-7359.

SUPPLEMENTARY INFORMATION: Congress has authorized the garnishment of Federal civilian employees' wages for debts pursuant to section 9 of Public Law 103-94, Hatch Act Reform Amendments of 1993. The applications and orders and legal issues related thereto will be reviewed by the Office of the Legal Adviser.

Dated: February 9, 1994.

Mary Beth West,

Assistant Legal Adviser for Legislation and General Management.

[FR Doc. 94-3948 Filed 2-22-94; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Special Committee 162 Twenty-First Meeting; Aviation Systems Design Guidelines for Open Systems Interconnection (OSI); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 162 meeting to be held March 29-31, starting at 9:30 a.m. The meeting will be held at the Stanford Telecom (STEL): Steve VanTrees, Phone: (703) 438-8014.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the summary of the twentieth meeting held May 12-13, 1993. RTCA Paper No. 276-93/SC162-166 (previously distributed); (3) Reports of Related Activities being conducted by other organizations; (5) Review and plan the activity of Working Group 1, "ATN MASPS & Router MOPS."; (6) Plan the activity of Working Group 2, "Rewrite DO-205, Part 1."; (7) Review industry systems management activity; (8) Other business; (9) Date and place of next meeting. (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 15, 1994.

Note: The First Day, March 29, the SC-162 plenary will meet. The following two days, March 30-31, will be a working session to begin drafting the avionics router MOPS. The meeting will be held at STEL for all three days.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94-4001 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-P

RTCA, Inc., Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 135 meeting to be held March 10–11, starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the summary of the twenty-first meeting in September 1993; (3) Review changes proposed for Section 21; (4) Review changes proposed for Section 20 (SC135 HIRF WG and EUROCAE WG33); (5) Review changes proposed for Section 22 (AEAL and EUROCAE WG31); (6) Review changes proposed for Section 8; (7) MOPS/TSO Process and DO-160; (8) Review changes proposed for all other sections in sequence; (9) EEHWG review status; (10) Review milestones for D–160/ED–14 revision "D" completion; (11) Other business; (12) Date and place of next meeting. (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 15, 1994.

Joyce J. Gillen,

Designated Officer

[FR Doc. 94–4002 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Mountain Loop, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway construction project on Forest Highway 7 between Darrington and Silverton, otherwise known as Mountain Loop, in the Mount Baker-Snoqualmie National Forest, Snohomish County, Washington.

FOR FURTHER INFORMATION CONTACT: Allan Stockman, Environmental Engineer, or Edrie Vinson, Environmental Specialist, Federal Highway Administration, Western Federal Lands Highway Division, 610 East Fifth Street, Vancouver, Washington 98661–3893. Telephone: (206) 696–7952.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the U.S. Forest Service, the Washington State Department of Transportation, and Snohomish County, will prepare an Environmental Impact Statement on a proposal to construct the Mountain Loop Highway, Forest Highway 7, in the Mount Baker-Snoqualmie National Forest between White Chuck River, east of Darrington to Barlow Pass, which is east of Silverton. The proposed highway would connect State Route 530 with State Route 92, completing a recreational and scenic highway loop along the South Fork and the Sauk Rivers in the Cascade Range. The proposal would involve reconstruction of an existing unimproved road to two lane paved surface. The total length is about 22.5 km (14 miles). The highway is considered necessary to accommodate recreational traffic and a developing tourism industry. The recreational loop is access to three wilderness areas, a Wild and Scenic river, a National Scenic Byway, hiking trails, camping facilities, and fishing opportunities. The road is seasonally open. Heavy snows close the road during most winters.

Alternatives under construction include: No action; road closure; build on existing alignment; construct an Elliott Creek bypass; and construct a single lane couplet around the Elliot Creek slide. Various lane widths will be analyzed with the build alternatives.

Announcements describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. These will also be sent to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. Public scoping meetings will be held in Granite Falls, Darrington, and a location between Lynwood and Everett. Public notices will be given on the dates, times, and places of all the meetings.

It is important that the full range of issues related to this proposed action be identified, all reasonable alternatives be considered, and significant impacts be thoroughly analyzed. To ensure this, comments and suggestions are invited from all interested parties. Comments, suggestions, and/or questions concerning this proposed action and the EIS should be directed to the FHWA at the address and phone number provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 11, 1994.

James N. Hall,

Division Engineer, Vancouver, Washington.

[FR Doc. 94–4027 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Entrance to Aspen, State Highway 82, Pitkin County, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed transportation improvements in Pitkin County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald A. Speral, Design/Environmental Coordinator, FHWA Colorado Division, 555 Zang Street, room 250, Lakewood, CO 80228, Telephone: (303) 969–6730, ext. 368.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Colorado Department of Transportation, Pitkin County, the City of Aspen, and Town of Snowmass Village, will prepare draft and final environmental impact statements for transportation improvements for the area of S.H. 82 known locally as the "Entrance To Aspen", including potential transit improvements to Snowmass Village. The proposed improvements involve the S.H. 82 corridor from about MP 38.80 (Tiehack Ski area) to MP 42.00 (7th and Main Street), a distance of approximately 3.20 miles.

Transportation improvements to the area are considered necessary to provide for the existing and future travel demand. Also, included in this proposal is a transit/multi-modal center located between Brush Creek and Aspen and fixed guideway alternatives. Alternatives under consideration include: The Do-Nothing alternative; Improving the existing highway; Upgrading the highway with additional lanes in either the existing location or new alignments; fixed guideway: transit enhancements and/or a combination of several modes/types.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held during the development of the draft and final EIS. In addition, a public hearing will be held after the draft EIS is issued for public comment. Public notices will give the time and place of the scheduled meetings and hearings. A formal scoping meeting will also be held to ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified. Comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Transportation Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: February 14, 1994.

Ronald A. Speral,

Design/Environmental Coordinator, Lakewood.

[FR Doc. 94–4025 Filed 2–22–94; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Annual List of Nonconforming Vehicles Determined To Be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Annual list of nonconforming vehicles determined to be eligible for importation.

SUMMARY: This notice lists all vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards that have been determined, as of December 31, 1993, to be eligible for importation into the United States.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION: Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act, (15 U.S.C. 1381 *et seq.*) (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless the Secretary of Transportation has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified vehicle, a vehicle that does not conform to all applicable Federal motor vehicle safety standards may be admitted into the United States if the Secretary determines that the safety features of the vehicle comply with, or are capable of being modified to comply with, those standards based on destructive test data or such other evidence that the Secretary determines to be adequate.

Section 108(c)(3)(C)(I) of the Act, 15 U.S.C. 1397(c)(3)(C)(i), authorizes the Secretary of Transportation to make import eligibility determinations "(I) on the petition of any registered importer or any manufacturer, or (II) on the Secretary's own initiative." The Secretary's authority to make these determinations has been delegated to the Administrator of NHTSA under 49 CFR 1.50(a). The Administrator redelegated to the Associate Administrator for Enforcement the authority to grant or deny petitions for import eligibility determinations submitted by motor vehicle manufacturers and registered importers (49 CFR 501.8(g)(3)). Thus far, a number of import eligibility determinations have been made on the Administrator's own initiative, and the Associate Administrator has granted many petitions for such determinations submitted by registered importers.

Section 108(c)(3)(C)(iv) of the Act, 15 U.S.C. 1397(c)(3)(C)(iv), requires the annual publication in the Federal Register of a list of all such determinations. That list is set forth in Annex A and is current as of December 31, 1993.

Each vehicle on the list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility determination must write that number on the Form HS–7 accompanying entry to indicate that the vehicle is eligible for importation. "VSA" eligibility numbers are assigned to all vehicles that are determined to be eligible for importation on the initiative of the Administrator. "VSP" eligibility numbers are assigned to vehicles that are determined to be eligible under section 108(c)(3)(C)(i)(I) of the Act, based on a petition from a manufacturer or registered importer which establishes that a substantially similar U.S.-certified vehicle exists. "VCP" eligibility numbers are assigned to vehicles that are determined to be eligible under section 108(c)(3)(C)(i)(II) of the Act, based on a petition from a manufacturer or registered importer which establishes that the vehicle has safety features that comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards. Vehicles for which eligibility determinations have been made are listed in Annex A alphabetically by make. Eligible models within each make are listed numerically by "VSA," "VSP," or "VCP" number.

Section 108(i) of the Act, 15 U.S.C. 1397(i), provides that "any motor vehicle that is 25 or more years old" is not subject to the Act's importation restrictions. Such vehicles may therefore be imported into the United States without regard to their compliance with applicable Federal motor vehicle safety standards. Since the importation of a vehicle more than 25 years old is not conditioned on the existence of an eligibility determination, NHTSA has amended its eligibillty determinations so that they no longer apply to such vehicles.

Authority: 15 U.S.C. 1397(c)(3)(C)(iv); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 15, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

ANNEX A.—VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

VSA#	
1	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989; (b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, which are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208;

ANNEX A.—VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS—Continued

(c) All multipurpose passenger vehicles, trucks, and buses less than 25 years old that were manufactured before September 1, 1991;
(d) All multipurpose passenger vehicles, trucks, and buses manufactured on and after September 1, 1991, by their original manufacturer to comply with the requirements of FMVSS No. 202 and 208 to which they would have been subject had they been manufactured for sale in the United States; and
(e) All trailers and motorcycles less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

	Model type	Model year
	Acura	
VSP No. 51	Legend	1988.
	Alfa Romeo	
VSP No. 44	Spider	1972.
	BMW	
VSA No. 2	1600	1969 through 1971.
3	2002	1969 through 1976.
4	2000 and 2000A	1969.
5	2500 and 2500A	1969 through 1970.
6	2800 and 2800A	1969 through 1971.
7	2002A	1970 through 1976.
8	2800CS and 2800CSA	1970 through 1971.
9	2.8 and 2.8A Bavaria	1971.
10	2002Tii	1972 through 1974.
11	3.0 and 3.0A Bavaria	1972.
12	3.0CSi and 3.0CSiA	1972 through 1974.
13	3.0S and 3.0SA	1974.
14	3.0Si and 3.0SiA	1975.
15	530i and 530iA	1975 through 1978.
16	320, 320i, and 320iA	1976 through 1985.
17	630CSi 630CSiA	1977.
18	633CSi and 633CSiA	1977 through 1984.
19	733i and 733iA	1977 through 1984.
20	528i and 528iA	1979 through 1984.
21	528e and 528eA	1982 through 1988.
22	533i and 533iA	1983 through 1984.
23	318i and 318iA	1981 through 1989.
24	325e and 325eA	1984 through 1987.
25	535i and 535iA	1985 through 1989.
26	524tdA	1985 through 1986.
27	635, 635CSi, and 635CSiA	1979 through 1989.
28	735, 735i, and 735iA	1980 through 1989.
29	L7	1986 through 1987.
30	325, 325i, 325iA, and 325E	1985 through 1989.
31	325 is and 325isA	1987 through 1989.
32	M6	1987 through 1988.
33	325iX and 325iXA	1988 through 1989.
34	M5	1988.
35	M3	1988 through 1989.
66	316	1978 through 1982.
67	323i	1978 through 1985.
68	520 and 520i	1978 through 1983.
69	525 and 525i	1979 through 1982.
70	728 and 728i	1977 through 1985.
71	730, 730i, and 730iA	1978 through 1980.
72	732i	1980 through 1984.
73	745i	1980 through 1986.
78	All other models except those in the M1 and Z1 series	1969 through 1989.
	BMW	
VSP No. 4	518i	1986.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

	Model type	Model year
5	525i	1989.
6	730iA	1988.
9	520iA	1989.
10	850i	1991.
14	728i	1986.
15	625CSi	1981.
24	730i	1991.
25	316	1986.
32	628CSi	1980.
41	750iL	1993.
46	518i	1991.
55	850i	1993.
	BMW Motorcycle	
VSP No. 30	R75/6	1974.
	Bristol Bus	
VCP No. 4	VRT Bus—Double Decker	1977.
	Citroen	
VCP No. 1	XM	1990 through 1992.
	Honda Motorcycle	
VSP No. 34	VFR750	1990.
	Ferrari	
VSA No. 36	308 (all models)	1974 through 1985.
37	328 GTS	1985 through 1989.
37	328 (all other models)	1985 and 1988 through 1989.
38	GTO	1985.
39	Testarossa	1987 through 1989.
74	Mondial (all models)	1980 through 1989.
76	208, 208 Turbo (all models)	1974 through 1988.
	Jaguar	
VSA No. 40	XJS	1980 through 1987.
41	XJ6	1970 through 1986.
	Jaguar	
VSP No. 47	XJ6	1987.
	Jaguar Daimler	
VSP No. 12	Limousine	1985.
	Laverda Motorcycle	
VSP No. 37	1000	1975.
	Mazda	
VSA No. 42	RX7	1978 through 1981.

	Model type	Model ID	Model year
	Mercedes Benz		
VSA No.			
43	600	100.012	1969 through 1981.
43	600 Long 4dr	100.014	1969 through 1981.
43	600 Landaulet	100.015	1969 through 1981.
43	600 Long 6dr	100.016	1969 through 1981.
44	280 SLC	107.022	1975 through 1981.
44	350 SLC	107.023	1972 through 1979.
44	450 SLC	107.024	1973 through 1989.
44	380 SLC	107.025	1981 through 1989.
44	500 SLC	107.026	1978 through 1981.
44	300 SL	107.041	1986 through 1988.
44	280 SL	107.042	1969 through 1985.
44	350 SL	107.043	1971 through 1978.
44	450 SL	107.044	1972 through 1989.
44	380 SL	107.045	1980 through 1989.
44	500 SL	107.046	1980 through 1989.
44	420 SL	107.047	1986.
44	560 SL	107.048	1986 through 1989.
45	280 S	108.016	1969 through 1972.
45	280 SE	108.018	1969 through 1972.
45	280 SEL	108.019	1969 through 1972.
45	280 SE (3.5)	108.057	1970 through 1973.
45	280 SEL (3.5)	108.058	1972 through 1973.
45	280 SE (4.5)	108.067	1970 through 1972.
45	280 SEL (4.5)	108.068	1972.
46	300 SEL	109.016	1969 through 1972.
46	300 SEL (6.3)	109.018	1969 through 1972.
46	300 SEL (4.5)	109.057	1972.
47	280S E Coupe	111.024	1969 through 1971.
47	280 SE Conv.	111.025	1969 through 1971.
47	280 SE 3.5 Cp	111.026	1971.
47	280 SE 3.5 Cv	111.026	1971.
48	230 SL	113.042	1969 through 1971.
48	250 SL	113.043	1969 through 1971.
48	280 SL	113.044	1969 through 1971.
49	230.6	114.015	1969 through 1976.
49	250	114.010	1969 through 1976.
49	250	114.011	1971 through 1976.
49	250 CE	114.022	1970 through 1976.
49	250 C	114.023	1970 through 1976.
49	280	114.060	1972 through 1976.
49	280 E	114.062	1972 through 1976.
49	280 CE	114.072	1972 through 1976.
49	280 C	114.073	1972 through 1976.
50	200	115.015	1976.
50	230.4	115.017	1974 through 1976.
50	220 D	115.110	1969 through 1976.
50	240 D (3.0)	115.114	1974 through 1976.
50	240 D	115.117	1974 through 1976.
51	280 S	116.020	1973 through 1980.
51	280 SE	116.024	1972 through 1988.
51	280 SEL	116.025	1972 through 1980.
51	350 SE	116.028	1973 through 1980.
51	350 SEL	116.029	1972 through 1980.
51	450 SE	116.032	1972 through 1980.
51	450 SEL	116.033	1972 through 1988.
51	450 SEL (6.9)	116.036	1972 through 1988.
52	200	123.020	1976 through 1980.
52	230	123.023	1976 through 1985.
52	250	123.026	1976 through 1985.
52	280	123.030	1976 through 1985.
52	280 E	123.033	1976 through 1985.
52	230 C	123.043	1978 through 1980.
52	280 C	123.050	1977 through 1980.
52	280 CE	123.053	1977 through 1985.
52	230 T	123.083	1977 through 1985.
52	280 TE	123.093	1977 through 1985.
52	200 D	123.120	1980 through 1982.
52	240 D	123.123	1977 through 1985.
52	300 D	123.130	1976 through 1985.
52	300 D	123.133	1977 through 1985.
52	300 CD	123.150	1978 through 1985.

	Model type	Model ID	Model year
52	240 TD	123.183	1977 through 1985.
52	300 TD	123.193	1977 through 1985.
52	200	123.220	1979 through 1985.
52	230 E	123.223	1977 through 1985.
52	230 CE	123.243	1980 through 1984.
52	230 TE	123.283	1977 through 1985.
53	280 S	126.021	1980 through 1983.
53	280 SE	126.022	1980 through 1985.
53	280 SEL	126.023	1980 through 1985.
53	300 SE	126.024	1985 through 1989.
53	300 SEL	126.025	1986 through 1989.
53	380 SE	126.032	1979 through 1989.
53	380 SEL	126.033	1980 through 1989.
53	420 SE	126.034	1985 through 1989.
53	420 SEL	126.035	1986 through 1989.
53	500 SE	126.036	1980 through 1986.
53	500 SEL	126.037	1980 through 1989.
53	560 SEL	126.039	1986 through 1989.
53	380 SE	126.043	1982 through 1989.
53	500 SEC	126.044	1981 through 1989.
53	560 SEC	126.045	1986 through 1989.
53	300 SD	126.120	1981 through 1989.
54	190	201.022	1984.
54	190 E (2.3)	201.024	1983 through 1989.
54	190 E	201.028	1986 through 1989.
54	190 E (2.6)	201.029	1986 through 1989.
54	190 E 2.3 16	201.034	1984 through 1989.
54	190 D (2.2)	201.122	1984 through 1989.
54	190 D	201.126	1984 through 1989.
55	200	124.020	1985.
55	230 E	124.023	1985 through 1987.
55	260 E	124.026	1985 through 1989.
55	300 E	124.030	1985 through 1989.
55	300 CE	124.050	1988 through 1989.
55	230 TE	124.083	1985.
55	300 TE	124.090	1986 through 1989.
55	300 D	124.130	1985 and 1986.
55	300 D Turbo	124.133	1985 through 1989.
55	300 TD Turbo	124.193	1986 through 1989.
77	All other models except Model ID 114 and 115 with sales designations "long," "station wagon," or "ambulance."		1969 through 1989.

	Mercedes Benz		
VSP No.			
1	230 E	124.023	1988.
2	230 TE	124.083	1989.
3	200 TE	124.081	1989.
7	300SL	107.041	1989.
11	200E	124.021	1989.
17	200D	124.120	1986.
18	260SE	126.020	1986.
19	230E	124.023	1990.
20	230E	124.023	1989.
21	300SEL	126.025	1990.
22	190E	201.024	1990.
23	500SEL	129.066	1989.
26	500SE	140.050	1991.
27	600SEL	140.057	1992.
28	260SE	126.020	1989.
31	250C	114.021	1970.
33	500SL	129.066	1991.
35	500SE	126.036	1988.
36	300SEL	109.056	1970.
38	250C	114.021	1969.
40	300TE	124.090	1990.
45	190E	201.024	1991.
48	420SEL	126.035	1990.
50	500SE	140.050	1992.
54	300SL	129.006	1992.

	Model type	Model ID	Model year
	Mercedes-Benz		
VCP No. 3	300GE	463.228	1993.

	Model type	Model year
	Mitsubishi	
VSP No. 8	Galant VX	1989.
13	Galant SUP	1989.
	Nissan	
VSA No. 75	Z and 280Z	1973 through 1981.
75	Fairlady and Fairlady Z	1975 through 1979.
	Porsche	
VSA No. 56	911 Coupe	1969 through 1989.
56	911 Targa	1969 through 1989.
56	911 Turbo	1976 through 1989.
56	911 Cabriolet	1984 through 1989.
56	911 Carrera	1972 through 1989.
57	912 Coupe	1969 through 1969.
57	912 Targa	1969 through 1969.
57	912 Karmann	1969 through 1969.
58	914	1970 through 1976.
59	924 Coupe	1976 through 1989.
59	924 Turbo Coupe	1979 through 1989.
59	924 S	1987 through 1989.
60	928 Coupe	1976 through 1989.
60	928 S Coupe	1983 through 1989.
60	928 S4	1979 through 1989.
60	928 GT	1979 through 1989.
61	944 Coupe	1982 through 1989.
61	944 Turbo Coupe	1985 through 1989.
61	944 S Coupe	1987 through 1989.
79	All other models except Model 959	1969 through 1989.
	Porsche	
VSP No. 29	911 C4	1990.
	Rolls Royce	
VSA No. 62	Silver Shadow	1970 through 1979.
	Rolls Royce	
VSP No. 16	Bentley	1989.
	Toyota	
VSA No. 63	Camry	1987 through 1988.
64	Celica	1987 through 1988.
65	Corolla	1987 through 1988.
	Toyota	
VSP No. 39	Camry	1989.

	Model type	Model year
	Volkswagen	
VSA No. 42	Scirocco	1986.
	Volkswagen	
VSP No. 49	911 "Beetle"	1969.
	Volvo	
VSP No. 43	262C	1981.

[FR Doc. 94-3941 Filed 2-22-94; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC-17; OTS No. 02811]

The Long Island Savings Bank, FSB, Melville, NY; Approval of Conversion Application

Notice is hereby given that on February 14, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of The Long Island Savings Bank, FSB, Melville, New York, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: February 16, 1994.

By the Office of Thrift Supervision,

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-3973 Filed 2-22-94; 8:45 am]
BILLING CODE 6720-01-M

[AC-15; OTS No. 00013]

Perpetual Savings Bank, FSB, Cedar Rapids, IA; Approval of Conversion Application

Notice is hereby given that on February 10, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Perpetual Savings Bank, FSB, Cedar Rapids, Iowa, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: February 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-3971 Filed 2-22-94; 8:45 am]
BILLING CODE 6720-01-M

[AC-16; OTS No. 03384]

Princeton Federal Savings & Loan Association, Princeton, KY; Approval of Conversion Application

Notice is hereby given that on February 10, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Princeton Federal Savings and Loan Association, Princeton, Kentucky, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: February 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-3972 Filed 2-22-94; 8:45 am]
BILLING CODE 6720-01-M

[AC-14; OTS No. 01386]

Southern Missouri Savings Bank, Poplar Bluff, MO; Approval of Conversion Application

Notice is hereby given that on February 10, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Southern Missouri Savings Bank, Poplar Bluff, Missouri; convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: February 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-3970 Filed 2-22-94; 8:45 am]
BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records—Means Test Verification Records—VA (89VA161)

AGENCY: Department of Veterans Affairs.

ACTION: Notice of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of the systems of records. Accordingly, the Department of Veterans Affairs (VA) published a notice of its inventory of personal records on September 27, 1977 (42 FR 49726). Notice is hereby given that VA is adding a new system of

records entitled "Means Test Verification Records" (89VA161).

DATES: Interested persons are invited to submit written comments, suggestions, or objections regarding the routine uses in this new system of records. All relevant materials received before March 25, 1994, will be considered. All written comments received will be available for public inspection in Room 170 of the address given below between Monday through Friday (except holidays) until April 4, 1994.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the Federal Register by VA, the routine uses are effective March 25, 1994.

ADDRESSES: Written comments concerning the proposed routine uses may be mailed to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Celia Winter, Program Analyst, Income Verification Match Program (161B/IVM), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 535–7437.

SUPPLEMENTARY INFORMATION: Public Law 99–272, the Veterans Health Care Amendments of 1986, as amended by Public Law 100–322, established two categories of eligibility for VA health care: "mandatory and discretionary." In order to determine the category assignment of nonservice-connected veterans, new eligibility assessment procedures, including the means test, were developed. The means tested is based on income information provided by the nonservice-connected veteran. It was developed to ensure that the most needy nonservice-connected veterans would be placed in the mandatory care category based on limited family income. The law provided VA no legislative authority to verify the self-reported income.

In November 1990, Public Law 101–508, the Omnibus Budget Reconciliation Act (OBRA), provided VA the authority to verify income data reported to VA by nonservice-connected veterans with income records obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Section 602, Public Law 102–568 extended VA's matching authority through September 1997. The law has three requirements for VA: (1) Notification to veterans that means test financial information report to VA is subject to verification with IRS and SSA records; (2) No steps may be taken to terminate, deny, suspend, or reduce any benefit or service until appropriate steps have been taken to independently verify the information received; and (3) Development and implementation of a VA income verification matching program be funded from the VA Compensation and Pension appropriation.

The Income Verification Match (IVM) Center was developed to conduct and administer the computer matching of Veterans Health Administration income data with IRS and SSA income records. Due to stringent IRS security regulations and codes, the process of matching the income of the veteran will be accomplished through a stand-alone automated data processing program with verification activities centralized at the IVM Center. The IVM Center is located in Decatur, Georgia.

Matching agreements have been established between the Veterans Health Administration and the IRS and SSA for verifying income of nonservice-connected veterans for appropriate years. The IVM Program will adhere to require VA security and reporting requirements in accordance with Title 38, Code of Federal Regulations, and other Federal regulations, as well as 5 U.S.C. 552a, the Privacy Act, and 26 U.S.C. 6103, the Internal Revenue Code. This new system of records is being established for IVM records to identify the types of information being extracted and utilized for IVM and means tested verification, how the data will be used and to describe he limited access to this data.

Approved: February 8, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

89VA161

SYSTEM NAME:

Means Test Verification Records—VA.

SYSTEM LOCATION:

All paper and electronic records are maintained at the Income Verification Match (IVM) Center, 1842 Clairmont Road, Decatur, Georgia 30033.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Nonservice-connected veterans who have applied for health care services under Title 38, United States Code, Chapter 17, and in certain cases, members of their immediate families.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical benefit application and eligibility information obtained from the "Patient Medical Record—VA" (24VA136) system of records. Identifying information including name, address, date of birth, social security number, current eligibility category, family information including spouse and dependent(s) name, address, social security number; employment information on veteran and spouse including occupation, employer(s) name(s) and address(es); financial information including family income, assets, expenses, debts; and third-party health plan contract information including health insurance carrier name and address, policy number and time period covered by policy; facility location(s) where treatment is provided, type of treatment provided, i.e., inpatient or outpatient and length of stay or number of visits. Documents generated as a result of income verification by computer match with records from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) and during the notification, verification and due process periods including initial verification letters, income verification forms, income difference/final letters, non-receipt/final letters, final confirmation letters, confirmation/due process letters, non-receipt confirmation letters, clarification letters, and all subpoena documentation. All forms of individual correspondence generated during the process or provided to the IVM Center by match participants including, but not limited to, copies of death certificates, discharge certificates, DD 214, Notice of Separation, disability award letters, Internal Revenue Service documents (i.e., form 1040's, W–2's, etc.), State Welfare and Food Stamp applications, VA and other pension applications, VA forms 10–10, Application for Medical Benefits, and 10–10F, Financial Worksheet, workers compensation forms, various annual earnings statements as well as pay stubs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, sections 501(a); 5317 and 7304.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 26 U.S.C. 6103(p)(4), i.e., the taxpayer's identity, and the nature, source and amount of income, that information cannot be disclosed under a Routine Use until such information has been independently verified with the individual to whom it pertains pursuant to 5 U.S.C. 552a(p).

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the written request of that individual.

2. Disclosure of IVM records, as deemed necessary and proper to named individuals serving as accredited service organization representatives and other individuals named as approved agents or attorneys for a documented purpose and period of time, to aid beneficiaries in the preparation and presentation of their cases during the verification and/or due process procedures and in the presentation and prosecution of claims under laws administered by the Department of Veterans Affairs.

3. In the event that information in this system of records maintained by this agency to carry out its functions, indicates a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or a particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

4. Relevant information from this system of records may be disclosed as a routine use: In the course of presenting evidence to a court, magistrate or administrative tribunal, in matters of guardianship, inquests and commitments; to private attorneys representing veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with Court required duties.

5. Any information in this system may be disclosed to a VA Federal fiduciary or a guardian ad litem in relation to his or her representation of a veteran only to the extent necessary to fulfill the duties of the VA Federal fiduciary or the guardian ad litem.

6. Relevant information may be disclosed to attorneys, insurance companies, employers, third parties, liable or potentially liable under health plan contracts, and to courts, boards, or commissions, such disclosures may be made only to the extent necessary to aid the Department of Veterans Affairs in the preparation, presentation, and prosecution of claims authorized under Federal, State, or local laws, and regulations promulgated thereunder.

7. Relevant information may be disclosed to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal Agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

8. Disclosure may be made to NARA (National Archives and Records Administration) GSA (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

9. Information in this system of records, may be disclosed for the purposes identified below to a third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by the Department of Veterans Affairs. Information may be disclosed under this routine use only to the extent that it is reasonably necessary for the following purposes: (a) To assist the VA in the collection of costs of services provided individuals not entitled to such services; and (b) to initiate civil or criminal legal actions for collecting amounts owed to the United States and/or for prosecuting individuals who willfully or fraudulently obtained or seek to obtain title 38 medical benefits. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

10. The name and address of a veteran, other information as is reasonably necessary to identify such veteran, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the veteran's indebtedness to the United States by virtue of the person's participation in a benefits program administered by the VA may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

11. For computer matching program and ADP security review purposes, record information may be disclosed to teams from other source Federal agencies who are parties to computer matching agreements involving the information maintained in this system, but only to the extent that the information is necessary and relevant to the review.

12. The name and identifying information on a veteran and/or spouse may be provided to reported payers of earned and/or unearned income in order to verify the identifier provided, address, income paid, period of employment, and health insurance information provided on the means test and to confirm income and demographic data provided by other Federal agencies during income verification computer matching.

13. Identifying information, including social security numbers, concerning veterans, their spouses, and the dependents of veterans may be disclosed to other Federal agencies for purposes of conducting computer matches to obtain valid identifying, demographic and income information to determine or verify eligibility of certain veterans who are receiving VA medical care under Title 38, United States Code.

14. The name and social security number of a veteran, spouse and dependents, and other identifying information as is reasonably necessary may be disclosed to the Social Security Administration, Department of Health and Human Services, for the purpose of conducting a computer match to obtain information to validate the social security numbers maintained in VA records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records (or information contained in records) are maintained on paper documents, and/or in an automated imaging system database at the Income Verification Match (IVM) Center, 1842 Clairmont Road, Decatur, Georgia 30033.

RETRIEVABILITY:

IVM records are retrieved by the names and social security numbers or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to working spaces and record storage areas at the Income Verification Match (IVM) Center is restricted to IVM employees on a "need-to-know" basis. Strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle.

2. All means test data downloaded from DHCP (Decentralized Hospital Computer Program) files as well as all incoming Internal Revenue Service (IRS) and Social Security Administration (SSA) tapes are received directly by the IVM ADP Division. The IRS and SSA tapes are placed into the IVM vault until the data is required for matching, at which time it is loaded on the IVM Computer System. Once the tapes are read-in, they are returned to the vault. Federal tax data is not co-mingled with

or transcribed into data maintained on the IVM Computer System. The data will reside within its own area of the computer system. Federal tax data must be protected according to the provisions of section 6103(p) of the Internal Revenue Code (Title 26, U.S.C.). It is mandatory that IVM employees review the IRS security awareness tapes and VA computer security tapes on a yearly basis.

3. The IVM Computer System supplies security access levels for all areas within the IVM Software Module. Security access levels are maintained not only on the IRS and SSA data elements themselves, but on initial access to the system (log-on procedures), menu options available, automatic shut-down when the system has not had a response in a predetermined period of time, etc. Access to the computer system is controlled by access and verify codes assigned by the IVM ADP Security Officer. The entire procedure is outlined in the IVM ADP Security Policy.

4. The office space occupied by the IVM ADP Division is in a secured area with only one access door. The door has been equipped with a punch-combination lock and an electronic card entry system. The card entry system logs every entrance and exit to the IVM space. The entry system log is programmed to provide a screen display of employees located in the IVM space as well as capturing entry and exit activity in a report format for any given period of time.

5. There are no field offices that will be receiving tax return information from IVM.

RETENTION AND DISPOSAL:

Paper records and information stored on electronic storage media are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States. After the data on each IRS and SSA tape has been validated as being a true copy of the original data, the tapes are held in the vault for thirty (30) days prior to destruction, either by degaussing or shredding. Any printed reports will be shredded prior to disposal.

SYSTEM MANAGERS(S) AND ADDRESS:

Official responsible for policies and procedures: Director, Administrative Services Office (161), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. Officials maintaining the system: Director, IVM Center, 1842 Clairmont Road, Decatur, Georgia 30033.

NOTIFICATION PROCEDURE

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the IVM Center. All inquiries must reasonably identify the records requested. Inquiries should include the individual's full name, social security number and return address.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of IVM records may write to the IVM Center.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The patient, the patient's spouse, family members or accredited representative(s), and friends, employers and other payers of earned income, financial institutions and other payers of unearned income, other Federal Agencies, and the "Patient Medical Records—VA" (24 VA 136) system of records, Veterans Benefits Administration Target System (BINQ, HINQ, etc.).

[FR Doc. 94–3942 Filed 2–22–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 36

Wednesday, February 23, 1994.

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, February 23, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Date: February 17, 1994.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 94–4157 Filed 2–18–94; 2:14 pm]

BILLING CODE 6355–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: March 8, 1994, 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street NW., Washington, DC 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes.
2. Report to the Commission—Office of Equal Employment Opportunity.
3. Proposed Enforcement Guidance on *Harris* v. *Forklift Sys., Inc.*
4. Proposed Enforcement Guidance: Cases under the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. sec. 621 *et seq.*, Challenging Employment Actions Taken on the Basis of a Factor that may be Empirically Correlated with, but not Directly Tied to, Age.

Closed Session

Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4077 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: February 18, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 94–4158 Filed 2–18–94; 2:15 pm]

BILLING CODE 6750–06–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Thursday, February 17, 1994.

PLACE: 11th Floor, 1730 K Street NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Prabhu Deshetty*, Docket No KENT 92–549. [Issues include whether the judge erred in finding that Mr. Deshetty knowingly authorized, ordered, or carried out a violation of 30 CFR 75.400 within the meaning of 30 U.S.C. § 820(c).)

It was determined by the Commission that this item be included on the agenda in closed session and that no earlier announcement of the addition of this matter to the previously scheduled meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–4159 Filed 2–18–94; 2:16 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, February 28, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding two Federal Reserve Banks' renovation projects.
2. Proposed upgrade of electrical distribution system within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 18, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–4214 Filed 2–18–94; 3:28 pm]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 3:30 p.m., Monday, February 28, 1994.

PLACE: International Ballroom Center, Washington Hilton Hotel, 1919 Connecticut Avenue NW., Washington, DC 20009, (202) 483–3000.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Proposed Rule: Amendments to Section 701.32, NCUA's Rules and Regulations, Nonmember Deposits.
3. Final Rule: Amendments to and Extension of Effective Date of Part 707, NCUA's Rules and Regulations, Truth in Savings.
4. Semiannual Agenda of Regulations.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–4225 Filed 2–18–94; 3:47 pm]

BILLING CODE 7535–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1 p.m. on Monday, March 7, 1994, and at 8:30 a.m. on Tuesday, March 8, 1994, in Washington, DC. The March 7 meeting, at which the Board will discuss preparations for the rate case filing (See 59 FR 7300, February 14, 1994) is closed to the public.

The March 8 meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

AGENDA

Monday Session

March 7—1 p.m. (Closed)

1. Consideration of Rate Case Filing. (Messrs. Riley, Porras, Heselton, Foucheaux and Mses. Elcano and Sonnenberg)

Tuesday Session

March 8—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, February 7–8, 1994.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Report on Reduction in Theft of Credit Cards. (Kenneth J. Hunter, Chief Postal Inspector)
4. Briefing on Flat Sorting Machines. (William J. Dowling, Vice President, Engineering)
5. Tentative Agenda for the April 4–5, 1994, meeting in Chicago, Illinois.

David F. Harris,

Secretary.

[FR Doc. 94–4150 Filed 2–18–94; 11:54 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 21, 1994.

An open meeting will be held on Wednesday, February 23, 1994, at 10 a.m., in Room 1C30. Closed meetings will be held on Wednesday, February 23, 1994, following the 10 a.m. open meeting and on Wednesday, February 23, 1994, at 4 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b (c)(4), (8), (9)(A) and (10) and 17 CFR 200.402 (a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, February 23, 1994, at 10:00 a.m., will be:

The Commission will hear oral argument on an appeal by Albert Vincent O'Neal, branch manager of the Fort Worth, Texas office of Dean Witter Reynolds, Inc., from an administrative law judge's initial decision. For further information, contact Richard E. Connor at (202) 272–3981.

The subject matter of the closed meeting scheduled for Wednesday, February 23, 1994, following the 10:00 a.m. open meeting will be:

Post oral argument discussion.

The subject matter of the closed meeting scheduled for Wednesday, February 23, 1994, at 4:00 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Regulatory matters regarding financial institutions.
Openions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Ramsay (202) 272–2100.

Dated: February 17, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4139 Filed 2–18–94; 11:08 am]

BILLING CODE 8010–01–M

Corrections

Federal Register

Vol. 59, No. 36

Wednesday, February 23, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117, 302, and 355

[SW H–FRL–4792–6]

Reportable Quantity Adjustments

Correction

In proposed rule document 93-25930 beginning on page 54836 in the issue of Friday, October 22, 1993, make the following corrections:

1. On page 54837, in the 2nd column, in the 1st partial paragraph, in the 16th line, "if" should read "is".

2. On the same page, in the third column, in the first full paragraph, in the second line, "expressed" should read "expressing".

3. On page 54839, in the second column, in the second full paragraph, in the seventh line, " "xylene ' (mixed)", " should read " "xylene (mixed)", ".

§ 302.4 [Corrected]

4. On page 54842, in Table 302.4, in the entry for Dimethylformamide, in the last column Pounds (kg), "(4.45)" should read "(4.54)".

5. On page 54843, in the first column Hazardous substance, the entry "Unlisted Hazardous Wastes Characteristics." should read "Unlisted Hazardous Wastes Characteristics:".

6. On page 54844, in the first column Hazardous substance, in the entry for K090, in the third line, "ferrochromium" should read "ferrochromiumsilicon".

7. On page 54845, in appendix A to § 302.4, in the second column Hazardous substance, "o-Xylene" should appear beneath the entry for Benzene, o-dimethyl.

8. On page 54846, in table 302.4, "Antimony and Compounds" should read "ANTIMONY AND COMPOUNDS" in the following places:

a. In the first column Hazardous substance, in the first entry where it appears.

b. In the third column Regulatory synonyms, in the second entry where it appears.

9. On pages 54846, 54857, 54858, and 54861, "Polychlorinated Biphenyls" should read "POLYCHLORINATED BIPHENYLS" each place it appears.

10. On page 54847, "Arsenic and Compounds" should read "ARSENIC AND COMPOUNDS" in the following places:

a. In the first column, in the first entry where it appears.

b. In the third column, in the second entry where it appears.

11. On page 54848, "Beryllium and Compounds" should read "BERYLLIUM AND COMPOUNDS" in the following places:

a. In the first column, in the first entry where it appears.

b. In the third column, in the second entry where it appears.

12. On the same page, in the first column, "Beryllium and Compounds" should read "Beryllium Compounds" in the second entry where it appears.

13. On page 54849, "Cadmium and Compounds" should read "CADMIUM AND COMPOUNDS" in the following places:

a. In the first column, in the first entry where it appears.

b. In the third column, in the second entry where it appears.

14. On page 54850, in the first column, "Chromium and Compounds" should read "CHROMIUM AND COMPOUNDS".

15. On the same page, in the third column, "Chromium and Compounds" should read "Chromium Compounds".

16. On the same page, in the same column, "Chromium Compounds" should read "CHROMIUM AND COMPOUNDS".

17. On the same page, in the first and third columns, "Cyanides" should read "CYANIDES".

18. On the same page, in the first column, in the entry for Cyclohexane, in the second line, in the parenthetical expression, the asterisk should read "1", and "6" should be inserted before "β".

19. On page 54851, in the third column, the points should be commas in the following entries: 3rd, 8th, 9th, 12th, 13th, 14th, and 16th.

20. On the same page, in the same column, in the 15th entry, "Ethane," should read "Ethene,".

21. On the same page, in the same column, in the 17th entry, in the second line, the bracket should be an open parenthesis.

22. On page 54852, in the entry for 1,3′-Dichloropropene, in the last column, "1000(45.4)" should read "100(45.4)".

23. On the same page, in the entry for 3,3′-Dimethoxybenzidine, in the third column, in the first line, the plus sign should be a prime mark.

24. On page 54853, in the entry for Ethylbenzene, in the last column, "1000(45.4)" should read "1000(454)".

25. On page 54854, in the entry for Heptachlor, in the third column, in the third line, insert a hyphen after "-tetrahydro".

26. On the same page, in the entries for Hexachlorocyclohexane and Lindane, in the third column, in the first lines, "γ-BHC" should read "γ-BHC".

27. On the same page, "Lead and Compounds" should read "LEAD AND COMPOUNDS" in the following places:

a. In the first column, in the first entry where it appears.

b. In the third column, in the second entry where it appears.

28. On page 54855, in the entry for Lindane (all isomers), in the third column, in the fourth line, insert a closed parenthesis after "6β".

29. On the same page, "Mercury and Compounds" should read "MERCURY AND COMPOUNDS" in the following places:

a. In the first column, in the first entry where it appears.

b. In the third column, in the second entry where it appears.

30. On the same page, in the entry for Methane, bromo, in the third column, in the first line, "Bromomethane" was misspelled.

31. On the same page, in the entry for Methoxychlor, in the third column, in the second line, remove the point.

32. On page 54856, "Nickel and Compounds" should read "NICKEL AND COMPOUNDS" in the following places:

a. In the first column, in the first entry where it appears.

b. In the third column, in the second entry where it appears.

33. On page 54857, in the entry for Oxirane, in the third column, in the first line, remove the comma after "3" and insert a hyphen in its place.

34. On the same page, in the 1st column, in the 17th entry, in the 2nd line, "O-(4-nitropheny)" should read "O-(4-nitrophenyl)".

35. On page 54858, in the first column, in the third entry, remove the comma before "-dichloro-".

36. On the same page, in the entry for Quinone, in the third column, in the second line, "Cyclochexadiene" should read "Cyclohexadiene".

37. On the same page, in the first column, "Selenium and Compounds" should read "SELENIUM AND COMPOUNDS" in the first entry where it appears.

38. On page 54859, in the entry for Toxaphene, in the third column, in the first line, insert a hyphen after "octachloro".

39. On the same page, in the 1st column, in the 15th entry, "Trichloroethene" was misspelled.

40. On the same page, in the 3rd column, in the 17th entry, insert a comma after "Phenol".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-59331; FRL-4758-6]

Certain Chemicals; Approval of a Test Marketing Exemption

Correction

In notice document 94-3293 appearing on page 6641 in the issue of Friday, February 11, 1994, make the following correction:

In the second column, under **TME-94-4**, beginning in the third line, "(insert date 15 days after date of publication in the **Federal Register**)." should read "February 28, 1994."

BILLING CODE 1505-01-D

federal register

Wednesday
February 23, 1994

Part II

Department of Commerce

International Trade Administration

North American Free Trade Agreement: Rules of Procedure for Article 1904 Binational Panel Review; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement: Rules of Procedure for Article 1904 Binational Panel Reviews

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Rules of Procedure for NAFTA Article 1904 Binational Panel Reviews.

SUMMARY: Canada, Mexico, and the United States have negotiated the rules of procedure for Article 1904 binational panel reviews. These rules apply to binational panel proceedings conducted pursuant to Article 1904 of the North American Free Trade Agreement.

EFFECTIVE DATE: January 1, 1994, the date of the entry into force of the North American Free Trade Agreement ("Agreement"). These Rules of Procedure shall apply to all binational panel proceedings under the Agreement commenced on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, Senior Attorney, Stacy J. Ettinger, Attorney-Advisor, or Terrence J. McCartin, Attorney-Advisor, Office of the Chief Counsel for Import Administration, room B–099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0836, (202) 482–4618, or (202) 482–5031, respectively. For procedural matters involving cases under panel review, contact James R. Holbein, United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5438; fax: (202) 482–0148.

SUPPLEMENTARY INFORMATION:

Background

Chapter Nineteen of the North American Free Trade Agreement ("Agreement") establishes a mechanism for replacing judicial review of final antidumping and countervailing duty determinations involving imports from Canada, Mexico, or the United States with review by independent binational panels. If requested, these panels will expeditiously review final determinations to determine whether they are consistent with the antidumping or countervailing duty law of the importing country.

Title IV of the North American Free Trade Agreement Implementation Act of 1993, Public Law No. 103–182, 107 Stat. 2057, amends United States law to implement Chapter Nineteen of the Agreement.

The *NAFTA Article 1904 Panel Rules* are intended to give effect to the panel review provisions of Chapter Nineteen of the Agreement by setting forth the procedures for commencing, conducting, and completing panel reviews. These rules are the result of negotiations among Canada, Mexico, and the United States in compliance with the terms of the Agreement, and are derived in large part from the *Article 1904 Panel Rules* under the United States-Canada Free Trade Agreement.

North American Free Trade Agreement

Rules of Procedure for Article 1904 Binational Panel Reviews

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Preamble

The Parties,

Having regard to Chapter Nineteen of the North American Free Trade Agreement between Canada, the United Mexican States and the United States of America;

Acting pursuant to Article 1904.14 of the Agreement;

Adopt the following Rules of Procedure, which shall come into force on the same day as the Agreement enters into force and from that day shall govern all panel reviews conducted pursuant to Article 1904 of the Agreement.

Short Title

1. These rules may be cited as the *NAFTA Article 1904 Panel Rules.*

Statement of General Intent

2. These rules are intended to give effect to the provisions of Chapter Nineteen of the Agreement with respect to panel reviews conducted pursuant to Article 1904 of the Agreement and are designed to result in decisions of panels within 315 days after the commencement of the panel review. The purpose of these rules is to secure the just, speedy and inexpensive review of final determinations in accordance with the objectives and provisions of Article 1904. Where a procedural question arises that is not covered by these rules, a panel may adopt the procedure to be followed in the particular case before it by analogy to these rules or may refer for guidance to rules of procedure of a court that would otherwise have had jurisdiction in the importing country. In the event of any inconsistency between the provisions of these rules and the Agreement, the Agreement shall prevail.

Definitions and Interpretation

3. In these rules,

"Agreement" means the North American Free Trade Agreement;

"Code of Conduct" means the code of conduct established by the Parties pursuant to Article 1909 of the Agreement;

"complainant" means a Party or interested person who files a Complaint pursuant to rule 39;

"counsel" means

(a) with respect to a panel review of a final determination made in Canada, a person entitled to appear as counsel before the Federal Court of Canada,

(b) with respect to a panel review of a final determination made in Mexico, a person entitled to appear as counsel before the Tribunal Fiscal de la Federación, and

(c) with respect to a panel review of a final determination made in the United States, a person entitled to appear as counsel before a federal court in the United States;

"counsel of record" means a counsel referred to in subrule 21(1);

"Deputy Minister" means the Deputy Minister of National Revenue for Customs and Excise, or the successor thereto, and includes any person authorized to perform a power, duty or function of the Deputy Minister under the *Special Import Measures Act*, as amended;

"final determination" means, in the case of Canada, a definitive decision within the meaning of subsection 77.01(1) of the *Special Import Measures Act*, as amended;

"first Request for Panel Review" means

(a) where only one Request for Panel Review is filed for review of a final determination, that Request, and

(b) where more than one Request for Panel Review is filed for review of the same final determination, the Request that is filed first;

"government information" means

(a) with respect to a panel review of a final determination made in Canada, information

(i) the disclosure of which would be injurious to international relations or national defence or security,

(ii) that constitutes a confidence of the Queen's Privy Council for Canada, or

(iii) contained in government-to-government correspondence that is transmitted in confidence,

(b) with respect to a panel review of a final determination made in Mexico, information the disclosure of which is prohibited under the laws and regulations of Mexico, including

(i) data, statistics and documents referring to national security and strategic activities for scientific and technological development, and

(ii) information contained in government-to-government correspondence that is transmitted in confidence, and

(c) with respect to a panel review of a final determination made in the United States, information classified in accordance with Executive Order No. 12065 or its successor;

"interested person" means a person who, pursuant to the laws of the country in which a final determination was made, would be entitled to appear and be represented in a judicial review of the final determination;

"investigating authority" means the competent investigating authority that issued the final determination subject to review and includes, in respect of the issuance, amendment, modification or revocation of a Proprietary Information Access Order, any person authorized by the investigating authority;

"involved Secretariat" means the section of the Secretariat located in the country of an involved Party;

"legal holiday" means

(a) with respect to the Canadian Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Good Friday, Easter Monday, Victoria Day, Canada Day (July 1), Labour Day (first Monday in September), Thanksgiving Day (second Monday in October), Remembrance Day (November 11), Christmas Day (December 25), Boxing Day (December 26), any other day fixed as a statutory holiday by the Government of Canada or by the province in which the Section is located and any day on which the offices of the Canadian Section of the Secretariat are officially closed in whole or in part,

(b) With respect to the Mexican Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Constitution Day (February 5), Benito Juárez's Birthday (March 21), Labor Day (May 1), Battle of Puebla (May 5), Independence Day (September 16), Congressional Opening Day (November 1), Revolution Day (November 20), Transmission of the Federal Executive Branch (every six years on December 1), Christmas Day (December 25), any day designated as a statutory holiday by the Federal Laws or, in the case of Ordinary Elections, by the Local Electoral Laws and any day on which the offices of the Mexican Section of the Secretariat are officially closed in whole or in part, and

(c) with respect to the United States Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Martin Luther King's Birthday (third Monday in January), Presidents' Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), any day designated as a holiday by the President or the Congress of the United States and any day on which the offices of the Government of the United States located in the District of Columbia or the offices of the United States Section of the Secretariat are officially closed in whole or in part;

"Mexico" means the United Mexican States;

"official publication" means

(a) in the case of the Government of Canada, the *Canada Gazette*;

(b) in the case of the Government of Mexico, the *Diario Oficial de la Federación*, and

(c) in the case of the Government of United States, the **Federal Register**;

"panel" means a binational panel established pursuant to Annex 1901.2 to Chapter Nineteen of the Agreement for the purpose of reviewing a final determination;

"participant" means any of the following persons who files a Complaint pursuant to rule 39 or a Notice of Appearance pursuant to rule 40:

(a) a Party,

(b) an investigating authority, and

(c) an interested person;

"Party" means the Government of Canada, the Government of Mexico or the Government of the United States;

"person" means

(a) an individual,

(b) a Party,

(c) an investigating authority,

(d) a government of a province, state or other political subdivision of the country of a Party,

(e) a department, agency or body of a Party or of a government referred to in paragraph (d), or

(f) a partnership, corporation or association;

"pleading" means a Request for Panel Review, a Complaint, a Notice of Appearance, a Change of Service Address, a Notice of Motion, a Notice of Change of Counsel of Record, a brief or any other written submission filed by a participant;

"privileged information" means

(a) with respect to a panel review of a final determination made in Canada, information of the investigating authority that is subject to solicitor-client privilege under the laws of Canada, or that constitutes part of the deliberative process with respect to the final determination, and with respect to which the privilege has not been waived,

(b) with respect to a panel review of a final determination made in Mexico,

(i) information of the investigating authority that is subject to attorney-client privilege under the laws of Mexico, or

(ii) internal communications between officials of the Secretaría de Comercio y Fomento Industrial in charge of antidumping and countervailing duty

investigations or communications between those officials and other government officials, where those communications constitute part of the deliberative process with respect to the final determination, and

(c) with respect to a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States with respect to which the privilege has not been waived;

"proof of service" means

(a) with respect to a panel review of a final determination made in Canada or Mexico,

(i) an affidavit of service stating by whom the document was served, the date on which it was served, where it was served and the manner of service, or

(ii) an acknowledgement of service by counsel for a participant stating by whom the document was served, the date on which it was served and the manner of service and, where the acknowledgement is signed by a person other than the counsel, the name of that person followed by a statement that the person is signing as agent for the counsel, and

(b) with respect to a panel review of a final determination made in the United States, a certificate of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service;

"proprietary information" means

(a) with respect to a panel review of a final determination made in Canada, information referred to in subsection 84(3) of the *Special Import Measures Act*, as amended, or subsection 45(3) of the *Canadian International Trade Tribunal Act*, as amended, with respect to which the person who designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information,

(b) with respect to a panel review of a final determination made in Mexico, *información confidencial*, as defined under article 80 of the *Ley de Comercio Exterior* and its regulations, and

(c) with respect to a panel review of a final determination made in the United States, business proprietary information under section 777(f) of the *Tariff Act of 1930*, as amended, and any regulations made under that Act;

"Proprietary Information Access Application" means

(a) with respect to a panel review of a final determination made in Canada, a disclosure undertaking in the prescribed form, which form

(i) in respect of a final determination by the Deputy Minister, is available from the Deputy Minister, and

(ii) in respect of a final determination by the Tribunal, is available from the Tribunal,

(b) with respect to a panel review of a final determination made in Mexico, a disclosure undertaking in the prescribed form, which form is available from the Secretaría de Comercio y Fomento Industrial, and

(c) with respect to a panel review of a final determination made in the United States, a Protective Order Application

(i) in respect of a final determination by the International Trade Administration of the United States Department of Commerce, in a form prescribed by, and available from, the International Trade Administration of the United States Department of Commerce, and

(ii) in respect of a final determination by the United States International Trade Commission, in a form prescribed by, and available from, the United States International Trade Commission;

"Proprietary Information Access Order" means

(a) in the case of Canada, a Disclosure Order issued by the Deputy Minister or the Tribunal pursuant to a Proprietary Information Access Application,

(b) in the case of Mexico, a Disclosure Order issued by the Secretaría de Comercio y Fomento Industrial pursuant to a Proprietary Information Access Application, and

(c) in the case of the United States, a Protective Order issued by the International Trade Administration of the United States Department of Commerce or the United States International Trade Commission pursuant to a Proprietary Information Access Application;

"responsible Secretariat" means the section of the Secretariat located in the country in which the final determination under review was made;

"responsible Secretary" means the Secretary of the responsible Secretariat;

"Secretariat" means the Secretariat established pursuant to Article 2002 of the Agreement;

"Secretary" means the Secretary of the United States Section of the Secretariat, the Secretary of the Mexican Section of the Secretariat or the Secretary of the Canadian Section of the Secretariat and includes any person authorized to act on behalf of that Secretary;

"service address" means

(a) with respect to a Party, the address filed with the Secretariat as the service address of the Party, including any facsimile number submitted with that address,

(b) with respect to a participant other than a Party, the address of the counsel of record for the person, including any facsimile number submitted with that address or, where the person is not represented by counsel, the address set out by the participant in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the participant may be served, including any facsimile number submitted with that address, or

(c) where a Change of Service Address has been filed by a Party or participant, the address set out as the new service address in that form, including any facsimile number submitted with that address;

"service list" means, with respect to a panel review,

(a) where the final determination was made in Canada, a list comprising the other involved Party and

(i) in the case of a final determination made by the Deputy Minister, persons named on the list maintained by the Deputy Minister who participated in the proceedings before the Deputy Minister and who were exporters or importers of goods of the country of the other involved Party or complainants referred to in section 34 of the *Special Import Measures Act*, as amended, and

(ii) in the case of a final determination made by the Tribunal, persons named on the list maintained by the Tribunal of parties in the proceedings before the Tribunal who were exporters or importers of goods of the country of the other involved Party, complainants referred to in section 31 of the *Special Import Measures Act*, as amended, or other domestic parties whose interest in the findings of the Tribunal is with respect to goods of the country of the other involved Party, and

(b) where the final determination was made in Mexico or the United States, the list, maintained by the investigating authority of persons who have been served in the proceedings leading to the final determination;

"Tribunal" means the Canadian International Trade Tribunal or its successor and includes any person authorized to act on its behalf;

"United States" means the United States of America.

4. The definitions set forth in Article 1911 of the Agreement and Annex 1911 to Chapter Nineteen of the Agreement are hereby incorporated into these rules.

5. Where these rules require that notice be given, it shall be given in writing.

Part I—General

Duration and Scope of Panel Review

6. A panel review commences on the day on which a first Request for Panel Review is filed with the Secretariat and terminates on the day on which a Notice of Completion of Panel Review is effective.

7. A panel review shall be limited to

(a) the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review; and

(b) procedural and substantive defenses raised in the panel review.

Responsibilities of the Secretary

8. The normal business hours of the Secretariat, during which the offices of the Secretariat shall be open to the public, shall be from 9:00 a.m. to 5:00 p.m. on each weekday other than

(a) in the case of the United States Section of the Secretariat, legal holidays of that Section;

(b) in the case of the Canadian Section of the Secretariat, legal holidays of that Section; and

(c) in the case of the Mexican Section of the Secretariat, legal holidays of that Section.

9. The responsible Secretary shall provide administrative support for each panel review and shall make the arrangements necessary for the oral proceedings and meetings of each panel, including, if required, interpreters to provide simultaneous translation.

10. (1) Each Secretary shall maintain a file for each panel review. Subject to subrules (3) and (4), the file shall be comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these rules, in the panel review.

(2) The file number assigned to a first Request for Panel Review shall be the Secretariat file number for all documents filed or issued in that panel review. All documents filed shall be stamped by the Secretariat to show the date and time of receipt.

(3) Where, after notification of the selection of a panel pursuant to rule 42, a document is filed that is not provided for in these rules or that is not in accordance with the rules, the responsible Secretary may refer the unauthorized filing to the chairperson of the Panel for instructions, provided such authority has been delegated by the Panel to its chairperson pursuant to rule 17.

(4) On a referral referred to in subrule (3), the chairperson may instruct the responsible Secretary to

(a) retain the document in the file, without prejudice to a motion to strike such document; or

(b) return the document to the person who filed the document, without prejudice to a motion for leave to file the document.

11. The responsible Secretary shall forward to the other involved Secretary a copy of all documents filed in the office of the responsible Secretary in a panel review and of all orders and decisions issued by the panel.

12. Where under these rules a responsible Secretary is required to publish a notice or other document in the official publications of the involved Parties, the responsible Secretary and the other involved Secretary shall cause the notice or other document to be published in the official publication of the country in which that section of the Secretariat is located.

13. (1) Each Secretary and every member of the staff of the Secretariat shall, before taking up duties, file a Proprietary Information Access Application with each of the Deputy Minister, the Tribunal, the Secretaría de Comercio y Fomento Industrial, the International Trade Administration of the United States Department of Commerce and the United States International Trade Commission.

(2) Where a Secretary or a member of the staff of the Secretariat files a Proprietary Information Access Application in accordance with subrule (1), the appropriate investigating authority shall issue to the Secretary or to the member a Proprietary Information Access Order.

14. (1) The responsible Secretary shall file with the investigating authority one original, and any additional copies required by the investigating authority, of every Proprietary Information Access Application and any amendments or modifications thereto, filed by a panelist, assistant to a panelist, court reporter, interpreter or translator pursuant to rule 47.

(2) The responsible Secretary shall ensure that every panelist, assistant to a panelist, court reporter, interpreter and translator, before taking up duties in a panel review, files with the responsible Secretariat a copy of a Proprietary Information Access Order.

15. Where a document containing proprietary information or privileged information is filed with the responsible Secretariat, each involved Secretary shall ensure that

(a) the document is stored, maintained, handled and distributed in accordance with the terms of any applicable Proprietary Information Access Order;

(b) the inner wrapper of the document is clearly marked to indicate that it contains proprietary information or privileged information; and

(c) access to the document is limited to officials of, and counsel for, the investigating authority whose final determination is under review and

(i) in the case of proprietary information, the person who submitted the proprietary information to the investigating authority or counsel for that person and any persons who have been granted access to the information under a Proprietary Information Access Order with respect to the document, and

(ii) in the case of privileged information filed in a panel review of a final determination made in the United States, persons with respect to whom the panel has ordered disclosure of the privileged information under rule 52, if the persons have filed with the responsible Secretariat a Proprietary Information Access Order with respect to the document.

16. (1) Each Secretary shall permit access by any person to the information in the file in a panel review that is not proprietary information or privileged information and shall provide copies of that information on request and payment of an appropriate fee.

(2) Each Secretary shall, in accordance with subrule 15(c) and the terms of the applicable Proprietary Information Access Order or order of the panel,

(a) permit access to proprietary information or privileged information in the file of a panel review; and

(b) on payment of an appropriate fee, provide a copy of the information referred to in subrule (a).

(3) No document filed in a panel review shall be removed from the offices of the Secretariat except in the ordinary course of the business of the Secretariat or pursuant to the direction of a panel.

Internal Functioning of Panels

17. (1) A panel may adopt its own internal procedures, not inconsistent with these rules, for routine administrative matters.

(2) A panel may delegate to its chairperson

(a) the authority to accept or reject filings in accordance with subrule 10(4); and

(b) the authority to grant motions consented to by all participants, other than a motion filed pursuant to rule 20 or 52, a motion for remand of a final determination or a motion that is inconsistent with an order or decision previously made by the panel.

(3) A decision of the chairperson referred to in subrule (2) shall be issued as an order of the panel.

(4) Subject to subrule 26(b), meetings of a panel may be conducted by means of a telephone conference call.

18. Only panelists may take part in the deliberations of a panel, which shall take place in private and remain secret. Staff of the involved Secretariats and assistants to panelists may be present by permission of the panel.

Computation of Time

19. (1) In computing any time period fixed in these rules or by an order or decision of a panel, the day from which the time period begins to run shall be excluded and, subject to subrule (2), the last day of the time period shall be included.

(2) Where the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat, that day and any other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

20. (1) A panel may extend any time period fixed in these rules if

(a) adherence to the time period would result in unfairness or prejudice to a participant or the breach of a general legal principle of the country in which the final determination was made;

(b) the time period is extended only to the extent necessary to avoid the unfairness, prejudice or breach;

(c) the decision to extend the time period is concurred in by four of the five panelists; and

(d) in fixing the extension, the panel takes into account the intent of the rules to secure just, speedy and inexpensive reviews of final determinations.

(2) A participant may request an extension of time by filing a Notice of Motion no later than the tenth day prior to the last day of the time period. Any response to the Notice of Motion shall be filed no later than seven days after the Notice of Motion is filed.

(3) A participant who fails to request an extension of time pursuant to subrule (2) may file a notice of motion for leave to file out of time, which shall include reasons why additional time is required and why the participant has failed to comply with the provisions of subrule (2).

(4) The panel will normally rule on such a motion before the last day of the time period which is the subject of the motion.

Counsel of Record

21. (1) A counsel who signs a document filed pursuant to these rules on behalf of a participant shall be the counsel of record for the participant from the date of filing until a change is effected in accordance with subrule (2).

(2) A participant may change its counsel of record by filing with the responsible Secretariat a Notice of Change of Counsel of Record signed by the new counsel, together with proof of service on the former counsel and other participants.

Filing, Service and Communications

22. (1) Subject to subrule 46(1), rule 47 and subrules 52(3) and 73(2)(a), no document is filed with the Secretariat until one original and eight copies of the document are received by the responsible Secretariat during its normal business hours and within the time period fixed for filing.

(2) The responsible Secretariat shall accept, date and time stamp and place in the appropriate file every document submitted to the responsible Secretariat.

(3) Receipt, date and time stamping or placement in the file of a document by the responsible Secretariat does not constitute a waiver of any time period fixed for filing or an acknowledgement that the document has been filed in accordance with these rules.

23. The responsible Secretary shall be responsible for the service of

(a) Notices of Intent to Commence Judicial Review and Complaints on Each Party;

(b) Requests for Panel Review on the Parties, the investigating authority and the persons listed on the service list; and

(c) Notices of Appearance, Proprietary Information Access Orders granted to panelists, assistants to panelists, court reporters, interpreter or translators and any amendments or modifications thereto or notices of revocation thereof, decisions and orders of a panel, Notices of Final Panel Action and Notices of Completion of Panel Review on the participants.

24. (1) Subject to subrules (4) and (5), all documents filed by a participant, other than the administrative record, any supplementary remand record and any document required by rule 23 to be served by the responsible Secretary, shall be served by the participant on the counsel of record of each of the other participants, or where a participant is not represented by counsel, on the participant.

(2) A proof of service shall appear on, or be affixed to, all documents referred to in subrule (1).

(3) Where a document is served by expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the expedited delivery courier or expedited mail service.

(4) A document containing proprietary information or privileged information shall be filed and served under seal in accordance with rule 44, and shall be served only on

(a) the investigating authority; and

(b) participants who have been granted access to the proprietary information or privileged information under a Proprietary Information Access Order or an order of the panel.

(5) A complainant shall serve a Complaint on the investigating authority and on all persons listed on the service list.

25. Subject to subrule 26(a), a document may be served by

(a) delivering a copy of the document to the service address of the participant;

(b) sending a copy of the document to the service address of the participant by facsimile transmission or by expedited delivery courier or expedited mail service, such as express mail in the United States or Priority Post in Canada; or

(c) personal service on the participant.

26. Where proprietary information or privileged information is disclosed in a panel review to a person pursuant to a Proprietary Information Access Order, the person shall not

(a) file, serve or otherwise communicate the proprietary information or privileged information by facsimile transmission; or

(b) communicate the proprietary information or privileged information by telephone.

27. Service on an investigating authority does not constitute service on a Party and service on a Party does not constitute service on an investigating authority.

Pleadings and Simultaneous Translation of Panel Reviews in Canada

28. Rules 29 to 31 apply with respect to a panel review of a final determination made in Canada.

29. Either English or French may be used by any person or panelist in any document or oral proceeding.

30. (1) Subject to subrule (2), any order or decision including the reasons therefor, issued by a panel shall be made available simultaneously in both English and French where

(a) in the opinion of the panel, the order or decision is in respect of a question of law of general public interest or importance; or

(b) the proceedings leading to the issuance of the order or decision were conducted in whole or in part in both English and French.

(2) Where

(a) an order or decision issued by a panel is not required by subrule (1) to be made available simultaneously in English and French, or

(b) an order or decision is required by subrule (1)(a) to be made available simultaneously in both English and French but the panel is of the opinion that to make the order or decision available simultaneously in both English and French would occasion a delay prejudicial to the public interest or result in injustice or hardship to any participant, the order or decision, including the reasons therefor, shall be issued in the first instance in either English or French and thereafter at the earliest possible time in the other language, each version to be effective from the time the first version is effective.

(3) Nothing in subrule (1) or (2) shall be construed as prohibiting the oral delivery in either English or French of any order or decision or any reasons therefor.

(4) No order or decision is invalid by reason only that it was not made or issued in both English and French.

31. (1) Any oral proceeding conducted in both English and French shall be translated simultaneously.

(2) Where a participant requests simultaneous translation of oral proceedings in a panel review, the request shall be made as early as possible in the panel review and preferably at the time of filing a Complaint or Notice of Appearance.

(3) Where the chairperson of a panel is of the opinion that there is a public interest in the panel review, the chairperson may direct the responsible Secretary to arrange for simultaneous translation of any of the oral proceedings in the panel review.

Costs

32. Each participant shall bear the costs of, and those incidental to, its own participation in a panel review.

Part II—Commencement of Panel Review

Notice of Intent to Commence Judicial Review

33. (1) Where an interested person intends to commence judicial review of a final determination, the interested person shall

(a) where the final determination was made in Canada, publish a notice to that effect in the *Canada Gazette* and serve a Notice of Intent to Commence Judicial Review on both involved Secretaries and on all persons listed on the service list; and

(b) where the final determination was made in Mexico or the United States, within 20 days after the date referred to in subrule (3) (b) or (c), serve a Notice of Intent to Commence Judicial Review on

(i) both involved Secretaries,

(ii) the investigating authority, and

(iii) all persons listed on the service list.

(2) Where the final determination referred to in subrule (1) was made in Canada, the Secretary of the Canadian Section of the Secretariat shall serve a copy of the Notice of Intent to Commence Judicial Review on the investigating authority.

(3) Every Notice of Intent to Commence Judicial Review referred to in subrule (1) shall include the following information (model form provided in the Schedule):

(a) the information set out in subrules 55(1) (c) to (f);

(b) the title of the final determination for which judicial review is sought, the investigating authority that issued the final determination, the file number assigned by the investigating authority and, if the final determination was published in an official publication, the appropriate citation, including the date of publication; and

(c) the date on which the notice of the final determination was received by the other Party if the final determination was not published in an official publication.

Request for Panel Review

34. (1) A Request for Panel Review shall be made in accordance with the requirements of

(a) section 77.011 or 96.21 of the *Special Import Measures Act*, as amended, and any regulations made thereunder;

(b) section 516A of the *Tariff Act of 1930*, as amended, and any regulations made thereunder;

(c) section 404 of the United States *North American Free Trade Agreement Implementation Act* and any regulations made thereunder; or

(d) articles 97 and 98 of the *Ley de Comercio Exterior* and its regulations.

(2) A Request for Panel Review shall contain the following information (model form provided in the Schedule):

(a) the information set out in subrule 55(1);

(b) the title of the final determination for which panel review is requested, the investigating authority that issued the final determination, the file number assigned by the investigating authority and, if the final determination was published in an official publication, the appropriate citation;

(c) the date on which the notice of the final determination was received by the other Party if the final determination was not published in an official publication;

(d) where a Notice of Intent to Commence Judicial Review has been served and the sole reason that the Request for Panel Review is made is to require review of the final determination by a panel, a statement to that effect; and

(e) the service list, as defined in rule 3.

35. (1) On receipt of a first Request for Panel Review, the responsible Secretary shall

(a) forthwith forward a copy of the Request to the other involved Secretary;

(b) forthwith inform the other involved Secretary of the Secretariat file number; and

(c) serve a copy of the first Request for Panel Review on the persons listed on the service list together with a statement setting out the date on which the Request was filed and stating that

(i) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with rule 39 within 30 days after the filing of the first Request for Panel Review.

(ii) a Party, an investigating authority or other interested person who does not file a Complaint but who intends to participate in the panel review shall file a Notice of Appearance in accordance with rule 40 within 45 days after the filing of the first Request for Panel Review, and

(iii) the panel review will be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

(2) On the filing of a first Request for Panel Review, the responsible Secretary shall forthwith publish a notice of that Request in the official publications of the involved Parties, stating that a Request for Panel Review has been received and specifying the date on which the Request was filed, the final determination for which panel review is requested and the information set out in subrule (1)(c).

Joint Panel Reviews

36. (1) Subject to rule 37, where

(a) a panel is established to review a final determination made under paragraph 41(1)(a) of the *Special Import Measures Act*, as amended, with respect to particular goods of the United States or Mexico and a Request for Panel

Review of a final determination made under subsection 43(1) of that Act with respect to those goods is filed, or

(b) a panel is established to review a final determination made under section 705(a) or 735(a) of the *Tariff Act of 1930*, as amended, with respect to particular goods of Canada or Mexico and a Request for Panel Review of a final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed,

within 10 days after that Request is filed, a participant in the former panel review, the investigating authority in the latter panel review or an interested person listed in the service list of the latter panel review may file a motion in the former panel review requesting that both final determinations be reviewed jointly by one panel.

(2) Any participant in the former panel review, the investigating authority in the latter panel review or an interested person listed in the service list of the latter panel review who certifies an intention to become a participant in the latter panel review may, within 10 days after a motion is filed under subrule (1), file an objection to the motion, in which case the motion shall be deemed to be denied and separate panel reviews shall be held.

37. (1) Where a panel is established to review a final determination made under paragraph 41(1)(a) of the *Special Import Measures Act*, as amended, that applies with respect to particular goods of the United States or Mexico and a Request for Panel Review of a negative final determination made under subsection 43(1) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

(2) Where a panel is established to review a final determination made under section 705(a) or 735(a) of the *Tariff Act of 1930*, as amended, that applies with respect to particular goods of Canada or Mexico and a Request for Panel Review of a negative final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

38. (1) Subject to subrules (2) and (3), where final determinations are reviewed jointly pursuant to rule 36 or 37, the time periods fixed under these rules for the review of the final determination made under subsection 43(1) of the *Special Import Measures Act*, as amended, or section 705(b) or 735(b) of the *Tariff Act of 1930*, as amended, shall apply to the joint review, commencing with the date fixed for filing briefs pursuant to rule 57.

(2) Unless otherwise ordered by a panel as a result of a motion under subrule (3), where final determinations are reviewed jointly pursuant to rule 37, the panel shall issue its decision with respect to the final determination made under subsection 43(1) of the *Special Import Measures Act*, as amended, or section 705(b) or 735(b) of the *Tariff Act of 1930*, as amended, and where the panel remands the final determination to the investigating authority and the Determination on Remand is affirmative, the panel shall thereafter issue its decision with respect to the final determination made under paragraph 41(1)(a) of the *Special Import Measures Act*, as amended, or section 705(a) or 735(a) of the *Tariff Act of 1930*, as amended.

(3) Where the final determinations are reviewed jointly pursuant to rule 36 or 37, any participant may, unilaterally or with the consent of the other participants, request by motion that time periods, other than the time periods referred to in subrule (1), be fixed for the filing of pleadings, oral proceedings, decisions and other matters.

(4) A Notice of Motion pursuant to subrule (3) shall be filed no later than 10 days after the date fixed for filing Notices of Appearance in the review of the final determination made under subsection 43(1) of the *Special Import Measures Act*, as amended, or section 705(b) or 735(b) of the *Tariff Act of 1930*, as amended.

(5) Unless otherwise ordered by a panel, where the panel has not issued a ruling on a motion filed pursuant to subrule (3) within 30 days after the filing of the Notice of Motion, the motion shall be deemed denied.

Complaint

39. (1) Subject to subrule (3), any interested person who intends to make allegations of errors of fact or law, including challenges to the jurisdiction of the investigating authority, with respect to a final determination, shall file with the responsible Secretariat, within 30 days after the filing of a first Request for Panel Review of the final determination, a Complaint, together with proof of service on the investigating authority and on all persons listed on the service list.

(2) Every Complaint referred to in subrule (1) shall contain the following information (model form provided in the Schedule):

(a) the information set out in subrule 55(1);

(b) the precise nature of the Complaint, including the applicable standard of review and the allegations of errors of fact or law, including challenges to the jurisdiction of the investigating authority;

(c) a statement describing the interested person's entitlement to file a Complaint under this rule; and

(d) where the final determination was made in Canada, a statement as to whether the complainant

(i) intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) requests simultaneous translation of any oral proceedings.

(3) Only an interested person who would otherwise be entitled to commence proceedings for judicial review of the final determination may file a Complaint.

(4) Subject to subrule (5), an amended Complaint shall be filed no later than 5 days before the expiration of the time period for filing a Notice of Appearance pursuant to rule 40.

(5) An amended Complaint may, with leave of the panel, be filed after the time limit set out in subrule (4) but no later than 20 days before the expiration of the time period for filing briefs pursuant to subrule 57(1).

(6) Leave to file an amended Complaint may be requested of the panel by the filing of a Notice of Motion for leave to file an amended Complaint accompanied by the proposed amended Complaint.

(7) Where the panel does not grant a motion referred to in subrule (6) within the time period for filing briefs pursuant to subrule 57(1), the motion shall be deemed to be denied.

Notice of Appearance

40. (1) Within 45 days after the filing of a first Request for Panel Review of a final determination, the investigating authority and any other interested person who proposes to participate in the panel review and who has not filed a Complaint in the panel review shall file with the responsible Secretariat a Notice of Appearance containing the following information (model form provided in the Schedule):

(a) the information set out in subrule 55(1);

(b) a statement as to the basis for the person's claim of entitlement to file a Notice of Appearance under this rule;

(c) in the case of a Notice of Appearance filed by the investigating authority, any admissions with respect to the allegations set out in the Complaints;

(d) a statement as to whether appearance is made

(i) in support of some or all of the allegations set out in a Complaint under subrule 39(2)(b),

(ii) in opposition to some or all of the allegations set out in a Complaint under subrule 39(2)(b), or

(iii) in support of some of the allegations set out in a Complaint under subrule 39(2)(b) and in opposition to some of the allegations set out in a Complaint under subrule 39(2)(b); and

(e) where the final determination was made in Canada, a statement as to whether the person filing the Notice of Appearance

(i) intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) requests simultaneous translation of any oral proceedings.

(2) Any complainant who intends to appear in opposition to allegations set out in a Complaint under subrule 39(2)(b) shall file a Notice of Appearance containing the statements referred to in subrules (1)(b) and (1)(d)(ii) or (iii).

Record for Review

41. (1) The investigating authority whose final determination is under review shall, within 15 days after the expiration of the time period fixed for filing a Notice of Appearance, file with the responsible Secretariat

(a) nine copies of the final determination, including reasons for the final determination;

(b) two copies of an Index comprised of a descriptive list of all items contained in the administrative record, together with proof of service of the Index on all participants; and

(c) subject to subrules (3), (4) and (5), two copies of the administrative record.

(2) An Index referred to in subrule (1) shall, where applicable, identify those items that contain proprietary information, privileged information or government information by a statement to that effect.

(3) Where a document containing proprietary information is filed, it shall be filed under seal in accordance with rule 44.

(4) No privileged information shall be filed with the responsible Secretariat unless the investigating authority waives the privilege and voluntarily files the information or the information is filed pursuant to an order of a panel.

(5) No government information shall be filed with the responsible Secretariat unless the investigating authority, after having reviewed the government information and, where applicable, after having pursued appropriate review procedures, determines that the information may be disclosed.

Part III—Panels

Announcement of Panel

42. On the completion of the selection of a panel, the responsible Secretary shall notify the participants and the other involved Secretary of the names of the panelists.

Violation of Code of Conduct

43. Where a participant believes that a panelist or an assistant to a panelist is in violation of the Code of Conduct, the participant shall forthwith notify the responsible Secretary in writing of the alleged violation. The responsible Secretary shall promptly notify the other involved Secretary and the involved Parties of the allegations.

Part IV—Proprietary Information and Privileged Information

Filing or Service Under Seal

44. (1) Where, under these rules, a document containing proprietary information or privileged information is required to be filed under seal with the Secretariat or is required to be served under seal, the document shall be filed or served in accordance with this rule and, where the document is a pleading, in accordance with rule 56.

(2) A document filed or served under seal shall be

(a) bound separately from all other documents;

(b) clearly marked

(i) with respect to a panel review of a final determination made in Canada,

(A) in the case of a document containing proprietary information, "Proprietary", "Confidential", "De nature exclusive" or "Confidentiel", and

(B) in the case of a document containing privileged information, "Privileged" or "Protégé",

(ii) with respect to a panel review of a final determination made in Mexico,

(A) in the case of a document containing proprietary information, "Confidencial", and

(B) in the case of a document containing privileged information, "Privilegiada", and

(iii) with respect to a panel review of a final determination made in the United States,

(A) in the case of a document containing proprietary information, "Proprietary", and

(B) in the case of a document containing privileged information, "Privileged"; and

(c) contained in an opaque inner wrapper and an opaque outer wrapper.

(3) An inner wrapper referred to in subrule (2)(c) shall indicate

(a) that proprietary information or privileged information is enclosed, as the case may be; and

(b) the Secretariat file number of the panel review.

45. Filing or service of proprietary information or privileged information with the Secretariat does not constitute a waiver of the designation of the information as proprietary information or privileged information.

Proprietary Information Access Orders

46. (1) A counsel of record, or a professional retained by, or under the control or direction of, a counsel of record, who wishes disclosure of proprietary information in a panel review shall file a Proprietary Information Access Application with respect to the proprietary information as follows:

(a) with the responsible Secretariat, four copies; and

(b) with the investigating authority, one original and any additional copies that the investigating authority requires.

(2) A Proprietary Information Access Application referred to in subrule (1) shall be served

(a) where the Proprietary Information Access Application is filed before the expiration of the time period fixed for filing a Notice of Appearance in the panel review, on the persons listed in the service list; and

(b) in any other case, on all participants other than the investigating authority, in accordance with subrule 24(1).

47. (1) Every panelist, assistant to a panelist, court reporter, interpreter and translator shall, before taking up duties in a panel review, provide to the responsible Secretary a Proprietary Information Access Application.

(2) A panelist, assistant to a panelist, court reporter, interpreter or translator who amends or modifies a Proprietary Information Access Application shall provide the responsible Secretariat with a copy of the amendment or modification.

(3) Where the investigating authority receives, pursuant to subrule 14(1), a Proprietary Information Access Application or an amendment or modification thereto, the investigating authority shall issue a Proprietary Information Access Order, amendment or modification accordingly.

48. The investigating authority shall, within 30 days after a Proprietary Information Access Application is filed in accordance with subrule 46(1), serve on the person who filed the Proprietary Information Access Application

(a) a Proprietary Information Access Order; or

(b) a notification in writing setting out the reasons why a Proprietary Information Access Order is not issued.

49. (1) Where

(a) an investigating authority refuses to issue a Proprietary Information Access Order to a counsel of record or to a professional retained by, or under the control or direction of, a counsel of record, or

(b) an investigating authority issues a Proprietary Information Access Order with terms unacceptable to the counsel of record,

the counsel of record may file with the responsible Secretariat a Notice of Motion requesting that the panel review the decision of the investigating authority.

(2) Where, after consideration of any response made by the investigating authority referred to in subrule (1), the panel decides that a Proprietary Information Access Order should be issued or that the terms of a Proprietary Information Access Order should be modified or amended, the panel shall so notify counsel for the investigating authority.

(3) Where the final determination was made in the United States and the investigating authority fails to comply with the notification referred to in subrule (2), the panel may issue such orders as are just in the circumstances, including an order refusing to permit the investigating authority to make certain arguments in support of its case or striking certain arguments from its pleadings.

50. (1) Where a Proprietary Information Access Order is issued to a person in a panel review, the person shall file with the responsible Secretariat a copy of the Proprietary Information Access Order.

(2) Where a Proprietary Information Access Order is revoked, amended or modified by the investigating authority, the investigating authority shall provide to the responsible Secretariat and to all participants a copy of the Notice of Revocation, amendment or modification.

51. Where a Proprietary Information Access Order is issued to a person, the person is entitled

(a) to access to the document; and

(b) where the person is a counsel of record, to a copy of the document containing the proprietary information, on payment of an appropriate fee, and to service of pleadings containing the proprietary information.

Privileged Information

52. (1) A Notice of Motion for disclosure of a document in the administrative record identified as containing privileged information shall set out

(a) the reasons why disclosure of the document is necessary to the case of the participant filing the Notice of Motion; and

(b) a statement of any point of law or legal authority relied on, together with a concise argument in support of disclosure.

(2) Within 10 days after a Notice of Motion referred to in subrule (1) is filed, the investigating authority shall, if it intends to respond, file the following in response:

(a) an affidavit of an official of the investigating authority stating that, since the filing of the Notice of Motion, the official has examined the document and has determined that disclosure of the document would constitute disclosure of privileged information; and

(b) a statement of any point of law or legal authority relied on, together with a concise argument in support of non-disclosure.

(3) After having reviewed the Notice of Motion referred to in subrule (1) and any response filed under subrule (2), the panel may order

(a) that the document shall not be disclosed; or

(b) that the investigating authority file two copies of the document under seal with the responsible Secretariat.

(4) Where the panel has issued an order pursuant to subrule (3)(b), the panel shall select two panelists, one of whom shall be a lawyer who is a citizen of the country of one involved Party and the other of whom shall be a lawyer who is a citizen of the country of the other involved Party.

(5) The two panelists selected under subrule (4) shall

(a) examine the document *in camera;* and

(b) communicate their decision, if any, to the panel.

(6) The decision referred to in subrule (5)(b) shall be issued as an order of the panel.

(7) Where the two panelists selected under subrule (4) fail to come to a decision, the panel shall

(a) examine the document *in camera;* and

(b) issue an order with respect to the disclosure of the document.

(8) Where an order referred to in subrule (6) or (7) is to the effect that the document shall not be disclosed, the responsible Secretary shall return all copies of the document to the investigating authority by service under seal.

53. In a panel review of a final determination made in the United States, where, pursuant to rule 52, disclosure of a document is granted,

(a) the panel shall limit disclosure to

(i) persons who must have access in order to permit effective representation in the panel review,

(ii) persons, such as the Secretariat staff, court reporters, interpreters and translators, who must have access for administrative purposes in order to permit effective functioning of the panel, and

(iii) members of an Extraordinary Challenge Committee and their assistants who may need access pursuant to the *NAFTA Extraordinary Challenge Committee Rules;*

(b) the panel shall issue an order identifying by name and by title or position the persons who are entitled to access and shall allow for future access by new counsel of record and by members of an Extraordinary Challenge Committee and, as necessary, their assistants; and

(c) the investigating authority shall issue a Propriety Information Access Order with respect to that document in accordance with the order of the panel.

Violations of Proprietary Information Access Applications or Orders

54. Where a person alleges that the terms of a Proprietary Information Access Application or of a Proprietary Information Access Order have been violated, the panel shall refer the allegations to the investigating authority for investigation and, where applicable, the imposition of sanctions in accordance with section 77.034 of the *Special Import Measures Act*, as amended, section 777(f) of the *Tariff Act of 1930*, as amended, or article 93 of the *Ley de Comercio Exterior*.

Part V—Written Proceedings

Form and Content of Pleadings

55. (1) Every pleading filed in a panel review shall contain the following information:

(a) the title of, and any Secretariat file number assigned for, the panel review;

(b) a brief descriptive title of the pleading;

(c) the name of the Party, investigating authority or interested person filing the document;

(d) the name of counsel of record for the Party, investigating authority or interested person;

(e) the service address, as defined in rule 3; and

(f) the telephone number of the counsel of record referred to in subrule (d) or, where an interested person is not represented by counsel, the telephone number of the interested person.

(2) Every pleading filed in a panel review shall be on paper 8½ x 11 inches (216 millimetres by 279 millimeters) in size. The text of the pleading shall be printed, typewritten or reproduced legibly on one side only with a margin of approximately 1½ inches (40 millimetres) on the left-hand side with double spacing between each line of text, except for quotations of more than 50 words, which shall be indented and single-spaced. Footnotes, titles, schedules, tables, graphs and columns of figures shall be presented in a readable form. Briefs and appendices shall be securely bound along the left-hand margin.

(3) Every pleading filed on behalf of a participant in a panel review shall be signed by counsel for the participant or, where the participant is not represented by counsel, by the participant.

56. (1) Where a participant files a pleading that contains proprietary information, the participant shall file two sets of the pleading in the following manner:

(a) one set containing the proprietary information shall be filed under seal and

(i) with respect to a panel review of a final determination made in Canada, shall be labelled "Proprietary", "Confidential", "Confidentiel" or "De nature exclusive", with the top of each page that contains proprietary information marked with the word "Proprietary", "Confidential", "Confidentiel" or "De nature exclusive" and with the proprietary information enclosed in brackets,

(ii) with respect to a panel review of a final determination made in Mexico, shall be labelled "Confidencial", with the top of each page that contains proprietary information marked with the word "Confidencial" and with the proprietary information enclosed in brackets, and

(iii) with respect to a panel review of a final determination made in the United States, shall be labelled "Proprietary",

with the top of each page that contains proprietary information marked with the word "Proprietary" and with the proprietary information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing proprietary information shall be filed and

(i) with respect to a panel review of a final determination made in Canada, shall be labelled "Non-Proprietary", "Non-Confidential", "Non confidentiel" or "De nature non exclusive",

(ii) with respect to a panel review of a final determination made in Mexico, shall be labelled "No-confidencial", and

(iii) with respect to a panel review of a final determination made in the United States, shall be labelled "Non-Proprietary", with each page from which proprietary information has been deleted marked to indicate the location from which the proprietary information was deleted.

(2) Where a participant files a pleading that contains privileged information, the participant shall file two sets of the pleading in the following manner:

(a) one set containing the privileged information shall be filed under seal and

(i) with respect to a panel review of a final determination made in Canada, shall be labelled "Privileged" or "Protégé", with the top of each page that contains privileged information marked with the word "Privileged" or "Protégé" and with the privileged information enclosed in brackets,

(ii) with respect to a panel review of a final determination made in Mexico, shall be labelled "Privilegiada", with the top of each page that contains privileged information marked with the word "Privilegiada", and with the privileged information enclosed in brackets, and

(iii) with respect to a panel review of a final determination made in the United States, shall be labelled "Privileged", with each page from which proprietary information has been deleted marked to indicate the location from which the proprietary information was deleted.

(b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing privileged information shall be filed and

(i) with respect to a panel review of a final determination made in Canada, shall be labelled "Non-Privileged" or "Non protégé",

(ii) with respect to a panel review of a final determination made in Mexico, shall be labelled "No-privilegiada", and

(iii) with respect to a panel review of a final determination made in the United States, shall be labelled "Non-Privileged",

with each page from which privileged information has been deleted marked to indicate the location from which the privileged information was deleted.

Filing of Briefs

57. (1) Subject to subrule 38(1), every participant who has filed a Complaint under rule 39 or a Notice of Appearance with a statement under subrule 40(1)(d) (i) or (iii) shall file a brief, setting forth grounds and arguments supporting allegations of the Complaint no later than 60 days after the expiration of the time period fixed, under subrule 41(1), for filing the administrative record.

(2) Every participant who has filed a Notice of Appearance with a statement under subrule 40(1)(d) (ii) or (iii) shall file a brief setting forth grounds and arguments opposing allegations of a Complaint no later than 60 days after the expiration of the time period for filing of briefs referred to in subrule (1).

(3) Every participant who has filed a brief pursuant to subrule (1) may file a brief replying to the grounds and arguments set forth in the briefs filed pursuant to subrule (2) no later than 15 days after the expiration of the time period for filing of briefs referred to in subrule (2). Reply briefs shall be limited to rebuttal of matters raised in the briefs filed pursuant to subrule (2).

(4) An appendix containing authorities cited in all briefs filed under any of subrules (1) to (3) shall be filed with the responsible Secretariat within 10 days after the last day on which a brief under subrule (3) may be filed.

(5) Any number of participants may join in a single brief and any participant may adopt by reference any part of the brief of another participant.

(6) A participant may file a brief without appearing to present oral argument.

(7) Where a panel review of a final determination made by an investigating authority of the United States with respect to certain goods involves issues that may relate to the final determination of the other investigating authority with respect to those goods, the latter investigating authority may file an *amicus curiae* brief in the panel review in accordance with subrule (2).

Failure to File Briefs

58. (1) In respect of a panel review of a final determination made in the United States or Canada, where a participant fails to file a brief within the time period fixed and no motion pursuant to rule 20 is pending, on a motion of another participant, the panel may order that the participant who fails to file a brief is not entitled

(a) to present oral argument;

(b) to service of any further pleadings, orders or decisions in the panel review; or

(c) to further notice of the proceedings in the panel review.

(2) Where

(a) no brief is filed by any complainant or by any participant in support of any of the complainants

within the time periods established pursuant to these rules, and

(b) no motion pursuant to rule 20 is pending, the panel may, on its own motion or pursuant to the motion of a participant, issue an order to show cause why the panel review should not be dismissed.

(3) If, pursuant to an order under subrule (2), good cause is not shown, the panel shall issue an order dismissing the panel review.

(4) Where no brief is filed by an investigating authority, or by an interested person in support of the investigating authority, within the time period fixed in subrule 57(2), a panel may issue a decision referred to in rule 72.

Content of Briefs and Appendices

59. (1) Every brief filed pursuant to subrule 57 (1) or (2) shall contain information, in the following order, divided into five parts:

Part I:

(a) A table of contents; and

(b) A table of authorities cited:

The table of authorities shall contain references to all treaties, statutes and regulations cited, any cases primarily relied on in the briefs, set out alphabetically, and all other documents referred to except documents from the administrative record. The table of authorities shall refer to the page(s) of the brief where each authority is cited and mark, with an asterisk in the margin, those authorities primarily relied on.

Part II: A statement of the case:

(a) in the brief of a complainant or of a participant filing a brief pursuant to subrule 57(1), this Part shall contain a concise statement of the relevant facts;

(b) in the brief of an investigating authority or of a participant filing a brief pursuant to subrule 57(2), this Part shall contain a concise statement of the position of the investigating authority or the participant with respect to the statement of facts set out in the briefs referred to in paragraph (a), including a concise statement of other facts relevant to its case; and

(c) in all briefs, references to evidence in the administrative record shall be made by page and, where practicable, by line.

Part III: A statement of the issues:

(a) in the brief of a complainant or of a participant filing a brief pursuant to subrule 57(1), this Part shall contain a concise statement of the issues; and

(b) in the brief of an investigating authority or of a participant filing a brief pursuant to subrule 57(2), this Part shall contain a concise statement of the position of the investigating authority or the participant with respect to each issue relevant to its case.

Part IV: Argument:

This Part shall consist of the argument setting out concisely the points of law relating to the issues, with applicable citations to authorities and the administrative record

Part V: Relief:

This part shall consist of a concise statement precisely identifying the relief requested.

(2) Paragraphs in Parts I to V of a brief may be numbered consecutively.

(3) A reply brief filed pursuant to rule 57(3) shall include a table of contents and a table of authorities, indicating those principally relied upon in the argument.

Appendix to the Briefs

60. (1) Authorities referred to in the briefs shall be included in an appendix, which shall be organized as follows: a table of contents, copies of all treaty and statutory references, references to regulations, cases primarily relied on in the briefs, set out alphabetically, and all other documents referred to in the briefs except documents from the administrative record.

(2) The appendix required under subrule 57(4) shall be compiled by a participant who filed a brief under subrule 57(1) and who was so designated by all the participants who filed a brief. Each participant who filed a brief under subrule 57(2) shall provide the designated participant with a copy of each authority on which it primarily relied in its brief that was not primarily relied on in any other brief filed under subrule 57(1). Each participant who filed a brief under subrule 57(3) shall provide the designated participant with a copy of each authority on which it primarily relied in its brief that was not primarily relied on in briefs filed pursuant to subrule 57 (1) or (2).

(3) The costs for compiling the appendix shall be borne equally by all participants who file briefs.

Motions

61. (1) A motion shall be made by Notice of Motion in writing (model form provided in the Schedule) unless the circumstances make it unnecessary or impracticable.

(2) Every Notice of Motion, and any affidavit in support thereof, shall be accompanied by a proposed order of the panel (model form provided in the Schedule) and shall be filed with the responsible Secretariat, together with proof of service on all participants.

(3) Every Notice of Motion shall contain the following information:

(a) the title of the panel review, the Secretariat file number for that panel review and a brief descriptive title indicating the purpose of the motion;

(b) a statement of the precise relief requested;

(c) a statement of the grounds to be argued, including a reference to any rule, point of law or legal authority to be relied on, together with a concise argument in support of the motion; and

(d) where necessary, references to evidence in the administrative record identified by page and, where practicable, by line.

(4) The pendency of any motion in a panel review shall not alter any time period fixed in these rules or by an order or decision of the panel.

(5) A Notice of Motion to which all participants consent shall be entitled a Consent Motion.

62. Subject to subrules 20(2) and 76(5), unless the panel otherwise orders, a participant may file a response to a Notice of Motion within 10 days after the Notice of Motion is filed.

63. (1) A panel may dispose of a motion based upon the pleadings filed pertaining to the motion.

(2) The panel may hear oral argument or, subject to subrule 26(b), direct that a motion be heard by means of a telephone conference call with the participants.

(3) A panel may deny a motion before responses to the Notice of Motion have been filed.

64. Where a panel chooses to hear oral argument or, pursuant to subrule 63(2), directs that a motion be heard by means of a telephone conference call with the participants, the responsible Secretary shall, at the direction of the chairperson, fix a date, time and place for the hearing of the motion and shall notify all participants of the same.

Part VI—Oral Proceedings

Location

65. Oral proceedings in a panel review shall take place at the office of the responsible Secretariat or at such other location as the responsible Secretary may arrange.

Pre-hearing Conference

66. (1) A panel may hold a pre-hearing conference, in which case the responsible Secretary shall give notice of the conference to all participants.

(2) A participant may request that the panel hold a pre-hearing conference by filing with the responsible Secretariat a written request setting out the matters that the participant proposes to raise at the conference.

(3) The purpose of a pre-hearing conference shall be to facilitate the expeditious advancement of the panel review by addressing such matters as

(a) the clarification and simplification of the issues;

(b) the procedure to be followed at the hearing of oral argument; and

(c) any outstanding motions.

(4) Subject to subrule 26(b), a pre-hearing conference may be conducted by means of a telephone conference call.

(5) Following a pre-hearing conference, the panel shall promptly issue an order setting out its rulings with respect to the matters considered at the conference.

Oral Argument

67. (1) A panel shall commence the hearing of oral argument no later than 30 days after the expiration of the time period fixed under subrule 57(3) for filing reply briefs. At the direction of the panel, the responsible Secretary shall notify all participants of the date, time and place for the oral argument.

(2) Oral argument shall be subject to the time constraints set by the panel and shall, unless the panel otherwise orders, be presented in the following order:

(a) the complainants and any participant who filed a brief in support of the allegations set out in a Complaint or partly in support of the allegations set out in a Complaint and partly in opposition to the allegations set out in a Complaint;

(b) the investigating autbority and any participant who filed a brief in opposition to the allegations set out in a Complaint, other than a participant referred to in subrule (a); and

(c) argument in reply, at the discretion of the panel.

(3) If a participant fails to appear at oral argument, the panel may hear argument on behalf of the participants who are present. If no participant appears, the panel may decide the case on the basis of briefs.

(4) Oral argument on behalf of a participant on a motion or at a hearing shall be conducted by the counsel of record for that participant or, where the participant is an individual appearing *pro se*, by the participant.

(5) Oral argument shall be limited to the issues in dispute.

Subsequent Authorities

68. (1) A participant who has filed a brief may bring to the attention of the panel,

(a) at any time before the conclusion of oral argument, an authority that is relevant to the panel review;

(b) at any time after the conclusion of oral argument and before the panel has issued its decision,

(i) an authority that was reported subsequent to the conclusion of oral argument, or

(ii) with the leave of the panel, an authority that is relevant to the panel review and that came to the attention of counsel of record after the conclusion of oral argument, by filing with the responsible Secretariat a written request, setting out the citation of the decision or judgment, the page reference of the brief of the participant to which the decision or judgment relates and a concise statement, of no more than one page in length, of the relevance of the decision or judgment.

(2) A request referred to in subrule (1) shall be filed as soon as possible after the issuance of the decision or judgment by the court.

(3) Where a request referred to in subrule (1) is filed with the responsible Secretariat, any other participant may, within five days after the date on which the request was filed, file a concise statement, of no more than one page in length, in response.

Oral Proceedings in Camera

69. During that part of oral proceedings in which proprietary information or privileged information is presented, a panel shall not permit any person other than the following persons to be present:

(a) the person presenting the proprietary information or privileged information;

(b) a person who has been granted access to the proprietary information or privileged information under a Proprietary Information Access Order or an order of the panel;

(c) in the case of privileged information, a person as to whom the confidentiality of the privileged information has been waived; and

(d) officials of, and counsel for, the investigating authority.

Part VII—Decisions and Completions of Panel Reviews

Orders, Decisions and Terminations

70. The responsible Secretary shall cause notice of every decision of a panel issued pursuant to rule 72 to be published in the official publications of the involved Parties.

71. (1) Where a Notice of Motion requesting dismissal of a panel review is filed by a participant, the panel may issue an order dismissing the panel review.

(2) Where a Notice of Motion requesting termination of a panel review is filed by a participant and is consented to by all the participants, and an affidavit to that effect is filed, or where all participants file Notices of Motion requesting termination, the panel review is terminated and, if a panel has been appointed, the panelists are discharged.

72. A panel shall issue a written decision with reasons, together with any dissenting or concurring opinions of the panelists, in accordance with Article 1904.8 of the Agreement. The decision will normally be released by noon on the date of issuance.

Panel Review of Action on Remand

73. (1) An investigating authority shall give notice of the action taken pursuant to a remand of the panel by filing with the responsible Secretariat a Determination on Remand within the time specified by the panel.

(2) If, on remand, the investigating authority has supplemented the administrative record,

(a) the investigating authority shall file with the responsible Secretariat an Index listing each item in the supplementary remand record, and a copy of each non-privileged item listed in that Index, within five days after the date on which the investigating authority filed the Determination on Remand with the panel;

(b) any participant who intends to challenge the Determination on Remand shall file a written submission with respect to the Determination on Remand within 20 days after the date on which the investigating authority filed the Index and supplementary remand record; and

(c) any response to the written submissions referred to in subrule (b) shall be filed by the investigating authority, and by any participant supporting the investigating authority, within 20 days after the last day on which written submissions in opposition to the Determination on Remand may be filed.

(3) If, on remand, the investigating authority has not supplemented the record,

(a) any participant who intends to challenge the Determination on Remand shall file a written submission within 20 days after the date on which the investigating authority filed the Determination on Remand with the panel; and

(b) any response to the written submissions referred to in subrule (a) shall be filed by the investigating authority, and by any participant filing in support of the investigating authority, within 20 days after the last day on which such written submissions may be filed.

(4) In the case of a panel review of a final determination made in Mexico, where a participant who fails to file a brief under rule 57 files a written submission pursuant to subrule (2) or (3), the submission shall be disregarded by the panel.

(5) If no written submissions are filed under subrule (2)(b) or (3)(a) within the time periods established by these rules, and if no motion pursuant to rule 20 is pending, the panel shall, within 10 days after the later of the due date for such written submissions and the date of the denial of a motion pursuant to rule 20, issue an order affirming the investigating authority's Determination on Remand.

(6) Where a Determination on Remand is challenged, the panel shall issue a written decision pursuant to rule 72, either affirming the Determination on Remand or remanding it to the investigating authority, no later than 90 days after the Determination on Remand is filed.

74. In setting the date by which a Determination on Remand shall be due from the investigating authority, the panel shall take into account, among other factors,

(a) the date that any Determination on Remand with respect to the same goods is due from the other investigating authority; and

(b) the effect the Determination on Remand from the other investigating authority might have on the deliberations of the investigating authority with respect to the making of a final Determination on Remand.

Re-examination of Orders and Decisions

75. A clerical error in an order or decision of a panel, or an error in an order or decision of a panel arising from any accidental oversight, inaccuracy or omission, may be corrected by the panel at any time during the panel review.

76. (1) A participant may, within 10 days after a panel issues its decision, file a Notice of Motion requesting that the panel re-examine its decision for the purpose of correcting an accidental oversight, inaccuracy or omission, which shall set

(a) the oversight, inaccuracy or omission with respect to which the request is made;

(b) the relief requested; and

(c) if ascertainable, a statement as to whether other participants consent to the motion.

(2) The grounds for a motion referred to in subrule (1) shall be limited to one or both of the following grounds:

(a) that the decision does not accord with the reasons therefor; or

(b) that some matter has been accidentally overlooked, stated inaccurately or omitted by the panel.

(3) No Notice of Motion referred to in subrule (1) shall set out any argument already made in the panel review.

(4) There shall be no oral argument in support of a motion referred to in subrule (1).

(5) Except as the panel may otherwise order under subrule (6)(b), no participant shall file a response to a Notice of Motion filed pursuant to subrule (1).

(6) Within seven days after the filing of a Notice of Motion under subrule (1), the panel shall

(a) issue a decision ruling on the motion; or

(b) issue an order identifying further action to be taken concerning the motion.

(7) A decision or order under subrule (6) may be made with the concurrence of any three panelists.

Part VIII—Completion of Panel Review

77. (1) Subject to subrule (2), when a panel issues:

(a) an order dismissing a panel review under subrule 58(3) or 71(1),

(b) a decision under rule 72 or subrule 73(6) that is the final action in the panel review, or

(c) an order under subrule 73(5), the panel shall direct the responsible Secretary to issue a Notice of Final Panel Action (model form provided in the Schedule) on the eleventh day thereafter.

(2) Where a motion is filed pursuant to subrule 76(1) regarding a decision referred to in subrule (1)(b), the responsible Secretary shall issue the Notice of Final Panel Action on the day on which the panel

(a) issues a ruling finally disposing of the motion; or

(b) directs the responsible Secretary to issue the Notice of Final Panel Action, the issuance of which shall constitute a denial of the motion.

78. If no Request for an Extraordinary Challenge Committee is filed, the responsible Secretary shall publish a Notice of Completion of Panel Review in the official publications of the involved Parties, effective.

(a) on the day on which a panel is terminated pursuant to subrule 71(2); or

(b) in any other case, on the 31st day following the date on which the responsible Secretary issues a Notice of Final Panel Action.

79. Where a Request for an Extraordinary Challenge Committee has been filed, the responsible Secretary shall publish a Notice of Completion of Panel Review in the official publications of the involved Parties, effective on the day after the day referred to in rule 64 or subrule 65(a) of the *NAFTA Extraordinary Challenge Committee Rules*.

80. Panelists are discharged from their duties on the day on which a Notice of Completion of Panel Review is effective, or on the day on which an Extraordinary Challenge Committee vacates a panel review pursuant to subrule 65(b) of the *NAFTA Extraordinary Challenge Committee Rules*.

Stays and Suspensions

81. Where a panelist becomes unable to fulfill panel duties, is disqualified or dies, panel proceedings and the running of time periods shall be suspended, pending the appointment of a substitute panelist in accordance with the procedures set out in Annex 1901.2 to Chapter Nineteen of the Agreement.

82. Where a panelist is disqualified, dies or otherwise becomes unable to fulfill panel duties, after the oral argument, the chairperson may order that the matter be reheard, on such terms as are appropriate, after selection of a substitute panelist.

83. (1) A Party may make a request, pursuant to Article 1905.11(a)(ii) of the Agreement, that an ongoing panel review be stayed by filing the request with the responsible Secretariat.

(2) A Party who files a request under subrule (1) shall forthwith give written notice of the request to the other involved Party and to the other involved Secretariat.

(3) On receipt of a request under subrule (1), the responsible Secretary shall

(a) immediately give written notice of the stay of the panel review to all participants in the panel review; and

(b) publish a notice of the stay of the panel review in the official publications of the involved Parties.

84. On receipt of a report containing an affirmative finding with respect to a ground specified in Article 1905.1 of the Agreement, the responsible Secretary for panel reviews referred to in Article 1905.11(a)(i) of the Agreement shall

(a) immediately give notice in writing to all participants in those reviews; and

(b) publish a notice of the affirmative finding in the official publications of the involved Parties.

85. (1) A Party who intends to suspend the operation of Article 1904 of the Agreement pursuant to Article 1905.8 or 1905.9 of the Agreement shall endeavour to give written notice of that intention to the other involved Party and to the involved Secretaries at least five days prior to the suspension.

(2) On receipt of a notice under subrule (1), the involved Secretaries shall publish a notice of the suspension in the official publications of the involved Parties.

Schedule—Procedural Forms

Forms (1) through (7) follow.

Form (1)

Article 1904 Binational Panel Review Pursuant to the North American Free Trade Agreement

In the matter of:

_____

(Title of Final Determination)

Notice of Intent to Commence Judicial Review

Pursuant to Article 1904 of the North American Free-Trade Agreement, notice is hereby served that

_____

(interested person filing notice)

intends to commence judicial review in the

_____

(name of the court)

of the final determination referenced below. The following information is provided pursuant to Rule 33 of the *NAFTA Article 1904 Panel Rules:*

1. _____
(The name of the interested person filing this notice)
2. _____
(The name of counsel for the interested person, if any)
3. _____
_____
(The service address, as defined by Rule 3 of the *NAFTA Article 1904 Panel Rules*, including facsimile number, if any)
4. _____
(The telephone number of counsel for the interested person or the telephone number of the interested person, if not represented by counsel)
5. _____
(The title of the final determination for which notice of intent to commence judicial review is served)
6. _____
(The investigating authority that issued the final determination)
7. _____
(The file number of the investigating authority)
8. (a) _____
(The citation and date of publication of the final determination in the **Federal Register**, *Canada Gazette* or *Diario Oficial de la Federación*); or
(b) _____
(If the final determination was not published, the date notice of the final determination was received by the other Party)

_____

Date

_____

Signature of Counsel (or interested person, if not represented by counsel)

Form (2)

Article 1904 Binational Panel Review Pursuant to the North American Free-Trade Agreement

In the matter of:

_____

(Title of Panel Review)

Secretariat File No. _____

Request for Panel Review

Pursuant to Article 1904 of the North American Free-Trade Agreement, panel review is hereby requested of the final determination referenced below. The following information is provided pursuant to Rule 34 of the *NAFTA Article 1904 Panel Rules:*

1. _____
(The name of the Party or the interested person filing this request for panel review)
2. _____
(The name of counsel for the Party or the interested person, if any)
3. _____
_____
(The service address, as defined by Rule 3 of the *NAFTA Article 1904 Panel Rules*, including facsimile number, if any)
4. _____
(The telephone number of counsel for the Party or the interested person or the telephone number of the interested person, if not represented by counsel)
5. _____
(The title of the final determination for which panel review is requested)
6. _____
(The investigating authority that issued the final determination)
7. _____
(The file number of the investigating authority)
8. (a) _____
(The citation and date of publication of the final determination in the **Federal Register**, *Canada Gazette* or *Diario Oficial de la Federación*); or
(b) _____
(If the final determination was not published, the date notice of the final determination was received by the other Party)
9. Yes _____ No _____ Non-Applicable
_____
(Where a Notice of Intent to Commence Judicial Review has been served, is the sole reason for requesting review of the final determination to require review by a panel?)
10. The Service List, as defined by Rule 3 of the *NAFTA Article 1904 Panel Rules*, is attached.

_____

Date

_____

Signature of Counsel (or interested person, if not represented by counsel)

Form (3)

Article 1904 Binational Panel Review Pursuant to the North American Free Trade Agreement

In the matter of:

_____

(Title of Panel Review)
Secretariat File No. _____

Complaint

1. _____
(The name of the interested person filing the complaint)
2. _____
(The name of counsel for the interested person, if any)
3. _____
_____
(The service address, as defined by Rule 3 of the *NAFTA Article 1904 Panel Rules*, including facsimile number, if any)
4. _____
(The telephone number of counsel for the interested person or telephone number of the interested person, if not represented by counsel)
5. Statement of the Precise Nature of the Complaint (See Rule 39 of the *NAFTA Article 1904 Panel Rules*)
A. The Applicable Standard of Review
B. Allegations of Errors of Fact or Law
C. Challenges to the Jurisdiction of the Investigating Authority
6. Statement of the Interested Person's Entitlement to File a Complaint under Rule 39 of the *NAFTA Article 1904 Panel Rules*
7. For Panel Reviews of Determinations Made in Canada:
(a) Complainant intends to use the specified language in pleadings and oral proceedings (Specify one)
_____ English _____ French
(b) Complainant requests simultaneous translation of oral proceedings (Specify one)
_____ Yes _____ No

_____

Date

_____

Signature of Counsel (or interested person, if not represented by counsel)

Form (4)

Article 1904 Binational Panel Review Pursuant to the North American Free Trade Agreement

In the matter of:

_____

(Title of Panel Review)
Secretariat File No. _____

Notice of Appearance

1. _____
(The name of the investigating authority or the interested person filing this notice of appearance)
2. _____
(The name of counsel for the investigating authority or the interested person, if any)
3. _____
_____
(The service address, as defined by Rule 3 of the *NAFTA Article 1904 Panel Rules*, including facsimile number, if any)
4. _____
(The telephone number of counsel for the investigating authority or the interested person or the telephone number of the interested person, if not represented by counsel)
5. This Notice of Appearance is made:
_____ in support of some or all of the allegations set out in a Complaint;
_____ in opposition to some or all of the allegations set out in a Complaint; or

_____ in support of some of the allegations set out in a Complaint and In opposition to some of the allegations set out in a Complaint.

6. Statement as to the basis for the interested person's entitlement to file a Notice of Appearance under rule 40 of the *NAFTA Article 1904 Panel Rules*

7. For Notices of Appearance Filed by the Investigating Authority

Statement by the Investigating Authority regarding any admissions with respect to the allegations set out in the Complaints

8. For Panel Reviews of Determinations Made in Canada:

(a) I intend to use the specified language in pleadings and oral proceedings (Specify one)

_____ English _____ French

(b) I request simultaneous translation of oral proceedings (Specify one)

_____ Yes _____ No

_____

Date

_____

Signature of Counsel (or interested person, if not represented by counsel)

Form (5)

Article 1904 Binational Panel Review
Pursuant to the North American Free Trade Agreement

In the matter of:

_____

_____

(Title of Panel Review)
Secretariat File No. _____

Notice of Motion

_____

(descriptive title indicating the purpose of the motion)

1. _____

(The name of the investigating authority or the interested person filing this notice of motion)

2. _____

(The name of counsel for the investigating authority or the interested person, if any)

3. _____

_____

(The service address, as defined by Rule 3 of the *NAFTA Article 1904 Panel Rules*, including facsimile number, if any)

4. _____

(The telephone number of the counsel for the investigating authority or the interested person or the telephone number of the interested person, if not represented by counsel)

5. Statement of the precise relief requested

6. Statement of the grounds to be argued, including references to any rule, point of law, or legal authority to be relied on

7. Arguments in support of the motion, including references to evidence in the administrative record by pege and, where practicable, by line

8. Draft order attached (see Rule 61 and Form (6) of the *NAFTA Article 1904 Panel Rules)*

_____

Date

_____

Signature of Counsel (or interested person, if not represented by counsel)

Form (6)

Article 1904 Binational Panel Review
Pursuant to the North American Free Trade Agreement

In the matter of:

_____

_____

(Title of Panel Review)
Secretariat File No. _____

Order

Upon consideration of the motion for

_____,

(relief requested)

filed on behalf of

_____,

and upon all
(participant filing motion)
other papers and proceedings herein, it is hereby Ordered that the motion is

_____

Issue Date _____
Panelist name _____
Panelist name _____
Panelist name _____
Panelist name _____
Panelist name _____

Form (7)

Article 1904 Binational Panel Review
Pursuant to the North American Free Trade Agreement

In the matter of:

_____

_____

(Title of Panel Review)
Secretariat File No. _____

Notice of Final Panel Action

Under the direction of the panel, pursuant to rule 77 of the *NAFTA Article 1904 Panel Rules*, Notice is hereby given that the panel has taken its final action in the above-referenced matter.

This Notice is effective on

_____.

Issue Date _____
Signature of the Responsible Secretary _____

Dated: February 10, 1994.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 94-3928 Filed 2-22-94; 8:45 am]

BILLING CODE 3510-GT-P

federal register

Wednesday
February 23, 1994

Part III

Department of Commerce

International Trade Administration

North American Free Trade Agreement: Rules of Procedure for Article 1904 Extraordinary Challenge Committees; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement: Rules of Procedure for Article 1904 Extraordinary Challenge Committees

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Rules of Procedure for NAFTA Article 1904 Extraordinary Challenge Committees.

SUMMARY: Canada, Mexico, and the United States have negotiated the rules of procedure for Article 1904 extraordinary challenge committee proceedings. These rules apply to extraordinary challenges conducted pursuant to Article 1904 of the North American Free Trade Agreement.

EFFECTIVE DATE: January 1, 1994, the date of the entry into force of the North American Free Trade Agreement ("Agreement"). These Rules of Procedure shall apply to all extraordinary challenge committee proceedings under the Agreement commenced on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, Senior Attorney, Stacy J. Ettinger, Attorney-Advisor, or Terrence J. McCartin, Attorney-Advisor, Office of the Chief Counsel for Import Administration, room B–099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0836, (202) 482–4618, or (202) 482–5031, respectively. For procedural matters involving extraordinary challenge committee proceedings, contact James R. Holbein, United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5438; fax: (202) 482–0148.

SUPPLEMENTARY INFORMATION:

Background

Chapter Nineteen of the North American Free Trade Agreement ("Agreement") establishes a mechanism for replacing judicial review of final antidumping and countervailing duty determinations involving imports from Canada, Mexico, or the United States with review by independent binational panels. If requested, these panels will expeditiously review final determinations to determine whether they are consistent with the antidumping or countervailing duty law of the importing country.

In instances in which one of the Parties to the Agreement alleges, pursuant to Article 1904.13 of the Agreement, that (a)(i) a member of a panel materially violated the rules of conduct, (ii) the panel seriously departed from a fundamental rule of procedure, or (iii) the panel manifestly exceeded its powers, authority or jurisdiction, and that (b) any of the actions set out in (a) has materially affected the panel's decision and threatens the integrity of the binational panel review process, that Party may request formation of an extraordinary challenge committee ("ECC"). Extraordinary challenge committee review is therefore not a routine appeal. Rather, as the name suggests, Canada, Mexico, or the United States may have recourse to an ECC only in extraordinary cases.

Title IV of the North American Free Trade Agreement Implementation Act of 1993, Public Law No. 103–182, 107 Stat. 2057, amends United States law to implement Chapter Nineteen of the Agreement.

The *NAFTA Extraordinary Challenge Committee Rules* are intended to give effect to the ECC provisions of Chapter Nineteen of the Agreement by setting forth the procedures for commencing, conducting, and completing extraordinary challenge proceedings. These rules are the result of negotiations among Canada, Mexico, and the United States in compliance with the terms of the Agreement, and are derived in large part from the *Extraordinary Challenge Committee Rules* under the United States-Canada Free Trade Agreement.

North American Free Trade Agreement

Rules of Procedure for Article 1904 Extraordinary Challenge Committees

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Preamble

The Parties,

Having regard to Chapter Nineteen of the North American Free Trade Agreement between Canada, the United Mexican States and the United States of America;

Acting pursuant to paragraph 2 of Annex 1904.13 to Chapter Nineteen of the Agreement;

Adopted the Rules of Procedure, which shall come into force on the same day as the Agreement enters into force and from that day shall govern all extraordinary challenge committee proceedings conducted pursuant to Article 1904 of the Agreement.

Short Title

1. These rules may be cited as the *NAFTA Extraordinary Challenge Committee Rules.*

Statement of General Intent

2. These rules are intended to give effect to the provisions of Chapter Nineteen of the Agreement with respect to extraordinary challenges conducted pursuant to Article 1904 of the Agreement and are designed to result in decisions within 90 days after the establishment of the committee. Where a procedural question arises that is not covered by these rules, a committee may adopt an appropriate procedure that is not inconsistent with the Agreement. In the event of any inconsistency between the provisions of these Rules and the Agreement, the Agreement shall prevail.

Interpretation

3. In these rules,

"Agreement" means the North American Free Trade Agreement;

"Code of Conduct" means the code of conduct established by the Parties pursuant to Article 1909 of the Agreement;

"committee" means an extraordinary challenge committee established pursuant to Annex 1904.13 to Chapter Nineteen of the Agreement;

"counsel" means

(a) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, a person entitled to appear as counsel before the Federal Court of Canada,

(b) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, a person entitled to appear as counsel before the Tribunal Fiscal de la Federación, and

(c) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, a person entitled to appear as counsel before a federal court in the United States;

"counsel of record" means a counsel referred to in subrule 12(1);

"Deputy Minister" means the Deputy Minister of National Revenue for Customs and Excise, or the successor thereto, and includes any person authorized to perform a power, duty or function of the Deputy Minister under the *Special Import Measures Act*, as amended;

"final determination" means, in the case of Canada, a definitive decision within the meaning of subsection 77.01(1) of the *Special Import Measures Act*, as amended;

"investigating authority" means the competent investigating authority that issued the final determination that was the subject of the panel review to which an extraordinary challenge relates and includes, in respect of the issuance, amendment, modification or revocation of a Proprietary Information Access Order, any person authorized by the investigating authority;

"involved Secretariat" means the section of the Secretariat located in the country of an involved Party;

"legal holiday" means

(a) with respect to the Canadian Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Good Friday, Easter Monday, Victoria Day, Canada Day (July 1), Labour Day (first Monday in September), Thanksgiving Day (second Monday in October), Remembrance Day (November 11), Christmas Day (December 25), Boxing Day (December 26), any other day fixed as a statutory holiday by the Government of Canada or by the province in which the Section is located and any day on which the offices of the Canadian Section of the Secretariat are officially closed in whole or in part,

(b) with respect to the Mexican Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Constitution Day (February 5), Benito Juárez's Birthday (March 21), Labor Day (May 1), Battle of Puebla (May 5), Independence Day (September 16), Congressional Opening Day (November 1), Revolution Day (November 20), Transmission of the Federal Executive Branch (every six years on December 1), Christmas Day (December 25), any day designated as a statutory holiday by the Federal Laws or, in the case of Ordinary Elections, by the Local Electoral Laws and any day on which the offices of the Mexican Section of the Secretariat are officially closed in whole or in part, and

(c) with respect to the United States Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Martin Luther King's Birthday (third Monday in January), President's Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), any other day designated as a holiday by the President or the Congress of the United States and any day on which the offices of the Government of the United States located in the District of Columbia or the offices of the United States Section of the Secretariat are officially closed in whole or in part;

"Mexico" means the United Mexican States;

"official publication" means

(a) in the case of the Government of Canada, the *Canada Gazette*,

(b) in the case of the Government of Mexico, the *Diario Oficial de la Federación*, and

(c) in the case of the Government of the United States, the **Federal Register**;

"panel" means a binational panel established pursuant to Annex 1901.2 to Chapter Nineteen of the Agreement, the decision of which is the subject of an extraordinary challenge;

"participant" means a Party who files a Request for an Extraordinary Challenge Committee or any of the following persons who files a Notice of Appearance pursuant to these rules:

(a) the other involved Party,

(b) a person who participated in the panel review that is the subject of the extraordinary challenge, and

(c) a panelist against whom an allegation referred to in Article 1904.13(a)(i) of the Agreement is made;

"Party" means the Government of Canada, the Government of Mexico or the Government of the United States;

"person" means

(a) an individual,

(b) a Party,

(c) an investigating authority,

(d) a government of a province, state or other political subdivision of the country of a Party,

(e) a department, agency or body of a Party or of a government referred to in paragraph (d), or

(f) a partnership, corporation or association;

"personal information" means, with respect to an extraordinary challenge proceeding in which an allegation is made that a member of the panel was guilty of gross misconduct, bias or a serious conflict of interest or otherwise materially violated the rules of conduct, the information referred to in subrule 39(2) and rule 41;

"pleading" means a Request for an Extraordinary Challenge Committee, a Notice of Appearance, a Change of Service Address, a Notice of Change of Counsel of Record, a Notice of Motion, a brief or any other written submission filed by a participant;

"privileged information" means

(a) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, information of the investigating authority that is subject to solicitor-client privilege under the laws of Canada, or that constitutes part of the deliberative process with respect to the final determination, with respect to which the privilege has not been waived,

(b) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico,

(i) information of the investigating authority that is subject to attorney-client privilege under the laws of Mexico, or

(ii) internal communications between officials of the Secretaria de Comercio y Fomento Industrial in charge of antidumping and countervailing duty investigations or communications between those officials and other government officials, where those communications constitute part of the deliberative process with respect to the final determination, and

(c) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States and with respect to which the privilege has not been waived;

"proof of service" means

(a) with respect to an extraordinary challenge of a panel review of a final determination made in Canada or Mexico,

(i) an affidavit of service stating the name of the person who served the document, the date on which it was

served, where it was served and the manner of service, or

(ii) a written acknowledgement of service by counsel for a participant stating the name of the person who served the document, the date on which it was served and the manner of service and, where the acknowledgement is signed by a person other than the counsel, the name of that person followed by a statement that the person is signing as agent for the counsel, and

(b) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, a certificate of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service;

"proprietary information" means

(a) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, information referred to in subsection 84(3) of the *Special Import Measures Act*, as amended, or subsection 45(3) of the *Canadian International Trade Tribunal Act*, as amended, and with respect to which the person who designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information,

(b) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, *informacion confidencial*, as defined under article 80 of the *Ley de Comercio Exterior* and its regulations, and

(c) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, business proprietary information under section 777(f) of the *Tariff Act of 1930*, as amended, and any regulations made under that Act;

"Proprietary Information Access Application" means

(a) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, a disclosure undertaking in the prescribed form, which form

(i) in respect of a final determination by the Deputy Minister, is available from the Deputy Minister, and

(ii) in respect of a final determination by the Tribunal, is available from the Tribunal,

(b) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, a disclosure undertaking in the prescribed form, which form is available from the Secretaría de Comercio y Fomento Industrial, and

(c) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, a Protective Order Application

(i) in respect of a final determination by the International Trade Administration of the United States Department of Commerce, in a form prescribed by, and available from, the International Trade Administration of the United States Department of Commerce, and

(ii) in respect of a final determination by the United States International Trade Commission, in a form prescribed by, and available from, the United States International Trade Commission;

"Proprietary Information Access Order" means

(a) in the case of Canada, a Disclosure Order issued by the Deputy Minister or the Tribunal pursuant to a Proprietary Information Access Application,

(b) in the case of Mexico, a Disclosure Order issued by the Secretaría de Comercio y Fomento Industrial pursuant to a Proprietary Information Access Application, and

(c) in the case of the United States, a Protective Order issued by the International Trade Administration of the United States Department of Commerce or the United States International Trade Commission pursuant to a Proprietary Information Access Application;

"responsible Secretariat" means, with respect to an extraordinary challenge of a panel review, the section of the Secretariat located in the country in which the final determination reviewed by the panel was made;

"responsible Secretary" means the Secretary of the responsible Secretariat;

"Secretariat" meant the Secretariat established pursuant to Article 2002 of the Agreement;

"Secretary" means the Secretary of the United States Section of the Secretariat, the Secretary of the Mexican Section of the Secretariat or the Secretary of the Canadian Section of the Secretariat and includes any person authorized to act on behalf of that Secretary;

"service address" means

(a) with respect to a Party or panelist, the address filed with the Secretariat as the service address of the Party or panelist, including any facsimile number submitted with that address,

(b) with respect to a participant other than a Party or panelist, the service address of the participant in the panel review, or

(c) where a Change of Service Address has been filed by a Party, panelist or participant, the address set out as the new service address of the participant in that form, including any facsimile number submitted with that address;

"Tribunal" means the Canadian International Trade Tribunal or its successor and includes any person authorized to act on its behalf;

"United States" means the United States of America.

4. The definitions set forth in Article 1911 of the Agreement and Annex 1911 to Chapter 19 of the Agreement are hereby incorporated into these rules.

Part I—General

5. An extraordinary challenge proceeding commences on the day on which a Request for an Extraordinary Challenge Committee is filed with the Secretariat and terminates on the day on which a Notice of Completion of Extraordinary Challenge is effective.

6. The general legal principles of the country in which a final determination was made apply in an extraordinary challenge of the decision of a panel with respect to the final determination.

7. A committee may review any part of the record of the panel review relevant to the extraordinary challenge.

Internal Functioning of Committees

8. (1) For routine administrative matters governing its own internal functioning, a committee may adopt procedures not inconsistent with these rules or the Agreement.

(2) Subject to subrule 34(b), meetings of a committee may be conducted by means of a telephone conference call.

9. Only committee members may take part in the deliberations of a committee, which shall take place in private and remain secret. Staff of the involved Secretariats and assistants to committee members may be present by permission of the committee.

Computation of Time

10. (1) In computing any time period fixed in these rules or by an order or decision of a committee, the day from which the time period begins to run shall be excluded and, subject to subrules (2) and (3), the last day of the time period shall be included.

(2) Where the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat, that day and any other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

(3) In computing any time period of five days or less fixed in these rules or by an order or decision of a committee, any legal holiday that falls within the time period shall be excluded from the computation.

11. A committee may extend any time period fixed in these rules if

(a) the extension is made in the interests of fairness and justice; and

(b) in fixing the extension, the committee takes into account the intent of the rules to secure just, speedy and inexpensive final resolutions of challenges to decisions of panels.

Counsel of Record

12. (1) Subject to subrule (2), the counsel of record for a participant in an extraordinary challenge proceeding shall be

(a) the counsel for the participant in the panel review; or

(b) in the case of a Party who was not a participant in the panel review or of a panelist, the counsel who signs any document filed on behalf of the Party or panelist in the extraordinary challenge proceeding.

(2) A participant may change its counsel of record by filing with the responsible Secretariat a Notice of Change of Counsel of Record signed by the new counsel, together with proof of service on the former counsel and other participants.

Costs

13. Each participant shall bear the costs of, and incidental to, its own participation in an extraordinary challenge proceeding.

Proprietary Information and Privileged Information

14. (1) Where proprietary information has been filed in a panel review that is the subject of an extraordinary challenge proceeding, every member of a committee, assistant to a committee member, court reporter, interpreter and translator shall provide the responsible Secretariat with a Proprietary Information Access Application.

(2) Upon receipt of a Proprietary Information Access Application, the responsible Secretary shall file with the appropriate investigating authority the Proprietary Information Access Application and any additional copies of those documents required by the investigating authority.

(3) The investigating authority shall issue the Proprietary Information Access Order and provide the responsible Secretariat with the original and any additional copies of those documents required by the responsible Secretariat.

(4) Upon receipt of a Proprietary Information Access Order, the responsible Secretary shall transmit the original Proprietary Information Access Order to the appropriate member of a committee, assistant to a committee member, court reporter, interpreter or translator.

15. (1) A member of a committee, assistant to a committee member, court reporter, interpreter or translator who amends or modifies a Proprietary Information Access Application shall provide a copy of the amendment or modification to the responsible Secretariat.

(2) Upon receipt of an amendment or modification to a Proprietary Information Access Application, the responsible Secretary shall file with the appropriate investigating authority that document and any additional copies of that document required by the investigating authority.

(3) Upon receipt of an amendment or modification to a Proprietary Information Access Application, the investigating authority shall, as appropriate, amend, modify or revoke the Proprietary Information Access Order and provide the responsible Secretariat with the original of the amendment, modification or notice of revocation and any additional copies of the document required by the responsible Secretariat.

(4) Upon receipt of an amendment or modification to a Proprietary Information Access Order or a notice of revocation, the responsible Secretary shall transmit the amendment, modification or notice of revocation to the appropriate member of a committee, assistant to a committee member, court reporter, interpreter or translator.

16. The responsible Secretary shall serve Proprietary Information Access Orders granted to members of a committee, assistants to committee members, court reporters, interpreters or translators, and any amendments or modifications thereto or notices of revocation thereof, on all participants other than the investigating authority.

17. (1) A counsel of record, or a professional retained by, or under the control or direction of, a counsel of record, who has not been issued a Proprietary Information Access Order in the panel review or in these proceedings and who wishes disclosure of proprietary information in the file of an extraordinary challenge proceeding, shall file a Proprietary Information Access Application, as follows:

(a) with the responsible Secretariat, four copies; and

(b) with the investigating authority, one original and any additional copies that the investigating authority requires.

(2) A Proprietary Information Access Application referred to in subrule (1) shall be served on all participants.

(3) The investigating authority shall, within 10 days after a Proprietary Information Access Application is filed with it in accordance with subrule (1), serve on the person who filed the Proprietary Information Access Application

(a) a Proprietary Information Access Order; or

(b) a notification in writing setting out the reasons why a Proprietary Information Access Order is not issued.

18. (1) Where

(a) an investigating authority refuses to issue a Proprietary Information Access Order to a counsel of record or to a professional retained by, or under the control or direction of, a counsel of record, or

(b) an investigating authority issues a Proprietary Information Access Order with terms unacceptable to a counsel of record,

the counsel of record may file with the responsible Secretariat a Notice of Motion requesting that the committee review the decision of the investigating authority.

(2) Where, after consideration of any response made by the investigating authority referred to in subrule (1), the committee decides that a Proprietary Information Access Order should be issued or that the terms of a Proprietary Information Access Order should be amended or modified, the committee shall so notify counsel for the investigating authority.

(3) Where the final determination was made in the United States and the investigating authority fails to comply with the notification referred to in subrule (2), the committee may issue such orders as are just in the circumstances, including an order refusing to permit the investigating authority to make certain arguments in support of its case or striking certain arguments from its pleadings.

19. (1) Where a Proprietary Information Access Order is issued to a person in an extraordinary challenge proceeding, the person shall file with the responsible Secretariat a copy of the Proprietary Information Access Order.

(2) Where a Proprietary Information Access Order is revoked, amended or modified by an investigating authority, the investigating authority shall provide to the responsible Secretariat and to all participants a copy of the Notice of Revocation, amendment or modification.

20. In an extraordinary challenge proceeding that commences with a Request for an Extraordinary Challenge Committee pursuant to Article 1904.13(a)(i) of the Agreement, personal information shall be kept confidential

(a) where a Notice of Motion is filed pursuant to subrule 41(1)(c),

(i) until the committee makes an order referred to in subrule 45(1)(a), or

(ii) where the committee makes an order referred to in subrule 45(1)(b), indefinitely, unless otherwise ordered by the committee; and

(b) in any other case, until the day after the expiration of the time period fixed, pursuant to rule 41, for filing a Notice of Motion referred to in subrule 41(1)(c).

21. Where a person alleges that the terms of a Proprietary Information Access Application or Proprietary Information Access Order have been violated, the committee shall refer the allegations to the investigating authority for investigation and, where applicable, the imposition of sanctions in accordance with section 77.034 of the *Special Import Measures Act*, as amended, section 777(f) of the *Toriff Act of 1930*, as amended, or article 93 of the *Ley de Comercio Exterior*.

Violation of Code of Conduct

22. Where a participant believes that a committee member or an assistant to a committee member is in violation of the Code of Conduct, the participant shall forthwith notify the responsible Secretary in writing of the alleged violation. The responsible Secretary shall promptly notify the other involved Secretary and the involved Parties of the allegations.

Pleadings and Simultaneous Translation of Extraordinary Challenge Proceedings in Canada

23. Rules 24 to 26 apply with respect to an extraordinary challenge of a panel review of a final determination made in Canada.

24. Either English or French may be used by any person, panelist or member of a committee in any document or oral proceeding.

25. (1) Subject to subrule (2), any order or decision including the reasons therefor, issued by a committee shall be made available simultaneously in both English and French where

(a) In the opinion of the committee, the order or decision is in respect of a question of law of general public interest or importance; or

(b) the proceedings leading to the issuance of the order or decision were conducted in whole or in part in both English and French.

(2) Where

(a) an order or decision issued by a committee is not required by subrule (1) to be made available simultaneously in English and French, or

(b) an order or decision is required by subrule (1)(a) to be made available simultaneously in both English and French but the committee is of the opinion that to make the order or decision available simultaneously in both English and French would occasion a delay prejudicial to the public interest or result in injustice or hardship to any participant, the order or decision, including the reasons therefor, shall be issued in the first instance in either English or French and thereafter at the earliest possible time in the other language, each version to be effective from the time the first version is effective.

(3) Nothing in subrule (1) or (2) shall be construed as prohibiting the oral delivery in either English or French of any order or decision or any reasons therefor.

(4) No order or decision is invalid by reason only that it was not made or issued in both English and French.

26. (1) Any oral proceeding conducted in both English and French shall be translated simultaneously.

(2) Where a participant requests simultaneous translation of an extraordinary challenge proceeding, the request shall be made as early as possible in the proceedings.

(3) Where a committee is of the opinion that there is a public interest in the extraordinary challenge proceedings, the committee may direct the responsible Secretary to arrange for simultaneous translation of the oral proceedings, if any.

Part II—Written Proceedings

27. Where these rules require that notice be given, it shall be given in writing.

Filing, Service and Communications

28. (1) No document is filed with the Secretariat until one original and five copies of the document are received by the responsible Secretariat during its normal business hours and within the time period fixed for filing.

(2) The responsible Secretariat shall accept, date and time stamp and place in the appropriate file every document submitted to the responsible Secretariat.

(3) Receipt, date and time stamping or placement in the file of a document by the responsible Secretariat does not constitute a waiver of any time period fixed for filing or an acknowledgement that the document has been filed in accordance with these rules.

29. (1) All documents filed by a participant, other than documents required by rule 58 to be served by the responsible Secretary and documents referred to in subrule 38(2), rule 39, subrule 40(2)(a) and rule 41 shall be served by the participant on the counsel of record of each of the other participants or, where another participant is not represented by counsel, on the other participant.

(2) Subject to subrule 34(a), a document may be served by

(a) delivering a copy of the document to the service address of the participant;

(b) sending a copy of the document to the service address of the participant by facsimile transmission or by expedited delivery courier or expedited mail service, such as express mail in the United States or Priority Post in Canada; or

(c) personal service on the participant.

(3) A proof of service shall appear on, or be affixed to, all documents referred to in subrule (1).

(4) Where a document is served by expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the expedited delivery courier or expedited mail service.

30. (1) Where, under these rules, a document containing proprietary information, privileged information or personal information is required to be filed under seal with the Secretariat or is required to be served under seal, the document shall be filed of served in accordance with this rule and, where applicable, in accordance with rule 32.

(2) A document filed or served under seal shall be

(a) bound separately from all other documents;

(b) clearly marked

(i) with respect to an extraordinary challenge of a panel review of a final determination made in Canada,

(A) in the case of a document containing proprietary information, "Proprietary", "Confidential", "De nature exclusive" or "Confidentiel", and

(B) in the case of a document containing privileged information, "Privileged" or "Protégé", and

(C) in the case of a document containing personal information, "Personal Information" or "Renseignements personnels",

(ii) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico,

(A) in the case of a document containing proprietary information, "Confidencial",

(B) in the case of a document containing privileged information, "Privilegiada", and

(C) in the case of a document containing personal information, "Información Personal", and

(iii) with respect to an extraordinary challenge of a panel review of a final determination made in the Untied States,

(A) in the case of a document containing proprietary information, "Proprietary", and

(B) in the case of a document containing privileged information, "Privileged", and

(C) in the case of a document containing personal information, "Personal Information"; and

(c) contained in an opaque inner wrapper and an opaque outer wrapper.

(3) An inner wrapper referred to in subrule (2)(c) shall indicate

(a) that proprietary information, privileged information or personal information is enclosed, as the case may be; and

(b) the Secretariat file number of the extraordinary challenge proceeding.

31. Filing or service of proprietary information, privileged information or personal information with the Secretariat does not constitute a waiver of the designation of the information as proprietary information, privileged information or personal information.

32. (1) Where a participant files a pleading that contains proprietary information, the participant shall file two sets of the pleading in the following manner:

(a) one set containing the proptietary information shall be filed under seal and

(i) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, shall be labelled "Proprietary", "Confidential", "Confidentiel" or "De nature exclusive", with the top of each page that contains proprietary information marked with the word "Proprietary", "Confidential", "Confidentiel" or "De nature exclusive" and with the proprietary information enclosed in brackets,

(ii) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, shall be labelled "Confidencial", with the top of each page that contains proprietary information marked with the word "confidencial" and with the proprietary information enclosed in brackets, and

(iii) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, shall be labelled "Proprietary", with the top of each page that contains proprietary information marked with the word "Proprietary" and with the proprietary information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing proprietary information shall be filed and

(i) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, shall be labelled "Non-Proprietary", "Non-Confidential", "Non confidentiel" or "De nature non exclusive",

(ii) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, shall be labelled "Non-confidencial", and

(iii) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, shall be labelled "Non-Proprietary", with each page from which proprietary information has been deleted marked to indicate the location from which the proprietary information was deleted.

(2) Where a participant files a pleading that contains privileged information, the participant shall file two sets of the pleading in the following manner:

(a) one set containing the privileged information shall be filed under seal and

(i) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, shall be labelled "Privileged" or "Protégé", with the top of each that contains privileged information marked with the word "Privileged" or "Protégé" and with the privileged information enclosed in brackets,

(ii) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, shall be labelled "Privilegiada", with the top of each page that contains privileged information marked with the word "Privilegiada" and with the privileged information enclosed in brackets, and

(iii) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, shall be labelled "Privileged", with the top of each page that contains privileged information marked with the word "Privileged" and with the privileged information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing privileged information shall be filed and

(i) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, shall be labelled "Non-Privileged" or "Non-protégé",

(ii) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, shall be labelled "No-privilegiada", and

(iii) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, shall be labelled "Non-Privileged", with each page from which privileged information has been deleted marked to indicate the location from which the privileged information was deleted.

(3) Where a participant files a pleading that contains personal information, the pleading shall be filed under seal and

(a) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, shall be labelled "Personal Information" or "Renseignements personnels", with the top of each page that contains personal information marked with the words "Personal Information" or "Renseignements personnels" and with the personal information enclosed in brackets;

(b) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, shall be labelled "Información Personal", with the top of each page that contains personal information marked with the words "Información Personal" and with the personal information enclosed in brackets; and

(c) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, shall be labelled "Personal Information", with the top of each page that contains personal information marked with the words "Personal Information" and with the personal information enclosed in brackets.

33. (1) Subject to subrule (2), a document containing proprietary or privileged information shall be filed under seal in accordance with rule 30 and shall be served only on the investigating authority and on those participants who have been granted access to the information under a Proprietary Information Access Order.

(2) Where all proprietary information contained in a document was submitted to the investigating authority by one participant, the document shall be served on that participant even if that participant has not been granted access to proprietary information under a Proprietary Information Access Order.

(3) A document containing personal information shall be filed under seal in accordance with rule 30 and shall be served only on persons or participants who have been granted access to the information under an order of the committee.

34. Where proprietary information, privileged information or personal information is disclosed to a person in an extraordinary challenge proceeding, the person shall not

(a) file, serve or otherwise communicate the information by facsimile transmission; or

(b) communicate the information by telephone.

3. Service on an investigating authority does not constitute service on a Party and service on a Party does not constitute service on an investigating authority.

Form and Content of Pleadings

36. (1) Every pleading filed in an extraordinary challenge proceeding shall contain the following information:

(a) the title of, and any Secretariat file number assigned for, the extraordinary challenge proceeding;

(b) a brief descriptive title of the pleading;

(c) the name of the participant filing the pleading;

(d) the name of counsel of record for the participant;

(e) the service address, as defined in rule 3; and

(f) the telephone number of the counsel of record of the participant or, where the participant is not represented by counsel, the telephone number of the participant.

(2) Every pleading filed in an extraordinary challenge proceeding shall be on paper 8½ × 11 inches (216 millimetres by 279 millimetres) in size. The text of the pleading shall be printed, typewritten or reproduced legibly on one side only with a margin of approximately 1½ inches (40 millimetres) on the left-hand side with double spacing between each line of text, except for quotations of more than 50 words, which shall be indented and single-spaced. Footnotes, titles, schedules, tables, graphs and columns of figures shall be presented in a readable form. Briefs and appendices shall be securely bound along the left-hand margin.

(3) Every pleading filed on behalf of a participant in an extraordinary challenge proceeding shall be signed by counsel for the participant or, where the participant is not represented by counsel, by the participant.

Requests for an Extraordinary Challenge Committee

37. (1) Where a Party, in its discretion, files with the responsible Secretary a Request for an Extraordinary Challenge Committee referred to in Article 1904.13(a) (ii) or (iii) of the Agreement, the Party shall file the Request (model form available from the Secretariat) within 30 days after the issuance, pursuant to rule 77 of the *NAFTA Article 1904 Panel Rules*, of the Notice of Final Panel Action in the panel review that is the subject of the Request.

(2) Where a Party, in its discretion, files with the responsible Secretary a Request for an Extraordinary Challenge Committee referred to in Article 1904.13(a)(i) of the Agreement, the Party shall file the Request (model form available from the Secretariat)

(a) within 30 days after the issuance, pursuant to rule 77 of the *NAFTA Article 1904 Panel Rules*, of the Notice of Final Panel Action in the panel review that is the subject of the Request; or

(b) subject to subrule (3), where the Party gained knowledge of the action of the panelist giving rise to the allegation more than 30 days after the panel issued a Notice of Final Panel Action, no more than 30 days after gaining knowledge of the action of the panelist.

(3) No Request for an Extraordinary Challenge Committee referred to in subrule (2) may be filed if two years or more have elapsed since the effective date of the Notice of Completion of Panel Review.

(4) Notwithstanding subrules (1) to (3), the running of the time periods referred to in this section

(a) shall be suspended in the circumstances set out in Article 1905.11 of the Agreement; and

(b) where suspended under subrule (a), shall be resumed in the circumstances set out in Articles 1905.12 and 1905.13 of the Agreement.

38. (1) Subject to subrule (2), every Request for an Extraordinary Challenge Committee shall be in writing and shall

(a) include a concise statement of the allegations relied on, together with a concise statement of how the actions alleged have materially affected the panel's decision and the way in which the integrity of the panel review process is threatened;

(b) contain the name of the Party in the panel review, name of counsel, service address and telephone number; and

(c) where the panel decision was made in Canada, state whether the Party filing the Request for an Extraordinary Challenge Committee

(i) intends to use English or French in pleadings and oral proceedings before the committee, and

(ii) requests simultaneous translation of any oral proceedings.

(2) Where a Request for an Extraordinary Challenge Committee contains an allegation referred to in Article 1904.13(a)(i) of the Agreement, the identity of the panelist against whom such an allegation is made shall be revealed only in a confidential annex filed together with the Request and shall be disclosed only in accordance with rule 60.

39. (1) Every Request for an Extraordinary Challenge Committee (model form available from the Secretariat) shall be accompanied by

(a) those items of the record of the panel review relevant to the allegations contained in the Request; and

(b) an Index of the items referred to in subrule (a).

(2) Where a Request contains an allegation referred to in Article 1904.13(a)(i) of the Agreement, the Request shall be accompanied by, in addition to the requirements of subrule (1),

(a) any other material relevant to the allegations contained in the Request; and

(b) if the Request is filed more than 30 days after the panel issued a Notice of Final Panel Action pursuant to rule 77 of the *NAFTA Article 1904 Panel Rules*, an affidavit certifying that the Party gained knowledge of the action of the panelist giving rise to the allegation no more than 30 days preceding the filing of the Request.

Notices of Appearance

40. (1) Within 10 days after the Request for an Extraordinary Challenge Committee is filed, a Party or participant in the panel review who proposes to participate in the extraordinary challenge proceeding shall file with the responsible Secretariat a Notice of Appearance (model form available from the Secretariat) containing the following information:

(a) the name of the Party or participant, name of counsel, service address and telephone number;

(b) a statement as to whether appearance is made

(i) in support of the Request, or

(ii) in opposition to the Request; and

(c) where the extraordinary challenge is in respect of a panel review of a final determination made in Canada, a statement as to whether the person filing the Notice of Appearance

(i) intends to use English or French in pleadings and oral proceedings before the committee, and

(ii) requests simultaneous translation of any oral proceedings.

(2) Where a Party or participant referred to in subrule (1) proposes to rely on a document in the record of the panel review that is not specified in the Index filed with the Request for an Extraordinary Challenge Committee, the Party or participant shall file, with the Notice of Appearance,

(a) the document; and

(b) a statement identifying the document and requesting its inclusion in the extraordinary challenge record.

(3) On receipt of a document referred to in subrule (2), the responsible Secretary shall include the document in the extraordinary challenge record.

41. (1) Within 10 days after a Request for an Extraordinary Challenge Committee referred to in Article 1904.13(a)(i) of the Agreement is filed, a panelist against whom an allegation contained in the Request is made and who proposes to participate in the extraordinary challenge proceeding

(a) shall file a Notice of Appearance;

(b) may file, under seal, documents to be included in the extraordinary challenge record relevant to the panelist's defense against the allegation; and

(c) may file an *ex parte* motion requesting that the extraordinary challenge proceeding be conducted *in camera*.

(2) Where a committee issues an order pursuant to subrule 45(1)(a), a panelist who filed documents described in subrule (1)(b) may, within five days after issuance of the order, withdraw any of those documents.

(3) Where a panelist withdraws documents pursuant to subrule (2), the committee shall not consider those documents.

Filing and Content of Briefs and Appendices

42. (1) The Party who has filed the Request for an Extraordinary Challenge Committee and every participant who has filed a Notice of Appearance under subrule 40(1)(b)(i) shall file a brief, setting forth grounds and arguments in support of the Request, no later than 21 days after the Request for an Extraordinary Challenge Committee is filed.

(2) Every participant who has filed a Notice of Appearance under subrule 40(1)(b)(ii) shall file a brief, setting forth grounds and arguments in opposition to the Request for an Extraordinary Challenge Committee, no later than 21 days after the expiration of the time period for filing of briefs referred to in subrule (1).

(3) The Party who has filed the Request for an Extraordinary Challenge Committee and every participant who has filed a Notice of Appearance under subrule 40(1)(b)(i) may file a brief, replying to the grounds and arguments set forth in the briefs filed pursuant to subrule (2), no later than 10 days after the expiration of the time period for filing of briefs referred to in subrule (2). Reply briefs shall be limited to rebuttal of matters raised in the briefs filed pursuant to subrule (2).

(4) Every brief filed under this rule shall be in the form required by rule 43.

(5) Appendices shall be filed with the briefs.

43. (1) Briefs shall contain information, in the following order, divided into five parts:

Part I:

(a) A table of contents; and

(b) A table of authorities cited:

The table of authorities shall contain references to all treaties, statutes and regulations cited, any cases primarily relied on in the briefs, set out alphabetically, and all other documents referred to except documents from the administrative record. The table of authorities shall refer to the page(s) of the brief where each authority is cited and mark, with an asterisk in the margin, those authorities primarily relied on.

Part II: A statement of the case:

This part shall contain a concise statement of the relevant facts with references to the panel record by page and, where applicable, by line.

Part III: A statement of the issues:

(a) In the brief of the Party who files the Request for an Extraordinary Challenge Committee, this part shall contain a concise statement of the issues.

(b) In the brief of any other participant, this part shall contain a concise statement of the position of the participant with respect to the issues.

Part IV: Argument:

This part shall consist of the argument, setting out concisely the points of law relating to the issues, with applicable citations to authorities and the panel record.

Part V: Relief:

This part shall consist of a concise statement precisely identifying the relief requested.

(2) Paragraphs in Parts I to V of a brief may be numbered consecutively.

(3) Authorities referred to in the briefs shall be included in an appendix, which shall be organized as follows: a table of contents, copies of all treaty and statutory references, references to regulations, cases primarily relied on in the briefs, set out alphabetically, all documents relied on from the panel record and all other materials relied on.

Motions

44. (1) Motions, other than motions referred to in subrule 41(1)(c), may be considered at the discretion of the committee.

(2) A committee may dispose of a motion based upon the pleadings filed on the motion.

(3) A committee may hear oral argument in person or, subject to subrule 34(b), direct that a motion be heard by means of a telephone conference call with the participants.

Part III—Conduct of Oral Proceedings

45. (1) The order of a committee on a motion referred to in subrule 41(1)(c) shall set out

(a) that the proceedings shall not be held *in camera*; or

(b) that the proceedings shall be held *in camera* and

(i) that all the participants shall keep confidential all information received with respect to the extraordinary challenge proceeding and shall use the information solely for the purposes of the proceeding, and

(ii) which documents containing personal information the responsible Secretary shall serve under seal and on whom the documents shall be served.

(2) The responsible Secretary shall not serve any documents containing personal information until the time period for withdrawal of any documents pursuant to subrule 41(2) has expired.

46. A committee may decide the procedures to be followed in the extraordinary challenge proceeding and may, for that purpose, hold a pre-hearing conference to determine such matters as the presentation of evidence and of oral argument.

47. The decision as to whether oral argument will be heard shall be in the discretion of the committee.

Oral Proceedings in Camera

48. During that part of oral proceedings in which proprietary information or privileged information is presented, a committee shall not permit any person other than the following persons to be present:

(a) the person presenting the proprietary information or privileged information;

(b) a person who has been granted access to the proprietary information or privileged information under a Proprietary Information Access Order or an order of the panel or committee;

(c) in the case of privileged information, a person as to whom the confidentiality of the privileged information has been waived; and

(d) officials of, and counsel for, the investigating authority.

Part IV—Responsibilities of the Secretary

49. The normal business hours of the Secretariat, during which the offices of the Secretariat shall be open to the public, shall be from 9 a.m. to 5 p.m on each weekday other than

(a) in the case of the Canadian Section of the Secretariat, legal holidays of that Section;

(b) in the case of the Mexican Section of the Secretariat, legal holidays of that Section; and

(c) in the case of the United States Section of the Secretariat, legal holidays of that Section.

50. On the completion of the selection of the members of a committee, the responsible Secretary shall notify the participants and the other involved Secretary of the names of the members of the committee.

51. The responsible Secretary shall provide administrative support for each extraordinary challenge proceeding and shall make the arrangements necessary for meetings and any oral proceedings, including, if required, interpreters to provide simultaneous translation.

52. Each involved Secretary shall maintain a file for each extraordinary challenge, comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these rules.

53. The responsible Secretary shall forward to the other involved Secretary a copy of all documents filed with the responsible Secretary and of all orders and decisions issued by a committee.

54. Where under these rules a notice or other document is required to be published, the responsible Secretary and the other involved Secretary shall each cause the document to be published in the official publication of the country in which that section of the Secretariat is located.

55. (1) Where a document containing proprietary information or privileged information is filed with the involved Secretariats, each involved Secretary shall ensure that

(a) the document is stored, maintained, handled, and distributed in accordance with the terms of an applicable Proprietary Information Access Order;

(b) the inner wrapper of the document is clearly marked to indicate that it contains proprietary information or privileged information; and

(c) access to the document is limited to

(i) in the case of proprietary information, officials of, and counsel for, the investigating authority, the person who submitted the proprietary information to the investigating authority and counsel of record for that person, and any persons who have been granted access to the information under a Proprietary Information Access Order, and

(ii) in the case of privileged information relied upon in an extraordinary challenge of a decision of a panel with respect to a final determination made in the United States, committee members and their assistants and persons with respect to whom the panel ordered disclosure of the privileged information under rule 52 of the *NAFTA Article 1904 Panel Rules*, if those persons have filed with the responsible Secretariat a Proprietary Information Access Order with respect to the document.

(2) Where a document containing personal information is filed with the involved Secretariats, each involved Secretary shall ensure that

(a) the document is stored, maintained, handled, and distributed in accordance with the terms of any applicable Proprietary Information Access Order;

(b) the inner wrapper of the document is clearly marked to indicate that it contains personal information; and

(c) access to the document is limited to persons granted access to the information pursuant to subrule 45(1)(b).

56. No document filed in an extraordinary challenge proceeding shall be removed from the offices of the Secretariat except in the ordinary course of the business of the Secretariat or pursuant to the direction of a committee.

57. (1) Each involved Secretary shall permit access by any person to information in the file of an extraordinary challenge proceeding that is not proprietary information, privileged information or personal information.

(2) Each involved Secretary shall, in accordance with the terms of any applicable Proprietary Information Access Order or order of a panel or committee, permit access to proprietary information, privileged information or personal information in the file of an extraordinary challenge proceeding.

(3) Each involved Secretary shall, on request and on payment of the prescribed fee, provide copies of information in the file of an extraordinary challenge proceeding to any person who has been given access to that information.

58. (1) Where a Request for an Extraordinary Challenge Committee pursuant to Article 1904.13(a) (ii) or (iii) of the Agreement is filed with the responsible Secretariat, the responsible Secretary shall, upon receipt thereof,

(a) forward a copy of the Request and Index to the other involved Secretary; and

(b) serve a copy of the Request and Index on the other involved Party and on the participants in the panel review, together with a statement setting out the date on which the Request was filed and stating that all briefs of

(i) the Party who has filed the Request and of every participant who files a Notice of Appearance in support of the Request shall be filed no later than 21 days after the date of filing of the Request,

(ii) every participant who files a Notice of Appearance in opposition to the Request shall be filed no later than 21 days after the expiration of the time period, referred to in subrule (i), for filing of briefs, and

(iii) the Party who has filed the Request and of every participant who files a brief under subrule (i) in reply to the grounds and arguments set forth in the briefs filed pursuant to subrule (ii) shall be filed no later than 10 days after the expiration of the time period, referred to in subrule (ii), for filing of briefs.

(2) Where a Request for an Extraordinary Challenge Committee pursuant to Article 1904.13(a)(i) of the Agreement is filed, the responsible Secretary shall, upon receipt thereof,

(a) forward a copy of the Request, Index and annex to the other involved Secretary; and

(b) serve a copy of the Request, Index and annex on the other involved Party, on the panelist against whom the allegation contained in the Request is made and on the participants in the panel review, together with a statement setting out the date on which the Request was filed and stating that all briefs of

(i) the Party who has filed the Request and of every participant who files a Notice of Appearance in support of the Request shall be filed no later than 21 days after the date of filing of the Request,

(ii) every participant who files a Notice of Appearance in opposition to the Request shall be filed no later than 21 days after the expiration of the time period, referred to in subrule (i), for filing of briefs, and

(iii) the Party who has filed the Request and of every participant who files a brief under subrule (i) in reply to the grounds and arguments set forth in the briefs filed pursuant to subrule (ii) shall be filed no later than 10 days after the expiration of the time period, referred to in subrule (ii), for filing of briefs.

(3) The responsible Secretary shall serve orders and decisions of a committee and Notices of Completion of Extraordinary Challenge on the participants.

(4) Where the decision of a committee referred to in subrule (3) relates to a panel review of a final determination made in Canada, the decision shall be served by registered mail.

59. The responsible Secretary shall cause notice of a final decision of a committee issued pursuant to rule 63, and any order that the committee directs the Secretary to publish, to be published in the official publications of the involved Parties.

60. Where the time period fixed, pursuant to rule 41, for filing an *ex parte* motion referred to in subrule 41(1)(c) has expired, the responsible Secretary shall serve on all participants

(a) where no motion is filed pursuant to that subrule, the documents referred to in rules 39 and 41;

(b) where the committee issues an order referred to in subrule 45(1)(a), the documents referred to in rules 39 and 41 in accordance with any order of the committee; and

(c) where the committee issues an order referred to in subrule 45(1)(b), the documents referred to in rules 39 and 41, in accordance with subrule 45(1)(b)(ii) and any order made by the committee.

Part V—Orders and Decisions

61. All orders and decisions of a committee shall be made by a majority of the votes of all members of the committee.

62. (1) Where a Notice of Motion requesting dismissal of an extraordinary challenge proceeding is filed by a participant, the committee may issue an order dismissing the proceeding.

(2) Where the motion referred to in subrule (1) is consented to by all the participants and an affidavit to that effect is filed, or where all participants file Notices of Motion requesting dismissal, the extraordinary challenge proceeding is terminated.

63. (1) A final decision of a committee shall

(a) affirm the decision of the panel;

(b) vacate the decision of the panel; or

(c) remand the decision of the panel to the panel for action not inconsistent with the final decision of the committee.

(2) Every final decision of a committee shall be issued in writing with reasons, together with any dissenting or concurring opinions of the members of the committee.

(3) Subrule (2) shall not be construed as prohibiting the oral delivery of the decision of a committee.

Part VI—Completion of Extraordinary Challenges

64. Where all participants consent to the termination of the proceeding pursuant to rule 62, the responsible Secretary shall cause to be published in the official publications of the involved Parties a Notice of Completion of Extraordinary Challenge, effective on the day after the day on which the requirements of rule 62 have been met.

65. Where a committee issues its final decision, the responsible Secretary shall cause to be published in the official publications of the involved Parties a Notice of Completion of Extraordinary Challenge, effective on the day after the day on which

(a) the committee affirms the decision of the panel;

(b) the committee vacates the decision of the panel; or

(c) where the committee remands the decision of the panel, the day the responsible Secretary gives notice to the committee that the panel has given notice that it has taken action not inconsistent with the committee's decision.

66. The members of the committee are discharged from their duties on the day on which a Notice of Completion of Extraordinary Challenge is effective.

67. (1) A Party may make a request, pursuant to Article 1905.11(a)(ii) of the Agreement, that an ongoing extraordinary challenge proceeding be stayed by filing the request with the responsible Secretariat.

(2) A Party who files a request under subrule (1) shall forthwith give written notice of the request to the other involved Party and to the other involved Secretariat.

(3) On receipt of a request under subrule (1), the responsible Secretary shall

(a) immediately give written notice of the stay of the extraordinary challenge proceedings to all participants in the extraordinary challenge proceedings; and

(b) publish a notice of the stay of the extraordinary challenge proceedings in the official publications of the involved Parties.

68. On receipt of a report containing an affirmative finding with respect to a ground specified in Article 1905.1 of the Agreement, the responsible Secretary for extraordinary challenge proceedings referred to in Article 1905.11(a)(i) of the Agreement shall

(a) immediately give notice in writing to all participants in those proceedings; and

(b) publish a notice of the affirmative finding in the official publications of the involved Parties.

69. (1) A Party who intends to suspend the operation of Article 1904 of the Agreement pursuant to Article 1905.8 or 1905.9 of the Agreement shall endeavour to give written notice of that intention to the other involved Party and to the involved Secretaries at least five days prior to the suspension.

(2) On receipt of a notice under subrule (1), the involved Secretaries shall publish a notice of the suspension in the official publications of the involved Parties.

Dated: February 10, 1994.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 94–3929 Filed 2–22–94; 8:45 am]

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Wednesday
February 23, 1994

Part IV

Department of Commerce

International Trade Administration

North American Free Trade Agreement: Rules of Procedure for Article 1905 Special Committees; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement: Rules of Procedure for Article 1905 Special Committees

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Rules of Procedure for NAFTA Article 1905 Special Committees.

SUMMARY: Canada, Mexico, and the United States have negotiated the rules of procedure for Article 1905 Special Committees. These rules apply to special committee proceedings conducted pursuant to Article 1905 of the Agreement, unless the involved Parties otherwise agree.

EFFECTIVE DATE: January 1, 1994, the date of the entry into force of the North American Free Trade Agreement ("Agreement"). These Rules of Procedure shall apply to all special committee proceedings commenced on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, Senior Attorney, Stacy J. Ettinger, Attorney-Advisor, or Terrence J. McCartin, Attorney-Advisor, Office of the Chief Counsel for Import Administration, room B–099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0836, (202) 482–4618, or (202) 482–5031, respectively. For procedural matters involving cases under panel review, contact James R. Holbein, United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5438; fax: (202) 482–0148.

SUPPLEMENTARY INFORMATION:

Background

Chapter Nineteen of the North American Free Trade Agreement ("Agreement") establishes a mechanism for replacing judicial review of final antidumping and countervailing duty determinations involving imports from Canada, Mexico, or the United States with review by independent binational panels. If requested, these panels will expeditiously review final determinations to determine whether they are consistent with the antidumping or countervailing duty law of the importing country.

In instances in which one of the Parties to the Agreement alleges, pursuant to Article 1905.1 of the Agreement, that the application of another Party's domestic law (a) has prevented the establishment of a panel; (b) has prevented a panel from rendering a final decision; (c) has prevented the implementation of a panel's decision or denied it binding force and effect; or (d) has resulted in a failure to provide opportunity for proper review of a final determination by a panel or a court of competent jurisdiction, that Party may request the establishment of a special committee.

Title IV of the North American Free Trade Agreement Implementation Act of 1993, Public Law No. 103–182, 107 Stat. 2057, amends United States law to implement Chapter Nineteen of the Agreement.

The *Article 1905 Special Committee Rules* are intended to give effect to the special committee provisions of Chapter Nineteen of the Agreement by setting forth the procedures for commencing, conducting, and completing special committee proceedings. These rules are the result of negotiations among Canada, Mexico, and the United States in compliance with the terms of the Agreement.

North American Free Trade Agreement Rules of Procedure for Article 1905 Special Committees

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Rule

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The Parties,

Having regard to Chapter Nineteen of the North American Free Trade Agreement between Canada, the United Mexican States and the United States of America;

Acting pursuant to Article 1905.6 of the Agreement;

Adopt the following Rules of Procedure, which shall come into force on the same day as the Agreement enters into force and from that day shall govern all special committee proceedings conducted pursuant to Article 1905 of the Agreement.

Short Title

1. These rules may be cited as the *Article 1905 Special Committee Rules.*

Statement of General Intent

2. These rules shall apply to special committee proceedings conducted pursuant to Article 1905 of the Agreement, unless the involved Parties otherwise agree. Where a procedural question arises that is not covered by these rules, a special committee may adopt an appropriate procedure that is not inconsistent with the Agreement. In the event of any inconsistency between the provisions of these rules and the Agreement, the Agreement shall prevail.

Interpretation

3. In these rules,

"Agreement" means the North American Free Trade Agreement;

"Complaining Party" means a Party who requests, pursuant to Article 1905.2 of the Agreement, that a special committee be established;

"involved Secretariat" means the responsible Secretariat or the section of the Secretariat located in the country of the other involved Party;

"legal holiday" means

(a) with respect to the Canadian Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Good Friday, Easter Monday, Victoria Day, Canada Day (July 1), Labour Day (first Monday in September), Thanksgiving Day (second Monday in October), Remembrance Day (November 11), Christmas Day (December 25), Boxing Day (December 26), any other day fixed as a statutory holiday by the Government of Canada or by the province in which the section is located and any day on which the offices of the Canadian Section of the Secretariat are officially closed in whole or in part,

(b) with respect to the Mexican Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Constitution Day (February 5), Benito Juárez's Birthday (March 21), Labor Day (May 1), Battle of Puebla (May 5), Independence Day (September 16), Congressional Opening Day (November 1), Revolution Day (November 20), Transmission of the Federal Executive Branch (every six years on December 1), Christmas Day (December 25), any day designated as a statutory holiday by the Federal Laws or, in the case of Ordinary Elections, by the Local Electoral Laws and any day on which the offices of the Mexican Section of the Secretariat are officially closed in whole or in part, and

(c) with respect to the United States Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Martin Luther King's Birthday (third Monday in January), Presidents' Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), any day designated as a holiday by the President or the Congress of the United States and any day on which the offices of the Government of the United States located in the District of Columbia or the offices of the United States Section of the Secretariat are officially closed in whole or in part;

"Mexico" means the United Mexican States;

"official publication" means

(a) in the case of the Government of Canada, the *Canada Gazette*,

(b) in the case of the Government of Mexico, the *Diario Oficial de la Federación*, and

(c) in the case of the Government of the United States, the **Federal Register**;

"Party" means the Government of Canada, the Government of Mexico or the Government of the United States;

"Responding Party" means the Party against whom an allegation is made under Article 1905.1 of the Agreement;

"responsible Secretariat" means the section of the Secretariat of the Responding Party;

"responsible Secretary" means the Secretary of the responsible Secretariat;

"Secretariat" means the Secretariat established pursuant to Article 2002 of the Agreement;

"Secretary" means the Secretary of the United States Section of the Secretariat, the Secretary of the Mexican Section of the Secretariat or the Secretary of the Canadian Section of the Secretariat and includes any person authorized to act on behalf of that Secretary;

"special committee" means a special committee established pursuant to Article 1905 of the Agreement;

"United States" means the United States of America.

Operation of the Special Committee

4. (1) Subject to subrule (2), unless the involved Parties otherwise agree, special committee meetings shall take place at the offices of the responsible Secretariat or at such alternative location as the committee members may agree.

(2) A special committee may conduct meetings or exchange information by any means, including by means of a telephone conference call or facsimile or computer transmission.

5. The members of a special committee shall select from among themselves a chairperson, who shall preside over all meetings and hearings of the special committee.

6. The chairperson of the special committee shall fix the date and time of its meetings in consultation with other special committee members and the responsible Secretary.

7. All reports, findings, determinations and decisions of a special committee shall be made or issued by a majority vote of all members of the special committee.

8. A special committee proceeding commences on the day on which a request for a special committee is filed with the responsible Secretariat and terminates on the day on which a notice of completion of the special committee proceeding is issued pursuant to rule 36.

9. (1) A special committee may adopt internal procedures of its own, not inconsistent with these rules, for routine administrative matters.

(2) A special committee may delegate to its chairperson the authority to make decisions regarding internal procedures or routine administrative matters.

10. The terms of reference of a special committee shall be limited to

(a) making a finding as to whether any allegations set out in Article 1905.1 of the Agreement made by the Complaining Party regarding the application of the Responding Party's domestic law are substantiated;

(b) determining whether a suspension of benefits by the Complaining Party pursuant to Article 1905.8(b) of the Agreement is manifestly excessive; and

(c) determining whether the Responding Party has corrected a problem with respect to which the special committee has made an affirmative finding.

Service of Documents

11. A document to be filed by an involved Party with the responsible Secretariat shall

(a) be served on the other involved Party by express courier, overnight mail or by any other means agreed upon by the involved Parties; and

(b) when filed, be accompanied by a proof of service certifying that the document has been served on the other involved Party, indicating the manner, date and time of service.

Written Submissions

12. All written submissions and responses filed with a responsible Secretariat shall be accompanied by four copies thereof.

13. (1) A request for the establishment of a special committee under Article 1905.2 of the Agreement shall be made by filing the request with the responsible Secretariat.

(2) On the filing of a request under subrule (1), the responsible Secretary and the other involved Secretary shall cause a notice of the filing of the request to be published in the official publications of the countries in which their sections of the Secretariat are located.

14. The written initial submission of a Complaining Party shall be filed with the responsible Secretariat no later than 10 days after the date on which the last member of the special committee is appointed.

15. A written response by the Responding Party shall be filed with the responsible Secretariat no later than 20 days after the filing of the initial submission of the Complaining Party.

16. A special committee may allow each involved Party the opportunity to make an equal number of further written submissions, within such time as may be fixed by the special committee, having regard to the time limits fixed by Annex 1905.6 to Chapter Nineteen of the Agreement.

17. The responsible Secretary shall forward to the other involved Secretary a copy of all documents filed with the responsible Secretariat and of all reports, findings, determinations and decisions issued by the special committee.

Hearings

18. (1) At least one hearing shall be held before the special committee presents its initial report.

(2) The date and time of hearings shall be fixed by the special committee in consultation with the involved Parties and the responsible Secretary.

(3) A verbatim transcript shall be taken of all hearings.

19. Unless the involved Parties otherwise agree, special committee hearings shall take place at the offices of the responsible Secretariat.

20. (1) All special committee members must be present during hearings.

(2) No later than five days before the date of a hearing, each involved Party shall deliver to the responsible Secretariat and to the other involved Party a list of the names of the persons who will present oral arguments at the hearing on behalf of that Party and of other representatives or advisers of the Party who will be attending the hearing.

21. Oral proceedings shall be conducted in the following order, ensuring that each involved Party is given equal time:

(a) the argument of the Complaining Party;

(b) the argument of the Responding Party;

(c) a reply of the Complaining Party; and

(d) a counter-reply of the Responding Party.

22. At the request of an involved Party or at the initiative of the special committee, with the agreement of both involved Parties and subject to such terms and conditions as both involved Parties may agree upon, the special committee may call upon any person to provide information concerning the matter in dispute.

Language of Proceedings

23. Written and oral proceedings may be in either English, French or Spanish, or in any combination thereof.

24. Unless the involved Parties otherwise agree, the reports, findings, determinations and decisions of a special committee shall be issued in an official language of the Responding Party and, if necessary, shall be promptly translated into an official language of the other involved Party.

Special Committee Deliberations

25. (1) The deliberations of a special committee shall take place in private and remain confidential.

(2) Only special committee members may take part in the deliberations of a special committee.

(3) Staff of the involved Secretariats, assistants to the special committee members and any necessary support staff may be present during deliberations of a special committee by permission of the special committee.

Reports

26. In accordance with paragraph (b) of Annex 1905.6 to Chapter Nineteen of the Agreement, a special committee shall prepare and present to the involved Parties an initial report, wherever practicable, within 60 days after the appointment of the last member of the special committee.

27. The involved Parties may comment in writing or, at the request of the special committee, orally, on an initial report of a special committee within 14 days after the initial report is presented.

28. An initial report of a special committee shall be kept confidential.

29. (1) A special committee shall issue a final report, together with any separate opinions rendered by individual committee members, within 30 days after the presentation of its initial report.

(2) Any separate opinions rendered by individual special committee members shall be anonymous.

(3) On the issuance of a final report under subrule (1), the responsible Secretary shall immediately forward copies of the report to the involved Parties.

(4) Unless the involved Parties otherwise agree,

(a) within 10 days after the final report is forwarded to the involved Parties, the involved Secretaries shall cause a notice that a final report has been issued by a special committee to be published in the official publications of the involved Parties, indicating that copies of the report and of any separate opinions by individual members or written views of either involved Party are available to the public at the offices of the responsible Secretariat; and

(b) the responsible Secretariat shall make available to the public copies of the final report of a special committee, together with any separate opinions by individual members and any written views that either involved Party may wish to be published.

Reconvening of Special Committee

30. Where a special committee has made an affirmative finding with respect to grounds specified in Article 1905.1 of the Agreement, a Responding Party may request that the special committee be reconvened by filing a request with the responsible Secretariat

(a) where the Responding Party is requesting that the special committee determine whether the Responding Party has corrected a problem with respect to which the special committee has made an affirmative finding, at any time after the affirmative finding was made; or

(b) where the Responding Party is requesting that the special committee determine whether a suspension of benefits by the Complaining Party under Article 1905.8 of the Agreement is manifestly excessive, at any time after the suspension was made.

31. (1) Where a request referred to in subrule 30(a) is filed before the fortieth day of the 60-day consultation period referred to in Article 1905.8 of the Agreement, the special committee shall endeavour to present a report containing its determination to the involved Parties before the sixtieth day of that period, and may for that purpose make such orders as to filing of written submissions and responses and the holding of a hearing as the special committee considers necessary under the circumstances.

(2) Rules 32 to 34 apply with respect to requests referred to in subrule 30(a) that are filed on or after the fortieth day of the 60-day consultation period referred to in Article 1905.8 and to requests referred to in subrule 30(b).

32. (1) At the time of filing a request pursuant to rule 30, the Responding Party shall file a written submission in support of the request.

(2) A Complaining Party shall file a written response to a submission referred to in subrule (1) within 20 days after that submission is filed.

33. (1) At the time of filing a request pursuant to rule 30 or a written response pursuant to subrule 32(2), an involved Party may request an opportunity to present oral argument in support of its request or response.

(2) Where an involved Party requests an opportunity to present oral argument pursuant to subrule (1), the special committee may hold a hearing, at which both involved Parties shall be granted an equal opportunity to present oral argument.

34. The special committee shall, within 45 days of the filing of a request pursuant to rule 30, present to the involved Parties a written report containing its determination pursuant to Article 1905.10 of the Agreement.

35. Subrules 29 (2) to (4) apply, with such modifications as are necessary, to reports referred to in subrule 31(1) and rule 34.

Completion of Special Committee Proceedings

36. (1) On completion of a special committee proceeding, as determined by the special committee in consultation with the involved Parties, the special committee shall request the responsible Secretary to issue a notice of completion of the proceeding.

(2) A notice referred to in subrule (1) is effective the day after it is issued.

(3) The responsible Secretary shall cause a notice issued under subrule (1) to be published in the official publications of the involved Parties.

37. The members of a special committee are discharged from their duties on the day on which a notice of completion of the special committee proceeding is effective.

Confidentiality

38. All written submissions to, and communications with, a special committee and all documents filed with the involved Secretariats shall be kept confidential.

39. (1) All hearings of a special committee, and all transcripts thereof, shall be kept confidential.

(2) It is the responsibility of each involved Party to ensure that the persons attending oral proceedings of a special committee on its behalf maintain the confidentiality of the proceedings.

Ex Parte Contacts

40. (1) No special committee or member of a special committee shall meet or contact one involved Party in the absence of the other involved Party.

(2) No special committee member shall discuss a matter before the special committee with the involved Parties in the absence of other special committee members.

Extension and Computation of Time

41. A time period fixed by these rules may be extended with the consent of both involved Parties or by a decision of a special committee.

42. (1) In computing any time period fixed in or under these rules, the day or date from which the time period begins to run shall be excluded and, subject to subrule (2), the last day of the time period shall be included.

(2) Where the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat, that day and any other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

(3) In computing any time period of five days or less fixed in these rules or by a decision of a special committee, any legal holiday that falls within the time period shall be excluded from the computation.

Responsibilities of the Responsible Secretary

43. The responsible Secretary shall provide administrative support for each special committee proceeding and shall make the arrangements necessary for the hearings and meetings of the special committee, including the provision of court reporters and, if required, interpreters to provide simultaneous translation.

44. The responsible Secretary shall maintain a file for each special committee proceeding, comprised of the original or a copy of all documents filed, whether or not filed in accordance with these rules, in the special committee proceeding.

Death or Incapacity

45. Where a special committee member is disqualified, dies or otherwise becomes unable to fulfil special committee duties,

(a) special committee proceedings and computations of time shall be suspended, pending the appointment of a substitute member; and

(b) where the disability, disqualification or death occurs after oral argument has begun, the chairperson may order that the matter be reheard, on such terms as are appropriate, after selection of a substitute member.

Dated: February 10, 1994.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 94–3931 Filed 2–22–94; 8:45 am]

BILLING CODE 3510–GT–P

Federal Register

Wednesday
February 23, 1994

Part V

Department of Commerce

International Trade Administration

North American Free Trade Agreement: Code of Conduct for Proceedings Under Chapters Nineteen and Twenty; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement: Code of Conduct for Proceedings Under Chapters Nineteen and Twenty

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Code of Conduct for Proceedings Under NAFTA Chapters Nineteen and Twenty.

SUMMARY: Canada, Mexico, and the United States have negotiated a Code of Conduct for proceedings under Chapters Nineteen and Twenty of the North American Free Trade Agreement ("Agreement"). The Code applies to members of panels established pursuant to Article 1903, 1904 or 2008, including Article 2008 panels established pursuant to Article 1414, and to members of committees established pursuant to Article 1905 or Annex 1904.13 of the Agreement. In addition, the Code establishes disclosure obligations for members of rosters established pursuant to Article 1414 or 2009 or Annex 1901.2 or 1904.13 of the Agreement and for individuals not on a roster who are under consideration for appointment to a panel or committee.

EFFECTIVE DATE: January 1, 1994, the date of entry into force of the North American Free Trade Agreement.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5438; fax: (202) 482–0148.

SUPPLEMENTARY INFORMATION: To ensure the integrity and impartiality of proceedings conducted pursuant to Articles 1903, 1904, 1905, and 2008 of the North American Free Trade Agreement ("Agreement"), which entered into force on January 1, 1994, Canada, Mexico, and the United States have negotiated a Code of Conduct pursuant to Articles 1909 and 2009 of the Agreement. The Code of Conduct governs the conduct of members of panels established pursuant to Article 1903, 1904 or 2008, including Article 2008 panels established pursuant to Article 1414, and to members of committees established pursuant to Article 1905 or Annex 1904.13 of the Agreement. In addition, the Code of Conduct establishes disclosure obligations for members of rosters established pursuant to Article 1414 or 2009 or Annex 1901.2 or 1904.13 of the Agreement and for individuals not on a roster who are under consideration for appointment to a panel or committee. It is based on the Code of Conduct existing under the United States-Canada Free Trade Agreement, with certain changes made to better ensure the integrity and impartiality of the proceedings under the Agreement.

Code of Conduct for Dispute Settlement Procedures Under Chapters 19 and 20 of the North American Free Trade Agreement

Preamble

Whereas the Parties place prime importance on the integrity and impartiality of proceedings conducted pursuant to Chapters 19 and 20 of the North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, this Code of Conduct is hereby established to ensure that these principles are respected.

Interpretation

A. In this Code of Conduct,

"Agreement" means the North American Free Trade Agreement;

"assistant" means a person who, under the terms of appointment of a member, conducts research or provides support for the member;

"candidate" means

(a) an individual whose name appears on a roster or list established under Article 1414, Annex 1901.2 or 1904.13 or Article 2009,

(b) an individual who is under consideration for appointment as a member of a panel pursuant to Annex 1901.2 or Article 1903, 1904 or 2011, or

(c) an individual who is under consideration for appointment as a member of a committee pursuant to Annex 1904.13 or Article 1905;

"member" means

(a) a member of a panel constituted pursuant to Annex 1901.2 or Article 1414, 1903, 1904, 2008 or 2011,

(b) a member of an extraordinary challenge committee constituted pursuant to Annex 1904.13, or

(c) a member of a special committee constituted pursuant to Article 1905;

"participant" has the meaning assigned in the Rules of Procedure for Article 1904 Binational Panel Reviews;

"Party" means a Party to the Agreement;

"proceeding", unless otherwise specified, means

(a) a panel review under Article 1903 or 1904,

(b) an extraordinary challenge proceeding under Annex 1904.13,

(c) a special committee proceeding under Article 1905,

(d) a panel proceeding under Chapter 20, or

(e) a proceeding in a dispute arising under Chapter 11 or 14 to which Chapter 20 applies;

"Secretariat" means the Secretariat established pursuant to Article 2002; and

"staff", in respect of a member, means persons under the direction and control of the member, other than assistants.

B. Any reference made in this Code of Conduct to an Article, Annex or Chapter is a reference to the appropriate Article, Annex or Chapter of the Agreement.

I. Responsibilities to the Process

Every candidate, member and former member shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.

II. Disclosure Obligations

[*Introductory Note:*

The governing principle of this Code of Conduct is that a candidate or member must disclose the existence of any interest, relationship or matter that is likely to affect the candidate's or member's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias. An appearance of impropriety or an apprehension of bias is created where a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would conclude that a candidate's or member's ability to carry out the duties with integrity, impartiality and competence is impaired.

These disclosure obligations, however, should not be interpreted so that the burden of detailed disclosure makes it impractical for persons in the legal or business community to serve as members, thereby depriving the Parties and participants of the services of those who might be best qualified to serve as members. Thus, candidates and members should not be called upon to disclose interests, relationships or matters whose bearing on their role in the proceeding would be trivial.

Throughout the proceeding, candidates and members have a continuing obligation to disclose interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process.

This Code of Conduct does not determine whether or under what circumstances the Parties will disqualify a candidate or member from being appointed to, or serving as a member of, a panel or committee on the basis of disclosures made.]

A. A candidate shall disclose any interest, relationship or matter that is likely to affect the candidate's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

The candidate shall disclose such interests, relationships and matters by completing an Initial Disclosure Statement provided by the Secretariat and sending it to the Secretariat.

Without limiting the generality of the foregoing, candidates shall disclose the following interests, relationships and matters:

(1) any financial interest of the candidate

(a) in the proceeding or in its outcome, and

(b) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;

(2) any financial interest of the candidate's employer, partner, business associate or family member

(a) in the proceeding or in its outcome, and

(b) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;

(3) any past or existing financial, business, professional, family or social relationship with any interested parties in the proceeding, or their counsel, or any such relationship involving a candidate's employer, partner, business associate or family member; and

(4) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same goods.

B. A member in an Article 1904 proceeding shall, after receiving the complaint, disclose any interests, advocacy or representation referred to in paragraph A (1)(b) or (2)(b) or subsection (4) by completing a Supplementary Disclosure Statement provided by the Secretariat and sending it to the Secretariat for consideration by the appropriate Parties.

C. Once appointed, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in section A and shall disclose them. The obligation to disclose is a continuing duty which requires a member to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

The member shall disclose such interests, relationships and matters by communicating them in writing to the Secretariat for consideration by the appropriate Parties.

III. The Performance of Duties By Candidates and Members

A. A candidate who accepts an appointment as a member shall be available to perform, and shall perform, a member's duties thoroughly and expeditiously throughout the course of the proceeding.

B. A member shall ensure that the Secretariat can, at all reasonable times, contact the member in order to conduct panel or committee business.

C. A member shall carry out all duties fairly and diligently.

D. A member shall comply with the provisions of Chapter 19 or 20 and the applicable rules.

E. A member shall not deny other members the opportunity to participate in all aspects of the proceeding.

F. A member shall consider only those issues raised in the proceeding and necessary to a decision and shall not delegate the duty to decide to any other person, except as provided in the applicable rules.

G. A member shall take all reasonable steps to ensure that the member's assistant and staff comply with Parts I, II and VI of this Code of Conduct.

H. A member shall not engage in *ex parte* contacts concerning the proceeding.

I. A candidate or member shall not communicate matters concerning actual or potential violations of this Code of Conduct unless the communication is to the Secretariat or is necessary to ascertain whether that candidate or member has violated or may violate the Code.

IV. Independence and Impartiality of Members

A. A member shall be independent and impartial. A member shall act in a fair manner and shall avoid creating an appearance of impropriety or an apprehension of bias.

B. A member shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

C. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the member's duties.

D. A member shall not use the member's position on the panel or committee to advance any personal or private interests. A member shall avoid actions that may create the impression that others are in a special position to influence the member. A member shall make every effort to prevent or discourage others from representing themselves as being in such a position.

E. A member shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the member's conduct or judgment.

F. A member shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the member's impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias.

V. Duties in Certain Situations

A. For a period of one year after the completion of an Article 1904 proceeding, a former member shall not personally advise or represent any participant in the proceeding with regard to antidumping or countervailing duty matters.

B. In the case of an Article 1904 proceeding, a member or a former member shall not represent a participant in an administrative proceeding, a domestic court proceeding or another Article 1904 proceeding involving the same goods.

C. A former member shall avoid actions that may create the appearance that the member was biased in carrying out the member's duties or would benefit from the decision of the panel or committee.

VI. Maintenance of Confidentiality

A. A member or former member shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of another.

B. A member shall not disclose a declaratory opinion under Article 1903 or a panel or extraordinary challenge committee order or decision under Article 1904 prior to its issuance by the panel or committee.

C. A member shall not disclose a special committee report or decision under Article 1905 prior to its public release by the Secretariat. A member or

former member shall not at any time disclose which members are associated with majority or minority opinions in an Article 1905 proceeding.

D. A member shall not disclose a panel report issued under Chapter 20 prior to its publication by the Commission. A member or former member shall not at any time disclose which members are associated with majority or minority opinions in a proceeding under Chapter 20.

E. A member or former member shall not at any time disclose the deliberations of a panel or committee, or any member's view, except as required by law.

VII. Responsibilities of Assistants and Staff

Parts I (Responsibilities to the Process), II (Disclosure Obligations) and VI (Maintenance of Confidentiality) of this Code of Conduct apply also to assistants and staff.

Dated: February 10, 1994.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 94-3930 Filed 2-22-94; 8:45 am]

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Federal Register

Wednesday
Februarv 23 1994

Part VI

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled Hazardous Waste Sites; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4839–6]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

This rule adds 1 new site, ALCOA (Point Comfort)/Lavaca Bay in Point Comfort, Texas, to the General Superfund Section. The identification of a site for the NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This action results in an NPL of 1,191 sites, 1,068 of them in the General Superfund Section and 123 of them in the Federal Facilities Section. An additional 96 sites are proposed, 66 in the General Superfund Section and 30 in the Federal Facilities Section. Final and proposed sites now total 1,288.

EFFECTIVE DATE: The effective date for this amendment is March 25, 1994. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register**.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see "Information Available to the Public" in Section I of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Purpose and Implementation of the NPL
III. Contents of This Final Rule
IV. Executive Order 12866
V. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, stat. 1613 *et seq.* To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions, most recently on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action * * * and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)).

Pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA has promulgated a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is appendix B of 40 CFR part 300, is the National Priorities List ("NPL").

CERCLA section 105(a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." The discussion below may refer to the "releases or threatened releases" that are included on the NPL interchangeably as "releases," "facilities," or "sites."

CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

Three mechanisms for placing sites on the NPL for possible remedial action are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of 40 CFR Part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed whether or not they score above

28.50, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.

EPA determines that the release poses a significant threat to public health.

- EPA anticipates that it will be more cost-effective to use its remedial authority (available only at NPL sites) than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on October 14, 1992 (57 FR 47180).

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites being addressed by other Federal agencies (the "Federal Facilities Section"). Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

Deletions/Cleanups

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 58 sites from the General Superfund Section of the NPL, most recently Charlevoix Municipal Well, Charlevoix, Michigan (58 FR 63531, December 2, 1993) and Mowbray Engineering Company, Greenville, Alabama (58 FR 69238, December 30, 1993).

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Sites qualify for the CCL when:

(1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;

(2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or

(3) The site qualifies for deletion from the NPL. Inclusion of a site on the CCL has no legal significance.

In addition to the 57 sites that have been deleted from the NPL because they have been cleaned up (the Waste Research and Reclamation site was deleted based on deferral to another program and is not considered cleaned up), an additional 167 sites are also in the NPL CCL, all but one from the General Superfund Section. Thus, as of January 1994, the CCL consists of 224 sites.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of January 1994, EPA had conducted 603 removal actions at NPL sites, and 1,755 removal actions at non-NPL sites. Information on removals is available from the Superfund hotline.

Correction

EPA inadvertently left one site off of the appendix B list in the previous final rule (57 FR 47180, October 14, 1992). This site is Foote Mineral Co., East Whiteland Township, PA, which belongs in the General Superfund Section of the NPL. Alternately, one site was included in the previous appendix B list which did not belong. This site is Broward County—21st Manor Dump in Fort Lauderdale, FL, which has been proposed to the NPL but a final decision has not yet been made.

Action In This Rule

This final rule adds 1 site, ALCOA (Point Comfort)/Lavaca Bay in Point Comfort, Texas, to the General Superfund Section, for a total of 1,068 sites in that section. The Federal Facility Section includes 123 sites. Therefore, there are now 1,191 sites on the NPL. An additional 96 sites have been proposed, 66 in the General Superfund Section and 30 in the Federal Facilities Section, and are awaiting final Agency action. Final and proposed sites now total 1,288. These numbers reflect that two sites have been voluntarily withdrawn from the NPL by EPA:

Hevi-Duty Electric Co., Goldsboro, NC
Hexcel Corporation, Livermore, CA

These numbers also reflect the removal of one site from the NPL by the District of Columbia Court of Appeals:

Tex-Tin Corp., Texas City, TX

Information Available to the Public

The Headquarters and Region 6 public dockets for the NPL contain documents relating to the evaluation and scoring of sites in this final rule. The dockets are available for viewing, by appointment only, after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Please contact the Region 6 Docket for hours.

Addresses for the Headquarters and Region 6 dockets follow:

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, 5201 Waterside Mall, 401 M Street SW., Washington, DC 20460, 202/260–3046
Bart Canellas, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H–MA, Dallas, TX 75202–2733, 214/655–6740

The Headquarters docket for this rule contains HRS score sheets for the final site; a Documentation Record for the site describing the information used to compute the score; pertinent information regarding statutory requirements or EPA listing policies that affect the site; a list of documents referenced in the Documentation Record; comments received; and the Agency's response to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule—February 1994." The Region 6 docket for this rule contains all information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the Region 6 docket.

Interested parties may view documents, by appointment only, in the Headquarters or Region 6 Docket or copies may be requested from the Headquarters or Region 6 Docket. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign

liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site may, to the extent potentially responsible parties are identifiable at the time of listing, serve as notice to such parties that the Agency may initiate CERCLA-financed remedial action.

Implementation

After initial discovery of a site at which a release or threatened release may exist, EPA begins a series of increasingly complex evaluations. The first step, the Preliminary Assessment (PA), is a low-cost review of existing information to determine if the site poses a threat to the public health or the environment. If the site presents a serious imminent threat, EPA may take immediate removal action. If the PA shows that the site presents a threat but not an imminent threat, EPA generally will perform a more extensive study called the Site Inspection (SI). The SI involves collecting additional information to better understand the extent of the problem at the site, screen out sites that will not qualify for the NPL, and obtain data necessary to calculate an HRS score for sites that warrant placement on the NPL and further study. To date EPA has completed approximately 35,000 PAs and approximately 17,000 SIs.

The NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990) limits expenditure of the Trust Fund for remedial actions to sites on the NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL; although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites.

Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.415(b)(2) (55 FR 8842, March 8, 1990).

EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities prior to undertaking response action, to proceed directly with Trust Fund-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to accomplish cleanup of the site most expeditiously while using CERCLA's limited resources as efficiently as possible.

Although it is a factor that is considered, the ranking of sites by HRS scores does not by itself determine the sequence in which EPA funds remedial response actions, since the information collected to develop HRS scores is not sufficient to determine either the extent of contamination or the appropriate response for a particular site (40 CFR 300.425(a)(2), 55 FR 8845). Additionally, resource constraints may preclude EPA from evaluating all HRS pathways; only those presenting significant environmental risk and sufficient to make a site eligible for the NPL may be evaluated. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first, so that addressing sites strictly on the basis of ranking would in some cases require stopping work at sites where it already was underway. In addition, certain sites are based on other criteria.

More detailed studies of a site are undertaken in the Remedial Investigation/Feasibility Study ("RI/FS") that typically follows listing. The purpose of the RI/FS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990). The RI/FS takes into account the amount of contaminants released into the environment, the risk to affected populations and environment, the cost to remediate contamination at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of response action to be taken at these sites are made in accordance with 40 CFR 300.415 (55 FR 8842, March 8, 1990) and 40 CFR 300.430 (55 FR 8846, March 8, 1990).

After conducting these additional studies, EPA may conclude that initiating a CERCLA remedial action using the Trust Fund at some sites on the NPL is not appropriate because of more pressing needs at other sites, or because a private party cleanup already is underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

RI/FS at Proposed Sites

An RI/FS may be performed at sites proposed in the Federal Register for placement on the NPL (or even sites that have not been proposed for placement on the NPL) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.415. Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a site proposed for placement on the NPL in preparation for a possible Trust Fund-financed response action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries

The Agency's position is that the NPL does not describe releases in precise geographical terms, and that it would be neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for it to do so.

CERCLA section 105(a)(8)(B) directs EPA to list national priorities among the known "releases or threatened releases" of hazardous substances. Thus, the purpose of the NPL is merely to identify releases of hazardous substances that are priorities for further evaluation. Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue; that is, the NPL site would include all releases evaluated as part of

that HRS analysis (including noncontiguous releases evaluated under the NPL aggregation policy, see 48 FR 40663 (September 8, 1983)).

EPA regulations provide that the "nature and extent of the threat presented by a release" will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally known, as more is learned about the source and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be defined, and in any event are independent of the NPL listing. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it will be impossible to describe the boundaries of a release with certainty.

For these reasons, the NPL need not be amended if further research into the extent of the contamination expands the apparent boundaries of the release. Further, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), quoted at 48 FR 40659 (September 8, 1983). If a party contests liability for releases on discrete parcels of property, it may do so if and when the Agency brings an action against that party to recover costs or to compel a response action at that property.

At the same time, however, the RI/FS or the Record of Decision (which defines the remedy selected) may offer a useful indication to the public of the areas of contamination at which the Agency is considering taking a response action, based on information known at that time. For example, EPA may evaluate (and list) a release over a 400-acre area, but the Record of Decision may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300 acres, but it would result in no formal change in the fact that a release is included on the NPL. The landowner (and the public) also should note in such a case that if further study (or the remedial construction itself) reveals that the contamination is located on or has spread to other areas, the Agency may address those areas as well.

This view of the NPL as an initial identification of a release that is not subject to constant re-evaluation is consistent with the Agency's policy of not rescoring NPL sites:

> EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process * * *. [T]he NPL serves as a guide to EPA and does not determine liability or the need for response. (49 FR 37081 (September 21, 1984).

See also *City of Stoughton, Wisc.* v. *U.S. EPA*, 858 F. 2d 747, 751 (D.C. Cir. 1988):

> Certainly EPA could have permitted further comment or conducted further testing [on proposed NPL sites]. Either course would have consumed further assets of the Agency and would bave delayed a determination of the risk priority associated with the site. Yet * * * "the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway." Eagle-Picher [*Industries* v. *EPA*] II, 759 F. 2d [921,] at 932 [(D.C. Cir. 1985)].

III. Contents of This Final Rule

This final rule adds 1 site to the General Superfund Section of the NPL. This site is ALCOA (Point Comfort)/Lavaca Bay in Point Comfort, Texas, which was proposed to the NPL in Proposal #15 (58 FR 34018, June 23, 1993) based on an HRS score of 28.50 or greater. The group number identified for this site based on its score is 4/5. Group numbers are determined by arranging the NPL by rank and dividing it into groups of 50 sites. For example, a site in Group 4 has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

Public Comments

EPA reviewed all comments received on this site. The formal comment period ended on August 23, 1993.

EPA has carefully considered public comments submitted and has made certain modifications in response to those comments. EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List Final Rule—February 1994."

Statutory Requirements

CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. Where other authorities exist, placing sites on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to place certain types of sites on the NPL even though CERCLA does not exclude such action. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

Economic Impacts

The costs of cleanup actions that may be taken at any site are not directly attributable to placement on the NPL. EPA has conducted a preliminary analysis of economic implications of today's amendment to the NPL. EPA believes that the kinds of economic effects associated with this revision generally are similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to adding 1 site to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis.

Inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to the site included in this rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches.

Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by Section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

—For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.

—For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1993) cost estimates available; the estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,350,000
Remedial design	1,260,000
Remedial action	[3] 21,960,000
Net present value of O&M [2]	3,770,000

[1] 1993 U.S. Dollars.
[2] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.
[3] Includes State cost-share.
Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

Costs to the State of Texas associated with today's final rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's period of participation. Using the budget projections presented above, the cost to Texas of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $2.78 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if the ALCOA (Point Comfort/Lavaca Bay) site will require this treatment and for how long. Assuming EPA involvement for 10 years is needed, State O&M costs would be approximately $2.3 million.

Placing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this amendment to the NPL are aggregations of efforts on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this amendment on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's amendment are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

IV. Executive Order 12866

This action was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 12316 (46 FR 42237, August 20, 1981). No changes were made in response to OMB.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule revises the NCP, it is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that the listing of the sites in this NPL rule could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only the firm's contribution to the problem, but also its ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule does not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: February 15, 1994.
Elliott P. Laws,
Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Appendix B to part 300 is revised to read as follows:

Appendix B—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994

State	Site name	City/county	Notes
AK	Alaska Battery Enterprises	Fairbanks N Star Borough	C
AK	Arctic Surplus	Fairbanks	
AL	Ciba-Geigy Corp. (McIntosh Plant)	McIntosh	
AL	Interstate Lead Co. (ILCO)	Leeds	
AL	Olin Corp. (McIntosh Plant)	McIntosh	
AL	Perdido Ground Water Contamination	Perdido	C
AL	Redwing Carriers, Inc. (Saraland)	Saraland	
AL	Stauffer Chemical Co. (Cold Creek Plant)	Bucks	
AL	Stauffer Chemical Co. (LeMoyne Plant)	Axis	
AL	T.H. Agriculture & Nutrition (Montgomery)	Montgomery	
AL	Triana/Tennessee River	Limestone/Morgan	C
AR	Arkwood, Inc	Omaha	
AR	Frit Industries	Walnut Ridge	
AR	Gurley Pit	Edmondson	
AR	Industrial Waste Control	Fort Smith	C
AR	Jacksonville Municipal Landfill	Jacksonville	
AR	Mid-South Wood Products	Mena	C
AR	Midland Products	Ola/Birta	C
AR	Monroe Auto Equipment (Paragould Pit)	Paragould	
AR	Popile, Inc	El Dorado	
AR	Rogers Road Municipal Landfill	Jacksonville	
AR	South 8th Street Landfill	West Memphis	
AR	Vertac, Inc	Jacksonville	
AZ	Apache Powder Co	St. David	
AZ	Hassayampa Landfill	Hassayampa	
AZ	Indian Bend Wash Area	Scottsdale/Tempe/Phoenix	
AZ	Litchfield Airport Area	Goodyear/Avondale	
AZ	Motorola, Inc. (52nd Street Plant)	Phoenix	
AZ	Nineteenth Avenue Landfill	Phoenix	
AZ	Tucson International Airport Area	Tucson	
CA	Advanced Micro Devices, Inc	Sunnyvale	C
CA	Advanced Micro Devices, Inc. (Bldg. 915)	Sunnyvale	C
CA	Aerojet General Corp	Rancho Cordova	
CA	Applied Materials	Santa Clara	C
CA	Atlas Asbestos Mine	Fresno County	
CA	Beckman Instruments (Porterville Plant)	Porterville	C
CA	Brown & Bryant, Inc. (Arvin Plant)	Arvin	
CA	CTS Printex, Inc	Mountain View	C
CA	Celtor Chemical Works	Hoopa	C
CA	Coalinga Asbestos Mine	Coalinga	
CA	Coast Wood Preserving	Ukiah	
CA	Crazy Horse Sanitary Landfill	Salinas	
CA	Del Norte Pesticide Storage	Crescent City	C
CA	Fairchild Semiconductor Corp (Mt View)	Mountain View	
CA	Fairchild Semiconductor Corp (S San Jose	South San Jose	C
CA	Firestone Tire&Rubber Co. (Salinas Plant)	Salinas	C
CA	Fresno Municipal Sanitary Landfill	Fresno	
CA	Hewlett-Packard (620–640 Page Mill Road)	Palo Alto	
CA	Industrial Waste Processing	Fresno	
CA	Intel Corp. (Mountain View Plant)	Mountain View	
CA	Intel Corp. (Santa Clara III)	Santa Clara	C
CA	Intel Magnetics	Santa Clara	C
CA	Intersil Inc./Siemens Components	Cupertino	C

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
CA	Iron Mountain Mine	Redding	
CA	J.H. Baxter & Co	Weed	
CA	Jasco Chemical Corp	Mountain View	
CA	Koppers Co., Inc. (Oroville Plant)	Oroville	
CA	Liquid Gold Oil Corp	Richmond	
CA	Lorentz Barrel & Drum Co	San Jose	
CA	Louisiana-Pacific Corp	Oroville	
CA	MGM Brakes	Cloverdale	
CA	McColl	Fullerton	
CA	McCornick & Baxter Creosoting Co	Stockton	
CA	Modesto Ground Water Contamination	Modesto	
CA	Monolithic Memories	Sunnyvale	
CA	Montrose Chemical Corp	Torrance	
CA	National Semiconductor Corp	Santa Clara	
CA	Newmark Ground Water Contamination	San Bernardino	
CA	Operating Industries, Inc., Landfill	Monterey Park	
CA	Pacific Coast Pipe Lines	Fillmore	
CA	Purity Oil Sales, Inc	Malaga	
CA	Ralph Gray Trucking Co	Westminster	
CA	Raytheon Corp	Mountain View	
CA	San Fernando Valley (Area 1)	Los Angeles	
CA	San Fernando Valley (Area 2)	Los Angeles/Glendale	
CA	San Fernando Valley (Area 3)	Glendale	
CA	San Fernando Valley (Area 4)	Los Angeles	
CA	San Gabriel Valley (Area 1)	El Monte	
CA	San Gabriel Valley (Area 2)	Baldwin Park Area	
CA	San Gabriel Valley (Area 3)	Alhambra	
CA	San Gabriel Valley (Area 4)	La Puente	
CA	Selma Treating Co	Selma	
CA	Sola Optical USA, Inc	Petaluma	C
CA	South Bay Asbestos Area	Alviso	
CA	Southern California Edison Co (Visalia)	Visalia	
CA	Spectra-Physics, Inc	Mountain View	C
CA	Stringfellow	Glen Avon Heights	S
CA	Sulphur Bank Mercury Mine	Clear Lake	
CA	Synertek, Inc. (Building 1)	Santa Clara	C
CA	T.H. Agriculture & Nutrition Co	Fresno	
CA	TRW Microwave, Inc (Building 825)	Sunnyvale	C
CA	Teledyne Semiconductor	Mountain View	C
CA	United Heckathorn Co	Richmond	
CA	Valley Wood Preserving, Inc	Turlock	
CA	Waste Disposal, Inc	Santa Fe Springs	
CA	Watkins-Johnson Co. (Stewart Division)	Scotts Valley	
CA	Western Pacific Railroad Co	Oroville	
CA	Westinghouse Elecetric Corp. (Sunnyvale)	Sunnyvale	
CO	Broderick Wood Products	Denver	
CO	California Gulch	Leadville	
CO	Central City-Clear Creek	Idaho Springs	
CO	Chemical Sales Co	Denver	
CO	Denver Radium Site	Denver	
CO	Eagle Mine	Minturn/Redcliff	
CO	Lincoln Park	Canon City	
CO	Lowry Landfill	Arapahoe County	
CO	Marshall Landfill	Boulder County	C,S
CO	Sand Creek Industrial	Commerce City	
CO	Smuggler Mountain	Pitkin County	
CO	Uravan Uranium Project (Union Carbide)	Uravan	
CT	Barkhamsted-New Hartford Landfill	Barkhamsted	
CT	Beacon Heights Landfill	Beacon Falls	
CT	Cheshire Ground Water Contamination	Cheshire	
CT	Durham Meadows	Durham	
CT	Gallup's Quarry	Plainfield	
CT	Kellogg-Deering Well Field	Norwalk	
CT	Laurel Park, Inc	Naugatuck Borough	S
CT	Linemaster Switch Corp	Woodstock	
CT	Nutmeg Valley Road	Wolcott	
CT	Old Southington Landfill	Southington	
CT	Precision Plating Corp	Vernon	
CT	Revere Textile Prints Corp	Sterling	C
CT	Solvents Recovery Service New England	Southington	
CT	Yaworski Waste Lagoon	Canterbury	
DE	Army Creek Landfill	New Castle County	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
DE	Chem-Solv, Inc	Cheswold	
DE	Coker's Sanitation Service Landfills	Kent County	C
DE	Delaware City PVC Plant	Delaware City	
DE	Delaware Sand & Gravel Landfill	New Castle County	
DE	Dover Gas Light Co	Dover	
DE	E.I. Du Pont de Nemours (Newport Landfill)	Newport	
DE	Halby Chemical Co	New Castle	
DE	Harvey & Knott Drum, Inc	Kirkwood	
DE	Koppers Co., Inc. (Newport Plant)	Newport	
DE	NCR Corp. (Millsboro Plant)	Millsboro	
DE	New Castle Spill	New Castle County	C
DE	Sealand Limited	Mount Pleasant	C
DE	Standard Chlorine of Delaware, Inc	Delaware City	
DE	Sussex County Landfill No. 5	Laurel	
DE	Tybouts Corner Landfill	New Castle County	S
DE	Tyler Refrigeration Pit	Smyrna	
DE	Wildcat Landfill	Dover	C
FL	Agrico Chemical Co	Pensacola	
FL	Airco Plating Co	Miami	
FL	Alpha Chemical Corp	Galloway	C
FL	American Creosote Works (Pensacola Plt)	Pensacola	
FL	Anaconda Aluminum Co./Milgo Electronics	Miami	
FL	Anodyne, Inc	North Miami Beach	
FL	B&B Chemical Co., Inc	Hialeah	
FL	BMI-Textron	Lake Park	
FL	Beulah Landfill	Pensacola	C
FL	Brown Wood Preserving	Live Oak	C
FL	Cabot/Koppers	Gainesville	
FL	Chemform, Inc	Pompano Beach	C
FL	City Industries, Inc	Orlando	
FL	Coleman-Evans Wood Preserving Co	Whitehouse	
FL	Davie Landfill	Davie	
FL	Dubose Oil Products Co	Cantonment	
FL	Florida Steel Corp	Indiantown	
FL	Gold Coast Oil Corp	Miami	C
FL	Harris Corp. (Palm Bay Plant)	Palm Bay	
FL	Helena Chemical Co. (Tampa Plant)	Tampa	
FL	Hipps Road Landfill	Duval County	
FL	Hollingsworth Solderless Terminal	Fort Lauderdale	C
FL	Kassauf-Kimerling Battery Disposal	Tampa	
FL	Madison County Sanitary Landfill	Madison	
FL	Miami Drum Services	Miami	C
FL	Munisport Landfill	North Miami	
FL	Northwest 58th Street Landfill	Hialeah	
FL	Peak Oil Co./Bay Drum Co	Tampa	
FL	Pepper Steel & Alloys, Inc	Medley	C
FL	Petroleum Products Corp	Pembroke Park	
FL	Pickettville Road Landfill	Jacksonville	
FL	Piper Aircraft/Vero Beach Water & Sewer	Vero Beach	
FL	Reeves Southeast Galvanizing Corp	Tampa	
FL	Sapp Battery Salvage	Cottondale	
FL	Schuylkill Metals Corp	Plant City	
FL	Sherwood Medical Industries	Deland	
FL	Sixty-Second Street Dump	Tampa	
FL	Standard Auto Bumper Corp	Hialeah	
FL	Sydney Mine Sludge Ponds	Brandon	
FL	Taylor Road Landfill	Seffner	
FL	Tower Chemical Co	Clermont	
FL	Whitehouse Oil Pits	Whitehouse	
FL	Wilson Concepts of Florida, Inc	Pompano Beach	C
FL	Wingate Road Municipal Incinerator Dump	Fort Lauderdale	
FL	Woodbury Chemical Co. (Princeton Plant)	Princeton	C
FL	Yellow Water Road Dump	Baldwin	
FL	Zellwood Ground Water Contamination	Zellwood	
GA	Cedartown Industries, Inc	Cedartown	
GA	Cedartown Municipal Landfill	Cedartown	
GA	Diamond Shamrock Corp. Landfill	Cedartown	
GA	Firestone Tire & Rubber Co (Albany Plant)	Albany	
GA	Hercules 009 Landfill	Brunswick	
GA	Marzone Inc./Chevron Chemical Co	Tifton	
GA	Mathis Brothers Landfill	Kensington	
GA	Monsanto Corp. (Augusta Plant)	Augusta	C

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
GA	Powersville Site	Peach County	C
GA	T.H. Agriculture & Nutrition (Albany)	Albany	
GA	Woolfolk Chemical Works, Inc	Fort Valley	
GU	Ordot Landfill	Guam	C,S
IA	Des Moines TCE	Des Moines	
IA	E.I. Du Pont de Nemours (County Rd X23)	West Point	C
IA	Electro-Coatings, Inc	Cedar Rapids	
IA	Fairfield Coal Gasification Plant	Fairfield	
IA	Farmers' Mutual Cooperative	Hospers	
IA	John Deere (Ottumwa Works Landfills)	Ottumwa	C
IA	Lawrence Todtz Farm	Camanche	C
IA	Mid-America Tanning Co	Sergeant Bluff	
IA	Midwest Manufacturing/North Farm	Kellogg	
IA	Northwestern States Portland Cement Co	Mason City	C
IA	Peoples Natural Gas Co	Dubuque	
IA	Red Oak City Landfill	Red Oak	
IA	Shaw Avenue Dump	Charles City	
IA	Sheller-Globe Corp. Disposal	Keokuk	
IA	Vogel Paint & Wax Co	Orange City	
IA	White Farm Equipment Co. Dump	Charles City	
ID	Bunker Hill Mining & Metallurgical	Smelterville	
ID	Eastern Michaud Flats Contamination	Pocatello	
ID	Kerr-McGee Chemical Corp. (Soda Springs)	Soda Springs	
ID	Monsanto Chemical Co. (Soda Springs)	Soda Springs	
ID	Pacific Hide & Fur Recycling Co	Pocatello	
ID	Union Pacific Railroad Co	Pocatello	
IL	A & F Material Reclaiming, Inc	Greenup	C
IL	Acme Solvent Reclaiming (Morristown Plant)	Morristown	
IL	Adams County Quincy Landfills 2&3	Quincy	
IL	Amoco Chemicals (Joliet Landfill)	Joliet	
IL	Beloit Corp	Rockton	
IL	Belvidere Municipal Landfill	Belvidere	C
IL	Byron Salvage Yard	Byron	
IL	Central Illinois Public Service Co	Taylorville	
IL	Cross Brothers Pail Recycling (Pembroke)	Pembroke Township	
IL	DuPage County Landfill/Blackwell Forest	Warrenville	
IL	Galesburg/Koppers Co	Galesburg	
IL	H.O.D. Landfill	Antioch	
IL	Ilada Energy Co	East Cape Girardeau	
IL	Interstate Pollution Control, Inc	Rockford	
IL	Johns-Manville Corp	Waukegan	C
IL	Kerr-McGee (Kress Creek/W Branch DuPage)	DuPage County	
IL	Kerr-McGee (Reed-Keppler Park)	West Chicago	
IL	Kerr-McGee (Residential Areas)	West Chicago/DuPage County	
IL	Kerr-McGee (Sewage Treatment Plant)	West Chicago	
IL	LaSalle Electric Utilities	LaSalle	
IL	Lenz Oil Service, Inc	Lemont	
IL	MIG/Dewane Landfill	Belvidere	
IL	NL Industries/Taracorp Lead Smelter	Granite City	
IL	Ottawa Radiation Areas	Ottawa	
IL	Outboard Marine Corp	Waukegan	S
IL	Pagel's Pit	Rockford	
IL	Parsons Casket Hardware Co	Belvidere	
IL	Southeast Rockford Gd Wtr Contamination	Rockford	
IL	Tri-County Landfill/Waste Mgmt Illinois	South Elgin	
IL	Velsicol Chemical Corp. (Illinois)	Marshall	
IL	Wauconda Sand & Gravel	Wauconda	
IL	Woodstock Municipal Landfill	Woodstock	
IL	Yeoman Creek Landfill	Waukegan	
IN	American Chemical Service, Inc	Griffith	
IN	Bennett Stone Quarry	Bloomington	
IN	Carter Lee Lumber Co	Indianapolis	
IN	Columbus Old Municipal Landfill #1	Columbus	
IN	Conrail Rail Yard (Elkhart)	Elkhart	
IN	Continental Steel Corp	Kokomo	
IN	Douglass Road/Uniroyal, Inc., Landfill	Mishawaka	
IN	Envirochem Corp	Zionsville	
IN	Fisher-Calo	LaPorte	
IN	Fort Wayne Reduction Dump	Fort Wayne	
IN	Galen Myers Dump/Drum Salvage	Osceola	
IN	Himco Dump	Elkhart	
IN	Lake Sandy Jo (M&M Landfill)	Gary	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
IN	Lakeland Disposal Service, Inc	Claypool	
IN	Lemon Lane Landfill	Bloomington	
IN	MIDCO I	Gary	
IN	MIDCO II	Gary	
IN	Main Street Well Field	Elkhart	
IN	Marion (Bragg) Dump	Marion	
IN	Neal's Dump (Spencer)	Spencer	
IN	Neal's Landfill (Bloomington)	Bloomington	
IN	Ninth Avenue Dump	Gary	
IN	Northside Sanitary Landfill, Inc	Zionsville	
IN	Prestolite Battery Division	Vincennes	
IN	Reilly Tar & Chemical (Indianapolis Plant)	Indianapolis	
IN	Seymour Recycling Corp	Seymour	C,S
IN	Southside Sanitary Landfill	Indianapolis	
IN	Tippecanoe Sanitary Landfill, Inc	Lafayette	
IN	Tri-State Plating	Columbus	C
IN	Waste, Inc., Landfill	Michigan City	
IN	Wayne Waste Oil	Columbia City	
IN	Whiteford Sales & Service/Nationalease	South Bend	
KS	29th & Mead Ground Water Contamination	Wichita	
KS	57th and North Broadway Streets Site	Wichita Heights	
KS	Arkansas City Dump	Arkansas City	C,S
KS	Cherokee County	Cherokee County	
KS	Doepke Disposal (Holliday)	Johnson County	
KS	Obee Road	Hutchinson	
KS	Pester Refinery Co	El Dorado	
KS	Strother Field Industrial Park	Cowley County	
KY	A.L. Taylor (Valley of Drums)	Brooks	C
KY	Airco	Calvert City	
KY	B.F. Goodrich	Calvert City	
KY	Brantley Landfill	Island	
KY	Caldwell Lace Leather Co., Inc	Auburn	
KY	Distler Brickyard	West Point	
KY	Distler Farm	Jefferson County	C
KY	Fort Hartford Coal Co. Stone Quarry	Olaton	
KY	General Tire & Rubber (Mayfield Landfill)	Mayfield	C
KY	Green River Disposal, Inc	Maceo	
KY	Howe Valley Landfill	Howe Valley	
KY	Lee's Lane Landfill	Louisville	C
KY	Maxey Flats Nuclear Disposal	Hillsboro	
KY	National Electric Coil/Cooper Industries	Dayhoit	
KY	Newport Dump	Newport	C
KY	Red Penn Sanitation Co. Landfill	PeeWee Valley	
KY	Smith's Farm	Brooks	
KY	Tri-City Disposal Co	Shepherdsville	
LA	American Creosote Works, Inc (Winnfield)	Winnfield	
LA	Bayou Bonfouca	Slidell	
LA	Bayou Sorrel Site	Bayou Sorrel	C
LA	Cleve Reber	Sorrento	
LA	Combustion, Inc	Denham Springs	
LA	D.L. Mud, Inc	Abbeville	
LA	Dutchtown Treatment Plant	Ascension Parish	
LA	Gulf Coast Vacuum Services	Abbeville	
LA	Old Inger Oil Refinery	Darrow	S
LA	PAB Oil & Chemical Service, Inc	Abbeville	
LA	Petro-Processors of Louisiana Inc	Scotlandville	
MA	Atlas Tack Corp	Fairhaven	
MA	Baird & McGuire	Holbrook	
MA	Cannon Engineering Corp. (CEC)	Bridgewater	C
MA	Charles-George Reclamation Landfill	Tyngsborough	
MA	Groveland Wells	Groveland	
MA	Haverhill Municipal Landfill	Haverhill	
MA	Hocomonco Pond	Westborough	
MA	Industri-Plex	Woburn	
MA	Iron Horse Park	Billerica	
MA	New Bedford Site	New Bedford	S
MA	Norwood PCBs	Norwood	
MA	Nyanza Chemical Waste Dump	Ashland	
MA	PSC Resources	Palmer	
MA	Re-Solve, Inc	Dartmouth	
MA	Rose Disposal Pit	Lanesboro	
MA	Salem Acres	Salem	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
MA	Shpack Landfill	Norton/Attleboro	
MA	Silresim Chemical Corp	Lowell	
MA	Sullivan's Ledge	New Bedford	
MA	W.R. Grace & Co Inc (Acton Plant)	Acton	
MA	Wells G&H	Woburn	
MD	Bush Valley Landfill	Abingdon	
MD	Kane & Lombard Street Drums	Baltimore	
MD	Limestone Road	Cumberland	
MD	Mid-Atlantic Wood Preservers, Inc	Harmans	C
MD	Sand, Gravel & Stone	Elkton	
MD	Southern Maryland Wood Treating	Hollywood	
MD	Woodlawn County Landfill	Woodlawn	
ME	McKin Co	Gray	C
ME	O'Connor Co	Augusta	
ME	Pinette's Salvage Yard	Washburn	
ME	Saco Municipal Landfill	Saco	
ME	Saco Tannery Waste Pits	Saco	C
ME	Union Chemical Co., Inc	South Hope	
ME	Winthrop Landfill	Winthrop	
MI	Adam's Plating	Lansing	
MI	Albion-Sheridan Township Landfill	Albion	
MI	Allied Paper/Portage Ck/Kalamazoo River	Kalamazoo	
MI	American Anodco, Inc	Ionia	C
MI	Anderson Development Co	Adrian	C
MI	Auto Ion Chemicals, Inc	Kalamazoo	
MI	Avenue "E" Ground Water Contamination	Traverse City	
MI	Barrels, Inc	Lansing	
MI	Bendix Corp./Allied Automotive	St. Joseph	
MI	Berlin & Farro	Swartz Creek	
MI	Bofors Nobel, Inc	Muskegon	
MI	Burrows Sanitation	Hartford	C
MI	Butterworth #2 Landfill	Grand Rapids	
MI	Cannelton Industries, Inc	Sault Saint Marie	
MI	Carter Industrials, Inc	Detroit	
MI	Cemetery Dump	Rose Center	C
MI	Chem Central	Wyoming Township	
MI	Clare Water Supply	Clare	
MI	Cliff/Dow Dump	Marquette	
MI	Duell & Gardner Landfill	Dalton Township	
MI	Electrovoice	Buchanan	
MI	Folkertsma Refuse	Grand Rapids	
MI	Forest Waste Products	Otisville	
MI	G&H Landfill	Utica	
MI	Grand Traverse Overall Supply Co	Greilickville	C
MI	Gratiot County Landfill	St. Louis	S
MI	H. Brown Co., Inc	Grand Rapids	
MI	Hedblum Industries	Oscoda	C
MI	Hi-Mill Manufacturing Co	Highland	
MI	Ionia City Landfill	Ionia	
MI	J&L Landfill	Rochester Hills	
MI	K&L Avenue Landfill	Oshtemo Township	
MI	Kaydon Corp	Muskegon	
MI	Kent City Mobile Home Park	Kent City	
MI	Kentwood Landfill	Kentwood	
MI	Kysor Industrial Corp	Cadillac	
MI	Liquid Disposal, Inc	Utica	
MI	Mason County Landfill	Pere Marquette Twp	C
MI	McGraw Edison Corp	Albion	
MI	Metamora Landfill	Metamora	
MI	Michigan Disposal (Cork Street Landfill)	Kalamazoo	
MI	Motor Wheel, Inc	Lansing	
MI	Muskegon Chemical Co	Whitehall	
MI	North Bronson Industrial Area	Bronson	
MI	Northernaire Plating	Cadillac	
MI	Novaco Industries	Temperance	C
MI	Organic Chemicals, Inc	Grandville	
MI	Ossineke Ground Water Contamination	Ossineke	
MI	Ott/Story/Cordova Chemical Co	Dalton Township	
MI	Packaging Corp. of America	Filer City	
MI	Parsons Chemical Works, Inc	Grand Ledge	
MI	Peerless Plating Co	Muskegon	
MI	Petoskey Municipal Well Field	Petoskey	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
MI	Rasmussen's Dump	Green Oak Township	
MI	Rockwell International Corp. (Allegan)	Allegan	
MI	Rose Township Dump	Rose Township	
MI	Roto-Finish Co., Inc	Kalamazoo	
MI	SCA Independent Landfill	Muskegon Heights	
MI	Shiawassee River	Howell	
MI	South Macomb Disposal (Landfills 9 & 9A)	Macomb Township	
MI	Southwest Ottawa County Landfill	Park Township	
MI	Sparta Landfill	Sparta Township	
MI	Spartan Chemical Co	Wyoming	
MI	Spiegelberg Landfill	Green Oak Township	
MI	Springfield Township Dump	Davisburg	
MI	State Disposal Landfill, Inc	Grand Rapids	
MI	Sturgis Municipal Wells	Sturgis	
MI	Tar Lake	Mancelona Township	
MI	Thermo-Chem, Inc	Muskegon	
MI	Torch Lake	Houghton County	
MI	U.S. Aviex	Howard Township	C
MI	Velsicol Chemical Corp. (Michigan)	St. Louis	C
MI	Verona Well Field	Battle Creek	
MI	Wash King Laundry	Pleasant Plains Twp	
MI	Waste Management of Michigan (Holland)	Holland	
MN	Agate Lake Scrapyard	Fairview Township	
MN	Arrowhead Refinery Co	Hermantown	
MN	Boise Cascade/Onan Corp./Medtronics, Inc	Fridley	C
MN	Burlington Northern (Brainerd/Baxter)	Brainerd/Baxter	
MN	Dakhue Sanitary Landfill	Cannon Falls	
MN	East Bethel Demolition Landfill	East Bethel Township	
MN	FMC Corp. (Fridley Plant)	Fridley	C
MN	Freeway Sanitary Landfill	Burnsville	
MN	General Mills/Henkel Corp	Minneapolis	C
MN	Joslyn Manufacturing & Supply Co	Brooklyn Center	
MN	Koch Refining Co./N-Ren Corp	Pine Bend	
MN	Koppers Coke	St. Paul	
MN	Kummer Sanitary Landfill	Bemidji	
MN	Kurt Manufacturing Co	Fridley	
MN	LaGrand Sanitary Landfill	LaGrand Township	
MN	Lehillier/Mankato Site	Lehillier/Mankato	C
MN	Long Prairie Ground Water Contamination	Long Prairie	
MN	MacGillis & Gibbs/Bell Lumber & Pole Co	New Brighton	
MN	NL Industries/Taracorp/Golden Auto	St. Louis Park	
MN	New Brighton/Arden Hills	New Brighton	
MN	Nutting Truck & Caster Co	Faribault	C
MN	Oak Grove Sanitary Landfill	Oak Grove Township	C
MN	Oakdale Dump	Oakdale	
MN	Olmsted County Sanitary Landfill	Oronoco	
MN	Perham Arsenic Site	Perham	
MN	Pine Bend Sanitary Landfill	Dakota County	
MN	Reilly Tar&Chem (St. Louis Park Plant)	St. Louis Park	S
MN	Ritari Post & Pole	Sebeka	
MN	South Andover Site	Andover	
MN	St. Augusta Sanitary Landfill/Engen Dump	St. Augusta Township	
MN	St. Louis River Site	St. Louis County	
MN	St. Regis Paper Co	Cass Lake	
MN	University Minnesota (Rosemount Res Cen)	Rosemount	
MN	Waite Park Wells	Waite Park	
MN	Washington County Landfill	Lake Elmo	C
MN	Waste Disposal Engineering	Andover	
MN	Whittaker Corp	Minneapolis	C
MN	Windom Dump	Windom	C
MO	Bee Cee Manufacturing Co	Malden	
MO	Big River Mine Tailings/St. Joe Minerals	Desloge	
MO	Conservation Chemical Co	Kansas City	C
MO	Ellisville Site	Ellisville	S
MO	Fulbright Landfill	Springfield	C
MO	Kem-Pest Laboratories	Cape Girardeau	
MO	Lee Chemical	Liberty	
MO	Minker/Stout/Romaine Creek	Imperial	
MO	Missouri Electric Works	Cape Girardeau	
MO	North-U Drive Well Contamination	Springfield	C
MO	Oronogo-Duenweg Mining Belt	Jasper County	
MO	Quality Plating	Sikeston	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
MO	Shenandoah Stables	Moscow Mills	
MO	Solid State Circuits, Inc	Republic	C
MO	St Louis Airport/HIS/Futura Coatings Co	St. Louis County	
MO	Syntex Facility	Verona	
MO	Times Beach Site	Times Beach	
MO	Valley Park TCE	Valley Park	
MO	Westlake Landfill	Bridgeton	
MO	Wheeling Disposal Service Co. Landfill	Amazonia	
MS	Flowood Site	Flowood	C,S
MS	Newsom Brothers/Old Reichhold Chemicals	Columbia	
MT	Anaconda Co. Smelter	Anaconda	
MT	East Helena Site	East Helena	
MT	Idaho Pole Co	Bozeman	
MT	Libby Ground Water Contamination	Libby	C
MT	Milltown Reservoir Sediments	Milltown	
MT	Montana Pole and Treating	Butte	
MT	Mouat Industries	Columbus	
MT	Silver Bow Creek/Butte Area	Sil Bow/Deer Lodge	
NC	ABC One Hour Cleaners	Jacksonville	
NC	Aberdeen Pesticide Dumps	Aberdeen	
NC	Benfield Industries, Inc	Hazelwood	
NC	Bypass 601 Ground Water Contamination	Concord	
NC	Cape Fear Wood Preserving	Fayetteville	
NC	Carolina Transformer Co	Fayetteville	
NC	Celanese Corp. (Shelby Fiber Operations)	Shelby	C
NC	Charles Macon Lagoon & Drum Storage	Cordova	
NC	Chemtronics, Inc	Swannanoa	C
NC	FCX, Inc. (Statesville Plant)	Statesville	
NC	FCX, Inc. (Washington Plant)	Washington	
NC	Geigy Chemical Corp. (Aberdeen Plant)	Aberdeen	
NC	JFD Electronics/Channel Master	Oxford	
NC	Jadco-Hughes Facility	Belmont	
NC	Koppers Co. Inc. (Morrisville Plant)	Morrisville	
NC	Martin-Marietta, Sodyeco, Inc	Charlotte	
NC	NC State University (Lot 86, Farm Unit #1)	Raleigh	
NC	National Starch & Chemical Corp	Salisbury	
NC	New Hanover Cnty Airport Burn Pit	Wilmington	
NC	Potter's Septic Tank Service Pits	Maco	
ND	Arsenic Trioxide Site	Southeastern ND	C,S
ND	Minot Landfill	Minot	
NE	10th Street Site	Columbus	
NE	Cleburn Street Well	Grand Island	
NE	Hastings Ground Water Contamination	Hastings	
NE	Lindsay Manufacturing Co	Lindsay	
NE	Nebraska Ordnance Plant (Former)	Mead	
NE	Sherwood Medical Co	Norfolk	
NE	Waverly Ground Water Contamination	Waverly	
NH	Auburn Road Landfill	Londonderry	
NH	Coakley Landfill	North Hampton	
NH	Dover Municipal Landfill	Dover	
NH	Fletcher's Paint Works & Storage	Milford	
NH	Kearsarge Metallurgical Corp	Conway	C
NH	Keefe Environmental Services	Epping	C
NH	Mottolo Pig Farm	Raymond	C
NH	New Hampshire Plating Co	Merrimack	
NH	Ottati & Goss/Kingston Steel Drum	Kingston	
NH	Savage Municipal Water Supply	Milford	
NH	Somersworth Sanitary Landfill	Somersworth	
NH	South Municipal Water Supply Well	Peterborough	
NH	Sylvester	Nashua	C,S
NH	Tibbets Road	Barrington	
NH	Tinkham Garage	Londonderry	
NH	Town Garage/Radio Beacon	Londonderry	C
NJ	A.O. Polymer	Sparta Township	
NJ	American Cyanamid Co	Bound Brook	
NJ	Asbestos Dump	Millington	
NJ	Bog Creek Farm	Howell Township	
NJ	Brick Township Landfill	Brick Township	
NJ	Bridgeport Rental & Oil Services	Bridgeport	
NJ	Brook Industrial Park	Bound Brook	
NJ	Burnt Fly Bog	Marlboro Township	
NJ	CPS/Madison Industries	Old Bridge Township	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
NJ	Caldwell Trucking Co	Fairfield	
NJ	Chemical Control	Elizabeth	
NJ	Chemical Insecticide Corp	Edison Township	
NJ	Chemical Leaman Tank Lines, Inc	Bridgeport	
NJ	Chemsol, Inc	Piscataway	
NJ	Ciba-Geigy Corp	Toms River	
NJ	Cinnaminson Ground Water Contamination	Cinnaminson Township	
NJ	Combe Fill North Landfill	Mount Olive Township	C
NJ	Combe Fill South Landfill	Chester Township	
NJ	Cosden Chemical Coatings Corp	Beverly	
NJ	Curcio Scrap Metal, Inc	Saddle Brook Township	
NJ	D'Imperio Property	Hamilton Township	
NJ	Dayco Corp./L.E Carpenter Co	Wharton Borough	
NJ	De Rewal Chemical Co	Kingwood Township	
NJ	Delilah Road	Egg Harbor Township	
NJ	Denzer & Schafer X-Ray Co	Bayville	
NJ	Diamond Alkali Co	Newark	
NJ	Dover Municipal Well 4	Dover Township	
NJ	Ellis Property	Evesham Township	
NJ	Evor Phillips Leasing	Old Bridge Township	
NJ	Ewan Property	Shamong Township	
NJ	Fair Lawn Well Field	Fair Lawn	
NJ	Florence Land Recontouring Landfill	Florence Township	
NJ	Fried Industries	East Brunswick Township	
NJ	GEMS Landfill	Gloucester Township	
NJ	Garden State Cleaners Co	Minotola	
NJ	Glen Ridge Radium Site	Glen Ridge	
NJ	Global Sanitary Landfill	Old Bridge Township	
NJ	Goose Farm	Plumstead Township	C
NJ	Helen Kramer Landfill	Mantua Township	C
NJ	Hercules, Inc. (Gibbstown Plant)	Gibbstown	
NJ	Higgins Disposal	Kingston	
NJ	Higgins Farm	Franklin Township	
NJ	Hopkins Farm	Plumstead Township	
NJ	Imperial Oil Co., Inc./Champion Chemicals	Morganville	
NJ	Industrial Latex Corp	Wallington Borough	
NJ	JIS Landfill	Jamesburg/S. Brnswck	
NJ	Jackson Township Landfill	Jackson Township	
NJ	Kauffman & Minteer, Inc	Jobstown	
NJ	Kin-Buc Landfill	Edison Township	
NJ	King of Prussia	Winslow Township	
NJ	Landfill & Development Co	Mount Holly	
NJ	Lang Property	Pemberton Township	
NJ	Lipari Landfill	Pitman	
NJ	Lodi Municipal Well	Lodi	C
NJ	Lone Pine Landfill	Freehold Township	
NJ	Mannheim Avenue Dump	Galloway Township	
NJ	Maywood Chemical Co	Maywood/Rochelle Park	
NJ	Metaltec/Aerosystems	Franklin Borough	
NJ	Monitor Devices/Intercircuits Inc	Wall Township	
NJ	Monroe Township Landfill	Monroe Township	C
NJ	Montclair/West Orange Radium Site	Montclair/W Orange	
NJ	Montgomery Township Housing Development	Montgomery Township	
NJ	Myers Property	Franklin Township	
NJ	NL Industries	Pedricktown	
NJ	Nascolite Corp	Millville	
NJ	PJP Landfill	Jersey City	
NJ	Pepe Field	Boonton	
NJ	Pijak Farm	Plumstead Township	
NJ	Pohatcong Valley Ground Water Contaminat	Warren County	
NJ	Pomona Oaks Residential Wells	Galloway Township	C
NJ	Price Landfill	Pleasantville	S
NJ	Radiation Technology, Inc	Rockaway Township	
NJ	Reich Farms	Pleasant Plains	
NJ	Renora, Inc	Edison Township	
NJ	Ringwood Mines/Landfill	Ringwood Borough	C
NJ	Rockaway Borough Well Field	Rockaway Township	
NJ	Rockaway Township Wells	Rockaway	
NJ	Rocky Hill Municipal Well	Rocky Hill Borough	
NJ	Roebling Steel Co	Florence	
NJ	Sayreville Landfill	Sayreville	
NJ	Scientific Chemical Processing	Carlstadt	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
NJ	Sharkey Landfill	Parsippany/Troy Hls	
NJ	Shieldalloy Corp	Newfield Borough	
NJ	South Brunswick Landfill	South Brunswick	C
NJ	South Jersey Clothing Co	Minotola	
NJ	Spence Farm	Plumstead Township	
NJ	Swope Oil & Chemical Co	Pennsauken	
NJ	Syncon Resins	South Kearny	
NJ	Tabernacle Drum Dump	Tabernacle Township	C
NJ	U.S. Radium Corp	Orange	
NJ	Universal Oil Products (Chemical Division)	East Rutherford	
NJ	Upper Deerfield Township Sanit. Landfill	Upper Deerfield Township	C
NJ	Ventron/Velsicol	Wood Ridge Borough	
NJ	Vineland Chemical Co., Inc	Vineland	
NJ	Vineland State School	Vineland	C
NJ	Waldick Aerospace Devices, Inc	Wall Township	
NJ	White Chemical Corp	Newark	A
NJ	Williams Property	Swainton	
NJ	Wilson Farm	Plumstead Township	C
NJ	Witco Chemical Corp. (Oakland Plt)	Oakland	C
NJ	Woodland Route 532 Dump	Woodland Township	
NJ	Woodland Route 72 Dump	Woodland Township	
NM	AT & SF (Clovis)	Clovis	
NM	Cimarron Mining Corp	Carrizozo	C
NM	Cleveland Mill	Silver City	
NM	Homestake Mining Co	Milan	
NM	Prewitt Abandoned Refinery	Prewitt	
NM	South Valley	Albuquerque	S
NM	United Nuclear Corp	Church Rock	
NV	Carson River Mercury Site	Lyon/Churchill Cnty	
NY	Action Anodizing, Plating, & Polishing	Copiague	C
NY	American Thermostat Co	South Cairo	
NY	Anchor Chemicals	Hicksville	
NY	Applied Environmental Services	Glenwood Landing	
NY	Batavia Landfill	Batavia	
NY	BioClinical Laboratories, Inc	Bohemia	C
NY	Brewster Well Field	Putnam County	
NY	Byron Barrel & Drum	Byron	
NY	C & J Disposal Leasing Co. Dump	Hamilton	C
NY	Carroll & Dubies Sewage Disposal	Port Jervis	
NY	Circuitron Corp	East Farmingdale	
NY	Claremont Polychemical	Old Bethpage	
NY	Clothier Disposal	Town of Granby	C
NY	Colesville Municipal Landfill	Town of Colesville	
NY	Conklin Dumps	Conklin	
NY	Cortese Landfill	Village of Narrowsburg	
NY	Endicott Village Well Field	Village of Endicott	
NY	FMC Corp. (Dublin Road Landfill)	Town of Shelby	
NY	Facet Enterprises, Inc	Elmira	
NY	Forest Glen Mobile Home Subdivision	Niagara Falls	A
NY	Fulton Terminals	Fulton	
NY	GE Moreau	South Glen Falls	
NY	General Motors (Central Foundry Division)	Massena	
NY	Genzale Plating Co	Franklin Square	
NY	Goldisc Recordings, Inc	Holbrook	
NY	Haviland Complex	Town of Hyde Park	
NY	Hertel Landfill	Plattekill	
NY	Hooker (102nd Street)	Niagara Falls	
NY	Hooker (Hyde Park)	Niagara Falls	
NY	Hooker (S Area)	Niagara Falls	
NY	Hooker Chemical/Ruco Polymer Corp	Hicksville	
NY	Hudson River PCBs	Hudson River	
NY	Islip Municipal Sanitary Landfill	Islip	
NY	Johnstown City Landfill	Town of Johnstown	
NY	Jones Chemicals, Inc	Caledonia	
NY	Jones Sanitation	Hyde Park	
NY	Katonah Municipal Well	Town of Bedford	C
NY	Kenmark Textile Corp	Farmingdale	
NY	Kentucky Avenue Well Field	Horseheads	
NY	Li Tungsten Corp	Glen Cove	
NY	Liberty Industrial Finishing	Farmingdale	
NY	Love Canal	Niagara Falls	
NY	Ludlow Sand & Gravel	Clayville	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
NY	Malta Rocket Fuel Area	Malta	
NY	Marathon Battery Corp	Cold Springs	
NY	Mattiace Petrochemical Co., Inc	Glen Cove	
NY	Mercury Refining, Inc	Colonie	
NY	Nepera Chemical Co., Inc	Maybrook	
NY	Niagara County Refuse	Wheatfield	
NY	Niagara Mohawk Power Co (Saratoga Springs)	Saratoga Springs	
NY	North Sea Municipal Landfill	North Sea	
NY	Old Bethpage Landfill	Oyster Bay	C
NY	Olean Well Field	Olean	
NY	Pasley Solvents & Chemicals, Inc	Hempstead	
NY	Pollution Abatement Services	Oswego	S
NY	Port Washington Landfill	Port Washington	
NY	Preferred Plating Corp	Farmingdale	
NY	Radium Chemical Co., Inc	New York City	A
NY	Ramapo Landfill	Ramapo	
NY	Richardson Hill Road Landfill/Pond	Sidney Center	
NY	Robintech, Inc./National Pipe Co	Town of Vestal	
NY	Rosen Brothers Scrap Yard/Dump	Cortland	
NY	Rowe Industries Gnd Water Contamination	Noyack/Sag Harbor	
NY	SMS Instruments, Inc	Deer Park	
NY	Sarney Farm	Amenia	
NY	Sealand Restoration, Inc	Lisbon	
NY	Sidney Landfill	Sidney	
NY	Sinclair Refinery	Wellsville	
NY	Solvent Savers	Lincklaen	
NY	Syosset Landfill	Oyster Bay	
NY	Tri-Cities Barrel Co., Inc	Port Crane	
NY	Tronic Plating Co., Inc	Farmingdale	C
NY	Vestal Water Supply Well 1–1	Vestal	
NY	Vestal Water Supply Well 4–2	Vestal	
NY	Volney Municipal Landfill	Town of Volney	
NY	Warwick Landfill	Warwick	
NY	Wide Beach Development	Brant	C
NY	York Oil Co	Moira	
OH	Allied Chemical & Ironton Coke	Ironton	
OH	Alsco Anaconda	Gnadenhutten	
OH	Arcanum Iron & Metal	Darke County	
OH	Big D Campground	Kingsville	
OH	Bowers Landfill	Circleville	C
OH	Buckeye Reclamation	St. Clairsville	
OH	Chem-Dyne	Hamilton	C, S
OH	Coshocton Landfill	Franklin Township	
OH	E.H. Schilling Landfill	Hamilton Township	C
OH	Fields Brook	Ashtabula	
OH	Fultz Landfill	Jackson Township	
OH	Industrial Excess Landfill	Uniontown	
OH	Laskin/Poplar Oil Co	Jefferson Township	C
OH	Miami County Incinerator	Troy	
OH	Nease Chemical	Salem	
OH	New Lyme Landfill	New Lyme	C
OH	Old Mill	Rock Creek	C
OH	Ormet Corp	Hannibal	
OH	Powell Road Landfill	Dayton	
OH	Pristine, Inc	Reading	
OH	Reilly Tar & Chemical (Dover Plant)	Dover	
OH	Republic Steel Corp Quarry	Elyria	C
OH	Sanitary Landfill Co (Industrial Waste)	Dayton	
OH	Skinner Landfill	West Chester	
OH	South Point Plant	South Point	
OH	Summit National	Deerfield Township	
OH	TRW, Inc (Minerva Plant)	Minerva	
OH	United Scrap Lead Co., Inc	Troy	
OH	Van Dale Junkyard	Marietta	
OH	Zanesville Well Field	Zanesville	
OK	Compass Industries (Avery Drive)	Tulsa	C
OK	Double Eagle Refinery Co	Oklahoma City	
OK	Fourth Street Abandoned Refinery	Oklahoma City	
OK	Hardage/Criner	Criner	
OK	Mosley Road Sanitary Landfill	Oklahoma City	
OK	Oklahoma Refining Co	Cyril	
OK	Sand Springs Petrochemical Complex	Sand Springs	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
OK	Tar Creek (Ottawa County)	Ottawa County	
OK	Tenth Street Dump/Junkyard	Oklahoma City	
OR	Allied Plating, Inc	Portland	C
OR	Gould, Inc	Portland	
OR	Joseph Forest Products	Joseph	C
OR	Martin-Marietta Aluminum Co	The Dalles	
OR	Northwest Pipe & Casing Co	Clackamas	
OR	Teledyne Wah Chang	Albany	
OR	Union Pacific Railroad Tie Treatment	The Dalles	
OR	United Chrome Products, Inc	Corvallis	C
PA	A.I.W. Frank/Mid-County Mustang	Exton	
PA	AMP, Inc. (Glen Rock Facility)	Glen Rock	
PA	Aladdin Plating	Scott Township	
PA	Ambler Asbestos Piles	Ambler	C
PA	Austin Avenue Radiation Site	Delaware County	A
PA	Avco Lycoming (Williamsport Division)	Williamsport	
PA	Bally Ground Water Contamination	Bally Borough	
PA	Bell Landfill	Terry Township	
PA	Bendix Flight Systems Division	Bridgewater Township	
PA	Berkley Products Co Dump	Denver	
PA	Berks Landfill	Spring Township	
PA	Berks Sand Pit	Longswamp Township	
PA	Blosenski Landfill	West Caln Township	
PA	Boarhead Farms	Bridgeton Township	
PA	Brodhead Creek	Stroudsburg	
PA	Brown's Battery Breaking	Shoemakersville	
PA	Bruin Lagoon	Bruin Borough	C
PA	Butler Mine Tunnel	Pittston	
PA	Butz Landfill	Stroudsburg	
PA	C & D Recycling	Foster Township	
PA	Centre County Kepone	State College Borough	
PA	Commodore Semiconductor Group	Lower Providence Township	
PA	Craig Farm Drum	Parker	
PA	Crater Resources/Keystone Coke/Alan Wood	Upper Merion Township	
PA	Crossley Farm	Hereford Township	
PA	Croydon TCE	Croydon	
PA	CryoChem, Inc	Worman	
PA	Delta Quarries & Disp./Stotler Landfill	Antis/Logan Twps	
PA	Dorney Road Landfill	Upper Macungie Township	
PA	Douglassville Disposal	Douglassville	
PA	Drake Chemical	Lock Haven	
PA	Dublin TCE Site	Dublin Borough	
PA	East Mount Zion	Springettsbury Township	
PA	Eastern Diversified Metals	Hometown	
PA	Elizabethtown Landfill	Elizabethtown	
PA	Fischer & Porter Co	Warminster	
PA	Foote Mineral Co	East Whiteland Township	
PA	Havertown PCP	Haverford	
PA	Hebelka Auto Salvage Yard	Weisenberg Township	
PA	Heleva Landfill	North Whitehall Township	
PA	Hellertown Manufacturing Co	Hellertown	
PA	Henderson Road	Upper Merion Township	C
PA	Hranica Landfill	Buffalo Township	
PA	Hunterstown Road	Straban Township	
PA	Industrial Lane	Williams Township	
PA	Jacks Creek/Sitkin Smelting and Refinery	Maitland	
PA	Keystone Sanitation Landfill	Union Township	
PA	Kimberton Site	Kimberton Borough	C
PA	Lackawanna Refuse	Old Forge Borough	
PA	Lindane Dump	Harrison Township	
PA	Lord-Shope Landfill	Girard Township	
PA	MW Manufacturing	Valley Township	
PA	Malvern TCE	Malvern	
PA	McAdoo Associates	McAdoo Borough	S
PA	Metal Banks	Philadelphia	
PA	Metropolitan Mirror and Glass	Frackville	
PA	Middletown Air Field	Middletown	
PA	Mill Creek Dump	Erie	
PA	Modern Sanitation Landfill	Lower Windsor Township	
PA	Moyers Landfill	Eagleville	
PA	North Penn—Area 1	Souderton	
PA	North Penn—Area 12	Worcester	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
PA	North Penn—Area 2	Hatfield	
PA	North Penn—Area 5	Montgomery Township	
PA	North Penn—Area 6	Lansdale	
PA	North Penn—Area 7	North Wales	
PA	Novak Sanitary Landfill	South Whitehall Township	
PA	Occidental Chemical Corp./Firestone Tire	Lower Pottsgrove Township	
PA	Ohio River Park	Neville Island	
PA	Old City of York Landfill	Seven Valleys	
PA	Osborne Landfill	Grove City	
PA	Palmerton Zinc Pile	Palmerton	
PA	Paoli Rail Yard	Paoli	
PA	Publicker Industries Inc	Philadelphia	
PA	Raymark	Hatboro	
PA	Recticon/Allied Steel Corp	East Coventry Twp	
PA	Resin Disposal	Jefferson Borough	
PA	Revere Chemical Co	Nockamixon Township	
PA	River Road Landfill/Waste Mngmnt, Inc	Hermitage	
PA	Rodale Manufacturing Co., Inc	Emmaus Borough	
PA	Route 940 Drum Dump	Pocono Summit	C
PA	Saegertown Industrial Area	Saegertown	
PA	Shriver's Corner	Straban Township	
PA	Stanley Kessler	King of Prussia	
PA	Strasburg Landfill	Newlin Township	
PA	Taylor Borough Dump	Taylor Borough	C
PA	Tonolli Corp	Nesquehoning	
PA	Tysons Dump	Upper Merion Twp	
PA	Walsh Landfill	Honeybrook Township	
PA	Westinghouse Electronic (Sharon Plant)	Sharon	
PA	Westinghouse Elevator Co. Plant	Gettysburg	
PA	Whitmoyer Laboratories	Jackson Township	
PA	William Dick Lagoons	West Caln Township	
PA	York County Solid Waste/Refuse Landfill	Hopewell Township	
PR	Barceloneta Landfill	Florida Afuera	
PR	Fibers Public Supply Wells	Jobos	
PR	Frontera Creek	Rio Abajo	
PR	GE Wiring Devices	Juana Diaz	
PR	Juncos Landfill	Juncos	
PR	RCA Del Caribe	Barceloneta	
PR	Upjohn Facility	Barceloneta	
PR	Vega Alta Public Supply Wells	Vega Alta	
RI	Central Landfill	Johnston	
RI	Davis (GSR) Landfill	Glocester	
RI	Davis Liquid Waste	Smithfield	
RI	Landfill & Resource Recovery, Inc. (L&RR)	North Smithfield	
RI	Peterson/Puritan, Inc	Lincoln/Cumberland	
RI	Picillo Farm	Coventry	S
RI	Rose Hill Regional Landfill	South Kingston	
RI	Stamina Mills, Inc	North Smithfield	
RI	West Kingston Town Dump/URI Disposal	South Kingston	
RI	Western Sand & Gravel	Burrillville	C
SC	Beaunit Corp. (Circular Knit & Dye)	Fountain Inn	
SC	Carolawn, Inc	Fort Lawn	
SC	Elmore Waste Disposal	Greer	
SC	Geiger (C & M Oil)	Rantoules	
SC	Golden Strip Septic Tank Service	Simpsonville	
SC	Helena Chemical Co. Landfill	Fairfax	
SC	Independent Nail Co	Beaufort	C
SC	Kalama Specialty Chemicals	Beaufort	
SC	Koppers Co., Inc. (Florence Plant)	Florence	
SC	Leonard Chemical Co., Inc	Rock Hill	
SC	Lexington County Landfill Area	Cayce	
SC	Medley Farm Drum Dump	Gaffney	
SC	Palmetto Recycling, Inc	Columbia	
SC	Palmetto Wood Preserving	Dixiana	
SC	Para-Chem Southern, Inc	Simpsonville	
SC	Rochester Property	Travelers Rest	
SC	Rock Hill Chemical Co	Rock Hill	
SC	SCRDI Bluff Road	Columbia	S
SC	SCRDI Dixiana	Cayce	C
SC	Sangamo Weston/Twelve-Mile/Hartwell PCB	Pickens	
SC	Townsend Saw Chain Co	Pontiac	
SC	Wamchem, Inc	Burton	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
SD	Whitewood Creek	Whitewood	C,S
SD	Williams Pipe Line Co., Disposal Pit	Sioux Falls	
TN	American Creosote Works, (Jackson Plant)	Jackson	
TN	Amnicola Dump	Chattanooga	C
TN	Arlington Blending & Packaging	Arlington	
TN	Carrier Air Conditioning Co	Collierville	
TN	Gallaway Pits	Gallaway	
TN	Lewisburg Dump	Lewisburg	C
TN	Mallory Capacitor Co	Waynesboro	
TN	Murray-Ohio Dump	Lawrenceburg	
TN	North Hollywood Dump	Memphis	S
TN	Velsicol Chemical Corp (Hardeman County)	Toone	
TN	Wrigley Charcoal Plant	Wrigley	
TX	ALCOA (Point Comfort)/Lavaca Bay	Point Comfort	
TX	Bailey Waste Disposal	Bridge City	
TX	Bio-Ecology Systems, Inc	Grand Prairie	C
TX	Brio Refining, Inc	Friendswood	
TX	Crystal Chemical Co	Houston	
TX	Crystal City Airport	Crystal City	C
TX	Dixie Oil Processors, Inc	Friendswood	C
TX	French, Ltd	Crosby	
TX	Geneva Industries/Fuhrmann Energy	Houston	C
TX	Highlands Acid Pit	Highlands	C
TX	Koppers Co. Inc (Texarkana Plant)	Texarkana	
TX	Motco, Inc	La Marque	S
TX	North Cavalcade Street	Houston	
TX	Odessa Chromium #1	Odessa	
TX	Odessa Chromium #2 (Andrews Highway)	Odessa	
TX	Pesses Chemical Co	Fort Worth	C
TX	Petro-Chemical Systems, (Turtle Bayou)	Liberty County	
TX	Sheridan Disposal Services	Hempstead	
TX	Sikes Disposal Pits	Crosby	
TX	Sol Lynn/Industrial Transformers	Houston	C
TX	South Cavalcade Street	Houston	
TX	Stewco, Inc	Waskom	C
TX	Texarkana Wood Preserving Co	Texarkana	
TX	Triangle Chemical Co	Bridge City	C
TX	United Creosoting Co	Conroe	
UT	Midvale Slag	Midvale	
UT	Monticello Radioactive Contaminated Prop	Monticello	
UT	Petrochem Recycling Corp./Ekotek Plant	Salt Lake City	
UT	Portland Cement (Kiln Dust 2 & 3)	Salt Lake City	
UT	Rose Park Sludge Pit	Salt Lake City	C,S
UT	Sharon Steel Corp. (Midvale Tailings)	Midvale	
UT	Utah Power & Light/American Barrel Co	Salt Lake City	
UT	Wasatch Chemical Co. (Lot 6)	Salt Lake City	
VA	Abex Corp	Portsmouth	
VA	Arrowhead Associates/Scovill Corp	Montross	
VA	Atlantic Wood Industries, Inc	Portsmouth	
VA	Avtex Fibers, Inc	Front Royal	
VA	Buckingham County Landfill	Buckingham	
VA	C & R Battery Co., Inc	Chesterfield County	C
VA	Chisman Creek	York County	C
VA	Culpeper Wood Preservers, Inc	Culpeper	
VA	Dixie Caverns County Landfill	Salem	
VA	First Piedmont Rock Quarry (Route 719)	Pittsylvania County	
VA	Greenwood Chemical Co	Newtown	
VA	H & H Inc., Burn Pit	Farrington	
VA	L.A. Clarke & Son	Spotsylvania County	
VA	Rentokil, Inc. (VA Wood Preserving Div)	Richmond	
VA	Rhinehart Tire Fire Dump	Frederick County	
VA	Saltville Waste Disposal Ponds	Saltville	
VA	Saunders Supply Co	Chuckatuck	
VA	Suffolk City Landfill	Suffolk	C
VA	U.S. Titanium	Piney River	
VT	BFI Sanitary Landfill (Rockingham)	Rockingham	
VT	Bennington Municipal Sanitary Landfill	Bennington	
VT	Burgess Brothers Landfill	Woodford	
VT	Darling Hill Dump	Lyndon	C
VT	Old Springfield Landfill	Springfield	
VT	Parker Sanitary Landfill	Lyndon	
VT	Pine Street Canal	Burlington	S

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
VT	Tansitor Electronics, Inc	Bennington	
WA	ALCOA (Vancouver Smelter)	Vancouver	
WA	American Crossarm & Conduit Co	Chehalis	
WA	American Lake Gardens	Tacoma	
WA	Centralia Municipal Landfill	Centralia	
WA	Colbert Landfill	Colbert	
WA	Commencement Bay, Near Shore/Tide Flats	Pierce County	
WA	Commencement Bay, South Tacoma Channel	Tacoma	
WA	FMC Corp. (Yakima Pit)	Yakima	C
WA	Frontier Hard Chrome, Inc	Vancouver	
WA	General Electric Co. (Spokane Shop)	Spokane	
WA	Greenacres Landfill	Spokane County	
WA	Harbor Island (Lead)	Seattle	
WA	Hidden Valley Landfill (Thun Field)	Pierce County	
WA	Kaiser Aluminum Mead Works	Mead	
WA	Lakewood Site	Lakewood	C
WA	Mica Landfill	Mica	
WA	Midway Landfill	Kent	
WA	Moses Lake Wellfield Contamination	Moses Lake	
WA	North Market Street	Spokane	
WA	Northside Landfill	Spokane	C
WA	Northwest Transformer	Everson	
WA	Northwest Transformer (South Harkness St)	Everson	
WA	Old Inland Pit	Spokane	
WA	Pacific Car & Foundry Co	Renton	
WA	Pasco Sanitary Landfill	Pasco	
WA	Queen City Farms	Maple Valley	
WA	Seattle Municipal Landfill (Kent Highlnds)	Kent	
WA	Silver Mountain Mine	Loomis	C
WA	Vancouver Water Station #4 Contamination	Vancouver	
WA	Western Processing Co., Inc	Kent	C
WA	Wyckoff Co./Eagle Harbor	Bainbridge Island	
WA	Yakima Plating Co	Yakima	C
WI	Algoma Municipal Landfill	Algoma	
WI	Better Brite Plating Chrome & Zinc Shops	DePere	
WI	City Disposal Corp. Landfill	Dunn	
WI	Delavan Municipal Well #4	Delavan	
WI	Eau Claire Municipal Well Field	Eau Claire	C
WI	Fadrowski Drum Disposal	Franklin	
WI	Hagen Farm	Stoughton	
WI	Hechimovich Sanitary Landfill	Williamstown	
WI	Hunts Disposal Landfill	Caledonia	
WI	Janesville Ash Beds	Janesville	
WI	Janesville Old Landfill	Janesville	
WI	Kohler Co. Landfill	Kohler	
WI	Lauer I Sanitary Landfill	Menomonee Falls	
WI	Lemberger Landfill, Inc	Whitelaw	
WI	Lemberger Transport & Recycling	Franklin Township	
WI	Madison Metropolitan Sewerage District	Blooming Grove	
WI	Master Disposal Service Landfill	Brookfield	
WI	Mid-State Disposal, Inc. Landfill	Cleveland Township	
WI	Moss-American (Kerr-McGee Oil Co.)	Milwaukee	
WI	Muskego Sanitary Landfill	Muskego	
WI	N.W. Mauthe Co., Inc	Appleton	S
WI	National Presto Industries, Inc	Eau Claire	
WI	Northern Engraving Co	Sparta	C
WI	Oconomowoc Electroplating Co. Inc	Ashippin	
WI	Omega Hills North Landfill	Germantown	
WI	Onalaska Municipal Landfill	Onalaska	
WI	Refuse Hideaway Landfill	Middleton	
WI	Sauk County Landfill	Excelsior	
WI	Schmalz Dump	Harrison	C
WI	Scrap Processing Co., Inc	Medford	
WI	Sheboygan Harbor & River	Sheboygan	
WI	Spickler Landfill	Spencer	
WI	Stoughton City Landfill	Stoughton	
WI	Tomah Armory	Tomah	
WI	Tomah Fairgrounds	Tomah	
WI	Tomah Municipal Sanitary Landfill	Tomah	
WI	Waste Mgmt of WI (Brookfield Sanit LF)	Brookfield	
WI	Wausau Ground Water Contamination	Wausau	
WI	Wheeler Pit	La Prairie Township	C

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
WV	Fike Chemical, Inc	Nitro	
WV	Follansbee Site	Follansbee	
WV	Leetown Pesticide	Leetown	C
WV	Ordnance Works Disposal Areas	Morgantown	
WV	West Virginia Ordnance	Point Pleasant	S
WY	Baxter/Union Pacific Tie Treating	Laramie	
WY	Mystery Bridge Rd/U.S. Highway 20	Evansville	C

Notes:
A=Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be >28.50).
C=Completion Category.
S=State top priority (included among the 100 top priority sites regardless of score).

TABLE 2.—FEDERAL FACILITIES SECTION, FEBRUARY 1994

State	Site name	City/county	Notes
AK	Eielson Air Force Base	Fairbanks N Star Borough.	
AK	Elmendorf Air Force Base	Greater Anchorage Borough.	
AK	Fort Wainwright	Fairbanks N Star Borough.	
AK	Standard Steel & Metals Salvage Yard (USDOT)	Anchorage.	
AL	Alabama Army Ammunition Plant	Childersburg.	
AL	Anniston Army Depot (SE Industrial Area)	Anniston.	
AZ	Luke Air Force Base	Glendale.	
AZ	Williams Air Force Base	Chandler.	
AZ	Yuma Marine Corps Air Station	Yuma.	
CA	Barstow Marine Corps Logistics Base	Barstow.	
CA	Camp Pendleton Marine Corps Base	San Diego County.	
CA	Castle Air Force Base	Merced.	
CA	Edwards Air Force Base	Kern County.	
CA	El Toro Marine Corps Air Station	El Toro.	
CA	Fort Ord	Marina.	
CA	George Air Force Base	Victorville.	
CA	Jet Propulsion Laboratory (NASA)	Pasadena.	
CA	Lawrence Livermore Laboratory (Site 300)	Livermore.	
CA	Lawrence Livermore Laboratory (USDOE)	Livermore.	
CA	March Air Force Base	Riverside.	
CA	Mather Air Force Base	Sacramento.	
CA	McClellan Air Force Base (GW Contam)	Sacramento.	
CA	Moffett Naval Air Station	Sunnyvale.	
CA	Norton Air Force Base	San Bernardino.	
CA	Riverbank Army Ammunition Plant	Riverbank.	
CA	Sacramento Army Depot	Sacramento.	
CA	Sharpe Army Depot	Lathrop.	
CA	Tracy Defense Depot	Tracy.	
CA	Travis Air Force Base	Solano County.	
CA	Treasure Island Naval Station-Hun Pt An	San Francisco.	
CO	Air Force Plant PJKS	Waterton.	
CO	Rocky Flats Plant (USDOE)	Golden.	
CO	Rocky Mountain Arsenal	Adams County.	
CT	New London Submarine Base	New London.	
DE	Dover Air Force Base	Dover.	
FL	Cecil Field Naval Air Station	Jacksonville.	
FL	Homestead Air Force Base	Homestead.	
FL	Jacksonville Naval Air Station	Jacksonville.	
FL	Pensacola Naval Air Station	Pensacola.	
GA	Marine Corps Logistics Base	Albany.	
GA	Robins Air Force Base (Lf#4/Sludge Lagoon)	Houston County.	
GU	Andersen Air Force Base	Yigo.	
HI	Pearl Harbor Naval Complex	Pearl Harbor.	
HI	Schofield Barracks	Oahu.	
IA	Iowa Army Ammunition Plant	Middletown.	
ID	Idaho National Engineering Lab (USDOE)	Idaho Falls.	
ID	Mountain Home Air Force Base	Mountain Home.	
IL	Joliet Army Ammunition Plant (LAP Area)	Joliet.	
IL	Joliet Army Ammunition Plant (Mfg Area)	Joliet.	
IL	Sangamo Electric/Crab Orchard NWR (USDOI)	Carterville.	
IL	Savanna Army Depot Activity	Savanna.	
KS	Fort Riley	Junction City.	
LA	Louisiana Army Ammunition Plant	Doyline.	
MA	Fort Devens	Fort Devens.	
MA	Fort Devens-Sudbury Training Annex	Middlesex County.	

TABLE 2.—FEDERAL FACILITIES SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
MA	Otis Air National Guard /Camp Edwards	Falmouth.	
MD	Aberdeen Proving Ground (Edgewood Area)	Edgewood.	
MD	Aberdeen Proving Ground (Michaelsville LF)	Aberdeen.	
ME	Brunswick Naval Air Station	Brunswick.	
ME	Loring Air Force Base	Limestone.	
MN	Naval Industrial Reserve Ordnance Plant	Fridley.	
MN	Twin Cities Air Force Base (SAR Landfill)	Minneapolis.	
MO	Lake City Army Ammu. Plant (NW Lagoon)	Independence.	
MO	Weldon Spring Former Army Ordnance Works	St. Charles County.	
MO	Weldon Spring Quarry/Plant/Pitts (USDOE)	St. Charles County.	
NC	Camp Lejeune Military Reservation	Onslow County.	
NE	Cornhusker Army Ammunition Plant	Hall County.	
NH	Pease Air Force Base	Portsmouth/Newington.	
NJ	Federal Aviation Admin. Tech. Center	Atlantic County.	
NJ	Fort Dix (Landfill Site)	Pemberton Township.	
NJ	Naval Air Engineering Center	Lakehurst.	
NJ	Naval Weapons Station Earle (Site A)	Colts Neck.	
NJ	Picatinny Arsenal	Rockaway Township.	
NJ	W.R. Grace/Wayne Interim Storage (USDOE)	Wayne Township.	
NM	Cal West Metals (USSBA)	Lemitar.	
NM	Lee Acres Landfill (USDOI)	Farmington.	
NY	Brookhaven National Laboratory (USDOE)	Upton.	
NY	Griffiss Air Force Base	Rome.	
NY	Plattsburgh Air Force Base	Plattsburgh.	
NY	Seneca Army Depot	Romulus.	
OH	Feed Materials Production Center (USDOE)	Fernald.	
OH	Mound Plant (USDOE)	Miamisburg.	
OH	Wright-Patterson Air Force Base	Dayton.	
OK	Tinker Air Force (Soldier Cr/Bldg 300)	Oklahoma City.	
OR	Umatilla Army Depot (Lagoons)	Hermiston.	
PA	Letterkenny Army Depot (PDO Area)	Franklin County.	
PA	Letterkenny Army Depot (SE Area)	Chambersburg.	
PA	Naval Air Development Center (8 Areas)	Warminster Township.	
PA	Tobyhanna Army Depot	Tobyhanna.	
PR	Naval Security Group Activity	Sabana Seca.	
RI	Davisville Naval Construction Batt Cent	North Kingston.	
RI	Newport Naval Education/Training Center	Newport.	
SC	Savannah River Site (USDOE)	Aiken.	
SD	Ellsworth Air Force Base	Rapid City.	
TN	Memphis Defense Depot	Memphis.	
TN	Milan Army Ammunition Plant	Milan.	
TN	Oak Ridge Reservation (USDOE)	Oak Ridge.	
TX	Air Force Plant #4 (General Dynamics)	Fort Worth.	
TX	Lone Star Army Ammunition Plant	Texarkana.	
TX	Longhorn Army Ammunition Plant	Karnack.	
UT	Hill Air Force Base	Ogden.	
UT	Monticello Mill Tailings (USDOE)	Monticello.	
UT	Ogden Defense Depot	Ogden.	
UT	Tooele Army Depot (North Area)	Tooele.	
VA	Defense General Supply Center	Chesterfield County.	
VA	Naval Surface Warfare—Dahlgren	Dahlgren.	
VA	Naval Weapons Station—Yorktown	Yorktown.	
WA	Bangor Naval Submarine Base	Silverdale.	
WA	Bangor Ordnance Disposal	Bremerton.	
WA	Bonneville Power Admin Ross (USDOE)	Vancouver.	
WA	Fairchild Air Force Base (4 Waste Areas)	Spokane County.	
WA	Fort Lewis (Landfill No. 5)	Tacoma.	
WA	Fort Lewis Logistics Center	Tillicum.	
WA	Hamilton Island Landfill(USA/COE)	North Bonneville.	

TABLE 2.—FEDERAL FACILITIES SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
WA	Hanford 100–Area (USDOE)	Benton County.	
WA	Hanford 1100–Area (USDOE)	Benton County.	
WA	Hanford 200–Area (USDOE)	Benton County.	
WA	Hanford 300–Area (USDOE)	Benton County.	
WA	McChord Air Force Base (Wash Rack/Treat)	Tacoma.	
WA	Naval Air Station, Whidbey Is (Seaplane)	Whidbey Island.	
WA	Naval Air Station, Whidbey Island (Ault)	Whidbey Island.	
WA	Naval Undersea Warfare Station (4 Areas)	Keyport.	
WY	F.E. Warren Air Force Base	Cheyenne.	

Notes:
A=Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be >28.50)
C=Completion Category. S=State top priority (included among the 100 top priority sites regardless of score).

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federal register

Wednesday
February 23, 1994

Part VII

Department of Transportation

Federal Highway Administration

49 CFR Part 390, et al.
Private Motor Carriers of Passengers;
Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390, 391, 393, 395, and 396

[FHWA Docket No. MC–88–15]

RIN 2125–AB62

Private Motor Carriers of Passengers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule with request for comments.

SUMMARY: In accordance with changes in the definitions of interstate commerce and commercial motor vehicle contained in the Motor Carrier Act of 1984, the FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to make private motor carriers of passengers involved in interstate transportation subject to them with certain exceptions. Implementation of the final rule is being delayed to allow the new class of regulatees an opportunity to comment on the type and scope of educational and technical assistance necessary and to provide ample time to come into compliance with the FMCSRs.

DATES: This regulation is effective January 1, 1995; comments must be received on or before October 1, 1994.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC–10, room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mr. F. Daniel Hartman, Office of Motor Carrier Standards, (202) 366–4009, or Mrs. Allison Smith, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Since 1935, the Federal government has been regulating, for safety purposes, interstate transportation performed by for-hire carriers of property and passengers and private carriers of property. Prior to the passage of the Motor Carrier Act of 1984 (Pub. L. 98–554, 98 Stat. 2832, 49 U.S.C. app. 2501 *et. seq.*), the Federal government's jurisdiction did not extend to private motor carriers of passengers (PMCPs).

With the enactment of the Motor Carrier Safety Act of 1984, Congress defined the FHWA's jurisdiction on the basis of vehicles operating in interstate commerce. The stated purposes of the 1984 Act were to (1) promote the safe operation of commercial motor vehicles; (2) minimize dangers to the health of operators of commercial motor vehicles; and (3) assure increased compliance with traffic laws and with the commercial motor vehicle safety rules.

Congress expanded the definition of commercial motor vehicle (CMV) in section 204 of that Act (49 U.S.C. app. 2503) to include any self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property if (a) such vehicle has a gross vehicle weight rating of 10,001 or more pounds; (b) such vehicle is designed to transport 16 or more passengers, including the driver; or (c) such vehicle is used in the transportation of hazardous materials which require a placard.

Interstate commerce was defined in the same section of the Act as "trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of the United States." Therefore, anyone operating or causing to be operated vehicles as defined in the Act in interstate commerce became subject to regulation by the Secretary of Transportation.

Current Regulations

The FMCSRs are contained in title 49, Code of Federal Regulations, parts 350 through 399. These regulations set minimum safety standards for motor carriers, vehicles and drivers involved in interstate commerce. The areas covered include driver qualification, licensing, hours of driving and on duty time, vehicle safety equipment, operating condition, inspection and maintenance. Consistent with the pre-1984 authority, PMCPs are currently exempt from the FMCSRs (parts 390–399) pursuant to 49 CFR 390.3(f)(6).

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA)(Title XII, Pub. L. 99–570, 49 U.S.C. app. 2701–2718) established requirements for testing and licensing of all drivers of commercial motor vehicles as defined in that Act. Under the implementing regulations in 49 CFR part 383, all drivers subject to that part must successfully complete a knowledge test and skills examination, as applicable, both of which are administered by the driver's State of residence. The State then issues a Commercial Driver's License (CDL), which is the only license that may be possessed by an operator of a commercial motor vehicle. The operative definitions in the CMVSA of 1986 extend jurisdiction to any driver of a defined vehicle, whether in interstate or intrastate commerce, and whether or not otherwise subject to DOT jurisdiction. The current rulemaking does not alter the provisions of Part 383 for any CMV driver, nor does it affect other regulatory exemptions, e.g., the transportation of school children and government operations.

The FHWA issued a Notice of Interpretation (58 FR 27328, May 7, 1993) to clarify its policy relating to for-hire transportation of passengers. That notice clarifies the FHWA's policy that businesses operating passenger-carrying commercial motor vehicles in interstate commerce, and receiving direct or indirect compensation for their transportation services, are for-hire motor carriers subject to the minimum levels of financial responsibility requirements. If the passenger-carrying capacity of the vehicle is 16 or more, including the driver, they are also subject to the remainder of the FMCSRs.

Rulemaking History

In 1985, the FHWA issued an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (50 FR 2998, Docket No. MC–114) to obtain comments on the merits of regulating PMCPs. Recognizing the wide diversity of operating practices, the FHWA (shortly after the 1984 Act) contracted for a study to gain greater insight into the operating practices of these carriers. (ASW Associates, Silver Spring, Md., June 10, 1987.) Although there is little definitive accident data, the study concluded that highway safety would be enhanced by regulating PMCPs. After comments to the ANPRM were received and analyzed, the FHWA issued a notice of proposed rulemaking (NPRM) on February 17, 1989 (MC–88–15), proposing to assert jurisdiction over these carriers with respect to certain requirements of the FMCSRs (see 54 FR 7362).

In the NPRM, the FHWA acknowledged that all buses should be in safe operating condition and driven by qualified drivers. However, it would be overly burdensome and counterproductive to attempt to require every entity transporting people by bus, regardless of purpose, to comply with the whole range of regulations, including recordkeeping requirements.

In the NPRM, the FHWA divided PMCPs into two groups based on the relationship of the driver to the motor carrier. Group I consisted of all employees hired to perform primarily as drivers. Group II consisted of volunteer drivers (who may also be employees) who received little or no remuneration for their driving and drove for less than 10 percent of their work time. The division of the two groups was intended to recognize the distinction between business and nonbusiness operations.

Under the proposal advanced in the NPRM, Group I would have been treated the same as for-hire motor carriers of passengers and would have been subject to all of the FMCSRs. Group II would have been subject to CDL and the vehicle and maintenance requirements, but would not have been required to keep driver qualification files.

The FHWA was also aware that some buses currently in use may not have been subject to the National Highway Traffic Safety Administration's (NHTSA) fuel system requirements at the time of manufacture. The NPRM proposed to "grandfather" this equipment and, therefore, would not require retrofitting of the fuel systems if the vehicle has been maintained and meets the original manufacturer's standards.

Discussion of Comments to the Docket

The FHWA received 28 comments to this docket: 14 from organizations and groups potentially effected by the rulemaking, 5 from national associations, 3 from for-hire bus companies, 2 from State enforcement agencies, 1 from a Federal advisory board, 1 from a union, and 2 from individuals. Only three commenters, two of which were churches, opposed the rule as an unnecessary regulatory burden.

The American Bus Association (ABA) supported the NPRM, expressing the opinion that PMCPs are less safe than for-hire carriers because they operate older, inferior equipment, with less experienced drivers, and in its opinion, are involved in a disproportionate number of fatal accidents. The ABA also stated that these drivers should be subject to the same driver qualification and hours of service requirements, including recordkeeping, because they are usually less experienced and qualified. The ABA raised questions about the enforceability of the definition in the NPRM for limited PMCPs, specifically the 10 percent driving time factor. It felt these carriers would reduce driving time below 10 percent to avoid the paperwork requirements. The ABA also recommended that all PMCPs get a U.S. DOT number to facilitate enforcement.

The United Bus Owners of America and the National School Transportation Association supported the rule, maintaining that anyone transporting passengers should comply fully with the FMCSRs, including recordkeeping, in the interest of safety for the passengers on board a vehicle and the motoring public at large. The International Brotherhood of Teamsters supported the rule and favored the division of PMCPs into groups for the purpose of paperwork burden relief.

Those commenters opposed to the NPRM were concerned that the rule placed an unnecessary burden on churches, with little accident or safety data to support the rule. They contended that many churches will terminate interstate travel rather than attempt to comply with the requirements.

Two States wrote to the docket—one supporting and one opposing the proposal. The Transportation Cabinet of the Commonwealth of Kentucky supported the rule. The Cabinet believed that school bus operations also should be subject to the FMCSRs, but did not provide data to support its position. The Department of Motor Vehicles in North Carolina opposed the rule as an unnecessary burden, claiming private buses are usually not used in commerce. The Department instead recommended that FHWA staff focus on truck safety problems.

FHWA's Response

In consideration of the comments to the NPRM, the FHWA concluded that the use of volunteer driver status, coupled with the 10 percent driving factor, would not be a workable criterion for separation of the two groups because of the uncertainty in defining "volunteer status" *and* measuring the 10 percent driving time factor. Instead, the FHWA will base its distinction on whether the motor carrier is providing the transportation of passengers in furtherance of a commercial purpose other than transportation.

Those PMCPs involved in a business activity which provides transportation, in the furtherance of a commercial purpose other than for-hire transportation, will be subject to all of the FMCSRs, including recordkeeping. Those PMCPs engaged in nonbusiness activities, but providing transportation of some kind, must have safe drivers and vehicles and will be subject to many of the FMCSRs. These PMCPs will not be required to comply with the current recordkeeping requirements. The FHWA also agrees with, and has incorporated into the final rule, comments that all PMCPs should obtain a U.S. DOT number, which should facilitate the proper collection of accurate roadside inspection and enforcement information. The "grandfather" provision for fuel system requirements, as proposed in the NPRM, also has been retained.

Although interstate commerce is historically defined to include trade, traffic, or transportation across State boundaries and is not limited to business entities in profit-making ventures, the FHWA believes most churches will fall within the definition of nonbusiness PMCPs. As such, these carriers will not be subject to the current recordkeeping requirements. Under this final rule, once a driver obtains a CDL, no additional files, such as driver qualification records including the medical examination certificate, or drivers' record of duty status, are required to be maintained.

Requirements of the Final Rule

The final rule is very similar to the NPRM except that (1) the definition of PMCP has been consolidated with the definition of private motor carrier of property, (2) the definitions of "nonbusiness PMCPs" and "business PMCPs" have been added, (3) nonbusiness PMCPs will be exempt from subpart H of part 391 and all current recordkeeping requirements, (4) PMCPs will not be subject to the road and written test requirements of part 391, and (5) all passenger carriers will be required to obtain a US DOT number to identify their buses for enforcement by Federal and State officials.

Many operations which are classified as PMCPs are companies that transport their workers to and from job sites. PMCPs also include nonbusiness-type organizations, including scout, church and civic groups, that characteristically use volunteers to transport members by bus and charge no fee, or only a nominal fee to cover expenses of the transportation service provided.

Definitions

Business PMCPs

A business PMCPs is defined as any entity involved in the interstate transportation of passengers; the transportation provided is in the furtherance of the entity's commercial

purpose, which is not for-hire transportation; and the transportation is not available to the general public. The FHWA believes that any business entity transporting people should meet the same minimum safety requirements as those businesses involved in the private transportation of property. Therefore, these carriers must comply with the entire body of the FMCSRs, including recordkeeping. These carriers need not comply with the road and written test requirements of part 391, since these requirements are essentially met by acquiring a CDL with proper bus endorsements. In addition, these carriers need not comply with the fuel system requirements of § 393.67, provided the carrier's commercial motor vehicle fuel systems have been maintained and meet the original manufacturer's standards.

Nonbusiness PMCPs

A nonbusiness PMCPs is any entity involved in the interstate transportation of passengers, other than for-hire, and does not meet the definition of a business PMCPs. These carriers will be subject to parts 383, 385 (requiring a Motor Carrier Identification Report), 390, 391 (excluding subpart H and recordkeeping requirements), 392, 393 (excluding fuel systems that have been maintained and meet the original manufacturer's standards), 395 (excluding the recordkeeping requirements), and 396 (excluding the recordkeeping requirements). Churches, civic associations, scouts, and other charitable institutions that may purchase or lease buses for sponsored activities are included in this category.

The special treatment afforded nonbusiness carriers is not to relieve churches or civic associations from compliance with any of the safety regulations when these carriers arrange tours for the public at large and charge a fee with the intent to make a profit. In this instance, nonbusiness carriers are in fact performing transportation services as for-hire carriers. When engaged in chartering operations, the transportation service is the primary activity of the organization and such charter service is not incidental to the non-transportation purposes of the organization. Such activities are and will continue to be treated as for-hire transportation of passengers, subject to all the FMCSRs.

Driver and Carrier Requirements

Business PMCPs

These carriers must meet all of the driver recordkeeping requirements in part 391, except for the road and written test requirements, which are essentially met by acquiring a CDL with proper bus endorsements. This recordkeeping requirement includes maintaining all documents required in a driver qualification file and drug testing documentation. These carriers must also comply with the recordkeeping requirements in part 395 regarding drivers' records of duty status.

Consistent with past FHWA practice, a one-time exemption for currently employed drivers is provided in this rulemaking. The recordkeeping requirements, including application for employment (§ 391.21), investigation and inquiries (§ 391.23), and notifications of previous employment (§ 383.35), will not apply to those drivers regularly employed by a motor carrier prior to July 1, 1994 and for as long as the person continues to be regularly employed as a driver for that motor carrier.

Nonbusiness PMCPs

Nonbusiness PMCPs must comply with the driving and on-duty hours limitation contained in part 395. The costs associated with requiring record retention by these motor carriers, who operate sporadically, would outweigh the benefits and, accordingly, the FHWA will not impose the recordkeeping requirements of part 395 on these carriers. It is recognized that some individuals who volunteer to drive for their church or civic organization may also drive for other motor carriers and in that capacity are required to maintain a record of duty status (driver logs). All on-duty and driving time, performed in a volunteer capacity by an individual who is otherwise regularly employed as a commercial driver, for a nonbusiness PMCP must be recorded on the records of duty-status submitted to that driver's regularly employing motor carrier. On duty and driving time for those drivers regularly employed must be considered in determining whether the driver has adequate time to drive as a volunteer, and vice-versa. The FHWA believes this requirement is necessary to ensure that a fatigued driver is not permitted or required to drive beyond the hours of service limits.

These carriers are not required to have their drivers medically examined and do not have to maintain the records required in parts 391, 395 and 396.

Drug and Alcohol Testing

Nonbusiness PMCPs are not subject to the current drug testing requirements found in 49 CFR part 391. However, business PMCPs are subject to those regulations.

Under a final rule published in the **Federal Register** on February 15, 1994, the FHWA announced new drug and alcohol testing rules. These rules were issued in response to the Omnibus Transportation Employee Testing Act of 1991 and will require that all operators of CMVs subject to the CDL requirements, be tested for controlled substances and alcohol. Both business and nonbusiness PMCPs will be subject to these rules.

Due to the broad scope of these rules, business and nonbusiness PMCPs with 50 or more drivers will have until January 1, 1995 to comply with the new drug and alcohol testing regulations. Business and nonbusiness PMCPs with less than 50 drivers will be required to comply with the new drug and alcohol testing regulations beginning January 1, 1996.

To further the purpose of the Omnibus Transportation Employee Testing Act, no waiver or exemption from any provision of the new rules, including the recordkeeping requirements, is provided. Consequently, all nonbusiness PMCPs will be required to meet certain recordkeeping requirements when the final rule is fully implemented.

Vehicle Requirements

Business PMCPs

Part 393, Parts and Accessories Necessary for Safe Operation, and Part 396, Inspection, Repair and Maintenance, provide detailed safety requirements for commercial motor vehicle components and inspection thereof. Business PMCPs are required to comply with the vehicle equipment requirements contained in part 393 (excluding fuel systems that have been maintained and meet original manufacturer's standards) and the maintenance and recordkeeping requirements in part 396. A few carriers may need to perform minor retrofitting to bring their vehicles into compliance with the requirements of part 393.

Nonbusiness PMCPs

Nonbusiness PMCPs must comply with the vehicle equipment requirements in part 393 (excluding fuel systems that have been maintained and meet original manufacturer's standards) and the maintenance requirements of part 396. These carriers will not have to comply with the recordkeeping requirements contained in part 396.

Insurance Requirements

Section 18 (a) through (g) of the Bus Regulatory Reform Act of 1982 (Pub. L. 97–261, 96 Stat. 1102, 1120, as amended) established minimum levels of financial responsibility for for-hire motor carriers of passengers. The Act did not extend coverage to motor carriers involved in private transportation of passengers. Therefore, for purposes of this final rule, PMCPs are not required to comply with part 387.

Enforcement

PMCPs will be subject to the FHWA and State motor carrier safety enforcement activities. The FHWA has a field staff which monitors compliance and enforces the regulations primarily by reviews of company records. Also, the FHWA administers a formula grant program, the Motor Carrier Safety Assistance Program (MCSAP), to reimburse States for uniform enforcement of commercial motor vehicle safety and hazardous materials compliance through roadside driver/vehicle inspections and review of motor carrier safety practices.

Business PMCPs

The primary enforcement activity will be unannounced terminal and roadside driver/vehicle inspections conducted by State personnel. Roadside driver/vehicle inspections may include inspections performed at origin or destination points such as parking lots, amusement parks, sporting complexes, and convention centers as well as on the road. A terminal inspection is a comprehensive vehicle inspection conducted at the carrier's terminal facility, garage or at a bus station. The vehicle standards for these inspections are reflected in the current periodic inspection requirements (part 396, Appendix G). Business PMCP drivers will have CDLs, medical cards, and records of duty status reviewed.

Federal and State investigators will also conduct safety and compliance reviews of these carriers at their principal places of business. The investigators will review motor carriers' safety management practices and regulatory compliance as evidenced by records maintained. These carriers will also be subject to FHWA's rating process and the provisions of the Motor Carrier Act of 1990 regarding the consequences of unsatisfactory safety ratings, i.e., an unsatisfactory rating will prohibit the operation of buses effective 45 days after receipt of the rating. Unsafe carriers will be subject to the same civil and criminal penalties as all other carriers currently under the jurisdiction of the FHWA. Carriers identified in FHWA's information system as having unsafe operations will be scheduled for safety and compliance reviews.

Nonbusiness PMCPs

Nonbusiness PMCPs will be subject to the same terminal and roadside driver/vehicle inspections as business PMCPs, except the drivers will only be subject to having their CDL reviewed and hours of service verified from evidence gathered at the scene. Compliance reviews will not be performed on these carriers nor will they be subject to FHWA's safety rating process, unless the information systems reveal that the carrier has been identified as having ongoing roadside safety inspection problems.

Marking

To facilitate State inspections of these vehicles and drivers, the FHWA is requiring each PMCP to have its name, city and State, and U.S. DOT number marked on the side of the bus to the extent presently required of all motor carriers.

Implementation

Marketing and Educational Program

Because PMCPs have not been regulated in the past, the FHWA and state personnel will be providing educational and technical assistance for these carriers prior to the effective date. The FHWA is seeking comments on the type and scope of educational and technical assistance that should be provided to assist PMCPs in complying with the FMCSRs. Comments must be received on or before October 1, 1994. The FHWA will make the materials available to National and State organizations which represent PMCPs or anyone who requests assistance directly from the FHWA. The FHWA also has Division offices in every State that can answer questions and provide technical assistance to these carriers upon request. The addresses for the FHWA Division Offices are listed in appendix D to 49 CFR part 7.

Effective Date

PMCPs (business and nonbusiness) will have until January 1, 1995, to meet these requirements.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Because this rulemaking has been the subject of substantial congressional and public interest, the FHWA has determined that this final rule is a significant regulatory action within the meaning of Executive Order 12866 and a significant regulation under the DOT regulatory policies and procedures. In the Motor Carrier Act of 1984, Congress expanded the definitions of "interstate commerce" and "commercial motor vehicle" which expanded the Department of Transportation's regulatory jurisdiction to include private motor carriers of passengers. Both Congress and the bus industry have shown a keen interest in the progress of this rulemaking. The safety benefits and opportunities for benefits from this rule will offset any cost. A regulatory evaluation has been prepared and is available for review in the public docket.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 605(b)), the FHWA has evaluated the effects of this rule on small entities. Many small entities will be economically impacted by this rulemaking and some may decide to cease transportation of passengers rather than comply with the safety rules and regulations. However, the overall impact on small entities will be minimal. The FHWA is exempting the majority of small entities—those defined as nonbusiness—from the paperwork and recording requirements of this rule. The vast majority of PMCPs are small entities, especially the non-business carriers. Some of the smallest entities may find it preferable to discontinue their operations in interstate commerce, and to charter buses for their interstate trips. Private carriers which pay their drivers are even more likely to consider chartering as an option because of their increased costs for driver salaries or other compensation. Chartering does not reduce the cost of complying with this rule, but does place an effective ceiling on how much this rule might cost small entities. Thus, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This regulation amends certain parts of the FMCSRs pertaining to the scope and applicability of the FMCSRs to Interstate transportation by PMCPs as authorized by the Motor Carrier Act of 1984. The FMCSRs establish minimum safety regulations which may be supplemented by the States, provided the State safety laws and regulations are compatible

with the Federal requirements. (See 57 FR 40946, September 8, 1992, which includes the Tolerance Guidelines for Adopting Compatible State Rules and Regulations.) The statutory basis for Federal regulation of interstate commerce has been outlined above. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.217, Motor Carrier Safety, and 20.218, Motor Carrier Safety Assistance Program. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements in part 390 of this rule are being submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 390, 391, 393, 395, and 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: February 14, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, parts 390, 391, 393, 395 and 396 as set forth below.

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. app. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

§ 390.3 [Amended]

2. In § 390.3, paragraph (f)(6) is removed.

§ 390.5 [Amended]

3. In § 390.5, the definition of *motor carrier* is revised; the definitions of *private motor carrier of passengers* and *private motor carrier of property* are removed; the definitions of *private motor carrier, private motor carrier of passengers (business)* and *private motor carrier of passengers (nonbusiness)* are added in alphabetical order as follows:

§ 390.5 Definitions.

* * * * *

Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of subchapter B, this definition includes the terms *employer*, and *exempt motor carrier*.

* * * * *

Private motor carrier means a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier.

Private motor carrier of passengers (business) means a private motor carrier engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large.

Private motor carrier of passengers (nonbusiness) means private motor carrier involved in the interstate transportation of passengers that does not otherwise meet the definition of a private motor carrier of passengers (business).

* * * * *

PART 391—[AMENDED]

5. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

§ 391.31 [Amended]

6. In § 391.31, paragraph (a) is revised to read as follows:

§ 391.31 Road test.

(a) Except as provided in subpart G, a person shall not drive a motor vehicle unless he/she has first successfully completed a road test and has been issued a certificate of driver's road test in accordance with this section.

* * * * *

§ 391.35 [Amended]

7. In § 391.35, paragraph (a) is revised to read as follows:

§ 391.35 Written examination.

(a) Except as provided in subpart G, a person shall not drive a motor vehicle unless he/she has first taken a written examination in accordance with this section.

* * * * *

8. In § 391.51, paragraph (a) is revised to read as follows:

§ 391.51 Driver qualification files.

(a) Except as provided in subpart G, each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with the driver's personnel file.

* * * * *

9. § 391.68 is added to subpart G to read as follows:

§ 391.68 Private motor carrier of passengers (nonbusiness).

(a) The following rules in this part do not apply to a private motor carrier of passengers (nonbusiness) and their drivers:

(1) Section 391.11(b)(8), (b)(10), (b)(11), and (b)(12), (relating to driver qualifications in general).

(2) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers).

(3) Subpart D (relating to road tests and written examinations).

(4) So much of §§ 391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his/her person.

(5) Subpart F (relating to maintenance of files and records).

(6) Subpart H (relating to controlled substances testing).

(b) The following rules in this part do not apply to a private motor carrier of passengers (business) driver: subpart D (relating to road tests and written examinations).

10. Section 391.73 is added to subpart G to read as follows:

§ 391.73 Private motor carrier of passengers (business).

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), § 391.31 (relating to road tests), and § 391.35 (relating to written examinations) do not apply to a driver who has been a regularly employed driver (as defined in § 390.5 of this subchapter) of a private motor carrier of passengers (business) as of July 1, 1994, so long as the driver continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a motor vehicle if that driver fulfills the requirements of paragraphs (b)(1) through (b)(9) of § 391.11 (relating to qualifications of drivers).

11. In § 391.83, paragraph (a) is revised to read as follows:

§ 391.83 Applicability.

(a) Except for a private motor carrier of passengers (nonbusiness), this subpart applies to motor carriers and persons who operate a commercial motor vehicle as defined in this subpart in interstate commerce and are subject to the driver qualification requirements of part 391 of this subchapter.

* * * * *

PART 393—[AMENDED]

12. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

§ 393.67 [Amended]

13. Section 393.67 is amended by adding a new paragraph (a)(6) to read as follows:

§ 393.67 Liquid fuel tanks.

(a) * * *

(6) Private motor carrier of passengers. Motor carriers engaged in the private transportation of passengers may continue to operate a commercial motor vehicle which was not subject to this section or 49 CFR 571.301 at the time of its manufacture, provided the fuel tank of such vehicle is maintained to the original manufacturer's standards.

* * * * *

PART 395—[AMENDED]

16. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505; and 49 CFR 1.48.

17. In § 395.8, paragraph (a) introductory text is revised to read as follows:

§ 395.8 Driver's record of duty status.

(a) Except for a private motor carrier of passengers (nonbusiness), every motor carrier shall require every driver used by the motor carrier to record his/her duty status for each 24 hour period using the methods prescribed in either paragraphs (a)(1) or (2) of this section.

* * * * *

PART 396—[AMENDED]

18. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. app. 2509; 49 U.S.C. 3102; 49 CFR 1.48.

19. In § 396.3, the introductory text of paragraph (b) is revised to read as follows:

§ 396.3 Inspection, repair, and maintenance.

* * * * *

(b) *Required records*—For vehicles controlled for 30 consecutive days or more, except for a private motor carrier of passengers (nonbusiness), the motor carriers shall maintain, or cause to be maintained, the following record for each vehicle:

* * * * *

20. In § 396.11, paragraph (d) is revised to read as follows:

§ 396.11 Driver vehicle inspection report(s).

* * * * *

(d) Exemption. The rules in this section shall not apply to a private motor carrier of passengers (nonbusiness) operations, driveaway-towaway operations as specified in § 396.15, or to any motor carrier operating only one (1) motor vehicle.

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Part VIII

Department of Education

Nondiscrimination in Federally Assisted Programs; Title VI of the Civil Rights Act of 1964; Notice

DEPARTMENT OF EDUCATION

Nondiscrimination in Federally Assisted Programs; Title VI of the Civil Rights Act of 1964

AGENCY: Department of Education.

ACTION: Notice of final policy guidance.

SUMMARY: The Secretary of Education issues final policy guidance on Title VI of the Civil Rights Act of 1964 and its implementing regulations. The final policy guidance discusses the applicability of the statute's and regulations' nondiscrimination requirement to student financial aid that is awarded, at least in part, on the basis of race or national origin.

EFFECTIVE DATE: This policy guidance takes effect on May 24, 1994, subject to the transition period described in this notice.

FOR FURTHER INFORMATION CONTACT: Jeanette Lim, U.S. Department of Education, 400 Maryland Avenue, SW., room 5036–I Switzer Building, Washington, DC 20202–1174. Telephone (202) 205–8635. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at 1–800–358–8247.

SUPPLEMENTARY INFORMATION: On December 10, 1991, the Department published a notice of proposed policy guidance and request for public comment in the **Federal Register** (56 FR 64548). The purpose of the proposed guidance and of this final guidance is to help clarify how colleges can use financial aid to promote campus diversity and access of minority students to postsecondary education without violating Federal anti-discrimination laws. The Secretary of Education encourages continued use of financial aid as a means to provide equal educational opportunity and to provide a diverse educational environment for all students. The Secretary also encourages the use by postsecondary institutions of other efforts to recruit and retain minority students, which are not affected by this policy guidance.

This guidance is designed to promote these purposes in light of Title VI of the Civil Rights Act of 1964 (Title VI), which states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Department has completed its review of this issue, taking into account the results of a recent study by the General Accounting Office (GAO) and public comments submitted in response to the proposed policy guidance. The Secretary has determined that the proposed policy guidance interpreted the requirements of Title VI too narrowly in light of existing regulations and case law. While Title VI requires that strong justifications exist before race or national origin is used as a basis for awarding financial aid, many of the rationales for existing race-based financial aid programs described by commenters appear to meet this standard.

The recent report by GAO on current financial aid programs does not indicate the existence of serious problems of noncompliance with the law in postsecondary institutions. That report found that race-targeted scholarships constitute a very small percentage of the scholarships awarded to students at postsecondary institutions. The Secretary anticipates that most existing programs will be able to satisfy the principles set out in this final guidance.

The Department will use the principles described in this final policy guidance in making determinations concerning discrimination based on race or national origin in the award of financial aid. These principles describe the circumstances in which the Department, based on its interpretation of Title VI and relevant case law, believes consideration of race or national origin in the award of financial aid to be permissible. A financial aid program that falls within one or more of these principles will be, in the Department's view, in compliance with Title VI.[1] This guidance is intended to assist colleges in fashioning legally defensible affirmative action programs to promote the access of minority students to postsecondary education. The Department will offer technical assistance to colleges in reexamining their financial aid programs based on this guidance.

This notice consists of five simply stated principles and a section containing a legal analysis for each principle. The legal analysis addresses the major comments received in response to the notice of proposed policy guidance.

[1] In identifying these principles, the Department is not foreclosing the possibility that there may be other bases on which a college may support its consideration of race or national origin in awarding financial aid. The Department will consider any justifications that are presented during the course of a Title VI investigation on a case-by-case basis.

Summary of Changes in the Final Policy Guidance

Almost 600 written responses were received by the Department in response to the proposed policy guidance, many with detailed suggestions and analysis. Many additional suggestions and concerns were raised in meetings between Department officials and representatives of postsecondary institutions and civil rights groups. The vast majority of comments expressed support for the objective of clarifying the options colleges have to use financial aid to promote student diversity and access of minorities to postsecondary education without violating Title VI. Many comments, however, took issue with specific principles in the proposed policy guidance and questioned whether those principles would be effective in accomplishing this purpose.

As more fully explained in the legal analysis section of this document, after reviewing the public comments and reexamining the legal precedents in light of those comments, the Department has revised the policy guidance in the following respects:

(1) Principle 3—"Financial Aid to Remedy Past Discrimination"—has been amended to permit a college to award financial aid based on race or national origin as part of affirmative action to remedy the effects of its past discrimination without waiting for a finding to be made by the Office for Civil Rights (OCR), a court, or a legislative body, if the college has a strong basis in evidence of discrimination justifying the use of race-targeted scholarships.

(2) Principle 4—"Financial Aid to Create Diversity"—has been amended to permit the award of financial aid on the basis of race or national origin if the aid is a necessary and narrowly tailored means to accomplish a college's goal to have a diverse student body that will enrich its academic environment.

(3) Principle 5—"Private Gifts Restricted by Race or National Origin"—has been amended to clarify that a college can administer financial aid from private donors that is restricted on the basis of race or national origin only if that aid is consistent with the other principles in this policy guidance.

(4) A provision has been added to permit historically black colleges and universities (HBCUs) to participate in race-targeted programs for black students established by third parties if the programs are not limited to students at HBCUs.

(5) Provisions in the proposed policy guidance for a transition period have been revised to provide that, as far as the Department's enforcement efforts are concerned—

(a) Colleges and other recipients of federal financial assistance will have a reasonable period of time—up to two years—to review their financial aid programs and to make any adjustments necessary to come into compliance with the principles in this final policy guidance;

(b) No student who has received or applied for financial aid at the time this guidance becomes effective will lose aid as a result of this guidance. Thus, if an award of financial aid is inconsistent with the principles in this guidance, a college or other recipient of Federal financial assistance may continue to provide the aid to a student during the course of his or her enrollment in the academic program for which the aid was awarded, if the student had either applied for or received the aid prior to the effective date of this policy guidance.

Principles

Definitions

For purposes of these principles—

College means any postsecondary institution that receives federal financial assistance from the Department of Education.

Financial aid includes scholarships, grants, loans, work-study, and fellowships that are made available to assist a student to pay for his or her education at a college.

Race-neutral means not based, in whole or in part, on race or national origin.

Race-targeted, race-based, and *awarded on the basis of race or national origin* mean limited to individuals of a particular race or races or national origin or origins.

Principle 1: Financial Aid for Disadvantaged Students

A college may make awards of financial aid to disadvantaged students, without regard to race or national origin, even if that means that these awards go disproportionately to minority students.

Financial aid may be earmarked for students from low-income families. Financial aid also may be earmarked for students from school districts with high dropout rates, or students from single-parent families, or students from families in which few or no members have attended college. None of these or other race-neutral ways of identifying and providing aid to disadvantaged students present Title VI problems. A college may use funds from any source to provide financial aid to disadvantaged students.

Principle 2: Financial Aid Authorized by Congress

A college may award financial aid on the basis of race or national origin if the aid is awarded under a Federal statute that authorizes the use of race or national origin.

Principle 3: Financial Aid To Remedy Past Discrimination

A college may award financial aid on the basis of race or national origin if the aid is necessary to overcome the effects of past discrimination. A finding of discrimination may be made by a court or by an administrative agency—such as the Department's Office for Civil Rights. Such a finding may also be made by a State or local legislative body, as long as the legislature has a strong basis in evidence identifying discrimination within its jurisdiction for which that remedial action is necessary.

In addition, a college may award financial aid on the basis of race or national origin to remedy its past discrimination without a formal finding of discrimination by a court or by an administrative or legislative body. The college must be prepared to demonstrate to a court or administrative agency that there is a strong basis in evidence for concluding that the college's action was necessary to remedy the effects of its past discrimination. If the award of financial aid based on race or national origin is justified as a remedy for past discrimination, the college may use funds from any source, including unrestricted institutional funds and privately donated funds restricted by the donor for aid based on race or national origin.

A State may award financial aid on the basis of race or national origin, under the preceding standards, if the aid is necessary to overcome its own past discrimination or discrimination at colleges in the State.

Principle 4 Financial Aid To Create Diversity

America is unique because it has forged one Nation from many people of a remarkable number of different backgrounds. Many colleges seek to create on campus an intellectual environment that reflects that diversity. A college should have substantial discretion to weigh many factors—including race and national origin—in its efforts to attract and retain a student population of many different experiences, opinions, backgrounds, and cultures—provided that the use of race or national origin is consistent with the constitutional standards reflected in Title VI, *i.e.*, that it is a narrowly tailored means to achieve the goal of a diverse student body.

There are several possible options for a college to promote its First Amendment interest in diversity. First, a college may, of course, use its financial aid program to promote diversity by considering factors other than race or national origin, such as geographic origin, diverse experiences, or socioeconomic background. Second, a college may consider race or national origin with other factors in awarding financial aid if the aid is necessary to further the college's interest in diversity. Third, a college may use race or national origin as a condition of eligibility in awarding financial aid if this use is narrowly tailored, or, in other words, if it is necessary to further its interest in diversity and does not unduly restrict access to financial aid for students who do not meet the race-based eligibility criteria.

Among the considerations that affect a determination of whether awarding race-targeted financial aid is narrowly tailored to the goal of diversity are (1) whether race-neutral means of achieving that goal have been or would be ineffective; (2) whether a less extensive or intrusive use of race or national origin in awarding financial aid as a means of achieving that goal has been or would be ineffective; (3) whether the use of race or national origin is of limited extent and duration and is applied in a flexible manner; (4) whether the institution regularly reexamines its use of race or national origin in awarding financial aid to determine whether it is still necessary to achieve its goal; and (5) whether the effect of the use of race or national origin on students who are not beneficiaries of that use is sufficiently small and diffuse so as not to create an undue burden on their opportunity to receive financial aid.

If the use of race or national origin in awarding financial aid is justified under this principle, the college may use funds from any source.

Principle 5: Private Gifts Restricted by Race or National Origin

Title VI does not prohibit an individual or an organization that is not a recipient of Federal financial assistance from directly giving scholarships or other forms of financial aid to students based on their race or national origin. Title VI simply does not apply.

The provisions of Principles 3 and 4 apply to the use of race-targeted privately donated funds by a college and may justify awarding these funds on the basis of race or national origin if the

college is remedying its past discrimination pursuant to Principle 3 or attempting to achieve a diverse student body pursuant to Principle 4. In addition, a college may use privately donated funds that are not restricted by their donor on the basis of race or national origin to make awards to disadvantaged students as described in Principle 1.

Additional Guidance

Financial Aid at Historically Black Colleges and Universities

Historically black colleges and universities (HBCUs), as defined in Title III of the Higher Education Act (Title III), 20 U.S.C. 1061, are unique among institutions of higher education in America because of their role in serving students who were denied access to postsecondary education based on their race.[2] Congress has made numerous findings reflecting the special role and needs of these institutions in light of the history of discrimination by States and the Federal Government against both the institutions and their students and has required enhancement of these institutions as a remedy for this history of discrimination.

Based upon the extensive congressional findings concerning HBCUs, and consistent with congressional and Executive Branch efforts to enhance and strengthen HBCUs, the Department interprets Title VI to permit these institutions to participate in student aid programs established by third parties that target financial aid to black students, if those programs are not limited to students at the HBCUs. These would include programs to which HBCUs contribute their own institutional funds if necessary for participation in the programs. Precluding HBCUs from these programs would have an unintended negative effect on their ability to recruit talented student bodies and would undermine congressional actions aimed at enhancing these institutions. HBCUs may not create their own race-targeted programs using institutional funds, nor may they accept privately donated race-targeted aid limited to students at the HBCUs, unless they satisfy the requirements of any of the other principles in this guidance.[3]

[2] Title III states a number of requirements that an institution must meet in order to be considered an historically black college or university, including the requirement that the college or university was established prior to 1964. 20 U.S.C. 1061. In regulations implementing Title III, the Secretary has identified the institutions that meet these requirements. 34 CFR 608.2(b).

[3] For example, an HBCU might award race-targeted aid to Mexican American students or to white students to promote diversity under Principle 4.

Transition Period

Although the Department anticipates that most financial aid programs that consider race or national origin in awarding assistance will be found to be consistent with one or more of the principles in this final policy guidance, there will be some programs that require adjustment to comply with Title VI. In order to permit colleges time to assess their programs and to make any necessary adjustments in an orderly manner—and to ensure that students who already have either applied for or received financial aid do not lose their student aid as a result of the issuance of this policy guidance—there will be a transition period during which the Department will work with colleges that require assistance to bring them into compliance.[4]

The Department will afford colleges up to two academic years to adjust their programs for new students. However, to the extent that a college does not need the full two years to make adjustments to its financial aid programs, the Department expects that the adjustments will be made as soon as practicable.

No student who is currently receiving financial aid, or who has applied for aid prior to the effective date of this policy guidance, should lose aid as a result of this guidance. Thus, if a college determines that a financial aid program is not permissible under this policy guidance, the college may continue to provide assistance awarded on the basis of race or national origin to students during the entire course of their academic program at the college, even if that period extends beyond the two-year transition period, if the students had either applied for or received that assistance prior to the effective date of this policy.

[4] This transition period also applies to recipients of Federal financial assistance that are not colleges, e.g., a nonprofit organization that operates a scholarship program.

Legal Analysis

Introduction

The Department of Education is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, at institutions receiving Federal education funds. Section 601 of Title VI provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 42 U.S.C. 2000d.

The Department has issued regulations implementing Title VI that are applicable to all recipients of financial assistance from the Department. 34 CFR part 100. The regulations prohibit discrimination in the administration of financial aid programs. Specifically, they prohibit a recipient, on the basis of race, color, or national origin, from denying financial aid; providing different aid; subjecting anyone to separate or different treatment in any matter related to financial aid; restricting the enjoyment of any advantage or privilege enjoyed by others receiving financial aid; and treating anyone differently in determining eligibility or other requirements for financial aid. 34 CFR 100.3(b)(1); see also 34 CFR 100.3(b)(2).

In addition to prohibiting discrimination, the Title VI regulations require that a recipient that has previously discriminated "must take affirmative action to overcome the effects of prior discrimination." 34 CFR 100.3(b)(6)(i). The regulations also permit recipients to take voluntary affirmative action "[e]ven in the absence of such prior discrimination * * * to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin" in the recipient's programs. 34 CFR 100.3(b)(6)(ii); see 34 CFR 100.5(i).

The permissibility of awarding student financial aid based, in whole or in part, on a student's race or national origin involves an interpretation of the preceding provisions concerning affirmative action. The Supreme Court has made clear that Title VI prohibits intentional classifications based on race or national origin for the purpose of affirmative action to the same extent and under the same standards as the Equal Protection Clause of the Fourteenth Amendment.[5] *Guardians Ass'n* v. *Civil Service Commission of the City of New York*, 463 U.S. 582 (1983); *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978). Thus, the Department's interpretation of the general language of the Title VI regulations concerning permissible affirmative action is based on case law under both Title VI and the Fourteenth Amendment.

[5] Some commenters suggested that Native Americans and Native Hawaiians—because of their special relationship with the Federal Government—should be exempt from the restrictions outlined in the policy guidance. The Department has found no legal authority for treating affirmative action by recipients of Federal assistance any differently if the group involved is Native Americans or Native Hawaiians. Thus, the principles in this policy guidance—including Principle 2, which states that a college may award financial aid on the basis of race or national origin if authorized by Federal statute—apply to financial aid that is limited to Native Americans and Native Hawaiians. However, the policy does not address the authority of tribal governments or tribally controlled colleges to restrict aid to members of their tribes.

The following discussion addresses the legal basis for each of the five principles set out in the Department's policy guidance.

1. Financial Aid for Disadvantaged Students

The first principle provides that colleges may award financial aid to disadvantaged students. Colleges are free to define the circumstances under which students will be considered to be disadvantaged, as long as that determination is not based on race or national origin.

As some commenters noted, the Title VI regulations prohibit actions that, while not intentionally discriminatory, have the effect of discriminating on the basis of race or national origin. 34 CFR 100.3(b)(2); see *Guardians Ass'n* v. *Civil Service Commission of the City of New York, supra; Lau* v. *Nichols*, 414 U.S. 563 (1974). However, actions that have a disproportionate effect on students of a particular race or national origin are permissible under Title VI if they bear a "manifest demonstrable relationship" to the recipient's educational mission. *Georgia State Conference of Branches of NAACP* v. *State of Georgia*, 775 F.2d 1403, 1418 11th Cir. (1985). It is the Department's view that awarding financial aid to disadvantaged students provides a sufficiently strong educational purpose to justify any racially disproportionate effect the use of this criterion may entail. In particular, the Department believes that an applicant's character, motivation, and ability to overcome economic and educational disadvantage are educationally justified considerations in both admission and financial aid decisions. Therefore, the award of financial assistance to disadvantaged students does not violate Title VI.

2. Financial Aid Authorized by Congress

This principle states that a college may award financial aid on the basis of race or national origin if the use of race or national origin in awarding that aid is authorized by Federal statute. This is because financial aid programs for minority students that are authorized by a specific Federal law cannot be considered to violate another Federal law, *i.e.*, Title VI. In the case of the establishment of federally funded financial aid programs, such as the Patricia Roberts Harris Fellowship, the authorization of specific minority scholarships by that legislation prevails over the general prohibition of discrimination in Title VI.[6] This result also is consistent with the canon of construction under which the specific provisions of a statute prevail over the general provisions of the same or a different statute. See 2A N. Singer *Sutherland Statutory Construction* section 46.05 (5th ed. 1992); *Radzanower* v. *Touche Ross and Co.*, 426 U.S. 148, 153 (1976); *Morton* v. *Mancari*, 417 U.S. 535, 550–51 (1974); *Fourco Glass Co.* v. *Transmira Products Corp.*, 353 U.S. 225, 228–29 (1957).

Some commenters argued that the existence of congressionally authorized race-targeted financial aid programs supports the position that all race-targeted financial aid programs are permissible under Title VI. However, the fact that Congress has enacted specific Federal programs for race-targeted financial aid does not serve as an authorization for States or colleges to create their own programs for awarding student financial aid based on race or national origin.

3. Financial Aid To Remedy Past Discrimination

Classifications based on race or national origin, including affirmative action measures, are "suspect" classifications that are subject to strict scrutiny by the courts. *Regents of the University of California* v. *Bakke*, 438 U.S. at 292. The use of those classifications must be based on a compelling governmental interest and must be narrowly tailored to serve that interest. *Richmond* v. *J.A. Croson Co.*, 488 U.S. 469 (1989); *Wygant* v. *Jackson Board of Education*, 476 U.S. 267 (1986).

The Supreme Court has repeatedly held that the Government has a compelling interest in ensuring the elimination of discrimination on the basis of race or national origin. To further this governmental interest, the Supreme Court has sanctioned the use of race-conscious measures to eliminate discrimination. *United States* v. *Fordice*, _____ U.S. _____ (1992); *United States* v. *Paradise*, 480 U.S. 149, 167 (1987); *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 15–16 (1971); *McDaniel* v. *Barresi*, 402 U.S. 39 (1971); *Green* v. *County School Board of New Kent County*, 391 U.S. 430, 438 (1968). Most recently, in *United States* v. *Fordice, supra*, the Court found that States that operated *de jure* systems of higher education have an affirmative obligation to ensure that no vestiges of the de jure system continue to have a discriminatory effect on the basis of race.

The implementing regulations for Title VI provide that a recipient of Federal financial assistance that has previously discriminated in violation of the statute or regulations must take affirmative action to overcome the effects of the past discrimination. 34 CFR 100.3(b)(6)(i). Thus, a college that has been found to have discriminated against students on the basis of race or national origin must take steps to remedy that discrimination. That remedial action may include the awarding of financial aid to students from the racial or national origin groups that have been discriminated against.

The proposed policy guidance provided that a finding of past discrimination could be made by a court or by an administrative agency, such as the Department's Office for Civil Rights. It also could be made by a State or local legislative body, as long as the legislature requiring the affirmative action had a strong basis in evidence identifying discrimination within its jurisdiction for which that remedial action is required.

A number of commenters argued that colleges should be able to take remedial action without waiting for a formal finding by a court, administrative agency, or legislature. The Department agrees. The final policy guidance provides that, even in the absence of a finding by a court, legislature, or administrative agency, a college—in order to remedy its past discrimination—may implement a remedial race-targeted financial aid program. It may do so if it has a strong basis in evidence for concluding that this affirmative action is necessary to remedy the effects of its past discrimination and its financial aid program is narrowly tailored to remedy that discrimination. Permitting colleges to remedy the effects of their past discrimination without waiting for a formal finding is consistent with the approach taken by the Supreme Court in *Wygant* v. *Jackson Board of Education, supra*. In *Wygant*, the Court clarified that a school district's race-conscious voluntary affirmative action plan could be upheld based on subsequent judicial findings of past discrimination by the

[6] Of course, an individual may challenge the statute under which the aid is provided as violative of the Constitution. The statute would then be evaluated under the constitutional standards for racial classifications authorized by Federal statute that were established in *Metro Broadcasting, Inc.* v. *FCC*, 497 U.S. 547 (1990) and *Fullilove* v. *Klutznick*, 448 U.S. 448 (1980). However, as explained previously, such a suit would not be viable under Title VI, for which the Department has enforcement responsibility.

district. *Wygant* v. *Jackson Board of Education*, 476 U.S. at 277.

In the *Wygant* case, teachers challenged their school board's adoption, through a collective bargaining agreement, of a layoff plan that included provisions protecting employees from layoffs on the basis of their race. The school board contended, among other things, that the plan's race-conscious layoff provisions were constitutional because they were adopted to remedy the school board's own prior discrimination. *Id.*, at 276, 277. Justice Powell, in a plurality opinion, stated that a public employer must have "convincing evidence" that an affirmative action plan is warranted by past discrimination before undertaking that plan. *Id.*, at 277. If the plan is challenged by employees who are harmed by the plan, the court must then make a determination that the employer had a "strong basis in evidence for its conclusion that remedial action was necessary." *Id.*

In a concurring opinion, Justice O'Connor agreed that a "contemporaneous or antecedent finding of past discrimination by a court was not a constitutional prerequisite to a public employer's voluntary agreement to an affirmative action plan." *Id.*, at 289. She explained that contemporaneous or antecedent findings were not necessary because "A violation of Federal statutory or constitutional requirements does not arise with the making of findings; it arises when the wrong is committed." Moreover, she explained that important values would be sacrificed if contemporaneous findings were required because "a requirement that public employers make findings that they engaged in illegal discrimination before they engage in affirmative action programs would severely undermine public employers' incentive to meet voluntarily their civil rights obligations." *Id.*, at 289, 290 (citations omitted).

In *Richmond* v. *J.A. Croson, supra*, the Court again emphasized that remedial race-conscious action must be based on strong evidence of discrimination. That case involved the constitutionality of a city ordinance establishing a plan to remedy past discrimination by requiring prime contractors awarded city construction contracts to subcontract at least 30% of the dollar amount of each contract to minority-controlled businesses. The Court found that the city council had failed to make sufficient factual findings to demonstrate a "strong basis in evidence" of racial discrimination "by anyone in the Richmond construction industry." *Richmond* v. *J.A. Croson*, 488 U.S. at 500.

Evidence of past discrimination may, but need not, include documentation of specific incidents of intentional discrimination. Instead, evidence of a statistically significant disparity between the percentage of minority students in a college's student body and the percentage of qualified minorities in the relevant pool of college-bound high school graduates may be sufficient. Such an approach is analogous to cases of employment discrimination where the courts accept statistical evidence to infer intentional discrimination against minority job applicants. See *Hazelwood School District* v. *United States*, 433 U.S. 299 (1977).

Based on this case law, Principle 3 provides that a college may award race-targeted scholarships to remedy discrimination as found by a court or by an administrative agency, such as the Department's Office for Civil Rights. OCR often has approved race-targeted financial aid programs as part of a Title VI remedial plan to eliminate the vestiges of prior discrimination within a State higher education system that previously was operated as a racially segregated dual system. As indicated by the *Croson* decision, a finding of past discrimination also may be made by a State or local legislative body, as long as the legislature has a strong basis in evidence identifying discrimination within its jurisdiction. The remedial use of race-targeted financial aid must be narrowly tailored to remedy the effects of the discrimination.

As revised, Principle 3 also allows a college to award student aid on the basis of race or national origin as part of affirmative action to remedy the effects of the school's past discrimination without waiting for a finding to be made by OCR, a court, or a legislative body, if the college has convincing evidence of past discrimination justifying the affirmative action. The Department's Title VI regulations, like the Fourteenth Amendment, do not require that antecedent or contemporaneous findings of past discrimination be made before remedial affirmative action is implemented, as long as the college has a strong basis in evidence of its past discrimination. Allowing colleges to implement narrowly tailored remedial affirmative action if there is strong evidentiary support for it—without requiring that it be delayed until a finding is made by OCR, a court, or a legislative body—will assist in ensuring that Title VI's mandate against discrimination based on race or national origin is achieved.

4. Financial Aid To Create Diversity

The Title VI regulations permit a college to take voluntary affirmative action, even in the absence of past discrimination, in response to conditions that have limited the participation at the college of students of a particular race or national origin. 34 CFR 100.3(b)(6)(ii); see 34 CFR 100.5(i). In *Regents of the University of California* v. *Bakke*, *supra*, the Supreme Court considered whether the University could take voluntary affirmative action by setting aside places in each medical school class for which only minority students could compete.[7]

The Court considered four rationales provided by the University of California for taking race and national origin into account in making admissions decisions: (1) To reduce the historic deficit of traditionally disfavored minorities in medical schools and the medical profession. (2) To counter the effects of societal discrimination. (3) To increase the number of physicians who would practice in communities lacking medical services. (4) To obtain the educational benefits of a diverse student body. Similar arguments have been advanced in response to the Department's proposed policy guidance on student financial assistance awarded on the basis of race or national origin.

The Court rejected the first three justifications. The first reason was rejected as facially invalid because setting aside a fixed number of admission spaces only to ensure that members of a specified race are admitted was found to be racial "discrimination for its own sake." *Regents of the University of California* v. *Bakke*, 438 U.S. at 307. In rejecting the second contention that the effects of societal discrimination warranted the racial preferences, the Court recognized that the State had a substantial interest in eliminating the effects of discrimination, but that interest was found to be limited to "redress[ing] the wrongs worked by specific instances of discrimination." *Id.* The third contention, concerning the provision of health care services to underserved communities, was rejected by the *Bakke* Court as an evidentiary matter because the State had "not carried its burden of demonstrating that it must prefer members of particular ethnic groups over all other individuals in order to promote better health-care delivery to deprived citizens." *Id.*, at 311.

With respect to the final objective, the "attainment of a diverse student body," Justice Powell found that—

> This clearly is a constitutionally permissible goal for an institution of higher education. Academic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment. The freedom of a university to make its own judgments as to education includes the selection of its student body.

Id., at 311, 312. Thus, colleges have a First Amendment right to seek diversity in admissions to fulfill their academic mission through the "robust exchange of ideas" that flows from a diverse student body. *Id.*, at 312–313.[8] However, the means to achieve this "countervailing constitutional interest" under the First Amendment must comport with the requirements of the Fourteenth Amendment. The Medical School's policy of setting aside a fixed number of admission spaces solely for minorities was found not to pass the Fourteenth Amendment's strict scrutiny test, because the policy's use of race as a condition of eligibility for the slots was not necessary to promote the school's diversity interest. *Id.*, at 315–316. Justice Powell found that the Medical School could advance its diversity interest under the First Amendment in a narrowly tailored manner that passed the Fourteenth Amendment's strict scrutiny test by using race or national origin as one of several factors that would be considered as a plus factor for an applicant in the admissions process. *Id.*, at 317–319.

Following the *Bakke* decision, the Department reexamined its Title VI regulations to determine whether any changes were necessary. In a policy interpretation published in the **Federal Register** (44 FR 58509), the Department concluded that no change was warranted. The Department determined that the Title VI regulatory provision authorizing voluntary affirmative action was consistent with the Court's decision and that the provision would be interpreted to incorporate the limitations on voluntary affirmative action announced by the Court.[9] Thus, if a college's use of race or national origin in awarding financial aid meets the Supreme Court's test under the Fourteenth Amendment for permissible voluntary affirmative action, it will also meet the requirements of Title VI.

In the Department's proposed policy guidance on financial aid, a principle was included permitting the use of race or national origin as a "plus" factor in awarding student aid. The basis for the principle was the *Bakke* decision and the Department's assessment that using an approach that had been approved by the Supreme Court as narrowly tailored to achieve diversity in the admissions context also would be permissible in awarding financial aid.[10]

In response to the proposed policy, many colleges submitted comments arguing that the use of race or national origin as a plus factor in awarding financial aid may be inadequate to achieve diversity. They contended that, in some cases, it may be necessary to designate a limited amount of aid for students of a particular race or national origin. According to those commenters, a college's financial aid program can serve a critical role in achieving a diverse student body in at least three respects: First, the availability of financial aid set aside for members of a particular race or national origin serves as a recruitment tool, encouraging applicants to consider the school. Second, it provides a means of encouraging students who are offered admission to accept the offer and enroll at the school. Finally, it assists colleges in retaining students until they complete their program of studies.

The commenters argued that a college—because of its location, its reputation (whether deserved or not) of being inhospitable to minority students, or its number of minority graduates—may be unable to recruit sufficient minority applicants even if race or national origin is considered a positive factor in admissions and the award of aid. That is, the failure to attract a sufficient number of minority applicants who meet the academic requirements of the college will make it impossible for the college to enroll a diverse student body, even if race or national origin is given a competitive "plus" in the admissions process. In addition, a college that has sufficient minority applicants to offer admission to a diverse group of applicants may find that, absent the availability of financial aid set aside for minority students, its offers of admission are disproportionately rejected by minority applicants.

Furthermore, commenters were concerned that, while there may be large amounts of financial aid available for undergraduates at their institutions, there may be insufficient aid for graduate students, almost all of whom are able to demonstrate financial need. Thus, it is possible that a college that is able to achieve a diverse student body in some of its programs using race-neutral financial aid criteria or using race or national origin as a "plus" factor may find it necessary to use race or national origin as a condition of eligibility in awarding limited amounts of financial aid to achieve diversity in some of its other programs, such as its graduate school or particular undergraduate schools.

The Department agrees with the commenters that in the circumstances they have described it may be necessary for a college to set aside financial aid to be awarded on the basis of race or national origin in order to achieve a diverse student body. Whether a college's use of race-targeted financial aid is "narrowly tailored" to achieve this compelling interest involves a case-by-case determination that is based on the particular circumstances involved. The Department has determined, based on the comments, to expand Principle 4 to permit those case-by-case determinations.

The Court in *Bakke* indicated that race or national origin could be used in making admissions decisions to further the compelling interest of a diverse student body even though the effect might be to deny admission to some students who did not receive a competitive "plus" based on race or ethnicity.[11] However, the use of a set-aside of places in the entering class was impermissible because it was not necessary to the goal of diversity. In cases since *Bakke*, the Supreme Court has provided additional guidance on the factors to be considered in determining whether a classification based on race or national origin is narrowly tailored to its purpose. These factors will be

[7] The Court noted that the University "does not purport to have made" a determination that its affirmative action plan was necessary to remedy any past discrimination at the medical school. *Regents of the University of California* v. *Bakke*, 438 U.S. at 309.

[8] The Secretary believes that a college's academic freedom interest in the "robust exchange of ideas" also includes an interest in the existence of a diverse faculty and, more generally, in diversity of professors nationally, since scholars engage in the interchange of ideas with others in their field, and not merely with faculty at their particular school. A university could contribute to this interest by enrolling graduate students who are committed to becoming professors and who will promote the overall diversity of scholars in their field of study, regardless of the diversity of the students who are admitted to the university's own graduate program.

[9] The present policy guidance on student financial assistance supplements the 1979 policy interpretation.

[10] The Department will presume that a college's use of race or national origin as a plus factor, with other factors, is narrowly tailored to further the compelling governmental interest in diversity, as long as the college periodically reexamines whether its use of race or national origin as a plus factor continues to be necessary to achieve a diverse student body.

[11] *Bakke* was the Supreme Court's first decision in an affirmative action case. Since that time, the Court has decided a number of affirmative action cases, none of which have invalidated Justice Powell's opinion in *Bakke* that the promotion of diversity in the higher education setting is a compelling interest.

considered by the Department in assessing whether a college's race-targeted financial aid program meets the requirements of Title VI.

First, it is necessary to determine the efficacy of alternative approaches. *United States* v. *Paradise*, 480 U.S. at 171. Thus, it is important that consideration has been given to the use of alternative approaches that are less intrusive (*e.g.*, the use of race or national origin as a "plus" factor rather than as a condition of eligibility). *Metro Broadcasting, Inc.* v. *F.C.C.*, 497 U.S. at 583; *Richmond* v. *J.A. Croson*, 488 U.S. at 507. Financial aid that is restricted to students of a particular race or national origin should be used only if a college determines that these alternative approaches have not or will not be effective.

Second, the extent, duration, and flexibility of the racial classification must be addressed. *Metro Broadcasting, Inc.* v. *F.C.C.*, 497 U.S. at 594; *United States* v. *Paradise*, 480 U.S. at 171. The extent of the use of the classification should be no greater than is necessary to carry out its purpose. *Richmond* v. *J.A. Croson*, 488 U.S. at 507. That is, the amount of financial aid that is awarded based on race or national origin should be no greater than is necessary to achieve a diverse student body.

The duration of the use of a racial classification should be no longer than is necessary to its purpose, and the classification should be periodically reexamined to determine whether there is a continued need for its use. *Metro Broadcasting, Inc.* v. *F.C.C.*, 497 U.S. at 594. Thus, the use of race-targeted financial aid should continue only while it is necessary to achieve a diverse student body, and an assessment as to whether that continues to be the case should be made on a regular basis.

In addition, the use of the classification should be sufficiently flexible that exceptions can be made if appropriate. For example, the Supreme Court in *United States* v. *Paradise* found that a race-conscious promotion requirement was flexible in operation because it could be waived if no qualified candidates were available. 480 U.S. at 177. Similarly, racial restrictions on the award of financial aid could be waived if there were no qualified applicants.

Finally, the burden on those who are excluded from the benefit conferred by the classification based on race or national origin (*i.e.*, non-minority students) must be considered. *Id.*, at 171. A use of race or national origin may impose such a severe burden on particular individuals—for example, eliminating scholarships currently received by non-minority students in order to start a scholarship program for minority students—that it is too intrusive to be considered narrowly tailored. See *Wygant* v. *Jackson Board of Education*, 476 U.S. at 283 (use of race in imposing layoffs involves severe disruption to lives of identifiable individuals). Generally, the less severe and more diffuse the impact on non-minority students, the more likely a classification based on race or national origin will address this factor satisfactorily. However, it is not necessary to show that no student's opportunity to receive financial aid has been in any way diminished by the use of the race-targeted aid. Rather, the use of race-targeted financial aid must not place an undue burden on students who are not eligible for that aid.

A number of commenters argued that race-targeted financial aid is a minimally intrusive method to attain a diverse student body, far more limited in its impact on non-minority students, for example, than race-targeted admissions policies. Under this view, and unlike the admissions plan at issue in *Bakke*, a race-targeted financial aid award could be a narrowly tailored means of achieving the compelling interest in diversity.

The Department agrees that there are important differences between admissions and financial aid. The affirmative action admissions program struck down in *Bakke* had the effect of excluding applicants from the university on the basis of their race. The use of race-targeted financial aid, on the other hand, does not, in and of itself, dictate that a student would be foreclosed from attending a college solely on the basis of race. Moreover, in contrast to the number of admissions slots, the amount of financial aid available to students is not necessarily fixed. For example, a college's receipt of privately donated monies restricted to an underrepresented group might increase the total pool of funds for student aid in a situation in which, absent the ability to impose such a limitation, the donor might not provide any aid at all.

Even in the case of a college's own funds, a decision to bar the award of race-targeted financial aid will not necessarily translate into increased resources for students from non-targeted groups. Funds for financial aid restricted by race or national origin that are viewed as a recruitment device might be rechanneled into other methods of recruitment if restricted financial aid is barred. In other words, unlike admission to a class with a fixed number of places, the amount of financial aid may increase or decrease based on the functions it is perceived to promote.

In summary, a college can use its financial aid program to promote diversity by considering factors other than race or national origin, such as geographic origin, diverse experiences, or socioeconomic background. In addition, a college may take race or national origin into account as one factor, with other factors, in awarding financial aid if necessary to promote diversity. Finally, a college may use race or national origin as a condition of eligibility in awarding financial aid if it is narrowly tailored to promote diversity.

5. Private Gifts Restricted by Race or National Origin

The fifth principle sets out the circumstances under which a recipient college can award financial aid provided by private donors that is restricted on the basis of race or national origin.

As noted by many commenters, pursuant to the Civil Rights Restoration Act of 1987, all of the operations of a college are covered by Title VI if the college receives any Federal financial assistance. 42 U.S.C. 2000d-4a(2)(A). Since a college's award of privately donated financial aid is within the operations of the college, the college must comply with the requirements of Title VI in awarding those funds.[12]

A college may award privately donated financial aid on the basis of race or national origin if the college is remedying its past discrimination pursuant to Principle 3 or attempting to achieve a diverse student body pursuant to Principle 4. In other words, Principles 3 and 4 apply to the use of privately donated funds and may justify awarding these funds on the basis of race or national origin in accordance with the wishes of the donor. Similarly, under Principle 1, a college may award privately donated financial aid that is restricted to disadvantaged students.

Some commenters were uncertain whether it is permissible under Title VI for a college to solicit private donations of student financial aid that are restricted to students of a particular race or national origin. If the receipt and award of these funds is permitted by Title VI, that is, in the circumstances

[12] Similarly, other organizations that receive Federal financial assistance must comply with Title VI in their award of student financial aid. On the other hand, individuals or organizations not receiving Federal funds are not subject to Title VI. They may thus, as far as Title VI is concerned, directly award financial aid to students on the basis of race or national origin.

previously described, it is similarly permissible to solicit the funds from private sources.

Financial Aid at Historically Black Colleges and Universities

To ensure that the principles in this policy guidance do not subvert congressional efforts to enhance historically black colleges and universities (HBCUs), these institutions may participate in student aid programs established by third parties for black students that are not limited to students at the HBCUs and may use their own institutional funds in those programs if necessary for participation.[13] See 20 U.S.C. 1051, 1060, and 1132c (congressional findings of past discrimination against HBCUs and of the need for enhancement).

This finding is based upon congressional findings of past discrimination against HBCUs and the students they have traditionally served, as well as the Department's determination that these institutions and their students would be harmed if precluded from participation in programs created by third parties that designate financial aid for black students. That action would have an unintended negative effect on their ability to recruit excellent student bodies and could undermine congressional actions aimed at enhancing these institutions.

Congress has repeatedly made findings that recognize the unique historical mission and important role that HBCUs play in the American system of higher education, and particularly in providing equal educational opportunity for black students. 20 U.S.C. 1051, 1060, and 1132c. Congress has created programs that strengthen and enhance HBCUs in Titles II through VII of the Higher Education Act, as amended by Public Law 99–498, 20 U.S.C. 1021–1132i-2. It has found that "there is a particular national interest in aiding institutions of higher education that have historically served students who have been denied access to postsecondary education because of race or national origin . . . so that equality of access and quality of postsecondary education opportunities may be enhanced for all students." 20 U.S.C. 1051. "A key link to the chain of expanding college opportunity for African American youth is strengthening the Nation's historically Black colleges and universities." House Report No. 102–447, 1992 U.S. Code Cong. and Adm. News p. 353.

Congress has found that "the current state of HBCUs is partly attributable to the discriminatory action of the States and the Federal Government and this discriminatory action requires the remedy of enhancement of Black postsecondary institutions to ensure their continuation and participation in fulfilling the Federal mission of equality of educational opportunity." 20 U.S.C. 1060. See also, House Report No. 102–447, 1992 U.S. Code Cong. and Adm. News p. 353; House Report No. 99–383, 1986 U.S. Code Cong. and Adm. News 2592–2596. This includes providing access and quality education to low-income and minority students, and improving HBCUs' academic quality. 20 U.S.C. 1051.

For these same reasons, every Administration in recent years has recognized the special role and contributions of HBCUs and expressed support for their enhancement. See "Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education," 43 FR 6658 (1977); Exec. Orders Nos. 12232, 45 FR 53437 (1980); 12320, 46 FR 48107 (1981); 12677, 54 FR 18869 (1989); and 12876, 58 FR 58735 (1993). The Department's own data indicate that HBCUs continue to play a vital role in providing higher education for many black students. In 1989 and 1990, more than one in four black bachelor's degree recipients received their degree from an HBCU (26.7%). See, "Historically Black Colleges and Universities, 1976–90" (U.S. Department of Education, Office of Educational Research and Improvement, July 1992).

This policy guidance is not intended to limit the efforts to enhance HBCUs called for by Congress and the President. The Department recognizes, however, that Principle 3 (remedying past discrimination) and Principle 4 (creating diversity) may not provide for HBCUs the same possibility of participating in race-targeted programs of financial aid for black students established by third parties as are provided for other colleges and universities. As some commenters pointed out, HBCUs continue to enroll a disproportionate percentage of black students and need to be able to compete for the most talented black students if they are to improve the quality and prestige of their academic environments and, therefore, enhance their attractiveness to all students regardless of race or national origin.

HBCUs' abilities to recruit, enroll and retain talented students will be undermined unless HBCUs are permitted to attract talented black students by participating in aid programs for black students that are established by third parties in which other colleges, *i.e.*, those that meet Principle 3 or 4, participate. Limiting or precluding HBCUs' participation in private programs, such as the National Achievement Scholarship program, would have an unintended negative effect on their ability to recruit a talented student body. Under this scholarship program, which is restricted to academically excellent black students, one type of National Achievement Scholarship is funded by the institution. If HBCUs were unable to participate in this program, some top black students might be forced to choose between (1) receiving a National Achievement Scholarship to attend a school that met Principle 3 or 4 and (2) attending an HBCU. For these reasons, the Department interprets Title VI to permit HBCUs to participate in certain race-targeted aid programs for black students, such as the National Achievement Scholarship program.

The Department reads Title VI consistent with other statutes and Executive orders addressing the special needs and history of HBCUs. In particular, the Department notes congressional findings of discrimination against black students that are the basis for enhancement efforts at HBCUs. Additionally, the Department interprets Title VI to permit limited use of race to avoid an anomalous and absurd result, *i.e.*, penalizing HBCUs and students who seek admission to HBCUs, and putting HBCUs at a disadvantage with respect to other schools precisely because of the special history and composition of the HBCUs.

The use of race-targeted aid by HBCUs that the Department is interpreting Title VI to permit under this provision is narrowly tailored to further the congressionally recognized purpose of enhancement of HBCUs. HBCUs may not discriminate on the basis of race or national origin in admitting students. They may not create their own race-targeted financial aid programs using their own institutional funds unless they satisfy the requirements of any of the other principles in this guidance. Nor may they accept private donations of race-targeted aid for black students that are limited to students at the institution unless otherwise permitted by the guidance. Because HBCUs have traditionally enrolled black students, it should not subvert the goal of enhancing the institutions to require

[13] This provision is limited to HBCUs as defined in Title III of the Higher Education Act. It does not apply generally to predominantly black institutions of higher education. The reason for this distinction is that Congress has made specific findings concerning the unique status of the HBCUs that serve as the basis for this provision.

that they not restrict aid to black students if using their own funds or funds from private donors that wish to set up financial aid programs at these institutions. However, because the applicant pool that is attracted to HBCUs presently consists primarily of black students, HBCUs would be placed at a distinct disadvantage with regard to other colleges in attracting talented students if they could not participate in financial aid programs set up by third parties for black students. Thus, the Department interprets Title VI to permit an HBCU to participate in race-targeted financial aid programs for black students that are created by third parties, if the programs are not restricted to students at HBCUs.

The participation by HBCUs in those race-targeted aid programs will be subject to periodic reassessment by the Department. The Department will regularly review the results of enhancement efforts at HBCUs, including the annual report to the President on the progress achieved in enhancing the role and capabilities of HBCUs required by Section 7 of Executive Order 12876. If an HBCU has been enhanced to the point that the institution is attractive to individuals regardless of their race or national origin to the same extent as a non-HBCU, then that institution may participate in only those race-targeted aid programs that are consistent with the other principles in this policy guidance.

Transition Period

The proposed policy guidance would have provided a four-year transition period for individual students to ensure that they did not lose their financial aid as a result of the guidance. Commenters pointed out that, in some cases, four years may not be a sufficient time for a student to complete his or her academic program at a college. In addition, commenters expressed concern that revising the policies and procedures used in recruiting minority students and in providing student financial assistance would require time to develop and implement. The revisions that have been made to the final policy guidance should result in far fewer instances in which colleges will be required to change their financial aid programs. However, the Department recognizes that colleges may need to conduct extensive reviews of their current programs and that in some cases adjustments to those programs may be necessary. As a result, the Department is expanding the proposed transition period.

The Department is providing colleges a reasonable period of time to review and, if necessary, adjust their financial aid programs in an orderly manner that causes the least possible disruption to their students. Colleges must adjust their financial aid programs to be consistent with the principles previously set out no later than two years after the effective date of the Department's policy guidance. However, colleges may continue to provide financial aid awarded on the basis of race or national origin to students who had either applied for or received that assistance prior to the effective date of this guidance during the full course of those students' academic program at the college, even though, in many cases, this will extend beyond the two-year period and, in some cases, the four-year period identified in the proposed policy.

Although some commenters questioned the Department's authority to create a transition period, such a period for adjustments is consistent with the Department's approach in the past under other civil rights statutes it enforces. See 34 CFR 106.41(d) (transition period to permit recipients to bring their athletic programs into compliance with Title IX of the Education Amendments of 1972); 34 CFR 104.22(e) (transition period to permit recipients to make facilities accessible to individuals with disabilities, as required by Section 504 of the Rehabilitation Act of 1973). It is based on the Department's recognition of the practical difficulties that some colleges may face in making changes to their recruitment and financial aid award processes.

The transition period also is consistent with the Department's policy, in approving plans for the desegregation of State systems of higher education, that students who have been the beneficiaries of past discriminatory conduct not be required to bear the burden of corrective action. For example, while the Department requires State higher education systems to take remedial action to increase the enrollment of previously excluded students, it does not require the expulsion of any student in order to permit admission of those previously excluded. See *Wygant v. Jackson Board of Education*, 476 U.S. at 282–85.

Finally, the transition period is consistent with the Department's obligations under Title VI to seek voluntary compliance by recipients that have been found in violation of the statute. 42 U.S.C. 2000d–1. During the transition period, the Department will provide colleges with technical assistance to help them make any necessary changes to their financial aid programs in order to achieve compliance with Title VI.

Program Authority: 42 U.S.C. 2000d.

Dated: February 17, 1994.

Richard W. Riley,

Secretary of Education.

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Part IX

Department of Education

Star Schools Program; Notice Inviting Application for New Awards for Fiscal Year 1994

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.203 A, B and C]

Star Schools Program; Notice Inviting Applications for New Awards for Fiscal Year 1994

Note to applicants: This notice is a complete application package. Together with the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under the Star Schools Program competitions.

Organization of notice: This notice applies to three separate grant competitions under the Star Schools Program. The notice is organized in four parts plus an appendix. Part I contains certain information that is pertinent to all competitions. Part II consists of fiscal information for each competition announced in this notice. Part III consists of programmatic information for each competition. Part IV consists of the selection criteria that applies to all competitions. The appendix contains all forms necessary for applying for grant awards under each of the individual competitions.

Part I: The following information applies to all three competitions in this notice:

Deadline for transmittal of applications: April 18, 1994.

Deadline for intergovernmental review: June 17, 1994.

Project period: Up to 24 months.

Budget period: 12 months.

Applicable regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(a) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(b) 34 CFR Part 75 (Direct Grant Programs).

(c) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(d) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(e) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(f) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(g) 34 CFR Part 82 (New Restrictions on Lobbying).

(h) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(i) 34 CFR Part 86 (Drug-Free Schools and Campuses).

Description of program: The Star Schools Program is authorized by Title IX of the Education for Economic Security Act (the "Act"), Public Law 100–297, as amended by Public Law 102–103. The purpose of the program is to encourage improved instruction in mathematics, science, foreign languages, and other subjects, such as literacy skills and vocational education, and to serve underserved populations, including disadvantaged, illiterate, limited-English proficient, and disabled students through distance learning technologies. The Star Schools Program, as well as the absolute priorities for this year, supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals. Specifically, in the Goals 2000 legislation pending before Congress, National Education Goal 3 calls for students' mastery of challenging subject matter in the following subjects: English, mathematics, science, foreign languages, the arts, history, civics, and geography. Goal 4 calls for U. S. students to be first in the world in mathematics and science. Goal 5 calls for all Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Geographic distribution: In determining which applications shall be funded, the Secretary shall assure an equitable geographic distribution of funds and services.

Special requirement: The Federal Government maintains an interest in all equipment purchased through projects funded under this program for the useful life of the equipment. Therefore, grantees are required to maintain an annual inventory of equipment and the use of such equipment for ten years after purchase.

Definitions: The following definitions apply to the terms used in this notice:

"Educational institution" means an institution of higher education, a local educational agency, and a State educational agency.

"Institution of higher education" has the same meaning given that term under section 1201(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1141(2)).

"Instructional programming" means courses of instruction, training courses, and materials used in such instruction and training which have been prepared in audio and visual form on tape, disc, film, or live interactive presentations, and presented by means of telecommunications devices.

"Local educational agency" has the same meaning given the term under section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).

"Public broadcasting entity" has the same meaning as that given that term in section 397 of the Communications Act of 1934 (47 U.S.C. 397).

"State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, and the Commonwealth of the Northern Mariana Islands.

"State educational agency" has the same meaning given that term under section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

"Secretary" means the Secretary of Education.

PART II—FISCAL INFORMATION

CFDA No. and name	Estimated available funds	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.203A Distance Education Projects	$20,096,800	$1,500,000–4,000,000	$2,500,000	8
84.203B Special Statewide Project	4,000,000	4,000,000	4,000,000	1
84.203C Dissemination Grants	1,297,200	250,000–350,000	300,000	4

Note: The Act limits any one award to not more than $10,000,000 for any one fiscal year. The Department is not bound by any estimates in this notice.

Part III

CFDA No. 84.203A Star Schools—Distance Education Projects

Purpose of the program: To encourage improved instruction in various subject areas for underserved populations through the use of telecommunications networks.

Eligible applicants: Only eligible telecommunications partnerships may receive grants under this program. Eligible telecommunications partnerships must be organized on a statewide or multistate basis. Two types of partnerships are eligible:

(a) A public agency or corporation established for the purposes of developing and operating telecommunications networks to enhance educational opportunities provided by educational institutions, teacher training centers, and other entities, provided that the agency or corporation represents the interests of elementary and secondary schools which are eligible for assistance under Chapter 1 of Title 1 of the Elementary and Secondary Education Act of 1965; or

(b) A partnership which includes three or more of the following, and at least one of which shall be an agency described in (1) or (2), and which will provide a telecommunications network:

(1) A local educational agency, which has a significant number of elementary and secondary schools which are eligible for assistance under Chapter 1 of Title 1 of the Elementary and Secondary Education Act of 1965 or elementary and secondary schools operated for Indian children by the Department of the Interior eligible under section 1005(d) of the Elementary and Secondary Education Act of 1965;

(2) A State educational agency;

(3) An institution of higher education or a State higher education agency;

(4) A teacher training center or academy which—

(A) Provides teacher preservice and inservice training; and

(B) Receives Federal financial assistance or has been approved by a State agency;

(5)(A) A public or private entity with experience and expertise in the planning and operation of a telecommunications network, including entities involved in telecommunications through satellite, cable, telephone, or computers; or

(B) A public broadcasting entity with such experience; or

(6) A public or private elementary or secondary school.

Continuing eligibility: An eligible telecommunications partnership currently funded under the Star Schools Program is eligible to receive an additional grant if it demonstrates that the partnership will:

(a) Continue to provide services in the subject areas and geographic areas in which services were provided under the previous Star Schools grant; and

(b) Use all grant funds to provide expanded services by:

(1) Increasing the number of students, schools, or school districts served by the courses of instruction assisted under this program in the previous grant period;

(2) Providing new courses of instruction; or

(3) Serving new populations of underserved individuals, such as children or adults who are disadvantaged, have limited-English proficiency, are disabled, are illiterate, or lack high school diplomas or their equivalent.

Priorities: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference for applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities.

Absolute Priority 1—National Education Goals

Projects that develop and deliver instructional programming for elementary or secondary school students, or both, that supports achievement of one or more of the National Education Goals, and that is consistent with challenging national or State content standards.

Absolute Priority 2—Preparation for Work

Projects that develop and deliver instructional programming to enhance the workplace and literacy skills of high school students, or young adults who are not in school, or both, in order to prepare students for responsible citizenship, further learning, and productive employment, and make the school-to-work transition more successful.

Absolute Priority 3—Preservice and Inservice Teacher Education

Projects that develop and deliver programming for preservice teachers attending colleges and universities, or professional development for practicing teachers and other educational personnel, or both. In meeting this priority, projects must provide information about the National Education Goals, emerging national or State content standards, and ways in which standards-driven systemic reform can help ensure that all students have opportunities to reach high levels of achievement. In addition, projects must provide professional development activities that include strong academic content and subject-specific pedagogical components to help teachers provide challenging learning experiences in the core academic subjects for their students.

Competitive priority: Under 20 U.S.C. 4084(c) and 34 CFR 75.105(c)(2)(ii), the Secretary gives preference to applications that meet the following competitive priority. For those applications that include a mathematics or science component, the Secretary gives preference to applications that meet paragraphs (a)–(i) of the competitive priority. For those applications that include a foreign language component, the Secretary gives preference to applications that meet paragraphs (a)–(h) of the competitive priority. For those applications that do not include a mathematics, science or foreign language component, the Secretary gives preference to applications that meet paragraphs (b)–(g) of the competitive priority. An application that meets the applicable paragraph of the following competitive priority is selected by the Secretary over applications of comparable merit that do not meet this priority:

(a) The applicant will provide a concentration and quality of mathematics, science, and foreign languages resources which, by their distribution through the eligible telecommunications partnership, will offer significant new educational opportunities to network participants and particularly to traditionally underserved populations and areas with scarce resources and limited access to courses in mathematics, science, and foreign languages.

Note: Although an application that focuses on a subject area other than mathematics, science or foreign languages is not required to meet paragraph (a) of the competitive priority, the Secretary encourages the applicant to address the needs of traditionally underserved populations and areas with scarce resources and limited access to courses in the subject area addressed in the application.

(b) The applicant has secured the direct cooperation and involvement of public and private educational institutions, State and local government, and industry in planning the network.

(c) The applicant will serve the broadest range of institutions, including,

in the case of elementary and secondary schools, those elementary and secondary schools having significant numbers of children counted for the purpose of Chapter 1 of Title 1 of the Elementary and Secondary Education Act of 1965, programs providing instruction outside of the school setting, institutions of higher education, teacher training centers, research institutions, and private industry.

(d) The applicant will demonstrate that a significant number of educational institutions have agreed to participate in the use of the telecommunications system for which assistance is sought.

(e) The applicant will have substantial academic and teaching capabilities including the capability of training, retraining, and inservice upgrading of teaching skills.

(f) The applicant will provide a comprehensive range of courses for educators with different skill levels to teach them instructional strategies for students with different levels of skills, provide training to participating educators in ways to integrate telecommunications courses into existing school curricula, and include instruction for students, teachers, and parents.

(g) The applicant will serve a multistate area.

(h) The applicant will demonstrate that a telecommunications entity (such as a satellite, cable, telephone, or computer company, or public or private television station) will participate in the partnership and will donate equipment or in-kind services for telecommunications linkages.

(i) The applicant will, in providing services with funds provided under this program, meet the needs of groups of individuals traditionally excluded from careers in mathematics and science because of discrimination, inaccessibility, or economically disadvantaged backgrounds.

Funding requirement: The Federal share for each fiscal year shall be 75 percent of the cost of the project. The eligible telecommunications partnership shall provide the remainder of the funds from non-Federal sources. The matching funds for the project may be in cash or in-kind support, fairly evaluated. In the case of financial hardship, an applicant may request that the Secretary reduce or waive the matching requirement.

CFDA NO. 84.203B Star Schools—Special Statewide Network

Purpose of the program: In addition to the Star Schools Distance Education Projects (CFDA # 84.203A), the Secretary will fund one statewide telecommunications network to demonstrate the delivery of instructional programming through a fiber optic telecommunications network using two-way full motion interactive video, voice and data telecommunications.

Eligible applicants: An eligible telecommunications partnership that meets the criteria described under *Part III 84.203A* and is organized on a statewide basis may apply for a grant under this section.

Priorities: The competitive priority described under *Part III 84.203A* of this notice applies to this section, with the exception of paragraph (g) of the competitive priority.

Funding requirement: The Federal share for each fiscal year shall be not more than 50 percent of the cost of the project. The statewide telecommunications partnership shall provide the remainder of the funds from non-Federal sources. The matching funds for the project may be in cash or in-kind support, fairly evaluated.

Special program requirements: (a) A project funded under this section must demonstrate the use of a fiber optic telecommunications network to carry two-way interactive voice, video, and data transmissions.

(b) During the funding period, the project must link together public and private institutions of higher education and secondary schools, and must include a participant in every county in the State.

CFDA No. 84.203C Star Schools—Dissemination Grants

Purpose of the program: To provide dissemination and technical assistance to State and local educational agencies not presently served by telecommunications partnerships to assist them to plan and implement technology-based distance learning systems.

Eligible applicants: (a) Telecommunications partnerships previously or currently funded through the Star Schools Program.

(b) Other eligible entities, which are defined as federally funded programs or institutions of higher education that have demonstrated expertise in educational applications of technology and provide comprehensive technical assistance to educators and policymakers at the local level.

Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference for applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority.

Absolute priority: Dissemination projects that will provide services nationwide.

Special program requirements: A project funded under this section must provide technical assistance to State and local educational agencies to plan and implement technology-based systems including—

(a) Information regarding successful distance learning resources for States, local educational agencies, and schools;

(b) Assistance in connecting users of distance learning, regional educational service centers, colleges, and universities, the private sector, and other relevant entities;

(c) Assistance and advice in the design and implementation of systems to include needs assessment and technology design; and

(d) Assistance in the identification of possible connections and cost-sharing arrangements for users of such systems.

Part IV: The following information applies to all competitions in this notice:

Selection criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purposes of the Star Schools Program, P.L. 100–297 as amended by P.L. 102–103, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Star Schools Program.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute authorizing the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental review of federal programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on Friday, September 24, 1993.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA # 84.203 A, B or C , U.S. Department of Education, room 4161, 400 Maryland Avenue SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as it is for applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for transmittal of applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #[Applicant must insert number and letter]), Washington, DC 20202–4725; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # (Applicant must insert number and letter)), Room #3633, Regional Office Building #3 7th and D Streets, SW., Washington, DC 20202–4725.

Note: Although applicants are not obligated to do so, it would be quite helpful if an additional two copies of the application were submitted (an original and four copies). The additional copies would be used during the review process.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application instructions and forms: The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner in which the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative

Additional Materials

Estimated Public Reporting Burden.

Star Schools Program Assurances.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 6/90).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Richard Lallmang or Deborah Williams, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Ave. NW., Washington, DC 20208–5644. Telephone 202–219–1770. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 4081–4086.

Dated: February 17, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

Appendix

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name. | Organizational Unit.

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 0 3

TITLE: Star Schools Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:
22. Indirect Charges:
23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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03

03

n Narrative

Before preparing the Applicatio-n Narrative, an applicant should rea-d carefully the description of the program , the information regarding the priorities , and the selection criteria the Secretar-y uses to evaluate applications.

CFDA No. 84.203A Star School-s—Distance Education Projects

The narrative should encompass eac-h function or activity for which funds ar-e being requested and should—

1. Begin with an Abstract that is a summary of the proposed project.

2. Describe how the proposed projec-t will meet one or more of the absolut-e priorities, and the competitive priority , if appropriate, in the light of each of th-e selection criteria in the order in whic-h the criteria are listed in this notice.

Requirements—Distance Educatio-n Projects

The legislation authorizing the Sta-r Schools Program requires that al-l applications address each of th-e following:

1. Describe the telecommunication-s facilities and equipment and technica-l assistance for which assistance is sough-t which may include—

A. The design, development , construction, and acquisition of State o-r multistate educationa-l telecommunications networks an-d technology resource centers;

B. Microwave, fiber optics, cable, an-d satellite transmission equipment or an-y combination thereof;

C. Reception facilities;

D. Satellite time;

E. Production facilities;

F. Other telecommunication-s equipment capable of serving a wid-e geographic area;

G. The provision of training service-s to instructors who will be using th-e facilities and equipment for whic-h assistance is sought; and in using suc-h facilities and equipment, and i-n integrating programs into the clas-s curriculum; and

H. The development of educationa-l programming for students, or fo-r educational personnel, or both, to b-e used on the telecommunication-s network;

2. Describe the types of programmin-g that will be acquired or developed t-o enhance instruction and training an-d provide assurances that suc-h programming will be designed i-n consultation with professionals who ar-e experts in the applicable subject matte-r and grade level.

3. Demonstrate that the eligibl-e telecommunications partnership ha-s engaged in sufficient survey an-d analysis of the area to be served t-o ensure that the services offered by th-e telecommunications partnership wil-l increase the availability of courses o-f instruction in the subjects to be offered.

4. Describe the manner in which traditionally underserved students (such as students who are disadvantaged, limited-English proficient, disabled or illiterate) will participate in the benefits of the telecommunications facilities, equipment, technical assistance, and programming assisted under this proposed project, and the extent to which existing telecommunications equipment will be used where available.

5. Describe the training policies for teachers and other school personnel to be implemented to ensure the effective use of the telecommunications facilities and equipment for which assistance is sought.

6. Describe the activities or services for which assistance is sought including activities and services such as—

A. Providing facilities, equipment, training, services, and technical assistance;

B. Making programs accessible to individuals with disabilities through mechanisms such as closed captioning and descriptive video services;

C. Linking networks together, for example, around an issue of national importance such as elections;

D. Sharing curriculum materials among networks;

E. Providing teacher and student support services;

F. Incorporating community resources such as libraries and museums into instructional programs;

G. Providing teacher training to early childhood development and Head Start teachers and staff;

H. Providing teacher training to vocational education teachers and staff, and

I. Providing programs for adults at times other than the regular school day in order to maximize the use of the telecommunications facilities and equipment.

Additional Instructions—Distance Education Projects

1. The applicant may include other pertinent information that may assist the Secretary in reviewing the application, including the scope and degree of services to be provided, who will render the telecommunications service, and when it will be delivered.

2. Justifications and specifications for equipment purchases should be clearly related to existing facilities and resources as well as to distance learning services to be delivered.

3. Applicants that apply for the production of instructional programming should be specific in the scope and sequence of the content and the tasks required to produce the proposed courses of instruction.

4. The application should enable reviewers to make clear linkages between the proposed budget and the specific tasks, operations, and service delivery.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 45 double-spaced, typed 8½" × 11" pages (on one side only), although the Secretary will consider applications of greater length.

The applicant may include an appendix, also on 8½" × 11" paper or any other pertinent information (e.g., letters of support, footnotes, resumes, etc.) that might assist the Secretary in reviewing the application.

The applicant may provide a VHS ½ inch videotape, however such a tape should be limited to no more than 12 minutes.

CFDA NO: 84.203B Star Schools—Special Statewide Network

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract that is a summary of the proposed project.

2. Describe how the proposed project will use a Statewide fiber optics network with two-way full motion video and audio communications to meet any or all of the priorities in the light of each of the selection criteria in the order in which the criteria are listed in this notice.

Requirements—Special Statewide Network

The legislation authorizing the Star Schools Program requires that all applications address each of the following:

1. Describe the telecommunications facilities and equipment and technical assistance for which assistance is sought which may include:

A. The design, development, construction, and acquisition of Statewide educational telecommunications networks and technology resource centers;

B. Reception facilities;

C. Production facilities;

D. Other telecommunications equipment capable of serving a wide geographic area;

E. The provision of training services to instructors who will be using the facilities and equipment and how to integrate distance learning into the classroom curriculum; and

F. The development of educational programming for students to be used on the telecommunications network.

2. Describe the types of programming which will be developed to enhance instruction and training and provide assurances that such programming will be designed in consultation with professionals who are experts in the applicable subject matter and grade level.

3. Demonstrate that the eligible telecommunications partnership has engaged in sufficient survey and analysis of the area to be served to ensure that the services offered by the telecommunications partnership will increase the availability of courses of instruction in mathematics, science, foreign languages and literacy skills as well as other subjects to be offered.

4. Describe the training policies for teachers and other school personnel to be implemented to ensure the effective use of the telecommunications facilities and equipment for which assistance is sought.

5. Describe the activities or services for which assistance is sought including activities and services such as—

A. Providing facilities, equipment, training, services, and technical assistance;

B. Making programs accessible to individuals with disabilities through mechanisms such as closed captioning and descriptive video services;

C. Linking networks together, for example, around an issue of national importance such as elections;

D. Sharing curriculum materials among networks;

E. Providing teacher and student support services;

F. Incorporating community resources such as libraries and museums into instructional programs;

G. Providing teacher training to early childhood development and Head Start teachers and staff;

H. Providing teacher training to vocational education teachers and staff, and

I. Providing programs for adults at times other than the regular school day in order to maximize the use of the telecommunications facilities and equipment.

Additional Instructions—Special Statewide Network

1. The applicant may include other pertinent information that may assist the Secretary in reviewing the application, including the scope and degree of services to be provided, who will render the telecommunication service, when it will be delivered, and the role of the interactive components.

2. Justifications and specifications for equipment purchases should be clearly related to existing facilities and resources as well as to distance learning services to be delivered.

3. Applicants that apply for the production of instructional programming should be specific in the scope and sequence of the content and the tasks required to produce the proposed courses of instruction.

4. The application should enable reviewers to make clear linkages between the proposed budget and the specific tasks, operations, and service delivery.

5. The applicant should detail the sources of matching funds and how they will be applied to the project. Other Federal funds may not be used as matching funds.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 45 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length.

The applicant may include an appendix, or any other pertinent information (e.g., letters of support, footnotes, resumes, etc.) that might assist the Secretary in reviewing the application.

The applicant may provide a VHS ½ inch videotape, however such a tape should be limited to no more than 12 minutes.

CFDA NO: 84.203C Star Schools—Dissemination Grants

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract that is a summary of the proposed project.

2. Describe how the proposed project will conduct the required activities described in Part III 84.203C of this notice in light of each of the selection criteria, in the order in which the criteria are listed in this notice.

3. Demonstrate that the applicant has engaged in sufficient survey and analysis to ensure that the services offered by the proposed project will increase the information about and access to distance learning technologies and resources for State and local educational agencies.

4. Enable reviewers to make clear linkages between the proposed budget and the specific tasks, operations, and service delivery.

5. Include other pertinent information that may assist the Secretary in reviewing the application, including the scope and degree of services to be provided.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 45 double-spaced, typed 8½" × 11" pages (on one side only), although the Secretary will consider applications of greater length.

The applicant may include an appendix, also on 8½" × 11" paper or any other pertinent information (e.g., letters of support, footnotes, resumes, etc.) that might assist the Secretary in reviewing the application.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 100 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850–0623, Washington, DC 20503.

(Information collection approved under OMB control number 1850–0623. Expiration date: June 30, 1994)

Applicants for grants under 84.203A and 84.203B must submit the following *Star Schools Program Assurances* with an application:

The eligible telecommunications partnership hereby assures and certifies as follows:

1. The eligible telecommunications partnership will protect the financial interest of the United States in the telecommunications facilities and equipment for the useful life of such facilities and equipment. (Estimated at ten years)

2. The eligible telecommunications partnership will make available a significant portion of any facilities and equipment, technical assistance, and programming for which assistance is sought to public elementary or secondary schools eligible for assistance under Chapter 1 of Title 1 of the Elementary and Secondary Education Act of 1965.

3. The eligible telecommunications partnership will use the funds to supplement and not supplant funds otherwise available for the purposes of this title.

4. The eligible telecommunications partnership will design any programming that may be developed to enhance instruction and training in consultation with professionals who are experts in the applicable subject matter and grade level.

Name and Title of Authorized Representative

Signature of Authorized Representative

Agency or Organization

Date

Applicants for grants under 84.203C must submit the following *Star Schools Program Assurances* with an application:

1. The eligible telecommunications partnership or other eligible entity hereby assures and certifies that the partnership or other eligible entity will provide technical assistance to State and local educational agencies to plan and implement technology-based systems, including—

(A) information regarding successful distance learning resources for States, local educational agencies, and schools;

(B) assistance in connecting users of distance learning, regional educational service centers, colleges and universities, the private sector, and other relevant entities;

(C) assistance and advice in the design and implementation of systems to include needs assessments and technology design; and

(D) support for the identification of possible connections, and cost-sharing arrangements for users of such systems.

2. Grant funds shall be used to supplement and not supplant services provided by the partnership under this program in previous years.

Name and Title of Authorized Representative

Signature of Authorized Representative

Agency or Organization

Date

BILLING CODE 4000-01-P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P L 93-205)
12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C §§ 1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17 Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18 Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OI 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

[FR Doc. 94–4057 Filed 2–22–94; 8:45 am]
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federal register

Wednesday
February 23, 1994

Part X

Department of Education

Star Schools Program; Notice

DEPARTMENT OF EDUCATION

Star Schools Program

AGENCY: Department of Education.

ACTION: Notice of final priorities for Fiscal Year 1994.

SUMMARY: The Secretary announces priorities for fiscal year 1994 under the Star Schools program. The Secretary takes this action to focus the services provided by the Star Schools distance education projects on assisting participating elementary and secondary students in public and private schools and others to work toward achieving the National Education Goals, and to focus the Star Schools dissemination projects on nationwide services.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Richard Lallmang or Deborah Williams, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208–5644. Telephone: (202) 219–1770. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice contains three absolute priorities for distance education projects under the Star Schools program. Under the distance education projects competition, the Star Schools program provides grants to telecommunications partnerships to support the use of distance education technologies.

The notice also contains one absolute priority for dissemination projects under the Star Schools program. Dissemination projects provide information and technical assistance concerning distance education technologies to local and State education agencies.

On October 5, 1993 the Secretary published a notice of proposed priorities for this competition in the **Federal Register** (58 FR 51960).

Public Comment

In the notice of proposed priorities, the Secretary invited comments on the proposed priorities. The Secretary received one comment in support of the proposed priorities.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the **Federal Register.**

Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference for applications that meet the following priorities. The Secretary funds under the relevant competition only applications that meet one or more of the absolute priorities established for that competition.

Star Schools Distance Education Projects

Absolute Priority 1—National Education Goals

Projects that develop and deliver instructional programming for elementary or secondary school students, or both, that supports achievement of one or more of the National Education Goals, and that is consistent with challenging national or State content standards.

Absolute Priority 2—Preparation for Work

Projects that develop and deliver instructional programming to enhance the workplace and literacy skills of high school students, or young adults who are not in school, or both, in order to prepare students for responsible citizenship, further learning, and productive employment, and make the school-to-work transition more successful.

Absolute Priority 3—Preservice and Inservice Teacher Education

Projects that develop and deliver programming for preservice teachers attending colleges and universities, or professional development for practicing teachers and other educational personnel, or both. In meeting this priority, projects must provide information about the National Education Goals, emerging national or State content standards, and ways in which standards-driven systemic reform can help ensure that all students have opportunities to reach high levels of achievement. In addition, projects must provide professional development activities that include strong academic content and subject-specific pedagogical components to help teachers provide challenging learning experiences in the core academic subjects for their students.

Star Schools Dissemination Projects

Absolute Priority: Dissemination projects that will provide services nationwide.

Intergovernmental Review

The program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 4081–4086. (Catalog of Federal Domestic Assistance Number 84.203 Star Schools Program)

Dated: February 17, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–4058 Filed 2–22–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
February 23, 1994

Part XI

Department of Transportation

Office of the Secretary

National Service; Announcement of Request for Proposals; Notice

DEPARTMENT OF TRANSPORTATION (DOT)

Office of the Secretary

National Service; Announcement of Request for Proposals

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of requests for proposals.

SUMMARY: The Corporation for National and Community Service (the "Corporation") offers support for national service activities designed to help address the Nation's human, educational, environmental and public safety needs. The President has urged all Federal agencies to incorporate national service into their Federal programs. The Department of Transportation will join the Corporation in its effort by supporting and promoting transportation-related national service programs. This request solicits proposals for transportation-related national service projects, and describes what kind of local service organizations might wish to apply. It also lists specific program areas in which DOT encourages proposals. DOT will evaluate all the proposals received. After programs have been selected, DOT may enter into a formal agreement to establish a partnership with their sponsors and include those programs as part of DOT's application to the Corporation for operating funds and for the funding of educational awards.

FOR GENERAL INFORMATION CONTACT: Paul B. Larsen, Office of the General Counsel, telephone (202) 366–9161; or CDR Timothy Beltz, Military Assistant to the Secretary of Transportation, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–5742.

FOR INFORMATION ABOUT SPECIFIC PROGRAMS: Contact the persons indicated in the programs described in this announcement.

SEND PROPOSALS TO: Mrs. Brenda L. Harris, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 400 7th Street, SW., room 9414, Washington, DC 20590.

DEADLINE FOR SUBMISSION OF PROPOSALS: March 23, 1994, 4 p.m. EST.

Dated: February 16, 1994.

Federico Peña,

Secretary of Transportation.

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1. Introduction

1.1 Background

On September 21, 1993, the President signed into law the National and Community Service Trust Act (the "Act"). The purpose of the Act is to engage Americans of all ages and backgrounds in community-based service to address the Nation's educational, public safety, human, and environmental needs. The Act establishes several different types of service programs designed to accomplish these goals, and establishes the Corporation for National and Community Service (the "National Service Corporation") to administer these programs.

The service program that this Request for Proposals ("RFP") addresses is the "AmeriCorps" program. The AmeriCorps program will enable dedicated individuals to work on a variety of community and national service programs on a full-time or part-time basis for a period of at least nine months. In exchange for their contribution, participants will receive living stipends and, at the end of their terms of service, may receive educational awards to pay for further education or to pay off student loans.

In order to further the goals of his national service initiative, the President has urged all Federal agencies to explore ways in which to incorporate national and community service into their Federal programs. To encourage the integration of national and community service with Federal programs, the National Service Corporation has earmarked up to $16.3 million that may be available specifically for the planning and operation of national and community service programs to be operated by Federal agencies or by other eligible entities (as defined in Section 1.4.1, "Eligible Service Organizations," of this RFP) in partnership with Federal agencies. Federal agencies may also apply for educational awards for program participants.

At the Department of Transportation ("DOT"), we intend to fully embrace this opportunity to use national and community service programs to further our transportation-related community, state, and national goals. It is our mission to provide future generations with a transportation system that is safer, more environmentally sound, and more efficient. The strategic goals that we have set to accomplish this mission go hand-in-hand with the goals of the National and Community Service Trust Act. At DOT, we are striving to:

—Tie America together through an effective intermodal transportation system;
—Promote safe and secure transportation;
—Actively enhance our environment through wise transportation decisions;
—Put people first in our transportation system by making it relevant and accessible to users.

We believe that national and community service can contribute effectively to the achievement of all of these transportation-related goals.

1.2 Programs and Purpose

Since DOT is new to the community service field, our intent is to tap the resources of existing community service organizations to implement our national and community service programs. The purpose of this RFP is to solicit proposals from eligible service organizations for transportation-related national and community service projects. Applicants may submit proposals involving activities within one or a combination of the five transportation-related programs that have been developed by DOT as being particularly suitable for national and community service projects:

1. Rehabilitation, Reclamation and Beautification of Transportation-Related Facilities;
2. "Transit Ambassadors"—providing assistance to the elderly, disabled, and children in Head Start programs in using public transportation systems;
3. "Operation Lifesaver"—making rail/highway crossings safer;
4. Hazardous Materials Transportation Emergency Preparedness Assistance; and
5. Youth Traffic Safety Education Programs.

Each of these five programs are explained in more detail later in this RFP and are referred to throughout as the "DOT Programs."

DOT will evaluate all of the proposals that it receives based on the criteria and priorities set forth in Section 4 of this RFP, and will enter into formal agreements to establish partnerships with service organizations that submit the proposals that are selected. Initially, these projects will most likely be concentrated in geographic areas of the greatest need based on the criteria set forth in the regulations issued under the National and Community Service Trust Act (see "Needs" under Section 4.1, "General Criteria" in this RFP). However, DOT views these initial projects to be the beginning of a broader, more comprehensive program.

DOT plans to fund the initial projects in these programs through two sources. First, DOT funds appropriated to DOT agencies will be available to partially finance projects in some of the five DOT Programs in fiscal year 1994. In addition, DOT may apply to the National Service Corporation for additional funding for operational costs and for educational awards (if requested) from the funds set aside by the National Service Corporation for Federal agency programs. (Since there is no guarantee that DOT will receive funding from the National Service Corporation, a proposal selected by DOT ultimately might not be fully funded or funded at all if DOT's request for funding from the National Service Corporation is not granted.) The service organizations sponsoring the project will have to provide matching funds for a portion of project costs.

Any funds that DOT receives from the National Service Corporation will be from the $16.3 million that has been earmarked for Federal agencies. Therefore, the DOT Programs may provide service organizations with access to a source of funds for which they are otherwise not eligible.

DOT will inform applicants prior to April 15, 1994, as to whether they have been selected to receive DOT funding and whether they will be included in DOT's application to the National Service Corporation. DOT anticipates that notification of National Service Corporation awards for Federal agency programs will occur in May or June of 1994.

1.3 General Program Requirements

Any proposal submitted under this RFP must comply with the general requirements for service programs that are set forth in the National and Community Service Trust Act and related regulations. These requirements include:

1. Employing participants on a full-time basis (1700 hours for a period of not less than nine months and not more than a year); or on a part-time basis (900 hours for a period of not more than two years, or, if the individual is enrolled in an institution of higher education while performing all or part of the service, not more than three years).

2. Employing at least 20 full time equivalent participants unless an explanation is provided as to why a smaller number is appropriate.

3. Paying participants a living allowance of at least $7,440 for fiscal year 1994 (but not more than twice that amount).

4. Providing participants with health care benefits and, if necessary, child care benefits during the term of service.

5. Providing for participants to receive educational awards (either from the National Service Corporation or from some other source) in an amount of $4,725 for one full-time term of service or $2,360 for one part-time term of service, for up to two terms of service. (If educational awards will not be received by all participants, the program must ensure that the distribution of educational awards is performed in an equitable manner that treats equally all participants doing the same or essentially similar work. Distribution based solely on economic needs of participants is not encouraged.)

6. Not displacing other employees or positions, nor supplanting the hiring or promotion of employees. The written concurrence of any local labor organization representing employees engaged in the same or substantially similar work must be obtained.

If a proposal is selected and funded, the service organization will be required to enter into a formal agreement to establish the partnership with DOT, which will set forth the specific terms and conditions of the partnership arrangement, including provisions for monitoring and evaluating the project. The selected service organization will also be required to enter into formal agreements with the participants in its project to spell out the terms and conditions of service.

1.4 Eligibility Requirements

1.4.1 Eligible Service Organizations

Subdivisions of states, Indian Tribes, public or private nonprofit organizations (including labor organizations), institutions of higher education, or a consortia of entities that propose to administer or operate a national or community service program are eligible to submit proposals for the DOT Programs.

1.4.2 Eligible Participants

Eligibility for individual participation in community and national service projects is limited to participants who: (1) are 17 years of age or older at the commencement of service, unless the individual is in a youth corps program, in which case the participant must be between the ages of 16 and 25; (2) either have received a high school diploma or its equivalent, including an alternative diploma or certificate for those individuals with mental and physical disabilities for whom such alternative diploma or certificate is appropriate, or agree to obtain a high school diploma or its equivalent. (However, if the program conducts an independent evaluation demonstrating that the potential participant is incapable of obtaining a high school diploma or its equivalent, this requirement may be waived); (3) have not dropped out of elementary or secondary school in order to enroll as a national service participant, unless the participant is enrolled in an institution of higher education on an ability to benefit basis and is considered eligible for funds under section 484 of the Higher Education Act of 1965; (4) are citizens or nationals of the United States; and (5) meet the task-related eligibility requirements established by the program.

2. Program Descriptions

2.1 Overview

To implement its national and community service program, DOT has identified five specific national and community service programs that combine the goals and priorities of the National and Community Service Trust Act and the goals and priorities of DOT. Applicants may submit proposals falling within one or a combination of DOT Programs. The proposals should tailor the selected DOT Program(s) to the specific needs of the community to be served. The following is a description of the five DOT Programs:

2.2 Rehabilitation, Reclamation, and Beautification of Transportation-Related Facilities

2.2.1 Description of Program

The DOT program for "Rehabilitation, Reclamation and Beautification of Transportation-Related Facilities" has been developed to implement the provisions of section 106(d) of the Act, which establishes an urban youth corps in DOT, and authorizes the Secretary of Transportation to enter into formal agreements to form partnerships with qualified urban youth corps. The Secretary may make grants of DOT funds to States (and through States to local governments) for the purpose of supporting qualified urban youth corps projects. In addition, proposals for qualified urban youth corps projects to be conducted by eligible service organizations (as defined in Section 1.4.1 of this RFP) may be included in DOT's application for funding from the National Service Corporation. These include projects that the Secretary is authorized to carry out under other authority of law involving public works resources or facilities.

Section 106(d) is based on the finding of Congress that public works and transportation resources are in need of labor intensive rehabilitation, reclamation, and beautification work that has been neglected in the past and cannot be adequately carried out by Federal, State, and local government at existing personnel levels. Rehabilitation, reclamation, and beautification of public roads and public works facilities through the efforts of young people in the United States participating in urban youth corps can benefit these youths and their communities.

An urban youth corps project that would qualify under this DOT Program is one that is established by an eligible service organization (as defined under Section 1.4.1 of this RFP) and that:

a. Is capable of offering meaningful, full-time, productive work for individuals between the ages of 16 and 25, inclusive, in an urban public works or transportation setting;

b. Gives participants a mix of work experience, basic and life skills, education, training, and support services; and

c. Provides participants with the opportunity to develop citizenship values and skills through service to their communities and the United States.

Although any project proposed under this Program should involve an urban youth corps in a significant portion of the work, the proposal may also include other eligible groups of community service participants that will work along with the urban youth corps.

Potential projects include organizing and managing community beautification projects to plant trees and flowers adjacent to highways and transportation terminals and corridors; coordinating with railroad companies to organize clean up campaigns and work days along railroad tracks and rights of way; working with local artists to beautify terminals and facilities with art work; and clean up and beautification of roadsides, transportation corridors, and access to transportation facilities. Community service projects will be associated with at least one mode of transportation, i.e., rail, transit, or highway.

All projects will need to be coordinated with the organizations having authority over the relevant transportation facilities (such as State Departments of Transportation, local Metropolitan Planning Organizations (MPOs), or transit authorities). As part of its proposal under this DOT Program, an applicant will need to show that the project is acceptable to the relevant transportation organizations.

2.2.2 Goals and Priorities

This program addresses the following national priorities established by the National Service Corporation:

a. Education—Urban youth corps projects will include specific project-related and general job skills training that will prepare participants for future employment opportunities. Training will also include specific skills related to the project being undertaken, such as carpentry, landscaping, and environmental planning.

b. Public Safety—Recruiting at-risk youths in urban settings for participation in youth corps activities will provide opportunities for youths to be productively involved in community activities, reducing the inclination to turn to activities such as drug dealing or other crimes. In addition, cleaner transportation facilities will make the facilities more attractive, drawing more users, and in turn, making them safer for use by all.

c. Human Needs—Urban youth corps projects will provide job skills training that will help individuals become self-sufficient. Job skills will include basics such as taking responsibility for attendance, being accountable for work products, and dealing with supervisors. In addition, these projects will be targeted at improving communities and neighborhoods.

d. Environment—Rehabilitation, reclamation and beautification of transportation facilities will enhance neighborhoods as well as assist in conserving and restoring the environment.

2.2.3 Anticipated Outcomes and Results

Urban youth corps projects will result in benefits to communities, neighborhoods, and transportation facilities in the form of renovated, restored, and cleaner facilities and areas. Participants will not only have the opportunity to perform community service but will learn job skills that will prepare them for future employment opportunities.

2.2.4 Funding

The Federal share of funding for urban youth corps projects may be provided from existing DOT program funds and state Federal-aid funds. DOT intends to apply for any additional funds needed for program costs, including living allowances, educational awards, health insurance, and child care costs, from the National Service Corporation. It is anticipated that direct funding for the Rehabilitation, Reclamation, and Beautification of Transportation-Related Facilities Program may be available from DOT in future years.

2.2.5 DOT Agency Involvement and Expertise Available

DOT agencies involved in this Program include the Federal Highway Administration, the Federal Transit Administration, and the Federal Railroad Administration. For the selected proposals, DOT representatives will work with sponsoring organizations to contact State DOTs, MPOs, transit authorities, etc., with authority over the relevant transportation facilities to assist with project arrangements and agreements.

2.2.6 DOT Contacts

Karen Kabel, Federal Highway Administration (HMS–31) (202) 366–9074, FAX (202) 366–3235
Gordon Smith, Federal Railroad Administration (RAD–10.1) (202) 366–0589, FAX (202) 366–7439
Roger Tate, Federal Transit Administration (TTS–31) (202) 366–0235, FAX (202) 366–3765
Address: 400 7th St., SW., Washington, DC 20950.

2.3 Transit Ambassadors

2.3.1 Description of Program

The DOT Federal Transit Administration's program for "Transit Ambassadors" proposes to use participants in community service programs to help elderly and disabled persons learn to use public transportation systems in their communities. Program participants, called "transit ambassadors", would assist these targeted individuals in locating bus stops, understanding how the fare system works, and identifying potential destinations, such as grocery stores, medical facilities, etc. Transit ambassadors would teach individuals how to use public transportation, and how to read maps and time schedules. In addition, transit ambassadors will accompany persons who need such assistance to navigate their way on conventional, fixed route public transportation service.

Assistance may be of a one-time nature to acquaint an individual with public transportation routes and services. Transit Ambassadors may also provide regular or scheduled guide services. The most minimal sort of service the transit ambassador could provide would simply be visiting an individual and providing schedule and fare information, and answering questions about a pending trip or series of trips. The service would include training individuals about their neighborhood and the shops within it, increasing the confidence level for those who then could move around independently and provide overall better security in the affected neighborhoods.

As part of this program, transit ambassadors will assess the local transportation facilities to identify obstacles that prevent disabled and elderly persons from safely and easily traveling on public transportation, and will work with local transportation authorities to remove these obstacles. The transit ambassadors will also work with the local transit authorities to develop and distribute information that will facilitate and encourage the use of public transportation by the elderly and disabled (such as more easily readable bus schedules, accompany maps showing routes to locations of particular interest, or information on special fares or rates available for the elderly or disabled).

This program also has the potential for developing partnerships with other Federal agencies (such as the Department of Health and Human Services or the Department of Education) to accompany youths to and from Head Start Programs and, in addition, provide assistance to Head Start teachers during class. In such a partnership, transit ambassadors could also be trained as aides on transportation vehicles to and from Head Start facilities/programs. Transit ambassadors could instruct Head Start children and their parents on the routes to bus stops, and teach the children about proper behavior and safety procedures while riding on a bus. Transit ambassadors could also act as aides to Head Start teachers during the remainder of the day.

2.3.2 Goals and Priorities

Transit Ambassadors will address the following national priorities:

a. Public Safety. By providing escorts and training for elderly and disabled persons, this program will help decrease potential violence to elderly and disabled citizens; transportation assistance for the Head Start program will also increase safety to and from bus stops and on those buses.

b. Health and Human Needs. Transportation assistance for elderly and disabled persons will enable them to get to medical and other facilities more readily and more independently.

c. Mitigate the impact of unfunded mandates. The Americans with Disabilities Act (ADA) requires all public transit systems to provide supplementary door-to-door paratransit service for those individuals who are unable to use even fully accessible public transit. The Transit Ambassador Program will help instill confidence in elderly and disabled persons in the use of conventional public transportation and limit the call for more expensive door-to-door paratransit to individuals with mobility difficulties.

d. Education. Transit ambassador participating in programs with the elderly and disabled will learn about the needs of those populations and will help to integrate them into mainstream society.

In addition, if cooperative partnerships are formed with other Federal agencies such as the Department of Health and Human Services and the Department of Education, the Transit Ambassadors Program will provide aides for Head Start programs and help make children more "school ready." In such a partnership, transit ambassadors will be able to work with children on the bus and in class, and provide information to them and their parents.

2.3.3 Anticipated Outcomes and Results

a. The program will benefit the local community and transit operators. Elderly and disabled citizens will be able to participate in the community. Transit Ambassadors will develop knowledge of needs of the populations served and increase skills for dealing with these populations.

b. Disciplines learned in this program can be carried over into careers in the medical field, social services, transportation and education.

2.3.4 Funding

Funding for this proposal will be available from the Federal Transit Administration at an anticipated level of up to $235,000 for program costs. DOT intends to apply for any additional funds needed for program costs, including living allowances, educational awards, health insurance, and child care costs, from the National Service Corporation. It is anticipated that direct funding for the Transit Ambassadors Program may be available from DOT in future years.

2.3.5 DOT Agency Involvement and Expertise Available

The Federal Transit Administration will be the agency within DOT that will implement the Transit Ambassador Program.

2.3.6 DOT Contact

Roger Tate, Federal Transit Administration, Room 6100 A, 400 7th Street SW., Washington, DC 20590, Phone: (202) 366–0235.

2.4 Operation Lifesaver

2.4.1 Description of Program

"Operation Lifesaver" is an active, continuous national public information and education program that works in conjunction with the DOT Federal Railroad Administration. This program provides help in preventing and reducing crashes, injuries and fatalities and in improving driver performance at the nation's 300,000 public and private rail/highway grade crossings. Operation Lifesaver originated in Idaho in 1972 after Union Pacific Railroad and community leaders in the state decided to band together and fight the growing number of rail/highway grade crossing crashes, injuries and fatalities with a public education program. At the end of the first year the rail/highway grade crossing fatality rate dropped a resounding 39 percent.

The program is now national in scope as all states have their own Operation Lifesaver programs. It is at the grassroots level—in the cities, in rural communities, and in the schools—where Operation Lifesaver has been most effective. States have reported fatality reductions at rail/highway grade crossings ranging from 28 percent to 100 percent one year after establishing the program.

There are two concepts through which Operation Lifesaver may be incorporated within the umbrella of the DOT National Service program:

a. The first would use a community service organization to assess the number and location of railroad/street, road, and highway intersections within the defined geographic area. Based upon the data developed, the community service organization would be responsible for developing and presenting an educational program suitable for elementary schools, secondary schools, colleges, civic organizations, service organizations and fraternal groups.

b. The second would address the provision of organizational and administrative assistance to the various state Operation Lifesaver offices through the recruitment and placement of assistant program coordinators. These individuals would enhance the ability of the State office to acquire information and establish geographic databases; organize and plan educational programs and campaigns; coordinate media initiatives and relationships; and systematize internal procedures and processes. This concept involves placement of individuals in single positions in a number of different states, and would be part of a multi-state program that would fall under the national service provisions of the Act. This portion of the program would be implemented incrementally based upon fiscal considerations.

Organizations that could participate in the first concept include community service organizations eligible to participate under the National and Community Service Trust Act (see Section 1.4.1 of the RFP).

Implementation of the second concept would be coordinated through the national Operation Lifesaver headquarters office located in Alexandria, Virginia. This second concept would facilitate individual recruitment of National Service volunteers at the local level and would provide participants with opportunities to provide service to their local communities and states and to participate in the development of viable transportation safety programs.

2.4.2 Goals and Priorities

This program addresses the following national priorities:

a. Education—Participants will be exposed to a variety of project specific tasks and general job skills that could prepare participants for future employment opportunities.

b. Public Safety—Operation Lifesaver assists in promoting public awareness of the dangers associated with rail crossings, trespassing on railroad properties, and improper use of motor vehicles around rail facilities. Further, it will bring the audiences into contact with local police and other law enforcement agencies, which will open the lines of communication and create opportunities for cooperation.

c. Human Needs—This Program will stimulate awareness of rail and highway safety-related problems within local and State communities and bring people together to address them. The programs will also provide safety training to a wide audience, ranging in age from pre-schoolers to senior citizens.

d. Environment—Operation Lifesaver has been successful in reducing community environmental hazards associated with rail crossings.

2.4.3 Anticipated Outcomes and Results

a. The utilization of a community service organization would result in benefits to the local communities and provide needed public education in the area of rail safety to the specifically targeted audiences and the general public. As past records have shown, there should be a downward trend in accidents, injuries, and trespasser violations in conjunction with the Operation Lifesaver Program. The statistics developed would be readily available for program evaluation, cost analysis, and community acceptance and adoption.

b. The hiring and placement of assistant administrative coordinators throughout the Operation Lifesaver system would result in better coordination of the program with railroad companies, law enforcement agencies, local and state governments, the various informational media and the general population. The opportunity to function within an established program would enhance the job skills and personal marketability for the participants for future endeavors.

Both concepts will expose the participants to the opportunity to perform community service, and enhance the development of personal qualities, educational values and positive work ethics.

2.4.4 Funding

DOT intends to apply for funding for program costs, including living allowances, educational awards, health insurance, and child care costs, from the National Service Corporation. A budgetary review is ongoing at this time to seek other sources of funding within DOT. The National and Community Service Act will be an item in the Fiscal Year 1996 budget submission of the Federal Railroad Administration, and it is anticipated that direct funding for national service involvement in the Operation Lifesaver program may be available from DOT in future years.

2.4.5 DOT Agency Involvement and Expertise Available

The Operation Lifesaver and adjunct trespasser programs are addressed by several of the DOT modal administrations, specifically the Federal Railroad Administration (FRA) and the Federal Highway Administration (FHWA).

2.4.6 DOT Contacts

Gordon J. Smith, Federal Railroad Administration, Office of Administration, (202) 366–0589, FAX (202) 366–7439

Bruce George, Highway Rail Crossing and Trespasser Division, Federal Railroad Administration, (202) 366–0533

Mailing Address: Room 8232, 400 7th St. SW., Washington DC 20590

2.5 Hazardous Materials Transportation Emergency Preparedness Assistance

2.5.1 Description of Program

a. Background. The DOT Research and Special Programs Administration, Office of Hazardous Materials Safety (OHMS), currently carries out a national safety program to protect against the risks to life, health, property, and the environment inherent in the transportation of hazardous materials by water, air, highway and railroad. OHMS plans, implements, and manages hazardous materials regulatory, enforcement, and outreach programs, and administers a user fee funded grant program to States and Indian tribes for planning and training for hazardous materials emergencies.

The number and type of entities regulated by OHMS have increased dramatically since 1990, when the Hazardous Materials Transportation Act (HMTA) was amended. Prior to 1990, the office had jurisdiction over approximately 40,000 hazardous materials shippers and carriers. In the future, the inclusion of intrastate shippers and carriers will bring an additional 110,000 newly regulated shippers and carriers mandated by the HMTA amendment under the Hazardous Materials Regulations (HMR).

Certain shippers and carriers are required to register with the Department and pay an annual fee. The Hazardous Materials Registration Program, which began in September 1992, funds emergency preparedness grants to States and Indian tribes for training and preparing to respond to hazardous materials emergencies.

The HMTA Grant Program was presented to Congress in 1990 during the legislative process reauthorizing the Hazardous Materials Transportation Act of 1974. Grant funds were first distributed in Fiscal Year 1993. The HMTA grant program is carefully crafted to build upon existing programs and relationships. It has increased the emphasis on improving the capability of communities to plan for the full range of transportation related hazardous materials risks they face.

Forty-seven States are participating in the HMTA grant program—an overwhelming first year response. Fifty-eight grants, totaling approximately $8.4 million, were given to States, Tribes, and Territories in the first grant budget period. 180,000 emergency responders will be trained with HMTA grant funds in the first year of the program; 81% of these responders are either paid or volunteer firefighters.

The existing grant process begins with each participating State's Governor determining which agency within the State receives the HMTA grant. The selected agency distributes funds in accordance with HMTA grant rules and required certifications, ensuring the assistance is provided to intended recipients. The grant distribution system allows each State's Governor to make decisions on funding based on local factors, and allows DOT to leverage resources, thereby operating the HMTA grant program efficiently. The HMTA grant distribution system is lean, and gives exceptionally responsive service to State grantees.

b. National Service Corps. Under the OHMS's "Hazardous Materials Transportation Emergency Preparedness Assistance" Program, national service funding will be used to employ national service participants as assistants to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and State Emergency Management Agency levels. This Program will reinforce the Nation's Hazardous Materials Transportation Emergency Response/State Emergency Response structure, one of the objectives of the existing HMTA grant program.

Local SERC/LEPC/emergency management national service participants may serve as assistants to prepare local emergency plans, perform hazardous materials commodity flow studies, and coordinate exercise of plans. These jobs, requiring little previous experience, could be learned mainly through on-the-job training.

Use of national service funds to increase the effectiveness of the nationally recognized HMTA grant program would not only help the nation and localities, but also give national service participants experience in, and access to, an industry which is experiencing growth. The Emergency Planning and Community Right-to-Know Act of 1986, a reaction in part to the Bhopal, India tragedy, created SERCs and LEPCs to plan for emergency response, including feedback and coordination from broadly based local groups; many responsibilities were levied on states and localities with little funding. This program can provide assistance not previously available. Similarly, state emergency management agencies need assistance with hazardous materials planning and training grants.

It is proposed that national service participants be involved as follows:

1. A day in the life of a national service participant might include assignment to an LEPC. For this participant the day might include working under the LEPC chairperson's supervision to gather data at the state police inspection point for a commodity flow study. The participant might use the data while interacting with LEPC members at an evening meeting. As a result of the meeting the LEPC might modify their emergency plan.

2. At other times the participant might distribute material safety data sheets to the public, conduct community outreach meetings, or receive notification of a hazardous materials release and provide support for the SERC/LEPC or the community. At a state emergency information center, the participant might assist the watch officer in preparing and distributing the daily situation report.

3. Daily activities provide on-the-job training. For example, data may have indicated heavy transport of gasoline indicating the need for training in response to tanker incidents. The participant learns from experience the interaction between data, planning, and training. The participant might also be mentored by the members of the LEPC, the response community, or the trucking industry. In this way, the public good is served and the participant receives valuable training.

2.5.2 Goals and Priorities

The proposed program meets all criteria for funding under the President's National Service program; it improves public safety and health, guards the environment, and educates program participants. The program addresses national service priorities while at the same time provides an opportunity for public service and giving participants training that may enable them to gain employment later. It specifically addresses the following national priorities:

a. Environment. The program will help eliminate environmental risks through education of communities and through risk preparation/prevention. Development of currently unavailable databases could provide the information especially helpful in accident avoidance and response. Hazardous materials planning and training assistant positions at SERC/LEPCs and HMTA State grantee offices are currently going unfilled.

b. Education. If students are selected for these positions, this program will meet the "Education" national priority. On-the-job training will provide unparalleled opportunities for individuals to learn skills leading to diplomas or equivalent recognition of accomplishment.

In addition, this program addresses two Department of Transportation Strategic Goals: (1) Promoting safe and secure transportation, and (2) enhancing the environment through wise transportation decisions.

2.5.3 Anticipated Outcomes and Results

Communities and individuals will benefit from national service participation. Participants can contribute to an increased awareness of environmental protection and emergency response. Community outreach, a possible activity for participants, can help involve residents in discussion of issues and formulation of policy that can directly benefit the community.

An ultimate goal of individual programs would be improved emergency response. Schools and community groups can be targets for educational programs, thereby increasing the knowledge level in the community.

2.5.4 Funding

Up to $60,000 of the Federal share of living allowances for participants may be provided by the Research and Special Programs Administration in DOT. DOT intends to apply for any additional funds needed for program costs, including living allowances, educational awards, health insurance, and child care costs, from the National Service Corporation.

2.5.5 DOT Agencies Involved and Expertise Available

The Office of Hazardous Materials Safety within the Research and Special Programs Administration will be the office in DOT that will implement this Program.

2.5.6 DOT Contact

The primary contact for DOT for the Hazardous Materials Transportation Emergency Preparedness Assistance Program will be:

Charles Rogoff, HMTA Grants Manager, Office of Hazardous Materials Safety, the Research and Special Programs Administration (RSPA). (202) 366–0001,

The National Service Program contact is:

Jim Kabel, Office of Policy and Program Support, RSPA (202) 366–6714.

2.6 Youth Traffic Safety Education Programs

2.6.1 Description of Program

a. Background and purpose. The DOT National Highway Traffic Safety Administration's program for Youth Traffic Safety Education offers the opportunity to train young volunteers aged 16 to 25 to be proficient in traffic safety and then become positive role models for traffic safety behaviors for both younger children and their young adult peers. The children, youth, and young adult populations are over-represented in fatal motor vehicle crashes and are therefore at very high risk of being involved in potentially life-threatening or debilitating motor vehicle incidents.

In the U.S., injury is the leading cause of death for people ages 1 to 44. Traffic crashes alone are consistently the leading cause of death for persons between the ages of 5 and 34. Many of the deaths and injuries that occur on our roads are not the result of unavoidable incidents. By and large, these consequences are the result of failure to take proper precautions such as wearing safety belts and bicycle helmets as well as unsafe behaviors such as speeding and impaired driving. These losses strike particularly hard on young families and young children.

Attempts to improve chances of survival focusing on injury prevention call for traffic safety programs to increase safe behaviors. Increasing safe behaviors depends largely on educating individuals about precautionary measures and rules of the road such as using child safety seats to transport young children, buckling up all motor vehicle passengers, practicing safe bicycle and pedestrian behaviors, not speeding, and never driving impaired or riding with an impaired driver.

b. Scope of work. This project calls for a two-phase activity for the grantee to train young adult volunteer participants on critical traffic safety issues and to conduct educational activities using trained volunteers to promote highway safety for children and youth from prekindergarten through eighth grade. The educational activities use peer and cross-age mentoring as a teaching technique that has been found quite effective with this age group. Phase one is the development and conduct of training. Phase two is the program implementation.

Prior to applying, the potential applicant shall conduct a preliminary assessment and problem identification, to the extent possible, of the current status of community traffic fatalities and injuries as well as safety activities and resources, consulting sources such as the state office of highway safety, law enforcement agencies, hospitals, health clinics, and local chapters of other organizations involved with traffic safety efforts such as SAFE KIDS Coalition, Mothers Against Drunk Driving (MADD), and Students Against Driving Drunk (SADD). The state office of highway safety may be able to provide a general outline of the problem and many of the activities underway within a designated area. The applicant shall use the preliminary assessment to help design a complementary plan of educational activities, providing both the preliminary community assessment and the educational activity plan as part of the application.

i. Program Phase One. Phase one will entail completing the preliminary community assessment, finalizing the educational program plan, and developing and implementing the training component. In preparation for dealing with the complex and technical highway safety issues, a training program for community service volunteers including specialized training and experiential learning will be the integral part of the preparation for conducting educational safety activities. The training program will be developed and implemented with the consultation and coordination of the National Highway Traffic Safety Administration ("NHTSA") and community experts corresponding with the educational activity plan. The training program must also be coordinated with and approved by the traffic unit of the local law enforcement department. Ideally, local law enforcement will be represented in training sessions to the extent possible. All participating program volunteers will complete initial training demonstrating a minimum level of knowledge and skills before beginning traffic safety education activities. The training program may extend into the program implementation phase as appropriate for continued instruction and consultation with experts.

ii. Program Phase Two. The grantee will then utilize trained volunteers to implement key traffic safety programs to meet local needs using available resources. Programs should incorporate one or more of the following traffic safety areas: child passenger safety, pedestrian safety, bicycle safety, safety belt use, and alcohol impairment. Several activities may be done concurrently or consecutively for added impact in a given traffic safety area or increased exposure to distinct traffic safety issues. Subjects may also be combined for a more comprehensive traffic-safety message. Suggested activities in the corresponding traffic safety areas include but are not limited to the following:

Child Passenger Safety

• Bounty Program

A Bounty Program utilizes volunteers to work with merchants and others to remove no-longer-safe child safety seats from the reuse and resale markets. No-longer-safe car seats include those manufactured before current standards; no longer containing labeling identifying model and manufacturer; missing parts; containing broken, cracked, frayed, or rusted parts; under recall; or previously involved in a motor vehicle crash. Volunteers could work with local newspapers to publish public service announcements in the classified sections alerting the garage sale market about the program. Safe child car seats are available at low cost in many areas through discount stores, car seat loaner programs, insurance companies, and other sources. Additional child passenger safety activities could include working with local distributors to develop a local shopping guide specifying sites with child safety seat model availability and price lists. A "how to" manual is available from NHTSA to help establish a bounty program. (Can be conducted in conjunction with hospitals, police departments, fire departments, and day care centers.)

Pedestrian Safety

• Pedestrian Safety Elementary Education Program

Two programs are available to reach young children with safe pedestrian information. The "Willy Whistle" program can be conducted in one or two pedestrian safety lessons. Resources include an age appropriate video for children from kindergarten through third grade or fourth through seventh grade and teaching guides with discussion questions, activity ideas, and a parent letter. Both videos teach critical behaviors needed by young pedestrians to avoid dangerous situations. "Wary Walker" is a pedestrian safety school-based curriculum consisting of five classroom lessons, an outdoor field day, and a two-part parent/child activity workbook to be completed at home by the family. The focus is on teaching elementary school children basic pedestrian skills emphasizing street crossing while encouraging independent thinking, making safe choices, and evaluating themselves and others as pedestrians using a variety of props including instructional videos, worksheets, cartoon characters, a pedestrian safety rap song, and a Map to Safety. (Can be conducted in conjunction with schools.)

• School Crossing Guard Program

Adult school crossing guard programs have been developed to help safely expedite the movement of children to and from school by creating gaps in traffic. Crossing guards act in identified high risk intersections separately from school student safety patrols who assist students on school property. The crossing guard program is used in cities of all sizes and has become an integral part of school crossing protection programs across the country. Most crossing guard programs are organized and administered by local law enforcement units in cooperation and coordination with school authorities and require strict reliability of participants. State or local legislation may establish procedures and guidelines pertaining to school crossing guards which could include minimum age, education requirements, and uniform attire for guards. Training materials available through the American Automobile Association (AAA) and other sources may be used if standard training materials are not already established in a particular locality. (Can be conducted in conjunction with law enforcement and schools. Note that this project can only be implemented if it will not displace other employees.)

Bicycle Safety

• Bicycle Helmet Program

Despite the effectiveness of wearing helmets in preventing death and serious head injury, only a very small percentage of cyclists wear them for many reasons including misperceptions of helmets being uncool, ugly, too hot, and too heavy. Purchasing bicycle helmets may also be cost prohibitive to consumers not fully aware of their potential life-saving benefits. Bicycle videos promoting safe cycling through increased use of helmets and videos demonstrating the proper fit of helmets are available through the American Academy of Pediatrics and other organizations. Potential program activities could include bicycle helmet demonstrations allowing first-hand helmet use, the distribution of bicycle helmet discount coupons obtained with the cooperation of local merchants or manufacturers, and the development and distribution of local shopping guides specifying area stores with model availability, sizes, and price lists. (Can be conducted in conjunction with parent and teacher organizations, civic groups, and schools.)

• Bicycle Rodeo

Bicycle rodeos are half or full-day events requiring fairly extensive planning and design which teach children of all ages how to ride their bikes safely and correctly. The rodeo allows participants to ride their bicycles while they practice and improve bicycle safety skills and learn about traffic situations while rotating through several activity stations. Some of the skills are also transferable to situations in which children are pedestrians. Complete guides for conducting rodeos are available for assistance. (Can be conducted in conjunction with law enforcement, schools, and youth centers.)

Safety Belts

• School Safety Belt Use Program

Young drivers and passengers have the lowest safety belt use rates of any age group. Their reasons often include not wanting to wrinkle their clothes, not wanting to appear uncool or wimpy in front of friends, and include myths such as "I could never be involved in a crash," "I'd rather be thrown clear from the car in a crash," and "I don't want to be trapped if the car catches on fire." Safety belt use programs can be designed to correct the misperceptions with facts and include activities that will raise awareness about the importance of wearing a safety belt properly every time a person rides in a motor vehicle. Activities can include taking children out to a car to instruct them how to properly buckle up in both the front and back seats and allowing them to practice, conducting a safety belt speed challenge to show that buckling up only takes a couple of seconds that could save a life, demonstrating the effectiveness of safety belts through a carefully designed egg experiment, taking an observational safety belt use survey of people arriving and departing school property, and having students sign pledge cards to wear safety belts and encourage others to do the same. (Can be conducted in conjunction with schools and student clubs.)

Alcohol

• Teen Courts

Teen courts represent an intervention approach that employs the dramatic role of peer influence responding to youth problem behaviors often prompted by peer pressure, such as underage drinking, impaired driving, and other antisocial behaviors. Teen courts could supplement the traditional juvenile justice system in which volunteers (teens or young adults) could work with the local justice system to implement and administer a teen court system, serving as bailiffs, clerks, prosecuting and defense attorneys, and, in some cases, judges. Volunteers would also coordinate recruiting youth jurors from the community to sit on juries for individual cases. Information on how to set up a teen court is available from NHTSA. On the whole, teen courts help provide a diversion from the juvenile justice system, appear to reduce recidivism, and capitalize on peer influence to alleviate illegal behaviors. Additional alcohol-awareness activism for volunteers could include efforts to utilize youth as court room monitors to collect data and make recommendations to solve problems, conduct intergenerational issue presentations, and use impaired driving victim impact panels in presentations. (Can be conducted in conjunction with juvenile justice system, schools, law enforcement, and Mothers Against Drunk Driving.)

c. Volunteer Participant and Program Requirements. Due to the highly technical nature of the program and the limitation of available funds, this project is designed as a pilot program to train the equivalent of 10 full-time youth or young adult volunteers. Volunteers should be between the ages of 16 and 25, with a high school diploma or its equivalent, working in a single city or community. The volunteers should be proficient speaking the dominant language or languages of the area. Volunteers should be divided into two teams of five with two volunteers designated as team leaders. Team leaders should be full-time volunteers with a college diploma or some college experience. Preference will be given to volunteers, especially team leaders, with experience or interest in education, public safety, public health, recreation, physical education,

marketing, public relations, journalism, or media relations.

Eligible applicants will be required to demonstrate, through a letter of cooperation, the support of the traffic division of the local law enforcement agency for the implementation of the planned program. Additional support organizations might include: Highway safety agencies, emergency medical services units, motor vehicle administration, educational institutions, public health officials, and private industry representatives. The applicant shall also provide both the preliminary community assessment and the educational activity plan as part of the application. The program shall incorporate evaluation measurements to determine the level of success of the program activities.

2.6.2 Goals and Priorities

This program addresses the following national service priorities:

a. Human Needs.—Motor vehicle crashes cost the nation nearly $14 billion in health care expenditures each year. With each serious injury prevented saving approximately $35,000 in health care costs, as much as $1 billion could be saved nationally through the prevention of traffic deaths and injuries. U.S. Transportation Secretary Federico Peña has called for stepped-up national efforts to reduce the proportion of alcohol involved traffic crashes to 43 percent and increase safety belt use to 75 percent by 1997 as part of President Clinton's health care initiative and year 2000 objectives.

b. Education.—Traffic safety education for children and youth ages 3 through 13 (prekindergarten through grade 8) aims to increase school readiness and further early childhood development. Before children are able to learn in school, they must be able to arrive at school safely each day. With traffic incidents as the leading cause of death and disability for school age children, they face a risk every day in their transport to and from school and other activities.

c. Public Safety.—Through better education and peer mentoring, traffic-related crimes can be reduced.

2.6.3 Anticipated Outcomes and Results

Young adult volunteers as mentors can make a constructive contribution to a national and community traffic safety problem while gaining practical learning experiences. The objective of these efforts is to improve the quality of life for young citizens by raising public awareness, reducing the severity and frequency of traffic safety problems, and providing highway safety experiences which could lead to related future career field choices. This program will allow volunteers to work cooperatively with law enforcement and other organizations within a designated community developing a positive, visible, outcome-oriented relationship to decrease death and injury due to motor vehicle crashes. The educational program will expose young children to appropriate behaviors which can become habits they will model to others and will practice to help keep themselves and others safe now and in the future. If the program proves beneficial to the community and agency, future expansion of a refined program with an increased number of participants may be explored.

2.6.4 Funding

Funding available from DOT for program development, implementation, and administration is $50,000. Application will be made to the National Service Corporation for any additional program costs, living allowance, education awards, health insurance, and child care costs as appropriate for participating volunteers. It is anticipated that direct funding of the Youth Traffic Safety Education Programs may be available from DOT in future years.

2.6.5 DOT Agency Involvement and Expertise Available

NHTSA will act as the project monitor working directly with the grantee to develop and implement a traffic safety training program through the local law enforcement department and facilitate additional state and community contacts with other organizations interested in and working on similar efforts. NHTSA may also provide access to additional materials, training, technical assistance, and data as appropriate. In addition to its headquarters staff, NHTSA has ten regional offices that work directly with the states to implement highway safety programs to reduce motor vehicle crashes including related fatalities, injuries, and economic loss.

2.6.6 DOT Contact

Ms. Susan Gorcowski, National Highway Traffic Safety Administration, Office of Occupant Protection, 400 7th Street, SW., NTS–11, Washington, DC 20590, (202) 366–2712/FAX (202) 366–2766.

3. Submission of Proposals

3.1 Content and Format for Proposals

Each proposal submitted to DOT must be in the format and must contain the information set forth in the application form attached as Appendix A to this RFP. DOT may need to seek additional information from applicants as a result of changes in the proposed regulations issued by the National Service Corporation or to more fully clarify and define specific proposals.

3.2 Address; Number of Copies; Deadline for Submission

Any eligible organization (as defined in Section 1.4.1 of this RFP) may submit one or more proposals for consideration by DOT. Each proposal may involve activities under a single DOT Program or may combine related activities under more that one of the DOT Programs set forth in Section 2 of this RFP.

Applications should be double sided, double spaced, and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction, plus two bound copies, should be submitted. All pages should be numbered and the specific DOT Program or Programs to be addressed should be identified at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission.

Proposals should be submitted to: Brenda L. Harris, Office of Small and Disadvantaged Business Utilization, Department of Transportation, 400 7th Street S.W., Room 9414, Washington, D.C. 20590.

Proposals must be received at DOT no later than March 23, 1994, 4 p.m. EST.

3.3 Coordination With State Community Service Plan

The proposed regulations issued under the National and Community Service Trust Act require that all community service projects be coordinated with their state community service plan in order to assure that the projects build on existing programs and that they are not duplicative.

Any service organization submitting a proposal for a DOT program must show evidence that the proposal has been reviewed and approved by the community service commission for the state(s) in which the project will be performed.

In addition, DOT requests that each proposal include a preliminary evaluation by the state on national and community service for the state in which the project is to be performed (the "state commission"). An evaluation form to be completed by the state commission is included as "Attachment 6" to the attached application form. The evaluation by the state commissions are not mandatory and are not binding on DOT. However, DOT believes that any information from the state commissions would be extremely helpful in our review and, therefore, we strongly encourage all applicants to obtain an evaluation from the state commission.

4. Selection Criteria

4.1 General Criteria

The following criteria and weights will be used by DOT to select national and community service proposals:

1. *Need* (10%).

DOT will take into consideration the extent to which both the overall program and its particular projects will address needs important to the community and be conducted in areas of need as defined in the National and Community Service Trust Act. These areas of need are:

a. Communities designated by the Federal government or states as empowerment zones or redevelopment areas, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people.

b. Areas that are environmentally distressed.

c. Areas adversely affected by Federal actions related to the management of Federal lands that result in significant regional job losses and economic dislocation.

d. Areas adversely affected by reduction in Defense spending or the closure or realignment of military installations.

e. Areas that have unemployment rates greater than the national average unemployment for the most recent 12 months for which satisfactory data are available.

2. *Program Design* (40%).

DOT will consider the quality of the program based on: the potential impact of using proposed national service participants to meet the community needs being addressed; inclusion of a clear and compelling mission statement; identification of specific objectives and indicators of success; development of an effective recruitment, selection, and training plan for staff and participants, including recruitment of participants and staff from the community to be served; ability to provide appropriate supervision, counseling, service-learning and other education opportunities, and outplacement to participants; the involvement of participants and community residents in the design, operation, and leadership of the program; development of a sound plan for continually improving the program based on self-assessment and monitoring of community and participant satisfaction with work performed; inclusion of an appropriate organization and staffing plan; and the program's cost-effectiveness in achieving identified outcomes, including per participant cost.

3. *Organizational Capacity* (30%).

DOT will consider organizational capacity based on: the quality of the leadership of the national service program; the past performance of the organization or program; the organization's connection to the community; the extent to which the program builds on existing programs; evidence of strong and broad-based community support for the program; and availability of additional funding sources for the program.

An application proposing the replication of an existing program will also be evaluated based on the success of the program in its original site, including the results of any evaluation undertaken; the program's analysis of the strengths and weaknesses of the original program; reasons for selecting the replication site and discussion of adjustments needed for adaptation to a new site; and the qualification of the leaders of the program at the new site.

4. *Sustainability* (10%).

DOT will consider the ability of the program to sustain itself beyond the period of support from DOT or from the National Service Corporation as evidenced by strong and broad-based community support; presence of multiple or private funding sources; and cost-effectiveness. Additional consideration will be given to programs that significantly exceed the regional match with non-Federal funds.

5. *Innovation and Replication* (10%).

DOT will consider the degree to which needs coincide to program design, the innovative aspects of the program, and the appropriateness of replicating the program in the future.

4.2 Priority Consideration

In addition to the criterie on which individual applications will be rated, DOT may give priority consideration to all or some of the following issues:

1. *Early Start Date.* DOT is interested in programs that will be able to start up quickly after completing an appropriate planning phase (ideally by September of 1994).

2. *Participant Diversity.*

DOT seeks a broadly diverse participant pool that includes a large representation of young adults; a mixture of individuals who have not attended college and those with college-education experience; approximately equal numbers of men and women; individuals of all races and ethnicities; and individuals with physical and cognitive disabilities.

3. *Location.*

While DOT will attempt to assure that programs funded are geographically diverse, at the same time, for the first year of funding, DOT may give priority consideration to fund programs in any or all of the areas of greatest need as determined by criteria set forth in the regulations issued under the National and Community Service Trust Act (see "Need" in Section 4.1. "General Criteria," of this RFP).

4. *Matching Funds in Excess of Requirements.* Priority consideration will be given to any proposals that provide funding from other sources in excess of the required match amounts (see Section 5.3, "Matching Funds," in this RFP).

5. *Overall Compliance and Consistency* with the National and Community Service Trust Act and related regulations and all other applicable laws and regulations.

6. *Ability to Achieve Transportation-Related Goals.*

DOT is particularly interested in programs that will address one or more of the following transportation-related goals:

a. Tying America together through an effective intermodal transportation system;

b. Promoting safe and secure transportation;

c. Actively enhancing our environment through wise transportation decisions;

d. Putting people first in our transportation system by making it relevant and accessible to users.

4.3 Priorities for Specific DOT Programs

For each specific DOT Program, priority consideration will be given for proposals with the following characteristics:

a. Priorities for Rehabilitation, Reclamation, and Beautification of Transportation-Related Facilities Program:

1. Proposal's balance between work experience, basic and life skills, education, training, and support services.

2. Ability to adequately oversee and supervise crews of youths.

3. Demonstrated ability to network with other organizations and proposed coordination with and use of other available organizational resources.

4. Demonstration of how participation will address currently unmet needs in community.

b. Priorities for Transit Ambassadors Program:

1. Ability to deal with the elderly, disabled, and Head-Start populations;
2. Ability to deal with minor emergency medical situations, or to provide training in this area;
3. Knowledge of the types of transportation and the schedules available in the community, such as bus, subway, light rail, and taxis;
4. Procedures for summoning (such as a two-way communication) emergency medical services and police for assistance;
5. Understanding of the community lifestyles;
6. Knowledge of the layout of the community being served, for example, major intersections, street lights, and traffic patterns.
7. Knowledge of the location of destination points such as medical facilities, supermarkets, recreational facilities, etc.

c. Priorities for Operation Lifesaver Program:
1. Knowledge of railroad and road network in geographical areas.
2. Demonstrated ability to network with other organizations, including local law enforcement units and proposed coordination and collaboration with other organizations.
3. Ability to coordinate and implement a training and certification program, along with local law enforcement departments, and appropriate education departments.
4. Feasibility of the proposed approach or work plan and the extent to which the project addresses traffic safety objectives.
5. Administrative capabilities and staff expertise required to successfully complete the proposed project.
6. Past and present organizational experience in the performance of similar projects.
7. Ability to provide sound evaluative information.

d. Priorities for Hazardous Materials Transportation Assistance Program:
1. Feasibility and utility of work program planned for National Service participants.
2. Ability of program to assist local agencies responsible for hazardous materials planning and training.
3. Ability of program to address the National Service priorities of Environment and Education, and the DOT Strategic Goals of promoting safe and secure transportation and enhancing the environment through wise transportation decisions.
4. Ability of program to address currently unmet hazardous materials needs.
5. Demonstrated strength of current state or local planning and response structure to effectively use national service participation to its full advantage.

e. Priorities for Youth Traffic Safety Education Programs:
1. Knowledge of basic traffic safety issues and status of related state and community efforts within designated locality.
2. Demonstrated ability to network with other organizations including local law enforcement units and proposed coordination and collaboration with other organizations.
3. Ability to coordinate and implement a training and certification program along with local law enforcement departments.

4.4 Preferences Applying to Urban Youth Corps Programs

Preferences will be given to the following types of projects if urban youth corps are used to implement the projects:
a. Projects that will provide long-term public benefits
b. Projects that will instill in the participant a work ethic and a sense of public responsibility.
c. Projects that will be labor intensive.
d. Projects that can be planned and initiated promptly.
e. Projects that will provide academic, experiential, or community education opportunities.

5. Funding

5.1 Direct Funding from DOT

Funds appropriated to DOT agencies will be available to partially finance initial national and community service projects in some of the five DOT programs in fiscal year 1994 (see individual discussions on funding in the individual DOT Program descriptions set forth in Section 2). These funds also may be allocated to finance portions of projects involving activities in more than one program area.

Appropriations for fiscal year 1995, which begins October 1, 1994, are not expected to be enacted until September 1994, and it is not possible to verify the availability of follow-on funding at this time. However, it is anticipated that direct funding of all DOT national and community service Programs identified in this RFP may be available from DOT in future years.

Depending on the nature of the proposal and the DOT Program to be implemented, it may be necessary for DOT funding to be given to State or local agencies, which will in turn pass the funding through to the service organization implementing the projects. DOT officials will advise and assist a service organization in arranging such coordination if its proposal is selected, and this coordination should not be viewed as an obstacle to the submission of an application at this time.

Other restrictions on the use of Federal funds are discussed in Section 5.4 below.

5.2 National Service Corporation Funding

DOT will submit a multi-program application containing all of the selected proposals and related partnership agreements to the National Service Corporation in order to request funding for the remaining program costs that cannot be covered by direct funding from DOT and matching funds from the service organization. Any funding provided by the National Service Corporation will come from the funds earmarked for Federal agencies. Since there is no guarantee that DOT will receive funding from the National Service Corporation, a proposal accepted by DOT ultimately may not be fully funded or funded at all if DOT's request for funding from the National Service Corporation is not granted.

5.3 Matching Funds

Each selected applicant must provide matching funds equal to at least 25% of the cost of the program. Where authorized, other federal, state or local sources (not including funds provided directly by DOT or the National Service Corporation) may be counted as matching funds. In-kind contributions, including facilities, equipment, goods or services, may also be counted as matching funds. (In-kind contributions to be used as a match in more that one program must be divided between the programs in proportion to use.) Note that a preference will be given to proposals that provide the match through non-federal sources and matches that exceed the minimum match requirement.

5.4 Restrictions on Use of Federal and Corporation Funds

a. Restrictions on Benefits

No more than 85% of the living stipend for participants may be paid from federal sources (including funds received from the National Service Corporation and any other federal funds received, including DOT funds). No more than 85% of the costs of the most affordable health care policy that provides minimum benefits may be paid from with National Service Corporation funds. Payment of the 15% of the living stipend from non-federal sources and

15% of health care benefits from non-Corporation sources will be included as part of the overall match for the program.

b. Restrictions on Administrative Costs

Not more than 5% of the National Service Corporation funds may be used to pay for administrative costs. Administrative costs are costs associated with the overall administration of the program. Such costs include the following: (1) Indirect costs (i.e., costs identified with two or more cost objectives but not identified with a particular cost objective) as described in applicable provisions of Office of Management and Budget Circulars that relate to indirect costs; (2) costs for financial, accounting, or contracting functions; (3) costs for insurance that protects the entity that operates the program; and (4) costs related to the evaluation of the program; and (5) costs for salaries and benefits of staff who recruit, train, place, or supervise participants.

Particular costs such as those associated with staff who perform both administrative and program functions may be prorated between administrative costs and costs directly related to program operations.

c. Restrictions on Equipment Purchases.

Not more than 10% of National Service Corporation funds may be used to purchase equipment to be used for programmatic operation.

d. Compliance with OMB Circulars

Programs must comply with all applicable Office of Management and Budget circulars for grant management, including Circulars A–133, A–128 and A–110, and with all applicable Federal, State and local laws.

Appendix A—Application Form for Proposals for the Department of Transportation National and Community Service Program

Proposals for the DOT National and Community Service Program should contain all of the following information and should be submitted in the following format. DOT may need to seek additional information from applicants as a result of changes in the proposed regulations issued by the National Service Corporation or to more fully clarify and define specific proposals.

Applications should be double sided, double spaced, and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction, plus two bound copies, should be submitted. All pages should be numbered and the specific DOT Program or Programs to be addressed should be identified at the top of each page. All documentation, attachments, or other information pertinent to the application should be included in a single submission, forwarded directly to the address listed below. Proposals should be submitted to:
Brenda L. Harris
Office of Small and Disadvantaged Business Utilization
Department of Transportation
400 7th Street SW., room 9410
Washington, DC 20590

Proposals must be received by DOT no later than March 23, 1994, 4 p.m. EST.

1. *Title page* (to be completed on the attached form identified as "Attachment 1"), along with a Table of Contents for the proposal.

2. *Application summary page*, providing a one page overview of the following:
a. Identification of which of the five DOT Programs the applicant intends to implement.
b. The specific needs to be met, particularly as they relete to the national priorities identified for the individual DOT Program(s).
c. Key elements of the program design.
d. Recruitment goals, including the percentage of participants (if any) to be drawn from the national recruitment system established by the National Service Corporation.
e. Description of the administering organization and identification of primary program partners.

3. *Program mission statement and annual objectives* (to be completed on the attached form identified as "Attachment 2"). The National Service Corporation has identified three goals of National Service:
a. *Community service.* Meeting community needs by getting things done through direct and demonstrable service in education, public safety, human needs, and the environment.
b. *Participant development.* Positively impacting participants by developing leadership skills, fostering active, productive citizenship, and enhancing educational opportunities.
c. *Community building.* Strengthening communities by bringing together both institutions and individuals to cooperate in affecting lasting and constructive change.

Each applicant will need to articulate a program mission statement that expresses the program's vision and must specify primary objectives to be achieved with respect to each of these three goals. (Applicants should complete three separate forms to address each goal.) More specific directions can be found on the back of the form.

4. *Program narrative.* In approximately 10 pages, organized and labeled in the stipulated categories, provide the following information in a narrative form with as much specificity as possible.
a. *DOT program to be addressed.* Identify the DOT Program or Programs to be implemented (see section 2 of the RFP).
b. *Needs to be met and appropriateness for national service.* Identify the nature of the specific needs to be met by the proposed national service program, including how and why these needs are appropriately or uniquely addressed by a national service program.

(i) *Needs*
—Identify the specific needs that the program will address.
—Explain how these needs relate to the priorities and goals of the selected DOT Program.

(ii) *Process*
—Describe the process by which the needs were identified.
—Explain who was involved in identifying the needs.
—Explain the extent to which the residents of the community to be served were involved in the needs assessment.

c. *Programs design.* Describe the concept and design for the program, including the nature of specific service activities to be performed by participants and how these activities address the identified needs and meet the program objectives.

(i) *Program concept.*
—Explain the basic concept of the program.
—Describe how the program will be structured.
—Describe where it will be located.
—Describe any institutional or programmatic collaborations or partnerships that will be involved in operating the program, including the extent to which the program builds on existing infrastructure.
—Explain how the program will be cost-effective and how participants will be fully and effectively utilized.

(ii) *Service activities.*
—Describe the projects or activities that the participants will conduct.
—Explain how these projects or activities will result in direct, measurable service that addresses the identified needs.
—Describe a typical week in the life of program participants, giving concrete examples of the types of activities or duties participants will perform. (Please note that projects must do more than just keep participants busy, offer temporary solutions, or provide free labor to organizations.)
—State the length of time required to complete the projects or activities (must be at least one year and cannot be more than three years)
—State an estimated date when the activities could begin. (Note that DOT will inform applicants as to whether they have been selected to receive DOT funding and/or to be included in DOT's application to the National Service Corporation prior to April 15, 1994, and anticipates that notification of awards of National Service Corporation funds will occur in May or June of 1994.)

(iii) *Relation to need.*
—Explain how the service activities respond to the identified needs.

(iv) *Participant training and support.*
—Explain how participants will be trained, supported, or otherwise prepared for their assignments.
—Describe the key elements of the participant training, in-service education, or service-learning curriculum employed to improve participants' skills, prepare them for placement, and foster positive civic values, and promote an ongoing interest in community service. (Note that the program

must, in a non-partisan manner, encourage participants to vote.)

(v) *Participant placement and supervision.*

—Explain how participants will be placed (in teams or individually) and matched with assignments.
—Describe how service sponsors or host-sites will be oriented and prepared for that placement.
—Explain how participants will be supervised.
—Outline the standards of conduct for participants (all community and national service programs will be required to establish a standard of conduct to be stringently enforced.)

(vi) *Nondisplacement.*

—Explain what steps have been taken to ensure that no displacement or supplantation of other employees will occur as a result of the project, or the project will not result in other employees not being hired or not receiving promotions. Include a summary of any discussions or contacts with labor organizations in related fields of work. The written concurrence of any local labor organization representing employees engaged in the same or substantially similar work must be obtained.

d. *Participant profile, recruitment strategy, and benefits.* Provide a description of the total number (full- or part-time) of participants to be recruited in the program, including the expected characteristics, attributes or skills of participants. Describe the benefits these participants will receive.

(i) *Number and characteristics of participants.*

—State the expected number and characteristics of participants, including racial or ethnic background, socio-economic status, gender, and educational attainment.
—If the program will recruit fewer than 20 participants, please explain why this smaller number is appropriate to the purpose and design of the program.

(ii) *Participant recruitment.*

—Explain the methods that will be used or the strategies undertaken to recruit participants.
—Explain what measures will be taken to recruit diverse participants based on economic background, race, ethnicity, age, gender, marital status, education levels, and disabilities.

(iii) *Participant selection.*

—Explain the methods or strategy that you will use to select participants.
—Describe selection criteria, including minimum qualifications for participants.
—Identify any specialized skills that participants will be required to possess in order to carry out service assignments.

(iv) *Participant benefits.*

—Identify the benefits that the participants will receive. (Note that all participants must receive health benefits and, if needed, child care.)
—Describe the amount of the living allowance provided to each participant. (Note that the living allowance must be at least $7,440 for fiscal year 1994 for full-time participants and must be at least $3,960 for each part-time participant, and cannot exceed twice these amounts.)
—Describe the amount of the educational awards to be provided to each participant. (Note that proposals should provide for participants to receive educational awards (either from the National Service Corporation or from some other source) in an amount of $4,725 for one full-time term of service or $2,360 for one part-time term of service, for up to two terms of service.)
—Describe how national service educational awards will be apportioned among program participants if not provided to all participants. (In general, the distribution should treat equally all participants doing the same or essentially similar work. Distribution based solely on economic needs of participants is not encouraged.)
—Describe any alternative post-service benefits that might be used (e.g., tuition credits at an institution of higher education or transition assistance).

(v) *Participant welfare.*

—Describe what measures will be taken to ensure the safety and well-being of participants while working on service projects.

e. *Internal Evaluation and Monitoring Activities.* Describe internal evaluation and monitoring activities.

(i) *Internal evaluation and monitoring.*

—Explain how you will monitor progress toward your program objectives (Note that monitoring approaches such as community advisory councils, participant advisory councils, peer reviews, quality control inspections, and customer participant surveys are encouraged).
—Explain how you will assess, on an ongoing basis, the quality of services and the satisfaction of both the participants and the individuals or institutions served.
—Explain how you will collect required descriptive and demographic data (e.g., reporting requirements will include data regarding the characteristics of participants and data regarding services to be conducted in areas of economic or environmental distress.)

(ii) *Previous evaluations.*

—If your proposal is to replicate an existing program in other areas, state whether the original program has been evaluated.
—Explain who conducted the evaluation and describe the results of the evaluation regarding community and participant impact.
—If the original program has not been evaluated, explain what evidence exists of successful performance or of a track record to demonstrate its appropriateness for replication or expansion.

f. *Institutional and personnel information.* Provide a description of the administering organization's past experience and institutional capacity to operate or coordinate a program comparable to the program(s) proposed, including the organization's ability to recruit and train staff.

(i) *Principal staff.*

—Describe the background, experience and major accomplishments of the program director and principal staff, and how their qualifications relate to their duties in and responsibilities for the proposed programs. (Attach resumes if appropriate.)
—If the staff has not yet been hired, explain what qualifications the candidates must fulfill.
—Give a name, address, and telephone number of a contact person for the program who can address any questions about the program.

(ii) *Training.*

Describe what kind of orientation and training, if any, will be provided for the staff.

(iii) *Institutional strengths.*

Explain what institutional resources or expertise the administering organization(s) provide that will contribute to the overall success of the program.

g. *Achievement of Transportation Goals.*

(i) *DOT community service goals and objectives.*

Explain how the program will meet any of the following transportation-related community service goals:

—Tie America together through an effective intermodal transportation system;
—Promote safe and secure transportation;
—Actively enhance our environment through wise transportation decisions;
—Put people first in our transportation system by making it relevant and accessible to users.

(ii) *Consultation with State DOTs and local MPOs.*

—Consultation with your local Metropolitan Planning Organization ("MPO") (or State Department of Transportation if you have no local MPO) is highly recommended. Explain in what manner you have consulted with the State DOT and local MPO in developing your proposal. (For information concerning the contact person for your local Metropolitan Planning Organization, please call Ms. Susan Gaskins at 202–366–5781.)
—Explain in what way you will involve State DOTs and local MPOs and/or keep them informed as the program progresses.
—For projects to be performed under the "Rehabilitation, Reclamation, and Beautification of Transportation-Related Facilities" Program, explain what coordination has been conducted with the organization having authority over the relevant transportation facility (such as the State Department of Transportation, the local MPO, the transit authority, etc.) to determine that the project is accepteble.

(iii) *DOT expertise.*

Explain to what extent you will use expertise or rely on information provided by the Federal DOT, your State DOT, or other local transportation agency.

5. *Budget form page and budget narrative.* Complete the provided budget form identified as "Attachment 3." A separate budget form must be completed for each proposal. A budget narrative should be attached to the form with containing any necessary explanatory information. Applicants must identify either on the form or in an attached narrative the source of its matching funds and whether it has a firm commitment for those funds.

If activities under two or more DOT Programs are combined in a single proposal, separate budget forms must be completed to show program costs for each DOT Program, along with a separate aggregate budget form for the entire proposal.

6. *Assurances Signature Form.* Complete the attached form identified as "Attachment 4."

7. *Certification Signature Form.* Complete the attached form identified as "Attachment 5."

8. *State Coordination and Evaluation Form.*

The proposed regulations issued under the National and Community Service Trust Act require that all community service projects be coordinated with their state community service plan in order to assure that the projects are building on existing programs and that they are not duplicative. Any community service organization submitting a proposal for a DOT Program must show evidence that the proposal has been reviewed and approved by the community service commission for the state in which it is located. Evidence of coordination can be shown by completion of the attached evaluation form (identified as "Attachment 6") by the state community service commission, by written correspondence from the state community service commission, or by documentation of a meeting with the state community service commission.

In addition, DOT also asks that each proposal include a preliminary evaluation of the project by the state commission on national and community service for the state in which the project will be performed (the "state commission"). An evaluation form to be completed by the state commission is attached ("Attachment 6"). Evaluations by the state commissions are optional and are not binding on DOT. However, DOT believes that any information from the state commissions would be extremely helpful in our review, and therefore strongly encourages all applicants to obtain an evaluation from their state commission.

9. *Standard Form 424* (Request for Federal Assistance). Complete the attached Standard Form 424 identified as "Attachment 7."

Please be sure that all forms have been signed by an authorized official who can legally represent the organization.

BILLING CODE 4910-62-P

ATTACHMENT 1

Title Page - AmeriCorps Direct Application

o Single-Program
o Multi-Program

(DOT NATIONAL AND COMMUNITY SERVICE PROGRAM)

Please type or print in black ink.

1. **Proposal Title:**_____

2. **Legal Applicant:**_____
Contact Person's Name:_____
Address:_____
City, State, Zip:_____
Phone/Fax:_____

3. **Institutional Information:**
o Federal Agency
o Multi-State Program
o Professional Corps Program
o National Non-Profit Organization
Employer Identification Number:_____

4. **Project Director:**
Organization's Name:_____
Address:_____
City, State, Zip:_____
Phone/Fax:_____

5. **Grant Type:** oPlanning or oOperating or oEducational Awards Only

6. **Issue Area and National Priorities:**
oEducational
oSchool Readiness
oSchool Success
oHuman Needs
oIndependent Living
oCommunity Revitalization
oEnvironment
oNeighborhood Environment
oNatural Environment
oPublic Safety
oViolence Prevention
oCrime Control

7. **Area(s) to be Served:**_____
oUrban or oSuburban or oRural

9. **Budget:**
DOT and Corporation Funds Requested:
YR 1_____ YR 2 _____ YR 3_____
Total Budget Amount:
YR 1 _____ YR 2 _____ YR 3 _____

11. **Project Duration**
Start Date _____ End Date _____
Number of Program Terms_____

8. **Participants:**
of Full-time Participants _____
of Part-time Participants_____
of Full-time Participants Needing Educational Awards_____
of Part-time Participants Needing Educational Awards_____
of Unfunded Participants _____
of Participants Needing Child Care _____

10. Program operates in an area of need as identified by the Corporation: oYes or oNo
Which one?_____

12. **Certification:**
The applicant certifies to the best of his/her knowledge and belief that the data in this application are true and correct and that the filing of the application has been duly authorized by the governing body of the applicant and that the applicant will comply with the assurances required of applicants if the assistance is approved.

Name:_____ Signature: _____
Title:_____ Phone:_____ Date:_____

ATTACHMENT 2

o Applicant Name:
o Program Name:

Mission Statement and Annual Objectives

(Directions on reverse side)

What is your program's mission statement?

Each application must include statements of primary objectives in three areas: Community, Community Building, and Participant Development. Please use a separate copy of this form to describe your objectives in each area (i.e., Community Service, Community Building, Participant Development). In the case of community services, also use a separate form for each priority area, if you are working on more than one (i.e. education, environment, etc.).

This page applies to:
- o Community Service
  - ☐ Education
  - ☐ Environment
  - ☐ Public Safety
  - ☐ Human Needs
- o Participant Development
- o Community Building

What are your annual objectives in the area checked above? List your three primary objectives.

A.

B.

C

DIRECTIONS

The **Mission Statement** should express the program's vision with regard to the three key goals of national service -- meeting community needs, strengthening communities, and developing participant citizenship and skills. Here you should indicate the ultimate impacts that you wish to achieve -- "reduce violence in schools," "improve the academic achievement of young people," "develop more skilled and more dedicated citizens," and the like. Please be aware that to demonstrate the impact of national service grants, the Corporation may assess your program's success in achieving its mission, but you will not be responsible for this type of evaluation. Your mission statement should therefore be geared to the most ambitious goals you believe that you can achieve, even if you do not believe you can measure them on your own.

Your **Annual Objectives** should be derived from your mission statement and should reflect as directly as possible your desired impacts. You will be responsible for assessing your success in achieving your annual objectives. These should be quantitative wherever possible and, in all cases, demonstrable. Each objective should address only one activity, include only one result, and provide at least one indicator of quality or customer satisfaction. *For example: "To assist 500 homebound elderly to live independently with 80% of the involved elderly indicating that they could not live independently without this assistance."*

To the extent possible, programs should develop outcome objectives that indicate real changes in the performance or activities of communities or individuals: in a tutoring program, level of improved academic achievement; in a safe schools program, percent of reduction in school violence; in a homelessness program, number of transitions to permanent housing. The Corporation recognizes, however, that impacts are often hard to measure and difficult to assign specifically to one intervention. In these cases, other indicators of success, such as staff satisfaction, may be more appropriate. The Corporation encourages programs to develop innovative ways to demonstrate impacts, such as customer surveys and before/after videotapes, along with the more traditional measures such as test scores, graduation rates, and staff satisfaction rates. As a rule, programs should seek to establish the most ambitious objectives whose achievement they will be able to clearly demonstrate.

Example objectives follow. They represent only a suggested form for such objectives; you are encouraged to be both creative and realistic as you design objectives for your own program.

Community Impact Examples

Education

• To provide an average of five hours of tutoring weekly to each of 200 junior high school students, with 50% improved test performance and 80% teacher satisfaction.

Human Services

• To rehabilitate 20 low-income housing units, achieving "significant improvement" ratings from 85% of neighborhood residents polled after project completion.

Environment

• To construct 10 miles of hiking trails, obtaining 85% "excellent" ratings on the trails from trail users surveyed after completion.

Public Safety

• To provide 2000 hours of violence prevention patrols in 10 high-violence schools, resulting in a 33% decline in violence.

Community-Building Examples

• To form partnerships with 5 companies as reflected by co-sponsored activities and substantial involvement by company personnel.

• To build program capacity by forming partnerships with 3 community-based organizations as demonstrated by co-sponsored projects and use of shared resources.

Participant Development Examples

• To develop a sustained commitment to education in 60% of participants, as demonstrated by continued work in the field of education during the next year.

• To improve citizenship of 80% of participants, as evidence by continued commitment to improving their community.

ATTACHMENT 3

National Service Programs Budget Form

○Aggregate
○Program

Please attach a Budget Narrative to this page.

	Total Program Costs		Match Other Federal/ State/Local/ Private Funds		DOT and Corporation (CNCS) Funds Requested from the DOT and the Corporation
A. Participant Support Costs					
• Living Allowance (may not exceed 85% of CNCS funds)	$				
• Education Awards (to be held in trust by the CNCS)					
• Health Care (may not exceed 85% of CNCS funds)					
• Child Care					
• Training and Education					
• Uniforms					
• FICA and Workers' Compensation					
• Other (please specify in Budget Narrative					
Subtotal					
B. Staff					
• Salaries					
• Benefits					
• Training					
• Other (please specify in Budget Narrative)					
Subtotal					
C. Operational					
• Travel/Transportation					
• Supplies					
• Equipment					
• Other (please specify in Budget Narrative)					
Subtotal					
D. Internal Evaluation/Monitoring					
E. Administration (may not exceed 5% of Corporation funds)					
TOTAL (in dollar amounts)	$	-		=	
Percentages (100% - Match% = CNCS + DOT%)	%	-	%	=	100%

ATTACHMENT 3

National Service Programs Budget Form

○Aggregate
○Program

"Transportation Ambassadors" – accessible transportation services for elderly, disabled, and children in Head Start programs

Please attach a Budget Narrative to this page.

	Total Program Costs		Match Other Federal/ State/Local/ Private Funds		DOT and Corporation (CNCS) Funds Requested from the DOT and the Corporation
A. Participant Support Costs					
• Living Allowance (may not exceed 85% of CNCS funds)	$				
• Education Awards (to be held in trust by the CNCS)					
• Health Care (may not exceed 85% of CNCS funds)					
• Child Care					
• Training and Education					
• Uniforms					
• FICA and Workers' Compensation					
• Other (please specify in Budget Narrative					
Subtotal					
B. Staff					
• Salaries					
• Benefits					
• Training					
• Other (please specify in Budget Narrative)					
Subtotal					
C. Operational					
• Travel/Transportation					
• Supplies					
• Equipment					
• Other (please specify in Budget Narrative)					
Subtotal					
D. Internal Evaluation/Monitoring					
E. Administration (may not exceed 5% of Corporation funds)					
TOTAL (in dollar amounts)	$	-		=	
Percentages (100% - Match% = CNCS + DOT%)	%	-	%	=	100%

ATTACHMENT 3

National Service Programs Budget Form

○Aggregate
○Program

Please attach a Budget Narrative to this page.

	Total Program Costs		Match Other Federal/ State/Local/ Private Funds		DOT and Corporation (CNCS) Funds Requested from the DOT and the Corporation
A. Participant Support Costs					
• Living Allowance (may not exceed 85% of CNCS funds)	$				
• Education Awards (to be held in trust by the CNCS)					
• Health Care (may not exceed 85% of CNCS funds)					
• Child Care					
• Training and Education					
• Uniforms					
• FICA and Workers' Compensation					
• Other (please specify in Budget Narrative					
Subtotal					
B. Staff					
• Salaries					
• Benefits					
• Training					
• Other (please specify in Budget Narrative)					
Subtotal					
C. Operational					
• Travel/Transportation					
• Supplies					
• Equipment					
• Other (please specify in Budget Narrative)					
Subtotal					
D. Internal Evaluation/Monitoring					
E. Administration (may not exceed 5% of Corporation funds)					
TOTAL (in dollar amounts)	$	-		=	
Percentages (100% - Match% = CNCS + DOT%)	%	-	%	=	100%

ATTACHMENT 3

National Service Programs Budget Form

○Aggregate
○Program

Please attach a Budget Narrative to this page.

	Total Program Costs		Match Other Federal/ State/Local/ Private Funds		DOT and Corporation (CNCS) Funds Requested from the DOT and the Corporation
A. Participant Support Costs					
• Living Allowance (may not exceed 85% of CNCS funds)	$				
• Education Awards (to be held in trust by the CNCS)					
• Health Care (may not exceed 85% of CNCS funds)					
• Child Care					
• Training and Education					
• Uniforms					
• FICA and Workers' Compensation					
• Other (please specify in Budget Narrative					
Subtotal					
B. Staff					
• Salaries					
• Benefits					
• Training					
• Other (please specify in Budget Narrative)					
Subtotal					
C. Operational					
• Travel/Transportation					
• Supplies					
• Equipment					
• Other (please specify in Budget Narrative)					
Subtotal					
D. Internal Evaluation/Monitoring					
E. Administration (may not exceed 5% of Corporation funds)					
TOTAL (in dollar amounts)	$	-		=	
Percentages (100% - Match% = CNCS + DOT%)	%	-	%	=	100%

ATTACHMENT 3

National Service Programs Budget Form

○Aggregate
○Program

Please attach a Budget Narrative to this page.

	Total Total Program Costs	Match Other Federal/ State/Local/ Private Funds	DOT and Corporation (CNCS) Funds Requested from the DOT and the Corporation
A. Participant Support Costs			
• Living Allowance (may not exceed 85% of CNCS funds)	$		
• Education Awards (to be held in trust by the CNCS)			
• Health Care (may not exceed 85% of CNCS funds)			
• Child Care			
• Training and Education			
• Uniforms			
• FICA and Workers' Compensation			
• Other (please specify in Budget Narrative			
Subtotal			
B. Staff			
• Salaries			
• Benefits			
• Training			
• Other (please specify in Budget Narrative)			
Subtotal			
C. Operational			
• Travel/Transportation			
• Supplies			
• Equipment			
• Other (please specify in Budget Narrative)			
Subtotal			
D. Internal Evaluation/Monitoring			
E. Administration (may not exceed 5% of Corporation funds)			
TOTAL (in dollar amounts)	$		
Percentages (100% - Match% = CNCS + DOT%)	%	%	100%

ATTACHMENT 4

Assurances

All recipients of Federal funding are required to assure that the recipient:

- Has the legal authority to apply for Federal assistance, and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.
- Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- Will establish safeguards to prohibit employees from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900; Subpart F).
- Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of disability; (d) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C.290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the National and Community Service Act of 1990, as amended; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
- Will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a and 276a-77), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), regarding labor standards for Federally assisted construction sub-agreements.
- Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires the recipients in a special flood hazard area to participate in the program and to purchase flood

insurance if the total cost of insurable construction and acquisition is $10,000 or more.

- Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

- Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

- Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

- Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

- Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

- Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

- Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular A-133. Audits of Institutions of Higher Learning and other Non-profit Institutions.

- Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

In addition, all recipients of Corporation assistance under this application are required to assure that the recipient:

- Will keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation.

- Will not use the assistance to replace State and local funding streams that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal expenditure for that program in the fiscal year that support is to be provided is not less than the previous fiscal year.

- Will use the assistance only for a program that does not duplicate, and is in addition to, an activity otherwise available in the locality of the program.

- Will comply with the Notice, Hearing, and Grievance Procedures found in § 176 of the Act.

- Will comply with the nondisplacement rules found in § 177(b) of the Act. Specifically, an employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the employer using an AmeriCorps participant; a service opportunity shall not be created that will infringe on the promotional opportunity of an employed individual; an AmeriCorps participants shall not perform any services or duties or engage in activities that (1) would otherwise be performed by an employee as part of the employee's assigned duties, (2) will supplant the hiring of employed workers, (3) are services or duties with respect to which an individual has recall rights pursuant to a collective bargaining; agreement or applicable personnel procedures; or (4) have been performed by or were assigned to any presently employed worker, an employee who recently resigned or was discharged, an employee who is on leave, an employee who is on strike or is being locked out, or an employee who is subject to a reduction in force or has recall rights subject to a collective bargaining agreement or applicable personnel procedure.

Assurances - Signature

By signing this assurances page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the attached Assurances.

NOTE: This form must be signed and included in the application.

Organization Name

_____

Project Name

_____

Name and Title of Authorized Representative

_____

Signature

_____

Date

_____

ATTACHMENT 5

Certifications

Before completing certification, please read Certification Instructions on the following page.

Certification - Debarment, Suspension, and Other Responsibility Matters. This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(1). The applicant certifies to the best of its knowledge and belief, that it and its principals:

(a). Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency,

(b). Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction or records, making false statements, or receiving stolen property,

(c). Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification, and

(d). Have not within a three-year period preceding this application proposal had one or more public transactions (Federal, State or local) terminated for cause or default;

(2). Where the applicant is unable to certify to any of the statements in this certification, such applicant shall attach an explanation to this application.

Certification - Drug-Free Workplace. This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment (see 34 CFR Part 85, Section 85.615 and 85.620). The grantee certifies that it will provide a drug-free workplace by:

(1). Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(2). Establishing a drug-free awareness program to inform employees about --

(a) the dangers of drug abuse in the workplace,

(b) the grantee's policy of maintaining a drug-free workplace,

(c) any available drug counseling, rehabilitation, and employee assistance programs, and

(d) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3). Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);

(4). Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will

(a) abide by the terms of the statement, and

(b) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(5). Notifying the Corporation within ten days after receiving notice under subparagraph (4)(b) from an employee or otherwise receiving actual notice of such conviction;

(6). Taking one of the following actions, within 30 days of receiving notice under subparagraph (4)(b) with respect to any employee who is so convicted--

(a) Taking appropriate personnel action against such an employee, up to and including termination; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(7). Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).

Certification - Lobbying Activities
As required by Section 1352, Title 31 of the US Code, the applicant certifies that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

C. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Certification -- Signature

Before You Start. Before completing certification, please read Certification Instructions.

NOTE: This form must be signed and included in the application.

Signature. By signing this Certification page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the Certifications set forth above. The three Certifications are:

- •Certification: Debarment, Suspension, and Other Responsibility Matters
- •Certification: Drug-Free Workplace
- •Certification: Lobbying Activities

Organization Name

Project Name

Name and Titled of Authorized Representative

Signature

Date

Certification Instructions

By signing the Certification Signature Page on the previous page, the applicant certified that it will agree to perform all actions and support all intentions stated in the Certifications.

Signing the Certification Page

1. **Inability to Certify.** The inability of a person to provide the certification required below will not necessarily result in denial of a grant. The applicant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Corporation determination whether to enter into this transaction. However, failure of the applicant to furnish a certification or an explanation shall disqualify such applicant for a grant.

2. **Erroneous Certification.** The certification in this clause is a material representation of fact upon which reliance was placed when the Corporation determined to enter into this transaction. If it is later determined that the applicant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Corporation may terminate this transaction for cause or default.

3. **Notice of Error in Certification.** The applicant shall provide immediate written notice to the Corporation to whom this proposal is submitted if at any time the applicant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. **Definitions.** The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. An applicant shall be considered a "prospective primary participant in a covered transaction" as defined in the rules implementing Executive Order 12549. You may contact the Corporation for assistance in obtaining a copy of those regulations.

5. **Certification Requirement for Subgrant Agreements.** The applicant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Corporation.

6. **Certification Inclusion in Subgrant Agreements.** The applicant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the Corporation, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. **Certification of Subgrant Principals.** A grantee may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A grantee may decide the method and frequency by which it determines the eligibility of its principals. Each grantee may, but is not required to, check the Nonprocurement List.

8. **Prudent Person Standard.** Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a grantee is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. **Non-Certification in Subgrant Agreements.** Except for transactions authorized under paragraph 6 of these instructions, if a grantee knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

ATTACHMENT 6

DEPARTMENT OF TRANSPORTATION
NATIONAL AND COMMUNITY SERVICE PROGRAM

THE FOLLOWING CRITERIA SHOULD BE USED BY STATE COMMISSIONS IN EVALUATING PROGRAM PROPOSALS FOR CONSIDERATION BY THE DEPARTMENT OF TRANSPORTATION
(This evaluation is a recommendation only and is not binding on the Department of Transportation)

On a scale from one to five, with five (5) being the highest, please rate each program proposal by placing a check (√) in the appropriate column.

CRITERIA	5	4	3	2	1	N/A	COMMENTS
Responsiveness to the National Service Criteria	–	–	–	–	–	–	
Responsiveness to the technical requirements of the proposal	–	–	–	–	–	–	
Staff resources and qualifications	–	–	–	–	–	–	
Organizational experience and capability	–	–	–	–	–	–	
Demonstrated ability in meeting community needs	–	–	–	–	–	–	
Program potential for sustainability	–	–	–	–	–	–	
Responsiveness to the Program Proposal as reflected in the proposal	–	–	–	–	–	–	

Please check (√) the appropriate column based on the criteria below.

CRITERIA	EXCELLENT	GOOD	FAIR	POOR	N/A
Commission's past working relationship with national service organizations (NSO) as it relates to performance of the NSOs	____	____	____	____	____

_____ has consulted and
(Name of Organization)

coordinated with the State Commission on National and Community Service for _____
(State)

with respect to its proposal for a DOT Community and National Service Program. The commission finds that the proposal is consistent with the State Plan, and that it builds on existing programs and does not duplicate efforts.

Date:_____ Signature: _____

Name: _____

Position: _____

ATTACHMENT 7

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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[FR Doc. 94-4011 Filed 2-22-94; 8:45 am]
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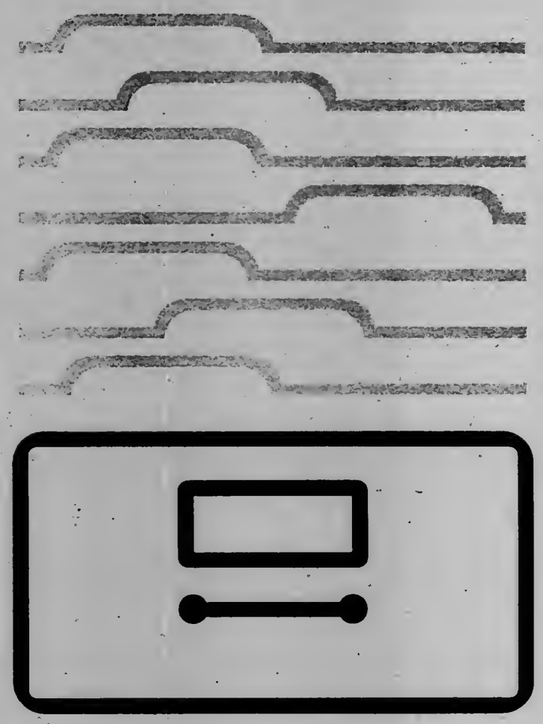
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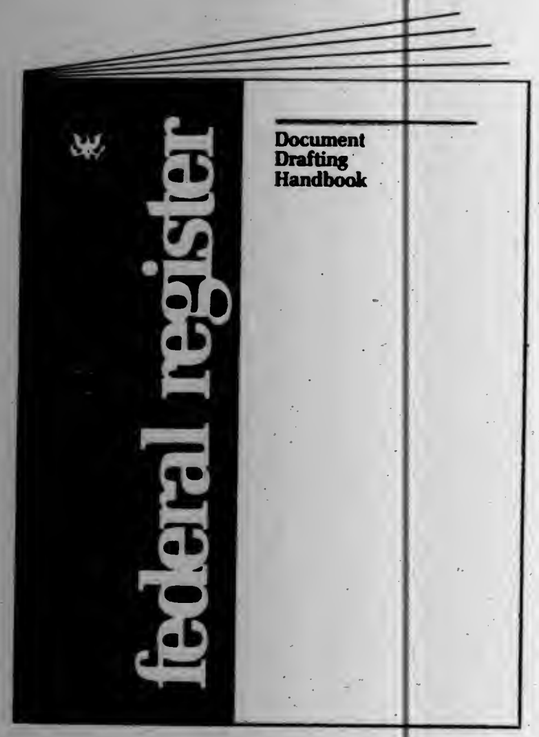
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Federal Register
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 1 and 2

Forest Service

36 CFR Part 223

Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990

AGENCY: Office of the Secretary; Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends 7 CFR parts 1 and 2 and 36 CFR part 223 by adding a new subpart M to 7 CFR part 1 establishing rules of practice governing the adjudication of sourcing area applications pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990; by deleting, in 7 CFR part 2, the reference to the Forest Resources Conservation and Shortage Relief Act and adding, in its place, a reference to the rules of practice established by this rule; and by making technical amendments to 36 CFR part 223 to conform it to the rules of practice established by this rule.

The Forest Resources Conservation and Shortage Relief Act of 1990 (Act) prohibits the export of unprocessed Federal timber west of the 100th meridian in the 48 contiguous states and the substitution of such unprocessed Federal timber for unprocessed private timber from the west that is exported. The Act allows a person with an approved sourcing area to export unprocessed private timber originating from outside of the sourcing area while purchasing Federal timber within the sourcing area. The Act states that the Secretary shall approve or disapprove sourcing areas on the record and after an opportunity for a hearing. Therefore, formal adjudication is required under the Administrative Procedure Act. The Act also requires that reviews of sourcing areas be conducted at least every 5 years in accordance with the procedures of the Act. Pursuant to section 556 of the Administrative Procedure Act, adjudications of sourcing area applications and formal reviews of sourcing areas will be subject to the rules of practice adopted by this rulemaking. Informal reviews of sourcing areas will be conducted in accordance with 36 CFR 223.191(e).

EFFECTIVE DATE: February 24, 1994.

FOR FURTHER INFORMATION CONTACT: Elizabeth Becker, Natural Resources Division, Office of the General Counsel, United States Department of Agriculture, room 4622 South Building, 14th and Independence Avenue, SW., Washington, DC 20250–1400. Telephone: (202) 720–9076.

SUPPLEMENTARY INFORMATION: The Forest Resources Conservation and Shortage Relief Act (Act), enacted August 20, 1990, prohibits both the export of unprocessed Federal logs originating west of the 100th meridian in the contiguous 48 states and the substitution of such unprocessed Federal logs for unprocessed private logs originating west of the 100th meridian in the contiguous 48 states that are exported.

The Act exempts persons with approved "sourcing areas" from the prohibition against substitution in certain circumstances. A sourcing area is the area from which an owner/manufacturer of logs obtains logs for his or her mill. To be approved, a sourcing area must be geographically and economically separate from any geographic area where the person harvests private timber for export. A person with an approved "sourcing area" may export unprocessed private logs whose origin is outside of the sourcing area, while continuing to purchase Federal logs within the sourcing area. Private logs originating from within the sourcing area may not be exported.

Section 490(c) of the Act states that the Secretary is to approve or disapprove the application, "on the record and after an opportunity for a hearing" 4 months after submission of a sourcing area application. Section 554 of Title 5, United States Code requires a formal adjudicatory process when a statute requires a determination to be made "on the record and after opportunity for an agency hearing." This rule amends 7 CFR part 1 by adding rules of practice governing sourcing area applications, pursuant to 5 U.S.C. 556. Specific rules governing sourcing area adjudications are necessary because of the short time in which the statute requires decisions to be made (4 months), and the unique procedural posture of sourcing area applications; i.e., sourcing area applications are submitted by a party other than the agency, expect in certain cases, pursuant to a review of a sourcing area.

This rule also amends 7 CFR 2.35 by deleting the words "in sourcing area adjudications under the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*)", and adding, in their place, the words "in adjudication proceedings subject to the 'Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*)' set forth in 7 CFR part 1, subpart M;".

Due to the amendments to 7 CFR parts 1 and 2, adopted by this rule, it is necessary in this rule, to make technical amendments to 36 CFR part 223 to conform it to the rules of practice, established by this rule, which govern the adjudication of sourcing area applications pursuant to the Act. This rule amends the rules governing initial sourcing applicants, published in an interim rule at 55 FR 48572 (Nov. 20, 1990). Specifically to conform the procedures in the interim rule to this rule, for ongoing applications, 36 CFR 223.190 is amended as follows:

1. Section 223.190(g) is revised to state that the application review process will be conducted pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), found at 7 CFR part 1, subpart M.

2. Section 223.190(h) (introductory text) and (h)(1)–(3) are removed.

3. Section 223.190(h)(4) is redesignated as 36 CFR 223.190(h) and is revised to state that a final decision will be issued within four (4) months of receipt of the sourcing area application or initiation date of the formal review of the sourcing area.

4. Section 223.190(h)(5) is redesignated as 36 CFR 223.190(i), and 36 CFR 223.190(h)(5)(i)–(iv) are redesignated as 36 CFR 223.190(i), (1)–(4).

5. Newly redesignated 36 CFR 223.190(i)(1) is amended by deleting the words "approving official" and adding, in their place, the words "the Administrative Law Judge, or, on appeal, the Judicial Officer."

This rule also makes technical amendments to 36 CFR 223.191(e) to conform the sourcing area review procedures to the rules of practice adopted in this rule (36 CFR 223.191 was published in a final rulemaking at 56 FR 65834, December 19, 1991). Specifically, this rule removes from 36 CFR 223.191(e) the words "deciding official" and adds, in their place, the words "the Administrative Law Judge, or, on appeal, the Judicial Officer." This rule also amends the following sentence in paragraph (e), "The deciding official shall, on the record and after opportunity for a hearing, approve or disapprove the sourcing area being reviewed" by adding to the end of the sentence the words "pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*), found at 7 CFR part 1, subpart M:".

Environmental Impact

This rulemaking consists primarily of technical and administrative changes related to the rules of practice governing the adjudication of sourcing area applications pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*). No extraordinary circumstances have been identified that might cause this proposed action to have a significant effect on the human environment. Therefore, this rulemaking is categorically excluded from documentation in an Environmental Impact Statement or an Environmental Assessment (40 CFR 1508.4; Forest Service Handbook 1909.15, Environmental Policy and Procedures, § 31.1b(2), 57 FR 43208, September 18, 1992).

Paperwork Reduction Act

This action contains no new or additional recordkeeping and reporting requirements, and contains no collections of information as defined in the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and its implementing regulations at 5 CFR part 1320. Therefore, the Paperwork Reduction Act and its implementing regulations do not apply to this rulemaking.

Regulatory Impact

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12866. Finally, this action is not a rule as defined in Public Law No. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

This rule has been reviewed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that the rule does not pose the risk of a taking of constitutionally protected private property.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under this rule: (1) All state and local laws and regulations that are in conflict with this rule or which could impede its full implementation will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) No administrative proceedings are required before parties may file suit in court challenging its provisions.

List of Subjects

7 CFR Part 1

Office of the Secretary of Agriculture, Administrative practice and procedure.

7 CFR Part 2

Delegations of authority (government agencies).

36 CFR Part 223

Exports, Government contracts, National Forests, Reporting requirements, Timber sales.

Therefore, for the reasons set forth in the preamble, parts 1 and 2 of title 7 and part 223 of Title 36 of the Code of Federal Regulations are amended as set forth below.

Title 7

PART 1—ADMINISTRATIVE REGULATIONS

1. The authority citation of part 1 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

2. Amend part 1 by adding a new subpart M to read as follows:

Subpart M—Rules of Practice Governing Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, et seq.)

Sec.

1.410 Meaning of words.
1.411 Definitions.
1.412 Institution of proceedings.
1.413 Submission of a sourcing area application.
1.414 Docket number.
1.415 Notification of proceedings.
1.416 Comment period.
1.417 Review period.
1.418 Procedure upon no request for hearing.
1.419 Amendment of a sourcing area application.
1.420. Consent recommendation.
1.421 Prehearing conferences and procedures.
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1.423 Post-hearing procedure.
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1.426 Appeal to Judicial Officer.
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1.428 Depositions.
1.429 Ex parte communications.

Subpart M—Rules of Practice Governing Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, et seq.)

Authority: 5 U.S.C. 556 and 16 U.S.C. 620, *et seq.*

§ 1.410 Meaning of words.

As used in these procedures, words in the singular form shall be deemed to import the plural, and vice versa, as the circumstance may require.

§ 1.411 Definitions.

As used in these procedures, the terms as defined in the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620, *et seq.* (Act) and in the regulations issued thereunder, shall apply with equal force and effect. In addition and except as may be provided otherwise in these procedures:

(a) *Applicant* or *Sourcing area applicant* means a person who submits a sourcing area application pursuant to these rules, or a person who sourcing area is subject to formal review pursuant to 36 CFR 223.191(e).

(b) *Decision" means:*

(1) The Judge's initial decision made in accordance with the provisions of 5 U.S.C. 554, 558, 557, and 16 U.S.C. 620, *et seq.* and 36 CFR 223.190 and 223.191(e), which includes the Judge's findings and conclusions and the reasons or basis therefore on all material issues of fact, law or discretion, orders and rulings on proposed findings, conclusions and orders submitted by the parties; and

(2) The decision and order by the Judicial officer upon appeal of the Judge's decision.

(c) *Determination* is synonymous with *decision.*

(d) *Hearing* means that part of the proceeding which may be requested by a party of record, and which involves the submission of additional evidence before the Administrative Law Judge for the record in the proceeding.

(e) *Hearing Clerk* means the Office of the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250.

(f) *Judge* means any Administrative Law Judge Appointed pursuant to 5 U.S.C. 3105 and assigned to the proceeding involved.

(g) *Judicial Officer* means an official of the United States Department of Agriculture delegated authority by the Secretary of Agriculture, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–459g) and Reorganization Plan No. 2 of 1953 (5 U.S.C. 1988 ed., appendix, p. 1280), to perform the function involved (7 CFR 235(a)), or the Secretary of Agriculture, if the authority so delegated is exercised by the Secretary.

(h) *Party of record* or *Party* is a party to the proceeding to determine approval or disapproval of a sourcing area application, including the proceeding for formal review of a sourcing area. The sourcing area applicant and persons who submit written comments on the sourcing area application at issue during the 30 calendar day comment period, including the Regional Forester, are the parties of record. For purposes of a formal review of a sourcing area, the holder of the sourcing area that is the subject of the review and persons who submit written comments on the sourcing area application at issue during the 30 calendar day comment period after institution of the formal review, including the Regional Forester, are the parties of record.

(i) *Sourcing Area Applicotion* means the application by which a person applies for a sourcing area or the application by which a sourcing area holder applies for a formal review of a sourcing area.

§ 1.412 Institution of proceedings.

(a) *Sourcing area applications.* The proceeding for determining sourcing areas shall be instituted by receipt of a sourcing area application by the Office of Administrative Law Judges, pursuant to 36 CFR 223.190.

(b) *Review of sourcing areas.* Informal review of a sourcing area precedes institution of a formal review as follows:

(1) *Request by Sourcing area holder.* A sourcing area holder who wishes to begin a review of a sourcing area shall send a written request for a review to the Regional Forester of the region in which the manufacturing facility being sourced is located. The request shall state the reason for the request.

(i) *Informal review.* The Regional Forester shall begin an informal review, pursuant to 36 CFR 223.191(e), based on the written request. If no agreement is reached in the informal review process, the Regional Forester of the region in which the manufacturing facility being sourced is located shall transmit to the Office of Administrative Law Judges any submissions received during the informal review process, within 5 working days of the meeting convened during the informal review (36 CFR 223.191)e)). Agreement is reached when all persons attending the meeting convened by the Regional Forester to resolve differences as to the proper sourcing area, including the Regional Forester, sign the document describing the sourcing area.

(ii) *Formal review.* Institution by a sourcing area holder of a formal review of the sourcing area occurs if the informal review process does not result in agreement among the parties, and the sourcing area holder submits a sourcing area application to the Office of the Administrative Law Judges, pursuant to 36 CFR 223.190, within 10 working days after the meeting convened by the Regional Forester as part of the informal process.

(2) *Initiation of Review By Agency.* If the Forest Service wishes to begin a review of a sourcing area, the Regional Forester of the region in which the manufacturing facility being sourced is located shall begin an informal review, pursuant to 36 CFR 223.191(e). If no agreement is reached in the informal review process, the Regional Forester of the region in which the manufacturing facility being sourced is located shall transmit to the Office of Administrative Law Judges any submissions received during the informal review process, within 5 working days of the meeting convened during the informal review (36 CFR 223.191(e)). Agreement is reached when all persons attending the meeting convened by the Regional Forester to resolve differences as to the proper sourcing area, including the Regional Forester, sign the document describing the sourcing area. Institution by the Forest Service of a formal review of a sourcing area occurs when the Office of Administrative Law Judges receives the papers and documents submitted during the informal review process.

§ 1.413 Submission of a sourcing area application.

A sourcing area applicant shall send the application to the Office of Administrative Law Judges and shall, simultaneously, send a copy of the sourcing area application to the Forest Service Regional Forester of the region in which the manufacturing facility being sourced is located. Where the sourcing area application will cover purchases from more than one agency, application is to be made to the agency from which the applicant expects to purchase the preponderance of its Federal timber. The sourcing area applicant must also send a complete copy of the application to each agency concerned. The lead agency shall make the decision in consultation with, and upon co-signature of, the other agency(ies) concerned. Sourcing area applications must be signed by the persons making the request, or in the case of a corporation, by its chief executive officer, and must be notarized. The application shall be on company letterhead.

§ 1.414 Docket number.

Each proceeding, following its institution, shall be assigned a docket number by the Hearing Clerk, and thereafter the proceeding shall be referred to by such number. The Hearing Clerk shall notify the sourcing area applicant and the Regional Forester to whom the applicant submitted a copy of the application of the docket number and the name of the Judge to whom the case has been assigned. In a formal review of a sourcing area instituted by the Forest Service, the Hearing Clerk shall inform the sourcing area holder whose sourcing area is subject to the review and the Regional Forester who submitted the comments instituting the formal review of the docket number and the name of the Judge to whom the case has been assigned.

§ 1.415 Notification of proceedings.

The Regional Forester of the region in which the manufacturing facility being sourced is located shall notify

prospective parties of the sourcing area application and/or the formal review of a sourcing area after receipt of the docket number and the name of the Judge to whom the proceeding has been assigned, pursuant to § 1.414 of these rules. Notification will consist of publication of a notice in newspapers of general circulation in the area included in the sourcing area application. The Regional Forester shall promptly notify the Hearing Clerk of the date of the publication and the notice. Additional notification will be made through agency mailing lists. Notification shall include the docket number, the name of the Judge to whom the case has been assigned and the mailing address of the Judge. In the case of a sourcing area review, notification will also state the reason for the review.

§ 1.416 Comment period.

Written comments on a sourcing area application or on a formal review of a sourcing area shall include the docket number and may be submitted to the Judge for 30 calendar days following publication of the notice. Persons submitting comments shall send a copy of the comments to the Regional Forester of the region in which the manufacturing facility being sourced is located. All comments must be received by the Judge and by the Regional Forester by the 30th day of the comment period.

§ 1.417 Review period.

(a) *Review of comments.* The sourcing area applicant, the sourcing area holder whose sourcing area is the subject of a formal review and other parties who submitted written comments will be allowed 10 working days from the close of the comment period to review the written comments at the Regional Forester's office during regular business hours.

(b) *Recommendation to Judge to approve or disapprove a sourcing area application.* During the 10 working day review period, parties who have submitted written comments on an application or on a formal review of a sourcing area may submit a written recommendation to the Judge, including an analysis of the facts and law as to why the Judge should approve or disapprove that application. A sourcing area applicant whose sourcing area application is the subject of the proceeding, and a sourcing area holder whose sourcing area is the subject of a formal review, may also submit a written recommendation to the Judge. The recommendation must be postmarked no later than the 10th working day of the review period.

(c) *Request for a hearing.* The sourcing area applicant, the sourcing area holder whose sourcing area is the subject of a formal review and persons who submitted written comments, or the attorney of record for a party in the proceeding, may review the comments and request a hearing within 10 working days after the comment period, pursuant to 36 CFR 233.190(h)(2). The request must be postmarked no later than the 10th working day of the review period. An attorney may file an appearance of record prior to the scheduled hearing. The request for a hearing shall be filed with the Judge. The hearing is for the purpose of supplementing the written record submitted prior to the hearing. The written record submitted prior to the hearing consists of papers and documents submitted during the 30 calendar day comment period, the 10 working day review period, and any motions submitted before the hearing. For purposes of a formal review of a sourcing area, the written record also consists of the papers and documents submitted during the informal review.

(1) *Contents of the notice of hearing.* The Judge shall issue a notice of hearing regarding a particular sourcing area application or regarding formal review of a sourcing area application or regarding formal review of a sourcing area to all parties of record for that application or formal review. The notice of hearing shall contain a reference to the authority under which the sourcing area is proposed or formally reviewed; shall define the scope of the hearing; shall contain a reference to the sourcing area that is the subject of the hearing; and shall state the date, time and place of such hearing; and shall state the date, time and place of such hearing; which shall be set with due regard for the necessity and convenience of the parties of record or their representatives. The Judge shall schedule a hearing no later than 21 calendar days after the 10 working day period for reviewing written comments ends. The Judge may consolidate requests for a hearing regarding the same application.

(2) *Giving notice of hearing.* The notice of hearing shall be served upon the parties of record for the sourcing area application at issue by the Hearing Clerk.

§ 1.418 Procedure upon no request for hearing.

If no hearing is requested by a party of record, the Judge shall issue an initial decision based on the written record and without further procedure or hearing. If no hearing is requested, the written record consists of papers and documents submitted during the 30-day comment period, the 10-day review period, and includes motions submitted before the Judge issues an initial decision. For purposes of a formal review of a sourcing area, the written record also consists of the papers and documents submitted during the informal review. Copies of the decision shall be served by the Hearing Clerk upon each of the parties of record.

§ 1.419 Amendment of a sourcing area application.

The sourcing area applicant may move to amend the sourcing area application with clarifying and technical amendments at any time prior to the Judge's initial determination if there is no hearing, or prior to the close of the hearing if there is a hearing.

§ 1.420 Consent recommendation.

Any time before the Judge files the decision, the parties of record may enter a consent recommendation. Such consent recommendation shall be filed with the Hearing Clerk, signed by the parties with appropriate space for signature by the Judge. The consent recommendation shall contain an admission of the jurisdictional facts, the factual and legal basis for the recommended sourcing area, the consent to the issuance of the recommended decision as the final decision of the agency without further procedure and such other admissions or statements as may be recommended by the parties. The Judge shall review the recommendation to determine whether such recommendation conforms with the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), 36 CFR 223.190, 36 CFR 223.191(e) and these procedures. If the recommendation conforms to the aforementioned Act, regulations, and procedures, the Judge may enter such decision without further procedure, unless an error is apparent on the face of the document. If the Judge enters the decision, such decision shall have the same force and effect as a decision issued after full hearing and shall become final upon issuance to become effective in accordance with the terms of the decision.

§ 1.421 Prehearing conferences and procedures.

(a) *Purpose and Scope.* (1) Upon motion of a party of record or upon the Judge's own motion, the Judge may direct the parties or their counsel to attend a conference at any reasonable time, prior to or during the course of the hearing, when the Judge finds that the proceeding would be expedited by a prehearing conference. Reasonable

notice of the time and place of the conference shall be given. The Judge may order each of the parties to furnish at or subsequent to the conference any or all of the following:

(i) An outline of a party's position;

(ii) The facts upon which the party will rely;

(iii) The legal theories upon which the party will rely;

(iv) Copies of or a list of documents which the party anticipates introducing at the hearing; and

(v) A list of anticipated witnesses who will testify on behalf of the party. At the discretion of the party furnishing such list of witnesses, the names of the witnesses need not be furnished if they are otherwise identified in some meaningful way such as a short statement of the type of evidence they will offer.

(2) The Judge shall not order any of the foregoing procedures that a party can show is inappropriate or unwarranted under the circumstances of the particular determination.

(3) At the conference, the following matters shall be considered:

(i) The simplification of issues;

(ii) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(iii) The limitation of the number of expert or other witnesses;

(iv) Negotiation, compromise, or settlement of issues;

(v) The exchange of copies of proposed exhibits;

(vi) The identification of documents or matters of which official notice may be requested;

(vii) A schedule to be followed by the parties for completion of the actions decided at the conference; and

(viii) Such other matters as may expedite and aid in the disposition of the proceeding.

(b) *Reporting.* A prehearing conference will not be stenographically reported unless so directed by the Judge.

(c) *Action in lieu of personal attendance at a conference.* In the event the Judge concludes that personal attendance by the Judge and the parties or counsel at a prehearing conference is unwarranted or impracticable, but determines that a conference would expedite the proceeding, the Judge may conduct such conference by telephone or correspondence.

(d) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the Judge concludes that a stenographic report shall suffice, or if the Judge elects to make a statement on the record at the hearing summarizing the actions taken.

§ 1.422 Conduct of the Hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing. If any change in the time or place of the hearing is made, the Judge shall file with the Hearing Clerk a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral script, or actual notice is given to the parties.

(b) *Appearances.* The parties may appear in person or by attorney of record in the proceeding. Any party who desires to be heard in person shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through counsel, such person or such counsel shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names, addresses, and occupations of such person and such counsel. Any such person or such counsel shall give such other information respecting his appearance as the Judge may request. Any person who appears as counsel must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(c) *Failure to appear.* A party of record who, after being duly notified, fails to appear at the hearing without good cause, shall be deemed to have waived the right to an oral hearing in the proceeding. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Judge's decision.

(d) *Order of proceeding.* The Judge shall determine the order in which the parties shall proceed.

(e) *Evidence*—(1) *In general.* (i) The testimony of witnesses at a hearing shall be on oath or affirmation and shall be subject to cross-examination. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts. The Judge may require that testimony on one issue raised by numerous parties be heard at one time.

(ii) Upon a finding of good cause, the Judge may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(iii) After a witness has testified on direct examination, any other party may request and obtain the production of any statement, or part thereof, of such witness in the possession of the party who called the witness, which relates to the subject matter as to which the witness has testified. Such production shall be made according to the procedures and subject to the definitions and limitations prescribed in the Jencks Act (18 U.S.C. 3500).

(iv) Evidence which is immaterial, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable.

(2) *Objections.* (i) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to any other ruling of the Judge, the party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the Judge.

(ii) Only objections made before the Judge may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness shall be admitted in the manner provided in and subject to the provisions of § 1.228 of these procedures.

(4) *Exhibits.* Unless the Judge finds that the furnishing of copies is impracticable, two copies of each exhibit shall be filed with the Judge. The party submitting the exhibit shall serve on every other party of record a copy of the exhibit, pursuant to § 1.427(c) of these procedures. A true copy of an exhibit may be substituted for the original.

(5) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be prima facie evidence of the relevant facts stated therein. Such record or document shall be evidenced by an official publication thereof or a copy certified by a person having legal authority to make such certification.

(6) *Official notice.* Official notice shall be taken of such matters as are judicially noted by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided,* That the parties shall be given adequate notice of matters so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

(7) *Offer of proof.* Whenever evidence is excluded by the Judge, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it shall be included in the transcript in toto. If the evidence consists of an exhibit, it shall be marked for identification and inserted in the hearing record.

(f) *Transcript.* Hearings shall be recorded and transcribed verbatim. Transcripts thereof shall be made available to any person, at actual cost of duplication (5 U.S.C. App. 2, section 11).

§ 1.423 Post-hearing procedure.

(a) *Corrections to transcript.* (1) Within the period of time fixed by the Judge, any party may file a motion proposing corrections to the transcript.

(2) Unless a party files such motion in the manner prescribed, the transcript shall be presumed, except for obvious typographical errors, to be complete.

(3) As soon as practicable after the close of the hearing and after consideration of any timely objections filed as to the transcript, the Judge shall issue an order making any corrections to the transcript which the Judge finds are warranted, which corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the origianl text).

(b) *Proposed findings of fact, conclusions, order, and brief.* Prior to the close of the hearing, each party may submit for consideration proposed findings of fact, conclusions, order, and brief in support thereof. A copy of each such document filed by a party shall be served upon each of the other parties.

(c) *Judge's decision.* (1) The Judge may, upon motion of any party or in his or her own discretion, issue a decision orally at the close of the hearing, or within 10 calendar days after the close of the hearing, or within 10 calendar days after submission of the record, if no hearing is requested.

(2) If the decision is announced orally, a copy thereof, excerpted from the transcript of the record, shall be furnished to the parties by the Hearing Clerk. Irrespective of the date such copy is mailed, the issuance date of the decision shall be the date the oral decision was announced.

(3) If the decision is in writing, it shall be filed with the Hearing Clerk and served upon the parties as provided in § 1.427.

(4) The Judge's decision shall become effective without further proceedings 21 calendar days after the issuance of the decision, if announced orally at the hearing, or if the decision is in writing, 21 calendar days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to § 1.426; *Provided, however,* that no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

(5) The Judicial Officer shall issue a decision within 10 calendar days of the receipt of the response to the appeal.

§ 1.424 Motions and requests.

(a) *General.* All motions and requests shall be filed with the Hearing Clerk, and served upon all the parties except motions and requests made on the record during the oral hearing.

(b) *Motions entertained.* No dispositive motions, including motions to dismiss on the pleadings and motions for summary judgment, shall be entertained unless specifically mentioned herein or allowed in the discretion of the Judge.

(c) *Contents.* All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefore.

(d) *Response to motions and requests.* Within 5 days after service of any written motion or request, or within such shorter or longer period as may be fixed by the Judge, an opposing party may file a response to the motion or request. The other party shall have no right to reply to the response.

§ 1.425 Judges.

(a) *Assignment.* No Judge shall be assigned to serve in any proceeding who:

(1) Has any pecuniary interest in any matter or business involved in the proceeding;

(2) Is related within the third degree by blood or marriage to any party to the proceeding; or

(3) Has any conflict of interest which might impair the Judge's objectivity in the proceeding.

(b) *Disqualification of Judge.* (1) Any party to the proceeding may, by motion made to the Judge, request that the Judge withdraw from the proceeding because of an alleged disqualifying reason. Such motion shall set forth with particularity the grounds of alleged disqualification. The Judge may then either rule upon or certify the motion to the Secretary, but not both.

(2) A Judge shall withdraw from any proceeding for any reason deemed by the Judge to be disqualifying.

(c) *Powers.* Subject to review as provided elsewhere in this part, the Judge, in any assigned proceeding shall have power to:

(1) Rule upon motions and requests;

(2) Set the time and place of a pre-hearing conference and the hearing, adjourn the hearing from time to time, and change the time and place of hearing;

(3) Administer oaths and affirmations;

(4) Request the presence of and examine witnesses and receive relevant evidence at the hearing;

(5) Take or order the taking of depositions as authorized under these rules;

(6) Admit or exclude evidence;

(7) Hear oral argument on facts or law;

(8) Do all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons;

(9) Request additional information from any party to aid in the Judge's determination; and

(10) Take all other actions authorized under these procedures.

(d) *Who may act in the absence of the Judge.* In case of the absence of the Judge or the Judge's inability to act, the powers and duties to be performed by the Judge under these rules of practice in connection with any assigned proceeding may, without abatement of the proceeding unless otherwise directed by the Chief Judge, be assigned to any other Judge.

§ 1.426 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 10 calendar days after receiving service of the Judge's decision, a party who disagrees with the decision, or any part thereof, or any ruling by the Judge or any alleged deprivation of rights, may appeal such decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.422(e)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other rulings made before the Judge may be relied upon in an appeal. Each issue set forth in the petition, and the arguments thereon, shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations of the record, statutes, regulations or authorities being relied upon in support thereof. A brief may be filed in support of the appeal simultaneously with the petition. A party filing a petition of appeal to the Judicial Officer, and any brief in support thereof, shall serve the other parties to the proceeding with a copy of the petition and supporting brief. The copies of the petition and supporting brief shall be served on the parties to the proceeding with a copy of the petition and supporting brief. The copies of the petition and supporting brief shall be served on the parties to the proceeding on the same day as the petition and supporting brief are filed with the Judicial Officer.

(b) *Response to appeal petition.* Within 10 calendar days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised. A party filing a response to a petition of appeal to the Judicial Officer shall serve the other parties to the proceeding with a copy of the response. The copies of the response shall be served on the parties to the proceeding on the same day as the response is filed with the Judicial Officer.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: The pleadings; motions and requests filed and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a prehearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Decision of the Judicial Officer on appeal.* The Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal within 4 months after the institution of the proceeding, pursuant to 16 U.S.C. 620b(c)(3). If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by a party as final for purposes of judicial review.

§ 1.427 Filing; identification of parties of record; service; and computation of time.

(a) *Filing; number of copies.* Except as otherwise provided in this section, all documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be filed in duplicate. Any document or paper required or authorized under the rules in this part to be filed with the Hearing Clerk shall, during the course of an oral hearing, be filed with the Judge.

(b) parties of record shall receive a list from the Hearing Clerk of the names and addresses of all parties of record immediately after the close of the comment period.

(c) *Service; proof of service.* (1) Each party of record is responsible for serving on every other party and to the Judge all papers and documents submitted after the comment period. Service shall be made either:

(i) by delivering a copy of the document or paper to the individual to be served or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation or association to be served, or to the attorney of record representing such individual, partnership, corporation, organization, or association; or

(ii) by leaving a copy of the document or paper at the principal office or place of business or residence of such individual, partnership, corporation, organization, or association, or of the attorney or agent of record and mailing by regular mail another copy to such person at such address; or

(iii) by registering or certifying and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to the attorney or agent of record, at the last known residence or principal office or place of business of such person: *Provided,* That if the registered or certified document or paper is returned undelivered because the addressee refused or failed to accept delivery, the document or paper shall be served by remailing it by regular mail; or

(iv) by mailing the document or paper by regular mail.

(2) Proof of service hereunder shall be made by the certificate of the person who actually made the service: *Provided,* that if the service is made by mail, as outlined in paragraph (b)(3) of this section, proof of service shall be made by the return post-office receipt, in the case of registered or certified mail, and if that service is made by regular mail, as outlined in paragraphs (b)(3) and (b)(4) of this section, proof of service shall be made by the certificate of the person who mailed the matter by regular mail. The certificate and post-office receipt contemplated herein shall be filed with the Hearing Clerk, and made a part of the record of the proceeding. The Judge and the Hearing Clerk shall follow the procedures outlined in (c) for service of papers or documents signed by the Judge and/or the Hearing Clerk.

(d) *Effective date of filing.* Any document or paper required or authorized under the rules in this part to be filed shall be deemed to be filed at the time when it reaches the Hearing Clerk; or, if authorized to be filed with another officer or employee of the Department it shall be deemed to be filed at the time when it reaches such officer or employee.

(e) *Computations of time.* Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper except as provided in these rules; *Provided,* that, when such time expires on a Saturday, Sunday, or Federal holiday, such period shall be extended to include the next following business day.

§ 1.428 Depositions.

(a) *Motion for taking deposition.* Upon the motion of a party to the proceeding, the Judge may, at any time after the filing of the submission, order the taking of testimony by deposition. The Motion shall be in writing, shall be filed with the Hearing Clerk, and shall set forth:

(1) The name and address of the proposed deponent;

(2) The name and address of the person (referred to hereafter in this section as the "officer") qualified under the regulations in this part to take depositions, before whom the proposed examination is to be made;

(3) The proposed time and place of the examination; and

(4) The reasons why such deposition should be taken, which shall be solely for the purpose of eliciting testimony which otherwise might not be available at the time of the hearing, for uses as provided in paragraph (g) of this section.

(b) *Judge's order for taking deposition.* (1) If the Judge finds that testimony may not be otherwise available at the hearing, the taking of the deposition may be ordered. The order shall be served upon the parties, and shall state:

(i) The time and place of the examination;

(ii) The name of the officer before whom the examination is to be made; and

(iii) The name of the deponent.

(2) The officer and the time and place need not be the same as those suggested in the motion.

(c) *Qualifications of officer.* The deposition shall be made before the Judge or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths.

(d) *Procedure on examinations.* (1) The deponent shall be subject to cross-examination. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. The questions propounded, together with all objections made (but not including argument or debate), shall

be recorded verbatim. In lieu of oral examination, parties may transmit written questions to the officer prior to the examination and the officer shall propound such questions to the deponent.

(2) The applicant shall arrange for the examination of the witness either by oral examination, or by written questions upon agreement of the parties or as directed by the Judge. If the examination is conducted by means of written questions, copies of the questions shall be served upon the other party to the proceeding and filed with the officer and the other party may serve cross questions and file them with the officer at any time prior to the time of the examination.

(e) *Certification by officer.* The officer shall certify on the deposition that the deponent was duly sworn and that the deposition is a true record of the deponent's testimony. The officer shall then securely seal the deposition, together with one copy thereof (unless there are more than two parties in the proceeding, in which case there should be another copy for each additional party), in an envelope and mail the same by registered or certified mail to the Hearing Clerk.

(f) *Corrections to the transcript.* (1) At any time prior to the hearing any party may file a motion proposing corrections to the transcript of the deposition.

(2) Unless a party files such a motion in the manner prescribed, the transcript shall be presumed, except for obvious typographical errors, to be a true, correct, and complete transcript of the testimony given in the deposition proceeding and to contain an accurate description or reference to all exhibits in connection therewith, and shall be deemed to be certified correct without further procedure.

(3) At any time prior to use of the deposition in accordance with paragraph (g) of this section and after consideration of any objections filed thereto, the Judge may issue an order making any corrections in the transcript which the Judge finds are warranted, which corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the original text).

(g) *Use of deposition.* A deposition ordered and taken in accordance with the provisions of this section may be used in a proceeding under these rules if the Judge finds that the evidence is otherwise admissible and that the witness is dead; that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or that such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If the party upon whose motion the deposition was taken refuses to offer it in evidence, any other party may offer the deposition or any thereof in evidence. If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part which ought in fairness to be considered with the part introduced and any party may introduce any other parts.

§ 1.429 Ex parte communications.

(a) At no stage of the proceeding between its institution and issuance of the final decision shall an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding, or with any representative of such person: *Provided,* That, procedural matters and status reports shall not be included within this limitation; and *Provided further,* That an employee of the Department who is or may be involved in the decisional process of the proceeding may discuss the merits of the proceeding if all parties of record have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record.

(b) No interested person shall make or knowingly cause to be made to the Judge an ex parte communication relevant to the merits of the proceeding.

(c) If the Judge reviews an ex parte communication in violation of this section, the one who receives the communication shall place in the public record of the proceeding:

(1) All such written communication;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Judge may, to the extent consistent with the interests of justice and the policy of the underlying statute, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(e) To the extent consistent with the interests of justice and the policy of the underlying statute, a violation of this section shall be sufficient grounds for a decision adverse to the party who knowingly commits a violation of this section or who knowingly causes such a violation occur.

(f) For purposes of this section "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or the proceeding.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

3. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart D—Delegation of Authority to Other General Officers and Agency Heads

§ 2.35 [Amended]

4. Amended § 2.35 by removing in paragraph (a) the words "in sourcing area adjudications under the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*);", and adding, in their place, the words "in adjudication proceedings subject to the 'Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*)' set forth in 7 CFR part 1, subpart M;".

Title 36

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

5. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618; 104 Stat. 714–726, 16 U.S.C. 620–620h, unless otherwise noted.

Subpart F—Interim Rules to Implement the Forest Resources Conservation and Shortage Relief Act 1990

6. Amend § 223.190 as follows:

a. Remove paragraph (h) introductory text, and (h)(1) through (3);

b. Redesignate paragraph (h)(4) as paragraph (h) and redesignate paragraphs (h)(5) (i) through (iv) as paragraphs (i) (1) through (4);

c. In newly redesignated paragraph (i)(1), remove the words "approving official", and add, in their place, the words, "the Administrative Law Judge, or, on appeal, the Judicial Officer"; and

d. Revise paragraph (g) and newly designated paragraph (h) to read as follows:

§ 223.190 Sourcing area procedures.

* * * * *

(g) The sourcing area application review process will be conducted pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et. seq.*), found at 7 CFR part 1, subpart M.

(h) A final decision on a sourcing area application or a formal sourcing area review will be issued within four (4) months of the receipt of the application or initiation of the review.

* * * * *

7. Amend § 223.191 by removing the words "deciding official's" in the second sentence of paragraph (e)(1) and adding, in their place, the words, "the Administrative Law Judge, or, on appeal, the Judicial Officer", and by revising the last sentence in paragraph (e)(1) to read as follows:

§ 223.191 Sourcing area disapproval and review procedures.

* * * * *

(e) * * *

(1) * * * The deciding official shall on the record and after opportunity for a hearing, approve or disapprove the sourcing area being reviewed pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*), found at 7 CFR part 1, subpart M.

* * * * *

Dated: February 11, 1994.

Mike Espy,

Secretary.

[FR Doc. 94–3884 Filed 2–23–94; 8:45 am]

BILLING CODE 3410–11–M

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket Nos. R–0800 and R–0809]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation O to permit the aggregate limit on lending to insiders by eligible, adequately capitalized small banks to be increased from 100 percent of unimpaired capital and surplus to 200. The Board also is revising Regulation O to permit banks to follow alternative recordkeeping procedures on loans to insiders of affiliates, to narrow the definition of "extension of credit," and to adopt certain exceptions to the general restrictions on lending to insiders and the special restrictions on lending to executive officers. Other minor revisions clarifying certain exemptions and conforming certain provisions to the enabling statutes are included as well.

EFFECTIVE DATE: Effective February 18, 1994.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Senior Attorney (202/452–3236), Gordon Miller, Attorney (202/452–2534), or Stephen Van Meter, Attorney (202/452–3554), Legal Division; Stephen M. Lovette, Manager of Policy Implementation (202/452–3469), or Mark Benton, Senior Financial Analyst (202/452–5205), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th & C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background

The Board is making permanent, with certain additional qualifications, its interim rule permitting small, adequately capitalized banks to extend credit to insiders up to 200 percent of unimpaired capital and surplus, in circumstances where such lending is necessary to serve local credit needs or to attract directors. The Board also is adopting amendments to Regulation O (12 CFR part 215) designed to increase the ability of banks to make extensions of credit that pose minimal risk of loss, to eliminate recordkeeping requirements that impose a paperwork burden but do not significantly aid compliance with the regulation, and to remove certain transactions from the regulation's coverage consistent with bank safety and soundness. The above amendments are expected to increase the availability of credit, particularly in communities served by small banks, and to reduce the cost of compliance with the regulation.

In view of the extensive changes made to Regulation O as a result of this rulemaking, the Board is restating subpart A of Regulation O as amended, rather than separately describing each amendment.

The Board is making the rule effective immediately in order to prevent a lapse in the 200 percent lending limit available to eligible banks under the interim rule for loans to insiders, and to make all other provisions effective at the same time.

II. The 200 Percent Aggregate Lending Limit

Section 22(h) of the Federal Reserve Act (12 U.S.C. 375b) restricts the amounts and terms of extensions of credit from a bank to executive officers, directors, and principal shareholders of the bank and its holding company affiliates and to any related interest of those persons (insiders). Section 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA)[1] amended section 22(h) to impose an aggregate limit on the amount a bank may lend to its insiders as a class. See 12 U.S.C. 375b(5). In general, the limit is equal to 100 percent of the bank's unimpaired capital and unimpaired surplus. The Board is authorized, however, to make exceptions to the general limit for banks with deposits of less than $100 million "if the Board determines that the exceptions are important to avoid constricting the availability of credit in small communities or to attract directors of such banks." 12 U.S.C. 375b(5)(C). The higher limit may not exceed 200 percent of the bank's unimpaired capital and unimpaired surplus. *Id.*

Effective May 18, 1992, the Board amended Regulation O, which implements section 22(h), to incorporate the aggregate lending limit added by FDICIA. The general limit on lending to insiders and their related interests—100 percent of the bank's unimpaired capital and unimpaired surplus—was adopted. The Board also decided as an interim measure to permit banks with deposits under $100 million to adopt a higher limit, not to exceed 200 percent of the bank's unimpaired capital and unimpaired surplus, for a period of one year to expire May 18, 1993. The interim period was intended to allow the Board to consult with the other federal banking agencies and collect data on the lending practices of banks in order to analyze the effect of the aggregate lending limit on the availability of credit and service of directors. See 57 FR 22417, 22420, May 28, 1992.

The Board subsequently extended the interim rule for six months, through November 18, 1993, in order to obtain public comments on whether the

[1] Pubic Law 102–242, Section 306, 105 Stat. 2236 (1991).

interim rule should be made permanent, modified, or permitted to expire. See 58 FR 28492, May 14, 1993. The Board thereafter extended the interim rule an additional three months, through February 18, 1994, in order to review the written comments, call reports of small banks, and relevant information from other governmental agencies. See 58 FR 61803, November 23, 1993.

The interim rule established requirements that a small bank had to meet in order to adopt a higher aggregate lending limit. Under that rule, the board of directors of the bank had to determine by resolution that a higher aggregate lending limit was consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to its insiders, and that a higher limit was necessary to attract or retain directors or to prevent restricting the availability of credit in small communities. The resolution had to set forth the facts and reasoning that supported this determination, including the amount of the bank's aggregate lending to insiders, expressed as a percentage of unimpaired capital and unimpaired surplus, as of the date of the resolution. The bank also was required to submit its resolution to the appropriate federal banking agency, with a copy to the Board. Finally, the bank had to meet or exceed all applicable capital requirements. See 12 CFR 215.4(d)(2).

In response to the notice of the extension of the interim rule, the Board received 147 written comments, with 144 respondents in favor of making the 200 percent limit permanent. Small banks subject to the rule submitted the large majority of comments. Other commenters included numerous state and national banking trade associations, several state banking superintendents and Federal Reserve Banks, individual bank directors, bank holding companies, and law firms.

Adverse comment focused on the relatively low level of use of the interim provision. Two of the three adverse commenters argued that a higher aggregate lending limit was not important to credit or director availability because very few banks had used the interim rule. One state banking commissioner noted that of the 88 small banks it supervised, only one had aggregate insider loans in excess of 60 percent of unimpaired capital and unimpaired surplus as of March 31, 1993.

Call report data reflected a similar low level of aggregate insider lending. As of September 30, 1993, of a total population of 7,435 banks with deposits of less than $100 million, only 17 reported loans to insiders in an amount greater than 100 percent of capital. A total of 131 banks reported insider loans greater than 60 percent of capital. Only 54 banks have notified the Board pursuant to the interim rule that they have adopted a higher aggregate lending limit.

In support of the proposed rule, sixty-two commenters stated that a higher aggregate lending limit was important in order that small banks not be forced to choose between refusing credit to qualified insiders and asking insiders to resign as directors. Several banks observed that this was a particular hardship because qualified directors typically are active businesspersons whose businesses have substantial yet healthy credit requirements.

Fifteen commenters observed that the aggregate lending limit was a particular hardship in small communities and rural markets because in those settings small banks were dependent on insiders as a loan source, insiders had fewer alternative credit sources, and insiders tended to be closely identified with their banks, making it difficult for them to seek credit from a competitor.

In order to demonstrate that the higher limit was being used and would have important benefits if made permanent, the Independent Bankers Association of America (IBAA) presented in its comment a survey of 8,057 small banks. Of 1,060 banks that responded to the survey, 152 reported that the general aggregate lending limit had prevented them from making a loan to an insider; 95 respondents reported that the aggregate lending limit had prevented them from naming an individual as a director; and 53 respondents reported that they had accepted a director resignation attributable to the aggregate lending limit.

Additional commenters presented a variety of reasons for the low level of use of the interim 200 percent limit: concern that the interim rule would be eliminated, thereby forcing banks to retract credit extended in reliance on it; historically low lending levels; loan participations as an alternative to approving a higher limit; and deferral of consideration of the issue by small banks whose insider loans had not matured since adoption of the interim rule. Some commenters also observed that the interim rule imposed detailed requirements and that some banks may have feared attracting additional regulatory scrutiny by adopting the interim rule.

After the close of the comment period, the General Accounting Office (GAO) provided to the Board a draft report on bank insider activities. The GAO reviewed banks that failed during 1990 and 1991 in order to determine whether insider practices contributed to the banks' failures. (The GAO did not evaluate any existing or proposed regulation in this area.) The GAO found that insider problems (which the GAO defined very broadly) were prevalent at failed banks, that banks with less than $100 million of assets were more likely than larger banks to be cited for insider problems, and that the most frequently cited violations were loans to insiders made in excess of lending limits and on preferential terms not available to the general public.

However, the GAO report did not establish a causal link between insider problems and bank failures. Rather, the GAO appeared to conclude that insider problems, as broadly defined by the GAO, were correlated with poor internal controls and underwriting practices. The GAO was not able to measure the actual level of insider lending at failed or troubled banks, and therefore was not able to address specifically the relationship of the actual level of insider lending to bank failures. The major GAO recommendations were for increased monitoring of insider lending and more effective follow-up on violations.

The Board has concluded that the concerns raised in the GAO report do not justify preventing qualified banks from utilizing a higher aggregate lending limit. If the higher limit should present safety and soundness problems at an institution, then the appropriate banking supervisor retains general authority to require a reduction in the level of insider loans. If problems should occur more generally, the Board retains authority to eliminate or reduce the exemption.

Although the 100 percent aggregate lending limit does not appear to be currently creating a widespread problem with credit or director availability, the Board has concluded that it does appear to pose important problems for banks in certain communities. Given the available data and the comments, the Board believes that the 100 percent limit is restricting the availability of credit and the recruitment of directors in communities where the proper certification can be made. In such circumstances, the Board believes that an eligible small bank should be permitted to establish a higher lending limit up to 200 percent of unimpaired capital and unimpaired surplus. Each eligible bank's board of directors will still be required to certify that the higher limit is necessary to avoid restricting credit or to assist in attracting directors and is consistent with prudent, safe, and sound banking practices.

The Board emphasizes that, as was the case prior to FDICIA, borrowing by insiders will continue to be subject to scrutiny during the examination process, including an evaluation of whether such borrowing represents an inappropriate concentration of loans.

In the final rule, the Board has adopted three modifications to the proposed rule. First, the Board has provided that to qualify for the higher lending limit, a bank must be in satisfactory overall condition as determined in the most recent report of examination of the bank, as well as being adequately capitalized, as was already required in the interim rule. Second, a provision has been added clarifying that a bank operating above the 100 percent limit that subsequently becomes ineligible for the higher limit may retain its existing insider loans but may not extend credit that would maintain aggregate insider lending in excess of 100 percent of unimpaired capital and surplus. Third, banks are not be required to file the required resolutions with their primary regulator or the Board, as was required by the interim rule. The resolutions are to be made available for inspection during the examination process.

III. Recordkeeping Procedures

Section 215.8 of Regulation O currently requires that each bank maintain records necessary for compliance with the insider lending restrictions of Regulation O. Specifically, banks are required to maintain records (1) identifying all directors, officers, and principal shareholders of the bank and its affiliates and all related interests of those persons (collectively, "insiders"), and (2) specifying the amounts and terms of all credit extended to these insiders. Section 215.8 further requires each bank to request on an annual basis that its insiders and insiders of its affiliates identify their related interests. The list of insiders is then used by the bank to identify all existing or proposed extensions of credit covered by Regulation O, to monitor the amount thereof subject to the individual and aggregate lending limits, and to ensure that all appropriate approval procedures are followed.

Since adoption of the initial recordkeeping requirement, the annual survey has grown in size and complexity. Bank holding companies have become increasingly large and diversified, and commercial organizations have acquired credit card banks and limited purpose banks. Thus, for example, a small, grandfathered bank owned by a large diversified holding company may have hundreds of affiliates with thousands of officers and directors. Although the bank may have no contact with these officers and directors and companies controlled by them, it currently is required to collect information on all these parties. In another example, a CEBA credit card bank is prevented by law from making loans to anyone but individuals,[2] and is thus effectively prohibited from lending to insiders' related interests, but the current rule nonetheless requires the bank to conduct an annual survey of related interests.

On September 9, 1993, the Board published notice of proposed rulemaking and requested comment concerning alternative recordkeeping procedures that banks may follow to monitor loans to insiders of the bank and its affiliates. See 58 FR 47400. The Board proposed to allow each bank to decide on its own how to gather information on related interests, so long as its method was effective. For example, in the case of a nonbank credit card bank or other bank that does not make commercial loans, the bank could decide not to keep records on related interests. For banks that make commercial loans, two acceptable recordkeeping methods were identified: (1) The "survey" method currently required, under which all insiders are asked annually to identify all their related interests; and (2) the "borrower inquiry" method, under which the bank would (a) ask each commercial borrower as part of the loan application process whether it is a related interest of an insider of the bank, and (b) maintain a record of each affirmative response. Finally, the proposed rule sought comment on whether any other recordkeeping methods would be effective in monitoring compliance with Regulation O.

The draft GAO report, discussed above, urged the federal bank agencies to emphasize the importance of accurate and complete insider recordkeeping. Management recordkeeping failures, the GAO argued, were indicative of larger bank management problems, and management solutions in this area, the GAO reasoned, would contribute to the resolution of management's larger problems. The Board believes that the proposed recordkeeping amendments, which attempt to eliminate unnecessary recordkeeping and allow for alternative methods of recordkeeping, are consistent with the GAO's recommendations:

Commenters supported the recordkeeping amendments as a means of decreasing unnecessary paperwork burden. Commenters uniformly supported no longer requiring credit card banks and other institutions that do not make commercial loans to keep records on the related interests of insiders. No commenter proposed any general recordkeeping methods in addition to those identified in the rule.

A few commenters expressed concerns about the second recordkeeping option put forth in the proposed rule—the "borrower inquiry" method. Commenters noted that in some cases a corporate borrower might be unaware that it is a related interest of a bank insider and therefore might inadvertently misinform a bank's loan officer. For example, a corporate employee negotiating a loan may not know that one of his company's controlling shareholders is also a director of one of the lending bank's affiliates. Citing this possibility, several bank commenters supported the recordkeeping provision but requested that the Board specify that use of the borrower inquiry method would give a bank a "safe harbor" from criticism during an examination in the event that inaccurate certifications were accepted from borrowers. On a related point, two commenters sought assurance that internal controls consistent with the proposed recordkeeping alternatives would meet the compliance certification requirements of section 112 of FDICIA.

The Board believes protections currently exist to prevent intentional misreporting by borrowers under the borrower inquiry method. Intentional misreporting could bring criminal or civil penalties. First, a borrower that knowingly misstates whether it is a related interest of the lending bank is criminally liable. 18 U.S.C. 1014. Second, a bank insider to whom the corporate borrower is related and who is aware of the loan violates Regulation O if the insider permits the related interest to receive any extension of credit not authorized under Regulation O. 12 CFR 215.6.

The Board has also concluded that any unintentional misreporting should not be a matter of serious concern. While there could be cases in large multi-bank holding companies where a borrower and lender are genuinely ignorant of the relationship between them, there is no potential in those circumstances for an insider's status to improperly affect the credit decision.

The Board has decided to adopt the recordkeeping provisions, as proposed, with three amendments. First, in order to address concerns about inaccurate

[2] See 12 U.S.C. 1841(c)(2).

reporting, the Board has adopted an additional safeguard to prevent the occurrence of those reporting errors, both intentional and unintentional, that are likely to occur most frequently and that raise the greatest concern. The final rule establishes a minimum requirement that every bank, regardless of the recordkeeping method it selects, must conduct an annual survey to identify its own insiders (that is, its own executive officers, directors, and principal shareholders and their related interests, but not those of its holding company affiliates). Every bank is expected to check this short list before extending credit, even if it is employing the borrower inquiry method of recordkeeping for affiliates in lieu of the survey method. In addition to addressing possible violations of Regulation O, the limited survey and the short list it produces will be available for monitoring compliance with section 23A of the Federal Reserve Act.

As for concerns about a "safe harbor," the Board believes that an implicit safe harbor exists for banks electing either one of the two recordkeeping options included in the final rule, and that following either of these options would allow the necessary certification to be made for purposes of section 112 of FDICIA. Furthermore, under the enforcement guidelines, the federal banking agencies should not assess civil money penalties for an inadvertent or accidental violation of their rules.

Second, because the commenters did not identify any recordkeeping methods other than the two proposed by the Board, the Board has adopted a presumption in the final rule that a bank must use either one of the two identified methods unless it can demonstrate that another method is equally effective. The suitability of any alternative procedure for monitoring lending to insiders and their related interests must be determined, of course, on the basis of the effectiveness of the procedure in preventing violations of law and insider abuse. Any alternative recordkeeping procedure must sufficiently identify extensions of credit covered by Regulation O to ensure that proper monitoring of and compliance with insider lending restrictions is maintained.

Finally, the Board has made an explicit exemption from the requirement that a bank keep records of, or inquire about related interests of insiders of the bank or its affiliates, for banks that are prohibited from making commercial loans in the first place.[3] Related interests consist only of companies or other similar entities, as a result of which a bank that is prohibited from making commercial loans is prohibited from making loans to any company or other entity that may be a related interest. When such a prohibition exists, recordkeeping or inquiries with respect to related interests is unnecessarily burdensome.

IV. Definition of Extension of Credit

The Board proposed three amendments to the definition of "extension of credit" in Regulation O: a clarification of the "tangible economic benefit" rule; a new exception for the discount by a bank of obligations sold by an insider without recourse; and an increase in the threshold for treating credit card debt as an extension of credit. See 58 FR 47400, September 9, 1993.

A. "Tangible Economic Benefit" Rule

Regulation O provides that an extension of credit is deemed to be made to an insider when the proceeds of the credit are used for the tangible economic benefit of, or are transferred to, the insider. 12 CFR 215.3(f). These extensions of credit are thereby counted toward the lending limits of Regulation O.

Following the enactment of FDICIA, which expanded the lending limit provision of section 22(h) of the Federal Reserve Act to cover directors and their related interests, questions were raised more frequently regarding the scope and proper application of the tangible economic benefit rule. If interpreted literally, the tangible economic benefit rule would apply whenever a bank extended credit to any person, including a member of the general public with no other relationship to the bank, and the proceeds of the extension of credit were transferred to or used for the benefit of an insider or an insider's related interest. For example, as one commenter noted, loans on non-preferential terms to members of the general public to purchase homes from a builder who is a director of the bank would be treated as loans to the builder/director.

The tangible economic benefit rule is similar to a provision contained in section 23A of the Federal Reserve Act, and was adopted at a time when the Board was required by section 22(h) of the Federal Reserve Act to use the definition of "extension of credit" found in section 23A. See Public Law 95–630 Section 104, 92 Stat. 3644 (1978). The definition of extension of credit in section 22(h), however, is no longer tied to section 23A, and the Board is authorized to adopt appropriate definitions of terms in the statute. See 12 U.S.C. 375b(9)(D) and 375b(10). The Board therefore proposed to revise the tangible economic benefit rule to clarify that it was not intended to reach such transactions, by providing explicitly that the rule does not apply to an arm's-length [4] extension of credit by a bank to a third party where the proceeds of the credit are used to finance the bona fide acquisition of property, goods, or services from an insider or an insider's related interest.

Commenters supported the proposal, and no adverse comments were received. Three commenters objected to the requirement that any arm's-length loan satisfy the non-preferential provisions for insider loans found in § 215.4(a), labelling that requirement overly restrictive. The Board has retained the requirement, however, that loans be on non-preferential terms, in order to prevent banks from participating in commercial promotions that benefit the bank's insiders to the detriment of the bank.[5]

Continuing to be covered by the tangible economic benefit rule are extensions of credit to an insider's nominee and transactions in which the proceeds of the credit are loaned to an insider. The Board also notes that provisions of the definition of "extension of credit" outside the tangible economic benefit rule will continue to reach transactions in which an insider actually becomes obligated to a bank, "whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever." 12 CFR 215.3(a)(8).

B. Discount of Obligations without Recourse

Regulation O includes within the definition of "extension of credit" any "discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, *whether with or without*

[3] For example, a nonbank credit card bank, in order to maintain its exception from the definition of "bank" in the Bank Holding Company Act, may not engage in the business of making commercial loans. See 12 U.S.C. 1841(c)(2)(E).

[4] In order to satisfy this requirement, the extension of credit to the general public must be on terms that would satisfy the standard set forth in § 215.4 of Regulation O if the extension of credit was being made directly to an insider or an insider's related interest.

[5] One other commenter sought clarification on the relationship between the tangible economic benefit rule and another rule in Regulation O that states that loans made by a bank to a partnership in which one or more executive officers of the bank hold a majority interest are to be attributed in full to each of the executive officers. 12 CFR 215.5(b). The introductory portion of § 215.5 has been revised to clarify the interplay between § 215.5 and the general provisions of Regulation O.

recourse." 12 CFR 215.3(a)(5) (emphasis added). At the time this provision was adopted, the Board was required by section 22(h) to include such items in the regulatory definition of extension of credit.[6] However, the current statutory definition does not require the inclusion of such items where the transaction is made without recourse to the transferor.[7] The Board proposed to delete this provision so as to exclude non-recourse transactions from Regulation O coverage. Transactions entered into with recourse to the transferor would continue to be covered under other provisions of the definition. See 12 CFR 215.3(a)(4) and (8).

The Board has adopted this amendment as proposed. Non-recourse transactions resemble a purchase of assets more than the lending of money, and the final rule conforms the treatment of these transactions to the treatment of other asset pruchases between a bank and its insiders. Moreover, these non-recourse transactions do not constitute "extensions of credit" to the transferor under the National Bank Act as interpreted by the Office of the Comptroller of the Currency. See 12 U.S.C. 84(b)(1); 12 CFR 32.2(a). These transactions will continue to be governed, however, by general standards of safety and soundness, prohibitions against fraud and abuse, and corporate fiduciary duties.[8]

Commenters supported the proposal, and no adverse comments were received. One commenter asked the Board to clarify whether limited or partial recourse transactions would be treated as extensions of credit. The Board believes that it is more appropriate to address the numerous possible recourse arrangements on a case-by-case basis.

C. Credit Card Plan Indebtedness

Regulation O exempts from the definition of "extension of credit," and thus from Regulation O's lending limits, indebtedness of $5,000 or less arising through any general arrangement by which a bank: (1) Acquires charge or time credit accounts; or (2) makes payments to or on behalf of participants in a bank credit card plan or other open-end credit plan. 12 CFR 215.3(b)(5). To qualify for the exemption, the indebtedness must be on market terms and must not involve prior individual clearance or approval by the bank other than for the purpose of determining the borrower's eligibility and compliance with any applicable dollar limit. *Id.*

The Board proposed to increase from $5,000 to $15,000 the threshold above which standard credit card loans to insiders would be counted as extensions of credit. This proposed increase reflected widespread increases by credit card issuers in pre-approved lending limits and, to some extent, inflation since the initial adoption of the $5,000 limit in 1979. The Board did not propose raising the limit for extensions of credit through overdraft plans, leaving that limit at $5,000. Extensions of credit through overdrafts in amounts up to $15,000 have not become routine.

Commenters supported the proposed increase. Many commenters, however, requested that the increase be expanded. Thirteen commenters suggested that the proposed $15,000 cap on the amount of excluded credit card debt either be eliminated, increased, indexed, or periodically reviewed. Two commenters requested that credit card debt be exempted from the cap on general purpose loans to executive officers.

Eight commenters requested that the overdraft limit be raised by an identical amount. Commenters reasoned that one extension of credit is the same as another and thus that no substantive difference exists between credit card loans and overdraft extensions of credit. Moreover, some overdraft protection plans are now tied directly to credit card lines of credit. Commenters also noted that the rationale that the credit card limit was being raised to compensate for inflation applied equally to overdraft protection.

The Board has decided to increase the credit card exemption from $5,000 to $15,000 and to maintain the overdraft limit at $5,000. Raising the limit could encourage insiders to view overdraft plans as a source of credit, rather than solely as protection against infrequent and unplanned events. The Board is not prohibiting payment of overdrafts over $5,000 pursuant to a permissible pre-approved overdraft plan, but merely providing that overdrafts over $5,000 are counted toward the individual and aggregate lending limits of Regulation O.

The Board believes that the proposed limit is an appropriate compromise between its concern to prevent insider lending abuse and the added convenience that even higher or indexed limits may provide. Commenters presented no evidence to support their argument that a cap on exempt credit card lending is no longer necessary. Finally, the Board believes that exempting credit card loans from the cap on general purpose loans to executive officers would be more properly addressed in the context of a more general review of executive officer lending restrictions.

V. Consumer Installment Paper

Pursuant to the authority granted it by the Housing and Community Development Act of 1992 (HCDA),[9] the Board proposed an exception to the aggregate lending limit for the discount of consumer installment paper from an insider with recourse, so long as the bank is relying primarily upon the creditworthiness of the maker of the paper and not on any endorsement or guarantee of the insider. Such transactions would continue to constitute extensions of credit subject to the aggregate lending limit if the maker of the consumer installment paper was an insider. See 58 FR 47400, September 9, 1993.

The legislative history of HCDA states that the Board should make a "zero-based review" of any exceptions it adopts.[10] The proposed exception is consistent with this directive. The Board has concluded that, where the bank is relying primarily upon the creditworthiness of the underlying maker, the accompanying extension of credit to an insider transferring the paper with recourse poses minimal risk of loss to the bank.[11] In addition like the previous three exceptions, the new exception is found in the National Bank Act,[12] and is incorporated as an

[6] The current definition of "extension of credit" in Regulation O was adopted in 1979, when the Board substantially amended the regulation in order to implement the Financial Institutions Regulatory Act of 1978 (FIRA), Public Law 95–630 Section 104, 92 Stat. 3644 (1978). 44 FR 12963, March 9, 1979. FIRA added section 22(h) to the Act, which in turn incorporated the definition of "extension of credit" contained in section 23A. At that time, section 23A's definition included the above-referenced provision concerning the discount of paper acquired with or without recourse. See Public Law 89–485 Section 12, 80 Stat. 241 (1966).

[7] The statutory cross-reference to section 23A was deleted from section 22(h) in 1982. See Public Law 97–230 Section 410, 96 Stat. 1520 (1982). FDICIA added a new definition of "extension of credit" to section 22(h), which applies whenever a member bank makes or renews a loan, grants a line of credit, or enters into any similar transaction as a result of which a person becomes obligated to pay money or its equivalent to the bank. See 12 U.S.C. 375b(9)(D). This definition does not cover all transactions, such as the purchase of assets, covered by section 23A.

[8] In addition, sections 23A and 23B of the Act may be applicable to such transactions if the insider or the insider's related interest is an affiliate, as defined in section 23A, of the lending bank.

[9] Public Law 102–550 Section 955, 106 Stat. 3672 (1992).

[10] See 138 Cong. Rec. S17,914–15 (daily ed. October 8, 1992).

[11] Although extensions of credit made in conformity with the proposed exception would not count toward a bank's aggregate lending limit, such extensions of credit would continue to be treated as extensions of credit under 12 CFR 215.3(4) (a) and (b) of Regulation O, as a safeguard against abuse of this exception.

[12] All interpretations by the Comptroller of the Currency of the exceptions contained in 12 U.S.C.

Continued

exception to the individual lending limit in Regulation O. See 12 U.S.C. 84(c)(8); 12 CFR 215.2(h) and 215.4(c).

Commenters generally supported the new exception, and no adverse comments were received. Three commenters argued that the proposed requirement that a designated officer of the bank certify in writing that the bank is relying primarily upon the maker of the discounted paper was too burdensome because it did not accommodate itself to bulk transactions in which the bank may perform only a statistical sampling of a discounted loan portfolio. One commenter asked the Board to clarify that the discount of consumer lease paper was included in the provision. Six commenters suggested adoption of additional exceptions contained in the National Bank Act, and one commenter suggested an additional exception not included in the National Bank Act.

The requirement that a designated officer certify that the bank has followed appropriate underwriting procedures is found in the National Bank Act, and the Board has decided to maintain consistency with that Act.

Concerning consumer lease paper, the Board notes that an interpretative letter concerning the circumstances under which a lease transaction may be considered to be an extension of credit for purposes of Regulation O has previously been issued. See Interpretative Letter dated April 8, 1976. The Board believes that it would be more appropriate to provide further guidance as to the treatment of particular transactions under Regulation O on a case-by-case basis.

Additional exemptions found in the National Bank Act have not been adopted. Those are either limited exemptions, exemptions for credit secured by collateral that is not stable and liquid, or exemptions that would be difficult to administer in the Regulation O context. Other exemptions suggested by commenters would require statutory change.

VI. Loans to Executive Officers

The Board proposed three amendments to the rules governing extensions of credit by a bank to its executive officers: A new exemption to the limit for general purpose loans that are fully collateralized by certain categories of highly stable and liquid collateral; clarification that home mortgage loan refinancing, subject to certain limitations, is included in the category of home mortgage loans; and a restatement of the prior approval requirement in section 22(g) of the Federal Reserve Act. See 58 FR 47400, September 9, 1993.

A. General Purpose Loans

Section 22(g) of the Federal Reserve Act establishes a special additional rule for extensions of credit by a bank to its executive officers. In general, a bank's lending to each of its executive officers is limited to an amount equal to the greater of $25,000 or 2.5 percent of the bank's capital and unimpaired surplus, but not to exceed $100,000. 12 CFR 215.5(c). Qualifying home mortgage loans and educational loans are not counted toward this limit, although they do count toward the general individual and aggregate lending limits applicable to all insiders under § 215.4 of Regulation O. 12 CFR 215.5(c)(1) and (2). Also, unlike the general individual and aggregate lending limits, there has been no exception to the executive officer lending limit based on the manner in which the extension of credit is collateralized.

The Board proposed to create an exemption to the general purpose lending limit for loans to executive officers for loans fully secured by: (a) Obligations of the United States or other obligations fully guaranteed as to principal and interest by the United States; (b) commitments or guarantees of a department or agency of the United States; or (c) a segregated deposit account with the lending bank.

The Board previously has determined that extensions of credit collateralized in the manner described above pose minimal risk of loss to a bank. See 58 FR 26507, May 4, 1993. In view of this determination, the Board has concluded that it is consistent with safe and sound banking practices to increase the amount of credit that a bank may extend to its executive officers when the credit is secured as described above. Because such loans would continue to be subject to the prohibitions against preferential lending, the Board also believes that the proposed exception would not lend itself to evasions of the law or any other abuse.

Commenters supported the proposed exception. Six commenters suggested that additional categories of exempt extensions of credit be adopted. Nine commenters requested that the current $100,000 cap on general purpose loans be increased, and two commenters suggested that the cap be eliminated altogether. One commenter suggested that loans to an executive officer serving in a bona fide fiduciary capacity not be included as loans to the executive officer for purposes of 12 CFR 215.5(c).

The additional exceptions that have been proposed apply more readily to loans made in a commercial context rather than to personal loans. Section 215.5 primarily governs personal loans, however, and the additional proposals therefore are neither necessary nor appropriate. The Board also considers it more appropriate to reconsider the appropriate lending limit for executive officers in connection with a more general review of executive officer restrictions. Finally, the Board notes that the proper treatment under Regulation O of loans to an executive officer serving in a bona fide fiduciary capacity has previously been addressed. See I Fed. Res. Reg. Serv. 3–1048. The Board will provide any further guidance on this issue on a case-by-case basis.

B. Refinancing of Home Mortgage Loans

Section 22(g) of the Federal Reserve Act provides that a bank may make a loan to its executive officer, without restriction as to amount, if the loan is secured by a first lien on a dwelling that is owned by the executive officer and used by the executive officer as a residence after the loan is made. 12 U.S.C. 375a(2). Section 215.5(c)(2) of Regulation O implements this provision, and sets forth additional restrictions on such loans.

The Board proposed to revise the regulation to provide clearly that the refinancing of a home mortgage loan is included within this category to the extent that the proceeds are used to pay off the prior home mortgage loan or for one or more of the permissible purposes enumerated in 12 CFR 215.5(c)(2).

Comments were generally supportive. Two commenters asked the Board to clarify that the closing costs of a home mortgage refinancing are included as part of the qualifying portion of the loan. Two commenters requested that all proceeds of a home mortgage refinancing be included in this category.

The Board, as requested in the comments, has revised the regulation further to provide expressly that closing costs are included as part of the exempt portion of a home mortgage refinancing, and to make other clarifying changes. Inclusion within the exemption of proceeds of a refinancing that may be used for unrestricted purposes is prohibited by the enabling statute.

C. Prior Approval of Home Mortgage Loans

Section 22(g) provides that the board of directors of a bank must specifically approve in advance a home mortgage loan to an executive officer. 12 U.S.C. 375a(2). Regulation O, however, does not set forth this requirement. The Board proposed that 12 CFR 215.5(c) be revised to conform to the enabling statute.

Comments upon this proposal were mixed. One commenter asked the Board to clarify that prior approval is required for all home mortgage loans regardless of size, notwithstanding the general provisions of Regulation O that require prior approval only for loans in excess of a calculated amount. See 12 CFR 215.4(b). Two commenters suggested that the Board rely on its rulemaking authority not to conform to the statute, and two commenters asked the Board to seek relief from this requirement from Congress.

The Board has adopted this provision substantially as proposed. As discussed above, the Board has added an introductory statement to § 215.5 to clarify that the requirements for extensions of credit to executive officers under that section, pursuant to section 22(g), are in addition to the general requirements for insiders set forth elsewhere in Regulation O. The Board lacks the authority to adopt a provision of Regulation O that does not conform to the statutory prior approval requirement. The additional comments are beyond the scope of this rulemaking.

VII. Conforming Definition of "Bank"

Subpart B of Regulation O partially implements the reporting requirements of title VIII of FIRA, as amended by the Garn-St. Germain Depository Institutions Act of 1982 [13] and FDICIA. 12 U.S.C. 1972(2)(G). Section 215.22 requires an executive officer or principal shareholder of a bank to report to the bank each year if the person or any related interest of the person borrowed during the prior calendar year from a correspondent bank of the bank.

As originally enacted, a correspondent bank was defined in title VIII of FIRA to include a bank as defined in the Bank Holding Company Act. Title VIII was subsequently amended to include in the definition a mutual savings bank, a savings bank, and a savings association as defined in section 3 of the Federal Deposit Insurance Act. 12 U.S.C. 1971 and 1972(H). The Board proposed to amend the definition of bank in subpart B of Regulation O to conform the rule to the statutory amendments. See 58 FR 47400, September 9, 1993.

Comments were favorable, and the Board has adopted this provision as proposed.

VIII. Technical Amendments

The Board has adopted a series of technical amendments to Regulation O that are designed to make the regulation more easily understandable and somewhat shorter. The amendments include a new definition of "affiliate," which makes the regulation read more clearly and allows various cross-references and footnotes to be eliminated. Because the technical amendments do not make any substantive change to the regulation, notice and comment on them was not required.

IX. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare a final regulatory flexibility analysis when the agency promulgates a final rule. Two of the requirements of a final regulatory flexibility analysis, a succinct statement of the need for and objectives of the rule, and a summary and assessment of issues raised by the public comments and of any changes made in the proposed rule as a result thereof (5 U.S.C. 604(b)), are contained in the summary and supplementary information above. No significant alternatives to the final rule were considered by the agency.

X. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, and 5 CFR 1320.130, the Board, under authority delegated by the Office of Management and Budget, has reviewed its amendments to Regulation O. The Board has determined that the revisions do not significantly increase the burden of the reporting institutions. The changes are expected to reduce regulatory burden for some banks, particularly small community banks and rural banks, but the estimated effect on aggregate burden calculations is not deemed to be significant.

List of Subjects in 12 CFR Part 215

Credit, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 215 as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

1. The authority citation for part 215 is revised to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b(9) and (10), 1817(k) and 1972(2)(G)(ii); Pub. L. 102–242, 105 Stat. 2236.

Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

2. 12 CFR part 215, subpart A, is amended by revising §§ 215.1 through 215.13, to read as follows:

§ 215.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to sections 11(i), 22(g), and 22(h) of the Federal Reserve Act (12 U.S.C. 248(i), 375a, and 375b), 12 U.S.C. 1817(k), and section 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)).

(b) *Purpose and scope.* This subpart A governs any extension of credit by a member bank to an executive officer, director, or principal shareholder of: The member bank; a bank holding company of which the member bank is a subsidiary; and any other subsidiary of that bank holding company. It also applies to any extension of credit by a member bank to: A company controlled by such a person; and a political or campaign committee that benefits or is controlled by such a person. This subpart A also implements the reporting requirements of 12 U.S.C. 375a concerning extensions of credit by a member bank to its executive officers and of 12 U.S.C. 1817(k) concerning extensions of credit by a member bank to its executive officers or principal shareholders, or the related interests of such persons.

§ 215.2 Definitions.

For the purposes of this subpart A, the following definitions apply unless otherwise specified:

(a) *Affiliate* means any company of which a member bank is a subsidiary or any other subsidiary of that company.

(b) *Company* means any corporation, partnership, trust (business or otherwise), association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of business entity not specifically listed herein. However, the term does not include:

(1) An insured depository institution (as defined in 12 U.S.C. 1813); or

(2) A corporation the majority of the shares of which are owned by the United States or by any State.

(c)(1) *Control of a company or bank* means that a person directly or indirectly, or acting through or in concert with one or more persons:

(i) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the company or bank;

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84 are applicable to Regulation O to the extent that these exceptions are incorporated by reference into or otherwise adopted in Regulation O.

[13] Public Law 97–320, 96 Stat. 1469 (1982).

(ii) Controls in any manner the election of a majority of the directors of the company or bank; or

(iii) Has the power to exercise a controlling influence over the management or policies of the company or bank.

(2) A person is presumed to have control, including the power to exercise a controlling influence over the management or policies, of a company or bank if:

(i) The person is:

(A) An executive officer or director of the company or bank; and

(B) Directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank; or

(ii)(A) The person directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank; and

(B) No other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(3) An individual is not considered to have control, including the power to exercise a controlling influence over the management or policies, of a company or bank solely by virtue of the individual's position as an officer or director of the company or bank.

(4) A person may rebut a presumption established by paragraph (b)(2) of this section by submitting to the appropriate Federal banking agency (as defined in 12 U.S.C. 1813(q)) written materials that, in the agency's judgment, demonstrate an absence of control.

(d) *Director of a member bank* means any director of a member bank, whether or not receiving compensation. An advisory director is not considered a director if the advisory director:

(1) Is not elected by the shareholders of the company or bank;

(2) Is not authorized to vote on matters before the board of directors; and

(3) Provides solely general policy advice to the board of directors.

(e)(1) *Executive officer* of a company or bank means a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company or bank, whether or not: the officer has an official title; the title designates the officer an assistant; or the officer is serving without salary or other compensation.[1] The chairman of the board, the president, every vice president, the cashier, the secretary, and the treasurer of a company or bank are considered executive officers, unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company, from participation (other than in the capacity of a director) in major policymaking functions of the bank or company, and the officer does not actually participate therein.

(2) Extensions of credit to an executive officer of an affiliate of a member bank (other than a company that controls the bank) shall not be subject to §§ 215.4, 215.6 and 215.8 of this part, provided that:

(i) The executive officer of the affiliate is excluded (by name or by title) from participation in major policymaking functions of the member bank by resolutions of the boards of directors of both the affiliate and the member bank, and does not actually participate in such major policymaking functions; and

(ii) The executive officer is not otherwise subject to such requirements as a director or principal shareholder.

(f) *Foreign bank* has the meaning given in 12 U.S.C. 3101(7).

(g) *Immediate family* means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(h) *Insider* means an executive officer, director, or principal shareholder, and includes any related interest of such a person.

(i) *Lending limit.* The lending limit for a member bank is an amount equal to the limit of loans to a single borrower established by section 5200 of the Revised Statutes,[2] 12 U.S.C. 84. This amount is 15 percent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are not fully secured, and an additional 10 percent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan. The lending limit also includes any higher amounts that are permitted by section 5200 of the Revised Statutes for the types of obligations listed therein as exceptions to the limit. A member bank's unimpaired capital and unimpaired surplus equals the sum of:

(1) The "total equity capital" of the member bank reported on its most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3);

(2) Any subordinated notes and debentures that comply with requirements of the appropriate Federal banking agency for addition to the member bank's capital structure and are reported on its most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3); and

(3) Any valuation reserves created by charges to the member bank's income reported on its most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3).

(j) *Member bank* means any banking institution that is a member of the Federal Reserve System, including any subsidiary of a member bank. The term does not include any foreign bank that maintains a branch in the United States, whether or not the branch is insured (within the meaning of 12 U.S.C. 1813(s)) and regardless of the operation of 12 U.S.C. 1813(h) and 12 U.S.C. 1828(j)(3)(B).

(k) *Pay an overdraft on an account* means to pay an amount upon the order of an account holder in excess of funds on deposit in the account.

(l) *Person* means an individual or a company.

(m)(1) *Principal shareholder* means a person (other than an insured bank) that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual.

(2) A principal shareholder of a member bank does not include a company of which a member bank is a subsidiary.

(n) *Related interest* of a person means.

(1) A company that is controlled by that person; or

(2) A political or campaign committee that is controlled by that person or the funds or services of which will benefit that person.

(o) *Subsidiary* has the meaning given in 12 U.S.C. 1841(d), but does not include a subsidiary of a member bank.

§ 215.3 Extension of credit.

(a) An extension of credit is a making or renewal of any loan, a granting of a

[1] The term is not intended to include persons who may have official titles and may exercise a certain measure of discretion in the performance of their duties, including discretion in the making of loans, but who do not participate in the determination of major policies of the bank or company and whose decisions are limited by policy standards fixed by the senior management of the bank or company. For example, the term does not include a manager or assistant manager of a branch of a bank unless that individual participates, or is authorized to participate, in major policymaking functions of the bank or company.

[2] Where State law establishes a lending limit for a State member bank that is lower than the amount permitted in section 5200 of the Revised Statutes, the lending limit established by applicable State law shall be the lending limit for the State member bank.

line of credit, or an extending of credit in any manner whatsoever, and includes:

(1) A purchase under repurchase agreement of securities, other assets, or obligations;

(2) An advance by means of an overdraft, cash item, or otherwise;

(3) Issuance of a standby letter of credit (or other similar arrangement regardless of name or description) or an ineligible acceptance, as those terms are defined in § 208.8(d) of this chapter;

(4) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which an insider may be liable as maker, drawer, endorser, guarantor, or surety;

(5) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for:

(i) Accrued interest; or

(ii) Taxes, insurance, or other expenses incidental to the existing indebtedness;

(6) An advance of unearned salary or other unearned compensation for a period in excess of 30 days; and

(7) Any other similar transaction as a result of which a person becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(b) An extension of credit does not include:

(1) An advance against accrued salary or other accrued compensation, or an advance for the payment of authorized travel or other expenses incurred or to be incurred on behalf of the bank;

(2) A receipt by a bank of a check deposited in or delivered to the bank in the usual course of business unless it results in the carrying of a cash item for or the granting of an overdraft (other than an inadvertent overdraft in a limited amount that is promptly repaid, as described in § 215(4)(e) of this part);

(3) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through:

(i) A merger or consolidation of banks or a similar transaction by which a bank acquires assets and assumes liabilities of another bank or similar organization; or

(ii) Foreclosure on collateral or similar proceeding for the protection of the bank, provided that such indebtedness is not held for a period of more than three years from the date of the acquisition, subject to extension by the appropriate Federal banking agency for good cause;

(4)(i) An endorsement or guarantee for the protection of a bank of any loan or other asset previously acquired by the bank in good faith; or

(ii) Any indebtedness to a bank for the purpose of protecting the bank against loss or of giving financial assistance to it;

(5) Indebtedness of $15,000 or less arising by reason of any general arrangement by which a bank:

(i) Acquires charge or time credit accounts; or

(ii) Makes payments to or on behalf of participants in a bank credit card plan, check credit plan, or similar open-end credit plan, provided:

(A) The indebtedness does not involve prior individual clearance or approval by the bank other than for the purposes of determining authority to participate in the arrangement and compliance with any dollar limit under the arrangement; and

(B) The indebtedness is incurred under terms that are not more favorable than those offered to the general public;

(6) Indebtedness of $5,000 or less arising by reason of an interest-bearing overdraft credit plan of the type specified in § 215.4(e) of this part; or

(7) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, without recourse.

(c) Non-interest-bearing deposits to the credit of a bank are not considered loans, advances, or extensions of credit to the bank of deposit; nor is the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business considered to be a loan, advance or extension of credit to the depositing bank.

(d) For purposes of § 215.4 of this part, an extension of credit by a member bank is considered to have been made at the time the bank enters into a binding commitment to make the extension of credit.

(e) A participation without recourse is considered to be an extension of credit by the participating bank, not by the originating bank.

(f) *Tangible economic benefit rule*—(1) *In general.* An extension of credit is considered made to an insider to the extent that the proceeds are transferred to the insider or are used for the tangible economic benefit of the insider.

(2) *Exception.* An extension of credit is not considered made to an insider under paragraph (f)(1) of this section if:

(i) The credit is extended on terms that would satisfy the standard set forth in § 215.4(a) of this part for extensions of credit to insiders; and

(ii) The proceeds of the extension of credit are used in a bona fide transaction to acquire property, goods, or services from the insider.

§ 215.4 General prohibitions.

(a) *Terms and creditworthiness.* No member bank may extend credit to any insider of the bank or insider of its affiliates unless the extension of credit:

(1) Is made on substantially the same terms (including interest rates and collateral) as, and following credit underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this part and who are not employed by the bank; and

(2) Does not involve more than the normal risk of repayment or present other unfavorable features.

(b) *Prior approval.* (1) No member bank may extend credit (which term includes granting a line of credit) to any insider of the bank or insider of its affiliates in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of $25,000 or 5 percent of the member bank's unimpaired capital and unimpaired surplus, unless:

(i) The extension of credit has been approved in advance by a majority of the entire board of directors of that bank; and

(ii) The interested party has abstained from participating directly or indirectly in the voting.

(2) In no event may a member bank extend credit to any insider of the bank or insider of its affiliates in an amount that, when aggregated with all other extensions of credit to that person, and all related interests of that person, exceeds $500,000, except by complying with the requirements of this paragraph (b).

(3) Approval by the board of directors under paragraphs (b)(1) and (b)(2) of this section is not required for an extension of credit that is made pursuant to a line of credit that was approved under paragraph (b)(1) of this section within 14 months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of § 215.4(a) of this part.

(4) Participation in the discussion, or any attempt to influence the voting, by the board of directors regarding an extension of credit constitutes indirect participation in the voting by the board of directors on an extension of credit.

(c) *Individual lending limit*—No member bank may extend credit to any insider of the bank or insider of its affiliates in an amount that, when aggregated with the amount of all other extensions of credit by the member bank to that person and to all related interests of that person, exceeds the lending limit

of the member bank specified in § 215.2(i) of this part. This prohibition does not apply to an extension of credit by a member bank to a company of which the member bank is a subsidiary or to any other subsidiary of that company.

(d) *Aggregate lending limit*.—(1) *General limit.* A member bank may not extend credit to any insider of the bank or insider of its affiliates unless the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to all such insiders, does not exceed the bank's unimpaired capital and unimpaired surplus (as defined in § 215.2(i) of this part).

(2) *Member banks with deposits of less than $100,000,000.* (i) A member bank with deposits of less than $100,000,000 may by an annual resolution of its board of directors increase the general limit specified in paragraph (d)(1) of this section to a level not to exceed two times the bank's unimpaired capital and unimpaired surplus, if:

(A) The board of directors determines that such higher limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to its insiders and is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities;

(B) The resolution sets forth the facts and reasoning on which the board of directors bases the finding, including the amount of the bank's lending to its insiders as a percentage of the bank's unimpaired capital and unimpaired surplus as of the date of the resolution;

(C) The bank meets or exceeds, on a fully-phased in basis, all applicable capital requirements established by the appropriate Federal banking agency; and

(D) The bank received a satisfactory composite rating in its most recent report of examination.

(ii) If a member bank has adopted a resolution authorizing a higher limit pursuant to paragraph (d)(2)(i) of this section and subsequently fails to meet the requirements of paragraph (d)(2)(i)(C) or (d)(2)(i)(D) of this section, the member bank shall not extend any additional credit (including a renewal of any existing extension of credit) to any insider of the bank or its affiliates unless such extension or renewal is consistent with the general limit in paragraph (d)(1) of this section.

(3) *Exceptions.* (i) The general limit specified in paragraph (d)(1) of this section does not apply to the following:

(A) Extensions of credit secured by a perfected security interest in bonds, notes, certificates of indebtedness, or Treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;

(B) Extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned directly or indirectly by the United States;

(C) Extensions of credit secured by a perfected security interest in a segregated deposit account in the lending bank; or

(D) Extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that is acquired from an insider and carries a full or partial recourse endorsement or guarantee by the insider, provided that:

(*1*) The financial condition of each maker of such consumer paper is reasonably documented in the bank's files or known to its officers;

(*2*) An officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of the obligation and not upon any endorsement or guarantee by the insider; and

(*3*) The maker of the instrument is not an insider.

(ii) The exceptions in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this section apply only to the amounts of such extensions of credit that are secured in the manner described therein.

(e) *Overdrafts.* (1) No member bank may pay an overdraft of an executive officer or director of the bank [3] on an account at the bank, unless the payment of funds is made in accordance with:

(i) A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment; or

(ii) A written, preauthorized transfer of funds from another account of the account holder at the bank.

(2) The prohibition in paragraph (e)(1) of this section does not apply to payment of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less, provided:

(i) The account is not overdrawn for more than 5 business days; and

(ii) The member bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances.

[3] This prohibition does not apply to the payment by a member bank of an overdraft of a principal shareholder of the member bank, unless the principal shareholder is also an executive officer or director. This prohibition also does not apply to the payment by a member bank of an overdraft of a related interest of an executive officer, director, or principal shareholder of the member bank.

§ 215.5 Additional restrictions on loans to executive officers of member banks.

The following restrictions on extensions of credit by a member bank to any of its executive officers apply in addition to any restrictions on extensions of credit by a member bank to insiders of itself or its affiliates set forth elsewhere in this part. The restrictions of this section apply only to executive officers of the member bank and not to executive officers of its affiliates.

(a) No member bank may extend credit to any of its executive officers, and no executive officer of a member bank shall borrow from or otherwise become indebted to the bank, except in the amounts, for the purposes, and upon the conditions specified in paragraphs (c) and (d) of this section.

(b) No member bank may extend credit in an aggregate amount greater than the amount permitted in paragraph (c)(3) of this section to a partnership in which one or more of the bank's executive officers are partners and, either individually or together, hold a majority interest. For the purposes of paragraph (c)(3) of this section, the total amount of credit extended by a member bank to such partnership is considered to be extended to each executive officer of the member bank who is a member of the partnership.

(c) A member bank is authorized to extend credit to any executive officer of the bank:

(1) In any amount to finance the education of the executive officer's children;

(2) With the specific prior approval of the board of directors, in any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the executive officer, provided:

(i) The extension of credit is secured by a first lien on the residence and the residence is owned (or expected to be owned after the extension of credit) by the executive officer; and

(ii) In the case of a refinancing, that only the amount thereof used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount thereof used for any of the purposes enumerated in this paragraph (c)(2), are included within this category of credit;

(3) In any amount, if the extension of credit is secured in a manner described in § 215.4(d)(3)(i)(A) through (d)(3)(i)(C) of this part; and

(4) For any other purpose not specified in paragraphs (c)(1) through (c)(3) of this section, if the aggregate amount of extensions of credit to that executive officer under this paragraph does not exceed at any one time the higher of 2.5 per cent of the bank's capital and unimpaired surplus or $25,000, but in no event more than $100,000.

(d) Any extension of credit by a member bank to any of its executive officers shall be:

(1) Promptly reported to the member bank's board of directors;

(2) In compliance with the requirements of § 215.4(a) of this part;

(3) Preceded by the submission of a detailed current financial statement of the executive officer; and

(4) Made subject to the condition in writing that the extension of credit will, at the option of the member bank, become due and payable at any time that the officer is indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in paragraph (c) of this section.

§ 215.6 Prohibition on knowingly receiving unauthorized extension of credit.

No executive officer, director, or principal shareholder of a member bank or any of its affiliates shall knowingly receive (or knowingly permit any of that person's related interests to receive) from a member bank, directly or indirectly, any extension of credit not authorized under this part.

§ 215.7 Extensions of credit outstanding on March 10, 1979.

(a) Any extension of credit that was outstanding on March 10, 1979, and that would, if made on or after March 10, 1979, violate § 215.4(c) of this part, shall be reduced in amount by March 10, 1980, to be in compliance with the lending limit in § 215.4(c) of this part. Any renewal or extension of such an extension of credit on or after March 10, 1979, shall be made only on terms that will bring the extension of credit into compliance with the lending limit of § 215.4(c) of this part by March 10, 1980. However, any extension of credit made before March 10, 1979, that bears a specific maturity date of March 10, 1980, or later, shall be repaid in accordance with its repayment schedule in existence on or before March 10, 1979.

(b) If a member bank is unable to bring all extensions of credit outstanding on March 10, 1979, into compliance as required by paragraph (a) of this section, the member bank shall promptly report that fact to the Comptroller of the Currency, in the case of a national bank, or to the appropriate Federal Reserve Bank, in the case of a State member bank, and explain the reasons why all the extensions of credit cannot be brought into compliance. The Comptroller or the Reserve Bank, as the case may be, is authorized, on the basis of good cause shown, to extend the March 10, 1980, date for compliance for any extension of credit for not more than two additional one-year periods.

§ 215.8 Records of member banks.

(a) *In general.* Each member bank shall maintain records necessary for compliance with the requirements of this part.

(b) *Recordkeeping for insiders of the member bank.* Any recordkeeping method adopted by a member bank shall:

(1) Identify, through an annual survey, all insiders of the bank itself; and

(2) Maintain records of all extensions of credit to insiders of the bank itself, including the amount and terms of each such extension of credit.

(c) *Recordkeeping for insiders of the member bank's affiliates.* Any recordkeeping method adopted by a member bank shall maintain records of extensions of credit to insiders of the member bank's affiliates by:

(1) *Survey method.* (i) Identifying, through an annual survey, each insider of the member bank's affiliates; and

(ii) Maintaining records of the amount and terms of each extension of credit by the member bank to such insiders; or

(2) *Borrower inquiry method.* (i) Requiring as part of each extension of credit that the borrower indicate whether the borrower is an insider of an affiliate of the member bank; and

(ii) Maintaining records that identify the amount and terms of each extension of credit by the member bank to borrowers so identifying themselves.

(3) *Alternative recordkeeping methods for insiders of affiliates.* A member bank may employ a recordkeeping method other than those identified in paragraphs (c)(1) and (c)(2) of this section if the appropriate Federal banking agency determines that the bank's method is at least as effective as the identified methods.

(d) *Special rule for non-commercial lenders.* A member bank that is prohibited by law or by an express resolution of the board of directors of the bank from making an extension of credit to any company or other entity that is covered by this part as a company is not required to maintain any records of the related interests of the insiders of the bank or its affiliates or to inquire of borrowers whether they are related interests of the insiders of the bank or its affiliates.

§ 215.9 Reports by executive officers.

Each executive officer of a member bank who becomes indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in § 215.5(c) of this part, shall, within 10 days of the date the indebtedness reaches such a level, make a written report to the board of directors of the officer's bank. The report shall state the lender's name, the date and amount of each extension of credit, any security for it, and the purposes for which the proceeds have been or are to be used.

§ 215.10 Reports on credit to executive officers.

Each member bank shall include with (but not as part of) each report of condition (and copy thereof) filed pursuant to 12 U.S.C. 1817(a)(3) a report of all extensions of credit made by the member bank to its executive officers since the date of the bank's previous report of condition.

§ 215.11 Disclosure of credit from member banks to executive officers and principal shareholders.

(a) *Definitions.* For the purposes of this section, the following definitions apply:

(1) *Principal shareholder of a member bank* means any person [4] other than an insured bank, or a foreign bank as defined in 12 U.S.C. 3101(7), that, directly or indirectly, owns, controls, or has power to vote more than 10 percent of any class of voting securities of the member bank. The term includes a person that controls a principal shareholder (e.g., a person that controls a bank holding company). Shares of a bank (including a foreign bank), bank holding company, or other company owned or controlled by a member of an individual's immediate family are presumed to be owned or controlled by the individual for the purposes of determining principal shareholder status.

(2) *Related interest* means:

(i) Any company controlled by a person; or

(ii) Any political or campaign committee the funds or services of which will benefit a person or that is controlled by a person. For the purpose of this section and subpart B of this part, a related interest does not include a

[4] The term "stockholder of record" appearing in 12 U.S.C. 1972(2)(G) is synonymous with the term "person."

bank or a foreign bank (as defined in 12 U.S.C. 3101(7)).

(b) *Public disclosure.* (1) Upon receipt of a written request from the public, a member bank shall make available the names of each of its executive officers and each of its principal shareholders to whom, or to whose related interests, the member bank had outstanding as of the end of the latest previous quarter of the year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus of $500,000, whichever amount is less. No disclosure under this paragraph is required if the aggregate amount of all extensions of credit outstanding at such time from the member bank to the executive officer or principal shareholder of the member bank and to all related interests of such a person does not exceed $25,000.

(2) A member bank is not required to disclose the specific amounts of individual extensions of credit.

(c) *Maintaining records.* Each member bank shall maintain records of all requests for the information described in paragraph (b) of this section and the disposition of such requests. These records may be disposed of after two years from the date of the request.

§ 215.12 Reporting requirement for credit secured by certain bank stock.

Each executive officer or director of a member bank the shares of which are not publicly traded shall report annually to the board of directors of the member bank the outstanding amount of any credit that was extended to the executive officer or director and that is secured by shares of the member bank.

§ 215.13 Civil penalties.

Any member bank, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, that violates any provision of this part (other than § 215.11 of this part) is subject to civil penalties as specified in section 29 of the Federal Reserve Act (12 U.S.C. 504).

Subpart B—[Amended]

§ 215.21 [Amended]

3. Section 215.21 is amended by removing "1841(c)" where it appears in paragraph (a) and adding in its place "1971 and 1972" and by removing footnote 10 and redesignating footnotes 11 and 12 as footnotes 5 and 6.

§ 215.22 [Amended]

4. Section 215.22 is amended by removing "12 CFR 226.2(p)" where it appears in paragraph (c)(1)(ii) and adding in its place "12 CFR 226.2(a)(12)".

By order of the Board of Governors of the Federal Reserve System, February 15, 1994.

Dated: February 15, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–3860 Filed 2–18–94; 3:20 pm]

BILLING CODE 6210–01–P

RESOLUTION TRUST CORPORATION

12 CFR Part 1630

RIN 3205–AA21

Definition of Predominantly Minority Neighborhood

AGENCY: Resolution Trust Corporation.

ACTION: Interim rule; request for comments.

SUMMARY: The Resolution Trust Corporation (RTC) is hereby adopting an interim rule which defines "predominantly minority neighborhood" as used in section 21A(s) of the Federal Home Loan Bank Act (FHLBA) and section 21A(w)(17) of the FHLBA, as amended by the Resolution Trust Corporation Completion Act. Section 21A(w)(17) of the FHLBA requires, among other things, that in considering offers to acquire any insured depository institution, or any branch of an insured depository institution, located in a predominantly minority neighborhood (as defined in regulations prescribed under section 21A(s) of the FHLBA), the Corporation shall give preference to an offer from any minority individual, minority-owned business, or a minority depository institution, over any other offer that results in the same cost to the Corporation, as determined under section 13(c)(4) of the Federal Deposit Insurance Act. Section 21A(s) of the FHLBA permits the RTC to lease to a minority acquiror, on a rent-free basis, subject to certain conditions, any branch of a failed institution which is located in a "predominantly minority neighborhood." Section 21A(w)(17) of the FHLBA also generally provides that the RTC may provide to such minority individual, minority-owned business, or minority depository institution additional preferences in the form of capital assistance and performing assets. The interim rule generally defines "predominantly minority neighborhood" as any U.S. Postal Zip Code geographical area in which 50% or more of the persons residing therein are minorities based upon the most recent Census data, unless the RTC has determined, in its sole discretion, that other reasonably reliable, readily accessible data indicates different neighborhood boundaries. The RTC is also seeking comment on the interim rule.

This interim rule is effective on February 24, 1994.

DATES: Comments must be submitted on or before March 28, 1994.

ADDRESSES: Written comments regarding the interim rule should be addressed to John M. Buckley, Jr., Secretary, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434–0001. Comments may be hand delivered to room 321 on business days between the hours of 9 a.m. and 5 p.m. Comments may also be inspected in the Public Reading Room, 801 17th Street, NW., during the same business hours. Phone number: 202–416–6940; FAX number: 202–416–4753.

FOR FURTHER INFORMATION CONTACT: Robert C. Fick, Counsel, TRC Legal Division, (202) 736–3069; Gregory B. Smith, Senior Counsel, RTC Legal Division, (202) 736–3013; Mark G. Flanigan, Senior Attorney, RTC Legal Division, (202) 736–3085; Edward Thomas, Resolutions Analyst, (202) 416–7179; Sherry Chen, Field Resolutions Specialist, (202) 416–7209. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

In August 1989, Congress enacted section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, (FIRREA), (codified as section 21A(b) of the FHLBA, 12 U.S.C. 1441a(b)), which established the Resolution Trust Corporation (RTC). Pursuant to FIRREA the RTC has the duty to manage and resolve failed depository institutions that come under its jurisdiction and to conduct the operations of the RTC in a manner which "maximizes the * * * return from the sale of institutions or assets," "makes efficient use of funds" and "minimizes * * * losses * * * in the resolution of [failed institutions]". Section 21A(b)(3) of the FHLBA, as added by section 501(a) of FIRREA. In addition, the RTC is required to resolve all failed institutions in the "least costly * * * of all possible methods" (collectively Cost Constraints). Section 13(c)(4)(A)(ii) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1823(c)(4)(A)(ii), as made applicable by section 21A(b)(4) of the FHLBA, 12

U.S.C. 1441a(b)(4). The RTC is committed, wherever practicable and whenever consistent with those statutory Cost Constraints, to preserving the ownership characteristics of historically minority-owned depository institutions, and to increasing the total number of minority-owned depository institutions. *See,* Strategic Plan for the Resolution Trust Corporation, 54 FR 46574, November 3, 1989.

Section 21A(s) of the FHLBA permits the RTC to make available to an acquiror which is either a minority depository institution or a women's depository institution, on a rent-free lease basis for not less than 5 years, any branch of a failed institution which is located in a "predominantly minority neighborhood."

Section 21A(w)(17) of the FHLBA, which was added by section 3(a) of the Resolution Trust Corporation Completion Act, Pub. L. 103–204 (the Act), provides that in considering offers to acquire any insured depository institution, or any branch thereof, located in a "predominantly minority neighborhood", (as defined in regulations prescribed under subsection (s)), the RTC shall give preference to an offer from a minority individual, minority-owned business, or a minority depository institution (Minority Acquiror), over any other offer that results in the same cost to the RTC as determined under section 13(c)(4)(A) of the FDIA.[1]

This interim rule defines "predominantly minority neighborhood" as used in sections 21A(s) and 21A(w)(17) of the FHLBA as a geographic area constituting a United States Postal Service 5-digit Zip Code (Zip Code) in which 50% or more of the persons residing therein are minorities, based upon the most recent census data, unless the RTC determines, in its sole discretion, that other reasonably reliable, readily accessible data indicates different neighborhood boundaries. The population data and the minority composition of these Zip Codes are determined using the most recent (currently 1990 data) Census of Population data (Census Data) collected and published by the U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census (Census Bureau).

If the institution or a branch thereof is located in a Zip Code area for which no significant Census Data is available (e.g., a business district or office building) the Zip Code of a nearby geographic area served by the institution or branch, for which such Census Data is available, will be used as its Zip Code for purposes of this rule. If the RTC determines, in its sole discretion, based upon other reasonably reliable and readily accessible data, and subject to RTC's Cost Constraints, that a different delineation would more accurately reflect the area served by the financial institution or branch to be marketed, the RTC will use such delineation as the boundaries for the relevant neighborhood.

There is no legislative history which might provide clear guidance in developing a definition of "predominantly minority neighborhood." Consequently, except for the word "minority" which is statutorily defined, the definition of "predominantly minority neighborhood" was, therefore, developed based upon the common or ordinary meanings of the individual words comprising the phrase, the statutory context in which they have been used, and based upon readily available data.

One of the ordinary meanings of the word "predominant" is "the most common." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 927 (1988). Since in the context of this statutory framework a neighborhood can only be either a minority neighborhood or a non-minority neighborhood, the most common or prevalent of two categories means a majority or more than half. Moreover, consistent with the legislative purpose of preserving and promoting minority ownership and service, in the case of any exact 50% split between the two categories, minorities should be viewed as predominant. Therefore, if half or more of the residents of a neighborhood are minorities, that neighborhood is predominantly minority.

The word "minority" is defined by statute to have the meaning given such term in section 1204(c)(3) of FIRREA. Sections 21A(s) & 21A(w)(17) of the FHLBA. Section 1204(c)(3) of FIRREA defines "minority" to mean "any Black American, Native American, Hispanic American, or Asian American." This interim rule provides a definition of the word "minority" which incorporates the statutory definition but permits the use of equivalent classifications used by the Census Bureau in collecting the Census Data. Among other categories, the Census Bureau collects and publishes population Census Data by State, County, County subdivision, Place, Zip Code (available on CD-rom or tape) Census Tract or block numbering area, Block group, and Block. Each census of the U.S. population provides data on the minority composition of those areas in a manner which corresponds with the statutory definition of "minority" in FIRREA. The population classifications utilized in the Census Data for the 1990 census are: Hispanic origin and the following racial categories: White; Black; American Indian, Eskimo, or Aleut; Asian or Pacific Islander; and Other Race. Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce, 1990 CENSUS OF POPULATION, GENERAL POPULATION CHARACTERISTICS (1992). Since Census Data is readily available, its use to determine the minority composition of a particular geographic area is not only reasonable and efficient, but also consistent with the RTC's statutory Cost Constraints.

The ordinary dictionary meaning of the word "neighborhood" is a district or area with distinctive characteristics. WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 789 (1988). Neighborhoods vary in size and can be contained within each other. Since the only reasonably reliable population data which is readily available on a nationwide basis is Census Data, it is both reasonable and cost-efficient to define "neighborhood" in terms of the geographic areas utilized by the Census Bureau. Census Data, including minority composition, is available for specific geographic areas, including among others, State, County, County subdivision, Place, Zip Code, Census Tract, Block and Block group. Census Tracts and Zip Codes appear to be the only such categories which might approximate the size and characteristics of a "neighborhood" served by an "institution, or any branch" thereof.[2]

[1] This Act also provides, in connection with such an acquisition, the following additional preferences: (i) the Minority Acquiror shall be eligible for minority interim capital assistance under section 21A(u)(1) of the FHLBA, provided that such assistance is consistent with section 13(c)(4)(A) of the FDIA; (ii) the RTC may provide to the Minority Acquiror performing assets under the RTC's control, in addition to those of the depository institution or branch to be acquired, in an amount not greater than the amount of the net liabilities carried on the books of the depository institution or branch and acquired by the Minority Acquiror; and (iii) such disposition of the performing assets of the failed depository institution or branch to the Minority Acquiror shall have a first priority over a disposition by the RTC of such assets for any other purpose

[2] The RTC has found no indication that an extensive, customized survey and analysis of the demographics and other characteristics of the geographic area surrounding each branch of a failed institution would yield results significantly different from those obtained by using Census Data and Zip Codes or Census Tracts. In addition, reliable population data for individually determined areas is not readily available on a consistent nationwide basis. The nature of the RTC's statutory Cost Constraints in marketing and

Continued

The United States Postal Service has subdivided the United States and its territories into discrete geographic areas for purposes of the distribution of mail, and has designated each such area with a 5-digit numeric Zip Code. See, U.S. Postal Service, 1993 NATIONAL FIVE-DIGIT ZIP CODE & POST OFFICE DIRECTORY. The individual areas defined by the Zip Codes generally correspond to a district or area with distinctive characteristics. The Zip Code itself is one distinctive characteristic that ties the area and its residents together. Moreover, most Zip Code areas are further distinguished by the presence of a postal facility designed to service those neighborhoods. Accordingly, Zip Codes constitute an existing, comprehensive system for describing areas that generally approximate neighborhoods.

Individual Census Tracts and Census Blocks, by their nature, do not appear to be reasonable alternatives to Zip Codes to utilize on a general basis. According to the Census Bureau, Census Blocks are small areas bounded on all sides by visible features such as streets, roads, streams, and railroad tracks, and by invisible boundaries such as city, town, township, and county limits, property lines, and short, imaginary extensions of streets and roads. Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce, 1990 CENSUS OF HOUSING, GENERAL HOUSING CHARACTERISTICS (1992). Individual Census Blocks because of their size appear to be inappropriate for determining the boundaries of a neighborhood served by a financial institution, or a branch thereof on a general basis. Census Tracts,[2] although larger than Census Blocks, are small, relatively permanent statistical subdivisions of a country which usually have between 2,500 and 8,000 persons, and when first delineated, are designed to be homogeneous with respect to population characteristics, economic status, and living conditions. Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce, 1990 CENSUS OF HOUSING, GENERAL HOUSING CHARACTERISTICS (1992).

Individual Census Tracts or Census Blocks are generally impractical for use in defining the boundaries of a neighborhood served by a financial institution, or a branch thereof, on a generally uniform basis and are inconsistent with the spirit of the legislation. However, use of Census Tracts or Census Blocks on an individual or aggregate basis may be appropriate on an exception basis. The Act is intended to enhance opportunities for Minorities to acquire institutions and branches which primarily "serve" Minority residents. 139 Cong. Rec. H10899–900 (daily ed. November 22, 1993) (statement of Rep. Mfume). The people served by a depository institution or branch may be located over a relatively large geographic area, generally transcending Census Block boundaries and, most likely, Census Tract boundaries as well. Census Tracts and Census Blocks tend to be small areas, focused only on residences and are generally not focused on all residential neighborhoods served by a local financial institution, or a branch office thereof.

The Zip Codes (and the boundaries thereof) of offices of a failed institution tend to be larger areas and are readily ascertainable both by RTC personnel and by potential bidders. Such is not the case for Census Tracts. The addresses of each of the offices of a failed institution already contain the Zip Code, and the boundaries of each Zip Code area are available at the local Post Office.

Notwithstanding the obvious advantages of a definition based on fixed methodology, circumstances may arise where that approach fails to accurately reflect the reality of the relevant neighborhood. For example, if an institution or branch is physically located within Zip Code 00001, near the boundary with Zip Code 00002, a mechanical application of the Zip Code approach would indicate that the branch serves customers in the neighborhood defined by Zip Code 00001. Or for example, a rigid application of the Zip Code approach to the individual offices of an institution might preclude the designation of the whole institution as being located in a predominantly minority neighborhood, although other rational bases might exist for a determination that the institution as a whole is located in a predominantly minority neighborhood. Therefore, rather than rigidly applying the Zip Code approach, if the RTC determines, in its sole discretion and subject to its Cost Constraints, that other reasonably reliable information and data, that is readily accessible to it, indicates different boundaries which more accurately reflect the relevant neighborhood, the RTC may define the relevant neighborhood in terms of those different boundaries.

selling a failed depository institution dictates that the identification of "predominantly minority neighborhoods" be accomplished with relative speed and minimal expense. The failed institutions the RTC resolves suffer significant operating losses on a daily basis. An increase in those operating losses due to a delay in the resolution of the institution caused by the implementation of a definition of "predominately minority neighborhood" which is difficult and time consuming to utilize is clearly inconsistent with the RTC's statutory duties.

[2] Starting with the 1990 Census those areas which are not covered by Census Tracts have been subdivided into "Block Numbering Areas" (BNA's). These BNA's are essentially the equivalent of Census Tracts, except that they have been delineated by a State agency instead of a local committee.

Conclusion

The RTC's definition of "predominantly minority neighborhood" is based on readily available, established and accepted information: Zip Codes and Census Data. A "predominantly minority neighborhood" can, therefore, be identified using existing, objective standards: (1) A Zip Code to define the geographic area which generally constitutes the neighborhood and (2) Census Data to determine the minority composition of that neighborhood. In the event that the RTC, in its sole discretion, determines that other reasonably reliable information and data, that is readily accessible to it, indicates more accurate boundaries for such neighborhood, the RTC will define such neighborhood using those more accurate boundaries. The proposed definition permits the RTC to quickly identify "predominantly minority neighborhoods" without delaying the resolution of an institution consistent with the RTC's statutory Cost Constraints. The methodology adopted by this interim rule constitutes a reasonable basis upon which to define "predominantly minority neighborhood" consistent with the purposes of sections 21A(s) and (w)(17) of the FHLBA and consistent with the RTC's duties in resolving failed institutions.

Administrative Procedure Act

The RTC is adopting this rule as an interim rule. It will be effective immediately upon publication in the **Federal Register** without the usual notice and comment period or delayed effective date as provided for in the Administrative Procedure Act, 5 U.S.C. 553. These requirements may be waived for "good cause." The definition provided by the interim rule implements the Act. Promulgation of the rule on an expedited basis is necessary to permit the immediate implementation of the new statute in order to avoid the additional losses that would otherwise be incurred due to the delay in the resolution of failed institutions pending the usual delayed effective date. Thus, the RTC finds that the benefits to the public in adopting the interim rule outweigh any possible harm resulting from not seeking comment on the proposed rule in advance of its effective date. The RTC actively solicits comment on this interim rule and will consider those comments in the adoption of the rule as final.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the following initial regulatory flexibility analysis is provided:

1. Reasons, objectives, and legal bases underlying the interim rule. These elements have been discussed above in the Supplementary Information section.

2. Small entities to which the rule would apply. This rule applies equally to acquiring institutions of all sizes inasmuch as the RTC has been given no discretion in this matter by Congress.

3. Impact of the interim rule on small businesses. There is no burden imposed on small businesses by this rule which merely defines, pursuant to Congressional direction, a term utilized in the statute.

4. Overlapping or conflicting federal rules. There are no known federal rules that overlap, duplicate, or conflict with the interim rule.

5. Alternatives to the interim rule. The RTC has not identified alternatives that would be less burdensome to small businesses and yet effectively accomplish the objectives of the rule because there is no burden imposed on small business.

Request for Public Comment

The RTC is issuing this interim rule in response to statutory direction to define "predominantly minority neighborhood." The RTC is, however, hereby requesting comment during a 30-day comment period on all aspects of the interim rule.

List of Subjects in 12 CFR Part 1630

Savings associations.

For the reasons set out in the preamble, the RTC hereby adds part 1630 to title 12, chapter XVI of the Code of Federal Regulations, to read as follows:

PART 1630—DEFINITION OF PREDOMINANTLY MINORITY NEIGHBORHOOD

Sec.
1630.1 Purpose and scope.
1630.2 Definitions.
1630.3 Predominantly minority neighborhood.

Authority: 12 U.S.C. 1441a(b)(11), (s) and (w)(17).

§ 1630.1 Purpose and scope.

The provisions of this part define "predominantly minority neighborhood" for the marketing, sale and resolution of depository institutions, and branches thereof, by the Resolution Trust Corporation (RTC) under the rent-free lease provisions of section 21A(s) of the Federal Home Loan Bank Act (FHLBA) and the minority preference provisions of section 21A(w)(17) of the FHLBA.

§ 1630.2 Definitions.

(a) *Branch* means a domestic branch as defined in section 3(o) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1813(o).

(b) *Census Bureau* means the U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census.

(c) *Census Data* means the population data, including without limitation the composition by Race and Hispanic origin of each U.S. Postal Service Zip Code area, provided by the Census Bureau for the most recent Census of Population.

(d) *Minority* means, any Black American, Native American, Hispanic American, or Asian American, as specified in section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 as utilized in sections 21A(s) and (w)(17) of the Federal Home Loan Bank Act (12 U.S.C. 1441a) or such other equivalent classifications, as determined by the Resolution Trust Corporation, including, without limitation, those used by the Census Bureau for the most recent Census Data.

(e) *Race* means a racial classification used by the Census Bureau pursuant to the guidelines in Federal Statistical Directive No. 15 issued by the Office of Management and Budget, which provides standards on ethnic and racial categories for statistical reporting to be used by all Federal agencies. The OMB directive is available from Office of Administration, EOP Publications, 725 17th Street, NW., room 2200, New EOB, Washington, DC 20503.

(f) *RTC* means the Resolution Trust Corporation, in its corporate, conservatorship or receivership capacities, as applicable.

(g) *U.S. Postal Service Zip Code* means a five-digit numeric code that identifies a specific geographic area within the United States and its territories which is used by the U.S. Postal Service for the distribution of mail.

§ 1630.3 Predominantly minority neighborhood.

The phrase "predominantly minority neighborhood" as used in sections 21A(s), (w)(17) of the Federal Home Loan Bank Act, means an area delineated by the geographical boundaries of a U.S. Postal Service Zip Code, in which, according to the most recent Census Data, 50% or more of the residential population is Minority; unless a different geographic area has been determined by the RTC, in its sole discretion, based on readily accessible and reasonably reliable information and data, to more accurately represent an area having distinctive or shared characteristics, that is served by the institution, or Branch thereof, being marketed by the RTC, in which 50% or more of the population is Minority.

By order of the Chief Executive Officer.

Dated at Washington, DC, this 18th day of February 1994.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 94–4184 Filed 2–22–94; 11:32 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–59–AD; Amendment 39–8837; AD 94–04–17]

Airworthiness Directives: Twin Commander Aircraft Corporation 500, 520, 560, 680, 681, 685, 690, 695, and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Twin Commander Aircraft Corporation (Twin Commander) 500, 520, 560, 680, 681, 685, 690, 695, and 720 series airplanes. This action requires inspecting the flap system for cables with broken wires or pulleys with worn cable clips, replacing any damaged parts, and replacing the master pulley and cable with new parts of improved design. Reports of cable fatigue, particularly the master pulley cable, on several of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent flap system failure caused by cable fatigue, which could result in loss of control of the airplane.

DATES: Effective April 15, 1994. The incorporation by reference of certain

publications listed in the regulations is approved by the Director of the Federal Register as of April 15, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2594; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Twin Commander 500, 520, 560, 680, 681, 685, 690, 695, and 720 series airplanes was published in the **Federal Register** on July 19, 1993 (58 FR 38540). The action proposed to require inspecting the flap system for cables with broken wires and pulleys with worn chips, replacing any damaged parts, and replacing the master pulley with a new part of improved design. The proposed actions would be accomplished in accordance with Twin Commander Service Bulletin No. 210, dated February 1, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter, the Twin Commander Aircraft Corporation, supports the proposed rule, and recommends wording the proposed AD to more closely coincide with Service Bulletin 210, dated February 1, 1991. The FAA concurs and has reworded the proposal accordingly. This change does not add any additional burden upon U.S. owners/operators of the affected airplanes than was originally proposed.

The other commenter states that a parts availability problem may occur if owners/operators of the affected airplanes find as many damaged pulleys in the cable system as this owner/operator did on a Model 690B airplane. This commenter feels that there is not sufficient parts inventory to coincide with the 50-hour time-in-service (TIS) compliance time, and recommends changing the compliance time to 12 months. The FAA does not concur. Twin Commander has assured the FAA that there will be adequate parts available for all required repairs. In addition, if a temporary delay in parts availability should occur, then an owner/operator could request an extension of the compliance time through instructions specified in paragraph (d) of the proposed AD. The proposed AD is unchanged as a result of this comment.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the wording changes referenced above and minor editorial corrections. The FAA has determined that these minor changes and corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 1,860 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 25 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $600 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,673,500. This figure is based upon the assumption that none of the affected airplane operators have accomplished the required actions.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD to read as follows:

94-04-17 Twin Commander Aircraft Corporation: Amendment 39-8837. Docket No. 92-CE-56-AD.

Applicability: Models 500, 500A, 500B, 500C, 500U, 520, 560, 560A, 560E, 560F, 680, 680E, 680F, 680FL, 680FL(P), 680FP, 680T, 680V, 680W, 681, 685, 690, 690A, 690B, 690C, 690D, 695, 695A, 695B, and 720 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent flap system failure caused by cable fatigue, which could result in loss of control of the airplane, accomplish the following:

(a) Accomplish the following inspections and parts replacements (where applicable) of the flap system in accordance with the Accomplishment Instructions section of Twin Commander Service Bulletin (SB) No. 210, dated February 1, 1991.

(1) Rub each flap system cable over its length using a soft cotton cloth. Where the cotton snags, visually inspect the cable for broken wires. Prior to further flight, replace any cable having a broken wire.

(2) Inspect the slave pulley groove width. If the groove is too narrow as specified in Part I, paragraph C, of the Accomplishment Instructions section of Twin Commander SB No. 210, prior to further flight, replace the slave pulley and slave pulley cable.

(3) Visually inspect the flap system for pulleys with worn cable clips or rubbing against the upper or lower support brackets. Prior to further flight, replace any damaged pulleys, brackets, or clips.

(b) Replace the master pulley and the master pulley cable with new parts of improved design in accordance with the Accomplishment Instructions section of Twin Commander SB No. 210, dated February 1, 1991. The applicable master pulley and master cable pulley part numbers are referenced in Table I of Twin Commander SB No. 210.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO, FAA, Northwest Mountain Region.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO, FAA, Northwest Mountain Region.

(e) The inspection and replacement required by this AD shall be done in accordance with Twin Commander Service Bulletin No. 210, dated February 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39-8837) becomes effective on April 15, 1994.

Issued in Kansas City, Missouri, on February 15, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-4127 Filed 2-23-94; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 931090-4048]

RIN 0625-AA06

Limit on Duty-Free Insular Watches in Calendar Year 1994

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Territorial and International Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: This action amends 15 CFR Part 303, which governs duty-exemption allocations and duty-refund entitlements for watch producers in the United States' insular possessions (the Virgin Islands, Guam and American Samoa) and the Northern Mariana Islands. The amendments establish the total quantity and territorial shares of duty-exemption for 1994 and adjust the wages considered creditable towards the production incentive certificate (PIC).

EFFECTIVE DATE: February 24, 1994.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–1660.

SUPPLEMENTARY INFORMATION: The insular possessions' watch industry provision in Section 110 of Public Law 97–446 (96 Stat. 2331) (1983) (19 U.S.C. 1202, note) requires the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands. Regulations on the establishment of these quantities and shares are contained in §§ 303.3 and 303.4 of title 15, Code of Federal Regulations (15 CFR 303.3 and 303.4). Section 303.6(h) gives the Secretaries authority to make the changes in § 303.14.

The rule also modifies § 303.14(a)(1)(i) by increasing the dollar amount of wages per person that the Departments can consider in calculating the producers' allocations and PICs. The limit is raised to $35,000 in order to help attract and retain the managerial talent necessary to operate efficient watch assembly plants.

We publish these revisions in proposed form on December 14, 1993 (58 FR 65294) and invited comments. We received no comments.

The Departments establish for calendar year 1994 a total quantity and respective territorial shares as shown in the following table:

Virgin Islands	3,600,000
Guam	500,000
American Samoa	500,000
Northern Mariana Islands	500,000
Total	5,100,000

Under the Administrative Procedure Act, 5 U.S.C. 553(d)(1), the effective date of this rule need not be delayed for 30 days because their rule relieves a restriction. The restriction is relieved by raising the amount of wages per person that the Departments can consider in calculating the producers' allocations and PICs.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Fewer than ten entities are directly affected by this action. The commercial benefits of the program governed by these regulations, for entities both directly and indirectly affected, are less than $10 million per year.

Paperwork Reduction Act

This rulemaking involves information collection activities subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which are currently approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134. The amendments will not increase the information burden on the public.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, we are amending part 303 as follows:

PART 303—[AMENDED]

1. The authority citation for part 303 continues to read as follows:

Authority: Public Law 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Public Law 94–241, 90 Stat. 263 (48 U.S.C. 1681, note).

§ 303.14 [Amended]

2. Section 303.14(a)(1)(i) is amended by removing "$32,000" and adding "$35,000" in its place.

3. Section 303.14(d)(1) is amended by removing "Guam," before American Samoa.

4. Section 303.14(d)(2) is amended by adding "and Guam" after Virgin Islands and removing "share" and adding "shares" in its place.

5. Section 303.14(e) is amended by removing "4,080,000" and adding "3,600,000" in its place.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Leslie M. Turner,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 94-4198 Filed 2-23-94; 8:45 am]

BILLING CODE 3510-DS-M and 4310-93-M

Bureau of Export Administration

15 CFR Parts 770, 772, 773, 776, and 799

[Docket No. 931245-3345]

Computers: General License Eligibility; Supercomputer Definition

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to revise the definition of "supercomputers". This final rule increases the "supercomputer" threshold level from a CTP (composite theoretical performance) equal to or exceeding 195 Mtops (million theoretical operations per second) to a CTP equal to or exceeding 1,500 Mtops.

This rule also increases the General License GFW eligibility level for digital computers controlled by ECCN 4A03A to a CTP of 500 Mtops or less for eligible countries listed in the Nuclear Nonproliferation Special Country List (i.e., Supplement No. 4) and 1,000 Mtops or less for other eligible countries. To conform with recent COCOM changes to the International Industrial List (IL), this rule makes General License G-DEST available for exports of "digital" computers with a "CTP" not exceeding 260 Mtops, except to Country Groups S and Z, Iran, Syria, and South African military and police entities. The Department of the Treasury's Office of Foreign Assets Control maintains an embargo on other destinations, such as Iraq and the Federal Republic of Yugoslavia (Serbia and Montenegro).

In addition, this rule raises the level at which nuclear nonproliferation controls apply to digital computers controlled by ECCNs 4A01A, 4A02A, and 4A03A. Nuclear nonproliferation controls now apply to computers with a CTP exceeding 500 Mtops for countries listed in Supplement No. 4.

This rule makes more computers eligible for export under the special license procedures because the eligibility levels for certain countries are tied to either the supercomputer threshold level or the nuclear nonproliferation control level for computers, both of which are increased by this rule.

Finally, this rule revises the Technical Note in the Commerce Control List that provides instructions on calculating "CTP".

EFFECTIVE DATE: February 24, 1994.

FOR FURTHER INFORMATION CONTACT: For technical information on computers contact Joseph Young, Information Sytems Technology Center, Office of Technology and Policy Analysis, Telephone: (202) 482-0706.

For information on licensing policies and procedures applicable to supercomputers, contact Gene Peterson-Beard, Office of Technology and Policy Analysis, Telephone: (202) 482-4220.

SUPPLEMENTARY INFORMATION:

Background

This interim rule revises the definition of a supercomputer, expands the General License GFW eligibility level for digital computers controlled by ECCN 4A03A, raises the levels at which nuclear nonproliferation controls apply to computers controlled by ECCNs 4A01A, 4A02A, and 4A03A, and makes more computers eligible for export under the special license procedures.

In international negotiations with our partner in the supercomputer regime, we have reached agreement on a new supercomputer threshold level. Accordingly, this rule revises the definition of "supercomputer" in § 770.2 and § 776.11(a) to increase the supercomputer threshold level from a CTP (composite theoretical performance) equal to or exceeding 195 Mtops (million theoretical operations per second) to a CTP equal to or exceeding 1,500 Mtops. The United States continues to seek an agreement that would increase the supercomputer threshold level to 2,000 Mtops. Following the completion of negotiations with our supercomputer partner, the Bureau of Export Administration (BXA) intends to publish a rule that will revise the supercomputer safeguards that apply to certain countries.

This rule also increases the General License GFW eligibility level for digital computers controlled by ECCN 4A03A from a CTP less than 195 Mtops to a CTP of 500 Mtops or less for eligible countries listed in Supplement No. 4 to part 778 and a CTP of 1,000 Mtops or less for other eligible countries. Subject to the restrictions in § 771.2(c), items eligible for General License GFW may be exported to most destinations in Country Groups T and V. General License GFW is not available for exports to Iran, Syria, the People's Republic of China, or the South African military or police and a validated license continues to be required for exports of all computers controlled by ECCN 4A03A to these destinations.

To conform with recent COCOM changes to the International Industrial List (IL), this rule amends the Validated License Required paragraph in ECCN 4A03A to indicate that General License G-DEST is available for exports of "digital" computers with a "CTP" not exceeding 260 Mtops, except to Country Groups S and Z, Iran, Syria, and South African military and police entities.

National security-based validated license requirements continue to apply to: (1) Exports of "digital computers" with a CTP exceeding 260 Mtops to controlled destinations and to all other destinations not eligible for General License GFW and (2) exports to GFW-eligible destinations of "digital computers" that exceed the GFW eligibility levels (i.e., 500 Mtops or less for eligible Supplement No. 4 countries and 1,000 Mtops or less for other eligible countries).

Foreign policy-based validated license requirements remain in effect for exports of computers controlled by ECCNs 4A03A and 4A94F (i.e., computers with a CTP of 6 Mtops or greater) to Iran or Syria and for exports of all computers to Country Groups S and Z, and South African military and police entities. Exporters should also be aware that the Department of the Treasury's Office of Foreign Assets Control maintains an embargo on other destinations, such as Iraq and the Federal Republic of Yugoslavia (Serbia and Montenegro).

This rule also amends ECCNs 4A01A, 4A02A, and 4A03A to increase the level at which nuclear nonproliferation controls apply to computers. Nuclear nonproliferation controls now apply only for exports of computers with a CTP exceeding 500 Mtops to countries listed in Supplement No. 4 to part 778. Previously, nuclear nonproliferation controls applied to computers with a CTP of 195 Mtops or above for countries listed in Supplement No. 4 to part 778.

This rule makes more computers eligible for export under the special license procedures. Destinations that are not subject to nuclear nonproliferation controls, and not eligible to receive supercomputers under the special license procedures, are eligible to receive computers below the new supercomputer threshold level, i.e., 1,500 Mtops. Countries for which exports of computers with a CTP above 500 Mtops are subject to nuclear nonproliferation controls are now eligible to receive computers with a CTP of 500 Mtops or less.

Section 772.1 is amended by adding a new paragraph (h) to inform exporters that validated license conditions are terminated when items are decontrolled. Exporters who have received validated licenses containing restrictive conditions for items that are now eligible for shipment under a general license (e.g., General Licenses GFW, GCT, or G-DEST) may use the appropriate general license to export such items, subject only to the specific conditions that apply to the use of these general licenses. Exporters should be aware, however, of the general prohibitions in § 771.2(c) concerning the use of general licenses and of the validated license requirements that apply to certain nuclear, missile technology, or chemical-biological weapons activities described in § 778.3, § 778.7, § 778.8, and § 778.9.

Finally, this rule revises the Technical Note under the heading "Information on How to Calculate Composite Theoretical Performance (CTP)" at the end of Category 4 in the Commerce Control List (CCL). The changes in this Technical Note may affect the control status of certain computers (e.g., eligibility for export under General License G-DEST, GFW, or GCT), as well as whether or not a computer is treated as a supercomputer.

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard carrier to a port of export pursuant to actual orders for export before March 10, 1994 may be exported under the previous general license provisions up to and including March 24, 1994. Any such items not actually exported before midnight March 24, 1994, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This rule was reviewed by the Office of Management and Budget under Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0010, 0694-0013, 0694-0015, and 0694-0073.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure.

15 CFR Parts 772, 773, 776, and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 770, 772, 773, 776, and 799 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citation for 15 CFR parts 770, 772, and 799 is revised to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

2. The authority citation for 15 CFR part 773 is revised to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

3. The authority citation for 15 CFR part 776 is revised to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

PART 770—[AMENDED]

4. Section 770.2 is amended by revising the definition of "supercomputers" to read as follows:

§ 770.2 Definitions of terms.

* * * * *

Supercomputer. A "supercomputer" is any computer with a Composite Theoretical Performance (CTP) equal to or exceeding 1,500 Mtops (million theoretical operations per second). For calculation of CTP, see the Technical Note that follows the Advisory Notes for Category 4 in the Commerce Control List

(Supplement No. 1 to § 799.1 of this subchapter).

* * * * *

PART 772—[AMENDED]

5. Section 772.1 is amended by adding a new paragraph (h) to read as follows:

§ 772.1 General provisions.

* * * * *

(h) *Terminating validated license conditions.* Exporters who have shipped under validated licenses containing conditions that would not apply to an export under a general license, and foreign consignees who have agreed to such conditions, are no longer bound by the conditions when the licensed items become eligible for shipment under a general license (e.g., GFW, GCT, G–DEST). Items that were exported under such licenses remain subject to the conditions of permissive reexports and any applicable general licenses on which they are based, as well as the general prohibitions in § 771.2(c) of this subchapter on the use of general licenses. Termination of validated license conditions does not relieve persons of responsibility for any violations that may have occurred before availability of a general license.

PART 773—[AMENDED]

Supplement No. 1 to Part 773 [Amended]

6. Supplement No. 1 to part 773 is amended by revising in paragraph (l)(1) the phrase "of less than 195 MTOPS" to read "that does not exceed 500 MTOPS".

PART 776—[AMENDED]

7. Section 776.11(a) is revised to read as follows:

§ 776.11 Supercomputers.

* * * * *

(a) *Definition of "supercomputer".* A supercomputer is any computer with a Composite Theoretical Performance (CTP) equal to or exceeding 1,500 MTOPS (million theoretical operations per second). For calculation of the CTP, see the Technical Note that follows the Advisory Notes for Category 4 in the Commerce Control List (Supplement No. 1 to § 799.1 of this subchapter).

* * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

8. In Supplement No. 1 to Section 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4A01A is amended by revising the Requirements section to read as follows:

4A01A Electronic computers and related equipment, as follows, and "assemblies" and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Units: Computers and peripherals in number; parts and accessories in $ value
Reason for Control: NS, MT, NP, FP (see Notes)
GLV: $5,000 for 4A01.a only; $0 for 4A01.b
GCT: Yes, except MT (see Notes) and except supercomputers as defined in § 776.11(a) (no supercomputer restriction for Japan)
GFW: No

Notes: 1. MT controls apply to 4A01.a.
2. NP controls apply to computers with a CTP exceeding 500 Mtops to countries listed in Supplement No. 4 to part 778 of this subchapter.
3. FP controls apply to all destinations, except Japan, for supercomputers (see § 776.11 of this subchapter).

* * * * *

Supplement No. 1 to § 799.1 [Amended]

9. In Supplement No. 1 to Section 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4A02A is amended by revising the Requirements section to read as follows:

4A02A "Hybrid computers", as follows, and "assemblies" and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Units: Computers and peripherals in number; parts and accessories in $ value
Reason for Control: NS, MT, NP, FP (see Notes)
GLV: $5,000
GCT: Yes, except MT (see Notes) and except supercomputers as defined in § 776.11(a) (no supercomputer restriction for Japan)
GFW: No

Notes: 1. MT controls apply to hybrid computers combined with specially designed "software", for modeling, simulation, or design integration of complete rocket systems and unmanned air vehicle systems described in § 787.7 of this subchapter.
2. NP controls apply to computers with a CTP exceeding 500 Mtops to countries listed in Supplement No. 4 to part 778 of this subchapter.
3. FP controls apply to all destinations, except Japan, for supercomputers (see § 776.11 of this subchapter).

* * * * *

Supplement No. 1 § 799.1 [Amended]

10. In Supplement No. 1 to Section 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4A03A is amended by revising the Requirements section to read as follows:

4A03A "Digital computers", "assemblies", and related equipment therefor, as described in this entry, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ (The "CTP" level in 4A03.c notwithstanding, General License G–DEST is available for exports of "digital" computers with a "CTP" not exceeding 260 Mtops, except to Country Groups S and Z, Iran, Syria, and South African military and police entities.)
Unit: Computers and peripherals in number; parts and accessories in $ value
Reason for Control: NS, MT, NP, FP (see Notes)
GLV: $5,000
GCT: Yes, except MT and FP, and except supercomputers as defined in § 776.11(a) (no supercomputer restriction for Japan); see Notes
GFW: Yes, except MT and FP (see Notes), for the following items:

a. Equipment described in Advisory Note 4; and

b. Computers with a CTP not exceeding 1,000 Mtops (500 Mtops for eligible countries listed in Supp. 4 to part 778 of this subchapter) and specially designed components therefor, exported separately or as part of a system, and related equipment therefor when exported with these computers as part of a system.

N.B. 1: General License GFW is not available for the export of commodities that the exporter knows will be used to:

a. Enhance the performance capability (i.e., CTP) of a computer to the "supercomputer" level; or

b. Enhance the performance capability of a "supercomputer" (see § 776.11 for definition of "supercomputer").

N.B. 2: To determine whether General License GFW may be used to export related equipment controlled under another entry in the CCL, consult the GFW paragraph under the Requirements heading of the appropriate entry.

Notes: 1. MT controls apply to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B05 or 9B06.
2. NP controls apply to computers with a CTP exceeding 500 Mtops to countries listed in Supplement No. 4 to part 778 of this subchapter.
3. FP controls apply to computers for computerized fingerprint equipment to all destinations except Australia, Japan, New Zealand and members of NATO.
4. FP controls apply to all destinations, except Japan, for supercomputers (see § 776.11 of this subchapter).

5. FP controls apply to Iran and Syria for computers controlled by 4A03A or 4A94F (i.e., computers with a CTP of 6 Mtops or greater). See § 785.4(d)(1) of this subchapter.

* * * * *

11. In Category 4 (Computers), following Advisory Note 7, the Technical Note under the heading "Information on How to Calculate Composite Theoretical Performance (CTP)" is revised to read as follows:

Information on How to Calculate "Composite Theoretical Performance" ("CTP"):

Technical Note: "Composite theoretical performance" (CTP).

Abbreviations used in this Technical Note

CE "computing element" (typically an arithmetic logical unit)
FP floating point
XP fixed point
t execution time
XOR exclusive OR
CPU central processing unit
TP theoretical performance (of a single CE)
CTP "composite theoretical performance" (multiple CEs)
R effective calculating rate
WL word length
L word length
* multiply

Execution time 't' is expressed in microseconds, TP and "CTP" are expressed in Mtops (millions of theoretical operations per second) and WL is expressed in bits.

Outline of "CTP" Calculation Method

"CTP" is a measure of computational performance given in millions of theoretical operations per second (Mtops). In calculating the "Composite Theoretical Performance" ("CTP") of an aggregation of "Computing Elements" ("CEs"), the following three steps are required:

1. Calculate the effective calculating rate (R) for each "computing element" ("CE");

2. Apply the word length adjustment (L) to the effective calculating rate (R), resulting in a Theoretical Performance (TP) for each "computing element" ("CE");

3. If there is more than one "computing element" ("CE"), combine the Theoretical Performances (TPs), resulting in a "Composite Theoretical Performance" ("CTP") for the aggregation.

Details for these steps are given in the following section.

Note 1: For aggregations of multiple "computing elements" ("CEs") that have both shared and unshared memory subsystems, the calculation of "CTP" is completed hierarchically, in two steps: first, aggregate the groups of "computing elements" ("CEs") sharing memory; second calculate the "CTP" of the groups using the calculation method for multiple "computing elements" ("CEs") not sharing memory.

Note 2: "Computing elements" ("CEs") that are limited to input/output and peripheral functions (e.g., disk drive, communication and video display controllers) are not aggregated into the "CTP" calculation.

The following table shows the method of calculating the Effective Calculating Rate (R) for each "Computing Element" ("CE"):

Step 1: The effective calculating rate R.

For computing elements (CEs) Implementing: Note: Every "CE" must be evaluated independently	Effective calculating rate, R
XP only (R_{xp})	$1 + 3 * (t_{xp\ add})$. If no add is implemented use: $1 + (t_{xp\ mult})$. If neither add nor multiply is implemented use the fastest available arithmetic operation as follows: $1 + 3 * (t_{xp})$.
FP only (R_{fp})	See Notes X and Y. Max $1 + t_{fp\ add}$, $1 + t_{fp\ mult}$.
Both FP and XP (R)	See Notes X and Y. Calculate both R_{xp}, R_{fp}.
For simple logic processors not implementing any of the specified arithmetic operations.	$1 + 3 * t_{log}$.
For special logic processors not using any of the specified arithmetic or logic operations.	Where t_{log} is the execute time of the XOR, or for logic hardware not implementing the XOR, the fastest simple logic operation. See Notes X and Z. $R = R * WL/64$. Where R is the number of results per second, WL is the number of *bits* upon which the logic operation occurs, and 64 is a factor to normalize to a 64 bit operation.

Note W: For a pipelined "CE" capable of executing up to one arithmetic or logic operation every clock cycle after the pipeline is full, a pipelined rate can be established: The effective calculating rate (R) for such a "CE" is the faster of the pipelined rate or non-pipelined execution rate.

Note X: For a "CE" that performs multiple operations of a specific type in a single cycle (e.g., two additions per cycle or two identical logic operations per cycle), the execution time t is given by:

$$t = \frac{\text{cycle time}}{\text{the number of identical arithmetic operations per machine cycle.}}$$

"Computing elements" ("CEs") that perform different types of arithmetic or logic operations in a single machine cycle are to be treated as multiple separate "computing elements" ("CEs") performing simultaneously (e.g., a "CE" performing an addition and a multiplication in one cycle is to be treated as two "CEs", the first performing an addition in one cycle and the second performing a multiplication in one cycle).

If a single "computing element" ("CE") has both scalar function and vector function, use the shorter execution time value.

Note Y: For the "CE" that does not implement FP add or FP multiply, but that performs FP divide:

$$R_{fp} = \frac{1}{t_{fp\ divide}};$$

If the "CE" implements FP reciprocal, but not FP add, FP multiply or FP divide, then:

$$R_{fp} = \frac{1}{t_{fp\ reciprocal}}.$$

If none of the specified instructions is implemented, the effective floating point (FP) rate is 0.

Note Z: In simple logic operations, a single instruction performs a single logic

manipulation of no more than two operands of given lengths.

In complex logic operations, a single instruction performs multiple logic manipulations to produce one or more results from two or more operands.

Rates should be calculated for all supported operand lengths considering both pipelined operations (if supported), and non-pipelined operations, using the fastest executing instruction for each operand length based on:

1. Pipelined or register-to-register operations. Exclude extraordinarily short execution times generated for operations on a predetermined operand or operands (for example, multiplication by 0 or 1). If no register-to-register operations are implemented, continue with (2).

2. The faster of register-to-memory or memory-to-register operations; if these also do not exist, then continue with (3).

3. Memory-to-memory.

In each case above, use the shortest execution time certified by the manufacturer.

Step 2: *TP for each supported operand length WL:* Adjust the effective rate R (or R_i) by the word length adjustment L as follows:

TP=R * L, where L=(1/3+WL/96).

Note: The word length WL used in these calculations is the operand length in bits. (If an operation uses operands of different lengths, select the largest word length.)

The combination of a mantissa ALU and an exponent ALU of a floating point processor or unit is considered to be one "computing element" ("CE") with a Word Length (WL) equal to the number of bits in the data representation (typically 32 or 64) for purposes of the "Composite Theoretical Performance" ("CTP") calculation.

This adjustment is not applied to specialized logic processors that do not use XOR instructions. In this case TP=R.

Select the maximum resulting value of TP for:

Each XP-only "CE" (R_{xp});
Each FP-only "CE" (R_{fp});
Each combined FP and XP "CE" (R);
Each simple logic processor not implementing any of the specified arithmetic operations; *and*
Each special logic processor not using any of the specified arithmetic or logic operations.

Step 3: *"CTP" for aggregations of "CEs", including CPUs:*

For a CPU with a single "CE", "CTP"=TP (for CEs performing both fixed and floating point operations, TP=max (TP_{fp}, TP_{xp})).

"CTP" for aggregations of multiple "CEs" operating simultaneously is calculated as follows:

Note 1: For aggregations that do not allow all of the "CEs" to run simultaneously, the possible combination of "CEs" that provides the largest "CTP" should be used. The TP of each contributing "CE" is to be calculated at its maximum value theoretically possible before the "CTP" of the combination is derived.

N.B.: To determine the possible combinations of simultaneously operating "CEs", generate an instruction sequence that initiates operations in multiple "CEs", beginning with the slowest "CE" (the one needing the largest number of cycles to complete its operation) and ending with the fastest "CE". At each cycle of the sequence, the combination of "CEs" that are in operation during that cycle is a possible combination.

The instruction sequence must take into account all hardware and/or architectural constraints on overlapping operations.

Note 2: A single integrated circuit chip or board assembly may contain multiple "CEs".

Note 3: Simultaneous operations are assumed to exist when the computer manufacturer claims concurrent, parallel or simultaneous operation or execution in a manual or brochure for the computer.

Note 4: "CTP" values are not to be aggregated for "CE"-combinations (inter-)connected by "Local Area Networks", Wide Area Networks, I/O shared connections/devices, I/O controllers and any communication interconnection implemented by software.

Note 5: "CTP" values must be aggregated for multiple "CEs" specially designed to enhance performance by aggregation, operating simultaneously and sharing memory-, or multiple memory/"CE"-combinations operating simultaneously utilizing specially designed hardware.

This aggregation does not apply to "assemblies" controlled by 4A03.d.

"CTP"=$TP_1+C_2*TP_2+\ldots+C_n*TP_n$, where the TPs are ordered by value, with TP_1 being the highest, TP_2 being the second highest, * * * and TP_n being the lowest. C_i is a coefficient determined by the strength of the interconnection between "CEs", as follows:

- For multiple "CEs" operating simultaneously and sharing memory:

$$C_2 = C_3 = C_4 = \cdots = C_n = 0.75.$$

Note 1: When the "CTP" calculated by the above method does not exceed 194 Mtops, the following formula may be used to calculate C_i:

$$C_i = \frac{0.75}{m^{0.5}} (i = 2, \cdots n)$$

Where m equals the number of "CEs" or groups of "CEs" sharing access.

Provided:

1. The TP_i of each "CE" or group of "CEs" does not exceed 30 Mtops;

2. The "CEs" or groups of "CEs" share access to main memory (excluding cache memory) over a single channel; and

3. Only one "CE" or group of "CEs" can have use of the channel at any given time.

N.B.: This does not apply to items controlled under Category 3.

Note 2: "CEs" share memory if they access a common segment of solid state memory. This memory may include cache memory, main memory, or other internal memory. Peripheral memory devices such as disk drives, tape drives, or RAM disks are not included.

- For multiple "CEs" or groups of "CEs" not sharing memory, interconnected by one or more data channels:

C_i=0.75 * k_i (i=2, . . . , 32) (see *NOTE* on k_i factor)
=0.60 * k_i (i=33, . . . , 64)
=0.45 * k_i (i=65, . . . , 256)
=0.30 * k_i (i > 256)

The value of C_i is based on the number of "CEs", not the number of nodes.

where:

k_i=min (S_i/K_r, 1), and
K_r=normalizing factor of 20 MByte/s.
S_i=sum of the maximum data rates (in units of MByte/s) for all data channels connected to the ith "CE" or group of "CEs" sharing memory.

When calculating a C_i for a group of "CEs", the number of the first "CE" in a group determines the proper limit for C_i. For example, in an aggregation of groups consisting of 3 "CEs" each, the 22nd group will contain "CE"$_{64}$, "CE"$_{65}$, and "CE"$_{66}$. The proper limit for C_i for this group is 0.60.

Aggregation (of "CEs" or groups of "CEs") should be from the fastest-to-slowest; i.e.:

$TP_1 \geq TP_2 \geq TP_n$, and
in the case of TP_i=TP_{i+1}, from the largest to smallest; i.e.:
$C_i \geq C_{i+1}$

Note: The k_i factor is not to be applied to "CEs" to 2 to 12 if the TP_i of the "CE" or group of "CEs" is more than 50 Mtops; i.e., C_i for "CEs" 2 to 12 is 0.75.

Dated: February 18, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–4156 Filed 2–18–94; 4:49 pm]

BILLING CODE 3510–DT–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 24, 123, 134, 162, 174, 177, 178, 181 and 191

[T.D. 94–1]

RIN 1515–AB33

North American Free Trade Agreement; Corrections

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim regulations; corrections.

SUMMARY: This document makes corrections to the document published in the Federal Register which set forth interim amendments to the Customs Regulations to implement the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement and the North American Free Trade Agreement Implementation Act.

EFFECTIVE DATE: These corrections are effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Myles Harmon, Office of Regulations and Rulings (202–482–7000).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1993, Customs published in the **Federal Register** (58 FR 69460) T.D. 94–1 to set forth interim amendments to the Customs Regulations to implement the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement (NAFTA) which was adopted by the United States through the enactment of the North American Free Trade Agreement Implementation Act ("the Act"), Public Law 103–182, 107 Stat. 2057. Those interim regulatory amendments took effect on January 1, 1994, to coincide with the effective date of the NAFTA.

This document corrects some errors published in T.D. 94–1. Two errors involved amended § 24.22: (1) Paragraph (g)(1), as revised in the document, failed to fully reflect the change in wording of section 13031(a)(5) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(5)) effected by section 521 of the Act for fiscal years 1994 through 1997; and (2) the document failed to amend paragraph (g)(2)(iv) to avoid a conflict between that paragraph and the amended statutory and paragraph (g)(1) language. In new § 181.45, a printing error involving the text of paragraph (a) before the example is corrected by rearranging the text without any change in substance. In addition, in order to ensure coverage of all appropriate litigation contexts involving Customs and its officers or agents, at the end of new §§ 181.98(b) and 181.116(f) the word "defendant" is corrected to read "party to the action". Finally, this document corrects a number of drafting or typesetting errors of an editorial nature.

Corrections of Publication

Accordingly, the document published in the **Federal Register** as T.D. 94–1 on December 30, 1993 (58 FR 69460) is corrected as set forth below.

Correction to the Background Section

1. On page 69461, in the second column under the heading Part 24, the first paragraph is corrected to read:

Section 24.22, which was published as a final rule in T.D. 93–85 on October 21, 1993 (58 FR 54271), is amended to reflect changes to the commercial passenger arrival fee provisions of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) effected by section 521 of the Act. The changes involve, for fiscal years 1994 through 1997 (in effect, from January 1, 1994 through September 30, 1997), (1) replacement of the words "from a place outside the United States" by the words "from outside the customs territory of the United States", (2) an increase in the fee from $5 to $6.50, and (3) suspension of the fee exemption for persons whose journey involves certain specified locations outside the United States.

Corrections to the Interim Regulations

2. On page 69470, in the third column, the amendatory language and text pertaining to § 24.22 are corrected to read:

Section 24.22 is amended by revising paragraph (g)(1), the introductory text of paragraph (g)(2)(i)(A), and paragraph (g)(2)(iv) to read as follows:

§ 24.22 Fees for certain services.

* * * * *

(g) *Fee for arrival of passengers aboard commercial vessels and commercial aircraft.*

(1) *Fee.* Except as provided in paragraph (g)(2) of this section:

(i) For the period from January 1, 1994 through September 30, 1997, a fee of $6.50 shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from outside the customs territory of the United States; and

(ii) Commencing on October 1, 1997, a fee of $5 shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States.

(2) * * *

(i)(A) Except during the period from January 1, 1994 through September 30, 1997, persons whose journey:

* * * * *

(iv) Except during the period from January 1, 1994 through September 30, 1997, persons departing from and returning to the United States without having touched a foreign port or place;

* * * * *

§ 181.12 [Corrected]

3. On page 69475, in the first column, in § 181.12(a)(3), the second sentence should be a flush paragraph.

§ 181.45 [Corrected]

4. On page 69478, in the second column, in § 181.45, the text of paragraph (a) before the example is corrected to read:

(a) *Goods originating in Canada or Mexico.* A Canadian or Mexican originating good that is dutiable and is imported into the United States is eligible for drawback without regard to the limitation on drawback set forth in § 181.44 of this part if that originating good is:

(1) Subsequently exported to Canada or Mexico;

(2) Used as a material in the production of another good that is subsequently exported to Canada or Mexico; or

(3) Substituted by a good of the same kind and quality and used as a material in the production of another good that is subsequently exported to Canada or Mexico.

§ 181.47 [Corrected]

5. On page 69479, in the second column, the second sentence in § 181.47(a) is corrected by removing the word "existing".

§ 181.53 [Corrected]

6. On page 69482, in the second column, in § 181.53(e)(2), the second sentence of the example is corrected by adding the word "have" after the word "would" within the parentheses.

§ 181.94 [Corrected]

7. On page 69491, in the third column, in § 181.94, the reference "thirty (30)" in the second sentence is corrected to read "30".

§ 181.98 [Corrected]

8. On page 69492, in the second column, in § 181.98(b), the word "defendant" at the end of the last sentence is corrected to read "party to the action".

§ 181.100 [Corrected]

9. On page 69493, in the third column, in § 181.100(a)(2)(iii), the text is corrected by adding the word "value" after the word "regional".

§ 181.116 [Corrected]

10. On page 69496, in the third column, in § 181.116(f), the word "defendant" at the end of the last sentence is corrected to read "party to the action".

Dated: February 17, 1994.

Karen J. Hiatt,

Acting Assistant Commissioner, Office of Commercial Operations.

[FR Doc. 94–4148 Filed 2–23–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 92F-0061]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of trimethylolpropane as a pigment dispersant in resinous and polymeric coatings in contact with food. This action is in response to a petition filed by SCM Chemicals.

DATES: Effective February 24, 1994; written objections and requests for a hearing by March 28, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 13, 1992 (57 FR 12831), FDA announced that a food additive petition (FAP 2B4316) had been filed by SCM Chemicals, c/o 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed that the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of trimethylolpropane as a pigment dispersant in resinous and polymeric coatings in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations in § 175.300 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 28, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 175.300 is amended in paragraph (b)(3)(xxxiii) by alphabetically adding a new entry to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxxiii) Miscellaneous materials:

* * * * *

Trimethylolpropane (CAS Reg. No. 77-99-6).	For use as a pigment dispersant at levels not to exceed 0.45 percent by weight of the pigment.

* * * * *

Dated: February 15, 1994.

Janice F. Oliver,

Acting Director, Center for Food Safety and Applied Nutrition

[FR Doc. 94-4081 Filed 2-23-94; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 178

[Docket No. 93F-0180]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate as an antioxidant in the manufacture of polypropylene and styrene block polymers that contact food. This action is in response to two petitions filed by Sumitomo Chemical America, Inc.

DATES: Effective February 24, 1994; written objections and requests for a hearing by March 28, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 23, 1993 (58 FR 34058), FDA announced that two food additive petitions (FAP's 3B4357 and 3B4359) had been filed by Sumitomo Chemical America, Inc., 345 Park Ave., New York, NY 10154, proposing that food additive regulations be amended in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate as an antioxidant in the manufacture of polypropylene and styrene block polymers that contact food.

FDA has evaluated data in the petitions and other relevant material. The agency concludes that the proposed uses of the additive are safe and that the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petitions are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 28, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
2,4-Di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate (CAS Reg. No. 123968-25-2).	For use only: 1. At levels not to exceed 0.2 percent by weight of polypropylene complying with § 177.1520 of this chapter. The additive is used under conditions of useD through G described in Table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 0.5 percent by weight of styrene block polymers complying with § 177.1810 of this chapter. The additive is used under conditions of use D through G described in Table 2 of § 176.170(c) of this chapter.

Dated: February 15, 1994.

Janice F. Oliver,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94-4079 Filed 2-23-94; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Parts 436 and 442

[Docket No. 93N-0328]

Antibiotic Drugs; Cefadroxil Hemihydrate: Cefadroxil Hemihydrate Capsules and Cefadroxil Hemihydrate Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, cefadroxil hemihydrate, and the use of the antibiotic drug in two dosage forms, cefadroxil hemihydrate capsules and cefadroxil hemihydrate tablets. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective March 28, 1994; written comments, notice of participation, and request for a hearing by March 28, 1994;

data, information, and analyses to justify a hearing by April 25, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0335.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, cefadroxil hemihydrate, and its use in two dosage forms, cefadroxil hemihydrate capsules and cefadroxil hemihydrate tablets. The agency has concluded that the data supplied by the manufacturer concerning these antibiotic drugs are adequate to establish their safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR parts 436 and 442 to provide for the inclusion of accepted standards for these products.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective March 28, 1994. However, interested persons may, on or before March 28, 1994, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before March 28, 1994, a written notice of participation and request for a hearing, and (2) on or before April 25, 1994, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Parts 436 and 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 436 and 442 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC—CONTAINING DRUGS

1. The authority citation for 21 CFR part 436 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 436.215 is amended by alphabetically adding two new entries to the table in paragraph (b) and by adding new paragraph (c)(17) to read as follows:

§ 436.215 Dissolution test.

* * * * *

(b) * * *

Dosage form	Dissolution medium	Rotation rate[1]	Sampling time(s)	Apparatus
•	•	•	•	•
Cefadroxil hemihydrate capsules	900 mL distilled water	100	45 min	1
Cefadroxil hemihydrate tablets	900 mL distilled water	50	30 min	2
•	•	•	•	•

[1]Rotation rate of basket or paddle stirring element (revolutions per minute).

(c) * * *

(17) *Cefadroxil hemihydrate.* Proceed as directed in paragraph (c)(1) of this section, except use the cefadroxil working standard and measure the absorbance at the absorption peak of approximately 264 nanometers.

* * * * *

PART 442—CEPHA ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

4. New § 442.7 is added to subpart A to read as follows:

§ 442.7 Cefadroxil hemihydrate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefadroxil hemihydrate is 7-[D-2-amino-2(*p*-hydroxyphenyl)acetamido]-3-methyl-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid hemihydrate. It is so purified and dried that:

(i) Its potency is not less than 900 micrograms and not more than 1,050 micrograms of cefadroxil activity per milligram on an anhydrous basis.

(ii) [Reserved]

(iii) Its moisture content is not less than 2.4 percent and not more than 4.5 percent.

(iv) The pH of an aqueous solution containing 50 milligrams per milliliter is not less than 4.0 and not more than 6.0.

(v) When calculated on an anhydrous basis, its absorptivity at 264 nanometers is not less than 95 percent and not more than 104 percent of that of the cefadroxil standard similarly treated and corrected for potency.

(vi) It passes the identity test.

(vii) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for cefadroxil potency, moisture, pH, absorptivity, identity, and crystallinity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Use either of the following methods; however, the results obtained from the hydroxylamine colorimetric assay shall be conclusive.

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with solution 1 to the reference concentration of 20 micrograms of cefadroxil per milliliter (estimated).

(ii) *Hydroxylamine colorimetric assay for cefadroxil.* Proceed as directed in § 442.40(b)(1)(ii), except prepare the working standard and sample solutions and calculate the potency of the sample as follows:

(A) *Preparation of working standard solutions.* Dissolve and dilute an accurately weighed portion of the cefadroxil working standard in sufficient distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of this solution with distilled water to a concentration of 1 milligram of cefadroxil per milliliter.

(B) *Preparation of sample solutions.* Dissolve an accurately weighed portion of the sample in sufficient distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of this solution with distilled water to a concentration of 1 milligram of cefadroxil per milliliter (estimated).

(C) *Calculations.* Calculate the potency of the sample in micrograms per milligram as follows:

$$\text{Micrograms of cefadroxil per milligram} = \frac{A_U \times P_s \times 100}{A_S \times W_U \times (100-m)}$$

where:

A_U = Absorbance of sample solution;

A_S = Absorbance of working standard solution;

P_s = Potency of working standard solution in micrograms per milliliter;

W_U = Milligrams of sample per milliliter of sample solution; and

m = Percent moisture content of the sample.

(2) [Reserved]

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 50 milligrams per milliliter.

(5) *Absorptivity.* Determine the absorbance of the sample and standard solutions in the following manner: Dissolve accurately weighed portions of approximately 50 milligrams each of the sample and standard in 250 milliliters of distilled water. Transfer a 10-milliliter aliquot to a 100-milliliter volumetric flask and dilute to volume with distilled water. Using a suitable spectrophotometer and distilled water as the blank, determine the absorbance of each solution at 264 nanometers. Determine the percent absorptivity of the sample relative to the absorptivity of the standard using the following calculations:

Percent relative absorptivity =

[Absorbance of sample X milligrams standard X potency of standard in micrograms per milligram X 10]/ [Absorbance of standard X milligrams sample X (100-*m*)]

where:

m = Percent moisture in the samples.

(6) *Identity.* Using the sample and working standard solutions prepared as described in paragraph (b)(5) of this section and a suitable spectrophotometer, record the ultraviolet spectrum from 220 to 340 nanometers. The spectrum of the sample compares qualitatively with that of the cefadroxil working standard.

(7) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

5. New §§ 442.107, 442.107a, and 442.107b are added to subpart B to read as follows:

§ 442.107 Cefadroxil hemihydrate oral dosage forms.

§ 442.107a Cefadroxil hemihydrate capsules.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefadroxil hemihydrate capsules are composed of cefadroxil hemihydrate and one or more suitable and harmless lubricants and diluents enclosed in a gelatin capsule. Each capsule contains cefadroxil hemihydrate equivalent to 500 milligrams of cefadroxil. Its cefadroxil content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cefadroxil that it is represented to contain. Its moisture content is not more than 7.0 percent. It passes the dissolution test. The cefadroxil hemihydrate used conforms to the standards prescribed in § 442.7(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The cefadroxil hemihydrate used in making the batch for potency, moisture, pH, absorptivity, identity, and crystallinity.

(B) The batch for content, moisture, and dissolution.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The cefadroxil hemihydrate used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch: A minimum of 100 capsules.

(b) *Tests and methods of assay*—(1) *Cefadroxil content.* Use either of the following methods; however, the results obtained from the hydroxylamine colorimetric assay shall be conclusive.

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105

of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed glass blender jar containing sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a stock solution of convenient concentration. Blend for 3 to 5 minutes. Remove an aliquot and further dilute with solution 1 to the reference concentration of 20 micrograms of cefadroxil per milliliter (estimated).

(ii) *Hydroxylamine colorimetric assay for cefadroxil.* Proceed as directed in § 442.40(b)(1)(ii), except prepare the working standard and sample solutions and calculate the potency of the sample as follows:

(A) *Preparation of working standard solutions.* Dissolve and dilute an accurately weighed portion of the cefadroxil working standard in sufficient distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of this solution with distilled water to a concentration of 1 milligram of cefadroxil per milliliter.

(B) *Preparation of sample solutions.* Blend a representative number of capsules in a high-speed glass blender jar with sufficient distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of this solution with distilled water to a concentration of 1 milligram of cefadroxil per milliliter (estimated).

(C) *Calculations.* Calculate the cefadroxil content as follows:

$$\text{Milligrams of cefadroxil per capsule} = \frac{A_U \times P_S \times d}{A_S \times 1{,}000 \times n}$$

where:
A_U = Absorbance of sample solution;
A_S = Absorbance of working standard solution;
P_S = Potency of working standard solution in micrograms per milliliter;
d = Dilution factor of the sample;
n = Number of capsules in the sample assayed.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Dissolution.* Proceed as directed in § 436.215 of this chapter. The quantity Q (the amount of cefadroxil dissolved) is 75 percent within 45 minutes.

§ 442.107b Cefadroxil hemihydrate tablets.

(a) *Requirements for certification—(1) Standards of identity, strength, quality, and purity.* Cefadroxil hemihydrate tablets are composed of cefadroxil hemihydrate and one or more suitable and harmless binders and lubricants, with or without coloring and film-coating substances. Each tablet contains cefadroxil hemihydrate equivalent to 1,000 milligrams of cefadroxil. Its cefadroxil content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cefadroxil that it is represented to contain. Its moisture content is not more than 8.0 percent. It passes the dissolution test. The cefadroxil hemihydrate used conforms to the standards prescribed in § 442.7(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The cefadroxil hemihydrate used in making the batch for potency, moisture, pH, absorptivity, identity, and crystallinity.

(B) The batch for content, moisture, and dissolution.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The cefadroxil hemihydrate used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch: A minimum of 100 tablets.

(b) *Tests and methods of assay—(1) Cefadroxil content.* Use either of the following methods; however, the results obtained from the hydroxylamine colorimetric assay shall be conclusive.

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place a representative number of tablets into a high-speed glass blender jar containing sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a stock solution of convenient concentration. Blend for 3 to 5 minutes. Remove an aliquot and further dilute with solution 1 to the reference concentration of 20 micrograms of cefadroxil per milliliter (estimated).

(ii) *Hydroxylamine colorimetric assay for cefadroxil.* Proceed as directed in § 442.40(b)(1)(ii), except prepare the working standard and sample solutions and calculate the potency of the sample as follows:

(A) *Preparation of working standard solutions.* Dissolve and dilute an accurately weighed portion of the cefadroxil working standard in sufficient distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of this solution with distilled water to a concentration of 1 milligram of cefadroxil per milliliter.

(B) *Preparation of sample solutions.* Blend a representative number of tablets in a high-speed glass blender jar with sufficient distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of this solution with distilled water to a concentration of 1 milligram of cefadroxil per milliliter (estimated).

(C) *Calculations.* Calculate the cefadroxil content as follows:

$$\text{Milligrams of cefadroxil per tablet} = \frac{A_U \times P_S \times d}{A_S \times 1{,}000 \times n}$$

where:
A_U = Absorbance of sample solution;
A_S = Absorbance of working standard solution;
P_S = Potency of working standard solution in micrograms per milliliter;
d = Dilution factor of the sample; and
n = Number of tablets in the sample assayed.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Dissolution.* Proceed as directed in § 436.215 of this chapter. The quantity Q (the amount of cefadroxil dissolved) is 75 percent within 30 minutes.

Dated: February 9, 1994.

Stephanie R. Gray,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–4078 Filed 2–23–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

Amendment of the Fee Exemption for Federal, State and Local Government Employees

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule limits the exemption from payment of application fees for registration or reregistration to Federal, state, or local government operated hospitals or institutions. This will eliminate the need for DEA to dedicate manpower or other resources to controlling abuse of the fee exempt status.

EFFECTIVE DATE: March 28, 1994.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: On June 1, 1993, a notice of proposed rulemaking was published in the **Federal Register** (58 FR 31180). DEA proposed to limit the exemption from payment of registration or reregistration application fees to Federal, state or local government operated hospital/clinics.

A total of three comments were received, all opposed to the proposed changes. Two of the comments concerned state certified euthanasia technicians. The commentors objected to the changes on the grounds that the change would impose a financial burden on the euthanasia technicians and the animal shelters at which they work, due to the extremely high turnover rate the industry experiences. This will not be the case. The euthanasia technicians are employees of animal control facilities or shelters. They may not engage in their activities other than as employees of the facilities or shelters. Under such circumstances, DEA has traditionally issued the registrations for such activities under the facility or shelter name with the euthanasia technician's name appearing thereafter. It is appropriate under such circumstances for the Federal, state or local government facility or shelter to request and receive the exemption from the fee. In light of the fact that DEA registers these activities as other than a hospital or clinic, the original language of the proposal with respect to Federal, state or local hospitals or clinics has been changed to Federal, state or local hospitals or other institutions.

The third commentor objected to the changes on the grounds that the proposed changes, if implemented, would prevent public sector employees from using their exempt status to obtain registrations for use in private practice. That is the exact intent of the proposal. Any individual who engages in private practice utilizing a DEA registration must pay the required fee for that registration. Individuals who engage in public practice as agents or employees of Federal, state or local hospitals or institutions would not be required to obtain a registration; they would conduct their controlled substances activities under the registration of the hospital or institution. Although this has been a longstanding policy, DEA will clarify the provisions for such activities in light of the impact that the limiting of the fee exemption will have. A proposal to amend § 1301.24 has been drafted to clarify the exemption from the registration requirement of individual practitioners who act as agents or employees of other individual practitioners and of hospitals or other institutions. That proposal will be published in the **Federal Register** in the near future.

There are approximately 44,000 active DEA registrations which were issued under the fee exempt status. Over 35,000 of the registrations are for practitioners and the remainder are for Federal, state or local hospitals or institutions. By restricting the fee exempt status to the hospitals or institutions and allowing the practitioners to carry out their official duties under the hospital or institution registrations, DEA will eliminate the need to dedicate manpower or other resources to controlling the misuse of the fee exempt status.

The limiting of the fee exemption will not affect those law enforcement analytical laboratories which are described in § 1301.26.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this final rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Any financial or regulatory burdens that practitioners may experience are existing burdens which the practitioners have heretofore avoided by inappropriate use of the fee exemption.

This final rule is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, security measures.

For reasons set out above, 21 CFR part 1301 is amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.13 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1301.13 Persons exempt from fee.

(a) The Administrator shall exempt from payment of an application fee for registration or reregistration any hospital or other institution which is operated by an agency of the United States (including the U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard), of any State, or any political subdivision or agency thereof.

(b) In order to claim exemption from payment of a registration or reregistration application fee, the registrant shall have completed the certification on the appropriate application form, wherein the registrant's officer certifies to the status and address of the registrant.

* * * * *

Dated: February 14, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 94–3823 Filed 2–23–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8521]

RIN 1545–AQ98

Rules To Carry Out the Purposes of Section 42 and for Correcting Administrative Errors and Omissions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the Secretary's authority to provide guidance necessary or appropriate to carry out the purposes of section 42, the low-income housing credit. This document also contains final regulations allowing State and local housing credit agencies to correct administrative errors and omissions made in connection with allocations of low-income housing credit dollar amounts and recordkeeping within a reasonable period after their discovery. The final regulations affect State and local housing credit agencies, owners of buildings or projects for which the low-income housing credit is allocated, and taxpayers claiming the low-income housing credit.

DATES: These final regulations are effective Febuary 24, 1994.

For applicability of these regulations, see § 1.42–13(d) of these regulations.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Erickson, 202–622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1357. The estimated annual burden per respondent varies from 1 hour to 2 hours, depending on individual circumstances, with an estimated average of 1.5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On January 4, 1993, a notice of proposed rulemaking (PS–50–92) was published in the **Federal Register** (58 FR 44) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code.

Written comments responding to the notice were received, and a public hearing was held on April 5, 1993. After consideration of all written and oral comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Changes Made by the Final Regulations

The proposed regulations generally describe an administrative error and omission and include illustrative examples. Commentators have requested that the final regulations include an "accounting error" as an administrative error or omission. The Service and the Treasury Department are concerned that the term "accounting error" is too vague. However, in order to address the commentators' concerns, the final regulations clarify that an administrative error or omission includes an error in tracking the housing credit dollar amount an Agency has allocated (or that remains to be allocated) in a calendar year. For example, assume an Agency, believing that it has $100 of credit remaining in its credit ceiling for the current calendar year, allocates $100 to a project and agrees to allocate an additional $30 from the next calendar year's credit ceiling. Later, in the current calendar year, the Agency discovers that it failed to include in its credit ceiling for the current calendar year $50 of credits that were returned in the current calendar year. The error in tracking the $50 of credits that were returned is an administrative error or omission.

One commentator asked for clarification of the correction procedure an Agency should use when correcting a document without the Secretary's prior approval. Under the final regulations, a document that corrects a document containing an error or omission that has not yet been filed with the Internal Revenue Service should be filed as the original. If a document containing an error has already been filed with the Internal Revenue Service, the Agency should refile a copy of the document containing the error that prominently and clearly notes the correction. The Agency should indicate at the top of the document(s) that the correction is being made under § 1.42–13 of the Income Tax Regulations.

The proposed regulations require that an Agency obtain the prior approval of the Secretary to correct an administrative error or omission if (1) the correction is not made before the close of the calendar year of the error or omission, and (2) the correction is a numerical change to the housing credit dollar amount allocated for the building or project. One commentator suggested that an Agency should have until February 28, the date by which an Agency must file its Form 8610, to correct an administrative error or omission that changes the housing credit dollar amount allocated to a building or project without obtaining the Secretary's prior approval. Another commentator made a similar suggestion solely for credits returned in the same year in which they were allocated. These suggestions have not been adopted. Section 42(h)(1) requires that an allocation for a certain calendar year be made by the close of that calendar year. Consistent with that approach, these regulations do not permit an Agency to make a post-year allocation without the Secretary's prior approval. Of course, for a correction of an administrative error or omission that an Agency cannot correct on its own, an Agency, or the Agency and the affected taxpayer, may seek the Secretary's prior approval.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the proposed regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jeffrey A. Erickson, Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.42–13 also issued under 26 U.S.C. 42(n); * * *.

Par. 2. Section 1.42–13 is added to read as follows:

§ 1.42–13 Rules necessary and appropriate; housing credit agencies' correction of administrative errors and omissions.

(a) *Publication of guidance.* Under section 42(n), the Secretary has authority to prescribe regulations as may be necessary or appropriate to carry out the purposes of section 42. The Secretary may also provide guidance through various publications in the Internal Revenue Bulletin. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

(b) *Correcting administrative errors and omissions*—(1) *In general.* An Agency may correct an administrative error or omission with respect to allocations and recordkeeping, as described in paragraph (b)(2) of this section, within a reasonable period after the Agency discovers the administrative error or omission. Whether a correction is made within a reasonable period depends on the facts and circumstances of each situation. Except as provided in paragraph (b)(3)(iii) of this section, an Agency need not obtain the prior approval of the Secretary to correct an administrative error or omission, if the correction is made in accordance with paragraph (b)(3)(i) of this section. The administrative errors and omissions to which this paragraph (b) applies are strictly limited to those described in paragraph (b)(2) of this section, and, thus, do not include, for example, any misinterpretation of the applicable rules and regulations under section 42. Accordingly, an Agency's allocation of a particular calendar year's low-income housing credit dollar amount made after the close of that calendar year, or the use of an incorrect population amount in calculating a State's housing credit ceiling for a calendar year are not administrative errors that can be corrected under this paragraph (b).

(2) *Administrative errors and omissions described.* An administrative error or omission is a mistake that results in a document that inaccurately reflects the intent of the Agency at the time the document is originally completed or, if the mistake affects a taxpayer, a document that inaccurately reflects the intent of the Agency and the affected taxpayer at the time the document is originally completed. Administrative errors and omissions described in this paragraph (b)(2) include the following—

(i) A mathematical error;

(ii) An entry on a document that is inconsistent with another entry on the same or another document regarding the same property, or taxpayer;

(iii) A failure in tracking the housing credit dollar amount an Agency has allocated (or that remains to be allocated) in the current calendar year (e.g., a failure to include in its State housing credit ceiling a previously allocated credit dollar amount that has been returned by a taxpayer);

(iv) An omission of information that is required on a document; and

(v) Any other type of error or omission identified by guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) as an administrative error or omission covered by this paragraph (b).

(3) *Procedures for correcting administrative errors or omissions*—(i) *In general.* An Agency's correction of an administrative error or omission, as described in paragraph (b)(2) of this section, must amend the document so that the corrected document reflects the original intent of the Agency, or the Agency and the affected taxpayer, and complies with applicable rules and regulations under section 42.

(ii) *Specific procedures.* If a document corrects a document containing an administrative error or omission that has not yet been filed with the Internal Revenue Service, the Agency, or the Agency and the affected taxpayer, should complete and file the corrected document as the original. When a document containing an administrative error or omission has already been filed with the Service, the Agency, or the Agency and the affected taxpayer, should refile a copy of the document containing the administrative error or omission, and prominently and clearly note the correction thereon or on an attached new document. The Agency should indicate at the top of the document(s) that the correction is being made under § 1.42–13 of the Income Tax Regulations.

(iii) *Secretary's prior approval required.* An Agency must obtain the Secretary's prior approval to correct an administrative error or omission, as described in paragraph (b)(2) of this section, if the correction is not made before the close of the calendar year of the error or omission and the correction—

(A) Is a numerical change to the housing credit dollar amount allocated for the building or project;

(B) Affects the determination of any component of the State's housing credit ceiling under section 42(h)(3)(C); or

(C) Affects the State's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D).

(iv) *Requesting the Secretary's approval.* To obtain the Secretary's approval under paragraph (b)(3)(iii) of this section, an Agency must submit a request for the Secretary's approval within a reasonable period after discovering the administrative error or omission, and must agree to any conditions that may be required by the Secretary under paragraph (b)(3)(v) of this section. When requesting the Secretary's approval, the Agency, or the Agency and the affected taxpayer, must file an application that complies with the requirements of this paragraph (b)(3)(iv). For further information on the application procedure see Rev. Proc. 93–1, 1993–1 I.R.B. 10 (or any subsequent applicable revenue procedure). (See § 601.601(d)(2)(ii)(*b*) of this chapter.) The application requesting the Secretary's approval must contain the following information—

(A) The name, address, and identification number of each affected taxpayer;

(B) The Building Identification Number (B.I.N.) and address of each building or project affected by the administrative error or omission;

(C) A statement explaining the administrative error or omission and the intent of the Agency, or of the Agency and the affected taxpayer, when the document was originally completed;

(D) Copies of any supporting documentation;

(E) A statement explaining the effect, if any, that a correction of the administrative error or omission would have on the housing credit dollar amount allocated for any building or project; and

(F) A statement explaining the effect, if any, that a correction of the administrative error or omission would have on the determination of the components of the State's housing credit ceiling under section 42(h)(3)(C) or on

the State's unused housing credit carryover that is assigned to the Secretary under section 42(b)(3)(D).

(v) *Agreement to conditions.* To obtain the Secretary's approval under paragraph (b)(3)(iii) of this section, an Agency, or the Agency and the affected taxpayer, must agree to the conditions the Secretary considers appropriate.

(c) *Examples.* The following examples illustrate the scope of this section:

Example 1. Individual B applied to Agency X for a reservation of a low-income housing credit dollar amount for a building that is part of a low-income housing project. When applying for the low-income housing credit dollar amount, B informed Agency X that B intended to form Partnership Y to finance the project. After receiving the reservation letter and prior to receiving an allocation, B formed Partnership Y and sold partnership interests to a number of limited partners. B contributed the low-income housing project to Partnership Y in exchange for a partnership interest. B and Partnership Y informed Agency X of the ownership change. When actually allocating the housing credit dollar amount, Agency X sent Partnership Y a document listing B, rather than Partnership Y, as the building's owner. Partnership Y promptly notified Agency X of the error. After reviewing related documents, Agency X determined that it had incorrectly listed B as the building's owner on the allocation document. Since the parties originally intended that Partnership Y would receive the allocation as the owner of the building, Agency X may correct the error without obtaining the Secretary's approval, and insert Partnership Y as the building's owner on the allocation document.

Example 2. Agency Y allocated a lower low-income housing credit dollar amount for a low-income housing building than Agency Y originally intended. After the close of the calendar year of the allocation, B, the building's owner, discovered the error and promptly notified Agency Y. Agency Y reviewed relevant documents and agreed that an error had occurred. Agency Y and B must apply, as provided in paragraph (b)(3)(iv) of this section, for the Secretary's approval before Agency Y may correct the error.

(d) *Effective date.* This section is effective February 24, 1994. However, an Agency may elect to apply these regulations to administrative errors or omissions that occurred before the publication of these regulations. Any reasonable method used by a State or local housing credit agency to correct an administrative error or omission prior to February 24, 1994, will be considered proper, provided that the method is consistent with the rules of section 42.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by adding in numerical order the entry "1.42–13.....1545–1357" to the table.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: January 25, 1994.

Samuel Y. Sessions,
Acting Assistant Secretary of the Treasury.

[FR Doc. 94–3946 Filed 2–23–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Bond Forfeiture, Definitions, and Inspection Frequency

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed program amendments to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments include revisions to those portions of the Kentucky Administrative Regulations dealing with bond forfeiture funds, definitions of terms, and inspection frequency.

EFFECTIVE DATE: February 24, 1994.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington Kentucky 40503, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, Federal Register (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of Amendments

By letter dated May 21, 1993, (Administrative Record No. KY–1221) Kentucky submitted proposed amendments containing additions and modifications to 405 KAR 10:050 Bond forfeiture, 405 KAR 12:001 Definitions, and 405 FAR 12:010 General provisions for inspection and enforcement.

OSM announced receipt of the proposed amendments in the June 11, 1993, Federal Register (58 FR 32618), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The comment period closed on July 12, 1993.

On June 14, 1993 (Administrative Record No. KY–1226), Kentucky revised the proposed amendment at 405 KAR 12:001 by adding a definition of the term "unwarranted failure to comply", since that term is used in 405 KAR 12:020 section 8. The proposed definition is identical to the existing definition set forth in 405 KAR 7:001. Since the definition already exists as part of Kentucky's approved program, the Director determined that no purpose would be served by reopening the public comment period for the modification submitted by Kentucky on June 14, 1993.

By letter dated October 19, 1993 (Administrative Record No. KY–1242), Kentucky submitted a proposed program amendment which was intended to replace the proposals submitted on May 21, 1993, and June 14, 1993. The regulations contained in the October 19, 1993, submission completed the Kentucky promulgation process under Kentucky Revised Statue Chapter 13A.

OSM announced receipt of the October 19, 1993 proposed amendment in the November 5, 1993, Federal Register (58 FR 58997), and in the same notice, reopened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on November 22, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendments to the Kentucky program.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Kentucky's Regulations That Are Substantively Identical to the Corresponding Federal Regulations

State regulations (405 KAR)	Subject	Federal counterpart (30 CFR)
12:001 Sec. 1(29).	Definition of term—"unwarranted failure to comply".	843.5

Because the above proposed revision is identical in meaning to the corresponding Federal regulation, the Director finds that Kentucky's proposed rule is no less effective than the Federal rule.

B. Revisions to Kentucky's Regulations That Are Not Substantively Identical to the Corresponding Federal Regulations

1. General

In several sections of the regulations affected by this amendment, Kentucky is proposing to revise the use of the terms "permittee", "operator", and "person" in order to achieve consistency in the use of the terms and to more clearly identify the entities that are intended to be subject to the particular statutory requirements involved. The Director finds that the proposed revisions add clarity to Kentucky's rules and are no less effective than the Federal regulations as listed below.

State regulations proposed for revision	Federal regulations
405 KAR 10:050 Section 2(4).	30 CFR 800.50(d) (1)
405 KAR 12:010 Necessity and Function.	30 CFR 840.11(e) (2)
405 KAR 12:010 Section 3(2).	30 CFR 840.12(a)
405 KAR 12:010 Section 3(5) (a).	30 CFR 840.11(a)
405 KAR 12:010 Section 3(5) (b).	30 CFR 840.11(b)
405 KAR 12:010 Section 4(1).	30 CFR 840.14(c) (1)

2. 405 KAR 12:001 Definitions for 405 KAR Chapter 12

Kentucky proposes to add a definition of "willfully and willful violation" which is identical to the definition currently found in Kentucky's program at 405 KAR 7:001, 8:001 and 10:001, and which was approved by the Director on October 1, 1992 (57 FR 45297). The Director finds that this definition was previously approved in other sections of the Kentucky program and the proposal to add it to 405 KAR Chapter 12 will not render Kentucky's regulations less effective than the Federal program.

3. 405 KAR 12:010 General Provisions for Inspection and Enforcement

Kentucky proposes to revise its regulations governing frequency of inspections set forth at 405 KAR 12:010 section 3(5) (a) by providing an exception to the monthly partial inspection requirement where the cabinet has received notice of temporary cessation of operations. As proposed for revision, if the cabinet has received notice of temporary cessation, the partial inspections shall continue until the cabinet determines that the permit area is sufficiently stable to insure that the quarterly complete inspections required by 405 KAR 12:010 section 3(5)(b) will provide adequate inspection of the permit area. The Federal rule at 30 CFR 840.11(a) provides for "partial inspections of each inactive surface coal mining and reclamation operation . . . as are necessary to ensure effective enforcement of the approved State program." 30 CFR 840.11(f) (1) includes as an inactive surface coal mining and reclamation operation one for which the regulatory authority has received written notice of temporary cessation of mining. The Director finds that the proposed rule represents reasonable exercise of Kentucky's discretion under 30 CFR 840.11(a) and is no less effective than the Federal counterparts at 30 CFR 840.11 (a) and (f).

C. Revisions to Kentucky's Regulations With No Corresponding Federal Regulations

1. General

a. Kentucky proposes to revise the introductory material at 405 KAR 10:050 and 405 KAR 12:010 to include appropriate statutory and regulatory citations relating to the materials covered by the respective regulations. The Director finds that the inclusion of this material is not inconsistent with any requirements of SMCRA or the Federal regulations.

b. In proposed revisions to the Necessity and Function sections of 405 KAR 10:050, 12:001 and 12:010, as well as 405 KAR 10:050 section 1(1) and 405 KAR 12:010 section 4(3), Kentucky refers to *administrative regulations*, rather than just *regulations* as currently expressed in those provisions. The Director finds that the proposed revisions add appropriate clarity to the State's program and do not adversely affect any requirement of SMCRA or the Federal regulations.

c. Kentucky proposes to revise the Necessity and Function section of 405 KAR 10:050 by adding the following clarifying sentence:

This administrative regulation establishes criteria under which unused forfeited bond funds shall be returned to the person from whom they were collected.

The Director finds that this proposed addition will not render Kentucky's program inconsistent with any provisions of the Federal program.

2. 405 KAR 10:050 Bond Forfeiture

Kentucky proposes to revise this regulation by adding section 2(5) which provides for the return of unused forfeited bond funds to the person from whom they were received, subject to the right to attach or set-off the funds under state law. The provision applies where the cabinet has not completed the reclamation plan on the forfeited site and the site, including any related off-site disturbances, is completely overlapped by a subsequent permanent program permit and is completely disturbed by the overlapping permittee. As proposed, the provision is limited to interim program sites forfeited on or after July 15, 1988, and io forfeited permanent program sites. While there is no direct Federal counterpart to this proposal, the Director has determined that it is not inconsistent with the Federal rule at 30 CFR 800.50(d)(2) which provides for the return of unused funds to the person from whom they were collected where the amount of performance bond forfeited is more than the amount necessary to complete reclamation. Therefore, the Director finds that the proposal is not inconsistent with the requirements of SMCRA or the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The public comment periods and opportunities to request a public hearing were announced in the June 11, 1993 Federal Register (58 FR 32618), and the November 5, 1993 Federal Register (58 FR 58997). The public comment periods closed on July 12, 1993, and November 22, 1993, respectively. No one requested an opportunity to testify at the scheduled public hearings so no hearings were held.

The Kentucky Resources Council (KRC) filed written comments on July

23, 1993 (Administrative Record Number KY–1331), and supplemented those comments on November 30, 1993 (Administrative Record Number KY–1259). A summary of those comments and their disposition is set forth below.

405 KAR 10:050

KRC expressed concern that the revisions to subsection (5) might result in the release of forfeited bonds in cases where the permit area is completely disturbed under an overlapping permit, and where there is off-permit disturbance that should be addressed under the forfeited bond. As a result of the concerns raised by KRC, Kentucky revised 405 KAR 10:050 section 2(5) in its October 19, 1993, resubmission by making specific reference to the inclusion of any off-site disturbance. In its November 30, 1993, letter, after reviewing Kentucky's revisions, KRC restated its concern with particular reference to "those cases, for example, where the former mining operation has caused damage to the hydrologic balance (such as loss or damage to water supplies, pollution of groundwater resources), or where other off-site damage might not be readily apparent or yet manifest, the allowance of a return of unused bond funds where the site is overlapped by a new permit and bond may result in unfunded liabilities". In its Statement of Consideration (Administrative Record Number KY–1333) filed by Kentucky on September 2, 1993, the State discusses these issues in some detail. In specific response to KRC's original concerns, Kentucky stated that it "has no intention of releasing forfeited bond funds when there is off-permit disturbance for which the original bond stands liable and such disturbance was not encompassed in the overlapping permit." In response to comments filed by another party (Item 7, Statement of Consideration), Kentucky stated that "[T]he original permittee's bond does not become "unused" and "more than the amount necessary to do reclamation" within the meaning of KRS 350.131(2) until the new permittee disturbs the entire overlapped area, triggering a reclamation obligation on his behalf. Prior to that, the new permittee could delete the unreclaimed area from its permit. The Cabinet must be assured that the original forfeited funds will in fact be unnecessary before it can release the funds." Finally, in response to KRC's concern regarding liabilities that may not become apparent until after a bond has been released, there is no authority in SMCRA or the Federal regulations to retain bond funds after all release requirements have been met, for such unknown liabilities. The State can always pursue the original permittee if such liabilities occur. The Director feels that the clarification provided by Kentucky adequately responds to the concerns raised by KRC.

405 KAR 12:001

KRC objects to the proposed definition of "willfully and willful violation" because it appears to impose a higher burden for demonstrating the willfulness of a violation than does the Federal counterpart at 30 CFR 843.5. The State's definition was previously considered and approved by OSM in a **Federal Register** notice dated October 1, 1992 (57 FR 45295). In that approval, the Director observed "[T]he Federal regulations provide separate definitions for "willfully" at 30 CFR 846.5, and "willful violation" at 30 CFR 701.5 and 843.5. Unlike the Federal definition of "willful violation", Kentucky's proposed combined definition does not stipulate that the person who committed the act or omission must have intended the result that actually occurs. However, since Kentucky's proposed definition includes all intentional acts and omissions, it will necessarily include all acts and omissions specified in the Federal definitions. Because Kentucky's proposed combined definition will result in sanctions and penalties no less stringent than those resulting from the separate Federal definitions, the Director finds that the proposal is no less effective than the Federal regulations." Based upon the same reasoning as discussed above, the Director is approving the proposed addition of the definition at 405 KAR 12:001(30).

405 KAR 12:010

KRC has raised two concerns regarding the reduction in inspection frequency proposed in section 3(5). KRC feels that the proposal is ambiguous as to whether or not a finding of site stability must precede any reduction of inspection frequency. In response to this concern, the State, in its Statement of Considerations dated August 13, 1993 (Administrative Record No. KY–1333), pointed out that "[A]fter a notice of temporary cessation is filed, the regulations require the cabinet to conduct partial inspections until the cabinet determines that the permit area is sufficiently stable with respect to mass stability, erosion, revegetation, water quality, and other reclamation requirements so that quarterly complete inspections will provide adequate inspection of the permit area." OSM feels that the State's explanation of its interpretation of this regulation resolves the concern raised by KRC. The second concern expressed by KRC involves the State's reference to reduction in partial inspection frequency upon completion of Phase I reclamation. The cited reference was approved by OSM on May 18, 1982 (47 FR 21404), and has not been submitted to OSM for reconsideration as part of the current amendment. However, OSM feels that the issue requires further review, in light of the counterpart Federal rule at 30 CFR 840.11(f)(2) published on August 16, 1982 (47 FR 35620). If, as a result of that review, OSM determines that revisions to Kentucky's regulations are required, action in accordance with 30 CFR Part 732 will be taken to insure that Kentucky's program is no less effective than the Federal counterpart.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various government agencies with an actual or potential interest in the Kentucky program. The U.S. Forest Service, the Bureau of Land Management, the Environmental Protection Agency, and the Soil Conservation Service responded but did not have any substantive comments on the proposed rules. The Mine Safety and Health Administration (MSHA) raised two concerns in their response. In connection with the bond forfeiture procedures at 405 KAR 10:050 section 2(4), MSHA feels that the word "operator" should be deleted from this section since the agency questions how the operator could be held liable if the operator is no longer on the site and/or has no interest in the bond. However, the question of liability is one of fact to be determined in each individual case. In addition, the use of the term operator is not part of the current amendment inasmuch as the term already exists in section 2(4) and is not part of the proposed revisions. Therefore, the Director is taking no action regarding this comment.

MSHA also feels that 405 KAR 12:010 section 3(5)(a), regarding inspection frequency, should be revised in order to clarify that a reduction in partial inspection frequency cannot occur until after Phase I reclamation. In reviewing the proposed revisions to section 3(5)(a), as discussed in Finding III.B.2. herein, the Director has determined that Kentucky's proposal is no less effective than the Federal counterpart at 30 CFR 840.11 (a) and (f). The Federal rule clearly provides the regulatory authority with certain discretion in conducting partial inspections of inactive surface coal mining and reclamation operations. In subsection (f), the rule identifies an inactive site as one for which the regulatory authority has received notice of temporary cessation of operations. Kentucky's proposal is consistent with the Federal rule in that it allows for a reduction in partial inspections upon completion of Phase I reclamation, or upon receipt of notification of temporary cessation of operations. Therefore, the Director believes that the proposal is acceptable as submitted.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment as submitted by Kentucky on May 21, 1993, and revised and resubmitted on June 14, 1993, and October 19, 1993. The Federal regulations at 30 CFR part 917 codifying decisions concerning the Kentucky program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural Determinations

Executive Order 12866

This final rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 11, 1994.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 917.15, is amended by adding new paragraph (uu) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(uu) The following amendment submitted to OSM on May 21, 1993, and modified and resubmitted on June 14, 1993, and October 19, 1993, is approved effective February 24, 1994. The amendment consists of additions and modifications to the following provisions of the Kentucky Administrative Regulations (KAR):

405 KAR 10:050	Statutory and regulatory citations
405 KAR 10:050	Necessity and Function section
405 KAR 10:050	Section 1(1) General
405 KAR 10:050	Section 2(4) and (5) Procedures
405 KAR 12:001	Necessity and Function section
405 KAR 12:001(29)	Definition of "unwarranted failure to comply"
405 KAR 12:001(30)	Definition of "willfully" and "willful violation"
405 KAR 12:010	Statutory and regulatory citations
405 KAR 12:010	Necessity and Function section
405 KAR 12:010	Section 3(2) Presentation of credentials
405 KAR 12:010	Section 3(5)(a) Partial inspections
405 KAR 12:010	Section 3(5)(b) Complete inspections
405 KAR 12:010	Section 4(1) Records of inspections
405 KAR 12:010	Section 4(3) Records of inspections

[FR Doc. 94–4146 Filed 2–23–94; 8:45 am]

BILLING CODE 4310–55–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD14–1–5679; A–1–FRL–4839–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Particulate Matter (PM–10): Group III Areas State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State implementation plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires the implementation of primary and secondary particulate matter standards consistent with the National ambient air quality standards (NAAQS) for particulate matter (PM–10). The intended effect of this action is to approve five (5) regulations, amended by Maryland in order to conform with the requirements established for Group III areas for PM–10. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective April 25, 1994 unless notice is received by March 28, 1994 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Jerry Kurtzweg ANR–443, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, Air and Radiation Programs Branch, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; 215–597–9781.

SUPPLEMENTARY INFORMATION: On March 1, 1989, the Maryland Department of the Environment submitted a revision to the Maryland State implementation plan (SIP) to achieve and maintain the National ambient air quality standards (NAAQS) for particulate matter (PM–10). The revision consists of: (1) An amended Code of Maryland Regulations (COMAR) 10.18.01–"General Administrative Provisions"; (2) An amended COMAR 10.18.02–"Permits, Approvals, and Registrations"; (3) An amended COMAR 10.18.03–"State-Adopted National Ambient Air Quality Standards and Guidelines"; (4) An amended COMAR 10.18.05–"Air Pollution Episode System"; and (5) An amended COMAR 10.18.06–"General Emission Standards, Prohibitions, and Restrictions".

The March 1, 1989 submittal is consistent with the SIP revision requirements for PM–10 Group III areas as detailed in the July 1, 1987 **Federal Register** notice (52 FR 24672). The amended Maryland regulations are consistent with the NAAQS for PM–10, and specify:

- PM–10 as an indicator of particulate matter.
- Exceedance levels.
- Reference methods for measurement of PM–10.
- Emergency episode plan revisions to include PM–10.
- Prevention of Significant Deterioration (PSD) regulation standards for both PM–10 and Total Suspended Particulate (TSP), with standards for emission rates and significant monitoring concentrations.

Summary of SIP Revision

On July 1, 1987, EPA promulgated national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10) (52 FR 24634). The PM–10 standards replace the total suspended particulate (TSP) standards promulgated by EPA in 1971. Also on July 1, 1987, EPA promulgated changes to the policies and regulations by which it will implement the NAAQS for PM–10 in 40 CFR parts 51 and 52 (52 FR 24672).

Using the classification criteria established at 52 FR 24672, EPA has preliminarily designated areas within each State as Group I, II, or III based upon an area's probability of attaining the PM–10 standard. The July 1, 1987 **Federal Register** notice requires State implementation plan (SIP) revisions for all classified Group I, II, and III areas and indicates the SIP revision requirements for each classification.

On August 7, 1987, the State of Maryland was classified at 52 FR 29383 as follows:

Group II–Baltimore County–City of Baltimore.

Group III–All other Areas not classified as Group I or Group II.

The Clean Air Act as amended (1990 Amendments) affects these classifications, and the associated requirements, in a number of ways. The 1990 Amendments eliminated the need for States to seek approval of "committal" SIP revisions for Group II areas as prescribed in the July 1, 1987 **Federal Register**. The Group II areas are to be addressed using the authorities established in section 107 of the Clean Air Act concerning the classification of areas as attainment or nonattainment with regard to the NAAQS. EPA has determined that sufficient evidence does not exist to redesignate the City of Baltimore as nonattainment for PM–10 at this time.

The 1990 Amendments did not affect the requirements established for Group III areas. The July 1, 1987 **Federal Register** requires States to seek approval of SIP revisions as required under the preconstruction review program and to codify other minor regulatory changes as needed. It is presumed that the existing Maryland SIP is adequate to demonstrate attainment and maintenance of the NAAQS for PM–10 in all Group III areas in the State. On March 1, 1989, the State of Maryland responded to the July, 1, 1987 **Federal Register** by submitting five (5) regulations amended to reflect the revised particulate matter standards as a SIP revision. This SIP revision addresses Group III areas only.

EPA Evaluation

EPA has evaluated Maryland's SIP revision request and concluded the following: (1) The amended regulations conform with the revised primary and secondary NAAQS for PM–10; (2) the amended regulations are clearly enforceable; and (3) the applicable requirements of 40 CFR part 51 have been met. A more detailed evaluation is provided in the Technical Support Document available upon request from the Regional EPA office listed in the **ADDRESSES** section of this document.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. These revisions to Maryland's regulations have been effective in the State since March 21, 1989. This action will be effective April 25, 1994 unless, by March 28, 1994, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on April 25, 1994.

Final Action

EPA is approving the five (5) regulations submitted by the Maryland Department of the Environment as a revision to the Maryland SIP. EPA's review of this material indicates that it conforms to the requirements of 40 CFR parts 51 and 52, and to the July 1, 1987 promulgation of NAAQS for PM–10 in the **Federal Register**.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This SIP revision establishing revised particulate matter standards in Maryland has been classified as a Table 3 action for signature by the Acting Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request is still applicable under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Clean Air Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 9, 1994.

Stanley L. Laskowski,
Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(99) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(99) Revisions to the Maryland regulations for particulate matter (PM–10) submitted on March 1, 1989 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of March 1, 1989 from the Department of the Environment transmitting a revision to the Maryland State implementation plan for particulate matter (PM–10) Group III areas.

(B) COMAR 10.18.01 (General Administrative Provisions), COMAR 10.18.02 (Permits, Approvals, and Registration), COMAR 10.18.03 (State-Adopted National Ambient Air Quality Standards and Guidelines), COMAR 10.18.05 (Air Pollution Episode System), and COMAR 10.18.06 (General Emission Standards, Prohibitions, and Restrictions) as published in the Maryland Register on February 10, 1989. The regulations were adopted on January 20, 1989 and became effective on March 21, 1989.

(ii) Additional materials.

(A) Remainder of the State implementation plan revision request submitted by the Maryland Department of the Environment on March 1, 1989.

[FR Doc. 94–4110 Filed 2–23–94; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 52

[OH56–1–6280; FRL–4840–3]

Approval and Promulgation of Air Quality Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule; withdrawal.

SUMMARY: USEPA is withdrawing a final action published on December 14, 1993 (58 FR 65286) to disapprove a requested revision to the Ohio State Implementation Plan (SIP) for particulate matter and nitrogen oxides for sources within specified source categories that require continuous emission monitoring, recording, and reporting. The rulemaking is being withdrawn because USEPA has received notice that comments will be submitted regarding the action.

USEPA will begin a new rulemaking by proposing the action and establishing a comment period.

EFFECTIVE DATE: February 24, 1994.

FOR FURTHER INFORMATION CONTACT: Maggie Greene at (312) 886–6088.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 8, 1994.
David A. Ullrich,
Acting Regional Administrator.
[FR Doc. 94-4111 Filed 2-23-94; 8:45 am]
BILLING CODE 6560-60-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7029

[OR-943-4210-06; GP4-038; OR-19014, OR-19115]

Partial Revocation of Executive Order Dated December 12, 1917, and Secretarial Order Dated December 12, 1917; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order and a Secretarial order insofar as they affect a 0.28 acre parcel of land withdrawn for the Bureau of Land Management's Powersite Reserve No. 661 and Waterpower Designation No. 14. This action will open 0.28 acre to such forms of disposition as may by law be made of Revested Oregon and California Railroad Grand Lands. The revocation is needed to permit disposal of the land through sale. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: March 28, 1994.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-280-7162.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated December 12, 1917, which established Powersite Reserve No. 661, and the Secretarial Order dated December 12, 1917, which established Waterproof Designation No. 14, are hereby revoked insofar as they affect the following described land:

Willamette Meridian

Revested Oregon and California Railroad Grant Lands
T. 21 S., R. 1 W.,
Sec. 35, lot 2.

The area described contains 0.28 acre in Lane County.

2. At 8:30 a.m. on March 28, 1994, the land described above will be opened to such forms of disposition as may by law be made of Revested Oregon and California Railroad Grant Lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on March 28, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: February 10, 1994.
Bob Armstrong,
Assistant Secretary of the Interior.
[FR Doc. 94-4094 Filed 2-23-94; 8:45 am]
BILLING CODE 4310-33-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 930791-3191; I.D. 021594A]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic group Spanish mackerel in the southern zone to 500 pounds (227 kg) per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Atlantic Spanish mackerel resource.

EFFECTIVE DATE: The 500-pound (227-kg) commercial trip limit is effective on February 18, 1994, at 12:01 a.m., and remains in effect through March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act.

An adjusted allocation and commercial trip limits were recommended by the Councils and implemented by NMFS for Atlantic migratory group Spanish mackerel for the current fishing year April 1, 1993, through March 31, 1994 (58 FR 45847, August 31, 1993). As set forth at 50 CFR 642.27(b), the adjusted allocation is 4.25 million pounds (1.93 million kg). In accordance with 50 CFR 642.27(a)(2)(iv), after 100 percent of the adjusted allocation of Atlantic group Spanish mackerel is taken, Spanish mackerel in or from the EEZ in the southern zone may not be possessed aboard or landed from a vessel in amounts exceeding 500 pounds (227 kg) per day.

NMFS has determined that 100 percent of the adjusted allocation for Atlantic group Spanish mackerel from the southern zone was taken by February 17, 1994. Accordingly, the 500-pound (227-kg) per day commercial trip limit applies to Spanish mackerel in or from the EEZ in the southern zone effective 12:01 a.m., local time, February 18, 1994.

The southern zone extends from the Georgia/Florida boundary (30°42'45.6" N. latitude) southward to the Dade/Monroe County, Florida, boundary (25°20.4' N. latitude).

Classification

This action is required by 50 CFR 642.27(a)(2)(iv) and (b).

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 17, 1994.
Richard H. Schaefer,
Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 94-4105 Filed 2-17-94; 4:57 pm]
BILLING CODE 3510-22-P

50 CFR Part 672

[Docket No. 931199-4042; I.D. 021794B]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the first quarter total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 18, 1994, until the second quarter's allowance becomes available.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The first quarterly allowance of pollock TAC in Statistical Area 63 is 14,000 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1994 first quarterly allowance of pollock TAC in Statistical Area 63 soon will be reached. The Regional Director established a directed fishing allowance of 13,500 mt, and has set aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 63, effective from 12 noon, A.l.t., February 18, 1994, until the second quarter's allowance becomes available.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 17, 1994.
David Crestin,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 94-4137 Filed 2-18-94; 2:59 pm]
BILLING CODE 3510-22-P

50 CFR Part 675

[Docket No. 931100-4043; I.D. 021794A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by vessels catching pollock for processing by the offshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to prevent exceeding the first allowance of the pollock total allowable catch (TAC) for the offshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 18, 1994, until 12 noon, A.l.t., August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI Exclusive Economic Zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the first seasonal allowance of pollock for vessels catching pollock for processing by the offshore component in the BS was established by the final groundfish specifications (59 FR 7656, February 16, 1994), as 330,671 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director) has determined in accordance with § 675.20(a)(8), that the first allowance of pollock TAC for the offshore component in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 320,671 mt with consideration that 10,000 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the BS, effective from 12 noon A.l.t., February 18, 1994, until 12 noon, A.l.t., August 15, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 17, 1994.
David S. Crestin,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 94-4138 Filed 2-18-94; 2:59 pm]
BILLING CODE 3510-22-P

50 CFR Part 675

[Docket No. 940249-4049; I.D. 020994D]

RIN 0648-AF47

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues a technical amendment to the 1994 Pacific cod specifications authorized under Amendment 24 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and published with the final rule implementing this amendment. This technical amendment is necessary to clarify a table that sets forth the 1994 seasonal apportionments of the amount of Pacific cod total allowable catch (TAC) allocated to vessels using hook-and-line or pot gear. It is intended to promote management and conservation of groundfish and other fish resources and to further the goals and objectives contained in the FMP.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, Alaska Region, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 24 to the FMP for the Groundfish Fishery of the BSAI also specified 1994 seasonal apportionments of the amount of the 1994 Pacific cod TAC allocated to vessels using hook-and-line or pot gear

(59 FR 4009, January 28, 1994). These specifications were established in Table 2 of the preamble to the final rule at 59 FR 4011. This technical amendment clarifies Table 2 by adding a footnote that sets forth the intent of the North Pacific Fishery Management Council to redistribute any unused portions of the first seasonal apportionment to the third season. This intent is set forth in the preamble to the proposed rule published in the **Federal Register** on October 27, 1993 (58 FR 57803) but inadvertently omitted in the final rule of January 28, 1994 (59 FR 4009). (See page 57805 in the first column in the first paragraph.)

Classification

Because this technical amendment makes only minor, non-substantive changes to existing regulations, notice and public comment thereon and a delay in the effective date would serve no purpose. This rule clarifies the intent of the Council with respect to the seasonal apportionments of the amount of the 1994 Pacific cod TAC allocated to vessels using hook-and-line or pot gear.

This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Technical Amendment

Accordingly, the final rule published at 59 FR 4009, January 28, 1994, that specifies the 1994 seasonal allowances of the amount of Pacific cod TAC allocated to vessels using hook-and-line or pot gear is amended by revising Table 2 in the preamble on page 4011 to include a footnote, as follows:

TABLE 2.—FINAL 1994 SEASONAL APPORTIONMENT OF THE AMOUNT OF PACIFIC COD ALLOCATED TO VESSELS USING HOOK-AND-LINE OR POT GEAR

Season	Percentage of Pacific cod	Amount of Pacific cod (mt)
January 1–April 30 [1]	90	64,291
May 1–August 31	10	7,143
September 1–December 31	Remainder	Remainder

[1] Any portion of the first season apportionment that is not harvested by the end of the first season will become available on September 1, the beginning of the third season.

Dated: February 16, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–4064 Filed 2–23–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 59, No. 37

Thursday, February 24, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–93–302]

RIN 0581–AB03

Fresh Fruits, Vegetables and Other Products (Inspection, Certification, and Standards)

AGENCY: Agricultural[1] Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing inspection and certification for fresh fruits, vegetables and other products by revising the fees charged for the inspection of these products at destination markets and by clarifying other charge-related regulations. The proposed fee increases are needed to offset the costs of developing and maintaining U.S. grade standards for fresh fruits and vegetables and to recover the costs of providing Federal fruit and vegetable inspection service at destination markets. Regulations regarding fees for inspection of small lots (fifty packages or less) would be added to provide a fee commensurate with the level of effort typically required to conduct such inspections. Finally, regulations regarding charges for waiting time would be added and conditions governing the applicability of dock-side inspection fees would be clarified.

DATES: Comments must be postmarked or courier dated on or before March 28, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, D.C. 20090–6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Bailey, 202–720–5870.

SUPPLEMENTARY INFORMATION:

The Department is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of the Regulations governing inspection, certification and standards for fresh fruits, vegetables and other products will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

The regulations were last revised in November 1992. The proposed rule reflects fees needed to offset the cost of developing and maintaining U.S. grade standards for fresh fruits and vegetables previously funded through an appropriation and to recover the costs of Federal fruit and vegetable inspection service at destination markets rendered in accordance with the AMA of 1946.

In the Agriculture Appropriations Bill for fiscal year 1994, Congress directed AMS to establish a user fee program, pursuant to 31 U.S.C. 9701, to recover the cost of developing, reviewing, and maintaining agricultural commodity standards that describe product quality attributes. This proposal would amend the schedule for fees and charges for services rendered to users at destination markets to recover the portion of the cost for fresh fruit and vegetable standardization that is applicable to these users.

The AMA authorizes voluntary official inspection, grading, and certification on a user-fee basis, of fresh fruits, vegetables, and other products such as raw nuts, Christmas trees, and flowers. The AMA provides that reasonable fees be collected from the user of the program services to cover as nearly as practicable the costs of services rendered. The program seeks to maintain an unobligated balance that is at least equal to 4 months of operating expense. The unobligated balance for the Federal inspection service at destination markets at the end of fiscal year 1993 was 1.1 months of operating expense. Approximately $240,000 in increases are expected in the cost the service pays for General Services Administration office rent and Federal Telecommunications Service, and a $120,000 increase is expected for the cost of implementing a locality-based pay system in January 1994. The service plans to implement cost-cutting actions during fiscal year 1994 that are expected to save approximately $350,000 each fiscal year beginning in fiscal year 1995. These cost-cutting actions will offset some of the expected increases in service costs; however, further action is necessary to meet all rising costs and for the program's unobligated balance to grow to the 4 month level necessary to provide contingency funding.

AMS regularly reviews this program to determine if fees are adequate. The last fee change was effective on November 12, 1992 (57 FR 48929). With the planned cost-cutting actions, but without a fee increase, the unobligated balance of this program is expected to decrease to seven-tenths of a month by the end of fiscal year 1994 and to two-tenths of a month by the end of fiscal year 1995.

Based on the program's need to offset various rising expenses, to increase its unobligated balance, and to incorporate user-fee funding for standardization activities, AMS proposes to increase the fees for destination market inspection services. Additionally, regulations would be added or clarified to (1) establish a new inspection fee for 50

[1] Among such other products are the following: Raw nuts; Christmas trees and evergreens; flowers and flower bulbs; and onion sets.

packages or less of the same product; (2) reflect the lower level of effort typically required to inspect small lots compared to that required for half carlot equivalent lots with 500 to 1,000 packages; (3) charge for waiting time at the prevailing hourly rate when an inspection is delayed because product is not available or readily accessible; and (4) apply dock-side inspection fees to cases where the applicant offers the product to AMS for inspection at the dock-side facility but AMS chooses to inspect the product at another location.

The following table compares current fees and charges with proposed fees and charges for fresh fruit and vegetable inspection as found in 7 CFR 51.38. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 51.38 are:

Service	Current	Proposed
Quality and condition inspections of one to four products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
Over a half carlot equivalent of each product	$68	$74
Half carlot equivalent or less of each product	57	62
For each additional lot of the same product	11	12
Condition inspections of one to four products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
Over a half carlot equivalent of each product	57	62
Half carlot equivalent or less of each product	52	57
For each additional lot of the same product	11	12
Inspections of five or more products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
For the first five products	242	264
For each additional product	11	37
For each additional lot of any product	11	12
Inspections of products each in quantities of 50 or less packages unloaded from the same land or air conveyance:		
For each product	57 (52 for condition only).	37
For each additional lot of any product	11	12
Dock-side inspections of an individual product unloaded directly from the same ship:		
For each package weighing less than 15 pounds	1 cent	1.1 cents
For each package weighing 15 to 29 pounds	2 cents	2.2 cents
For each package weighing 30 or more pounds	3 cents	3.3 cents
Minimum charge per individual product	68	74
Inspections performed for other purposes during the grader's regularly scheduled work week	34.00 per hour	37.00 per hour
Overtime or holiday premium rate for all inspections performed outside the grader's regularly scheduled work week.	17.00 per hour	18.50 per hour

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

For the reasons set forth in the preamble, 7 CFR part 51 is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR part 51 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. Section 51.38 is revised to read as follows:

§ 51.38 Basis for fees and rates.

(a) When performing inspections of product unloaded directly from land or air transportation, charges shall be determined on the following basis:

(1) For products in quantities of 51 or more packages:

(i) Quality and condition inspection of 1 to 4 products unloaded from the same conveyance:

(A) $74 for over a half carlot equivalent of an individual product.

(B) $62 for a half carlot equivalent or less of an individual product.

(C) $12 for each additional lot identified on an inspection certificate for the same product.

(ii) Condition only inspection of 1 to 4 products unloaded from the same conveyance:

(A) $62 for over a half carlot equivalent of an individual product.

(B) $57 for a half carlot equivalent or less of an individual product.

(C) $12 for each additional lot identified on an inspection certificate for the same product.

(iii) Quality and condition inspection and/or condition only inspection of 5 or more products unloaded from the same conveyance:

(A) $264 for the first 5 products.

(B) $37 for each additional product.

(C) $12 for each additional lot identified on an inspection certificate for any of the products.

(2) For quality and condition inspection and/or condition only inspection of products in quantities of 50 or less packages unloaded from the same conveyance:

(i) $37 for each individual product.

(ii) $12 for each additional lot identified on an inspection certificate for any product.

(b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:

(1) On a package basis, with a minimum charge of $74 for each product inspected, according to the following rates:

(i) 1.1 cents per package weighing less than 15 pounds;

(ii) 2.2 cents per package weighing 15 to 29 pounds, and

(iii) 3.3 cents per package weighing 30 or more pounds.

(2) On a carlot basis in accordance with § 51.38(a) for products in sea containers, or when product is first offered for inspection after being transported from the dock-side facility. If palletized products are not offered for inspection at dock-side, the carlot fees in § 51.38(a) shall apply.

(c) When performing inspections for Government agencies, or for purposes other than those prescribed in the preceding paragraphs including weight-only and freezing-only inspections, fees for inspection shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of $37.00 an hour: Provided, That:

(1) Charges for time shall be rounded to the nearest half hour;

(2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections;

(3) When weight certification is provided in addition to quality and/or condition inspection, a one-hour charge shall be added to the carlot fee.

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(d) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of $18.50 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(e) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: February 15, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–4121 Filed 2–23–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Parts 1001 and 1002

[DA–94–09]

Milk in the New England and New York-New Jersey Marketing Areas; Proposed Termination or Suspension of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination or suspension of rules.

SUMMARY: This document invites written comments on a proposal to either terminate or for 1994 suspend the seasonal incentive plans for paying producers under the New England and New York-New Jersey Federal milk orders. This was requested by cooperative associations that represent about one-half of the milk supply for each market. The cooperatives contend that the payment plans, which have been suspended since 1991, are no longer effective in altering producer seasonal milk production patterns.

DATES: Comments are due on or before March 11, 1994.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1366.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that the proposed actions would not have a significant economic impact on a substantial number of small entities. Such actions would lessen the regulatory impact of the order on dairy farmers and would have no impact on regulated handlers.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the termination, or as an alternative the suspension for the months of March through June 1994 and August through November 1994, of the following provisions of the order regulating the handling of milk in the New England and New York-New Jersey marketing areas are being considered:

1. In § 1001.62, paragraphs (c) and (d).

2. In § 1002.61, paragraphs (d) and (e).

All persons who want to send written data, views, or arguments about the proposed termination or suspension of provisions should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, not later than 30 days after the publication of this notice in the **Federal Register.** The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedures before the requested termination or suspension is to be effective.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed actions would either terminate, or as an alternative suspend for the months of March through June 1994 and August through November 1994, the seasonal incentive plans for paying producers under the New England and New York-New Jersey Federal milk orders. The seasonal payment plans provide for making deductions from prices paid to producers during the normal flush-production months of March through June. The deducted amounts are returned to producers during the normal short-production months of August through November. The plan is intended to provide an incentive for dairy farmers to level out the seasonal milk production pattern.

The actions were requested by several cooperative associations representing dairy farmers who supply handlers regulated by the Federal milk marketing orders for the New England and New York-New Jersey marketing areas. Collectively, these cooperatives represent about 51 percent of the producers associated with the New England marketing area and about 48 percent of the producers associated with the New York-New Jersey marketing area.

The cooperatives maintain that the "Louisville" seasonal payment plans have not had the effect of reducing the large seasonal spring-to-fall swings in milk production as was intended when they were first provided for in these orders some 25 years ago. They maintain that the seasonality of milk production in the Northeast has not been reduced significantly. The cooperatives assert that the seasonal payment plans are largely ineffective because of a general lack of awareness about the plan in the dairy farming community. They also contend that the price differentials are too low to provide an incentive for dairy farmers to modify their seasonal production patterns. The cooperatives also expressed concern about the impact of reducing returns to producers during the spring months when producer milk prices are already generally lower than during other times of the year.

The cooperatives seeking actions noted that the seasonal incentive payment plans have been repeatedly suspended since 1991. They contend that the prior suspension actions are further evidence that the plans are no longer necessary or effective. These past suspensions, according to the cooperatives, were supported by the need for dairy farmers to have additional monies available during the spring months in which prices to producers declined precipitously. The cooperatives expect that milk prices will decline in the spring of 1994, which will continue to put a cash flow pressure on dairy farmers during a time of increased cash needs for spring planting.

Therefore, comments are sought to determine whether the aforementioned provisions should be terminated or, in the alternative, suspended for the months of March through June 1994 and August through November 1994.

List of Subjects in 7 CFR Parts 1001 and 1002

Milk marketing orders.

The authority citation for 7 CFR part 1001 and 1002 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–675.

Dated: February 15, 1994.

L.P. Massaro,

Acting Administrator.

[FR Doc. 94–4119 Filed 2–23–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1040

[Docket No. AO–225–A45–RO1; DA–92–10]

Milk in the Southern Michigan Marketing Area; Reopened Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: A hearing held in February 1993 to consider proposals to adopt multiple component pricing for milk pooled under the Southern Michigan marketing order is being reopened to consider modifications to the pricing plan recommended for that order. Additional proposals would authorize the market administrator to adjust pool supply plant shipping requirements to reflect changes in marketing conditions. The reopened hearing will also consider a proposal to "lock in" to regulation under the Southern Michigan order a UHT packaging plant that otherwise may be regulated under a different Federal order each month. A request to consider the "lock in" proposal on an emergency basis also will be considered.

The reopening was requested by cooperative associations representing most of the producers whose milk is pooled under the Southern Michigan order.

DATES: The hearing will convene at 9 a.m. local time on March 1, 1994.

ADDRESSES: The hearing will be held at the Radisson Hotel, 11 Monroe Avenue NW., Grand Rapids, Michigan 49503, telephone (616) 242–6000.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a reopened public hearing to be held at the request of most of the producers whose milk is pooled under the Southern Michigan milk order. The reopened hearing will begin at 9 a.m. on March 1, 1994, at the Radisson Hotel, 11 Monroe Avenue NW., Grand Rapids, Michigan 49503, telephone (616) 242–6000, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to Proposal No. 3.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small business.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Agricultural Marketing Agreement Act provides that

administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 4 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

Prior documents in this proceeding:

Notice of Hearing: Issued December 3, 1992; published December 10, 1992 (57 FR 58418).

Supplemental Notice of Hearing: Issued January 19, 1993; published January 29, 1993 (58 FR 6447).

Recommended Decision: Issued November 29, 1993; published December 6, 1993 (58 FR 64176).

List of Subjects in 7 CFR Part 1040

Milk marketing orders.

The authority citation for 7 CFR part 1040 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Michigan Milk Producers Association and Independent Cooperative Milk Producers Association: Proposal No. 1

Compute the same protein price for both handlers and producers on the basis of a cheese market price and a cheese yield formula, and include any residual value in the skim milk delivered by producers in the computation of the weighted average differential value.

Proposed by Michigan Milk Producers Association: Proposal No. 2

Amend the pool supply plant shipping requirement provisions to allow the market administrator to adjust the shipping percentages as market conditions require.

Proposed by White Knight Packaging Corporation: Proposal No. 3

Include in the pool distributing plant definition a description of a plant located within the marketing area which processes at least 50 percent of its fluid milk receipts as ultra-high temperature fluid milk products for distribution in aseptic packages. A plant qualifying as a distributing plant under the new provision would be a pool plant under the Southern Michigan order regardless of its route disposition in the marketing area of any other Federal milk order.

Proposal No. 4

Determine whether emergency marketing conditions exist that would warrant omission of a recommended decision with respect to Proposal No. 3.

Proposal No. 5

Make such changes as may be necessary to make the entire marketing agreement and order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of the Southern Michigan marketing area, or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisionmaking process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.

Office of the Administrator, Agricultural Marketing Service.

Office of the General Counsel.

Dairy Division, Agricultural Marketing Service (Washington office only).

Office of the Market Administrator, Southern Michigan Marketing Area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: February 18, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–4130 Filed 2–23–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–139–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require inspections to detect fatigue-related skin cracks and corrosion of the skin lap joints in the fuselage upper lobe, and repair, if necessary. This proposal would also require modification of certain lap joints and inspections of modified lap joints. This proposal is prompted by a structural review of Model 747 series airplanes. The actions specified by the proposed AD are intended to prevent rapid decompression of the airplane and the inability to carry fail-safe loads.

DATES: Comments must be received by April 19, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Steven Fox, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2777; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–139–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a transport category airplane managed to land after tiny cracks in rivet holes in the upper fuselage linked together, causing structural failure and explosive decompression. An 18-foot section ripped from the fuselage. This accident focused greater attention on the problem of aging aircraft.

In June 1988, the FAA sponsored a conference on aging airplane issues, which was attended by representatives of the aviation industry from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion directed inspections and prevention programs, and (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

The Working Group assigned to review the Boeing Model 747 series airplanes completed its work on Item (2) in July 1989 and developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Boeing Model 747 fleet. This program is contained in Boeing Document Number D6–36022, "Aging Airplane Corrosion Prevention and Control Program—Model 747," dated July 1989. The FAA issued AD 90–25–05, Amendment 39–6790 (55 FR 49268, November 27, 1990), which requires implementation of a corrosion prevention and control program.

The Working Group completed a portion of its work on Item (1), above. The Working Group's proposal is contained in Boeing Document Number D6–35999, "Aging Airplane Service Bulletin Structural Modification Program—Model 747." The FAA issued AD 90–06–06, Amendment 39–6490 (55 FR 6374, March 7, 1990), which requires the installation of the structural modifications identified in the document, and AD 92–27–04, Amendment 39–8437 (58 FR 8695, February 17, 1993), which requires structural inspections of older airplanes.

Additional structural inspections are required by AD 90–15–06, Amendment 39–6653 (55 FR 28600, July 12, 1990), which references Boeing Service Bulletin 747–53–2307, dated December 21, 1989. (A correction of the rule was published in the **Federal Register** on July 30, 1990 (55 FR 31027).)

The action being proposed herein follows from the ongoing activities of the Working Group relative to Item (1). The Working Group has identified certain service difficulties that warrant mandatory inspections following mandatory modification of these airplanes. The Working Group considers that these service difficulties can be controlled safely by repetitively inspecting following modification of these airplanes, and that, because of the safety implications, the inspections should be mandatory to assure that all operators perform them. Typically, the addressed unsafe conditions have occurred infrequently on older airplanes, and the Working Group has a very high degree of confidence in the ability of an inspection program to detect the damage before it impairs safety.

The Working Group has reviewed Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993, and has recommended it to the FAA for mandating of the described inspections to detect fatigue-related skin cracks and corrosion of the skin lap joints in the fuselage upper lobe, and necessary repair. The SWG also recommends modification of certain skin lap joints in the fuselage upper lobe that are fastened with deep countersink rivets on airplanes that have accumulated 20,000 or more total landings. The upper skin panel in these particular lap joints has a doubler that is hot-bonded to the skin. The countersink depth of the rivet is greater than the basic skin gage. While this is not a problem for a skin panel with the hot bond intact, disbonding will result in a knife-edge condition in the skin layer. This condition causes these lap joints to be more susceptible to fatigue-related cracking. The SWG also recommends accomplishment of repetitive inspections of these modified lap joints. Accomplishment of these modifications and inspections will detect fatigue-related cracking and corrosion in a timely manner and will ensure the structural integrity of the skin lap joints beyond the design life of the airplane. The FAA has concurred with the Working Group's recommendations and has determined that AD action is warranted to mandate the inspections and modifications to assure the continued airworthiness of the Model 747 fleet.

The FAA has reviewed and approved Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993, that describes procedures for inspections to detect fatigue-related skin cracks and corrosion of the skin lap joints in the fuselage upper lobe, and repair, if necessary.

The service bulletin also describes procedures for "full" modification of certain skin lap joints in the fuselage upper lobe that are fastened with deep countersink rivets on airplanes that have accumulated 20,000 total landings. Such rivets are used in the lap joints at the following locations:

1. Stringer 12, left and right, from station 520 to 1,000; and
2. Stringer 19, left and right, from station 520 to 740.

The "full" modification for deep countersink rivets at these locations consists of opening the lap joint between circumferential splices, removing adhesive, repairing all cracks and corrosion, and reassembling the lap joint with 9/32 inch protruding head rivets at all rivet locations.

The service bulletin also describes procedures for repetitive external high frequency eddy current (HFEC) inspections to detect fatigue-related skin cracks of modified lap joints at the upper fastener row, and repair, if necessary.

The service bulletin also describes procedures for an "optional" (partial) modification for certain lap joint areas that have an upper skin panel thickness of 0.090 inch or less and that do not have cracks or corrosion or an existing structural repair on the lap joint. The "optional" (partial) modification consists of removing the upper row of rivets at a corrosion-free lap joint, performing an HFEC open hole inspection to detect cracks in removed rivet locations, and installing ¼-inch protruding head rivets.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspections to detect fatigue-related skin cracks and corrosion of the skin lap joints in the fuselage upper lobe, and repair, if necessary. The proposed AD would also require "full" modification of certain skin lap joints in the fuselage upper lobe that are fastened with deep countersink rivets on airplanes that have accumulated 20,000 total landings. The inspections and "full modification" would be required to be accomplished in accordance with the service bulletin described previously.

The proposed AD would also require repetitive external HFEC inspections to detect fatigue-related skin cracks of modified lap joints, and repair, if necessary. After such repair, additional repetitive external HFEC inspections would be required. The HFEC inspections and repair would also be required to be accomplished in accordance with the service bulletin described previously.

The proposed AD would also provide an "optional" (partial) modification for certain skin panels that have a thickness that is within specified limits, and that do not have cracks or corrosion or an existing structural repair on the lap joint. For those skin panels, this "optional" (partial) modification may be accomplished in lieu of the "full" modification. However, the "optional" (partial) modification may not be implemented at deep countersink fastener locations. The "optional" (partial) modification would be required to be accomplished in accordance with the service bulletin described previously.

Accomplishment of the requirements of this proposed AD would terminate the requirements of AD 90–15–06, Amendment 39–6653 (55 FR 28600, July 12, 1990). The FAA is considering further rulemaking action to revise AD 90–15–06, Amendment 39–6653, accordingly once this proposed AD becomes effective.

There are approximately 200 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 116 airplanes of U.S. registry would be affected by this proposed AD.

The costs associated with the proposed inspections entail 100 work hours per airplane per inspection, at an average labor rate of $55 per work hour. (This figure does not include the time necessary for gaining access and closing up.) Based on these figures, the total cost impact of the proposed AD on U.S. operators, with regard to the proposed inspections, is estimated to be $638,000, or $5,500 per airplane per inspection.

The costs associated with the proposed "full" modification entail approximately 96 work hours, for each 200-inch length of uncracked and uncorroded lap joint, at an average labor rate of $55 per work hour. (This figure does not include the time necessary for gaining access and closing up.) There are 100 lap joint sections per airplane, each with a length of 200 inches. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators, with regard to the proposed "full" modification requirement, is estimated to be $61,248,000, or $528,000 per airplane.

The costs associated with the proposed initial HFEC inspection following modification entails approximately 56 work hours, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators, with regard to the proposed initial HFEC inspection following modification, is estimated to be $357,280, or $3,080 per airplane.

Based upon the figures discussed above, the total cost impact of the proposed AD on U.S. operators is expected to be $62,243,280, or $536,580 per airplane. This total cost figure includes the proposed inspections and modification, for the first year of the average five-year inspection cycle. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this proposed AD.

The FAA recognizes that the proposed "full" modification would require a large number of work hours to accomplish. However, the proposed compliance time specified in paragraph (e) of this proposed AD should allow ample time for accomplishment of the "full" modification coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–139–AD.

Applicability: Model 747 series airplanes, line positions 001 through 200 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid decompression of the airplane and the inability to carry fail-safe loads, accomplish the following:

(a) Within 1,000 landings after the effective date of this AD, and thereafter at the intervals specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, perform inspections at the upper lobe skin lap joints in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993:

(1) Perform a detailed external visual inspection to detect cracks and evidence of corrosion (bulging skin between fasteners, blistered paint, dished fasteners, popped rivet heads, or loose fasteners) in accordance with the service bulletin. Repeat that inspection thereafter at intervals not to exceed 2,000 landings until the inspection required by paragraph (f) of this AD is accomplished.

(2) Perform a high frequency eddy current inspection (HFEC) to detect cracks in the skin at the upper row of fasteners of the lap joints forward of body station (BS) 1000 in accordance with the service bulletin. Repeat that inspection thereafter at intervals not to exceed 4,000 landings until the modification required by paragraph (e) of this AD is accomplished.

(3) Perform a HFEC inspection to detect cracks in the skin at the upper row of fastener holes of the lap joints aft of BS 1480 to 2360 in accordance with the service bulletin. Repeat that inspection thereafter at intervals not to exceed 6,000 landings until the inspection required by paragraph (f) of this AD is accomplished.

(b) If any crack is found during any inspection required by this AD, or if any corrosion is found for which material loss exceeds 10 percent of the material thickness, accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993.

(1) Prior to further flight, repair any crack or corrosion found, in accordance with the service bulletin.

(2) Within 15 months after accomplishing the repair, accomplish the "full" modification described in the service bulletin for the remainder of any skin panel lap joint in which a crack is found, or in which corrosion is found that exceeds 10 percent of the material thickness.

(c) If no crack is found during any inspection required by this AD, but corrosion is found for which the material loss does not exceed 10 percent of the material thickness: Accomplish paragraph (c)(1) and (c)(2) of this AD for the entire affected skin panel lap joint in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993.

(1) Within 500 landings after accomplishing the inspection during which the corrosion was found, and thereafter at intervals not to exceed 500 landings until the "full" modification required by paragraph (c)(2) of this AD is accomplished: Perform a HFEC inspection to detect cracks of the corroded lap joint, in accordance with the service bulletin.

(2) Within 30 months after accomplishing the inspection during which the corrosion was found: Accomplish the "full" modification required by paragraph (e) of this AD.

(d) The inspections required by this AD shall be performed by removing the paint and using an approved chemical stripper; or by ensuring that each fastener head is clearly visible.

(e) Except as provided in paragraph (g) of this AD, prior to the accumulation of 20,000 total landings, or within the next 1,000 landings after the effective date of this AD, whichever occurs later: Accomplish the modification described in the service bulletin as a "full" modification of the skin lap joints at the locations specified in paragraphs (e)(1) and (e)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993.

(1) For airplane line numbers 001 through 058, inclusive: Modify the skin lap joints at Stringer 12 (left and right), station 520 to 1,000 and Stringer 19 (left and right), station 520 to 740.

(2) For airplane line numbers 59 through 200, inclusive: Modify the skin lap joints at Stringer 12 (left and right), station 740 to 1,000 and Stringer 19 (left and right), station 520 to 740.

(f) Perform an external HFEC inspection to detect skin cracks of any modified skin lap joints at the times specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, as applicable, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993. Repeat that inspection thereafter at intervals not to exceed 3,000 landings. Accomplishment of this inspection terminates the repetitive inspection requirements of paragraph (a) of this AD.

(1) For airplanes on which the "full" modification has been accomplished: Within 10,000 landings after accomplishment of that modification.

(2) For airplanes on which the "optional" (partial) modification has been accomplished: Within 7,000 landings after accomplishment of that modification.

(3) For airplanes having deep countersink fasteners located at Section 42 on which the "full" modification, as described in the original issue of the service bulletin, has been accomplished: Within 5,000 landings after accomplishment of that modification.

(g) In lieu of the "full" modification required by paragraph (e) of this AD, the "optional" (partial) modification described in Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993, may be accomplished for skin panels that have an outer thickness of 0.090 inches or less, and that do not have any cracks, corrosion, or an existing structural repair on the lap joint. The "optional" (partial) modification shall not be accomplished at deep countersink fastener locations.

(h) Accomplishment of the requirements of this AD terminates the requirements of AD 90–15–06, Amendment 39–6653.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(j) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 17, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4128 Filed 2–23–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 90–CE–56–AD]

Airworthiness Directives: British Aerospace, Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to certain British Aerospace (BAe), Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes.

The proposed action would have required identifying all Type "F" universal joints on the flap torque shaft and replacing these universal joints with Type "M" or Type "MC" universal joints. Since issuance of the NPRM, Jetstream Aircraft Ltd. has introduced improved flap torque shaft assemblies that include universal joints that are not life limited, and that incorporate the actions proposed in the referenced NPRM and required in two other existing airworthiness directives (AD's). The FAA has determined that installing these improved assemblies would incorporate the actions of the current NPRM and the requirements of the two existing AD's. The FAA is withdrawing the current NPRM and will subsequently issue another NPRM that would incorporate all the actions referenced above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513–3830; facsimile (322) 230–6899; or Mr. John P. Dow, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that would apply to certain British Aerospace (BAe), Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes was published in the **Federal Register** on March 21, 1991 (56 FR 11976). The action proposed inspecting the flap torque shaft to identify all Type "F" universal joints, and replacing these universal joints with Type "M" or Type "MC" universal joints. The proposed actions would be accomplished in accordance with the instructions in BAe Alert Service Bulletin (ASB) 27–A–JA 900544, which incorporates the following pages and revisions:

Pages	Revision level	Date
1 through 5	4	Sept. 29, 1990.
6 through 9, and 11 through 29.	2	June 15, 1990.
10	3	June 22, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

Since issuance of the notice of proposed rulemaking (NPRM), Jetstream Aircraft Ltd. has introduced improved flap torque shaft assemblies that include universal joints that are not life limited, and that incorporate the actions proposed in the referenced NPRM and required in two other existing AD's. The FAA has determined that installing these improved assemblies would incorporate the actions proposed in the current NPRM and the requirements of the following AD's:

- AD 87–04–04, Amendment 39–5529, which requires limiting the in-service life of the torque tube shaft assembly on BAe HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes; and
- AD 89–16–02, Amendment 39–6273, which requires repetitively inspecting the universal joints and universal joint rivets on BAe HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes, and replacing any damaged part.

The FAA will issue another NPRM to propose combining the universal joint inspection requirements and the flap torque shaft assembly life limit requirement of the two existing AD's, but mandate installing improved flap torque shaft assemblies as terminating action for these requirements. Since this future action will also incorporate the previously proposed actions, the FAA is withdrawing the existing NPRM.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed rule nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. 90–CE–56–AD, published in the **Federal Register** on March 21, 1991 (56 FR 11976), is withdrawn.

Issued in Kansas City, Missouri, on February 14, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4125 Filed 2–23–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–01–AD]

Airworthiness Directives: Piper Aircraft Corporation PA28R, PA28RT, and PA44 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Piper Aircraft Corporation (Piper) PA28R, PA28RT, and PA44 series airplanes. The proposed action would require installing a certain nose landing gear modification kit. Several service difficulty reports of collapsed nosegear on the affected airplanes prompted this action. In particular, these reports reveal failure of the bolt (AN4–20) connecting the lower drag link of the nosegear to the upper drag link. The actions specified by the proposed AD are intended to prevent nose gear collapse because of AN4–20 bolt failure, which could lead to airplane damage.

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–01–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–2910; facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–01–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–01–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several service difficulty reports of collapsed nosegear on certain Piper PA28R, PA28RT, and PA44 series airplanes. In particular, these reports reveal failure of the bolt (AN4–20) connecting the lower drag link of the nosegear to the upper drag link.

For example, the nose landing gear of a Piper Model PA44–180 airplane collapsed during the landing roll. The accident occurred during a normal touchdown and was a result of AN4–20 bolt failure. Both the left and right propellers struck the ground and were damaged beyond repair.

Piper Service Letter No. 988, dated July 29, 1986, references Nose Landing Gear Modification Kit, Piper part number (P/N) 764–377 (for PA28R and PA28RT series airplanes) and Piper P/N 764–378 (for PA44 series airplanes). The modification kits consist of a close tolerance bolt (NAS464P4–27), four bearings, and all other associated hardware for installation on the draglink assembly. This NAS464P4–27 bolt replaces the AN4–20 bolt used to connect the upper and lower draglinks. Instructions to these kits specify complete installation procedures for these parts, including a check of the nosegear downlock hook to ensure that it rotates freely.

After examining the circumstances and reviewing all available information related to the accident and incidents described above, the FAA has determined that AD action should be taken to prevent nose gear collapse because of failure of the AN4–20 bolt, which could lead to airplane damage.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA28R, PA28RT, and PA44 series airplanes of the same type design, the proposed AD would require installing Nose Landing Gear Modification Kit, Piper part number (P/N) 764–377 (for PA28R and PA28RT series airplanes) or Piper P/N 764–378 (for PA44 series airplanes). The proposed action would be accomplished in accordance with the instructions included with the referenced kits.

The FAA estimates that 6,888 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $52 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,631,216. This figure is based on the assumption that none of the affected airplane owners/operators have accomplished the proposed modification.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Piper Aircraft Corporation: Docket No. 94–CE–01–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.
PA28R–180 ..	28R–30004 through 28R–7130013.
PA28R–200 ..	28R–35001 through 28R–7635545.
PA28R–201 ..	28R–7737001 through 28R–7837317.
PA28R–201T	28R–7703001 through 28R–7803373.
PA28RT–201	28R–7918001 through 28R–8218003.
PA28RT–201T.	28R–7931001 through 28R–8231009.
PA44–180	44–7995001 through 44–8195026.
PA44–180T ..	44–8107001 through 44–8207005.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent nose gear collapse, which could lead to airplane damage, accomplish the following:

(a) Incorporate Nose Landing Gear Modification Kit, Piper part number (P/N) 764–377 (for PA28R and PA28RT series airplanes) or Piper P/N 764–378 (for PA44 series airplanes). Accomplish this action in accordance with the procedures and sketches included with the instructions to the above referenced kits.

Note 1: The modification kits referenced in paragraph (a) of this AD consist of a close tolerance bolt (NAS464P4–27), four bearings, and all other associated hardware for installation on the draglink assembly. This NAS464P4–27 bolt replaces the AN4–20 bolt used to connect the upper and lower draglinks.

(b) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Menager, Atlanta Aircraft Certification Office (ACO), 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 15, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4126 Filed 2–23–94; 8:45 am]

BILLING CODE 4910–13–U

Coast Guard

33 CFR Part 187

[CGD 89–050]

RIN 2115–AD35

Vessel Identification System

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On October 5, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) regarding the establishment of a vessel identification system. The NPRM provided a 90-day comment period that closed on January 3, 1994. The Coast Guard is reopening the comment period for an additional 30 days.

DATES: Comments must be received on or before March 28, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 89–050), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, 20593–0001, or comments may be delivered to room 3406 at the same address between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on the collection of information requirements must be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LT David Fish, Office of Marine Safety, Security and Environmental Protection, Information Management Division, (202) 267–6044.

SUPPLEMENTARY INFORMATION: On October 5, 1993, the Coast Guard published an NPRM regarding the establishment of a vessel identification system (VIS) (58 FR 51920). The VIS proposal would establish a vessel identification system, as required by legislation, guidelines for State vessel titling systems, procedures for certifying compliance with those guidelines, and rules for participation in the VIS system for undocumented vessels. The Coast Guard has received a request to extend the comment period for six months. The Coast Guard has determined that in order to keep this important project moving in as timely a manner as possible, extending the comment period for six months would be inappropriate. However, the Coast Guard recognizes the value of data and information from interested parties. Therefore, the Coast Guard, in order to encourage meaningful participation by all interested parties, is reopening the comment period for an additional 30 days.

Persons submitting comments should include their names and addresses, and identify this notice (CGD 89–050). All comments and attachments should be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed post card or envelope.

Dated: February 15, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–4204 Filed 2–23–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AG14

Loan Guaranty: Implementation of Public Law 102–547

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its loan guaranty regulations to comply with certain provisions of the Veterans Home Loan Program Amendments of 1992 and the Omnibus Budget Reconciliatory Act of 1993. VA proposes to amend its regulations to provide for the guarantee of loans for reservists and members of the national guard, loans where the interest rate has been negotiated between the borrower and the lender, adjustable rate mortgages, and energy efficient mortgages. VA also proposes to amend its regulations to reflect a reduced funding fee for interest rate reduction refinancing loans, and a revised guaranty percentage for these loans as well as an increased funding fee on most guaranteed loans, and an increased funding fee for second and subsequent use of the loan guaranty benefit, except for interest rate reduction refinancing loans. These changes will increase the types of loans available to veterans and the categories of veterans eligible for VA home loans.

DATES: Comments must be received on or before April 25, 1994. Comments will be available for public inspection until May 5, 1994. VA proposes to make these regulations effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection in room 170, Veterans Service Unit, at the above address between the hours of 8 a.m. and 4:30

p.m., Monday through Friday (except holidays) until May 5, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233–3042.

SUPPLEMENTARY INFORMATION: VA is proposing to incorporate into its regulations several changes to comply with certain provisions of Public Law 102–547 and Public Law 103–66.

Prior to the enactment of Public Law 102–547 persons whose only military service consisted of active duty for training and inactive duty training in the reserve components of the Armed Forces did not qualify for loan guaranty benefits. Public Law 102–547 extends eligibility for VA-guaranteed home loans to certain members of the Selected Reserve as defined in 38 U.S.C. 3701(b)(5). This eligibility expires 7 years from the date of enactment of the law.

38 U.S.C. 3729 requires that a funding fee be collected from each veteran obtaining a VA-guaranteed loan except for veterans who receive compensation or from a surviving spouse of a veteran who died from a service-connected disability. Public Law 102–547 requires that a higher funding fee be collected on loans to the newly eligible members of the Selected Reserve as defined in 38 U.S.C. 3701(b)(5) than on loans to other veterans. Effective October 1, 1993, Public Law 103–66, the Omnibus Budget Reconciliation Act of 1993, increased the funding fee by 0.75 percent on all VA loans except interest rate reduction refinancing loans, vendee loans, direct loans, manufactured home loans under 38 U.S.C. 3712, and loan assumptions. This new law also established an increased fee for second and subsequent use of the loan guaranty benefit, except for interest rate reduction refinancing loans. The increase in funding fees established by Public Law 103–66 will expire on September 30, 1998. VA is proposing to amend 38 CFR 36.4312 to add the funding fee structure for members of the Selected Reserves, and to provide for the higher funding fees required by Public Law 103–66, as discussed in the following paragraphs.

Public Law 103–66 provides that on loans to veterans whose entitlement is not based on service in the Selected Reserve as defined in 38 U.S.C. 3701 (b)(5)(1), the funding fee shall be as follows:

(1) For loans for the purchase or construction of a home on which the veteran does not make a down payment, the funding fee shall be 2.00 percent of the total loan amount;

(2) For loans where the veteran makes a down payment of 5 percent or more, but less than 10 percent, the funding fee shall be 1.5 percent of the loan amount;

(3) For loans where the veteran makes a down payment of 10 percent or more, the funding fee shall be 1.25 percent of the total loan amount;

(4) For refinancing loans except interest rate reduction refinancing loans under 38 U.S.C. 3710(a)(8) and 3710(b)(7), the funding fee shall be 2.00 percent of the total loan amount; and

(5) For loans where the veteran uses entitlement for a second or subsequent time and does not make a downpayment, the funding fee shall be 3.00 percent of the total loan amount.

Public Law 103–66 provides that on loans to veterans whose entitlement is based on service in the Selected Reserve as defined in 38 U.S.C. 3701(b)(5) the funding fee shall be as follows:

(1) For loans for the purchase or construction of a home on which the veteran does not make a down payment, the funding fee shall be 2.75 percent of the total loan amount;

(2) For loans where the veteran makes a down payment of 5 percent or more, but less than 10 percent, the funding fee shall be 2.25 percent of the loan amount;

(3) For loans where the veteran makes a down payment of 10 percent or more, the funding fee shall be 2.00 percent of the total loan amount;

(4) For refinancing loans except interest rate reduction refinancing loans under 38 U.S.C. 3710(a)(8) and 3710(b)(7), the funding fee shall be 2.75 percent of the total loan amount; and

(5) For loans where the veteran uses entitlement for a second or subsequent time and does not make a downpayment, the funding fee shall be 3.00 percent of the total loan amount.

Prior to the enactment of Public Law 102–547 the Secretary was required to set a maximum interest rate which a veteran could pay when purchasing a home with a VA guaranteed loan, and the veteran was not permitted to pay discount points on the loan. Public Law 102–547 authorizes the Secretary to elect either to require that VA-guaranteed loans bear interest at rates not to exceed the maximum rates established by the Secretary or to allow such loans to bear interest at rates agreed upon by the veteran and the lender. The law also authorizes the Secretary to change the election from time to time, and provides that when the Secretary has elected to have interest rates negotiated between the veteran and the lender, the veteran may pay reasonable discount points on the loan. Effective October 28, 1992, the Secretary elected to have interest rates negotiated between the veteran and the lender. VA proposes to amend 38 CFR 36.4212 and 36.4311 to reflect these changes.

Public Law 102–547 generally prohibits financing discount points when interest rates are negotiated between the lender and veteran. However, Public Law 103–78, approved August 13, 1993, permits veterans to finance discount points on interest rate reduction refinancing loans. Accordingly, the proposed §§ 36.4212(b) and 36.4311(b) prohibit discount points from being financed, except for interest rate reduction refinancing loans under 38 U.S.C. 3710(a)(8), 3710(b)(7) and 3712(a)(1)(F).

Prior to enactment of Public Law 102–547, VA was authorized to guarantee fixed rate mortgages only. Public Law 102–547 authorizes a demonstration project during fiscal years 1993, 1994, and 1995 whereby VA will guarantee loans with adjustable interest rates. The law provides that the interest rate adjustments on these loans shall: (1) Correspond to a specified national interest rate index approved in regulations by the Secretary, information on which is readily accessible to mortgagors from generally available published sources; (2) be made by adjusting the monthly payment on an annual basis; (3) be limited, with respect to any single annual interest rate adjustment, to a maximum increase or decrease of 1 percentage point; and (4) be limited, over the term of the mortgage, to a maximum increase of 5 percentage points above the initial contract interest rate. VA proposes to amend 38 CFR 36.4311 to provide for an adjustable rate mortgage with these adjustment provisions. The regulations will also provide that the first interest rate adjustment may occur 12 to 18 months from the date of the borrower's first mortgage payment. The VA guaranteed adjustable rate mortgage with the above features will be similar to the Federal Housing Administration (FHA) adjustable rate mortgage. This should facilitate pooling of these mortgages together in Government National Mortgage Association (GNMA) mortgage-backed securities pools.

Public Law 102–547 requires the Secretary to carry out a program to demonstrate the feasibility of guaranteeing mortgages for the acquisition of an existing dwelling and the cost of making energy efficiency improvements to the dwelling or for energy efficient improvements to a dwelling owned and occupied by a veteran. The law authorizes an addition to the purchase loan for the cost of energy efficient improvements. It provides that for a mortgage guaranteed under 38 U.S.C. 3710(d) the cost of the energy efficient improvements may be added to the loan amount provided the cost does not exceed (1) $3,000; or (2) $6,000, if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the energy efficiency improvements. VA proposes to amend 38 CFR 36.4336 to provide that a loan for an energy efficient mortgage guaranteed under 38 U.S.C. 3710(d) may exceed the reasonable value of the property by the cost of the energy efficient improvements as stated above. This demonstration program for financing the cost of energy efficiency improvements will expire on December 31, 1995.

The law provides that the amount of the guaranty for an energy efficient mortgage guaranteed under 38 U.S.C. 3710(d) will be in the same proportion as would have been provided if the energy efficiency improvements were not added to the loan amount. It also provides that there be no additional charge to the veteran's entitlement as a result of the increased loan amount. VA proposes to amend 38 CFR 36.4302 to conform to these changes.

Public Law 102–547 reduces the funding fee for interest rate reduction refinancing loans guaranteed under sections 3710(a)(8), 3710(a)(9)(B), and 3712(a)(1)(F) to 0.50 percent of the total loan amount. VA proposes to amend 38 CFR 36.4232, 36.4254 and 36.4312 to comply with the law. The law also provides that the guaranty amount for interest rate reduction refinancing loans shall not exceed the greater of the original guaranty amount or 25 percent of the loan amount. VA proposes to amend 38 CFR 36.4223 and 36.4302 to reflect this change.

The provisions of Public Law 102–547 and Public Law 103–66 included in the appropriate regulations by this amendment have been implemented administratively.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U S.C. 601–612. The proposed amendments simply update VA regulations to incorporate the changes which have already been made by Public Law 102–547 and Public Law 103–66.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan programs—housing and community development, Manufactured homes, Veterans.

These amendments are proposed under Public Law 102–547 and the authority granted the Secretary by section 501(a) of title 38, United States Code.

Approved: September 10, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble 38 CFR part 36, is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 §§ 36.4201 through 36.4287 continues to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501(a), 3712.

2. Section 36.4212 is revised to read as follows:

§ 36.4212 Interest rates and late charges.

(a) In guaranteeing or insuring loans under 38 U.S.C. chapter 37 the Secretary may elect to require that such loans bear interest at a rate that is (1) agreed upon by the veteran and the lender, or (2) established by the Secretary. The Secretary may, from time to time, change the election under this paragraph by publishing a notice in the **Federal Register**.

(b) For loans bearing an interest rate agreed upon by the veteran and the lender, the veteran may pay reasonable discount points in connection with the loan. The discount points may not be included in the loan amount, except for interest rate reduction refinancing loans under 38 U.S.C. 3712 (a)(1)(F).

(c) The rate of interest in instruments securing the indebtedness for all loans may be expressed in terms of add-on or discount.

(d) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency of default; *Provided*, That a late charge not in excess of an amount equal to 4 percent on any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

(e) The interest rate of loans for the purpose of an interest rate reduction (38 U.S.C. 3712(a)(1)(f)) must be less than the interest rate of the VA loan being refinanced.

(f) Adjustable rate mortgage loans which comply with the requirements of this paragraph are eligible for guaranty.

(1) *Interest rate index.* Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on one year (52 week) Treasury bills adjusted to a constant maturity. Yields on one year Treasury bills at 'constant maturity' are interpolated by the United States Treasury from the daily yield curve. This curve, which relates the yield on the security to its time to maturity, is based on the closing market bid yields on actively traded one year Treasury bills in the over-the-counter market. The weekly average one year constant maturity Treasury bill yields are published by the Federal Reserve Board of the Federal Reserve System. The Federal Reserve Statistical Release Report H.15 (519) is released each Monday. These one year constant maturity Treasury bill yields are also published monthly in the Federal Reserve Bulletin, published by the Federal Reserve Board of the Federal Reserve System, as well as quarterly in the Treasury Bulletin, published by the Department of the Treasury.

(2) *Frequency of interest rate changes.* Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur not sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment. To set the new interest rate, the lender will determine the change between the initial (i.e., base) index figure and the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(3) *Method of rate changes.* Interest rate changes may only be implemented through adjustments to the borrower's monthly payments.

(4) *Initial rate and magnitude of changes.* The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. The rate must be reflective of adjustable rate lending. Annual adjustments in the interest rate shall be set at a certain spread or margin over the interest rate index prescribed in paragraph (f)(1) of this section. Except for the initial rate, this margin shall remain constant over the life of the loan. Annual adjustments to the contract interest rate shall correspond to annual changes in the interest rate index,

subject to the following conditions and limitations:

(i) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(ii) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent and the new index figure is 6.06 percent, the adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8⅛ percent.

(5) *Pre-loan disclosure.* The lender shall explain fully and in writing to the borrower, no later than on the date upon which the lender provides the prospective borrower with a loan application, the nature of the obligation taken. The borrower shall certify in writing that he or she fully understands the obligation and a copy of the signed certification shall be placed in the loan folder and included in the loan submission to VA. Such lender disclosure must include the following items:

(i) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(ii) Identification of the interest rate index, its source of publication and availability;

(iii) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment;

(iv) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(6) *Annual disclosure.* At least 25 days before any adjustment to a borrower's monthly payment may occur, the lender must provide a notice to the borrower which sets forth the date of the notice, the effective date of the change, the old interest rate, the new interest rate, the new monthly payment amount, the current index and the date it was published, and a description of how the payment adjustment was calculated. A copy of the annual disclosure shall be made a part of the lender's permanent record on the loan.

3. Section 36.4223 is amended by revising paragraph (a)(4) to read as follows:

§ 36.4223 Interest rate reduction refinancing loan.

(a) * * *

(4) The dollar amount of the guaranty of the 38 U.S.C. 3712(a)(1)(F) loan may not exceed the greater of the original guaranty amount of the loan being refinanced, or 25 percent of the loan.

* * * * *

4. Section 36.4232 is amended by revising paragraph (e)(1) to read as follows:

§ 36.4232 Allowable fees and charges; manufactured home unit.

* * * * *

(e)(1) Subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section, a fee must be paid to the Secretary. A fee of 1 percent of the total amount must be paid in a manner prescribed by the Secretary before a manufactured home unit loan will be eligible for guaranty. Provided, however, that the fee shall be 0.50 percent of the total loan amount for interest rate reduction refinancing loans guaranteed under section 3712(a)(1)(F). All or part of the fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

* * * * *

5. Section 36.4254 is amended by revising paragraph (d)(1) to read as follows:

§ 36.4254 Fees and charges.

* * * * *

(d)(1) Notwithstanding the provisions of paragraph (c) of this section and subject to the limitations set out in paragraphs (d)(4) and (d)(5) of this section, a fee must be paid to the Secretary. A fee of 1 percent of the total loan amount must be paid to the Secretary before a combination manufactured home and lot loan (or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed) will be eligible for guaranty. Provided, however, that the fee shall be 0.50 percent of the total loan amount for interest rate reduction refinancing loans guaranteed under § 3712(a)(1)(F). All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

* * * * *

6. The authority citation for part 36, §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

7. In § 36.4302, paragraph (a) is amended by adding the words "except as provided in paragraphs (b) and (c)" after "38 U.S.C. 3710"; paragraph (b) is revised; paragraphs (c), (d), (e) (f), (g), (h), (i) and (j) are redesignated paragraphs (d), (e) (f), (g), (h), (i), (j) and (k) respectively; a newly designated paragraph (c) is added; newly redesignated (e) introductory text is republished; and the newly redesignated paragraph (e)(1) is revised to read as follows:

§ 36.4302 Computation of guaranties or insurance credits.

* * * * *

(b) With respect to an interest rate reduction refinancing loan guaranteed under 38 U.S.C. 3710 (a)(8) or (b)(7) the dollar amount of guaranty may not exceed the greater of the original guaranty amount of the loan being refinanced, or 25 percent of the refinancing loan amount.

(c) With respect to a loan for an energy efficient mortgage guaranteed under 38 U.S.C. 3710(d) the amount of the guaranty will be in the same proportion as would have been provided if the energy efficiency improvements were not added to the loan amount, and there will be no additional charge to the veteran's entitlement as a result of the increased guaranty amount.

* * * * *

(e) Subject to the provisions of paragraph (g) of § 36.4303, the following formulas shall govern the computation of the amount of the guaranty or insurance entitlement which remains available to an eligible veteran after prior use of entitlement:

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from $36,000. The sum remaining is the amount of available entitlement for use except that (i) entitlement may be increased by up to $10,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home, purchase of a condominium, or for an interest rate reduction refinancing loan, and (ii) entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 3712 may not exceed $20,000.

* * * * *

8. Section 36.4311 is revised to read as follows:

§ 36.4311 Interest rates.

(a) In guaranteeing or insuring loans under 38 U.S.C. chapter 37 the Secretary may elect to require that such loans bear interest at a rate that is (1) agreed upon by the veteran and the lender, or (2) established by the Secretary. The Secretary may, from time to time, change the election under this paragraph by publishing a notice in the **Federal Register**. Provided, however, that the interest rate of loans for the purpose of an interest rate reduction (38 U.S.C. 3710 (a)(8) or (b)(7)) must be less than the interest rate of the VA loan being refinanced.

(b) For loans bearing an interest rate agreed upon by the veteran and the lender, the veteran may pay reasonable discount points in connection with the loan. The discount points may not be included in the loan amount, except for interest rate reduction refinancing loans under 38 U.S.C. 3710(a)(8) and 3710(b)(7). For loans bearing an interest rate agreed upon by the veteran and the lender the provisions of § 36.4312, paragraphs (d)(6) and (7) do not apply.

(c) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default: *Provided*, That a late charge not in excess of an amount equal to 4 percent on any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

(d) Adjustable rate mortgage loans which comply with the requirements of this paragraph are eligible for guaranty.

(1) *Interest rate index.* Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on one year (52 week) Treasury bills adjusted to a constant maturity. Yields on one year Treasury bills at 'constant maturity' are interpolated by the United States Treasury from the daily yield curve. This curve, which relates the yield on the security to its time to maturity, is based on the closing market bid yields on actively traded one year Treasury bills in the over-the-counter market. The weekly average one year constant maturity Treasury bill yields are published by the Federal Reserve Board of the Federal Reserve System. The Federal Reserve Statistical Release Report H.15 (519) is released each Monday. These one year constant maturity Treasury bill yields are also published monthly in the Federal Reserve Bulletin, published by the Federal Reserve Board of the Federal Reserve System, as well as quarterly in the Treasury Bulletin, published by the Department of the Treasury.

(2) *Frequency of interest rate changes.* Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment. To set the new interest rate, the lender will determine the change between the initial (i.e., base) index figure and the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(3) *Method of rate changes.* Interest rate changes may only be implemented through adjustments to the borrower's monthly payments.

(4) *Initial rate and magnitude of changes.* The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. The rate must be reflective of adjustable rate lending. Annual adjustments in the interest rate shall be set at a certain spread or margin over the interest rate index prescribed in paragraph (d)(1) of this section. Except for the initial rate, this margin shall remain constant over the life of the loan. Annual adjustments to the contract interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

(i) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(ii) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent and the new index figure is 6.06 percent, the adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8⅛ percent.

(5) *Pre-loan disclosure.* The lender shall explain fully and in writing to the borrower, no later than on the date upon which the lender provides the prospective borrower with a loan application, the nature of the obligation taken. The borrower shall certify in writing that he or she fully understands the obligation and a copy of the signed certification shall be placed in the loan folder and included in the loan submission to VA. Such lender disclosure must include the following items:

(i) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index:

(ii) Identification of the interest rate index, its source of publication and availability;

(iii) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment;

(iv) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(6) *Annual disclosure.* At least 25 days before any adjustment to a borrower's monthly payment may occur, the lender must provide a notice to the borrower which sets forth the date of the notice, the effective date of the change, the old interest rate, the new interest rate, the new monthly payment amount, the current index and the date it was published, and a description of how the payment adjustment was calculated. A copy of the annual disclosure shall be made a part of the lender's permanent record on the loan.

9. Section 36.4312 is amended by removing from paragraph (e)(3) the words "in paragraphs (e)(4) and (e)(5)" and replacing them with the words "in paragraph (e)(4)"; by adding (e) introductory text; and by revising paragraph (e)(1) to read as follows:

§ 36.4312 Charges and fees.

* * * * *

(e) Subject to the limitations set out in paragraph (e)(4) of this section, a fee must be paid to the Secretary.

(1) The fee on loans to veterans shall be as follows.

(i) On all interest rate reduction refinancing loans guaranteed under Sections 3710(a)(8) and 3710(b)(7) the fee shall be 0.50 percent of the total loan amount.

(ii) On all refinancing loans other than those described in paragraph (e)(1)(i) of this section, the funding fee shall be 2.75 percent of the loan amount for loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of section 3701(b)(5) of title 38, U.S.C., and 2 percent of the loan amount for loans to all other veterans, provided, however, that if the veteran is using entitlement for a second or subsequent time, the fee shall be 3 percent of the loan amount.

(iii) Except for loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of section 3701(b)(5) of title 38, U.S.C., the funding fee shall be 2 percent of the total loan amount for all loans for the purchase or construction of a home on which the veteran does not make a down payment, unless the veteran is using entitlement for a second or subsequent time, in which case the fee shall be 3 percent. On purchase or construction loans on which the veteran makes a down payment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 1.50 percent of the total loan amount. On purchase or construction loans on which the veteran makes a down payment of 10 percent or more, the amount of the funding fee shall be 1.25 percent of the total loan amount.

(iv) On loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of section 3701(b)(5) of title 38, U.S.C., the funding fee shall be 2.75 percent of the total loan amount on loans for the purchase or construction of a home on which the veteran does not make a down payment, unless the veteran is using entitlement for a second or subsequent time, in which case the fee shall be 3 percent. On purchase or construction loans on which veterans whose entitlement is based on service in the Selected Reserve make a down payment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 2.25 percent of the total loan amount. On purchase or construction loans on which such veterans make a down payment of 10 percent or more, the amount of the funding fee shall be 2.00 percent of the total loan amount.

(v) All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

* * * * *

10. Section 36.4336 is amended by revising paragraphs (a)(2)(i); and by adding a new paragraph (a)(4) to read as follows:

§ 36.4336 Eligibility of loans; reasonable value requirements.

(a) * * *

(1) * * *

(2)(i) Except as to refinancing loans pursuant to 38 U.S.C. 3710 (a)(8) or (b)(7) and energy efficient mortgages pursuant to 38 U.S.C. 3710(d), the loan including any scheduled deferred interest added to principal, does not exceed the reasonable value of the property or projected reasonable value of a new home which is security for a graduated payment mortgage loan, as appropriate, as determined by the Secretary, and

* * * * *

(4) A loan guaranteed under 38 U.S.C. 3710(d) which includes the cost of energy improvements may exceed the reasonable value of the property, provided, that the cost of the energy efficiency improvements does not exceed (1) $3,000; or (2) $6,000, if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the energy efficiency improvements.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 79

[FRL-4840-7]

Fuels and Fuel Additives Registration Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reopening of comment period.

SUMMARY: On April 15, 1992, EPA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) for Fuels and Fuel Additives (F/FAs) Registration Regulations (57 FR 13168). The purpose of the proposed regulation would be to establish requirements for the registration of motor vehicle F/FAs as authorized by sections 211(b)(2) and 211(e) of the Clean Air Act (CAA). Under the proposed regulations, manufacturers of F/FAs would be required to conduct certain tests and submit information regarding the composition of emissions produced by such F/FAs and the effects of these emissions on public health and welfare.

EPA held a public hearing on the NPRM on May 28, 1992 and accepted written comments until June 30, 1992. Subsequent analysis indicated that additional public notice to clarify and reconsider a few specific compliance-related and technical issues would be helpful in developing the final rule. Today's action presents these issues and requests comments on EPA's proposals for addressing them. The issues addressed in this document are the following: Timing of requirements for new F/FAs, alternative testing requirements in lieu of Tier 2, general emission generation methodology, mileage accumulation for the testing of atypical F/FAs, and base fuel specifications.

DATES: Written comments on the specific issues discussed in this document will be accepted until March 28, 1994.

ADDRESSES: Comments on this document should be submitted in duplicate to: EPA Air Docket (LE-131); Attention: Public Docket No. A-90-07; U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

All other materials relevant to this document have been placed in Docket No. A-90-07, located in the EPA Air Docket, room M-1500, 401 M Street SW., Washington, DC 20460; phone (202) 260-7548. The docket is open for public inspection from 8:30 a.m. until noon and from 1:30 p.m. to 3 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying services.

FOR FURTHER INFORMATION CONTACT: Ines del C. Figueroa, Special Regulatory Projects Branch, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, Michigan 48105; phone (313) 668-4575.

SUPPLEMENTARY INFORMATION:

I. Background

The legal authority for the F/FA registration program is provided by section 211 of the CAA. Section 211(a), 42 USC section 7545, authorizes EPA to designate any fuel or fuel additive for registration and prohibits manufacturers of designated fuels or additives from selling such products unless they have been registered by EPA in accordance with section 211(b). In 1975, EPA issued

regulations (40 CFR part 79) implementing basic registration requirements, as stipulated by section 211(b)(1), that required applicants to submit certain information, such as commercial identifying information, range of concentration, purpose-in-use, and chemical composition, in order to register a fuel or fuel additive.

The CAA also gave EPA discretionary authority to establish additional registration requirements under section 211(b)(2). This section authorized EPA to require F/FA manufacturers "to conduct tests to determine potential public health effects of such fuel[s] or additive[s] (including but not limited to, carcinogenic, teratogenic, or mutagenic effects)," and to furnish other "reasonable and necessary" information to identify F/FA emissions and determine their effects on vehicular emission control performance and on the public health and welfare.

EPA did not exercise its discretionary authority to require testing of F/FAs under section 211(b)(2) when the general registration regulations were issued in 1975. However, in the CAA Amendments of 1977 (Public Law 95-95, August 7, 1977), Congress added section 211(e), which made implementation of section 211(b)(2) mandatory. On August 7, 1990, EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) (55 FR 32218) and, on April 15, 1992, published an NPRM (57 FR 13168) proposing additional registration requirements under sections 211(b)(2) and 211(e) of the CAA. The purpose of the rule would be to provide EPA with information for identifying and evaluating the potential adverse health effects of motor vehicle F/FA emissions and for guiding the direction of related regulatory actions in the future as specified in section 211(c). The reader is referred to the NPRM and Public Docket A-90-07 for detailed information on the proposed registration requirements.

Subsequent to the publication of the proposal, a public hearing was held on May 28, 1992, followed by a written comment period which closed on June 30, 1992. A transcript of the public hearing and the written comments are contained in the docket.

After careful evaluation of the comments and additional technical analysis, EPA determined that additional public notice to clarify certain key compliance issues and to modify certain proposed technical approaches would be beneficial. The next sections of this notice discuss the issues in question and request relevant comments from the public. EPA asks the public to focus their comments on the key areas discussed below. Comments on topics addressed in previous notices and comment periods will be treated as late communication to which EPA is not required to respond. The issues to be addressed are the following: (1) Timing of requirements for new F/FAs, (2) alternative testing requirements in lieu of Tier 2, (3) general emission generation methodology, (4) mileage accumulation for the testing of atypical F/FAs, and (5) base fuel specifications.

II. Compliance-Related Issues

A. Timing of Requirements for New F/FAs

The registration requirements proposed in the April 1992 NPRM were organized within a three-tiered health effects evaluation structure. Under Tier 1, F/FA manufacturers would be required to perform a literature search on the health and welfare effects of F/FA emissions, characterize the emissions, and provide exposure information. Tier 2 would include short-term biological testing to screen for specific health effects endpoints, involving the exposure of laboratory animals to the whole emissions of fuels or fuel/additive mixtures. After receipt and review of manufacturers' Tier 1 and Tier 2 submittals, EPA would determine, on a case-by-case basis, if additional testing were needed under Tier 3 to evaluate the risk of a particular F/FA (or group of F/FAs) on human health or welfare. Tier 3 testing could include any emissions analysis, health effects, welfare effects, and/or exposure testing or analysis deemed necessary by EPA for this purpose.

The organization of the F/FA program's requirements into hierarchical tiers was proposed, in part, to ensure that the rule would accommodate the goals of section 211(b) within the time restrictions of section 211(e). Section 211(e) requires that, for F/FAs registered as of the date of promulgation of the final rule, the "requisite information" be submitted to EPA within three years of that date. On the other hand, manufacturers seeking to register F/FA products after the date of promulgation would have to satisfy the testing requirements before registration would be granted.

EPA judged that compliance with the Tier 1 and Tier 2 requirements should be achievable within the three-year time limit for registered F/FAs; thus, these two tiers were proposed to be defined as the "requisite information" for registration pursuant to its authority under CAA section 211(e). However, maintenance of such registration would be conditional on subsequent satisfaction of any Tier 3 requirements which EPA might impose pursuant to its authority under CAA section 211(b). For consistency, the same definition of "requisite information" and the same Tier 3 arrangements were proposed to apply to both currently registered and new F/FAs.

EPA intends to maintain these originally proposed provisions in the case of currently registered F/FA products. Thus, for continued registration of such F/FAs, compliance with Tier 1 and Tier 2 must occur within three years of promulgation of the final rule. As proposed in the NPRM, this registration would be conditional on subsequent satisfaction of any Tier 3 requirements which might be prescribed by the Agency. This means that if Tier 3 testing were prescribed for a fuel or fuel additive product registered as of the time of promulgation, the registration would be extended for that time which EPA specifies as necessary for completion of the prescribed Tier 3 requirements. Only upon satisfactory completion of these requirements would re-registration occur.

In the case of products for which manufacturers seek registration after promulgation of this rule, EPA is re-examining the appropriateness of the timing of these Tier 3 provisions. As discussed in the NPRM, EPA interprets section 211(b) in conjunction with section 211(c), which gives EPA authority to control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive if the Administrator finds that the emission products of such fuel or fuel additive "causes, or contributes, to air pollution which may reasonably be anticipated to endanger the public health or welfare." In light of this responsibility, EPA believes that it should exercise particular caution in registering new F/FA products that are significantly different from or have a usage pattern which is significantly different in scope or character from currently registered F/FA products. The potential health risks associated with the use of new F/FAs could be higher, lower, or the same as those of current F/FAs. Thus, before permitting the introduction of these products into the market, the Agency must have reasonable certainty that the public health consequences will not be made worse.

Clarification is therefore needed concerning what constitutes a "new" F/FA. EPA believes it is appropriate to distinguish between two types of unregistered products which a manufacturer might seek to register after

the promulgation of the final rule: (1) F/FA products similar in composition and usage to those already allowed wide commercial distribution (e.g., registered for general use by other manufacturers), and (2) F/FA products which differ significantly in composition and/or usage from such current products.

To formalize this distinction, EPA is proposing to make use of grouping system concepts and definitions previously discussed in the April 1992 NPRM. Specifically, EPA proposes that a F/FA product not registered by its manufacturer [1] as of the date of promulgation of this rule be designated as "registrable" if it meets the program's criteria for grouping with a currently registered fuel or bulk additive [2] in the same fuel family [3]. Conversely, a F/FA product not registered by its manufacturer as of the date of promulgation would be designated as "new" if it does not meet the program's criteria for grouping with a currently registered fuel or bulk additive in the same fuel family. In these definitions, the term "currently" refers to the date on which EPA receives the registration application for the F/FA in question.

According to these definitions, an unregistered F/FA which meets the criteria for grouping only with a currently registered aftermarket additive (and not also with a currently registered fuel and/or bulk additive) would not be registrable. This does not preclude an unregistered aftermarket additive from being registrable (since aftermarket additives can group with fuels and bulk additives), nor does it affect the registration status of currently registered aftermarket additives.

For example, an unregistered detergent additive (either bulk or aftermarket) intended for use in unleaded gasoline and conforming to the "substantially similar" criteria for unleaded gasoline (56 FR 5352) would be registrable, since it would be able to group with currently registered baseline unleaded gasoline fuels and bulk additives [4]. On the other hand, an unregistered chromium-containing additive intended for use in unleaded gasoline would be considered "new" rather than "registrable," because there are no currently registered chromium-containing fuels or bulk additives in the unleaded gasoline family with which the applicant additive could be grouped. Even if a chromium-containing product had previously been registered as an aftermarket additive for unleaded gasoline (prior to the ban on such aftermarket additives under CAA section 211(f)(1)(B) [5] or as a bulk additive for use in another fuel family (e.g., leaded gasoline or diesel fuel), the applicant additive would still be considered "new".

Under the original proposal, new F/FA products would automatically be allowed on the market after submission of Tier 1 and Tier 2 data; whether or not significant health effects concerns had arisen and whether or not EPA had sufficient information to determine if action under section 211(c) were appropriate. However, to address the concerns described above in relation to section 211(c), EPA is now proposing to require that manufacturers of new F/FA products (i.e., F/FA products not registered by their specific manufacturers as of the date of promulgation and not fitting the registrable criteria) submit all testing requirements prior to registration, including Tier 3 when prescribed by the Agency. This means that if EPA were to identify a need for additional testing at the Tier 3 level for a new F/FA, registration would not be granted until satisfactory completion of all such requirements.

On the other hand, EPA is proposing to grant registration to "registrable" F/FAs upon the manufacturer's submittal of the basic registration application and other pre-Tier 1 notification requirements (see NPRM) [6]. Once registered, these products would be legally able to enter the market. Furthermore, these products would have the same testing and compliance requirements as those specified for currently registered products, i.e., three years from the date of promulgation for the completion of the Tier 1 and Tier 2 requirements and, if Tier 3 testing were prescribed, additional time consistent with the incremental testing requirements. Manufacturers' compliance with these requirements could be accomplished independently or as a member of an existing group.

EPA believes that the proposed distinctions between registrable and new F/FAs, both in terms of their definitions and their respective compliance requirements, reflect reasonable regard for the public health and welfare without undue interference in the F/FA marketplace. Because registrable F/FAs are defined such that they must be reasonably similar in composition and usage to current F/FAs, their entry onto the market would generally not be expected to increase the health or welfare risks potentially related to current F/FA emission exposures. In determining whether a manufacturer's product is registrable, the omission of aftermarket additives from the relevant population of currently registered F/FAs is intended to prevent a potentially large increase in public exposure to generally untested products which had previously been relatively limited in distribution and usage. It also ensures that the ability to group with a "grandfathered" aftermarket additive would not confer "registrability" on an unregistered F/FA. This is consistent with the congressional intent in CAA section 211(f)(1)(B) to preclude introduction into commerce of new aftermarket additives which do not fit the "substantially similar" criteria. The omission of F/FAs in different fuel families from the relevant population of current F/FAs is also intended to prevent potential increases in exposure to untested products. Expanding the use of an additive from one fuel family to another (e.g., from diesel fuel to gasoline) would significantly increase the overall size of the potential market for the product and thus the potential exposure to its emissions.

Because of these safeguards, EPA believes that additional protection to the public health would generally not be achieved by prohibiting registrable F/FAs from entering the market while testing of these products (or groups of similar products) proceeds. In the case of "new" F/FAs, however, EPA has no such assurances. By definition, these F/FAs would be dissimilar in composition and/or usage to currently registered products, and allowing their introduction could not reasonably be assumed to have no adverse effects on the health or welfare of the general population. For these F/FAs, therefore, EPA believes that it must protect the public health and welfare by requiring compliance with all data requests it deems necessary before exposing the public to potentially increased risk.

Figure 1 summarizes the decision process for determining whether an unregistered F/FA product would be "registrable" (and thus handled much like a currently registered product), or whether an unregistered F/FA product would not be "registrable" and must complete all testing requirements before registration is granted.

[1] For purposes of these definitions, registration is product-specific. Thus, if a particular fuel or additive product has not been registered by its manufacturer, then that manufacturer does not have the right to introduce, market, and/or sell this product, even if a compositionally similar or identical product has been registered by another manufacturer.

[2] A "bulk additive," sometimes called a "general use" additive, was defined in the NPRM as a product added to fuel at the refinery as part of the original blending stream or after the fuel is transported from the refinery, but before the fuel is purchased for introduction into the fuel tank of a motor vehicle. In contrast, an "aftermarket additive," sometimes called a consumer additive, is an additive product marketed for introduction directly into the fuel system of a motor vehicle.

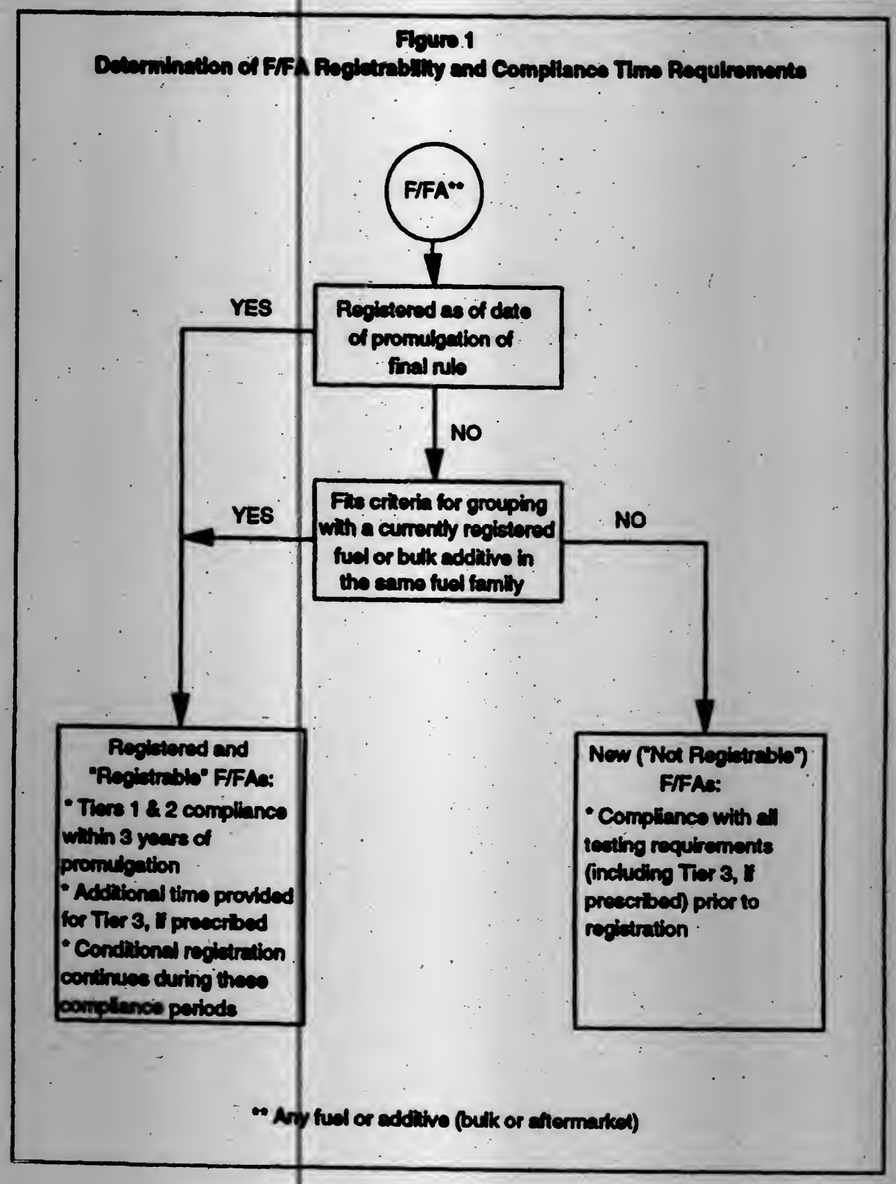
[3] "Fuel family" refers to the primary categorization of F/FAs within the proposed grouping system. A fuel family was defined in the NPRM as a set of F/FAs which share basic chemical and physical formulation characteristics and can be used in the same engine or vehicle. Seven such fuel families were originally defined (unleaded gasoline, leaded gasoline, diesel, methanol, ethanol, methane, and propane), although EPA now intends to delete the leaded gasoline family in view of the prohibition under CAA section 211(n) of on-road use of leaded fuel after December 31, 1995. In the proposed definition of "registrable," the restriction "in the same fuel family" means that the similarity of an applicant F/FA to a bulk additive currently registered for use in another fuel family would not suffice to make the applicant F/FA registrable. This restriction is consistent with the general principles of the grouping system, which permits grouping of F/FAs only within defined fuel families.

[4] The ability to join the unleaded gasoline baseline group assumes that the detergent additive does not exceed oxygen and sulfur limits applicable to the baseline unleaded gasoline category.

[5] Until the 1990 CAA Amendments went into effect, the statutory language of section 211(f) was interpreted as applying only to unleaded gasoline fuels and related bulk additives. Thus, prior to November 15, 1990 (the effective date of the CAA Amendments), aftermarket additives intended for use in unleaded gasoline and containing elements other than carbon, hydrogen, oxygen, nitrogen, and sulfur were allowed to be registered. Under the 1990 CAA amendments, all types of motor vehicle F/FAs were placed under section 211(f) jurisdiction. All aftermarket additives that were not "substantially similar" and were introduced on or after November 15, 1990 were banned. However, this ban does not apply to products first introduced into commerce prior to November 15, 1990 [CAA section 211(f)(1)(B)]. Thus, "non-sub-sim" gasoline aftermarket additives which had been registered prior to that date were allowed to retain their registrations. These are so-called "grandfathered" aftermarket additives.

[6] Even if an unregistered F/FA were "registrable", however, EPA could invoke other available regulatory authority under Federal law to prevent its commerical distribution if EPA were to determine that such action was necessary to protect the public health or welfare. For example, applicable sections of the Toxic Substances Control Act (TSCA)(15 U.S.C. section 2601 *et seq.*), such as the Significant New Use rule or the Premanufacturing Notification process, could be invoked to require health effects testing prior to commerical distribution of an F/FA product if, among other factors specified in TSCA, there is a change in the use of the product or an increase in the magnitude and/or duration of exposure to the product by human beings or the environment (15 U.S.C. section 2601 (a)(2)).

Figure 1
Determination of F/FA Registrability and Compliance Time Requirements



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As a result of these modifications to the original proposal, EPA would have an opportunity to evaluate fully the potential health effects of truly new products before they enter the marketplace. On the other hand, F/FAs similar to those already registered would not be arbitrarily kept from the market during the compliance period simply because of the relationship between their date of introduction and the effective date of this rule.

EPA interprets section 211(e) to support the approach contained in this notice. EPA believes that the reference in CAA section 211(e)(2) (A) and (B) to a "fuel or fuel additive which is registered" or "which is not registered" is ambiguous as to whether it refers to the F/FA generally or to a particular product-specific registration. Given this ambiguity, EPA believes that it is reasonable to interpret the phrase "fuel or fuel additive which is registered" to refer to the F/FAs generally. Further, EPA believes it is reasonable to interpret the phrase "registered" to include both F/FAs that are either "registered" or "registrable." "Registrable" F/FAs are sufficiently similar in composition and use to existing F/FAs that one would not expect them to have dissimilar health effects; and therefore, it is reasonable to interpret the phrase "registered fuel or fuel additive" to include not only those F/FAs that are identical, but also those that can group with existing F/FAs.

Alternatively, EPA believes that the approach in this notice is consistent with section 211 because EPA interprets section 211(e)(3) (A) and (B) in conjunction with section 211(e)(3)(C), which gives EPA authority to exempt any F/FA from duplicative testing. Thus, even if one interprets the phrase "fuel or fuel additive which [is/is not] registered" to mean either that an identical F/FA must already have a registration, or to refer to a product-specific registration, EPA believes it is reasonable to interpret section 211(e)(3)(C) to allow F/FAs that are similar in composition and usage to those already on the market to group with those similar F/FAs and complete the testing with the other F/FAs in their group. At the same time, EPA believes that for F/FAs that differ significantly in composition or usage from currently registered F/FAs, such testing would not be duplicative of testing of groups of registered F/FAs; and therefore, EPA is authorized under section 211(e) to require this information prior to registration.

Under either theory, EPA's authority to obtain information is not limited to Tier 1 and Tier 2 data, because section 211(b)(2)(B) gives EPA authority to require any information necessary to assess the effects of emissions on public health or welfare. Therefore, EPA interprets section 211 (e) and (b) to give it the authority to require any necessary health or welfare effects information for F/FAs that are significantly different in composition or usage from currently registered products.

EPA solicits comments on its interpretation of CAA section 211 as it applies to the approach outlined in this notice and on the proposed compliance requirements for F/FA products which manufacturers may seek to register after promulgation of this rule. EPA is proposing: (1) To allow those products fitting the definition of "registrable" to become registered and thus subject to the same compliance and timing requirements as currently registered products, and (2) to require manufacturers of "new" F/FAs (i.e., those not in conformance with the definition of "registrable") to submit any information EPA requires, potentially including Tier 3, prior to registration. Based on its analysis of the public comments on these proposed provisions, EPA may adopt both proposals, adopt one proposal, or reject both proposals.

B. Alternative Testing Requirements in Lieu of Tier 2

As explained in the NPRM, the main purpose of the proposed rule is to obtain information for the identification and evaluation of potential health effects of F/FA emissions in order to guide EPA in future regulatory actions. CAA section 211(b)(2)(A) gives EPA the authority to require the manufacturer of any fuel or fuel additive "to conduct tests to determine potential public health effects of such fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects)." Thus, the statute gives EPA discretion to require the examination of other endpoints of concern in addition to the mandatory areas of testing described above.

The Tier 2 program in the NPRM proposed to establish a testing framework that incorporated the screening of several health effects endpoints relevant to the assessment of the public health impacts of F/FA emissions, including those endpoints mandated by the statute. In general, EPA still intends to maintain a standard Tier 2 biological testing program as a requirement for registration. Thus, the prescribed Tier 2 tests to be included in the final rule would apply to nearly all F/FAs seeking compliance with registration requirements, to the extent that the results of the data search activities in Tier 1 do not include comparable existing information from adequately performed and properly documented previous studies.

However, EPA is now proposing a special provision which would give EPA discretion to require different testing requirements in lieu of the standard Tier 2 program, in order to address specific health concerns for a particular fuel or fuel additive product. EPA recognizes that, in some special cases, more exhaustive or specifically focused tests might be warranted in lieu of the screening Tier 2 tests, based on already available health effects information. For example, for a particular fuel or fuel additive product, information could already be available to EPA (independent of this proposed program) which indicates that testing should be targeted to an identified health concern that is not specifically addressed in Tier 2 or that calls for more definitive testing than would ordinarily occur under Tier 2. The currently proposed testing program structure certainly allows EPA to require such tests under Tier 3 after the evaluation of the previous tiers. However, in this special case, requiring more definitive tests or other appropriate endpoint tests earlier in the testing program would result in overall savings to the manufacturer while providing EPA with the needed data earlier to assess the potential health risks for the particular fuel or fuel additive in question. Under this special provision EPA would also be able to prescribe additional tests to be performed along with the standard Tier 2 program as well as substituting different tests. EPA asks for comments on this proposed provision that would allow EPA to prescribe alternative tests in lieu of (or in addition to) the standard Tier 2 tests in special cases.

If EPA decided to exercise its authority under this special provision, EPA would allow an appropriate time for completion of the prescribed tests. For instance, if ancillary tests to Tier 2 were prescribed for a registered F/FA, the usual three-year timeframe for completing Tier 1 and Tier 2 requirements would no longer apply. Instead, EPA would allow additional time for completion of the alternative testing program (i.e., Tier 2 as well as the ancillary tests prescribed under this provision) in this special case. Similar compliance allowances would be made if different tests (e.g., chronic tests) were prescribed in lieu of the standard Tier 2 screening tests. For registered F/FAs, EPA would notify the manufacturer (or group) by certified mail letter, within eighteen months of promulgation of the

final rule, of the specific tests to be done in lieu of the standard Tier 2 regimen, along with a schedule for compliance and submittal of test results. A **Federal Register** notice would also be published to give the public opportunity to comment on the intended testing regimen. A public hearing would not be held, however. The responsible manufacturer (or group of manufacturers) would have 60 days to comment on the prescribed tests and timing requirements. If the responsible manufacturer did not provide any comments, EPA would assume that the manufacturer had consented in full with the prescribed testing program. Similar notification arrangements would apply to manufacturers of currently unregistered F/FAs. In this instance, EPA would notify the new applicant (by certified mail letter) of the nonstandard requirements within eighteen months of EPA's learning of the manufacturer's intent to register a product. EPA welcomes comments on the proposed notification and comment procedures for this special provision.

In general, EPA considers the normal Tier 2 testing regimen to be applicable, appropriate, and valuable for the health effects evaluation of F/FA emissions, even if higher-level testing is later required under the provisions of Tier 3. Thus, EPA would exercise the special authority to prescribe other testing requirements in addition to or in lieu of the standard Tier 2 regimen only in exceptional cases. The exercise of this authority would be done wholly at EPA's discretion. F/FA manufacturers would be specifically discouraged from submitting applications or requests to EPA for Tier 2 substitutions, and EPA would be under no obligation to consider or respond to any such requests.

III. Technical Issues

A. General Emission Generation Methodology

The NPRM proposed that F/FA manufacturers would be required to conduct a detailed characterization of the emissions of their products, as well as biological tests in which animals are exposed to these emissions. The use of applicable portions of the standard Federal Test Procedure (FTP) was proposed for generating exhaust emissions for these purposes. For biological testing of products predominantly used in light-duty vehicle applications, EPA proposed the use of one light-duty vehicle operating over continuous, repeated Urban Dynamometer Driving Schedule (UDDS) cycles (i.e., a transient speed driving sequence used to simulate typical urban driving) performed on a chassis dynamometer. An engine dynamometer operated on the Engine Dynamometer Schedule (EDS) was presented as an option. The EDS is a transient engine speed versus torque time sequence commonly used in heavy-duty engine evaluation. It was proposed that the EDS would be used to generate emissions in heavy-duty applications. EPA also proposed that all test vehicles and engines should possess all of the emission control equipment normally recommended by the manufacturer.

In their comments on the NPRM, the regulated industry questioned the appropriateness of using the FTP to generate emissions for biological testing, given the inherent variable nature of FTP-generated emissions. In response to these comments, EPA is considering several alternative approaches as discussed below. EPA asks for comments on the suitability of these proposals and on alternative methods suitable for the generation of emissions to be used in the biological testing of F/FAs. To be most useful, such comments should include a detailed discussion on the recommended methodology, including advantages and disadvantages.

1. Non-Transient Methods

EPA is considering the use of non-transient methods as an alternative approach to FTP or other transient cycles to reduce the potential variability in the emission stream. The rationale behind this approach is discussed below.

The determination of an exposure/health effect relationship requires a constant, well-controlled, and measurable exposure environment. A high degree of variability in emission properties such as heat, pressure, water vapor, CO, NOx, CO_2, total hydrocarbons, and specific chemical composition could complicate the measurement and determination of the actual exposure levels that occur during toxicology testing. During transient cycles, physical and chemical properties of the exhaust stream can vary significantly. In addition, a high percentage of emissions are produced in concentrated spikes (related to the enriched conditions present during accelerations) that result in a series of alternating high and low level exposures. This variability could be difficult to accommodate in the context of the inhalation toxicology tests proposed in this rule. Therefore, EPA is considering the use of single-mode (steady state) operating conditions for generating emissions in the F/FA testing program.

In addition to reducing variability, non-transient methods might also provide a better simulation of ambient conditions. Ambient air contains emissions from many thousands of vehicles of varying technologies, age, and state of maintenance. At any point in time, these vehicles are in different stages of operation under various engine loads. As a collective average of the emissions from these sources, the ambient air typically varies gradually over a period of hours or days. In contrast, UDDS emissions vary significantly from second to second. For these reasons, the ambient air actually resembles a steady state condition more closely than a transient state.

Another potential advantage of running the test vehicle or engine under single-mode conditions is that it would permit less sophisticated and less expensive dynamometer equipment (e.g., water-brake dynamometers) to be used for emission generation. This could help to encourage additional biological testing laboratories to obtain the equipment necessary for conducting the test exposures required in this program, and might also increase the feasibility of using portable dynamometers for these purposes.

On the other hand, the use of a non-transient rather than a transient cycle for generating emissions raises legitimate concerns that the emission stream could be missing certain toxicologically active species which would ordinarily be generated in appreciable amounts only during accelerations. However, these concerns might be allayed to some extent by two other emission generation specifications which EPA is considering: the use of engine-out (non-catalyzed) rather than tailpipe catalyzed emissions (see section III.A.2, below) and the use of high-load, fuel-enriched operating conditions.

To maximize the emission species occuring in the exhaust stream during non-transient operation, EPA is considering different vehicle/engine operating specifications or emission performance requirements. One approach under consideration is to specify the speed and throttle requirements, e.g., 25 percent of full throttle at a constant speed of 20 mph (the average speed of the FTP). An alternative method would be to specify a high load requirement directly (e.g., 50 percent load at 20 mph). One factor to consider is that the vehicle/engine operating conditions must be achievable without exceeding the load which a typical well-maintained, modern engine can handle for prolonged periods of time without breaking down. EPA requests comments and advice on this practical constraint. A different approach would be to require the modification of electronic computer controls to manage fuel injection so as to achieve a suitably enriched air/fuel ratio under steady-state operation. Programming a vehicle to operate in open-loop mode is one example of this approach.

Rather than specifying the operating conditions to be used during non-transient vehicle/engine operation, EPA could choose to specify performance criteria which would achieve suitable emission levels. These criteria would be based on selected exhaust or exposure concentrations of key emissions for biological testing (e.g., CO, total HC). This approach would allow operators the flexibility to determine the most appropriate vehicle/engine conditions and/or computer controls needed to obtain an exhaust stream containing the required concentration ranges of specific emissions. For example, EPA could require that the concentration of total hydrocarbons in the exhaust must exceed a specified amount and/or that the CO concentration be less than a specified maximum. Because different test vehicles/engines would be required to meet the same criteria, this approach might reduce the potential test-to-test variability which might result if EPA were to specify a particular set of operating conditions and require that set to be applied across all vehicle/engine technologies.

EPA invites comments on the possibility of using a non-transient cycle rather than the FTP for generating emissions for biological testing. Specific comments are requested on the effectiveness of the various approaches discussed above for achieving the desired emission enrichment during steady-state operation. Comments on the specific speed, throttle, load specifications, computer controls, and/or performance criteria mentioned above are also requested, and suggestions as to suitable alternative methods or specifications are welcome. Such suggestions will be particularly helpful if supporting data and rationale are provided. Detailed emission speciation data/profiles contrasting engine/vehicle operating conditions (e.g., transient versus non-transient, especially under engine-out conditions) are also solicited.

2. Alternative Approaches

Although EPA is considering steady state conditions for the generation of emissions in the final rule, it has not excluded the possibility of using the previously proposed FTP method or other transient or semi-transient (e.g., multi-modal) methods. EPA solicits detailed comments on whether transient methods are necessary to ensure that toxicologically significant species will not be unintentionally omitted from the emission stream.

EPA is considering the use of emission conditioning techniques that could potentially accommodate transient cycle emission generation within the context of the F/FA inhalation toxicity testing program. One option being considered would use constant dilution ratio equipment (e.g., the mini-diluter or variable flow rate "constant volume sampling" (VFR–CVS) systems) being developed and evaluated in the American Industry/Government Emissions Research, Cooperative Research and Development Agreement (AIGER CRADA) to limit the transient variability characteristics of classical CVS (variable dilution ratio) exhaust. With this equipment, the diluent can be managed to achieve desired CO, CO_2 and water vapor concentrations (e.g., to avoid animal asphyxiation or water condensation) and sample temperatures prior to being directed to the biological exposure chambers. Concentration swings will occur when the engine air/fuel ratio diverges from stoichiometric combustion, but for only short durations of time. EPA recognizes that this is a developing technology and invites comments, suggestions, and supporting data on its possible application in the F/FA biological testing program.

Another alternative that would allow management of the variability of transient vehicle exhaust is use of a mixing chamber between the classical CVS source and the exposure chamber. The transient exhaust would be injected into a large dilution/mixing/integration chamber prior to its delivery to the animal exposure chamber. This would allow necessary adjustment of the exhaust concentrations and integration of the large concentration swings typical of CVS exhaust, prior to exposing the animals. The mixing chamber would be charged from the CVS at a constant rate determined by the exposure chamber purge rate. The exposure chamber flow could begin at the conclusion of the initial transient cycle with the associated mixing chamber charge. EPA requests comments on the feasibility of using mixing chambers to condition diluted transient exhaust for animal exposure in the context of the F/FA testing program.

3. Engine-Out Emissions

EPA is also considering the use of engine-out (i.e., non-catalyzed) rather than catalyzed tailpipe emissions for biological testing, to assure that the test animals will be exposed to the full range of emission species potentially resulting from the combustion of F/FAs. With modern emission control technology in place, most of the ambient air pollutant species attributable to automobile exhaust come from two sources: malfunctioning vehicles ("high emitters") and normal vehicles during their cold start period, when their engines run rich and their catalytic converters have not yet reached effective operating temperatures. The variety of emissions from these two important sources are not well represented by hot, catalyzed exhaust generated from well-maintained, modern vehicles. Emissions during the cold-start include hundreds of organic chemical species which are generated before the catalytic converter reaches its effective temperature. Once the catalytic converter is warmed-up, its efficiency increases to the point where only a dozen or so simple compounds remain in readily measurable amounts in the catalyzed exhaust. Thus, the use of treated exhaust in the biological testing program would expose the laboratory animals to only a very few of the organic emission species associated with the combustion of the fuel or additive of interest.

In vivo testing requires continuous air changes in the animal chambers to avoid confounding health effects (e.g., lung and skin irritations, hypoxia, bacterial infections, heat exhaustion, etc.) caused by a build-up of metabolic by-products (e.g., CO_2, ammonia, humidity and body heat) of the animal test population. Because of the need for frequent air changes, the initial cold-start emissions would remain in the exposure chamber for only a few minutes before being flushed out. Assuming catalyzed emissions were used, the remaining hours of each day's test period would expose the animals only to the relatively few species that remain in hot, treated exhaust. Thus, the use of catalyzed exhaust for biological exposures could exclude from the tests relevant emission species that could potentially be harmful to human health or the environment. In contrast, the ambient air normally contains the full range of combustion emissions, since cold-start emissions are continuously re-introduced and some "high emitters" are always in operation. Since humans experience continuous exposure to these emissions, EPA believes it is

important that they be included in the test exposure atmosphere.

Several possible methods have been considered for increasing the frequency and/or duration of biological exposures to actual cold-start emissions. These included the use of emission storage and retrieval systems, use of an enhanced engine and exhaust cooling system, and the use of a fleet of identical vehicles that could be interchanged to provide natural cooling periods. However, each of these methods could introduce still more technical challenges. Thus, EPA believes that production of a constant supply of genuine cold-start emissions could be an impractical requirement for the type of toxicology tests required in this program. Comments and suggestions on these issues are welcome.

Instead of attempting to produce a constant supply of cold-start emissions, EPA is considering the possibility of requiring manufacturers to use engine-out emissions as a surrogate for cold-start emissions. Recognizing that an ineffective catalytic converter is the major (though not only) vehicle-related factor which differentiates the cold start, EPA has compared cold-start emissions and high-emitting vehicle emissions to engine-out emissions using available emission data. This analysis [7] showed that, in terms of both chemical composition and relative concentrations, engine-out organic emissions closely resemble cold-start and high-emitting vehicle emissions. In addition, a comparison of FTP composite emissions showed that engine-out and tailpipe organic emission species were nearly the same on a qualitative basis, although the engine-out emissions appeared at a greater overall concentration. Thus, bypassing the catalyst produced emissions representing a comprehensive aggregate of characteristic combustion products at enriched concentrations, including the species which are otherwise emitted only during the cold start. The enrichment of organic emissions is an important side benefit for the biological testing program because richer hydrocarbon streams will be available for toxicology testing for any given level of CO_2 and water vapor. (It should be noted, however, that CO levels are also raised, and may themselves become a limiting factor.) EPA requests comments on the use of engine-out emissions for the F/FA biological testing program and welcomes suggestions regarding this proposal or other alternative approaches. To be most useful, such comments should include supporting emission data.

With the exception of exhaust after-treatment devices, EPA proposes that all normally required emission control equipment be present and fully operational on all test vehicles and heavy duty engines used in the generation of engine-out emissions. This may require replacing catalytic converters and particulate traps with other devices capable of simulating the back pressure, residence time, and mixing characteristics usually provided by these devices. Another approach could be to install a blank catalyst (no catalytic wash coat) in the exhaust system where the production catalyst would normally be installed. EPA requests comments and suggestions on this or other suitable alternative methods that would ensure the appropriate operation of the exhaust system.

B. Mileage Accumulation for the Testing of Atypical F/FAs

In the NPRM, EPA proposed 25,000 miles as the minimum mileage which must be accumulated on the emission-generation vehicle before generating emissions for characterization and animal testing purposes. For fuels and fuel additives containing atypical elements, mileage accumulation was proposed to continue after 25,000 miles, if needed, until the emissions of the atypical element(s) reached steady state or until the vehicle or engine has been operated for 80 percent of its estimated useful life (e.g., 80,000 miles for light-duty vehicles). "Steady state" was defined in the proposal as the point at which the mass of the atypical elements emitted during the performance of one or more UDDS or engine dynamometer schedules is within 10 percent of the mass of the atypical elements that entered the combustion chamber during the driving cycles.

Based in part on comments received from the regulated industry, EPA is now considering different mileage accumulation approaches. In the case of a fuel or fuel/additive mixture meeting baseline or non-baseline criteria, EPA believes that an accumulation of 4,000 miles on a light-duty vehicle or light-duty truck or 125 hours on a heavy-duty vehicle (fueled exclusively with the fuel or fuel/additive mixture to be tested), should be sufficient to stabilize emissions. The 4,000 mile/125 hour mileage accumulation requirements are consistent with the emission stabilization procedures used for emission-data vehicles in EPA's new vehicle certification program.[8]

In the case of F/FAs with atypical elements, EPA is concerned that the requirement to reach a mass-balance steady state prior to generating emissions for testing might be too stringent. In fact, in some cases, a measured input-output mass balance might never be reached. Thus, EPA is considering a different approach for atypical F/FAs. The minimum mileage accumulation that vehicles/engines testing atypical F/FAs would be required to undergo would be 4,000 miles, the same mileage accumulation now proposed for the testing of baseline and non-baseline F/FAs. After completion of the 4,000 miles, the F/FA manufacturer would be required to identify and measure the atypical element(s) in the exhaust, if possible. Because the presence of the atypical species in specific emission fractions will be dependent on the nature of the particular atypical element, EPA would recommend examination of all emission fractions (i.e., vapor, semi-volatile, and particulate). If the atypical element(s) of interest are not detected in at least one of the emission fractions after 4,000 miles, the manufacturer would then need to continue mileage accumulation until the atypical element(s) are at high enough level(s) for accurate identification and measurement. The intervals at which the emissions should be examined for detection of the atypical element(s) is proposed to be left to the manufacturer's discretion. Once the atypical element(s) of interest are detected in at least one emission fraction, an additional 10,000 miles would be required prior to generation of emissions for purposes of emission characterization and biological testing.

EPA solicits comments and suggestions on the proposed mileage accumulation requirements for baseline, non-baseline, and atypical F/FAs. If alternative approaches are provided, EPA requests commenters to include supporting data and a detailed discussion so as to allow an appropriate analysis of the options.

C. Base Fuel Specifications

The NPRM proposed the use of base fuels to represent theoretical "industry average" or normative formulations for each defined fuel family. EPA was to develop chemical and physical specifications to define a specific base fuel (including a minimum required additive package) for each fuel family. The base fuels were proposed to serve as the group representatives in compliance with testing requirements for baseline F/FA groups. The base fuels were also proposed to serve as the fuel substrates into which additives which were undergoing evaluation would be mixed prior to emission generation and testing. Tests conducted on the emissions of the base fuel would then serve as controls against which tests on the emissions of the additive/base fuel mixture would be compared.

Although base fuel definitions for the conventional fuel families (gasoline and diesel) were discussed in a memorandum to the docket ("Base Fuel Determination Procedures for the Proposed Fuels and Fuel Additives Rulemaking," see Public Docket No. A-90-07), EPA did not specify at that time the required additive package for conventional fuels or the base fuel specifications for alternative fuels. The proposed specifications for the unleaded gasoline and diesel base fuels are shown in Table 1 and Table 2, respectively. Comments are requested on these specifications, with particular emphasis on the additive functions proposed to be included in each base fuel. The base additive packages are intended to include only those additive functions that are essential for fuel production or engine operation and/or those required by law. Selection of the specific product within each specified additive functional category would be up to the formulator of the base fuel and/or the test operator. However, additive products which include elements other than carbon, hydrogen, oxygen, and nitrogen would not be allowed as part of the base fuel/additive formulation. The base additives would be required to be used at their minimum effective concentrations in the base fuel.

TABLE 1.—Unleaded Gasoline Base Fuel Properties

API Gravity	57.4±0.3
Sulfur, ppm	33 ±25
Benzene, vol%	1.53±0.3
RVP, psi	8.7±0.3
Octane, (R+M)/2	87.3±0.5
Distillation parameters	
IBP, °F	91±5
10%, °F	128±5
50%, °F	218±5
90%, °F	330±5
End Point, °F	415±5
Aromatics, vol%	32.0±0.5
Olefins, vol%	9.2±0.3
Saturates, vol%	58.8±1.0
Additive [1]	**Allowable range**
Deposit Control	12–200 ppm
Corrosion Inhibitor	4–40 ppm
Demulsifier	0.4–10.0 ppm
Anti-oxidant	12–20 ppm
Metal deactivator	4–12 ppm

[1] Additives used in the base fuel may contain no elements other than CHON.

TABLE 2.—DIESEL BASE FUEL PROPERTIES

Specific Gravity	0.86±0.01
Sulfur, wt%	0.05±0.0025
Cetane Number	45.2±2
Cetane Index	45.7±2
Distillation parameters	
IBP, °F	351±5
10%, °F	433±5
50%, °F	516±5
90%, °F	606±5
End Point, °F	651±5
Aromatics, vol%	38.4±0.5
Olefins, vol%	1.5±0.3
Saturates, vol%	60.1±1.0
Additive [1]	**Allowable range**
Deposit Control	33–84 ppm
Corrosion Inhibitor	3–33 ppm
Demulsifier	0.3–0.8 ppm
Biocide	135–1000 ppm
Anti-oxidant	17–26 ppm
Metal deactivator	4–16 ppm

[1] Additives used in the base fuel may contain no elements other than CHON.

EPA has also developed proposed base fuel specifications for alternative fuels, based on California Air Resources Board (CARB) definitions and other available information. EPA requests comments on the proposed base fuel specifications, discussed below for each alternative fuel family. At this time, much less in-use data is available for alternative fuels than for conventional fuels, and some of these fuels and their associated vehicle/engine technologies are still under development. EPA thus proposes to allow some flexibility (with specific EPA approval) in the base fuel formulations specified for the alternative fuel families, if necessitated by technological changes occurring after final promulgation of the specifications.

Such changes might be particularly necessary in regard to the additives specified to be used as part of the base fuels. For example, the proposed M100 base fuel (see below) is specified to contain no additives. This proposed specification reflects EPA's understanding that M100 fuel is currently used without additives in heavy-duty buses in California. However, as experience accumulates and/or if other M100 vehicle technologies become predominant, the need for a minimum complement of additives (such as agents to increase the lubricity or auto-ignition characteristics of M100) may become evident. In such cases, EPA would review and (if justified) approve requests from alternative fuel manufacturers to modify the base fuel (and/or additive) specifications. Such requests would generally be deemed to be justified if consistent with the associated vehicle manufacturer's recommendations for operation of the vehicle. Public notice of any approved changes to the base fuels (and/or their additive components) would be published in the Federal Register.

1. Methanol

As proposed in the NPRM, the baseline category within the methanol fuel family would contain two F/FA groups: the M100 group (to include methanol formulations with at least 96 percent methanol by volume) and the M85 group (to include methanol formulations with 50–95 percent methanol by volume). Each of these baseline methanol groups would have its own base fuel. These base fuels would contain no elements other than carbon, hydrogen, oxygen, nitrogen, sulfur, and chlorine. The chlorine (as chloride) would be permitted as a contaminant remaining from methanol production, and would be limited to no more than 0.0001 percent by mass. The sulfur content may not exceed 0.002 percent by mass in the M100 base fuel and may not exceed 0.004 percent by mass in the M85 base fuel.

The M100 base fuel would be required to consist of 100 percent by volume chemical grade methanol. The M85 base fuel would contain 85 percent by volume chemical grade methanol, blended with 15 volume percent unleaded gasoline base fuel (as described in Table 1). No additives other than those contained in the gasoline base fuel component would be allowed. Specifications for the methanol base fuels are presented in Table 3.

TABLE 3.—METHANOL BASE FUEL PROPERTIES

	M100	M85
Chemical grade MeOH, vol%	100.0	85.0
Gasoline base Fuel, vol%	0.0	15.0
Chlorine (as chloride), wt%, max	0.0001	0.0001
Water, wt%, max	0.5	0.5
Sulfur, wt%, max	0.002	0.004

[7] See memorandum to the docket from Stephen Mayotte, entitled "Engine-out versus Tailpipe Emissions in Light-duty Vehicles".

[8] 40 CFR 86.094–26, Mileage and service accumulation; emission requirements.

TABLE 4.—E85 BASE FUEL PROPERTIES

Chemical grade ethanol, vol%	85.0
Gasoline base fuel, vol%	15.0
Chlorine (as chloride), wt%, max	0.0004
Copper, mg/L, max	0.07
Sulfur, wt%, max	0.004
Water, wt%, max	0.50

TABLE 5.—METHANE BASE FUEL SPECIFICATIONS

Methane, mole%, min	89.0
Ethane, mole%, max	4.5
Propane and higher HC, mole%, max	2.3
C6 and higher HC, mole%, max	0.2
Oxygen, mole%, max	0.6
Inert gases:	
Sum of CO_2 and N_2, mole%, max	4.0
Sulfur (odorant additive), ppmv, max	16

TABLE 6.—PROPANE BASE FUEL SPECIFICATIONS

RVP, psig, max	208
Evaporative temperature, 95%, °F, max	−37
Propane, vol%, min	92.5
Propylene, vol%, max	5.0
Butane, vol%, max	2.5
Sulfur (odorant additive), ppmw, max	120

Some gasoline detergents have been shown to cause intake system deposits when used in M85 applications. Likewise, lubricating oils containing calcium have been shown to cause injector tip deposits in M100 applications. Therefore, EPA recommends that F/FA producers determine the methanol compatibility of lubricating oils as well as fuel additives used in the gasoline portion of the M85 base fuel. EPA requests comments on this issue.

2. Ethanol

In the NPRM, EPA proposed two baseline groups for the ethanol fuel family: E100 group and E85 group. However, EPA is now considering defining only one group for baseline ethanol formulations. This single baseline ethanol group would be represented by E85 base fuel. The rationale behind this proposal is that fuel ethanol is required to contain at least 5 percent denaturant, which means that, in actuality, E100 formulations contain only 95 percent ethanol (i.e., E95). Furthermore, gasoline is normally used as the denaturant for ethanol fuels. EPA believes that there would be little incremental value in requiring tests of E95 in addition to E85, and thus proposes to create a single baseline ethanol group represented by an E85 base fuel.

The E85 base fuel would contain no elements other than carbon, hydrogen, oxygen, nitrogen, sulfur, chlorine, and copper. The chlorine (as chloride) would be permitted as a contaminant remaining from ethanol production, and would be limited to no more than 0.0004 percent by mass. The sulfur content in the E85 base fuel may not exceed 0.004 percent by mass. Copper, also a contaminant from ethanol production, would be limited to 0.07 mg/L.

The E85 base fuel would contain 85 percent by volume chemical grade ethanol, blended with 15 volume percent unleaded gasoline base fuel. No additives, beyond those included in the gasoline base fuel portion of the ethanol blends, would be included in the E85 base fuel. Additives used in the gasoline component of E85 should be ethanol-compatible. A summary of the ethanol base fuel specifications is provided in Table 4.

3. Methane (CNG, LNG)

The methane fuel family would be represented by a natural gas base fuel whose elemental composition is limited to CHONS, with the sulfur present only as an odorant for leak detection purposes and limited to 16 parts per million (by volume). The added odorant should be used at a level such that at ambient conditions the fuel must have a distinctive odor potent enough for its presence to be detected down to a concentration in air of not over 1/5 (one-fifth) of the lower limit of flammability. No other additives would be included in the base fuel. The proposed methane base fuel specifications are presented in Table 5.

4. Propane (LPG)

Special-duty propane, as defined in ASTM specification D–1835, is proposed to serve as the propane base fuel. The propane base fuel may contain no elements other than CHONS, with the sulfur present as an added odorant for leak detection purposes and limited to 120 ppm (by weight). The added odorant should be used at a level such that at ambient conditions the fuel must have a distinctive odor potent enough for its presence to be detected down to a concentration in air of not over 1/5 (one-fifth) of the lower limit of flammability. No other additive would be allowed included in the base fuel. The proposed base fuel specifications for propane are presented in Table 6.

IV. Public Participation

EPA desires full public participation in arriving at its final decisions, and therefore solicits comments on all aspects of this notice from all interested parties. However, EPA does request that comments be limited to the specific issues identified and discussed in this notice. EPA does not intend to respond to comments submitted at this time which concern other aspects of the proposed program. Ample opportunity for such comments was already provided at the public hearings and during the comment periods which followed publication of the ANPRM and NPRM. For those submitting comments, whenever applicable, full supporting rationale, data, and detailed analysis should be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the EPA Air Docket, Docket No. A–90–07 (see **ADDRESSES**). Comments will be accepted until March 28, 1994.

V. Statutory Authority

The statutory authority for this proposal is provided by sections 205(b) and (c), 211, and 301(a) of the Clean Air Act as amended [42 U.S.C. 7524(b) and (c), 7545, and 7601(a), Public Law 95–95].

List of Subjects in 40 CFR Part 79

Environmental protection, Fuels, Fuel additives, Gasoline, Motor vehicle pollution, Penalties.

Dated: February 15, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–4047 Filed 2–23–94; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 940255–4054; I.D. 012894A]

RIN 0648–AF95

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) requests public comments on a proposed rule that would annually allocate the U.S. Pacific whiting harvest guideline or quota, in 1994 through 1996, between: Fishing vessels that either catch and process at sea or catch and deliver to at-sea processors; and fishing vessels that deliver to processors located on shore. In each of the 3 years, after 60 percent of the annual harvest guideline (or quota) for whiting is taken, further at-sea processing in the exclusive economic zone (EEZ) would be prohibited, and the remaining 40 percent (104,000 metric tons (mt) in 1994) would be reserved initially for fishing vessels that deliver to shore-based processors. On or about August 15, any amount of the harvest guideline (including any part of the 40 percent initially held in reserve) that is determined by the Northwest Regional Director, NMFS, not to be needed by the shoreside sector during the remainder of the year would be made available to the at-sea processing sector. This action is intended to promote the goals and objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by providing for equitable sharing of the harvest guideline between shore-based and at-sea processors; by contributing to the economies of coastal communities by providing reasonable opportunity for shoreside processing of the whiting harvest guideline; and by promoting stability in the west coast fishing industry by diverting effort from other fully-utilized fisheries.

DATES: Comments are invited until March 21, 1994.

ADDRESSES: Comments may be mailed to J. Gary Smith, Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or Dr. Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213. Information relevant to this proposed rule has been compiled in aggregate form and is available for public review during business hours at the Office of the NMFS Northwest Regional Director. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) can be obtained from the Pacific Fishery Management Council, 2000 SW First Avenue, suite 420, Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION: NOAA is issuing a proposed rule based on a recommendation of the Pacific Fishery Management Council (Council), under the authority of the FMP and the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background

The domestic and foreign groundfish fisheries in the EEZ off the coasts of Washington, Oregon, and California are managed by the Secretary according to the FMP prepared by the Council under the authority of the Magnuson Act. The FMP is implemented by regulations for U.S. fishermen at 50 CFR part 663. General regulations applicable to U.S. fishermen are at 50 CFR part 620. The FMP has been amended 6 times. Amendment 4 contains a framework process (the socio-economic framework) that provides the authority, guidelines, and criteria for establishing management measures that address social and economic conditions within the fishery. These measures can be implemented by regulation, without further amending the FMP, through the procedures contained in Amendment 4.

Pacific whiting is the largest groundfish resource managed by the Council, and makes up over 50 percent of the potential annual groundfish harvest. Prior to 1980, this species was harvested primarily by foreign fishing vessels. Foreign directed fishing for whiting ended in 1989, when all the available whiting were allocated to U.S. fishermen, mostly for delivery of raw fish to foreign processing vessels under joint venture arrangements. By mid-1990 it was clear that over-capacity of the harvesting and processing sectors in the Alaska groundfish fisheries was causing shorter fishing seasons and that participants were looking for alternative resources, both inside and outside Alaska.

1991

In 1991, the Council recommended, and the Secretary approved, a proposal to allocate the 228,000-mt 1991 Pacific whiting quota 104,000 mt to catcher/processors and 88,000 mt to fishing vessels that do not process (including vessels that delivered whiting both to shoreside plants and to motherships), with 36,000 mt reserved for priority access for the shoreside sector (56 FR 43718, September 4, 1991). The actual 1991 harvest was 117,000 mt by factory trawlers, 80,000 mt delivered to motherships, and 21,000 mt delivered to shoreside processors.

1992

In 1992, no more than 98,800 mt of whiting initially could be processed at sea, 80,000 mt was allocated to vessels delivering to shoreside processors, and 30,000 mt was retained in reserve with a priority for use by the shoreside sector. The 30,000-mt reserve was released to at-sea processing operations on September 4, and an additional 24,000 mt of the initial shoreside allocation was made available for at-sea processing on October 1. In 1992, factory trawlers again harvested 117,000 mt, motherships received 36,000 mt and 56,000 mt was delivered to shoreside processing plants.

A more detailed discussion of the history of this fishery through 1992 is contained in the March 18, 1993 **Federal Register** (58 FR 14543) and in the Council's EA/RIR for this proposed rule.

1993

In 1993, the first 112,000 mt of the 142,000 mt harvest guideline was available for open competition ("olympic fishery"), with the remaining 30,000 mt held in reserve for shoreside processing. This assumed that vessels delivering shoreside would harvest about 12,000 mt during the olympic fishery, for a total of 42,000 mt for the year. When it became apparent that shoreside deliveries were substantially lower than expected during the olympic fishery, an emergency rule was issued that prohibited processing at sea when 100,000 mt was taken by the at-sea processing sector. Therefore, 42,000 mt was reserved for vessels delivering shoreside in 1993. The regulations also included a provision for releasing any unneeded portion of the shoreside allocation on September 1, to ensure the harvest guideline would be fully utilized. However, shore-based processors used their entire allocation and no additional whiting were made available for processing at sea in 1993. The at-sea processing sector harvested 99,103 mt in 1993 (84,588 mt by catcher/processors and 14,515 mt by vessels that delivered to motherships). Shore-based landings were about 41,859 mt in 1993. In total, 140,962 mt of whiting were caught in 1993, over 99 percent of the 142,000 mt harvest guideline.

1994

The fleet composition in the 1994 whiting fishery may be quite different than in 1992 and 1993. A license limitation ("limited entry") program was implemented under Amendment 6 to the FMP, and became effective on January 1, 1994. The limited entry program requires trawl vessels targeting on groundfish to have a limited entry permit. Limited entry permits were issued to vessels that landed a minimum amount of groundfish during the window period (July 11, 1984—August 1, 1988). Permits also were issued to vessels purchased or under construction or conversion during the

window period that later had a certain level of participation in the fishery. The permits may be bought and sold. Therefore, the traditional vessels that were active in the whiting fishery during the window period initially received permits while entrants after 1988 (which includes the catcher/processor fleet) are not able to operate in the fishery unless they buy or lease permits sufficient for these vessels to operate. In 1993, 16 catcher/processors operated in the whiting fishery. As of January 20, 1994, it appears that one catcher/processor may initially receive a limited entry permit while several others might acquire enough limited entry permits to operate as a catcher/processor (rather than a mothership) in the 1994 whiting fishery. However, the catcher/processor fleet is expected to be much smaller than in 1992 and 1993—the whiting market is weak and too few permits are likely to be available for purchase to accommodate the entire whiting catcher/processor fleet. The final composition of the whiting fleet for 1994 and beyond will not be known until the fishery is underway, but it is clear that future participation by the catcher/processor fleet will be constrained by implementation of the limited entry program in 1994.

Statement of the Problem

Both the fishing and processing sectors of the whiting fishery continue to be overcapitalized, which means there is more capacity than needed to take and to process the entire harvest guideline. The at-sea processing sector is more mobile and thus able to follow whiting that migrate from south to north during the March–October/November fishing season. Catcher/processors and catcher vessels delivering to motherships do not lose fishing time by having to return to shore to offload. Until 1994, there have been more at-sea processing vessels (as many as 26 in a given year) than shore-based plants (10–12 major plants). The at-sea processing fleet generally prefers shorter, intense seasons to minimize operating costs, and to "fill in" between other fisheries, particularly the pollock fisheries off Alaska. The shore-based plants clearly are not mobile and are limited by the availability of whiting as it migrates within range of local ports. Shore-based processing plants tend to prefer a longer, slower season to maintain their work force and markets when other fisheries are less productive. Even under limited entry, the potential exists for the at-sea processing sector to preempt the shoreside sector's opportunity for a longer processing season if enough at-sea processing capacity enters the whiting fishery. Although limited entry may reduce the number of catcher/processors that harvest whiting, it has no effect on the number of at-sea processors that may choose to offer at-sea markets to catcher boats.

The shore-based fleet and processing plants now are established components of the whiting industry, not likely to be totally preempted by the at-sea fleet. They are, however, vulnerable to severe economic impacts should landings be precipitously reduced by unrestricted at-sea processing taking much of the harvest guideline in a fast, early fishery. The Council believes that even partial preemption of shoreside processing opportunities will result in an inequitable redistribution of economic benefits between sectors of the industry. The greatest change in the fishery in 1994 will be due to implementation of the limited entry program. Even though the traditional catcher vessels might appear to be protected from the rapid and intense competition of the catcher/processor fleet, concern remains that market opportunities might be severely restricted by an at-sea processing fleet consisting of motherships (including former catcher/processors acting as motherships) or of catcher/processors accumulating enough permits to operate in the fishery. The mothership fleet provides a viable market for the traditional catcher vessels, and to this extent is beneficial to the catcher fleet. However, if the mothership fishery attracts a large number of catcher/processors acting only as motherships, and if they are able to process whiting almost as rapidly as when they acted as catcher/processors (which is expected), the harvest guideline still could be taken in a matter of weeks (as early as May 11, 1994, according to Table 7–2 in the EA/RIR). The Council believes the traditional catcher fleet's market opportunities are enhanced when there are viable, competing markets both onshore and offshore over a longer period of time, and therefore a less intense, slower fishery appears to benefit market choices for these vessels.

The Council also is concerned that preemption of harvesting opportunities for whiting catcher boats will result in those vessels transferring additional fishing effort into the traditional groundfish fisheries for rockfish, sablefish, and flatfish, which already are fully utilized. Increased effort in the non-whiting groundfish fishery could result in shortened seasons and more restrictive trip limits for all groundfish fishing vessels, could economically disadvantage many fishermen, and could exacerbate the current problem of excessive discards and wastage attributed to restrictive regulations. To the extent that the Council can maintain employment for the traditional joint venture fishing vessels in the Pacific whiting fishery, adverse impacts on the other groundfish fisheries will be lessened.

In addition, the Council and the industry desire stability in the regulatory process. For each of the last 3 years, the Council submitted recommendations for allocations to the Secretary. Uncertainty as to what the allocation would be and delays in announcing the allocation prevented participants in the whiting fishery from planning their harvesting and processing operations prior to the season. The industry was unable to plan ahead because it did not have a firm foundation on which to base its business decisions.

In summary, the problems the Council has identified and is seeking to solve are: Too much fishing and processing capacity and not enough fish; inequitable distribution of economic benefits among the competing sectors; and regulatory instability that has prevented the industry from making timely business decisions.

To resolve these problems, the Council identified the following priorities:

(1) Ensure that [the] shore-based sector has reasonable opportunity to participate; (2) foster stability of shore-based processing sector by providing replacement revenues for other faltering fisheries; (3) help stabilize faltering rural coastal economies by providing fishing, processing and supporting industry revenues to replace income declines in other industries; (4) achieve maximum net benefit to the nation by putting economic benefits directly into coastal communities and distributing income impacts/benefits along traditional geographic paths; (5) spread fishery over time and area, reducing potential pulse fishery impacts on whiting, salmon and rockfish stocks; (6) prevent effort shift to other species; (7) address management of the entire groundfish resource rather than piecemeal; (8) contribute to increased long-term product yield and employment opportunities by spreading harvest over a longer season; (9) discourage additional capital investment in harvesting or processing facilities.

The Council convened an ad hoc industry subcommittee in July 1993 in Portland, Oregon, to develop an allocation option that would be acceptable to all sectors. The subcommittee included a representative from each major sector in the whiting industry: catcher vessels delivering at-sea, shoreside, and "at-large;" shoreside processors; catcher/processors; and mothership processors. The ad hoc committee, after considering a number of alternatives, successfully negotiated a 3-year agreement that was acceptable to all participants, and subsequently was adopted by the Council and recommended to the Secretary (Option 1 in the EA/RIR or the proposed rule).

The Council's recommendation provides that the first 60 percent of the annual whiting harvest guideline will be available to all vessels in open competition. The remaining 40 percent is reserved initially for shore-based activities. When the 60 percent has been harvested, no further at-sea processing will be allowed for the remainder of the year or until August 15, when an additional portion of the harvest guideline may be made available. NMFS will assess how much of the harvest guideline will be utilized by shore-based processors during the remainder of the year, and any surplus to shore-based needs will be made available to all permitted vessels on August 15. The allocation would remain in effect for 3 years, 1994–1996. Any Pacific whiting harvested or processed in state ocean waters (0–3 nautical miles offshore) will be counted toward the EEZ limits.

The Council also considered the alternatives of continuing the 1993 percentages (of 30 percent for vessels delivering shoreside and 70 percent for at-sea processing (Option 2 in the EA/RIR), and continuing the "olympic"-style fishery with no allocations to either sector (Option 3 in the EA/RIR).

The ad hoc committee also reached a consensus agreement to assume that only the traditional whiting catcher fleet (limited entry vessels with "A" permits) would be allowed to operate in the whiting fishery. The Committee believed that the limited entry fleet, which contains approximately 40 catcher vessels from the traditional whiting fishery and possibly one catcher/processor, is sufficient to harvest any likely harvest guideline for whiting in the next 3 years. However, NOAA cannot foresee what choices fishermen will make and cannot guarantee that the entire harvest guideline will be taken by the current limited entry fleet. Participation in the limited entry fishery is determined under Amendment 6 to the FMP, which allows for participation by vessels that are not in the current limited entry fleet (by issuance of "designated species B permits"), based on seniority in the fishery, if the current limited entry fleet will not use the entire harvest guideline. Therefore, the FMP provides for temporary participation by vessels that do not have "A" permits to ensure that the harvest guideline for whiting will be fully utilized.

Impacts of the Proposed Rule

The socio-economic framework in the FMP, under which this action is taken, requires the Council to consider a number of factors in its recommendation to directly allocate the resource among users. (See section III.C.3 of the appendix to 50 CFR part 663.) One factor that must be considered by the Council is "any consensus harvest sharing agreement or negotiated settlement between the affected participants in the fishery." However, the fact that an agreement has been negotiated is not in itself a sufficient basis for the Secretary to approve the Council's recommendation. The socio-economic framework also requires consideration of a number of biological, social, and economic factors, as well as consistency with the goals and objectives of the FMP, the Magnuson Act and other applicable law. These factors are more fully discussed in the Council's EA/RIR (see **ADDRESSES**) and are summarized below.

In its analysis, the Council developeo a model to predict how much whiting would be taken by each sector under each option and under certain conditions and assumptions (section 7.2.3 of the EA/RIR). The resulting ranges of estimated production for the shore-based sector are listed in the following table.

ESTIMATED HARVEST GUIDELINE (HG) AND WHITING CATCH BY THE SHORE-BASED FISHERY UNDER THE ASSUMPTIONS USED IN THE EA/RIR

[in thousands of metric tons]

Year	HG	Reserve (40% HG)	Option 1 (proposed)	Option 2 (1993 %'s)	Option 3 (no alloc.)
1994	260	104.0	60–134 mt	59–77 mt	21–57 mt.
			23–52%	23–30%	8–22%.
1995	[1]222	88.8	59–112 mt	59–66 mt	15–47 mt.
			27–50%	27–30%	7–21%.
1996	[1]166	66.4	59–80 mt	50 mt	8–32 mt.
			36–48%	30%	5–19%.

[1] Based on 80 percent of the estimated U.S.-Canada acceptable biological catch. The actual harvest guideline will not be announced until January 1 each year, and the actual harvest guideline for 1995 and 1996 may vary from these estimates. (Source: Tables 7–2 and 7–3 (EA/RIR))

Biological and Environmental Impacts

No significant biological or environmental impact is expected as a result of the proposed rule. The bycatch of rockfish and salmon is expected to be similar whether the proposed rule is implemented. Although it is possible that a short, intense pulse fishery could have localized impacts on bycatch species, it also provides the potential for avoiding species more likely to be caught at other times of year. The incentive to minimize bycatch may be less if the season is short and vessels race to take their allocation. However, observers have been carried onboard both the at-sea processors and shore-based catcher vessels for the purpose of monitoring bycatch. In general, bycatch rates of yellowtail rockfish and Pacific ocean perch are more likely to increase if the fishery occurs predominantly in the northern areas, and bycatch of bocaccio/chilipepper rockfish are more likely to increase if fishing occurs off California. A number of regulations were implemented in 1993 for the purpose of minimizing bycatch of salmon and rockfish in the whiting fishery (50 CFR 663.23(b)(3)).

Although the Council heard testimony that a later and longer season would benefit the whiting resource because the fish would be larger later in the season and it would take fewer fish to fill the harvest guideline, the actual difference in yield is small. An analysis conducted in 1992 indicated that even if the *entire* harvest guideline were taken in September compared to April, the potential increase in yield would be about 10 percent. This 10 percent would include increases to liver and gonad weight, and therefore is not likely to represent an equal increase in

marketable flesh. Since none of the options considered by the Council provided for the entire fishery being taken in September, the increase in yield from an extended season would be less than 10 percent.

Economic Impacts

The economic cost-benefit analysis developed by the Council for the 1993 allocation did not provide adequate information to support any allocation decision. However, one more year of fishing and marketing experience, and revised data were incorporated into a new analysis. Even though data were available in the recent analysis that did not exist at the time the previous analysis was prepared, the results still should be interpreted with caution and are contingent on assumptions about the effects of limited entry, and the quality of the data. However, given these limitations, the Council's cost/benefit analysis does provide consistent ranking of the three options, suggesting that the proposed rule may provide the greatest net economic benefit to the nation, even though the amount of that difference may be quite small. In all instances the no allocation option (Option 3) was ranked lowest in terms of net economic benefit to the nation. The differences between Options 1 and 2 were insignificant in most cases. Three important factors, based on 1993 prices, appear to drive the results: (1) Shore-based headed and gutted operations are the most profitable (highest net economic benefit); (2) shore-based waste utilization adds to the net economic benefit; and (3) surimi prices are highest for catcher/processors. Applying the new data to assumed levels of participation by each sector, and using observed prices, the total difference between the proposed rule and the no allocation option is only about $3 million over the three-year period. Even though the exact dollar amount may not be known, this indicates a small economic difference among the options.

The Council concluded that although the net economic benefits are similar for Options 1 and 2, the no allocation (Option 3) was clearly inferior. In short, the cost-benefit analysis concluded that shore-based activities appear to produce a slightly greater net economic benefit, in part due to the slower operating pace and to the multi-faceted nature of the shore-based sector.

However, the Council perceives a clearer difference between the options with respect to distributional effects, believing maintenance of a robust shore-based whiting fishery is essential for the preservation of the social and economic structure of the west coast fishing industry.

Social Impacts

The Council believes that the proposed rule will provide the greatest stability to the harvesting and processing communities. The Council is concerned about the impacts on traditional fishermen and the rural coastal communities where they reside, focusing on those displaced by Americanization of the joint venture fisheries as well as those displaced from other declining fisheries and industries. An integrated industry is important in dealing with severe stock declines in other fisheries, most notably in the salmon industry, which also is stressing the shore-based processing industry.

Similarly, the traditional whiting fishery must be viewed in the context of the overall groundfish fishery. Most traditional whiting fishermen (those receiving "A" permits in the limited entry fishery) operate in other groundfish fisheries as well. These fisheries have been managed under increasingly restrictive landing limits, and are harvested near their levels of maximum sustainable yield (MSY), which means they cannot sustain additional effort. Of the three options considered, Option 1 (the proposed rule) provides the greatest stability to the harvesting and processing communities in part because it provides for the longest season for the shoreside sector (which could last until late July/mid-October in 1994–1996) and should divert the greatest effort from other fully-utilized fisheries. Diversion of effort from these other fisheries is intended to prolong their seasons, delay reductions in trip limits, and maintain employment opportunities in both fishing and processing sectors.

In contrast, the catcher/processor trawl fleet entered the fishery off Washington, Oregon, and California in 1990 and has targeted only on whiting. Consequently, its participation in the whiting fishery does not divert effort from other west coast fisheries, and, by taking the harvest guideline quickly, may reduce market opportunities for catcher vessels that do not process.

The no allocation option (Option 3) could encourage a brief fishery conducted primarily by at-sea processors, with the entire harvest guideline being taken by the end of June. This would divert effort back to the other fully-utilized groundfish fisheries, could accelerate the need for reduced trip limits in those fisheries, and result in shortened seasons for the shoreside fishing and processing industries.

Fishing opportunities for the at-sea fleet also have been substantially reduced, particularly off Alaska and the former Soviet Union, and therefore whiting has become more important to this fleet as well. The Council concluded that the social and demographic description included in the December 1992 EA/RIR (prepared for the 1993 allocation decision) clearly showed that the relative importance of whiting to the coastal communities exceeds the relative importance to the Seattle metropolitan area where most of the at-sea processing fleet is based (although a large percentage of employees are recruited from throughout the western United States). The Council agrees that neither sector should receive a disproportionate amount of the harvest guideline, as could occur under the no allocation option (Option 3). It also believes that the greater national benefit will be derived by giving some protection to the traditional catcher vessels that deliver to shore-based processors, and the communities in which they are based.

Although each of these options would influence participation by each sector, none of the options would preempt any sector entirely. The social impacts of Option 1 upon the Seattle-based at-sea processing fleet are small relative to those already occurring under the limited entry program. Because the fleet composition under the limited entry program is still relatively unknown, undertaking a rigorous social analysis is premature.

The Council also recommended Option 1 because industry consensus in support of this option indicated a willingness to compromise that is unprecedented and should be encouraged.

Net Benefit to the Nation

In addition to the findings above, the Council found other compelling reasons to support the proposed rule and concluded that it would provide the greatest net benefit to the nation.

Option 1 addresses concerns that there be equal sharing of the conservation burden between the at-sea and the shoreside processing sectors. A percentage allocation more equitably shares between sectors both the conservation burden when the harvest guideline is low, and the benefit when the harvest guideline is high. The harvest guideline in 1994 is much higher than previously expected, almost twice the 1993 level, but is expected to be lower in 1995 and 1996.

Even though the tonnage available in 1994 is substantially higher than in 1993, additional overcapitalization is not expected. The shore-based industry already is developed and the 104,000 mt reserve is close to the 100,000 mt estimate of shoreside capacity in the EA/RIR. (Maximum annual harvest by shore-based whiting fishery was estimated at 134,000 mt in 1994–1996.)

The proposed rule, if implemented, would apply only for the next 3 years, a long-enough horizon for stability in planning, but short enough to indicate to the public that the Council may reconsider this issue after the fleet has had a chance to adjust to the limited entry program and whiting markets have stabilized.

The proposed rule is not a major departure from the approved 1993 allocation percentage of 30 percent for the shoreside sector. The Council recommendation for 1994–1996 would give shoreside priority to 40 percent of the harvest guideline, supplementing any amount taken during the olympic fishery for the first 60 percent. Also, with implementation of the limited entry program, participation by the at-sea processing fleet may be much lower than in 1993, although the exact level will not be known until the fishery occurs.

The reserve release assures that the harvest guideline will be fully utilized. The release date of August 15 is 2 weeks earlier than in the past, and provides a longer opportunity for the at-sea fleet if a release is made to them. August 15 also coincides with the opening of the pollock "B" season in Alaska, and therefore would provide a more subdued level of effort and a more orderly fishery than if the reserve were released much earlier or later in the year.

In addition to the above considerations, NOAA also has considered the Council's response to the following three questions asked at the November 1993 Council meeting:

1. *Why is allocating between the sectors by regulation superior to allowing the market to determine the shares between sectors?* Each of the sectors has the capacity to take a substantial portion, if not all, of the whiting harvest guideline in the next 3 years. It is not clear if each would choose to do so given current low prices and uncertainty in the availability of markets. The shore-based and at-sea sectors operate optimally at different rates, however, with the shore-based component generally preferring a longer, slower fishery and the at-sea component best served with a relatively shorter, more intense operation. Extended seasons at sea and on-shore actually enhance market opportunities for catcher boats that would have their choice of markets. Furthermore, providing an opportunity for all sectors would divert effort from other fully utilized fisheries that already are severely restricted. Additional effort into those fisheries would have a cascading effect, causing earlier and/or more restrictive management measures and even greater stress on shore-based processors of those species. (Whiting is the only trawl-caught species off Washington, Oregon, and California that is processed offshore to any large extent.) Allowing the at-sea processing sector to even partially preempt the shoreside sector would reduce national net benefits to the nation from the fishery and destabilize the successfully developed shoreside economic infrastructure. Thus, there is ample justification to allocate between sectors. The proposed rule would provide each sector with a reasonable opportunity to utilize this public resource. However, if a sector does not need or intend to use its opportunity to the fullest extent possible, any unused portion of the harvest guideline would be made available to the entire whiting fishery.

2. *Will this proposal encourage further capitalization in either sector?* None of the options, including the preferred option, are expected to encourage further capitalization in either sector. The at-sea and shore-based processing sectors and the catcher fleet are fully developed and are believed to be capable of taking the proposed amounts. Even though the tonnage available in 1994 is substantially higher than in 1993 (and is the highest level in the 3-year period under consideration), market prices for whiting currently are at such low levels that it is unlikely that additional processing capacity would be attracted. At issue is the extent that existing capacity will be utilized on whiting, other species, or not at all.

3. *With 104,000 mt reserved for shore-based operations in 1994, what are the net benefits to the nation from providing an exclusive opportunity to the shoreside sector to use twice its historical level?* In 1993, the Secretary was concerned that the conservation burden of a reduced harvest guideline be equitably shared among the sectors. Similarly, the benefit of an increased harvest guideline also should be equitably shared between the sectors, particularly since it is not expected to result in increased capitalization, but rather in how effectively the existing infrastructure is used. Thus, it would not be reasonable to limit the shoreside sector to only what they processed in 1993 or any prior year.

The shoreside industry needs a longer operating window to be viable than the at-sea sector needs. Production by early August will be a key component in determining if shore-based processors will need the entire reserve. Any unneeded portion of the harvest guideline will be made available to the entire fishery on or about August 15, assuring there is adequate time to conduct successful operations on the remainder of the harvest guideline. In 1992 and 1993, the at-sea fleet was able to harvest considerably more than its initial allocation due to the release of whiting not needed by shoreside processors.

The historical level of catch or production is not the only consideration. In 1993, both the shore-based and at-sea processing fleets were constrained from catching as much whiting as they wanted. The 40 percent reserve recognizes anticipated lower participation by catcher/processors in 1994 and beyond, consistent with implementation of the limited entry program in January 1, 1994.

NOAA has reviewed the Council's recommendation and supporting analysis and initially has determined that the proposed rule is consistent with the Magnuson Act and its national standards and other applicable Federal laws.

NOAA also requests comments on the advisability of releasing additional amounts of whiting after August 15, but only if necessary to ensure full utilization of the harvest guideline.

Clarification

The regulatory text would revise an incorrect cross-reference at § 663.7 which should read § 663.23(b)(4)(v).

Classification

This proposed rule is published under authority of the Magnuson Act, 16 U.S.C. 1801 *et seq.*, and was prepared at the request of the Pacific Fishery Management Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is necessary for management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an Environmental Assessment (EA) for this proposed rule (contained in the EA/RIR), and concluded that there would be no significant impact on the environment. A copy of the EA may be obtained from the Council (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, would

not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Although the whiting fleet contains less than 20 percent of the total number of groundfish vessels, if this proposed rule diverts effort from other traditional groundfish stocks, more than 20 percent of the fleet could potentially be affected. However, none of the options is expected to have impacts that would qualify under any of the criteria for determining "significant" impacts, nor would they force any small business entity to cease operation. In fact, in comparison to the status quo, the proposed rule could result in greater fishing opportunities for non-whiting vessels and thus increased revenues. For these reasons, it is determined that the proposed rule potentially would affect a substantial number of small entities, but would not cause significant economic impacts on those entities. Therefore, an initial regulatory flexibility analysis (IRFA) is not required. Also, the Council has requested that this notice announce a correction to page 77 of the EA/RIR, the last sentence in the first paragraph, so that it reads: "The Council concludes that this proposed rule, if adopted, would not have significant effects on small entities in 1994–1996."

This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 17, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is proposed to be amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 663.7 [Amended]

2. In § 663.7, paragraph (o), reference to "§ 663.23(b)(v)" is revised to read "§ 663.23(b)(4)(iv)".

3. In § 663.23 paragraph (b)(4) is added to read as follows:

§ 663.23 Catch restrictions.

* * * * *

(b) * * *

(4) *Pacific Whiting—Allocation. The following provisions apply from 1994 through 1996*—(i) *The Shoreside Reserve.* When 60 percent of the annual harvest guideline for Pacific whiting has been or is projected to be taken, further at-sea processing of Pacific whiting will be prohibited pursuant to paragraph (b)(4)(iv) of this section. The remaining 40 percent of the harvest guideline is reserved for harvest by vessels delivering to shoreside processors.

(ii) *Release of the Reserve.* That portion of the annual harvest guideline that the Regional Director determines will not be used by shoreside processors by the end of that fishing year shall be made available for harvest by all fishing vessels, regardless of where they deliver, on August 15 or as soon as practicable thereafter.

(iii) *Estimates.* Estimates of the amount of Pacific whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of Pacific whiting that will be used by shoreside processors by the end of the fishing year will be based on the best information available to the Regional Director from state catch and landings data, the survey of domestic processing capacity and intent, testimony received at Council meetings, and/or other relevant information.

(iv) *Announcements.* The Assistant Administrator will announce in the **Federal Register** when 60 percent of the whiting harvest guideline has been, or is about to be, harvested, specifying a time after which further at-sea processing of Pacific whiting in the fishery management area is prohibited. The Assistant Administrator will announce in the **Federal Register** any release of the reserve on August 15 or as soon as practicable thereafter. In order to prevent exceeding the limits or underutilizing the resource, adjustments may be made effective immediately by actual notice to fishermen and processors, by phone, fax, Northwest Region computerized bulletin board (contact 206–526–6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken.

* * * * *

[FR Doc. 94–4108 Filed 2–18–94; 12:14 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 37
Thursday, February 24, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Oil and Gas Leasing; Lewis and Clark National Forest, MT

AGENCIES: Forest Service, USDA, and Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service and the Bureau of Land Management (BLM) will prepare an Environmental Impact Statement (EIS) to disclose the impacts of proposed oil and gas leasing on the Lewis and Clark National Forest. The Forest Service and the BLM will be joint lead agencies for this EIS (40 CFR 1501.5). The EIS will be designed to satisfy the requirements of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and implementing regulations (36 CFR 228.102).

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than March 31, 1994.

ADDRESSES: Send written comments to John D. Gorman, Forest Supervisor, Lewis and Clark National Forest, P.O. Box 869, Great Falls, MT 59403.

FOR FURTHER INFORMATION CONTACT: Robin Strathy, Environmental Analysis Team Leader, Lewis and Clark National Forest, as above, or phone: (406) 791–7726.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to make certain lands within the Lewis and Clark National Forest administratively available for oil and gas leasing, subject to constraints specified in the 1986 Lewis and Clark National Forest Land and Resource Management Plan. The Forest Service also proposes to authorize the BLM to offer those lands for lease, subject to specified stipulations. Both the administratively-available decision, and the leasing decision for specific lands are being made. The BLM will decide whether to offer the specific lands for lease subject to the Forest Service ensuring that correct stipulations will be attached to leases issued by BLM. In cases where the surface resources are not managed by the federal government but the minerals are federally owned (split estate), the BLM will also decide whether or not to offer these mineral rights for lease and what stipulations to apply. Except where stipulations prohibit all surface use, operations and development may be allowed on the leased lands. Such activity is subject to the operator obtaining an approved Surface Use Plan of Operations from the Forest Service in accordance with 36 CFR, subpart E, 228.106 and 228.107.

The EIS will examine the effects of the proposal to implement the oil and gas leasing direction in the 1986 Lewis and Clark Forest Plan and additional alternatives. The primary purpose of this analysis is to determine which lands should be available for leasing, what stipulations should be applied to any leases, and which specific lands should be offered for lease at this time.

Lands affected are within the boundaries of the Lewis and Clark National Forest. These lands encompass several mountain ranges south and east of Great Falls, Montana (including the Little Belt, Highwood, Castle, north Crazy, Big and Little Snowy Mountains), as well as the eastern Front Range of the Rocky Mountains west of Choteau, Montana. By regulation, several classes of National Forest System lands are considered legally unavailable for leasing at this time, and will be considered unavailable for lease under all alternatives in the analysis. On the Lewis and Clark Forest, these lands include existing wilderness, specifically the Bob Marshall-Scapegoat Wilderness complex. Also unavailable are those lands recommended for wilderness in the Lewis and Clark Forest Plan, which includes about 51,800 acres on the Rocky Mountain Division adjacent to the Bob Marshall and Scapegoat Wildernesses. These lands are described in the Lewis and Clark Forest Plan as the Renshaw, South Fork and West Fork of the Teton, and Silver King-Falls Creek areas. In addition, lands proposed for wilderness study under the Montana Wilderness Study Act (Pub. L. 95–150) are not available for oil and gas leasing. This includes 92,000 acres in the Middle Fork of the Judith River Wilderness Study Area in the Little Belt Mountains, and 98,000 acres in the Big Snowy Mountain Wilderness Study Area.

This analysis is required by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and implementing regulations promulgated in 1990 (36 CFR 228.102).

Potential issues that have been identified to date are the effects of oil and gas activities on:

1. Threatened and endangered species.
2. Sensitive fish, wildlife, and plant species.
3. Big game wildlife species.
4. Water quality.
5. Soil resources.
6. Inventoried roadless areas.
7. Indian rights and religious practices.
8. Dispersed and developed recreation opportunities.
9. Heritage resources.
10. Social and economic impacts to local and area communities.
11. Consistency with Forest Plan goals and objectives.
12. Lands considered in wilderness legislation.
13. Scenic byways.
14. Municipal watersheds.
15. Experimental Forest.
16. Noxious weeks.

The Lewis and Clark Forest Plan provides direction for the use of stipulations to be attached to leases in order to comply with Forest Plan goals and objectives. As outlined in the Forest Plan, no-surface occupancy (NSO) is recommended for lands where oil and gas development could conflict with riparian values, wetlands and floodplains, as well as on slopes greater than 60%. The Forest Plan calls for no-surface occupancy to protect existing uses such as powerlines, irrigation canals, and cemeteries, and developed recreation sites, as well as the area above Gibson Dam on the Sun River. Areas identified in the Forest Plan as Research Natural Areas also require the NSO stipulation. The Ford Creek Plateau area on the Rocky Mountain Division would be available only for no-surface occupancy leasing for the first decade of the Forest Plan.

The Plan also identifies areas for which timing restrictions on activity would be stipulated to protect resource

values such as threatened and endangered species habitat, sensitive species habitat, big game seasonal ranges, and raptor nest sites. NSO is recommended in areas where more than one key wildlife habitat is present and the combined seasons of use leaves no opportunity for oil and gas occupancy.

In addition, the Lewis and Clark Forest Plan identifies resource concerns requiring special operating constraints, such as landtypes susceptible to moderate-severe cut-bank failure potential, semi-primitive recreation areas, Experimental Forests, and municipal watersheds. A stipulation controlling surface use would be applied to leases with these resource concerns.

Under the Forest Plan, stream segments eligible for "wild" status under the Wild and Scenic Rivers Act of 1968 will not be offered for lease. Most of these stream segments are within existing wilderness areas, but on those segments outside of designated wilderness on Forest, lands unavailable for lease include areas within ¼ mile either side of segments of the South Fork of the Sun River, the Dearborn River, and North Fork Birch Creek.

Public participation will be important to the analysis. Part of the goal of public involvement is to identify additional issues and to refine the preliminary issues identified above. People may visit with Forest Service officials at any time during the analysis and prior to the decision. However, two periods are specifically designated for comments on the analysis: (1) During the scoping process and (2) during the Draft EIS (DEIS) comment period.

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. A scoping document will be prepared and mailed to parties known to be interested in the proposed action by February 25, 1994. The agency invites written comments and suggestions on this action, particularly in terms of identification of issues and alternative development. In addition, public open houses will be held during the scoping period: on Monday, February 28 from 5 p.m. to 8 p.m. at the Kings Hill Ranger District Office in White Sulphur Springs, MT; on Wednesday, March 2, from 6 p.m. until 9 p.m. at the Great Falls Civic Center in Great Falls, MT; on Monday, March 14, from 6 p.m. to 9 p.m. at the Holiday Inn in Missoula, MT; on Tuesday, March 16, from 6 p.m. to 9 p.m. at the Little Flower Parish in Browning, MT; and on Wednesday, March 17, from 6 p.m. to 9 p.m. at the Choteau Public Library in Choteau, MT.

In addition to the proposed action, a range of alternatives will be developed in response to issues identified during scoping. This includes the no-action alternatives required by NEPA in which no leasing would be authorized at this time. The Forest Service will analyze and document the direct, indirect, and cumulative effects of all alternatives. Stipulations will be developed to mitigate effects and protect other resources, and the effectiveness of those stipulations will be assessed.

The BLM and Forest Service are jointly preparing a Reasonably Foreseeable Development (RFD) scenario to predict the level and type of oil and gas activity anticipated to occur for the 10–15 year period following leasing. The RFD is based on known geologic, economic, and technical information for the local area. This RFD will be used to analyze the effects of the proposed action and alternatives.

The Forest Service will continue to involve the public and inform interested and affected parties on how to participate and contribute to the final decision. Another formal opportunity for response will be provided following completion of a Draft EIS.

The Draft EIS should be available for review in the fall of 1994. The Final EIS is scheduled for completion in September 1995.

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Supervisor for the Lewis and Clark National Forest has been assigned the task of compiling the EIS. However, the officials responsible for making the decision resulting from the analysis are: David F. Jolly, Northern Region Regional Forester, Federal Building, 200 E. Broadway, P.O Box 7669, Missoula, MT 59807; and State Director, USDI-Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, MT 59107–6800.

They will decide on an alternative to be implemented after considering comments and responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The comment period on the Draft Environmental Impact Statement will have 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F. 2d 1016, 1022 (9th Cr. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections can be made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments during the scoping period should be as specific as possible. Initial comments concerning the scope of the analysis should be mailed to John D. Gorman, Forest Supervisor by March 31, 1994. When the Draft EIS is released, it is also helpful if comments refer to specific pages or chapters in the draft document. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: February 17, 1994.

John D. Gorman,

Forest Supervisor.

[FR Doc. 94–4134 Filed 2–23–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Roque A. Muracciole; Order Denying Permission to Apply for or Use Export Licenses

In the matter of Roque A. Muracciole, 14311 Southwest 88 Street, Number 406, Miami, Florida 33186, and currently incarcerated at Federal Correctional Facility—Ashland, Inmate Number 41566–004, Post Office Box 888716, Ashland, Kentucky 41105.

On April 27, 1990, Roque A. Muracciole (hereinafter referred to as "Muracciole") was convicted in the U.S. District Court for the Southern District of Florida—Miami Division of two counts of violating the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–10, March 27, 1993)) (the "EAA"), by possessing a controlled U.S.-origin computer with knowledge that it was intended for export to Bulgaria, and by preparing a falsified invoice with the intent to evade the provisions of the EAA. Section 11(h) of the EAA provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of violating the EAA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the "Regulations"), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Muracciole's conviction for violating the EAA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Muracciole permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on April 27, 2000. I have also decided to revoke all export licenses issued pursuant to the EAA in which Muracciole had an interest at the time of his conviction.

Accordingly, it is hereby Ordered:

I. All outstanding individual validated licenses in which Muracciole appears or participates, an any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Muracciole's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until April 27, 2000, Roque A. Murracciole, 14311 Southwest 88 Street, Number 406, Miami, Florida 33186, and currently incarcerated at the Federal Correctional Facility—Ashland, Inmate Number 41566–004, Post Office Box 888716, Ashland, Kentucky 41105, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Muracciole by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until April 27, 2000.

VI. A copy of this Order shall be delivered to Roque A. Muracciole. This Order shall be published in the **Federal Register**.

Dated: February 10, 1994.

Eileen M. Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 94–4091 Filed 2–23–94; 8:45 am]

BILLING CODE 3510–DT–M

[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

Action Affecting Export Privileges; Sofep Petrole et Derives; Order Denying Permission To Apply for or Use Export Licenses

In the matter of Sofep Petrole et Derives, 6 Rue Galilee, 77116 Paris, France.

On September 30, 1993, following its agreement to plead guilty to one count of a 10-count superseding indictment, Sofep Petrole et Derives (hereinafter referred to as Sofep) was convicted in the U.S. District Court for the Eastern District of Texas of violating the Export Administration Act of 1979, as amended

(50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–10, March 27, 1993)) (the EAA), by exporting U.S.-origin aviation oil from the United States to Cuba without obtaining the required export license from the U.S. Department of Commerce. Section 11(h) of the EAA provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of a violation of the EAA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Sofep's conviction for violating the EAA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Sofep permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of its conviction. The 10-year period ends on September 30, 2003. I have also decided to revoke all export licenses issued pursuant to the EAA in which Sofep had an interest at the time of its conviction.

Accordingly, it is hereby Ordered:

I. All outstanding individual validated licenses in which Sofep appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Sofep's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until September 30, 2003, Sofep Petrole et Derives, 6 rue Galilee, 77116 Paris, France, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Sofep by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until September 30, 2003.

VI. A copy of this Order shall be delivered to Sofep. This Order shall be published in the Federal Register.

Dated: February 10, 1994.

Eileen M. Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 94–4093 Filed 2–23–94; 8:45 am]

BILLING CODE 3510–DT–M

[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

International Trade Administration

[C–549–503]

Rice From Thailand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 10, 1992, the Department of Commerce (the Department) published the preliminary results of its administrative review of the countervailing duty order on rice from Thailand (57 FR 8437). We have now completed that review and determine the total bounty or grant during the period January 1, 1990 through December 31, 1990 to be 0.53 percent *ad valorem* for all producers and exporters.

EFFECTIVE DATE: February 24, 1994.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Rick Herring, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1992, the Department published in the **Federal Register** (57 FR 8437) the preliminary results of its administrative review of the countervailing duty order on rice from Thailand (51 FR 12356; April 10, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Since the preliminary results of review, respondent, the Royal Thai Government (RTG), filed a case brief. All comments received are addressed in this notice.

In response to the comments, the Department recalculated loans made under the EPC program and the ACFT program using the 1989 benchmark rate instead of the 1990 benchmark rate for short-term loans received in 1989 but repaid in 1990.

The Department adjusted the net benefit to the millers under the Ministry of Interior (MOI) paddy price raising program. This adjustment results in a revised benefit to the millers.

Because of these changes, the estimated bounty or grant of 0.69 percent *ad valorem* found in our preliminary results has been recalculated to 0.53 percent *ad valorem*.

Scope of Review

Imports covered by this review are shipments of all Thai rice including rice in the husk (paddy or rough); husked (brown) rice including basmati and other; semi-milled or wholly-milled rice, whether or not polished or glazed, including parboiled and other; and broken rice. During the review period, such merchandise was classifiable under item numbers 1006.10.00, 1006.20.20, 1006.20.40, 1006.30.10, 1006.30.90 and 1006.40.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990 and fifteen programs: (1) Export Packing and Stocking Credits (EPCs), (2) Marketing Organization of Farmers (MOF) Payment-in-kind Program, (3) MOF Paddy Rice Purchase Program, (4) Cooperative Promotion Department (CPD) loans to Agricultural Cooperative Federation of Thailand (ACFT), (5) Bank of Agriculture and Agricultural Cooperatives (BAAC) Paddy Rice Mortgage Program, (6) BAAC Second Crop Paddy Rice Purchasing Program, (7) Ministry of Interior (MOI) Paddy Rice Raising Project and Compensatory Financing Program for Millers, (8) Bank of Thailand (BOT) Agricultural Purchase Project, (9) Department of Agricultural Extension (DAE) Loans to Farmer Associations, (10) Public Warehouse Organization (PWO) Loan Program, (11) Department of Foreign Trade (DFT) Purchase of Milled Rice Program, (12) Export Processing Zones, (13) Incentives for International Trading Firms, (14) Export Promotion Fund, and (15) Tax Certificates for Exporters.

Standing

Respondent, the Royal Thai Government (RTG), contends that only the USA Rice Council (USA Rice), by letter dated April 29, 1991, requested this administrative review, and that the Department's preliminary determination that this review was initiated upon request of an interested party under 19 CFR 355.2(i)(5) is not supported by substantial evidence on the record of this review. Further, respondent argues that there is no evidence on the record of this review that the Rice Millers Association (RMA), the original petitioner in this proceeding, timely requested a review during the anniversary month of the publication of the order.

The Department accepted the USA Rice/RMA letter dated April 29, 1991, as being a request for review on behalf of both USA Rice and RMA because all the statements in the letter were made collectively and the names and addresses of contact individuals at both organizations were provided. To determine whether USA Rice had standing as an interested party in this proceeding, the Department in its letter of May 2, 1991, requested information from USA Rice regarding the function of USA Rice, the eligibility requirements for membership, and the number of members classified as importers, producers or sellers of rice. By letter of May 13, 1991, USA Rice provided the requested information as well as copies of their bylaws, articles of incorporation, and their annual report covering the period of review (POR). Based on the information provided by USA Rice, the Department determined that USA Rice is an interested party to this proceeding. Further, by letter dated June 7, 1991, the Department asked that RMA clarify its intent to request a review jointly with USA Rice. RMA's affirmative response of June 7, 1991 was treated not as a request for review, but as a clarification of RMA's intent. For these reasons, the Department treated the request for this administrative review to be jointly from USA Rice and RMA.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the respondent.

Comment 1: Respondent contends that in its preliminary determination, the Department wrongly rejected the short-term loan benchmark developed by the Bank of Thailand (BOT) and erred in using the benchmark methodology adopted in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Steel Wire Rope from Thailand (56 FR 46299; Sept. 11, 1991), (Steel Wire Rope).

Respondent argues that the Department failed to address new evidence and arguments submitted by the RTG in the questionnaire responses on the record of this review which show that the BOT benchmark methodology is more representative of short-term commercial lending rates in Thailand than the Department benchmark methodology used in Steel Wire Rope. The respondent explained that the BOT compiles a database from monthly balance sheets and semi-annual income statements submitted by Thai commercial banks from which the BOT calculates a weighted-average commercial interest rate for short-term borrowing. Respondent asserts that this BOT benchmark has been consistently used in all Thai cases previous to Steel Wire Rope and was most recently verified in the 1989/90 administrative review of carbon steel butt-weld pipe fittings from Thailand.

Respondent also argues that the Steel Wire Rope benchmark is premised on a misunderstanding of the minimum loan rate (MLR) and minimum overdraft rate (MOR). Respondent asserts that the MLR and MOR are merely an indication of the commercial bank's prospective short-term lending rates, and that banks are free to make commercial loans below either the MLR or MOR. Commercial banks usually indicate high MLRs because certain loans cannot be made in excess of their MLRs. Further, the MOR carries a higher interest rate than regular loans and is used only when a loan has not been repaid by its due date. The MLR and MOR are "prime" rates from the perspective of the commercial banks, and exporters, as secured borrowers repaying in hard foreign currencies, often receive commercial loans at rates below these rates.

For these reasons, respondent contends that the MLR and the MOR do not reflect the actual lending practices of commercial banks, and the Department should instead use the BOT benchmark to recalculate the benefits from all short-term loan programs found countervailable in this review.

Response: The Department has considered all the information submitted in respondent's questionnaire responses which explain in detail the methodology and sources of information used to calculate the BOT benchmark.

However, using the data submitted by the respondent in the responses resulted, as it did in the final determination and order in Steel Wire Rope, in a BOT benchmark which was lower than the average of the monthly prime rates (MLRs and MORs) as compiled by BOT from commercial banks and published in the 1990 BOT Quarterly Bulletin, and less even than the interbank lending rate reported in the government's response. Contrary to respondent's assertions that the MLR and MOR are merely indications of the commercial bank's prospective short-term lending rates, throughout the BOT Annual Report and Quarterly Bulletins, the MORs and MLRs are reported both as commercial banks' interest rates to prime customers or as prime rates (See *BOT 1990 Annual Economic Report* at p. 51 and 55; and *December 1990 BOT Quarterly Bulletin*, at p. 12 and Table 22, p. 32). Also, the prime rates are published in the BOT Annual Report under Thailand's Key Economic Indicators at page one. Further, it was found in Steel Wire Rope, that most of the commercial bank's short-term loans were made at the MOR/MLR rates. This is confirmed by the *1990 BOT Quarterly Bulletin*, Table 12 at p. 17 and the *BOT Annual Economic Report* at p. 53. Finally, because the interbank lending rate is the rate at which a commercial bank obtains its funds, the BOT benchmark, which is less than the interbank lending rate reported in the government's response, demonstrates unmistakably that the BOT benchmark does not reflect commercial realities.

Based on these facts, the Department is not persuaded that the information submitted by respondent on the record of this review more accurately reflects the actual interest rates for commercial short-term financing in Thailand than the published MLR and MOR. Therefore, we determine that it is appropriate to continue to use the average of the MOR and the MLR as our benchmark interest rate in these final results of review.

Comment 2: Respondent contends that the Department should apply the 1989 benchmark rate to the benefit calculations for loans made under the EPC program in 1989 and repaid in 1990. Respondent argues that this methodology matches the appropriate benchmark rate to the time when the terms of the loans, including the interest rates, were set.

Response: The Department's practice is to select a benchmark interest rate at the time the government and the firm agree on the terms of the loan, which in this case was when the loan was received. (See, e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Steel Wire Rope from Thailand) (56 FR 46299, September 11, 1991). Therefore, we agree that the 1989 benchmark rate should be used for calculating the benefit of EPC loans received in 1989 but on which interest was paid in 1990 and have recalculated the benefit from this program. The revised net subsidy from this program is 0.32 percent *ad valorem*.

Comment 3: Respondent claims the Department did not follow its recent practice of accounting for EPC loans with repayments made both during and outside the review period. Respondent argues that, in calculating the benefit from this program, the Department should include the entire loan if partial repayments are made before and during the review period and exclude the entire loan if repayments are made during and after the review period. RTG specifically requested corrections to be made to 22 loans with payments both inside and outside the review period.

Response: The Department disagrees with respondent. According to our practice as expressed in section 355.48(b)(3) of our Proposed Rules, (54 FR 23384, May 31, 1989), the benefit from a loan occurs when a firm is due to make a payment on the loan. The questionnaire response clearly states that in the case of EPC pre-shipment loans, the entire loan must be repaid in full within two days of shipment, whether or not this occurred before the due date on the note. Further, in the case of EPC post-shipment financing, the loan must be repaid on the earlier of the date on which the loan was due or the payment for the shipment was received. In both types of loans, provision is made only for the payment of the entire loan and no provision is made for partial payments. Therefore, we consider each payment listed in the questionnaire response to be a repayment of a separate loan and according to our practice, have countervailed all those loans repaid within our POR or with penalties refunded during the POR.

Comment 4: Respondent contends that the loan disbursements from three domestic price stabilization programs—CPD loans to ACFT, BAAC Paddy Mortgage Program and BOT Agricultural Purchase Project—should be allocated over the crop-year during which the funds were available rather than allocated entirely during the calendar year covered by the review. Respondent argues that the allocation of the disbursements should be made by calculating a ratio of crop-year months falling within 1989 to total crop-year months which includes months in both 1989 and 1990. For calculating the benefit from this program, the 1989 benchmark should be used for the portion of loans equivalent to the ratio of months falling in 1989 and the 1990 benchmark used for the portion of loans equivalent to the ratio of months falling in 1989.

Response: The Department agrees in part. The questionnaire response shows all CPD loans to ACFT, the provincial federations, and district-level cooperative societies were disbursed in 1989 and repaid in 1990. Therefore, we have adjusted our calculations to reflect the use of the 1989 benchmark rate of 12.23 for loans disbursed under this program (see Comment 2). The revised net subsidy under this program is 0.05 percent *ad valorem*.

Although the RTG allocated the funds to BAAC and BOT in 1989 at the beginning of the crop year, respondent submitted no information as to when the individual loans to farmers under these programs were disbursed by the BAAC and BOT. Therefore, we continue to consider the aggregate amount of BAAC and BOT loans to be disbursed and repaid during the POR.

Comment 5: Respondent asserts that the Department's best information available (BIA) rate imposed on the four companies not submitting EPC loan information is overly punitive. Respondent argues that a more reasonable method for calculating the benefits for this program should be adopted because complete EPC loan information was submitted for eight companies accounting for 95.31 percent of rice exports to the United States for which EPCs were received.

Response: In its questionnaire, the Department requested information on all EPCs granted, paid, or on which interest was paid or due on rice exports to the United States during the POR. In its supplemental questionnaire, the Department requested complete loan information for all 12 companies exporting to the United States who utilized EPCs during the POR. Respondent submitted complete loan information for only eight of the 12 companies but stated in their supplemental questionnaire response that the loan charts for the four exporters would be submitted as soon as they were available to counsel. No loan information was submitted for the four companies. Section 776(c) of the Act requires the Department to use BIA whenever a party refuses or is unable to produce the information requested. Furthermore, § 355.37 of the Department's regulations gives the Department broad discretion in the use of BIA to calculate benefits for non-cooperating companies who do not submit a complete response. In light of respondent's failure to respond to our request for complete loan information, we are continuing to use the highest individual company benefit found in this review to calculate the benefit of the four companies not submitting complete responses. However, in accordance with our utilization of different benchmarks for 1989 and 1990 loans (*See* response to comment 2), the revised net subsidy from this program is 0.32 percent *ad valorem*.

Comment 6: Respondent contends that the Department's application of section 771B of the Tariff Act of 1930, as amended, 19 U.S.C. Sec. 1677–2, is in error and, absent an upstream subsidies investigation, the Department has no authority to countervail any of the paddy rice (paddy) price support and stabilization programs in this review. Respondent argues that at harvest, the RTG intervenes in the market to purchase paddy from paddy farmers at prices above prevailing market prices and holds the paddy off the market until prices improve. Although this practice serves to increase the price received by paddy farmers, it increases the millers' cost of paddy, thereby decreasing the competitiveness of milled rice, the exported product, in the U.S. and world markets. Therefore, an upstream subsidies investigation would show that the price support and stabilization programs for paddy rice provide no competitive advantage to milled rice, the exported product, and therefore are not countervailable.

Further, respondent argues that the Department should determine whether 771B is relevant to the paddy rice purchase programs by reexamining the following four factors: (1) Paddy growers and rice millers are not related and there is no commonality of economic interest—in fact, their economic interests are adverse; (2) rice processing adds more than limited value; (3) there can be no circumvention of the order because both paddy rice and milled rice are included in the scope of the order and product shifting is impossible; (4) the processing operations (milling) change the essential character of the paddy rice from an inedible raw fiber to an edible grain and create the added value, whether measured by price or essential characteristics. In light of these facts, respondent claims that it would be inappropriate to apply section 771B to the paddy rice purchase programs insofar as such programs serve only to raise the price of the exported milled rice.

Response: The Department disagrees with Respondent's contention that, absent an upstream subsidy investigation, the Department has no authority to countervail the paddy rice support and stabilization programs in this review. In this review, the Department determines that the criteria of 771B of the Act are satisfied, and as such need not apply an upstream subsidy analysis with respect to subsidies on raw agricultural products used in the production of processed agricultural products.

In addition, the Department disagrees with Respondent's claim that Commerce has deemed four factors relevant to determining which agricultural subsidies are subject to section 771B's provisions. Respondent extracts its four factors from Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada, (50 FR 25098, June 17, 1985) (Live Swine), a determination which predates section 771B by several years. While the Live Swine determination may have provided the genesis for section 771B, it is not dispositive in the Department's application and interpretation of the superseding statutory provision, particularly in cases involving other products.

Finally, the Department disagrees with Respondent's argument and reasoning that the domestic paddy purchase programs should not be countervailed because they increase milled rice export prices, decreasing the competitiveness of Thai rice in the United States and world markets. By raising the farm income of poor paddy farmers and stabilizing a domestic paddy market, the programs ensure a continuous, level supply of paddy rice for domestic millers. A drop in the supply of paddy due to either seasonal low levels of paddy production or a decrease in the number of paddy farmers could compel Thai millers to source paddy abroad at even higher prices.

Prior to enactment of section 771B, the Department considered a benefit to producers of a raw agricultural product as a benefit to producers of a processed agricultural product. See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Rice From Thailand, (51 FR 12356, April 10, 1986) (Rice). In Rice we determined that "the primary, if not sole purpose of all segments of the industry in the case is to produce a single end product—milled rice." We also noted that almost all of the raw agricultural product, paddy or unmilled rice, is dedicated to the production of milled rice, and determined that there is a single, continuous line of production from paddy rice to milled rice. Rice, at 12358.

Section 1313 of the Omnibus Trade and Competitiveness Act of 1988 amended the Tariff Act of 1930 to include a new section 771B that states: "In the case of an agricultural product processed from a raw agricultural product in which (1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and (2) the processing operation adds only limited value to the raw commodity, subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product."

In this review, we determine that the first criterion of section 771B is met because the demand for paddy rice depends substantially upon the demand for milled rice. As in Rice, we find in this review that substantially all of the raw agricultural product, paddy rice, is dedicated to the production of milled rice. As determined in Rice, the fact that there is a single, continuous line of production from paddy rice to milled rice is further evidence that the demand for the prior stage product is dependent on the demand for the latter stage product.

Furthermore, as in Final Results of Countervailing Duty Administrative Review; Rice From Thailand (56 FR 68, January 2, 1991) (Final), we determine that the second criterion of 771B, limited value added, is also satisfied in this review. Respondent would have us consider the difference between paddy rice and milled rice in terms of price as the focus in determining value added. The statute, however, requires us to consider the processing operation in determining value added for the purposes of 771B. Notably, the bulk of value added in terms of price reflects supply and demand conditions in the world market for rice and includes selling costs and profits in addition to the cost of milling or processing operations. In this case, the processing operations consist primarily of parboiling the paddy rice, removing the rice hulls, and removing the bran layer. The resulting processed agricultural product, milled rice, while not identical to the raw agricultural product, paddy rice, is essentially unchanged in composition. As a result, the Department determines that the processing operation itself adds only limited value to the raw commodity.

Therefore, for the reasons set forth above, we determine that subsidies

found to be provided to paddy rice shall be deemed to be provided with respect to the manufacture, production, or exportation of milled rice in accordance with section 771B of the Act.

Comment 7: Respondent claims that in order to receive interest-free loans under the MOI's loan program, millers are required by the Government to buy paddy from farmers at prices approximately ten percent above prevailing market prices. Therefore, respondent argues that the gross benefit from the loans should be reduced by ten percent, as authorized under section 771(6) of the Act.

Response: For the purpose of determining the net subsidy, section 771(6) of the Act allows the administering authority to subtract from the gross subsidy the amount of "(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy, (B) any loss in the value of the subsidy resulting from the deferred receipt, if the deferral is mandated by Government order, and (C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received." Our practice is to interpret this section of the Act very narrowly, and we determine that the requirement to buy paddy at prices above prevailing market prices is not an offset provided for under section 771(6).

However, in order not to double-count the subsidy conferred upon the subject merchandise under this program, we have adjusted our preliminary calculations. Under this program, the MOI required rice millers to purchase rice from farmers at a price ten percent above the prevailing market price. To partially cover the additional payments to the farmers, the MOI provided interest-free loans to the rice millers.

In our preliminary results of review, we calculated a countervailable subsidy under this program based on the ten percent government-mandated price premium paid to the rice farmers. If we were also to calculate a benefit from the interest-free loans provided to the millers to finance this program, we would be double-counting the benefit conferred on the subject merchandise under this program: once, as grant payments provided to rice farmers, and again as the amount of interest savings incurred by the millers from the interest-free loans used to pay the rice farmers the price premium grant.

In order to avoid this double-counting, and to calculate properly the full amount of the subsidy conferred upon the subject merchandise under this program, we compared the amount of the ten percent premium paid for paddy rice purchases to the amount of the interest savings from the MOI loans. Because the amount of the interest savings was greater than the amount of the premiums paid on purchases of paddy rice, both the rice farmers and the millers received benefits under this program.

Since section 771B of the Act applies to this review, the benefits provided to both rice farmers and millers are deemed to be conferred on the subject merchandise. (See Comment 6 for a discussion of section 771B of the Act.) Therefore, to determine the net benefit to the millers under this program, we calculated the difference between the amount of interest savings under this program and the ten percent premium provided to the rice farmers. This change results in a revised benefit to the millers under this program. The benefit to the paddy farmers remains the same as in the preliminary results. Thus, by dividing the sum of these two benefits by the domestic denominator and applying the export adjustment factor, the net subsidy conferred upon the subject merchandise under this program is 0.02 percent *ad valorem*.

Comment 8: Respondent points out that the preliminary results have no effect on the cash deposit rate and requests that the Department rescind any instructions to Customs issued upon publication of the preliminary determination.

Response: No instructions were issued to Customs following the publication of the preliminary results. In accordance with 19 CFR 355.22(c)(10), the Department will issue instructions to Customs after publication of the final results of this review.

Final Results of Review

As a result of our review, we determine the net bounty or grant to be 0.53 percent *ad valorem* for the period January 1, 1990 through December 31, 1990.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 0.53 percent of the f.o.b. invoice price on all shipments from Thailand of the subject merchandise exported on or after January 1, 1990 and on or before December 31, 1990.

Further, as provided by section 751(a)(1) of the Act, the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties of 0.53 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: February 14, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-4197 Filed 2-23-94; 8:45 am]

BILLING CODE 3510-DS-P

Notice of Scope Rulings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed between October 1, and December 31, 1993. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: February 24, 1994.

FOR FURTHER INFORMATION CONTACT: David L. Guglielmi, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-2704.

Background:

The Department of Commerce regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed between October 1, and December 31, 1993, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in April 1994 a notice of scope rulings and anticircumvention inquiries completed between January 1, 1994, and March 31, 1994, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

Scope Rulings Completed Between October 1, 1993 and December 31, 1993:

Country: Japan

A-588-810: Mechanical Transfer Presses

Aida Engineering, Ltd.—The FMX cold forging press is within the scope of the order—11/23/93.

A-588-817: Flat Panel Displays

International Digital Electronics—Certain electroluminescent FPDs used in the Graphic Control Panels, models GP-410 and GP-430, are within the scope of the order; models GP-511T, GP-530T and GP-530VM terminated due to the revocation of the active-matrix FPD order—10/04/93.

Country: Italy

A-475-801: Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof

Fiber Services—Certain textile machinery components are outside the scope of the order—12/23/93.

Anticircumvention Rulings Completed Between October 1, 1993 and December 31, 1993

None.

Scope Inquiries Terminated Between October 1, 1993 and December 31, 1993

None

Anticircumvention Inquiries Terminated Between October 1, 1993 and December 31, 1993

None.

Pending Scope Clarification Requests As of December 31, 1993

Country: Mexico

A-201-805: Circular Welded Non-Alloy Steel Pipe

Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A-53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order.

Country: Brazil

A-351-809: Circular Welded Non-Alloy Steel Pipe

Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A-53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order.

Country: People's Republic of China

A-570-501: Paint Brushes

Stanley Works—Clarification to determine whether paint brushes with a blend of 60% synthetic and 40% natural fibers are within the scope of the order.

A-570-003: Cotton Shop Towels

Win-Tex Products, Inc. (original applicant)—Clarification to determine whether certain cotton shop towels are within the scope of the order. This scope ruling was remanded to the Department by the Court of International Trade for further analysis.

A-570-504: Candles

A.J. Cohen—Clarification to determine whether certain holiday taper wax candles are within the scope of the order.

A-570-504 Candles

E & G Company—Clarification to determine whether certain musical holiday wax candles are within the scope of the order.

Country: Korea

A-580-809: Circular Welded Non-Alloy Steel Pipe

Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A-53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order.

Country: Venezuela

A-307-805: Circular Welded Non-Alloy Steel Pipe

Self-initiation. Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A-53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order.

Country: Japan

A-588-014: Tuners

Alpine Electronics—Clarification to determine whether certain car radio/stereo and/or replacement parts, comprised of four subassemblies and their components, are within the scope of the order.

Fujitsu Ten Corporation of America—Clarification to determine whether certain "front end" components of car tuners are within the scope of the order.

A-588-015: Televisions

AGIV (USA) Inc.—Clarification to determine whether AIWA Model VX-T1000MK3KEI color TV-VCR combination is within the scope of the order.

A-588-814: Polyethylene Terephthalate Film (PET)—

Kimoto U.S.A. Inc., Clarification to determine whether certain Anti-Static Clear Film is within the scope of the order.

A-588-055: Acrylic Sheet

Sekisui America Corp.—Clarification to determine whether ESLON DC PLATE manufactured by Sekisui Chemical Co., Ltd., is within the scope of the order.

A-588-405: Cellular Mobile Telephones and Subassemblies Matsushita Communication Industrial Co., Ltd., and its related entities—Clarification to determine whether certain portable cellular telephones, Panasonic models EB-3530 and EB-3531, comprised of eight kits and numerous accessories, subassemblies and/or components thereof, are within the scope of the order.

A-588-405: Matsushita Communication Industrial Co., Ltd., and its related entities—Clarification to determine whether three models of hand-held portable cellular telephones and their subassemblies and/or components thereof, are within the scope of the order.

A-588-405: Toyocom U.S.A. Inc.—Clarification to determine whether temperature compensated crystal oscillators (TCXOs) and High Frequency Crystal Mechanical filters (HCM filters) are within the scope of the order.

A-588-405: Mitsubishi Electric Corp., Mitsubishi Electronics America, Inc., Mitsubishi Consumer Electronics

America, Inc.—Clarification to determine whether Electronic Model MT109 and MT119 Portable Cellular Telephones are within the scope of the order.

A–588–405: TDK Corporation of America,—Clarification to determine whether Duplexers, Voltage Control Oscillators and Isolators are within the scope of the order.

A–588–405: Sony Corporation and Sony Electronics Inc.,—Clarification to determine whether model CM–H333, and subassemblies thereof are within the scope of the order.

A–588–823: Professional Electric Cutting Tools Makita Inc., Makita, U.S.A.—Clarification to determine whether electronic jig saw model 4303C is within the scope of the order.

A–588–823: Makita Inc., Makita, U.S.A.—Clarification to determine whether Router models 3621 and 3621A are within the scope of the order.

A–588–823: Makita Inc., Makita, U.S.A.—Clarification to determine whether a bench top wet tile saw is within the scope of the order.

A–588–604: Tapered Roller Bearings and Parts Thereof

Koyo Seiko—Clarification to determine whether certain forgings are within the scope of the order.

Country: Argentina

C–357–803: Leather

Petitioners—Clarification to determine whether upper bovine leather without hair on, not whole, prepared after tanning is within the scope of the countervailing duty order.

Country: Sweden

A–401–040: Stainless Steel Plate

Armco, Inc., G.O. Carlson, Allegheny Ludlum Corp., and Washington Steel Corp.—Clarification to determine whether Stavax, Ramax, and 904L are within the scope of the order.

Avesta Sheffield—Clarification to determine whether stainless steel "hot bands" are within the scope of the order.

Country: Germany

A–428–801: Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof

SKF—Clarification to determine whether certain textile machinery components are within the scope of the order.

A–428–801: Consolidated Saw Mill International (CSMI) Inc.—Clarification to determine whether certain Cambio bearings contained in its sawmill debarker are within the scope of the order.

Country: Brazil

A–351–603: Brass Sheet and Strip

Elumn International Inc.—Clarification to determine whether brass circles are within the scope of the order.

Pending Anticircumvention Inquiry Requests As of October 1, 1993

Country: Mexico

A–201–806: Steel Wire Rope

Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers—Anticircumvention inquiry to determine whether a producer of steel wire rope in Mexico is circumventing the antidumping order by importing steel wire strand into the United States where it is wound into steel wire rope.

Country: Japan

A–588–807: Industrial Belts and Components

BRECOFLEX Corp.—Anticircumvention inquiry to determine whether the order is being circumvented by the processing of Japanese belting into belts in Mexico before importation into the United States.

Country: Japan

A–588–818: Personal Word Processors

Smith Corona Corporation—Anticircumvention inquiry to determine whether the order is being circumvented by the importation, completion and assembly of personal word processor parts and components by Brother Industries (USA), Inc., in the United States.

Country: People's Republic of China

A–570–814: Butt-Weld Pipe Fittings

U.S. Fittings Group—Anticircumvention inquiry to determine whether the order is being circumvented by adding value in Thailand (modifying pipe fittings to "finished" from "unfinished" status) after importation from the People's Republic of China.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: February 12, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–4196 Filed 2–23–94; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 931091–3291]

Notice of Proposed Validation Requirements for Products Implementing Federal Information Processing Standards; Publication (FIPS PUB) 140–1, Security Requirements for Cryptographic Modules

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: NIST invites interested members of the public to review validation requirements that have been developed for products that implement FIPS PUB 140–1, Security Requirements for Cryptographic Modules. NIST plans to establish a product certification program using independent third party laboratories to validate cryptographic modules for conformance to the security requirements of FIPS 140–1. The requirements for certification will be finalized after the proposed procedures, inspections and tests for conformance have been determined. A National Voluntary Laboratory Accreditation Program will be set up to accredit the third party laboratories at an appropriate future time. At this time, NIST solicits public review of the proposed procedures, inspections, and tests that will be used and the expected results to be achieved in the validation of cryptographic modules.

Those wishing to review the validation requirements may obtain a copy from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, room B64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: NIST will continue to develop the validation program for FIPS 140–1, and will issue notices as appropriate concerning the program. Comments on the validation requirements are invited by May 25, 1994.

ADDRESSES: Written comments should be sent to: Director, Computer Systems Laboratory, ATTN: Validation Requirements for FIPS PUB 140–1, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT:

Ms. Lisa Carnahan, (301) 975–3362, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: February 17, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–4180 Filed 2–23–94; 8:45 am]

BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

February 17, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: February 25, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated February 4, 1994, the Governments of the United States and the Republic of Hungary reached agreement to amend and extend their current bilateral textile agreement for two consecutive one-year periods, beginning on January 1, 1994 and extending through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period January 1, 1994 through December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 17, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Memorandum of Understanding (MOU) dated February 4, 1994, between the Governments of the United States and the Republic of Hungary; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 25, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit[1]
410	887,567 square meters.
433	16,832 dozen.
434	14,281 dozen.
435	24,686 dozen.
443	158,116 numbers.
444	51,005 numbers.
448	21,816 dozen.
604	965,144 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

Imports charged to these category limits for the period January 1, 1993 through December 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–4199 Filed 2–23–94; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

February 17, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: February 25, 1994.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6709. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated January 28, 1994, the Governments of the United States and Macau agreed to amend and extend further their Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period beginning on January 1, 1994 and extending through December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the

implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 17, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The directive issued to you on November 16, 1993, by the Chairman, Committee for the Implementation of Textile Agreements, directs you to count imports of certain textiles and textile products, produced or manufactured in Macau and exported during the period beginning on January 1, 1994 and extending through December 31, 1994. Effective on February 25, 1994, you are directed to no longer monitor those categories for which import restraint limits are not being established in this directive. Monitoring data for the remaining categories shall be applied to the limits established below.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Memorandum of Understanding dated January 28, 1994 between the Governments of the United States and Macau; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on ___, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit[1]
Levels in Group I	
219	2,000,000 square meters.
225	7,000,000 square meters.
237	61,000 dozen.
313	6,000,000 square meters.
314	1,000,000 square meters.
315	3,000,000 square meters.
317	5,000,000 square meters.
326	2,000,000 square meters.
331/831	300,000 dozen pairs.
333/334/335/833/834/835.	210,951 dozen of which not more than 111,121 dozen shall be in Categories 333/335/833/835.
336/836	50,000 dozen.
338	271,565 dozen.
339	1,137,492 dozen.
340	257,037 dozen.
341	165,783 dozen.
342	75,000 dozen.
345	45,860 dozen.
347/348/847	642,789 dozen.
350/850	50,000 dozen.
351/851	60,000 dozen.
359–C/659–C[2]	300,000 kilograms.
359–V[3]	100,000 kilograms.
611	2,000,000 square meters.
625/626/627/628/629	5,000,000 square meters.
631	231,386 dozen pairs.
633/634/635	446,706 dozen.
638/639/838	1,391,054 dozen.
640	98,905 dozen.
641/840	169,992 dozen.
642/842	99,039 dozen.
645/646	231,843 dozen.
647/648	467,698 dozen.
652/852	160,000 dozen.
659–S[4]	100,000 kilograms.
670	340,194 kilograms.
845/846	102,000 dozen.
Group II	
400–469, as a group	1,448,022 square meters equivalent.
Sublevel in Group II	
445/446	78,065 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[4] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

Imports charged to these category limits for the period January 1, 1993 through December 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Import charges for part-Categories 359–C/659–C, 359–V and 659–S shall be provided at a later date.

The conversion factor (square meters equivalent/category unit) for Categories 445/446 is 12.4.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–4200 Filed 2–23–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

The US Strategic Command Strategic Advisory Group: Closed Meeting

AGENCY: USSTRATCOM, Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: The CINCSTRATCOM has scheduled a closed meeting of the Strategic Advisory Group.

DATES: The meeting will be held from 17 and 18 March 1994.

ADDRESSES: The meeting will be held at Offutt AFB, Nebraska.

FOR FURTHER INFORMATION CONTACT: USSTRATCOM Strategic Advisory Group, Offutt AFB, Nebraska 68113.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12356, 2 April 1982. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense. Accordingly, the meeting will be closed in accordance with 5 U.S.C. App II Para 10(d) (1976), as amended.

Dated: February 17, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4097 Filed 2–23–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 14 March 1994.

Time of Meeting: 1000–1600 (classified).

Place: Pentagon, Washington DC.

Agenda: Several Army Science Board members will participate in a Department of Army Technical Review of "Electric Gun Technology." Discussions will involve Technology Options, classified and proprietary information, and a closed door executive session. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The proprietary and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–4087 Filed 2–23–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 22 March 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–4088 Filed 2–23–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 15 March 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–4089 Filed 2–23–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 9 March 1994.

Time of Meeting: 1300–1600.

Place: TRADOC HQ, Ft. Monroe, VA.

Agenda: The Army Science Board's Issue Group on Analysis, Test and Evaluation will meet to conduct a review of the operation of the "Battle Labs" and how it relates to operational testing. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–4348 Filed 2–23–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Disposal of Decommissioned, Defueled Cruiser, Ohio, and Los Angeles Class Naval Reactor Plants

AGENCIES: Department of the Navy and Department of Energy.

SUMMARY: The Department of Navy, with the Department of Energy as a cooperating agency, announces its intent to prepare an Environmental Impact Statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), in accordance with the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508), and to conduct a series of public scoping meetings. This Environmental Impact Statement will address final disposal of decommissioned, defueled reactor plants from cruisers and OHIO (Trident) and LOS ANGELES (SSN 688) Class submarines and will analyze the associated reasonably foreseeable environmental impacts. The disposal of future reactor compartments from vessels that have not yet been commissioned (e.g., SEAWOLF Class of submarines) will be addressed, as appropriate, in future National Environmental Policy Act documents. By participating as a cooperating agency in this Environmental Impact Statement, the Department of Energy expects to be able to adopt this Environmental Impact Statement, if appropriate, to fulfill its environmental review obligations under the National Environmental Policy Act.

In accordance with the Council on Environmental Quality National Environmental Policy Act regulations, the Department of the Navy is preparing this Environmental Impact Statement to focus on the potential for significant environmental impacts and to consider reasonable alternatives.

Because of the common design characteristics of the reactor plants and their reactor compartments, the method currently being used by Puget Sound Naval Shipyard in Bremerton, Washington to dispose of submarine reactor compartments is the preferred alternative for disposal of the defueled reactor plants from cruisers and OHIO and LOS ANGELES Class submarines. Briefly, this alternative would involve draining the piping systems, tanks, vessels, and other components to the maximum extent practical, sealing the radioactive systems, removing the reactor compartment and sealing it to provide a high integrity welded steel package. The reactor compartment package would be transported by barge out of Puget Sound through the Straits of Juan de Fuca, down the Washington coast, and up the Columbia River to the Port of Benton where it would be loaded onto an overland transporter for the short movement to the Department of Energy's low level radioactive waste burial grounds at Hanford, Washington.

The reactor plants contain radioactivity due to neutron irradiation of structural alloys forming the reactor plant components. The reactor

compartment packages would comply with the shipping container requirements of the Department of Transportation, the Nuclear Regulatory Commission, and the Department of Energy. Disposal of the reactor compartments would be in accordance with Department of Energy requirements for low level radioactive waste disposal. Disposal of the reactor compartments would be regulated by the State of Washington due to the lead shielding contained within the reactor compartments and by the U.S. Environmental Protection Agency due to the small quantity of polychlorinated biphenyls in materials within the reactor compartment such as insulation, electrical cables, and rubber parts.

The Navy also will evaluate in detail a "no action" alternative. In this alternative, the defueled ships would be maintained in waterborne protective storage for an indefinite period of time at the inactive ships facilities at Puget Sound Naval Shipyard and Norfolk Naval Shipyard.

Several other alternatives will be examined. These alternatives include sea disposal, land disposal at other sites, land disposal or reuse of subdivided portions of the reactor plant, and above ground storage or disposal.

DATES: The Navy invites interested agencies, organizations, and the general public to submit written comments or suggestions concerning the scope of the issues to be addressed, alternatives to be analyzed, and the environmental impacts to be addressed in the Draft Environmental Impact Statement. The public also is invited to attend scoping meetings in which oral comments and suggestions will be received. Oral and written comments will be considered equally in preparation of the Environmental Impact Statement. Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the Draft Environmental Impact Statement for review when it is issued, should write to Puget Sound Naval Shipyard at the address below. When the Draft Environmental Impact Statement is complete, its availability will be announced in the **Federal Register** and in the local news media. Public hearings will be held, and comments will be solicited on this document.

Written comments postmarked by March 21, 1994 will be considered in preparation of the Draft Environmental Impact Statement. Comments postmarked after that date will be considered to the extent practicable. Oral and written comments will be received at public scoping meetings to be held at the locations and times indicated as follows:

Bremerton, Washington, March 10, 1994, 7pm–10pm
Best Western Bayview Inn, 5640 Kitsap Way

Richland, Washington, March 11, 1994, 7pm–10pm
Shiloh Inn—Rivershore, 50 Comstock

Olympia, Washington, March 14, 1994, 7pm–10pm
Ramada Inn—Governor House, 621 So. Capitol Way

Portland, Oregon, March 15, 1994, 7pm–10pm
Red Lion Inn—Jantzen Beach, 909 N. Hayden Island Dr.

Portsmouth, Virginia, March 17, 1994, 7pm–10pm
Holiday Inn, 8 Crawford Parkway

The meetings will be chaired by a presiding officer but will not be conducted as evidentiary hearings; speakers will not be cross examined although the presiding officer, Department of the Navy, and Department of Energy representatives present may ask clarifying questions. To ensure that everyone has an adequate opportunity to speak, five minutes will be allotted for each speaker. Depending on the number of persons requesting to speak, the presiding officer may allow more time for elected officials, or speakers representing multiple parties, or organizations. Persons wishing to speak on behalf of organizations should identify the organization. Persons wishing to speak may either notify Puget Sound Naval Shipyard in writing at the address below or register at the meetings. Persons registering at the meetings will be called on to speak if time permits. Written comments also will be accepted at the meetings.

ADDRESSES: Written comments, suggestions on the scope of the Draft Environmental Impact Statement, or requests to speak at the public hearings should be submitted to Mr. Robert Minitti, Puget Sound Naval Shipyard, Bremerton, Washington 98314–5000.

SUPPLEMENTARY INFORMATION:

Background

The United States Navy placed the world's first nuclear powered submarine, the NAUTILUS, into service in 1954. The first nuclear powered cruiser, the LONG BEACH, was commissioned in 1961. As of the end of 1993, the U.S. Navy had 106 nuclear-powered submarines and 15 nuclear-powered surface ships in operation. Today, over 40% of the Navy's principal combatants are nuclear powered.

At the end of their useful lifetime, when the cost of continued operation is not justified by their military capability, or when they are no longer needed, the defueled reactor compartments from these ships require disposal. In the late 1970s and early 1980s, the Navy evaluated a number of options for disposing of the pre-LOS ANGELES class nuclear powered submarine reactor compartments as the ships were beginning to approach the end of their design life. The options examined included disposal of the reactor compartment at an existing land burial site, with the non-radioactive remainder of the submarine disposed of either by sinking at sea or by cutting up for sale as scrap metal, and disposal by sinking the entire submarine in the deep ocean. The "no action" alternative of long term protective storage also was examined. The Navy's 1984 Final Environmental Impact Statement and Record of Decision concluded that permanent disposal would be environmentally safe and feasible using either the land burial or deep ocean option. The Record of Decision issued by the Secretary of the Navy stated that "No unacceptable environmental impacts associated with either option have been identified as a result of the analysis or through the public review process", and that "Based on consideration of all current factors bearing on a disposal action of this kind contemplated, the Navy has decided to proceed with disposal of the reactor compartments by land burial." The Navy has successfully pursued this course of action and, as of the end of 1993, has safely shipped 35 submarine reactor compartments to the Department of Energy's burial grounds at Hanford, Washington.

Today the Navy faces the necessity of downsizing the fleet to an extent that was not envisioned before the end of the Cold War. Over the next few years a number of major surface combatants, including nuclear powered cruisers, will be removed from service. Some LOS ANGELES Class submarines are scheduled for removal from service. Eventually, the Navy will also need to decommission OHIO Class submarines. These classes of nuclear powered ships were not considered in the 1984 Environmental Impact Statement. The total number of cruiser, OHIO, and LOS ANGELES Class reactor compartments is approximately 100. The purpose of this Environmental Impact Statement will be to assess the potential environmental impact of disposing of defueled reactor compartments from nuclear powered cruisers and the LOS ANGELES and OHIO Class submarines.

Preliminary Description of Alternatives

1. Preferred Alternative

Because of the common design characteristics of the reactor plants and their reactor compartments, the method currently being used by Puget Sound Naval Shipyard in Bremerton, Washington to dispose of submarine reactor compartments is the preferred alternative for disposal of the defueled cruiser, OHIO and LOS ANGELES Class reactor plants. Briefly, this alternative would involve draining the piping systems, tanks, vessels, and other components to the maximum extent practical, sealing the radioactive systems, removing the reactor compartment and sealing it to provide a high integrity welded steel package, and transporting the package first by barge up the Columbia River and then a short distance over land to the Department of Energy's low level radioactive waste burial grounds at Hanford, Washington. The reactor compartment packages would be placed in a trench, backfilled with earth, and covered by an engineered cap to minimize future water infiltration.

2. No Action

This alternative would involve keeping defueled nuclear powered ships in waterborne protective storage for an indefinite period of time. Puget Sound Naval Shipyard and Norfolk Naval Shipyard have inactive ships storage facilities for defueled nuclear powered ships. Rather than temporarily storing the ships until their reactor compartments can be removed, the "no action" alternative would result in a much larger number of ships in storage. This option would require periodic ship inspections as well as performance of drydocking preservations. If no permanent disposal alternative is available, the "no action" alternative will occur by default.

3. Other Alternatives

Several other alternatives will be examined including the following:

The detailed evaluation of sea disposal contained in the Navy's 1984 Environmental Impact Statement will be used and updated in this Environmental Impact Statement to take into account the number and radioactivity content of the cruiser, OHIO, and LOS ANGELES Class reactor compartments. The 1984 Environmental Impact Statement concluded that sea disposal could be performed in an environmentally safe manner with no significant adverse effect. However, the 1984 Record of Decision noted that Congress passed an amendment which restricted the issuance of permits for sea disposal of radioactive material and required Congressional approval before such a permit could be issued, and the Environmental Protection Agency stated that additional regulations may be required before a permit request could be reviewed. Also, in November 1993, the United States voted along with the majority of other signatories to the London Convention to ban sea disposal of low level radioactive waste subject to a scientific review in 25 years. Therefore, this alternative would now be precluded by treaty.

Disposal sites other than the Department of Energy's burial site at Hanford will be considered for disposal of reactor compartment packages. Criteria to be considered in site evaluation will include availability of barge unloading facilities, navigability of waterways, bridge clearances, and overland transport requirements.

Land disposal or reuse of subdivided portions of the reactor plant would involve the cutting up of the defueled reactor plant into smaller pieces. This option would require evaluation of locations and methods to dismantle and package the reactor plant components and determination of appropriate locations and methods for final disposal or reuse of the resulting subdivided portions of the reactor plant.

Placement of the reactor compartments above ground in specially designed buildings or in an arid environment will be evaluated as an interim storage measure, and as a permanent disposal method. As in the case of the burial option, the above ground storage evaluation will consider the long term migration potential of long lived radionuclides.

Preliminary Identification of Environmental Issues

The following issues, subject to consideration of comments received in response to public scoping, have been tentatively identified for analysis in the Environmental Impact Statement. This list is presented to facilitate public comment on the scope of the Environmental Impact Statement. It is not intended to be all inclusive nor is it intended to be a predetermination of impacts.

1. Potential impacts to the public and on-site workers from radiological and non radiological releases caused by activities to be conducted within the context of the proposed action and alternatives.

2. Potential environmental impacts, including air and water quality impacts, caused by the proposed action and alternatives.

3. Potential transportation impacts as a result of the proposed action and alternatives.

4. Potential effect on endangered species, floodplain/wetlands, and archeological/historical sites as a result of the proposed action and alternatives.

5. Potential impacts from postulated accidents as a result of the proposed action and alternatives.

6. Potential socioeconomic impacts to the surrounding communities as a result of implementing the proposed actions and alternatives.

7. Potential cumulative impacts from the proposed action and other past, present, and reasonably foreseeable future actions.

8. Potential irreversible and irretrievable commitment of resources.

Dated: February 5, 1994.

B. DeMars,

Admiral, U.S. Navy, Director, Naval Nuclear Propulsion Program.

Dated: February 7, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–4283 Filed 2–23–94; 8:45 am]
BILLING CODE 3810–AE–P

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 22, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT:

Cary Green, (202) 401–3200.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: February 18, 1994.

Cary Green,

Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Expedited

Title: Follow-Up Survey of Participants in National Center for Education Statistics (NCES) Seminars on the Use of National Databases

Abstract: This survey will be used to gather information about the use of NCES data by participants of NCES seminars on the analysis of national databases. The results will be used to improve the design and presentation of future seminars that are intended to increase the use of NCES data.

Additional Information: We are requesting expedited clearance for this information collection. Clearance is requested by February 22, 1994 in order for the survey forms to be mailed to participants and returned to NCES in time for the planning of the seminars to be held in the Spring and Summer of 1994.

Frequency: One-time

Affected Public: Individuals and households

Reporting Burden:
Responses: 350
Burden Hours: 35

Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.

[FR Doc. 94–4151 Filed 2–23–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ST94–579–000, et al.]

Natural Gas Pipeline Company of America; Self-Implementing Transactions

February 16, 1994.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–579	Natural Gas P/L Co. of America.	Texaco Gas Marketing, Inc.	11–01–93	G–S	200,000	N	I	08–01–89	Indef.
ST94–580	Natural Gas P/L Co. of America.	City of Dyersburg	11–01–93	B	5,000	N	I	05–01–87	Indef.
ST94–581	Natural Gas P/L Co. of America.	Texaco Gas Marketing, Inc.	11–01–93	G–S	10,000	N	I	05–01–89	Indef.
ST94–582	Natural Gas P/L Co. of America.	Northern Illinois Gas Co.	11–01–93	B	2,000	N	I	12–01–87	Indef.
ST94–583	Natural Gas P/L Co. of America.	Westar Transmission Co.	11–01–93	B	2,000	N	I	06–01–87	Indef.
ST94–584	Florida Gas Transmission Co.	Frito-Lay, Inc	11–01–93	G–S	1,250	N	I	10–01–93	Indef.
ST94–585	Florida Gas Transmission Co.	Enron Gas Marketing, Inc.	11–01–93	G–S	100,000	A	I	10–01–93	Indef.
ST94–586	Louisiana Intrastate Gas Corp.	ANR Pipeline Co., et al.	11–01–93	C	150,000	N	I	10–01–93	01–01–96
ST94–587	Williams Natural Gas Co.	City of Auburn ...	11–01–93	B	342	N	I	10–01–93	Indef.
ST94–588	Williams Natural Gas Co.	City of Auburn ...	11–01–93	B	1,158	N	F	10–13–93	Indef.
ST94–589	Williams Natural Gas Co.	GPM Gas Corp ..	11–01–93	G–S	5,000	N	F	10–13–93	Indef.
ST94–590	Williams Natural Gas Co.	Kansas Public Service.	11–01–93	G–S	6,099	N	F	10–22–93	Indef.
ST94–591	Williams Natural Gas Co.	GPM Gas Corp ..	11–01–93	G–S	200	N	F	10–01–93	12–01–93
ST94–592	Williams Natural Gas Co.	GPM Gas Corp ..	11–01–93	G–S	1,800	N	F	10–01–93	12–01–93
ST94–593	Williams Natural Gas Co.	Ford Motor Co ...	11–01–93	G–S	7,000	N	F	10–11–93	Indef.
ST94–594	Williams Natural Gas Co.	Arkansas Louisiana Gas Co.	11–01–93	G–S	2,055	N	I	10–22–93	Indef.
ST94–595	Williams Natural Gas Co.	City of Howard ...	11–01–93	B	490	N	F	10–13–93	Indef.
ST94–596	Williams Natural Gas Co.	City of Howard ...	11–01–93	B	146	N	F	10–01–93	Indef.
ST94–597	Williams Natural Gas Co.	City of Hamilton .	11–01–93	B	125	N	F	10–13–93	Indef.
ST94–598	Williams Natural Gas Co.	City of Hamilton .	11–01–93	B	36	N	F	10–01–93	Indef.
ST94–599	Williams Natural Gas Co.	General Motors Corp.	11–01–93	B	4,000	N	F	10–06–93	Indef.
ST94–600	Williams Natural Gas Co.	City of Argonia ...	11–01–93	B	240	N	F	10–13–93	Indef.
ST94–601	Williams Natural Gas Co.	City Utilities of Springfield.	11–01–93	B	79,460	N	F	10–20–93	10–01–94
ST94–602	Superior Offshore Pipeline Co.	United Cities & Commonwealth Alum.	11–01–93	B	25,000	N	I	10–01–93	Indef.
ST94–603	Superior Offshore Pipeline Co.	United Cities & Commonwealth Alum.	11–01–93	B	25,000	N	I	10–01–93	Indef.
ST94–604	Superior Offshore Pipeline Co.	United Cities & Commonwealth Alum.	11–01–93	B	25,000	N	I	10–01–93	Indef.
ST94–605	Superior Offshore Pipeline Co.	United Cities & Commonwealth Alum.	11–01–93	B	25,000	N	I	10–01–93	Indef.
ST94–606	Iroquois Gas Trans. System, L.P.	Brymore Energy, Inc.	11–01–93	G–S	50,000	N	I	10–02–93	Indef.
ST94–607	Trunkline Gas Co.	Fina Natural Gas Co.	11–01–93	G–S	51,750	N	I	10–21–93	Indef.
ST94–608	Trunkline Gas Co.	Cypress Gas Marketing Co.	11–01–93	G–S	25,000	N	I	10–01–93	Indef.
ST94–609	CNG Transmission Corp.	Long Island Lighting Co.	11–01–93	G–S	100,000	N	I	09–01–93	Indef.
ST94–610	CNG Transmission Corp.	Appalachian Gas Sales.	11–01–93	G–S	30,000	N	I	10–01–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–611	CNG Transmission Corp.	Appalachian Gas Sales.	11–01–93	G–S	30,000	N	I	10–01–93	Indef.
ST94–612	CNG Transmission Corp.	Elizabethtown Gas Co.	11–01–93	G–S	10,000	N	I	07–16–93	Indef.
ST94–613	CNG Transmission Corp.	Fulton Cogen Associates.	11–01–93	G–S	5,800	N	I	10–01–93	Indef.
ST94–614	Southern Natural Gas Co.	Tourch Gas, L.C	11–01–93	G–S	10,000	N	I	10–08–93	Indef.
ST94–615	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	11–01–93	G–S	20,970	N	F	10–01–93	Indef.
ST94–616	Panhandle Eastern Pipe Line Co.	City of Sunray ...	11–01–93	G–S	91,250	N	I	10–04–93	07–31–98
ST94–617	Panhandle Eastern Pipe Line Co.	Centana Energy Corp.	11–01–93	G–S	20,000	Y	F	10–01–93	10–31–93
ST94–618	Northern Illinois Gas Co.	Rangeline	11–01–93	C/G–ST	1,250	N	I	10–01–93	10–04–93
ST94–619	Northern Illinois Gas Co.	Aquila Energy Marketing.	11–01–93	C/G–ST	25,000	N	I	10–01–93	10–08–93
ST94–620	Northern Illinois Gas Co.	Poco Petroleums, Ltd.	11–01–93	C/G–ST	60,000	N	I	10–01–93	10–08–93
ST94–621	Northern Illinois Gas Co.	Coastal Gas Marketing.	11–01–93	C/G–ST	77,573	N	I	10–05–93	10–29–93
ST94–622	Northern Natural Gas Co.	Hibbing Public Utilities Commission.	11–02–93	G–S	4,785	N	F	07–08–93	05–31–97
ST94–623	Northern Natural Gas Co.	Oklahama Natural Gas Co.	11–02–93	B	50,000	N	I	01–20–93	Indef.
ST94–624	Northern Natural Gas Co.	Continental Natural Gas Inc.	11–02–93	G–S	40,000	N	I	04–07–93	Indef.
ST94–625	Natural Ga P/L Co. of America.	Union Pacific Resources Co.	11–02–93	G–S	100,000	N	I	11–01–89	Indef.
ST94–626	Natural Ga P/L Co. of America.	Northern Illinois Gas Co.	11–02–93	B	100,000	N	I	01–01–89	Indef.
ST94–627	Natural Ga P/L Co. of America.	Llano, Inc	11–02–93	B	50,000	N	I	07–01–87	Indef.
ST94–628	Colardo Interstate Gas Co.	Helmerich & Payne Energy Service.	11–02–93	G–S	41,713	N	I	10–01–93	Indef.
ST94–629	Colardo Interstate Gas Co.	Amarillo Natural Gas, Inc.	11–02–93	B	100	N	I	10–01–93	Indef.
ST94–630	Arkansas Western Pipeline Co.	Associated Natural Gas Co.	11–02–93	G–S	33,700	Y	I	07–01–93	06–30–94
ST94–631	Midcon Texas Pipeline Corp.	Natural Gas P/L Co. of America	11–01–93	C	40,000	N	I	10–02–93	Indef.
ST94–632	Natural Gas P/L Co. of America.	Interstate Power Co.	11–03–93	G–S	20,000	N	I	11–01–89	Indef.
ST94–633	Natural Gas P/L Co. of America.	Tejas Power Corp.	11–03–93	G–S	35,000	N	I	04–01–88	Indef.
ST94–634	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc.	11–03–93	G–S	100,000	N	I	10–01–88	Indef.
ST94–635	Natural Gas P/L Co. of America.	Yuma Gas Corp	11–03–93	B	25,000	N	I	11–01–88	Indef.
ST94–636	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	11–03–93	C	20,000	N	I	10–07–93	Indef.
ST94–637	Koch Gateway Pipeline Co.	Enron Gas Marketing, et al.	11–03–93	G–S	524,000	N	I	10–25–93	02–22–94
ST94–638	Transwestern Pipeline Co.	U.S. Gas Transportation, Inc.	11–03–93	G–S	16,161	N	F	10–14–93	10–18–93
ST94–639	Questar Pipeline Co.	Mountain Fuel Supply Co.	11–03–93	B	798,902	Y	I	09–01–93	Indef.
ST94–640	ONG Transmission Co.	Caprock Pipeline	11–03–93	C	50,000	N	I	10–07–93	Indef.
ST94–641	Colorado Interstate Gas Co.	Windsor Gas Processing, Inc.	11–03–93	G–S	4,404	N	I	10–15–93	Indef.
ST94–642	Transcontinental Gas P/L Corp.	CNG Trading Co	11–03–93	G–S	120,000	N	I	10–25–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–643	Koch Gateway Pipeline Co.	Shell Gas Trading Co.	11–03–93	G–S	209,600	N	I	10–25–93	02–22–94
ST94–644	Koch Gateway Pipeline Co.	Mobil Natural Gas Inc.	11–03–93	G–S	100,000	N	I	10–25–93	02–22–94
ST94–645	Koch Gateway Pipeline Co.	Destoto Pipeline Co.	11–03–93	G–S	7,860	N	I	10–25–93	02–22–94
ST94–646	Koch Gateway Pipeline Co.	Highland Energy Co.	11–03–93	G–S	27,851	N	I	10–25–93	02–22–94
ST94–647	Koch Gateway Pipeline Co.	Entex	11–03–93	G–S	10,000	N	I	10–01–93	Indef.
ST94–648	Williams Natural Gas Co.	Leann Gas Co ...	11–03–93	G–S	750	N	I	10–01–93	Indef.
ST94–649	Williams Natural Gas Co.	Lawrence Paper Co.	11–03–93	G–S	260	N	F	10–01–93	Indef.
ST94–650	Williams Natural Gas Co.	Kansas Municipal Gas Agency.	11–03–93	G–S	7,000	N	F	10–01–93	Indef.
ST94–651	Williams Natural Gas Co.	Kansas Municipal Gas Agency.	11–03–93	G–S	6,022	N	F	10–01–93	Indef.
ST94–652	Williams Natural Gas Co.	Kansas Municipal Gas Agency.	11–03–93	G–S	131	N	I	10–01–93	Indef.
ST94–653	Williams Natural Gas Co.	Kansas Municipal Gas Agency.	11–03–93	G–S	1,276	N	F	10–22–93	Indef.
ST94–654	Williams Natural Gas Co.	AG Processing, Inc.	11–03–93	G–S	600	N	F	10–01–93	12–01–93
ST94–655	Williams Natural Gas Co.	City of Lebo	11–03–93	G–S	80	N	I	10–01–93	Indef.
ST94–656	Williams Natural Gas Co.	City of Lebo	11–03–93	G–S	268	N	F	10–13–93	Indef.
ST94–657	Williams Natural Gas Co.	City of McLouth .	11–03–93	G–S	114	N	I	10–01–93	Indef.
ST94–658	Williams Natural Gas Co.	City of McLouth .	11–03–93	G–S	390	N	F	10–13–93	Indef.
ST94–659	Williams Natural Gas Co.	Miles, Inc	11–03–93	G–S	400	N	F	10–01–93	Indef.
ST94–660	Williams Natural Gas Co.	Miles, Inc	11–03–93	G–S	405	N	F	10–01–93	Indef.
ST94–661	Williams Natural Gas Co.	Mountain Iron & Supply Co.	11–03–93	G–S	3,425	N	F	10–01–93	Indef.
ST94–662	Williams Natural Gas Co.	City of Neodesha	11–03–93	G–S	684	N	I	10–01–93	Indef.
ST94–663	Williams Natural Gas Co.	City of Neodesha	11–03–93	G–S	2,316	N	F	10–13–93	Indef.
ST94–664	Texas Eastern Transmission Corp.	Commonwealth Gas Co.	11–04–93	G–S	4,342	N	I	10–12–93	03–31–06
ST94–665	Texas Eastern Transmission Corp.	Direct Gas Supply Corp.	11–04–93	G–S	36,225	N	I	10–06–93	01–01–00
ST94–666	Texas Eastern Transmission Corp.	Equitable Resources Marketing Co.	11–04–93	G–S	103,500	N	F	10–08–93	09–30–94
ST94–667	Texas Eastern Transmission Corp.	O&R Energy Inc	11–04–93	G–S	20,700	N	F	10–21–93	09–30–94
ST94–668	Texas Eastern Transmission Corp.	Gaslantic Corp ...	11–04–93	G–S	20,000	N	F	10–07–93	09–30–94
ST94–669	Texas Eastern Transmission Corp.	Sonat Marketing Co.	11–04–93	G–S	164,700	N	I	10–06–93	03–31–94
ST94–670	Texas Eastern Transmission Corp.	Midcon Gas Services Corp.	11–04–93	G–S	400,000	N	I	10–19–93	03–31–94
ST94–671	Northern Natural Gas Co.	Snyder Oil Corp .	11–04–93	G–S	100,000	N	I	09–18–93	Indef.
ST94–672	Northern Natural Gas Co.	Gorham Inc	11–04–93	G–S	840	N	F	10–07–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–673	Northern Natural Gas Co.	Citrus Marketing Inc.	11–04–93	G–S	100,000	N	F/I	09–01–93	Indef.
ST94–674	Algonquin Gas Transmission Co.	Texas Eastern Transmission Corp.	11–04–93	B	1,870	N	F	10–18–93	Indef.
ST94–675	Algonquin Gas Transmission Co.	Yankee Gas Services Co.	11–04–93	B	1,797	N	F	10–14–93	Indef.
ST94–676	Algonquin Gas Transmission Co.	Yankee Gas Services Co.	11–04–93	B	3,000	N	F	10–18–93	Indef.
ST94–677	Louisiana State Gas Corp.	Columbia Gulf Trans. Corp., et al.	11–04–93	C	172,603	Y	I	06–01–93	Indef.
ST94–678	K N Interstate Gas Trans. Co.	Cibola Corp	11–04–93	G–S	110,000	N	F	10–01–93	Indef.
ST94–679	K N Interstate Gas Trans. Co.	Northern Gas Co	11–04–93	G–S	10,000	N	F	10–01–93	Indef.
ST94–680	K N Interstate Gas Trans. Co.	Western Resources, Inc.	11–04–93	G–S	5,670	N	F	10–01–93	04–30–97
ST94–681	K N Interstate Gas Trans. Co.	Peoples Natural Gas Co.	11–04–93	G–S	20,100	N	F	10–01–93	09–30–94
ST94–682	K N Interstate Gas Trans. Co.	Colorado Springs Utilities.	11–04–93	G–S	30,000	N	F	10–01–93	09–30–96
ST94–683	K N Interstate Gas Trans. Co.	K N Gas Marketing, Inc.	11–04–93	G–S	5,000	A	F	10–01–93	11–30–93
ST94–684	K N Interstate Gas Trans. Co.	Panhandle Eastern Pipe Line Co.	11–04–93	G	300,000	N	I	10–01–93	Indef.
ST94–685	K N Interstate Gas Trans. Co.	Panhandle Eastern Pipe Line Co.	11–04–93	G	10,000	N	I	10–01–93	Indef.
ST94–686	K N Interstate Gas Trans. Co.	Chevron USA Production Co.	11–04–93	G–S	10,000	N	F	10–01–93	02–28–94
ST94–687	K N Interstate Gas Trans. Co.	Union Pacific Fuels, Inc.	11–04–93	G–S	50,000	N	I	10–01–93	Indef.
ST94–688	K N Interstate Gas Trans. Co.	American Exploration Gas Sys. Corp.	11–04–93	G–S	9,950	N	F	10–01–93	12–31–97
ST94–689	K N Interstate Gas Trans. Co.	K N Gas Marketing, Inc.	11–04–93	G–S	200,000	N	I	10–01–93	Indef.
ST94–690	K N Interstate Gas Trans. Co.	K N Gas Marketing, Inc.	11–04–93	G–S	200,000	N	I	10–01–93	Indef.
ST94–691	K N Interstate Gas Trans. Co.	K N Gas Marketing, Inc.	11–04–93	G–S	200,000	A	I	10–01–93	Indef.
ST94–692	K N Interstate Gas Trans. Co.	K N Gas Marketing, Inc.	11–04–93	G–S	200,000	A	I	10–01–93	Indef.
ST94–693	K N Interstate Gas Trans. Co.	K N Gas Marketing, Inc.	11–04–93	G–S	2,413	A	F	10–01–93	01–31–94
ST94–694	K N Interstate Gas Trans. Co.	K N Gas Marketing, Inc.	11–04–93	G–S	964	A	F	10–01–93	01–31–94
ST94–695	K N Interstate Gas Trans. Co.	K N Gas Supply Services, Inc.	11–04–93	G–S	200,000	A	F	10–01–93	Indef.
ST94–696	K N Interstate Gas Trans. Co.	Northwestern Public Service Co.	11–04–93	G–S	29,600	N	F	10–01–93	09–30–94
ST94–697	Transcontinental Gas P/L Corp.	Oryx Gas Marketing L.P.	11–04–93	G–S	1,542,450	N	I	10–27–93	Indef.
ST94–698	Northern Natural Gas Co.	O & R Energy Inc.	11–04–93	G–S	50,000	N	F/I	09–01–93	Indef.
ST94–699	Natural Gas P/L Co. of America.	Mitchell Energy Corp.	11–04–93	B	30,000	N	I	07–01–87	Indef.
ST94–700	Natural Gas P/L Co. of America.	Shell Gas Trading Co.	11–04–93	B	90,000	N	I	06–01–87	Indef.
ST94–701	Natural Gas P/L Co. of America.	Tejas Power Corp.	11–04–93	G–S	50,000	N	I	04–15–88	Indef.
ST94–702	Williams Natural Gas Co.	Natural Gas P/L Co. of America.	11–04–93	G–S	25,000	N	I	10–01–93	10–01–94
ST94–703	Williams Natural Gas Co.	Williams Gas Marketing Co.	11–04–93	G–S	750,000	A	I	10–01–93	10–01–94

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–704	Williams Natural Gas Co.	Mountain Iron & Supply Co.	11–04–93	G–S	20,000	N	I	10–01–93	10–01–96
ST94–705	Williams Natural Gas Co.	Mobil Natural Gas, Inc.	11–04–93	G–S	300,000	N	I	10–01–93	10–01–96
ST94–706	Williams Natural Gas Co.	Entrade Corp	11–04–93	G–S	100,000	N	I	10–05–93	10–01–94
ST94–707	Williams Natural Gas Co.	Enron Gas Marketing, Inc.	11–04–93	G–S	250,000	N	I	10–01–93	10–01–94
ST94–708	Williams Natural Gas Co.	Coastal Gas Marketing, Inc.	11–04–93	G–S	100,000	N	I	10–01–93	Indef.
ST94–709	Williams Natural Gas Co.	Anadarko Trading Co.	11–04–93	G–S	10,000	N	I	10–01–93	10–01–94
ST94–710	Panhandle Eastern Pipe Line Co.	Howard Energy Co., Inc.	11–05–93	G–S	300,000	N	I	10–18–93	04–30–98
ST94–711	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	11–05–93	G–S	200,000	N	I	09–28–93	03–31–98
ST94–712	Panhandle Eastern Pipe Line Co.	Catex Energy, Inc.	11–05–93	G–S	150,000	N	I	10–01–93	03–31–98
ST94–713	Panhandle Eastern Pipe Line Co.	Tenaska Marketing Ventures.	11–05–93	G–S	300,000	N	I	10–05–93	03–31–98
ST94–714	Channel Industries Gas Co.	Tennessee Gas Pipeline Co.	11–05–93	C	15,000	Y	I	10–08–93	Indef.
ST94–715	Tennessee Gas Pipeline Co.	Consolidated Edison Co. of NY, Inc.	11–05–93	G–S	2,791	N	F	11–01–93	Indef.
ST94–716	Tennessee Gas Pipeline Co.	Elk River Public Utility District.	11–05–93	G–S	11,419	N	F	11–01–93	Indef.
ST94–717	Tennessee Gas Pipeline Co.	Kinder Gas Processing Corp.	11–05–93	G–S	2,550	N	I	11–01–93	Indef.
ST94–718	Tennessee Gas Pipeline Co.	Cargill, Inc	11–05–93	G–S	100,000	N	I	10–19–93	Indef.
ST94–719	Ozark Gas Transmission System.	ONG Transmission Co.	11–05–93	B	25,000	N	I	10–11–93	Indef.
ST94–720	Colorado Interstate Gas Co.	Coastal Gas Marketing Co.	11–05–93	G–S	28,635	A	I	11–01–93	12–31–99
ST94–721	Colorado Interstate Gas Co.	Universal Resources Corp.	11–05–93	G–S	15,000	N	F	11–01–93	04–30–94
ST94–722	Colorado Interstate Gas Co.	Brooklyn Interstate Gas Corp.	11–05–93	G–S	2,251	N	I	10–16–93	Indef.
ST94–723	Colorado Interstate Gas Co.	Transwestern Pipeline Co.	11–05–93	G–S	4,161	N	I	10–27–93	Indef.
ST94–724	Colorado Interstate Gas Co.	Arco Oil & Gas Co.	11–05–93	G–S	3,195	N	I	11–01–93	Indef.
ST94–725	Colorado Interstate Gas Co.	Fuel Resources Development Co.	11–05–93	G–S	458	N	I	11–01–93	Indef.
ST94–726	Colorado Interstate Gas Co.	Santa Fe Minerals.	11–05–93	G–S	822	N	I	11–01–93	Indef.
ST94–727	Arkla Energy Resources Co.	Arkla Energy Marketing Co.	11–05–93	G–S	25,000	N	F	10–01–93	Indef.
ST94–728	Arkla Energy Resources Co.	City Utilities of Springfield.	11–05–93	G–S	40,000	N	F	11–01–93	10–31–03
ST94–729	Arkla Energy Resources Co.	Arkla Energy Marketing Co.	11–05–93	G–S	1,000	N	F	10–01–93	Indef.
ST94–730	Arkansas Oklahoma Gas Corp.	Ozark Gas Transmission System, et al.	11–08–93	G–HT	250	N	I	09–21–93	Indef.
ST94–731	Natural Gas P/L Co. of America.	Central Hudson Gas & Electric Corp.	11–08–93	B	15,000	N	I	05–01–87	Indef.
ST94–732	Natural Gas P/L Co. of America.	Michigan Consolidated.	11–08–93	B	50,000	N	I	04–01–87	Indef.
ST94–733	Southern Natural Gas Co.	Consolidated Gas Marketing.	11–08–93	G–S	100,000	N	I	10–22–93	Indef.
ST94–734	Southern Natural Gas Co.	Consolidated Gas Marketing.	11–08–93	G–S	100,000	N	I	10–22–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–735	Southern Natural Gas Co.	Western Gas Resources, Inc.	11–08–93	G–S	30,000	N	I	10–01–93	Indef.
ST94–736	Williston Basin Inter. P/L Co.	Interenergy Corp	11–05–93	G–S	135,150	Y	I	10–13–93	05–31–95
ST94–737	Tennessee Gas Pipeline Co.	Harriman Utility Board.	11–08–93	G–S	3,469	N	F	11–01–93	Indef.
ST94–738	Tennessee Gas Pipeline Co.	Lenoir City Utilities Board.	11–08–93	G–S	3,870	N	F	11–01–93	Indef.
ST94–740	Alabama-Tennessee Nat. Gas Co.	KCS Energy Marketing, Inc.	11–08–93	G–S	10,000	N	I	10–08–93	02–05–94
ST94–741	Alabama-Tennessee Nat. Gas Co.	Woodward Marketing, Inc.	11–08–93	G–S	25,000	N	I	11–01–93	02–28–94
ST94–742	Colorado Interstate Gas Co.	Grand Valley Gas Co.	11–08–93	G–S	9,545	N	F	11–02–93	12–31–99
ST94–743	Transtexas Pipeline.	Koch Gateway Pipeline Co.	11–08–93	C	11,000	N	I	10–16–93	Indef.
ST94–744	Valero Transmission, L.P.	Koch Gateway Pipeline Co.	11–08–93	C	2,500	N	I	10–27–93	Indef.
ST94–745	Tejas Gas Corp	Florida Gas Transmission.	11–08–93	C	600	N	I	11–01–93	Indef.
ST94–746	Tejas Gas Pipeline Co.	Transcontinental Gas Pipe Line Corp.	11–08–93	C	15,000	N	I	10–01–93	Indef.
ST94–747	Williams Natural Gas Co.	Vulcan Chemicals.	11–05–93	G–S	13,000	N	F	10–21–93	Indef.
ST94–748	Williams Natural Gas Co.	Universal Resources Corp.	11–05–93	G–S	5,000	N	F	10–21–93	Indef.
ST94–749	Williams Natural Gas Co.	Union Pacific Fuels, Inc.	11–05–93	G–S	20,085	N	F	10–01–93	Indef.
ST94–750	Williams Natural Gas Co.	Rangeline Corp	11–05–93	G–S	1,500	N	F	10–01–93	Indef.
ST94–751	Williams Natural Gas Co.	Rangeline Corp	11–05–93	G–S	2,200	N	F	10–11–93	Indef.
ST94–752	Williams Natural Gas Co.	Rangeline Corp	11–05–93	G–S	440	N	F	10–01–93	Indef.
ST94–753	Williams Natural Gas Co.	Rangeline Corp	11–05–93	G–S	250	N	F	10–01–93	Indef.
ST94–754	Williams Natural Gas Co.	Rangeline Corp	11–05–93	G–S	900	N	F	10–01–93	Indef.
ST94–755	Williams Natural Gas Co.	Pittsburgh Corning Corp.	11–05–93	G–S	1,200	N	F	10–01–93	Indef.
ST94–756	Williams Natural Gas Co.	Union Pacific Fuels, Inc.	11–05–93	G–S	18,198	N	F	10–05–93	10–01–94
ST94–757	Williams Natural Gas Co.	United States Gypsum Co.	11–05–93	G–S	3,975	N	F	10–01–93	08–01–94
ST94–758	Williams Natural Gas Co.	Severy Gas Co	11–05–93	G–S	149	N	I	10–01–93	Indef.
ST94–759	Williams Natural Gas Co.	Rangeline Corp	11–05–93	G–S	2,610	N	F	10–01–93	10–01–94
ST94–760	Williams Natural Gas Co.	City of Oronogo	11–05–93	G–S	130	N	F	10–01–93	10–01–94
ST94–761	Williams Natural Gas Co.	Rangeline Corp	11–05–93	G–S	2,639	N	F	10–05–93	10–01–94
ST94–762	Williams Natural Gas Co.	Western Resources, Inc.	11–05–93	B	400	N	F	10–01–93	Indef.
ST94–763	Algonquin Gas Transmission Co.	Yankee Gas Services Co.	11–09–93	G–S	6,402	N	I	10–31–93	Indef.
ST94–764	Algonquin Gas Transmission Co.	Yankee Gas Services Co.	11–09–93	G–S	3,300	N	I	10–31–93	Indef.
ST94–765	Algonquin Gas Transmission Co.	Texas-Ohio Gas, Inc.	11–09–93	G–S	120,000	N	I	10–29–93	Indef.
ST94–766	Tennessee Gas Pipeline Co.	City of South Pittsburgh.	11–09–93	G–S	3,161	N	F	11–11–93	Indef.
ST94–767	Tennessee Gas Pipeline Co.	Sweetwater Utilities Board.	11–09–93	G–S	2,991	N	F	11–11–93	Indef.

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ST94–768	Natural Gas P/L Co. of America.	Natural Gas Clearinghouse, Inc.	11–09–93	B	50,000	N	I	09–01–93	Indef.
ST94–769	Natural Gas P/L Co. of America.	Mitchell Energy Corp.	11–09–93	B	100,000	N	I	07–31–88	Indef.
ST94–770	Williams Natural Gas Co.	AG Processing, Inc.	11–09–93	G–S	750	N	I	10–29–93	10–01–94
ST94–771	Williams Natural Gas Co.	Amax Gas Marketing, Inc.	11–09–93	G–S	27,400	N	I	10–01–93	Indef.
ST94–772	Williams Natural Gas Co.	Amoco Energy Trading Co.	11–09–93	G–S	2,000,000	N	I	10–28–93	Indef.
ST94–773	Williams Natural Gas Co.	Aquila Energy Marketing Corp.	11–09–93	G–S	34,000	N	I	10–01–93	Indef.
ST94–774	Williams Natural Gas Co.	Arco Natural Gas Marketing, Inc.	11–09–93	G–S	207,000	N	I	10–28–93	Indef.
ST94–775	Williams Natural Gas Co.	Arkla Energy Marketing Co.	11–09–93	G–S	50,000	N	I	10–22–93	10–01–94
ST94–776	Williams Natural Gas Co.	Certainteed Corp	11–09–93	G–S	5,000	N	I	10–26–93	10–01–94
ST94–777	Williams Natural Gas Co.	Associated Natural Gas, Inc.	11–09–93	G–S	100,000	N	I	10–01–93	10–01–94
ST94–778	Williams Natural Gas Co.	Cibola Corp	11–09–93	G–S	42,300	N	I	10–01–93	Indef.
ST94–779	Williams Natural Gas Co.	City of Iola	11–09–93	G–S	5,100	N	F	10–01–93	Indef.
ST94–780	Williams Natural Gas Co.	Utilicorp Energy Services, Inc.	11–09–93	G–S	2,306	N	F	10–13–93	10–01–94
ST94–781	Williams Natural Gas Co.	Western Resources, Inc.	11–09–93	G–S	75,000	N	F	10–29–93	Indef.
ST94–782	El Paso Natural Gas Co.	NGC Transportation, Inc.	11–09–93	G–S	100,000	N	I	10–17–93	Indef.
ST94–783	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	11–09–93	C	10,000	N	I	08–01–93	Indef.
ST94–784	K N Interstate Gas Trans. Co.	Midwest Energy, Inc.	11–09–93	G–S	16,000	N	F	10–01–93	09–30–94
ST94–785	K N Interstate Gas Trans. Co.	K N Gas Marketing, Inc.	11–09–93	G–S	200,000	A	I	10–01–93	Indef.
ST94–786	Equitrans, Inc	Equitable Gas Co.	11–09–93	G–S	94,742	N	I	09–01–93	03–31–01
ST94–787	Equitrans, Inc	Equitable Gas Co.	11–09–93	G–S	197,000	N	I	09–01–93	03–31–01
ST94–788	Equitrans, Inc	Equitable Gas Co.	11–09–93	G–S	5,258	N	I	09–01–93	03–31–01
ST94–789	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	11–10–93	G–S	42,826	N	F	09–01–93	Indef.
ST94–790	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	11–10–93	G–S	7,409	N	F	09–01–93	Indef.
ST94–791	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	11–10–93	G–S	5,003	N	F	09–01–93	Indef.
ST94–792	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	11–10–93	G–S	3,055	N	F	09–01–93	Indef.
ST94–793	Arkla Energy Resources Co.	Greeley Gas Co	11–10–93	G–S	950	N	I	09–01–93	03–31–03
ST94–794	Arkla Energy Resources Co.	Greeley Gas Co	11–10–93	G–S	450	N	I	09–01–93	03–31–03
ST94–795	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	11–10–93	G–S	168,000	N	I	09–01–93	03–31–00
ST94–796	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	11–10–93	G–S	54,000	N	I	09–01–93	03–31–00
ST94–797	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	11–10–93	G–S	18,000	N	I	09–01–93	03–31–00
ST94–798	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	11–10–93	G–S	47,280	N	I	09–01–93	03–31–00
ST94–799	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	11–10–93	G–S	12,720	N	I	09–01–93	Indef.
ST94–800	Arkla Energy Resources Co.	Boston Gas Co	11–10–93	G–S	15,868	N	F	11–01–93	Indef.
ST94–801	Arkla Energy Resources Co.	Halliburton Energy Services.	11–10–93	G–S	1,500	N	I	11–01–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–802	Arkla Energy Resources Co.	MRT Energy Marketing Co.	11–10–93	G–S	100,000	N	I	11–05–93	Indef.
ST94–803	Williams Natural Gas Co.	Pittsburgh Corning Corp.	11–10–93	G–S	3,000	N	I	10–01–93	10–01–94
ST94–804	Williams Natural Gas Co.	Panoak Gas Co., Inc.	11–10–93	G–S	2,800	N	I	10–15–93	Indef.
ST94–805	Williams Natural Gas Co.	Williams Gas Marketing Co.	11–10–93	G–S	8,705	N	F	10–01–93	Indef.
ST94–806	Williams Natural Gas Co.	Williams Gas Marketing Co.	11–10–93	G–S	95	N	F	10–01–93	Indef.
ST94–807	Williams Natural Gas Co.	Western Resources, Inc.	11–10–93	G–S	8,356	N	F	10–01–93	Indef.
ST94–808	Williams Natural Gas Co.	Clinton Gas Transmission, Inc.	11–10–93	G–S	30,000	N	I	10–01–93	10–01–94
ST94–809	Williams Natural Gas Co.	Conoco, Inc	11–10–93	G–S	65,000	N	I	10–09–93	Indef.
ST94–810	Williams Natural Gas Co.	Consolidated Fuel Corp.	11–10–93	G–S	50,000	N	I	10–01–93	10–01–94
ST94–811	Williams Natural Gas Co.	Continental Natural Gas, Inc.	11–10–93	G–S	40,000	N	I	10–01–93	10–01–94
ST94–812	Williams Natural Gas Co.	Energy Dynamics, Inc.	11–10–93	G–S	50,000	N	I	10–01–93	Indef.
ST94–813	Williams Natural Gas Co.	Global Petroleum Corp.	11–10–93	G–S	4,000	N	I	10–27–93	Indef.
ST94–814	Williams Natural Gas Co.	GPM Gas Corp ..	11–10–93	G–S	40,000	N	I	10–01–93	Indef.
ST94–815	Williams Natural Gas Co.	Kansas City Power & Light Co.	11–10–93	G–S	100,000	N	I	10–13–93	10–01–94
ST94–816	Williams Natural Gas Co.	Kansas Industrial Energy Supply Co.	11–10–93	G–S	20,800	N	I	10–01–93	Indef.
ST94–817	Williams Natural Gas Co.	Koch Gas Services Co.	11–10–93	G–S	50,000	N	I	10–01–93	Indef.
ST94–818	Williams Natural Gas Co.	Mesa Operating, L.P.	11–10–93	G–S	55,800	N	I	10–29–93	Indef.
ST94–819	Williams Natural Gas Co.	Midcon Gas Services Corp.	11–10–93	G–S	100,000	N	I	10–02–93	Indef.
ST94–820	Colorado Interstate Gas Co.	Montana Power Co.	11–12–93	B	8,000	N	I	11–06–93	Indef.
ST94–821	Colorado Interstate Gas Co.	Colorado Springs Utilities.	11–12–93	G–S	20,000	N	F	11–01–93	05–31–94
ST94–822	ANR Pipeline Co	Cincinnati Gas & Electric Co.	11–12–93	B	50,000	N	I	10–15–93	Indef.
ST94–823	Tennessee Gas Pipeline Co.	Westvaco Corp ..	11–12–93	G–S	4,269	N	F	11–01–93	Indef.
ST94–824	Tennessee Gas Pipeline Co.	United Cities Gas Co.	11–12–93	G–S	80,064	N	F	11–01–93	Indef.
ST94–825	Tennessee Gas Pipeline Co.	Roanoke Gas Co	11–12–93	G–S	9,326	N	F	11–01–93	Indef.
ST94–826	Tennessee Gas Pipeline Co.	Gallatin Natural Gas System.	11–12–93	G–S	4,984	N	F	11–01–93	Indef.
ST94–827	Tennessee Gas Pipeline Co.	Coastal Gas Marketing Co.	11–12–93	G–S	2,700	N	F	11–01–93	Indef.
ST94–828	Tennessee Gas Pipeline Co.	Direct Gas Supply Corp.	11–12–93	G–S	5,500	N	F	11–02–93	Indef.
ST94–829	Tennessee Gas Pipeline Co.	Bay State Gas Co.	11–12–93	G–S	3,721	N	F	11–01–93	Indef.
ST94–830	Tennessee Gas Pipeline Co.	Northern Utilities, Inc.	11–12–93	G–S	13,155	N	F	11–01–93	Indef.
ST94–831	Tennessee Gas Pipeline Co.	Atlanta Gas Light Co.	11–12–93	G–S	54,825	N	F	11–01–93	Indef.
ST94–832	Tennessee Gas Pipeline Co.	Valley Gas Co ...	11–12–93	G–S	4,000	N	F	11–01–93	Indef.
ST94–833	Arkla Energy Resources Co.	Boyd Rosene & Associates, Inc.	11–12–93	G–S	5,000	N	I	11–01–93	Indef.
ST94–834	Northern Natural Gas Co.	Wisconsin Power & Light Co.	11–12–93	G–S	14,200	N	F/I	10–14–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–835	Black Marlin Pipeline Co.	Houston Pipe Line Co.	11–12–93	B	25,000	A	I	11–01–93	Indef.
ST94–836	Northern Border Pipeline Co.	Unigas Corp	11–12–93	G–S	40,000	N	I	10–04–93	09–19–03
ST94–837	Northern Border Pipeline Co.	Pancanadian Petroleum Co.	11–12–93	G–S	12,000	N	I	11–01–93	11–01–07
ST94–838	Northern Border Pipeline Co.	Montana-Dakota Utilities Co.	11–12–93	G–S	15,000	N	I	10–19–93	09–14–95
ST94–839	Columbia Gulf Transmission Co.	Kerr-McGee Corp.	11–12–93	G–S	100,000	N	I	10–14–93	Indef.
ST94–840	Natural Gas P/L Co of America.	Iowa-Illinois Gas & Electric Co.	11–12–93	G–S	17,000	N	F	11–01–93	11–30–95
ST94–841	Natural Gas P/L Co of America.	Peoples Natural Gas Co.	11–12–93	G–S	25,000	N	F	11–01–93	11–30–93
ST94–842	Natural Gas P/L Co of America.	Grain Processing Corp.	11–12–93	G–S	2,000	N	F	11–01–93	10–31–98
ST94–843	Stringray Pipeline Co.	Energy Development Corp.	11–12–93	G–S	75,000	N	I	11–01–93	Indef.
ST94–844	Trailblazer Pipeline Co.	Enron Gas Marketing, Inc.	11–12–93	G–S	5,000	N	F	11–01–93	03–31–94
ST94–845	Williams Natural Gas Co.	Rangeline Corp .	11–12–93	G–S	150,000	N	I	10–20–93	Indef
ST94–846	Williams Natural Gas Co.	Texpar Energy, Inc..	11–12–93	G–S	10,000	N	I	10–01–93	Indef
ST94–847	Williams Natural Gas Co.	Kansas Public Service.	11–12–93	G–S	2,435	N	F	10–28–93	Indef.
ST94–848	Williams Natural Gas Co.	Kansas Public Service.	11–12–93	G–S	6,435	N	F	10–28–93	Indef.
ST94–849	Williams Natural Gas Co.	Kansas Public Service.	11–12–93	G–S	895	N	F	10–28–93	Indef.
ST94–850	Williams Natural Gas Co.	Kansas Public Service.	11–12–93	G–S	3,897	N	F	10–28–93	Indef.
ST94–851	Williams Natural Gas Co.	Trident NGL	11–12–93	G–S	50,000	N	I	10–19–93	Indef.
ST94–852	Williams Natural Gas Co.	Trident Helex, Inc.	11–12–93	G–S	50,000	N	I	10–28–93	Indef.
ST94–853	Williams Natural Gas Co.	Vesta Energy Co	11–12–93	G–S	4,912	N	F	10–22–93	10–01–94
ST94–854	Williams Natural Gas Co.	Vesta Energy Co	11–12–93	G–S	125,000	N	I	10–01–93	Indef.
ST94–855	Williams Natural Gas Co.	Ward Gas Services, Inc.	11–12–93	G–S	100,000	N	I	10–25–93	10–01–94
ST94–856	Williams Natural Gas Co.	Aquila Energy Marketing Corp.	11–12–93	G–S	34,000	N	I	10–01–93	Indef.
ST94–857	Williams Natural Gas Co.	Western Resources, Inc.	11–12–93	G–S	2,000	N	I	10–01–93	10–01–94
ST94–858	Williams Natural Gas Co.	Amoco Production Co.	11–12–93	G–S	2,000,000	N	I	10–01–93	Indef.
ST94–859	Williams Natural Gas Co.	KN Energy, Inc ..	11–12–93	G–S	20,000	N	I	10–07–93	10–01–94
ST94–860	Williams Natural Gas Co.	NGC Transportation Co, Inc.	11–12–93	G–S	100,000	N	I	10–01–93	10–01–94
ST94–861	Williams Natural Gas Co.	Union Pacific Fuels, Inc.	11–12–93	G–S	25,000	N	I	10–01–93	Indef.
ST94–862	Williams Natural Gas Co.	Utilicorp Energy Services, Inc.	11–12–93	G–S	1,107	N	I	10–28–93	10–01–94
ST94–863	Williams Natural Gas Co.	Kansas Public Service.	11–12–93	G–S	18,121	N	I	10–28–93	Indef.
ST94–864	Williams Natural Gas Co.	Producers Service, Inc.	11–12–93	G–S	1,300	N	I	10–01–93	Indef.
ST94–865	Acadian Gas Pipeline System.	Natural Gas P/L Co. of Amer., et al.	11–10–93	C	25,000	N	I	09–16–93	Indef.
ST94–866	Channel Industries Gas Co.	Trunkline Gas Co., et al.	11–10–93	C	100,000	Y	I	10–11–93	Indef.
ST94–867	Michigan Gas Storage Co.	Consumers Power Co.	11–10–93	B	2,400,000	Y	F	11–01–93	Indef.
ST94–868	Transok, Inc	ANR Pipeline Co., et al.	11–10–93	C	50,000	N	I	10–02–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–869	Transok, Inc	ANR Pipeline Co., et al.	11–12–93	C	20,000	N	F	09–01–93	09–30–93
ST94–870	Koch Gateway Pipeline Co.	Mobile Gas Service Corp.	11–12–93	G–S	34,100	N	F	11–01–93	04–01–97
ST94–871	Koch Gateway Pipeline Co.	Mobile Gas Service Corp.	11–12–93	G–S	620,000	N	I	11–01–93	04–01–94
ST94–872	Koch Gateway Pipeline Co.	City of Milton Florida.	11–12–93	G–S	6,500	N	I	11–01–93	04–01–99
ST94–873	Koch Gateway Pipeline Co.	Duplessis Gas & Fuel Co., Inc.	11–12–93	G–S	45	N	F	11–01–93	04–01–97
ST94–874	Koch Gateway Pipeline Co.	City of Pascagoula.	11–12–93	G–S	7,335	N	I	11–01–93	04–01–99
ST94–875	Koch Gateway Pipeline Co.	City of Bay Minette-Utilities Board.	11–12–93	G–S	32,800	N	I	11–01–93	04–01–99
ST94–876	Koch Gateway Pipeline Co.	City of Palmetto	11–12–93	G–S	808	N	I	11–01–93	04–01–97
ST94–877	Koch Gateway Pipeline Co.	Okaloosa County Gas District.	11–12–93	G–S	17,000	N	I	11–01–93	04–01–99
ST94–878	Koch Gateway Pipeline Co.	New Orleans Public Service, Inc.	11–12–93	G–S	100,000	N	I	11–01–93	04–01–99
ST94–879	Koch Gateway Pipeline Co.	City of Moss Point.	11–12–93	G–S	6,000	N	I	11–01–93	04–01–97
ST94–880	Koch Gateway Pipeline Co.	Walthall Natural Gas Co., Inc.	11–12–93	G–S	1,800	N	I	11–01–93	04–01–97
ST94–881	Koch Gateway Pipeline Co.	United States of America Pensacola.	11–12–93	G–S	3,500	N	F	11–01–93	04–04–97
ST94–882	Koch Gateway Pipeline Co.	United States of America Pensacola.	11–12–93	G–S	1,500	N	I	11–01–93	04–01–97
ST94–883	Koch Gateway Pipeline Co.	City of Picayune	11–12–93	G–S	5,000	N	I	11–01–93	04–01–97
ST94–884	Koch Gateway Pipeline Co.	Canton Municipal Utilities.	11–12–93	G–S	7,335	N	I	11–01–93	04–01–99
ST94–885	Koch Gateway Pipeline Co.	City of Breaux-Bridge Gas System.	11–12–93	G–S	3,500	N	I	11–01–93	04–01–97
ST94–886	Koch Gateway Pipeline Co.	City of Alto	11–12–93	G–S	660	N	I	11–01–93	04–01–97
ST94–887	Koch Gateway Pipeline Co.	City of Abita Springs.	11–12–93	G–S	612	N	I	11–01–93	04–01–97
ST94–888	Koch Gateway Pipeline Co.	City of Abita Springs.	11–12–93	G–S	38	N	F	11–01–93	04–01–97
ST94–889	Koch Gateway Pipeline Co.	City of Carencro	11–12–93	G–S	66	N	F	11–01–93	04–01–97
ST94–890	Koch Gateway Pipeline Co.	Chickasawahay Natural Gas District.	11–12–93	G–S	48,934	N	I	11–01–93	04–01–97
ST94–891	Tennessee Gas Pipeline Co.	Consolidated Edison Co. of NY, Inc.	11–10–93	G–S	4,961	N	F	11–01–93	Indef.
ST94–892	Tennessee Gas Pipeline Co.	General Shale Products Corp.	11–10–93	G–S	356	N	F	11–01–93	Indef.
ST94–893	Tennessee Gas Pipeline Co.	Rhone-Poulenc AG Co.	11–10–93	G–S	300	N	F	11–01–93	Indef.
ST94–894	Tennessee Gas Pipeline Co.	Catex Energy Inc	11–10–93	G–S	20,000	N	F	11–01–93	Indef.
ST94–895	Tennessee Gas Pipeline Co.	Texaco Gas Marketing Inc.	11–10–93	G–S	15,000	N	F	11–01–93	Indef.
ST94–896	Transwestern Pipeline Co.	Tristar Gas Co ...	11–10–93	G–S	10,000	N	F	10–28–93	10–31–93
ST94–897	Transwestern Pipeline Co.	GPM Gas Corp ..	11–10–93	G–S	13,557	N	F	10–29–93	10–31–93
ST94–898	Transwestern Pipeline Co.	GPM Gas Corp ..	11–10–93	G–S	20,000	N	F	10–20–93	10–31–93
ST94–899	Stringray Pipeline Co.	GGR Energy	11–10–93	G–S	50,000	N	I	09–29–93	Indef.
ST94–900	Natural Gas P/L Co. of America.	National Gas Resources, L.P.	11–10–93	G–S	3,087	N	F	11–01–93	11–30–93

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ST94–901	Trailblazer Pipeline Co.	Northwestern Public Service Co.	11–10–93	B	353,000	N	I	11–01–93	Indef.
ST94–902	ANR Pipeline Co	Coastal Gas Marketing Co.	11–10–93	B	150,000	A	I	10–12–93	Indef.
ST94–903	ANR Pipeline Co	Total Minatome Corp.	11–10–93	G–S	30,000	N	I	10–09–93	Indef.
ST94–904	ANR Pipeline Co	Catex Energy, Inc.	11–10–93	G–S	1,000	N	I	10–05–93	10–31–93
ST94–905	Trunkline Gas Co.	Rochester Gas & Electric Corp.	11–12–93	G–S	10,350	N	F	11–01–93	Indef.
ST94–906	Trunkline Gas Co.	Enron Gas Marketing, Inc.	11–12–93	G–S	10,000	N	I	10–27–93	Indef.
ST94–907	Trunkline Gas Co.	Central Illinois Public Service Co.	11–12–93	G–S	15,525	N	F	11–01–93	Indef.
ST94–908	Trunkline Gas Co.	Kerr-McGee Corp.	11–12–93	G–S	414,000	N	I	10–30–93	Indef.
ST94–909	Trunkline Gas Co.	Centana Energy Corp.	11–12–93	G–S	10,000	Y	I	10–28–93	Indef.
ST94–910	K N Interstate Gas Trans. Co.	Rangeline Corp	11–12–93	G–S	61,000	N	I	10–01–93	Indef.
ST94–911	K N Interstate Gas Trans. Co.	Public Service Co. of Colorado.	11–12–93	G–S	4,900	N	F	10–01–93	09–30–94
ST94–912	K N Interstate Gas Trans. Co.	Plains Petroleum Operating Co.	11–12–93	G–S	100,000	N	I	10–01–93	Indef.
ST94–913	Koch Gateway Pipeline Co.	City of Chatham	11–12–93	G–S	5,449	N	I	11–01–93	04–01–97
ST94–914	Koch Gateway Pipeline Co.	Bayou La Batre	11–12–93	G–S	2,470	N	I	11–01–93	04–01–97
ST94–915	Koch Gateway Pipeline Co.	City of Bay St. Louis.	11–12–93	G–S	3,710	N	I	11–01–93	04–01–97
ST94–916	Koch Gateway Pipeline Co.	City of Bay Springs.	11–12–93	G–S	8,856	N	I	11–01–93	04–01–99
ST94–917	Koch Gateway Pipeline Co.	Willmut Gas & Oil Co.	11–12–93	G–S	28,000	N	I	11–01–93	04–01–97
ST94–918	Koch Gateway Pipeline Co.	Washington Parish-Gas Utility Dist.	11–12–93	G–S	342	N	I	11–01–93	04–01–97
ST94–919	Koch Gateway Pipeline Co.	Washington Parish-Gas Utility Dist.	11–12–93	G–S	27	N	F	11–01–93	04–01–97
ST94–920	Koch Gateway Pipeline Co.	City of Foley, Utilities Board.	11–12–93	G–S	4,000	N	I	11–01–93	04–01–99
ST94–921	Koch Gateway Pipeline Co.	City of Fairhope	11–12–93	G–S	6,862	N	I	11–01–93	04–01–99
ST94–922	Koch Gateway Pipeline Co.	Energy Services of Pensacola.	11–12–93	G–S	1,005	N	I	11–01–93	04–01–99
ST94–923	Koch Gateway Pipeline Co.	Conecuh-Monroe Counties Gas Dist.	11–12–93	G–S	5,161	N	I	11–01–93	04–01–99
ST94–924	Koch Gateway Pipeline Co.	City of Beaumont	11–12–93	G–S	1,509	N	I	11–01–93	04–01–97
ST94–925	Koch Gateway Pipeline Co.	Arkansas-Louisiana Gas Co.	11–12–93	G–S	51,561	N	I	11–01–93	04–01–99
ST94–926	Koch Gateway Pipeline Co.	City of Appleby Natural Gas • System.	11–12–93	G–S	6,072	N	I	11–01–93	04–01–97
ST94–927	Koch Gateway Pipeline Co.	City of Appleby Natural Gas System.	11–12–93	G–S	759	N	F	11–01–93	04–01–97
ST94–928	Koch Gateway Pipeline Co.	City of Alto	11–12–93	G–S	990	N	F	11–01–93	04–01–97
ST94–929	Koch Gateway Pipeline Co.	Willmut Gas & Oil Co.	11–12–93	G–S	18,032	N	I	11–01–93	04–01–99
ST94–930	Koch Gateway Pipeline Co.	City of Baldwin ..	11–12–93	G–S	946	N	I	11–01–93	04–01–97
ST94–931	Koch Gateway Pipeline Co.	City of Baldwin ..	11–12–93	G–S	54	N	F	11–01–93	04–01–97

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ST94–932	Koch Gateway Pipeline Co.	City of Atmore ...	11–12–93	G–S	2,620	N	I	11–01–93	04–01–99
ST94–933	Koch Gateway Pipeline Co.	City of Arnaudville.	11–12–93	G–S	1,000	N	I	11–01–93	04–01–97
ST94–934	Koch Gateway Pipeline Co.	City of Carencro	11–12–93	G–S	1,434	N	I	11–01–93	04–01–97
ST94–935	Texas Eastern Transmission Corp.	American Central Gas Marketing Co.	11–12–93	G–S	185,818	N	I	06–11–93	03–31–94
ST94–936	Texas Eastern Transmission Corp.	Coastal Gas Marketing Co.	11–12–93	G–S	100,000	N	I	06–11–93	03–31–94
ST94–937	Texas Eastern Transmission Corp.	Libra Marketing Co.	11–15–93	G–S	100,000	N	I	06–01–93	03–31–94
ST94–938	Texas Eastern Transmission Corp.	Marathon Oil Co	11–15–93	G–S	48,000	N	I	06–01–93	03–31–94
ST94–939	Texas Eastern Transmission Corp.	Woodward Marketing, Inc.	11–15–93	G–S	90,000	N	I	06–01–93	03–31–94
ST94–940	Texas Eastern Transmission Corp.	Amerada Hess Corp.	11–15–93	G–S	350,000	N	I	06–01–93	03–31–94
ST94–941	Texas Eastern Transmission Corp.	Amoco Energy Trading Corp.	11–15–93	G–S	1,000,000	N	I	06–04–93	03–31–94
ST94–942	Texas Eastern Transmission Corp.	Endevco Oil and Gas Co.	11–15–93	G–S	400,000	N	I	06–14–93	03–31–94
ST94–943	Texas Eastern Transmission Corp.	Arkla Energy Marketing Co.	11–15–93	G–S	700,000	N	I	08–04–93	03–31–94
ST94–944	Texas Eastern Transmission Corp.	Sonat Marketing Co.	11–15–93	G–S	25,000	N	I	06–01–93	03–31–94
ST94–945	Texas Eastern Transmission Corp.	MG Natural Gas Corp.	11–15–93	G–S	244,940	N	I	08–05–93	03–31–94
ST94–946	Texas Eastern Transmission Corp.	Yuma Gas Corp	11–15–93	G–S	25,000	N	I	06–11–93	03–31–94
ST94–947	Texas Eastern Transmission Corp.	Woodward Marketing, Inc.	11–15–93	G–S	27,000	N	I	07–14–93	03–31–94
ST94–948	Texas Eastern Transmission Corp.	CNG Trading Co	11–15–93	G–S	904,000	N	I	06–01–93	03–31–94
ST94–949	Texas Eastern Transmission Corp.	Citizens Gas Supply Corp.	11–15–93	G–S	2,590,000	N	I	09–10–93	03–31–94
ST94–950	Texas Eastern Transmission Corp.	Mobil Natural Gas Inc.	11–15–93	G–S	400,000	N	I	06–01–93	03–31–94
ST94–951	Texas Eastern Transmission Corp.	Tejas Power Corp.	11–15–93	G–S	293,000	N	I	06–26–93	03–31–94
ST94–952	Texas Eastern Transmission Corp.	Elf Aquitaine Operating, Inc.	11–15–93	G–S	50,000	N	I	06–01–93	01–01–00
ST94–953	Texas Eastern Transmission Corp.	Pemex Gas y Petroquimica Basica.	11–15–93	G–S	200,000	N	I	08–05–93	08–31–94
ST94–954	Texas Eastern Transmission Corp.	Energy Development Corp.	11–15–93	G–S	600,000	N	I	06–01–93	03–31–94
ST94–955	Texas Eastern Transmission Corp.	Olympic Fuels Co.	11–15–93	G–S	15,000	N	I	09–26–93	03–31–94

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ST94–956	Texas Eastern Transmission Corp.	James River Paper Co., Inc.	11–15–93	G–S	30,000	N	I	06–01–93	03–31–94
ST94–957	Texas Eastern Transmission Corp.	International Paper Co.	11–15–93	G–S	400,000	N	I	06–01–93	03–31–94
ST94–958	Texas Eastern Transmission Corp.	Woodward Marketing, Inc.	11–15–93	G–S	4,000	N	I	07–14–93	03–31–94
ST94–959	Texas Eastern Transmission Corp.	Enron Gas Marketing, Inc.	11–15–93	G–S	3,357,750	N	I	06–01–93	03–31–94
ST94–960	Texas Eastern Transmission Corp.	Aquila Energy Marketing Corp.	11–15–93	G–S	350,000	N	I	06–01–93	03–31–94
ST94–961	Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	11–15–93	G–S	1,359,335	N	I	09–01–93	05–30–94
ST94–962	Texas Eastern Transmission Corp.	Fina Natural Gas Co.	11–15–93	G–S	160,000	N	I	07–21–93	03–31–94
ST94–963	Texas Eastern Transmission Corp.	Panhandle Trading Co.	11–15–93	G–S	160,000	Y	I	07–01–93	03–31–94
ST94–964	Texas Eastern Transmission Corp.	Texas Southeastern Gas Co.	11–15–93	G–S	15,000	N	I	06–01–93	03–31–94
ST94–965	Texas Eastern Transmission Corp.	New Jersey Natural Gas Co.	11–15–93	G–S	788,604	N	I	06–01–93	05–30–94
ST94–966	Texas Eastern Transmission Corp.	New Jersey Natural Gas Co.	11–15–93	G–S	788,604	N	I	06–01–93	05–30–94
ST94–967	Texas Eastern Transmission Corp.	Direct Gas Supply Corp.	11–15–93	G–S	80,000	N	I	07–24–93	03–31–94
ST94–968	Texas Eastern Transmission Corp.	Entrade Corp	11–15–93	G–S	3,000,000	N	I	08–25–93	03–31–94
ST94–969	Texas Eastern Transmission Corp.	Exxon Corp	11–15–93	G–S	200,000	N	I	06–03–93	03–31–94
ST94–970	Texas Eastern Transmission Corp.	Woodward Marketing, Inc.	11–15–93	G–S	10,000	N	I	07–14–93	03–31–94
ST94–971	Texas Eastern Transmission Corp.	Texaco Gas Marketing, Inc.	11–15–93	G–S	339,000	N	I	07–02–93	03–31–94
ST94–972	Texas Eastern Transmission Corp.	North Jersey Energy Associates.	11–15–93	G–S	75,000	N	I	06–01–93	05–30–94
ST94–973	Texas Eastern Transmission Corp.	Oryx Gas Marketing, L.P.	11–15–93	G–S	185,250	N	I	06–16–93	03–31–94
ST94–974	Texas Eastern Transmission Corp.	Northeast Energy Associates.	11–15–93	G–S	150,000	N	I	09–01–93	05–30–94
ST94–975	Koch Gateway Pipeline Co.	City of De Quincy.	11–16–93	G–S	2,876	N	I	11–01–93	04–01–97
ST94–976	Sea Robin Pipeline Co.	Superior Natural Gas Co.	11–15–93	G–S	6,258	N	F	11–01–93	03–31–94
ST94–977	Sea Robin Pipeline Co.	Associated Natural Gas, Inc.	11–15–93	G–S	75,000	N	I	11–01–93	Indef.
ST94–978	Williston Basin Inter. P/L Co.	Interenergy Corp	11–15–93	G–S	150	Y	F	10–15–93	10–13–94
ST94–979	K N Interstate Gas Trans. Co.	Associated Natural Gas, Inc.	11–15–93	G–S	100,000	N	I	10–01–93	Indef.
ST94–980	K N Interstate Gas Trans. Co.	Plains Petroleum Operating Co.	11–15–93	G–S	50,000	N	I	10–01–93	Indef.

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ST94–981	Panhandle Eastern Pipe Line Co.	Gaz Metropolitain & Co., L.P.	11–15–93	G–S	100,000	N	I	10–24–93	10–31–98
ST94–982	Panhandle Eastern Pipe Line Co.	Catex Energy, Inc.	11–15–93	G–S	220,000	N	I	10–30–93	03–31–98
ST94–983	Florida Gas Transmission Co.	Hardee Power, L.P..	11–16–93	G–S	8,000	N	F	10–17–93	10–25–93
ST94–984	Tennessee Gas Pipeline Co.	Bowater, Inc	11–16–93	G–S	4,079	N	F	11–01–93	Indef.
ST94–985	Tennessee Gas Pipeline Co.	Jefferson/Cocke Co.	11–16–93	G–S	6,579	N	F	11–01–93	Indef.
ST94–986	Tennessee Gas Pipeline Co.	Sevier County Utility District.	11–16–93	G–S	4,166	N	F	11–01–93	Indef.
ST94–987	Tennessee Gas Pipeline Co.	City of Lawrenceburg.	11–16–93	G–S	2,271	N	F	11–01–93	Indef.
ST94–988	Tennessee Gas Pipeline Co.	Dunlap Gas System.	11–16–93	G–S	2,763	N	F	11–01–93	Indef.
ST94–989	Tennessee Gas Pipeline Co.	Madisonville Gas System.	11–16–93	G–S	1,265	N	F	11–01–93	Indef.
ST94–990	Tennessee Gas Pipeline Co.	Monsanto Co	11–16–93	G–S	152	N	F	11–01–93	Indef.
ST94–991	Tennessee Gas Pipeline Co.	Cargill, Inc	11–16–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–992	Tennessee Gas Pipeline Co.	Southern Indiana Gas & Electric Co.	11–16–93	G–S	75,000	N	I	11–01–93	Indef.
ST94–993	Tennessee Gas Pipeline Co.	Houston Pipeline Co.	11–16–93	G–S	1,000	N	I	10–23–93	Indef.
ST94–994	Valero Transmission, L.P.	Transwestern Pipeline Co.	11–16–93	C	25,000	N	I	11–01–93	Indef.
ST94–995	Valero Transmission, L.P.	El Paso Natural Gas Co.	11–16–93	C	20,000	N	I	10–30–93	Indef.
ST94–996	Koch Gateway Pipeline Co.	Pensacola Gas Division.	11–16–93	G–S	46,440	N	I	11–01–93	04–01–99
ST94–997	Koch Gateway Pipeline Co.	City of De Quincy.	11–16–93	G–S	124	N	F	11–01–93	04–01–97
ST94–998	Koch Gateway Pipeline Co.	City of Denham Springs.	11–16–93	G–S	5,800	N	I	11–01–93	04–01–97
ST94–999	Koch Gateway Pipeline Co.	City of Chester ..	11–16–93	G–S	166	N	I	11–01–93	04–01–97
ST94–1000	Koch Gateway Pipeline Co.	City of Chester ..	11–16–93	G–S	249	N	F	11–01–93	04–01–97
ST94–1001	Koch Gateway Pipeline Co.	City of Chireno ..	11–16–93	G–S	1,955	N	F	11–01–93	04–01–97
ST94–1002	Koch Gateway Pipeline Co.	City of Chireno ..	11–16–93	G–S	1,304	N	I	11–01–93	04–01–97
ST94–1003	Koch Gateway Pipeline Co.	City of Easton	11–16–93	G–S	238	N	I	11–01–93	04–01–97
ST94–1004	Koch Gateway Pipeline Co.	Duplessis Gas & Fuel Co., Inc.	11–16–93	G–S	492	N	I	11–01–93	04–01–97
ST94–1005	Williams Natural Gas Co.	Western Resources, Inc.	11–16–93	G–S	386,496	N	F	10–08–93	10–01–94
ST94–1006	Williams Natural Gas Co.	Western Resources, Inc.	11–16–93	G–S	728,136	N	F	10–15–93	10–01–94
ST94–1007	Williams Natural Gas Co.	United Cities Gas Co.	11–16–93	G–S	7,506	N	F	10–23–93	Indef.
ST94–1008	Williams Natural Gas Co.	United Cities Gas Co.	11–16–93	G–S	4,305	N	F	10–23–93	Indef.
ST94–1009	Williams Natural Gas Co.	United Cities Gas Co.	11–16–93	G–S	83,126	N	F	10–23–93	Indef.
ST94–1010	Williams Natural Gas Co.	Western Resources, Inc.	11–16–93	G–S	18,201	N	F	10–08–93	Indef.
ST94–1011	Williams Natural Gas Co.	United Cities Gas Co.	11–16–93	G–S	19,063	N	F	10–23–93	Indef.
ST94–1012	Williams Natural Gas Co.	Missouri Public Service.	11–16–93	G–S	18,317	N	F	10–23–93	Indef.
ST94–1013	Williams Natural Gas Co.	Missouri Public Service.	11–16–93	G–S	6,435	N	F	10–23–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–1014	Williams Natural Gas Co.	Missouri Public Service.	11–16–93	G–S	895	N	F	10–23–93	Indef.
ST94–1015	Williams Natural Gas Co.	Missouri Public Service.	11–16–93	G–S	3,897	N	F	10–23–93	Indef.
ST94–1016	Williams Natural Gas Co.	Missouri Public Service.	11–16–93	G–S	18,122	N	F	10–23–93	Indef.
ST94–1017	Williams Natural Gas Co.	Western Resources, Inc.	11–16–93	G–S	21,489	N	F	10–15–93	Indef.
ST94–1018	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	11–17–93	C	5,000	N	I	11–01–93	Indef.
ST94–1019	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	11–17–93	C	30,000	N	I	11–01–93	Indef.
ST94–1020	Northern Illinois Gas Co.	Associated Natural Gas, Inc.	11–17–93	G–ST	113,408	N	I	11–01–93	11–20–93
ST94–1021	Northern Illinois Gas Co.	Valero Gas Marketing, L.P.	11–17–93	G–ST	27,000	N	I	11–01–93	11–07–93
ST94–1022	Northern Illinois Gas Co.	Rhibro Energy	11–17–93	G–ST	10,000	N	I	11–09–93	11–30–93
ST94–1023	Acadian Gas Pipeline System.	Nat. Gas P/L Co. of America, et al.	11–17–93	C	50,000	N	I	10–15–93	Indef.
ST94–1024	Northern Illinois Gas Co.	Eastex Hydrocarbons, Inc.	11–17–93	G–ST	5,175	N	I	11–09–93	11–30–93
ST94–1025	Texas Eastern Transmission Corp.	United Cities Gas Co.	11–17–93	G–S	1,500	N	I	10–30–93	03–31–06
ST94–1026	Texas Eastern Transmission Corp.	Kerr-McGee Corp.	11–17–93	G–S	317,000	N	I	10–30–93	03–31–94
ST94–1027	Texas Eastern Transmission Corp.	City of Hamilton .	11–17–93	G–S	20,000	N	I	10–30–93	03–31–94
ST94–1028	Texas Eastern Transmission Corp.	United Cities Gas Co.	11–17–93	G–S	10,000	N	I	10–30–93	03–31–94
ST94–1029	Texas Eastern Transmission Corp.	Yankee Gas Services Co.	11–17–93	G–S	3,285	N	I	10–31–93	04–15–00
ST94–1030	Texas Eastern Transmission Corp.	Yankee Gas Services Co.	11–17–93	G–S	6,401	N	I	10–31–93	03–31–06
ST94–1031	Llano, Inc	El Paso Natural Gas Co., et al.	11–17–93	C	2,000	N	F/I	11–01–93	Indef.
ST94–1032	KN Interstate Gas Trans. Co.	Hastings Utilities	11–17–93	G–S	20,831	N	F	10–01–93	Indef.
ST94–1033	KN Interstate Gas Trans. Co.	Hastings Utilities	11–17–93	G–S	5,000	N	F	10–01–93	09–30–94
ST94–1034	KN Interstate Gas Trans. Co.	Hastings Utilities	11–17–93	G–S	20,000	N	I	10–01–93	Indef.
ST94–1035	Williams Natural Gas Co.	Gedi, Inc	11–17–93	G–S	10,000	N	I	11–04–93	Indef.
ST94–1036	Williams Natural Gas Co.	Rangeline Corp .	11–17–93	G–S	8,000	N	F	11–01–93	11–01–94
ST94–1037	Natural Gas P/L Co. of America.	Central Illinois Light Co.	11–17–93	B	13,000	N	F	11–01–93	10–31–96
ST94–1038	Natural Gas P/L Co. of America.	Brooklyn Interstate Nat. Gas Corp.	11–17–93	G–S	26,000	N	F	11–01–93	11–30–93
ST94–1039	Natural Gas P/L Co. of America.	Archer-Daniels-Midland Co.	11–17–93	G–S	10,000	N	F	11–01–93	03–31–96
ST94–1040	Truckline Gas Co	City of Hazen	11–17–93	G–S	24,090	N	F	11–01–93	Indef.
ST94–1041	Truckline Gas Co	Laclede Gas Co	11–17–93	G–S	45,695	N	F	11–01–93	Indef.
ST94–1042	Truckline Gas Co	Harcros Pigments, Inc.	11–17–93	G–S	68	N	F	11–01–93	Indef.
ST94–1043	Truckline Gas Co	City of Potosi	11–17–93	G–S	210	N	F	11–01–93	Indef.
ST94–1044	Truckline Gas Co	City of Augusta ..	11–17–93	G–S	94	N	F	11–01–93	Indef.
ST94–1045	Truckline Gas Co	Granite City Steel Division.	11–17–93	G–S	1,446	N	F	11–01–93	Indef.

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ST94–1046	Truckline Gas Co	Laroche Industries.	11–17–93	G–S	58	N	F	11–01–93	Indef.
ST94–1047	Truckline Gas Co	Mississippi Lime Co.	11–17–93	G–S	284	N	F	11–01–93	Indef.
ST94–1048	Truckline Gas Co	City of Des Arc ..	11–17–93	G–S	51	N	F	11–01–93	Indef.
ST94–1049	Truckline Gas Co	Laclede Gas Co	11–17–93	G–S	23,614	N	F	11–01–93	Indef.
ST94–1050	Truckline Gas Co	Rheox, Inc	11–17–93	G–S	16	N	F	11–01–93	Indef.
ST94–1051	Truckline Gas Co	City of Bismarck	11–17–93	G–S	32	N	F	11–01–93	Indef.
ST94–1052	Truckline Gas Co	Mississippi Lime Co.	11–17–93	G–S	141	N	F	11–01–93	Indef.
ST94–1053	Truckline Gas Co	City of Waterloo .	11–17–93	G–S	70	N	F	11–01–93	Indef.
ST94–1054	Truckline Gas Co	Cerro Copper Products Co.	11–17–93	G–S	212	N	F	11–01–93	Indef.
ST94–1055	Truckline Gas Co	United Cities Gas Co.	11–17–93	G–S	27	N	F	11–01–93	Indef.
ST94–1056	Truckline Gas Co	Larouche Industries.	11–17–93	G–S	29	N	F	11–01–93	Indef.
ST94–1057	Truckline Gas Co	Village of Dupo ..	11–17–93	G–S	55	N	F	11–01–93	Indef.
ST94–1058	Truckline Gas Co	American Steel Foundries Division.	11–17–93	G–S	70	N	F	11–01–93	Indef.
ST94–1059	Truckline Gas Co	City of Red Bud .	11–17–93	G–S	52	N	F	11–01–93	Indef.
ST94–1060	Truckline Gas Co	American Steel Foundries Division.	11–17–93	G–S	36	N	F	11–01–93	Indef.
ST94–1061	Truckline Gas Co	United Cities Gas Co.	11–17–93	G–S	54	N	F	11–01–93	Indef.
ST94–1062	Truckline Gas Co	Cerro Copper Products Co.	11–17–93	G–S	107	N	F	11–01–93	Indef.
ST94–1063	Truckline Gas Co	City of Augusta ..	11–17–93	G–S	47	N	F	11–01–93	Indef.
ST94–1064	Truckline Gas Co	Natural Gas Improvement District No. 2.	11–17–93	G–S	24	N	F	11–01–93	Indef.
ST94–1065	Truckline Gas Co	Arkansas Louisiana Gas Co.	11–17–93	G–S	1,054	N	F	11–01–93	Indef.
ST94–1066	Truckline Gas Co	City of Red Bud .	11–17–93	G–S	105	N	F	11–01–93	Indef.
ST94–1067	Truckline Gas Co	City of Bismarck	11–17–93	G–S	65	N	F	11–01–93	Indef.
ST94–1068	Truckline Gas Co	City of Chester ..	11–17–93	G–S	239	N	F	11–01–93	Indef.
ST94–1069	Truckline Gas Co	Arkansas Louisiana Gas Co.	11–17–93	G–S	2,111	N	F	11–01–93	Indef.
ST94–1070	Trunkline Gas Co.	Rheox, Inc	11–17–93	G–S	32	N	F	11–15–93	Indef.
ST94–1071	Trunkline Gas Co.	Spectrulite Consortium, Inc.	11–17–93	G–S	195	N	F	11–01–93	Indef.
ST94–1072	Trunkline Gas Co.	City of Potosi	11–17–93	G–S	105	N	F	11–01–93	Indef.
ST94–1073	Trunkline Gas Co.	Spectrulite Consortium, Inc.	11–17–93	G–S	97	N	F	11–01–93	Indef.
ST94–1074	Trunkline Gas Co.	City of Des Arc ..	11–17–93	G–S	27	N	F	11–01–93	Indef.
ST94–1075	Trunkline Gas Co.	Laclede Steel Co	11–17–93	G–S	1,487	N	F	11–01–93	Indef.
ST94–1076	Trunkline Gas Co.	City of Chester ..	11–17–93	G–S	119	N	F	11–01–93	Indef.
ST94–1077	Trunkline Gas Co.	City of Hazen	11–17–93	G–S	32	N	F	11–01–93	Indef.
ST94–1078	Trunkline Gas Co.	Harcros Pigments, Inc.	11–17–93	G–S	33	N	F	11–01–93	Indef.
ST94–1079	Trunkline Gas Co.	Granit City Steel Division.	11–17–93	G–S	723	N	F	11–01–93	Indef.
ST94–1080	Trunkline Gas Co.	Village of Dupo ..	11–17–93	G–S	107	N	F	11–01–93	Indef.
ST94–1081	Trunkline Gas Co.	Big River Zinc Co.	11–17–93	G–S	50	N	F	11–01–93	Indef.
ST94–1082	Trunkline Gas Co.	Natural Gas Improvement Dist. No. 2.	11–17–93	G–S	47	N	F	11–01–93	Indef.
ST94–1083	Westar Transmission Co.	Williams Natural Gas Co.	11–18–93	C	20,000	N	I	11–01–93	Indef.
ST94–1084	Westar Transmission Co.	Associated Natural Gas Co.	11–18–93	G–S	108	N	I	11–01–93	Indef.

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ST94–1085	Trunkline Gas Co.	Associated Natural Gas Co.	11–18–93	G–S	217	N	F	11–01–93	Indef.
ST94–1086	Trunkline Gas Co.	Laclede Gas Co	11–18–93	G–S	50,000	N	F	11–01–93	Indef.
ST94–1087	Trunkline Gas Co.	Union Pacific Corp.	11–18–93	G–S	1	N	F	11–01–93	Indef.
ST94–1088	Trunkline Gas Co.	Union Pacific Corp.	11–18–93	G–S	2	N	F	11–01–93	Indef.
ST94–1089	Trunkline Gas Co.	Union Pacific Corp.	11–18–93	G–S	1,444	N	F	11–01–93	Indef.
ST94–1090	Trunkline Gas Co.	Illinois Power Co	11–18–93	G–S	3,611	N	F	11–01–93	Indef.
ST94–1091	Trunkline Gas Co.	Illinois Power Co	11–18–93	G–S	7,220	N	F	11–01–93	Indef.
ST94–1092	Trunkline Gas Co.	Union Electric Co	11–18–93	G–S	723	N	F	11–01–93	Indef.
ST94–1093	Trunkline Gas Co.	Union Gas Co. of Arkansas, Inc.	11–18–93	G–S	36	N	F	11–01–93	Indef.
ST94–1094	Trunkline Gas Co.	Union Gas Co. of Arkansas, Inc.	11–18–93	G–S	17	N	F	11–01–93	Indef.
ST94–1095	Trunkline Gas Co.	Doe Run Co	11–18–93	G–S	159	N	F	11–01–93	Indef.
ST94–1096	Trunkline Gas Co.	Doe Run Co	11–18–93	G–S	80	N	F	11–01–93	Indef.
ST94–1097	Trunkline Gas Co.	Brouk Co	11–18–93	G–S	4	N	F	11–01–93	Indef.
ST94–1098	Trunkline Gas Co.	Brouk Co	11–18–93	G–S	1	N	F	11–01–93	Indef.
ST94–1099	Trunkline Gas Co.	Big River Zinc Co.	11–18–93	G–S	25	N	F	11–01–93	Indef.
ST94–1100	Northern Natural Gas Co.	Madison Gas and Electric Co.	11–18–93	G–S	34,024	N	F	10–01–93	10–31–02
ST94–1101	Northern Natural Gas Co.	Valero Gas Marketing, L.P.	11–18–93	G–S	200,000	N	F	10–01–93	10–31–02
ST94–1102	Northern Natural Gas Co.	Minnegasco, Div. of Arkla, Inc.	11–18–93	G–S	650	N	F	11–01–93	10–31–03
ST94–1103	Northern Natural Gas Co.	David M. Munson, Inc.	11–18–93	G–S	2,000	N	F	11–01–93	Indef.
ST94–1104	Transwestern Pipeline Co.	Richardson Products Co.	11–18–93	G–S	56,000	N	F	11–01–93	11–30–93
ST94–1105	Transwestern Pipeline Co.	NGC Transportation Inc.	11–18–93	G–S	12,000	N	F	11–01–93	11–30–93
ST94–1106	Transwestern Pipeline Co.	Anthem Energy Co., L.P.	11–18–93	G–S	8,500	N	F	11–01–93	11–30–93
ST94–1107	Transwestern Pipeline Co.	Bridge Gas U.S.A.	11–18–93	G–S	4,400	N	F	11–01–93	11–30–93
ST94–1108	Transwestern Pipeline Co.	GPM Gas Corp ..	11–18–93	G–S	9,000	N	F	11–01–93	11–30–93
ST94–1109	Transwestern Pipeline Co.	GPM Gas Corp ..	11–18–93	G–S	10,000	N	F	11–01–93	11–30–93
ST94–1110	Transwestern Pipeline Co.	NGC Transportation, Inc.	11–18–93	G–S	20,450	N	F	11–01–93	11–30–93
ST94–1111	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	11–18–93	G–S	65,630	A	F	11–01–93	11–30–93
ST94–1112	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	11–18–93	G–S	33,300	A	F	11–01–93	11–30–93
ST94–1113	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	11–18–93	G–S	40,910	A	F	11–01–93	11–30–93
ST94–1114	Transwestern Pipeline Co.	Anthem Energy Co.	11–18–93	G–S	16,410	N	F	11–01–93	11–30–93
ST94–1115	Transwestern Pipeline Co.	NGC Transportation Inc.	11–18–93	G–S	9,000	N	F	11–07–93	11–30–93
ST94–1116	Transwestern Pipeline Co.	NGC Transportation Inc.	11–18–93	G–S	10,000	N	F	11–01–93	11–30–93
ST94–1117	Columbia Gulf Transmission Co.	Eastex Gas Transmission Co.	11–18–93	G–S	60,000	N	I	10–21–93	Indef.
ST94–1118	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co.	11–18–93	G–S	2,841	N	F	10–30–93	10–31–93

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ST94–1119	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–18–93	G–S	70,444	A	F	11–01–93	03–21–98
ST94–1120	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–18–93	G–S	70,444	A	F	11–01–93	03–21–98
ST94–1121	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–18–93	G–S	262	A	F	11–01–93	03–21–98
ST94–1122	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–18–93	G–S	87	A	F	11–01–93	03–21–98
ST94–1123	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–18–93	G–S	120,000	N	I	11–01–93	Indef.
ST94–1124	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–18–93	G–S	87	A	F	11–01–93	03–21–98
ST94–1125	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–18–93	G–S	44	A	F	11–01–93	03–21–98
ST94–1126	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–18–93	G–S	87	A	F	11–01–93	03–21–98
ST94–1127	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–18–93	G–S	87	A	F	11–01–93	03–21–98
ST94–1128	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–18–93	G–S	262	A	F	11–01–93	03–21–98
ST94–1129	Transcontinental Gas P/L Corp.	City of Monroe ...	11–18–93	G–S	200	N	F	11–01–93	07–31–01
ST94–1130	Transcontinental Gas P/L Corp.	City of Social Circle.	11–18–93	G–S	1,145	N	F	11–01–93	03–31–06
ST94–1131	Transcontinental Gas P/L Corp.	City of Toccoa ...	11–18–93	G–S	5,000	N	F	11–01–93	03–31–06
ST94–1132	Transcontinental Gas P/L Corp.	City of Royston ..	11–18–93	G–S	2,030	N	F	11–01–93	03–31–06
ST94–1133	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co.	11–18–93	G–S	5,996	N	F	10–30–93	10–31–93
ST94–1134	Transcontinental Gas P/L Corp.	Sonat Marketing Co.	11–18–93	G–S	600,000	N	I	11–01–93	Indef.
ST94–1135	Transcontinental Gas P/L Corp.	Clinton-Newberry Natural Gas Auth.	11–18–93	G–S	100	N	F	10–30–93	10–31–93
ST94–1136	Transcontinental Gas P/L Corp.	City of Laurens ..	11–18–93	G–S	100	N	F	10–30–93	10–31–93
ST94–1137	Transcontinental Gas P/L Corp.	Brooklyn Union Gas Co.	11–18–93	G–S	15,336	N	F	10–30–93	10–31–93
ST94–1138	Transcontinental Gas P/L Corp.	Cargill, Inc	11–18–93	G–S	1,600,000	N	I	11–01–93	Indef.
ST94–1139	Transcontinental Gas P/L Corp.	City of Hartwell ..	11–18–93	G–S	3,525	N	F	11–01–93	03–31–06
ST94–1140	Transcontinental Gas P/L Corp.	City of Elberton ..	11–18–93	G–S	3,034	N	F	11–01–93	03–31–06
ST94–1141	Transcontinental Gas P/L Corp.	City of Covington	11–18–93	G–S	5,000	N	F	11–01–93	03–31–06
ST94–1142	Transcontinental Gas P/L Corp.	City of Commerce.	11–18–93	G–S	2,910	N	F	11–01–93	03–31–06
ST94–1143	Transcontinental Gas P/L Corp.	City of Buford	11–18–93	G–S	300	N	F	11–01–93	07–31–01
ST94–1144	Northern Natural Gas Co.	Sioux Pointe, Inc	11–19–93	G–S	3,000	N	I	10–21–93	Indef.
ST94–1145	Northern Natural Gas Co.	Northwestern Public Service Co.	11–19–93	G–S	10,000	N	I	09–01–93	Indef.
ST94–1146	Northern Natural Gas Co.	Midland Marketing Corp.	11–19–93	G–S	50,000	N	I	08–27–93	Indef.
ST94–1147	Northern Natural Gas Co.	Oxy USA, Inc	11–19–93	G–S	100,000	N	I	02–01–93	Indef.

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ST94–1148	Northern Natural Gas Co.	Oxy USA, Inc	11–19–93	G–S	100,000	N	I	01–01–93	Indef.
ST94–1149	Natural Gas P/L Co. of America.	Union Electric Co	11–19–93	B	10,000	N	I	04–01–87	Indef.
ST94–1150	Natural Gas P/L Co. of America.	O&R Energy, Inc	11–19–93	G–S	10,000	N	F	04–04–93	11–30–93
ST94–1151	Natural Gas P/L Co. of America.	Olympic Fuels Co.	11–19–93	G–S	4,907	N	F	11–01–93	11–30–93
ST94–1152	Williston Basin Inter P/L Co.	Rainbow Gas Co	11–19–93	G–S	354,684	A	I	10–21–93	07–31–94
ST94–1153	ONG Transmission Co.	Ozark Pipeline Co.	11–19–93	C	20,000	N	I	10–29–93	Indef.
ST94–1154	ONG Transmission Co.	Caprock Pipeline Co.	11–19–93	C	50,000	N	I	11–02–93	Indef.
ST94–1155	ONG Transmission Co.	Caprock Pipeline Co.	11–19–93	C	10,000	N	I	11–05–93	Indef.
ST94–1156	ONG Transmission Co.	Caprock Pipeline Co.	11–19–93	C	50,000	N	I	11–03–93	Indef.
ST94–1157	Trunkline Gas Co.	Ni-Tex, Inc	11–19–93	G–S	10,350	N	I	11–01–93	Indef.
ST94–1158	Trunkline Gas Co.	MRT Energy Marketing Co.	11–19–93	G–S	9,615	N	I	11–01–93	Indef.
ST94–1159	Trunkline Gas Co.	Midland Cogeneration Venture, L.P.	11–19–93	G–S	31,050	N	F	11–01–93	Indef.
ST94–1160	Trunkline Gas Co.	Michigan Gas Utilities.	11–19–93	G–S	1,500	N	F	11–01–93	Indef.
ST94–1161	Trunkline Gas Co.	Stand Energy Corp.	11–19–93	G–S	1,011	N	F	11–01–93	Indef.
ST94–1162	Trunkline Gas Co.	Public Service Electric & Gas.	11–19–93	G–S	13,531	N	F	11–01–93	Indef.
ST94–1163	Trunkline Gas Co.	UGI Utilities, Inc	11–19–93	G–S	10,408	N	F	11–01–93	Indef.
ST94–1164	Trunkline Gas Co.	Miami Valley Resources, Inc.	11–19–93	G–S	9,098	N	F	11–01–93	Indef.
ST94–1165	Algonquin Gas Transmission Co.	Boston Gas Co ..	11–22–93	B	21,394	N	F	11–01–93	Indef.
ST94–1166	Algonquin Gas Transmission Co.	Southern Connecticut Gas Co.	11–22–93	B	4,922	N	F	11–01–93	Indef.
ST94–1167	Algonquin Gas Transmission Co.	Bay State Gas Co.	11–22–93	B	7,236	N	I	11–01–93	Indef.
ST94–1168	Algonquin Gas Transmission Co.	Texas Eastern Transmission Corp.	11–22–93	G–S	7,522	N	I	11–01–93	Indef.
ST94–1169	Algonquin Gas Transmission Co.	CNG Gas Services.	11–22–93	B	116	N	F	11–01–93	Indef.
ST94–1170	Algonquin Gas Transmission Co.	CNG Gas Services.	11–22–93	B	762	N	F	11–01–93	Indef.
ST94–1171	Algonquin Gas Transmission Co.	Colonial Gas Co	11–22–93	B	1,951	N	F	11–01–93	Indef.
ST94–1172	Algonquin Gas Transmission Co.	Colonial Gas Co	11–22–93	B	972	N	F	11–01–93	Indef.
ST94–1173	Algonquin Gas Transmission Co.	Colonial Gas Co	11–22–93	B	577	N	F	11–01–93	Indef.
ST94–1174	Algonquin Gas Transmission Co.	Colonial Gas Co	11–22–93	B	3,000	N	F	11–01–93	Indef.
ST94–1175	Midwestern Gas Transmission Co.	CMS Gas Marketing.	11–22–93	G–S	50,000	N	I	11–01–93	Indef.
ST94–1176	Trunkline Gas Co.	Brooklyn Interstate Natural Gas Co.	11–22–93	G–S	51,750	N	I	11–05–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–1177	Trunkline Gas Co.	Pennzoil Gas Marketing Co.	11–22–93	G–S	1,500	N	I	11–01–93	Indef.
ST94–1178	Trunkline Gas Co.	Associated Natural Gas, Inc.	11–22–93	G–S	20,000	N	I	11–01–93	Indef
ST94–1179	Trunkline Gas Co.	Victoria Gas Corp.	11–22–93	G–S	25,000	N	I	11–01–93	Indef.
ST94–1180	Trunkline Gas Co.	Miami Valley Resources, Inc.	11–22–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–1181	Trunkline Gas Co.	Illinois Power Co	11–22–93	G–S	15,000	N	I	11–01–93	Indef.
ST94–1182	Questar Pipeline Co.	Fuel Resources Development.	11–22–93	G–S	2,300	N	I	12–04–92	Indef.
ST94–1183	Questar Pipeline Co.	Industrial Gas Resource Corp.	11–22–93	G–S	15,000	N	I	01–01–93	Indef.
ST94–1184	Questar Pipeline Co.	Mountain Fuel Supply Co.	11–22–93	B	3,000	N	I	04–29–93	Indef.
ST94–1185	Questar Pipeline Co.	Mountain Fuel Supply Co.	11–22–93	B	27,820	N	I	08–01–92	Indef.
ST94–1186	Questar Pipeline Co.	Bonneville Fuels Marketing Corp.	11–22–93	G–S	15,200	N	I	06–29–92	Indef.
ST94–1187	Koch Gateway Pipeline Co.	St. James Parish Utilities.	11–22–93	G–S	109	N	F	11–01–93	04–01–97
ST94–1188	Koch Gateway Pipeline Co.	Mississippi Valley Gas Co..	11–22–93	G–S	775,000	N	I	11–01–93	04–01–99
ST94–1189	Koch Gateway Pipeline Co.	City of Simmesport.	11–22–93	G–S	657	N	I	11–01–93	04–01–97
ST94–1190	Koch Gateway Pipeline Co.	ST. John The Baptist Parish Util.	11–22–93	G–S	46,972	N	I	11–01–93	04–01–97
ST94–1191	Koch Gateway Pipeline Co.	City of Washington.	11–22–93	G–S	12,410	N	F	11–01–93	04–01–97
ST94–1192	Koch Gateway Pipeline Co.	City of Westlake	11–22–93	G–S	4,000	N	I	11–01–93	04–01–97
ST94–1193	Koch Gateway Pipeline Co.	City of Waveland	11–22–93	G–S	9,944	N	I	11–01–93	04–01–97
ST94–1194	Koch Gateway Pipeline Co.	City of Washington.	11–22–93	G–S	1,066	N	I	11–01–93	04–01–97
ST94–1195	Koch Gateway Pipeline Co.	City of Oberlin ...	11–22–93	G–S	760	N	I	11–01–93	04–01–97
ST94–1196	Koch Gateway Pipeline Co.	City of Walnut Grove.	11–22–93	G–S	1,683	N	I	11–01–93	04–01–97
ST94–1197	Koch Gateway Pipeline Co.	City of Gueydan	11–22–93	G–S	1,677	N	I	11–01–93	04–01–97
ST94–1198	Koch Gateway Pipeline Co.	City of Port Gibson.	11–22–93	G–S	4,187	N	I	11–01–93	04–01–97
ST94–1199	Koch Gateway Pipeline Co.	Stevens Utilities .	11–22–93	G–S	385	N	I	11–01–93	04–01–97
ST94–1200	Koch Gateway Pipeline Co.	City of Sunset	11–22–93	G–S	621	N	I	11–01–93	04–01–97
ST94–1201	Koch Gateway Pipeline Co.	Parish of Terrebonne-Police Jury.	11–22–93	G–S	1,314	N	I	11–01–93	04–01–97
ST94–1202	Koch Gateway Pipeline Co.	City of Pineland .	11–22–93	G–S	735	N	I	11–01–93	04–01–97
ST94–1203	Koch Gateway Pipeline Co.	City of Reklaw ...	11–22–93	G–S	716	N	I	11–01–93	04–01–97
ST94–1204	Koch Gateway Pipeline Co.	Union Gas Co	11–22–93	G–S	1,263	N	I	11–01–93	04–01–97
ST94–1205	Koch Gateway Pipeline Co.	South Rusk County Gas Co. Inc.	11–22–93	G–S	219	N	I	11–01–93	04–01–97
ST94–1206	Koch Gateway Pipeline Co.	Transloulsiana Gas Co.	11–22–93	G–S	12,073	N	I	11–01–93	04–01–97
ST94–1207	Koch Gateway Pipeline Co.	City of Walker	11–22–93	G–S	2,600	N	I	11–01–93	04–01–97
ST94–1208	Koch Gateway Pipeline Co.	Polaris Pipeline Corp.	11–22–93	G–S	5,375	N	I	11–01–93	04–01–97
ST94–1209	Koch Gateway Pipeline Co.	South Coast Gas Co., Inc.	11–22–93	G–S	18,210	N	I	11–01–93	04–01–97

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ST94–1210	Koch Gateway Pipeline Co.	City of Delcambre.	11–22–93	G–S	5,558	N	I	11–01–93	04–01–97
ST94–1211	Koch Gateway Pipeline Co.	City of Huxley	11–22–93	G–S	1,718	N	I	11–01–93	04–01–97
ST94–1212	Koch Gateway Pipeline Co.	City of Estherwood.	11–22–93	G–S	12	N	F	11–01–93	04–01–97
ST94–1213	Koch Gateway Pipeline Co.	Woodsboro Natural Gas Corp.	11–22–93	G–S	594	N	I	11–01–93	04–01–97
ST94–1214	Koch Gateway Pipeline Co.	City of Kaplan	11–22–93	G–S	2,800	N	I	11–01–93	04–01–97
ST94–1215	Koch Gateway Pipeline Co.	St. Amant Gas Co., Inc.	11–22–93	G–S	1,218	N	I	11–01–93	04–01–97
ST94–1216	Koch Gateway Pipeline Co.	City of Iota	11–22–93	G–S	620	N	I	11–01–93	04–01–97
ST94–1217	Koch Gateway Pipeline Co.	City of Montgomery.	11–22–93	G–S	4,357	N	I	11–01–93	04–01–97
ST94–1218	Koch Gateway Pipeline Co.	City of Kentwood	11–22–93	G–S	12,688	N	I	11–01–93	04–01–97
ST94–1219	Koch Gateway Pipeline Co.	City of Joaquin ..	11–22–93	G–S	306	N	I	11–01–93	04–01–97
ST94–1220	Koch Gateway Pipeline Co.	City of Easterwood.	11–22–93	G–S	313	N	I	11–01–93	04–01–97
ST94–1221	Koch Gateway Pipeline Co.	City of Huntington.	11–22–93	G–S	391	N	I	11–01–93	04–01–97
ST94–1222	Koch Gateway Pipeline Co.	United States of America-Ft. Polk.	11–22–93	G–S	800	N	I	11–01–93	04–01–97
ST94–1223	Koch Gateway Pipeline Co.	City of Gary	11–22–93	G–S	700	N	I	11–01–93	04–01–97
ST94–1224	Koch Gateway Pipeline Co.	City of Vicksburg	11–22–93	G–S	77,500	N	I	11–01–93	04–01–97
ST94–1225	Koch Gateway Pipeline Co.	City of Scott	11–22–93	G–S	842	N	I	11–01–93	04–01–97
ST94–1226	Koch Gateway Pipeline Co.	City of Glenmora	11–22–93	G–S	600	N	I	11–01–93	04–01–97
ST94–1227	Koch Gateway Pipeline Co.	City of Flomaton	11–22–93	G–S	687	N	I	11–01–93	04–01–97
ST94–1228	Koch Gateway Pipeline Co.	City of Scott	11–22–93	G–S	33	N	F	11–01–93	04–01–97
ST94–1229	Koch Gateway Pipeline Co.	City of Gary	11–22–93	G–S	1,049	N	F	11–01–93	04–01–97
ST94–1230	Koch Gateway Pipeline Co.	City of Joaquin ..	11–22–93	G–S	460	N	F	11–01–93	04–01–97
ST94–1231	Koch Gateway Pipeline Co.	City of Madisonville.	11–22–93	G–S	1,356	N	I	11–01–93	04–01–97
ST94–1232	Koch Gateway Pipeline Co.	City of Garrison .	11–22–93	G–S	4,404	N	I	11–01–93	04–01–97
ST94–1233	Koch Gateway Pipeline Co.	Livinston Parish Bd. of Comm.-Gas.	11–22–93	G–S	4,125	N	I	11–01–93	04–01–97
ST94–1234	Koch Gateway Pipeline Co.	City of Delcambre.	11–22–93	G–S	33	N	F	11–01–93	04–01–97
ST94–1235	Koch Gateway Pipeline Co.	City of Sorrento .	11–22–93	G–S	7	N	F	11–01–93	04–01–97
ST94–1236	Koch Gateway Pipeline Co.	City of Reklaw ...	11–22–93	G–S	1,073	N	F	11–01–93	04–01–97
ST94–1237	Koch Gateway Pipeline Co.	South Rusk County Gas Co., Inc.	11–22–93	G–S	436	N	F	11–01–93	04–01–97
ST94–1238	Koch Gateway Pipeline Co.	City of Sunset	11–22–93	G–S	29	N	F	11–01–93	04–01–97
ST94–1239	Koch Gateway Pipeline Co.	City of Pineland .	11–22–93	G–S	1,102	N	F	11–01–93	04–01–97
ST94–1240	Koch Gateway Pipeline Co.	City of Simmesport.	11–22–93	G–S	6,570	N	F	11–01–93	04–01–97
ST94–1241	Koch Gateway Pipeline Co.	City of Hornbeck	11–22–93	G–S	43	N	F	11–01–93	04–01–97
ST94–1242	Koch Gateway Pipeline Co.	United States of America-Ft. Polk.	11–22–93	G–S	4,200	N	F	11–01–93	04–01–97

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ST94–1243	Koch Gateway Pipeline Co.	City of Iota	11–22–93	G–S	10,950	N	F	11–01–93	04–01–97
ST94–1244	Koch Gateway Pipeline Co.	City of Moreauville.	11–22–93	G–S	50	N	F	11–01–93	04–01–97
ST94–1245	Koch Gateway Pipeline Co.	City of Huxley ...	11–22–93	G–S	2,577	N	F	11–01–93	04–01–97
ST94–1246	Koch Gateway Pipeline Co.	City of New Summerfield.	11–22–93	G–S	1,514	N	F	11–01–93	04–01–97
ST94–1247	Koch Gateway Pipeline Co.	City of Gonzales	11–22–93	G–S	93,075	N	F	11–01–93	04–01–97
ST94–1248	Koch Gateway Pipeline Co.	City of Franklinton.	11–22–93	G–S	60,590	N	F	11–01–93	04–01–97
ST94–1249	Koch Gateway Pipeline Co.	Lone Star Gas Co., of Texas, Inc.	11–22–93	G–S	6,288	N	I	11–01–93	04–01–97
ST94–1250	Koch Gateway Pipeline Co.	Montpelier Village.	11–22–93	G–S	160	N	I	11–01–93	04–01–97
ST94–1251	Koch Gateway Pipeline Co.	City of Madisonville.	11–22–93	G–S	52,560	N	I	11–01–93	04–01–97
ST94–1252	Koch Gateway Pipeline Co.	City of Palmetto	11–22–93	G–S	45	N	F	11–01–93	04–01–97
ST94–1253	Koch Gateway Pipeline Co.	City of Huntington.	11–22–93	G–S	586	N	F	11–01–93	04–01–97
ST94–1254	Koch Gateway Pipeline Co.	City of Garrison	11–22–93	G–S	551	N	F	11–01–93	04–01–97
ST94–1255	Koch Gateway Pipeline Co.	City of Kentwood	11–22–93	G–S	112	N	F	11–01–93	04–01–97
ST94–1256	Koch Gateway Pipeline Co.	City of Newton ..	11–22–93	G–S	1,272	N	F	11–01–93	04–01–97
ST94–1257	Koch Gateway Pipeline Co.	Clarke Mobil Counties Gas District.	11–22–93	G–S	3,500	N	F	11–01–93	04–01–97
ST94–1258	Koch Gateway Pipeline Co.	City of Greensburg.	11–22–93	G–S	300	N	F	11–01–93	04–01–97
ST94–1259	Koch Gateway Pipeline Co.	Stevens Utilities	11–22–93	G–S	577	N	F	11–01–93	04–01–97
ST94–1260	Koch Gateway Pipeline Co.	City of Montgomery.	11–22–93	G–S	38	N	F	11–01–93	04–01–97
ST94–1261	Koch Gateway Pipeline Co.	City of Franklinton.	11–22–93	G–S	1,406	N	I	11–01–93	04–01–97
ST94–1262	Koch Gateway Pipeline Co.	City of Moreauville.	11–22–93	G–S	825	N	I	11–01–93	04–01–97
ST94–1263	Koch Gateway Pipeline Co.	Natural Gas Co. of Louisiana.	11–22–93	G–S	17,859	N	I	11–01–93	04–01–97
ST94–1264	Koch Gateway Pipeline Co.	City of Sorrento	11–22–93	G–S	343	N	I	11–01–93	04–01–97
ST94–1265	Koch Gateway Pipeline Co.	St. James Parish Utilities.	11–22–93	G–S	4,340	N	I	11–01–93	04–01–97
ST94–1266	Koch Gateway Pipeline Co.	City of New Summerfield.	11–22–93	G–S	1,010	N	I	11–01–93	04–01–97
ST94–1267	Koch Gateway Pipeline Co.	City of Newton ..	11–22–93	G–S	848	N	I	11–01–93	04–01–97
ST94–1268	Koch Gateway Pipeline Co.	City of Hornbeck	11–22–93	G–S	1,157	N	I	11–01–93	04–01–97
ST94–1269	Koch Gateway Pipeline Co.	City of Kinder	11–22–93	G–S	1,200	N	I	11–01–93	04–01–97
ST94–1270	Koch Gateway Pipeline Co.	Livingston Gas Service Co.	11–22–93	G–S	1,572	N	I	11–01–93	04–01–97
ST94–1271	Koch Gateway Pipeline Co.	City of Livingston	11–22–93	G–S	600	N	I	11–01–93	04–01–97
ST94–1272	Koch Gateway Pipeline Co.	Louisiana Gas Service Co.	11–22–93	G–S	79,896	N	I	11–01–93	04–01–97
ST94–1273	Koch Gateway Pipeline Co.	Louisiana Gas Service Co.	11–22–93	G–S	46,860	N	I	11–01–93	04–01–97
ST94–1274	Koch Gateway Pipeline Co.	United States of America Stennis.	11–22–93	G–S	300	N	I	11–01–93	04–01–97
ST94–1275	Koch Gateway Pipeline Co.	City of Gonzales	11–22–93	G–S	2,445	N	I	11–01–93	04–01–97
ST94–1276	Koch Gateway Pipeline Co.	Entex, Agent Services.	11–22–93	G–S	25,101	N	I	11–01–93	04–01–99

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–1277	Koch Gateway Pipeline Co.	Entex, Agent Services.	11–22–93	G–S	383,899	N	I	11–01–93	04–01–99
ST94–1278	Enogex Inc	Phillips Gas Pipeline Co.	11–22–93	C	10,000	N	I	10–26–93	Indef.
ST94–1279	El Paso Natural Gas Co.	Arizona Electric Power Coop., Inc.	11–22–93	G–S	607	N	I	10–23–93	Indef.
ST94–1280	El Paso Natural Gas Co.	Arkla Energy Marketing Co.	11–22–93	G–S	100,000	N	I	10–29–93	Indef.
ST94–1281	El Paso Natural Gas Co.	Arizona Electric Power Coop., Inc.	11–22–93	G–S	38,252	N	I	10–24–93	Indef.
ST94–1282	Transcontinental Gas P/L Corp.	Alabama Gas Corp.	11–22–93	B	2,000	N	F	11–01–93	11–02–93
ST94–1283	Transcontinental Gas P/L Corp.	City of Liberty	11–22–93	B	285	N	F	11–01–93	11–02–93
ST94–1284	Natural Gas P/L Co. of America.	Northern Indiana Public Serv. Co.	11–22–93	B	50,000	N	I	12–01–87	Indef.
ST94–1285	Natural Gas P/L Co. of America.	Northern Indiana Public Serv. Co.	11–22–93	B	50,000	N	I	12–01–87	Indef.
ST94–1286	Natural Gas P/L Co. of America.	Winnie Pipeline Co.	11–22–93	B	80,000	N	I	01–01–88	Indef.
ST94–1287	Natural Gas P/L Co. of America.	Citizens Gas Supply Corp.	11–22–93	B	5,000	N	I	02–01–88	Indef.
ST94–1288	Transcontinental Gas P/L Corp.	Brooklyn Union Gas Co.	11–22–93	B	237,638	N	F	10–19–93	03–31–05
ST94–1289	Tennessee Gas Pipeline Co.	United States Department of Energy.	11–23–93	G–S	6,294	N	F	11–01–93	Indef.
ST94–1290	Tennessee Gas Pipeline Co.	Southern Indiana Gas & Electric Co.	11–23–93	G–S	10,101	N	F	11–01–93	Indef.
ST94–1291	Tennessee Gas Pipeline Co.	Pub. Serv. Co. of North Carolina.	11–23–93	G–S	8,315	N	F	11–01–93	Indef.
ST94–1292	Tennessee Gas Pipeline Co.	Rhone-Poulenc Basic Chemicals.	11–23–93	G–S	499	N	F	11–01–93	Indef.
ST94–1293	Tennessee Gas Pipeline Co.	Etowah Utilities Dept.	11–23–93	G–S	N/A	N	F	11–01–93	Indef.
ST94–1294	Tennessee Gas Pipeline Co.	Englewood Natural Gas System.	11–23–93	G–S	558	N	F	11–02–93	Indef.
ST94–1295	Tennessee Gas Pipeline Co.	Chattanooga Gas Co.	11–23–93	G–S	39,792	N	F	11–01–93	Indef.
ST94–1296	Tennessee Gas Pipeline Co.	Athens Tennessee Utilities Board.	11–23–93	G–S	5,429	N	F	11–01–93	Indef.
ST94–1297	Tennessee Gas Pipeline Co.	City of Algood	11–23–93	G–S	606	N	F	11–01–93	Indef.
ST94–1298	Tennessee Gas Pipeline Co.	Mount Pleasant Gas System.	11–23–93	G–S	2,329	N	F	11–01–93	Indef.
ST94–1299	Tennessee Gas Pipeline Co.	Lewisburg Gas Dept.	11–23–93	G–S	3,996	N	F	11–01–93	Indef.
ST94–1300	Tennessee Gas Pipeline Co.	Clinton Gas Marketing, Inc.	11–23–93	G–S	1,950	N	F	11–01–93	Indef.
ST94–1301	Tennessee Gas Pipeline Co.	Southern Indiana Gas & Electric Co.	11–23–93	G–S	75,750	N	I	11–01–93	Indef.
ST94–1302	Tennessee Gas Pipeline Co.	Olin Corp	11–23–93	G–S	152	N	F	11–01–93	Indef.
ST94–1303	Tennessee Gas Pipeline Co.	Northern Utilities, Inc.	11–23–93	G–S	848	N	F	11–01–93	Indef.
ST94–1304	Tennessee Gas Pipeline Co.	Belden & Blake Corp.	11–23–93	G–S	5,200	N	F	11–01–93	Indef.
ST94–1305	Tennessee Gas Pipeline Co.	Fayetteville Gas System.	11–23–93	G–S	3,556	N	F	11–01–93	Indef.
ST94–1306	Tennessee Gas Pipeline Co.	Hawkins County Utility District.	11–23–93	G–S	2,922	N	F	11–01–93	Indef.

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ST94–1307	Northern Natural Gas Co.	Arkla Energy Marketing Co.	11–23–93	G–S	100,000	N	F/I	10–04–93	Indef.
ST94–1308	Northern Natural Gas Co.	Sioux Pointe, Inc	11–23–93	G–S	400,000	N	F/I	10–22–93	Indef.
ST94–1309	Northern Natural Gas Co.	Enron Gas Marketing, Inc.	11–23–93	G–S	250,000	A	F/I	09–16–93	Indef.
ST94–1310	Northern Natural Gas Co.	Tristar Gas Marketing Co.	11–23–93	G–S	50,000	N	F/I	09–27–93	Indef.
ST94–1311	Williams Natural Gas Co.	Citation Oil & Gas Corp.	11–23–93	G–S	500	N	I	10–22–93	10–01–98
ST94–1312	Williams Natural Gas Co.	Williams Gas Marketing Co.	11–23–93	G–S	150,000	A	I	10–01–93	09–30–98
ST94–1313	Williams Natural Gas Co.	Williams Gas Marketing Co.	11–23–93	G–S	150,000	A	I	10–09–93	09–30–98
ST94–1314	Williams Natural Gas Co.	Williams Gas Marketing Co.	11–23–93	G–S	75,000	A	I	10–01–93	09–30–98
ST94–1315	Williams Natural Gas Co.	Williams Gas Marketing Co.	11–23–93	G–S	150,000	A	I	10–01–93	09–30–98
ST94–1316	Williams Natural Gas Co.	Williams Gas Marketing Co.	11–23–93	G–S	50,000	A	I	10–09–93	09–30–98
ST94–1317	Williams Natural Gas Co.	Aquila Energy Marketing Corp.	11–23–93	G–S	50,000	N	I	10–22–93	09–30–98
ST94–1318	Williams Natural Gas Co.	Aquila Energy Marketing Corp.	11–23–93	G–S	50,000	N	I	10–22–93	09–30–98
ST94–1319	Williams Natural Gas Co.	Mobil Natural Gas Inc.	11–23–93	G–S	100,000	N	I	10–22–93	09–30–98
ST94–1320	Williams Natural Gas Co.	Tenaska Marketing Ventures.	11–23–93	G–S	100,000	N	I	10–22–93	09–30–98
ST94–1321	Williams Natural Gas Co.	Enron Gas Marketing, Inc.	11–23–93	G–S	250,000	N	I	10–22–93	09–30–98
ST94–1322	Williams Natural Gas Co.	Energy Dynamics, Inc.	11–23–93	G–S	2,000	N	I	10–22–93	09–30–98
ST94–1323	Williams Natural Gas Co.	Rangeline Corp	11–23–93	G–S	20,000	N	I	10–01–93	09–30–98
ST94–1324	Williams Natural Gas Co.	Rangeline Corp	11–23–93	G–S	50,000	N	I	10–01–93	09–30–98
ST94–1325	Williams Natural Gas Co.	Rangeline Corp	11–23–93	G–S	50,000	N	I	10–22–93	09–30–98
ST94–1326	Williams Natural Gas Co.	Rangeline Corp	11–23–93	G–S	25,000	N	I	10–22–93	09–30–98
ST94–1327	Williams Natural Gas Co.	Energy Development Corp.	11–23–93	G–S	25,000	N	I	10–01–93	09–30–98
ST94–1328	Williams Natural Gas Co.	City of Sharon ..	11–23–93	G–S	185	N	I	10–01–93	09–30–13
ST94–1329	Williams Natural Gas Co.	Kansas Industrial Energy Supply Co.	11–23–93	G–S	2,000	N	I	10–23–93	09–30–98
ST94–1330	Williams Natural Gas Co.	Union Pacific Fuels, Inc.	11–23–93	G–S	50,000	N	I	10–26–93	09–30–13
ST94–1331	Williams Natural Gas Co.	Conoco, Inc	11–23–93	G–S	65,000	N	I	10–01–93	10–31–93
ST94–1332	Williams Natural Gas Co.	Conoco, Inc	11–23–93	G–S	65,000	N	I	10–01–93	10–31–93
ST94–1333	Williams Natural Gas Co.	DNR Oil & Gas, Inc.	11–23–93	G–S	100	N	I	10–01–93	09–30–94
ST94–1334	Williams Natural Gas Co.	Anadarko Trading Co.	11–23–93	G–S	10,000	N	I	10–23–93	09–30–94
ST94–1335	Williams Natural Gas Co.	Genergy Atlantic Resources, Inc.	11–23–93	G–S	100	N	I	10–16–93	09–30–94
ST94–1336	Williams Natural Gas Co.	Tenaska Marketing Ventures.	11–23–93	G–S	100,000	N	I	10–22–93	09–30–98
ST94–1337	Williams Natural Gas Co.	Tenaska Marketing Ventures.	11–23–93	G–S	100,000	N	I	10–22–93	09–30–98
ST94–1338	Pacific Gas Transmission Co.	San Diego Gas & Electric Co.	11–24–93	B	144,260	N	I	10–27–93	Indef.
ST94–1339	Webb/Duval Gatherers.	Natural Gas Pipeline Co. of America.	11–24–93	C	25,000	N	I	10–01–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–1340	Westar Transmission Co.	El Paso Natural Gas Co.	11–24–93	C	40,000	N	I	10–07–93	Indef.
ST94–1341	Pacific Gas Transmission Co.	Washington Energy Exploration Corp.	11–24–93	G–S	100,000	N	I	10–30–93	Indef.
ST94–1342	Pacific Gas Transmission Co.	Washington Energy Marketing, Inc.	11–24–93	G–S	100,000	N	I	10–30–93	Indef.
ST94–1343	Panhandle Eastern Pipe Line Co.	Kellogg Co	11–24–93	G–S	5,274	N	F	11–01–93	10–31–96
ST94–1344	Panhandle Eastern Pipe Line Co.	Thermic Refractories, Inc.	11–24–93	G–S	150	N	F	11–01–93	04–30–94
ST94–1345	Panhandle Eastern Pipe Line Co.	UCG Energy Corp.	11–24–93	G–S	325	N	F	11–01–93	03–31–94
ST94–1346	Panhandle Eastern Pipe Line Co.	Centana Energy Corp.	11–24–93	G–S	1,000	A	F	11–01–93	11–30–93
ST94–1347	Panhandle Eastern Pipe Line Co.	Associated Natural Gas, Inc.	11–24–93	G–S	12,500	N	F	11–01–93	10–31–94
ST94–1348	Panhandle Eastern Pipe Line Co.	Public Service Electric & Gas Co.	11–24–93	G–S	13,535	N	F	11–01–93	10–31–13
ST94–1349	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc.	11–24–93	G–S	5,000	N	F	11–02–93	01–31–94
ST94–1350	Panhandle Eastern Pipe Line Co.	Centana Energy Corp.	11–24–93	G–S	1,000	A	F	11–01–93	11–30–93
ST94–1351	Panhandle Eastern Pipe Line Co.	Schuller International, Inc.	11–24–93	G–S	8,500	N	F	11–01–93	10–31–96
ST94–1352	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co.	11–24–93	G–S	20,000	N	F	11–01–93	03–31–94
ST94–1353	Panhandle Eastern Pipe Line Co.	Stand Energy Corp.	11–24–93	G–S	1,002	N	F	11–01–93	10–31–94
ST94–1354	Panhandle Eastern Pipe Line Co.	Catex Energy, Inc.	11–24–93	G–S	10,000	N	F	11–01–93	03–31–94
ST94–1355	Panhandle Eastern Pipe Line Co.	Semco Energy Services, Inc.	11–24–93	G–S	6,500	N	F	11–01–93	10–31–96
ST94–1356	Panhandle Eastern Pipe Line Co.	UGI Utilities, Inc	11–24–93	G–S	10,327	N	F	11–01–93	10–31–13
ST94–1357	Panhandle Eastern Pipe Line Co.	O&R Energy, Inc	11–24–93	G–S	100,000	N	I	11–01–93	04–30–08
ST94–1358	Panhandle Eastern Pipe Line Co.	Michigan Gas Utilities.	11–24–93	G–S	15,000	N	F	11–01–93	10–31–98
ST94–1359	Great Lakes Gas Transmission LP.	Northern States Power Co.	11–24–93	G–S	500	N	F	11–12–93	10–31–97
ST94–1360	Great Lakes Gas Transmission LP.	AIG Trading Corp.	11–24–93	G–S	75,000	N	F	11–01–93	03–31–94
ST94–1361	Great Lakes Gas Transmission LP.	ANR Pipeline Co	11–24–93	G	100,000	Y	F	11–01–93	03–31–13
ST94–1362	Great Lakes Gas Transmission LP.	Coenergy Trading Co.	11–24–93	G–S	20,000	N	F	11–01–93	03–31–94
ST94–1363	Great Lakes Gas Transmission LP.	Southeastern Michigan Gas Co.	11–24–93	G–S	15,000	N	F	11–01–93	10–31–06

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ST94–1364	Great Lakes Gas Transmission LP.	Murphy Gas Gathering, Inc.	11–24–93	G–S	3,250	N	F	11–01–93	10–31–01
ST94–1365	Great Lakes Gas Transmission LP.	Rochester Gas & Electric Corp.	11–24–93	G–S	158,000	N	F	11–01–93	10–31–00
ST94–1366	Great Lakes Gas Transmission LP.	Midland Cogeneration Venture L.P.	11–24–93	G–S	80,000	N	F	11–01–93	11–01–05
ST94–1367	Great Lakes Gas Transmission LP.	Mobil Natural Gas, Inc.	11–24–93	G–S	12,000	N	F	11–01–93	10–31–03
ST94–1368	Great Lakes Gas Transmission LP.	Peoples Natural Gas Co.	11–24–93	G–S	4,052	N	F	11–01–93	10–31–01
ST94–1369	Great Lakes Gas Transmission LP.	Western Gas Marketing, Inc.	11–24–93	G–S	86,250	Y	F	11–01–93	03–31–94
ST94–1370	Great Lakes Gas Transmission LP.	Northern Natural Gas Co.	11–24–93	G	108,000	N	F	11–01–93	11–01–02
ST94–1371	Great Lakes Gas Transmission LP.	ANR Pipeline Co	11–24–93	G	32,586	Y	F	11–01–93	03–31–94
ST94–1372	Great Lakes Gas Transmission LP.	AIG Trading Corp.	11–24–93	G–S	45,000	N	F	09–13–93	08–31–94
ST94–1373	Great Lakes Gas Transmission LP.	Tennessee Gas Pipeline Co.	11–24–93	G	45,000	N	F	09–13–93	08–31–94
ST94–1374	Great Lakes Gas Transmission LP.	Gaz Metropolitian, Inc.	11–24–93	G–S	80,000	N	F	10–27–93	11–30–93
ST94–1375	Great Lakes Gas Transmission LP.	ANR Pipeline Co	11–24–93	G	175,000	Y	F	11–01–93	03–31–94
ST94–1376	Natural Gas P/L Co. of America.	Eastex Hydrocarbons, Inc.	11–23–93	G–S	5,000	N	F	11–01–93	11–30–93
ST94–1377	Texas Gas Transmission Corp.	NGO Development Corp.	11–24–93	G–S	20,000	N	I	11–02–93	Indef.
ST94–1378	Texas Gas Transmission Corp.	Protein Technologies International.	11–24–93	G–S	6,000	N	I	11–05–93	Indef.
ST94–1379	Transwestern Pipeline Co.	Tristar Gas Marketing Co.	11–24–93	G–S	5,000	N	F	10–29–93	10–31–93
ST94–1380	Transwestern Pipeline Co.	Clayton Williams Energy, Inc.	11–24–93	G–S	3,280	N	F	11–01–93	11–30–93
ST94–1381	Transwestern Pipeline Co.	Tristar Gas Marketing, Co.	11–24–93	G–S	30,770	N	F	11–01–93	11–30–93
ST94–1382	Sabine Pipe Line Co.	Enron Marketing, Inc.	11–24–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1383	Sabine Pipe Line Co.	Midcon Marketing Corp.	11–24–93	G–S	50,000	N	I	11–01–93	Indef.
ST94–1384	Sabine Pipe Line Co.	Aquila Energy Marketing Corp.	11–24–93	G–S	250,080	N	I	11–01–93	Indef.
ST94–1385	Sabine Pipe Line Co.	Tejas Power Corp.	11–24–93	G–S	200,000	N	I	11–01–93	Indef.
ST94–1386	Sabine Pipe Line. Co.	Coastal Gas Marketing Co.	11–24–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1387	Sabine Pipe Line Co.	Arco Oil & Gas Co.	11–24–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1388	Sabine Pipe Line Co.	KCS Energy Marketing, Inc.	11–24–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1389	Sabine Pipe Line Co.	Enmark Gas Corp.	11–24–93	G–S	60,000	N	I	11–01–93	Indef.
ST94–1390	Sabine Pipe Line Co.	Transco Energy Marketing Co.	11–24–93	G–S	300,000	N	I	11–01–93	Indef.
ST94–1391	Sabine Pipe Line Co.	NGC Transportation Inc.	11–24–93	G–S	250,000	N	I	11–01–93	Indef.

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ST94–1392	Sabine Pipe Line Co.	Anadarko Trading Co.	11–24–93	G–S	80,000	N	I	11–01–93	Indef.
ST94–1393	Sabine Pipe Line Co.	Enron Access. Corp.	11–24–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1394	Sabine Pipe Line Co.	Texaco Gas Marketing, Inc.	11–24–93	G–S	200,000	A	I	11–01–93	Indef.
ST94–1395	Sabine Pipe Line Co.	Tenneco Gas Marketing Co.	11–24–93	G–S	150,000	N	I	11–01–93	Indef.
ST94–1396	Sabine Pipe Line Co.	Transok Gas Co	11–24–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1397	Sabine Pipe Line Co.	Eastex Hydrocarbons, Inc.	11–24–93	G–S	50,000	N	I	11–01–93	Indef.
ST94–1398	Sabine Pipe Line Co.	Western Gas Resources, Inc.	11–24–93	G–S	50,000	N	I	11–01–93	Indef.
ST94–1399	Sabine Pipe Line Co.	Tejas Hydrocarbons Co.	11–24–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1400	Sabine Pipe Line Co.	Natural Gas Pipeline Co. of America.	11–24–93	G	100,000	N	I	11–01–93	Indef.
ST94–1401	Tennessee Gas Pipeline Co.	Catex Energy, Inc.	11–24–93	G–S	20,000	N	F	11–01–93	Indef.
ST94–1402	Tennessee Gas Pipeline Co.	Fulton Cogeneration Association.	11–24–93	G–S	6,700	N	F	11–01–93	Indef.
ST94–1403	Tennessee Gas Pipeline Co.	Rockwood Water Sewer & Gas.	11–24–93	G–S	3,302	N	F	11–04–93	Indef.
ST94–1404	Tennessee Gas Pipeline Co.	Livingston Gas System.	11–24–93	G–S	2,448	N	F	11–01–93	Indef.
ST94–1405	Tennessee Gas Pipeline Co.	Greenback Industries, Inc.	11–24–93	G–S	394	N	F	11–01–93	Indef.
ST94–1406	Tennessee Gas Pipeline Co.	Tennessee Air National Guard.	11–24–93	G–S	296	N	F	11–01–93	Indef.
ST94–1407	Tennessee Gas Pipeline Co.	Middle Tennessee Natural Gas.	11–24–93	G–S	22,276	N	F	11–01–93	Indef.
ST94–1408	Tennessee Gas Pipeline Co.	Knoxville Utilities Board.	11–24–93	G–S	43,261	N	F	11–01–93	Indef.
ST94–1409	Tennessee Gas Pipeline Co.	City of Cookeville Gas Dept.	11–24–93	G–S	6,059	N	F	11–01–93	Indef.
ST94–1410	Tennessee Gas Pipeline Co.	National Gas & Oil Corp.	11–24–93	G–S	3,000	N	F	11–02–93	Indef.
ST94–1411	Tennessee Gas Pipeline Co.	Bay State Gas Co.	11–24–93	G–S	57,748	N	F	11–01–93	Indef.
ST94–1412	Tennessee Gas Pipeline Co.	Timken Co	11–24–93	G–S	8,000	N	F	11–03–93	Indef.
ST94–1413	Tennessee Gas Pipeline Co.	Consolidated Edison Co. of New York.	11–24–93	G–S	6,834	N	F	11–05–93	Indef.
ST94–1414	Tennessee Gas Pipeline Co.	Unicoi County Utility District.	11–24–93	G–S	3,789	N	F	11–01–93	Indef.
ST94–1415	Tennessee Gas Pipeline Co.	Gainsboro Gas Systems.	11–24–93	G–S	940	N	F	11–01–93	Indef.
ST94–1416	Tennessee Gas Pipeline Co.	Mississippi Valley Gas Co.	11–24–93	G–S	200,000	N	F	11–01–93	Indef.
ST94–1417	Tennessee Gas Pipeline Co.	Powell Clinch Utility District.	11–24–93	G–S	5,155	N	F	11–01–93	Indef.
ST94–1418	Tennessee Gas Pipeline Co.	National Fuel Gas Distribution Co.	11–24–93	G–S	7,777	N	F	11–01–93	Indef.
ST94–1419	Tennessee Gas Pipeline Co.	Jamestown Natural Gas System.	11–24–93	G–S	3,045	N	F	11–01–93	Indef.
ST94–1420	Natural Gas P/L Co of America.	Mobil Oil Corp ...	11–24–93	B	100,000	N	I	05–01–88	Indef.
ST94–1421	Natural Gas P/L Co of America.	Arkansas Louisiana Gas Co.	11–24–93	G–S	2,297	N	F	11–01–93	11–30–93
ST94–1422	Northern Natural Gas Co.	Northern Minnesota Utilities.	11–24–93	G–S	17,900	N	F/I	09–01–93	Indef.
ST94–1423	Northern Natural Gas Co.	Midwest Gas	11–24–93	B	182,834	N	F/I	09–01–93	Indef.

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ST94–1424	Northern Natural Gas Co.	Tenneco Gas Marketing Co.	11–24–93	G–S	200,000	N	F/I	11–01–93	Indef.
ST94–1425	Northern Natural Gas Co.	Virginia Public Utilities.	11–24–93	G–S	3,000	N	F/I	11–01–93	Indef.
ST94–1426	Northern Natural Gas Co.	Enron Gas Processing Co.	11–24–93	G–S	20,000	A	F/I	11–01–93	Indef.
ST94–1427	Northern Natural Gas Co.	Superior Water, Light & Power Co.	11–24–93	G–S	500	N	F/I	11–01–93	Indef.
ST94–1428	Northern Natural Gas Co.	Peoples Natural Gas Co.	11–24–93	G–S	8,000	N	F/I	11–01–93	Indef.
ST94–1429	Northern Natural Gas Co.	Peoples Natural Gas Co..	11–24–93	G–S	45,000	N	F/I	11–01–93	Indef.
ST94–1430	Northern Natural Gas Co.	Peoples Natural Gas Co.	11–24–93	G–S	6,000	N	F/I	11–01–93	Indef.
ST94–1431	Northern Natural Gas Co.	Iowa Southern Utilities Co.	11–24–93	G–S	50,000	N	F/I	11–01–93	Indef.
ST94–1432	Northern Natural Gas Co.	ONG Western	11–24–93	B	50,000	N	F/I	11–08–93	Indef.
ST94–1433	Northern Natural Gas Co.	Hartley Municipal Utilities.	11–24–93	G–S	735	N	F/I	11–01–93	10–31–97
ST94–1434	Enogex Inc	ANR Pipeline Co..	11–23–93	C	5,000	N	I	11–01–93	Indef.
ST94–1435	Bridgeline Gas Distribution Co.	Columbia Gulf Transmission Co.	11–24–93	G–HT	15,000	N	I	11–01–93	Indef.
ST94–1436	Transok, Inc	ANR Pipeline Co., et al..	11–24–93	C	420,000	N	I	11–01–93	Indef.
ST94–1437	Transok, Inc	ANR Pipeline Co., et al..	11–24–93	C	3,000	N	I	11–01–93	Indef.
ST94–1438	Houston Pipe Line Co.	Sabine Pipeline Co.	11–24–93	C	1,000	N	I	10–15–93	Indef.
ST94–1439	Houston Pipe Line Co.	Natural Gas Pipeline Co. of America.	11–24–93	C	25,000	N	I	10–16–93	Indef.
ST94–1440	Houston Pipe Line Co.	Florida Gas Transmission Co.	11–24–93	C	100,000	N	I	10–08–93	Indef.
ST94–1441	Houston Pipe Line Co.	Northern Natural Gas Co.	11–24–93	C	100,000	N	I	11–01–93	Indef.
ST94–1442	Houston Pipe Line Co.	Texas Eastern Transmission Corp.	11–24–93	C	25,000	N	I	10–02–93	Indef.
ST94–1443	Houston Pipe Line Co.	Florida Gas Transmission Co.	11–24–93	C	50,000	N	I	11–02–93	Indef.
ST94–1444	Houston Pipe Line Co.	Texas Eastern Transmission Corp.	11–24–93	C	10,000	N	I	11–01–93	Indef.
ST94–1445	Houston Pipe Line Co.	Koch Gateway Pipeline Co.	11–24–93	C	10,000	N	I	10–03–93	Indef.
ST94–1446	Houston Pipe Line Co.	Sabine Pipeline Co.	11–24–93	C	10,000	N	I	11–01–93	Indef.
ST94–1447	Arkla Energy Recources Co.	Arkla Energy Marketing Co.	11–29–93	G–S	5,000	A	F	11–01–93	Indef.
ST94–1448	Arkla Energy Resources Co.	Conagra Frozen Foods.	11–29–93	G–S	3,050	N	F	11–01–93	Indef.
ST94–1449	Arkla Energy Resources Co.	Arkla Energy Marketing Co.	11–29–93	G–S	800	A	F	11–01–93	Indef.
ST94–1450	Williston Basin Inter. P/L Co.	Koch Hydrocarbon Co.	11–26–93	G–S	409,002	A	I	10–28–93	04–30–95
ST94–1451	Williston Basin Inter. P/L Co.	Texaco Gas Marketing, Inc.	11–26–93	G–S	56,100	A	I	10–29–93	09–30–94
ST94–1452	Transcontinental Gas P/L Corp.	Health & Associates.	11–29–93	G–S	87	N	F	11–01–93	03–17–98
ST94–1453	Transcontinental Gas P/L Corp.	Health & Associates.	11–29–93	G–S	175	N	F	11–01–93	03–17–98
ST94–1454	Transcontinental Gas P/L Corp.	Health & Associates.	11–29–93	G–S	262	N	F	11–01–93	03–17–98
ST94–1455	Transcontinental Gas P/L Corp.	Health & Associates.	11–29–93	G–S	87	N	F	11–01–93	03–17–98

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ST94–1456	Transcontinental Gas P/L Corp.	Health & Associates.	11–29–93	G–S	219	N	F	11–01–93	03–17–98
ST94–1457	Transcontinental Gas P/L Corp.	Public Service Co. of North Carolina.	11–29–93	G–S	2,187	A	F	11–01–93	03–16–98
ST94–1458	Transcontinental Gas P/L Corp.	Public Service Co of North Carolina.	11–29–93	G–S	4,200	N	F	11–01–93	07–31–11
ST94–1459	Transcontinental Gas P/L Corp.	Public Service Co of North Carolina.	11–29–93	G–S	1,354	N	F	11–01–93	10–31–12
ST94–1460	Transcontinental Gas P/L Corp.	Philadelphia Electric Co.	11–29–93	G–S	149,061	A	F	11–01–93	03–31–06
ST94–1461	Transcontinental Gas P/L Corp.	Philadelphia Electric Co.	11–29–93	G–S	4,400	A	F	11–01–93	07–31–06
ST94–1462	Transcontinental Gas P/L Corp.	Clinton-Newberry Nat. Gas Authority.	11–29–93	G–S	9,100	A	F	11–01–93	10–31–04
ST94–1463	Transcontinental Gas P/L Corp.	Fort Hill Natural Gas Authority.	11–29–93	G–S	11,900	A	F	11–01–93	10–31–04
ST94–1464	Transcontinental Gas P/L Corp.	Fort Hill Natural Gas Authority.	11–29–93	G–S	200	N	F	11–01–93	03–31–05
ST94–1465	Transcontinental Gas P/L Corp.	Virginia Natural Gas, Inc.	11–29–93	G–S	34,715	N	F	11–01–93	03–31–05
ST94–1466	Transcontinental Gas P/L Corp.	Virginia Natural Gas, Inc.	11–29–93	G–S	537	N	F	11–01–93	10–31–12
ST94–1467	Transcontinental Gas P/L Corp.	United Cities Gas Co.	11–29–93	G–S	6,700	A	F	11–01–93	03–31–98
ST94–1468	Transcontinental Gas P/L Corp.	United Cities Gas Co.	11–29–93	G–S	8,100	A	F	11–01–93	03–31–98
ST94–1469	Transcontinental Gas P/L Corp.	United Cities Gas Co.	11–29–93	G–S	200	N	F	11–01–93	07–31–01
ST94–1470	Transcontinental Gas P/L Corp.	City of Union	11–29–93	G–S	181	N	F	11–01–93	02–25–98
ST94–1471	Transcontinental Gas P/L Corp.	City of Union	11–29–93	G–S	5,600	N	F	11–01–93	06–29–05
ST94–1472	Transcontinental Gas P/L Corp.	City of Union	11–29–93	G–S	100	N	F	11–01–93	06–29–05
ST94–1473	Transcontinental Gas P/L Corp.	City of Richmond	11–29–93	G–S	9,693	N	F	11–01–93	03–31–05
ST94–1474	Transcontinental Gas P/L Corp.	Energy Development Corp.	11–29–93	G–S	6,222	A	F	11–01–93	03–02–98
ST94–1475	Transcontinental Gas P/L Corp.	City of Shelby	11–29–93	G–S	262	N	F	11–01–93	03–17–98
ST94–1476	Transcontinental Gas P/L Corp.	City of Shelby	11–29–93	G–S	11,600	A	F	11–01–93	03–31–00
ST94–1477	Transcontinental Gas P/L Corp.	City of Shelby	11–29–93	G–S	200	N	F	11–01–93	07–31–06
ST94–1478	Transcontinental Gas P/L Corp.	Atlanta Gas Light Co.	11–29–93	G–S	6,222	N	F	11–01–93	03–17–08
ST94–1479	Transcontinental Gas P/L Corp.	Atlanta Gas Light Co.	11–29–93	G–S	4,500	N	F	11–01–93	10–31–09
ST94–1480	Transcontinental Gas P/L Corp.	City of Danville ..	11–29–93	G–S	26,000	N	F	11–01–93	03–31–99
ST94–1481	Transcontinental Gas P/L Corp.	South Carolina Pipeline Corp.	11–29–93	G–S	29,300	A	F	11–01–93	12–31–08
ST94–1482	Transcontinental Gas P/L Corp.	City of Lexington	11–29–93	G–S	319	N	F	11–01–93	03–24–98
ST94–1483	Transcontinental Gas P/L Corp.	City of Lexington	11–29–93	G–S	8,900	N	F	11–01–93	01–31–07
ST94–1484	Transcontinental Gas P/L Corp.	City of Lexington	11–29–93	G–S	300	N	F	11–01–93	07–31–06
ST94–1485	Transcontinental Gas P/L Corp.	Philadelphia Gas Works.	11–29–93	G–S	159,625	A	F	11–01–93	03–31–05
ST94–1486	Transcontinental Gas P/L Corp.	Philadelphia Gas Works.	11–29–93	G–S	1,900	N	F	11–01–93	07–31–11
ST94–1487	Transcontinental Gas P/L Corp.	Consolidated Edison Co. of New York.	11–29–93	G–S	2,014	A	F	11–01–93	03–31–98

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–1488	Transcontinental Gas P/L Corp.	Consolidated Edison Co. of New York.	11–29–93	G–S	324,522	A	F	11–01–93	03–31–05
ST94–1489	Transcontinental Gas P/L Corp.	Consolidated Edison Co. of New York.	11–29–93	G–S	9,800	N	F	11–01–93	03–31–10
ST94–1490	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co, Inc.	11–29–93	G–S	6,222	A	F	11–01–93	02–28–03
ST94–1491	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co, Inc.	11–29–93	G–S	205,200	A	F	11–01–93	01–31–12
ST94–1492	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co, Inc.	11–29–93	G–S	5,900	N	F	11–01–93	07–31–11
ST94–1493	Transcontinental Gas P/L Corp.	Brooklyn Union Gas Co.	11–29–93	G–S	1,902	N	F	11–01–93	03–20–98
ST94–1494	Transcontinental Gas P/L Corp.	Brooklyn Union Gas Co.	11–29–93	G–S	70,725	A	F	11–01–93	03–31–05
ST94–1495	Transcontinental Gas P/L Corp.	Brooklyn Union Gas Co.	11–29–93	G–S	4,100	N	F	11–01–93	07–31–11
ST94–1496	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–29–93	G–S	2,790	A	F	11–01–93	03–31–06
ST94–1497	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–29–93	G–S	3,680	A	F	11–01–93	03–31–06
ST94–1498	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–29–93	G–S	1,135	N	F	11–01–93	03–31–06
ST94–1499	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–29–93	G–S	4,900	A	F	11–01–93	03–31–06
ST94–1500	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–29–93	G–S	4,670	N	F	11–01–93	03–31–06
ST94–1501	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–29–93	G–S	2,015	A	F	11–01–93	03–31–06
ST94–1502	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–29–93	G–S	2,643	A	F	11–01–93	03–31–06
ST94–1503	Transcontinental Gas P/L Corp.	City of Kings Mountain.	11–29–93	G–S	87	N	F	11–01–93	03–18–98
ST94–1504	Transcontinental Gas P/L Corp.	City of Kings Mountain.	11–29–93	G–S	4,100	N	F	11–01–93	10–31–00
ST94–1505	Transcontinental Gas P/L Corp.	City of Kings Mountain.	11–29–93	G–S	200	N	F	11–01–93	07–31–01
ST94–1506	Transcontinental Gas P/L Corp.	City of Greenwood.	11–29–93	G–S	100	N	F	11–01–93	07–31–06
ST94–1507	Transcontinental Gas P/L Corp.	North Carolina Natural Gas Corp.	11–29–93	G–S	141,000	A	F	11–01–93	01–31–13
ST94–1508	Transcontinental Gas P/L Corp.	Appalachian Gas Sales.	11–29–93	G–S	219	A	F	11–01–93	04–25–98
ST94–1509	Transcontinental Gas P/L Corp.	National Fuel Gas Distribution Corp.	11–29–93	G–S	11,390	N	F	11–01–93	10–31–12
ST94–1510	Transcontinental Gas P/L Corp.	Southwestern Virginia Gas Co.	11–29–93	G–S	200	N	F	11–01–93	07–31–11
ST94–1511	Transcontinental Gas P/L Corp.	Southwestern Virginia Gas Co.	11–29–93	G–S	5,850	N	F	11–01–93	01–31–11
ST94–1512	Transcontinental Gas P/L Corp.	Baltimore Gas & Electric Co.	11–29–93	G–S	2,187	A	F	11–01–93	03–17–03
ST94–1513	Transcontinental Gas P/L Corp.	North Carolina Gas Service.	11–29–93	G–S	10,400	A	F	11–01–93	03–31–05
ST94–1514	Transcontinental Gas P/L Corp.	North Carolina Gas Service.	11–29–93	G–S	200	N	F	11–01–93	03–31–05
ST94–1515	Transcontinental Gas P/L Corp.	Commonwealth Gas Services, Inc.	11–29–93	G–S	12,000	A	F	11–01–93	03–31–00

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ST94–1516	Transcontinental Gas P/L Corp.	Commonwealth Gas Services Co.	11–29–93	G–S	6,377	A	F	11–01–93	03–31–05
ST94–1517	Transcontinental Gas P/L Corp.	Pennsylvania Gas & Water Co.	11–29–93	G–S	3,300	N	F	11–01–93	07–31–04
ST94–1518	Transcontinental Gas P/L Corp.	Washington Gas Light Co.	11–29–93	G–S	1,750	N	F	11–01–93	03–02–98
ST94–1519	Transcontinental Gas P/L Corp.	Washington Gas Light Co.	11–29–93	G–S	55,000	N	F	11–01–93	03–31–09
ST94–1520	Transcontinental Gas P/L Corp.	City of Fountain Inn.	11–29–93	G–S	1,510	A	F	11–01–93	03–31–05
ST94–1521	Transcontinental Gas P/L Corp.	City of Laurens ..	11–29–93	G–S	7,840	N	F	11–01–93	10–31–00
ST94–1522	Transcontinental Gas P/L Corp.	City of Greer	11–29–93	G–S	5,000	N	F	11–01–93	12–31–11
ST94–1523	Transcontinental Gas P/L Corp.	Commissioner of Public Works.	11–29–93	G–S	8,600	A	F	11–01–93	01–31–12
ST94–1524	Transcontinental Gas P/L Corp.	City of Alexander	11–29–93	G–S	5,500	A	F	11–01–93	03–31–00
ST94–1525	Transcontinental Gas P/L Corp.	PSE&G E/U	11–29–93	G–S	200,000	N	I	10–27–93	Indef.
ST94–1526	Lone Star Gas Co.	Northern Natural Gas Co, et al.	11–30–93	C	15,000	N	I	11–10–93	Indef.
ST94–1527	Koch Gateway Pipeline Co.	Polaris Pipeline Corp.	11–30–93	G–S	765	N	F	11–01–93	04–01–97
ST94–1528	Koch Gateway Pipeline Co.	Village of Tangipahoa.	11–30–93	G–S	144	N	I	11–01–93	04–01–97
ST94–1529	Koch Gateway Pipeline Co.	City of Brewton ..	11–30–93	G–S	5,000	N	I	11–01–93	04–01–99
ST94–1530	Koch Gateway Pipeline Co.	City of Century ..	11–30–93	G–S	2,250	N	I	11–01–93	04–01–97
ST94–1531	Koch Gateway Pipeline Co.	Mississippi Gas Corp.	11–30–93	G–S	175	N	I	11–01–93	04–01–97
ST94–1532	Koch Gateway Pipeline Co.	Utility Board of City of Citronelle.	11–30–93	G–S	2,935	N	I	11–01–93	04–01–99
ST94–1533	Texas Gas Transmission Corp.	City of Memphis	11–30–93	G–S	159,281	N	F	11–01–93	Indef.
ST94–1534	Texas Gas Transmission Corp.	City of Henderson.	11–30–93	G–S	11,002	N	F	11–01–93	Indef.
ST94–1535	Texas Gas Transmission Corp.	Illinois Gas Co ...	11–30–93	G–S	9,895	N	F	11–01–93	Indef.
ST94–1536	Texas Gas Transmission Corp.	Arkansas Louisiana Gas Co.	11–30–93	G–S	10,106	N	F	11–01–93	Indef.
ST94–1537	Texas Gas Transmission Corp.	Jackson Utility Division/Jackson.	11–30–93	G–S	17,590	N	F	11–01–93	Indef.
ST94–1538	Texas Gas Transmission Corp.	Central Illinois Public Service Co.	11–30–93	G–S	7,800	N	F	11–01–93	Indef.
ST94–1539	Texas Gas Transmission Corp.	Midwest Natural Gas Corp.	11–30–93	G–S	4,766	N	F	11–01–93	Indef.
ST94–1540	Texas Gas Transmission Corp.	Southern Indiana Gas & Electric Co.	11–30–93	G–S	54,848	N	F	11–01–93	Indef.
ST94–1541	Texas Gas Transmission Corp.	Mississippi Gas Co.	11–30–93	G–S	45,429	N	F	11–01–93	Indef.
ST94–1542	Texas Gas Transmission Corp.	Mayor & Aldermen of Dyersburg.	11–30–93	G–S	7,119	N	F	11–01–93	Indef.
ST94–1543	Texas Gas Transmission Corp.	Citizens Gas & Coke Utility.	11–30–93	G–S	46,969	N	F	11–01–93	Indef.

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ST94–1544	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	11–30–93	G–S	81,000	N	F	11–01–93	Indef.
ST94–1545	Arkla Energy Resources Co.	Ensco, Inc	11–30–93	G–S	3,800	N	F	11–01–93	Indef.
ST94–1546	Arkla Energy Resources Co.	Encore Energy ...	11–30–93	G–S	20,000	N	I	11–01–93	Indef.
ST94–1547	Arkla Energy Resources Co.	Nucor-Yamoto Steel Co.	11–30–93	G–S	9,000	N	F	11–01–93	Indef.
ST94–1548	Arkla Energy Resources Co.	NJR Energy Corp.	11–30–93	G–S	4,206	N	F	11–01–93	Indef.
ST94–1549	Arkla Energy Resources Co.	National Steel Corp.	11–30–93	G–S	4,192	N	F	11–01–93	Indef.
ST94–1550	Arkla Energy Resources Co.	Marathon Oil Co	11–30–93	G–S	1,000	N	F	11–01–93	Indef.
ST94–1551	Arkla Energy Resources Co.	Cummins Construction Co.	11–30–93	G–S	50	N	F	11–01–93	Indef.
ST94–1552	Arkla Energy Resources Co.	American Steel Foundries.	11–30–93	G–S	205	N	F	11–01–93	Indef.
ST94–1553	Arkla Energy Resources Co.	City of Red Bud .	11–30–93	G–S	305	N	F	11–01–93	Indef.
ST94–1554	Arkla Energy Resources Co.	City of Waterloo .	11–30–93	G–S	594	N	F	11–01–93	Indef.
ST94–1555	Arkla Energy Resources Co.	Spectrulite Consortium, Inc.	11–30–93	G–S	564	N	F	11–01–93	Indef.
ST94–1556	Arkla Energy Resources Co.	Laclede Gas Co	11–30–93	G–S	133,932	N	F	11–01–93	Indef.
ST94–1557	Arkla Energy Resources Co.	Cerro Copper Products Co.	11–30–93	G–S	616	N	F	11–01–93	Indef.
ST94–1558	Arkla Energy Resources Co.	Harcros Pigments, Inc.	11–30–93	G–S	195	N	F	11–01–93	Indef.
ST94–1559	Arkla Energy Resources Co.	Arnold Muffler Co.	11–30–93	G–S	4	N	F	11–01–93	Indef.
ST94–1560	Arkla Energy Resources Co.	Gabriel Ride Control Products, Inc.	11–30–93		160	N	I	11–01–93	Indef.
ST94–1561	Arkla Energy Resources Co.	Strategic Energy Ltd.	11–30–93	G–S	2,873	N	F	11–01–93	Indef.
ST94–1562	Arkla Energy Resources Co.	Illinois Powers Co.	11–30–93	G–S	20,931	N	F	11–01–93	Indef.
ST94–1563	Arkla Energy Resources Co.	General Chemical Corp.	11–30–93	G–S	87	N	F	11–01–93	Indef.
ST94–1564	Arkla Energy Resources Co.	MRT Energy Marketing Co.	11–30–93	G–S	180,000	N	I	11–01–93	Indef.
ST94–1565	Arkla Energy Resources Co.	Wickford Energy	11–30–93	G–S	50,000	N	I	11–01–93	Indef.
ST94–1566	Arkla Energy Resources Co.	Laroche Industries, Inc.	11–30–93	G–S	167	N	F	11–01–93	Indef.
ST94–1567	Arkla Energy Resources Co.	Natural Gas Improvement District #2.	11–30–93	G–S	136	N	F	11–01–93	Indef.
ST94–1568	Arkla Energy Resources Co.	Mississippi Lime Co.	11–30–93	G–S	821	N	F	11–01–93	Indef.
ST94–1569	Arkla Energy Resources Co.	Union Pacific Corp.	11–30–93	G–S	5	N	F	11–01–93	Indef.
ST94–1570	Arkla Energy Resources Co.	City Of Des Arc .	11–30–93	G–S	152	N	F	11–01–93	Indef.
ST94–1571	Arkla Energy Resources Co.	City of Hazen	11–30–93	G–S	188	N	F	11–01–93	Indef.
ST94–1572	Arkla Energy Resources Co.	City of Potosi	11–30–93	G–S	608	N	F	11–01–93	Indef.
ST94–1573	Arkla Energy Resources Co.	United Cities Gas Co.	11–30–93	G–S	157	N	F	11–01–93	Indef.
ST94–1574	Arkla Energy Resources Co.	United Gas Co of Arkansas.	11–30–93	G–S	103	N	F	11–01–93	Indef.
ST94–1575	Arkla Energy Resources Co.	Brouk Co	11–30–93	G–S	8	N	F	11–01–93	Indef.
ST94–1576	Arkla Energy Resources Co.	Doe Run Co	11–30–93	G–S	462	N	F	11–01–93	Indef.
ST94–1577	Arkla Energy Resources Co.	Jefferson Smurfit Corp.	11–30–93	G–S	15	N	F	11–01–93	Indef.

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ST94–1578	Arkla Energy Resources Co.	Union Electric Co	11–30–93	G–S	4,186	N	F	11–01–93	Indef.
ST94–1579	Arkla Energy Resources Co.	Red River Zinc Corp.	11–30–93	G–S	147	N	F	11–01–93	Indef.
ST94–1580	Arkla Energy Resources Co.	City of Chester ..	11–30–93	G–S	692	N	F	11–01–93	Indef.
ST94–1581	Arkla Energy Resources Co.	Nesco Steel Barrel Co.	11–30–93	G–S	30	N	F	11–01–93	Indef.
ST94–1582	Arkla Energy Resources Co.	Rhoex, Inc	11–30–93	G–S	92	N	F	11–01–93	Indef.
ST94–1583	Arkla Energy Resources Co.	Sterling Steel Co	11–30–93	G–S	16	N	F	11–01–93	Indef.
ST94–1584	Arkla Energy Resources Co.	City of Augusta ..	11–30–93	G–S	272	N	F	11–01–93	Indef.
ST94–1585	Arkla Energy Resources Co.	City of Bismark ..	11–30–93	G–S	187	N	F	11–01–93	Indef.
ST94–1586	Arkla Energy Resources Co.	Associated Natural Gas Co.	11–30–93	G–S	628	N	F	11–01–93	Indef.
ST94–1587	Arkla Energy Resources Co.	MRT Gas Sales & Services Division.	11–30–93	G–S	180,000	N	I	11–01–93	Indef.
ST94–1588	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	11–30–93	G–S	6,117	N	F	11–01–93	Indef.
ST94–1589	Arkla Energy Resources Co.	Village of Dupo ..	11–30–93	G–S	313	N	F	11–01–93	Indef.
ST94–1590	Oasis Pipe Line Co.	Transwestern Pipeline Co.	11–30–93	C	50,000	N	I	11–01–93	Indef.
ST94–1591	Oasis Pipe Line Co.	El Paso Natural Gas Co.	11–30–93	C	25,000	N	I	10–18–93	Indef.
ST94–1592	Oasis Pipe Line Co.	EL Paso Natural Gas Co.	11–30–93	C	25,000	N	I	10–19–93	Indef.
ST94–1593	Oasis Pipe Line Co.	Transwestern Pipeline Co.	11–30–93	C	25,000	N	I	11–01–93	Indef.
ST94–1594	Oasis Pipe Line Co.	El Paso Natural Gas Co.	11–30–93	C	25,000	N	I	11–01–93	Indef.
ST94–1595	Mississippi River Trans Corp.	Nesco Steel Barrel Co.	11–30–93	G–S	145	N	F	11–01–93	Indef.
ST94–1596	Mississippi River Trans Corp.	Premier Gas Co	11–30–93	G–S	2,000	N	I	11–01–93	Indef.
ST94–1597	Mississippi River Trans Corp.	MRT Energy Marketing Co.	11–30–93	G–S	100,000	A	I	11–01–93	Indef.
ST94–1598	Sabine Pipe Line Co.	Sonat Marketing Co.	11–30–93	G–S	50,000	N	I	11–01–93	Indef.
ST94–1599	Sabine Pipe Line Co.	Philbro Energy ...	11–30–93	G–S	500,000	N	I	11–01–93	Indef.
ST94–1600	Sabine Pipe Line Co.	Eagle Natural Gas Co.	11–30–93	G–S	40,000	N	I	11–01–93	Indef.
ST94–1601	Sabine Pipe Line Co.	Catex Energy, Inc.	11–30–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1602	Sabine Pipe Line Co.	Associated Natural Gas, Inc.	11–30–93	G–S	75,000	N	I	11–01–93	Indef.
ST94–1603	Sabine Pipe Line Co.	Louis Dreyfus Energy Corp.	11–30–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1604	Sabine Pipe Line Co.	Koch Gas Services Co.	11–30–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1605	Sabine Pipe Line Co.	Panhandle Trading Co.	11–30–93	G–S	75,000	N	I	11–01–93	Indef.
ST94–1606	Sabine Pipe Line Co.	MG Natural Gas Corp.	11–30–93	G–S	75,000	N	I	11–01–93	Indef.
ST94–1607	Sabine Pipe Line Co.	Amoco Energy Trading Corp.	11–30–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1608	Sabine Pipe Line Co.	Brooklyn Interstate Nat Gas Corp.	11–30–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1609	Sabine Pipe Line Co.	Pontchartrain Natural Gas System.	11–30–93	G–S	220,000	N	I	11–01–93	Indef.
ST94–1610	Sabine Pipe Line Co.	CNG Trading Co	11–30–93	G–S	210,000	N	I	11–01–93	Indef.
ST94–1611	Sabine Pipe Line Co.	Nortech Energy Corp.	11–30–93	G–S	50,000	N	I	11–01–93	Indef.

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ST94–1612	Sabine Pipe Line Co.	Olympic Pipeline Co.	11–30–93	B	50,000	N	I	11–01–93	Indef.
ST94–1613	Sabine Pipe Line Co.	Equitable Resources Marketing Co.	11–30–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1614	Sabine Pipe Line Co.	National Gas Resources, L.P.	11–30–93	G–S	20,000	N	I	10–28–93	Indef.
ST94–1615	Sabine Pipe Line Co.	Sunrise Energy Co.	11–30–93	G–S	50,000	N	I	11–01–93	Indef.
ST94–1616	Sabine Pipe Line Co.	Neste Oy	11–30–93	G–S	200,000	N	I	11–01–93	Indef.
ST94–1617	Sabine Pipe Line Co.	Torch Gas, L.C. .	11–30–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1618	Sabine Pipe Line Co.	Bridgeline Gas Disribution Co.	11–30–93	B	200,000	N	I	11–01–93	Indef.
ST94–1619	Sabine Pipe Line Co.	Texaco, Inc	11–30–93	G–S	10,000	A	I	11–01–93	Indef.
ST94–1620	Sabine Pipe Line Co.	Calcasieu Gas Gathering System.	11–30–93	G–S	220,000	N	I	11–01–93	Indef.
ST94–1621	Sabine Pipe Line Co.	Acadian Gas Pipeline System.	11–30–93	G–S	220,000	N	I	11–01–93	Indef.
ST94–1622	Sabine Pipe Line Co.	Spindletop Gas Distribution System.	11–30–93	G–S	220,000	N	I	11–01–93	Indef.
ST94–1623	Sabine Pipe Line Co.	Kerr-Mcgee Corp	11–30–93	G–S	40,000	N	I	11–01–93	Indef.
ST94–1624	Sabine Pipe Line Co.	O&R Energy, Inc	11–30–93	G–S	50,000	N	I	11–01–93	Indef.
ST94–1625	Sabine Pipe Line Co.	Amerada Hess Corp.	11–30–93	G–S	200,000	N	I	11–01–93	Indef.
ST94–1626	Sabine Pipe Line Co.	CNG Producing Co.	11–30–93	G–S	105,000	N	I	11–01–93	Indef.
ST94–1627	Sabine Pipe Line Co.	GGR Energy	11–30–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1628	Sabine Pipe Line Co.	Western Gas Resources, Inc.	11–30–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1629	Sabine Pipe Line Co.	Tauber Oil Co	11–30–93	G–S	50,000	N	I	11–01–93	Indef.
ST94–1630	Sabine Pipe Line Co.	Neches Gas Distribution Co.	11–30–93	B	100,000	N	I	11–01–93	Indef.
ST94–1631	Sabine Pipe Line Co.	Union Pacific Fuels, Inc.	11–30–93	G–S	80,000	N	I	11–01–93	Indef.
ST94–1632	Sabine Pipe Line Co.	Yuma Gas Corp	11–30–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1633	Sabine Pipe Line Co.	Citrus Marketing, Inc.	11–30–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1634	Sabine Pipe Line Co.	BP Gas Inc	11–30–93	G–S	100,000	N	I	11–01–93	Indef.
ST94–1635	Texas Eastern Transmission Corp.	UGI Utilities, Inc	11–30–93	G–S	10,391	N	F	11–01–93	10–31–13
ST94–1636	Texas Eastern Transmission Corp.	Public Service Electric & Gas Co.	11–30–93	G–S	13,398	N	F	11–01–93	10–31–14
ST94–1637	Texas Eastern Transmission Corp.	Stand Energy Corp.	11–30–93	G–S	1,000	N	F	11–01–93	10–31–94
ST94–1638	Texas Eastern Transmission Corp.	UGI Utilities, Inc	11–30–93	G–S	10,391	N	F	11–01–93	10–31–13
ST94–1639	Texas Eastern Transmission Corp.	Miami Valley Resources Inc.	11–30–93	G–S	8,160	N	F	11–01–93	10–31–94
ST94–1640	Texas Eastern Transmission Corp.	National Gas Resources, L.P.	11–30–93	G–S	80,000	N	I	11–01–93	03–31–94
ST94–1641	Texas Eastern Transmission Corp.	Centra Gas Ontario, Inc.	11–30–93	G–S	20,000	N	F	11–01–93	10–01–95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–1642	Texas Eastern Transmission Corp.	Bay State Gas Co.	11–30–93	G–S	4,235	N	F	11–01–93	10–31–09
ST94–1643	Texas Eastern Transmission Corp.	Bay State Gas Co.	11–30–93	G–S	49	N	I	11–01–93	10–31–09
ST94–1644	Texas Eastern Transmission Corp.	Northern Utilities Inc.	11–30–93	G–S	965	N	F	11–01–93	10–31–09
ST94–1645	Texas Eastern Transmission Corp.	Columbia Gas of Pennsylvania.	11–30–93	G–S	14,835	N	I	11–01–93	10–31–03
ST94–1646	Texas Eastern Transmission Corp.	Columbia Gas of Pennsylvania.	11–30–93	G–S	7,000	N	I	11–01–93	10–31–03
ST94–1647	Texas Eastern Transmission Corp.	Northern Utilities Inc.	11–30–93	G–S	11	N	I	11–01–93	10–31–12
ST94–1648	Texas Eastern Transmission Corp.	Columbia Gas Transmission Corp.	11–30–93	G	18,021	N	F	11–01–93	10–31–99
ST94–1649	Texas Eastern Transmission Corp.	Penn Fuel Gas, Inc.	11–30–93	G–S	977	N	F	11–01–93	10–31–99
ST94–1650	Texas Eastern Transmission Corp.	Penn Fuel Gas, Inc.	11–30–93	G–S	317,185	N	F	11–01–93	10–31–99
ST94–1651	Texas Eastern Transmission Corp.	New Jersey Natural gas Co.	11–30–93	G–S	3,671	N	I	11–01–93	10–31–99
ST94–1652	Texas Eastern Transmission Corp.	Columbia Gas Transmission Corp.	11–30–93	G	75,000	N	I	11–02–93	03–31–94
ST94–1653	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	11–30–93	G–S	53,104	N	I	11–01–93	03–31–94
ST94–1654	Texas Eastern Transmission Corp.	Vesta Energy Co	11–30–93	G–S	10,000	N	I	11–01–93	03–31–94
ST94–1655	Texas Eastern Transmission Corp.	Vesta Energy Co	11–30–93	G–S	10,000	N	I	11–01–93	03–31–94
ST94–1656	Texas Eastern Transmission Corp.	Elizabethtown Gas Co.	11–30–93	G–S	1,348	N	F	11–01–93	10–31–99
ST94–1657	Texas Eastern Transmission Corp.	Providence Gas Co.	11–30–93	G–S	3,671	N	F	11–01–93	10–31–99
ST94–1658	Texas Eastern Transmission Corp.	UGI Utilities, Inc	11–30–93	G–S	32,475	N	F	11–01–93	10–31–99
ST94–1659	Texas Eastern Transmission Corp.	New York State Electric & Gas Corp.	11–30–93	G–S	1,839	N	F	11–01–93	10–31–99
ST94–1660	Texas Eastern Transmission Corp.	National Fuel Gas District Corp.	11–30–93	G–S	517	N	F	11–01–93	10–31–03
ST94–1661	Texas Eastern Transmission Corp.	UGI Utilities, Inc	11–30–93	G–S	41,000	N	I	11–01–93	10–31–99
ST94–1662	Texas Eastern Transmission Corp.	Indiana Gas Co .	11–30–93	G–S	3,810	N	I	11–01–93	10–31–98
ST94–1663	Texas Eastern Transmission Corp.	CNG Transmission Corp.	11–30–93	G	30,000	N	F	11–01–93	10–31–13
ST94–1664	Texas Eastern Transmission Corp.	UGI Utilities, Inc	11–30–93	G–S	20,000	N	F	11–01–93	10–31–13

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–1665	Texas Eastern Transmission Corp.	Public Service Electric & Gas.	11–30–93	G–S	13,000	N	F	11–01–93	10–31–14
ST94–1666	Texas Eastern Transmission Corp.	Central Illinois Public Service Co.	11–30–93	G–S	8,000	N	F	11–01–93	10–31–96
ST94–1667	Texas Eastern Transmission Corp.	Associated Natural Gas, Inc.	11–30–93	G–S	400,000	N	I	11–01–93	03–31–94
ST94–1668	Texas Eastern Transmission Corp.	Direct Gas Supply Corp.	11–30–93	G–S	36,225	N	I	11–03–93	09–30–94
ST94–1669	Texas Eastern Transmission Corp.	NGC Transportation Inc.	11–30–93	G–S	258,750	N	I	11–03–93	09–30–94
ST94–1670	Texas Eastern Transmission Corp.	Miami Valley Resources Inc.	11–30–93	G–S	5,175	N	I	11–01–93	09–30–94
ST94–1671	Texas Eastern Transmission Corp.	City of Hamilton .	11–30–93	G–S	20,000	N	I	11–01–93	03–31–94
ST94–1672	Texas Eastern Transmission Corp.	Northeast Energy Associates.	11–30–93	G–S	150,000	N	I	11–06–93	03–31–94
ST94–1673	Texas Eastern Transmission Corp.	Appalacian Gas Sales.	11–30–93	G–S	240,000	N	I	11–03–93	03–31–94
ST94–1674	Texas Eastern Transmission Corp.	Mitchell Marketing Co.	11–30–93	G–S	200,000	N	I	11–01–93	03–31–94
ST94–1675	Texas Eastern Transmission Corp.	Apache Corp	11–30–93	G–S	100,000	N	I	11–01–93	08–31–94
ST94–1676	Texas Eastern Transmission Corp.	Miami Valley Resources Inc.	11–30–93	G–S	27,000	N	I	11–01–93	10–31–94
ST94–1677	Texas Eastern Transmission Corp.	Producers Gas Sales, Inc.	11–30–93	G–S	36,000	N	I	11–01–93	03–31–94
ST94–1678	Texas Eastern Transmission Corp.	Columbia Gas of Ohio, Inc.	11–30–93	G–S	200,000	N	I	11–01–93	03–31–94
ST94–1679	Transcontinental Gas P/L Corp.	Pennsylvania Gas & Water Co.	11–30–93	G–S	46,900	N	F	11–01–93	10–31–04
ST94–1680	Transcontinental Gas P/L Corp.	Long Island Lighting Co.	11–30–93	G–S	1,800	N	F	11–01–93	07–31–06
ST94–1681	Transcontinental Gas P/L Corp.	Frederick Gas Co.	11–30–93	G–S	4,500	N	F	11–01–93	03–31–09
ST94–1682	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co., Inc.	11–30–93	G–S	5,996	N	F	11–01–93	03–31–00
ST94–1683	Transcontinental Gas P/L Corp.	Union Gas Co	11–30–93	G–S	10,350	A	F	11–01–93	03–31–05
ST94–1684	Transcontinental Gas P/L Corp.	Long Island Lighting Co.	11–30–93	G–S	1,750	A	F	11–01–93	02–25–98
ST94–1685	Transcontinental Gas P/L Corp.	Maplesville Water & Gas Board.	11–30–93	G–S	681	A	F	11–01–93	03–31–06
ST94–1686	Transcontinental Gas P/L Corp.	Horsehead Resource Development Co.	11–30–93	G–S	3,000	A	F	11–01–93	11–15–95
ST94–1687	Transcontinental Gas P/L Corp.	Rochester Gas & Electric Corp.	11–30–93	G–S	9,307	A	F	11–01–93	10–31–12
ST94–1688	Transcontinental Gas P/L Corp.	Public Service Electric & Gas Co.	11–30–93	G–S	12,800	A	F	11–01–93	07–31–06
ST94–1689	Transcontinental Gas P/L Corp.	Delmarva Power & Light Co.	11–30–93	G–S	54,800	A	F	11–01–93	03–31–05
ST94–1690	Transcontinental Gas P/L Corp.	Delmarva Power & Light Co.	11–30–93	G–S	1,600	A	F	11–01–93	07–31–01

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ST94–1691	Transcontinental Gas P/L Corp.	City of Clanton ...	11–30–93	G–S	3,460	N	F	11–01–93	12–31–01
ST94–1692	Transcontinental Gas P/L Corp.	City of Winder	11–30–93	G–S	5,000	A	F	11–01–93	03–31–06
ST94–1693	Transcontinental Gas P/L Corp.	City of Butler	11–30–93	G–S	550	A	F	11–01–93	12–31–01
ST94–1694	Transcontinental Gas P/L Corp.	City of Bowman .	11–30–93	G–S	250	A	F	11–01–93	03–31–06
ST94–1695	Transcontinental Gas P/L Corp.	Alabama Gas Corp.	11–30–93	G–S	2,000	N	F	11–01–93	12–31–01
ST94–1696	Transcontinental Gas P/L Corp.	Arkla Energy Marketing Co.	11–30–93	G–S	300,000	N	I	11–23–93	INDEF.
ST94–1697	Transcontinental Gas P/L Corp.	City of Roanoke .	11–30–93	G–S	1,726	N	F	11–01–93	03–31–06
ST94–1698	Transcontinental Gas P/L Corp.	City of Wadley ...	11–30–93	G–S	376	N	F	11–01–93	03–31–06
ST94–1699	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11–30–93	G–S	46,609	A	F	11–01–93	10–31–06
ST94–1700	Transcontinental Gas P/L Corp.	Public Service Electric & Gas Co.	11–30–93	G–S	411,527	A	F	11–01–93	03–31–05
ST94–1701	Transcontinental Gas P/L Corp.	South Jersey Gas Co.	11–30–93	G–S	2,187	A	F	11–01–93	02–28–03
ST94–1702	Transcontinental Gas P/L Corp.	South Jersey Gas Co.	11–30–93	G–S	124,300	N	F	11–01–93	02–28–10
ST94–1703	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co.	11–30–93	G–S	1,750	A	F	11–01–93	03–19–98
ST94–1704	Transcontinental Gas P/L Corp.	Brooklyn Union Gas Co.	11–30–93	G–S	15,336	N	F	11–01–93	03–20–98
ST94–1705	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co.	11–30–93	G–S	2,841	N	F	11–01–93	10–31–04
ST94–1706	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co.	11–30–93	G–S	75,126	A	F	11–01–93	10–31–04
ST94–1707	Transcontinental Gas P/L Corp.	Public Service Electric & Gas Co.	11–30–93	G–S	6,222	A	F	11–01–93	03–02–98
ST94–1708	Transcontinental Gas P/L Corp.	Brooklyn Union Gas Co.	11–30–93	G–S	237,638	A	F	11–01–93	03–31–05
ST94–1709	Transcontinental Gas P/L Corp.	Public Ser. Co. of N. Carolina, Inc.	11–30–93	G–S	158,600	A	F	11–01–93	10–31–04
ST94–1710	Transcontinental Gas P/L Corp.	Atlanta Gas Light Co.	11–30–93	G–S	107,600	A	F	11–01–93	03–31–10
ST94–1711	Transcontinental Gas P/L Corp.	Appalachian Gas Sales.	11–30–93	G–S	219	A	F	11–01–93	03–25–98
ST94–1712	Transcontinental Gas P/L Corp.	East Central Alabama Gas District.	11–30–93	G–S	438	N	F	11–01–93	10–31–13
ST94–1713	Transcontinental Gas P/L Corp.	City of Wedowee	11–30–93	G–S	109	N	F	11–01–93	10–31–13
ST94–1714	Transcontinental Gas P/L Corp.	Connecticut Natural Gas Corp.	11–30–93	G–S	1,814	N	F	11–01–93	06–01–08
ST94–1715	Transcontinental Gas P/L Corp.	Long Island Lighting Co.	11–30–93	G–S	149,070	A	F	11–01–93	03–31–05
ST94–1716	Transcontinental Gas P/L Corp.	City of Rockford .	11–30–93	G–S	139	N	F	11–01–93	03–31–06
ST94–1717	Transcontinental Gas P/L Corp.	UGI Utilities, Inc	11–30–93	G–S	1,300	N	F	11–01–93	07–31–01
ST94–1718	Transcontinental Gas P/L Corp.	City of Bessemer	11–30–93	G–S	2,000	A	F	11–01–93	12–31–01
ST94–1719	Transcontinental Gas P/L Corp.	City of Wedoweed.	11–30–93	G–S	541	A	F	11–01–93	03–31–06
ST94–1720	Transcontinental Gas P/L Corp.	Alabama Gas Corp.	11–30–93	G–S	110	N	F	11–01–93	12–31–01
ST94–1721	Transcontinental Gas P/L Corp.	South Jersey Gas Co.	11–30–93	G–S	2,900	N	F	11–01–93	07–31–11
ST94–1722	Transcontinental Gas P/L Corp.	City of Greer	11–30–93	G–S	91	N	F	11–01–93	02–26–98
ST94–1723	Transcontinental Gas P/L Corp.	Union Gas Co	11–30–93	G–S	10,350	A	F	11–01–93	07–31–06

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ST94–1724	Transcontinental Gas P/L Corp.	City of Blacksburg.	11–30–93	G–S	2,410	N	F	11–01–93	03–31–05
ST94–1725	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co.	11–30–93	G–S	1,900	N	F	11–01–93	07–31–06
ST94–1726	Transcontinental Gas P/L Corp.	Temco	11–30–93	G–S	100,000	A	F	11–01–93	10–31–02
ST94–1727	Transcontinental Gas P/L Corp.	Clinton-Newberry Nat. Gas Authority.	11–30–93	G–S	100	N	F	11–01–93	07–31–01
ST94–1728	Transcontinental Gas P/L Corp.	City of Liberty	11–30–93	G–S	285	N	F	11–01–93	12–31–01
ST94–1729	Transcontinental Gas P/L Corp.	City of Wadley ...	11–30–93	G–S	275	N	F	11–01–93	10–31–13
ST94–1730	Transcontinental Gas P/L Corp.	City of Laurens ..	11–30–93	G–S	100	N	F	11–01–93	07–31–01
ST94–1731	Transcontinental Gas P/L Corp.	UGI Utilities, Inc	11–30–93	G–S	2,011	N	F	11–01–93	06–15–98
ST94–1732	Transcontinental Gas P/L Corp.	KCS Energy Marketing, Inc.	11–30–93	G–S	5,778	N	F	11–01–93	10–31–06
ST94–1733	Transcontinental Gas P/L Corp.	UGI Utilities, Inc	11–30–93	G–S	4,900	A	F	11–01–93	10–31–97
ST94–1734	Kern River Gas Transmission Co.	North American Chemical Co.	11–30–93	G–S	24,000	N	I	11–04–93	Indef.
ST94–1735	Midwestern Gas Transmission Co.	Southern Indiana Gas & Electric Co.	11–30–93	G–S	10,000	N	F	11–02–93	Indef.
ST94–1736	Tennessee Gas Pipeline Co.	Northern Utilities, Inc.	11–30–93	G–S	950	N	F	11–01–93	Indef.
ST94–1737	Tennessee Gas Pipeline Co.	Delhi Gas Pipeline Corp.	11–30–93	B	50,000	N	I	11–04–93	Indef.
ST94–1738	Tennessee Gas Pipeline Co.	Texas-Ohio Gas, Inc.	11–30–93	G–S	2,500	N	F	11–02–93	Indef.
ST94–1739	Tennessee Gas Pipeline Co.	Northern Utilities, Inc.	11–30–93	G–S	2,653	N	F	11–02–93	Indef.
ST94–1740	Tennessee Gas Pipeline Co.	City of Decatur ..	11–30–93	G–S	8,700	N	I	11–03–93	Indef.
ST94–1741	Tennessee Gas Pipeline Co.	Citizens Gas Utility District.	11–30–93	G–S	616	N	F	11–04–93	Indef.
ST94–1742	Tennessee Gas Pipeline Co.	Mississippi Valley Gas Co.	11–30–93	G–S	17,500	N	F	11–03–93	Indef.
ST94–1743	Tennessee Gas Pipeline Co.	Bay State Gas Co.	11–30–93	G–S	6,170	N	F	11–01–93	Indef.
ST94–1745	Tennessee Gas Pipeline Co.	Mid Louisiana Marketing Co.	11–30–93	G–S	50,000	N	I	11–02–93	Indef.
ST94–1746	Tennessee Gas Pipeline Co.	Bay State Gas Co.	11–30–93	G–S	15,375	N	F	11–08–93	Indef.
ST94–1747	Tennessee Gas Pipeline Co.	Interstate Gas Marketing, Inc.	11–30–93	G–S	5,000	N	F	11–04–93	Indef.
ST94–1748	Tennessee Gas Pipeline Co.	Energynorth Natural Gas, Inc.	11–30–93	G–S	4,240	N	F	11–10–93	Indef.
ST94–1749	Tennessee Gas Pipeline Co.	Brooklyn Union Gas Co.	11–30–93	G–S	6,638	N	F	11–07–93	Indef.
ST94–1750	Tennessee Gas Pipeline Co.	Vintage Gas, Inc	11–30–93	G–S	1,000	N	I	11–11–93	Indef.
ST94–1751	Tennessee Gas Pipeline Co.	Bay State Gas Co.	11–30–93	G–S	12,547	N	F	11–02–93	Indef.
ST94–1752	Tennessee Gas Pipeline Co.	Brooklyn Union Gas Co.	11–30–93	G–S	6,834	N	F	11–02–93	Indef.
ST94–1753	Tennessee Gas Pipeline Co.	Vesta Energy Co	11–30–93	G–S	1,013	N	F	11–03–93	Indef.
ST94–1754	El Paso Natural Gas Co.	Sonat Marketing Co.	11–30–93	G–S	103,000	N	I	11–01–93	Indef.
ST94–1755	Florida Gas Transmission Co.	Onyx Gas Marketing Co., L.C.	11–30–93	G–S	20,000	N	I	11–01–93	Indef.
ST94–1756	Northern Natural Gas Co.	Northern States Power Co.	11–30–93	G–S	45,000	N	F/I	11–01–93	10–31–08
ST94–1757	Transwestern Pipeline Co.	Meridian Oil Trading, Inc.	11–30–93	G–S	55,000	N	F	11–01–93	02–28–00

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ST94–1758	Natural Gas P/L Co. of America.	Illinois Power Co	11–30–93	G–S	7,862	N	F	11–01–93	11–30–93
ST94–1759	Natural Gas P/L Co. of America.	Archer-Daniels-Midland Co.	11–30–93	G–S	20,000	N	I	10–01–90	Indef.
ST94–1760	Natural Gas P/L Co. of America.	NGC Transportation, Inc.	11–30–93	G–S	20,000	N	F	11–06–93	11–30–96
ST94–1761	Natural Gas P/L Co. of America.	National Steel Corp.	11–30–93	G–S	1,574	N	F	11–01–93	11–30–93
ST94–1762	Natural Gas P/L Co. of America.	Cargill, Inc	11–30–93	G–S	100,000	N	I	11–02–93	Indef.
ST94–1763	Natural Gas P/L Co. of America.	Union Electric Co	11–30–93	G–S	1,572	N	F	11–01–93	11–30–93
ST94–1764	Iroquois Gas Trans. Sys., L.P.	Ag-Energy, Inc ...	11–30–93	G–S	25,000	N	I	11–05–93	Indef.
ST94–1765	Iroquois Gas Trans. Sys., L.P.	New England Power Co.	11–30–93	G–S	60,000	N	F	11–01–93	11–01–13
ST94–1766	Iroquois Gas Trans. Sys., L.P.	Northern Utilities, Inc.	11–30–93	G–S	6,493	N	F	11–01–93	11–01–12
ST94–1767	Iroquois Gas Trans. Sys., L.P.	CNG Gas Services, Inc.	11–30–93	G–S	40,000	Y	I	11–01–93	Indef.
ST94–1768	Iroquois Gas Trans. Sys., L.P.	Niagara Mohawk Power Corp.	11–30–93	G–S	51,000	N	F	11–01–93	10–31–11
ST94–1769	Iroquois Gas Trans. Sys., L.P.	St. Lawrence Gas Co, Inc.	11–30–93	B	20	N	F	11–01–93	10–31–98
ST94–1770	Iroquois Gas Trans. Sys., L.P.	Renaissance Energy, Inc.	11–30–93	G–S	50,000	N	I	11–01–93	Indef.
ST94–1771	Iroquois Gas Trans. Sys., L.P.	Bay State Gas Co.	11–30–93	B	28,507	N	F	11–01–93	11–01–12
ST94–1772	Iroquois Gas Trans. Sys., L.P.	Salmon Resources Ltd.	11–30–93	G–S	230,000	N	I	11–01–93	Indef.
ST94–1773	Iroquois Gas Trans. Sys., L.P.	Continental Energy Marketing, Inc.	11–30–93	G–S	16,908	N	F	11–01–93	11–30–93
ST94–1774	Iroquois Gas Trans. Sys., L.P.	Direct Gas Supply/IESC, Inc.	11–30–93	G–S	10,000	N	F	11–01–93	11–30–93
ST94–1775	East Tennessee Natural Gas Co.	City of Mont Pleasant.	11–30–93	G–S	2,575	N	F	11–01–93	Indef.
ST94–1776	East Tennessee Natural Gas Co.	Middle Tennessee Utility District.	11–30–93	G–S	27,572	N	F	11–01–93	Indef.
ST94–1777	East Tennessee Natural Gas Co.	Middle Tennessee Utility District.	11–30–93	G–S	16,621	N	F	11–01–93	Indef.
ST94–1778	East Tennessee Natural Gas Co.	City of South Pittsburg.	11–30–93	G–S	580	N	F	11–01–93	Indef.
ST94–1779	East Tennessee Natural Gas Co.	City of Madisonville.	11–30–93	G–S	1,391	N	F	11–01–93	Indef.
ST94–1780	East Tennessee Natural Gas Co.	City of South Pittsburg.	11–30–93	G–S	4,009	N	F	11–01–93	Indef.
ST94–1781	East Tennessee Natural Gas Co.	City of Loudon ...	11–30–93	G–S	8,626	N	F	11–01–93	Indef.
ST94–1782	East Tennessee Natural Gas Co.	City of Livingston	11–30–93	G–S	2,678	N	F	11–01–93	Indef.

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ST94–1783	East Tennessee Natural Gas Co.	Mead Paper	11–30–93	G–S	100	N	F	11–01–93	Indef.
ST94–1784	East Tennessee Natural Gas Co.	Greenback Industries, Inc.	11–30–93	G–S	500	N	F	11–01–93	Indef.
ST94–1785	East Tennessee Natural Gas Co.	General Shale Products Co.	11–30–93	G–S	350	N	F	11–01–93	Indef.
ST94–1786	East Tennessee Natural Gas Co.	AFG Industries, Inc.	11–30–93	G–S	7,300	N	F	11–01–93	Indef.
ST94–1787	East Tennessee Natural Gas Co.	Department of Energy.	11–30–93	G–S	7,600	N	F	11–01–93	Indef.
ST94–1788	East Tennessee Natural Gas Co.	Bowater Inc	11–30–93	G–S	4,000	N	F	11–01–93	Indef.
ST94–1789	East Tennessee Natural Gas Co.	Aluminum Co. of America.	11–30–93	G–S	18,000	N	F	11–01–93	Indef.
ST94–1790	East Tennessee Natural Gas Co.	St. of TN, Adjutant General's Dept.	11–30–93	G–S	375	N	F	11–01–93	Indef.
ST94–1791	East Tennessee Natural Gas Co.	Ucar Carbon Co., Inc.	11–30–93	G–S	3,200	N	F	11–01–93	Indef.
ST94–1792	East Tennessee Natural Gas Co.	Zeneca, Inc	11–30–93	G–S	350	N	F	11–01–93	Indef.
ST94–1793	East Tennessee Natural Gas Co.	Rhone Poulenc Basic Chemicals Co.	11–30–93	G–S	500	N	F	11–01–93	Indef.
ST94–1794	East Tennessee Natural Gas Co.	Eastman Chemical Co.	11–30–93	G–S	11,200	N	F	11–01–93	Indef.
ST94–1795	East Tennessee Natural Gas Co.	Rhone Poulenc Ag Co.	11–30–93	G–S	300	N	F	11–01–93	Indef.
ST94–1796	East Tennessee Natural Gas Co.	Olin Corp	11–30–93	G–S	150	N	F	11–01–93	Indef.
ST94–1797	East Tennessee Natural Gas Co.	Occidental Chemical Corp.	11–30–93	G–S	150	N	F	11–01–93	Indef.
ST94–1798	East Tennessee Natural Gas Co.	Unicoi County Utility District.	11–30–93	G–S	515	N	F	11–01–93	Indef.
ST94–1799	East Tennessee Natural Gas Co.	United Cities Gas Co.	11–30–93	G–S	36,547	N	F	11–01–93	Indef.
ST94–1800	East Tennessee Natural Gas Co.	City of Loudon ...	11–30–93	G–S	438	N	F	11–01–93	Indef.
ST94–1801	East Tennessee Natural Gas Co.	United Cities Gas Co.	11–30–93	G–S	94,263	N	F	11–01–93	Indef.
ST94–1802	East Tennessee Natural Gas Co.	Citizens Gas Utility District.	11–30–93	G–S	665	N	F	11–01–93	Indef.
ST94–1803	East Tennessee Natural Gas Co.	City of Cookeville	11–30–93	G–S	6,590	N	F	11–01–93	Indef.
ST94–1804	East Tennessee Natural Gas Co.	Chattanooga Gas Co.	11–30–93	G–S	46,350	N	F	11–01–93	Indef.
ST94–1805	East Tennessee Natural Gas Co.	Atlanta Gas Light Co.	11–30–93	G–S	63,860	N	F	11–01–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–1806	East Tennessee Natural Gas Co.	City of Athens	11–30–93	G–S	5,779	N	F	11–01–93	Indef.
ST94–1807	East Tennessee Natural Gas Co.	City of Athens	11–30–93	G–S	1,122	N	F	11–01–93	Indef.
ST94–1808	East Tennessee Natural Gas Co.	Monsanto Co	11–30–93	G–S	150	N	F	11–01–93	Indef.
ST94–1809	East Tennessee Natural Gas Co.	Nat. Gas Utility Dist. of Hawkins.	11–30–93	G–S	2,837	N	F	11–01–93	Indef.
ST94–1810	East Tennessee Natural Gas Co.	Oak Ridge Utility District.	11–30–93	G–S	7,622	N	F	11–01–93	Indef.
ST94–1811	East Tennessee Natural Gas Co.	City of Lenoir	11–30–93	G–S	4,285	N	F	11–01–93	Indef.
ST94–1812	East Tennessee Natural Gas Co.	City of Lewisburg	11–30–93	G–S	5,069	N	F	11–01–93	Indef.
ST94–1813	East Tennessee Natural Gas Co.	Jefferson-Cocke Cty. Utility Dist.	11–30–93	G–S	8,334	N	F	11–01–93	Indef.
ST94–1814	East Tennessee Natural Gas Co.	City of Lewisburg	11–30–93	G–S	699	N	F	11–01–93	Indef.
ST94–1815	East Tennessee Natural Gas Co.	City of Etowah ...	11–30–93	G–S	134	N	F	11–01–93	Indef.
ST94–1816	East Tennessee Natural Gas Co.	City of Etowah ...	11–30–93	G–S	2,407	N	F	11–01–93	Indef.
ST94–1817	East Tennessee Natural Gas Co.	City of Pulaski ...	11–30–93	G–S	515	N	F	11–01–93	Indef.
ST94–1818	East Tennessee Natural Gas Co.	Unicoi County Utility District.	11–30–93	G–S	4,120	N	F	11–01–93	Indef.
ST94–1819	East Tennessee Natural Gas Co.	City of Monteagle.	11–30–93	G–S	541	N	F	11–01–93	Indef.
ST94–1820	East Tennessee Natural Gas Co.	City of Algood	11–30–93	G–S	670	N	F	11–01–93	Indef.
ST94–1821	East Tennessee Natural Gas Co.	City of Sweetwater.	11–30–93	G–S	3,296	N	F	11–01–93	Indef.
ST94–1822	East Tennessee Natural Gas Co.	Sevier County Utility District.	11–30–93	G–S	1,133	N	F	11–01–93	Indef.
ST94–1823	East Tennessee Natural Gas Co.	Sevier County Utility District.	11–30–93	G–S	5,253	N	F	11–01–93	Indef.
ST94–1824	East Tennessee Natural Gas Co.	City of Rockwood.	11–30–93	G–S	4,167	N	F	11–01–93	Indef.
ST94–1825	East Tennessee Natural Gas Co.	Ranoke Gas Co .	11–30–93	G–S	10,083	N	F	11–01–93	Indef.
ST94–1826	East Tennessee Natural Gas Co.	Powell-Clinch Utility Dist./Anderson.	11–30–93	G–S	1,645	N	F	11–01–93	Indef.
ST94–1827	East Tennessee Natural Gas Co.	Powell-Clinch Utility Dist./Anderson.	11–30–93	G–S	6,536	N	F	11–01–93	Indef.
ST94–1828	East Tennessee Natural Gas Co.	City of Fayetteville.	11–30–93	G–S	4,511	N	F	11–01–93	Indef.

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ST94–1829	East Tennessee Natural Gas Co.	City of Harriman	11–30–93	G–S	3,815	N	F	11–01–93	Indef.
ST94–1830	East Tennessee Natural Gas Co.	City of Jamestown.	11–30–93	G–S	3,278	N	F	11–01–93	Indef.
ST94–1831	East Tennessee Natural Gas Co.	City of Knoxville	11–30–93	G–S	51,500	N	F	11–01–93	Indef.
ST94–1832	East Tennessee Natural Gas Co.	City of Englewood.	11–30–93	G–S	618	N	F	11–01–93	Indef.
ST94–1833	East Tennessee Natural Gas Co.	City of Jamestown.	11–30–93	G–S	309	N	F	11–01–93	Indef.
ST94–1834	East Tennessee Natural Gas Co.	City of Fayetteville.	11–30–93	G–S	485	N	F	11–01–93	Indef.
ST94–1835	East Tennessee Natural Gas Co.	City of Lawrenceburg	11–30–93	G–S	2,575	N	F	11–01–93	Indef.
ST94–1836	East Tennessee Natural Gas Co.	City of Knoxville	11–30–93	G–S	35,020	N	F	11–01–93	Indef.
ST94–1837	East Tennessee Natural Gas Co.	City of Lenoir	11–30–93	G–S	397	N	F	11–01–93	Indef.
ST94–1838	East Tennessee Natural Gas Co.	City of Gallatin	11–30–93	G–S	6,283	N	F	11–01–93	Indef.
ST94–1839	East Tennessee Natural Gas Co.	City of Gallatin	11–30–93	G–S	2,060	N	F	11–01–93	Indef.
ST94–1840	East Tennessee Natural Gas Co.	Elk River Public Utility District.	11–30–93	G–S	1,030	N	F	11–01–93	Indef.
ST94–1841	East Tennessee Natural Gas Co.	City of Gainesboro.	11–30–93	G–S	1,030	N	F	11–01–93	Indef.
ST94–1842	East Tennessee Natural Gas Co.	City of Dunlap	11–30–93	G–S	3,090	N	F	11–01–93	Indef.
ST94–1843	East Tennessee Natural Gas Co.	Elk River Public Utility District.	11–30–93	G–S	14,420	N	F	11–01–93	Indef.
ST94–1844	East Tennessee Natural Gas Co.	Natural Gas Utility District/ Hawkins.	11–30–93	G–S	3,906	N	F	11–01–93	Indef.
ST94–1845	East Tennessee Natural Gas Co.	City of Cookeville	11–30–93	G–S	1,341	N	F	11–01–93	Indef.
ST94–1846	Southern Natural Gas Co.	City of Colquitt	11–30–93	G–S	87	N	F	11–01–93	10–31–95
ST94–1847	Southern Natural Gas Co.	City of Claxton	11–30–93	G–S	910	N	F	11–01–93	10–31–96
ST94–1848	Southern Natural Gas Co.	City of Claxton	11–30–93	G–S	515	N	F	11–01–93	10–31–96
ST94–1849	Southern Natural Gas Co.	City of Eatonton	11–30–93	G–S	1,095	N	F	11–01–93	10–31–96
ST94–1850	Southern Natural Gas Co.	City of Edison	11–30–93	G–S	91	N	F	11–01–93	10–31–96
ST94–1851	Southern Natural Gas Co.	City of Douglas	11–30–93	G–S	1,289	N	F	11–01–93	02–28–97
ST94–1852	Southern Natural Gas Co.	City of Douglas	11–30–93	G–S	729	N	F	11–01–93	02–28–97
ST94–1853	Southern Natural Gas Co.	City of Donalsonville.	11–30–93	G–S	160	N	F	11–01–93	10–31–96
ST94–1854	Southern Natural Gas Co.	City of Donalsonville.	11–30–93	G–S	91	N	F	11–01–93	10–31–96
ST94–1855	Southern Natural Gas Co.	City of Shellman	11–30–93	G–S	81	N	F	11–01–93	10–31–95

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ST94–1856	Southern Natural Gas Co.	City of Scottsboro.	11–30–93	G–S	1,558	N	F	11–01–93	10–31–03
ST94–1857	Southern Natural Gas Co.	City of Richland	11–30–93	G–S	109	N	F	11–01–93	10–31–95
ST94–1858	Southern Natural Gas Co.	City of Woodland	11–30–93	G–S	58	N	F	11–01–93	10–31–96
ST94–1859	Southern Natural Gas Co.	City of Monticello	11–30–93	G–S	920	N	F	11–01–93	10–31–95
ST94–1860	Southern Natural Gas Co.	City of Meigs	11–30–93	G–S	65	N	F	11–01–93	10–31–96
ST94–1861	Southern Natural Gas Co.	City of Millen	11–30–93	G–S	240	N	F	11–01–93	10–31–95
ST94–1862	Southern Natural Gas Co.	Chilton County Gas District.	11–30–93	G–S	427	N	F	11–01–93	10–31–98
ST94–1863	Southern Natural Gas Co.	City of Sparta	11–30–93	G–S	174	N	F	11–01–93	10–31–95
ST94–1864	Southern Natural Gas Co.	City of Thomson	11–30–93	G–S	1,059	N	F	11–01–93	12–31–05
ST94–1865	Southern Natural Gas Co.	City of Tallahassee.	11–30–93	G–S	2,811	N	F	11–01–93	09–30–96
ST94–1866	Southern Natural Gas Co.	City of Talbotton	11–30–93	G–S	119	N	F	11–01–93	10–31–95
ST94–1867	Southern Natural Gas Co.	City of Sylacauga.	11–30–93	G–S	5,110	N	F	11–01–93	10–31–98
ST94–1868	Southern Natural Gas Co.	City of Sylacauga.	11–30–93	G–S	2,890	N	F	11–01–93	10–31–98
ST94–1869	Southern Natural Gas Co.	City of Fultondale.	11–30–93	G–S	2,811	N	F	11–01–93	03–31–95
ST94–1870	Southern Natural Gas Co.	City of Lagrange	11–30–93	G–S	271	N	F	11–01–93	09–30–97
ST94–1871	Southern Natural Gas Co.	City of Sumiton	11–30–93	G–S	600	N	F	11–01–93	10–31–98
ST94–1872	Southern Natural Gas Co.	City of Tchula	11–30–93	G–S	395	N	F	11–01–93	10–31–96
ST94–1873	Southern Natural Gas Co.	City of Roxie	11–30–93	G–S	182	N	F	11–01–93	10–31–96
ST94–1874	Southern Natural Gas Co.	City of Fayette	11–30–93	G–S	867	N	F	11–01–93	10–31–96
ST94–1875	Southern Natural Gas Co.	City of Artesia	11–30–93	G–S	97	N	F	11–01–93	10–31–94
ST94–1876	Southern Natural Gas Co.	City of Dublin	11–30–93	G–S	2,825	N	F	11–01–93	10–31–94
ST94–1877	Southern Natural Gas Co.	Marshall County Gas District.	11–30–93	G–S	6,504	N	F	11–01–93	12–31–00
ST94–1878	Southern Natural Gas Co.	City of Lafayette	11–30–93	G–S	672	N	F	11–01–93	03–31–95
ST94–1879	Southern Natural Gas Co.	City of Union Springs.	11–30–93	G–S	858	N	F	11–01–93	03–31–96
ST94–1880	Southern Natural Gas Co.	City of Havana	11–30–93	G–S	201	N	F	11–01–93	09–30–06
ST94–1881	Southern Natural Gas Co.	Atlanta Gas Light Co.	11–30–93	G–S	406,222	N	F	11–01–93	02–28–94
ST94–1882	Southern Natural Gas Co.	Graysville Municipal Gas System.	11–30–93	G–S	1,012	N	F	11–01–93	03–23–01
ST94–1883	Southern Natural Gas Co.	City of Childersburg.	11–30–93	G–S	1,073	N	F	11–01–93	03–31–95
ST94–1884	Southern Natural Gas Co.	City of Nashville	11–30–93	G–S	21	N	F	11–01–93	10–31–95
ST94–1885	Southern Natural Gas Co.	City of Nashville	11–30–93	G–S	321	N	F	11–01–93	10–31–95
ST94–1886	Southern Natural Gas Co.	City of Monticello	11–30–93	G–S	304	N	F	11–01–93	10–31–95
ST94–1887	Southern Natural Gas Co.	City of Calera	11–30–93	G–S	650	N	F	11–01–93	10–31–03
ST94–1888	Southern Natural Gas Co.	City of Brookside	11–30–93	G–S	200	N	F	11–01–93	10–31–03
ST94–1889	Southern Natural Gas Co.	City of Cartersville.	11–30–93	G–S	6,499	N	F	11–01–93	10–31–94
ST94–1890	Southern Natural Gas Co.	City of Cartersville.	11–30–93	G–S	3,676	N	F	11–01–93	10–31–03

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ST94–1891	Southern Natural Gas Co.	City of Childersburg.	11–30–93	G–S	831	N	F	11–01–93	03–31–95
ST94–1892	Southern Natural Gas Co.	Alabama Gas Corp.	11–30–93	G–S	141,946	N	F	11–01–93	10–31–08
ST94–1893	Southern Natural Gas Co.	City of Adel	11–30–93	G–S	623	N	F	11–01–93	12–31–05
ST94–1894	Southern Natural Gas Co.	City of Adel	11–30–93	G–S	353	N	F	11–01–93	12–31–05
ST94–1895	Southern Natural Gas Co.	City of Adairsville	11–30–93	G–S	239	N	F	11–01–93	11–01–95
ST94–1896	Southern Natural Gas Co.	City of Hogansville.	11–30–93	G–S	368	N	F	11–01–93	10–31–95
ST94–1897	Southern Natural Gas Co.	City of Warner Robins.	11–30–93	G–S	4,380	N	F	11–01–93	09–18–05
ST94–1898	Southern Natural Gas Co.	City of Ashburn ..	11–30–93	G–S	21	N	F	11–01–93	10–31–95
ST94–1899	Southern Natural Gas Co.	City of Ashburn ..	11–30–93	G–S	482	N	F	11–01–93	10–31–95
ST94–1900	Southern Natural Gas Co.	City of Cochran .	11–30–93	G–S	433	N	F	11–01–93	10–31–95
ST94–1901	Southern Natural Gas Co.	City of Dalton	11–30–93	G–S	17,745	N	F	11–01–93	07–31–98
ST94–1902	Southern Natural Gas Co.	City of Oneonta .	11–30–93	G–S	1,870	N	F	11–01–93	03–31–96
ST94–1903	Southern Natural Gas Co.	City of Piedmont	11–30–93	G–S	1,251	N	F	11–01–93	03–31–95
ST94–1904	Southern Natural Gas Co.	City of Cordele ..	11–30–93	G–S	1,219	N	F	11–01–93	10–31–98
ST94–1905	Southern Natural Gas Co.	City of Lumpkin .	11–30–93	G–S	114	N	F	11–01–93	10–31–96
ST94–1906	Southern Natural Gas Co.	City of Summerville.	11–30–93	G–S	1,883	N	F	11–01–93	12–31–05
ST94–1907	Southern Natural Gas Co.	City of Statesboro.	11–30–93	G–S	1,582	N	F	11–01–93	12–31–05
ST94–1908	Southern Natural Gas Co.	City of Andersonville.	11–30–93	G–S	26	N	F	11–01–93	10–31–95
ST94–1909	Southern Natural Gas Co.	City of Ocilla	11–30–93	G–S	275	N	F	11–01–93	10–31–96
ST94–1910	Southern Natural Gas Co.	City of Ocilla	11–30–93	G–S	156	N	F	11–01–93	10–31–96
ST94–1911	Southern Natural Gas Co.	City of Tallapoosa.	11–30–93	G–S	715	N	F	11–01–93	10–31–98
ST94–1912	Southern Natural Gas Co.	City of Tallahassee.	11–30–93	G–S	2,800	N	F	11–01–93	09–30–96
ST94–1913	Southern Natural Gas Co.	City of Sylvester	11–30–93	G–S	275	N	F	11–01–93	12–31–05
ST94–1914	Southern Natural Gas Co.	City of Dora	11–30–93	G–S	450	N	F	11–01–93	10–31–98
ST94–1915	Southern Natural Gas Co.	Dekalb-Cherokee Counties Gas Dist.	11–30–93	G–S	3,613	N	F	11–01–93	03–31–96
ST94–1916	Southern Natural Gas Co.	Dekalb-Cherokee Counties Gas Dist.	11–30–93	G–S	137	N	F	11–01–93	03–31–96
ST94–1917	Southern Natural Gas Co.	Cullman-Jefferson Counties Gas Dist.	11–30–93	G–S	6,387	N	F	11–01–93	09–30–95
ST94–1918	Southern Natural Gas Co.	Cullman-Jefferson Counties Gas Dist.	11–30–93	G–S	3,613	N	F	11–01–93	09–30–95
ST94–1919	Southern Natural Gas Co.	City of Lafayette	11–30–93	G–S	1,241	N	F	11–01–93	12–31–05
ST94–1920	Southern Natural Gas Co..	Municipal Gas Authority.	11–30–93	G–S	4,832	N	F	11–01–93	12–31–05
ST94–1921	Southern Natural Gas Co.	City of West Point.	11–30–93	G–S	723	N	F	11–01–93	10–31–96
ST94–1922	Southern Natural Gas Co.	Southeast Alabama Gas District.	11–30–93	G–S	13,277	N	F	11–01–93	03–31–95
ST94–1923	Southern Natural Gas Co.	City of Lanett	11–30–93	G–S	1,300	N	F	11–01–93	03–31–95

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ST94–1924	Southern Natural Gas Co.	City of Dalton	11–30–93	G–S	13,572	N	F	11–01–93	07–31–98
ST94–1925	Southern Natural Gas Co.	City of Piedmont	11–30–93	G–S	956	N	F	11–01–93	03–31–95
ST94–1926	Southern Natural Gas Co.	City of Oneonta .	11–30–93	G–S	1,430	N	F	11–01–93	03–31–96
ST94–1927	Southern Natural Gas Co.	City of Pelham ...	11–30–93	G–S	263	N	F	11–01–93	03–03–97
ST94–1928	Southern Natural Gas Co.	City of Mulga	11–30–93	G–S	732	N	F	11–01–93	10–31–03
ST94–1929	Southern Natural Gas Co.	City of Livingston	11–30–93	G–S	650	N	F	11–01–93	10–31–03
ST94–1930	Southern Natural Gas Co.	City of Wrens	11–30–93	G–S	1,468	N	F	11–01–93	11–30–01
ST94–1931	Southern Natural Gas Co.	City of Boaz	11–30–93	G–S	1,367	N	F	11–01–93	03–31–23
ST94–1932	Southern Natural Gas Co.	City of Boaz	11–30–93	G–S	773	N	F	11–01–93	03–31–23
ST94–1933	Southern Natural Gas Co.	City of Austell	11–30–93	G–S	12,746	N	F	11–01–93	11–30–00
ST94–1934	Southern Natural Gas Co.	City of Helena	11–30–93	G–S	259	N	F	11–01–93	10–31–03
ST94–1935	Southern Natural Gas Co.	City of Blakely ...	11–30–93	G–S	254	N	F	11–01–93	12–31–05
ST94–1936	Southern Natural Gas Co.	Board of Decatur County.	11–30–93	G–S	86	N	F	11–01–93	10–31–95
ST94–1937	Southern Natural Gas Co.	Board of Decatur County.	11–30–93	G–S	65	N	F	11–01–93	10–31–95
ST94–1938	Southern Natural Gas Co.	City of Cuthbert .	11–30–93	G–S	284	N	F	11–01–93	10–31–98
ST94–1939	Southern Natural Gas Co.	City of Bay Springs.	11–30–93	G–S	150	N	F	11–01–93	03–31–94
ST94–1940	Southern Natural Gas Co.	Canton Municipal Utilities.	11–30–93	G–S	150	N	F	11–01–93	02–28–94
ST94–1941	Southern Natural Gas Co.	Chattanooga Gas Co.	11–30–93	G–S	14,051	N	F	11–01–93	02–28–94
ST94–1942	Southern Natural Gas Co.	Trans Louisiana Gas Co.	11–30–93	G–S	74	N	F	11–01–93	10–31–98
ST94–1943	Southern Natural Gas Co.	Chattanooga Gas Co.	11–30–93	G–S	7,949	N	F	11–01–93	02–28–94
ST94–1944	Southern Natural Gas Co.	Atlanta Gas Light Co.	11–30–93	G–S	5,173	N	F	11–01–93	02–28–94
ST94–1945	Southern Natural Gas Co.	City of Perry	11–30–93	G–S	1,832	N	F	11–01–93	12–31–05
ST94–1946	Southern Natural Gas Co.	City of Perry	11–30–93	G–S	1,037	N	F	11–01–93	12–31–05
ST94–1947	Southern Natural Gas Co.	Marshall County Gas District.	11–30–93	G–S	11,496	N	F	11–01–93	12–31–00
ST94–1948	Southern Natural Gas Co.	City of Grantville	11–30–93	G–S	161	N	F	11–01–93	10–31–96
ST94–1949	Southern Natural Gas Co.	Albany-Water, Gas & Light Comm.	11–30–93	G–S	7,449	N	F	11–01–93	10–31–98
ST94–1950	Southern Natural Gas Co.	Albany-Water, Gas & Light Comm.	11–30–93	G–S	5,697	N	F	11–01–93	10–31–98
ST94–1951	Southern Natural Gas Co.	City of Vienna	11–30–93	G–S	85	N	F	11–01–93	12–31–05
ST94–1952	Southern Natural Gas Co.	South Carolina Pipeline Corp.	11–30–93	G–S	57,809	N	F	11–01–93	10–31–03
ST94–1953	Southern Natural Gas Co.	Mississippi Valley Gas Co.	11–30–93	G–S	42,500	N	F	11–01–93	09–30–96
ST94–1954	Southern Natural Gas Co.	City of Lagrange	11–30–93	G–S	2,211	N	F	11–01–93	09–30–97
ST94–1955	Southern Natural Gas Co.	City of Blakely ...	11–30–93	G–S	352	N	F	11–01–93	10–31–95
ST94–1956	Southern Natural Gas Co.	City of Doerun ...	11–30–93	G–S	91	N	F	11–01–93	10–31–96
ST94–1957	Southern Natural Gas Co.	City of Cochran .	11–30–93	G–S	1,310	N	F	11–01–93	10–31–95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–1958	Southern Natural Gas Co.	City of Wilton	11–30–93	G–S	89	N	F	11–01–93	03–31–95
ST94–1959	Southern Natural Gas Co.	Wilcox County Gas District.	11–30–93	G–S	438	N	F	11–01–93	03–31–95
ST94–1960	Southern Natural Gas Co.	United Cities Gas Co.	11–30–93	G–S	23,444	N	F	11–01–93	12–31–00
ST94–1961	Southern Natural Gas Co.	City of Trussville	11–30–93	G–S	7,739	N	F	11–01–93	07–31–50
ST94–1962	Southern Natural Gas Co.	City of Union Springs.	11–30–93	G–S	657	N	F	11–01–93	03–31–96
ST94–1963	Southern Natural Gas Co.	City of Cordova	11–30–93	G–S	303	N	F	11–01–93	10–31–03
ST94–1964	Southern Natural Gas Co.	City of Hawkinsville	11–30–93	G–S	963	N	F	11–01–93	10–31–94
ST94–1965	Southern Natural Gas Co.	City of Hawkinsville	11–30–93	G–S	737	N	F	11–01–93	10–31–98
ST94–1966	Southern Natural Gas Co.	City of Gordo	11–30–93	G–S	343	N	F	11–01–93	10–31–03
ST94–1967	Southern Natural Gas Co.	City of Waynesboro.	11–30–93	G–S	405	N	F	11–01–93	10–31–95
ST94–1968	Southern Natural Gas Co.	City of Unadilla	11–30–93	G–S	321	N	F	11–01–93	10–31–96
ST94–1969	Southern Natural Gas Co.	City of Unadilla	11–30–93	G–S	182	N	F	11–01–93	10–31–96
ST94–1970	Southern Natural Gas Co.	City of Trion	11–30–93	G–S	1,016	N	F	11–01–93	10–31–95
ST94–1971	Southern Natural Gas Co.	City of Quitman	11–30–93	G–S	440	N	F	11–01–93	10–31–96
ST94–1972	Southern Natural Gas Co.	Graysville Municipal Gas System.	11–30–93	G–S	2,694	N	F	11–01–93	03–23–01
ST94–1973	Southern Natural Gas Co.	City of Cairo	11–30–93	G–S	495	N	F	11–01–93	10–31–96
ST94–1974	Southern Natural Gas Co.	City of Cairo	11–30–93	G–S	873	N	F	11–01–93	10–31–96
ST94–1975	Southern Natural Gas Co.	City of Columbiana	11–30–93	G–S	668	N	F	11–01–93	03–31–96
ST94–1976	Southern Natural Gas Co.	City of Fort Gaines.	11–30–93	G–S	109	N	F	11–01–93	10–31–95
ST94–1977	Southern Natural Gas Co.	City of Jacksonville.	11–30–93	G–S	1,234	N	F	11–01–93	03–31–95
ST94–1978	Southern Natural Gas Co.	City of Cordele	11–30–93	G–S	1,595	N	F	11–01–93	10–31–94
ST94–1979	Southern Natural Gas Co.	City of Adairsville	11–30–93	G–S	722	N	F	11–01–93	11–01–95
ST94–1980	Southern Natural Gas Co.	City of Doerun	11–30–93	G–S	160	N	F	11–01–93	10–31–96
ST94–1981	Southern Natural Gas Co.	City of Tallassee	11–30–93	G–S	1,213	N	F	11–01–93	10–31–03
ST94–1982	Southern Natural Gas Co.	Four Square Gas Co.	11–30–93	G–S	10,000	N	I	11–01–93	Indef.
ST94–1983	Southern Natural Gas Co.	City of Quincy	11–30–93	G–S	853	N	F	11–01–93	10–31–96
ST94–1984	Southern Natural Gas Co.	City of Sylvania	11–30–93	G–S	352	N	F	11–01–93	12–31–05
ST94–1985	Southern Natural Gas Co.	City of Tifton	11–30–93	G–S	1,941	N	F	11–01–93	11–14–00
ST94–1986	Southern Natural Gas Co.	City of Tifton	11–30–93	G–S	1,098	N	F	11–01–93	11–14–00
ST94–1987	Southern Natural Gas Co.	City of Thomson	11–30–93	G–S	1,871	N	F	11–01–93	12–31–05
ST94–1988	Southern Natural Gas Co.	Southern Natural Gas Co.	11–30–93	G–S	200,000	Y	I	11–01–93	Indef.
ST94–1989	Southern Natural Gas Co.	City of West Jefferson.	11–30–93	G–S	285	N	F	11–01–93	10–31–03
ST94–1990	Southern Natural Gas Co.	Alabama Gas Corp.	11–30–93	G–S	250,924	N	F	11–01–93	10–31–08
ST94–1991	Southern Natural Gas Co.	Arcadian Corp	11–30–93	G–S	47,000	N	F	11–01–93	10–31–98
ST94–1992	Southern Natural Gas Co.	Atlanta Gas Light Co.	11–30–93	G–S	259,812	N	F	11–01–93	02–28–94

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–1993	Southern Natural Gas Co.	City of Trussville	11–30–93	G–S	5,261	N	F	11–01–93	07–31–05
ST94– 994	Southern Natural Gas Co.	South Carolina Pipeline Corp.	11–30–93	G–S	102,191	N	F	11–01–93	10–31–03
ST94–1995	Southern Natural Gas Co.	City of Vienna	11–30–93	G–S	306	N	F	11–01–93	10–31–95
ST94–1996	Southern Natural Gas Co.	City of Wrens	11–30–93	G–S	1,572	N	F	11–01–93	11–30–01
ST94–1997	Southern Natural Gas Co.	City of York	11–30–93	G–S	416	N	F	11–01–93	10–31–03
ST94–1998	Southern Natural Gas Co.	City of Manchester.	11–30–93	G–S	672	N	F	11–01–93	10–31–98
ST94–1999	Southern Natural Gas Co.	Pickens County Gas District.	11–30–93	G–S	818	N	F	11–01–93	10–31–03
ST94–2000	Southern Natural Gas Co.	Northwest Alabama Gas District.	11–30–93	G–S	1,625	N	F	11–01–93	04–30–96
ST94–2001	Southern Natural Gas Co.	Polaris Pipeline Corp.	11–30–93	G–S	90	N	F	11–01–93	10–31–96
ST94–2002	Southern Natural Gas Co.	Southwest Alabama Gas District.	11–30–93	G–S	23,470	N	F	11–01–93	03–31–95
ST94–2003	Southern Natural Gas Co.	City of Camilla	11–30–93	G–S	474	N	F	11–01–93	10–31–95
ST94–2004	Southern Natural Gas Co.	City of Camilla	11–30–93	G–S	130	N	F	11–01–93	12–31–05
ST94–2005	Southern Natural Gas Co.	City of Jasper	11–30–93	G–S	192	N	F	11–01–93	09–30–06
ST94–2006	Southern Natural Gas Co.	Municipal Gas Authority of Georgia.	11–30–93	G–S	8,541	N	F	11–01–93	12–31–05
ST94–2007	Southern Natural Gas Co.	City of Columbiana.	11–30–93	G–S	1,182	N	F	11–01–93	03–31–95
ST94–2008	Southern Natural Gas Co.	City of Camilla	11–30–93	G–S	342	N	F	11–01–93	12–31–05
ST94–2009	Southern Natural Gas Co.	City of Blakely	11–30–93	G–S	98	N	F	11–01–93	12–31–05
ST94–2010	Southern Natural Gas Co.	City of Helena	11–30–93	G–S	198	N	F	11–01–93	10–31–03
ST94–2011	Southern Natural Gas Co.	City of Trion	11–30–93	G–S	1,136	N	F	11–01–93	10–31–95
ST94–2012	Southern Natural Gas Co.	City of Sylvania	11–30–93	G–S	623	N	F	11–01–93	12–31–05
ST94–2013	Southern Natural Gas Co.	City of Summerville.	11–30–93	G–S	1,330	N	F	11–01–93	12–31–05
ST94–2014	Southern Natural Gas Co.	City of Sylvester	11–30–93	G–S	106	N	F	11–01–93	12–31–05
ST94–2015	Southern Natural Gas Co.	City of Sylvester	11–30–93	G–S	381	N	F	11–01–93	10–31–95
ST94–2016	Southern Natural Gas Co.	City of Vienna	11–30–93	G–S	221	N	F	11–01–93	12–31–05
ST94–2017	Southern Natural Gas Co.	City of Louisville	11–30–93	G–S	429	N	F	11–01–93	12–31–05
ST94–2018	Southern Natural Gas Co.	City of Louisville	11–30–93	G–S	758	N	F	11–01–93	12–31–05
ST94–2019	Southern Natural Gas Co.	City of Austell	11–30–93	G–S	17,254	N	F	11–01–93	11–30–00
ST94–2020	Southern Natural Gas Co.	City of Warner Robins.	11–30–93	G–S	7,743	N	F	11–01–93	09–18–05
ST94–2021	Southern Natural Gas Co.	City of Scottsboro.	11–30–93	G–S	1,192	N	F	11–01–93	10–31–03
ST94–2022	Southern Natural Gas Co.	City of Lagrange	11–30–93	G–S	4,388	N	F	11–01–93	09–30–07
ST94–2023	Southern Natural Gas Co.	City of Dadeville	11–30–93	G–S	511	N	F	11–01–93	03–31–95
ST94–2024	Southern Natural Gas Co.	City of Camp Hill	11–30–93	G–S	185	N	F	11–01–93	03–31–95
ST94–2025	Southern Natural Gas Co.	City of Fultondale.	11–30–93	G–S	3,198	N	F	11–01–93	03–31–01
ST94–2026	Southern Natural Gas Co.	City of Ragland	11–30–93	G–S	217	N	F	11–01–93	03–31–95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–2027	Southern Natural Gas Co.	West Lincoln Natural Gas District.	11–30–93	G–S	297	N	F	11–01–93	10–31–94
ST94–2028	Southern Natural Gas Co.	City of Dublin	11–30–93	G–S	2,161	N	F	11–01–93	10–31–94

[1] Notice of transactions does not constitute a determination that filings comply with commission regualtions in accordance with order no. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 94–4016 Filed 2–23–94; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. CP91–2243–002 et al.]

Distrigas of Massachusetts Corporation, et al. Natural Gas Certificate Filings

February 15, 1994.

Take notice that the following filings have been made with the Commission:

1. Distrigas of Massachusetts Corporation

Docket No. CP91–2243–002

Take notice that on February 8, 1994, Distrigas of Massachusetts (DOMAC) with an office at 200 State Street, Boston Massachusetts 02109, filed in Docket No. CP91–2243–002 pursuant to section 7 of the Natural Gas Act and part 157 of the Commission's regulations an application for an amendment to the certificate of public convenience and necessity issued by the Commission in this Docket on December 3, 1991 (*Distrigas of Massachusetts Corporation*, 57 FERC ¶ 61,295, 1991; *clarified* 58 FERC ¶ 61,297 (March 18, 1992)). The December 3 Certificate authorized DOMAC to install additional vaporization capacity and appurtenant facilities at DOMAC's liquefied natural gas (LNG) terminal in Everett, Massachusetts. That Certificate, as clarified, required DOMAC to complete construction of the authorized facilities by March 18, 1994.

Because of intervening developments and changes in DOMAC's original market projections, installation of the certificated facilities by the March 18, 1994, in-service date is no longer warranted by current market demand. Accordingly, given the substantial lead times needed to complete design and to obtain needed equipment, DOMAC requests that the December 3 Certificate be amended to remove the in-service date. In place of a specific in-service date, DOMAC requests that the certificate require DOMAC to file with the Commission by March 31, 1995, final design specifications and evidence that final equipment orders have been placed. Timing of completion of the certificated facilities will thus depend on the completion and delivery of the required equipment and will not require further intervention by the Commission to precisely tailor the certificate to the delivery dates for that equipment.

Comment date: March 8, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Williams Natural Gas Company

Docket No. CP94–196–000

Take notice that on January 24, 1994, Williams Natural Gas Company (WNG), Post Office Box 3288, Tulsa, Oklahoma 74101, filed an application pursuant to Section 7(b) of the Natural Gas Act for an order permitting the abandonment of certain of its gathering system facilities by conveyance to Williams Gas Processing - Mid-Continent Region Company (WGP-MCR), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG will convey approximately 88 miles of predominantly small diameter pipeline, 38,286 horsepower of compression, two drip control plants and various appurtenant facilities, all used to gather gas from approximately 700 wells in the states of Texas, Oklahoma, and Kansas. WNG will sell the facilities to WGP-MCR at the net book value at the time of conveyance.

Comment date: March 8, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Williams Natural Gas Company

Docket No. CP94–221–000

Take notice that on February 9, 1994, Williams Natural Gas Company (WNG) P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94–221–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing WNG to replace approximately 20 feet of 20-inch transition pipeline and, upon replacement, to hydrotest and increase the maximum allowable operating pressure (MAOP) of the Blackwell, Oklahoma to Hesston, Kansas segment of WNG's system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, WNG states that in order to increase the MAOP of the Blackwell to Hesston portion of its pipeline system approximately 20 feet of 20-inch pipeline, in five four-foot sections, must be replaced. WNG states that the pipe replacement and subsequent uprating will give WNG the capability to transport increased volumes of gas to the Wichita market center. WNG further states that the increased MAOP will also enhance service reliability and flexibility by increasing WNG's ability to shift demand volumes between the north and south portions of its pipeline system.

WNG states that the proposed replacement and uprating will cost approximately $222,000, which will be paid from funds on hand.

Comment date: March 8, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Arkla Energy Resources Company

Docket No. CP94–222–000

Take notice that on February 9, 1994, Arkla Energy Resources Company (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed a prior notice request with the Commission in Docket No. CP94–222–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a one-inch delivery tap in St. Francis County, Arkansas, under AER's blanket certificate issued in Docket No. CP82–384–000, *et al.* and deliver natural gas under its blanket certificate issued in Docket No. CP88–820–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

AER proposes to construct and operate a one-inch delivery tap in St. Francis County, Arkansas, for the delivery of natural gas to Arkansas Louisiana Gas Company's (ALG) customer, James E. Knox. AER would deliver approximately 85 Mcf of natural gas annually and one Mcf on a peak day. AER states that Mr. Knox would reimburse AER for the estimate $1,600 in construction costs for the proposed delivery tap. AER also states that it would transport gas to ALG and provide service under its Order No. 636 restructured rate schedules, the volumes would be within ALG's certificated entitlements, and AER's tariff allows the addition of new delivery points.

Comment date: April 1, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. K N Interstate Gas Transmission Co.

Docket No. CP94–225–000

Take notice that on February 10, 1994, K N Interstate Gas Transmission Co (KNI) [1], P.O. Box 281304, Lakewood, Colorado 80228, filed an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of facilities by KNI sale to GPM Gas Corporation (GPM) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

KNI requests permission from the Commission to abandon, by transfer to GPM, the following facilities:

(a) 27,773 feet of 12.75-inch steel pipeline extending north from the former Tyrone Plant in Texas County, Oklahoma to a point of interconnect with Northern Natural Gas Company (Northern) in Seward County, Kansas,

(b) 46,813 feet of 8.625-inch steel pipeline extending south from the former Tyrone Plant to points of interconnect with the facilities of Colorado Interstate Gas Company and Panhandle Eastern Pipe Line Company in Texas County, Oklahoma, and

(c) 4,564 feet of 4.5-inch steel pipe extending from a point southwest of the former Tyrone Plant site north to a point of interconnect with the facilities of Northern in Texas County, Oklahoma, and various valves, regulators, and miscellaneous facilities.

[1] By order issued May 5, 1993, in Docket No. CP93–41–000, KNI became the successor to the jurisdictional operations of K N Energy, Inc., which in turn had previously succeeded to the operations of Kansas-Nebraska Natural Gas Company, Inc. To avoid confusion, KNI, the current jurisdictional entity, rather than whichever corporate entity existed at the time, will be referred to as the jurisdictional entity.

KNI states that the Tyrone System, located in Beaver and Texas Counties, Oklahoma and Seward County, Kansas, was constructed in 1953. KNI indicates that the system was constructed even though it was isolated from the rest of its system. It was also indicated that adequate reserves could not be purchased adjacent to its main pipeline system. KNI states that gas purchased by KNI was delivered from the Tyrone System to third parties for ultimate redelivery to KNI on its mainline system. KNI advised that over time its reliance upon the supplies connected to the Tyrone System diminished and, as a result, KNI released all of the gas supplies it had under contract along the Tyrone System.

It is indicated that because the Tyrone System was isolated and distant from its mainline system and was no longer needed to move its system supplies, K N transferred its facilities upstream of the Tyrone Plant to GPM but did not transfer the residue lines connecting the plant with the three downstream interstate transporters. The Commission approved this abandonment by sale by order issued August 4, 1993, in Docket No. CP92–661–000 and also determined that the upstream facilities were non-jurisdictional gathering lines. KNI also states that, upon acquisition of the Tyrone gathering facilities, GPM began using these facilities to gather gas for delivery to its own processing plants. It is then indicated that, as a result, gas no longer flowed to the Tyrone Plant for processing and for ultimate delivery into KNI's residue lines. It is also stated that, subsequently, the owner of the Tyrone Plant sold the plant, and removed the facility from the plant site.

KNI states that, with the removal of the Tyrone Plant, the residue lines are no longer usable to KNI. KNI now seeks to transfer these facilities to GPM. It is indicated that pursuant to a memorandum of understanding, KNI would receive the net book value of the residue lines ($36,000 as of October 31, 1993) in return for the transfer of facilities to GPM. KNI states that by abandoning the remainder of the Tyrone System facilities, it would eliminate the expense and inefficiencies associated with the isolated facilities.

Comment date: March 8, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4114 Filed 2–23–94; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. CP94–223–000]

Arkla Energy Resources Co.; Request Under Blanket Authorization

February 17, 1994.

Take notice that on February 9, 1994, Arkla Energy Resources Company (AER), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–223–000 a request pursuant to § 157.205 of the Commission's Regulations to operate an existing interconnection with Oklahoma Natural Gas (ONG) to deliver natural gas in Custer County, Oklahoma under AER's blanket certificate issued in Docket No. CP82–384–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

AER proposes to convert an existing receipt interconnection, consisting of a six-inch tap and check valve with a maximum delivery capability of approximately 125,000 MMcf of natural gas per day, located on AER's Line AD in Custer County, Oklahoma into a delivery interconnection. AER proposes to make minor above-ground changes to the check valve, install an electronic flow computer, modem and phone service to permit the reversal of the gas flow and allow deliveries to ONG for transportation services pursuant to § 284.223 of the Commission's Regulations. AER states that ONG owns and operates the meter and would reimburse AER for the cost of the facilities estimated to be $8,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4160 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–102–001]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 17, 1994.

Take notice that on February 14, 1994, Carnegie Natural Gas Company (Carnegie), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective October 1, 1993:

First Revised Sheet No. 140A
Third Revised Sheet No. 141

Carnegie states that it is filing the above tariff sheet in compliance with the Commission's Order in Docket No. RP94–102–000, dated January 28, 1994, which required Carnegie to revise section 32.1 of the General Terms and Conditions of its FERC Gas Tariff to provide for the passthrough of any refunds related to amounts recovered under section 32.1 or section 26 of its superseded tariff regardless of when such refunds are received.

Carnegie states that copies of the filing were served on all parties to the above-captioned proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4167 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–99–000]

Colorado Interstate Gas Co.; Notice of Informal Settlement Conference

February 17, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, March 1, 1994, at 10 a.m., at the offices of the Federal Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring settlement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Lorna J. Hadlock at (202) 208–0737.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4162 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–175–000]

Consolidated Edison Company of New York; Notice of Filing

February 8, 1994.

Take notice that on February 4, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing additional information requested by the Commission Staff concerning an agreement with Long Island Lighting Company (LILCO) to provide for the sale and purchase of excess energy and capacity.

Con Edison states that a copy of this filing has been served by mailed upon LILCO.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary,

[FR Doc. 94–4113 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–107–002]

Northwest Pipeline Corp.; Compliance Filing

February 17, 1994.

Take notice that on February 14, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance statements addressing certain PGA issues.

Northwest states that the purpose of this filing is to comply with the January 28, 1994, order of the Federal Energy Regulatory Commission (Commission) requiring Northwest to file revisions to the purchased gas cost adjustment provisions in section 28 of the General Terms and Conditions of Northwest's Tariff relating to unpaid accruals and transportation and exchange imbalances or state why the revisions are inapplicable. Such revisions to section 28 of Northwest's Tariff are not being made. Northwest has addressed these issues in the February 14, 1994, filing and stated in such filing that the revisions are unnecessary or inapplicable.

Northwest states that a copy of this filing has been served upon each of Northwest's affected sales customers, all intervenors in Docket Nos. RP94–107–000 and 001, and upon affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4169 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–134–000]

Northwest Pipeline Corp.; Notice of Proposed Changes in FERC Gas Tariff

February 17, 1994.

Take notice that on February 14, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of March 14, 1994:

Second Revised Sheet No. 304
Second Revised Sheet No. 305
Second Revised Sheet No. 306
Second Revised Sheet No. 307
First Revised Sheet No. 313

Northwest states that the purpose of this filing is to amend the Form of Service Agreement applicable to Rate Schedule TF–1 and that the changes were necessary to accommodate the execution of Replacement Agreements for capacity release transactions. Northwest also made two minor technical corrections to the Exhibit "T" applicable to Rate Schedule TF–1.

Northwest states that a copy of this filing has been served upon all of Northwest's jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4171 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–136–000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

February 17, 1994.

Take notice that on February 14, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of March 1, 1994:

Fourth Revised Sheet No. 24,
First Revised Sheet No. 103,
First Revised Sheet No. 107,
First Revised Sheet No. 108,
First Revised Sheet No. 200,
First Revised Sheet No. 274,
Second Revised Sheet No. 275,
First Revised Sheet No. 276,
First Revised Sheet No. 277,
First Revised Sheet No. 278.

Northwest states that the purpose of this filing is to propose changes to Sections 11.3 and 9.4 of Rate Schedule TF–1 and proposed Rate Schedule TF–2, respectively, to Section 5 of proposed Rate Schedule TF–2 and to Section 25 of the General Terms and Conditions of Third Revised Volume No. 1 of Northwest's FERC Gas Tariff to provide a way for Northwest to market to new customers uncommitted firm capacity that becomes available under expiring contracts.

Northwest states that a copy of this filing has been served upon all of Northwest's jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4173 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–106–001]

Pacific Gas Transmission Co.; Compliance Filing

February 17, 1994.

Take notice that on February 14, 1994, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance revised tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A.

PGT states that the purpose of this filing is to revise language related to the flowthrough of refunds in PGT's Account No. 191 to its former sales customer, Pacific Gas and Electric Company, in compliance with the Commission's February 1, 1994, Order in this proceeding.

PGT states that a copy of its filing is being served on the affected customer, interested state regulatory agencies, and the parties of record.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4168 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–133–000]

Southern Natural Gas Co.; GSR Cost Recovery Filing

February 17, 1994.

Take notice that on February 14, 1994, Southern Natural Gas Company (Southern) filed pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717(c) (1988), to recover gas supply realignment (GSR) costs incurred as a consequence of Southern's implementation of restructured pipeline services under Order No. 636, *et seq.* Southern states that the tariff sheets identified below were filed in compliance with the Commission's order in Southern's restructuring proceeding in Docket No. RS92–10–000 and the procedures set forth in section 31 of the General Terms and Conditions of Southerns's FERC Gas Tariff, Seventh Revised Volume No. 1:

Fourth Revised Sheet No. 15
Alternate Fourth Revised Sheet No. 15
Fourth Revised Sheet No. 17
Alternate Fourth Revised Sheet No. 17
Fourth Revised Sheet No. 18
Third Revised Sheet No. 29
Third Revised Sheet No. 30
Third Revised Sheet No. 31
Fourth Revised Sheet No. 18

Southern states that the purpose of this filing is to set forth additional known and measurable GSR costs which have been paid or incurred by Southern since the filing on December 1, 1993, of its first GSR cost recovery filing in Docket No. RP94–67–000. Southern states that it sets forth in this filing the revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs associated with the reformation of additional gas supply contracts that have become unnecessary and/or unmarketable as a result of the receipt by Southern of revised service elections from its customers following the mandatory restructuring by Southern of its pipeline services under Order No. 636. Southern requests that the tariff sheets be made effective on March 1, 1994.

Southern states that it seeks to recover $53.9 Million in GSR costs which has been paid or incurred in connection with the reformation of four gas supply contracts. Southern states that these GSR costs have arisen as a direct result of the need to realign gas supply contracts following customers' elections during restructuring to terminate their sales entitlements under Order No. 636. Southern further states that none of the GSR costs sought to be recovered in the instant filing constitute take-or-pay settlement costs under gas supply contracts existing at March 31, 1989 which would be subject to the provisions of Southern's 1988 take-or-pay settlement in Docket No. RP86–63–000.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4170 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–17–001]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

February 17, 1994.

Take notice that on February 14, 1994, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariffs, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed on appendix A to the filing.

Texas Eastern states that on December 30, 1993, Texas Eastern filed tariff sheets in Docket No. TM94–4–17–000, to be effective February 1, 1994, to reflect changes in Texas Eastern's projected expenditures for electric power for the twelve month period beginning February 1, 1994, based upon actual expenditures for the twelve month period ending October 31, 1993 ("EPC Filing").

Texas Eastern states that on January 28, 1994, the Commission issued an order on the EPC Filing in Docket No. TM94–4–17–000 which accepted and suspended, effective February 1, 1994, the proposed tariff sheets, subject to the Commission's receipt and review of certain additional information to be filed by Texas Eastern ("January 28 Order"). Texas Eastern states that it is providing the required information and filing certain tariff sheets, listed on appendix A of the filing, which reflect the various rate components for EPC costs included in incremental services and the exclusion from the EPC tariff provision of those Rate Schedule FT–1 services approved on an incremental basis.

The proposed effective date of the tariff sheets is February 1, 1994.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern, current Rate Schedule FT–1 and IT–1 shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on a file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4175 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–204–004]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

February 17, 1994.

Take notice that on February 14, 1994, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on appendix A of the filing.

Texas Eastern states that on December 30, 1993, Texas Eastern filed certain tariff sheets: (1) Pursuant to ordering paragraph (C) of the Commission's order issued October 29, 1993, in Docket No. RP93–204–000, to implement a small customer mitigation methodology, and (2) to flow through a rate refund received from Columbia Gulf Transmission Company. These tariff sheets reflected a proposed effective date of October 31, 1993. By Commission order issued January 28, 1994, (January 28 Order) such tariff sheets were accepted and suspended to be effective January 1, 1994, subject to Texas Eastern refiling the sheets to revise the billing amounts prospectively, for the remainder of the amortization period, so as to adjust for the differences between the new allocations and the amounts already billed to customers.

Texas Eastern states that pursuant to and in compliance with the January 28 Order, Texas Eastern is refiling the tariff sheets listed on appendix A of the filing. In the December 30, 1993, filings, Texas Eastern states it contemplated a twelve (12) month amortization period for these billing amounts beginning October 31, 1993. Texas Eastern has already billed its customers for the months of November 1993, December 1993 and January 1994 according to First Revised Sheet Nos. 165, 166 and 167. As a result, the tariff sheets listed on appendix A which are effective January 1, 1994, show that the Account No. 858 Stranded Cost Direct Bill commences on January 31, 1994, because January 31, 1994, is the first day of the next unbilled amortization period (February 1994). Texas Eastern states that this is purely an administrative matter resulting from the billing process and will not affect amounts previously billed for the months of November 1993, December 1993 and January 1994. Attachment A of the filing illustrates the calculation of the new principal amount by customer for the remaining nine (9) month amortization period in accordance with the January 28 Order.

The proposed effective date of the tariff sheets listed on appendix A of the filing is January 1, 1994.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4163 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–135–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 17, 1994.

Take notice that on February 14, 1994, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

Proposed To Be Effective June 1, 1993

2nd Sub Original Sheet No. 634
Sub Original Sheet No. 636

Proposed To Be Effective October 1, 1993

Sub First Revised Sheet No. 633

Proposed To Be Effective October 3, 1993

1st Rev Second Revised Sheet No. 633

Proposed To Be Effective November 1, 1993

Sub Fourth Revised Sheet No. 633

Texas Eastern states that it is making the instant filing to clarify tariff inconsistencies called to Texas Eastern's attention by the Commission Staff in connection with a January 25, 1994, technical conference in Docket No. TM94–2–17. Staff indicated that Section 15.6(A) could be read as meaning that all Rate Schedule FT–1 services are subject to the ASA provision. Texas Eastern states that it is filing Sub Fourth Revised Sheet No. 633 to clarify that certain incremental services, including ITP, are not subject to the ASA provision and to further clarify the definition of "Applicable Shrinkage Percentages".

Additionally, Staff pointed out that Section 15.6(A) listed Rate Schedules LLFT, LLIT, VKFT and VKIT, also incremental rate schedules, as ASA Rate Schedules in Section 15.6(A). Pursuant to Commission orders authorizing these services, Rate Schedules LLFT, LLIT, VKFT, and VKIT should be and were intended to be defined as Non-ASA Rate Schedules, as shown on currently effective Sheet No. 130 of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that it is filing Sub First Revised Sheet No. 633 and 1st Rev Second Revised Sheet No. 633 to eliminate these Rate Schedules from the listing of ASA Rate Schedules. Such tariff sheets are to be effective October 1, 1993 and October 3, 1993, the effective dates of Rate Schedules LLFT and LLIT and VKFT and VKIT, respectively.

Further, as Staff pointed out at the technical conference, the reference to "ASA Reservation Charge Surcharge" in Section 15.6(E) of Texas Eastern's tariff should read "ASA Usage Surcharge." Texas Eastern states that it is filing Sub Original Sheet No. 636 to make this modification. In addition, Texas Eastern states that it is filing 2nd Sub Original Sheet No. 634 to correct an error in the page reference in Section 15.6(A)(2).

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4172 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–84–001]

Viking Gas Transmission Co.; Notice of Compliance Filing

February 17, 1994.

Take notice that on February 15, 1994, Viking Gas Transmission Company (Viking), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective February 1, 1994:

Substitute Second Revised Sheet No. 94
Substitute Second Revised Sheet No. 95
Substitute Second Revised Sheet No. 139

Viking states that the purpose of this filing is to comply with the Commission's January 31, 1994, "Order Accepting Tariff Sheets Subject to Condition and Granting Clarification" in Docket No. RP94–84–000.

Viking states that copies of the filing have been served on all parties listed on the service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4165 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–100–001]

Viking Gas Transmission Co.; Notice of Compliance Filing

(February 17, 1994).

Take notice that on February 15, 1994, Viking Gas Transmission Company (Viking), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective February 1, 1994:

Substitute First Revised Sheet No. 53

Viking states that the purpose of this filing is to comply with the Commission's January 31, 1994, Letter Order in Docket No. RP94–100–000. In response to that Order, Viking is proposing a threshold level for the installation of electronic flow measurement devices of 500 Mcf per day. Viking believes that this level is consistent with the Commission's January 31, 1994 Letter Order.

Viking states that copies of the filing have been served on all parties listed on the service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4166 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–957–000]

Western Resources, Inc.; Filing

February 17, 1994.

Take notice that on January 31, 1994, Western Resources, Inc. (WRI) tendered for filing a letter advising that Oklahoma Municipal Power Authority (OMPA) had made a prepayment on January 27, 1994, under various agreements with WRI and Kansas Gas and Electric Company. WRI states that this information is in response to the Commission's acceptance letter in Docket No. ER94–15–00. Additionally, WRI states that the prepayment acknowledged by this filing extends the terms of the various agreements on file with the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 28, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4161 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–48–002]

Williston Basin Interstate Pipeline Co.; Notice of Compliance Tariff Filing

February 17, 1994.

Take notice that on December 16, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Effective December 1, 1993

Sub Forth-ninth Revised Sheet No. 11B

On December 13, 1993, Williston Basin submitted for filing its compliance filing in Docket No. RP94–48–001. The filing was made in compliance with the Commission's December 3, 1993, Order to reflect the annual principal amount (plus interest) of the ten percent of Gas Supply Realignment Transition Costs as an allocated costs attributable to interruptible transportation service provided under Rate Schedule IT–1 and the removal of the facilities transferred by Williston Basin to Koch Hydrocarbon Company from Williston Basin's rate base.

Upon further review of its December 13 filing, Williston Basin noticed that Forty-ninth Revised sheet No. 11B contains an inadvertent error. Rate Schedule X–13 should not have reflected the take-or-pay throughput surcharge of 21.251 cents per Dkt. Williston Basin is therefore submitting herewith a corrected, Sub Forth-ninth Revised Sheet No. 11B, to replace Forth-ninth Revised Sheet No. 11B submitted on December 13, 1993. The change to this tariff sheet has no effect on any other rates.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 25, 1994. Protests will be considered by the Commission in determining the appropriate action to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4164 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–49–002]

Williston Basin Interstate Pipeline Co.; Notice of Compliance Tariff Filing

February 17, 1994.

Take notice that on February 14, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet:

Second Revised Volume No. 1
Substitute Original Sheet No. 322A

Williston Basin states that it submitted this tariff sheet as a substitute for Original Sheet No. 322A submitted in this proceeding on January 31, 1994 so as to include additional language to address the derivation of the projected system average cost of gas referenced in Section 38 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 25, 1994. Protests will be considered by the Commission in determining the appropriate action to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4174 Filed 2–23–94; 8:45 am]

BILLING CODE 6717–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by March 28, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–885.
3. N.A.
4. Propane Provider Fleet Survey.
5. New.
6. Triennially.
7. Mandatory.
8. Businesses or other for-profit.
9. 135 respondents.
10. .33 responses.
11. 1.28 hours per response.
12. 58 hours.
13. Form EIA–885 will be used to collect data on the fleet and fleet vehicles belonging to propane suppliers. Data will be published along with data obtained from other alternative fuel provider sources. Respondents are companies who conduct deliveries (residential and commercial) of propane.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 of the United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, February 18, 1994.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 94–4182 Filed 2–23–94; 8:45 am]

BILLING CODE 6450–01–P

Form EIA–871A (FS), "Commercial Buildings Energy Consumption Survey, Building Questionnaire (Federal Supplement)"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the Proposed Revision of the Form EIA–871A, "Commercial Buildings Energy Consumption Survey, Building Questionnaire," and Solicitation of Comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. No. 96–511, 44 U.S.C. 3501 et seq.), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revision of Form EIA–871A, "Commercial Buildings Energy Consumption Survey, Building Questionnaire," to collect information on Federal government buildings using EIA–871A (FS), "Commercial Buildings Energy Consumption Survey, Building Questionnaire, (Federal Supplement)."

DATES: Written comments must be submitted by March 28, 1994. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Martha Johnson, Energy Information Administration, EI–631, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Telephone number: (202) 586–1135.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Martha Johnson at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy

Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

Form EI–871A, "Commercial Buildings Energy Consumption Survey, Buildings Questionnaire" collects information about energy characteristics and related energy consumption and expenditures in commercial buildings. These data are used for energy modelling and forecasting. Specifically, the data to be obtained by the Form EIA–871A (FS) will assist in measuring the potential for energy savings in Federal buildings, pursuant to the requirements of Section 152 through 167 of the Energy Policy Act of 1992. Form EIA–871A (FS) will collect data on Federally-owned buildings. Data will be collected on building size, principal building activity, physical characteristics of the building and energy-related equipment, energy sources used and related energy end uses. The data collected will be similar to that previously collected by EIA for commercial buildings using Form EIA–871A "Building Questionnaire".

II. Current Actions

This is a revision of an existing collection. Modifications to the existing Form EIA–871A "Building Questionnaire" include eliminating questions that are not related to Federal buildings or to EPACT requirements and adding several questions related to: water heating, energy audits conducted by the DOE Office of Federal Energy Management Programs, and energy consumption.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent: A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 27 minutes per respondent. Given that this survey will be conducted by telephone, how much time do you estimate it will require you to review the advanced letter mailed to you, gather the necessary data needed (square footage of building, year constructed and annual energy consumption) and respond to the telephone interview which includes questions about the physical characteristics of the building and energy-related equipment.

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user: A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

E. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the form EIA–871A (FS), "Commercial Buildings Energy Consumption Survey, Building Questionnaire (Federal Supplement)".

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Statutory Authorities: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 of the United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, February 18, 1994.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 94–4183 Filed 2–23–94; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before April 25, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0151

Title: Progress Report.

Abstract: Public Assistance grants are awarded to States eligible for Federal disaster assistance. FEMA regulation 44 CFR Part 13, Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments, places certain requirements on the State in its role as grantee for the Public Assistance Program, which includes monitoring and reporting program/project performance. States are required to submit progress reports on a quarterly basis which describe the status of those projects and any problems or circumstances expected to result in noncompliance with the approved grant conditions.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping

Burden: 125 hours.

Number of Respondents: 25.

Estimated Average Burden Time per Response: 1 hour.

Frequency of Response: Quarterly.

Dated: February 15, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–4154 Filed 2–23–94; 8:45 am]

BILLING CODE 6718–01–M

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: March 28, 1994.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 29, 1993, 58 FR 62718, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: February 17, 1994.

John P. Carey,

General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 02/16/94 UPDATE

Property name	PO Box/Rt No. and street address	City	State/ZIP	Telephone
Additions				
Arizona:				
Point Hilton Resort on South Mountain	7777 South Pointe Pkwy	Phoenix	AZ 85044–	602–438–9000
Point Hilton Tapatio Cliffs	11111 North 7th St	Phoenix	AZ 85020–	602–866–7500
California:				
The Plaza Inn	7039 Orangethrope Ave	Buena Park	CA 90620	714–521–9220
Inncal	8062 Garden Grove Blvd	Garden Grove	CA 92644–	714–898–3500
Residence Inn by Marriott	1000 Airway Blvd	Livermore	CA 94550–	510–373–1800
Hyatt Regency Los Angeles	711 S. Hope St	Los Angeles	CA 90017–	213–638–1234
Inncal	3280 Dunes Dr	Marina	CA 93933–	408–384–1800
Inncal	95 Dempsey Rd	Milpitas	CA 95035–	408–942–1798
Travelodge	4325 Watt Ave	N. Highlands	CA 95660–	916–971–9440
Sheraton Newport Beach Hotel	4545 Mac Arthur Blvd	Newport Beach	CA 92660–	714–833–0570
Residence Inn by Marriott-Orange	201 N. State College Blvd	Orange	CA –	714–978–7700
Inncal	10800 Ilson Dr	Rancho Cordova	CA 95670–	916–638–2500
Best Western Hilltop Inn	2300 Hilltop Dr	Redding	CA 96002–	800–336–4880
Inncal	9646 Micron Wy	Sacramento	CA 95827	916–361–3131
The Fitzgerald Hotel	620 Post St	San Francisco	CA 94109–	415–775–8100
Valu Inn Oasis Motel	900 Franklin St	San Francisco	CA 94109–	415–885–6865
The Galleria Park Hotel	191 Sutter St	San Francisco	CA 94104–	415–781–3060
Inncal	370 Ocean	Santa Cruz	CA 95060–	408–458–9220
Ramada Limited	866 Hopper Ave	Santa Rosa	CA 95403–	707–575–4600
Travelodge	2717 W. March Ln	Stockton	CA 95207–	209–477–5576
Inncal	3473 W. Hammer Ln	Stockton	CA 95209–	209–473–2000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 02/16/94 UPDATE—Continued

Property name	PO Box/Rt No. and street address	City	State/ZIP	Telephone
Hawaii:				
Sheraton Kauai Garden Hotel	2440 Hoonani Rd	Koloa	HI 96756–	808–742–1661
Idaho:				
Red Lion Boise Riverside	29th & Chinden Blvd	Boise	ID 83714–	208–343–1871
Shilo Inn Boise Riverside	3031 Main St	Boise	ID 83702–	503–641–6565
Chaffee Hall Boise State University	1421 Campus Ln	Boise	ID 83706–	208–385–1258
Driscoll Hall Boise State University	1605 Campus Ln	Boise	ID 83706–	208–385–1502
Morrison Hall Boise State University	1515 Campus Ln	Boise	ID 83706–	208–385–1978
Super 8 Kellogg	601 Bunker Ave	Kellogg	ID 83837–	208–783–1234
Shilo Inn Nampa Blvd	617 Nampa Blvd	Nampa	ID 83687–	503–641–656[illegible]
Best Western Apollo Motor Inn	296 Addison Ave. West	Twin Falls	ID 83301–	208–733–20[illegible]
Kansas:				
Garden City Hilton Inn	1911 E. Kansas Ave	Garden City	KS 67846–	316–275–7471
La Quinta Inn #801	9461 Lenexa Dr	Lenexa	KS 66215–3836	913–492–5500
Howard Johnson Motel	2403 S. 9th	Salina	KS 67401–	913–827–5511
Topeka Comfort Inn	1518 SW Wanamaker Rd	Topeka	KS 66604–	913–273–5335
Topeka Days Inn	1510 SW Wanamaker Rd	Topeka	KS 66604–	913–222–85[illegible]
La Quinta Inn #532	7700 E. Kellogg	Wichita	KS 67207–1772	316–681–2[illegible]
Residence Inn Downtown	120 West Orme	Wichita	KS 67213–	316–263–10[illegible]
Oklahoma:				
Best Western Trade Winds Inn	534 S. 32nd St	Muskogee	OK 74401–	918–683–2951
Best Western Trade Winds Central Inn	1800 East Reno	Oklahoma City	OK 73117–	405–235–45[illegible]
Oregon:				
Shilo Inn Bend	3105 O B Riley Rd	Bend	OR 97701–	503–641–65[illegible]
Red Lion Inn S.	849 NE Third	Bend	OR 97701–	503–382–[illegible]
Red Lion Inn N.	1415 NE Third	Bend	OR 97701–	503–382–70[illegible]
Red Lion Coos Bay	1313 N. Bayshore Dr	Coos Bay	OR 97420–	503–267–4141
Shilo Inn Troy Lodge	Troy Pt. BX85, PO Box 400	Enterprise	OR 97828–	503–641–65[illegible]
Mt Hood Inn	87450 E Govt Camp Loop	Government Camp	OR 97028–	503–272–3307
Red Lion Klamath Falls	3612 S. Sixth	Klamath Falls	OR 97601–	503–882–8864
Shilo Inn Medford	2111 Biddle Rd	Medford	OR 97504–	503–641–6565
Shilo Inn Newberg	501 Sitka Ave	Newberg	OR 97132–	503–641–6565
Val-U Inn (Newport)	531 SW Fall St	Newport	OR 97365–	503–265–6623
Shilo Inn Newport	536 SW Elizabeth	Newport	OR 97365–	503–641–6565
Red Lion Jantzen Beach	909 N. Hayden Island Dr.	Portland	OR 97217–	503–283–4466
Red Lion Portland Downtown	310 SW Lincoln	Portland	OR 97201–	503–221–040
Shilo Inn Seaside Oceanfront	30 N Prom	Seaside	OR 97138–	503–641–6565
Shilo Inn Seaside East	900 S Holladay	Seaside	OR 97138–	503–641–6565
Shilo Inn Eugene	3350 Gateway	Springfield	OR 97477–	503–641–6565
Shilo Inn Eugene	3350 Gateway	Springfield	OR 97477–	503–641–6565
Shilo Inn The Dalles	3223 Bret Coldfelter Way	The Dalles	OR 97058–	503–641–6565
Shilo Inn Tillamook	2515 N Main	Tillamook	OR 97141–	503–641–6565
Shilo Inn	1609 East Harbor Dr	Warrenton	OR 97146–	503–641–6565
Pennsylvania:				
Holiday Inn Harrisburg/Hershey	Exit 26 off I–81	Grantville	PA 17028–	717–469–0661
South Carolina:				
Hilton Resort	PO Box 6165, 23 Ocean Ln	Hilton Head Island	SC 29938–	803–842–8000
West Virginia:				
Grantsville Hotel	PO Box 572	Grantsville	WV 26147–	304–354–7857
Leisure Inn	Int. I–81 and WV9	Martinsburg	WV 25401–	304–263–8811
Smoke Hole Motel	HC 59 Box 39	Seneca Rocks	WV 26884–	304–257–4442
See's Motel	Main St	Wardensville	WV 26851–	304–874–2666
Corrections/changes				
California:				
Best Western San Pedro Grand Hotel	111 S. Gaffey St	San Pedro	CA 90731–	310–514–1414
Idaho:				
Budget Motel	243 N. 4th St	Montpelier	ID 83254–	208–847–1273
New York:				
Best Western Albany Airport Inn	200 Wolf Rd	Albany	NY 12205–	518–458–1000
The Inn on the Lake	770 S. Main St	Canandaigua	NY 14424–	716–394–7800
Comfort Inn	425 E. Rt. 59	Nanuet	NY 10954–	914–623–6000
Oklahoma:				
La Quinta Inn #632	5501 Tinker Diagonal	Del City	OK 73115–4613	405–672–0067
La Quinta Inn #807	8315 S. I–35	Oklahoma City	OK 73149–3040	405–631–8661
Tulsa Marriott Southern Hills	1902 E. 71st St	Tulsa	OK 74136–	918–493–7000
La Quinta Inn #595	12525 E. 52nd St. S	Tulsa	OK 74146–6207	918–254–1626
La Quinta Inn #517	35 N. Sheridan Rd	Tulsa	OK 74115–8718	918–836–3931
La Quinta Inn #4697	10829 E. 41st St	Tulsa	OK 74146–2709	918–665–0220
Pennsylvania:				
Inn at Nichols Village	1101 Northern Blvd	Clarks Summit	PA 18411–	717–587–1135

[FR Doc. 94–4181 Filed 2–23–94; 8:45 am]
BILLING CODE 6718–26–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3653
Name: Panorama Express, Inc. dba Panorama Express
Address: 2301 South Federal Highway, Ft. Lauderdale, FL 33316
Date Revoked: December 9, 1993
Reason: Surrendered license voluntarily.

License Number: 288
Name: Al. G. Wichterich Co., Inc.
Address: 5590 Vicksburg Street, New Orleans, LA 70124
Date Revoked: December 10, 1993
Reason: Surrendered license voluntarily.

License Number: 2363
Name: Cargoza Forwarding Corporation
Address: 7220 NW., 79th Terrace, Miami, FL 33166
Date Revoked: December 16, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 1027
Name: Leading Export Service Corporation
Address: 1 World Trade Center, Ste., 1923, New York, NY 10048
Date Revoked: December 16, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3680
Name: Luis R. Hallon dba Protocol International Company
Address: 500 E. Carson Plaza Dr., No. 129, Carson, CA 90746
Date Revoked: January 14, 1994
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,
Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–4102 Filed 2–23–94; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0693]

Modification of the Payments System Risk Policy; Bankers' Banks, Edge Corporations, and Limited-Purpose Trust Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board has determined to assess a penalty fee on the average daily daylight overdrafts in Federal Reserve accounts incurred by bankers' banks that do not maintain reserves, Edge and agreement corporations, and limited-purpose trust companies. The rate for the daylight overdraft penalty fee is equal to the regular daylight overdraft rate applicable to other institutions plus 100 basis points, quoted on a 24-hour basis, for a 360-day year, and adjusted for the length of the Fedwire operating day. The penalty fee should create an incentive for institutions that do not have regular discount window access to avoid incurring daylight overdrafts in Federal Reserve accounts.

DATES: *Effective* April 14, 1994.

FOR FURTHER INFORMATION CONTACT: Oliver I. Ireland, Associate General Counsel (202/452–3625) or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The Board has modified its payments system risk policy by adopting a daylight overdraft penalty fee. The penalty fee will be assessed on average daily daylight overdrafts in Federal Reserve accounts incurred by Edge and agreement corporations,[1] bankers' banks[2] that do not maintain reserves, and limited-purpose trust companies. These institutions do not have regular discount window access.

The Board anticipates that the penalty fee will provide an incentive for institutions without regular discount window access to refrain from incurring daylight overdrafts. This incentive will help a Reserve Bank to avoid a situation where it may be obliged to permit an overnight overdraft or to extend extraordinary discount window credit if an institution is unable to cover a daylight overdraft by the end of the business day. In addition, should daylight overdrafts be considered as Federal Reserve extensions of credit, the penalty fee for bankers' banks that do not maintain reserves would reflect the *quid pro quo* policy of reserves for discount window access embodied in the Monetary Control Act of 1980.

Background

Under the Board's current payments system risk policy, most depository institutions may incur daylight overdrafts in their Federal Reserve accounts up to a maximum, or cap, that is a multiple of their risk-based capital. Effective April 14, 1994, the Reserve Banks will assess a fee of 24 basis points (annual rate) on average daily daylight overdrafts. After full phase-in, expected in 1996, this fee will rise to 60 basis points (annual rate).

If an institution fails to cover a daylight overdraft by the close of the business day, it may either obtain a discount window loan (if it has access to the discount window) or carry the overdraft overnight (a practice that is discouraged by the Federal Reserve). The Reserve Banks charge a penalty fee on overnight overdrafts. Since 1981, the overnight penalty rate has equalled the higher of 10 percent or the federal funds rate plus 2 percent (annual rate). On February 16, 1994, the Board approved a new overnight overdraft penalty rate equal to the federal funds rate plus 4 percent, with no floor. When an institution incurs an overnight overdraft, it must make up for any reserve or clearing account deficiency by holding make-up balances on another night.

The Federal Reserve Act exempts bankers' banks from reserve requirements,[3] and Regulation A explicitly excludes bankers' banks from regular discount window access.[4] Nevertheless, the Board has permitted bankers' banks to have access to the discount window if they choose to maintain reserves voluntarily. Bankers' banks that maintain reserves may establish a cap and incur daylight overdrafts under the payments system risk policy to the same extent and subject to the same fees as depository

[1] Edge corporations are organized under section 25A of the Federal Reserve Act (12 U.S.C. 611–631). Agreement corporations have an agreement or undertaking with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601–604a). For the purposes of this docket, the term "Edge corporation" includes both Edge and agreement corporations.

[2] A bankers' bank is a financial institution that is not required to maintain reserves under the Board's Regulation D (12 CFR part 204) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public. A bankers' bank is not a depository institution as defined in the Board's Regulation A (12 CFR 201.2(a)).

[3] 12 U.S.C. 461(b)(9).

[4] 12 CFR 201.2(a)(2).

institutions. To address the risks arising from daylight overdrafts and to avoid the extension of overnight credit to institutions with no discount window access, current policy provides that bankers' banks that do not maintain reserves should refrain from incurring daylight overdrafts. If such institutions do incur daylight overdrafts, however, they are required to post collateral to cover the overdrafts.

Edge corporations are subject to reserve requirements, but do not have access to the discount window on the same basis as depository institutions. Instead, Edge corporations generally are funded by their parent depository institutions, which have discount window access. Current policy permits Edge corporations to establish a cap and to incur overdrafts within that cap, provided that they post collateral to cover the overdrafts. Edge corporations also may incur book-entry securities overdrafts above their cap, provided the overdrafts are collateralized.

Limited-purpose trust companies may become members of the Federal Reserve, at the Board's discretion, subject to conditions the Board may prescribe pursuant to the Act. As a general matter, member limited-purpose trust companies do not accept reservable deposits, do not have regular discount window access, and may not incur daylight overdrafts.

Previous Board Actions

In May 1990, the Board proposed to levy a penalty fee, at a rate equal to the overnight overdraft penalty rate, on the maximum daily daylight overdrafts incurred by bankers' banks that do not maintain reserves and Edge corporations (55 FR 22086, May 31, 1990). In August 1993, the Board adopted a modified version of the 1990 proposal, but sought further comment on the rate at which the daylight overdraft penalty fee would be assessed (58 FR 44672, August 24, 1993). The policy adopted by the Board in 1993 provides that the daylight overdraft penalty fee will be levied on the daily average, rather than maximum, daylight overdraft of institutions that do not have regular discount window access. The Board also determined to apply the daylight overdraft penalty fee to limited-purpose trust companies as well as bankers' banks that do not maintain reserves and Edge corporations. The Board retained the requirement that, in the event a bankers' bank, Edge corporation, or limited-purpose trust company incurs a daylight overdraft, the overdraft should be collateralized.[5] Reserve Banks will have the ability to waive the penalty fee if, for example, the overdraft resulted from a Reserve Bank error.

The daylight penalty rate proposed in 1993 was equal to the overnight penalty rate plus the federal funds rate (e.g., given a 10 percent overnight penalty rate and a 3 percent federal funds rate, the daylight penalty rate would be 13 percent), adjusted for the length of the Fedwire operating day. The Board proposed the addition of the federal funds rate to make the daylight penalty rate more comparable to the overnight penalty rate. As noted above, institutions are required to make up any reserve or clearing account deficiency resulting from an overnight overdraft, thereby incurring a loss of interest earnings on the make-up funds. Rather than instituting a make-up requirement for daylight overdrafts subject to the penalty fee, the Board proposed that the daylight overdraft penalty rate include a factor to account for the cost of holding make-up funds.

The Board also proposed to adjust the manner in which the penalty fee is calculated to make it similar to the calculation of the "regular" daylight overdraft fee. The regular daylight overdraft fee is quoted on a 24-hour basis, for a 360-day year, and adjusted for the length of the Fedwire operating day. This adjustment maintains a constant per-minute charge in the event that Fedwire hours change. The Board proposed that the daylight penalty rate be quoted on a similar basis. Under the 1993 proposal, assuming an overnight overdraft rate of 10 percent and a federal funds rate of 3 percent, the annual 24-hour daylight penalty rate would be 22.3 percent, adjusted to 9.3 percent for a 10-hour Fedwire operating day.

Daylight Overdraft Penalty Rate Adopted by the Board

The Board believes that it is appropriate to retain a relatively high overnight penalty rate (i.e., greater than the federal funds rate) to provide a strong incentive for all depository institutions to avoid overnight overdrafts. However, a daylight penalty rate tied to the overnight rate would also be relatively high, perhaps higher than necessary to provide an incentive for institutions to avoid daylight overdrafts. Therefore, the daylight overdraft penalty rate adopted by the Board is tied to the regular daylight overdraft rate, rather then the overnight penalty rate.

The daylight overdraft penalty rate adopted by the Board is equal to the regular Federal Reserve daylight overdraft rate plus 100 basis points. The annual daylight penalty rate will equal 124 basis points as of April 14, 1994, rising to 160 basis points when the regular daylight overdraft fee is fully phased in. The daylight penalty rate, like the regular daylight rate, will be adjusted to take account of the length of the Fedwire operating day, yielding a rate of 52 basis points as of April 14, 1994 (given a 10-hour Fedwire day), and rising to 67 basis points after full phase-in of the regular daylight fee. There is no deductible associated with the daylight overdraft penalty fee. In addition, the Board has set a minimum fee of $25 for any two-week period in which a penalty fee is assessed (i.e., any fee greater than zero and less than $25 over a two-week period would be rounded up to $25).

Summary of and Responses to Comments on 1993 Proposal

The Board received 28 comments on the proposed penalty fee calculation. The comments were distributed as follows:

Type of commenter	No. of responses
Corporate credit union	18
Commercial bank	2
Federal Reserve Bank	2
Credit union	1
Commercial bankers' bank	1
Trade association	1
Bank holding company	1
Edge corporation	1
Federal agency	1
Total	28

The corporate credit union commenters generally expressed similar views regarding the proposal. They opposed both the concept of the daylight overdraft penalty and the size of the proposed rate. These commenters contended that the Board did not present a legally sustainable case as to why the same daylight overdraft rate should not be imposed on all institutions. They also asserted that the Federal Reserve Act does not authorize a penalty fee for corporate credit unions.

The corporate credit union commenters, as well as the National Credit Union Administration, maintained that one of the purposes of the proposed penalty fee appeared to be to penalize those bankers' banks that do not maintain reserves. They argued that it is unwarranted and contrary to the letter and spirit of the Monetary Control Act (MCA) for the Board to attempt to reduce the equality of treatment among users of Federal Reserve services by assessing corporate credit unions a penalty fee for daylight overdrafts.

Five commenters, including a bank trade association, a bank holding company, and a commercial bankers' bank, agreed that the MCA does not require the Federal Reserve to treat daylight credit as a service to which depository institutions should have equal access. Two of these commenters stated that charging the same rate for all daylight overdrafts would give an unfair competitive advantage to those institutions that do not maintain reserves.

The legislative history of the MCA indicates that Congress intended bankers' banks to have access to Federal Reserve payment services despite the fact that they do not maintain reserves, but also indicates that the access to Federal Reserve services was opened up to depository institutions in general because they all were to be subject to reserve requirements.[6] The Board believes that, when implementing a fee for daylight overdrafts incurred through use of Federal Reserve payments services, it is reasonable to establish different rates for institutions that maintain reserves and those that do not. The language of the MCA supports this distinction, by explicitly providing that the Board may impose balances "sufficient for clearing purposes" as a requirement for access to Federal Reserve services. By including this provision, Congress recognized that certain institutions with access to Federal Reserve services may not hold reserves at the Reserve Bank and may be subject to terms that would account for that fact.

The corporate credit union commenters also stated that the Board has not shown how daylight overdrafts incurred by corporate credit unions differ from those incurred by commercial banks and other depository institutions. Many of these commenters cited the Board's 1989 overdraft survey, which showed that corporate credit unions incurred only 0.18 percent of the total amount of daylight overdrafts incurred. The corporate credit unions, as well as an Edge corporation, stated that a penalty incentive is not necessary, as these institutions rarely incur daylight overdrafts. The commenters also stated that corporate credit unions do not incur overnight overdrafts, and therefore there is no evidence that a daylight penalty fee is necessary to prevent overnight overdrafts.

The Board believes there is a fundamental difference between overdrafts incurred by institutions that have access to Federal Reserve credit and those that do not. Even though corporate credit union overdrafts constitute only a small percentage of the total daylight overdrafts in Federal Reserve accounts, the Board believes that these institutions should not receive any daylight credit from the Federal Reserve. On the other hand, the Board allows depository institutions with discount window access to incur limited daylight overdrafts. The daylight overdraft penalty fee reflects this difference.

The corporate credit unions and the National Credit Union Administration argued that the proposed penalty fee is excessive for the purposes of discouraging daylight overdrafts. These commenters also noted that the Board has stated that even the regular daylight overdraft fee of 60 basis points (adjusted to 25 basis points given a 10-hour Fedwire day) will provide an incentive for depository institutions to reduce daylight overdrafts. The corporate credit union commenters, as well as a bank trade association, also noted that the 10 percent floor in the current overnight penalty rate, to which the proposed daylight penalty rate was tied, yields an anomalous result as the federal funds rate declines. One commenter suggested that a daylight penalty rate 100 basis points above the federal funds rate should provide more than sufficient incentive for corporate credit unions to avoid daylight overdrafts. Four commenters, including a bank holding company and a commercial bankers' bank, supported the Board's proposed penalty fee calculation as equitable and sufficient to deter daylight overdrafts.

As noted above, the daylight overdraft penalty rate adopted by the Board will not be linked to the overnight penalty rate, but rather to the regular daylight rate applicable to depository institutions. The daylight penalty rate will be computed using the regular daylight rate plus a penalty add-on of 100 basis points, which is more proportional to the regular daylight rate. This policy will allow the Board to maintain a relatively high overnight rate that will provide a strong incentive to avoid overnight overdrafts, while maintaining a relatively low daylight penalty rate that will be less of a cost burden on affected institutions yet high enough to effect behavioral changes by institutions to avoid daylight overdrafts altogether. The Board may consider raising the penalty rate if such behavioral changes do not occur. Also, if an intraday market rate were to develop in the future, the Board may base the daylight penalty on that rate. The daylight penalty rate will be adjusted to account for the length of the Fedwire operating day (multiplied by 10/24, given the current 10-hour Fedwire day), as is the regular daylight overdraft rate.

A bank trade association recognized the Board's intent to prevent institutions that do not have regular discount window access from obtaining credit from the Federal Reserve, but stated that a penalty-oriented approach could result in risk-shifting from the Federal Reserve to the private sector, rather than reducing overall payment system risk.

The intent of the penalty fee is to induce institutions to manage their accounts so as to avoid overdrafts, this reducing overall risk. The Board recognizes, however, that some risk-shifting would occur if institutions affected by the penalty fee move their payments business from the Federal Reserve to the private sector. Presumably, however, the risk would be shifted to depository institutions that have discount window access and thus could obtain Federal Reserve credit to cover daylight or overnight overdrafts in their Federal Reserve accounts.

Several corporate credit union commenters stated that the proposed penalty fee formula unfairly penalizes corporate credit unions by not allowing a deductible. The commenters noted that the Board's stated purpose of the deductible for depository institutions was to refrain from charging a large number of institutions who present small amount of risk and that this reasoning should also apply to corporate credit unions. One commenter suggested that, as an alternative to a deductible, the Board allow a one-hour grace period before assessing a penalty fee.

The Board established a deductible for the regular daylight overdraft fee to account for Reserve Bank error and computer downtime. The deductible also provides a minimal amount of free intraday credit to depository institutions. The Board does not believe that it is appropriate to supply free intraday credit to institutions that do not have discount window access, and thus has not provided a deductible or grace period for the daylight penalty fee. Reserve Banks will be able to waive penalty fees that result from Reserve Bank error or computer malfunction.

Two commenters suggested that no penalty fee be imposed until the Federal

[5] As these institutions do not normally maintain collateral pledged to the Federal Reserve on an ongoing basis, if a bankers' bank, Edge corporation, or limited-purpose trust company incurs a daylight overdraft, the Reserve Bank generally requests a pledge of collateral (that would be eligible collateral for a discount window loan) for an appropriate period.

[6] Colloquy between Mr. Wirth and Mr. Reuss, 126 Cong. Rec. H 2291, daily ed. March 27, 1980, and remarks of Sen. Proxmire, 126 Cong. Rec. S 3167, daily ed. March 27, 1980.

Reserve's book-entry securities system is redesigned to allow receiver control of securities deliveries. These commenters stated that the current system's design forces unanticipated daylight overdrafts and that the penalty fee punishes certain institutions for a shortfall in the Federal Reserve's book-entry securities transfer system.

Although institutions that receive securities versus payment over Fedwire do not have operational control over the timing of the transaction, they often know the approximate size and time of incoming securities deliveries. The Board believes it is appropriate to require institutions without access to Federal Reserve credit to manage their account so as to avoid securities-related overdrafts. The Federal Reserve is currently studying new service capabilities that would permit receivers of securities to control the use of securities-related intraday Federal Reserve credit.

An Edge corporation requested that, if a penalty fee is imposed, the Board clarify that an Edge corporation could pledge collateral to support regular discount window borrowing similar to the policy allowing bankers' banks to voluntarily maintain reserves, thereby allowing such Edge corporations to pay only the regular daylight overdraft fee rather than the penalty fee. This commenter also suggested that the Board should allow a parent bank to guarantee the daylight overdraft position of, or substitute itself for, an Edge corporation, similar to practice under CHIPS rules. This practice would allow a Reserve Bank to combine the daylight position of an Edge corporation and its parent.

The Board believes that collateral and pricing serve two related but separate purposes. Although collateral limits Reserve Bank risk, its purpose is to make discount window loans to book-entry securities overdrafters feasible during periods of operational difficulty. The daylight overdraft penalty fee is designed to create economic incentives to eliminate the use of daylight credit by institutions without regular discount window access. Their lack of access to the discount window suggests that Edge corporations should be subject to the same policy as bankers' banks that do not maintain reserves. The policy statement notes that the parent of an Edge or agreement corporation could fund its subsidiary during the day over Fedwire and/or the parent could substitute itself for its subsidiary on private networks. Such an approach by the parent could both reduce systemic risk exposure and permit the Edge or agreement corporation to continue to service its customers.

Competitive Impact Analysis

The Board assesses the competitive impact of changes that have a substantial effect on payments system participants.[7] Under this analysis, the Board determines whether the change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services.

Many corporate credit unions have argued that the daylight overdraft penalty fee would put them at a competitive disadvantage vis-a-vis other payments system participants, particularly in book-entry security settlement and safekeeping services. These commenters asserted that daylight overdraft penalty fees would drive corporate credit unions out of the securities services and would force credit unions to do business with other service providers. Such other service providers could be private institutions, such as commercial banks, or credit unions could choose to establish accounts directly with a Federal Reserve Bank.

The Board does not believe that its policy adversely affects the ability of corporate credit unions to compete with the Reserve Banks in providing payments services. The policy places controls on the use of the Federal Reserve Banks' funds and book-entry transfer services, which are consistent with controls used in private clearing and settlement systems. Corporate credit unions have the ability to establish caps and collateralize book-entry securities overdrafts if they voluntarily maintain reserves, as commercial banks are required to do. By voluntarily maintaining reserves, the corporate credit unions would avoid the penalty fees that, according to their comments, would cause their customer credit unions to go to the Reserve Banks or elsewhere for payments services. In addition, the penalty rate adopted by the Board is significantly lower than the rates proposed in 1990 and 1993 and will result in a lower cost burden on corporate credit unions vis-a-vis their competitors.

Policy Statement

The Board has adopted the following to replace part (I)(D)(4) of its "Federal Reserve System Policy Statement on Payments System Risk" under the headings "I. Federal Reserve Policy", "D. Net Debit Caps", and "4. Special Situations," effective April 14, 1994:

4. *Special Situations.* Special risks are presented by the participation on Fedwire of Edge and agreement corporations, bankers' banks that are not subject to reserve requirements, limited-purpose trust companies, and institutions that have been assigned a cap of zero by their Reserve Banks. Most of these institutions lack regular discount window access. In developing its policy for these institutions, the Board has sought to balance the goal of reducing and managing risk in the payments system, including risk to the Federal Reserve, with that of minimizing the adverse effects on the payments operations of these institutions.

Regular access to the Federal Reserve discount window generally is available to institutions that are subject to reserve requirements. If an institution that is not subject to reserve requirements and thus does not have regular discount window access were to incur a daylight overdraft, the Federal Reserve may face the necessity of extending overnight credit to that institution if the daylight overdraft is not covered by the end of the business day. This credit would be contrary to the *quid pro quo* of reserves for discount window access established in the Federal Reserve Act and Board regulations. In addition, the Board expects that assessing a fee for daylight overdrafts could lead to an intraday funds market, similar to the current overnight funds market. As daylight credit begins to have significant value, daylight overdrafts in accounts at the Federal Reserve will begin to appear more and more like overnight extensions of credit by Reserve Banks. Thus, institutions that do not have regular access to the discount window should not incur either overnight overdrafts or daylight overdrafts in their Federal Reserve accounts.

As set out below, Edge and agreement corporations, bankers' banks that are not subject to reserve requirements, and limited-purpose trust companies are subject to a daylight overdraft penalty fee levied against the average daily daylight overdraft incurred by the institution. The annual rate for the daylight overdraft penalty fee is equal to the annual rate applicable to the daylight overdrafts of other depository institutions (i.e., the rate set forth in section (I)(B)) *plus* 100 basis points, adjusted to take account of the Fedwire operating day (multiplied by the fraction of the day Fedwire is scheduled to operate). The daily daylight penalty rate is calculated by dividing the annual penalty rate by 360.

The penalty fee applies to the institution's average daily daylight overdraft in accounts at the Federal Reserve. The average daily overdraft is calculated by dividing the sum of the negative Federal Reserve account balances at the end of each minute of the scheduled Fedwire operating day (with positive balances set to zero) by the total number of minutes in the scheduled Fedwire operating day. The penalty fee is charged in lieu of, not in addition to, the daylight overdraft fee described in section (I)(B) and is effective April 14, 1994.

Overnight overdrafts for these institutions are treated similarly to overnight overdrafts of other depository institutions.

a. *Edge and agreement corporations.*[9] Edge and agreement corporations should refrain from incurring daylight overdrafts in their reserve or clearing accounts. In the event that any daylight overdrafts occur, the Edge or agreement corporation must post collateral to cover the overdrafts. In addition to posting collateral, the Edge or agreement corporation would be subject to a daylight overdraft penalty fee levied against the average daily daylight overdrafts incurred by the institution, as described above.

This policy reflects the lack of access of these institutions to the discount window and the possibility that the parent of an Edge or agreement corporation may be unable or unwilling to cover its subsidiary's overdraft on a timely basis. The Board notes that the parent of an Edge or agreement corporation could fund its subsidiary during the day over Fedwire and/or the parent could substitute itself for its subsidiary on private networks. Such an approach by the parent could both reduce systemic risk exposure and permit the Edge or agreement corporation to continue to service its customers. Edge and agreement corporation subsidiaries of foreign banks are treated in the same manner as their domestically-owned counterparts.

b. *Bankers' banks.*[10] Bankers' banks are exempt from reserve requirements and do not have regular access to the discount window. They do, however, have access to Federal Reserve payments services. The Board's policy provides that bankers' banks should refrain from incurring overdrafts and post collateral to cover any overdrafts they do incur. In addition to posting collateral, a bankers' bank would be subject to a daylight overdraft penalty fee levied against the average daily daylight overdrafts incurred by the institution, as described above.

The Board's policy for bankers' banks reflects the need to protect Reserve Banks from potential losses resulting from daylight overdrafts incurred by bankers' banks. The policy also reflects the fact that some bankers' banks do not incur the costs of maintaining reserves as do other depository institutions and do not have regular access to the discount window and the similarity between overdrafts and discount window credit.

Bankers' banks may voluntarily waive their exemption from reserve requirements, thus gaining access to the discount window. Such bankers' banks would be free to establish caps and would be subject to the same policy as other depository institutions. The policy set out in this section applies only to those bankers' banks that have not waived their exemption from reserve requirements.

c. *Limited-purpose trust companies.*[10A] The Federal Reserve Act permits the Board to grant Federal Reserve membership to limited-purpose trust companies subject to conditions the Board may prescribe pursuant to the Act. As a general matter, member limited-purpose trust companies do not accept reservable deposits, do not have regular discount window access, and may not incur daylight overdrafts.

Limited-purpose trust companies are subject to the same daylight overdraft penalty fees as other institutions that do not maintain reserves and do not have regular discount window access. Limited-purpose trust companies should refrain from incurring overdrafts and should post collateral to cover any overdrafts they do incur. In addition to posting collateral, a limited-purpose trust company would be subject to a daylight overdraft penalty fee levied against the average daily daylight overdrafts incurred by the institution, as described above.

d. *Zero-cap depository institutions.* Some depository institutions have caps of zero that are imposed by Reserve Banks because of the institutions' financially troubled status or failure to comply with the Board's payments system risk policy or because the institution itself requested a zero cap. Regardless of whether it has access to the discount window, if a depository institution on which a Reserve Bank has imposed, or that has adopted, a zero cap incurs a funds-transfer-related overdraft, the Reserve Bank would counsel the institution and may monitor the institution's activity in real-time and reject or pend any Fedwire funds transfer instruction that would cause an overdraft. Because the timing of book-entry securities transfers are not fully within the control of the receiving depository institution, the Board will allow depository institutions with caps of zero that have access to the discount window to continue to incur book-entry overdrafts, but will require that such overdrafts be collateralized even if they are infrequent and modest.

By order of the Board of Governors of the Federal Reserve System, February 17, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–4131 Filed 2–23–94; 8:45 am]

BILLING CODE 6210–01–P

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[7] These assessment procedures are described in the Board's policy statement entitled "The Federal Reserve in the Payments System" (55 FR 11648, March 29, 1990).

[9] These institutions are organized under section 25A of the Federal Reserve Act (12 U.S.C. 611–631) or have an agreement or undertaking with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601–604a).

[10] For the purposes of this policy statement, a bankers' bank is a financial institution that is not required to maintain reserves under the Board's Regulation D (12 CFR part 204) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public and is not a depository institution as defined in the Board's Regulation A (12 CFR 201.2(a)).

[10A] For the purposes of this policy statement, a limited-purpose trust company is a trust company that is a member of the Federal Reserve System but that does not meet the definition of "depository institution" in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

[Docket No. R–0778]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved an expansion of Fedwire funds transfer operating hours for the public policy benefits that will result through the use, over the long term, of the service by banks individually and through clearing groups. The Board believes that the potential, long run benefits from offering final payment capabilities that will strengthen interbank settlements outweigh the costs to the Federal Reserve of expanding the Fedwire funds transfer service operating hours. Over time, longer Fedwire funds transfer hours can contribute to reductions in Herstatt risk through innovations in payment and settlement practices. As well, the Fedwire funds transfer service will become a tested tool for managing settlement risk early in the day during times of financial stress.

Specifically, the Board is announcing that the hours of operation of the

Fedwire on-line funds transfer service will be expanded to 18 hours per day, opening at 12:30 a.m. e.t. and closing at 6:30 p.m. e.t., five days per week (Monday through Friday) to become effective in early 1997. A specific implementation date will be announced approximately one year in advance of the effective date. Intraday credit from the Federal Reserve will be available during expanded hours on the same terms that it would be provided from 8:30 a.m. e.t. to 6:30 p.m. e.t. Further expansion of the funds transfer operating day could be considered following several years of experience with the new schedule.

In addition, the Board is announcing that current Fedwire securities transfer operating hours will not be expanded until after the implementation of new service capabilities that permit receivers of securities to control the use of securities-related intraday Federal Reserve credit. Public comment will be sought in 1994 on new service capabilities that permit users the option to participate in expanded securities transfer service operating hours and to control the receipt of securities that are delivered to them during expanded hours. This request for public comment could be combined with a request for views on the use of similar service features during regular securities transfer operating hours. In the case of expanded or regular hours, but especially in the latter case, a key issue concerns the effects of such changes on the liquidity and efficiency of the U.S. government securities market.

FOR FURTHER INFORMATION CONTACT: John H. Parrish, Assistant Director (202/452–2224), Gayle Brett, Manager (202/452–2934), or Lisa Hoskins, Senior Financial Services Analyst (202/452–3437), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The growth in financial market activity worldwide, and in foreign exchange market activity in particular, has heightened attention and sensitivity to settlement and systemic risks. Market participants, as well as regulators, are particularly concerned about current methods for settling multi-currency, cross-border transactions. Data published by the Bank for International Settlements (BIS) indicate that the daily average value of global foreign exchange market activity was approximately $880 billion in April 1992.[1] The interbank payments generated by foreign exchange transactions account for a substantial portion of the total value of payments settled in many of the industrialized countries.

The most significant settlement risks presented by foreign exchange or other multi-currency contracts involve the risk that a counterparty to such contracts will pay one currency and not receive payment in the contra-currency. Concerns about such risks have been prominent since the failure of Bankhaus Herstatt in 1974, when foreign exchange counterparties of Herstatt made Deutsche mark payments to Herstatt to settle foreign exchange contracts, but did not receive contra-payments in U.S. dollars before the closure of the bank, which occurred at the end of the German banking day. The settlement risk associated with the sequential payment of currencies, and involving the potential loss of the full principal amount of foreign exchange contracts, has come to be known as Herstatt risk.

Despite the rapid growth of the foreign exchange markets since 1974, foreign exchange contracts are currently settled much as they were at the time of the Herstatt episode. For example, in the case of yen-U.S. dollar foreign exchange contracts, the yen amounts due on a particular banking day would be paid and settled in Tokyo before the start of that banking day in New York. U.S. dollar contra-payments would likely be initiated early in the U.S. banking day and settled with finality at the end of the U.S. banking day, some 18 hours after the close of business in Tokyo. Similarly, payments in most European currencies would be made and settled hours before U.S. dollar payments are either initiated or settled with finality. The overall magnitude of Herstatt risks associated with these settlement delays has grown commensurately with the rapid growth in foreign exchange and other multi-currency transactions.

Over the past few years, there has been a series of central bank studies aimed at heightening the understanding and awareness of risks in various international payment and settlement processes. These studies have also provided a common framework for evaluating both new and enhanced interbank settlement arrangements, as well as changes in central bank services, that might be designed to reduce and manage better Herstatt risk. Working groups from the G–10 central banks have published reports, under the aegis of the BIS, on such topics as minimum standards for interbank netting systems, delivery-versus-payment (DVP) in securities settlement systems, and options for enhanced central bank payment and settlement services with respect to multi-currency and cross-border transactions.[2]

The recent report on central bank services, for example, pointed to the significant expansion of the operating hours for large-value payment systems as an important central bank option that could contribute to reductions in risk in settlement practices. Longer hours for central bank large-value payment systems would provide the banking sector[3] with additional flexibility in developing innovative methods to reduce time delays between the settlement of the different legs of foreign exchange contracts. Such innovations might include the development of delivery-versus-payment techniques, in which one currency is paid (settled) when and only when the contra-currency is also paid (settled), either by individual correspondent banks or by groups of banks that are members of clearing arrangements. Over the long run, such arrangements could substantially reduce Herstatt risks in the settlement of multi-currency contracts.

Even without the development of delivery-versus-payment techniques, the possibility of greater harmonization of the timing of currency settlements based on longer operating hours of central bank large-value payment systems could help reduce time delays and risks in settlements.

Significant advances in information technology have been introduced to banking and financial markets in recent years. The level of automation and sophistication of banking systems has increased rapidly and likely will continue to do so for some time to come. In this environment, and particularly during a time of increasing volumes, values, and sophistication of financial transactions, advanced technology

[1] See "Central Bank Survey of Foreign Exchange Market Activity in April 1992" published by the Bank for International Settlements, Basle, March 1993.

[2] Report on Netting Schemes, February 1989; Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries, November 1990; Delivery Versus Payment in Securities Settlement Systems, September 1992; Central Bank Payment and Settlement Services With Respect to Cross-Border and Multi-Currency Transactions, September 1993. These reports are available through the Bank for International Settlements.

[3] For discussion purposes only, references to bank include all depository institutions, such as commercial banks, savings institutions, and credit unions. As used in this docket, the term private-sector bank means any bank (including a Federal Home Loan Bank) other than a Federal Reserve Bank.

needs to be applied to payment systems so that these systems can provide for both high efficiency and low risk in the settlement of all kinds of economic transactions. The adoption and implementation of this kind of technology, however, requires significant lead times and careful, advanced planning.

Against this background, and following public comment on the Board's October 1992 proposal to open the Fedwire funds transfer service two hours earlier in the morning, the Board directed a staff task force (Fedwire Study Group, see Appendix A of this notice) to discuss the issues involving longer Fedwire hours with representatives of commercial banks and other interested members of the public and to analyze the associated public policy concerns. These discussions helped clarify the issues relating to the expansion of Fedwire hours and the difficulties in devising new techniques to reduce settlement risks.

Consideration of the appropriate operating hours for the Fedwire funds and securities transfer services must, in the first instance, take account of the Federal Reserve's responsibilities as a central bank to support final interbank settlement. The Federal Reserve Banks provide final interbank payment and settlement services to the banking system through the transfer of banks' balances (reserves and clearing balances) on deposit with Reserve Banks. These balances—also called central bank money—are free of default risk and are an integral part of monetary arrangements for the U.S. dollar. "Instantaneous" intraday final payment in risk-free, central bank money is delivered operationally to banks through the Fedwire funds and securities transfer services. The benefits of such instantaneous intraday final payment in central bank money are, in turn, available to the public through the payment services provided by banks to their customers. To achieve this level of finality, Fedwire and similar sophisticated central bank payment services rely on a processing technique known as real-time gross settlement. In fact, most G–10 central banks currently provide, or are in the process of introducing, real-time gross settlement payment services, along the lines of the Fedwire funds transfer service.[4] (See Appendix B of this notice for a discussion of the structure of large-value interbank payment arrangements.)

The following two public policy objectives can be stated for the Fedwire funds and securities transfer services. These public policy objectives are useful as a guide to analysis of expanded operating hours and were used by the Fedwire Study Group to set the stage for discussions held with the public. Fedwire should:

(1) Provide a means that can be used to enhance the safety and efficiency of U.S. dollar settlement arrangements, including arrangements that rely on interbank settlement of netted positions, particularly during periods of financial stress.

(2) Respond to the needs of both existing and emerging financial markets, including overseas markets, which depend on the U.S. dollar and are increasingly reliant on state-of-the-art technology.

Members of the Fedwire Study Group met with representatives of various commercial banks, broker-dealers, and clearing organizations, and with a group of corporate treasurers to discuss current problems in payment and settlement arrangements. The Fedwire Study Group encountered a diversity of views within the financial industry, and even within individual organizations, regarding approaches to managing settlement risk and the use of Fedwire to obtain real-time gross settlement in central bank money outside of current operating hours.

The diversity of views is, in part, related to the functional responsibilities of the individuals interviewed. For example, a number of persons with credit management responsibilities in banks and other financial firms tended to favor expanded Fedwire hours based on the potential benefits associated with access to final, that is, irrevocable and unconditional, settlement using central bank money—notably, potential reductions in counterparty and systemic risk. In contrast, individuals with responsibilities for transaction processing services and information technology within banking organizations tended not to favor an expansion of Fedwire operating hours because, for example, (1) they could not identify customer demand for longer Fedwire hours, (2) there would be costs and operational challenges associated with "off hour" services, and (3) competitive responses by rival banking organizations would compel them to undertake product and operational changes. In addition, many of those interviewed also pointed to the charging of fees for Federal Reserve intraday credit as creating a disincentive to the use of Fedwire funds and securities transfer services during both regular and expanded hours of operation.

A main concern raised during the meetings held by the Fedwire Study Group, particularly by executives and senior credit managers, was that of settlement risk in foreign exchange dealings, or Herstatt risk. Those expressing concern noted, however, that while expanded Fedwire funds transfer operating hours might be useful as a component part of some new approaches to controlling Herstatt risk, without changes in overall settlement practices, longer hours would not be able to make a major contribution to risk reduction. Further, changes in risk management techniques and settlement practices would need to take account of a variety of operational and financial factors for different currencies. Some of these issues are discussed further in appendix C of this notice.

Given that there is a reduced tolerance for temporal risk in settlements, especially—but not solely—settlement of multi-currency transactions, the Board anticipates that efforts to control settlement risk will continue, with or without the support of central banks. The Board believes, however, that final, real-time gross settlement through Fedwire should play an important part in market efforts to control risk more effectively. As discussed earlier, final settlements in central bank money are free of default risk and, as a result, settlement in central bank money provides the highest possible degree of certainty and liquidity in interbank settlements.

The routine availability of Fedwire on an expanded schedule will add final interbank payment capabilities that the markets, the Federal Reserve, and other federal regulatory agencies recognize as being particularly important during periods of financial stress. Only by becoming familiar with the use of expanded Fedwire will banks be prepared operationally and procedurally to use expanded final payment capabilities effectively. Over time, as the availability and use of expanded Fedwire capabilities becomes more routine, operating procedures for using Fedwire earlier in the day will become well tested and integrated into banks' operations and contingency planning.

In addition, expanding Fedwire operating hours will eliminate an operational barrier that stifles potentially important innovation in privately-provided payment and

[4] The central banks of the European Union have recommended that every central bank in the European Union install a real-time gross settlement system. See Report to the Committee of Governors of the central banks of the member states of the European Economic Community by the Working Group on EC Payment Systems, "Minimum Common Features for Domestic Payment Systems" (November 1993).

settlement services. Expansion of Fedwire operating hours will provide opportunities for market participants to experiment with the use of real-time gross settlement to meet a variety of market needs. New bank services and settlement arrangements based on real-time gross settlement will have the potential to reduce significantly banks' own and their customers' settlement risks in the foreign exchange and other markets.[5] A particular application could be the development of delivery-versus-payment settlement techniques either for individual foreign exchange transactions or for obligations arising from netting arrangements.

A Federal Reserve initiative to expand Fedwire funds transfer operating hours also demonstrates a long-term commitment to increasing the availability of real-time gross settlement services in the international financial system. The Federal Reserve is taking a leadership role in the international financial community in seeking to stimulate new or enhanced central bank services to facilitate cross-border, multi-currency payments and settlements. By expanding the operating hours of Fedwire, the Federal Reserve will make it possible for banks to settle the U.S. dollar, with finality using central bank money, during the banking and trading days of major international financial centers in Europe and the Far East.[6] Such a Federal Reserve initiative looks to private sector banking organizations to develop improved multi-currency services and settlement arrangements, in some cases relying on Fedwire.

Finally, a clearly stated Federal Reserve policy regarding Fedwire operating hours provides the certainty and stability banks have indicated that they need to develop their own business and technology plans. This approach to communicating Federal Reserve policy was requested both in public comments on the Board's October 1992 proposal and in meetings with representatives of the industry held by the Fedwire Study Group. As noted here, expanded Fedwire funds transfer operating hours are announced three years in advance of implementation. Banks will have a clear understanding of the Federal Reserve's intentions with respect to its operating hours and could use the lead time to incorporate the expanded hours into their strategic plans for payment services and supporting technical systems.

Fedwire on-line funds transfer operating hours will be expanded to open at 12:30 a.m. e.t. (5:30 a.m. G.m.t. and 2:30 p.m. Tokyo time) to support strengthened, interbank settlement for domestic and cross-border markets. This precedes the opening of the current European banking day by about three hours and overlaps with current payment system and money market hours in Tokyo by about two and one-half hours. This overlap of payment system hours could increase further if, in the future, the operating hours of other national payment systems were expanded.

The closing time for the Fedwire funds transfer service will remain at 6:30 p.m. e.t. (11:30 p.m. G.m.t. and 8:30 a.m. Tokyo time), in order not to delay inordinately the calculation of U.S. dollar positions by U.S. banks providing dollar clearing services to clients operating in the Asian markets, or to disrupt domestic money management. Further, keeping the closing time at 6:30 p.m. e.t. will not disturb the reserve management operations of the large number of smaller U.S. banks that are not active internationally and that are unlikely to participate in an expanded Fedwire operating day.

The Federal Reserve's estimated incremental costs to operate the funds transfer service from 12:30 a.m. e.t. to 6:30 p.m. e.t. will be roughly $2.5 to $4.0 million per year, or about 3 to 5 percent of the total cost of providing the service in 1993. While the operational costs incurred by banks using Fedwire during the expanded operating period are difficult to estimate, such costs would be incurred entirely voluntarily. Banks could choose to remain closed during the expanded operating period and thus forego any additional operating costs.

Further, an 18-hour day (beginning at 12:30 a.m. e.t. and closing at 6:30 p.m. e.t.) provides an adequate six-hour quiet period within which banks can perform end-of-day processing and provides for contingency situations. It also provides for a definite period for measuring reserve positions, a requirement for the conduct of monetary policy. There are some other minor issues posed by an 18-hour Fedwire funds transfer day that are discussed in appendix C of this notice.

With respect to Fedwire securities transfer operating hours, under current DVP arrangements, banks do not have the capability to control the timing of deliveries of securities and associated debits to their funds accounts. Accordingly, banks have limited control over the effect of securities-related debits on their funds positions and their use of Federal Reserve securities-related intraday credit. These control limitations could lead to either increased operating costs or increased use of intraday credit, with accompanying charges, during periods of expanded hours. (See appendix C of this notice for further discussion.) In contrast to the Fedwire funds transfer service, therefore, expanding the operating hours of the securities transfer service would likely impose unavoidable costs on a large number of banks. Thus, the Board believes that it is inadvisable at this time to approve an expansion of the operating hours for the Fedwire securities transfer service.

Competitive Impact Analysis

During expanded Fedwire funds transfer operating hours, the Federal Reserve Banks will be providing real-time gross settlement in central bank money. While this service cannot be duplicated in the private sector, this situation is no different under expanded operating hours than it is under the existing Fedwire operating hours. Service providers that provide funds transfer services under a netting arrangement could expand their operating hours to coincide with Fedwire operating hours; however, only by setting earlier settlement time(s) and settling through Fedwire could these organizations provide risk-free central bank money earlier in the day to their participants. Service providers that provide real-time gross settlement funds transfer services across their own books could not solely backstop these transactions with central bank money and, thus, could be reliant on their own capital and credit standing to assure participants of final settlement. Again, this situation is no different under expanded operating hours than it is under normal Fedwire operating hours.

By order of the Board of Governors of the Federal Reserve System, February 15, 1994.

William W. Wiles,

Secretary of the Board.

Appendix A—Fedwire Study Group

Bruce J. Summers, FRB Richmond, Chair
Carol W. Barrett, FRB New York
Gayle Brett, Board staff
Paul Connolly, FRB Boston
Lisa Hoskins, Board staff
Dara Hunt, FRB Chicago
Oliver Ireland, Board staff
Barbara Kavanagh, FRB Chicago
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Christopher J. McCurdy, FRB New York
Gerard J. Nick, FRB Chicago
Patrick M. Parkinson, Board staff
John H. Parrish, Board staff
Israel Sendrovic, FRB New York
A. Patricia White, Board staff.

Appendix B—Structure of Large-Value Interbank Payment Arrangements

Most large-value, domestic interbank payments are currently made via the transfer of money balances on the books of the Federal Reserve Banks through the Fedwire system. Fedwire is the large-value payment system operated by the Federal Reserve Banks for the transfer of funds and delivery of book-entry (electronic) securities against payment. Fedwire is a real-time gross settlement system that settles transfers immediately on a transaction-by-transaction basis. The Fedwire funds transfer service is a credit transfer process. That is, a bank sends a funds transfer to the Federal Reserve instructing the Federal Reserve to debit its account for a specified amount and to credit the account of another bank. In 1993, the daily average value of transfers originated over the Fedwire funds transfer system was about $824 billion.

In contrast, the Fedwire securities transfer service, which is the principal means for transferring and settling U.S. government securities,[1] is a debit transfer process that permits the seller of the securities to send a transfer that will result in the Federal Reserve withdrawing funds from the account of the receiver of the securities transfer. The Fedwire securities transfer process is based on the delivery-versus-payment (DVP) principle, whereby the final transfer of securities from the seller to the buyer (delivery) occurs at the same time as final transfer of funds from the buyer to the seller (payment). Fedwire achieves such simultaneous settlement by treating the instruction initiated by the seller as both an instruction to deliver securities to the buyer and an instruction to debit payment from the buyer's reserve or clearing account. In 1993, the daily average value of transfers originated through the Fedwire securities transfer system was roughly $580 billion.

Banks may also provide settlement services to their customers through the final transfer of balances across their books. In addition, banks also use multilateral clearing and settlement arrangements to meet some of their large-value payment needs. In such arrangements, including the Clearing House Interbank Payments System (CHIPS) operated by the New York Clearing House, payment instructions may be entered into a netting system throughout a pre-determined clearing cycle and each participant's net position vis-a-vis the other participants is determined on an ongoing basis throughout the cycle. Settlement for the payment instructions occurs at an agreed upon settlement time. Participants with net debit obligations may satisfy their obligations by transferring funds on the books of a "settlement bank." Central banks can serve as a "settlement bank" for such interbank netting arrangements and, in the case of CHIPS, this role is performed by the Federal Reserve Bank of New York. In this arrangement, CHIPS settling participants in a net debit position send Fedwire funds transfers to a settlement account at the Federal Reserve Bank of New York, which, when fully funded, is the source for payments to participants in net credit positions. In 1993, the daily average value of transfers originated through the CHIPS system was over $1 trillion.

Appendix C—Issued Associated With Expanded Fedwire Operating Hours

This appendix analyzes issues associated with expanded Fedwire funds and securities transfer operating hours. The appendix is organized in three parts. First, settlement practices in financial markets are analyzed, with particular attention to Herstatt risk. Second, the operation of the Fedwire securities transfer delivery-versus-payment service is analyzed. Finally, other implementation issues associated with expanded Fedwire hours are analyzed.

Settlement Practices in Financial Markets

The following discussion of settlement practices and risks in financial markets takes into account (1) the integrity of settlement during times of financial stress, (2) multi-currency, cross-border settlements, (3) domestic corporate and interbank markets and the needs of the futures markets, and (4) the current availability of bank payment services on a 24-hour basis.

Settlement during times of financial stress. Concerns regarding the ability of counterparties to meet their payment obligations and the certainty of settlement are heightened during times of financial stress. Sudden events that disrupt markets can increase the risk associated with domestic and, in particular, multi-currency transactions, and can contribute to uncertainty, payment delays, and market liquidity problems. If such problems are widespread, systemic risk may be increased substantially. It is during times of stress in the financial markets that the certainty associated with interbank settlement across the books of the central bank takes on added importance.

In the past, the Fedwire funds transfer service has been opened early on an ad hoc basis, at short notice, during times of stress in the financial markets at the request of market participants and regulatory authorities. For example, the Federal Reserve opened the Fedwire funds transfer service early on the days following the October 1987 stock market break and the beginning of the Gulf War. Experience has shown, however, that market participants are not prepared operationally to use facilities, such as Fedwire, when these facilities are made available during "off-hours" on an ad hoc basis at short notice. These difficulties suggest that to be most helpful during times of financial stress, Fedwire should be available in the early morning hours on a more routine basis.

Multi-currency settlements. With respect to multi-currency settlements, the settlement of a foreign exchange contract involves the settlement of both currencies involved in the contract, such as the U.S. dollar and the Deutsche mark or the U.S. dollar and the yen. In such settlements, risk management and efficiency considerations must take into account payment arrangements in the country of issue for each currency, including the relative intraday timing of payments and the finality of payment in the respective currencies. Settlement risk is incurred by paying final funds in one currency before receiving final funds in another currency. As a general matter, the magnitude of settlement risk in the foreign exchange markets has grown substantially, in large part as a result of a vast expansion of foreign exchange trading. At the same time, there has been continued reliance on traditional methods of settling trades one currency at a time with significant delays before related payments and contra-payments become final.

Because the large U.S. cities are in the western-most time zones of the major financial centers, under current settlement arrangements for multi-currency transactions, the U.S. dollar is normally the last currency to be settled. The two charts at the end of this appendix provide information on global time zone relationships and on the operating hours of selected large-value interbank transfer systems in different countries.[1]

On an exception basis today, banks may choose to require final payment of the U.S. dollar leg of a multi-currency transaction either in advance of, or in certain cases simultaneously with, final payment of the contra-currency, as a means to protect against risk of nonpayment.[2] Foreign exchange market participants have indicated that such protective measures are taken, for example, in special cases where counterparties would exceed their U.S. dollar credit lines. Banks, however, find these exception procedures to be very expensive due to the lack of an established mechanism to effect settlements under these terms (that is, final U.S. dollar payment before, or simultaneously with, final payment in the other currency). For exception processing, the parties must negotiate how the related payments are to be made and closely monitor the settlement process to ensure that the payment sequence unfolds as expected.

Substantially earlier Fedwire funds transfer service operating hours as well as later payment system hours for other major currencies will increase the opportunity to achieve simultaneous or near-simultaneous settlements of individual deals involving the U.S. dollar and European and Asian currencies, where needed. Such settlements might involve a variety of new institutional designs for settlements, including private correspondent bank DVP services, new clearing organization procedures, or innovative arrangements that are not readily apparent given current payment system constraints.

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[3] Examples of private sector initiatives currently underway include the development of multilateral netting systems for foreign exchange transactions, such as Exchange Clearing House Organization (ECHO) and Multinet.

[6] Staff notes that the Bank of Japan recently expanded the operating hours for its large-value funds transfer system to later in the Tokyo banking day. Also, as noted earlier, the European Union central banks have recently endorsed the establishment of real-time gross settlement systems in all EU countries as well as closer coordination of operating hours for settlement services.

[1] Netting is performed outside Fedwire through the Government Securities Clearing Corporation (GSCC) for transactions that settle on a next day or forward basis, with the netted securities and funds positions settled on Fedwire.

[1] These charts were published in the report on Central Bank Payment and Settlement Services with Respect to Cross-Border and Multi-Currency Transactions, Basle, September 1993.

[2] In markets for exchange traded derivative instruments, some settlements are conducted currently using delivery-versus-payment techniques.

Current initiatives to reduce Herstatt risk in foreign exchange transactions point to the need for greater future overlap of final interbank settlement facilities in Asia, Europe, and North America. While in the future Asian and European systems may well be open later during their local banking days, the achievement of a significant overlap in payment system hours also requires earlier opening hours for U.S. payment systems, especially to achieve overlapping hours with Asian markets. With such earlier hours, opportunities may increase substantially for more nearly simultaneous settlements of multi-currency transactions, and associated reductions in Herstatt risk. It should be noted, however, that although simultaneous or near-simultaneous payment for multi-currency transactions reduces the temporal dimension of settlement risk, achieving final payment in one currency against a simultaneous, but provisional, payment in another currency does not eliminate fully Herstatt risk. Therefore, to address fully the problem of controlling Herstatt risk, it is important that the overlap in operating hours include overlap in systems that provide final settlement in central bank money.[3]

Domestic markets. With respect to domestic markets, there are relatively few types of transactions for which immediate and final payment at a particular time during the day is an absolute requirement. The demand for final payment at a particular time during the day for corporate customers is currently quite small and is limited to such things as payments to settle mergers and acquisitions and the distribution of funds from underwritings of securities. In general, because banks often make funds available to corporate customers before final settlement, corporate customers are largely unaware of the distinctions between final and provisional payment or when during the day payments are actually settled. Instead, corporations generally rely on their banks to make decisions regarding how their large-value payments are originated and received.

Even in the interbank markets, participants are typically satisfied with same-day settlement for certain types of transactions. At present, Federal funds contracts do not generally stipulate that payment must be made at or before a specific time of day other than before the close of the Fedwire funds transfer service. Federal funds contracts are generally settled using the Fedwire funds transfer system.

For some futures exchange settlements, the convention today is to accept irrevocable commitments to pay from designated settlement banks to cover clearing members' settlement obligations prior to the start of the current day's trading, with the settlement banks actually fulfilling the obligation via Fedwire funds transfers by 10 a.m. e.t. The futures clearing organizations and the Commodity Futures Trading Commission (CFTC) have expressed a desire for settlement to occur in final funds before the commencement of trading. Such earlier settlement is viewed as reducing risks to futures exchanges and the financial markets despite some concerns that it would merely shift risks from the clearing organizations to their settlement banks. Settlement banks would clearly need to manage carefully their own cash needs earlier in the day in order to make settlement payments at an earlier time, which is not necessary under current arrangements.

Within a few years, there may be a demand for later Fedwire funds transfer hours from banks that provide services to the futures and options markets. This demand could arise from two sources. First, some clearing organizations are progressively moving toward same-day settlement of margin obligations arising from the current day's trading activity. Second, some of the exchanges are contemplating longer trading hours for certain of their products. The exchanges are beginning to incorporate automated trade matching and confirmation systems that will permit timely same-day calculation of all margin obligations. Indications are that these systems, which will remove a significant obstacle to same-day settlement, could be widely adopted within three to five years. Longer trading hours, in combination with the desire for same-day settlement, would argue for a later Fedwire funds transfer service closing time.

To date, there has been little evidence of demand for a materially later closing time for the Fedwire funds and securities transfer services to meet domestic needs. The most likely source of demand to make later payments is from the Pacific time zone. Banks with operations in that time zone, however, have expressed only slight interest in later Fedwire hours in response to requests for comment made by the Board of Governors in 1989 and in 1992. Moreover, many corporate treasurers generally view later-in-the-day payments activity as disruptive to their primary goal of determining the amount of money available for investment. This preference is, of course, conditioned by current conventions in the U.S. money markets, especially the times at which decisions must be made to invest or borrow funds.

Bank payment services. Currently, a number of large, internationally active U.S. banks offer their customers real-time account balance inquiry and payment services on a 24-hour basis. Many of these banks offer the capability to originate payment instructions in up to 60 currencies. Payment orders may be processed as book transfers or held in an electronic queue until the national payment system for the currency to be paid is open for business. Given current queuing practices, there would appear to be some scope for earlier settlement of queued payments if international clearing banks find it advantageous to process customer payments earlier in the day and national payment systems are open to process and settle such payments.

Fedwire Securities Transfer Service

As mentioned earlier, most interbank transfers of U.S. government securities are processed through Fedwire. The DVP capability of the Fedwire securities transfer service increases the efficiency and integrity of the securities clearance and settlement process. In fact, the liquidity of the government securities market is partly a function of the Fedwire securities transfer system design, whereby the seller is assured of payment at the time the securities are delivered. While it virtually eliminates settlement risk, the current design of the Fedwire securities transfer service may, in some cases, result in significant demands for intraday credit. Once Fedwire opens in the morning, users of the Fedwire securities transfer service have no control over the time at which they may receive securities on a DVP basis. In particular, since the sellers of securities initiate the DVP transfers, receivers do not have any operational control over the time during the day when their securities and funds accounts are credited and debited, respectively.

Since the inception of the Board's Payment System Risk Reduction Program, the implications of the cost of intraday credit have taken on greater significance for participants in the Fedwire DVP securities transfer service. Receivers of securities, especially those maintaining relatively low intraday cash balances, are not in a position to manage their use of intraday Federal Reserve credit resulting from securities deliveries. Because of the inability to review transfers prior to receipt, this problem may be compounded if the securities delivery is not known, or the delivery amounts are incorrect. Although receivers of securities can reverse transfers received in error virtually immediately after delivery and payment occur, they must very actively monitor and manage their activity to be in a position to do so.

The charging of fees for Federal Reserve intraday overdrafts has important implications for expanding the Fedwire securities transfer operating hours. An expansion of such operating hours could impose significant cost burdens on a potentially large number of banks that would need to make a choice between staffing their operations to manage their intraday overdraft positions, or remaining closed and incurring the costs of intraday overdrafts that might arise from securities deliveries during "off-hours." In an effort to provide participants with the tools necessary to manage their operations and credit costs, the Federal Reserve is designing new Fedwire securities transfer service features, including receiver controls (such as receiver-authorized deliveries) and a mechanism allowing participants to choose whether to use the service during non-standard business hours. The Board believes that public comment on these new service features is required because of the impact they would have on senders and receivers of securities transfers and on the operation of the U.S. government securities market.

[3] Fedwire in the United States and BOJ-NET in Japan, for example, currently provide real-time gross settlement services in the U.S. dollar and yen, respectively. Significant projects to establish real-time gross settlement systems are now underway in France, the United Kingdom, and other countries, and legal developments are occurring that will help ensure the availability of payment systems in all or most European countries that provide for final payments on an intraday basis. Thus, in the next few years, concerns about the lack of intraday final payment capabilities in major industrialized countries are likely to be reduced substantially.

Analysis of a potential expansion of Fedwire securities transfer service operating hours must also take into account "free" transfers of securities, that is, the movement of collateral. The ability to move collateral during early morning Fedwire operating hours was identified as a potentially useful measure by several clearing organizations and banks in their comments on the Board's October 1992 Fedwire operating hours proposal. The ability to pledge collateral during early morning hours can reduce settlement uncertainties and enhance participant liquidity, particularly in times of financial stress.

The discussion above suggests that careful attention must be given in the near term to features of the Fedwire securities transfer service that limit the control users of the service have over the receipt of securities, particularly if the hours of operation for the service were to be lengthened. The Board anticipates that the implementation of new service capabilities, such as those discussed earlier, could reduce or even eliminate the involuntary costs imposed on receivers of securities transfers, especially during expanded operating hours. Under these conditions, the public benefits of expanding these operating hours could be significant and would be derived in part from the opportunities to use securities as collateral, or as a near-cash equivalent, for purposes of meeting obligations that arise overnight. At present, however, an expansion of hours would not be advisable. The Board believes that the issues surrounding the development and use of new features for the Fedwire securities transfer service can be effectively addressed through the public comment process during 1994.

Implementation Issues

Because of the aforementioned complications associated with operating characteristics of the current Fedwire securities transfer system, the following analysis of implementation issues is limited to an expansion of Fedwire funds transfer service operating hours. The key implementation issues addressed in this section are technology, operational costs, monetary control and reserve management, overlapping business and calendar days, and the Federal Reserve's intraday overdraft policy.

Technology issues. Banks as well as other financial and non-financial institutions are installing or planning to install advanced technology to support their critical business functions. For example, many major banking organizations employ real-time control procedures to manage their own and customer payments over major large-value electronic payment systems. Many financial organizations are also continuing to automate major dealing functions and integrate these with their clearing and payment systems.

In turn, in order to provide the banking and financial system with advanced tools with which to design payment and settlement arrangements using central bank money, the Federal Reserve is installing advanced computing and communications systems. These systems will support all of the Federal Reserve's national payment services and accounting functions. Among other things, this new technology will enable the Federal Reserve to provide real-time gross settlement services in central bank money virtually around-the-clock. Other benefits of this technology are expected to include greater payments processing efficiency, improvements in the reliability and availability of critical payment systems, and enhanced contingency processing capabilities.

Most existing accounting and other back office systems require that banks, including Federal Reserve Banks, accumulate a wide range of transactions throughout the day in order to calculate and balance customer account positions. Traditionally, this "end-of-day" processing has been treated as a batch operation for which large quantities of information are accumulated from a variety of sources and then processed overnight. For example, information received from large commercial banks that provide corporate payment services and U.S. dollar clearing services reveals that their current systems have been designed to perform end-of-day processing within an approximate six- to eight-hour window. Most large commercial banks are either currently changing, or have plans to change, their systems to move to a two- to four-hour end-of-day processing window, an evolution which should be completed within about five years.

Contingency processing requirements also need to be considered in connection with proposals to expand Fedwire funds transfer operating hours, or bank payment system operations more generally. Specifically, for large commercial banks, an 18-hour operating day compresses the current end-of-day processing period, including a "cushion" of time to deal with the failure of regular systems or other unexpected operational disruptions that must be resolved before opening for the next day's business.

The Board believes that current efforts by banks and other financial institutions to use technology to improve the efficiency of end-of-day processing will, over the next several years, reduce the time necessary to perform these activities. Thus, with a 3-year lead time, an 18-hour Fedwire day should provide an adequate cushion of time for end-of-day processing under normal and most contingency conditions.

Operational costs. The Reserve Bank's incremental costs to expand operating hours can be estimated fairly accurately. The estimated incremental costs to the Federal Reserve of lengthening the current 10-hour funds transfer operating day to 18 hours are relatively small compared to the total cost of providing the service. Specifically, the Board estimates that an 18-hour day beginning at 12:30 a.m. e.t. will add roughly $2.5 to $4.0 million to annual Fedwire funds transfer operating costs, or about 3 to 5 percent of 1993 total service costs.[4] (The Board recently asked staff to study issues related to Federal Reserve pricing methodology, which is underway.)

The incremental costs that would be incurred by banks in using the Fedwire funds transfer service during expanded hours are difficult to estimate. In any event, the incremental operational costs to banks of participating in expanded hours would be incurred entirely voluntarily. Banks would make individual business decisions whether to use the Fedwire funds transfer service during expanded hours.

Monetary control and reserve management issues. The Board believes that an expansion of Fedwire funds transfer operating hours, involving a 6:30 p.m. e.t. closing time, does not complicate reserve maintenance for banks. Also, provided that there is a sufficient break in time during the operating day for purposes of measuring reserve holdings, monetary measurement and control problems do not arise for the Federal Reserve. In the event of full 24-hour operations, both monetary measurement and control issues would need careful attention.

Overlapping business and calendar days. One complication associated with a Fedwire funds transfer day that begins earlier than 3 a.m. e.t. concerns asynchronous business and calendar days for domestic payments and possibly for cross-border payments as well. For example, assuming a 6:30 p.m. e.t. closing time and an 18-hour Fedwire funds transfer day, the 12:30 a.m. e.t. opening time is 9:30 p.m. Pacific Time (p.t.). This means that today's business day, as defined by the opening of Fedwire, begins on the prior calendar day in continental United States time zones other than the Eastern time zone. Some clarification or adjustment in accounting practices and possibly legal conventions may be necessary to address this situation. These adjustments do not appear to present large issues and they can be readily addressed through such things as modifications in financial reporting conventions and business practices.

For example, financial reporting conventions that rely on precise "as of" reporting dates and times would appear reasonably to address most reporting issues. Similarly, more precision may be needed in financial contracts about when completion of a payment or other financial transaction must occur. This is a problem that exists today and that is addressed in contracts by specifying the location at which payment is to be made and the date ("pay to my account in San Francisco on x date"). The new problem posed by an earlier Fedwire opening time could be addressed readily by specifying when during the day payment is to be made at a particular location ("pay to my account in San Francisco by close of Fedwire on x date").

Federal Reserve daylight overdraft policy. In an expanded Fedwire funds transfer operating environment, Federal Reserve intraday credit will be provided to banks on the same basis that it would be provided from 8:30 a.m. e.t. to 6:30 p.m. e.t. That is, eligible institutions will be able to incur intraday overdrafts subject to the net debit caps and daylight overdraft fees in place at the time the overdraft is incurred.

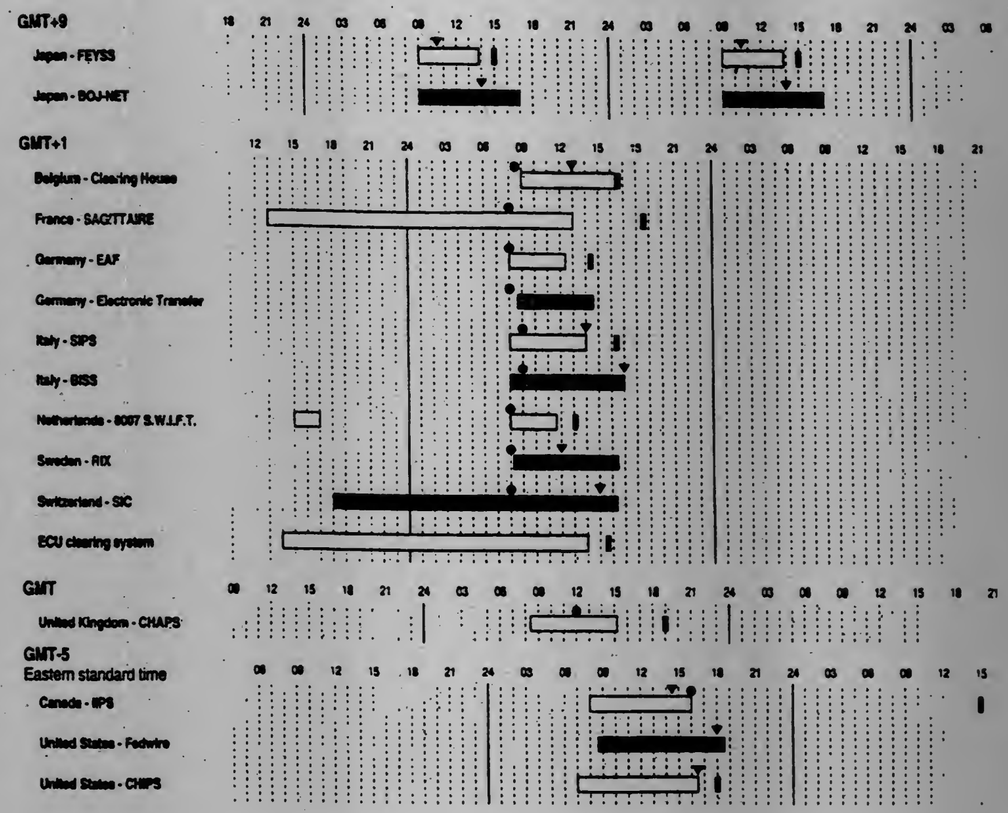
Some adjustments to the intraday overdraft measurement rules will be required. For example, posting times for non-wire

[4] The Federal Reserve's estimated incremental costs associated with providing a near 24-hour operation are significantly higher than for an 18-hour operation.

transactions settled on the books of the Reserve Banks that are currently tied to the opening of Fedwire, such as ACH and principal and interest payments for securities, need to be adjusted. Since users will be accustomed to the current schedule, which generally results in posting these transactions at 8:30 a.m. e.t., a clear option would be for the Board to consider establishing 8:30 a.m. e.t. as the "explicit" posting time for these transactions.

BILLING CODE 6210-01-P

Global time zone relationships:
Opening hours of selected large-value interbank transfer systems
For same value day *



* The diagram shows the opening hours, as of August 1993, of selected interbank funds transfer systems as they relate to the same value day: some systems, including SAGITTAIRE and the ECU clearing system, may accept payment orders for a number of value days. As indicated, some systems open on the day before the value day. For Canada, settlement finality for IIPS occurs on the next business day, with retroactive value dating. Precise information on opening hours and cut-off times is provided in the table. For FEYSS, Fedwire and CHIPS, the cut-off time for third-party and international correspondents' payment orders is the same.

BILLING CODE 6210-01-C

OPERATING HOURS OF SELECTED LARGE-VALUE INTERBANK FUNDS TRANSFER SYSTEM (AS OF AUGUST 1993)

System	Gross (G) or net (N)	Opening-closing time for same-day value (local time)	Settlement finality (local time)	Cut-off for all third-party payment orders	Cut-off for international correspondents' payment orders	Memo item: Standard money market hours (local time)
Belgium:						
C.E.C.	N	13:46–13:45	16:30	13:30	8:30	(9:00–16:15)
Clearing House of Belgium	N	9:00–16:30	16:30	13:00	8:30	.....
Canada:						
IIPS	N	8:00–16:00	15:00	14:30	16:00	(8:30–17:30)
ACSS	N	18:00–24:00	15:00	17:00	n.a.	.....
France:						
SAGITTAIRE	N	8:00–13:00	18:30	n.a.	8:00	(8:15–17:00)
TBF (planned)	G	8:00–17:15	8:00–17:15	.....	8:00	.....
Germany:						
Express electronic credit transfer system	G	8:30–14:30	8:30–14:30	.....	8:00	.....
Express (paper based) local credit transfer system.	G	8:00–12:00	8:00–12:00	.....	8:00	(9:30–13:00)
EAF	N	8:00–12:30	14:30	.....	8:00	.....
Italy:						
BISS.	G	8:00–17:00	8:00–17:00	17:00	9:00	(8:30–17:30)
SIPS	N	8:00–14:00	16:30	14:00	9:00	.....
ME	N	8:00–16:00	16:30	16:00	9:00	....
Japan:						
FEYSS	N	9:00–13:45	15:00	10:30	10:30	(9:00–17:00)
BOJ-NET	G	9:00–17:00	9:00–17:00	14:00	n.a.	.....
Netherlands:						
Central Bank FA System	G	8:00–15:30	8:00–15:30	12:45	n.a.	(8:00–15:30)
8007 S.W.I.F.T.	N	8:00–11:30	13:00	n.a.	8:00	.....
Sweden:						
RIX	G	8:15–16:30	8:15–16:30	12:00	8:00	(9:00–16:00)
Switzerland:						
SIC	G	18:00–16:15	18:00–16:15	15:00	8:00	(9:00–16:00)
United Kingdom:						
CHAPS	N	8:30–15:10	end of day	none	12:00	(9:00–12:00)
United States:						
Fedwire	G	8:30–18:30	8:30–18:30	18:00	18:00	(8:30–18:30)
CHIPS	N	7:00–16:30	18:00	16:30	16:30	.....
ECU clearing system	N	14:01–14:00	15:45	none	none	(TOM/NEXT)

[FR Doc. 94–3847 Filed 2–23–94; 8:45 am]
BILLING CODE 6210–01–P

Banc One Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 15, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Banc One Colorado Corporation, Montrose, Colorado; to engage *de novo* through its subsidiary, Bank One Colorado Trust Company, N.A., Denver, Colorado, in performing functions or activities that may be performed by a trust company, including activities of a fiduciary, agency, or custodial nature pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 16, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–4115 Filed 2–23–94; 8:45 am]
BILLING CODE 6210–01–F

William Robert Collins, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 15, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. William Robert Collins, Huntsville, Alabama; to retain 11.9 percent of the voting shares of BancAlabama, Inc., Huntsville, Alabama, for a total of 14.3 percent and thereby indirectly acquire BankAlabama—Huntsville, Huntsville, Alabama.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Benjamin Namatinia, Portland, Oregon; to acquire an additional 7.39 percent of the voting shares of Cowlitz Bancorporation, Longview, Washington, for a total of 25.38 percent, and thereby indirectly acquire The Cowlitz Bank, Longview, Washington.

Board of Governors of the Federal Reserve System, February 16, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–4116 Filed 2–23–94; 8:45 am]
BILLING CODE 6210–01–F

First Alabama Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 18, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Alabama Bancshares, Inc., Birmingham, Alabama; to merge with Guaranty Bancorp, Inc., Baton Rouge, Louisiana, and thereby indirectly acquire Guaranty Bank & Trust Company, Baton Rouge, Louisiana.

2. Hartsville Bancshares, Inc. ESOP, Hartsville, Tennessee; to acquire up to an additional 6.5 percent of the voting shares of Bank of Hartsville, Hartsville, Tennessee, for a total of 45.07 percent.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NorthWest Indiana Bancorp, Munster, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank, SB, Munster, Indiana.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Carlisle Bancshares, Inc., Little Rock, Arkansas; to acquire 100 percent of the voting shares of FirstBank of Arkansas, Brinkley, Arkansas.

2. First Community Banking Corporation, Little Rock, Arkansas; to acquire 100 percent of the voting shares of Caddo Holding Company, Glenwood, Arkansas, and thereby indirectly acquire Caddo First National Bank, Glenwood, Arkansas.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Frandsen Financial Corporation, Forest Lake, Minnesota; to merge with Warren Bancshares, Inc., Warren, Minnesota, and thereby indirectly acquire Peoples State Bank of Warren, Warren, Minnesota.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. La Grange Bancshares, Inc., La Grange, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of La Grange National Bank, La Grange, Texas.

Board of Governors of the Federal Reserve System, February 16, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–4117 Filed 2–23–94; 8:45 am]
BILLING CODE 6210–01–F

J.P. Morgan & Company, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 18, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. J.P. Morgan & Company, Inc., New York, New York; to acquire J.P. Morgan Delaware Trust Company, Wilmington, Delaware, and thereby engage in activities that may be carried on by a trust company, including those of a fiduciary, investment management, agency and securities safekeeping nature pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Compass Bancshares, Inc., Birmingham, Alabama; to acquire certain branches of Anchor Savings Bank, FSB, Hewlett, New York, located in Callahan, Florida; Jacksonville, Florida; and St. Augustine, Florida, and thereby engage in operating a saving bank pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 16, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–4118 Filed 2–23–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93631–93–03]

Developmental Disabilities; Request for Public Comments on Proposed Developmental Disabilities Funding Priorities for Projects of National Significance for Fiscal Year 1994

AGENCY: Administration on Developmental Disabilities (ADD), Administration for Children and Families (ACF).

ACTION: Notice of request for public comments on developmental disabilities funding priorities for Projects of National Significance for Fiscal Year 1994.

SUMMARY: The Administration on Developmental Disabilities (ADD), Administration for Children and Families (ACF), announces that public comments are being requested on funding priorities for Fiscal Year 1994 Projects of National Significance.

We welcome specific comments and suggestions on these proposed funding priorities as well as recommendations for additional priority areas which will assist in bringing about the increased independence, productivity, and integration into the community of people with developmental disabilities.

DATES: Closing date for receipt of public comments is April 25, 1994.

ADDRESSES: Comments should be sent to: Bob Williams, Commissioner, Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services, room 329–D, HHH Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Vera Evans, Program Development Division, Administration on Developmental Disabilities, (202) 690–5980.

SUPPLEMENTARY INFORMATION:

Part I. Background

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). Although different from the other ACF program administrations in the specific constituency it serves, ADD shares a common set of goals that promote the economic and social well-being of families, children, individuals and communities. Through national leadership we see:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, states and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve client access;
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees and migrants to address their needs, strengths and abilities.

Emphasis on these goals and progress towards them will help more people with developmental disabilities to live productive and independent lives integrated into their communities. The Projects of National Significance program is one means through which ADD promotes the achievement of these goals.

Two issues are of particular concern with these projects. First, there is a pressing need for networking and cooperation among specialized and categorical programs, particularly at the service delivery level, to ensure continuation of coordinated services to people with developmental disabilities. Second, project findings and successful innovative models of projects need to be made available nationally to policy makers as well as to direct service providers.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs which promote the self-sufficiency and protect the rights of people with developmental disabilities.

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 *et seq.*) (the Act) supports and provides assistance to States and public and private nonprofit agencies and organizations to assure that all people with developmental disabilities receive the services, assistance and opportunities necessary to enable them to achieve their maximum potential through increased independence, productivity and integration into the community.

The Act stresses that individuals with developmental disabilities typically:

- Experience significant functional limitations due to physical or mental, or a combination of physical and mental, impairments; and is manifested before the person attains age 22 (as described in the Act, section 102(5)).
- Possess significant abilities of which employers are generally unaware;
- Have wants and needs;
- Remain unserved or underserved;

The Act further finds that:

- The family and community can play a central role in enhancing their lives when properly supported; and
- It is in the nation's interest for people with developmental disabilities to be employed, and to live conventional and independent lives as a part of families and communities.

Towards these ends, ADD seeks to enhance the capabilities of families in assisting people with developmental disabilities to achieve their maximum potential to support the increasing ability of people with developmental disabilities to exercise greater choice and self-determination; to engage in leadership activities in their communities; as well as to ensure the protection of their legal and human rights.

Programs funded under the Act are:

- Basic State formula grants;
- State system for the protection and advocacy of individual rights;
- Grants to University Affiliated Programs for interdisciplinary training, exemplary services, technical assistance, and information dissemination; and
- Grants for Projects of National Significance.

C. Description of Projects of National Significance

Under Part E of the Act, grants and contracts are awarded for Projects of National Significance to increase and support the independence, productivity and integration into the community of people with developmental disabilities, and to support the development of national and state policy which enhances the independence, productivity and integration of these individuals. These projects may include, but are not limited to:

- Projects to conduct data collection and analysis;
- Projects to provide technical assistance to program components;
- Projects to provide technical assistance for the development of information and referral systems;
- Projects which improve supportive living and quality of life opportunities which enhance recreation, leisure and fitness;
- Projects to educate policymakers;
- Projects to pursue Federal interagency initiatives;
- Projects that support the enhancement of minority participation in public and private sector initiatives in developmental disabilities; and
- Other projects of sufficient size and scope, and which hold promise of expanding or otherwise improving opportunities for people with developmental disabilities (especially those who have multiple disabilities or are disadvantaged, including cultural and ethnic minority groups, (African Americans, Asian Americans, Hispanic Americans, Latino Americans, American Indian and Native Americans, Native Alaskan and Hawaiian) and other underserved groups.

In addition, funds may be awarded for technical assistance and demonstration projects (including research, training, and evaluation in connection with such projects) which expand or improve the advocacy functions performed by University Affiliated Programs, State Developmental Disabilities Planning Councils, and the Protection and Advocacy System.

Section 162(c) of the Act requires that ADD publish in the **Federal Register** its proposed priorities for grants and contracts to carry out Projects of National Significance for the fiscal year. The Act also requires a period of 60 days for public comments and suggestions concerning such proposed priorities. After analyzing and considering such comments, ADD must publish in the **Federal Register** final priorities for such grants and contracts, and solicit applications for funding based on the final priorities selected.

The following section presents the proposed priority areas for Fiscal Year 1994 Projects of National Significance. We welcome specific comments and suggestions as well as suggestions for additional priority areas. We would also like to receive suggestions on topics which are timely and relate to specific needs in the developmental disabilities field.

Topics of particular interest to ADD for Fiscal Year 1994 include self-advocacy and empowerment of consumers and/or their families, specifically members of diverse cultural/ethnic minority constituencies. ADD is seeking disability and other grassroots organizations, minority coalitions, civil rights and other private non-profit organizations experienced in working with culturally diverse communities to develop successful collaborative models for supporting the ability of minorities with developmental disabilities to exercise greater choice and self-determination by engaging in leadership activities in their communities. Such leadership activities at a minimum should provide them the needed knowledge, skills and confidence to access services and other supports available to them.

Part II. Fiscal Year 1994 Proposed Priority Areas for Projects of National Significance

ADD is interested in all comments and recommendations which address areas of existing or evolving national significance related to the field of developmental disabilities.

We also solicit recommendations for project activities which will advocate for public policy change and community acceptance of all people with developmental disabilities and families so that such persons receive the services, supports, and other assistance and opportunities necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community.

ADD is also interested in activities which promote the inclusion of all people with developmental disabilities including persons with the most severe disabilities, in community life; which promote the interdependency of all people with developmental disabilities with all others; and which recognize the contributions of these individuals, as such individuals share their talents at home, school, and work, and in recreation and leisure time.

No proposals, concept papers or other forms of applications should be submitted at this time. Any such submission will be discarded.

ADD will not respond to individual comment letters. However, all comments will be considered in preparing the final funding solicitation announcement and will be acknowledged and addressed in that announcement.

Comments should be addressed to: Bob Williams, Commissioner, Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services, room 329–D HHH Building, 200 Independence Avenue, SW., Washington, DC 20201.

Proposed Fiscal Year 1994 Priority Area 1: Leadership Education and Development of Individuals With Disabilities and Their Families From Culturally Diverse Backgrounds

In recent years, individuals with developmental and other disabilities have benefitted from new approaches to providing services that dramatically changed the lives of many of those who were previously unserved or underserved. However, many individuals and families, particularly those of culturally diverse backgrounds, remain on the outside looking in. Many such individuals may seem to have been invisible in the developmental disabilities community. Due to a long history of cultural stereotyping of such individuals, open discussions about disabilities remain a very sensitive and emotionally charged topic in some communities. Although minority individuals and families are affected by developmental and other disabilities (as the population at large), many often cannot gain access to the service system let alone fully participate in or benefit from it. In many instances, these individuals and families may be poor, may live in isolated areas; may be

homeless or lack general knowledge about the services available to them or how the system works.

Therefore, ADD is proposing to fund Projects of National Significance (PNS) that target individuals with developmental disabilities and their families from culturally diverse backgrounds in an effort to enable them to impact service delivery and fully access the services they need. These projects would strengthen the ability of individuals with developmental disabilities and their families from culturally diverse backgrounds to serve as leaders and advocates on critical issues in the developmental disabilities field, particularly in their own communities. These projects would assist individuals with developmental disabilities from culturally diverse backgrounds and their families in the development and implementation of effective methods of communication and systems change to increase public awareness, inform individuals from culturally diverse backgrounds with disabilities of issues and services, and to develop and to implement networking strategies that improve access to community resources. Furthermore, these projects would institutionalize action strategies that promote policies and practices which are family-centered and community-based.

ADD is particularly interested in grassroots organizations with a record of planning and implementing programs with individuals from culturally diverse backgrounds, such as major civil rights organizations, minority coalitions, and other private non-profits that would be able to establish ongoing working relationships with State Developmental Disabilities Planning Councils, University Affiliated Programs, Protection and Advocacy Systems and other relevant community resources.

It is essential to identify local linkages to establish collaborative agreements/arrangements on critical issues in the developmental disabilities field that would strengthen the capacity of individuals to serve as leaders/advocates on behalf of themselves and their families.

Every effort will be made to coordinate the activities under this priority areas with the Department of Education and other Federal agencies.

Proposed Fiscal Year 1994 Priority Area 2: Expanding the Scope of Developmental Disabilities Planning. Councils

Individuals with significant disabilities other than developmental disabilities can and have benefitted from the systems change, capacity building and advocacy activities of the Developmental Disabilities Planning Councils (DDPCs) authorized by Part B of the Act. In response to concerns of some advocates in the States, ADD proposes to award funds to study the expansion of the scope of DDPCs to include concerns of a broad range of citizens with disabilities other than developmental disabilities. Because this issue is complex and little information is available regarding the implications of such an expansion, ADD is interested in funding three types of projects to explore the effects of such an expansion:

- A short-term (not to exceed six months) study of DDPCs that are currently authorized under State law to focus on individuals with disabilities other than developmental disabilities as well as persons with developmental disabilities.
- Pilot studies in up to five (5) additional states by DDPCs, in conjunction with and with support from Protection and Advocacy systems and University Affiliated Programs, to explore the implications of expanding the current scope of Council activity. Pilots are expected to be completed within 15 months.
- A national study of the process, outcomes, and implications of the five (5) pilot studies. Completion of this study is expected five months following the pilots.

Under separate contractual solicitations, ADD proposes to award funds to provide technical assistance to improve the functions of the DD Council, Protection and Advocacy System, and the University Affiliated Program; and to develop information and referral systems.

ADD also proposes to fund projects through demonstrations as well as procurements that would ensure the integration and active participation of racial and ethnic minorities into the "mainstream" of the service delivery system.

(Federal Catalog Domestic Assistance Number 13.631 Developmental Disabilities—Projects of National Significance)

Dated: Janaury 14, 1994.

Bob Williams,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 94–4103 Filed 2–23–94; 8:45 am]

BILLING CODE 4184–01–P

Centers for Disease Control and Prevention

Chorionic Villus Sampling Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Chorionic Villus Sampling (CVS) Meeting.

Time and Date: 8:30 a.m.–5 p.m., Friday, March 11, 1994.

Place: CDC, Auditorium A, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to public for observation and comment, limited only by space available.

Purpose: CVS is an obstetrical diagnostic procedure done prenatally to detect genetic abnormalities. The safety of the procedure has been questioned since infants have been reported with birth defects (limb deficiency) after their mothers had undergone CVS. Studies have been published which both support and contradict the hypothesis that CVS has caused birth defects. CDC has recently completed a multistate study investigating the association between limb deficiency and CVS. CDC will convene this public meeting to discuss all recent studies of this issue and to receive advice from individual participants on establishing public health recommendations for CVS utilization.

Matters to Be Discussed: An invited group of qualified individuals will be asked to provide comments on recent studies of limb deficiency after CVS. The risk for these birth defects will be discussed in the context of other risks, benefits, and alternatives of the procedure. A written commentary from CDC which provides recommendations for CVS utilization will also be discussed.

Contact Person for More Information: J. David Erickson, D.D.S., Ph.D., Chief, Birth Defects and Genetic Diseases Branch, Division of Birth Defects and Developmental Disabilities, NCEH, CDC, Mailstop F–45, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724, telephone 404/488–7160.

Dated: February 17, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–4124 Filed 2–23–94; 8:45 am]

BILLING CODE 4163–18–M

Technical Advisory Committee for Diabetes Translation and Community Control Programs; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Technical Advisory Committee for Diabetes Translation and Community Control Programs.

Time and date: 8:30 a.m.–4 p.m., Monday, March 14, 1994.

Place: Sheraton Gateway Hotel, 1900 Sullivan Road, College Park, Georgia 30337.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with advising the Director, CDC, regarding priorities and feasible goals for translation activities and community control programs designed to reduce risk factors, morbidity and mortality associated with diabetes and its complications. The committee advises regarding policies, strategies, goals and objectives, and priorities; identifies research advances and technologies ready for translation into widespread community practice; recommends public health strategies to be implemented through community interventions; advises on operational research and outcome evaluation methodologies; identifies research issues for further clinical investigation; and advises regarding the coordination of programs with Federal, voluntary, and private resources involved in the provision of services to people with diabetes.

Matters to be discussed: The committee will discuss the status of the Request for Application that will be issued for award in June 1994 and the expansion of state-based diabetes control programs. The committee will review and provide input on Project DIRECT (Diabetes Intervention: Reaching and Educating Communities Together), social marketing, and the Health Communications Plan. The committee will discuss national diabetes surveillance and future conference strategies. Committee members will make recommendations to the Division of Diabetes Translation on coordination and implementation of diabetes translation activities and the role of the committee within this coordination process. Division of Diabetes Translation staff will provide updates on projects and initiatives currently operational within the Division.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Cheryl Counts, Program Specialist, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., (K–10), Atlanta, Georgia 30341–3724, telephone 404/488–5004.

Dated: February 16, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–4123 Filed 2–23–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 94F–0008]

Analytical Systems Engineering Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Analytical Systems Engineering Corp. (ASEC) has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a machine source of high energy X-rays to inspect cargo containers which may contain food.

DATES: Written comments on the petitioner's environmental assessment by March 28, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4M4407) has been filed by Analytical Systems Engineering Corp., 5400 Shawnee Rd., suite 100, Alexandria, VA 22312. The petition proposes that the food additive regulations in § 179.21 *Sources of radiation used for inspection of food, for inspection of packaged food, and for controlling food processing* (21 CFR 179.21) be amended to provide for the safe use of a machine source of high energy X-rays to inspect cargo containers which may contain food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 28, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 10, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–4077 Filed 2–23–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0005]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of oxidized bis(hydrogenated tallow alkyl)amines as a process stabilizer for polypropylene intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by March 28, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0002, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4B4410) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532. The petition proposes that the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of oxidized bis(hydrogenated tallow alkyl)amines (CAS Reg. No. 143925–92–2) as a process stabilizer for polypropylene intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition

that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 28, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 15, 1994.

Janice F. Oliver,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–4080 Filed 2–23–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1994.

Name: Departments of Family Medicine Review Committee.

Date and Time: April 4–6, 1994, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, Regency Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on April 4, 8:30 a.m.–9:30 a.m.

Closed for Remainder of Meeting.

Purpose: The Departments of Family Medicine Review Committee shall review applications that assist in meeting the costs of establishing, maintaining, or improving academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on April 4, at 11 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., and the Determination by the Associate Administrator for Policy Coordination, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information regarding the subject Committee should contact Mrs. Sherry Whipple, Executive Secretary, Departments of Family Medicine Review Committee, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6874.

Agenda items are subject to change as priorities dictate.

Dated: February 17, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–4082 Filed 2–23–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Meetings of Panel/Request for Public Comment

Notice is hereby given of the future meeting dates of the National Institutes of Health (NIH) Human Embryo Research Panel, a panel of special consultants to the Advisory Committee to the Director (ACD), NIH, established to recommend guidelines for Federal funding of human embryo research. Panel meetings will be held March 14, April 11, May 4, and, tentatively, June 21. The March meeting will be held from 8:30 a.m. to 6 p.m. at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland. Logistical information about subsequent Panel meetings will be available from the contact office listed below.

Until June 1993, Federal regulations governing research on human subjects (45 CFR part 46) required research involving *in vitro* fertilization (IVF) to be reviewed by an Ethics Advisory Board (EAB). Because of the absence of an EAB since 1980, Federal funding of IVF protocols was not possible. With the enactment of the NIH Revitalization Act of 1993 (Pub. L. 103–43), the regulatory provision requiring EAB review of IVF proposals was nullified. As a result, IVF proposals, as well as research involving human embryos that result from IVF or other sources, may now be considered for Federal funding.

The NIH has received a number of applications for support in this area and in the related field of parthenogenesis. However, before proceeding with the consideration of specific human embryo research proposals for funding, the NIH must address the profound moral and ethical issues raised by the use of human embryos in research and develop guidelines to govern the review and conduct of Federally-funded research. Panel members will be asked to consider various areas of research involving the human embryo and provide advice as to those areas they view to be acceptable for Federal funding, areas that warrant additional review, and areas that are unacceptable for Federal support. For those areas of research considered acceptable for Federal funding, the Panel will be asked to recommend specific guidelines for the review and conduct of this research. Issues related to human germ-line gene modification are not within the Panel's purview. The Panel's final report will be presented to the ACD for review.

A critical part of the process of considering these issues is to gain an understanding of the diversity of beliefs and opinions held about the moral status of the human embryo and about Federal funding of research involving the human embryo. The NIH is seeking public comment on Federal funding of human embryo research for consideration by the Panel and encourages interested individuals and organizations to share with the Panel their views and perspectives on this important topic. Those who wish to submit written comments of any length should forward these to Steven Muller, Ph.D., Chair, NIH Human Embryo Research Panel, c/o National Institutes of Health, 9000 Rockville Pike, Building #1, room 218, Bethesda, Maryland 20892. To ensure that public input is available to the Panel during its deliberations, written comments should be received in advance of the Panel's fourth scheduled meeting, May 4, 1994.

Each meeting of the Panel will also provide an opportunity for interested individuals and organizations to make brief oral presentations to the Panel. During the first Panel meeting, public commentary was heard in a two-hour session. To register to make an oral statement before the Panel, individuals and organizations should contact Ms. Peggy Schnoor at the NIH by telephoning 301–496–1454 or by sending a facsimile message to 301–402–0280 or 301–402–1759. Oral statements must not exceed five minutes in length, and a copy of the remarks should be forwarded to the above address one week in advance of the scheduled presentation date. Opportunities to present statements will be determined by the order in which requests are received.

The NIH will endeavor to provide seating for all members of the public who wish to attend the meetings. Individuals are, however, asked to notify the NIH of their interest in attending by using the telephone or facsimile numbers listed above. Individuals who require special accommodations are also asked to contact Ms. Schnoor at the above number. General questions about the Panel or future meetings should also be directed to Ms. Schnoor.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–4176 Filed 2–23–94; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Grants for Comprehensive Community Mental Health Services for Children and Adolescents with Serious Emotional Disturbances

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Program update and reannouncement.

The Center for Mental Health Services (CMHS) is reannouncing the following grant program:

Grants for Comprehensive Community Mental Health Services for Children and Adolescents with Serious Emotional Disturbance

Under the authority of section 561 of the Public Health Service Act, as amended by Public Law 102–321, the CMHS will accept applications from States, political subdivisions of States, and Indian tribes for the purpose of providing comprehensive community mental health services for children and adolescents with serious emotional disturbance. The grants will be used to support a broad array of community-based and family-focused services for children and adolescents with serious emotional, behavioral, or mental disorders to enable communities to develop coordinated local systems of care which involve mental health, child welfare, education, juvenile justice and other agencies, as appropriate. Approximately $10–15 million will be available to support approximately 10–15 grants in FY 1994. The receipt date for applications for FY 1994 funds is May 10, 1994. The Catalog of Federal Domestic Assistance number for this program is *93.104*.

The Comprehensive Community Mental Health Services for Children and Adolescents with Serious Emotional Disturbance program was originally announced on April 15, 1993 (**Federal Register**, Vol. 58, No. 71) and FY 1993 grant awards were made in September 1993. This program has subsequently been updated to: (1) Provide further clarification of the definition of a community; (2) provide additional specifications on the services that a grantee must provide in developing the system of care; (3) clarify that Indian tribal applicants receiving grants under Section 103 of P.L. 93–638 are exempt from the restriction which prohibits the use of Federal funds as a match; (4) provide greater explanation/clarification of the review criteria; and (5) incorporate other minor technical changes related to individual contacts and addresses, and to help ensure overall clarity.

Application kits including the PHS 5161–1 application form, a copy of the updated announcement, and guidance for submitting an application are available from: Grants Management Office, Center for Mental Health Services, 5600 Fishers Lane, room 15–87, Rockville, MD 20857, Telephone: (301) 443–4456.

For additional information regarding the program and/or application procedures, contact: Gary DeCarolis, Chief, Child, Adolescent and Family Branch, Center for Mental Health Services, SAMHSA, 5600 Fishers Lane, room 11C–09, Rockville, MD 20857, Telephone: (301) 443–1333.

Dated: February 16, 1994.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 94–4104 Filed 2–23–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–940–4210–06; CACA 29517]

Opening of Land in a Proposed Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 270 acres of National Forest System land for the protection of the State's rare plant, Senecio Layneae (Laynes Butterweed) and to control public access expires on March 25, 1994, and the land will be opened to mining. It has been and remains open to surface entry and mineral leasing.

EFFECTIVE DATE: March 26, 1994.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E–2845, Sacramento, California 95825, 916–978–4820.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 57 FR 10366, March 25, 1992, which segregated the land described therein for up to 2 years from location and entry under the mining laws, subject to valid existing rights, but not from other forms of disposition which may by law be made of National Forest System land. The 2-year segregation expires March 25, 1994.

The withdrawal application will continue to be processed unless it is canceled or denied. The land is described as follows:

Mount Diablo Meridian

El Dorado National Forest

T. 12 N., R. 10 E.,

Sec. 24, lot 2, NW¼NW¼, S½NW¼, N½SW¼, E½SW¼SW¼, and SE¼SW¼.

The area described contains 270 acres in El Dorado County.

At 10 a.m. on March 26, 1994, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with 2 Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: February 1, 1994.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94–3130 Filed 2–23–94; 8:45 am]

BILLING CODE 4001–00–P

[NV-030-4210-05; N-33727]

Termination of Recreation and Public Purposes Classification and Opening Order; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes classification, N-33727 in its entirety and opens the land to appropriation under the public land laws and the general mining laws.

EFFECTIVE DATE: Termination of the classification is effective with the publication of this document. The land will be open to entry at 10 a.m. on March 28, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, (702) 785-6530.

SUMMARY: In 1983, in response to an application from the City of Elko for a sewage treatment facility, the lands described in this notice were classified as suitable for lease with an option to purchase pursuant to the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, 869-1 to 869-4). Disposal of these lands for a sewage treatment facility is no longer authorized under the Recreation and Public Purposes Act. Therefore, pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272) and the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203, Recreation and Public Purposes classification N-33727 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 34 N., R. 55 E.,
Sec. 28, SW¼NE¼, S½NW¼, SW¼, W½W½SE¼;
Sec. 29, lots 1-4, inclusive SE¼NE¼, SE½SW¼, SE¼;
Sec. 32, NE¼NW¼NW¼, S½NW¼NW¼, SW¼NW¼,W½SE¼;

The area described contains approximately 847.82 acres in Elko County, Nevada.

At 10 a.m. on March 28, 1994, the land will be open to the operation of the public land laws, subject to valid existing rights, existing classifications and withdrawals, pending lawsuits, and requirements of applicable law. All valid applications received prior to or at 10 a.m. on March 28, 1994 will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10 a.m. on March 28, 1994, the land will also be open to the operation of the mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. The land remains open to the mineral leasing and material sale laws.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 94-4092 Filed 2-23-94; 8:45 am]

BILLING CODE 4310-HC-M

[CA-010-4210-04, CACA 25889; 1-00160 GP4-027]

Realty Action; Exchange of Public and Private Land in El Dorado County, CA; Correction

In notice document 89-27715 beginning on page 48817 in the issue of Monday, November 27, 1989, make the following correction:

On page 48817, in the last line of the third column, the word southeast is hereby corrected to read northwest.

For a period of 45 days from publication, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, Folsom, CA 95630

Timothy J. Carroll,

Acting Area Manager.

[FR Doc. 94-3963 Filed 2-23-94; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Pelly Amendment to the Fishermen's Protective Act; Request for Certification of the People's Republic of China and Taiwan; Conservation of Endangered Species Subject to Illegal International Trade

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On November 8, 1993, the Department of the Interior received a "petition" to certify the People's Republic of China and Taiwan under the Pelly Amendment to the Fishermen's Protective Act for undermining the effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, or the Convention). The U.S. Fish and Wildlife Service (Service) is the agency responsible for the implementation of CITES in the United States. The request alleged unlawful international trade by nationals of the People's Republic of China and Taiwan, in the following species: Asiatic black bears, Asian brown bears, Malayan sun bears, sloth bears, clouded leopards, leopards, snow leopards, gibbons, and orangutans. The People's Republic of China and Taiwan were previously certified by the Secretary of the Interior under the Pelly Amendment on September 7, 1993 for undermining the effectiveness of CITES for trade in rhinoceros and tiger parts and products. This notice requests comments and information from the public on the following: the international trade in Asiatic black bears, Asian brown bears, Malayan sun bears, sloth bears, clouded leopards, leopards, snow leopards, gibbons, and orangutans, particularly involving the People's Republic of China and Taiwan; the conservation status of these species in the wild; the effect of illegal trade on their populations; whether or not actions of nationals of the People's Republic of China and/or Taiwan are undermining the effectiveness of CITES; and any illegal trade in these species by nationals of other countries or entities. This information will be utilized by the Service in determining whether the existing certification should be amended to cover these additional species.

DATES: The Fish and Wildlife Service will consider written information and comments on these issues received by April 25, 1994.

ADDRESSES: Comments should be sent to the Director, U.S. Fish and Wildlife Service, c/o Chief, Office of Management Authority, 4401 N. Fairfax Drive, room 420C, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 1993, the Department of the Interior received a "petition" to certify the People's Republic of China and Taiwan under the Pelly Amendment to the Fishermen's Protective Act for undermining the effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The U.S. Fish and Wildlife Service (Service) is the agency responsible for the implementation of CITES in the United States. Both the People's Republic of China and Taiwan were previously certified by the Secretary under the Pelly Amendment on September 7, 1993 for undermining the effectiveness of CITES for trade in rhinoceros and tiger parts and products. The November 8, 1993 letter requesting certification was submitted by the following organizations: Environmental Investigation Agency, Earth Island Institute, Animal Welfare Institute, Society for Animal Protective Legislation, Defenders of Wildlife, International Primate Protection League, and World Society for the Protection of Animals. The letter provided information on the alleged illegal international trade by nationals of the People's Republic of China and Taiwan in the following species: Asiatic black bears, Asian brown bears, Malayan sun bears, sloth bears, clouded leopards, leopards, snow leopards, gibbons, and orangutans. Although the November 8 letter focusses on the certification of China and Taiwan, international trade in other countries with respect to these species is also alleged in the materials appended to the letter. Public comment is requested on the international trade in each of these species, including, but not limited to, trade by nationals of the People's Republic of China, Taiwan, and other countries mentioned in the appended materials.

The Service has reviewed and analyzed this supplemental data, in combination with other information in the Service's files on trade in the species mentioned in the November 8 letter (Asiatic black bears, Asian brown bears, Malayan sun bears, sloth bears, clouded leopards, leopards, snow leopards, gibbons, and orangutans). All of the species mentioned in the letter are listed in CITES Appendix I, and are therefore considered to be species threatened with extinction which are or may be affected by trade, among other factors. Because the species are listed in Appendix I, any primarily commercial trade in these species is generally in violation of the Convention. The letter provided information to support the allegation that illegal trade is continuing in specimens of these species, particularly involving nationals of the People's Republic of China and Taiwan.

The Service is aware that habitat loss and fragmentation is a major factor threatening these and many other endangered species. In addition, and in the context of the Pelly Amendment, the supplemental information alleges that these species are also threatened with extinction by international trade, either as live animals or as parts and products. All of these species have declined significantly in recent years, with some populations entirely extirpated and others on the verge of extinction. The November 8 letter provides detailed information on both the internal and international trade in parts and products of these species, involving nationals of both the People's Republic of China and Taiwan. The letter provides information alleging that these species are threatened with extinction by the following types of international trade, either as live animals or as parts and products:

Bears: Asian brown bears (*Ursus arctos*), Asiatic black bears (*Selenarctos thibetanus*), Malayan sun bears (*Helarctos malayanus*), sloth bears (*Melursus ursinus*): The trade in their gall bladders and extracted bile for use in traditional Chinese medicines is a major threat to the survival of these bear species, combined with the trade in paws, liver, fat, and meat as a gourmet delicacy. Malayan sun bears are believed to be traded as pets as well.

Leopards: Clouded leopards (*Neofelis nebulosa*) are poached and traded illegally mostly for their skins, although some use in traditional Chinese medicine is reported. Leopards (*Panthera pardus*), particularly the Amur leopard (*Panthera p. orientalis*), and snow leopards (*Panthera uncia*), are poached and traded illegally for their skin, bones, and other parts; their bones are used for the Chinese medicinal market. Supplemental information is provided on both the internal and international trade in leopard parts and products, involving nationals of both the People's Republic of China and Taiwan.

Primates: Gibbons (*Hylobates spp.*) are traded illegally mostly as pets, particularly to Taiwan. Limited supplemental information is provided on the trade in gibbons for traditional medicine markets as well. Orangutans (*Pongo pygmaeus*) are traded illegally as pets, particularly to Taiwan. The information included in the November 8 letter does not explain the degree to which the alleged biological injury posed to these CITES species is properly attributable to trade. Public comment is specifically sought on the existence of a causal connection between trade and alleged adverse effects posed to the CITES species discussed in the November 8 letter.

Summary of Previous Pelly Amendment Certification of the People's Republic of China and Taiwan

On September 7, 1993, Secretary of the Interior Bruce Babbitt determined that nationals of the People's Republic of China and Taiwan are engaging in trade in rhinoceros and tiger parts and products that diminishes the effectiveness of CITES, and so notified the President of the United States. That determination constituted a certification under the Pelly Amendment to the Fishermen's Protective Act of 1967, 22 U.S.C. 1978(a)(2), which provides that the Secretary of the Interior shall make a certification to the President if he determines that nationals of a foreign country, directly or indirectly, are engaged in trade or taking which diminishes the effectiveness of any international program for the conservation of endangered or threatened species; CITES is such a program. Secretary Babbitt announced this certification at the thirtieth meeting of the CITES Standing Committee, in Brussels, Belgium September 6-8, 1993; staff of the Service's Office of Management Authority (OMA) also participated in the meeting. The Standing Committee made several recommendations to both the People's Republic of China and Taiwan on eliminating the illegal trade in both rhinoceroses and tigers. In response to the Secretary of the Interior's certification, the Standing Committee recommendations, and after bilateral discussions with both China and Taiwan, and careful deliberation and evaluation, on November 5, 1993 the President: Reported to Congress on the certification; made several recommendations to both the People's Republic of China and Taiwan; and required that unless measurable, verifiable, and substantial progress is made by March, 1994, import prohibitions on trade with both governments would be necessary, as recommended by the CITES Standing Committee. Since that time, two CITES missions have visited both the People's Republic of China and Taiwan, and bilateral meetings have taken place. A U.S. government technical assistance mission from the Departments of Interior and Justice will visit both the People's Republic of China and Taiwan in late February-early March. An evaluation of progress and a preliminary decision on possible trade prohibitions is expected in March, 1994. The thirty first CITES Standing Committee meeting will take place March 21-25 in Geneva, Switzerland, where the issues of rhinoceros and tiger trade will also be discussed.

Request for Information and Comments

The Service has reviewed the November 8 letter, and finds that it contains sufficient information to warrant a consideration of whether nationals of the People's Republic of China and Taiwan are undermining the effectiveness of CITES by engaging trade or taking of endangered species other than rhinoceroses and tigers. Both the People's Republic of China and Taiwan

have been previously certified to the President under the Pelly Amendment for trade in rhinoceros and tiger parts and products. If the Secretary of the Interior finds that nationals of the People's Republic of China and/or Taiwan are diminishing the effectiveness of CITES by trading in additional species, the existing certification would be amended accordingly.

This notice requests comments and information from the public on the following: The international trade in the species discussed, particularly involving the People's Republic of China and Taiwan; the conservation status of these species in the wild; the effect of illegal trade on their populations; whether or not actions of nationals of the People's Republic of China and/or Taiwan are undermining the effectiveness of CITES; and on any illegal trade in these species by nationals of other countries or entities. This information will be utilized by the Service in determining whether to recommend that the Secretary amend the existing certification.

Author

This notice was prepared by Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service (703/358–2093; fax 703/358–2280).

Dated: February 15, 1994.

Bruce Blanchard,

Acting Director.

[FR Doc. 94–4008 Filed 2–23–94; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–684–685 (Preliminary)]

Fresh Cut Roses From Colombia and Ecuador

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–684–685 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Colombia and Ecuador of fresh cut roses, provided for in subheading 0603.10.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by March 31, 1994.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on February 14, 1994, by the Floral Trade Council, Haslett, MI.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 8, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–205–3190) not later than March 2, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 11, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: February 17, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4112 Filed 2–23–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–32 (Sub-No. 56X), Boston and Maine Corporation—Discontinuance of Service—Middlesex County, MA. EA available 2/14/94.

AB–55 (Sub-No. 479X), CSX Transportation, Inc.—Notice of Exemption—In Putnam and Owen Counties, Indiana. EA available 2/15/94.

AB–43 (Sub-No. 165X), Illinois Central Railroad Company—Abandonment Exemption—in Perry and Randolph Counties, Illinois; and

AB–3 (Sub-No. 114X), Missouri Pacific RR. Company—Discontinuance of Service—in Perry and Randolph Counties, Illinois. EA available 2/15/94.

AB–32 (Sub-No. 59X) & AB–355 (Sub-No. 11X), Boston & Maine Corporation and Springfield Terminal Railway Company—Abandonment and Discontinuance of Service—in Middlesex County, Massachusetts. EA available 2/18/94.

Comments on the following assessment are due 30 days after the date of availability:

AB–12 (Sub-No. 164X), Southern Pacific Transportation Company—Abandonment Exemption—in Bee and San Patricio Counties, Texas. EA available 2/15/94.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4153 Filed 2–23–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 as Amended

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Advanced Environmental Technologies Corp., et al.*, No. 90–3793 (AJL) (D.N.J.) and *United States* v. *A.T. & T. Technologies, Inc., et al.*, No. 90–3789 (AJL) (D.N.J.) (consolidated cases), lodged on February 1, 1994 with the United States District Court for the District of New Jersey. The decree resolves claims of the United States against defendant Raybestos-Manhattan, Inc. ("Settling Defendant") in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at the Chemical Control Superfund Site in Elizabeth, New Jersey (the "Site"). In the proposed consent decree the Settling Defendant agrees to pay the United States $22,000 in settlement of the United States' claims for response costs incurred by the Environmental Protection Agency at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Advanced Environmental Technologies Corp. et al.*, No. 90–3793 (AJL) (D.N.J.) and *United States* v. *A.T. & T. Technologies, Inc., et al.*, No. 90–3789 (AJL) (D.N.Y.) (consolidated cases), DOJ Ref. #90–11–2–293A.

The proposed consent decree may be examined at the Office of the United States Attorney, 970 Broad Street, Newark, New Jersey 07102; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278; and the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–4095 Filed 2–23–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Energy West Mining Company

[Docket No. M–94–15–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Deer Creek Mine (I.D. No. 42–00121); its Cottonwood Mine (I.D. No. 42–01944); and its Trail Mountain Mine (I.D. No. 42–01211) all located in Emery County, Utah. The petitioner proposes to use high-voltage (2400 volts) cable to power longwall equipment. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Andalex Resources, Inc.

[Docket No. M–94–16–C]

Andalex Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Pinnacle Mine (I.D. No. 42–01474); and its Aberdeen Mine (I.D. No. 42–02028) both located in Carbon County, Utah. The petitioner proposes to use high-voltage (2400 volts) equipment in the last open crosscut at the longwall sections. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. De'Lyn, Ltd.

[Docket No. M–94–17–C]

De'Lyn, Ltd., Drawer 907, Skelton, West Virginia 25919 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its

Mine No. 7 (I.D. No. 46–07162) located in Boone County, West Virginia. Due to deteriorating roof conditions in the 2nd Left Mains air course, the area cannot be traveled safely. The petitioner proposes to establish monitoring stations at spad #2872 in entry #1 outby the affected area and at #3024 inby the affected area to measure the quantity and direction of the air flow; to post a marker indicating the proper direction of the air flow; and to record the results of air readings and examinations in a record book accessible to all interested parties. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 28, 1994. Copies of these petitions are available for inspection at that address.

Dated: February 15, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–4177 Filed 2–23–94; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Move of the John F. Kennedy Assassination Collection to the National Archives at College Park

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of closure and reopening of reference services for the John F. Kennedy assassination collection related to the move to the National Archives at College Park (Archives II).

SUMMARY: This notice provides information about the period of time that reference service on certain holdings of the National Archives will be unavailable due to the move of those holdings and the associated National Archives staff from the National Archives Building to the new Archives II facility. Additional notices will be published by NARA relating to the move of other holdings to Archives II.

In order to prepare for and complete the move, reference services will be temporarily discontinued as follows:

Requests for textual records to be reviewed in the research room will not be accepted after February 22, 1994. Requests for reproductions received after February 7, 1994, and written requests for information from the collection received after February 18, 1994, will be processed. Requests received after these cutoff dates will be returned for resubmission after April 1, 1994.

All reference services will resume on April 1, 1994, at the National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001. Changes in the overall move schedule may require changes in these dates.

Reference services for the records of the House Select Committee on Assassinations, the Senate Select Committee To Study Governmental Operations With Respect to Intelligence Activities (the Church Committee), and the House Select Committee on Intelligence (the Pike Committee) will still be available at the National Archives Building in Washington, DC. A reference set of these Congressional records will be part of the Collection at Archives II.

FOR FURTHER INFORMATION CONTACT: For schedule updates, call the Access Staff at (202) 501–5313.

Dated: February 16, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–4178 Filed 2–23–94; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Research Agenda Steering Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the ad hoc Arts In Education Research Agenda Steering Committee will be held on February 28–March 1, 1994. The panel will meet from 9 a.m. to 5 p.m. on February 28, 1994 and from 8:30 a.m. to 3 p.m. on March 1, 1994. This meeting will be held at the Doubletree Hotel in Arlington, VA.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 17, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–4155 Filed 2–23–94; 8:45 am]

BILLING CODE 7537–01–M

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Project Grants for Organizations Section) to the National Council on the Arts will be held March 8–11, 1994. The panel will meet from 9 a.m. to 7:30 p.m. on March 8–10, 1994 and from 9 a.m. to 5 p.m. on March 11, 1994. This meeting will be held in room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3 p.m. to 5 p.m. on March 11, 1994 for a policy discussion.

The remaining portions of this meeting from 9 a.m. to 7:30 p.m. on March 8–10, 1994 and from 9 a.m. to 3 p.m. on March 11, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 16, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–4099 Filed 2–23–94; 8:45 am]

BILLING CODE 7537–01–M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Arts Education Initiative Section) to the National Council on the Arts will be held on March 22–24, 1994. The panel will meet from 9:15 a.m. to 6 p.m. on March 22, 1994; from 9 a.m. to 6 p.m. on March 23, 1994; and from 9 a.m. to 4:30 p.m. on March 24, 1994. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9:15 a.m. to 10:30 a.m. on March 22, 1994 for opening remarks and a general overview, and on March 24, 1994 from 3 p.m. to 4:30 p.m. for a policy discussion.

The remaining portions of this meeting from 10:30 a.m. to 6 p.m. on March 22, 1994; from 9 a.m. to 6 p.m. on March 23, 1994; and from 9 a.m. to 3 p.m. on March 24, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 17, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc: 94–4188 Filed 2–23–94; 8:45 am]

BILLING CODE 7537–01–M

Folk Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel (National Heritage Fellowships Section) to the National Council on the Arts will meet on March 9–11, 1994. The panel will meet from 9 a.m. to 10 p.m. on March 9, 1994; from 9 a.m. to 6:30 p.m. on March 10, 1994; and from 9 a.m. to 4 p.m. on March 11, 1994. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: February 17, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc: 94–4186 Filed 2–23–94; 8:45 am]

BILLING CODE 7537–01–M

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* March 1, 1994.
Time: 8 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Dissertation Grants applications in American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

2. *Date:* March 1, 1994.
Time: 8 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Dissertation Grants applications in Art History, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1994.

3. *Date:* March 11, 1994.

Time: 8 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for the Centers for Advanced Study Program, submitted to the Division of Research Programs, for projects beginning after July 1, 1994.

David Fisher,
Advisory Committee Management Officer.
[FR Doc. 94–4106 Filed 2–23–94; 8:45 am]
BILLING CODE 7536–01–M

International Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the International Advisory Panel (International Projects Initiatives and Overview Section) to the National Council on the Arts will be held on March 21–23, 1994. The panel will meet from 9 a.m. to 6 p.m. on March 21, 1994; from 9 a.m. to 7 p.m. on March 22, 1994; and from 9 a.m. to 5 p.m. on March 23, 1994. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 21, 1994, from 9 a.m. to 10 a.m. for introductions and instructions to panelists and on March 23, 1994 from 11:15 a.m. to 5 p.m. for for a policy discussion and guidelines review.

The remaining portions of this meeting from 10 a.m. to 6 p.m. on March 21, 1994; 9 a.m. to 7 p.m. on March 22, 1994; and from 9 a.m. to 11:15 a.m. on March 23, 1994 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 17, 1994.

Yvonne M. Sabine,
Director, Office of Panel Operations, National Endowment for the Arts.
[FR Doc. 94–4195 Filed 2–23–94; 8:45 am]
BILLING CODE 7537–01–M

Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Professional Development Overview Section) to the National Council on the Arts will be held on March 9–10, 1994. The panel will meet from 9 a.m. to 7 p.m. on March 9, 1994 and from 10 a.m. to 5 p.m. on March 10, 1994. This meeting will be held in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 10, 1994 from 10 a.m. to 5 p.m. for Program Overview and a discussion of policy and guidelines.

The remaining portion of this meeting from 9 a.m. to 7 p.m. on March 9, 1994 is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 17, 1994.

Yvonne M. Sabine,
Director, Office of Panel Operations, National Endowment for the Arts.
[FR Doc. 94–4192 Filed 2–23–94; 8:45 am]
BILLING CODE 7537–01–M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Section) to the National Council on the Arts will be held on March 30–31, 1994. The panel will meet from 9 a.m. to 6:30 p.m. on March 30, 1994 and from 9 a.m. to 5:30 p.m. on March 31, 1994. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 31, 1994 from 4:30 p.m. to 5:30 p.m. for a policy discussion.

The remaining portions of this meeting from 9 a.m. to 6:30 p.m. on March 30, 1994 and from 9 a.m. to 4:30 p.m., on March 31, 1994 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 17, 1994.

Yvonne M. Sabine,
Director, Office of Panel Operations, National Endowment for the Arts.
[FR Doc. 94–4189 Filed 2–23–94; 8:45 am]
BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Music Recording Section) to the National Council on the Arts will be held on March 9–10, 1994 from 9 a.m. to 5:30 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 10, 1994 from 4:30 p.m. to 5:30 p.m. for a policy discussion and a guidelines review.

The remaining portions of this meeting from 9 a.m. to 5:30 p.m. on March 9, 1994 and from 9 a.m. to 4:30 p.m. on March 10, 1994 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 17, 1994.

Yvonne M. Sabine,
Director, Office of Panel Operations, National Endowment for the Arts.
[FR Doc. 94–4187 Filed 2–23–94; 8:45 am]
BILLING CODE 7537–01–M

Public Partnership Office Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (State and Regional Arts Agencies Section) to the National Council on the Arts will be held on March 17–18, 1994. The panel will meet from 9 a.m. to 5:30 p.m. on March 17, 1994 and from 9 a.m. to 4 p.m. on March 18, 1994. This meeting will be held in room 730, at the Nancy Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 17, 1994.

Yvonne M. Sabine,
Director, Office of Panel Operations, National Endowment for the Arts.
[FR Doc. 94–4190 Filed 2–23–94; 8:45 am]
BILLING CODE 7537–01–M

Public Partnership Office Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Local Arts Agencies Section) to the National Council on the Arts will be held on March 16–18, 1994. The panel will meet from 3 p.m. to 5 p.m. on March 16, 1994; from 9 a.m. to 5 p.m. on March 17, 1994; and from 9 a.m. to 3 p.m. on March 18, 1994. This meeting will be held in room M–09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 17, 1994.

Yvonne M. Sabine,
Director, Office of Panel Operations, National Endowment for the Arts.
[FR Doc. 94–4191 Filed 2–23–94; 8:45 am]
BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Companies B Section) to the National Council on the Arts will be held on March 28–April 1, 1994. The panel will meet from 9 a.m. to 9 p.m. on March 28–31, 1994 and from 9 a.m. to 8 p.m. on April 1, 1994. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 28, 1994 from 9:30 a.m. to 10:30 a.m. for welcome and a discussion of procedural issues and application review criteria, and on April 1, 1994 from 5 p.m. to 8 p.m. for a discussion of policy and guidelines a further discussion of procedural issues.

The remaining portions of this meeting from 10:30 a.m. to 9 p.m. on March 28, 1994; from 9 a.m. to 9 p.m. on March 29–31, 1994; and from 9 a.m. to 5 p.m. on April 1, 1994 are for the

purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4)(6)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 17, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–4193 Filed 2–23–94; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Companies A Section) to the National Council on the Arts will be held on March 14–18, 1994. The panel will meet from 9:30 a.m. to 9 p.m. on March 14, 1994; from 9 a.m. to 9 p.m. on March15–17, 1994; and from 9 a.m. to 8 p.m. on March 18, 1994. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 14, 1994 from 9:30 a.m. to 10:30 a.m., for a discussion of procedural issues and application review criteria and on March 18, 1994 from 5 p.m. to 8 p.m. for a discussion of guidelines and policy and further discussion of procedural issues.

The remaining portions of this meeting from 10:30 a.m. to 9 p.m. on March 14, 1994; from 9 a.m. to 9 p.m. on March 15–17, 1994; and from 9 a.m. to 5 p.m. on March 18, 1994 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 17, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–4194 Filed 2–23–94; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–453), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Public Projects Section) to the National Council on the Arts will be held on March 14–18, 1993. The panel will meet from 9 a.m. to 7 p.m. on March 14–17, 1994 and from 9:30 a.m. to 2:30 p.m. on March 18, 1994. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 1 p.m. to 2:30 p.m. on March 18, 1993 for discussion of policy and guidelines.

The remaining portions of this meeting from 9 a.m. to 7 p.m. on March 14–17, 1994 and from 9:30 a.m. to 1 p.m., on March 18, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9) (B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 16, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–4100 Filed 2–23–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Public Workshop: Reliability of Reactor Designs Proposing To Use Passive Safety Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing a public workshop on reliability assessments of safety system designs having passive features. The purpose of the workshop is to review the present status of available methodology for assessing safety systems having passive features, to discuss possible improvements in these methods and to develop guidelines for performing meaningful assessments of such systems. This action is being taken to initiate a dialogue on this important topic and to provide the opportunity for early public participation in the development of review methods and criteria for passive safety systems. In addition to open public participation in this workshop, the NRC is inviting all known interested parties to attend.

DATES: The workshop will be held on Tuesday, March 1 and on Wednesday, March 2, 1994, from 8:30 am to 5 pm.

ADDRESSES: The workshop will be held at the Cliffside Inn, P.O. Box 786, Harpers Ferry, West Virginia 25425. Phone: (304) 535–6302. Reservations may be made by calling: 1–800–782–9437.

FOR FURTHER INFORMATION CONTACT: Brad Hardin, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3733.

SUPPLEMENTARY INFORMATION: The purpose of this workshop is to initiate a dialogue on practical approaches for assessing the reliability of engineering systems comprised partially or completely of passive components and/or subsystems such as for example gravity fed emergency water supplies. Even though the workshop focus will be on the generic issues associated with nuclear reactor safety systems having passive features, it is also intended to draw on relevant experience in engineering fields other than nuclear such as the chemical industry or NASA's space programs. Another objective of this workshop is to discuss ways for improving our understanding of the sensitivity of functional success of passive systems to changes in controlling system parameters. Examples of such changes include variations in heat transfer coefficient and driving pressure (ΔP) across check valves under conditions of natural circulation and low driving head. Due to the preliminary nature of the NRC's reviews of the advanced reactor designs planning to utilize passive safety features, the workshop will not include discussions of specific proprietary design information. The results of the workshop will provide an input to assessing the need for additional research into understanding passive system reliability in integral designs.

Specific Topics: The proceedings of this meeting will address issues pertinent to the assessment of reactor safety systems having passive features including such topics as:

1. Regulatory needs for assessments of passive safety system reliability. What ingredients must logically be included in the quantification of functional reliability of passive systems? What results (e.g., uncertainty analysis) should be presented and documented?
2. What is meant by the reliability of a passive safety system and by the uncertainty in its reliability? What is the best way of determining this uncertainty and of incorporating experimental information to reduce the uncertainty?
3. Discussion of past efforts to assess the reliability of reactor systems that utilize passive features. What methods have proven successful in past efforts in light of stated needs (Item I) and what were their shortcomings?
4. Which assessment methods are good candidates for improvement and what might those improvements be?

Other questions on the proposed approach to the assessment of passive safety systems will be entertained if time permits.

Dated at Rockville, Maryland, this 17th day of February 1994.

For the Nuclear Regulatory Commission.

Joseph Murphy,

Acting Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 94–4132 Filed 2–23–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane (202) 942–8800

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings, Information, and Consumer Services, Washington, DC 20549.

Revisions

Regulation 14A—File No. 270–56
Rule 20a–1—File No. 270–132
Rule 20a–2—File No. 270–133
Rule 20a–3—File No. 270–134
Regulation S–K—File No. 270–2
Form N–14—File No. 270–297

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval amendments to Regulation 14A and Regulation S–K under the Securities Exchange Act of 1934 and Rules 20a–1 through 20a–3 and Form N–14 under the Investment Company Act of 1940 ("1940 Act").

Regulation 14A, and Schedule 14A thereto, sets forth general requirements for the solicitation of proxies. Approximately 8,000 respondents, other than management investment companies registered under the 1940 Act, prepare proxies with an estimated compliance time of 89 hours per registrant. Regulation 14A and Schedule 14A, currently and as proposed to be amended, have provisions applicable to investment companies. However, the burden hours for proxy filings by investment companies are imposed under Rules 20a–1 through 20a–3 discussed below and the Commission does not anticipate any changes to the burden imposed under Regulation 14A or Schedule 14A.

Regulation S–K includes generally applicable disclosure items for registration statement forms, proxies, and other documents filed under the federal securities laws, and has an estimated compliance burden of one hour for administrative convenience because it does not directly impose filing requirements. The Commission does not anticipate that the propose amendments will change the burden associated with Regulation S–K.

Rules 20a–1 through 20a–3 set forth various specific requirements applicable to the solicitation of proxies by investment companies. About 970 investment companies prepare proxies with an estimated compliance time of 97.2 hours per registrant. The Commission expects the amendments to decrease the burden by one hour, for a total compliance time of 96.2 hours.

N–14 is the registration statement for use by investment companies to register securities under the Securities Act of 1933 issued in mergers and other forms of business combination. Approximately 95 registrants filed Form N–14 in 1992, with an estimated compliance time of 2,500.3 hours per registrant. The maximum additional burden imposed by the amendments is estimated to be one hour, for a total of 2,502.3 hours.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (paperwork Reduction Act Numbers 3235–0059, 3235–0158, 3235–0071, and 3235–

0336), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 25, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4140 Filed 2–23–94; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane (202) 942–8800

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings, Information, and Consumer Services, Washington, DC 20549

Extensions

Form N–8f—File No. 270–136
Form N–23C–1—File No. 270–230
Rule 6e–2—File No. 270–177
Rule 17a–8—File No. 270–225
Rule 17f–1—File No. 270–236

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted to the Office of Management and Budget request for approval of extensions on the following currently approved rules and forms:

Form N–8f is the form prescribed for use by certain registered investment companies requesting orders of the Commission declaring that they have ceased to be investment companies. The form takes approximately 6 hours to complete.

Form N–23C–1 is a form on which closed-end investment companies report repurchases of their own securities. The form requires about one hour to fill out on each occasion, up to twelve times per year, on the part of approximately 4 companies that undertake such repurchase transactions each year. Total annual burden hours are estimate to be 23.

Rule 6e–2 grants investment companies offering scheduled premium and single premium variable life insurance contracts exemptions from the Investment Company Act of 1940. Only management accounts that register to sell contracts under Rule 6e–2 have a reporting burden, estimated to be approximately 111 annual hours per respondent, imposed under paragraph (b)(9) of the rule. Since 1988, there have been no filings under paragraph (b)(9) of rule 6e–2 by existing management accounts, and separate accounts now are being organized as trust accounts, which are not subject to the reporting requirements, rather than as management accounts. Without the rule, management companies that offer variable insurance contracts and their sponsoring life insurers would have to file individual exemptive applications in addition to a registration statement in order to obtain the relief needed to sell the contracts. This process would be burdensome on both the life insurer and the Commission's staff.

Rule 17a–8 exempts certain mergers or consolidations involving investment companies from the restrictions on transactions between affiliates set forth in Section 17(a) of the Investment Company Act of 1940. The rule annually requires approximately 1.5 hours of recordkeeping by each of approximately 17 companies estimated to be involved in such a merger or consolidation each year, for a total of 26 annual burden hours.

Rule 17f–1 requires that a custodial contract and an accountant's certificate be filed with the Commission in connection with the placement or maintenance of the assets of a registered management investment company in the custody of a member of a national securities exchange. The rule requires each respondent to spend about 4 hours meeting reporting requirements annually.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Act No. 3235–0157, 3235–0230, 3235–0177, 3235–0235, and 3235–0222), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 14, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4141 Filed 2–23–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33486A; File No. SR–Amex–93–21]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Expansion of the Amex Options Switching System; Correction

February 17, 1994.

In FR Document No. 94–2021, beginning on page 4293 for Monday, January 31, 1994, the Amex File No. was incorrectly stated. The correct Amex File No. is: SR–Amex–93–21.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4147 Filed 2–23–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33627; File No. SR–NASD–93–76]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. to Article II, Sections 10 and 11 of the Code of Procedures Relating to the Procedures of the National Business Conduct Committee

February 15, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 14, 1994,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission"), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Code of Procedure

* * * * *

Article II

* * * * *

Sec. 10

* * * * *

Acceptance, Waiver and Consent of the Respondent

(a) If the Committee has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Committee may suggest that the member or associated person submit a letter containing an acceptance of a finding of violations, a waiver of all rights of appeal to the National Business Conduct Committee (and any review thereof by the Board of Governors), the Securities and Exchange Commission and the courts or to otherwise challenge or contest the validity of the Order issued if the letter is accepted, and a consent to the imposition of sanctions. The letter shall describe the act or practice engaged in or omitted; the rule, regulation or statutory provision violated; and the sanction to be imposed therefore. If the Committee then concludes that the Letter of Acceptance, Waiver and Consent is appropriate and should be accepted, it shall be submitted to the National Business Conduct Committee. If the letter is accepted by the National Business Conduct Committee or a *Subcommittee designated by the National Business Conduct Committee*, it shall become final and shall constitute the complaint, answer and decision in the matter. If the letter is rejected by the Committee, [or] the National Business Conduct Committee, or a *Subcommittee designated by the National Business Conduct Committee*, any acceptances, waivers and consents contained therein shall not be considered in any further complaint action which may be taken against the member or associated person.

Minor Rule Violations Procedure

(b)(1)

* * * * *

(3) The Letter shall be submitted to the Committee and, if accepted, the Letter shall then be submitted to the National Business Conduct Committee. If the National Business Conduct Committee or a *Subcommittee designated by the National Business Conduct Committee* accepts the Letter, the Corporation will report the violation to the Securities and Exchange Commission as required by the Commission pursuant to a plan approved under Rule 19d–1(c)(2) adopted under the Securities Exchange Act of 1934, as amended. If the Committee, [or] *the* National Business Conduct Committee, or a *Subcommittee designated by the National Business Conduct Committee* rejects the Letter, the Committee or National Business Conduct Committee may take any other appropriate disciplinary action with respect to the violation or violations.

* * * * *

Settlement Procedure

Sec. 11

* * * * *

(e) Before any such Order of Acceptance of Offer of Settlement shall become effective it must be submitted to and approved by the National Business Conduct Committee or a *Subcommittee designated by the National Business Conduct Committee*, which is hereby delegated authority to accept or reject an Offer of Settlement. If the National Business Conduct Committee [by a majority vote] or a *Subcommittee designated by the National Business Conduct Committee* approves the Committee's Order, it shall communicate its conclusion to the Committee which shall thereafter issue such Order.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The National Business Conduct Committee of the NASD ("NBCC") is composed of participating members of the first year class of the NASD Board of Governors ("Board") plus an elected Chair and Vice-Chair from the Board's second year class. The members of the NBCC are sent a weekly package ("weekly mailings") for review on proposed Acceptance, Waiver, and Consents ("AWCs"), Minor Rule Violations Letters, and Offers of Settlement. The NBCC also reviews, on a weekly basis, all disciplinary decisions of the District Business Conduct Committees and the Market Surveillance Committee. All matters are first reviewed by the Chair and Vice-Chair of the NBCC and then reviewed by the other members of the NBCC along with the recommendations of the Chair and Vice-Chair.

The NASD has determined that the weekly mailings to the NBCC require a substantial commitment of time of NBCC members and that the review by NBCC members of all the foregoing matters is unnecessary and unduly burdensome. In order to reduce the amount of materials which must be read by NBCC members, the NASD proposes to amend Article II, Sections 10(a), 10(b), and 11(e)[2] of the Code of Procedure ("Code") to allow the NBCC to designate a Subcommittee composed of members of the NBCC to review AWCs, Minor Rule Violations Letters, and Offers of Settlement in all instances other than matters that are outside the NASD Sanction Guidelines[3] or where the designated Subcommittee, in its discretion, otherwise believes full NBCC review is appropriate. The NASD intends that, initially, the Subcommittee designated by the Committee will consist of the Committee Chair and Vice-Chair, but may modify the composition of the Subcommittee in the future.,

The NASD is, therefore, proposing to amend Article II, Sections 10(a) and 10(b) of the Code, to allow acceptance and rejections of AWCs and Minor Rule Violations Letters to be made by a Subcommittee designated by the NBCC as an alternative to full NBCC review.

The NASD is also proposing to amend Article II, section 11(e) of the Code to allow acceptances and rejections of Offers of Settlement to be made by a Subcommittee designated by the NBCC as an alternative to full NBCC review. The NASD is also proposing to delete the phrase "by a majority vote" from Article II, section 11(e) of the Code. The NASD considers the phrase "by a majority vote" to be confusing since a majority vote is always required by an NASD review body acting pursuant to the Code.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(8) of the Act in that the proposed rule change provides for fair procedures for the disciplining of members and persons associated with members. The proposal enhances the NASD's disciplinary procedures with respect to AWCs, Minor Rule Violations Letters, and Offers of Settlement by facilitating the review of such matters by the NBCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition.

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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[1] The NASD submitted the filing on December 16, 1993. However, on February 14, 1994, it filed an amendment to replace and supersede the original filing.

[2] *NASD Manual*, Code of Procedure, Article II, Sections 10(a), 10(b), and 11(e), (CCH) ¶¶ 3030, 3031.

[3] The NASD Sanction Guidelines were published in May 1993 and sent to all NASD members. *See* NASD Regulatory & Compliance ALERT, Volume 7, No. 2 (June 1993).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule, or

B. Institute proceeding to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 17, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4143 Filed 2–23–94; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20079; 812–8678]

First Prairie Cash Management et al.; Notice of Application

February 16, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: First Prairie Cash Management ("Cash Management"), First Prairie Money Market Fund ("Money Market"), First Prairie U.S. Treasury Securities Cash Management ("Treasury Cash Management") and such other registered investment companies that in the future (i) are advised by FNBC or any entity under common control with or controlled by FNBC, (ii) are taxable money market funds, (iii) are permitted to invest in repurchase agreements, and (iv) effect purchase and sales through FNBC's "sweep" program (the "Funds"), and The First National Bank of Chicago ("FNBC").

RELEVANT ACT SECTIONS: Exemption requested pursuant to sections 6(c) and 17(b) from section 17(a).

SUMMARY OF APPLICATION: Applicants seek an amendment to a prior order that permits Money Market to enter into repurchase agreements with FNBC. The prior order limits the collateral for the repurchase agreements to U.S. Treasury Bills, Notes, or Bonds, with remaining maturities of one year or less, and valued at least equal to 102% of the maximum amount of a Fund's net assets that could be invested in such repurchase agreements. The order will not limit the maturity of the collateral and, with respect to the amount of the collateral, will provide only that the repurchase agreements must be fully collateralized within the meaning of rule 2a–7.

FILING DATE: The application was filed November 12, 1993 and amended on January 19, 1994 and February 7, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 14, 1994 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: First Prairie Funds, 144 Glenn Curtiss Boulevard, Uniondale, New York 11556–0144; The First National Bank of Chicago, One First National Plaza, Chicago, Illinois 60670–0120.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 504–2259, or Barry Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end, diversified management investment companies. Each Fund is a money market fund that maintains a net asset value of $1.00 per share for purchases and redemptions and, pursuant to rule 2a–7 under the Act, uses the amortized cost method of valuing its securities.

2. FNBC is the investment adviser for each of the Funds. FNBC, a wholly-owned subsidiary of First Chicago Corporation, a registered bank holding company, is a commercial bank offering a range of banking and investment services. The Bank of New York acts as the custodian for each of the Funds.

3. Cash Management invests in short-term money market obligations, including repurchase agreements with respect to such securities with registered or unregistered securities dealers or banks that have total assets in excess of $1 billion. Money Market is divided into two separate portfolios, the Money Market Series and the Government Series (each of which is referred to as a "Fund"). The Money Market Series invests in short-term money market obligations, including repurchase agreements with banks or primary government securities dealers reporting to the Federal Reserve Bank of New York. The Government Series invests only in short-term securities issued or guaranteed as to principal and interest by the U.S. Government, and repurchase agreements with respect to such securities with selected registered or unregistered securities dealers or banks that have total assets in excess of $1 billion. Treasury Cash Management invests at least 65% of the value of its net assets in U.S. Treasury securities and repurchase agreements in respect thereof and the remainder of its net assets in other securities guaranteed as to principal and interest by the U.S. Government and repurchase agreements in respect thereof with registered or unregistered securities dealers or banks that have total assets in excess of $1 billion.

4. Each Fund's shares are purchased primarily by clients of FNBC and its affiliates, including qualified custody, agency, and trust accounts, through their accounts with FNBC and its affiliates. Each Fund's shares may be purchased through automatic investment transactions. In these transactions, FNBC, as agent, follows the standing instructions of such clients and automatically invests excess cash balances in the clients' accounts in shares of one or more of the Funds.[1] Currently, these "sweep" transactions are effected automatically by computer each Fund business day as the next determined net asset value. The machine processing required to tabulate the day's transactions in such clients' accounts and other shareholder accounts, however, is completed later in the day (normally no earlier than 11 p.m., New York time) when the daily processing for FNBC's accounting system is completed (the "Completion Time"). Therefore, total assets to be invested in each Fund through the "sweep" program each day are not known until that evening and are invested in each Fund at the respective net asset values determined on the following day.

5. The current operation of the "sweep" program makes the Funds materially less attractive to FNBC's clients because they lose a day's income on funds invested through the program and, for "sweeps" accomplished on a Friday, lose a weekend's income.

6. To correct this problem, Money Market and FNBC (the "original Applicants") applied for and received an order (the "Order") of the SEC under section 6(c) and 17(b) of the Act on January 26, 1993, exempting them from section 17(a) of the Act to permit Money Market to enter into repurchase agreements with FNBC or an affiliate subject to certain conditions.[2] To date, however, Money Market has not entered into repurchase agreements with FNBC and therefore is not relying on the Order. The application seeks to amend the Order to: (1) Add additional Funds with investment policies and procedures similar to those of Money Market as applicants; and (2) amend condition seven to the Order.[3]

7. Condition seven to the Order provides that, during the operation of the "sweep" program, collateral maintained in a subcustodian account in the name of each Fund shall be "comprised only of U.S. Treasury Bills, Notes or Bonds, *with remaining maturities of one year or less*, and valued at least equal to *102% of the Maximum Purchase Amount*" (emphasis added). The "Maximum Purchase Amount" is the amount of a Fund's net assets that may be invested pursuant to the Order. This amount is based on a percentage that may change from time to time, subject to the agreement of the applicants, but may not exceed 15% of a Fund's net assets.

8. Applicants propose to amend condition seven to eliminate the requirement that the securities comprising the collateral have "remaining maturities of one year or less." Applicants believe that the provisions of rule 2a–7 relating to remaining maturity are not applicable to securities underlying fully collateralized repurchase agreements.[4] FNBC's experience is that the Funds will be able to obtain a higher yield on repurchase agreements using collateral with remaining maturities of greater than one year than otherwise would be the case.

9. Applicants also propose to amend condition seven to eliminate the requirement that the securities comprising the collateral be valued at least equal to "102% of the Maximum Purchase Amount." Applicants believe that neither rule 2a–7 nor relevant regulatory pronouncements require the collateral for the repurchase agreements to be valued at 102% of the Maximum Purchase Amount. Applicants propose to substitute the requirement that the collateral be at least equal to the amount (the "Required Collateral Amount") necessary to collateralize fully (within the meaning of rule 2a–7) a repurchase agreement in an amount equal to the Maximum Purchase Amount. Applicants believe that maintaining additional collateral beyond that necessary to collateralize fully a repurchase agreement reduces the relevant Fund's yield on the repurchase agreement to the detriment of the Fund's shareholders.

10. To permit FNBC, as each Fund's investment adviser, to invest anticipated net assets attributable to the "sweep" program on the same day that they are available for investment (despite the fact that the exact amount thereof will not be known until after the time for investment that day), FNBC or an affiliate proposes to enter into overnight repurchase agreements with each Fund. Such assets would be invested in shares of a Fund as of the time the Fund determined its net asset value (the "Pricing Time") on the same day the sweep occurs.

11. Each Fund proposes to enter into a master repurchase agreement with FNBC or one of its affiliates, which is substantially the same as the industry standard master repurchase agreement promulgated by the Public Securities Association, covering all repurchase agreement transactions (the "Master Repurchase Agreement").

12. To facilitate the repurchase transaction where the exact amount of the overnight repurchase agreement and, consequently, the required collateral is not known until the following day, FNBC, at no cost to the Funds, will maintain at all times in a segregated sub-custodian account in the name of each Fund the Required Collateral Amount. Each Fund will promptly notify FNBC of any increase or decrease in its net asset value and FNBC will adjust the amount of collateral maintained in the segregated account daily so that it at least equals the Required Collateral Amount for each Fund. The relevant Fund will have a perfected security interest in the repurchase agreement collateral held in such account.

13. If the cash balances swept into a Fund equalled the Maximum Purchase Amount, the required amount of collateral already would be held in the Fund's segregated sub-custodian account with FNBC's Trust Department and the Fund would have a perfected security interest in all such collateral notwithstanding the fact that the actual amount of the repurchase transaction would not be known until the computer records were received the next morning. If such cash balances were less than the Maximum Purchase Amount, the repurchase transaction would be over-collateralized. If such cash balances swept exceeded the Maximum Purchase Amount, the excess amount would remain uninvested. FNBC, however, believes that its experience in operating the "sweep" program and its daily consultations with other departments should limit the amount of funds being

[1] In accordance with the standing instructions of FNBC's clients, the computer program also provides for the automatic redemption of Fund shares held in an account as of the next determined net asset value if the cash balance in the account is less than the minimum balance specified by the client.

[2] Investment Company Act Release Nos. 19185 (Dec. 29, 1992) (notice) and 19240 (Jan. 26, 1993) (order).

[3] The application restates the prior application in its entirety except for changes relating to the requested amendments and minor wording changes.

[4] See Investment Company Act Release No. 18005 n.32 (Feb. 20, 1991).

swept and thus potentially held uninvested.

14. FNBC's Trust Department will act as each Fund's sub-custodian pursuant to a sub-custodian agreement approved by each Fund's Board of Trustees, including a majority of the Trustees who are not "interested persons," as defined in the Act, of either FNBC or the Fund.[5] Each Fund's assets held by FNBC's Trust Department will be maintained in a segregated custodial account established on its behalf in accordance with the rules and standards of the Comptroller of the Currency and the Act. FNBC's Trust Department would receive the eligible securities transferred to it in its capacity as sub-custodian for each Fund and hold them in a manner complying with the requirements of section 17(f) of the Act. After the Completion Time that evening, for a particular fund, the records maintained by FNBC for its clients' accounts and by FNBC's Trust Department in its capacity as the Fund's sub-custodian would show:

(i) For FNBC's client accounts, a cash entry for the amount of Fund shares purchased or redeemed and a corresponding entry to the client accounts for the number of Fund shares purchased or redeemed as of the Pricing Time through operation of the computer "sweep" program; and

(ii) For the Fund's sub-custodian account, all purchase and sale transactions and the net cash proceeds, if any, received by the Fund through the operation of the "sweep" (or, conversely, the net redemption proceeds paid or payable by the Fund if there were net redemptions). In addition, the Fund's sub-custodian account would reflect the specific amount in fact invested in the particular transaction (including the ownership of the securities securing the repurchase agreement). If the "sweep" had resulted in unanticipated net redemptions for the Fund, the relevant sub-custodian account would reflect this fact and show no ownership of any of such securities transferred by FNBC or its affiliates to the account, since (contrary to expectations) none of the Fund's assets had been used to purchase the securities. To the extent that transferred securities exceeded the Fund's assets that were available for investment (as shown by the results of the day's computer processing), FNBC or the appropriate affiliate would be shown to be owner of such securities.

[5] The sub-custodian account may be maintained with FNBC's Trust Department or a nominee qualified to act as a custodian pursuant to section 17(f) of the Act and references herein to FNBC's Trust Department shall mean either entity.

15. After the Completion Time, FNBC would transmit to the Fund's transfer agent records relating to these automatic investment transactions. The transfer agent's records would show an entry to each of the corresponding shareholder accounts for the number of Fund shares automatically purchased or redeemed as of the Pricing Time through operation of the "sweep."

16. Each Fund will purchase only securities in which it may invest as described in its prospectus and statement of additional information and as limited by rule 2a–7. The Master Repurchase Agreement into which each Fund proposes to enter will be collateralized only by U.S. Treasury Bills, Notes, and Bonds. The transactions will comply with the guidelines set forth in Investment Company Act Release No. 13005 (February 2, 1983) and will be collateralized fully as that term is defined in rule 2a–7. The Master Repurchase Agreement will be subject to annual approval, with respect to each Fund, by the Fund's Board of Trustees, including a majority of the Trustees who are not "interested persons" (as defined in the Act) of the Fund or FNBC or its affiliates.

17. The transactions would be "repurchase agreements" for purposes of Chapter 11 of the United States Bankruptcy Code and the Financial Institutions Reform, Recovery and Enforcement Act of 1989. These statutes provide that, if the bankruptcy of the counterparty occurs, the repurchase agreement can be liquidated without being subject to the potential delay associated with the automatic stay or similar provisions of these statutes. If the transactions were not "repurchase agreements" as defined under those statutes, the Fund might encounter significant liquidity problems if a large percentage of its assets were invested in repurchase agreements with a bankrupt counterparty.

18. Cash Management, the Money Market Series, the Government Series, and Treasury Cash Management currently invest approximately 33%, 33%, 25%, and 50%, respectively, of their net assets on an overnight basis. Each Fund's average daily portfolio maturity customarily is between 40 and 60 days. Applicants intend to limit the Maximum Purchase Amount at a level that they believe should avoid reducing average daily portfolio maturity and thus the yield for a Fund.

19. FNBC will continue to solicit independent quotes from third parties for the proposed "sweep" transactions, but to date FNBC has been unable to find any unaffiliated entity willing to engage in such transactions on a basis as favorable to the Funds as the proposed arrangement with FNBC. The repurchase agreement counterpart will not know until the next day the amount, if any, of such transactions. This delay results because the daily processing for FNBC's accounting system normally is completed well into the night of the day the order is placed and the actual amount to be invested in the repurchase transaction is not known and, thus, monies in respect thereof cannot be transmitted until the next morning. Unaffiliated third parties will not agree to operate in this "look back" manner with the Fund on a basis as favorable to the Fund as the proposed arrangement with FNBC.

20. Before any repurchase agreements are entered into pursuant to the exemption, the participating Fund or FNBC must obtain and document competitive quotations from at least two other dealers with respect to repurchase agreements that are comparable in terms of size, maturity, and collateral, except that if quotations are unavailable from two such dealers only one other competitive quotation is required. In addition, the transactions for which quotations are sought will be conventional overnight repurchase agreements in which the funds would be transferred by the participating Fund on the same day that the transaction is entered into, and then returned by the counterpart on the following day. Before entering into a transaction pursuant to the exemption, a determination will be required that the income to be earned from the repurchase agreement is at least equal to that available from the other dealers from which quotes were obtained. As set forth in the application, applicants enter into repurchase agreements on an ongoing basis and, therefore, believe they are capable of obtaining such quotes.

Applicants' Legal Analysis

1. Section 17(a) of the Act, among other things, generally prohibits certain entities affiliated with an registered investment company, when acting as principal, from knowingly selling to or purchasing from the investment company, any security. Among the entities precluded from dealing as principal with a registered investment company under section 17(a) are any affiliated person of the investment company and any affiliated person of an affiliated person of the investment company. Section 2(a)(3) of the Act defines the term "affiliated person" of an investment company to include any investment adviser of such company. Therefore, FNBC, as each Fund's investment adviser, and its affiliates are subject to the prohibitions contained in section 17(a) with respect to the Fund.

2. Section 6(c) of the Act provides in relevant part that "the Commission, * * * by order upon application, may * * * exempt any person, security, or transaction * * * from any provision or provisions of [the Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]."

3. Section 17(b) of the Act provides that "notwithstanding [section 17(a)], any person may file with the Commission an application for an order exempting a proposed transaction * * * from one or more provisions of that subsection. The Commission shall grant such application and issue such order of exemption if evidence establishes that * * * (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under [the Act]; and (3) the proposed transaction is consistent with the general purposes of [the Act]."

4. Each Fund believes that the relief requested is appropriate and in the public interest because it will permit the Fund to invest at a favorable price net assets attributable to the "sweep" program on the same day that such assets are available for investment. Applicants believe that a more attractive "sweep" program will result in increased assets for the Funds. A larger asset base for a Fund will benefit all Fund shareholders by reducing the amount of Fund expenses indirectly borne by each shareholder, thereby increasing investors' returns.

5. FNBC and its affiliates are aware of the potential conflict of interest inherent in the operation of the "sweep" program if the proposed relief is granted. FNBC, therefore, has established procedures and conditions to be followed by its employees and agents to prevent any overreaching on the part of any person that could act to the detriment of the Funds and to ensure that each transaction is effected on a reasonable and fair basis.

6. A Fund's overnight position should not necessarily reduce its yield. If the operation of the proposed "sweep" program shortens a Fund's average daily portfolio maturity, the effect of such reduction would be minimal because: (i) the Fund currently maintains a relatively short average daily portfolio maturity; (ii) as FNBC develops more experience operating the "sweep" program, FNBC will be able to manage the maturity of that portion of the Fund's assets held outside the sub-custodian account for the program so as to provide optimal liquidity levels; and (iii) upon receipt of such assets currently, the Fund has invested such assets in overnight or very short-term obligations in any event, but such investment occurs one day later. Thus, applicant believe that any effect on yield as a result of the proposed relief would be negligible. In addition, operation pursuant to the independent pricing mechanism set forth in condition 8 should provide yields from "sweep" investments that are no lower than similar non-sweep Fund investments.

7. Based on the arguments set forth above, applicants believe that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants also believe that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transactions are consistent with the policy of each Fund, as set forth in the Fund's registration statement and reports filed under the Act, and that the proposed transactions are consistent with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. No. FNBC or affiliate "sweep" account client will be permitted to affect a transaction for a Fund after the sweep has occurred and the Fund's net assets value has been computed for that day.

2. The legal or compliance department of, and internal and outside auditors for, FNBC or its affiliates will prepare guidelines for FNBC and affiliate personnel to ensure that the transactions described herein comply with the conditions set forth herein and that the integrity of the program is maintained. Each Fund's independent public accountants will verify assets held in each sub-custodian account in accordance with rule 17f–2 under the Act. The legal or compliance department and auditors will periodically monitor the activities of FNBC and its affiliates in connection with the operation of the "sweep" program to ensure that the conditions set forth in the application are adhered to.

3. The terms of the relief will be disclosed fully in each Fund's prospectus and statement of additional information. A schedule of all transactions with FNBC and its affiliates will be filed with each semi-annual report filed by a Fund with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. FNBC will provide each Fund's Board of Trustees with a full report of the transactions under the "sweep" program, as described herein, no less frequently than quarterly. FNBC also will provide each Fund's Board of Trustees with a statement that, as the Fund's investment adviser, it determined the principal transactions to be necessary and appropriate under the circumstances.

4. The Funds and FNBC will maintain such records with respect to those transactions conducted pursuant to the exemption as may be necessary to confirm compliance with the conditions to the requested relief. In this regard, each Fund will maintain an itemized daily record of repurchase agreement transactions entered into pursuant to the exemption, showing for each transaction: that it has entered into the transaction; the entity with which it has entered into the transaction; the purchase and repurchase prices; the type and amount of collateral; the date fixed for termination of the transaction; and the time and date of the transaction. For each transaction, such records also shall document the quotations received from other dealers in accordance with condition no. 8, including: The names of the dealers; the prices quoted; and the times and dates the quotations were received. The records required by this condition will be maintained and preserved in the same manner as records required under rule 31a–1(b)(1).

5. The Maximum Purchase Amount will be the percentage of each Fund's net assets upon which the applicants from time to time may agree, which percentage may fluctuate but shall not exceed 15%. As to a particular Fund on a particular day, the amount invested pursuant to the exemption will not exceed the amount swept into such Fund on such day.

6. All records pertaining to the sweep program will be preserved for a period of not less than six years, the first two years in an easily accessible place, from the end of the fiscal year in which any sweep transaction occurred.

7. In connection with overnight repurchase agreement transactions pursuant to the Master Repurchase Agreement, FNBC will maintain at all times during operation of the "sweep" program in a segregated sub-custodian account in the name of each Fund collateral comprised only of U.S. Treasury Bills, Notes or Bonds valued at least equal to the Required Collateral Amount. In addition, FNBC or its affiliates will transfer such collateral through the book entry system of the Federal Reserve and, in connection therewith, the Fund's sub-custodian account with FNBC's Trust Department will be designated by Fedwire as the recipient of such securities and FNBC's internal records and written confirmations will indicate that the collateral is being held on behalf and in such Fund's name. The relevant Fund thereby will acquire a security interest in the collateral.

8. Before any transaction may be conducted pursuant to the exemption, the participating Fund or FNBC must obtain such information as it deems necessary to determine that the price test set forth below has been satisfied. Before any repurchase agreements are entered into pursuant to the exemption, the participating Fund or FNBC must obtain and document competitive quotations from at least two other dealers with respect to repurchase agreements comparable to the type of repurchase agreement involved (including size, which would be at least equal to the Maximum Purchase Amount, maturity and collateral), except that if quotations are unavailable from two such dealers only one other competitive quotation is required. In addition, the transactions for which quotations are sought will be conventional overnight repurchase agreements in which the funds would be transferred by the participating Fund on the same day that the transaction is entered into, and then returned by the counterparty on the following day. Before entering into a transaction pursuant to the exemption, a determination will be required in each instance, based upon the information available to the participating Fund and FNBC, that the income to be earned from the repurchase agreement is at least equal to that available from the other dealers from which quotes were obtained.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4142 Filed 2–23–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1950]

Shipping Coordinating Committee (Subcommittee on Safety of Life at Sea; Working Group on Fire Protection); Meeting

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting on March 10, 1994 at 10 a.m. in room 4315 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. The purpose of this meeting will be to prepare for discussion anticipated to take place at the Thirty-ninth Session of the International Maritime Organization's Sub-Committee on Fire Protection, scheduled for June 27, 1994.

The meeting will focus on the fire safety of commercial vessels. Specific discussion areas include: Smoke and toxicity, revision of resolution A.472, heat radiation through windows and glass partitions, automatic sprinkler systems and fixed water spraying systems, high speed craft, criteria for minimum fire loads, analyses of fire casualty records, guidelines for performance and testing criteria and surveys of foam concentrates, phasing out of halons, interpretations of SOLAS 74, requirements for dangerous solid bulk cargo, role of the human element in maritime casualties, smoke control and ventilation, carriage of dangerous goods on the vehicle decks of passenger ships, fire safety aspects of composite materials used on board ships, and matters relating to tanker safety.

Members of the public may attend up to the seating capacity of the room. For further information regarding the meeting of the SOLAS Working Group on Fire Protection contact Mr. Jack Booth at (202) 267–2997.

Dated: February 14, 1994.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 94–4096 Filed 2–23–94; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Destination Sun Airways for Transfer of Certificate Authority Under Section 401(H)

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 94–2–31), Docket 47807.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Conquest Sun Airlines, Inc., fit, willing, and able and transfer and reissue to it the certificate of public convenience and necessity to engage in interstate end overseas scheduled air transportation of persons, property, and mail issued to Sun Express Group, Inc. d/b/a Destination Sun Airways by Order 92–4–13.

DATES: Persons wishing to file objections should do so no later than February 28, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 47807 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. John E. Harman, Office of Aviation Analysis (P–52, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: February 18, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 94–4319 Filed 2–23–94; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 94–012]

Navigation Safety Advisory Council, Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Navigation Safety Advisory Council (NAVSAC).

DATES: Completed applications and resumes must be received no later than March 28, 1994. Application forms may be obtained by contacting the Executive Director at the address below.

ADDRESSES: To request an application, either call (202) 267–0415 and give your name and mailing address or write to Commandant (G–NSR–3), U.S. Coast Guard, 2100 Second Street SW., room 1420, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director, Navigation Safety Advisory Council (NAVSAC), room 1420, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–0415.

SUPPLEMENTARY INFORMATION: The Council is a twenty-one member Federal advisory council that advises the Coast Guard on matters relating to the prevention of vessel collisions, rammings, and groundings, including, but not limited to: Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

The applications will be considered for seven (7) expiring terms. The Council consists of 21 members who have expertise, knowledge and experience in the Navigation Rules of the Road (International and Inland), aids to navigation, navigational safety equipment, vessel traffic service, and traffic separation schemes and vessel routing.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. To assure balanced representation of subject matter expertise, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and state officials with responsibility for vessel and port safety.

The three-year membership term begins July 1, 1994, and assuming that the Council is continued beyond September 30,1995, will expire June 30, 1997. Those persons who have submitted previous applications must reapply as no applications received prior to this solicitation will be considered.

The Council meets twice each year at various sites in the continental United States. Members serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided.

Dated: February 18, 1994.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–4207 Filed 2–23–94; 8:45 am]

BILLING CODE 4910–14–M

[CGD 03–055]

RIN 2115–AE58

Inflatable Personal Flotation Device Consensus Standard; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Coast Guard announces it will be participating in a meeting sponsored by Underwriters Laboratories to discuss the development of a consensus standard for inflatable personal flotation devices (PFDs) for use on recreational boats. The technical requirements for both the inflatable PFD and its inflation mechanism will be discussed. This meeting is intended for technical experts knowledgeable in the field who have volunteered to participate in the development effort and so notified the Coast Guard or Underwriters Laboratories.

DATES: The meeting will be held March 7, 1994, from 9 a.m. to 4 p.m. Notice of interest in participation should be made by February 28, 1994.

ADDRESSES: The meeting will be held at Underwriters Laboratories, 12 Laboratory Drive, Research Triangle Park, North Carolina, telephone (919) 549–1400. Persons having an interest and volunteering to participate, but who have not already notified either Underwriters Laboratories or Coast Guard may do so by contacting Mr. Dan Ryan, Underwriters Laboratories, P.O. Box 3995, Research Triangle Park, NC 27709, telephone (919) 549–1400 between the hours of 8 a.m. and 4 p.m. Monday through Friday, or Ensign Stephen H. Ober, Office of Marine Safety, Security, and Environmental Protection, Attn: G–MVI–3/14, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–1444 between the hours of 8 a.m. and 3:30 p.m. Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign Stephen H. Ober, Office of Marine Safety, Security, and Environmental Protection, at the above address or phone number.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the consensus standard development approach outlined in the Advanced Notice of Proposed Rulemaking (ANPRM) published in the Federal Register on November 9, 1993 (58 FR 59420). If a standard is developed which provides a suitable basis for the regulation of inflatable PFDs for use in recreational boating, a notice of proposed rulemaking (NPRM), in which the Coast Guard discusses and proposes adoption of all or part of it, will be published in the Federal Register.

The agenda for the March 7, 1994 meeting will include discussion of the following topics:

(1) Issues identified after publication of the ANPRM, as they relate to the draft standard.

(2) Inflation system status indicator needs/requirements.

(3) Possible alternatives to an indicating inflation system.

(4) Reliability testing of the inflation system.

(5) User information needs and requirements.

Notice of intent to participate in this meeting is requested from knowledgeable persons in the field, who are willing to volunteer to participate in the development of this standard. In order to determine what accommodations need to be arranged, this notification should occur by February 28, 1994.

Interested persons are also invited to participate by providing written comments as requested in response to the ANPRM cited above.

Dated: February 17, 1994.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–4206 Filed 2–23–94; 8:45 am]

BILLING CODE 4910–14–M

[CGD 93–092]

Passenger Vessel Safety Act of 1993; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to notice of eligibility.

SUMMARY: This document corrects the notice of eligibility published on Thursday, January 6, 1994 (59 FR 792) concerning the Passenger Vessel Safety Act of 1993.

EFFECTIVE DATE: January 6, 1994.

FOR FURTHER INFORMATION CONTACT: LT Brian Poskaitis, Merchant Vessel Inspection and Documentation Division, (202) 267–1464.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the notice of eligibility (CGD 93–092) contains an error which requires correction. In describing to which vessels certain requirements of the Passenger Vessel Safety Act apply, the word "and" was used rather than the correct word "or".

Correction of Publication

Accordingly, the publication on January 6, 1994, of the notice of eligibility (CGD 91–035), which is the subject of FR document 94–262, is corrected as follows:

1. On page 793, under the subtitle "Possible Modified Regulations for Certain Existing Passenger Vessels" in the first paragraph of the second column, "(a) At least 100 gross tons but less than 300 gross tons, and;" is corrected to read "(a) At least 100 gross tons but less than 300 gross tons; or".

Dated: February 15, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–4205 Filed 2–23–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR 211.9, 211.41 and 211.45, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Renfe Talgo of America, Incorporated

Docket Numbers RSGM–94–2 and SA–94–1

Renfe Talgo of America, Incorporated (RTAX) requests waivers of compliance with certain provisions of the Railroad Safety Glazing Standards (49 CFR part 223) under Docket Number RSGM–94–2 and Railroad Safety Appliance Standards (49 CFR part 231), under Docket Number SA–94–1.

RTAX seeks these waivers in order to permit operation of the TALGO Pendular Train (TALGO) under two conditions. It is intended that the train will be operated (1) in non-revenue demonstration runs and (2) in revenue service as part of a regularly scheduled service operated by National Railroad Passenger Corporation (Amtrak) in the Pacific Northwest High Speed Rail Corridor. The non-revenue demonstration runs of the TALGO train will involve a cross-country movement from its assembly point in Washington, DC to Seattle, Washington, in March 1994. It is anticipated that the train will be on public display in Cleveland, Detroit, Chicago, St. Louis, and Seattle. The revenue operations in passenger service are to be conducted as part of Amtrak's regularly scheduled service between Seattle, Washington, and Portland, Oregon, which are scheduled to begin in April 1994.

The trainset would be comprised of 12 TALGO Pendular cars. The 12 cars will include 1 head-end power car which will not carry passengers, 8 passenger coach cars, 1 cafeteria car, 1 dining car, and 1 rear-end service car which will not carry passengers. The TALGO equipment has a total weight of approximately 400,000 pounds. With the Amtrak locomotive, the total length of the train will be approximately 575 feet.

RTAX petition seeks a waiver from compliance with the Railroad Glazing Standards, (49 CFR 223.15(b)), which requires that all side facing glazing on passenger cars must meet the FRA Type II testing criteria. RTAX states that the side facing glazing of the TALGO train may in fact meet the FRA requirements for FRA Type II, but it has not been subjected to the test specified in the regulation. The windows in the sides of the cars are double glazed with tempered safety glass. Each layer is 6 mm. (.24 inches) thick with an air space in between the two layers. RTAX says that there is not sufficient time to retrofit windows in the TALGO train prior to shipment from Spain.

RTAX petition seeks a waiver from compliance of the Railroad Safety Appliance Standards, (49 CFR 231.14) and sections 2 and 4 of the Safety Appliance Act (45 U.S.C. 2 and 4), which requires that each passenger car must be equipped with side handholds, end handholds, and uncoupling levers. The passenger cars have side handholds at the doors for the assistance of passengers, but there are no side handholds or end handholds which the rules contemplate for use in switching operations or coupling and uncoupling. RTAX states that the 12 cars in the TALGO train constitute a single unit, in that the cars will not be uncoupled from one another, except at specified maintenance facilities. The individual cars are joined by swivel type traction couplers which will not uncouple in normal operations and because of this configuration there is no need for uncoupling levers. Standard AAR Type E couplers will be installed at the ends of the front and rear service cars.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number SA–94–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before March 17, 1994 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on February 15, 1994.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 94–4076 Filed 2–23–94; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Customs Service

Public Meeting on Customs "Mod Act"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a two-day public meeting will be held in the Department of Commerce Auditorium in Washington, DC, commencing at 10:00 a.m. on Wednesday, March 8, 1994. The purpose of this meeting is to (1) provide the public with a general briefing on the entire "Mod Act," (2) give senior Customs managers an opportunity to share "strawmen" implementation proposals, and (3) give participants an opportunity to ask questions, make suggestions, and provide the Customs Service with informal input relative to implementation of Title VI of the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057, codified at 19 U.S.C. 3301 note). To facilitate building access and control attendance, those planning to attend are requested to notify Customs in advance.

DATES: March 8, 1994, from 10 a.m. to 5 p.m. and March 9, 1994, from 9 a.m. to 4 p.m.

ADDRESSES: Commerce Department Auditorium, Main Entrance to Hoover Building, 14th Street between Pennsylvania & Constitution Avenues NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dale Snell, "Mod Act" Task Force, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229. Phone: (202) 482–6990; FAX: (202) 482–6994.

SUPPLEMENTARY INFORMATION: On December 8, 1993, the President signed the "North American Free Trade Agreement Implementation Act." The Customs modernization portion of this Act (Title VI of Public Law 103–182), popularly known as the Customs Modernization Act or "Mod Act," became effective when it was signed. To provide the public with a general "Mod Act" briefing, share "strawmen" implementation proposals, and invite informal dialogue relative to implementation plans and issues, Customs will hold an open meeting in Washington on March 8–9, 1994. Between 10 a.m. and 12:30 p.m. on March 8, a general briefing covering operational, automation and enforcement issues will be conducted. This general briefing will be similar to those conducted in Washington on February 9 and 10, 1994. Following the general briefing, senior Customs managers will conduct a series of presentations focussing on their proposals for implementing specific Mod Act provisions. Among the topics to be discussed in these focussed sessions will be regulatory audit, drawback, penalties, carriers, importer activity summary statements and reconciliation. Participants will be given ample opportunity to ask questions and provide suggestions during each session. Persons planning to attend are requested to pre-register by FAX with Mr. Dale Snell at 202–482–6994. Individuals not having access to facsimile equipment may pre-register by calling Mr. Snell at 202–482–6990. To meet Commerce Department building access requirements, attendees are encouraged to arrive approximately 30 minutes in advance of the meeting. Each individual attending Customs Mod Act Implementation meeting on March 8 and 9, 1994, will be required to sign a Commerce Department register and present photo-identification.

Dated: February 15, 1994.

Harvey B. Fox,

Director, Office of Regulations & Rulings.

[FR Doc. 94–4149 Filed 2–23–94; 8:45 am]

BILLING CODE 4820–02–P

Office of the Comptroller of the Currency

Public Comment Regarding Operating Subsidiary Notices

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Request for public comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) requests public comment concerning two notices filed by national banks of their proposed establishment of operating subsidiaries that will engage in mutual fund activities.

DATES: Comments should be submitted on or before March 28, 1994.

ADDRESSES: Written comments regarding the Notices should cite the OCC control number and should be submitted to Karen Carter, Disclosure Unit, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington DC 20219. Telephone number (202) 874–4700. Fax number (202) 874–5263.

FOR FURTHER INFORMATION CONTACT: Ellen Broadman, Director, Securities, Investments and Fiduciary Practices Division, Office of the Chief Counsel (202) 874–5210.

SUPPLEMENTARY INFORMATION:

First Union National Bank of North Carolina; Notice of Intent to Establish Three Operating Subsidiaries Which Will Acquire the Partnership Interests of Lieber & Company and the Assets and Liabilities of Evergreen Asset Management Corporation. [OCC Control No. 93–ML08023.]

Mellon Bank, N.A.; Notice of Intent to Establish Certain Operating Subsidiaries Which Will Acquire Most of the Assets, Operations, and Activities of the Dreyfus Corporation. [OCC Control No. 93–NE–08043.]

First Union National Bank of North Carolina, Charlotte, North Carolina (First Union) filed a notice with the Office of the Comptroller of the Currency (OCC) on November 1, 1993 (First Union Notice), pursuant to 12 CFR 5.34,[1] advising the OCC of First Union's intent to establish three operating subsidiaries. The First Union Notice describes First Union's intent to acquire, through First Union's proposed operating subsidiaries, two affiliated investment advisory companies, Lieber & Company, a New York general partnership, and Evergreen Asset Management Corp., a Delaware corporation, (collectively referred to as "Lieber").

Mellon Bank, N.A., Pittsburgh, Pennsylvania (Mellon) filed a notice with the Office of the Comptroller of the Currency (OCC) on December 30, 1993 (Mellon Notice), pursuant to § 5.34, advising the OCC of Mellon's intent to establish certain operating subsidiaries. The Mellon Notice describes Mellon's intent to acquire, through operating subsidiaries, most of the assets, operations and activities of The Dreyfus Corporation, a New York corporation (Dreyfus).

The First Union and Mellon Notices propose activities for operating subsidiaries that have been approved for national banks. The magnitude of the Mellon transaction, however, is significant. Because the First Union Notice involves the acquisition of entities that engage in activities similar to Dreyfus, the OCC considers it appropriate to consolidate the two notices for the purpose of soliciting public comment.

Although notices filed pursuant to § 5.34 do not require public comment under existing OCC regulations, the OCC has reserved the right, pursuant to § 5.2(b), to adopt procedures different from those specifically provided in its corporate applications regulations if the OCC deems such actions appropriate in acting on a particular application or filing. The OCC considers it appropriate to seek comments from the public concerning the First Union and Mellon Notices.

First Union has assets of approximately $20 billion. Both First Union and its holding company, First Union Corporation (FTU), which has assets of approximately $71 billion, already have substantial involvement in trust and investment activities, including mutual fund administration, brokerage, master trust and custody, institutional investment management and personal trust. FTU currently administers approximately $43 billion in assets and manages approximately $27 billion in assets. The Evergreen family of 15 mutual funds currently has assets of approximately $3.6 billion. Lieber principally provides investment advice and administrative services to the Evergreen funds, several large institutional investors and a number of high net worth individuals. The First Union Notice details the functions

[1] The OCC's regulation concerning operating subsidiaries, § 5.34, provides that national banks may establish or acquire operating subsidiaries to engage in activities that are part of or incidental to the business of banking. Where a national bank intends to engage in new activities in an operating subsidiary, it must notify the OCC. The OCC reviews the bank's proposal to determine whether the proposed activities are legally permissible for a national bank's operating subsidiary and to ensure that the proposal is consistent with prudent banking principles and OCC policy which considers customer needs and fair treatment.

currently performed by Lieber for its clients.

Mellon has assets of approximately $28 billion. Both Mellon and its holding company, Mellon Bank Corporation (MBC), which has assets of approximately $36 billion, already have substantial involvement in trust and investment activities, including mutual fund administration, brokerage, master trust and custody, institutional investment management and personal trust. MBC currently administers approximately $615 billion in assets and manages approximately $135 billion in assets. Dreyfus, the sixth-largest mutual fund company in the United States, provides investment advice and administrative services to over 130 mutual funds with approximately $80 billion in assets.

The Mellon Notice details the function of each of the existing Dreyfus corporations and subsidiaries and sets forth which entities will be acquired as operating subsidiaries of Mellon, which will be acquired as operating subsidiaries of MBC, and which will be sold or liquidated. Pursuant to Mellon's proposal, several of the Dreyfus entities will become operating subsidiaries of Mellon. The Dreyfus operations currently include subsidiaries which provide investment advisory, brokerage, and administrative services to registered investment companies which are known to the public as the Dreyfus family of mutual funds.

The OCC invites public comment on the First Union and Mellon Notices in order to provide interested parties with an opportunity to express their views concerning the proposed acquisitions that may assist the OCC in making a final determination concerning the First Union and Mellon Notices.

The First Union and Mellon Notices and any public comments submitted are available for inspection by appointment at the OCC headquarters in Washington, DC. Appointments may be made by calling the Disclosure Unit at the telephone number listed in the **ADDRESSES** section of this request for public comment. Photocopies of the First Union and Mellon Notices and any public comments submitted are available upon written request from the Disclosure Unit at the address indicated in the **ADDRESSES** section of this request for public comment. Pursuant to 12 CFR 4.17, a fee may be assessed to cover duplication costs.

Interested persons are encouraged to express their views in writing to the OCC concerning the First Union and Mellon Notices.

Dated: February 18, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 94–4185 Filed 2–23–94; 8:45 am]

BILLING CODE 4810–33–P

Office of the Assistant Secretary for Economic Policy

Reports on Foreign Currency Positions

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements and availability of forms and instructions.

SUMMARY: The Department of the Treasury has issued revised forms and instructions submitted for Foreign Currency Forms FC–1 (approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act under OMB Control No. 1505–0012), FC–2 (OMB No. 1505–0010), and FC–3 (OMB No. 1505–0014). The reports are mandatory. Foreign Currency Form FC–4 is discontinued for reporting periods beginning in 1994.

This Notice constitutes legal notification to all United States persons (defined below) who satisfy the reporting criteria set forth in the section below on Who Must Report that they must respond to, and comply with, the filing requirements on these forms.

United States persons who are required to report but who do not receive a copy of the forms and instructions should contact the Department of the Treasury at (202) 622–2250.

DATES: The filing requirement will take effect on the first filing date in 1994. Weekly reports must be filed with the applicable district Federal Reserve Bank no later than noon (12 p.m.) on Friday following the Wednesday to which the report applies. Monthly reports should be completed as of the last business day of each month and filed within ten (10) business days with the Federal Reserve Bank of New York at the address below. Quarterly reports should be completed as of the last business day of each calendar quarter (ending March, June, September, and December) and filed within 45 calendar days with the Federal Reserve Bank of New York at the address below. Former Forms FC–1, FC–2, FC–3 and FC–4 should be used to file reports for all completed reporting periods of 1993 according to the schedules specified in those forms.

ADDRESSES: Weekly reports should be filed with the Federal Reserve Bank of the district in which the reporter resides. Monthly and quarterly reports should be filed with the Federal Reserve Bank of New York, International Reports Division, 33 Liberty Street, 4th Floor, New York, New York 10045–0001 or by FAX to (212) 720–8028.

FOR FURTHER INFORMATION CONTACT: T. Ashby McCown, Director, Office of Data Management, Department of the Treasury, Washington, DC 20220. Telephone (202) 622–2250; FAX (202) 622–0607.

SUPPLEMENTARY INFORMATION: Public Law 93–110 (31 U.S.C. 5315, 5320, and 5321(a)(3), as amended) directs the Secretary of the Treasury to prescribe regulations requiring reports on foreign currency transactions conducted by a United States person or a foreign person controlled by a United States person. The regulations, 31 CFR part 128, governing Forms FC–1, FC–2, and FC–3 for use with respect to reporting periods beginning in 1994, were published in the **Federal Register** on November 2, 1993, 58 FR 58494–58497.

Definitions

For purposes of this reporting requirement:

(1) The term "United States person" includes a person which is organized or exists under the laws of any State or, in the case of a natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has cumulative direct or indirect beneficial interest in excess of 50 per centum of the value of the trust. [Section 7(f)(2)(A) of the Securities and Exchange Act of 1934 (15 U.S.C. 78g(f)(2)(A))]

(2) The term "foreign person controlled by a United States person" includes any noncorporate entity in which United States persons directly or indirectly have more than a 50 per centum beneficial interest, and any corporations in which one or more United States persons, directly or indirectly, own stock possessing more than 50 per centum of total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock. [Section 7(f)(2)(C) of the Securities and Exchange Act of 1934 (15 U.S.C. 78g(f)(2)(C))]

Who Must Report

The weekly FC–1 and monthly FC–2 reports must be filed throughout the calendar year by each foreign exchange market participant which had more than $50 billion equivalent in foreign exchange contracts on the last business day of any calendar quarter during the previous year (ending March, June, September, or December) calculated using then prevailing exchange rates. The quarterly FC–3 reports must be filed throughout the calendar year by each foreign market participant which had more than $1 billion equivalent in foreign exchange contracts on the last business day of any calendar quarter during the previous year (ending March, June, September, or December) calculated using then prevailing exchange rates. Such contracts include the amounts of foreign exchange spot contracts bought and sold, foreign exchange forward contracts bought and sold, foreign exchange futures bought and sold, and one half the notional amount of foreign exchange options bought and sold.

Institutions required to report include all banks and banking institutions in the United States; the agencies, branches, and subsidiaries located in the United States of foreign banks and banking institutions; business concerns and nonprofit institutions; brokers; dealers; mutual fund, foreign exchange, and hedge fund managers, and other concerns located in the United States, whether sole proprietorships, partnerships, groups, associations, syndicates, trusts, or corporations, including the U.S. branches and subsidiaries of foreign nonbanking concerns. U.S. reporters should include data for all domestic and foreign branches and subsidiaries. U.S. subsidiaries of foreign entities should file for themselves and their subsidiaries, but not for their parents. In determining whether exemptions apply and in filing reports, reportable items of direct and indirect subsidiaries—including banks, Edge Acts, and nonbanks—should be consolidated with those of the parent. Inter- and intra-company off-balance sheet contracts should be reported on a gross basis.

Banks which file the Federal Financial Institutions Examination Council (FFIEC) 035 report ("Monthly Consolidated Foreign Currency Report") are not required to file the FC–2 or FC–3 reports. Holding companies whose subsidiaries file FFIEC 035 reports are not required to file the FC–2 report unless, directly or indirectly, the holding company has foreign exchange contracts of $10 billion or more which are not reflected in FFEIC 035 reports. In such cases, the holding company should report all foreign exchange contracts and foreign currency-denominated assets and liabilities on FC–2 which are not included on FFIEC 035 reports.

How to Report

The reports are to be submitted on forms provided by the Department of the Treasury and the district Federal Reserve Banks. Computer printouts in the same format as the form may be used if approved in writing by the district Federal Reserve Bank to which it is submitted. The use of a facsimile machine is recommended for weekly reports, optional for monthly and quarterly reports.

Enforcement Provided by Law

United States persons who meet the reporting requirements are advised that failure to report can result in a civil penalty up to $10,000 (31 U.S.C. 5321(a)(3); 31 CFR 128.4(c)).

Dated: February 4, 1994.

Alicia H. Munnell,

Assistant Secretary for Economic Policy.

[FR Doc. 94–4083 Filed 2–23–94; 8:45 am]

BILLING CODE 4810–25–M

Survey of Selected Foreign Financial Assets as of March 31, 1994

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements and availability of survey forms and instructions.

SUMMARY: By this Notice the Department of the Treasury is informing the public that it is conducting a mandatory survey of United States residents' ownership and/or custody of selected financial claims on foreigners other than long-term debt or equity securities. The purpose of this survey is to reassess the value of various classes of portfolio capital positions on foreigners as currently reported by United States persons under the Treasury International Capitol reporting system. The data will be used to ensure the quality and completeness of international financial statistics which are vital components used in determining the international investment position and in compiling the official balance of payments accounts of the United States. These data are also important in the formulation of the U.S. Government's international financial and monetary policies. The survey has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control No. 1505–0150.

This survey has been designed to collect systematic and consistent information on selected classes of financial claims on foreigners owned by U.S. persons as of March 31, 1994, while holding the reporting requirements to a minimum. The survey's approach is to collect data from global custodians located in the United States to the extent possible. Data are requested only by type of instrument. Data are not required on individual claims and financial instruments, nor on the geographical distribution of such assets. The survey collects data on certain types of claims on foreigners owned by U.S. persons that represent portfolio investment. Reportable claims include deposits with foreign institutions, financial instruments with an original maturity of one year or less, and loans to foreigners. Excluded are direct investments, equity holdings, debt securities with an original maturity of more than one year, contingent claims, and off-balance sheet contracts, including unsettled spot and forward foreign exchange contracts, options, and warrants. More detailed information on the categories of claims and financial instruments to report is provided in the survey form and instructions.

This Notice constitutes legal notification to all United States persons that they must respond to, and comply with, this survey if they are subject to the reporting requirements set forth below in Who Must Report. United States persons who are required to report but who do not receive a set of the "Survey of Selected Foreign Financial Assets "forms and instructions, should obtain copies by contacting the Federal Reserve Bank of New York at (212) 720–8238, or the Department of the Treasury at (202) 622–2250.

DATES: All United States persons who receive a set of survey forms and instructions or who are required to report as set forth in this Notice must submit reports, including those which indicate that the United States person is exempt from reporting requirements, by June 30, 1994.

ADDRESSES: All reports should be submitted to the Federal Reserve Bank of New York, International Reports Division, 33 Liberty Street, 4th Floor, New York, New York 10045–0001.

FOR FURTHER INFORMATION CONTACT: T. Ashby McCown, Director, Office of Data Management, Department of Treasury, room 5460, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Telephone (202) 622–2250; FAX (202) 622–0607.

SUPPLEMENTARY INFORMATION: The International Investment and Trade in Services Act (22 U.S.C. 3101 *et seq.*) (the Act) provides for the collection of comprehensive and reliable information concerning international investment while minimizing the reporting burden on respondents. The Act specifies that regular data collection programs and surveys, as outlined in the Act, or as

deemed necessary by the Secretary of the Treasury pursuant to Executive Order (E.O.) 11961, shall be conducted to secure information on international capital flows and other information related to international portfolio investment, including information that may be necessary for computing and analyzing the U.S. balance of payments. Regulations governing the current survey, 31 CFR part 128, were published in the **Federal Register** on November 2, 1993, 58 FR 58494–58497. The preamble to the regulations stated that notice of specific report forms and instructions would be published separately in the **Federal Register**.

Definitions

For purposes of reporting on this survey:

(a) "Foreign," when used in a geographical sense from the perspective of the United States, means that which is situated outside the United States, or that which belongs to or is characteristic of, a country other than the United States.

(b) "Foreign person" means any person (defined below), including a U.S. citizen, who resides outside the United States or is subject to the jurisdiction of a country other than the United States or any international organization even if located in the United States, such as the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD) or World Bank, the Inter-American Development Bank (IDB) and the United Nations (UN).

(c) "Foreign assets" means those assets owned by the respondent and the respondent's domestic customers that represent claims on foreigners. Such assets include deposits placed with, and certificates of deposit issued by, banking institutions located abroad, including the foreign branches of U.S.-chartered banks; loans made to, and short-term marketable instruments, e.g., commercial paper issued by, 0. . . persons located abroad, including international organizations even if located in the United States.

(d) "United States," when used in a geographical sense, means the fifty (50) states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the following: American Samoa, Guam, Midway Island, the U.S. Virgin Islands, and Wake Island.

(e) "Person" means any individual, branch, partnership, associated group, association, estate, trust, corporation or other organization (whether or not organized under the laws of any state), and any government, including a foreign government, the United States government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency.

(f) "United States person" means any person in the United States (defined above), including a foreign citizen, who resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report

All United States persons who, on a fully consolidated basis, hold for their own account and/or manage for domestic customers the custody or safekeeping of reportable foreign financial assets, if the total face value of such assets—aggregated over all accounts—is $10 million or more on an actual settlement basis as of March 31, 1994.

Note: In instances where actual settlement date data are not available, the contractual settlement date may be used.

If the respondent's ownership and/or custody of reportable foreign assets is less than $10 million, the report form must still be returned by the due date with the signature and initials of the authorized official in the places provided.

How To Report

Respondents must file consolidated reports based on their own accounts and the accounts of their U.S. nonbanking subsidiaries, branches and other affiliates located in the United States, except for their broker/dealer subsidiaries. U.S. global custodians who manage the custody of reportable foreign assets for themselves and/or on behalf of other U.S. persons must report those assets in Part 1 for all accounts, including own accounts, own-custody accounts, pooled or commingled-custody accounts, and omnibus-custody accounts. Data on foreign assets whose safekeeping was not arranged through U.S. global custodians are reportable in Part I of the "Survey of Selected Foreign Financial Assets" form by other U.S. persons/investors.

Custodians located in the United States and U.S. persons/investors who entrust the safekeeping of reportable foreign assets for themselves or for the account of their domestic customers to other custodians in the United States must report summary totals of such assets in Part II of the "Survey of Selected Foreign Financial Assets" form. More detailed instructions on how to report on this survey are provided in the "Survey of Selected Foreign Financial Assets" form and instructions.

Enforcement Provided by Law

United States persons who meet the reporting requirements set forth in this Notice are advised that failure to respond to, and to comply with, this survey may be subject to civil and/or criminal penalties provided by law (22 U.S.C. 3105).

Dated: February 3, 1994.

Alicia H. Munnell,

Assistant Secretary for Economic Policy.

[FR Doc. 94–4084 Filed 2–23–94; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

AR Human Resource Management Project

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

TITLE: Labor, Conflict Resolution, and Economic Development: Strategies To Address Human Resource Management Problems in Brazil.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a competitive grants program for non-profit organizations to develop programs in the area of labor/management relations and human resource management. The project should link the U.S. organization's international exchange interests with counterparts in the American Republics.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. After the deadline for submitting proposals, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

ANNOUNCEMENT NAME AND NUMBER: All communications concerning this announcement should refer to the AR Local Government Project. This announcement number is *E/P–94–25*. Please refer to this title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m., Washington, DC time on March 24, 1994. Faxed documents will not be accepted, nor will documents postmarked March 24, 1994, but received at a later date.

It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. The grant project activity should begin after July 1, 1994.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Ref: AR Human Resource Management Project (E/P–94–25), Grants Management Division (E/XE), 301 4th Street, SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations, Institutions should contact: Benjamin Cromer, American Republics and East Asia and Pacific Division, Office of Citizen Exchanges (E/P), room 220, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547. Please telephone 202–619–5326 or fax 202–619–4350 to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation.

Objectives of the AR Human Resource Management Project

The Office of Citizen Exchanges (E/P) of the United States Information Agency proposes a two-way exchange program for Brazilian decision-makers to develop strategies to address human resource management problems in Brazil. This exchange will involve two components: a two-week U.S. study tour by a delegation of 12–16 Brazilian leaders selected from the national government, the national employers organizations, and labor unions; and a follow-on visit to Brazil by U.S. human resource management experts.

These study tours will explore methods of human resource development based on private sector initiative that involve the cooperation of labor, management, and government.

Moreover, the U.S. Departments of Labor and Education support such models as solutions to resolve labor-management conflict. In Brazil, coordination will be with the Ministry of Labor's Secretary For Training and Professional Development, the national employer's organizations, and the Labor Central.

Other goals of this program are to aid in modernizing Brazil's economy, ensure the growth of its democratic institutions, and increase public awareness of the vital policy-making role that labor can play in the general well-being of a dynamic society.

Program Guidelines

Structural unemployment, technological change, and the pressure of global competition, combined with a poorly educated work force, have magnified Brazil's lack of a coherent approach to human resource development. Currently, the formation of human capital is financed by payroll taxes and run by the business community, ostensibly with government approval. However, there is no manpower development strategy in Brazil that involves all parties: labor, management, and the government. With Brazil's ever-increasing levels of unemployment and social unrest the optimum use of labor is essential in modernizing the country's economy.

Labor-management human resource development in the U.S. telecommunications, automobile, construction and steel industries provides practical models for the situation in Brazil. The following case studies are suggested as sources: The AT&T/CWA Alliance project; the pioneering work of the UAW and the automobile industry; and the entry level programs of the construction industry in tandem with the building trades organizations of the AFL–CIO.

The research of former Labor Secretary Ray Marshall and Dr. Barry Bluestone could also be consulted, in addition to more recent efforts by U.S. Labor Secretary Robert Reich. Other sources include labor studies centers such as those at George Washington University and the University of the District of Columbia; the AIFLD education program at the George Meany Center for Labor Studies; the AFL–CIO's Human Resource Institute; the National Association of Manufacturers; and the Conference Board.

Models used to illustrate effective labor-management-government relations must include those involving currently-employed individuals, the chronically unemployed, and new entrants into the labor pool.

The decisive and expanding role of labor-management cooperation should be emphasized as a key element in meeting the competitive challenges of the global economy. The program should also emphasize the coordination between human resource development delivery methods and the constant change that occurs in business and industry.

Selection of Participants

Participants must be policymakers who can influence changes in Brazil, not management experts and professionals. Participants will be selected by the grantee, or its local co-sponsoring organization, in consultation with USIS posts. This two-way support will ensure effective discussion of new models for cooperation and innovation; these models should encourage more participation between labor and management, supporting Brazil's effort to secure more private sector initiative resulting in a more competitive market economy.

This project will be executed by a U.S. not-for-profit institution that, through its proposal, illustrates extensive experience and success in coordinating international exchange programs. U.S. organizations with established working relationships with counterpart institutions in Brazil will receive priority under this competition.

At the conclusion of the exchange, the grantee will conduct participant evaluations and submit a final report to USIA.

Funding

Competition for USIA funding support is intense. Selection of a grantee institution is based on the substantive nature of the program proposal; the applicant's professional capability to carry the program through to successful conclusion; the cost effectiveness such as in-kind contributions and the ability to keep overhead costs at a minimum. USIA can devote up to $175,000 for this project; however, organizations with fewer than four years of successful experience in managing international exchange programs are limited to $60,000, and their budget submission should correspond to this limitation.

All proposals should demonstrate in-depth, substantive knowledge of the relevant issues, established connections with partner institutions, and the capacity to organize and conduct the program. Organizational abilities include: appropriate orientation activities for the participants; detailed work plan for all phases of the project; tentative agendas for study tours, workshops, and internships; letters of commitment from internship hosts; and selection procedures.

Note: Applicants may wish to consult the USIS office at the appropriate U.S. Embassy before submitting proposals.

USIA will give priority to proposals from U.S. organizations with partner organizations in the American Republics that can help ensure the program meets its goals and objectives. Applicants are encouraged to demonstrate partner relationships by providing copies of correspondence or other materials as appendices to proposals.

Moreover, these partner institutions are encouraged to provide cost-sharing or significant in-kind contributions such as local housing, transportation,

interpreting, translating and other local currency costs and to assist with the organization of projects.

Materials Development

USIA encourages the development, where needed, of written, audio and video materials in the local language to enhance the programs. For example, if not already available, glossaries of specialized terms in local government or public administration might be developed.

Scope

Proposals should limit their focus to local governance. Proposals for programs that are broader in scope will be eligible, but are less likely to receive USIA support. USIA encourages proposals that feature "train the trainers" models; the creation of indigenous training centers; schemes to create professional networks or professional associations to disseminate information; and other enduring aspects.

Participant Selection

All grant proposals must clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. Programs in support of internships in the U.S. must include letters tentatively committing host institutions to support the internships.

In the selection of all foreign participants, USIA and USIS Posts retain the right to nominate participants and to accept or deny participants recommended by the program institution.

While applicants must provide an all-inclusive budget with the proposal, they may also include separate sub-budgets for each program component, phase, location, or activity. Competition for USIA funding support is keen.

Note: All participants will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

The following costs are eligible for funding:

1. *Transportation costs.* International and domestic air fares, visas, transit costs, and ground transportation costs are eligible for funding.

2. *Per Diem.* For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published federal per diem rates must be used.

Note: Grantee staff must use the published federal per diem rates, not the flat rate.

3. *Interpreters.* Interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Generally, two simultaneous interpreters are provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country.

Grant proposal budgets should contain a flat $140/day per diem for each Department of State (DOS) interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program.

Note: Salary expenses for interpreters are covered elsewhere and should not be part of an applicant's proposed budget.

4. *Book and cultural allowance.* Participants are entitled to a one-time cultural allowance of $150 per person, in addition to a book allowance of $50. Escorts are reimbursed for actual cultural expenses up to $150. U.S. staff do not receive these allowances.

5. *Consultants.* Consultants may be employed to provide specialized expertise or to make presentations. Generally, honoraria should not exceed $250 per day.

Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included with the proposal.

6. *Room rental.* Room rental should not exceed $250 per day.

7. *Materials development.* Proposals may contain costs to purchase, develop, and translate materials for participants.

8. *One working meal per project.* Per capita costs may not exceed $5–$8 for a lunch and $14–$20 for a dinner; this amount includes room rental if applicable. The number of invited guests may not exceed participants by more than a factor of two to one.

9. *A return travel allowance of $70 for each participant.* This allowance is for incidental expenditures incurred during international travel.

10. *Costs for an audit.* The proposal MUST include the cost of an audit that:

a. Complies with the requirements of OMB circular No. 1–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

b. Complies with the requirements of the American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

c. Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

a. Preparation of basic financial statements, and other accounting services; and

b. Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

11. *Cost-sharing.* Cost-sharing in the form of allowable direct or indirect costs is encouraged. The recipient must maintain written records to support all allowable costs claimed as being its contribution to cost participation, as well as costs to be paid by the U.S. government. Such records are subject to audit.

The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E, "Cost-sharing and Matching" and should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS posts and by USIA's Office of American Republics. Proposals may also be reviewed by the Office of General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

The award of any grant is subject to availability of funds. The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant all preparation and submission costs are at the applicant's expense.

USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the objectives stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality and relevance to USIA's mission, and demonstrate a clearly defined need.

2. *Institutional Ability/Capacity/Record:* Applicants should demonstrate the potential for program excellence by documenting previous successful programs. If an organization is a former USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past USIA grants is essential.

3. *Project Personnel:* Thematic and logistical expertise should be relevant to the proposed program. Resumes included with the proposal should reflect this relevance.

4. *Program Planning:* A detailed work plan should provide time-lines for the accomplishment of each phase of the project and clearly demonstrate how the grantee institution will meet these deadlines. In addition, the work plan should indicate how it will accomplish project goals.

5. *Thematic Expertise:* Proposals should demonstrate the organization's expertise in the subject area.

6. *Cross-Cultural Expertise and Area Expertise:* Proposals should show evidence of sensitivity to historical, linguistic, and other cross-cultural factors, as well as relevant knowledge of the target area/country.

7. *Multiplier Effect/Follow-On Activities:* Proposed programs should strengthen long-term mutual understanding, facilitate sharing of information, and establish long-term institutional and individual relationships. Proposals should also reflect an institution's commitment to continued exchange activity beyond the term of the USIA grant.

8. *Cost-Effectiveness:* Overhead and administrative costs should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objective.

9. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution.

10. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success. The applicant should include a draft of a questionnaire or other evaluation technique to demonstrate which evaluation method will be utilized.

Applicants will be expected to submit intermediate reports after each project component is concluded, or quarterly, whichever is less frequent.

Note: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by the U.S. Congress and allocated and committed through internal USIA procedures. Applicants will be notified of the results of the review process on or about June 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 14, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–3983 Filed 2–23–94; 8:45 am]

BILLING CODE 8230–01–M

Exchange Programs Promoting Conflict Resolution in Africa, the Middle East, East Asia and American Republics (Public and Private Nonprofit Organizations in Support of International Educational and Cultural Activities)

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the Bureau of Educational and Cultural Affairs announces a competitive grants programs for nonprofit organizations to develop initiative grant projects on the theme of conflict resolution for audiences in the following geographical areas: Africa (Sub-Saharan Africa and South Africa only), the Middle East (Israel, the West Bank, and Gaza only), East Asia and the Pacific (regionwide or subregions), and the American Republics (Nicaragua and Guatemala only). Note: USIA will not accept proposals designed for Europe or the NIS. USIA particularly is seeking projects which link American institutions and specialists with partners overseas. New and creative approaches to the issue of conflict resolution will be especially welcome.

Interested applicants are urged to read the complete Federal Register announcement before addressing inquiries to the Office or submitting their proposals. After the RFP deadline, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the final decisions are made.

ANNOUNCEMENT NUMBER: This Announcement number is E/P–94–23. Please refer to the title given above and this number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC, time on Friday, May 6, 1994. Faxed documents will not be accepted, nor will documents postmarked May 6, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by this deadline. Grant activity should begin after September 1, 1994.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency; Ref: E/P–94–23; Office of Grants Management (E/XE); 301 Fourth Street, SW, room 336, Washington, DC 20547.

CONTACT FOR INFORMATION: Interested organization/institutions should contact the Office of Citizen Exchanges (E/P), room 224, USIA, 301 Fourth Street, SW., Washington, DC 20547, tel. (202) 619–5348, fax (202) 619–4350, to request detailed application packages which include all necessary forms and guidelines for preparing proposals, including specific budget preparation.

SUPPLEMENTARY INFORMATION:

Regional Conflict Resolution in Sub-Saharan Africa

USIA will accept proposals to conduct a two-way exchange program to encourage and support the development of conflict resolution capability in African regional or subregional institutions. The amount requested from USIA should not exceed $125,000. For technical information, interested organizations may contact E/P Program Specialist Charlotte Peterson at (202) 619–5319.

Project Themes and Objectives

This project will encourage Africans to support conflict resolution within the region as an activity in the common interest of all, fostering stability and economic development in the region as a whole. The project should help strengthen relevant regional organizational capabilities, and the grantee is expected to work closely with an Africa-based multilateral organization interested in conflict resolution for this purpose. Together with that body and area U.S. Information Service (USIS) posts, the

grantee will identify key government, military and NGO leaders to participate in the exchanges; these participants should represent several African countries as well as the regional organization.

The project will include at least two phases: (1) A U.S. phase designed to introduce African participants to American specialists and approaches to local and international conflict resolution and (2) one or more visits of American specialists to Africa to conduct consultations, workshops or other activities with local counterparts.

The project should be designed to:

—Help develop resources and skills for conflict management/resolution in an Africa-based international or multilateral organization whose goals include management/resolution of conflicts in the region;

—Introduce African participants to principles of American pluralism and American institutions and modalities for peaceful management and resolution of differences among ethnic and interest groups;

—Emphasize U.S. commitment to peaceful resolution of conflicts at home and abroad;

—Arrange meetings of African participants with leading American authorities on international and regional conflict resolution theories and techniques;

—Provide opportunities for African participants to engage in substantive discussions with American specialists, with representatives of an African regional organization, and with one another on conflict resolution in the African area;

—Facilitate cross-disciplinary and cross-national networking among African participants to help form constituencies in support of multilateral efforts to prevent, manage, and resolve conflicts in Africa.

Conflict Resolution in South Africa

USIA will accept proposals for the development of an exchange program to support conflict resolution in South Africa. The amount requested from USIA should not exceed $125,000. Applicants are encouraged to present their own creative program ideas within the general theme of conflict resolution in South Africa. For technical information, interested organizations may contact E/P Program Specialist Charlotte Peterson at (202) 619–5319.

Promoting Cooperation and Understanding Between Arab and Jewish Municipal Government Inside Israel

USIA will accept proposals for the development of a two-way exchange program to reduce tensions and increase cooperation between municipal governments in the Jewish and Arab sectors inside Israel. The amount requested from USIA should not exceed $125,000. For technical information, interested organizations may contact E/P Program Specialist Charlotte Peterson at (202) 619–5319.

Background/Objectives

As Israelis and Palestinians work toward implementing the declaration of principles, the U.S. Mission in Israel is encouraging greater cooperation among Israeli-Arabs and Jews. This project will contribute to the overall peace process and resolution of conflict between the two ethnic groups by encouraging interaction and advancing successful Arab integration into Israeli society. Bringing mayors and municipal officials from both sides together with American counterparts, the program will enhance leadership skills, including the skills of negotiation and conflict resolution, and emphasize the economic and social benefits of increased intermunicipal cooperation.

The project should be designed to:

—Introduce Israeli Arab and Jewish mayors and municipal officials to models of local government administration and leadership in the U.S., including mechanisms for cooperation and dispute resolution between municipalities or regions;

—Provide for extensive dialogue between the Israeli participants and American counterparts on a range of issues, for example: How local governments accommodate the needs of various ethnic and other groups; modes of interaction between neighboring municipalities on economic development; leadership styles, and other issues of mutual interest.

—Introduce participants to theories and practice of conflict prevention and conflict resolution at the local level;

—Demonstrate pluralism in the United States and the interaction of interest groups representing various ethnic and other minorities;

—Provide opportunities for members of the group to discuss, among themselves and with American specialists, how American models might pertain to their situation at home.

Recommended Structural/Procedural Objectives

—At least one exchange visit in each direction. The U.S. visit might be organized as a study tour of at least three weeks' duration, allowing a group of 8–12 Jewish and Arab mayors and municipal officials to visit several U.S. cities.

—American participants should also travel to Israel for consultations, workshops or other activities with their local counterparts.

—Knowledge of English on the part of the participants from Israel will not be required.

Arbitration: Building Dispute Resolution Mechanisms in Palestinian Society

USIA will accept proposals designed to support the development of a two-way exchange program to assist Palestinian lawyers and legal institutions in establishing internationally credible dispute and conflict resolution mechanisms in the fields of commerce, labor, and civil matters. The amount requested from USIA should not exceed $125,000. For technical information, interested organizations may contact E/P Program Specialist Charlotte Peterson at (202) 619–5319.

Background/Objectives

Palestinian society has traditionally depended on a dispute arbitration mechanism centered on prominent figures, such as clan or village leaders, to mediate and resolve commercial, social, and family disputes. While other Middle Eastern societies have moved beyond this traditional process of mediation—at least for resolution of commercial and legal disputes—Palestinians have, in the absence of a rational legal structure in the occupied territories, continued to rely almost exclusively on this informal, consensual process. As the peace process evolves toward Palestinian autonomy, it has become critical that Palestinians adopt internationally credible models of dispute resolution as a *sine qua non* for attracting the international investment essential to bolster Palestinian autonomy.

The project should be designed to:

—Familiarize Palestinian legal experts—many of whom are now working on the general outlines of a constitution and legal framework to govern the autonomous regions—with the types of arbitration organizations and mechanisms Americans rely on to resolve commercial, labor, and other disputes. This introduction should be squarely placed within a framework of the judicial system in the United States.

—Promote cooperation between Palestinian and American experts in formulating and proposing specific dispute resolution mechanisms for the Palestinian autonomous regions.

—Provide, as a third exchange component, internships with an American arbitration group for a small group of Palestinians closely involved with the evolution of dispute resolution mechanisms within the autonomous authority, so that they might learn how arbitration mechanisms actually work in American society.

Recommended Structural/Procedural Objectives

—A visit to the United States, to take place as early as possible, for six to eight Palestinian legal experts to become familiar with arbitration organizations and conflict resolution mechanisms. A three-week program, with visits to at least three cities.

—Travel of three or four American legal experts involved in the first component of the exchange, to take place after a lapse of several months, to work for four to six weeks in Jerusalem, the West Bank, and Gaza with legal experts on formulating dispute resolution mechanisms for the Palestinian autonomous regions.

—Three Palestinians involved with the evolution of dispute mechanisms within the autonomous authority would travel to the United States for a one-semester internship with an American arbitration group.

American Republics (AR)—Nicaragua and Guatemala Only

USIA will accept separate proposals designed to support conflict resolution in Nicaragua and Guatemala. Proposals targeting other countries in the region will not be accepted. The amount requested from USIA should not exceed $65,000 for Nicaragua or $35,000 for Guatemala. For technical information, interested organizations may contact E/P Program Specialist Ben Cromer at (202) 619–5326. USIS post consultation by applicants, prior to submission of proposals, is recommended.

Background for Nicaragua

Nicaraguans historically have found it hard to resolve their own conflicts. They have often tried to enlist outsiders, frequently from the U.S., as partisans in their disputes, or turned to them for mediation and arbitration when all else has failed. This dynamic has been a source of instability for over 150 years.

Some Nicaraguans recognize this failing and are trying to remedy it. In the past year, two university-linked research institutes have been formed to study conflict resolution. A local environmental group sponsored a workshop organized by professional U.S. mediators on resolving environmental disputes, hosted by the new binational center. Still, if Nicaraguans are to complete this process successfully, they need training and support.

U.S. policy today is to encourage Nicaraguans to resolve their internal conflicts without looking to the U.S. for assistance and/or intervention. With this in mind, the Post proposes a project to strengthen Nicaraguan conflict resolution. USIA will work with the grantee and local organizations to identify a bipartisan (the only conceivable approach) pool of trainees who could conduct conflict resolution training for other Nicaraguans and provide mediation services and related activities (fact-finding, curriculum development, etc.). This program would respond to a historic need in Nicaragua.

Please address inquiries to the Public Affairs Officer; USIS—AmEmbassy Managua; Unit #2714; APO AA 34021; Tel. 011–505–2668234, Fax 011–505–2663861.

Background for Guatemala

Guatemala's 33 year-old civil war has cost more than 100,000 lives, has severely hindered democratic and social development in the country, and has adversely affected the fortunes of every government of Guatemala since the war's inception. Although heated constitutional and political battles dominate daily headlines, this conflict continues to cast a long shadow over the country's future.

Media co-sponsorship would be desirable, such as by the centrist daily Siglo XXI and its publisher, Jorge Reuben Zamora; the issues-oriented talk show "Libre Encuentro" and its host, Dionisio Gutierrez; and Guatemala's newest daily, La Republica, which, though it probably has the smallest readership, is well-written and tightly edited, and is supported by the media family, Marroquin.

The Post envisions meetings and workshops at a neutral site, such as Miami, which is both easily accessible to Guatemalans and equipped with the resources necessary to support such a program. A site such as Miami, which is also home base to many CentAm beat reporters, would likely generate considerable regional coverage and encourage the participation of key participants such as Rigoberta Menchu and Frank LaRue, as well as younger members of the URNG.

The program must focus on specific issues (i.e. refugee resettlement, land tenure, political participation by the URNG), and be managed by professionals. Innovation is absolutely necessary to avoid the dry and meaningless "round tables" and seminars that are so common in Guatemala itself.

Please address inquiries to: Public Affairs Officer; USIS—AmEmbassy Guatemala; Unit #3316; APO AA 34024; Tel. 011–502–2–311–541, Fax 011–502–2–321–549.

East Asia and the Pacific (EA)

USIA will accept proposals for the development of exchange programs to support conflict resolution in the East Asia and Pacific region. Exchange programs may include but not be limited to conferences or symposia. The amount requested from USIA should not exceed $200,000.

U.S. foreign policy in Asia is receptive to the concept of regional security consultations. The ASEAN–U.S. dialogue has been expanded to include security discussions through the ASEAN Regional Forum (AFR), for example. Russia has been invited to participate in ARF, along with China, Vietnam, Laos and Papua New Guinea. The USG has also welcomed the holding of symposia sponsored by the private sector on Northeast Asia security.

Applicants are encouraged to view these security dialogues as conflict resolution arrangements where potential adversaries talk to each other rather than form blocs against a common adversary. Proposals should present ideas as to how to extend the dialogue to encompass the entire East Asia and Pacific region or how to enhance the evolving subregional dialogues (e.g. ASEAN, North Asia). Proposals should treat conflict resolution as preventive diplomacy, including reducing tensions, building confidence, and deterring arms races in addition to contributing to the solution of specific conflicts or potential specific conflicts.

Security (and thus, conflict resolution) may be broadly defined to include regional issues that directly or indirectly contribute to security (or the lack thereof), such as economic growth and other conditions affecting trade and social stability, including environmental and energy issues, and population questions.

A conflict resolution project focussed on Northeast Asia should account for private as well as public sector interests, and should be aimed toward stimulating participants' appreciation of the benefits

to the East Asia and Pacific community as a whole to be derived from discussions of both the opportunities for cooperation and the potential conflicts in the subregion.

For projects that focus on Northeast Asia, the area may include Japan, China, Russia, the Korean peninsula, and the U.S.

For additional information on regionwide or subregional emphases, grant applicants may contact Margaret Eubank, Cultural Coordinator in USIA's Office of East Asia and Pacific Affairs, at (202) 619–5837. For technical information, interested organizations may contact E/P Program Specialist Elroy Carlson at (202) 619–5326.

Europe

USIA will not accept proposals for this region.

The Newly Independent States

USIA will not accept proposals for this region.

Additional Guidelines and Restrictions

USIA is interested in supporting programs which will lay the groundwork for new and continuing links between American and foreign professional organizations and non-governmental organizations in the area of conflict resolution and in the specific fields mentioned in the above project descriptions. Proposals which are overly ambitious and those which are very general will not be competitive. Therefore, institutions should provide strong evidence of their ability to accomplish a few tasks exceptionally well. General structural or procedural objectives for all of the above projects include the following:

—development of institutional links which continue beyond the duration of USIA funding support, preferably with funding commitments;
—development and distribution of written, audio and video instructional materials to complement and enhance the program.
—coordination, in the design of these programs, with U.S. Information Service offices overseas, and with foreign government officials and private sector leaders with direct knowledge and experience in the thematic area.

Bureau grants are not given to support projects whose focus is limited to technical issues, or for research projects, developing publications for dissemination in the United States, individual student exchange, film festivals, or exhibits. Neither does the Office of Citizen Exchanges provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register** and may have different application requirements as well as different objectives.

Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. However, USIA and USIS posts retain the right to nominate all foreign participants and to accept or deny participants recommended by grantee institutions. Grantee institutions will often provide support, as requested by USIA, in the nomination of participants.

The grantee should provide the names of American participants and brief, relevant biographical data. American participants should be selected on the basis of their experience and expertise in the thematic field. Relevant language ability, experience in communicating to foreign audiences and general knowledge of the regions and countries involved in the respective projects are highly desirable.

The USIS offices will facilitate the issuance of vises and other program-related materials.

Programmatic Considerations

Pursuant to the legislation authorizing the Bureau of Educational and Cultural Affairs, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social and cultural life.

USIA will give priority to proposals from U.S. organizations with relevant institutional contacts in the countries involved in the various projects described above. Partner institutions are encouraged to provide cost-sharing or significant in-kind contributions such as local housing and transportation, interpreting, translating and other local currency costs. These institutions are also encouraged to assist with the organization of various program activities.

The grantee will be responsible for most arrangements associated with this program. These include selecting speakers, themes, and topics for discussion; organizing a coherent progression of activities; providing international and domestic travel arrangements for all foreign participants and U.S. domestic travel for escort-interpreters; making lodging and local transportation arrangements for visitors; orienting and debriefing participants; preparing any necessary support materials; and working with host institutions and individuals to achieve maximum program effectiveness.

At the start of the U.S. portion of a program, the grantee should conduct an orientation session for the visiting delegation which addresses substantive details of the program as well as geographic, historical, and cross-cultural factors which they should consider to enhance program success.

Upon conclusion of the program the grantee will be required to submit a report to E/P summarizing results of the entire program.

Other Logistical Considerations

Program monitoring and oversight will be provided by appropriate USIA elements. Per Diem support from host institutions during an internship component is strongly encouraged. However, for all programs which include internships, a nonprofit grantee institution which receives funds from corporate or other cosponsors should then use those monies to provide food, lodging, and pocket money for the participants. In no case could the intern receive a wage or "be hired" by the sponsoring institution. Internships should also have an American studies/values orientation component at the beginning of the exchange program in the U.S. Grantee institutions should try to maximize cost-sharing in all facets of their program design, and to stimulate U.S. private sector (foundation and corporate) support.

Funding

Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

Competition for USIA funding support is keen. The final selection of a grantee institution will depend on assessment of proposals according to the review criteria delineated below.

While applicants must provide on all-inclusive budget with the proposal, they are also encouraged to include separate sub-budgets for each program component, phase, location or activity.

The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for: (1) Preparation of basic financial statements and other accounting services; and (2) preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

USIA will consider funding the following project costs:

1. International and domestic air fares; visas; transit costs (e.g., airport taxes); ground transportation costs.

2. Per diem: For the U.S. program, organizations have the option of using a flat $140/day for international participants or the published Federal Travel Regulations per diem rates for individual American cities. NOTE: U.S. escorting staff must use the published federal per diem rates, not the flat rate. For activities overseas, the Standard Government Travel Regulations per diem rates must be used.

3. Interpreters: For the U.S. program interpreters are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each DOS interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance: Participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Escorts are reimbursed for actual cultural expenses up to $150. U.S. staff do not get these benefits.

5. Consultants: May be used to provide specialized expertise or to make presentations. Honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written contract(s) must be included in the proposal.

6. Room rental: Generally should not exceed $250 per day.

7. Materials Development: Proposals may contain costs to purchase, develop and translate materials for participants. USIA reserves the rights to these materials for future use.

8. One working meal per project: Per capita cost may not exceed $5–8 per lunch and $14–20 per dinner, excluding room rental. The number of invited guests may not exceed the number of participants by more than a factor of two to one.

9. Return travel allowance: $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E, "Cost-sharing and Matching," and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Please note: All delegates will be covered under the terms of a USIA/sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the Application Package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the appropriate geographic area offices and the budget and contract offices. Proposals may also be reviewed by the Office of General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, rigor, and relevance to the Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. *Institutional Reputation and Ability:* Applicant institutions should demonstrate their potential for excellence in program design and implementation and/or provide documentation of successful programs. If an applicant is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG) will be considered. Relevant substantive evaluations of previous projects may also be considered in this assessment.

3. *Project Personnel.* The thematic and logistical expertise of project personnel should be relevant to the proposed program. Resumes or C.V.s should be relevant to the specific proposal and no longer than two pages each.

4. *Program Planning:* A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate the organization's expertise in the subject area which promises an effective sharing of information.

6. *Cross-Cultural Sensitivity and Area Expertise:* Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

7. *Ability to Achieve Program Objectives:* Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term

mutual understanding and contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-Effectiveness:* Cost to USIA per exchange participant (American and foreign) should be kept to a minimum, and all items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution and its partners.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Grantees will be expected to submit intermediate reports after each project component is considered or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency which contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 10, 1994.

Barry Fulton,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94-4202 Filed 2-23-94; 8:45 am]

BILLING CODE 8230-01-M

Exchange Project for the Development of Journalism Education in the Middle East, North Africa, and South Asia (Public and Private Nonprofit Organizations in Support of International Educational and Cultural Activities)

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Educational and Cultural Affairs announces a competitive grants program for nonprofit organizations to develop multi-phased exchange programs for journalism educators. There will be two separate exchange programs, and American organizations are invited to submit proposals for one or both. One program will be for 10 to 12 educators from the Middle East and North Africa; the other program will be for 10 to 12 educators from South Asia. The journalism educators will come to the United States for an intensive, six-week study program in American journalism education, with emphasis on curriculum development, the relationship of education to the practice of journalism, the development of professionalism in journalism, and an introduction to American print media, from student publications at the university and secondary school levels to substantive contact with newspapers. During the second phase of each exchange program, two teams of two American journalism educators will travel to selected countries for consultations with phase one participants and their colleagues. Each team will visit two or three countries and will focus on curriculum development and the establishment of student publications as an educational device. These target countries will be selected through consultations among USIA, USIS posts and the program organizer after completion of the first program component.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. After the RFP deadline, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the final decisions are made.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P-94-20.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on April 22, 1994. Faxed documents will not be accepted, nor will documents postmarked April 22, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by this deadline.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Ref: E/P-94-20, Office of Grants Management (E/XE), 301 Fourth Street, SW., room 336, Washington, DC 20547.

CONTACT FOR INFORMATION: Interested organizations/institutions should contact the Office of Citizen Exchanges (E/P), USIA, 301 Fourth Street, SW., room 224, Washington, DC 20547, tel. (202) 619-5319, fax (202 619-4350, to request detailed application packages which include all necessary forms and guidelines for preparing proposals, including specific budget preparation information. Please specify the name of USIA Program Specialist Thomas Johnston on all inquiries and correspondence.

Background/Objectives of This Program

The end of colonialism and the consequent dramatic rise in the number of sovereign states in the developing world have produced an equally dramatic rise in the scope and diversity of available news media, both print and broadcast. However, much of the reporting disseminated through these media is flawed by the absence of journalistic skills, appropriate educational background, and appreciation for professional standards among those employed as journalists. In addition, media throughout the Near East, North Africa, and South Asia are often utilized to mold public opinion, rather than to provide objective information, and to rally support for the policies of parties holding or seeking power, rather than to present an independent, credible account or a responsible analysis of social and political phenomena.

The primary objective of this program is to further the development of journalism education as an independent academic discipline in North Africa, the Near East, and South Asia, and thereby to strengthen substantive, responsible, and objective media reporting, reflecting international recognized standards of journalistic professionalism.

Project proposals should focus on the cultivation of a cadre of journalism educators—both professors and deans of schools of journalism—from the Near East and North Africa, or from South Asia, who are persuaded of the need for curricular reform and development in order to train well educated, responsible journalists and who are able and willing to translate their convictions into efforts to bring about such reform and development.

Participants

Journalism educators from the Middle East and North Africa who will participate in the U.S. phase of this program will be provided the service of bilingual escort-interpreters in Arabic, with one interpreter for each five/six participants and one language-fluent escort for the group (to be facilitated by USIA through the U.S. Department of State). For American consultants participating in the second component of the Near East/North African exchange, fluency in Arabic or French, depending on the countries visited and the language preference of the anticipated audiences, would be desirable. In the absence of language fluency, arrangements should be made by the grantee organization, in consultation with USIS posts, for interpretation. Participating educators in the South Asian exchange must possess strong English language skills. American consultants traveling to South Asia during the second component of the program may require the service of interpreters, depending upon the language facility of the South Asian educators with whom they will work in the region. Again, the grantee organization should coordinate arrangements for in-country interpreters with the appropriate USIS posts.

Participants will be nominated through coordination among USIA, U.S. Information Service personal in the region, and overseas partner institutions. USIA and the participating USIS posts retain the right to nominate all participants and to accept or reject participants recommended by grantee institutions. The U.S. consultants who will travel abroad will be selected by the grantee institution in consultation with USIA.

USIS officers in participating countries will facilitate the issuance of visas and other program-related material.

Programmatic Considerations

Thematically, each program should:

—Analyze the current status of professional journalism and journalism education in the participants' countries of origin and determine, in conjunction with USIS posts in these countries and with the journalism educators selected as participants, the needs to be addressed by the exchange;

—Provide the participants both a general and a specific overview of journalism education and the practice of journalism in the United States, beginning with an historic perspective and a survey of the evolution of the public media in the context of a socially diverse and politically democratic country;

—Conduct for the participants short, intensive, lecture-seminary-discussion courses in journalism education, focussing primarily on curriculum development, the structuring of apprenticeships or internships as an integral component of the journalist's training, and the development of student publications as essential to journalism education.

—And arrange one-week, intensive, participant/observer placements for the journalism educators as a group in the journalism departments of three universities, preferably reflecting diversity of size, orientation, and geographic location. These placements should include, in each case, classroom observation, first-hand experience in producing a student publication, visits to at least one medium-to-large newspaper which features both national and international reporting, and, if possible, observation of high-school level student journalism classes and publications.

Pursuant to the legislation authorizing the Bureau of Educational and Cultural Affairs, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social and cultural life.

Beyond the immediate goals of this exchange, USIA is also interested in supporting programs which will lay the groundwork for new and continuing links between American and Middle Eastern, North African, and South Asian educational institutions and professional organizations and which will encourage the further growth and development of democratic institutions.

The grantee organization will be responsible for most arrangements associated with this program. These include organizing a coherent progression of activities, providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, preparing any necessary support material, and working with host institutions and individuals to achieve maximum program effectiveness.

To prepare foreign journalism educators for this project prior to their arrival in the United States, E/P encourages the grantee organization to develop material that would be sent to USIS offices overseas for distribution to participants. This material might include a tentative project outline with suggested goals and objectives, relevant background information, and information about American institutions and individuals involved in the exchange.

At the beginning of the program, the grantee organization should conduct an orientation session for the visiting participants which addresses administrative details of the program and provides general information about American society and culture which will facilitate the participants' understanding of and adjustment to daily life in the United States.

At the conclusion of the program, the group should meet in a one-day evaluation and planning session to review what has been presented to and experienced by the participants and to consider how that which has been learned can most effectively be applied upon the participants' return to their home countries.

Additional Guidelines

Program monitoring and oversight will be provided by appropriate USIA elements. The U.S. grantee institution should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector (foundation and corporate) support.

Proposals incorporating participant/observer site visits will be more competitive if letters committing prospective host institutions to support these efforts are provided.

Funding

Competition for USIA funding support is keen. The final selection of a grantee institution will depend on assessment of proposals according to a the review criteria delineated below.

The amount requested from USIA should not exceed $165,000 for each of these programs. However, organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

While applicants must provide an all-inclusive budget with the proposal, they are also encouraged to include separate sub-budgets for each program component, phase, location or activity.

The recipient's proposal shall include the cost of an audit that:

(1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

(3) Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

USIA will consider funding the following project costs:

1. International and domestic air fares; visas; transit costs (e.g., airport taxes); ground transportation costs.

2. Per diem: For the U.S. program, organizations have the option of using a flat rate of $140/day for international participants or the published Federal Travel Regulations per diem rates for individual American cities.

Note: U.S. escorting staff must use the published federal per diem rates, not the flat rate. For activities in the Middle East, North Africa and South Asia, the Standard Federal Travel Regulations per diem rates must be used.

3. Escort-interpreters: Interpretation for U.S.-based programs is provided by the State Department's Language Services Division. USIA grants do not pay for foreign interpreters to accompany delegations during travel to or from their home country. Grant proposal budgets should contain a flat $140/day per diem rate for each State Department interpreter, as well as home-program-home air transportation of $400 per interpreter and any U.S. travel expenses during the program itself. Salary expenses are covered centrally and are not part of the applicant's budget proposal. For the second component of the program, a limited amount of grant funds would be available for interpreters, should interpretation be required. The grant applicant is encouraged to confirm with the appropriate USIS posts the local costs for interpreters. Grant proposals should reflect these costs.

4. Book and cultural allowance: Participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Escorts are reimbursed for actual cultural expenses up to $150. U.S. staff do not get these benefits.

5. Consultants: May be used to provide specialized expertise or to make presentations. Honoraria should not exceed $250 per day. Subcontracting organizations may also be used, in which case the written contract(s) must be included in the proposal.

6. Room rental: generally should not exceed $250 per day.

7. Materials: Proposals may contain costs to purchase, develop and translate materials for participants. USIA reserves the rights to these materials for future use.

8. One working meal per project: Per capita cost may not exceed $5–8 per lunch and $14–20 per dinner, excluding room rental. The number of invited guests may not exceed the number of participants by a factor of more than two to one.

9. Return travel allowance: $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E, "Cost-sharing and Matching," and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution.

Please Note

All participants will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals will be reviewed by USIS posts and by USIA's Office of Near Eastern, North African, and South Asian Affairs. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for granting awards resides with USIA's contracting officer. The awarding of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent the awarding of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit substance, originality, rigor, and relevance to the Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. *Institutional Reputation/Ability:* Institutions should demonstrate their potential for effective program design and implementation and provide, if available, evidence of having conducted successful programs. If an applicant has previously received a USIA grant, responsible fiscal management and full compliance with all reporting requirements for past Agency grants, as determined by USIA's Office of Contracts (M/KG), will be considered. Evaluations of previous projects may also be considered in this assessment.

3. *Project Personnel:* Information provided regarding the thematic and logistical expertise of project personnel should be relevant to the proposal at hand. Resumes or C.V.s should be summaries appropriate to the specific proposal and no longer than two pages each.

4. *Program Planning:* A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate the organization's expertise in the subject area and its ability effectively to share information.

6. *Cross-Cultural Sensitivity and Area Expertise:* Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

7. *Ability To Achieve Program Objectives:* Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. *Multiplier Effect:* Proposed programs should strengthen mutual understanding and should contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-Effectiveness:* Costs to USIA per exchange participant (American and foreign) should be kept to a minimum, and all items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should maximize cost-sharing through private sector support as well as through direct funding contributions and/or in-kind support from the prospective grantee organization and its partners.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the project. USIA recommends that the applicant discuss the evaluation methodology chosen and the techniques which will be employed to assess the effectiveness of the project and the correspondence between observable outcomes and original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency which contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about July 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 14, 1994.

Barry Fulton,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–3984 Filed 2–23–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 2401, will be held at the Excelsior Hotel #3 Statehouse Plaza, Little Rock, Arkansas on April 20–21, 1994.

The sessions will begin at 8:30 a.m. c.s.t. each day to conduct routine business. The meeting will be open to the public up to the seating capacity which is about 20 persons. Those wishing to attend should contact Ms. Dina Wood, Special Assistant to the Director, or Mr. Larry De Meo, Executive Assistant to the Director, National Cemetery System, (phone (202) 273–5235] not later than 12 noon, EST April 4, 1994.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Director, National Cemetery System (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writer must fully identify themselves and state the organization or association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Director, National Cemetery System.

Letters and written statements as discussed above must be mailed or delivered in time to reach the Director, National Cemetery System, by 12 noon e.s.t. April 4, 1994. Oral statements will be heard only between 1:30 p.m. and 2 p.m. c.s.t., April 20, 1994.

Dated: February 15, 1994.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–4144 Filed 2–23–94; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 59, No. 37

Thursday, February 24, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC01

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Mojave Population of the Desert Tortoise

Correction

In rule document 94-2694 beginning on page 5820 in the issue of Tuesday, February 8, 1994, on page 5846, the maps appearing in § 17.95 were incorrectly positioned in the text. For clarification, the amendment to § 17.95(c) is reprinted in its entirety.

§ 17.95 Critical habitat—fish and wildlife.

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(c) * * *

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Desert Tortoise—Mojave Population (*Gopherus agassizii*)

Index map of approximate locations of critical habitat units follows:

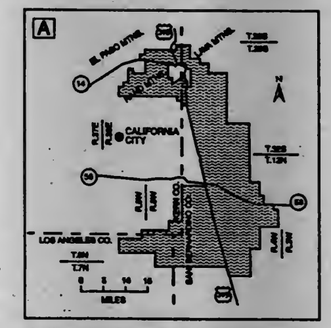


California. Areas of land as follows:

1. *Fremont-Kramer Unit.* Kern, Los Angeles, and San Bernardino Counties. From BLM Maps: Victorville 1978 and Cuddeback Lake 1978. (Index map location A).

Mt. Diablo Meridian: T. 29 S., R. 39 E., secs. 13, 14, 22–26, 35, and 36; T. 29 S., R. 40 E., secs. 12–33; T. 29 S., R. 41 E., secs. 7, 8, 17–20, 27–30, and 32–36; T. 30 S., R. 38 E., secs. 24–26, 35, and 36; T. 30 S., R. 39 E., secs. 1–36 except secs. 3–5; T. 30 S., R. 40 E., secs. 4–9 and 13–36 except those portions of secs. 13, 14, and 23 lying northwesterly of the Randsburg-Mojave Road; T. 30 S., R. 41 E., secs. 1–36 except secs. 5–8 and 20 and those portions of secs. 17 and 18 lying easterly of U.S. Hwy. 395; T. 30 S., R. 42 E., secs. 7–10, 15–22, and 27–34; T. 31 S., R. 40 E., secs. 1 and 6 except that portion of sec. 6 lying southeasterly of the Randsburg-Mojave Road; T. 31 S., R. 41 E., secs. 1–17, 20–29, and 32–36 except those portions of secs. 20, 29 and 32 lying westerly of U.S. Hwy. 395; T. 31 S., R. 42 E., secs. 3–10, 15–22, and 27–34; T. 32 S., R. 41 E., secs. 1–4, 9–16, 21–28, and 34–36 except those portions of secs. 4, 9, 16, 21, 27, 28, and 34 lying westerly of U.S. Hwy. 395; T. 32 S., R. 42 E.; T. 32 S., R. 43 E., secs. 4–9, 16–21, and 28–33.

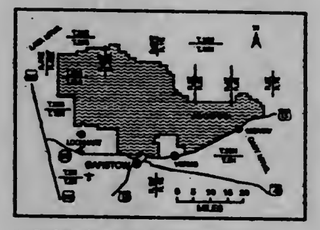
San Bernardino Meridian: T. 7 N., R. 5 W., secs. 2–11 and 14–18 except that portion of sec. 18 lying west of U.S. Hwy. 395; T. 7 N., R. 6 W., secs. 1–6, 12, and 13 except those portions of secs. 1, 12, and 13 lying westerly of U.S. Hwy. 395; T. 7 N., R. 7 W., secs. 1–6; T. 7 N., R. 8 W., secs. 1–4; T. 8 N., R. 4 W., secs. 6, 7, and 18; T. 8 N., R. 5 W., secs. 1–35 except secs. 24 and 25; T. 8 N., R. 6 W.; T. 8 N., R. 7 W.; T. 8 N., R. 8 W., secs. 1–28, and 33–36; T. 8 N., R. 9 W., secs. 1 and 7–24; T. 9 N., R. 4 W., secs. 2–11, 14–23, 30, and 31; T. 9 N., R. 5 W.; T. 9 N., R. 6 W.; T. 9 N., R. 7 W., secs. 1–4, 9–16, and 19–36; T. 9 N., R. 8 W., secs. 24, 25, and 31–36; T. 9 N., R. 9 W., sec. 36; T. 10 N., R. 4 W., secs. 6, 7, 18–20, and 29–34; T. 10 N., R. 5 W.; T. 10 N., R. 6 W., secs. 1–36 except sec. 6; T. 10 N., R. 7 W., secs. 9–16, 21–28, and 33–36; T. 11 N., R. 5 W., secs. 2–11, 14–23, and 26–35; T. 11 N., R. 6 W., secs. 1–36 except those portions of secs. 6, 7, 18, 19, 30, and 31 lying westerly of U.S. Hwy. 395; T. 11 N., R. 7 W., that portion of sec. 1 lying easterly U.S. Hwy. 395; T. 12 N., R. 5 W., secs. 31–35; T. 12 N., R. 6 W., secs. 31–36; T. 12 N., R. 7 W., that portion of sec. 36 lying easterly of U.S. Hwy. 395.



2. *Superior-Cronese Unit.* San Bernardino County. From BLM Maps: Cuddeback Lake 1978, Soda Mts. 1978, Victorville 1978, and Newberry Springs 1978. (Index map location B).

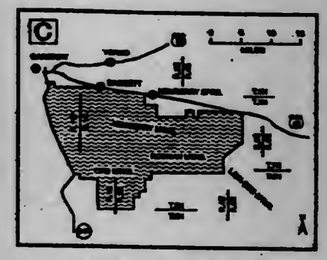
Mt. Diablo Meridian: T. 29 S., R. 42 E., secs. 35 and 36; T. 29 S., R. 43 E., secs. 25, 26, and 31–36; T. 29 S., R. 44 E., secs. 20–36; T. 29 S., R. 45 E., secs. 14–16, 19–23, and 25–36; T. 29 S., R. 46 E., secs. 30–32; T. 30 S., R. 42 E., secs. 1, 2, 11–14, 23–26, 35, and 36; T. 30 S., R. 43 E.; T. 30 S., R. 44 E.; T. 30 S., R. 45 E.; T. 30 S., R. 46 E., secs. 3–36; T. 30 S., R. 47 E., secs. 7–10, 15–22, and 27–34; T. 31 S., R. 42 E., secs. 1, 2, 11–14, 23–26, 35, and 36; T. 31 S., R. 43 E.; T. 31 S., R. 44 E.; T. 31 S., R. 45 E.; T. 31 S., R. 46 E.; T. 31 S., R. 47 E., secs. 3–10, 15–22, and 27–34; T. 32 S., R. 43 E., secs. 1–3, 10–15, 22–27, and 34–36; T. 32 S., R. 44 E.; T. 32 S., R. 45 E.; T. 32 S., R. 46 E.; T. 32 S., R. 47 E., secs. 3–10, 15–22, and 27–34.

San Bernardino Meridian: T. 9 N., R. 1 W., those portions of secs. 1 and 2 lying northerly of Interstate Hwy. 15; T. 9 N., R. 1 E., that portion of sec. 6 lying northerly of Interstate Hwy. 15; T. 10 N., R. 2 W., secs. 1–29; T. 10 N., R. 1 W., secs. 1–28, 30, and 33–36 except those portions of secs. 33–35 lying southwesterly of Interstate Hwy. 15; T. 10 N., R. 1 E., secs. 18, 19, 30, and 31; T. 10 N., R. 2 E., secs. 1–5, 8–17, and 22–34 except those portions of secs. 25, 26, and 34 lying southeasterly of Interstate Hwy. 15; T. 10 N., R. 3 E., secs. 1–12, 14–21, and 30 except those portions of secs. 11, 12, 14–16, 19–21, and 30 lying southeasterly of Interstate Hwy. 15; T. 10 N., R. 4 E., those portions of secs. 5–7 lying northwesterly of Interstate Hwy. 15; T. 11 N., R. 5 W., secs. 1 and 12; T. 11 N., R. 4 W., secs. 1–7, 9, 11, and 12; T. 11 N., R. 3 W., secs. 1–18; T. 11 N., R. 2 W.; T. 11 N., R. 1 W.; T. 11 N., R. 1 E., secs. 1–31; T. 11 N., R. 2 E., secs. 1–36 except sec. 31; T. 11 N., R. 3 E.; T. 11 N., R. 4 E., secs. 1–34 except those portions of secs. 25, 26, 33, and 34 lying southeasterly of Interstate Hwy. 15; T. 11 N., R. 5 E., secs. 1–11 and 15–20 except those portions of secs. 1, 2, 10, 11, 15–17, 19, and 20 lying southeasterly of Interstate Hwy. 15; T. 12 N., R. 5 W., sec. 36; T. 12 N., R. 4 W., secs. 31–36; T. 12 N., R. 3 W., secs. 31–36; T. 12 N., R. 2 W., secs. 31–36; T. 12 N., R. 1 W., secs. 31–36; T. 12 N., R. 1 E.; T. 12 N., R. 2 E., secs. 3–36; T. 12 N., R. 3 E., secs. 7–36; T. 12 N., R. 4 E., secs. 7–36; T. 12 N., R. 5 E., secs. 1–5 and 7–36; T. 12 N., R. 6 E., secs. 5–9, 15–22, and 27–34 except those portions of secs. 31–34 lying southerly of Interstate Hwy. 15; T. 13 N., R. 1 E.; T. 13 N., R. 2 E., secs. 19 and 29–34; T. 13 N., R. 5 E., secs. 26–28 and 32–36; T. 14 N., R. 1 E., secs. 5–10, 15–23, and 24–36.



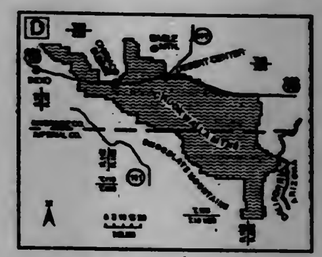
3. *Ord-Rodman Unit.* San Bernardino County. From BLM Maps: Newberry Springs 1978 and Victorville 1978. (Index map location C).

San Bernardino Meridian: T. 6 N., R. 1 E., secs. 1–6, 10–15, 22–27, and 34–36; T. 6 N., R. 2 E., secs. 1–11, 14–22, and 28–33; T. 7 N., R. 1 W., secs. 1–4, 9–15, 22–26, 35, and 36 except those portions of secs. 4, 9, 10, 15, 22, 23, 26, and 35 lying southwesterly of State Hwy. 247; T. 7 N., R. 1 E.; T. 7 N., R. 2 E.; T. 7 N., R. 3 E.; T. 7 N., R. 4 E.; T. 7 N., R. 5 E., secs. 4–9 and 17–19 except those portions of secs. 4, 8, 9, and 17–19 lying southerly of the northern boundary of Twentynine Palms Marine Corps Base; T. 8 N., R. 1 W., secs. 1–18, 20–29, and 32–36 except those portions of secs. 6, 7, 17, 18, 20, 29, 32, and 33 lying southwesterly of State Hwy. 247; T. 8 N., R. 1 E.; T. 8 N., R. 2 E., secs. 2–36; T. 8 N., R. 3 E., secs. 7 and 18–36; T. 8 N., R. 4 E., secs. 13–16 and 18–36; T. 8 N., R. 5 E., secs. 16–18, 19–21, 28–30, and 31–33 except those portions of secs. 16 and 17 lying northerly of Interstate Hwy. 40; T. 8 N., R. 6 E., secs. 18–21 and 27–36 except those portions of secs. 18–21, 27, 28, 34, and 35 lying northerly of Interstate Hwy. 40; T. 9 N., R. 1 W., secs. 19, 20, and 25–36 except those portions of secs. 19, 20, and 29–31 lying westerly of State Hwy. 247; T. 9 N., R. 1 E., secs. 25–36 except those portions of secs. 25–27 lying northerly of Interstate Hwy. 40; T. 9 N., R. 2 E., secs. 27–35 except those portions of secs. 27–30 lying northerly of Interstate Hwy. 40.



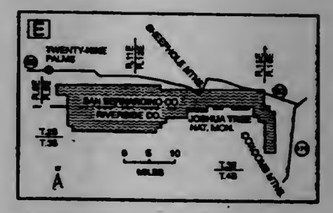
4. *Chuckwalla Unit.* Imperial and Riverside Counties. From BLM Maps: Chuckwalla #18 1978, Parker-Blythe #16 1978, Salton Sea #20 1978, and Midway Well #21 1979. (Index map location D).

San Bernardino Meridian: T. 3 S., R. 13 E., secs. 19–21 and 27–35; T. 4 S., R. 8 E., secs. 1–6, 8–16, 22–26, and 36; T. 4 S., R. 9 E., secs. 6–10, and 15–36; T. 4 S., R. 10 E., secs. 19–21, and 27–34; T. 4 S., R. 13 E., secs. 2–36 except secs. 12 and 13; T. 4 S., R. 14 E., secs. 27–36; T. 4 S., R. 15 E., secs. 31 and 32; T. 5 S., R. 9 E., secs. 1–4, 12, 13, and 24; T. 5 S., R. 10 E., secs. 2–36 except sec. 31; T. 5 S., R. 11 E., secs. 19–21 and 28–33; T. 5 S., R. 12 E., sec. 36; T. 5 S., R. 13 E., secs. 1–36 except secs. 6 and 7; T. 5 S., R. 14 E.; T. 5 S., R. 15 E., secs. 4–9, 16–21, 25, S ½ sec. 26, S ½ sec. 27, and secs. 28–36; T. 5 S., R. 16 E., secs. 28–35; T. 6 S., R. 10 E., secs. 1–4, 9–16, 21–26, 35 and 36; T. 6 S., R. 11 E., secs. 4–36; T. 6 S., R. 12 E.; T. 6 S., R. 13 E.; T. 6 S., R. 14 E.; T. 6 S., R. 15 E.; T. 6 S., R. 16 E.; T. 6 S., R. 17 E., secs. 5–9, and 14–36; T. 6 S., R. 18 E., secs. 29–36; T. 6 S., R. 19 E., secs. 31–36; T. 6 S., R. 20 E., secs. 31–34; T. 7 S., R. 11 E., sec. 1; T. 7 S., R. 12 E., secs. 1–6, 9–15, and 23–25; T. 7 S., R. 13 E., secs. 1–30 and 31–36; T. 7 S., R. 14 E.; T. 7 S., R. 15 E.; T. 7 S., R. 16 E.; T. 7 S., R. 17 E.; T. 7 S., R. 18 E.; T. 7 S., R. 19 E.; T. 7 S., R. 20 E., secs. 3–10, 14–23, and 26–35; T. 8 S., R. 13 E., secs. 1, 2, and 11–14; T. 8 S., R. 14 E., secs. 1–18, and secs. 21–26; T. 8 S., R. 15 E., secs. 1–30 and 34–36; T. 8 S., R. 16 E.; T. 8 S., R. 17 E.; T. 8 S., R. 18 E.; T. 8 S., R. 19 E.; T. 8 S., R. 20 E., secs. 3–10, 15–22, and 28–33; T. 9 S., R. 15 E., sec. 1; T. 9 S., R. 16 E., secs. 1–17, 20–29, and 32–36; T. 9 S., R. 17 E.; T. 9 S., R. 18 E.; T. 9 S., R. 19 E.; T. 9 S., R. 20 E., secs. 5–8, 17–20, and 29–33; T. 10 S., R. 16 E., secs. 1–5, 9–16, and 22–26; T. 10 S., R. 17 E.; T. 10 S., R. 18 E.; T. 10 S., R. 19 E.; T. 10 S., R. 20 E., secs. 3–36; T. 10 S., R. 21 E., secs. 18–21 and 28–34; T. 10 ½ S., R. 21 E., secs. 31–33; T. 11 S., R. 17 E., secs. 1–5 and 8–15; T. 11 S., R. 18 E., secs. 1–24; T. 11 S., R. 19 E., secs. 1–26, 35, and 36; T. 11 S., R. 20 E., secs. 1–23 and 26–34; T. 11 S., R. 21 E., secs. 4–8; T. 12 S., R. 19 E., secs. 1, 2, 11–14, 23–26, 35, and 36; T. 12 S., R. 20 E., secs. 3–10, 15–22, and 27–34; T. 13 S., R. 19 E., secs. 1, 2, 11, 12, 22–27, and 34–36; T. 13 S., R. 20 E., secs. 3–10, 14–23, and 26–34.



5. *Pinto Mountain Unit.* Riverside and San Bernardino Counties. From BLM Maps: Yucca Valley 1982, Sheep Hole Mountains 1978, Chuckwalla 1978, and Palm Springs #17 1978. (Index map location E).

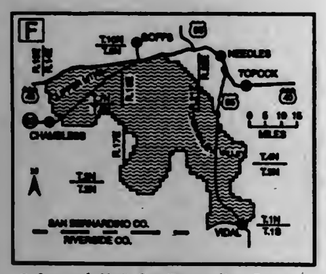
San Bernardino Meridian: T. 1 S., R. 9 E., secs. 10–15, 24, 25, and 36; T. 1 S., R. 10 E., secs. 7–36; T. 1 S., R. 11 E., secs. 7–36; T. 1 S., R. 12 E., secs. 7–36 except sec. 12; T. 1 S., R. 13 E., secs. 13–36; T. 1 S., R. 14 E., secs. 13–32; T. 1 S., R. 15 E., secs. 13–30 and 36; T. 1 S., R. 16 E., secs. 18, 19, and 30–32; T. 2 S., R. 9 E., secs. 1, 12, and 13; T. 2 S., R. 10 E., secs. 1–24; T. 2 S., R. 11 E., secs. 1–24; T. 2 S., R. 12 E., secs. 1–22 except sec. 13; T. 2 S., R. 13 E., secs. 3–6; T. 2 S., R. 15 E., sec. 1; T. 2 S., R. 16 E., secs. 4–9, 16, 17, 20, 21, 28, 29, 32, and 33; T. 3 S., R. 16 E., secs. 4, 5, 8, and 9.



6. *Chemehuevi Unit.* San Bernardino County. From BLM Maps: Sheep Hole Mts. 1978, Parker 1979, Needles 1978, and Amboy 1991. (Index map location F).

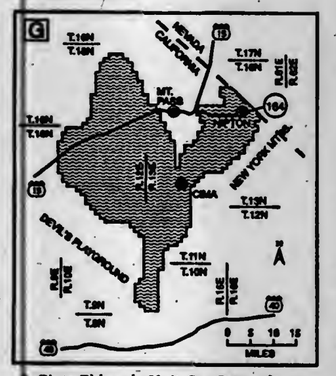
San Bernardino Meridian: T. 1 S., R. 22 E., those portions of secs. 3–5 lying northwesterly of the Atchison Topeka and Santa Fe Railroad; T. 1 S., R. 23 E., those portions of secs. 1–3 lying northerly of the Atchison Topeka and Santa Fe Railroad except that portion of sec. 1 lying easterly of U.S. Hwy. 95; T. 1 N., R. 22 E., secs. 1–4, 9–16, 20–29, and 32–36 except those portions of secs. 34–36 lying southerly of the Atchison Topeka and Santa Fe Railroad; T. 1 N., R. 23 E., secs. 1–36 except those portions of secs. 31–34 lying southerly of Atchison Topeka and Santa Fe Railroad; T. 1 N., R. 24 E., secs. 4–9, 16–21, and 29–31; T. 2 N., R. 18 E., secs. 1–5, and 9–14; T. 2 N., R. 19 E., secs. 2–10, and 16–18; T. 2 N., R. 22 E., secs. 1–5, 8–16, 21–28, and 33–36; T. 2 N., R. 23 E., secs. 5–8, 17–21, and 26–36; T. 2 N., R. 24 E., secs. 31 and 32; T. 3 N., R. 17 E., secs. 12, 13, 24, and 25; T. 3 N., R. 18 E.; T. 3 N., R. 19 E., secs. 1–35; T. 3 N., R. 20 E., secs. 5–8, 18, and 19; T. 3 N., R. 21 E., secs. 1–5, 9–16, 23, and 24; T. 3 N., R. 22 E., secs. 1–36 except

sec. 31; T. 3 N., R. 23 E., secs. 2–11, 14–22, and 28–32; T. 4 N., R. 18 E., secs. 1, 2, 10–15, 21–28, and 32–36; T. 4 N., R. 19 E.; T. 4 N., R. 20 E., secs. 1–12, 16–20, and 29–32; T. 4 N., R. 21 E., secs. 1–17, 20–29, and 32–36; T. 4 N., R. 22 E.; T. 4 N., R. 23 E., secs. 1–35; T. 4 N., R. 24 E., Secs 6, 7, 18, and 19; T. 5 N., R. 15 E., secs. 1–6; T. 5 N., R. 16 E., secs. 4–6; T. 5 N., R. 18 E., secs. 1–6, 8–17, 22–26, 35, and 36; T. 5 N., R. 19 E.; T. 5 N., R. 20 E.; T. 5 N., R. 21 E.; T. 5 N., R. 22 E., secs. 2–36; (Unsurveyed) T. 5 N., R. 23 E., protracted secs. 19, and 29–33; T. 6 N., R. 14 E., secs. 1–3, 10–15, and 23–25; T. 6 N., R. 15 E.; T. 6 N., R. 16 E., secs. 1–23, and 27–34; T. 6 N., R. 17 E., secs. 1–18, 22–26, and 36; T. 6 N., R. 18 E.; T. 6 N., R. 19 E.; T. 6 N., R. 20 E.; T. 6 N., R. 21 E.; T. 6 N., R. 22 E., secs. 3–10, 15–23, and 26–35; T. 7 N., R. 14 E., secs. 1–5, 8–17, 21–28, and 33–36; T. 7 N., R. 15 E.; T. 7 N., R. 16 E.; T. 7 N., R. 17 E.; T. 7 N., R. 18 E.; T. 7 N., R. 19 E.; T. 7 N., R. 20 E.; T. 7 N., R. 21 E.; T. 7 N., R. 22 E., secs. 18–20, and 28–34; T. 8 N., R. 14 E., secs. 13, 23–28, and 31–36 except those portions of secs. 13, 23, 24, 26, 27, 28, 31, 32, and 33 lying northwesterly of Interstate Hwy. 40; T. 8 N., R. 15 E., secs. 9–36 except those portions of secs. 9–12, 17, and 18 lying northwesterly of Interstate Hwy. 40; T. 8 N., R. 16 E., secs. 1, 2, and 7–36 except those portions of secs. 1, 2, and 7–10 and 11 lying northerly of Interstate Hwy. 40; T. 8 N., R. 17 E., secs. 1–36 except those portions of secs. 1–6 lying northerly of Interstate Hwy. 40; T. 8 N., R. 18 E., secs. 1–36 except that portion of sec. 6 lying northerly of Interstate Hwy. 40; T. 8 N., R. 19 E.; T. 8 N., R. 20 E.; T. 8 N., R. 21 E., secs. 7, 17–21, and 27–35; T. 9 N., R. 18 E., those portions of secs. 31–36 lying southerly of Interstate Hwy. 40; T. 9 N., R. 19 E., secs. 23–29 and 31–36 except those portions of secs. 23, 24, 26–29, 31, and 32 lying northerly of Interstate Hwy. 40; T. 9 N., R. 20 E., secs. 19, 20, and 29–33 except those portions of secs. 19 and 20 lying northerly of Interstate Hwy. 40 and S½ S½ sec. 27, SW¼ SW¼ sec. 26, and W½ W½ sec. 35.



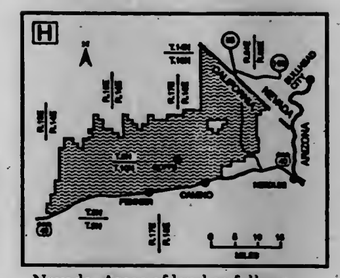
7. *Ivanpah Unit.* San Bernardino County. From BLM Maps: Amboy 1991, Ivanpah 1979, and Mesquite Lake 1990. (Index map location G).

San Bernardino Meridian: T. 9 N., R. 12 E., secs. 1, 2, 11–14, and 24; T. 9 N., R. 13 E., secs. 4–9, 16–21, and 28–30; T. 10 N., R. 12 E., secs. 25, 35, and 36; T. 10 N., R. 13 E., secs. 3–10, 16–21, and 28–33; T. 11 N., R. 12 E., secs. 1, 12, 13, 24, 25, and 36; T. 11 N., R. 13 E., secs. 1–12, 15–21, and 28–33; T. 11 N., R. 14 E., sec. 6; T. 12 N., R. 11 E., secs. 1–5 and 9–15; T. 12 N., R. 12 E., secs. 1–18, 21–27, 35, and 36; T. 12 N., R. 13 E.; T. 12 N., R. 14 E., secs. 4–9, 16–21, and 29–32; T. 13 N., R. 10 E., secs. 1–5, 10–14, 24, and 25; T. 13 N., R. 11 E.; T. 13 N., R. 12 E.; T. 13 N., R. 13 E.; T. 13 N., R. 14 E., secs. 3–9, 16–21, and 28–33; T. 14 N., R. 9 E., secs. 1, 12, 13, and 24; T. 14 N., R. 10 E.; (Unsurveyed) T. 14 N., R. 11 E., Protracted secs. 1–35; T. 14 N., R. 11 E., sec. 36; T. 14 N., R. 12 E.; T. 14 N., R. 13 E.; T. 14 N., R. 14 E., secs. 1–5, 8–17, and 19–35; T. 14 N., R. 15 E., secs. 1–12, and 14–22; T. 14 N., R. 16 E., sec. 6; T. 15 N., R. 9 E., secs. 24, 25, and 36; T. 15 N., R. 10 E., secs. 1–36 except sec. 6; T. 15 N., R. 11 E.; T. 15 N., R. 12 E.; T. 15 N., R. 13 E., secs. 3–11 and 14–36; T. 15 N., R. 14 E., secs. 12, 13, 23–28, and 33–36; T. 15 N., R. 15 E.; T. 15 N., R. 16 E., secs. 1–11, 14–22, and 28–33; T. 15½ N., R. 14 E., secs. 24 and 25; T. 15½ N., R. 15 E., secs. 19–36; T. 15½ N., R. 16 E., secs. 19–35; T. 16 N., R. 10 E., secs. 25, 35, and 36; T. 16 N., R. 11 E.; T. 16 N., R. 12 E.; T. 16 N., R. 12½ E., secs. 12, 13, 24, 25, and 36; T. 16 N., R. 13 E., secs. 7, 17–20, and 29–33; T. 16 N., R. 14 E., secs. 24, 25, 35, and 36 except those portions of secs. 24 and 35 lying northwesterly of Interstate Hwy. 15; T. 16 N., R. 15 E., secs. 1–3, 10–14, and 23–36; T. 16 N., R. 16 E., secs. 6–8, 16–22, and 26–36; T. 17 N., R. 11 E., secs. 1–5, 8–17, 20–29, and 31–36; T. 17 N., R. 12 E., secs. 3–10, 14–23, and 26–36; T. 18 N., R. 11 E., secs. 13, 14, 22–28, and 33–36; T. 18 N., R. 12 E., secs. 18–20, and 28–33.



8. *Piute-Eldorado Unit.* San Bernardino County. From BLM Maps: Amboy 1991, Needles 1978, and Ivanpah 1979. (Index map location H).

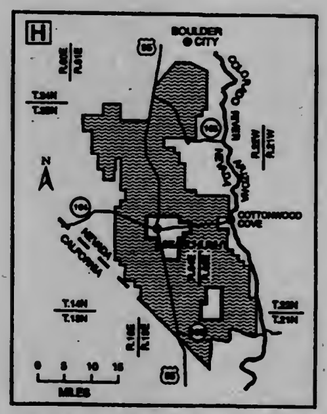
San Bernardino Meridian: T. 8 N., R. 14 E., secs. 1–4, 8–17, 19–24, 26–30, 32, and 33 except those portions of secs. 13, 23, 24, 26–28, 32, and 33 lying southeasterly of Interstate Hwy. 40; T. 8 N., R. 15 E., secs. 1–12, 17, and 18 except those portions of secs. 1, 9–12, 17, and 18 lying southeasterly of Interstate Hwy. 40; T. 8 N., R. 16 E., secs. 1–10 except those portions of sections 1–3 and 6–10 lying southerly of Interstate Hwy. 40; T. 8 N., R. 17 E., those portions of secs. 1–6 lying northerly of Interstate Hwy. 40; T. 9 N., R. 14 E., secs. 1–3, 10–15, 22–28, and 33–36; T. 9 N., R. 15 E.; T. 9 N., R. 16 E.; T. 9 N., R. 17 E., secs. 1–36 except that portion of sec. 36 lying southerly of Interstate Hwy. 40; T. 9 N., R. 18 E., secs. 1–36 except those portions of secs. 31–36 lying southerly of Interstate Hwy. 40; T. 9 N., R. 19 E., secs. 1–24 and 26–32 except those portions of secs. 26–29, 31, and 32 lying southerly of Interstate Hwy. 40; T. 9 N., R. 20 E., secs. 3–8 and 17–20 except those portions of secs. 19 and 20 lying southerly of Interstate Hwy. 40; T. 10 N., R. 14 E., secs. 11–14, 22–27, and 34–36; T. 10 N., R. 15 E., secs. 1–3, 9–16, and 18–36; T. 10 N., R. 16 E.; T. 10 N., R. 17 E.; T. 10 N., R. 18 E.; T. 10 N., R. 19 E.; T. 10 N., R. 20 E.; T. 10 N., R. 21 E., secs. 3–10, 15–22, and 28–31; T. 11 N., R. 15 E., secs. 9, 15, 16, 21, 22, 25–29, and 33–36; T. 11 N., R. 16 E., secs. 9, 15, 16, 21–23, 25–28, 31, and 33–36; T. 11 N., R. 17 E., secs. 8, 12–17, and 19–36; T. 11 N., R. 18 E., secs. 1–4 and 7–36; T. 11 N., R. 19 E., secs. 1–13, 18, 19, 23–27, and 29–36; T. 11 N., R. 20 E., secs. 1–11, 14–23, and 26–35; T. 12 N., R. 19 E.; T. 12 N., R. 20 E., secs. 3–11 and 13–36; T. 12 N., R. 21 E., secs. 19, 30, and 31; T. 13 N., R. 19 E., secs. 3–11 and 13–36; T. 13 N., R. 20 E., secs. 19 and 29–33; T. 14 N., R. 19 E., secs. 19 and 29–33.



Nevada. Areas of land as follows:

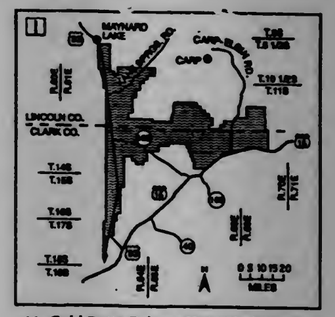
9. *Piute-Eldorado Unit.* Clark County. From BLM Maps: Mesquite Lake 1990, Boulder City 1978, Ivanpah 1979, and Davis Dam 1979. (Index map location H).

Mt. Diablo Meridian: T. 23 S., R. 64 E., secs. 31–36 except that portion of sec. 31 lying northwesterly of the powerline and also except those portions of secs. 34–36 lying northeasterly of the powerline; T. 23 ½ S., R. 64 E., secs. 31–36 except that portion of sec. 31 lying northwesterly of the powerline; T. 23 ½ S., R. 65 E., that portion of sec. 31 lying southwesterly of the powerline; T. 24 S., R. 63 E., secs. 1, 2, 11–15, 22–28, and 33–36 except those portions of secs. 1, 2, 11, 14, and 15 lying northwesterly of the powerline and those portions of secs. 22, 27, 28, and 33 lying northwesterly of U.S. Hwy. 95; T. 24 S., R. 64 E.; T. 24 S., R. 65 E., secs. 6, 7, 18, 19, 30, and 31; T. 25 S., R. 61 E., secs. 13–15, E ½ sec. 16, E ½ sec. 21, secs. 22–27, E ½ sec. 28, secs. 35 and 36; T. 25 S., R. 62 E., secs. 4–9, and secs. 16–36; T. 25 S., R. 63 E., secs. 1–4, 9–16, and 19–36 except those portions of sec. 4, 9, and 16 lying northwesterly of U.S. Hwy. 95; T. 25 S., R. 64 E., secs. 1–35 except secs. 13, 24, and 25.; T. 25 S. R. 65 E., sec. 6; T. 26 S., R. 61 E., secs. 1, 2, 11–14, 24, 25, and 36; T. 26 S., R. 62 E., secs. 1–36 except secs. 28 and 33; T. 26 S., R. 63 E., secs. 2–36 except sec. 12; T. 26 S., R. 64 E., secs. 18–20, and 29–33; T. 27 S., R. 62 E., secs. 1–3, 5–8, 10–15, 22–26, 35, and 36; T. 27 S., R. 62 ½ E., secs. 1, 12, 13, 24, 25, and 36; T. 27 S., R. 63 E.; T. 27 S., R. 64 E., secs. 4–9, 16–21, and 26–36; T. 27 S., R. 65 E., secs. 31–35; T. 28 S., R. 62 E., secs. 1–3, 9–16, 21–28, and 33–36; T. 28 S., R. 63 E., secs. 1–20, and 29–32; T. 28 S., R. 64 E., secs. 1–18, 21–26, 35, and 36; T. 28 S., R. 65 E., secs. 2–11, 14–21, and 28–35; T. 29 S., R. 62 E., secs. 1–4, 9–16, 21–28, 34, 35 and 36; T. 29 S., R. 63 E., secs. 5–10, 15–23, and 26–36; T. 29 S., R. 64 E., secs. 1–3, 9–16, 21–28, and 31–36; T. 29 S., R. 65 E., secs. 2–36 except secs. 12 and 13; T. 29 S., R. 66 E., secs. 30–32; T. 30 S., R. 62 E., secs. 1, 2, and 11–14; T. 30 S., R. 63 E., secs. 1–36 except secs. 30 and 31; T. 30 S., R. 64 E.; T. 30 S., R. 65 E., secs. 1–26, 30, 31, 35, and 36; T. 30 S., R. 66 E., secs. 4–9, 16–21, and 28–33; T. 31 S., R. 63 E., secs. 1–5, 8–16, 22–26, and 36; T. 31 S., R. 64 E.; T. 31 S., R. 65 E., secs. 1, 2, 6, 11–14, and 23–36 except that portion of sec. 36 lying southwesterly of State Hwy. 163; T. 31 S., R. 66 E., secs. 3–10, 15–22, and 27–34 except that portion of sec. 31 lying southwesterly of State Hwy. 163; T. 32 S., R. 64 E., secs. 1–6, 8–16, 22–26, and 36; T. 32 S., R. 65 E., secs. 1–12, 17–20, and 29–32 except those portions of secs. 1 and 9–12 lying southeasterly or easterly of State Hwy. 163; T. 32 S., R. 66 E., those portions of secs. 3–6 lying northerly of State Hwy. 163; T. 33 S., R. 65 E., sec. 5.



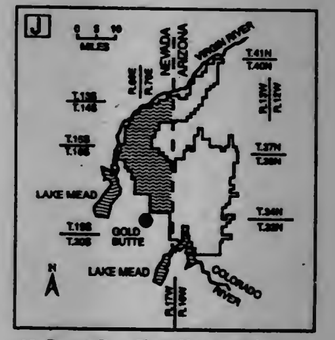
10. *Mormon Mesa Unit.* Clark and Lincoln Counties. From BLM Maps: Pahranagat 1978, Clover Mts. 1978, Overton 1978, Indian Springs 1979, Lake Mead 1979, and Las Vegas 1986. (Index map location I).

Mt. Diablo Meridian: T. 9 S., R. 62 E., secs. 13–15, 22–27, and 34–36 except those portions of secs. 15, 22, 27, and 34 lying westerly of the easterly boundary line of the Desert National Wildlife Range; T. 9 S., R. 63 E., secs. 18, 19, 30, and 31; T. 10 S., R. 62 E., secs. 1, 2, 11–14, 23–25, and 36 except those portions of secs. 14, 23, 35, and 36 lying westerly of the easterly boundary line of the Desert National Wildlife Range; T. 10 S., R. 63 E., secs. 6, 7, 13–15, 18–20, and 22–36; T. 10 S., R. 64 E., secs. 2–36 except sec. 12; T. 10 S., R. 65 E., secs. 18, and 19; T. 11 S., R. 62 E., that portion of sec. 1 lying easterly of the easterly boundary line of the Desert National Wildlife Range; T. 11 S., R. 63 E.; T. 11 S., R. 64 E., secs. 4–9, 17–20, 30, and 31; T. 11 S., R. 66 E., secs. 31–36; T. 12 S., R. 63 E.; T. 12 S., R. 64 E., secs. 6, 7, and 25–36; T. 12 S., R. 65 E., secs. 1, 12, 13, and 24–36 except those portions of secs. 1, 2, 13, and 24 lying westerly of Union Pacific Railroad; T. 12 S., R. 66 E.; T. 12 S., R. 67 E., secs. 6–8, 16–22, and 27–33; T. 12 S., R. 68 E., secs. 23–29 and 31–36; T. 12 S., R. 69 E., secs. 1–5, 8–17, and 19–36; T. 12½ S., R. 62 E., that portion of sec. 36 lying easterly of the easterly boundary line of the Desert National Wildlife Range; T. 13 S., R. 62 E., those portions of secs. 1, 12, 13, 24, and 25 lying easterly of the easterly line of the Desert National Wildlife Range; T. 13 S., R. 63 E.; T. 13 S., R. 64 E.; T. 13 S., R. 65 E., secs. 1–24, N ½ 26, N ½ 27, N ½ and SW ¼ sec. 28, 29–32, and W ½ 33; T. 13 S., R. 66 E., secs. 1–26, W ½ sec. 27, 35, and 36; T. 13 S., R. 67 E.; T. 13 S., R. 68 E., secs. 1–36 except those portions of secs. 25 and 33–36 lying southeasterly of Interstate Hwy. 15; T. 13 S., R. 69 E., secs. 1–30 except those portions of secs. 25–30 lying southerly of Interstate Hwy. 15; T. 13 S., R. 70 E., secs. 6, 7, 18, 19, 30, and 31 except those portions of secs. 30 and 31 lying southerly of Interstate Hwy. 15; T. 13½ S., R. 63 E., secs. 31–36; T. 13½ S., R. 64 E., secs. 31–36 except that portion of sec. 36 lying southwesterly of State Hwy. 168; T. 14 S., R. 63 E., secs. 1–23, and 26–35; T. 14 S., R. 64 E., secs. 2–6, 8–11, 15, and 16; T. 14 S., R. 66 E., secs. 1, E ½ sec. 2, 12, E ½ sec. 13, and E ½ sec. 24; T. 14 S., R. 67 E., secs. 1–12 and 14–22 except those portions of secs. 12, 14, 15, 21, and 22 lying southerly of Interstate Hwy. 15; T. 14 S., R. 68 E., those portions of secs. 4–7 lying northwesterly of Interstate Hwy. 15; T. 15 S., R. 63 E., secs. 2–11, 14–22, and 27–34; T. 16 S., R. 63 E., secs. 3–10, 15–22, and 28–33; T. 17 S., R. 63 E., secs. 7–9, 16–21, and 28–32 except those portions of secs. 29 and 32 lying easterly of the westerly boundary line of the Apex Disposal Road; T. 18 S., R. 63 E., secs. 5–8, 17–19, and 29–31 except those portions of secs. 5, 8, 17–19, and 29–31 lying easterly of the westerly boundary line of the Apex Disposal Road and that portion of sec. 31 lying westerly of the easterly boundary line of Desert National Wildlife Range.



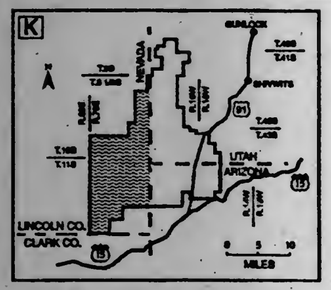
11. *Gold Butte-Pakoon Unit.* Clark County. From BLM Maps: Overton 1978 and Lake Mead 1979. (Index map location J).

Mt. Diablo Meridian: T. 13 S., R. 71 E., secs. 32–34; T. 14 S., R. 69 E., secs. 24–26, and 34–36; T. 14 S., R. 70 E., secs. 1, and 10–36; T. 14 S., R. 71 E., secs. 3–10, 15–22, and 27–34; T. 15 S., R. 69 E., secs. 1–3, 9–16, 21–28, and 33–36; T. 15 S., R. 70 E., secs. 2–11, 15–22, and 28–33; T. 16 S., R. 69 E., secs. 1–36 except secs. 6, 7, and 29–32; T. 16 S., R. 70 E., secs. 4–36 except sec. 12; T. 16 S., R. 71 E., secs. 19, and 29–32; T. 17 S., R. 69 E., secs. 1–3, 11–14, 24, 25, and 36; T. 17 S., R. 70 E.; T. 17 S., R. 71 E., secs. 4–10, 15–22, and 27–34; T. 18 S., R. 69 E., sec. 1; T. 18 S., R. 70 E., secs. 1–6, 10–15, 22–27, and 34–36; T. 18 S., R. 71 E., secs. 3–10, 15–22, and 27–34; T. 19 S., R. 71 E., secs. 3, 4, 9, 10, 15, 16, 21, 22, 27, 28, 33 and 34; T. 20 S., R. 71 E., secs. 3 and 4.



12. *Beaver Dam Slope Unit.* Lincoln County. From BLM Maps: Clover Mountains 1978 and Overton 1978. (Index map location K).

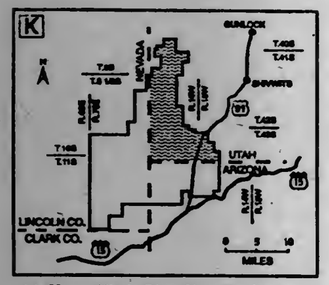
Mt. Diablo Meridian: T. 8 1/2 S., R. 71 E., that portion of sec. 34 lying south of a westerly extension of the north line of sec. 26, T. 41 S., R. 20 W. (Salt Lake Meridian), Washington County, Utah; T. 9 S., R. 71 E., secs. 3, 10, 15–17, 20–22, 27–29, and 32–34; T. 10 S., R. 70 E., secs. 19–36; T. 10 S., R. 71 E., secs. 3–5, 7–10, 15–22, and 27–34; T. 11 S., R. 70 E.; T. 11 S., R. 71 E., secs. 3–10, 15–22, and 27–34; T. 12 S., R. 70 E., secs. 1–12, 14–23, and 28–33; T. 12 S., R. 71 E., secs. 3–10.



Utah. Areas of land as follows:

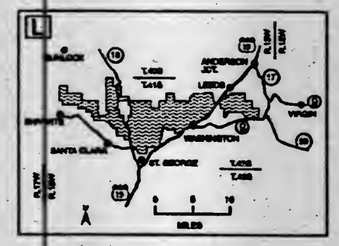
13. *Beaver Dam Slope Unit.* Washington County. From BLM Maps: St. George 1980 and Clover Mts. 1978. (Index map location K).

Salt Lake Meridian: T. 40 S., R. 19 W., S 1/2 sec. 28, S 1/2 sec. 29, S 1/2 sec. 31, secs. 32 and 33; T. 41 S., R. 19 W., S 1/2 sec. 2, S 1/2 sec. 3, secs. 4, 5, 6, E 1/2 sec. 7, secs. 8–11, 15–17, E 1/2 sec. 18, and secs. 19–22, and 28–33; T. 41 S., R. 20 W., E 1/2 sec. 1, secs. 24–26, 35, and 36; T. 42 S., R. 19 W., secs. 4–9, 16–22, and 27–34; T. 42 S., R. 20 W., secs. 1, 2, 11–14, 23–26, 35, and 36; T. 43 S., R. 18 W., secs. 7, 8, S 1/2 sec. 16, secs. 17–21, and 27–34; T. 43 S., R. 19 W., secs. 1–36 except N 1/2 sec. 1; T. 43 S., R. 20 W., secs. 1, 2, 11–14, 23–26, 35, and 36.



14. *Upper Virgin River Unit.* Washington County. From BLM Map: St. George 1980. (Index map location L).

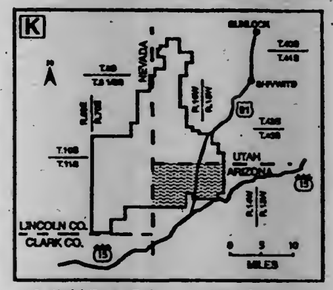
Salt Lake Meridian: T. 41 S., R. 13 W., secs. 17–21 except NW 1/4 NW 1/4 sec. 18, also W 1/2 and W 1/2 E 1/2 sec. 27, sec. 28 except that portion lying westerly of Gould Wash, N 1/2 sec. 29, N 1/2 sec. 30, N 1/2 N 1/2 sec. 33 except that portion lying westerly of Gould Wash, and N 1/2 NW 1/4 and NW 1/4 NE 1/4 sec. 34; T. 41 S., R. 14 W., S 1/2 S 1/2 and NE 1/4 SE 1/4 and SE 1/4 NE 1/4 sec. 13, that portion of sec. 14 lying westerly of Red Cliff Road, secs. 15–17 except N 1/2 NW 1/4 and SW 1/4 NW 1/4 sec. 17, secs. 19–22, that portion of sec. 23 lying westerly of Red Cliff Road and westerly of Interstate Hwy. 15, sec. 24, E 1/2 and N 1/2 SE 1/4 and SW 1/4 SE 1/4 sec. 25, and those portions of secs. 26, 27, and 32–34 lying northwesterly of Interstate Hwy. 15; T. 41 S., R. 15 W., secs. 14, 19, 20, and 22–36; T. 41 S., R. 16 W., secs. 4, 9, 10, S 1/2 sec. 14, 15–16, 19, 21, W 1/2 sec. 22, secs. 24–25 except W 1/2 SW 1/4 sec. 24 and W 1/2 NW 1/4 and NW 1/4 SW 1/4 sec. 25, and W 1/2 W 1/2 sec. 25, SW 1/4 NE 1/4 and NW 1/4 NW 1/4 and S 1/2 NW 1/4 and SW 1/4 and W 1/2 SE 1/4 sec. 27, E 1/2 and E 1/2 W 1/2 and NW 1/4 NW 1/4 and SW 1/4 SW 1/4 sec. 28, N 1/2 and SE 1/4 and E 1/2 SW 1/4 sec. 30, NE 1/4 sec. 31, N 1/2 sec. 32, N 1/2 and SE 1/4 and N 1/2 SW 1/4 sec. 33, sec. 34, SE 1/4 SE 1/4 and that portion of sec. 35 lying westerly of State Hwy. 18, and sec. 36; T. 41 S., R. 17 W., secs. 9, 14–16, NE 1/4 sec. 21, N 1/2 sec. 22, NW 1/4 and E 1/2 sec. 23, sec. 24, and NE 1/4 sec. 25; T. 42 S., R. 14 W., those portions of secs. 5 and 6 lying northwesterly of Interstate Hwy. 15; T. 42 S., R. 15 W., sec. 1, N 1/2 and N 1/2 S 1/2 sec. 2, NE 1/4 and W 1/2 sec. 3, secs. 4–9, W 1/2 W 1/2 sec. 10, N 1/2 N 1/2 sec. 12, secs. 16–18, N 1/2 and N 1/2 SE 1/4 and NE 1/4 SW 1/4 sec. 19, and W 1/2 NW 1/4 and NW 1/4 SW 1/4 sec. 20, except those portions of secs. 1 and 12 lying southeasterly of Interstate Hwy. 15; T. 42 S., R. 16 W., secs. 1–2, NW 1/4 and E 1/2 sec. 3, NE 1/4 NE 1/4 sec. 4, NE 1/4 sec. 10, NW 1/4 and E 1/2 sec. 11–12, E 1/2 and NW 1/4 and N 1/2 SW 1/4 sec. 13 except that portion lying westerly of State Hwy. 18, and N 1/2 NE 1/4 sec. 24.



Arizona. Areas of land as follows:

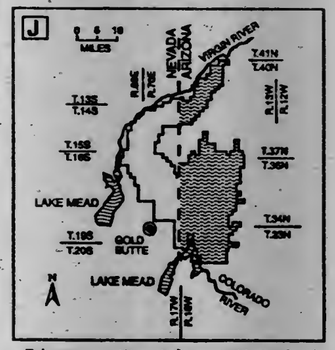
15. *Beaver Dam Slope Unit.* Mohave County. From BLM Maps: Overton 1978 and Littlefield 1987. (Index map location K).

Gila and Salt River Meridian: T. 41 N., R. 14 W., secs. 6, 7, 18, and 19; T. 41 N., R. 15 W., secs. 1–24, 26–28, 30, and 31; T. 41 N., R. 16 W., secs. 1–5, 8–17, 20–29, and 32–36; T. 42 N., R. 14 W., sec. 31; T. 42 N., R. 15 W., secs. 31–36; T. 42 N., R. 16 W., secs. 32–36.



16. *Gold Butte-Pakoon Unit.* Mohave County. From BLM Maps: Overton 1978, Littlefield 1987, Mount Trumbull 1986, and Lake Mead 1979. (Index map location J).

Gila and Salt River Meridian: T. 32 N., R. 15 W., secs. 1–18 except those portions of secs. 13–18 lying south of the Lake Mead National Recreation area boundary line; T. 32 N., R. 16 W., secs. 1, 2, 12, and 13; T. 32 1/2 N., R. 15 W., secs. 31–36; T. 32 1/2 N., R. 16 W., secs. 35 and 36; T. 33 N., R. 14 W., secs. 4–8, 18, 19, and 28–31; T. 33 N., R. 15 W.; T. 33 N., R. 16 W., secs. 1–14, 17–20, 23–26, 29–32, 35, and 36; T. 34 N., R. 14 W., secs. 4–9, 17–19, 30, 31, 33, and 34; T. 34 N., R. 15 W.; T. 34 N., R. 16 W.; T. 35 N., R. 14 W., secs. 3–9, 16–22, and 28–35 ; T. 35 N., R. 15 W.; T. 35 N., R. 16 W.; T. 36 N., R. 14 W., secs. 2–11, 14–22, and 27–34; T. 36 N., R. 15 W.; T. 36 N , R. 16 W., secs. 1–36 except secs. 4–9; T. 37 N., R. 14 W., secs. 15, 22, 27, 31, and 33–35; T. 37 N., R. 15 W., secs. 5, 8, 17–22, and 27–36; T. 37 N., R. 16 W., sec. 35; T. 38 N., R. 15 W., sec. 6; T. 38 N., R. 16 W., secs. 1–12 and 14–22; T. 39 N., R. 15 W., secs. 2–10, 16–21, and 29–32; T. 39 N., R. 16 W., secs. 1, 12, 13, 20, 23–29, and 32–36; T. 40 N., R. 14 W., sec. 6; T. 40 N., R. 15 W., secs. 1, 10–15, and 21–36.



Primary constituent elements: Desert lands that are used or potentially used by the desert tortoise for nesting, sheltering, foraging, dispersal, or gene flow.

BILLING CODE 1505-01-D

federal register

Thursday
February 24, 1994

Part II

Department of the Interior

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics Meeting; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal Consultation Meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct consultation meetings to obtain oral and written comments concerning potential issues in Indian education programs. The potential issues which will be set forth in a tribal consultation booklet to be issued prior to the meetings are as follows:

1. BIA safety and health inspection program—proposed rule.
2. BIA FY 95–97 State Plan—Exceptional Education Program.
3. Proposed Change to Intensive Residential Guidance Regulations.
4. Proposed National Organization for Higher Education Directors.
5. Proposed National Organization for Johnson-O'Malley Directors.
6. Proposed Portable Classroom Guidelines.
7. Indian Education Work Group Policy Papers.

DATES: March 14, 16, 18, 21, 23, and 25, 1994 for all locations listed. Several of the dates and locations were scheduled to coincide with meetings of various Indian education organizations. All meetings will begin at 9 a.m. and continue until 3 p.m. (local time). Written comments concerning the consultation items must be received no later than April 8, 1994.

ADDRESSES:

Location, Local Contact, and Telephone

March 14, 1994

1. Oklahoma, Tulsa, Jim Baker, 405/945–6051
2. New Mexico, Albuquerque, Val Cordova, 505/766–3034

March 16, 1994

1. Florida, Tampa, Lena Mills, 703/235–3233
2. New Mexico, Gallup, Lester Hudson, 505/368–4427

March 18, 1994

1. Alaska, Anchorage, Robert Pringle, 907/271–4115
2. Arizona, Phoenix, John Wahnee, 602/738–2262

March 21, 1994

1. California, San Diego, Fayetta Babby, 916/978–4680
2. South Dakota, Aberdeen, Neva Sherwood, 605/856–4478

March 23, 1994

1. Washington, Seattle, Van Peters, 503/230–5682
2. Wisconsin, Green Bay, Betty Walker, 612/373–1090

March 25, 1994

1. Montana, Billings, Larry Parker, 406/657–6375

Written comments should be mailed, to be received, on or before April 8, 1994, to the Bureau of Indian Affairs, Office of Indian Education Programs, MS 3512 MIB, 1849 C. Street, NW., Washington, DC 20240, Attn: Dr. John Tippeconnic; OR, may be hand delivered to room 3512 at the same address.

FOR FURTHER INFORMATION CONTACT: John Tippeconnic or Jim Martin at the above address or call 202/208–6123 or 208–3550.

SUPPLEMENTARY INFORMATION: The meetings are a follow-up to similar meetings conducted by the BIA since 1990. The purpose of the consultation, as required by 25 U.S.C. 2010(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA regarding Indian education programs. A consultation booklet for the March meetings is being distributed to Federally recognized Indian Tribes, Bureau Area and Agency Offices and Bureau-funded schools. The booklets will also be available from local contact persons and at each meeting.

Dated: February 15, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–4098 Filed 2–23–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
February 24, 1994

Part III

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

February 1, 1994.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of 37 rescission proposals and 12 deferrals contained in three special messages for FY 1994. These messages were transmitted to Congress on October 13, November 1, and November 19, 1993.

Rescissions (Attachments A and C)

As of February 1, 1994, 37 rescission proposals totaling $1,946.1 million had been transmitted to the Congress. Attachment C shows the status of the FY 1994 rescission proposals.

Deferrals (Attachments B and D)

As of February 1, 1994, $4,682.6 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1994.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the Federal Registers cited below:

58 FR 54256, Wednesday, October 20, 1993

58 FR 59517, Tuesday, November 9, 1993

58 FR 63264, Tuesday, November 30, 1993

Leon E. Panetta,

Director.

BILLING CODE 3110-01-M

ATTACHMENT A

STATUS OF FY 1994 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	1,946.1
Rejected by the Congress.....	---
Currently before the Congress.....	1,946.1

ATTACHMENT B

STATUS OF FY 1994 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	8,548.7
Routine Executive releases through February 1, 1994	-3,866.1
Overturned by the Congress.....	---
Currently before the Congress.....	4,682.6

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of February 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Foreign military financing grants	R94-1	40,000		11-1-93				
Economic support fund	R94-2	90,000		11-1-93	*			
Agency for International Development								
Development assistance fund	R94-3	160,000		11-1-93	*			
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R94-4	16,233		11-1-93				
Buildings and facilities	R94-5	8,460		11-1-93				
Cooperative State Research Service								
Cooperative State Research Service	R94-6	30,002		11-1-93				
Buildings and facilities	R94-7	34,000		11-1-93				
Agricultural Stabilization and Conservation Service								
Salaries and expenses	R94-8	12,167		11-1-93				
Soil Conservation Service								
Conservation operations	R94-9	12,167		11-1-93				
Farmers Home Administration								
Salaries and expenses	R94-10	12,167		11-1-93				
Rural Electrification Administration								
Rural electrification and telephone loans program account	R94-11	6,445		11-1-93				

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of February 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Food and Nutrition Service								
Commodity supplemental food program	R94-12	12,600		11-1-93				
DEPARTMENT OF COMMERCE								
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R94-13	6,000		11-1-93				
Construction	R94-14	4,000		11-1-93				
International Trade Administration								
Operations and administration	R94-15	2,000		11-1-93				
DEPARTMENT OF DEFENSE								
Military Construction								
Military construction, Army	R94-16	116,134		11-1-93				
Military construction, Air Force	R94-17	85,084		11-1-93				
Military construction, Army Reserve	R94-18	19,807		11-1-93				
Military construction, Naval Reserve	R94-19	4,438		11-1-93				
Military construction, Air Force Reserve	R94-20	18,759		11-1-93				
Military construction, Army National Guard	R94-21	251,654		11-1-93				
Military construction, Air National Guard	R94-22	105,138		11-1-93				
DEPARTMENT OF THE ARMY-CIVIL								
Army Corps of Engineers								
General investigations	R94-23	24,970		11-1-93				
Construction, general	R94-24	97,319		11-1-93				
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R94-25	97,300		11-1-93				

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of February 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Uranium supply and enrichment activities	R94-25	42,000		11-1-93				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R94-26	180,000		11-1-93				
DEPARTMENT OF INTERIOR								
Bureau of Reclamation								
Construction	R94-27	16,000		11-1-93				
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R94-28	600		11-1-93				
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Operations	R94-29	2,750		11-1-93				
Facilities and equipment	R94-30	40,257		11-1-93				
Federal Transit Administration								
Discretionary grants	R94-31	52,037		11-1-93				
Federal Highway Administration								
Highway demonstration projects	R94-32	187,827		11-1-93				
GENERAL SERVICES ADMINISTRATION								
Public Buildings Service								
Federal buildings fund	R94-33	126,022		11-1-93				

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of February 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R94-34	13,100		11-1-93				
OTHER INDEPENDENT AGENCIES								
State Justice Institute								
Salaries and expenses	R94-35	6,775		11-1-93	*			
United States Information Agency								
Salaries and expenses	R94-36	3,000		11-1-93				
North/South Center	R94-37	8,700		11-1-93				
TOTAL RESCISSIONS		1,946,122	0		0		0	

* Funds were never withheld from obligation.

ATTACHMENT D
Status of FY 1994 Deferrals - As of February 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 2-1-94
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D94-1	394,175		10-13-93					
	D94-1A		1,184,562	11-19-93	84,357				1,474,380
Foreign military financing grants	D94-9	3,137,279		11-19-93	1,000,000				1,337,279
Foreign military financing program account	D94-10	46,530		11-19-93					46,530
Agency for International Development									
Demobilization and transition fund	D94-2	8,000		10-13-93					8,000
International disaster assistance, executive	D94-11	118,059		11-19-93					118,059
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D94-3	461,639		10-13-93					461,639
Expenses, brush disposal	D94-4	40,195		10-13-93					40,195
Timber salvage sales	D94-5	256,897		10-13-93					256,897
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D94-6	1,852		10-13-93					1,852
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D94-7	7,317		10-13-93					7,317

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ATTACHMENT D
Status of FY 1994 Deferrals - As of February 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 2-1-94
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D94-8	27,100		10-13-93					
	D94-8A		49,261	11-19-93	20,061				56,300
GENERAL SERVICES ADMINISTRATION									
Public Buildings Service									
Public buildings fund	D94-12	2,835,860		11-19-93	1,961,737				874,123
TOTAL, DEFERRALS		7,334,903	1,213,823		3,066,155	0		0	4,482,571

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[FR Doc. 94-4109 Filed 2-23-94; 8:45 am]
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Thursday
February 24, 1994

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 685

Pelagic Fisheries of the Western Pacific Region; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 940245–4045; I.D. 012694F]

RIN 0648–AE35

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule to implement Amendment 7 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). This rule would replace a moratorium on the issuance of new permits for the Hawaii-based longline fishery for Pacific pelagic management unit species. Under this rule, limited entry permits for the Hawaii longline fishery would be issued to people meeting certain eligibility criteria. The rule also proposes broad framework procedures for subsequent adjustment of the conservation and management measures for the pelagics fisheries intended to provide for more efficient administration of the longline fishery. This rule also makes several technical changes to the regulations. The proposed action is necessary to manage the longline fishery based in Hawaii to achieve optimum yield from the fishery and prevent overfishing in accordance with the Magnuson Fishery Conservation and Management Act (Magnuson Act). Comments are solicited on this action; especially regarding the sufficiency of the upgrade limit to control the longline fleet's growth and the adequacy of this measure to protect pelagic stocks and to prevent adverse impacts on non-longline fishermen fishing for tuna and billfish, and to protect sea turtles.

DATES: Comments on the proposed rule will be accepted until April 4, 1994.

ADDRESSES: Comments on the proposed rule and the Initial Regulatory Flexibility Analysis (IRFA) may be sent to Anneka E. Bane, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213. Copies of the amendment, final environmental impact statement (FEIS), and IRFA are available from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (WPFMC), 1164 Bishop Street, Suite 1405, Honolulu, HI 96813, (808) 541–1974. Send comments on the proposed collection-of-information to the Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Paperwork Reduction Project 0648–0204 and 0648–0214, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, WPFMC, at (808) 541–1974; Svein Fougner, Southwest Region, NMFS, at (310) 980–4034; or Alvin Katekaru, Pacific Area Office, NMFS, at (808) 955–8831.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Western Pacific Fishery Management Council (Council) and approved and implemented by the Secretary of Commerce (Secretary) at a time when there were few problems in the domestic fisheries for management unit species (billfish and associated species). This is no longer the case. The longline fishery based in Hawaii targets swordfish, tuna, and other management unit species, with vessels often traveling up to 2,000 miles (3,219 Km) from port. Due to rapid growth of this fishery, prior to imposition of the 3-year moratorium on new participants, there was concern about the potential and actual impact of the expanded fishery on the status of some fish stocks, the impact of increased longline catches on other fisheries, and interactions between longline fishing and protected species such as Hawaiian monk seals and sea turtles.

The Council and Secretary have already taken several actions to address these concerns. They established a control date for possible use in a limited entry program (56 FR 12891, March 28, 1991), issued an emergency rule establishing a moratorium on new entry into the Hawaii-based longline fishery (56 FR 14866, April 12, 1991) and subsequently extended the moratorium to midnight, April 22, 1994, by Amendment 4 to the FMP (56 FR 51849, October 16, 1991). Amendment 7 would replace the moratorium and addresses a number of issues that are associated with the prospect of unregulated expansion of the longline fishery. Increased level of longline fishing catches from the portion of the EEZ around Hawaii and from adjacent high seas could result in overfishing of the stocks of Pacific pelagic management unit species throughout their range, most notably swordfish. Even if stocks were not affected on a stock-wide basis, increased catches by U.S. longline vessels could adversely affect other established fisheries, such as the commercial and recreational handline and troll fisheries in the EEZ, as well as within the longline fishery. Further, even if direct catch competition were not occurring, there would be considerable potential for market competition, both between the longline fleet and the troll and handline fleets and within the longline fishery itself. Unregulated expansion of the longline fishery could also increase the likelihood of adverse impacts on threatened and endangered species such as sea turtles, which are known to be taken in the longline fishery.

On the other hand, the restrictions (e.g., limitations on permit transfers and on vessel upgrading) under the moratorium, in combination with area closures around the Northwestern and main Hawaiian Islands, which were imposed after the moratorium went into effect, have been adversely affecting a number of people who had qualified for longline permits under the moratorium. More than a quarter of the eligible fleet was inactive in 1992, due in many cases to the main Hawaiian Island area closures that require vessels to travel 50 to 75 (81 to 121 Km) or more miles from shore to set their longline gear. Some older and smaller vessels are unable to fish under these restrictions. Vessel owners have in some cases been unable to sell or otherwise transfer their vessels or obtain financing for their fishing activity due to the "one transfer" limit during the moratorium. In the Council's view, this has been an unintended negative effect of the management program. Further, restrictions on the longline fishery outside the EEZ could have mixed effects on the nation. The United States would benefit if the fishery could expand without adverse effects on fish stocks, other fisheries, or protected resources and if foreign fleets were subject to similar restrictions. However, in the absence of similar management of foreign fleets, restricting the U.S. fleet could disadvantage the United States in any future negotiations leading to international regulation of longline fisheries and allocations of fish from the high seas.

In addition, Amendment 7 is intended to improve the administration of the existing longline fishery management program. The FMP also could be improved administratively. Existing framework procedures for regulatory changes are limited in scope, and new framework procedures are proposed to simplify and expedite the implementation of new regulations in particular instances without an FMP amendment. This is especially important for rapid response to new information indicating problems with respect to stock conservation or conservation of protected resources.

Hawaii longline limited entry permits would be required for longline vessels used to: (1) Fish for pelagic species in the EEZ around Hawaii; or (2) land or transship pelagic species shoreward of the outer boundary of the EEZ around Hawaii. The permits already required by existing regulations at 50 CFR 685.9 would be re-named "longline general permits" and would be required for longline vessels around American Samoa, Guam, the Northern Mariana Islands or other U.S. possessions in the Pacific Ocean, that are used to fish for, land, or transship pelagic species. Holders of Hawaii longline limited entry permits would not need a separate general permit to longline, land, or transship anywhere in the fishery management area (the waters off Hawaii and all the western Pacific territories and possessions), or adjacent state waters. Receiving vessel permits would be required for vessels shoreward of the outer boundary of the fishery management area that do not have longline gear on board and that land pelagic species or receive pelagic species from other vessels. For purposes of 50 CFR part 685, "land" means to begin to offload, to arrive in port with the intention of offloading, or to cause to be offloaded.

The following persons would be eligible for Hawaii longline limited entry permits:

(1) The last holder of record for any longline vessel limited entry permit under the moratorium, provided the vessel was used to land longline-caught management unit species in Hawaii at least once during the moratorium period;

(2) The last holder of record of a limited entry permit under the moratorium for a vessel less than 40 feet (12 m) in length; and

(3) The last holder of record of a limited entry permit obtained during the moratorium because that person also held a limited entry permit for the NWHI crustaceans (lobster) fishery.

Approximately 166 vessels are expected to qualify for permits under this program. Hawaii longline limited entry permits would be freely transferable between vessel owners, provided the new vessel is not longer than the longest vessel that had a longline limited entry permit and made landings during the moratorium period (about 93 feet (28 m) to date). The vessel's length overall is defined in the proposed regulations and will be the measure of length used in implementing this restriction.

These measures are intended to allow vessel owners more freedom to either transfer their vessels or permits to other prospective fishery participants or invest in larger vessels (up to the size of the largest vessel active in the moratorium period) in order to resume operation in the fishery. Vessel owners would have more freedom to decide whether and how to use their vessels and other resources. This is expected to result in a decrease in the number of smaller vessels and an increase in the number of larger vessels. Overall effort is expected to increase over the actual effort that occurred during the moratorium, with more effort directed at swordfish on the high seas. Landings of swordfish and tuna are expected to increase, with the value of landings estimated to rise from about $45 million in 1992 to about $60 million per year after fleet adjustments have been made.

The amendment contains framework procedures to allow rapid responses to changing conditions, including biological concerns for the stocks, economic problems in the fisheries, and potential harm to protected species under the Endangered Species Act, such as sea turtles. This would simplify the implementation of needed changes in the management program.

Non-permitted U.S. longline vessels could enter the exclusive economic zone (EEZ) in the Council's area of concern and ports shoreward of the EEZ with longline-caught fish on board provided the longline gear is stowed or secured. These vessels would not be allowed to offload management unit species shoreward of the outer boundary of the EEZ. These measures are intended to relieve economic strains now faced by longline vessel owners in Hawaii due to present limitations on permit transfers and vessel upgrades.

Section 685.23 would be removed because the 5-year review was completed in 1992 and this section is therefore no longer applicable. It was noted that pelagic fisheries had changed dramatically and that more frequent evaluation of the effectiveness of management was necessary. Several amendments to the FMP already had been implemented to address new issues. The Council now prepares an annual report on this fishery under the FMP.

This rule also proposes to add three fish species to the management unit (moonfish, *Lamprus* spp.; pomfret, Family Bramidae; and oilfish, Family Gempylidae). The definition of overfishing applied to other Pacific Pelagic Management Unit Species (excluding sharks) would apply to the species added to the management unit. This would ensure that collection of catch and effort data will be comprehensive.

In addition, the definition of protected species zone would be revised to correct a drafting error when the zone was created (56 FR 52214, October 18, 1991). The current definition leaves open to longline fishing a corridor between Laysan Island and Lisianski Island. The intent of the Council in establishing the protected species zone was to provide a continuous closed corridor around the NWHI in which longline fishing would be prohibited to protect Hawaiian monk seals.

The rule would eliminate § 685.26, which has procedures for changing longline fishing prohibited areas, because the new framework procedures in § 685.18 would encompass the procedures for changing longline fishing prohibited areas.

A consultation was conducted by NMFS under the Endangered Species Act in 1993 to determine if the fishery, as it was being managed under the FMP at that time, would jeopardize the continued existence of sea turtles. A Biological Opinion and Incidental Take Statement were issued June 10, 1993, that indicated the fishery is not likely to adversely affect any endangered or threatened species of sea turtle, nor will it adversely affect any critical habitat of any listed sea turtle species during the 1-year term of the Opinion. An incidental take of 752 turtles was established. Several conservation recommendations and reasonable and prudent measures were included in the Opinion and Statement, which are in an Appendix to this Amendment 7. Through complementary actions, the Council has also concurred with establishment of a mandatory observer program and an electronic vessel monitoring system requirement for the longline fishery. These measures were included in the Opinion and Statement. The proposed amendment will be evaluated for compliance with the Biological Opinion during the public review process for Amendment 7.

The conservation of sea turtles is a special concern. In the Biological Opinion and Incidental Take Statement, NMFS included a conservation recommendation that the FMP be amended to preclude increases in longline effort until it is demonstrated that the take of turtles is being managed at a level that will not preclude recovery of the species. Amendment 7 would establish a cap on potential harvesting capacity by allowing vessel upgrades only to the size of the largest vessel active in the moratorium period. The amendment indicates that it is likely

there will be some shift to larger vessels on average, and that larger vessels generally deploy fewer hooks per set than small vessels. Effort is not expected to increase above that which would have occurred if all the vessels in the fleet had been active in the moratorium. As noted, the amendment also proposes framework measures to allow rapid regulatory response to new information, including indications of need for management changes for protected resources. In separate actions, the Council has concurred with establishment of a mandatory observer program and a vessel monitoring system requirement. In the Council's view, these measures taken together are sufficient to control growth of the longline fishery and address future conservation problems with new actions, if necessary, and the amendment complies with the Biological Opinion and incidental take statement. NMFS specifically solicits comments on this issue.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, the Secretary has not determined that Amendment 7 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. In making that determination, the Secretary will take into account the data, views, and comments received during the comment period.

This action is not subject to review under E.O. 12866.

The Council prepared a combined draft FMP amendment/Draft Environmental Impact Statement (EIS) covering the impacts of the fishery as managed under this amendment and alternative approaches. The final amendment/final EIS satisfies NEPA requirements for documentation and analysis of the impacts of the fishery on the environment.

A consultation under section 7 of the Endangered Species Act (ESA) was conducted in 1993 and NMFS issued a Biological Opinion (Opinion) and Incidental Take Statement (Statement) in June 1993 concerning the take of sea turtles in the longline fishery. The Opinion concluded that the fishery, as managed by the FMP at that time, is not likely to jeopardize the continued existence of the species during the one-year period of the Opinion. An incidental take of 752 turtles was set for the one year during which the Opinion is in effect.

This rule, if adopted, is expected to have a significant economic impact on a substantial number of small entities. Hawaii longline vessel owners (approximately 166) will have more flexibility to buy and sell vessels and permits and to upgrade their fishing vessels to compete more effectively in the domestic longline fishery, as well as with foreign fleets. It is estimated that total revenue from longline landings would increase to $60 million per year from about $45 million in 1992. The final amendment/FEIS also is written to serve as an IRFA intended to satisfy the requirements of the Regulatory Flexibility Act.

This rule includes changes in an information collection previously approved by the Office of Management and Budget (OMB No. 0648–0204). A request for approval of these modifications and extension of the collections is included in a request submitted by the Southwest Region, NMFS, for approval of modification and extension of that collection that covers all Southwest Region fishery permit programs. The proposed program would require prospective participants in the Hawaii longline fishery to submit permit application forms and supporting information, including a current Certificate of Documentation from the U.S. Coast Guard, to obtain a permit under the new limited entry program. Landings records from the existing Hawaii longline logbook reporting requirement will be used to determine whether an individual has met any landings requirement to qualify for a permit. The estimated burden on the applicants is 30 minutes per application. This is less than the average of 1 hour or more that had been required for applications for permits in the moratorium period because those applications often involved documentation demonstrating intent to enter the longline fishery at a time when investment decisions were made. The documentation requirements under the new permit program will be simpler. This rule also restates requirements for the submission of logbooks and post-landing notifications. These requirements have already been approved by OMB under Control Number 0648–0214. The response times for these requirements were estimated to be 5 minutes per day for the logbook and 5 minutes per notification. Send comments regarding these burden estimates or any other aspect of these collection-of-information requirements, including suggestions for reducing burden, to the Director of the Southwest Region, NMFS, and to OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 685

American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Northern Mariana Islands.

Dated: February 17, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 685 is proposed to be amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 685.2, the definition of "Pacific pelagic management unit species" is amended by adding three new entries alphabetically to the list of species; the definition of "protected species zone" is amended by revising the last sentence of the definition; the definition of "receiving vessel" is revised; the definition of "substantial financial investment" is removed; and new definitions of "Council", "Fisheries Management Division (FMD)", "Hawaii longline limited entry permit", "length overall or length", "longline fishing vessel", "longline general permit", "moratorium", and "receiving vessel permit" are added in alphabetical order, to read as follows:

§ 685.2 Definitions.

* * * * *

Council means the Western Pacific Regional Fishery Management Council that was established under section 302 of the Magnuson Act.

* * * * *

Fisheries Management Division (FMD) means the Chief, Fisheries Management Division, Southwest Regional Office, National Marine Fisheries Service, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802, or a designee.

* * * * *

Hawaii longline limited entry permit means the permit required by § 685.9(a)(2) to use a vessel to fish for Pacific pelagic management unit species with longline gear in the EEZ or to land or transship longline-caught fish shoreward of the EEZ around Hawaii.

* * * * *

Length overall or *length* of a vessel means the length overall set forth in the Certificate of Documentation (CG–1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel (addresses available from 50 CFR part 611, subpart A, appendix A). For vessels that do not have the length overall stated in an official document, or for a vessel for which NMFS requests confirmation of the length overall, the length overall is the horizontal distance, rounded to the nearest foot, between the foremost part of the stern and the aftermost part of the stem, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 1 of this part).

* * * * *

Longline fishing vessel means a vessel that has longline gear on board the vessel.

* * * * *

Longline general permit means the permit required by § 685.9(a)(1) to use a vessel to fish for Pacific pelagic management unit species in the fishery management area excluding the EEZ around Hawaii, or to land or transship longline-caught fish shoreward of the outer boundary of the fishery management area, excluding the waters shoreward of the EEZ around Hawaii.

* * * * *

Moratorium means the moratorium on new entry into the Hawaii longline fishery in effect from April 23, 1991, through April 22, 1994.

* * * * *

Pacific pelagic management unit species means the following fish:

Common name	Scientific name
. . .	. . .
Moonfish (or opah)	*Lampris* spp.
. . .	. . .
Oilfish (or walu)	Family Gempylidae.
Pomfret	Family Bramidae.
. . .	. . .

Protected species zone means * * * Parallel lines tangent to and connecting those 50-nm areas around Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, Laysan Island and Lisianski Island, and Lisianski Island and Pearl and Hermes Reef, delimit the remainder of the protected species zone.

Receiving vessel means a vessel of the United States that has on board the vessel longline-caught Pacific pelagic management unit species but does not have longline fishing gear on board the vessel.

Receiving vessel permit means a permit required by § 685.9(a)(3) for a receiving vessel to transship or land Pacific pelagic management unit species.

* * * * *

3. In § 685.4, paragraph (b) introductory text is revised to read as follows:

§ 685.4 Recordkeeping and reporting.

* * * * *

(b) The operator of any longline fishing vessel subject to § 685.9(a)(1) or (a)(2) must maintain on board the vessel an accurate and complete fishing logbook for each day of each fishing trip, which must include the following information:

* * * * *

4. In § 685.5, paragraphs (e) through (h) are revised and paragraphs (y), (z), (aa), (bb), and (cc) are added to read as follows:

§ 685.5 Prohibitions.

* * * * *

(e) Use a longline vessel without a valid general longline permit or a Hawaii longline limited entry permit registered for use with that vessel, to fish for Pacific pelagic management unit species in the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area.

(f) Use a longline fishing vessel without a valid Hawaii longline limited entry permit registered for use with that vessel to fish for Pacific pelagic management unit species in the EEZ around Hawaii.

(g) Use a receiving vessel without a valid receiving vessel permit registered for use with that vessel to land or transship, shoreward of the outer boundary of the Fishery Management Area Pacific pelagic management unit species harvested with longline gear.

(h) Transfer a permit in violation of § 685.9(j).

* * * * *

(y) Refuse to make available to an authorized agent for inspection or copying any records that must be made available under § 685.17.

(z) Use a U.S. vessel that has longline gear on board and that does not have a valid Hawaii longline limited entry permit registered for use with that vessel or a valid longline general permit registered for use with that vessel to land or transship Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area.

(aa) Use a U.S. vessel that has longline gear on board and that does not have a valid Hawaii longline limited entry permit registered for use with that vessel to land or transship Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around Hawaii.

(bb) Enter the EEZ around Hawaii with longline gear that is not stowed or secured in accordance with § 685.25, if operating a U.S. vessel without a valid Hawaii longline limited entry permit registered for use with that vessel.

(cc) Enter the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area with longline gear that is not stowed or secured in accordance with § 685.25, if operating a U.S. vessel without a valid Hawaii longline limited entry permit registered for use with that vessel or a longline general permit registered for use with that vessel.

5. Section 685.9 is revised to read as follows:

§ 685.9 Permits.

(a) Permit requirements. (1) A longline fishing vessel of the United States must be registered for use under a Hawaii limited entry permit or a longline general permit if that vessel:

(i) Is used to fish for Pacific pelagic management unit species in the EEZ around American Samoa, Guam, the Northern Mariana Islands, or other U.S. island possessions in the Pacific Ocean; or

(ii) Is used to land or transship Pacific pelagic management unit species, shoreward of the outer boundary of the EEZ around American Samoa, Guam, the Northern Mariana Islands, or other U.S. island possessions in the Pacific Ocean.

(2) A longline fishing vessel of the United States must be registered for use under a Hawaii limited entry permit if that vessel:

(i) Is used to fish for Pacific pelagic management unit species in the EEZ around Hawaii; or

(ii) Is used to land or transship Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around Hawaii.

(3) A receiving vessel must be registered for use with a receiving vessel permit if that vessel is used to land or transship, shoreward of the Fishery Management Area, Pacific pelagic management unit species that were harvested with longline gear.

(b) Eligibility for initial permits. (1) Only a person who is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued a longline general permit under paragraph (a)(1) of this section or a receiving vessel

permit under paragraph (a)(3) of this section.

(2) Any person who is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) is eligible for initial issuance of a Hawaii limited entry permit under paragraph (a)(2) of this section, provided that person on April 22, 1994:

(i) Owns a limited entry permit issued under this part during the moratorium, and owns or owned a vessel that landed longline-caught management unit species in Hawaii at least once during the moratorium; or

(ii) Owns a limited entry permit issued under this part during the moratorium for a vessel that is less than 40 feet (12 m) in length; or

(iii) Owns a limited entry permit issued to that person under § 685.15(c)(6) because that person was the holder of a permit for the Northwestern Hawaiian Islands lobster fishery under 50 CFR 681.30.

(c) Application. (1) An application for a permit under this section must be submitted on a Southwest Region Federal Fisheries Application form obtained from the Pacific Area Office containing all the necessary information, attachments, certification, signatures, and fees. In no case will oral or telephone applications be accepted.

(2) A vessel owner must submit an application for a permit to the Pacific Area Office at least 15 days before the desired effective date of the permit. If an incomplete or improperly completed application is filed, the applicant will be sent a notice of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(3) An application is complete when all required information, attachments, certifications, signatures, and fees have been received.

(d) Change in application information. Any change in information on the permit application form submitted under paragraph (c) of this section must be reported to the Pacific Area Office at least 10 days before the effective date of the change. Failure to report such changes may result in termination of the permit.

(e) Issuance. After receiving a complete application, the FMD will issue a permit to an applicant eligible for a permit under this section.

(f) Fees. A fee is charged for each application for a Hawaii longline limited entry permit (including initial permits, permit transfers and permit renewals). The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of a limited entry permit.

(g) Expiration. Permits issued under this section remain valid for the period specified on the permit unless transferred, revoked, suspended, or modified under 15 CFR part 904.

(h) Renewal. An application for renewal of any permit issued under this section must be submitted to the Pacific Area Office in the same manner as described in paragraph (c) of this section.

(i) Replacement. Replacement permits may be issued, without charge, to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(j) Transfer. (1) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(2) The owner of a Hawaii longline limited entry permit may apply to transfer the permit:

(i) To a different person for registration for use with the same or another vessel; or

(ii) For registration for use with another U.S. vessel under the same ownership.

(3) An application for a permit transfer must be submitted to the Pacific Area Office in the same manner as described in paragraph (c) of this section.

(k) A permit will not be registered for use with a vessel that has a length overall that is greater than the length overall of the vessel that had the greatest length overall and that landed Pacific pelagic management unit species under a limited entry permit during the moratorium.

(l) Only a person who is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a limited entry permit.

6. Section 685.13 is revised to read as follows:

§ 685.13 Notification of landings and transshipments.

The operator of a longline fishing vessel that is subject to the permit requirements of § 685.9(a) of this part shall contact the Pacific Area Office by telephone, at a number provided to permit holders, within 12 hours of the vessel's arrival at any port in Hawaii, Guam, American Samoa, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area and report the name of the vessel, name of the vessel operator, and the date and time of each landing or transshipment of Pacific pelagic management unit species by the vessel since its previous report of landing and/or transshipment.

7. Section 685.15 is revised to read as follows:

§ 685.15 Permit appeals.

(a) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or any permit owner may appeal the granting, denial, conditioning, suspension, or transfer of a permit or requested permit to the Regional Director. In order to be considered by the Regional Director, the appeal must be in writing, must state the action(s) appealed, and the reasons therefor, and must be submitted within 30 days of the action(s) by the FMD. The appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Regional Director may request additional information as will allow action on the appeal. Upon receipt of sufficient information, the Regional Director will decide the appeal in accordance with the criteria set forth in this part and the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information available, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (c) of this section, and such other considerations as deemed appropriate. The Regional Director will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested, or if the Regional Director determines that one is appropriate, the Regional Director may grant an informal hearing before a hearing officer designated for that purpose. Such a hearing normally shall be held no later than 30 days following receipt of the appeal unless the hearing officer extends the time for reasons deemed equitable. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend, in writing, a decision to the Regional Director.

(d) The Regional Director may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Director will notify the appellant, and interested persons, if any, of the decision, and the reason(s) therefor, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Director's action shall constitute final Agency action for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Director for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.

8. Section 685.17 is revised to read as follows:

§ 685.17 Availability of records for inspection.

Any fish dealer shall provide an authorized officer access for inspecting and copying all records of fish purchases, sales, or other transactions involving fish taken or handled by vessels that have permits issued under this part or are otherwise subject to this part, including but not limited to information concerning:

(a) The name of the vessel involved in each transaction and the owner or operator of the vessel;

(b) The amount, number, and size of each species of fish involved in each transaction; and

(c) The price(s) paid by the buyer and proceeds to the seller in each transaction.

9. A new § 685.18 is added to subpart A to read as follows:

§ 685.18 Framework procedures.

(a) *Introduction.* New management measures may be added, through rulemaking, if new information demonstrates that there are biological, social, or economic concerns in the fishery. The following framework process allows for measures that may affect operation of the fisheries, gear restrictions, quotas, or reductions or increases in longline catch and/or effort if the information supports such a change. Additional information may indicate the need for new management measures for other sectors of the fishery, such as harvest guidelines, permits for certain classes of vessels, or reporting requirements.

(b) *Annual report*—(1) *Assessment of the fisheries.* By June 30 of each year, the Council-appointed Pelagics Plan Team will prepare an annual report on fisheries in the fishery management area, containing the following:

(i) Fishery performance data (e.g., landings, effort, value of landings, species composition);

(ii) Summary of recent research and survey results;

(iii) Habitat conditions and recent alterations;

(iv) Enforcement activities and problems;

(v) Administrative action (e.g., data collection and reporting, permits);

(vi) State and territorial management actions; and

(vii) Assessment of need for Council action (including biological, economic, social, enforcement, administrative, and state/Federal needs, problems, and trends). Indications of potential problems warranting further investigation may be signaled by indicator criteria. These criteria could include, but are not limited to, important changes in: Mean size of the catch of any species; estimated ratio of fishing mortality to natural mortality for any species; decline in catch per unit effort by any sector; ex-vessel revenue of any sector; relative proportions of gear in and around the EEZ; rate of entry/exit of fishermen in the fisheries; revenues for a significant percentage of any sector; total pelagic landings; species composition of the pelagic landings; research results; habitat or environmental conditions; or level of interactions between pelagic fishing operations and protected species in the EEZ or surrounding waters.

(viii) Recommendations for Council action; and

(ix) Estimated impacts of recommended action.

(2) *Recommendations for management action.* The annual report shall specify any recommendations made by the Pelagics Plan Team to the Council. Recommendations may cover actions suggested for Federal regulations, state/territorial action, enforcement or administrative elements, and research and data collection. Recommendations will include an assessment of urgency and the effects of not taking action and will indicate whether changes involve existing measures, which may be changed under paragraph (c) of this section, or new measures, which may be implemented under paragraph (d) of this section.

(c) *Procedure for changing established measures.* (1) Established measures are those that are or have been in place via rulemaking procedures for various sectors of the fisheries, including, but not limited to: General longline fishery permits; limited entry longline fishery permits; longline logbooks and other reporting requirements; longline area closures; and longline gear marking requirements. The estimated and potential impacts of these measures have been evaluated in past FMP amendments and associated documents.

(2) The Council will identify problems that may warrant action. This may be through the annual report described in paragraph (b)(1) of this section, or a separate report from the Pelagics Plan Team, the Advisory Subpanel, Pelagics Review Board, Scientific and Statistical Committee, pelagic fishery sector, enforcement officials, NMFS or other sources. The Council will discuss at its next meeting whether changes to established conservation and management measures would resolve the problem. Notice to the public and news media preceding the meeting will indicate that the Council intends to discuss and possibly recommend regulatory adjustments through the framework process for established measures to address the issue or problem. The notice must summarize the issue(s) and the basis for recommending the measures being reviewed and would refer interested parties to the document(s) pertaining to the issue. Based on the discussions at the meeting, which could include participation by the Pelagics Plan Team, Advisory Subpanel, Pelagics Review Board, Scientific and Statistical Committee, or other Council organizations, the Council will decide whether to recommend action by the Regional Director. The Regional Director will be asked to indicate any special concerns or objections to the possible actions being considered under the framework process and, if there are any concerns or objections, will be asked for ways to resolve them.

(3) If the Council decides to proceed, a document will be prepared describing the problem and the proposed regulatory adjustment to resolve it. The document will demonstrate how the adjustment is consistent with the purposes of the established measure and that the impacts had been addressed in the document supporting the original imposition of the measure. The document will be submitted to the Regional Director with a recommendation for action. The Council may indicate its intent that the recommendations are to be approved or disapproved as a single action.

(4) If the Regional Director approves part or all of the Council's recommendation, the Secretary, in accordance with the Administrative Procedure Act, may implement the approved change in an established

measure by publishing a final rule, waiving advance notice and comment. This does not preclude the Secretary from deciding to provide additional opportunity for advance notice and comment, but contemplates that the Council process will satisfy the requirements of the Magnuson Act and Administrative Procedure Act. It is emphasized that established measures are measures that have been evaluated and applied in the past, and adjustments are meant to be consistent with the original intent of the measure and within the scope of analysis in previous documents supporting the existing measure.

(5) Nothing in this section limits the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

(d) *Procedure for implementing new measures.* (1) New measures are those that have not been used before or measures that, while previously applied, would be applied to another fishing sector (e.g., non-longline pelagic fishery) or gear type for the first time. New measures may have been previously considered in a past FMP amendment or document, but the specific impacts on the persons to whom the measures would newly apply have not been evaluated in the context of current conditions. Potential new measures include, but are not limited to: Permit requirements for new fishery sectors; reporting requirements for a fishery sector other than longline fishing; effort limitations; quotas (for total catch or by species) including individual transferable quotas; fractional licensing; or bycatch limits.

(2) A Pelagics Plan Team report (annual report or an in-season report), input from advisors, or input from NMFS or other agencies will first bring attention to a problem or issue that needs to be addressed at the next Council meeting. In its notice announcing the meeting, the Council will summarize the concern or issue raised, the party that has raised the problem, and the extent to which it is a new problem or a problem that may require new management measures. The Council will seek to identify all interested persons and organizations and solicit their involvement in discussion and resolution of this problem through the Council process, and the Council meeting notice in the **Federal Register** will emphasize that this problem will be discussed and that proposed actions may result.

(3) The document presenting the problem to the attention of the Council will be distributed to all advisory bodies of the Council who have not yet received it, with a request for comments. The document also will be distributed to the Council's mailing list associated with the FMP to solicit inputs and to indicate the Council will take up action at the following meeting. The Council's chairperson may request the Council's Pelagics Standing Committee to discuss the issue and review the comments (if any) of the Pelagics Plan Team, Advisory Panel, Pelagics Review Board, or Scientific and Statistical Committee, and develop recommendations for Council action.

(4) At the meeting, the Council will consider the recommendations of its Pelagics Standing Committee, if any, and other Council organizations and will take comments from the public concerning the possible course of action. If the Council agrees to proceed with further action under the framework process, the issue will be placed on the agenda for the following meeting. A document describing the issue, alternative ways to resolve the issue, the preferred action, and the anticipated impacts of the preferred action, will be prepared and distributed to the public with a request for comments. A notice will be published in the **Federal Register** summarizing the Council's deliberations and preferred action and indicating the time and place for the Council meeting to take final action.

(5) In its notice for the following meeting, the Council will indicate that the Council may take final action on the possible adjustment to regulations under this section. At the meeting, the Council will consider the comments received as a result of its solicitation of comments and take public comments during the meeting on the issue or problem. The Council will consider any new information presented or collected and analyzed during the comment period. The Regional Director will be provided a specific opportunity to indicate any objections or concerns about any or all components of the measures being considered. The Council then will decide whether to propose a new measure or measures under this section.

(6) If the Council decides to proceed, the Council will submit its proposal to the Regional Director for consideration with supporting rationale and an analysis of the estimated biological, economic and social impacts of the proposed actions. The Council may indicate its intent that all components of its recommendations be approved or disapproved as a single action.

(7) If the Regional Director concurs in whole or in part, the Secretary, in accordance with the Administrative Procedure Act, may implement the approved new measure by publishing a final rule, waiving advance notice and comment. Nothing in this procedure is intended to preclude the Secretary from deciding to provide additional opportunity for advance notice and comment in the **Federal Register**, but contemplates that the Council process (which includes two Council meetings with opportunity for public comment at each) will satisfy that requirement.

(8) If a new action is approved and implemented, future adjustments may be made under the procedure for established measures.

(9) Nothing in this section limits the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

§ 685.23 [Removed]

§ 685.24 through 685.26 [Redesignated as §§ 685.23 through 685.25]

10. Section 685.23 is removed and §§ 685.24, 685.25, and 685.26 are redesignated §§ 685.23, 685.24, and 685.25, respectively.

11. In newly redesignated § 685.24 paragraphs (a)(1) and (f) introductory text are revised to read as follows:

§ 685.24 Exemptions for longline fishing prohibited areas; procedures.

(a) * * *

(1) Currently owns a Hawaii longline limited entry permit issued under this part and registered for use with his or her vessel;

* * * * *

(f) The Council will consider information provided by persons with Hawaii longline limited entry permits issued under this part who believe they have experienced extreme financial hardship resulting from the Hawaii longline area closure, and will consider recommendations of the Pelagic Advisory Review Board to assess whether exemptions under this section should continue to be allowed, and, if appropriate, revise the qualifying criteria in paragraph (a) of this section to permit additional exemptions.

* * * * *

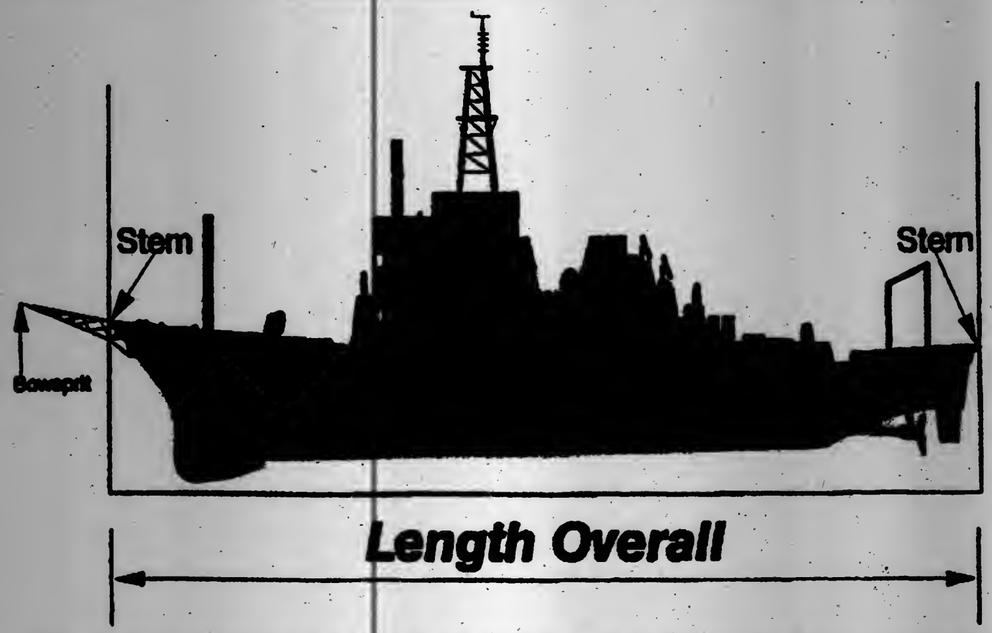
12. Newly redesignated § 685.25 is revised to read as follows:

§ 685.25 Port privileges and transiting for unpermitted longline vessels.

A U.S. longline fishing vessel that does not have a permit under § 685.9(a)(1) or (a)(2) may enter waters of the fishery management area with pacific pelagic management unit species on board, but may not land or transship any management unit species on board the vessel. The vessel's longline gear must be stowed or secured so it is rendered unusable during the time the vessel is in those waters.

13. Figure 1 is added to part 685 as follows:

BILLING CODE 3510-22-P



Length Overall—the horizontal distance between the foremost part of the stem and the aftermost part of the stem, excluding bowspirits, rudders, outboard motor brackets, and similar fittings or attachments. Rounded to the nearest foot.

Stem—the foremost position of a vessel; a section of timber or cast, forged or rolled metal to which the sides of a vessel are united at the fore end with the lower and scarfed to the keel and the bowspirit, if one is present, resting on the upper end.

Stern—the aftermost part of the vessel.

Figure 1.

[FR Doc. 94–4107 Filed 2–18–94; 1:13 pm]
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federal register

Thursday
February 24, 1994

Part V

The President

Executive Order 12900—Educational Excellence for Hispanic Americans

Federal Register
Vol. 59, No. 37
Thursday, February 24, 1994

Presidential Documents

Title 3—

The President

Executive Order 12900 of February 22, 1994

Educational Excellence for Hispanic Americans

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to advance the development of human potential, to strengthen the Nation's capacity to provide high-quality education, and to increase opportunities for Hispanic Americans to participate in and benefit from Federal education programs, it is hereby ordered as follows:

Section 1. There shall be established in the Department of Education the President's Advisory Commission on Educational Excellence for Hispanic Americans (Commission). The Commission shall consist of not more than 25 members, who shall be appointed by the President and shall report to the Secretary of Education (Secretary). The Commission shall comprise representatives who: (a) have a history of involvement with the Hispanic community; (b) are from the education, civil rights, and business communities; or (c) are from civic associations representing the diversity within the Hispanic community. In addition, the President may appoint other representatives as he deems appropriate.

Sec. 2. The Commission shall provide advice to the President and the Secretary on: (a) the progress of Hispanic Americans toward achievement of the National Education Goals and other standards of educational accomplishment; (b) the development, monitoring, and coordination of Federal efforts to promote high-quality education for Hispanic Americans; (c) ways to increase State, private sector, and community involvement in improving education; and (d) ways to expand and complement Federal education initiatives. The Commission shall provide advice to the President through the Secretary.

Sec. 3. There shall be established in the Department of Education the White House Initiative on Educational Excellence for Hispanic Americans (Initiative). The Initiative shall be an interagency working group coordinated by the Department of Education and shall be headed by a Director, who shall be a senior level Federal official. It shall provide the staff, resources, and assistance for the Commission and shall serve the Secretary in carrying out his or her responsibilities under this order. The Initiative is authorized to utilize the services, personnel, information, and facilities of other Federal, State, and local agencies with their consent, and with or without reimbursement, consistent with applicable law. To the extent permitted by law and regulations, each Federal agency shall cooperate in providing resources, including personnel detailed to the Initiative, to meet the objectives of this order. The Initiative shall include both career civil service and appointed staff with expertise in the area of education, and shall provide advice to the Secretary on the implementation and coordination of education and related programs across Executive agencies.

Sec. 4. Each Executive department and each agency designated by the Secretary shall appoint a senior official, who is a full-time officer of the Federal Government and responsible for management or program administration, to report directly to the agency head on activity under this Executive order and to serve as liaison to the Commission and the Initiative. To the extent permitted by law and to the extent practicable, each Executive department and designated agency shall provide any appropriate information requested by the Commission or the staff of the Initiative, including data relating

to the eligibility for and participation by Hispanic Americans in Federal education programs and the progress of Hispanic Americans in relation to the National Education Goals. Where adequate data is not available, the Commission shall suggest the means of collecting the data.

Sec. 5. The Secretary, in consultation with the Commission, shall submit to the President an Annual Federal Plan to Promote Hispanic American Educational Excellence (Annual Federal Plan, or Plan). All actions described in the Plan shall be designed to help Hispanic Americans attain the educational improvement targets set forth in the National Education Goals and any standards established by the National Education Standards and Improvement Council. The Plan shall include data on eligibility for, and participation by, Hispanic Americans in Federal education programs, and such other aspects of the educational status of Hispanic Americans as the Secretary considers appropriate. This Plan also shall include, as an appendix, the text of the agency plans described in section 6 of this order. The Secretary, in consultation with the Commission and with the assistance of the Initiative staff, shall ensure that superintendents of Hispanic-serving school districts, presidents of Hispanic-serving institutions of higher education, directors of educational programs for Hispanic Americans, and other appropriate individuals are given the opportunity to comment on the proposed Annual Federal Plan. For purposes of this order, a "Hispanic-serving" school district or institution of higher education is any local education agency or institution of higher education, respectively, whose student population is more than 25 percent Hispanic.

Sec. 6. As part of the development of the Annual Federal Plan, each Executive department and each designated agency (hereinafter in this section referred to collectively as "agency") shall prepare a plan for, and shall document, both that agency's effort to increase Hispanic American participation in Federal education programs where Hispanic Americans currently are underserved, and that agency's effort to improve educational outcomes for Hispanic Americans participating in Federal education programs. This plan shall address, among other relevant issues: (a) the elimination of unintended regulatory barriers to Hispanic American participation in Federal education programs; (b) the adequacy of announcements of program opportunities of interest to Hispanic-serving school districts, institutions of higher education, and agencies; and (c) ways of eliminating educational inequalities and disadvantages faced by Hispanic Americans. It also shall emphasize the facilitation of technical, planning, and development advice to Hispanic-serving school districts and institutions of higher education. Each agency's plan shall provide appropriate measurable objectives for proposed actions aimed at increasing Hispanic American participation in Federal education programs where Hispanic Americans currently are underserved. After the first year, each agency's plan also shall assess that agency's performance on the goals set in the previous year's annual plan. These plans shall be submitted by a date and time to be established by the Secretary.

Sec. 7. The Director of the Office of Personnel Management, in consultation with the Secretary and the Secretary of Labor, to the extent permitted by law, shall develop a program to promote recruitment of Hispanic students for part-time, summer, and permanent positions in the Federal Government.

Sec. 8. I have determined that the Commission shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2). Notwithstanding any other Executive order, the responsibilities of the President under the Federal Advisory Committee Act, as amended, shall be performed by the Secretary, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 9. *Administration.* (a) Members of the Commission shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(b) The Commission and the Initiative shall obtain funding for their activities from the Department of Education.

(c) The Department of Education shall provide such administrative services for the Commission as may be required.

Sec. 10. Executive Order No. 12729 is revoked.

William J. Clinton

THE WHITE HOUSE,
February 22, 1994.

[FR Doc. 94–4472
Filed 2–23–94; 11:35 am]
Billing code 3195–01–P

Editorial note: For the President's remarks on signing this Executive order, see the *Weekly Compilation of Presidential Documents* (vol. 30, no. 8).

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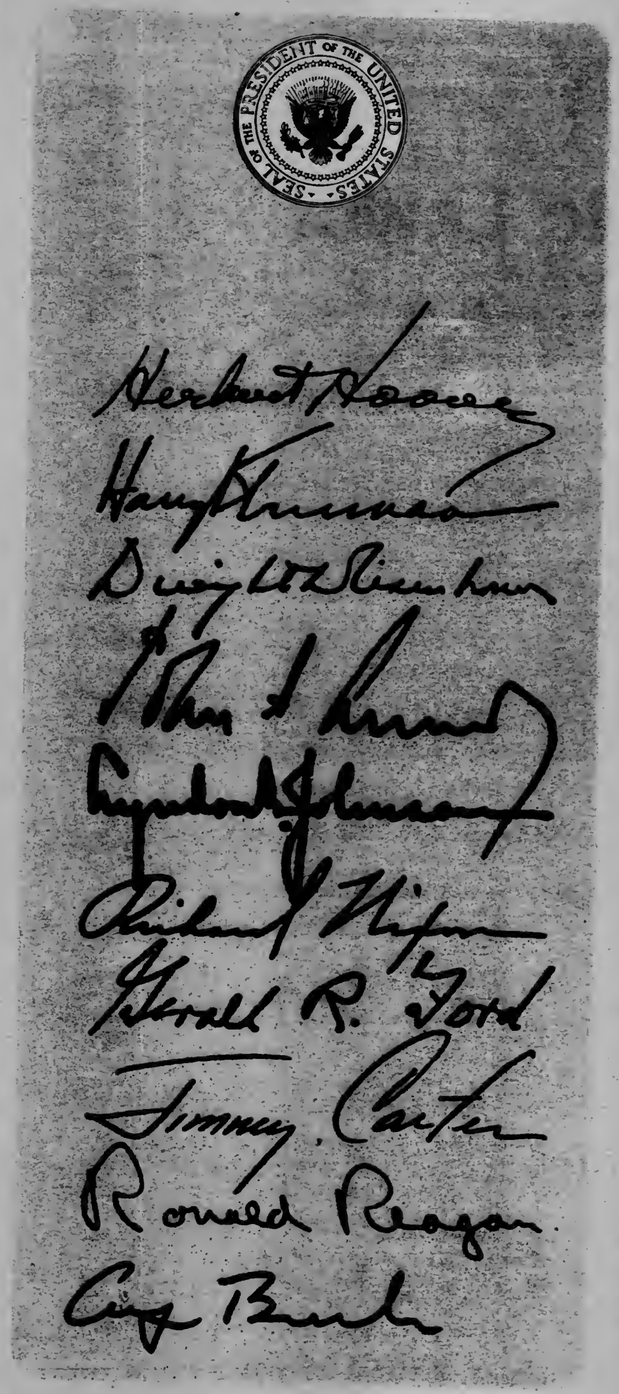
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Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Vol. 59, No. 38
Friday, February 25, 1994

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93–142–1]

Black Stem Rust; Addition of Rust-Resistant Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the black stem rust quarantine and regulations to add six varieties to the list of rust-resistant *Berberis* species. This change will allow for the interstate movement of these newly developed varieties without unnecessary restrictions.

DATES: This rule will be effective on April 26, 1994, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before March 25, 1994. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your submission refers to Docket No. 93–142–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 645, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6365.

SUPPLEMENTARY INFORMATION:

Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of wheat, oat, barley, and rye crops by robbing host plants of food and water. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis*, *Mahoberberis*, and *Mahonia*. The fungus is spread from host to host by wind-borne spores.

The black stem rust quarantine and regulations in 7 CFR 301.38 through 301.38–8 (referred to below as the regulations) quarantine the conterminous 48 States and the District of Columbia, and govern the interstate movement of certain plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, also known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of spreading black stem rust; rust-susceptible plants do pose such a risk.

Section 301.38–2 of the regulations includes a listing of regulated articles and indicates species of the genera *Berberis*, *Mahoberberis*, and *Mahonia* are known to be rust-resistant. Although rust-resistant species are included as regulated articles, they may be moved into or through protected areas if accompanied by a certificate. In accordance with the procedures described below under "Effective Date," this direct final rule will add *Berberis media* 'Red Jewel,' *Berberis thunbergii* 'Bailone,' *Berberis thunbergii* 'Bailtwo,' *Berberis thunbergii* 'Cherry bomb,' *Berberis thunbergii* 'Harlequin,' and *Berberis thunbergii* 'Pink Queen' to the list of rust-resistant *Berberis* species in § 301.38–2(b).

The addition of the species listed above to the list of rust-resistant *Berberis* species is based on recent testing to determine rust-resistance conducted by the Agricultural Research Service of the United States Department of Agriculture (USDA) at its Cereal Rust Laboratory in St. Paul, MN. The testing is performed in the following manner: In a greenhouse, the suspect plant or test subject is placed under a screen with a control plant—a known rust-susceptible species of *Berberis*, *Mahoberberis*, or *Mahonia*. Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100 percent humidity. This causes the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20–80 percent relative humidity. If the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, the test results indicate that the test plants are rust-resistant. This test must be performed 12 times, and all 12 tests must yield the same result before USDA can make a determination as to whether the test plants are rust-resistant. The test may be conducted on 12 individual plants, or it may be performed multiple times on fewer plants (e.g., six plants tested twice or three plants tested four times). The tests must be performed on new growth, just as the leaves are unfolding. Therefore, the tests are usually conducted in the spring or fall, during the growing season. All 12 tests generally cannot be conducted on the same day because of the plants' different growth stages. Based on over 30 years of experience with this test, we believe that 12 is the reliable test sample size on which USDA can make its determination. We do not know of any plant that was subsequently discovered to be rust-susceptible after undergoing this procedure 12 times and being determined by USDA to be rust-resistant.

Effective Date

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30

days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

This rule will allow the interstate movement of *Berberis media* 'Red Jewel,' *Berberis thunbergii* 'Bailone,' *Berberis thunbergii* 'Bailtwo,' *Berberis thunbergii* 'Cherry bomb,' *Berberis thunbergii* 'Harlequin,' and *Berberis thunbergii* 'Pink Queen' into and through States or parts of States designated as protected areas. Based on the information provided to us, we have determined that this rule will affect three commercial nurseries that might propagate the new species and numerous retail sales nurseries that might purchase or resell the varieties. This rule will enable those nurseries to move the species into and through protected areas and to propagate and sell the species in States or parts of States designated as protected areas. It is unlikely that the addition of these varieties to the list of rust-resistant *Berberis* species will have any effect on prices, investment, productivity, or our international competitive position. It is possible that this rule will positively affect innovation by allowing nurseries that develop new rust-resistant *Berberis* varieties the opportunity to market those varieties in protected areas. It is also possible that this rule will have some positive effect on nurseries that are small businesses by providing an opportunity for increased sales of rust-resistant *Berberis* species in protected areas. We cannot predict the exact number of nurseries that might be affected by this rule change, nor can we predict the level of demand for these new species or the impact on nurseries producing or selling them. It is likely, however, that any economic effects will not be significant as a result of additional plant sales.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 is amended as follows:

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.38–2, paragraph (b) is amended by adding, in alphabetical order, the following rust-resistant *Berberis* species:

§ 301.38–2 Regulated articles.

* * * * *

(b) * * *

B. media 'Red Jewel'

* * * * *

B. thunbergii 'Bailone'

B. thunbergii 'Bailtwo'

* * * * *

B. thunbergii 'Cherry Bomb'

* * * * *

B. thunbergii 'Harlequin'

* * * * *

B. thunbergii 'Pink Queen'

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4324 Filed 2–24–94; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Stabilization and Conservation Service

7 CFR Part 729

RIN 0560–AD20

1994-Crop Peanuts National Poundage Quota

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: On December 15, 1993, the Secretary of Agriculture (Secretary) announced by press release that the national poundage quota for quota peanuts was established at 1,350,000 short tons (st), 146,000 st less than last year's quota. This final rule codifies the announced quota. The quota is established pursuant to statutory requirements contained in the Agricultural Adjustment Act of 1938 (the 1938 Act), as amended.

EFFECTIVE DATE: December 15, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Miller, Director, Tobacco and Peanuts Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3739, South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–7477.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by USDA, it has been determined that this final rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

One commentor in response to the proposed quota previously published in the **Federal Register** disagreed with conclusions (1), (2), and (3) noting the 1990-crop and the drought that affected that crop. These determinations remain unchanged as the quota level adopted by this notice is required by statute and involves an on-going Federal program.

Final Regulatory Impact Analysis

A final regulatory impact analysis discussing the impact of the established quota is available from the above-named person.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are Commodity Loans and Purchases—10.051.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 relating to intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act Requirements

The amendments to 7 CFR part 729 set forth in this final rule do not contain information collection requirements that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Announcement of the Quota

Section 358–1(a)(1) of the 1938 Act requires that the national poundage quota for peanuts for each of the 1991 through 1995 marketing years (MY's) be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each such MY to domestic edible, seed, and related uses. Section 358–1(a)(1) further provides that the national poundage quota for a MY shall not be less than 1,350,000 st. The MY for 1994-crop peanuts runs from August 1, 1994, through July 31, 1995. Poundage quotas for the 1991–95 crops of peanuts were approved by 98.2 percent of peanut growers voting in a referendum conducted December 10 through 13, 1990. A proposed rule on the quota determination, with a public comment period, was published in the **Federal Register** (58 FR 63106) on November 30, 1993. The proposed rule of 1,350,000 st set out, for purposes of the proposed quota calculation, individual estimates for: (1) Domestic food use; (2) farm sales and local sales of peanuts; (3) seed use; (4) crushing residual; (5) shrinkage and other losses; and (6) Segregation 2 and 3 loan transfers. The sum of the individual estimates was 1,298,000 st., less than the allowed statutory minimum of 1,350,000 st.

Following a review of the comments and more recent estimates made by the USDA Interagency Commodity Estimates Committee (ICEC) for Oilseeds, Oils, and Meals, the estimates for domestic edible, seed, and related uses totals 1,333,000 st., which is likewise below the allowed minimum. Updated data resulted in adjustments to the estimates of domestic food use and seed. The adjustments in those two factors also produced a slight revision in the estimate for crushing residual. The differences between the estimates on which the proposed quota was based versus the estimates on which the final quota was established are set out in the following table:

ESTIMATED DOMESTIC EDIBLE, SEED, AND RELATED USES

Item	Quota (short tons)	
	Proposed[1]	Final[2]
Domestic edible:		
Domestic food	986,000	1,019,000
On farm and local sales	22,000	22,000
Subtotal	1,008,000	1,041,000
Seed	97,000	96,500
Related Uses:		
Crushing residual	133,000	133,500
Shrinkage and other losses	40,000	40,000
Segregation 2 and 3 loan transfers to quota loan	20,000	20,000
Subtotal	193,000	193,500
Total	[3] 1,298,000	[3] 1,333,000

[1] Contained in November 30, 1993, **Federal Register** (58 FR 63106).

[2] Final quota determination.

[3] By statute, the quota level cannot be less than 1,350,000 st.

Discussion of the Comments on Proposed Quota

A total of 7 comments were received during the public comment period that ended on December 6, 1993. Comments were submitted by 2 manufacturer/processor associations, 2 manufacturers, 1 sheller association, and 2 grower associations.

The comments made regarding the 1994-crop national quota are discussed below by subject matter.

A. Overall Quota Level

A number of comments were directed to the overall quota level rather than to individual elements of the calculation. The manufacturer/processor associations and manufacturers supported larger quotas, between 1,403,000 st and 1,645,600 st. The sheller association and two grower associations supported the proposed 1994 quota of 1,350,000 st. One commentor justified a high recommendation by citing the 1990-crop year drought when yields were reduced and supplies were very tight, but did not cite any figure for needed carryover, if any. The current quota formula has applied since 1986 and growers have produced on average 128 percent of the national poundage quota (counting the production of non-quota, "additional" peanuts which can, if needed, be used for quota-peanut purposes if certain special procedures are followed and certain conditions are met).

B. Domestic Edible Use

The final estimate of 1994 domestic food use was 3 percent above the proposed estimate. It was developed in two steps. First, total domestic edible utilization of 1,137,500 st was estimated by the USDA ICEC. Second, to account for peanut butter imports and exports, the estimate of domestic edible disappearance was reduced by 118,500 st.

Manufacturer/processor associations and manufacturers requested a higher domestic edible food use to enable growth in excess of projected levels. A grower association supported the proposed domestic food use estimate. Based on the best data available, it was determined that the final quota made the most realistic estimates of growth and imports possible.

Accordingly, the revised estimate of domestic edible use was accepted.

C. Farm Use and Local Sales

No comments were received. The proposed estimate of 20,000 st was accepted without change.

D. Seed Use

The proposed seed estimate of 97,000 st was based on the farmer stock tonnage equivalent of the amount of seed required to plant the expected 1995 crop. A manufacturer believed that processing losses for seed peanuts requires a 150,000 st estimate. It was determined that the ICEC estimate for the amount of seed required to plant the 1995 crop was the most realistic estimate available and a revised ICEC seed estimate of 98,500 st was accepted in the final rule.

E. Crushing Residual

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given load of quota farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The portion of such peanuts only suitable for the crushing market was proposed to be estimated at 12 percent, unchanged from the level used for setting the 1992 and 1993 quotas. One manufacturer asserted that recent edible kernel yields would require using a higher crushing residual, but this higher yield is not considered representative for the industry. It was determined accordingly, that the proposed crushing residual factor of 12 percent was the most accurate estimate available. That level is within the range a sheller association proposed for the 1993 crop. The proposed factor of 12 percent was retained.

F. Shrinkage and Other Losses

No comments were provided and the estimate was accepted as proposed.

G. Segregation 2 and 3 Transfers

No comments were provided and the estimate was accepted as proposed. This estimate represents peanuts that would otherwise be eligible for use as quota peanuts but which will not qualify for such use due to quality problems. Such transfers to quota peanut price support loan pools occur when quota peanut producers, due to no fault of their own, would otherwise have insufficient Segregation 1 peanuts to fulfill their quota. In such instances, Segregation 2 and 3 peanuts placed under an additional peanut price support loan may be transferred to the quota price support loan. The Commodity Credit Corporation will then ensure that such peanuts are crushed for oil.

Proposed Quota Adjustment for Undermarketings and Carryover

The foregoing components of the national poundage quota have not been adjusted for either the application of prior undermarketings to the 1994 quota or abnormal carryover stocks at the beginning of MY 1994. As peanut usage has grown, carryover stocks have also grown. But, since 1980, carryover stocks have varied more from year to year than earlier. Also, current law allows a farm's quota to be increased by the amount by which marketings for prior years back to 1989 were less than the farm's quota. The total of all such increases nationally may not exceed 10 percent of the national poundage quota. Unapplied undermarketings from 1993 suggest that the 1994 quotas at the farm level will also be increased by the 10-percent maximum. In response to this issue an association of manufacturers favored a 50,000 st quota increase to adjust for low carryover stocks from the 1993–94 marketing year. Two comments did not favor any MY 1994 quota adjustment for undermarketings and carryover.

Without prejudice to possible adjustments to the 1995-crop and subsequent quota determinations, it was determined that the 1994-crop quota would not be adjusted to reflect the impact of undermarketings and end of year carryover of 1993-crop peanuts into MY 1994 as it was determined that a 1,350,000 st quota would be sufficient to meet full demand for peanuts in the coming year.

After consideration of the comments received, the proposed change to 7 CFR 729.214 is adopted as presented in the proposed rule.

List of Subjects in 7 CFR Part 729

Poundage quotas, Peanuts, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 729 is amended as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375; 7 U.S.C. 1445c–3.

2. Section 729.214 is amended by adding paragraph (d) to read as follows:

§729.214 National poundage quota.

* * * * *

(d) The national poundage quota for peanuts for marketing year 1994 is 1,350,000 short tons.

Signed at Washington, DC, on February 18, 1994.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 94–4329 Filed 2–24–94; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV93–982–2IFR]

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 1993–94 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes interim final and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1993–94 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages allocate the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This rule was recommended by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

DATES: Effective on February 25, 1994. Comments which are received by March 28, 1994 will be considered prior to any finalization of the interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Ave., room 369, Portland, OR 97204; telephone (503) 326–2724 or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 982 (7 CFR part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is intended that this action apply to all merchantable filberts/hazelnuts handled during the 1993–94 marketing year. The marketing year covers the period July 1, 1993 through June 30, 1994. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,000 producers of filberts/hazelnuts in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this interim final rule are based on requirements specified in the order. This rule will establish the amount of inshell filberts/hazelnuts that can be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the establishment of interim final and final free and restricted percentages will benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the market can utilize throughout the season, and the percentages release the volume of filberts/hazelnuts necessary to meet the inshell trade demand. The preliminary percentages provide for the release of 80 percent of the inshell trade demand. The interim final percentages release 100 percent of the inshell trade demand. The inshell trade demand equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, rounded to the nearest whole number. The Board may increase such estimate by no more than 25 percent, if market conditions warrant an increase. The final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell filberts/hazelnuts for desirable carryout.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported, shelled, or otherwise disposed of (restricted) early in the 1993–94 season. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates. The majority of domestic inshell filberts/hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

At its August 26, 1993, meeting, the Board announced preliminary free and restricted percentages of 7 percent and 93 percent, respectively, to release 80 percent of the inshell trade demand. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against underestimates of crop size. The preliminary restricted percentage is 100 percent minus the free percentage.

On or before November 15, the Board must meet again to recommend interim final percentages and final percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions to ensure an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and

approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year.

In accordance with order provisions, the Board met on November 10, 1993, reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. Interim final percentages were recommended at 12 percent free and 88 percent restricted, and final free and restricted percentages were recommended at 13 percent and 87 percent. The interim final percentages make an additional 807 tons of product available for the domestic inshell market. The interim final marketing percentages are based on the industry's final production estimates and release 3,903 tons to the domestic inshell market from the 1993 crop. The final marketing percentages release an additional 605 tons from the 1993 crop for domestic use. Thus, a total of 4,508 tons of product will be available from the 1993 crop for domestic use when the final percentages are established. The Oregon Agricultural Statistics Service provided an early estimate of 39,000 tons total production for the Oregon and Washington area. However, a handler survey conducted by the Board provided a more current estimate of 37,700 tons total production for the area. Therefore, the Board voted to unanimously accept the more current estimate of 37,700 tons.

Although the crop is large, the Board determined that the inshell domestic market conditions will allow more product without depressing the market and recommended immediate release of the additional 15 percent (the final percentages). The Board believes that the immediate release of the final percentages will benefit the industry with increased returns to growers and more product available for consumers.

The marketing policy of the marketing order states that the final percentages must be effective at least 30 days prior to the end of the marketing year, or earlier. The Board has recommended immediate release of the final percentages, in accordance with the authority of the marketing policy. The marketing policy also requires that procedurally, the Board recommend interim final and final percentages. Therefore, the interim final percentages have been established even though they will not be utilized this marketing season.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1993–94 marketing year:

	Tons
Inshell Supply	
(1) Total production (Filbert/Hazelnut Marketing Board handler survey estimate)	37,700
(2) Less substandard, farm use (disappearance)	2,700
(3) Merchantable production (the Board's adjusted crop estimate)	35,000
(4) Plus undeclared carryin as of July 1, 1993, subject to regulation	338
(5) Supply subject to regulation (Item 3 plus Item 4)	35,338
Inshell Trade Demand	
(6) Average trade acquisitions of inshell filberts for three prior years	4,033
(7) Increase to encourage increased sales (20 percent)	807
(8) Less declared carryin as of July 1, 1993, not subject to regulation	937
(9) Adjusted Inshell Trade Demand	3,903
(10) 15 percent of the average trade acquisitions of inshell filberts for three prior years (Item 6)	605
(11) Adjusted Inshell Trade Demand plus 15 percent (Item 9 plus Item 10)	4,508

Percentages	Free	Restricted
(12) Interim final percentages (Item 9 divided by Item 5) × 100	11	89
(13) Final percentages (Item 11 divided by Item 5) × 100	13	87

In addition to complying with the provisions of the marketing order, the Board also considers the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines provide that this primary market have available a quantity equal to 110 percent of recent years' sales in those outlets before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. An additional increase of 20 percent (807 tons) has been included in the calculations used in determining the inshell trade demand. The established final percentages, will make available 4,508 tons from the 1993 crop plus 937 tons of declared carryin which is 135 percent of prior years' sales, thus exceeding the goal of the Guidelines.

Based on the above, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities. Written comments, timely received in response to this action, will be considered before finalization of this rule.

After consideration of all available information, it is found that the establishment of interim final and final free and restricted percentages, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1993–94 marketing year began July 1, 1993, and the percentages established herein apply to all merchantable filberts/hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this action, which was recommended at an open Board meeting, and need no additional time to comply with these percentages which release more filberts/hazelnuts than the preliminary percentages; and (3) interested persons are provided a 30-day comment period in which to respond. All comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 982.242 is added to read as follows:

(Note: The following section will not be published in the Code of Federal Regulations.)

Section 982.242 Free and restricted percentages—1993–94 marketing year.

(a) The interim final free and restricted percentages for merchantable filberts/hazelnuts for the 1993–94 marketing year shall be 11 and 89 percent, respectively.

(b) The final free and restricted percentages for merchantable filberts/hazelnuts for the 1993–94 marketing year shall be 13 and 87 percent, respectively.

Dated: February 18, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–4234 Filed 2–24–94; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket 91–161–2]

Tuberculosis in Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the tuberculosis regulations by adding a definition for States whose accredited-free status has been suspended due to detection of tuberculosis in any cattle or bison in those States, and by adding requirements for moving cattle and bison interstate from States whose accredited-free status has been suspended. This action clarifies the requirements concerning the interstate movement of cattle and bison.

EFFECTIVE DATE: March 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 734, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8715.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations, contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Bovine tuberculosis is the contagious, infectious and communicable disease caused by *Mycobacterium bovis*. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free States, modified accredited States, or nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations via incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

On August 13, 1993, we published in the **Federal Register** (58 FR 43086–43087, Docket No. 91–161–1) a proposal to amend the regulations by adding a definition for States whose accredited-free status has been suspended due to detection of tuberculosis in any cattle or bison in those States, and by adding requirements for moving cattle and bison interstate from States whose accredited-free status has been suspended.

We solicited comments concerning our proposal for a 60-day comment period ending October 12, 1993. We received three comments by that date. They were from two marketing cooperatives and a veterinary medical association. All responses were in favor of the proposed rule as written.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Cattle and bison not known to be affected with or exposed to tuberculosis are already allowed to move interstate without restriction from modified accredited States and accredited-free States, including States whose accredited-free status has been suspended. We are clarifying the regulations with respect to requirements for the interstate movement of cattle and bison from a State whose accredited-free status has been suspended. Consequently, this action will not have any economic impact on those persons affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 77.1 is amended by adding in alphabetical order a definition for "Accredited-free (suspended) State" to read as follows:

§ 77.1 Definitions.

* * * * *

Accredited-free (suspended) State. (1)(i) A State with the status of an accredited-free State is designated as accredited-free (suspended) if tuberculosis is detected in any cattle or bison in the State.

(ii) A State is qualified for redesignation of accredited-free status after the herd in which tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed.

(2) Accredited-free (suspended) States: None.

* * * * *

3. Section 77.3 is revised to read as follows:

§ 77.3 Movement from accredited-free States, accredited-free (suspended) States, and modified accredited States.

Cattle or bison not known to be affected with or exposed to tuberculosis, originating in an accredited-free State, an accredited-free (suspended) State, or a modified accredited State, may be moved interstate without restriction.[3]

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94-4328 Filed 2-24-94; 8:45 am]

BILLING CODE 3410-34-P

[3] The regulations of the State of destination should be consulted before shipments are made from accredited-free, accredited-free (suspended) and modified accredited States.

9 CFR Part 92

[Docket No. 93-113-2]

Horses From Portugal

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring Portugal free of African horse sickness and removing Portugal from the list of countries which the Animal and Plant Health Inspection Service considers affected with African horse sickness. This action relieves certain restrictions on the importation into the United States of horses from Portugal.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Chief Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations on animal importations in 9 CFR parts 92 and 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products to prevent the introduction of various livestock diseases, including African horse sickness (AHS). AHS is a fatal equine viral disease not found in the United States.

On November 1, 1993, we published in the **Federal Register** (58 FR 58304-58305, Docket No. 93-113-1) a proposal to amend the regulations by removing Portugal from the list in § 92.308(a)(2) of countries which the Animal and Plant Health Inspection Service considers affected with AHS.

We solicited comments concerning our proposed rule for a 30-day period ending on November 29, 1993. During that period, we received two comments, both from horse associations. Both associations supported the proposed rule; one made additional comments not related to the proposed rule. Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes Portugal from the list in § 92.308(a)(2) of countries which APHIS considers affected with AHS. We have determined that approximately 2 weeks are needed to ensure that APHIS personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the APHIS has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The number of horses imported into the United States is small; we estimate, using 1991 and 1992 figures, that only 0.2 to 0.3 percent of all horses in the United States have been imported. Furthermore, during the last 2 years, only one horse has been imported from Portugal. Therefore, we anticipate that any increase in horse imports from Portugal as a result of this rule will be insignificant.

Principally, this rule will allow horses from Portugal to make temporary visits to the United States for shows or sporting events. Currently, such visits are impractical, since horses imported from Portugal must be quarantined in New York for at least 60 days, at a cost to importers of approximately $4,700 per horse. The rule will allow horses from Portugal making temporary visits to the United States to enter through a variety of ports and be quarantined for a shorter, and less expensive, period. Accordingly, though this rule may have a positive economic impact on importers bringing horses from Portugal into the United States for temporary visits, we anticipate that the overall economic impact on businesses and individuals will be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.308 [Amended]

2. In § 92.308, paragraph (a)(2) is amended by removing "Portugal,".

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94-4325 Filed 2-24-94; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-ASO-22]

Establishment of Class E Airspace; Puerto Rico, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at San Juan, Puerto Rico. This action reestablishes a portion of airspace that was lost as a result of the terminal airspace reconfiguration. Controlled airspace extending from 1200 feet and 2700 feet is needed to contain IFR operations in the area and to provide necessary air traffic services.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5585.

SUPPLEMENTARY INFORMATION:

History

On November 19, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at San Juan, Puerto Rico. The terminal airspace configuration final rule dated August 27, 1992, amended the size of the 1200 ft. transition area from a 100-mile radius of San Juan, Puerto Rico to an area extending approximately 15 miles north of San Juan. This reduced area is not adequate to provide necessary air traffic services. This action will establish 1200 ft. and 2700 ft. Class E airspace and replace a portion of the airspace that was lost (58 FR 65949). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. This amendment is the same as that proposed in the notice with the exception of removing Warning Areas from the description that are outside this Class E airspace and the additional of a set of coordinates to more clearly describe the actual area. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at San Juan, Puerto Rico to provide controlled airspace for aircraft arriving and departing San Juan.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005, Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO PR E5 Puerto Rico, PR—San Juan-Fernando Luis Ribas Dominicci Airport, PR

(Lat. 18°27'25" N, long. 66°05'53" W)

That airspace extending upward from 1,200 feet above the surface beginning at lat. 18°50' N, long. 68°00' W; to lat. 18°45'22.62" N, long. 66°54'58.15" W; to lat. 18°33' N, long. 64°22' W; to lat. 17°20' N, long. 64°22' W; to lat. 17°29' N, long. 64°54' W; to lat. 17°50' N, long. 65°34' W; to lat. 17°42' N, long. 68°00' W; to the point of beginning; excluding that airspace within Warning Areas W-370A, W-371, W-373A; and that airspace extending upward from 2,700 feet above the surface beginning at lat. 18°33' N, long. 64°22' W; to lat. 18°25' N, long. 62°52' W; to lat. 17°47' N, long. 62°23' W; to lat. 17°22' N, long. 62°59' W; to lat. 16°58' N, long. 63°00' W; to lat. 17°20' N, long. 64°22' W; to the point of beginning; and that airspace extending upward from 2,700 feet above the surface beginning at lat. 18°45'22.62" N, long. 66°54'58.15" W; to lat. 19°00' N, long. 66°10' W; to lat. 19°00' N, long. 65°45' W; to lat. 18°45' N, long. 64°22' W; to lat. 18°33' N, long. 64°22' W; to the point of beginning.

* * * * *

Issued in College Park, Georgia, on February 7, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94-4366 Filed 2-24-94; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Requirements for Clacker Balls; Amendments

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its existing regulation, under the Federal Hazardous Substances Act, that bans clacker balls that do not meet specified requirements. The amendments include revising the definition of clacker ball to exclude those devices where the balls are suspended by plastic rods that are integrally molded to the balls and are mounted on a pivot so that movement

of the balls is essentially limited to a single plane. The amendments also exempt from the ban those clacker balls that meet specified maximum ball-weight and cord-length specifications and a minimum safety factor specification. The amendments clarify the regulation and benefit consumers, manufacturers, importers, distributors, and retailers by allowing the marketing of currently-banned products that do not present the unreasonable risk of injury the ban was intended to prevent.

DATES: The amendments are effective March 25, 1994.

FOR FURTHER INFORMATION CONTACT: Frank Krivda, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission's regulations, issued under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1277, ban clacker balls (defined in 16 CFR 1500.18(a)(7)), unless the clacker balls meet the requirements in 16 CFR 1500.86(a)(5). The regulations define clacker balls as consisting of two balls of plastic or another material connected by a length of line or cord or similar connector * * * intended to be operated in a rhythmic manner by an upward and downward motion of the hand so that the two balls will meet forcefully at the top and bottom of two semicircles thus causing a "clacking" sound, which toys present a mechanical hazard because their design or manufacture presents an unreasonable risk of personal injury from fracture, fragmentations, or disassembly of the toy and from propulsion of the toy or its part(s). (But see § 1500.86(a)(5))

These requirements were issued in 1971 by the Food and Drug Administration, which administered the FHSA at that time.

The criteria in § 1500.86(a)(5) were designed to ensure the safety of the type of clacker ball that was on the market before the regulation was issued in 1971. This type of clacker ball used balls that were relatively large and heavy, and the balls were mounted on flexible cords. The criteria include an impact test for the balls and strength tests for the cords and attachment points.

In August of 1989, Mr. William Hones of Fascinations Toys and Gifts, Inc., petitioned the Commission to amend its requirements for clacker balls to exclude products that (1) mechanically restrict the motion of the balls to a plane perpendicular to a supporting shaft and (2) withstand impact and centrifugal stresses at least 10 times those produced in normal use. [1, Tab A][1] The petitioner marketed a product similar to a clacker ball but that operated in the manner that would be excluded by the requested amendment.

The device marketed by the petitioner mounted the balls by integrally molding them onto the apex of a V-shaped plastic member mounted so that the arms of the V pivot on a shaft. This mounting limits the movement of the balls to a single plane that is perpendicular to the axis of the shaft. Compared to the pre-1972 type of clacker balls, the petitioner's product had lighter balls and shorter mounting arms. Because of this, the petitioner's product did not generate the impact or centrifugal forces that the earlier clacker balls did. The Commission's staff agreed that the criteria of § 1500.18(a)(5) vastly exceeded the stresses generated by petitioner's device and by various other brands and types of clacker balls that were on the market.

After considering the petition, the Commission decided that the term "clacker ball" did not encompass the product marketed by the petitioner and similar products. The Commission (3–0) also directed the staff to prepare, for the Commission's consideration, a draft **Federal Register** notice that would propose to amend the definition of clacker ball to explicitly exclude petitioner's and similar products and to amend § 1500.86(a)(5) to exempt clacker balls meeting maximum ball-weight and cord-length specifications and a minimum safety factor specification. On June 25, 1993, the Commission published proposed amendments in the **Federal Register**. 58 FR 34385. The period for public comment on the proposal ended on September 8, 1993; no comments were received.

B. Procedure

A regulation such as the Commission's clacker ball regulation is issued under section 3(e) of the FHSA, 15 U.S.C. 1262(e), which applies to determinations that a toy or other article intended for use by children presents a mechanical, electrical, or thermal hazard and is thus a hazardous substance pursuant to section 2(f)(1)(D), 15 U.S.C. 1261(f)(1)(D). The original issuance of such a regulation would be governed by the procedure in section 3(f) of the FHSA, 15 U.S.C. 1262(f), which specifies a three-stage rulemaking procedure that is initiated by the publication of an advance notice of proposed rulemaking ("ANPR"). The amendments issued below, however, eliminate from the scope of the rule those products that do not present the mechanical risk that the regulation originally intended to cover. Accordingly, since new obligations are not being imposed, sections 3 (e) and (f) do not apply. In addition, the provisions of section 3(f) governing the required content of the ANPR show that the ANPR is intended to apply only to cases where new requirements are being imposed and not to the case where previously covered products are being exempted or otherwise released from coverage. Therefore the two-stage rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. 553, apply.

C. The Amendments

Amended § 1500.18(a)(7). As explained above, the device marketed by the petitioner was mounted on plastic rods so that the balls move only in a single plane. This prevents off-center hits of the balls, and the limitation to "plastic" material should limit any likelihood of loose particles caused by flaking or fragmentation of the balls. The Commission determined that the definition of clacker ball did not cover the petitioner's device, or similar devices with these features. Therefore, the amendments add language specifically stating that the definition of clacker ball "does not include products that are constructed such that the connecting members consist of plastic rods integrally molded to the balls and are mounted on a pivot so that movement of the balls is essentially limited to a single plane."

Amended § 1500.86(a)(5). As discussed above, the Commission concluded that the criteria in the current exemption in § 1500.86(a)(5) are too stringent for the lighter and smaller clacker balls that are currently on the market, which have balls with masses of less than 12 grams each and pivot lengths of less than 180 mm (7.1 inches). Accordingly, the staff examined how the exemption criteria might be changed so that they would be more appropriate for these lighter and smaller clacker balls. The criteria that must be changed in order to do this are (1) The cord-strength requirement of § 1500.86(a)(5)(i)(B), (2) the ball-impact test in § 1500.86(a)(5)(ii)(B), (3) the cord-strength test of § 1500.86(a)(5)(ii)(D), and (4) the holding-device strength test of § 1500.86(a)(5)(ii)(E). These criteria are discussed separately below. How the formulae for adjusting these factors were derived is explained in detail in the report "Engineering Analysis Supporting Proposed Amendments to the Clacker Ball Regulation at 16 CFR Sections 1500.18(a)(7) and 1500.86(a)(5)," Scott R. Heh, CPSC Directorate for Engineering Sciences, December 1992 [6, Tab B]. For clacker balls with masses of 12 grams or more, or with pivot lengths of 180 mm or more, the current provisions of the regulation will continue to apply.

Cord-strength test. The staff calculated the safety factor that the current regulation applied to the large and heavy clacker balls that the regulation was intended to address and determined that it provides a cord-strength safety factor, for those clacker balls, of approximately 35. Therefore, this safety factor was also applied to the reduced forces proposed to be allowed when testing the cord strength of smaller and lighter clacker balls.

The tensile forces applied to the cord of a clacker ball during use are mainly due to the centrifugal forces generated by the motion of the balls. The centrifugal force of an object is equal to the mass of the object times its acceleration, which in turn is a function of the velocity of the object and the radius of the curve being traveled by the object. The velocity of the ball is established by specifying a maximum "clack" rate of 20 clacks per second. (As specified in the definition of clacker ball at § 1500.18(a)(7), a clack is produced when the two balls collide at the top and bottom of their semicircular paths. The highest clack rate that the Commission's staff was able to achieve in testing was 17 clacks per second.)

Applying the safety factor of 35, the adjusted cord strength value in Newtons can be calculated by $0.1382(m_b)(R_p)$, where m_b is the mass of a single ball in grams and R_p is the radius of the arc described by the ball (pivot length) in mm. Accordingly, the Commission is amending the regulation as set forth below so that this adjusted cord strength value will be one of the criteria for exempting the smaller and lighter clacker balls described above.

Ball-impact test. The current regulation provides that a clacker ball shall be tested by 10 drops of a 5-lb steel weight from a height of 48 inches. The Commission's staff determined that this provides a safety factor of about 20 for the large and heavy clacker balls for which the test was designed.

The clacker ball experiences an impact related to the magnitude of the kinetic energy it achieves in use, which is a function of the mass of the clacker ball times its velocity. The velocity can be calculated from the "clack rate," which, as described above, is assumed to be 20 clacks per second. Accordingly, the height from which a 5-lb weight must be dropped in order to achieve an impact equal to what the clacker ball can generate, times the safety factor of 20, can be calculated as $179\times10^{-5}(m_b)(R_p^2)$, where m_b is the mass of a single ball in grams and R_p is the radius of the arc described by the ball (pivot length) in mm. Accordingly, the Commission amends its regulations to allow this adjusted drop height value to be one of the criteria for exempting the smaller and lighter clacker balls described above.

Holding device test force. Present § 1500.86(a)(5)(ii)(E) provides that the device for holding the cords together shall be tested by applying a force of 50 lb to each cord separately, while the holding device is clamped in position. Since this is half the force provided by the current regulation for the cord-strength test, the Commission amends its regulations to allow an adjusted holding device test force of half the adjusted cord-strength test force, to exempt the smaller and lighter clacker balls described above.

D. Metric Units

Current Federal policy encourages the use of metric units in regulations. Exec. Order No. 12770, 3 CFR, 1991 Comp., p. 343. Accordingly, wherever current § 1500.86(a)(5) uses inch/pound units that can be specified instead in metric units, the amendments proposed below give the corresponding metric units as the primary criteria, with the inch/pound equivalent in parentheses.

E. Correction

The exemptions at § 1500.86(a)(5) have a typographical error in the table in § 1500.86(a)(5)(vi). The word "rental" in the heading of the first column should be "retail." Accordingly, the amendments issued below correct this discrepancy.

F. Effective Date

This amendment grants an exemption. A delayed effective date of 30 days from the date a final rule is issued will be sufficient for parties to test their products to determine whether the products comply with the amended regulation. Accordingly, these amendments will become effective March 28, 1994.

G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et seq.) generally requires the agency to prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics prepared Initial and Final Regulatory Flexibility Act Analyses to examine the effect of the rule on small entities. [6, Tab D; 8, Tab D] The findings of the Final Regulatory Flexibility Analysis are repeated below.

The potential cost of the rule includes the possibility of future injury or death associated with these products, if that were due to less safe clacker balls being on the market because the exemption criteria of the regulation were made less stringent. The Commission has no information that would support a conclusion that this will occur.

The Commission is aware of 13 incidents from January 1, 1973, through 1992 that were associated with clacker balls. [6, Tab C] Three of these incidents involved fatalities. In one of these fatal incidents, a child strangled when she got the cord of a clacker ball around her neck. In the two others, infants were asphyxiated when clacker balls obstructed their airways. Such strangulation and asphyxiation hazards are not addressed by the current requirements for clacker balls.

The remaining 10 incidents involved injuries incurred when users were hit with clacker balls (4), fell on clacker balls (2), or ingested a piece of broken clacker ball (1), or involved a burn (1) or poisonings (2) associated with clacker balls that made a cracking sound and emitted smoke when the balls struck each other. None of these incidents is known to be due to any deficiency in the clacker balls' impact resistance, cord strength, or holding-device strength.

Based on the available epidemiological and engineering information, no potential injuries or deaths are expected to be associated with the amended definition and exemption. Accordingly, no significant costs are expected to be associated with these changes.

The amended definition and exemption will provide benefits to marketers of the product by allowing the

[1] Numbers in brackets represent the number of a relevant document in Appendix 1 (List of Relevant Documents) at the end of this notice.

continued marketing of these products as toys and novelties. Marketers would also benefit through an elimination of any uncertainty about enforcement of the existing regulations, and the regulation's effects on future product development would be clarified. The marketers would also benefit by avoiding any cost increases that would be caused by having to come into compliance with the present regulation.

Consumers obtain utility from the use of these products. Sales in 1990 of products similar to the petitioner's are estimated at 10–12 million units, which were valued at $25–30 million. Sales in 1991 declined to about one million units, and 1992 sales were around two million units. Sales of lightweight, short-cord clacker balls are thought to be insignificant compared to the number of products like the petitioner's that are marketed. However, the available information is not sufficient to enable an accurate estimate. To the extent that consumers enjoy the use of these products, their continued availability is a benefit, and the loss of this product on the market would be a loss to consumers.

All the firms known to be currently marketing these products are small firms. The rule is expected to have a positive impact on these firms.

For the reasons given above, the Commission concludes that the amendments to the Commission's regulations for clacker balls, issued below, will not have any significant adverse economic effect on a substantial number of small entities.

H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission preliminarily assessed the possible environmental effects associated with the proposed amendments to the clacker ball regulations. [6, Tab D] Because that assessment found that there were no significant environmental effects from the rule, no final assessment is required.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

I. Conclusion

For the reasons given above, the Commission amends 16 CFR part 1500 as follows:

PART 1500—[AMENDED]

1. The authority citation for part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261–1277.

2. Section 1500.18(a)(7) is amended by replacing the second sentence with two new sentences to read as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

* * * * *

(a) * * *

(7) * * * (But see § 1500.86(a)(5).) This does not include products that are constructed so that the connecting members consist of plastic rods integrally molded to the balls and are mounted on a pivot so that movement of the balls is essentially limited to a single plane.

* * * * *

§ 1500.86 [AMENDED]

3. Section 1500.86(a)(5)(i)(B) is amended by:

a. Replacing "100 pounds" with "445 Newtons (100 pounds)" and

b. Adding a new sentence at the end of the paragraph, to read as follows:

§ 1500.86 Exemptions from classification as a banned toy or other banned article for use by children.

(a) * * *

(5) * * *

(i) * * *

(B) * * * Clacker balls where the mass of each ball is less than 12 grams (0.42 oz.) and the distance between the center of the pivot and the center of the ball cannot exceed 180 mm (7.1 inches) may have a minimum cord breaking strength of less than 445 Newtons (100 pounds), as computed by the following formula:

Adjusted Cord Breaking Strength in Newtons=0.1382(m_b) (R_p), where m_b=mass of a single ball in grams and R_p=pivot length in mm.

* * * * *

4. Section 1500.86(a)(5)(ii)(B) is amended by:

a. Replacing "5-pound" with "2.25 kg (5-pound)"

b. Replacing "2¼-inch" with "57-mm (2¼-inch)

c. Replacing "48 inches" with "1220 mm (48 inches)"

d. Replacing "2⅜-inch with "60-mm (2⅜-inch)" and

e. Adding a sentence after the first sentence and before the last sentence, to read as follows:

§ 1500.86 Exemptions from classification as a banned toy or other banned article for use by children.

(a) * * *

(5) * * *

(ii) * * *

(B) * * * Clacker balls where the mass of each ball is less than 12 grams (0.42 oz.) and the distance between the center of the pivot and the center of the ball cannot exceed 180 mm (7.1 inches) may be tested by dropping the impact weight from a height of less than 1220 mm (48 in.), where the height is computed as follows:

Adjusted drop height in mm=179×10^{-5}(m_b) (R_p^{2}), where m_b=mass of a single ball in grams and R_p=pivot length in mm. * * *

* * * * *

5. Section 1500.86(a)(5)(ii)(D) is amended by:

a. Replacing "100-pound" with "445 Newton (100-pound)" and

b. Adding two sentences before the last sentence, to read as follows:

§ 1500.86 Exemptions from classification as a banned toy or other banned article for use by children.

(a) * * *

(5) * * *

(ii) * * *

(D) * * * Clacker balls where the mass of each ball is less than 12 grams (0.42 oz.) and the distance between the center of the pivot and the center of the ball cannot exceed 180 mm (7.1 inches) may be tested with a force of under 445 Newtons (100 pounds). The test force for these clacker balls shall be the same as the cord breaking strength calculated in § 1500.86(a)(5)(i)(B). * * *

* * * * *

6. Section 1500.86(a)(5)(ii)(E) is amended by:

a. Replacing "50-pound" with "222-Newton (50-pound)" and

b. Adding two sentences after the first sentence and before the last sentence, to read as follows:

§ 1500.86 Exemptions from classification as a banned toy or other banned article for use by children.

(a) * * *

(5) * * *

(ii) * * *

(E) * * * Clacker balls where the mass of each ball is less than 12 grams (0.42 oz.) and the distance between the center of the pivot and the center of the ball cannot exceed 180 mm (7.1 inches) may have their holding device tested with a force of less than 222 Newtons (50 pounds). The holding device test force for these clacker balls shall be half of the cord breaking strength calculated in § 1500.86(a)(5)(i)(B). * * *

* * * * *

§ 1500.86 [Amended]

7. Section 1500.86(a)(5)(iv)(C) is amended by:

a. Replacing "one-quarter inch" with "6 mm (¼ inch)" and

b. Replacing "one-eighth inch" with "3 mm (⅛ inch)".

8. Section 1500.86(a)(5)(vi) is amended by replacing "rental" in the heading of the first column of the table with "retail".

Dated: February 18, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix 1—List of Relevant Documents

(This Appendix will not be printed in the Code of Federal Regulations.)

1. Briefing Package—Petition HP 90–2—Clacker Balls: Executive Summary and briefing memorandum "Petition HP 90–2: Clacker Balls," John D. Preston, Project Manager, CPSC Directorate for Engineering Sciences, dated Jan. 27, 1992, with Tabs A, C, and F–J.

TAB A—Petition.

TAB C—Photograph of petitioner's clacker ball.

TAB F—Memorandum from Debbie Tinsworth, CPSC/EPHA, to John Preston, CPSC/ESME, "Clacker Ball Incident Data," April 18, 1991.

TAB G—Memorandum from Terrance R. Karels, CPSC/ECPA to John Preston, Project Manager, "Clacker Ball Petition, HP 90–2," July 23, 1991.

TAB H—Memorandum from John Preston, CPSC/ESME, "Petition HP 90–2, Clacker Balls," October 4, 1991.

TAB I—Memorandum from Bob Poth, CPSC/CERM, to John Preston, Project Manager, CPSC/ESME, "Background of CE Action on 'Newton's Yo-Yo'," Sept. 18, 1991.

TAB J—Proposed Enforcement Policy.

2. Tape recording of Commission briefing on March 25, 1992.

3. Memorandum from John Preston, Project Manager, to the Commission, "Response to Commission Request for Options and Resource Estimates to Respond to the Clacker Ball Petition," June 5, 1992, with revised vote sheet.

4. Commissioners' ballot vote sheets, signed June 29–30, 1992.

5. Letter from the Commission's Secretary to Mr. William G. Hones, President of Fascinations Toys and Gifts, Inc., dated Sept. 23, 1992.

6. Briefing package "Proposed Amendments to the Clacker Ball Regulation at 16 CFR Sections 1500.18(a)(7) and 1500.86(a)(5)," consisting of Executive Summary, briefing memorandum, and Tabs A–E.

Briefing Memorandum, "Proposed Rule Amending the Clacker Ball Regulation at 16 CFR § 1500.18(a)(7) and § 1500.86(a)(5)," April 13, 1993.

TAB A—Photographs of products.

TAB B—Engineering report from Scott Heh, ESME, "Engineering Analysis Supporting Proposed Amendments to the Clacker Ball Regulation at 16 CFR Sections 1500.18(a)(7) and 1500.86(a)(5)," December 17, 1992.

TAB C—Memorandum from Suzanne P. Cassidy, EPHA, "Injuries and Deaths Associated with Clacker Balls," Feb. 1, 1993.

TAB D—Memorandum from A. Homan, ECPA, to Scott R. Heh, ESME, "Regulatory Flexibility and Regulatory Analyses, Economic and Environmental Assessments: Proposed Amendments to the Clacker Ball Regulations," December 10, 1992.

TAB E—Draft **Federal Register** notice 7. 58 FR 34385 (June 25, 1993).

8. Briefing memorandum from Scott Heh, Project Manager, to the Commission, "Final Rule Amending the Clacker Ball Regulation at 16 C.F.R. Sections 1500.18(a)(7) and 1500.86(a)(5), with Tabs A–E, dated January 19, 1994:

TAB A—Photographs of Products.

TAB B—Memorandum from Suzanne Cassidy EPHA, to Scott Heh, Project Manager, "Injuries and Deaths Associated with Clacker Balls," dated February 1, 1993.

TAB C—Memorandum from Suzanne Cassidy, EPHA, to Scott Heh, Project Manager, "Data Update on Injuries and Deaths Associated with Clacker Balls," dated November 4, 1993.

TAB D—Memorandum from A. Homan, ECPA, "Regulatory Flexibility and Regulatory Analyses, and Economic Assessments: Final Regulatory Amendments to the Clacker Ball Regulation," dated December 1, 1993.

TAB E—Draft **Federal Register** notice.

[FR Doc. 94–4359 Filed 2–24–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 201 and 202

[Docket No. R–94–1636; FR–3021–F–02]

RIN 2502–AF29

Tiered Pricing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements section 203(t) of the National Housing Act. That section prohibits tiered pricing involving a variation in mortgage charge rates that exceeds two percentage points for FHA insured mortgages made by a mortgagee in an area. The purpose of the rule is to eliminate a mortgagee's discriminatory pricing of FHA insured mortgages in a particular area that would either discourage home purchases or place an unfair burden of costs on the borrower. The rule also implements section 539(a)(2) of the National Housing Act by providing a procedure for requests for determination of a mortgagee's compliance with tiered pricing restrictions or compliance by a mortgagee or Title I lender with related prohibitions on establishing minimum loan amounts.

EFFECTIVE DATE: March 28, 1994.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, room 9156, 451 Seventh Street SW., Washington, DC 20410, Telephone Number (202) 708–1824; TDD telephone number (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Introduction

The information collection requirements contained in this rule have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control numbers 2502–0265 and 2502–0059.

Section 330(a) of the Cranston-Gonzalez National Affordable Housing Act, entitled "Limitation on Tiered Pricing Practices," amended Section 203 of the National Housing Act to add subsection (t). The new provision restricts "tiered pricing" of single family FHA-insured mortgages. "Tiered pricing" occurs when a mortgagee varies its charges for the same type of mortgage in the same area, usually based on the principal amount of the loan.

Under section 203(t), no mortgagee may make or hold FHA insured mortgages if the customary lending practices of the mortgagee, as determined by HUD, provide for variations of more than two percentage points in the mortgage charge rate based on interest rate, level of discount points, loan origination fees, or any other amount charged to a mortgagor by the mortgagee with respect to a mortgage made within a designated area. The section is concerned with lending practices that may unfairly impose costs and charges that are higher for smaller loans than for larger loans.

HUD published a proposed rule on July 14, 1993, 58 FR 37885, with a request for public comments. HUD received 37 public comments. More than half were from State Bankers Associations; comments also were received from the American Bankers Association, the Mortgage Bankers Association, and mortgagees. The following section summarizes the principal points of the public comments, explains how HUD has responded to the public comments, and

explains additional changes that HUD has made in the final rule.

II. Public Comments and Provisions of Final Rule

General

Most of the commenters agreed that tiered pricing in the form of excessive variation in mortgage charge rates should be discouraged, but most commenters also argued that the proposed rule would drive mortgagees away from the FHA programs. The principal reasons cited were the failure of the proposed rule to recognize legitimate differences in pricing based on the fact that lower balance loans cost more to originate, and excessive recordkeeping requirements in the proposed rule. HUD believes that the commenters have overstated the burdensome effect of the proposed rule (as distinguished from the statutory command). HUD has concluded, however, that the lending community will benefit from additional information concerning the manner in which HUD intends to apply the final rule. The following discussion should provide additional information on HUD's intentions that may alleviate some of the commenters' concerns.

Many commenters observed that the two percentage point limit on variation in mortgage charge rates may force mortgagees to either suffer losses on the smallest loans (which must still be offered due to an earlier statutory provision) or overprice the largest loans. Either effect could lead mortgagees to withdraw from FHA single family programs. In this rule, HUD has attempted to interpret the statute in a way that preserves the ability of mortgagees to participate profitably in FHA single family programs while honoring the letter and spirit of the statute.

Calculation and Comparison of Mortgage Charge Rate

A. General

Many commenters expressed confusion over how mortgage charge rates would be calculated and how HUD would determine which variations in charges were acceptable. Mortgages will be compared to determine excess variations in mortgage charge rates only if: (1) They are of the same mortgage type, (2) from the same area and (3) the amounts charged by the mortgagee were determined on the same day or during some other reasonably limited period. Items 1 and 2 will be discussed in more detail later under separate headings. The purpose of the comparison is to determine whether a mortgagee's customary lending practices include either variations in mortgage charge rates (determined primarily by the discount point spread for each interest rate offered) that exceed two percentage points, or lesser variations that are unrelated to variations in the mortgagee's actual costs in making loans.

B. Two Percentage Point Variation

As explained in the preamble to the proposed rule, HUD's determination of whether the permissible two percentage point variation is exceeded will primarily be based on a review of discount points charged by the mortgagee. The rule prevents a mortgagee from offering an interest rate only for certain size loans. For any given interest rate offered in an area for a mortgage type during the time period under review, mortgages should be available to all applicants without a difference in discount points of greater than two percentage points. Charges collected by the mortgagee for third party services would not be considered for tiered pricing purposes. HUD's experience is that all mortgagees typically will collect the maximum 1% origination fee so that the fee will be disregarded in reviewing variations in charges.

HUD expects a mortgagee to charge a mortgagor only the origination fee, discount points and interest to cover its costs (excluding payments for third party services). HUD regulations do not permit mortgagees to charge other fees such as document preparation fees or closing fees for services provided by their own employees. (Some mortgagees are permitted to use appraisers and/or inspectors on their staffs. For purposes of this rule, the amounts collected by a mortgagee for the services of its staff appraisers and/or inspectors are considered analogous to third party services and are not included in mortgagee charges.)

Thus, for purposes of the two percentage point variation there will ordinarily be no need to consider other fees or charges. Mortgagees that establish other fees or charges should be certain that they are acceptable to the local HUD Office as reasonable and customary. Mortgagees are also on notice that HUD will consider them in determining compliance with the two percentage point limitation on variations even if the spread in discount points among mortgages is less than two percent.

Several commenters noted that any flat fee will necessarily have a greater impact on the mortgage charge rate for a small loan than for a larger loan, making it more difficult to comply with the two percent variation. It is probable that Congress did not expect significant flat fees for services to be charged by the mortgagee because such services are ordinarily to be compensated through the 1% origination fee. However, the statutory definition of mortgage charge rate refers to "any other amount charged to a mortgagor with respect to an insured mortgage." The Department interprets this language as excluding flat fees for mortgagee services distinct from the actual making of the loan (justifying the treatment of staff appraisers and staff inspectors described above) but the Department finds no blanket authority to disregard any flat fees charged by the mortgagee for any part of its role in the actual underwriting and closing process.

Two commenters addressed the proposed § 202.20(d) which would require that any interest rate offered for a mortgage type be available for mortgages of any principal amount. HUD has responded to one comment by clarifying in the final rule that this requirement applies only within an area as defined by the rule. Another commenter argued that the proposed rule conflicted with the tiered pricing statute because the proposed rule would require a mortgagee to recover a variance in costs in making different loans through variances in points rather than interest rates, whereas the statute left to the mortgagee the discretion to recover differences through either means or a combination of them. The commenter is correct that the statute refers to variations between mortgage charge rates instead of variations in discount points. If HUD permitted certain interest rates to be reserved for certain size loans, HUD would have needed to propose a rule that in all cases required a mathematical calculation of a specific mortgage charge rate, taking into account at least interest rates, discount points and origination fees. Under such an approach a mortgagee could have reserved certain interest rates for certain loans.

Such an approach may have been closer than the proposed rule to the literal language of the statute. HUD determined that the statute permitted a different and less complex approach. The compliance burden on mortgagees as well as the monitoring burden on HUD is greatly reduced if the primary comparison between mortgages is limited to discount points only so that no calculation is required. A single commenter objected to this approach, while nearly all commenters urged a reduction in regulatory burden. HUD will use its simplified approach of focussing on one component of the mortgage charge rate (discount points) in lieu of a more complex and burdensome approach.

C. Variation in Costs

For a mortgagee which is in compliance with the two percentage point limitation on variation in mortgage charge rates, the statute also requires that HUD ensure that *any* variations in mortgage charge rates "are based only on actual variations in fees or costs to the mortgagee to make the loan." This requirement was contained in the proposed rule in § 202.20(a). Many commenters expressed concern over how HUD would determine the costs to make a loan. In effect, commenters wanted to know whether HUD would look solely at a mortgagee's direct expenditures and overhead in determining the cost of making a loan or whether the origination fees and value of servicing rights generated in making the loan would also be considered to arrive at a net cost. Loans of different sizes might appear to have similar costs until origination fees and servicing value are considered.

Origination fees necessarily vary because they are set at 1% of the loan amount. Commenters also explained that servicing value might be nonexistent for the smallest loans but could be a significant factor that partially or completely offsets costs for a larger loan. If these items were considered so that *net* costs were compared and points were allowed to make up the difference in net costs between small and large loans, mortgagees would have less difficulty in complying with the rule.

HUD did not address this issue specifically in the proposed rule. HUD agrees with commenters that the statute was not intended to prevent consideration of the variations in origination fee income and servicing values as factors offsetting other variations in costs. HUD has added language to § 202.20(a) of the final rule to clarify that net costs will be considered. Section 202.20(a) has also been revised to improve organization.

One commenter proposed that variation in mortgage charge rates up to two percentage points be permitted whenever the mortgagee can demonstrate that it is not recovering for any mortgage more than its average cost to originate all mortgages. "The lender should be prohibited from creating classes of mortgages and allocating differing costs to those classes," wrote the commenter. The Department agrees that the mortgagee may allocate the same average basic cost for all mortgages within a mortgage type, or for all mortgages, provided that this approach is documented in the mortgagee's records. Information submitted by commenters suggested that mortgagees do have information on the average basic cost of originating an FHA-insured mortgage (without considering the value of servicing) produced by allocating general overhead among the mortgages originated. One commenter used an estimate of $1,000 "unit cost" plus a commission that varied with loan size, resulting in a cost range of $1,175–$1,700 for loans of $25,000–$100,000. Another reported typical loan costs of $1500–$1800. Another stated that all FHA-insured single family mortgages, regardless of size, cost approximately the same to originate. An industry study by the Mortgage Bankers Association of America based on 1991 data from 185 mortgagees (not limited to FHA-insured mortgages) indicated somewhat higher expenses for producing a loan—an average of $2,332 for all companies studied, $2,183 for companies that purchase less than 10% of their loan production, and $1,884 for the ten companies in the study with the highest profit. HUD will not question a mortgagee that documents its costs by using an average basic production cost in these ranges for all sizes of FHA-insured mortgages and any additional documented costs varying directly due to loan size, such as for commission. A mortgagee that wants to justify its costs variations by using differing basic costs for particular mortgages within a mortgage type will need to document any actual difference in costs but will not be prohibited from attempting to do so.

D. Other Comments on Mortgage Charge Rates

A few commenters disagreed completely with HUD's approach to determining mortgage charge rates. They argued that HUD should use the annual percentage rate (APR) determined under the Truth in Lending Act as the mortgage charge rate. HUD considered this approach when developing the proposed rule but did not pursue the idea. The APR could be useful in determining compliance with the two percentage point limit on variation, but the simplicity of comparing two APRs does not seem to be any great advantage over the simplicity of comparing discount points under the proposed rule. Use of the APR could not help to determine whether variations in fees and charges within the two percentage point limitation were justified. In addition, the APR includes charges not under the control of the mortgagee, such as charges for the appraisal, credit report and other third party closing services, that would distort the application of the two percent tolerance that Congress intended to be applied only to mortgagee charges. It might be possible to develop some other tolerance applied to APR variations that approximated the effect of the two percent variation for mortgage charge rates, but HUD has no clear authority to abandon the specific terms of the statute. If Congress had intended that HUD attack the tiered pricing problem through comparison of APRs, it could easily have said so instead of developing the distinct concept of mortgage charge rates.

Two commenters questioned the statement in the preamble to the proposed rule that HUD would review any practices that pass closing costs and charges to the seller, in addition to items paid by the mortgagor. The commenters stated that HUD lacked statutory authority to review fees charged to the seller. One stated that at a minimum the rule should clarify that fees paid by the seller should be reviewed to determine whether they were charged to circumvent the tiered pricing rule and that there would be no other scrutiny.

The commenters' remarks regarding statutory authority presumably refer to the statutory definition of "mortgage charge rate" as including various items "charged to a mortgagor with respect to an insured mortgage." This could exclude some items that a mortgagee would not charge to a mortgagor, such as a seller's share of a settlement fee in a jurisdiction in which sellers share responsibility for the mortgagee's cost of conducting a settlement. HUD does not agree that the law precludes review of one or more items of closing costs merely because actual payment may have been made by the seller in the particular transaction. The law applies to the mortgagee's customary lending practices, not to the terms negotiated between particular sellers and buyers.

For example, assume that the parties to the sale are able to negotiate the manner in which they will share the responsibility for paying discount points to the mortgagee. If the mortgagee charges three extra points for a small mortgage as compared to a large one at the same interest rate, the mortgagee is not in compliance with the tiered pricing restriction merely because the seller in the smaller transaction has agreed to pay one or two points on behalf of the mortgagor. That aspect of the seller-mortgagor negotiation does not modify the mortgagee's customary lending practices, which are to charge a

mortgagor an impermissible amount of extra points for the smaller loan.

Recordkeeping

Most commenters viewed as excessively burdensome the requirement in § 202.20(h) of the proposed rule that mortgagees retain for three years records on pricing information "satisfactory to the Secretary". The following comment represents a typical reaction: "The creation of a separate and distinct recordkeeping system for this particular proposed rule is excessive." Another complained of "the sheer volume and extent of the loan documentation requirement." Another asserted that the proposal "requires banks to make extensive calculation of variables." Commenters did not offer any suggestions as to how HUD could monitor compliance with the statute if it had no access to historical records on a mortgagee's pricing policies.

HUD deliberately proposed a rule that minimized a mortgagee's recordkeeping burden and that did not require a separate and distinct recordkeeping system. HUD might have pursued approaches that would have placed substantial new recordkeeping and reporting burdens on a mortgagee, such as requiring all pricing sheets to be submitted to a local HUD office when they are adopted, or requiring a mortgagee to calculate a mortgage charge rate for each FHA insured single family mortgage or requiring a mortgagee to develop its own comparisons of its mortgage charge rates. HUD chose instead not to specify new records that a mortgagee must develop and maintain. Under current FHA policies and under the regulations implementing the Equal Credit Opportunity Act, 12 CFR part 202, mortgagees must retain loan files for both rejected and closed loan applications for two years. The rule does not add significantly to this burden.

Files for closed loans will ordinarily contain information showing the date and terms when the mortgage charges were locked in. Loan files for rejected loans should also contain sufficient information on the pricing of the loan if processing progressed far enough for specific loans terms to be considered. However, the rule does not require that pricing information be retained on an individual loan basis. The focus of the rule is on the "customary lending practices" of a mortgagee. A mortgagee could choose to retain its pricing sheets for two years as evidence of its general pricing policies and as a simple way to demonstrate compliance with the regulation. The final rule does not dictate whether a mortgagee keeps information on mortgage charges on an individual loan basis, as a general record on its pricing policies, or both. Similarly, a mortgagee that wishes to ensure consideration of factors offsetting direct costs may include evidence of variations in origination fees and the value of servicing rights either in the individual loan files or in some other form that is available to HUD monitors.

The comments suggest that the necessary information is routinely available to a mortgagee with respect to each loan that is underwritten since the information is a basis for pricing the particular loan. It is a simple matter and not a substantial new burden to include the information in the loan file, or otherwise maintain it elsewhere if the mortgagee so chooses.

In short, all that the final rule requires is that a mortgagee be able to provide records to HUD during routine HUD mortgagee monitoring (or otherwise pursuant to a general inquiry as discussed below in Section III), in a form determined by the mortgagee and consistent with existing legal requirements for recordkeeping, that will enable HUD to obtain answers to a few basic questions: What charges has a mortgagee imposed on mortgagors for its mortgages, of a particular mortgage type in a particular area, during a specified time period? If the charges vary between mortgages of the same interest rate, mortgage type and area, what is the specific reason for the amount of variance? If the mortgagee has information available to answer these questions (and HUD expects that mortgagees already have such information without the requirements of this rule), then the mortgagee has records "satisfactory to the Secretary." HUD will inform mortgagees if the records ordinarily retained by mortgagees are found to be insufficient in the course of applying the rule and more specific requirements are needed.

A few commenters questioned the reference in § 202.20(h) of the proposed rule to data required under regulations implementing the Home Mortgage Disclosure Act (HMDA). The rule does not affect existing HMDA requirements, either by adding to information that must be reported for HMDA purposes or by relieving mortgagees of any reporting requirements. The final rule has been corrected to acknowledge that not all FHA-approved mortgagees are required to report under HMDA. Mortgagees that are not covered by HMDA are subject to similar requirements with respect to applications and closed loans involving FHA-insured mortgages pursuant to HUD's responsibilities under the Fair Housing Act, Mortgagee Letter 90–25 and other mortgagee letters, and Handbook 4155.1 REV–4, paragraph 3–14G.1.

Responsibility of Sponsors/Wholesalers/Investors

Ten commenters disagreed with the Department's position in the preamble to the proposed rule regarding responsibility of sponsors/wholesalers/investors. The Department proposed to hold responsible for an originator's tiered pricing violations the sponsor mortgagee (if the originator was approved by HUD as a loan correspondent) or any wholesaler/investor mortgagee that had arranged prior to closing to fund and purchase the mortgage (*i.e.*, through table funding). This would involve interpreting the statutory phrase "customary loan practices" as applicable to the wholesale purchases of mortgages from the originator and including the purchased loans.

Commenters stated that the mortgagees/investors at the wholesale level lacked the ability to dictate the amounts charged to a mortgagor by the originating mortgagee and therefore should not be held responsible. Some commenters also stated that a sponsor has no knowledge of the various prices charged by its loan correspondents and no way to monitor them. Many commenters also pointed out that an originating loan correspondent could have many sponsors, and that HUD should not hold a single sponsor responsible for the loan practices of the loan correspondent including loans originated for other sponsors.

The Department stated in the proposed rule preamble that its intent was to "most effectively regulate those directly responsible for tiered pricing." Responsibility can be the result of action or inaction by the sponsor or wholesale purchaser. The Department's experience in examining possible tiered pricing violations has been that loan originators attribute any violations to the requirements of mortgagees at the wholesale level. The Department agrees that this is not always the case. The Department does not view as dispositive, however, the fact that the tiered pricing practices at the retail level may not have been expressly dictated by the wholesale mortgagee. The Department believes that there are other ways in which the wholesaler's requirements and practices may lead to tiered pricing that is not in compliance with the statute.

The commenters generally appeared to accept the Department's position that

the practices of wholesale lenders in setting terms for the mortgages that they fund or purchase can come within the scope of the statutory term "customary lending practices" if they have the effect of leading to discriminatory pricing by the originating mortgagees in violation of the tiered pricing restrictions. The disagreement is over whether, in fact, that effect follows from typical arrangements.

Current regulations, at 24 CFR 202.15(c)(6), provide that each sponsor of a loan correspondent shall be responsible to the Secretary for the actions of its loan correspondent in originating mortgages, unless applicable law or regulation requires specific knowledge on the part of the party to be held responsible. This principle applies to the tiered pricing area. It is limited to those mortgages with which the particular sponsor mortgagee is involved, not mortgages originated for sale to other mortgagees. The sponsor is required to underwrite the FHA insured loans that it will purchase from the loan correspondent, 24 CFR 202.15(c)(1). The sponsor is not ignorant of the lending practices of its correspondent with respect to such loans. The Department will provide a sponsor the opportunity to explain why it should not be regarded as responsible for a particular tiered pricing violation of its loan correspondent with respect to loans that it underwrites, but the Department does not agree that sponsors generally cannot be regarded as responsible for the pricing of loans by loan correspondents.

In the proposed rule HUD stated its intention to treat wholesale purchasers providing table funding for a mortgagee in the same manner as HUD-approved sponsors. At least one commenter specifically objected to any application of the rule to a table funding situation. The commenter cited a 1992 ruling of the Emerging Issues Task Force of the Financial Accounting Standards Board (FASB), the governing body of the accounting profession, that a table funding arrangement should be accounted for as a purchase if the loan is legally structured as an origination by the correspondent and if the correspondent is independent of the mortgage banking enterprise. HUD does not agree that this accounting ruling should govern the distinct issue of responsibility for tiered pricing practices. Even if the mortgagee/investor providing table funding is not an approved sponsor purchasing from a loan correspondent, HUD will regard the mortgagee/investor as responsible for tiered pricing violations if the requirements of the funding mortgagee have the effect of leading to a tiered pricing violation by the loan originator. HUD has revised § 202.20(a) to state this principle in the final rule. HUD continues to distinguish approved sponsors from other mortgagees providing table funding because other mortgagees do not have the general responsibility for the correspondent/originator stated in § 202.15(c)(6).

Application of Rule to All Single Family Programs

Numerous commenters objected to applying the rule to all FHA single family programs rather than limiting the rule to the section 203 programs mentioned in the legislation. The commenters viewed this as a major extension of the scope of tiered pricing restrictions, and beyond HUD's legal authority. One commenter supported HUD's approach.

Section 203(t) can be read as only requiring HUD to consider section 203 mortgages when determining whether the customary lending practices of a mortgagee violate the tiered pricing restrictions. Most Section 203 mortgages are insured under the basic Section 203(b) program; insurance is also available in specific circumstances under Sections 203 (h), (i), (n) or (k). HUD does not agree that it lacks authority to consider practices under other FHA single family programs and concludes that there is good reason to look beyond section 203 to other single family programs as well.

For FY 1993, approximately 84.5 percent of single family mortgage loans receiving FHA insurance were insured under section 203 programs so that single family mortgagees will not be subject to significant extra burdens by including other programs in this rule. The principal non-section 203 mortgage insurance program is the section 234(c) program for insurance of condominium unit mortgages with approximately 7.7 percent of insured mortgages in FY 1993. There is no policy reason why the practice of tiered pricing should be viewed differently for section 234(c) mortgages as for section 203(b) mortgages. It should be restricted in both programs. In addition, the Department anticipates that additional significant single family programs may be added to the National Housing Act outside of section 203 with the same potential for discriminatory treatment through tiered pricing. The law should not be interpreted to require specific amendment of section 203(t) as a prerequisite to addressing tiered pricing concerns in new programs; the better reading is that the law permits HUD to attack any tiered pricing concerns for each new program without the need for express new authority.

The general rulemaking authority in section 211 of the National Housing Act permits HUD to adopt rules and regulations that it regards as necessary to carry out Title II of the National Housing Act; that authority permits HUD to adopt and apply its mortgagee approval requirements generally to all programs and the tiered pricing restrictions are being adopted in the regulations as an additional section of the mortgagee approval requirements. In section 539 of the National Housing Act, which will be discussed in a later section, Congress acknowledged the relationship of the tiered pricing restrictions of section 203(t) with the prohibition of a minimum loan amount in section 535 of the National Housing Act. Congress required the Secretary to assess the compliance of a mortgagee with both requirements in connection with any HUD examination of a mortgagee, and required a single procedure for a private individual to require determination of a mortgagee's compliance with both requirements. Section 535 has already been implemented by regulation for all single family programs and it is reasonable to keep the same broad approach for the related provision. The Department is sympathetic to the commenters' concern that extension of the tiered pricing restrictions to many minor programs could be burdensome. The Department will respond to this concern by focusing its review of tiered pricing compliance on a limited number of mortgage types involving major programs as discussed below.

Mortgage Type

The proposed rule provides for comparison only of mortgages of the same mortgage type. Instead of describing each mortgage type, the proposed rule provided that a mortgage type would include those groups of mortgages that are closely parallel in important risk characteristics. The proposed rule would have authorized the Secretary to develop standards and definitions regarding risk characteristics. The preamble to the proposed rule suggested that mortgage types could be based both on approaches to interest rate (fixed rate, ARM, GPM) and insurance program (sections 203(b) and 234(c) separated from section 203(k)). The Department indicated particular interest in receiving industry comment.

The commenters provided many suggestions for developing mortgage types. There was no consensus regarding appropriate typing. The

following were cited by one or more commenters as characteristics that should place mortgages in separate categories: purchase vs. refinance, attached/condominium vs. detached (203(b)), high vs. low loan-to-value ratio, adjustable rate vs. fixed rate level payment vs. fixed rate graduated payment, new vs. existing construction, no- or low-closing cost loans (refinances or others) with premium interest rate vs. market rate, and different FHA mortgage insurance funds.

One commenter stated that mortgage types should be based on cost of origination instead of risk. The proposed rule reference to risk was taken from the pertinent discussion in the Conference Committee report on the statute [1], but that report also mentioned expenses. The report states:

> This section is intended to apply to Sec. 203 of the National Housing Act by loan type. For example, mortgages insured under the section 203(k) program may be priced differently from mortgages insured under the 203(b) program. The Committee recognizes that different types of mortgages involve differing levels of risk, processing expenses or other factors that differentiate them and necessitate pricing variation.

The basic objective is to avoid comparing mortgages where one would ordinarily expect to find interest rate and/or discount point differences due to the nature of the mortgage even given identical borrowers, property and loan amount. HUD agrees that the proposed rule's reference only to "risk characteristics" may be too limiting and additional language has been added to § 202.20(g) that paraphrases the Conference Committee report.

The Department does not consider it advisable to place a fixed delineation of mortgage types in the rule because of lack of experience and potential new mortgage programs and pricing practices. Instead the Department has retained general language providing for the Secretary to provide standards and definitions. Based on this authority, HUD's monitoring for tiered pricing compliance will initially be based on a mortgage type definition that will divide mortgages only into two types based on program: section 203(b)/section 234(c) mortgages as one type, with section 203(k) rehabilitation loans as a separate type. The rule extends to all single family programs as discussed above, but at this time HUD intends to restrict routine monitoring to these major programs.

HUD considered whether each mortgage type based on program should be further subdivided based on other characteristics of the mortgage such as those cited by the commenters. HUD has concluded that it does not have sufficient information and experience to determine additional appropriate subtypes at this time, given the lack of any consensus among the commenters who addressed this question. An excessive number of overly specific mortgage types would result if each of the suggested methods of grouping mortgages were adopted by HUD. The final rule permits HUD to further define mortgage types if its monitoring experience demonstrates that this is necessary to avoid inappropriate comparisons of mortgages when determining compliance with the rule.

Definition of "Area"

The statute applies the two percentage point limitation on mortgage charge rate variation to mortgages on dwellings in an "area". The statute states that "area" shall have the meaning given the term under section 203(b)(2) of the National Housing Act. The pertinent sentence in section 203(b)(2) states that "area" means a county or a metropolitan statistical area (MSA) as established by the Office of Management and Budget, whichever results in the higher dollar amount. This definition is ordinarily used when implementing HUD's authority to designate "high-cost" areas where—due to high median area house prices—the FHA maximum mortgage limit can exceed the $67,500 amount that would otherwise apply for a 1-family residence. There is some ambiguity in applying this definition of "area" to the tiered pricing context.

The proposed rule regarded the statutory reference to the section 203(b)(2) definition as an indication that the areas for tiered pricing purposes should be the high-cost areas already designated by HUD to determine maximum mortgage amounts. These areas currently cover most of the population of the country and include most MSAs as well as some counties that are not part of any MSA. Under the reading of the statute adopted in the proposed rule, there is no specific statutory guidance regarding how other parts of the country should be divided into areas for purposes of tiered pricing comparisons. The proposed rule would have divided the rest of the country (*i.e.*, excluding the designated high-cost areas) by using the jurisdictional lines of HUD Field Offices.

HUD received 5 comments—all negative—on its proposed approach to defining areas. Several commenters indicated that the proposed rule was difficult to understand. Three commenters made specific suggestions for different approaches. One asserted that the statutory reference to the section 203(b)(2) definition of area simply means that loans made in metropolitan statistical areas are compared with other loans made in the same metropolitan statistical area, and loans made outside of metropolitan statistical areas are compared on a county by county basis. This commenter also recommended use of counties because HMDA data is compiled by counties. HMDA data is not compiled for loans outside MSAs, however, so that HMDA precedent is not pertinent regarding defining rural land into "areas" for tiered pricing purposes. Another commenter accepted HUD's use of designated high-cost areas as areas for purposes of the rule, but also suggested that the remainder of the country be compared on a county-by-county basis instead of using HUD Field Office jurisdictions. A third commenter also objected to use of HUD Field Office jurisdictions and suggested the use of areas served by the lender's own offices as they might change from time to time. Another commenter noted that different counties or states may require different pricing levels even though they are both in the same HUD Office jurisdiction, without offering any alternative approach. None of the commenters submitted any information regarding how lenders typically vary pricing levels geographically. No evidence was submitted indicating that pricing typically varies on a county-by-county basis.

After reviewing the comments, HUD continues to conclude that the most likely intent of the statutory reference to the section 203(b)(2) definition of area was to require use of the same high-cost areas that are used for designating mortgage limits under section 203(b)(2). It is unlikely that the statute demands use of county-by-county comparisons outside of MSAs, as one commenter suggested, because of the lack of evidence that mortgages are priced on a county basis and because of the very large number of separate rural areas that would result—with very few mortgages made by any one mortgagee in most of the areas. County comparisons are unlikely to reveal any excessive tiered pricing that may be occurring over broader areas outside of MSAs.

It is possible that the statute does not mandate any tiered pricing comparisons outside of high-cost areas. If so, HUD still would possess authority to extend the rule's coverage through its general rulemaking authority and HUD believes that it is not appropriate to exclude parts of the country from coverage of the final rule. There is no reason to conclude that excessive tiered pricing, to the extent that it exists, is limited to high-cost areas.

Any dividing of the rural and non-high-cost MSAs will be somewhat arbitrary and will not match exactly any mortgagee's perception of different mortgage markets. Use of political jurisdictional lines could result in too many areas (counties) or too few and too large areas (states). HUD has concluded that use of HUD Office jurisdictional lines is an appropriate compromise. In large sparsely populated states which are unlikely to be divided into well-defined separate mortgage pricing areas, there is typically a single HUD Office. In the more populous state there are likely to be several HUD offices, as well as high-cost areas, so that the state will be divided into a number of different areas for tiered pricing comparisons. HUD has previously decided to use HUD Office jurisdictions as a means of dividing up mortgage markets for monitoring purposes. For example, 24 CFR 202.11(d)(i) defines the "normal rate" of claims and defaults in an area on the basis of HUD Office jurisdictions.

Therefore, HUD has not made any substantive changes in the definition of area in the final rule. A technical change has been made in the reference to the regulation on high-cost areas to reflect revisions made by a final rule that implemented a revision of section 203(b)(2) in the Housing and Community Development Act of 1992 (58 FR 40996, July 30, 1993.)

Variations From Customary Lending Practices

The commenters raised a number of questions involving cases where the actual charges for the mortgage might differ in special cases from the prevailing policy of the mortgagee. Commenters asked about reduced rates for certain loans as a promotion or to gain market share in an area or on a "random basis," about par-plus pricing, about negotiated interest rates or points needed to attract a particular mortgagor from a competitor lender, and about loan officer overages. Rather than discuss each of these situations in detail, the Department will point out that the statute is directed at a mortgagee's "customary lending practices". It is permissible for a mortgagee to have a lending policy that permits occasional deviations from the standard terms it is generally offering to customers in its lending area, even if beyond a two percent variation, provided that those deviations are not applied in a discriminatory fashion and are available to purchasers on lower as well as higher priced homes on an individual case basis. The loan file should document why special pricing was applied. The two percent variation limitation is permitted by law not to recognize the occasional exceptions to a pricing policy, but to permit the mortgagee's pricing policy itself to contain some variations among loans, principally to ensure that a mortgagee can afford to make loans of all sizes.

One commenter objected to the lack of a good faith exception process for what it characterized as "good faith noncompliance based on circumstances which do not violate the spirit of a regulation * * *. There should be the ability to show that in good faith, tiered pricing was not based on loan amounts or other discriminatory factors." HUD does not interpret the statute as authorizing a formal good faith exception although, as stated above, the statute is concerned with customary practices instead of the actual terms of each individual mortgage. Monitoring and enforcement in this area, as in other areas, can take into account actual circumstances when determining appropriate responses to a mortgagee's noncompliance. The mere lack of intent to engage in forbidden discrimination is not a defense. The statute prohibits customary lending practices with variation in mortgage charge rates on greater than two percentage points regardless of any legitimate business motive for the excess variation. The statute requires HUD to determine that lesser variations in mortgage charge rates are based on actual variations in fees or costs to the mortgagee. The mere lack of an illegitimate discriminatory motive for variations is not enough.

III. Implementation of Section 539(a) of the National Housing Act

Section 330(b) of the Cranston-Gonzalez National Affordable Housing Act added a new section 539(a) to the National Housing Act (NHA). The new section requires, among other things, that the Secretary establish a procedure whereby any person may file a request for a determination on whether a mortgagee is in compliance with: (1) The new section 203(t) on tiered pricing, and (2) certain other provisions of the National Housing Act that prohibit minimum loan amounts for insured mortgages and Title I loans. The Secretary must also establish a procedure to inform each requestor of the disposition of its request for determination and to publish in the **Federal Register** the disposition of any case referred to the Mortgagee Review Board for action.

HUD published a notice setting forth the procedure for filing a request for determination of compliance with section 203(t) and the minimum loan amount prohibitions (56 FR 33455, July 22, 1991.) Section 330(b) requires that this notice be followed by a final rule. The substance of the notice is included in this rule as a new subsection (i) to § 202.20. The Department has also amended § 201.10(g) to refer to new § 202.20(i) because the procedure also applies to Title I Lenders.

Many commenters, primarily State Banking Associations, objected to this provision as a "private right of action" that would cause HUD to conduct "fishing expeditions" at great expense to mortgagees. HUD believes that the commenters misunderstood the intent of the provision. HUD has done no more than follow the requirements of section 539(a)(2) of the National Housing Act. Those requirements must be read together with section 539(a)(1), which directs the Secretary to assess the performance of a mortgagee in meeting the tiered pricing and minimum loan amount prohibitions "[i]n connection with any examination of a mortgagee by the Secretary pursuant to this [National Housing] Act." In other words, a tiered pricing review generally would be conducted as part of the regular mortgagee monitoring conducted by HUD.

Section 539(b)(2) ensures that HUD can receive evidence of violations outside of its regular mortgagee monitoring so that special investigations can be made if appropriate. The law and the rule do not compel HUD to conduct an investigation at the demand of any person. A person may "request" a HUD determination of compliance, and HUD must inform the person of the disposition of the request, which could be a decision that no investigation was warranted. One commenter suggested that requests be published. They will be available to the public upon request under the Freedom of Information Act (except to the extent that withholding is determined to be necessary under the "investigatory records" exception to disclosure) but HUD does not plan a formal publication system.

An investigation might not be warranted if the requestor provides no reason to suspect a tiered pricing violation by the mortgagee or if the request appears to have been solely for harassment purposes. HUD has limited investigative and monitoring resources and will not waste those resources in pursuing all requests no matter how unsupported or frivolous. HUD will respond vigorously when it receives reason to suspect a tiered pricing violation even though a violation may

[1] H.R. Rep. 101–922, p. 393.

not have been identified through the regular mortgagee monitoring process.

IV. Procedural Requirements

Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers are: 14.108, 14.110, 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, 14.133, 14.142 and 14.162.

Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule carries out a statutory mandate designed to ensure that FHA mortgagees will not discriminate against FHA mortgagors with low principal loans. The Department believes that the rule does this in a manner which interferes to the minimum extent feasible with ordinary business operations of small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have "federalism implications" within the meaning of the Order. The rule does not alter existing relationships between the Department, state and local governments and the private sector.

Executive Order 12606, the Family

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this rule do not have the potential significant impact on family formation, maintenance, and general well-being within the meaning of the Order. The tiered pricing rule serves primarily as a tool for prohibiting discrimination against mortgagors who apply for low-principal loans.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332) The Finding of No Significant Impact is available for public inspection and copying through Friday, 7:30 a.m. until 6:00 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Regulatory Agenda

This rule was listed as sequence number 1528 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56428) pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 201 and 202 are amended to read as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR part 201 is revised to read as follows:

Authority: 12 U.S.C. 1703; 42 U.S.C. 3535(d).

2. In § 201.10, paragraph (g) is amended by adding to the end of the paragraph a new sentence to read as follows:

§ 201.10 Loan amounts.

* * * * *

(g) * * * A person may request the Secretary to determine compliance of a lender with this section as provided in § 202.20(i) of this chapter.

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

3. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715(b); 42 U.S.C. 3535(d).

Subpart B—Approval of Mortgages

4. Part 202, subpart B, is amended by adding a new § 202.20 to read as follows:

§ 202.20 Tiered Pricing.

(a) *Customary lending practices.* (1) The customary lending practices of a mortgagee for its FHA insured single family mortgages shall not provide for a variation in mortgage charge rates that exceeds two percentage points. A variation is determined as provided in paragraph (f) of this section.

(2) The customary lending practices of a mortgagee include all FHA insured single family mortgages originated by the mortgagee. They also include FHA insured single family mortgages funded by the mortgagee or purchased from the originator if requirements of the mortgagee have the effect of leading to violation of this section by the originator. The responsibility of sponsors of loan correspondents is also governed by § 202.15(c)(6).

(3) Any variations in the mortgage charge rate up to two percentage points under the mortgagee's customary lending practices must be based on actual variations in fees or cost to the mortgagee to make the loan, which shall be determined after accounting for the value of servicing rights generated by making the loan and other income to the mortgagee related to the loan. Fees or costs must be fully documented for each specific loan.

(b) *Area.* For purposes of this section, an area is:

(1) An area used by HUD for purposes of § 203.18(a) of this chapter to determine the median 1-family house price for an area; or

(2) The area served by a HUD field office but excluding any area included in paragraph (b)(1) of this section.

(c) *Mortgage charges.* Mortgage charges include any charges under the control of the mortgagee and not collected for the benefit of third parties, including, but not limited to interest discount points and loan origination fees.

(d) *Interest rate.* Whenever a mortgagee offers a particular interest rate for a mortgage type in an area, it may not restrict the availability of the rate in the area on the basis of the principal amount of the mortgage. A mortgagee may not direct mortgage applicants to any specific interest rate category on the basis of loan size.

(e) *Mortgage charge rate.* The mortgage charge rate is defined as the amount of mortgage charges for an FHA insured mortgage expressed as a percentage of the initial principal amount of the mortgage.

(f) *Determining excess variations.* Variation in mortgage charge rates for a mortgage type is determined by comparing all mortgage charge rates offered by the mortgagee within an area for the mortgage type for a designated day or other time period, including mortgage charge rates for all actual mortgage applications.

(g) *Mortgage type.* A mortgage type for purposes of paragraph (f) of this section will include those mortgages that are closely parallel in important characteristics affecting pricing and charges, such as level of risk or processing expenses. The Secretary may develop standards and definitions regarding mortgage types.

(h) *Recordkeeping.* Mortgagees are required to maintain records on pricing information, satisfactory to the Secretary, that would allow for reasonable inspection by HUD for a period of at least two years. Additionally, many mortgagees are required to maintain racial, ethnic, and gender data under the regulations implementing the Home Mortgage Disclosure Act (12 U.S.C. 2801–2810).

(i) *Request for determination of compliance.* Pursuant to section 539(a) of the Cranston-Gonzalez National Affordable Housing Act, any person may file a request that the Secretary determine whether a mortgagee or Title I lender is in compliance with this section or with sections implementing sections 223(a)(7) and 535 of the National Housing Act such as §§ 201.10(g), 203.18d and 203.43(c)(5) of this chapter.[2] The request for determination shall be made to the following address: Department of Housing and Urban Development, Office of Lender Activities and Land Sales Registration, 451 Seventh Street SW., Room 9146, Washington, DC 20410. Each request shall include the requestor's name and address and the name and address of the mortgagee or Title I lender involved. A complete explanation of the circumstances and the mortgagee's or Title I lender's practices, to the extent known, must be delineated. Any documented evidence that the requestor may have, including copies of advertisements, HUD–1 Settlement Statements, sales contracts, or other relevant documents would greatly expedite the Department's review and the resultant determination. The Secretary shall inform the requestor of the disposition of the request. The Secretary shall publish in the **Federal Register** the disposition of any case referred by the Secretary to the Mortgagee Review Board.

(Approved by the Office of Management and Budget under control numbers 2502–0265 and 2502–0059)

Dated: February 15, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–4331 Filed 2–24–94; 8:45 am]

BILLING CODE 4210–27–P

[2] Only section 535 applies to Title I lenders.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of a proposed amendment to the Montana permanent regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment would revise the State's definition of "prospecting" to more closely conform to the Federal definition of "coal exploration."

EFFECTIVE DATE: February 25, 1994.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program as administered by the Department of State Lands. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980 **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15 and 926.16.

II. Submission of Amendment

By letter dated October 19, 1992, (Administrative Record No. MT–9–1) Montana submitted a proposed amendment to its permanent program pursuant to SMCRA. Montana submitted the proposed amendment in response to a March 29, 1990, letter that OSM sent to Montana in accordance with 30 CFR 732.17(c) (Administrative Record No. MT–8–01). The provision of the Montana program that Montana proposes to amend is Montana Code Annotated (MCA) Section 82–4–203(26) (statutory definition of "prospecting").

OSM published a notice in the December 14, 1992, **Federal Register** (57 FR 59020) announcing receipt of the amendment and inviting public comment on its adequacy (Administrative Record No. MT–9–8). The public comment period ended January 13, 1993.

During its review of the amendment, OSM identified concerns relating to the proposed revision of MCA 82–4–203(26). OSM notified Montana of the concerns by letter dated February 3, 1993 (Administrative Record No. MT–9–11). Montana responded in a letter dated July 28, 1993, by submitting a revised proposed definition at MCA 82–4–203(26) (Administrative Record No. MT–9–13). OSM published a notice in the **Federal Register** announcing receipt of the revision and invited public comment on its adequacy (Administrative Record No. MT–9–18). The public comment period ended September 27, 1993.

In a letter dated November 24, 1993, (Administrative Record No. MT–9–26) OSM notified the State of concerns related to the proposed definition submitted by cover letter dated July 28, 1993. Thereafter, by letter dated January 12, 1994, (Administrative Record No. MT–9–27) Montana agreed that OSM's concerns with the proposed definition were justified.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment submitted by Montana on October 19, 1992, and revised July 28, 1993.

Montana submitted a revised definition of "prospecting" at MCA 82–4–203(26) on October 19, 1992, and subsequently, as a result of OSM's February 3, 1993 letter, submitted a revision to the initially proposed definition on July 28, 1993. The State is proposing the following definition of "prospecting":

> Prospecting means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit: the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical or other techniques necessary to determine the quality and quantity of overburden in an area: or the gathering of environmental data to establish the conditions of an area before beginning strip-or underground-coal-mining and reclamation operations under this part.

The State proposal is similar to the Federal definition of the term "coal exploration" at 30 CFR 701.5 insofar as it includes: "* * * the gathering of environmental data to establish the conditions of an area before beginning strip-or underground-coal-mining and reclamation operations * * *."

Montana's definition of "prospecting" differs from the Federal definition of "coal exploration," however, in that it distinguishes between activities that are conducted "* * * for the purposes of determining the location, quantity, or quality of a natural mineral deposit" and those that are conducted "* * * to determine the quality and quantity of overburden in an area." Montana defines the term "mineral" at MCA 82–4–203(20), to mean coal or uranium.

If activities are conducted to determine the location, quantity, or quality of a natural mineral deposit, then prospecting "means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface * * *." If, on the other hand, activities are conducted to determine the quality and quantity of overburden in an area, then prospecting means "the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical, or other techniques necessary to determine the quality and quantity of overburden in [the] area * * *."

By comparison, the Federal definition of "coal exploration" means, in part, the field gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area. Thus, the Federal definition, unlike the State proposal, does not distinguish between whether the purpose of the activity conducted is related to the mineral deposit (coal seam) or the overburden. Additionally, under the Federal definition of "coal exploration," unlike the State proposal, activities need not involve surface disturbance to be covered by the definition. In contrast, the State proposal requires that activities involve surface disturbance before such activities will be considered "prospecting" if the purpose of the activities is to determine the location, quality, or quantity of the coal deposit.

OSM discussed the broad scope of activities encompassed by the definition of "coal exploration" in the September 18, 1978 **Federal Register** (43 FR 41662, 41669) as follows:

> The Office has considered the question of whether the terms "coal exploration operation" and "substantially disturb" should be proposed to exclude specifically cases where persons enter upon lands underlain by coal deposits to conduct scientific research or where very small amounts of coal are removed by hand tools and access to the area is obtained by foot or by limited use of an existing road or other access route. After consideration, the Office has decided not to propose such exclusions, because it is believed that Congress authorized no categorical exemptions from activities otherwise covered by section 512 of the Act.

Therefore, to be consistent with the Federal program requirements, Montana's definition of "prospecting" must include the activities of gathering surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical or other techniques necessary to determine the quality and quantity of coal of an area, when the purpose of the activity is to determine location, quantity, or quality of a mineral deposit. The State must also clarify that an activity need not involve surface disturbance to be considered "prospecting."

The Director is approving the proposed definition of "prospecting" because its overall effect would be to increase the scope of the Montana prospecting program requirements over those required under the previously approved State definition. The previously approved definition defined "prospecting" to mean:

> The removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit.

However, the State is required to further amend its definition of "prospecting" so that it includes the activities of gathering surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical or other techniques necessary to determine the quality and quantity of coal of an area, when the purpose of the activity is to determine location, quantity, or quality of a mineral deposit. The State must also clarify that an activity need not involve surface disturbance to be considered "prospecting."

IV. Summary and Disposition of Comments

1. Public Comments

OSM solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received. A public hearing was not held because no one requested an opportunity to testify.

2. Federal Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Montana program.

The Bureau of Indian Affairs responded that the revision of the definition of "prospecting" does not appear detrimental to lands within the Indian reservations in Montana (Administrative Record No. MT–9–06).

The Mine Safety and Health Administration (MSHA), Denver, CO, responded that the proposed amendment appears not to be in conflict with MSHA's standards of title 30 of the Federal regulations so long as "prospecting" activities do not become mining operations as defined in 30 CFR 41.1. OSM's duty in reviewing State program amendments (SPA's) like the one under consideration here is limited to determining whether the SPA is "in accordance with" and "consistent with" SMCRA and its implementing regulations. See sections 503(a)(1) and (a)(7) of SMCRA. See also 30 CFR 730.5. OSM is not qualified to make a determination whether a particular SPA is "in accordance with" or "consistent with" MSHA regulations. Additionally, OSM notes that section 702(a) of SMCRA specifically requires that nothing in the Act (SMCRA) shall be construed as superseding, amending, modifying, or repealing numerous Acts including the Federal Coal Mine Health and Safety Act of 1969. (Administrative Record No. MT–9–10 and MT–9–16).

The U.S. Fish and Wildlife Service, Mountain-Prairie Region (Denver, CO) and its Ecological Services (Helena, MT) had no comments or concerns with the proposed rule change (Administrative Record No. MT–9–07 and MT–9–20).

The U.S. Army Corps of Engineers, Omaha District (Omaha, NE), responded that as a part of prospecting, if construction activities involved temporary or permanent placement of dredged or fill material into waters of the United States, including wetlands, then a section 404 permit may be required. Also, the placement of any material in any floodway should be avoided per the Federal Flood Plain Management criteria. An operator is required to comply with all other applicable Federal, State and local requirements, including requirements to obtain other necessary permits needed to conduct an operation. Therefore, all other required permits, such as the section 404 permit, must be obtained by an operator (Administrative Record No. MT–9–05).

The U.S. Department of Agriculture's Soil Conservation Service had no comment on the proposed revision of the term "prospecting" (Administrative Record No. MT–9–17).

The Bureau of Mines, Division of Environmental Technology reviewed the amendment and had no comment (Administrative Record No. MT–9–22).

The Bureau of Land Management responded in support of Montana's proposed amendment (Administrative Record No. MT—*State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments.*

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and ACHP for comment. Neither agency responded with any comments.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) By letter dated October 27, 1992, (Administrative Record No. MT–9–03) the OSM requested that EPA review and concur, if appropriate, with Montana's proposed amendment. No response was received from the EPA, Washington DC office, and their concurrence is not required on the proposed amendment, since it did not address any requirements that would impact the Clean Water or Clean Air Acts. EPA's Region VIII Office (Denver, CO) replied that they had no comments on the proposed amendment (Administrative Record No. MT–9–21).

V. Director's Decision

Based on the above findings, the Director approves Montana's proposed program amendment as submitted October 19, 1992 and revised on July 28, 1993 with the provision that Montana further amend its definition of "prospecting" so that it includes the activities of gathering surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical or other techniques necessary to determine the quality and quantity of coal of an area, when the purpose of the activity is to determine location, quantity, or quality of a mineral deposit. The State must also clarify that an activity need not involve surface disturbance to be considered "prospecting."

The Federal regulations at 30 CFR part 926 codifying decisions concerning the Montana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Compliance With Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review.)

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of the Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 17, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, the Code of Federal Regulations is amended as set forth below.

PART 926—MONTANA

1. The authority citation for part 926 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Section 926.15 is amended by adding paragraph (k) to read as follows:

§ 926.15 Approval of amendments to State regulatory program.

* * * * *

(k) The amendment to the Montana permanent regulatory program, that defines "prospecting" as submitted to OSM on October 19, 1992, and revised on July 28, 1993, is approved effective February 25, 1994.

3. Section 926.16 is amended by adding paragraph (f) to read as follows:

§ 926.16 Required program amendments.

* * * * *

(f) By April 26, 1994, Montana shall amend its definition of "prospecting" so that it includes the activities of gathering surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical or other techniques necessary to determine the quality and quantity of coal of an area, when the purpose of the activity is to determine location, quantity, or quality of a mineral deposit. The State must also clarify that an activity need not

involve surface disturbance to be considered "prospecting."

[FR Doc. 94-4281 Filed 2-24-94; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendments to the Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping Requirements by Casinos

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: The Bank Secrecy Act authorizes the Secretary of the Treasury to require financial institutions to file reports and keep records that the Secretary determines have a high degree of usefulness in criminal, tax, and regulatory matters. The Secretary has designated certain casinos as "financial institutions" for purposes of the Bank Secrecy Act. Treasury issued a final rule amending the particular reporting and recordkeeping requirements on these casinos on March 12, 1993, in the **Federal Register**, 58 FR 13538–13550, and delayed its effective date on August 27, 1993, in the **Federal Register**, 58 FR 45263. This final rule further delays the effective date until December 1, 1994.

EFFECTIVE DATE: The effective date of the final rule ("the Rule") published on March 12, 1993, in the **Federal Register**, 58 FR 13538–13550, and extended on August 27, 1993, in the **Federal Register**, 58 FR 45263, dealing with nineteen amendments to the Bank Secrecy Act regulations affecting casinos, is further delayed until December 1, 1994.

FOR FURTHER INFORMATION CONTACT: A. Carlos Correa, Assistant Director, Rules and Regulations Section, Office of Financial Enforcement, Department of the Treasury, (202) 622–0400.

SUPPLEMENTARY INFORMATION: On March 12, 1993, Treasury issued a final rule dealing with amendments to the Bank Secrecy Act regulations affecting casinos. The rule's effective date was September 8, 1993. The purpose of the amendments was to enhance compliance with Bank Secrecy Act requirements (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5326), and to provide Bank Secrecy Act examiners with "audit trails" to determine the adequacy of compliance.

Treasury received a request from the Casino Association of New Jersey requesting a delay in the implementation date of the final rule to give casinos additional time to revise systems and procedures and train employees after the conclusion of the busy summer season. On August 27, 1993, Treasury issued a final rule to delay the implementation date until March 1, 1994, to give all casinos meeting the definition in 31 CFR 103.11(i)(7)(i) an additional six months to comply with the rule. Treasury has decided to delay the implementation date again until December 1, 1994, because the final rule is being considered in the course of an ongoing, comprehensive review of Treasury's anti-money laundering enforcement programs.

Dated: February 18, 1994.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 94-4282 Filed 2-24-94; 8:45 am]

BILLING CODE 4810-25-P

PANAMA CANAL COMMISSION

35 CFR Part 10

RIN 3207-AA33

Implementation of the Privacy Act of 1974

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: On October 19, 1993, the Panama Canal Commission published for notice and comment a proposed rule amending 35 CFR part 10, the agency's existing Privacy Act regulations, (1) to update §§ 10.21 "General Exemptions" and 10.22 "Specific Exemptions" by amending alphanumerical designations and titles, deleting obsolete systems and more precisely stating the exemptions pursuant to the Privacy Act of 1974 and OMB Circular A–130, and (2) to exempt two new systems of records maintained by the Office of Inspector General (OIG) and one existing system which was relocated to OIG (See 58 FR 53897). A notice establishing these two new systems of records and the amendment of the existing system appeared at 58 FR 53966. The Panama Canal Commission did not receive any comments on the proposed rule. Therefore, the Panama Canal Commission has exempted these systems of records from certain provisions of the Privacy Act.

EFFECTIVE DATE: March 24, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, International Square, 1825 I Street, NW., Suite 1050, Washington, DC 20006–5402. Telephone (202) 634–6441.

SUPPLEMENTARY INFORMATION: The Panama Canal Commission has revised 35 CFR part 10, §§ 10.21 and 10.22 by updating the number and category of exempt systems of records currently maintained by the agency. The Customs Division, Police Division and the Probation and Parole Unit of the former Canal Zone Government were disestablished in 1982 pursuant to the provisions of the Panama Canal Treaty of 1977. Exempt systems of records maintained by those units were transferred to the Commission's Agency Records Center located in the Republic of Panama and to Federal Records Centers in the United States and are no longer actively in use or have been destroyed. Pursuant to subsection (1) of the Privacy Act, inactive records transferred to records centers continue to be subject to the same rules and procedures as active records maintained by the agency. Of the active exempt files, several alphanumerical designations and system names have been changed due to reorganization or the transfer of duties to other departments. These revisions were published in 52 FR 49541, Dec. 31, 1987, however, due to administrative oversight were not revised in 35 CFR 10.21 and 10.22. The following alphanumerical designations have been amended:

The Office of Financial Management PCC/FMAK–1, "Claims Files," was reorganized and portions relocated to the Office of General Counsel PCC/GCCL–1, "Marine Accident/Miscellaneous General Claims," the investigatory portion of which is exempt, and other portions remained in the Office of Financial Management, but redesignated as PCC/FMCL–1 which is not exempt;

The Marine Bureau redesignated PCC/MRPA–1 as PCC/MRNA–1; The General Services Bureau PCC/GSIS, "Personnel Security Files," were relocated to the Office of Personnel Administration and designated as PCC/PR–7, "Personnel Reference Unit Files."

The title of the General Services Bureau PCC/GSCP–2, "Canal Protection Division Activity Report Files," was amended to "Canal Protection Division Incident Report Files."

The Office of Personnel Administration system designated as PCC/PR–11, "Minority Group Designator Records" has been deleted because the Government-wide OPM/GOVT–7, "Applicant Race, Sex, National Origin, and Disability Status Records" is applicable to this system. Likewise, the Personnel Board system designated as PCC/PB–1, "Merit System Recruiting, Examining and Placement Records" has been deleted because the Government-wide OPM/GOVT–5, "Recruiting, Examination and Placement Records is applicable to this system.

The following active and inactive systems have been destroyed and are hereby removed:

PCC/AMSE–2, Cardex file Contraband Violations;
PCC/CALS, Driver's License Investigatory File;
PCC/GSPL–5, Prisoner Record Cards;
PCC/GSPL–8, Pending Detective Investigation Records;
PCC/GSPL–9, Informant Name File;
PCC/GSPL–12, Youth Unit Name Index File;
PCC/OM–1, Ombudsman Investigation Files.

The Inspector General has determined that the existing "Cash Audit Files" system of records is in need of updating due to its relocation to the Office of Inspector General. The alphanumerical designation has changed from PCC/GA–1 to PCC/OIG–3. In addition, all references to the Office of General Audit have been changed to Office of Inspector General and references to General Auditor have been changed to Inspector General.

The Inspector General has also undertaken an internal review of its compliance with the Privacy Act and has determined that two new systems of records are necessary in order to account for information maintained about individuals. These new systems are exempt from certain provisions of the Privacy Act under subsections (j) or (k).

In the process of reviewing the proposed rule published on October 19, 1993, (58 FR 53897) an editorial error listing exemption (i) of 5 U.S.C. 552a was noticed. This oversight has been corrected and exemption (i) has been removed.

Since the Commission has been exempted from Executive Order 12866, the provisions of that Order do not apply for this rule. Even if that were the case, this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

The Administrator has certified to the Office of Management and Budget that these changes in regulations meet the applicable standards provided in section 2 of Executive Order 12778.

Finally, the rule does not impose any new information collection requirements within the Paperwork Reduction Act.

List of Subjects in 35 CFR Part 10

Privacy.

Accordingly, 35 CFR Part 10 is amended as follows:

PART 10—ACCESS TO INFORMATION ABOUT INDIVIDUALS

1. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 10.21 is revised to read as follows:

§ 10.21 General exemptions.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(j)(2) because each system is maintained by a component of the agency, or subcomponent, which performs as its principal function the enforcement of criminal laws, and which contains investigatory material compiled for criminal law enforcement purposes. Accordingly, these systems are exempt from the following sections of 552a of 5 U.S.C.: (c) (3) and (4); (d); (e) (1), (2) and (3); (e)(4) (G) and (H); (e) (5); (e)(8); (f); (g); and (h).

(1) PCC/GSCP–2, Canal Protection Division Incident Report Files;

(2) PCC/OIG–1, Investigative Files of the Office of Inspector General;

(3) PCC/OIG–2, Allegation/Complaint Files of the Office of Inspector General;

(4) PCC/OIG–3, Cash Audit Files.

(b) The systems of records listed below, although no longer actively in use, continue to be subject to general exemption pursuant to 5 U.S.C. 552a(j)(2) because they were compiled by a component, or subcomponent, of the agency which performed as its principal function the enforcement of criminal laws, and which contain investigatory material compiled for criminal law enforcement purposes. Accordingly, the following systems of records are exempt from subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4) (G) and (H); (e)(5); (e)(8); (f); (g); and (h) of 5 U.S.C. 552a:

(1) PCC/AEPR–1, Probation and Parole Unit Child Custody Reports;

(2) PCC/AEPR–2, Presentence and Preparole Investigation Reports;

(3) PCC/AEPR–3, Probation and Parole Unit Statistical File;

(4) PCC/GSPL–1, Law Enforcement Case Report File;

(5) PCC/GSPL–2, Police Headquarters Confidential File;

(6) PCC/GSPL–3, Detective Confidential Files;

(7) PCC/GSPL–4, Convict Files;

(8) PCC/GSPL–6, Police Photo Files;

(9) PCC/GSPL–7, Fingerprint File;

(10) PCC/GSPL–10, Master Name File;

(c) Exemptions from the particular subsections are justified for the following reasons:

(1) From (c)(3) because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses and other evasive action that could impede or compromise the investigation.

(2) From (c)(4) because this subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) From subsection (d) because access to the records contained in these systems would inform the subject of a criminal or civil investigation, matter or case of the existence of such, and provide the subject with information that might enable him or her to avoid detection, apprehension or legal obligations, and present a serious impediment to law enforcement and other civil remedies. Amendment of the records would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, information may be obtained concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, information should be retained because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(5) From subsection (e)(2) because in a law enforcement investigation it is usually counterproductive to collect information to the greatest extent practicable directly from the subject thereof. It is not always feasible to rely upon the subject of an investigation as a source for information which may implicate him or her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation by prematurely revealing its nature and scope, or could provide the subject with

an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(6) From subsection (e)(3) because providing such notice to the subject of an investigation, or to other individual sources, could seriously compromise the investigation by prematurely revealing its nature and scope, or could inhibit cooperation, or permit the subject to evade apprehension.

(7) From (e)(4) (G) and (H); (f); (g); and (h) because these provisions concern an individual's access to records which concern him and such access to records in this system would compromise investigations, reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(8) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of information necessary for effective law enforcement.

(9) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation and could reveal investigative techniques, procedures or evidence.

3. Section 10.22 is revised to read as follows:

§ 10.22 Specific exemptions.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(2) because they contain investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. Provided, however, that if any individual is denied any right, privilege or benefit that he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identify of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, the following systems of records are exempt from (c)(3); (d); (e)(1): (e)(4) (G) and (H); (f); (g); and (h) of 5 U.S.C. 552a.

(1) PCC/GSCP–2, Canal Protection Division Incident Report Files;

(2) PCC/OIG–1, Investigative Files of the Office of Inspector General;

(3) PCC/OIG–2, Allegation/Complaint Files of the Office of Inspector General;

(4) PCC/OIG–3. Cash Audit Files.

(5) PCC/FMAC–1, Embezzlements, Burglaries, and Cash Shortages;

(6) PCC/EO–2, Equal Employment Opportunity Complaint File;

(7) PCC/GCCL–1, Marine Accident/ Miscellaneous General Claims Files;

(8) PCC/GSCS–2, Housing Complaints Files;

(9) PCC/GSCX–1, Administrative Reports, Transfer of Custody and Official Complaint Files.

(10) PCC/AEPR–1, Probation and Parole Unit Child Custody Reports;

(11) PCC/AEPR–2, Presentence and Preparole Investigation Reports;

(12) PCC/AEPR–3, Probation and Parole Unit Statistical File;

(13) PCC/CAPS–2, Case Investigations;

(14) PCC/GSPL–1, Law Enforcement Case Report Files;

(15) PCC/GSPL–2, Police Headquarters Confidential File;

(16) PCC/GSPL–3, Detective Confidential Files;

(17) PCC/GSPL–4, Convict Files;

(18) PCC/GSPL–6, Police Photo Files;

(19) PCC/GSPL–7, Fingerprint File;

(20) PCC/GSPL–10, Master Name File;

(21) PCC/CZG–HL–2, Medical Administration System.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the accounting of disclosures would permit the subject of a criminal investigation and/or civil case or matter under investigation, in litigation, or under regulatory or administrative review or action to obtain valuable information concerning the nature of that investigation, case or matter and present a serious impediment to law enforcement or civil legal activities.

(2) From (d); (e)(4) (G) and (H); (f); (g); and (h) because these provisions concern an individual's access to records which concern him and such access to records in this system would compromise investigations, reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(3) From subsection (e)(1) because it is often impossible to determine relevancy or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, information may be obtained concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, this information should be retained because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(c) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(5) because they contain investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, these systems of records are exempt from 5 U.S.C. 552a(c)(3) and (d).

(1) PCC/FMAC–1, Embezzlements, Burglaries, and Cash Shortages;

(2) PCC/PB–2, Appeals, Grievances, Complaints and Assistance Records;

(3) PCC/PB–3, Personnel Investigation Records;

(4) PCC/PR–5, Recruiting and Placement Records;

(5) PCC/PR–7, Personnel Reference Unit Files.

(6) PCC/OIG–1, Investigative Files of the Office of Inspector General;

(7) PCC/OIG–2, Allegation/Complaint Files of the Office of Inspector General;

(8) PCC/OIG–3, Cash Audit Files.

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From (c)(3) because release of an accounting of disclosure to an individual who is the subject of an investigation could compromise the investigation.

(2) From (d) because access to or amendment of records in these systems would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation. Such knowledge might violate the explicit or implicit promise of confidentiality made to the source during the investigation or constitute an unwarranted invasion of the personal privacy of third parties, or reveal sensitive investigative techniques and procedures. Such breaches could restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(e) The following systems of records are eligible for exemption under 5 U.S.C. 552a (k)(6) because they contain testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process. Accordingly, these systems of records are exempt from 5 U.S.C. 552a(d).

(1) PCC/CZG/BRAE–1, Canal Zone Board of Registration for Architects and Professional Engineers Reference Files;

(2) PCC/MRBL–1, Marine License Files;

(3) PCC/MRNA–1, Admeasurer Examination File;

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) The exemption from (d) is justified because portions of records in these systems relate to testing or examining materials and are used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information would compromise the objectivity and fairness of the testing or examining process.

Dated: February 4, 1994.

Gilberto Guardia F.,

Administrator.

[FR Doc. 94–4215 Filed 2–24–94; 8:45 am]

BILLING CODE 3640–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL86–1–6181; FRL–4841–1]

Approval and Promulgation of a State Implementation Plan for Photochemical Assessment Monitoring; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving a revision to the Illinois State Implementation Plan (SIP) for ozone. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements for enhanced ozone monitoring in the Clean Air Act (Act). The Act requires the State to provide for establishment and maintenance of an enhanced ambient air quality monitoring network in the form of photochemical assessment monitoring stations (PAMS) by November 12, 1993.

DATES: This rulemaking will be effective April 26, 1994, unless notice is received by March 28, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Patricia Morris at (312) 353–8656, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section (AR–18J), Regulation Development Branch, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois, 60604, (312) 886–6081

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(c)(1) of the Act, as amended in 1990 and the General Preamble (57 FR 13515) require that the USEPA promulgate rules for enhanced monitoring of ozone, oxides of nitrogen (NO_x), and volatile organic compounds (VOC) no later than 18 months after the date of the enactment of the 1990 Amendments. In addition, the Act requires that following the promulgation of the rules relating to enhanced ambient monitoring, the State must commence actions to adopt and implement a program based on these rules, including a revision to each SIP affecting areas classified serious and above for ozone, to provide for establishment and maintenance of PAMS as part of their overall ambient air quality monitoring network.

The final PAMS rule was promulgated by USEPA on February 12, 1993 (58 FR 8452). Section 58.40(a) of title 40, subpart C of the Code of Federal Regulations requires the State to submit a photochemical assessment monitoring network description, including a schedule for implementation, to the Administrator within 6 months after promulgation, or by August 12, 1993.

Further, § 58.20(f) requires the State to provide for the establishment and maintenance of a PAMS network within 9 months after promulgation of the final rule or November 12, 1993.

On August 12, 1993, the Lake Michigan Air Directors Consortium submitted an alternative regional PAMS network description, including a schedule for implementation, under the signature of the State Air Directors for the four States of Illinois, Indiana, Michigan and Wisconsin ("the States"). This submittal is currently being reviewed by the USEPA and is intended to satisfy the requirements of § 58.40(a).

On November 4, 1993, Illinois submitted to the USEPA a revision to the Illinois ozone SIP and requested its approval. A letter finding the submittal complete was sent to the State on December 15, 1993.

The November 4, 1993, Illinois submission (Illinois PAMS SIP revision request) is intended to meet the requirements of section 182(c)(1) of the Act and effect compliance with 40 CFR part 58, subpart C, as amended on February 12, 1993 by implementing the rules for PAMS. The Illinois Environmental Protection Agency (IEPA) held a public hearing on the Illinois PAMS SIP revision request on October 15, 1993.

II. Analysis of State Submittal

On November 4, 1993, the IEPA submitted to the USEPA the Illinois PAMS SIP revision request, which would incorporate PAMS into the ambient air quality monitoring network of State and Local Ambient Monitoring Stations/National Ambient Monitoring

Stations (SLAMS/NAMS). The State will establish and maintain PAMS as part of the overall ambient air quality monitoring network.

The criteria used to review the Illinois PAMS SIP revision request are derived from 40 CFR part 58 revisions promulgated on February 12, 1993 (58 FR 8452), the *Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR Part 58* (EPA–450/4–78–038, OAQPS, November 1979), the September 2, 1993 memorandum from the U.S. EPA, Office of Air Quality Planning and Standards (OAQPS), entitled *Final Boilerplate Language for the PAMS SIP Submittal*, the Act and the General Preamble.

The alternative regional PAMS network submitted by the States on August 12, 1993 is currently being reviewed by USEPA. A joint network description and implementation schedule is allowed and encouraged by 40 CFR 58.40(a)(3) for States where the State's PAMS network requires monitoring stations in different States and/or Regions.

Since network descriptions may change annually, they are not part of the SIP as recommended by the *Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR Part 58*. However, the network description is negotiated and approved during the annual review via the section 105 of the Act grant process as required by 40 CFR 58.20(d), 58.25, 58.36 and 58.46.

On November 4, 1993 the State submitted the Illinois PAMS SIP revision request to incorporate PAMS into the overall ambient air quality monitoring network. The Illinois PAMS SIP revision request would provide Illinois with the authority to establish and operate the PAMS sites, secure funds for PAMS and provide the USEPA with authority to enforce the implementation of PAMS, since their implementation is required by the Act.

The September 2, 1993 memorandum from OAQPS entitled *Final Boilerplate Language for the PAMS SIP Submittal* stipulates that the PAMS SIP revision request, at a minimum, should provide for the monitoring of criteria and non-criteria pollutants as well as meteorological parameters; provide that a copy of the approved (or proposed) PAMS network description, including the phase-in schedule, be made available for public inspection during the public notice and/or comment period for the SIP revision request or, alternatively, provide that, on request, information concerning the State's plans for implementing the rules be made publicly available; reference the fact that PAMS will become a part of the State and local air monitoring stations (SLAMS) network; and, allow for sampling via methods approved by USEPA which are not Federal Reference method or equivalent.

The Illinois PAMS SIP revision request provides that the network will measure ambient levels of ozone, NO_x, speciated VOC, including hydrocarbons and carbonyls and meteorological data. During the public comment period and hearing, Illinois provided a copy of the proposed alternative regional PAMS network description, including a schedule, to the public. The Illinois PAMS SIP revision request provides that each station in the air quality surveillance network provided for and described in the network description will be termed a SLAMS. Finally, the Illinois PAMS SIP revision request provides that the methods used in PAMS will meet the criteria stipulated by 40 CFR 58.41, the quality assurance requirements as contained in 40 CFR part 58, appendix A, and the monitoring methodology requirements contained in appendix C.

III. Final Rulemaking Action

The USEPA approves the Illinois rule revision for PAMS and adopts it into the Illinois SIP for ozone.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on April 26, 1994. However, if we receive notice by March 28, 1994, that someone wishes to submit adverse comments, then USEPA will publish: (1) A notice that withdraws the action; and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This SIP approval involves a monitoring network that will be operated by the IEPA and does not impose any new regulatory requirements on small businesses. Therefore, I certify that it does not have a significant economic impact on any small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 9, 1994.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (g) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(g) Approval—The Administrator approves the incorporation of the photochemical assessment ambient monitoring system submitted by Illinois on November 4, 1993 into the Illinois State Implementation Plan. This submittal satisfies 40 CFR 58.20(f) which requires the State to provide for the establishment and maintenance of photochemical assessment monitoring stations (PAMS) by November 12, 1993.

[FR Doc. 94–4222 Filed 2–24–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 60

[FRL–4841–4]

Standards of Performance for New Stationary Sources, Supplemental Delegation of Authority to Knox County, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On May 5, 1993, the Knox County Department of Air Pollution Control requested that EPA delegate authority for implementation and enforcement of an additional category of New Source Performance Standards (NSPS). Since EPA's review of Knox County's pertinent laws, rules, and regulations showed them to be adequate for the implementation and enforcement of this Federal standard; the Agency has made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is May 28, 1993.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

Knox County Department of Air Pollution Control, City-County Building, Room 459, 400 West Main Avenue, Knoxville, Tennessee 37902.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly delegated standard should not be submitted to the Region IV office, but should instead be submitted to the following address:

Knox County Department of Air Pollution Control, City-County Building, Room 459, 400 West Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, United States Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347–2864.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards (NSPS).

On May 20, 1977, EPA initially delegated the authority for implementation and enforcement of the NSPS programs to Knox County. A subsequent delegation followed on December 13, 1985, in which Knox County requested an update of its delegation of authority for previously delegated NSPS regulations. On May 5, 1993, Knox County requested a delegation of authority for implementation and enforcement of the following NSPS category found in 40 CFR part 60.

1. Standard of Performance for Calciners and Dryers in Mineral Industries, as specified in 40 CFR part 60, subpart UUU, as amended at 57 FR 44496 (September 28, 1992), as adopted April 29, 1993.

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for this source category with the conditions set forth in the original delegation letter of May 20, 1977. Knox County sources subject to the requirements of this subpart will now be under the jurisdiction of Knox County.

Action

Since review of the pertinent Knox County laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned category of NSPS, the EPA hereby notifies the public that it has delegated the authority for the source category listed above on May 28, 1993.

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Authority: This document is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as Amended (42 U.S.C. 7401, 7410, 7411, 7412, and 7601).

Dated: February 3, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–4221 Filed 2–24–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4F3011 and PP 7F3498/R2033; FRL–4742–7]

RIN 2070–AB78

Pesticide Tolerances for Cypermethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the pesticide chemical [(±)alpha-cyano(3-phenoxyphenyl)methyl(±)-*cis,trans*-3(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the raw agricultural commodities (RACs) cabbage at 2.0 parts per million (ppm) and onions at 0.1 ppm. This regulation proposes to establish maximum permissible levels for residues of the pesticide chemical requested pursuant to petitions submitted by FMC Corp.

EFFECTIVE DATE: This regulation becomes effective February 25, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 4F3011 and PP 7F3498/R2033], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6100.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 20, 1993 (58 FR 54092), EPA issued a proposed rule that gave notice that the FMC Corp., 1735 Market St., Philadelphia, PA 19103, had submitted pesticide petitions (PP) 4F3011 and 7F3498 proposing to amend 40 CFR part 180 by establishing tolerances for residues of cypermethrin [(±) alpha-cyano-(3-phenoxyphenyl)methyl (±)-*cis, trans*-3(2,2-dimethylcyclopropanecarboxylate)] and its metabolites dichlorovinyl acid (DCVA) and *m*-phenoxybenzoic acid (MPB-Acid) and cyperamide under section 408(b) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a(b)) in or on the raw agricultural commodities cabbage at 1.5 parts per million (ppm) and bulb onions at 0.1 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 8, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending § 180.418 in the table therein, by adding and alphabetically inserting the following raw agricultural commodities, to read as follows:

§ 180.418 Cypermethrin; tolerances for residues.

* * * * *

Commodity	Parts per million
Cabbage	2.0
* * * * *	
Onions, bulb	0.10
* * * * *	

[FR Doc. 94-4212 Filed 2-24-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 4E4288 and PP 4E4289/R2038; FRL-4756-4]

RIN 2070-AB78

Pesticide Tolerances for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revises tolerances for residues of the insecticide chlorpyrifos in or on the raw agricultural commodities pears, peaches, nectarines, and plums. The regulations to revise maximum permissible levels for residues of chlorpyrifos were requested in petitions submitted by DowElanco and are needed to cover maximum expected residues in or on imported commodities.

EFFECTIVE DATE: This regulation becomes effective February 25, 1994.

ADDRESSES: Written objections and request for a hearing, identified by document control number, [PP 4E4288 and PP 4E4289/R2038], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of December 28, 1993 (58 FR 68621), which announced that DowElanco had submitted pesticide petitions (PP 4E4288 and PP 4E4289) to the Administrator under section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)) to amend 40 CFR 180.342 by revising the tolerances for residues of the insecticide chlorpyrifos in or on the raw agricultural commodities pears from 0.01 part per million (ppm) to 0.05 ppm and peaches, nectarines, and plums from 0.01 ppm to 0.05 ppm. The revisions in the tolerances are needed because of differing use patterns of chlorpyrifos in other parts of the world as compared to the U.S.

The Agency reviewed preliminary residue data and concluded that residues should not exceed the proposed tolerances. However, the Agency has determined that additional residue data for imported pears, peaches (data for peaches will suffice for nectarines), plums, and prunes (the processed commodity of plums) must be submitted. Therefore, the Agency is revising these tolerances with a 2-year expiration date, at which time the tolerances will revert to the previous 0.01 ppm for the named commodities. Once the required residue data are submitted and determined to be adequate and upon request by DowElanco, the Agency will take appropriate steps to make the tolerances permanent.

The available data do not support a change in the U.S. use pattern for the crops listed above. If such a change is desired, additional residue data generated in the U.S. must be submitted.

There was one comment received in response to the proposed rule. The comment supported the proposed rule.

Therefore, based on the information considered by EPA and discussed in detail in the December 28, 1993 proposal and in this final rule, the Agency is hereby establishing the tolerance revisions in 40 CFR 180.342 for residues of chlorpyrifos in or on the following raw agricultural commodities: nectarines, peaches, pears, and plums.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which the hearing is requested, the requestor's contentions must include a statement of factual contentions on each issue and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and the resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, use fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.342, by amending paragraph (c) by removing the entries in the table therein for nectarines, peaches, pears, and plums and by adding new paragraph (e), to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(e) Tolerances are established as follows for residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] in or on the following raw agricultural commodities:

Commodity	Parts per million	
	Until Jan. 28, 1996	After Jan. 28, 1996
Nectarines	0.05	0.01
Peaches	0.05	0.01
Pears	0.05	0.01
Plums	0.05	0.01

[FR Doc. 94-4379 Filed 2-24-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 503

[FRL-4842-8]

Standards for the Use or Disposal of Sewage Sludge

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 25, 1992, pursuant to section 405 of the Clean Water Act (CWA), EPA promulgated a regulation to protect public health and the environment from reasonably anticipated adverse effects of certain pollutants in sewage sludge (February 19, 1993). This regulation established requirements for the final use or disposal of sewage sludge when: (1) The sludge is applied to the land either to condition the soil or to fertilize crops grown in the soil; (2) the sludge is disposed on land by placing it in surface disposal sites; and (3) the sludge is incinerated. Today's action amends this regulation with respect to two aspects of the rule pending EPA's reconsideration of certain issues. The issues under reevaluation concern the appropriate pollutant limits for molybdenum in sewage sludge when land applied and the requirement for certain sewage sludge incinerators to monitor incinerator emissions continuously for total hydrocarbons (THC).

EFFECTIVE DATE: February 19, 1994.

FOR FURTHER INFORMATION CONTACT: Alan Hais, Chief, Sludge Risk Assessment Branch, Health and Ecological Criteria Division (4304), Office of Science and Technology, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260-5389.

SUPPLEMENTARY INFORMATION:

A. Authority

Today's rule is being promulgated under the authority of section 405 of the Clean Water Act (CWA). Section 405(d) requires EPA to establish management

practices and numerical limits adequate to protect public health and the environment against reasonably anticipated adverse effects of toxic pollutants in sewage sludge. Section 405(e) prohibits any person from disposing of sludge from a publicly-owned treatment works or other treatment works treating domestic sewage except in compliance with the section 405 regulations.

B. Amendment of Pollutant Limits for Molybdenum When Land Applied

On November 25, 1992, the U.S. Environmental Protection Agency promulgated, pursuant to section 405 of the Clean Water Act, Standards for the Use or Disposal of Sewage Sludge (40 CFR part 503) published in the Federal Register on February 19, 1993 (58 FR 9248). This regulation establishes requirements for the final use or disposal of sewage sludge that are codified at 40 CFR part 503. By letter dated May 25, 1993, Climax Metals Company filed a petition with the Agency asking that EPA reconsider the molybdenum pollutant limits for sewage sludge when it is applied to the land and to stay the February 19, 1994, compliance date for these pollutant limits pending reconsideration. Subsequently, on June 25, 1993, Climax Metals Company, American Mining Congress, The Chem-Met Company, Eastern Technologies, Inc., Gulf Coast Chemical, Jamestown Chemical Company, Inc., Midland Research Labs, Inc., and North Metals and Chemical Company, generators or users of molybdenum, filed a petition with the United States Court of Appeals for the 10th Circuit seeking review of the land application pollutant limits for molybdenum in the part 503 Rule. This petition for review was subsequently transferred to the D.C. Circuit.

The molybdenum cumulative pollutant loading rate (CPLR) promulgated at Table 2 of § 503.13 in the final part 503 rule is 18 kg of molybdenum per hectare of land. The CPLR was determined from Pathway 6 of the land application risk assessment. Pathway 6 evaluates the amount of a pollutant in sewage sludge that is protective of livestock and wild animals that consume plants grown on sludge-amended soil. In the case of molybdenum, the CPLR is designed to protect cattle from molybdenosis. The major concern that Climax and others have brought to the Agency's attention is related to the studies used to assess exposure conditions and the exposure assumptions for the establishment of the molybdenum CPLR for land application of sewage sludge. In particular, Climax and others questioned the use of the data from the Pierzynski and Jacobs (1986) study to determine the crop uptake slope used in the Pathway 6 risk assessment. These interested parties state that this approach results in an overprotective molybdenum limit because the sludges used in the study were highly contaminated with molybdenum (1500 mg molybdenum per kg of sewage sludge, while sewage sludge usually contains 40 mg/kg) and because the Pierzynski and Jacobs data were inappropriately weighted with data from only one other study (Soon and Bates, 1985).

EPA has reviewed Climax's request and has evaluated additional data and additional information submitted by Climax supporting a different crop uptake slope for molybdenum. Based on this preliminary evaluation, EPA is amending part 503 to delete the molybdenum pollutant limits in Tables 2, 3, and 4 of § 503.13 pending its reconsideration of appropriate molybdenum pollutant limits. EPA's preliminary review of the data indicates the appropriateness of reevaluation of the cumulative pollutant loading rate for molybdenum established in Table 2 of § 503.13 of the February 19, 1993 rule. Because the molybdenum cumulative pollutant loading rate is used to develop the molybdenum pollutant concentration limit and annual pollutant loading rate in Tables 3 and 4 of § 503.13, respectively, EPA is also amending these tables to remove the molybdenum pollutant limits.

As noted, the molybdenum limits in Tables 2, 3 and 4 were determined from a risk assessment of Pathway 6 and are designed to protect animals consuming feed crops grown on sludge-amended soil from molybdenosis. Specifically, EPA, using a mathematical algorithm, calculated what quantity of molybdenum in sewage sludge per hectare of land could be added to the soil without resulting in exceeding the threshold in crops fed to domesticated animals that is associated with molybdenosis. That calculation is dependent on three variables. These are the threshold level of molybdenum in feed crops associated with molybdenosis, the background level of molybdenum in feed crops and the relationship between molybdenum added to the soil from sewage sludge and the resulting level in feed crops.

EPA has reviewed the data it used to establish the molybdenum limits, information submitted by Climax and others and additional information the Agency has obtained. EPA has concluded that the molybdenum limits are highly sensitive to how the molybdenum data base used in the part 503 regulation was treated. An example illustrates why the data are sensitive to the method used in the calculation. Assume that two field studies are used to calculate the uptake of molybdenum by feed crops grown on sludge-amended soil. One study shows low molybdenum uptake levels while the second shows high uptake. If the study with low molybdenum uptake levels includes only three data points while the study showing high uptake contains 20 data points, calculation of a single uptake value from the studies will differ depending on how the data points in the individual studies are treated. If all data points are weighted equally, then the results will be most heavily influenced by the high uptake data points. Contrarily, if the results are averaged for each study separately and then the studies, rather than data points, weighted equally, the influence of the high uptake data is mitigated.

Given the limited number of studies relied upon for the part 503 molybdenum limits and the resulting sensitivity of the results to the method adopted for weighting data points in those studies, EPA determined that it should reconsider these limits. A preliminary review of additional field studies suggests that use of data from sewage sludge that is highly contaminated by molybdenum may yield results that could overpredict crop uptake and background molybdenum levels in feed crops at the lower levels of molybdenum required by part 503. This leads the Agency to conclude that the limits adopted in Tables 2, 3, and 4 may be more restrictive than required to protect public health and the environment because of both an inappropriately high background molybdenum level in feed crops and molybdenum uptake rate. This information has led the Agency to conclude that it should reevaluate its determination of the molybdenum pollutant limits for land application of sewage sludge.

EPA has concluded that amending its regulation to delete the current land application molybdenum pollutant limits pending reconsideration will not adversely affect public health and the environment for the following reasons. First, EPA is not modifying the ceiling concentration limit for molybdenum (75 milligrams per kilogram of sewage sludge on a dry weight basis) in Table 1 of § 503.13. Sewage sludge that is land applied must have a molybdenum concentration equal to or less than this limit. Sewage sludge that exceeds this level cannot be land applied. Under a worst case scenario of 75 milligrams of molybdenum per kilogram of dry sewage sludge, if sewage sludge is applied at a rate of 10 metric tons of sewage sludge (dry weight basis) per hectare of land annually, it would take 24 years to reach the cumulative pollutant load of 18 kilograms per hectare for molybdenum—the CPLR adopted in Table 2 of § 503.13 in the final rule. Because EPA plans to propose and promulgate a new molybdenum cumulative pollutant loading rate in the near future, a new molybdenum pollutant concentration limit and a new annual pollutant loading rate (APLR), even if EPA concludes the same or lower limits are necessary to protect public health and the environment, the likelihood that the molybdenum in sewage sludge applied to the land during the time EPA reevaluates the molybdenum CPLR would harm public health and the environment is extremely low.

Similarly, under this worst case scenario, sewage sludge sold or given away in a bag or other container for application to the land (e.g., for use on lawns or home gardens) is limited to an annual application rate of 12 dry metric tons per hectare. This application rate is calculated based on the ceiling concentration of 75 mg molybdenum per kg of dry sewage sludge and the annual pollutant loading rate of 0.9 kg per hectare per 365 day period listed in Table 4 of § 503.13. Application rates above this amount would cause an exceedence of the molybdenum annual pollutant loading rate. However, the molybdenum pollutant limit on which the APLR is based is designed to protect animals consuming forage grown on sludge amended soils from molybdenum toxicity. The likelihood of cattle consuming feed crops grown on a lawn or home garden is small. In the multi-pathway risk assessment, the next most limiting pathway for molybdenum is Pathway 3, the ingestion of pure sewage sludge by a toddler. Pathway 3 is a more realistic concern for sewage sludge sold or given away in a bag or other container. The pollutant limit for this pathway is 400 milligrams of molybdenum per kilogram of dry sewage sludge, well above the ceiling concentration limit of 75 mg molybdenum per kg of dry sewage sludge. Because sewage sludge cannot be applied to the land if the molybdenum concentration is greater than 75 mg molybdenum per kg of dry sewage sludge, the toddler who may inadvertently ingest sewage sludge is protected during the time the Agency reconsiders the molybdenum pollutant limits. Therefore, today's amendments to the pollutant limits in Tables 2, 3, and 4 of § 503.13 will not threaten public health or the environment for land application of either bulk sewage sludge sold or sewage sludge sold or given away in a bag or other container.

C. Modification of the Applicability of the Continuous Emission Monitoring Requirements for Total Hydrocarbons for Certain Incinerators

On July 17, 1993, Gloucester County Utilities, Stony Brook Regional Sewerage Authority, Township of Wayne, Pequannock, Lincoln Park and Fairfield Sewerage Authority, Somerset Raritan Valley Sewerage Authority, Bayshore Regional Sewerage Authority, and the State of New Jersey filed a petition with the D.C. Circuit seeking review of the part 503 regulation. These petitioners challenged, among other things the failure of the part 503 regulation to allow site-specific sewage sludge incinerator emissions limits and the failure to allow State-imposed emissions limitations, including monitoring and reporting requirements, to replace the part 503 requirements. The petitioners argue that the requirements to demonstrate compliance with a 100 ppm total hydrocarbon (THC) operational standard through continuous monitoring of THC emissions should be changed.

Currently, the State of New Jersey requires that the exit gas from the petitioners' sewage sludge incinerators meet a 100 ppm carbon monoxide (CO) limit corrected for zero percent moisture and to seven percent oxygen. The State also requires the petitioners to monitor the exit gas continuously for CO. For these reasons, the petitioners asked for relief from the requirement to monitor THC continuously. To demonstrate compliance with the 100 ppm THC operational standard, the incinerator management practices in § 503.45(a) require installation of a continuous equipment THC monitor. In the petitioners' view, installation of this instrument is not needed because any sewage sludge incinerator complying with State of New Jersey 100 ppm emissions limitation and continuous CO monitoring requirements will comply with the 100 ppm THC operational standard.

EPA concluded that it is appropriate to reconsider its requirement for the continuous monitoring of THC in the case of certain incinerators. Based on a reassessment of information on THC emissions and CO emissions from certain types of sewage sludge incinerators, EPA has preliminary determined that incinerators that meet a 100 ppm CO emission limitation will easily achieve a 100 ppm THC operational standard. In these circumstances, EPA determined that requiring such incinerators to install and maintain continuous THC monitors was unduly burdensome and wasteful and would not result in increased environmental benefits. Accordingly, EPA finds there is good cause to amend its regulation, effective immediately, to authorize the demonstration of compliance with the 100 ppm THC operational standard by meeting a 100 ppm CO limit and by monitoring the exit gas continuously for CO during the interim period of reconsideration. Therefore, EPA is today issuing a final rule amending the applicability provision of the part 503—subpart E—Incineration to modify the applicability of certain management practices, frequency of monitoring requirements and recordkeeping requirements for sewage sludge incinerators meeting certain conditions.

As a result of the amendment, the following requirements will not apply to sewage sludge incinerators meeting defined conditions: the management practice in § 503.45(a); the frequency of monitoring requirements for THC concentration in § 503.46(b); and the recordkeeping requirements for THC concentration in § 503.47 (c) and (n). The management practice in 503.45(a) requires the installation of a continuous emissions monitor for total hydrocarbons. The monitoring requirements of § 503.46(b) concern THC concentration in the exit gas. The recordkeeping requirements in § 503.47 (c) and (n) deal with the total hydrocarbons concentration in the exit gas from the sewage sludge incinerator stack and with a calibration and maintenance log for THC concentration in the exit gas.

The requirements outlined above do not apply to sewage sludge incinerators in the following circumstances. The sewage sludge incinerator must achieve a CO concentration in the exit gas of 100 ppm (monthly average) or lower, corrected for zero percent moisture and to seven percent oxygen. The incinerator owner/operator also must monitor the exit gas continuously for CO, keep records on the CO emissions, and, in certain cases, report the monthly average CO concentration annually to the permitting authority.

EPA concluded there is good cause for taking today's action because current data support the petitioners' assertion that the THC concentration in the exit gas from the sewage sludge incinerators described above will comply with the 100 ppm (monthly average) THC operational standard in part 503 when

the monthly average CO concentration in the exit gas is equal to or less than 100 ppm.

D. Procedural Requirements

EPA has reviewed the two requests discussed above and concluded that: (1) The molybdenum CPLR, pollutant concentration limit, and APLR for land application should be reconsidered based on the new information, and (2) the THC operational standard in § 503.44(c) will be achieved if a CO limit of 100 ppm is met. Accordingly, EPA is today taking final action amending its part 503 regulation. EPA's action amends the molybdenum pollutant limits for land application in Tables 2, 3, and 4 of § 503.13 and the applicability of various part 503 requirements related to THC in § 503.45, § 503.46, and § 503.47 for certain incinerators until such time as the Agency has an opportunity to study these issues further. At the completion of the studies, EPA will decide whether to propose new molybdenum pollutant limits and whether further amendments to part 503 are needed concerning the monitoring of CO to demonstrate compliance with the THC operational standard in lieu of monitoring THC continuously.

Section 553 of the Administrative Procedures Act provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, it may first issue a rule without providing notice and comment. In addition, the agency may make the rule effective immediately. EPA has concluded here that it should both amend its part 503 regulation as described without providing for notice and comment and make these changes effective immediately.

1. Notice and Comment

By today's action, the Agency avoids the possibility that some treatment works treating domestic sewage would be required to comply with certain numerical limits for molybdenum in sewage sludge that is land applied. The Agency has concluded at this juncture that these limits may be too stringent and consequently should be reconsidered. Given the pendency of the compliance deadline for the land application requirements, it would be impracticable to provide notice and comment. Further, the public interest would suffer to the extent that treatment works treating domestic sewage incurred increased costs associated with compliance with requirements that the Agency determines are not needed to protect public health and the environment. Given the retention of the ceiling limit on molybdenum in sewage sludge which may be applied to the land, EPA has concluded that public health and the environment will be adequately protected while the Agency is reconsidering what are the appropriate molybdenum limits for Tables 2, 3 and 4 of § 503.13.

Further, in the case of the amendments to the requirements for sewage sludge incinerators, the Agency has similarly concluded that notice and comment is impracticable and contrary to the public interest. EPA has concluded that the public interest will suffer if sewage sludge incinerators that achieve a 100 ppm CO level, as demonstrated by continuous CO monitoring, are also required to install THC monitors. Based on its evaluation, EPA has concluded that, if incinerators are meeting a 100 ppm CO level, the likelihood is substantial that such incinerators are well below the 100 ppm THC operational standard. Given this information and the fact that the obligation for many of these incinerators to achieve a 100 ppm or lower CO standard and monitor continuously antedated the promulgation of the 100 ppm THC operational standard, EPA has concluded that the public interest does not support installation of THC monitors for such incinerators pending Agency reconsideration.

2. Effective Date

Under section 405 of the CWA, EPA's sewage sludge regulation must require compliance with the regulation as expeditiously as practicable but in no case later than 12 months after its publication, unless such regulation requires construction of new pollution control facilities, in which case the regulation must require compliance expeditiously, but not later than two years from publication. The part 503 regulation was effective on March 22, 1993. In the case of the molybdenum pollutant limits and the continuous monitoring requirements for THC, the regulation required compliance by February 19, 1994. Because of the potential adverse effect on public interest noted above, the Agency has determined there is good cause for making this regulation effective immediately.

E. Regulatory Requirements

1. Executive Order 12866

Executive Order 12866 requires EPA to prepare an assessment of the costs and benefits of any "significant regulatory action." Because the effect of today's rule is to modify current requirements and provide additional flexibility to the regulated community, costs to the regulated community should be reduced or at least remain unchanged. Consequently, no assessment of costs and benefits is required.

2. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

This action to modify the part 503 regulation promulgated today is deregulatory in nature and thus will only provide beneficial opportunities for entities that may be affected by the rule. Accordingly, I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

3. Paperwork Reduction Act

There are no reporting, notification, or recordkeeping (information) provisions in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 503

Environmental protection, Frequency of monitoring, Incineration, Land application, Management practices, Pathogens, Pollutants, Reporting and recordkeeping requirements, Sewage sludge, Surface disposal and Vector attraction reduction.

Dated: February 18, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 503 of title 40 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 503 continues to read as follows:

Authority: Sections 405 (d) and (e) of the Clean Water Act, as amended by Pub. L. 95–217, Sec. 54(d), 91 Stat. 1591 (33 U.S.C. 1345 (d) and (e)); and Pub. L. 100–4, Title IV, Sec. 406 (a), (b), 101 Stat., 71, 72 (33 U.S.C. 1251 *et seq.*).

2. Section 503.13 is amended by revising paragraphs (b)(2), (b)(3), and (b)(4) to read as follows:

§ 503.13 Pollutant limits.

(b) * * *

(2) Cumulative pollutant loading rates.

TABLE 2 OF § 503.13.—CUMULATIVE POLLUTANT LOADING RATES

Pollutant	Cumulative pollutant loading rate (kilograms per hectare)
Arsenic	41
Cadmium	39
Chromium	3000
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2800

(3) Pollutant concentrations.

TABLE 3 OF § 503.13.—POLLUTANT CONCENTRATIONS

Pollutant	Monthly average concentrations (milligrams per kilogram)[1]
Arsenic	41
Cadmium	39
Chromium	1200
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	36
Zinc	2800

[1] Dry weight basis.

(4) Annual pollutant loading rates.

TABLE 4 OF § 503.13.—ANNUAL POLLUTANT LOADING RATES

Pollutant	Annual pollutant loading rate (kilograms per hectare per 365 day period)
Arsenic	2.0
Cadmium	1.9
Chromium	150
Copper	75
Lead	15
Mercury	0.85
Nickel	21
Selenium	5.0
Zinc	140

* * * * *

5. Section 503.40 is amended by adding paragraph (c) to read as follows:

§ 503.40 Applicability.

* * * * *

(c) The management practice in § 503.45(a), the frequency of monitoring requirement for total hydrocarbon concentration in § 503.46(b) and the recordkeeping requirements for total hydrocarbon concentration in § 503.47(c) and (n) do not apply if the following conditions are met:

(1) The exit gas from a sewage sludge incinerator stack is monitored continuously for carbon monoxide.

(2) The monthly average concentration of carbon monoxide in the exit gas from a sewage sludge incinerator stack, corrected for zero percent moisture and to seven percent oxygen, does not exceed 100 parts per million on a volumetric basis.

(3) The person who fires sewage sludge in a sewage sludge incinerator retains the following information for five years:

(i) The carbon monoxide concentrations in the exit gas; and

(ii) A calibration and maintenance log for the instrument used to measure the carbon monoxide concentration.

(4) Class I sludge management facilities, POTWs (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater submit the monthly average carbon monoxide concentrations in the exit gas to the permitting authority on February 19 of each year.

[FR Doc. 94–4372 Filed 2–24–94; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 171

[CGD 93–041]

RIN 2115–AD33

Domestic Passenger Vessel Damage Stability Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of partial suspension of application.

SUMMARY: The Coast Guard announces an indefinite suspension of the application of 46 CFR 171.080(e), Damage Stability Standards for Inspected Passenger Vessels, for all vessels not requiring a SOLAS Passenger Ship Safety Certificate. The suspension will allow time for development of revised regulatory requirements. This action is being taken in response to a determination that there are technical problems in meeting these requirements for certain vessels, especially those designed for service on protected or partially-protected waters. Suspending the effective date will provide an opportunity to define the extent of the problem and to consider alternative regulations.

EFFECTIVE DATE: Effective February 25, 1994, the application of 46 CFR 170.210(e) is suspended indefinitely for all vessels not requiring a SOLAS Passenger Vessel Safety Certificate.

FOR FURTHER INFORMATION CONTACT: Ms. P. L. Carrigan, Marine Technical and Hazardous Materials Division (G–MTH–3), room 1308, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone: (202) 267–2988, telefax: (202) 267–4816.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in the drafting of this notice are Ms. Patricia L. Carrigan, Project Manager, Office of Marine Safety, Security and Environmental Protection and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Regulatory History

On February 13, 1990, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Stability Design and Operational Regulations in the **Federal Register** (55 FR 5120).

During the NPRM 60-day comment period, the Coast Guard received 28 letters commenting on the proposed rulemaking. Only two of the 28 letters received included comments on the new damage stability standards for passenger vessels.

On September 11, 1992, the Coast Guard published a final rule entitled Stability Design and Operational Regulations in the **Federal Register** (57 FR 41812) which adopted damage stability requirements for new passenger vessels from the proposed rule.

Following implementation of the final rule, the Coast Guard received inquiries on the appropriateness of the damage stability standards in 46 CFR 171.080(e) for certain types of new passenger vessels.

On July 7, 1993, the Coast Guard published a notice in the **Federal Register** to announce a public meeting on August 5, 1993 to discuss what problems were being encountered in complying with the standard and what actions might be appropriate.

At the public meeting, attention focused on the application of this requirement to domestic vessels, especially vessels operating in protected and partially-protected waters. Comments indicated that unexpected difficulties were being experienced by some designers in complying with the new standard. These problems were discovered as new vessel designs began to be reviewed. Due to requests to reconsider the specific criteria to be applied in various waters and based on the information received at the public meeting, the Coast Guard on August 27, 1993 (58 FR 45264), published a notice temporarily suspending the application of § 171.080(e) for all vessels not carrying a SOLAS Passenger Ship Certificate until February 23, 1994.

The Coast Guard also reopened the comment period for 90 days to allow further input from the public, and received twenty-one additional comments. The majority of the comments came from naval architects and shipyards, and two comments were from the Society of Naval Architects and Marine Engineers (SNAME) technical panels. In general, the comments indicated that the regulations adopted seemed overly severe, especially for vessels operating on protected or partially-protected waters.

Reason for Extension of the Suspension of Effective Date

Based on a preliminary evaluation of the comments received, including those made at the August 5, ~~1993~~ public hearing and those received following the initial suspension, the Coast Guard expects to publish a notice of proposed rulemaking proposing amendments to the damage stability standards for passenger vessels on domestic routes. The Coast Guard believes the development of improved damage stability regulations requiring minimal design changes are necessary and achievable, particularly in view of the dramatic increase in the number of high density passenger vessels on inland waters and the potential for loss of life if a casualty occurs. The work of SNAME in this matter is considered especially important and indicative of the need for damage stability standards for passenger vessels. The Coast Guard is considering adopting a tiered approach, in which a vessel operating on exposed routes would be required to meet a stricter stability standard than a vessel operating on protected or partially-protected routes. The Coast Guard expects to publish the proposed revision by mid-1994.

Dated: February 15, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-4203 Filed 2-24-94; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 22, 90, 94, and 95

[PP Docket No. 93-253; FCC 94-32]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a First Report and Order (Order) that proposes to implement recent statutory change to the Communications Act of 1934, as amended (Communications Act). The Order is necessary in order to comply with the Congressional directive contained in the Omnibus Budget Reconciliation Act of 1993 (Budget Act) to consider regulations to deter unjust enrichment by lottery winners. The Order adopts a rule requiring disclosure of transfer prices by an applicant for voluntary transfer of control or assignment where the subject license was acquired by the transferor through a Commission lottery.

EFFECTIVE DATE: May 26, 1994.

FOR FURTHER INFORMATION CONTACT: Marc Martin or Kent Nakamura, Office of Plans and Policy, Federal Communications Commission, at (202) 653-5940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 94-32, adopted February 3, 1994; and released February 4, 1994. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, room 236, Washington, DC 20554, telephone (202) 857-3800.

Summary of Order

1. The First Report and Order (Order) in PP Docket 93-253 implements a provision of the Budget Act that requires the Commission to prescribe, as necessary, regulations to deter unjust enrichment in the lottery context within 180 days of the Budget Act's enactment, i.e., February 6, 1994. The Commission has adopted a transfer disclosure rule that applies to applicants for voluntary transfer of control or assignment where the transferor or assignor acquired the subject license through a Commission lottery.

2. This Order responds to Congress's directive. The Commission concludes that, in addition to the requirements that already apply to licenses acquired pursuant to lotteries, certain transfer disclosure rules are necessary to prevent unjust enrichment with respect to licenses that the Commission issues by lottery.

3. By this action, the Commission adopts a rule requiring disclosure of the consideration that would be received by prospective transferor of licenses they have acquired through Commission lotteries. These requirements will enable the Commission to monitor the operation and effect of lotteries closely over the next several years as it gains experience with the competitive bidding process and the new regulatory environment for mobile service providers, thus enabling the Commission to determine whether additional safeguards are necessary.

4. As required by section 603 of the Regulatory Flexibility Act, the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of the proposals contained in the Notice of Proposed Rule Making, PP Docket No. 93-253, 58 FR 53489 (October 15, 1993), on small entities. By this Order, the Commission responds to a Congressional directive contained in the Budget Act to consider measures to deter unjust enrichment in the lottery context. The Commission received no comments in response to the IRFA concerning unjust enrichment in the lottery context. As noted in the text of the Order, we considered and rejected more burdensome requirements designed to deter unjust enrichment, such as additional transfer restrictions for licensees that acquire their license by lottery. Rather, we adopted the less onerous transfer disclosure requirement that is expressly recommended in the Budget Act. In the case of some spectrum-based services, such as Low Power Television, entities that file transfer of control applications with the Commission are currently required to submit information similar to what the Commission explicitly requires by this Order: Copies of documents that reveal the transfer price for a license. Further, in other services, applicants for voluntary transfer of control or assignment are currently required to submit information in support of their request. Inasmuch as any contracts, purchase agreements, or similar legal documents detailing the consideration received by the transferor will presumably already have been prepared by the parties to the transaction for their own purposes, attaching a copy of such documents to the application(s) submitted to the Commission should not prove onerous. Accordingly, the Commission does not believe this limited disclosure requirement adds a significant economic burden on small entities.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain, in new or modified form, information collection and/or record retention requirements, that would not substantially increase burden hours imposed on the public. Further, the Commission has examined the relevant data and determined that the universe of affected parties to be fewer than ten annually. Therefore, the Paperwork Reduction Act does not apply to this action.

List of Subjects in 47 CFR Parts 1, 21, 22, 90, 94, and 95

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

Parts 1, 21, 22, 90, 94 and 95 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303: Implement 5 U.S.C. 552 and 21 U.S.C. 853(a), unless otherwise noted.

2. Section 1.924 is amended by adding a new paragraph (d) to read as follows:

§ 1.924 Assignment or transfer of control, voluntary and involuntary.

* * * * *

(d) An applicant for voluntary transfer of control or assignment under this section where the subject license was acquired by the transferor or assignor through a system of random selection shall, together with its application for transfer of control or assignment, file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below-market financing).

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

3. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 610; 48 Stat. as amended, 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

4. Section 21.38 is amended by adding a new paragraph (g) to read as follows:

§ 21.38 Assignment or transfer of station authorization.

* * * * *

(g) An applicant for voluntary transfer of control or assignment under this section where the subject license was acquired by the transferor or assignor through a system of random selection shall, together with its application for transfer of control or assignment, file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below-market financing).

PART 22—PUBLIC MOBILE SERVICE

5. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

6. Section 22.39 is amended by adding a new paragraph (d) to read as follows:

§ 22.39 Transfer of control or assignment of station authorization.

* * * * *

(d) An applicant for voluntary transfer of control or assignment under this section where the subject license was acquired by the transferor or assignor through a system of random selection shall, together with its application for transfer of control or assignment, file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below-market financing).

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

7. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48, Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

8. Section 90.153 is amended by adding two new sentences at the end of the existing sentence to read as follows:

§ 90.153 Transfer or assignment of station authorization.

* * * An applicant for voluntary transfer of control or assignment under this section where the subject license was acquired by the transferor or assignor through a system of random selection shall, together with its application for transfer of control or assignment, file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below-market financing).

PART 94—PRIVATE OPERATIONAL FIXED MICROWAVE SERVICE

9. The authority citation for part 94 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

10. Section 94.47 is amended by adding a new paragraph (c) to read as follows:

§ 94.47 Transfer and assignment of station authorization.

* * * * *

(c) An applicant for voluntary transfer of control or assignment under this section where the subject license was acquired by the transferor or assignor through a system of random selection shall, together with its application for transfer of control or assignment, file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below-market financing).

[FR Doc. 94–4292 Filed 2–24–94; 8:45 am]
BILLING CODE 6712–01–M

PART 95—PERSONAL RADIO SERVICES

11. The authority citation for part 95 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

12. Section 95.821 is amended by adding two new sentences at the end of the paragraph to read as follows:

§ 95.821 Application for transfer of control.

* * * An applicant for voluntary transfer of control or assignment under this section where the subject license was acquired by the transferor or assignor through a system of random selection shall, together with its application for transfer of control or assignment, file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below-market financing).

DEPARTMENT OF ENERGY

48 CFR Chapter 9

[RIN 1991–AB01]

Acquisition Regulation; Technical Amendments

AGENCY: Department of Energy (DOE).

ACTION: Final rule; technical amendments.

SUMMARY: The Department is amending the Department of Energy Acquisition Regulation (DEAR) to perform "housekeeping" duties such as updating references, correcting spelling and editorial errors, and clarifying certain language. This rule falls under the exceptions to the usual proposed rulemaking and public procedure requirements. These corrections and changes are all technical and administrative in nature, and none of them raises substantive issues. For this reason, the Department is not requesting public comments.

Any comments may be addressed to the individual identified below.

EFFECTIVE DATE: This rule will be effective April 26, 1994.

FOR FURTHER INFORMATION CONTACT: Richard Langston, Office of Procurement and Assistance Management (HR–521.1), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8247.

SUPPLEMENTARY INFORMATION:

I. Explanation of Selected Revisions
II. Procedural Requirements
A. Regulatory Review
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under Executive Order 12612
E. National Environmental Policy Act
F. Review Under Executive Order 12778

I. Explanation of Selected Revisions

None of the revisions in this rule are substantive but the reader may benefit from an explanation of some of the revisions. Readers are reminded that this regulation implements and supplements the Federal Acquisition Regulation (FAR), which is the regulation primarily applicable to the acquisition activities of all Federal agencies. Some revisions being made here are for the purpose of ensuring that our regulation conforms to FAR requirements.

A new 901.170, Organizational references, is added. It explains our practice of using second level organizational names along with the phrase "within the Headquarters procurement organization" when referring to various Headquarters procurement offices. It is hoped that this will minimize the obsolescence of the text as the organization continues to change.

At 908.802, in paragraph (b), a new final sentence has been added to explain Government printing regulations. The text is not new to the regulation; it was previously located in the introductory text of 952.208–70.

At 916.207–3(d), we have added "(but no lower than the chief of the contracting office)" after the word "designee". This will bring this section into conformance with FAR 16.207–3(d) which requires approval by the chief of the procurement office.

At 919.501, in paragraph (c), we have revised "$10,000" to read "the small purchase limitation" to recognize that the Federal small purchase limitation was increased to $25,000 and may be revised upward again.

At 937.205, we have deleted paragraph (b)(7) based on the observation that it duplicates FAR 37.206(c) and we have redesignated the remaining part as 937.207.

At 970.5204–30, we have deleted the clause entitled "Notice of labor disputes". It is duplicative of FAR 52.222–1, which will be used in its place.

At 970.5204–34, we have inserted the full text of a clause entitled "Sensitive Foreign Nations Controls". The clause is not new as the clause is also located at 952.204. This is being done for the convenience of the readers.

At 970.5204–41, we have included the full text of a clause entitled "Preservation of Individual Occupational Radiation Exposure Records." This is not a new requirement, as the clause is also contained at 952.223–75. This is being done for the convenience of our readers.

At 970.5204–50, we have included the full text of a clause entitled "Cost and Schedule Control Systems." This is not a new requirement, as the clause is also contained at 952.212–73. This is being done for the convenience of our readers.

At 970.5204–52, we have included the full text of a clause entitled "Foreign Travel." This is not a new requirement as the clause is also contained at 952.247–70. This is being done for the convenience of our readers.

II. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review, under the Executive Order, by the Office of Information and Regulatory Affairs.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the Federal government and the states, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule will apply to states that contract with DOE; however, none of the revisions is substantive in nature.

E. National Environmental Policy Act

DOE has concluded that this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) (1976) or the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2 (a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, any effect on existing Federal law or regulation, and any retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

List of Subjects in 48 CFR Chapter 9

Government procurement.

Issued in Washington, DC, on February 4, 1994.

G. L. Allen,

Acting Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is amended as set forth below. The authority citation for chapter 9 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

901.103–70 [Amended]

1. At paragraph (a) of 901.103–70, remove "FAR 4.402" and insert in its place "904.4".

901.104–1 [Amended]

2. At paragraph (a)(2) of 901.104–1, revise "of" to read "in" after "form".

3. Section 901.170 is added as follows:

901.170 Organizational references.

Wherever an office within the DOE Headquarters procurement organization is identified in the DEAR (48 CFR chapter 9) only the title of the subordinate organization is used, along with the phrase "within the Headquarters procurement organization"; for example, "the Office of Policy, within the Headquarters procurement organization".

901.201–1 [Amended]

4. At 901.201–1, in paragraph (b), remove "Policy Office, Procurement and Assistance Management Directorate, Headquarters" and insert "Office of Policy, within the Headquarters procurement organization," and in paragraph (d), remove "Policy Office" and insert "Office of Policy, within the Headquarters procurement organization."

901.301 [Amended]

5. At 901.301, at paragraph (b) introductory text, remove "the" before "Contracting".

901.57 [Amended]

6. At 901.570, in paragraph (b), remove "Policy Office, Procurement and Assistance Management Directorate, Headquarters" and insert "Office of Policy, within the Headquarters procurement organization,".

901.601–1 [Amended]

7. At 901.601, remove "the" preceding "Contracting" in the third sentence.

901.602–3 [Amended]

8. At 901.602–3, at paragraph (b)(3), revise "Heads" to "Head," add "the" between the words "of" and "Contracting", and revise "Activities" to "Activity"; at paragraph (c)(7) insert "any" before "unauthorized" and revise "commitments" to "commitment"; at paragraph (c)(7)(ii), correct the spelling of the word "furnished" in the first sentence; at paragraph (c)(7)(iv) remove "Business Clearance Division, MA–441, Headquarters" and insert "Office of Clearance and Support, within the Headquarters procurement organization".

901.603–1 [Amended]

9. At 901.603–1, add the words "(See current version.)" after "4200.4".

901.603–71 [Amended]

10. In the second sentence of paragraph (a) of 901.603–71, revise "contracting activity" to read "contracting personnel".

901.603–72 [Amended]

11. At 901.603–72, in paragraph (a), in the second sentence, revise "as to" to read "regarding the" and revise "hot" to read "not".

PART 902—DEFINITIONS OF WORDS AND TERMS

12. At 902.101, add the words ", or supplement," after the words "in addition to" in the introductory sentence and revise the definition of *Acquisition Executive*, to read as follows:

902.101 Definitions.

* * * * *

Acquisition Executive, as that term is used in OMB Circular A–109, means the Secretary or individuals designated by

the Secretary to make key decisions on major systems acquisitions. The Acquisition Executive, as contrasted to the Procurement Executive, is involved in approving and monitoring the development of major systems acquisitions and the review of their progress as they evolve through the major system acquisition process. Details regarding internal major systems acquisition procedures may be found in the DOE directives.

* * * * *

At 902.101, at the definition of *Procurement Executive*, remove "Procurement and Assistance Management Directorate" and insert "of the Headquarters procurement organization"; and, at the definition of *Senior Program Official*, delete the parenthetical expression at the end of the definition.

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

903.203 [Amended]

13. At 903.203, in paragraph (a), remove the words "and if the allegations appear to support a violation" and insert ", and, if the report appears to substantiate the allegations,".

903.303 [Amended]

14. At 903.303, in the final sentence of paragraph (a), insert a comma following the second occurrence of the word "General".

903.603 [Amended]

15. At 903.603, in paragraph (a), remove the word "shall" and insert in its place the words ", in accordance with FAR 48 CFR 3.602, may".

PART 904—ADMINISTRATIVE MATTERS

904.401 [Amended]

16. At 904.401, remove the roman numeral "II" and insert an arabic numeral "11" at the definition of *Restricted Data*.

904.403 [Amended]

17. At 904.403(a), add the words "(See current version.)" after "5631.2" in (a) and "5632.2" in (c).

904.601 [Amended]

18. At 904.601, in paragraph (c), remove the words "Office of Management Review and Assistance, Headquarters" and insert "Office of Management Review and Analysis, within the Headquarters procurement organization".

904.601–70 [Amended]

19. At 904.601–70, in paragraph (b) introductory test, revise "(latest version)" to "(See current version.)" following "1331.1", and remove the words "Requirements and Procedures for the"; and, remove paragraph (b)(4).

20. At 904.601–71, in paragraph (a), remove the acronym "(URS)"; at paragraph (b) remove the first sentence and insert in its place the following: "Instructions for use of the uniform reporting system may be found in DOE Order 1332.1 (See current version.)."; and in paragraph (b), remove the acronym "URS" and insert in its place "uniform reporting system" where it appears three times

21. At 904.702, in paragraph (b), remove ", and any pertinent superseding provisions" and insert "(See current version.)".

22. At 904.805, add "(See current version.)" after 1324.2.

23. At subpart 904.70, remove the terms "offeror/bidder" and "offerors/bidders" and insert in their place the term "offeror(s)" where the terms appear at 904.7000 (twice); 904.7001; 904.7002; definition of *Foreign ownership, control, or influence;* 970.7003(c); and at 904.7004 (six times).

24. At 904.7000, at the end of the final sentence, remove the words "FOCI over the offeror/bidder or contractor/subcontractor" and insert the words "the foreign influence".

25. At 904.7002, place the definition of *Contracting officer* so it appears first in the alphabetic list of definitions and revise "Officer" to read "officer".

PART 905—PUBLICIZING CONTRACT ACTIONS

26. At 905.403(a), revise "Office of Congressional and Intergovernmental Affairs" to read "Office of Congressional, Intergovernmental and International Affairs".

27. At 905.403–70 introductory text, remove the word "Headquarters" and revise "Office of Congressional and Intergovernmental Affairs" to read "Office of Congressional, Intergovernmental and International Affairs" where it appears three times.

28. At 905.404–1, revise "Office of Procurement Support, Procurement and Assistance Management Directorate, Headquarters" to read "Office of Clearance and Support, within the Headquarters procurement organization".

PART 906—COMPETITION REQUIREMENTS

29. At 906.303–1, in paragraph (a), insert a comma after the phrase "For small purchases" at the beginning of the final sentence

PART 907—ACQUISITION PLANNING

30. At 907.102, revise the number "5700" to read "4700".

31. At 907.401, in paragraph (f), revise "it it" to read "It is" in the second sentence and correct the spelling of the word "circumstances" in the final sentence

32. At 907.402–70, revise "controller and finance divisions" to read "Headquarters and field Chief Financial Officers" in the introductory text of paragraph (b); at paragraph (b)(3) revise "Controller and Finance Divisions" to read "Headquarters and field Chief Financial Officers"; correct the spelling of the word "Transfer" at paragraph (c)(1)(iv); and correct the spelling of the word "penalties" at the next to the last sentence of paragraph (c)(4).

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

33. At 908.307, in paragraph (b), remove "Business Clearance Division" and insert "Office of Clearance and Support, within the Headquarters procurement organization" and remove the word "usually" from the final sentence of the undesignated paragraph following paragraph (b).

34. At 908.802, in paragraph (b), in the second sentence revise "1340.1A" to "1340.1" and add "(See current version.)" after "1340.1", and add a new final sentence to read "When appropriate, contracting officers shall furnish the necessary forms and instructions to contractors as described in the current version of DOE Order 1340.1."

35. At 908.1170, in paragraph (a), insert "the" before "Heads" and in paragraphs (a) and (b), revise "Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters" to read "Office of Property Management, within the Headquarters procurement organization".

36. At 908.7101, revise "Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters" to read "Office of Property Management, within the Headquarters procurement organization" where it appears at 908.7101–3, 908.7101–6(a), and 908.7101–7(b); and insert "the" before "Heads" at 908.7101–2(c), 908.7101–4(b), 908.7101–5, and 908.7101–6(a).

37. At 908.7101–7(b), revise "is" to read "are" in the second sentence.

38. At 908.7107(i), revise "101–43.4" to read "101–48.1".

39. At 908.7108, in paragraph (b), revise "helium act" to read "Helium Act".

40. At 908.7112, add "The" before "Heads" at the second sentence.

41. At 908.7115, in paragraph (a), revise "1322.2A" to read "1322.2", remove the words "Forms Management." and insert "(See current version.).".

42. At 908.7116, in paragraph (b), insert "the" before "Heads".

43. At 908.7121, in paragraph (b), remove "Westinghouse Materials Company of Ohio (WMCO), P.O. Box 398704, Cincinnati, Ohio 45239" and insert "Martin Marietta Energy Systems, Inc., MS8207, P.O. Box 2009, Oak Ridge, Tn. 37831" in the third sentence and revise "WMCO" to read "the operating contractor" in the fourth sentence.

PART 912—CONTRACT DELIVERY OR PERFORMANCE

44. At 912.300, revise the parenthetical cross reference to read "(See 15 CFR part 700)".

45. At 912.302(e), add "The" before "Heads".

46. At 912.304, in paragraph (c), revise "$1,000" to read "$5,000".

PART 913—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

47. At the part heading, revise "PURCHASES" to read "PURCHASE".

48. At 913.505–1, in paragraph (b)(2), remove ", including DOE Clause Set 319 which"; and remove "by the Office of Policy, Procurement and Assistance Management Directorate" and insert the phrase "from the Office of Policy, within the Headquarters procurement organization".

49. At 913.505–3, in paragraph (d)(1), insert the word "the" before the words "control of forms".

PART 914—SEALED BIDDING

50. At 914.201–5, in paragraph (a)(1), remove "Office of Policy, Office of Procurement, Assistance and Program Management" and insert "Office of Policy, within the Headquarters procurement organization".

51. At 914.406–3, in paragraph (e), insert "the" before "Heads".

52. Remove 914.407–8.

53. Remove 914.407–70.

54. At 914.408–2, revise "10 CFR part 795" to read "10 CFR part 1016".

PART 915—CONTRACTING BY NEGOTIATION

55. At 915.406–5, in paragraph (a)(1), revise "Office of Policy, Office of Procurement, Assistance and Program Management" to read "Office of Policy, within the Headquarters procurement organization"; and correct the spelling of the word "period", at its second usage, at paragraph (a)(2)(iv),.

56. At 915.502, correct the spelling of the word "expeditious" at paragraph (a)(iv); and revise "943.107" to read "943.170" at paragraph (b).

57. At 915.504, in paragraph (b)(6)(ii), revise "Advisor" to read "advisor" and revise "Office of Procurement Support, Headquarters" to read "Office of Clearance and Support, within the Headquarters procurement organization"; and at paragraphs (b)(6)(iv) and (b)(6)(vi), revise "Unsolicited Proposal Management Officer" to read "unsolicited proposal coordinator".

58. At 915.506, in paragraph (b), revise "Procurement and Assistance Management Directorate, U.S. DOE, Attn: Unsolicited Proposals Management Officer, MA432" to read "Unsolicited Proposal Coordinator, Office of Procurement and Assistance Management," in the first sentence, and in the third sentence revise "Unsolicited Proposal Management Officer" to read "unsolicited proposal coordinator".

59. At 915.506–2, correct the spelling of the word "assignment" in paragraph (a); and correct the spelling of the words "justifications" and "recommendation" in paragraph (e).

60. At 915.801, revise "Department of Energy" to read "DOE".

61. At 915.804–3, add "The" before "Heads" at paragraph (b)(2)(iii), (c)(8), (g), and (i).

62. At 915.804–6, add "The" before "Heads" at paragraphs (e) and (i).

63. At 915.805–5, in paragraph (c)(1), remove "Directorate of Procurement and Assistance Management, Office of Policy, Policy and Procedures Division" and insert "Office of Policy, within the Headquarters procurement organization".

64. At 915.807, in paragraph (d)(5)(h), correct the spelling of the word "maximum".

65. At 915.903, in paragraph (f), correct the spelling of "comparison".

66. At 915.970–4, in paragraph (c), correct the spelling of "documentation".

67. At 915.970–8, in paragraph (b)(1), remove the "a in" appearing after the word "accomplish" in the second sentence and revise the paragraph designation "(b)(2)(iv)(C)" to read "(c)" before the heading *"Contract risk."*.

68. At 915.970–8, in paragraph (h)(1), correct the spelling of the word "awarded" in the third sentence.

69. At 915.971–4, in paragraph (h), correct the spelling of the word "positive".

70. At 915.1003, in paragraph (a), remove the comma following "officer" and insert a comma following the word "may" in the next to the last sentence.

PART 916—TYPES OF CONTRACTS

71. At 916.203–4, in paragraph (d)(2), revise the FAR reference at the end of the paragraph to read "(FAR) 48 CFR 16.203–4".

72. At 916.207–3, in paragraph (d), following the word "designee", add the phrase "(but no lower than the chief of the contracting office)".

73. At 916.306, in paragraph (c)(2), revise "head" to read "Head".

74. At 916.404–2, in the third sentence of paragraph (d), correct the spelling of the word "determined".

75. At 916.405, in paragraph (e), remove "Office of Policy, Headquarters" and insert "Office of Policy, within the Headquarters procurement organization"; and revise "Contracting Officer" to read "contracting officer" where it appears, once each, in the paragraphs titled "Base Fee" and "Award Fee" of the article entitled "Payment of Base and Award Fee".

PART 917—SPECIAL CONTRACTING METHODS

76. At 917.504, in paragraph (b)(9)(i), correct the spelling of the word "estimated".

77. At 917.7003, correct the spelling of the word "commercially" in paragraph (b)(3) and add a comma following the word "important" in the second sentence of paragraph (e).

78. At 917.7006, remove "Controller" and insert "Chief Financial Officer, Headquarters,".

79. At 917.7200, in paragraph (b), remove the fourth sentence.

80. At 917.7300, in paragraph (b), remove the fourth sentence.

81. At 917.7301–4, in paragraph (a)(9), correct the spelling of the word "announcement".

82. At 917.7303, in paragraph (b), correct the spelling of the word "ex officio" in the third sentence.

83. At 917.7401, insert the word "may" before the word "arise" in the second sentence.

84. At 917.7402, in paragraph (c)(3), correct the spelling of the word "cancellation" where it precedes the word "date".

85. At 917.7403, in paragraph (b), correct the spelling of the word "responsibility".

86. At 917.7502, in paragraph (b), at the fifth sentence, revise "multiphase" to read "multiple phase" and revise "timeframe" to read "time frame".

PART 919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS

87. At 919.201(c), add ", Headquarters, is responsible for the administration of the DOE small" between "Utilization" and "and" in the first sentence, and add "The" before "Heads" in the final sentence.

88. At 919.501, in paragraph (c), remove "$10,000" and insert in its place "the small purchase limitation".

89. At 919.705–6, remove "OSDBU" and insert in its place "Office of Small and Disadvantaged Business Utilization".

90. At 919.708, in paragraph (c), correct the spelling of the word "disadvantaged".

PART 920—LABOR SURPLUS AREA CONCERNS

91. At 920.102, correct the spelling of the word "Acquisitions".

92. 920.106 is revised to read as follows: 920.106 Records and reports.

Set-aside awards shall be reported as described in the Handbook for Preparation of Individual Procurement Action Reports.

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

93. At 922.103–4, in the second sentence of paragraph (d)(1), add "the" before "Heads"; and, in the second sentence of paragraph (d)(1)(i), remove the phrase "By casual overtime is meant" and insert in its place "Casual overtime means".

94. At 922.470, in paragraph (a), revise the reference "FAR 22.400" to read "(FAR) 48 CFR part 22, subpart 22.4".

95. At 922.471, correct the spelling of the word "rehabilitation" at paragraph (e) in the first sentence; and at paragraph (g)(2)(iii) remove "uninterruption of continuing" and insert "continuity of" before the word "construction".

96 and 97. At 922.473, in paragraph (a), revise the reference "FAR 22.400" to read "(FAR) 48 CFR part 22, subpart 22.4" and add "the" before "Heads"; and at paragraph (b) add "The" before "Heads", insert ", within the Headquarters procurement organization" following "Management" and revise "FAR 22.400 and 922.400" to read "(FAR) 48 CFR part 22, subpart 22.4" and "48 CFR part 922, subpart 922.4".

98. At 922.608–5, revise the FAR reference to read "(FAR) 48 CFR 22.608–5".

99. At 922.800, revise "(FAR 22.800" to read "(FAR) 48 CFR part 22, subpart 22.8".

100. At 922.804–2, correct the spelling of "provisions" in the first sentence of paragraph (a)(1).

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

101. Revise the title of part 123 to read as above.

102. At 923.7001, in paragraph (a), correct the spelling of "producing".

103. At 923.7002, revise "(a)" to read "(b)" in the reference at the end of the introductory text of paragraph (b) and at the fourth sentence of paragraph (d) revise "Deputy Assistant Secretary" to read "Principal Deputy Assistant Secretary".

PART 924—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

104. At 924.103, in paragraph (b)(2), revise "maintained" to read "Maintained", revise "order" to "Order", and add "(See current version.)" after "1800.1".

105. At 924.202, in paragraph (b), add "and DOE Order 1700.1 (See current version.) for related internal procedures" following the word "regulations" at the first sentence; and at the second sentence, remove the words "Public" and "Records" and insert "Requests" following "Information and".

PART 925—FOREIGN ACQUISITION

106. At 925.108, in paragraph (b), revise the FAR reference to read "(FAR) 48 CFR 25.108(d)(1)".

107. At 925.204, remove the paragraph designation "(d)".

108. Subpart 925.9 is revised to read as follows:

Subpart 925.9—Additional Foreign Acquisition Clauses

925.901 Omission of the examination of records clause.

(c) Conditions for omission.

Any proposed determinations and any reports mentioned at (FAR) 48 CFR 25.903 shall be forwarded to the Director, Office of Clearance and Support, within the Headquarters procurement organization.

PART 928—BONDS

109. At 928.202–70, revise the FAR reference to read "(FAR) 48 CFR 28.202".

PART 932—CONTRACT FINANCING

110. At 932.501–2, in paragraph (a)(3), revise "Controller" to read "Chief Financial Officer, Headquarters".

111. At 932.803, in the last sentence of paragraph (d), revise "Controller" to read "Chief Financial Officer, Headquarters".

112. At 932.970, remove the word "basic" preceding the words "Prompt Payment" and remove the words "and (a)(2)(i)(B) of its Alternate I" at paragraph (a)(1); remove the word "basic" preceding the words "Prompt Payment" and remove the words "and (a)(5)(i) of its Alternate I" at paragraph (a)(2); correct the spelling of "Financing" at the heading of (b), remove the word "basic" preceding the words "Prompt Payment" and remove the words "and its Alternate I" at paragraph (b)(1); and add a period at the end of the final sentence of paragraph (b)(2).

113. At 932.7003, in paragraph (a), remove the word "of" between the words "or" and "class" at the end of the first sentence.

114. At 932.7004–2, in paragraph (d), correct the spelling of "repaid".

115. At 932.7004–3, in paragraph (b), remove the word "Controller's" and insert "Chief Financial Officer's".

PART 933—PROTESTS, DISPUTES, AND APPEALS

116. At 933.103, in paragraph (a), insert the words "at least" between the words "that" and "one" in the second sentence; and, remove "Business Clearance Division, Headquarters" and "Business Clearance Division" and insert "Office of Clearance and Support, within the Headquarters procurement organization" where it appears once in paragraph (d)(5) and three times in paragraph (e).

117. At 933.104, at paragraph (a)(3) and in the mailing address at paragraph (a)(4)(iii), remove "Business Clearance Division (MA–441)" and insert "Office of Procurement and Assistance Management, Office of Clearance and Support,"; revise "Business Clearance Division" and "Business Clearance Division, Headquarters" to read "Office of Clearance and Support" at paragraphs (a)(4)(iii), 2 times; the undesignated paragraph following the address in paragraph (a)(4)(iii), 2 times; (a)(5)(i), (a)(6), paragraph (b), and at paragraph (c)(2), 2 times; and by capitalizing

"Head of the Contracting Activity" where it appears twice in (b)(1).

118. At 933.105, remove "Business Clearance Division, Headquarters" at paragraphs (a)(1)(ii) and (g) and insert in both places "Office of Clearance and Support, within the Headquarters procurement organization"; and, at paragraph (h), remove "Business Clearance Division" and insert "Office of Clearance and Support, within the Headquarters procurement organization".

119. At 933.170, at paragraph (b) remove "Headquarters Business Clearance Division," at paragraph (c), remove "Business Clearance Division Headquarters," and at paragraphs (d) and (e) remove "Business Clearance Division" and insert in each place "Office of Clearance and Support, within the Headquarters procurement organization".

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

120. At 935.015–3, in the definitions of *Awarding Contracting Activity* and *Cognizant Contracting Activity* revise the terms "Contracting Activity", "Cognizant Contracting Activity", "Awarding Contracting Activity", and "Awarding Contracting Activities", to read "contracting activity", "cognizant contracting activity", "awarding contracting activity", and "awarding contracting activities", except in the definition headings.

121. At 935.015–4, correct the spelling of "proposals", at its second appearance, at paragraph (b)(5); revise the terms "Contracting Officer" and "Cognizant Contracting Activity" from upper case to lower case at paragraph (c); and revise the term "Contracting Activity" from upper case to lower case at paragraph (d).

122. At 935.015–5, in paragraph (b)(1)(ii), correct the spelling of the word "intended" where it is first used.

123. At 935.015–6, in paragraph (a), revise "Contracting Officer" from upper to lower case.

124. At 935.016–7, in paragraph (d)(4), revise from upper case to lower case the terms "Contracting Officer" and "Contracting Officer's Representative".

125. At 935.016–8, revise the following from upper case to lower case: "Program Office" at paragraphs (a)(5) and (e)(10); "Procurement Request" at paragraph (e)(1); and, "Contracting Activity" at paragraph (e)(11).

126. At 935.016–9, in the introductory text, revise "Procurement Request" and "Contracting Activity" to read "procurement request" and "contracting activity".

127. At 935.070, revise "Research and Development" to read "research and development".

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

128. At the table of contents; correct the spelling of "Evaluation" at 936.602–2.

129. At 936.202, in paragraph (a), revise the FAR reference to read "910.004(f)."

130. At 936.601, revise the reference "FAR 5.205(c)" to read "(FAR) 48 CFR 5.205(d)".

131. At 936.602–3, in paragraph (c)(5), revise the reference "FAR 5.207(d)" to read "(FAR) 48 CFR 5.207(e)".

132. At 936.602–4, in paragraph (b), insert the word "the" after the words "retained in" in the second sentence.

133. At 936.603, remove the word "of" following the word "Collecting" in the heading.

134. At 936.605, at paragraph (c)(1), add the term "and/or" after the term "program need", revise the colon to a semicolon after the word "risks"; revise the comma to a semicolon after the word "disciplines"; revise "Develop" to read "develop" after the word "risks"; and, at paragraph (c)(3), remove the word "and" preceding the words "assist in securing".

135. At 936.606, in paragraph (f), revise "percentum" to read "per centum" in the final sentence.

136. At subpart 936.7, revise the heading to read "Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements".

137. At 936.7002–3(a), add "the" before "Heads" which appears twice and remove "the" where it precedes "Contracting".

138. At 936.7003–1, add "The" before "Heads".

PART 937—SERVICE CONTRACTING

139. Revise the heading of subpart 937.2 to read "Advisory and Assistance Services"; redesignate 937.205 as 937.207, revise its heading to read "Contracting officer responsibilities.", remove the paragraph "(b)" designation and remove the second paragraph designated "(7)".

PART 942—CONTRACT ADMINISTRATION

140. At 942.003, in paragraph (b), revise "cognization" to read "cognizant" in the last sentence.

141. At 942.101, in paragraph (b), remove "Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters" and insert "Division, Office of Policy, within the Headquarters procurement organization,".

142. At subpart 942.7, remove "Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters" and insert "Division, Office of Policy, within the Headquarters procurement organization," at 942.705–1(a)(3), 942.705–3, 942.705–4, and 942.705–5; and, at 942.708, insert "(b)" before the undesignated paragraph beginning "The contracting officer shall".

143. At 942.803, in paragraph (c)(3)(vii), revise "followup" to read "follow-up".

144. At subpart 942.14, add "(See current version.)" following "1540.1" in 942.1401, and insert ", Safeguards, and Emergency" between the words "Transportation" and "Management" at 942.1401, 942.1402(a)(2), 942.1403–1(a), 942.1403–1(c)(1) and 942.1403–2(a).

PART 943—CONTRACT MODIFICATIONS

145. At 943.170, in paragraph (g), in the introductory text, insert the word "the" before "extension"; revise the reference from "915.570–2" to read "915.506–2" at paragraph (g)(1); and correct the spelling of the word "initial" at paragraph (g)(3).

PART 944—SUBCONTRACTING POLICIES AND PROCEDURES

146. At 944.302, add the word "The" before "Heads" in the first sentence of paragraph (a) and revise "followup" to read "follow-up" at paragraph (c).

147. At 944.305–1, in paragraph (a), add the word "the" before "Contracting Activity".

148. At 944.307, in paragraph (b), remove "Procurement Management Review Division, Procurement and Assistance Management Directorate, Headquarters" and insert "Office of Contractor Management and Administration, within the Headquarters procurement organization".

PART 945—GOVERNMENT PROPERTY

149. At the table of contents, correct the spelling of "management" at 945.570.

150. At 945.102–70, in the introductory text, remove "Property and Equipment Management Division, Procurement and Assistance Management Directorate, Headquarters" and insert "Office of Property Management, within the Headquarters

procurement organization", and at paragraph (c) remove "Administration Service" and insert "Management Command".

151. At 945.104–70, in paragraph (a)(5), revise "Worksheets" to read "Work sheets" at the final sentence, correct "exist" to read "exit" at paragraphs (a)(6) and (a)(7), and remove "Property and Equipment Management Division, Headquarters" and insert "Office of Property Management, within the Headquarters procurement organization" at paragraph (a)(11).

152. At 945.303–1, revise the second sentence of the introductory text to read as follows: *Special nuclear material* means uranium enriched in the isotopes U233, and U235, and/or plutonium, other than PU238."

153. At 945.304, remove "Acquisition of" and revise "motor" to read "Motor" in paragraph (c), and, in paragraph (d), remove "GSA Interagency Motor Pool System" and insert "Contractor Use of Interagency Fleet Management System (IFMS)".

154. In the table at 945.505–14, at the entry for asset type code number 490, remove "includable" and insert "included" and at the entry for 655, revise "powerplant" to read "power plants".

155. At 945.570–2, remove "Motor Pool" and insert "Fleet Management" at paragraph (a); remove "IMPS" and insert "IFMS" at paragraphs (a), (b)(1) and (b)(2); and, at paragraph (g) introductory text remove "Property and Equipment Management Division, Headquarters, Procurement and Assistance Management Directorate, (MA–422)" and insert "Office of Property Management, within the Headquarters procurement organization".

156. At 945.607–2, in paragraph (b), remove "Westinghouse Materials Company of Ohio (WMCO), P.O. Box 398704, Cincinnati, Ohio 45239" and insert "Martin Marietta Energy Systems, M.S. 8207, P.O. Box 2009, Oak Ridge, Tn. 37831".

157. At 945.608–2, in paragraph (b)(1)(ii), remove "Property and Supply Division, REAPS, Office of Policy, Procurement and Assistance Directorate, Headquarters" and insert ", Office of Property Management, within the Headquarters procurement organization".

158. At 945.608–6, in paragraph (a), remove "of the Office of Review and Analysis, Procurement and Assistance Management" and insert "Office of Property Management, within the Headquarters procurement organization", and at paragraph (b) remove "Office of Review and Analysis" and insert "Office of Property Management, within the Headquarters procurement organization".

PART 949—TERMINATION OF CONTRACTS

159. At 949.111, insert "The" before "Heads" at paragraph (a) and insert "the" before "Heads" at paragraph (c).

160. At 949.501, remove the word "following" and the colon following it in the introductory text; remove the designation "(a)" before the second paragraph and revise "Cost" to read "cost"; and combine the remaining text into 1 sentence.

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS

161. At 950.104, remove "Contract Business Clearance Division, Headquarters" and insert "Office of Clearance and Support, within the Headquarters procurement organization" twice.

162. At 950.7003(b), add "The" before "Heads".

163. At 950.7006, in paragraph (a), remove the two "§" symbols.

164. At 950.7101, correct the spelling of "contractors" in the first sentence of paragraph (a); revise "Avoidable Costs" to read "avoidable costs" at paragraph (c)(2); revise "Contracting Officer" to read "contracting officer" in paragraph (c)(2) where it appears twice; correct the spelling of the word "responsibility" at paragraph (d); correct the spelling of the word "commercial" at paragraph (e); and correct the spelling of the word "provisions" at paragraph (g).

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

165. At 951.102, revise "contracts" to read "subcontracts" immediately before the word "where" at paragraph (a), and remove "Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters" and insert "Office of Property Management, within the Headquarters procurement organization" at paragraph (c)(1).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

166. At the table of contents, correct the spelling of the word "termination" at 952.249.

167. At subpart 952.1, correct the spelling of the word "Subpart" in the heading.

168. At 952.102–1, in paragraph (a), remove "Office of Policy" and insert "Office of Policy, within the Headquarters procurement organization"; remove the phrase "during the initial Federal Acquisition Regulations System familiarization period" at the end of the first sentence; and revise the final sentence to read "This practice eliminates the confusion and expense which would be caused the Department's contractors if each contracting activity pursued its own approach regarding contract clauses."

169. At 952.202–1(a), add the following sentence as the first sentence of that paragraph "As prescribed in (FAR) 48 CFR 902.200, insert the clause at (FAR) 48 CFR 52.202 in all contracts."; remove the words "at FAR 52.202–1" from the second sentence of the first paragraph (a); remove "The term" in the beginning of the second paragraph (a); and, correct the spelling of the word "Federal" in paragraph (d) of the clause.

170. At 952.204–2, insert the phrase "As prescribed in 904.404(d)(1)," before the first word of introductory text; and at paragraph (g) of the clause revise "Plutonium" to "plutonium".

171. At 952.204–70, insert the words "As prescribed in 904.404(d)(2)," before the introductory text and revise the colon to a period at the end of the introductory text.

172. At 952.204–71, revise the colon to a period at the end of introductory text and revise "effecting" to "impacting" in the second sentence of paragraph (a) of the clause.

173. At 952.204–72, add the phrase "As prescribed in 904.404(d)(4)" at the beginning of the introductory text and revise the colon to a period at the end of introductory text.

174. At 952.204–73, revise the term "offeror/bidder" to read "offeror" where it appears at paragraph (c), at the certification following question 11 (three times), at paragraph (d) (three times), and at paragraphs (e) and (f).

175. At 952.208–7, insert the phrase "As prescribed in 908.7101–7," before the word "insert" at the beginning of the introductory text.

176. At 952.208–70, remove the introductory text and insert instead "As prescribed in 908.802, insert the following clause."

177. At 952.209–70, in the first sentence of paragraph (a), correct the spelling of the word "contractual", and at paragraph (c), in the second sentence place a period after "conflict of interest" and add the words "If a conflict" immediately before the words "is found".

178. At 952.209–71, in paragraph (b), revise "Contracting Officer" to "contracting officer".

179. At 952.212–70, in the introductory text, revise the colon to a period at the end of the introductory text and revise "350" to read "700" and insert a period after the word "box" in the clause following the introductory text.

180. At 952.212–71, in the introductory text, revise the colon to a period at the end of introductory text and revise "350" to read "700" in the clause following the introductory text.

181. At 952.212–72, remove the first sentence of the undesignated introductory paragraph; in the second sentence remove the words "As discussed in DEAR" and insert the words "As prescribed in"; revise the colon to a period at the end of the introductory text; and, in the second sentence of the clause remove "A, or any later" and add a comma in its place.

182. At 952.212–73, revise the colon to a period at the end of the introductory text.

183. At 952.215–22, remove "certified" and insert "a certificate of current".

184. At 952.215–70, insert the date "(OCT 1984)" at the end of the clause heading.

185. At 952.216–15, correct the spelling of "Subpart" before the reference "31.6".

186. At 952.223–71, insert "As prescribed in 923.7002," at the beginning of the text.

187. At 952.223–72, insert "As prescribed in 923.7002," at the beginning of the text.

188. At 952.223–75, insert "(Government-owned or leased facility)" after "Safety and Health" in the clause introductory text.

189. At 952.224–70, revise "Federal Reports Act" to read "Paperwork Reduction Act" in paragraph (a) of the clause.

190. At 952.227–71, revise "(MAR 1982)" to read "(APR 1984)" in the clause heading; correct the spelling of "extension" at paragraph (c)(4); insert the word "to" after "convey" at paragraph (d)(1); correct the spelling of "countries" at paragraph (d)(1)(ii); correct the spelling of "Government" at paragraph (f)(1)(i); correct the spelling of "maintenance" at paragraph (f)(3); correct the spelling of "privileged" at the last sentence of paragraph (h); revise "non profit" to "nonprofit" at paragraph (k) introductory text; and correct the spelling of "applications" at paragraph (k)(2).

191. At 952.227–75, revise "Contracting Officer" to "contracting officer" at paragraphs (b)(2)(ii), (c)(2), (d)(1), (d)(2) and (f); insert the word "other" between the words "unless" and "use" at paragraph (b)(2)(ii); at the introductory text of Alternate I, revise "(d)" to "(g)" following "paragraph"; revise "Contracting Officer" to "contracting officer" at the first sentence of paragraph (g) of Alternate I; at Alternate II, revise "(b)" to "(h)" following "paragraph" in the introductory text and correct the spelling of "satisfaction" in paragraph (h) introductory text.

192. At 952.227–76, in paragraph (b), revise "Contracting Officer" to read "contracting officer":

193. At 952.227–77, insert "other" between "unless" and "use" at paragraph (b)(2).

194. At 952.227–78, at the end of paragraph (b)(1)(iv), revise "optional paragraph (e) hereof—'Limited Rights in Proprietary Data'" to read "paragraph (e), 'Limited Rights in Proprietary Data,' hereof, if a part of this clause".

195. At 952.227–79, correct the spelling of "proprietary" in the introductory text.

196. At 952.227–80, correct the spelling of "solicitations" in the introductory text.

197. At 952.227–82, correct the spelling of "whatsoever" in the final sentence of the clause.

198. At 952.233–2; designate the first paragraph beginning "Another copy" as (c); remove "Business Clearance Division (MA–441) Forrestal Building, Room 1I030" and insert "Office of Clearance and Support, Office of Procurement and Assistance Management"; and, designate the second paragraph beginning "Another copy" as (d).

199. At 952.235–70, revise "this" to "the following" in the introductory text and revise "Contracting Officer" to "contracting officer" where it appears four times in the text of the clause.

200. At 952.236–70, revise "Contracting Officer" to "contracting officer" at paragraph (1) of Title I and paragraph (6) of Title III.

201. At 952.236–71, correct the spelling of "performed" in the first sentence of the clause.

202. At 952.236–72, revise 936.202" to read "936.202(j)".

203. At 952.249–70, revise "Contracting Officer" to read "contracting officer" at paragraph (a).

204. At 952.251–70, remove the word "on" following the word "terms" in paragraph (c).

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

205. At 970.0000, revise "Secretary, Deputy or Under Secretary" to read Secretary, Deputy Secretary or Under Secretary" in the second sentence. Revise the words "Small Business" to read "small business" and "Contract Clauses" to read "contract clauses" in the fourth sentence. Revise "Titles" to read "titles" in the fifth sentence. Revise "difference" to read "differences" in the sixth sentence.

206. At 970.0001, in paragraph (b) introductory text, revise "effect" to "determine", and correct the spelling of the word "competed".

207. At 970.0404–1, place a comma after the word "defined" in the second paragraph and revise the section number "II" to read "11".

208. At 970.0404–2, at paragraph (b) remove "and Orders" in the second sentence and revise "and" to read "is" in the third sentence. Revise "Production" to read "production" at paragraph (d)(2)(i) and correct the spelling of "facilities" at paragraph (d)(2)(ii).

209. At 970.0404–3, place a comma after "contract" in paragraph (a) and, in paragraph (b) insert "(See current versions.)" after the word "Orders".

210. At 970.0406, revise "5700.7B" to read "5700.7" and add "(See current version.)" following "5700.7".

211. At 970.0803, in paragraph (b), remove "Office of Project and Facilities Management (OPFM), at Headquarters" and insert "Public Utilities Branch, Headquarters" and remove ", OPFM", where it is used the second time and insert "of that office".

212. At 970.0905, revise "intercorporate" to read "intracorporate".

213. At 970.1001, revise "operation" to read "operating".

214. At 970.1509–1, correct the spelling of "particularly" at paragraph (b).

215. At 970.1509–2, correct the spelling of "Special" and "educational" in the heading.

216. At 970.1509–4, at paragraph (b)(6), revise "operation" to "operations" the second time it appears.

217. At 970.1509–6, correct the spelling of "similar" at paragraph (b)(1)(iii) and insert "the" before "Contracting" in paragraph (e).

218. At 970.1509–8, in paragraph (d), in the Narrative Description of Performance Adjectives table, correct the spelling of "deficiencies" at its first use in the category entitled "Good"; in paragraph (e) revise the two references from "paragraph (d)" to "paragraph (c)"; and, in paragraph (g), correct the spelling of "performance" at its first use.

219. At 970.2201, revise "management" to read "administration" at its first use in paragraph (a) and

correct the spelling of "commercial" at paragraph (b)(3).

220. At 970.2271, in paragraph (b)(1), delete "Headquarters'"; add ", within the Headquarters procurement organization" following "Resource Management"; add "the" before "Heads"; in paragraph (b)(2) insert "the" before "Heads"; and, in paragraphs (b)(2)(iv) and (b)(3), delete "Headquarters" and add ", within the Headquarters procurement organization" following "Resource Management".

221. At 970.2272, in paragraph (b)(2), revise "Contracting Officer" to read "contracting officer".

222. At 970.2273, correct the spelling of "integral" at paragraph (a)(7), correct the spelling of "example" at paragraph (a)(8), insert the word "the" before the word "Heads" in the second sentence of (b) introductory text, correct the spelling of "Contracting" in the final sentence of paragraph (b)(3), correct the spelling of "Assembly" at paragraph (c)(1)(iv), correct the spelling of "identified" in the fourth sentence of paragraph (c)(2), and correct the spelling of "embraces" (first sentence) and "commercial" (next to the last sentence) of paragraph (d).

223. At 970.2303–2, in paragraph (d), insert "(Government-owned or leased)" immediately following "Safety and Health" and revise "Nuclear Facility Safety Applicability" to read "Nuclear Safety".

224. At 970.2901, in paragraph (b), remove "Controller" and insert "Chief Financial Officer, Headquarters".

225. In the undesignated introductory paragraph of 970.2902, insert the word "the" before the word "Heads".

226. At 970.3001–2, revise the reference "970.3102–10" to read "970.3102–3".

227. At 970.3101–1, in paragraph (c), revise "appendices" to read "appendix".

228. At 970.3101–2, in paragraph (b)(1), correct the spelling of "manufacturing" in the fourth sentence.

229. At 970.3102–1, revise "or" to read "of" following the word "representative" in the next to the last sentence of paragraph (b), and correct the spelling of "adequately" in the first sentence of paragraph (c).

230. At 970.3102–2, correct the spelling of "forfeited" at paragraph (h)(2)(ii), correct the spelling of "accordance" at paragraph (l)(2)(iv), revise "(vi)" to read "(iv)" in paragraph (l)(6)(iv), correct the spelling of "ownership" in the heading at paragraph (l)(7), correct the spelling of "participating" at paragraph (l)(7)(i)(A), and remove the acronym "—TRASOP's" at paragraph (l)(7)(ii).

231. At 970.3102–5, in paragraph (a), correct the spelling of "activities".

232. At 970.3102–9, correct the spelling of "services" the second time it appears in the next to the last sentence.

233. At 970.3102–17, revise "Contracting Officer" to read "contracting officer" in the fourth sentence of (a)(1), and correct the spelling of "vehicles" in the heading of paragraph (b) introductory text.

234. At 970.3102–18, correct the spelling of "except".

235. At 970.3102–19, revise "Contracting Officer" to read "contracting officer" at the introductory text of paragraph (d), at the undesignated paragraph following paragraph (d)(5), and at paragraph (e)(1); and revise "closings" to "closures" at paragraph (e)(2)(iii).

236. At 970.3102–20, in paragraph (d), revise "Contracting Officer" to read "contracting officer" where it appears twice.

237. At 970.3102–21, in paragraph (b)(3) introductory text and the undesignated paragraph following paragraph (b)(3)(ii), revise "Contracting Officer" to read "contracting officer".

238. At 970.3102–22, revise "Contracting Officer" to read "contracting officer" where it appears six times, and revise "Avoidable Cost" and "Avoidable Costs" to "avoidable cost" and "avoidable costs" at the introductory text, at paragraph (d), at paragraph (e), and the undesignated paragraph following paragraph (e).

239. At 970.3201, remove "Office of Controller" and insert "Chief Financial Officer, Headquarters".

240. At 970.3271, under the heading "Covenants", revise "Contracting Officer" to read "contracting officer" where it appears two times in paragraph 2, and insert "the" before "Contracting" in paragraph (4).

241. At 970.5101, in paragraph (c), add "the" before "Heads".

242. At 970.5203–1, remove "See FAR 52.203–5." and the "Note" and add "Insert the clause at (FAR) 48 CFR 52.203–5 with the addition of the following paragraph."; and in paragraph (c) revise "Contracting Officer" to read "contracting officer".

243. At 970.5203–2, remove "See FAR 52.215–1." and the word "NOTE:" and revise "Office of the Controller" to "Chief Financial Officer, Headquarters".

244. At 970.5203–3, remove "See FAR 52.225–3." and the word "NOTE:", and insert in its place "Insert the clause at (FAR) 48 CFR 52.225–3 but".

245. At 970.5204–1, insert "As prescribed in 970.0404–4," before the existing text.

246. At 970.5204–2, add the following introductory text immediately before the clause "As prescribed in 970.2303–2(a), insert the following clause."

247. At 970.5204–4, remove "See FAR 52.229–10." and the word "Note" and insert the following introductory text "As prescribed in (FAR) 48 CFR 29.401–6(b), insert the clause at (FAR) 48 CFR 52.229–10, as modified by the following." and correct the spelling of "Fee" in the text of the note.

248. At 970.5204–5, remove the existing text and insert "As prescribed in 970.0404–4(b), insert the clause at 952.204–72.".

249. At 970.5204–6, remove "See 952.250–70" and insert "As prescribed in 950.7006(a), insert the clause at 952.250–70, when appropriate.".

250. At 970.5204–8, remove "See 952.250–72." and insert "As prescribed in 950.7006(a), insert the clause at 952.250–70, when appropriate.".

251. At 970.5204–9, add the following introductory text immediately before the clause: "As prescribed in 970.0407, insert the following clause."; revise "of unit-piece" in paragraph (g) to read "or unit price"; remove the second use of the phrase "advisable by the Head of the Contracting Activity" in the Note following paragraph (h); and correct the spelling of "contractor" in the Note following paragraph (h).

252. At 970.5204–11, add introductory text immediately before the clause to read "Insert the following clause.".

253. At 970.5204–12, add introductory text immediately before the clause to read "As prescribed in 970.2272(b)(2), insert the following clause.".

254. At 970.5204–13, insert introductory text immediately before the clause to read "As prescribed in 970.3103(a), insert the following clause, when appropriate."; revise "Contracting Officer" to read "contracting officer" where it appears at paragraph (d)(8)(v), (e)(1)(ii), (e)(11), (e)(32) and (e)(36)(i); correct the spelling of "originated" at paragraphs (e)(1)(iii); at paragraph (e)(17)(iv), remove the paragraph designation "(iv)" from the NOTE and insert the designation "(iv)" immediately before "are direct costs"; correct the spelling of "excess" at paragraph (e)(24); and, at paragraph (e)(36); remove the paragraph designation "(36)" from the NOTE and revise the paragraph designation "(i)" to read "(36)(i)"; and revise "clauses" to read "paragraphs" in the NOTE preceding paragraph (36)(i).

255. At 970.5204–14, insert introductory text preceding the clause to read "As prescribed in 970.3103(a),

insert the following clause."; correct the spelling of "performance" the second time it appears in paragraph (b); revise "Contracting Officer" to read "contracting officer" where it appears at paragraph (d)(5), (d)(14), (e)(1), (e)(9), and (e)(34)(i); revise "clauses" to read "paragraphs" at paragraph (e)(10) Note 1; revise "clause" to read "paragraph" at paragraph (e)(10) Note 2; at paragraph (e)(15)(iv), remove the paragraph designation from the NOTE and insert the designation "(iv)" immediately before the phrase "are direct costs"; at paragraph (e)(34), remove the paragraph designation "(34)" from the NOTE and revise the paragraph designation "(i)" to read "(34)(i)"; and revise "clauses" to read "paragraphs" in the Note preceding paragraph (34)(i).

256. At 970.5204–15, add introductory text preceding the clause to read "As prescribed in 970.1508(c), insert the following clause.", and correct the spelling of "contractor" in the last sentence of paragraph (a).

257. At 970.5204–16, add introductory text preceding the clause to read "As prescribed in 970.3270, insert the following clause.".

258. At 970.5204–19, add introductory text preceding the clause to read "As prescribed in 970.5101, insert the following clause."

259. At 970.5204–21, insert introductory text preceding the clause to read "As prescribed in 970.7104–43, insert the following clause." and, at paragraph (j) revise "Avoidable Costs" to read "avoidable costs".

260. At 970.5204–22, add introductory text preceding the clause to read "As prescribed in 970.7103, insert the following clause.".

261. At 970.5204–17, add introductory text preceding the clause to read "As prescribed in 970.3103(b), insert the following clause.", correct the spelling of "technical" at paragraph (b)(1), and revise "Contracting Officer" to read "contracting officer" at paragraph (b)(2).

262. At 970.5204–18, add introductory text preceding the clause to read "Insert the following clause."; add a heading and date to the clause to read "Definition of Nonprofit and Profit Making Management and Operating Contractors and Subcontractors (JUL 1991); and revise "Contracting Officer" to read "contracting officer" where it appears twice.

261. At 970.5204–23, add introductory text preceding the clause to read "As prescribed in 970.2902, insert the following clause.".

262. At 970.5204–24, add introductory text preceding the clause to read "As prescribed in 970.7104–11, insert the following clause.", and revise "a" to read "the" in paragraph (c) following the NOTE.

263. At 970.5204–25, add introductory text preceding the clause to read "Insert the following clause.".

264. At 970.5204–26, in the introductory text, revise "In accordance with the provisions at" to read "As prescribed in"; revise the reference "970.2303" to read "970.2303–2(c)"; insert "following" before "clause"; and remove "below in management and operating contracts".

265. At 970.5204–28, add introductory text preceding the clause to read "Insert the following clause.".

266. At 970.5204–29, add introductory text preceding the clause to read "Insert the following clause.".

267. At 970.5204–30, remove the existing text, including its heading and date and insert the following in its place "As prescribed in 970.2201(b)(5)(ii), insert the clause at (FAR) 48 CFR 52.222–1."

268. At 970.5204–31, add introductory text preceding the clause to read "Insert the following clause."; add a heading and date after the introductory text to read "Litigation and Claims (JUL 1991); and revise "Contracting Officer" to read "contracting officer" wherever it appears in the text of the clause; revise "clause" to read "paragraph" in the introductory text of "NOTE 1"; and, revise "clause" to read "paragraphs" in the introductory text of "NOTE 2".

269. At 970.5204–32, remove "Note 1:" and insert "(a)"; add a heading and date following the new designator "(a)" to read "Required Bond and Insurance-Exclusive of Government Property (Nonprofit) (Jul 1991)"; remove "Note 2:" and insert "(b)"; add a heading and date to read "Required Bond and Insurance-Exclusive of Government Property (Profit-Making) (Jul 1991); and revise "Contracting Officer" to read "contracting officer" where it appears four times.

270. At 970.5204–33, revise "15 CFR Part 350" to read "15 CFR Part 700" in the clause following paragraph (a), and correct the spelling of "decision" at its second appearance in the clause following paragraph (b).

271. At 970.5204–34, remove "See 952.204–71." and insert introductory text to read "As prescribed in 970.0404–4(a)(3), insert the following clause."; and add the clause as follows:

Sensitive Foreign Nations Controls (Apr 1984)

(a) In connection with any activities in the performance of this contract, the contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the contractor by written notice as sensitive foreign nations. The contractor shall have the right to terminate its performance under this contract upon at least 60 days prior written notice to the contracting officer if the contractor determines that it is unable, without substantially interfering with its polices or without adversely affecting its performance to continue performance of the work under this contract as a result of such notification. If the contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The provisions of this clause shall be included in any subcontracts.

272. At 970.5204–35, remove "(unclassified contracts with educational institutions)" from the heading and insert introductory text, to read "Insert the following clause in contracts with educational institutions involving unclassified work.".

273. At 970.5204–36, remove "(contracts with universities where DOE has major investments in facilities but does not own or lease the land)" from the heading and add introductory text to read "Insert the following clause in contracts with universities where DOE has major investments in facilities but does not own or lease the land."

274. At 970.5204–37, revise the reference to read "See 970.1002.".

275. At 970.5204–38; in the introductory text, remove "In accordance with" and insert "As prescribed in"; revise the reference "970.2273" to read "970.1002(c) and 970.3601"; remove "the following clause shall be used" and insert "insert the following clause"; revise "operating and management" to read "management and operating"; and, in the final sentence of the clause, revise "on" to read "of" before "a public building".

276. At 970.5204–41, remove "See 952.223–75." and insert "As prescribed in 970.2303–2(d), insert the following clause.", and add the clause as follows:

Preservation of Individual Occupational Radiation Exposure Records (Apr 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

277. At 970.5204–42, insert introductory text preceding the clause to read "As prescribed in 970.2201(b)(1), insert the following clause."

278. At 970.5204–43, insert introductory text preceding the clause to read "Insert the following clause, when appropriate."; and, in the first sentence of the clause insert "other" before "contracts" and "additional" before "work".

279. At 970.5204–45, revise the introductory text to read "As prescribed in 970.7104–30, insert the following clause."; and revise "or" to read "of" following the second use of "contracting officer" in paragraph (a)(1)(i) of the clause.

280. At 970.5204–50, remove "See 952.212–73." and add introductory text to read "As prescribed in 970.7104–40, insert the following clause."; and add the clause as follows:

Cost and Schedule Control Systems (Apr 1984)

(a) In the performance of this contract, the contractor shall establish, maintain, and use cost and schedule control systems (management control systems) meeting the criteria set forth in the contract and as described in detail in "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," annexed hereto and hereinafter referred to as the "Guide." Prior to acceptance by the contracting officer and within _____ calendar days after contract award, the contractor shall be prepared to demonstrate systems operation to the Government to verify that the proposed systems meet the designated criteria. As a part of the review procedures, the contractor shall furnish the Government a description of the cost and schedule control systems applicable to this contract in such form and detail as indicated by the Guide, or as required by the contracting officer. The contractor agrees to provide access to all pertinent records, data, and plans as requested by representatives of the Government for the conduct of systems review.

(b) The description of the management control systems accepted by the contracting officer, identified by title and date, shall be referenced in the contract. Such systems shall be maintained and used by the contractor in the performance of this contract.

(c) Contractor revises to the reviewed systems shall be submitted for review and approval as required by the contracting officer. When contracting officer approval is required, the contracting officer shall advise the contractor of the acceptability of such revises within sixty (60) days after receipt from the contractor. When systems existing at the time of contract award do not comply with the designated criteria, adjustments necessary to assure compliance will be made at no change in contract price or fee.

(d) The contractor agrees to provide access to all pertinent records and data requested by the contracting officer, or duly authorized representative, for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to this contract. Deviations from the systems description identified during contract performance shall be corrected as directed by the contracting officer.

(e) The contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the contractor and as set forth in the schedule of this contract, meet the criteria for cost and schedule control systems as set forth in subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of subcontractor's systems to be carried out by the prime contractor, or by the Government when requested by either the prime or subcontractor.

281. At 970.5204–52, remove "See 952.247–70" and add introductory text to read "Insert the following clause when foreign travel may be required under the contract."; and add the clause as follows:

Foreign Travel (Apr 1984)

(a) Foreign travel, when charged directly, shall be subject to the prior approval of the contracting officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.

(b) Request for approval shall be submitted at least 45 days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed soviet-bloc travel.

282. At 970.5204–54, insert introductory text to read "As prescribed in 970.1509–8(d), insert this clause in cost plus award fee management and operating contracts." and insert the clause heading and date to read "Basic Fee and Award Fee (Jul 1991)".

283. At 970.5204–55, insert introductory text to read "Insert the following clause in management and operating contracts with profit making contractors."; insert the clause heading and date to read "Ceiling on Certain Liabilities for Profit Making Contractors (Jul 1991)"; revise "Contracting Officer" to read "contracting officer" at paragraph (b)(1) twice and at paragraph (c) four times; and revise "Avoidable Costs" to "avoidable costs" three times in paragraph (a), three times in paragraph (b)(1), six times in paragraph (b)(3), and once in paragraph (b)(4).

284. At 970.5204–56, insert introductory text to read "Insert this clause in management and operating contracts with profit making contractors."; add a clause heading and date to read "Determining Avoidable Costs (Jul 1991)"; revise "Contracting Officer" to read "contracting officer" at paragraph (a)(2); and, revise "Avoidable Costs" to read "avoidable costs" once each at paragraphs (a)(1), (a)(2), and (c).

285. At 970.5204–57, revise "offeror/bidder" to read "offeror" at paragraphs (b) and (c).

286. At 970.5204–58, in the introductory text, correct the reference "970.5204–4(b)" to read "970.2305–4(b)".

287. At paragraph (a) of the clause at 970.5204–60, revise "4320.1B" to read "4320.1 (See current version.)".

288. At 970.5204–61, insert introductory text to read "Insert the following clause as specified in 970.3103(c)." and add a clause heading and date as follows: Cost Prohibitions Related to Legal and Other Proceedings (Dec 1993).

289. At 970.7102, insert "the" before "Contracting" in the first sentence of paragraph (a); insert "the" before "Head" and "Contracting" in the third sentence of paragraph (a); and revise "system" to read "systems" at paragraph (b)(1).

290. At 970.7104–7, correct the spelling of "Replacement" at item (12) of the table, and correct the spelling of "wiretapping" at item (14) of the table.

291. At 970.7104–9, at paragraph (b), insert "The" before "Heads".

292. At 970.7104–12, revise "subpart" to read "subparts" where it first appears in paragraph (a).

293. At 970.7104–19, at paragraph (b), remove "in FPR Temporary Regulation No. 76 or successor FAR coverage" and insert ", (FAR) 48 CFR 52.222–40 or (FAR) 48 CFR 52.222–41,".

294. At 970.7104–22, remove the word "prescribed", and revise the reference "970.7103–3 and 970.7103–5" to read "970.5203–3" in paragraph (a).

295. At 970.7104–24, in the first paragraph, revise "FAR Subpart 28.3" to read "28.102–2" and revise "DEAR Subpart 928.3" to read "928.1."

296. At 970.7104–25, remove "paragraphs (f) and (g) of".

297. At 970.7104–27, revise "Audits" to read "audits" at paragraph (a)(2).

298. At 970.7104–28, remove, in paragraph (c), the words "dated December 12, 1983," and revise the reference "936.7102" to read "936.73" at paragraph (d).

299. At 970.7107, revise "Business Clearance Division, Headquarters" to read "Office of Clearance and Support, in the Headquarters procurement organization" at paragraphs (e), (f), and (g).

300. At 970.7108, insert "The" before "Heads" in the first sentence of paragraph (a); insert "The" before "Heads" at paragraph (c); and, insert "The" before "Heads" in paragraph (h).

PART 971—REVIEW AND APPROVAL OF CONTRACT ACTIONS

301. At 971.101, add "the" before "Heads" and revise "of" to read "or" between the words "settlements" and "terminations".

302. At 971.102, insert "The" before "Heads" and revise "Controller" to read "Chief Financial Officer, Headquarters".

303. At 971.103, revise "Business Clearance Division, Headquarters" to read "Office of Clearance and Support, within the Headquarters procurement organization" at paragraph (a) introductory text and (b).

304. At 971.202, revise "Each Head of Contracting Activity" to read "The Head of the Contracting Activity, at each DOE contracting activity,".

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Proposed Rules

Federal Register
Vol. 59, No. 38
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 0, 1, 47, 50, 51, 52, 53, 54, and 180

Packers and Stockyards Administration

9 CFR Part 202

Rules of Practice

AGENCY: Office of the Secretary of Agriculture, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, the Rules of Practice Governing Cease and Desist Proceedings Under section 2 of the Capper-Volstead Act, the Rules of Practice Under the Perishable Agricultural Commodities Act, and the Rules of Practice Applicable to Reparation Proceedings Under the Packers and Stockyards Act. The proposal would provide that conferences shall be conducted by telephone or correspondence, and hearings and depositions by telephone unless the person conducting the proceeding orders that the conference, hearing and deposition be conducted by audio-visual telecommunication or personal attendance. This proposal would also provide for the use of recordings of hearings and depositions. These amendments would save the government and those who participate in the proceedings time and money.

DATES: Consideration will be given only to comments received on or before April 26, 1994.

ADDRESSES: Please send an original and three copies of your comments to William Jenson, Senior Counsel, Office of the General Counsel, USDA, Room 2422, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250. Comments received may be inspected at USDA, Room 2422, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202) 720–2453 to facilitate entry.

FOR FURTHER INFORMATION CONTACT: Mary Hobbie, Deputy Assistant General Counsel, Trade Practices Division, Office of the General Counsel, USDA, room 2446, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, (202) 720–5293.

SUPPLEMENTARY INFORMATION:

Background

The Department conducts a number of adjudicatory proceedings in which conferences, depositions, and hearings are held. Many of the conferences, depositions, and hearings are conducted by personal attendance which necessitates travel by those who participate in the conference, deposition, or hearing.

Generally, conferences, at which personal attendance is required, are attended by the person conducting the proceeding (an administrative law judge, hearing officer, examiner, or presiding officer), the parties to the proceeding, and counsel for the parties to the proceeding. Depositions are attended by an officer authorized to administer oaths, a court reporter, the parties, counsel for the parties, and the deponent. Hearings are attended by the person conducting the proceeding, the parties to the proceeding, counsel for the parties to the proceeding, a court reporter, and witnesses called by the parties.

The costs associated with travel to Department conferences, depositions, and hearings (meals, lodging, and actual travel expense) are often substantial. These travel costs burden all taxpayers and particularly burden the individuals who attend these proceedings. In addition to expenditure of money, individuals personally attending the proceedings often must spend valuable time traveling to and from these conferences, depositions, and hearings.

We believe that most conferences conducted in connection with adjudicatory proceedings, held by the Department can be conducted by telephone or correspondence, and that most depositions and hearings conducted in connection with adjudicatory proceedings held by the Department can be conducted by telephone or audio-visual telecommunication. Therefore, we propose to amend the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR 1.130 through 1.151) (referred to as the "Uniform Rules" below), the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act (7 CFR 1.160 through 1.175) (referred to as the "Capper-Volstead Rules" below), the Rules of Practice Under the Perishable Agricultural Commodities Act Applicable to Reparation Proceedings (7 CFR 47.1 through 47.25 and 47.46) (referred to as the "PACA Reparation Rules" below), Rules of Practice Under the Perishable Agricultural Commodities Act Applicable to Determinations as to Whether a Person is Responsibly Connected With A Licensee Under the Perishable Agricultural Commodities Act (7 CFR 47.1, 47.2(a) through 47.2(h), and 47.47 through 47.68) (referred to below as the "PACA Responsibly Connected Rules"), and the Rules of Practice Applicable to Reparation Proceedings Under the Packers and Stockyards Act (9 CFR 202.101 through 202.123) (referred to below as the P&S Reparation Rules) as described below, to specifically provide that conferences may be conducted by telephone, correspondence, audio-visual telecommunication, or by personal attendance of the participants and to specifically provide that depositions and hearings may be conducted by telephone, audio-visual telecommunication, or personal attendance of the participants.

We also propose to amend these rules of practice to allow the use of recordings of depositions and hearings instead of requiring the transcription of depositions and hearings. Transcription of hearings and depositions is more expensive than recording hearings and depositions, and transcriptions do not provide a better record of hearings and depositions than audio or audio-visual recordings.

The Department conducts numerous hearings in accordance with rules of practice which we are not proposing to amend. However, the vast majority of the Department's adjudicatory proceedings are conducted in

accordance with the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules which we are proposing to amend. We intend to review other Department rules of practice applicable to other Department proceedings (both adjudicatory and non-adjudicatory) and, if appropriate, propose to amend those rules of practice to provide for conducting all or part of those proceedings by telecommunication and to provide for recordings in lieu of transcription.

We have carefully considered the due process concerns that could be raised regarding Department proceedings conducted by telecommunication. This proposal provides for conducting conferences, depositions, and hearings by personal attendance in circumstances in which any party may be prejudiced by conducting the conference, deposition, or hearing by telecommunication or when a disability of any individual expected to participate in the conference, deposition, or hearing necessitates that the conference, deposition, or hearing be conducted by personal attendance.

Conferences

Current 7 CFR 1.140(c) provides that in the event that the Judge concludes that personal attendance by the Judge and the parties or counsel at a conference under the Uniform Rules is unwarranted or impracticable, but determines that a conference would expedite the proceeding, the Judge may conduct the conference by telephone or correspondence. Current 7 CFR 1.167 provides that the Judge may direct the parties to attend a conference under the Capper-Volstead Rules when the Judge finds that the conference would expedite the proceeding. Title 4, CFR, § 1.167 does not state the manner in which the conference is to be held. Current 7 CFR 47.14 provides that an examiner conducting a proceeding under the PACA Reparation Rules may request the parties to appear at a conference before the examiner to expedite or aid in the disposition of the proceeding. If appearance is not practical, the examiner may request the parties to correspond with the examiner to expedite or aid in the disposition of the proceeding. (There are no provisions for conferences under the PACA Responsibly Connected Rules). Current 9 CFR 202.110 provides that the presiding officer conducting a proceeding under the P&S Reparation Rules, at any time prior to the commencement of a hearing, may request the parties or their counsel to appear at a conference to expedite and aid in the disposition of the proceeding. If appearance at the conference is impracticable, the presiding officer may conduct the conference by telephone or correspondence.

We propose to amend 7 CFR 1.140(c), 1.167, and 47.14 and 9 CFR 202.110 to provide that conferences shall be conducted by telephone or correspondence unless the Judge (the examiner, under the PACA Reparation Rules; and the presiding officer, under the P&S Reparation Rules) determines that audio-visual telecommunication of the conference: (1) Would cost less than conducting the conference by telephone or correspondence; (2) is necessary to prevent prejudice to a party; or (3) is necessary because of a disability of any individual expected to participate in the conference. We also propose that if the conference is not conducted by telephone or correspondence that it shall be conducted by audio-visual telecommunication unless the Jude (the examiner, under the PACA Reparation Rules; and the presiding officer, under the P&S Reparation Rules) determines that personal attendance of any individual expected to participate in the conference: (1) Would cost less than conducting the conference by audio-visual telecommunication; (2) is necessary to prevent prejudice to a party; or (3) is necessary because of a disability of any individual expected to participate in the conference.

We believe that the vast majority of conferences should be conducted by telephone or correspondence. These conferences are generally held to narrow issues, focus testimony, discuss settlement, and expedite the proceeding. Observations of demeanor for the purposes of determining credibility of persons participating in such conferences is not relevant to the conference.

We propose three specific bases for an order by the person conducting the proceeding that the conference be conducted by audio-visual telecommunication rather than telephone or correspondence. First, the person conducting the proceeding could order that the conference be conducted by audio-visual telecommunication when the person conducting the proceeding determines that a conference conducted by audio-visual telecommunication would cost less than conducting the conference by telephone or correspondence. We believe that most conferences conducted by telephone or correspondence will be less expensive than conferences conducted by audio-visual telecommunication. However, there are rare situations in which conferences conducted by audio-visual telecommunication may be less expensive than conferences conducted by telephone or correspondence. For instance, conferences conducted by audio-visual telecommunication held during or just prior to a hearing conducted by audio-visual telecommunication may be less expensive than conferences conducted by correspondence or telephone.

Second, the person conducting the proceeding could order that a conference be conducted by audio-visual telecommunication if conducting the conference by audio-visual telecommunication is necessary to prevent prejudice to a party. While this is extremely unlikely, there may be unusual circumstances in which a party is denied due process or is put at a disadvantage if the party is required to participate in a conference conducted by telephone or correspondence and this prejudice would be negated by conducting the conference by audio-visual telecommunication.

Third, the person conducting the proceeding could order that a conference be conducted by audio-visual telecommunication if it is necessary because of a disability of any individual expected to participate in the conference. For instance, if an individual expected to participate in the conference has a severe speech or hearing impediment and has difficulty communicating in writing, an audio-visual telecommunication conference, instead of a conference conducted by telephone, may be necessary.

Further, we propose that, if the conference is not conducted by telephone or correspondence, the conference shall be conducted by audio-visual telecommunication unless the person conducting the proceeding determines that conducting the conference by personal attendance of any individual who is expected to participate in the conference: (1) Would cost less than conducting the conference by audio-visual telecommunication; (2) is necessary to prevent prejudice to a party; or (3) is necessary because of a disability of any individual expected to participate in the conference.

We propose three bases for an order by the person conducting the proceeding to require that the conference be conducted by personal attendance of the participants instead of audio-visual telecommunication. These are the same bases as we propose with respect to a presiding person's order that the conference be conducted by audio-visual telecommunication instead of by telephone or correspondence.

We also propose that any determination be the person conducting the proceeding that audio-visual telecommunication or personal attendance of any individual at a conference is necessary, and the basis for that determination, must be reduced to a written order and filed with the Hearing Clerk, unless the person conducting the proceeding orders the audio-visual telecommunication of a conference to be held during a hearing conducted by audio-telecommunication or personal attendance of an individual at a conference to be held during a hearing and that individual is personally attending the hearing. A party may appeal the presiding person's order to the Judicial Officer (the Secretary, under the PACA Reparation Rules) by filing an interlocutory appeal petition with the Hearing Clerk.

We believe that the cost of conferences conducted by audio-visual telecommunication and personal attendance should be avoided, if possible, and that the parties who generally bear most of the costs associated with conferences conducted by audio-visual telecommunication or personal attendance should be given an opportunity to appeal orders to conduct these conferences by audio-visual telecommunication or personal attendance. In order to limit a party's ability to disrupt a scheduled conference, we also propose that no party may file an interlocutory appeal petition within 5 days of the scheduled date of the conference, and any interlocutory appeal petition must be filed within 10 days after service of a presiding person's order on the party filing the interlocutory appeal petition.

We also propose that, within 10 days after the service of a copy of an interlocutory appeal petition, any party to the proceeding, other than the party who filed the interlocutory appeal petition, may file with the Hearing Clerk a response in support of or in opposition to the interlocutory appeal petition.

In order to allow the Judicial Officer (the Secretary, under the PACA Reparation Rules) time to consider both the appeal from the presiding person's order to attend a conference personally and any response to the appeal, we propose that the presiding person's order which is the subject of a party's interlocutory appeal petition shall be stayed from the time the interlocutory appeal petition is filed until 5 days after the Judicial Officer's (the Secretary's, under the PACA Reparation Rules) ruling on the interlocutory appeal petition is served on all of the parties to the proceeding.

Hearings

Current 7 CFR 1.141(b) provides that, under the Uniform Rules, the Judge shall set the time and place of hearing by notice filed with the Hearing Clerk. Further, if any change in the time or place is made, the Judge is required to give the parties notice of the change. Current 7 CFR 1.168 sets forth the procedure for hearings under the Capper-Volstead Rules. Current 7 CFR 47.15 provides that, under the PACA Reparation Rules, the examiner shall set the time and place of hearing by notice filed with the Hearing Clerk. Further, if any change in the time or place is made, the examiner is required to give the parties notice of the change. Current 7 CFR 47.49(f) provides that, under the PACA Responsibly Connected Rules, the presiding officer shall issue an order for a hearing if one is requested by the petitioner or found necessary by the presiding officer. Currently, in all cases in which there is an oral hearing, the presiding officer must require the petitioner to appear in person for the purpose of oral testimony and examination. Current 7 CFR 47.53 requires the presiding officer to provide the parties to the proceeding with notice of the time and place of hearing and notice of any change in the time or place of hearing. Current 9 CFR 202.112 provides that, under the P&S Reparation Rules, the presiding officer shall set a time and place for oral hearing and provide notice to the parties prior to the oral hearing. Further, if any change in the time or place is made, the presiding officer is required to give notice of the change.

We propose to amend 7 CFR 1.141(b), 47.15(c), and 47.53 and 9 CFR 202.112(b) to provide that the presiding person's notice shall also state the manner in which the hearing is to be held (telephone, audio-visual telecommunication, or personal attendance of any individual expected to participate in the hearing). Further, we propose to amend 7 CFR 1.141(b), 1.168, 47.15, and 47.49(f) and 9 CFR 202.112(a) to require that the hearing shall be conducted by telephone unless the person conducting the proceeding determines that conducting the hearing by audio-visual telecommunication: (1) Would cost less than conducting the hearing by telephone; (2) is necessary to prevent prejudice to a party; (3) is necessary because of the importance of observing the demeanor of any individual who is expected to testify at the hearing; or (4) is necessary because of a disability of any individual expected to participate in the hearing.

We propose four specific bases for an order by the person conducting the proceeding that an audio-visual hearing be conducted instead of a hearing conducted by telephone. First, the person conducting the proceeding could order that the hearing be conducted by audio-visual communication if conducting the hearing by audio-visual telecommunication would cost less than conducting the hearing by telephone. Given the current relative cost and availability of the two technologies, we believe that most, if not all, hearings conducted by telephone will be less expensive than hearings conducted by audio-visual telecommunication.

Second, the person conducting the proceeding could order that a hearing be conducted by audio-visual telecommunication if conducting the hearing by audio-visual telecommunication is necessary to prevent prejudice to a party. While this is extremely unlikely, there may be unusual circumstances in which a party is denied due process or is put at a disadvantage if the party is required to participate in a hearing conducted by telephone and this prejudice would be negated by conducting the hearing by audio-visual telecommunication.

Third, the person conducting the proceeding could order that the hearing be conducted by audio-visual telecommunication instead of by telephone if the person conducting the proceeding determines that audio-visual telecommunication is necessary because of the importance of observing the demeanor of any individual who is expected to testify at the hearing. Hearings are often held when there is a dispute of fact. However, the credibility of those who are expected to testify at these hearings is generally not an issue. In the vast majority of hearings, disputes regarding facts arise because the parties honestly disagree regarding events that took place, the relevance or materiality of events to the proceeding, and the relevance or materiality of mitigating circumstances. Therefore, only in unusual circumstances would the demeanor of persons testifying at a hearing necessitate a hearing conducted by audio-visual telecommunication instead of a hearing conducted by telephone. Further, voice is an excellent determinant of credibility.

Fourth, the person conducting the proceeding could order that a hearing be conducted by audio-visual telecommunication if it is necessary because of a disability of any individual expected to participate in the hearing. For instance, if an individual expected to participate in the hearing has a severe speech or hearing impediment, an audio-visual telecommunication hearing, instead of a hearing conducted by telephone, may be necessary.

Further, we propose that, if the hearing is not conducted by telephone, the hearing shall be conducted by audio-visual telecommunication unless the person conducting the proceeding determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing: (1) Would cost less than conducting the hearing by telephone or audio-visual telecommunication; (2) is necessary to prevent prejudice to a party; or (3) is necessary because of a disability of any individual expected to participate in the hearing.

We propose only three bases for an order by the person conducting the proceeding to require that the hearing be conducted by personal attendance of the participants instead of audio-visual telecommunications. These are the same bases as we propose with respect to a presiding person's order that the hearing be conducted by audio-visual telecommunication instead of by telephone, except that there is no provision for requiring personal attendance because of the necessity of observing demeanor of an individual who is expected to testify at the hearing. A hearing conducted by audio-visual telecommunication would provide as good an opportunity to observe demeanor of witnesses as a hearing conducted by personal attendance.

We also propose to require that any order by the person conducting the proceeding that the hearing be conducted by audio-visual telecommunication or by the personal attendance of those who participate in the hearing be reduced to a written order which, within proposed specified time limits, may be appealed to the Judicial Officer (the Secretary, under the PACA Reparation Rules; the Administrator, under the PACA Responsibly Connected Rules) by a party. Hearings conducted by audio-visual telecommunication or by personal attendance are substantially more expensive than hearings conducted by telephone, and parties who generally bear most of these costs should have the right to appeal an order to conduct the hearing by audio-visual telecommunication or by personal attendance. We further propose that no party may file an interlocutory appeal petition within 10 days of a scheduled hearing and that any interlocutory appeal petition must be filed within 10 days after service of the presiding person's order. This will limit a party's ability to disrupt a scheduled hearing.

Further still, we propose that, if an interlocutory appeal petition is timely filed, the presiding person's order to conduct the hearing by audio-visual telecommunication or by personal attendance would be stayed to allow the Judicial Officer (the Secretary, under the PACA Reparation Rules; the Administrator, under the PACA Responsibly Connected Rules) to rule on the interlocutory appeal.

Additionally, we propose to amend 7 CFR 1.141(b), 1.168(b), 47.15(c), and 47.53 and 9 CFR 202.112 (a) and (b) to specifically provide that a party may move that a hearing be conducted by audio-visual telecommunication or personal attendance. Any such motion would be required to be accompanied by a memorandum stating the basis for the motion and the circumstances that require the hearing to be conducted other than telephonically. Further, parties who want reconsideration of the presiding person's order concerning the manner of the hearing would be required to make a motion for reconsideration within 10 days of the order. This motion would have to be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the presiding person's order.

Finally, current footnote in 7 CFR 1.141(b) provides that, if there is one respondent in a hearing, the hearing is to be held as near as possible to the respondent's place of business or residence, depending on the availability of a courtroom or other appropriate hearing room. If there is more than one respondent, and they have their places of business or residence within a single unit of local government, a single geographical area within a state, or a single state, the hearing is to be held as near as possible to their places of business or residence, depending on the availability of a courtroom or other appropriate hearing room. We propose to amend footnote 3 in § 1.141(b) to eliminate the references to courtrooms and hearing rooms because hearings conducted by telephone or audio-visual telecommunication will not necessarily be conducted in courtrooms or hearing rooms. Instead, we propose to amend footnote 3 in § 1.141(b) so that the proximity of a hearing to the respondent(s) place(s) of business or residence will be dependent on an appropriate location for conducting the hearing. Current 9 CFR 202.112(a) contains similar provisions which we also propose to amend.

Depositions

Current 7 CFR 1.148(b) provides that, under the Uniform Rules, if the Judge finds that testimony may not be otherwise available at a hearing, the Judge may order the taking of a deposition. The order must state the time and place of the deposition. Current 7 CFR 47.16(b) provides that, under the PACA Reparation Rules, the examiner may, upon application of a party, order the taking of a deposition. The order must state the time and place of the deposition. Current 9 CFR 202.109 provides that, under the P&S Reparation Rules, the presiding officer may, upon application of a party, order the taking of a deposition. The order must state the time and place of the deposition. (There are no provisions for ordering a deposition under the Capper-Volstead Rules or under the PACA Responsibly Connected Rules.)

We propose to amend 7 CFR 1.148(b) and 47.16 and 9 CFR 202.109(d) to require that the order of the person conducting the proceeding include the manner (telephone, audio-visual telecommunication, or personal attendance) of the deposition. Further, we propose to require that the deposition be conducted by telephone unless the person conducting the proceeding determines that conducting the deposition by audio-visual telecommunication: (1) Would cost less than conducting the deposition by telephone; (2) is necessary to prevent prejudice to a party; or (3) is necessary because of a disability of any individual expected to participate in the deposition.

We propose three specific bases for an order by the person conducting the proceeding that the deposition be conducted by audio-visual telecommunication instead of by telephone. First, the person conducting the proceeding could order that the deposition be conducted by audio-visual communication if the deposition conducted by audio-visual telecommunication would cost less than conducting the deposition by telephone. Given the current relative cost and availability of the two technologies we believe that most, if not all, depositions conducted by telephone will be less expensive than depositions conducted by audio-visual telecommunication.

Second, the person conducting the proceeding could order an audio-visual telecommunication deposition if a deposition conducted by audio-visual telecommunication is necessary to prevent prejudice to a party. While this is extremely unlikely, there may be unusual circumstances in which a party

is denied due process or is put at a disadvantage if the party is required to participate in a deposition by telephone and this prejudice would be negated by conducting the deposition by audio-visual telecommunication.

Third, the person conducting the proceeding could order an audio-visual telecommunication deposition if audio-visual telecommunication is necessary because of a disability of any individual expected to participate in the deposition. For instance, if an individual expected to participate in the deposition has a severe speech or hearing impediment, a deposition conducted by audio-visual telecommunication may be necessary.

We further propose that if the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication unless the person conducting the proceeding determines that conducting the deposition by personal attendance of any individual who is expected to participate in the deposition: (1) Would cost less than conducting the deposition by telephone or audio-visual telecommunication; (2) is necessary to prevent prejudice to a party; or (3) is necessary because of a disability of any individual expected to participate in the deposition.

These are the same bases we proposed with respect to a presiding person's order that the deposition be conducted by audio-visual telecommunication instead of by telephone.

We are not proposing that the person presiding over the proceeding order a deposition conducted by audio-visual telecommunication based upon a determination that it is necessary to observe the demeanor of a person testifying at the deposition because depositions are not generally attended by the person conducting the proceeding, and, therefore, there is no opportunity for the fact finder to observe demeanor at these depositions.

We also propose that any determination by the person conducting the proceeding that a deposition be conducted by audio-visual telecommunication or personal attendance of any individual expected to testify in the deposition, and the basis for this determination, must be reduced to a written order which shall be filed with the Hearing Clerk and which may be appealed by any party within proposed specified time limits. Depositions conducted by audio-visual telecommunication or by personal attendance are substantially more expensive than depositions conducted by telephone, and parties who generally bear most of these costs should have the right to appeal an order to conduct the deposition by audio-visual telecommunication or by personal attendance.

We further propose that no party may file an interlocutory appeal petition within 10 days of a scheduled deposition and that any interlocutory appeal petition must be filed within 10 days after service of the presiding person's order. This will limit a party's ability to disrupt a scheduled deposition.

Further still, we propose that, if an interlocutory appeal petition is timely filed, the presiding person's order to conduct the deposition by audio-visual telecommunication or by personal attendance would be stayed to allow the Judicial Officer (the Secretary, under the PACA Reparation Rules) to rule on the interlocutory appeal.

Recordings

Current 7 CFR 1.141(h) provides that hearings, under the Uniform Rules, shall be recorded and transcribed verbatim and that transcripts shall be made available to any person at cost. Current 7 CFR 47.60 provides that, under the PACA Responsibly Connected Rules, any party who desires a transcript of a hearing may place an order with the reporter, who will furnish and deliver a copy of the transcript at the rate provided by contract between the reporter and the Department. Current 9 CFR 202.112(h) provides that, under the P&S Reparation Rules, any party who desires a transcript of a hearing may place an order with the reporter, who will furnish and deliver a copy of the transcript at the rate provided by contract between the reporter and the Department. (There is no similar provision under the Capper-Volstead Rules or the PACA Reparation Rules.)

We propose to amend 7 CFR 1.141(h) and 47.60 and 9 CFR 202.112(h) to require that hearings be recorded verbatim by an electronic recording device. Only if a party requests the transcript of a hearing or part of a hearing, and the person conducting the proceeding determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, could the person conducting the proceeding order the verbatim transcription of the recording as requested by the party. Any presiding person's order to transcribe a hearing or part of a hearing and the basis for the order must be reduced to a written order and filed with the Hearing Clerk. We also propose to require that recordings or transcripts of hearings be made available to any person at actual cost of duplication.

We propose this amendment because the cost of transcription is more expensive than the cost of recording a hearing. We believe that a hearing or parts of a hearing should only be transcribed when a transcript of the hearing or part of the hearing would expedite the proceeding.

Further, we propose amendments to current 7 CFR 1.148 and 9 CFR 202.109 to provide for recordings of depositions taken in proceedings conducted under the Uniform Rules and the P&S Reparation Rules. The PACA Reparation Rules currently allow the recording of depositions. As stated above, there are no provisions for ordering a deposition under the Capper-Volstead Rules or under the PACA Responsibly Connected Rules.

We propose appropriate amendments to the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to provide for the use of recordings in the same manner as transcripts are currently used.

Certification or Appeal

Current 7 CFR 1.143(e) provides that, for proceedings conducted in accordance with the Uniform Rules, the submission or certification of any motion, request, objection, or other question to the Judicial Officer prior to filing an appeal from an initial decision of the Judge shall be made by and in the discretion of the Judge. Current 7 CFR 1.172(e) contains an identical provision relating to proceedings conducted in accordance with the Capper-Volstead Rules. Current 7 CFR 47.13(b) provides that, in proceedings conducted in accordance with the PACA Reparation Rules, the submission or certification of any motion, request, objection, or other question to the Secretary prior to the transmittal of the record to the Secretary shall be in the discretion of the examiner. Current 9 CFR 202.118(b) provides that, in proceedings conducted under the P&S Reparation Rules, the presiding officer is authorized to rule on all motions and requests filed in the proceeding prior to the submission of the presiding officer's report to the Judicial Officer. Further, 9 CFR 202.118(b) provides that the submission or certification of any question to the Judicial Officer, prior to the submission of the presiding officer's report to the Judicial Officer, shall be in the discretion of the presiding officer.

We propose to amend 7 CFR 1.143(e) to allow any party to appeal to the Judicial Officer a Judge's order: (1) To personally attend a conference; (2) to conduct a hearing by audio-visual telecommunication or personally attend a hearing; or (3) to conduct a deposition by audio-visual telecommunication or personally attend a deposition. Further, we propose to amend 7 CFR 47.13(b) to allow any party to appeal to the Secretary an examiner's order: (1) To personally attend a conference; (2) to conduct a hearing by audio-visual telecommunication or personally attend a hearing; or (3) to conduct a deposition by audio-visual telecommunication or personally attend a deposition. Further still, we propose to amend 7 CFR 1.172(e) to allow any party to appeal to the Judicial Officer a Judge's order: (1) To personally attend a conference; or (2) to conduct a hearing by audio-visual telecommunication or personally attend a hearing. Finally, we propose to amend 9 CFR 202.118(b) to allow any party to appeal to the Judicial Officer a presiding officer's order: (1) To personally attend a prehearing conference; (2) to conduct an oral hearing by audio-visual telecommunication or personally attend an oral hearing; or (3) to conduct a deposition by audio-visual telecommunication or personally attend a deposition. (As stated above, the Capper-Volstead Rules do not contain provisions relating to depositions. The PACA Responsibly Connected Rules do not contain provisions restricting interlocutory appeals to the Administrator.)

Powers of the Person Conducting the Proceeding

Current 7 CFR 1.144(c) sets forth the powers of the Judges assigned to proceedings conducted under the Uniform Rules. Current 7 CFR 1.144(c)(2) provides that Judges shall have the power to set the time and place of a conference and the hearing and change the time and place of the hearing. Current 7 CFR 1.173 sets forth the powers of Judges assigned to proceedings under the Capper-Volstead Rules. Current 7 CFR 1.173(d)(2) provides that Judges shall have the power to set the time and place of any requested conference, adjourn a hearing from time to time, and change the time and place of hearing. Current 7 CFR 47.11 sets forth the powers of examiners assigned to proceedings conducted under the PACA Reparation Rules. Current 7 CFR 47.11(c)(2) provides that the examiner shall have the power to set the time and place of hearing, adjourn the hearing from time to time, and change the place and time of hearing. Current 7 CFR 47.56 sets forth the powers of the presiding officer assigned to proceedings under the PACA Responsibly Connected Rules. Current 7 CFR 47.56(b) provides that the presiding officer shall have the power to set the time and place of hearing, adjourn the hearing from time to time, and change the place and time of hearing. Current 9 CFR 202.118 sets forth the powers of a presiding officer assigned to proceedings under the P&S Reparation Rules. Current 9 CFR 202.118(a)(1) provides that the presiding officer shall have the power to set the time and place of prehearing conference and oral hearing, adjourn the oral hearing from time to time, and change the place and time of oral hearing.

We propose to expand these powers to allow the person conducting a proceeding under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, and the P&S Reparation Rules to set the manner of conferences (telephone, audio-visual telecommunication or personal attendance). (There is no provision for conferences under the PACA Responsibly Connected Rules.) Further, we propose to expand these powers to allow the person conducting a proceeding under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules and the P&S Reparation Rules to set the manner of hearings (telephone, audio-visual telecommunication or personal attendance) and to change the manner of the hearing. As stated above, before a conference may be conducted by personal attendance, the person presiding over the proceeding would be required to make certain specified determinations as set forth in proposed 7 CFR 1.140(c), proposed 7 CFR 1.167(b), proposed 7 CFR 47.14(c), and proposed 9 CFR 202.110(b), and before a hearing would be conducted by audio-visual telecommunication or by personal attendance, the person presiding over the proceeding would be required to make certain specified determinations set forth in proposed 7 CFR 1.141(b), proposed 7 CFR 1.168(b), proposed 7 CFR 47.15(c), proposed 7 CFR 47.49(f), and proposed 9 CFR 202.112(a).

In addition, we propose to add two new powers to the list of presiding person's powers specified in current 7 CFR 1.144(c), 1.173(d), 47.11(c), and 47.56 and 9 CFR 202.118(a). First, in proposed 7 CFR 1.144(c)(9), proposed 7 CFR 1.173(d)(7), proposed 7 CFR 47.11(c)(9), proposed 7 CFR 47.56(g), and proposed 9 CFR 202.118(a)(8), we provide the person conducting the proceeding with the power to require each party to provide all other parties and the presiding person with a copy of any exhibit that the party intends to introduce into evidence, prior to any hearing to be conducted by telephone or audio-visual telecommunication. We believe that this power is necessary to expedite hearings conducted by telephone or audio-visual telecommunication when the parties expect to introduce numerous exhibits.

We also propose to provide the person conducting proceedings under the Uniform Rules, the PACA Reparation Rules, and the P&S Reparation Rules with the power to require parties participating in a deposition conducted by telephone or audio-visual telecommunication to exchange any documents which the parties expect to use for the examination of a deponent prior to the deposition. There are no provisions for ordering a deposition under the Capper-Volstead Rules or the PACA Responsibly Connected Rules.

Second, we propose in 7 CFR 1.144(c)(11), 1.173(d)(8), 47.11(c)(11), and 47.56(h) and 9 CFR 202.118(a)(10) to provide persons conducting proceedings with the power to require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the person conducting the proceeding are able to transmit documents during the hearing. This would enable each party to enter or use exhibits during a hearing which the party did not provide to the person conducting the proceeding and other parties prior to the hearing.

We also propose to provide the person conducting proceedings under the Uniform Rules, the PACA Reparation Rules, and the P&S Reparation Rules to require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit documents during the deposition. There are no provisions for ordering a deposition under the Capper-Volstead Rules or the PACA Responsibly Connected Rules.

Written Statements of Direct Testimony

Current 7 CFR 1.141 sets forth the procedure for hearing under the Uniform Rules; current 7 CFR 1.168 sets forth the procedure for hearing under the Capper-Volstead Rules; current 7 CFR 47.15 sets forth the procedure for oral hearing before an examiner under the PACA Reparation Rules; current 7 CFR 47.58 sets forth the rules of evidence at hearings conducted under the PACA Responsibly Connected Rules; and current 9 CFR 202.112 sets forth the procedure for oral hearing under the P&S Reparation Rules.

We propose to amend 7 CFR 1.141, 1.168, 47.15, and 47.58 and 9 CFR 202.112 to require that each party must

exchange, in writing, with all other parties, the direct testimony of each witness the party will call. This written direct testimony would be required to be in narrative form and verified, and exchanged by the parties at least 10 days prior to the hearing. Further, the oral direct testimony provided by a witness at the hearing would be limited to presentation of the written direct testimony, unless the person conducting the proceeding finds that oral direct testimony which is supplemental to the written direct testimony would expedite the proceeding and would not constitute surprise. If adopted, this requirement would expedite the hearing and would eliminate a party's being taken by surprise concerning any material aspect of the direct testimony to be introduced at the hearing.

This requirement would not apply if the hearing is scheduled to begin less than 20 days after the notice, issued by the person conducting the proceeding, stating the time of the hearing. In a few instances, hearings are held on an expedited basis and it would be difficult for the parties to adequately prepare written testimony prior to the hearing.

7 CFR Part 50

We are proposing to eliminate all of the Rules of Practice Governing Withdrawal of Inspection and Grading Services in 7 CFR part 50, except those rules relating to conditional withdrawal of services in current 7 CFR 50.11 and 50.12 and summary suspension of service in current 7 CFR 50.40.

Title 7, CFR 1.131(b) provides that the Uniform Rules are applicable to adjudicatory proceedings under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) for the denial or withdrawal of inspection, certification, or grading service. Title 7, CFR part 50 contains rules of practice governing withdrawal of inspection and grading services furnished under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). Since 1977, when the Department promulgated the Uniform Rules, all proceedings regarding the withdrawal of inspection and grading services furnished under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) have been conducted in accordance with the Uniform Rules. Further, in the future, we do not intend to conduct proceedings regarding withdrawal of inspection and grading services furnished under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) in accordance with the rules of practice in 7 CFR part 50. Therefore, we propose to delete all of the rules of practice in 7 CFR part 50 with the exception of the provisions which relate to conditional withdrawal and summary withdrawal of inspection and grading services.

There is no provision in the Uniform Rules which would provide for conditional withdrawal and summary suspension of inspection and grading services furnished under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). Therefore, we are proposing to retain the provisions in 7 CFR part 50 which relate to conditional withdrawal of service and summary suspension of service. These provisions, found in current 7 CFR 50.11, 50.12, and 50.40, would be retained in proposed 7 CFR 50.11 and 50.12. In addition, for clarity, proposed 7 CFR 50.1 identifies the scope of proposed 7 CFR 50.11 and 50.12; and proposed 7 CFR 50.10 defines words used in proposed 7 CFR 50.11 and 50.12.

Current 7 CFR 51.46, 52.54(a), 53.13(a)(2), 54.11(a)(2), and 180.300(d) contain cross references to the Rules of Practice Governing Withdrawal of Inspection and Grading Services in 7 CFR part 50. We are proposing to amend these cross references because of the above-mentioned changes to 7 CFR part 50. Title 7, CFR 51.46, 52.54(a), 53.13(a)(2), and 54.11(a)(2) would be amended to require that the proceedings referenced be held in accordance with the Uniform Rules and proposed 7 CFR part 50. Title 7, CFR 180.300(d) would be amended to require that the proceeding referenced be held in accordance with the Uniform Rules.

7 CFR Part 0

Current 7 CFR 0.735–11(b)(6) provides that, except as authorized by the Inspector General with the consent of a party to the conversation when necessary in criminal investigations, Department employees are prohibited from monitoring or recording, or authorizing or permitting others under their administrative control to monitor or record, telephone conversations for the purpose of taking a verbatim transcript of all or part of the conversation, unless such monitoring or recording is agreed to in advance by all participants in the conversation. Current 7 CFR 0.735–11(b)(7) provides that, except as authorized by the Inspector General with the consent of a party to the conversation when necessary in criminal investigations, Department employees are prohibited from utilizing a mechanical or electronic device to monitor or record nontelephone conversations, unless such monitoring or recording is agreed to in advance by all participants in the conversation. We propose to amend 7 CFR 0.735–11(b)(6) and 0.735–11(b)(7) to allow monitoring and recording conversations during the course of a Department proceeding held by telephone or audio-visual telecommunication that is conducted by an administrative law judge, hearing officer, examiner, or presiding officer.

Minor and Non-substantive Changes

We are proposing a number of minor and non-substantive changes. Specifically, we are proposing to: (1) Eliminate all gender specific references in 7 CFR 1.160 through 1.175 and part 47; (2) correct all improper cross references in 7 CFR 1.130 through 1.151, 1.160 through 1.175, and part 47; (3) correct minor errors in the authority citations in 7 CFR 1.130 through 1.151, 1.160 through 1.175, and part 47; (4) alphabetize the words and terms defined in 7 CFR 1.132, 1.161, and 47.47 and 9 CFR 202.102; and (5) eliminate an erroneous reference to "complaint" in § 1.141(f) and replace it with a reference to "complainant". In addition, we have proposed to change the references to "prehearing conferences" in 7 CFR 1.130 through 1.151, 1.160 through 1.175, and part 47 to "conference" because the "prehearing conferences" referred to in these regulations may be held prior to or during a hearing. Further still, we propose other minor non-substantive changes for clarity.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12866.

The changes we are proposing would provide for conducting certain conferences, depositions, and hearings in connection with proceedings under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules by telecommunication. Further, the changes we are proposing would provide for the use of recordings, rather than transcripts, in connection with most depositions and hearings conducted under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules. Finally, this proposal would require each party to exchange, in writing, with all other parties in the proceeding, the direct testimony of each witness the party intends to call. These proposed amendments are designed to save money associated with the purchase of transcripts and time and money associated with travel to conferences, depositions, and hearings.

Most of the coast of the proceedings conducted under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules are borne by the United States, which is not a small entity. The vast majority of conferences, hearings, and depositions held under the rules we propose to amend are conducted at locations convenient to the private individuals participating in the proceeding. This requires the United States to incur most of the costs associated with travel in connection with the proceedings. Further, most conferences held under the rules that we are proposing to amend are currently held by telephone, unless the conference is held during the hearing. Therefore, this proposal would not result in a change with respect to the manner in which most conferences are conducted.

Nonetheless, we believe that, if this rule is adopted, private individuals who participate in conferences, depositions, and hearings conducted by telecommunication, which will be paid for by the United States, will reduce costs which are associated with travel, even to convenient locations, and private parties who participate in these proceedings will save the difference between the cost of transcripts and recordings.

Most of the private individuals who participate in proceedings conducted under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules are small entities. If adopted, this proposed rule would result in a small economic impact on private individuals who participate in the proceedings in question.

Under these circumstances, the Secretary has determined that, if adopted, this proposed rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 does not apply to this proposed rule since the proposed rule does not seek answers to identical questions or impose reporting or recordkeeping requirements on 10 or more persons, and the information collected is not used for general statistical purposes.

List of Subjects

7 CFR Part 0

Conflict of interest.

7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

7 CFR Part 47

Administrataive practice and procedure, Agricultural commodities, Agricultural Marketing Service, Brokers.

7 CFR Part 50

Administrative practice and procedure, Agricultural commodities, Agricultural Marketing Service.

7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and Recordkeeping requirements, Vegetables.

7 CFR Part 53

Cattle, Hogs, Livestock, Sheep.

7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

7 CFR Part 180

Administrative practice and procedure, Labeling, Plants.

7 CFR Part 202

Administrative practice and procedure, Agriculture, Animals, Reparation proceedings.

Accordingly, we propose to amend 7 CFR part 0, part 1, subpart H and subpart I, part 47, part 50, part 51, part 52, part 53, part 54, and part 180 and 9 CFR part 202 as follows:

Title 7—[Amended]

PART 0—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 0 would be revised to read as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR, 1965, Supp.; 5 CFR 735.104; 18 U.S.C. 207(j), unless otherwise noted.

§ 0.735–11 [Amended]

2. Section 0.735–11 would be amended as follows:

a. In paragraph (b)(6), by adding the words "or such monitoring or recording occurs in the course of a Department of Agriculture proceeding conducted by telephone or audio-visual telecommunication and the person conducting the proceeding is an administrative law judge, hearing officer, examiner, or presiding officer" immediately before the semicolon.

b. In paragraph (b)(7), by adding the words "or such monitoring or recording occurs in the course of a Department of Agriculture proceeding conducted by telephone or audio-visual telecommunication and the person conducting the proceeding is an administrative law judge, hearing officer, examiner, or presiding officer" immediately before the semicolon.

PART 1—ADMINISTRATIVE REGULATIONS

3. The authority citation for part 1, subpart H, would be revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2621, 2714, 2908, 3812, 4610, 4815, 4910; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043, 43 U.S.C. 1740; 7 CFR 2.35, 2.41.

§ 1.131 [Amended]

4. In § 1.131, paragraph (a), the second sentence would be revised to read "Section 1.26 shall be inapplicable to proceedings covered by this subpart."

§ 1.132 [Amended]

5. Section 1.132 would be amended as follows:

a. In paragraph (d), the reference to "459g" would be removed and "450g" added in its place.

b. In paragraph (d), the reference to "1970 ed. appendix, p. 550" would be removed and "App. (1988)" added in its place.

c. In paragraph (d), the reference to "7 CFR 2.35(a)" would be removed and "§ 2.35(a) of this chapter" added in its place.

d. Section 1.132 would be amended by removing all paragraph designations and placing the definitions in alphabetical order.

§ 1.133 [Amended]

6. In § 1.133, paragraph (a)(1), the first sentence would be amended by removing the words "of this subpart".

§ 1.140 [Amended]

7. In § 1.140, the section heading would be revised to read as set forth below; paragraphs (a)(1) and (b) would be amended by removing the word "prehearing" in the two places the word appears; and paragraph (c) would be revised to read as follows:

§ 1.140 Conferences and procedure.

* * * * *

(c) *Manner of Conference.* (1) The conference shall be conducted by telephone or correspondence unless the Judge determines that conducting the conference by audio-visual telecommunication:

(i) Would cost less than conducting the conference by telephone or correspondence;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the conference.

(2) If the conference is not conducted by telephone or correspondence, the conference shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the conference by personal attendance of any individual who is expected to participate in the conference:

(i) Would cost less than conducting the conference by audio-visual telecommunication;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the conference.

(3) Any determination by the Judge that audio-visual telecommunication or personal attendance of any individual at a conference is necessary and the basis for the Judge's determination as provided in paragraph (c)(1) or (c)(2) of this section must be reduced to a written order and filed with the Hearing Clerk, unless the Judge orders the conference to be conducted by audio-visual telecommunication during a hearing that is being conducted by audio-visual telecommunication or the personal attendance of an individual at a conference to be held during a hearing and that individual is personally attending the hearing.

(4) A party may appeal to the Judicial Officer the Judge's order issued under this paragraph requiring a conference to be conducted by audio-visual telecommunication or personal attendance of any individual expected to participate in the conference by filing an interlocutory appeal petition with the Hearing Clerk. No party may file an interlocutory appeal petition within 5 days of the scheduled date of the conference, and any interlocutory appeal petition must be filed within 10 days after service of a Judge's order on the party filing the interlocutory appeal petition.

(5) Within 10 days after the service of a copy of an interlocutory appeal petition, any party to the proceeding, other than the party who filed the interlocutory appeal petition, may file with the Hearing Clerk a response in support of or in opposition to the interlocutory appeal petition.

(6) The Judge's order which is the subject of a party's interlocutory appeal petition shall be stayed from the time the interlocutory appeal petition is filed until 5 days after the Judicial Officer's ruling on the interlocutory appeal petition is served on all of the parties to the proceeding.

* * * * *

§ 1.141 [Amended]

8. Section 1.141 would be amended as follows:

a. Paragraph (b) would be revised to read as set forth below.

b. Paragraph (e) would be amended by removing the words "of these rules" both times they appear.

c. Paragraph (f) would be amended by removing the word "complaint" and adding "complainant" in its place.

d. Paragraph (g)(7) would be amended by adding the words "or recording" immediately after the word "transcript" each of the three times the word "transcript" appears.

e. Paragraphs (g) and (h) would be redesignated as paragraphs (h) and (i) respectively.

f. New paragraph (g) would be added to read as set forth below.

g. Redesignated paragraph (i) would be revised to read as set forth below.

§ 1.141 Procedure for hearing.

* * * * *

(b) *Time, place, and manner.* (1) If any material issue of fact is joined by the pleadings, the Judge, upon motion of any party stating that the matter is at issue and is ready for hearing, shall set a time and place for hearing as soon as feasible after the motion is filed, with due regard for the public interest and the convenience and necessity of the parties. The Judge shall file with the Hearing Clerk a notice stating the time and place of the hearing.[3] This notice shall state whether the hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to participate in the hearing. The Judge's determination regarding the manner of the hearing shall be made in accordance with paragraphs (b)(3) through (b)(5) of this section. If any change in the time, place, or manner of the hearing is made, the Judge shall file with the Hearing Clerk a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral hearing and made part of the transcript or recording, or actual notice is given to the parties.

(2)(i) If any material issue of fact is joined by the pleadings and the matter is at issue and is ready for hearing, any party may move that the hearing be conducted by audio-visual telecommunication or personal attendance of any individual expected to attend the hearing rather than by telephone. Any motion that the hearing be conducted by audio-visual telecommunication or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than telephonically.

(ii) Within 10 days after the Judge issues a notice stating the manner in which the hearing is to be conducted, any party may move that the Judge reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the Judges's notice.

(3) The hearing shall be conducted by telephone unless the Judge determines that conducting the hearing by audio-visual telecommunication:

(i) Would cost less than conducting the hearing by telephone;

[3] The place of hearing in a proceeding under the Packers and Stockyards Act shall be set in accordance with the Packers and Stockyards Act (7 U.S.C. 228 (e) and (f)). In essence, if there is only one respondent, the hearing is to be held as near as possible to the respondent's place of business or residence depending on the availability of an appropriate location for conducting the hearing. If there is more than one respondent and they have their places of business or residence within a single unit of local government, a single geographical area within a State, or a single State, the hearing is to be held as near as possible to their places of business or residence depending on the availability of an appropriate location for conducting the hearing. If there is more than one respondent, and they have their places of business or residence distant from each other, 7 U.S.C. 228 (e) and (f) have no applicability.

(ii) Is necessary to prevent prejudice to a party;

(iii) Is necessary because of the importance of observing the demeanor of any individual who is expected to testify at the hearing; or

(iv) Is necessary because of a disability of any individual expected to participate in the hearing.

(4) If the hearing is not conducted by the telephone, the hearing shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing:

(i) Would cost less than conducting the hearing by telephone or audio-visual telecommunication;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the hearing.

(5) Any determination by the Judge that conducting the hearing by audio-visual telecommunication or personal attendance of any individual expected to participate in the hearing is necessary and the basis for the Judge's determination as provided in paragraph (b)(3) or (b)(4) of this section must be reduced to a written order which shall be filed with the Hearing Clerk.

(6) A party may appeal to the Judicial Officer the Judge's order issued under this paragraph requiring a hearing to be conducted by audio-visual telecommunication or personal attendance of any individual expected to participate in the hearing by filing an interlocutory appeal petition with the Hearing Clerk. No party may file an interlocutory appeal petition within 10 days of the scheduled date of the hearing and any interlocutory appeal petition must be filed within 10 days after service of a Judge's order on the party filing the interlocutory appeal petition.

(7) Within 10 days after the service of a copy of an interlocutory appeal petition, any party to the proceeding, other than the party who filed the interlocutory appeal petition, may file with the Hearing Clerk a response in support of or in opposition to the interlocutory appeal petition.

(8) The Judge's order which is the subject of a party's interlocutory appeal petition shall be stayed from the time the interlocutory appeal petition is filed until 10 days after the Judicial Officer's ruling on the interlocutory appeal petition is served on all of the parties to the proceeding.

* * * * *

(g) *Written statements of a direct testimony.* Unless the hearing is scheduled to begin less than 20 days after the Judge's notice stating the time of the hearing, each party must exchange, in writing, with all other parties, the direct testimony of each witness that the party will call to provide oral direct testimony at the hearing. The written direct testimony must be in narrative form and must be verified. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at the hearing will be limited to the presentation of the written direct testimony, unless the Judge finds that oral direct testimony which is supplemental to the written direct testimony would expedite the proceeding and would not constitute surprise.

* * * * *

(i) *Transcript or recording.* Hearings shall be recorded verbatim by electronic recording device. If a party requests the transcript of a hearing or part of a hearing and the Judge determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the Judge shall order the verbatim transcription of the recording as requested by the party. The Judge's order to transcribe a hearing or part of a hearing and the basis for the order, as provided in this paragraph, must be reduced to a written order and filed with the Hearing Clerk. The recordings or transcript of hearings shall be made available to any person at actual cost of duplication.

§ 1.142 [Amended]

9. Section 1.142 would be amended as follows:

a. In paragraph (a), the heading would be amended by adding the words "or recording" immediately after the word "transcript".

b. Paragraph (a)(1) would be amended by adding the words "or recording" immediately after the word "transcript".

c. Paragraph (a)(2) would be amended by adding the words "or recording" immediately after the word "transcript".

d. Paragraph (a)(3) would be amended by adding the words "or recording" immediately after the word "transcript".

e. Paragraph (c)(2) would be amended by removing the words "of the record" and adding the words "or recording" in their place.

§ 1.143 [Amended]

10. In § 1.143, paragraph (e) would be revised to read as follows:

§ 1.143 Motions and requests.

* * * * *

(e) *Certification or appeal to the Judicial Officer.* (1) Except as provided in paragraph (e)(2) of this section, the submission or certification of any motion, request, objection, or other question to the Judicial Officer prior to filing an appeal pursuant to § 1.145 shall be made by and in the discretion of the Judge. The Judge may either rule upon or certify the motion, request, objection, or other question to the Judicial Officer, but not both.

(2) Any party may appeal to the Judicial Officer a Judge's order issued under:

(i) § 1.140(c) to conduct a conference by audio-visual telecommunication or personally attend a conference;

(ii) § 1.141(b) to conduct a hearing by audio-visual telecommunication or personally attend a hearing; or

(iii) § 1.148(b) to conduct a deposition by audio-visual telecommunication or personally attend a deposition.

§ 1.144 [Amended]

11. Section 1.144 would be amended as follows:

a. Paragraph (c)(2) would be revised to read as set forth below.

b. Paragraphs (c)(9) and (c)(10) would be redesignated as paragraphs (c)(13) and (c)(14) respectively.

c. New paragraphs (c)(9), (c)(10), (c)(11), and (c)(12) would be added to read as set forth below.

§ 1.144 Judges.

* * * * *

(c) * * *

(2) Set the time, place, and manner of a conference and the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

* * * * *

(9) Require each party to provide all other parties and the Judge with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(10) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;

(11) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the Judge are able to transmit documents during the hearing;

(12) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at

locations at which the parties are able to transmit documents during the deposition;

* * * * *

§ 1.145 [Amended]

12. Section 1.145 would be amended as follows:

a. In paragraph (a), the reference to "§ 1.141(g)(2)" would be removed and "§ 1.141(h)(2)" added in its place.

b. In paragraph (c), the second sentence would be amended by adding the words "or recording" immediately after the word "transcript".

§ 1.147 [Amended]

13. In section 1.147, paragraph (c)(2) would be amended by removing the words "of this part"; and paragraph (d) would be amended by removing the words "of this part".

§ 1.148 [Amended]

14. Section 1.148 would be amended as follows:

a. Paragraph (b) would be revised to read as set forth below:

(b) In paragraph (f), the words "or recording" would be added immediately after the word "transcript" in the paragraph heading; in paragraph (f)(1), once; in paragraph (f)(2), twice; and in paragraph (f)(3), twice.

§ 1.148 Depositions.

* * * * *

(b) *Judge's order for taking deposition.* (1) If the Judge finds that the testimony may not be otherwise available at the hearing, the taking of the deposition may be ordered. The order shall be filed with the Hearing Clerk and shall state:

(i) The time of the deposition;

(ii) The place of the deposition;

(iii) The manner of the deposition (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition);

(iv) The name of the officer before whom the deposition is to be made; and

(v) The name of the deponent. The officer and the time, place, and manner need not be the same as those suggested in the motion for the deposition.

(2) The deposition shall be conducted by telephone unless the Judge determines that conducting the deposition by audio-visual telecommunication:

(i) Would cost less than conducting the deposition by telephone;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the deposition.

(3) If the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the deposition by personal attendance of any individual who is expected to participate in the hearing:

(i) Would cost less than conducting the hearing by telephone or audio-visual telecommunication;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the deposition.

(4) Any determination by the Judge that conducting the deposition by audio-visual telecommunication or personal attendance of any individual expected to participate in the deposition is necessary and the basis for the Judge's determination as provided in paragraph (b)(2) or (b)(3) of this section must be reduced to a written order which shall be filed with the Hearing Clerk.

(5) A party may appeal to the Judicial Officer the Judge's order issued under this paragraph requiring a deposition to be conducted by audio-visual telecommunication or personal attendance of any individual expected to participate in the deposition by filing an interlocutory appeal petition with the Hearing Clerk. No party may file an interlocutory appeal petition within 10 days of the scheduled date of the deposition and any interlocutory appeal petition must be filed within 10 days after service of a Judge's order on the party filing the interlocutory appeal petition.

(6) Within 10 days after the service of a copy of an interlocutory appeal petition, any party to the proceeding, other than the party who filed the interlocutory appeal petition, may file with the Hearing Clerk a response in support of or in opposition to the interlocutory appeal petition.

(7) The Judge's order which is the subject of a party's interlocutory appeal petition shall be stayed from the time the interlocutory appeal petition is filed until 10 days after the Judicial Officer's ruling on the interlocutory appeal petition is served on all of the parties to the proceeding.

* * * * *

§ 1.149 [Amended]

15. In § 1.149, paragraph (b), the last sentence would be amended by removing the words "of this part".

16. The authority citation for part 1, subpart I, would be revised to read as follows:

Authority: 7 U.S.C. 291, 292; 7 CFR 2.35, 2.41

§ 1.161 [Amended]

17. Section 1.161 would be amended as follows:

a. In paragraph (c), the word "he" would be removed and the word "be" added in its place.

b. In paragraph (c), the words "or her" would be added immediately after the word "his".

c. In paragraph (g), the reference to "1976 ed., appendix, p. 764" would be removed and "App. (1988)" added in its place.

d. In paragraph (g), the reference to "7 CFR 2.35" would be removed and "§ 2.35(a) of this chapter" added in its place.

e. In paragraph (g), the words "or she" would be added immediately after the word "he".

f. Section 1.161 would be amended by removing all paragraph designations and placing the definitions in alphabetical order.

§ 1.162 [Amended]

18. Section 1.162 would be amended as follows:

a. In paragraph (b), in the first sentence, the word "part" would be removed and the word "paragraph" added in its place.

b. In paragraph (b), in the second sentence, the word "he" would be removed and ", the Secretary" added in its place.

§ 1.164 [Amended]

19. In § 1.164, paragraph (a), the first sentence would be amended by removing the word "his" and adding the words "the respondent's" in its place.

§ 1.167 [Amended]

20. Section 1.167 would be revised to read as follows:

§ 1.167 Conference.

(a) *Purpose.* Upon motion of a party or upon the Judge's own motion, the Judge may direct the parties to attend a conference when the Judge finds that the proceeding would be expedited by discussions on matters of procedure and/or possible stipulations. The Conference may include discussions regarding:

(1) Simplification of the issues;

(2) Limitation of expert or other witnesses;

(3) The orderly presentation of evidence; and

(4) Any other matters that may expedite and aid in the disposition of the proceeding.

(b) *Manner of the conference.* (1) The conference shall be conducted by telephone or correspondence unless the Judge determines that conducting the conference by audio-visual telecommunication:

(i) Would cost less than conducting the conference by telephone or correspondence;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the conference.

(2) If the conference is not conducted by telephone or correspondence, the conference shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the conference by personal attendance of any individual who is expected to participate in the conference:

(i) Would cost less than conducting the conference by audio-visual telecommunication;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the conference.

(3) Any determination by the Judge that conducting the conference by audio-visual telecommunication or personal attendance of any individual expected to participate in the conference is necessary and the basis for the Judge's determination as provided in paragraph (b)(1) or (b)(2) of this section must be reduced to a written order and filed with the Hearing Clerk, unless the Judge orders the conference to be conducted by audio-visual telecommunication during a hearing that is being conducted by audio-visual telecommunication or the personal attendance of an individual at a conference to be held during a hearing and that individual is personally attending the hearing.

(4) A party may appeal to the Judicial Officer the Judge's order issued under this paragraph requiring a conference to be conducted by audio-visual telecommunication or personal attendance of any individual expected to participate in the conference by filing an interlocutory appeal petition with the Hearing Clerk. No party may file an interlocutory appeal petition within 5 days of the scheduled date of the conference and any interlocutory appeal petition must be filed within 10 days after service of a Judge's order or the party filing the interlocutory appeal petition.

(5) Within 10 days after the service of a copy of an interlocutory appeal petition, any party to the proceeding, other than the party who filed the interlocutory appeal petition, may file with the Hearing Clerk a response in support of or in opposition to the interlocutory appeal petition.

(6) The Judge's order which is the subject of a party's interlocutory appeal petition shall be stayed from the time the interlocutory appeal petition is filed until 5 days after the Judicial Officer's ruling on the interlocutory appeal petition is served on all the parties to the proceeding.

§ 1.168 [Amended]

21. Section 1.168 would be amended as follows:

a. In paragraph (e)(1), the first sentence would be amended by removing the word "reported" and adding the words "transcribed or recorded" in its place.

b. In paragraph (e)(2), the first sentence would be amended by removing the word "he" and by adding the words "the party" in its place.

c. In paragraph (e)(2), the second sentence would be amended by adding the words "or recording" immediately after the word "transcript".

d. Paragraph (e)(6) would be amended by adding the words "or recording" immediately after the word "transcript" each of the three times the word "transcript" appears.

e. Paragraphs (b), (c), (d), and (e) would be redesignated as (c), (d), (e), and (f) respectively.

f. New paragraphs (b) and (f) would be added to read as follows:

§ 1.168 Procedure for hearing.

* * * * *

(b) *Manner of hearing.* (1) The Judge shall file with the Hearing Clerk a notice stating whether the hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to attend the hearing and the Judge's determination regarding the manner of hearing shall be made in accordance with paragraphs (b)(3) through (b)(5) of this section. If any change in the manner of the hearing is made, the Judge shall file with the Hearing Clerk a notice of the change, which notice shall be served on the parties, unless it is made during the course of an oral hearing and made part of the transcript or recording, or actual notice is given to the parties.

(2)(i) Any party may move that the hearing be conducted by audio-visual telecommunication or personal attendance of any individual expected to attend the hearing rather than by telephone. Any motion that the hearing be conducted by audio-visual telecommunication or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than telephonically.

(ii) Within 10 days after the Judge issues a notice stating the manner in which the hearing is to be conducted, any party may move that the Judge reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the Judges's notice.

(3) The hearing shall be conducted by telephone unless the Judge determines that conducting the hearing by audio-visual telecommunication:

(i) Would cost less than conducting the hearing by telephone;

(ii) Is necessary to prevent prejudice to a party;

(iii) Is necessary because of the importance of observing the demeanor of any individual who is expected to testify at the hearing; or

(iv) Is necessary because of a disability of any individual expected to participate in the hearing.

(4) If the hearing is not conducted by telephone, the hearing shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing:

(i) Would cost less than conducting the hearing by telephone or audio-visual telecommunication;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the hearing.

(5) Any determination by the Judge that conducting the hearing by audio-visual telecommunication or personal attendance of any individual expected to participate in the hearing is necessary and the basis for the Judge's determination as provided in paragraph (b)(3) or (b)(4) of this section must be reduced to a written order which shall be filed with the Hearing Clerk.

(6) A party may appeal to the Judicial Officer the Judge's order issued under this paragraph requiring a hearing to be conducted by audio-visual telecommunication or personal attendance of any individual expected to participate in the hearing by filing an interlocutory appeal petition with the Hearing Clerk. No party may file an interlocutory appeal petition within 10 days of the scheduled date of the hearing and any interlocutory appeal petition must be filed within 10 days

after service of a Judge's order on the party filing the interlocutory appeal petition.

(7) Within 10 days after the service of a copy of an interlocutory appeal petition, any party to the proceeding, other than the party who filed the interlocutory appeal petition, may file with the Hearing Clerk a response in support of or in opposition to the interlocutory appeal petition.

(8) The Judge's order which is the subject of a party's interlocutory appeal petition shall be stayed from the time the interlocutory appeal petition is filed until 10 days after the Judicial Officer's ruling on the interlocutory appeal petition is served on all of the parties to the proceeding.

* * * * *

(f) *Written statements of direct testimony.* Unless the hearing is scheduled to begin less than 20 days after the Judge's notice stating the time of the hearing, each party must exchange, in writing, with all other parties, the direct testimony of each witness that the party will call to provide oral direct testimony at the hearing. The written direct testimony must be in narrative form and must be verified. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at the hearing will be limited to the presentation of the written direct testimony, unless the Judge finds that oral direct testimony which is supplemental to the written direct testimony would expedite the proceeding and would not constitute surprise.

* * * * *

§ 1.169 [Amended]

22. Section 1.169 would be amended as follows:

a. In paragraph (a), the heading would be revised to read "*Corrections to transcript or recording.*"

b. In paragraph (a)(1), the words "or recording" would be added immediately after the word "transcript".

c. In paragraph (a)(2), the words "or recording" would be added immediately after the word "transcript" both times the word "transcript" appears.

d. In paragraph (a)(3), the words "or recording" would be added immediately after the word "transcript" each of the three times the word "transcript" appears.

e. In paragraph (c), in the last sentence, the word "herein" would be removed.

§ 1.170 [Amended]

23. Section 1.170 would be amended as follows:

a. In paragraph (a), in the second sentence, the reference to "§ 1.167(e)(2)" would be removed and "§ 1.168(g)(2)" added in its place.

b. In paragraph (c), the words "or recording" would be added immediately after the word "transcript".

c. In paragraph (i), in the last sentence, the word "herein" would be removed.

§ 1.171 [Amended]

24. Section 1.171 would be amended by removing the word "herein".

§ 1.172 [Amended]

25. Section 1.172 would be amended as follows:

a. In paragraph (a), the words "or recording" would be added immediately after the word "transcript".

b. Paragraph (e) would be revised to read as follows:

§ 1.172 Motions and requests.

* * * * *

(e) *Certification or appeal to the Judicial Officer.* (1) Except as provided in paragraph (e)(2) of this section, the submission or certification of any motion, request, objection, or other question to the Judicial Officer prior to the time when the Judge's certification of the transcript or recording is filed with the Hearing Clerk, shall be made by and in the discretion of the Judge. The Judge may either rule upon or certify the motion, request, objection, or other question to the Judicial Officer, but not both.

(2) Any party may appeal to the Judicial Officer a Judge's order issued under § 1.167(b) to conduct a conference by audio-visual telecommunication or personally attend a conference, or a Judge's order issued under § 1.168(b) to conduct a hearing by audio-visual telecommunication or personally attend a hearing.

§ 1.173 [Amended]

26. Section 1.173 would be amended as follows:

a. In paragraph (b)(1), the words "or herself" would be added immediately after the word "himself".

b. In paragraph (b)(2), the word "he" would be removed and the words "the Judge" added in its place.

c. In paragraph (b)(2), the words "or herself" would be added immediately after the word "himself".

d. In paragraph (d), in the introductory language, the words "or her," would be added immediately after the word "him".

e. Paragraph (d)(2) would be revised to read as set forth below.

f. Paragraph (d)(7) would be redesignated as paragraph (d)(9).

g. New paragraphs (d)(7) and (d)(8) would be added to read as set forth below.

h. In paragraph (e), the word "his " would be removed and the words "the Judge's" added in its place.

i. In paragraph (e), the word "him" would be removed and the words "the Judge" would be added in its place both times the word "him" appears.

§ 1.173 Judges.

* * * * *

(d) * * *

(2) Set the time, place and manner of any conference, set the manner of the hearing, adjourn the hearing, and change the time, place and manner of the hearing;

* * * * *

(7) Require each party to provide all other parties and the Judge with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(8) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the Judge are able to transmit documents during the hearing;

* * * * *

§ 1.174 [Amended]

27. In § 1.174, paragraph (c) would be amended by adding the words "or recording" after the word "transcript".

PART 47—RULES OF PRACTICE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

28. The authority citation for part 47 would be revised to read as follows:

Authority: 7 U.S.C. 499o; 7 CFR 2.17(a)(8)(xiii), 2.50(a)(8)(xiii).

§ 47.2 [Amended]

29. Section 47.2 would be amended as follows:

a. In paragraph (c), the words "or her" would be added immediately after the word "his".

b. In paragraph (e), the words "or her" would be added immediately after the word "his".

c. In paragraph (f), the words "or her" would be added immediately after the word "his".

d. In paragraph (h), the words "or her" would be added immediately after the word "his".

§ 47.3 [Amended]

30. Section 47.3 would be amended as follows:

a. In paragraph (b)(1), in the first sentence, the word "his" would be removed and the words "the Director's" added in its place.

b. Paragraph (c) would be revised to read as follows:

§ 47.3 Institution of proceedings.

* * * * *

(c) *Status of person filing informal complaint.* The person filing an informal reparation complaint shall not be a party to any disciplinary proceeding which may be instituted as a result of the informal reparation complaint. The person filing an informal reparation complaint shall have no legal status in the reparation proceeding, except as he or she may be subpoenaed as a witness or deposed without expense to him or her.

§ 47.4 [Amended]

31. In section 47.4, paragraph (b)(2) would be amended by removing the words "of this part".

§ 47.5 [Amended]

32. Section 47.5 would be amended by removing the words "of these regulations in this part" both times the words appear and revising the last sentence to read as follows: "In addition, except to the extent that they are inconsistent with §§ 1.130 through 1.151 of this chapter, §§ 47.1 through 47.5 and 47.46 are also applicable to procedures governing the filing and disposition of formal complaints and other moving papers relating to administrative proceedings to enforce the Act pursuant to §§ 1.130 through 1.151 of this chapter.

§ 47.11 [Amended]

33. Section 47.11 would be amended as follows:

a. In paragraph (b), in the second sentence, the word "he" would be removed and the words "the Secretary" would be added in its place.

b. In paragraph (c), in the introductory language, the words "elsewhere in the regulations" would be removed.

c. In paragraph (c), in the introductory language, the words "or her" would be added immediately after the word "him".

d. Paragraph (c)(2) would be revised to read as set forth below.

e. Paragraph (c)(9) would be redesignated as (c)(13).

f. New paragraphs (c)(9), (c)(10), (c)(11), and (c)(12) would be added to read as set forth below.

g. In paragraph (d), the word "him" would be removed and the words "the examiner" added in its place.

§ 47.11 Examiners.

* * * * *

(c) * * *

(2) Set the time, place, and manner of the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

* * * * *

(9) Require each party to provide all other parties and the examiner with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(10) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;

(11) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the examiner are able to transmit documents during the hearing;

(12) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit documents during the deposition;

* * * * *

§ 47.12 [Amended]

34. Section 47.12 (b), (c), and (d) would be amended by removing the word "he" and adding the words "the petitioner".

§ 47.13 [Amended]

35. Section 47.13 would be amended as follows:

a. In paragraph (a)(1), the words "or recording" would be added immediately after the word "transcript".

b. Paragraph (b) would be revised to read as follows:

§ 47.13 Motions and requests.

* * * * *

(b) *Certification or appeal to the Secretary.* (1) Except as provided in paragraph (b)(2) of this section, the submission or certification of any motion, request, objection, or other question to the Secretary prior to transmittal of the record to the Secretary as provided in this part shall be made by and in the discretion of the examiner. The examiner may either rule upon or certify the motion, request, objection, or other question to the Secretary, but not both.

(2) Any party may appeal to the Secretary an examiner's order issued:

(i) Under § 47.14(c) to conduct a conference by audio-visual telecommunication or personally attend a conference;

(ii) Under § 47.15(c) to conduct a hearing by audio-visual telecommunication or personally attend a hearing; or

(iii) Under § 47.16(b) to conduct a deposition by audio-visual telecommunication or personally attend a deposition.

36. Section 47.14 would be revised to read as follows:

§ 47.14 Conferences.

(a) In any proceeding in which it appears that a conference will expedite the proceeding, the examiner, at any time prior to or during the course of the oral hearing, may request the parties or their counsel to appear at a conference before the examiner to consider:

(1) The simplification of the issues;

(2) The necessity or the desirability of amendments to the pleadings;

(3) The possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert or other witnesses; or

(5) Such other matters as may expedite and aid in the disposition of the proceeding.

(b) No transcript or recording of the conference shall be made. If the conference is conducted by correspondence, the examiner shall forward copies of letters and documents to the parties as circumstances require. The correspondence in connection with a conference shall not be part of the record. The examiner shall prepare and file for the record a written summary of the action agreed upon or taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference.

(c) *Manner of the Conference.* (1) The conference shall be conducted by telephone or correspondence unless the examiner determines that conducting the conference by audio-visual telecommunication:

(i) Would cost less than conducting the conference by telephone or correspondence;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the conference.

(2) If the conference is not conducted by telephone or correspondence, the conference shall be conducted by audio-visual telecommunication unless the

examiner determines that conducting the conference by personal attendance of any individual who is expected to participate in the conference:

(i) Would cost less than conducting the conference by audio-visual telecommunication;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the conference.

(3) Any determination by the examiner that conducting the conference by audio-visual telecommunication or personal attendance of any individual expected to participate in the conference is necessary and the basis for the examiner's determination as provided in paragraph (c)(1) or (c)(2) of this section must be reduced to a written order and filed with the Hearing Clerk, unless the examiner orders the conference to be conducted by audio-visual telecommunication during a hearing that is being conducted by audio-visual telecommunication or the personal attendance of an individual at a conference to be held during a hearing and that individual is personally attending the hearing.

(4) A party may appeal to the Secretary the examiner's order issued under this paragraph requiring a conference to be conducted by audio-visual telecommunication or personal attendance of any individual expected to participate in the conference by filing an interlocutory appeal petition with the Hearing Clerk. No party may file an interlocutory appeal petition within 5 days of the scheduled date of the conference and any interlocutory appeal petition must be filed within 10 days after service of an examiner's order on the party filing the interlocutory appeal petition.

(5) Within 10 days after the service of a copy of an interlocutory appeal petition, any party to the proceeding, other than the party who filed the interlocutory appeal petition, may file with the Hearing Clerk a response in support of or in opposition to the interlocutory appeal petition.

(6) The examiner's order which is the subject of a party's interlocutory appeal petition shall be stayed from the time the interlocutory appeal petition is filed until 5 days after the Secretary's ruling on the interlocutory appeal petition is served on all of the parties to the proceeding.

§ 47.15 [Amended]

37. Section 47.15 would be amended as follows:

a. Paragraph (c) would be revised to read as set forth below.

b. In paragraph (d)(2), the word "he" would be removed and the words "the party" would be added in its place.

c. In paragraph (d)(2), the words "or her" would be added immediately after the word "his".

d. In paragraph (d)(3)(i), the words "or her" would be added immediately after the word "him".

e. In paragraphs (f)(2)(i), the words "or recording" would be added immediately after the word "transcript" both times the word "transcript" appears.

f. In paragraph (f)(6)(ii), "recording," would be added immediately after "document," both times "document," appears.

g. In paragraph (f)(8), the words "or recording" would be added immediately after the word "transcript" the three times the word "transcript" appears.

h. In paragraph (g), in the first sentence, the words "hereinafter provided" would be removed and the words "provided in this part" would be added in their place.

i. In paragraph (g), in the second sentence, the word "he" would be removed and the words "the examiner" would be added in its place.

j. In paragraph (h), the paragraph heading would be revised to read "*Transcript or recording.*"

k. In paragraph (h), the words "or recording" would be added immediately after the word "transcript" both times the word "transcript" appears.

l. Paragraphs (f), (g), and (h) would be redesignated as (g), (h), and (i) respectively.

m. A new paragraph (f) would be added to read as set forth below.

§ 47.15 Oral hearing before examiner.

* * * * *

(c) *Time, place, and manner.* (1) if and when the proceeding has reached the stage of oral hearing, the examiner, giving careful consideration to the convenience of the parties, shall set a time for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. Unless the parties otherwise agree, the place of the hearing shall be the place in which the respondent is engaged in business. This notice shall state whether the hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to participate in the hearing and the examiner's determination regarding the manner of the hearing shall be made in accordance with paragraphs (c)(3) and (c)(4) of this section. If any change in the time, place, or manner of the hearing is made, the examiner shall file with the hearing clerk a notice of the change. The notice of any change in the time, place, or manner of the hearing shall be served on the parties, unless it is made during the course of an oral hearing and made part of the transcript or recording, or actual notice is given to the parties.

(2)(i) If and when the proceeding has reached the stage of oral hearing, any party may move that the hearing be conducted by audio-visual telecommunication or personal attendance of any individual expected to attend the hearing rather than by telephone. Any motion that the hearing be conducted by audio-visual telecommunication or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than telephonically.

(ii) Within 10 days after the examiner issues a notice stating the manner in which the hearing is to be conducted, any party may move that the examiner reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the examiner's notice.

(3) The hearing shall be conducted by telephone unless the examiner determines that conducting the hearing by audio-visual telecommunication:

(i) Would cost less than conducting the hearing by telephone;

(ii) Is necessary to prevent prejudice to a party;

(iii) Is necessary because of the importance of observing the demeanor of any individual who is expected to testify at the hearing; or

(iv) Is necessary because of a disability of any individual expected to participate in the hearing.

(4) If the hearing is not conducted by telephone, it shall be conducted by audio-visual telecommunication unless the examiner determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing:

(i) Would cost less than conducting the hearing by telephone or audio-visual telecommunication;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the hearing.

(5) Any determination by the examiner that conducting the hearing by audio-visual telecommunication or personal attendance of any individual expected to participate in the hearing is necessary and the basis for the examiner's determination as provided in paragraphs (c)(3) or (c)(4) of this section must be reduced to a written order which shall be filed with the hearing clerk.

(6) A party may appeal to the Secretary the examiner's order issued under this paragraph requiring a hearing to be conducted by audio-visual telecommunication or personal attendance of any individual expected to participate in the hearing by filing an interlocutory appeal petition with the hearing clerk. No party may file an interlocutory appeal petition within 10 days of the scheduled date of the hearing and any interlocutory appeal petition must be filed within 10 days after service of an examiner's order on the party filing the interlocutory appeal petition.

(7) Within 10 days after the service of a copy of an interlocutory appeal petition, any party to the proceeding, other than the party who filed the interlocutory appeal petition, may file with the hearing clerk a response in support of or in opposition to the interlocutory appeal petition.

(8) The examiner's order which is the subject of a party's interlocutory appeal petition shall be stayed from the time the interlocutory appeal petition is filed until 10 days after the Secretary's ruling on the interlocutory appeal petition is served on all of the parties to the proceeding.

* * * * *

(f) *Written statements of direct testimony.* Unless the hearing is scheduled to begin less than 20 days after the examiner's notice stating the time of the hearing, each party must exchange, in writing, with all other parties, the direct testimony of each witness that the party will call to provide oral direct testimony at the hearing. The written direct testimony must be in narrative form and must be verified. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at the hearing will be limited to the presentation of the written direct testimony, unless the examiner finds that oral direct testimony which is supplemental to the written direct testimony would expedite the proceeding and would not constitute surprise.

* * * * *

§ 47.16 [Amended]

38. Section 47.16 would be amended as follows:

a. Paragraphs (a)(3) and (a)(4) would be revised and paragraphs (a)(5) and (a)(6) would be added to read as set forth below.

b. Paragraph (b) would be revised to read as set forth below.

c. Paragraph (d)(1) would be revised to read as set forth below.

d. In paragraph (e), in the first sentence, the word "him" would be removed and the words "the officer" added in its place.

e. In paragraph (e), in the second sentence, the word "He" would be removed and the words "The officer" added in its place.

§ 47.16 Depositions.

(a) * * *

(3) the proposed time of the deposition which, unless otherwise agreed, shall be at least 30 days after the date of the mailing of the application; (4) the proposed place of the deposition; (5) the proposed manner in which the deposition is to be conducted (telephone, audio-visual telecommunication, or by personal attendance of the individuals who are expected to participate in the deposition); and (6) the reasons for taking the deposition.

(b) *Examiner's order for taking deposition.* (1) If, after examination of the application, the examiner is of the opinion that the deposition should be taken, the examiner shall order the taking of the deposition. The order shall be filed with the hearing clerk and shall be served by the hearing clerk upon the parties in accordance with § 47.4.

(2) The order shall state:

(i) The time of the deposition (which unless otherwise agreed shall not be less than 20 days after the filing of the order);

(ii) The place of the deposition;

(iii) The manner of the deposition (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition);

(iv) The name of the officer before whom the deposition is to be made; and

(v) The name of the deponent.

(3) The deposition shall be conducted by telephone unless the examiner determines that conducting the deposition by audio-visual telecommunication:

(i) Would cost less than conducting the deposition by telephone;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the disposition.

(4) If the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication unless the examiner determines that conducting the deposition by personal attendance of any individual who is expected to participate in the hearing:

(i) Would cost less than conducting the deposition by telephone or audio-visual telecommunication;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the deposition.

(5) Any determination by the examiner that conducting the deposition by audio-visual telecommunication or personal attendance of any individual expected to participate in the deposition is necessary and the basis for the examiner's determination as provided in paragraph (b)(3) or (b)(4) of this section must be reduced to a written order which shall be filed with the hearing clerk.

(6) A party may appeal to the Secretary the examiner's order issued under this paragraph requiring a deposition to be conducted by audio-visual telecommunication or personal attendance of any individual expected to participate in the deposition by filing an interlocutory appeal petition with the hearing clerk. No party may file an interlocutory appeal petition within 10 days of the scheduled date of the deposition and any interlocutory appeal petition must be filed within 10 days after service of an examiner's order on the party filing the interlocutory appeal petition.

(7) Within 10 days after the service of a copy of an interlocutory appeal petition, any party to the proceeding, other than the party who filed the interlocutory appeal petition, may file with the hearing clerk a response in support of or in opposition to the interlocutory appeal petition.

(8) The examiner's order which is the subject of a party's interlocutory appeal petition shall be stayed from the time the interlocutory appeal petition is filed until 10 days after the Secretary's ruling on the interlocutory appeal petition is served on all of the parties to the proceeding.

* * * * *

(d) *Procedure on examination.* (1) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or some person under the officer's direction. In lieu of oral examination, parties may transmit

written questions to the officer prior to examination and the officer shall propound the written questions to the deponent.

* * * * *

§ 47.17 [Amended]

39. In § 47.17, paragraph (c), the last sentence would be amended by removing the words "of this part".

§ 47.19 [Amended]

40. Section 47.19 would be amended as follows:

a. In paragraph (a), the heading would be revised to read *"Certifiation of transcript or recording."*.

b. In paragraph (a), the words "or recording" would be added immediately after the word "transcript" each of the five times the word "transcript" appears.

c. In paragraph (a), the words "or her" would be added immediately after the word "his" both times time the word "his" appears.

d. In paragraph (a) of the word "he" would be removed and the words "the examiner" added in its place both times the word "he" appears.

e. In paragraph (b), in the second sentence, the words "or she" would be added immediately after the word "he".

f. In paragraph (d)(3), the word "his" would be removed and the words "the party's" would be added in its place.

g. In paragraph (d)(6), in the first sentence, the words "or her" would be added immediately after the word "his".

h. In paragraph (e) the words "or her" would be added immediately after the word "his".

§ 47.20 [Amended]

41. Section 47.20 would be amended as follows:

a. In paragraph (b)(2) the words "or she" would be added immediately after the word "he" both times the word "he" appears.

b. In paragraph (h) the words "(or she)" would be added immediately after the word "he" both times the word "he" appears.

c. In paragraph (k) the words "or her" would be added immediately after the word "his".

d. In paragraph (l) the words "or her" would be added immediately after the word "his".

§ 47.21 [Amended]

42. Section 47.21 would be amended by adding the words "or recording" immediately after the word "transcript" and by removing the word "prehearing".

§ 47.22 [Amended]

43. In § 47.22, paragraph (a) would be amended by removing the reference to "§ 47.15(g)" and adding "§ 47.15(h)" in its place.

§ 47.23 [Amended]

44. Section 47.23 would be amended by removing the word "he" and adding the words "the Secretary" in its place each of the three times the word "he" appears; and by adding the words "or her" immediately after the word "his" each of the three times the word "his" appears.

§ 47.24 [Amended]

45. In § 47.24, paragraph (a) would be amended by removing the word "he" and adding the words "the Secretary" in its place both times the word "he" appears.

§ 47.25 [Amended]

46. In § 47.25, paragraph (e) would be amended by removing the words "the regulations in", and by adding the words "or her" immediately after the word "him".

§ 47.46 [Amended]

47. Section 47.46 would be amended by removing the word "he" and adding the words "the Secretary" both times the word "he" appears; and adding the words "or her" immediately after the word "his".

§ 47.47 [Amended]

48. Section 47.47 would be amended as follows:

a. In the introductory language, the reference to "7 CFR 47.2 (a) through (h)" would be removed and "§§ 47.2 (a) through (h)" added in its place.

b. In the introductory language, the reference to "7 CFR 47.47 through 47.68" would be removed and "§§ 47.47 through 47.68" added in its place.

c. Section 47.47 would be amended by removing all paragraph designations and placing the definitions in alphabetical order.

§ 47.49 [Amended]

49. In section 47.49, paragraph (f) would be revised to read as follows:

§ 47.49 Determinations

* * * * *

(f)(1) The presiding officer will order that an oral hearing be held if one is requested by the petitioner, or if the presiding officer determines that an oral hearing is necessary. A verbatim record shall be made of the hearing. In the event that an oral hearing is neither requested by the petitioner, nor ordered by the presiding officer, the presiding officer shall provide the petitioner a copy of the official file, and give the parties an opportunity to submit documents and other evidence to support their positions, as well as written arguments pertaining to their positions.

(2) The hearing shall be conducted by telephone unless the presiding officer determines that conducting the hearing by audio-visual telecommunication:

(i) Would cost less than conducting the hearing by telephone;

(ii) Is necessary to prevent prejudice to a party;

(iii) Is necessary because of the importance of observing the demeanor of any individual who is expected to testify at the hearing; or

(iv) Is necessary because of a disability of any individual expected to participate in the hearing.

(3) If the hearing is not conducted by telephone, the hearing shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing:

(i) Would cost less than conducting the hearing by telephone or audio-visual telecommunication;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the hearing.

(4) Any determination by the presiding officer that conducting the hearing by audio-visual telecommunication or personal attendance of any individual expected to participate in the hearing is necessary and the basis for the presiding officer's determination as provided in paragraph (f)(2) or (f)(3) of this section must be reduced to a written order which shall be filed with the Administrator.

(5) A party may appeal to the Administrator the presiding officer's order issued under this paragraph requiring a hearing to be conducted by audio-visual telecommunication or personal attendance of any individual expected to participate in the hearing by filing an interlocutory appeal petition with the Administrator. No party may file an interlocutory appeal petition within 10 days of the scheduled date of the hearing and any interlocutory appeal petition be filed within 10 days after service of a presiding officer's order on the party filing the interlocutory appeal petition.

(6) Within 10 days after the service of a copy of an interlocutory appeal petition, any party to the proceeding, other than the party who filed the interlocutory appeal petition, may file with the Administrator a response in support of or in opposition to the interlocutory appeal petition.

(7) The presiding officer's order which is the subject of a party's interlocutory appeal petition shall be stayed from the time the interlocutory appeal petition is filed until 10 days after the Administrator's ruling on the interlocutory appeal petition is served on all of the parties to the proceeding.

50. Section 47.53 would be revised to read as follows:

§ 47.53 Notice of time, place, and manner of hearing and provision of the official file.

(a) Upon assignment of the matter for oral hearing, the presiding officer shall notify the parties by serving them with copies of the notice of hearing, stating the time and place of the hearing. The notice shall state whether the oral hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to attend the hearing, and the presiding officer's determination regarding the manner of the hearing shall be made in accordance with § 47.49(f)(2) through § 47.49(f)(4). The parties will be notified as soon as possible of any change in the time, place, or manner of the hearing.

(b) If the presiding officer orders an oral hearing, any party may move that the hearing be conducted by audio-visual telecommunication or personal attendance of any individual expected to attend the hearing rather than by telephone. Any motion that the hearing be conducted by audio-visual telecommunication or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than telephonically.

(c) Within 10 days after the presiding officer issues a notice stating the manner in which the hearing is to be conducted, any party may move that the presiding officer reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the presiding officer's notice.

(d) Upon assignment of the matter for oral hearing, the presiding officer shall make the official file a part of the records of the proceeding and shall provide the petitioner with a copy of the official file.

§ 47.56 [Amended]

51. Section 47.56 would be amended as follows:

a. Paragraph (b) would be revised to read as set forth below.

b. Paragraphs (g) and (h) would be redesignated as paragraphs (i) and (j) respectively.

c. New paragraphs (g) and (h) would be added to read as set forth below.

§ 47.56 Powers of presiding officer.

* * * * *

(b) Set the time, place, and manner of the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

* * * * *

(g) Require each party to provide all other parties and the presiding office with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(h) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the presiding officer are able to transmit documents during the hearing;

* * * * *

§ 47.58 [Amended]

52. Section 47.58 would be amended as follows:

a. In paragraph (b), the words "or recording" would be added immediately after the word "transcript" both times the word "transcript" appears.

b. In paragraph (f), the words "or recording" would be added immediately after the word "transcript" both times the word "transcript" appears.

c. Paragraphs (a), (b), (c), (d), (e), and (f) would be redesignated as (b), (c), (d), (e), (f), and (g) respectively.

d. A new paragraph (a) would be added to read as follows:

§ 47.58 Evidence.

(a) *Written stotements of direct testimony.* Unless the hearing is scheduled to begin less than 20 days after the presiding officer's notice stating the time of the hearing, each party must exchange, in writing, with all other parties, the direct testimony of each witness that the party will call to provide oral direct testimony at the hearing. The written direct testimony must be in narrative form and must be verified. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at the hearing will be limited to the presentation of the written direct testimony, unless the presiding officer finds that oral direct testimony which is supplemental to the written direct testimony would expedite the proceeding and would not constitute surprise.

* * * * *

§ 47.59 [Amended]

53. Section 47.59 would be amended as follows:

a. The section heading would be revised to read *"Filing transcripts or recordings and exhibits."*

b. In section 47.59, the words "or recording" would be added immediately after the word "transcript" each of the five times the word "transcript" appears.

54. Section 47.60 would be revised to read as follows:

§ 47.60 Transcript or recording.

Hearings shall be recorded verbatim by electronic recording device. If a party requests the transcript of a hearing or part of a hearing and the presiding officer determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the presiding officer shall order the verbatim transcription of the recording as requested by the party. The presiding officer's order to transcribe a hearing or part of a hearing and the basis for the order, as provided in this paragraph, must be reduced to a written order and filed with the Hearing Clerk. The recordings or transcripts of hearings shall be made available to any person at actual cost of duplication.

§ 47.62 [Amended]

55. In § 47.62, the last sentence would be amended by removing the words "of this part".

PART 50—RULES OF PRACTICE GOVERNING WITHDRAWAL OF INSPECTION AND GRADING SERVICES

56. The authority citation for part 50 would be revised to read as follows:

Authority: 7 U.S.C. 1621 *et seq.*; 7 CFR 2.35, 2.41.

57. Part 50 would be revised to read as follows:

Subpart A—General

Sec.

50.1 Scope and applicability of rules of practice.

Subpart B—Supplemental Rules of Practice

50.10 Definitions.

50.11 Conditional withdrawal of service.

50.12 Summary suspension of service

Subpart A—General

§ 50.1 Scope and applicability of rules of practice.

(a) The rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes promulgated in §§ 1.130 through 1.151 of this title are rules of practice applicable to adjudicatory proceedings under the regulations promulgated under 7 U.S.C. 1621 *et seq.* for denial or withdrawal of inspection, certification, or grading service. In addition, the supplemental rules of practice in subpart B of this part shall be applicable to adjudicatory proceedings under the regulations promulgated under 7 U.S.C. 1621 *et seq.* for denial or withdrawal of inspection, certification, or grading service.

(b) Neither the rules of practice in §§ 1.130 through 1.151 of this title nor the supplemental rules of practice in subpart B of this part modify existing procedures for refusing to inspect, grade, or certify a specific lot a product because of adulteration, improper preparation of the lot for grading, improper presentation of the lot for grading, or because of failure to comply with any similar requirements set forth in applicable regulations.

Subpart B—Supplemental Rules of Practice

§ 50.10 Definitions.

Director. The Director of the Division or any employee of the Division to whom authority to act in his or her stead is delegated.

Division. The Division of the Agricultural Marketing Service, United States Department of Agriculture, initiating the withdrawal of inspection, certification, or grading service.

Mailing. Depositing an item in the United States Mail with postage affixed and addressed as necessary to cause the item to be delivered to the address shown by ordinary mail, certified mail, or registered mail.

§ 50.11 Conditional withdrawal of service.

(a) The Director may withdraw grading or inspection service from a person for correctable cause. The grading or inspection service withdrawn, after appropriate corrective action is taken, will be restored immediately, or as soon thereafter as a grader or inspector can be made available.

(b) Written notice of withdrawal of grading or inspection service under this section shall be given to the person from whom grading or inspection services will be withdrawn in advance of withdrawal, whenever it is feasible to provide such an advance written notice. If advance written notice is not given, the withdrawal action and the reasons for the withdrawal shall be confirmed as promptly as circumstances permit, except where the deficiency which is the basis for the withdrawal has already been corrected.

§ 50.12 Summary suspension of service.

(a) *General.* In any situation in which the integrity of grading or inspection service would be jeopardized if such service were continued pending a decision in a proceeding to withdraw grading or inspection service, such service to the respondent may be suspended effective on the third day after mailing of a written notice of the suspension of service to the respondent's last known address or designated address or upon actual receipt of the written notice, whichever is earlier.

(b) *Actual or threatened physical violence.* In any case of actual or threatened physical violence to an inspector or grader, grading and inspection services to the respondent may be suspended prior to the transmittal of the written notice of suspension to the respondent. A written notice shall be given as promptly as circumstances permit.

PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

58. The [1,2] authority citation for part 51 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.50; unless otherwise noted.

§ 51.46 [Amended]

59. Section 51.46(d) would be amended by revising the last sentence to read "The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter shall govern proceedings conducted pursuant to this section."

[1] Among such other products are the following: Raw nuts; Christmas trees and evergreens; flowers and flower bulbs; and onion sets.

[2] None of the requirements in this part shall excuse failure to comply with any federal, State, county, or municipal laws applicable to products covered in this part.

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

60. The [3] authority citation for part 52 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.50.

§ 52.54 [Amended]

61. In § 52.54, paragraph (a) introductory text, would be amended by revising the last sentence to read "The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter shall be applicable to such debarment action."

PART 53—LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS)

62. The authority citation for part 53 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.50.

63. In § 53.13, paragraph (a)(2) would be revised to read as follows:

§ 53.13 Denial or withdrawal of service.

(a) * * *

(2) *Procedure.* All cases arising under this paragraph shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter.

* * * * *

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

64. The authority citation for part 54 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.50.

65. In § 54.11, paragraph (a)(2) would be revised to read as follows:

§ 54.11 Denial or withdrawal of service.

(a) * * *

(2) *Procedure.* All cases arising under this paragraph shall be conducted in accordance with the Rules of Practice

[3] Among such other processed food products are the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups except from grain; tea; cocoa; coffee; spices; condiments.

Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter.

* * * * *

PART 180—REGULATIONS AND RULES OF PRACTICE UNDER THE PLANT VARIETY PROTECTION ACT

66. The authority citation for part 180 would be revised to read as follows:

Authority: 7 U.S.C. 2326, 2352, 2353, 2356, 2371, 2402(b), 2403, 2426, 2427, 2501(c); 7 CFR 2.17, 2.50.

§ 180.300 [Amended]

67. In § 180.300, paragraph (d), the last sentence would be revised to read "If a formal hearing is requested, the proceeding shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title."

Title 9—[Amended]

PART 202—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE PACKERS AND STOCKYARDS ACT

68. The authority citation for part 202 would be revised to read as follows:

Authority: 7 U.S.C. 228(a); 7 CFR 2.17(e), 2.56.

§ 202.102 [Amended]

69. Section 202.102 would be amended by removing all paragraph designations and placing the definitions in alphabetical order.

§ 202.103 [Amended]

70. In § 202.103, paragraph (a), the second sentence would be amended by removing the words "the provisions of".

§ 202.105 [Amended]

71. In § 202.105, paragraph (f)(2) would be amended by removing the words "of this part".

§ 202.109 [Amended]

72. Section 202.109 would be amended as follows:

a. Paragraph (a)(5) would be revised to read as set forth below.

b. In paragraph (c)(2), in the second sentence, the word "pace" would be removed and the word "place" would be added in its place.

c. Paragraph (d) would be revised to read as set forth below.

d. In paragraph (g), the words "or recording" would be added immediately after the word "transcript" each of the four times the word "transcript" appears.

e. In paragraph (h), the words "or recording" would be added immediately after the word "transcript" each of the four times the word "transcript" appears.

f. In paragraphs (i)(3), (i)(4), and the concluding text, the words "or recording" would be added immediately after the word "transcript" each of the six times the word "transcript" appears and, in the first sentence, the words "the provisions of" would be removed.

g. In paragraph (j), the word "therein" would be removed and the words "in the deposition" added in its place.

h. In paragraph (l), the words "or recording" would be added immediately after the word "transcript" both times the word "transcript" appears.

§ 202.109 Rule 9: Depositions.

(a) * * *

(5) if oral, a suggested time and place where the proposed deposition is to be made and a suggested manner in which the proposed deposition is to be conducted (telephone, audio-visual telecommunication, or by personal attendance of the individuals who are expected to participate in the deposition). The application for an order for the taking of testimony by deposition shall be made in writing, unless it is made orally on the record at an oral hearing.

* * * * *

(d) *Order.* (1) The presiding officer, if satisfied that good cause for taking the deposition is present, may order the taking of the deposition.

(2) The order shall be served on the parties and shall include:

(i) The name and address of the officer before whom the deposition is to be made;

(ii) The name of the deponent;

(iii) Whether the deposition will be oral or on written questions;

(iv) If the deposition is oral, the manner of the deposition (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition); and

(v) The time, which shall not be less than 20 days after the issuance of the order, and place.

(3) The officer, time, place, and manner of the deposition as stated in the presiding officer's order need not be the same as the officer, time, place, and manner suggested in the application.

(4) The deposition shall be conducted by telephone unless the presiding officer determines that conducting the deposition by audio-visual telecommunication:

(i) Would cost less than conducting the deposition by telephone;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the deposition.

(5) If the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication, unless the presiding officer determines that conducting the deposition by personal attendance of any individual who is expected to participate in the hearing:

(i) Would cost less than conducting the deposition by telephone or audio-visual telecommunication;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the deposition.

(6) Any determination by the presiding officer that conducting the deposition by audio-visual telecommunication or personal attendance of any individual expected to participate in the deposition is necessary and the basis for the presiding officer's determination as provided in paragraph (d)(4) or (d)(5) of this section must be reduced to a written order which shall be filed with the hearing clerk.

(7) A party may appeal to the Judicial Officer the presiding officer's order requiring a deposition to be conducted by audio-visual telecommunication or personal attendance of any individual expected to participate in the deposition by filing an interlocutory appeal petition with the hearing clerk. No party may file an interlocutory appeal petition within 10 days of the scheduled date of the deposition and any interlocutory appeal petition must be filed within 10 days after service of a presiding officer's order on the party filing the interlocutory appeal petition.

(8) Within 10 days after the service of a copy of an interlocutory appeal petition, any party to the proceeding, other than the party who filed the interlocutory appeal petition, may file with the hearing clerk a response in support of or in opposition to the interlocutory appeal petition.

(9) The presiding officer's order which is the subject of a party's interlocutory appeal petition shall be stayed from the time the interlocutory appeal petition is filed until 10 days after the Judicial Officer's ruling on the interlocutory appeal petition is served on all of the parties to the proceeding.

* * * * *

§ 202.110 [Amended]

73. Section 202.110 would be amended as follows:

a. In paragraph (a), in the concluding text, the words "or recording" would be added immediately after the word "transcript".

b. Paragraph (b) would be revised to read as set forth below.

§ 202.110 Rule 10: Prehearing Conference.

* * * * *

(b) *Manner of the prehearing conference.* (1) prehearing conference shall be conducted by telephone or correspondence unless the presiding officer determines that conducting the prehearing conference by audio-visual telecommunication:

(i) Would cost less than conducting the prehearing conference by telephone or correspondence;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the prehearing conference.

(2) If the prehearing conference is not conducted by telephone or correspondence, the prehearing conference shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the prehearing conference by personal attendance of any individual who is expected to participate in the prehearing conference:

(i) Would cost less than conducting the prehearing conference by audio-visual telecommunication;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the prehearing conference.

(3) Any determination by the presiding officer that conducting the prehearing conference by audio-visual telecommunication or personal attendance of any individual expected to participate in the prehearing conference is necessary and the basis for the presiding officer's determination as provided in paragraph (b)(1) or (b)(2) of this section must be reduced to a written order and filed with the hearing clerk.

(4) A party may appeal to the Judicial officer the presiding officer's order issued under this paragraph requiring a prehearing conference to be conducted by audio-visual telecommunication or personal attendance of any individual expected to participate in the conference by filing an interlocutory appeal petition with the hearing clerk. No party may file an interlocutory appeal petition within 5 days of the scheduled date of the conference and any interlocutory appeal petition must be filed within 10 days after service of a presiding officer's order on the party filing the interlocutory appeal petition.

(5) Within 10 days after the service of a copy of an interlocutory appeal petition, any party to the proceeding, other than the party who filed the interlocutory appeal petition, may file with the hearing clerk a response in support of or in opposition to the interlocutory appeal petition.

(6) The presiding officer's order which is the subject of a party's interlocutory appeal petition shall be stayed from the time the interlocutory appeal petition is filed until 5 days after the Judicial Officer's ruling on the interlocutory appeal petition is served on all of the parties to the proceeding.

§ 202.112 [Amended]

74. Section 202.112 would be amended as follows:

a. Paragraph (a) would be revised to read as set forth below.

b. Paragraph (b) would be revised to read as set forth below.

c. In paragraph (e)(2), the second sentence, the words "or recording" would be added immediately after the word "transcript", and the word "thereon" would be removed.

d. In paragraph (e)(3), the words "or recording" would be added immediately after the word "transcript" both times the word "transcript" appears.

e. In paragraph (e)(5), the word "thereof" would be removed and the words "of the Department" added in its place, and the word "therein" would be removed and the words "in the record of the Department" added in its place.

f. Paragraphs (e), (f), (g), (h), (i), and (j) would be redesignated as (f), (g), (h), (i), (j), and (k) respectively.

g. New paragraph (e) would be added to read as set forth below.

h. Redesignated paragraph (i) would be revised to read as set forth below.

i. In redesignated (j), the heading would be revised to read "*Filing, and presiding officer's certificate, of the transcript or recording.*"; the words "or recording" would be added immediately after the word "transcript" each of the 10 times the word "transcript" appears; and the words "or recorded" would be added immediately after the word "transcribed".

j. In redesignated paragraph (k), the heading would be revised to read "*Keeping of copies of the transcript or recording.*"; and the words "or recording" would be added immediately after the word "transcript" each of the three times the word "transcript" appears.

§ 202.112 Rule 12: Oral hearing.

(a) *Time, place, and manner.* (1) If and when the proceeding has reached the stage where an oral hearing is to be held, the presiding officer shall set a time, place, and manner for oral hearing. The time shall be set based upon careful consideration to the convenience of the parties. The place shall be set in accordance with paragraph (a)(2) of this section and careful consideration to the convenience of the parties. The manner shall be set in accordance with paragraphs (a)(3) through (a)(5) of this section.

(2) The place shall be set in accordance with paragraphs (e) and (f) of section 407 of the Act, if applicable. In essence, under paragraphs (e) and (f) of section 407 of the Act, if the complainant and the respondent, or all of the parties, if there are more than two, have their principal places of business or residence within a single unit of local government, a single geographical area within a State, or a single State, the oral hearing is to be held as near as possible to such places of business or residence, depending on the availability of an appropriate location for conducting the hearing. If the parties have such places of business or residence distant from each other, then paragraphs (e) and (f) of section 407 of the Act are not applicable.

(3) The oral hearing shall be conducted by telephone unless the presiding officer determines that conducting the oral hearing by audio-visual telecommunication:

(i) Would cost less than conducting the oral hearing by telephone;

(ii) Is necessary to prevent prejudice to a party;

(iii) Is necessary because of the importance of observing the demeanor of any individual who is expected to testify at the oral hearing; or

(iv) Is necessary because of a disability of any individual expected to participate in the oral hearing.

(4) If the oral hearing is not conducted by telephone, it shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the oral hearing by personal attendance of any individual who is expected to participate in the hearing:

(i) Would cost less than conducting the oral hearing by telephone or audio-visual telecommunications;

(ii) Is necessary to prevent prejudice to a party; or

(iii) Is necessary because of a disability of any individual expected to participate in the oral hearing.

(5) Any determination by the presiding officer that conducting the oral hearing by audio-visual telecommunication or personal attendance of any individual expected to participate in the oral hearing is necessary and the basis for the presiding officer's determination as provided in paragraph (a)(3) or (a)(4) of this section must be reduced to a written order which shall be filed with the hearing clerk.

(6) A party may appeal to the Judicial Officer the presiding officer's order issued under this paragraph requiring an oral hearing to be conducted by audio-visual telecommunication or personal attendance of any individual expected to participate in the oral hearing by filing an interlocutory appeal petition with the hearing clerk. No party may file an interlocutory appeal petition within 10 days of the scheduled date of the oral hearing and any interlocutory appeal petition must be filed within 10 days after service of a presiding officer's order on the party filing the interlocutory appeal petition.

(7) Within 10 days after the service of a copy of an interlocutory appeal petition, any party to the proceeding, other than the party who filed the interlocutory appeal petition, may file with the hearing clerk a response in support of or in opposition to the interlocutory appeal petition.

(8) The presiding officer's order which is the subject of a party's interlocutory appeal petition shall be stayed from the time the interlocutory appeal petition is filed until 10 days after the Judicial Officer's ruling on the interlocutory appeal petition is served on all of the parties to the proceeding.

(b) *Notice.* A notice stating the time, place, and manner or oral hearing shall be served on each party prior to the time of the oral hearing. The notice shall state whether the oral hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to participate in the hearing. If any change is made in the time, place, or manner of the oral hearing, a notice of the change shall be served on each party prior to the time of the oral hearing as changed, unless the change is made during the course of an oral hearing and shown in the transcript or on the recording. Any party may waive such notice, in writing, or orally on the record at an oral hearing and shown in the transcript or on the recording.

(2) If the presiding officer orders an oral hearing, any party may move that the hearing be conducted by audio-visual telecommunication or personal attendance of any individual expected to attend the hearing rather than by telephone. Any motion that the hearing be conducted by audio-visual telecommunication or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than telephonically.

(3) Within 10 days after the presiding officer issues a notice stating the manner in which the hearing is to be conducted, any party may move that the presiding officer reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the presiding officer's notice.

* * * * *

(e) *Written statements of direct testimony.* Unless the hearing is scheduled to begin less than 20 days after the presiding officer's notice stating the time of the hearing, each party must exchange, in writing, with all other parties, the direct testimony of each witness that the party will call to provide oral direct testimony at the hearing. The written direct testimony must be in narrative form and must be verified. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at the hearing will be limited to the presentation of the written direct testimony, unless the presiding officer finds that oral direct testimony which is supplemental to the written direct testimony would expedite the proceeding and would not constitute surprise.

* * * * *

(i) *Transcript or recording.* (1) Oral hearings shall be recorded verbatim by electronic recording device. If a party requests the transcript of an oral hearing or part of an oral hearing and the presiding officer determines that the disposition of the proceeding would be expedited by a transcript of the oral hearing or part of an oral hearing, the presiding officer shall order the verbatim transcription of the recording as requested by the party. The presiding officer's order to transcribe an oral hearing or part of an oral hearing and the basis for the order, as provided in this paragraph, must be reduced to a written order and filed with the hearing clerk.

(2) Copies of transcripts or recordings of oral hearings shall be made available to any person at actual cost of duplication.

* * * * *

§ 202.115 [Amended]

75. Section 202.115 would be amended as follows:

a. Paragraph (b), the second sentence would be amended by adding the words "or recording" immediately after the word "transcript".

b. Paragraph (d) would be revised to read as set forth below.

§ 202.115 Rule 15: Submission for final consideration.

* * * * *

(d) *Oral argument.* There shall be no right to oral argument other than that provided in rule 12(h), § 202.112(h).

§ 202.118 [Amended]

76. Section 202.118 would be amended as follows:

a. Paragraph (a)(1) would be revised to read as set forth below.

b. Paragraph (a)(8) would be redesignated as paragraph (a)(12).

c. New paragraphs (a)(8), (a)(9), (a)(10), and (a)(11) would be added to read as set forth below.

d. Paragraph (b) would be revised to read as set forth below.

§ 202.118 Rule 18: Presiding officer.

(a) * * *

(1) Set the time, place, and manner of a prehearing conference and an oral hearing, adjourn the oral hearing from time to time, and change the time, place, and manner of oral hearing;

* * * * *

(8) Require each party to provide all other parties and the presiding officer with a copy of any exhibit that the party intends to introduce into evidence prior to any oral hearing to be conducted by telephone or audio-visual telecommunication;

(9) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;

(10) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the presiding officer are able to transmit documents during the hearing;

(11) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit documents during the deposition;

* * * * *

(b) *Motions and requests.* (1) Except as provided in paragraph (b)(2) of this section, the presiding officer is authorized to rule on all motions and

requests filed in the proceeding prior to the submission of the presiding officer's report to the Judicial Officer, *Provided*, That a presiding officer is not authorized to dismiss a complaint. Except as provided in paragraph (b)(2) of this section, the submission or certification of any question to the Judicial Officer, prior to the submission of the presiding officer's report to the Judicial Officer, shall be in the discretion of the presiding officer.

(2) Any party may appeal to the Judicial Officer a presiding officer's order issued under:

(i) Rule 9(d), § 202.109(d), to conduct a deposition by audio-visual telecommunication or personally attend a deposition;

(ii) Rule 10(b), § 202.110(b), to conduct a prehearing conference by audio-visual telecommunication or personally attend a prehearing conference; or

(iii) Rule 12(a), § 202.112(a), to conduct an oral hearing by audio-visual telecommunication or personally attend an oral hearing.

* * * * *

Done in Washington, DC, this 11th day of February, 1994.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 94–3824 Filed 2–24–94; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 93–088–1]

Avocados from Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the interstate movement of Hawaiian fruits and vegetables to allow avocados to be moved from Hawaii into Alaska, accompanied by a limited permit and subject to certain conditions. We believe this action is warranted because the climatic conditions in Alaska ensure that pests of avocados would not present a threat to agriculture in that State. This action would relieve some restrictions on the interstate movement of avocados from Hawaii without presenting a significant risk of introducing injurious insects into the United States. We are also proposing to amend the regulations to clarify that limited permits may be issued by inspectors or by persons operating under compliance agreements unless the regulations specify that the limited permit must be issued by an inspector.

DATES: Consideration will be given only to comments received on or before April 26, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–088–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Harabin, Head, Permit Unit, Port Operations, Plant Protection and Quarantine, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8645.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations (contained in 7 CFR 318.13 through 318.13–17, and referred to below as the regulations) govern, among other things, the interstate movement from Hawaii of avocados in a raw or unprocessed state. Regulation is necessary to prevent the spread of the Mediterranean fruit fly (*Ceratitis capitata* (Wied.)), the melon fly (*Dacus cucurbitae* (Coq.)), and the Oriental fruit fly (*Bactrocera dorsalis* (Hendel)(Syn. *Dacus dorsalis*)). These types of fruit flies are collectively referred to as Trifly.

The regulations allow avocados to be moved interstate from Hawaii to any destination in the United States only if, among other things, they have been treated in accordance with a treatment specified in either § 318.13–4d or § 318.13–4e of the regulations. We are proposing to amend the regulations to allow avocados to be moved from Hawaii to Alaska without treatment, but subject to certain other conditions.

Based on host tolerance studies, we have determined that the treatments specified in §§ 318.13–4d and 318.13–4e are not commercially feasible for use on avocados. Section 318.13–4d provides for treatment of avocados by fumigation with methyl bromide at normal atmospheric pressure at the rate of 2 pounds per 1,000 cubic feet for 4 hours at 70 °F. or above under certain conditions. This treatment causes pitting and internal and external discoloration, and reduces the shelf life of the avocado by 2–4 days, all of which adversely affect the marketability of the avocados. Section 318.13–4e provides for treatment of mature green avocados under conditions which include fumigation with methyl bromide at normal atmospheric pressure at the rate of 2 pounds per 1,000 cubic feet for 2½ hours at 70 °F. or above, followed by refrigeration for 7 days at fruit pulp temperature of 45 °F. or below. This treatment cannot be feasibly used because, after avocados are refrigerated for 7 days, there would not be a sufficient shelf life remaining for marketing them. For these reasons, avocados from Hawaii are not being treated and shipped interstate from Hawaii.

Although two hosts of Trifly are grown in Alaska (apples and pears), these pests of avocados could not become established in Alaska because the pests could not survive that State's cold winters. We are therefore proposing to add a new § 318.13–4g to allow untreated avocados from Hawaii to be moved interstate to Alaska only, provided that certain conditions are met to help ensure that the avocados moved to Alaska are free from Trifly. We consider these conditions necessary, in addition to limiting movement only to Alaska, to minimize the risk to Alaskan apples and pears and to address the slight risk that some Hawaiian avocados might eventually move from Alaska to other States. The conditions we propose to require are discussed below.

Marking Requirements

The avocados would have to be packed in boxes clearly marked with the statement "Distribution limited to the State of Alaska." This requirement would dissuade shippers and brokers from diverting cargo, and would alert cargo handlers and others who might not be familiar with the restrictions of the regulations that the avocados are to be distributed only in Alaska.

Commercial Shipments

We believe that allowing only commercial shipments of avocados to be moved interstate from Hawaii to Alaska would be an added precaution to minimize the risk of introducing Trifly into the continental United States. Wild or "backyard" produce is generally grown under very different conditions than commercially produced produce (e.g. wild or backyard produce usually involves different varieties of produce and different cultivation techniques, little or no pest control, and a lack of sanitary controls during growing and packing). As a result, there is reason to believe that wild or backyard avocados would present a greater pest risk than commercially produced avocados. For these reasons, we propose that only commercial shipments of avocados be eligible for movement to Alaska. The term *commercial shipment* would be added to § 318.13–1, "Definitions," to read as follows:

"*Commercial shipment.* Shipment containing fruits and vegetables that an inspector identifies as having been produced for sale or distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower and packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer."

This definition is the same as the definition for commercial shipment that appears in 7 CFR 319.56–1, which pertains to the importation of fruits and vegetables from foreign countries.

Packing Requirements

We propose to require that the avocados be sealed in the packing house in Hawaii in boxes with a seal that will break when the box is opened. Such sealing would ensure that no avocados are removed from the boxes before they reach their final destination in Alaska. Animal and Plant Health Inspection Service (APHIS) inspectors would not allow any boxes with broken seals to be moved into or through the continental United States en route to Alaska.

Limited Ports

We propose to allow Hawaiian avocados to enter the continental United States only at the following ports: Portland, OR; Seattle, WA; or any port in Alaska. These ports would be convenient to shippers, but would be sufficiently distant from warmer areas of the continental United States more hospitable to Trifly. These ports are staffed by APHIS inspectors, who would inspect permits for movement, inspect the boxes of avocados to make sure that the boxes are intact and the seals are not broken, and supervise transloading of shipments.

Shipping Requirements

We propose to allow the avocados to be moved from Hawaii to Alaska only by air or ship and only if the boxes of avocados are in a sealed container. As defined in § 318.13–1 of the regulations, a sealed container is "[a] completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass, or other similarly sturdy or impenetrable material, providing an enclosure accessed through doors that are closed and secured with a lock or seal. Sealed (sealable) containers used for sea shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments are distinct and separable from the means of conveyance carrying them before any transloading in the continental United States. Sealed (sealable) containers used for air shipments after transloading in the continental United States or for overland shipments in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself."

The avocados would not be permitted to be commingled in the same sealed container with articles intended for entry and distribution in parts of the United States other than Alaska. This precaution would be necessary because the avocados may carry Trifly and commingling with articles not destined for Alaska would pose a pest risk.

It may be necessary for a shipper to transload shipments arriving at the ports of Portland, OR, or Seattle, WA. We are proposing to allow transloading only under certain conditions to help ensure that the shipments of avocados are not diverted en route to Alaska.

For shipments by sea, we would allow the avocados to be transloaded from one ship to another ship at the port of arrival, provided they remain in the original sealed container and that APHIS inspectors supervise the transloading. If the avocados must be stored before reloading, they must be kept in the original sealed container and must be in an area that is either locked or guarded at all times the avocados are present.

For shipments by air, we would allow the avocados to be transloaded from one aircraft to another aircraft. Containers for air shipments, unlike sea containers, often cannot practically be transferred to other aircraft either because of their size or configuration. This means that avocados shipped by air may have to be transloaded from the original shipping container into another container or directly into the hold of another aircraft. To accommodate this need, while at the same time providing adequate safeguards and supervision against diversion of the avocados, we are proposing that transloading of air shipments would be authorized only if the following conditions are met: (1) The transloading is done into sealable containers; (2) the transloading is carried out within the secure area of the airport—i.e., that area of the airport that is open only to personnel authorized by the airport security authorities; (3) the area used for any storage of the shipment is within the secure area of the airport, and is either locked or guarded at all times the avocados are present. The avocados must be kept in a sealed container while stored in the continental United States en route to Alaska; and (4) APHIS inspectors supervise the transloading.

We are not proposing a requirement for sea shipments parallel to the requirement that the transloading and storage of air shipments must be carried out in the "secure area" of the airport. Airports have secure areas to protect against problems peculiar to airports (for example, hijackings). Sea ports do not normally have a secure area. Also, sealed containers for air shipments are usually made of a relatively flimsy material such as aluminum, while sealed containers for sea shipments are made of sturdier metal and are virtually tamper-proof. Therefore, we do not believe that the extra precaution would be necessary for sea shipments.

No transloading other than that described above would be allowed except under extenuating circumstances (such as equipment breakdown) and when authorized and supervised by an APHIS inspector. Because, practically speaking, landing facilities for aircraft are not located close enough to shipping docks to allow for direct transloading from an aircraft to a ship or from a ship to an aircraft, we are not including these options. Likewise, because of the distance between Portland or Seattle and Alaska, it would not be practical to ship the avocados to Alaska by truck or railcar. Therefore, we are not including the option that shipments may be transloaded from an aircraft or ship to a truck or railcar.

Limited Permit

We are proposing to require that shipments of avocados be accompanied from Hawaii to Alaska by a limited permit issued by an APHIS inspector in accordance with § 318.13–4(c) of the regulations. The limited permit would be issued only if the inspector examines the shipment and determines that the shipment has been prepared in compliance with the provisions we are proposing (for example, the boxes must be properly marked and sealed). A limited permit would provide a means of documenting the movement of the shipment following issuance of the limited permit. We believe this would

be necessary to ensure that the avocados move in compliance with the regulations and to allow for documentation of violations.

A limited permit would be withdrawn by an APHIS inspector if the inspector determines that the holder of the permit has not complied with all the conditions under the regulations for the use of the limited permit. Provisions concerning removal of limited permits are located in § 318.13–16 of the regulations.

Currently, as a condition of issuance of a limited permit, persons wishing to move articles regulated under § 318.13 must sign an agreement to, among other things, comply with the regulations for the movement of the regulated articles (stipulations of the compliance agreement are located in § 318.13–4(d) of the regulations). The primary purpose of requiring a compliance agreement is to allow persons operating under compliance agreements to be issued a block of limited permits or a limited permit stamp that they may apply to shipments themselves without having to wait for an inspector to examine every shipment. If a person violates any of the terms of the compliance agreement, the agreement will be withdrawn and an inspector will issue all limited permits individually for movement of regulated articles by that person.

As stated above, our proposal for the movement of avocados from Hawaii to Alaska would require the limited permit to be issued by an APHIS inspector after the inspector has examined the shipment and determined that the shipment has been prepared in compliance with the proposed provisions. We believe that direct supervision by an inspector would be an added precaution to ensure that the shipments of avocados are properly marked, sealed, and shipped in accordance with the regulations. Since this proposal would not allow shippers to be issued limited permits in blocks or a limited permit stamp, it does not appear necessary to require them to sign a compliance agreement.

Therefore, we are proposing several revisions to the current regulations in § 318.13 regarding limited permits and compliance agreements to make the role of compliance agreements clear. We would amend § 318.13–4(c) by adding a new paragraph (c)(3) to state that limited permits may be issued by a person operating under a compliance agreement, except when the regulations specify that an inspector must issue the limited permit. Section 318.13–4(d), "*Compliance agreements,*" currently states: "As a condition of issuance of a limited permit, or a certificate under paragraph (b) of this section for the movement of regulated articles for which a compliance agreement is required, the person applying for the permit or certificate must sign a compliance agreement stipulating that * * *". We would amend § 318.13–4(d) by adding the phrase "under paragraph (c)(3) of this section" after "limited permit." The addition of the phrase would clarify that not all limited permits are issued under compliance agreements and would reference readers to the paragraph regarding issuance of a limited permit for which a compliance agreement is required.

In the definition of *compliance agreement*, we would remove the references "§ 318.13–4(e)" and "§ 318.13–4g" because the proposed regulations in § 318.13–4g would not require a compliance agreement and § 318.13–4(e) no longer exists in the regulations. The definition for *limited permit* currently reads: "A document issued by an inspector for the interstate movement of regulated articles to a specified destination for: (1) Consumption, limited utilization or processing, or treatment in conformity with a compliance agreement; or (2) Movement into or through the continental United States in conformity with a transit permit." We would revise this definition by adding "or a person operating under a compliance agreement" immediately after "inspector", and by removing the phrase "in conformity with a compliance agreement" from paragraph (1). These revisions would allow limited permits to be issued either by a person operating under a compliance agreement or by an inspector, according to the requirements for each regulated article.

Additional Revisions

We are proposing to make two additional revisions to the regulations to reflect the provisions of proposed § 318.13–4g. We are proposing to add a paragraph to § 318.13–2, "Prohibited movement," to state that avocados which have been moved to Alaska in accordance with proposed § 318.13–4g are prohibited movement from Alaska into or through other places in the continental United States, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States. We are also proposing to add a paragraph to § 318.13–3, "Conditions for movement," to stipulate that avocados may be moved interstate from Hawaii to Alaska if the provisions of § 318.13–4g are met, and if they are accompanied by a limited permit issued by an APHIS inspector in accordance with § 318.13–4(c).

Finally, we are proposing to make a miscellaneous correction to the regulations in § 318.13–4f, which concern approval of irradiation treatments as a condition for certification of papayas for movement from Hawaii. Paragraph (b)(2)(iii) states that, in order to be approved, irradiation treatment facilities must complete a compliance agreement with APHIS as provided in § 318.13–4(e). However, the regulations regarding compliance agreements are now found in § 318.13–4(d). We would correct the reference in paragraph (b)(2)(iii) to reflect this change.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866.

This proposed rule would allow untreated avocados to be moved interstate from Hawaii to Alaska. Avocados are not presently shipped from Hawaii to Alaska because required treatments do not make it economically feasible.

In 1992, the U.S. production of avocados, not including Hawaii, was approximately 290 million pounds. California produced approximately 86 percent of this total, with the Hass variety accounting for about 85 percent of California's production. The peak harvest season of the Hass variety is April through October. California supplied approximately 90 percent of Alaska's 1992 avocado market.

In 1992, Hawaii produced approximately 700,000 pounds of avocados. Thus, Hawaii's total production was less than 0.3 percent of the total U.S. avocado production for that year. There are about 100 farms in Hawaii that produce avocados. All of these would be considered small entities (defined as having sales of less than $500,000 annually), as the total value in 1992 for Hawaiian avocados was only $322,000. The Sharwil variety accounts for about 75 percent of Hawaii's avocado production. The peak harvest season for Sharwil avocados is November through May.

The proposed rule change would positively affect Hawaiian avocado producers by providing an economically feasible place for them to ship avocados when there is a surplus in production. Although almost all of Alaska's avocados are supplied by California, the addition of a Hawaiian supply is unlikely to have a significant impact on Californian avocado producers. Before a suspension of shipments in 1992, the shipment of Hawaiian avocados to the mainland United States peaked at only 100,000 pounds. Further, Californian avocados (Hass variety) and Hawaiian avocados (Sharwil variety) have different peak production seasons. As a result, their importation would overlap very little. The shipment of Hawaiian avocados would allow Alaska to have a continuous and varied avocado supply.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0088.

List of Subjects in 7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, 7 CFR part 318 would be amended as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 318.13–1 [Amended]

2. Section 318.13–1 would be amended as follows:

a. In the definition for *Compliance agreement* the phrase "§ 318.13–4(e)," and the phrase "and § 318.13–4g" would be removed.

b. A definition for *Commercial shipment* would be added, in alphabetical order, as set forth below.

c. The definition for *Limited permit* would be revised by adding the phrase "or a person operating under a compliance agreement" immediately following "inspector", and by removing the phrase ", in conformity with a compliance agreement" from paragraph (1).

§ 318.13–1 Definitions.

* * * * * *

Commercial shipment. Shipment containing fruits and vegetables that an inspector identifies as having been produced for sale or distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower and packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

* * * * * *

3. In § 318.13–2, the regulatory text of paragraph (a) would be redesignated as paragraph (a)(1) and a new paragraph (a)(2) would be added to read as follows:

§ 318.13–2 Regulated articles.

(a) *Prohibited movement.*

(1) * * *

(2) Avocados which have been moved to Alaska in accordance with § 318.13–4g are prohibited movement from Alaska into or through other places in the continental United States, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

* * * * *

4. In § 318.13–3, the text of paragraph (b) would be redesignated as paragraph (b)(1) and a new paragraph (b)(2) would be added to read as follows:

§ 318.13–3 Conditions of movement.

* * * * *

(b) *To restricted destinations.*

(1) * * *

(2) Avocados may be moved interstate from Hawaii to Alaska if the provisions of § 318.13–4g are met, and if they are accompanied by a limited permit issued by an APHIS inspector in accordance with § 318.13–4(c).

* * * * *

§ 318.13–4 [Amended]

5. Section 318.13–4 would be amended as follows:

a. A new paragraph (c)(3) would be added to read as set forth below.

b. Paragraph (d) would be amended by adding the phrase "under paragraph (c)(3) of this section" immediately following the words "limited permit". § 318.13–4 *Conditions governing the issuance of certificates or limited permits.*

* * * * * *

(c) *Limited permits.*

(1) * * *

(2) * * *

(3) Except when the regulations specify an inspector must issue the limited permit, limited permits may be issued by a person operating under a compliance agreement.

* * * * * *

6. In § 318.13–4f, paragraph (b)(2)(iii) would be amended by removing the phrase "§ 318.13–4(e)" and replacing it with "§ 318.13–4(d)".

7. A new § 318.13–4g would be added to read as follows:

§ 318.13–4g Administrative instructions governing movement of avocados from Hawaii to Alaska.

Avocados may be moved interstate from Hawaii to Alaska without being certified in accordance with § 318.13–4 (a) or (b) only under the following conditions:

(a) *Distribution and marking requirements.* The avocados may be moved interstate for distribution in Alaska only, the boxes of avocados must be clearly marked with the statement "Distribution limited to the State of Alaska", and the shipment must be identified in accordance with the requirements of § 318.13–6.

(b) *Commercial shipments.* The avocados may be moved in commercial shipments only.

(c) *Packing requirements.* The avocados must have been sealed in the packing house in Hawaii in boxes with a seal that will break if the box is opened.

(d) *Ports.* The avocados may enter the continental United States only at the following ports: Portland, Oregon; Seattle, Washington; or any port in Alaska.

(e) *Shipping requirements.* The avocados must be moved either by air or ship and in a sealed container. The avocados may not be commingled in the same sealed container with articles that are intended for entry and distribution in any part of the United States other than Alaska. If the avocados arrive at either Portland, Oregon or Seattle, Washington, they may be transloaded only under the following conditions:

(1) *Shipments by sea.* The avocados may be transloaded from one ship to another ship at the port of arrival, provided they remain in the original sealed container and that APHIS inspectors supervise the transloading. If

the avocados are stored before reloading, they must be kept in the original sealed container and must be in an area that is either locked or guarded at all times the avocados are present.

(2) *Shipments by air.* The avocados may be transloaded from one aircraft to another aircraft at the port of arrival, provided the following conditions are met:

(i) The transloading is done into sealable containers;

(ii) The transloading is carried out within the secure area of the airport—i.e., that area of the airport that is open only to personnel authorized by the airport security authorities;

(iii) The area used for any storage of the shipment is within the secure area of the airport, and is either locked or guarded at all times the avocados are present. The avocados must be kept in a sealed container while stored in the continental United States en route to Alaska; and

(iv) APHIS inspectors supervise the transloading.

(3) *Exceptions.* No transloading other than that described in paragraphs (e) (1) and (2) of this section is allowed except under extenuating circumstances (such as equipment breakdown) and when authorized and supervised by an APHIS inspector.

(f) *Limited permit.* Shipments of avocados must be accompanied by a limited permit issued by an APHIS inspector in accordance with § 318.13–4(c) of this subpart. The limited permit will be issued only if the inspector examines the shipment and determines that the shipment has been prepared in compliance with the provisions of this section.

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4327 Filed 2–24–94; 8:45 am]

BILLING CODE 4310–34–P

Agricultural Marketing Service

7 CFR Part 944

[Docket No. FV–92–058–PR]

Fruits; Import Regulations (Oranges); Proposed Reinstatement of Orange Import Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would reinstate, with minor revisions, temporarily suspended minimum grade requirements for oranges imported into the United States. These requirements were temporarily suspended to provide the United States Trade Representative (USTR) adequate time to review contemplated changes in the import requirements. This proposed rule is needed so that imported oranges meet the same minimum grade requirements as those established for oranges under the marketing order covering Texas oranges.

DATES: Comments must be received by March 14, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, or by facsimile at 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: 202–720–2431; or Belinda G. Garza, McAllen Marketing Field Office, USDA/AMS, 1313 East Hackberry, McAllen, Texas 78501; telephone: 210–682–2833.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under section 8e (7 U.S.C. Section 608e–1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act. Section 8e of the Act provides that whenever specified commodities, including oranges, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply regulations based on that area to the imported commodity. The Secretary has determined that oranges imported into the United States are in most direct competition with oranges grown in Texas regulated under Marketing Order No. 906, and has found that the minimum grade and size requirements for imported oranges should be the same as those established for oranges under Marketing Order No. 906.

The Department is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, this action should also have small entity orientation, and impact both small and large business entities in a manner comparable to rules issued under such marketing orders. There are about 20 importers of oranges who would be subject to the proposed import grade requirement. Small agricultural service firms, which include importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. A majority of these importers may be classified as small entities.

The minimum grade requirements specified in § 944.312 (7 CFR part 944) for oranges imported into the United States were in effect on a continuous basis prior to their suspension on October 24, 1991 (56 FR 55983, October 31, 1991; 57 FR 2674, January 23, 1992). These requirements were suspended to provide the USTR adequate time to review contemplated changes in the orange import requirements needed to reflect changes in the minimum grade requirements for Texas oranges in

§ 906.365 (7 CFR part 906) under Marketing Order No. 906.

This proposed rule would amend § 944.312 (7 CFR 944.312; as amended at 58 FR 69185, December 30, 1993; and corrected at 59 FR 4246, January 31, 1994) to reinstate the minimum grade requirement of U.S. No. 2 for oranges imported into the United States. The proposed minimum grade requirement for imported oranges would be the same as the current minimum grade requirement for oranges grown in Texas under Marketing Order No. 906, and would be the same as the grade requirement in effect under § 944.312 just prior to the grade requirement's suspension on October 24, 1991.

This proposed rule would also define the term "oranges", to precisely identify the fruit covered by this import regulation.

This proposed rule also would change the minimum quantity exemption under the import regulation to 400 pounds of fruit per day. The minimum quantity exemption in the suspended import regulation was ten 7/10 bushel cartons (420 pounds). This proposed change would make the quantity exempted in the import regulation comparable to the quantity exempted from handling regulations under the marketing order for oranges grown in Texas.

The minimum size requirement currently in effect under § 944.312 requiring that oranges imported into the United States be at least 2$^{6}/_{16}$ inches in diameter would remain in effect unchanged by this proposed rule.

According to the Department of Agriculture's Foreign Agricultural Service, U.S. fresh orange imports during the 1992/93 season were well below the corresponding levels in the 1991/92 season, reflecting record fresh-market domestic supplies. U.S. imports of fresh oranges during the 1992/93 season (beginning November 1) through July 1993 totaled 10.4 million pounds, down 60 percent from the same period in 1991/92. In the previous five seasons (1987/88–1991/92) fresh orange imports varied greatly. In 1990/91, the late December 1990 freeze caused extensive damage to orange crops in California, and resulted in an unusually large quantity of imports for that season. From 1987/88 through 1991/92, U.S. imports of fresh oranges ranged from a high of 137.3 million pounds in the 1990/91 season, to a low of 17.2 million pounds in 1988/89, with an average of 53.0 million pounds per season.

Fresh U.S. orange imports typically come from five countries, with Mexico being the primary source followed by Morocco, Spain, Israel, and the Dominican Republic. In the 1991/92 season, Mexico accounted for 5.8 million pounds or 17 percent of U.S. fresh orange imports. In comparison, 1990/91 Mexico imports were 56.1 million pounds or 41 percent of U.S. fresh market orange imports. From 1987/88 through 1991/92, U.S. fresh orange imports from Mexico ranged from a low of 2.2 million pounds (1988/89), to a high of 56.1 million pounds (1990/91), with a five year average of 18.0 million pounds per season.

In accordance with section 8e of the Act, the USTR has concurred with the issuance of this proposed rule.

Based on the above, the Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule reflects the Department's appraisal of the need to reinstate the suspended orange import grade requirements and make the specified changes in the orange import regulation, as hereinafter set forth, to effectuate the declared policy of the Act.

A comment period of 15 days is deemed appropriate because the orange import grade requirements need to be in place as soon as possible, since oranges are currently being imported into the United States.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is proposed to be amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 944.312 is revised to read as follows:

§ 944.312 Orange import regulation.

(a) Pursuant to section 8e (7 U.S.C. section 608e–1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and part 944—Fruits; Import Regulations, the importation into the United States of any oranges is prohibited unless such oranges grade at least U.S. No. 2, and they are at least 2 $^{6}/_{16}$ inches in diameter.

(b) The term "oranges" is defined as Citrus sinensis, Osbeck.

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Terms and tolerances pertaining to grade and size requirements, which are defined in the United States Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona) (7 CFR 51.680–714), shall be applicable herein.

(e) Any person may import up to 400 pounds a day of oranges exempt from the requirements specified in this section.

(f) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of oranges imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of oranges, is required on all such imports. The inspection and certification services will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards of Fresh Fruits, Vegetables, and Other Products (7 CFR part 51), and in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR part 944.400).

(g) Any oranges which fail to meet the import requirements, and are not being imported for purposes of consumption by charitable institutions, distribution by relief agencies, or processing into products; prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such oranges borne by the importer.

(h) The grade, size, quality, and maturity requirements of this section shall not be applicable to oranges imported for consumption by charitable institutions, distribution by relief agencies, or processing into products, but shall be subject to the safeguard provisions contained in § 944.350.

(i) The Secretary has determined that oranges imported into the United States are in most direct competition with oranges grown in Texas regulated under Marketing Order No. 906.

Dated: February 18, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–4235 Filed 2–24–94; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 95

[Docket No. 89–174–1]

Importation of Fetal Bovine Serum

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to remove the prohibition on the importation into the United States of fetal bovine serum from countries in which foot-and-mouth disease or rinderpest exists, and to establish conditions under which fetal bovine serum from those countries can be imported without presenting a significant risk of introducing disease into this country. We believe this action would provide additional sources of fetal bovine serum for use in this country without presenting a significant disease risk.

DATES: Consideration will be given only to comments received on or before April 26, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89–174–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Gray, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 95 govern importation into the United States of certain animal byproducts, including blood serum and other blood products. Blood serum is that part of blood that is left after the blood cells are removed.

Fetal bovine serum (FBS) is that part of the blood from bovine fetuses that is left after the blood cells are removed. It is used in tissue culture media, to produce various pharmaceuticals and biological products, such as vaccines, and cannot be derived synthetically.

Research laboratories and biologics manufacturers need a reliable, affordable, safe, and continuous supply of pathogen-free FBS. At times, the supply of domestically produced FBS is inadequate for the needs of the United States. Although FBS is available from outside the United States, many countries where FBS is available are countries in which foot-and-mouth disease (FMD), rinderpest, or bovine spongiform encephalopathy (BSE) exists. To guard against the introduction of these diseases into the United States, FBS is prohibited importation from countries where these diseases exist.

The prohibition on the importation of FBS from countries where BSE exists is set forth in 9 CFR 95.4. The prohibition on the importation of FBS from countries where FMD or rinderpest exists is set forth in 9 CFR part 94, which regulates, among other things, the importation into the United States of certain animal products to prevent the introduction into the United States of certain diseases. Section 94.2 prohibits, among other things, the importation of fresh, chilled, or frozen products, derived from ruminants, from countries in which FMD or rinderpest exists. Under this provision, the importation of FBS from countries in which either of these diseases exists is prohibited.

Foot-and-mouth disease and rinderpest virus in FBS is destroyed by gamma radiation. However, we do not know of any method of treating FBS that destroys the BSE agent and retains a usable product. We, therefore, propose to amend the regulations by adding a new § 95.17 to allow FBS to be imported under certain conditions, including treatment by irradiation in the United States, from countries in which FMD or rinderpest exists but in which BSE does not exist.

Under this proposal, preparing FBS for export from such countries would involve three steps. First, blood would be collected from bovine fetuses at a certified slaughtering plant, as explained below. Then, FBS would be derived from the blood through removal of the blood cells. Finally, the FBS would be processed by filtering, also as explained below. Each of these steps would be required to take place in the country from which the FBS is collected and exported. This helps ensure that the blood and FBS are not diverted to a country in which BSE exists and are not commingled with blood or FBS containing the BSE agent.

Under § 95.17(b) of this proposal, FBS could be imported from a country in which FMD or rinderpest exists (as listed in current § 94.1), but in which BSE does not exist (countries in which BSE exists are listed in current § 94.18), provided, among other things, that the blood from which the FBS is derived is collected at a slaughter plant that is certified by the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture as eligible to export meat products into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the regulations in 9 CFR 327.2. To attain the eligibility described above, the facility may not commingle meat products from the country in which it is located with meat products of other countries. This would help ensure that the blood collected at the establishment is not commingled with blood from a country in which BSE exists. The strict standards for sanitation and inspection required of such establishments, would further help guarantee that FBS derived from blood collected there is free of BSE.

We are proposing to require in § 95.17(b)(1) of this proposal that the FBS be derived from blood in the same country in which the blood is collected. As set forth in proposed § 95.17(b)(3)(ii), the blood would also have to be certified as having been collected from fetuses: (1) Whose dams have passed *ante mortem* and *post mortem* food safety inspections, conducted by a salaried veterinarian employed by the national government of the country of origin in which the cattle were slaughtered; and (2) whose dams did not originate from and had never transited a country in which BSE exists. The first requirement would help ensure that the FBS is free of diseases that might pose a health risk to livestock in the United States. The second requirement would provide added assurance that the FBS does not come from a fetus whose dam is affected with BSE. Because of the lengthy incubation period for BSE, in many cases 5 years or more, we believe it is necessary to require that the dam never have been in a country in which BSE exists.

Each slaughter plant that is certified by FSIS in a foreign country has an FSIS-issued establishment number. We are proposing to require that this number be included on the certification regarding the blood collected, discussed above. We are also proposing that this certification accompany the blood to the facility where it is processed to produce FBS, and then accompany the FBS to the United States. We believe these requirements are necessary to facilitate the traceback of FBS in cases where its origin may be in question, and to ensure that the blood from which it was processed was collected at an FSIS-certified establishment.

Proposed § 95.17(b)(3)(iii) would require that, after collection, the blood be shipped in leak-proof containers to a processing facility in the country in which the blood was collected. We are proposing that § 95.17(b)(4) of this proposal require that pre-importation processing include filtering the FBS through a 0.45 micron or smaller filter. Filtering helps to break up large particles in the serum, making later irradiation to kill the FMD and rinderpest viruses more even and, therefore, effective. We are further proposing in proposed § 95.17(b)(5) to prohibit the commingling of FBS with serum other than FBS collected at certified slaughtering establishments in the country in which the processing facility is located. Serum other than FBS, even that from a newborn calf, poses a significantly greater risk of containing disease agents at high levels, for which irradiation would be less effective.

Paragraphs 95.17(b) (6) and (7), as proposed, would require the importer of the FBS to obtain an import permit from the Animal and Plant Health Inspection Service (APHIS), and would require that the FBS be shipped to the United States in leak-proof containers from the country in which it was processed. Section 95.17(b)(7) would require that each container be identified by lot number. In § 95.1, we would define *lot* to mean FBS that is processed by filtering in the same production run and under the same conditions, and that is given an identification number at the time it is processed.

Upon arrival at the port of entry in the United States, the shipment of FBS would have to be inspected by an APHIS inspector, to confirm its identity, origin, and eligibility for importation into the United States. The shipment would then have to be placed under an official United States Department of Agriculture seal indicating agency-approved inspection, and be moved from the port of entry to an APHIS-approved irradiation facility [1] to be irradiated.

Under § 95.17(c) of this proposal, an irradiation facility would be approved by APHIS after: (1) An APHIS inspector has inspected the facility and has determined that the irradiation facility has storage, sterilization, and recordkeeping capabilities adequate to comply with the regulations; and (2) the owner or operator of the irradiation facility has entered into a compliance agreement with APHIS. By entering into a compliance agreement, the owner or operator would notify APHIS of his or her intent to comply with the regulations.

As set forth in proposed § 95.17(c)(2), the compliance agreement would require the owner or operator of the irradiation facility to notify APHIS, no later than the next business day after arrival of the imported FBS, of its arrival, origin, quantity, and scheduled date of irradiation. This would enable APHIS to confirm that the FBS had not been diverted after inspection at the port of importation. The owner or operator would also be required to store FBS that has not been irradiated in an area that is separate from irradiated FBS, in order to avoid commingling of treated and untreated material.

In addition, as set forth in proposed § 95.17(c)(2), the owner or operator would be required: (1) To use a dosimeter to confirm completion and dose of treatment; (2) to release the product to the importer only after review of the dosimeter to confirm that the serum received the required dosage; (3) to maintain records of irradiated FBS for at least 2 years and make them available to APHIS inspectors upon request during normal business hours; and (4) to allow APHIS inspectors to make unannounced inspections of the facility. These requirements would enable APHIS to confirm that FBS treated at the facility has received a dosage of radiation sufficient to inactivate any FMD or rinderpest virus that might have been present.

Under § 95.17(d) of our proposal, approval of an irradiation facility, and the compliance agreement required for approval, would be effective for one year. To renew approval, irradiation facilities would have to renew the compliance agreement, and undergo reinspection, on an annual basis. Section 95.17(e) of the proposed regulations includes criteria for denial or withdrawal of approval of a facility and for the cancellation of a compliance agreement, and procedures by which an owner or operator could appeal such a denial, withdrawal, or cancellation.

Under § 95.17(b)(9) of our proposal, the FBS would have to be irradiated with a minimum of 2.2 megarads of gamma radiation at dry ice temperature. Research has determined that 2.2 megarads of gamma radiation at dry ice temperature is adequate to inactivate any FMD and rinderpest virus present.[2] The FBS could not be released until the irradiation process was completed.

Section 95.17(b)(10) of this proposal would require that, upon completion of the irradiation, a certificate of treatment for each lot of FBS be issued to the importer by the irradiation facility. The certificate would have to include the following information: The USDA import permit number; the country of origin of the FBS; the lot number of the FBS; the quantity of irradiated FBS in the consignment; and the date the FBS was irradiated. Importers, as well as irradiation facilities, would be required to keep FBS treatment certificates for 2 years, and would be required to make them available during normal business hours to APHIS inspectors upon request. The information on these documents would prove valuable in the event of a disease outbreak to confirm that imported FBS was treated as required by the regulations.

Miscellaneous

We are proposing to revise the definition of *inspector* in § 95.1. Currently, *inspector* is defined as an inspector of Veterinary Services. However, Veterinary Services is just one unit of APHIS responsible for conducting inspections under the regulations. We are, therefore, proposing to define *inspector* as an APHIS inspector. We are also proposing to add a definition of *fetal bovine serum*, to read "that part of the blood from bovine fetuses that remains after the blood cells are removed."

We are also proposing to redesignate footnote numbers in part 95 to conform with **Federal Register** style guidelines, and are removing a duplicative footnote. We are also proposing to make a nonsubstantive change to the definition of *Animal and Plant Health Inspection Service*.

Addition of Regulatory Authority

Under this proposed rule, §§ 136 and 136a of title 21 of the United States Code (21 U.S.C. 136 and 136a) are being added to the authority citation for part 95. Sections 136 and 136a concern additional inspection services and the collection of fees for inspection services.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory

[1] The names and addresses of approved irradiation facilities may be obtained from, and requests for approval may be made to, the Administrator, c/o the Import-Export Products Staff, VS, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[2] Literature regarding this research can be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

Flexibility Analysis regarding the impact of this proposed rule on small entities. This proposed action may have a significant economic impact on a substantial number of small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential impacts. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

In accordance with 21 U.S.C. 111, the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction or dissemination of any contagious, infectious, or communicable disease of animals from a foreign country into the United States. Under specified conditions, this proposed rule would allow the importation of FBS from countries in which FMD or rinderpest exists, but in which BSE does not exist. We believe that FBS can be imported from such countries under specified conditions without presenting a significant disease risk.

The United States currently imports FBS from countries in which FMD or rinderpest does not exist. Although official statistics are not maintained on these imports, available estimates suggest that current imports range from 75,000 to 130,000 liters annually. Estimates regarding the additional quantity of FBS likely to be imported as a result of this proposed rule are unavailable.

Under this proposed rule, FBS imported from countries in which FMD and rinderpest exist would be subject to irradiation upon import into the United States. Current costs for irradiation run approximately $12.50 per liter. These costs are based on irradiation facilities working at full capacity. Costs per liter could be higher if the irradiation were carried out at facilities operating at less than full capacity.

The cost of the APHIS inspections of irradiation facilities that would be required under this proposed rule would be subject to user fees paid by the facilities. We expect that these costs would be passed on to importers through fees charged for irradiation. However, at present, estimates of how many facilities would request approval to irradiate FBS from countries in which FMD or rinderpest exists are unavailable.

Official U.S. production data for FBS are unavailable; however, available estimates suggest that production ranges from 200,000 to 250,000 liters annually. Fetal bovine serum is used in the United States for research purposes, in the production of a variety of pharmaceuticals and biological products, such as vaccines. The cost of FBS in the United States ranges from $200 to $500 per liter.

In general, increases in imports of FBS would tend to lower U.S. prices for the serum. Users of FBS such as research laboratories and vaccine producers would benefit from these lower prices. Increased revenue might accrue to FBS producers/importers if the percentage increase in quantity sold exceeded the percentage decrease in price. Without information on the sensitivity of demand on price (elasticity), it is not possible to project actual changes in price.

In 1987, the last year for which U.S. Department of Commerce census information was available, 241 establishments in the United States produced biological products such as bacterial and viral vaccines, toxoids, and analogous products, as well as serums, plasmas, and other blood derivatives for human and veterinary use. Establishments using FBS would be among these establishments. Of these 241 establishments, 32 percent employ less than 10 persons, 43 percent employ 10 to 49 persons, 13 percent employ 50 to 99 persons, 10 percent employ 100 to 499 persons, and 2 percent employ over 500 persons.

A total of 732 establishments produced pharmaceutical preparations for both human and veterinary use in 1987. Establishments using FBS were among these 732 firms. Of these 732 establishments, 36 percent employed less than 10 persons, 30 percent employed 10 to 49 persons, 9 percent employed 50 to 99 persons, 17 percent employed 100 to 499 persons, and 8 percent employed over 500 persons.

This proposed rule contains paperwork and recordkeeping requirements. Under this proposed rule, importers of FBS would be required to apply for and receive an import permit from APHIS. Irradiation facilities that irradiate FBS imported under this proposed rule would be required to certify to the importer that the required treatment was carried out. Both the irradiation facilities and the importers of the FBS would be required to retain the records of treatment for 2 years. A salaried veterinarian in the country from which the FBS is imported would be required to certify that the blood collected came from fetuses whose dams had passed *ante mortem and post mortem* inspections, and whose dams were not from, and had never transited, a country where BSE exists.

The alternatives to this proposed rule would be to take no action or to allow the importation of FBS from countries in which FMD or rinderpest exists under conditions other than those specified in this proposal. We do not consider taking no action a reasonable alternative, because we believe it would unnecessarily limit the supply of FBS available in this country. We also do not consider importation under conditions other than those proposed a viable option, because we believe the proposed conditions are necessary to ensure that FBS imported into this country does not pose the risk of introducing FMD, rinderpest, or BSE.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

Accordingly, 9 CFR part 95 would be amended as follows:

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

1. The authority citation for part 95 would be revised to read as follows:

Authority: 21 U.S.C. 111, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 95.1, the definitions of *Animal and Plant Health Inspection Service* and *inspector* would be revised, and definitions of *fetal bovine serum* and *lot* would be added, in alphabetical order, to read as follows:

§ 95.1 Definitions.

* * * * *

Animal and Plant Health Inspection Service (APHIS) means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

* * * * *

Fetal bovine serum means that part of the blood from bovine fetuses that remains after the blood cells are removed.

* * * * *

Inspector means an APHIS inspector.

Lot means fetal bovine serum that is processed by filtering in the same production run and under the same conditions, and that is given an identification number at the time it is processed.

* * * * *

§ 95.4 [Amended]

3. In § 95.4, paragraph (d)(1), footnote 2 would be removed and its reference in the regulatory text would be changed to footnote 1.

§§ 95.5, 95.7, 95.9, 95.26, 95.28 [Amended]

4. In part 95, footnote numbers and their references in the text would be redesignated as follows:

a. In § 95.5, paragraph (c), footnote 1 would be redesignated as footnote 2;

b. In § 95.7, paragraph (c), footnote 1 would be redesignated as footnote 3;

c. In § 95.9, paragraph (c), footnote 1 would be redesignated as footnote 4; and

d. In § 95.26, paragraph (c)(3), footnote 2 would be redesignated as footnote 7.

§§ 95.17 through 95.28 [Redesignated as §§ 95.18–95.29]

5. Sections 95.17 through 95.28 would be redesignated §§ 95.18 through 95.29, respectively.

6. A new § 95.17 would be added to read as follows:

§ 95.17 Fetal bovine serum.

(a) Fetal bovine serum (FBS) from countries where bovine spongiform encephalopathy exists, as listed in § 94.18 of this chapter, may not be imported into the United States.

(b) FBS from countries where foot-and-mouth disease or rinderpest exists, as listed in § 94.1 of this chapter, may be imported into the United States only if the following conditions are met:

(1) The FBS is derived from blood in the same country in which the blood is collected;

(2) The country in which the FBS is derived from the blood is free of bovine spongiform encephalopathy (BSE);

(3) The FBS is derived from blood that was:

(i) Collected at a slaughter plant certified by the Food Safety and Inspection Service of the United States Department of Agriculture as eligible to export meat products into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the regulations in 9 CFR 327.2;

(ii) Certified as having been collected from fetuses whose dams were determined through *ante mortem* and *post mortem* inspections to be eligible to be used for food, and whose dams did not originate from and never transited a country where BSE exists. The certification and inspections must be carried out by a salaried veterinarian employed by the national government of the country in which the dams were slaughtered. The certification must include the slaughter plant's FSIS-issued establishment number; and

(iii) Shipped in leak-proof containers, accompanied by the certification issued at the slaughter plant, to a facility within the country where it was collected, for pre-importation processing;

(4) The FBS is processed by filtering it through a 0.45 micron or smaller filter;

(5) The FBS is not commingled with serum other than FBS from slaughter plants that are in the same country as the processing plant and that are certified as described in paragraph (b)(3)(i) of this section;

(6) The importer of the FBS obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors under part 122 of this chapter by filing a permit application on VS form 16–3.[5] The permit application must include the name and complete street address of the irradiation facility at which the FBS will be irradiated in the United States;

(7) The FBS is shipped from the country in which it was processed to the United States in leak-proof containers that are each identified by lot number, and that are accompanied by the certification, or a copy of the certification, issued at the slaughter plant in accordance with paragraph (b)(3)(ii) of this section;

(8) Upon arrival at the United States port of entry, the FBS is inspected by an inspector, placed under an official Department seal, and moved from the port of entry to an irradiation facility approved in accordance with paragraph (c) of this section;[6]

(9) At the irradiation facility, the FBS is irradiated with a minimum of 2.2 megarads of gamma radiation at dry ice temperature;

(10) Following the irradiation, the irradiation facility issues to the importer a certificate of treatment for each lot of FBS that includes the following information:

(i) The USDA import permit number;

(ii) The country of origin of the FBS;

(iii) The lot number of the FBS;

(iv) The quantity of irradiated FBS in the consignment;

(v) The date the FBS was irradiated; and

(11) Importers of FBS and approved irradiation facilities must retain FBS irradiation certificates of treatment for 2 years following the treatment. These records must be made available to inspectors upon request during normal APHIS business hours.

(c) An irradiation facility will be approved by APHIS when the following conditions are met:

(1) An inspector has inspected the facility and has determined that the facility has storage, sterilization, and recordkeeping capabilities adequate to meet the conditions set forth in paragraph (c)(2) of this section; and

(2) The owner or operator of the irradiation facility has entered into a compliance agreement in which the owner or operator agrees to comply with the following requirements:

(i) To notify APHIS no later than the next business day following arrival of the FBS at the facility, of its arrival, origin, quantity, and scheduled date of irradiation;

(ii) To store all FBS untreated by radiation in an area separate from FBS that has been treated with radiation, so as to avoid commingling of containers of treated and untreated FBS;

(iii) To use a dosimeter to confirm completion and dose of treatment in accordance with paragraph (b)(9) of this section;

(iv) To release the product to the importer only after review of the dosimeter to confirm that the serum received the required dose of radiation;

(v) To maintain records of irradiated FBS for at least 2 years and make them available to inspectors during normal business hours; and

[5] See footnote 1 to § 95.4.

[6] The names and addresses of approved irradiation facilities may be obtained from, and requests for approval may be made to, the Administrator, c/o the Import-Export Products Staff, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(vi) To allow inspectors to make unannounced inspections of the facility.

(d) Approval of an irradiation facility, and the compliance agreement required under paragraph (c)(2) of this section, are effective for one year, unless withdrawn or canceled under paragraph (e) of this section. In order to renew approval, irradiation facilities must, on an annual basis, renew the compliance agreement and undergo reinspection.

(e) Approval of an irradiation facility may be denied or withdrawn, and any compliance agreement entered into under this section may be canceled, orally or in writing, if:

(1) An inspector determines that a facility or its owner or operator does not meet or has not complied with the requirements of this section;

(2) The operator or a person responsibly connected with the business of the irradiation facility has committed any act involving fraud, bribery, extortion, smuggling, or any other act involving a lack of integrity needed for the conduct of operations affecting the irradiation of FBS, as determined by the Administrator.

(f) For the purposes of this section, a person shall be deemed to be responsibly connected with the business of the quarantine facility if such person has an ownership, mortgage, or lease interest in the facility's physical plant, or if such person is a partner, officer, director, holder or owner of 10 per centum or more of its voting stock, or an employee in a managerial or executive capacity.

(g) If the denial, cancellation, or withdrawal is oral, such action and the reasons for the action shall be confirmed in writing as promptly as circumstances allow. Any owner or operator whose facility has been denied approval, whose facility's approval has been withdrawn, or whose compliance agreement has been canceled, may appeal the decision, in writing, within 10 days after receiving written notification of the denial, withdrawal, or cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the approval was wrongfully denied or withdrawn, or that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve a conflict as to any material fact. Rules of practice concerning the hearing will be adopted by the Administrator.

Done in Washington, DC, this 18th day of February, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94-4326 Filed 02-24-94; 8:45 am]

BILLING CODE 3410-34-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150-AE90

Disposal of Radioactive Material by Release into Sanitary Sewer Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is seeking information to determine whether an amendment to its regulations governing the release of radionuclides from licensed nuclear facilities to sanitary sewer systems is needed. The potential rulemaking would revise the approach to limiting the release of radioactive materials into sanitary sewer systems by licensed nuclear facilities based on current sewer treatment technologies. This advance notice of proposed rulemaking is being issued to invite comments, information, and recommendations from interested parties on the issues that have been identified as candidates for consideration as part of this rulemaking.

DATES: The comment period expires May 26, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Examine copies of comments received at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Copies of NUREG/CR-5814, which supports this advance notice, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying, for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. George E. Powers, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3747.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission regulates the release of radioactive material by licensees into sanitary sewer systems under 10 CFR part 20. The basis for the NRC's sewer release requirements was established over 35 years ago. The NRC and Agreement States have become aware of instances where radioactive material has been detected in sewage treatment systems. Examination of several of these cases led the Commission to modify the requirements for disposal of radioactive materials into sanitary sewers as part of the revised standards for protection against radiation added to 10 CFR part 20 (56 FR 23360; May 21, 1991). In particular, the Commission removed the provision (except for the case of biologically dispersible materials) which allowed the disposal of dispersible materials into sewers because it appeared that dispersible, but insoluble materials, were generally implicated in the sewer sludge contamination cases. In addition, the concentrations allowed for various radionuclides released to sewers were reduced by a factor of 10, as part of an overall reduction in effluent release limits. The concentrations listed in Table 3 of appendix B to 10 CFR part 20 were calculated on the basis of a 5 mSv (500 mrem) dose via ingestion of material at the discharge point from the licensee. The concentrations listed in Table 3 were considered reasonable since it is unlikely that any individual would actually consume water at the point of discharge and since dilution from additional contributions within the sanitary sewer would likely reduce levels to well below the 1 mSv (100 mrem) annual dose limit for members of the public. The provisions permitting the release of soluble material and the total quantities of material which could be released in any one year were retained in the revision to 10 CFR part 20.

These provisions have been effective since June 1991. However, licensees have until January 1, 1994, to comply with the requirements. In promulgating

the revised standards for protection against radiation, the NRC acknowledged that additional information was necessary regarding potential pathways of exposure and radiation doses that could result from releases into sanitary sewers, particularly in light of new sewerage treatment systems that further concentrate solids and are used by large municipalities. The NRC is publishing this advance notice to obtain public comment on a number of issues associated with the release of radioactive material to sewer systems. This information will be used in evaluating what additional changes to the requirements in 10 CFR part 20 may be necessary. This information will also be used in assessing the impacts of the various options that may be available for imposing any necessary additional requirements.

Discussion

There are approximately 15,000 sewer treatment plants (STPs) in the United States and 23,000 specifically licensed users of radioactive materials. It is not uncommon for several licensed radioactive materials users to discharge radioactive waste materials into the same sewerage system. Sewage treatment plants (STP) vary in size (capacity) from less than 1 million gallons per day (gpd) to over 1 billion gpd. A capacity of 1 million gpd would serve about 5000 people and a few small commercial users. A 1 billion gpd facility would accommodate a population of about 5 million people and a substantial industrial base. The sewage treatment process, the size of the sewage treatment facility, and the amount, as well as the physical and chemical form, of the radioactive materials released to the sewer system can have a significant effect on the fate of the radioactive materials in the process and the final concentrations of materials in the sewer sludge or ash.

A number of incidents of radioactive material contamination and reconcentration have occurred. A description of some of these cases is included at the end of this notice. It should be noted that each of these cases occurred prior to implementation of the revised part 20 limits for releases of radioactive material to sewer systems.

In 1989, the NRC contracted with Battelle, Pacific Northwest Laboratories (PNL), to study situations where radioactivity has been reported in sewer systems or sewer treatment sludge. The results of the PNL study were published in May 1992 as NUREG/CR-5814, "*Evaluation of Exposure Pathways to Man from Disposal of Radioactive Materials Into Sanitary Sewer Systems.*" NUREG/CR-5814 includes information on sewage treatment and disposal practices, and exposure pathways and scenario analysis, based on case studies of situations where radioactive contamination has been reported in sewer systems or in sewer treatment sludges.

The PNL study performed theoretical modeling of most types of licensee radioactive discharges, except for excreta from individuals undergoing medical diagnostic or therapeutic administrations of radioactive material, which are exempt from regulation under § 20.2003. Modeling scenarios estimated the exposure to individuals at the sewer treatment facility and as a result of various uses of sewage sludges resulting from treatment. The results of the study predicted doses of 0.2 to 93 mrem/yr total effective dose equivalent (TEDE). The assumptions used in the study were that all material was released at the part 20 limit and subsequently reconcentrated. Thus, the doses calculated represent an upper bound of possible doses to actual individuals.

Request for Information and Comment

The Commission requests comments and information on a number of issues related to requirements for disposal of radioactive material into sanitary sewers. This request for comments and information is in the context of evaluating the options which may be available to the Commission to provide additional or alternative means of regulatory control over releases into sanitary sewers. The comments and information which will be particularly useful are those related to the impacts of various alternatives for each issue, including impacts on various types of licensees such as biomedical and university research licensees.

(1) Form of the Material for Disposal

The standards for protection against radiation in 10 CFR part 20 permit the disposal of materials into the sanitary sewer if they are soluble or readily dispersible biological materials. Formerly, the release of dispersible non-biological material was permitted. At the time of publication of the 1986 proposed rule (51 FR 1092; January 9, 1986) for the revised standards for protection against radiation, the Commission had proposed that only soluble materials be permitted for disposal into sanitary sewers. The Commission received significant comment at that time regarding the practice of research institutions to use sewer disposal as the preferred alternative for disposal of tissue samples over incineration. As a result, the May 21, 1991, final rule allows readily dispersible biological material to be released but prohibits the release of any non-biological insoluble material.

The Commission recognizes that new technologies for sewer treatment are currently under development, such as the emerging mesocosm-based treatments which use bioprocessors to neutralize sludge. These bioprocessors can be selected with unique abilities to selectively reconcentrate specific heavy metals and organics. In the consideration of new requirements, the Commission invites comments on to what extent and how the regulations should take into account the technologies for processing sewage including technologies such as bioprocessing or ion-exchange.

Coincident with publication of this advance notice, the Commission has initiated contract support to analyze typical water treatment processes, which includes determining how the solubility of materials in influent to a treatment plant may be changed in a way that affects the potential dose to members of the public. One possible outcome of this analysis could result in modified restrictions regarding the forms of materials suitable for disposal. Comments on the potential impacts on licensee's operations associated with any additional restrictions regarding the forms of materials suitable for dispersal are solicited.

(2) Total Quantity of Material

In the May 21, 1991, final rule, the Commission did not change the total quantity of radioactive materials which could be released into sanitary sewers. In brief, the limits are 185 GBq (5 Ci) of ^{3}H, 37 GBq (1 Ci) of ^{14}C, and 37 GBq (1 Ci) of all other radioactive materials combined to be released into a sanitary sewer by a licensed nuclear facility in a year provided the licensee complies with the other requirements of 10 CFR 20.2003. The use of a total quantity limit has been a long-standing requirement and was originally included to address concerns regarding the possibility for reconcentration. The Commission solicits comments regarding the acceptability of this approach, and whether a total quantity to be released should be specified or otherwise limited. As an alternative, the Commission solicits comments on an approach which might limit the total quantity of each radionuclide, such as some multiple of the annual limit of intake values or the related exempt quantities published in 10 CFR part 30. This alternative approach could have the advantage of specifying a total

quantity limit, concentration and form requirement based upon the biokinetics and health risk for each radionuclide. In particular, the Commission solicits comments on the potential impacts on licensee's operations associated with further restrictions on the total quantity of radioactive material which could be released during a year.

The Commission also invites comments on whether the total quantity of radionuclides that may be released to a sanitary sewer by a licensed nuclear facility should take into consideration the capacity and treatment methods used by the water treatment plant that serves the licensee, and whether consideration should be given to the fact that many licensed facilities may discharge into the same sewer treatment plant. In this regard, the Commission is interested in comments on the practicality of these approaches.

The NRC has also received a petition for rulemaking submitted by the Northeast Ohio Regional Sewer District concerning the disposal of radioactive material into sanitary sewerage (PRM–20–22). A notice of receipt and request for comment on the petition was published in the **Federal Register** on October 20, 1993 (58 FR 54071). The petitioner requests that the NRC amend its regulations to require that all licensees provide at least 24 hours advance notice to the appropriate sewage treatment plant before releasing radioactive material to the sanitary sewage system. The petitioner also requests that the NRC exempt materials that enter the sanitary waste stream from the requirements regarding Commission approval for incineration under the NRC's current regulations. Comments on the issues raised in this petition will be considered in any possible revision to NRC regulations.

(3) Type of Limits

The present method of limiting releases into sanitary sewers is to specify annual total quantity and concentration values of radioactive materials. Table 3, Appendix B, of revised 10 CFR part 20 lists the concentrations of radioactive materials which can be disposed of in sanitary sewers and is based upon a calculated dose of 5 mSv/yr (500 mrem/yr) via ingestion of the effluent as the total water intake of the individual (2 liters/day) at the point of release. These limits are based upon a model of exposure which assumes that an individual could be present at the sewer outfall of the licensee, and that the exposure pathway is the ingestion of water. The Commission invites comments on two facets related to this regulatory approach.

First, should the Commission continue an approach of limitation based upon an individual being exposed by the ingestion of water from the sewer outfall? Alternatively, should the Commission consider other locations, such as at a treatment facility, in determining the level of protection to be provided? If so, what modeling assumptions would be appropriate? Further, how would these types of approaches deal with exposure scenarios such as contamination in sewage sludges, as has been the case in contamination incidents?

Second, should the Commission consider limitation using a dose limit approach, and provide total quantity and concentration values in a Regulatory Guide to facilitate compliance with the dose limit?

(4) Exemption of Patient Excreta

The present requirements exclude from sewer release limits the contribution of patient excreta which may contain radioactive materials as a result of nuclear medicine diagnosis or treatment. In general, the radioactive materials used in these types of procedures have short half-lives and decay rapidly after their production, use and subsequent release into the sanitary sewer. Thus, doses to individuals from this source are expected to be far below the NRC's dose limit for members of the public. The Commission currently believes that the present regulation is adequate but recognizes that radionuclides used in nuclear medicine have been detected in very low concentrations on occasion at treatment facilities. Therefore, the Commission invites comments regarding the appropriateness of continuing the exemption for patient excreta.

The preliminary views expressed in this notice may change in light of comments received. In any case, there will be an opportunity later for additional public comment in connection with any proposed rule that may be developed by the Commission.

Case Studies

Case 1—Tonawanda, New York

A manufacturer of smoke detectors, which used Americium-241 (^{241}Am) foils, operated in the 1970s and early 1980s in Tonawanda, New York. When the facility was being decommissioned in 1983, ^{241}Am contamination of the sewer lines leading from the facility was detected. Similar contamination was subsequently detected in the STP sewage sludge and incinerated sludge ash residue. It is believed that the contamination occurred over a period of several years. Tests performed by the State of New York in 1984 showed levels up to 27.75 Bq/g (750 pCi/g) of ^{241}Am in ash taken from a sludge incinerator. Levels of 5.92 Bq/g (160 pCi/g) were detected in landfill samples. The levels in the sludge at the time of the investigation were up to 3.7 Bq/g (100 pCi/g). Following the termination of licensed activities in 1983, these levels decreased to less than .037 Bq/g (1 pCi/g) by 1986. Bioassays of STP workers and landfill workers detected no radioactivity over background levels in their lungs or bones.

Case 2—Grand Island, New York

Because of the ^{241}Am contamination at the Tonawanda STP, the New York Department of Health also collected sludge samples in 1984 at the Grand Island STP, which received effluent from another manufacturer that produced devices that used ^{3}H, ^{210}Po, and ^{241}Am. This manufacturing facility discharged about 0.925 MBq/yr (25mCi/yr) of ^{241}Am into the sanitary sewer that fed into the Grand Island STP. The Grand Island STP uses tertiary treatment prior to discharging effluent, with a sludge production averaging 450 ton/yr. Tertiary treatment removes material from the effluent that has not been removed through primary and secondary treatment. Tertiary treatment may include the use of microscreens, filtration through specific media such as activated charcoal, precipitation, and coagulation prior to discharging effluent. The sludge is digested and pressed to increase the solids content to about 20%, and it is subsequently buried in a landfill. The average ^{241}Am concentration in the dry sludge was about 3.7 Bq/g (100 pCi/g) dry weight when first studied. At the request of the New York State Department of Labor, the manufacturer reduced the ^{241}Am concentration in its liquid discharges after the contamination was identified. By adding filtration to the licensee's holding tank, concentrations of ^{241}Am in sludge were decreased to about 1.48 Bq/g (40 pCi/g). Using information provided by the State of New York, calculations of the annual average concentration of ^{241}Am in the wet sludge were based on the assumption that all ^{241}Am entering the plant was concentrated in the sludge. Wipe samples taken within the STP did not detect ^{241}Am above levels allowed for unrestricted use (20 dpm/100cm^2 removable alpha contamination and 100 dpm/100cm^2 total removable and fixed alpha contamination). Some of the workers used dried sludge as a soil supplement in their home gardens, and one garden showed measurable amounts of ^{241}Am. Based on the sampling data, it was concluded that there did not appear to be a radiation hazard to the STP employees or landfill employees and that no specific safety measures beyond those normally taken by employees would be required of these facilities.

Case 3—Royersford, Pennsylvania

A commercial laundry for radioactively contaminated protective clothing discharged approximately 15,000 gallons of wastewater per day to the local sanitary sewer system. The wastewater from the laundry was temporarily stored, treated to adjust the pH, and analyzed for gross alpha and gross beta activity before the contents were released to the sanitary sewer system. Inspections by the NRC in late 1985 revealed no violations by the licensee. Subsequently, an inspection of the Royersford STP revealed radiation levels up to 12 μSv/h (1.2 mR/h) above background at the secondary digester. Because of these elevated levels, the NRC evaluated the impacts of the radionuclides released to the sanitary sewer system by the laundry facility. The evaluation encompassed not only the STP, but the potential radiological impact of sludge applications to agricultural areas as well. The results indicated that the highest potential doses would be received by farmers working the fields where the sludge had been applied. However, potential doses were less than 50 μSv/yr (5 mrem/yr). Radiation levels on the outside of a tank truck, used to carry the sludge to application sites, ranged up to 3 μSv/h (0.3 mR/h), well within the range allowed for transport by the Department of Transportation.

Case 4—Oak Ridge, Tennessee

A company in Oak Ridge which specialized in decontaminating nuclear power plant materials disposed of a small amount of radioactive material by release to the city sanitary sewer system. When a new STP was put into operation by the city of Oak Ridge, contamination of the sewer lines leading from the company was discovered. In addition, radionuclides were detected in the sludge being processed at the sewage treatment facility. The contamination was found at the STP in both its primary and secondary digesters. This sludge had subsequently been applied to deforested land at a government facility, resulting in radiation levels of about 0.1 μSv/h (0.01 mR/h) (2 to 3 times background) in the area. Stricter radioactive material release guidelines were set by Tennessee's Division of Radiological Health, to limit the amount of radioactive material released to the sewer system. Additionally, the licensee was allowed to release only soluble material, because it was suspected that some of the material previously released had been insoluble.

A study was conducted by the State of Tennessee to evaluate the risk to the general public from the radionuclides released into the sanitary sewer systems at Oak Ridge and Erwin, Tennessee. The study estimated that there were four radionuclides of concern in the sludge, of which ^{137}Cs was the primary contaminant, with lesser quantities of ^{60}Co, ^{134}Cs and ^{54}Mn. It was determined that the primary risk would be through consumption of vegetables grown in a garden fertilized with sludge from the STP at an estimated dose rate of approximately 60 μSv/yr (6 mrem/yr).

Case 5—Washington, DC

The Blue Plains Wastewater Treatment Plant processes waste from the metropolitan Washington area, including a number of Federal research facilities that use a relatively broad spectrum of radionuclides. Some liquid effluents are released directly to the sanitary sewer system, while others are retained in temporary holding tanks to permit decay of short-lived isotopes before release. Inspections of two research facilities and the STP were conducted in early 1986, with no violations of Federal regulations or licenses noted. Samples were obtained at both facilities from holding tanks and effluent discharge points and at the STP for influent, liquid effluent, and sludge. Radionuclide concentrations in facility effluents were 2% or less of the limits specified for maximum daily release concentrations in Appendix B, Table I, Column 2 of the version of 10 CFR part 20 in effect at that time. Analysis of the STP samples revealed that concentrations of soluble isotopes, such as ^{137}Cs and beta-emitters in general, were on the same order of magnitude for liquid influent and effluent, and that concentrations in sludge were about 10% of those in the liquid samples. In contrast, for insoluble materials (primarily alpha-emitters), the influent concentrations were about 10 times higher than those of the liquid effluent samples.

Since the publication of the NUREG/CR–5814, additional incidents concerning the reconcentration of radioactive isotopes in sewerage sludge have been identified, and one is presented below.

Case 6—Cleveland, Ohio

During an aerial monitoring survey of an NRC licensee in the Cleveland metropolitan area, ^{60}Co contamination was identified in a STP that is part of the Northeast Ohio Regional Sewer District(NEORSD) and services a large portion of Cuyahoga County. The source of the radioactivity may have originated from a sealed source manufacturer which had previously discharged to the STP. Analysis of treated sewerage sludges samples revealed ^{60}Co concentration averages from approximately 2.96 to 14.8 Bq/g (80 to 400 pCi/g). The STP is currently proceeding to remediate the site. In October 1993, the NRC has received two Requests for Modification of a License under 10 CFR 2.206 from NEORSD. The first 2.206 Petition, notice of receipt published in the **Federal Register** on April 13, 1993 (58 FR 19282), requested modification to a license to require the licensee (1) to assume all costs resulting from the off-site release of cobalt-60 that had been deposited at a District treatment plant, and (2) to decontaminate the sewer line connecting the licensee's facility and the District's treatment plant. The second 2.206 Petition, notice of receipt published in the **Federal Register** on December 6, 1993; 58 FR 64341, requested modification to a license to require that the licensee provide adequate financial assurance to cover public liability pursuant to section 170 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2210. The NRC is taking appropriate action on the two 2.206 Petitions as separate matters.

List of Subjects in 10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

The authority citation for this document is: Sec. 161, 58 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Dated at Rockville, MD, this 18th day of February, 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 94–4294 Filed 2–24–94; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES ENRICHMENT CORPORATION

10 CFR Part 1101

Sunshine Regulations; Meetings

AGENCY: United States Enrichment Corporation.

ACTION: Proposed rule.

SUMMARY: The United States Enrichment Corporation (Corporation), a newly formed Government corporation established by the Energy Policy Act of 1992, is issuing this proposed rule pursuant to section 3 of the Government in the Sunshine Act, 5 U.S.C. 552b(g) (Sunshine Act). These implementing regulations establish procedures for conducting meetings of the Board of Directors of the Corporation in compliance with the Sunshine Act. In conjunction with this proposed rule, the Corporation has consulted with the Office of the Chairman of the Administrative Conference of the United States, and is soliciting comments from interested parties which it will review and, where appropriate, reflect in the final rule.

DATES: Comments must be submitted on or before March 25, 1994.

ADDRESSES: Comments may be mailed to the Office of General Counsel, United States Enrichment Corporation, Two Democracy Center, 6903 Rockledge Drive, Bethesda, Maryland 20817.

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, General Counsel, (301) 564–3200.

SUPPLEMENTARY INFORMATION:

Background

The United States Enrichment Corporation, an agency and instrumentality of the United States, was established by the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2923, as a wholly-owned Government corporation. The Corporation has undertaken the uranium enrichment enterprise formerly operated by the Department of Energy. Among other things, the Corporation was established as the Government's exclusive agent for the marketing and sale of enriched uranium and uranium enrichment and related services. Pursuant to the Energy Policy Act, the powers of the Corporation are vested in a five-member Board of Directors, the members of which are to be appointed by the President by and with the advice and consent of the Senate.

In connection with its legitimate activities, the Board of Directors of the Corporation may hold meetings for the purpose of conducting or disposing of official business of the Corporation. Pursuant to the Energy Policy Act, the Board of Directors of the Corporation shall meet not less than quarterly. The Corporation is issuing these proposed regulations pursuant to section 3 of the Sunshine Act to ensure compliance with its provisions.

In general, the Sunshine Act provides safeguards designed to provide public access to meetings of the Corporation's Board of Directors, while preserving the Corporation's ability to effectively and efficiently conduct its business. Specifically, the Sunshine Act requires the Corporation to make meetings of a quorum of its Board of Directors open to public observation, except as provided for in the Act.

The Corporation, which assumed responsibility for the uranium enrichment enterprise on July 1, 1993, has been operating for less than eight months. It is anticipated that the five individuals nominated for membership on the Corporation's Board of Directors will be confirmed by the Senate and appointed by the President shortly. Prior to the promulgation of the final rule implementing the Sunshine Act, the Corporation will regard this proposed rule as a Corporate policy, and will follow its provisions accordingly.

Proposed Rule

As a whole, these regulations provide the procedures for providing public notice of meetings of the Corporation's Board of Directors, holding open meetings and closing meetings in accordance with the Sunshine Act. Section 1101.3 establishes standards for public observation of the meetings of the Corporation's Board of Directors. Section 1101.4 establishes procedures by which the Corporation will provide notice to the public of meetings of its Board of Directors. Section 1101.5 sets out the procedures for closing such meetings, while § 1101.6 establishes the criteria for closing meetings. Finally, § 1101.7 establishes procedures for the maintenance of transcripts of closed meetings.

Paperwork Reduction Act

The Corporation certifies that this proposed rule does not require additional reporting under the criteria of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Executive Order 12291

This proposed rule is not a "major rule" within the meaning of E.O. 12291 because it: (1) Does not have an annual effect on the economy of $100 million or more; (2) does not result in a major increase in the cost of financial institution operations or governmental supervision; and (3) does not have a significant adverse effect on competition (foreign or domestic), employment, investment productivity or innovation within the meaning of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Pursuant to section 605(b), the Corporation certifies that the proposed regulations, and any final regulations that may be adopted following comment on the proposed regulations, are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This proposed rule implements the Sunshine Act, which is concerned with public access to meetings of the Corporation's Board of Directors. By its terms, the Sunshine Act does not address private business or corporate entities.

Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 10 CFR Part 1101

Administrative practice procedure, Public Meetings, Records, Sunshine Act.

Issued in Washington, DC, February 18, 1994.

William H. Timbers, Jr.,

Transition Manager.

For the reasons set out in the preamble, it is proposed to establish new chapter XI in title 10 of the Code of Federal Regulations, consisting of part 1101 to read as follows:

CHAPTER XI—UNITED STATES ENRICHMENT CORPORATION

PART 1101—SUNSHINE ACT REGULATIONS

Sec.

1101.1 Purpose and scope.
1101.2 Definitions.
1101.3 Open meetings.
1101.4 Notice of Meetings.
1101.5 Procedure for closing meetings.
1101.6 Criteria for closing meetings.
1101.7 Transcripts of closed meetings.
1101.8 Report to Congress.

Authority: 5 U.S.C. 552b.

§ 1101.1 Purpose and scope.

(a) The provisions of this part are intended to implement the requirements of section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552b for the United States Enrichment Corporation ("Corporation").

(b) Nothing in this part expands or limits the present rights of any person under the Freedom of Information Act (5 U.S.C. 552), except that the exemptions set forth in § 1101.6 shall govern in the case of any request made pursuant to the Freedom of Information Act to copy or inspect the transcripts, recordings, or minutes described in § 1101.7.

(c) Nothing in this part authorizes the Corporation to withhold from any individual any record, including transcripts, recordings, or minutes required by this part, which is otherwise accessible to such individual under the Privacy Act (5 U.S.C. 552a).

(d) The requirements of chapter 33 of title 44 of the United States Code shall not apply to the transcripts, recordings, and minutes described in § 1101.7.

§ 1101.2 Definitions.

For the purposes of this part:

Agency means any agency, as defined in 5 U.S.C. 552(e), headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency.

Board means the Board of Directors of the Corporation.

Corporation means the United States Enrichment Corporation.

Meeting means the deliberations of at least a quorum of the Corporation Board where such deliberations determine or result in the joint conduct or disposition of official Corporation business. A *meeting* may be conducted under this part through telephone or similar communications equipment by means of which all participants can hear each other. The term *meeting* does not include deliberations required or permitted by § 1101.4 or § 1101.5 and does not include the process of notation voting by circulated memorandum for the purpose of expediting consideration of routine matters.

Member means an individual who is a member of the Corporation Board.

Quorum means the number of members authorized to conduct Corporation business pursuant to the Corporation's bylaws.

§ 1101.3 Open meetings.

Members shall not jointly conduct or dispose of Corporation business other than in accordance with this part. Except as provided in § 1101.6, every portion of every meeting of the Corporation shall be open to public observation, and the Corporation shall provide suitable facilities therefore. The public is invited to observe and listen to all meetings of the Corporation, or portions thereof, open to public observation, but may not participate in the deliberations at such meetings or record any portion of such meetings by means of electronic or other devices or cameras.

§ 1101.4 Notice of meetings.

(a) The Corporation shall make a public announcement of the time, place, and subject matter of each meeting, whether it is to be open or closed to the public, and the name and telephone number of a Corporation official who can respond to requests for information about the meeting.

(b) Such public announcement shall be made at least one week before the meeting unless a majority of the members determine by a recorded vote that the Corporation business requires that such meeting be called at an earlier date. If an earlier date is so established, the Corporation shall make such public announcement at the earliest practicable time.

(c) Following a public announcement required by paragraph (a) of this section, the time or place of the meeting may be changed only if the Corporation publicly announces the change at the earliest practicable time. The subject matter of a meeting or the determination to open or close a meeting or portion of a meeting to the public may be changed following the public announcement required by paragraph (a) of this section only if a majority of the members determine by a recorded vote that the Corporation business so requires and that no earlier announcement of the change was possible and if the Corporation publicly announces such change and the vote of each member upon such change at the earliest, practicable time.

(d) In addition to any other means which the Corporation may choose, public announcements required by this section shall be made by posting a notice in the reception area of the Corporation's headquarters at 6903 Rockledge Drive, Bethesda, Maryland 20817.

(e) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the Corporation official designated to respond to requests for information about the meeting shall be submitted for publication in the **Federal Register.**

(f) Votes taken pursuant to this section may be conducted through any means which the Corporation Board determines are appropriate, including a notation voting process.

§ 1101.5 Procedure for closing meetings.

(a) Action under § 1101.6 to close a meeting shall be taken only when a majority of the member vote to take such action. A separate vote shall be taken with respect to each meeting, a portion or portions of which are proposed to be closed to the public pursuant to § 1101.6, or with respect to any information which is proposed to be withheld pursuant to § 1101.6. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty (30) days after the initial meeting in such series. The vote of each member participating in such vote shall be recorded and no proxies shall be allowed.

(b) Notwithstanding that the members may have already voted not to close a meeting, whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraphs (e), (f), or (g) of § 1101.6, the Board, upon request of any one of its members made prior to the commencement of such portion, shall vote by recorded vote whether to close such portion of the meeting.

(c) Within one day of any vote taken pursuant to this section, the Corporation shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Corporation shall, within one day of the vote taken pursuant to this section, make publicly available a full written explanation of this action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. Information to be made public available pursuant to this paragraph (c) shall be posted in the reception area of the Corporation's headquarters.

(d) For every meeting closed pursuant to § 1101.6, there shall be a certification by the General Counsel of the Corporation stating whether, in this or her opinion, the meeting may be closed to the public and each relevant exemptive provision. A copy of such certification shall be retained by the Corporation and shall be made publicly available.

(e) Votes taken pursuant to this section may be conducted through any means which the Corporation Board determines are appropriate, including a notation voting process.

§ 1101.6 Criteria for closing meetings.

Except in a case where the Board finds that the public interest requires otherwise, the second sentence of § 1101.3(a) shall not apply to any portion of a meeting and such portion may be closed to the public, and the requirements of §§ 1101.4 and 1101.5 (a), (b), and (c) shall not apply to any information pertaining to such meeting otherwise required by this part to be disclosed to the public, where the Board properly determines that such portion or portions of its meeting or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense for foreign policy and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of the Corporation:

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld, including section 1314 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2297b-13, with reference to trade secrets and commercial and financial information, and section 148 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2168, with reference to particular information regarding the facilities leased by the Corporation from the U.S. Department of Energy;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally ensuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of an agency, except that this provision shall not apply in any instance where such an agency has already disclosed to the public the content or nature of its proposed action, or where such an agency is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(j) Specifically concern the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 1101.7 Transcripts of closed meetings.

(a) For every meeting closed pursuant to § 1101.6, the presiding officer of the meeting shall prepare a statement setting forth the time and place of the meeting, and the persons present, and such statement shall be retained by the Corporation.

(b) The Corporation shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (h) or (j) of § 1101.6, the Corporation shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All document considered in connection with any action shall be identified in such minutes.

(c) The Corporation shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two (2) years after such meeting, or until one year after the conclusion of any Corporation proceeding with respect to which the meeting or portion was held, whichever occurs later.

(d) Within a reasonable time after the adjournment of a meeting closed to the public, the Corporation shall make available to the public, at the Corporation's headquarters, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Corporation determines to contain information which may be withheld under § 1101.6. Copies of such transcript, electronic recording or minutes shall be furnished to any person at the actual cost of duplication or transcription.

§ 1101.8 Report to Congress.

The Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552b.

[FR Doc. 94–4332 Filed 2–23–94; 9:18 am]
BILLING CODE 6270–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Utah's rules pertaining to coal exploration. Utah proposed the amendment with the intent of streamlining the Utah program and making the exploration process more responsive to field needs for coal seam information.

This document sets forth the times and locations that the Utah program and proposed amendment to that program are available for public inspection, the dates and times of the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. on March 28, 1994. If requested, a public hearing on the proposed amendment will be held on March 22, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on March 14. 1994. Any disabled individual who has a need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., suite 1200, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT:

Robert H. Hagen, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated January 27, 1994, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–888). Utah submitted the proposed amendment at its own initiative to "streamline the Utah program and make the exploration process more responsive to field needs for coal seam information." The sections of the Utah Coal Mining Rules that Utah proposes to amend are: Utah Administrative Rule (Utah Admin. R.) 645–200–100, scope of rules for coal exploration; Utah Admin. R. 645–200–200, responsibilities of the Division concerning (1) notice of intention to conduct minor coal exploration and (2) major coal exploration permits; Utah Admin. R. 645–201–100, requirements for coal exploration approval; Utah Admin. R. 645–201–200, notices of intention to conduct minor coal exploration; and Utah Admin. R. 645–202–100, required documents for notice of intention to conduct minor coal exploration and major coal exploration permits.

Specifically, Utah proposes to revise its rules describing the scope of its coal exploration rules at (1) Utah Admin. R. 645–200–121 to provide a coal exploration category for exploration that is subject to 43 CFR parts 3480 through 3487 and to require that this category of exploration be conducted according to the procedures set forth in 43 CFR parts 3480 through 3487; (2) Utah Admin. R. 645–200–122 to require, for coal exploration operations that will remove 250 tons or less of coal, the Division of Oil, Gas and Mining (Division) to review the operator's notice of intention to conduct minor coal exploration under the requirements of Utah Admin. R. 645–201–200; and (3) Utah Admin. R. 645–200–123 to require, for coal exploration operations that will remove more than 250 tons of coal, the Division's approval and issuance of a major coal exploration permit under the requirements of Utah Admin. R. 645–201–300.

Utah proposes to revise its rules pertaining to the Division's responsibilities for coal exploration at (1) Utah Admin. R. 645–200–220 to provide that the Division will receive and review notices of intention to conduct minor coal exploration and enforce the terms of each notice; receive, review, and approve or disapprove applications for major coal exploration permits as well as issue, condition, suspend, revoke and enforce these permits under the Utah program; and review and respond to notices of intention to conduct minor coal exploration and initial applications for major coal exploration permits within 15 days of receipt; and (2) Utah Admin. R. 645–200–230 to provide that the Division will coordinate review of notices of intention for minor coal exploration and review, approval, or disapproval of major coal exploration permit applications with other government agencies, as appropriate.

Utah proposes to revise its rules for coal exploration plan review at (1) Utah Admin. R. 645–201–110 to provide that the Division will be responsible for coal exploration plan review on lands not subject to 43 CFR parts 3480 through 3487; (2) Utah Admin. R. 645–201–120 to provide that the review of coal exploration plans on lands subject to 43 CFR parts 3480 through 3487 will be guided by the direction provided in 43 CFR parts 3480 through 3487; and (3) Utah Admin. R. 645–201–130 to provide that the Division will coordinate as appropriate its activities in reviewing coal exploration projects with other agencies in order to reduce duplication of agency and operator effort and maximize protection of the State from the environmental effects of coal exploration activities.

Utah proposes to revise its rules for notices of intention to conduct minor coal exploration at Utah Admin. R. 645–201–210 to provide that notices of intention to conduct minor coal exploration when 250 tons or less of coal will be removed will require Division review prior to conducting exploration.

Utah proposes to revise its rules for coal exploration compliance duties and required documents at Utah Admin. R. 645–202–100 to provide that each person who conducts coal exploration that substantially disturbs the natural land surface will, while in the exploration area, have available a copy of the approved minor coal exploration notice of intention or approved major coal exploration permit for review by an authorized representative of the Division upon request.

Utah proposes editorial revisions to its rules for minor coal exploration at Utah Admin. R. 645–200–122, 645–200–220, 645–201–210 and –220, and 645–202–100 to replace "application" and "permit" as they pertain to minor coal exploration with the phrase "notice of intention to conduct," and to provide that the Division "reviews" rather than "approves and issues" these notices. Utah proposes to eliminate the distinction between coal exploration "outside an approved permit area" and "within an approved permit area" at Utah Admin. R. 645–200–100, 645–201–100, and 645–202–100. Utah proposes to delete parts of Utah Admin. R. 645–201–100 through 140, revise the language as it pertains to responsibilities for coal exploration, and recodify the remaining provisions of this section as Utah Admin. R. 645–201–100 through 130.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

1. Written Comments

Written comments should be specified, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t. on March 14, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specific date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovrnmental relations, Surface mining, Underground mining.

Dated: February 17, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 94–4280 Filed 2–24–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL12–33–6262, FRL–4841–2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Announcement of public hearing; reopening the public comment period.

SUMMARY: The United States Environmental Protection Agency (USEPA) promulgated the Chicago ozone Federal Implementation Plan (FIP) on June 29, 1990. Included in USEPA's FIP was a requirement that paper coating facilities such as Riverside Laboratories' (Riverside) Kane County, Illinois facility be subject to specific emission limits. On August 20, 1991, Riverside filed a petition for reconsideration with USEPA in which it contended, based on its economic situation that the Federal rules were not reasonably available control technology (RACT) for its facility. On December 16, 1993, USEPA published a proposed rule on this reconsideration which offered the opportunity for a public hearing. A public hearing was requested on the December 16, 1993, proposed rule. This document announces a public hearing on the proposed rule and reopens the public comment period.

DATES: The public comment period is reopened from February 25, 1994 until May 6, 1994.

A public hearing has been scheduled for Wednesday April 6, 1994, at 1:30 p.m.

ADDRESSES: Written comments on the December 16, 1993, proposed rule should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Comments should be strictly limited to the subject matter of the December 16, 1993 (58 FR 65688), proposed rule.

The location of the public hearing is Room 328 of the Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Regulation Development Branch, 18th Floor Southwest, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 11, 1994.

Phyllis A. Reed,

Acting Regional Administrator.

[FR Doc. 94–4223 Filed 2–24–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[MN–15–1–5878; FRL–4841–7]

Approval of the 1990 Base Year Carbon Monoxide Emission Inventory for Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA today proposes full approval of the 1990 base year carbon monoxide (CO) emission inventory by the State of Minnesota for the purpose of bringing about the attainment of the National Ambient Air Quality Standard (NAAQS) for CO. The inventory was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area CO State Implementation Plan (SIP) for the Duluth and Minneapolis, St. Paul areas in Minnesota.

DATES: Comments on this proposed action must be received in writing by March 28, 1994.

ADDRESSES: Written Comments should be sent to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3509.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3509, (312) 353–3849.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3509, (312) 353–3849.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Clean Air Act as amended (including 1990 Amendments) (CAA), States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAA requires moderate and serious CO nonattainment areas to submit a base year CO inventory that represents actual emissions in the CO season by November 15, 1992. Moderate and serious CO nonattainment areas are required to submit a revised inventory that represents actual emissions no later than September 30, 1995, and every three years thereafter until the area is redesignated to attainment. The base year inventory is the primary inventory from which the periodic inventories are derived. Further information on these inventories and their purpose can be found in the document "Emission Inventory Requirements for Carbon Monoxide State Implementation Plans, "U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, March 1991.

The air quality planning requirements for CO nonattainment areas are set out in section 187 of title I of the Act. The USEPA has issued a General Preamble describing USEPA's preliminary views on how USEPA intends to review SIP revisions submitted under title I of the Act, including requirements for the preparation of the 1990 base year inventory (see 57 FR 13529; April 16, 1992 and 57 FR 18070; April 28, 1992). Because USEPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale. In today's proposed rulemaking action on the Minnesota carbon monoxide base year emission inventory, USEPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, USEPA will consider any comments submitted within the comment period before taking final action on today's proposal.

Those States containing moderate carbon monoxide nonattainment areas are required under section 187(a)(1) of the Clean Air Act to submit by November 15, 1992, a comprehensive, accurate, and current inventory of actual CO season emissions from all sources (57 FR 13530, April 16, 1992). Stationary point, stationary area, on-road mobile, and non-road mobile sources of carbon monoxide (CO) are to be included in the inventory. This inventory is for calendar year 1990 and is denoted as the base year inventory. The inventory is to address actual CO emissions for the area during the peak CO season. The peak CO season should reflect the months when peak CO air quality concentrations occur. For many, but not all areas of the country, the peak CO season will be in the wintertime months. For areas where winter is the peak CO season, the 1990 base year inventory will include the winter months that begin in 1989 and extend into 1990 (e.g., December 1989 through January-February 1990). Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Emission inventories are first reviewed under the completeness criteria established under section 110(k)(1) of the CAA (56 FR 42216, August 26, 1991). According to section 110(k)(1)(C) if a submittal does not meet the completeness criteria, "the State shall be treated as not having made the submission." Under sections 179(a)(1) and 110(c)(1), a finding by USEPA that a submittal is incomplete is one of the actions that initiates the sanctions and

Federal Implementation Plan (FIP) processes. [1]

II. This Proposed Action

Section 110(k) of the Act sets out provisions governing USEPA's review of base year emission inventory submittals in order to determine approval or disapproval under section 187(a)(1) (see 57 FR 13565–13566, April 16, 1992). The USEPA is proposing to grant approval of the carbon monoxide (CO) base year emission inventory submitted to USEPA on November 9, 1992, based on the Level I, II, and III review findings. This section outlines the review procedures performed to determine if the base year emission inventory is acceptable.

Today's proposed action describes the review procedures associated with determining the acceptability of a 1990 base year emission inventory and discusses the levels of acceptance or disapproval that can result from the findings of the review process.

A. Review of a State Base Year SIP CO Inventory

The emissions inventory was submitted on November 9, 1992, from the State of Minnesota to USEPA. USEPA reviewed the inventory and is satisfied that all Agency guidance requirements have been met.

The emissions inventory contained point, area, mobile on-road and mobile off-road source carbon monoxide emissions for a typical winter day in Duluth.

TABLE 1. CARBON MONOXIDE EMISSIONS FOR THE DULUTH AREA

Emissions Source	1990 Emissions Rate (lbs/winter day)
On-road Mobile	114,718
Off-road Mobile	13,624
Point Source	4,270
Area Source	85,614
Total Emissions	218,226

Table 1 provides a summary of emissions for Duluth. Approximately 59 percent of the emissions are from mobile sources. The State used USEPA guidance in preparation of the emissions inventory. A copy of this inventory is available for review at the Region 5 office listed previously.

The emissions inventory also contained point, area, on-road, and off-road mobile source carbon monoxide emissions for a typical winter day in the Minneapolis-St. Paul area.

TABLE 2. CARBON MONOXIDE EMISSIONS FOR THE MINNEAPOLIS-ST. PAUL AREA

Emissions Source	1990 Emissions Rate (lbs/winter day)
On-road Mobile	2,790,595
Off-road Mobile	345,702
Point Source	559,898
Area Source	566,285
Total Emissions	4,262,480

Table 2 provides a summary of the emissions for the Minneapolis-St. Paul area. Approximately 73 percent of the emissions are from mobile sources. The State used USEPA guidance in preparation of the emissions inventory. A copy of this inventory is also available for review at the Region 5 office listed previously.

The Level I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the State and assesses whether the emissions were developed according to current USEPA guidance. The data quality is also evaluated.

The Level III review process is outlined here and consists of 9 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the Quality Assurance (QA) program contained in the IPP was performed and its implementation documented.
2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory. Summary emissions by categories of source type were provided and these emissions match the emission totals in the Aerometric Information Retrieval System (AIRS).
3. The point source inventory must be complete.
4. Point source emissions must have been prepared or calculated according to the current USEPA guidance.
5. The area source inventory must be complete.
6. The area source emissions must have been prepared or calculated according to the current USEPA guidance. 7. The method (e.g., Highway Performance Monitoring System (HPMS) or a network transportation planning model) used to develop VMT estimates must follow USEPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources", U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, MI and RTP, NC, December 1992. The VMT development methods were adequately described and documented in the inventory report.
8. The MOBILE model was correctly used to produce emission factors for each of the vehicle classes.
9. Non-road mobile emissions were prepared according to current USEPA guidance for all of the source categories.

The base year emission inventory will be approved if it passes Levels I, II, and III of the review process. Detailed Level I and II review procedures can be found in the following document; "Quality Review Guidelines for 1990 Base Year Emissions Inventories", Office of Air Quality Planning and Standards (OAQPS), Research Triangle Park, NC, August, 1992. Level III review procedures are specified in a memorandum from John S. Seitz, Director of OAQPS to Regional Air Division Directors entitled "Emission Inventory Issues," dated June 24, 1993. USEPA has reviewed the inventory using these criteria and proposes approval of the base year emission inventory as meeting the requirements of section 187(a)(1) of the Act.

A summary of the Level III findings is given below.

1. The IPP and the Q/A program have been approved and implemented. These were approved by a June 8, 1993, letter from William L. MacDowell, Region 5 to Lisa Thorvig, Minnesota Pollution Control Agency.
2. The documentation was adequate and was reviewed in detail.
3. The point source inventory was found to be complete.
4. The point source emissions were estimated according to USEPA guidance.
5. The area source inventory was found to be complete.
6. The area source emissions were estimated according to USEPA guidance.
7. The method used to develop vehicle miles traveled estimates was in accordance with USEPA guidance, and was documented.
8. The MOBILE model was used correctly.
9. The non-road mobile source emission estimates were correctly prepared. Most of the emissions were estimated by apportioning the USEPA nonroad mobile emissions inventory by population to the applicable counties.

B. Procedural Background

The Act requires States to observe certain procedural requirements in developing emission inventory submissions to USEPA. Section 110(a)(2) of the Act provides that each emission inventory submitted by a State must be adopted after reasonable notice and public hearing. [2] Final approval of the inventory will not occur until the State revises the inventory to address public comments. CO nonattainment areas with design values greater than 12.7 ppm must submit the entire SIP (emissions inventories, attainment demonstrations, and control strategies) by November 15, 1992, and USEPA expects the emissions inventories to have gone through the public hearing process as part of the full CO SIP. [3] CO areas with design values 12.7 and below would be required to subject the emissions inventory to the public hearing and adoption process if the area attains the CO NAAQS and subsequently develops a redesignation request and the associated maintenance plan. A public hearing would also be required for CO areas with design values 12.7 and below if the area fails to attain the NAAQS standard by December 31, 1995, and is reclassified to serious and therefore required to submit an attainment plan.

The State of Minnesota held a public hearing on October 26, 1992, and November 6, 1992, to entertain public comment on the 1990 base year emission inventory for Duluth. The State was given a de minimis deferral for the Minneapolis–St. Paul public hearing. The de minimis deferral of the public hearing requirement is provided for in a September 29, 1992, memorandum from John Calcagni, Director, Air Quality Management Division. [4] The inventory was submitted to USEPA on November 9, 1992, and November 11, 1992, as a proposed revision to the SIP.

The emission inventory was reviewed by USEPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42218 (August 28, 1991). A letter was sent to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. In today's action USEPA proposes to approve the Minnesota carbon monoxide emission inventory submittal for Duluth and the Minneapolis-St. Paul areas and invites public comment on the action.

III. Implications of This Action

The USEPA is proposing to fully approve the SIP carbon monoxide emission inventory submitted to USEPA for the Duluth and Minneapolis-St. Paul areas on November 9 and 11, 1992. The State has submitted a complete inventory containing point, area, and mobile source data, and documentation. The Duluth inventory is complete and approvable according to all criteria set out in the June 24, 1993, memorandum from John S. Seitz, Director, OAQPS, to the Regional Air Directors. The Minneapolis-St. Paul inventory is complete and approvable according to the criteria set out in the June 24, 1993, Seitz memorandum with the exception of the CAA requiring a public hearing and comment period.

USEPA granted Minnesota a deferral from the public hearing requirement. However, since the State was only given a de minimis deferral of the public hearing requirements for the Minneapolis-St. Paul emissions inventory, the final action for the area cannot be effective until the State has held the public hearing, and solicited comments and submitted these to USEPA.

As noted, additional submittals of SIP emission inventories for the nonattainment areas are due at later dates: The USEPA will determine the adequacy of any such submittal as appropriate.

IV. Request for Public Comments

The USEPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this notice, USEPA will consider any comments received by March 28, 1994.

V. Executive Order (EO) 12291

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprise, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410 (a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

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[1] Memorandum from J. David Mobley, Chief, Emission Inventory Branch, to Air Branch Chiefs, Region I-X, "Guidance on States' Failure to Submit Ozone and CO SIP Inventories," November 12, 1992.

[2] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[3] Memorandum from John Calcagni, Director, Technical Support Division, to Regional Air Division Directors, Region I-X, "Public Hearing Requirements for 1990 Base-Year Emission Inventories for Ozone and Carbon Monoxide Nonattainment Areas," September 29, 1992.

[4] Because the base year 1990 CO emissions inventory for Minneapolis does not place an emissions limitation on sources, USEPA has determined that it is appropriate to provide a "de minimis" deferral of the State public hearing requirement up to such time as a public hearing is held on a redesignation request or an attainment demonstration for the area. After it is included in a redesignation request or attainment demonstration, it could become an emissions budget for the area. The budget would limit the amount of emissions that the area could emit into the air. CO areas with design values 12.7 ppm and below would be required to subject the emissions inventory to the public hearing and adoption process if the area attains the CO NAAQS and subsequently develops a redesignation request and associated maintenance plan, or if the area fails to attain the standard by December 31, 1995, and is reclassified to serious and therefore required to submit an attainment plan.

Dated: February 4, 1994.
David A. Ullrich,
Acting Regional Administrator.
[FR Doc. 94–4224 Filed 2–24–94; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 52

[WI39–01–6079; FRL–4842–1]

Approval and Promulgation of Implementation Plan; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).
ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve a revision to Wisconsin's State Implementation Plan (SIP) for ozone. On September 22, 1993, the Wisconsin Department of Natural Resources (WDNR) submitted volatile organic compound (VOC) rules to the USEPA as a proposed revision to Wisconsin's ozone SIP. These rules replace the Chapter NR 154 (154 series) regulations currently contained in Wisconsin's federally approved ozone SIP with Chapter NR 400 (400 series) regulations which are consistent with the current Wisconsin Administrative Code. In addition to renumbering Wisconsin's VOC regulations, this revision addresses the following: the requirement of Wisconsin's March 9, 1984 SIP that the State submit major source non-control technology guideline (non-CTG) reasonably available control technology (RACT) regulations; the USEPA's SIP call of May 26, 1988; the requirement of the Clean Air Act as amended in 1990 (Act) that States correct deficient VOC RACT rules ("fix-up" requirement); and the requirement of the Act that States adopt VOC RACT rules where not previously required ("catch-up" requirement). Further, this revision redefines RACT for non-vapor conveyorized degreasers, high performance architectural coatings, and fire truck and emergency response vehicle manufacturing. This proposed revision is being parallel processed because portions of the rules submitted on September 22, 1993 have been adopted by the WDNR's Natural Resources Board, but are not as yet fully effective at the State level. The USEPA is proposing to take final action approving these rules if and when they become fully effective providing that they are submitted to the USEPA in a timely manner.
DATES: Comments on this revision and on the proposed USEPA action must be received by March 28, 1994.
ADDRESSES: Written comments should be sent to:Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and the USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.) USEPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.
FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Air Toxics and Radiation Branch (AT–18J), USEPA, Region 5, Chicago, Illinois 60604, (312) 886–1767.
SUPPLEMENTARY INFORMATION:

Background

Under section 107 of the Clean Air Act as amended in 1977 (1977 Act), the USEPA designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. For these areas, section 172(a) of the 1977 Act required that the State revise its SIP to provide for attaining the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982.[1] section 172(b) and (c) of the 1977 Act require that for stationary sources, an approvable SIP must include legally enforceable requirements reflecting the application of RACT to sources of VOC.[2]

In partial response to the requirement for VOC RACT rules, the State of Wisconsin submitted and the USEPA approved controls representing the application of RACT for certain stationary sources of VOCs covered by the first two groups of CTGs (RACT I–40 CFR 52.2570(c)(13) (January 11, 1980, 45 FR 2319) and RACT II–40 CFR 52.2570(c)(27) (June 21, 1982, 47 FR 26622)).

Part D allowed the USEPA, though, to grant extensions of up to December 31, 1987 to those States that could not demonstrate attainment of the ozone standard by December 31, 1982, if certain conditions were met by the State in revising its SIP.[3] Wisconsin requested and received an extension to December 31, 1987 for achieving the ozone NAAQS for five counties (Kenosha, Milwaukee, Ozaukee, Racine, and Waukesha). This extension was granted on May 6, 1981 (46 FR 25294) and obligated the State to develop, for sources located in the five-county nonattainment area in southeastern Wisconsin, RACT regulations addressed by the Group III CTGs (RACT III) and RACT regulations for major sources not addressed by a CTG (major non-CTG RACT). The State of Wisconsin submitted and the USEPA approved controls representing the application of RACT for stationary sources of VOCs covered by the third group of CTGs on May 10, 1985 (40 CFR 52.2570(c)(39) (50 FR 19682)) and June 28, 1985 (40 CFR 52.2570(c)(41) (50 FR 26735)).

On May 26, 1988, Valdas V. Adamkus, Regional Administrator, USEPA, Region 5, notified Governor Tommy G. Thompson pursuant to section 110(a)(2)(H) of the 1977 Act that the Wisconsin SIP was substantially inadequate to achieve the NAAQS for ozone in parts of Wisconsin. This letter to the Governor further stated that Wisconsin was required under the 1977 Act to correct the deficiencies and inconsistencies in its existing VOC regulations. A June 17, 1988 SIP call follow-up letter to Wisconsin identified the deficiencies and inconsistencies in its existing VOC stationary source RACT regulations which had been previously approved by the USEPA. This letter also noted that approvable non-CTG regulations were lacking for resin manufacturing, coating manufacturing, aerosol can filling and leather coating. The USEPA published an informational notice on September 7, 1988 (53 FR 34500) on the call for a SIP revision and on guidance documents, including the May 25, 1988 document, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (Bluebook).

The Clean Air Act Amendments of 1990 were enacted on November 15, 1990. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that pre-enactment ozone nonattainment areas that retained their designation of nonattainment and were classified as marginal or above fix their deficient RACT rules for ozone by May 15, 1991. Specifically, this section requires such areas to correct RACT as it was required under pre-amendment section 172(b) as that requirement was interpreted in pre-amendment guidance (the "fix-up" requirement).[4] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. Five counties in the Milwaukee area (Kenosha, Milwaukee, Ozaukee, Racine, and Waukesha) and the Sheboygan area retained their designation of nonattainment and were classified as severe and moderate, respectively. Therefore, these nonattainment areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

Section 182(b)(2) of the Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment 1990 amendments; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. This section requires nonattainment areas to regulate sources that previously were exempt from RACT requirements and thereby "catch up" to those nonattainment areas that became subject to those requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas. The counties of Kewaunee, Manitowoc, and Sheboygan and the Milwaukee area (including Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha) are the only areas in Wisconsin designated nonattainment and classified as moderate or above. Therefore, these are the areas in Wisconsin subject to the RACT catch-up requirements of section 182(b)(2) of the Act.

State Submittal

On September 22, 1993, Wisconsin submitted VOC rules to the USEPA as a proposed revision to the State's ozone SIP. This submittal supersedes the following rule revision submittals: October 3, 1988 (non-CTG rules for aerosol can filling, coating manufacturing, and synthetic resin manufacturing); February 5, 1987 (non-CTG rule for leather coating); February 18, 1988 (RACT for non-vapor conveyorized degreasers); June 28, 1988 (non-CTG rule for aerosol can filling); August 30, 1988 (RACT for high performance architectural coatings); November 1, 1989 (internal offsets); April 17, 1990 (rule corrections in response to the 1988 SIP call); and May 21, 1990 (RACT for fire truck and emergency response vehicle manufacturing).[5] The proposed revision has been submitted to the USEPA for parallel processing because portions of the rules have been adopted by the WDNR's Natural Resources Board, but are not as yet fully effective at the State level.

These rules replace the 154 series regulations currently contained in Wisconsin's ozone SIP with 400 series regulations which are consistent with the current Wisconsin Administrative Code. More specifically, the September 22, 1993 submission consists of Chapters NR 400, 419 to 425 (excluding NR 419.07), 439 and 484, as related to VOCs. This includes Order AM–36–92, which contains VOC rule revisions adopted by the State of Wisconsin's Natural Resources Board on July 29, 1993. In addition to renumbering Wisconsin's VOC regulations, this revision fully addresses the following: the requirement of Wisconsin's March 9, 1984 SIP that the State submit major source non-CTG RACT regulations; the USEPA's SIP call of May 26, 1988; and the RACT fix-up requirement of section 182(a)(2)(A) of the Act. Additionally, this submittal expands the geographic coverage of Wisconsin's VOC RACT rules (where this has not already been done) to Door, Kewaunee, Manitowoc, and Washington Counties and lowers the applicability cutpoint for existing major non-CTG regulations to 25 tons per year (tpy) of VOC for sources located in the Milwaukee area.[6] In doing so, these rules partially address the RACT catch-up requirement of section 182(b)(2) of the Act. The catch-up requirement will be fully addressed when the Wisconsin submits its rules for major non-CTG sources, currently expected in 1994. Further, this revision redefines RACT for non-vapor conveyorized degreasers, high performance architectural coatings, and fire truck and emergency response vehicle manufacturing.

USEPA's Analysis of the State's Submittal

The following is a summary of the major changes to Wisconsin's VOC regulations contained in the State's submittal.

I. Chapter NR 400: Air Pollution Control Definitions

This chapter contains definitions used throughout the remaining chapters.

A. "Maximum Theoretical Emissions"

The State has established the following definition: "'Maximum theoretical emissions' means the quantity of air contaminants that theoretically could be emitted by a stationary source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. In determining the maximum theoretical emissions of VOCs for a source, the design capacity or maximum production capacity shall include the use of raw materials, coatings and inks with the highest VOC content used in practice by the source." This definition is clear and consistent with USEPA RACT guidelines.

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[1] The requirements for an approvable SIP are described in a "General Preamble" for part D rulemaking published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

[2] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator of Air and Waste Management and is cited in a General Preamble-Supplement on Control Technique Guidelines (CTG), published at 44 FR 53761, 53762 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

The United States Environmental Protection Agency published CTGs in three phases (Groups I, II and III) in order to assist the States in determining RACT. The CTGs provide information on available air pollution control techniques and provide recommendations on what the USEPA considers the "presumptive norm" for RACT. All other sources which are not covered by Group I, II, or III CTGs are referred to as "non-CTG" sources. Under the 1977 Act, "non-CTG major sources" were sources that have the potential to emit more than 100 tons per year (TPY) of VOC and for which a CTG has not been published. Under the Act as amended in 1990, the definition of "major source" has been linked to the area's classification; i.e., while for marginal and moderate areas major sources continue to be defined as those with potential to emit 100 TPY, major sources in serious, severe, and extreme areas are defined as those with potential to emit 50, 25, and 15 TPY, respectively. Therefore, under the amended Act, the definition of "non-CTG major source" depends on the classification of a specific area.

[3] On January 22, 1981, (46 FR 7182), the USEPA published guidance for the development of 1982 ozone SIPs in "State Implementation Plans: Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension."

[4] Among other things, the pre-amendment guidance consists of the VOC RACT portions of the Post–87 policy, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Bluebook) (notice of availability published in the **Federal Register** on May 25, 1988); and the existing CTGs.

[5] In its May 21, 1990, submittal, the State requested that the rule revisions to the Wisconsin Administrative Code as approved by the Natural Resources Board (NRB) in Order AM–46–88 (fire truck and emergency response vehicle manufacturing) and modified by NRB Order AM–20–89 (April 17, 1990, RACT correction submittal) be incorporated into Wisconsin's federally-approved SIP. Thus, the regulatory language submitted on April 17, 1990, actually supersedes the regulatory language submitted on May 21, 1990. To clarify this it should be noted that the April 17, 1990 and May 21, 1990 dates are dates of submittal. The May 21, 1990 submittal was actually approved prior to the approval of the April 17, 1990 submittal. This is why the April 17, 1990 regulatory language takes precedence.

[6] Under the 1990 amendments, major sources in severe areas are defined as those with the potential to emit 25 tpy or more of VOCs. This revision ensures that the definition of major source contained in the amendments is reflected in existing major non-CTG regulations.

B. "Volatile Organic Compound" or "VOC"

The State has revised the definition to read as follows: "'Volatile organic compound' or 'VOC' means any organic compound which participates in atmospheric photochemical reactions. This includes any such organic compound other than the following compounds, which have been determined to have negligible photochemical reactivity: (a) Methane, (b) Ethane, (c) Methylene chloride (Dichloromethane), (d) 1,1,1-Trichloroethane (Methyl chloroform), (e) Trichlorofluoromethane (CFC–11), (f) Dichlorodifluoromethane (CFC–12), (g) Chlorodifluoromethane (CFC–22), (h) Trifluoromethane (FC–23), (i) 1,1,1-Trichloro–2,2,2-trifluoroethane (CFC–113), (j) 1,2-Dichloro–1,1,2,2-tetrafluoroethane (CFC–114), (k) Chloropentafluoroethane (CFC–115), (l) 1,1,1-Trifluoro–2,2-dichloroethane (HCFC–123), (m) 1-Chloro–1,1,1,2-tetrafluoroethane (HCFC–124), (n) Pentafluoroethane (HFC–125), (o) 1,1,2,2-Tetrafluoroethane (HFC–134), (p) 1,1,1,2-Tetrafluoroethane (HFC–134a), (q) 1,1-Dichloro–1-fluoroethane (HCFC–141b), (r) 1-Chloro–1,1-difluoroethane (HCFC–142b), (s) 1,1,1-Trifluoroethane (HFC–143a), (t) 1,1-Difluoroethane (HFC–152a), and (u) perfluorocarbon compounds which fall in to the following classes: 1. Cyclic, branched or linear completely fluorinated alkanes. 2. Cyclic, branched or linear completely fluorinated ethers with no unsaturations. 3. Cyclic, branched or linear completely fluorinated tertiary amines with no unsaturations, and 4. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine." This definition is consistent with USEPA's definition of VOC (40 CFR 51.100).

II. Chapter NR 419: Control of Organic Compound Emissions

This chapter contains definitions and general regulations (including those pertaining to the disposal of VOC wastes, the storage of organic compounds and the transfer of organic compounds) which apply to VOC sources.[7]

Storage of Any Organic Compound

The State has revised this section to require that any alternative control method approved by the WDNR be submitted to, and not become effective for Federal purposes until approved by, the USEPA as a SIP revision.

III. Chapter NR 420: Control of Organic Compound Emissions from Petroleum and Gasoline Sources

This chapter contains definitions and specific regulations pertaining to the storage of petroleum liquids, transfer operations and associated equipment, motor vehicle fueling,[8] and petroleum refinery sources.

A. Storage of Petroleum Liquids; Exemptions

The State has revised this section by removing the exemption for underground storage vessels where the total volume of petroleum liquids added to and taken from the tank annually did not exceed twice the volume of the tank. This exemption was replaced with an exemption for horizontal underground storage tanks used to store JP–4 jet fuel.

B. Storage of Petroleum Liquids; Inspections of Fixed Roof Vessels

The State has revised the provision relating to the inspection of covers and seals so as to require inspections whenever the tank is emptied or at least every 5 years, whichever is more frequent.

C. Storage of Petroleum Liquids; Alternate Control Methods

The State has revised this section to require that any alternative control method approved by the WDNR be submitted to, and not become effective for Federal purposes until approved by, the USEPA as a SIP revision.

D. Transfer Operations and Associated Equipment; Bulk Gasoline Plants

The State has revised this rule to apply to facilities which have an average daily throughput of 4,000 gallons of gasoline or more on a 30-day rolling average. In addition, this section was revised to require that any source subject to this section shall remain subject to this subsection even if its throughput later falls below the applicability thresholds.

E. Transfer Operations and Associated Equipment; Gasoline Dispensing Facilities

The State revised this section to allow sources to comply by using a refrigeration-condensation system capable of recovering at least 90 percent by weight of the organic compounds in the displaced vapor or an equally effective alternative control method approved by the department. The State also added the requirement that any alternative control method approved under this subsection be submitted to, and not become effective for Federal purposes until approved by, the USEPA as a source-specific SIP revision.

F. Transfer Operations and Associated Equipment; Gasoline Delivery Vessels

The State revised this section to require that records be kept not only of the results of pressure tests, but also of all data collected during the test.

IV. Chapter NR 421: Control of Organic Compound Emissions from Chemical, Coatings and Rubber Products Manufacturing

This chapter contains definitions and specific regulations pertaining to chemical manufacturing, pneumatic rubber tire manufacturing, synthetic resin manufacturing, and coatings manufacturing.

A. Chemical Manufacturing

The provisions of this subsection are not consistent with USEPA RACT guidelines. However, the State has made an adequate demonstration that there are no sources in nonattainment areas in this category. USEPA is approving this negative declaration into the SIP as fulfilling the RACT requirement for these source categories. In addition, USEPA is approving the submitted rules into the SIP for their strengthening effect, but not as meeting RACT. If major VOC sources falling under this category are constructed in an ozone nonattainment area, these sources will be required to control their emissions with the lowest achievable emission rate under New Source Review provisions. In addition, the State's negative declaration would no longer be supportable and the State would then need to submit RACT rules for this category.

B. Pneumatic Rubber Tire Manufacturing

The provisions of this subsection are not consistent with USEPA RACT guidelines. However, the State has made an adequate demonstration that there are no sources in nonattainment areas in this category. USEPA is approving this negative declaration into the SIP as fulfilling the RACT requirement for these source categories. In addition, USEPA is approving the submitted rules into the SIP for their strengthening effect, but not as meeting RACT. If major VOC sources falling under this category

[7] Section 419.07 regulates the remediation of contaminated soil or water. The WDNR requested that this section not be incorporated into the State's ozone SIP. Therefore, USEPA is not taking action on this section.

[8] On August 13, 1993 (58 FR 43080), the USEPA published a direct final approval of the proposed revisions to Wisconsin's SIP relating to motor vehicle fueling that became effective on October 13, 1993. These revisions will not be discussed in today's rulemaking.

are constructed in an ozone nonattainment area, these sources will be required to control their emissions with the lowest achievable emission rate under New Source Review provisions. In addition, the State's negative declaration would no longer be supportable and the State would then need to submit RACT rules for this category.

C. Synthetic Resin Manufacturing

This non-CTG rule, not previously incorporated into the State's SIP, applies to reaction tanks, thinning tanks, blending tanks and other process vessels used in any synthetic resin manufacturing facility which has maximum theoretical emissions of VOCs greater than or equal to 100 tpy and which is located in the counties of Door, Kewaunee, Manitowoc, Sheboygan or Walworth, or which has maximum theoretical emissions of VOCs greater than or equal to 25 tpy and which is located in the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington, or Waukesha. The regulation requires that each vent from reaction tanks, and all blending tanks and thinning tanks be equipped with either of the following: (1) A surface condenser, or equally effective control device approved by the WDNR, and a vapor recovery or control system that reduces emissions from the surface condenser or equally effective device by 85 percent; or (2) an equivalent system or approach demonstrated to reliably control emissions from a process that does not include a condenser by not less than 90 percent as approved by the WDNR. Any equally effective control equipment or equivalent system approved by WDNR under this paragraph must be submitted to, and not become effective for Federal purposes until approved by, the USEPA as a site-specific SIP revision.

The rule further requires equipment which processes or contains VOC to be either enclosed or covered. Each valve, pump, sealed agitator, compressor, flange and relief valve must be inspected bimonthly for indications of dripping liquid. In addition, if this equipment is used with a process stream which contains at least 10.0 percent VOCs by weight, annual monitoring is required, unless it is located within 2 meters of a permanent support surface, in which case quarterly monitoring is required. All leaks detected must be repaired within 15 days or, if technically infeasible without a process unit shutdown, before the end of the next such shutdown. Documentation, including the description of the equipment that leaked, date of detection, date of repair, dates of follow-up inspection, and an explanation of what caused the leak, is required on a quarterly basis.

D. Coatings Manufacturing

This non-CTG rule, not previously incorporated into the State's SIP, applies to pigment dispersion chambers, thinning tanks, tinting, straining, blending tanks and other process vessels used in any coatings manufacturing facility which has maximum theoretical emissions of VOCs greater than or equal to 100 tpy and which is located in the counties of Door, Kewaunee, Manitowoc, Sheboygan or Walworth, or which has maximum theoretical emissions of VOCs greater than or equal to 25 tpy and which is located in the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington, or Waukesha. The regulation requires that all vats be covered with lids, except to add ingredients or to take samples; all vats, high speed dispersion mills, grinding mills and roller mills be cleaned in a way which minimizes the emissions of VOCs into the atmosphere, and all grinding mills be equipped with fully enclosed screens.

The rule further requires that each valve, pump, sealed agitator, compressor, flange and relief valve be inspected bimonthly for indications of dripping liquid. In addition, if this equipment is used with a process stream which contains at least 10.0 percent VOCs by weight, annual monitoring is required, unless it is located within 2 meters of a permanent support surface, in which case quarterly monitoring is required. All leaks detected must be repaired within 15 days or, if technically infeasible without a process unit shutdown, before the end of the next such shutdown. Documentation, including the description of the equipment that leaked, date of detection, date of repair, dates of follow-up inspection, and an explanation of what caused the leak, is required on a quarterly basis.

V. Chapter NR 422: Control of Organic Compound Emissions from Surface Coating, Printing and Asphalt Surfacing Operations

This chapter contains definitions and specific regulations pertaining to can coating, coil coating, paper coating, fabric and vinyl coating, leather coating, automobile and light-duty truck manufacturing, furniture metal coating, surface coating of large appliances, magnet wire coating, flat wood panel coating, graphic arts, miscellaneous metal parts and products, fire truck and emergency response vehicle manufacturing, and use of asphalt surfacing materials.

A. Definitions

The following revisions have been made to the definitions included in this subsection:

1. The definition of "fabric coating" has been revised to include the saturation coating of textile substrates.

2. "Organisol" has been defined to be a thick coating containing resin, plasticizers and organic solvent used to coat flexible substances, such as paper or fabrics.

3. The definition of "paper coating" has been revised to include saturation coating of paper. The definition has also been revised to include the web coating of "plastic films" rather than "plastic fibers" as a source type subject to the coating rules.

4. "Plastisol" has been defined to be a composition of finely divided resin and plasticizer used to coat flexible substances, such as paper or fabrics, which is applied as a thick gel which solidifies when heated.

5. The definition of "pretreatment coat" has been revised to mean a coating applied directly to metal substrates and which contain at least 1/2 percent acid by weight and is used to provide surface etching, corrosion resistance and enhanced adhesion of subsequent coatings.

6. "Saturation coating" has been defined as the application of a coating which permeates the substrate to which it is applied.

7. The definition of "vinyl coating" was revised to exclude the application of plastisols and organisols and to include urethane coated fabric and urethane sheets.

B. Exemptions

The exemptions in this section have been revised as follows:

1. The exemption for sources whose actual emissions were never greater than 15 pounds per day and 3.1 pounds per hour was revised. The regulation now allows exemptions only for sources whose actual emissions from all lines meeting the same applicability requirements within the facility are never greater than 15 pounds per day with all emission control equipment inoperative.

2. The exemption for miscellaneous metal parts and products and fire truck and emergency response vehicle manufacturing sources whose emissions were never greater than 10 tpy with all emission control equipment inoperative was revised. The regulation now exempts miscellaneous metal parts and

products and fire truck and emergency response vehicle manufacturing sources which have maximum theoretical emissions of VOCs from all surface coating process lines of less than or equal to 10 tpy.

3. The exemption covering coating sources, other than graphic arts, which have total emissions of VOCs, with all emission control equipment inoperative, of less than or equal to 100 tpy no longer applies in Door or Kewaunee counties.

4. The exemption for printing facilities whose emissions, with all emission control equipment inoperative, are less than or equal to 100 tpy was revised. The regulation now exempts printing facilities which are located in the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington or Waukesha and have maximum theoretical emissions of VOCs of less than or equal to 25 tpy, or are located outside of these counties and have maximum theoretical emissions of VOCs less than or equal to 100 tpy.

5. The exemption relating to leather coating facilities has been revised to exempt facilities located outside the counties of Door, Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Walworth, Washington and Waukesha; or located in the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington, or Waukesha and which have maximum theoretical emissions of VOCs of less than 25 tpy, or located in the counties of Door, Kewaunee, Manitowoc, Sheboygan or Walworth, and which have maximum theoretical emissions of VOCs of less than 100 tpy.

C. Methods of Compliance

Sources may achieve compliance through the use of an equivalent system or approach demonstrated to reliably control emissions to a level at or below the applicable emission limit. In addition, sources have the option of achieving compliance through the use of an alternative control method or system involving a high transfer efficiency coating application system. In either case, the equivalent or alternate method or system must be approved by the WDNR and submitted to USEPA as a site-specific SIP revision. This revision would not become effective for Federal purposes until approved by the USEPA.

This subsection has also been revised to allow sources to demonstrate compliance through a daily volume-weighted average of all coatings or inks applied by emission units subject to the same emission limitation in a process line. The regulation includes equations specifying the required method for calculating daily volume-weighted average VOC content. Sources not covered by one of the equations specified in this subsection may comply by means of in-line averaging only by obtaining the WDNR's approval. Any such approval must be submitted to, and will not become effective for Federal purposes until approved by, the USEPA as a site-specific SIP revision.

D. Leather Coating

This non-CTG rule, not previously incorporated into the State's SIP, limits emissions from leather coating facilities to 10.6 kilograms per 100 square meters (38 pounds per 1000 square feet) of coated product calculated on a daily average basis. The regulation contains equations and procedures specifying the required method for determining compliance with the regulation as well as detailed recordkeeping requirements.

E. Automobile and Light-Duty Truck Manufacturing

The provisions of this subsection are not consistent with USEPA RACT guidelines. However, the State has made an adequate demonstration that there are no sources in nonattainment areas in this source category. USEPA is approving this negative declaration into the SIP as fulfilling the RACT requirement for these source categories. In addition, USEPA is approving the submitted rules into the SIP for their strengthening effect, but not as meeting RACT. If major VOC sources falling under this category are constructed in an ozone nonattainment area, these sources will be required to control their emissions with the lowest achievable emission rate under New Source Review provisions. In addition, the State's negative declaration would no longer be supportable and the State would then need to submit RACT rules for this category.

F. Graphic Arts

Sources are allowed to comply with the regulation through the use of an alternative VOC emission reduction system demonstrated to have at least 90 percent reduction efficiency, as measured across the control system. The regulation was revised to require that any such alternative system be not only approved by the WDNR, but also submitted to the USEPA as a site-specific SIP revision. Any such revision would not become effective for Federal purposes until approved by the USEPA.

In addition, the regulation was revised to require that the overall emission reduction efficiency of any capture system and control device be at least 75 percent where a publication rotogravure process is employed, 65 percent where a packaging rotogravure process is employed, and 60 percent where a flexographic printing process is employed.

G. Miscellaneous Metal Parts and Products

The applicability subsection has been modified to eliminate the exemption for coating operations involved in the application of specialized coatings required by State of Federal agencies on products made for their use. The exemptions for adhesives, sealants or fillers and the silk screening of metal parts and products and the emission limitations for pretreatment coats have been revised to apply only to facilities located outside the counties of Door, Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Walworth, Washington and Waukesha.

In addition, this section contains emission limitations for high performance architectural coatings which have not previously been incorporated into the State's SIP. This rule limits such coatings to 5.4 and 5.8 pounds of VOC per gallon of coating, excluding water, for prime coating and other coatings, respectively. These limits apply only to sources using such coatings prior to July 1, 1983, and located outside the counties of Brown, Calumet, Dane, Dodge, Door, Fond du Lac, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha and Winnebago.

H. Fire Truck and Emergency Response Vehicle Manufacturing

This section, not previously incorporated into the State's SIP, applies to coating operations of fire truck and emergency response vehicle manufacturing where meeting applicable miscellaneous metals emission limits is not technologically or economically feasible and where total facility production is less than 35 vehicles per day. This section establishes the following emission limitations: 6.66 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies pretreatment coats; 4.44 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies prime coats; 6.00 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies topcoats; and 3.5 pounds per gallon of coating, excluding water, delivered to a coating applicator that applies clear coats. Coating operations

subject to this section may not be involved in an internal offset. It should be noted that the only facility affected by this regulation is located in an attainment area. U.S. EPA is approving this negative declaration into the SIP. In addition, USEPA is approving the submitted rules into the SIP for their strengthening effect, but not as meeting RACT. If VOC sources falling under this category are constructed in an ozone nonattainment area, these sources will be required to control their emissions with the lowest achievable emission rate under New Source Review provisions. In addition, the State's negative declaration would no longer be supportable and the State would then need to submit RACT rules for this category.

VI. Chapter NR 423: Control of Organic Compound Emissions from Solvent Cleaning Operations

This chapter contains definitions and specific regulations pertaining to solvent metal cleaning, perchloroethylene dry cleaning, and petroleum liquid solvent dry cleaning.

A. Solvent Metal Cleaning; Exemptions

The exemption which applies to cold cleaners to which not more than 1.5 gallons of solvent per day is added and to open top vapor, conveyorized vapor or conveyorized non-vapor degreasers whose emissions of VOCs are not more than 15 pounds in any one day nor more than 3.1 pounds in any one hour which are located outside the counties of Brown, Calumet, Dane, Dodge, Fond du Lac, Jefferson, Kenosha, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha and Winnebago has been revised to require that the sources also be located outside the counties of Door and Kewaunee.

An exemption was added for conveyorized non-vapor degreasers with a total horizontal solvent-air interface smaller than 21.6 square feet or to conveyorized non-vapor degreasers which are located outside the counties of Brown, Calumet, Dane, Dodge, Door, Fond du Lac, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha and Winnebago.

B. Solvent Metal Cleaning; Equivalent Control

This section was revised to require that any equivalent control system approved by the WDNR be submitted to, and not become effective for Federal purposes until approved by, the USEPA as a site-specific SIP revision.

C. Solvent Metal Cleaning; Conveyorized Non-Vapor Degreasers

This section was revised to distinguish between conveyorized vapor degreasers and the much less common conveyorized non-vapor degreasers. The State adopted control requirements consistent with those previously approved for conveyorized vapor degreasers including: minimizing entrance and exit openings during operation, providing downtime covers for closing off the entrance and exit, placing downtime covers over the entrances and exits immediately after the conveyors and exhausts are shut down and not removing until just before start-up, minimizing carryout emissions, storing waste solvent in covered containers, disposing of waste in such a way as to prevent more than 15 percent of the waste solvent to evaporate, and repairing solvent leaks immediately. In addition, sources must install and operate a carbon adsorption system demonstrated to have at least 95 percent control efficiency or an equivalent control system approved by the WDNR and submitted to the USEPA as a site-specific SIP revision. Any such revision would not become effective for Federal purposes until approved by the USEPA.

D. Perchloroethylene Dry Cleaning

This section exempts sources which provide satisfactory documentation to the WDNR showing that an adsorber cannot be accommodated because of inadequate space or because insufficient steam capacity is available to desorb adsorbers. This exemption was revised to require that any exemption determinations made by the WDNR be submitted to, and not become effective for Federal purposes until approved by, the USEPA as a site-specific SIP revision.

E. Petroleum Liquid Solvent Dry Cleaning

The applicability subsection has been modified to apply to facilities having maximum theoretical emissions of VOCs greater than or equal to 25 tpy and which are located in the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington or Waukesha, or having maximum theoretical emissions of VOCs greater than or equal to 100 tpy and which are located in the counties of Door, Kewaunee, Manitowoc, Sheboygan or Walworth.

VII. Chapter NR 424: Control of Organic Compound Emissions from Process Lines

This chapter contains definitions and specific regulations pertaining to process lines emitting organic compounds and aerosol can filling.

Aerosol Can Filling

This section, not previously incorporated into the State's SIP, applies to any aerosol can filling facility which has maximum theoretical emissions of VOCs greater than or equal to 100 tpy and which is located in the counties of Door, Kewaunee, Manitowoc, Sheboygan or Walworth, or which has maximum theoretical emissions of VOCs greater than or equal to 25 tpy and which is located in the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington, or Waukesha. The regulation requires that facilities install and operate a through-the-valve filling system on the aerosol can filling line, or install and operate a vapor recovery system or other device approved by the WDNR which reduces the amount of VOCs emitted by at least 52 percent by weight. Any approval of an alternative device issued by the WDNR must be submitted to the USEPA as a site-specific SIP revision. Any such revision would not become effective for Federal purposes until approved by the USEPA.

VIII. Chapter NR 425: Compliance Schedules, Exceptions, Registration and Deferrals for Organic Compound Emission Sources in Chapters 419 to 424

This chapter contains definitions and provisions relating to compliance schedules; exceptions, registrations and nonozone season allowances; and internal offsets.

A. Compliance Schedules

While most of the compliance schedules are contained in this chapter, some are included in the chapter containing the control methods. The regulations have been revised to allow sources previously exempt from the regulations and now subject to the "catch-up" rules until May 31, 1995 to comply. In addition, for sources which previously received the WDNR's approval to use an alternative or equivalent control method or procedure for determining compliance, the sources are allowed up to 12 months after the effective date of the rule before the applicable control methods specified under NR 419 to 424 and reference methods specified under NR 439 can become federally enforceable. Since these sources will be newly subject to RACT, a period of twelve months from the date of adoption of these regulations is reasonable. The compliance dates for the remaining sources have all past. This provision is acceptable because

Chapters NR 419 to 424 and 439 are being approved for incorporation into the State's SIP.

B. Exceptions, Registrations and Nonozone Season Allowances

This subsection allows sources meeting the requirements of NR 419 to 425 by means of a natural gas-fired incinerator to use that incinerator only during the ozone season, provided that its operation is not required for purposes of occupational health or safety or for the control of toxic or hazardous substances, malodors, or other pollutants. In addition, this provision may be applied, subject to WDNR approval, when the requirements of NR 419 to 425 are met by use of other energy intensive control devices. This subsection was revised to require that any such approval issued by the WDNR be submitted to, and not become effective for Federal purposes until approved by, the USEPA as a site-specific SIP revision.

C. Internal Offsets

This section allows sources to choose to demonstrate compliance through the use of an internal offset (an internal emissions trade or "bubble") under one of two subsections. Under the first subsection, the internal offset plan must be consistent with the USEPA's "Emission Trading Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits," 51 FR 43814, December 4, 1986 (ETPS). In addition, this plan must be submitted to the USEPA and would not become effective for Federal purposes until it had been approved by the USEPA as a source-specific SIP revision. Under the second subsection, the internal offset plan would be approved by the WDNR under generic internal offset provisions. These generic provisions are consistent with the USEPA's ETPS. Under this section, only the following coating source categories may achieve compliance through the use of an internal offset: can coating, coil coating, paper coating, leather coating, automobile and light-duty truck manufacturing, metal furniture coating, large appliance coating, magnet wire coating, flat wood panel coating, graphic arts, and miscellaneous metal parts and products coating.

IX. Chapter NR 439: Reporting, Recordkeeping, Testing, Inspection and Determination of Compliance Requirements

This chapter contains definitions and provisions relating to reporting, recordkeeping, access to records and inspections, compliance determinations, emission testing, fuel sampling and analysis, continuous emission monitoring, circumvention, and malfunction prevention and abatement plans.

A. Recordkeeping and Reporting

This section has been revised to add detailed recordkeeping and reporting requirements for coating sources. Additional specific requirements have been included for sources complying through the use of daily volume-weighted averaging, internal offsets, or control devices.

B. Methods and Procedures for Determining Compliance with Emission Limitations

When tests or a continuous monitoring system are required, sources must use either the reference methods specified in this chapter or an alternative or equivalent method approved (or other specific method required) by the WDNR to determine compliance with emission limitations. Any alternative, equivalent or other specific method approved or required by the WDNR must be submitted to, and will not become effective for Federal purposes until approved by, the USEPA as a site-specific SIP revision.

X. Chapter NR 484: Incorporation By Reference

This chapter incorporates by reference testing, monitoring and other technical standards established by the Federal Government and technical societies and organizations.

The State has revised this chapter adding a reference to the USEPA's "Emissions Trading Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits" and the "Standard Industrial Classification Manual." In addition, the State has revised outdated references.

The USEPA has evaluated all of Wisconsin's rules, as submitted on September 22, 1993, for consistency with the requirements of the Act, USEPA regulations and the USEPA's interpretation of these requirements as expressed in USEPA policy guidance documents. The USEPA has found that the rules meet the requirements applicable to ozone and are, therefore, approvable for incorporation into the State's ozone SIP.[9] A more complete discussion of the USEPA's review of the State's regulations is contained in technical support documents dated March 5, 1987; July 14, 1987; October 19, 1987; January 11, 1988; April 14, 1988; November 17, 1988; April 24, 1989; November 27, 1990; May 1, 1991; and September 27, 1993. The USEPA is proposing to approve this revision as fully meeting the following: the requirement of Wisconsin's March 9, 1984 SIP that the State submit major source non-CTG RACT regulations; the USEPA's SIP call of May 26, 1988; and the RACT fix-up requirement of section 182(a)(2)(A) of the Act. Additionally, the USEPA is proposing to approve these rules as meeting part of the RACT catch-up requirements of section 182(b)(2) of the Act. Again, it should be noted that these requirements will be completely fulfilled once Wisconsin submits and USEPA approves rules for the State's remaining major non-CTG sources; these rules are expected in 1994. Section 193 of the Clean Air Act, as amended in 1990, prohibits the modification of control requirements in effect before November 15, 1990 in nonattainment areas, unless the modification insures equivalent or greater emission reductions. USEPA believes that these proposed rules will result in a reduction of ozone substantially beyond what the current Wisconsin SIP requires.

This proposed revision is being parallel processed because portions of the rules submitted on September 22, 1993 have been adopted by the WDNR s Natural Resources Board, but are not as yet fully effective at the State level. The USEPA is proposing to take final action approving these rules providing they become fully effective in their current form and are submitted to USEPA in a timely fashion.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for the Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future notice will inform the general public of these tables. Under the revised tables this action remains classified as a Table 2. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the EPA's request. This request continued in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, The USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Implementation Plan approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 256, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 10, 1994.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 94–4371 Filed 2–24–94; 8:45 am]

BILLING CODE 6560–60–F

[9] The USEPA is approving rules NR 421.03, NR 421.04, NR 422.09, NR 422.155 into the SIP for their strengthening effect, but not as meeting RACT.

40 CFR Part 180

[OPP–300322; FRL–4759–2]

RIN 2070–AC18

Acrylic Acid-Stearyl Methacrylate Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6) when used as an inert ingredient (emulsifier, suspending agent, or rheology modifier) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. This proposed regulation was requested by the B. F. Goodrich Co.

DATES: Comments, identified by the document control number [OPP-300322], must be received on or before March 28, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver to: Rm. 1132, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th floor, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: The B. F. Goodrich Co., 3925 Embassy Parkway, Akron, OH 44313-1799, submitted pesticide petition (PP) 4E4298 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6) when used as an inert ingredient (emulsifier, suspending agent, or rheology modifier) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, or to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellents in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Where it can be determined that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for acrylic acid-stearyl methacrylate copolymer will need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Acrylic acid-stearyl methacrylate copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b) (11) and meets the following criteria that are used to identify low risk polymers:

1. The minimum number-average molecular weight of the acrylic acid-stearyl methacrylate copolymer is

1,250,000. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

2. Acrylic acid-stearyl methacrylate copolymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. Acrylic acid-stearyl methacrylate copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Acrylic acid-stearyl methacrylate copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Acrylic acid-stearyl methacrylate copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Acrylic acid-stearyl methacrylate copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or a modification of a biopolymer that is substantially intact.

7. Acrylic acid-stearyl methacrylate copolymer is not manufactured from reactants containing, other than impurities, halogen atoms or cyano groups.

8. Acrylic acid-stearyl methacrylate copolymer does not contain a reactive functional group that is intended or reasonably anticipated to undergo further reaction.

9. Acrylic acid-stearyl methacrylate copolymer is not designed or reasonably anticipated substantially to degrade, decompose, or depolymerize.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [OPP-300322]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: February 8, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001 is amended in paragraphs (c) and (e) in the tables therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6), minimum number-average molecular weight 1,250,000..	.....	Emulsifier, suspending agent, or rheology modifier.
* * *	* *	* *

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6), minimum number-average molecular weight 1,250,000..	.....	Emulsifier, suspending agent, or rheology modifier.
* * *	* *	* *

[FR Doc. 94-4211 Filed 2-24-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 0E3921/P576; FRL-4756-1]

RIN 2070-AC18

Pesticide Tolerance for Bifenthrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a tolerance for residues of the pesticide bifenthrin in or on the raw agricultural commodity dried hops. The proposed regulation to establish a maximum permissible level for residues of the pesticide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4). This time-limited tolerance would expire on November 15, 1994.

DATES: Comments, identified by the document control number [PP 0E3921/P576], must be received on or before March 28, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition (PP) 0E3921 and food additive petition (FAP) 0H5602 to EPA on behalf of the Agricultural Experiment Stations of Idaho, Oregon, and Washington. Pesticide petition 0E3921 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), establish a tolerance for residues of the pesticide bifenthrin, (2-methyl [1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the raw agricultural commodity green hops at 2 parts per million (ppm). Food additive petition 0H5602 requested that the Administrator, pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 348, establish a food additive regulation for residues of bifenthrin in or on dried hops at 6 ppm.

IR-4 subsequently withdrew food additive petition 0H5602 and revised pesticide petition 0E3921 by deleting the requested tolerance for green hops and by requesting a pesticide tolerance, pursuant to section 408(e) of the FFDCA, for residues of bifenthrin on the raw agricultural commodity dried hops at 10 ppm. IR-4's withdrawal of the food additive petition for dried hops and request for the establishment of a pesticide tolerance for residues of bifenthrin on dried hops, pursuant to section 408(e) of the FFDCA, was submitted in response to EPA's revision of Subdivision O of the Pesticide Assessment Guidelines that reclassified dried hops as a raw agricultural commodity (RAC). This change was announced in PR Notice 93-12, which was issued on December 23, 1993.

EPA has been considering for some time whether dried hops are properly classified as a processed food. The FFDCA defines a RAC as "food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing." Elsewhere the FFDCA lists canning, cooking, freezing, dehydration, and milling as examples of processing activities for RACs.

Hops are a unique commodity, used almost exclusively as a flavoring agent for beer. Harvested in a fresh form (green hops), they are immediately dried in kilns. This on-farm drying is necessary to prevent spoilage and always occurs prior to the shipment of the dried hops to beer manufacturers. While the drying of hops is, in the most general sense, a form of dehydration, both EPA and FDA have traditionally treated many forms of dried or partially dried food as RACs, e.g., peanuts and grains. Hops growers, both domestic and international, have asserted that dried hops should be considered a RAC because the drying process takes place immediately upon harvest, before the hops leave the farm or enter commerce, i.e., "prior to marketing."

Congress indicated in its most recent appropriations bill for EPA that it believes that EPA's treatment of dried hops as a processed food was a misinterpretation of the statute. That bill, Public Law 103-124, which was signed by President Clinton on October 28, 1993, prohibits EPA from using funds for any regulatory activity under FFDCA or FIFRA that relates to hops as a processed food. In the Congressional report that accompanied the bill (S. Rep. 103-137, 103d Cong., 1st Sess. 121 (1993)), the Appropriations Committee explained that this limitation on spending was directed at barring EPA from acting on what Congress believes is an erroneous interpretation of the term RAC as it applies to dried hops. In consideration of these factors, EPA revised its guidelines to change the classification of dried hops from a processed commodity to a RAC. EPA requests comments on this change.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A metabolism study in rats demonstrated that about 90 percent of parent compound and its hydroxylated metabolites are excreted. Significant bioaccumulation of the parent compound can occur in tissues with high fat content, with half-lives in these tissues of about 50 days.

2. A 12-month feeding study in dogs fed dose levels of 0, 0.75, 1.5 , 3.0, or 5.0 milligrams(mg)/kilogram (kg)/day with a no-observed-effect level (NOEL) of 1.5 mg/kg/day. The lowest-effect-level (LEL) for this study is established at 3.0 mg/kg/day based on the occurrence of intermittent tremors in the test animals.

3. A developmental toxicity study in rats given gavage doses of 0, 0.5, 1.0, or 2.0 mg/kg/day with no developmental toxicity observed under the conditions of the study. Maternal and fetal NOELs for this study are established at 1.0 mg/kg/day. The maternal NOEL is based on the occurrence of tremors and the fetal NOEL is based on an increased incidence of hydroureter without hydronephrosis at the 2.0 mg/kg/day dosage level.

4. A developmental toxicity study in rabbits given gavage doses of 0, 2.67, 4, or 8 mg/kg/day with no developmental toxicity observed under the conditions of the study. The maternal NOEL is established at 4 mg/kg/day based on the occurrence of twitching and tremors at the 8 mg/kg/day dosage level.

5. A two-generation reproduction study in rats fed diets containing 0, 30, 60, or 100 ppm with no reproductive effects or developmental toxicity observed under the conditions of the study. The maternal NOEL for the study is established at 30 ppm (equivalent to 5 mg/kg/day) based on lower body weight in females.

6. Mutagenicity tests, including gene mutation in Salmonella, chromosomal aberrations in Chinese hamster ovary and rat bone marrow cells, HGPRT locus mutation in mouse lymphoma cells, and unscheduled DNA synthesis in rat hepatocytes, were all negative. Bifenthrin was marginally active in a forward mutation test involving the thymidine kinase locus in mouse lymphoma cells. These test results support a low level of concern for mutagenicity from bifenthrin.

7. A 24-month feeding/carcinogenicity study with rats fed diets containing 0, 12, 50, 100, or 200 ppm with a systemic NOEL of 50 ppm (equivalent to 2.5 mg/kg/day) based on tremors, elevated body weight, and higher liver and kidney organ-to-body weight ratios. There were no carcinogenic effects observed under the conditions of the study.

8. A carcinogenicity study with mice fed diets containing 0, 50, 200, 500, or 600 ppm (equivalent to 7.5, 30, 75, or 90 mg/kg/day) for 87 weeks (males) and 92 weeks (females) with a statistically significant trend for hemangiopericytomas of the urinary bladder of male mice. In this study, male mice in the high-dose group (600 ppm) showed an increase in the number of hemangiopericytomas of the urinary bladder as compared to the control group. Although the number of hemangiopericytomas was twice as high in male mice at the high-dose level compared to the control animals, the difference in rate of tumors between the control group and the high-dose group was not statistically significant by pair-wise comparison. There were also significant dose-related trends in hepatocellular carcinomas and in the combined hepatocellular adenomas and/or carcinomas in male mice. Female mice had significantly higher incidences of combined lung adenomas and carcinomas in the 50, 200, and 600 ppm groups, although there was no significant dose-related trend.

Bifenthrin has been classified by the Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee (CPRC) as a Group C carcinogen, i.e., possible human carcinogen. The Agency has chosen to use the reference dose calculations to estimate human dietary risk from bifenthrin residues. The decision supporting classification of bifenthrin as a possible carcinogen (Group C) rather than a probable carcinogen (Group B) was primarily based on the following:

a. Evidence for carcinogenicity was only observed in mice; no compound related increases in tumors were observed in the carcinogenicity study in rats.

b. It is unlikely that the hemangiopericytomas observed in the mouse study were malignant.

c. Mutagenicity studies do not support Group B classification for bifenthrin.

d. Feeding studies using structurally related pyrethroids, which were classified as Group C carcinogens by the CPRC, have resulted in increased incidences of lung tumors in female mice.

A dietary exposure/risk assessment was performed for bifenthrin using a Reference Dose (RfD) of 0.015 mg/kg of body weight/day. The RfD is based on an NOEL of 1.5 mg/kg/day from the 1-year dog feeding study, which demonstrated intermittent tremors in test animals at the lowest effect level, and an uncertainty factor of 100. The Theoretical Maximum Residue Contribution (TMRC) from established tolerances utilizes 3.0 percent of the RfD for the U.S. population, or 3.2 percent of the RfD if the tolerance for dried hops is granted. Established tolerances utilize 10.2 percent of the RfD for non-nursing infants less than 1 year old, the subgroup with the highest estimated exposure to bifenthrin residues. The proposed use on hops would not contribute to the dietary exposure of non-nursing infants.

EPA concludes that the chronic dietary risk of bifenthrin, as estimated by the dietary risk assessment, does not appear to be of concern. The cancer risk to humans is considered negligible, given the weight of evidence considerations, which only support the classification of bifenthrin as a possible carcinogen, and the low level of exposure to bifenthrin residues in the human diet.

An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Volume II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to any one interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington VA 22202, (703) 305-5232.

The established meat and milk tolerances for bifenthrin, which are time-limited tolerances established in support of conditional registration for use of bifenthrin on cotton, are adequate to cover secondary residues resulting from the proposed use of bifenthrin on hops. On October 20, 1993, EPA granted a time extension for established bifenthrin tolerances for cottonseed at 0.5 ppm, cattle, goat, sheep, hog and horse fat, meat and meat byproducts at 0.1 ppm, and milk at 0.02 ppm. The meat and milk tolerances will expire on November 15, 1994. The proposed tolerances for dried hops would expire on November 15, 1994, to coincide with the expiration date for bifenthrin meat and milk tolerances. In the event that the Agency establishes the proposed tolerance for dried hops and subsequently establishes permanent bifenthrin tolerances for meat and milk, the tolerance for dried hops would be reassessed and, if appropriate, the Agency would propose that a permanent tolerance be established for this commodity.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E3921/P576]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 9, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.442, to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

Tolerances, to expire on November 15, 1994, are established for residues of the pyrethroid bifenthrin, (2-methyl [1,1'biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the following commodities:

Commodity	Parts per million
Cottonseed	0.5
Hops, dried	10.0
Meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep	0.1
Milk	0.02

[FR Doc. 94-4213 Filed 2-24-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300324; FRL-4760-7]

RIN 2070-AC18

Cetyl Alcohol; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of cetyl alcohol (CAS Reg. No. 36653-82-4) when used as an inert ingredient (evaporation retardant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. This proposed regulation was requested by Roussel Uclaf Corp.

DATES: Comments, identified by the document control number [OPP-300324], must be received on or before March 28, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Rosalind L. Gross, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8354.

SUPPLEMENTARY INFORMATION: Roussel Uclaf Corp., 95 Chestnut Ridge Rd., P.O. Box 30, Montvale, NJ 07645, submitted pesticide petition (PP) 3E4207 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) to exempt from the requirement of a tolerance residues of cetyl alcohol (CAS Reg. No. 36653-82-4) when used as an inert ingredient (evaporation retardant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Where it can be determined that the inert ingredient will present minimal or no risk, the Agency

may waive some or all of the listed studies. The Agency has decided that no additional data will need to be submitted to support the proposed tolerance exemption for cetyl alcohol. The rationale for this decision is described below.

1. Cetyl alcohol is approved for use as a direct food additive under 21 CFR 172.515 (synthetic flavoring substances and adjuvants).

2. Cetyl alcohol is contained in a drug recently approved by the Food and Drug Administration for use as a direct spray into the lungs of newborns in order to prevent and/or treat idopathic respiratory distress syndrome.

3. Cetyl alcohol is approved for use as an indirect food additive under 21 CFR 175.105, 21 CFR 175.300 (indirect food additives: adhesives and components of coatings), 21 CFR 176.200, 21 CFR 176.210 (indirect food additives: paper and paperboard components), 21 CFR 177.1200, 21 CFR 177.1210, 21 CFR 177.1350, 21 CFR 177.1400, and 21 CFR 177.2800 (indirect food additives: polymers), and 21 CFR 178.3910 (indirect food additives: adjuvants, production aids, and sanitizers).

The Agency has reviewed the supporting literature for the aforementioned FDA clearances on cetyl alcohol. This review supports the use of cetyl alcohol as an evaporation retardant in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, at concentrations of not more than 5.0 percent of the pesticide formulation. Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practices, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300324]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: February 14, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended in the table therein by adding and alphabetically inserting the entry for cetyl alcohol, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Cetyl alcohol (CAS Reg. No. 36653-82-4)	Not more than 5.0% of pesticide formulation.	Evaporation retardant
* * *	* * *	* * *

* * * * *

[FR Doc. 94–4378 Filed 2–24–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 745

[OPPTS–00152; FRL–4763–1]

Proposed Identification of Dangerous Levels of Lead; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA's Office of Pollution Prevention and Toxics will hold a meeting to discuss its strategy for developing health-based standards for lead in paint, dust, and soil. Section 403 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 directed the Agency to among other things promulgate a regulation which shall identify lead-based paint hazards, lead contaminated dust, and lead-contaminated soil. The purpose of the meeting is to review the agency's regulatory approach and the findings of recent analytical and research efforts and obtain feedback from technical experts and stakeholders.

DATES: The meeting will take place on March 3, 1994 from 10 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the EPA Auditorium, located in the EPA Education Center, 401 M St., SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: For information on substantive issues, please contact: Dave Topping, of the Program Development Branch (PDB), at (202) 260–7737. For information on administrative matters, or to advise of your intent to attend, please contact: Jonathan Jacobson of PDB at (202) 260–3779.

Dated: February 18, 1994.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–4376 Filed 2–24–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 93–62; DA 94–161]

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Chief of the Commission's Office of Engineering and Technology has granted a 60 day extension for filing reply comments in response to the Notice of Proposed Rule Making (NPRM). This extension is in response to a motion filed by the Telecommunications Industry Association ("TIA"). The additional time will allow for further analysis with respect to numerous comments already filed that are relevant to the Commission's implementation of new radiofrequency exposure guidelines.

DATES: Reply comments are due by April 25, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Cleveland, Office of Engineering and Technology, Federal Communications Commission, (202) 653–8169.

SUPPLEMENTARY INFORMATION:

1. On February 15, 1994, the Mobile Communications Division of the Telecommunications Industry Association ("TIA") filed with the Commission a "Motion for Extension of Time" in the above-named proceeding. TIA has requested that the Commission extend, by a period of 60 days, the time for filing reply comments.

2. The Commission has proposed to incorporate into its rules the revised standard of the American National Standards Institute (ANSI) developed by the Institute of Electrical and Electronics Engineers (IEEE) and designated IEEE C95.1–1991 (also ANSI/IEEE C95.1–1992) for human exposure to radiofrequency (RF) fields.[1] The deadline originally established for filing comments in this proceeding was August 13, 1993, and the date for reply comments was September 13, 1993.

3. Previously, on August 3, 1993, the Commission granted a request filed by the National Association of Broadcasters (NAB) for an extension of time of ninety (90) days for filing comments and reply comments.[2] This action established a new deadline for filing comments of November 12, 1993, and a new deadline for filing reply comments of December 13, 1993.

4. Subsequently, on November 2, 1993, CBS, Inc., ("CBS") and Capital Cities/ABC, Inc., filed a request to extend the comment and reply comment deadlines an additional sixty (60) days. The Commission approved this request changing the deadlines for filing comments and reply comments to January 11, 1994, and February 10, 1994, respectively.[3] On January 3, 1994, CBS filed a request for an additional 14 day extension. This was also approved resulting in new dates of January 25, 1994, and February 24, 1994, for comments and reply comments.[4]

5. The first extension was granted to allow NAB time to complete a study commissioned to develop non-measurement based techniques for determining compliance with new guidelines. The second extension was granted in response to filings by CBS, Capital Cities, and Hammett and Edison, Inc., noting that new information from the NAB study and other experimental results relevant to the consequences of the proposed guidelines had only recently become available. CBS and Capital Cities maintained that additional time was necessary to consider the implications of the new data, both to determine whether further study was required and to assess the effect that the proposed guidelines will have on broadcast operations.

6. The most recent extension was granted to allow CBS an additional 14 days to perform measurements and to organize and analyze data that is relevant in considering implementation of new guidelines on RF induced currents. CBS also requested additional time to facilitate the filing of a single set of comments representing the views of itself and several other broadcast entities.

7. The TIA represents manufacturers and suppliers of telecommunications equipment used primarily in the cellular, private land-mobile radio, cordless radio and personal communications services. In the latest request for an extension TIA points out that there have been over 1200 pages of comments filed with the Commission to date in this proceeding over the approximately nine-month period that was ultimately allowed for comments. Therefore, TIA maintains that it would not be equitable to allow only a thirty-day period in which to evaluate and respond to these comments, especially in view of the complex nature of the issues involved.

8. The Commission does not routinely grant requests for extensions of time.[5] However, we continue to recognize the complexity of the issues raised by the new exposure guidelines and the difficulties in developing reasonable methods by which compliance can be evaluated. We also agree that the many comments filed in this docket to date require a more reasonable amount of time for review and response. Therefore, the request by TIA for a further extension is justified.

9. Accordingly, *It is Ordered that* the deadline for filing reply comments *Is Extended* to April 25, 1994. This action is taken pursuant to Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and pursuant to sections 0.31, 0.241 and 1.46 of the Commission's Rules, 47 CFR 0.31, 0.241 and 1.46.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 94–4218 Filed 2–24–94; 8:45 am]

BILLING CODE 6712–01–M

[1] See Notice of Proposed Rule Making in ET Docket 93–62, 58 FR 19393 (1993), 8 FCC Rcd 2849 (1993).

[2] See Order Extending Time for Comments and Reply Comments, ET Docket 93–62, 58 Fed. Reg. 43091 (1993), 8 FCC Rcd 5526 (1993).

[3] See Order Extending Comments and Reply Comments, ET Docket 93–62, 58 Fed. Reg. 60827 (November 18, 1993).

[4] See Order Extending Time for Comments and Reply Comments, ET Docket 93–62, 59 Fed. Reg. 3050 (January 20, 1994).

[5] 47 CFR 1.46 (1991).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 940257–4057; I.D. 012494C]

RIN No.: 0648–AF76

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS requests public comments on a proposed rule to establish requirements for combining two or more limited entry Pacific Coast groundfish fishery permits endorsed with vessel lengths from smaller vessels into a single limited entry permit endorsed with a larger length for use with a single fishing vessel. Comments

are requested on the NMFS preferred approach for which proposed regulatory text is offered, and on two alternatives (Initial Alternatives I and II). This rule is necessary to comply with regulations that require the Director, Northwest Region, NMFS (Regional Director), to develop and implement a standardized measure of harvest capacity for the purpose of determining the appropriate endorsed lengths for limited entry permits created by combining two or more permits with smaller size endorsements.

DATES: Comments are invited until March 21, 1994.

ADDRESSES: Comments may be mailed to J. Gary Smith, Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or Anneka W. Bane, Acting Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available for public review during business hours at the office of the Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION: Amendment 6 to the Pacific Coast Groundfish Fishery Management Plan (FMP) was prepared by the Pacific Fishery Management Council (Council) and approved and implemented by NMFS on November 16, 1992 (57 FR 54001), through regulations codified at 50 CFR part 663, subpart C. Amendment 6, also called the "Limited Entry Plan," is intended to control the harvesting capacity of the groundfish fishing fleet by: (1) Limiting the overall number of vessels; (2) limiting the number of vessels using each of the three major gear types; and (3) limiting increases in vessel harvest capacity by limiting vessel length.

Amendment 6 requires that each limited entry fishing permit be endorsed with the length overall of the vessel that initially qualified for the permit (except for certain exceptions explained in the implementing regulations). A permit can only be used on a vessel no more than 5 ft (1.5 m) longer than the endorsed size on the permit or on a smaller vessel. Vessel owners may obtain and fish with larger vessels by combining permits for smaller vessels. Regulations at 50 CFR 663.33(g) require the Regional Director, with professional advice of marine architects and other qualified individuals, and after consultation with the Pacific Fishery Management Council (Council), to develop and implement a standardized measure of harvest capacity for the purpose of determining the appropriate endorsed lengths for limited entry permits created by combining two or more permits with smaller size endorsements.

Amendment 6 bases the system for combining limited entry permits in the Pacific Coast groundfish limited entry fishery on overall length of the fishing vessel. The standard it sets is that the harvest capacity represented by the appropriate length endorsement for the combined permit should not exceed the sum of the capacity of the permits being combined. As provided by Amendment 6, the standard applies regardless of the target species being fished, and is equally applicable to trawl, longline, and fish trap (pot) vessels. As a practical matter, any system for combining permits must also provide the flexibility for vessel owners to mix and match permits with a variety of different length endorsements in order to achieve the desired length endorsement for a larger vessel. Once the relationship between length and harvesting capacity is established, a table can be generated that assigns a certain number of capacity rating points for each increment of vessel length. This table can be used by vessel owners to determine, at a glance, how many rating points are needed for any particular length of vessel (see Table 1 proposed to be added to § 663.33(g)). Under Amendment 6, only limited entry permits with "A" gear endorsements may be combined, and only permits for the same gear type (e.g., longline and longline, not trawl and longline) may be combined.

At the April 1993 Council meeting, NMFS circulated a discussion paper proposing a theoretical approach for combining permits based on the premise that, within a certain size range of vessels, the larger the vessel, the greater the harvesting capacity. This relationship was described by an exponential curve up to a certain vessel length. The theoretical approach initially put forward stemmed from the generally accepted premise that the relationship between length, width, and depth of a vessel is logically related to the harvesting capacity of the vessel and that, other things being equal, the harvesting capacity increases or decreases in direct relationship to these measurements. This relationship was described mathematically as length cubed. The April 1993 NMFS discussion paper illustrated three different relationships: length cubed, length to the 2.5 power, and length squared. At some vessel length, however, it was assumed that the curve was no longer exponential, because the rate of increase in capacity begins to slow as vessel length increases. This was assumed because observed catch rates for vessels above a certain size no longer appeared to be exponentially greater than the catch rates of smaller vessels. To illustrate the decline in the increase in harvesting capacity per increment of length for many larger vessels, the exponential curves were flattened in several examples between 120 ft (36.6 m) and 250 ft (76.2 m), at which point the rate of increase declined to zero.

This theoretical approach was reviewed by the Council, its Scientific and Statistical Committee and Groundfish Advisory Panel in consultation with a marine architect at the April 1993 Council meeting. In general, all groups supported the theoretical approach, but desired to see it "reality checked" with data from actual groundfish fisheries where, to the extent possible, landings were not artificially constrained (e.g., by trip landing limits or markets).

Prior to the September 1993 Council meeting, NMFS examined actual production (catch amounts per time period) of vessels of various lengths for all three limited entry gear types in a variety of different fisheries. (Note: Harvest capacity, a physical measure, is not synonymous with a vessel's actual production. In some cases, vessels may produce (harvest) very close to their theoretical capacity. In other cases, factors may exist that act to limit a vessel's ability actually to produce at physical capacity level. When comparing the actual production of different vessel classes to the theoretical capacity curves, it is important to keep in mind that actual production is often less than theoretical capacity).

In addition to reviewing the data in a graphical format, NMFS conducted regression analyses using vessel-periods falling in the top 25 percent of landings quantities for a vessel class (highliners). Highliner landings are significant because they are a measure of the highest level of actual production that, historically, has been observed within a particular fishery. Generally, for all three limited entry gears used by the West Coast shorebased groundfish fleet, the relationship observed between length and the upper 25 percent of catch amounts per time period was very consistent with the use of a cubic or 2.5 exponential function of vessel length, for lengths up to somewhere in the 55–70 ft (16.8–21.3 m) range. Above this

range, except for Alaska freezer longliners (i.e., freezer longliners built primarily for fishing off Alaska but also fishing off the West Coast), actual catch rates usually either increased at a much slower rate or, in several cases, went down. This pattern of landing rates increasing and then decreasing as vessel size increases was also present in shoreside longline landings from the Alaskan 1991 groundfish fishery. However, when Alaska freezer longliner catch rates were included, a 2.5 exponential relationship between length and catch also tracked peak performance reasonably well for vessels from 120 ft (36.6 m) up to 150 ft (45.7 m). In the ranges from 75–120 ft (22.9–36.6 m) and above 150 ft (45.7 m), no vessels performed up to the level corresponding to a 2.5 exponential function fitted to the peak values in the two other length ranges.

The only West Coast groundfish fishery in which very large vessels have participated is the whiting fishery. It is the only fishery in which motherships (typically supplied with catch by five to seven trawlers) and factory trawlers (combination harvester/processors) have conducted operations off the West Coast. The harvesting vessels in this fishery are typically larger than other groundfish vessels. All of the factory trawlers were larger than 210 ft (64 m), while more than two-thirds of the trawlers delivering to motherships were larger than 85 ft (25.9 m).

The 1991 data for the offshore delivery fleet shows a very gradual increase in the weekly whiting catch of the top 25 percent of vessels as vessel length increases. Over a range of vessel lengths from 50 to 150 ft (15.2 to 45.7 m), a 1.5 exponential value produced the best fit to actual production values. In the factory trawler fleet, there was even less evidence of a significant upward trend in catches with increased vessel size. The best fit for a regression using the top 25 percent of the vessel-weeks was obtained using an exponent for length of roughly 1.2, meaning that the increase in catch was proportionately not much greater than the increase in vessel size. Review of 1992 production data, as with the 1991 data, showed a slight upward slope to the factory trawler production values for vessels over 200 ft (61.0 m), although the actual production values were somewhat higher in 1992. Within the context of the at-sea whiting fishery, the data show that any function steeper than a linear function of length is likely to be adequate to ensure that existing harvesting capacity is not exceeded, even if permits are combined across the full range of vessel sizes.

The Council's Groundfish Management Team (GMT) reviewed this analysis prior to the Council's September meeting. There was general agreement within the GMT that a simple and reasonably safe formula for combining permits could be created using a 2.5 exponential function of length, up to 90 ft (27.4 m), followed by a straight-line increase from that point up to a value equal to 10 times that for a 60-foot (18.3 m) boat (10 permits endorsed with a vessel length overall of 60 ft (18.3 m)) for vessels 200 ft (61.0 m) in length, or greater. Above 200 ft (61.0 m) in length, the rate of increase would be zero and no further accumulation of permits would be required.

Initial Two Alternatives

At the September 14–17, 1993, Council meeting in Portland, OR, NMFS recommended the formula described below be used to determine the vessel length rating points for each 1-foot (0.3 m) increment in vessel length beginning with a vessel length of 20 ft (6.1 m) length overall and ending with zero rate of increase at a vessel length of 200 ft (61.0 m), which is equal to about 10 times the rating points of a 60-foot (18.3 m) vessel. The formula was expressed in a form so that vessel owners could easily consult the table and determine the number of rating points necessary to achieve any specified vessel length.

Beginning with a vessel length of 20 ft (6.1 m) length overall, the formula is a 2.5 exponential function up to and including a length of 90 ft (27.4 m), followed by a linear increase from that point up to a value equal to 10 times that for a 60-foot (18.3 m) boat for vessels 200 ft (61.0 m) in length. Above 200 ft (61.0 m) in length, the rate of increase is zero and no further accumulation of permits would be required. For purposes of this rulemaking, use of this formula is Initial Alternative I.

The Council considered this recommendation and raised several concerns. Considerable concern was expressed that large (over 200 ft (61.0 m)), efficient vessels would be able to enter the whiting fishery by buying up ten 60-foot (18.3 m) permits from vessels that represented the lowest level of production in the groundfish fishery and had no previous history harvesting whiting. The vessels that entered the whiting fishery in this way would represent new harvesting capacity in the whiting fishery without displacing any real production from the groundfish fishery. The Council accurately pointed out that experiences in other fisheries where limited access programs were imposed usually resulted in those entering the fishery acquiring the necessary permits from those who value them the least, and therefore are willing to sell them for the lowest price. In general, this means that owners who have been sporadic, low-volume participants in the groundfish fishery will be the first to sell out, whether they sell to someone owning a vessel of the same size, or one that is larger. The Council was concerned that the proposal was not sufficiently conservative to prevent overall harvesting effort and capacity to increase in these cases, especially through the entry of very efficient larger vessels into the whiting fishery. Although the concern that potentially high producers will purchase permits from historically low producers applies for all vessel lengths, there is greater concern regarding large vessels entering the whiting fishery because those new vessels may displace existing whiting harvesting vessels from the whiting fishery into the fishery for other groundfish species, which already is considered to be overcapitalized.

Another concern raised by the Council was the suggestion that current production for large factory trawlers reflected only current conditions, and that large vessels might change their operating procedures under the limited entry program and become more efficient. For example, it was suggested that factory trawlers could remove processing barriers to improved performance by operating in pairs, with one vessel catching enough fish to feed the processing lines on both vessels. Another example relates to the fact that harvesting and processing in the whiting fishery currently is constrained by the fragile nature and rapid deterioration of the whiting flesh. Vessels currently harvesting only whiting might, at some point, switch to groundfish species with less fragile flesh and increase their proven production significantly.

To address its concerns about insufficient control over the harvesting capacities of larger vessels, the Council recommended that NMFS adopt a numerical rating system that extended the 2.5 exponential curve all the way to 200 ft (61.0 m). Above 200 ft (61.0 m) the rating would be the rating for a 200-foot (61.0 m) permit, plus 0.9354 times the difference between the permit endorsement length and 200 ft (61.0 m) (a linear relationship). Under this formula, a 200-foot (61.0 m) vessel would need to purchase twenty 60-foot (18.3 m) permits and a 300-foot (91.4 m) vessel, twenty-six 60-foot (18.3 m) permits, compared to ten permits for either size under the initial NMFS

proposal. The Council recommended a linear slope to determine the number of permits for vessels over 200 ft (61.0 m), reflecting the belief that vessel owners would not have built vessels greater than 200 ft (61.0 m) if they did not believe the larger vessels represented increased production potential. For purposes of this rulemaking, the rating system is referred to as Initial Alternative II.

Proposed Numerical Rating Formula (NMFS Preferred Alternative)

Upon reviewing the Council's recommendation and its rationale, NMFS has initially concluded that it exaggerates the relationship between vessel length and harvesting capacity for vessels over about 150 ft (45.7 m). Using an average weekly production of 500 mt for catcher vessels delivering to motherships in the Pacific whiting fishery as a proxy for the harvest capacity of a 60-foot (18.3 m) permit, under the Council's recommendation, it would require, for example, the owner of a 200-foot (61.0 m) vessel to purchase 20 permits. This represents harvesting capacity four times greater than the demonstrated production of this class of vessel in the Pacific whiting fishery (maximum of 2,500 mt per week), and about twice the demonstrated production of large factory trawlers in the Alaska pollock fishery (maximum of 5,000 mt per week), which represents the highest production for these vessels in any fishery. The owner of a 400-foot (121.9 m) vessel would have to acquire 32 permits from 60-foot (18.3 m) vessels under the Council's recommendation. This represents harvesting capacity over six times the demonstrated production of a factory trawler in the Pacific whiting fishery, and over three times factory trawler production values for the Alaska pollock fishery.

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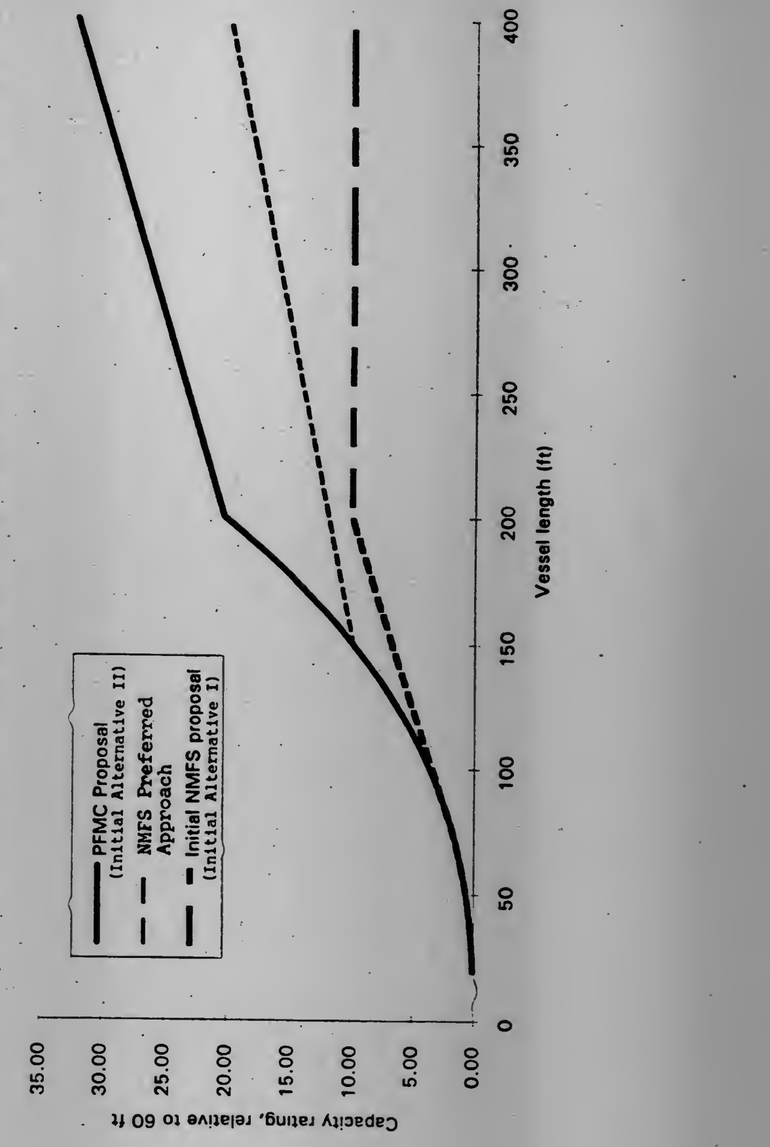


Figure 1. Comparison of 3 alternative capacity rating schedules for combining limited entry permits

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On the other hand, NMFS agrees that the propensity for unproductive or marginally productive permits to pass into the hands of efficient, productive vessel owners should be considered in the formula for relating vessel length to harvesting capacity. This is true, however, for all vessel size classes, and occurs both in the transfer of a permit to another vessel of the same size or in combining permits for larger vessels. As a result, a reasonable amount of conservatism is necessary for all size vessels to ensure that the transfer and combination of permits does not result in an increase in harvesting capacity in the overall fishery.

Taking the considerations discussed above into account, NMFS has revised its initial proposal to base the numerical rating system on a mathematical expression of fishing power that (1) extends the 2.5 exponentially based relationship initially proposed from 90 ft (27.4 m)(initial proposal) to 150 ft (45.7 m); and (2) uses a linear relationship between 150 ft (45.7 m) and 400 ft (121.9 m) so that 400 ft (121.9 m) in vessel length would require the purchase of twenty 60-foot (18.3 m) permits.

NMFS recommends no changes for vessel lengths less than 90 ft (27.4 m) because the production data examined for these vessels confirm that the 2.5 exponential relationship is appropriate for vessels below 90 ft (27.4 m). NMFS proposes using the 2.5 exponential curve from 90 ft (27.4 m) to 150 ft (45.7 m) to account for the potential additional productivity suggested by the higher production figures from the Alaska freezer longline fleet. The linear relationship between 150 and 400 ft (45.7 and 121.9 m) increases gradually, as did the production data from this class of vessels; this linear increase provides the margin of safety recommended by the Council to account for unproductive permits being transferred into the hands of productive vessel owners, especially in the whiting fishery.

For example, under the proposed rule, the owner of a 200-foot (61.0 m) vessel would have to purchase 12 permits representing harvest capacity about 2.4 times the production values for a factory trawler in the Pacific whiting fishery, and representing about the same capacity (1.2 times) as the production values from the largest factory trawlers in the Alaska pollock fishery. The owner of a 400-foot (121.9 m) vessel would have to acquire 20 permits representing harvesting capacity about four times the production of a factory trawler in the whiting fishery and twice the production of large factory trawlers in the Alaska pollock fishery. NMFS believes this degree of conservatism is necessary for vessels larger than 150 ft (45.7 m) to account for the potential for these vessels to increase their actual production in the future, and to account for the potential increase in harvesting capacity in the whiting sector of the fishery due to the combination of permits for vessels that have no past history in the whiting fishery.

Because no limited entry permits are being issued with length endorsements of less than 20 ft (6.1 m), the starting point for the rating table will reflect all vessels of 20 ft (6.1 m) or less length overall. The ratings table ends at 400 ft (121.9 m) because the accumulation of a greater number than 20 permits does not appear to be justified by production data.

The proposed rating formula is shown graphically in Figure 1 of this preamble and the exact number of rating points for each 1-foot of vessel length for vessels between 20 and 400 ft (6.1 and 121.9 m) in length is shown in Table 1 in the regulatory section of this proposed rule. The proposal is intended to ensure that harvesting capacity represented by larger size endorsements does not exceed existing harvesting capacity by relating vessel length to harvest capacity, by accounting for the propensity of unproductive permits to be transferred to more productive vessels, and by recognizing the potential for increased production suggested by the Alaskan freezer longline data, and the potential for increased production from larger factory trawlers. The formula is intended to be conservative and also to apply equitably to all vessel lengths so that it does not disproportionately affect only larger or smaller vessels. The proposed rating formula recognizes that smaller vessels appear to produce at a level closer to their harvesting capacity, while larger vessels, especially 200 ft (61.0 m) and larger, may produce considerably below their actual capacity. As a result, the formula reflects that the harvesting capacity for larger vessels is potentially greater than they have produced historically.

The following example illustrates how a vessel owner would use Table 1 to determine the number of permits from smaller vessels that would be required to be combined for a single permit for a larger vessel. A vessel owner with a permit for a 58-foot (17.7 m) vessel who desired to upgrade to a 90-foot (27.4 m) vessel would have to purchase permits endorsed for the same gear type, with combined rating points equal to or greater than the difference between the 58-foot (17.7 m) vessel (14.32 rating points) and the 90-foot (27.4 m) vessel (42.98 rating points), or 28.64 rating points. Using Table 1, the vessel owner has a choice of a large number of combinations of permits that can be purchased to achieve the needed 28.64 rating points. Some examples are a 58-foot (17.7 m) (14.32) and a 60-foot (18.3 m) (15.59) totalling 29.91 rating points, or a 42-foot (12.8 m) (6.39), 50-foot (15.2 m) (9.88), and a 55-foot (17.8 m) (12.54) permit for a total of 28.81 rating points. In each case, the additional permits can be combined with the permit from the original 58-foot (17.7 m) vessel resulting in a single permit endorsed for a 90-foot (27.4 m) vessel. In this manner, vessel owners are afforded the necessary flexibility to choose from the different size permits that may be available on the open market to meet the requirements for a permit for a larger vessel.

Current regulations implementing Amendment 6 already allow vessel owners to register a permit to a vessel that is up to 5 ft (1.5 m) longer than the vessel length endorsed on the permit. Thus, vessel owners seeking to combine permits for use on larger vessels only have to obtain permits equivalent to the rating points for a vessel 5 ft (1.5 m) shorter than the vessel to which the single combined permit will be registered. Therefore, in the example above, the upgrade to a 90-foot (27.4 m) vessel could be accomplished by combining permits with 22.92 rating points (37.24 points for an 85-foot (25.9 m) vessel minus 14.32 points for the owner's 58-foot (17.7 m) vessel). This should reduce the overall cost of obtaining additional permits somewhat.

For ease of implementation, NMFS proposes to round the sum of the rating points for the permits being combined to the next highest whole integer for the purpose of meeting the required number of rating points listed in the regulations for a larger permit. For example, if a vessel owner needs 28.64 rating points, but the particular combination of permits purchased totals only 28.48 rating points, NMFS will round the sum of the rating points for the permits purchased to 29 rating points. Because only vessel permits may be combined, rating points gained from combining permits that are surplus to qualifying the larger vessel for a combination permit are not available for any other permit combination. For purposes of this rulemaking, the second NMFS proposal is referred to as the NMFS preferred approach. Proposed regulatory text is offered for this approach.

Figure 1 of this preamble graphically compares the differences between the NMFS initial proposal (Initial Alternative I), the Council's proposal (Initial Alternative II), and the NMFS preferred approach. Public comment is invited on all three.

Classification

This notice of proposed rulemaking is issued under 50 CFR part 663. The Assistant Administrator for Fisheries, NOAA, has initially determined that the NMFS preferred approach is consistent with the FMP and the national standards and other provisions of the Magnuson Act.

The NMFS preferred approach or Initial Alternatives I or II, if adopted, could have a significant economic impact on a substantial number of small entities. Although the cost to a vessel owner of purchasing additional permits to combine for use on a larger vessel would be offset by the greater fishing effectiveness and larger profit potential represented by the larger vessel, vessel owners may be adversely affected by not being able to obtain the appropriate combination of permits or by having increased permit costs due to the possible absence of permits for sale endorsed with the appropriate vessel lengths. As a result, an initial regulatory flexibility analysis was prepared.

This rule is not subject to review under Executive Order 12866.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 18, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is proposed to be amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 663.33(g) is revised to read as follows:

§ 663.33 Limited entry fishery—General.

* * * * *

(g) *Combining limited entry permits.* Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement. The vessel harvest capacity rating for each of the permits being combined is based on the length overall (in feet) endorsed on each limited entry permit. The vessel harvest capacity ratings (see Table 1 of this paragraph) for the length endorsement on each permit will be added to produce the length rating for the larger permit. The individual harvest capacity ratings for each limited entry permit will not be rounded before they are combined. The sum of the harvest capacity ratings for the permits being combined will be rounded to the next highest whole number.

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Table 1: Harvest Capacity Ratings for 1-foot Increments of Vessel Length Overall

Vessel length	Capacity Rating	Vessel length	Capacity Rating	Vessel length	Capacity Rating	Vessel length	Capacity Rating
≤20	1.00	89	41.77	158	159.10	227	202.64
21	1.13	90	42.96	159	159.73	228	203.27
22	1.27	91	44.16	160	160.36	229	203.90
23	1.42	92	45.38	161	160.99	230	204.53
24	1.58	93	46.63	162	161.62	231	205.16
25	1.75	94	47.89	163	162.25	232	205.79
26	1.93	95	49.17	164	162.88	233	206.42
27	2.12	96	50.48	165	163.51	234	207.05
28	2.32	97	51.80	166	164.14	235	207.68
29	2.53	98	53.15	167	164.77	236	208.32
30	2.76	99	54.51	168	165.41	237	208.95
31	2.99	100	55.90	169	166.04	238	209.58
32	3.24	101	57.31	170	166.67	239	210.21
33	3.50	102	58.74	171	167.30	240	210.84
34	3.77	103	60.19	172	167.93	241	211.47
35	4.05	104	61.66	173	168.56	242	212.10
36	4.35	105	63.15	174	169.19	243	212.73
37	4.66	106	64.67	175	169.82	244	213.36
38	4.98	107	66.20	176	170.45	245	213.99
39	5.31	108	67.76	177	171.08	246	214.63
40	5.66	109	69.34	178	171.72	247	215.26
41	6.02	110	70.94	179	172.35	248	215.89
42	6.39	111	72.57	180	172.98	249	216.52
43	6.78	112	74.21	181	173.61	250	217.15
44	7.18	113	75.88	182	174.24	251	217.78
45	7.59	114	77.57	183	174.87	252	218.41
46	8.02	115	79.28	184	175.50	253	219.04
47	8.47	116	81.02	185	176.13	254	219.67
48	8.92	117	82.77	186	176.76	255	220.30
49	9.40	118	84.55	187	177.40	256	220.94
50	9.88	119	86.36	188	178.03	257	221.57
51	10.38	120	88.18	189	178.66	258	222.20
52	10.90	121	90.03	190	179.29	259	222.83
53	11.43	122	91.90	191	179.92	260	223.46
54	11.98	123	93.80	192	180.55	261	224.09
55	12.54	124	95.72	193	181.18	262	224.72
56	13.12	125	97.66	194	181.81	263	225.35
57	13.71	126	99.62	195	182.44	264	225.98
58	14.32	127	101.61	196	183.07	265	226.61
59	14.95	128	103.62	197	183.71	266	227.25
60	15.59	129	105.66	198	184.34	267	227.88
61	16.25	130	107.72	199	184.97	268	228.51
62	16.92	131	109.80	200	185.60	269	229.14
63	17.61	132	111.91	201	186.23	270	229.77
64	18.32	133	114.04	202	186.86	271	230.40
65	19.04	134	116.20	203	187.49	272	231.03
66	19.78	135	118.38	204	188.12	273	231.66
67	20.54	136	120.58	205	188.75	274	232.29
68	21.32	137	122.81	206	189.38	275	232.93
69	22.11	138	125.06	207	190.02	276	233.56
70	22.92	139	127.34	208	190.65	277	234.19
71	23.74	140	129.64	209	191.28	278	234.82
72	24.59	141	131.97	210	191.91	279	235.45
73	25.45	142	134.32	211	192.54	280	236.08
74	26.33	143	136.70	212	193.17	281	236.71
75	27.23	144	139.10	213	193.80	282	237.34
76	28.15	145	141.53	214	194.43	283	237.97
77	29.08	146	143.98	215	195.06	284	238.60
78	30.04	147	146.46	216	195.69	285	239.24
79	31.01	148	148.96	217	196.33	286	239.87
80	32.00	149	151.49	218	196.96	287	240.50
81	33.01	150	154.05	219	197.59	288	241.13
82	34.04	151	154.68	220	198.22	289	241.76
83	35.08	152	155.31	221	198.85	290	242.39
84	36.15	153	155.94	222	199.48	291	243.02
85	37.24	154	156.57	223	200.11	292	243.65
86	38.34	155	157.20	224	200.74	293	244.28
87	39.47	156	157.83	225	201.37	294	244.91
88	40.61	157	158.46	226	202.01	295	245.55

Vessel length	Capacity Rating	Vessel length	Capacity Rating	Vessel length	Capacity Rating
296	246.18	331	268.26	366	290.35
297	246.81	332	268.89	367	290.98
298	247.44	333	269.52	368	291.61
299	248.07	334	270.16	369	292.24
300	248.70	335	270.79	370	292.87
301	249.33	336	271.42	371	293.50
302	249.96	337	272.05	372	294.13
303	250.59	338	272.68	373	294.77
304	251.22	339	273.31	374	295.40
305	251.86	340	273.94	375	296.03
306	252.49	341	274.57	376	296.66
307	253.12	342	275.20	377	297.29
308	253.75	343	275.83	378	297.92
309	254.38	344	276.47	379	298.55
310	255.01	345	277.10	380	299.18
311	255.64	346	277.73	381	299.81
312	256.27	347	278.36	382	300.44
313	256.90	348	278.99	383	301.08
314	257.54	349	279.62	384	301.71
315	258.17	350	280.25	385	302.34
316	258.80	351	280.88	386	302.97
317	259.43	352	281.51	387	303.60
318	260.06	353	282.14	388	304.23
319	260.69	354	282.78	389	304.86
320	261.32	355	283.41	390	305.49
321	261.95	356	284.04	391	306.12
322	262.58	357	284.67	392	306.75
323	263.21	358	285.30	393	307.39
324	263.85	359	285.93	394	308.02
325	264.48	360	286.56	395	308.65
326	265.11	361	287.19	396	309.28
327	265.74	362	287.82	397	309.91
328	266.37	363	288.46	398	310.54
329	267.00	364	289.09	399	311.17
330	267.63	365	289.72	≥400	311.80

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[FR Doc. 94–4231 Filed 2–18–94; 4:27 pm]
BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 59, No. 38
Friday, February 25, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, March 8–9, 1994 at the times and location noted below.

DATES: The schedule of events is as follows.

Tuesday, March 8, 1994
10–10:45 a.m. Technical Programs Committee.
11–11:45 a.m. Planning and Budget Committee.
1:30–4:30 p.m. Public Forum on Communications Barriers.
Wednesday, March 9, 1994
9:30–11:15 a.m. Briefing on Children's Environments (closed meeting).
12:30–1:15 p.m. Executive Committee.
1:30–3:30 p.m. Board Meeting.

ADDRESSES: The meetings will be held at: Embassy Suites Hotel, Diplomat/Consulate Rooms, 1250 22nd Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the Minutes of the January 12, 1994 Board Meeting.
- Executive Director's Report.
- Ad Hoc Committee on Communications' Report on Public Forum.
- Overview of Technical Programs Committee Activities.
- Status Report on Fiscal Years 1992–1994 Research Projects.
- Proposed Research Coordination Activities.
- Status Report on Fiscal Year 1994 Budget.
- Status Report on Fiscal Year 1995 Budget.
- Status Report on the Executive Committee.
- Report on Extraordinary Work.
- Complaint Status Report.
- Recreation Access Advisory Committee Status Report.
- Report on Rulemaking for Children's Environments (closed).

Some meetings or items may be closed to the public as indicated above. All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,
Executive Director.
[FR Doc. 94–4361 Filed 2–24–94; 8:45 am]
BILLING CODE 8150–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 18, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Farmers Home Administration; 7 CFR 1951–A, Account Servicing Policies; On occasion; Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 10 responses; 3 hours; Jack Holston (202) 720–9736.
- Farmers Home Administration; 7 CFR 1910–A, Receiving and Processing Applications; Recordkeeping; On occasion; Individuals or households; State or local governments; Farms; Businesses or other for-profit; 33,210 responses; 39,987 hours; Jack Holston (202) 720–9736.
- Economic Research Service; Agricultural Real Estate Tax Survey; Annually; State or local governments; 2,780 responses; 1,834 hours; J. Peter DeBraal (202) 219–0425.

Extension

- Farmers Home Administration; 7 CFR 1965–B, Security Servicing for Multiple Family Housing; Loans; FmHA 1944–33A, 34A, 1965–16; On occasion; Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 945 responses; 1,587 hours; Jack Holston (202) 720–9736.
- Forest Service; Fulewood and Post Assessment in Selected States; Annually (but not in each state); Individuals or households; Small businesses or organizations; 4,300 responses; 294 hours; Dennis May (612) 649–5132.
- Rural Electrification Administration; State Telecommunications Modernization Plan; On occasion; Small businesses or organizations; 350 responses; 21,000 hours; Gary Allan (202) 720–0729.
- Rural Electrification Administration; Pre-loan Policies and Procedures for Electric Loans; On occasion; Small businesses or organizations; 75 responses; 300 hours; Sue Arnold (202) 690–1078.
- Forest Service; Timber Sale Bid Forms; FS–2400–14, FS–2400–42a; Quarterly; Businesses or other for-profit; Small businesses or organizations; 19,500 responses; 3,250 hours; John A. Combes (202) 205–0862.

- Farmers Home Administration; 7 CFR 1956–B, Debt Settlement—Farmer Programs and Housing; FmHA 1956–1; On occasion; Individuals or households; State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 29,900 responses; 14,825 hours; Jack Holston (202) 720–9736.
- Farmers Home Administration; 7 CFR 1980–D, Rural Housing Loans; FmHA 1980–11, 12, 13, 16, 17, 18, 20, 21, 80, 81; Recordkeeping; On occasion; Individuals or households; State or local governments; Businesses or other for-profit; Small businesses or organizations; 65,723 responses; 33,378 hours; Jack Holston (202) 720–9736.

Reinstatement

- Farmers Home Administration; Outreach and Assistance Grants Program for Socially Disadvantaged Farmers and Ranchers; Fiscal Year 1994; Request for Proposals; Application Guidelines; Recordkeeping; Semi-annually; Annually; Non-profit institutions; 50 responses; 400 hours; Jack Holston (202) 720–9736.

New Collection

- Food Safety and Inspection Service; Exportation, Transportation and Importation of Meat and Poultry Products; FSIS Form 9060–6, FSIS Form 7350–1, FSIS Form 9540–1, FSIS Form 9510–1; Recordkeeping; On occasion; Businesses or other for-profit; 12,750 responses; 1,192 hours; Lee Puricelli (202) 720–7163.

Larry K. Roberson,
Deputy Department Clearance Officer.
[FR Doc. 94–4330 Filed 2–24–94; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 94–005–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organisms	Field test location
94–024–01	Monsanto Agricultural Company.	01–24–94	Wheat plants genetically engineered to express marker genes.	Montana.
94–025–01	VanderHave, USA	01–25–94	Sunflower plants genetically engineered to express marker genes.	North Dakota.
94–027–01	DuPont Agricultural Products.	01–27–94	Canola plants genetically engineered to express altered fatty acid composition.	Idaho.
94–027–02	University of Idaho	01–27–94	Potato plants genetically engineered to express resistance to potato leaf roll virus, potato virus X, potato virus Y, and potato virus S.	Idaho.
94–027–03	Pioneer Hi-Bred International, Incorporated.	01–27–94	Alfalfa plants genetically engineered to express resistance to alfalfa mosaic virus.	California, Iowa, Pennsylvania, Washington, Wisconsin.

Done in Washington, DC, this 22nd day of February 1994.

Lonnie J. King,
Acting Administrator, Animal and Plant Health Inspection Service.
[FR Doc. 94–4323 Filed 2–24–94; 8:45 am]
BILLING CODE 3410–34–P

Farmers Home Administration

Housing Demonstration Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of Housing Demonstration Program.

SUMMARY: The Farmers Home Administration (FmHA) of the U.S. Department of Agriculture (USDA) will accept in fiscal year 1994, proposals for a Housing Demonstration program under section 506(b), title V of the Housing Act. Under section 506(b), FmHA may provide loans for innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies. The intended effect is to increase the

availability of affordable Rural Housing (RH) for low-income families, through innovative designs and systems.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, 14th and Independence Avenue SW., room 5334, South Building, Washington, DC 20250, telephone 202–720–1487.

SUPPLEMENTARY INFORMATION: Under current standards, regulations, and policies, some low-income rural families lack sufficient incomes to qualify for loans to obtain adequate housing. Section 506(b) of title V of the Housing Act of 1949 authorizes a housing demonstration program that could result in housing that these families can afford. The Congress of the United States made two conditions: (1) That the health and safety of the population of the areas in which the demonstrations are carried out will not be adversely affected, and (2) that the aggregate expenditures for the demonstration may not exceed $13.9 million in any fiscal year.

FmHA State Directors are authorized in fiscal year 1994 to continue to accept proposed demonstration concept proposals from nonprofit organizations, profit organizations, and individuals as announced in 51 FR 19240 on May 28, 1986.

The State Directors will evaluate the proposals on a first-come-first-served basis. An acceptable proposal is to be sent to the National Office for concurrence of the Assistant Administrator, Housing, before the State Director may approve it. If the proposal is not selected, the State Director will so notify the applicants, in writing, giving specific reasons why the proposal was not selected. The funds for the Demonstration Housing program are section 502 funds, and are available to housing applicants that may wish to purchase an approved demonstration dwelling. However, there is no guarantee that a market exists for demonstration dwellings and applicants for such a section 502 RH loan must be eligible for the program in all other respects.

The program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in Final Rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," (December 23, 1983) this program/activity is excluded from the scope of Executive Order 12372, which requires the intergovernmental consultation with State and local officials.

All interested parties must make a written request for a proposal package. The request must be made to the State Director in the State in which the proposal will be submitted; FmHA will not be liable for any expenses incurred by respondents in the development and submission of applications.

Dated: February 9, 1994.

Michael V. Dunn,

Administrator.

[FR Doc. 94–4314 Filed 2–24–94; 8:45 am]

BILLING CODE 3410–07–M

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 1994 through June 30, 1995. These guidelines are used by schools, institutions, and centers participating in the National School Lunch Program, School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food program and Commodity School Program. The annual adjustments are required by section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for increases in the Consumer Price Index.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, or by phone at (703) 305–2618.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget. These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556 and No. 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, Subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals in the National School Lunch Program (7 CFR part 210), School Breakfast program (7 CFR part 220), Child and Adult Care Food Program (7 CFR part 226), and Commodity School Program (7 CFR part 210), and the guidelines for free milk in the Special Milk Program for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size.

The Department requires schools and institutions which charge for meals separately from other fees to serve free meals to all children from any household with income at or below 130 percent of the poverty guidelines. The Department also requires such schools and institutions to serve reduced price meals to all children from any household with income higher than 130 percent of the poverty guidelines, but at or below 185 percent of the poverty guidelines. Schools and institutions participating in the Special Milk Program for Children may, at local option, serve free milk to all children from any household with income at or below 130 percent of the poverty guidelines.

Definition of Income

"Income," as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

"Income," as the term is used in this Notice, does not include any income or benefits received under any Federal programs which are excluded from consideration as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 1994 through June 30, 1995. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the 1994 Federal income poverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12, respectively, and by rounding upward to the next whole dollar.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 1994 to June 30, 1995]

Household size	Federal poverty guidelines			Reduced price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
48 Contiguous United States, District of Columbia, Guam and Territories									
1	7,360	614	142	13,616	1,135	262	9,568	798	184
2	9,840	820	190	18,204	1,517	351	12,792	1,066	246
3	12,320	1,027	237	22,792	1,900	439	16,016	1,335	308
4	14,800	1,234	285	27,380	2,282	527	19,240	1,604	370
5	17,280	1,440	333	31,968	2,664	615	22,464	1,872	432
6	19,760	1,647	380	36,556	3,047	703	25,688	2,141	494
7	22,240	1,854	428	41,144	3,429	792	28,912	2,410	556
8	24,720	2,060	476	45,732	3,811	880	32,136	2,678	618
For each additional family member add	+2,480	+207	+48	+4,588	+383	+89	+3,224	+269	+62
Alaska									
1	9,200	767	177	17,020	1,419	328	11,960	997	230
2	12,300	1,025	237	22,755	1,897	438	15,990	1,333	308
3	15,400	1,284	297	28,490	2,375	548	20,020	1,669	385
4	18,500	1,542	356	34,225	2,853	659	24,050	2,005	463
5	21,600	1,800	416	39,960	3,330	769	28,080	2,340	540
6	24,700	2,059	475	45,695	3,808	879	32,110	2,676	618
7	27,800	2,317	535	51,430	4,286	990	36,140	3,012	695
8	30,900	2,575	595	57,165	4,764	1,100	40,170	3,348	773
For each additional family member add	+3,100	+259	+60	+5,735	+478	+111	+4,030	+336	+78
Hawaii									
1	8,470	706	163	15,670	1,306	302	11,011	918	212
2	11,320	944	218	20,942	1,746	403	14,716	1,227	283
3	14,170	1,181	273	26,215	2,185	505	18,421	1,536	355
4	17,020	1,419	328	31,487	2,624	606	22,126	1,844	426
5	19,870	1,656	383	36,760	3,064	707	25,831	2,153	497
6	22,720	1,894	437	42,032	3,503	809	29,536	2,462	568
7	25,570	2,131	492	47,305	3,943	910	33,241	2,771	640
8	28,420	2,369	547	52,577	4,382	1,012	36,946	3,079	711
For each additional family member add	+2,850	+238	+55	+5,273	+440	+102	+3,705	+309	+72

Authority: (42 U.S.C. 1758(b)(1)).

Dated: February 18, 1994.

George A. Braley,

Associate Administrator.

[FR Doc. 94–4320 Filed 2–24–94; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Proposed Carey Creek Timber Sales, Payette National Forest, Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement (EIS) for the Carey Creek Timber Sales. The Forest Service proposes to treat approximately 1445 acres using a variety of silvicultural methods and prescribed burning. Harvest prescriptions include: clearcut with

reserve trees (245 acres), commercial thinning (75 acres), salvage/sanitation (509 acres), shelterwood (489 acres), and uneven aged (127 acres). The proposed action includes site preparation and regeneration, emphasizing the use of natural regeneration where possible. Approximately 13 miles of new road construction are also proposed. Logging methods include tractor, skyline, and helicopter systems.

Other preliminary alternatives include No-action and an alternative that seeks to achieve Forest Plan objectives to maximize timber growth and yield.

The proposed activities are located in the drainages of Carey and Fall Creeks, which both flow into the Salmon River. The planning area is approximately 30 miles north of McCall, Idaho.

The EIS will tier to the final EIS for the Forest Plan, Payette National Forest (May 1988).

The Payette National Forest invites written comments and suggestions on the scope of the analysis. These may include issues and comments regarding the proposed project. The agency also gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of this proposal must be received by April 2, 1994.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to David F. Alexander, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Michael L. Balboni, Payette National Forest. Phone: (208) 634–0629.

SUPPLEMENTARY INFORMATION: The planning area includes approximately 21,000 acres within the Payette National Forest in Idaho County, Idaho. The planning area is within the drainages of Carey and Fall Creeks. The legal description of the planning area is: Sections 1–9, 17, 18, 20, 21 of Township 23 North, Range 4 East, Sections 3,9–36 of Township 24 North, Range 4 East, Sections 19,28–33 of Township 24 North, Range 5 East, Idaho County, Idaho.

The proposed activities are within the former Carey Creek Roadless Area. The area has 3,184 acres remaining as roadless. The planning area has a very small portion that is contiguous with the Frank Church River of No Return Wilderness. This area comprises less than 300 acres of the planning area. The planning area is not within any areas recommended for inclusion in the National Wilderness System by the Payette National Forest Plan or by any past or present legislative wilderness proposal.

The Proposed Action is the result of an ecosystem and landscape analysis of the planning area completed by the Interdisciplinary Team (IDT). The IDT used the landscape analysis and design process developed by Diaz and Apostol (1992). This 8-step process used aerial photographs, research literature, stand data, maps, and site visits.

The process defined the natural range of variation for successional stages in the planning area using the best information available. The planning area was broken into four zones. The ponderosa pine zone, mixed conifer zone, subalpine-spruce/fir zone, and subalpine-lodgepole pine zone. Using stand data and research done in surrounding areas, the existing condition and natural range of variation for four successional stages in the planning area was determined. The IDT found that the zone with the most deviation from the natural range is the subalpine-lodgepole pine zone. This zone has 79% mature/oldgrowth; the natural range for this successional stage is 10–20%. The IDT used this and the rest of the information gained from the landscape analysis to develop the proposed action, concentrating on the areas where the ecosystem is most outside the natural range.

The IDT recognizes the role fire has played. The proposed activities include some prescribed burning in the ponderosa pine zone where natural fires were regular and of low intensity.

The purpose of the proposed activity is to improve the existing silvicultural conditions of the timber stands within the Carey Creek planning area while improving the health of the ecosystem. The Proposed Action would increase the long-term health and productivity of the timber resources, provide some short-term wood products, improve the overall health of the ecosystem, and protect other resource values in the planning area. Treatments would follow the goals and objectives in the Payette National Forest Plan or amend the Plan where appropriate.

The need for the proposed action is generated by the difference between existing conditions of the ecosystem and timber stands and the Desired Future Condition for the area described in the Payette Forest Plan and the landscape analysis for the planning area.

Failing to treat these areas will allow further deviation from the natural range of conditions for this ecosystem and raise the risk of severe impacts from insects, diseases, and wildfires. Failing to treat this area will also result in the Payette National Forest not fully implementing the Forest Plan Record of Decision, signed in May of 1988.

Issues

The IDT has identified preliminary issues. These issues are briefly described below:

1. Effects of road building and timber harvest on water quality, particularly in the Fall Creek drainage where past fires, timber harvesting, and road construction have occurred at a high rate over the past several years.
2. Wildlife: Effects of road building, timber harvest, and access management on some management indicator species and sensitive species found in the areas such as goshawk, pileated and white-headed woodpeckers. Also effects on wildlife corridors that currently exist in the area.
3. Ecosystem Health: Effects of the no-action alternative on the health of the ecosystem and the risk of major wildfires and insect/disease outbreaks.
4. Fisheries: Effects of road building and timber harvest on threatened, endangered, and sensitive fish, such as the chinook salmon and bull trout.

Public Participation and Scoping

The IDT is developing a citizen participation plan for the proposed project.

Public participation will be requested at several points during the analysis. The IDT will be available to visit and discuss the proposed project with individuals and organizations at their request.

The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in the preparation of the Draft EIS.

The Scoping process includes:

—Identifying potential issues.
—Identifying major issues to be analyzed in depth.
—Identifying potential management alternatives addressing the issues recognized during scoping activities.
—Identifying potential environmental effects of this project (i.e. direct, indirect, and cumulative effects and connected actions).

The Responsible Official is David F. Alexander, Forest Supervisor, Payette National Forest.

The Draft Environmental Impact Statement is scheduled to be completed and available for review in October of 1994 and the Final Environmental Impact Statement is expected to be completed in August of 1995.

The Responsible Official will document the decision, and reasons for the decision, in the Record of Decision when the FEIS is completed. That decision will be subject to Forest Service appeal regulations (36 CFR part 215).

The comment period on the DEIS will be a minimum of 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers early notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of that proposal so that it is meaningful and alerts an agency to the reviewers position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Circuit, 1986) *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementihg the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: February 18, 1994.

David F. Alexander,

Forest Supervisor, Payette National Forest.

[FR Doc. 94–4311 Filed 2–24–94; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Blue Ridge Electric Membership Corporation and Skyline Telephone Membership Corporation; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a Finding of No Significant Impact (FONSI) with respect to a loan application submitted to REA by Blue Ridge Electric Membership Corporation and Skyline Telephone Membership Corporation through REA's Rural Economic Development Loan and Grant Program. Each has applied for $400,000 to provide financing assistance to Alleghany County, North Carolina, to develop a 50-acre site in the Alleghany County Industrial Park for Bristol Compressors.

The FONSI is based on a Borrower's Environmental Report prepared by Blue Ridge Electric Membership Corporation and submitted to REA. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the Borrower's Environmental Report as its Environmental Assessment for the site development project.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, REA, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: Site development to be undertaken using the funds from the two loan applications would be $750,000 for site clearing, grading, and compaction and $50,000 for erosion control and drainage. The developed 50-acre site will be conveyed over to Bristol Compressors by Alleghany County, the owner of the site. Bristol Compressors will invest $6.9 million to construct a manufacturing facility on the site.

REA's alternative to providing the requested financing assistance would be to take no action. Under the no action alternative, REA would not provide financing assistance for site development. As of the issuance date of this **Federal Register** notice REA has not made a decision on whether or not to provide the financing assistance requested.

Copies of the environmental assessment and FONSI are available for review at, or can be obtained from, REA at the address provided herein or Mr. Brian Crutchfield, Blue Ridge Electric Membership Corporation, P.O. Box 112, Lenior, North Carolina 28645, telephone (704) 758–2383.

Dated: February 18, 1994.

Wally Beyer,

Administrator.

[FR Doc. 94–4233 Filed 2–24–94; 8:45 am]

BILLING CODE 3410–15–P

Oglethorpe Power Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a Finding of No Significant Impact with respect to the potential environmental impacts resulting from a proposal by Oglethorpe Power Corporation to construct a 500 kV transmission line between its Rocky Mountain Switching Station at its Rocky Mountain Pumped Storage Hydro-Generation Facility located northwest of the City of Rome, in Floyd County, Georgia, to Georgia Power Company's 230/115 kV Pinson Substation located near Pinson, also in Floyd County, Georgia.

The Finding of No Significant Imapct is based on a Borrower's Environmental Report prepared by Oglethorpe Power Corporation and submitted to REA. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the Borrower's Environmental Report as its Environmental Assessment for the 500 kV Rocky Mountain to Pinson Transmission Line.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, Rural Electrification Administration, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The length of the transmission line is approximately 18 miles. The proposed transmission line would require a 180

foot wide right-of-way easement. The right-of-way width may increase to 200 feet in areas where a transmission line span (spacing between structures) will exceed 1,500 feet. Lattice steel towers with four "feet" anchored to concrete piers will be used to construct the proposed transmission line. A triple bundle 1113 ACSR conductor has been selected for the transmission line. It is projected that the transmission line will be constructed by the summer of 1995. Although the transmission line will be designed for 500 kV operation, it will be initially energized and operated at 230 kV.

Alternatives considered to the project as proposed were no action, construction of a 230 kV transmission line now and a 500 kV transmission line at a later date, and three transmission line corridors for the proposed transmission line.

Copies of the Environmental Assessment and Finding Of No Significant Imapct are available for review at, or can be obtained from, REA at the address provided herein or from Mr. John Lasseter, Oglethorpe Power Corporation, 2100 East Exchange Place, Tucker, Georgia 30085–1349, telephone (404) 270–7600.

Dated: February 17, 1994.

Wally Beyer,

Administrator.

[FR Doc. 94–4232 Filed 2–24–94; 8:45 am]

BILLING CODE 3410–15–P

Soil Conservation Service

Dry Creek (Columbia) Watershed, Marion County, MS; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Dry Creek (Columbia) Watershed, Marion County, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a watershed plan for the purpose of reducing flood damages to urban areas along Webb Creek, a tributary to Dry Creek. The planned works of improvement consist of one floodwater retarding structure located on Webb Creek.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting L. Pete Heard. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: February 14, 1994.

L. Pete Heard,

State Conservationist.

[FR Doc. 94–4310 Filed 2–24–94; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Amendment to Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission announced at FR Doc 94–2941, 59 FR 5984, published February 9, 1994, will convene at 1 p.m. and adjourn at 4 p.m. on February 26, 1994, at the Hyatt Regency Hotel, Russell Room, 122 North 2nd Street, Phoenix, Arizona 85004. (This amendment is for change of location and time only.)

Dated at Washington, DC, February 18, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–4274 Filed 2–24–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will meet on Tuesday, March 22, 1994, from 6 p.m. until 8 p.m. at Oklahoma State University, Building Services, 242 Student Union, room 460, Stillwater, Oklahoma 74078. The purpose of the meeting is to finalize plans for an upcoming factfinding meeting.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TDD 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 17, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–4303 Filed 2–24–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will be held on Tuesday, March 22, 1994, from 6:30 p.m. to 8:30 p.m. at Shiloh Inn, 206 South West Temple, Salt Lake City, Utah 84101. The purpose of the meeting is to brief Advisory Committee members on Commission and regional activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Mary E. Stovall Richards or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303–866–1040 (TTY 303–866–1049).

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 17, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–4304 Filed 2–24–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE—ADJUSTMENT ASSISTANCE FOR PERIOD 01/15/94–02/15/94

Firm name	Address	Date petition accepted	Product
A.P. Green Industries, Inc	1 Green Boulevard, Mexico, MO 65265.	01/21/94	Alumina bricks, clay refractories and lime.
Decorator House, Inc	13801 Senlac, Dallas, TX 75234	01/28/94	Cutting boards and clip boards.
Universal Tools & Manufacturing Co.	115 Victory Road, Springfield, NJ 07081.	02/02/94	Machining and stamping of precision metal parts for telecommunication and defense industries.
North American Refractories Company.	500 Halle Bld., 1228 Euclid Ave., Cleveland, OH 44115–1809.	02/03/94	Frefractory bricks.
Curtiss Wright Flight Systems Inc	300 Fairfield Road, Fairfield, NJ 07004.	02/07/94	Actuators and actuation gearboxes used in the aerospace industry.
Darman Manufacturing Company, Inc.	1410 Lincoln Avenue, Utica, NY 13502.	02/07/94	Cloth roll towel cabinets.
Hamco, Inc	16131 Hwy. 44 N., Prairieville, LA 70769.	02/09/94	Baby bibbs.
Wollaston Alloys, Inc	205 Wood Road, Braintree, MA 02184.	02/11/94	Commercial valves and pumps.
Weldotron Corporation	1532 South Washington Avenue, Piscataway, NJ 08855.	02/11/94	Automatic L-sealer shrink wrappers.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: February 16, 1994

Pedro R. Garza,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 94–4254 Filed 2–24–94; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–307–803]

Gray Portland Cement and Clinker From Venezuela; Termination of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 25, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or James Rice, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW, Washington, DC 20230; telephone (202) 482–3793.

SUMMARY: On January 7, 1994, the Ad Hoc Committee of Florida Producers of Gray Portland Cement withdrew its request for an administrative review of the above referenced suspension agreement. The Department is now terminating this review.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1993, the Department received a request from the Ad Hoc Committee of Florida Producers of Gray Portland Cement to conduct an administrative review of the suspension agreement pursuant to § 353.22(a)(4) of the Department's regulations (19 CFR 353.22(a)(4).

On November 17, 1993, the Department published in the **Federal Register** a Notice of Initiation for this review (58 FR 60600).

On January 7, 1994, petitioners withdrew their request for administrative review. Accordingly, the Department has determined to terminated this administrative review.

February 17, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4351 Filed 2–24–94; 8:45 am]

BILLING CODE 3510–DS–M

Standard Carnations From Canada; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: The Department of Commerce is revoking the countervailing duty order on standard carnations from Canada because it is no longer of interest to interested parties.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Sarah Givens, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1993, the Department of Commerce ("the Department") published in the **Federal Register** (58 FR 11844) its intent to revoke the countervailing duty order on standard carnations from Canada (52 FR 7645; March 12, 1987). Additionally, as required by 19 CFR 355.25(d)(4)(ii) (1993), the Department served written notice of its intent to revoke this countervailing duty order on each party listed on the most current service list.

Scope of the Order

Imports covered by this order are shipments of fresh cut standard carnations from Canada. This merchandise is currently classifiable under *Harmonized Tariff Schedules* ("HTS") item number 0603.10.7030. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Determination to Revoke

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that the order is no longer of interest to interested parties. We conclude that there is no interest in a countervailing duty order when no interested party has requested an administrative review for at least five consecutive review periods (19 CFR 355.25(d)(4)(i)) and when no domestic interested party objects to the revocation (19 CFR 355.25(d)(4)(iii)).

Accordingly, as we received neither objections to our notice of intent to revoke the countervailing duty order nor requests for an administrative review, we have concluded that the countervailing duty order covering standard carnations from Canada is no longer of interest to interested parties. Therefore, we are revoking this countervailing duty order in accordance with 19 CFR 355.25(d)(4)(iii).

Further, as required by 19 CFR 355.25(d)(5), the Department is terminating the suspension of liquidation and will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported from Canada on or after January 1, 1993.

This notice is published in accordance with 19 CFR 355.25(d)(4)(iii).

Dated: February 17, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4352 Filed 2–24–94; 8:45 am]

BILLING CODE 3510–DS–P

National Telecommunications and Information

Spectrum Planning and Policy Advisory Committee; Renewal

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of renewal of the Spectrum Planning and Policy Advisory Committee (SPAC).

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix, and General Services Administration (GSA) Interim Rule on Federal Advisory Committee Management, 41 CFR part 101–6, as amended, and after consultation with GSA, the Secretary of Commerce has determined that the Renewal of the Spectrum Planning and Policy Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee was first established on July 19, 1965 as the Frequency Management Advisory Council. It provided advice to the Director of the Office of Telecommunications Policy (OTP), Executive Office of the President, until the functions of that office were transferred to the Department of Commerce, National Telecommunications and Information Administration (NTIA), by Executive Order 12046 of March 27, 1978. In 1991, the Committee name was changed to the Spectrum Planning Advisory Committee. Since the activities of the Committee extend into policy areas of concern, the Advisory Committee was renamed the Spectrum Planning and Policy Advisory Committee.

In reviewing the need for the Committee, the Assistant Secretary for Communications and Information has reaffirmed its original purpose of providing advice on radio frequency spectrum allocation and assignment matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Secretary has further affirmed the need for the Committee to advise on strategic spectrum planning issues and increased commercial access to Federal Government spectrum. Research indicates that the Committee's function cannot be accomplished by any organizational element or other committee of the Department.

The Committee membership consists of 19 members, including a balanced representation of 15 non-Federal members and four Federal members, chaired by the Secretary of Commerce or an individual appointed by the Secretary. The Committee will operate in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Committee's current Charter have been filed with appropriate committees of Congress and with the Library of Congress.

FOR FURTHER INFORMATION CONTACT: Inquiries or comments may be addressed to the Executive Secretary, Spectrum Planning and Policy Advisory Committee, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, U.S. Department of Commerce, room 1617M–7, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4487; or Ms. Victoria Kruk, the Department's Committee Management Analyst, U.S. Department of Commerce, room 6020, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4115.

Dated: February 18, 1994.

Richard A. Lancaster,

Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 94–4208 Filed 2–24–94; 8:45 am]

BILLING CODE 3510–60–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions to the Procurement List; Correction

In the document appearing on page 6622 in the second column of FR Doc. 94–3279 in the issue of February 11, 1994 the nonprofit agency listed under Metal Strip, Bag Tie, Plain should be United Cerebral Palsy of Broward County, Fort Lauderdale, Florida rather than The Chimes, Inc., Baltimore, Maryland.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–4353 Filed 2–24–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 28, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 6, January 7 and 14, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 42055, 59 FR 1002 and 2360) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Commissary Shelf Stocking and Custodial, Roosevelt Roads, Ceiba, Puerto Rico.

Commissary Shelf Stocking, Custodial and Receiving, Los Angeles Air Force Base, California.

Janitorial/Grounds Maintenance, Child Development Center, U.S. Coast Guard Academy, New London, Connecticut.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–4354 Filed 2–24–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 28, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Ribbon, Lift-Off Dry, 7510–01–219–5753.
NPA: Charleston Vocational Rehabilitation Center Charleston Heights, South Caroline.

Grommet,
8140–01–051–9951.
NPA: Royal Maid Association for the Blind, Inc., Hazlehurst, Mississippi.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–4355 Filed 2–24–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 28, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statements underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Grounds Maintenance, VA Medical Center, Dallas, Texas.
NPA: Fairweather Associates, Inc., Dallas, Texas.
Grounds Maintenance, U.S. Army Reserve Center, 2800 West 15th Street, Texarkana, Texas.
NPA: Texarkana Sheltered Workshop, Inc., Texarkana, Arkansas.
Janitorial/Grounds Maintenance, Western District Federal Highway Division, Vancouver, Washington,
NPA: Portland Habilitation Center, Inc., Portland, Oregon.

Beverly L. Milkman,
Executive Director.

[FR Doc. 94–4356 Filed 2–24–94; 8:45 am]
BILLING CODE 6820-33-P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94–C0009]

Futon Factory; Provisional Acceptance of a Consent Order Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Consent Order Agreement under the Flammable Fabrics Act (FFA).

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts in the **Federal Register** in accordance with the terms of 16 CFR section 1605.13. Published below is a provisionally-accepted Consent Order Agreement with Ted Imel, d/b/a Futon Factory.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by March 14, 1994.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 94–C0009, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: (Attached).

Dated: February 17, 1994.

Sheldon D. Butts,
Deputy Secretary.

Consent Order Agreement

Ted Imel, doing business as Futon Factory (hereinafter, "Respondent") enter into this Consent Order Agreement (hereinafter, "Agreement") with the staff (hereinafter, "staff") of the Consumer Product Safety Commission (hereinafter, "Commission") pursuant to the procedure for Consent Order Agreements contained in section 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR part 1605.

This Agreement and Order are for the sole purpose of settling allegations of the staff that the Respondent sold futon mattresses that are subject to the Flammable Fabrics Act, the Federal Trade Commission Act, and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72), amended), 16 CFR part 1632, (hereinafter, "Mattress Standard"); and that those futon mattresses failed to comply with those Acts and the Mattress Standard issued thereunder, as more fully set forth in the complaint accompanying this Agreement.

Respondent and the Staff Agree

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

2. Respondent is a sole proprietorship organized and existing under the laws of the State of Oregon with its principal place of business located at 220 SW Ankeny, Portland, Oregon 97204.

3. Respondent Ted Imel is the sole proprietor of the Futon Factory and, in this capacity, is responsible for its acts, practices, and policies.

4. Respondent is now and has been engaged in one or more of the following: The manufacture for sale, the sale, or the offering for sale, in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.*, and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

5. This Agreement is for settlement purposes only, does not constitute an admission by Respondent that he has violated the law, and becomes effective only upon its final acceptance by the Commission and service of the Final Order upon Respondent.

6. Respondent waives (a) all requirements for finding of fact and conclusions of law in the disposition of this matter, and (b) administrative and judicial review of the facts and proceedings.

7. The requirements of this Order are in addition to, and not to the exclusion of, other remedies such as criminal penalties which may be pursued under section 7 of the FFA, 15 U.S.C. 1196, and civil penalties which may be pursued under section 5 of the FFA, 15 U.S.C. 1194.

8. Violation of the provisions of the Order may subject Respondent to a civil penalty not to exceed $10,000 for each such violation, as prescribed by law.

9. The Commission may disclose the terms of this Consent Order Agreement.

10. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the Order.

11. No agreement, understanding, representation or interpretation not contained in this Agreement, Order, and accompanying Complaint may be used to vary or contradict the terms of the Order.

Upon acceptance of this Agreement, the Commission shall issue the following Order:

Order

I

It is hereby ordered that respondent, and his successors and assigns, agents, representatives, and employees of the Respondent, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material which fails to conform to the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72), amended 16 CFR part 1632.

II

It is further ordered that respondent conduct prototype testing for each futon mattress design, prior to production, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

III

It is further ordered that respondent prepare and maintain written records of the prototype testing specified in paragraph II of this Order for each futon mattress design, including photographs of the tested futon mattresses, in accordance with applicable provision of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72,) amended), 16 CFR part 1632.

IV

It is further ordered that respondent prepare and maintain a written record of the manufacturing specifications of each futon mattress prototype in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

V

It is further ordered that respondent conduct prototype testing or, if appropriate, obtain supplier certification to support any substitution of materials after prototype testing, in accordance with all applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

VI

It is further ordered that respondent prepare and maintain a written record of the manufacturing specifications of any new ticking or tape edge material substituted for those used in the original prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

VII

It is further ordered that respondent prepare and maintain all other records required by the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632, including:

(a) Records to support any determination that a particular material other than ticking or tape edge material did not influence ignition resistance;
(b) Ticking classification test results or a certification from the ticking supplier;
(c) Tape edge substitution test results;
(d) Photographs of any futon mattress tested for purposes of making a tape edge substitution; and,
(e) Records describing the disposition of all failing or rejected prototype futon mattresses.

VIII

It is further ordered that respondent shall forthwith distribute a copy of this Order to each of its operating divisions.

IX

It is further ordered that respondent shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

X

It is further ordered that, for a period of ten (10) years from the date this Order becomes final within the meaning of the Federal Trade Commission Act, Respondent notify the Commission at least thirty (30) days prior to any proposed change in the way Respondent does business which may affect his compliance obligations arising out of this Order.

XI

It is further ordered that the Consent Order Agreement is provisionally accepted pursuant to 16 CFR section 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register.**

Signed this 22nd day of November, 1993.

Ted Imel,
d/b/a Futon Factory, 220 SW Ankery, Portland, OR 97204.
David Schmeltzer,
Associate Executive Director, Office of Compliance and Enforcement.
Alan H. Schoem,
Director, Division of Administrative Litigation, Office of Compliance and Enforcement.
Melvin I. Kramer,
Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR section 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register.**

So ordered by the Commission, this 18th day of February, 1994.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 94–4358 Filed 2–24–94; 8:45 am]
BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35).

Title and Applicable Form: Quarterly "Check It Out" Checklist for Appropriated Fund Facilities, Air Force Form 3587
Type of Request: New collection
Number of Respondents: 291
Responses Per Respondent: 4
Annual Responses: 1,164
Average Burden Per Response: 1 hour
Annual Burden Hours: 1,164
Needs and Uses: The information collected hereby constitutes the quarterly review of appropriated fund dining facilities, both contracted and military supervised, required by Air

Force Policy Directive 40–1, "Health Promotion." It is used to measure compliance with the requirements of the Air Force's "Check It Out" nutrition education program.
Affected Public: Businesses or other for-profit; Federal agencies or employees
Frequency: Quarterly
Respondent's Obligation: Voluntary
OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503
DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: February 18, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4251 Filed 2–24–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Number: Marine Corps Advertising Awareness and Attitude Tracking Study, OMB Control Number 0704–0155
Type of Request: Reinstatement
Average Burden Hours/Minutes Per Response: 21 minutes
Responses Per Respondent: 2
Number of Respondents: 900
Annual Burden Hours: 630
Annual Responses: 1,800
Needs and Uses: The Marine Corps Advertising Awareness and Attitude Tracking Study is used by the Marine Corps to measure the effectiveness of current advertising campaigns and to plan future advertising campaigns.
Affected Public: Individuals or households
Frequency: Semi-annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: February 18, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4252 Filed 2–24–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Meeting

ACTION: Notice.

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on April 19, 1994, and from 8:30 a.m. to 4:30 p.m. on April 20, 1994. The meeting will be held at The Corpus Christi Marriott, 900 North Shoreline Boulevard, Corpus Christi, Texas. The purpose of the meeting is to review planned changes in the Department of Defense's Student Testing Program and progress in developing paper-and-pencil and computerized enlistment tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Personnel and Readiness), room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than April 1, 1994.

Dated: February 18, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4250 Filed 2–24–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Yakima Training Center Cultural and Natural Resources Committee—Policy Committee; Meeting

AGENCY: U.S. Army I Corps and Fort Lewis, Staff Judge Advocate, DOD.

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463 announcement is made of the following committee meeting:

Name of the Committee: Yakima Training Center Cultural and Natural Resources Committee—Policy Committee.
Date of the Meeting: March 17, 1994
Place: Yakima Training Center, Building 266, Yakima Washington.
Time: 1 p.m.
Proposed Agenda: Cultural and Natural Resources Management Plan EIS: Stationing of Mechanized or Armored Combat Forces at Fort Lewis, Washington.

All proceedings are open. For further information contact Stephen Hart, Chief, Civil Law, (206) 967–4540.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 94–4302 Filed 2–24–94; 8:45 am]

BILLING CODE 3710–08–M

Yakima Training Center Cultural and Natural Resources Committee—Policy Committee

AGENCY: U.S. Army I Corps and Fort Lewis, Staff Judge Advocate, DOD.

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of the Committee: Yakima Training Center Cultural and Natural Resources Committee—Policy Committee.
Date of the Meeting: March 10, 1994.
Place: Yakima Training Center, Building 266, Yakima Washington.
Time: 1 p.m.
Proposed Agenda: Cultural and Natural Resources Management Plan EIS: Stationing of Mechanized or Armored Combat Forces at Fort Lewis, Washington.

All proceedings are open. For further Information contact Stephen Hart, Chief, Civil Law, (206) 967–4540.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–4309 Filed 2–24–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement for Redevelopment and Reuse of the (Former) Naval Construction Battalion Center (NCBC) Davisville, RI

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the Redevelopment and Reuse of the (former) Naval Construction Battalion Center (NCBC) Davisville, Rhode Island.

The NCBC is located in the town of North Kingstown eighteen miles south of the city of Providence in the county of Washington. The Center consists of a total of approximately 904 acres including all lands at the main center, and West Davisville. The Center has a combined total of 237 buildings and structures including 62 permanent, 161 semi-permanent and 14 temporary facilities.

In November 1990, the Congress passed the Base Closure and Realignment Act (BCRA) which established a procedure for the realignment/closure of U.S. Defense Department installations. As a result of the 1991 BCRA Commission recommendations, which were subsequently approved by the President, the U.S. Naval Construction Battalion Center Davisville, Rhode Island was slated for closure.

The BCRA also identified the requirements for compliance with the National Environmental Policy Act (NEPA) stating that the provisions of NEPA shall apply (a) during the process of property disposal and (b) during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated.

The proposed action addressed in the DEIS is the redevelopment and reuse of land/facilities determined excess to the needs of the federal government. A local community Base Reuse Committee ("BRC"), consisting of representatives from the Rhode Island Port Authority, the North Kingtown Town Council, and the local community have developed a NCBC Comprehensive Plan for the reuse of the (former) NCBC complex. The DIS has been prepared to address the environmental consequences of the implementation of this comprehensive reuse plan.

The DEIS also includes the no action alternative defined as the NCBC is closed, all military activities are relocated or terminated and the land is not disposed, i.e., it remains as U.S. Government land. It is noted that congressional legislation will be required to implement the no action alternative.

In the development of the reuse plan for NCBC, consideration was given to the possible reuse of the complex by other federal, state, and local agencies: Native American tribal interests; homeless support organizations; educational and technical institutions; business interests; and organized sports and recreational organizations. Various development/reuse scenarios were developed by the BRC and a preferred reuse plan has been identified and approved following public review and evaluation. The preferred action evaluated in the DEIS is the approved reuse plan developed by the BRC.

The reuse plan identifies areas of the NCBC complex for administrative, institutional and industrial uses; increased support to ongoing pier operations including commercial fishing; expanded recreational uses including an enlarged marina; and expanded warehousing and small business support.

As proposed, implementation of the reuse plan would see a conversion of the NCBC complex to a significant industrial park employing approximately 5,000 new workers.

The DEIS has been distributed to various federal, state and local governmental agencies and elected officials, special interest groups, and libraries. A limited number of single copies are available at the address listed at the end of this notice.

The Department of the Navy will hold a public hearing to inform the public of the DEIS findings and to solicit comments. The hearing will be held on March 29, 1994, at Building 404 on NCBC Davisville. The hearing will begin at 7:30 p.m. and will end at 10 p.m. or at the conclusion of public comments. The hearing will be conducted by the Navy. Federal, state and local agencies and interested parties are invited and urged to attend or be represented at the hearing. Oral statements will be heard and transcribed by a stenographer ; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this action and will be given equal consideration.

In the interest of available time, each speaker will be asked to limited remarks to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this notice. All written statements must be postmarked by April, 2, 1994, to become part of the official record.

Additional information concerning this notice may be obtained by contacting Mr. Robert Ostermueller (Code 202) Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Lester, PA 19113, telephone 212–595–0759.

Dated: February 22, 1994.

Saundra K. Melancon,

Alternate Federal Regional Liaison Officer

[FR Doc. 94–4315 Filed 2–24–94; 8:45 am]

BILLING CODE 3810–AE–M

Intent To Prepare an Environmental Impact Statement for Proposed Leasing of a Portion of Fleet Industrial and Supply Center, Oakland, CA

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy in association with the Port of Oakland, Oakland, California announce their intent to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the proposed lease of Navy land to the Port of Oakland for commercial and maritime industrial development. The Navy will be the Lead Agency under NEPA and the Port of Oakland will be the Lead Agency under the California Environmental Quality Act.

Public Law 102–484 (section 2834(b) of the Fiscal Year 1993 Defense Authorization Act, as amended) authorizes the Secretary of the Navy to lease to the Port of Oakland real property, together with improvements thereon, at the Fleet and Industrial Supply Center, Naval Supply Center, Oakland, Alameda County, California, hereinafter referred to as the "Center.

The proposed project involves up to 220 acres of the Center's land facilities to be leased to the Port of Oakland for long-term commercial uses and redevelopment for maritime and transportation-related functions. In addition, the project includes 45 acres of the Port of Oakland's property, south of the Center and adjacent to the American President Lines Terminal. The Port of Oakland proposes to

establish maritime and transportation activities and to redevelop the site for port operations in support of the Oakland Harbor Area.

Redevelopment projects may include intermodal rail facilities, marine facilities, container facilities, and other maritime and transportation facilities. The site would be used as a transfer and staging area for container cargo transported between the project area and the Inner and Outer Oakland Harbor marine terminals by train and truck.

The 265 acres included in the proposed project have been divided into five areas for planning purposes. Development of Area A (83 acres of the Center) would include demolition of most of the existing facilities and construction of new intermodal rail tracks and associated appurtenances, such as straddle carrier runways and container staging support areas.

Development of Area B (40 acres of the Center) would include demolition of existing facilities and construction of new container transfer and storage areas and a transloading facility. The transloading facility would be a narrow, dock-high pletform with rail tracks on one side and truck spaces on the other side.

Development of Area C (67 acres of the Center) would include demolition of some existing facilities, construction of an entrance for the intermodal rail facility (including a gatehouse and maintenance and repair building) and maintenance of existing warehouses for continued warehouseing and/or distribution uses.

Development of Area D (45 acres of Port property) would include demolition of existing facilities and construction of a new terminal expansion area to be used for marine tenant container staging and storage.

An option for development of Area E (20 to 30 acres of the Center) may be included in the lease, depending on the results of discussions between the Port of Oakland and the Center. If agreement is reached, the additional area would be used for warehousing and/or distribution.

The alternatives to be evaluated will include:

1. Alternative intensities of demolition and development;
2. Alternative configurations of land usage, including options that will retain some of the existing facilities; and
3. No Action alternative.

Federal, state, and local agencies and interested individuals are encouraged to take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS/EIR for the proposed action. Please submit written comments within 30 days of the published date of this notice to the following addresses: (1) Mr. Raymond Chiang, Environmental Planning Branch, Western Division Naval Facilities Engineering Command, P.O. Box 727, San Bruno, California 94066, FAX (415) 244–3737 for comments pertaining to the Navy; and (2) Mr. Charles Schwarz, Environmental Department, Port of Oakland, 530 Water Street, Oakland, California, 94607, FAX (510) 465–3755 for comments pertaining to the Port of Oakland.

Dated: February 22, 1994.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 94–4322 Filed 2–24–94; 8:45 am]

BILLING CODE 3810–AE–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Resolution of Potential Conflict of Interest

The Defense Nuclear Facilities Safety Board (Board) has identified and resolved a potential conflict of interest situation related to its contractor, MPR Associates, Incorporated (MPR). This notice, which is a summary of the facts related to this decision, satisfies the requirements of 10 CFR 1706.8(e) with respect to publication in the **Federal Register**. Under the Board's Organizational and Consultant Conflicts of Interests Regulation, 10 CFR part 1706 (OCI Regulations), an organizational or consultant conflict of interest (OCI) means that because of other past, present or future planned activities or relationships, a contractor or consultant is unable, or potentially unable, to render impartial assistance or advice to the Board, or the objectivity of such offeror or contractor in performing work for the Board is or might be otherwise impaired, or such offeror or contractor has or would have an unfair competitive advantage. While the OCI Regulations provide that contracts shall generally not be awarded to an organization where the Board has determined that an actual or potential OCI exists and cannot be avoided, the Board may waive this requirement in certain circumstances.

The Board was advised of a potential safety issue at the Department of Energy's (DOE) Savannah River Site (SRS) regarding a tank containing Curium and Americium in a nitric acid solution. Specifically, sampling of the tank, which is 10 feet in diameter by 11 feet in height, and is made of Type 304 L stainless steel, demonstrated a high concentration of iron in the tank's contents, indicative of corrosion of the tank's stainless steel structure. Based on a standard calculational method for determining corrosion, DOE's Management and Operating contractor for SRS reached a preliminary conclusion that corrosion of the tank's stainless steel structure had resulted in a uniform wall thickness reduction of 0.011 inches from an original thickness of 0.5 inches. The Board was concerned that the corrosion might potentially be nonuniform or localized in areas of the tank such as crevices, or welds, and under sludge. The primary question was whether the extent of corrosion had the potential to breach the integrity of the tank, thereby increasing the probability of a release of radioactive material, threatening site workers and the general public's health and safety. Consequently, the Board determined that the accuracy of the analysis of the tank needed to be verified through the collection and evaluation of additional data to determine the degree of the corrosion problem and whether the tank's integrity is intact.

As the Board did not have expertise readily available to conduct an in-depth evaluation of these findings, the Board decided to engage outside technical experts from MPR based on their extensive relevant experience, expertise, and immediate availability. However, MPR advised the Board that it had entered into a contractual relationship with a DOE contractor to provide assistance to DOE in the analysis of deactivation plans for the PUREX Plant, a DOE facility at the Hanford Reservation in Richland, Washington, and provide written recommendations and advice to DOE regarding these analyses. While MPR's contractual work for the Board and the DOE would not necessarily create an actual overlap of work at this time, and hence no direct OCI, a potential OCI would exist due to MPR's concurrent relationships with DOE and the Board, as the PUREX plant is a defense nuclear facility under the Board's jurisdiction. Consequently, as a result of its relationship with DOE, the ability of MPR to provide objective advice to the Board could be questioned.

After considering these concerns, the Board concluded that the award of the task to MPR for a review of the tank in question at SRS was in the best interest of the Government and that a waiver of any OCI arising from the relationship described above, and the pertinent provisions of the OCI Regulations, was warranted. The reasons underlying these conclusions were as follows:

1. MPR possessed extensive relevant technical expertise gained from previous long-term work on similar problems with the commercial nuclear industry and through performance of safety-related activities at SRS for the Board. The Board did consider whether there was a source other than MPR that had the caliber of qualified staff capable to responding to the Board's needs without having potential OCI situations. However, without exhaustive research, which would have caused unwarranted delay, the Board was not aware of any other firm with the level of background knowledge and experience of MPR, which is essential to the successful accomplishment of the Board's requirement.

2. MPR advised the Board's staff that the expected revenues from its work related to the PUREX Plant at the Hanford Reservation in Richland, Washington, represented less than one percent of its total revenues. In the Board's view, such a low percentage of revenues from DOE-related projects should not make MPR financially dependent on DOE.

3. In an attempt to mitigate any potential OCI related to this situation, MPR agreed to create an internal partition between MPR staff working on the Board project and MPR staff working on the DOE-related project. Further, MPR's efforts for the Board will be overseen by experienced technical staff of the Board to ensure that all resultant work products are impartial and contain full support for any findings and recommendations issued thereunder.

Accordingly, on the basis of the determinations described above and pursuant to the applicable provisions of 10 CFR part 1706, the Chariman of the Board granted a waiver of any conflicts of interests (and the pertinent provisions of the OCI Regulations) with the Board's contract with MPR that might arise out of its existing contractual arrangement with a DOE contractor.

Dated: February 18, 1994.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 94–4220 Filed 2–24–94; 8:45 am]

BILLING CODE 6820–KD–M

DEPARTMENT OF ENERGY

Cases Filed During the Week of January 7 Through January 14, 1994

Office of Hearings and Appeals

During the Week of January 7 through January 14, 1994, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 18, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 7 through January 14, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 14, 1993	Texaco/Art's Airport Texaco, Louisville, KY	RR321–143	Request for modification/rescission in the Texaco refund proceeding. If granted: The December 14, 1993 Dismissal Letter (Case No. RF321–14745) issued to Art's Airport Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Jan. 10, 1994	Francis M. O'Laughlin, Metairie, LA	LWA–0005	Request for hearing under DOE contractor employee protection program. If granted: A hearing under 10 CFR Part 708 would be held on the complaint of Francis M. O'Laughlin that reprisals were taken against him by management officials of Boeing Petroleum Services, Inc. as a consequence of his having disclosed health and safety concerns at the Strategic Petroleum Reserve Office.
Jan. 10, 1994	Minneola Co-Op, Inc., Minneola, KS	LEE–0071	Exception to the reporting requirements. If granted: Minneola Co-Op, Inc., would not be required to file Form EIA–782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
1/7/94 thru 1/14/94	Texaco Oil Refund, Applications Received	RF321–20015 Thru RF321–20037
1/7/94 thru 1/14/94	Whitaker Oil Refund, Applications Received	RF351–9 Thru RF351–14
1/10/94	W.A. Kelso Bldg. Material Corp.	RF272–95096
1/10/94	Pemberton Bd. of Education	RF272–95097
1/10/94	Stanley Swabbing Service	RF272–95098

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
1/10/94	Washington Canal Center	RF346–113
1/12/94	VAL Cap. Inc.	RF300–21771

[FR Doc. 94–4345 Filed 2–24–94; 8:45 am]
BILLING CODE 6450–01–P

Office of Hearings and Appeals; Cases Filed During the Week of January 28 Through February 4, 1994

During the Week of January 28 through February 4, 1994, the appeals and applications for exception or other relief listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 18, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 28 through February 4, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 8, 1994	OXY USA Inc., Washington, DC	LRZ–0024	Interlocutory order. If granted: The Office of Hearings and Appeals would recuse itself from further consideration of the Revised Proposed Remedial Order at issue in OXY USA Inc., LRO–0003.
Jan. 31, 1994	Farmers Co-Operative Company, Winger, MN.	LEE–0077	Exception to the reporting requirements. If granted: Farmers Co-Operative Company would not be required to file FORM EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Jan. 31, 1994	Jon Berg, Alexandria, VA	LFA–0351	Appeal of an information request denial. If granted: The December 21, 1993 Freedom of Information Request Denial issued by the Energy Information Administration would be rescinded, and Jon Berg would receive access to documents withheld by the Energy Information Administration relating to a business concept created by a current DOE employee.
Jan. 31 1994	Nayar and Company PC, Denver, CO	LFA–0352	Appeal of an information request denial. If granted: The December 30, 1993 Freedom of Information Request Denial issued by the Office of the Administrator would be rescinded, and Nayar and Company, PC would receive access to documents deleted relating to solicitation DE–RP65–93WA10570.
Jan. 31, 1994	R&R Oil, Incorporated, Gillette, WY	LEE–0079	Exception to the reporting requirements. If granted: R&R Oil, Incorporated would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Jan. 31, 1994	Swan Oil Company, Benton Harbor, MI	LEE–0076	Exception to the reporting requirements. If granted: Swan Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Jan. 31, 1994	Winn's Gas & Oil, Paul, ID	LEE–0078	Exception to the reporting requirements. If granted: Winn's Gas & Oil would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Feb. 1, 1994	Pledger Oil Company, Inc., Kentwood, LA	LEE–0080	Exception to the reporting requirements. If granted: Pledger Oil Company, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Feb 2, 1994	Seehuus Associates, Prosser, WA	LFA–0353	Appeal of an information request denial. If granted: Seehus Associates would receive a retroactive waiver of fees regarding information released to them pursuant to a previous request.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of January 28 through February 4, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 2, 1994	V.W. Smith Oils, Inc., Ankeny, IA	LEE–0081	Exception to the reporting requirements. If granted: V.W. Smith Oils, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
Feb. 3, 1994	Mt. Airy Refining Company, Washington, DC.	LEF–0121	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the November 14, 1990 Consent Order entered into with Mt. Airy Company.

REFUND APPLICATIONS RECEIVED

[Week of January 28 through February 4, 1994]

Date received	Name of refund proceeding/name of refund applicant	Case no.
1/21/94	Airport Texaco	RR321–147
2/2/94	IBP, Inc	RF340–197
2/2/94	AT&T Global Info Solutions Co	RF351–16
2/2/94	AT&T Global Info Solutions Co	RF351–17
2/1/94	Bob's Gulf	RF300–21772
1/18/94	Nebraska Public Power District	RF340–196
1/28/94 thru 2/4/94	Texaco Oil Refund, Applications Received	RF321–20112 thru RF321–20147
1/28/94 thru 2/4/94	Crude Oil Refund, Applications Received	RF272–95104 thru RF272–95115

[FR Doc. 94–4346 Filed 2–24–94; 8:45 am]
BILLING CODE 6450–01–P

Cases Filed During the Week of January 14 through January 21, 1994

During the Week of January 14 through January 21, 1994, the appeals and applications for exception or other relief listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 18, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 14 Through January 21, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 18, 1994	Ed Bricker, Washington, DC	LFA–0349	Appeal of an information request denial. If granted: Ed Bricker would receive access to agency records, and redactions made under various Freedom of Information Act exemptions from documents in the possession of DOE's Office of Inspector General.
Jan. 18, 1994	Texaco/Al Mazon Texaco, Olivehurst, CA	RR321–145	Request for modification/rescission in the Texaco refund proceeding. If granted: The January 29, 1992 Dismissal Letter (Case No. RF321–2170) issued to Al Mazon Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Jan. 21, 1994	Christian County Farmers Supply Company, Taylorville, IL.	LEE–0073	Exception to the reporting requirements. If granted: Christian County Farmers Supply Company would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Jan. 21, 1994	Mico Oil Company, Inc., Shawnee Mission, KS.	LEE–0075	Exception to the reporting requirements. If granted: Mico Oil Company, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Jan. 21, 1994	New Dixie Oil Corporation, Roanoke Rapids, NC.	LEE–0074	Exception to the reporting requirements. If granted: New Dixie Oil Corporation would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of January 14 Through January 21, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 21, 1994 ..	Ranchers Supply, Inc., Rock River, WY	LEE–0072	Exception to the reporting requirements. If granted: Ranchers Supply, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Jan. 21, 1994 ..	Texaco/Roland's Texaco, San Diego, CA ...	RR321–146	Request for modification/rescission in the Texaco refund proceeding. If granted: The September 5, 1991 Dismissal Letter (Case No. RF321–2028) issued to Roland's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

Date received	Name of refund proceeding/name of refund application	Case No.
1/13/94	Beaver Valley Builder's Supply	RF272–95100
1/13/94	Laurel Coop Assoc	RF272–95101
1/14/94	Foster & Kleiser	RF272–95102
1/24/94	Cargill, Inc	RF351–15
1/14/94 thru 1/21/94	Texaco Refund Applications Received	RF321–20038 thru RF321–20063

[FR Doc. 94–4347 Filed 2–24–94; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Management Advisory Board.

Dates and Times: Monday, March 14, 1994 from 5:30 p.m. to 10 p.m. Tuesday, March 15, 1994 from 8 a.m. to 4 p.m.

Place: The Henry VIII Conference Center—Ramada Hotel, 4690 Lindberg Avenue, St. Louis, Missouri 63044.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Secretary, Environmental Management Advisory Board, EM–1, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4400.

SUPPLEMENTARY INFORMATION: Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on both the substance and process of the EM Programmatic Environmental Impact Statement and other EM projects, from the perspectives of affected groups and State and local Governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program.

Tentative Agenda

Monday, March 14, 1994

5:30 p.m.
Co-Chairs Opens the Meeting
Subcommittee reports
7:30 p.m.
Public Comment Session
10 p.m.
Meeting Adjourns

Tuesday, March 15, 1994

8 a.m.
Public Meeting Reconvened
Site Specific Risk Assessment: Advisory Boards and Public Participation
FY 1995 Environmental Management Budget Priorities
12 p.m.
Lunch
1 p.m.
Environmental Management Issues
- Environmental Management Program Reorganization
- Project Performance Study Update
- Environmental, Safety and Health Plan to move the Department of Energy under the Occupational Safety and Health Administration (OSHA)
- International Spent Fuel

4 p.m.
Meeting Ends

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the Board during the public comment session should call (800) 862–8860 and leave a message. Individuals may also register on March 14, 1994 at the meeting site. Every effort will be made to hear all those wishing to speak to the Board, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Board Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes: A transcript and minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on February 18, 1994.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 94–4343 Filed 2–24–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EL79–8–006, *et al.*]

Southwestern Electric Power Company, et al. Electric Rate and Corporate Regulation Filings

February 17, 1994.

Take notice that the following filings have been made with the Commission:

1. Southwestern Electric Power Company

[Docket No. EL79–8–006]

Take notice that on February 3, 1994, Southwestern Electric Power Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service Company

[Docket No. ER94–51–000]

Take notice that on February 10, 1994, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company (CL&P) tendered for filing supplemental information on a letter agreement between CL&P and the Connecticut Municipal Electric Energy Cooperative (CMEEC) regarding emission allowances associated with units which CMEEC has a life-of-unit entitlement.

NUSCO states that the filing is in accordance with Section 35 of the Commission's regulation and copies of the filing have been sent to CMEEC and CL&P.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Service Corporation

[Docket No. ER94–284–000]

Take notice that on February 10, 1994, Wisconsin Public Service Corporation (WPSC) tendered for filing an amendment to its original submittal in this docket at the direction of the Commission's staff. The amendment will effect a small reduction in WPSC's proposed charges for firm transmission service. WPSC requests that the Commission waive its notice requirements and permit the filing to become effective on March 1, 1994.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. San Diego Gas & Electric Company

[Docket No. ER94–360–000]

Take notice that on February 14, 1994, San Diego Gas & Electric Company (SDG&E) tendered for filing an amendment to its earlier filing of the agreements which affect or relate to the Mutual Assistance Transmission Agreement (MATA), SDG&E FERC rate schedule 62, among SDG&E, Southern California Edison Company (Edison), the Imperial Irrigation District (IID), and Arizona Public Service Company (APS). SDG&E is amending its filing to include Edison's Certificate of Service.

Copies of this filing were served upon the Public Utilities Commission of the State of California, Edison, IID and APS.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company

[Docket No. ER94–880–000]

Take notice that on February 14, 1994, Northern States Power Company (Minnesota) tendered for filing an Amendment to Supplement No. 1 through No. 8 to the Interconnection and Interchange Agreement between Northern States Power Company (Minnesota) and United Power Association. This Amendment provides additional cost support information regarding Supplement No. 7.

NSP requests that the Commission accept for filing these Supplements effective as of the dates upon which the Supplements were executed.

Based upon the parties' mutual agreement and in accordance with the Commission's Order in Docket No. PL93–2–002 which granted amnesty period until December 31, 1993, NSP requested that the Commission accept these agreements effective as of their various effective dates. NSP requests waiver of the Commission's notice requirements under Part 35 so these agreements may be effective as of the dates requested. NSP also requests waiver of any other applicable filing requirements under the Commission's Rules and Regulations as may be necessary to accept these agreements for filing on the dates requested.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of Colorado

[Docket No. ER94–943–000]

Take notice that on February 1, 1994, Public Service Company of Colorado (Public Service) tendered for filing a Notice of Cancellation of the letter agreement between Public Service Company of New Mexico (PNM) and Colorado Ute Electric Association, Inc. (Colorado-Ute) which was filed in Docket No. ER94–515–000.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Electric Clearinghouse, Inc.

[Docket No. ER94–968–000]

Take notice that Electric Clearinghouse, Inc. (ECI) on February 10, 1994, tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (1992), a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective on April 8, 1994.

ECI intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where ECI purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, ECI will be functioning as a marketer. ECI's marketing transactions, ECI proposes to charge rates mutually agreed upon by the parties. All sales will be at arms-length, and no sales will be made to affiliated entities. In transactions where ECI does not take title for the electric power and/or energy, ECI will be limited to the role of a broker and charge a fee for its services. ECI is not in the business of producing or transmitting electric power. ECI does not currently have or contemplate acquiring title to any electric power transmission facilities.

Rate Schedule No. 1 proposes for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4300 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 11448–000, et al.]

Hydroelectric Applications; City of Granite Falls, et al.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11448–000.

c. *Dote filed:* November 12, 1993.

d. *Applicant:* City of Granite Falls.

e. *Name of Project:* Minnesota Falls Project.

f. *Location:* On the Minnesota River, near Granite Falls, in Yellow Medicine and Chippewa Counties, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16, U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William Lavin, City Manager, City of Granite Falls, 885 Prentice, Granite Falls, MN 56241 (612) 564–3011.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Comment Date:* April 4, 1994.

k. *Description of Project:* The proposed project would consist of: (1) An existing dam 600 feet long and 18 feet high; (2) an existing reservoir approximately 150 acres with a storage capacity of 735 acre-feet and a normal maximum surface elevation of 903.2 feet mean sea level; (3) a proposed conduit approximately 9 feet in diameter; (4) a powerhouse with two proposed turbine-generator units having a total installed capacity of 1,160 kilowatts; (5) a proposed 12,470-volt transmission line 2 miles long; and (6) appurtenant facilities. The estimated cost of the studies is $28,500. The owner of the dam is Northern States Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2 a. *Type of Application:* Minor License.

b. *Project No.:* 11402–000.

c. *Date Filed:* April 2, 1993.

d. *Applicant:* City of Crystal Falls.

e. *Name of Project:* Crystal Falls.

f. *Location:* On the Paint River, in the City of Crystal Falls, Iron County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* W.E. Hagglund, 401 Superior Ave., Crystal Falls, MI 49920 (906) 875–3212.

i. *FERC Contact:* Charles T. Raabe (dt) (202) 219–2811.

j. *Deadline for interventions and protests:* April 1, 1994.

k. *Status of Environmental Analysis:* This application is accepted for filing but is not ready for environmental analysis at this time—see attached paragraph D8.

l. *Description of Project:* The existing operating project would consist of: (1) A 270-foot-long, 16-foot-high concrete gravity dam having a spillway section topped with four radial steel gates; (2) a reservoir having a surface area of 100 acres and a storage capacity of 590 acre-feet at surface elevation 1333.69 feet NGVD; (3) a 77-foot-long integral powerhouse having three turbine/generator units with a total installed capacity of 1,000-kW; (4) a 75-foot-long, 77-foot-wide tailrace; and (5) appurtenant facilities. The project is owned by the Applicant. Project power would be used by the Applicant within its municipal facilities.

m. This notice also consists of the following standard paragraphs: A2, A9, B1, & D8.

n. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at the City of Crystal Falls, 401 Superior Ave., Crystal Falls, Michigan 49920, (906) 875–3212.

o. *Scoping Process:* In gathering background information for preparation of the Environmental Assessment for the issuance of a Federal hydropower license, staff of the Federal Energy Regulatory Commission, is using a scoping process to identify significant environmental issues related to the construction and operation or the continued operation of hydropower projects. The staff will review all issues raised during the scoping process and identify issues deserving of study and also deemphasize insignificant issues, narrowing the scope of the environmental assessment as well. If preliminary analysis indicates that any issues presented in the scoping process would have little potential for causing significant impacts, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

p. *Request for Scoping Comments:* Federal, state, and local resource agencies; licensees, applicants and developers; Indian tribes; other interested groups and individuals, are requested to forward to the Commission, any information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing activities of the project(s). Therefore you are requested to provide information related to the following items:

- Information, data, maps or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.
- Identification of and information from any other EIS or similar study (previous, on-going, or planned) relevant to the proposed licensing activities in the subject river basin.
- Existing information and any data that would aid in describing the past and present effects of the project(s) and other developmental activities on the physical/chemical, biological, and socioeconomic environments. For example, fish stocking/management histories in the subject river, historic water quality data and the reasons for improvement or degradation of the quality, any wetland habitat loss or proposals to develop land and water resources within the basin.
- Identification of any federal, state or local resource plans and future project proposals that encompass the subject river or basin. For example, proposals to construct or operate water treatment facilities, recreation areas, or implement fishery management programs.
- Documentation that would support a conclusion that the project(s) does not contribute, or does contribute to adverse and beneficial cumulative effects on resources and therefore should be excluded for further study or excluded from further consideration of cumulative impacts within the river basin. Documentation should include, but not limited to: How the project(s) interact with other projects within the river basin or other developmental activities; results from studies; resource management policies; and, reports from federal, state, and local agencies.

Comments concerning the scope of the environmental assessment should be filed by the deadline for interventions and protests.

3 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11450–000.

c. *Date filed:* December 22, 1993.

d. *Applicant:* City of Covington, Virginia.

e. *Name of Project:* Gathright Hydro Project.

f. *Location:* On the Jackson River, near Covington, in Allegheny County, Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. David H. Dew, City Manager, City of Covington, 158 North Court Avenue, Covington, VA 24426 (703) 965–6303.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Comment Date:* April 04, 1994.

k. *Competing Application:* Project No. 11439. Date Filed: October 1, 1993.

l. *Description of Project:* The proposed project would utilize the U.S. Department of the Army Corps of Engineers Gathright dam and would consist of the following: (1) A proposed powerhouse with two proposed turbine-generator units having a total installed capacity of approximately 3.6 megawatts; (2) a proposed 12,470-volt transmission line 3 miles long; and (3) appurtenant facilities. The average annual generation is estimated to be 19,000,000 kilowatthours. The estimated cost of the studies is $100,000.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

4 a. *Type of Application:* Transfer of License.

b. *Project No:* 2973–056.

c. *Date Filed:* January 25, 1994.

d. *Applicant:* Fall River Rural Electric Cooperative, Inc.

e. *Name of Project:* Island Park Hydroelectric Project.

f. *Location:* At the Bureau of Reclamation's Island Park dam in Fremont County, Idaho, on the Henry's Fork of the Snake River (T. 13 N., R. 43 E., Section 28).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Fall River Rural Elec. Coop., Inc., Attn: Dee Reynolds, 714 Main Street, Ashton, ID 83420, (208) 652–7431.

Island Park Hydro L.L.C., c/o L.B. Industries, Inc., Attn: Rick S. Koebbe, 1401 Shoreline Drive, Boise, ID 83701, (208) 345–7515.

i. *FERC Contact:* Diane M. Murray, (202) 219–2682.

j. *Comment Date:* March 21, 1994.

k. *Description of Proposed Action:* Fall River Rural Electric Cooperative, Inc. proposes to transfer the Island Park Hydroelectric Project, No. 2973, to Island Park Hydro L.L.C.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

5 a. *Type of Application:* New Major License.

b. *Project No.:* 2306–008.

c. *Date filed:* December 23, 1991.

d. *Applicant:* Citizens Utilities Company.

e. *Name of Project:* Clyde River Project.

f. *Location:* On the Clyde River, near Newport in Orleans County, Vermont.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Douglas C. Anderson, High Ridge Park, Stamford, CT 06905–0390, (802) 334–6538.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Comment Date:* See paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The licensed project consists of three existing hydroelectric generating facilities, West Charleston, Newport Dam, and Newport No. 11, on the Clyde River and two existing storage reservoirs, Seymour Lake and Echo Pond, on a tributary to the Clyde River.

Seymour Lake is a natural lake with a man-made 430-foot-long rock-filled timber crib dam outlet structure. It has a surface area of 1,750 acres, a useable storage capacity of 2,040 acre-feet and a normal water surface elevation of 1,279 feet USGS. Presently, Seymour Lake provides annual storage for the Clyde River Project but the proposed mode of operation is spillway crest controlled instantaneous run-of-river.

Echo Pond is a natural lake having a surface area of 530 acres, a useable storage capacity of 3,180 acre-feet and a normal water surface elevation of 1,249 feet USGS. Presently, Echo Pond provides annual storage for the Clyde River Project but the proposed mode of operation is spillway crest controlled instantaneous run-of-river.

West Charleston consists of: (1) A 197-foot-long rock-filled and masonry dam; (2) a reservoir named Lubber Lake having a surface area of 40 acres, a storage capacity of 220 acre-feet, and a normal water surface elevation of 1,059 feet USGS; (3) a 1,622-foot-long, 6-foot-diameter steel penstock; and (4) a powerhouse containing one generating unit with a rated capacity of 800 kW.

Newport Dam consists of: (1) A 714-foot-long concrete and masonry dam; (2) a reservoir named Clyde Pond having a surface area of 200 acres, a storage capacity of 2,400 acre-feet, and a normal water surface elevation of 879.25 feet USGS; (3) a 50-foot-long, 6-foot-diameter steel penstock which bifurcates into a 6-foot-diameter, 2,175-foot-long penstock and a 5-foot-diameter, 1,800-foot-long penstock leading to a 6-foot-diameter surge tank; (4) a 4.5-foot-diameter intake pipe leading to the powerhouse; and (5) a powerhouse containing three generating units with a total installed capacity of 4,000 kW.

Newport No. 11 consists of: (1) A 114-foot-long concrete gravity dam; (2) a reservoir having a surface area of 1 acre, a storage capacity of 3.5-acre-feet, and a normal water surface elevation of 740.67 feet USGS; (3) an 80-foot-long, 10-foot-diameter steel penstock; and (4) a powerhouse containing one generating unit with a rated capacity of 1,800 kW.

The applicant is proposing to operate the project in a run-of-river mode. The average annual net energy generation is 25,437 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* All project energy would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Citizens Utilities Company, High Ridge Park, Stamford, CT 06905–0390, or by calling (802) 334–6538.

6 a. *Type of Application:* Amendment to Application for Major License.

b. *Project No.:* 10455–001.

c. *Date Filed:* December 23, 1993.

d. *Applicant:* JDJ Energy Company.

e. *Name of Project:* River Mountain Pumped Storage Project.

f. *Location:* On the Arkansas River near Lake Dardanelle in Logan County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Stewart Noland, JDJ Energy Company, 5210 Sherwood Road, Little Rock, AR 72207 (501) 661–9228.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* April 8, 1994.

k. *Description of Project:* The applicant has revised its project boundaries to ensure that the license will encompass all lands necessary for project construction and operation. The revised project boundaries will include approximately 60 acres of additional land and no additional landowners will be affected by the revisions. The revised boundaries are shown in the attached Exhibit G–1A, sheets 1 to 3, and replaces the former Exhibit G–1.

Any comments and filings, filed on this amendment notice, will be addressed and included in the River Mountain Final Environmental Impact Statement.

l. This notice also consists of the following standard paragraphs: B1 and D1.

m. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at

941 North Capitol Street, NE, room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at JDJ Energy Company, 5210 Sherwood Road, Little Rock, AR or by calling (501) 661–9228.

7 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11453–000.

c. *Date Filed:* January 5, 1994.

d. *Applicant:* Rock River Power and Light Corporation.

e. *Name of Project:* Lake Altoona Dam Water Power Project.

f. *Location:* On Eau Claire River, Eau Claire County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas J. Reiss, Jr., P.O. Box 553, 319 Hart Street, Watertown, WI 53094 (414) 261–7975.

i. *FERC Contact:* Michael Dees (202) 219–2807.

j. *Comment Date:* April 8, 1994.

k. *Description of Project:* The proposed project would consist of: (1) An existing dam 223 feet long; (2) an existing reservoir with a surface area of 836 acres; (3) a proposed penstock 12 feet in diameter and 50 feet long; (4) a proposed powerhouse housing one hydropower unit with a total capacity of 875 kW; (5) a 4.16–kV transmission line 200 feet long; (6) and appurtenant facilities. The applicant estimates that the annual energy generation would be 2,468 MWh and that the cost of the studies to be performed under the permit would be $40,000. The energy would be sold to Northern States Power Company. The dam is owned by Eau Claire County, Wisconsin.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. *Type of Application:* Revised Exhibits A and G.

b. *Project No.:* 8864–009.

c. *Date filed:* October 18, 1993.

d. *Applicant:* Weyerhaeuser Company.

e. *Name of Project:* Calligan Creek.

f. *Location:* The proposed project would be located within the Snoqualmie River Basin of King County, Washington, about 9 miles northeast of the city of North Bend.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Toby Freeman, Freeman Consulting, 1300 114th Ave. SE., Belleview, WA 98004 (206) 450–4096.

i. *FERC Contact:* John K. Hannula, (202) 219–1040.

j. *Comment Date:* March 30, 1994.

k. *Description of Application:* The applicant proposes to revise the transmission line route to follow Weyerhaeuser Road #4000. The applicant also proposes to bury the transmission line rather than attach it to poles.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs:

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. Initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) (1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub.L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (April 4, 1994 for Project No. 2308–008). All reply comments must be filed with the Commission within 105 days from the date of this notice. (May 18, 1994 for Project No. 2306–008).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the

filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: February 17, 1994, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4273 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD94–02876T Texas–156]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

February 18, 1994.

Take notice that on February 15, 1994, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Spraberry Trend Area Formation, Preston and Shackelford area, underlying a portion of Midland County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 8 and consists of approximately 52,000 acres as described on the attached appendix.

The Notice of determination also contains Texas' findings that the referenced portion of the Spraberry Trend Area Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended area consists of approximately 52,000 acres in Midland County, Texas and includes all or portions of the following sections:

Mrs. S.E. Shackelford

Block A
Section 45: All

Township 3 South

Block 38
Sections 17–20: All
Sections 25–32: All
Sections 37–40: All
Block 37
Sections 27–34: All
Sections 39–46: All

Township 4 South

Block 38
Sections 1–4: All
Sections 9–16: All
Sections 21–25: All
Sections 36–37: All
Block 37
Sections 3–10: All
Sections 15–21: All
Sections 27: NW/4
Sections 28–33: All
Sections 39–45: All

Township 5 South

Block 37
Sections 4–5: N/2

[FR Doc. 94–4260 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–78–002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 18, 1994.

Take notice that on February 15, 1994, Algonquin Gas Transmission Company (Algonquin) submitted a revised tariff sheet in compliance with ordering paragraph (D) of the Commission's January 6, 1994, order in Docket No. RP94–78–000.

Algonquin tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sub Alt Second Revised Sheet No. 97.

Algonquin requests that the Commission accept the revised tariff sheet effective January 7, 1994.

Algonquin states that the revised tariff sheet conforms to the changes proposed in Texas Eastern's January 14 filing in Docket No. RP94–66–000 to recover GSR costs (1) through a demand surcharge, instead of a direct bill, and (2) over a reasonable period.

Algonquin states that copies of this filing were served upon each affected party and interested state commission and parties on the service list in Docket No. RP94–78–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 28, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4272 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–73–002]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 18, 1994.

Take notice that on February 15, 1994, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Eleventh Revised Sheet No. 570, under Rate Schedule X–64, with a proposed effective date of January 1, 1994.

ANR states that the revised tariff sheet reflects the results of the proceedings which the Commission initiated in its December 30, 1993, suspension order whereby the Commission (a) determined the depreciation rate and rate of return for ANR's proposed annual adjustment to the rate paid by High Island Offshore System (HIOS) under Rate Schedule X–64 and (b) established a technical conference for the parties to consider certain costs underlying the rate adjustment. ANR states that the instant adjustment reflects the agreement reached at the January 26, 1994, technical conference.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 28, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4267 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–465–000]

Beebee Island Corp.; Filing

February 18, 1994.

Take notice that on February 4, 1994, Beebee Island Corporation (BIC) tendered for filing an amendment to its earlier filing in this docket. The earlier filing provided for sales from a hydroelectric generating facility located on the Black River, Watertown, New York, to Niagara Mohawk Power Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 1, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4271 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–96–003]

CNG Transmission Corp.; Supplemental Filing

February 18, 1994.

Take notice on February 15, 1994, that CNG Transmission Corporation (CNG), filed the following statements and schedules in compliance with the Commission's January 31, 1994, order in this proceeding:

Supplemental Statement G.2
Supplemental Schedule K–1
Supplemental Statement P

CNG states that in its filing it also responded to a February 3, 1994, data request issued by the Director of the Office of Pipeline and Producer Regulation.

CNG states that copies of this filing are being served upon parties to the captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 28, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4264 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 18, 1994.

Take notice that on February 15, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 1, 1994:

First Revised Sheet No. 135
First Revised Sheet No. 136
First Revised Sheet No. 137
First Revised Sheet No. 138

FGT states that the proposed changes will allow FGT to access credit markets at more favorable rates and terms, and will provide FGT and its customers more protection against Shipper default. At the same time, the proposed changes will not result in the denial of service to truly creditworthy shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules and Regulations. All such protests should be filed on or before February 28, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4261 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–98–001]

Granite State Gas Transmission Inc.; Proposed Changes in FERC Gas Tariff

February 18, 1994.

Take notice that on February 15, 1994, Granite State Gas Transmission, Inc. (Granite State) tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, containing changes in rates and tariff provisions for effectiveness January 1, 1994:

First Revised Sheet No. 31
Second Revised Sheet No. 247

According to Granite State, the foregoing revised tariff sheets are submitted in compliance with the provisions of the Commission's Letter Order issued in this proceeding on January 28, 1994.

Granite State further states that, on December 30, 1993, it filed a limited Section 4 filing to recover by direct billings to its former bundled sales customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) the accumulated balances of deferred gas costs in the Company's Account No. 191 as of October 31, 1993. It is stated that Granite State's filing was accepted subject to the condition that it remove any unpaid accruals for gas purchases from the direct billed amounts, that it revise its tariff to provide for perpetual refunds and provide for the treatment of transportation and exchange imbalances and a refund or recovery mechanism for such imbalances.

According to Granite State, it does not have any unpaid accruals for gas purchased directly from producers but that it has recorded credit imbalances for estimated cash-outs due Tennessee Gas Pipeline Company and debit imbalances for metered as being received by Granite State. The accumulated credit imbalance in the amount of ($71,216.00) has been removed from the amounts on First Revised Sheet No. 31 that will be directly billed to Bay State and Northern Utilities.

Granite State further states Section 21.1(a) on Second Revised Sheet No. 247 in the General Terms and Conditions of its tariff contains a revision to provide for perpetual refunds.

Granite State states that copies of its filing have been served on its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.211). All such protests should be filed on or before February 28, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4263 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–91–001]

Granite State Gas Transmission Inc.; Proposed Changes in FERC Gas Tariff

February 18, 1994.

Take notice on February 15, 1994, Granite State Gas Transmission, Inc. (Granite State) tendered for filing the revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, containing changes in rates and tariff provisions for effectiveness January 1, 1994:

First Revised Sheet No. 32
First Revised Sheet No. 247

According to Granite State, the foregoing revised tariff sheets are submitted in compliance with the Commission's order of January 27, 1994, in this proceeding accepting and suspending, subject to refund and conditions, tariff sheets filed on December 28, 1993. Granite State further states that Original Sheet No. 32, filed December 28, 1993, allocated to its customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) transitional costs that had been directly billed to Granite State by its former upstream pipeline supplier, Algonquin Gas Transmission Company (Algonquin). According to Granite State, the costs which Algonquin billed to Granite State included certain GSR costs which Algonquin had been billed by Texas Eastern Transmission Corporation. It is further stated that the Commission, in its January 27th order, directed Granite State to remove the GSR costs from the transitional costs allocated to Bay State and Northern Utilities. According to Granite State, the revised transitional costs allocated to Bay State and Northern Utilities on First Revised Sheet No. 32 complies with the Commission's order.

It is further stated that First Revised Sheet No. 247 complies with an additional directive in the January 27th order requiring an amendment to § 21.1(b) of the General Terms and Conditions of Granite State's tariff to specify that GSR costs will be recovered through reservation surcharges in transportation rates.

Granite State states that copies of its filing have been served on its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.211). All such protests should be filed on or before February 28, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4266 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–93–001]

K N Interstate Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 18, 1994.

Take notice that on February 15, 1994, K N Interstate Gas Transmission Co., (KNI) tendered for filing proposed changes to its FERC Gas Tariff in compliance with the Commission's January 31, 1994, Order in these proceedings. In particular, KNI states that the tariff filing reflects the restoration of 90/10 IT revenue sharing mechanism, with the costs and revenues for the Buffalo Wallow area, Production Area 4, maintained separately.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 28, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4265 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–61–000]

Kentucky Power Co.; Filing

February 18, 1994.

Take notice that on February 14, 1994, Kentucky Power Company filed, as a proposed amendment to its earlier filing in this docket, a revision of its earlier filing in this docket and a correction of its earlier filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 1, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4268 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–121–000]

Kentucky Power Co.; Filing

February 18, 1994.

Take notice that on February 14, 1994, Kentucky Power Company (Kentucky Power) filed, as an amendment to its earlier filing in this docket, a proposed form of service agreement for the proposed tariff MRS–T and a service agreement executed by the City of Vanceburg, Kentucky.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 1, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4270 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–110–000]

New England Power Co.; Filing

February 18, 1994.

Take notice that on February 14, 1994, New England Power Company tendered an amendment to its filing in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 1, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4269 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–104–001]

Overthrust Pipeline Co.; Tariff Filing

February 18, 1994.

Take notice that on February 16, 1994, Overthrust Pipeline Company (Overthrust), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute First Revised Sheet No. 70, to become effective July 3, 1994. Overthrust states that this tariff sheet reflects the inclusion of Overthrust's interruptible transportation revenue-crediting mechanism as required by the Commission's February 1, 1994, order in Docket No. RP94–104–000.

Overthrust states that this filing is made pursuant to 18 CFR 154.63(a)(1) and in compliance with Ordering Paragraph (B) of the Commission's February 1, 1994, order.

Overthrust states further that copies of this filing were served upon each person in the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 28, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4262 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–111–000]

Potomac Electric Power Co.; Filing

February 18, 1994.

Take notice that on February 18, 1994, Potomac Electric Power Company tendered for filing an amendment to its November 2, 1993 filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 1, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4299 Filed 2–24–94; 8:45 am]

BILLING CODE 6717–01–M

National Electric and Magnetic Fields Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of a meeting of the National Electric and Magnetic Fields Advisory Committee.

DATES: Wednesday, March 2, 1994: 1:30 p.m.–4:30 p.m.; Thursday, March 3, 1994: 9 a.m.–4:30 p.m.

ADDRESSES: Radisson Plaza Hotel, 5000 Seminary Road, Alexandria VA 22311.

FOR FURTHER INFORMATION CONTACT: Robert Brewer, Director, Utility Systems Division, EE–141, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2828.

SUPPLEMENTARY INFORMATION: The National Electric and Magnetic Fields Advisory Committee advises the Department of Energy and the National Institute of Environmental Health Sciences on the design and implementation of a five-year, national electric and magnetic fields research and public information dissemination program. The Secretary of Energy, pursuant to Section 2118 of the Energy Policy Act of 1992, Public Law 102–486, has overall responsibility for establishing the national program which includes health effects research, development of technologies to assess and manage exposures, and dissemination of information.

Tentative Agenda

Wednesday, March 2, 1994

1:30 p.m.—Welcome and Introductions
1:45 p.m.—Review of minutes for 11/4/93 meeting
2 p.m.—Committee Business
- Committee duties and responsibilities
- Adoption of Committee charter

3 p.m.—Break
3:20 p.m.—Report on FY94 and FY95 financial status
3:40 p.m.—Review of Interagency Committee activities
4 p.m.—Discussion on interaction between NEMFAC and IAC
4:30 p.m—Adjourn

Thursday, March 3, 1994

9 a.m.—Draft Implementation Plan Overview
9:45 a.m.—Discussion of Implementation Plan
10:30 a.m.—Break
10:50 a.m.—Further discussion of Implementation Plan
12 a.m.—Lunch

1:30 p.m.—Progress of current RFAs
1:45 p.m.—Discussion on future RFAs
2:15 p.m.—Wrap-Up
- Other business
- Review of action items
- Next meeting plans

3:15 p.m.—Break
3:30 p.m.—Open time for public comments
4:30 p.m. Adjourn

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Robert Brewer at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Depending on the number of requests, comments may be limited to five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to certain programmatic issues which had to be resolved prior to publication.

Transcript and Minutes: A transcript and minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the minutes will also be available by request.

Issued at Washington, DC on February 22, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–4344 Filed 2–24–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Monday, March 7, 1994, 9 a.m.–5 p.m., Tuesday, March 8, 1994, 9 a.m.–3 p.m.

Place: U.S. Department of Energy, room 1E–245, 1000 Independence Avenue SW., Washington, DC 20585.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN, Washington, DC 20585, Telephone: (301) 903–4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Monday, March 7, 1994, and Tuesday, March 8, 1994.

—Discussion of National Science Foundation (NSF) Elementary Particle Physics Programs and Budget
—Discussion of Department of Energy (DOE) High Energy Physics Programs and Budget
—Discussion of Superconducting Super Collider (SSC) Project Closeout Activities
—Update on Activities of the HEPAP Subpanel on the Future Vision for High Energy Physics
—Discussion of Impact of FY 1995 President's Budget on High Energy Physics Accelerator Laboratories and Their Programs
—Reports on and Discussions of Topics of General Interest in High Energy Physics
—Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

J. Robert Franklin,

Acting Advisory Committee Management Officer.

[FR Doc. 94–4475 Filed 2–23–94; 12:06 pm]

BILLING CODE 6450–01–M

Western Area Power Administration

Parker-Davis Project Notice of Rate Order No. WAPA–55; Correction Notice

AGENCY: Western Area Power Administration, Department of Energy (DOE).

ACTION: Correction notice.

SUMMARY: Today's notice is replacing the rate schedule that was inadvertently printed from the Monday, February 7, 1994 (59 FR 5598) publication of a Notice of Rate Order—Parker-Davis Project Firm Power Rate and Firm and Non-Firm Transmission Service Rate Adjustments.

SUPPLEMENTARY INFORMATION: The following text should be inserted in the second column after William H. White, Deputy Secretary:

Rate Schedule PD–F4
(Supersedes Rate Schedule PD–F3)

United States Department of Energy, Western Area Power Administration, Parker-Davis Project

Schedule of Rates for Wholesale Firm Power Service

Effective

Step One: The first day of the first full billing period beginning on or after February 1, 1994.

Step Two: The first day of the first full billing period beginning on or after October 1, 1995, and remaining in effect through January 31, 1999, or until superseded, whichever occurs first.

Available

In the marketing area served by the Parker-Davis Project (P–DP).

Applicable

To the wholesale power customers for firm power service supplied through one meter at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Step One

Demand Charge: $2.54 per kilowatt of billing demand.

Energy Charge: 5.79 mills per kilowatthour of use.

Step Two

Demand Charge: $2.63 per kilowatt of billing demand.

Energy Charge: 6.01 mills per kilowatthour of use.

Billing Demand: The billing demand will be the greater of (1) the highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm capacity and/or energy obligations, such overrun shall be billed at 10 times the above rates.

Adjustments

For Transformer Losses

If delivery is made at transmission voltage but metered in the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor

None. The customer will normally be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading.

Rate Schedule PD–FCT4
(Supersedes Rate Schedule PD–FCT3)

United States Department of Energy, Western Area Power Administration, Parker-Davis Project

Schedule of Rate for Firm Transmission Service

Effective

Step One: The first day of the first full billing period beginning on or after February 1, 1994.

Step Two: The first day of the first full billing period beginning on or after October 1, 1995, and remaining in effect through January 31, 1999, or until superseded, whichever occurs first.

Available

Within the marketing area served by the Parker-Davis Project (P–DP).

Applicable

To firm transmission service customers where capacity and energy are supplied to the P–DP system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the P–DP system specified in the service contract.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Step One

Transmission Service Charge: $10.40 per kilowatt per year for each kilowatt delivered at the point of delivery, established by contract, payable monthly at the rate of $0.87 per kilowatt.

Step Two

Transmission Service Charge: $12.55 per kilowatt per year for each kilowatt delivered at the point of delivery, established by contract, payable monthly at the rate of $1.05 per kilowatt.

Adjustments

For Reactive Power

None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses

Capacity and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligation, such overrun shall be billed at 10 times the above rate.

Rate Schedule PD–FCT4
(Supersedes Rate Schedule PD–FCT3)

United States Department of Energy, Western Area Power Administration, Parker-Davis Project

Schedule of Rate for Firm Transmission Service of Salt Lake City Area Integrated Projects Power

Effective

Step One: The first day of the first full billing period beginning on or after February 1, 1994.

Step Two: The first day of the first full billing period beginning on or after October 1, 1995, and remaining in effect through January 31, 1999, or until superseded, whichever occurs first.

Available

Within the marketing area served by the Parker-Davis Project (P–DP) transmission facilities.

Applicable

To Salt Lake City Area/Integrated Projects (SLCA/IP) Southern Division customers where SLCA/IP capacity and energy are supplied to the P–DP system by the Colorado River Storage Project (CRSP) at points of interconnection with the CRSP system and for transmission and delivery on a unidirectional basis, less losses, to Southern Division customers at points of delivery on the P–DP system specified in the service contract.

Charocter and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Step One

Transmission Service Charge: $5.20 per kilowatt of the maximum allowable rate of delivery and metered at the voltages and points of delivery, established by contract, payable monthly at the rate of $0.87 per kilowatt.

Step Two

Transmission Service Charge: $6.27 per kilowatt of the maximum allowable rate of delivery and metered at the voltages and points of delivery, established by contract, payable monthly at the rate of $1.05 per kilowatt.

Adjustments

For Reactive Power

None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by the contractor and contracting officer or their authorized representatives.

For Losses

Capacity and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Billing for Unauthorized Overruns

For each billion period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligation, such overrun shall be billed at 10 times the above rate.

Rate Schedule PD–NFT4

(Supersedes Rate Schedule PD–NFT3)

United States Department of Energy, Western Area Power Administration, Parker-Davis Project

Schedule of Rates for Nonfirm Transmission Service

Effective

Step One: The first day of the first full billing period beginning on or after February 1, 1994.

Step Two: The first day of the first full billing period beginning on or after October 1, 1995, and remaining in effect through January 31, 1999, or until superseded, whichever occurs first.

Available

Within the marketing area served by the Parker-Davis Project (P–DP) transmission facilities.

Applicable

To nonfirm transmission service customers where capacity and energy are supplied to the P–DP system at points of interconnection with other systems, transmitted subject to the availability of transmission capacity, and delivered on a unidirectional basis, less losses, to points of delivery on the P–DP system specified in the service contract.

Character and Condition of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Step One

Nonfirm Transmission Service Charge: 1.98 mills per kilowatthour of the scheduled or delivered kilowatthours at point of delivery, established by contract, payable monthly.

Step Two

Nonfirm Transmission Service Charge: 2.39 mills per kilowatthour of the scheduled or delivered kilowatthours at point of delivery, established by contract, payable monthly.

Adjustments

For Reactive Power

None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by the contractor and contracting officer or their authorized representatives.

For Losses

Capacity and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Issued at Washington, DC, February 18, 1994.

Joel K. Bladow,

Assistant Administrator for Washington Liaison.

[FR Doc. 94–4341 Filed 2–24–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4708–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 07, 1994 Through February 11, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–L65205–ID. Rating EO2, Sunshine Timber Sale, Implementation, Salmon National Forest, Cobalt Ranger District, Big Deer Creek, Lemhi County, ID.

Summary: EPA expressed environmental objections based on the potential for adverse effects to existing beneficial uses of Panther Creek and its tributaries under all of the action alternatives. Panther Creek and its tributaries have been listed as stream segments of concern by the State of Idaho. Several of the alternatives are also not consistent with the Salmon National Forest Land and Resource Management Plan. EPA requested additional information regarding water quality standards, wetlands effects, the potential for erosion hazard, mitigation effectiveness, site specific monitoring, noise effects and air quality effects.

ERP No. D–AFS–L65208–AK. Rating EC2, Shamrock Timber Sales, Timber Harvesting and Road Construction, Stikine Area, Kupreanof Island, Tongass National Forest, Implementation, AK.

Summary: EPA expressed environmental concerns based on the potential for adverse effects to existing beneficial uses of streams in the Shamrock analysis area from this timber sale and future timber sales. EPA requested additional information about compliance with water quality standards, noise effects, site specific monitoring and mitigation effectiveness.

Final EISs

ERP No. F–BPA–L08049–00. Alternating Current (AC) Intertie Transmission Facilities, Capacity Ownership and Federal Marketing and Joint Ventures, Implementation, WA, OR, ID, MT, CA, NV, UT, NM, AZ, WY and British Columbia.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the preparing agency.

ERP No. F–FRC–B05182–NH. Upper Androscoggin River Basin Hydroelectric Projects, Issuance of New Licenses/ Relicensing for Operation of Seven Hydroelectric Projects, Coos County, NH.

Summary: EPA expressed environmental objections in that the FEIS: Did not resolve the issues of the scope of the analysis, range of reasonable alternatives, cumulative impacts, potential wetland impacts, water quality impacts and dioxin contaminated river sediments. EPA recommended that a supplemental EIS be prepared to assess the above issues and the environmental impacts from the modified project.

Dated: February 22, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–4349 Filed 2–24–94; 8:45 am]

BILLING CODE 6560–60–U

[ER–FRL–4708–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed February 14, 1994 Through February 18, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940047, Final Supplement, AFS, MT, Beaver-Dry Timber Sales, Timber Harvest and Road Construction, Updated Information, Implementation, Helena National Forest, Lincoln Ranger District, Lewis and Clark and Powell Counties, MT, Due: March 28, 1994, Contact: Maggie Pittman (406) 449–5201.

EIS No. 940048, Draft EIS, IBR, UT, Narrows Multi-Purpose Water Development Project, Construction and Operation, Funding, Gooseberry Creek, Manti-La Sal National Forest, Sanpete County, UT, Due: April 20, 1994, Contact: Ron Willhite (303) 236–9336.

EIS No. 940049, Draft EIS, USN, RI, Davisville Naval Construction Battalion Center, Base Reuse and Development Plan, Implementation, Town of North Kingstown, Washington County, RI, Due: April 11, 1994, Contact: Robert Ostermueller (215) 595–0759.

EIS No. 940050, Final EIS, BPA, WA, Tenaska Washington II Generation Electric Power Plant Construction, Operation and NPDES Permits, Pierce County, WA, Due: March 28, 1994, Contact: Carol M. Borgstrom (800) 472–2756.

EIS No. 940051, Final EIS, AFS, ID, Black Pine Gold Mine Expansion Project, Implementation, Plan of Operation Approval and Right-of-Way Permits, Sawtooth National Forest, Burley Ranger District, Cassia County, ID, Due: April 11, 1994, Contact: Donald E. Peterson (208) 678–0430.

EIS No. 940052, Final EIS, UAF, FL, Homestead Air Force Base (AFB) Disposal and Reuse, Implementation, Dade County, FL, Due: March 28, 1994, Contact: Lt. Col. Gary Baumgatel (210) 536–3907.

EIS No. 940053, Final Supplement, COE, MS, Mississippi River and Tributaries Flood Control Plan, Updated Information, Yazoo Projects, Yazoo River Basin, several counties, MS, Due: March 28, 1994, Contact: Gary Young (601) 631–5906.

EIS No. 940054, Final Supplement, USA, TT, Kwajalein Atoll Ongoing and Strategic Defense Initiative Activities, Test Range Facility Construction and Support Services, Republic of the Marshall Islands, TT, Due: March 28, 1994, Contact: D. R. Gallier (205) 955–3294.

EIS No. 940055, Draft EIS, BLM, WY, Enron Burly Field Oil and Gas Leasing, Permit to Drill, Temporary Use Permits, COE Section 404 Permit and Right-of-Way Grants, Pinedale Resource Area, Sublette County, WY, Due: April 18, 1994, Contact: Teresa Deakins (307) 382–5350.

EIS No. 940056, Draft EIS, EPA, FL, Tampa Electric—Polk 1150 Megawatt Power Station Construction and Operation, NPDES and COE Section 404 Permits, Polk County, FL, Due: April 11, 1994, Contact: Heinz J. Mueller (404) 347–3776.

EIS No. 940057, Final Supplement, COE, MI, Sault Ste. Marie Federal Facilities Operation, Maintenance and Minor Improvements, Opening Date Considerations, Implementation, Chippewa County, MI, Due: March 28, 1994, Contact: Thomas M. Freitag (313) 226–6753.

EIS No. 940058, Draft EIS, AFS, NV, CA, East Shore Land and Resource Management Plan, Implementation, Lake Tahoe Basin Management Unit (LTBMU), Washoe and Douglas Counties, NV, Due: April 11, 1994, Contact: Scott Parsons (916) 573–2600.

EIS No. 940059, Draft EIS, FHW, MT, US 93 (Somers to Whitefish West) Transportation Improvements, Funding and COE Section 404 Permit, Glacier National Park and Flathead National Forest, Flathead County, MT, Due: May 02, 1994, Contact: Dale Paulson (406) 449–5305.

EIS No. 940060, Final Supplement, AFS, CA, WA, OR, Northern Spotted Owl Management Plan, Updated Information concerning Late-Successional and Old Growth Forest Related Species Within the Range of the Northen Spotted Owl, OR, WA and CA, Due: March 28, 1994, Contact: Robert T. Jacobs (503) 326–7472.

In accordance with 1502.9(c)(4) of the Council of Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act alternative procedures have been approved by the Council for the filing of this FSEIS to allow for the filing and publication of the NOA in the same week. For further information contact Elisabeth Blaug (CEQ) 202–395–5754.

EIS No. 940061, Draft EIS, UAF, MO, Richards-Gebaur Air Force Base Disposal and Reuse, Implementation, Possible Clean Air Act Title V, National Pollutant Discharge Elimination System, COE Section 404, Hazardous Waste Treatment Storage or Disposal Facility, Archaeological Resources Protection Act and Endangered Species Act Section 10 Permits, Jackson and Cass Counties, MO, Due: April 11, 1994, Contact: Lt. Col. Gary Baumgartel (210) 536–3907.

Amended Notices

EIS No. 930432, Draft EIS, AFS, ID, Hazard Helicopter Timber Sale, Harvesting Timber and Road Construction, Payette National Forest, New Meadows Ranger District, Idaho County, ID, Due: February 25, 1994, Contact: Mike Balboni (208) 2634–0629. Published FR–11–30–93—Review period extended.

EIS No. 930445, Draft EIS, AFS, MO, Salem and Potosi Ranger Districts Off-Highway Recreational Vehicle Opportunities, Designation/ Nondesignation, Mark Twain National Forest, Implementation, Crawford, Dent, Iron, Reynolds, Shannon and Washington Counties, MO, Due: March 25, 1994, Contact: Darsan Wang (314) 364–4621. Published FR 12–23–93—Review period extended.

Dated: February 22, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–4350 Filed 2–24–94; 8:45 am]

BILLING CODE 6560–50–U

[WH–FR–484–2–7]

State and Local Assistance; Grants for State Water Pollution Control Revolving Funds (Title VI) Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of allotment.

SUMMARY: The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994, (the Act) provides $1,218,000,000 to capitalize State Revolving Fund (SRF) programs authorized by Title VI of the Clean Water Act (CWA). This notice sets forth the State allotments for fiscal year 1994 for their SRF programs. It also provides notice that one-half of one percentum of the appropriation, $6,090,000 is reserved for grants to Indian Tribes and Alaska Native Villages to construct sewage treatment facilities.

FOR FURTHER INFORMATION CONTACT:

Mr. Leonard B. Fitch, Program Management Branch, Municipal Support Division, Office of Wastewater Enforcement and Compliance, (202) 260–5858.

SUPPLEMENTARY INFORMATION: Public Law No. 103–124, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994, provides $1,218,000,000 to capitalize SRF programs authorized by Title VI of the CWA. Section 604(a) of the CWA requires that funds appropriated for Title VI for fiscal years 1987–1990 be allotted in accordance with the table in section 205(c)(3) of the CWA. Congress has given the Agency no instruction regarding the allotment of fiscal year 1994 funds. In the absence of Congressional action, the Agency will allot the fiscal year 1994 funds in accordance with the table in section 205(c)(3) except as described below.

Indian Tribes Adjustment

Public Law 102–389 authorized the Administrator to reserve up to one-half of one percentum of the funds appropriated in fiscal year 1993 and thereafter for the State Revolving Funds for making grants to Indian Tribes and Alaska Native Villages for construction of wastewater treatment facilities. The full amount is hereby reserved to be administered under the Indian Set-Aside Program authorized by section 518(c) of the CWA. These funds will be allotted to the Indian Tribes and Alaska Native Villages based on the 1990 Indian Set-Aside Project Priority List published in the **Federal Register** December 21, 1990. Projects were ranked on this Priority List based on water quality and public health criteria.

Trust Territory Adjustment

In Public Law No. 99–658, Congress approved a Compact of Free Association for the Trust Territories' members. Two entities, the Federated States of Micronesia and the Republic of the Marshall Islands have implemented Compacts and are no longer eligible for grants under Title VI. At the effective date of this allotment the Republic of Palau has yet to implement a Compact of Free Association, and, under Public Law No. 99–239, section 105(h)(2), remains eligible for Title VI grants. Funds that otherwise would have been allotted to the Federated States of Micronesia and the Republic of the Marshall Islands are redistributed to the States and Territories by proportionally increasing their respective shares of the appropriation as shown in the column titled "Allotment Formula After Trust Territory Adjustments." The actual allotments resulting from the adjusted allotment shares are shown in the column titled "fiscal year 1994 State Allotment." The table at the end of this notice lists the amount of funding made available to each State. These funds are available for obligation until September 30, 1995. Grants from the allotments may be awarded as of the date that the funds were issued to the Regional Administrators by the Comptroller of EPA.

Dated: February 18, 1994.

Carol M. Browner,

Administrator.

State	Allotment formula	Allotment formula after trust territory adjustment	Fiscal year 1994 title VI state allotment
Alabama	0.011309	0.011320	$13,718,200
Alaska	0.006053	0.006059	7,342,500
Arizona	0.006831	0.6837	8,286,200
Arkansas	0.006616	0.006622	8,025,400
California	0.072333	0.072400	87,742,500
Colorado	0.008090	0.008098	9,813,500
Connecticut	0.012390	0.012402	15,029,500
Delaware	0.004965	0.004970	6,022,700
Dist. of Columbia	0.004965	0.004970	6,022,700
Florida	0.034139	0.034171	41,411,800
Georgia	0.017100	0.017118	20,742,900
Hawaii	0.007833	0.007840	9,501,700
Idaho	0.004965	0.004970	6,022,700
Illinois	0.045741	0.045783	55,485,500
Indiana	0.024374	0.024397	29,566,500
Iowa	0.013688	0.013701	16,604,000
Kansas	0.009129	0.009137	11,073,800
Kentucky	0.012872	0.012884	15,614,200
Louisiana	0.011118	0.011128	13,486,500
Maine	0.007829	0.007836	9,496,900
Maryland	0.024461	0.024484	29,672,100
Massachusetts	0.034338	0.034370	41,653,200
Michigan	0.043487	0.043527	52,751,300
Minnesota	0.018589	0.018606	22,549,100
Mississippi	0.009112	0.009120	11,053,200
Missouri	0.028037	0.028063	34,009,900
Montana	0.004965	0.004970	6,022,700
Nebraska	0.005173	0.005178	6,275,000
Nevada	0.004965	0.004970	6,022,700
New Hampshire	0.010107	0.010116	12,260,200
New Jersey	0.041329	0.041367	50,133,600
New Mexico	0.004965	0.004970	6,022,700
New York	0.111632	0.111736	135,413,900
North Carolina	0.018253	0.018270	22,141,500
North Dakota	0.004965	0.004970	6,022,700
Ohio	0.056936	0.056989	69,065,400
Oklahoma	0.008171	0.008179	9,914,700
Oregon	0.011425	0.011436	13,858,900
Pennsylvania	0.040062	0.040099	48,596,600
Rhode Island	0.006791	0.006797	8,237,700
South Carolina	0.010361	0.010371	12,568,300
South Dakota	0.004965	0.004970	6,022,700
Tennessee	0.014692	0.014706	17,821,900
Texas	0.046226	0.046269	56,073,800
Utah	0.005329	0.005334	6,464,300
Vermont	0.004965	0.004970	6,022,700
Virginia	0.020698	0.020717	25,107,400
Washington	0.017588	0.017604	21,334,900
West Virginia	0.015766	0.015781	19,124,700
Wisconsin	0.027342	0.027367	33,166,800
Wyoming	0.004965	0.004970	6,022,700
American Samoa	0.000908	0.000909	1,101,400
Guam	0.000657	0.000658	797,000
Northern Marianas	0.000422	0.000422	511,900
Puerto Rico	0.013191	0.013203	16,001,200
Pacific Trust Terr	0.000367	0.000367	445,200
Virgin Islands	0.000527	0.000527	639,300
State Totals	0.999072	1.000000	1,211,910,000
Indian Tribes			6,090,000
Total All Funds			1,218,000,000

[FR Doc. 94–4370 Filed 2–24–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4842–5]

Notice of Open Meeting of the Superfund Evaluation Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT)

Under Public Law 92463 (the Federal Advisory Committee Act), EPA gives notice of a meeting on February 24, 1994 of the Superfund Evaluation Committee. The Superfund Evaluation Committee is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The Subcommittee will offer comments on the proposed Superfund legislation and discuss its role in the reauthorization process. The Subcommittee was scheduled to meet on February 11, 1994 will be reconvened on February 24, 1994. The earlier meeting was canceled due to the snow storm. The meeting on the 24th will also take place at the Hyatt Regency Hotel (2799 Jefferson Davis Highway, (Crystal City) Arlington, Virginia) from 2–6 p.m. Interested parties may call the RCRA/Superfund Hotline at 1–800–424–9346, 703–920–9810, or 1–800–553–7672 (TDD) for copies of the materials EPA is providing to the Committee.

The Deputy Administrator of the EPA has called this emergency meeting on short notice to solicit timely input from Committee members. Written comments of preferably not more than 25 pages (at least 25 copies) may be provided to the committee up until the meeting. Those interested in attending must contact Abby Pirnie (U.S. EPA 401 M Street SW., Washington, DC 20460, mail code, 1601 or phone, 202–260–7567, or fax, 202–260–3682.)

Dated: February 17, 1994.

Gordon Schisler,

Acting NACEPT Designated Federal Official.

[FR Doc. 94–4373 Filed 2–24–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4841–S]

National Advisory Council for Environmental Policy and Technology, Policy Integration Project, Lead Subcommittee; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the Lead Subcommittee of the Policy Integration Project of the National Advisory Council for Environmental Policy and Technology (NACEPT). During the meeting, to be held on Thursday, March 10, the Lead Subcommittee will discuss its final draft report and recommendations.

DATES: The Subcommittee will meet on March 10, 1994. The meeting will start at 9 a.m. and end at 4:30 p.m.

ADDRESSES: Bighorn Room, U.S. EPA Regional Office, 999 18th Street, Denver, CO 80202. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Hardaker, Designated Federal Official, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–9741.

Dated: February 10, 1994.

Robert L. Hardaker,

Designated Federal Official, Lead Subcommittee.

[FR Doc. 94–4226 Filed 2–24–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50774; FRL–4759–1]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Department of Plant Pathology, Cornell University, Geneva Campus, a notification of intent to conduct small-scale field testing on grape vines in the State of New York of a strain of *Agrobacterium vitus* which was originally isolated in South Africa.

DATES: Comments must be received on or before March 11, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney C. Jackson, Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), was received on December 2, 1993, from Cornell University, Department of Plant Pathology, New York State Agricultural Experiment Station, Geneva, NY 14456-0462. The purpose of the proposed testing is to evaluate the efficacy of a nonindigenous strain of *Agrobacterium vitus* originally isolated in South Africa for the control of crown gall on grape vines. This strain is a nonpathogenic strain of a species of bacteria which is commonly detected in vinyards worldwide. The proposed field tests would be conducted in the State of New York on a total area of less than 10 acres.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: February 8, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-4210 Filed 2-24-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-190002C; FRL-4759-9]

State Pesticide Residue Removal Compliance Programs; Notice of Interim Determination of Adequacy; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: This document contains a correction to the Notice of Interim Determination of Adequacy of Certain State Programs published Friday, December 17, 1993. (58 FR 65989). The Notice inadvertently omitted the State of New Mexico from the list of States on page 65990 which submitted a commitment to conduct the activities outlined in the August 18, 1993 Policy Statement on Interim Determination of Adequacy of State Pesticide Residue Removal Compliance Programs. The Notice is hereby corrected by adding "New Mexico" to the list of States which have received an interim determination of adequacy of their State pesticide residue removal compliance program.

ADDRESSES: Anyone wishing to review the State submission may do so in person, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the: Public Docket Room, Room 1132, CM #2, 19921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Phyllis Flaherty, Office of Compliance Monitoring (7204W), 401 M St., SW., Washington DC 20460, telephone (703) 308-8383, facsimile (703) 308-8285.

Dated: February 15, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94-4377 Filed 2-24-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

February 16, 1994.

Petitions for reconsideration and/or clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice. The full text of these documents are available for viewing and copying in room 616, 1919 M Street NW., Washington, DC, by contacting Donna Viert ((202) 254-6530) or may be obtained from the Commission's copy contractor ITS, Inc. ((202) 857-3800). Oppositions to these petitions must be filed March 14, 1994.

See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Format Requirements for Pleading and Documents: Amendment of Section 1.49 of the Commission's Rules (FCC 93-448). Filed: 3.

Action by the General Counsel.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-4217 Filed 2-24-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified below.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Public Disclosure By Banks.

Form Number: N/A.

OMB Number: 3064-0090.

Expiration Date of Current OMB Clearance: February 28, 1994.

Frequency of Response: Annually.

Respondents: Insured State nonmember banks and thrifts.

Number of Respondents: 7,310.

Number of Respondents Per Respondent: 1.

Total Annual Responses: 7,310.

Average Number of Hours Per Response: 0.5.

Total Annual Burden Hours: 3,655.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project 3064-0090, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before April 26, 1994.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: FDIC regulations, at 12 CFR 350, require insured state nonmember banks and thrifts to provide basic information about themselves to shareholders, borrowers, depositors, and others to whom they offer banking services.

Dated: February 17, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94-4219 Filed 2-24-94; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

CNB Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 21, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CNB Bancshares, Inc., Evansville, Indiana; to acquire 100 percent of the voting shares of Union Bank & Trust Company, Morganfield, Kentucky.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. DuRoc Investment Company, Table Rock, Nebraska; to acquire 100 percent of the voting shares of State Bank of Table Rock, Table Rock, Nebraska.

2. Stockmen's Management Company, Rushville, Nebraska; to acquire 100 percent of the voting shares of Blackpipe State Bank, Martin, South Dakota.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Bancwest Financial Corporation, Walla Walla, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of the West, Walla Walla, Washington.

2. Central Bancorporation, Wenatchee, Washington; to acquire 100 percent of the voting shares of First Bank Washington, Omak, Washington.

Board of Governors of the Federal Reserve System, February 18, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-4284 Filed 2-24-94; 8:45 am]

BILLING CODE 6210-01-F

First Bankshares of West Point, Inc.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-2890) published on page 6032 of the issue for Wednesday, February 9, 1994.

Under the Federal Reserve Bank of Atlanta heading, the entry for First Bankshares of West Point, Inc. is revised to read as follows:

1. First Bankshares of West Point, Inc., West Point, Georgia; to acquire an additional 16.1 percent of the voting shares of First Peoples Bank, Pine Mountain, Georgia, for a total of 21.0 percent.

Comments on this application must be received by March 4, 1994.

Board of Governors of the Federal Reserve System, February 18, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-4285 Filed 2-24-94; 8:45 am]

BILLING CODE 6210-01-F

First Chicago Corporation; Application to Engage in Certain Nonbanking Activities

First Chicago Corporation, Chicago, Illinois (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23 of the Board's Regulation Y (12 CFR 225.23), to engage *de novo* through its wholly owned subsidiary, First Chicago Capital Markets, Inc., Chicago, Illinois (Company), in the following nonbanking activities:

1. Underwriting and dealing in, to a limited extent, all types of debt securities, including sovereign debt securities, municipal revenue bonds, mortgage-related securities, consumer receivable-related securities, commercial paper, corporate debt securities, convertible debt securities, and debt securities issued by a trust or other vehicle secured by or representing interests in debt obligations;

2. Acting as agent in the private placement of all types of securities, and providing related advisory services;

3. Purchasing and selling all types of securities as a "riskless principal" on the order of customers;

4. Providing full-service securities brokerage services, pursuant to § 225.25(b)(15)(ii) of Regulation Y;

5. Providing financial and transaction advice regarding the structuring and arranging of swaps, caps, and similar transactions relating to interest rates, currency exchange rates or prices, and economic and financial indices, and similar transactions, pursuant to § 225.25(b)(4)(vi)(A)(2) of Regulation Y; and

6. Providing financial and transaction advice regarding the structuring and arranging of swaps, caps, and similar transactions relating to commodity prices and commodity indices, and similar transactions.

Applicant seeks approval to conduct the proposed activities throughout the United States.

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are:

(1) Whether banks generally have in fact provided the proposed services;

(2) Whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services; and

(3) Whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *See* 516 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling

banks. *Board Statement Regarding Regulation Y*, 49 FR 806 (1984).

Applicant states that the Board previously has determined by regulation that certain of the proposed activities, when conducted within the limitations established by the Board in its regulations and in related interpretations and orders, are closely related to banking for purposes of section 4(c)(8) of the BHC Act. *See* 12 CFR 225.25(b)(4) and (15) (certain investment and financial advisory services and full-service brokerage activities).

Applicant also maintains that the Board previously has determined by order that several of the other proposed activities, when conducted within the limitations established by the Board in its previous orders, are closely related to banking, and, where applicable, consistent with section 20 of the Glass-Steagall Act (12 U.S.C. 377). *See, e.g., J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989), *aff'd sub nom. Securities Industries Ass'n v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990), *Order Approving Modifications to the Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989), *Order Approving Modifications to the Section 20 Orders*, 79 Federal Reserve Bulletin 226 (1993), and *Supplement to Order Approving Modifications to Section 20 Orders*, 79 Federal Reserve Bulletin 360 (1993) (underwriting and dealing activities); and *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) (private placement and riskless principal activities).

Applicant maintains that Company will conduct the foregoing, previously approved activities in conformity with the conditions and limitations established by the Board in prior cases.

Applicant further states that the proposed advisory services relating to swaps and other transactions based upon commodity prices or commodity indices are closely related to banking within the meaning of the BHC Act. In this regard, Applicant maintains that banks currently provide such services, and argues, *inter alia*, that the New York State Banking Department and the Office of the Comptroller of the Currency have permitted banks under their respective jurisdictions to engage in these activities, subject to certain limitations. *See* Letter from New York State Banking Department dated November 14, 1988; OCC Interpretive Letter No. 494 (December 20, 1989); OCC Interpretive Letter No. 507 (May 5, 1990).

Proper Incident to Banking Standard

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance competition and efficiency. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 14, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, February 18, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-4286 Filed 2-24-94; 8:45 am]

BILLING CODE 6210-01-F

Fleet Financial Group, Inc., Providence, Rhode Island; Request for an Exemption From Tying Provisions

Fleet Financial Group, Inc., Providence, Rhode Island (Fleet), has requested, pursuant to section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 *et seq.*) (Section 106(b)), that the Board grant exemptions to permit Fleet's subsidiary banks (Fleet Banks) to vary the consideration charged for a deposit account based, in part, on:

(1) A customer's balance on a credit card issued or assumed by Fleet Bank of New York, Albany, New York (Fleet-NY);[1] and

(2) A customer's investment/securities balance maintained at Fleet's subsidiary, Fleet Brokerage Securities, Inc., Providence, Rhode Island (Fleet Brokerage).[2]

All products offered as part of these arrangements will be separately available to customers at market prices.

Section 106(b) permits a bank to fix or vary the consideration for extending credit or furnishing services on condition or requirement that a customer also obtain a traditional bank product (loan, discount, deposit or trust service) from that bank. However, Section 106(b) prohibits a bank from engaging in these same activities on condition that the customer obtain any additional credit or services from any affiliate. The Board may, by regulation or order, grant exceptions that are not contrary to the purposes of the section.

The Fleet Banks currently offer customers a deposit service, the Fleet One Account, for which the monthly fee is waived if a depositor maintains a minimum balance in certain products offered by the bank. Fleet proposes that the Fleet Banks be permitted to take into account a customer's credit card balance at Fleet Bank-NY and the investment/securities balance at Fleet Brokerage in calculating the required minimum balance.

Fleet argues that no anticompetitive effects would result from this proposal because no Fleet Bank possesses sufficient market power in any relevant banking market to force a customer to purchase any other product or service. In addition, other significant financial institutions compete aggressively with the Fleet Banks in these markets and no Fleet Bank has the power to exercise a dominant influence over any market.

Fleet also argues that the proposal will promote competition and will not limit the availability of products to consumers because the deposit service offered by the Fleet Banks, as well as the credit cards offered by Fleet Bank-NY and the brokerage services offered by Fleet Brokerage, will be separately available to customers at market prices. In this regard, Fleet contends that both the market for credit cards and the market for retail brokerage services are national in scope and very competitive.

Notice of Fleet's request is published solely in order to seek the views of interested persons on the issues presented by the request and does not represent a determination by the Board that the request meets or is likely to meet the standards of Section 106(b). The request may be inspected at the offices of the Board of Governors.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than March 25, 1994.

Board of Governors of the Federal Reserve System, February 18, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-4287 Filed 2-24-94; 8:45 am]

BILLING CODE 6210-01-P

[1] Fleet has announced its plan to consolidate the credit card operations of the Fleet Banks into Fleet Bank-NY.

[2] In determining the consideration charged for the deposit account, a Fleet Bank also will consider traditional bank products purchased from that bank and a customer's balance in an unaffiliated open-end mutual fund advised by Fleet Investment Advisors, Providence, Rhode Island.

Park National Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 21, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Park National Corporation*, Newark, Ohio; to acquire Scope Leasing, Inc., Columbus, Ohio, and thereby engage in permissible leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Baylor Bancshares, Inc.*, Seymour, Texas; to expand the geographic scope of the operations of Baylor Mortgage Company, Inc., Jeffersonville, Indiana, and thereby engage in making, acquiring, or servicing loans for itself or for others, and in loan marketing and advisory services pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will now be conducted throughout the State of Texas.

Board of Governors of the Federal Reserve System, February 18, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-4288 Filed 2-24-94; 8:45 am]

BILLING CODE 6210-01-F

Buckner Woodford, IV, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 17, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Buckner Woodford, IV*, Paris, Kentucky; to acquire an additional 0.34 percent for a total of 9.73 percent; Susan Y. Woodford, to acquire 0.34 percent; and Buckner Woodford V and Randall B. Woodford, to each acquire 0.13 percent of the voting shares of Bourbon Bancshares, Inc., Paris, Kentucky, and thereby indirectly acquire Bourbon-Agricultural Deposit Bank & Trust, Paris, Kentucky.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *James Lee Blin*, Cedar Rapids, Iowa; Gregory August Bruening and Keith Bernard Bruening, both of Decorah, Iowa; Willis McNeil Bywater and Linda Ann Brown Bywater, both of Iowa City, Iowa; Willis Wayne Crees, Waterloo, Iowa; Collin Wilburn Fritz, Peoria, Arizona; Vernon Clare Hoffman, Independence, Iowa; William Allan Kuehn, Sumner, Iowa; Thomas James Sexton, St. Paul, Minnesota; and Timothy Andrew Sexton, Randalia, Iowa; and Gary Foster Short, Independence, Iowa; to acquire 68.35 percent of the voting shares of Independence Bancshares, Inc., Independence, Iowa, and thereby indirectly acquire Security State Bank, Independence, Iowa; and First State Bancorporation, Inc., Independence, Iowa, and thereby indirectly acquire Northwest Security Bank, Sumner, Iowa.

Board of Governors of the Federal Reserve System, February 18, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-4289 Filed 2-24-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Anti-Infective Drugs Advisory Committee

Date, time, and place. March 17 and 18, 1994, 8:30 a.m., Plaza Ballroom, Holiday Inn, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, March 17, 1994, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; closed committee deliberations, 9:30 a.m. to 4:30 p.m.; open committee discussion, March 18, 1994, 8:30 a.m. to 3 p.m.; Ermona B. McGoodwin or Mary Elizabeth Donahue, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates data relating to the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 11, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed committee deliberations. On March 17, 1994, the committee will review trade secret and/or confidential commercial information. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Open committee discussion. On March 18, 1994, the committee will discuss new drug applications (NDA's) 20–266 and 20–271, Megalone® (lomefloxacin), Hoffmann-La Roche, Inc., tablets and injection, for treatment of specific infections.

Ophthalmic Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. March 21 and 22, 1994, 8:30 a.m., Versailles Ballroom IV, Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, March 21, 1994, 8:30 a.m. to 10 a.m., unless public participation does not last that long; closed committee deliberations, 10 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 5 p.m.; open public hearing, March 22, 1994, 8:30 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Daniel W. C. Brown, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1744.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 4, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On March 21, 1994, the committee will discuss general issues relating to the review of premarket approval applications (PMA's) for phototherapeutic keratectomy excimer lasers. There will be brief updates on surgical/laser issues. On March 22, 1994, the committee will: (1) Hear presentations and have discussions on labeling issues regarding the "A" constant for power calculation for intraocular lenses; (2) be provided with an update on the status of daily wear contact lens reclassification; (3) discuss the comments received on the November 1993 guidance entitled "Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses"; and (4) be provided with an update on policy initiatives on contact lenses. In addition, the period for public comment on the November 1993 guidance has been extended until February 15, 1994.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information relevant to PMA's for contact lenses, surgical and diagnostic devices, or intraocular lenses. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 17, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–4290 Filed 2–24–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meetings are announced:

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. March 18, 1994, 8 a.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; Igor Cerny, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 3, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss new drug application (NDA) 20–357, metformin hydrochloride, Glucophage®, Lipha Pharmaceuticals, for use as an adjunct to the diet to lower blood glucose in patients with noninsulin-dependent diabetes mellitus whose hyperglycemia cannot be satisfactorily managed by diet alone.

Blood Products Advisory Committee

Date, time, and place. March 24 and 25, 1994, 8:30 a.m., Holiday Inn, Silver Spring Plaza, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, March 24, 1994, 8:30 a.m. to 10 a.m.; open public hearing, 10 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 4 p.m.; open public hearing, 4 p.m. to 4:30 p.m., unless public participation does not last that long; open committee discussion, March 25, 1994, 8:30 a.m. to 10 a.m.; open public hearing, 10 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion 10:30 a.m. to 2 p.m.; open public hearing, 2 p.m. to 2:30 p.m., unless public participation does not last that long; Linda A. Smallwood, Center

for Biologics Evaluation and Research (HFM–300), Food and Drug Administration, 1401 Rockville Pike, Bethesda, MD 20852–1448, 301–594–6700.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 14, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On March 24, 1994, the committee will: (1) Review and discuss issues relevant to the impact of use of virus inactivated plasma; (2) hear a summary discussion on the workshop on red cell substitutes; (3) discuss an addendum to the points to consider document; and (4) hear presentations on the product license application for Rh_o (D) Immune Globulin Intravenous (Human), WinRho, Winnipeg Rh Institute, Inc. On March 25, 1994, the committee will hear a summary discussion of the workshop on validation of blood establishment computer systems and a followup review of the FDA contract on increasing the safety of the blood supply by screening donors more effectively.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. March 24 and 25, 1994, 8:30 a.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, March 24, 1994, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, March 25, 1994, 8:30 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), 419–259–6211, or Valerie M. Mealy, Advisors and Consultants Staff (HFD–9), 301–443–4695, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 15, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On March 24, 1994, the committee will discuss new drug application (NDA) 20–390 (vesnarinone), Arkin®, Otsuka America Pharmaceutical, for congestive heart failure, and NDA 19–151/ S–002 (propafenone), Rythmol®, Knoll Pharmaceuticals, for prophylaxis of paroxysmal supraventricular tachycardia and paroxysmal atrial fibrillation and flutter. On March 25, 1994, the committee will discuss product license application (PLA)1048, supplement 93–0889 (alteplase recombinant), Activase®, Genentech, Inc., for a new accelerated dose regimen.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 17, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–4291 Filed 2–24–94; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

Workshop for the Compressed Medical Gas Industry; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Southwest Region Small Business Assistance Program, the Center for Drug Evaluation and Research, and the Office of Small Business, Scientific and Trade Affairs are sponsoring a public workshop on FDA requirements and guidelines that apply to the compressed medical gas industry. This workshop is designed to assist the industry in complying with and conforming to legal requirements and guidelines for manufacturing and repacking medical gases.

DATES: The public workshop will be held on April 8, 1994, 8 a.m. to 4 p.m.

ADDRESSES: The public workshop will be held at the Clarion Hotel (formerly Lincoln Plaza), 4445 North Lincoln Blvd., Oklahoma City, OK.

FOR FURTHER INFORMATION CONTACT: Marie Falcone, Southwest Region Small Business Assistance Program, Food and Drug Administration, 7920 Elmbrook Dr , suite 102, Dallas, TX 75247, 214–655–8100 (ext. 128) or Office of Small Business, Scientific and Trade Affairs (HF–50), Food and Drug Administration, rm. 15–61, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776.

Those persons interested in attending this meeting should FAX their registration to 405–273–5086, including name, firm name, address, and telephone number. There is no registration fee for this workshop, but advance registration is required. Space is limited and all interested parties are encouraged to register early.

SUPPLEMENTARY INFORMATION: FDA's inspectional history of the compressed medical gas industry shows that a high percentage of medical gas firms are unaware of applicable regulations and guidelines or are not operating in compliance with or conformance to applicable requirements or guidelines. This workshop is designed to assist the medical gas industry and is free of charge to attendees.

Dated: February 17, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 94–4242 Filed 2–24–94; 8:45 am]

BILLING CODE 4160–01–F

Administration for Children and Families

Notice of Meeting of the Interagency Committee on Developmental Disabilities

AGENCY: Administration on Developmental Disabilities, ACF, DHHS.

ACTION: Notice of meeting.

SUMMARY: The Interagency Committee on Developmental Disabilities (ICDD) was established in 1984 by Section 108(b) of the Developmental Disabilities Assistance and Bill of Rights Act of 1984 (42 U.S.C. 6007 [b]) to "meet regularly to coordinate and plan activities by Federal departments and agencies for persons with developmental disabilities." In 1990, the Act was amended to provide that the meetings be open to the public and that a notice of the meeting be published in the **Federal Register.** Under Section 107(c)(1)(E) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6006(c)(1)(E)), the Secretary must annually report on "the accomplishments of the interagency committee in comparison to the goals and objectives of such committee." The ICDD is chaired by the Assistant Secretary for Special Education and Rehabilitative Services and the Commissioner of the Administration on Developmental Disabilities.

MISSION AND GOALS: The mission of the ICDD is to promote the collaboration of appropriate Federal departments and agencies to improve the effectiveness of Federal programs in assisting persons with developmental disabilities to achieve their maximum potential through increased independence, productivity, and integration into the community and in such other ways that assist people with developmental disabilities to attain a more normalized and higher quality of life.

The ICDD has adopted the following goals:

- The exchange information on Federal activities that affect people with developmental disabilities so that each agency is able to utilize this information in managing and directing its programs;
- To identify the needs of people with developmental disabilities and barriers to achieving the goals of the Developmental Disabilities Act and to recommend solutions for meeting these needs and removing these barriers.
- To establish coordinated planning, when appropriate, for activities that are complementary or similar;
- To stimulate joint activities (e.g., joint research, joint development of policies and regulations, joint demonstration or evaluation projects) among the affected Federal agencies.

The ICDD presently meets three times a year. The meeting is open to the public.

DATES: Friday, March 11, 1994, from 2 p.m. to 4 p.m.

ADDRESSES: Auditorium of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: April Waugh, room 351D, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201 (202) 690–6120.

SUPPLEMENTARY INFORMATION: At the meeting the ICDD will discuss: (1) Future direction and collaboration of the ICDD; (2) Health care reform and its impact on disabilities; (3) Leadership and diversity initiatives.

A sign language interpreter will be present at the meeting.

Dated: February 1, 1994.

Bob Williams,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 94–4259 Filed 2–24–94; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

Food and Drug Industry Exchange Meeting Concerning the Biologics Industry; Notice of Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meetings.

SUMMARY: The Food and Drug Administration's (FDA's), Atlanta District Office, Center for Biologics Evaluation and Research, and Office of Small Business, Scientific and Trade Affairs are cosponsoring public meetings with all persons involved in the blood bank, plasmapheresis, and associated laboratory industries. These meetings are intended to provide an exchange of information between FDA and the biologics industry on critical areas in which problems have been observed. Two meetings of comparable content will be held.

DATES: The industry exchange meetings will be held on Tuesday, March 8, 1994, from 8 a.m. to 5 p.m. in Savannah, GA, and on Thursday, April 12, 1994, from 8 a.m. to 5 p.m. in Charlotte, NC. Registration is required.

ADDRESSES: The industry exchange meetings will be held at the following locations:

March 8, 1994: The Radisson Plaza

Hotel, 100 General McIntosh Blvd., Savannah, GA.

April 12, 1994: The Radisson Plaza Hotel, Two Nations Bank Plaza, 101 South Tryon St., Charlotte, NC.

FOR FURTHER INFORMATION CONTACT: Dawn Todd or Barbara Carmichael, Investigations Branch, Food and Drug Administration, 60 Eighth St. NE., Atlanta, GA 30309, 404–347–3218 or FAX 404–347–1913, or Jeanne White or Sharon Schneider, Office of Small Business, Scientific and Trade Affairs, Food and Drug Administration (HF–51), 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776.

Those persons interested in attending either of these meetings should FAX their registration including name, firm name, address, and telephone number to Barbara Carmichael, registration coordinator at 404–347–1913. There is no registration fee but advance registration is required. Space is limited and all interested parties are encouraged to register early.

SUPPLEMENTARY INFORMATION: The purpose of these workshops is to provide the biologics industry with information regarding regulations and policies, as well as to provide an opportunity to hear and address concerns from persons involved in the biologics industry. Topics to be highlighted include current issues in blood banking, error and accident reporting, testing, computers, and recalls.

Dated: February 17, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4243 Filed 2–24–94; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

Requirements for the Tanning Salon Operator; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Southwest Region Small Business Assistance Program, Kansas District Office, Center for Devices and Radiological Health, and Office of Small Business, Scientific and Trade Affairs are sponsoring a public workshop on FDA requirements for tanning salon operators. This workshop is designed to assist tanning salon operators in understanding FDA and State requirements for certain types of UV products, compatibility, approved eye protection, exposure schedules, and medical use bulbs.

DATES: The public workshop will be held on March 28, 1994, 7:30 a.m. to 4 p.m.

ADDRESSES: The public workshop will be held at the Doubletree Hotel, 101100 College Blvd., Overland Park, KS.

FOR FURTHER INFORMATION CONTACT: Stephanie Donnelly or Erinn Williams, Southwest Region Small Business Assistance Program, Food and Drug Administration, 7920 Elmbrook Dr., suite 102, Dallas, TX 75247, 214–655–8100 (ext. 128) or Office of Small Business, Scientific and Trade Affairs, Food and Drug Administration (HF–50), rm. 15–61, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776.

Those persons interested in attending this meeting should FAX their registration to 214–655–8130, including name, firm name, address, and telephone number. There is no registration fee for this workshop, but advance registration is required. Space is limited and all interested parties are encouraged to register early.

SUPPLEMENTARY INFORMATION: FDA's inspectional history of the industry shows that a high percentage of tanning salon operators are unaware of applicable regulations and guidelines or that tanning salon devices are not in compliance with applicable requirements. This workshop is designed to assist the tanning salon operator and is free of charge to attendees.

Dated: February 17, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4244 Filed 2–24–94; 8:45 am]

BILLING CODE 4160–01–F

Indian Health Service

Availability of Funds for Loan Repayment Program for Repayment of Health Professions Educational Loans

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: The Indian Health Service (IHS) announces that approximately $11,000,000 in funds for fiscal year (FY) 1994 are available for the repayment of health professions educational loans (undergraduate and graduate) in return for full-time clinical service in Indian health programs. This program is authorized by section 108 of the Indian Health Care Improvement Act as amended, 25 U.S.C. 1601 et seq. Through this notice, the IHS invites potential applicants to request an application for participation in the Loan Repayment Program. The IHS estimates that approximately 200 loan repayment awards may be made with this funding.

DATES: Applications for the FY 1994 Program will be accepted and evaluated monthly beginning 30 days after publication of this notice but not earlier than January 14, 1994 and will continue each month thereafter until all funds are exhausted. Subsequent monthly deadline dates are scheduled for Friday of the second full week of each month. Notice of awards will be mailed on the last working day of each month.

Applicants selected for participation in the FY 1994 program cycle will be expected to begin their service period no later than September 30, 1994.

Applicants shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall *not* be acceptable as proof of timely mailing.)

Applications received after the monthly closing date will be held for consideration in the next monthly funding cycle. Applicants who do not receive funding by September 30, 1994 will be notified in writing.

FORM TO BE USED FOR APPLICATION: Applications will be accepted only if they are submitted on the form entitled "Application for the Indian Health Service Loan Repayment Program," identified with the Office of Management and Budget approval number of OMB #0917–0014 (expires 02/28/96).

ADDRESSES: Application materials may be obtained by calling or writing to the address below. In addition, completed applications should be returned to: IHS Loan Repayment Program, 12300 Twinbrook Parkway—suite 100, Rockville, Maryland 20852, PH: 301/443–3396 [between 8 a.m. and 5 p.m. (EST) Monday through Friday, except Federal holidays].

FOR FURTHER INFORMATION CONTACT: Please address inquiries to Mr. Charles Yepa, LRP Section Chief, IHS Loan Repayment Program, Twinbrook Metro Plaza—suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852, PH: 301/443–3396 [between 8 a.m. and 5 p.m. (EST) Monday through Friday, except Federal holidays].

SUPPLEMENTARY INFORMATION: Section 108 of the Indian Health Care Improvement Act as amended by Public Law 100–713 and 102–573, authorizes the IHS Loan Repayment Program and provides in pertinent part as follows:

> The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the "Loan Repayment Program") in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.
>
> "Health Profession" means family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering and allied health professions.

Osteopathic physicians (D.O.) may be funded regardless of specialty, provided that the IHS has a need for that specialty. Allopathic physicians (M.D.) may be funded only if they are board certified/eligible in family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology and psychiatry.

For the purposes of this program, the term "Indian health program" is defined in section 108(a)(2)(A), as follows:

> * * * any health program or facility funded, in whole or in part, by the IHS for the benefit of American Indians and Alaska Natives and administered:
>
> a. Directly by the service; or
>
> b. By any Indian tribe or tribal or Indian organization pursuant to a contract under:
>
> (1) The Indian Self-Determination Act; or
>
> (2) Section 23 of the Act of April 30, 1908, (25 U.S.C. 47), popularly known as the Buy Indian Act; or
>
> (3) By an urban Indian organization pursuant to Title V of this act.

Applicants may sign contractual agreements with the Secretary for 2 years. The IHS will repay all or a portion of the applicant's health professions educational loans (undergraduate and graduate) for tuition expenses and reasonable educational and living expenses in amounts up to $30,000 per year for each year of contracted service to be made in annual payments to the participant for the purpose of repaying his/her outstanding health professions educational loans. Repayment of health professions educations loans will be made to the participant within 120 days after the participant's entry on duty has been confirmed by the IHS. The Secretary must approve the contract before the disbursement of loan repayments can be made to the participant.

Participants will be required to fulfill their contract service agreements through full-time clinical practice at an Indian health program site determined by the Secretary. Loan repayment sites are characterized by physical, cultural, and professional isolation, and have histories of frequent staff turnover. All Indian health program sites are annually prioritized by discipline, based on need or vacancy by the Agency.

All health professionals will receive up to $30,000 per year, regardless of their length of contract. Where payments under the Loan Repayment Program result in an increase in Federal income tax liability, the IHS will pay up to 31 percent of the participant's total loan repayments to the Internal Revenue Service on the participant's behalf for all or part of the increased tax liability of the participant.

Pursuant to Section 108 (b), to be eligible to participate in the Loan Repayment Program an individual must:

(1) A. be enrolled:

(i) In a course of study or program in an accredited institution, as determined by the Secretary, within any state and be scheduled to complete such course of study in the same year such individual applies to participate in the Loan Repayment Program. (The term "State" includes, in addition to several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau); or

(ii) In an approved graduate training program in a health profession; or

B. Have a degree in a health profession and a license to practice; AND

(2) A. Be eligible for, or hold an appointment as a Commissioned Officer in the Regular or Reserve Corps of the Public Health Service, or

B. Be eligible for selection for civilian service in the Regular or Reserve Corps of the Public Health Service; or

C. Meet the professional standards for civil service employment in the IHS; or

D. Be employed in an Indian health program without service obligation; AND

(3) Submit to the Secretary an application and contract to the Loan Repayment Program; AND

(4) Sign and submit to the Secretary, a written contract agreeing to accept repayment of health professions educational loans and to serve for the applicable period of obligated service in a priority site as determined by the Secretary; AND

(5) Sign an affidavit attesting to the fact that they have been informed of the relative merits of the U.S. Public Health Service Commissioned Corps and the Civil Service as employment options.

Upon approval of the applicant for participation in the Loan Repayment Program, the applicant will receive confirmation of his/her loan repayment award and the duty site at which he/she will serve his/her loan repayment obligation.

The IHS has identified the positions in each Indian health program for which there is a need or vacancy and ranked those positions in order of priority by developing discipline specific prioritized lists of sites. Ranking criteria for these sites include the following:

- Historically critical shortages caused by frequent staff turnover
- Current unmatched vacancies in a Health Profession Discipline
- Projected Vacancies in a Health Profession Discipline
- Ensuring that the staffing needs of Indian health programs administered by an Indian tribe or tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and
- Giving priority to vacancies in Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached Loan Repayment Program contracts entered into under this section. Consistent with this priority ranking, in determining which applications to approve and which contracts to accept, the IHS will give priority to applications made by American Indians and Alaska Natives and to individuals recruited through the efforts of Indian tribes or tribal or Indian organizations.
- With respect to priorities among the various health professions, the statute requires that of the total amount appropriated for Fiscal Year 1994 for loan repayment contracts, not less than 25 percent be provided to applicants who are nurses, nurse practitioners, or nurse midwives and not less than 10 percent be provided to applicants who are mental health professionals (other than nurses, nurse practitioners, or nurse midwives). This requirement does not apply if the number of applications from these two groups, respectively, is not sufficient to meet the requirement.
- Subject to the above statutory priority for nurses and mental health practitioners, the IHS will give priority in funding among health professionals to physicians in the following priority specialties: Anesthesiology, emergency room medicine, general surgery, obstetrics/gynecology, ophthalmology, orthopedic surgery, otolaryngology/

otorhinolaryngol, psychiatry and radiology.

The following factors are equal in weight when applied, and are applied when all other criteria are equal and a selection must be made between applicants. One or all of the following factors may be applicable to an applicant, and the applicant who has the most of these factors, all other criteria equal, would be selected.

- An applicant's length of current employment in the IHS, tribal or urban program.
- Availability for service earlier than other applicants (first come, first served); and
- Date the individual's application was received.

Any individual who enters this program and satisfactorily completes his or her obligated period of service may, apply to extend the contract on a year-by-year basis as determined by the IHS, at the maximum amount up to $30,000 per year and additional 31 percent for Federal Withholding. If funds are available, the maximum amount will be funded in this manner and will not exceed the total of the individual's outstanding eligible health professions educational loans.

Any individual who owes an obligation for health professional service to the Federal Government or to a State or other entity under an agreement with such State or other entity is not eligible for the Loan Repayment Program unless such an obligation will be completely satisfied prior to the beginning of service under this program in the year that an application is made for this program.

This program is not subject to review under Executive Order 12372.

The Catalog of Federal Domestic Assistance number is 13.164.

Dated: January 4, 1994.

Michel E. Lincoln,

Acting Director.

[FR Doc. 94–4249 Filed 2–24–94; 8:45 am]

BILLING CODE 4160–16–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Vascular Cell Signaling and Metabolism in Atherogenesis (Telephone Conference Call).

Dates of Meeting: February 25, 1994.

Time of Meeting: 2 p.m.

Place of Meeting: 5333 Westbard Avenue, room 552, Bethesda, Maryland.

Agenda: To review and evaluate grant applications.

Contact Person: Dr. Louis M. Ouellette, 5333 Westbard Avenue, room 552, Bethesda, Maryland 20892, (301) 594–7474.

Name of Panel: NHLBI SEP on Demonstration and Education Research Applications.

Dates of Meeting: March 1–2, 1994.

Time of Meeting: 9 a.m.

Place of Meeting: Stouffer Concourse Hotel, Arlington, Virginia.

Agenda: To review and evaluate grant applications.

Contact Person: Dr. Louis Corman, 5333 Westbard Avenue, room 548, Bethesda, Maryland 20892, (301) 594–7452.

This notice is being published less than the fifteen days prior to the meeting due to difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4433 Filed 2–24–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Cooperative Clinical Research Grants (R10).

Dates of Meeting: March 3–4, 1994.

Time of Meeting: 8 p.m.

Place of Meeting: Sheraton Fiesta Hotel, 37 N.E. Loop 410, San Antonio, Texas 78216.

Agenda: To review and evaluate grant applications.

Contact Person: Dr. C. James Scheirer, 5333 Westbard Avenue, room 548, Bethesda, Maryland 20892, (301) 594–7452.

This notice is being published less than the fifteen days prior to the meeting due to difficulty to coordinating schedules.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4435 Filed 2–24–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: NHLBI SEP on Cardiovascular Diseases.

Dates of Meeting: March 7–8, 1994.

Time of Meeting: 9 a.m.

Place of Meeting: National Institutes of Health, Building 31C, Conference Room 8, Bethesda, Maryland.

Agenda: To provide concept review for proposed contract or grant solicitations.

Contact Person: Dr. Michael Horan, 7550 Wisconsin Avenue, Room 4A16, Bethesda, Maryland 20892, (301) 496–2553.

Name of Panel: NHLBI SEP on Blood Diseases and Resources.

Dates of Meeting: April 18–19, 1994.

Time of Meeting: 9 a.m.

Place of Meeting: National Institutes of Health, Federal Building, 7550 Wisconsin Avenue, Conference Room B119, Bethesda, Maryland 20892.

Agenda: To provide concept review for proposed contract or grant solicitations.

Contact Person: Dr. Clarice Reid, Federal Building, 7550 Wisconsin Avenue, Room 212, Bethesda, Maryland 20892, (301) 496–6931.

This notice is being published less than the fifteen days prior to the meeting due to difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance Programs. Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4436 Filed 2–24–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Trials Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, February 28–March 1, 1994, Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

The meeting will be open to the public on February 28 from 7 p.m. to approximately 7:45 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on February 28 from approximately 7:45 p.m. to adjournment on March 1, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung and Blood Institute, Building 31, room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretations or other reasonable accommodations, should contact the Scientific Review Administrator in advance of the meeting.

Dr. David M. Monsees, Jr., Scientific Review Administrator, Clinical Trials Review Committee, Division of Extramural Affairs, National Heart, Lung and Blood Institute, Westwood Building, room 550B, Bethesda, Maryland 20892, (301) 594–7450, will furnish substantive program information.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordination schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4434 Filed 2–24–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Professions Preparatory, Pregraduate and Indian Health Professions Scholarship Grant Programs

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Availability of Funds for Health Professions Preparatory, Pregraduate and Indian Health Professions Scholarship Grant Programs for Fiscal Year (FY) 1994.

SUMMARY: The Indian Health Service (IHS) announces the availability of approximately $3,496,000 to fund scholarships for the Health Professions Preparatory and Pregraduate Scholarship Grant Programs for FY 1994 awards. These programs are authorized by section 103 of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, as amended by Public Law 100–713 and by Public Law 102–573.

The Health Professions Scholarship Grant Program, authorized by section 104 of the IHCIA, Public Law 94–437, as amended by Public Law 100–713 and by Public Law 102–573, has approximately $7,702,000 available for FY 1994 awards. Scholarships will be awarded utilizing the Notice of Grant Award form, PHS–5152–1 (Rev. 7/92). For academic year 1994–1995, full-time and part-time scholarships will be funded for each of the three scholarship programs.

The Health Professions Preparatory Scholarship Grant Program is listed as No. 93.123 in the Office of Management and Budget Catalog of Federal Domestic Assistance (CFDA). The Health Professions Pregraduate Scholarship Grant Program is listed as No. 93.971, and the Indian Health Professions Scholarship Grant Program is listed as No. 93.972 in the CFDA.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

DATES: The application deadline is April 15, 1994. Applications shall be considered as meeting the deadline if they are received by the appropriate Scholarship Coordinator on the deadline date or postmarked on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) Applicants received after the announced closing date will be returned to the applicant and will not be considered for funding.

ADDRESSES: Application packets may be obtained by calling or writing to the addresses listed below. The application form number is IHS 856, under OMB Clearance #0917.0006 (expires 05/31/94).

IHS area office and states/locality served	Scholarship coordinator/address
Aberdeen Area IHS—Iowa, Nebraska, North Dakota, South Dakota.	Ms. Rhonda Baade, Scholarship Coordinator, IHS Aberdeen Area, Federal building, 115 4th Avenue, SE., Aberdeen, SD 57401, Tele: 605–226–7553.

IHS area office and states/locality served	Scholarship coordinator/address
Alaska Area Native Health Service—Alaska	Ms. Beverlee Pettit, Scholarship Coordinator, IHS Alaska Area, 250 Gambell Street, Anchorage, Alaska 99501, Tele: 907–257–1408.
Albuquerque Area IHS—Colorado, New Mexico	Ms. Alvina Waseta, Scholarship Coordinator, IHS Albuquerque Area, 505 Marquette, NW., Suite 1502, Albuquerque, NM 87102, Tele: 505–766–1545.
Bemidji Area IHS—Illinois, Indiana, Michigan, Minnesota, Wisconsin.	Ms. Shirley Lillemo, Scholarship Coordinator, IHS Bemidji Area, 203 Federal Building, Bemidji, MN 56601, Tele: 218–759–3315.
Billings Area IHS—Montana, Wyoming	Mr. Sandy Macdonald, Scholarship Coordinator, IHS Billings Area, P.O. Box 2143, Billings, MT 59103–6601, Tele: 406–657–6909.
California Area IHS—California, Hawaii	Mr. John Kinnison, Scholarship Coordinator, IHS California Area, 1825 Bell Street—Suite 200, Sacramento, CA 95825–1097, Tele: 916–978–4202.
Nashville Area IHS—Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, District of Columbia.	Mr. Stephen Holder, Scholarship Coordinator, IHS Nashville Area, 3310 Perimeter Hill Drive, Nashville, TN 37211, Tele: 615–781–5519.
Navajo Area IHS—Arizona, New Mexico, Utah	Ms. Rosalinda Allison, Scholarship Coordinator, IHS Navajo Area, P.O. Box G, Window Rock, AZ 86515, Tele: 602–871–5831.
Oklahoma City Area IHS—Kansas, Missouri, Oklahoma	Mr. Jim Ingram, Scholarship Coordinator, IHS Oklahoma City Area, 3625 NW. 56th Street, Five Corporate Plaza, Oklahoma City, OK 73211, Tele: 405–231–4448.
Phoenix Area IHS—Arizona, Nevada, Utah	Ms. Jeannie Rousseau, Scholarship Coordinator, IHS Phoenix Area, 3738 N. 16th Street—Suite A, Phoenix, AZ 85016–2066, Tele: 602–261–2068.
Portland Area IHS—Idaho, Oregon, Washington	Ms. Darlene Marcellay, Scholarship Coordinator, IHS Portland Area, 1220 SW 3rd Street, RM 315, Portland, OR 97204–2892, Tele: 503–326–2019.
Tucson Area IHS—Arizona, Texas	Ms. Eileen Preston, Scholarship Coordinator, IHS Tucson Area, 7900 S.J. Stock Road, Tucson, AZ 85746, Tele: 602–295–2434.

FOR FURTHER INFORMATION CONTACT: Please address application inquiries to the appropriate Indian Health Service Area Scholarship Coordinator. Other programmatic inquiries may be addressed to Ms. Rosh Foley, Chief, Scholarship Branch, Indian Health Service, Twinbrook Metro Plaza, suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852; Telephone 301–443–6197. (This is not a toll-free number.) For grants information, contact Ms. Patricia Lee-McCoy, Grants Scholarship Coordinator, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, room 100, 12300 Twinbrook Parkway, Rockville, MD 20852; Telephone 301–443–0243. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Health Professions Preparatory and Pregraduate Scholarship Grant Programs are authorized by section 103 of the IHCIA, Public Law 94–437, as amended by Public Law 96–537, Indian Health Care Amendments of 1980; Public Law 100–713, Indian Health Care Amendments of 1988; and Public Law 102–573, Indian Health Care Amendments of 1992.

The Indian Health Professions Scholarship Grant Program, formerly authorized by section 338I of the Public Health Service Act (42 U.S.C. 254r), is now authorized by section 104 of the IHCIA, as amended by the Indian Health Care Amendments of 1988, Public Law 100–713 and Public Law 102–573, Indian Health Care Amendments of 1992.

A. General Program Purpose: These grant programs are intended to encourage American Indians and Alaska Natives to enter the health professions and to assure the availability of Indian health professionals to serve Indians.

B. Eligibility Requirements: 1. The Health Professions Preparatory Scholarship awards are made to individuals of American Indian or Native Alaskan descent meeting the criteria in section 4(c) of the IHCIA, as amended, who have successfully completed high school education or high school equivalency and who have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum. Support is limited to 2 years for full-time students and 4 years for part-time students.

2. The Health Professions Pregraduate Scholarship awards are made to individuals of American Indian or Native Alaskan descent meeting the criteria in section 4(c) of the IHCIA, as amended, who have successfully completed high school education or high school equivalency and who have been accepted for enrollment or are enrolled in an accredited pregraduate program leading to a baccalaureate degree in pre-medicine or pre-dentistry. Support is limited to 4 years for full-time students and 8 years for part-time students.

3. The Indian Health Professions Scholarship awards are made to individuals of American Indian or Native Alaskan descent meeting the criteria in section 4(c) of the IHCIA, as amended, who are enrolled in health professions and allied health professions programs. Support is limited to 4 years for full-time students and 8 years for part-time students.

Awards for the Indian Health Professions Scholarship Grant program will be made in accord with 42 CFR 36.330, except that pursuant to section 104 of the IHCIA, as amended by the Indian Health Care Amendments of 1988, Public Law 100–713, only Indian and Native Alaskan applicants shall receive awards and the service obligation prescribed under section 338C of the Public Health Service Act (43 U.S.C. 244m) shall be met:

(1) In Indian Health Service;

(2) In a program conducted under a contract entered into under the Indian Self-Determination Act;

(3) In a program assisted under title V of the Indian Health Care Improvement Act (Pub. L. 94–437) and its amendments; and

(4) In private practice of his or her profession, if the practice: (a) Is situated in a health professional shortage area, designated in regulations promulgated by the Secretary and (b) addresses the health care needs of a substantial number of Indians as determined by the Secretary in accordance with guidelines of the Service.

Pursuant to the Indian Health Amendments of 1992 (Pub. L. 102–573), a recipient of an Indian Health Professions Scholarship may, at the election of the recipient, meet his/her active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 245m) by a program specified in options (1)–(4) above that:

(i) Is located on the reservation of the tribe in which the recipient is enrolled; or

(ii) serves the tribe in which the recipient is enrolled.

All applicants for the Indian Health Professions Scholarship Grant Program are reminded that recipients of this scholarship incur a service obligation. Moreover, this obligation shall be served at a facility determined by the Director, IHS, consistent with the IHCIA, Public Law 94–437, as amended by Public Law 100–713 and Public Law 102–573.

C. Fund Availability: Both part-time and full-time scholarship awards will be made in accordance with regulations at 42 CFR 36.320, incorporated in the application materials, for Health Professions Preparatory Scholarship Grant Program for Indians and 42 CFR 36.370, incorporated in the application materials, for Health Professions Pregraduate Scholarship Grant Program for Indians. Approximately 169 awards, 80 of which are continuing, will be made under the Health Professions Preparatory and Pregraduate Scholarship Grant Programs for Indians in this fiscal year. The awards are for 10 months in duration, and the average award to a full-time student is approximately $14,000. In FY 1994, approximately $1,120,000 is available for continuation awards and approximately $2,376,000 is available for new awards.

Approximately 453 awards, 300 of which are continuing, will be made under the Health Professions Scholarship Grant Program for Indians in FY 1994. Awards will be made to both full-time and part-time students. The awards are for 12 months in duration, and the average award to a full-time student is approximately $17,000. In FY 1994, approximately $5,100,000 is available for continuation awards, and $2,602,000 is available for new awards.

No more than 20% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of 6 hours of instruction and are not considered in full-time status by their college or university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status

D. Criteria for Evaluation: Applications will be evaluated against the following criteria: 1. Needs of the IHS. Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health manpower needs. Applications for each health career category are reviewed and ranked separately.

2. Academic performance. Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are asked to provide a personal judgment of the applicant's achievement. Health Profession applicants with a cumulative GPA below 2.0 are not eligible to apply.

3. Faculty/Employer Recommendations. Applicants are rated according to evaluations by faculty members and current and/or former employers regarding the applicant's potential in the chosen health related profession.

4. Stated Reasons for Asking for the Scholarship and Stated Career Goals. Applicants must provide a brief written explanation of reasons for asking for the scholarship and of career goals. The applicant's narrative will be judged on how well it is written and content.

5. Applicants who are closest to graduation or completion are awarded first. For example, senior and junior applicants under the Health Professions Pregraduate Scholarship receive funding before freshmen and sophomores.

E. Priority Categories: Regulations at 42 CFR 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Health Professions Preparatory and Pregraduate Scholarships and Health Professions Scholarships. Section 104(b) (1) of the IHCIA, as amended by the Indian Health Care Amendment of 1988, Public Law 100–713, authorizes the IHS to determine specific health professions for which Indian Health Scholarships will be awarded.

The lists of priority health professions that follow, by scholarship program, are based upon the needs of the IHS as well as upon the needs of the American Indians and Alaska Natives for additional service by specific health profession.

1. Health Professions Preparatory Scholarship Grant Program for Indians. (Below is the list of disciplines to be supported and priority is based on academic level: Sophomore, Freshman.)

A. Pre-Engineering.
B. Pre-Medical Technology.
C. Pre-Nursing.
D. Pre-Pharmacy.
E. Pre-Physical Therapy.
F. Pre-Sanitation.

2. Health Professions Pregraduate Scholarship Grant Program. (Below is the list of disciplines to be supported and priority is based on academic level: Senior, Junior, Sophomore, Freshman.)

A. Pre-Dentistry.
B. Pre-Medicine.

3. Indian Health Professions Scholarship Grant Program. (Below is a list of disciplines to be supported and priority is based on academic level, unless specified: Graduate, Senior, Junior, Sophomore, Freshman.)

A. Chemical Dependency Counseling.
B. Clinical Psychology: PH.D. only.
C. Counseling Psychology: PH.D. only.
D. Computer Science: B.S.
E. Dentistry.
F. Dietician: B.S.
G. Engineering: B.S. Civil, Environmental and Mechanical.
H. Health Education: Masters level only.
I. Health Records: A.R.T. and R.R.T.
J. Medical Technology: B.S.
K. Medical Social Work: Masters level only.
L. Medicine: Allopathic and Osteopathic.
M. Nurse Practitioner: R.N.A., C.N.M. and F.N.P.
N. Nursing: A.D.N. B.S.N. and M.S.N. (Priority consideration will be given to Registered Nurses employed by the Indian Health Service; in a program assisted under a contract entered into under the Indian Self-Determination Act; or in a program assisted under title V of the Indian Health Care Improvement Act.)
O. Optometry.
P. Para-Optometric.
Q. Pharmacy: B.S.
R. Physician Assistant: B.S.
S. Physical Therapy.
T. Podiatry: D.P.M.
U. Public Health: M.P.H. only. (Applicants must be enrolled or accepted in a school of public health and must have 2 years of health delivery experience.)
V. Public Health Nutrition: Masters level only.
W. Radiologic Technology.
X. Respiratory Therapy: B.S.
Y. Sanitarian: B.S. Environmental Health, Environmental Science and Occupational Safety and Health.
Z. Sonography.

Interested individuals are reminded that the list of eligible health and allied health professions is effective for the applicants for the 1994–1995 academic year. These priorities will remain in

effect until superseded. Applicants for health and allied health professions not on the above priority list are eligible to apply but will only be considered pending the availability of qualified applicants in the priority areas.

Dated: January 4, 1994.

Michel E. Lincoln,

Acting Director.

[FR Doc. 94–4248 Filed 2–24–94; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–72]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Land, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *GSA:* Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 208–0619; *Dept. of Interior:* Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; *Dept. of Agriculture:* Marsha Pruitt, Realty Officer, USDA, South Bldg., Rm. 1566, 14th and Independence Ave. SW., Washington, DC 20250; (202) 447–3338; (These are not toll-free numbers).

Dated: February 25, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 02/25/94

Suitable/Available Properties

Building (by State)

Colorado

Former AF Finance Center
3800 York Street
Denver Co: Denver CO 80205–
Landholding Agency: GSA
Property Number: 549310011
Status: Excess
Comment: 293,932 sq. ft., 1-story timber frame with masonry exterior, fair condition, most recent use—storage, office, rehab
GSA Number: 7–GR–CO–468–D

Kansas

Federal Office Building
1923 Broadway
Greater Bend Co: Barton KS 67530–
Landholding Agency: GSA
Property Number: 549340005
Status: Excess
Comment: 4452 sq. ft., concrete/steel frame, 1 story w/basement, possible asbestos, most recent use—office building
GSA Number: 7–G–KS–515

Minnesota

Coast Guard Family Housing
404 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230007
Status: Excess
Comment: 1333 sq. ft., 1-story frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
406 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230008
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
408 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230009
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
418 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230010
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

South Dakota

Clark Communication Site
12 miles north & 5 miles west of Clark Co: Clark SD 57225–
Landholding Agency: GSA
Property Number: 549340008
Status: Excess
Comment: 2 acres with a 200 foot radio tower, 8x8 hutment & 12x12 hutment
GSA Number: 7–B–SD–514

Tennessee

Alamo Federal Building
146 East Park
Alamo Co: Crockett TN 38001–
Landholding Agency: GSA
Property Number: 549340007
Status: Excess
Comment: 4970 sq. ft. brick bldg. (this excludes space occupied by U.S. Post Office)
GSA Number: 4–G–TN–617A

Land (by State)

California

Receiver Site
Delano Relay Station
Route 1, Box 1350
Delano Co: Tulare CA 93215–
Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GSA
Property Number: 549010044
Status: Surplus
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities, environmental restrictions
GSA Number: 9–2–CA–1308

(P) Camp Elliott
Rosedale Tract
San Diego Co: San Diego CA
Landholding Agency: GSA
Property Number: 549310008
Status: Surplus
Comment: Parcel 1—0.15 acre, Parcel 2—01.7 acre, located in the narrow median strip between Murphy Canyon Rd. and State Highway 15, previously leased by homeless provider
GSA Number: 9–GR (6)–CA–694A

Dixon Relay Station
7514 Radio Road
Dixon Co: Solano CA 95620–9653
Landholding Agency: GSA
Property Number: 549320002
Status: Surplus
Comment: 787.53 acres with 7 bldgs., most recent use—transmitter site
GSA Number: 9–Z–CA–1162B

Georgia

Portion of Tract I–801
Lake Allatoona, Yacht Club Road
Acworth Co: Cherokee GA 30102–
Landholding Agency: GSA
Property Number: 549340009
Status: Excess
Comment: 7.02 acres, no sewer or public water system, most recent use—timber growth
GSA Number: 4–D–GA–826

Portion of Tract E–419
Cheatham Road
Acworth Co: Cobb GA 30101–
Landholding Agency: GSA
Property Number: 549340010
Status: Excess
Comment: 0.57 acres, fronts on paved road, possible zoning variances
GSA Number: 4–D–GA–827

Massachusetts

Por. of Former Navy Ammo. Plt.
Fort Hill Street
Hingham Co: Plymouth MA 02043–
Location: Across from Bus Company Parking Garage
Landholding Agency: GSA
Property Number: 549030017
Status: Excess
Comment: 1.129 acres, gravel pavement, most recent use—parking lot
GSA Number: 2–GR–MA–591B

Ohio

Portion, Camp Sherman Range
Approximately 1 mile north of Chillicothe
Springfield Co: Ross OH
Landholding Agency: GSA
Property Number: 549310004
Status: Excess
Comment: 4.674 acres, potential utilities, previously leased by non-profit for homeless assistance use
GSA Number: 2–GR–OH–433B

Oklahoma

Parcel 7
Fort Gibson Lake
Section 6, Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010869
Status: Surplus
Comment: 16.31 acres; potential utilities; most recent use—recreational and development
GSA Number: 7–D–OK–0442E–0001

Parcel 14
Fort Gibson Lake
Section 20, Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010870
Status: Surplus
Comment: 52.09 acres; potential utilities; subject to haying/grazing leases; most recent use—recreational
GSA Number: 7–D–OK–0442E–0002

Parcel 15
Fort Gibson Lake
Section 22, Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010871
Status: Surplus
Comment: 7.51 acres; potential utilities; most recent use—recreational
GSA Number: 7–D–OK–0442E–0003

Parcel 28
Fort Gibson Lake
Section 35, Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010877
Status: Surplus
Comment: 36.59 acres; potential utilities; most recent use—recreational
GSA Number: 7–D–OK–0442E–0005

Parcel 75
Fort Gibson Lake
Section 16, Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010887
Status: Surplus
Comment: 45 acres; potential utilities; subject to haying lease and flowage easement; most recent use—recreational
GSA Number: 7–D–OK–0442E–0009

Parcel 88
Fort Gibson Lake
Section 7, Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010899
Status: Surplus
Comment: 14 acres; potential utilities; subject to grazing lease; most recent use—recreational
GSA Number: 7–D–OK–0442E–0010

Parcel 89
Fort Gibson Lake
Section 7, Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010900
Status: Surplus
Comment: 16 acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational
GSA Number: 7–D–OK–0442E–0011

Parcel 95
Fort Gibson Lake
Section 33, Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010906
Status: Surplus
Comment: 8 acres; potential utilities; most recent use—recreational
GSA Number: 7–D–OK–0442E–0012

Parcel No. 43
Fort Gibson Lake
Section 11, Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011371
Status: Surplus
Comment: 125 acres; potential utilities; portion subject to grazing lease and flowage easements
GSA Number: 7–D–OK–0442E–0006

Parcel No. 49
Fort Gibson Lake
Section 15, Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011377
Status: Surplus
Comment: 26.94 acres; potential utilities; portion subject to grazing lease and flowage easements
GSA Number: 7–D–OK–0442E–0007

Parcel No. 61
Fort Gibson Lake
Section 13, Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011389
Status: Surplus
Comment: 54 acres; potential utilities; subject to flowage easement; most recent use—recreation
GSA Number: 7–D–OK–0442E–0008

Parcel No. 99
Fort Gibson Lake
Section 21, Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011400
Status: Surplus
Comment: 5 acres; small creek on land; most recent use—recreation
GSA Number: 7–D–OK–0442E–0013

Parcel No. 102
Fort Gibson Lake
Section 33, Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011403
Status: Excess
Comment: 7 acres; subject to grazing lease; most recent use—recreation
GSA Number: 7–D–OK–0442E–0014

Puerto Rico

Parcel A
Naval Station, Roosevelt Roads
Vieques PR 00765–
Landholding Agency: GSA
Property Number: 549340003
Status: Excess
Comment: 68.11 acres, potential limited utilities, most recent use—buffer zone
GSA Number: 2–N–PR–485

Texas

Tract F–516 O.C. Fisher Lake
Parallel with Grape Creek Road
San Angelo Co: Tom Green TX 76902–3085
Landholding Agency: GSA
Property Number: 319120002
Status: Unutilized
Comment: 2.13 acres, potential limited utilities
GSA Number: 7–D–TX–0968–A

Part of Tract E–434
FW Hwy 720 (Lewisville Lake)
Little Elm Co: Denton TX 75068–
Landholding Agency: GSA
Property Number: 319310005
Status: Excess
Comment: 0.375 acre, frontage on paved highway
GSA Number: 7–D–TX–510–L

21 Parcels
Big Thicket National Preserve, Co: Hardin TX
Landholding Agency: GSA
Property Number: 549340006
Status: Excess
Comment: 21 parcels containing 157.53 acres of unimproved timberland, tracts are in floodplain or considered to be wetlands
GSA Number: 7–I–TX–956–G

Washington

Asotin Quarry-Lower Lock & Dam
West of Upriver Road
Asotin Co: Asotin WA 99402–
Landholding Agency: GSA
Property Number: 549340001
Status: Excess
Comment: 39.42 acres, access easement, most recent use—rock quarry
GSA Number: 9–D–WA–824K

Suitable/Unavailable Properties

Buildings (by State)

California

Quarters 1, TV 0001
950 Tennessee Valley Road
Mill Valley Co: Marin CA 94941–
Landholding Agency: Interior
Property Number: 619320002
Status: Unutilized
Comment: 828 sq. ft., 1 story wood frame residence, fair condition, off-site use only

Colorado

3 Bldgs.
Former U.S. Forest Service Admin. Site
Fox Lane
Beaulah Co: Pueblo CO 81023–
Landholding Agency: GSA
Property Number: 549330002
Status: Excess
Comment: 1100 sq. ft. 2-story house, 600 sq. ft. 1-story house and 1600 sq. ft. garage, most recent use—classroom, storage, residence
GSA Number: 7–GR–CO–525

Kansas

Federal Building
417–418 South Main St.
Wichita Co: Sedgwick KS 67202–
Landholding Agency: GSA
Property Number: 549320005
Status: Excess
Comment: 35,000 sq. ft., 2-story steel/concrete bldg., scheduled to be vacated 9/93, presence of asbestos
GSA Number: 7–G–KS–0512

Maine

9 Capehart Family Houses
Charleston Family Housing Annex, Union St.
Bangor Co: Penobscot ME
Landholding Agency: GSA
Property Number: 189310052
Status: Surplus
Comment: 2916–7097 sq. ft., 1–2 story wood, 3-duplexes, 27-four plexes totaling 114 units with garages
GSA Number: 2–D–ME–526G

Massachusetts

Lowell Federal Building
50 Kearny Square
Lowell Co: Middlesex MA 01854–
Landholding Agency: GSA
Property Number: 549320003
Status: Excess
Comment: 40,283 sq. ft., 3-story concrete and steel bldg., most recent use—storage/office and medical clinic
GSA Number: 2–G–MA–778

Minnesota

Army Reserve Center
301 Lexington Ave. South
New Prague Co: LeSueur MN 56071–
Landholding Agency: GSA
Property Number: 549330003
Status: Excess
Comment: 4316 sq. ft. brick veneer and concrete block office and training bldg. and a 1170 sq. ft. maintenance shop on 3.82 acres of land leased by the City
GSA Number: 2–D–MN–558

New Mexico

Former Post Office
4th & Mitchell
Clovis Co: Curry NM 88101–
Landholding Agency: GSA
Property Number: 549230005
Status: Excess
Comment: 9225 sq. ft., 2 story concrete, brick & steel structure, good condition, pres. of asbestos, listed on Natl Register of Historic Places, most recent use—public library
GSA Number: 7–GR–NM–478

New York

Former Damtender's House
East Sidney Lake
Franklin Co: Delaware NY 13775–
Location: Located on the corner of Triverfold Rd. and County Rd. 44
Landholding Agency: GSA
Property Number: 319210007
Status: Surplus
Comment: 1605 sq. ft., 2 story wood frame residence with 1 acre of land, asbestos shingle siding
GSA Number: 2–D–NY–814

(P) Form. Alex. Bay CG Station
Landon Road, Wellesley Island
Alexandria Co: Jefferson NY
Landholding Agency: GSA
Property Number: 549310006
Status: Excess
Comment: 2500 sq. ft. 2-story wood bldg., 5 acres of land
GSA Number: 2–GR–NY–0730A–000Z

North Caroline

Portion VA Reservation
Nurses Quarters
Oteen Co: Buncombe NC
Landholding Agency: GSA
Property Number: 549320006
Status: Excess
Comment: 8752 sq. ft., 3-story stucco bldg., presence of asbestos, most recent use—educational facility
GSA Number: 4–GR–NC–481B

Pennsylvania

Storage & Maint. Facility
1200 Airport Road
Hopewell Co: Beaver PA 15001–
Landholding Agency: GSA
Property Number: 549330004
Status: Excess
Comment: 44157 sq. ft., 1-story concrete block bldg. (inadequate heating) and 19 acres of land, easements for pipelines and public utilities
GSA Number: 4–L–PA–776

Texas

Bldg. 2
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014815
Status: Unutilized
Comment: 94606 sq. ft.; 1 story wood, masonry, and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 4
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–

Landholding Agency: GSA
Property Number: 219014816
Status: Excess
Comment: 1350 sq. ft.; 1 story structured clay tile and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 17
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014817
Status: Excess
Comment: 68 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house
GSA Number: 7–D–TX–879A

Bldg. 29
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014818
Status: Excess
Comment: 5028 sq. ft.; 1 story wood, masonry and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 30
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014819
Status: Excess
Comment: 5323 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 18
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014820
Status: Excess
Comment: 9560 sq. ft.; 1 story wood, masonry and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 6
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014821
Status: Excess
Comment: 1258 sq. ft.; 1 story structured clay tile and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 7
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014822
Status: Excess
Comment: 508 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 8
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014824
Status: Excess
Comment: 171 sq. ft.; 2 story concrete block and brick; subject to sewer pipeline easement; needs rehab; most recent use—watch tower
GSA Number: 7–D–TX–879A

Bldg. 16
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014825
Status: Excess
Comment: 17263 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 19
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014826
Status: Excess
Comment: 25399 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 31
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014827
Status: Excess
Comment: 1392 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 9
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014828
Status: Excess
Comment: 244 sq. ft.; 1 story wood, hollow tile and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 25
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014829
Status: Excess
Comment: 1320 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—fire house
GSA Number: 7–D–TX–879A

Bldg. 10
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014830
Status: Excess
Comment: 354 sq. ft.; 2 story concrete block and brick; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 26
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014831
Status: Excess
Comment: 3518 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 21
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014832
Status: Excess
Comment: 65 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house
GSA Number: 7–D–TX–879A

Bldg. 22
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014833
Status: Excess
Comment: 50581 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Bldg. 27
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014834
Status: Excess
Comment: 228 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—control tower
GSA Number: 7–D–TX–879A

Bldg. 32
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014835
Status: Excess
Comment: 19546 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab
GSA Number: 7–D–TX–879A

Del Rio Federal Building
Main at Broadway
Del Rio Co: Val Verde TX 78840–
Landholding Agency: GSA
Property Number: 549310001
Status: Excess
Comment: 15600 sq. ft.; 3 story plus basement, masonry frame, most recent use—offices and courthouse
GSA Number: 7–G–TX–1034

Washington

Vancouver Substations
Vancouver Co: Clark WA 98661–
Landholding Agency: GSA
Property Number: 549240004
Status: Surplus
Comment: 7 electrical control houses and transmission line corridors, access restrictions, high voltage present, minor contamination
GSA Number: 9–B–WA–1019—1028

Land (by State)

Arizona

Land—640 acres
Ave. B—Country 23 St.
Yuma Co: Yuma AZ 85364–
Landholding Agency: Interior
Property Number: 619340001
Status: Unutilized
Comment: desert land, currently no water available, possible lease restrictions

Tract No. APO–SRP–JL–4
West of 91st Ave. & South of Indian School Rd., Co: Maricopa AZ

Landholding Agency: Interior
Property Number: 619340002
Status: Unutilized
Comment: 26 foot strip of land 800 foot long, possible easement restrictions

California

Receiver Site
Dixon Relay Station
7514 Radio Station Road
Dixon CA 95620–9653
Location: Approximately .16 miles southeast of Dixon, CA
Landholding Agency: GSA
Property Number: 549010042
Status: Excess
Comment: 60 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, limited utilities
GSA Number: 9–2–CA–1162–A

.4075 acres
Ocotillo Wells
Borrego CA
Landholding Agency: GSA
Property Number: 549230002
Status: Excess
Comment: unimproved land, surroundingland—desert
GSA Number: 9–F–CA–1327

Folsom South Canal
SW corner of Whiterock Rd. & Folsom S Canal
Rancho Cordova Co: Sacramento CA 95670–
Landholding Agency: Interior
Property Number: 619310002
Status: Excess
Comment: 1.52 acres; perpetual easement over .25 acre, surrounding land use is commercial

Florida

Former US Army Reserve Center
Belvedere Rd. and Clubhouse Dr.
West Palm Beach Co: Palm Beach FL 33409–
Landholding Agency: GSA
Property Number: 549310005
Status: Unutilized
Comment: 3.10 acres, utilities, previously leased by non-profit for homeless assistance use
GSA Number: 4–GR–FL–682A

Idaho

Portion
Former Farragut Naval Training Center
Athol Co: Kootenai ID 83801–
Landholding Agency: GSA
Property Number: 549230004
Status: Excess
Comment: 48.42 acres, former railroad right-of-way
GSA Number: 9–GR(2)–ID–421C

Indiana

Portion, Cannelton Locks & Dam
Adjacent to Middle Creek Boat Launching Ramp, Co: Floyd IN
Landholding Agency: GSA
Property Number: 549240008
Status: Excess
Comment: 28.65 acres with pumphouse, no utilities, periodic flooding
GSA Number: 2–D–IN–569–C

Iowa

C BAR J Ranch
¼ mile south of River Rd. on Stagecoach Rd.
Ames Co: Story IA
Landholding Agency: GSA
Property Number: 159230002
Status: Unutilized
Comment: 24.5 acres w/bldgs.—animal, shops, barn, storage; wood and metal frames; potential utils.; limestone quarry approx ¾ mi. north, perform some blasting; fenced area w/locked gate
GSA Number: 7–A–IA–493

Minnesota

Bike Trail
Minneapolis Co: Hennepin MN 55417–
Location: Located along the Bureau of Mines eastern boundary
Landholding Agency: GSA
Property Number: 549330005
Status: Excess
Comment: long strip of land consisting of approximately 2 acres, property is not accessible by motor vehicle
GSA Number: 2–I–MN–544–A

Mississippi

Jackson Installation Waterway
Lotlin Street
Jackson Co: Hinds MS 39209–
Landholding Agency: GSA
Property Number: 549340002
Status: Excess
Comment: 34.68 acres, gas pipeline runs along eastern boundary, property is irregularly shaped, backs to a highway
GSA Number: 4–GR(1)–MS–478B

New Mexico

Western Perimeter Tract
Los Alamos Co: Los Alamos NM
Landholding Agency: GSA
Property Number: 549310010
Status: Surplus
Comment: 194 acres, potential utilities, open area, no roadways through property
GSA Number: 7–B–NM–504–G, 7–GR(1)–NM–504–L

Oklahoma

Parcel No. 100/GSA No. 13
Lake Texoma
Section 25, T7S, R5E
Enos Co: Marshall OK
Location: 1 mile northeast of Enos
Landholding Agency: GSA
Property Number: 319010440
Status: Excess
Comment: 11.77 acres, most recent use—recreation
GSA Number: 7–D–OK–507–H

Parcel No. 58/GSA No. 7
Lake Texoma
Section 34 and Section 3, Co: Marshall OK
Location: About 2 miles northeast of Cumberland
Landholding Agency: GSA
Property Number: 319010460
Status: Surplus
Comment: 28.66 acres, most recent use—recreation
GSA Number: 7–D–OK–507–H

Parcel No. 44/GSA No. 4
Lake Texoma
Section 15, T5S, R7E, Co: Johnston OK
Location: About ½ miles southeast of Bee
Landholding Agency: GSA
Property Number: 319010475
Status: Excess
Comment: 14.98 acres, no utilities, most recent use—recreation
GSA Number: 7–D–OK–507–H

Parcel No. 46/GSA No. 5
Lake Texoma
Section 15 and Section 16, T5S, R7E, Co: Johnston OK
Location: About 1 mile southwest of Bee
Landholding Agency: GSA
Property Number: 319010477
Status: Excess,
Comment: 23.91 acres; no utilities, most recent use—recreation
GSA Number: 7–D–OK–507–H

Parcel No. 13/GSA No. 1
Lake Texoma
Section 7, T7S, R8E, Co: Bryan OK
Location: Approximately 2 miles south of Mead, OK
Landholding Agency: GSA
Property Number: 319011345
Status: Excess
Comment: 26.76 acres, most recent use—recreation
GSA Number: 7–D–OK–507–H

Parcel No. 21/GSA No. 2
Lake Texoma
Section 3, T7S, R7E, Co: Bryan OK
Location: Approximately 5 miles southwest of Mead, OK.
Landholding Agency: GSA
Property Number: 319011352
Status: Excess
Comment: 41.16 acres, most recent use—recreation
GSA Number: 7–D–OK–507–H

Parcel No. 23/GSA No. 3
Lake Texoma
Section 34, T7S, R7E, Co: Bryan OK
Location: Approximately 3½ miles west of Mead, OK.
Landholding Agency: GSA
Property Number: 319011354
Status: Excess
Comment: 9 acres, most recent use—recreation
GSA Number: 7–D–OK–507–H

Parcel No. 54/GSA No. 6
Lake Texoma, Co: Marshall OK 73439–
Location: Section 17, 3½ miles north of Little City, OK
Landholding Agency: GSA
Property Number: 549210007
Status: Excess
Comment: 5.05 acres, potential utilities, most recent use—low density recreation
GSA Number: 7–D–OK–0507–H

Parcel No. 63/GSA No. 8
Lake Texoma, Co: Marshall OK 73439–
Location: Section 19, 3½ miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210008
Status: Excess
Comment: 40.32 acres, potential utilities, most recent use—low density recreation
GSA Number: 7–D–OK–0507–H

Parcel No. 66/GSA No. 9
Lake Texoma, Co: Marshall OK 73439–
Location: Sections 12 and 13, 2½ miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210009
Status: Excess

Comment: 14.05 acres, potential utilities, most recent use—low density recreation/natural gas well and pipelines
GSA Number: 7–D–OK–0507–H

Parcel No. 78/GSA No. 11
Lake Texoma, Co: Marshall OK 73439–
Location: Section 24, 1 mile east of McBride, OK
Landholding Agency: GSA
Property Number: 549210010
Status: Excess
Comment: 30.28 acres, potential utilities, most recent use—low density recreation
GSA Number: 7–D–OK–0507–H

Parcel No. 86/GSA No. 12
Lake Texoma, Co: Marshall OK 73439–
Location: Section 1824, 3½ miles south of Kingston, OK
Landholding Agency: GSA
Property Number: 549210011
Status: Excess
Comment: 13 acres, potential utilities, most recent use—low density recreation
GSA Number: 7–D–OK–0507–H

Parcel No. 125/GSA No. 14
Lake Texoma Co: Marshall OK 73439–
Location: Section 17
Landholding Agency: GSA
Property Number: 549210012
Status: Excess
Comment: 11.24 acres, potential utilities, most recent use—low density recreation
GSA Number: 7–D–OK–0507–H

Parcel No. 150/GSA No. 15
Lake Texoma, Co: Marshall OK 73439–
Location: Section 6
Landholding Agency: GSA
Property Number: 549210013
Status: Excess
Comment: 12.64 acres, potential utilities, most recent use—low density recreation
GSA Number: 7–D–OK–0507–H

Parcel No. 164/GSA No. 16
Lake Texoma Co: Love OK 73441–
Location: Section 3
Landholding Agency: GSA
Property Number: 549210014
Status: Excess
Comment: 40.20 acres, potential utilities, most recent use—low density recreation
GSA Number: 7–D–OK–0507–H

Parcel No. 165/GSA No. 17
Lake Texoma Co: Love OK 73441–
Location: Section 3
Landholding Agency: GSA
Property Number: 549210015
Status: Excess
Comment: 32.62 acres, potential utilities, most recent use—low density recreation
GSA Number: 7–D–OK–0507–H

Parcel No. 166/GSA No. 18
Lake Texoma Co: Love OK 73441–
Location: Section 10
Landholding Agency: GSA
Property Number: 549210016
Status: Excess
Comment: 62.61 acres, potential utilities, most recent use—low density recreation
GSA Number: 7–D–OK–0507–H

Parcel No. 68/GSA No. 10
Lake Texoma, Sect. 11 T6S, R6E
Cumberland Co: Marshall OK
Landholding Agency: GSA
Property Number: 549240010
Status: Excess
Comment: 29.76 acres, most recent use—recreation
GSA Number: 7–D–OK–0507–H

Puerto Rico

Parcel C
Naval Station, Roosevelt Roads
Vieques PR 00765–
Landholding Agency: GSA
Property Number: 549340004
Status: Excess
Comment: 96.41 acres, subject to water/sewer easement, access restrictions, most recent use—buffer zone
GSA Number: 2–N–PR–486

South Carolina

Land—7.28 acres
Georgetown Wayside Park
Georgetown Co: Georgetown SC 29440–
Landholding Agency: GSA
Property Number: 549330007
Status: Excess
Comment: 7.28 acres, potential utilities
GSA Number: 4–GR–SC–521A

South Dakota

Ree Heights Communications Site
2 miles south of Ree Heights Co: Hand SD 57371–
Landholding Agency: GSA
Property Number: 549310015
Status: Excess
Comment: approx. 4.24 acres divided into 2 parcels with radio towers and equipment sheds
GSA Number: 7–B–SD–512

Land—1.28 acre
Arlington Co: Brookings SD 57212–
Landholding Agency: GSA
Property Number: 549320004
Status: Excess
Comment: 1.284 acre of land with 120 sq. ft. metal bldg., most recent use—radio equipment housing
GSA Number: 7–B–SD–495–A

Texas

Parcel #185/GSA No. 19
Lake Texoma Co: Cooke TX
Location: Robert Firinash survey A–368
Landholding Agency: GSA
Property Number: 319010405
Status: Excess
Comment: 31.64 acres, most recent use—recreation
GSA Number: 7–D–OK–507–H

Parts of Tracts
B–143, B–144, B–146, B–148, B–179
Downstream of Lewisville Dam embankment
Lewisville Co: Denton TX 75067–
Location: Along State Hwy. 121
Landholding Agency: GSA
Property Number: 319140015
Status: Underutilized
Comment: 101.78 acres in 3 parcels, most recent use—wildlife and low density recreation
GSA Number: 7–D–TX–0510–K

Parcel No. 201
Lake Texoma Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320007
Status: Excess
Comment: 8.07 acres, most recent use—low density recreation, upland timber wildlife habitat
GSA Number: 7–D–OK–0507–H

Parcel No. 203
Lake Texoma Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320008
Status: Excess
Comment: 62.36 acres, most recent use—low density recreation and grazing
GSA Number: 7–D–OK–0507–H

Parcel No. 205
Lake Texoma Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320009
Status: Excess
Comment: 11.18 acres, most recent use—low density recreation and grazing
GSA Number: 7–D–OK–0507–H

Parcel No. 209
Lake Texoma Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320010
Status: Excess
Comment: 12.67 acres, most recent use—low density recreation and grazing
GSA Number: 7–D–OK–0507–H

Wyoming

Wind Site A
Medicine Bow Co: Carbon WY 82329–
Location: 3 miles south and 2 miles west of Medicine Bow
Landholding Agency: GSA
Property Number: 419030010
Status: Excess
Comment: 46.75 acres, limitation-easement restrictions

Suitable/To Be Excessed

Buildings (by State)

Washington

Quarters No. 1204
604 S. Maple
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 619330001
Status: Excess
Comment: 850 sq. ft., one story frame residence, asbestos siding

Quarters No. 1208
608 S. Maple
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 619330002
Status: Excess
Comment: 709 sq. ft., one story frame residence, asbestos siding

Quarters No. 1301
3 SE and N Warden Road
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 619330003
Status: Excess
Comment: 709 sq. ft., one story frame residence on 4.9 acres, asbestos siding

Wyoming

House
25 mi. southeast of Laberge, WY
Fontenelle WY 83101–
Landholding Agency: Interior
Property Number: 619410001
Status: Excess

Comment: 1056 sq. ft., 1 story frame residence, 2 bedrooms, off-site use only

Land (by State)

Arizona

Land—APO–GR–12–26A–09
120 Street and Mountain View
Scottsdale Co: Maricopa AZ 85259–
Location: South of Shea Boulevard and East of 120th Street
Landholding Agency: Interior
Property Number: 619240002
Status: Unutilized
Comment: 4.75 acres, easement restrictions, most recent use—acquired for construction of CAP canal

Unsuitable Properties

Buildings (by State)

Arkansas

Bldg. 12, Cass Job Corps Cntr
Hwy 23
Ozark Co: Franklin AR 72949–
Landholding Agency: Agriculture
Property Number: 159320013
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Winston Spring House
Garfield Co: Benton AR 72732–
Landholding Agency: Interior
Property Number: 619320001
Status: Excess
Reason: Other
Comment: Extensive deterioration

California

5 bungalows
125 South Grand Avenue
Pasadena Co: Los Angeles CA 91105–
Landholding Agency: GSA
Property Number: 549230012
Status: Excess
Reason: Other
Comment: Extensive deterioration

Minnesota

Daryll Schwieger—Cabin, Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320002
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Kenneth Krienke—Cabin, Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320003
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Montana

Sioux Pass Radio Relay Tower
17 Miles South of Culbertson, Co: Richland MT 57212–
Landholding Agency: GSA
Property Number: 549320012
Status: Excess
Reason: Other
Comment: No public access
GSA Number: 7–B–SD–495–A

New Mexico

Farmington Office and Yard
900 La Plata Highway
Farmington Co: San Juan NM 87499–
Landholding Agency: Interior
Property Number: 619010001
Status: Unutilized
Reason: Within airport runway clear zone

Oregon

Eugene District Office Site
751 South Danebo
Eugene Co: Lane OR 97402–
Landholding Agency: Interior
Property Number: 619010003
Status: Underutilized
Reason: Within 2,000 ft. of flammable or explosive material

South Dakota

Booster Station
Tract #1, Mapleton Township, Co: Minnehaha SD 57101–
Landholding Agency: GSA
Property Number: 549230006
Status: Excess
Reason: Other
Comment: Extensive deterioration
GSA Number: 7–I–SD–480–A

Texas

Bldg. 14
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014823
Status: Excess
Reason: Other
Comment: Pump house
GSA Number: 7–D–TX–879A

Land (by State)

Alaska

Nike Site, Tract 104
Jig Battery "D"
Eielson Defense Area
Fairbanks Co: Fairbanks AK 99701–
Landholding Agency: GSA
Property Number: 549120001
Status: Excess
Reason: Other
Comment: Property is landlocked
GSA Number: 9–D–AK–506–AD

Arizona

Portion, Gila River
Buckeye Co: Maricopa AZ 85337–
Landholding Agency: GSA
Property Number: 549240005
Status: Excess
Reason: Floodway
GSA Number: 9–GR–AZ–533

Salt River Vortac
North of intersection of Price Rd. & 1st St.
Mesa Co: Maricopa AZ 85201–
Landholding Agency: GSA
Property Number: 549330008
Status: Excess
Reason: Other
Comment: No legal access
GSA Number: 9–U–AZ–624

California

Portion, Travis AFB
6 miles southeast of Vacaville
Travis AFB Co: Solano CA 94535–
Landholding Agency: GSA
Property Number: 549220012
Status: Surplus
Reason: Floodway
GSA Number: 9–D–CA–499L

Central Valley Project
San Luis Drain
Tracy Co: San Joaquin CA 95376–
Landholding Agency: GSA
Property Number: 549230003
Status: Excess
Reason: Other
Comment: Landlocked
GSA Number: 9–I–CA–1325

Parcel B
Santa Rosa Co: Sonoma CA
Landholding Agency: GSA
Property Number: 549310016
Status: Excess
Reason: Other
Comment: Sewage Treatment Plant
GSA Number: 9–G–CA–580–C

Portion of Lot 7
Former State of California Land/Stockpile
Yreka Co: Siskiyou CA
Landholding Agency: GSA
Property Number: 549330006
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–G–CA–956A

Colorado

Former ERDA Site
Black Bridge Park
Gunnison Co: Mesa CO 81501–
Landholding Agency: GSA
Property Number: 549330009
Status: Excess
Reason: Floodway
GSA Number: 7–GR–CO–463–D

Illinois

1.6 acres of land
Rock Island Arsenal
South Shore Mississippi River Moline Pool
Moline Co: Rock Island IL 61299–
Landholding Agency: GSA
Property Number: 549310009
Status: Excess
Reason: Floodway
GSA Number: 2–D–IL–620–B

Kentucky

E.C. Clements Job Corps Cntr.
1 Mile East of Morganfield, Ky.
Morganfield Co: Union KY 42437–
Landholding Agency: GSA
Property Number: 549120002
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material;
Within airport runway clear zone
GSA Number: 4–L–KY–432–E

Artemus Site
Across Cumberland River Bridge
Artemus Co: Knox KY
Landholding Agency: GSA
Property Number: 549320001
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Floodway
GSA Number: 4–Z–KY–602

Louisiana

Land
Louisiana Army Ammunition Plant
Doyline Co: Webster LA
Landholding Agency: GSA
Property Number: 219013923
Status: Excess
Reason: Other
Comment: Barrow pit, predominately under water

GSA Number: 7–D–LA–0435D

Montana

Sherryl Tap Point Site
3 miles south of Drummond, MT, Co: Granite MT
Landholding Agency: GSA
Property Number: 549240006
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 7–B–MT–0598

Oregon

Tract 108 (Portion of)
Willow Creek Lake Project
Heppner Co: Morrow OR 77836–
Location: Located up hill from the left abutment of the dam structure.
Landholding Agency: GSA
Property Number: 319011687
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–D–OR–708

Reedsport Substation
North 22nd Street
Reedsport Co: Douglas OR 97467–
Landholding Agency: GSA
Property Number: 549310003
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–B–OR–701

Puerto Rico

El Corcho Tract
Naval Station Roosevelt Roads
Naguabo PR 00718–
Landholding Agency: GSA
Property Number: 549320011
Status: Excess
Reason: Floodway
GSA Number: N–PR–487

Puntas Figueras (2)
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: GSA
Property Number: 549320013
Status: Excess
Reason: Floodway
GSA Number: N–R–488A

119.3 Acres
Culebra Island PR 00775–
Landholding Agency: Interior
Property Number: 619210001
Status: Excess
Reason: Floodway

South Carolina

Land—2.66 acres
Port Royal Co: Beaufort SC 29902–6148
Landholding Agency: GSA
Property Number: 549240009
Status: Excess
Reason: Floodway

[FR Doc. 94–4245 Filed 2–24–94; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–94–3683; FR–3560–N–03]

NOFA for Fair Housing Initiatives Program; Notice of Availability of Additional Funding and Extension of Application Due Date for Earthquake Victims

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of availability of additional funding and extension of application due date.

SUMMARY: This Notice announces the availability of an additional $800,000 of 1993 Fiscal Year (FY) funding for the Education and Outreach Initiative of the Fair Housing Initiatives Program (FHIP). It also extends the application due date for victims of the Los Angeles earthquake.

DATES: The application due date for FY 1993 FHIP funding remains February 22, 1994, except for applicants who could not complete their applications because of disruptions due to the Los Angeles earthquake. For those applicants affected by the earthquake, the application due date is extended to March 8, 1994.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Assistance and Voluntary Programs, room 5234, 451 Seventh Street SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–0455. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: A Notice of Funding Availability (NOFA) announcing HUD's 1993 Fiscal Year (FY) funding of $8.8 million for the Fair Housing Initiatives Program (FHIP) was published on December 22, 1993 (58 FR 68000). This FY 1993 FHIP NOFA stated that $1.8 million of Education and Outreach funds would be made available in another NOFA, to be published separately, for an affirmative fair housing marketing project. The Department has since determined that only $1 million would be made available for the affirmative fair housing marketing project, and is, therefore, making the remaining $800,000 available to applicants for Education and Outreach Initiative funding under the FY 1993 FHIP NOFA. Of this $800,000, $400,000 will be available for national program activities, and $400,000 will be available for regional/local/community-based program activities.

In addition, this Notice extends the application due dates for those applicants who could not complete their applications because of disruptions due to the Los Angeles earthquake. For applicants adversely affected by the earthquake, the application due date is extended two weeks to March 8, 1994. Such applicants must include with their applications a cover letter that briefly explains how the earthquake prevented them from meeting the original February 22nd due date. All other applicants are still subject to the February 22, 1994 due date.

No other aspects of the FY 1993 FHIP NOFA are changed by this notice.

Authority: Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note); Title VIII, Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3619); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 16, 1994.

Paul Williams,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–4279 Filed 2–24–94; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–4350–01]

Seasonal Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Seasonal closure on approximately 8 miles of the Rio Grande in south-central Colorado to boating use from April 1 to May 31.

SUMMARY: Seasonal closure will be applied to boating use on approximately eight (8) miles of the Rio Grande River from Lobatos Bridge, Section 27, T.33N, R.11E. The closure made under the authority of 43 CFR 8364.1 will provide habitat protection and privacy for several raptor species. A copy of the closure order will be posted at the Bureau of Land Management Offices in Alamosa, Colorado and Taos, New Mexico, and at points of access to the 8 miles of the Rio Grande River.

Under the authority and requirement of 43 CFR 8364.1, the public lands and related waters as described above would be closed to boating use except for emergency craft, BLM, other Federal, State or local agency water craft in performance of official duty and other water craft on official business specifically approved by the San Luis

Resource Area Manage of the Bureau of Land Management.

Any person who fails to comply with this closure order may be subject to the penalties provided by 43 CFR 8360.0–7 which includes fines not to exceed $1000 and/or imprisonment not to exceed 12 months.

DATES: This season closure is in effect from April 1 to May 31 annually and shall remain in effect unless revised, revoked or amended.

ADDRESSES: Comments can be direct to the Area Manager, San Luis Resource Area, 1921 State Street, Alamosa, CO 81101 or District Manager, Canon City District Office, P.O. Box 2200, Canon City, CO 81215–2200.

FOR FURTHER INFORMATION CONTACT: Julie Howard, Area Manager at (719) 589–4975.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 94–4301 Filed 2–24–94; 8:45 am]

BILLING CODE 4310–JB–M

[AZ–020–04–5410–11–A109; AZA–28204]

Notice of Receipt of Conveyance of Mineral Interest Application

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of minerals segregation.

SUMMARY: The private lands described in this notice aggregating approximately 520 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances were the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Vivian M. Reid, Land Law Examiner, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. (602) 780–8090. Serial Number AZA–28204.

Gila and Salt River Base and Meridian, Maricopa County, Arizona

T. 10 N., R. 3 W.,
Sec. 12, W½NE¼, E½SE¼;
Sec. 13, NE¼NE¼, S½NE¼;
Sec. 24, E½SW¼, SE¼.
Minerals Reservation—All Minerals.

Upon publication of this Notice of Segregation in the **Federal Register** or as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon: issuance of a patent or deed of such mineral interest; upon final rejection of the application; or two years from the date of publication of this notice, whichever occurs first.

Dated: February 17, 1994.

G. L. Cheniae;

District Manager.

[FR Doc. 94–4306 Filed 2–24–94; 8:45 am]

BILLING CODE 4310–32–M

[NV–930–4210–04; N–57468; 3–00154]

Realty Action: Exchange of Public Lands in Clark and Nye Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action N–57468 for Exchange of Lands in Clark and Nye Counties, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada, including the mineral estate, is being considered for disposal by exchange pursuant to Sections 206 and 209 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 29, E½NE¼NE¼,
E½NW¼NE¼NE¼, E½NE¼SE¼NE¼,
SE¼SE¼NE¼.

Aggregating 40.00 acres (gross).

In exchange for these lands, the Federal Government will acquire a tract of non-federal land in Tonopah, Nye County, Nevada, described as follows:

Mount Diablo Meridian, Nevada

T. 3 N., R. 42 E.,
Sec. 36, a portion of the E½W½.

The area described contains 8.23 acres, more or less.

The purpose of the exchange is to acquire the non-federal lands located within the Town of Tonopah to be used as an administrative office complex for the Bureau of Land Management's Tonopah Resource Area Office. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with local governmental officials. The public interest will be served by making the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon approval of the final appraisal of the lands.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All oil and gas deposits, compounds of sodium and potassium, and saleable minerals.

And will be subject to:

1. Right-of-way N–53652 granted to Central Telephone Company for an underground communication line, 2616.24'x10', as to the E½NE¼NE¼, E½NE¼SE¼NE¼, SE¼SE¼NE¼.

2.Right-of-way N–55369 granted to Las Vegas Valley Water District for a water main, 2616.24'x20', and a temporary construction area 2616.24'x10' (expires 3/3/95), as to the E½NE¼NE¼, E½NE¼SE¼NE¼, SE¼SE¼NE¼.

3. Right-of-way N–57864 granted to Southwest Gas Corp. for a gas pipeline, 2622'x30', and a temporary construction 2622'x20' (for a period of 2 months from start of construction), as to the E½NE¼NE¼, E½NE¼SE¼NE¼, SE¼SE¼NE¼.

4. An easement 30.00 feet in width along the south boundary of the NE¼NE¼NE¼, together with a 15.00-foot spandrel area in the Southwest corner thereof concave Northeasterly, and being tangent to the East line of said West 30.00 feet and tangent to the North line of said South 30.00 feet, together with a 25.00-foot spandrel area in the Southeast corner thereof concave Northwesterly, being tangent to the North line of said South 30.00 feet and tangent to the West line of said East 50.00 feet, in favor of Clark County, for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands.

5. An easement 50.00 feet in width along the north and east boundaries, and 30.00 feet in width along the west and south boundaries of the E½NE¼NE¼, together with a 25.00-foot spandrel area in the Northwest corner thereof concave Southeasterly, and being tangent to the South line of said North 50.00 feet and tangent to the East line of said West 30.00 feet; also together with a 15.00-foot spandrel area in the Southwest corner thereof concave Northeasterly, and being tangent to the East line of said West 30.00 feet and tangent to the North line of said South 30.00 feet; further together with a 25.00-foot spandrel area in the Southeast corner thereof concave Northwesterly, and being tangent to the North line of said South 30.00 feet and tangent to the West line of said East 50.00 feet; together with a 54.00-foot spandrel area in the Northeast corner thereof concave Southwesterly, being tangent to the West line of said East 50.00 feet and tangent to the South line of said North 50.00 feet, in favor of Clark County, for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands.

6. An easement 50.00 feet in width along the north boundary, and 30.00 feet in width along the south and east boundaries of the E½NW¼NE¼NE¼, together with a 15.00-foot spandrel area in the Southeast corner thereof concave Northwesterly, and being tangent to the North line of said South 30.00 feet and tangent to the West line of said East 30.00 feet, also together with a 25.00-foot spandrel area in the Northeast corner thereof concave Southwesterly, being tangent to the West line of said East 30.00 feet and tangent to the South line of said North 50.00 feet, in favor of Clark County, for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands.

7. An easement 30.00 feet in width along the north boundary of the SE¼NE¼NE¼, together with a 15.00-foot spandrel area in the Northwest corner thereof concave Southeasterly, and being tangent to the South line of said North 30.00 feet and tangent to the East line of said West 30.00 feet, together with a 25.00-foot spandrel area in the Northeast corner thereof concave Southwesterly, being tangent to the West line of said East 50.00 feet and tangent to the South line of said North 50.00 feet, in favor of Clark County, for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands.

8. An easement 50.00 feet in width along the east boundary, and 30.00 feet in width along the north and south boundaries of the E½NE¼SE¼NE¼, together with a 25.00-foot spandrel area in the Southeast corner thereof concave Northwesterly, and being tangent to the North line of said South 30.00 feet and tangent to the West line of said East 50.00 feet, also together with a 25.00-foot spandrel area in the Northeast corner thereof concave Southwesterly, being tangent to the West line of said East 50.00 feet and tangent to the South line of said North 30.00 feet, in favor of Clark County, for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands.

9. An easement 50.00 feet in width along the east boundary, 40.00 feet in width along the south boundary and 30 feet in width along the north and west boundaries of the SE¼SE¼NE¼, together with a 15.00-foot spandrel area in the Northwest corner thereof concave Southeasterly, and being tangent to the South line of said North 30.00 feet and tangent to the East line of said West 30.00 feet, also together with a 20.00-foot spandrel area in the Southwest corner thereof concave Northeasterly, and being tangent to the East Line of said West 30.00 feet and tangent to the North line of said South 40.00 feet; further together with a 25.00-foot spandrel area in the Southeast corner thereof concave Northwesterly, and being tangent to the North line of said South 40.00 feet and tangent to the West line of said East 50.00 feet; together with a 25.00-foot spandrel area in the Northeast corner thereof concave Southwesterly, being tangent to the West line of said East 50.00 feet and tangent to the South line of said North 30.00 feet, in favor of Clark County, for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the environmental assessment is available for review at the Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Dr. Las Vegas, NV 89108.

Dated: February 18, 1994.

Mason K. Hall,

Acting District Manager.

[FR Doc. 94–4312 Filed 2–24–94; 8:45 am]

BILLING CODE 4310–HC–M

[OR–943–4210–05; GP4–070; OR–50354(WASH); 4–00151]

Receipt of Application for the Conveyance of Federally-Owned Mineral Interests

AGENCY: Bureau of Land Management, Washington, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the receipt of an application from the surface estate owner for the conveyance of Federally-owned mineral interests.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7170.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Willene E. Minnier, surface owner, Kettle Falls, Washington, has applied to purchase the mineral estate described as follows:

Willamette Meridian

T. 33 N., R. 38 E.,
Sec. 7, lots 14–16.
The areas described aggregate 32.10 acres in Stevens County, Washington.

Upon publication of this notice in the **Federal Register**, the mineral interest described above will be segregated to the extent that it will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, or upon rejection of the application, or two years from the date of filing of the application, November 12, 1993, whichever occurs first.

Dated: February 8, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–4308 Filed 2–24–94; 8:45 am]

BILLING CODE 4310–33–P

[UT–934–03–4410–03]

Upcoming Planning Effort in Eastern Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for information and update.

SUMMARY: This notice is a follow up to the notice that appeared in the January 1993 **Federal Register** concerning revision of the Grand Resource Area Management Plan, Moab District, Utah, Bureau of Land Management (BLM). It has been determined appropriate to expand the planning area beyond the Grand Resource Area to include the Price River Resource Area of the Moab District and the Book Cliffs Resource Area of the Vernal District. The plan will be referred to as the Eastern Utah Resource Management Plan and Environmental Impact Statement (RMP/EIS). As part of this effort, data will be acquired to amend and update the adjacent San Rafael, San Juan, and Diamond Mountain RMPs. The BLM will coordinate with the adjourning BLM Districts in Utah and Colorado.

By expanding the planning area, the BLM will be able to include complete ecosystems in the evaluation and analysis of resource issues. This expanded area will encompass a major portion of the Colorado Plateau in Utah. This notice is intended to inform the public that the planning area has been expanded and to invite public

participation. Public comment will be solicited throughout the planning process. In the January 1993 notice for the Grand Resource Area, a call was made for nominations of Areas of Critical Environmental Concern (ACEC) and Wild and Scenic River (W&SR) segments, along with a request for submission of technical mineral resource information. The above information is requested for the expanded planning area, along with submission of technical coal resource information, outdoor recreation use data, and information on the wildlife resources and issues in the planning area. This call for information will include information on W&SR segments in the adjacent San Rafael and San Juan Resource Areas and on water depletion as it affects threatened and endangered species in the Colorado River drainage system.

FOR FURTHER INFORMATION CONTACT: Wayne Erickson, Project Manager, Utah State Office, 324 South State Street, suite 301, Salt Lake City, Utah 84111; Michael O'Donnell, Team Leader, Bureau of Land Management, Moab District Office, 82 East Dogwood, Moab, Utah 84532; or Jerry Kenczka, Team Leader, Vernal District, 170 South 500 East, Vernal, Utah 84078. Office hours are: Utah State Office, 7:30 a.m. to 4:30 p.m., telephone (801) 539–4051; Moab District, 7:45 a.m. to 4:30 p.m., telephone (801) 259–2100; Vernal District, 7:45 a.m. to 4:30 p.m., telephone (801) 781–4400, Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: This plan will be prepared under 43 CFR part 1610 to meet the requirements of section 202 of the Federal Land Policy and Management Act and section 102 of the National Environmental Policy Act. Decisions generated during this planning process will validate or supersede land-use planning decisions presented in the 1983 Price River Management Framework Plan (MFP), the 1985 Book Cliffs RMP, and the 1985 Grand RMP. The RMP/EIS will also incorporate decisions relating to policy and regulatory changes initiated or enacted since 1983.

The planning area, which includes the Book Cliffs, Price River, and Grand Resource Areas, covers approximately 3,907,000 acres of public land in Uintah, Emery, Carbon, Grand, and San Juan Counties in eastern Utah. Additionally, the planning area includes approximately 307,000 acres of split-estate where the minerals are in Federal ownership and the surface is in other Federal agency, State, private, or tribal ownership. Portions of the San Juan, Diamond Mountain, and the San Rafael Resource Areas will be included in this plan for limited specific areas.

The planning effort will formulate resource decisions based on the environmental and socioeconomic needs within the planning area. Coordination will take place with the State of Utah; the Ute Indian Tribe; Federal agencies such as the National Park Service, USDA Forest Service, U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs; as well as other county and private entities. The plan will consider management of the Federal subsurface mineral estate.

The following planning issues have been identified: Vegetative management for livestock, wildlife habitat management, and watershed management, access and transportation needs, mineral activities, recreation management, cultural resource management, and threatened and endangered species recovery-implementation plans. In addition, a unique wildlife initiative in the Book Cliffs and increased recreation use in the Grand Resource Area will be addressed and alternative management solutions analyzed.

As a part of the planning process, requests for nominations for ACEC designations are encouraged. Nominations must include a map as well as a discussion on why an ACEC is necessary and what special management would be proposed. Nominations will be evaluated, and final designations will be made through the planning process. The public is also invited to nominate potential W&SR segments. Maps or a description of the specific streams for study by the team should accompany the W&SR nomination. Opportunity is also provided at this time for submission of relevant technical information regarding mineral resources in the planning area. Specifically, as a part of this planning effort, a call for coal and other resource information is hereby requested to solicit indications of interest and information on coal resources development potential and other resources which may be affected by coal development for lands in the planning area. Industry, State and local governments, and the general public may submit information on lands that should be considered for coal leasing, including statements describing why the lands should be considered for leasing. Proprietary data marked as confidential may be submitted as response to this call for coal and other resource information, however, this data may be submitted to the Authorized Officers only. The Authorized Officers are the Resources Area and District Managers of the Vernal and Moab Districts. This data will be used, along with other published information, in the evaluation of mineral resource potential and to assist in making resource-allocation decisions. This data will not be included in the public record.

Public participation is being sought at this time to ensure that all issues, problems, and concerns from those interested in the management of lands within the planning area are considered. Public response is requested by September 30, 1994. The development of the land-use plan is a public process; and the public is invited to assist in the identification of issues, the scope of the EIS, and the nomination of special-designation areas. Public workshops will be held in April 1994 to discuss planning issues. The date, time, and location of these workshops will be announced at a later date in local newspapers. Additional public participation will be encouraged throughout this process.

Public participation will again be requested at the time the draft RMP/EIS is initiated, in October 1994, and the proposed RMP/Final EIS is completed in 1997. Notice of availability of these documents will be published at the appropriate times.

James M. Parker,
State Director.

[FR Doc. 94–4240 Filed 2–24–94; 8:45 am]
BILLING CODE 4310–DQ–M

[CO–942–94–4730–02]

Colorado: Filing of Plats of Survey

February 14, 1994.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., February 14, 1994.

The plat (in four sheets), representing the dependent resurvey of a portion of the 12th Guide Meridian West, (east boundary), a portion of the subdivisional lines, and certain tract lines and the subdivision of certain sections, T. 2 N., R. 97 W., Sixth Principal Meridian, Colorado, Group No. 853, was accepted December 8, 1993.

The plat (in 2 sheets), representing the corrective dependent resurveys of the west boundary of section 1, portions of Tract A, Monitor Placer, Mineral Survey No. 1302, South Bank Placer, and the subdivision of section 1, and the dependent resurvey of portions of the subdivisional lines and certain mineral claims, and the subdivision of section 2, T. 12 S., R. 80 W., Sixth Principal Meridian, Colorado, Group No. 873, was accepted December 7, 1993.

The supplemental plat, correcting the bearing on the line between section 5 and section 6, T. 44 N., R. 11 W., New Mexico Principal Meridian, Colorado, was accepted December 20, 1993.

The amended plat, clarifying the chord bearing and chord length between Angle Point 11 and Angle Point 1, of Tract 43, in unsurveyed T. 2 S., R. 75 W., Sixth Principal Meridian, Colorado, was accepted November 30, 1993.

These surveys were executed to meet certain administrative needs of this Bureau.

The Plat (in 2 sheets), representing the dependent resurvey of portions of the New Mexico Principal Meridian (west boundary), the Eighth Standard Parallel North (south boundary), east and north boundaries, and subdivisional lines and the subdivision of sections, T. 33 N., R. 1 E., New Mexico Principal Meridian, Colorado, Group No. 942, was accepted December 28, 1993.

The plat representing the dependent resurvey of the First Guide Meridian West, (east boundary), portions of the south, west, and north boundaries, subdivisional lines, M.S. No. 2129 Warner Placer, and the Ophir Townsite, and the subdivision of sections 4 and 5, T. 42 N., R. 9 W., New Mexico Principal Meridian, Colorado, Group No. 881, was accepted December 28, 1993.

The plat representing the dependent resurvey of portions of the Eighth Standard Parallel North, (south boundary), and subdivisional lines, and the subdivision of certain sections, T. 33 N., R. 1 W., New Mexico Principal Meridian, Colorado, Group No. 981, was accepted January 3, 1994.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of sections 32 and 33, T. 21 S., R. 69 W., Sixth Principal Meridian, Colorado, Group No. 972, was accepted December 17, 1993.

The plat (in 2 sheets), representing the dependent resurvey of portions of the Third Standard Parallel South (south boundary), the Twelfth Auxiliary Guide Meridian West (east boundary), west and north boundaries and subdivisional lines, and the subdivision of sections, T. 15 S., R. 101 W., Sixth Principal Meridian, Colorado, Group No. 880, was accepted November 29, 1993.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subdivision of section 17, T. 14 S., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 941, was accepted January 4, 1994.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat (in two sheets), representing the dependent resurvey of a portion of the Eighth Standard Parallel North, (south boundary), the west boundary, and a portion of the subdivisional lines, and the subdivision of sections. T. 33 N., R. 6 W., New Mexico Principal Meridian, Colorado, Group No. 960, was accepted January 4, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Darryl A. Wilson,
Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 94–4367 Filed 2–24–94; 8:45 am]
BILLING CODE 4310–JB–M

[NM–920–4210–06; NMNM 0450823]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes that a 796.50-acre withdrawal for the Dry Camp Picnic Ground, Balsam Glade Picnic Ground, Sandia Crest Observation Recreation Site, Kiwanis Point Picnic Ground, Tree Spring Picnic Ground, Capulin Spring Picnic Ground, Sandia Man Cave Recreation Site, and La Madera Winter Sports Area, all within the Sandia Ranger District in the Cibola National Forest, continue for an additional 20 years. The lands will remain closed to mining, but have been and will remain open to surface entry and mineral leasing.

DATES: Comments should be received by May 26, 1994.

ADDRESSES: Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7502.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, 505–438–7594.

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture, Forest Service, proposes that the existing land withdrawal made by Public Land Order No. 3498 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988).

The lands are described as follows:

New Mexico Principal Meridian

Cibola National Forest

Dry Camp Picnic Ground

T. 11 N., R. 5 E., (Unsurveyed) (40 acres)
Sec. 4, S½SE¼SE¼;
Sec. 9, N½NE¼NE¼.

Balsam Glade Picnic Ground

T. 11 N., R. 5 E., (Unsurveyed) (30 acres)
Sec. 4, SE¼NW¼NE¼ and S½NE¼NE¼.

Sandia Crest Observation Recreation Site

That portion that lies outside the Sandia Wilderness described as
T. 11 N., R. 5 E., (Unsurveyed) (69 acres)
Sec. 6, NW¼SW¼NE¼, S½SW¼NE¼, E½NE¼NW¼, E½NW¼NE¼NW¼, NE¼SE¼NW¼, and N½SE¼SE¼ NW¼.

Kiwanis Point Picnic Ground

That portion that lies outside the Sandia Wilderness described as
T. 11 N., R. 5 E., (Unsurveyed) (42.50 acres)
Sec. 6, W½NE¼SE¼, E½NW¼SE¼, N½ NE¼SW¼SE¼, SE¼NE¼SW¼SE¼, NW¼SE¼SE¼, and N½SW¼SE¼ SE¼.

Tree Spring Picnic Ground

T. 11 N., R. 5 E., (Unsurveyed) (40 acres)
Sec. 9, SE¼NE¼.

Capulin Spring Picnic Ground

T. 11 N., R. 5 E., (Unsurveyed) (50 acres)
Sec. 4, NE¼NW¼NW¼ and NW¼NE¼ NW¼.
T. 12 N., R. 5 E.,
Sec. 33, SE¼SE¼SW¼ and S½SW¼ SE¼.

Sandia Man Cave Recreation Site

That portion that lies outside the Sandia Wilderness described as
T. 12 N., R. 5 E., (45 acres)
Sec. 22, E½SW¼NW¼ (parts of lot 1 and Reconveyance NM 0592), W½NW¼ SW¼ (parts of lot 3 and Reconveyance NM 0592), and E½E½NW¼SW¼ (part of lot 3).

La Madera Winter Sports Area

That portion that lies outside the Sandia Wilderness described as
T. 11 N., R. 5 E., (Unsurveyed) (480 acres)
Sec. 4, SW¼SW¼NE¼, S½S½NW¼, N½ SW¼, N½SW¼SW¼, SW¼SW¼ SW¼, and W½NW¼SE¼;
Sec. 5, S½SW¼SW¼, E½SE¼SW¼, SW¼SE¼SW¼, NE¼SE¼, SE¼NW¼ SE¼, and S½SE¼;
Sec. 6, SE¼SE¼SE¼;
Sec. 8, NW¼NE¼NE¼, N½NW¼NE¼, SW¼NW¼NE¼, NE¼NW¼, N½NW¼ NW¼, N½SW¼NW¼NW¼, SE¼ NW¼NW¼, E½NE¼SW¼NW¼, and NW¼SE¼NW¼.

The lands described aggregate 796.50 acres in Bernalillo and Sandoval Counties.

The purpose of the withdrawal is to protect the Dry Camp Picnic Ground, Balsam Glade Ground, Sandia Crest

Observation Recreation Site, Kiwanis Point Picnic Ground, Tree Spring Picnic Ground, Capulin Spring Picnic Ground, Sandia Man Cave Recreation Site, and La Madera Winter Sports Area all within the Sandia Ranger District in the Cibola National Forest. The withdrawal segregates the lands from location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will continue and, if so, for how long. The final determination of the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: February 14, 1994.

Malcolm J. Schnitker,

Acting State Director.

[FR Doc. 94–4236 Filed 2–24–94; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Chimfunshi Wildlife Orphanage, Palm Beach Gardens, FL., PRT–785691.

The applicant requests a permit to import a female chimpanzee which originated in Zaire, Africa, and is now located in Haiti and immediately export it to Zambia, Africa, to the Chimfunshi Wildlife Orphanage which specializes in rehabilitating and reintroducing orphaned chimpanzees to social groups. Due to the current political and economic situation in Haiti, in accordance with section 10(c) of the Endangered Species Act, the Fish and Wildlife Service reserves the right to issue this permit during the 30 day comment period in the event that the current owners of this chimpanzee must leave the country on short notice and the health or life of this chimpanzee would therefore become threatened.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 18, 1994.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–4241 Filed 2–24–94; 8:45 am]

BILLING CODE 4310–55–P

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Gas and Oil Lease Sale 147

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice Of sale.

1. *Authority.* This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, (1988)), and the regulations issued thereunder (30 CFR part 256).

2. *Filing of Bids.* Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m., Central Standard Time (c.s.t.) until the bid submission deadline at 10 a.m. Tuesday, March 29, 1994. Hereinafter, all times cited in this Notice refer to c.s.t. unless otherwise stated. Bids will not be accepted the day of bid opening, Wednesday, March 30, 1994. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or written withdrawal request is received by the RD prior to 10 a.m. Tuesday, March 29, 1994. Bid opening time will be 9 a.m., Wednesday, March 30, 1994, at the Sheraton Hotel, 500 Canal Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR part 256. The list of restricted joint bidders which applies to this sale appeared in the **Federal Register** at 58 FR 52505, published on October 8, 1993.

3. *Method of Bidding.* A separate signed bid in a sealed envelope labeled "Sealed Bid for Gas and Oil Lease Sale 147, not to be opened until 9 a.m., c.s.t., Wednesday, March 30, 1994," must be submitted for each block bid upon. The sealed envelope and the bid should contain the following information: the company name, qualification number, area number and/or name (abbreviations acceptable), and the block number of the block bid upon. In addition, the total amount bid must be in whole dollar amounts.

Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. For identification purposes, the company name and company qualification number should also appear on the check or draft together with the bid block identification (abbreviations acceptable). No bid for less than all of the unleased portions of a block will be considered.

All documents must be executed in conformance with signatory authorizations on file in the Gulf of Mexico regional office. Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. *Bidding, Yearly Rental, and Royalty Systems.* The following bidding, yearly rental, and royalty systems apply to this sale:

(a) *Bidding Systems.* All bids submitted at this sale must provide for a cash bonus in the amount of $25 or more per acre or fraction thereof.

(b) *Yearly Rental.* All leases awarded will provide for a yearly rental payment of $5 per acre or fraction thereof.

(c) *Royalty Systems.* All leases will provide for a minimum royalty of $5 per acre or fraction thereof. The following royalty systems will be used in this sale.

(1) *Leases with a 12½–Percent Royalty.* This royalty rate applies to blocks in water depths of 400 meters or greater; this area is shown on the Stipulations, Lease Terms and Bidding Systems Map applicable to this Notice (see paragraph 13). Leases issued on the blocks offered in this area will have a fixed royalty rate of 12½ percent.

(2) *Leases with a 16⅔–Percent Royalty.* This royalty rate applies to blocks in water depths of less than 400 meters (see aforementioned Map). Leases issued on the blocks offered in this area will have a fixed royalty rate of 16⅔ percent.

5. *Equal Opportunity.* The certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) must be on file in the Gulf of Mexico regional office prior to lease award (see paragraph 14(e)).

6. *Bid Opening.* Bid opening will begin at the bid opening time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of bid opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. *Deposit of Payment.* Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Blocks.* The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. *Acceptance, Rejection, or Return of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(a) The bidder has complied with all requirements of this Notice and applicable regulations;

(b) The bid is the highest valid bid; and

(c) The amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. *Successful Bidders.* Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. See **Federal Register** at 58 FR 45255, published August 27, 1993.

11. *Leasing Maps and Official Protraction Diagrams.* Blocks offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) Outer Continental Shelf (OCS) Leasing Maps—Louisiana Nos. 1 through 12. This is a set of 29 maps which sells for $32.

(b) Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for $2.00 each.

NH 15–12 Ewing Bank (Dec. 2, 1976).
NH 16–4 Mobile (Feb. 23, 1993).
NH 16–7 Viosca Knoll (Dec. 2, 1976).
NH 16–10 Mississippi Canyon (Dec. 2, 1976).
NG 15–3 Green Canyon (Dec. 2, 1976).
NG15–6 Walker Ridge (Dec. 2, 1976).
NG 15–9 (No Name) (Apr. 27, 1989).
NG 16–1 Atwater Valley (Nov. 10, 1983).
NG 16–4 Lund (Aug. 22, 1986).
NG 16–7 (No Name) (Apr. 27, 1989).

(c) A complete set of all the above OCS Leasing Maps and Official Protraction Diagrams is available on microfiche for $5.00 per set.

12. *Description of the Areas Offered for Bids.*

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, is included in the following document available from the Gulf of Mexico regional office:

Central Gulf of Mexico Lease Sale 147—Final. Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease.

(b) *Blocks which have recently become available for leasing since December 17, 1993:* Attention is drawn to the following update list which is included as a matter of convenience for interested parties. Any questions on this may be directed to Ms. Patricia Bryars, Phone (504) 736–2763.

Update List: West Cameron Blocks 245 and 272; West Cameron, South Addition Block 656; East Cameron Block 165; Eugene Island Blocks 135 and 155; Ship Shoal, South Addition Block 279; South Timbalier Blocks 142 and 186; Bay Marchand Block 5; Main Pass, South & East Addition Block 257; Mobil Block 859; Mississippi Canyon Block 681; Green Canyon Blocks 38, 56, 83, 111, 113, 156, 260, 281, 299, 422, 457, 499, 500, 501, 629, and 630; Atwater Valley Blocks 134, 178, 179, 210, 222, and 397.

(c) *Blocks not available for leasing:* The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11(a), (b), and (c), except for those blocks or partial blocks already under lease. Descriptions of blocks listed represent all Federal acreage leased unless otherwise noted.

Sabine Pass

3, 6, 8, 9, 10, 11, 13, 14, 15.

West Cameron

17 18(SW¼), 19, 20, 21, 22, 23, 24, 27, 28, 33, 34, 35, 36, 38, 39, 40, 41, 44, 45, 47(NW¼), 48, 49, 53, 55, 56, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 104, 108, 109, 110, 111, 114, 115, 116, 118, 128, 130, 132, 134, 135, 136, 138, 139, 141, 142, 143, 144, 145, 146, 148, 149, 150, 151, 153, 165, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 186, 187, 191, 192(S½), 193, 194, 195, 196, 197, 198, 201, 202, 203, 205, 206, 207, 211, 212, 213, 215, 216, 221, 222, 224, 225, 226, 228, 229, 230, 231, 237, 238, 239, 240, 241, 242, 246, 247, 248, 249, 250, 252, 253, 254, 255, 256, 258, 259, 261, 262, 263, 264, 265, 266, 269, 278, 277, 279, 280, 282, 283, 284, 285, 286.

West Cameron, West Addition

155, 161, 163, 164, 287, 290, 291, 292, 293, 294, 295, 298, 299, 301, 305, 306, 310, 312, 313, 315, 319, 320, 321, 323, 324, 331, 332, 333, 334, 337, 338, 340, 342, 343, 344, 347, 351, 352, 360, 363, 365, 367, 368, 369, 370, 379, 380, 385, 386, 391, 392, 400, 401, 404, 405, 406, 407, 408, 409, 410, 411, 416, 421, 422, 423, 424, 425, 426, 427, 431, 432, 433, 434, 435, 436, 437, 442, 444.

West Cameron, South Addition

445, 446, 447, 450, 455, 456, 457, 458, 459, 463, 464, 466, 469, 470, 471, 473, 474, 475, 476, 477, 478, 479, 480, 482, 483, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 498, 499, 504, 505, 507, 509, 510, 513, 514, 517, 518, 523, 524, 527, 528, 529, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 542, 543, 547, 548, 551, 552, 553, 554, 556, 557, 559, 560, 561, 563, 564, 565, 566, 570, 571, 572, 574, 575, 576, 580, 583, 584, 586, 587, 588, 592, 593, 594, 596, 600, 601, 604, 605, 606, 607, 609, 613, 616, 617, 618, 619, 620, 621, 624, 625, 628, 630, 633, 634, 635, 639, 642, 643, 645, 648, 653, 654, 657, 660, 663.

East Cameron

2, 9, 11, 12, 14(E½ NW¼; NE¼) (Landward of 8(g) Line), 15, 20, 21, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 42, 44, 45, 46, 47, 48, 49, 50, 51, 55, 56, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 70, 71, 72, 75, 76, 77, 78, 81, 82, 83, 87, 89, 92, 96, 98, 99, 101, 102, 103, 104, 105, 109, 110, 111, 112, 113, 114, 116, 117, 120, 122, 123, 124, 125, 126, 131, 132, 134, 135, 138, 139, 140, 141, 142, 143, 144, 145, 148, 149, 151, 152, 153, 154, 155, 157, 158, 160, 161, 171, 172, 176, 185, 187, 188, 189, 190, 192, 193, 194, 195(S½), 196, 198, 199, 200, 201, 202, 203, 204(N½ N½), 205, 211, 213, 214, 215, 218, 219, 220, 221, 222, 223, 226, 227, 229, 230, 231, 232, 233, 234, 235.

East Cameron, South Addition

240, 242, 243, 245, 251, 254, 255, 256, 259, 260, 261, 263, 264, 265, 270, 271, 272, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 289, 297, 298, 299, 300, 302, 303, 306, 307, 311, 312, 313, 314, 316, 317, 318, 319, 320, 321, 322, 323, 327, 328, 330, 331, 332, 334, 335, 336, 337, 338, 339, 346, 351, 352, 353, 354, 356, 359, 360, 361, 362, 363, 364, 365, 367, 368, 369, 370, 371, 377, 378.

Vermilion

16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 65, 66, 67, 68, 70, 75, 78, 80, 82, 83, 84, 87, 88, 89, 90, 92, 94, 95, 96, 97, 99, 100, 101, 102, 103, 104(SE¼; N½; E½ SW¼; E½ W½ SW¼), 107, 108, 109, 112, 114, 115, 116, 117, 119, 120, 122, 123, 124, 129, 130, 131, 132, 133, 143, 144, 145, 146, 147, 148, 152, 155, 156, 157, 159, 160, 161, 162, 164, 166, 167, 168, 171, 172, 175, 178, 179, 180, 182, 185, 186, 187, 188, 189, 190, 191, 193, 194, 195, 196, 197, 198, 199, 200, 201, 203, 204, 205, 206, 207, 208, 213, 214, 215, 216, 217, 218(E½ NW¼ SE¼; NE¼ SW¼ SE¼; E½ SE¼), 219, 220, 221, 222, 223, 225(E½ NE¼; NE¼ SE¼), 226, 227, 230, 232, 233, 237, 241, 245, 246, 247, 249, 250, 251.

Vermilion, South Addition

251, 253, 255, 256, 257, 258, 261, 262, 265, 266, 267, 268, 270, 271, 272, 275, 276, 277, 278, 279, 280, 281, 282, 284, 286, 287, 288, 289, 290, 291, 292, 293, 294, 296, 297, 298, 299, 300, 301, 302, 304, 305, 306, 308, 309, 310, 313, 314, 315, 317, 318, 320, 321, 324, 325, 326, 327, 328, 329, 330, 331, 332, 336, 338, 339, 340, 341, 342, 347, 348, 349, 351, 355, 359, 360, 362, 363, 365, 367, 368, 369, 370, 371, 377, 378, 379, 380, 385, 386, 394, 395, 397, 398, 400, 401, 404, 407, 410, 411, 412, 413.

South Marsh Island, North Addition

207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220 (Landward of lease 0310 stip. Line), 221 (Landward of lease 0310 stip. Line), 222, 223, 224, 225, 226, 227, 228, 229, 230 (Landward of lease 0310 stip. Line), 231 (Landward of lease 0310 stip. Line), 232, 233, 234, 235 (Landward of lease 0310 stip. line; and portion more than 3 marine leagues swd. of a line connecting Tiger Pt. & Shell Keys), 236, 237, 238, 239, 240, 241 (Landward of lease 0310 stip. Line), 242 (Landward of lease 0310 stip. Line), 243, 244, 249, 250, 251, 252, 253, 255, 256, 257, 258, 260, 261, 264, 265, 266, 267, 268, 269, 270, 271, 273, 274, 275, 281, 282, 285, 286, 287, 288.

South Marsh Island

2, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 25, 27, 28, 29, 30, 33, 34, 35, 36, 37, 39, 40, 41, 44, 45, 47, 48, 49, 50, 51, 53, 54, 55, 57, 58, 59, 60, 61, 64, 66, 68, 69, 70.

South Marsh Island, South Addition

71, 72, 73, 75, 76, 77, 78, 79, 81, 82, 84, 85, 87, 90, 91, 92, 94, 95, 96, 97, 98, 99, 102, 103, 106, 107, 108, 109, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123, 125, 127, 128, 130, 131, 132, 133, 134, 136, 137, 138, 140, 141, 142, 143, 144, 146, 147, 149, 150, 151, 154, 155, 156, 158, 160, 161, 164, 165, 168, 169, 171, 172, 173, 174, 175, 176, 179, 180, 181, 182, 185, 186, 187, 188, 189, 190, 192, 193, 194, 195, 197, 198, 199, 204, 205.

Eugene Island

10, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 32, 33, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57, 58, 59, 60, 62, 63, 64, 65, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 85, 86, 87, 88, 89, 90, 93(E½), 94, 95, 97, 98, 99, 100, 101, 102, 105, 106, 107, 108, 109, 110, 111, 113A, 113B, 116(E½), 117, 118, 119, 120, 125, 126, 128, 128A, 129, 133, 136, 138, 142, 143, 144, 146, 147, 148, 153, 154, 156, 157, 158, 159, 160, 162, 163, 164, 167, 170, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 208, 211, 212, 214(W½W½E½; W½), 215, 217, 218, 219, 222, 224, 227, 228, 229, 230, 231, 236, 237, 238, 240, 242, 243, 245, 246, 247, 248, 249, 251, 252, 253(NE¼; E½NW¼; NW¼NW¼; E½SW¼NW¼; S½), 254(S½), 255, 256, 257, 258, 259, 261, 262, 265, 266.

Eugene Island, South Addition

267, 268, 269, 270, 272, 273, 274, 275, 276, 277, 278, 279, 281, 282, 283, 284, 285, 286, 287(S½; S½N½), 289, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301(S½), 304, 305, 306, 307, 308, 309, 310, 312, 313, 314, 315, 316, 317, 318, 319, 320, 322, 323, 324, 325, 326, 327, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 348, 349, 350, 352, 353, 354, 355, 356, 358, 359, 360, 361, 363, 364, 365, 367, 368, 370, 371, 372, 374, 380, 383, 384, 385, 386, 388, 389, 392.

Ship Shoal

13(S½SE¼), 14(S½S½), 15, 25(Seaward of Zone 2 line), 26(SE¼), 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 49, 52, 53, 55, 58, 59, 63, 64(W½), 65, 66, 68, 69, 71(W½), 72, 75, 76, 77, 79, 80, 81, 84, 86, 87, 90, 91, 92, 93, 94, 97, 98, 99, 100, 101, 102, 103, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 117(N½), 118(N½), 119, 120, 122, 123, 126, 128, 129, 130, 133, 134, 135, 136, 137, 138, 139, 140, 141, 145, 146, 148, 149, 150, 153, 154, 156, 157, 158, 159, 160, 163, 164, 166, 167, 168, 169, 170, 171, 172, 175, 176, 177, 178, 180, 181, 182, 183, 184, 189, 190, 191, 193, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 214, 215, 216, 218, 219, 220, 222, 223, 224, 225(N½), 227, 229, 230, 233, 235.

Ship Shoal, South Addition

237, 238, 239, 240, 242, 243, 246, 247, 248, 249, 250, 251, 252, 253, 255, 256, 257, 258, 259, 262, 263, 264, 265, 266, 268, 269, 270, 271, 272, 273, 274, 276, 277, 278, 280, 281, 287, 288, 290, 291, 292, 293, 294, 295, 296, 299, 300, 301, 303, 304, 307, 309, 311, 312, 313, 314, 315, 316, 317, 319, 321, 322, 323, 325, 326, 327, 328, 329, 330, 331, 333, 334, 335, 339, 340, 341, 343, 348, 349, 350, 351, 352, 353, 356, 357, 358, 359, 360, 364, 366, 368.

South Timbalier

10, 11, 16, 17, 21, 22, 23, 24, 25, 26, 27(N½; N½SW¼), 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 50, 51, 52, 53, 54, 55, 63, 66, 67, 68, 69, 70, 72, 73, 74, 76, 77, 78, 79, 81, 82, 83, 85, 86(N½), 87, 95, 97, 98, 99, 100, 101, 107, 108, 109, 111, 112, 124, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 143, 144, 146, 147, 148, 149, 151, 152, 158, 159, 160, 161, 162, 163, 164, 165, 166, 169, 170, 171, 172, 173, 175, 176, 177, 178, 179, 180, 182, 184, 185, 187, 188(NW¼), 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 202, 203, 205, 206, 207, 208, 210.

South Timbalier, South Addition

214, 215, 217, 219, 221, 223, 225, 226, 229, 231, 236, 238, 239, 240, 241, 242, 244, 245, 246, 248, 249, 251, 252, 253, 255, 258, 259, 260, 263, 264, 265, 266, 267, 269, 271, 272, 275, 276, 277, 278, 279, 280, 281, 282, 283, 285, 287, 289, 290, 291, 292, 295, 296, 297, 300, 301, 302, 308, 309, 310, 311, 312, 316, 319, 320.

South Pelto

1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 24.

Bay Marchand

2, 3.

Grand Isle

15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44(N½), 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 58, 59, 65, 66, 69, 75, 76, 77, 78, 79, 82, 83, 85.

Grand Isle, South Addition

86, 88, 89, 90, 91, 93, 94, 95, 99, 100, 101, 102, 103, 106, 108, 110, 111, 113, 115, 116, 117, 118, 119, 121.

West Delta

17, 18, 19, 20, 21(S½ N½ S½; S½ S½), 22, 23, 24, 26, 27, 28(N½; N½ S½), 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 79, 80, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 102, 103, 104, 105, 106, 107, 108, 109.

West Delta, South Addition

110, 111, 112, 113, 114, 115, 117, 118, 121, 122, 123, 126, 128, 129, 132, 133, 134, 135, 140, 143, 144, 145, 147, 148, 149, 152

South Pass

6, 17(Seaward of the 4th Supp.Decree to 1 ft. swd. of 3rd Supp.Decree), 27, 28, 31, 33, 34, 35, 36, 37, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52(Seaward of 8(g) Line), 54, 55, 56(Landward of line 3 geographical miles swd. of 65 Decree Line), 57(Swd. of 75 Decree Line to 1 ft. swd. of 3rd Supp. Decree; and 1 ft swd. of 3rd Supp. Decree to 3 geog. miles swd. of 1st Supp. Decree), 58, 59, 60, 61.

South Pass, South & East Addition

62, 63, 64, 65, 66(Seaward of 65 Decree Line), 67, 68, 70, 71, 72, 74, 75, 76, 77, 78, 82, 83, 86, 87, 88, 89, 92, 93, 94, 96.

Main Pass

7, 18, 19, 20, 30, 37, 38, 39, 40, 41, 42, 43, 44, 55, 57, 58, 59, 61, 62, 63, 64, 65, 68, 69, 70, 71, 72, 73, 74, 77, 78, 86, 87, 88, 90, 91(N½; SE¼; SW¼ in Zone 1), 92, 93(Seaward of 8(g) Line), 94, 95, 96, 97, 98, 99, 100(N½; N½ N½ S½; SE¼ NE¼ SE¼; E½ SE¼ SE¼), 102, 103, 104, 105, 106 (SW¼ SE¼ NE¼; S½ SW¼ NE¼; S½ S½ NW¼; SW¼; W½ SE¼; W½ E½ SE¼), 107, 108, 110, 111, 112, 114, 115, 116, 117, 118, 119, 120, 122, 123, 124, 125, 126, 127(N½), 129, 131, 132, 133, 138, 139, 140, 141, 142, 144, 145, 146, 148, 149, 151, 152(Seaward of 65 Decree Line), 153.

Main Pass, South & East Addition

154, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 175, 177, 178, 179, 180, 181, 182, 183, 186, 187, 188, 189, 190, 191, 192, 193, 194, 196, 198, 199, 201, 202, 208, 209, 210, 214, 216, 218, 219, 220, 221, 222, 223, 224, 226, 227, 228, 229, 233, 234, 236, 237, 242, 243, 244, 248, 249, 251, 252, 253, 254, 255, 256, 258, 259, 260, 261, 262, 265, 272, 273, 274, 276, 280, 281, 283, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 303, 304, 305, 306, 308, 309, 310, 311, 312, 313, 315.

Breton Sound

39, 41, 42, 43, 53(W½ Portion Seaward of 75 Decree Line), 54, 55, 56.

Chandeleur

9, 12, 13, 14, 15, 17, 19, 21, 22, 24, 25, 28, 29, 30 (Seaward of 8(g) Line), 31, 34.

Chandeleur, East Addition

36, 37, 38, 40, 41.

Mobile

778, 779, 819, 820, 821, 822, 823, 824, 826, 827, 828, 830, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 904, 905, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 945, 947, 948, 949, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 990, 1002, 1003.

Viosca Knoll

22, 24, 27, 29, 31, 32, 35, 38, 68, 69, 73, 74, 76, 79, 117, 118, 124, 155, 156, 157, 158, 161, 170, 201, 202, 203, 204, 206, 207, 208, 209, 212, 213, 250, 251, 252, 253, 256, 294, 295, 296, 297, 340, 341, 343, 344, 346, 390, 427, 428, 429, 430, 474, 518, 519, 520, 564, 565, 609, 692, 693, 694, 695, 697, 698, 734, 736, 740, 741, 742, 772, 773, 774, 779, 780, 783, 784, 785, 786, 814, 815, 817, 818, 822, 823, 825, 826, 827, 829, 830, 861, 862, 863, 867, 868, 869, 870, 871, 872, 899, 900, 903, 905, 906, 907, 911, 912, 913, 914, 915, 916, 944, 945, 947, 953, 954, 955, 956, 957, 958, 959, 988, 989, 990, 992, 993, 994, 996, 997, 999, 1000, 1001, 1002, 1003.

Ewing Bank

305, 306, 347, 350, 438, 481, 482, 526, 570, 658, 701, 702, 743, 744, 745, 746, 781, 782, 783, 784, 788, 789, 790, 824, 825, 826, 828, 833, 867, 868, 869, 871, 872, 873, 874, 878, 879, 903, 906, 908, 910, 911, 912, 913, 914, 915, 916, 917, 918, 920, 921, 922, 923, 938, 944, 947, 948, 949, 950, 952, 954, 955, 958, 959, 961, 962, 963, 964, 965, 966, 983, 985, 986, 987, 988, 989, 991, 993, 994, 995, 996, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1010, 1011.

Mississippi Canyon

20, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 63, 64, 65, 66, 68, 70, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 84, 85, 108, 109, 114, 123, 124, 125, 127, 128, 129, 148, 149, 150, 151, 161, 162, 163, 166, 167, 168, 169, 173, 191, 192, 193, 194, 195, 196, 199, 204, 205, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 240, 243, 244, 245, 247, 248, 252, 253, 254, 255, 256, 257, 258, 259, 265, 267, 268, 280, 281, 287, 288, 289, 290, 291, 292, 296, 299, 300, 301, 302, 305, 309, 311, 312, 320, 321, 322, 323, 324, 325, 333, 335, 338, 339, 340, 341, 342, 343, 344, 345, 346, 348, 353, 354, 355, 356, 357, 358, 363, 365, 378, 382, 383, 384, 385, 386, 392, 397, 398, 399, 400, 401, 402, 426, 427, 428, 429, 430, 431, 436, 437, 441, 443, 444, 445, 447, 448, 449, 450, 470, 471, 474, 475, 476, 480, 481, 485, 486, 487, 489, 490, 492, 493, 494, 495, 496, 505, 506, 507, 508, 509, 514, 515, 516, 517, 520, 521, 522, 524, 529, 530, 531, 533, 537, 538, 539, 551, 553, 554, 555, 560, 561, 562, 563, 564, 565, 566, 568, 573, 574, 575, 576, 577, 583, 584, 585, 593, 594, 595, 596, 597, 603, 605, 606, 607, 608, 612, 613,

617, 619, 620, 621, 624, 627, 628, 630, 638, 639, 643, 647, 656, 657, 661, 663, 667, 673, 674, 676, 677, 678, 682, 686, 687, 688, 692, 694, 695, 698, 705, 706, 707, 711, 714, 717, 718, 720, 721, 724, 725, 726, 727, 728, 730, 731, 732, 734, 738, 739, 749, 750, 755, 757, 758, 760, 762, 763, 764, 765, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 802, 803, 804, 806, 807, 808, 809, 810, 811, 818, 819, 831, 832, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 868, 875, 876, 885, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 911, 912, 928, 929, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 955, 956, 972, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 992, 993, 999, 1000.

Green Canyon

5, 6, 7, 8, 9, 10, 13, 15, 16, 18, 19, 23, 25, 30, 31, 33, 34, 35, 37, 39, 40, 41, 45, 46, 50, 52, 53, 54, 58, 60, 64, 65, 67, 68, 69, 72, 73, 78, 79, 81, 82, 89, 90, 92, 96, 97, 98, 101, 102, 109, 110, 114, 115, 116, 117, 120, 121, 122, 123, 125, 126, 128, 129, 135, 136, 137, 140, 141, 142, 144, 145, 146, 149, 155, 158, 159, 160, 161, 163, 165, 166, 167, 169, 170, 177, 179, 180, 181, 184, 185, 195, 198, 199, 200, 201, 202, 203, 205, 208, 209, 210, 211, 213, 214, 215, 216, 217, 221, 223, 224, 225, 228, 235, 236, 237, 238, 240, 241, 242, 243, 244, 245, 246, 247, 248, 250, 251, 252, 253, 254, 255, 256, 257, 258, 268, 269, 272, 273, 274, 278, 279, 282, 285, 286, 287, 288, 290, 295, 296, 297, 298, 300, 301, 303, 309, 311, 312, 314, 317, 318, 325, 326, 329, 330, 333, 338, 339, 340, 341, 342, 353, 354, 355, 356, 369, 372, 373, 377, 378, 379, 383, 384, 385, 386, 398, 399, 400, 403, 404, 405, 406, 415, 416, 417, 421, 426, 427, 429, 430, 431, 437, 446, 447, 448, 454, 459, 460, 461, 462, 463, 465, 466, 467, 468, 469, 470, 472, 473, 474, 475, 481, 486, 487, 491, 497, 498, 505, 506, 507, 508, 509, 510, 512, 513, 514, 515, 516, 517, 518, 519, 520, 531, 533, 534, 535, 540, 541, 543, 544, 545, 546, 550, 552, 553, 554, 556, 557, 558, 559, 562, 563, 564, 578, 579, 587, 588, 589, 590, 600, 601, 602, 603, 604, 605, 606, 631, 632, 636, 644, 645, 646, 647, 648, 649, 650, 651, 673, 674, 679, 680, 681, 689, 690, 691, 692, 693, 706, 712, 713, 714, 723, 724, 725, 726, 735, 736, 737, 756, 757, 758, 766, 767, 775, 776, 801, 802, 810, 816, 825, 826, 844, 845, 854, 859, 860, 863, 864, 869, 870, 871, 872, 873, 905, 913, 915, 955, 958, 999, 1001.

Atwater Valley

1, 7, 8, 11, 12, 13, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 51, 52, 55, 56, 57, 58, 59, 60, 61, 63, 64, 66, 67, 68, 70, 71, 84, 90, 91, 92, 93, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 112, 113, 114, 115, 116, 117, 118, 119, 127, 128, 135, 136, 137, 141, 142, 143, 145, 146, 150, 151, 152, 153, 157, 158, 160, 161, 162, 163, 180, 181, 182, 189, 190, 223, 224, 225, 226, 233, 234, 256, 261, 266, 267, 268, 276, 277, 284, 310, 311, 312, 313, 321, 327, 334, 343, 370, 371, 377, 378, 379, 401, 405, 406, 414, 415, 441, 444, 445, 446, 450, 457, 488, 489, 490, 573, 574, 575, 617, 618.

Walker Ridge

22, 45, 46, 66, 120, 121, 164, 197, 198, 205, 663, 678, 707, 723, 766.

13. Lease Terms and Stipulations

(a) Leases resulting from this sale will have initial terms as shown on the Stipulations, Lease Terms and Bidding Systems Map applicable to this Notice and will be on Form MMS–2005 (March 1986). Copies of the map and lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on the Map described in paragraph 13(a) and as supplemented by references in this Notice.

Stipulation No. 1—Protection of Archaeological Resources

(This stipulation will apply to all blocks offered for lease in this sale. Bidders should also refer to paragraph 14(h) of this Notice for specific survey requirements. See also paragraph 14(j).)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

Stipulation No. 2—Topographic Features

(This stipulation will be included in leases located in the areas so indicated in the biological block package associated with this Notice which is available from the Gulf of Mexico regional office. See paragraph 14(a).)

The banks which cause this stipulation to be applied to blocks of the Central Gulf are:

No Activity Zone Defined by Isobath:

Bank name	Meters
McGrail Bank	85
Bouma Bank	85
Rezak Bank	85
Sidner Bank	85
Rankin Bank	85
Sweet Bank[1]	85
Sackett Bank[2]	85
Ewing Bank	85
Diaphus Bank[2]	85
Parker Bank	85
Jakkula Bank	85
Bright Bank	85
Geyer Bank[3]	85
MacNeil Bank[3]	82
Alderdice Bank	80
Fishnet Bank[2]	76
29 Fathom Bank	64
Sonnier Bank	55

[1] Only paragraph (a) of the stipulation applies.

[2] Only paragraphs (a) and (b) apply.

[3] Western Gulf of Mexico bank with a portion of its "3–Mile Zone" in the Central Gulf of Mexico.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown in the aforementioned biological block package) of the banks as listed above.

(b) Operations within the area shown as "1,000–Meter Zone" in the aforementioned biological block package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "1–Mile Zone" in the aforementioned biological block package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1–Mile Zone" designated, the "1,000–Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3–Mile Zone" in the aforementioned biological block package shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 3—Live Bottoms

(To be included only on leases in the following blocks: Main Pass Area, South and East Addition, Blocks 190, 194, 198, 219–226, 244–266, 276–290; Viosca Knoll, Blocks 473–476, 521, 522, 564, 565, 566, 609, 610, 654, 692–698, 734, 778.)

For the purpose of this stipulation, "live bottom areas" are defined as seagrass communities; or those areas which contain biological assemblages consisting of such sessile invertebrates as sea fans, sea whips, hydroids, anemones, ascidians, sponges, bryozoans, or corals living upon and attached to naturally occurring hard or rocky formations with rough, broken, or smooth topography; or areas whose lithotope favors the accumulation of turtles, fishes, and other fauna.

Prior to any drilling activities or the construction or placement of any structure for exploration or development on this lease, including, but not limited to, anchoring, well drilling, and pipeline and platform placement, the lessee will submit to the Regional Director (RD) a live bottom survey report containing a bathymetry map prepared using remote sensing techniques. The bathymetry map shall be prepared for the purpose of determining the presence or absence of live bottoms which could be impacted by the proposed activity. This map shall encompass such an area of the seafloor where surface disturbing activities, including anchoring, may occur.

If it is determined that the live bottoms might be adversely impacted by the proposed activity, the RD will require the lessee to undertake any measure deemed economically, environmentally, and technically feasible to protect the pinnacle area. These measures may include, but are not limited to, the following:

(a) the relocation of operations; and

(b) the monitoring to assess the impact of the activity on the live bottoms.

Stipulation No. 4—Military Areas

(This stipulation will be included in leases located within the Warning Areas and Eglin Water Test Areas 1 and 3, as shown on the Map described in paragraph 13(a).)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS) to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with the programs and activities of the command headquarters listed in the following table.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and hold and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, or to indemnify and hold and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities, conducted within individual designated warning areas. Necessary monitoring control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic in the individual designated warning areas shall enter into an agreement with the commander of the individual command headquarters listed following this paragraph, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in the warning areas at all times.

W–155–A; W–155–B; (For Agreement)—Chief, Naval Air Training, Naval Air Station, Office No. 206, Corpus Christi, Texas 78419–5100, Telephone: (512) 939–3862/3902.

W–155–A; W–155–B; (For Operational Control)—Fleet Area Control & Surveillance, Facility (FACSFAC), Operations, Naval Air Station Pensacola, Florida 32508, Telephone: (904) 452–2735/4671.

W–92—Naval Air Station, Air Operations Department, Air Traffic Division/Code 52, New Orleans, Louisiana 70146–5000, Telephone: (504) 393–3100/3101.

W–453—Air National Guard—CRTC, Gulfport/ACMI, Scheduling Office, Gulfport, Mississippi 39507, Telephone: (601) 867–2433.

Eglin Water Test Areas 1 and 3—Air Force Development Test Center, Plans and Programs Department, Directorate of Plans, Eglin AFB, Florida 32542, Telephone: (904) 882–3899/9757.

14. Information to Lessees

(a) *Supplemental Documents.* For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, either in writing or by telephone at (504) 736–2519. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736–2759.

(b) *Navigation Safety.* Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended, and the Deepwater Port Act (33 U.S.C. 1501–1524). Bidders are advised that the U.S. Coast Guard published a notice of petition for rulemaking to expand the existing safety zone around the Louisiana Offshore Oil Port (57 FR 2236 published on January 21, 1992).

U.S. Army Corps of Engineers (COE) permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

For additional information, prospective bidders should contact Lt. Commander Ken Parris, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, (504) 589–6901. For COE information, prospective bidders should contact Mr. Ron Ventola, CELMN-OD-S, Post Office Box 60267, New Orleans, Louisiana 70160–0267, (504) 862–2255.

(c) *Offshore Pipelines.* Bidders are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) *8-Year Leases.* Bidders are advised that any lease issued for a term of 8 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated, or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria, or if there is not a suspension of operations in effect. Bidders are referred to 30 CFR 256.37.

(e) *Affirmative Action.* Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see **Federal Register** of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS–2005, March 1986), would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60–1.5(a)(1) and 60–1.7(a)(1). Submission of Form MMS–2032 (June 1985) and Form MMS–2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) *Ordnance Disposal Areas.* Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Mississippi Canyon area, shown on the Map described in paragraph 13(a). These areas were used to dispose of ordnance of unknown quantity and composition. Water depths range from approximately 750 to 1,525 meters. Bottom sediments in both areas are soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards.

The U.S. Air Force has released an indeterminable amount of unexploded ordnance throughout Eglin Water Test Areas 1 and 3. The exact location of the unexploded ordnance is unknown, and lessees are advised that all lease blocks included in this sale within these water test areas should be considered potentially hazardous to drilling and platform and pipeline placement.

(g) *Communications Towers.* The Department of Defense, U.S. Air Force, has installed seven military communications towers in the Chandeleur/Mobile/Viosca Knoll area which support Air Combat Maneuvering Instrumentation (ACMI). This project may impose certain restrictions on gas and oil activities in that area since no activity can take place within 500 feet of a tower site, and unobstructed lines of sight must be maintained between towers. The seven towers are located within Mobile, Blocks 769, 819, and 990; Viosca Knoll, Block 116; and Chandeleur Area, Blocks 33 and 61; and Chandeleur Area, East Addition, Block 39. Information and maps of the specific locations and line of sight crossings for ACMI towers may be obtained from Mr. Wallace Williams, Minerals Management Service, Telephone (504) 736–2772.

(h) *Archaeological Resources.* Bidders are advised of the Notice to Lessees (NTL) affecting the historic shipwreck survey requirement published in the **Federal Register** on December 20, 1991, pages 66076–66082 with an effective date of February 17, 1992. This NTL details the survey methodology, including a more intensive survey with line spacing 50 meters apart, and report writing requirements. A Letter to Lessees (LTL) of November 30, 1990 lists those blocks identified as having a high probability for encountering historic shipwrecks. Copies of both the NTL and LTL are available from the MMS Public Information Unit. See paragraph 14(a).

(i) *Proposed Rigs to Reefs.* Bidders are advised that there are OCS artificial reef sites and planning sites for the Gulf of Mexico. These are generally located in water depths of less than 200 meters. While all existing and proposed sites require a permit from the U.S. Army Corps of Engineers, this "Rigs to Reefs" program is implemented through State sponsorship through the following State Coordinators:

Alabama: Mr. Wallace M. Tatum (205) 968–7578

Louisiana: Mr. Rick Kaspzrac (504) 765–2375

Mississippi: Mr. Mike Buchanan (601) 385–5860

Texas: Ms. Jan Coulbertson (713) 474–2811

For more information on artificial reef sites, prospective bidders should contact the above listed State Artificial Reef Coordinators for their areas of interest.

(j) *Archaeological Surveys and Reports.* Bidders are advised that a Proposed Rule has been published in the **Federal Register** dated Tuesday, October 12, 1993, which proposes to grant specific authority to each MMS Regional Director to require archaeological surveys and reports (under 30 CFR 250.26). This proposed rule specifically states the authority of MMS and conditions for requiring lessees or operators to conduct archaeological resource surveys and submit the reports prior to exploration, development and production, or installation of pipelines. This rule, when adopted, may apply to all blocks leased in this sale.

(k) *Proposed Right of Use and Easement for Chandeleur Blocks 27 and 30.* Bidders are advised that a right of use and easement may be granted for portions of Chandeleur Area Blocks 27 and 30 for gas storage purposes. The areas being considered are generally in the southernmost quarter of the federal portion of Chandeleur Area Block 27 and the W½ NW¼; NW¼ SW¼ portion of Chandeleur Area Block 30. For additional information, contact the MMS Gulf of Mexico Regional Supervisor for Production and Development at (504) 736–2675.

Dated: February 18, 1994.

Tom Fry,

Director, Minerals Management Service.

Approved

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 94–4256 Filed 2–24–94; 8:45 am]

BILLING CODE 4310–MR–P

Outer Continental Shelf, Central Gulf of Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Leasing Systems, Sale 147.

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register**:

a. identifying the bidding systems to be used and the reasons for such use; and

b. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. *Bidding Systems to be Used.* In the Outer Continental Shelf (OCS) Sale 147, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16⅔-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12½-percent royalty on all remaining unleased blocks.

a. *Bonus Bidding With a 16⅔-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. *Bonus Bidding With a 12½-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Central Gulf of Mexico (Sale 147) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow-water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12½-percent royalty system would be less than for the same blocks under a 16⅔-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. *Designation of Blocks.* The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12½-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Central Gulf of Mexico Lease Sale 147—Final Bidding Systems and Bidding Units." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Dated: February 18, 1994.

Tom Fry,

Director, Minerals Management Service.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 94–4255 Filed 2–24–94; 8:45 am]

BILLING CODE 4310–MR–P

Gulf of Mexico Outer Continental Shelf; Notice of Availability of the Environmental Assessment for the Addition of 337 Blocks to Oil and Gas Lease Sale 150, Western Gulf of Mexico

The final Environmental Impact Statement (EIS) for Gulf of Mexico oil and gas Lease Sale 150 provided an analysis of potential impacts resulting from offering for lease approximately 4,682 unleased blocks in the Western Planning Area. The final EIS specifically excluded a 337-block area used for naval operations. The Department of the Navy has notified the Minerals Management Service (MMS) that they no longer require the 337-block naval operations area be excluded from oil and gas leasing. Consequently, the MMS proposes adding the 337-block area to proposed Sale 150. An environmental assessment (EA) was prepared to analyze the potential impacts of adding the 337 blocks to proposed Sale 150.

The MMS has reviewed the information in the EA and the information in the final EIS for proposed Sale 150 and has determined that a supplemental EIS is not required.

Copies of the EA may be obtained by written request from the Regional Director, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Any person who would like to comment on the EA may do so by submitting written comments to the above address on or before 30 days from the date of publication of this notice.

Dated: February 9, 1994.

Tom Fry,

Director, Minerals Management Service.

[FR Doc. 94–4258 Filed 2–24–94; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

Notice of Completion of Inventory of Native American Human Remains from the Hawaiian Islands in the Collections of the Bernice Pauahi Bishop Museum

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with the provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of human remains from the Hawaiian Islands by the Bernice Pauahi Bishop Museum, Honolulu, HI.

The human remains consist of a fragmentary skull originally held by the P.A. Hearst Museum of Anthropology, University of California, Berkeley, CA. The human remains had been accessioned in 1935 and identified as 12–5456. The Hearst Museum catalog identified the human remains as deriving from the Hawaiian Islands. In a letter acknowledging the gift, the acting curator refers to the human remains as "Polynesian."

On January 5, 1992, representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, a recognized Native Hawaiian organization, requested repatriation of the human remains. The Hearst Museum declined to do so and the dispute was referred to the Native American Graves Protection and Repatriation Review Committee. The Committee considered contextual, osteological, and spiritual information in arriving at their finding that was subsequently published in the Federal Register on April 15, 1993. While the Committee was unable to determine that the preponderance of the evidence indicated a relationship of shared group identity which could be reasonably traced between present day Native Hawaiian organizations and the remains identified as 12–5456, they recommended that the Hearst Museum transfer the human remains to a museum in Hawaii for future consideration of cultural affiliation and care.

The human remains were transferred from the Hearst Museum to the Bishop Museum on August 11, 1993. An assessment of the human remains by Bishop Museum staff indicated that they represented a 20–30 year old male. Dental characteristics and the morphology of the cranial vault and mandible indicate the individual was of Mongoloid, and probably Polynesian, ancestry.

Based on the above information, officials of the Bishop Museum, in consultation with representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs, determined pursuant to 25 U.S.C. 3001(2) that there is a relationship of shared group identity which can be reasonably traced between these remains and present-day Native Hawaiian organizations.

On September 29, 1993 the human remains were transferred to representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*. Representatives of any Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Mr. Kunani Nihipali, P.O. Box 190, Haleiwa, HI 96712–0190; (808) 455–4212.

Dated: February 17, 1994.
Veletta Canouts,
Acting Departmental Consulting Archeologist Chief, Archeological Assistance Division.
[FR Doc. 94-4237 Filed 2-24-94; 8:45am]
BILLING CODE 4310-70-F

Notice of Inventory Completion of Native American Human Remains from the Hawaiian Islands in the Collections of the Peabody Museum of Natural History, Yale University

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with the provisions of the Native American Graves Protection and Repatriation, 25 U.S.C. 3003(d), of the completion of an inventory of human remains from the Hawaiian Islands held by the Peabody Museum of Natural History.

A detailed inventory and assessment of the Yale Peabody Museum's collections of human remains of Hawaiian provenance have been completed by its professional curatorial staff in consultation with *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, the Office of Hawaiian Affairs and the Hawai'i, Kaua'i/Nihau, Maui/Lanai, Moloka'i, and O'ahu Burial Councils. According to the Peabody's accession records, these human remains are without associated funerary objects. Acquired by the Museum in five accessions between 1872 and 1921, these human remains are described in eighty-four catalogue entries. They have been determined to be Native Hawaiian in origin on the basis of the locality information provided in the catalogue descriptions. The Museum records give no indication of the antiquity of these human remains. The inventory has not resulted in the determination of any human remains that are of an identifiable individual.

Following is a summary of each accession.

One skull, one cranium, two femurs and one mandible are described in three catalogue entries. They were received in 1872 in an accession with unrelated material collected and donated by the Yale College Scientific Expedition of 1871. A provenance of Honolulu, Hawaii is provided by the catalogue ledger.

Two associated accessions were acquired in 1872 and 1873 via donation from the Honorable Christie, U.S. Consul and collected from the sand hills near Koloa, Kauai Island. The 1872 accession consists of ten skulls, one nearly complete skeleton, and one calotte described in fourteen catalogue entries and is identified in the accession ledger as having been collected by George H. Dole. The 1873 accession consists of fourteen skulls, six crania, fifteen unassociated mandibles, and eleven unassociated post crania described in twenty-two catalogue entries; the collector has not been identified.

Nine skulls, twenty-seven crania, two partial crania, seventeen and one half unassociated mandibles and some cranial fragments described in forty catalogue entries were received in donation in 1878 from David Dwight Baldwin via Professor Daniel Cady Eaton. They are identified in the catalogue records as Hawaiian; more locality detail is not provided.

Five catalogue entries describe two skulls, two crania, and one tibia fragment. These human remains were acquired for the Peabody from Miss Maria L.C. Winslow via purchase and donation by Professor Charles Schuchert in 1921. They are part of a collection assembled by Dr. Charles F. Winslow, largely during the 1860's. All are identified as Hawaiian in the catalogue records. The additional locality of Maui is provided for one cranium. Wailuku, Maui is provided for one cranium and the skull.

Based on the above mentioned information, officials of the Peabody Museum of Natural History, Yale University have determined pursuant to 25 U.S.C. 3001(2) that there is a relationship of shared group identify which can be reasonably traced between these remains and the present-day Native Hawaiian organizations such as *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs.

Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Dr. Alison F. Richard, Director, Yale University, Peabody Museum of Natural History, P. O. Box 208118, New Haven, Connecticut 06520-8118, (203) 432-3752, before March 28, 1994.

Dated: February 4, 1994.
Dr. Francis P. McManamon,
Departmental Consulting Archeologist Chief, Archeological Assistance Division.
[FR Doc. 94-4238 Filed 2-24-94; 8:45am]
BILLING CODE 4310-70-F

Notice of Intent to Repatriate a Cultural Item in the Possession of the University of Iowa, Museum of Natural History

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate a cultural item in the possession of the University of Iowa, Museum of Natural History, that meets the definitions of "sacred object" and "object of cultural patrimony" under Section 2 of the act.

The cultural item consists of one large carved wooden object. This object measures 25 3/4" long by 2 3/4" diameter. The date of collection and provenance of the object are unknown. Museum records indicate that the object may have been obtained in the early 1880's by Daniel H. Talbot of Sioux City, Iowa, who donated his extensive personal collection to the museum in 1891.

The form of the object leads the Museum to believe it is of Zuni origin, and most likely represents a Zuni War God. Copies of museum records and photographs of the object have been provided to the Pueblo of Zuni. Authorized representatives of the Pueblo of Zuni have viewed the object and concur with the identification of the object as a Zuni War God. The Pueblo of Zuni has requested repatriation of the object from the University of Iowa, Museum of Natural History, in a letter dated November 29, 1993. The University of Iowa, Museum of Natural History, has no objection.

The object has been transferred to representatives of the Pueblo of Zuni. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object are advised to contact Robert E. Lewis, Governor, Pueblo of Zuni, Box 339, Zuni, New Mexico 87327, telephone: (505) 782–4481.

Dated: January 10, 1994.
Francis P. McManamon,
Departmental Consulting Archeologist Chief, Archeological Assistance Division.
[FR Doc. 94-4239 Filed 2-24-94; 8:45am]
BILLING CODE 4310-70-F

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32238]

The Atchison, Topeka and Santa Fe Railway Company and Gateway Western Railway Company; Lease Exemptions; Kansas City Terminal Railway Co.

AGENCY: Interstate Commerce Commission.
ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–11345, the lease by Kansas City Terminal Railway of: (1) 41.62 miles of its main line and connecting tracks to The Atchison, Topeka and Santa Fe Railway Company; and (2) 25.68 miles of switch and yard tracks to Gateway Western Railway Company, subject to standard labor protection conditions.

DATES: This exemption will become effective March 27, 1994. Petitions to stay must be filed by March 7, 1994, and petitions to reopen must be filed by March 17, 1994.

ADDRESSES: Send pleadings referring to Finance Docket No. 32238 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioners' representatives: W. M. Stapleton, Lathrop & Norquist, 2345 Grand Avenue, Suite 2500, Kansas City, MO 64108; Dennis W. Wilson, 1700 East Golf Road, Schaumburg, IL 60173; and Debora J. Choate, McLachlan, Rissman & Dole, 6 West Hubbard Street, Chicago, IL 60610.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 17, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.
Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 94–4340 Filed 2–24–94; 8:45 am]
BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,292]

Sandvik Special Metals Corp., Kennewick, WA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Sandvik Special Metals Corporation, Kennewick, Washington. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,292; Sandvik Special Metals Corporation, Kennewick, Washington (February 10, 1994)

Signed at Washington, DC this 16th day of February, 1994.
Marvin M. Fooks,
Director, Office of Adjustment Assistance.
[FR Doc. 94–4227 Filed 2–24–94; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary

of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C.276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or government agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I:

NONE

VOLUME II:

PENNSYLVANIA
PA940003 (FEB. 11, 1994)
PA940020 (FEB. 11, 1994)
PA940023 (FEB. 11, 1994)
PA940040 (FEB. 11, 1994)
PA940042 (FEB. 11, 1994)

VOLUME III:

KENTUCKY
KY940004 (FEB. 11, 1994)
KY940029 (FEB. 11, 1994)

VOLUME IV:

ILLINOIS
IL940001 (FEB. 11, 1994)
IL940008 (FEB. 11, 1994)
IL940009 (FEB. 11, 1994)
OHIO
OH940001 (FEB. 11, 1994)
OH940002 (FEB. 11, 1994)
OH940028 (FEB. 11, 1994)
OH940029 (FEB. 11, 1994)
OH940035 (FEB. 11, 1994)
OH940036 (FEB. 11, 1994)

VOLUME V:

IOWA
IA940037 (FEB. 11, 1994)
LOUISIANA
LA940005 (FEB. 11, 1994)
LA940015 (FEB. 11, 1994)
LA940017 (FEB. 11, 1994)
LA940018 (FEB. 11, 1994)
NEW MEXICO
NM940001 (FEB. 11, 1994)

VOLUME VI:

COLORADO
CO940001 (FEB. 11, 1994)
MONTANA
MT940004 (FEB. 11, 1994)
NORTH DAKOTA
ND940002 (FEB. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of February 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–4201 Filed 2–24–94; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

Maryland State Standards; Approval

1. *Background*—Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart 0 to part 1952 containing the decision.

The Maryland State Plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart 0 sets forth the State's schedule for the adoption of Federal standards. By letter dated October 13, 1993, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: 29 CFR 1910.1027, pertaining to an amendment to the Cadmium Standards for General Industry, as published in the **Federal Register** of April 23, 1993 (58 FR 21790), 29 CFR 1926.63 pertaining to an amendment to the Cadmium Standard of Construction as published in the **Federal Register** of April 23, 1993 (58 FR 21787), and 29 CFR 1928. 1027 pertaining to the Cadmium Standard for Agriculture as published in the **Federal Register** of April 23, 1993 (58 FR 21787). These standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standard was promulgated after a public hearing on August 10, 1993. This standard was effective on September 13, 1993.

2. *Decision*—Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standard are identical to the Federal standards and accordingly are approved.

3. *Location of the Supplements for Inspection and Copying*—A copy of the standards supplements, along with the approved plan, may be inspected and copied at the following locations during normal business hours: Office of the Regional Administrator, 3535 Market Street, suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, room N–3700, Third Street and Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation*—Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standard is identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective February 25, 1994.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania, this 28th day of October 1993.

Richard Soltan,

Deputy Regional Administrator.

[FR Doc. 94–4229 Filed 2–24–94; 8:45 am]

BILLING CODE 4510–26–M

Maryland State Standards; Approval

1. *Background*—Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of subpart 0 to part 1952 containing the decision.

The Maryland State Plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of subpart 0 sets forth the State's schedule for the adoption of Federal standards. By letters dated January 3, 1994, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to:

(1) Revisions to 29 CFR 1910.1000, pertaining to the Air Contaminants Standard for General Industry, as published in the **Federal Register** of June 30, 1993 (58 FR 35340); (2) a correction to 29 CFR 1910.1000, pertaining to the Air Contaminants Standard for General Industry, as published in the **Federal Register** of July 27, 1993 (58 FR 40191); (3) a compilation of the text of all standards set forth at 29 CFR part 1926, Construction Industry Standards, as published in the **Federal Register** of June 30, 1993 (58 FR 35077); (4) amendments and a correction to 59 CFR 1926, Construction Industry Standards, as published in the **Federal Register** of July 30, 1993 (58 FR 35077); (4) amendments and a correction to 29 CFR 1926, Construction Industry Standards, as published in the **Federal Register** of July 28, 1993 (58 FR 40468); (5) amendments, corrections, additions and revisions to 29 CFR part 146, Permit-Required Confined Spaces for General Industry, as published in the **Federal Register** of June 29, 1993 (58 FR 34845); and (6) amendments, corrections, additions and revisions to 29 CFR part 1910, Standards for General Industry, and 29 CFR part 1926, Standards for Construction Industry, as published in the **Federal Register** of June 30, 1993 (58 FR 35308). These standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after a public hearing on October 15, 1993. These standards became effective on December 20, 1993.

2. *Decision*—Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

3. *Location of the Supplements for Inspection and Copying*+copy of the standards supplements, along with the approved plan, may be inspected and copied at the following locations during normal business hours: Office of the Regional Administrator, 3525 Market Street, suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, room N–3700, Third Street and Constitution Avenue NW., Washington, DC 20210.

4. *Public Participation*—Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standard is identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective February 25, 1994.

Authority: Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Philadelphia, Pennsylvania, this 14th day of January 1994.

Linda R. Anku,

Regional Administrator.

[FR Doc. 94–4228 Filed 2–24–94; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–013]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Acting Agency Clearance Officer. Comments on the items listed should be submitted to the Acting Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by March 28, 1994. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Ms. Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 358–1374.

Reports

Title: NASA Spacelink System User Survey.

OMB Number: 2700–New.

Type of Request: New.

Frequency of Report: One time only.

Type of Respondent: Non-profit institutions.

Number of Respondents: 400.

Responses per Respondent: 1.

Annual Responses: 400.

Hours per Response: .25.

Annual Burden Hours: 100.

Abstract-Need/Uses: Conduct a one-time only survey of 400 current NASA Spacelink users to help determine improvements that will make the system more valuable to educators. Survey is required to help satisfy agency continuous improvement goals.

Dated: February 16, 1994.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 94–4368 Filed 2–24–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for Evaluation of FY 95 Challenge Grant Applicants

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to oversee the preparation of independent assessment reports of approximately 200 applicants for a FY95 Challenge grant, for use in the grant decision-making process. The assessments will result from the analysis of application documents and through telephone interviews with key staff and board members of the applicants, and will address each applicant's ability to successfully meet the Challenge Grant requirements for the proposed activities. The artistic quality of the applicant organization or the proposed project will not be included in the analysis. The role of the recipient of this Cooperative Agreement will be to provide independent assessment reports; advise the Endowment, its panels, and other decision-making bodies as to the feasibility and potential impact of a Challenge Grant for the applicants; and attend all meetings where applications are reviewed to answer questions about the assessment reports. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–06 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 94–06 is scheduled for release approximately March 14, 1994 with proposals due April 14, 1994.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 94–4307 Filed 2–24–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas & Electric Co. Diablo Canyon Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–80 and DPR–82, issued to the Pacific Gas and Electric Company (the licensee), for operation of Diablo Canyon Power Plant, Unit Nos. 1 and 2, located in San Luis Obispo, California.

Environmental Assessment

Identificotion of Proposed Action

The proposed amendment would consist of a revision to Technical Specification 5.1.3, "Map Defining Unrestricted Areas and Site Boundary for Radioactive Gaseous and Liquid Effluents." The change would revise the site area map description of the restricted area to a new smaller restricted area. The change proposed by the licensee is consistent with the requirements of the revised 10 CFR part 20. These changes are in response to the licensee's application for amendments dated July 7, 1993.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impacts of the Proposed Action

The proposed revision, in regard to the new restricted area as referenced in the Technical Specifications (TS) will not increase the types or amounts of effluents that may be released offsite, nor increase individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed amendments to the TS, any alternative to the amendments will have either no significantly different environmental impact or will have greater environmental impact. The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts as a result of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement and Addendum related to the operation of Diablo Canyon Power Plant, Units 1 and 2, dated May 1973 and May 1976, respectively.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult order agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 7, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 17th day of February 1994.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4298 Filed 2–24–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published on January 21, 1994 (59 FR 3379). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the March 1994 ACRS and ACNW full Committee meetings can be obtained by contacting the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., (EST).

ACRS Subcommittee Meetings

ABB–CE Standard Plant Designs, March 8, 1994, Bethesda, MD. The Subcommittee will continue its review of the NRC staff Final Safety Evaluation Report (FSER), ABB–CE Standard Safety Analysis Report (SSAR), and Design Certification Material (Design Description/ITAAC) for the System 80+ design.

Advanced Boiling Water Reactors, March 9, 1994, Bethesda, MD. The Subcommittee will review any residual issues associated with the ABWR design and prepare a proposed ACRS report on the ABWR Final Design Approval for consideration by the full Committee.

Planning and Procedures, March 9, 1994, Bethesda, MD (2:15 p.m.–4:45 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Thermal Hydraulic Phenomena, March 15–16, 1994, Monroeville, PA. The Subcommittee will continue its review of the test programs being conducted in support of the AP600 passive plant design certification review. The focus of the discussions will be on the Core Make-up Tank (CMT) and Passive Containment Cooling System (PCCS) test programs. In addition, the Subcommittee members and consultants will attend, as observers, a March 14, 1994 meeting between the NRC staff and Westinghouse Electric Corporation being held to discuss the particulars of the CMT test program.

ABB–CE Standard Plant Designs, April 5–6, 1994, Bethesda, MD. The Subcommittee will continue its review of the NRC staff FSER, ABB–CE SSAR, and Design Certification Material (Design Description/ITAAC) for the System 80+ design.

Planning and Procedures, April 6, 1994, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that related solely to internal personnel rules and practices of ACRS, and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

ACRS Full Committee Meetings

407th ACRS Meeting, March 10–12, 1994, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *Periodic Meeting Between the ACRS and the NRC Commissioners*—Meet with the NRC Commissioners to discuss matters of mutual interest.

B. *ABWR Review Regarding the Final Design Approval*—Hear a briefing by and hold discussions with

representatives of the NRC staff regarding the Final Design Approval (FDA) of the ABWR.

C. *ABWR Review and Report Regarding the Final Design Approval (FDA)*—Discuss proposed ACRS report to the Commission regarding the FDA of the ABWR. Representatives of the NRC staff will participate, as appropriate. Representatives of the General Electric Nuclear Energy (GE) will participate, as appropriate.

D. *Advanced Light Water Reactor (ALWR) Policy Issue—Source Term*—Review and comment on a draft Commission Paper related to the source term to be used for ALWRs. Representatives of the NRC staff will participate.

E. *Multiple System Responses Program (MSRP)*—Review and comment on the status of resolution of issues identified by the MSRP. Representatives of the NRC staff will participate.

F. *Revision of the LLNL Probabilistic Seismic Hazard Methodology for the Eastern U.S.*—Hear briefing by and hold discussions with representatives of the NRC staff on the recent revisions of the LLNL probabilistic seismic hazard methodology for the Eastern United States. Representatives of LLNL and industry will participate, as appropriate.

G. *Turbine Generator Failure Event at Fermi 2*—Briefing by and discussions with representatives of the NRC staff regarding the AIT conducted following the December 25, 1993 turbine generator failure at Fermi 2.

H. *Loss of Offsite Power and Steam Generator Dryout Event at McGuire*—Briefing by and discussions with representatives of the NRC staff regarding the December 27, 1993 loss of offsite power and steam generator dryout event at McGuire.

*I. *Report of the Planning and Procedures Subcommittee*—Hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business. A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

J. *ACRS Subcommittee Activities*—Hear reports and hold discussions regarding the status of ACRS subcommittee activities, including a report from the Subcommittees on ABB-CE Standard Plant Designs.

K. *Future Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

L. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

408th ACRS Meeting, April 7–9, 1994, Bethesda, MD. Agenda to be announced.

409th ACRS Meeting, May 5–7, 1994, Bethesda, MD. Agenda to be announced.

ACNW Full Committee Meetings

62nd ACNW Meeting, March 23–24, 1994, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *Low-Level Waste (LLW) Performance Assessment Program*—Review the LLW Performance Assessment Program (Working Group meeting scheduled for March 22, 1994). A Draft Branch Technical Position on Performance Assessment for LLW Disposal Facilities will be the focus of the review. Representatives of the NRC staff will participate.

B. *NRC Staff Interactions with National Academy of Science Committee on the Technical Bases for Yucca Mountain*—Hear briefing by and hold discussions with representatives of the NMSS staff on their interaction with this National Academy of Sciences Committee. The philosophy governing the disposal of high-level waste will be discussed.

C. *Government Ownership for 10 CFR Part 61 Disposal Facilities*—Hear briefing by and hold discussions with representatives of the NRC staff on an advance notice of proposed rulemaking to Part 61 on Government Land Ownership. Issue centers on whether the original requirement for government land ownership in 10 CFR Part 61 should be continued.

D. *Low-Level Waste Research Plan*—Hear briefing by and hold discussions with representatives of the NRC staff on plans to revise NUREG–1380, LLW Research Program Plan.

E. *NRC Technical Program on High-Level Waste (HLW) Tectonics*—Review the NRC staff technical program on HLW tectonics. Participation by the NRC staff and representatives of the Center for Nuclear Waste Regulatory Analyses is expected.

F. *Natural Analogs*—Review the NRC staff technical program on natural analogs. Participation by the NRC staff and representatives of the Center for Nuclear Waste Regulatory Analyses is expected.

G. *NRC Staff Technical Position (STP) on Fault Avoidance*—Review the STP on Fault Avoidance. Public comments on the draft STP will be reviewed. The ACNW expects to issue comments on the final STP.

H. *Summary of Nuclear Waste Technical Review Board (NWTRB) Meeting on Seismic and Volcanic Hazards*—Hear a brief report from an ACNW member who attended this NWTRB meeting on Seismic and Volcanic Hazard Estimation at Yucca Mountain.

63rd ACNW Meeting, April 20–21, 1994, Bethesda, MD. Agenda to be announced.

64th ACNW Meeting, May 18–19, 1994, Bethesda, MD. Agenda to be announced.

ACNW Working Group Meeting

Low-Level Radioactive Waste Performance Assessment, March 22, 1994, Bethesda, MD. The Working Group will review the overall low-level waste performance assessment program, with emphasis on the status of the draft Branch Technical Position, and staff's performance assessment capability. Issues to be examined include ongoing and planned activities, milestones and schedules, results of ongoing test case analyses, and other NRC staff activities relating to LLW performance assessment.

NRC Staff Capabilities in Performance Assessment and Computer Modeling of High-Level Waste Disposal Facilities, May 17, 1994, Bethesda, MD. The Working Group will discuss progress in the NRC's Iterative Performance Assessment (PA) Program, the NRC staff's completion of an expert elicitation exercise, and progress made in the execution of the NRC's modular computer model. These discussions will be performed periodically, along with the review of NRC written reports to remain apprised of the degree of in-house and contractor-supported PA capability, the coordination and integration between data analyst and computer modelers, revisions to the High-Level Radioactive Waste Management PA Strategy Plan, and future plans for PA development.

Dated: February 18, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–4293 Filed 2–24–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–317 and 50–318]

Baltimore Gas & Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–53 and DPR–69 issued to Baltimore Gas and Electric Company (the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendments would allow the removal of an orifice plate in the containment vent/purge line to allow greater flow through the line. The restoration of full flow capability will result in less time required to vent the containment. A reanalysis of the maximum hypothetical accident, as currently described in the Update Final Safety Analysis Report, was performed to support the requested amendments. The results of the reanalysis indicate that the consequences of the accident previously analyzed would be increased. Although the consequences result in an increase in the fission product release, the total doses are well within the limits of 10 CFR part 100, "Factors to be considered when evaluating sites."

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

This proposed change does not involve an increase in the probability of an accident previously evaluated. The removal of the orifice plate will decrease the amount of time the containment vent/hydrogen purge line is open to accomplish containment venting. This decreases the probability of occurrence of a maximum hypothetical accident while venting. In addition, this proposed change would not affect any precursors to any of the accidents in the Updated Final Safety Analysis Report.

However, this proposed change does involve an increase in the consequences of an accident previously evaluated. In the worst case event, a maximum hypothetical accident, the exclusion area whole body dose and the low population zone thyroid and whole body doses increased above the previously approved doses. This increase is not significant. In fact, the offsite doses presented here are similar to those reported in the NRC's Safety Evaluation Report [Safety Evaluation of the Baltimore Gas and Electric Company's Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, dated August 28, 1972]. Other accident scenarios were evaluated to determine if this change would impact them as well. No other accident scenario is impacted by this change. Therefore, removal of the orifice plate in the containment vent/hydrogen purge line does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different type of accident from any accident previously evaluated; or

The proposed change affects a previously evaluated accident, but creates no new or different type of accident. The equipment required to mitigate the consequences of an accident would continue to be operable. We are not proposing to alter the function of any equipment or have it operate differently than it was designed to operate. In fact, we are restoring the containment vent/hydrogen purge line to full flow capability by removal of an orifice plate. Therefore, this change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The margin of safety defined by 10 CFR Part 100 has not been significantly reduced. There will be an increase in the exclusion area and low population zone doses, but the total dose is still significantly less than the guidelines given in 10 CFR Part 100. Additionally, the NRC has previously calculated offsite dose for Calvert Cliffs [Safety Evaluation of the Baltimore Gas and Electric Company's Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, dated August 28, 1992] using assumptions similar to those used for the analysis performed in support of this request. The NRC's results are similar to those obtained from our calculations. The increase in dose does not affect any conclusions stated in the NRC's SER. Therefore, the margin of safety has not been significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Buildings, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests of hearing and petitions for leave to intervene is discussed below.

By March 28, 1994, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the

Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petition in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra, Director, Project Directorate I–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for the amendments dated November 4, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 14th day of February.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4296 Filed 2–24–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–498 and 50–499]

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Partial Denial of Amendments to Facility Operating Licensees and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Houston Lighting & Power Company, et al. (the licensee), for amendments to Facility Operating License Nos. NPF–78 and NPF–80, issued to the licensee for operation of the South Texas Project, Units 1 and 2, located in Matagorda County, Texas. Notice of Consideration of Issuance of the amendments was published in the **Federal Register** on March 21, 1990 (55 FR 10535).

The purpose of the licensee's amendment request was to change the allowed outage times (AOTs) and/or surveillance test intervals (STIs) for several technical specifications (TS) as a result of the South Texas probabilistic safety assessment (PSA). The staff has concluded that the proposed change for the STI for TS 4.6.1.7 (containment ventilation) from 31 days to 92 days cannot be granted.

The licensee was notified of the Commission's denial of the proposed change by letter dated February 17, 1994.

By March 28, 1994, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this

proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC., 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC., by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555 and to Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street NW., Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated February 1, 1990, as supplemented by letters dated November 27, 1990, June 5, 1991, November 3, 1992, November 11, 1992, August 16, 1993, October 22, 1993, November 5, 1993 (two letters), and November 29, 1993, and (2) the Commission's letter to the licensee dated February 17, 1994.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Dated at Rockville, Maryland, this 17th day of February 1994.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4295 Filed 2–24–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–352]

Philadelphia Electric Company (Limerick Generating Station, Unit 1)

Exemption

I

Philadelphia Electric Company (the licensee), is the holder of Facility Operating License No. NPF–39, which authorizes operation of the Limerick Generating Station (LGS), Unit 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The LGS, Unit 1 facility consists of a boiling water reactor located in Chester and Montgomery Counties, Pennsylvania.

II

In its letter dated November 30, 1993, the licensee requested an exemption from the Commission's regulations. The subject exemption is from a requirement in appendix J to 10 CFR part 50 that a set of three Type A tests (Containment Integrated Leakage Rate Tests, or CILRTs) be performed, at approximately equal intervals, during each 10-year service period. The exemption applies to the first 10-year service period; subsequent service periods are not changed. In the same letter, the licensee applied for an amendment to Operating License No. NPF–39 to change certain provisions of the LGS Technical Specifications (TSs).

The type A test is defined in 10 CFR part 50, appendix J, section II.F, as "tests intended to measure the primary reactor containment overall integrated leakage rate (1) after the containment has been completed and is ready for operation, and (2) at periodic intervals thereafter." The 10-year service period begins with the inservice date. The first CILRT testing interval was 36 months, and the second was 39 months. The time interval between CILRTs should be about 40 months based on performing three such tests at approximately equal intervals during each 10-year service period.

The request for a one-time exemption would allow the third Type A CILRT within the first 10-year service period to be conducted during the sixth refueling outage. This requested exemption is a one-time schedular extension of the third interval to 65 months. It does not affect the second 10-year service period.

With respect to the subject exemption request, the NRC staff notes that the first and second CILRTs of the set of three tests for the first 10-year service period for LGS were conducted in August 1987 and November 1990. The third of the first set of three CILRTs will be scheduled for Refueling Outage 6, projected to start in January 1996, pending approval of the exemption request. The current third test period in the first 10-year service period will actually be exceeded by approximately 15 months.

Data from the first August 1989 and second November 1990 CILRT at LGS, Unit 1 indicates that most of the measured leakage is from the containment penetrations and not from the containment barrier. The "as-left" leakage rate was well below the 10 CFR part 50 Appendix J limit. Both Appendix J and the TS require that the leakage rate be less than 75% of L_a to allow for deterioration in leakage paths between tests. The allowable leakage rate, L_a, is 0.5 wt.%/day. Therefore, the established acceptable limit is <0.375 wt.%/day. The "as-left" leakage rates for the first two CILRTs were 0.178 and 0.334 wt.%/day, which is below the acceptance limit. The Type B and C test (Local Leakage Rate test or LLRT) program also provides assurance that containment integrity has been maintained. LLRTs demonstrate operability of components and penetrations by measuring penetration and valve leakage. Additionally, there have been no modifications made to the plant that could adversely affect the test results.

The licensee further notes that the performance of a fourth test in the first 10-year service period to meet the requirements of the TSs and Appendix J would result in additional radiation exposure to personnel. Omitting the test will result in additional dose savings by eliminating contamination and by reducing exposure from venting and draining and from setups and restorations of instrumentation required to perform the test. These factors and the costs associated with a fourth test for a 15-month difference in interval time are not offset by the benefits of the fourth test.

For the reasons set forth above, the NRC staff concludes that this deviation from the 10-year service period ending August 1994 is not significant in terms of complying with the safety or scheduling requirements of Section III.D.1.(a) of Appendix J. Accordingly, the staff finds that the additional test would not provide substantially different information and that the intent of Appendix J is met. Therefore, the subject exemption request meets the special circumstances of 10 CFR 50.12(a)(2)(ii), in that the fourth test is not necessary to achieve the underlying purpose of the rule.

On this basis, the NRC staff finds that the licensee has demonstrated that special circumstances are present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that extending the service period will not present an undue risk to the public health and safety; since the licensee has justified the leaktight integrity of the containment based on previous leakage test results, the staff concludes that a one-time extension of approximately 15 months beyond the maximum permitted third test interval within the first 10-year service period will not have a significant safety impact.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to a requirement of 10 CFR part 50, appendix J, Section III.D.1(a):

For the Limerick Generating Station, Unit 1, the current third test period within the first 10-year service period may be extended by approximately 15 months, so that the third periodic Type A test may be performed during the Sixth refueling outage scheduled for January, 1996.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (59 FR 5785).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 16 day of February 1994.

Gus C. Lainas,

Acting Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4297 Filed 2–24–94; 8:45 am]

BILLING CODE 7590–01–M

PANAMA CANAL COMMISSION

Office of the Inspector General

Privacy Act of 1974; Proposed Amendment to a System of Records and Two New Systems of Records; Correction

AGENCY: Office of Inspector General, PCC.

ACTION: Correction.

SUMMARY: In notice document 93–25522 beginning on page 53966 in the issue of Tuesday, October 19, 1993, make the following corrections:

On page 53967 in the third column under the head "Exemptions From Certain Provisions of the Act" delete the reference to subsection (i) in lines eight and sixteen. Accordingly, in lines eight and sixteen "(g); (h); and (i)" should read "(g); and (h)".

On page 53968 in the third column under the heading "Exemptions From Certain Provisions of the Act" delete the reference to subsection (i) in lines seven and fifteen. Accordingly, in lines seven and fifteen "(g); (h); and (i)" should read "(g); and (h)".

On page 53969 in the second column under the heading "Exemptions From Certain Provisions of the Act" delete the reference to subsection (i) in lines seven and fifteen. Accordingly, in lines seven and fifteen "(g); (h); and (i)" should read "(g); and (h)".

Dated: February 4, 1994.

Gilberto Guardia F.,

Administrator.

[FR Doc. 94–4216 Filed 2–24–94; 8:45 am]

BILLING CODE 3640–04–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33638; File No. SR–PSE–94–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Customer Hedge Exemption Procedures for Options on Broad-Based Indexes

February 17, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 15, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend its rule to codify its existing policy on customer hedge exemption procedures for options on broad-based indexes. The Exchange is not proposing to make any substantive changes to these procedures. The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On September 14, 1993, the Commission approved an Exchange proposal to add Commentary .02 to PSE Rule 7.6 allowing a customer hedge exemption from position and exercise limits for options on broad-based indexes.[2] The Subject commentary specified that such exemptions would be based upon Exchange procedures and criteria that would be made available to Exchange members in a regulatory bulletin.[3] The Exchange is now proposing to incorporate these procedures and criteria into Commentary .02 to Rule 7.6. The Exchange represents that the substance of these procedures and criteria have not been changed since they were approved by the Commission. The Exchange is, however, proposing to make certain housekeeping changes involving renumbering and a cross-reference in Rule 7.6, Commentary .02.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities and to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Completion

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[1] The Exchange previously submitted this proposal on February 8, 1994, however, in response to Commission concerns, the PSE delayed effectiveness of the rule change pending amendment and resubmission to the Commission in its current form.

[2] See Securities Exchange Act Release No. 32900 (September 14, 1993), 58 FR 49077 (September 21, 1993) (order granting partial approval to File No. SR–PSE–92–38).

[3] The procedures and criteria that the Commission approved were the same as those set forth in Interpretation .01 to Rule 24.4 of the Chicago Board Options Exchange, Inc. *Id*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e)(1) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–94–04 and should be submitted by March 18, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4339 Filed 2–24–94; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33639; File No. SR–BSE–93–04]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Procedures for the Handling of Market-On-Close Orders on Expiration Fridays and Quarterly Index Expiration Days

February 17, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 9, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On May 3, 1993, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change to clarify the scope of this filing, to agree to its framing as a pilot program and to request accelerated approval thereof.[1] On September 17, 1993, the BSE submitted Amendment No. 2 to the proposed rule change in order to conform its proposal with recent amendments to comparable procedures on another exchange.[2] On February 3, 1994, the BSE submitted to the Commission Amendment No. 3 to the proposed rule change regarding the dissemination of order imbalances.[3] On February 10, 1994, the BSE submitted Amendment No. 4 to the proposed rule change in order to define certain terms used in the filing and to correct certain typographical errors.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to establish a set of procedures for the handling of Market-on-Close ("MOC") orders[5] on Expiration Fridays[6] and Quarterly Index Expiration days[7] which mirror the procedures in place on the New York Stock Exchange ("NYSE")[8] in order to ensure equal treatment of orders in both markets.[9]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item II below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt certain procedures to

[1] See letter from Karen A. Aluise, Staff Attorney, BSE, to Diana Luke-Hopson, Branch Chief, Division of Market Regulation, SEC, dated April 29, 1993 ("Amendment No. 1").

[2] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luke-Hopson, Branch Chief, Division of Market Regulation, SEC, dated September 15, 1993 ("Amendment No. 2").

[3] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Sandra Sciole, Acting Branch Chief, Division of Market Regulation, SEC, dated January 31, 1994 ("Amendment No. 3").

[4] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Sandra Sciole, Acting Branch Chief, Division of Market Regulation, SEC, dated February 3, 1993 ("Amendment No. 4").

[5] The BSE defines an "at the close order" as a market order which is to be executed at or as near to the close as practicable. See Ch. I, Sec. 3 of the BSE Rules.

[6] The term "Expiration Friday" refers to the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently.

[7] The term "Quarterly Index Expiration day" refers to the trading day, currently the last trading day of each calendar quarter, on which Quarterly Index Expiration ("QIX") options expire. Amendment No. 1, see *supra* note 1, expanded the scope of this proposal to include Quarterly Index Expiration days as well as Expiration Fridays.

[8] The Commission recently approved modifications to the NYSE's auxiliary closing procedures for Expiration Fridays and Quarterly Index Expiration days (collectively, "expiration days"), and extended the effectiveness of the NYSE pilot program until October 31, 1994. See Securities Exchange Act Release No. 32868 (September 10, 1993), 58 FR 48687 (September 17,1993) (File No. SR–NYSE–93–33) ("1993 Auxiliary Closing Procedures Approval Order"). As modified, the NYSE procedures establish, for all stocks, a 3:40 p.m. deadline for (1) the entry of MOC orders related to a strategy including any expiring stock index options, stock index futures or options on stock index futures and (2) the cancellation or reduction of any MOC order. In addition, for the pilot stocks (as defined below, see *infra* note 10), the NYSE specialist must, as soon as practicable after 3:40 p.m. disseminate any MOC order imbalance of 50,000 shares or more; thereafter, MOC orders in the pilot stocks may be entered only to offset a published imbalance.

[9] The BSA proposes to implement its MOC order procedures on a pilot basis expiring October 31, 1994. See Amendment No. 1, *supra*, note 1. The BSE also requests accelerated approval to enable the pilot program to take effect on the next expiration day. See Amendment No. 3, *supra*, note 3.

mirror those of the primary market for the handling of MOC orders on Expiration Fridays and Quarterly Index Expiration days so that the BSE does not become a haven for MOC orders that are prohibited on the NYSE. In this way, all orders sent to the Exchange will receive equal treatment to orders sent to the NYSE. The proposed procedures include (a) prohibiting the cancellation or reduction of any MOC order in any NYSE stock after 3:40 p.m. on Expiration Fridays and Quarterly Index Expiration days, (b) providing a 3:40 p.m. deadline for the entry of MOC orders, in all NYSE stocks, related to a strategy involving any stock index future, stock index option or option on stock index futures in expiring contracts, (c) publishing imbalances of 50,000 shares or more in the pilot stocks, and (d) limiting the entry of MOC orders after 3:40 p.m. in the pilot stocks to offsetting published imbalances. With respect to item (a) above, the Exchange will permit cancellations of MOC orders after 3:40 p.m. in those instances where a legitimate error has been made. The term "pilot stocks" refers to the list of stocks designated by the NYSE as pilot stocks for purposes of its auxiliary closing procedures.[10]

2. Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The BSE believes that, if investors, whose orders are banned on the NYSE because of current market conditions, are able to reroute those orders to the Exchange for execution on the BSE without regard to current market conditions, there could be a negative impact on the overall market as a result of the execution of those orders.

[10] As designated by the NYSE, the Expiration Friday pilot stocks consist of the 50 most highly capitalized Standard & Poors ("S&P") 500 stocks and any component stocks of the Major Market Index ("MMI") not included therein. See 1993 Auxiliary Closing Procedures Approval Order, *supra*, note 8. The Quarterly Index Expiration day pilot stocks consist of the 50 most highly capitalized S&P 500 stocks, any component stocks of the MMI not included therein and the 10 highest weighted S&P Midcap 400 stocks. *Id.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–93–04 and should be submitted by March 18, 1994.

IV. Commission's Findings and Order Granting Temporary Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b). In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

In recent years, the self-regulatory organizations, with the support of the Commission, have instituted certain safeguards to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving expiring index derivative products. For instance, on expiration days, the NYSE utilizes auxiliary closing procedures [11] designed to help the specialist attract any contra-side interest necessary to alleviate MOC order imbalances and dampen their effect on the closing price. Based on the NYSE's experience, [12] the Commission believes that these procedures work relatively well and may result in more orderly markets at the close on expiration days.

In today's highly competitive market environment, however, it is possible that a regional exchange, which trades NYSE-listed stocks but does not have comparable closing procedures, could be utilized by market participants to enter MOC orders prohibited on the NYSE. Although the Commission has no reason to believe that the BSE market has become a significant alternative market to enter otherwise prohibited MOC orders, the Commission agrees with the BSE that, if this possibility were realized, it could have a negative impact on the fairness and orderliness of the national market system. [13] Accordingly, the Commission initially believes that it is reasonable for the BSE to adopt procedures for the handling of MOC orders that mirror the NYSE's, thereby ensuring the equal treatment of orders in both markets and, in the event of unusual market conditions, offering the BSE the same benefits in terms of potentially reducing volatility.

Consistent with its rationale for approving the identical NYSE procedures, [14] the Commission preliminarily has concluded that this proposal should allow the BSE to obtain an accurate view of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof. In reaching this conclusion, the Commission noted that the proposed rule change will establish a simultaneous 3:40 p.m. deadline for the entry of expiration-related MOC orders and for the cancellation or reduction of any MOC order. Substantial MOC order imbalances in the pilot stocks will be disseminated promptly thereafter. [15] Because the MOC orders included in those imbalances will be irrevocable and because of the restrictions on further MOC order entry, the Commission is satisfied that BSE imbalance publications should reflect actual investor interest.

In addition, the Commission finds that, in the event of unusual market conditions, the BSE should have sufficient time to attract contra-side interest to help alleviate imbalances created by the unwinding of index derivative related positions. As noted above, the proposed rule change will require both the early submission of expiration-related MOC orders and, for the pilot stocks, prompt dissemination of substantial MOC order imbalances. While the Commission recognizes that 3:40 p.m. is relatively near the close, the Commission tentatively believes that deadline strikes a reasonable balance between the need to provide the investing public with timely and reliable notice of expiration-related order flow and the need to avoid unduly infringing upon legitimate trading strategies.

The Commission is approving the proposed rule change on a pilot basis until October 31, 1994. [16] As long as some index derivative products continue to expire based on the closing stock prices on expiration days, the Commission agrees with those self-regulatory organizations which argue that such procedures are necessary to provide a mechanism to handle the potentially large stock imbalances engendered by the unwinding of index derivative related positions. During this pilot program, the Commission expects the BSE to monitor the effectiveness of its MOC order procedures.

The Commission therefore requests that the BSE submit a report to the Commission, by August 31, 1994, describing its experience with the pilot program. At a minimum, this report should contain, for each Expiration Friday and Quarterly Index Expiration day, the following data: (1) For all pilot stocks, the size of the MOC order imbalance on the BSE at 3:40 p.m. and at 4:00 p.m.; (2) for all pilot stocks, the price (and time) of the last regular way trade on the BSE, the price of the last consolidated trade and the closing price; and (3) for each pilot stock which had a MOC order imbalance of 50,000 shares or more at 3:40 p.m., an appropriate measure of volatility at the close for the BSE (for example, the change in price of the closing transaction, measured as a percentage, from the last trade and/or the change in the specialist's position) and a description of how the pilot procedures influenced market conditions. Any requests to modify this pilot program, to extend its effectiveness or to seek permanent approval of the pilot procedures also should be submitted to the Commission, by August 31, 1994, as a proposed rule change pursuant to section 19(b) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to take effect on the next expiration day. In addition, the procedures the Exchange proposes to use are identical to NYSE procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission. [17]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act [18] that the proposed rule change (SR–BSE–93–04) is hereby approved on a pilot basis until October 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4338 Filed 2–24–94; 8:45 am]

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[11] See *supra*, note 8.

[12] The NYSE has submitted to the Commission several monitoring reports describing its experience with the auxiliary closing procedures. For further discussion of the NYSE's results, *see* 1993 Auxiliary Closing Procedures Approval Order, *supra*, note 8.

[13] For example, if MOC orders prohibited on the NYSE were entered instead on the BSE, unusually large MOC order imbalances on the regional exchange could contribute to overall market voletility.

[14] See 1993 Auxiliary Closing Procedures Approval Order, *supra* note 8.

[15] The BSE has indicated that it will disseminate imbalances to its floor, its member firms and the investing public in a manner which is substantially similar to that utilized by the NYSE. Telephone conversation between Karen A. Aluise, Assistant Vice President, BSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on February 10, 1994.

[16] Prior to the initiation of this pilot, the Commission requests that the BSE submit to the Commission an Information Memorandum substantially similar to the NYSE's.

[17] No comments were received in connection with the most recent proposed rule change which modified and extended the NYSE procedures. See 1993 Auxiliary Closing Procedures Approval Order, *supra*, note 8.

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–33637; File No. SR–CHX–94–4]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc., Regarding the Re-extension of the Waiver of Certain Exchange Transaction Fees for Transactions in Certain Tape B Eligible Issues

February 17, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 2, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to re-extend the waiver of certain transaction fees, and not re-extend the waiver of certain other transaction fees, as set out in Section (c) (Transaction Fee Schedule), of its Membership Dues and Fees for transactions in Tape B eligible issues.[2] The Exchange proposes to extend the waiver of certain transaction fees for Tape B eligible issues executed through the Midwest Automated Execution System ("MAX"), but not extend the waiver for otherwise eligible issues not executed through MAX. The Exchange had waived these fees through December 31, 1993, on both MAX and non-MAX executed trades [3] and now

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Consolidated Tape, operated by the Consolidated Tape Association ("CTA"), compiles current last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. The CTA is comprised of the New York, American, Boston, Cincinnati, Chicago, Pacific, and Philadelphia Stock Exchanges, as well as the Chicago Board Options Exchange and the National Association of Securities Dealers, Inc. Transactions in American Stock Exchange listed stocks and qualifying regional listed stocks are reported on CTA Tape B. Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730 (January 7, 1985).

[3] See Securities Exchange Act Release No. 31636 (December 22, 1992), 57 FR 62406 (December 30, 1992) (approving File No. SR–MSE–92–15). Previously, the Exchange waived these fees for the time period of February 7, 1991 through December 31, 1991 in Securities Exchange Act Release No. 28916 (February 25, 1991), 56 FR 9028 (March 4, 1991) (approving File No. SR–MSE–91–7). The

Continued

proposes to extend the waiver on MAX executed trades through December 31, 1994.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section (A), (B) and (c) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to continue the Exchange's efforts to attract additional order flow in Tape B eligible securities in order to enhance the Exchange's competitive position in these issues. Limiting the waiver of fees to MAX trades recognizes the economies of scale and cost savings achieved through electronic order routing versus manually processed trades.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and the persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–4 and should be submitted by March 18, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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Exchange also waived these fees for the time period of August 31 through December 31, 1990. See Securities Exchange Act Release No. 28402 (August 31, 1990), 55 FR 37389 (September 11, 1990) (approving File No. SR–MSE–90–14). The Commission did not receive any comments in connection with these filings.

[Release No. 34–33636; File No. SR–CBOE–93–59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Narrow-Based Index Options Listing Standards

February 17, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to establish generic listing standards for options on narrow-based (sector) indexes and to adopt a streamlined procedure for introducing trading in options that satisfy these listing standards. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enable the CBOE to list classes of index options on narrow-based (sector) stock indices that satisfy specified listing standards pursuant to a filing submitted to the Commission for effectiveness upon filing under section 19(b)(3)(A) of the Act. The proposed rule change includes both the listing standards that a narrow-based stock index must meet to qualify for such expedited effectiveness, as well as the procedures and conditions that will apply to such a filing. These listing standards, procedures and conditions were developed during the course of discussions among the Commission staff and representatives of the CBOE and other options exchanges.

[1] The CBOE originally submitted a filing (SR–CBOE–92–39) covering the same subject matter of the present filing on December 14, 1992. The CBOE has advised the Commission staff that it intends to withdraw SR–CBOE–92–39 upon Commission approval of the present filing. See letter from Michael L. Meyer, Schiff Hardin & Waite, to Michael A. Walinskas, Options Branch, Division of Market Regulation, SEC, dated February 11, 1994.

The initial listing standards that must be met to qualify a narrow-based index option for filing under section 19(b)(3)(A) include that the options must be designated for A.M.-settlement, that the index must be capitalization-weighted, price-weighted, of equal-dollar weighted, and consist of ten or more component securities, and that the component securities must meet stated minimum market capitalization and trading volume criteria. In addition, the proposed rule includes "weight" limits for individual components securities and for the five highest-weighted component securities in the subject index, and it requires that a high percentage of the component securities in the index must meet the issue-specific listing criteria set forth in CBOE Rule 5.3. Further, each component security must be a "reported security" under Rule 11Aa3–1 under the Act, and the non-U.S. component securities in a subject index that are not subject to comprehensive surveillance agreements may not exceed 20 percent of the index's weight. Finally, the current index value must be reported at least once every fifteen seconds during trading hours, any equal dollar-weighted index must be rebalanced at least once each calendar quarter, and any underlying index that is maintained by a broker-dealer must be subject to suitable "Chinese Wall" arrangements.

The proposed rule change also contains maintenance listing standards. These include most of the initial listing standards, somewhat reduced minimum trading volume criteria, and a percentage limitation respecting changes in the number of component securities in an index subsequent to initial listing. These maintenance standards would apply to each class of narrow-based index options listed pursuant to a section 19(b)(3)(A) filing, unless and until the class of option is subsequently approved pursuant to a filing made under section 19(b)(2).

The proposed rule change amends CBOE Rule 24.2, which provides that each new underlying index must be approved by the Commission. Practice under this rule to date has dictated use of filing and approval procedures pursuant to a subparagraph (2) of subsection 19(b) of the Act. Although that process would remain available to the CBOE under this proposed rule change, this rule change is designed to produce more expeditious trading of options on new indices that meet the listing standards.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–59 and should be submitted by March 18, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4337 Filed 2–24–94; 8:45 am]

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[Release No. 34–33634; File No. SR–Phlx–93–07]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to a Proposed Rule Change Relating to an Increase in Position and Exercise Limits for Options on the National Over-The Counter Index

February 17, 1994.

On March 2, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposal (1) to increase the position limits[3] and exercise limits[4] for individual equity options, narrow-based options, and options on the National Over-the-Counter Index ("XOC Index" or "Index"), and (2) to amend Commentaries .03 and .04 to Rule 1001 with respect to the procedures applicable to specialists' requests for position limit exemptions ("specialists' exemptions"). Notice of the proposed rule change appeared in the **Federal Register** on May 21, 1993.[5] No comments were received on the proposed rule change. On December 3, 1993, the Commission granted partial approval of the proposed rule change. Specifically, the Commission approved the Exchange's proposal to increase the three-tiered position and exercise limits: (1) For individual equity options to 4,500, 7,500, and 10,500 contracts depending on certain criteria related to the trading volume of the underlying stock or a combination of both the trading volume and the number of

[2] 17 CF 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1989).

[3] Position limits impose a ceiling on the number of options contracts relating to an underlying instrument which an investor, or group of investors acting in concert, may own or control.

[4] Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than a specified number of option contracts on a particular underlying security within five consecutive business days.

[5] See Securities Exchange Act Release No. 32309 (May 14, 1993), 58 FR 29653 (May 21, 1993).

shares outstanding of the underlying stock; and (2) for narrow-based stock index options to 5,500, 7,500, and 10,500 contracts depending on the concentration of the stocks included in the index.[6] In that approval order, the Commission deferred a decision on increasing position and exercise limits for the XOC Index pending further review.[7] On February 8, 1994, the Exchange filed Amendment No. 2 to the proposed rule change requesting that position and exercise limits for the XOC Index be increased to 17,000 contracts instead of 15,000 contracts as originally proposed.[8] This order approves the Exchange's proposal, as amended.

On May 17, 1985, the Commission approved an Exchange proposal to list and trade options on the XOC Index.[9] As subsequently amended, the position limits and exercise limits for options on the Index are currently set at 10,000 contracts on the same side of the market.[10]

The proposal would increase the position and exercise limits available on the Index to 17,000 contracts on the same side of the market.[11] These proposed position limits are similar in terms of aggregate dollar value with those that the Commission recently approved for options on the broad-based NASDAQ 100 Index, which are listed for trading by the Chicago Board Options Exchange, Inc.[12]

The Exchange believes that the characteristics of the XOC Index and the NASDAQ 100 Index are sufficiently similar to justify comparable position and exercise limits for both indexes. Both indexes are capitalization weighted, have a correlation rate of 98.72% (taken on an annual basis for 1993), and are primarily comprised of highly capitalized common stocks traded in the U.S. over-the-counter market.

The proposed amendments to Commentaries .03 and .04 to Rule 1001 would (1) transfer language from Commentary .03 dealing with specialists' exemption to Commentary .04 which pertains specifically to specialists, and (2) replace the requirement that specialists obtain prior approval from the Exchange's Committee on Options for position limit exemption with a requirement that specialists obtain approval from two floor officials for such an exemption. The Exchange believes these amendments are necessary in order to (1) eliminate possible confusion by placing together Exchange position limit rules pertaining to specialists, and (2) ensure that Phlx specialists are not at a competitive disadvantage against specialists at other options exchanges. Specifically, the Phlx represents that specialists at the American Stock Exchange, Inc. ("Amex") are able to obtain position limits exemptions with the approval of a senior floor official.[13] The Phlx represents that having to obtain approval from the Committee on Options for specialists' exemptions imposes a significant burden on specialists because not all of the Committee members are present on the Exchange floor during the trading day when the need for an exemption arises.[14] As a result, there can be significant delays before a specialist exemption can be obtained which, the Exchange believes, could result in lost business.[15] The Phlx believes the proposed amendments will eliminate these delays by allowing two floor officials to grant a specialist exemption on-the-spot when necessary.The Exchange also represents that the proposed procedure is identical to the procedure already in place on the Exchange with respect to position limit exemption requests by members and member organizations which has not resulted in any abuses.[16]

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5),[17] in that it should help remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade and protect investors and the public interest.

In analyzing and reviewing specific position and exercise limits proposed by the options exchanges, the Commission has attempted to balance two competing concerns. First, limits must be sufficiently low to prevent investors from disrupting the underlying cash market. Second, limits must not be established at levels that are so low as to unnecessarily discourage participation in the options markets by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain fair and orderly markets.

The Commission believes that the proposed position limit of 17,000 contracts on the same side of the market could potentially increase the depth and liquidity of the XOC market without significantly increasing the concerns regarding intermarket manipulations or disruptions of the markets for the options or the underlying securities. As previously noted, markets that exhibit active and deep trading, as well as broad public ownership, are more difficult to manipulate or disrupt than less active markets with smaller public floats.[18] In this regard, the Commission notes that the Index is a broad-based index consisting of 100 domestic stocks from approximately thirty economic sectors. The Exchange's maintenance requirements ensure that the Index will not contain a large number of thinly capitalized, low-priced securities with small public floats and low trading volume.[19] Accordingly, given the size and breadth of the Index, the Commission does not believe that increasing the position limits for the Index as proposed herein will substantially increase the Index's susceptibility to manipulation or increase the potential for disruption in the markets for the underlying securities. In addition, the Exchange's surveillance program will continue to be applicable and should detect and deter any trading abuses arising from the increased XOC Index position and exercise limits. Finally, the Commission notes that the proposed limits are similar to those approved by the Commission in terms of aggregate dollar value for options on the NASDAQ 100 traded on the CBOE,[20] which is comparable in composition to the XOC Index.[21]

Amendments to Commentaries to Rule 1001

The Commission believes that the procedures proposed with respect to specialists' exemptions are adequate to minimize any potential for abuse. Specifically, a specialist exemption may not be granted retroactively and an exemption usually will be granted only until the nearest expiration. Additionally, the procedures proposed for obtaining a specialist exemption are identical to the procedures currently used by the Exchange for granting position limit exemptions to members and member organizations, which the Exchange represents have not resulted in any abuses.[22] Finally, the Commission finds that the proposed amendments to Commentaries .03 and .04 to Rule 1001 would conform the Phlx rules with respect to specialists' exemptions to those previously approved by the Commission for other options exchanges.[23]

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Amendment No. 2 provides that the position and exercise limits for options on the XOC Index will be 17,000 contracts instead of 15,000 contracts as originally proposed. The proposed position limits are comparable to those that the Commission recently approved for options on the NASDAQ 100 Index.[24] In addition, the Commission received no comments on the Exchange's original proposal to increase the position limits on the XOC Index to 15,000 contracts. Accordingly, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment No. 2 to the Phlx's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File Number SR–Phlx–93–07 and should be submitted by March 18, 1994.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[25] that the portions of the proposed rule change (File No. SR–Phlx–93–07) proposing to increase the position and exercise limits for options on the National Over-the-Counter Index from 10,000 contracts to 17,000 contracts and to amend the procedures for specialists to obtain position limit exemptions, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 94–4253 Filed 2–24–94; 8:45 am]

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[6] See Securities Exchange Act Release No. 33288 (December 3, 1993), 58 FR 65221 (December 13, 1993).

[7] *Id.* at note 7. In addition, the Commission deferred consideration of the Phlx's proposed amendments to Commentaries .03 and .04 to rule 1000.

[8] See Letter from William Uchimoto, General Counsel, Phlx, to Sharon Lawson, Assistant Director, Office of Derivatives Regulation, Division of Market Regulation, Commission, dated February 8, 1994 ("Amendment No. 2").

[9] See Securities Exchange Act Release No. 22044 (May 17, 1985), 50 FR 21532 (May 24, 1985).

[10] See Securities Exchange Act Release No. 25644 (May 3, 1988), 53 FR 16829 (May 11, 1988). See also Phlx Rule 1001A.

[11] See Amendment No. 2, *supra* note 8.

[12] See Securities Exchange Act Release No. 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994) (order approving the listing and trading of options on the NASDAQ 100 Index). Specifically, as of February 8, 1994, the maximum position limit of 15,000 contracts for the NASDAQ 100 corresponded to an aggregate dollar value of $1.0037 billion, while the maximum proposed position limit for the XOC Index corresponded to an aggregate dollar value of $1.0006 billion.

[13] See Amex Rule 904, Commentary .05.

[14] Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, Phlx, and Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, Commission, on February 10, 1994.

[15] *Id.*

[16] Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, Phlx, and Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, Commission, on February 10, 1994. See also, Phlx Rule, 1001, Commentary .03.

[17] 15 U.S.C. 78f(b)(5) (1988).

[18] See, e.g., Securities Exchange Act Release No. 31330 (October 16, 1992), 57 FR 48408 (October 23, 1992) ("Exchange Act Release No. 31330").

[19] See Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985).

[20] See *supra* note 12.

[21] As of February 14, 1994, the XOC Index and the NASDAQ 100 Index contained 66 of the same component stocks.

[22] See *supra* note 16.

[23] See *supra*, note 13.

[24] The Commission notes that no comments were received by the Commission with respect to the position limits which were approved for options on the NASDAQ 100 Index.

[25] 15 U.S.C. 78s(b)(2) (1988).

[26] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20080; 811–5799]

College Prepayment Fund, Inc.; Notice of Application

February 17, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: College Prepayment Fund, Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application was filed on October 21, 1992 and an amendment was filed on February 7, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 14, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o The Corporation Trust Incorporated, 32 South Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 272–3030, or Barry D. Miller, Senior Special Counsel, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

APPLICANT'S REPRESENTATIONS:

1. Applicant, a Maryland corporation, is an open-end, diversified, management investment company. On April 14, 1989, applicant registered under the Act and filed a registration statement pursuant to section 8(a) under the Act. On that same date, applicant registered an unlimited number of shares under the Securities Act of 1933. The registration statement was declared effective on October 3, 1989, and applicant's initial public offering of its securities commenced thereafter.

2. Eleven persons, constituting 14 shareholders of record, acquired shares of applicant prior to the effective date of applicant's registration statement for an aggregate purchase price of $104,500 ("Initial Shareholders"). Two of the Initial Shareholders, who were officers of The National TMO, Inc., applicant's Administrator (the "Administrator"), were involved in promoting applicant and were elected as officers of applicant, and four of the Initial Shareholders were relatives of the promoters of the applicant.

3. The Initial Shareholders signed purchase agreements with applicant representing to applicant that the shares were being acquired for investment

purposes and not with a view to distribution. The agreements also provided that any redemption of the shares prior to the fifth anniversary of the date applicant began its investment activities would result in a required payment to the applicant by the Initial Shareholders of a *pro rata* portion of any unamortized organizational costs.

4. On February 3, 1992, the board of directors determined that the liquidation and dissolution of applicant was advisable, because applicant was not able to obtain sufficient investors to become a viable entity. It also directed that the proposed dissolution be submitted to stockholders for approval at a special meeting to be held on or before March 30, 1992.

5. On February 3, 1992, the board of directors considered the different circumstances pertaining to the shareholders who purchased during the public offering ("Prospectus Shareholders"), as compared with the Initial Shareholders. The Prospectus Shareholders had acquired their shares during applicant's abbreviated public offering, did not contribute to the initial organizational capital of the applicant, and had not executed agreements requiring the reimbursement of organizational expenses in the event of redemption within five years. The board of directors knew that the net asset value per share of the outstanding shares of applicant, including the shares held by the Initial Shareholders and the shares held by Prospectus Shareholders, was less than cost (cost was approximately $10 per share for all shareholders). On March 4, 1992, the board of directors determined that the most equitable course of action was that the Prospectus Shareholders should be invited to redeem their shares at cost, and it is established a reserve in the amount of $25,000 for liquidation expenses.

6. A March 6, 1992 letter inviting such a redemption was sent to all shareholders of the applicant. Each of the Prospectus Shareholders executed and returned the form of redemption request enclosed with the March 6 letter. On or about March 20, 1992, the Prospectus Shareholders, who owned 8,154.067 shares, received an aggregate of approximately $81,032 in redemption proceeds. The net asset value par share was $7.36 as of December 31, 1991, and is not believed to have changed materially between that date and March 20, 1992. the Prospectus Shareholders would have received an aggregate of $60,013.93 had they been paid such net asset value per share, $21,018.07 less than they were paid.

7. On March 20, 1992, a Notice of Special Meeting of Shareholders was mailed to the Initial Shareholders, who were the only shareholders entitled to vote because the Prospectus Shareholders had redeemed their shares.

8. At a special meeting on March 30, 1992, by a vote of 8,158.254 shares in favor and none against, applicant's shareholders approved the voluntary dissolution of applicant and authorized the board of directors to take related action.

9. On May 22, 1992, the board of directors adopted a Plan of Liquidation covering the disbursement of approximately $79,971 to pay expenses and resolve claims of creditors; reaffirmed the $25,000 reserve for liquidation to be applied to the expenses of liquidation and dissolution; directed that the balance of assets of applicant be paid to the Initial Shareholders upon the consummation of the dissolution of applicant' and approved Articles of Voluntary Dissolution and authorized that they be filed with the State Department of Assessments and Taxation of Maryland.

10. The organizational costs of applicant ($276,049) exceeded the aggregate cost of the shares acquired by the Initial Shareholders. the Administrator advanced $219,226 for the organizational costs, which applicant did not repay to the Administrator. Accordingly, the Administrator, which was the principal organizer of applicant, bore the amount of the organizational costs it had advanced. As a result of the decision of the board of directors to liquidate and dissolve the applicant, the organizational costs were written off on the books of applicant as an expense. Applicant bore the organizational costs not advanced by the Administrator, $56,823.

11. As of the date of the application, applicant retained cash in the amount of $4,044.06, which will not be invested and will be applied to any future filing fees and other costs of dissolution. Any remaining assets will be paid *pro rata* to the Initial Shareholders.

12. At the time of filing the amended application, applicant had no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

13. Applicant plans to file Articles of Voluntary Dissolution with the State of Maryland promptly after the issuance of an order by the SEC that applicant has ceased to be an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4335 Filed 2–24–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20081; 812–8220]

The PNC Fund, et al.; Notice of Application

February 17, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The PNC Fund (the "Fund"), PNC Institutional Management Corporation ("PIMC"), and Provident Distributors, Inc. ("PDI").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order exempting them from the provisions of sections 18(f), 18(g), and 18(i) to the extent necessary to permit each of the Fund's existing and future investment portfolios to issue up to three classes of shares.

FILING DATES: The application was filed on December 16, 1992, and amendments were filed on April 6, 1993, June 4, 1993, December 3, 1993, and February 14, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 14, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: The Fund and PIMC, Bellevue Corporate Center, 103 Bellevue Parkway, Wilmington, Delaware 19809; PDI, 259 Radnor-Chester Road, suite 120, Radnor, Pennsylvania 19087.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Assistant Director, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a Massachusetts business trust registered under the Act as an open-end management investment company. The Fund currently is authorized to offer shares in twenty-one separate investment portfolios, but may create new portfolios in the future. Six of the Fund's existing portfolios are money market portfolios that declare dividends daily and operate in accordance with rule 2a–7 under the Act.

2. PIMC serves as the Fund's investment adviser. PDI serves as the Fund's distributor.

3. In 1991, the SEC issued an order (the "Existing Order")[1] permitting the Fund's money market portfolios to offer two classes of shares ("Investor Shares"and "Service Shares"). In 1992, the SEC issued an order (the "Distributor's Order")[2] permitting investment companies, including the Fund, for which Funds Distributor, Inc. ("FDI") acts as principal underwriter to offer three classes of shares (the third class being the "Institutional Shares") in each of its investment portfolios. The Fund's board approved a three-class distribution structure on June 22, 1992, based on the Distributor's Order. Effective January 17, 1993, the Fund replaced FDI as its distributor, and as a consequence thereof, could no longer reply on the Distributor's Order. The Fund has received a letter from the Division of Investment Management dated April 2, 1993, stating that it would not recommend that the SEC take any enforcement action against the Fund if, pending final SEC action on the application or one year from the date of the letter, whichever is sooner, any portfolio of the Fund issued three classes of shares in reliance on, and subject to the terms and conditions of, the Distributor's Order.

4. Applicants request a conditional order to permit each portfolio of the Fund to offer up the three classes of shares. The order would supersede the Existing Order and the Distributor's Order, as such orders relate to the Fund.

5. Institutional Shares currently are sold and redeemed at net asset value without a sales or redemption charge imposed by the Fund. Institutional Shares do not bear rule 12b–1 or shareholder servicing expenses. Service Shares also currently are sold and redeemed at net asset value without a sales or redemption charge, but are charged fees for shareholder services, in reliance on the no-action letter and the Existing Order. Investor Shares of the non-money market portfolios are sold with a front-end sales load. In addition, Investor Shares of all portfolios currently are being charged rule 12b–1 fees, in reliance on the no-action letter and the Existing Order. Transfer agency expenses have been treated as a general expense of a particular portfolio.

6. Under the proposed order, Investor Shares will be sold to investors generally and be subject to a rule 12b–1 plan with fees currently at an annual rate of up to .55 percent of the average net asset value of the outstanding shares in the class.

7. Service Shares will be sold to customers of banks and other financial institutions, which will provide administrative support services under a shareholder services plan to customers who beneficially own the Service Shares. The shareholder services plan will not provide for payments for activities intended to result in the sale of Service Shares. The shareholder services plan provides for a service fee, as defined in the Rules of Fair Practice of the National Association of Securities Dealers, Inc. (the "NASD"), and a non-service fee. Each fee currently is at an annual rate of up to .15 percent of the average daily net asset value of the class. The non-service fee is not a service fee as that term is used in the NASD's Rules of Fair Practice.

8. Institutional Shares will be sold primarily to financial institutions for their own account or in their capacity as fiduciaries for certain accounts, and will not be subject to expenses incurred pursuant to a shareholder services plan or rule 12b–1 plan.

9. As used herein, "Plan" will refer to the applicable shareholder services plan or rule 12b–1 plan, and "Plan Payments" will refer to payments made under a Plan. The assessing may asset-based sales charge and/or service fee, applicants will comply with article III, section 26 of the NASD's Rules of Fair Practice, as they may be amended from time to time.

10. All shares of a portfolio bear portfolio expenses allocated *pro rata* to each class on the basis of the relative net asset value of the respective class. Expenses specific to a class are allocated to that class. Dividends paid to each class of shares will be declared and paid, and the net asset value of each class will be determined, on the same days and at the same time, and will be determined in the same manner.

11. Under the proposed order, shares of a class of one portfolio would be exchangeable only for shares of another with the same class designation. Exchanges will be effected in accordance with the provisions of rule 11a–3 under the Act.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed issuance and sale of any of the classes of shares might be deemed to result in a "senior security" within the meaning of section 18(g) and prohibited by section 18(f)(1) and to violate the equal voting provisions of section 18(i).

2. Applicants assert that the proposed allocation of expenses and voting rights in the manner described is consistent with that of the Existing Order, is equitable, and would not discriminate against any group of shareholders. Applicants argue that investors purchasing Service or Investor Shares would receive the services provided under the respective Plans, and would bear the costs associated with such services. Moreover, since the rights and privileges of all classes of shares of a portfolio would be substantially identical, the possibility that their interests would conflict would be remote.

3. Applicants believe that the ability to offer various classes of shares in each portfolio with different levels of service will better enable the Fund to meet the competitive demands of today's financial services industry. The proposed arrangement will permit the Fund to both facilitate the distribution of its securities and expand the scope and depth of its services without assuming excessive accounting and bookkeeping costs or unnecessary investment risks. In addition, the Fund would be able, under the proposed arrangement, to match more precisely its distribution costs, administrative support, and other expenses with those investors on whose behalf such costs and expenses are incurred.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

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[1] The PNC Fund, Investment Company Act Releases Nos. 17819 (Oct. 24, 1990) (notice) and 17875 (Nov. 27, 1990) (order).

[2] The Galaxy Fund, Investment Company Act Release Nos. 18507 (Jan. 30, 1992) (notice) and 18558 (Feb. 19, 1992) (order).

1. Each class of shares of each portfolio of the Fund will represent interests in the same portfolio of investments of a portfolio of the Fund and will be identical in all respects, except as set forth below. The only differences between the classes of shares of the Fund will relate solely to: (a) The impact of the Plan Payments, possibly transfer agency expenses, and any other incremental expense subsequently identified that should be properly allocated to one class which will be approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respect to each portfolio's rule 12b–1 plan and shareholder services plan; (c) exchange privileges; and (d) class designations.

2. The Trustees of the Fund, including a majority of the independent Trustees, will approve the multi-class structure. The minutes of the meetings of the Trustees of the Fund regarding the deliberations of the Trustees with respect to the approvals necessary to implement the multi-class structure will reflect in detail the reasons for the Trustees' determination that the proposed multi-class structure is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the Trustees of the Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the portfolios for the existence of any material conflicts between the interests of the classes of shares. The Trustees, including a majority of the non-interested Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Fund's adviser and distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Fund's adviser and distributor, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. Each shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that holders of Service Shares need not receive the voting rights specified in rule 12b–1.

5. The Trustees of the Fund will receive quarterly and annual statements concerning Plan Payments complying with paragraph (b) (3) (ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

6. Dividends paid by the Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except for the impact of Plan Payments and possibly transfer agency expenses.

7. The methodology and procedures for calculating the net asset value, dividends, and distributions of the classes of shares and the proper allocation of expenses between those classes has been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been filed with the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to applicants that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the SEC staff, upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value, dividends, and distributions of the classes of shares and the proper allocation of expenses between such classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition 7 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 7 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

9. The prospectus for each portfolio with more than one class will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares may receive different compensation for selling or servicing one particular class of shares over another class in the same portfolio.

10. The distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares to agree to conform to such standards.

11. The conditions pursuant to which the order is granted and the duties and responsibilities of the Trustees of the Fund with respect to the multi-class structure will be set forth in guidelines which will be furnished to the Trustees of the Fund.

12. Each portfolio will disclose the respective expenses, performance data, distribution arrangements, services, fees, transfer agency expenses, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares of such portfolio in every prospectus, regardless of whether all classes of shares in the portfolio are offered through each prospectus. Each portfolio will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to each portfolio as a whole generally and not on a per class basis. Each portfolio's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares in a portfolio, it will also disclose the respective expenses and/or performance data applicable to all classes of shares in such portfolio. The information provided by applicants for publication in any newspaper or similar listing of each portfolio's net asset value and public offering price will present each class of shares separately.

13. Applicants acknowledge that the grant of the order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to its shareholder services or rule 12b-1 plan in reliance on the order.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4334 Filed 2–24–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20082; 812–8788]

Rydex Series Trust, et al.; Notice of Application

February 17, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Rydex Series Trust (the "Trust"); PADCO Advisors, Inc. (the "Adviser"); and all future registered investment companies and series thereof for which the Adviser, or any entity controlled by, controlling, or under common control with the Adviser serves as investment adviser (collectively with the Trust, the "Funds").

RELEVANT ACT SECTIONS: Exemption requested under sections 6(c) and 17(d) and rule 17d-1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting the Funds to deposit their daily uninvested cash balances into a single joint account to be used to enter into repurchase agreements.

FILING DATE: The application was filed on January 24, 1994, and amended on February 9, 1994. By letters dated February 15, 1994, and February 16, 1994, applicants have agreed to make certain technical changes to the application, and to file an amendment prior to the issuance of any order granting the requested relief. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 14, 1994 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street; NW., Washington, DC 20549. Applicants, 4641 Montgomery Avenue, suite 400, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a registered management investment company that offers, or in the near future expects to offer, six series: the Nova Fund, the Rydex U.S. Government Money Market Fund, the Rydex Precious Metals Fund, the Ursa Fund, the Rydex U.S. Government Bond Fund, and the Rydex OTC Fund. The Adviser, a registered investment adviser, serves as investment adviser to the Trust. The series of the Trust are authorized, and the future Funds will be authorized, by their investment policies to invest in repurchase agreements.

2. Each Fund has or may be expected to have uninvested cash balances with its custodian bank which otherwise would not be invested in portfolio securities by the Adviser at the end of each trading day. In the normal course of business, such assets are or would be invested in overnight repurchase agreements with a bank or major brokerage house collateralized by U.S. Government securities in order to earn additional income. Each morning the Adviser on behalf of the Funds begins negotiating the interest rate for repurchase agreements for that day and lining up the U.S. Government obligations required as collateral. Generally, some portion of the assets in the respective account of each Fund is received too late, or is too small, to be invested effectively in a separate transaction. Further, because each Fund must separately pursue, secure, and implement such investments, there is a duplication of effort that results in certain inefficiencies and may limit the return which some or all Funds can achieve.

3. Applicants seek a conditional order permitting the Funds to deposit their daily uninvested cash balances into a single joint account, the daily balance of which would be used to enter into one or more overnight (or over-the-weekend or over-a-holiday) repurchase agreements. The requested order will maximize the return by minimizing economic and administrative efficiencies by allowing the Funds to enter into large repurchase agreements.

4. Each repurchase agreement will be made by calling a government securities dealer and indicating the rate of interest and size of the desired repurchase agreement. Particular U.S. Government obligations to be held as collateral will then be identified and the Funds' custodian bank will be notified. The securities will be wired to the account of the custodian bank at the proper Federal Reserve Bank, transferred to a sub-custodian account of the Funds at another qualified bank, or redesignated and segregated on the records of the custodian bank if the custodian bank is already the record holder of the collateral for the repurchase agreement. The Funds will not enter into repurchase agreements with the custodian bank, except where cash is received very late in the business day and otherwise would be unavailable for investment at all.

5. Each of the Funds has established the same systems and standards, including quality standards for issuers of repurchase agreements and for collateral, and requirements that the repurchase agreements will be "collateralized fully," as that term is defined in rule 2a-7 under the Act. Identical systems and standards will be adopted by any future funds which invest in the proposed joint account.

Applicant's Legal Conclusions

1. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, to effect any transaction in which such registered investment company is a joint or a joint and several participant with such person in

contravention of rules and regulations which the SEC prescribes for the purpose of preventing participation by such company on a basis different from or less advantageous than that of other participants

2. Rule 17d–1 provides that no affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which such registered investment company is a participant unless an application regarding such joint arrangement has been filed with the SEC and granted an order. In passing upon such applications, the SEC will consider whether the investment company's participation in the proposed joint enterprise or arrangement is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Each Fund might be deemed an affiliated person of each other Fund under section 2(a)(3) of the Act. Each Fund, by participating in the proposed account, and the Adviser, by managing the proposed account, could be deemed to be a "joint participant" in a "transaction" within the meaning of section 17(d), and the proposed account could be deemed to be a "joint enterprise or other joint series issue arrangement" within the meaning of rule 17d–1.

4. The proposed account will not be distinguishable from any other account maintained by the Fund with its custodian bank except that monies from the Fund could be deposited in it on a commingled basis. The sole function of this account will be to provide a convenient way of aggregating what otherwise would be the individual daily transactions for each Fund necessary to manage the daily uninvested cash balances of each Fund. Each Fund will participate in the account on the same basis as every other Fund. The Adviser will have no monetary participation in the account, but will be responsible for investing amounts in the account, establishing control procedures, and ensuring the equal treatment of each Fund. The proposed method of operating the account will not result in any conflicts of interest between any of the Funds, or between a Fund and the Adviser.

5. The Funds will benefit from the proposed arrangement because, on any given day and under most market conditions, it is possible to negotiate a rate of return on large repurchase agreements which is greater than the rate of return available for smaller repurchase agreements. In addition, by reducing the number of trade tickets, repurchase transactions will be simplified and the opportunity for errors will be reduced. Each Fund will also benefit from the fact that an institution entering into a very large repurchase agreement is almost always able and willing to increase the amount covered by such agreement near the end of the day, which possibility may not exist with smaller repurchase agreements. Moreover, without a joint account, some Funds may find that they will be unable to invest in repurchase agreements because their respective daily cash balances would not meet the minimum investment requirement for a repurchase agreement.

6. Applicants believe that granting the requested relief would be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants further believe that participation in the proposed joint account by each Fund would not be on a basis different from or less advantageous than that of any other participant. Applicants thus believe that the criteria of sections 6(c) and 17(d) and rule 17d–1 for issuance of the requested order have been satisfied.

Applicant's Conditions

As express conditions to obtaining an order granting the requested relief, applicants agree that the joint repurchase account will operate as follows:

1. A separate custodian cash account will be established into which each Fund will cause its uninvested net cash balances to be deposited daily. The joint account will not be distinguishable from any other accounts maintained by a Fund with its custodian bank except that monies from a Fund will be deposited on a commingled basis. The account will not have any separate existence which will have indicia of a separate legal entity. The sole function of the account will be to provide a convenient way of aggregating individual transactions which will otherwise require daily management by each Fund of its uninvested cash balances.

2. Cash in the account will be invested solely in repurchase agreements with a duration not to exceed one business day and collateralized by suitable U.S. Government obligations, *i.e.*, obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities, and satisfying the uniform standards set by the Funds for such investments.

3. All securities held by the joint account will be valued on an amortized cost basis.

4. Each Fund relying upon rule 2a–7 under the Act for valuation of its net assets on the basis of amortized cost will use the average maturity of the repurchase agreements purchased by the Funds participating in the account for the purpose of computing the Fund's average portfolio maturity with respect to the portion of its assets held in such account on that day.

5. In order to assure that there will be no opportunity for one Fund to use any part of a balance of the account credited to another Fund, no Fund will be allowed to create a negative balance in the account for any reason, although a Fund will be permitted to draw down its entire balance at any time; each Fund shall retain the sole rights of ownership of any of its assets, including interest payable on the assets invested in the account.

6. Each Fund will participate in the net income earned or accrued in the account on the basis of the percentage of the total amount in the account on any day represented by its share of the account.

7. The Adviser will administer the investment of the cash balance in and the operation of the account as part of the Adviser's duties under its existing or any future investment advisory contract with each Fund and will not collect any additional fees for management of the account. The Adviser will collect its fees based upon the assets of each separate Fund as provided in each respective investment advisory agreement.

8. Each Fund's decision to invest in the account shall be solely at the Fund's option and no Fund shall be obligated to invest or to maintain any minimum amount in the account.

9. Each Fund's investment in the account shall be documented daily on the books of each Fund as well as on the books of the Fund's custodian bank.

10. All repurchase agreements will have an overnight, over-the-weekend, or over-a-holiday duration, and in no event will have a duration of more than seven days.

11. The Funds will enter into an agreement with each other to govern the arrangements in accordance with the foregoing principles.

12. The administration of the account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

13. The trustees of the Trust and the boards of directors of any future Funds participating in the joint account shall evaluate the joint account arrangement annually, and shall continue the account only if they determine that there is a reasonable likelihood that the account will benefit the funds and their shareholders.

14. All joint repurchase agreement transactions will be effected in accordance with Investment Company Act Release No. 13005 (Feb. 2, 1983) and with other existing and future positions taken by the SEC or its staff by rule, interpretive release, no-action letter, any release adopting any new rule, or any release adopting any amendments to any existing rule.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4333 Filed 2–24–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 94–2–30]

Fitness Determination of Island Air Charters, Inc.

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find Island Air Charters, Inc., fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 7, 1994.

FOR FURTHER INFORMATION CONTACT: Carol Woods, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2340.

DATED: February 18, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 94–4360 Filed 2–24–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–94–9]

Petitions for Exemption, Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 17, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on February 21, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 23455.

Petitioner: Reeve-Aleutian Airways, Inc..

Sections of the FAR Affected: 14 CFR 121.574(a) (1), (3) and (4).

Description of Relief Sought/Disposition: To Extend Exemption No. 4692 to continue to permit the petitioner to carry and operate aboard its aircraft, certain oxygen storage, generating, and dispensing equipment for medical use by patients, when the oxygen and equipment is furnished and maintained by hospitals, clinics, or city/village emergency medical services within the state of Alaska.

Docket No.: 24605.

Petitioner: World Jet Corporation dba KC Aviation.

Sections of the FAR Affected: 14 CFR 91.511(a) and 135.165(b).

Description of Relief Sought: To amend Exemption No. 4961 to relieve the petitioner from the 30-minute very high frequency (VHF) communications gap restriction.

Docket No.: 26048.

Petitioner: National Test Pilot School.

Sections of the FAR Affected: 14 CFR 91.319(a) (1) and (2).

Description of Relief Sought: To amend Exemption No. 5778 to: (1) Replace the Los Angeles Air Route Traffic Control Center with Joshua Approach in condition No. 3; (2) Eliminate condition No. (6), which prohibits aerobatic flight for aircraft operating under the exemption; and (3) add "graduate military pilots who have at least 1,000 hours total time and have been on active duty military flying status within the prior 12 months" to condition No. 9.

Docket No.: 27243.

Petitioner: Chalk's International Airlines.

Sections of the FAR Affected: 14 CFR 135.153.

Description of Relief Sought/Disposition: To amend Exemption No. 5769 to permit the petitioner to operate Grumman Turbo Mallard aircraft (G–73T) south of the 29th parallel after April 20, 1994, without the installation of ground proximity warning systems. The current exemption restricts such operations to below the 27th parallel.

Docket No.: 27506.

Petitioner: Northeast Helicopter Services, Inc.

Sections of the FAR Affected: 14 CFR Part 45.

Description of Relief Sought/ Disposition: To permit the petitioner to reduce the registration numbers, for two UH–1B Huey helicopters, to 2 inches and to change the registration numbers' location from the tail boom to the upper portion of the tail yoke.

Docket No.: 27576.
Petitioner: Des Moines Public Schools.
Sections of the FAR Affected: 14 CFR 147.13 and 147.17(a)(1).
Description of Relief Sought/ Disposition: To permit the students of the Central Campus Aviation Technology Program in Des Moines, Iowa to use Indian Hills Community college's equipment (components and mockups) in Ottumwa, Iowa until the Central Campus Aviation Technology Program can obtain or build the equipment.

Docket No.: 27590.
Petitioner: Mr. Paul Schneider.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit the petitioner to serve as a pilot in Part 121 air carrier operations after reaching his 60th birthday.

Dispositions of Petitions

Docket No.: 27193.
Petitioner: Rocky Mountain Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, February 16, 1994, Exemption No. 5774A

Docket No.: 27303.
Petitioner: Bay Aviation.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/ Disposition: To permit the petitioner to hold examining authority for the certified flight instructor (CFI) written tests.
Denial, February 16, 1994, Exemption No. 5844

Docket No.: 27348.
Petitioner: Northeast Express Regional Airlines dba Northwest Airlink.
Sections of the FAR Affected: 14 CFR 61.57(e)(1)(i); 121.433(c)(iii); 121.440(a); 121.441(a)(1) and (b)(1); 135.293 (a) and (b); 135.297 (a), (b), and (c)(1); 135.299(a); part 61, appendix A; and part 121, appendix F.
Description of Relief Sought: To allow the petitioner to establish an annual single visit training program (SVTP) for its flight crewmembers, and allow it to transition into the advanced qualification program (AQP) codified in Special Federal Aviation Regulation (SFAR) 58.
Partial Grant, February 15, 1994, Exemption No. 5843

Docket No.: 27501.
Petitioner: Cessna Aircraft Company.
Sections of the FAR Affected: 14 CFR 25.562.
Description of Relief Sought: To allow exemption from the dynamic seat testing requirements for the cockpit forward observer seat on the Cessna Model 750 Citation X (ten) airplane..
Denial, January 26, 1994, Exemption No. 5836

Docket No.: 27561.
Petitioner: Lloyd Aereo Boliviano S.A. (LAB).
Sections of the FAR Affected: 14 CFR 129.18.
Description of Relief Sought/ Disposition: To permit the petitioner to operate in the U.S. airspace, from December 31, 1993, through March 31, 1994, without the required TCAS II equipment installed in one of its aircraft.
Denial, February 14, 1994, Exemption No. 5842

Docket No.: 27554.
Petitioner: Federal Express.
Sections of the FAR Affected: 14 CFR 121.343(c).
Description of Relief Sought: To allow Mountain Air Cargo, Corporate Air, and Empire Airlines to continue operating until November 30, 1994, 31 Fokker F–27 aircraft that are not expected to be fitted by May 26, 1994, with digital flight data recorders capable of simultaneously recording at least 11 flight parameters.
Denial, February 14, 1994, Exemption No. 5841

Docket No.: 27569.
Petitioner: Aris Helicopters, Ltd.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought: To allow the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, February 9, 1994, Exemption No. 5840

Docket No.: 27573.
Petitioner: Richard A. Henson.
Sections of the FAR Affected: 14 CFR 25.811(f).
Description of Relief Sought/ Disposition: To permit type certification of his Learjet Model 31A without the required emergency exit outline bands.
Grant, February 1, 1994, Exemption No. 5832A

Good Cause

Docket No.: 26538.
Petitioner: A.C.E. Flyers, Inc. dba Jay Hawk Air.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To extend Exemption No. 5430 to continue to allow appropriately trained and certified pilots employed by the petitioner to remove and replace aircraft cabin seats in company aircraft during part 135 operations, subject to certain limits and conditions.

Docket No.: 27529.
Petitioner: Airway Transport.
Sections of the FAR Affected: 14 CFR 91.607.
Description of Relief Sought: To allow the carrying of a normal crew plus 40 passengers on a Douglas DC–3 N7500A aircraft between November 1993 and May 30, 1994 (skydiving competitions).

[FR Doc. 94–4362 Filed 2–24–94; 8:45 am]
BILLING CODE 4910–13–M

Passenger Facility Charge (PFC) Approvals/Disapprovals

February 14, 1994.
AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Correction.

SUMMARY: In Notice document 93–28971 beginning on page 63202 in the issue of Tuesday November 30, 1993, make the following correction: On page 63204, in the third column, under the heading Total Approved Net PFC Revenue, $34,263,607 should read $33,896,157.

FOR FURTHER INFORMATION ON THIS CORRECTION CONTACT: Joe Hebert, Passenger Facility Charge Branch, (APP–530), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8902.

Ellis Ohnstad,
Acting Manager Airports Financial Assistance Division.

[FR Doc. 94–4364 Filed 2–24–94; 8:45 am]
BILLING CODE 4910–13–M

Global Positioning System (GPS) Navigation Equipment Issues—Industry Session

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration to discuss Global Positioning System (GPS) issues.

DATES: The meeting will be held on March 10, 1994, at 9 a.m. Arrange for oral presentation by March 3, 1994.

ADDRESSES: The meeting will be held at the Arlington Renaissance Hotel, 900 North Stafford Street, Arlington, Virginia 2203, telephone (703) 812–5109, Fax (703) 528–4386.

FOR FURTHER INFORMATION CONTACT: Mr. James Williams, Aircraft Engineering Division, Navigation and Communications Branch (AIR–130), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3963.

SUPPLEMENTARY INFORMATION: Representatives of GPS equipment manufacturers are requested to address concerns and questions regarding the approval and installation of GPS receiving equipment in aircraft. The manufacturers may present written statements to the Navigation and Communications Branch and bring copies to the meeting Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

John K. McGrath,
Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 94–4365 Filed 2–24–94; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Horry & Georgetown Counties, SC

AGENCY: Fedeal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway facility from near the North Carolina state line in Horry County to near the City of Georgetown in Georgetown County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Myers, Planning & Environmental Engineer, Federal Highway Administration, 1835 Assembly Street, suite 758, Strom Thurmond Federal Building, Columbia, SC 29201, telephone: (803) 253–3881. Contacts at the State and local level, respectively are: Mr. Tommy Elrod, South Carolina Department of Transportation, P.O. Box 191, Columbia, SC, telephone (803) 737–1564; Dr. Peter B. Barr, Coastal Caroline University, College Road KH 204, P.O. Box 1954, Conway, SC, telephone (803) 349–2640.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the South Carolina Department of Transportation (SCDOT) and the Horry County Higher Education Commission (the Commission), will prepare an environmental impact statement on the proposed Carolina Bays Parkway in eastern Horry & Georgetown Counties. The proposed Parkway would be located in a corridor study area approximately sixty miles in length beginning south of the North Carolina state line and extending beyond the town of Georgetown. In addition to the main route, which is proposed as a controlled access facility, crossings of the Intercostal Waterway will be studied along the length of the parkway to provide access where traffic and development patterns are co-existant. Interchanges at various locations will also be studied.

The proposed Parkway was included in the Intermodal Surface Transportation Efficiency Act of 1991 under section 1107, Innovative Projects. Funding for the preliminary engineering and environmental analysis is derived from that section. Identification of feasible funding sources for project implementation will be an important task in the location and environmental studies. Alternatives under consideration include: (1) Taking no action (no-build); (2) Transportation System Management (improvement of existing routes); and, (3) build alternatives.

The FHWA, the SCDOT, and the Commission are seeking input as a part of the scoping process, to assist in determining and clarifying issues relative to the project. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A formal scoping meeting with federal, state, and local agencies, and other interested parties is planned for 11 a.m., Tuesday, March 29th, 1994 at the Law Enforcement Center, Myrtle Beach Police Department, 1101 Oak Street in Myrtle Beach.

Coordination will be continued with appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A serious of public forums will be held as the project develops. The draft EIS will be available for public and agency review and comment prior to the official public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposal action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 17, 1994.

Robert J. Probst,
Division Administrator, Columbia, South Carolina.

[FR Doc. 94–4278 Filed 2–24–94; 8:45 am]
BILLING CODE 4910–22–M

Environmental Impact Statement: Cole County, MO

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Cole County, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, telephone Number 314–636–7104; or Mr. Bob Sfreddo, Design Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department (MHTD), will prepare an environmental impact statement (EIS) on a proposal to extend Missouri Route 179 between U.S. Route 50 West and Missouri Route B in Cole County, Missouri. An MHTD reconnaissance report determined that the extension of Missouri Route 179 would do three things: (1) Provide a system link to reduce congestion, (2) improve safety in the Capitol Complex area, and (3) promote economic development and planned growth in Jefferson City and Cole County.

1. The proposed highway project begins at U.S. Route 50 West in Cole County at the existing terminus of Missouri Route 179 and runs generally southeast for approximately 4.9 miles to meet Missouri Route B. The proposed facility would provide a four-lane,

limited-access roadway with at-grade intersections or interchanges at major arterial crossroads.

2. Alternatives under consideration include two "build" alternatives and a "no build" alternative, as well as mass transit and transportation system management options.

3. To date, preliminary information has been issued to local officials and other interested parties. The scoping process will be initiated with Federal. State, and local agencies as the study progresses. Further public hearings will be held. To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Any comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Missouri Highway and Transportation Department at the addresses provided above.

Issued on: January 20, 1994.

Donald Neumann,

Program Engineer, Jefferson City.

[FR Doc. 94–4313 Filed 2–24–94; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Certification of School Attendance—REPS, VA Form 21–8926

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 28, 1994.

Dated: February 17, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Certification of School Attendance—REPS, VA Form 21–8926.

2. The form is used to verify the school attendance of dependent children in REPS (Restored Entitlement Program for Survivors). The information is used by VA to determine entitlement for continued benefits.

3. Individuals or households.

4. 225 hours.

5. 15 minutes.

6. On occasion.

7. 900 respondents.

[FR Doc. 94–4317 Filed 2–24–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Intention to Foreclose, VA Form 26–6851

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 28, 1994.

Dated: February 17, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Notice of Intention to Foreclose, VA Form 26–6851.

2. The form is used by holders of GI (guaranteed/insured) loans to notify VA of their intention to foreclose. The information is used to coordinate the actions of VA and the holder so that all legal requirements regarding foreclosure and claim payment are met.

3. Businesses or other for-profit; Small businesses or organizations.

4. 22,000 hours.

5. 15 minutes.

6. On occasion.

7. 88,000 respondents.

[FR Doc. 94–4316 Filed 2–24–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Invitation, Bid, and/or Acceptance or Authorization, VA Form 26–6724

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 28, 1994.

Dated: February 17, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Invitation, Bid, and/or Acceptance or Authorization, VA Form 26–6724.

2. The form is used to solicit competitive bids or serves as a work order for the repair of properties acquired by VA. It also serves as a record of contractor's bids, VA acceptance of bid, inspection of completed work, and a contractor's invoice and payment.

3. Businesses or other for-profit.

4. 1 hour (The annual burden is estimated at 100,000 hours. VA requests 1 hour of annual burden for this information collection as the solicitation of bids is a common practice in the real estate management industry, and the submission of bids is routine with repair contractors.)

5. 30 minutes.

6. On occasion

7. 200,000 respondents.

[FR Doc. 94–4318 Filed 2–24–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 38
Friday, February 25, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: March 4, 1994, 9:00 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS: Open to the Public.

February 23, 1994

I. Approval of Agenda
II. Approval of Minutes of January Meeting
III. Announcements
IV. Discussion of SAC Process Task Force
V. Staff Director's Report
VI. Appointments to the Michigan, Minnesota, Nebraska (interim), and New Jersey Advisory Committees
VII. New York Hearing Update
VIII. Future Agenda Items
IX. Briefing on Civil Rights Aspects of Health Care Reform

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376-8312.

Dated: February 23, 1994.
Emma Monroig,
Solicitor.
[FR Doc. 94-4496 Filed 2-23-94; 3:02 pm]
BILLING CODE 6335-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:35 a.m. on Tuesday, February 22, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendations regarding administrative enforcement proceedings.

Application of Smith County Bank, Taylorsville, Mississippi, an insured State nonmember bank, for consent to purchase certain assets and assume certain liabilities of The Bank of Raleigh, Raleigh, Mississippi, an insured State nonmember bank, and for consent to establish the three offices of The Bank of Raleigh as branches of Smith County Bank.

Matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Acting Chairman Andrew C. Hove, Jr., concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC

Dated: February 22, 1994.
Federal Deposit Insurance Corporation.
Patti C. Fox,
Acting Deputy Executive Secretary.
[FR Doc. 94-4432 Filed 2-23-94; 10:11 am]
BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, March 2, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 23, 1994.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 94-4490 Filed 2-23-94; 3:02 am]
BILLING CODE 6210-01-P

Corrections

Federal Register
Vol. 59, No. 38
Friday, February 25, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Training in Early Childhood Education and Violence Counseling

Correction

In notice document 94-3171 beginning on page 6249 in the issue of Thursday, February 10, 1994, make the following correction:

On page 6250, in the first column, under **DATES:**, in the second line, "February 10, 1994." should read "March 14, 1994."

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

48 CFR Parts 912, 952 and 970

Acquisition Regulation; Project Control System

Correction

In proposed rule document 94-2736 beginning on page 5751 in the issue of Tuesday, February 8, 1994, in the second column in the **DATES:** in the second line, "February 8, 1994". should read "April 11, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RS92-19-003, RS92-19-004, RS92-19-007, RS92-19-008,RP92-104-000 and RP92-131-000 (Consolidated Inpart)]

KN Energy, Inc.; Comment Period

Correction

In notice document 94-2800 beginning on page 5762 in the issue of Tuesday, February 8, 1994, in the third column, in the heading, the Docket Numbers should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-930-4214-10; COC-55542]

Proposed Withdrawal; Scheduled Public Meeting; Colorado

Correction

In notice document 94-1294 beginning on page 3120 in the issue of Thursday, January 20, 1994, make th following corrections:

1. On page 3121, in the first column, in the land description, under T. 1 N., R. 3 W., under Sec. 7, in the third line, "lost" should read "lots".
2. On page 3121, in the first column, in the land description, under T. 10 S., R. 103 W., under Sec. 15, in the second line, "E½SE¼SW¼;" should read "E½SW¼SW¼;".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33571; File No. SR-CHX-94-01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Chicago Stock Exchange, Inc. Relating to the Capital Requirement for the Designated Primary Market Maker in the Chicago Stock Basket

February 1, 1994.

Correction

In notice document 94-2824 beginning on page 5798, in the issue of Tuesday, February 8, 1994, in the second column, the date following the subject heading, was omitted and is correctly set out above.

BILLING CODE 1505-01-D

federal register

Friday
February 25, 1994

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 83

Procedures for Establishing That an American Indian Group Exists as an Indian Tribe; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 83

RIN 1076–AC46

Procedures for Establishing That an American Indian Group Exists as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This rule makes substantial changes in the administrative process for Federal acknowledgment of Indian groups as tribes entitled to a government-to-government relationship with the United States. Changes are made to clarify requirements for acknowledgment and define more clearly standards of evidence. Provision is made for a reduced burden of proof for petitioners demonstrating previous Federal acknowledgment. Procedural improvements include an independent review of decisions, revised timeframes for actions, definition of access to records, and opportunity for a formal hearing on proposed findings. These changes will improve the quality of materials submitted by petitioners, as well as reduce the work required to develop petitions. They are also intended to provide a faster and improved process of evaluation.

EFFECTIVE DATE: March 28, 1994.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs, MS 2611–MIB, 1849 C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

I. Background

This final revised rule is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Regulations governing the administrative process for Federal acknowledgment first became effective October 2, 1978. Initially designated as 25 CFR part 54, they were later redesignated without change as 25 CFR part 83. Prior to 1978, Federal acknowledgment was accomplished both by Congressional action and by various forms of administrative decision. However, there still remained in the 1970's many acknowledgment claimants whose character and history varied widely. The regulations established the first detailed, systematic process for review of petitions from groups seeking Federal acknowledgment.

Proposed revised regulations were published on September 18, 1991, at 56 FR 47320. These were published in response to issues raised by diverse parties concerning interpretation of the regulations and administration of the review process. The proposed revised regulations also incorporated changes based on the perspective that had been gained by the Department from 13 years of experience administrating the acknowledgment process.

The public comment period of 90 days was extended for an additional 30 days, until January 17, 1992. Public meetings were held at nine locations around the country. Sixty-one written comments were received from 59 different individuals. These individuals included representatives of unrecognized groups, recognized tribes, Indian legal rights organizations, State governments, and Federal agencies, as well as individual attorneys, anthropologists, and other scholars. The issues and concerns raised by commenters are summarized below, followed by the Department's response and a description of changes made in response to comments.

II. Review of Public Comments

Overview

These final regulations include changes which make clearer the meaning of the criteria for acknowledgment and make more explicit the kinds of evidence which may be used to meet the criteria. The general standards for interpreting evidence set out in these regulations are the same as were used to evaluate petitions under the previous regulations. In some circumstances, the burden of evidence to be provided is reduced, but the standards of continuity of tribal existence that a petitioner must meet remain unchanged.

None of the changes made in these final regulations will result in the acknowledgment of petitioners which would not have been acknowledged under the previously effective acknowledgment regulations. Neither will the changes result in the denial of petitioners which would have been acknowledged under the previous regulations.

Standards of Evidence and Stringency of Requirements

Comments: Several commenters stated that the proposed revisions represented a major escalation of requirements and/or that they codified de facto escalations of requirements that had occurred in the Department's application of the regulations in the 13 years since they became effective in October 1978. Several other commenters stressed the importance of maintaining the present standards and the necessity of stringent standards for Federal acknowledgment.

Response: The Department does not agree that the standards of evidence have escalated at any time, nor that the proposed revisions have increased the requirements. The acknowledgment criteria and definitions were modified on the basis of 13 years experience dealing with a wide variety of cases. Changes were made to clarify the meaning of the criteria and intent of the regulations, and make possible efficient development of evidence specifically focused on the requirements.

Comments: A number of commenters requested a specific statement of the general burden of evidence. Most suggested demonstration by a "preponderance" of evidence or that a criterion be considered met if it were more likely true than not.

Response: These comments are based on the incorrect assumption that the acknowledgment process presently requires proof beyond a doubt. The process only requires evidence providing a reasonable basis for demonstrating that a criterion is met or that a particular fact has been established. "Preponderance" is a legal standard focused on weighing evidence for versus against a position. It is not appropriate for the present circumstances where the primary question is usually whether the level of evidence is high enough, even in the absence of negative evidence, to demonstrate meeting a criterion, for example, showing that political authority has been exercised. In many cases, evidence is too fragmentary to reach a conclusion or is absent entirely In response to these comments, language has been added to § 83.6 codifying current practices by stating that facts are considered established if the available evidence demonstrates a reasonable likelihood of their validity The section further indicates that a criterion is not met if the available evidence is too limited to establish it, even if there is no evidence contradicting facts asserted by the petitioner.

Further, because the above standard is so general, additional language has been added in § 83.6 and § 83.7 to clarify the standard of proof as it relates to particular circumstances or criteria. In particular, many commenters interpreted the revised regulations as requiring a group to demonstrate that it meets the criteria in historical times by using the same kinds of evidence as for the present. In fact, actual acknowledgment decisions to date have clearly recognized the limitations of the historical record and have utilized standard scholarly requirements for determining the nature of societies in the past. It has been the Department's experience that claimed "gaps" in the historical record often represent deficiencies in the petitioner's research even in easily accessible records.

Language has also been added to § 83.6 which explicitly takes into account the inherent limitations of historical research on community and political influence. Further, the section allows for circumstances where evidence is genuinely not available, as opposed to being available but not developed by appropriate research. This does not mean, however, that a group can be acknowledged where continuous existence cannot be reasonably demonstrated, nor where an extant historical record does not record its presence.

Comment: Extensive comment was received concerning the requirement to demonstrate continuous existence as a tribe since first sustained contact. Comments were divided concerning interpretation and/or modification of the definition of "continuous." Some expressed the opinion that a stated period of years should be defined as a permissible "interval" during which a group could be presumed to have continued to exist. A petitioner would only have to demonstrate its existence before and after the interval. Intervals as long as 50 years were suggested. The suggestion to establish criteria for "intervals" is based on the language "generation to generation" which appeared in the original definition of "continuous." Other commenters felt that the "generation to generation" language was vague and inappropriate and should be eliminated in favor of a more careful, technical explanation of the standards required to demonstrate continuity of existence.

It was also suggested that no demonstration of continuity be required if a group is presently a tribe and can show ancestry from a historic tribe. A variant of this was a suggestion that petitioners only be required to demonstrate continuity since 1934. This date was suggested because it was the period of initial implementation of the 1934 Indian Reorganization Act.

Response: Language has been added to the regulations to make explicit the existing standard that criteria (b) and (c) do not have to be documented at every point in time. The phrase "generation to generation" has been removed from the definition of continuous. The additional language added to § 83.6 concerning standards of evidence clarifies the requirements for demonstrating historical existence. However, in the Department's view it is inappropriate to establish a specific interval during which tribal existence may be presumed. The significance of an interval must be considered in light of the character of the group, its history, and the nature of the available historical evidence. It has been the Department's experience that historical evidence of tribal existence is often not available in clear, unambiguous packets relating to particular points in time. More often, demonstration of historical existence requires piecing together various bits of information of differing importance, each relating to a different historical date.

The purpose of the acknowledgment process is to acknowledge that a government-to-government relationship exists between the United States and tribes which have existed since first contact with non-Indians. Acknowledgment as a historic tribe requires a demonstration of continuous tribal existence. A demonstration of tribal existence only since 1934 would provide no basis to assume continuous existence before that time. Further, the studies of unrecognized groups made by the Government in the 1930's were often quite limited and inaccurate. Groups known now to have existed as tribes then, were portrayed as not maintaining communities or political leadership, or had their Indian ancestry questioned. Thus, as a practical matter, 1934 would not be a useful starting point.

Comment: In the proposed revised regulations, the definition of "continuity" was revised to require that "substantially" rather than "essentially" continuous existence be demonstrated. Some commenters interpreted this as an escalation of requirements.

Response: The change in wording is a reduction in the stated requirements to demonstrate tribal existence. The modification in wording reflects how the previous regulations had always been applied. "Essentially" means that there can be almost no interruptions. "Substantially" continuous is a lesser requirement which means only that overall continuity has been maintained, even though there may be interruptions or periods where evidence is absent or limited.

Comment: The language in § 83.6(d) concerning fluctuations in tribal activity drew a number of comments. Some commenters approved of it, some objected to it, and others requested that it be clarified. Commenters were uncertain about how the language was to be applied to the criteria. Some objected to the use of the qualifier "sole" in the phrase describing fluctuation as a cause of denial. They felt that using fluctuation as a cause for denial was inappropriate.

Response: The language regarding fluctuations in activity appears in the present regulations in § 83.7(a). It was moved to § 83.6, the section dealing with general provisions, to make clear that it applied to all the criteria. It is now placed together with the new language concerning historical continuity, and should be read together with the new language.

The language concerning fluctuations recognizes that acknowledgment determinations should take into account that the level of tribal activity may decrease temporarily for various reasons such as a change in leadership or a loss of land or resources. These real historical fluctuations are different from variations in documentation that result from an incomplete historical record. To clarify the meaning, the qualifier "sole" has been omitted and the sentence rewritten to state that fluctuations will not in themselves be the cause of denial.

Comments: Commenters stated that the proposed revisions of the regulations were inadequate because they did not make clear what evidence was required to meet the criteria in § 83.7 (b) and (c). Some commenters requested a more explicit specification of the evidence needed to meet these criteria in order to clarify the petitioner's burden of proof. One commenter proposed a streamlined approach using simplified and quantified standards. This individual felt that current approaches were subjective and overly complicated and that they dealt with extraneous issues.

Response: To clarify the kinds of evidence needed to demonstrate the criteria at § 83.7 (b) and (c), the revised regulations now include a list of evidence that can be used to meet each criterion. To further simplify and streamline the processes of developing and reviewing petitions, new language sets forth specific kinds of evidence considered sufficient in themselves to demonstrate that the criterion has been met. For example, the revised regulations provide that a high percentage of residence in a geographical area exclusively or almost exclusively occupied by group members is sufficient to demonstrate community. The additions to criteria (b) and (c) are discussed further below, with the review of comments about specific criteria. The existing regulations already

contained lists of specific evidence for criteria (a) and (e), and these are carried over into the revised rule. These changes will provide a more focused and efficient process of preparation and evaluation of petitions, particularly for strong, clear-cut cases.

A new paragraph, 83.6(g), has been added to the section on general provisions which specifies that these lists of specific evidence are not mandatory requirements or "tests" that a petitioner must meet. Rather, they are explicit statements of evidence that may be used to demonstrate that a criterion has been met. As in past cases, other kinds of evidence may be used to meet various criteria. The revised and expanded guidelines will further help petitioners develop their evidence by explicating the meaning of the criteria as well as approaches to demonstrating that a criterion is met.

Previous Federal Acknowledgment

Comments: Extensive comment was received on the proposed provision allowing petitioners that were federally acknowledged previously to demonstrate only that they meet the criteria from the point of previous acknowledgment until the present. Many commenters favored this provision because they viewed it as remedying a lack in the present regulations and restoring a policy in effect before the present regulations were published in 1978. No commenters objected to taking previous acknowledgment into account.

The strongest objections came from those holding the view that if a group was acknowledged previously it should be recognized now, without further requirements. These commenters felt that such a group should be acknowledged automatically unless the Government could demonstrate that the group had abandoned tribal relations voluntarily.

A variant of this approach was the suggestion that a petitioner only be required to show that it was the same as the group acknowledged previously. This could be done either by demonstrating genealogical descent or by showing that the present group constitutes a tribe under the regulations and that its members are genealogically descended from the tribe acknowledged historically.

Response: The Department's position is, and has always been, that the essential requirement for acknowledgment is continuity of tribal existence rather than previous acknowledgment. The Federal court in *United States* v. *Washington*, rejected the argument that "because their ancestors belonged to treaty tribes, the appellants benefitted from a presumption of continuing existence." The court further defined as a single, necessary and sufficient condition for the exercise of treaty rights, that tribes must have functioned since treaty times as "continuous separate, distinct Indian cultural or political communities"(641 F.2d 1374 (9th Circuit 1981)). Thus, simple demonstration of ancestry is not sufficient.

Petitioning groups may be recently formed associations of individuals who have common tribal ancestry but whose families have not been associated with the tribe or each other for many generations.

The Department cannot accord acknowledgment to petitioners claiming previous acknowledgment without a showing that the group is the same as one recognized in the past. Several previous petitioners claimed they were a historical tribe for which previous Federal acknowledgment could be demonstrated. However, it was later found that their members had no genealogical connection with the claimed tribe. In addition the present group did not connect with the previously acknowledged tribe through the continuous historical existence of a distinct community and political leadership.

The provisions concerning previously acknowledged tribes have been further revised and set forth in a new, separate section of the regulations. The changes reduce the burden of evidence for previously acknowledged tribes to demonstrate continued tribal existence. The revisions, however, still maintain the same requirements regarding the character of the petitioner. For petitioners which were genuinely acknowledged previously as tribes, the revisions recognize that evidence concerning their continued existence may be entitled to greater weight. Such groups, therefore, require only a streamlined demonstration of criterion (c). Although these changes have been made, the revisions maintain the essential requirement that to be acknowledged a petitioner must be tribal in character and demonstrate historic continuity of tribal existence. Thus, petitioners that were not recognized under the previous regulations would not be recognized by these revised regulations.

The revised language requires the previously acknowledged petitioner as it exists today to meet the criteria for community (criterion 83.7(b) and political influence (criterion 83.7(c)). The demonstration of historical continuity of tribal existence, since last Federal acknowledgment until the present, must meet three requirements. First, the petitioner must demonstrate that it has been continuously identified by external sources as the same tribe as the tribe recognized previously. Second, continuity of political influence must be established by showing identification of leaders and/or a governing body exercising political influence on a substantially continuous basis from last acknowledgment until the present, if supported by demonstration of one form of evidence listed in § 83.7(c). Demonstration of historical community would not be required. Thus, the evidence required is less burdensome. Alternatively, if these requirements cannot be met, petitioner may demonstrate that it meets the requirements of criteria 83.7(a)–(c) from last Federal acknowledgment until the present. Third, ancestry from the historic tribe (criterion 83.7(e)) must be shown. The requirements of criterion (g), that the petitioner not be subject to legislation terminating or forbidding the Federal relationship will still apply. Criterion (f), which requires that the petitioner's members not be members of a presently recognized tribe, will also still apply.

Comments: Several commenters raised the practical question of when and how it would be demonstrated that the petitioner was in fact the same as the previously acknowledged tribe.

Response: The determination under paragraphs 83.10(b)(3) and 83.10(c)(2) that a group was previously acknowledged will only be a determination that past government actions constituted unambiguous Federal acknowledgement as a tribe. It will not be a determination that the criteria for acknowledgment have been met by the petitioning entity since the last point in time that the tribe it claims to have evolved from was acknowledged. If during the preliminary technical assistance review it becomes apparent that the petitioner cannot be linked with the previously acknowledged tribe, the petitioner will be advised. Further explanation of this procedure will be provided in the revised guidelines.

Language has been added to § 83.10(c) to provide for circumstances where a petitioner's response to the questions raised during the technical assistance review are not adequate to establish unambiguous previous Federal acknowledgment.

Comments: Many commenters felt that the definition of the term "unambiguous previous federal acknowledgment" was unclear. They requested a statement of the specific

evidence necessary to demonstrate Federal acknowledgment.

Response: Section 83.8(c) now lists three forms of evidence for unambiguous previous Federal acknowledgment. These are derived from the "Cohen criteria" used by the Department to recognize tribes between the mid-1930's and 1978. The section further provides that unambiguous previous acknowledgment may be demonstrated by other kinds of Federal action. The guidelines provided for under § 83.5(b) will include further examples and explanations of how this provision will be applied.

Comments: Several commenters felt that the regulations did not make clear whether tribal existence would have to be demonstrated from the earliest or from the latest date of Federal acknowledgment clearly identified in records. Thus, for example, a petitioner's last point of Federal acknowledgment might be when under the terms of a treaty, services were withdrawn, even though that might have been several decades after the treaty was signed.

Response: The language in § 83.8(d) has been modified to indicate that tribal existence need only be demonstrated from the latest date of Federal acknowledgment.

Comment: One commenter was concerned that the regulations might allow the isolated actions of individual Federal officials not authorized to extend acknowledgment to be interpreted as previous acknowledgment.

Response: Since the regulations require that previous acknowledgment be unambiguous and clearly premised on acknowledgment of a government-to-government relationship with the United States, no change in the definition is necessary. The definition does not apply to circumstances where services may have been provided to individual Indians, but the services were not based on their membership in a recognized tribe. Providing individual services in this way was common earlier in this century.

Interested Parties

Comments: A definition of "interested party" was added to the proposed revised regulations. Language concerning notification and participation of interested parties was added to and/or clarified in § 83.9, Notification, § 83.10, Processing of the documented petition, and § 83.11, Independent review, reconsideration and final action (sections renumbered). Some commenters approved of these changes. Yet, numerous others strongly objected to third parties having an opportunity to participate in and comment on acknowledgment petitions. Particular concern was expressed that interested parties might be able to delay the effective date of an acknowledgment determination without sufficient reason. Several commenters were concerned that third party information might be considered in advance of consideration of a petition. Conversely, several commenters wanted language to insure that recognized tribes affected potentially by a petition be notified and have an opportunity to comment.

Response: Interested parties participate fully in the acknowledgment process under the present regulations. None of the changes made in the proposed revised regulations reflected an increase in their role. It is neither necessary nor appropriate, in the Department's view, to prohibit the participation of third parties. In particular, the Department's position is that parties which may have a legal or property interest in a decision, such as recognized tribes or non-Indian governmental units, must be allowed to participate. Other parties, such as scholars with a knowledge of the history of a petitioning group, often are able to contribute valuable information not otherwise available. It has been our experience that this material is most often favorable to petitioners. Thus, participation of such interested parties is both appropriate and useful.

The Department agrees that third parties without a significant property or legal interest in a determination should not be permitted to participate without limit. Therefore, the definition of interested party has been revised to refer to third parties with a significant property or legal interest. A separate phrase informed party, has been defined in § 83.1 to refer to all other third parties. Language throughout the regulations has been revised to reflect this distinction. The revised and additional definitions should be read together with the language of § 83.11, on reconsideration, and the new language in paragraph 83.10(i) concerning a formal meeting after a proposed finding to review the bases of the determination. These revisions limit to petitioners and interested parties the right to initiate requests for a formal meeting or for reconsideration. The Assistant Secretary and the Interior Board of Indian Appeals (IBIA), respectively, will determine which third parties qualify as interested parties in the formal meeting and the process for review of requests for reconsideration.

Language has been added to § 83.9(b) to provide that recognized tribes and petitioners that can be identified as being affected by or having a possible interest in a petition determination will be notified of the opportunity to comment. Such tribes and petitioners will be considered interested parties.

A requirement that third parties who comment on a proposed finding or a final determination must provide copies of their comments to the petitioner as well as to the Department was already included in the proposed revised regulations (§ 83.10(i) and § 83.11(b) as renumbered here). In order to extend notification requirements to all stages of the process, language has been added to § 83.10(f) requiring the Department to notify petitioners of comments received from third parties before active consideration begins. Information received from third parties will not be considered by the Department until a petition is placed under active consideration.

Section-by-Section Review

Introduction: Comments relating to specific sections, not already discussed in connection with the general issues reviewed above, are reviewed below on a section-by-section basis. Because a new section, 83.8, has been added, previous sections 83.8–12 have been renumbered as § 83.9–13.

Throughout the body of the regulations, minor changes have been made in the text. These are solely for the purposes of clarity and ease of reading and have no intended change in meaning. All revisions which are intended to change the acknowledgment process have been separately noted.

Section 83.1 Definitions

Introduction: Comments on many of the most important definitions have been incorporated with the criteria with which they are associated. These comments are discussed below in § 83.7. Comments on other definitions are reviewed here.

Continental United States

Comment: A definition of continental United States was added to the proposed revised regulations to make it clear that the regulations apply to Alaska. The preamble to the proposed revised regulations further stated that the Bureau would consider whether it was appropriate to develop a modified acknowledgment process to apply to Alaska organizations wishing to be included on the **Federal Register** list of recognized tribes. One commenter strongly supported the establishment of a modified acknowledgment process for Alaska.

Response: Many Federal statutes passed since the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 *et seq.*) have defined Indian "tribe" to include the corporations established pursuant to ANCSA. Thus, the **Federal Register** list of tribes recognized and eligible for services was expanded to include ANCSA corporate entities (see 53 FR 52829, at 52832, December 29, 1988). The ANCSA corporations, while eligible for services as though they were "tribes" because Congress expressly included them in the statutory definition of "tribes," are not tribes in the historical or political sense.

The inclusion of non-tribal entities on the 1988 Alaska entities list departed from the intent of 25 CFR 83.6(b) and created a discontinuity from the list of tribal entities in the contiguous 48 states. On October 21, 1993, a Notice identifying tribal entities in Alaska as well as the contiguous 48 states was published in the **Federal Register** (58 FR 54364) to clarify that the villages and regional tribes are not simply eligible for services, or recognized as tribes for certain narrow purposes. Rather, the Alaska villages have the same governmental status as other federally acknowledged tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States; are entitled to the same protection, immunities, and privileges as other acknowledged tribes; have the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes; and are subject to the same limitations imposed by law on other tribes.[1] The publication of the new tribal entities list resolves the primary questions relating to Alaska which led to the consideration of adopting a possible modified acknowledgment process for Alaska (see 56 FR 47320, at 47321, September 18, 1991). Accordingly, a modification now of the acknowledgment process to address the special circumstances in Alaska is unwarranted.

Continuous and Historical

Comments: Commenters generally approved of the addition of language providing that petitioners need only trace continuity as a tribe back to the point where contact with non-Indians was sustained. This provision was aimed at eliminating possible problems caused by the often sporadic and poorly documented nature of initial contacts. Several commenters were concerned that the revised definition might lead to recognition of recently formed groups. Others felt that the change would eliminate Eastern groups whose early culture and government had been destroyed.

Response: A separate definition of sustained contact has been created by restating language incorporated in the definition of "historical" in the proposed revised regulations. The revised and added definitions concerning "historical," "continuous" and "sustained contact" reflect the current administrative practice in implementing the present regulations. They do not increase the burden of demonstrating historical continuity for Eastern groups. The definition would not permit recently formed groups in areas with long-standing non-Indian settlement and/or governmental presence to claim historical existence as a tribe.

European

Comment: Comments were received that European is an inappropriate term to describe many of the peoples that Indian societies first came into contact with.

Response: The term non-Indian has been substituted for European in the definitions of continuous, historical and sustained contact.

Indian Group

Revision: Because the term "Indian" did not clearly cover Alaskan groups, the term "Alaska Native" has been added to this definition.

Indian Tribe

Revision: Because the term "Indian" did not clearly cover acknowledged Alaskan tribal entities, the terms Alaska Native and villages have been added to this definition.

Indigenous

Revision: For clarity and consistency with portions of the regulations referring to sustained historical contact, this definition has been revised to refer to the tribe's "territory at the time of sustained contact," rather than its "aboriginal range."

Tribal Roll

Comments: One commenter objected to the requirement for "active" consent to membership while another supported it.

Response: This definition was added in the proposed revised regulations to provide a specific definition of tribal roll for the purposes of these regulations only. The intent of the regulations is to acknowledge tribes that are in fact politically autonomous of other Indian tribes. We believe that in order to meet this intent, a tribal roll, which here refers to a roll made by a recognized tribe, must clearly reflect the existence of a bilateral political relationship between the individuals listed and their tribe. The definition has been revised, however, to require that the individual have "affirmatively demonstrated" consent rather than "actively consented" to membership. This will make it clearer that a variety of actions may constitute evidence that an individual's listing on a roll reflects the existence of a bilateral political relationship with the tribe.

Undocumented Letter Petition

Comments: Comments indicated some continued confusion between the status of an undocumented letter petition and a documented petition. The former was defined in the proposed revised regulations as a letter or resolution to the Assistant Secretary-Indian Affairs indicating that an Indian group was requesting acknowledgment as a tribe. The latter was defined as containing the necessary evidence for such a request to be evaluated.

Response: The term letter of intent has been substituted for undocumented letter petition in the definitions section and throughout the regulations. This change more clearly distinguishes between a group which has merely requested acknowledgment and one which has provided the evidence necessary to review such a request. Hopefully, the change will eliminate confusion concerning the status of groups seeking acknowledgment.

Section 83.3 Scope

Section 83.3(a)

Comment: The meaning of the phrase "ethnically identifiable" was questioned. The exclusion from the proposed revised regulations of the phrase "culturally identifiable" was also questioned.

Response: The phrase "ethnically identifiable" has been eliminated because it caused some confusion and does not contribute to the implementation of the regulations. "Culturally identifiable" was previously eliminated because the regulations do not require that a successful petitioner be culturally different from non-Indians.

[1] Sol. Op. M–36,975 concluded, construing general principles of Federal Indian law and ANCSA, that "notwithstanding the potential that Indian country still exists in Alaska in certain limited cases, Congress has left little or no room for tribes in Alaska to exercise governmental authority over land or nonmembers" M–36,975 at 108. That portion of the opinion is subject to review, but has not been withdrawn or modified.

Section 83.3(g)

Comments: This section provides that petitioners under active consideration when revised regulations become effective may choose either to continue under the present regulations or come under the revised regulations. One commenter objected to allowing a shift if a proposed finding had already been issued and another objected to allowing any choice at all. Most of the comments concerned providing access to the Interior Board of Indian Appeals (IBIA) review process in § 83.11. Commenters argued that even if the petitioner chose to be reviewed under the present regulations, they should have access to the new appeal process. It was also suggested that petitioners whose cases were already decided under the existing regulations be allowed access to the IBIA process.

Response: The Department thinks it unlikely that the old regulations will be chosen by petitioners under active consideration. However, the comments underscored some procedural complications. Thus, language has been added to specify that the transition rules apply at any stage of active consideration, including reconsideration. Language has also been added to allow petitioners presently under active consideration to request a suspension of consideration in order to modify their petition. In addition, the regulations have been revised to allow groups choosing the original regulations to nonetheless use the IBIA process, since the Department's policy is presently to utilize the IBIA to conduct an independent review of requests for reconsideration.

No provision is being made, however, to allow already completed decisions to be reopened, since this would constitute repetitioning. Repetitioning by petitioners for which a final decision has become effective is prohibited by § 83.10(p).

It is anticipated that groups ready for active consideration but not yet being considered may wish to withdraw their petitions for further work. Such petitions would be removed from the priority register established under § 83.10(d).

Comment: Two commenters requested clarification on what procedures would apply if a court were to vacate or otherwise return a decision for reconsideration.

Response: Provisions would be made regarding what procedures should be followed on an individual basis depending on the specific court ruling. Because the court would be expected to provide guidance for each case of this type, no general provisions can be included in the regulations.

New Issues

Comment: One commenter requested that the regulations bar consideration of petitioners declared by a Federal court not to exist as tribes, if the United States and a recognized tribe were a party to the decision.

Response: It would be inappropriate to put a blanket prohibition in the regulations. Whether the United States is barred by past court decisions from acknowledging a petitioner would depend on the particular circumstances of a given decision. In such cases, the Department would undertake a legal review which would not require regulatory language to be effective.

Section 83.4 Filing a Letter of Intent

Revision: Language has been added to clarify that even though in most instances a letter of intent will be filed first, a petitioner's letter of intent may be filed at the same time and as part of its documented petition.

In addition, the language requiring that a letter of intent be signed, dated, and produced by a petitioner's governing body has been moved from the definition in § 83.1 to this section as paragraph 83.4(c).

Section 83.5 Duties of the Department

Section 83.5(a)

Comments: The proposed revised regulations changed the requirement for publication of a list of recognized tribes in the **Federal Register** from annually to periodically, as deemed necessary. Commenters objected that this change made the requirement too indefinite and that regular publication was necessary so that other Federal agencies would clearly know the status of tribes.

Response: While the Department believes annual publication is unnecessary, we agree that some regular schedule is appropriate. Consequently this section has been revised to provide for publication at least every three years, and more frequently if deemed necessary.

Comments: Comments were received requesting that the Department specify as part of the publication of the list of recognized tribes that Alaska Native villages have the status of historic tribes. This would include both those villages on lists published under the previous regulations and on the lists published in the future under the current regulations.

Response: As already indicated, on October 21, 1993, the Assistant Secretary—Indian Affairs published a Notice in the **Federal Register** (58 FR 54364) listing the recognized tribal entities in the contiguous 48 states and Alaska and clarifying the status of Alaska Native villages.

Comments: Many comments stated that the revised regulations could be used, or were intended to be used, to review tribes already on the list of recognized tribes to determine whether they should continue to be recognized.

Response: This is an erroneous and unwarranted interpretation of the proposed revised regulations. The Department has no authority to use these regulations to review the status of already recognized tribes and no intention of doing so. Both the current and the proposed revised regulations declare under § 83.3(b) that presently acknowledged tribes cannot be acknowledged under these regulations. The intent of this is that presently acknowledged tribes not be reviewed under the acknowledgment process.

Section 83.5(b)

Comments: Comments generally approved of the issuance of revised guidelines, as a way to clarify the requirements for preparation and evaluation of petitions. Some commenters were afraid that, because of the provision for periodic updating, the guidelines would be used as a way to modify the regulations without public comment. Some comments on definitions wanted key terms such as "significant" and "substantial" defined in the regulations rather than in the guidelines.

Response: The purpose of the guidelines is to clarify and explain more precisely the kinds of evidence necessary for petitions as well as the administrative procedures for reviewing petitions. It is not possible to include in the regulations a definition of all of its terms or a complete exposition of all forms of possible evidence to demonstrate that the acknowledgment criteria have been met. The provision for updating guidelines reflects the desire of the Department to continue to improve its technical assistance to petitioners. The revised guidelines will allow for response to petitioner's questions and provide advice on cases or problems which have not been dealt with previously. The guidelines cannot be used to modify the regulations.

Language has been added to clarify the nature of the guidelines, by stating explicitly that they will include an explanation of the meaning of the criteria and the types of evidence necessary to meet them.

New Provision

Comments: Several commenters objected to the deletion of a provision to notify unrecognized groups of the opportunity to petition. It was recommended that because the proposed changes in the regulations are so extensive, the Department should notify petitioners and/or potential petitioners of the revised regulations.

Response: A new section, 83.5(f), has been added to provide for the notification of petitioners when the revised regulations become effective. It is our view that it is not necessary to further notify groups which have not petitioned that the regulations have been modified even if they may be aware of the acknowledgment process. That information can be provided when a letter of intent is submitted.

Section 83.6 General Provisions for the Documented Petition

Section 83.6(a)

Comment: Several commenters interpreted the word "comprehensive" in characterizing petitions as a requirement that all possible evidence be supplied.

Response: The term "comprehensive" was used to mean that the petition should contain evidence concerning all necessary aspects of the regulations. Because of objections to this term, the language was changed to require "detailed, specific" evidence.

Revision: The paragraph previously numbered 83.6(e) concerning previous Federal acknowledgment, has been reorganized and augmented and now appears as a separate section, § 83.8.

Section 83.6(f)

This is a new paragraph which makes explicit that the regulations apply not only to tribes which have existed historically as a single entity, but also to tribes which are the result of the historical combination of several tribes or subunits into a single political entity. Language to this effect was added to criterion (b) in the proposed revised regulations. That language in criterion (b) has been replaced by this general provision. Similar language appears in criterion (e) of the present regulations and, for reasons of clarity, has been left in that criterion statement.

Section 83.7 Mandotory Criteria for Federal Acknowledgment

Section 83.7(a)

Comments: There were many comments that this criterion was unfair, burdensome and unnecessary. Strong concerns were raised, particularly regarding historical identification of groups in the South, that racial prejudice, poverty, and isolation have resulted in either a lack of adequate records or records which unfairly characterized Indian groups as not being Indian. One commenter considered the criterion unnecessary because the Indian character of a group should be established adequately by the requirement under criterion 83.7(e) to show Indian ancestry, and under criteria 83.7(b) and (c) to show continuity of tribal community and political influence.

Response: The requirement for continued identification complements criteria (b), community, (c), political influence; and (e), descent from a historical tribe. The criterion is intended to exclude from acknowledgment those entities which have only recently been identified as being Indian or whose Indian identity is based solely on self-identification.

The criterion for continued identification has been revised to reduce the burden of preparing petitions, as well as to address problems in the historical record in some areas of the country. The requirement for substantially continuous external identification has been reduced to require that it only be demonstrated since 1900. This avoids some of the problems with historical records in earlier periods while retaining the requirement for substantially continuous identification as Indian. To further address the question of use of historical records, language has been added to this criterion to make explicit that the existence of historical records denying the Indian character of a group will not be considered definitive evidence that the group does not meet this criterion. In applying the present acknowledgment regulations, records denying the Indian character of a group have not been considered definitive, particularly where there is evidence that the records have been influenced by racial bias, and where other, reliable records affirming the group's Indian identity have also been available.

Comments: Few changes were made in this paragraph in the proposed revised regulations. For consistency, the word "repeated" was added to several of the descriptions of specific evidence to be used to meet the criterion. While most commenters viewed these descriptions as useful, they felt that addition of the term "repeated" might be taken to mean that repeated demonstration over time was required for each kind of external identification.

Response: The intent of the paragraph is to outline the kinds of evidence which may be used in combination to demonstrate substantially continuous identification. In response to the comments, the term "repeated" has been taken out of the descriptions, since the basic criterion language clearly indicates that consistent identification by outsiders is required.

State and regional organizations have been added to § 83.7(a)(7) to better reflect the range of Indian organizations which may provide external identification.

The criterion language has been revised to state that the kinds of evidence specified "may" rather than "shall" be used to demonstrate substantially continuous Indian identity. This has been done to reflect explicitly how this criterion has been applied under the present regulations, as well as to maintain consistency with the lists of evidence provided for other criteria, which are not mandatory.

Comment: One commenter stated that the criterion should require identification as an Indian tribe, not just as an Indian entity.

Response: The Department feels there is no need to revise the criterion in this manner. The criterion serves to establish the Indian identification as a group, but does not determine the character of that group. Tribal character is determined by the other criteria.

Section 83.7(b)

Introduction: A list of specific evidence that can be used to demonstrate this criterion, including evidence considered sufficient in itself, has been added to this criterion. This provides a clearer explanation of the meaning of the criterion and associated definitions, and of the burden required to demonstrate this criterion.

Comments: Criterion (b), demonstration of community, and the associated definition of community in § 83.1, were substantially revised in the proposed revised rule. The revision omitted an apparently implied requirement that a group live in a geographical community in order to demonstrate that this criterion was met. The revised definition effectively requires a showing that substantial social relationships and/or social interaction are maintained widely within the membership, i.e., that members are more than simply a collection of Indian descendants, and that the membership is socially distinct from non-Indians.

Several commenters applauded the omission of a geographical or territorial requirement as better reflecting the circumstances of unrecognized tribes in some parts of the country. Two commenters objected on the grounds that a tribe cannot exist without a territorial basis.

Response: The omission of a geographical requirement reflects current practices in interpreting the regulations and recognizes that tribal social relations may be maintained even though members are not in close geographical proximity. It focuses on the essential requirement that such relationships exist to a significant degree. The change has been made so that the definition of community could encompass all forms of social interaction and not just the traditional circumstances where a tribe lived on a separate landbase. It also takes into account the historical difficulties and limitations which may have made it impossible for unrecognized groups to maintain a separate geographical community. The revised criterion does not eliminate the possibility that geographical concentrations may provide direct or supporting evidence concerning the existence of a community. The statements of specific evidence added to the criterion state explicitly that the existence of an exclusive territorial area is strong evidence that a community exists, because it indicates that significant social relationships are being maintained. Thus, the use of geographical evidence remains an option, but not a requirement.

Comment: Several commenters maintained that the existing regulations only required a showing that members were sufficiently concentrated geographically to allow the possibility that they could maintain social and political relationships, without having to show that such relationships actually existed. They maintained that a requirement to demonstrate that social relationships actually exists represents a change in the regulations.

Response: This view misinterprets the definition of community in the present regulations. The revision does not constitute a change in meaning. It is consistent with the intent of the regulations and with the legal precedents underlying the regulations, which require demonstration of the social solidarity of the tribe. It is also consistent with all acknowledgment decisions made under the existing regulations. These determinations have required evidence that significant social interaction and/or social relationships are actually maintained within the petitioner's membership.

Comments: Two commenters maintained that the revised definition adds a new requirement that "social boundaries" be shown.

Response: Distinctness is an essential requirement for the acknowledgment of tribes which are separate social and political entities. The existing criterion, and the revised one, both call for the community to be distinct from non-Indians. It is thus not a new requirement. The definition of "community" in the present regulations does not provide a definition of "distinct." The definition in the revised regulations merely adds language that defines "distinct."

Further, sharp social distinctions have been treated under the present regulations as strong evidence of cohesion within a community, since they have the effect of strengthening social interaction and relations within a group. Language to this effect has been added to criterion (b), as part of the examples of evidence which may be used to demonstrate the criterion. Sharp social distinctions include patterns of discrimination where members of a group are excluded or limited in their participation in the institutions of the larger society. While the acknowledgment regulations do not require that such sharp distinctions exist, they do require that some distinction be shown. Distinctions may also be maintained by the group itself, and not imposed by outsiders. In order to clarify the intent of the definition of community it has been modified to indicate that social distinction is the key element in the second part of the definition.

Comments: The proposed revised regulations added language to criterion (b) making it explicit that community must be demonstrated historically as well as presently. This language reflects the interpretation of the original regulations used in previous acknowledgment decisions.

Demonstration of continuity of a historical community is necessary in order to meet the intent of the regulations that continuity of tribal existence is the essential requirement for acknowledgment. In addition, political authority cannot be demonstrated without showing that there is a community within which political influence is exercised.

Some comments approved the inclusion of this language. Others opposed it as an escalation of requirements. These latter commenters further saw this revision and the revised definition of community as requiring a demonstration of specific details of interactions in the historical past, and thus as creating an impossible burden. They also viewed the requirement to demonstrate historical distinctness of community as adding a new research burden, that of "reconstructing social boundaries."

Response: A detailed description of individual social relationships has not been required in past acknowledgment decisions where historical community has been demonstrated successfully and it is not required here. The descriptions of specific kinds of evidence to demonstrate community make clear that detailed sociological reconstructions are not required. That is, historical community may be demonstrated by other means such as by showing distinct territorial areas occupied by the group, strong patterns of intermarriage within the group, etc. Further, the language added to § 83.6 clarifies that the nature and limitations of the historical record will be taken into account.

No requirement is intended, nor has one been imposed in past decisions, to demonstrate "social boundaries" in the sense of a detailed description of social interaction. In fact, however, since much of the historical data on unacknowledged groups is provided by outsiders to a group, information on social distinction is often more readily available in historical sources than is information on the internal workings of a group.

Comment: Several commenters objected to the use of the word "predominant" in the definition of community, rather than the term "substantial" as used in the previous definition. However, at least one commenter viewed the use of "predominant" as essential to insure that most of the group had significant social contact with each other.

Response: The two terms appear in the contexts of two different definitions of community. The old definition implied a geographic community, while the revised one focuses on the social character of the community. The term "predominant" is used to state a requirement that at least half of the membership maintains significant social contact with each other. The Department considers this is a reasonable standard for defining an Indian community eligible for acknowledgment. Therefore, the term has been retained.

Comment: Several individuals pointed out that retention of the language "distinct from other populations in the area" implied a geographical requirement, even though this was eliminated elsewhere.

Response: We agree, so this language has been eliminated.

Comments: Some commenters felt that having both criteria (b) and (c) was redundant, at least for the historical

periods, since, in their view, one implied the other.

Response: While the two criteria are interlinked, they are not identical. Previous acknowledgment decisions have delineated the relationship between these two criteria. Rather than eliminate one of the criteria, a description of how one can be used in some circumstances as evidence to demonstrate the other is included in the new descriptions of specific evidence which may be used to demonstrate these criteria. Contrary to the comments received, community is often easier to demonstrate historically than is political influence.

Revision: To conform with the changes in criterion (a), the language "viewed as American Indian" has been eliminated. The language was essentially redundant with the requirement of criterion (a) for identification of the group as an Indian entity.

Section 83.7(c)

Introduction: A list of specific evidence that can be used to demonstrate this criterion, including evidence considered sufficient in itself, has been added to this criterion. This addition provides a clearer explanation of the meaning of the criterion and associated definitions, and of the burden required to demonstrate this key criterion.

Comment: The present regulations do not provide a definition of the key phrase "tribal political influence or other authority." While some commenters approved of the definition added in § 83.1 of the proposed revised regulations, others interpreted it as establishing new requirements. Commenters specifically objected to the language specifying that influence on members be "in significant respects," that decisions "substantially affect members," and that outside dealings be in "matters of consequence." Several commenters suggested that the clauses in the definition be linked by "and/or" rather than "and" to indicate that these were alternatives that could be used in combination.

Response: The definition is not a change from present requirements. It reflects the legal and policy precedents underlying the regulations. These precedents have been used to interpret the existing regulations in all previous acknowledgment decisions. It is essential that more than a trivial degree of political influence be demonstrated. Petitioners should show that the leaders act in some matters of consequence to members or affect their behavior in more than a minimal way. They need not demonstrate the ability to require action or enforce decisions over strong opposition. It is also not necessary that political influence be exercised in all or most areas of members' lives or their relationships with other members. The definition provides for taking into account the history of the group, including the difficulties faced by unacknowledged groups in maintaining political influence. Yet it maintains the fundamental requirements of the regulations that political influence must not be so diminished as to be of no consequence or of minimal effect. The qualifying language is essential to the demonstration of political influence. Thus, it has been retained in the final regulations. However, the suggestion of linking the clauses with "and/or" has been adopted since it is more consistent with the intent of the definition.

Comments: Two commenters wanted stronger requirements for criterion (c). One requested that demonstration of authority over a specific area be required. The other wanted the criterion to specify "governmental" authority, meaning the demonstration of extensive, often coercive powers similar to those of recognized tribes.

Response: The requested changes would be an unwarranted escalation of the present requirements and entirely unreasonable, given the historical difficulties faced by many unacknowledged groups.

Comment: Several commenters questioned the use of the term "tribal" to qualify political influence or authority. The commenters felt that this implied some specialized type of political influence specific to Indians.

Response: The term "tribal" has been eliminated as unnecessary. It's use merely suggested that the scope of influence was over the tribal membership. It was not intended to imply a distinct type of political influence.

Comment: The significance of the word "other" in criterion 83.7(c) and the related definitions was questioned. It's inclusion was interpreted as implying an alternative definition of political processes than that actually addressed in the definition.

Response: To eliminate confusion, "other" has been removed. Now the basic phrase is "political influence or authority" rather than "political influence or other authority." "Authority" refers to exercise of political processes more directly and powerfully than is the case with "influence."

Section 83.7(d)

Comments: Two commenters supported the inclusion of this criteria, which was only slightly revised. Another concluded that it was unnecessary because its requirements could be included in criteria (c) and (e), respectively.

Response: This criterion is largely a technical requirement to provide information essential to evaluation of a petition. Since it does not constitute a significant burden on petitioners, it is being kept separate as a matter of convenience.

Section 83.7(e)

Revisions: The order in which the requirements are presented has been reversed, in order to state the most fundamental requirement first. The paragraphs describing evidence which may be used to demonstrate ancestry have been revised to be consistent with each other and to state clearly that they should provide evidence demonstrating that the present membership of a petitioner is descended from a historic tribe.

Comment: Two commenters questioned the adequacy of the language allowing ancestry to be derived from historic tribes which combined into one autonomous political entity. They interpreted it as requiring a formal union, even though tribal mergers more often occur informally. They also thought allowance should be made for the movement of families among tribes.

Response: The present language does not require a formal union, and past acknowledgment decisions have not required it. The previous decisions have also allowed for the movement of families between tribes. Thus, we believe any elaboration on this issue can best be provided in the revised guidelines.

Comment: Commenters generally supported the requirement of demonstrating tribal ancestry, but questioned whether it needed to be traced as far back as is currently required. They also questioned whether standards of proof were too strict and whether insufficient weight was given to oral history and tribal records, as opposed to governmental records.

Response: The regulations have not been interpreted to require tracing ancestry to the earliest history of a group. For most groups, ancestry need only to be traced to rolls and/or other documents created when their ancestors can be identified clearly as affiliated with the historical tribe. Unfortunately such rolls and/or documents may not exist for some groups or where they do, individuals may not be identified as Indians. In such instances, the petitioner's task is more difficult as they must find other reliable evidence to establish the necessary link to the historical tribe.

Weight is given to oral history, but it should be substantiated by documentary evidence wherever possible. Past decisions have utilized oral history extensively, often using it to point the way to critical documents. Tribal records are also given weight. In fact, all available materials and sources are used and their importance weighed by taking into account the context in which they were created.

Comment: One commenter considered it unreasonable to require a description of the circumstances under which historical membership lists were prepared. The commenter pointed out that such information might not be available in the historical record. The commenter interpreted the wording of the regulations as requiring this information and was concerned that, therefore, a petitioner could be denied for not meeting this requirement.

Response: Language has been added to indicate that information regarding the creation of past membership lists is required only if it can be obtained readily. Inability to provide it would not block a group's ability to meet this criterion. Such information is often vital to understanding the history of the group, and often helpful to demonstrating that the group meets this or other criteria.

Comment: Two commenters wanted the criterion to state a specific percentage of the modern membership, such as 60 percent, that would have to demonstrate ancestry from the historic tribe.

Response: The Department has intentionally avoided establishing a specific percentage to demonstrate required ancestry under criterion (e). This is because the significance of the percentage varies with the history and nature of a group and the particular reasons why a portion of the membership may not meet the requirements of the criterion.

Section 83.7(f)

Comments: Several commenters supported the revisions made to this section and the related definitions of tribal roll, membership in a recognized tribe and tribal relations. The primary concern was that the meaning of "associated with" was unclear. One commenter objected to the definition of "tribal roll" associated with this criterion. Another objected to prohibiting dual enrollment, because members of unacknowledged groups often enroll themselves or their children in recognized tribes. This may be done in order to receive essential benefits, and not with the intent of changing tribal affiliation.

Response: The phrase "associated with" is meant as a general term to encompass any situation where a petitioner may have had some relationship with a recognized tribe but is not legally incorporated with nor governed by that tribe and is not part of the same community. No better substitute term was found. The language in this section specifically prohibits use of the regulations to acknowledge portions of already recognized tribes. However, it allows for acknowledgment of rare cases where the petitioner has been regarded, erroneously, as part of or associated with another tribe, but has been a separate, autonomous group throughout history.

Section 83.7(g)

No significant comments were received on this paragraph.

Section 83.8 Previous Federal Acknowledgment

All comments relating to this section were dealt with above in the responses concerning general issues.

Section 83.9 Notice of Receipt of Petition (Formerly 83.8)

This section was renumbered from § 83.8, to permit insertion of the new, separate section concerning previous Federal acknowledgment. All comments relating to this section were dealt with above in the section concerning interested parties.

Section 83.10 Processing the Documented Petition

Introduction: This section was renumbered from § 83.9, to permit insertion of the new, separate section concerning previous Federal acknowledgment. Some paragraphs have been divided or combined, and renumbered, to group together related ideas.

Comments: Numerous comments were received objecting to the fact that no deadlines were required for Departmental action on technical assistance reviews nor to commence active consideration of a case. In contrast, it was pointed out that there were deadlines for petitioners to respond to proposed findings and final determinations.

Response: The regulations do not provide deadlines for certain Departmental actions nor for petitioners to submit documented petitions or to respond to technical assistance reviews. Deadlines only apply to the active consideration process, where both petitioners and the Department have specific timelines in which to act. The Department is committed to as timely and rapid consideration of petitions as possible. Yet, it finds it cannot guarantee deadlines for technical assistance reviews or initiation of active consideration, because it cannot predict the number size, content, or time of submission of documented petitions.

Section 83.10(a)

Comments: Several commenters objected to the deletion of the phrase "by his staff" in reference to research conducted for the Assistant Secretary. Commenters interpreted this as allowing for the use of contract researchers and felt strongly that contracting was not desirable or effective in hastening petition reviews. If contract research is to be allowed, provision was requested to enable petitioners to be fully informed about the contracting process. Commenters also asked to allow petitioners to decline to be reviewed by contractors, and to have the right to challenge the credentials of contract researchers.

Response: No change is necessary in this section. While the Department has the obligation to perform its review using qualified personnel, it is not obligated to allow petitioners to determine the personnel reviewing petitions, whether under contract or not. Contracting can play a useful role in expanding the Department's resources and providing flexibility, thereby facilitating and expediting the review of petitions. Furthermore, contracting is used only for research purposes. Evaluation and determinations of whether a petitioner meets the mandatory criteria for acknowledgment are only carried out by Departmental staff.

Section 83.10(d)

Comments: Some commenters approved of the change this section makes from basing priority of consideration on the date of submission of the letter of intent to the order in which petitions are ready for active consideration. Others opposed it as unfair or subject to manipulation.

Response: The Department's position is that the revised priority register is the most equitable approach. In the past, petitions which were ready for active consideration but had low priority numbers based on the initial letter of intent were "bumped" by petitions completed much later but with a higher priority number. This wait and

uncertainty is detrimental to the petitioning and review process.

Section 83.10(e)

Comments: Commenters generally approved of the addition of this section, which provides for a limited, speedy review of petitions which cannot, upon examination, meet the requirements of certain acknowledgment criteria. The primary concern was whether sufficient review and due process would be accorded.

Response: The section requires *clear* evidence, apparent on a preliminary review, that one of the three named criteria are not met. The section provides that, absent such clear evidence, the petition will be reviewed under the regular process. This limited evaluation will only occur after the petitioner has had the opportunity to respond to the technical assistance review. A proposed finding under this section would still be subject to the comment process before a final determination was issued. The petitioner would also have the opportunity to request reconsideration under § 83.11.

Section 83.10(f)

Comments: Several commenters were concerned that this section did not give the petitioner sufficient information about which personnel were responsible for the reviewing of their petition.

Response: The language in this section has been modified to make clear that the petitioner will be notified of the personnel actually conducting the review of their petition, as well as the supervisor in charge of the review.

Section 83.10(g)

Comments: Many commenters objected to the fact that while the Assistant Secretary can suspend review of a petition under provisions of this section, petitioners do not have the right to withdraw their petition or suspend its consideration. Some commenters suggested that the section should at least specify that the Assistant Secretary will consider such requests from a petitioner. Several commenters objected to the prohibition against withdrawal of a petition once active consideration was begun.

Response: While the present section does not prohibit consideration of petitioner requests for suspension of consideration, language has been added to specify that the Assistant Secretary will consider such requests.

The requirement for the Department to complete the review of any petition upon which work has begun has been retained. This is because of the considerable staff time and resources committed to a petition review which are wasted if the petition is subsequently withdrawn. Petitioners will have ample time to withdraw before active consideration is begun. They also will receive extensive preliminary review and advice concerning their petition. In addition, if petitioners could choose to withdraw solely because they anticipated a negative finding, this would create numerous administrative difficulties which would, in turn, slow down the reviewing process.

Section 83.10(h)

Comments: Two commenters requested that the language in this section describing the requirements for the Assistant Secretary's report to accompany the proposed finding be expanded to require that the bases for the decision be made clear.

Response: The current language calls for the report to summarize the "evidence and reasoning" for the proposed decision. Revised language has been added to further insure that the report provides a detailed discussion of the basis for the decision.

In addition, language has been added in a new section, § 83.10(j), to provide access to all records used in the finding, as well as for technical advice concerning the bases for the decision. Further, provision has been made for a formal meeting on the proposed finding which would be transcribed. This will allow a thorough exploration of the bases for the proposed finding which will be on the record, as well as an exchange of views and information between the Bureau, the petitioner and any interested parties. These changes accord with the Department's view that a proposed finding is a proposal subject to change based on additional analyses and evidence. Since new data and analysis may affect the conclusions proposed in the finding, it is important to make the petitioner clearly aware of the evidence and reasoning behind the proposed decision.

Section 83.10(i)

Comments: Several commenters observed that, based on experience to date, the 120-day response period, even with a potential 120-day extension, is greatly insufficient. Given the limitations of petitioner resources and the extent and complexity of the documentation usually involved, they felt that additional time was needed to prepare an adequate response.

Response: The Department agrees with these conclusions. The time periods in this section have been lengthened to provide for an initial 180-day response period and for an extension of up to an additional 180 days at the discretion of the Assistant Secretary. In addition, for consistency with other sections, the language of the section has been modified to make clear that comments to the Assistant Secretary may address any aspect of the proposed finding, not simply the "evidence relied upon", as the section currently provides.

Section 83.10(k)

Comments: Five commenters stated that the 60-day period for petitioners to respond to the comments of interested parties regarding a proposed finding was insufficient.

Response: The section allows for an extension of the 60-day period if warranted by the extent and nature of the comments. No limits are placed on this extension. We feel that this provision is adequate to address the needs of petitioners who may need additional time to address comments of any nature from third parties.

Comments: Two commenters requested that interested parties be allowed an opportunity to respond in turn to petitioner's comments on their submissions.

Response: Because the purpose of the response period is to address the proposed finding, there is no reason to provide for an extended exchange of comments between parties. However, because of the importance of the acknowledgment decision to petitioning groups and their future existence, opportunity is provided for petitioners to comment both on the proposed finding and on any comments received from other parties.

Section 83.10(l)

Clarification: Language has been added to this section to make it clear that the Assistant Secretary's research for the purpose of analyzing the petition and obtaining information concerning the petitioner's status, which is stated in § 83.10(a), extends through the period for preparation of a final determination.

Language has also been added to make it explicit that the Assistant Secretary may request that a petitioner or third party supplement or support their comments on a proposed finding with additional information and explanation. Comments on proposed findings are sometimes submitted without adequate supporting documentation or explanation. The absence of this information makes evaluation of the comments and preparation of the final determination difficult. These supplementary submissions would not be required and would not require additional research on the part of the petitioner or commenting party. These revisions do not provide for a reopening of the response period and would not allow for the consideration of unsolicited comments submitted after the close of the response period.

Section 83.10(m)

Revisions: This paragraph, numbered 83.10(l) in the proposed revised regulations, has been combined with the initial sentence in § 83.10(m) (as renumbered in the proposed revised regulations), and designated together as § 83.10(m). The other paragraphs from § 83.10(m) (as renumbered), have been redesignated as separate sections.

Sections 83.10 (o) and (p) (Renumbered, Formerly 83.9(m)(2))

Comments: Twenty comments were received on this section and the related section, § 83.3(f). These sections set forth the prohibition against repetitioning by groups denied acknowledgment under the existing regulations. The present regulations are silent on the question of repetitioning. All but one of the commenters opposed this change in the regulations. The primary objections were that undiscovered evidence which might change the outcome of decisions could come to light in the future. There was also some concern that petitions could be denied because the petitioner's research was inadequate.

Some felt that proposed changes in the regulations might affect the outcome if a petition decided under the existing regulations was reevaluated under the revised rules. These commenters wanted the revised reconsideration process made available to petitioners denied in the past under the present regulations.

Response: The Department's position is that there should be an eventual end to the present administrative process. Those petitioners who were denied went through several stages of review with multiple opportunities to develop and submit evidence. Allowing such groups to return to the process with new evidence would burden the process for the numerous remaining petitioners. The changes in the regulations are not so fundamental that they can be expected to result in different outcomes for cases previously decided. Denied petitioners still have the opportunity to seek legislative recognition if substantial new evidence develops.

Section 83.11 Independent Review, Reconsideration and Final Action

Introduction: This section has been reorganized to clarify the steps in the process and to group together as far as possible the actions required of each party. This section was formerly numbered § 83.10. To better reflect the nature of this process, the words "Independent Review" have been added to the title of the section.

General Comments: Many commenters supported the provision for review of reconsideration requests by an independent body. Some commenters objected to review by the IBIA, however, stating incorrectly that it was part of the Bureau of Indian Affairs. Other commenters felt that a review body outside of the Department would provide the fairest, most independent review.

Commenters also questioned whether the IBIA has the technical expertise necessary to adequately review acknowledgment decisions. These observers requested that an *ad hoc*, independent panel of professionals be utilized to review appeals.

Response: The IBIA is an independent administrative review body within the Department. Its decisions are not reviewable by agency officials. The Department does not believe that an independent panel of experts would be an appropriate body to make the actual decision for the Secretary whether to request reconsideration.

The proposed revised regulations included general provisions intended to address the need for technical input and advice to the IBIA. Section 83.11(e)(4) provides for a hearing before an administrative law judge and § 83.11(e)(3) provides for technical comment by the Bureau at the Board's request, although the Bureau is not otherwise involved in the independent review process. However, we believe there is some merit to the concern whether adequate provision has been made to address technical aspects of acknowledgment decisions in the independent review process as set forth in the proposed revised regulations. Therefore, the language of § 83.11(e)(3) has been modified to allow the Board to obtain independent expert comment if it deems this appropriate. Additional language has been added to § 83.11(e)(4) to strengthen the role of the discretionary hearing before an administrative law judge provided for in this paragraph.

Comments: Many commenters objected to the additional grounds for reconsideration set forth in § 83.11(d)(4). This paragraph provides that alternative interpretations of evidence, not previously reviewed, may be considered. Commenters interpreted this solely in terms of allowing reversal of positive acknowledgment decisions. One commenter approved of the additional grounds but questioned the competence of the IBIA to utilize them because of its lack of technical expertise. Another commenter wanted this provision limited to expert opinion, with legal opinions barred with regard to this specific ground for reconsideration.

Response: The additional grounds are neutral. They allow equally for a positive or a negative decision to be vacated and returned to the Assistant Secretary for reconsideration on the basis that the interpretation used was incorrect or that there are valid, credible alternative interpretations of the evidence. We believe these additional grounds further guarantee fairness and flexibility appropriate to the complexity of these decisions. We do not believe it would be practical or appropriate to attempt to limit in advance the kinds of alternative interpretations offered for consideration.

Comment: Some commenters wanted to omit all but the "new evidence" grounds for reconsideration. Others objected to any opportunity to present new evidence at all, on the grounds that "due diligence" to develop such evidence should have been exercised by the petitioner, who has the burden of proof under the regulations.

Response: The administrative process is predicated on providing a maximum opportunity to develop and provide evidence, as well as further analysis of existing evidence, free of as many procedural technicalities as possible. We believe this opportunity should extend to the reconsideration process. In addition, as the response to the previous set of comments indicates, we believe that the most thorough and equitable process requires consideration of more than just new evidence.

Comments: Two commenters objected to the provisions of § 83.11(e)(8) calling for the Assistant Secretary to designate the portions of the record to be sent to the IBIA. They felt that this would allow withholding of vital documents or manipulation of the decision.

Response: The section makes explicit that the entire record is available to the Board. The limited initial transmission is called for because of the extensive nature of the record, which often runs in excess of 20,000 pages. Thus, it is merely a convenience for the initial stages of the process of considering requests for reconsideration. The filings of petitioners and interested parties will

require, in all likelihood, an examination of more of the record.

Comment: Several commenters pointed out that there was no provision for petitioners or interested parties to comment on materials submitted to the Secretary which result in a request for reconsideration under based on grounds other than those in § 83.11(d)(1–4). One commenter wanted all parties to have an opportunity to comment before the Secretary made a decision whether to request reconsideration.

Response: We believe there is merit in having an opportunity to comment in such circumstances, parallel to that provided in the review by the IBIA. We also agree that it is most appropriate that such comments be received before the decision is made by the Secretary. Therefore, provision has been made for submission to the Secretary of comments on requests for the Secretary to ask the Assistant Secretary to reconsider the determination. Where comments are from interested parties, provision has been made for a reply by the petitioner. The revised language establishes timeframes for receipt of comment.

Revision: To simplify the reconsideration process, it has been reorganized to provide that requests for reconsideration be made directly to the Board. The initial determination of the nature of the request is a straightforward one that can be more quickly made by the Board.

As another means of simplifying the reconsideration process, the Secretary will only review requests for reconsideration made on other than the four basic grounds set forth in § 83.11(b) if the Board does not remand the determination to the Assistant Secretary on one or more of the basic grounds. The Assistant Secretary, in the event of a remand, would be authorized to also consider any other grounds alleged for reconsideration besides the four basic ones.

Comments: One commenter wanted all parties to have an opportunity to comment on any technical comments provided by the Bureau under § 83.11(e)(3).

Response: It is not necessary to provide for such a comment opportunity. The Bureau under the regulations does not participate as an active party opposing or supporting the submissions of petitioner or interested parties or defending the determination. It is intended only that the Board have the opportunity to obtain the technical comment that it may need to make its decision. Further, the Board has authority under § 83.11(e)(2) to allow the active participants to respond to such technical comments if it deems this necessary and appropriate.

Section 83.12 Implementation of Decisions

Section 83.12(a)

Comments: Several commenters objected to the change made in this section identifying tribes acknowledged through this process as "historic" tribes. The commenters objected to the distinction that has been made by the Department for many years between historical tribes and other organized Indian communities. The political authority of historical tribes is derived from aboriginal sovereignty because they have existed historically as distinct tribes since first acknowledgment. In contrast, the political authority of other organized Indian communities is considered to be based solely on powers derived from Federal statutes.

Response: This language is included to make clear that tribes acknowledged through the process are historical tribes by virtue of the requirements of the regulations. Removing the language would serve no purpose in resolving current objections to the distinction between historic tribes and other organized Indian communities.

The language of this section has been edited to state more directly that tribes acknowledged through this process are historic tribes and to clarify that all federally recognized tribes are considered to have a government-to-government relationship with the United States.

Section 83.12(b)

Comments: Several commenters approved of the limitations prescribed by this section on the base membership roll of a newly acknowledged tribe. Others considered the limitation an infringement on tribal sovereignty.

Response: The provision was included to clearly define tribal membership prior to acknowledgment. It was also included so that membership for purposes of Federal funding cannot later be so greatly expanded that the petitioner becomes, in effect, a different group than the one acknowledged. The acknowledgment decision rests on a determination that members of the petitioner form a cohesive social community and exercise tribal political influence. If the membership after acknowledgment expands so substantially that it changes the character of the group, then the validity of the acknowledgment decision may become questionable. The language of this section does allow for the addition to the base roll of these individuals who are politically and socially part of the tribe and who meet its membership requirements.

Section 83.13 Information Collection

Comment: Only one comment was received which concern the burden of work stated in the information collection statement. This commenter felt that the actual burden was much higher than the stated one.

Response: The Department does not agree that the stated burden is unrealistic, if the research is focused on the information actually needed to demonstrate tribal existence. Considerable scarce research resources are wasted on materials which are not relevant to the criteria. The stated burden hours have been reduced, to reflect the revisions in the criteria and their application to petitioners which can demonstrate tribal continuity with previously acknowledged tribes. The reduction also reflects correction of an error in calculating the number of genealogical forms which need to be filled out for a petition. The explanation of the purpose of the information collection has been revised slightly to more clearly reflect all seven of the criteria in section 83.7(a–g).

III. Findings and Certifications

The Department has certified to the Office of Management and Budget (OMB) that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778. These regulations have no preemptive or retroactive effect. A major purpose of the revisions has been to address the clarity of language and general draftsmanship of the regulations. Major efforts have been made to reduce the burden on petitioners.

This rule has been reviewed under Executive Order 12866. In accordance with E.O. 12630, the Department has determined that this rule does not have significant takings implications.

The Department has determined that this rule does not have significant federalism effects on States. This rule concerns the establishment by the Federal Government of a government-to-government relationship between the United States and Indian tribes not presently accorded that relationship. It does not affect State laws or powers, but may change the extent of their exercise or applicability to a tribe which becomes federally acknowledged. Costs or burdens to the States would not be significantly increased. Provision is made for State comment during the review of petitions for acknowledgment.

The Department has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The information collection requirements contained in § 83.7 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number OMB 1076–0104.

The primary author of this document is George Roth, Cultural Anthropologist, Branch of Acknowledgment and Research, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 83

Administrative practice and procedure, Indians-tribal government.

For the reasons set out in the preamble, Title 25, Chapter 1 of the Code of Federal Regulations is amended by revising part 83 to read as follows:

PART 83—PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE

Sec.

83.1 Definitions.
83.2 Purpose.
83.3 Scope.
83.4 Filing a letter of intent.
83.5 Duties of the Department.
83.6 General provisions for the documented petition.
83.7 Mandatory criteria for Federal acknowledgment.
83.8 Previous Federal acknowledgment
83.9 Notice of receipt of a petition.
83.10 Processing of the documented petition.
83.11 Independent review, reconsideration and final action.
83.12 Implementation of decisions.
83.13 Information collection.

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 43 U.S.C. 1457; and 209 Departmental Manual 8.

§ 83.1 Definitions.

As used in this part:

Area Office means a Bureau of Indian Affairs Area Office.

Assistant Secretary means the Assistant Secretary—Indian Affairs, or that officer's authorized representative.

Autonomous means the exercise of political influence or authority independent of the control of any other Indian governing entity. Autonomous must be understood in the context of the history, geography, culture and social organization of the petitioning group.

Board means the Interior Board of Indian Appeals.

Bureau means the Bureau of Indian Affairs.

Community means any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. *Community* must be understood in the context of the history, geography, culture and social organization of the group.

Continental United States means the contiguous 48 states and Alaska.

Continuously or *continuous* means extending from first sustained contact with non-Indians throughout the group's history to the present substantially without interruption.

Department means the Department of the Interior.

Documented petition means the detailed arguments made by a petitioner to substantiate its claim to continuous existence as an Indian tribe, together with the factual exposition and all documentary evidence necessary to demonstrate that these arguments address the mandatory criteria in § 83.7(a) through (g).

Historically, historical or *history* means dating from first sustained contact with non-Indians.

Indian group or *group* means any Indian or Alaska Native aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe.

Indian tribe, also referred to herein as *tribe*, means any Indian or Alaska Native tribe, band, pueblo, village, or community within the continental United States that the Secretary of the Interior presently acknowledges to exist as an Indian tribe.

Indigenous means native to the continental United States in that at least part of the petitioner's territory at the time of sustained contact extended into what is now the continental United States.

Informed party means any person or organization, other than an interested party, who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner.

Interested party means any person, organization or other entity who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. "Interested party" includes the governor and attorney general of the state in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination.

Letter of intent means an undocumented letter or resolution by which an Indian group requests Federal acknowledgment as an Indian tribe and expresses its intent to submit a documented petition.

Member of an Indian group means an individual who is recognized by an Indian group as meeting its membership criteria and who consents to being listed as a member of that group.

Member of an Indian tribe means an individual who meets the membership requirements of the tribe as set forth in its governing document or, absent such a document, has been recognized as a member collectively by those persons comprising the tribal governing body, and has consistently maintained tribal relations with the tribe or is listed on the tribal rolls of that tribe as a member, if such rolls are kept.

Petitioner means any entity that has submitted a letter of intent to the Secretary requesting acknowledgment that it is an Indian tribe.

Political influence or authority means a tribal council, leadership, internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and/or representing the group in dealing with outsiders in matters of consequence. This process is to be understood in the context of the history, culture and social organization of the group.

Previous Federal acknowledgment means action by the Federal government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States.

Secretary means the Secretary of the Interior or that officer's authorized representative.

Sustained contact means the period of earliest sustained non-Indian settlement and/or governmental presence in the local area in which the historical tribe or tribes from which the petitioner descends was located historically.

Tribal relations means participation by an individual in a political and social relationship with an Indian tribe.

Tribal roll, for purposes of these regulations, means a list exclusively of those individuals who have been determined by the tribe to meet the tribe's membership requirements as set forth in its governing document. In the absence of such a document, a tribal roll

means a list of those recognized as members by the tribe's governing body. In either case, those individuals on a tribal roll must have affirmatively demonstrated consent to being listed as members.

§ 83.2 Purpose.

The purpose of this part is to establish a departmental procedure and policy for acknowledging that certain American Indian groups exist as tribes. Acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits of the Federal government available to Indian tribes by virtue of their status as tribes. Acknowledgment shall also mean that the tribe is entitled to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. Acknowledgment shall subject the Indian tribe to the same authority of Congress and the United States to which other federally acknowledged tribes are subjected.

§ 83.3 Scope.

(a) This part applies only to those American Indian groups indigenous to the continental United States which are not currently acknowledged as Indian tribes by the Department. It is intended to apply to groups that can establish a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present.

(b) Indian tribes, organized bands, pueblos, Alaska Native villages, or communities which are already acknowledged as such and are receiving services from the Bureau of Indian Affairs may not be reviewed under the procedures established by these regulations.

(c) Associations, organizations, corporations or groups of any character that have been formed in recent times may not be acknowledged under these regulations. The fact that a group that meets the criteria in § 83.7 (a) through (g) has recently incorporated or otherwise formalized its existing autonomous political process will be viewed as a change in form and have no bearing on the Assistant Secretary's final decision.

(d) Splinter groups, political factions, communities or groups of any character that separate from the main body of a currently acknowledged tribe may not be acknowledged under these regulations. However, groups that can establish clearly that they have functioned throughout history until the present as an autonomous tribal entity may be acknowledged under this part, even though they have been regarded by some as part of or have been associated in some manner with an acknowledged North American Indian tribe.

(e) Further, groups which are, or the members of which are, subject to congressional legislation terminating or forbidding the Federal relationship may not be acknowledged under this part.

(f) Finally, groups that previously petitioned and were denied Federal acknowledgment under these regulations or under previous regulations in part 83 of this title, may not be acknowledged under these regulations. This includes reorganized or reconstituted petitioners previously denied, or splinter groups, spin-offs, or component groups of any type that were once part of petitioners previously denied.

(g) Indian groups whose documented petitions are under active consideration at the effective date of these revised regulations may choose to complete their petitioning process either under these regulations or under the previous acknowledgment regulations in part 83 of this title. This choice must be made by April 26, 1994. This option shall apply to any petition for which a determination is not final and effective. Such petitioners may request a suspension of consideration under § 83.10(g) of not more than 180 days in order to provide additional information or argument.

§ 83.4 Filing a letter of intent.

(a) Any Indian group in the continental United States that believes it should be acknowledged as an Indian tribe and that it can satisfy the criteria in § 83.7 may submit a letter of intent.

(b) Letters of intent requesting acknowledgment that an Indian group exists as an Indian tribe shall be filed with the Assistant Secretary—Indian Affairs, Department of the Interior, 1849 C Street, NW., Washington, DC 20240. Attention: Branch of Acknowledgment and Research, Mail Stop 2611–MIB. A letter of intent may be filed in advance of, or at the same time as, a group's documented petition.

(c) A letter of intent must be produced, dated and signed by the governing body of an Indian group and submitted to the Assistant Secretary.

§ 83.5 Duties of the Department.

(a) The Department shall publish in the **Federal Register**, no less frequently than every three years, a list of all Indian tribes entitled to receive services from the Bureau by virtue of their status as Indian tribes. The list may be published more frequently, if the Assistant Secretary deems it necessary.

(b) The Assistant Secretary shall make available revised and expanded guidelines for the preparation of documented petitions by September 23, 1994. These guidelines will include an explanation of the criteria and other provisions of the regulations, a discussion of the types of evidence which may be used to demonstrate particular criteria or other provisions of the regulations, and general suggestions and guidelines on how and where to conduct research. The guidelines may be supplemented or updated as necessary. The Department's example of a documented petition format, while preferable, shall not preclude the use of any other format.

(c) The Department shall, upon request, provide petitioners with suggestions and advice regarding preparation of the documented petition. The Department shall not be responsible for the actual research on behalf of the petitioner.

(d) Any notice which by the terms of these regulations must be published in the **Federal Register**, shall also be mailed to the petitioner, the governor of the state where the group is located, and to other interested parties.

(e) After an Indian group has filed a letter of intent requesting Federal acknowledgment as an Indian tribe and until that group has actually submitted a documented petition, the Assistant Secretary may contact the group periodically and request clarification, in writing, of its intent to continue with the petitioning process.

(f) All petitioners under active consideration shall be notified, by April 16, 1994 of the opportunity under § 83.3(g) to choose whether to complete their petitioning process under the provisions of these revised regulations or the previous regulations as published, on September 5, 1978, at 43 FR 39361.

(g) All other groups that have submitted documented petitions or letters of intent shall be notified of and provided with a copy of these regulations by July 25, 1994.

§ 83.6 General provisions for the documented petition.

(a) The documented petition may be in any readable form that contains detailed, specific evidence in support of a request to the Secretary to acknowledge tribal existence.

(b) The documented petition must include a certification, signed and dated by members of the group's governing body, stating that it is the group's official documented petition.

(c) A petitioner must satisfy all of the criteria in paragraphs (a) through (g) of § 83.7 in order for tribal existence to be acknowledged. Therefore, the documented petition must include thorough explanations and supporting documentation in response to all of the criteria. The definitions in § 83.1 are an integral part of the regulations, and the criteria should be read carefully together with these definitions.

(d) A petitioner may be denied acknowledgment if the evidence available demonstrates that it does not meet one or more criteria. A petitioner may also be denied if there is insufficient evidence that it meets one or more of the criteria. A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. Conclusive proof of the facts relating to a criterion shall not be required in order for the criterion to be considered met.

(e) Evaluation of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available. The limitations inherent in demonstrating the historical existence of community and political influence or authority shall also be taken into account. Existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time. Fluctuations in tribal activity during various years shall not in themselves be a cause for denial of acknowledgment under these criteria.

(f) The criteria in § 83.7 (a) through (g) shall be interpreted as applying to tribes or groups that have historically combined and functioned as a single autonomous political entity.

(g) The specific forms of evidence stated in the criteria in § 83.7 (a) through (c) and § 83.7(e) are not mandatory requirements. The criteria may be met alternatively by any suitable evidence that demonstrates that the petitioner meets the requirements of the criterion statement and related definitions.

§ 83.7 Mandatory criteria for Federal acknowledgment.

The mandatory criteria are:

(a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members.

(1) Identification as an Indian entity by Federal authorities.

(2) Relationships with State governments based on identification of the group as Indian.

(3) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.

(4) Identification as an Indian entity by anthropologists, historians, and/or other scholars.

(5) Identification as an Indian entity in newspapers and books.

(6) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations.

(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

(1) This criterion may be demonstrated by some combination of the following evidence and/or other evidence that the petitioner meets the definition of *community* set forth in § 83.1:

(i) Significant rates of marriage within the group, and/or, as may be culturally required, patterned out-marriages with other Indian populations.

(ii) Significant social relationships connecting individual members.

(iii) Significant rates of informal social interaction which exist broadly among the members of a group.

(iv) A significant degree of shared or cooperative labor or other economic activity among the membership.

(v) Evidence of strong patterns of discrimination or other social distinctions by non-members.

(vi) Shared sacred or secular ritual activity encompassing most of the group.

(vii) Cultural patterns shared among a significant portion of the group that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization, or religious beliefs and practices.

(viii) The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.

(ix) A demonstration of historical political influence under the criterion in § 83.7(c) shall be evidence for demonstrating historical community.

(2) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following:

(i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community;

(ii) At least 50 percent of the marriages in the group are between members of the group;

(iii) At least 50 percent of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship organization, or religious beliefs and practices;

(iv) There are distinct community social institutions encompassing most of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or

(v) The group has met the criterion in § 83.7(c) using evidence described in § 83.7(c)(2).

(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

(1) This criterion may be demonstrated by some combination of the evidence listed below and/or by other evidence that the petitioner meets the definition of political influence or authority in § 83.1.

(i) The group is able to mobilize significant numbers of members and significant resources from its members for group purposes.

(ii) Most of the membership considers issues acted upon or actions taken by group leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication and involvement in political processes by most of the group's members.

(iv) The group meets the criterion in § 83.7(b) at more than a minimal level.

(v) There are internal conflicts which show controversy over valued group goals, properties, policies, processes and/or decisions.

(2) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating

that group leaders and/or other mechanisms exist or existed which:

(i) Allocate group resources such as land, residence rights and the like on a consistent basis.

(ii) Settle disputes between members or subgroups by mediation or other means on a regular basis;

(iii) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior;

(iv) Organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(3) A group that has met the requirements in paragraph 83.7(b)(2) at a given point in time shall be considered to have provided sufficient evidence to meet this criterion at that point in time.

(d) A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

(e) The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.

(1) Evidence acceptable to the Secretary which can be used for this purpose includes but is not limited to:

(i) Rolls prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, or other purposes;

(ii) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iii) Church, school, and other similar enrollment records identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(v) Other records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(2) The petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group. This list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.

(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that it has functioned throughout history until the present as a separate and autonomous Indian tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group.

(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

§ 83.8 Previous Federal acknowledgment.

(a) Unambiguous previous Federal acknowledgment is acceptable evidence of the tribal character of a petitioner to the date of the last such previous acknowledgment. If a petitioner provides substantial evidence of unambiguous Federal acknowledgment, the petitioner will then only be required to demonstrate that it meets the requirements of § 83.7 to the extent required by this section.

(b) A determination of the adequacy of the evidence of previous Federal action acknowledging tribal status shall be made during the technical assistance review of the documented petition conducted pursuant to § 83.10(b). If a petition is awaiting active consideration at the time of adoption of these regulations, this review will be conducted while the petition is under active consideration unless the petitioner requests in writing that this review be made in advance.

(c) Evidence to demonstrate previous Federal acknowledgment includes, but is not limited to:

(1) Evidence that the group has had treaty relations with the United States.

(2) Evidence that the group has been denominated a tribe by act of Congress or Executive Order.

(3) Evidence that the group has been treated by the Federal Government as having collective rights in tribal lands or funds.

(d) To be acknowledged, a petitioner that can demonstrate previous Federal acknowledgment must show that:

(1) The group meets the requirements of the criterion in § 83.7(a), except that such identification shall be demonstrated since the point of last Federal acknowledgment. The group must further have been identified by such sources as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity.

(2) The group meets the requirements of the criterion in § 83.7(b) to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically.

(3) The group meets the requirements of the criterion in § 83.7(c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in § 83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in § 83.7(c).

(4) The group meets the requirements of the criteria in paragraphs 83.7 (d) through (g).

(5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d) (1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in § 83.7 (a) through (c) from last Federal acknowledgment until the present.

§ 83.9 Notice of receipt of a petition.

(a) Within 30 days after receiving a letter of intent, or a documented petition if a letter of intent has not previously been received and noticed, the Assistant Secretary shall acknowledge such receipt in writing

and shall have published within 60 days in the Federal Register a notice of such receipt. This notice must include the name, location, and mailing address of the petitioner and such other information as will identify the entity submitting the letter of intent or documented petition and the date it was received. This notice shall also serve to announce the opportunity for interested parties and informed parties to submit factual or legal arguments in support of or in opposition to the petitioner's request for acknowledgment and/or to request to be kept informed of all general actions affecting the petition. The notice shall also indicate where a copy of the letter of intent and the documented petition may be examined.

(b) The Assistant Secretary shall notify, in writing, the governor and attorney general of the state in which a petitioner is located. The Assistant Secretary shall also notify any recognized tribe and any other petitioner which appears to have a historical or present relationship with the petitioner or which may otherwise be considered to have a potential interest in the acknowledgment determination.

(c) The Assistant Secretary shall also publish the notice of receipt of the letter of intent, or documented petition if a letter of intent has not been previously received, in a major newspaper or newspapers of general circulation in the town or city nearest to the petitioner. The notice will include all of the information in paragraph (a) of this section.

§ 83.10 Processing of the documented petition.

(a) Upon receipt of a documented petition, the Assistant Secretary shall cause a review to be conducted to determine whether the petitioner is entitled to be acknowledged as an Indian tribe. The review shall include consideration of the documented petition and the factual statements contained therein. The Assistant Secretary may also initiate other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status. The Assistant Secretary may likewise consider any evidence which may be submitted by interested parties or informed parties.

(b) Prior to active consideration of the documented petition, the Assistant Secretary shall conduct a preliminary review of the petition for purposes of technical assistance.

(1) This technical assistance review does not constitute the Assistant Secretary's review to determine if the petitioner is entitled to be acknowledged as an Indian tribe. It is a preliminary review for the purpose of providing the petitioner an opportunity to supplement or revise the documented petition prior to active consideration. Insofar as possible, technical assistance reviews under this paragraph will be conducted in the order of receipt of documented petitions. However, technical assistance reviews will not have priority over active consideration of documented petitions.

(2) After the technical assistance review, the Assistant Secretary shall notify the petitioner by letter of any obvious deficiencies or significant omissions apparent in the documented petition and provide the petitioner with an opportunity to withdraw the documented petition for further work or to submit additional information and/or clarification.

(3) If a petitioner's documented petition claims previous Federal acknowledgment and/or includes evidence of previous Federal acknowledgment, the technical assistance review will also include a review to determine whether that evidence is sufficient to meet the requirements of previous Federal acknowledgment as defined in § 83.1.

(c) Petitioners have the option of responding in part or in full to the technical assistance review letter or of requesting, in writing, that the Assistant Secretary proceed with the active consideration of the documented petition using the materials already submitted.

(1) If the petitioner requests that the materials submitted in response to the technical assistance review letter be again reviewed for adequacy, the Assistant Secretary will provide the additional review. However, this additional review will not be automatic and will be conducted only at the request of the petitioner.

(2) If the assertion of previous Federal acknowledgment under § 83.8 cannot be substantiated during the technical assistance review, the petitioner must respond by providing additional evidence. A petitioner claiming previous Federal acknowledgment who fails to respond to a technical assistance review letter under this paragraph, or whose response fails to establish the claim, shall have its documented petition considered on the same basis as documented petitions submitted by groups not claiming previous Federal acknowledgment. Petitioners that fail to demonstrate previous Federal acknowledgment after a review of materials submitted in response to the technical assistance review shall be so notified. Such petitioners may submit additional materials concerning previous acknowledgment during the course of active consideration.

(d) The order of consideration of documented petitions shall be determined by the date of the Bureau's notification to the petitioner that it considers that the documented petition is ready to be placed on active consideration. The Assistant Secretary shall establish and maintain a numbered register of documented petitions which have been determined ready for active consideration. The Assistant Secretary shall also maintain a numbered register of letters of intent or incomplete petitions based on the original date of filing with the Bureau. In the event that two or more documented petitions are determined ready for active consideration on the same date, the register of letters of intent or incomplete petitions shall determine the order of consideration by the Assistant Secretary.

(e) Prior to active consideration, the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical assistance review letter indicates that there is little or no evidence that establishes that the group can meet the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7.

(1) If this review finds that the evidence clearly establishes that the group does not meet the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, a full consideration of the documented petition under all seven of the mandatory criteria will not be undertaken pursuant to paragraph (a) of this section. Rather, the Assistant Secretary shall instead decline to acknowledge that the petitioner is an Indian tribe and publish a proposed finding to that effect in the Federal Register. The periods for receipt of comments on the proposed finding from petitioners, interested parties and informed parties, for consideration of comments received, and for publication of a final determination regarding the petitioner's status shall follow the timetables established in paragraphs (h) through (l) of this section.

(2) If the review cannot clearly demonstrate that the group does not meet one or more of the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, a full evaluation of the documented petition under all seven of the mandatory criteria shall be undertaken during active consideration of the documented petition pursuant to paragraph (g) of this section.

(f) The petitioner and interested parties shall be notified when the

documented petition comes under active consideration.

(1) They shall also be provided with the name, office address, and telephone number of the staff member with primary administrative responsibility for the petition; the names of the researchers conducting the evaluation of the petition; and the name of their supervisor.

(2) The petitioner shall be notified of any substantive comment on its petition received prior to the beginning of active consideration or during the preparation of the proposed finding, and shall be provided an opportunity to respond to such comments.

(g) Once active consideration of the documented petition has begun, the Assistant Secretary shall continue the review and publish proposed findings and a final determination in the **Federal Register** pursuant to these regulations, notwithstanding any requests by the petitioner or interested parties to cease consideration. The Assistant Secretary has the discretion, however, to suspend active consideration of a documented petition, either conditionally or for a stated period of time, upon a showing to the petitioner that there are technical problems with the documented petition or administrative problems that temporarily preclude continuing active consideration. The Assistant Secretary shall also consider requests by petitioners for suspension of consideration and has the discretion to grant such requests for good cause. Upon resolution of the technical or administrative problems that are the basis for the suspension, the documented petition will have priority on the numbered register of documented petitions insofar as possible. The Assistant Secretary shall notify the petitioner and interested parties when active consideration of the documented petition is resumed. The timetables in succeeding paragraphs shall begin anew upon the resumption of active consideration.

(h) Within one year after notifying the petitioner that active consideration of the documented petition has begun, the Assistant Secretary shall publish proposed findings in the **Federal Register**. The Assistant Secretary has the discretion to extend that period up to an additional 180 days. The petitioner and interested parties shall be notified of the time extension. In addition to the proposed findings, the Assistant Secretary shall prepare a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision. Copies of the report shall be provided to the petitioner, interested parties, and informed parties and made available to others upon written request.

(i) Upon publication of the proposed findings, the petitioner or any individual or organization wishing to challenge or support the proposed findings shall have 180 days to submit arguments and evidence to the Assistant Secretary to rebut or support the proposed finding. The period for comment on a proposed finding may be extended for up to an additional 180 days at the Assistant Secretary's discretion upon a finding of good cause. The petitioner and interested parties shall be notified of the time extension. Interested and informed parties who submit arguments and evidence to the Assistant Secretary must provide copies of their submissions to the petitioner.

(j)(1) During the response period, the Assistant Secretary shall provide technical advice concerning the factual basis for the proposed finding, the reasoning used in preparing it, and suggestions regarding the preparation of materials in response to the proposed finding. The Assistant Secretary shall make available to the petitioner in a timely fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law.

(2) In addition, the Assistant Secretary shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the Assistant Secretary in reaching a final determination.

(k) The petitioner shall have a minimum of 60 days to respond to any submissions by interested and informed parties during the response period. This may be extended at the Assistant Secretary's discretion if warranted by the extent and nature of the comments. The petitioner and interested parties shall be notified by letter of any extension. No further comments from interested or informed parties will be accepted after the end of the regular response period.

(l) At the end of the period for comment on a proposed finding, the Assistant Secretary shall consult with the petitioner and interested parties to determine an equitable timeframe for consideration of written arguments and evidence submitted during the response period. The petitioner and interested parties shall be notified of the date such consideration begins.

(1) Unsolicited comments submitted after the close of the response period established in § 83.10(i) and § 83.10(k), will not be considered in preparation of a final determination. The Assistant Secretary has the discretion during the preparation of the proposed finding, however, to request additional explanations and information from the petitioner or from commenting parties to support or supplement their comments on a proposed finding. The Assistant Secretary may also conduct such additional research as is necessary to evaluate and supplement the record. In either case, the additional materials will become part of the petition record.

(2) After consideration of the written arguments and evidence rebutting or supporting the proposed finding and the petitioner's response to the comments of interested parties and informed parties, the Assistant Secretary shall make a final determination regarding the petitioner's status. A summary of this determination shall be published in the **Federal Register** within 60 days from the date on which the consideration of the written arguments and evidence rebutting or supporting the proposed finding begins.

(3) The Assistant Secretary has the discretion to extend the period for the preparation of a final determination if warranted by the extent and nature of evidence and arguments received during the response period. The petitioner and interested parties shall be notified of the time extension.

(4) The determination will become effective 90 days from publication unless a request for reconsideration is filed pursuant to § 83.11.

(m) The Assistant Secretary shall acknowledge the existence of the petitioner as an Indian tribe when it is determined that the group satisfies all of the criteria in § 83.7. The Assistant Secretary shall decline to acknowledge that a petitioner is an Indian tribe if it fails to satisfy any one of the criteria in § 83.7.

(n) If the Assistant Secretary declines to acknowledge that a petitioner is an Indian tribe, the petitioner shall be informed of alternatives, if any, to acknowledgment under these procedures. These alternatives may include other means through which the petitioning group may achieve the status of an acknowledged Indian tribe or through which any of its members may become eligible for services and benefits from the Department as Indians, or become members of an acknowledged Indian tribe.

(o) The determination to decline to acknowledge that the petitioner is an Indian tribe shall be final for the Department.

(p) A petitioner that has petitioned under this part or under the acknowledgment regulations previously effective and that has been denied Federal acknowledgment may not re-petition under this part. The term "petitioner" here includes previously denied petitioners that have reorganized or been renamed or that are wholly or primarily portions of groups that have previously been denied under these or previous acknowledgment regulations.

§ 83.11 Independent review, reconsideration and final action

(a) (1) Upon publication of the Assistant Secretary's determination in the **Federal Register**, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals. Petitioners which choose under § 83.3(g) to be considered under previously effective acknowledgment regulations may nonetheless request reconsideration under this section.

(2) A petitioner's or interested party's request for reconsideration must be received by the Board no later than 90 days after the date of publication of the Assistant Secretary's determination in the **Federal Register**. If no request for reconsideration has been received, the Assistant Secretary's decision shall be final for the Department 90 days after publication of the final determination in the **Federal Register**.

(b) The petitioner's or interested party's request for reconsideration shall contain a detailed statement of the grounds for the request, and shall include any new evidence to be considered.

(1) The detailed statement of grounds for reconsideration filed by a petitioner or interested parties shall be considered the appellant's opening brief provided for in 43 CFR 4.311(a).

(2) The party or parties requesting the reconsideration shall mail copies of the request to the petitioner and all other interested parties.

(c)(1) The Board shall dismiss a request for reconsideration that is not filed by the deadline specified in paragraph (a) of this section.

(2) If a petitioner's or interested party's request for reconsideration is filed on time, the Board shall determine, within 120 days after publication of the Assistant Secretary's final determination in the **Federal Register**, whether the request alleges any of the grounds in paragraph (d) of this section and shall notify the petitioner and interested parties of this determination.

(d) The Board shall have the authority to review all requests for reconsideration that are timely and that allege any of the following:

(1) That there is new evidence that could affect the determination; or

(2) That a substantial portion of the evidence relied upon in the Assistant Secretary's determination was unreliable or was of little probative value; or

(3) That petitioner's or the Bureau's research appears inadequate or incomplete in some material respect; or

(4) That there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination, that would substantially affect the determination that the petitioner meets or does not meet one or more of the criteria in § 83.7 (a) through (g).

(e) The Board shall have administrative authority to review determinations of the Assistant Secretary made pursuant to § 83.10(m) to the extent authorized by this section.

(1) The regulations at 43 CFR 4.310–4.318 and 4.331–4.340 shall apply to proceedings before the Board except when they are inconsistent with these regulations.

(2) The Board may establish such procedures as it deems appropriate to provide a full and fair evaluation of a request for reconsideration under this section to the extent they are not inconsistent with these regulations.

(3) The Board, at its discretion, may request experts not associated with the Bureau, the petitioner, or interested parties to provide comments, recommendations, or technical advice concerning the determination, the administrative record, or materials filed by the petitioner or interested parties. The Board may also request, at its discretion, comments or technical assistance from the Assistant Secretary concerning the final determination or, pursuant to paragraph (e)(8) of this section, the record used for the determination.

(4) Pursuant to 43 CFR 4.337(a), the Board may require, at its discretion, a hearing conducted by an administrative law judge of the Office of Hearings and Appeals if the Board determines that further inquiry is necessary to resolve a genuine issue of material fact or to otherwise augment the record before it concerning the grounds for reconsideration.

(5) The detailed statement of grounds for reconsideration filed by a petitioner or interested parties pursuant to paragraph (b)(1) of this section shall be considered the appellant's opening brief provided for in 43 CFR 4.311(a).

(6) An appellant's reply to an opposing party's answer brief, provided for in 43 CFR 4.311(b), shall not apply to proceedings under this section, except that a petitioner shall have the opportunity to reply to an answer brief filed by any party that opposes a petitioner's request for reconsideration.

(7) The opportunity for reconsideration of a Board decision provided for in 43 CFR 4.315 shall not apply to proceedings under this section.

(8) For purposes of review by the Board, the administrative record shall consist of all appropriate documents in the Branch of Acknowledgment and Research relevant to the determination involved in the request for reconsideration. The Assistant Secretary shall designate and transmit to the Board copies of critical documents central to the portions of the determination under a request for reconsideration. The Branch of Acknowledgment and Research shall retain custody of the remainder of the administrative record, to which the Board shall have unrestricted access.

(9) The Board shall affirm the Assistant Secretary's determination if the Board finds that the petitioner or interested party has failed to establish, by a preponderance of the evidence, at least one of the grounds under paragraph (d)(1–4) of this section.

(10) The Board shall vacate the Assistant Secretary's determination and remand it to the Assistant Secretary for further work and reconsideration if the Board finds that the petitioner or an interested party has established, by a preponderance of the evidence, one or more of the grounds under paragraph (d)(1–4) of this section.

(f)(1) The Board, in addition to making its determination to affirm or remand, shall describe in its decision any grounds for reconsideration other than those in paragraphs (d)(1–4) of this section alleged by a petitioner's or interested party's request for reconsideration.

(2) If the Board affirms the Assistant Secretary's decision under § 83.11(e)(9) but finds that the petitioner or interested parties have alleged other grounds for reconsideration, the Board shall send the requests for reconsideration to the Secretary. The Secretary shall have the discretion to request that the Assistant Secretary reconsider the final determination on those grounds.

(3) The Secretary, in reviewing the Assistant Secretary's decision, may review any information available, whether formally part of the record or not. Where the Secretary's review relies upon information that is not formally

part of the record, the Secretary shall insert the information relied upon into the record, together with an identification of its source and nature.

(4) Where the Board has sent the Secretary a request for reconsideration under paragraph (f)(2), the petitioner and interested parties shall have 30 days from receiving notice of the Board's decision to submit comments to the Secretary. Where materials are submitted to the Secretary opposing a petitioner's request for reconsideration, the interested party shall provide copies to the petitioner and the petitioner shall have 15 days from their receipt of the information to file a response with the Secretary.

(5) The Secretary shall make a determination whether to request a reconsideration of the Assistant Secretary's determination within 60 days of receipt of all comments and shall notify all parties of the decision.

(g) (1) The Assistant Secretary shall issue a reconsidered determination within 120 days of receipt of the Board's decision to remand a determination or the Secretary's request for reconsideration.

(2) The Assistant Secretary's reconsideration shall address all grounds determined to be valid grounds for reconsideration in a remand by the Board, other grounds described by the Board pursuant to paragraph (f)(1), and all grounds specified in any Secretarial request. The Assistant Secretary's reconsideration may address any issues and evidence consistent with the Board's decision or the Secretary's request.

(h) (1) If the Board finds that no petitioner's or interested party's request for reconsideration is timely, the Assistant Secretary's determination shall become effective and final for the Department 120 days from the publication of the final determination in the **Federal Register**.

(2) If the Secretary declines to request reconsideration under paragraph (f)(2) of this section, the Assistant Secretary's decision shall become effective and final for the Department as of the date of notification to all parties of the Secretary's decision.

(3) If a determination is reconsidered by the Assistant Secretary because of action by the Board remanding a decision or because the Secretary has requested reconsideration, the reconsidered determination shall be final and effective upon publication of the notice of this reconsidered determination in the **Federal Register**.

§ 83.12 Implementation of decisions.

(a) Upon final determination that the petitioner exists as an Indian tribe, it shall be considered eligible for the services and benefits from the Federal government that are available to other federally recognized tribes. The newly acknowledged tribe shall be considered a historic tribe and shall be entitled to the privileges and immunities available to other federally recognized historic tribes by virtue of their government-to-government relationship with the United States. It shall also have the responsibilities and obligations of such tribes. Newly acknowledged Indian tribes shall likewise be subject to the same authority of Congress and the United States as are other federally acknowledged tribes.

(b) Upon acknowledgment as an Indian tribe, the list of members submitted as part of the petitioners documented petition shall be the tribe's complete base roll for purposes of Federal funding and other administrative purposes. For Bureau purposes, any additions made to the roll, other than individuals who are descendants of those on the roll and who meet the tribe's membership criteria, shall be limited to those meeting the requirements of § 83.7(e) and maintaining significant social and political ties with the tribe (i.e., maintaining the same relationship with the tribe as those on the list submitted with the group's documented petition).

(c) While the newly acknowledged tribe shall be considered eligible for benefits and services available to federally recognized tribes because of their status as Indian tribes, acknowledgment of tribal existence shall not create immediate access to existing programs. The tribe may participate in existing programs after it meets the specific program requirements, if any, and upon appropriation of funds by Congress. Requests for appropriations shall follow a determination of the needs of the newly acknowledged tribe.

(d) Within six months after acknowledgment, the appropriate Area Office shall consult with the newly acknowledged tribe and develop, in cooperation with the tribe, a determination of needs and a recommended budget. These shall be forwarded to the Assistant Secretary. The recommended budget will then be considered along with other recommendations by the Assistant Secretary in the usual budget request process.

§ 83.13 Information collection.

(a) The collections of information contained in § 83.7 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0104. The information will be used to establish historical existence as a tribe, verify family relationships and the group's claim that its members are Indian and descend from a historical tribe or tribes which combined, that members are not substantially enrolled in other Indian tribes, and that they have not individually or as a group been terminated or otherwise forbidden the Federal relationship. Response is required to obtain a benefit in accordance with 25 U.S.C. 2.

(b) Public reporting burden for this information is estimated to average 1,968 hours per petition, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this collection of information, including suggestions for reducing the burden, to both the Information Collection Clearance Officer, Bureau of Indian Affairs, Mail Stop 336–SIB, 1849 C Street, NW., Washington, DC 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Dated: December 28, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–3934 Filed 2–24–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Friday
February 25, 1994

Part III

Department of the Interior

Bureau of Indian Affairs
25 CFR Part 141
Business Practices on the Navajo, Hopi and Zuni Reservations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 141

RIN 1076–AC87

Business Practices on the Navajo, Hopi and Zuni Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to amend the general regulations in 25 CFR Part 141 deleting the references to the account "Indian Monies, Proceeds of Labor" and substituting "Special Deposits," in their place. This regulation is being amended to correspond to current administrative procedures in eliminating the use of IMPL accounts which are to be removed from the BIA accounting system.

DATES: Comments must be received on or before March 28, 1994.

ADDRESSES: Written comments should be directed to the Bureau of Indian Affairs, Office of Trust Funds Management, 505 Marquette NW., Suite 700, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Parris, Bureau of Indian Affairs, Office of Trust Funds Management, 505 Marquette NW., Suite 700, Albuquerque, NM 87102, Telephone Number 505–766–3233.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

This proposed rulemaking action will amend Part 141 of Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations, which contains general regulations pertaining to the reservation businesses and prescribes rules for the licensing of non-member businesses, pawnbrokers and traders who engage in retail business on the Navajo, Hopi, and Zuni Reservations, as required by 25 U.S.C. 261, 262, 263 and 264.

Pursuant to the amendments contained in Pub. L. 97–257, title I, § 109 (Sept. 10, 1982, 96 Stat. 839.) which provide that, "No funds shall be deposited in such 'Indian monies, proceeds of labor' (IMPL) accounts after September 30, 1982," all deposits to IMPL accounts were discontinued. The IMPL accounts will be removed from the BIA accounting system and are no longer available for use. The references to, "Indian Monies, Proceeds of Labor" accounts contained in § 141.10(d) and § 141.33(d) are therefore no longer valid, and are being changed to refer to "Special Deposits" accounts, in accordance with the requirements of 25 CFR part 114.

The primary author of this proposed rule is Loren J. Farmer, Policy, Analysis and Evaluation Staff, Bureau of Indian Affairs, Office of Trust Funds Management, 505 Marquette NW., Suite 700, Albuquerque, NM 87102.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the office identified in the Addresses section of this document.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The Department has determined that this document is not a significant rule under Executive Order 12866 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In accordance with Executive Order 12630, the Department has determined that this proposed rule does not have significant takings implications.

The Department has determined that this rule does not have significant federalism effects.

The Department has determined that this proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

There are no new information collection requirements requiring approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 25 CFR Part 141

Business and industry, Credit, Indians-business and finance, Penalties, Reporting and recordkeeping requirements.

For reasons set out in the preamble, part 141 of title 25, Chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 141 BUSINESS PRACTICES ON THE NAVAJO, HOPI AND ZUNI RESERVATIONS

1. The authority citation for 25 CFR part 141 is revised to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9.

2. Sections 141.10(d) and 141.33(d) are revised to read as follows:

§ 141.10 License fees for reservation businesses.

* * * * *

(d) All fees are payable to the Area Director and shall be deposited to the credit of the account "Special Deposits."

§ 141.33 Fees for pawnbroker license.

* * * * *

(d) All fees are payable to the Area Director and shall be deposited to the credit of the account "Special Deposits."

Dated: February 1, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–3935 Filed 2–24–94; 8:45 am]

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federal register

Friday
February 25, 1994

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Determination of Endangered or Threatened Status for 24 Plants From the Island of Kauai, HI; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB69

Endangered and Threatened Wildlife and Plants; Determination of Endangered or Threatened Status for 24 Plants From the Island of Kauai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 21 plant taxa and threatened status for 3 plant taxa. All but seven of the taxa are endemic to the island of Kauai, Hawaiian Islands. The exceptions are found on the islands of Niihau, Oahu, Molokai, Maui, and/or Hawaii, as well as Kauai. The 24 plant taxa and their habitats have been variously affected or are currently threatened by 1 or more of the following: habitat degradation by animals (e.g., goats, pigs, axis and mule deer, cattle, and red jungle fowl); competition for space, light, water, and nutrients by naturalized, introduced vegetation; erosion of substrate produced by weathering, or human or animal caused disturbance; recreational and agricultural activities; habitat loss from fires; and predation by animals (goats and rats). Due to the small number of existing individuals and their very narrow distributions, these taxa and most of their populations are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events. This rule implements the protection and recovery provisions provided by the Act for these plant taxa.

EFFECTIVE DATE: March 28, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Brighamia insignis, Cyanea asarifolia, Cyrtandra limahuliensis, Delissea rhytidosperma, Diellia pallida, Exocarpos luteolus, Hedyotis cookiana, Hibiscus clayi, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lysimachia filifolia, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Melicope quadrangularis, Munroidendron racemosum, Nothocestrum peltatum, Peucedanum sandwicense, Phyllostegia waimeae, Pteralyxia kauaiensis, Schiedea spergulina var. *leiopoda, Schiedea spergulina* var. *spergulina,* and *Solanum sandwicense* are endemic to or have the majority of their populations on the island of Kauai, Hawaii. Seventeen of these taxa are endemic to the island of Kauai, Hawaii; two additional taxa are now found only on Kauai. One of these taxa is now or was previously also known from Niihau, four from Oahu, two from Molokai, two from Maui, and one from the island of Hawaii.

The island of Kauai is the northernmost and oldest of the eight major Hawaiian Islands (Foote *et al.* 1972). This highly eroded island, characterized by deeply dissected canyons and steep ridges, is 553 square miles (sq mi) (1,430 sq kilometers (km)) in area (Department of Geography 1983). Kauai was formed about six million years ago by a single shield volcano. Its caldera, once the largest in the Hawaiian Islands, now extends about 10 mi (16 km) in diameter and comprises the extremely wet, elevated tableland of Alakai Swamp (Department of Geography 1983). Because the highest point on Kauai, at Kawaikini Peak, is only 5,243 feet (ft) (1,598 meters (m)) in elevation (Department of Geography 1983), it lacks the contrasting leeward montane rainfall patterns found on other islands that have higher mountain systems. Rainfall is, therefore, distributed throughout the upper elevations, especially at Mount Waialeale, Kauai's second highest point at 5,148 ft elevation (1,569 m) (Department of Geography 1983). Mount Waialeale is one of the wettest spots on earth, where annual rainfall averages 450 inches (in) (1,140 centimeters (cm)). (Honda *et al.* 1967, Joesting 1984). To the west of the Alakai Swamp is the deeply dissected Waimea Canyon, extending 10 mi (16 km) in length and up to 1 mi (1.6 km) in width. Later volcanic activity on the southeastern flank of the volcano formed the smaller Haupu caldera. Subsequent erosion and collapse of its flank formed Haupu Ridge (Macdonald *et al.* 1983). One of the island's most famous features is the Na Pali Coast, where stream and wave action have cut deep valleys and eroded the northern coast to form precipitous cliffs as high as 3,000 ft (910 m) (Joesting 1984).

Because of its age and relative isolation, levels of floristic diversity and endemism are higher on Kauai than on any other island in the Hawaiian archipelago. However, the vegetation of Kauai has undergone extreme alterations because of past and present land use. Land with rich soils was altered by the early Hawaiians and more recently converted to agricultural use or pasture (Gagne and Cuddihy 1990). Intentional or inadvertent introduction of alien plant and animal taxa has also contributed to the reduction of native vegetation on the island of Kauai. Native forests are now limited to the upper elevation mesic and wet regions within Kauai's conservation district. The 24 taxa in this rule occur in that district, between 400 and 4,000 ft (120 and 1,200 m) elevation in the western and northwestern portions of the island or within large State owned tracts of natural area reserves, forest reserves, and parks. Most of the taxa included in this rule persist on steep slopes, precipitous cliffs, valley headwalls, and other regions where unsuitable topography has prevented agricultural development or where inaccessibility has limited encroachment by alien animal and plant taxa.

The 24 taxa included in this rule are distributed throughout the island of Kauai and grow in a variety of vegetation communities (grassland, shrubland, and forests), elevational zones (coastal to montane), and moisture regimes (dry to wet). Six taxa are found in various lowland dry communities. These once abundant communities are now fragmented due to fire, development, and the ingression of alien plants and animals. *Munroidendron racemosum* extends from coastal mesic vegetation communities to higher elevations in lowland dry (Hawaii Heritage Program (HHP) 1990a) and mesic forests. *Peucedanum sandwicense* is found within a variety of vegetation communities, ranging from coastal to lowland dry to mesic shrublands and forests. Only 1 of the 24 taxa is found in grasslands. *Brighamia insignis* grows within Kauai's lowland dry grassland and shrubland communities in the Na Pali region, where the annual rainfall is usually less than 65 in (170 cm). Three taxa, *Hibiscus clayi, Delissea rhytidosperma,* and *Melicope knudsenii,* are located within lowland dry forests, the latter two extending into mesic forests. Lowland dry forests are characterized by an annual rainfall of 20 to 80 in (50 to 200 cm), which falls between November and March, and a well-drained, highly weathered substrate rich in aluminum (Gagne and Cuddihy 1990).

Nineteen of the 24 taxa have all or a significant number of their populations in lowland mesic or wet forest communities. Lowland mesic forest communities lie between 100 and 3,000 ft (30 and 1,000 m) elevation and are characterized by a 6.5 to 65 ft (2 to 20 m) tall canopy and a diverse understory of shrubs, herbs, and ferns. The annual rainfall of 45 to 150 in (120 to 380 cm) falls predominantly between October and March (Gagne and Cuddihy 1990). This mesic community often grades into lowland wet forests which are typically found on the windward side of the island or in sheltered leeward situations between 330 and 3,940 ft (100 and 1,200 m) elevation. The rainfall in this lowland wet community may exceed 200 in (500 cm) per year. These forests were once the predominant vegetation on Kauai but now exist only on steep rocky terrain or cliff faces. The substrate is generally of well-drained soils that may support tree canopies up to 130 ft (40 m) in height (Cuddihy and Stone 1990, Gagne and Cuddihy 1990).

The habitat of *Solanum sandwicense* extends to the higher elevation and drier portions of montane mesic forests, whereas the habitat of *Exocarpos luteolus* extends into montane wet forests. *Nothocestrum peltatum* and *Phyllostegia waimeae* are the only taxa found strictly within these montane communities, which typically occur above 3,000 ft (1,000 m) elevation (HHP 1991). The annual rainfall in montane communities may exceed 280 in (700 cm) (Gagne and Cuddihy 1990).

The land that supports these 24 plant taxa is owned by various private parties, the City and County of Honolulu, and the State of Hawaii (including State parks, forest reserves, natural area reserves, the Seabird Sanctuary, and land managed under a cooperative agreement with the National Park Service).

Discussion of the 24 Plant Taxa Included in This Final Rule

Asa Gray (in Mann 1868) described *Brighamia insignis* based upon alcohol-preserved flowers and fruits collected by William Tufts Brigham on Molokai and a dried specimen collected on Kauai or Niihau by Ezechiel Jules Remy. The specific epithet means "outstanding," referring to the plant's unique appearance. Brigham's bottled material, since lost, would today be considered to be *Brighamia rockii.* Other published names that Thomas G. Lammers (1989), in the currently accepted treatment of the genus, considers to be synonymous with *B. insignis* include *B. insignis* f. *citrina* (Forbes 1917a), *B. citrina* (St. John 1958), and *B. citrina* var. *napaliensis* (St. John 1969b).

Brighamia insignis, a member of the bellflower family (Campanulaceae), is an unbranched plant 3 to 16 ft (1 to 5 m) tall with a succulent stem that is bulbous at the bottom and tapers toward the top. The fleshy leaves, which measure 5 to 8 in (12 to 20 cm) long and 2.5 to 4.5 in (6.5 to 11 cm) wide, are arranged in a compact rosette at the apex of the stem. Fragrant yellow flowers are clustered in groups of 3 to 8 in the leaf axils (the point between the leaf and the stem), with each flower on a stalk 0.4 to 1.2 in (1 to 3 cm) long. The hypanthium (basal portion of the flower) has 10 ribs and is topped with 5 oval or loosely triangular calyx lobes (partially fused sepals) 0.02 to 0.04 in (0.5 to 1 millimeter (mm)) long. The yellow petals are fused into a tube 2.8 to 5.5 in (7 to 14 cm) long and 0.1 to 0.2 in (3 to 4 mm) wide, which flares into five elliptic lobes. The fruit is a capsule 0.5 to 0.7 in (13 to 19 mm) long containing numerous seeds. This species is a member of a unique endemic Hawaiian genus with only one other species, presently known only from Molokai, from which it differs by the color of its petals, its shorter calyx lobes, and its longer flower stalks (Hillebrand 1888; Johnson 1986; Lammers 1990; Rock 1919; St. John 1958, 1969b; Takeuchi 1982).

Historically, *Brighamia insignis* was known from the headland between Hoolulu and Waiahuakua Valleys along the Na Pali Coast on the island of Kauai, and from Kaali Spring on the island of Niihau (HHP 1991a1, 1991a2, 1991a4). The Na Pali Coast populations are still extant and additional populations are known from the same general area. The two Na Pali Coast populations within or on the boundary of the Hono O Na Pali Natural Area Reserve (NAR) are within 0.4 mi (0.6 km) of each other (HHP 1991a1, 1991a3). There are also two populations in the Haupu Range within 2.7 mi (4.3 km) of each other (HHP 1991a2, 1991a5). In 1992, Hurricane Iniki destroyed approximately half of the individuals in the Na Pali Coast populations and 7 of the 12 individuals in the Haupu area (Perlman 1992; Steve Perlman, Hawaii Plant Conservation Center (HPCC), pers. comm., 1992). The 5 populations grow on State and private land and total fewer than 40 plants. The status of the small population on privately owned Niihau is not known, although there are reports that it was destroyed when the supporting cliff fell away (HHP 1991a4; Wichman and St. John 1990; Charles Christensen, Hawaii Department of Agriculture (DOA), and John Fay, U.S. Fish and Wildlife Service (FWS), pers. comms., 1991). This species grows predominantly on the rocky ledges with little soil or steep sea cliffs in lowland dry grassland and shrubland from sea level to 1,300 ft (400 m) elevation (Gagne and Cuddihy 1990, Lammers 1990). Associated plant taxa include *Canthium odoratum* (alahe'e), *Chamaesyce celastroides* ('akoko), *Eragrostis variabilis* (kawelu), and *Heteropogon contortus* (pili grass) (Gagne and Cuddihy 1990; HHP 1991a1 to 1991a3).

Feral goats (*Capra hircus*) pose the major threat to *Brighamia insignis* by causing defoliation and stem damage, restricting populations to inaccessible cliffs, and probably causing rock slides that degrade the plant's habitat. Alien plant taxa are another major threat to the survival of this species, especially introduced grasses such as *Melinis minutiflora* (molasses grass), *Setaria gracilis* (yellow foxtail), and *Sporobolus africanus* (smutgrass), which prevent establishment of seedlings. Other alien plants that potentially pose a threat are *Lantana camara* (lantana), *Psidium cattleianum* (strawberry guava), *Psidium guajava* (common guava), and *Syzygium cumini* (Java plum). Hikers transport weed seeds to areas where *Brighamia insignis* grows and dislodge rocks that can damage plants. Wildfire also poses a serious threat to this species. Some plants flower but fail to set seed, which may be due to a lack of pollinators or a reduction in genetic variability due to the few existing individuals. *Brighamia insignis* is also threatened by stochastic extinction due to low total numbers and the frequency of disturbance events, such as the rock slides in their cliff habitat. Carmine spider mite (*Tetranychus cinnabarinus*), an introduced insect, has been observed to cause leaf loss in both cultivated and wild individuals of *Brighamia insignis* (Christensen 1979; HHP 1991a1 to 1991a4; HPCC 1990a; Perlman 1979; St. John 1969b, 1981b; Takeuchi 1982; Wagner *et al.* 1990; Tim Flynn, National Tropical Botanical Garden (NTBG), pers. comm., 1991; S. Perlman, pers. comm., 1993).

Robert W. Hobdy collected a specimen of *Cyanea asarifolia* on Kauai in 1970. Harold St. John (1975) later described and named the taxon. The specific epithet refers to the leaves, which are similar in shape to those in the genus *Asarum.* Recently, St. John (1987d, St. John and Takeuchi 1987) placed the genus *Cyanea* in synonymy with *Delissea,* resulting in the new combination *Delissea asarifolia,* but

Lammers (1990) retains both genera in the currently accepted treatment of the family.

Cyanea asarifolia, a member of the bellflower family, is a sparingly branched shrub 1 to 3.3 ft (0.3 to 1 m) tall. The heart-shaped leaves are 3.3 to 4.1 in (8.5 to 10.5 cm) long and 2.8 to 3.1 in (7 to 8 cm) wide with leaf stalks 4.7 to 5.9 in (12 to 15 cm) long. Thirty to 40 flowers are clustered on a stalk 1 to 1.2 in (25 to 30 mm) long, each having an individual stalk 0.3 to 0.4 in (7 to 10 mm) in length. The slightly curved flowers are white with purple stripes, 0.8 to 0.9 in (20 to 22 mm) long, and about 0.1 in (3.5 mm) wide with spreading lobes. The five anthers have tufts of white hairs at the tips. The nearly spherical fruit is a dark purple berry about 0.4 in (1 cm) long. This species is distinguished from others of the genus that grow on Kauai by the shape of the leaf base, the leaf width in proportion to the length, and the presence of a leaf stalk (Lammers 1990, St. John 1975).

For over 20 years, *Cyanea asarifolia* was known only from a population of five or six plants above the bed of Anahola Stream on Kauai at its type locality (HHP 1991b1). Because recent attempts to locate this population were unsuccessful, this population is now thought to be extirpated (T. Flynn, pers. comm., 1991). In 1991, Steven Perlman and Ken Marr discovered a population of 14 mature plants and 5 seedlings at the headwaters of the Wailua River in central Kauai on State owned land (HHP 1991b2; S. Perlman, pers. comm., 1991). This species typically grows in pockets of soil on sheer rock cliffs in lowland wet forests (Ken Marr, University of British Columbia, pers. comm., 1991) at an elevation of approximately 1,080 ft (330 m). Associated plant taxa include ferns, *Hedyotis elatior* (manono), *Metrosideros polymorpha* ('ohi'a), *Touchardia latifolia* (olona), and *Urera glabra* (opuhe) (Lammers 1990; St. John 1975; Robert Hobdy, Hawaii Department of Land and Natural Resources (DLNR), and S. Perlman, pers. comms., 1991).

Cyanea asarifolia is threatened by stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals. Plants in the area in which the only currently known population occurs are vulnerable to occasional hurricanes, natural rock slides, and over-collecting for scientific purposes. In 1992, Hurricane Iniki heavily damaged the *Cyanea asarifolia* population, either directly or indirectly destroying all but four or five juvenile plants. Plants observed after Hurricane Iniki were frequently damaged by introduced slugs or rodents (Loyal Mehrhoff, FWS, pers. comm., 1993). Habitat degradation by feral pigs (*Sus scrofa*), at least one of which has invaded the plant's habitat, is a potential threat (T. Flynn, David Lorence, NTBG, and S. Perlman, pers. comms., 1991).

Lawrence H. MacDaniels first collected *Cyrtandra limahuliensis* on Kauai in 1926. St. John (1987a) described the species, naming it for Limahuli Valley, where Steven Perlman collected the type specimen in 1978.

Cyrtandra limahuliensis, a member of the African violet family (Gesneriaceae), is an unbranched or few-branched shrub up to 5 ft (1.5 m) tall. The opposite, elliptic leaves are usually 6 to 12 in (15 to 30 cm) long and 2 to 4.7 in (5 to 12 cm) wide. The upper surface of the toothed leaves is moderately hairy and the lower surface, with deep veins, is moderately or densely covered with yellowish brown hairs. Single downy flowers are borne in the leaf axils. The slightly curved corolla tube (fused petals) barely extends beyond the calyx. The calyx encloses the approximately 0.8 in (2 cm) long berries at maturity. The following combination of characteristics distinguish this species from others of the genus: the leaves are usually hairy, especially on lower surfaces; the usually symmetrical calyx is tubular or funnel-shaped and encloses the fruit at maturity; and the flowers are borne singly (St. John 1987a, Wagner *et al.* 1990).

Historically, *Cyrtandra limahuliensis* was known from three areas on Kauai: Wainiha Valley; Lumahai Valley; and near Kilauea River (HHP 1991c4, 1991c5, 1991c8; C. Christensen, pers. comm., 1992). One population remains in Wainiha Valley and 11 others exist on Kauai in Limahuli Valley, Waipa Valley, on Mount Kahili, along the north fork of Wahiawa Stream, along Anahola Stream, Waioli Valley, and near Powerline Trail on private and State land (HHP 1991c1 to 1991c3, 1991c5 to 1991c7; HPCC 1991a1 to 1991a2; T. Flynn, R. Hobdy, S. Perlman, and Warren L. Wagner, Smithsonian Institution, pers. comms., 1991; D. Lorence *et al.*, in *litt.*, 1991). The 12 known populations, distributed over a 13 by 18 mi (20 by 30 km) area, range in size from solitary shrubs to large populations of over 1,000 plants (HHP 1991c1 to 1991c3, 1991c5 to 1991c7; D. Lorence, *in litt.*, 1993). The largest populations of this species occur in the upper Waioli Valley, where 3 populations total at least 2,100 individuals (D. Lorence, *in litt.*, 1993). Another location with "hundreds or perhaps thousands" of plants (W.L. Wagner, pers. comm., 1991) is limited to a 0.25 sq mi (0.4 sq km) area along the north fork of the Wailua River. Other botanists familiar with this population believe it to number no more than 500 individuals (T. Flynn and D. Lorence, pers. comms., 1991). A total of 2,800 to 3,000 plants are known from these 12 populations. This species typically grows along streams in lowland wet forests at elevations between 800 and 2,850 ft (240 and 870 m) (Wagner *et al.* 1990). Associated taxa include *Antidesma platyphyllum* var. *hillebrandii* (hame), *Athyrium sandwichianum* (ho'i'o), *Perrottetia sandwicensis* (olomea), 'ohi'a, *Dicranopteris linearis* (uluhe), *Gunnera kauaiensis* ('ape'ape), *Hedyotis* sp. (manono), and *Psychotria* sp. (kopiko) (HHP 1991c1, 1991c7; T. Flynn, pers. comm., 1991).

The major threat to *Cyrtandra limahuliensis* populations is competition with invasive alien taxa, especially strawberry guava. Each population has additional threats: Competition with the introduced grass *Paspalum conjugatum* (Hilo grass) and *Melastoma candidum* (NCN) at the Mount Kahili population; competition with common guava and habitat degradation by feral pigs at the Anahola Stream population; and competition with *Hedychium flavescens* (yellow ginger) at the Wainiha Valley population. Individuals of the Wailua Stream population are situated at the base of a steep cliff and are vulnerable to natural landslides. The Waioli Valley populations are threatened by several alien weeds: *Rubus rosifolius* (thimbleberry); *Youngia japonica* (Oriental hawksbeard); *Erechtites valerianifolia* (fireweed); and *Blechnum occidentale* (NCN). Hurricanes are also a potential threat, but most of the plants have grown back vigorously since Hurricane Iniki (HHP 1991c1; T. Flynn, R. Hobdy, D. Lorence, and W.L. Wagner, pers. comms., 1991; D. Lorence, *in litt.*, 1993).

Cyrtandra limahuliensis is not immediately in danger of extinction, but if the threats outlined above are not curtailed, the species will become endangered in the future.

Remy first collected a specimen of *Delissea rhytidosperma* on Kauai between 1851 and 1855. Horace Mann, Jr. (1867) chose the specific epithet to describe its wrinkled seeds. Heinrich Wawra (1873) later described another species, *D. kealiae*, which he said was closely related to *D. rhytidosperma*. In the current treatment of the family, Lammers (1990) considers *D. kealiae* to be synonymous with *D. rhytidosperma*.

Delissea rhytidosperma, a member of the bellflower family, is a branched shrub 1.6 to 8.2 ft (0.5 to 2.5 m) tall. The lance-shaped or elliptic leaves are 3.1 to 7.5 in (8 to 19 cm) long and 0.8 to 2.2 in (2 to 5.5 cm) wide and have toothed margins. Clusters of 5 to 12 flowers are borne on stalks 0.4 to 0.8 in (1 to 2 cm) long; each flower has a stalk 0.3 to 0.5 in (8 to 13 mm) long. The greenish white (sometimes pale purple) corolla is 0.6 to 0.8 in (14 to 20 mm) long. The stamens are hairless, except for a small patch of hair at the base of the anthers. The nearly spherical dark purple fruits are 0.3 to 0.5 in (7 to 12 mm) long and contain numerous white seeds. This species differs from other taxa of the genus by the shape, length, and margins of the leaves and by having hairs at the base of the anthers (Hillebrand 1888; Lammers 1990; Rock 1913, 1919; Wimmer 1953).

Historically, *Delissea rhytidosperma* was known from scattered locations throughout the island of Kauai. Populations ranged as far north as Wainiha and Limahuli Valleys, as far east as Kapaa and Kealia, and as far south as Haupu Range between the elevations of 1,000 and 3,000 ft (300 and 1,000 m) (HHP 1991d3 to 1991d7). Today, only one population with six individuals, located in State owned Kuia NAR, is known to exist (HHP 1991d1; S. Perlman, pers. comm., 1993). The only other populations seen in recent years were a single plant in Limahuli Valley which is now dead and 20 plants in the Haupu Range (Bruegmann 1990; HHP 1991d2; Perlman 1992; S. Perlman, pers. comm., 1991). The latter population was destroyed by Hurricane Iniki in 1992 (Perlman 1992; S. Perlman, pers. comm., 1993). This species generally grows in diverse lowland mesic forests or *Acacia koa* (koa)-dominated lowland dry forests that have well-drained soils with medium- to fine-textured subsoil (Foote *et al.* 1972, Gagne and Cuddihy 1990, Lammers 1990). Associated plant taxa include *Dianella sandwicensis* ('uki'uki), *Diospyros sandwicensis* (lama), *Nestegis sandwicensis* (olopua), and *Styphelia tameiameiae* (pukiawe) (HHP 1991d1, 1991d2).

Habitat degradation by mule deer or black-tailed deer (*Odocoileus hemionus*), feral goats, and feral pigs is the major threat affecting the survival of *Delissea rhytidosperma*. Other threats are predation by rats (*Rattus* spp.), fire, over-collecting for scientific or horticultural purposes, landslides, and competition with alien plants such as lantana, *Passiflora ligularis* (sweet granadilla), and *P. mollissima* (banana poka). This species, with a single extant population of six individuals, is threatened by stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals. Hurricanes are an additional, and major, threat (Bruegmann 1990; HHP 1991d1; HPCC 1990b; John Obata, HPCC, and S. Perlman, pers. comms., 1991, 1993).

About 1875, Valdemar Knudsen, a rancher on Kauai, collected a fern at Halemanu, which Wilhelm Hillebrand (1888) named *Lindsaya laciniata*, the specific epithet referring to the divided fronds. Hillebrand also indicated two varieties: var. *subpinnata*, a bipinnate form, which may actually represent another species (Wagner 1952); and an unnamed form. Friedrick Ludwig Emil Diels (1899) transferred the species to *Diellia*, resulting in *Diellia laciniata*, the name in use at the time the species was proposed (Lamoureux 1988). Recent studies have recognized these populations as a new species, *Diellia pallida* (W.H. Wagner 1993).

Diellia pallida, a member of the spleenwort family (Aspleniaceae), is a plant that grows in tufts of three to four light green, lance-shaped fronds along with a few persistent dead ones. The midrib of the frond ranges from dark purple to brownish gray in color and has a dull sheen. Scales on the midrib are brown, gray, or black; 0.1 to 0.2 in (3 to 5 mm) long; and rather inconspicuous. The fronds measure 12 to 22 in (30 to 55 cm) in length and 2 to 5 in (5 to 12 cm) in width and have short black hairs on the underside. Each frond has approximately 20 to 40 pinnae (divisions or leaflets). The largest pinnae are in the middle section of the frond, while the lower section has triangular, somewhat reduced pinnae, with the lowermost pair of pinnae raised above the plane of the others. The sori (groups of spore-producing bodies), which are frequently fused along an extended line, are encircled by a prominent vein. This species differs from others of this endemic Hawaiian genus by the color and sheen of the midrib, the presence and color of scales on the midrib, and the frequent fusion of sori (Hillebrand 1888; Wagner 1952, 1987).

Diellia pallida was known historically from Halemanu on Kauai (Hillebrand 1888). The species had not been seen since 1949, when a collection was made in Kuia NAR (Warren H. Wagner, University of Michigan, pers. comm., 1991). It is currently known from two populations on State land on the island of Kauai within Kuia NAR and Koaie Canyon. The recently discovered population on the west side of Waimea Canyon within Puu Ka Pele Forest Reserve is now apparently extirpated (CPC 1989a, 1990; HHP 1991e1 to 1991e3; Wagner 1952; D. Lorence, pers. comm., 1991; S. Perlman, pers. comm., 1993; D. Lorence *et al.*, *in litt.*, 1991). The two known populations extend over a 7 by 3 mi (11 by 5 km) area. In 1987, Joel Lau of The Nature Conservancy of Hawaii (TNCH) discovered the Koaie Canyon population of three or four individuals (Bruegmann 1990; HHP 1991e3; Joel Lau, Hawaii Heritage Program, and S. Perlman, pers. comms., 1991). Botanists of NTBG have since discovered two plants in Puu Ka Pele Forest Reserve, but the plants have since disappeared and were likely destroyed by goats (D. Lorence *et al.*, *in litt.*, 1991). Recent visits to the Kuia NAR and Koaie populations have found a total of less than 10 extant individuals for this species (HPCC 1991c; Perlman 1992; J. Lau and D. Lorence, pers. comms., 1991; S. Perlman, pers. comms., 1991, 1993). This species grows on bare soil on steep, rocky, dry slopes of lowland mesic forests, 1,700 to 2,300 ft (530 to 690 m) in elevation. Associated plant taxa include koa, *Alectryon macrococcus* (mahoe), *Aleurites moluccana* (kukui), *Antidesma platyphyllum* (hame), 'ohi'a, *Myrsine lanaiensis* (kolea), and *Rauvolfia sandwicensis* (hao) (HHP 1991e1 to 1991e3; S. Perlman, pers. comm., 1991; D. Lorence *et al.*, *in litt.*, 1991).

Competition with alien plants, especially lantana and *Melia azedarach* (Chinaberry), constitutes the major threat to *Diellia pallida*. Introduced grasses, such as *Stenotaphrum secundatum* (St. Augustine grass) and *Oplismenus hirtellus* (basketgrass), and two naturalized taxa of Polynesian introduction, kukui and *Cordyline fruticosa* (ti), degrade this species' habitat. Feral goats cause erosion near the plants and trample and possibly browse these plants. Other threats to this species are habitat degradation by feral pigs and mule deer, fire, over-collecting for scientific purposes, as well as stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals (HHP 1991e2, 1991e3; Bruegmann 1990, Wagner 1950; J. Lau, S. Perlman, and D. Lorence, pers. comms., 1991).

Reverend John Mortimer Lydgate first collected *Exocarpos luteolus* in 1908 and Charles N. Forbes (1910) described the species two years later. The specific epithet means "yellow" and refers to the color of the receptacle (base of flower) and fruit.

Exocarpos luteolus, a member of the sandalwood family (Santalaceae), is a moderately to densely branched shrub, 1.6 to 6.6 ft (0.5 to 2 m) tall with knobby branches. The leaves are of two kinds, minute scales and more typical leaves. The latter, which are usually present,

are elliptical, lance-shaped or oval, usually 2 to 3.2 in (5 to 8 cm) long and 1 to 1.4 in (25 to 36 mm) wide, and lack a leaf stalk. The green flowers have five to six petals about 0.04 in (1 mm) long. The pale yellow fruit is a drupe (single-seeded fleshy fruit), usually 0.4 to 0.7 in (11 to 19 mm) long, with four distinct indentations at the apex. About 0.2 to 0.4 in (6 to 9 mm) of the drupe is exposed above the fleshy, golden-yellow receptacle. This species is distinguished from others of the genus by its generally larger fruit with four indentations and by the color of the receptacle and fruit (Degener 1932a, 1932b; Forbes 1910; Wagner *et al.* 1990).

Historically, *Exocarpos luteolus* was known from three locations on Kauai: Wahiawa Swamp; Kaholuamanu; and Kumuwela Ridge (HHP 1991f1, 1991f5, 1991f7). This species is now known to grow on Kumuwela Ridge as well as in Kauaikinana Valley, near Honopu Trail, Waialai, and on the rim of Kalalau Valley within or on the boundary of Kokee State Park (HHP 1991f3 to 1991f6; HPCC 1991c; D. Lorence *et al., in litt.*, 1991) in a 3 sq mi (5 sq km) area and on Kamalii Ridge in Kealia Forest Reserve (HHP 1991f2), roughly 16 mi (26 km) away. All known populations are on State land and are estimated at 250 individuals (HHP 1991f2, 1991f4, 1991f6; Derral Herbst, FWS, pers. comm., 1991; S. Perlman, pers. comms., 1991, 1993; D. Lorence *et al., in litt.*, 1991). There are reliable, but unconfirmed, reports that this species was collected on the slopes of Anahola Mountain about 1970 (D. Herbst, pers. comm., 1991). *Exocarpos luteolus* is found at elevations between 2,000 and 3,600 ft (600 and 1,100 m) in a variety of habitats: Wet places bordering swamps; on open, dry ridges; and lowland to montane, 'ohi'a-dominated wet forest communities (HHP 1991f1, 1991f3, 1991f4, 1991f6; Wagner *et al.* 1990). Associated taxa include koa, pukiawe, and uluhe (HHP 1991f2 to 1991f5).

Destruction of habitat by feral goats and pigs and competition with *Erigeron karvinskianus* (daisy fleabane) are major threats to *Exocarpos luteolus*. Aggressive alien taxa degrading this plant's habitat include *Acacia mearnsii* (black wattle), *Corynocarpus laevigatus* (karakanut), *Myrica faya* (firetree), and *Rubus argutus* (prickly Florida blackberry), all woody plants that displace native Hawaiian taxa. Other threats to this species include: rats, that eat the fruits; goats, that browse the plants; and fire, erosion, and over-collecting for scientific purposes (HHP 1991f6; T. Flynn and S. Perlman, pers. comms., 1991; D. Lorence *et al., in litt.*, 1991).

Louis Charles Adelbert von Chamisso collected a plant specimen in 1816 at Kealakekua, island of Hawaii, and named it *Kadua cookiana* (Chamisso and Schlechtendal 1829). The specific epithet commemorates Captain James Cook, the first European to anchor at Kealakekua Bay. Ernest G. Steudel (1840) transferred the species to the genus *Hedyotis*, resulting in the combination *H. cookiana*.

Hedyotis cookiana, a member of the coffee family (Rubiaceae), is a small shrub with many branches 4 to 8 in (10 to 20 cm) long. The papery-textured leaves are long and narrow, 1.5 to 3 in (4 to 8 cm) long and about 0.2 to 0.5 in (0.5 to 1.2 cm) wide, and fused at the base to form a sheath around the stem. The bisexual or female flowers are arranged in clusters of threes on flower stalks about 0.3 to 0.6 in (8 to 15 mm) long, with the central flower on the longest stalk. Beneath the flower clusters are sharp-pointed bracts (modified leaves). The fleshy white corolla is trumpet-shaped and about 0.3 to 0.4 in (8 to 9 mm) long, with lobes about 0.08 in (2 mm) long. Fruits are top-shaped or spherical capsules about 0.1 in (3.0 to 3.5 mm) long and 0.1 to 0.2 in (3.5 to 4 mm) wide that open at maturity to release wedge-shaped reddish brown seeds. This plant is distinguished from other species in the genus that grow on Kauai by being entirely hairless (Fosberg 1943, Hillebrand 1888, Chamisso and Schlechtendal 1829, Wagner *et al.* 1990).

Historically, *Hedyotis cookiana* was known from only three collections: Kealakekua on the island of Hawaii; Halawa and Kalawao on Molokai; and at the foot of the Koolau Mountains on Oahu (Fosberg 1943, HHP 1991g2, Hillebrand 1888). There is no evidence that it still exists on any of those islands. This species was discovered in 1976 by Charles Christensen on the island of Kauai in Waiahuakua Valley on State land (HHP 1991g1). Between 50 and 100 plants are scattered along a 0.25 mi (0.4 km) distance in the streambed and lower part of the waterfall. Although this population has not been observed since its discovery, it is still believed to be extant (C. Christensen, pers. comm., 1991). *Hedyotis cookiana* generally grows in streambeds or on steep cliffs close to water sources in lowland wet forest communities (C. Christensen, pers. comm., 1991) and is believed to have formerly been much more widespread on several of the main Hawaiian Islands at elevations between 560 and 1,200 ft (170 and 370 m) (Wagner *et al.* 1990).

The major threat to *Hedyotis cookiana*, with only one known population, is stochastic extinction and/or reduced reproductive vigor. Potential threats include competition with alien plants, which are invading the area, and habitat modification by feral pigs and goats, which have been observed in the area. Individuals of *Hedyotis cookiana* grow in a stream bed and on the side of a waterfall. These areas are vulnerable to flooding and other natural disturbances (HHP 1991u6; C. Christensen, pers. comm., 1991).

In 1928, Albert W. Duvel discovered several trees of *Hibiscus clayi* that had been damaged by cattle (*Bos taurus*) and brought the species into cultivation. Isa and Otto Degener named the species after the late Horace F. Clay, a horticulturist and college instructor who brought the species to their attention (Degener and Degener 1959a). Sister Margaret James Roe, in her study of the genus in Hawaii, named *H. newhousei* as another species from Kauai (Roe 1959, 1961). In the currently accepted treatment of the Hawaiian members of the family, David M. Bates (1990) considers *H. newhousei* to be a synonym of *H. clayi*.

Hibiscus clayi, a member of the mallow family (Malvaceae), is a shrub or tree 13 to 26 ft (4 to 8 m) tall with stems bearing sparse hairs at the branch tips. The oval or elliptical leaves are usually 1 to 3 in (3 to 7 cm) long and 0.6 to 1.4 in (15 to 35 mm) wide and have a hairless upper surface and slightly hairy lower surface. The leaf margins are entire or toothed toward the apex. The flowers are borne singly near the ends of the branches. The flaring petals are dark red, 1.8 to 2.4 in (45 to 60 mm) long, and 0.4 to 0.7 in (10 to 18 mm) wide. The green tubular or urn-shaped calyx is usually 0.6 to 1 in (15 to 25 mm) long with five or six shorter bracts beneath. The fruits are pale brown capsules, 0.5 to 0.6 in (12 to 14 mm) long, containing about 10 oval, brownish-black seeds about 0.16 in (4 mm) long. This species is distinguished from other native Hawaiian members of the genus by the lengths of the calyx, calyx lobes, and capsule, and by the margins of the leaves (Bates 1990, Degener and Degener 1959a).

Hibiscus clayi is known from scattered locations on private and State land on the island of Kauai: The Kokee region on the western side of the island; Moloaa Valley to the north; Nounou Mountain in Wailua to the east; and as far south as Haiku near Halii Stream (HHP 1991h1 to 1991h5). At this time, only the Nounou Mountains population

with four trees, is known to still exist (HHP 1991h2, 1991h3; David Bates, Cornell University, T. Flynn, and S. Perlman, pers. comms., 1991; D. Lorence *et al., in litt.*, 1991). It is unclear whether the one individual from the Kokee region was a cultivated plant. This lowland dry forest species generally grows on slopes at an elevation of 750 to 1,150 ft (230 to 350 m). Associated taxa include Java plum, koa, kukui, and ti (Bates 1990; HHP 1991h1, 1991h2).

Before cattle were removed from the area, they greatly damaged the habitat of *Hibiscus clayi*. Competition with alien plant taxa currently threatens this species. Strawberry guava is the greatest threat, but common guava, Hilo grass, Java plum, kukui, lantana, ti, and *Schinus terebinthifolius* (Christmas berry) are also present. The area of the Nounou Mountain population has been planted with *Araucaria columnaris* (columnar araucaria), which is reseeding itself there and may prevent regeneration of native plants. The close proximity of most of the plants to a hiking trail makes them prone to disturbance. Pigs pose a potential threat to the species. The small total number of existing individuals poses a threat of stochastic extinction and/or reduced reproductive vigor (Degener and Degener 1959a; HHP 1991h1 to 1991h3; HPCC 1990c; T. Flynn, pers. comm., 1990; D. Bates, T. Flynn, D. Herbst, and R. Hobdy, pers. comms., 1991).

Abbe Urbain Jean Faurie first collected *Lipochaeta fauriei* on Kauai in 1910. During the following year, H. Leveille (1911) named the plant in honor of him. St. John (1972) described another species from Kauai, *L. deltoidea*, but the authors of the current treatment place this name in synonymy with *L. fauriei* (Wagner *et al.* 1990).

Lipochaeta fauriei, a member of the aster family (Asteraceae), is a perennial herb with somewhat woody, erect or climbing stems up to 16 ft (5 m) long. The toothed leaves are narrowly triangular, slightly hairy, 3 to 5 in (7 to 13 cm) long, and about 1.2 in (3 cm) wide. Flower heads occur in clusters of 2 to 3, each comprising 6 to 8 ray florets, 0.2 to 0.5 in (6 to 13 mm) long and about 0.1 in (2.3 mm) wide, and 30 to 35 disk florets 0.1 to 0.2 in (3.3 to 3.9 mm) long. The bracts beneath the flower heads are purple near the base. Fruits are knobby-textured achenes (dry, one-seeded fruits) about 0.1 in (2.5 to 3 mm) long and 0.07 in (1.5 to 2 mm) wide. The achenes of the disk florets are sometimes thinner and shorter than those of the ray florets. This species belongs to a genus endemic to the Hawaiian Islands and is one of three species found only on the island of Kauai. This species differs from the others on Kauai by having a greater number of disk and ray flowers per flower head, typically longer leaves and leaf stalks, and longer ray flowers (Gardner 1976, 1979; St. John 1972; Sherff 1935b; Wagner *et al.* 1985, 1990).

Historically, *Lipochaeta fauriei* was known from Olokele Canyon on the island of Kauai (Gardner 1979, HHP 1991i5). This species is now also known from four other areas on Kauai: Koaie Canyon; Poopooiki; Haeleele; and lower Hikimoe Valleys (HHP 1991i1 to 1991i4; HPCC 1990d2, 1990d3; St. John 1972). All 5 populations, totalling fewer than 70 individuals, are found on State land (HHP 1991i1 to 1991i3; HPCC 1990d2, 1990d3; R. Hobdy and J. Lau, pers. comms., 1991), encompassing a 6 by 7 mi (10 by 11 km) area. This species most often grows in moderate shade to full sun and is usually found on the sides of steep gulches in diverse lowland mesic forests at an elevation of about 1,570 to 2,950 ft (480 to 900 m) (Wagner *et al.* 1990). Associated plant taxa include basketgrass, kukui, lama, and *Hibiscus waimeae* (koki'o ke'oke'o); the major alien associate is lantana (HHP 1991i1 to 1991i3; HPCC 1990d2, 1990d3).

The major threats to *Lipochaeta fauriei* are degradation of its habitat by feral goats and competition with invasive alien plant taxa, especially lantana. Feral pigs pose a potential threat to the species and fire is a significant threat. The small total number of individuals comprises a threat of stochastic extinction and/or reduced reproductive vigor to this species (HHP 1991i1 to 1991i3; HPCC 1990d1 to 1990d3; R. Hobdy, J. Lau, and S. Perlman, pers. comms., 1991).

Thomas Nuttall (1841) described *Schizophyllum micranthum* based on a specimen collected on Kauai in 1840 during the United States Exploring Expedition. The specific epithet refers to the small size of the flowers. In 1843, Guilielmo Gerardo Walpers published the superfluous name *Aphanopappus nuttallii* based on the same specimen described by Nuttall (Gardner 1979). Gray (1861) transferred the species to the genus *Lipochaeta*, resulting in *L. micrantha*. Amos Arthur Heller (1897) transferred the species into the genus *Aphanopappus*, resulting in *A. micranthus*. Otto Degener and Earl Edward Sherff (Sherff 1941) described *L. exigua* as another Kauai taxon based on a specimen collected by Otto Degener and Emilio Ordonez. In his monograph of the genus, Robert C. Gardner (1979) recognized *L. micrantha* var. *exigua* along with the typical variety, and this is accepted in the current treatment (Wagner *et al.* 1990).

Lipochaeta micrantha, a member of the aster family, is a somewhat woody perennial herb. The 1.6 to 6.6 ft (0.5 to 2 m) long stems grow along the ground and root at the nodes, with the tip of the stem growing upward. The roughly triangular leaves measure 0.8 to 3.8 in (2.1 to 9.7 cm) long and 0.5 to 3.1 in (1.2 to 7.8 cm) wide. They are sparsely hairy, with margins smooth or variously lobed. Flower heads are in clusters of two or three. Each head contains four to five ray florets, 0.1 to 0.2 in (2.3 to 5.8 mm) long and 0.06 to 0.14 in (1.4 to 3.5 mm) wide, and five to nine disk florets, about 0.1 in (2.7 to 3.1 mm) long. The two recognized varieties of this species, *exigua* and *micrantha*, are distinguished by differences in leaf length and width, degree of leaf dissection, and the length of the ray florets. The smaller number of disk florets separates this species from the other members of the genus on the island of Kauai (Gardner 1976, 1979; Degener and Degener 1959b, 1962; Sherff 1935b; Wagner *et al.* 1990).

Only two populations of *Lipochaeta micrantha* var. *exigua* are known from the vicinity of Haupu Range on the island of Kauai (HHP 1991j3). The populations of this variety are distributed over a 1.5 mi (2.4 km) distance on privately owned portions of Haupu Range and total between 100 and 500 individuals (HHP 1991j1, 1991j2; HPCC 1991d; T. Flynn, pers. comm., 1991). Historically, *Lipochaeta micrantha* var. *micrantha* appears to have been more widely distributed on Kauai in Olokele Canyon, Hanapepe Valley, and in the Koloa District (HHP 1991k1, 1991k5; HPCC 1991d; T. Flynn and S. Perlman, pers. comms., 1991). This variety is now known only from two to four populations located on State land in Koaie Canyon on Kauai, totalling 150 to 570 individuals (CPC 1992; HHP 1991k1, 1991k5; S. Perlman, pers. comms., 1991, 1993). The populations encompass an area of 1.4 square miles (2.3 sq km) approximately 1.4 mi (2.3 km) apart. Both varieties generally grow on exposed rocky slopes in diverse lowland mesic forests and sometimes on grassy ridges at an elevation of 1,000 to 1,300 ft (300 to 400 m) (HHP 1991j1 to 1991j3, 1991k1 to 1991k5; Wagner *et al.* 1990). Associated plant taxa include alahe'e, lama, 'ohi'a, *Chamaesyce celastroides* var. *hanapepensis* ('akoko), and *Neraudia kauaiensis* (Gardner 1979; HHP 1991j1, 1991k1, 1991k2).

The major threats to *Lipochaeta micrantha* are habitat degradation by feral ungulates and competition with alien plant taxa. Feral pigs threaten the

habitat of both varieties of *Lipochaeta micrantha* and signs of damage by feral goats have been seen near individuals of var. *micrantha*. Alien plant taxa, such as lantana, affect the habitats of both varieties. *Pluchea carolinensis* (sourbush) is found near var. *exigua*. Daisy fleabane and *Stachytarpheta* spp. are components of the habitat of var. *micrantha*. Both varieties are threatened by stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations (HHP 1991j1, 1991j2, 1991k1, 1991k5; HPCC 1990e, 1990f; T. Flynn, pers. comm., 1991; D. Lorence *et al., in litt.*, 1991).

Hobdy collected the first specimen of *Lipochaeta waimeaensis* in 1967. Five years later, St. John (1972) described it as a new species, naming it for the Waimea Canyon where it grows.

Lipochaeta waimeaensis, a member of the aster family, is a low growing, somewhat woody perennial herb with stems 3 to 6.5 ft (1 to 2 m) long that root at the nodes. The linear or narrowly elliptical leaves are 1.9 to 2 in (4.7 to 5 cm) long, 0.2 to 0.3 in (5 to 8 mm) wide, hairy along major veins on the upper surface, and evenly hairy on the lower surface. Flower heads are borne singly or in clusters of two or three. The outer head bracts are lance-shaped and measure 0.1 to 0.2 in (3 to 4 mm) long and 0.06 to 0.08 in (1.5 to 2 mm) wide. The oval ray florets number four or five per head and are about 0.13 in (3.2 to 3.5 mm) long and about 0.1 in (3 mm) wide. The disk florets number 20 to 25 per head. The fruits are knobby, winged achenes 0.1 in (2.2 to 2.5 mm) long and about 0.08 in (1.7 to 2.3 mm) wide. The ray achenes are slightly wider and have longer wings than those of the disk. This species differs from the two other taxa of the genus included in this rule (*L. fauriei* and *L. micrantha*) in having a different leaf shape and shorter leaf stalks and ray florets (Gardner 1976, 1979; St. John 1972; Wagner *et al.* 1990).

Lipochaeta waimeaensis is known only from the type locality, along the rim of Kauai's Waimea Canyon on State land (HHP 1991m1, HPCC 1991e). Fewer than 10 plants are scattered over a 2.5 acre (ac) (1-hectare (ha)) area (Gerald Carr, University of Hawaii at Manoa, and S. Perlman, pers. comms., 1991). This population grows on eroded soil on a precipitous, shrub-covered gulch in a diverse lowland mesic forest at an elevation between 1,150 and 1,300 ft (350 and 400 m) (HHP 1991m1, Wagner *et al.* 1990). The vegetation at the site is predominantly alien consisting of *Grevillea robusta* (silk oak), *Leucaena leucocephala* (koa haole), and *Rhynchelytrum repens* (Natal redtop); however, native taxa include *Dodonaea viscosa* ('a'ali'i) and *Lipochaeta connata* (nehe) (CPC 1989b, 1990; S. Perlman, pers. comm., 1991) also occur here.

Alien plant taxa competing with and threatening *Lipochaeta waimeaensis* include koa haole, Natal redtop, silk oak, and *Opuntia ficus-indica* (prickly pear, panini). The existing soil erosion problem is exacerbated by the presence of feral goats. The single population, and thus the entire species, is threatened by stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals. Over-collecting for scientific purposes also poses a threat (G. Carr and S. Perlman, pers. comms., 1991).

In 1912, Lydgate collected a plant specimen on Kauai that he and Forbes named *Lysimachia filifolia* (Forbes 1916). They chose the specific epithet, which means "thread-leaved," in reference to the plant's very narrow leaves. Heller (1897) created a new genus, *Lysimachiopsis*, in which he placed all endemic Hawaiian taxa of *Lysimachia*, and Otto and Isa Degener (1963) later published *Lysimachiopsis filifolia*. The current treatment (Wagner *et al.* 1990) recognizes *Lysimachiopsis* as a section of *Lysimachia*. Most recently, St. John (1987b) published many species, varieties, and combinations of *Lysimachia*, one or more of which may fit into this species (Wagner *et al.* 1990).

Lysimachia filifolia, a member of the primrose family (Primulaceae), is a small shrub 0.5 to 1.6 ft (15 to 50 cm) tall. The linear leaves measure 0.6 to 2.1 in (15 to 54 mm) long and 0.01 to 0.07 in (0.3 to 1.8 mm) wide and are usually alternately arranged. They are single-veined and sparsely hairy or hairless. The bell-shaped flowers are reddish purple, 0.2 to 0.4 in (6 to 10 mm) long, and borne singly on flower stalks about 0.7 to 1.2 in (18 to 30 mm) long that elongate upon fruiting. Fruits are thick, hard capsules about 0.2 in (5 to 6 mm) long that contain numerous minute, nearly black, irregularly shaped seeds. This species is distinguished from other taxa of the genus by its leaf shape and width, calyx lobe shape, and corolla length (Forbes 1916, Wagner *et al.* 1990).

Historically, *Lysimachia filifolia* was known only from the upper portion of Olokele Valley on Kauai (HHP 1991n1). This species is now known from two other areas: The headwaters of the Wailua River on Kauai; and the slopes of Waiahole Valley in the Koolau Mountains of Oahu (HHP 1991n2, 1991n3; HPCC 1990g1, 1990g3). Three closely situated colonies on Kauai are located within a 0.5 sq mi (1.3 sq km) area and total 76 individuals (K. Marr, pers. comm., 1991). The Oahu population contains about 150 to 200 individuals (CPC 1989a; HHP 1991n3; HPCC 1990g1, 1990g3). Both populations of this species are located on State land, totalling approximately 225 to 275 individuals. This species typically grows on mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests at an elevation of 800 to 2,200 ft (240 to 680 m) (HHP 1991n1 to 1991n3; HPCC 1990g1, 1990g3; Wagner *et al.* 1990; K. Marr, pers. comm., 1991). Associated plant taxa include mosses, ferns, liverworts, pili grass, *Cuphea carthagenensis* (tarweed), and *Pilea peploides* (HHP 1991n3; J. Lau, pers. comm., 1991).

The major threat to *Lysimachia filifolia* is competition with alien plant taxa. Individuals of this species on Kauai are damaged and destroyed by natural rock slides in their habitat, which is near the bottom of steep cliffs. *Hydrocotyle sibthorpioides* (marsh pennywort), tarweed, and thimbleberry, although not invasive weeds, are present in this near-pristine area of Wailua Stream and may degrade the native ecosystem. At least one feral pig has made its way into this area, indicating that this disruptive animal is a potential threat. Individuals of *Lysimachia filifolia* on Oahu are vulnerable to rock slides and compete for space with alien plants such as marsh pennywort, tarweed, *Ageratina riparia* (Hamakua pamakani), and *Schefflera actinophylla* (octopus tree). Because only one population of *Lysimachia filifolia* occurs on each of only two islands, the species is threatened by stochastic extinction. Hurricane Iniki caused at least some damage to the Wailua River population (HHP 1991n3; HPCC 1990g2; D. Lorence and S. Perlman, pers. comms., 1991; L. Mehrhoff, pers. comm., 1993).

In 1927, MacDaniels collected a plant specimen on Kauai that St. John (1944) later named *Pelea haupuensis*. The specific epithet refers to the type locality, Haupu, the only known site for this plant until it was discovered in Waimea Canyon in 1989. Thomas G. Hartley and Benjamin C. Stone (1989, Stone *et al.* 1990, Wagner *et al.* 1990) synonymized the genus *Pelea* with *Melicope*, resulting in the current name for this taxon, *Melicope haupuensis*.

Melicope haupuensis, a member of the citrus family (Rutaceae), is a tree about 26 ft (8 m) tall. The oval leaves, 2 to 5.1 in (5 to 13 cm) long and 1.1 to 2.2 in (28 to 56 mm) wide, are oppositely arranged. Flowers grow in clusters of five to seven on stalks

usually 0.1 to 2.8 in (2 to 7 mm) long, each flower on a stalk 0.04 to 0.12 in (1 to 3 mm) long. Only female flowers are known. The flowers are about 0.14 in (3.5 mm) long, dotted with oil glands, and covered with a dense mat of hairs. Fruits are distinct follicles (a dry fruit that splits open lengthwise), 0.35 to 0.43 in (9 to 11 mm) long, with a hairless exocarp and endocarp (outermost and innermost layers of the fruit wall, respectively). Unlike other taxa of this genus on Kauai, the exocarp and endocarp are hairless and the sepals are covered with dense hairs (St. John 1944, Stone 1969, Stone *et al.* 1990).

For 62 years, *Melicope haupuensis* was known only from the type locality on the north side of Haupu Ridge on Kauai (HHP 1991o3). In 1989, two plants were discovered within 1 mi (1.6 km) of each other along the banks of Koaie Stream on State owned land in Waimea Canyon (HHP 1991o1, 1991o2; HPCC 1991f). These plants grow on moist talus slopes in 'ohi'a-dominated lowland mesic forests (Stone *et al.* 1990) with such associated taxa as 'a'ali'i and hame, at elevations between 1,230 and 2,690 ft (375 and 820 m) (HHP 1991o1 to 1991o3).

Habitat degradation by feral goats and competition with invasive alien plant taxa such as lantana and yellow foxtail threaten *Melicope haupuensis*. A potential threat to members of this genus is their known susceptibility to black twig borer (*Xylosandrus compactus*), a burrowing beetle ubiquitous in Hawaii at elevations below 2,500 ft (670 m). The existence of only two known trees of this species constitutes a threat of stochastic extinction, over-collecting, and/or reduced reproductive vigor (Hara and Beardsley 1979; HHP 1991o1, 1991o2; Medeiros *et al.* 1986).

Knudsen sent a plant specimen he found at Waimea to Hillebrand, who named it *Pelea knudsenii* in honor of its collector (Hillebrand 1888). In an action that was not supported by other taxonomists, Emmanuel Drake del Castillo (1890) transferred several species from the genus *Pelea* to the genus *Evodia*. Hartley and Stone (1989) synonymized the genus *Pelea* with *Melicope*, resulting in the combination *M. knudsenii*. Other names now included in *M. knudsenii* are *Pelea multiflora* (Rock 1911), *P. knudsenii* var. *multiflora* (Rock 1918), and *P. tomentosa* (St. John 1944).

Melicope knudsenii, a member of the citrus family, is a tree usually 10 to 33 ft (3 to 10 m) tall with smooth gray bark and yellowish brown to olive-brown hairs on the tips of the branches. Leaves are variable, ranging from oblong to elliptic, 3.5 to 9.8 in (9 to 25 cm) long and 1.8 to 3.9 in (4.5 to 10 cm) wide. The lower surface of the leaves is uniformly covered with olive-brown hairs, but the upper surface is only sparsely hairy along the midrib. The densely hairy flowers are bisexual or may be unisexual. There are usually 20 to 200 flowers per cluster in the leaf axils. The sepals and petals are covered with silky gray hairs and the sepals persist in fruit. The fruits are 0.7 to 1.2 in (18 to 30 mm) wide and are comprised of distinct follicles, 0.3 to 0.6 in (8 to 14 mm) long. The hairless exocarp is dotted with minute glands. The endocarp also lacks hairs. Seeds number one or two per carpel (ovule-bearing structure) and are about 0.2 in (5 to 6 mm) long. The distinct carpels of the fruit, the hairless endocarp, the larger number of flowers per cluster, and the distribution of hairs on the underside of the leaves distinguish this species from *M. haupuensis* and other species of the genus (Degener *et al.* 1962a, 1962b; Hillebrand 1888; Rock 1913; Stone 1969; Stone *et al.* 1990).

Historically, *Melicope knudsenii* was known only from the southeast slope of Haleakala on Maui and from Olokele Canyon on Kauai (HHP 1991p1, 1991p5). This species remains in the Auwahi and Kanaio areas of Maui (R. Hobdy and Arthur Medeiros, Haleakala National Park, pers. comms., 1991) on privately owned land, but its numbers have decreased considerably from being "very common" in 1920 to between 20 and 30 plants when it was last observed in 1983 (CPC 1990; HHP 1991p1). On Kauai, three populations, each consisting of one individual, remain on State land in the Koaie drainage area of Waimea Canyon (HHP 1991p2 to 1991p4; S. Perlman, pers. comm., 1991) and are distributed across a distance of 1.6 mi (2.6 km). This species, therefore, totals between 23 and 33 individuals at present. *Melicope knudsenii* grows on forested flats or talus slopes in lowland dry to mesic forests at an elevation of about 1,500 to 3,300 ft (450 to 1,000 m) (Stone *et al.* 1990). The Auwahi population on Maui, however, grows on a substrate of 'a'a lava in a remnant native forest, dominated by a continuous mat of *Pennisetum clandestinum* (Kikuyu grass) (HHP 1991p1; Medeiros *et al.* 1986). Plants associated with the Kauai populations include 'a'ali'i, hame, 'ohi'a, and *Xylosma* (HHP 1991p3, 1991p4).

Competition with alien plant taxa and habitat degradation by feral and domestic animals are the major threats affecting *Melicope knudsenii*. On Kauai, this species competes with lantana and is affected by feral goats and pigs. On Maui, *Melicope knudsenii* grows in an area currently grazed by domestic cattle, where a continuous mat of Kikuyu grass prevents seedlings from establishing. Feral goats and feral pigs are also present in the area of the Maui population. Axis deer (*Axis*), found on the south slope of Haleakala Mountain and increasing in numbers, are a potential threat. This species is potentially threatened by black twig borer, a ubiquitous insect that lives at elevations up to 2,500 ft (670 m) in Hawaii and is known to infest members of *Melicope*. This species is also threatened by fire, stochastic extinction, and/or reduced reproductive vigor due to the small number of existing individuals (HHP 1991p2 to 1991p4; Hara and Beardsley 1979; Medeiros *et al.* 1986; van Riper and van Riper 1982; Patrick Beil, Puu Mahoe Arboretum, R. Hobdy, A. Medeiros, and Steve Montgomery, Bishop Museum, pers. comms., 1991).

Hillebrand (1888) described *Pelea pallida* based on a specimen he collected on Oahu. The specific epithet refers to the plant's pale leaf veins and lower leaf surfaces. Drake del Castillo (1890) transferred the species to the genus *Evodia*, a combination not accepted by other taxonomists. Faurie described *P. leveillei* in 1912 based on a specimen collected on Kauai (Stone 1969). Following the transfer of the genus *Pelea* to *Melicope* (Hartley and Stone 1989, Wagner *et al.* 1990), authors of the current treatment of the Hawaiian members of the genus (Stone *et al.* 1990) now consider *Evodia pallida*, *P. pallida*, and *P. leveillei* to be synonyms of *Melicope pallida*.

Melicope pallida, a member of the citrus family, is a 20 to 33 ft (6 to 10 m) tree with grayish white hairs and black, resinous new growth. The leaves, 2.4 to 8.3 in (6 to 21 cm) long and 1 to 3.1 in (2.5 to 8 cm) wide, are grouped in threes, with each leaf loosely folded. Fifteen to 35 pale yellowish-green flowers are also clustered in groups of 3 along a fuzzy white stalk up to 2.4 in (6 cm) long. The petals are usually lance-shaped and measure 0.1 to 0.2 in (3.5 to 5 mm) long. Fruits contain two shiny black seeds about 0.1 in (3.5 mm) long in each of the usually four distinct carpels. This species differs from *M. haupuensis*, *M. knudsenii*, and other members of the genus by the following combination of characteristics: Resinous new growth; leaves folded and in clusters of three; and fruits with separate carpels (Degener *et al.* 1960, Hillebrand 1888, St. John 1944, Stone *et al.* 1990, Wagner *et al.* 1990).

Historically, *Melicope pallida* was known from various locations in the

Waianae Mountains on Oahu and from Hanapepe on Kauai (HHP 1991q2 to 1991q4, 1991q7). This species is now known from two locations at the base of Mount Kaala and near Palikea, within TNCH's privately owned Honouliuli Preserve in the Waianae Mountains on Oahu, and from four State owned locations on Kauai in Kalalau Valley, Koaie Stream in Waimea Canyon, and Hanakapiai Valley (HHP 1991q1, 1991q6, 1991q8; HPCC 1991g1, 1991g2; T. Flynn, J. Lau, and S. Montgomery, pers. comms., 1991). The population near Palikea was last visited in 1960 (HHP 1991q1); it is thought to contain only a few plants. Fewer than five plants are known from the island of Oahu (S. Montgomery, pers. comm., 1991). Populations were discovered in 1991 near the rim of Kalalau Valley (about 65 plants) and Honopu Rim (12 plants) (Kenneth Wood, HPCC, pers. comm., 1991), giving a total of less than 100 known plants for this species.

Melicope pallida usually grows on steep rock faces in drier regions of lowland mesic forests at an elevation of 1,600 to over 3,800 ft (490 to 910 m) (Stone *et al.* 1990; J. Lau, pers. comm., 1991; D. Lorence *et al., in litt.*, 1991). Associated plant taxa include *Abutilon sandwicense*, *Alyxia oliviformis* (maile), *Dryopteris* sp., 'ohi'a, *Pipturus albidus* (mamaki), *Sapindus oahuensis* (lonomea), *Tetraplasandra* sp. ('ohe), and *Xylosma hawaiiense* (maua) (HHP 1991q1, 1991q5, 1991q8; J. Lau, pers. comm., 1991).

The major threats to *Melicope pallida* are habitat destruction by feral animals and competition with alien plant taxa. On Kauai, feral goats and feral pigs destroy habitat of *Melicope pallida* and weeds, such as daisy fleabane and prickly Florida blackberry, compete with the species. The Oahu populations of *Melicope pallida* face strong competition from introduced plants, especially *Clidemia hirta* (Koster's curse) and *Toona ciliata* (Australian red cedar). A potential threat to *Melicope pallida* is the black twig borer, which is known to occur in areas where this species grows and to feed on members of the genus *Melicope*. Additional threats to *Melicope pallida* are fire and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals (Hara and Beardsley 1979; HHP 1991q6, 1991q8; Medeiros *et al.* 1986; T. Flynn, J. Lau, S. Montgomery, and K. Wood, pers. comms., 1991; D. Lorence *et al., in litt.*, 1991).

St. John and Edward P. Hume described *Melicope quadrangularis*, based on a specimen collected by Forbes on Kauai in 1909 (St. John 1944). The specific epithet, meaning "four-angled," describes the cube-shaped capsule. Hartley and Stone (1989) synonymized the genus *Pelea* with *Melicope*, resulting in the combination *M. quadrangularis*.

Melicope quadrangularis, a member of the citrus family, is a shrub or small tree. Young branches are generally covered with fine yellow fuzz but become hairless with age. The thin, leathery, elliptical leaves, 3.5 to 6 in (9.5 to 16 cm) long and 2 to 3 in (4.5 to 7.5 cm) wide, are oppositely arranged. The upper leaf surface is hairless and the lower surface is sparsely hairy, especially along the veins. Flowers are solitary or in clusters of two. The specific floral details are not known. The fruits are somewhat cube-shaped, flattened capsules, about 0.5 in (13 mm) long and about 0.8 in (19 to 22 mm) wide with a conspicuous central depression at the top of the fruit. The capsules are four-lobed and completely fused. The exocarp is sparsely hairy and the endocarp is hairless. This species differs from others in the genus in having the following combination of characters: Oppositely arranged leaves; only one or two flowers per cluster; cube-shaped capsules with fused lobes; and a deep central depression at the top of the fruit (St. John 1944, Stone 1969, Stone *et al.* 1990).

Melicope quadrangularis is known from the type locality in the Wahiawa Bog region of Kauai (HHP 1991r1; Stone *et al.* 1990). One adult plant and two seedlings were discovered in 1991 in that area by Ken Wood of HPCC on an east-facing slope of Wahiawa Ridge at 2,800 ft (850 m) elevation on privately owned land. Subsequent exploration has resulted in the location of 13 individuals of this species. The plants are growing in a diverse lowland forest that ranges from mesic to wet conditions with other plants, such as 'ohi'a, opuhe, uluhe, *Broussaisia arguta* (kanawao), *Cyrtandra pickeringii* (ha'iwale), other *Melicope* species (alani), *Metrosideros waialealae*, and abundant ferns and mosses (K. Wood, pers. comm., 1991, D. Lorence *et al., in litt.*, 1991).

The existence of only 13 known plants of this species causes the species to be threatened by over-collecting for scientific purposes, stochastic extinction, and/or reduced reproductive vigor. The alien strawberry guava grows in the area and is a potential threat (Hara and Beardsley 1979; K. Wood, pers. comm., 1991; D. Lorence *et al., in litt.*, 1991).

Forbes collected specimens of a tree on Kauai in 1916 that he described the following year (1917b) as *Tetraplasandra racemosa*. The specific epithet describes the inflorescence that Forbes considered a raceme. Sherff (1952) transferred the species to the new endemic, monotypic genus *Munroidendron*, named in honor of George C. Munro, who was apparently the first to recognize the plant as a new taxon. Sherff (1952) also published two varieties, *Munroidendron racemosum* var. *forbesii* and *M. racemosum* var. *macdanielsii*. In the current treatment of the species, Porter P. Lowrey II (1990) recognizes no subspecific taxa.

Munroidendron racemosum, a member of the ginseng family (Araliaceae), is a tree up to about 23 ft (7 m) in height with a straight gray trunk crowned with spreading branches. The leaves are 6 to 12 in (15 to 30 cm) long and comprise five to nine oval or elliptical leaflets with clasping leaf stalks. Each leaflet is 3.1 to 6.7 in (8 to 17 cm) long and usually 1.6 to 3.9 in (4 to 10 cm) wide. About 250 pale yellow flowers are borne along a stout hanging stalk 10 to 24 in (25 to 60 cm) long. Each flower has five or six lance-shaped petals 0.3 to 0.4 in (8 to 10 mm) long emerging from a cup-shaped or ellipsoid calyx tube. Both the lower surface of the petals and the calyx tube are covered with whitish scaly hairs. The fruit is an egg-shaped drupe 0.3 to 0.5 in (8 to 12 mm) long and nearly as wide, situated atop a flat, dark red disk (stylopodium). This species is the only member of a genus endemic to Hawaii, differing from other closely related Hawaiian genera of the family primarily in its distinct flower clusters and corolla (Forbes 1917b, Lamoureux 1982, Lowrey 1990, St. John 1981b, Sherff 1952).

Historically, *Munroidendron racemosum* was known from scattered locations throughout the island of Kauai (HHP 1991s1, 1991s3, 1991s8, 1991s13). Fifteen populations are now found at elevations of 390 to 1,310 ft (120 to 400 m) on private and State land in the following areas: Along the Na Pali Coast within Na Pali Coast State Park and Hono O Na Pali NAR; in the Poomau and Koaie branches of Waimea Canyon; in the Haupu Range area; and on Nounou Mountain (HHP 1991s1 to 1991s12, 1991s14, 1991s15; Lamoureux 1982). Although widely distributed, the largest population contains fewer than 50 individuals, with most populations numbering only 1 or 2 individuals. Estimates of the total number of individuals range from 57 to 100 (HHP 1991s1 to 1991s15). Most populations are found on steep exposed cliffs or on ridge slopes in coastal to lowland mesic forests (Lowrey 1990), but a few populations are in mesic *Pandanus tectorius* (hala) forests, lantana-dominated shrubland, or *Eragrostis* grassland. Other associated plant taxa include common guava, kopiko, kukui, and lama (Gagne and Cuddihy 1990; HHP 1991s1, 1991s3 to 1991s5, 1991s8 to 1991s11, 1991s15; Lamoureux 1982).

Competition with introduced plants is the major threat to *Munroidendron racemosum*. Kukui and ti, plants introduced by Polynesian immigrants to the Hawaiian Islands, compete with this species for space in the forests of Kauai. Other introduced plants threatening this species' habitat include Chinaberry, common guava, firetree, koa haole, lantana, and *Triumfetta semitriloba* (Sacramento bur). Feral goats degrade the habitat of *Munroidendron* and cattle were formerly present in areas where the trees grow. Fire is a threat to the habitat. Predation of the fruit by rats is probable. An introduced insect of the longhorned beetle family (Cerambycidae) that killed a mature, cultivated tree has the potential of affecting wild trees. Because each population of this species contains only one or a few trees, the total number of individuals is small, threatening the species through over-collecting for scientific or horticultural purposes, stochastic extinction, and/or reduced reproductive vigor (HHP 1991s1, 1991s3 to 1991s5, 1991s8 to 1991s11, 1991s15; HPCC 1990h; Lamoureux 1982).

First collected on Kauai before 1900, *Nothocestrum peltatum* was described by Carl J. F. Skottsberg in 1944, based on a specimen collected by Olof H. Selling in 1938. The specific epithet refers to the peltate leaves, attached to the stalk by the lower surface, inside the leaf margin rather than at its edge. St. John (1986) later described *N. inconcinnum*, but David E. Symon (1990), in the currently accepted treatment of the genus, regards that name as a synonym of *N. peltatum*.

Nothocestrum peltatum, a member of the nightshade family (Solanaceae), is a small tree up to 26 ft (8 m) tall with ash-brown bark and woolly stems. The leathery leaves are usually peltate, measure 2.4 to 9.1 in (6 to 23 cm) long and 1.4 to 3 in (3.5 to 7.5 cm) wide and vary in shape from oval or elliptic to oblong. The densely hairy flowers number up to 10 per cluster. The corolla is greenish yellow fading to yellow orange and 0.5 to 0.6 in (12 to 14 mm) long. The orange berries are 0.5 to 0.6 in (13 to 14 mm) long and contain numerous irregularly shaped seeds about 0.1 in (2.5 mm) in diameter. The usually peltate leaves and shorter leaf stalks separate this species from others in the genus (St. John 1986, Selling 1947, Skottsberg 1944, Symon 1990).

Historically, *Nothocestrum peltatum* was known from Kauai at Kumuwela, Kaholuamanu, and the region of Nualolo (HHP 1991t3, 1991t5, 1991t6). This species is now known from five populations on Kauai located near the Kalalau Lookout area, in Awaawapuhi and Makaha Valleys, and in Waimea Canyon (HHP 1991t1, 1991t2, 1991t4, 1991t7; HPCC 1990i1, 1990i2, 1990i4; S. Perlman, pers. comm., 1991, 1993), scattered over a 5.5 by 2.5 mi (8.9 by 4 km) area. These populations, totalling about 15 individuals (CPC 1989b, 1990; S. Perlman, pers. comm., 1993), are on State owned land between 3,000 and 4,000 ft (915 and 1,220 m) elevation (Symon 1990). This species generally grows in rich soil on steep slopes in montane mesic forests dominated by koa or a mixture of 'ohi'a and koa, with associates such as hame, uluhe, *Bobea brevipes* ('ahakea lau li'i), *Elaeocarpus bifidus* (kalia), and more common *Melicope* species (alani) (HHP 1991t1, 1991t7; Sohmer and Gustafson 1987; J. Lau, pers. comm., 1991).

Competition with alien plants and habitat degradation by introduced animals constitute the major threats to *Nothocestrum peltatum*. Introduced plants competing with this species include banana poka, daisy fleabane, lantana, prickly Florida blackberry, and *Passiflora edulis* (passion fruit). Animals disturbing the habitat of this species include feral goats, feral pigs, mule deer, and red jungle fowl (*Gallus gallus*). Although plants of this species flower, they rarely set fruit; this could be the result of a loss of pollinators, reduced genetic variability, or self-incompatibility (S. Perlman, pers. comm., 1991; D. Lorence *et al., in litt.*, 1991). This species is threatened by fire, over-collecting for scientific or horticultural purposes, stochastic extinction, and/or reduced reproductive vigor due to the small number of existing individuals (HHP 1991t7; HPCC 1990i3, 1990i4).

Hillebrand (1888) described *Peucedanum sandwicense* based on a specimen collected on Molokai and *P. kauaiense* based on a specimen collected on Kauai. He also referred to an unnamed variety of *P. sandwicense* from Maui. Otto and Isa Degener (1960) later named the Maui plant *P. sandwicense* var. *hiroi*. In their current treatment, Lincoln Constance and James Affolter (1990) recognize only *P. sandwicense* for all populations of the genus in the Hawaiian Islands.

Peucedanum sandwicense, a member of the parsley family (Apiaceae), is a parsley-scented, sprawling herb usually 20 to 40 in (0.5 to 1 m) tall. Hollow stems arise from a short, vertical, perennial stem with several fleshy roots. The compound leaves are generally three-parted with stalkless leaflets, each egg- or lance-shaped and toothed. The larger terminal leaflet is usually one- to three-lobed and 2.8 to 5.1 in (7 to 13 cm) long. The other leaflets have leaf stalks 4 to 20 in (10 to 50 cm) long or are stalkless. Flowers are clustered in a compound umbel of 10 to 20 flowers. The round petals are white and bent inward at the tips. The flat, dry, oval fruits are 0.4 to 0.5 in (10 to 13 mm) long and 0.2 to 0.3 in (5 to 8 mm) wide, splitting in half to release a single flat seed. This species is the only member of the genus in the Hawaiian Islands, one of three genera of the family with taxa endemic to the island of Kauai. This species differs from the other Kauai members of the parsley family in having larger fruit and pinnately compound leaves with broad leaflets (Constance and Affolter 1990, Degener and Constance 1959, Degener and Degener 1960, Hillebrand 1888).

Historically, *Peucedanum sandwicense* was known from three islands: Kalaupapa, Pauonuakea Kui, Waikolu, and Wailau Valley on Molokai; Weiluku and Waiehu on Maui; and various locations in the Waimea Canyon and Olokele regions of Kauai (HHP 1991u1, 1991u2, 1991u4, 1991u7, 1991u9 to 1991u12; HPCC 1991h1, 1991h2). Discoveries in 1990 extended the known distribution of this species to the island of Oahu, where 2 populations totalling about 85 individuals exist in the Waianae Mountains on County and State land (J. Lau, *in litt.* and pers. comm., 1991; J. Obata, pers. comm., 1990). One population of 20 to 30 individuals is known from State owned Keopuka Rock, an islet off the coast of Maui (HHP 1991u8; Hobdy 1982; R. Hobdy, pers. comm., 1991). On Molokai, 3 populations totalling fewer than 30 individuals are found on private and State owned land in Pelekunu Preserve, Kalaupapa National Historical Park, and Huelo, an islet off the coast of Molokai (HHP 1991u7, 1991u16, 1991u20; S. Perlman, pers. comm., 1991). The 10 Kauai populations of 130 to 190 individuals are distributed in Waimea Canyon and along the Na Pali Coast within 1.5 mi (2.4 km) of the ocean (HHP 1991u1, 1991u3, 1991u5, 1991u6, 1991u13 to 1991u15, 1991u17 to 1991u19; T. Flynn, pers. comm., 1991). These populations are found within a 7 by 8 mi (11 by 13 km) area on private and State land. The total number of plants in the known populations of this species is estimated to exceed 1,000 and possibly 5,000 individuals (CPC 1992; S. Perlman, pers. comm., 1993). This species grows in cliff habitats from sea level to above 3,000 ft (900 m) (Constance and Affolter 1990) with such

plant associates as 'akoko, kawelu, lama, 'ohi'a, *Artemisia australis* ('ahinahina), and alien species such as common guava and lantana (HHP 1991u1 to 1991u3, 1991u5 to 1991u8, 1991u14 to 1991u18, 1991u20; J. Lau, *in litt.* and pers. comm., 1991; D. Lorence *et al.*, *in litt.*, 1991).

Competition with introduced plants and habitat degradation and browsing by feral goats are the major threats to *Peucedanum sandwicense*. Kauai populations are affected by alien plant species such as *Kalanchoe pinnata* (air plant), banana poka, common guava, daisy fleabane, firetree, introduced grasses, Java plum, and lantana, as well as by feral goats. The Hanakapiai population on Kauai is close enough to the trail that it is potentially affected by hikers and trail clearing. Oahu populations are threatened by alien plants such as Christmas berry, common guava, daisy fleabane, Hamakua pamakani, silk oak, and *Stachytarpheta*; feral goats; fire; and landslides. The Kalaupapa, Molokai, population of *P. sandwicense* competes with Christmas berry, common guava, and molasses grass. The Pelekunu, Molokai, population is threatened by common guava, Hamakua pamakani, *Ageratina adenophora* (Maui pamakani), and potentially by axis deer. Plants of this species on Huelo are vulnerable to natural rock slides. The population on Keopuka Rock is threatened by alien grasses, lantana, and sourbush (Clarke and Cuddihy 1980; HHP 1991u1, 1991u3, 1991u5, 1991u15, 1991u16; HPCC 1990j1 to 1990j3; R. Hobdy, J. Lau, J. Obata, and S. Perlman, pers. comms., 1991; D. Lorence *et al.*, *in litt.*, 1991).

Peucedanum sandwicense is not in immediate danger of extinction, but if these threats are not curtailed, this species will become endangered in the future.

Wawra collected a specimen of *Phyllostegia waimeae* on Kauai in 1870 while he was a member of the Austrian East Asiatic Exploring Expedition. In 1872, he described the species, naming it for Waimea Canyon where he collected it. St. John (1987c) recently published many species, varieties, and combinations in *Phyllostegia*, one or more of which may fit into this species (Wagner *et al.* 1990).

Phyllostegia waimeae, a nonaromatic member of the mint family (Lamiaceae), is a climbing perennial plant with hairy four-angled stems that are woody at the base. The oval leaves are 2 to 5 in (5 to 13 cm) long, 1 to 2.4 in (2.5 to 6 cm) wide, and have rounded, toothed margins. They are wrinkled and sparsely dotted with oil glands. Flowers grow in groups of six along an unbranched leafy stalk usually 3.9 to 5.9 in (10 to 15 cm) long. The bracts below each flower stalk are broad and partially overlap the flowers. The calyx resembles an inverted cone with broad lobes. The corolla, 0.3 to 0.5 in (8 to 12 mm) long, is pinkish or may be white. The fruits, probably nutlets, have not been observed. Characteristics that distinguish this species from others in the genus are the nearly stalkless bracts that partially overlap and cover the flowers and relatively fewer oil glands on the leaves (Hillebrand 1888, Sherff 1935a, Wagner *et al.* 1990, Wawra 1872).

Historically, *Phyllostegia waimeae* was known from Kaholuamanu and Kaana on Kauai (HHP 1991v2, 1991v3). In recent years, it is known from State land on Kauai in the Halemanu and Waimea Canyon areas (HHP 1991v1, 1991v4). Because the Halemanu population has not been seen for almost 40 years (HHP 1991v1), the number of extant individuals is unknown. The Waimea Canyon population consists of a single plant which has not been observed recently (R. Hobdy, pers. comm., 1991; S. Perlman, pers. comm., 1993). This species typically grows on shallow to deep, well-drained soils in clearings (HHP 1991v1) or along the banks of streams of diverse montane mesic to wet forests at elevations from 3,000 to 3,600 ft (915 m to 1,100 m) (Wagner *et al.* 1990). Associated taxa include 'ohi'a and *Pritchardia minor* (loulu) (HHP 1991v4).

Habitat destruction by feral goats, erosion, and competition with introduced grasses are the major threats to *Phyllostegia waimeae*. The species is also threatened by over-collecting for scientific purposes, stochastic extinction, and/or reduced reproductive vigor due to the small number of existing individuals (R. Hobdy, pers. comm., 1991).

Based on a specimen collected by Duvel and Harold L. Lyon in 1925, Edward L. Caum (1933) described *Pteralyxia kauaiensis*, named for the island where it grows. St. John (1981a) later published *P. elliptica*, but the authors of the current treatment of the genus (Wagner *et al.* 1990) regard that name to be synonymous with *P. kauaiensis*.

Pteralyxia kauaiensis, a member of the dogbane family (Apocynaceae), is a tree 10 to 26 ft (3 to 8 m) tall. The leaves are dark green and shiny on the upper surfaces but pale and dull on the lower surfaces. They are generally egg-shaped and usually 4.3 to 8.7 in (11 to 22 cm) long and 1.6 to 2.6 in (40 to 65 mm) wide. The pale yellow flowers are trumpet-shaped, 0.3 to 0.5 in (8 to 12 mm) long, with each of the five lobes 0.1 to 0.2 in (3 to 4 mm) long. The paired fruits, of which usually only one matures, are drupe-like, bright red, and fleshy. The woody endocarp that encloses the single seed has two prominent central wings and two reduced lateral wings. This species differs from the only other taxa in this endemic Hawaiian genus in having reduced lateral wings on the seed (Caum 1933; Degener 1933, 1936; Lamb 1981; St. John 1981a; Wagner *et al.* 1990).

Historically, *Pteralyxia kauaiensis* was known from the Wahiawa Mountains in the southern portion of Kauai (HHP 1991w8). This species is now known from the following scattered locations on private and State land on Kauai at elevations between 820 and 2,000 ft (250 and 610 m) (Wagner *et al.* 1990): Mahanaloa-Kuia Valley in Kuia NAR; Haeleele Valley; Na Pali Coast State Park; Limahuli Valley; the Koaie branch of Waimea Canyon; Haupu Range; Wailua River; and Moloaa Forest Reserve (HHP 1991w1 to 1991w7, 1991w9, 1991w10, 1991w11; HPCC 1990k1; HPCC 1991j1, 1991j2; T. Flynn and S. Montgomery, pers. comms., 1991). There is an undocumented sighting of one individual at Makaleha, above the town of Kapaa (T. Flynn, pers. comm., 1991). The 13 known populations, totaling 170 to 300 individuals, typically grow on the sides of gulches in diverse lowland mesic forests and sometimes lowland wet forests (Wagner *et al.* 1990). Associated plant taxa include hame, lama, lantana, 'ohi'a, and *Pouteria sandwicensis* ('ala'a) (Degener 1936; HHP 1991w1 to 1991w7, 1991w10; D. Herbst, pers. comm., 1991).

The major threats to *Pteralyxia kauaiensis* are habitat destruction by feral animals and competition with introduced plants. Animals affecting the survival of this species include feral goats, feral pigs, and possibly rats, which may eat the fruits. Fire and over-collecting for scientific purposes could threaten some populations. Introduced plants competing with this species include common guava, daisy fleabane, kukui, lantana, strawberry guava, and ti (HHP 1991w1, 1991w4, 1991w5, 1991w7; HPCC 1990k1, 1990k2; T. Flynn and S. Perlman, pers. comms., 1991).

Gray (1854) described *Schiedea spergulina* based on a specimen collected in 1840 on Kauai during the United States Exploring Expedition. The specific epithet means "resembling *Spergula*," another genus in the same plant family. Two varieties of *S. spergulina* are recognized in the current

treatment of the genus (Wagner *et al.* 1990). The typical variety, which includes var. *degeneriana*, was named by Sherff (1956) and var. *leiopoda* (Sherff 1944), which includes var. *major*, was also named by Sherff (1944).

Schiedea spergulina, a member of the pink family (Caryophyllaceae), is a 1 to 2 ft (30 to 60 cm) tall subshrub. The opposite leaves are very narrow, usually 1.2 to 2.6 in (30 to 65 mm) long and about 0.04 in (1.4 mm) wide, one-veined, and attached directly to the stem. The flowers are unisexual, with male and female flowers on different plants. Flowers occur in compact clusters of three. The sepals usually number five and are green and purple-tinged, 0.08 to 0.13 in (2 to 3.3 mm) long. The capsular fruits are about 0.08 to 0.12 in (2 to 3 mm) long and contain nearly smooth, kidney-shaped seeds. Of the 22 species in this endemic genus, only 2 other species have smooth seeds. This species differs from those two in having very compact flower clusters. The two weakly defined varieties differ primarily in the degree of hairiness (Heller 1897; Hillebrand 1888; Sherff 1944, 1945; Wagner *et al.* 1990).

Historically, *Schiedea spergulina* var. *leiopoda* was found on a ridge on the east side of Hanapepe on Kauai (HHP 1991x1). One population of 50 to 100 individuals of this variety is now known to grow in Lawai Valley on Kauai on privately owned land (HHP 1991x2; HPCC 1991k; T. Flynn, J. Lau, and S. Perlman, pers. comms., 1991). *Schiedea spergulina* var. *spergulina* is more numerous, once found in Olokele Canyon but now known from Kalalau Rim and four locations in Waimea Canyon on State land (HHP 1991y1 to 1991y5). One population contains only five plants, whereas others number in the thousands. However, these populations are estimated to total no more than 5,000 individuals (HHP 1991y1 to 1991y5; T. Flynn, pers. comm., 1991; S. Perlman, pers. comm., 1993). This taxon is usually found on bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland mesic forests at elevations between 590 and 3,000 ft (180 and 800 m) (Wagner *et al.* 1990). Plants associated with the Lawai population of *S. spergulina* var. *leiopoda* are *Bidens sandvicensis* (ko'oko'olau), *Doryopteris* (kumuniu), *Peperomia leptostachya*, and *Plectranthus parviflorus* ('ala'ala wai nui) (T. Flynn and J. Lau, pers. comms., 1991; D. Lorence *et al.*, *in litt.*, 1991). Plant taxa associated with *S. spergulina* var. *spergulina* include 'ahinahina, Chinaberry, lantana, Sacramento bur, and *Nototrichium sandwicense* (kulu'i) (HHP 1991y5, Sherff 1956).

The major threats to *Schiedea spergulina* are habitat destruction by feral goats and competition with introduced plants. Variety *leiopoda* is threatened by competition with alien plant taxa such as koa haole, lantana, and *Furcraea foetida* (Mauritius hemp), and individuals are also damaged and destroyed by rock slides. This variety is potentially threatened by pesticide use in nearby sugarcane fields. This variety is threatened by stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals (CPC 1990; D. Lorence, T. Flynn, pers. comms., 1991). Variety *spergulina* is threatened by competition with alien taxa, including daisy fleabane and lantana. The area in which this variety grows is used heavily by feral goats and there is evidence that plants are being browsed and trampled (HHP 1991y2, 1991y5; T. Flynn, J. Lau, and S. Perlman, pers. comms., 1991; D. Lorence *et al.*, *in litt.*, 1991).

The intensity of threats and small number of populations known for *Schiedea spergulina* var. *leiopoda* indicate that this taxon is in serious danger of extinction. *Schiedea spergulina* var. *spergulina* has significantly more individuals and populations and is facing less intense threats since it is found on more protected cliffs. However, while the latter taxon is not now in danger of extinction, if these threats are not curtailed, the taxon will become endangered in the future.

William Jackson Hooker and G.A.W. Arnott (1830–1841) described *Solanum sandwicense* based on a specimen collected in 1826 or 1827 on Oahu during the voyage of H.M.S. *Blossom*. The plant was named for the Sandwich Islands, an older name for the Hawaiian Islands. Other names by which portions of this species have been known include *S. hillebrandii* (St. John 1969a), *S. kauaiense* (Hillebrand 1888), *S. sandwicense* var.? *kavaiense* (Gray 1862), *S. woahense* (Symon 1990), and *S. woahense* var. *eroso-crenulatum* (Symon 1990). In the current treatment of this genus, Symon (1990) considers the Oahu and Kauai populations as *Solanum sandwicense* and recognizes no subspecific taxa.

Solanum sandwicense, a member of the nightshade family, is a large sprawling shrub that grows up to 13 ft (4 m) tall. The younger branches are more densely hairy than older branches. The oval leaves are usually 4 to 6 in (10 to 15 cm) long and 2 to 5.5 in (5 to 14 cm) wide and have up to four lobes along the margins. Leaf stalks are 0.8 to 1.6 in (2 to 4 cm) long. On the flowering stem, a few to as many as 40 flowers are grouped in threes, with each flower on a stalk about 0.6 in (15 mm) long, bent at the end so that the flower faces downward. The corolla is white with a faint purplish stripe, each lobe is curved somewhat backward. Stamens are attached low on the corolla tube, with anthers curved inward. The fruit is a berry 0.5 to 0.6 in (13 to 15 mm) in diameter, black when ripe. This species differs from others of the genus in having dense hairs on young plant parts, a greater height, and its lack of prickles (Gray 1862, St. John 1969a, Sohmer and Gustafson 1987, Symon 1990).

Historically, *Solanum sandwicense* was known from widely scattered populations throughout the Waianae Mountains and southern portions of the Koolau Mountains on Oahu (HHP 1991z1 to 1991z5, 1991z7 to 1991z10). On Kauai, this species was known from locations in the Kokee region bounded by Kalalau Valley to the north, Milolii Ridge to the west, and Kawaikoi to the east, extending southward to the Hanapepe River (HHP 1991z13 to 1991z17, 1991z21, 1991z22, 1991z24). On Oahu, this species is known from a single population on privately owned land in what is now Honouliuli Preserve (HPCC 1991l). One other recent population was destroyed by a landslide in 1986 (HHP 1991z6; J. Obata, pers. comm., 1991; D. Lorence *et al.*, *in litt.*, 1991). The Kauai populations are on private and State land and most are from Kokee and Na Pali Coast State Parks. Of the 12 known populations, only 4 are currently extant; they total about 20 plants (Bruegmann 1990; CPC 1990; HHP 1991z11, 1991z12, 1991z19, 1991z20, 1991z26; D. Herbst, pers. comm., 1991; S. Perlman, pers. comm., 1993). This species is typically found in open, sunny areas at elevations between 2,500 and 4,000 ft (760 and 1,220 m) in diverse lowland to montane mesic forests and occasionally in wet forests (HHP 1991z1, 1991z11, 1991z16, 1991z19 to 1991z26; Symon 1990). Associated plant taxa include koa, 'ohi'a, uluhe, and wet forest plants such as kopiko, ho'i'o, and more common *Melicope* species (alani) (HHP 1991z11, 1991z18, 1991z20, 1991z26).

The major threats to populations of *Solanum sandwicense* on Kauai are habitat degradation by feral pigs and competition with alien plant taxa. Alien taxa that have heavily invaded this species' habitat on Kauai include banana poka, prickly Florida blackberry, strawberry guava, *Hedychium gardnerianum* (kahili ginger), and *Lonicera japonica* (Japanese honeysuckle). This species is also

threatened by fire, over-collecting for scientific purposes, stochastic extinction, and/or reduced reproductive vigor due to the small number of existing individuals. All Oahu populations of *Solanum sandwicense* except one are now apparently extinct, the result of its habitat being destroyed by urbanization, landslides, feral pigs, and weedy alien taxa (Bruegmann 1990; HHP 1991z1 to 1991z7, 1991z18, 1991z25; HPCC 1990m; R. Hobdy, J. Lau, J. Obata, and S. Perlman, pers. comms., 1991; D. Lorence *et al., in litt.*, 1991).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Brighamia insignis* (as *B. insignis* and *B. citrina* var. *napaliensis*), *Delissea rhytidosperma*, *Exocarpos luteolus*, *Hibiscus clayi* (as *H. clayi* and *H. newhousei*), *Lipochaeta fauriei*, *Lipochaeta micrantha* (as *L. exigua*), *Melicope haupuensis* (as *Pelea haupuensis*), *Melicope knudsenii* (as *Pelea multiflora*), *Melicope pallida* (as *Pelea pallida* and *P. leveillei*), *Melicope quadrangularis* (as *Pelea quadrangularis*), *Nothocestrum peltatum*, *Peucedanum sandwicense* (as *P. kauaiense*), *Pteralyxia kauaiensis*, and *Solanum sandwicense* were considered to be endangered. *Diellia pallida* (as *D. laciniata*), *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeaensis*, *Lysimachia filifolia*, and *Solanum sandwicense* (as *S. kauaiense*) were considered to be threatened. *Hedyotis cookiana*, *Melicope knudsenii* (as *Pelea knudsenii* and *P. tomentosa*), *Munroidendron racemosum* (as *M. racemosum* var. *macdanielsii*), and *Solanum sandwicense* (as *S. hillebrandii*) were considered to be extinct.

On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant species named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including all of the above species considered to be endangered or thought to be extinct. The list of 1,700 plant species was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over two years old be withdrawn. A one-year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, 10 of the species (including synonymous species) that had been in the 1976 proposed rule were treated as Category 1 candidates for Federal listing. Category 1 species are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Other than *Diellia pallida* (as *D. laciniata*), *Hedyotis cookiana*, *Lipochaeta fauriei*, *Lipochaeta micrantha* (as *L. exigua*), *Lysimachia filifolia*, *Melicope knudsenii* (as *Pelea knudsenii*), *Melicope pallida*, *M. quadrangularis*, *Peucedanum sandwicense*, and *Solanum sandwicense* (as *S. hillebrandii*), all the aforementioned species that were either proposed as endangered or thought to be extinct in the June 16, 1976, proposed rule were considered Category 1 candidates on all three notices of review.

In the 1980 and 1985 notices, *Lipochaeta fauriei*, *Melicope knudsenii* (as *Pelea knudsenii*), and *Solanum sandwicense* (as *S. hillebrandii*) were considered Category 1* species. Category 1* species are those that are possibly extinct. *Lysimachia filifolia* appeared as a Category 2 species and *Hedyotis cookiana* as a Category 3A species in the 1980 and 1985 notices. Category 2 species are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. Category 3A species are those for which the Service has persuasive evidence of extinction. Because new information indicated their current existence or provided support for listing, the above five species were conferred Category 1 status in the 1990 notice. *Lipochaeta exigua* appeared as a Category 3B species in the 1980 and 1985 notices; in the 1990 notice, it was considered synonymous with *L. micrantha*, a Category 1 species. Category 3B species are those which, on the basis of current taxonomic understanding, do not represent distinct taxa meeting the Act's definition of "species." *Diellia pallida* (as *D. laciniata*), *Melicope pallida*, and *M. quadrangularis* were accorded Category 1* status in the 1990 notice, but because new information regarding their existence has become available, they are included herein for listing. In 1980, *Peucedanum sandwicense* appeared as a Category 2 species and retained that status in the 1985 and 1990 notices. Information obtained since the 1990 notice suggests that its numbers and distribution are sufficiently restricted to warrant listing. *Schiedea spergulina* first appeared on the 1985 notice of review as a Category 1 species. In the 1990 notice, two varieties were recognized: Variety *spergulina* as a Category 1 species; and variety *leiopoda* as a Category 1* species for which recently obtained information indicates that it is extant. *Cyrtandra limahuliensis* first appeared in the 1990 notice of review as Category 1 species after it was described in 1987. The 1990 notice also recognized *Cyanea asarifolia* and *Phyllostegia waimeae* as Category 1 species for the first time.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, and 1990. The proposed rule published on October 30, 1991 (56 FR 55862) to list 23 plant species primarily from the island of Kauai as endangered species constituted the final 1-year finding that was required for the species discussed above.

Based on comments and recommendations received in response to the proposal (see Comments and Recommendations, below), the Service now determines 21 plant species to be endangered and 3 plant species to be threatened with the publication of this rule. One of the species proposed in 1991 is now being listed as two separate entities: *Schiedea spergulina* var. *spergulina* (as threatened); and *Schiedea spergulina* var. *leiopoda* (as endangered). This results in the apparent increase from 23 species in the proposed rule to 24 species in the final rule.

Summary of Comments and Recommendations

In the October 30, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended on December 30, 1991. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in "The Garden Island" on November 10, 1991. Fifteen letters of comment, including 2 from State agencies, 11 from organizations, and 2 from individuals, were received and are discussed below. A public hearing was requested by Kamehameha Schools/Bernice Pauahi Bishop Estate on December 1, 1992. On January 13, 1993, the Service published a notice (58 FR 4145) reopening the comment period until February 20, 1993, to accommodate the requested public hearing which was held in Kapaa, Kauai, on February 10, 1993. A newspaper notice announcing the public hearing was published in "The Garden Island" on February 10, 1993. Eleven people presented oral comments; their testimony is included in the following summary.

Two respondents acknowledged receipt of the proposed rule but had no comments. Of the remaining 13 letters, 7 supported the listing of these taxa from the island of Kauai and 6 opposed 1 or more of the listings. Additional information included in the letters has been incorporated into this final rule. Comments of similar content were grouped into a number of general issues for discussion. These issues and the Service's response to each are discussed below.

Issue 1: Status of *Cyrtandra limahuliensis:* Two respondents stated that more populations of *Cyrtandra limahuliensis* exist than were discussed in the proposed rule and that there is a good possibility that more populations await discovery. One respondent asked whether this species should still be considered endangered, while the second stated that this species does not warrant listing as endangered.

Response: At the time the proposed rule was written, only 9 populations of *Cyrtandra limahuliensis* were known; however, 3 additional populations were subsequently discovered in Waioli Valley, bringing the total number of plants to 2,800 to 3,000 (D. Lorence, *in litt.*, 1993). This information has been included in the final rule. Based on additional information, the Service determines that *Cyrtandra limahuliensis* is not now in danger of extinction, but that *Cyrtandra limahuliensis* is likely to become endangered in the foreseeable future if the threats posed by competition from alien species are not curbed. Thus, *Cyrtandra limahuliensis* is designated a threatened species.

Issue 2: Status of *Peucedanum sandwicense:* One respondent stated that more populations of *Peucedanum sandwicense* exist than were discussed in the proposed rule and that this species is not immediately threatened with extinction. The proposed rule indicated that only 16 populations of the species were known, 2 on Oahu, 3 on Molokai, 10 on Kauai, and 1 on Maui. Additional populations are now known from the Wailau sea cliffs on Molokai and the Kalalau Valley rim on Kauai (D. Lorence *et al., in litt.*, 1991).

Response: At the time the proposed rule was written, only 9 populations of *Peucedanum sandwicense* were known; however, several additional colonies were subsequently brought to the Service's attention, bringing the totals to between 1,000 to 5,000 individuals (CPC 1992; D. Lorence *et al., in litt.*, 1991). This information has been included in the final rule. Based on the above information, the Service determines that *Peucedanum sandwicense* is not now in danger of extinction, but that it is likely to become endangered in the foreseeable future if the threats posed by competition from alien plant species and feral goats are not curbed. Thus, *Peucedanum sandwicense* is designated a threatened species.

Issue 3: Status of *Schiedea spergulina:* One respondent stated that one variety of *Schiedea spergulina*, var. *spergulina*, is not immediately threatened with extinction. The proposed rule treated the species as one entity in terms of listing.

Response: Schiedea spergulina var. *leiopoda* is known from only 1 population of 50 to 100 individuals (HHP 1991x2; T. Flynn, J. Lau, and S. Perlman, pers. comms., 1991). The numbers of plants and populations of this variety are sufficiently small that, given its threats, it is in immediate danger of extinction and meets the definition of an endangered species as defined in the Act. *Schiedea spergulina* var. *spergulina* is known from 5 locations with from 1,000 to 5,000 individuals total. Based on the above information, the Service determines that *Schiedea spergulina* var. *spergulina* is not now in danger of extinction, but that it is likely to become endangered in the foreseeable future if the threats posed by competition from alien taxa and feral goats are not curbed. Thus, *Schiedea spergulina* var. *spergulina* is designated a threatened species and *S. spergulina* var. *leiopoda* is designated as an endangered species.

Issue 4: Changes to the Act: Several concerns were expressed in letters of comment and in testimony at the public hearing about the Endangered Species Act and its effect on private citizens and landowners. One individual asked both during testimony at the hearing and in multiple letters of comment that the ability of the Federal government to seize land with endangered species be removed from the Act. Concern was expressed by four individuals during their testimony and in three letters of comment that the Endangered Species Act does not allow private citizens to grow and propagate endangered species. Many respondents asked that the permit process be streamlined for propagation and scientific research purposes.

Response: The Act does not require the seizure or acquisition of private lands containing endangered species. The Act also does not restrict the growth and propagation of endangered plant taxa by private citizens as long as the plants are not collected from Federal lands, are not transported between states or outside of the U.S., and that these actions do not violate State laws. A Federal permit for collecting is only required if the collection involves Federal actions, Federal funding, or activities on Federal lands.

Issue 5: Changes to State regulations: Concern was expressed by four individuals during their testimony and in three letters of comment that State regulations might make the propagation or cultivation of these 24 taxa more difficult if they were listed as endangered, since State regulations prohibit possessing endangered plants or collecting their propagules. Permits to collect or possess endangered plants may be issued by the State to enhance the propagation or survival of the species, but the respondents believe that it is difficult and burdensome to obtain

these permits. One individual was also concerned about the seizure of private lands by the State to protect endangered species. Another individual stated that rezoning for conservation districts should be limited to public lands.

Response: Hawaii Administration Rule 13–124–4(a) allows for "Permits to * * * possess * * * any endangered or threatened species of wildlife or plants" to be issued "to enhance the propagation or survival of the species." To date, the State has worked with private landowners to reach a cooperative agreement for management of endangered species habitat or to reach a fair purchase price. Concerns about the State's endangered species law and how it affects private citizens, and any requests to change State requirements, should be addressed to State authorities. The Service believes that existing State policies should not delay or prevent the Federal protection that listing would afford the species.

Issue 6: Threat of game mammals: One individual at the hearing was concerned that there is inadequate information on the effects of feral ungulates to indicate that their eradication would truly benefit the proposed plants.

Response: The Service is not proposing the eradication of feral ungulates from the island of Kauai. However, several studies verify that feral ungulates damage native plants and habitats. Feral goats have been implicated in the damage of native vegetation ranging from lowland to subalpine areas (Mueller-Dombois and Spatz 1972, Spatz and Mueller-Dombois 1973, Scowcroft and Sakai 1983). Goat browsing damage has been observed on individuals of *Exocarpus luteolus*, *Lipochaeta micrantha*, and *Schiedea spergulina* var. *spergulina* (HHP 1991k5; T. Flynn, pers. comm., 1991; S. Perlman, pers. comm., 1993). Goats threaten 12 other species through habitat degradation.

Pigs have been similarly implicated in damaging native habitats. Specific studies have demonstrated that native vegetation recovers significantly after the exclusion of pigs in rainforests and subalpine grasslands (Spatz and Mueller-Dombois 1975, Stone 1985). Eleven species in this rule are threatened by habitat degradation caused by pigs. Elimination or reduction of habitat damage by feral ungulates will be addressed during the recovery process for these species.

Issue 7: Lack of adequate management: Four respondents and three individuals in their testimony stated that inadequate management of State and Federal lands in the past has caused the decline of many of the 24 taxa.

Response: Listing a species as either endangered or threatened does enable States, such as Hawaii, to apply for Federal funds to undertake programs aimed at conserving endangered species. Additional concerns about the management of State lands should be addressed to State authorities. None of the 24 taxa are found on federally owned lands. Populations of one species, *Peucedanum sandwicense*, are found on State land managed under a cooperative agreement with the National Park Service. The National Park Service assumed management of the area in 1980. A natural resource management plan will be developed for the area soon, but must be approved by the State before it can be implemented (Gary Barbano, National Park Service, pers. comm., 1993).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Brighamia insignis* ('olulu), *Cyanea asarifolia* (haha), *Delissea rhytidosperma* (no common name (NCN)), *Diellia pallida* (NCN), *Exocarpos luteolus* (heau), *Hedyotis cookiana* ('awiwi), *Hibiscus clayi* (Clay's hibiscus), *Lipochaeta fauriei* (nehe), *Lipochaeta micrantha* (nehe), *Lipochaeta waimeaensis* (nehe), *Lysimachia filifolia* (NCN), *Melicope haupuensis* (alani), *Melicope knudsenii* (alani), *Melicope pallida* (alani), *Melicope quadrangularis* (alani), *Munroidendron racemosum* (NCN), *Nothocestrum peltatum* ('aiea), *Phyllostegia waimeae* (NCN), *Pteralyxia kauaiensis* (kaulu), *Schiedea spergulina* var. *leiopoda* (NCN), and *Solanum sandwicense* (popolo'aiakeakua) should be classified as endangered species; and that *Cyrtandra limahuliensis* (ha'iwale), *Peucedanum sandwicense* (makou), and *Schiedea spergulina* var. *spergulina* (NCN) should be classified as threatened species. The provisions of section 4 of the Endangered Species Act (16 U.S.C 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed in making these determinations. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing these 24 taxa are summarized in Table 1.

TABLE1.—SUMMARY OF THREATS

Species	Alien mammals					Insects	Alien plants	Fire	Natural disaster*	Human impacts	Limited numbers**
	Cattle	Deer	Goats	Pigs	Rats						
Brighamia insignis	.....	.....	X	.....	.....	X	X	X	X	X	X1,3
Cyanea asarifolia	.....	.....	.....	P	P	.....	.....	.....	X	X	X1,2
Cyrtandra limahuliensis	.....	.....	.....	X	.....	.....	X	.....	P	P	
Delissea rhytidosperma	.....	X	X	X	X	.....	X	X	X	X	X1,2
Diellia pallida	.....	X	X	X	.....	.....	X	.....	X	X	X1,2
Exocarpos luteolus	.....	.....	X	X	X	.....	X	X	X	P	
Hedyotis cookiana	.....	.....	P	P	.....	.....	P	.....	P	P	X1,3
Hibiscus clayi	.....	.....	.....	P	.....	.....	X	.....	.....	X	X1,2
Lipochaeta fauriei	.....	.....	X	P	.....	.....	X	X	.....	P	X1,3
Lipochaeta micrantha var. *exigua*	.....	.....	.....	X	.....	.....	X	.....	.....	P	X1
Lipochaeta micrantha var. *micrantha*	.....	.....	X	X	.....	.....	X	.....	.....	P	X1
Lipochaeta waimeaensis	.....	.....	X	.....	.....	.....	X	.....	X	X	X1,2
Lysimachia filifolia	.....	.....	.....	P	.....	.....	X	.....	X	P	X1
Melicope haupuensis	.....	.....	X	.....	.....	P	X	.....	.....	X	X1,2
Melicope knudsenii	X	P	X	X	.....	P	X	P	.....	P	X1,3
Melicope pallida	.....	.....	X	X	.....	P	X	X	.....	P	X3
Melicope quadrangularis	.....	.....	.....	.....	.....	P	P	.....	.....	P	X1,3
Munroidendron racemosum	.....	.....	X	.....	P	P	X	X	X	P	X3

TABLE1.—SUMMARY OF THREATS—Continued

Species	Alien mammals					Insects	Alien plants	Fire	Natural disaster*	Human impacts	Limited numbers**
	Cattle	Deer	Goats	Pigs	Rats						
Nothocestrum peltatum	.....	.....	X	X	.....	.....	X	X	.....	X	X1,3
Peucedanum sandwicense	.....	P	X	.....	.....	.....	X	X	X	X	
Phyllostegia waimeae	.....	.....	X	.....	.....	.....	X	.....	X	X	X1,2
Pteralyxia kauaiensis	.....	.....	X	X	P	.....	X	X	.....	P	
Schiedea spergulina var. *leiopoda*	.....	.....	X	.....	.....	.....	X	.....	X	P	X1,3
Schiedea spergulina var. *spergulina*	.....	.....	X	.....	.....	.....	X	.....	.....	P	X1
Solanum sandwicense	.....	.....	.....	X	.....	.....	X	X	X	X	X1,3

X=Immediate and significant threat.
P=Potential threat.
*=Natural disasters include hurricanes, erosion, rock slides, and landslides.
**=No more than 100 individuals and/or no more than 5 populations.
1=No more than 5 populations.
2=No more than 10 individuals.
3=No more than 100 individuals.

These factors and their application to *Brighamia insignis* A. Gray ('olulu), *Cyanea asarifolia* St. John (haha), *Cyrtandra limahuliensis* St. John (ha'iwale), *Delissea rhytidosperma* H. Mann (no common name (NCN)), *Diellia pallida* W.H. Wagner (NCN), *Exocarpos luteolus* C. Forbes (heau), *Hedyotis cookiana* (Cham. and Schlechtend.) Steud. ('awiwi), *Hibiscus clayi* Degener and I. Degener (Clay's hibiscus), *Lipochaeta fauriei* H. Levl. (nehe), *Lipochaeta micrantha* (Nutt.) A. Gray (nehe), *Lipochaeta waimeaensis* St. John (nehe), *Lysimachia filifolia* C. Forbes and Lydgate (NCN), *Melicope haupuensis* (St. John) Hartley and Stone (alani), *Melicope knudsenii* (Hillebr.) Hartley and Stone (alani), *Melicope pallida* (Hillebr.) Hartley and Stone (alani), *Melicope quadrangularis* (St. John and E. Hume) T. Hartley and B. Stone (alani), *Munroidendron racemosum* (C. Forbes) Sherff (NCN), *Nothocestrum peltatum* Skottsb. ('aiea), *Peucedanum sandwicense* Hillebr. (makou), *Phyllostegia waimeae* Wawra (NCN), *Pteralyxia kauaiensis* Caum (kaulu), *Schiedea spergulina* var. *leiopoda* Sherff (NCN), *Schiedea spergulina* A. Gray var. *spergulina* (NCN), and *Solanum sandwicense* Hook. and Arnott. (popolo'aiakeakua) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The habitats of the plants included in this rule have undergone extreme alteration because of past and present land management practices, including deliberate alien animal and plant introductions, agricultural development, and recreational use. Natural disturbances such as storms and landslides also destroy habitat and can have a significant effect on small populations of plants. Destruction and modification of habitat by introduced animals and competition with alien plants are the primary threats facing the 24 plant taxa in this rule (see Table 1).

When Polynesian immigrants settled in the Hawaiian Islands, they brought with them water-control and slash-and-burn systems of agriculture and encouraged plants that they introduced to grow in valleys. Their use of the land resulted in erosion, changes in the composition of native communities, and a reduction of biodiversity (Cuddihy and Stone 1990; HHP 1990b; Kirch 1982; Wagner *et al.* 1985). Hawaiians settled and altered many areas of Kauai including areas in which some of the taxa in this rule grew (DLNR 1981a; HHP 1990a, 1990b). Many forested slopes were denuded in the mid-1800s to supply firewood to whaling ships, plantations, and Honolulu residents. Native plants, such as the historic population of *Lipochaeta micrantha* var. *micrantha* in Koloa District (HHP 1991k4), were undoubtedly affected by this practice. Also, sandalwood and tree fern harvesting occurred in many areas, changing forest composition and affecting native taxa (Cuddihy and Stone 1990).

Beginning with Captain James Cook in 1792, early European explorers introduced livestock, which became feral, increased in number and range, and caused significant changes to the natural environment of Hawaii. The 1848 provision for land sales to individuals allowed large-scale agricultural and ranching ventures to begin. So much land was cleared for these enterprises that climatic conditions began to change and the amount and distribution of rainfall were altered (Wenkam 1969). Plantation owners supported reforestation programs that resulted in many alien trees being introduced in the hope that the watershed could be conserved. Beginning in the 1920s, water collection and diversion systems were constructed in upland areas to irrigate lowland fields. It is probable that individuals and populations of native plants were destroyed. Some of the taxa, such as a Kokee population of *Exocarpos luteolus* and a Waimea Canyon population of *Schiedea spergulina* var. *spergulina*, which now occur near ditches of the irrigation system, may have been affected (HHP 1991f4, 1991y2). The irrigation system also opened new routes for the invasion of alien plants and animals into native forests (Cuddihy and Stone 1990, Culliney 1988, Wagner *et al.* 1990, Wenkam 1969).

Past and present activities of introduced alien mammals are the primary factor in altering and degrading vegetation and habitats on Kauai, Niihau, Oahu, Molokai, and Maui. Feral ungulates trample and eat native vegetation and disturb and open new areas. This causes erosion and allows the entry of alien plant taxa (Cuddihy and Stone 1990, Wagner *et al.* 1990). Nineteen taxa in this proposal are directly threatened by habitat degradation resulting from introduced ungulates: 17 taxa are threatened by goats; 10 by pigs; 3 by deer; and 1 by cattle. In addition, an introduced ground-nesting bird potentially threatens one taxon by disturbing its habitat.

Goat (*Capra hircus*), a species originally native to the Middle East and India, was successfully introduced to the Hawaiian Islands in 1792 and there currently are populations on Kauai, Oahu, Molokai, Maui, and Hawaii. All

feral goats were removed from Niihau about 1910, but by that time they had caused considerable damage to the island's dry and mesic forests. On Kauai, feral goats have been present in drier, more rugged areas since the 1820s. They still occur in Waimea Canyon and along the Na Pali Coast, as well as in the drier perimeter of Alakai Swamp and even in its wetter areas during periods with low rainfall. Goats have been on Oahu since about 1820 and they currently occur in the northern Waianae Mountains. On Molokai, goats degrade dry forests at low elevations and they are expanding their range (J. Lau, pers. comm., 1991). On Maui, goats have been widespread for 100 to 150 years and are common throughout the south slope of Haleakala (Medeiros *et al.* 1986). Goats are managed in Hawaii as a game animal, but many herds populate inaccessible areas where hunting has little effect on their numbers (HHP 1990c). Goat hunting is allowed year-round or during certain months, depending on the area (DLNR n.d.-a, n.d.-b, n.d.-c, 1990). Goats browse on introduced grasses and native plants, especially in drier and more open ecosystems. Feral goats eat native vegetation, trample roots and seedlings, cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Clarke and Cuddihy 1980, Cuddihy and Stone 1990, Culliney 1988, Scott *et al.* 1986, Tomich 1986, van Riper and van Riper 1982).

Although many of the plants survive on steep cliffs inaccessible to goats, their original range was probably much larger. Plants are vulnerable to the long-term, indirect effects of goats, such as large-scale erosion (Corn *et al.* 1979). The habitats of many of the 24 plant taxa in this rule were damaged in the past by goats and these effects are still apparent today in the form of alien vegetation and erosion. One or more populations of 17 of the following taxa are currently threatened by direct damage from feral goats, such as trampling of plants and seedlings and erosion of substrate: *Brighamia insignis; Delissea rhytidosperma; Diellia pallida; Exocarpos luteolus; Lipochaeta fauriei; Lipochaeta micrantha* var. *micrantha; Lipochaeta waimeaensis; Melicope haupuensis; Melicope knudsenii; Melicope pallida; Munroidendron racemosum; Nothocestrum peltatum; Peucedanum sandwicense; Phyllostegia waimeae; Pteralyxia kauaiensis,* and both varieties of *Schiedea spergulina.* In addition, it is probable that goats have invaded the area in which the only known population of *Hedyotis cookiana* occurs (Bruegmann 1990; Clarke and Cuddihy 1980; Culliney 1988; HHP 1991a1, 1991e3, 1991f6, 1991i3, 1991k5, 1991o1, 1991o2, 1991p1 to 1991p4, 1991q6, 1991q8, 1991s1, 1991s8 to 1991s10, 1991s15, 1991t7, 1991u14, 1991w5, 1991y5; HPCC 1990a, 1990i4, 1990j2, 1990j3, 1990k1, 1990k2; Lammers 1990; Lamoureux 1982; Medeiros *et al.* 1986; Perlman 1979; St. John 1981b; Scott *et al.* 1986; Takeuchi 1982; van Riper and van Riper 1982; C. Christensen, T. Flynn, R. Hobdy, J. Lau, D. Lorence, S. Montgomery, S. Perlman, and K. Wood, pers. comms., 1991).

Pig (*Sus scrofa*) is a species originally native to Europe, northern Africa, Asia Minor, and Asia. European pigs, introduced to Hawaii by Captain James Cook in 1778, became feral and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. They are currently present on Kauai, Oahu, Molokai, Maui, and Hawaii, and inhabit rain forests and grasslands. Pig hunting is allowed on all islands either year-round or during certain months, depending on the area (DLNR n.d.-a, n.d.-b, n.d.-c, 1990). While rooting in the ground in search of the invertebrates and plant material they eat, feral pigs disturb and destroy vegetative cover, trample plants and seedlings, and threaten forest regeneration by damaging seeds and seedlings. They disturb soil substrates and cause erosion, especially on slopes. Alien plant seeds are dispersed on their hooves and coats as well as through their digestive tracts. The disturbed soil is fertilized by their feces, helping these plants to establish. Pigs are a major vector in the spread of banana poka, firetree, and strawberry guava and enhance populations of common guava, kahili ginger, Hamakua pamakani, prickly Florida blackberry, sweet granadilla, and yellow ginger, all of which threaten one or more of the taxa (Cuddihy and Stone 1990, Medeiros *et al.* 1986, Scott *et al.* 1986, Smith 1985, Stone 1985, Tomich 1986, Wagner *et al.* 1990).

Feral pigs pose an immediate threat to 1 or more populations of 11 of the taxa. At least one population of each of the following taxa is threatened by feral pigs: *Pteralyxia kauaiensis; Solanum sandwicense;* both varieties of *Lipochaeta micrantha; Cyrtandra limahuliensis; Delissea rhytidosperma; Diellia pallida; Exocarpos luteolus; Lipochaeta fauriei; Melicope knudsenii; Melicope pallida;* and *Nothocestrum peltatum.* Pigs also constitute a potential threat to *Cyanea asarifolia, Hedyotis cookiana, Hibiscus clayi, Lipochaeta fauriei,* and *Lysimachia filifolia* (Bruegmann 1990; HHP 1991f6, 1991p1, 1991p3; HPCC 1990i3, 1990i4; J. Obata, pers. comm., 1990; C. Christensen, T. Flynn, R. Hobdy, J. Lau, D. Lorence, and S. Perlman, pers. comms., 1991).

Cattle (*Bos taurus*), the wild progenitor of which was native to Europe, north Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. Large feral herds developed as a result of restrictions on killing cattle decreed by King Kamehameha I. Feral cattle formerly occurred on Niihau and, along with goats and sheep (*Ovis aries*), caused much damage on the island (Stone 1985). On Kauai, parts of Kokee were leased for cattle grazing in the 1850s and both sides of Waimea Canyon were supporting large cattle ranching operations by the 1870s (Joesting 1984, Ryan and Chang 1985). Cattle grazing began about 1920 in the Na Pali region (DLNR 1981a). Cattle roamed lowland areas and eventually began invading wet forests from adjacent mesic areas. Around 1900, Augustus Knudsen, the district forester of Kauai and a rancher, realizing the amount of destruction being caused to the forests by cattle, initiated some fencing (Deehler 1973). Sugar company interests funded additional fencing as well as feral cattle removal to protect the forest from further degradation and to safeguard water reserves for their crops (Wenkam 1969). On Kauai, feral cattle were still present in Kokee as late as 1960 and in the Puu Ka Pele area in the 1980s. Feral cattle roamed Oahu, but most were removed by the early 1960s. Today, only a few can be found in the northwestern part of the island (J. Lau, pers. comm., 1990). Feral cattle were formerly found on Molokai and Maui and damaged the forests there. Hunting of feral cattle is no longer allowed in Hawaii (DLNR 1985). Cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas into which alien plants invade, and spread seeds of alien plants in their feces and on their bodies. The forest, in areas grazed by cattle, becomes degraded to grassland pasture. Plant cover is reduced for many years following removal of cattle from an area. Several alien grasses and legumes purposely introduced for cattle forage have become noxious weeds (Cuddihy and Stone 1990, Scott *et al.* 1986, Tomich 1986).

The habitats of many of the plants included in this rule were degraded in the past by feral cattle. This has had effects which still persist. Examples of plant taxa whose habitats have been altered by feral cattle include *Hibiscus clayi* and *Munroidendron racemosum.* The Maui population of *Melicope knudsenii,* growing in an area currently used as a domestic cattle pasture, is directly threatened by trampling by this animal (Degener and Degener 1959a; HHP 1991h3, 1991p1; Lamoureux 1982).

Individuals of mule deer or black-tailed deer (*Odocoileus hemionus*), native from western North America to central Mexico, were brought to Kauai from Oregon in the 1960s for game hunting and have not been introduced to any other Hawaiian island. In part, mule deer were introduced to provide another animal for hunting, since the State had planned to reduce the number of goats on Kauai because they were so destructive to the landscape (Kramer 1971). There are about 400 animals in and near Waimea Canyon, with some invasion into Alakai Swamp in drier periods. Mule deer, legally hunted during only one month each year, trample native vegetation and cause erosion by creating trails and removing vegetation (Cuddihy and Stone 1990, DLNR 1985, Tomich 1986). They are a threat to *Delissea rhytidosperma, Diellia pallida,* and *Nothocestrum peltatum* (Bruegmann 1990; HPCC 1990b, 1990i3, 1990i4; S. Perlman, pers. comm., 1991).

Axis deer (*Axis*), native to Sri Lanka and India, were first introduced to the Hawaiian Islands in 1868 as a game animal on Molokai, later to Oahu and Lanai, and finally to East Maui in 1960. Hunting of axis deer is allowed only on Molokai and Lanai during two months of the year. Considerable damage has been done to the forests on Molokai and Lanai by this animal, especially through browsing of vegetation and compaction of the soil (Cuddihy and Stone 1990, Culliney 1988, DLNR 1985, Scott *et al.* 1986, Tomich 1986). With a population of about 100 animals on the lower southwest slope of Haleakala, the range of the axis deer is expanding on East Maui and constitutes a potential threat to *Melicope knudsenii* (Medeiros *et al.* 1986). On Molokai, axis deer are encroaching on Pelekunu Valley and are already present in Kalaupapa, thus posing a potential threat to populations of *Peucedanum sandwicense* in these areas (HHP 1991u7, 1991u16; J. Lau, pers. comm., 1990).

Red jungle fowl (*Gallus*), ground-nesting chickens native to India and southeast Asia, were introduced to Hawaii by the Polynesian immigrants and became feral in the forests. A current threat to the Makaha Valley, Kauai, population of *Nothocestrum peltatum,* red jungle fowl disturb the ground cover while searching for seeds, fruits, and small invertebrates, thus disrupting seedling establishment (Cuddihy and Stone 1990, HPCC 1990i3, Scott *et al.* 1986).

Substrate loss due to agriculture, grazing animals (especially goats), hikers, and vegetation change results in habitat degradation and loss. This particularly affects plant populations located on cliffs or steep slopes, including *Lipochaeta waimeaensis, Brighamia insignis, Diellia pallida, Exocarpos luteolus, Peucedanum sandwicense,* and *Phyllostegia waimeae* (Bruegmann 1990; Christensen 1979; HHP 1991f6; Takeuchi 1982; G. Carr, R. Hobdy, and J. Obata, pers. comms., 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to all 24 of the taxa, but especially to *Cyanea asarifolia, Delissea rhytidosperma, Diellia pallida, Hibiscus clayi, Lipochaeta waimeaensis, Melicope haupuensis,* and *Phyllostegia waimeae,* each of which has only 1 or 2 populations and a total of 10 or fewer individuals. Collection of whole plants or reproductive parts of any of these seven taxa could cause an adverse impact on the gene pool and threaten the survival of the taxa. Some taxa, such as *Brighamia insignis, Exocarpos luteolus, Hibiscus clayi, Nothocestrum peltatum, Peucedanum sandwicense,* and *Solanum sandwicense,* have populations close to trails or roads and are, thus, easily accessible to collectors (HHP 1991a3, 1991f6, 1991h1, 1991t1, 1991t2, 1991t4, 1991t7, 1991u1, 1991u3, 1991u5, 1991u7, 1991u15, 1991z11, 1991z12, 1991z18, 1991z20, 1991z23, 1991z25, 1991z26; HPCC 1990c, 1990i1 to 1990i4, 1990m).

Many of the plants occur in recreational areas used for hiking, camping, and hunting. Tourism is a growing industry in Hawaii and as more people seek recreational activities, they are more likely to come into contact with rare native plants. People can transport or introduce alien plants through seeds on their footwear and they can cause erosion, trample plants, and start fires (Corn *et al.* 1979). *Brighamia insignis, Hibiscus clayi,* and *Peucedanum sandwicense* have populations next to trails and are considered to be immediately threatened by recreational use of the areas in which they occur (Clarke and Cuddihy 1980; Takeuchi 1982; T. Flynn, pers. comm., 1991).

C. Disease or Predation

Browsing damage by goats has been verified for the following taxa: *Brighamia insignis; Exocarpos luteolus; Peucedanum sandwicense;* and *Schiedea spergulina* var. *spergulina* (HHP 1991y5; Takeuchi 1982; T. Flynn, J. Lau, and S. Perlman, pers. comms., 1991; L. Mehrhoff, pers. comm., 1993). The remaining taxa are not known to be unpalatable to goats, deer, or cattle and, therefore, predation is a probable threat where those animals have been reported, potentially affecting 15 additional taxa. These taxa include *Delissea rhytidosperma, Diellia pallida, Hedyotis cookiana, Hibiscus clayi, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Nothocestrum peltatum, Phyllostegia waimeae, Pteralyxia kauaiensis,* and *Solanum sandwicense.* The lack of seedlings of many of the taxa and the occurrence of individuals of several taxa only on inaccessible cliffs appear to indicate the effect that browsing mammals, especially goats, have had in restricting the distribution of these plants (HHP 1990b, Takeuchi 1982).

Of the four species of rodents that have been introduced to the Hawaiian Islands, the species with the greatest impact on the native flora and fauna is probably the black or roof rat (*Rattus rattus*), which now occurs on all the main Hawaiian Islands around human habitations, in cultivated fields, and in dry to wet forests. Black rats, and to a lesser extent house mouse (*Mus musculus*), Polynesian rat (*Rattus exulans*), and Norway rat (*R. norvegicus*) eat the fruits of some native plants, especially those with large, fleshy fruits. Many native Hawaiian plants produce their fruit over an extended period of time and this produces a prolonged food supply that supports rodent populations. Black rats strip bark from some native plants (Cuddihy and Stone 1990, Tomich 1986). Rats threaten *Delissea rhytidosperma* by damaging the fruits and stems (Bruegmann 1990). Rats eat fruits of *Exocarpos luteolus,* threatening this species as well. It is probable that rats damage the fruit and stems of *Cyanea asarifolia, Munroidendron racemosum,* and *Pteralyxia kauaiensis,* which have fleshy fruits and populations in areas where rats occur (Lamoureux 1982; T. Flynn and D. Herbst, pers. comms., 1991).

Black twig borer (*Xyleborandrus compactus*) is a small beetle about 1.6 mm (0.06 in) in length that burrows into

branches, introduces a pathogenic fungus as food for its larvae, and lays its eggs. Twigs, branches, and even the entire plant can be killed from such an infestation. In the Hawaiian Islands, black twig borer has many hosts, disperses easily, and is probably present at most elevations up to 2,500 ft (670 m). It is known to attack species of *Melicope* and is a potential threat to *Melicope haupuensis, M. knudsenii, M. pallida,* and *M. quadrangularis,* all of which grow in areas where the insect is believed to be present (Davis 1970; Hara and Beardsley 1979; Hill 1987; Medeiros *et al.* 1986; Samuelson 1981; S. Montgomery, pers. comm., 1991).

D. The Inadequacy of Existing Regulatory Mechanisms

Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, sect. 195D–4).

None of the 24 taxa in this final rule are listed by the State. Twelve taxa have populations located on privately owned land. Two taxa, *Melicope quadrangularis* and *Schiedea spergulina* var. *leiopoda,* are found exclusively on private land. *Peucedanum sandwicense* is found on City and County of Honolulu land and federally managed land, as well as State land. At least one population of each taxon except *Schiedea spergulina* var. *leiopoda* and *Melicope quadrangularis* occur on State land. Eleven of the taxa are located in State parks, NARs, or the seabird sanctuary, which have rules and regulations for the protection of resources (DLNR 1981b; HRS, sects. 183D–4, 184–5, 195- 5, and 195–8). One or more populations of each of the 24 tax a except *Schiedea spergulina* var. *leiopoda* is located on land classified within conservation districts and owned by the City and County of Honolulu, the State of Hawaii, or private companies or individuals. Regardless of the owner, lands within these districts are regarded as necessary for the protection of endemic biological resources and for the maintenance, enhancement, or conservation of natural resources. Activities permitted in conservation districts are chosen by considering how best to make multiple use of the land (HRS, sect. 205–2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by both Federal and State laws.

Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205–4). Before decisions about these requests are made, the impact of the proposed reclassification on "preservation or maintenance of important natural systems or habitat" (HRS, sects. 205–4, 205–17), as well as the maintenance of natural resources, is required to be taken into account (HRS, sects. 205–2, 205–4). Before any land use change proposed to occur on county or State lands and funded, in part or in whole, by county or State funds, or would occur within land classified as conservation district, an environmental assessment is required to determine whether or not the environment would be significantly affected (HRS, chapt. 343). If it is found that an action would have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii environmental policy and, thus, approval of land use, is required by law to safeguard "* * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344–3(1)) and includes guidelines to "Protect endangered species of individual plants and animals * * *" (HRS, sect. 344–4(3)(A)). Federal listing, because it automatically invokes State listing, would trigger operation of these other State regulations protecting the plants.

State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D–5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). If listing were to occur, funds for these activities could be made available under section 6 of the Federal Endangered Species Act (State Cooperative Agreements). The DLNR is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D–5.1).

Ten of the taxa are threatened by plants considered by the State of Hawaii to be noxious weeds. The State has provisions for eradication and control of noxious weeds on State and private land in conservation districts and other areas (HRS, chapt. 152; DOA 1981, 1991). State and Federal agencies have programs to locate, eradicate, and deter marijuana cultivation, which is a potential threat to six taxa (HHP 1990c). Federal listing of these 24 plant taxa would reinforce and supplement the protection available under the Hawaii State Endangered Species Act and other laws. The Federal Endangered Species Act would offer additional protection to these 24 taxa because, if they were to be listed as endangered or threatened, it would be a violation of the Federal Endangered Species Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

One or more of the almost 50 taxa of introduced plants threaten 21 of the 24 plant taxa in this rule and potentially threaten the other three. The original native flora of Hawaii consisted of about 1,000 taxa, 89 percent of which were endemic. Of the total native and naturalized Hawaiian flora of 1,817 taxa, 47 percent were introduced from other parts of the world and nearly 100 taxa have become pests (Smith 1985, Wagner *et al.* 1990). Naturalized, introduced taxa degrade the Hawaiian landscape and compete with native plants for space, light, water, and nutrients (Cuddihy and Stone, 1990; D. Lorence, pers. comm., 1991). Some of these taxa were brought to Hawaii by various groups of people, including the Polynesian immigrants, for food or cultural reasons. Plantation owners, alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral animals, supported the introduction of alien tree taxa for reforestation. Ranchers intentionally introduced pasture grasses and other taxa for agriculture and sometimes inadvertently introduced weed seeds as well. Other plants were brought to Hawaii for their potential horticultural value (Cuddihy and Stone 1990, Scott *et al.* 1986, Wenkam 1969).

A small tree, *Acacia confusa* (Formosa koa), was introduced to Hawaii for reforestation purposes and is naturalized in dry to mesic, disturbed habitats on most of the Hawaiian Islands (Smith 1985, Wagner *et al.* 1990). *Acacia mearnsii* (black wattle) was introduced as a cultivated plant and has naturalized on five islands in pastures and dry to mesic forests (Wagner *et al.* 1990). It threatens *Exocarpos luteolus* (T. Flynn, pers. comm., 1991). Two subshrubs in the genus *Ageratina* have naturalized in the Hawaiian Islands and are classified as noxious weeds by the State (Hawaii, Department of Agriculture (DOA) 1981). *Ageratina adenophora* (Maui pamakani), naturalized in dry areas to wet forests on four islands, is also classified as a noxious weed by the Federal government (7 CFR 360). It threatens *Peucedanum sandwicense* (HHP 1991u16, Wagner *et al.* 1990). *Ageratina riparia* (Hamakua pamakani) is naturalized in disturbed, dry to mesic areas and wet forest on four islands and is a threat to *Lysimachia filifolia,* as well as to *Peucedanum sandwicense* (HHP 1991u16; HPCC 1990g2, 1990j1, 1990j3; Wagner *et al.* 1990). *Ageratum conyzoides* (maile hohono), an herb that is a common weed in many areas of the main Hawaiian Islands, threatens *Brighamia insignis* in some areas (HHP 1991a1; Wagner *et al.* 1990).

Although it is the official State tree of Hawaii, *Aleurites moluccana* (kukui) is not a native Hawaiian plant. It was originally native to Malesia. It was brought to Hawaii by the Polynesian immigrants and is now a component of mesic valley ecosystems on all of the main islands except Kahoolawe (Wagner *et al.* 1990). One or more populations of *Hibiscus clayi, Lipochaeta fauriei, Munroidendron racemosum,* and *Pteralyxia kauaiensis* grow in areas with kukui, which may compete with these native species for space. *Hibiscus clayi* and *Lipochaeta fauriei* do not grow under a dense canopy, so kukui could prevent them from regenerating in an area. *Munroidendron racemosum* and *Pteralyxia kauaiensis,* overstory trees in native forests, are displaced when kukui dominates (HHP 1991h2, 1991s1, 1991s4, 1991s5, 1991s8, 1991s10, 1991s15, 1991w1, 1991w4, 1991w5; HPCC 1990d3; Lamoureux 1982; T. Flynn, J. Lau, and S. Perlman, pers. comms., 1991). *Araucaria columnaris* (columnar araucaria), planted in Hawaii for reforestation and timber production and now found on all the main islands, is reseeding and threatens *Hibiscus clayi* (Little and Skolman 1989; Neal 1965; D. Bates, pers. comm., 1991). *Bidens pilosa* (Spanish needle), an annual herb naturalized on all the main Hawaiian Islands, is a threat to *Peucedanum sandwicense* (Ganders and Nagata 1990, HHP 1991u15).

Classified as a noxious weed by the State of Hawaii, *Clidemia hirta* (Koster's curse) is an aggressive shrub found in mesic to wet forests on at least five islands in Hawaii (Almeda 1990, DOA 1981). It is a threat to *Melicope pallida* and *Peucedanum sandwicense.* It is a potential threat to *Cyrtandra limahuliensis* (HHP 1990c; T. Flynn and S. Montgomery, pers. comms., 1991). *Cordyline fruticosa* (ti) is a shrub that was brought to Hawaii by the Polynesian immigrants. Its original range is unknown, but in Hawaii it is now naturalized on all the main islands except Kahoolawe in hala forest and mesic valleys and forests, sometimes forming dense stands (Wagner *et al.* 1990; J. Lau, pers. comm., 1991). One or more populations of the following taxa compete for space with ti: *Delissea rhytidosperma; Hibiscus clayi; Lipochaeta micrantha* var. *exigua; Lysimachia filifolia; Munroidendron racemosum;* and *Pteralyxia kauaiensis* (HHP 1991d2, 1991h1, 1991h2, 1991j1, 1991s1, 1991w7; HPCC 1990c, 1990e, 1990g2; J. Lau, T. Flynn, and S. Perlman, pers. comms., 1991). *Corynocarpus laevigatus* (karakanut), a tree introduced to Hawaii for reforestation, is now found on four islands and is a threat to *Exocarpos luteolus* (Wagner *et al.* 1990; T. Flynn, pers. comm., 1991).

Brought to Hawaii as a cultivated herbaceous plant, *Erigeron karvinskianus* (daisy fleabane) is naturalized in wetter areas of four islands (Wagner *et al.* 1990). Invasion by daisy fleabane threatens *Exocarpos luteolus, Lipochaeta micrantha* var. *micrantha, Melicope pallida, Nothocestrum peltatum,* and *Peucedanum sandwicense* (HHP 1991k1; HPCC 1990f, 1990i4, 1990j2; T. Flynn and K. Wood, pers. comms., 1991). *Furcraea foetida* (Mauritius hemp), a large rosette plant naturalized on most islands in Hawaii on rocky ledges, slopes, and in pastures, threatens *Schiedea spergulina* var. *leiopoda* (Wagner *et al.* 1990; T. Flynn, pers. comm., 1991). *Grevillea banksii* (kahili flower), considered a noxious weed by the State of Hawaii, was introduced as a cultivated tree and has naturalized in disturbed, dry to wet forests on most of the main Hawaiian Islands (DOA 1981, Wagner *et al.* 1990). It threatens *Cyrtandra limahuliensis* (T. Flynn, pers. comm., 1991). *Grevillea robusta* (silk oak) was extensively planted in Hawaii for timber and is now naturalized on most of the main islands (Smith 1985, Wagner *et al.* 1990). Silk oak threatens *Lipochaeta waimeaensis* and *Peucedanum sandwicense* (HPCC 1990j1; S. Perlman, pers. comm., 1991).

Three species of *Hedychium* (ginger), native to the Himalayas and surrounding areas, were brought to Hawaii as ornamentals and are now naturalized in mesic or wet forests. Two of these species threaten one or more of the 24 taxa in this rule. Their rhizomes produce rapid, vegetative growth, forming dense ground cover that excludes other plants. The Wainiha population of *Cyrtandra limahuliensis* is threatened by *H. flavescens* (yellow ginger) (T. Flynn and K. Wood, pers. comms., 1991). *Hedychium gardnerianum* (kahili ginger) produces red seeds that are distributed by alien fruit-eating birds; it threatens *Solanum sandwicense* (Cuddihy and Stone 1990; HPCC 1990m; Nagata 1990; Smith 1985; T. Flynn and K. Wood, pers. comms., 1991). *Kalanchoe pinnata* (air plant) is an herb that occurs on all the main islands except Niihau and Kahoolawe, especially in dry to mesic areas (Wagner *et al.* 1990). Populations of *Brighamia insignis* and *Peucedanum sandwicense* are threatened by competition with air plant (HHP 1991u15, Takeuchi 1982).

Lantana camara (lantana), brought to Hawaii as an ornamental plant, is an aggressive, thicket-forming shrub that can now be found on all of the main islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Wagner *et al.* 1990). One or more populations of each of the following taxa are threatened by lantana: *Brighamia insignis; Delissea rhytidosperma; Diellia pallida; Hibiscus clayi; Lipochaeta fauriei;* both varieties of *Lipochaeta micrantha; Melicope haupuensis; Melicope knudsenii; Munroidendron racemosum; Nothocestrum peltatum; Peucedanum sandwicense; Pteralyxia kauaiensis;* and both varieties of *Schiedea spergulina* (HHP 1991a1 to 1991a3, 1991e3, 1991i1, 1991j1, 1991k1, 1991o1, 1991p2 to 1991p4, 1991s1, 1991s5, 1991s11, 1991s15, 1991t7, 1991u1, 1991u3, 1991u5, 1991w4, 1991w7, 1991y5; HPCC 1990a, 1990d1, 1990d2, 1990e, 1990f, 1990k1, 1990k2; T. Flynn, R. Hobdy, D. Lorence, and S. Perlman, pers. comms., 1991).

Leucaena leucocephala (koa haole), a shrub naturalized and sometimes the dominant species in low elevation, dry, disturbed areas on all of the main Hawaiian Islands, threatens the following plants: *Lipochaeta waimeaensis; Munroidendron racemosum;* and *Schiedea spergulina* var. *leiopoda* (Geesnick *et al.* 1990; HHP 1991s3; Lamoureux 1982; T. Flynn and S. Perlman, pers. comms., 1991).

Lonicera japonica (Japanese honeysuckle) is becoming naturalized in mesic to wet areas on Kauai and Hawaii and threatens *Solanum sandwicense* Bruegmann 1990, HPCC 1990m, Wagner *et al.* 1990). *Melastoma candidum,* a small cultivated tree that is now naturalized in mesic to wet areas of

Kauai, threatens some populations of *Cyrtandra limahuliensis*. *Melia azedarach* (Chinaberry), a small tree widely cultivated and naturalized on most of the main Hawaiian Islands, threatens *Diellia pallida*, *Munroidendron racemosum*, and *Schiedea spergulina* var. *spergulina* (HHP 1991e3, 1991y5; HPCC 1990h; Wagner *et al.* 1990). The aggressive *Myrica faya* (firetree) has become a dominant plant in many mesic to wet forests on five Hawaiian Islands. Populations of *Exocarpos luteolus*, *Munroidendron racemosum*, and *Peucedanum sandwicense* are threatened by firetree (HHP 1991u3; HPCC 1990h; S. Perlman, pers. comm., 1991). *Opuntia ficus-indica* (prickly pear, panini) is a cactus found in dry, disturbed habitats on five islands and poses a threat to *Lipochaeta waimeaensis* (Solomon 1990; S. Perlman, pers. comm., 1991).

Passiflora edulis (passion fruit) is a woody vine that occurs on five Hawaiian Islands in mesic forests and shrublands and threatens *Nothocestrum peltatum* (Escobar 1990, HPCC 1990i3). *Passiflora ligularis* (sweet granadilla) is a woody vine that now occurs in diverse mesic forest and wet forest on four islands and threatens *Delissea rhytidosperma* (Escobar 1990; S. Perlman, pers. comm., 1991). *Passiflora mollissima* (banana poka), another woody vine, poses a serious problem to mesic forests on Kauai and Hawaii by covering trees, reducing the amount of light that reaches trees as well as understory. It causes damage and death to trees by the weight of the vines. Animals, especially feral pigs, eat the fruit and distribute the seeds (Cuddihy and Stone 1990, Escobar 1990). Banana poka threatens *Delissea rhytidosperma*, *Nothocestrum peltatum*, *Peucedanum sandwicense*, *Pteralyxia kauaiensis*, and *Solanum sandwicense* (HHP 1991d1, 1991u5; HPCC 1990i3, 1990m; D. Herbst, R. Hobdy, and J. Lau, pers. comms., 1991). *Pluchea carolinensis* (sourbush), a shrub naturalized in dry, coastal areas and mesic and wet forest on all of the main Hawaiian Islands, threatens *Lysimachia filifolia* and *Peucedanum sandwicense* (HPCC 1990g2; Wagner *et al.* 1990; R. Hobdy, pers. comm., 1991).

Two shrubs or small trees, *Psidium cottleianum* (strawberry guava) and *Psidium guajava* (common guava) were brought to Hawaii and have become widely naturalized on all the main islands, forming dense stands in disturbed areas. Strawberry guava, found in mesic and wet forests, develops into stands in which few other plants grow, physically displacing natural vegetation and greatly affecting Hawaiian plants, many of which are narrowly endemic taxa. Pigs use strawberry guava for food and, in turn, disperse the plant's seeds through the forests (Smith 1985, Wagner *et al.* 1990). Strawberry guava is considered to be the greatest weed problem in Hawaiian rain forests and is known to pose a threat to *Brighamia insignis*, *Cyrtandra limahuliensis*, *Hibiscus clayi*, *Lipochaeta fauriei*, and *Lipochaeta micrantha* var. *exigua*, and it is a potential threat to *Melicope quadrangularis* (HHP 1991a1; HPCC 1990c, 1990e; Smith 1985; T. Flynn, pers. comm., 1991; D. Lorence *et al.*, *in litt.*, 1991). Common guava invades disturbed sites, forming dense thickets in dry as well as mesic and wet forests (Smith 1985, Wagner *et al.* 1990). Common guava threatens *Brighamia insignis*, *Cyrtandra limahuliensis*, *Hibiscus clayi*, *Lipochaeta fauriei*, *Melicope pallida*, *Munroidendron racemosum*, *Peucedanum sandwicense*, and *Pteralyxia kauaiensis* (Lamoureux 1982; HHP 1991a1, 1991a4, 1991s1, 1991s4, 1991s5, 1991u3, 1991u16; HPCC 1990d1, 1990h; T. Flynn, R. Hobdy, and J. Lau, pers. comms., 1991).

Rubus argutus (prickly Florida blackberry), an aggressive alien species in disturbed mesic to wet forests and subalpine grasslands on four islands, is considered a noxious weed by the State of Hawaii (DOA 1981, Smith 1985, Wagner *et al.* 1990). Prickly Florida blackberry threatens *Exocarpos luteolus*, *Melicope pallida*, *Melicope quadrangularis*, *Nothocestrum peltatum*, and Solanum sandwicense (HHP 1991z18, 1991z25; HPCC 1990i3, 1990i4, 1990m; T. Flynn, D. Herbst, R. Hobdy, J. Lau, S. Perlman, and K. Wood, pers. comms., 1991). *Schefflera actinophylla* (octopus tree), brought to Hawaii as a cultivated tree, is shade tolerant and becomes established in undisturbed forests (Lowrey 1990, Smith 1985). It is now naturalized on at least four islands and is a threat to *Lysimachia filifolia* as well as a potential threat to *Peucedanum sandwicense* (HHP 1990c, HPCC 1990g2).

After escaping from cultivation, *Schinus terebinthifolius* (Christmas berry) became naturalized on most of the main Hawaiian Islands (Wagner *et al.* 1990). It threatens *Hibiscus clayi* and is a potential threat to *Peucedanum sandwicense* (HHP 1990c, 1991h1; HPCC 1990j1, 1990j3; T. Flynn, pers. comm., 1991). Four species of the genus *Stachytarpheta* have naturalized in the Hawaiian Islands, usually in disturbed areas (Wagner *et al.* 1990). These alien herbs or subshrubs threaten *Brighamia insignis* and *Peucedanum sandwicense* (HHP 1991a1, HPCC 1990j1). *Syzygium cumini* (Java plum), a tree naturalized in disturbed mesic forests on most of the main Hawaiian Islands, threatens *Brighamia insignis*, *Hibiscus clayi*, *Melicope quadrangularis*, and *Peucedanum sandwicense* (HHP 1991a1, 1991a2, 1991h1, 1991h2, 1991u1, 1991u3; HPCC 1990a; Wagner *et al.* 1990; K. Wood, pers. comm., 1991). *Triumfetto semitriloba* (Sacramento bur) is a subshrub now found on four Hawaiian Islands and considered to be a noxious weed by the State of Hawaii (DOA 1981, Wagner *et al.* 1990). Populations of *Munroidendron racemosum* and *Schiedea spergulina* var. *spergulina* are threatened by Sacramento bur (HHP 1991y5, HPCC 1990h). *Toona ciliata* (Australian red cedar), a tree now naturalized on four Hawaiian Islands, is quickly spreading in forests of the Waianae Mountains on Oahu and threatens *Melicope pallida* (Wagner *et al.* 1990; S. Montgomery, pers. comm., 1991).

Several hundred species of grasses have been introduced to the Hawaiian Islands, many for animal forage. Approximately 100 grass species have become naturalized. *Melinis minutiflora* (molasses grass), a perennial grass brought to Hawaii for cattle fodder, is now naturalized in dry to mesic, disturbed areas on most of the main Hawaiian Islands. Formed mats smother out other plants and fuel more intense fires than would normally affect an area (Cuddihy and Stone 1990, O'Connor 1990, Smith 1985). Plants threatened by molasses grass are *Brighamia insignis*, *Lipochaeta fauriei*, and populations of *Peucedanum sandwicense* (HHP 1991a1, 1991a3, 1991u3; HPCC 1990a; R. Hobdy and S. Perlman, pers. comms., 1991). *Oplismenus hirtellus* (basketgrass) is a perennial grass that is naturalized in shaded mesic valleys and forests and sometimes in wet forests on most of the main Hawaiian Islands (O'Connor 1990). *Diellia pallida*, *Hibiscus clayi*, and *Lipochaeta fauriei* are threatened by basketgrass (HHP 1991h1; HPCC 1990c, 1990d3; W.H. Wagner, pers comm., 1991). The perennial grass, *Paspalum conjugatum* (Hilo grass), naturalized in moist to wet, disturbed areas on most Hawaiian Islands, produces a dense ground cover, even on poor soil, and threatens *Cyrtandra limahuliensis* and *Hibiscus clayi* (Cuddihy and Stone 1990, O'Connor 1990, Smith 1985; T. Flynn and R. Hobdy, pers. comms., 1991).

Pennisetum clandestinum (Kikuyu grass), an aggressive, perennial grass introduced to Hawaii as a pasture grass, withstands trampling and grazing and has naturalized on four Hawaiian Islands in dry to mesic forest. It produces thick mats that choke out other plants and prevent their seedlings from establishing and has been declared a noxious weed by the U.S. Department of Agriculture (7 CFR 360) (DOA 1991, Medeiros *et al.* 1986, O'Connor 1990, Smith 1985). Kikuyu grass threatens *Melicope knudsenii* (R. Hobdy, pers. comm., 1991). *Rhynchelytrum repens* (Natal redtop) is an annual or perennial grass that is naturalized in disturbed, usually dry areas on all the main Hawaiian Islands and threatens *Lipochaeta waimeaensis* (O'Connor 1990; S. Perlman, pers. comm., 1991). *Setaria gracilis* (yellow foxtail), a perennial grass naturalized in wet to dry, disturbed habitat on most of the main Hawaiian Islands, threatens *Brighamia insignis*, *Melicope haupuensis*, and *Peucedanum sandwicense* (HHP 1991a1, 1991a3, 1991o1, 1991u3; O'Connor 1990). A perennial grass naturalized in disturbed areas on most of the main Hawaiian Islands, *Sporobolus africanus* (smutgrass) threatens *Brighamia insignis* and *Peucedanum sandwicense* (HHP 1991a1, 1991a3, 1991u15; O'Connor 1990).

Because Hawaiian plants were subjected to fire during their evolution only in areas of volcanic activity and from occasional lightning strikes, they are not adapted to recurring fire regimes and are unable to recover well following a fire. Alien plants are often better adapted to fire than native plant taxa and some fire-adapted grasses have become widespread in Hawaii. The presence of such taxa in Hawaiian ecosystems greatly increases the intensity, extent, and frequency of fire. Fire-adapted alien taxa can reestablish in a burned area, resulting in a reduction in the amount of native vegetation after each fire. Fire is a serious, immediate threat along the Na Pali coast, especially during drier months. Fires are caused by people pursuing recreational activities and prevailing winds spread fires to inland areas. Fire could destroy dormant seeds as well as plants, even on steep cliffs (Clarke and Cuddihy 1980, Corn *et al.* 1979, Cuddihy and Stone 1990). Fire is a threat to *Brighamia insignis*, *Exocarpos luteolus*, *Melicope pallida*, *Munroidendron racemosum*, *Nothocestrum peltatum*, *Peucedanum sandwicense*, *Pteralyxia kauaiensis*, and *Solanum sandwicense*. In addition, *Lipochaeta fauriei* is threatened by fire because it occurs with molasses grass, a fire-adapted alien plant. The only population of *Delissea rhytidosperma* is also considered to be threatened by fire. The Maui population of *Melicope knudsenii* is potentially threatened by fire, since it grows in a pasture area covered by a thick mat of Kikuyu grass (Bruegmann 1990; Cuddihy and Stone 1990; HHP 1991a1, 1991a3, 1991f3, 1991f6, 1991q6, 1991s2, 1991s5 to 1991s8, 1991s10, 1991s14, 1991s15, 1991t1, 1991t2, 1991u1, 1991u5, 1991u6, 1991u15, 1991u17, 1991w2, 1991w4, 1991z11, 1991z12, 1991z18, 1991z25; HPCC 1990i4; Medeiros *et al.* 1986; St. John 1981b; R. Hobdy, pers. comm., 1991).

Illegal cultivation of *Cannabis sativa* (marijuana) occurs in isolated portions of public and private lands in the Hawaiian Islands. This agricultural practice opens areas in native forests into which alien plants invade after the patches are abandoned (HHP 1990c). Marijuana cultivation is considered a management problem in Hono O Na Pali and Kuia NARs and is a potential threat to the following taxa, which have populations in those areas: *Brighamia insignis; Delissea rhytidosperma; Munroidendron racemosum; Peucedanum sandwicense; Pteralyxia kauaiensis;* and *Solanum sandwicense* (HHP 1991a1, 1991d1, 1991s5, 1991s6, 1991u8, 1991w1, 1991z25; HHP and DOFAW 1989).

The small numbers of populations and individuals of most of these taxa increase the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. Eight of the taxa, *Cyanea asarifolia*, *Delissea rhytidosperma*, *Hedyotis cookiana*, *Hibiscus clayi*, *Lipochaeta waimeaensis*, *Melicope haupuensis*, *Melicope quadrangularis*, and *Schiedea spergulina* var. *leiopoda* are known from a single population. Ten other taxa are known from only two to five populations (see Table 1). Seventeen of the taxa are estimated to number no more than 100 known individuals (see Table 1). Seven of these taxa, *Cyanea asarifolia*, *Delissea rhytidosperma*, *Diellia pallida*, *Hibiscus clayi*, *Lipochaeta waimeaensis*, *Melicope haupuensis*, and *Phyllostegia waimeae*, number no more than 10 individuals.

Erosion, landslides, and rock slides due to natural weathering, result in the death of individual plants as well as habitat destruction. This especially affects the continued existence of taxa with limited numbers and/or narrow ranges, such as *Cyanea asarifolia*, *Delissea rhytidosperma*, *Lysimachia filifolia*, *Schiedea spergulina* var. *leiopoda*, and *Solanum sandwicensis* (CPC 1990; HHP 1991b2; HPCC 1990g1, 1990g2; T. Flynn and W.L. Wagner, pers. comms., 1991; D. Lorence *et al.*, *in litt.*, 1991). Individuals of other species, such as *Hedyotis cookiana* and *Cyrtandra limahuliensis*, are potentially threatened by substrate loss. This process is often exacerbated by human disturbance and land use practices (see Factor A).

In November 1982, Hurricane Iwa struck the Hawaiian Islands and caused extensive damage, especially on the island of Kauai. Many forest trees were destroyed, opening the canopy and, thus, allowing the invasion of light-loving alien plants. These plants are a threat to the continued existence of many of the taxa in this rule. Hurricane Iniki hit the island of Kauai in September 1992 and caused significant damage to rare plant populations on that island. Populations of at least four taxa in this rule were seriously damaged by this hurricane, *Cyanea asarifolia*, *Brighamia insignis*, *Lysimachia filifolia*, and *Delissea rhytidosperma*. Damage by additional hurricanes could further decrease the already reduced habitat of all 24 taxa.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to make this rule final. Based on this evaluation, the preferred action is to list 21 of these plant taxa as endangered, *Brighamia insignis* ('olulu), *Cyanea asarifolia* (haha), *Delissea rhytidosperma* (no common name (NCN)), *Diellia pallida* (NCN), *Exocarpos luteolus* (heau), *Hedyotis cookiana* ('awiwi), *Hibiscus clayi* (Clay's hibiscus), *Lipochaeta fauriei* (nehe), *Lipochaeta micrantha* (nehe), *Lipochaeta waimeaensis* (nehe), *Lysimachia filifolia* (NCN), *Melicope haupuensis* (alani), *Melicope knudsenii* (alani), *Melicope pallida* (alani), *Melicope quadrangularis* (alani), *Munroidendron racemosum* (NCN), *Nothocestrum peltatum* ('aiea), *Phyllostegia waimeae* (NCN), *Pteralyxia kauaiensis* (kaulu), *Schiedea spergulina* var. *leiopoda* (NCN), and *Solanum sandwicense* (popolo'aiakeakua). The preferred action for the remaining three plant taxa is to list them as threatened, *Cyrtandra limahuliensis* (ha'iwale), *Peucedanum sandwicense* (makou), and *Schiedea spergulina* var. *spergulina* (NCN). Nineteen of the taxa determined to be endangered either number no more than 100 individuals or are known from 5 or fewer populations. Small population size and limited distribution

make these taxa particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. The 21 taxa are threatened by 1 or more of the following: Habitat degradation and/or predation by feral goats, feral cattle, feral pigs, rats, and deer; competition from alien plants; natural disaster; human impacts; and lack of legal protection or difficulty in enforcing laws that are already in effect. Because these 21 taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Populations of three taxa *(Cyrtandra limahuliensis, Peucedanum sandwicense,* and *Schiedea spergulina* var. *spergulina)* are threatened to some degree by fire, competition with alien plant taxa, and predation by feral animals. The widespread distribution of populations and total number of individuals reduces the likelihood that these taxa will become extinct in the near future. For these reasons, these taxa are not now in immediate danger of extinction throughout all or a significant portion of their ranges. However, *Cyrtandra limahuliensis, Peucedanum sandwicense,* and *Schiedea spergulina* var. *spergulina* are likely to become endangered in the foreseeable future if these threats are not curtailed. As a result, *Cyrtandra limahuliensis, Peucedanum sandwicense,* and *Schiedea spergulina* var. *spergulina* fit the definition of threatened species as defined in the Act.

Critical habitat is not being designated for the 24 taxa included in this rule, for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the taxa is listed. The Service finds that designation of critical habitat is not presently prudent for these species. As discussed under Factor B in the "Summary of Factors Affecting the Species," the species face numerous anthropogenic threats. The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required for the designation of critical habitat, would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of these species under the Act publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the importance of protecting the habitat of these species. Protection of the habitat of the species will be addressed through the recovery process and through the section 7 consultation process. There is only one Federal activity within the currently known habitats of these plants. One species is located on land owned by the Department of Hawaiian Home Lands and is currently under a cooperative management agreement with the National Park Service in Kalaupapa National Historical Park on the island of Molokai. As protection of the species is now under the jurisdiction of the National Park Service, Federal laws protect all plants in the park from damage or removal. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. One population of *Peucedanum sandwicense* is located in Kalaupapa National Historical Park. Laws relating to national parks prohibit damage or removal of any plants growing in the parks. There are no other known Federal activities that occur within the present known habitat of these 24 plant species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants and 17.71 and 17.72 for threatened plants not covered by a special rule, set forth a series of prohibitions and exceptions that apply to listed plant species. With respect to the 24 plant species listed as endangered or threatened in this rule, the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 or 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Section 4(d) of the Act allows for the provision of such protection to threatened species. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species are not common in cultivation or in the wild.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; FAX 503–231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Office (see **ADDRESSES** above).

Author

The authors of this final rule are Loyal A. Mehrhoff, Marie M. Bruegmann, Derral R. Herbst, Joan E. Canfield, Z.E. Ellshoff, and Joan M. Yoshioka, Ecological Services, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–3441). Substantial data was generously contributed by Tim Flynn and David Lorence, National Tropical Botanical Garden; and Steve Perlman and Ken Woods, Hawaii Plant Conservation Center, and Joel Lau, Hawaii Heritage Program.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Apiaceae—Parsley family:						
Peucedanum sandwicense	Makou	U.S.A. (HI)	T	530	NA	NA
Apocynaceae—Dogbane family:						
Pteralyxia kauaiensis	Kaulu	U.S.A. (HI)	E	530	NA	NA
Araliaceae—Ginseng family:						
Munroidendron racemosum	None	U.S.A. (HI)	E	530	NA	NA
Aspleniaceae—Spleenwort family:						
Diellia pallida	None	U.S.A. (HI)	E	530	NA	NA
Asteraceae—Aster family:						
Lipochaeta fauriei	Nehe	U.S.A. (HI)	E	530	NA	NA
Lipochaeta micrantha	Nehe	U.S.A. (HI)	E	530	NA	NA
Lipochaeta waimeaensis	Nehe	U.S.A. (HI)	E	530	NA	NA
Campanulaceae—Bellflower family:						
Brighamia insignis	'Olulu	U.S.A. (HI)	E	530	NA	NA
Cyanea asarifolia	Haha	U.S.A. (HI)	E	530	NA	NA
Delissea rhytidosperma	None	U.S.A. (HI)	E	530	NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Caryophyllaceae—Pink family:						
Schiedea spergulina var. *leiopoda*	None	U.S.A. (HI)	E	530	NA	NA
Schiedea spergulina var. *spergulina*	None	U.S.A. (HI)	T	530	NA	NA
Gesneriaceae—African Violet family:						
Cyrtandra limahuliensis	Ha'iwale	U.S.A. (HI)	T	530	NA	NA
Lamiaceae—Mint family:						
Phyllostegia waimeae	None	U.S.A. (HI)	E	530	NA	NA
Malvaceae—Mallow family:						
Hibiscus clayi	Clay's hibiscus	U.S.A. (HI)	E	530	NA	NA
Primulaceae—Primrose family:						
Lysimachia filifolia	None	U.S.A. (HI)	E	530	NA	NA
Rubiaceae—Coffee family:						
Hedyotis cookiana	'Awiwi	U.S.A. (HI)	E	530	NA	NA
Rutaceae—Citrus family:						
Melicope haupuensis	Alani	U.S.A. (HI)	E	530	NA	NA
Melicope knudsenii	Alani	U.S.A. (HI)	E	530	NA	NA
Melicope pallida	Alani	U.S.A. (HI)	E	530	NA	NA
Melicope quadrangularis	Alani	U.S.A. (HI)	E	530	NA	NA
Santalaceae—Sandalwood family:						
Exocarpos luteolus	Heau	U.S.A. (HI)	E	530	NA	NA
Solanaceae—Nightshade family:						
Nothocestrum peltatum	'Aiea	U.S.A. (HI)	E	530	NA	NA
Solanum sandwicense	Popolo 'aiakeakua	U.S.A. (HI)	E	530	NA	NA

Dated: February 10, 1994.
Mollie H. Beattie,
Director, Fish and Wildlife Service.
[FR Doc. 94–4038 Filed 2–24–94; 8:45 am]
BILLING CODE 4310–55–P

federal register

Friday
February 25, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Administrative Guidelines; Limitations on Combining Low Income Housing Tax Credits With HUD and Other Government Assistance; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3722; FR–3334–N–01]

Administrative Guidelines; Limitations on Combining Low Income Housing Tax Credits With HUD and Other Government Assistance

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Administrative Guidelines to be Applied in Implementing the Requirements of Section 911 of the Housing and Community Development Act of 1992 (HCDA '92), (42 U.S.C. 3545 note) and Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HRA '89), (42 U.S.C. 3545).

SUMMARY: This document sets forth the Administrative Guidelines which qualified Housing Credit Agencies (HCAs), as defined under Section 42 of the Internal Revenue Code of 1986, must follow in implementing the requirements of Section 911 of HCDA '92. HUD Field Offices will also follow these Guidelines, in accordance with HUD instructions, which will be made available to HUD Field Offices at the time these Guidelines are effective. These Guidelines were designed to ensure that participants in multifamily projects do not receive excessive compensation by combining sundry HUD Housing-administered program assistance with assistance from other Federal, State, or local agencies (Other Government Assistance) and/or low income housing tax credits (LIHTCs).

DATES: Comment due date: April 26, 1994.

Effective Date: February 25, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. All comments will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For questions, write to the attention of Helen Dunlap, Deputy Assistant Secretary, Multifamily Housing Programs, room 6106, or call (202) 708–2495. Please note that this phone number is not toll free.

SUPPLEMENTARY INFORMATION: This document sets forth the Administrative Guidelines which qualified Housing Credit Agencies (HCAs), as defined under Section 42 of the Internal Revenue Code of 1986, must follow in implementing the requirements of Section 911 of HCDA '92. HUD Field Offices will also follow these Guidelines, in accordance with HUD instructions, which will be made available to HUD Field Offices at the time these Guidelines are effective. These Guidelines were designed to ensure that participants in multifamily projects do not receive excessive compensation by combining sundry HUD Housing-administered program assistance with assistance from other Federal, State, or local agencies (Other Government Assistance) and/or low income housing tax credits (LIHTCs).

HUD Housing assistance includes at least the following: Project-Based Certificates; Mortgage Insurance; Capital Advances; Mortgage Relief (i.e., Partial Payments of Claims); HUD Refinancing of a HUD-assisted project; Prepayment Plans of Action; Section 8 Rent Increases or Contracts for New or Additional Units; Flexible Subsidy; Foreclosure, Negotiated, or Competitive Sales; Section 8 Project-Based Certificate projects; Section 8 Moderate Rehabilitation and Single Room Occupancy Moderate Rehabilitation and any other HUD Housing-approved Source which pays for what these Guidelines allow as a project Use. See 24 CFR 12.50 for a more complete list of types of HUD assistance, and 24 CFR 12.32 for aggregate amounts which necessitate applicant disclosure.

Other Government Assistance includes at least the following: Grants/Loans from a Federal, State, or Local source; Low Income Housing Tax Credits (LIHTCs) or Historic Tax Credits received from a Housing Credit Agency (HCA); Tax-Exempt Bond Financing received from a Housing Finance Agency, with or without tax credits; State Housing Tax Credits received in connection with the project; and any other governmental Source which pays for allowable project Uses. Other Government Assistance is defined as "any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof." 24 CFR 12.30

These Guidelines also advise qualified HCAs having tax credit allocation authority of how they may fulfill section 911, HCDA '92 requirements to carry out the responsibilities of Section 102(d) of the HUD Reform Act for projects receiving HUD-housing assistance and receiving or allocated LIHTCs by certifying that the sum total of all assistance awarded to an individual project "shall not be any more than is necessary to provide affordable housing." The Guidelines should make the subsidy layering review process more efficient for housing industry participants who rely on the LIHTC, combined with HUD and possibly other forms of Other Government Assistance, to produce low income housing. Readers may note that the primary emphasis throughout this publication is on HUD mortgage insurance and HCA LIHTC assistance. However, combination of these and other forms of HUD Housing-administered and Other Government Assistance is possible, and is also subject to the same limitations discussed herein, as administered in conjunction with HUD's Instructions. In accordance with section 911, however, HCAs can only perform the subsidy layering function for projects that are at least receiving HUD housing assistance and are receiving or allocated a LIHTC. Below are relevant dates and HUD contacts, followed by the Procedural Description, Guideline Standards, Glossary, and related Attachments.

The Office of Housing currently applies previously published Guidelines (See **Federal Register** dated April 9, 1991 at 56 FR 14436) and other instructions to project submissions received as of this date. Section 911 of HCDA '92 provides that for projects receiving HUD assistance and receiving or allocated LIHTCs, HCAs may perform the subsidy layering review function originally assigned to HUD under section 102 of HRA '89 (42 U.S.C. 3545) provided they certify to HUD that they will properly apply the Guidelines which HUD establishes. HCAs must also certify pursuant to Guidelines established for section 911 implementation that the total assistance provided to any one project is not more than is necessary to provide affordable housing. This publication establishes such Guidelines effective immediately.

HUD will follow these Guidelines for LIHTC projects in cases where an HCA has not been delegated section 911 authority or where an HCA has had its section 911 authority revoked by HUD. HUD has reserved until this time implementation of its regulations at 24 CFR part 12, subpart D (as well as

implementation of conforming changes made to HUD's program regulations) for subsidy layering review of Non-LIHTC projects under Section 102 of HRA '89. These regulations are now fully effective by publication of these Guidelines for all forms of Other Government Assistance combined with HUD assistance. These Guidelines are immediately effective and supersede HUD's previously published notices, memoranda, and Administrative Guidelines relating to tax credits and subsidy layering.

For cases involving FHA mortgage insurance, only projects which have not reached final endorsement may be reviewed by HCAs pursuant to Section 911 of HCDA '92 and in accordance with these Guidelines. If the Sponsor submitted Attachment #4, Form HUD–2880, "Applicant/Recipient Disclosure/Update Form," to HUD with its mortgage insurance application and indicated no intention to apply for or receive LIHTCs, and the application has been processed through to a commitment as of this date, and the Sponsor now submits Form HUD–2880 revisions indicating application for or receipt of LIHTCs, then a "significant deviation" from the Form HUD–92013, "Application for Multifamily Housing Project," is proposed, and new processing fees are required (See Procedural Description below for cases processed hereafter indicating application for or receipt of LIHTCs).

As noted, instructions detailing HUD responsibilities for monitoring HCA subsidy layering review activities, and also for performing section 102 responsibilities in cases where HCAs cannot or elect not to, will be effective and applied by the Field Office at the time of publication of this notice.

HUD will consider public comments on these Guidelines, and make a final revision effective by publication following the 60-day comment period. Thereafter, HUD may annually review numerical standards throughout these Guidelines, or more frequently as market conditions dictate, and make any adjustments deemed necessary.

The Office of Public and Indian Housing (PIH) will be publishing a separate set of guidelines which will apply to Section 8 Moderate Rehabilitation projects developed under 24 CFR part 882, subparts D and E, and the Project Based Certificate projects developed under part 882, subpart G. However, until such time as PIH's guidelines are published, these guidelines will be used to determine necessary assistance when reviewing tax credit proposals related to the Section 8 Moderate Rehabilitation and Project Based Certificate programs. For more information, please contact G. DeWayne Kimbrough, Rental Assistance Division, Office of Assisted Housing, PIH, (202) 708–7424; TDD: (202) 708–0850.

The Office of Special Needs Assistance Programs (SNAPS), of the Office of Community Planning and Development, will issue its own set of guidelines, tailored to its individual programs. Until that time, subsidy layering reviews for the Section 8 Moderate Rehabilitation SRO program will continue to be conducted at Headquarters. For these reviews, SNAPS will generally adopt the standards contained in the Office of Housing's revised guidelines published below. For more information, please contact Mark R. Johnston, Deputy Director, SNAPS, (202) 708–4300; TDD: (202) 708–2565.

Procedural Description

Intent to Participate

An interested HCA must signal to the HUD Field Office with jurisdiction (i.e., the applicable HUD Office which performs full Multifamily functions for the area) its intent to conduct the Section 911 review procedure by sending a brief letter, executed by an authorized official of the HCA informing HUD that it: (1) Has reviewed Section 911 and these Administrative Guidelines; and (2) understands its responsibilities under the Section 911 and the Guidelines; and (3) certifies that it will perform the Section 911 review process in accordance with all Statutory, Regulatory, and Guideline requirements.

An individual HCA's questions or requests for clarification relating to Section 911 implementation should be addressed to HUD Headquarters, and should be answered by HUD prior to that HCA's notification to the HUD Field Office of its intent to accept Section 911 authority. Where there are no outstanding issues affecting an individual HCA's understanding of the Guidelines, and in all States or areas where a qualified HCA having tax credit allocation authority has so notified HUD of its intention to participate, HUD will delegate the authority to perform the Section 911 review, and shall confirm its delegation by the Field Office's written acknowledgement to the HCA.

This means that for all projects receiving or allocated tax credits as well as (where present) other forms of other government assistance, combined with some form of HUD assistance, participating HCA's will conduct a subsidy layering review to determine whether any excess subsidy is being provided. Such an HCA will check allowable Sources against allowable Uses, and reduce the subsidy Source within its control—i.e., the total tax credit allocation amount—whenever necessary to balance a project's Sources and Uses Statement. If an HCA is unable to award the full amount of the tax credits requested to a particular project after application of its selection criteria, or because only limited allocation authority and resources exist, then the HCA should reflect that "Additional Equity" is required of the Sponsor on the Sources and Uses Statement, and also indicate this on the Attachment #1 Certification provided to HUD. Note: These are the two primary lines of Attachment #2, Required Format—Section 221 Sources and Uses Statement or #3, Required Format—Section 223(f) Sources and Uses Statement, as applicable, which require HCA analysis and input for mortgage insurance cases. Other "Uses" lines appearing near the bottom of the Statement which are payable by Sources other than HUD mortgage insurance may, however, also require some analysis and calculation.

HUD Field Offices will perform Section 102 subsidy layering review functions using HUD Instructions for all projects located in states or areas where the HCA having allocation authority has declined to accept Section 911 authority, has not registered its intent with HUD and been delegated the Section 911 authority by HUD, as described above, or has been revoked by HUD for non-compliance with the Statute or implementing Guidelines and instructions.

Typical Sequence of Events

Sponsors wishing to combine HUD assistance and HCA tax credit assistance are encouraged to initially apply to HUD. Attachment #4, Form HUD–2880, must accompany all applications. Generally, applicants should know the level of approved HUD assistance before applying to the HCA for tax credit assistance; otherwise, the HCA's determination of the necessary allocation amount and its Section 911 responsibilities will have to be repeated. HCAs may wish to consider this policy for projects combining HUD mortgage insurance and HCA LIHTC assistance: that only those which have already received a HUD commitment may apply for a tax credit allocation (But see Attachment #6 caveats and exceptions to the general sequential order and such a policy for other forms of HUD assistance).

In all cases, HUD will process applications in accordance with the applicable program's outstanding Handbook procedures and instructions.

For example, Section 221 new construction or substantial rehabilitation mortgage insurance applications will be completely processed in accordance with an assumed level of "set-aside" units (See Attachments #4 and #5), where either tax credits will be sought or a reservation has been obtained. HUD will make its best efforts, with all available qualified staff, to process assistance requests in a timely manner. HUD will also qualify its mortgage commitments, making them dependent upon HCA determinations (See HUD Assistance Adjustment below).

Sponsors which have received a commitment for HUD mortgage insurance should include all processing and financing details in their application materials to an HCA. When LIHTC applicants are able to show an HCA HUD's processing details and results—including estimated mortgage amounts, replacement costs, and cash requirements—the HCA will be in a better position to review the project's tax credit requests and needs, and make an appropriate allocation to selected projects in accordance with its own criteria.

Initial HCA Allocations

For every project selected to receive HCA tax credit assistance combined with HUD assistance, HCAs must establish a Net Syndication Proceeds Estimate on a case-by-case basis (See Glossary definition). The Net estimate used must be no greater than is necessary to balance the Sources and Uses Statement.

Therefore, an HCA may wish to work in reverse, completing the Uses portion of the Statement, and the known other Sources, before establishing the Net Syndication Proceeds "gap filler" needed.

The HCA may add to this Net Proceeds amount estimated Syndication and Bridge Loan Expenses to "build up" to an estimated sum of the total allocation needed. The sum total allocation estimated to be necessary in these cases may be less than the amount the HCA otherwise generally estimates based on the applicable credit percentage and eligible project costs. The HCA may reconcile the difference (alter the estimated allocation necessary) by either lowering the credit percentage, or, by lowering the number of units eligible for the credit. Generally, HCAs should reduce the credit percentage for such projects, because a reduction in the number of eligible units affects the unit set-aside percentage, and, the net estimate of what investors of the syndication would pay, creating circular recalculation problems. Lowering the number of eligible units which HUD has initially agreed are marketable should be avoided unless the HCA projects absorption difficulties HUD did not recognize earlier in processing.

HCAs should also use past syndication data and current market and industry sources of data to assist them in determining accurate Net Syndication Proceeds Estimates and necessary allocation amounts for an individual project. However the HCA chooses to analyze the problem and estimate Net proceeds, where the initial estimation of Net Syndication Proceeds indicates that total Sources exceed total Uses, estimated necessary allocations should be reduced proportionately and commensurately to balance the Statement prior to making actual allocation awards to, and executing allocation agreements with, the Sponsor.

HCAs should assume that the Sponsor retains no more than a 1–5 percent ownership in the project pursuant to its General Partnership capacity in a syndication to Limited Partners. HCAs must examine syndication and partnership documentation to determine what the Sponsor's interest will be. Where greater than a 5 percent ownership interest will be retained, the HCA must assume a Net Syndication Proceeds estimate as if only a 5 percent interest was being retained. Initial allocation determinations shall be conveyed by an HCA to HUD on Attachment #2 or #3 for mortgage insurance cases, along with an initial Attachment #1 Certification.

Standards and Certification

There are basically two standards the HCA may choose to apply before making its Certification: "Safe Harbor" or "Ceiling." If all applicable Safe Harbor standards (See Guideline Standards below) are met, the allocation and Section 911 Certification are exclusively within the HCA's authority to make and relay to HUD. But if a Safe Harbor standard is exceeded, then HCAs must submit a Special Authority Request, together with supporting data and rationale justifying the deviation up to an "Absolute Ceiling" amount, to the HCA's Governing Board for review and approval (or Approving Authority where no existing Governing Board oversees the HCA). The Governing Board or Approving Authority must conduct a public hearing for all Special Authority Requests prior to approval. The Board may Approve the Request, Approve the Request Subject to Modification, or Reject the Request, making findings by signed Resolution. After the Governing Board has returned its decision, HCAs shall make adjustments in accordance with it, allocate tax credits to balance the Sources and Uses Statement, make its Section 911 Certification to HUD, and forward to HUD the applicable Sources and Uses Statement and Governing Board's executed Resolution finding to exceed a Safe Harbor Standard(s), in cases where the Governing Board approves the Special Authority Request (with or without modification) to exceed the Safe Harbor Standard(s).

Sponsor's Additional Equity Contributions

Where no additional allocation authority exists to meet estimated allowable project Uses, HCAs should reflect the additional equity required of the Sponsor to balance the Sources and Uses Statement. The HCA must submit this Statement to HUD together with its Section 911 Certification so that HUD may determine the Sponsor's ability to meet such cash requirements prior to initial closing for mortgage insurance cases, or contract execution for all other cases involving preliminary HUD assistance approval.

HUD Assistance Adjustment

If a project does not receive the allocation anticipated and assumed in HUD processing of the original request—for example, only 40 percent of the units receive tax credits and are set aside for low income use, while the HUD processing assumption was 100 percent—then the HCA will advise HUD through its Attachment #1, Section 911 Certification; the sponsor must submit an updated Attachment #4, Form HUD–2880; and the mortgagee must submit an amended Form HUD–92013. In the case of a lower set aside, HUD will re-estimate income assuming the rents reflected on Line 1 of Form HUD–92264–T, "Rent Estimates for Low or Moderate Income Units in Non Section 8 Projects Involving Tax Exempt Financing or Low Income Housing Tax Credits," Attachment #5, for units not being set aside. This Form HUD–92013 application revision does not constitute a "significant deviation," and no new fees will be required.

If a higher set-aside than that assumed by HUD in processing is awarded, then HUD will similarly re-estimate income assuming the rents reflected on Line 6 of Form HUD–92264–T for the additional rent restricted units. Operating Expense estimates may be affected by varying set-aside assumptions. Revised set-aside assumptions can result in either an

increase or a decrease in the maximum insurable mortgage depending on whether the set-aside proportion assumption has been decreased or increased, and the effect that this has on rents and expenses. More significantly, projects with set-aside assumptions different from those initially assumed by HUD may be subject to different overall market need or economic feasibility conclusions.

In the event the HCA awards more or fewer tax credits to the project than amounts originally assumed by HUD in processing, HUD may revise its market need analysis and conclusion. HUD's market need analysis should assist HCAs in determining whether, and to what extent, set-aside assumptions may be changed without altering, or perhaps completely eliminating, HUD mortgage insurance assistance. HUD's Office of Housing Management will similarly determine and convey in preliminary approvals whether varying set-aside proportions can be acceptably combined with HUD assistance it administers.

HUD will reserve the right in its mortgage insurance commitments to reconsider all underwriting conclusions affected by changes in LIHTC assumptions. For example, HUD will recalculate its operating deficit estimate if the set-aside proportion changes, and this estimate may either increase or decrease depending on the relative absorption rates and rent and expense levels of market and unsubsidized rent-restricted units. Working Capital requirements may change. Where fewer tax credits are awarded, HUD will gauge the effect on unmet cash requirements. In short, these caveats mean that the commitments issued in conjunction with this procedure will be highly qualified. EMAS or Valuation recommendations to reject revised applications due to lack of market need, or Mortgage Credit rejection recommendations on the basis of unmet cash requirements, must be anticipated by Sponsors. HUD may unilaterally modify commitment terms, or cancel its commitment altogether, if original HUD processing assumptions associated with LIHTCs subsequently change.

Allocation Adjustments

HCAs must advise HUD of any adjustments made to its initial allocation in a timely manner. HUD must advise HCAs of any changes in estimated project uses or HUD controlled assistance also in a timely manner. For example, positive construction change-orders, occurring during construction and approved by HUD, may change estimated project uses. Similarly, HUD's mortgage amount is subject to change at cost certification. Therefore, HUD must transmit the results of its cost certification procedure to HCAs in a timely manner so that HCAs may complete the final review.

An HCA must submit a final Section 911 Certification and balanced Sources and Uses Statement after HUD's cost certification procedure is completed. Thus, the HCA's third and final stage of review at placement in service will be delayed until cost certification results have been received from HUD. Subsequent to the placement in service date of any of the project's units or HUD's final endorsement date, whichever occurs first, the HCA may not revise the rent restricted unit set-aside proportion without the HUD Field Office's prior approval.

HUD Monitoring

As discussed above, HCAs must submit Section 911 Certifications and Sources and Uses Statements for all projects to HUD Field Offices. HCAs must allow designated HUD personnel, including the Office of Inspector General, access to all HCA Section 911 subsidy layering records and on-site inspection of the same. HUD Field Offices will, in accordance with instructions issued to them, monitor for Guideline compliance, correspond with HCAs concerning any review deficiencies, and make determinations regarding the HCA's Section 911 authority to continue performing subsidy layering reviews. HCAs may appeal Field Office determinations to revoke Section 911 authority to Headquarters. Similarly, any cases involving deficiencies in HCA Governing Board decisions may be appealed to Headquarters for final determination.

Guideline Standards

Separate Standards Appear Below

If all Safe Harbor standards are met, the HCA may make its tax credit allocation and Section 911 Certification, and directly submit these and the Sources and Uses Statement to HUD. But if any Safe Harbor standard is exceeded, HCAs must submit Special Authority Requests to the HCA Governing Board as outlined above.

Applicability Exceptions

An HCA may grant a limited number of exceptions to the standards referenced below, i.e., it may exclude the greater of either 5 individual projects or 10 percent of the total number of projects which the standards apply to in a single calendar year from any or all of the standards below. These exceptions should be granted in a consistent manner (*i.e.*, that in granting exceptions projects with similar characteristics shall be treated consistently). Also, there should be a rational basis to support any project being excepted from Guideline Standards, while another is not. All exceptions must be approved by the HCA Governing Board under the procedures previously described for Special Authority Requests. For example, a small project of 5–20 units may receive a Builder's Profit of greater than 6 percent as one exceptional case, if approved by the Board.

As another example, a project located in a qualified census tract may receive a Developer's Fee of greater than 15 percent and may incur Syndication Expenses for private placement of greater than 12 percent of gross proceeds as a second exceptional case. Additionally, for these cases, the HCA will determine that the amount of equity capital and the project costs satisfy the mandates in section 911(b) of the HCDA '92.

1. Builder's Profit

Safe Harbor Standard

Where there is no Identity-of-Interest (See Glossary) between the Builder and the Sponsor/Developer, the Builder's Profit may not exceed HUD's estimate reflected on Line G44 of Form HUD–92264, "Rental Housing Project Income Analysis and Appraisal." Where there is an Identity-of-Interest, the combined Builder's Profit and Sponsor's Profit/Developer's Fee is limited to BSPRA, as reflected on Line G68. Such allowances may be reflected by the HCA on the Mortgageable Replacement Cost Uses portion of the Sources and Uses Statement. Alternatively, HCAs may reflect no Builder's Profit or BSPRA on the Mortgageable Uses portion of the Statement, and may instead reflect up to 4 percent of Total Development Costs (See Glossary) under the Non-Mortgageable Uses portion of the Statement.

Ceiling Standard

Following the alternative funding pattern above, the HCA may reflect Builder's Profit of up to 6 percent of Total Development Costs under the Non-Mortgageable Uses portion of the Statement where approved by the Governing Board or Approving Authority.

Note: The Safe Harbor and Ceiling Alternatively-funded Standards may be raised from the 4 and 6 percent levels, if the HUD Field Office having jurisdiction approves of an increase, and establishes new

Safe Harbor and Ceiling Alternative percentages for a defined area.

2. Sponsor's Profit/ Developer's Fee

Safe Harbor Standard

Where there is no Identity-of-Interest (See Glossary) between the Sponsor/ Developer and the Builder, SPRA will be recognized as a limitation by HUD in Section 221 mortgage insurance application processing, and may be transferred by HCAs to the Mortgageable Replacement Cost Uses portion of the Sources and Uses Statement (See Attachment #2). Where there is an Identity-of-Interest, BSPRA will be recognized as the Safe Harbor standard limitation for the combined Builder's Profit and Developer's fee, and may be reflected on the Mortgageable Replacement Cost Uses portion of the Statement. Alternatively, HCAs may reflect no BSPRA/SPRA on the Mortgageable Replacement Cost Uses portion of the Statement, and may instead reflect up to 10 percent of Total Development Cost under the Non-Mortgageable Uses portion of the Statement.

Ceiling Standard

Following the alternative funding pattern above, the HCA may reflect Developer's Fees of up to 15 percent of Total Development Costs under the Non-Mortgageable Uses portion of the Statement where approved by the Governing Board or Approving Authority.

Note on Standards #1 and #2: Ceiling Standards may not be exceeded except for a limited number of exceptional cases. An HCA may, in its discretion, permit Builder's Profit or Developer's Fees which are less than the indicated Safe Harbor standards above in accordance with market data. Between Safe Harbor and Ceiling standards, HCAs are also to use their discretion in awarding incremental Builder's Profit or Developer's Fees depending on project risk factors. However, where amounts greater than Safe Harbor standards are permitted, the HCA must justify the allowance it recommends by reference to special building or development risks, and the Governing Board must make the final determination. These risk factors include, but are not limited to, the following: location in a "qualified census tract" (See Glossary); size (generally, small projects should receive a higher percentage than otherwise comparable large projects); scattered site development of a particular type of housing (e.g., three bedroom family units may be especially needed in a particular area of noncontiguous parcels, and such development may involve greater compensable risk than contiguous site development of one bedroom units); location—i.e., other distressed neighborhoods not included by HUD in qualified census tracts (an HCA must document the nature of distress or blight and additional risk associated with the applicable site area, and provide adequate description in narrative form to the HCA Governing Board, so that it can make the determination of whether the Safe Harbor standard should be exceeded); challenging substantial rehabilitation with many unknown contingencies (because of the unforeseen, such projects have greater inherent risk to the Developer than new construction); and finally, whether there is an Identity-of-Interest between the Developer and the Builder that may affect recognized fees. Other factors not mentioned may be developed and considered by the HCAs and the HCA Governing Board.

Note also: Because HUD analyzes and determines the allowance for Builder's Overhead in processing (See Line G43 of Form HUD–92264), extraordinarily high overhead may not be cited as a factor justifying a higher Developer's fee. Similarly, where relatively high local development fees are involved, HUD already includes these fees under the rubric "Other Fees," Line G48 of Form HUD–92264; and this factor will not justify higher fees.

For Section 221 substantial rehabilitation cases the "Total Development Cost" of only the new improvements will serve as the base for calculating the Developer's fee allowance (See Glossary). For Section 223(f) the Builder's Profit and Developer's Fee percentages must be based on only the hard cost of "required repairs", and must be reflected under the Non-Mortgageable Uses portion of the Sources and Uses Statement (See Glossary and Attachment #3), i.e. existing property value or acquisition price and soft costs are not included in the base for fees. For Section 241 proposals, Builder's Profit and Developer's Fee percentages are based on only the Total Development Cost of the supplemental improvements being made.

3. Syndication Expenses

Safe Harbor Standard: The sum total of expenses, excluding bridge loan costs, incurred by the owner in obtaining cash from the sale of tax credits to investors through public offerings may not exceed 15 percent of the gross syndication proceeds. The sum total incurred pursuant to private offerings may not exceed 5 percent of the gross syndication proceeds.

Ceiling Standard: The sum total of expenses, excluding bridge loan costs, incurred by the owner in obtaining cash from the sale of tax credits to investors through public offerings may not exceed 24 percent of the gross syndication proceeds. The sum total incurred pursuant to private offerings may not exceed 12 percent of the gross syndication proceeds.

4. LIHTC Net Syndication Proceed Estimates

HCAs may not estimate net syndication proceeds (see Glossary) of less than 42 cents per dollar of the total allocation. However, where the proposed syndication of a project receiving a combination of any form of HUD assistance and LIHTCs reflects that greater than 51 cents per dollar of total allocation in net syndication proceeds will be received as a Source, the project is not subject to further Section 911 review, i.e., the Guideline Safe Harbor and Ceiling Standards above do not apply. HCAs should indicate to HUD whether this threshold has been surpassed on the Certification forwarded to HUD.

Glossary

Bridge Loan Interest and Costs

Interim financing costs incurred by an owner on loans obtained by the pledge of investors' deferred capital contributions to the project receiving tax credits. HCAs must analyze these costs on an "arm's length" basis, i.e. there should be no Identity-of-Interest between the lender and any partners holding any interest in the project. HCAs must verify that no Identity-of-Interest exists between the lender and Sponsor, and for private offerings, between the lender and all general and limited partners. Where an Identity-of-Interest does exist, the HCA may recognize only reasonable market rate interest or other costs to avoid the excess profits which may result when loans are not negotiated through arm's length transactions.

BSPRA/SPRA

Line G68, Form HUD–92264 BSPRA for Identity-of-Interest Builder/ Developers is calculated as follows: (1) not more than 10 percent of the sum of Lines G50, G63, and G67, and (2) no profit will be allowed on Line G44. Line G68, Form HUD–92264 SPRA for non Identity-of-Interest Developer/Sponsors is calculated as follows: 1.) not more than 10 percent of the sum of Lines G45, G46, G63, and G67, and 2.) profit may be allowed on Line G44.

Conventional and Below-Market Debt or Equity Financing

Where conventional financing is used to meet project uses (for example, a bridge loan at initial closing), it may not be reflected on the Sources and Uses Statement unless it is subordinated to any HUD insured mortgage and, is an obligation of a third party who is not the mortgagor. Where below-market debt or equity financing is provided to meet allowable project Uses, HCAs should reflect the amount under Sources if all Uses of such funds are properly itemized and identified within the Uses portion of the Statement. HUD requires that certain formats be used for projects insured by HUD under Sections 221, 241, or 223(f) (See Attachments #2 and #3), and may not be altered, including tax-exempt bond-financed cases with LIHTCs insured under those sections. Formats for other HUD Housing-administered non-mortgage insurance assistance cases will be included in HUD's Special Instructions. A format may be developed by the HCAs and approved by HUD Headquarters for use in Section 542 (of HCDA '92) risk sharing pilot program subsidy layering reviews.

Developer's Fees

The amount reflected on the developer's fee line of the Sources and Uses Statement is the "paper" allowance for Developer's Fees. A developer's actual net fee will be affected by whether acquisition costs exceed (or are less than) recognized HUD value, and whether there are third party consultants involved whom the developer must pay, or other costs or reserves which the developer must fund, which are not recognized or reflected on the Sources and Uses Statement.

Grants

HCAs should recognize all grant amounts available for any allowable project Uses. In mortgage insurance cases, grants available for mortgageable item Uses are subtracted by HUD in the determination of the mortgage Source. However, all such grant amounts, plus the remaining grant amounts available to meet allowable project Uses outside of the mortgage, should be reflected on the Sources and Uses Statement.

Gross Syndication Proceeds

All amounts paid by purchasers of tax credits before subtraction of syndication and bridge loan costs. The Sponsor's or Sponsor's Syndicator's estimate may only be relied upon if the HCA's past experience and current market data support such reliance. The Sponsor must report and certify to the HCA the actual gross and net amounts received from the sale of tax credits, and this must be made a part of the project file available for HUD review.

Identity-of-Interest

A financial, familial, or business relationship that permits less than arm's length transactions. Includes, but is not limited to, existence of a reimbursement program or exchange of funds; common financial interests; common officers, directors, or stockholders; or family relationships between officers, directors, or stockholders.

Net Syndication Proceeds Estimate

The net estimated by the HCA shall be the net present value of all syndication proceed installments as of the "placement in service" date. For the purpose of making estimates, installments received subsequently will be discounted at the bridge loan interest rate. Installments received prior to placement in service will be commensurately credited in accordance with the same rate. Thus, the difference between "early" (credited) and "late" (discounted) installments centered around the placement in service date will affect the net estimate. The owner must provide its syndication and financing plan to HUD and the HCA in accordance with Chapter 18, HUD Handbook 4470.1 REV–2 for mortgage insurance cases.

Operating Deficit Reserve

An escrow established to fund net operating losses projected to occur between the date of initial occupancy and the date by which the project's operating income is expected to cover replacement reserve deposits, debt service, expenses, and ground rent, if any, related to operation of the rental project. HCAs may not establish separate reserve accounts not estimated and approved by HUD (see also working capital reserve and resident initiative fund reserve below). If the reserve is funded by LIHTC-proceeds, then the Sponsor must agree to enter into HUD's standard Escrow Agreement for the amount involved, except that that agreement is amended to provide that any escrow remaining after the escrow period will be transferred to the project's Replacement Reserve account rather than being returned to the Sponsor (Form HUD–92476–A, "Escrow Agreement Additional Contribution by Sponsors," clause 4 must be amended). Disbursements must be approved by HUD Housing Management in accordance with established rules and policy. Note: If reserves are to be funded by a Letter of Credit, the Sponsor should indicate this in the financing plan submitted to HUD Mortgage Credit, and also, include only the costs of obtaining the Letter as a Use on Form HUD–2880. The HCA and HUD will allow only the costs associated with obtaining a Letter on the appropriate Sources and Uses Statement.

Property Value

The HCA will accept HUD's estimates of allowable value when performing the Section 911 review, i.e. Line G73 of Form HUD–92264. HUD estimates this value without considering any additional subsidies to be made available to the project, or any LIHTCs or other tax benefits the owner will receive. This permits Sponsors to acquire property for new construction or rehabilitation at its market value, and assures that present fee simple owners receive the value of their property, but no excess subsidy. By using "as-is" market value of improvements and/or land instead of investment value or acquisition cost, HUD seeks to eliminate any value attributable to the tax credits the owner/purchaser seeks, and prevent unearned windfall profits.

Note: HUD will not require appraisals for property purchased from HUD, or at a foreclosure sale where HUD is the foreclosing mortgagee. In these cases, the allowable amount will be the purchase price when a project is competitively sold based on the high bid price at either a foreclosure sale or HUD-owned sale. When HUD sells a property at a pre-determined price, as in a negotiated sale, the allowable amount is that price and is not subject to adjustment. Also, for acquisition or refinance and rehabilitation of projects which will remain subject to existing HUD-insured loans, HCAs will only permit the outstanding indebtedness of the insured loan on the HUD Property Value line of the Uses portion of Attachment #2.

Public Versus Private Offerings

Public offerings are those syndications which must be registered with the Securities and Exchange Commission; private offerings include all others.

Qualified Census Tracts

Those census tracts, census enumeration districts, and/or block numbering areas designated by the Secretary in accordance with Section 42(d)(5)(C)(ii)(I) of the Internal Revenue Code as amended.

Replacement Cost Uses

The "Subtotal Mortgageable Replacement Cost Uses" reflected on an individual project's Sources and Uses Statement (See Attachment #2) must be equal to HUD's Line G74 of Form HUD–92264, except for cases where Standard #1 or #2 amounts are alternatively reflected as Non-Mortgageable Uses.

Required Repairs

Those repairs which HUD multifamily staff include in the work write-up pursuant to Section 223(f) processing, or determine to be necessary in Section 241 processing.

Resident Initiative Fund Reserve

If such a reserve is to be combined with other HUD Housing-administered assistance, it is required that: (1) The fund will be used only for resident management/ownership initiatives, security/drug free housing initiatives, job-training or other support services; and (2) all initiatives or services will be targeted to the residents of the project for which the fund is established. The HCA must coordinate any tax-credit-proceed-funding of such reserve escrows with the affected HUD Housing Office, e.g., the HUD Field Office responsible for Multifamily Property Disposition should be consulted pursuant to the activities described in Chapter 9 of HUD Handbook 4315.1 REV–1. Preservation cases involving such activities will be analyzed in accordance with Chapter 9, HUD Handbook 4350.6. Hope 2 resident initiative activities for multifamily projects must be analyzed in accordance with the Resident Initiative Office's "Interim Guidelines". Generally, the HCA may include as much as it and HUD deems necessary to support such activities, but the Sponsor must agree as a term of the reserve escrow that any unused funds remaining after 10 years will be transferred to the Replacement Reserve account, or, in the event of default, will immediately be applied to prepay HUD-insured mortgage loans (if any are applicable).

Set-Aside Assumptions

HUD requires that the Sponsor provide the materials listed in Attachment #4 regarding the amount of tax credits being sought at the time any form of HUD assistance is requested, and update this information as changes occur. LIHTC set-aside assumptions must be detailed on the form.

Total Development Costs

For HUD mortgage insurance cases, Line G72 of Form HUD–92264, less the sum of Lines G68 through G71, and less Line G44. It is also the sum of Lines G50, G63, and G67 (but less Line G44). HUD believes that use of well-known FHA procedures for estimating development costs will limit such costs to commercially-reasonable amounts and facilitate HUD cost certification and monitoring of the section 911 review process. Note: For section 221, BSPRA, if allowed under Standards #1 or #2, is not included in development cost base when calculating Developer's fee; but BSPRA is a percentage of the development cost base. See instructions above for calculating BSPRA/SPRA. Note also: property value, typically Line G73 of Form HUD–92264, is not included in the development cost base for calculating Developer's fee. Similarly, when establishing development cost bases for Standards #1 and #2 for Sections 223(f) or 241, the fees themselves and property value are not included. Note further: For Section 223(f) the HCA will use HUD's Form HUD–92264–A, "Supplement to Project Analysis," to complete the Sources and Uses format (Attachment #3). Note finally: For Property Disposition sales the estimates may have to be increased if initial repair estimates prove to be inadequate.

Total Project Cost (Uses)

All project Uses must be identified and the total cost must appear on the Sources and Uses Statement. If allowable total project Uses exceed total available Sources, additional equity is required of the Sponsor to "balance" Sources and Uses. If total available Sources are greater than allowable total Uses then, generally, too much assistance has been provided to the project, and one of the Sources must be reduced. In such cases, HCAs will reduce the assistance within its control, i.e., tax credit allocations. Where HCAs do not accept section 911 review authority, or HUD revokes an individual HCA for non-compliance with these Guidelines, then HUD will reduce the applicable assistance within its control, as necessary, to "balance" sources and uses, e.g., reduce the mortgage, section 8 assistance, etc.

Working Capital Reserve

For Profit-Motivated Sponsors developing new construction proposals the HCA may allow HUD's estimated working capital reserve of 2 percent of newly insured mortgages, but the reserve must be funded by non-mortgage sources. HUD also determines whether any working capital is necessary for substantial rehabilitation cases, and will communicate any necessary amounts on Form HUD–92264A. If this reserve is to be funded by a Letter of Credit, only the costs associated with obtaining the Letter may be reflected as a Use on the Sources and Uses Statement.

Other Matters

HUD Negotiated or Competitive Sales

In addition to the restrictions described above, HUD reserves the right to negotiate/impose other conditions when it sells real estate.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this notice does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this notice does not have potential significant impact on family formation, maintenance, and general well-being. It sets forth the administrative guidelines which HUD and Housing Credit Agencies must follow to ensure that participants in multifamily projects do not receive excessive compensation by combining low income housing tax credits with sundry HUD program assistance, or with assistance from other Federal, State, local, or private agencies.

List of Forms Referenced

Forms HUD–92013; 92264; 92264–A; 92476–A: Available through HUD insuring offices

Form HUD–92264–T: See Attachment #5

Form HUD–2880: See Attachment #4

Dated: February 17, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing; Federal Housing Commissioner.

Attachment #1—Section 911 Certification

Pursuant to Section 911 of the Housing and Community Development Act of 1992 (HCDA '92), and in accordance with HUD's Administrative Guidelines for implementation thereof published at _____ FR _____ on _____, 1994, (*name of HCA*) of (*location of HCA*) hereby certifies that (*project name and HUD project number*) _____ will be receiving tax credits for the number of units and

set-aside proportion your office previously assumed;

OR,

_____ will not be receiving tax credits in the amount assumed by HUD in processing assistance requests, with the following revisions to be noted by your office:

_____

_____

_____

Attached hereto please find the applicable approved Sources and Uses Statement. Pursuant to the subsidy layering review performed under the Administrative Guidelines for projects receiving tax credits I can also certify that:

_____ all "Safe Harbor" standards contained within the Administrative Guidelines have been met, and no line item amounts exceed Guideline allowances,

OR,

_____ at least one "Ceiling" standard was applied, but the project received the HCA Governing Board's approval (copy attached) in accordance with Guideline allowances,

OR,

_____ at least one "Ceiling" standard was exceeded, but the HCA has determined that this is an exceptional case requiring such additional amounts and the HCA has received the HCA Governing Board's approval (copy attached),

OR,

_____ the Guideline Safe Harbor and Ceiling standards do not apply because the project ownership will net at least 51 cents per dollar of total allocation (See Sources and Uses Statement attached).

(*name of HCA*) certifies that it has properly implemented the Administrative Guidelines and that the mandates of section 911(b) of the HCDA '92 have been satisfied. (*name of HCA*) further certifies that, in accordance with Section 911 and the Administrative Guidelines, and as indicated above, the combination of tax credits, HUD Assistance—(*specify here, e.g. mortgage insurance, Section 8 HAP contract, etc.*)—and any other Other Government Assistance, being provided to meet allowable project uses, is not more than is necessary to provide affordable housing.

(Authorized HCA Official)

Date

Attachment #2 Required Format—Section 221 [1] Sources and Uses Statement

	Program	Mortgage
SOURCES		
Debt Sources:		
HUD loans/programs [2]		
Other loans (specify)		
Other (specify)		
Equity Sources:		
Grants available for project uses		
Estimated Net Syndication Proceeds [3]		
Additional Sponsor Equity Necessary [4]		
Other Equity Sources (specify)		
Total Sources		$
Project Uses.		
Mortgageable Replacement Cost Uses:		
Total Land Improvements		$
Total Structures		
General Requirements		
Builder's General Overhead		
Builder's Profit [5]		
Architects' Fees		
Bond Premium		
Other Fees		
Construction Interest		
Taxes		
Insurance		
Mortgage Insurance Premium		
Examination Fee		
Inspection Fee		
Financing Fee		
FNMA/GNMA Fee		
Title & Recording		
Legal		
Organization		
Cost Certification Fee		
Contingency Reserve (Sub Rehab)		
BSPRA/SPRA (if applicable)		
HUD Property Value [6]		
Subtotal Mortgageable Replacement Cost Uses		$
Non-Mortgageable Uses (i.e. Uses Payable by Sources Other than the Mortgage) [7]:		
Resident Initiative Fund		
Working Capital Reserve (or LC costs) [8]		
Operating Deficit Reserve (or LC costs) [9]		
Alternative Builder's Profit [10]		
Alternative Developer's Fee [11]		
Section 241 Developer's Fee [12]		
Subtotal Non-Mortgageable Uses		
Total Project Uses		

	Program	Mortgage
Estimated Net Syndication Proceeds:		
The HCA may use this format before completing the Net Syndication Proceeds estimate line above on the Sources and Uses Statement, and must use this format to reflect final allocation determination assumptions.		
Total Tax Credit Allocation		$_____
Estimated Gross Syndication Proceeds		$_____
Syndication Expenses:		
Accountant's Fee		$_____
Syndicator's Fee		$_____
Attorney's Fee [13]		$_____
HCA Fee		$_____
Organizational Expense [14]	$_____	
Other (Specify)		$_____
Subtotal Syndication Expenses [15]		$_____
Bridge Loan Costs less Interest (if applicable)		$_____
Adjustment for Early and Late Installments (See Glossary, Net Syndication Proceeds).		
Estimate for adjustment explanation)		$_____
Total Reductions from Gross		$_____
Estimated Net Syndication Proceeds		$_____

[1] This same format may be used for cases previously insured by HUD for which a Section 241 supplemental loan is proposed, but see Attachment #6 caveats.

[2] The HCA may assume HUD commitment amounts for the subsidy layering review. HUD may have to adjust its mortgage if set-aside proportions change from those the Sponsor and HUD anticipated. For Section 241 loans being added to existing HUD-insured loans which will not be expunged, include separately the new supplemental loan (if any) and only the outstanding indebtedness on the existing loan regardless of whether it will be assumed by a purchaser or held by an owner.

[3] The amount obtainable by the owner from the syndication of the project being awarded tax credits (i.e., gross proceeds less syndication expenses and bridge loan interest and costs). A format at the bottom of this Statement must be used by HCAs to reflect the results of their analyses.

[4] HCAs may use this line for the additional amount needed from the Sponsor to balance Sources against Uses when no additional monies are available from other Sources.

[5] Builder's Profit for non-identity-of-Interest cases (a SPRA allowance may also be added below). See also Standard #1 safe harbor and ceiling standard alternatives before completing. The Mortgageable Use lines relating to Builder's Profit and Developer's Fee may be left blank if alternative funding standards are used, and the amounts are reflected below.

[6] See Glossary. For new construction proposals the HCA should include the "warranted price of land" here. For supplemental loans the "warranted price of land" attributable to new parcels, if any, may be added to the outstanding indebtedness of the HUD-insured property. If property is valued within a Section 221 substantial rehabilitation proposal, HUD will determine and the HCA shall reflect the non-subsidized, market rate rental use value "As Is".

[7] Note that syndication expenses are included below in the estimation of Net tax credit proceeds for this Statement, and therefore, are not included within this Statement.

[8] Only Letter of Credit Costs may be included if the reserve is funded by a Letter of Credit.

[9] Indicate the full cash reserve amount if funded by LIHTC proceeds. Indicate only the costs of obtaining a Letter of Credit for the reserve if funded by a Letter of Credit at initial closing.

[10] See Standard #1 for alternative funding option and standards. If Builder's Profit or BSPRA are reflected above under Mortgageable Uses, then this line should be left blank.

[11] See Standard #2 for alternative funding option and standards. If BSPRA or SPRA are reflected above as Mortgageable Uses, this line should be left blank.

[12] See Standard #2, the Glossary under "Total Development Cost," and Attachment #6 below regarding chronological issues and Section 241 assistance. Any Developer's Fee under Section 241 must be reflected here.

[13] Such fees may not duplicate legal charges already recognized on Line G64, Form HUD–92264, nor title work as reflected on Line G62. On these lines, HUD accounts for legal fees associated with typical non-LIHTC projects. Therefore, only fees associated with the additional legal service associated with LIHTC projects should be recognized here by the HCA.

[14] Such expenses may not include HUD mortgage insurance application fees. Organizational expenses are already included for non-LIHTC projects under Line G65, Form HUD–92264, and should not be duplicated. Therefore, only extraordinary organizational expenses incurred because of the additional LIHTC-associated application preparation activities should be included here.

[15] See Guideline Standard #3 for separate safe harbor and ceiling limitations for private and public offerings.

Attachment #3 Required Format—Section 223(f) Sources and Uses Statement [16]

	Program	Mortgage
SOURCES		
Debt Sources:		
HUD loan [17]—	223(f)	_____
Other loans (specify)—		_____
Other (specify)—		_____
Equity Sources:		
Grants available for project uses—		_____
Estimated Net Syndication Proceeds—		_____
Additional Sponsor Equity Necessary—		_____
Other Equity Sources (specify)—		_____
Total Sources		$_____

	Program	Mortgage
Project Uses:		
Use Limitations Related to Value & Mortgage Financing:		
Use Limitation "A": "Fair Market Value" of the Property Including Required Repairs, from Section L, Form HUD–92264—		$_____
Use Limitation "B": (for projects being acquired) Item 7g., Form HUD–92264A [18]—		$_____
Use Limitation "C": (for projects owned) Item 10g., Form HUD–92264A [19]		$_____
Subtotal Value Uses Related to Mortgage Financing:		
For Property Acquired (lesser of "A" or "B")—		$_____
For Property Owned (lesser of "A" or "C")—		$_____
Non-Mortgageable Uses: (i.e. Uses Payable by Sources Other than the Mortgage)		
Resident Initiative Fund—		$_____
Initial Deposit to Replacement Reserve Account—		$_____
Operating Deficit Reserve—		$_____
Builder's Profit—		$_____
Developer's Fee [20]—		$_____
Subtotal Non-Mortgageable Uses		[21] $_____
Total Project Uses		$_____
Estimated Net Syndication Proceeds:		
The HCA may use this format before completing the Net Syndication Proceeds estimate line above on the Sources and Uses Statement, and must use this format to reflect final allocation determination assumptions.		
Total Tax Credit Allocation—		$_____
Estimated Gross Syndication Proceeds—		$_____
Syndication Expenses:		
Accountant's Fee—	$_____	_____
Syndicator's Fee—	$_____	_____
Attorney's Fee—	$_____	_____
HCA Fee—	$_____	_____
Organizational Expenses—	$_____	_____
Other (specify)—	$_____	_____
Subtotal Syndication Expenses—		$_____
Bridge Loan Costs less interest (if applicable)—		$_____
Adjustment for Early and Late Installments (See Glossary, Net Syndication Proceeds Estimate for adjustment explanation)—		$_____
Total Reductions from Gross—		$_____
Estimated Net Syndication Proceeds—		$_____

[16] This format is only appropriate for projects which HCAs award "rehabilitation" LIHTCs, but proposed repairs are less than HUD's substantial rehabilitation eligibility test.

[17] The HCA may assume HUD commitment amounts for the subsidy layering review; HUD may have to adjust its commitment amount, or change underwriting conclusions if fewer LIHTCs are awarded than processing assumes.

[18] See HUD Handbook 4480.1, pages 2264A–18a. through 18d; see also Notice H 92–31.

[19] See HUD Handbook 4480.1, pages 2264A–18g. through 18j; see also Notice H 92–31.

[20] Standard #1 and #2's Safe Harbor and Ceiling percentages relating to Builder's Profit and Developer's Fee shall use HUD's "required repairs" cost estimate as the multiplicand.

[21] Please note that working capital reserves do not apply to §223(f) loans, and thus, are not an allowable use. Also, as a matter of policy, HUD will not permit unfinished work write-up escrow amounts to be funded through LIHTC proceeds. Therefore, such escrow amounts may not be included on this Statement.

BILLING CODE 4210–27–M

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development
Office of Ethics

Attachment 4

OMB Approval No. 2535-0101 (exp. 12/31/94)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

Part I Applicant/Recipient Information Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code) | Social Security Number or Employer ID Number

2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)

3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received $

Part II. Threshold Determinations – Applicants Only

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? ☐ Yes ☐ No
   If Yes, you must complete the remainder of this report.
   If No, you must sign the certification below and answer the next question.
   I hereby certify that this information is true. (Signature) _____ Date _____
2. Is this application for a specific housing project that involves other government assistance? ☐ Yes ☐ No
   If Yes, you must complete the remainder of this report.
   If No, you must sign this certification.
   I hereby certify that this information is true. (Signature) _____ Date _____

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

Part III. Other Government Assistance Provided/Requested

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V? ☐ Yes ☐ No

If there is no other government assistance, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Part IV. Interested Parties

Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	Social Security Number or Employee ID Number	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Part V. Report on Expected Sources and Uses of Funds

Source	

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Use	

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 1 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature	Date

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0101), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §12.34.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions (See Note 1 on last page.)

I. Overview. Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. An overview of these requirements follows.

A. Applicant disclosure (initial) reports: General. All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

Assistance from other government sources in connection with the project,

The financial interests of persons in the project,

The sources of funds to be made available for the project, and

The uses to which the funds are to be put.

B. Update reports: General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

C. Applicant disclosure reports: Specific guidance. The applicant must complete all parts of this disclosure form if **either** of the following **two** circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; **and**

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) Note: There is no dollar threshold for this criterion: **any** other government assistance triggers the requirement. (See Note 6)

If the Application meets **neither** of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets **either** of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

D. Update reports: Specific guidance. During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

II. Line-by-Line Instructions.

A. Part I. Applicant/Recipient Information.

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.

2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

B. Part II. Threshold Determinations — Applicants Only

Part II contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

C. Part III. Other Government Assistance.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.

3. State the type of other government assistance (e.g., loan, grant, loan insurance).

4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

D. Part IV. Interested Parties.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

(1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity; and

(2) Any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures referred to in Section I.D.1.,2., or 4, above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with their last names first.

2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.

3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).

4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

5. Part V. Report on Sources and Uses of Funds. This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds — both from HUD and from any other source — that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General instructions — sources of funds

Each reportable source of funds must indicate:

a. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.

c. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions — sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount of approved, and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, evevators, exterior masonry, etc.

Specific instructions -- uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

AMPO
Architect's fee — design
Architect's fee — supervision
Bond premium
Builder's general overhead
Builder's profit
Construction interest
Consultant fee
Contingency Reserve
Cost certification audit fee
FHA examination fee
FHA inspection fee
FHA MIP
Financing fee
FNMA / GNMA fee
General requirements
Insurance
Legal — construction
Legal — organization
Other fees
Purchase price
Supplemental management fund
Taxes
Title and recordingOperating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve
Total land improvement
Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses
Bridge loan interest
Development fee
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve

Footnotes:

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.
2. A list of the covered assistance programs can be found at 24 CFR §12.30, or in the rules or administrative instructions governing the program involved. Note: The list of covered programs will be updated periodically.
3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).
4. See 24 CFR §§12.32 (a)(2) and (3) for detailed guidance on how the threshold is calculated.
5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
6. For further guidance on this criterion, and for a list of covered programs, see 24 CFR §12.50.
7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe, and any other organization or group of people.

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Attachment #5—Processing HUD Insured Projects Involving Low Income Housing Tax Credits Using Form HUD–92264–T

A. *Purpose.* This attachment provides modified underwriting instructions for processing projects where owners will receive low income housing tax credits (LIHTCs).

B. *Background.* The Tax Reform Act of 1986 amended the Internal Revenue Code to create new Federal Tax Credits for owners of low income rental housing. In Public Law 101–239, dated December 19, 1989, the applicable maximum affordable monthly rents for most apartment sizes are to be based on the program income limits by household size assuming an occupancy of 1.5 persons per bedroom and efficiency units without a separate bedroom would have income limits based on occupancy by one person. In order for a household to qualify as tax credit assisted they must have an income at or below the program income limit for their respective household size.

The calculation of the maximum affordable monthly rents for tax credit units is based on tenants paying at least 30 percent of income for rent. Analysis of program participation has shown that few households in tax credit projects spend more than 40 percent of income for rent. This means that, if rents are set at the maximum, the potential market is restricted to income-eligible households with incomes between 75 and 100 percent of the respective income limit. Most households with incomes lower than this would be unable to afford the statutory maximum rents. As a result, when the proposed rents are set at the statutory maximums, the market for a tax credit assisted project is comprised of a relatively narrow band of income eligible renters, which can result in a problem with the market feasibility of the project. Therefore, depending on the particular market area and the rental market conditions in that area, there may be an insufficient number of potential renters that meet the income limit criteria and who are also willing and able to pay the maximum allowable rent.

Program data show that this potential marketability problem has been dealt with either by charging lower rents or obtaining other subsidies to lower the rent. The available information on tax credit assisted units shows that most projects have established rents below the maximum permitted by the statute. In addition, over 80 percent of projects funded had some other form of assistance to further reduce tenant rents.

The extent to which there is an adequate supply of units with rents at or below those proposed would also limit the market. An analysis of the market prospects of a proposed project, therefore, requires information on the current market conditions for this type of project, and information on the marketability of the proposed project relative to other options available to those income-eligible households.

Thus, market demand for tax credit units depends on several factors: The number of income qualified households and the willingness of those same households to pay the proposed rents; the supply of comparable units at rents equal to or less than the proposed rents; and, the marketability of the proposed units in comparison to the existing supply.

Therefore, if the Field Office determines that there is insufficient demand for the units at the proposed rents the Field Office should set the rents at lower amounts, as necessary to broaden the market band sufficiently to attract the potential tenants needed to ensure market feasibility. This determination should take into consideration the current and anticipated supply/demand conditions in the overall rental market, and potential depth of the market of income eligible households in comparison to the number of units at the proposed rents, and the marketability of the proposed units taking into account the project's amenities, rents and location relative to comparable and competitive projects and other options available to those income eligible households.

C. *Special Processing Instructions.* In order to make the rent estimates based on income limits as close as possible to the income limits described in the legislation, the following instructions for processing HUD-insured projects involving LIHTCs using revised Form HUD–92264–T shall be used. Using this form and the following directions, the Department will determine the appropriate processing rents for the low income units required by the Tax Credits. (In the case of projects with "deep skewed" rental units, it may be necessary to complete two separate revised Forms HUD–92264–T, since two different qualifying income limits may apply to lower income units of the same size.)

1. *Line 1* of Form HUD–92264–T—For each effected unit size, enter the market rental estimates from Form HUD–92273.

2. *Line 2*—If utility costs are to be paid by the tenant, enter an estimated Personal Benefit Expense (PBE) for services or utilities not included in the market rental estimate.

3. *Line 3*—Enter the applicable income limit. For purposes of this rent estimation exercise, the applicable income limits by unit size are as follows:

Column A* applicable limit if 20%/50% restriction applies	Column B* applicable limit if 40%/60% restriction applies	Column C* applicable limit if 15%/40% restriction applies
Eff. 1 Person Section 8	120% of Column A Limit	80% of Column. A Limit.
Very Low Income Limit		
1–BR 1.5-Person Section 8	120% of Column A Limit	80% of Column. A Limit.
Very Low Income Limit**		
2–BR 3-Person Section 8	120% of Column A Limit	80% of Column. A Limit.
Very Low Income Limit		
3–BR 4.5-Person Section 8	120% of Column A Limit	80% of Column. A Limit.
Very Low Income Limit**		
4–BR 6-Person Section 8	120% of Column A Limit	80% of Column. A Limit.
Very Low Income Limit		

*The use of these limits by HUD for underwriting purposes is not meant to imply that the Internal Revenue Service will necessarily use the same limits in determining whether tenants will qualify as low income for purposes of the Tax Credit.

** The one and one-half-person Section 8 very low income limit is computed by adding the one person Section 8 very low income limit to the two-person limit, then dividing the sum by 2. Likewise, the four and-one-half-person Section 8 very low income limit is the sum of the four-person limit and the five-person limit, divided by 2.

4. *Line 4*—Compute and enter the estimated maximum affordable monthly rent for each affected unit size. Compute that rental estimate as follows:

a. Multiply the income limit on line 3 of the form by 30 percent (.30);

b. Divide the product obtained in step a by 12;

c. Subtract the monthly PBE (if any) on Line 2 from the quotient obtained in step b.

5. *Line 5*—Where the Valuation staff has evidence that the project's tax credit assisted units would not be marketable to income eligible households at the lesser of the maximum affordable monthly rents (Line 4) or the rent by market comparison (Line 1), based on the market analysis review by the EMAS, enter the recommended estimated monthly rent obtainable for the restricted units, as approved by the Director, HD Division. For Section 223(f) cases involving projects with existing Section 8 contracts, use this line to enter the processing rents calculated in accordance with the outstanding instructions involving the refinancing or purchase of Section 8 projects with outstanding project based contracts.

6. *Line 6*—Monthly Rent Estimate for Restricted Units. Enter the least of lines 1, 4, or 5.

7. *Line 7*—Enter the number of each unit type with income limits shown on line 3.

8. *Line 8*—Enter the number of each unit type shown on another Form HUD–92264–T with other income limits.

9. *Line 9*—Enter the number of each unit type with no income limits using unsubsidized market rents from line 1.

D. *For Further Information*—Any questions concerning this attachment and completion of revised Form HUD–92264–T which follows should be directed to the Office of Insured Multifamily Housing Development, Technical Support Division, Valuation Branch, (FTS 8–202–708–0624).

FORM HUD–92264–T.—RENT ESTIMATES FOR LOW OR MODERATE INCOME UNITS IN NON SECTION 8 PROJECTS INVOLVING TAX EXEMPT FINANCING OR LOW INCOME HOUSING TAX CREDITS

Unit size	0 BR	1 BR	2–BR	3–BR	4–BR
1. Rent by Market Comparison					
2. Personal Benefit Expense (if any)					
3. The Percentage of Median Income (adjusted for family size) used for income limits: 40%, 50%, 60% (circle only one; then enter the applicable dollar income limit for each unit)					
4. Estimated Maximum Affordable Monthly Rent for Restricted Units:* (.30 × Line 3)—Line 2 ÷ (12)					
5. Estimated Obtainable Monthly Rent for Restricted Units**					
6. Monthly Rent Estimate for Restricted Units (least of lines 1, 4, or 5)***					
7. Number of each unit type with income limits shown on line 3					
8. Number of each unit type shown on another form HUD–92264–T with other income limits					
9. Number of each unit type with no income limits using unsubsidized market rents from line 1.					

Asterisks:

* Where State or local laws, ordinances or regulations limit the rent to an amount lower than this formula estimate, or the Sponsor's proposed rent is less than this formula estimate, enter the lower amount and explain below.

** Where the Valuation staff has evidence that the project's tax credit assisted units would not be marketable to income eligible households at the lesser of the maximum affordable monthly rents (Line 4) or the rent by market comparison (Line 1), based on the market analysis review by the EMAS, enter the recommended estimated monthly rent obtainable for the restricted units, as approved by the Director, HD Division. For Section 223(f) cases involving projects with existing Section 8 contracts, use this line to enter the processing rents calculated in accordance with the outstanding instructions involving the refinancing or purchase of Section 8 projects with outstanding project based contracts.

*** Enter in Section C of Form HUD–92264.

Attachment #8—Chronology Associated With Seeking Various Forms of HUD Assistance in Combination With LIHTCs

Generally, the Guidelines assume that Sponsors will apply for HUD assistance first, and HCA LIHTC assistance after the amount of HUD assistance is known. However, there are certain types and combinations of HUD assistance which, when combined with HCA LIHTC assistance, suggest the opposite order, i.e. Sponsors will sometimes probably benefit from seeking HCA LIHTC assistance before seeking any available HUD assistance. This reverse order of application may be more appropriate where HUD's process for awarding assistance is based on protracted Notices of Fund Availability (NOFAs), or other competitive, short-term, or limited funding programs.

For example these may include:

1. Section 201 Flexible Subsidy Capital Improvement Loans (For project eligibility, a particular existing HUD-insured loan must already be in place);

2. Section 8 Loan Management Set-Aside Assistance (additional project-based units), whether to support existing construction and repairs, new construction, or moderate or substantial rehabilitation;

3. Project-Based Section 8 Rental Assistance Increases and Section 241 Supplemental Loans (For project eligibility, a HUD-insured loan and an existing project-based Section 8 contract must be in place).

4. Property Disposition Sale Offerings

Elaborating on Examples 1 and 2: Sponsors must weigh the probability and timetable for getting necessary repairs funded through these HUD assistance programs, against the probability and timetable of receiving HCA LIHTC assistance to provide for the repairs. Note: application for and refusal of assistance from one source does not preclude seeking assistance from the other source thereafter. Some Sponsors may prefer to seek HCA assistance first in these cases, and to apply for such HUD assistance as may be necessary after receiving the HCA's response. HUD's applicable program guidelines for the estimation and certification of costs must be complied with in either case.

Elaborating on the third example: Any Sponsor-contemplated repair program to a HUD-insured project, if it is to be supported by new HUD assistance, must generally fall within any excess available Section 8 contract authority. This means that HUD would probably be unable to support any significant repair program. Sponsors should also note the improbability of any available amendment funds to support repair cost financing. Thus, necessary repairs are more likely to be financed through an HCA's award of LIHTCs and the Sponsor's syndication of the project to receive net syndication proceeds to pay for the repairs. Sponsors are encouraged to determine whether necessary repairs may be funded out of any existing available HUD contract authority—and if not, as will often be the case—to apply to the HCA for LIHTC assistance.

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Federal Register

Part VI

Department of Education

34 CFR Parts 690 and 691
Federal Pell Grant Program; Presidential Access Scholarship Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 690 and 691

RIN 1840–AB73

Federal Pell Grant Program; Presidential Access Scholarship Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Pell Grant Program regulations and to establish regulations for the newly enacted Presidential Access Scholarship Program. These regulations are needed to implement recently enacted provisions of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1992 (the 1992 Amendments), enacted on July 23, 1992.

The proposed amendments to the Federal Pell Grant Program regulations incorporate changes in student eligibility requirements and institutional administration requirements. The program name has also been changed from the "Pell Grant Program" to the "Federal Pell Grant Program."

The proposed regulations for the Presidential Access Scholarship Program specify the eligibility requirements for students to apply for and receive an award. These proposed regulations also specify the roles of institutions of higher education, State officials, and State agencies in administering the program.

DATES: Comments must be received on or before April 11, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Fred H. Sellers, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., room 4018, Regional Office Building 3, Washington, DC 20202–5447. Telephone (202) 708–4607.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Denise Boulanger, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., room 4018, Regional Office Building 3, Washington, DC 20202–5447. Telephone (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the proposed revisions in the regulations for the Federal Pell Grant Program (formerly known as the Pell Grant Program) is to incorporate statutory changes to the HEA, as amended by the 1992 Amendments. The proposed changes in the Pell Grant Program would: (1) Rename the program the Federal Pell Grant Program; (2) eliminate the duration of eligibility limitations; (3) revise the formula for calculating a Federal Pell Grant payment for a payment period; (4) limit the eligibility of incarcerated students; (5) incorporate references to the Federal Need Analysis System's Expected Family Contribution (EFC) under part F, title IV of the HEA; (6) eliminate, in certain circumstances, the requirement that the student present a Student Aid Report (SAR) to the institution in order to be paid his or her Federal Pell Grant and allow an institution to pay a student on the basis of a valid institutional student information report (ISIR), *i.e.*, a report to an institution that includes an applicant's application information and EFC, generated by the central processor; and (7) allow less-than-half-time students to receive a Federal Pell Grant.

The 1992 Amendments included a provision giving the Secretary the option to allow, on a case-by-case basis, a student pursuing a baccalaureate degree to receive two Federal Pell Grants within one 12-month period if the student completed more than an academic year of coursework and needed funds to attend additional terms beyond the academic year but within the same award year. The Higher Education Technical Amendments of 1993, enacted on December 20, 1993, (Pub. L. 103–208) (The 1993 Technical Amendments) expanded the eligibility for a second Scheduled Award to include students pursuing an associate degree. The Secretary is requesting comment on how to implement this provision fairly and equitably.

The Federal Pell Grant Program, a cornerstone of the Federal student financial aid programs, supports National Education Goal 5 which states that every adult American will be literate and will possess the knowledge and skills to compete in a global economy and exercise the rights and responsibilities of citizenship. The program, reauthorized in section 401 of the 1992 Amendments, will further Goal 5 by helping eligible students obtain marketable skills, achieve higher levels of education than they might otherwise have pursued, and obtain the knowledge required to discharge the responsibilities of citizenship.

Federal Pell Grant Program

Significant Proposed Changes to the Federal Pell Grant Program Regulations:

Section 690.2 General Definitions

The Secretary proposes to amend the definitions in § 690.2 for "disbursement schedule" and "enrollment status" to include references to students enrolled less-than-half-time, "payment schedule," and to add new definitions of "academic year," "annual award," "central processor," "expected family contribution," "incarcerated student," "institutional student information report," "less-than-half-time student," and "valid institutional student information report" to incorporate clarifying eligibility language included in the 1992 Amendments.

The Secretary believes that the new definition of academic year in the 1992 Amendments is particularly important because it not only requires completion of a minimum number of credit hours or clock hours during an academic year, it also requires that the academic year be a minimum of 30 weeks of instructional time.

Section 690.3 Payment Period.

The Secretary proposes to amend § 690.3 to define more accurately payment periods for eligible programs offered in credit hours, but not in academic terms, if the majority of credit hours cannot be earned until the program or academic year is completed. Under the current definition, determining the end of one payment period and the beginning of another for this type of program has been uncertain and has resulted in program abuse at some institutions. The addition to the definition of a payment period was made to prevent a particular type of program abuse that occurs at an institution without terms that does not have a clearly defined midpoint in its program or academic year. Specifically, institutions have arbitrarily established a midpoint that is inappropriately early. As a result, students received disbursements in excess of the coursework that the students completed for the payment period. The Secretary is proposing that for this type of program, if a student cannot earn half the credits in a program or academic year by the calendar midpoint of that program or academic year, the first payment period shall end and the second payment period shall begin on the later of: (a) the

last scheduled days of class of the program or academic year; or (b) the date, as determined by institution, that the student has completed half of his or her academic coursework. For example, an institution offers a program which consists of 24 semester hours. A student is not considered to have earned any of the semester hours until he or she finishes the program. The student's second payment period begins on the later of the date of the calendar midpoint in the program or the date that the institution determines the student has completed half of his or her coursework.

Section 690.6 Duration of Eligibility

Currently §§ 690.6(b) through (d) limit, in most instances, the eligibility of a Federal Pell Grant recipient to 5 or 6 years, depending on the length of the recipient's undergraduate program of study. The 1992 Amendments remove the provisions in section 411(c)(1) of the HEA that limited the number of years a student was eligible to receive an award. Therefore, the Secretary proposes to amend this section of the regulations by removing those limitations.

Section 690.8 Enrollment Status for Students Taking Regular and Correspondence Courses

The Secretary proposes to amend § 690.8 concerning the enrollment status of students taking regular and correspondence courses to include less-than-half-time students.

Section 690.10 Administrative Cost Allowance to Participating Schools

In those instances where an institution enrolls significant numbers of less-than-full-time or independent students, the Secretary proposes that the institution use some of its administrative cost allowance funds to make financial aid services available to those students as required under section 489(b)(2) of the HEA.

Subpart C—Expected Family Contribution for Students With Special Conditions

The Secretary proposes to remove subpart C of the current regulations. In fiscal years 1989–92, the Department of Education Appropriations Act provided that section 479A of the HEA, which allows a financial aid administrator to exercise professional judgment concerning a student's and a student's family's ability to pay for his or her education, did not apply to the Pell Grant Program. Instead, the Secretary prescribed "special conditions" that, if the student or his or her family met them, would allow the student to apply for a Pell Grant using expected year income instead of base year income. The regulations in subpart C specified those "special conditions." However, the Department of Education Appropriations Act for fiscal year 1993 does not exempt the Federal Pell Grant Program from section 479A for award year 1993–94. Consequently, financial aid administrators may exercise professional judgment concerning a student's ability to pay for his or her education when determining the student's eligibility for a Federal Pell Grant. Based on that judgment, a financial aid administrator may make adjustments to data elements submitted by the student on his or her application, recalculate the expected family contribution (EFC), and pay the student based on the new EFC. The special conditions contained in subpart C of the current regulations will, therefore, no longer be necessary for award year 1993–94.

Section 690.61 Submission Process and Deadline Date for Student Aid Report or Institutional Student Information Report

The 1992 Amendments authorize and require a financial aid administrator to pay a student his or her Federal Pell Grant based on an output document produced by the central processor and sent directly to the institution. Therefore, the Secretary proposes to allow an institution to pay a student a Federal Pell Grant not only when the student presents a valid Student Aid Report (SAR) but, under certain circumstances, when the institution obtains a "valid institutional student information report" from the central processor.

Section 690.62 Calculation of a Federal Pell Grant

The 1992 Amendments increase the amount of the minimum grant from $200 to $400. The Secretary proposes to amend the language in § 690.92 to reflect this change and to provide that a student eligible for a grant equal to or greater than $200, but less than $400, shall be awarded $400. In addition, the 1992 Amendments eliminate the Secretary's authority to adjust Federal Pell Grant awards due to insufficient appropriations. Therefore, the Secretary proposes to remove § 690.62(c), which provides for adjustments for less-than-full funding.

Section 690.63 Calculation of a Federal Pell Grant for a Payment Period

The 1992 Amendments add new statutory language defining an "academic year." The new definition no longer defines the minimum academic year for a program using only one measure of length. Instead, the new definition uses two minimum measures that must be met, and these measures are, in many circumstances, different from the ones used under the old definition. The new definition requires that an academic year be a minimum of 30 weeks of instructional time in which a full-time student is expected to complete at least (1) 24 semester or trimester hours; (2) 36 quarter hours at an institution that measures program length in credit hours; or (3) 900 clock hours at an institution that measures program length in clock hours.

The 1993 Technical Amendments further amended section 481 of the HEA definition of academic year to provide that the Secretary may reduce, for good cause on a case-by-case basis, the 30-week minimum to not less than 26 weeks of instructional time in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which it awards an associate or baccalaureate degree. The Secretary is requesting comment on how to implement this provision in another notice of proposed rulemaking for subparts A and B of the Student Assistance General Provisions regulations (34 CFR part 668) which will be published in the Federal Register in the near future.

While the Secretary is amending the definition of "academic year" to comply with section 481 of the HEA, it is also necessary for the Secretary to amend § 690.63 to incorporate the new definition of academic year, as defined in section 481 of the HEA, into the Federal Pell Grant payment calculations. To implement this change for purposes of Federal Pell Grant award calculations, each institution must define its academic year for each of its programs in terms of the number of credit hours or clock hours offered and the number of weeks of instructional time during which those hours are provided. That definition must satisfy the new statutory definition of an academic year, *i.e.*, at least 24 semester or trimester hours, 36 quarter hours, or 900 clock hours, and at least 30 weeks of instructional time. The institution may, of course, use the same definition of academic year for each of its programs. In addition, an institution must determine if its traditional definition of an academic year—2 semesters or trimesters, or 3 quarters at an institution that measures program length in credit hours, or at least 900 clock hours at an institution that measures program length in clock hours—meets or exceeds 30 weeks of

instructional time as incorporated in the new statutory definition of academic year.

Institutions with standard academic terms have traditionally defined an academic year as the period of time in which a full-time student is expected to complete two semesters or trimesters in the fall and spring or three quarters in the fall, winter, and spring. These institutions have not generally included additional or special terms that it may offer, such as in the summer, as part of the academic year. Therefore, the Secretary believes that many institutions with semesters, trimesters, or quarters can satisfy the academic year requirement in their regularly scheduled fall and spring semesters or trimesters or fall, winter, and spring quarters.

The following discussions provide descriptions of the procedures for calculating the amount of a student's payment for a payment period. The Secretary recognizes that these procedures may be considered complex and welcomes specific comment on any ways to simplify or better present them that do not compromise program integrity or implementation of the new definition of academic year.

Programs Using Standard Terms With at Least 30 Weeks of Instructional Time as Described in § 690.63(a)(1) With Awards Calculated Under § 690.63(b)

A student at a term institution may currently complete the credit-hour requirements for an academic year in two semesters or trimesters, fall and spring, or three quarters, fall, winter, and spring. Those terms may total at least 30 weeks of instructional time and the institution may require a student to enroll for at least 12 credit hours for any term in the award year to be considered full-time. Moreover, the institution may not offer the student's program with multiple start dates or overlapping terms. If all conditions apply, the institution continues to calculate the Federal Pell Grant payment in a payment period, for all terms, in the same manner as that payment is currently calculated. For example, an institution has fall and spring semesters that when combined provide 24 semester hours of credit, 12 hours per semester for a full-time student, in 30 weeks of instructional time. Therefore, a full-time student is paid up to one-half of his or her Scheduled Award for each of the fall and spring semesters. Further, the student will be eligible to be paid one-half of his or her Scheduled Award, if he or she has enough remaining eligibility (including, if eligible, a second Scheduled Award) for a summer term even if that term is not at least one-half of the academic year in weeks of instructional time.

Programs Using Standard Terms With Less Than 30 Weeks of Instructional Time as Described in § 690.63(a)(2) With Awards Calculated Under § 690.63(c)

A student at a term institution that measures its program in credit hours may currently complete the credit-hour requirements for an academic year in two semesters or trimesters, fall and spring, or three quarters, fall, winter, and spring. However, the weeks in these terms may total less than 30 weeks of instructional time, and the institution may require a student to attend at least 12 hours for any term in the award year to be considered full-time. Moreover, the institution may not offer the student's program with multiple start dates or overlapping terms. Under these conditions, the institution must prorate the Federal Pell Grant award for a term based on the number of weeks of instructional time in the two semesters or trimesters or three quarters that it takes to complete the credit-hour requirements for an academic year compared to the number of weeks of instructional time required to complete the institution's academic year as defined by the institution consistent with section 481 of the HEA. A payment for a payment period, for all terms, is then determined from a student's award. For example, an institution has two semesters, fall and spring, in which a student attends 12 hours each semester to be considered a full-time student. The two semesters have 28 weeks of instructional time. The institution defines its academic year as 24 semester hours and 30 weeks of instructional time. The institution must determine a full-time student's award for the two semesters by multiplying the student's Scheduled Award by 28 weeks of instructional time, the instructional time in the fall and spring semesters, divided by the 30 weeks of instructional time in the institution's academic year consistent with section 481 of the HEA. The student will be eligible to be paid one-half of his or her award as calculated by this formula for any term in the award year. Further, the student will be eligible to be paid one-half of his or her award as calculated by this formula, if he or she has enough remaining eligibility, for the summer term.

Other Programs Using Terms and Credit Hours as Described in § 690.63(a)(3) With Awards Calculated Under § 690.63(d)

These provisions apply to institutions that use terms, measure progress in credit hours, and do not meet the provisions of § 690.63 (a)(1) and (b) or § 690.63 (a)(2) and (c). In addition, the Secretary proposes to provide that institutions that meet the requirements under § 690.63 (a)(1) or (a)(2) to use the formulas in § 690.63 (b) or (c) may also use the formula in (d). The Secretary believes that providing this option ensures that these institutions will have the flexibility to handle any special circumstances that may arise. If the terms are standard terms (*i.e.*, semesters, trimesters, or quarters), the institution must determine a student's enrollment status and, based on that enrollment status, determine the student's award from the Payment Schedule or one of the Disbursement Schedules (annual award). Then, a student's payment for a payment period is determined by multiplying the annual award by the number of weeks of instructional time in the term divided by the number of weeks of instructional time in the institution's academic year. For example, an institution uses quarters and credit hours and those quarters begin each week throughout the year. A full-time student is required to enroll for at least 12 credit hours per quarter. Each quarter provides 8 weeks of instructional time. The institution defines its academic year as 36 quarter hours and 30 weeks of instructional time. A student's payment for a payment period is calculated by: (1) Determining his or her enrollment status; (2) based on that enrollment status, selecting his or her annual award from the proper Payment or Disbursement Schedule; and (3) multiplying the annual award by the fraction of the number of weeks of instructional time in the term (8 weeks) divided by the number of weeks of instructional time in the academic year (30 weeks). The student's payment for a payment period would be 8/30 of the annual award.

For programs at institutions using terms and credit hours, other than semesters, trimesters, and quarters, the institution must first determine a student's enrollment status before an award can be calculated. If the terms are not semesters, trimesters, or quarters, full-time enrollment status is determined by: (1) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the academic year; and (2) multiplying the credit hours in the academic year by the number obtained in item 1. Once the institution determines the number of credit hours for full-time enrollment status in a term and determines what portion of full-time equals three-quarter-time, half-time, or less-than-half-time enrollment status, the institution must compare the number of hours the student is enrolled to the number of hours required for full-time, three-quarter-time, half-time, or less-than-half-time. Once enrollment status is determined, the institution selects the appropriate Payment or Disbursement Schedule to determine the student's annual award. The institution then divides the number of weeks of instructional time in the payment period by the number of weeks of instructional time in the institution's academic year and calculates the student's payment for a payment period by multiplying the annual award by results of the fraction. For example, an institution has 4 nonstandard terms.

The first and fourth terms provide 4 weeks of instructional time, the second term provides 8 weeks of instructional time, and the third term provides 6 weeks of instructional time. The institution defines its academic year as 30 credit hours and 30 weeks of instructional time. A student enrolls for 6 credits during the first and fourth terms of 4 weeks each, 12 credits for the second term of 8 weeks, and 6 credits during the third term of 6 weeks. To calculate the student's enrollment status in the first and fourth terms, the institution divides the number of weeks of instructional time in each term (4) by the number of weeks of instructional time in the academic year (30). The institution then multiplies the credit hours in its academic year (30) by the fraction (4/30) to determine the student's enrollment status ((30 (4/30)]=4). The student must be enrolled for 4 credits to be considered full time. Since the student is enrolled full time for 6 hours in the first term, the student's annual award is determined from the Payment Schedule. To determine the payments for the first and fourth terms, the institution divides the number of weeks in the terms (4) by the number of weeks in the academic year (30). The institution then multiplies the annual award by the results of that fraction (4/30=.133). The enrollment status and payments for the other payment periods are determined in the same manner.

Programs Using Clock Hours or Credit Hours Without Terms as Described in § 690.63(a)(4) With Awards Calculated Under § 690.63(e)

At an institution that offers its programs using credit hours without terms or clock hours, the institution calculates a student's Federal Pell Grant for a payment period by: (1) Determining the student's Scheduled Federal Pell Grant from the Payment Schedule; (2) multiplying the student's Scheduled Award by the following fraction: the number of weeks of instructional time required for a full-time student to complete the lesser of the clock or credit hours in the program or academic year divided by the number of weeks of instructional time for a full-time student to complete the clock or credit hours in the institution's academic year; and (3) multiplying the amount determined in step 2 by the following fraction: the number of credit or clock hours in the payment period divided by the number of credit or clock hours in the institution's academic year.

For example, a student enrolls in a 1,200 clock-hour program at an institution that defines its academic year as 900 clock hours and 30 weeks of instructional time. Each payment period is 450 clock hours, and a full-time student completes the clock hours in the payment period in 12 weeks of instructional time. To determine the student's payment for a payment period, the institution must determine the student's Scheduled Award using the Payment Schedule. The institution then must multiply the student's Scheduled Award by the number of weeks of instructional time that it takes a full-time student to complete the clock hours in the academic year divided by the number of weeks of instructional time in the academic year (24/30 = .8). The institution multiplies that amount by the number of clock hours in the payment period divided by the number of clock hours in the academic year (450/900 = .5).

Section § 690.65 Transfer Student: Attendance at More Than One Institution During an Award Year

Because the 1992 Amendments authorize and require a financial aid administrator to pay a student his or her Federal Pell Grant based on receipt of a valid institutional student information report produced by the central processor that is sent directly to the institution, the Secretary proposes to amend § 690.65 to incorporate the use of the institutional student information report into the procedures for paying transfer students. The use of an institutional student information report to, in some instances, pay a student a Federal Pell Grant eliminates the SAR as the only document from which a student can be paid.

Section 690.75 Determination of Eligibility for Payment

The 1992 Amendments allow a student attending an institution on a less-than-half-time basis to receive a Federal Pell Grant. Prior to the 1992 Amendments, a less-than-half-time student was only eligible under certain restricted conditions. Therefore, the Secretary proposes to amend the regulations to incorporate less-than-half-time students into the requirements for determining the eligibility of a student for payment.

The Secretary proposes to limit the eligibility of an incarcerated student for a Federal Pell Grant as required under amended section 401(b)(8) of the HEA. A student incarcerated under a sentence of death or life without eligibility for parole or release would not be eligible to receive a Federal Pell Grant. In addition, the HEA provides that for an incarcerated student to receive a Federal Pell Grant, the State in which the student is incarcerated must demonstrate to the Secretary that it uses Federal Pell Grants to supplement, not supplant, the postsecondary assistance provided incarcerated students in fiscal year 1988. The Secretary has determined that this provision applies only to students who are incarcerated by a State. Federally incarcerated students are not covered by this provision. Under the proposed regulations, the Secretary requires a State to submit an annual report to demonstrate its continuing financial commitment to assisting incarcerated students to receive postsecondary education assistance.

In a May 7, 1993 letter to the Governor of each State, the Secretary provided a form for the 1993–94 award year. Using the form, each State can provide the information necessary to determine if that State is currently using Federal Pell Grant funds to supplement and not supplant State postsecondary assistance provided to incarcerated students in fiscal year 1988. The form for the 1993–94 award year did not require, as do the proposed regulations, that a State provide the data by individual categories. The Secretary believes that the categories assist a State in determining sources of postsecondary assistance provided to incarcerated students, and the State must consider these categories to arrive at a total amount. The Secretary also believes that providing the information by individual categories will assure that the

information is more accurate while imposing minimal additional burden on the State. However, the Secretary is requesting comment on whether providing the data by individual categories imposes an additional burden on States and, if so, whether commenters believe that the benefits of more accurate information may outweigh the additional burden.

Section 690.77 Initial Disbursement of a Federal Pell Grant in an Award Year Without a Valid SAR or Valid Institutional Student Information Report

The Secretary has proposed an amendment to § 690.77 to allow an institution to make an initial Federal Pell Grant disbursement before receiving a valid SAR or valid institutional student information report sent to the institution from the central processor. The Secretary is proposing this amendment to include payment of an initial disbursement before receiving the valid institutional student information report provided for in the amendment to section 401(f) of the HEA.

Notwithstanding the proposed amendment, the Secretary is also considering removing § 690.77 due to the rapid delivery of institutional student information reports to institutions, the increased use of the Department's electronic programs in the Federal application processing system, and the growing number of mandated Federal requirements, such as matching applicant information with other Federal agency data bases. The Secretary specifically requests comment concerning the possible deletion of this section.

Section 690.80 Recalculation of a Federal Pell Grant Award

Because there is no longer statutory authority requiring the use of the provision in subpart C, the Secretary proposes to amend § 690.80 to remove the references to sections in subpart C. Those sections provided for a student to apply for a Federal Pell Grant using expected year income instead of base year income if the student or his or her family met special conditions.

Section 690.82 Maintenance and Retention of Records

The Secretary proposes to amend the recordkeeping requirements in the regulations to require an institution to maintain the SARs or institutional student information reports only for those students who receive Federal Pell Grants. Currently, an institution is required to keep SARs on file for every student who submits one to the institution, regardless of whether the student receives assistance from the institution. The Secretary believes that the current recordkeeping requirement in § 690.82 is unnecessary if the student did not receive a Federal Pell Grant. All other recordkeeping requirements of other title IV HEA programs would still apply.

Presidential Access Scholarship Program

The proposed regulations for the Presidential Access Scholarship (PAS) Program would implement the PAS Program as enacted under title IV, part A, subpart 2, chapter 3 of the amended HEA. Funds for the PAS Program were not appropriated for fiscal year 1993 (the 1993–94 award year) or 1994 (the 1994–95 award year). As indicated in the Conference Report for the 1992 Amendments to the HEA, the purposes of the PAS Program are to (1) encourage students to finish high school and attend college and (2) to upgrade the course of study completed by high school graduates who are from low or moderate-income families. The PAS Program supports National Education Goal 1, which calls for the high school graduation rate in the United States to reach at least 90 percent; National Education Goal 3, which calls for students to learn to use their minds well so they will be prepared for responsible citizenship, further learning, and productive employment in our modern economy; and National Education Goal 5, which calls for every adult American to be literate and possess the knowledge and skills to compete in a global economy and exercise the rights and responsibilities of citizenship.

One of the eligibility requirements for a student to qualify for a PAS award is based directly on his or her eligibility for a Federal Pell Grant award. The Secretary has developed a functional delivery system for providing Federal Pell Grant funds to a student through his or her institution. Because the amount of the PAS award is based on the amount of a student's Federal Pell Grant and the PAS can easily be incorporated into the Federal Pell Grant delivery system, the Secretary believes that this system is the best method for providing a student with his or her PAS award. The Secretary, therefore, is proposing regulations describing the requirements for a participating institution's administration of the program. The proposed regulations for the PAS Program duplicate, or are as similar as possible to, the Federal Pell Grant Program regulations. The Secretary believes that coordinating the administrative requirements of the PAS Program with the Federal Pell Grant Program will assist participating institutions in administering both programs, reduce the amount of additional institutional administrative burden and paperwork, and simplify the process for students to apply for assistance under these programs.

The proposed PAS regulations that clarify or amplify the statutory requirements are explained below.

Subpart B—Application Procedures and Eligibility Requirements

Section 406C(b) of the HEA specifies that an eligible student shall submit an application to the Secretary. Section 691.12 of the proposed regulations requires that the student apply for a PAS at the same time the student applies for a Federal Pell Grant. The Secretary believes that because a student is eligible to receive a PAS only if he or she is eligible to receive a Federal Pell Grant, it is a matter of administrative convenience for a student, his or her institution, and the Secretary if a single application is submitted for both programs.

Sections 406C and 406E of the HEA specify the eligibility requirements for students to apply for, receive, and continue to receive a PAS. The proposed regulations have incorporated these requirements in §§ 691.15, 691.16, and 691.17. These sections include the following requirements: (1) The student be scheduled to graduate from high school or be a high school graduate, or the recipient of the equivalent of a high school diploma as recognized by a State, within 3 years of being accepted for enrollment or enrolling at an institution of higher education; (2) the student have taken certain specified college preparatory coursework in high school and achieved a minimum 2.5 grade point average in the final two years of high school; (3) the student have participated, with limited exceptions, in a federally sponsored or federally approved early-intervention program or have graduated in the top 10 percent of his or her high school class; and (4) to continue to receive an award, the student must remain eligible for a Federal Pell Grant and be maintaining satisfactory academic progress at his or her institution.

It should be noted that the definition of eligible early- intervention program at § 691.2 includes the National Early Intervention Scholarship and Partnership Program as authorized by section 404A of the HEA. Regulations for this program have not yet been promulgated. When they are, however, they will be incorporated into these regulations.

The Secretary believes that if an applicant who did not graduate in the top 10 percent of his or her high school class was unable to participate in an early intervention program where the applicant resides due to unusual or exceptional circumstances, the applicant should not be prevented from participating in the PAS Program. Therefore, § 691.16 implements a waiver for those students not graduating in the top 10 percent of their class. However, an applicant who simply chooses not to participate in an early intervention program should not receive PAS Program funds. The Secretary believes that this interpretation is consistent with the statute. The requirement that an applicant take certain specified college preparatory classes cannot be waived under the statute. The regulations mirror this requirement but also permit an applicant who was unable to take the required high school coursework where he or she resides to complete that coursework at another high school or community college. The applicant must be able to demonstrate that he or she has completed the required coursework before the applicant receives a PAS award.

Subpart F—Determination of Awards

Subpart F of the proposed regulations includes instructions for determining the amount of an award for any academic year and for a specific payment period. This determination is based on the amount of the Federal Pell Grant a student is eligible to receive. Procedures are proposed for receiving a valid SAR or valid institutional student information report and for calculating an award when the payment period crosses over 2 award years. In addition, the Secretary proposes to establish institutional requirements regarding transfer students, correspondence students, and exceptions to the maximum PAS award when a student is eligible for more than one Scheduled Federal Pell Grant within an award year.

Subpart G—Institutional Administration

Subpart G of the proposed regulations establishes requirements under which institutions must administer the PAS Program. As proposed, in order to participate in the PAS Program, an institution would be required to include the PAS Program in its agreement with the Secretary under 34 CFR 668.12. To implement this requirement, the Secretary intends to propose amending 34 CFR 668.1(c) to include the PAS Program in a separate notice of proposed rulemaking amending subparts A and B of the Student Assistance General Provisions regulations. As a result, all the relevant provisions of 34 CFR part 668 would apply to the PAS Program. If the institution withdraws or is terminated from the program, provisions will be proposed that prescribe how an institution must disburse funds to a student. Also, this proposed subpart would provide guidance on fiscal accounting procedures, retention of records, and submission of reports. As in the Federal Pell Grant Program, the Secretary specifically is requesting comment concerning the need for proposed § 691.77 and also concerning the proposed administrative burden on institutions to administer the program.

Subpart H—Administrative Responsibilities of a State

Because section 406F(a) of the HEA requires that a State enter into an agreement with the Secretary in order for students residing in that State to receive a PAS, proposed § 691.90 describes the contents of the agreement. In addition, proposed § 691.91 establishes the records a State must maintain and the length of time a State must keep those records.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of the regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.*

In assessing the potential cost and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. States entering into an agreement with the Secretary are not defined as "small entities" in the Regulatory Flexibility Act. The small entities that would be affected by these proposed regulations are small institutions of higher education. However, these proposed regulations would not have a significant economic impact on the small institutions affected because, although certain reporting and recordkeeping requirements are imposed on participating institutions, these requirements are modeled on existing student financial assistance programs requirements already imposed on these institutions under title IV of the Higher Education Act of 1965, as amended. Therefore, the Secretary has determined that these provisions will have minimal impact on the small institutions of higher education.

Paperwork Reduction Act of 1980

Sections 690.13, 690.75, 690.77, 690.82, 691.7, 691.9, 691.12, 691.61, 691.73, 691.79, 691.81, 691.82, 691.83, 691.90, and 691.91 contain information collection requirements for the Federal Pell Grant Program and the PAS Program. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

These proposed regulations affect businesses or other for-profit organizations and nonprofit institutions that are eligible to participate in the title IV, HEA programs. The Department needs and uses the information to implement the 1992 Amendments for the Federal Pell Grant Program and PAS Program. The regulations provide the requirements that States, institutions, and students must follow to participate in these programs.

Federal Pell Grant

Annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 hours per response for 57 States and Territories and 2,280 total hours per year, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information.

Presidential Access Scholarship Program

Annual public reporting and recordkeeping burden for this collection of information is estimated to average: (1) 3 hours per response for 57 States and Territories; (2) 1 hour per response for 390,000 applicants; and (3) 3 hours per response for 10,000 institutions. The total hours for States, applicants, and institutions are 420,171 hours per year including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation To Comment: Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4018, Regional Office Building 3, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there might be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 690

Administrative practice and procedure, Colleges and universities, Education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 691

Administrative practice and procedure, Colleges and universities, Education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.063 Federal Pell Grant Program; Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned)

Dated: February 17, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by amending part 690 and adding a new part 691 as follows:

PART 690—[Amended]

1. The authority citation for part 690 is revised to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

2. The heading for part 690 is revised to read as follows:

PART 690—FEDERAL PELL GRANT PROGRAM

§§ 690.1, 690.2, 690.3, 690.6, 690.7, 690.9, 690.10, 690.11, 690.12, subpart F, 690.62, 690.64, 690.65, 690.66, 690.71, 690.72, 690.73, 690.74, 690.75, 690.78, 690.79, 690.81, and 690.83 [Amended]

3. In part 690 add the word "Federal" before the words "Pell Grant" in the following places:

(a) Section 690.1;

(b) Section 690.2(c) under the terms "Disbursement Schedule" and "Scheduled Pell Grant";

(c) Section 690.3(a)(2)(ii);

(d) Section 690.6(a) and (e);

(e) Section 690.7(a)(1) introductory text, (a)(2) (twice), (b) introductory text (twice), (c)(2), (c)(3), and (c)(4);

(f) Section 690.9(a) introductory text, (a)(1) (twice), (a)(2) introductory text, and (a)(2)(ii);

(g) Section 690.10(a) and (b);

(h) Section 690.11 heading and text;

(i) Section 690.12(a);

(j) Subpart F heading;

(k) Section 690.62(a);

(l) Section 690.64 heading, (a)(2), and (b);

(m) Section 690.65(d) introductory text, (d)(1), (d)(3), and (e) (three times);

(n) Section 690.66(b)(1) introductory text, (b)(1)(i), (b)(1)(ii), (c)(1) introductory text, (c)(1)(i), (c)(1)(ii), and (c)(5);

(o) Section 690.71;

(p) Section 690.72(a);

(q) Section 690.73(b)(2), (b)(3), and (b)(4);

(r) Section 690.75(a) introductory text, (a)(3)(i), (a)(3)(ii), (c), and (d) (twice);

(s) Section 690.78(c) introductory text;

(t) Section 690.79(a)(1) and (a)(2);

(u) Section 690.81(e)(2) and (b) (twice); and

(v) Section 690.83(a)(1) introductory text, (b)(1), and (c)(2).

§§ 690.74 and 690.81 [Amended]

4. In part 690 add the word "Federal" before the words "Pell Grants" in the following places:

(a) Section 690.74 (twice); and

(b) Section 690.81(c).

§ 690.2 [Amended]

5. Section 690.2 paragraph (b) is amended by adding in alphabetical order the term "Federal Pell Grant Program" and removing the terms "Academic year" and "Pell Grant Program".

6. Section 690.2 paragraph (c) is amended by removing the definition of "Pell Grant Index"; by adding, in alphabetical order, new definitions of "Academic year", "Annual award", "Central processor", "Expected family contribution", "Incarcerated student", "Institutional student information report", "Less-than-half-time student", and "Valid institutional student information report"; and by revising the definitions of "Disbursement Schedule", paragraph (1) under "Enrollment status", and "Payment Schedule" to read as follows:

§ 690.2 General Definitions

* * * * *

(c) * * *

Academic year: An academic year as defined in section 481 of the HEA.

Annual award: The Federal Pell Grant award amount a full-time student would receive under the Payment Schedule for a full award year, and the amount a three-quarter-time, half-time, and less-than-half-time student would receive under the appropriate Disbursement Schedule for a full award year.

Central processor: An organization under contract with the Secretary that calculates an applicant's expected family contribution based on the applicant's application data, transmits an institutional student information report to each institution designated by the applicant, and submits reports to the Secretary on the correctness of the central processor's computations of the amount of the expected family contribution and the accuracy of the answers to questions on the application form for the previous academic year.

* * * * *

Disbursement Schedule: A table showing the grant amounts that three-quarter, half-time, and less-than-half-time students at term-based institutions using credit hours would receive for an academic year. This table is published annually by the Secretary and is based on—

(1) A student's expected family contribution, as determined in accordance with title IV, part F of the Higher Education Act of 1965 (HEA), as amended; and

(2) A student's attendance costs as defined in title IV, part F of the HEA.

* * * * *

Enrollment status: (1) Full-time, three-quarter-time, half-time, or less-than-half-time depending on a student's credit-hour work load per academic term at an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours.

* * * * *

Expected family contribution (EFC): The amount an applicant and his or her spouse and family are expected to pay toward the student's cost of attendance.

* * * * *

Incarcerated student: A student serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, or other similar correctional institution. A student who is in a "half-way house" or "home detention" or is sentenced to serve only weekends is not considered incarcerated.

* * * * *

Institutional student information report: A paper document or an institutional paper printout from a computer-generated electronic record that the central processor transmits to the institution that includes an applicant's—

(1) Personal identification information;

(2) Application data used to calculate the applicant's EFC; and

(3) EFC calculated by the central processor.

* * * * *

Less-than-half-time student: An enrolled student who is carrying a less-than-half-time academic work load—as determined by the institution—that amounts to less than half the work load of the appropriate minimum requirement outlined in the institution's definition of a full-time student.

* * * * *

Payment Schedule: A table showing a full-time student's Scheduled Federal Pell Grant for a given award year. This table, published annually by the Secretary, is based on—

(1) The student's expected family contribution, as determined in accordance with part F of title IV; and

(2) The student's cost of attendance as defined in part F of title IV.

* * * * *

Valid institutional student information report: An institutional student information report—

(1) On which all the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed;

(2) That is signed by the applicant; and

(3) That, if corrections are made, is signed—

(i) By the applicant's spouse; and

(ii) If the applicant is dependent, by one of his or her parents.

* * * * *

7. Section 690.3 is amended by revising (b) introductory text, (b)(1), and (b)(2), removing (b)(3), and redesignating (b)(4) as (b)(3):

§ 690.3 Payment period.

* * * * *

(b) *Payment periods for an eligible program that does not have academic terms:* (1) For a student whose eligible program is one academic year or less—

(i) (A) The first payment period is the period of time in which the student completes the first half of his or her academic year or the first half of his or her program (in credit or clock hours); and

(B) The second payment period is the period of time in which the student completes the second half of the academic year or the second half of his or her program (in credit or clock hours); or

(ii) At an institution measuring progress in credit hours, if a student cannot earn half the credits in the academic year or program until after the midpoint between the first and last scheduled days of class, the student is considered to begin his or her second payment period on the later of—

(A) The calendar midpoint between the first and last scheduled days of class of the program or academic year; or

(B) The date, as determined by institution, that the student has completed half of his or her academic coursework.

(2) For a student whose program is more than one academic year in credit or clock hours, the payment periods must be calculated under paragraph (b)(1) of this section unless the remaining portion of the program is less than an academic year. If the remaining portion of the program is less than an academic year, each payment period must be the period of time in which a student first completes—

(i) One-half of the academic year as determined under the provisions in (b)(1); or

(ii) The remaining hours in the student's program.

* * * * *

8. Section 690.8 is amended by removing paragraphs (c), (d), and (e), and by amending paragraph (b) by adding a second sentence to read as follows:

§ 690.6 Duration of student eligibility.

* * * * *

(b) * * * Any noncredit or remedial course taken by a student, including a course in English language instruction, is not included in the institution's determination of that student's period of Federal Pell Grant eligibility.

(Authority: 20 U.S.C. 1070a)

9. Section 690.8 is amended by revising paragraphs (c) and (d) to read as follows:

§ 690.8 Enrollment status for students taking regular and correspondence courses.

* * * * *

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or a combination of correspondence work and regular course work is considered a less-than-half-time student.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to 6 credits per term.

Under § 691.8	Number of credit hours regular work	Number of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.
(c)[1]				Less-than-half-time.

[1] Any combination of regular and correspondence work that is greater than 0, but less than 6 hours.

10. Section 690.10 is amended by revising the authority citation at the end of the section and by adding a new paragraph (c) to read as follows:

§ 690.10 Administrative cost allowance to participating schools.

* * * * *

(c) If an institution enrolls a significant number of students who are attending less-than-full-time or are independent students, the institution shall use a reasonable proportion of these funds to make financial aid services available during times and in places that will most effectively accommodate the needs of those students.

(Authority: 20 U.S.C. 1096)

11. Section 690.13 is amended by revising the first sentence to read as follows:

§ 690.13 Notification of expected family contribution.

The Secretary sends a "Student Aid Report" (SAR) to each eligible applicant and an institutional student information report to each institution designated by the applicant. * * *

Subpart C—[Removed and Reserved]

12. Subpart C is removed and reserved.

13. Section 690.61 is revised to read as follows:

§ 690.61 Submission process and deadline for a student aid report or institutional student information report.

(a) *Submission process.* (1) Except as provided in paragraph (a)(2) of this section, an institution may make a disbursement of a Federal Pell Grant to a student only if—

(i) The student has submitted a valid SAR to the institution; or

(ii) The institution—

(A) Has obtained a valid institutional student information report for that student; and

(B) Participates in the Secretary's electronic programs (Recipient Data Exchange, Electronic Data Exchange, or "Floppy Disk" Exchange) to report Federal Pell Grant disbursements; and

(C) Uses that institutional student information report to determine the student's eligibility to receive his or her Federal Pell Grant.

(2) An institution may make one disbursement of a student's Federal Pell Grant without a valid SAR or valid institutional student information report if it follows the procedures described in § 690.77.

(3) An institution is entitled to rely on valid SAR information or valid institutional student information report information except under the conditions set forth in 34 CFR 668.14(f) and 668.60.

(b) *Student Aid Report or institutional student information report deadline.* (1) Except as noted in 34 CFR 668.60, for a student to receive a Federal Pell Grant for an award year, the student must submit the relevant parts of the SAR to his or her institution or the institution must receive a valid institutional student information report by June 30 of that award year.

(2) Except as noted in 34 CFR 668.60, for a student to receive a Federal Pell Grant for an award year, the student must submit the relevant parts of the SAR to his or her institution or the institution must receive a valid institutional student information report while the student is still enrolled and eligible for payment at that institution.

(Authority: 20 U.S.C 1070a)

14. Section 690.62 is amended by revising the heading of the section, by removing paragraph (c), and by revising paragraph (b), to read as follows:

§ 690.62 Calculation of a Federal Pell Grant.

* * * * *

(b) No payment may be made to a student if the student's Scheduled Federal Pell Grant is less than $200. However, a student who is eligible for a Federal Pell Grant that is equal to or greater than $200, but less than or equal to $400, shall be awarded a Federal Pell Grant of $400.

15. Section 690.63 is revised to read as follows:

§ 690.63 Calculation of a Federal Pell Grant for a payment period.

(a)(1) *Programs using standard terms with at least 30 weeks of instructional time.* A student's Federal Pell Grant for a payment period is calculated under paragraph (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(D) Is not offered with multiple start dates or overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Provides at least 30 weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section.

(2) *Programs using standard terms with less than 30 weeks of instructional time.* A student's Federal Pell Grant for a payment period is calculated under paragraph (c) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C) Requires the student to enroll in at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(D) Is not offered with multiple start dates or overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Does not provide at least 30 weeks of instructional time in the terms specified in paragraph (a)(2)(ii)(A) of this section.

(3) *Other programs using terms and credit hours.* A student's Federal Pell Grant for a payment period is calculated under paragraph (d) of this section if the student is enrolled in an eligible program that—

(i) Measures progress in credit hours; and

(ii) Is offered in academic terms other than those described in paragraphs (a)(1) and (a)(2) of this section.

(4) *Programs not using terms or using clock hours.* A student's Federal Pell Grant for any payment period is calculated under paragraph (e) of this section if the student is enrolled in an eligible program that—

(i) Is offered in credit hours but is not offered in academic terms; or

(ii) Is offered in clock hours.

(b) *Programs using standard terms with at least 30 weeks of instructional time.* The Federal Pell Grant for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with at least 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time students; and

(3) Dividing the amount described under paragraph (b)(2) of this section by—

(i) Two at institutions using semesters or trimesters or three at institutions using quarters; or

(ii) The number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the institution's academic year.

(c) *Programs using standard terms with less than 30 weeks of instructional time.* The Federal Pell Grant for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with less than 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(2)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time students;

(3) Either—

(i)(A) Multiplying his or her annual award determined under paragraph (c)(2) of this section by the following fraction as applicable:

At an institution using semesters or trimesters—

$$\frac{\text{The number of weeks of instructional time offered by the institution in the fall and spring semesters}}{\text{The number of weeks in the institution's academic year}}$$

; or

At an institution using quarters—

$$\frac{\text{The number of weeks of instructional time offered by the institution in the fall, winter, and spring quarters}}{\text{The number of weeks in the institution's academic year}}$$

; and

(B) Dividing the amount determined under paragraph (c)(3)(i)(A) of this section by two at institutions using semesters or trimesters or three at institutions using quarters; or

(ii) Dividing the student's annual award determined under paragraph (c)(2) by the number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (c)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms including the additional term or terms equals the weeks of instructional time in the institution's academic year.

(d) *Other programs using terms and credit hours.* The Federal Pell Grant for a payment period, *i.e.*, an academic term, for a student in a program using terms and credit hours, other than those described in paragraphs (a) (1) or (2) of this section, is calculated by—

(1)(i) For a student enrolled in a semester, trimester, or quarter, determining his or her enrollment status for the term; or

(ii) For a student enrolled in a term other than a semester, trimester, or quarter, determining his or her enrollment status for the term by—

(A) Dividing the number weeks of instructional time in the term by the number of weeks of instructional time in the institution's academic year;

(B) Multiplying the fraction determined under paragraph (d)(1)(ii)(A) by the number of credit hours in the institution's academic year to determine the number of hours required to be enrolled to be considered a full-time student; and

(C) Determining a student's enrollment status by calculating the proportion of the number of hours in which the student enrolls in the term to the number of hours required to be considered full-time under paragraph (d)(1)(ii)(B) of this section;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time student;

(3) Multiplying his or her annual award determined under paragraph (d)(2) of this section by the following fraction:

$$\frac{\text{The number of weeks of instructional time in the term}}{\text{The number of weeks of instructional time in the institution's academic year}}$$

; and

(4) Paying the student the amount determined under paragraph (d)(3) of this section.

(e) *Programs using clock hours or credit hours without terms.* The Federal Pell Grant for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by—

(1) Determining the student's Scheduled Federal Pell Grant using the Payment Schedule;

(2) Multiplying the Scheduled Award by—

$$\frac{\text{The number of weeks of instructional time for a full-time student to complete the lesser of the clock or credit hours in the program or the academic year}}{\text{The number of weeks of instructional time in the institution's academic year}}$$

; and

(3) Multiplying the amount determined under paragraph (e)(2) of this section by—

$$\frac{\text{The number of credit or clock hours in a payment period}}{\text{The number of credit or clock hours in the institution's academic year}}$$

(f) A single disbursement may not exceed 50 percent of any award determined under paragraph (d) or (e) of this section. If a payment for a payment period calculated under paragraphs (d) or (e) of this section would require the disbursement of more than 50 percent of a student's annual award in that payment period, the institution shall make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student's annual award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the institution's academic year.

(g) Notwithstanding paragraphs (b), (c), (d), (e), and (f) of this section—

(1) The amount of a student's award for an award year may not exceed his or her Scheduled Federal Pell Grant award for that award year; and

(2) An incarcerated student's Federal Pell Grant shall not exceed the sum of the amount of tuition and fees normally assessed for that course of study by the institution plus the actual cost of books and supplies.

(h) For purposes of this section, an institution must define its academic year for each of its eligible programs in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of section 481(d) of the HEA.

16. Section 690.65 is amended by revising paragraphs (a), (c), and (f) to read as follows:

§ 690.65 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a Federal Pell Grant at one institution subsequently enrolls at a second institution in the same award year, the student may receive a grant at the second institution only if—

(1) The student has submitted a valid SAR; or

(2) The second institution participates in the Secretary's electronic programs to report Federal Pell Grant disbursements (Recipient Data Exchange, Electronic Data Exchange, or "Floppy Disk" Exchange) and the second institution has obtained a valid institutional student information report, in which case the institution shall use the information from the valid institutional student information report to determine the amount of the student's award. (The institution shall follow the procedures set forth in 34 CFR 668.19 relating to financial aid transcripts.)

* * * * *

(c) The second institution may pay a Federal Pell Grant only for that portion of the academic year in which a student is enrolled at that institution. The grant amount must be adjusted, if necessary, to ensure that the grant does not exceed the student's Scheduled Federal Pell Grant for that award year.

* * * * *

(f) A transfer student shall repay any amount received in an award year that exceeds his or her Scheduled Federal Pell Grant.

§ 690.73 [Amended]

17. Section 690.73(b)(1) is amended by adding after the word "institution" the words "or for whom the institution received a valid institutional student information report".

18. Section 690.75 is amended by revising paragraphs (a)(2), and (b), and by adding new paragraphs (f), (g), and (h) to read as follows:

§ 690.75 Determination of eligibility for payment.

(a) * * *

(2) Is enrolled as an undergraduate student; and

* * * * *

(b) If an eligible student submits a valid SAR to the institution or the institution receives a valid institutional student information report for that student and that student then becomes ineligible before receiving a payment, the institution may pay the student only the amount that it determines could have been used for educational purposes before the student became ineligible.

* * * * *

(f) If the student is an incarcerated student, the student is eligible to receive a Federal Pell Grant if—

(1) (i) The State in which the student is incarcerated has submitted, and the Secretary has approved, a report as described in § 690.75(g); or

(ii) The student is a federally incarcerated student in any state; and

(2) The student is not under sentence of death or under sentence of life imprisonment without eligibility for parole or release.

(g) For an eligible incarcerated student to receive funds during an award year, the State in which the student is incarcerated must file a report annually on a form approved by the Secretary. The report confirms that the State expended as much on postsecondary educational assistance for incarcerated students during the Federal fiscal year prior to the year in which an incarcerated student is otherwise eligible to receive a Federal Pell Grant as was expended by the State for incarcerated students in Federal fiscal year 1988. For purposes of this report, States must provide information about State postsecondary educational expenditures for incarcerated students for the Federal fiscal year prior to the year in which the student is eligible and Federal fiscal year 1988. The report must include fiscal information about the following—

(1) Appropriated funds, including funds appropriated to State Departments of Correction or other State agencies, expended for postsecondary education assistance to incarcerated students;

(2) Tuition waivers for postsecondary incarcerated students;

(3) Tuition reimbursements for postsecondary incarcerated students;

(4) State postsecondary educational assistance programs where the funds are expended for incarcerated students (except the Federal portion of any grant under the State Student Incentive Grant Program, and any other Federal postsecondary assistance);

(5) Special school district funding for postsecondary education for incarcerated students; and

(6) Any other funds expended on postsecondary educational assistance for incarcerated students, excluding any Federal assistance.

(h) For each payment period during which an incarcerated student is otherwise eligible, the institution may make payments to the student only if the State has submitted its annual report and the Secretary approved that report prior to the payment period during which the student is eligible to be paid. The institution shall not make payments to an incarcerated student for payment periods during which the student was enrolled and eligible but the State's annual report was not submitted and approved by the Secretary.

19. Section 690.77 is revised to read as follows:

§ 690.77 Initial disbursement of a Federal Pell Grant in an award year without a valid SAR or valid institutional student information report.

(a) Within an award year, an institution may make one disbursement of a student's Federal Pell Grant before receiving the student's valid SAR or valid institutional student information report if the institution—

(1) Receives a student's application information;

(2) Does not have documentation that indicates that the application information is inaccurate; and

(3) Receives an EFC—

(i) From the Secretary; or

(ii) From an organization that has a contract with the Secretary to transmit application data to the Secretary.

(b) If an institution receives a student's application information specified in paragraphs (a)(1) and (a)(3) of this section and his or her EFC from the Secretary, or his or her EFC as calculated by the Secretary from an organization that has a contract to transmit application data to the Secretary, but the institution has documentation that indicates that the application information is inaccurate, the institution may make one disbursement of a student's Federal Pell Grant within an award year before receiving the student's valid SAR or valid institutional student information report if the institution—

(1) Resolves the inconsistencies between its documentation and the student's application information;

(2) Recalculates the student's EFC based on correct information;

(3) Makes the disbursement of the student's Federal Pell Grant for the first payment period based on the recalculated EFC; and

(4) Reports the changes in the student's application information and the recalculated EFC to the Secretary within the deadline established by the Secretary.

(c)(1) If an institution chooses to make a disbursement under paragraph (a) or (b) of this section, it shall be liable for that disbursement if the institution does not receive a valid SAR or valid institutional student information report for the student for that award year.

(2) If an institution chooses to make a disbursement under paragraph (b) of this section, the institution and the student shall be liable for any overpayment caused by an incorrect recalculation of the student's EFC.

(3) If a student receives an overpayment as a result of a disbursement made under paragraph (a) or (b) of this section, the institution shall eliminate the overpayment by following the procedures described in 34 CFR 668.61(a).

(Authority: 20 U.S.C. 1070a)

20. Section § 690.80 is amended by revising the section heading and paragraphs (a) and (b)(1) to read as follows:

§ 690.80 Recalculation of a Federal Pell Grant award.

(a) *Change in expected family contribution.* (1) The institution shall recalculate a Federal Pell Grant award for the entire award year if the student's expected family contribution changes at any time during the award year. The change may result from—

(i) The correction of a clerical or arithmetic error under § 690.14; or

(ii) A correction based on information required in § 690.12 or § 690.77.

(2) Except as described in 34 CFR 668.60(c), the institution shall adjust the student's award when an overaward or underaward is caused by the change in the expected family contribution. That adjustment must be made—

(i) Within the same award year—if possible—to correct any overpayment or underpayment; or

(ii) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(b) *Change in enrollment status.* (1) If the student's enrollment status changes from one academic term to another term within the same award year, the institution shall recalculate the Federal Pell Grant award for the new payment period taking into account any changes in the cost of attendance.

* * * * *

21. Section 690.82 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 690.82 Maintenance and retention of records.

(a) Each institution shall maintain adequate records (including those related to verification), which include the fiscal and accounting records that are required under § 690.81, records required for audits in 34 CFR 668.23, the SAR or institutional student information report of each student who received a Federal Pell Grant, and records indicating—

(1) The eligibility of all enrolled students who have submitted valid SARs to the institution or for whom the institution has received valid institutional student information report;

* * * * *

22. A new part 691 is added to read as follows:

PART 691—PRESIDENTIAL ACCESS SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

691.1 Scope and purpose.
691.2 General definitions.
691.3 Definitions of payment period.
691.4 [Reserved]
691.5 [Reserved]
691.6 Duration of student eligibility.
691.7 Institutional participation.
691.8 Enrollment status for students taking regular and correspondence courses.
691.9 Written agreements between two or more eligible institutions.
691.10 [Reserved]
691.11 Payments from more than one institution.

Subpart B—Application Procedures and Eligibility Requirements

691.12 The application process.
691.13–691.14 [Reserved]
691.15 Eligibility to apply initially for a scholarship.
691.16 Eligibility requirements to receive an award.
691.17 Eligibility requirements to continue to receive an award.

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—Determination of Awards

691.61 Disbursement conditions and deadlines.
691.62 Calculation of a Presidential Access Scholarship Program award.
691.63 Calculation of a Presidential Access Scholarship for a payment period.
691.64 Calculation of a Presidential Access Scholarship for a payment period that occurs in 2 award years.
691.65 Transfer student: attendance at more than one institution during an award year.
691.66 Correspondence study.

Subpart G—Institutional Administration

691.71 Scope.
691.72 Institutional participation agreement.
691.73 Termination of institutional participation agreement.
691.74 [Reserved]
691.75 Determination of eligibility for payment.
691.76 Frequency of payment.
691.77 Initial disbursement of a PAS in an award year without a valid SAR or institutional student information report.

691.78 Method of disbursement by check or credit to a student's account.
691.79 Recovery of overpayments.
691.80 Recalculation of a PAS Program award.
691.81 Fiscal control and fund accounting procedures.
691.82 Maintenance and retention of records.
691.83 Submission of reports.

Subpart H—Administrative Responsibilities of a State

691.90 Early-intervention agreement.
691.91 Records a State must maintain.

Authority: 20 U.S.C. 1070a-31 et seq.

Subpart A—General

§ 691.1 Scope and purpose.

The purposes of the Presidential Access Scholarship (PAS) Program are to encourage students to finish high school and attend college and to upgrade the course of study completed by high school graduates who are from low or moderate-income families.

(Authority: 20 U.S.C. 1070a–31)

§ 691.2 General definitions.

(a) Definitions of the following terms used in this part are described in subpart A of the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
program
Program of study by correspondence
Recognized equivalent of high school diploma
Secretary

(b) Definitions of the following terms used in this part are described in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Award year
Enrolled
Federal Pell Grant Program
Public or private nonprofit institution of higher education
Regular student
State

(c) Other terms used in this part are:

Academic year: An academic year as defined in section 481 of the HEA.

Central processor: An organization under contract with the Secretary that calculates an applicant's expected family contribution based on the applicant's application data, transmits an institutional student information report to each of the institutions designated by the applicant, and submits reports to the Secretary on the correctness of the central processor's computations of the amount of the expected family contribution and the accuracy of the answers to questions on the application form for the previous academic year.

Disbursement Schedule: A table showing the scholarship amounts for three-quarter, half-time, and less-than-half-time students at term-based institutions using credit hours would receive for an academic year. This table, published annually by the Secretary, is based on the amount of a student's Federal Pell Grant.

Electronic Data Exchange: An electronic exchange system between the Secretary and an institution under which a student is able to correct or verify information contained on his or her SAR at the institution he or she is attending and the institution is able to print out a SAR for that student that is based on the corrected or verified information.

Eligible early-intervention program: A program as required under § 691.16(a)(5) that provides education-related activities such as counseling, mentoring, academic support, outreach, and other supportive services, including providing information on opportunities for postsecondary financial aid, to students enrolled in preschool through grade 12. To qualify, a program must be one of the following:

(1) A Talent Search project as described in 34 CFR part 643 and authorized under section 402B of the HEA, as amended;

(2) An Upward Bound project as described in 34 CFR part 645 and authorized under section 402C of the HEA, as amended;

(3) An Opportunity Center as described in 34 CFR part 644 and authorized under section 402F of the HEA, as amended; or

(4) A National Early Intervention Scholarship and Partnership Program as authorized under section 404A of the HEA, as amended; or

(5) A program that is certified as an honors scholars program by the Governor of the State in which it is offered and that the Governor determines meets comparable requirements for any program funded under 34 CFR parts 643, 644, 645, or section 404A of the HEA.

Eligible institution: An institution as defined in section 481 of the HEA.

Eligible program: A program as defined in section 481 of the HEA.

Expected family contribution (EFC): The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

Full-time student: An enrolled student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarter system;

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than 1 academic year;

(3) 24 clock hours per week for an institution using clock hours;

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equal 12 semester hours or 12 quarter hours in a maximum of 18 weeks; or

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

Half-time student: (1) Except as provided in paragraph (2) of this definition, an enrolled student who is carrying a half-time academic work load—as determined by the institution—that amounts to at least half the work load of the appropriate minimum requirement outlined in the institution's definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours of work per week or is earning at least 6 credit hours per semester, trimester, or quarter. However, regardless of the workload, no student enrolled solely in correspondence study is considered more than a half-time student.

Honors scholars program: A program designed to encourage a high level of academic achievement from students who are enrolled in the program.

Institution of higher education (Institution): An institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution as defined in section 481 of the HEA.

Institutional student information report: A paper document or an institutional paper printout from a computer-generated electronic record that the central processor transmits to the institution, which includes an applicant's—

(1) Personal identifying information;

(2) Application data used to calculate the applicant's EFC; and

(3) EFC calculated by the central processor.

Less than half-time student: An enrolled student who is carrying a less than half-time academic work load—as determined by the institution—that amounts to less than half the work load of the appropriate minimum requirement outlined in the definition of a full-time student.

Payment Schedule: A table showing a full-time student's Scheduled PAS Award for an academic year. This table is published annually by the Secretary.

Scheduled Presidential Access Scholarship: The amount of a PAS that would be paid to a full-time student for a full academic year.

Student Aid Report (SAR): A report provided to an applicant showing the amount of his or her expected family contribution.

Student Aid Report (SAR) Payment Document: A part of the SAR that is provided to the Secretary by an institution showing an applicant's expected family contribution, cost of attendance, and enrollment status at that institution.

Three-quarter-time student: An enrolled student who is carrying a three-quarter-time academic work load—as determined by the institution—that amounts to at least three-quarters of the work of the appropriate minimum requirement outlined in the definition of a "full-time student."

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study that usually does not exceed 4 academic years or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student only for the first 4 academic years of that program.

Valid institutional student information report: An institutional student information report—

(1) On which all the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed;

(2) That is signed by the applicant; and

(3) That if corrections are made, is signed—

(i) By the applicant's spouse; and

(ii) If the applicant is dependent, by one of his or her parents.

Valid Student Aid Report: A Student Aid Report—

(1) On which all of the information used in the calculation of the applicant's expected family contribution is accurate and complete as of the date the application is signed; and

(2) For the Electronic Data Exchange, that is signed by the applicant and, if corrections are made—

(i) Is signed by the applicant's spouse; and

(ii) If the applicant is dependent, is signed by one of his or her parents.

(Authority: 20 U.S.C. 1070a—31 *et seq.*)

§ 691.3 Definitions of payment period.

(a) *Payment period for an eligible program that has academic terms:*

(1) Except as noted in paragraph (a)(2) of this section, for an eligible program that uses semesters, trimesters, quarters, or other academic terms, the payment period is the semester, trimester, quarter, or other academic term.

(2) For an eligible program that uses semesters, trimesters, quarters, or other academic terms and measures progress in clock hours—

(i) A payment period is a semester, trimester, quarter, or other academic term if the student completes all the clock hours scheduled for that term;

(ii) If at the end of a term, the student has not completed all of the clock hours scheduled for that term and the student has received a PAS for that term, the payment period extends beyond that term for as long as it takes the student to complete the number of clock hours originally scheduled for that term; and

(iii) If a payment period extends into another term, the next payment period consists of the number of clock hours scheduled for that term that were not included in the previous payment period.

(b) Payment period for an institution that does not have academic terms:

(1) For the first academic year for a student—

(i) The first payment period is the period of time in which the student completes the first half of his or her academic year (in credit hours or clock hours);

(ii) The second payment period is the period of time in which the student completes the second half of that academic year.

(2) For subsequent academic years, or fractions of academic years, each payment period must be the period of time in which a student completes—

(i) One-half of the academic year; or

(ii) The remaining hours in the student's program, whichever is to be completed first.

(3) For a student whose remaining program is less than an academic year—

(i) The first payment period must be the period of time in which the student completes the first half of his or her remaining program (in credit or clock hours); and

(ii) The second payment period must be the period of time in which the student completes the second half of his or her remaining program.

(4) If an institution chooses to have more than two payment periods in an academic year, the rules in paragraphs (b)(1) through (b)(3) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year.

(Authority: 20 U.S.C. 1070a–32)

§§ 691.4–691.5 [Reserved]

§ 691.6 Duration of student eligibility.

A scholarship under the PAS Program shall be awarded to a student for a period of—

(a) Not more than 4 academic years; or

(b) Not more than 5 academic years in the case of a student who is enrolled in an undergraduate course of study requiring attendance for the full-time equivalent of 5 academic years.

(Authority: 20 U.S.C. 1070a–32)

§ 691.7 Institutional participation.

(a)(1) An institution of higher education is eligible to award scholarships for the PAS Program if it—

(i) Meets the appropriate definition set forth in section 481 of the HEA;

(ii) Enters into a program participation agreement with the Secretary; and

(iii) Complies with that agreement and with the applicable provisions of this part and 34 CFR part 668.

(2) If an institution begins participation in the PAS Program during an award year, a student enrolled in and attending that institution is eligible to receive a PAS for the payment period during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

(b) If an institution becomes ineligible to participate in the PAS Program

during an award year, an eligible student who was attending the institution and who submitted a valid SAR to the institution or whose institution received a valid institutional student information report from the U.S. Department of Education before the date the institution became ineligible is paid a PAS for that award year for—

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(c) An institution that becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary—

(1) The name and enrollment status of each eligible student who, during the award year, received a PAS at the institution before it became ineligible;

(2) The amount of funds paid to each PAS recipient for that award year;

(3) The amount due each student eligible to receive a PAS through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the PAS expenditures for that award year to the date of ineligibility.

(Authority: 20 U.S.C. 1070a–32)

§ 691.8 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work which—

(1) Applies toward a student's degree or certificate;

(2) Is completed within the period of time required for regular course work; and

(3) Does not exceed the amount of a student's regular course work for the payment period for which the student's enrollment status is being calculated.

(c) (1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or a combination of correspondence work and regular course work is considered a less-than-half-time student.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to 6 credits per term.

Under § 691.8	Number of credit hours regular work	Number of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.
(c)[1]				Less-than-half-time.

[1] Any combination of regular and correspondence work that is greater than 0, but less than 6 hours.

(Authority: 20 U.S.C. 1070a–32)

§ 691.9 Written agreements between two or more eligible institutions.

(a) A student who is enrolled in an eligible program at one eligible institution and taking courses at one or more other eligible institutions that apply toward his or her degree or certificate at the first institution may receive a PAS for attendance at both institutions only if there is a written agreement between the institutions.

(b) The institution at which the student is enrolled and expects to receive his or her degree or certificate shall determine and pay the student's PAS. However, the other institution may determine and pay the student's PAS if the institutions agree in writing to that arrangement.

(c) The institution that determines and pays the PAS shall—

(1) Take into account all courses that apply to the student's degree or certificate taken by the student at each eligible institution participating in the agreement when determining the student's enrollment status and cost of attendance; and

(2) Maintain all records regarding the student's eligibility for and receipt of the PAS.

(Authority: 20 U.S.C. 1070a–32)

§ 691.10 [Reserved]

§ 691.11 Payments from more than one institution.

A student is not entitled to receive PAS Program payments concurrently from more than one institution or from the Secretary and an institution.

(Authority: 20 U.S.C. 1070a–32)

Subpart B—Application Procedures and Eligibility Requirements

§ 691.12 The application process.

Each eligible student desiring to apply for a PAS shall—

(a) Submit annually an application to the Secretary on the same approved form and at the same time the student applies for a Federal Pell Grant;

(b) Provide the application to the Secretary within the time frame required to apply for a Federal Pell Grant; and

(c) Provide such information as is required to apply for a Federal Pell Grant.

(Authority: 20 U.S.C. 1070a–33)

§§ 691.13–691.14 [Reserved]

§ 691.15 Eligibility to apply initially for a scholarship.

A student is eligible to apply for a PAS for his or her first year of postsecondary study if the student—

(a) Is scheduled to graduate from or is a graduate of a public or private secondary school, or has the equivalent of a high school diploma as recognized by the State in which the eligible student resides, but has not yet received a baccalaureate degree; and

(b) Is either enrolled, accepted for enrollment, or intends to enroll, at an institution of higher education not later than 3 calendar years after the date that the student graduates from secondary school or obtains the recognized equivalent of a high school diploma.

(Authority: 20 U.S.C. 1070a–35)

§ 691.16 Eligibility requirements to receive an award.

(a) A student is eligible to receive a PAS for his or her first year of postsecondary study if the student—

(1) Is eligible to receive a Federal Pell Grant in the award year in which the PAS is awarded;

(2) Is enrolled or accepted for enrollment in a degree or certificate program of at least 2 years in length;

(3) Has demonstrated academic achievement and preparation for postsecondary education by taking the following college preparatory level coursework that includes at least—

(i) Four years of English;

(ii) Three years of science;

(iii) Three years of mathematics;

(iv) Either—

(A) Three years of history; or

(B) Two years of history and one year of social studies; and

(v) Either—

(A) Two years of foreign language; or

(B) One year of computer science and 1 year of foreign language;

(4) Has earned a gradepoint average of 2.5 or higher, on a scale of 4.0, in the final 2 years of high school; and

(5) Has either (i) participated for a minimum period of 36 months in an eligible early-intervention program; or

(ii) Ranked in the top 10 percent, by grade point average, of the student's secondary school graduating class.

(b) Notwithstanding the requirements in paragraph (a)(5) of this section, a student may receive a PAS if an authorized official of the State in which the student resides certifies to the Secretary that the student was unable to participate in an eligible early-intervention program because—

(1) The program was not available in the area where the student resides; or

(2) Due to unusual and exceptional circumstances, the student was unable to participate in such a program.

(c) Notwithstanding the requirements in paragraph (a)(3) of this section, a student may receive a PAS if the student's secondary school does not offer the necessary coursework required in paragraph (a)(3) of this section, and the student has completed the required coursework at another local secondary school or at a community college.

(d) Notwithstanding the requirements in paragraph (a)(3)(v) of this section, a student may receive a PAS if the student is—

(1) Fluent in a language other than English and participates in a program to learn English; or

(2) An English-speaking student who is fluent in a second language.

(Authority: 20 U.S.C. 1070a–33, 1070a–35, 1070a–36(c))

§ 691.17 Eligibility requirements to continue to receive an award.

(a) To be eligible to continue to receive a PAS after the first year of postsecondary study, a student shall—

(1) Continue to meet the eligibility requirements in § 691.16(a) (1) and (2); and

(2) Fulfill the requirements for satisfactory academic progress as described in § 668.7(c) of the Student Assistance General Provisions regulations and section 484(c) of the HEA.

(b) If a student ceases to be eligible for a PAS because he or she is no longer eligible for a Federal Pell Grant, the student can later regain eligibility to receive a PAS at the time he or she qualifies for a Federal Pell Grant.

(Authority: 20 U.S.C. 1070a–33)

Subparts C–E [Reserved]

Subpart F—Determination of Awards

§ 691.61 Disbursement conditions and deadlines.

(a) *Submission process.* (1) Except as provided in paragraph (a)(2) of this section, an institution makes a disbursement of a PAS to a student only if—

(i) (A) The student has submitted a valid Student Aid Report (SAR) to that institution; or

(B) The institution has obtained a valid institutional student information report for that student, the institution participates in the Secretary's electronic programs (Recipient Data Exchange, Electronic Data Exchange, or "Floppy Disk" Exchange) to report Federal Pell Grant disbursements, and the institution uses that institutional student information report for the student to receive his or her PAS; and

(ii) (A) The student presents a certificate issued by an appropriate official of a high school in a State verifying that the student has completed the necessary coursework to qualify for a PAS; or

(B) The student presents written documentation that he or she has participated in an approved eligible early-intervention program for at least 36 months or qualifies for an exception under §§ 691.16(b).

(2) An institution may make one disbursement of a student's PAS without a valid SAR or valid institutional student information report if it follows the procedures described in § 691.77.

(3) An institution may rely on valid SAR information or institutional student information report information except under conditions set forth in 34 CFR 668.14(f) and 668.60.

(b) *Student Aid Report or institutional student information report deadline.*

(1) Except as noted in 34 CFR 668.60, to receive a PAS for an award year, a student shall submit to his or her institution the relevant parts of the SAR or the institution shall receive a valid institutional student information report by June 30 of that award year.

(2) Except as noted in 34 CFR 668.60, for a student to receive a PAS for an award year, the student shall submit to his or her institution the relevant parts of the SAR or the institution shall receive a valid institutional student information report while the student is still enrolled and eligible for payment at that institution.

(Authority: 20 U.S.C. 1070a–32)

§ 691.62 Calculation of a Presidential Access Scholarship Program award.

The amount of a student's PAS for an academic year is equal to 25 percent of the student's Federal Pell Grant awarded for that academic year as determined under 34 CFR 690.62 except that—

(a) If funding in a fiscal year is sufficient to fund fully all eligible student awards in that academic year, no payment shall be made to a full-time student of less than $400 for an academic year, independent of the amount of the Federal Pell Grant.

(b) If funding is insufficient to fund fully all eligible students, the Secretary reduces each student's award in proportion to the amount that the PAS Program is not fully funded.

(Authority: 20 U.S.C. 1070a–32)

§ 691.63 Calculation of a Presidential Access Scholarship for a payment period.

For an eligible student enrolled in an institution of higher education in an eligible program, the student's PAS for each payment period is calculated by—

(a) Determining his or her total PAS award in accordance with § 691.62; and

(b) Determining the amount of each payment based on the payment amount for a Federal Pell Grant as calculated in accordance with § 690.63.

(Authority: 20 U.S.C. 1070a–32)

§ 691.64 Calculation of a Presidential Access Scholarship for a payment period that occurs in 2 award years.

(a) If a student enrolls in a payment period that is scheduled to occur in 2 award years—

(1) The entire payment period must be considered to occur within 1 award year.

(2) The institution shall determine for each PAS recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraph (a)(3) of this section.

(3) The institution shall place a payment period with more than 6 months scheduled to occur within 1 award year in that award year.

(4) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year.

(5) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(b) An institution may not make a payment that will result in the student receiving more than his or her Scheduled PAS for an award year

(c)(1) If an eligible program uses academic terms and offers a series of minisessions that occur in 2 award years, the combined sessions must be treated as one term. A student may not receive more that one term's award for completing any combination of these minisessions.

(2) For each minisession, an institution that uses academic terms in an eligible program shall determine the student's enrollment status for the entire term. That enrollment status must be based on—

(i) The total number of credits for which the student enrolled in all sessions if that number is known when the award is calculated; or

(ii) A projected number of credits based on the credits enrolled for in the first session, if the number of credits to be taken in subsequent sessions is unknown when the award is calculated.

(Authority: 20 U.S.C. 1070a–32)

§ 691.65 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a PAS at one institution subsequently enrolls at a second institution in the same award year, the student may receive a PAS at the second institution only if—

(1) The student has submitted a valid SAR; or

(2) The second institution participates in the Secretary's electronic programs (Recipient Data Exchange, Electronic Data Exchange, or "Floppy Disk" Exchange) to report Federal Pell Grant disbursements and the second institution obtains a valid institutional student information report, in which case the institution shall use the information from the institutional student information report to determine the student's PAS.

(b) The second institution shall calculate the student's award according to § 691.63.

(c) The second institution may pay a PAS only for that portion of the award year in which a student is enrolled at that institution. The scholarship amount must be adjusted, if necessary, to ensure that the scholarship award does not exceed the percentage of the award remaining from the student's first institution for that award year.

(d) If a student's PAS award at the second institution differs from the Scheduled PAS Award at the first institution, the award amount at the second institution is calculated as follows—

(1) The amount received at the first institution is compared to the PAS award at the first institution to determine the percentage of the PAS award that the student has received.

(2) The percentage in paragraph (d)(1) of this section is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the Scheduled PAS award at the second institution to which the student is entitled.

(e) The student's PAS award for each payment period is calculated according to the procedures in § 691.63, unless the remaining percentage of the Scheduled PAS at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student's PAS is equal to the remaining percentage.

(f) A transfer student shall repay any amount received in an award year which exceeds his or her Scheduled PAS.

(Authority: 20 U.S.C. 1070a–32)

§ 691.66 Correspondence study.

A student enrolled in an eligible program of study by correspondence must be paid according to the following procedures:

(a) The institution shall determine the length of each correspondence program it offers by preparing a written schedule for submission of lessons, reflecting a work load of at least 12 hours of preparation per week.

(b)(1) For an institution, if there is not a required period of residential training in the program, a student's PAS for an academic year is calculated by—

(i) Determining the student's PAS award based on § 691.62; and

(ii) Multiplying the Scheduled PAS by one-half.

(2) An academic year must consist of two payment periods. The first payment period must be the period of time in which the student completes the first half of his or her academic year. The second payment period must be the period of time in which the student completes the second half of the academic year.

(3) For the first payment period, the institution shall pay the student one-half of the amount calculated in paragraph (b)(1)(ii) of this section after he or she has submitted 25 percent of the lessons or otherwise completed 25 percent of the work scheduled for the academic year or for the program if the program is less than an academic year.

(4) The institution shall make the final payment for the second payment period after the student has submitted 75 percent of the lessons or otherwise completed 75 percent of the work scheduled for the academic year or for the program.

(c) (1) For an institution, if there is a required period of residential training in the program, a student's PAS for an academic year is calculated by—

(i) Determining the student's PAS award according to § 691.62, and;

(ii) Multiplying the Scheduled PAS by one-half.

(2) The nonresidential portion of an academic year must consist of two payment periods. The first payment period must be the period of time in which the student completes the first half of his or her academic year or the nonresidential portion of the program if it is less than an academic year. The second payment period must be the period of time in which the student completes the second half of the academic year or nonresidential portion of the program.

(3) For the first payment period, the institution shall pay the student one-half of the amount calculated in paragraph (c)(1)(ii) of this section after he or she has submitted 25 percent of the nonresidential lessons or otherwise completed 25 percent of the work scheduled for the academic year or for the program if the program is less than an academic year.

(4) The institution shall make the final payment (for the nonresidential portion of the program) for the second payment period after the student has submitted 75 percent of the nonresidential lessons or otherwise completed 75 percent of the work scheduled for the academic year or for the program.

(5) A student's PAS disbursement for the residential portion of the program is calculated according to the procedures in § 691.63(c) for a student enrolled in a regular course of study at an institution that measures progress by clock hours.

(Authority: 20 U.S.C. 1070a–32)

Subpart G—Institutional Administration

§ 691.71 Scope.

This subpart deals with program administration by an institution of higher education. An institution shall enter into a program participation agreement with the Secretary so that it may calculate and pay PAS awards to students.

(Authority: 20 U.S.C. 1070a–32)

§ 691.72 Institutional participation agreement.

The Secretary may enter into an agreement with an institution of higher education pursuant to which the institution will calculate and pay PAS awards to its students.

(Authority: 20 U.S.C. 1070a–32)

§ 691.73 Termination of institutional participation agreement.

(a) *Termination by the Secretary.* The Secretary may terminate the agreement with an institution by giving the institution—

(1) Thirty days written notice; or

(2) Less than 30 days written notice if a shorter notice is necessary to prevent the likelihood of a substantial loss of funds to the Federal government or to students.

(b) *Information required.* An institution shall provide the following information to the Secretary if the Secretary terminates the agreement:

(1) The name and enrollment status of each eligible student who submitted a valid SAR to the institution or for whom the institution obtained a valid institutional student information report before the termination date.

(2) The amount of funds the institution paid to PAS recipients for the award year in which the agreement is terminated.

(3) The amount due to each student eligible to receive a PAS through the end of the award year.

(4) An accounting of PAS expenditures to the date of termination.

(c) *Termination by the institution.* An institution may terminate the agreement by giving the Secretary written notice. The termination becomes effective on June 30 of that award year. The institution shall carry out the agreement for the remainder of that award year.

(d) *Termination because of a change in ownership which results in a change of control.* The agreement automatically terminates when an institution changes ownership that results in a change of control. The Secretary may enter into an agreement with the new owner if the institution complies with requirements set forth in subpart B of the Student Assistance General Provisions, 34 CFR part 668.

(Authority: 20 U.S.C. 1070a–32)

§ 691.74 [Reserved]

§ 691.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a PAS to an eligible student only after it determines that the financial aid transcript requirements of 34 CFR 668.19 have been met, and the student—

(1) Qualifies as eligible to receive a Federal Pell Grant and as an eligible student under §§ 691.16 or 691.17 for a continuing student;

(2) Is enrolled as an undergraduate student; and

(3) (i) Has completed required clock hours for which he or she has been paid a PAS, if the student is enrolled in an eligible program that is measured in clock hours; or

(ii) Has completed the required credit hours for which he or she has been paid a PAS, if the student is enrolled in an eligible program that is measured in credit hours and that does not have academic terms.

(b) If an eligible student submits a valid SAR to the institution or the institution receives a valid institutional student information report for the student and that student then becomes ineligible before receiving a payment, the institution may pay the student only the amount that it determines could have been used for purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress but reverses that determination before the end of the payment period, the institution may pay a PAS to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress but reverses that determination after the end of the payment period, the institution may neither pay the student a PAS for that payment period nor make adjustments in subsequent PAS payments to compensate for the loss of aid for that period.

(e) A member of a religious order, community, society, agency, or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution of at least $3,000 if that religious order—

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members or has directed the member to pursue the course of study.

(Authority: 20 U.S.C. 1070a–32)

§ 691.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was an eligible student within the award year. The student's enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070a–32)

§ 691.77 Initial disbursement of a PAS in an award year without a valid SAR or institutional student information report.

(a) Within an award year, an institution may make one disbursement of a student's PAS before receiving the student's valid SAR or valid institutional student information report if the institution—

(1) Receives a student's application information;

(2) Does not have documentation that indicates that the application information is inaccurate; and

(3) Receives an EFC—

(i) From the Secretary; or

(ii) From an organization that has a contract with the Secretary to transmit application data to the Secretary.

(b) If an institution receives a student's application information specified in paragraphs (a)(1) and (a)(3) of this section and the student's EFC from the Secretary, or the student's EFC produced by the Secretary from an

organization that has a contract to transmit application data to the Secretary, but the institution has documentation that indicates that the application information is inaccurate, the institution may make one disbursement of a student's PAS within an award year before receiving the student's valid SAR or valid institutional student information report if the institution—

(1) Resolves the inconsistencies between its documentation and the student's application information;

(2) Recalculates the student's EFC and Federal Pell Grant based on correct information;

(3) Makes the disbursement of the student's PAS for the first payment period based on the recalculated EFC and Federal Pell Grant; and

(4) Reports the changes in the student's application information and the recalculated EFC to the Secretary within the deadline established by the Secretary.

(c)(1) If an institution chooses to make a disbursement under paragraph (a) or (b) of this section, it shall be liable for that disbursement if it does not receive a valid SAR or valid institutional student information report for the student for that award year.

(2) If an institution chooses to make a disbursement under paragraph (b) of this section, the institution and the student shall be liable for any overpayment caused by an incorrect recalculation of the student's EFC.

(3) If a student receives an overpayment as a result of a disbursement made under paragraph (a) or (b) of this section, the institution shall eliminate the overpayment by following the procedures described in 34 CFR 690.77.

(Authority: 20 U.S.C. 1070a–32)

§ 691.78 Method of disbursement by check or credit to a student's account.

(a)(1) The institution may pay a student directly by check or by crediting his or her institutional account.

(2) Unless a student has agreed otherwise, the amount an institution may credit to a student's account may not exceed the amount the student is required to pay the institution for—

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board; and

(iii) Housing, if the student contracts with the institution for housing.

(3) An institution may not require a student to grant permission to credit his or her account for the costs of other goods and services the institution provides to the student.

(4) The institution shall notify the student of the amount he or she can expect to receive and how that amount will be paid.

(b)(1) The institution may not make a payment to a student for a payment period until the student is registered for classes for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may credit a registered student's account is 3 weeks before the first day of classes of a payment period.

(c) The institution shall return to the Secretary any funds paid to a student who, before the first day of classes—

(1) Officially or unofficially withdraws; or

(2) Is expelled.

(d)(1) If an institution intends to pay a student directly, it shall notify him or her before the payment is made when it will pay the PAS award.

(2) If a student does not pick up the check on time, the institution shall still pay the student if he or she requests payment within 15 days after the last date that his or her enrollment ends in that award year.

(3) If the student has not picked up his or her payment at the end of the 15-day period, the institution may credit the student's account only for any outstanding charges for tuition and fees and room and board for the award year incurred by the student while he or she was eligible.

(4) A student forfeits the rights to receive the payment if he or she does not pick up a payment by the end of the 15 day period.

(5) Notwithstanding paragraph (d)(4) of this section, the institution may, if it chooses, pay a student who did not pick up his or her payment, through the next payment period.

(Authority: 20 U.S.C. 1070a–32)

§ 691.79 Recovery of overpayments.

(a)(1) A student is liable for any PAS overpayment made to him or her.

(2) The institution is liable for any overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore those funds to the Secretary even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by—

(1) Making a reasonable effort to contact the student and recover the overpayment; and

(2) If unsuccessful, providing the Secretary with the student's name, social security number, amount of overpayment, and other relevant information.

(c) If an institution refers a student who received an overpayment for which it is not liable to the Secretary for recovery, the student remains ineligible for further title IV, HEA program assistance for attendance at any institution until the student repays the overpayment or the Secretary determines the overpayment has been resolved.

(Authority: 20 U.S.C. 1070a–32)

§ 691.80 Recalculation of a PAS Program award.

(a) The institution shall recalculate a PAS award for the entire award year if the student's Federal Pell Grant changes at any time during the award year for any reason specified in § 690.80, including changes in enrollment status, EFC, or cost of attendance.

(b) The institution shall adjust the student's award when an overaward or underaward is caused by the change in the Federal Pell Grant award. That adjustment must be made—

(1) Within the same award year—if possible—to correct any overpayment or underpayment; or

(2) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(Authority: 20 U.S.C. 1070a–32)

§ 691.81 Fiscal control and fund accounting procedures.

(a)(1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall account for the receipt and expenditure of PAS funds in accordance with generally accepted accounting principles.

(b) A separate bank account for PAS funds is not required. However, the institution shall notify any bank in which it deposits PAS funds of all accounts in that bank in which it deposits Federal funds.

(c) Except for funds received for administrative expenses, funds received by an institution under this part may be used only to pay PAS funds to students. The funds are held in trust by the institution for the intended student beneficiaries and may not be used or hypothecated for any other purpose.

(Authority: 20 U.S.C. 1070a–32)

§ 691.82 Maintenance and retention of records.

(a) Each institution shall maintain adequate records (including those related to verification) that include the fiscal and accounting records that are required under § 691.81, records required for audits in 34 CFR 668.23, the SAR or valid institutional student information report of each student receiving a PAS, and records indicating—

(1) The eligibility for a PAS of all enrolled students who have submitted valid SARs or valid institutional student information report to the institution;

(2) The name and social security number of and the amount of the PAS award paid to each student;

(3) The amount and date of each payment;

(4) The amount and date of any overpayment that has been restored to the program account; and

(5) Each student's enrollment period.

(b)(1) The institution shall make the records listed in paragraph (a) of this section available for inspection by the Secretary's authorized representative at any reasonable time in the institution's offices. It shall keep the records for each award year for 5 years after that award year has ended.

(2) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(c) The institution shall keep records involved in any claim or expenditure questioned by Federal audit until resolution of any audit questions.

(d) An institution may substitute microform copies in lieu of original records in meeting the requirements of this section.

(Authority: 20 U.S.C. 1070a–32)

§ 691.83 Submission of reports.

(a)(1) An institution may receive either a payment from the Secretary for an award to a PAS recipient or a corresponding reduction in the amount of Federal funds received in advance for which it is accountable if—

(i) The institution submits to the Secretary all SAR Payment Documents (or the equivalent as defined by the Secretary) for that award in the manner and form prescribed in paragraph (a)(2) of this section by September 30 following the end of the award year in which the scholarship is made, and

(ii) The Secretary accepts those SAR Payment Documents.

(2) The Secretary accepts SAR Payment Documents that are submitted in accordance with procedures established through publication in the **Federal Register** and that contain information including that previously provided by the student and the institution.

(3) An institution that does not comply with the requirements of this paragraph may receive payment or reduction in accountability only as provided in paragraph (c) of this section.

(b) An institution shall report to the Secretary any change in enrollment status, cost of attendance, or other event or condition that causes a change in the amount of a Federal Pell Grant and a resulting change in a PAS for which a student qualifies by submitting to the Secretary an SAR Payment Document reporting a change to the Secretary by the end of that reporting period that next follows the reporting period in which the change occurred.

(c)(1) An institution that has timely submitted an SAR Payment Document for a student in accordance with paragraph (a) of this section but does not timely submit to the Secretary, or have accepted by the Secretary, an SAR Payment Document necessary to document the full amount of the PAS award to which the student is entitled may receive a payment or reduction in accountability in the full amount of that award if—

(i) A program review or an audit report produced in accordance with the standards prescribed in 34 CFR 668.23(c) demonstrated to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported on the SAR Payment Document timely submitted to, and accepted by the Secretary; and

(ii) The institution seeks an adjustment to reflect an overpayment for that award that is at least $100.

(2) An institution that has timely submitted and has accepted a SAR Payment Document for a student in accordance with this section shall report a reduction in the amount of a PAS award that the student received when it determines that an overpayment has occurred, unless that overpayment is one for which the institution is not liable under § 690.79(a).

(3) The Secretary pays or recognizes a reduction in accountability under this paragraph after deducting the amount of any overpayments for which the institution is liable under § 691.79(a).

(d) In accordance with 34 CFR 668.84, the Secretary may impose a fine on the institution if the institution fails to comply with the requirements in paragraph (a), (b), or (c) of this section.

(Authority 20 U.S.C. 1070a–32)

Subpart H—Administrative Responsibilities of a State

§ 691.90 Early-intervention agreement.

For a student to receive a PAS, the State agency in the State in which the student resides shall have entered into a one-time written agreement with the Secretary, except that a State must submit a subsequent agreement if the Secretary subsequently requires changes in this initial agreement. Each State's agreement must be approved by the Secretary and must include provisions designed to ensure the following:

(a) All secondary school students in the State have equal and easy access to the coursework described in § 691.16(c) and 406C(a)(2) of the HEA.

(b) The State agency has procedures in place to verify to the Secretary that—

(1) A student receiving a PAS has taken the coursework described in § 691.16(c);

(2) The coursework described in § 691.16 is of a college preparatory level; and

(3) The State requires all secondary schools in the State to issue a certificate to each eligible student certifying that the student has completed the necessary coursework to qualify for a PAS.

(c) The State agency has procedures in place to notify institutions of higher education of the availability of the PAS so that the institutions may award additional scholarships in concert with the PAS. The State agency has procedures to inform junior high school students enrolled in public or private schools and their families about—

(1) The value of postsecondary education;

(2) The availability of student aid to meet college expenses; and

(3) The availability of a PAS for students from low and moderate-income families who take academically demanding courses.

(Authority 20 U.S.C. 1070a-36)

§ 691.91 Records a State must maintain.

(a) The State agency shall maintain written procedures and records to support the information supplied in the early-intervention agreement in § 691.90 and the Governor's certification of other eligible early intervention programs.

(b) The State agency shall maintain the written procedures and records required under this subpart for a period of five calendar years from the end of the award year to which the records relate.

(Authority: U.S.C. 1070a–36)

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Part VII

Department of Education

34 CFR Part 682
Federal Family Education Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AB62

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL Program consists of the Federal Stafford, Federal Supplemental Loans for Students (SLS), Federal PLUS, and the Federal Consolidation Loan programs. These proposed regulations are needed to implement certain changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1992 (Pub. L. 102–325). Pub. L. 102–325 added new section 428J to the HEA which authorizes the Secretary to establish a demonstration program for loan forgiveness for certain types of professional or public service. Minor changes to section 428J were made by the National and Community Service Trust Act of 1993 (Pub. L. 103–82). Section 428J was also recently amended by the Higher Education Technical Amendments of 1993 (Pub. L. 103–208). Those additional statutory changes are also reflected in these proposed rules. Under section 428J of the HEA, the Secretary is authorized to forgive portions of Federal Stafford Loans incurred by a student borrower who performs volunteer service or works in certain teaching or nursing areas. This program is not currently funded.

DATES: Comments must be received on or before March 28, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Patricia Newcombe, Acting Chief, FFEL Program Section, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4310, ROB–3), Washington, DC 20202–5449.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of the preamble.

FOR FURTHER INFORMATION CONTACT: Barbara Baumen, Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4310, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

New section 428J of the HEA requires the Secretary to promulgate regulations to establish a loan forgiveness demonstration program in the Federal Stafford Loan Program. The purpose of the demonstration program is to encourage individuals to enter the teaching and nursing professions and to perform national and community service by offering partial Federal Stafford loan forgiveness. The loan forgiveness program is available only to new borrowers who, as of October 1, 1989, had no outstanding debt on a FFEL Program loan.

Summary of Comments from Regional Meetings

In compliance with section 492(a) of the HEA, the Secretary convened regional meetings during September 1992 to obtain public involvement in the development of proposed regulations. The purpose of the meetings was to "provide for a comprehensive discussion and exchange of information concerning the implementation" of certain parts of Pub. L. 102–325. In addition, attendees of the regional meetings were asked to nominate individuals to act as negotiators in the negotiated rulemaking process required by section 492(b) of the HEA.

The regional meetings were conducted for two days each in San Francisco, California; New York, New York; Atlanta, Georgia; and Kansas City, Missouri. Each participant at the regional meetings was assigned to one of six groups which were asked to discuss particular issue areas identified by the Department. Each group at the regional meetings prepared a report of its discussion and recommendations and those reports were presented to the Department for consideration during the preparation of the proposed regulations.

One of the groups at each regional meeting was asked to discuss the loan forgiveness demonstration program established by section 428J of the HEA. However, none of the groups discussed the program in much detail. Each of the groups recommended that the Department implement the demonstration program in the same way that the provisions for loan cancellation for public service are implemented in the Perkins Loan Program. The Department considered these comments in preparing draft proposed regulations.

Negotiated Rulemaking

After completion of the regional meetings, the Department prepared draft proposed regulations to implement the provisions of Pub. L. 102–325 relating to the FFEL Program. In accordance with the requirements of section 492(b) of the HEA, those regulations were submitted to a negotiated rulemaking process. During the weeks of January 4–8 and February 1–5, 1993, the Department met with negotiators selected from among individuals nominated by attendees at the regional meetings.

The discussion below of the proposed regulations reflects those areas where the negotiators reached a consensus and the proposed regulations reflect that agreement. The discussion below also indicates where consensus was not reached during the negotiations. However, the negotiators did not choose to discuss every part of the proposed regulations. Accordingly, the discussion below of those issues not discussed during the negotiations reflects only the views of the Secretary.

Proposed Regulations

The Secretary is proposing to amend 34 CFR part 682 to add a new § 682.215 to the regulations. These regulations are being proposed if it becomes necessary to implement section 428J of the HEA that authorizes a demonstration program under which certain Federal Stafford loan borrowers may have a portion of their loan debt forgiven. Under the program the Secretary may forgive a percentage of the loan debt that accrued on Federal Stafford loans that were borrowed (1) during the borrower's last two years of undergraduate education or, (2) for up to two academic years, during which the borrower returned to an institution of higher education after graduation from an institution of higher education to obtain a teaching certificate or additional certification. An eligible borrower may have a specific percentage of his or her eligible loans forgiven for each year of service performed.

Borrower Eligibility

Under section 428J of the HEA, the borrower is eligible for loan forgiveness if the borrower serves as: (1) A full-time teacher in certain elementary and secondary schools teaching certain subjects; (2) a full-time nurse in particular types of hospitals or health care centers; (3) a volunteer under the Peace Corps Act or under the Domestic Volunteer Service Act of 1973; or (4) a full-time employee of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 who makes below the greater of the minimum wage or the poverty line for a family of two. In defining the types of health care facilities where an eligible borrower may work, the Secretary consulted with staff members of the Department of Health and Human Services. Definitions that apply to the teaching category were largely extracted from 34 CFR 682.210(q) at the suggestion of the negotiators. For the tax-exempt organization service forgiveness category, the Secretary is requiring eligible borrowers to work for an organization that serves low-income persons and communities to assist in eliminating poverty and related conditions. In defining this area of service, the Secretary remains consistent with existing deferment provisions for full-time volunteer service in the FFEL Program. The Secretary believes that loan forgiveness is the more desirable benefit and as such should not be given to a borrower who would not otherwise meet the requirements for deferment and repayment for the same service. The proposed regulations would establish criteria and procedures governing the application and eligibility process for the loan forgiveness under the demonstration program.

To qualify for loan forgiveness, a borrower must be in repayment, or in an authorized period of deferment or forbearance. During the negotiated rulemaking sessions, there was considerable discussion surrounding the issue of whether lenders should be required to automatically grant administrative forbearance to those borrowers who are serving in a capacity that meets the criteria of the new § 682.215 (e), (f) or (g) for loan forgiveness. The negotiators felt that it was necessary to provide forbearance in cases where a borrower does not qualify for a deferment but would seem to qualify for loan forgiveness. Although the Secretary recognized at the time that borrowers serving in the fields that qualify under § 682.215 may be receiving low wages, the Secretary acknowledged that Congress did not provide a forbearance or deferment for borrowers in this program in the law. However, as a result of changes made by Pub. L. 103–208, the law now provides forbearance for borrowers who are engaged in qualifying service.

As recommended by the negotiators, the proposed regulations provide that a defaulted borrower is not eligible for loan forgiveness under the demonstration program unless the borrower has made satisfactory repayment arrangements for the defaulted loan or loans. However, the forgiveness would apply only to the loan or loans that are not in default.

Application

The Secretary is proposing that, to qualify for loan forgiveness under the demonstration program, a borrower must submit to the Secretary or his designee an application and any necessary supporting documentation by October 1 of each year following the year served in qualifying service as a full-time volunteer, full-time teacher or full-time nurse. A concern expressed during the negotiated rulemaking process was how the Secretary or his designee would accommodate any incomplete applications submitted by borrowers by the due date. There was no consensus among the negotiators as to whether a borrower who does not have complete documentation submitted by the October 1 deadline should be allowed to later supply the missing documentation. The Secretary is interested in receiving public comment as to what is an acceptable time-frame in which to inform a borrower that additional documentation is needed and to collect the information necessary to complete the application.

The Secretary is proposing to allow borrowers who serve in more than one qualifying organization to combine the time served in each organization to satisfy the requirement that the borrower be employed "full-time." The term "full-time" is not defined in section 428J of the statute. However, the Secretary and the negotiators reached a consensus that the term "full-time," for purposes of these regulations, be defined as the period of time generally accepted as the industry standard for the given profession. It is the duty of the authorizing official or officials (in the case of multiple employment of the borrower) to certify the borrower's service on the application. If a borrower combines employment to meet the full-time employment definition, the borrower would be required to obtain a certification from each employment facility's authorizing official. The Secretary will make a final determination as to whether the borrower's certified combined service amounts to full-time. The certification will cover the year of service as defined in § 682.215 (e), (f), and (g) for the particular service category. A new application and certification is required for each year of service that the borrower wishes to apply for loan forgiveness.

The Secretary acknowledges that the statute originally indicated that a borrower receiving loan forgiveness based on volunteer service could become eligible for loan forgiveness after agreeing in writing to volunteer, before service was completed. However, a consensus was reached that the statute did not intend to treat borrowers differently based on the type of service involved. Pub. L. 103–208 amended section 428J to be consistent with this approach. Therefore, the proposed regulations provide that an eligible borrower may apply for the forgiveness only after the year of service is completed.

The Secretary proposes that once a borrower has met the requirements for forgiveness under § 682.215 (e), (f) or (g) the borrower will have a percentage of his or her loan forgiven based on which year of service has been completed. A borrower who qualifies for forgiveness under this demonstration program shall have 15 percent of the total amount of Federal Stafford loans incurred during the borrower's last two years of undergraduate education forgiven for the borrower's service for each of the first two years of service, 20 percent of the total amount for each third and fourth year of service, and 30 percent of such total amount for the fifth year of service.

Limitations

The Secretary believes that the intent of Congress in enacting section 428J was to have the Secretary forgive 100 percent of a borrower's loans received for the last 2 years of undergraduate education by the end of a borrower's five-year period of service. However, the Secretary and the negotiators were compelled at the outset to consider the constraints associated with this program, since it is a demonstration program with a defined appropriation. The negotiators discussed the fact that the program may not have adequate funding to provide the full annual forgiveness amounts to all borrowers who qualify. The negotiators discussed a number of possible approaches to selecting the borrowers who would be allowed to benefit from the forgiveness program from among the eligible borrowers if adequate funding is not available but did not reach consensus regarding the use of a particular approach. However, Pub. L. 103–208 directs the Secretary to provide loan forgiveness on a first-come, first-served basis subject to the availability of appropriations. Accordingly, the Secretary will make a determination on each application as it is received and will use a first-come, first-served

approach to award loan forgiveness in the amounts provided by section 428J of the Act until the amount of appropriated funds is exhausted.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations will only affect a small percentage of institutions that participate in the FFEL Program.

Paperwork Reduction Act of 1980

Section 682.215(c) contains an information collection requirement. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Certain Federal Stafford loan borrowers are eligible to apply for loan forgiveness under these regulations. The Department needs and uses the information provided on the application to determine an individual's eligibility for loan forgiveness.

Annual public reporting and recordkeeping burden for this collection of information is estimated to average .25 of an hour per response for 2000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Dan Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4310, Regional Office Building 3, 7th and D Streets, SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: February 17, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. A new section 682.215 is added to read as follows:

§ 682.215 Federal Stafford Loan forgiveness demonstration program.

(a) *General.* The Federal Stafford Loan forgiveness demonstration program is intended to encourage individuals to enter the teaching and nursing professions and to perform national and community service. Under this demonstration program, the Secretary repays portions of Federal Stafford obligations that were incurred by a borrower during the borrower's last two years of undergraduate education if that borrower enters those professions or performs that service. For purposes of this section, an eligible borrower is a borrower who, prior to October 1, 1989, had no outstanding debt under the FFEL programs.

(b) *Borrower eligibility; requirements for qualification.* A borrower may obtain loan forgiveness under this program if he or she is employed as a full-time teacher in certain elementary and secondary schools teaching certain subjects or as a full-time nurse in certain types of hospitals or health care centers, or is serving as a volunteer under the Peace Corps Act or under the Domestic Volunteer Service Act of 1973, or is performing comparable service as a full-time employee of a tax exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986. For purposes of this section, "full-time" means the standard used by a State or profession in defining full-time employment. For a borrower serving in more than one organization, the determination of "full-time" is based on the combination of all qualifying employment. A borrower who is in default on a FFEL loan and has not made satisfactory repayment arrangements is not eligible for forgiveness. However, if a borrower has made satisfactory repayment arrangements on the loan or loans in default, the forgiveness applies only to the loan or loans held by the holder that are not in default.

(c) *Application.* To qualify for the forgiveness program, an eligible borrower shall apply to the Secretary or his designee by October 1 of each year in writing on a form and according to procedures established by the Secretary following the completed year of service Eligible borrowers will be chosen on a first-come, first-served basis to participate and will receive forbearance for each year of service for which forgiveness is requested.

(d) *Limitation; Stafford forgiveness recipients.* The total amount of loans forgiven is limited to the amount of funds appropriated for the fiscal year for the demonstration program.

(e) *Borrower eligibility; teaching forgiveness.* (1) To qualify for teaching loan forgiveness under this section, a borrower must teach full-time for a year (as defined by the jurisdiction in which the borrower is employed) in a teacher shortage area as certified by the authorizing official. For purposes of this paragraph a teacher is teaching in a teacher shortage area if—

(i) The teacher teaches in a school that satisfies the criteria in section 465(a)(2)(A) of the Act for loan cancellation for Perkins loan recipients who teach in those schools; and

(ii) The teacher teaches mathematics, science, foreign languages, special education, bilingual education or in any other field of expertise where the State educational agency determines there is a shortage of qualified teachers.

(2) The borrower, in the time frame provided under paragraph (c) of this section, for the first year of service for which forgiveness is requested, must provide to the Secretary or his designee—

(i) A statement by the chief administrative officer of the public elementary or secondary school in which the borrower was teaching—

(A) Certifying the year that the borrower was employed as a full-time teacher;

(B) Certifying which subject area listed in paragraph (e)(1)(ii) of this section or designated by the state educational agency the borrower taught; and

(C) Verifying that the borrower teaches or taught in a school that satisfies the requirements of paragraph (e)(1)(i) of this section.

(ii) To continue to receive forgiveness in a subsequent year, the borrower shall provide the Secretary or his designee with a statement by the chief administrative officer of the public elementary or secondary school in which the borrower was teaching, certifying—

(A) The dates of the year of service;

(B) That the borrower continued to be employed as a full-time teacher; and

(C) That the borrower continued to meet the designated subject area and school requirements specified in this section.

(f) *Borrower eligibility; volunteer service forgiveness.*

(1)(i) To qualify for the volunteer service loan forgiveness under this paragraph, a borrower must serve as a full-time volunteer for at least a year (defined as twelve consecutive months) under—

(A) The Peace Corps Act; or

(B) The Domestic Volunteer Service Act of 1973 (ACTION programs); or

(ii) A borrower may also qualify for the volunteer service loan forgiveness if the borrower performs service comparable to service provided under paragraph (f)(1) of this section as a full-time employee of an organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, if the borrower does not receive compensation that exceeds the greater of—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 100 percent of the poverty line for a family of two as defined in section 673(2) of the Community Services Block Grant Act.

(2) To qualify under this paragraph, the borrower must—

(i) Work for an organization that provides services to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions; and

(ii) Not, as part of his or her duties, give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities.

(3) The borrower, for the first year of service for which forgiveness is requested under paragraphs (f)(1), (2), or (3) of this section must provide to the Secretary or his designee a statement from an authorized official of the organization or agency for whom the borrower is working certifying—

(i) That the borrower has served in a job that satisfies the requirements of this paragraph;

(ii) The date on which the borrower's service began; and

(iii) The date on which the borrower completed the year of service.

(4) To continue to receive loan forgiveness in a subsequent year under this paragraph, the borrower must provide an additional statement as described in this paragraph at the end of each additional year of service.

(g) *Borrower eligibility; nursing profession loan forgiveness.* (1) To qualify for the nursing profession loan forgiveness under this paragraph, a borrower must be employed as a full-time nurse for a public hospital, a rural health clinic, a migrant health center, an Indian Health Service Health Center, an Indian Health Center, a Native Hawaiian Health Center or for an acute care or long-term care facility.

(2) To qualify for loan forgiveness under this paragraph, a borrower must provide to the Secretary or his designee—

(i) A statement from an authorized official where the borrower is employed certifying that the borrower was employed as a full-time nurse for a facility described in this section and served for the term of at least one year (defined as twelve consecutive months);

(ii) The date on which the borrower's service began; and

(iii) The date on which the borrower's year of service ended.

(3) To continue to receive the forgiveness in a subsequent year under this paragraph, the borrower must provide an additional statement as described in this paragraph at the end of each additional year of service.

(h) *Forgiveness amounts.* (1) The Secretary repays the holder a percentage of the total amount of Stafford loans owed by the eligible borrower during—

(i) The borrower's last 2 years of undergraduate education; or

(ii) The 2 academic years in which a borrower who was not already participating in loan repayment pursuant to this section returned to an institution of higher education for the purpose of obtaining a post graduate teaching certificate or additional teacher certification.

(2) The Secretary repays loans on the following basis:

(i) 15 percent of the total original principal amount of Stafford loans for the first or second year in which the borrower meets the requirements of this section.

(ii) 20 percent of the total original principal amount for a third or fourth year.

(iii) 30 percent of the total original principal amount for a fifth year.

(3) The Secretary repays the holder for the amount of interest, including capitalized interest, which accrued on the loan or loans subject to forgiveness over the year.

(4) The amount of payments made by the Secretary under paragraphs (h)(2)(i), (ii), and (iii) of this section may not exceed the sum of the outstanding principal balance of the loan or loans subject to forgiveness plus all interest payments made in accordance with paragraph (h)(3) of this section.

(5) Payments received from a borrower who qualifies for loan forgiveness under this section will not be returned.

(i) *Definitions.* The following definitions apply to this section:

Acute care facility means either a short-term care hospital in which the average length of patient stay is less than 30 days, or a short-term care hospital in which over 50% of all patients are admitted to units where the average length of patient stay is less than 30 days.

Elementary school means a public day or public residential school that provides elementary education, as determined under State law.

Indian Health Service Health Center means a health care facility (whether operated directly by the Indian Health Service or operated by a tribal contractor or grantee under the Indian Self-Determination Act), that is physically separated from a hospital and that provides one or more clinical treatment services, such as physician, dentist or nursing services, available at least 40 hours a week for outpatient care to persons of Indian or Alaska Native descent.

Long-term care facility means a facility that offers services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive and maintenance services for individuals who have chronic physical or mental impairments. This facility may have a variety of institutional and non-institutional health settings, including the home, and the goal of the service is to promote the optimum level of physical, social and psychological functioning.

Native Hawaiian Health Center means an entity (as defined in section 8 of the Native Hawaiian Health Care Act of 1988 (Pub. L. 100–579)—

(1) That is organized under the laws of the State of Hawaii;

(2) That provides or arranges for health care services through practitioners licensed by the State of

Hawaii, if licensure requirements are applicable;

(3) That is a public or private nonprofit entity; and

(4) In which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

Public hospital means a facility (as defined in 24 CFR 242.1)—

(1) Owned by a State or unit of local government or by an instrumentality thereof, or owned by a public benefit corporation established by a State or unit of local government or by an instrumentality thereof;

(2) That provides community services for inpatient medical care of the sick or injured (including obstetrical care);

(3) Where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis; and

(4) That is licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located).

Rural Health Clinic means an entity (as defined under section 1861(aa)(2) of the Social Security Act and in 42 CFR 491.2 that—

(1) Is primarily engaged in furnishing to outpatients, physicians' services and services furnished by a physician assistant or by a nurse practitioner, as well as those services and supplies covered under sections 1861(s)(2)(A) and 1961(s)(10) of the Social Security Act;

(2) In the case of a facility that is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with one or more physicians under which provision is made for the periodic review by those physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such patients as may be necessary, and the availability of those physicians for advice and assistance in the management of medical emergencies, and in the case of the physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(3) Maintains clinical records on all patients;

(4) Has arrangements with one or more hospitals, having agreements in effect under section 1866 of the Social Security Act, for the referral and admission of patients requiring inpatient services or diagnostic or other specialized services as are not available at the clinic;

(5) Has written policies, that are developed with the advice of (and with provision of review of those policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services which it furnishes;

(6) Has a physician assistant or nurse practitioner responsible for the execution of policies described in paragraph (5) of this definition and relating to the provision of the clinic's services;

(7) Directly provides routine diagnostic services, including clinical laboratory services, as prescribed in 42 CFR 491.2; and has prompt access to additional diagnostic services from facilities meeting requirements under title 42;

(8) In compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined under 42 CFR 491.2 to be necessary for the treatment of emergency cases and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(9) Has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible; and

(10) Meets other requirements as the Secretary of Health and Human Services may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

Secondary school means a public day or public residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term "secondary school" includes education beyond the twelfth grade.

State education agency means the agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

Teacher means a professional who provides direct and personal services to students for their educational development through classroom teaching.

(Authority: 20 U.S.C. 1071 to 1087–2)

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S.J. Res. 119/P.L. 103–217

To designate the month of March 1994 as "Irish-American Heritage Month". (Feb. 22, 1994; 108 Stat. 48; 2 pages)

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Monday
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federal register

Monday
February 28, 1994

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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RESERVATIONS: Federal Information Center 1–800–359–3997 or in the Tucson area, call 602–290–1616

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WHERE: Oakland Federal Building, 1301 Clay Street, Conference Rooms A, B, and C, 2nd Floor, Oakland, CA
RESERVATIONS: Federal Information Center 1–800–726–4995

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 93-095-2]

Importation of Apples, Apricots, Peaches, Persimmons, Pomegranates, and Citrus From Sonora

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations by adding San Luis Rio Colorado to the list of definite areas in Sonora, Mexico, determined to be free from certain injurious insect pests and from which apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines may be imported without treatment for these pests. We have determined that this municipality is free from certain injurious insect pests known to occur in Mexico and known to attack these fruits. This action allows the importation of these fruits into the United States from San Luis Rio Colorado, in accordance with the regulations. We also are making other nonsubstantive changes for clarity.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Operations Officer, Port Operations Staff, Plant Protection and Quarantine, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56-8 (referred to below as the regulations) restrict the importation of fruits and vegetables to prevent the introduction and dissemination of certain injurious insects, including fruit and melon flies, that are new to or not widely distributed within and throughout the United States. Paragraphs (e) and (f) of § 319.56-2 contain requirements for the importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet certain criteria, including criteria designed to ensure that the area or district is free from all or certain injurious insects. Paragraph (h) of § 319.56-2 lists municipalities in Sonora, Mexico, that are considered free of five listed insect pests: *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus.* Apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines from municipalities in Sonora, Mexico, listed in paragraph (h) may be imported into the United States without treatment for these five insect pests.

In a document published in the **Federal Register** on August 25, 1993 (58 FR 44779-44780, Docket No. 93-095-1), we proposed to add San Luis Rio Colorado to the list of municipalities in Sonora, Mexico, determined to be free from the five listed insect pests and from which apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines may be imported into the United States without treatment for these pests. We have determined that San Luis Rio Colorado meets all the criteria contained in § 319.56-2 (e)(4) and (f).

We solicited comments concerning our proposal for a 30-day comment period ending September 24, 1993. We received one comment by that date from a State agency. The commenter expressed concern regarding Mexican Government enforcement efforts to prevent the introduction of fruit flies into San Luis Rio Colorado and requested any pertinent information that we used in formulating the proposed rule.

We have since responded to the commenter and have provided him with the pest risk assessment we used in adding San Luis Rio Colorado to the list of Sonoran municipalities considered to be free of fruit flies. As indicated in the pest risk assessment, the Mexican Government performs fruit fly trapping surveys adequate to detect any fruit fly infestation in San Luis Rio Colorado. The Mexican Government also maintains roadside inspection stations to prevent the introduction of fruit flies through incoming produce.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register.** Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit from this additional source of fruit. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register.**

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

The action allows the importation of apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines from San Luis Rio Colorado into the United States without treatment for the five listed insect pests. This action could increase imports of these articles into the United States, since import costs will be lowered through the elimination of treatment costs. The small entities that could be affected by this action include fumigators at the Mexican border, importers of the above-listed fruits, and domestic growers, distributors, and retailers of these fruits.

The economic impact on these entities should be insignificant since the amount of fruit imported into the United States from San Luis Rio Colorado is expected to be very small.

Based on available information, we anticipate that only imports of oranges, peaches, and possibly grapefruit may increase as a result of this rule. Further, if imports of oranges and peaches from

Sonora and imports of grapefruit from Mexico in general were to increase 10 percent from 1992 levels, this increase would amount to less than one percent of total U.S. production and less than one percent of total U.S. imports of these commodities. Consequently, we do not estimate any changes in prices or costs of fresh oranges, peaches, or grapefruit as a result of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule allows fruit to be imported into the United States from San Luis Rio Colorado, Mexico. State and local laws and regulations regarding fruit imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant Diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.56–2 [Amended]

2. In § 319.56–2, paragraph (h) is amended by removing the eight semicolons following each city name and by adding commas in their places and by adding the phrase "San Luis Rio Colorado," immediately after "Puerto Penasco,".

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4485 Filed 2–25–94; 8:45 am]

BILLING CODE 3410–34–P

Federal Crop Insurance Corporation

7 CFR Part 457

General Crop Insurance Regulations; Small Grains Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts regulations for specific crop provisions to insure Small Grains (wheat, barley, flax, oats, and rye), and options for increased coverage on Winter Wheat and Malting Barley. This rule consolidates the provisions for insuring small grains into one policy and provides for late planting, prevented planting, and wheat winter coverage.

EFFECTIVE DATE: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1998.

Kenneth D. Ackerman, Manager, FCIC, has determined that this action is in conformance with Executive Order 12866 and is not a "significant regulatory action." Based on information compiled by the Department, it has been determined that this final rule: (1) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) would not alter the budgetary impact of entitlement, grants, user fees or loan programs or rights and obligations of recipients thereof; and (4) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record-keeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget.

This action will not have a significant impact on a substantial number of small businesses. The insurance companies delivering these policies will not increase the amount of work required over the previous policy delivery. In fact, the combination of a number of previously independent policies into one policy should reduce confusion and increase efficiency. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The small grains crop provisions were developed to provide one policy form for insuring wheat, barley, flax, oats, and rye. Using one policy for these five crops will: (1) Substantially reduce paperwork by issuing one policy form rather than the five separate policies previously used; (2) substantially reduce the number of crop handbooks and administrative procedures because separate handbooks and procedures will no longer be required for each of the small grain crops; (3) reduce the time involved to amend or revise the Provisions by eliminating repetitious review processes; and (4) continue to allow insureds the flexibility to elect any of the five small grain crops they wish to insure.

By separate rule, FCIC will remove and reserve the present sections for these crop endorsements.

On Thursday, June 10, 1993, FCIC published a notice of proposed rulemaking in the **Federal Register** at 58 FR 32458 proposing to revise the Common Crop Insurance Regulations by

adding new provisions for oats, wheat, winter wheat, flax, barley, malting barley, and rye crop insurance.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. Comments were received from various representatives of farm and commodity groups, the crop insurance industry, and FCIC. The comments received and FCIC responses are as follows:

Comment: Six comments suggested that the Crop Provisions should be delayed until after the 1994 crop year because:

(1) Timeliness—Implementation of this program for the 1994 crop would cause confusion and disruption because companies had insufficient time for training and marketing of the program to agents and insureds;

(2) Program Integrity—The effect upon the overall public acceptance and program integrity will be negative as a result of the inevitable service problems associated with "rushing" a program of such national scale; and

(3) Changes—To a large degree, most of the proposed provisions are positive and will improve the program; however, by delaying implementation until the 1985 crop year specific provisions can be studied.

Response: FCIC delayed implementation until the 1995 crop year.

Comment: Two comments suggested the proposed Small Grains Crop Provisions undergo a pilot test in two to three county groupings located in (1) a predominantly spring wheat only area, (2) a winter wheat only area, and (3) an area having significant acreage of both winter and spring wheat. The comments stated that this approach would avoid undue risk of adverse effects to a wheat program currently working well for thousands of policyholders. An additional comment recommended that the proposal be tabled for further study and discussion to give all parties sufficient time to adequately assess the effects of the proposed changes.

Response: The Small Grains Crop Provisions permit farmers to choose the same or nearly the same coverage as currently offered. FCIC does not anticipate significant problems with the proposed provisions, and sees no need to create a pilot program to test effectiveness.

Comment: Two comments recommended that the term "initially planted" be defined for the purposes of unit division. Current farming practices are such that more than one use/interpretation of this term is possible. Another comment recommended that "initially planted" be defined as "the first occurrence of planting the crop to the acreage for the crop year".

Response: FCIC agrees that the term "initially planted" should be defined and has done so.

Comment: One comment stated that the definition of "practical to replant" contained in the Common Crop Insurance Policy conflicts with the Small Grains Crop Provisions. The Common Crop Insurance Policy indicates it is practical to replant until 20 days after the final planting date. The Small Grains Crop Provisions indicate that any acreage of the insured crop damaged before the final planting date must be replanted unless FCIC agrees that replanting is not practical. It was recommended that a definition of "practical to replant" be added to the Small Grains Crop Provisions that will override the definition contained in the Common Crop Insurance Policy.

Response: The comment misapplies the definition of "practical to replant" in the Common Policy. That policy does not indicate that it is practical to replant until 20 days after the final planting date but, to the contrary, states that it is not practical to replant after that date. The provisions do not conflict. A new definition has not been added due to this comment. However, a new definition has been added that is compatible with the new 25 day late planting period.

Comment: One comment noted that the definition of "swathed" indicates that a wheat crop that has been cut but not placed in windrows is considered "swathed." The comment suggested rewording the definition to require that the crop be placed in a windrow.

Response: FCIC agrees with the comment and has appropriately modified the definition.

Comment: One comment stated that the wording in the unit division section has significantly changed as has the unit division wording in the "draft" 1994 Crop Insurance Handbook (CIH). The comment recommended corresponding policy language with that in the CIH.

Response: Language contained in the Crop Insurance Handbook is interpretive and procedural in nature. The Crop Insurance Handbook details unit division for various crops, and is intended for use by insurers and their agents to interpret the crop provisions. In the event of conflict the provisions control. The Small Grains Crop Provisions outline the unit structure for small grains in a concise manner and are controlling.

Comment: One comment disagreed with requiring insureds to furnish records for each optional unit for at least the last crop year the unit was planted. According to current procedure, "in order for optional units to apply, the insured must have provided production reports for the most recent year in the base period which support the optional units proposed by the insured." The comment asserts that unless all optional units are planted every year, the new policy could require an insured to furnish records for several years to qualify for optional units. This places an increased burden on all producers, particularly on those practicing crop rotation. The comment recommended revising the provision to "You must have verifiable records of production for at least the last crop year used to determine your production guarantee."

Response: FCIC agrees with the comment and has modified the provision with language similar to that recommended.

Comment: A comment inquired if the process of raising the planter for a few feet and then resuming planting, or leaving a space unplanted is sufficient for a "clear and discernible break in the planting pattern". The comment suggested further clarification of the term, "clear and discernible break in the planting pattern".

Response: Requirements for separate units have been met if the break in the planting pattern is adequate to allow measurement of individual insurance units, and allow separate harvest of the units. The terms are self explanatory. Whether a break exists depends on whether these functions can occur. No changes in policy language are needed to clarify boundary requirements.

Comment: Four comments supported initially planted spring wheat being treated as a separate unit. Each comment also indicated that there should not be a mandatory replant provision for damaged winter wheat. One of the four comments indicated that any premium increase caused by the separate optional units for spring and winter wheat should be minimal.

Response: Separate optional units for initially planted winter and spring wheat are allowed by this regulation, although farmers who elect this choice will forgo the premium discount for maintaining a single unit. These terms are consistent with those terms given to a producer who elects to plant spring and winter wheat into separate sections.

The Wheat Winter Coverage Endorsement provides optional coverage for those growers who may not wish to replant damaged winter wheat. However, the Basic Policy requires that crops damaged prior to the final planting date be replanted when

practical. This requirement helps FCIC maintain lower premium rates.

Comment: Some comments were in disagreement with the provision allowing insureds to select optional units for initially planted winter wheat and initially planted spring wheat for the following reasons:

a. Currently, production from winter wheat acreage often off-sets losses on spring wheat acreage. Allowing optional units by type can only increase the loss ratio in those areas where both winter and spring types wheat are planted and insured. To increase risk exposure by allowing winter and spring wheat units when other changes are concurrently being implemented in the program to decrease the loss ratio seems to create a conflict.

b. There is no appreciable difference in harvesting and marketing the soft white winter wheat and the soft white spring wheat grown in the northwest. Although a yield difference does exist between the two types of wheat, yield differences also exist for many other crop practices and types not allowed separate optional units.

c. If optional units are allowed by type, a significant increase in losses could result. According to information from some member companies who have analyzed prior year losses by type, loss ratios for wheat would have been substantially higher if winter and spring wheat could have been insured as a separate optional units.

d. One organization had not received any requests for optional units by type from companies, agents, or insureds, and therefore did not see the need for the provision.

Other comments provided the following observations and inquiries:

a. Will the cost of the options in provisions governing Unit Division be prohibitive?

b. Production of spring wheat and winter wheat is commingled more often than not.

c. Allowing winter and spring optional units may significantly increase risk. FCIC should analyze winter and spring statistics to determine if an additional rate should be charged.

d. The provision allowing optional units for initially planted Winter Wheat and initially planted Spring Wheat will permit growers who have insufficient acreage to plant in separate sections and declare separate optional units. Large producers will also be able to declare separate optional units, and the net effect will increase the number of wheat units. This may have a negative effect on FCIC's loss ratio. The provision will also increase the paperwork burden of the already overburdened claims adjuster.

e. Changes or adjustments to the program should be sensitive to rating adequacy and reduction of excess of loss ratios. Some of the provisions of the program contradict these goals. For instance, analyses by companies and industry trade associations do not support the notion that no additional rate is required for optional units by type. As proposed, optional units by type can only be justified as a marketing tool in some areas of the country.

Response: Separate units for winter and spring wheat have been requested by grower groups in Washington, Idaho, and Oregon. FCIC agrees that farmers should have the opportunity to designate initially planted spring and winter wheat as separate optional units because they are planted several months apart and are normally harvested separately. FCIC also agrees that soft white wheat types may be marketed together. However, there are substantial price penalties for commingling production of spring and winter wheat of other types.

FCIC has analyzed types of wheat reported by unit for the states in which both winter and spring types are insured. An average of only 7 percent of all units in these states reported both winter and spring types within the same unit. The majority, or 93 percent of all units, reported only a single type within the unit. These results suggest that most farmers already manage their land in a manner that permits them to put the winter and spring types into separate optional units. This is accomplished by planting the types within different legally defined sections of land. Thus, FCIC believes that the potential for increases in the number of optional units is not substantial. Most farmers who have enough land and who wish to designate separate optional units already do so.

Farmers who designate separate optional units by type within the same section will forgo the premium discount that is currently allowed if a basic unit is not separated into optional units. Thus, farmers who elect to designate units by type of wheat within the section will pay more premium than a farmer who elects to retain all acreage within a basic unit.

The comments concerning additional paperwork are overstated. Farmers already are required to report separately any acreage planted to the spring and winter types within section because different premium rates, insurance guarantees, or both, apply to such acreage. The only difference in the acreage report under the new provision is that two distinct unit numbers will be used by the insurer rather than one as at present. Farmers will be required to report the production of the two types separately, which they already may do in many cases. FCIC cannot estimate the number of cases in which a new report may be required. The former wheat endorsement required only that insured persons report the total production of all the insurable crop produced on the unit. If a farmer elects to report only total production under the present arrangements, the accuracy of the guarantees for the types is reduced because the insurer must allocate the production in some manner to establish a guarantee by type. If farmers who now report the combined production of the two types within section do designate separate optional units, the change may enhance the precision of guarantees for the separate types, thereby benefiting the insurer. If the farmer already reports production of the two types separately, there will be no change in the paperwork required.

Insured persons who wish to take advantage of the opportunity to designate separate optional units within a section must comply with all other requirements for unit division. Thus, if a producer commingles production of the winter and spring types, separate optional units may not be elected. If a producer plants spring wheat into a failed winter stand, separate optional units may not be elected. If planting patterns do not permit separate identification of the acreage, optional units may not be elected. If a producer wishes to reduce the premium paid for the insurance, he or she can elect to retain all the acreage in a basic unit. The new provisions do not mandate separate optional units.

Finally, much of the research about units referenced in the comments relates to size of acreage, not specifically to unit division. Results of such research suggests that small farmers should pay higher premiums than large farmers because small acreage may have higher losses on average. Although the issues is related, FCIC believes that the issues should be treated separately. If it is ultimately demonstrated that small acreage should be subject to a surcharge due to actuarial considerations, the surcharge should be assessed against small acreage regardless of whether these result from small farming operations or from unit division.

In summary, FCIC does not find these comments persuasive.

Comment: One comment took issue with winter wheat vs. spring wheat Transitional Yields (T-yields) and factors in many Pacific Northwest counties. The comment suggested that the uncoupling of winter wheat and spring wheat into separate units be preceded by a major rework of T-yield factors to prevent potential over-payments on spring wheat units.

Response: FCIC agrees that T-yields should reflect any significant differences in yields. Evaluations will be performed and any necessary changes will be made as soon as practicable. However, those changes will not require a change in this rule.

Comment: The last paragraph under section 2. (Unit Division) indicates that optional units not in compliance with the provisions of the section will be combined into the basic unit from which they were formed. A comment suggested that this language be clarified to separate this combination from that which occurs at loss time if production is commingled between optional units. The comment recommended the following language: "If you do not comply fully with these conditions, we will combine all optional units which are not established in compliance with this section into the basic unit from which they were formed."

Response: FCIC agrees with the comment and has modified the provision as recommended.

Comment: One comment suggested that Harding and Perkins counties, South Dakota, be added to the list of wheat counties that have an April 15 cancellation and termination date. Statistics indicate that over 80 percent of the wheat in these counties is initially planted spring wheat. In order to maintain the line of counties which separates the April 15 counties from counties with earlier dates, Harding and Perkins counties should be listed with the other South Dakota counties with the April 15 date.

Response: FCIC agrees with the comment and has modified the provision as recommended.

Comment: Four comments agreed with changing the wheat sales closing and cancellation dates for Idaho, Oregon, and Washington from October 31, to September 30. However, they recommended the dates not be changed until the 1995 crop year due to the late publication of the proposed rule. One of the four comments indicated the change would cause the production reporting date to occur at an earlier date. In some areas of the Northwest, harvest may not be completed by that new production reporting date.

Response: The effective date of these regulations has been postponed until the 1995 crop year, therefore, the wheat sales closing and cancellation dates for Idaho, Oregon, and Washington from October 31 to September 30 has been postponed to 1995. FCIC will take action to change the production reporting date if problems occur.

Comment: One comment stated that the change of the wheat sales closing and cancellation dates from October 31 to September 30 for Idaho, Oregon, and Washington is favorable and inquired as to the reason that Nevada and Utah remain at the 10/31 date.

Response: FCIC changed the sales closing and cancellation in Idaho, Oregon, and Washington due to an allegation that the previous dates posed a potential for adverse selection. FCIC has not received any comments or recommendations regarding the dates in Nevada or Utah. It is FCIC's intent to allow the maximum sales period possible as long as program integrity is not compromised. FCIC will not change the proposed rule.

Comment: A comment recommended that the cancellation and termination dates be changed from April 15 to February 28 for barley and oats in all Pacific Northwest states.

Response: FCIC plans an overall assessment of program dates for all crops. The recommendation will be considered in that review.

Comment: A comment recommended moving the cancellation and termination dates from the Crop Provisions to the Special Provisions. The comment suggested that any information specific to a state, county or group of counties be located in the Special Provisions where the appropriate parties have access to it.

Response: These dates must remain in the Common Crop Insurance Policy due to the requirements of § 457.8. However, FCIC will consider also placing them in the Special Provisions.

Comment: One comment stated that as proposed, policy language in subsection 6.(a) could lead the reader to believe that the insured has the option of insuring only a portion of their insurable acreage.

Response: FCIC agrees that this language should be clarified. The provision has been modified to indicate the crop insured is each small grain the producer elects to insure, that is grown in the county on insurable acreage, and for which premium rates are provided by the actuarial table.

Comment: One comment recommended requiring that requests for written agreements be received by FCIC within 15 days of the acreage reporting date and that the requirement be added to section 6. Insured Crop.

Response: The Crop Insurance Handbook now indicates that these types of written agreements must be sent to FCIC, and be postmarked no later than 15 days after the acreage reporting date. Since reinsured insurance contracts are between the reinsured company and the insured, the contract should not contain obligations that exist between FCIC and the reinsured company. Therefore, language indicating that requests must be received by FCIC within 15 days of the acreage reporting date will not be included in the crop provisions.

Comment: Three comments were received regarding the provision that allows the insured to designate wheat acreage that will be destroyed before harvest as uninsurable acreage, or acreage eligible for a reduced premium rate. The comments suggested that applicability of the provisions not be limited to wheat, and that the reduced premium rate should only be provided in counties where early destruction of crops has been a problem.

Response: FCIC agrees that applicability of the provisions should not be limited to wheat. Only acreage intended to be harvested for grain qualifies as an insurable crop. Therefore, if it is known at the acreage reporting date that the acreage will be destroyed, it is not insurable. The provision that allows an insured to designate only wheat acreage as uninsurable acreage has been changed to apply to all covered crops. The provision that provides for a reduced premium rate if acreage is destroyed by a certain date, has been changed so that it applies only in those counties for which such a reduced rate is included on the actuarial table. This change will allow FCIC to provide a "short rate" only in areas where small grain crops are most commonly used for multiple purposes, e.g., grazing and harvest for grain.

Comment: One comment questioned the benefit of using the under-reported premium factor as opposed to current procedure whereby production from unreported acreage is counted against the guarantee for reported acreage, or the acreage report is revised if acreage is over-reported.

Response: Current procedure is not altered if under-reported acreage is the only problem. The under-reported premium factor reduces the guarantee when share, practice, type, or other material information is under-reported.

Comment: One comment noted that it is extremely important that shifting liability procedure be reinstated. Acreage is reported by unit and the insurance company requires the insured to indicate on the acreage report the acreage he plans to destroy, however, insureds often do not know at acreage

report time exactly which acres will be destroyed. Therefore, the company is asking for information that is often unknown at the time the acreage report is filed. Shifting liability procedure is an equitable method of addressing the situation.

Response: If an insured indicates that acreage will be destroyed and then does not destroy the acreage, the unit will be subject to the under-reporting provisions of subsection 6.(f) of the Common Crop Insurance Policy (§ 457.8).

Comment: Two comments indicated that the wheat provision will allow any insured producer whose wheat sustains early damage to destroy any remaining wheat, pay a reduced premium rate, and receive a full indemnity. The comments suggested that the provision should be changed to prohibit this practice, and to require the insured to notify the insurer prior to destroying any insured wheat.

Response: FCIC agrees that the reduced premium should apply only when there is no insurable damage. FCIC also agrees that the insured should notify the insurer prior to and after destruction of any acreage of the insured crop. This notification will allow the insurer to make any necessary inspections and adjustments to the Acreage Report. The provision has been revised accordingly.

Comment: Two comments indicated that the provisions for destroyed acreage are difficult to assess without seeing the proposed prorata premium charges, or the deadlines which will be designated in the Special Provisions. The comments asked if the expense reimbursement to reinsured companies for acreage destroyed by the deadline in the Special Provisions would be calculated using the total premium or the reduced premium.

Response: Premium rates for destroyed acreage will vary in accordance with the probability of loss in individual geographic areas. If insurable damage occurs prior to the crop being destroyed by the grower, the loss will be processed in the normal manner and 100 percent of the premium will be due. Expense reimbursement will also be calculated on this basis. If the insured destroys the acreage by the date designated in the Special Provisions and does not claim insurable damage on such acreage, the reduced rate will be used to determine the premium and the reduced premium will be used to determine the expense reimbursement.

Comment: One comment recommended that if the terms of the Late Planting Agreement Option are added to the Small Grains Policy, an option should be allowed for insureds to decline this coverage. The comment supported giving insureds the opportunity to make a management decision on whether their late planted acreage has coverage.

Response: Provisions for late planting coverage have been added to these provisions in order to provide more complete coverage for insureds. If insureds are allowed to opt out of the coverage it may result in adverse selection against the insurer. When agronomic conditions are good many insureds would tend to opt out of the coverage, but if growing conditions are poor, insureds would tend to keep the coverage.

Comment: One comment inquired about the lack of availability of the late planting option for late planted winter wheat. The comment pointed out that the option is available for both fall and spring planted barley, and suggested that it be available for winter wheat.

Response: FCIC has received comments indicating that the wheat final planting dates are now set as late as it is normally practical to plant. The additional planting period allowed by the Late Planting Agreement Option (LPAO) permits planting too late in the year to expect production equal to or in excess of the insurance guarantee provided by the Option. Although coverage similar to that provided by the current LPAO will no longer be available, coverage for winter wheat planted after the final planting date will be available under the prevented planting provisions (section 12). FCIC received no comments opposed to removing the LPAO for winter wheat.

Comment: One comment recommended changing the wording in subsection 6.(d) to: "If you do not select one of the options for alternate coverage, you agree that in counties for which the special provisions designate both a fall final planting date and a spring final planting date, any damage to fall planted wheat which occurs between the fall final planting date and the spring final planting date due to any cause is not insured."

Response: Subsection 6.(d) (renumbered as 6.(c) in this final rule) is intended solely to inform the insured of the availability of the Wheat Winter Coverage Endorsement. Section 7 (Insurance Period) clearly indicates the coverage limitations for fall planted wheat in counties with both fall and spring final planting dates. Additional language in subsection 6.(d) is not necessary.

Comment: A comment suggested that FCIC provide a deadline for selecting Option A or B under the Winter Coverage Option.

Response: The sales closing date will be the last date an insured can select either Option A or B under the Winter Coverage Option. FCIC agrees that the Option should indicate this date and has revised it accordingly.

Comment: One comment stated that if wheat insurance attaches at different times depending on which style of insurance a grower has purchased, it will lead to administrative problems. The comment suggested that insurance on wheat attach on the day the acreage is planted or the date the application is accepted—whichever is later.

Response: The insurance provisions attach on the later of the date the application is accepted or the date the crop is planted. This does not vary based on the insurance options chosen by the insured.

Comment: One comment indicated concern that the replant provision could be interpreted to mean that a crop that had sustained 1% damage before the final planting date must be replanted. The comment recommended "damage" be defined to mean damaged to the extent that the crop will not be further cared for, will not be harvested, or will be abandoned.

Response: FCIC agrees that the amount of damage should be clarified. Language has been added clarifying that any acreage damaged to the extent that growers in the area would not further care for the crop must be replanted unless replanting is not practical. The same change has been made to similar provisions for barley and wheat acreage (subparagraphs 7.(a)(2)(ii), 7.(a)(2)(iii), and 7.(a)(2)(iv)).

Comment: One comment stated that clarification is needed regarding the definition of "practical to replant."

Response: FCIC agrees with the comment and has clarified the definition. The new definition clarifies that it is practical to replant if it is "our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, etc., that a replanting of the insured crop will attain maturity in the remainder of the crop year."

Comment: A comment inquired as to the practicality of replanting wheat before the fall planting date.

Response: Replanting wheat before the fall final planting date is considered practical if certain conditions are met.

Comment: Three comments suggested that coverage limitations applicable to winter wheat also apply to winter barley. One of the comments also inquired if the requirement that a written request be made to insure fall planted wheat in counties with only a spring final planting date would result in extra paperwork.

Response: FCIC agrees that the limitations that apply to wheat should also apply to barley. The provisions have been modified accordingly. A written request to insure the fall planted acreage will serve to notify the insurer that a crop inspection is necessary in the spring to determine whether or not an adequate stand exists in the spring.

Comment: One comment noted that the provisions of section 7 specifically state that spring wheat damaged prior to the spring final planting date must be reseeded. The comment recommended that specific wording be added to state that damaged fall wheat must be reseeded prior to the fall final planting date and that no replanting payment applies.

Response: FCIC agrees that this clarification should be made. The provisions have been modified to state that any acreage damaged prior to the fall final planting date must be replanted to winter wheat unless FCIC agrees it is not practical. Paragraph 9.(a)(4) clearly indicates that a replanting payment for damage occurring prior to the fall final planting date is not allowed. Therefore, language regarding replanting payments was not added.

Comment: The following questions regarding winter wheat were submitted:

a. When winter wheat is planted in a county that has only a spring final planting date, will the winter wheat be insured using the spring wheat yield or will the RSO set a winter wheat yield on the written agreement?

b. Will the winter wheat production be considered spring wheat for APH purposes or must winter wheat APH yield be established?

c. What production guarantee is used to determine if the winter wheat has an adequate stand?

Response: The provision that applies to these questions is unchanged from the present wheat endorsement. Actuarial tables for the counties in question do not designate a wheat type. When a type is not designated, the guarantee is based on wheat production without regard to the type. This guarantee is used for APH purposes and is also used to determine whether or not an adequate stand exists.

Comment: For winter wheat in counties that only have a spring final planting date, the policy states that insurance will attach on the earlier of the spring final planting date or the date the insurer agrees to accept the acreage. The policy also requires insureds planting winter wheat in these counties to request insurance for winter planted wheat. One comment suggested that because the insurer must inspect the crop to determine if an adequate stand exists, insurance should attach when the insurer agrees to accept liability (not on the spring final planting date). The comment suggested that the applicable sentence in subparagraph 7.(a)(2)(v) should be revised to read as follows: "* * * Insurance will attach to acreage having an adequate stand on the date we agree to accept the acreage for insurance."

Response: The policy language was written to set a specific date by which the insurer must accept liability. The language requires insurers to inspect acreage in a timely manner so that the insured can be advised about the coverage level prior to the spring final planting date. No changes have been made in the provisions.

Comment: Under the winter coverage endorsement, FCIC is giving producers two additional coverage options for losses on winter wheat that is damaged prior to the spring final planting date. A Montana producer expressed concern that the new provisions may change the current basic winter wheat coverage and premium levels.

Response: The basic coverage under the wheat provisions is similar to the existing wheat endorsement. The changes (primarily replanting payments in certain instances) may have a small impact on the rate charged for the base coverage. The new basic policy (without the Wheat Winter Coverage Endorsement) clearly states that winter wheat damaged prior to the spring final planting date must be replanted in counties with both winter and spring final planting dates.

Comment: One comment recommended that the calendar dates for the end of the insurance period be moved to the Special Provisions. The comment also indicated that it is incorrect to state that the end of the insurance period is "October 31 following planting in all other states" because, in many states, the crop is planted prior to October 31.

Response: FCIC agrees that language regarding the end of the insurance period is incorrect and has made appropriate corrections. The Common Crop Insurance Policy (§ 457.8), to which the Small Grains Crop Provisions attaches, requires that the calendar date for the end of the insurance period be indicated in the crop provisions. FCIC will consider placing this date in the Special Provisions at a later date.

Comment: One comment expressed concern that the provisions pertaining to sufficient or improper application of insect or disease control measures could lead FCIC towards micro-management. The comment also indicated that an over-zealous appraiser could unjustly claim that a producer did not use the right timing, kind of pesticide, or the equipment for application.

Response: Language indicates that crop damage caused by insects or disease is covered unless the damage is due to insufficient or improper application of control measures. It has always been the loss adjustor's responsibility to determine if good farming practices are carried out by the producer. This responsibility includes determining if cultural practices necessary to control insects and disease are followed. The new language does not change current loss adjustment procedures, or give loss adjustors the latitude to require unreasonable control measures. The language is intended to clearly advise insureds that they are expected to take control measures that typically would be used in the area.

Comment: One comment recommended adding the following language under failure of water supply as an insured cause of loss: "(water source and means for supplying irrigation water, without regard to equipment or facilities). This includes the water source, dams, canals, ditches, pipelines, etc., necessary to supply water for movement from the source to the acreage but does not include any irrigation equipment or facilities."

Response: Failure of the irrigation water supply during the insurance period is a covered cause of loss. The "supply" includes several items not included in the recommendation, e.g., aquifers, precipitation, etc. Also covered are off-farm irrigation facilities and equipment used by water regulators and suppliers. The recommended language would not provide coverage when such facilities failed. Language in the proposed rule will remain unchanged.

Comment: One comment inquired if the provision concerning wheat replant payments includes replant payments for winter wheat as well as spring wheat.

Response: The provisions provide a replant payment for winter wheat in counties with both a fall and spring final planting date, only if the winter wheat is damaged after the fall final planting date. A replant payment is also provided to replant spring wheat in counties with a spring final planting date.

Comment: Five comments were received opposing paying replant payments for wheat. The comments stated that: (a) Insureds have not requested replant payments for spring wheat; (b) insureds are currently

replanting or "sweetening" stands at their own minimal expense; (c) replant payments for spring wheat will not reduce indemnity payments because insureds already replant at their own expense; (d) the cost of replanting wheat is much less than other spring crops; (e) unnecessary increased loss adjustment expense will result; (f) if FCIC persists with implementation of this proposal, provisions addressing these increased expenses should be made; (g) without a commensurate increase in rates, adding a replant payment has the net effect of increasing the loss ratio; (h) this provision will tremendously impact the loss adjustment expense; (i) the replant provisions are extremely hard to react to on a timely basis and very expensive to administer; and (j) replants on row crops are normally confined to smaller areas with fewer miles to travel. The same is not applicable to other small grains.

Response: The intended effects of replanting payments are to: (1) Provide coverage requested by wheat growers; (2) provide reimbursement to insureds for replanting expenses; (3) reduce indemnities by encouraging replacement of damaged or destroyed crops; and (4) provide equity among the various crops. FCIC understands that administrative costs will be associated with this coverage, however, replant payments are a loss control mechanism and may outweigh any additional administrative costs. Comments received did not establish findings that all damaged acreage is presently replanted in the absence of a payment.

Comment: One comment recommended revising language concerning wheat replant payments to specify that damage must be due to an insurable cause of loss in order for a replay payment to be made.

Response: FCIC agrees with the comment and has revised the language accordingly.

Comment: The provisions require that wheat be damaged to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the unit to qualify for a replant payment. One comment stated that these provisions conflict with the winter coverage options because the options indicate a replant payment can be made on a portion of a unit. The comment recommended changing the language to allow a replant payment if the remaining stand will not produce at least 90 percent of the production guarantee for the acreage as opposed to the unit.

Comment: FCIC agrees that changing the language as recommended makes replanting payment provisions consistent between the Basic Policy and Winter Wheat Coverage Endorsement. Changes have been made accordingly.

Comment: The provisions do not include any limitation regarding the date an insured can replant and be eligible for a replanting payment. One comment recommended adding a provision requiring that acreage be replanted within 25 days after the spring final planting date to remain eligible for a replant payment. The comment also recommended clarifying if "sweetening" is considered replanting.

Response: FCIC agrees that replanting should take place within 25 days after the spring final planting date and has added appropriate language. The provision has been changed to indicate that planting new seed into an existing damaged stand at a reduced seeding rate will not be considered replanting.

Comment: One comment stated that the replant payment provisions do not indicate the consequences when wheat is replanted using a practice that is uninsurable for an original planting. The comment recommended the following language be added to clearly indicate what happens in such a situation: "When wheat is replanted using a practice that is uninsurable for an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will be based on the original liability."

Response: FCIC agrees with the comment and has added the language as recommended.

Comment: One comment recommended that replant payments apply onto wheat. In addition, the comment recommended clarification that no replant payment for barley, oats, rye or flax will be provided.

Response: The provisions already clearly state that a replant payment is allowed only for wheat. Further clarification is not necessary. After loss experience with wheat replanting payments is analyzed, replanting payment coverage may be extended to barley, oats, rye and flax.

Comment: One comment inquired why the number of days a representative sample must be left unharvested has been changed from 15 to 30.

Response: The provisions have been revised to require that representative samples be left until the earlier time the insurer gives consent to destroy the samples or 15 days after harvest.

Comment: One comment stated that the proposed provisions do not link the time notice is given with the requirement to leave representative samples of the insured crop. In addition, the provisions do not clearly indicate that a sample is required for each field in the unit. The comment recommended that there be some indication that the requirements in this provision are in addition to the insured's duties contained in the Common Crop Insurance Policy. The comment also recommended that the following language be used: "In addition to your duties contained under section 14 of the Common Crop Insurance Policy (§ 457.8), if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 30 days after harvest is completed on the unit."

Response: FCIC agrees with the comment and has changed the provisions as recommended with the exception of the 30 day requirement.

Comment: One comment inquired about the intent of the provisions under the heading, "Duties in the Event of Damage or loss."

Response: This provision requires that representative samples be left when notice of damage is given within 15 days of, or during harvest. It does not apply only when the producer is going to destroy the acreage. The intent of this provision is to enable the loss adjustor to have a reasonable amount of time to inspect a portion of the undisturbed crop and determine the extent of insurable damage. After the crop is harvested it can be extremely difficult to accurately determine the extent of insurable damage.

Comment: One comment suggested clarifying the provisions under section 11, "Settlement of Claim", by indicating that mixed grains will be graded based on a sample of the insured (predominant) grain.

Response: According to current procedure, mixed grains may be quality adjusted if the predominant grain is separable from other grains in the mix. Additionally, the predominant grain must meet policy requirements for quality adjustment. This is a procedural matter and will remain in loss adjustment procedure handbooks.

Comment: Two comments recommended that the provisions be revised to state that only those optional units on which production is commingled will be combined. As proposed, the provisions require that all optional units within a basic unit be combined when production is commingled between any optional units.

Response: FCIC agrees with the comment and has revised the provisions accordingly.

Comment: One comment stated that language under section 12, "Settlement of Claim", is misleading because it indicates that "All appraised production which is: Not less than the production guarantee will be counted for acreage that is abandoned * * *" This could lead the reader to believe that only appraised production in excess of the production guarantee will be counted. The comment recommended revising the language as follows: "All appraised production as follows: Not less than the production guarantee for acreage which is abandoned * * *."

Response: FCIC agrees with the comment and has revised the language as recommended.

Comment: One comment suggested that "appraised production" be defined in the policy. The comment also inquired if FCIC intends to include definitions of "appraised production," "harvested production" and "uninsured causes" in the small grains policy?

Response: The term "appraised production" is defined in the provisions. "Harvested production" and "uninsured causes" are definitive terms and do not require specific definitions.

Comment: One comment suggested clarifying the provisions under section 11, "Settlement of Claim", by revising the language to read as follows: "(i) not less than the production guarantee for: (a) acreage which is abandoned, (b) put to another use without our consent, (c) damaged solely by uninsured causes, or (d) for which you fail to provide records of production that are acceptable to us."

Response: FCIC agrees that separating the items in the language makes it easier to read and revisions have been made accordingly.

Comment: One comment recommended that the provisions under section 11, "Settlement of Claim", be revised to allow adjusting production for both (1) moisture exceeding the requirements in the policy and (2) quality deficiencies exceeding the grade requirements stated in the policy for each small grain crop. The comment also recommended that an adjustment for moisture should be addressed using moisture charts in the handbook.

Response: FCIC agrees with the comment and has revised the provisions so that adjustments for moisture and quality are determined separately.

Comment: One comment inquired if individuals licensed under the United States Warehouse Act are qualified to determine grade due to damaged kernels, shrunken or broken kernels, defects, sound barley, thin barley, sound oats, etc. The comment also inquired if tests for vomitoxin by state university labs and commercial labs licensed by the state will continue to be acceptable.

Response: Grain graders licensed under the United States Warehouse Act are authorized to inspect, weigh, and grade grain for the purposes of warehouse receipts. Ability to grade grain varies considerably. When grade problems exist and elevator personnel are unable to adequately establish the quality, samples are generally sent to Federal Grain Inspection Service (FGIS) for a grade determination. FGIS has the authority to make final grade determinations. Insurers who are uncomfortable with grade determinations made by individuals licensed under the United States Warehouse Act should send samples to FGIS for final grade determination. Specialized tests, such as tests for vomitoxin, must be performed by a qualified laboratory. Language specifying that specialized tests must be performed by a laboratory approved by the insurer has been added to the provisions.

Comment: One comment recommended clarifying the definition of "local market price".

Response: FCIC agrees that the definition should be clarified and has done so.

Comment: Two comments recommended changing the term "final inspection" under section 11, "Statement of Claim", to either: "final settlement" or "the date the loss is adjusted."

Response: The date of the final inspection is used to determine values used in quality adjustment. This is the date the claim is completed. Changing the term to either of the above suggestions does not significantly clarify the provision.

Comment: One comment recommended revising the provisions concerning quality adjustment under section 11, "Statement of Claim", to the following: "The value we use for the damaged production will reflect only reduction in value to the requirements outlined in 11(d). It will not reflect any reduction in value due to moisture content, uninsured causes, charges for drying, handling or processing or any other reduction."

Response: FCIC agrees with the comment and has revised the language accordingly.

Comment: One comment expressed concern over FCIC's option to utilize prices of outside markets as opposed to local markets to establish the value for local grain.

Response: This provision allows insurers to seek higher prices for damaged grain which may result in the insured receiving compensation from a buyer rather than from an insurance indemnity. This provision should help reduce indemnities and keep premiums lower.

Comment: One comment suggested requiring damaged grain with zero value be destroyed prior to paying any indemnity.

Response: Once a loss adjuster determines a crop has no value it should remain the insured's choice how to handle its disposition. Loss adjustors are trained to make accurate evaluations of crop potential and any determinations made by them should be accepted by the insurer. The suggested language has not been added.

Comment: One comment recommended that a provision be added to clarify that any discount used to establish the net price of damaged production be usual, customary, and reasonable.

Response: FCIC agrees with the comment and has revised the provision accordingly.

Comment: One comment recommended revising paragraph 11.(d)(3) regarding moisture reduction to read as follows: "Production eligible for moisture adjustment will be reduced by .12 percent for each .1 percentage point of moisture in excess of * * *."

Response: FCIC agrees with the comment and has revised the paragraph accordingly.

Comment: Four comments indicated that it is difficult to assess provisions of the Winter Coverage Endorsement without knowing the premium rates. One of the comments points out that dissatisfaction would occur with the Endorsement when premium rates are published. The author of another comment expressed concern that the proposed Options may erode the affordable value of the insurance product in counties currently covered by the Winter Coverage Option/Fall Seeded Endorsement. If Option B is priced too high, it may cause a migration of business to the less expensive Option A or the basic endorsement. The result would be less significant protection, on an affordable basis, and an overall devaluation of the effectiveness of the insurance product in counties that currently have the Winter Coverage Option.

Response: Final rate determinations cannot be made until the endorsement provisions are finalized. Any premium rate changes will reflect the coverage

provided by regulations published in this final rule. Adequate time will be allowed to inform insureds of coverage and rate changes, and for insureds to make choices regarding their insurance protection.

Comment: Three comments stated that it will be necessary to provide extra training to insurance agents before they sell the Winter Coverage Endorsement.

Response: FCIC agrees that it is imperative to properly train insurance agents regarding program changes. Adequate training will be provided prior to implementing program changes contained in the new Winter Coverage Endorsement.

Comment: One comment stated that "conservation compliance requirements are encouraging more intensive rotational systems. Producers throughout South Dakota are opting to use both Spring wheat and Winter wheat within their rotational systems. Unfortunately for many producers, they are unable to buy winter wheat coverage in a large portion of the state." The comment suggested that serious consideration be given to allowing insurance coverage for both wheats on a state wide basis.

Response: The Wheat Winter Coverage Endorsement will be available in all South Dakota counties that currently have both fall and spring final planting dates. Research is being done by FCIC to determine if the Endorsement should be available in other counties. Expanded availability will depend on the outcome of this research.

Comment: One comment submitted the following questions: If an insured chooses to destroy damaged acreage covered by the Wheat Winter Coverage Endorsement, can they destroy only damaged acres, or do they have to destroy all the remaining acres in the unit? Is spring wheat insurable on acres indemnified under Winter Wheat Option A? Will the insured qualify for a replant payment on those acres?

Response: The insured may destroy only the damaged acres on the unit and qualify for coverage as long as at least 20 acres or 20 percent of the acreage in the unit does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage. Under Option A, an insured may choose to have the acreage appraised, destroy damaged winter wheat, or plant spring wheat on the acreage and insure it separately. If the insured chooses to accept an appraisal of the remaining potential, a replant payment is not allowed, even if the acreage is replanted to spring wheat.

Comment: One comment recommended adding the following to the last sentence in paragraph 3 of the Winter Coverage Endorsement: "* * * unless we agree in writing that it is practical to replant after the spring final planting date."

Response: The provisions of paragraph 3 do not prevent a replant payment for acreage replanted after the spring final planting date. It is not necessary to extend coverage after the period covered by the Winter Coverage Endorsement.

Comment: One comment stated that the word "damage," used in the Winter Coverage Endorsement, can be interpreted to mean that a crop which has suffered one percent damage can either be replanted, carried to harvest or destroyed. The comment recommended that "damage" be qualified to mean damaged to the extent that the crop does not have the potential to produce the yield used to determine the production guarantee, will not be further cared for, will not be harvested or will be abandoned.

Response: Coverage under both Options A and B is limited to situations in which at least 20 acres or 20 percent of the acreage in the unit, whichever is less, is damaged to the extent that it does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage (see first paragraphs under Options A and B).

Comment: Two comments indicated that since one of the choices the insured has under the Winter Coverage Option is to replant to spring wheat, the notice of damage should be required by the spring final planting date. The deadline for notice of loss under the current Fall-Winter Coverage Option is the spring final planting date.

Response: FCIC agrees that notice of damage under the Endorsement should be provided by the spring final planting date. The provisions have been revised accordingly.

Comment: Eight comments were received regarding coverage limitations under Option A of the Wheat Winter Coverage Endorsement. The comments stated that limiting coverage for damaged wheat to 30 percent of the production guarantee, after the time period covered by the Endorsement, is inappropriate. A crop carried on after the winter coverage period would have a potential much greater than 30 percent of the production guarantee. Two of the comments recommended allowing coverage to remain at the full production guarantee when the insured continues to care for the crop. One comment recommended allowing coverage to remain in place at the actual crop potential.

Response: Option A limited coverage to 30 percent of the production guarantee even if the insured elected to carry the damaged wheat to harvest. FCIC has revised Option A to allow coverage to continue based on the full guarantee if the production potential on the spring final planting date is such that growers in the area continue to maintain the crop.

Comment: The author of one comment submitted the following questions: Under Option A of the Wheat Winter Coverage Endorsement, is 70 percent of the production guarantee levied against total production on damaged acres only? What if there is winter damage and the insurer was not informed until after harvest?

Response: Option A clearly indicates that the amount of production to count will not be less than 70 percent of the production guarantee for the damaged acreage. If notice of damage is not given in accordance with policy provisions, and such lack of notice interferes with determination of covered damage, a claim may not be payable for the unit.

Comment: One comment outlined concerns that the coverage under Option A will not be sufficient to cover production costs incurred before the crop must be destroyed. The comment also inquired about the actual premium costs.

Response: Option A of the Wheat Winter Coverage Endorsement is designed as a lower cost alternative to the full coverage of Option B. Although full production costs may not be covered, there is a significant increase in coverage over the base policy which does not provide protection unless the crop is replanted. Rate determinations cannot be made until the Endorsement provisions are finalized. The premium rates for Option A will reflect the coverage provided by regulations published in this final rule.

Comment: One comment recommended adding language to the Wheat Winter Coverage Endorsement that would state that when damaged winter wheat is replanted to spring wheat, the spring wheat will have the winter wheat guarantee.

Response: FCIC agrees that clarification is needed and has revised the language accordingly.

Comment: Two comments were received regarding the provisions in the Wheat Winter Coverage Endorsement that allow an insured to destroy damaged wheat acreage, replant the acreage to spring wheat, and consider such replanted acreage as a separate crop. One comment indicated that the endorsement may cause program abuse by encouraging an insured to gamble and seed winter wheat if he is normally a spring wheat producer. If there is not a good stand in the spring, the insured could destroy the crop, collect an indemnity, and plant spring wheat as is normally done. The second comment indicated that the provision will cause FCIC to insure two different crops of wheat on the same acreage during one crop year, which could cause a myriad of administrative problems.

Response: As written, both Option A and B allow an insured to destroy damaged winter wheat, receive any applicable indemnity payment, and then replant to spring wheat. The spring wheat can then be insured separately for a separate premium. If the insured is forced to include acreage replanted to spring wheat as part of the winter unit, a significant coverage provided by the options is eliminated. FCIC does not anticipate the administrative difficulties will be unmanageable.

Comment: The following question was submitted: "Under Option A, if damaged winter wheat is replanted to spring wheat, does the harvested spring wheat production count against the winter wheat unit production guarantee?"

Response: Yes.

Comment: The following question was submitted: "Does the winter wheat guarantee continue on the replanted spring wheat crop under paragraph b of Option B."

Response: Yes.

Comment: One comment stated that Option B provides better coverage than Option A and will be more attractive to insureds. The comment found no appreciable differences between the new Option B and former Winter Coverage Option for wheat.

Response: Option B is not similar to the current Winter Coverage Endorsement. Option B allows spring wheat (planted to replace damaged winter wheat) to be treated as a separate crop. The current Endorsement requires that spring wheat in this situation be a part of the winter wheat unit. This new choice provides more comprehensive coverage than the current Endorsement.

Comment: One comment inquired if FCIC is aware of the recommendations from the meeting of the Montana Committee and the Billings RSO regarding clarification of the Malting Barley Option.

Response: FCIC has considered and incorporated the recommendations of the Billings Regional Service Office and the Montana Committee. The recommendations were to: (1) Include a clearer definition of the entity (i.e., a brewery or business that makes or sells malt or processed mash to a brewery) contracting with the insured to produce malting barley; and (2) clearly state that the insurer's liability under the Option is limited to the lesser of the number of contracted bushels or the production guarantee.

Comment: One comment inquired if malting barley basic units can be divided into optional units by section/ASCS FSN and/or irrigated/non-irrigated acreage. The comment stated that if this division is possible, paragraph 4 of the Malting Barley Option needs to be revised to refer to the Small Grains Crop Provisions, not the Basic Provisions.

Response: Paragraph 4 of the Malting Barley Option refers to the "Basic Policy," not the "Basic Provisions." The "Basic Policy" includes all provisions applicable to small grains (both the Common Crop Insurance Policy, and the Small Grains Crop Provisions). Revision is not necessary.

Comment: A comment recommended that the approved malting barley varieties be specified in the Special Provisions.

Response: FCIC agrees with the comment and has specified the varieties in the Special Provisions.

Comment: A comment suggested that the "date of the final inspection for the unit" be clarified.

Response: The date of the final inspection is the date that the loss adjustor completes the claim.

Comment: One comment recommended that the Malting Barley Option be revised to allow adjusting production for both (1) moisture exceeding the requirements in the policy and (2) exceeding the grade requirements stated in the Option.

Response: FCIC agrees with the comment and has modified the paragraphs so that adjustments for moisture and quality are determined separately.

During the interim between publication of the Small Grains Crop Provisions as a proposed rule and preparation of this final rule, provisions providing coverage for Late and Prevented Planting were added to the current Wheat Endorsement (§ 401.101), Barley Endorsement (§ 401.103), and Oat Endorsement (§ 401.105). These provisions for Late and Prevented Planting Coverage, which were published in the **Federal Register** on December 22, 1993, have been incorporated into this final rule to continue the coverage provided by the current endorsements for barley, oats, and wheat, and to provide the same coverage benefits to those insuring flax or rye. In addition, FCIC has determined that revised language is needed in subparagraph 11.(c)(1)(iv) regarding acreage an insured wants to put to another use prior to harvest. These provisions now allow an insured to destroy such acreage when an appraisal amount is not agreed upon, if the insured agrees to leave representative samples of the crop in place. The samples will be used to later determine the amount of production to count.

Accordingly, the rule, "General Crop Insurance Regulations; Small Grains Crop Insurance Provisions" published at 58 FR 32458 as revised as set out below is hereby adopted as final rule.

List of Subjects in 7 CFR Part 457

Crop insurance; Barley, Flax, Malting barley, Oats, Rye, Wheat, Winter wheat.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1995 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 457 is amended by revising the heading; by adding and reserving §§ 457.9 through 457.100; and by adding §§ 457.101 Small Grains Crop Provisions, 457.102 Wheat Crop Insurance Winter Coverage Endorsement, and 457.103 Malting Barley Option to read as follows:

PART 457—COMMON CROP INSURANCE; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

* * * * *

§ 457.9–457.100 [Reserved]

§ 457.101 Small Grains Crop Insurance.

The Small Grains Crop Insurance provisions for the 1995 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Small Grains Crop Provisions

If a conflict exists between the Common Crop Insurance Policy (§ 457.8) and the Special Provisions, the Special Provisions will control. If a conflict exists between these Crop Provisions and the Special Provisions, the Special Provisions will control.

1. Definitions

(a) *Adequate stand*—A population of live plants per unit of acreage which will produce at least the yield used to establish your production guarantee.

(b) *Days*—Calendar days.

(c) *Final planting date*—The date contained in the Special Provisions by which the insured crop must initially be planted in order to be insured for the full production guarantee.

(d) *Good farming practices*—The cultural practices necessary for the insured crop to make usual and normal progress toward maturity and which can be expected to produce at least the yield used to determine the production guarantee. Good farming practices are generally those in use in the county for production of the insured crop and are recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(e) *Harvest*—Combining or threshing the insured crop for grain or cutting for hay or silage on any acreage. A crop which is swathed prior to combining is not considered harvested.

(f) *Initially planted*—The first occurrence of planting the insured crop on insurable acreage for the crop year.

(g) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(h) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the production guarantee on the irrigated acreage planted to the insured crop.

(i) *Late planted*—Acreage planted during the late planting period.

(j) *Late planting period*—(not applicable for fall-planted wheat)—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(k) *Latest final planting date*—

(1) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate a final planting date for spring-planted acreage only;

(2) The final planting date for fall-planted acreage in all counties for which the Special Provisions designate a final planting date for fall-planted acreage only; or

(3) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate final planting dates for both spring-planted and fall-planted acreage.

(l) *Local market price*—The cash grain price per bushel for the U.S. No. 2 grade of the insured crop offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade of the insured crop. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein, oil or moisture content, or milling quality will not be considered.

(m) *Nurse crop* (companion crop)—A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

(n) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Except for flax, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted. Flax seed must initially be placed in rows to be considered planted.

(o) *Practical to replant*—(subsection 1.(ff) of the Common Crop Insurance Policy (§ 457.8) does not apply to small grains.) Our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, etc., that a replanting of the insured crop will attain maturity in the remainder of the crop year. It will not be considered practical to replant after the end of the late planting period or the final planting date if a late planting period is not applicable (see section 7) except that it may be determined practical to replant after the end of the late planting period or the final plant date if such procedure is generally occurring in the area.

(p) *Prevented planting*—Inabiltiy to plant the insured crop with proper equipment by:

(1) The latest final planting date for the insured crop in the county; or

(2) The end of the late planting period.

You must have been unable to plant the insured crop due to an insured cause of loss that is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and that occurs between the sales closing date and the latest final planting date for the insured crop in the county or within the late planting period.

(q) *Production guarantee*—The number of bushels determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(r) *Replanting*—Performing the cultural practices necessary to replace seed for the insured crop, and replacing the seed in the insured acreage with the expectation of growing a successful crop.

(s) *Small grains*—Wheat, barley, oats, rye, and flax.

(t) *Swathed*—Severance of the stem and grain head from the ground without removal of the seed from the head and placing into a windrow.

(u) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Common Crop Insurance policy (§ 457.8) may be divided into optional units if, for each optional unit you claim, all the conditions of subsections 2.(a), (b), and (c), and the conditions of paragraph 2.(d)(1), (d)(2, or (d)(3) are met, or if we agree to such division in writing. Optional units must be established at the time you file your report of acreage for each crop year.

(a) You must have verifiable records of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plant the crop in a manner which results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have measurements of stored production or market production from each optional unit in a manner that permits us to verify the production from the optional unit.

(d) Each optional unit must meet one or more of the following:

(1) *Optional Units by Section, Section Equivalent, or ASCS Farm Serial Number:* Optional units may be established if each optional unit is located in a separate section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands. In areas which have not been surveyed using the systems identified above or another system approved by us, and in areas where boundaries are not readily discernable, each optional unit must be located in separate ASCS Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to or instead of establishing optional units by section, section equivalent, or ASCS Farm Serial Number, optional units may be established if each optional unit contains only irrigated acreage or only non-irrigated acreage. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage and the non-irrigated acreage in an appropriate manner.

(3) *Optional Units by Initially Planted Winter Wheat or Initially Planted Spring Wheat:* For wheat only, in addition to or instead of establishing optional units by section, section equivalent, or ASCS Farm Serial Number as described in paragraph 2.(d)(1) or by irrigated and non-irrigated practices as described in paragraph 2.(d)(2), optional units maybe established if each optional unit contains only initially planted winter wheat or only initially planted spring wheat. Optional units may be established in this manner only in counties having both fall and spring final planting dates as designated by the Special Provisions.

Basic units may not be divided into optional units on any basis (production practice, type, variety, planting period, etc.) other than as described under this section. If you do not comply fully with these conditions, we will combine all optional units which are not established in compliance with these provisions into the basic unit from which they were formed. We may do this at any time we discover that you have failed to comply with these conditions. If failure to comply with these provisions is determined to be inadvertent, and if the optional units are combined, the premium paid for electing optional units will be refunded to you.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements under section 3 (Insurance Guarantees, Coverage Levels, and Prices for determining Indemnities) of the Common Crop Insurance Policy (§ 457.8) you may select only one price election for each crop insured under this policy in the county.

4. Contract Changes

The contract change date is December 31 preceding the cancellation date for counties with an April 15 cancellation date and June 30 preceding the cancellation date for all other counties (see the provisions under section 4. (Contract changes) in the Common Crop Insurance Policy § 457.8).

5. Cancellation and Termination Dates

The cancellation and termination dates are:

Crop, state and county	Cancellation date	Termination date
Wheat:		
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel Counties; all Iowa Counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties and all Iowa counties north thereof; all Wisconsin Counties except Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties and all Wisconsin counties north and west thereof; and all other states except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming.	September 30	September 30.
Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, and San Miguel Counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels, Roosevelt, Sheridan, and Valley Counties; New York; Oregon; Rhode Island; all South Dakota counties except Harding, Perkins, Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Jerauld, Aurora, Douglas, and Bon Homme Counties and all South Dakota counties north and east thereof; Washington; and all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie Counties.	September 30	November 30.
Matanuska-Susitna County, Alaska; Arizona; California; Nevada; and Utah	October 31	November 30.
All Alaska Counties except Matanuska-Susitna County; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels, Roosevelt, Sheridan, and Valley Counties, Montana; New Hampshire; North Dakota; Harding, Perkins, Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Jerauld, Aurora, Douglas, and Bon Homme Counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties, Wisconsin, and all Wisconsin counties north and west thereof; Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	April 15	April 15.
Barley:		
All New Mexico counties except Taos County; Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey, and all states south and east thereof.	September 30	September 30.
Kit Carson, Lincoln, Elbert, El Paso, Pueblo, Las Animas Counties, Colorado and all Colorado Counties south and east thereof; Connecticut; Kansas; Massachusetts; and New York.	September 30	November 30.
Arizona; California; and Clark and Nye Counties, Nevada	October 31	November 30.
All Colorado counties except Kit Carson, Lincoln, Elbert, El Paso, Pueblo, and Las Animas Counties and all Colorado counties south and east thereof; all Nevada counties except Clark and Nye Counties; Taos County, New Mexico; and all other states except: Arizona, California, Connecticut, Kansas, Massachusetts, New York; and (except) Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, and New Jersey and all states south and east thereof.	April 15	April 15.
Oats:		
Alabama; Arkansas; Florida; Georgia; Louisiana; Mississippi; All New Mexico counties except Taos County; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; and Patrick, Franklin, Pittsylvania, Campbell, Appomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties, Virginia, and all Virginia counties east thereof.	September 30	September 30.
Arizona; All California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties.	October 31	October 31.
Del Norte, Humbolt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties, California; Taos County, New Mexico; all Virginia counties except Patrick, Franklin, Pittsylvania, Campbell, Attomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties and all Virginia counties east thereof; and all other except Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.	April 15	April 15.
Rye:		
All states	September 30	September 30.
Flax:		
All states	April 15	April 15.

6. Insured Crop

(a) The crop insured will be each small grain you elect to insure, that is grown in the county on insurable acreage, and for which premium rates are provided by the actuarial table:

(1) In which you have a share;

(2) That is planted for harvest as grain (a grain mixture in which barley or oats is the predominate grain may also be insured if allowed by the Barley or Oat Special

Provisions, or if we agree in writing to insure such mixture. The crop insured will be the grain which is predominate in the mixture. The production from such mixture will be considered as the predominate grain on a weight basis);

(3) That is not:

(i) Interplanted with another crop except as allowed in paragraph 6.(a)(2);

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop, unless planted as a nurse crop for new forage seeding, but only if seeded at a normal rate and intended for harvest as grain.

(4) We may agree, in writing, to insure a crop prohibited under paragraph 6.(a)(3) if you so request. Your request to insure such crop must be in writing, and submitted to your agent not later than 15 days after the acreage reporting date.

(b) If you anticipate destroying any acreage prior to harvest you:

(1) May report all planted acreage when you report your acreage for the crop year and specify any acreage to be destroyed as uninsurable acreage. (By doing so, no coverage will be considered to have attached on the specified acreage and no premium will be due for such acreage. If you do not destroy such acreage, you will be subject to the under-reporting provisions contained in subsection 6.(f) of the Common Crop Insurance Policy (§ 457.8)); or

(2) If the actuarial table provides a reduced premium rate for acreage destroyed by a date designated in the Special Provisions, you may report all planted acreage as insurable when you report your acreage for the crop year. Premium will be due on all the acreage. Your premium amount will be reduced by the amount shown on the Actuarial Table for any acreage you destroy prior to a date designated in the Special Provisions if you do not claim an indemnity on such acreage. In accordance with subsection 14.(b) of the Common Crop Insurance Policy (§ 457.8), you must obtain our consent before and give us notice after you destroy any of the insured crop so your acreage report can be revised to make you eligible for this reduction in premium.

(c) In counties for which the Wheat Special Provisions designate both fall and spring final planting dates, you may elect a winter coverage endorsement for wheat. This endorsement provides two options for alternative coverage for wheat that is damaged between the fall final planting date and the spring final planting date. Coverage under the endorsement will be effective only if you designate the coverage option you elect by executing the endorsement by the sales closing date for winter wheat in the county.

7. Insurance Period

In lieu of the requirements under section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), and subject to any provisions provided by the Wheat crop insurance winter coverage endorsement (§ 457.102) if you have elected such endorsement, the insurance period is as follows:

(a) Insurance attaches on each unit or part thereof on the later of the date we accept your application or the date the insured crop is planted.

(1) For oats, rye and flax, the following limitations apply:

(i) The acreage must be planted on or before the final planting date designated in the Special Provisions for the insured crop except as allowed in subsection 12.(c).

(ii) Any acreage of the insured crop damaged before the final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical (see subsection 1.(o)).

(2) For barley and wheat, the following limitations apply:

(i) The acreage must be planted on or before the final planting date designated in the Special Provisions for the type (winter or spring) except as allowed in subsection 12.(c).

(ii) Whenever the Special Provisions designate only a fall final planting date, any acreage of winter barley or wheat damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop unless we agree that replanting is not practical.

(iii) Whenever the Special Provisions designate both fall and spring final planting dates, winter barley or wheat planted on or before the final planting date which is damaged:

(A) Before the fall planting final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop unless we agree that replanting is not practical.

(B) On or after the fall final planting date, but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to an appropriate variety of the insured crop unless we agree that replanting is not practical.

If you have elected coverage under one of the available wheat winter coverage options available in the county, the insurance period for wheat will be in accordance with the selected options.

(iv) Whenever the Special Provisions designate a spring final planting date, any acreage of spring barley or wheat damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree that replanting is not practical.

(v) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted barley or wheat is not insured unless you request such coverage and we agree in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. Insurance will then attach to acreage having an adequate stand on the earlier of the spring final planting date or the date we agree to accept the acreage for insurance. If such fall planted acreage is not to be insured it must be recorded on the acreage report as an uninsured fall planted crop.

(b) Insurance ends on each unit at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;

(3) Final adjustment of a loss on the unit;

(4) September 25 following planting in Alaska, or October 31 of the calendar year in which the crop is normally harvested in all other states; or

(5) Abandonment of the crop on the unit.

8. Causes of Loss

In addition to the provisions under section 12 (Causes of Loss) of the Common Crop Insurance Policy, any loss covered by this policy must occur within the insurance period.

The specific causes of loss for small grains are:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage allowed because of insufficient or improper application of pest control measures;

(d) Plant disease, but not damage allowed because of insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply.

9. Replanting Payments

(a) A replant payment for wheat only is allowed as follows:

(1) You comply with all requirements regarding replanting payments contained under section 13 (Replanting Payment) of the Common Crop Insurance Policy and in any winter coverage endorsement for which you are eligible and which you have elected;

(2) The wheat must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage;

(3) The acreage must have been initially planted to spring wheat in those counties with only a spring final planting date;

(4) The damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated;

(5) Replanting must take place not later than 25 days after the spring final planting date; and

(6) The replant wheat must be seeded at a rate that is normal for initially planted wheat (if new seed is planted at a reduced seeding rate into a partially damaged stand of wheat, the acreage will not be eligible for a replanting payment).

(b) No replanting payment will be made for acreage initially planted to winter wheat in any county for which the Special Provisions contain only a fall final planting date.

(c) In accordance with subsection 13.(c) of the Common Crop Insurance Policy (§ 457.8), the maximum amount of the replanting payment per acre will be the lesser of 20 percent (20%) of the production guarantee or 3 bushels, multiplied by your price election multiplied by your share.

(d) When wheat is replanted using a practice that is uninsurable for an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

10. Duties in the Event of Damage or Loss

In addition to your duties under section 14 of the Common Crop Insurance Policy (§ 457.8), if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or for any

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (bushels) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) Which is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with subsection 11.(d));

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If:

(A) Agreement on the appraised amount of production is not reached, you may elect to continue to care for the crop, or we will give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.

(B) You elect to continue to care for the crop, we will determine the amount of production to count for the acreage using the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested production from the insurable acreage.

(d) Mature wheat, barley, oat, and rye production may be adjusted for excess moisture and quality deficiencies. Flax production may be adjusted for quality deficiencies only.

(1) Production will be reduced by .12 percent for each .1 percentage point of moisture in excess of:

(i) 13.5 percent for wheat;

(ii) 14.5 percent for barley;

(iii) 14.0 percent for oats; and

(iv) 16.0 for rye.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in:

(A) Wheat not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, total damaged kernels (excluding heat damage), shrunken or broken kernels, or defects (excluding foreign material and heat damage), or grading garlicky, light smutty, smutty or ergoty;

(B) Barley not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, percentage of sound barley, damaged kernels, thin barley, or black barley, or grading smutty, garlicky, or ergoty;

(C) Oats not meeting the grade requirements for U.S. No. 4 (grade U.S. sample grade) because of test weight or percentage of sound oats, or grading smutty, garlicky, or ergoty;

(D) Rye not meeting the grade requirements for U.S. No. 3 (grades U.S. No. 4 or worse) because of test weight, percent damaged kernels or thin rye, or grading smutty, garlicky, or ergoty;

(E) Flaxseed not meeting the grade requirements for U.S. No. 2 (grades U.S. sample grade) due to damaged kernels; or

(ii) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged grain that is less than the local market price of U.S. No. 2 production;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grain grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by one loss adjustor.

(4) Production of small grains that is eligible for quality adjustment, as specified in paragraphs 11.(d) (2) and (3), will be reduced as follows:

(i) The market price of the qualifying damaged production and the local market price will be the prices on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit. The price for the qualifying damaged production will be the market price for the local area to the extent feasible. Discounts used to establish the net price of the damaged production will be limited to those which are usual, customary, and reasonable. Any reduction in price due to the following factors will not be accepted:

(A) Moisture content;

(B) Damage due to uninsured causes; or

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the grain; except, if the price of the damaged production can be increased by conditioning, we may reduce the price of the production after it hes been conditioned by the cost of conditioning but not lower than the value of the production before conditioning. We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the production to those buyers.

(ii) The value of the damaged or conditioned production will be divided by the local market price to determine the quality adjustment factor.

(iii) The number of bushels remaining after any reduction due to excessive moisture (the moisture-adjusted gross bushels (if appropriate)) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

12. Late Planting and Prevented Planting

(a) In lieu of paragraph 6.(b)(2) and subsection 1.(aa) of the Common Crop Insurance Policy (§ 457.8), insurance will be provided for acreage planted to the insured crop during the late planting period (see subsection (c)), and acreage you were prevented from planting (see subsection (d)). These coverages provide reduced production guarantees. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and

eligible prevented planting acreage will be the same as that for timely planting acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planting acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage). For example, assume you insure one unit in which you have a 100 percent share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by 93 percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by 50 percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subsection 1.(p)). This notice must be given not later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting:

(1) For spring-planted wheat acreage in counties for which the Special Provisions designate a spring final planting date, and all barley, flax, oat, and rye acreage which is planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the insured crop continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting the insured crop (see subsection 1.(p)), you may elect:

(i) To plant the insured crop during the late planting period (The production guarantee for such acreage will be determined in accordance with paragraph 12.(c)(1));

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year (The production guarantee for such acreage which is eligible for prevented planting coverage will be 50 percent (50%) of the production guarantee for timely planted acres. In counties for which the Special Provisions designates a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted acreage of the insured crop. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). This subparagraph does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest); or

(iii) To plant the insured crop after the late planting period (The production guarantee for such acreage will be 50 percent (50%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels times 0.50). Production to count for such acreage will be determined in accordance with subsections 11.(c) through (e)).

(2) In addition to the provisions under section 11 (Insurance Period), of the Common Crop Insurance Policy (§ 457.8) the beginning of the insurance period for prevented coverage is the sales closing date designated in the Special Provisions for the insured crop in the county.

(3) Unless we agree in writing, prior to the sales closing date, the acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to the insured crop on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for the insured crop reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that were used to determine your yield;

Unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit, whichever is less;

(B) Land for which the actuarial table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for the insured crop in the county and we provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than the insured crop, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and reduced by the number of acres of the insured crop that are timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more acreage of the insured crop under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you report for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to the insured crop in the current crop year.

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted acreage of the insured crop in counties for which the Special Provisions designates a spring final planting date, or the acreage reporting date for fall-planted acreage of the insured crop in counties for which the Special Provisions designates a fall final planting date only, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which is not eligible will be deleted from prevented planting coverage.

§ 457.102 Wheat crop insurance winter coverage endorsement.

United States Department of Agriculture

Federal Crop Insurance Corporation

Wheat Crop Insurance Winter Coverage Endorsement

(This is a Continuous Endorsement)

(a) In return for payment of the additional premium designated in the Actuarial Table, this endorsement is attached to and made part of your Small Grains Crop Provisions subject to the terms and conditions described herein.

(b) This endorsement is available only in counties for which the Special Provisions designate both a fall final planting date and a spring final planting date.

(c) This endorsement modifies the provisions of sections 7 and 11 of the Small Grains Crop Insurance policy (§ 457.101).

(1) You must have a Small Grains Crop Insurance policy in force and elect to insure wheat under that policy.

(2) You may select either Option A or Option B. Failure to select either Option A or Option B means that you have rejected both Options and this endorsement would be void.

(3) Insurance Period. Coverage under this endorsement begins on the later of the date we accept your application for coverage or on the fall final planting date designated in the Special Provisions. Coverage ends on the spring final planting date designated in the Special Provisions.

(4) The provisions under section 14 of the Common Crop Insurance Policy (§ 457.8) are amended to require that all notices of damage must be provided to us by the spring final planting date designated in the Special Provisions.

Option A (30 Percent Coverage and Acreage Release)

Whenever any winter wheat is damaged during the insurance period (see section 3, above), and at least 20 acres or 20 percent of the acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may take any one of the following actions:

(a) Destroy the remaining crop on such acreage. By doing so, you agree to accept an amount of production to count against the unit production guarantee equal to 70 percent of the production guarantee for the damaged acreage, or an appraisal determined in accordance with paragraph 11.(c)(1) of the Small Grains Crop Insurance Provisions (§ 457.101) if such an appraisal results in a greater amount of production. This amount will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in the provisions under section 11. (Settlement of Claim) of the Small Grains Crop Insurance Provisions (§ 457.101). You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to utilize such acreage for the production of spring wheat, you must:

(1) Plant the spring wheat in a manner which results in a clear and discernible break in the planting pattern at the boundary between it and any remaining winter wheat; and

(2) Store or market the production from such acreage in a manner which permits us to verify the amount of spring wheat production separately from any winter wheat production.

In the event you are unable to provide records of production that are acceptable to us, the spring wheat acreage will be considered to be a part of the original winter wheat unit. If you elected to insure the spring wheat acreage as a separate optional unit, any premium amount for such acreage will be considered earned and payable to us.

(b) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Common Crop Insurance Policy (§ 457.8), the Small Grains Crop Insurance Provisions (§ 457.101), and this Option.

(c) Replant the acreage to an appropriate variety of wheat, if it is practical, and receive a replanting payment in accordance with the terms of section 9. (Replanting Payments) of the Small Grains Crop Provisions (§ 457.101). By doing so, coverage will continue under the terms of the Common Crop Insurance Policy (§ 457.8), the Small Grains Crop Insurance Provisions (§ 457.101), and this Option, and the production guarantee for winter wheat will remain in effect.

Option B (With Full Winter Damage Coverage)

Whenever any winter wheat is damaged during the insurance period and at least 20 acres or 20 percent of the acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may, at your option, take one of the following actions:

(a) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Common Crop Insurance Policy (§ 457.8), the Small Grains Crop Insurance Provisions (§ 457.101), and this Option.

(b) Replant the acreage to an appropriate variety of wheat, if it is practical, and receive a replanting payment in accordance with the terms of section 9. (Replanting Payments) of the Small Grains Crop Provisions (§ 457.101). By doing so, coverage will continue under the terms of the Common Crop Insurance Policy (§ 457.8), the Small Grains Crop Insurance Provisions (§ 457.101), and this Option, and the production guarantee for winter wheat will remain in effect.

(c) Accept our appraisal of the crop on the damaged acreage as production to count against the production guarantee for the damaged acreage, destroy the remaining crop on such acreage, and be eligible for any indemnity due under the terms of the Common Crop Insurance Policy (§ 457.8) and the Small Grains Crop Provisions (§ 457.101). The appraisal will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in the provisions of section 11. (Settlement of Claim) of the Small Grains Crop Insurance Provisions (§ 457.101). You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to utilize such acreage for the production of spring wheat, you must:

(1) Plant the spring wheat in a manner which results in a clear and discernible break in the planting pattern at the boundary between it and any remaining winter wheat; and

(2) Store or market the production from such acreage in a manner which permits us to verify the amount of spring wheat production separately from any winter wheat production.

In the event you are unable to provide records of production that are acceptable to us, the spring wheat acreage will be considered to be a part of the original winter wheat unit. If you elected to insure the spring wheat acreage as a separate optional unit, any premium amount for such acreage will be considered earned and payable to us.

§ 457.103 Malting barley option.

The Malting Barley Option Provisions for the 1995 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Small Grains Crop Insurance Malting Barley Endorsement

(This is a continuous Endorsement. Refer to section 2 of the Common Crop Insurance Policy)

In return for payment of the additional premium designated in the actuarial table, it is hereby agreed that the Common Crop Insurance Policy (§ 457.8) and Small Grains Crop Provisions (§ 457.101) are amended to incorporate the following terms and conditions:

(a) This Endorsement must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your malting barley acreage under this Option.

(b) You must have a Common Crop Insurance Policy (§ 457.8) and a Small Grains Crop Insurance policy (§ 457.101) in force and elect to insure barley under those policies.

(c) You must provide:

(1) Acceptable records of the sale of malting barley for malting purposes for three of the previous five crop years by the production reporting date; and

(2) Before the acreage reporting date, written contract with a brewery or business that makes or sells malt or processed mash to a brewery, which states the quantity contracted and purchase price or method for determining such price by the acreage reporting date. Our liability under this Option will be limited to the lesser of the number of contracted bushels or your production guarantee.

(d) All barley acreage in the county planted to an approved malting variety in which you have a share will be insured under this Endorsement. All barley acreage of any non-malting variety will be insured under the terms of the Small Grains Endorsement. Malting barley and basic barley acreage will be separate basic units. Further unit division

may be allowed in accordance with the Common Crop Insurance Policy.

(e) Your price election will be provided by the actuarial table.

(f) In lieu of subparagraphs 11.(d)(2)(i)(B) and 11.(d)(1)(ii) of the Small Grains Crop Provisions:

(1) Mature malting barley production will be reduced .12 percent for each one tenth (.1) percentage point of moisture in excess of 13.0 percent; and

(2) Mature malting barley production, which due to insurable causes, is not accepted by a buyer of malting barley and will not meet the applicable standards for two-rowed or six-rowed malting barley will be adjusted by:

(i) Dividing the value per bushel for the insured malting barley by the price election for malting barley; and

(ii) Multiplying the result not to exceed one (1.0) by the number of bushels of such barley.

(3) All grade determination must be made by a grader licensed to inspect barley under the United States Grain Standards Act using samples obtained by a licensed sampler or our loss adjuster. Any production which is not sampled and graded as provided by this section will be considered as malting barley meeting the applicable standards.

(g) As used in the Endorsement:

(1) Applicable standards—For two-rowed and six-rowed malting barley are defined in the Official United States Standards for barley.

(2) Approved malting variety—The varieties specified in the Special Provisions.

(3) Brewery—A facility where malt liquors are commercially produced for human consumption.

(4) Value per bushel means:

(i) The local market price of U.S. No. 2 barley (basic barley) if the insure mature malting barley production, due to insurable causes, grades U.S. No. 4 or better and does not grade smutty, garlicky, or ergoty; or

(ii) The local market price of basic barley of the same quality as the insured malting barley, if the malting barley does not grade better than U.S. No. 5.

The prices used for this adjustment will be the prices on the earlier of the date such quality-adjusted barley is sold or the date of final inspection for the unit.

Done in Washington, DC, on February 16, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94-4230 Filed 2-25-94; 8:45 am]

BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 93-044-2]

Official Brucellosis Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations by adding the D-Tec® Brucella A test to the list of official tests for determining the brucellosis disease status of test-eligible cattle and bison. We are taking this action because the D-Tec® Brucella A test has exhibited a high degree of specificity in identifying *Brucella abortus* antibodies. Adding the D-Tec® Brucella A test to the list of official tests for brucellosis in cattle and bison will help prevent the spread of the disease by making available an additional means by which animal health personnel may obtain timely and accurate diagnoses of brucellosis.

EFFECTIVE DATE: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6188.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is an infectious disease of animals and humans caused by bacteria of the genus *Brucella*. In its principal animal hosts—cattle, bison, and swine—brucellosis is characterized by abortion and impaired fertility. The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the spread of brucellosis.

Official brucellosis tests are used to determine the brucellosis disease status of cattle, bison, and swine. The regulations stipulate that certain cattle, bison, and swine must, among other requirements, test negative to an official brucellosis test prior to interstate movement. Official brucellosis tests are also used to determine eligibility for indemnity payments for animals destroyed because of brucellosis. In § 78.1 of the regulations, the definition of official test lists those tests that have been designated as official tests for determining the brucellosis disease status of cattle, bison, and swine.

On September 27, 1993, we published in the **Federal Register** (58 FR 50290-50291, Docket No. 93-044-1) a proposal to amend the regulations by adding the D-Tec® Brucella A test to the list of official tests for determining the brucellosis disease status of test-eligible cattle and bison.

We solicited comments concerning our proposal for a 30-day comment period ending October 27, 1993. We received one comment by that date, from a veterinary medical association. The commenter supported our proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

The rule change will not add any costs for agricultural producers. It will, however, benefit farmers and ranchers who, without access to this or the other available diagnostic tests, quarantine or destroy animals on the basis of "false positive" reactions to presumptive tests. We estimate that between 200 and 300 animals are unnecessarily slaughtered or quarantined each year after having falsely tested positive on presumptive tests. These losses could be prevented by the use of diagnostic tests. The addition of the D-Tec® Brucella A test as an official test will prevent losses to farmers and ranchers if they opt to use it. While losses resulting from false positives affect only a few farmers and ranchers each year, this rule could modestly benefit all those entities that avail themselves of the D-Tec® Brucella A test.

This rule is expected to have a beneficial effect on the producer of the D-Tec® Brucella A test and a negligible negative impact on the only other producer of diagnostic tests. Both producers are small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart A—[Amended]

2. In § 78.1, in the definition of *official test*, paragraph (a)(11) is redesignated as (a)(12), and a new paragraph (a)(11) is added to read as follows:

§ 78.1 Definitions.

* * * * *

Official test.

(a) * * *

(11) *D-Tec®* Brucella A test. An automated serologic test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by APHIS. The degree of reactivity is measured by the ratio of the average optical density of the sample to that of the Negative Control (S/N) and is expressed as Percent Inhibition (1-S/N) × 100. The brucellosis disease status of the animals is classified according to the following established criteria:

Percent inhibition	Classification
Less than or equal to 40 percent.	Negative.
Greater than 40 percent and less than or equal to 70 percent.	Suspect.
Greater than 70 percent	Reactor.

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94-4487 Filed 2-25-94; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Part 95

[Docket No. 92-135-2]

Importation of Hoofs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal byproduct importation regulations to allow hoofs that have been disinfected in their country of origin to be imported into the United States without further processing. Currently, certain hoofs imported into the United States must be consigned from the port of first arrival to an approved establishment having facilities for their disinfection. We have determined, however, that hoofs that have been adequately disinfected in their country of origin may be imported into the United States without risk of introducing disease. This change in the regulations will give importers of hoofs that require disinfection a choice between importing disinfected hoofs and importing unprocessed hoofs for disinfection in the United States.

EFFECTIVE DATE: March 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Gray, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 95 (referred to below as "the regulations") contain restrictions on the importation into the United States of certain animal byproducts and hay and straw in order to prevent the introduction of certain animal diseases. Among the regulated animal byproducts are animal hoofs, which, along with bones and horns, may be imported subject to the restrictions contained in §§ 95.11 and 95.12.

On July 13, 1993, we published in the **Federal Register** (58 FR 37669-37670, Docket No. 92-135-1) a proposal to amend the regulations to allow hoofs that have been disinfected in their country of origin, using one of five approved disinfection methods specified in the proposed rule, to be imported into the United States without additional treatment. We proposed to require that the hoofs be accompanied by a certificate issued by the national government of the country of origin and signed by an official veterinary inspector of that country stating that the hoofs have been disinfected and describing the manner in which the disinfection was accomplished.

We solicited comments concerning our proposal for a 60-day comment period ending September 13, 1993. We received one comment by that date, from a veterinary medical association. The comment fully supported our proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes restrictions on the importation of hoofs by allowing hoofs that have been processed in their country of origin to be imported into the United States without further processing. We have determined that approximately 2 weeks are needed to ensure that Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule: (1) Will have an effect on the economy of less than $100 million; (2) will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

We have required certain hoofs imported into the United States to be consigned directly from the port of entry to an approved establishment that has facilities for their disinfection. This rule will allow hoofs to be imported into the United States without further processing

if the hoofs have been disinfected using an approved method in their country of origin. We believe that adding this option will have little or no economic impact on U.S. importers of hoofs because it will not significantly decrease their cost of doing business. The primary impact on these importers will be the added convenience of having two importation options from which to choose.

The primary use of disinfected hoofs appears to be in the production of dog chews, but that industry is still in its infancy and is rather small in terms of production and numbers of producers. Based on information available to the Department, we estimate that there are currently fewer than 10 importers of hoofs and approximately 6 producers of dog chews made from hoofs. Using the Small Business Administration's size criteria of fewer than 100 employees, all of these businesses would be considered small entities.

We believe that a few of these businesses receive hoofs from both foreign and domestic sources. Because the industry is small and relatively new, however, there are no records available concerning the number of hoofs imported into the United States or the levels of dog chew production.

The facilities in which hoofs are disinfected handle a variety of items, with hoofs making up only a small percentage of the total volume of products processed. Therefore, we anticipate that allowing hoofs to be processed in their country of origin will have little, if any, economic impact on domestic processors in terms of lost volume and revenue.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule will be submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 95

Imports, Livestock, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 95 is amended as follows:

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

1. The authority citation for part 95 is revised to read as follows:

Authority: 21 U.S.C. 111, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 95.11 is amended as follows:

a. The section heading is revised as set forth below.

b. The undesignated text of the section is designated as paragraph (a).

c. A new paragraph (b) is added to read as set forth below.

§ 95.11 Bones, horns, and hoofs for trophies or museums; disinfected hoofs.

* * * * *

(b) Clean, dry hoofs disinfected in the country of origin may be imported without other restrictions if the following conditions are met:

(1) The hoofs have been disinfected using one of the following methods:

(i) Dry heat at 180°F (82.2°C) for 30 minutes;

(ii) Soaking in boiling water for 20 minutes;

(iii) Soaking in a 0.1 percent chlorine bleach solution for 2 hours;

(iv) Soaking in a 5 percent acetic acid solution for 2 hours; or

(v) Soaking in a 5 percent hydrogen peroxide solution for 2 hours.

(2) The hoofs are accompanied by a certificate issued by the national government of the country of origin and signed by an official veterinary inspector of that country stating that the hoofs have been disinfected and describing the manner in which the disinfection was accomplished.

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94-4486 Filed 2-25-94; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-16-AD; Amendment 39-8841; AD 94-05-03]

Airworthiness Directives; British Aerospace Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP airplanes. This action requires inspections to detect damaged main landing gear (MLG) wheel bearings and replacement of discrepant parts. This amendment is prompted by reports of failure of the MLG wheel bearings. The actions specified in this AD are intended to prevent detachment of a MLG wheel from the airplane.

DATES: Effective March 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 15, 1994.

Comments for inclusion in the Rules Docket must be received on or before April 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-16-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model ATP airplanes. The CAA advises that reports have been received of failure of the main landing gear (MLG) wheel bearings on Model ATP airplanes. Investigations are under way to determine the cause of these failures. This condition, if not corrected, could result in detachment of a MLG wheel from the airplane.

Jetstream has issued Service Bulletin ATP-32-48, Revision 1, dated January 28, 1994, that describes procedures for performing daily and pre-flight detailed visual inspections to detect damage or discoloration of the main wheel hub caps and of the outer side of the inflation valve side hubs on the MLG wheels. (This service bulletin references Dunlop Service Bulletin AHA 1663-32-1088, Revision 1, dated January 13, 1994, as the appropriate source of service information.) The CAA classified this service bulletin as mandatory and issued CAA Airworthiness Directive 007-12-93, dated December 22, 1993, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (FAR) (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the MLG wheel bearings, which could result in detachment of the MLG wheel from the airplane. This AD requires daily and pre-flight detailed visual inspections to detect damage or discoloration of the main wheel hub caps and of the outer side of the inflation valve side hubs on the MLG wheels. The actions are required to be accomplished in accordance with the Jetstream service bulletin described previously.

This AD also requires replacement of the entire MLG wheel assembly and bearings with a serviceable wheel assembly and bearings, if any damage or discoloration is detected during any inspection. The replacement is required to be accomplished in accordance with the airplane maintenance manual.

Operators should note that, although Jetstream Service Bulletin ATP-32-48, Revision 1, dated January 28, 1994, specifies that certain pilots may perform both the daily and pre-flight inspections, it is the FAA's determination that both inspections must be performed by appropriately certificated maintenance personnel, as specified in § 43.3 of the FAR (14 CFR 43.3).

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-16-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-05-03 British Aerospace (Commercial Aircraft), Limited: Amendment 39-8841. Docket 94-NM-16-AD.

Applicability: Model ATP series airplanes; constructor's numbers 2001 through 2063 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) wheel bearings, which could result in detachment of a MLG wheel from the airplane, accomplish the following:

(a) Within 24 hours after the effective date of this AD, perform cleaning and a detailed visual inspection to detect damage or discoloration of the wheel hub caps and of the outer side of the inflation valve side hubs on the MLG wheels, in accordance with paragraph 2.A.(1) of the Accomplishment Instructions of Jetstream Service Bulletin ATP–32–48, Revision 1, dated January 28, 1994. Thereafter, prior to the first flight of each day, repeat this cleaning and inspection. The cleaning and inspection must be performed by appropriately certificated maintenance personnel as specified in § 43.3 of the Federal Aviation Regulations (FAR). If any damage or discoloration is found during any inspection required by this paragraph, prior to further flight, replace the existing MLG wheel assembly and bearings with a serviceable wheel assembly and bearings in accordance with the airplane maintenance manual.

(b) Following accomplishment of the initial inspection required by paragraph (a) of this AD, prior to each flight, with the exception of the first flight of each day, perform a pre-flight detailed visual inspection to detect damage or heat discoloration of the wheel hub cap and the outer side of each inflation valve side hub on the MLG wheels, in accordance with paragraph 2.A.(2) of the Accomplishment Instructions in Jetstream Service Bulletin ATP–32–48, Revision 1, dated January 28, 1994. The pre-flight inspections must be performed by appropriately certificated maintenance personnel, as specified in § 43.3 of the FAR. If any damage or discoloration is found during any inspection required by this paragraph, prior to further flight, replace the existing MLG wheel assembly and bearings with a serviceable wheel assembly and bearings in accordance with the airplane maintenance manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The cleaning and inspections shall be done in accordance with Jetstream Service Bulletin ATP–32–48, Revision 1, dated January 28, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 15, 1994.

Issued in Renton, Washington, on February 18, 1994.

Darrell M. Federson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4275 Filed 2–24–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771 and 774

[Docket No. 931116-3316]

Revisions to the Export Administration Regulations; Elimination of the Certification Requirements for General License GLR

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR), by eliminating the Shipper's Export Declaration (SED) certification requirements for exports and reexports of replacement parts and equipment under General License GLR to Country Groups Q, T, V, W, and Y. These reporting requirements were originally imposed as a tracking system to help determine how well the replacement provisions of General License GLR were working. BXA has determined that placing the symbol GLR on the SED is in itself a certification that the conditions of the general license are understood and that the exporter will comply with the terms of the general license. However, the removal of the certification requirement does not relieve the exporter of any recordkeeping obligations or other export clearance provisions contained in the EAR.

This rule also eliminates the reporting requirement regarding servicing commodities imported from Country Groups Q, W, or Y and eliminates the reporting requirements regarding certain reexports of one-for-one replacements and replacement equipment.

EFFECTIVE DATE: This rule is effective February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: Exporters are reminded that listing General License GLR on the Shipper's Export Declaration (SED) and the presentation of such a SED to the U.S. Government under the clearance procedures of part 786 constitutes a declaration that the export is authorized under General License GLR and that the exporter is committed to the terms and conditions of the one-for-one replacement authority of General License GLR, including, but not limited to, the duty to destroy abroad or return the part to be replaced.

Rulemaking Requirements

1. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), approved by the Office of Management and Budget under control numbers 0694–0018 and 0694–0047. This rule will reduce the reporting burden on the public.

2. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. Section 13(b) of the Export Administration Act (EAA) does not require that this rule be published in proposed form because this rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 771 and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 771 and 774 of the Export Administration Regulations are amended as follows:

1. The authority citations for 15 CFR parts 771 and 774 continue to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992); E.O. 12867 of September 30, 1993 (58 FR 51743, October 4, 1993); E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

PART 771—[AMENDED]

2. Section 771.17 is amended by removing paragraph (a)(4) (the Note following (a)(4) is unchanged); by redesignating paragraph (a)(5) as paragraph (a)(4); by revising paragraph (e)(3)(ii) and removing the certification following that paragraph; by adding a new paragraph (e)(3)(iii); by amending paragraphs (f)(2)(i) and (f)(2)(ii) to remove the semicolon at the end of each sentence and replacing the semicolons with a period; by revising paragraphs (f)(2)(iii) and (f)(3)(iii) and removing the certification following each paragraph; and by removing paragraph (f)(3)(iv) as follows:

§ 771.17 General license GLR; return or replacement of certain commodities.

* * * * *

(e) * * *

(3) * * *

(ii) The parts to be replaced shall either be destroyed abroad or returned to the party who supplied the replacement parts, or to a foreign firm that is under the effective control of that party prior to, or promptly after, the shipment of the replacement parts.

(iii) Any export made under paragraph (e)(3) of this section shall be cleared in accordance with the provisions of part 786 of this subchapter.

* * * * *

(f) * * *

(2) * * *

(iii) Any export made under paragraph (f)(2) of this section shall be cleared in accordance with the provisions of part 786 of this subchapter.

(3) * * *

(iii) Any export made under paragraph (f)(3) of this section shall be cleared in accordance with the provisions of part 786 of this subchapter. By making such an export the exporter represents that all the requirements of paragraph (e)(3) have been met and undertakes to destroy or return the replaced parts as set forth in paragraph (f)(3)(ii).

PART 774—[AMENDED]

3. Section 774.2 is amended by revising paragraph (a)(4) to read as follows:

§ 774.2 Permissive reexports.[2]

* * * * *

(a) * * *

(4) May be exported directly from the United States to the country of destination under paragraphs (e) or (f) of General License GLR (§ 771.17 of this subchapter). A party reexporting U.S. origin one-for-one replacement parts or replacements for defective or unacceptable U.S. origin equipment shall ensure that the commodities being repaired or replaced were shipped to their present location in accordance with U.S. law and continue to be legally used, and that either before or promptly after reexport of the replacement parts or equipment, the replaced parts or equipment are either destroyed or returned to the United States or to the foreign firm in Country Groups T or V, except Iran and Syria that shipped the replacement parts or equipment.

* * * * *

Dated: February 22, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–4357 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–DT–P

[2] See § 774.9 for effect on foreign laws.

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Part 403

RIN 1505–AA42

Implementing Regulations for the Government Securities Act of 1986

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Department") is issuing in final form amendments to the regulations issued under the Government Securities Act of 1986, as amended (the "Government Securities Act" or "GSA"). The amendments implement a buy-in requirement for mortgage-backed securities that are in a fail to receive status for more than 60 calendar days; and all government securities that are needed to complete a customer sell order (other than a short sale) if the securities have not been received from the customer within 30 calendar days after the settlement date for all government securities except mortgage-backed securities, or 60 calendar days after the settlement date for mortgage-backed securities. The final rule adopts without substantive change the buy-in requirements for mortgage-backed securities in a fail to receive status that were prescribed in the proposed rules published for comment on April 17, 1991. However, the time frames for buy-ins of customer sell orders have been revised in the final rule in response to comments received on the proposed rules. These requirements apply to all entities that are required to register or provide notice of their status as government securities brokers and dealers.

EFFECTIVE DATE: April 29, 1994.

FOR FURTHER INFORMATION CONTACT: Ken Papaj (Director), or Lee Grandy (Government Securities Specialist), Public Debt, Government Securities Regulations Staff, 999 E Street, NW., room 515, Washington, DC 20239–0001, (202) 219–3632. (TDD for hearing impaired: (202) 219–9274.)

SUPPLEMENTARY INFORMATION:

I. Background

The GSA regulations currently require a government securities broker or dealer to take prompt steps to obtain possession or control of customers' fully paid or excess margin securities that have been in a fail to receive status for more than 30 calendar days through a

buy-in procedure or otherwise. However, mortgage-backed securities are not subject to this buy-in requirement since the Department suspended the application of this rule to such securities in the GSA regulations that were issued in July 1987.[1] In addition, the current GSA regulations do not impose a buy-in requirement for customer sell orders where the government securities broker or dealer has not obtained the securities from its customer. A temporary rule imposing such a requirement on registered government securities brokers and dealers was suspended in the July 1987 GSA regulations issued by the Department.[2]

On April 17, 1991, the Department proposed for comment amendments to sections 403.1, 403.4, and 403.5 of the GSA regulations.[3] The proposed amendments prescribed buy-in requirements for: (i) Mortgage-backed securities in a fail to receive status for more than 60 calendar days, and (ii) customer sell orders (other than short sales) in which the securities were not received from the customer within ten business days after the settlement date.

The proposed rule was intended to subject mortgage-backed securities to a 60 calendar day buy-in requirement, rather than the 30 calendar days applicable to other government securities due to the unique nature of the mortgage-backed market, particularly the lengthy settlement cycle. The reader is referred to the preamble to the proposed rule[4] for a more detailed discussion of the Department's reasons for adopting a 60 calendar day time frame for buy-ins of mortgage-backed securities. The proposed rulemaking also included buy-in rules for customer sell orders that would apply to all government securities brokers and dealers, including financial institutions. Specifically, the provisions proposed that if a government securities broker or dealer executes a customer sell order (other than a short sale) and the broker or dealer has not obtained the securities from the customer within ten business days after the settlement date, then the broker or dealer would be required to close out the transaction with the customer by purchasing securities of like kind and quantity. The Department specifically requested comments concerning the appropriateness of the ten-day time frame.

The comment period for the proposed rules closed on June 17, 1991. Only one letter[5] was received in response to the proposed rule changes. The commenter supported the 60-day buy-in time frame for mortgage-backed securities in a fail to receive status but opposed the proposed rule for customer sell orders. However, the commenter suggested modifications to the time frame for buy-ins of customer sell orders if Treasury decided to adopt such a rule.

Treasury did not issue these rules in final form prior to the expiration of its rulemaking authority on October 1, 1991. Treasury's authority under the GSA was permanently reauthorized on December 17, 1993, hence the long delay in finalizing these rules.

II. Section-by-Section Analysis of Proposed Changes

A. Buy-Ins for Fails To Receive

The Department is now adopting without significant change amendments to paragraphs 403.1, 403.4(g) and 403.5(c)(1)(iii) that were proposed in April 1991. These provisions would require all government securities brokers and dealers that are required to register or file notice pursuant to 15C(a)(1) of the Exchange Act to take prompt steps to obtain possession or control of mortgage-backed securities that are in a fail to receive status for more than 60 calendar days through a buy-in procedure or otherwise.[6] The Public Securities Association (PSA), which was the only commenter on the proposed rules, supported the 60 calendar day time frame for buy-ins of mortgage-backed securities, stating that "* * * the proposal is a reasonable approach."[7] This time frame reflects the recommendations made in July 1989 by an industry-wide task force established by the PSA.[8]

As discussed in more detail in the preamble to the proposed rules, the Department is adopting a longer buy-in time frame for fails to receive for mortgage-backed securities than the 30-calendar day time frame in place for other government securities. This longer time period is appropriate given the normally longer settlement cycle for mortgage-backed securities (which is often as long as 30 days),[9] the complexities of these instruments and the scarcity in the market of specified pools. To avoid abnormal settlements,[10] the Department reiterates that any buy-in accomplished pursuant to these rules would be allowed to settle on the next regularly scheduled settlement date for that particular class or pool of mortgage-backed securities.

The Department understands that the PSA will implement buy-in procedures for mortgage-backed securities similar to those in place for other government securities. We believe that reliance on procedures that are already familiar to the broker-dealers should facilitate the implementation of this rule and view efforts to standardize the operational procedures as a positive step.

B. Buy-Ins for Customer Sell Orders

The Department's proposed rules included a requirement to buy-in customer sell orders (other than a short sale) in cases where the government securities broker or dealer had not obtained the securities from the customer within ten business days after the settlement date. For registered government securities brokers and dealers the Department was proposing to add paragraph 403.4(l) which incorporated by reference paragraph (m) of SEC Rule 15c3–3 (17 CFR 240.15c3–3(m)), with one modification pertaining to the definition of a short sale.[11] This rule has been suspended by the SEC with respect to exempted securities since 1973, including government securities.[12] A companion buy-in rule for customer sell orders that would apply to financial institutions that are required to file notice as government securities brokers and dealers was also proposed in April 1991 by adding new paragraph 403.5(g) to the GSA regulations.

In its comment letter, the PSA stated that the ten-day buy-in rule for customer sell orders should not be adopted because it has minimal customer protection benefits. The PSA noted that improvements in the settlement processes and the fact that most Treasury, agency and government mortgage-backed securities are now in book-entry form have resulted in increased deliveries and fewer overall fails. For those few fails that may still occur, the PSA stated that "[b]roker-dealers have business incentives to clean up fails to limit their market exposure."[13] For mortgage-backed securities, the ten-day buy-in time frame would be problematic since it would require delivery of securities outside of the regularly scheduled settlement cycles. The PSA suggested that, if Treasury believes a buy-in rule for customer sell orders must be adopted, the time frame should be consistent with the applicable buy-in time frames for fails to receive.

The Department continues to believe that buy-in rules for customer sell orders are needed to strengthen customer protection because a customer's failure to deliver a security to an executing broker or dealer could result in that broker's or dealer's failure to deliver to another counterparty. Further, these rules will prevent customers from taking advantage of market fluctuations by refusing to deliver a security to a broker or dealer when the price rises after a sell order has been executed.

In response to the comments made by the PSA, the Department is revising the buy-in time frame for customer sell orders in new paragraphs 403.4(l) and paragraph 403.5(g), applicable to registered government securities brokers-dealers and financial institution government securities broker-dealers, respectively, from ten business days to 30 calendar days for all government securities, except mortgage-backed securities, and to 60 calendar days for all government mortgage-backed securities.[14] These time frames are consistent with the buy-in requirements for fails to receive addressed above. The Department also modified the customer sell order rules to permit the use of alternatives other than purchasing securities (e.g., securities may be borrowed, substituted or bought back) in closing out orders. Again, this is consistent with the buy-in rules for fails to receive.

The buy-in rules for customer sell orders continue to provide an exemption for short sales, which are the primary cause for non-deliveries. This should significantly reduce the number of fails subject to these requirements. Similar to buy-ins of mortgage-backed securities that are in a fail to receive status, broker-dealers will be allowed to effect buy-ins for customer sell orders of mortgage-backed securities at the next regularly scheduled settlement cycle.[15]

Finally, the Department is also adopting without change redesignated paragraph 403.5(h), which will now grant the appropriate regulatory agencies for financial institutions the authority to extend the 30- and 60-calendar day time frame for buy-ins of customer sell orders if a financial institution broker-dealer requests an extension. No comments were received on this provision.

C. Effective Dates

The final rules become effective April 29, 1994. This will provide sufficient time for all government securities brokers and dealers to become acquainted with the new requirements and to implement operating procedures. Additionally, the lead time will enable the PSA to finalize and distribute buy-in procedures it is developing for the industry.

In its comment letter, the PSA requested that the Treasury's buy-in rules be enacted contemporaneously with the Commission's amendments to Rule 15c3–3(d)(2) and (m). Since Treasury's rules apply to all government securities brokers and dealers, and given the Department's understanding that the buy-in rules to be proposed by the Commission will conform to those adopted herein, the Department believes that there is no compelling reason to defer implementation until the Commission acts.

III. Special Analysis

The Department has determined that this action does not constitute a "significant regulatory action" for the purposes of Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, it was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs, Office of Management and Budget.

In the preamble to the proposed rules, the Department certified that these amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared. In reviewing the final rules being adopted herein and after considering the comments received on the proposed rules, the Department has concluded that there is no reason to alter the previous certification that these rules will not have a significant economic impact on a substantial number of small entities.

Since these final rules contain no new collections of information, the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) are inapplicable.

List of Subjects in 17 CFR Part 403

Banks, Banking, Brokers, Government securities.

For the reasons set out in the Preamble, 17 CFR part 403 is amended to read as follows:

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

1. The authority citation for part 403 is revised to read as follows:

Authority: Sec. 101, Public Law 99–571, 100 Stat. 3209; sec. 4(b), Public Law 101–432, 104 Stat. 963; sec. 102, sec. 106, Public Law 103–202, 107 Stat. 2344 (15 U.S.C. 78o–5(b)(1)(A), (b)(4)).

2. Section 403.1 is revised to read as follows:

§ 403.1. Application of part to registered brokers and dealers.

With respect to their activities in government securities, compliance by

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[1] 52 FR 27910, 27920–21 and 27948–50 (July 24, 1987).

[2] 52 FR 27910, 27921–22 and 27948–50 (July 24, 1987).

[3] See 56 FR 15529 (April 17, 1991). The rule changes to these three sections of the GSA regulations would make the buy-in requirements applicable to all classes of government securities brokers and dealers that were required to register or file notice pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(a)(1)). Section 403.1 would apply to registered brokers and dealers that were required to file notice as government securities brokers and dealers with the Securities and Exchange Commission; section 403.4 would apply to registered government securities brokers and dealers (i.e., those entities that were required to register with the SEC); and section 403.5 would apply to financial institutions that were required to file notice as government securities brokers and dealers with their respective appropriate regulatory agency.

[4] See 56 FR 15529, 15530–31 (April 17, 1991).

[5] Letter from Peter J. Murray, Chairman, Government Securities Operations Committee, Public Securities Association (PSA) and Laura E. LoCoss, Chairperson, Mortgage-Backed Securities Operations Committee, PSA, to Kenneth Papaj, Director, Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, dated June 17, 1991 (hereinafter "June 17, 1991 PSA Letter").

[6] The term mortgage-backed securities includes only those mortgage-backed securities that are included in the definition of "government securities" as set out in section 3(a)(42) of the Exchange Act (15 U.S.C. 78c(a)(42)).

[7] June 17, 1991 PSA Letter, *supra* note 5, at 2.

[8] Letter from Marianna Maffucci, Vice President and Assistant General Counsel, Public Securities Association, to Kenneth Papaj, Director, Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, and Michael Macchiaroli, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, dated July 10, 1989.

[9] The PSA has developed a system to standardize the settlement process for mortgage-backed securities. See Public Securities Association, "Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities" at 15–1 (1988). This system has proven successful in alleviating operational workloads during the heaviest settlement periods, which has contributed to a reduction in the high fail rates for mortgage-backed securities.

[10] A settlement date other than the regularly scheduled settlement date can be requested, however, the buyer pays a premium for this abnormal settlement.

[11] The proposed rule also included an amendment to section 403.1 which would make paragraph 403.4(l) apply to registered brokers and dealers that were required to file notice as government securities brokers and dealers with the SEC.

[12] Securities Exchange Act Release No. 10093 (April 10, 1973), 38 FR 12103 (May 9, 1973).

[13] June 17, 1991 PSA Letter, *supra* note 5, at 3.

[14] The Department is also adopting without change, the amendments to section 403.1, which requires registered broker-dealers to comply with paragraph 403.4(l).

[15] The SEC's buy-in requirement for customer sell orders has been suspended with respect to exempted securities. *See* Securities Exchange Act Release No. 10093 (April 10, 1973), 38 FR 12103 (May 9, 1973). It is the Department's understanding that SEC staff intends to recommend to the Commission a proposal to lift the suspension of paragraph (m) of Rule 15c3–3 with respect to exempted securities and amend the provision in a manner that would conform with Treasury's final rule in paragraph 403.4(l) as it relates to government and mortgage-backed securities.

registered brokers or dealers with § 240.8c–1 of this title (SEC Rule 8c–1), as modified by §§ 403.2 (a), (b) and (c), with § 240.15c2–1 of this title (SEC Rule 15c2–1), with § 240.15c3–2 of this title (SEC Rule 15c3–2), as modified by § 403.3, and with § 240.15c3–3 of this title (SEC Rule 15c3–3), as modified by §§ 403.4 (a)–(d), (e)(2)–(3), (f)–(i), and (l), constitutes compliance with this part.

3. Section 403.4 is amended by revising paragraph (g) and by adding new paragraph (l) after paragraph (k) to read as follows:

§ 403.4. Customer protection—reserves and custody of securities.

* * * * *

(g) For the purposes of this section, § 240.15c3–3(d)(2) of this title ismodified to read as follows:

"(2) Securities included on its books or records as failed to receive more than 30 calendar days, or in the case of mortgage-backed securities, more than 60 calendar days, then the government securities broker or government securities dealer shall, not later than the business day following the day on which such determination is made, take prompt steps to obtain possession or control of securities so failed to receive through a buy-in procedure or otherwise; or"

* * * * *

(l) For purposes of this section, the suspension of § 240.15c3–3(m) of this title (38 FR 12103, May 9, 1973) is no longer effective and the paragraph is modified to read as follows: "(m) If a government securities broker or government securities dealer executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own, which for the purposes of this paragraph shall mean that the customer placing the sell order has identified the sale as a short sale to the government securities broker or dealer) and if for any reason whatever the government securities broker or government securities dealer has not obtained possession of the government securities, other than mortgage-backed securities, from the customer within 30 calendar days, or in the case of mortgage-backed securities within 60 calendar days, after the settlement date, the government securities broker or government securities dealer shall immediately thereafter close the transaction with the customer by purchasing, or otherwise obtaining, securities of like kind and quantity. For purposes of this paragraph (m), the term "customer" shall not include a broker or dealer who maintains a special omnibus account with another broker or dealer in compliance with section 4(b) of Regulation T (12 CFR 220.4(b)).

* * * * *

4. Section 403.5 is amended by revising paragraph (c)(1)(iii); by redesignating paragraph (g) as paragraph (h) and revising newly redesignated paragraph (h); and by adding new paragraph (g) to read as follows:

§ 403.5. Custody of securities held by financial institutions that are government securities brokers or dealers.

* * * * *

(c)(1) * * *

(iii) Take prompt steps to obtain possession or control of securities failed to receive for more than 30 calendar days, or in the case of mortgage-backed securities, for more than 60 calendar days; or

* * * * *

(g) If a financial institution executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own, which for the purposes of this paragraph shall mean that the customer placing the sell order has identified the sale as a short sale to the financial institution) and if for any reason whatever the financial institution has not obtained possession of the government securities, except mortgage-backed securities, from the customer within 30 calendar days, or in the case of mortgage-backed securities within 60 calendar days, after the settlement date, the financial institution shall immediately thereafter close the transaction with the customer by purchasing, or otherwise obtaining, securities of like kind and quantity.

(h) The appropriate regulatory agency of a financial institution that is a government securities broker or dealer may extend the period specified in paragraphs (c)(1)(iii) and (g) of this section on application of the financial institution for one or more limited periods commensurate with the circumstances, provided the appropriate regulatory agency is satisfied that the financial institution is acting in good faith in making the application and that exceptional circumstances warrant such action. Each appropriate regulatory agency should make and preserve for a period of not less than three years a record of each extension granted pursuant to this paragraph, which contains a summary of the justification for the granting of the extension.

Dated: February 14, 1994.

Frank N. Newman,

Under Secretary for Domestic Finance.

[FR Doc. 94–4402 Filed 2–25–94; 8:45 am]

BILLING CODE 4810–39–W

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 16

[Docket No. R–94–1669; FR–3436–F–02]

RIN 2501–AB60

Exemption of System of Records Under Privacy Act of 1974

AGENCY: Office of the Secretary, HUD

ACTION: Final rule.

SUMMARY: This final rule exempts a new system of records entitled "Tenant Eligibility Verification Files" from compliance with the applicable provisions of the Privacy Act. This additional exemption is necessary because on July 12, 1993, the Department created a new system of records entitled "HUD/PIH–1. Tenant Eligibility Verification Files" to add to the Privacy Act system of records.

EFFECTIVE DATE: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: David L. Decker, Director, Computer Matching Activities Division, Office of the Public and Indian Housing Comptroller, Room 4122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0099. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Except for the Office of Inspector General, the Department's implementation of the Privacy Act (5 U.S.C. 552a) is set forth in 24 CFR part 16. (The implementation of the Privacy Act for the Office of Inspector General appears in 24 CFR part 2003). The implementation of the Privacy Act includes the publication of a system of records which are exempt from certain requirements of the Privacy Act, as determined by the Secretary under the specific exemption authority of the Act, 5 U.S.C. 552a(k). The specific exemption provision of the Privacy Act authorizes exemption for systems of records from many of the notice and access requirements of the Privacy Act, but does not affect the applicability of the remaining Privacy Act requirements. The Department's specific exemptions appear at 24 CFR 16.15.

The establishment of a new system of records on July 12, 1993 (58 FR 37600), entitled "HUD/PIH–1. Tenant Eligibility Verification Files," and this rule are necessary as a result of the recent transfer of computer matching/tenant eligibility verification functions from the Office of Inspector General to the Assistant Secretary for Public and Indian Housing. (The transfer affects only housing assistance programs administered by the Assistant Secretary for Public and Indian Housing.)

The tenant records and other records referenced in the new "Tenant Eligibility Verification Files" system of records notice were previously included in the "Investigative Files of the Office of the Inspector General" (HUD/OIG–1, see 57 FR 25070). The Assistant Secretary for Public and Indian Housing will be adding records to the final new system based on computer matching results and verification of those results with tenant case files and records supplied by Federal agencies and private employers.

This final rule also makes changes to § 16.15 to clarify the scope of the exemptions applicable to the Assistant Secretary for Public and Indian Housing's system of records entitled "Tenant Eligibility Verification Files," and provides reasons for the exemptions from particular subsections of the Privacy Act that are more detailed than those currently found at 24 CFR 16.15.

II. Discussion of Public Comments From Proposed Rule

On July 12, 1993 (58 FR 37598), the Department published a proposed rule which would exempt the new system of records entitled "Tenant Eligibility Verification Files" from compliance with applicable provisions of the Privacy Act. The Department received one public comment from a public housing agency in response to this proposed rule. The commenter stressed the need to protect a tenant's privacy, and urged strenuous penalties to prevent misuse of the new system of records. The Department agrees that it is extremely important to prevent the misuse of confidential material concerning a tenant. However, the Department does not believe any changes to the final rule are necessary because both the Privacy Act and the Computer Matching and Privacy Protection Act of 1988 provide sufficient safeguards to protect against the unlawful disclosure of material concerning a tenant from this Privacy Act system of records.

III. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

B. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule only affects the way the Department implements the Privacy Act.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. Specifically, the requirements of this rule are directed to the Department of Housing and Urban Development, and do not impinge upon the relationship between the Federal Government and State and local governments.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

E. Regulatory Agenda

This final rule was listed as item no. 1444 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56410) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 16

Privacy.

Accordingly, 24 CFR part 16 is amended to read as follows:

PART 16—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for part 16 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 42 U.S.C. 3535(d).

2. Section 16.15 is amended by adding new paragraphs (c) and (d) as follows:

§ 16.15 Specific exemptions.

* * * * *

(c) The system of records entitled "HUD/PIH–1. Tenant Eligibility Verification Files" consists in part of investigatory material compiled for law enforcement purposes. Relevant records will be used by appropriate Federal, state or local agencies charged with the responsibility for investigating or prosecuting violations of law. Therefore, to the extent that information in the system falls within the coverage of subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), the system is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3) because release of an accounting of disclosures to an individual who may be the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1) because release of the records to an individual who may become or has become the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2) because amendment or correction of the records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the office that maintains the records to continuously retrograde its verifications of tenant eligibility attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1) because it is often impossible to determine

relevance or necessity of information in pre-investigative early stages. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the Assistant Secretary for Public and Indian Housing, or investigators, may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Assistant Secretary for Public and Indian Housing, or investigators, should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining the evidence, information may be provided which relates to matters incidental to the main purpose of the inquiry or investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(d) The system of records entitled "HUD/PIH–1. Tenant Eligibility Verification Files" consists in part of material that may be used for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in this system falls within the coverage of subsection (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), the system is exempt from the requirements of the following subsection of the Privacy Act, for the reasons stated below.

(1) From subsection (d)(1) because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

Dated: February 15, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–4482 Filed 2–25–94; 8:45 am]

BILLING CODE 4210–32–P

24 CFR Parts 792 and 892

[Docket No. R–94–1708; FR–3487–F–01]

RIN 2501–AB65

Implementation of Section 129 of the Housing and Community Development Act of 1992

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for public housing agencies and Indian housing authorities (HAs) to follow to permit HAs to retain a portion of certain section 8 fraud recoveries from tenants and owners for use in section 8 programs. Section 129 of the Housing and Community Development Act of 1992 expands HA retention of section 8 fraud recoveries to include recoveries obtained through administrative repayment agreements, as well as litigation (including settlement of a lawsuit) or a court-ordered restitution. This rule applies to the section 8 rental certificate, rental voucher, moderate rehabilitation programs, and private owner/HA new construction and substantial rehabilitation projects subject to an Annual Contributions Contract.

EFFECTIVE DATE: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: For the Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation Programs: Madeline Hastings, Director, Rental Assistance Division, Office of Assisted Housing, room 4226, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1842. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–0850.

For issues concerning computer matching/tenant income verification matters: David L. Decker, Director, Computer Matching Activities Division, room 4122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–0099. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–0850.

For Section 8 private owner/HA new construction and substantial rehabilitation projects subject to an ACC between HUD and an HA: James Tahash, Director, Planning and Procedures Division, Office of Insured Multifamily Housing Development, room 6182, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–3944. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594.

(The telephone numbers cited above are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background:

Some tenants receiving section 8 assistance submit false statements which underreport income to obtain excessive housing assistance. Similarly, some owners also commit fraud in order to receive section 8 rental assistance payments to which they are not entitled. Examples of owner fraud include billing for vacant dwelling units, charging more rent for assisted units than unassisted units in the same building, receiving sidepayments from assisted tenants, and knowingly admitting ineligible tenants into section 8 substantial rehabilitation and new construction projects. Through various methods, such as direct observation, informants, investigative action and computer matches, HAs discover that tenants and owners have committed fraud in order to receive either benefits or payments for which they were not entitled.

In 1981, Congress enacted legislation aimed at stemming this fraud and abuse. Section 326(d)(1) of the Housing and Community Development Amendments of 1981 (Pub. L. 97–35; hereafter referred to as "1981 HCD Act") allowed HAs to retain "out of judgments obtained by them in recovering amounts wrongfully paid as a result of fraud and abuse" a portion of the fraud recoveries to encourage HAs to recover amounts overpaid as a result of such fraud and abuse. On August 20, 1986 (51 FR 29633), the Department published a final rule implementing section 326(d)(1) of the 1981 HCD Amendments. In the final rule, HUD construed the term "judgments" to allow HAs to retain amounts recovered by means of litigation, including a settlement of litigation.

However, most section 8 fraud recoveries result from administrative repayment agreements between the HA and the families, or between the HA and the owner. As such, nearly all tenant and owner fraud recoveries have gone to HUD, and HAs have had little monetary incentive to identify tenant and owner fraud and pursue repayment.

Section 129 of the Housing and Community Development Act of 1992, (Pub. L. 102–550, approved October 28, 1992; hereafter referred to as "1992 HCD Act"), allows HAs to retain a portion of rental assistance fraud recoveries obtained through litigation, court-ordered restitutions, and administrative repayment agreements pursuant to an administrative grievance procedure except in cases where HUD is the

principal party initiating or sustaining the recovery action. By allowing HAs to retain a portion of the monies recovered under administrative repayment agreements, the Act provides an additional incentive for HAs to aggressively pursue cases of suspected fraud.

Under the Act and this regulation, an HA can retain the greater of: (1) 50 percent of the amount collected or (2) the actual, reasonable, and necessary expenses related to the collection, including the cost of investigation, legal fees and collection fees. The recoveries may be obtained through litigation (including settlement of a lawsuit), a court-ordered restitution, or an administrative repayment agreement pursuant to an administrative grievance procedure. The rule applies to the Section 8 Rental Certificate, Rental Voucher, Moderate Rehabilitation Programs and private owner/HA new construction and substantial rehabilitation projects subject to an Annual Contributions Contract (ACC) between HUD and an HA.

Finally, in August of 1986, the Department added a final rule implementing section 326(d)(1) of the 1981 HCD Amendments as a new part 892. This final rule transfers the requirements of 892 to a new part 792, and removes part 892. The rule also changes the reference from public housing agency (PHA) to housing agency (HA) to recognize definitional changes resulting from the Indian Housing Act of 1988 (Pub. L. 100–358).

II. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, the rule increases the amount a housing agency may recover in fraud and abuse cases. As such, the rule will not impinge on the relationship between the Federal and state and local governments, and the rule is not subject to review under the order.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities, because the number of recoveries by housing agencies is expected to be small and so the number of small public housing agencies affected will be small. In any event, the effect on small entities is expected to be positive rather than negative.

E. Paperwork

The changes made by this final rule to the regulatory text in 24 CFR part 892, which now appears as 24 CFR part 792, will not add any additional information collection burden than that already approved by the Office of Management and Burden under the Paperwork Reduction Act and assigned OMB approval number 2577–0053.

F. Regulatory Agenda

This rule was listed as item no. 1655 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56453) in accordance with Executive Order 12991 and the Regulatory Flexibility Act.

G. Justification for Final Rulemaking

In general, the Department publishes rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 provides exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary because the changes being made to part 892, which now appears as part 792, merely implement statutory amendments that do not involve the exercise of any discretion by the Department.

H. The Catalog of Federal Domestic Assistance program number(s) are 14.156, Lower Income Housing Assistance Programs.

List of Subjects in 24 CFR Parts 792 and 892

Fraud, Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, title 24 of the Code of Federal Regulations is amended by redesignating part 892 as part 792 and by revising the newly designated part 792 to read as follows:

PART 792—HOUSING AGENCY SECTION 8 FRAUD RECOVERIES

Subpart A—General Provisions

Sec.
792.101 Purpose.
792.102 Applicability.
792.103 Definitions.

Subpart B—Recovery of Section 8 Funds

792.201 Conduct of litigation.
792.202 HA retention of proceeds.
792.203 Application of amounts recovered.
792.204 Recordkeeping and reporting.

Authority: 42 U.S.C. 1437f note; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 792.101 Purpose.

The purpose of this part is to encourage public housing agencies and Indian housing authorities (HAs) to investigate and pursue instances of tenant and owner fraud and abuse in the operation of the section 8 housing assistance payments programs.

§ 792.102 Applicability.

(a) This part applies to an HA acting as a contract administrator under an annual contributions contract with HUD in any section 8 housing assistance payments program. To be eligible to retain section 8 tenant or owner fraud recoveries, the HA must be the principal party initiating or sustaining an action to recover amounts from families.

(b) This part applies only to those instances when a tenant or owner committed fraud, and the fraud

recoveries are obtained through litigation brought by the HA (including settlement of the lawsuit), a court-ordered restitution pursuant to a criminal proceeding, or an administrative repayment agreement with the family or owner as a result of an HA administrative grievance procedure pursuant to, or incorporating the requirements of, § 882.216 or 887.405. This part does not apply to cases of owner fraud in HA-owned or controlled units, or where incorrect payments were made or benefits received because of calculation errors instead of willful fraudulent activities.

(c) This part applies to all tenant and owner fraud recoveries resulting from litigation brought by the HA (including settlement of the lawsuit), or a court-ordered restitution pursuant to a criminal proceeding obtained on or after October 8, 1986, and to all tenant and owner fraud recoveries obtained through administrative repayment agreements signed on or after October 28, 1992.

§ 792.103 Definitions.

Fraud and abuse. Fraud and abuse means a single act or pattern of actions:

(1) That constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead; and

(2) That results in payment of section 8 program funds in violation of section 8 program requirements.

HA (Housing Agency). HA (Housing Agency) means any State, county, municipality, or other governmental entity or public body, including any Indian Housing Authority, acting as a section 8 contract administrator under an annual contributions contract with HUD.

Judgment. Judgment means a provision for recovery of section 8 program funds obtained through fraud and abuse, by order of a court in litigation or by a settlement of a claim in litigation, whether or not stated in a court order.

Litigation. A lawsuit brought by a HA to recover section 8 program funds obtained as a result of fraud and abuse.

Principal party in initiating or sustaining an action to recover. Principal party in initiating or sustaining an action to recover means the party that incurs more than half the costs incurred in:

(1) Recertifying tenants who fraudulently obtained section 8 rental assistance;

(2) Recomputing the correct amounts owed by tenants; and

(3) Taking needed actions to recoup the excess benefits received, such as initiating litigation.

Costs incurred to detect potential excessive benefits in the routine day-to-day operations of the program are excluded in determining the principal party in initiating or sustaining an action to recover. For example, the cost of income verification during an annual recertification would not be counted in determining the principal party in initiating or sustaining an action to recover.

Repayment agreement. Repayment agreement means a formal document signed by a tenant or owner and provided to an HA in which a tenant or owner acknowledges a debt; in a specific amount, and agrees to repay the amount due at specific time period(s).

Subpart B—Recovery of Section 8 Funds

§ 792.201 Conduct of litigation.

The HA must obtain HUD approval before initiating litigation in which the HA is requesting HUD assistance or participation.

§ 792.202 HA retention of proceeds.

(a) Where the HA is the principal party initiating or sustaining an action to recover amounts from tenants that are due as a result of fraud and abuse, the HA may retain, the greater of:

(1) Fifty percent of the amount it actually collects from a judgment, litigation (including settlement of lawsuit) or an administrative repayment agreement pursuant to, or incorporating the requirements of, § 882.216 or § 887.405; or

(2) Reasonable and necessary costs that the HA incurs related to the collection from a judgment, litigation (including settlement of lawsuit) or an administrative repayment agreement pursuant to, or incorporating the requirements of, § 882.216 or § 887.405. Reasonable and necessary costs include the costs of the investigation, legal fees and collection agency fees.

(b) If HUD incurs costs on behalf of the HA in obtaining the judgment, these costs must be deducted from the amount to be retained by the HA.

§ 792.203 Application of amounts recovered.

(a) The HA may only use the amount of the recovery it is authorized to retain in support of the section 8 program in which the fraud occurred.

(b) The remaining balance of the recovery proceeds (i.e., the portion of recovery the HA is not authorized to retain) must be applied as directed by HUD.

§ 792.204 Recordkeeping and reporting.

To permit HUD to audit amounts retained under this part, an HA must maintain all records required by HUD, including:

(a) Amounts recovered on any judgment or repayment agreement;

(b) The nature of the judgment or repayment agreement; and

(c) The amount of the legal fees and expenses incurred in obtaining the judgment or repayment agreement and recovery.

(Approved by the Office of Management and Budget under Control Number 2577–0053)

Dated: February 17, 1994.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 94–4484 Filed 2–25–94; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8491]

RIN 1545–AN15

Regulations Under Section 446 of the Internal Revenue Code of 1986; Application of Section 446 With Respect to Notional Principal Contracts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (TD 8491), which were published in the Federal Register for Thursday, October 14, 1993 (58 FR 53125). The final regulations relate to the timing of income and deductions with respect to notional principal contracts.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Alan B. Munro, (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 446(b) (relating to general rules for methods of accounting) and 1092(d) (relating to definitions and special rules with respect to straddles) of the Internal Revenue Code of 1986.

Need for Correction

As published, TD 8491 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 8491), which were the subject of FR Doc. 93–25192, is corrected as follows:

1. On page 53132, § 1.446–3(f)(4), the last table on the page following paragraph (a) of *Example 6*, in the last column under the column heading "Principal component", the language

Loan balance	Time value component	Principal component
. . . . .		.
		$6,105,100

is corrected to read

Loan balance	Time value component	Principal component
		$ 0
		0
. . . . .		.
		0
		0
		6,105,100

2. On page 53135, column 2, § 1.446–3(h)(5), paragraph (b) of *Example 3*, second line from the bottom of the paragraph, the language "unamortized payment with respect the" is corrected to read "unamortized payment with respect to the".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94–4494 Filed 2–25–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AG72

To Amend the Travel Authority for Beneficiaries Who Are In Receipt of Pension

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending the regulations that govern its program to provide for the transportation of claimants and beneficiaries to VA health care facilities. The amendments will correct an inadvertent error made when the Department last promulgated regulations pertaining to this program in 1991. This amendment will delete an inaccurate reference to beneficiaries who are in receipt of pension as not subject to a travel deductable.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Monica J. Wilkins, Policies and Procedures Division (161B1), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; Phone (202) 535–7439.

SUPPLEMENTARY INFORMATION: On October 21, 1991, the Department of Veterans Affairs amended its regulations governing the beneficiary travel program to implement changes in law made by Public Law 100–322. Generally, that law authorized the Government to pay for travel for certain categories of veterans but imposed a "deductible" on the amount of the benefit. Other categories of veterans could receive travel benefits without having to pay the deductible. The 1991 amendments to the implementing regulations correctly provided that a veteran in receipt of pension benefits was required to pay a deductible. (See: 38 CFR 17.100(b)(3)). However, in another place, the same regulation inadvertently provided that a veteran in receipt of VA pension benefits could receive transportation expenses without being subject to the deductible. (See: 38 CFR 17.100(c)(3)). The latter provision is inconsistent with the law, and this amendment will correct that error.

The Secretary of the Department of Veterans Affairs hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

This regulation concerned the provision of beneficiary travel to a specified category of eligible veterans. No paperwork, administrative or other regulatory burdens are imposed upon small entities.

The Catalog of Federal Domestic Assistance Numbers are 64.009, 64.010 and 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: November 24, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reason set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 72 Stat. 1114, 38 U.S.C. 501, unless otherwise noted.

§ 17.100 [Amended]

2. In § 17.100, paragraph (c) (3) is removed.

[FR Doc. 94–4480 Filed 2–25–94; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3048, 6F3453, and 6F3318/R2034; FRL–4742–8]

RIN 2070–AB78

Pesticide Tolerances for Permethrin, Cypermethrin, Fenvalerate/Esfenvalerate, Tralomethrin, Bifenthrin, Cyfluthrin, and Lambda-Cyhalothrin; Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document extends tolerances for the residues of the seven synthetic pyrethroids—permethrin, cypermethrin, fenvalerate/esfenvalerate, tralomethrin, bifenthrin, cyfluthrin, and lambda-cyhalothrin (collectively referred to as the synthetic pyrethroids)—in or on certain raw agricultural commodities. This rule to extend the effective date for tolerances for maximum permissible levels of residues of these synthetic pyrethroids in or on these commodities was requested by FMC Corp. (FMC), Zeneca Ag Products, E.I. DuPont de Nemours & Co., Inc., Hoechst-Roussel Agri-Vet Co., and Miles, Inc. (collectively called the industry's Pyrethroid Working Group (PWG)).

EFFECTIVE DATE: This regulation becomes effective February 28, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3048, 6F3453, and 6F3318/R2034], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division

(7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6100.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 20, 1993 (58 FR 54093), EPA issued a proposed rule to amend 40 CFR part 180 by extending to November 15, 1994, tolerances for the residues of the seven synthetic pyrethroids in or on certain commodities. The Pyrethroid Working Group had requested the extension.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in conjunction with the extension request and in previous extensions for the synthetic pyrethroids have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance extensions will protect the public health. Therefore, the tolerance extensions are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 8, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.378, by revising the introductory text of paragraph (a), to read as follows:

§ 180.378 Permethrin; tolerances for residues.

(a) Tolerances, to expire on November 15, 1994, are established for residues of the insecticide permethrin [(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] in or on the following raw agricultural commodities:

* * * * *

c. In § 180.379 by amending the table in paragraph (a) by adding a footnote to the entry for cottonseed as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-α-(1-methethyl) benzeneacetate; tolerances for residues.

(a) * * *

Commodity	Parts per million
. . . . .	
Cottonseed	[1]0.2
. . . . .	

[1] The tolerance for cottonseed expires on November 15, 1994.

* * * * *

§ 180.418 [Amended]

d. By amending § 180.418 *Cypermethrin; tolerances for residues* in the introductory text by changing "July 1, 1993," to read "November 15, 1994."

e. In § 180.422, by revising the introductory text to read as follows:

§ 180.422 Tralomethrin; tolerances for residues.

Tolerances, to expire on November 15, 1994, are established for the combined residues of the insecticide tralomethrin ((*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-alpha-cyano-3-phenoxybenzyl (1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following raw agricultural commodities:

* * * * *

f. In § 180.436, by amending the table therein by adding a footnote to the entry for cottonseed as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

* * * * *

Commodity	Parts per million
. . . . .	
Cottonseed	[1]1.0
. . . . .	

[1] The tolerance for cottonseed expires on November 15, 1994.

g. In § 180.438, the section designation "(a)" is removed, the introductory text is revised, and the table is amended by adding a footnote to the entry for cottonseed as follows:

§ 180.438 [1 α-(S*),3 α (Z)]-(±-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate; tolerances for residues.

Tolerances are established for the combined residues of the insecticide [1 α-(S*),3 α (Z)]-(±)-cyano(3-penoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the following raw agricultural commodities:

Commodity	Parts per million
. . . . .	
Cottonseed	[1]0.05
. . . . .	

[1] The tolerance for cottonseed expires on November 15, 1994.

h. In § 180.442 by revising the introductory text, to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

Tolerances, to expire on November 15, 1994, are established for residues of the pyrethroid bifenthrin, (2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the following commodities:

* * * * *

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. In § 185.1250, by revising paragraph (a), to read as follows:

§ 185.1250 Cyfluthrin.

(a) A tolerance, to expire on November 15, 1994, of 2.0 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate; CAS Reg. No. 69359-37-5) in cottonseed oil resulting from application of the insecticide to cottonseed.

* * * * *

c. In § 185.5450, by revising the introductory text to read as follows:

§ 185.5450 Tralomethrin.

Tolerances, to expire on November 15, 1994, are established for the combined residues of the insecticide tralomethrin ((*S*)-alpha-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6]) and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-alpha-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following food commodities when present as a result of application of the insecticide to the growing crops:

* * * * *

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1250, by revising paragraph (a), to read as follows:

§ 186.1250 Cyfluthrin.

(a) A tolerance, to expire on November 15, 1994, of 2.0 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate; CAS Reg. No. 68359-37-5) in cottonseed hulls resulting from application of the insecticide to cottonseed.

* * * * *

[FR Doc. 94-4209 Filed 2-25-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 92-28; FCC 93-547]

Mobile-Satellite Service at 1610–1626.5 and 2483.5–2500 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order allocates the 1610–1626.5 and 2483.5–2500 MHz bands on a co-primary basis to the mobile-satellite service (MSS). This action responds to seven petitions for rule making that were filed with the Commission and conforms to the international frequency allocation that was adopted at the World Administrative Radio Conference (WARC–92) last year. Further, this action is taken to accommodate the need for additional mobile-satellite spectrum that can be used to provide many new services both domestically and internationally.

DATES: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: Ray LaForge, Office of Engineering and Technology, telephone (202) 653–8117.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in ET Docket No. 92–28 adopted on December 13, 1993 and released January 12, 1994. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Public Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this Report and Order also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20036, (202) 857–3800.

Summary of Report and Order

1. In this Report and Order the Commission allocates 33 MHz of spectrum, the 1610–1626.5 and 2483.5–2500 MHz bands, for the mobile-satellite service (MSS). A total of 16.5 MHz, 1610–1626.5 MHz, is provided for primary space-to-Earth (uplink) operations and 16.5 MHz, 2483.5–2500 MHz, is provided for primary Earth-to-space (downlink) operations. Also, 12.7 MHz, 1613.8–1626.5 MHz, is allocated for secondary MSS space-to-Earth (downlink) operations. In addition, the Commission elevates the radio astronomy service allocation in the 1610.6–1613.8 MHz band from secondary to co-primary status.

2. The 1610–1626.5 and 2483.5–2500 MHz bands currently are allocated to a number of other services. The radiodetermination satellite service (RDSS), is allocated in these bands on a primary basis but only interim RDSS systems have been authorized. *See* Newcomb Communications, Inc., 8 FCC Rcd 3631 (1993); and letter to Counsel, Mobile Data Communications, Inc. from Chief, Domestic Facilities Division (August 19, 1993). Currently, the 1610–1626.5 MHz band is allocated to the aeronautical radionavigation service on a co-primary basis, and the 1610.6–1613.8 MHz segment of this band also is allocated to the radio astronomy service (RAS) on a secondary basis. Frequencies adjacent to the 1610–1626.5 MHz band are allocated to aeronautical radionavigation satellite and maritime mobile satellite services.

3. The 2483.5–2500 MHz band is authorized for co-primary use by the broadcast auxiliary service, the terrestrial fixed service, and the industrial, scientific and medical (ISM) service. Additionally, the frequencies adjacent to this band are allocated on a primary basis to the instructional television fixed service (ITFS), the multi-channel multi-point distribution service (MMDS), fixed services, mobile services and for industrial, scientific, and medical (ISM) equipment, and to the radiolocation service on a secondary basis.

4. On August 5, 1992, we proposed to allocate these bands to the mobile-satellite service systems, shared on a co-primary basis with the RDSS. See 57 FR 43434 (September 21, 1992).

5. Based on the record in this proceeding, we find that there is substantial interest in using both LEO and GEO technologies to provide new voice and data MSS services in the subject bands. As we indicated in the Notice, MSS LEO systems will offer significant new benefits to both domestic and international communications users. MSS LEO systems potentially can provide a universally available world-wide cellular-like radiotelephone service offering voice, data, and facsimile service. In addition, radiolocation and radionavigation applications also can be provided.

6. Some of the new applications envisioned include: (1) personal locator services that could be used to locate accident victims or persons stranded because of weather or injury; (2) fleet management and tracking services that would permit more efficient shipping and transportation of goods, including the tracking of hazardous wastes and material; (3) public safety services that would allow state and local governments to use MSS to extend health and emergency services to rural and remote areas currently unserved by traditional communications facilities; and (4) International Services that would permit global MSS and make modern telephone communications available to remote and underserved areas throughout the world.

7. Further, the Commission determined that although the specific method for sharing among systems remains to be determined, based on the record, bi-directional operations in the 1613.8–1626.5 MHz band is feasible, and accordingly the Commission is providing for a secondary allocation for space-to-Earth operations in this band.

8. The Commission also concluded that MSS operations in the 1610–1626.5 and 2483.5–2500 MHz bands should be subject to the e.i.r.p. and power flux density levels set forth in the international Radio Regulations. In addition, such MSS operations will be subject to the coordination and notification procedures set forth in Resolution 46.

9. We continue to believe that, at least initially, the existing FSS bands are sufficient to accommodate MSS feeder links. We note that there may be difficulties in using FSS bands that generally are congested with significant numbers of geostationary fixed-satellite systems (GEO FSS). Consequently, because of the significant coordination difficulties arising from the global nature of LEO operations, MSS LEO feeder links would need to operate in FSS frequency bands that are not heavily used by GEO FSS systems. We are also including the inter-satellite service bands at 24.45–24.65 and 24.65–24.75 GHz and the already allocated inter-satellite service band at 22.55–23 GHz in the United States Table of Frequency Allocations for non-government use.

10. In view of the important health issues involved, the fact that no general manufacture of consumer equipment for MSS in these bands has yet begun, and our intent to provide for the expeditious initiation of the services for which this spectrum is being allocated, we believe the ANSI/IEEE guidelines (IEEE C95.1–1991) should be used when evaluating the potential for harm to public health from exposure to RF emissions of MSS user devices. If we modify the ANSI/IEEE guidelines in ET Docket No. 92–62, those guidelines will be applied to MSS equipment. We will require that all hand-held devices comply with the ANSI/IEEE specifications for "uncontrolled" environments because the new MSS service as envisioned would include consumer use that would be within the "uncontrolled" definition.

11. Further, in the Notice and Tentative Decision, 57 FR 43434, September 21, 1992 *supra*, we dismissed a petition for rule making filed by CELSAT to use the RDSS frequency band for a hybrid satellite and terrestrial ground personal communications service (PCS). CELSAT had an alternative request for spectrum in the 2120–2129 and 2410–2428 MHz bands, including a pioneer's preference request which remains pending. On October 5, 1992, CELSAT filed a Petition for Reconsideration of the Commission's Notice and Tentative Decision in which it argues that the Commission incorrectly dismissed its proposed spectrum allocation because the terrestrial element of its proposal was incompatible with WARC–92. TRW filed a petition to dismiss the CELSAT Petition for Reconsideration. The Commission grants TRW's petition but accepts CELSAT's petition as late filed comments. The Commission continues to believe that for the purpose of international coordination it is important that our domestic allocation be compatible with the WARC–92 spectrum allocation. Thus we continue to hold that terrestrial operations in these bands is inappropriate. For this reason, we accept CELSAT's Petition for Reconsideration as a comment in this proceeding.

12. In the Notice and Tentative Decision we noted that the proposal was analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public. No comments were received regarding the Paperwork Reduction Act.

13. Further, in the Notice and Tentative Decision we invited comments on the impact of the proposed allocation in accordance with the Regulatory Flexibility Act of 1980. No comments were received in response to our analysis of this allocation as required by the Regulatory Flexibility Act.

14. Accordingly, *it is ordered*, that Part 2 of the Commission's Rules and Regulations is amended as specified below, effective March 30, 1994. *It is further ordered* that TRW's Motion to Dismiss CELSAT's Petition for Reconsideration is granted in part; and that the Petition for Reconsideration filed by CELSAT is accepted as a comment. This action is taken pursuant to Sections 4(i), 303 (c), (f), (g), and (r), and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 (c), (f), (g), and (r).

List of Subjects in 47 CFR Part 2

Frequency allocation, General rules and regulations, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

I. Part 2 of title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

1. The authority citations in Part 2 continues to read:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. The International Footnotes at the end of the Table of Frequency Allocations, § 2.106 is amended to remove footnotes 731A, 731B, 731C, 731D, 753E, 877, 878, 890 and 891; revise footnotes 733A, 733E, 734, 753, 753C, 882E, 882F, and 882G; and add footnotes 731E, 731F, 753F, 881A, and 881B. Footnote US319 in the United States footnotes is also revised.

3. Section 2.106, the Table of Frequency Allocations, is revised for the 1610–1626.5 MHz, 2483.5–2500 MHz, 22.5–23 GHz, and 24.25–24.75 GHz bands, in accordance with the following:

§ 2.106 Table of Frequency Allocations.

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule part(s)	Special-Use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1610–1610.6 Aeronautical Radionavigation. Mobile-Satellite (Earth-to-space).	1610–1610.6 Aeronautical Radio-navigation. Radiodetermination satellite (Earth-to-space). Mobile Satellite (Earth-to-space).	1610–1610.6 Aeronautical Radio-navigation. Mobile-Satellite (Earth-to-space). Radiodetermination-Satellite (Earth-to-space).	1610–1610.6 Aeronautical Radio-navigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space)	1610–1610.6 Aeronautical Radio-navigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space).	Aviation (87). Satellite Communication (25).	
722 727 730 731 731E 732 733 733A 733B 733E 733F	722 731E 732 733 733A 733C 733D 733E	722 727 730 731E 732 733 733A 733B 733E	722 731E 732 733 733A 733E US208 US260 US319	722 731E 732 733 733A 733E US208 US260 US319		
1610.6–1613.8 Aeronautical Radionavigation. Mobile-Satellite (Earth-to-space). Radio-Astronomy.	1610.6–1613.8 Aeronautical Radio-navigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space). Radio-Astronomy.	1610.6–1613.8 Aeronautical Radio-navigation. Mobile-Satellite (Earth-to-space). Radio-Astronomy. Radiodetermination Satellite (Earth-to-space).	1610.6–1613.8 Aeronautical Radio-navigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space). Radio-Astronomy.	1610.6–1613.8 Aeronautical Radio-navigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space)	Aviation (87). Satellite communication (25).	
722 727 730 731 731E 732 733 733A 733B 733E 733F 734	722 731E 732 733 733A 733C 733D 733E 734	722 727 730 731E 732 733 733A 733B 733E 734	722 731E 732 733 733A 733E 734 US208 US260 US319	722 731E 732 733 733A 733E 734 US208 US260 US319		
1613.8–1626.5 Aeronautical Radionavigation. Mobile-Satellite (Earth-to-space). Mobile-Satellite (space-to-Earth).	1613.8–1626.5 Aeronautical Radio-navigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space). Mobile-Satellite (space-to-Earth).	1613.8–1626.5 Aeronautical Radio-navigation. Mobile-Satellite (Earth-to-space). Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (space-to-Earth).	1613.8–1626.5 Aeronautical Radio-navigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space). Mobile-Satellite (space-to-Earth).	1613.8–1626.5 Aeronautical Radio-navigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space). Mobile-Satellite (space-to-Earth).	Aviation (87). Satellite Communication (25).	
722 727 730 731 731E 731F 732 733 733A 733B 733E 733F	722 731E 731F 732 733 733A 732C 733D 733E	722 727 730 731E 731F 732 733 733A 733B 733E	722 731E 731F 732 733 733E US208 US260 US319	722 731E 731F 732 733 733E US208 US260 US319		

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule part(s)	Special-Use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
•	•	•	•	•	•	•
2483.5–2500 Fixed. Mobile. Mobile-Satellite (space-to-Earth). Radiolocation.	2483.5–2500 Fixed. Mobile. Radiodetermination satellite (space-to-Earth) 753A. Radiolocation.	2483.5–2500 Fixed. Mobile. Radiolocation. Mobile-Satellite (space-to-Earth).	2483.5–2500 Radiodetermination satellite (space-to-Earth) 753A. Mobile-Satellite (space-to-Earth).	2483.5–2500 Radiodetermination satellite (space-to-Earth) 753A. Mobile-Satellite (space-to-Earth).	Satellite Communication (25).	
	Mobile-Satellite (space-to-Earth).	Radiodetermination-Satellite (space-to-Earth). 753A.				
733F 752 753 753A 753B 753C 753F	752 753D 753F	752 753C 753F	752 753F US41 US319	752 753F US41 US319 NG147		
•	•	•	•	•	•	•
22.5–22.5			22.5–22.55	22.5–22.55		
	Fixed		Fixed	Fixed	Domestic public fixed (21).	
	Mobile		Mobile	Mobile	Private operational fixed microwave (94).	
22.55–23			US211 22.55–23	US211 22.55–23		
	Fixed		Fixed	Fixed	Domestic public fixed (21).	
	Inter-satellite		Inter-satellite	Inter-satellite	Private operational fixed microwave (94).	
	Mobile		Mobile	Mobile	Satellite communications (25).	
	879		879 US278	879 US278		
•	•	•	•	•	•	•
24.25–24.45 fixed	Radionavigation	Radionavigation Fixed Mobile	24.25–24.45 Radionavigation		Aviation (87).	
24.45–24.65 Fixed Inter-Satellite	24.45–24.65 Radionavigation Inter-satellite	24.45–24.65 Radionavigation Fixed Inter-satellite Mobile	24.45–24.65 Inter-satellite Radiolocation-satellite (Earth-to-space) Radionavigation		Satellite communication (25).	
Inter-satellite	Inter-satellite	Fixed Inter-satellite. Mobile.				
	882E	882E	882E			
24.65–24.75 fixed. Inter-satellite	24.65–24.75 Inter-satellite. Radio-location-satellite (Earth-to-space)	24.65–24.75 Fixed. Inter-satellite. Mobile	24.65–24.75 Inter-satellite. Radiolocation-satellite (Earth-to-space)		Satellite communication (25).	
		882E 882F				
24.75–25.25 Fixed	24.75–25.25 Fixed-satellite (Earth-to-space) 882G	24.75–25.25 Fixed Fixed-satellite (Earth-to-space) 882G 882F	24.75–25.25 Radionavigation		Aviation (87).	

* * * * *

International Footnotes

* * * * *

731A—Removed.

731B—Removed.

731C—Removed.

731D—Removed.

* * * * *

731E—The use of the band 1610–1626.5 MHz by the mobile-satellite service (Earth-to-space) and by the radiodetermination-satellite service (Earth-to-space) is subject to the application of the coordination and notification procedures set forth in Resolution 46 (WARC–92). A mobile earth station operating in either of the services in this band shall not produce an e.i.r.p. density in excess of −15 dB (W/4 kHz) in the part of the band used by systems operating in accordance with the provisions of No. 732, unless otherwise agreed by the affected administrations. In the part of the band where such systems are not operating, a value of −3 dB (W/4 kHz) is applicable. Stations of the mobile-satellite service shall not cause harmful interference to, or claim protection from, stations in the aeronautical radionavigation service, stations operating in accordance with the provisions of No. 732 and stations in the fixed service operating in accordance with the provisions of No. 730.

731F—The use of the band 1613.8–1626.5 MHz by the mobile-satellite service (space-to-Earth) is subject to the application of the coordination and notification procedures set forth in Resolution 46 (WARC–92).

* * * * *

733A—With respect to the radiodetermination-satellite and mobile-satellite services the provisions of No. 953 do not apply in the frequency band 1610–1626.5 MHz.

* * * * *

733E—Harmful interference shall not be caused to stations of the radio astronomy service using the band 1610.6–1613.8 MHz by stations of the radiodeterminaton-satellite and mobile-satellite services. (No. 2904 applies.)

734—In making assignments to stations of other services, administrations are urged to take all practicable steps to protect the radio astronomy service in the band 1610.6–1613.8 MHz from harmful interference. Emissions from space or air-borne stations can be particularly serious sources of interference to the radio astronomy service (see Nos. 343 and 344 and Article 36).

* * * * *

753—*Different category of service:* in France, the band 2450–2500 MHz is allocated on a primary basis to the radiolocation service (see No. 425). Such use is subject to agreement with administrations having service operating or planned to operate in accordance with the Table of Frequency Allocations which may be affected.

* * * * *

753C—*Different category of service:* in Angola, Australia, Bangladesh, Burundi, China, Cote d'Ivoire, Ethiopia, India, the Islamic Republic of Iran, Israel, Italy, Jordan, Kenya, Lebanon, Liberia, Libya, Madagascar, Mali, Pakistan, Papua, New Guinea, Senegal, Sudan, Swaziland, Syria, Tanzania, Thailand, Togo, Zaire and Zambia, the allocation of the band 2483.5–2500 MHz to the radiodetermination-satellite service (space-to-Earth) is on a primary basis (see No. 425) subject to agreement obtained under the procedure of Article 14 with other countries not listed in this provision.

* * * * *

753E—Removed.

753F—The use of the band 2483.5–2500 MHz by the mobile-satellite and the radiodetermination-satellite services is subject to the application of the coordination and notification procedures set forth in Resolution 46 (WARC–92). Coordination of space stations of the mobile-satellite and radiodetermination-satellite services with respect to terrestrial services is required only if the power flux-density produced at the Earth's surface exceeds the limits in No. 2566. In respect of assignments operating in this band, the provisions of Section II, paragraph 2.2 of Resolution 46 (WARC–92) shall also be applied to geostationary transmitting space stations with respect to terrestrial stations.

* * * * *

877—Removed.

878—Removed.

* * * * *

881A—Use of the 25.25–27.5 GHz band by the inter-satellite service is limited to space research and Earth exploration-satellite applications, and also transmissions of data originating from industrial and medical activities in space.

881B—Space services using non-geostationary satellites operating in the inter-satellite service in the band 27–27.5 GHz are exempt from the provisions of No. 2613.

* * * * *

882E—The inter-satellite service shall not claim protection from harmful interference from airport surface detection equipment stations of the radionavigation service.

882F—*Additional allocation:* in Japan, the band 24.65–25.25 GHz is also allocated to the radionavigation service on a primary basis until 2008.

882G—In the band 24.75–25.25 GHz, feeder links to stations of the broadcasting-satellite service shall have priority over other users in the fixed-satellite service (Earth-to-space). Such other uses shall protect and shall not claim protection from existing and future operating feeder-link networks to such broadcasting satellite stations.

* * * * *

890—Removed.

891—Removed.

* * * * *

United States (US) Footnotes

* * * * *

US319—In the 137–138, 148–149.9, 149.9–150.05, 399.9–400.05, 400.15–401, 1610–1626.5, and 2483.5–2500 MHz bands, Government stations in the mobile-satellite service shall be limited to earth stations operating with non-Government space stations.

* * * * *

NG147—Stations in the broadcast auxiliary service and private radio services licensed as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, may continue to operate on a radiodetermination satellite service.

* * * * *

[FR Doc. 94–4409 Filed 2–25–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 32

[CC Docket No. 89–360, FCC 94–28]

Statement of Financial Accounting Standards No. 96, Accounting for Income Taxes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order to incorporate the liability method of accounting for income taxes into the Uniform System of Accounts for Telecommunications Companies. This action brings the method of accounting for income taxes in line with the generally accepted method of accounting for income taxes prescribed for the American business community.

EFFECTIVE DATE: August 29, 1994.

FOR FURTHER INFORMATION CONTACT: Thaddeus Machcinski, Common Carrier Bureau, Accounting and Audits Division, 202–634–1861.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in CC Docket No. 89–360, adopted January 31, 1994 and released February 8, 1994. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., at (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. This Report and Order amends part 32 to incorporate the new accounting procedures for income taxes prescribed in Statement of Financial Accounting Standards No. 109 (SFAS–109) and it also establishes new accounts to properly implement those procedures.

2. This Report and Order adds three new accounts to the Uniform System of Accounts to incorporate the requirements of SFAS–109 into part 32. The new accounts are Account 1437, Deferred Tax Regulatory Asset; Account 4341, Net Deferred Tax Liability Adjustments; and Account 4361, Deferred Tax Regulatory Liability. These new accounts will reflect the adjustments to existing carrier deferred tax balances that are necessary as a result of adopting SFAS–109.

3. The type of SFAS–109 adjustments that will be shown in the above accounts relate to changes in tax rates, recording tax liabilities for items that

were previously accounted for under the flow through method, and recording taxes on items that were formerly considered permanent differences by the accounting profession.

4. The Report and Order will be effective six months after it is published in the **Federal Register**. However, the Report and Order permits carriers to adopt SFAS–109 for federal accounting purposes on January 1, 1993 if the carriers so desire.

5. Finally, the new accounts that are established in the Report and Order will be excluded from interstate rate base and revenue requirement determinations. This insures that the adoption of SFAS–109 for federal accounting purposes will not increase or decrease the interstate revenue requirement.

Rule Changes

6. Accordingly, *it is ordered that,* Pursuant to sections 1, 4(i), 201–205, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)201–205, 218, 220, 403, part 32 is amended as set forth below.

7. *It is further ordered that,* Pursuant to section 220(g) of the Communications Act of 1934, as amended, 47 U.S.C. § 220(g) and § 1.427(c) of the Commission's Rules, 47 CFR 1.427(c), the amendments to part 32 of the Commission's Rules, 47 CFR 32.1 *et seq.*, as set forth below, shall be effective August 29, 1994.

8. *It is further ordered that,* Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), § 32.16 of the Commission's rules 47 CFR 32.16 is waived to the extent that it requires the filing of a revenue requirement study in regard to SFAS–109.

9. *It is further ordered that,* Carriers may implement SFAS–109 for federal regulatory purposes prior to the effective date of the new rules.

10. *It is further ordered that,* The Secretary shall provide a copy of this Report and Order to each state utility commission.

List of Subjects in 47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Part 32 of title 47 of the CFR is amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 32 continues to read as follows:

Authority: Secs. 4(i), 4[j] and 220 as amended; 47 U.S.C. 154(i), 154(j), and 220 unless otherwise noted.

2. Section 32.22 (a), (c), (d), and (f) is revised to read as follows:

§ 32.22 Comprehensive interperiod tax allocation.

(a) Companies shall apply interperiod tax allocation (tax normalization) to all book/tax temporary differences which would be considered material for published financial report purposes. Furthermore, companies shall also apply interperiod tax allocation if any item or group of similar items when aggregated would yield debit or credit entries which exceed or would exceed 5 percent of the gross deferred income tax expense debits or credits during any calendar year over the life of the temporary difference. The tax effects of book/tax temporary differences shall be normalized and the deferrals shall be included in the following accounts:

4100, Net Current Deferred Operating Income Taxes;
4110, Net Current Deferred Nonoperating Income Taxes;
4340, Net Noncurrent Deferred Operating Income Taxes;
4350, Net Noncurrent Deferred Nonoperating Income Taxes.

In lieu of the accounting prescribed herein, any company shall treat the increase or reduction in current income taxes payable resulting from the use of flow through accounting in prior years as an increase or reduction in current tax expense.

* * * * *

(c) Subsidiary records shall be used to reduce the deferred tax assets contained in the accounts specified in paragraph (a) of this section when it is likely that some portion or all of the deferred tax asset will not be realized. The amount recorded in the subsidiary record should be sufficient to reduce the deferred tax asset to the amount that is likely to be realized.

(d) The records supporting the activity in the deferred income tax accounts shall be maintained in sufficient detail to identify the nature of the specific temporary differences giving rise to both the debits and credits to the individual accounts.

* * * * *

(f) The tax differentials to be normalized as specified in this section shall also encompass the additional effect of state and local income tax changes on Federal income taxes produced by the provision for deferred state and local income taxes for book/tax temporary differences related to such income taxes.

* * * * *

3. Section 32.103 is amended by adding account 32.1437 to the list of accounts to read as follows:

§ 32.103 Balance sheet accounts for other than regulated-fixed assets to be maintained.

BALANCE SHEET ACCOUNTS

Account title	Class A account	Class B account
• • • • •		
Deferred Tax Regulatory Asset	1437	1437
• • • • •		

* * * * *

4. Section 32.1437 is added to read as follows:

§ 32.1437 Deferred tax regulatory asset.

(a) This account shall include amounts of probable future revenue for the recovery of future increases in taxes payable. As reversals occur, amounts recorded in this account shall be reduced with a credit entry and a debit entry to Account 4341, Net Deferred Tax Liability Adjustments.

(b) This account shall also be adjusted for the impact of prospective tax rate changes on the deferred tax liability for those temporary differences underlying its existing balance. If the cumulative effect of such adjustments reduce the account to a net credit balance, such balance shall be reclassified to Account 4361.

5. Section 32.4000 is amended by adding accounts 32.4341 and 32.4361 to the list of accounts to read as follows:

§ 32.4000 Instructions for balance sheet accounts—liabilities and stockholders' equity.

Liabilities and Stockholders' Equity Accounts to be Maintained by Class A and Class B telephone companies:

Account title	Class A account	Class B account
• • • • •		
Net Deferred Tax Liability Adjustments	4341	4341
• • • • •		
Deferred Tax Regulatory Liability	4361	4361

Account title	Class A account	Class B account
• • • • •		

* * * * *

6. Section 32.4100(d) is revised to read as follows:

§ 32.4100 Net current deferred operating income taxes.

* * * * *

(d) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to the deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the temporary differences.

* * * * *

7. Section 32.4110(g) is revised to read as follows:

§ 32.4110 Net current deferred nonoperating income taxes.

* * * * *

(g) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the temporary differences.

* * * * *

8. Section 32.4340 (a) and (d) are revised to read as follows:

§ 32.4340 Net noncurrent deferred operating income taxes.

(a) This account shall include the balance of income tax expense related to noncurrent items from regulated operations which have been deferred to later periods as a result of comprehensive interperiod tax allocation related to temporary differences that arise from regulated operations.

* * * * *

(d) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to the deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the temporary difference.

* * * * *

9. Section 32.4341 is added to read as follows:

§ 32.4341 Net deferred tax liability adjustments.

(a) This account shall include the portion of deferred income tax charges and credits pertaining to Accounts 32.1437, Deferred Tax Regulatory Asset, and 32.4361, Deferred Tax Regulatory Liability.

(b) This account shall be used to record adjustments to the accumulated deferred tax liabilities recorded in Accounts 4100 and 4340 for:

(1) Tax effects of temporary differences accounted for under the flow-through method or treated as permanent differences.

(2) Reclassification attributable to changes in tax rates (Federal, state and local). As tax rates increase or decrease, the offsetting debit or credit will be recorded in Account 1437 and/or 4361 as required by paragraph (a) of this section.

(3) The tax effects of carryforward net operating losses and carryforward investment tax credits expected to reduce future taxes payable that are reported in published financial statements.

(4) Reversals of the tax effects of carryforward net operating losses and carryforward investment tax credits previously recorded in this account at the time they become recognized as reductions in current taxable income and current taxes payable on tax returns.

(c) This account shall be exempt from the vintage year detail record requirements of § 32.22(e)(2).

10. Section 32.4350 (a) and (g) are revised to read as follows:

§ 32.4350 Net noncurrent deferred nonoperating income taxes.

(a) This account shall include the balance of income tax expense (Federal, state, and local) that has been deferred to later periods as a result of comprehensive interperiod allocation related to nonoperating differences.

* * * * *

(g) The classificaiton of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to the deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the temporary difference.

* * * * *

11. Section 32.4361 is added to read as follows:

§ 32.4361 Deferred tax regulatory liability.

(a) This account shall include amounts of probable future revenue reductions attributable to future decreases in taxes payable. As reductions occur, amounts recorded in this amount shall be reduced with a debit entry and a credit entry to Account 4341, Net Deferred Tax Liability Adjustments.

(b) This account shall also be adjusted for the impact of prospective tax rate changes on the deferred tax liability for those temporary differences underlying its existing balance. If the cumulative effect on such adjustments reduces the account to a net debit balance, such balance shall be reclassified to Account 1437.

[FR Doc. 94–4408 Filed 2–25–94; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 99

[GEN Docket No. 90–314; FCC 93–550]

Establishment of New Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Third Report and Order, the Commission makes final decisions on 50 pioneer's preference requests related to broadband 2 GHz Personal Communications Services (PCS). The Commission awards pioneer's preferences to three applicants and denies the remaining 47 requests. This action guarantees a license to each pioneer in 30 megahertz of spectrum in a Major Trading Area (MTA) if the applicant is otherwise eligible to hold such a license and subject to any changes upon reconsideration in GEN Docket No. 90–314 that affect service areas or spectrum blocks. The action is intended to appropriately reward the three parties that pioneered new PCS services and technologies.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 653–8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order adopted December 23, 1993, and released February 3, 1994. This action will not change the public reporting burden. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of the decision also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Third Report and Order

1. In the Tentative Decision and Memorandum Opinion and Order (Tentative Decision) (57 FR 57458, December 4, 1992) in this proceeding, the Commission proposed to award pioneer's preferences to American Personal Communications (APC), Cox Enterprises, Inc. (Cox), and Omnipoint Communications, Inc. (Omnipoint) and to deny 53 other requests. Subsequently, in the First Report and Order (58 FR 42681, August 11, 1993) in GEN Docket No. 90–314 and ET Docket No. 92–100, six of these 53 requests were found to address 900 MHz narrowband services and therefore final action on these six was taken in that proceeding. The Commission adopted final rules for broadband 2 GHz PCS in the Second Report and Order (58 FR 59174, November 8, 1993) in this proceeding. Seven blocks of spectrum were allocated for licensed 2 GHz PCS encompassing 120 megahertz at 1850–1890, 1930–1970, 2130–2150, and 2180–2200 MHz. Regional and local PCS service areas based upon MTAs and Basic Trading Areas (BTAs) also were adopted.

2. The Commission's pioneer's preference rules provide preferential treatment in its licensing process to parties that demonstrate their responsibility for developing new communications services and technologies. To be granted a pioneer's preference, an applicant must demonstrate that it has developed the new service or technology; e.g., that it has developed the capabilities or possibilities of the technology or service or has brought them to a more advanced or effective state. The applicant also must demonstrate the technical feasibility of the new service or technology, either by submitting a technical feasibility showing or at least preliminary results of an experiment. Finally, a preference will be granted only if the rules adopted are a reasonable outgrowth of the proposal and lend themselves to grant of a preference. An applicant meeting this standard will be placed on a pioneer's preference track, will not be subject to competing applications, and if otherwise qualified will receive a license. Other applicants will compete for additional licenses on a separate track. The pioneer's preference rules are intended to foster development of new services and improve existing services by reducing the delays and risks innovators otherwise would face with the Commission's licensing process.

3. In the Tentative Decision, the Commission proposed to grant APC, Cox, and Omnipoint a pioneer's preference and to deny 53 requests that is tentatively concluded did not merit preferences. After opportunity for additional comment and replies focused on the Tentative Decision, the Commission found that APC, Cox, and Omnipoint meet the pioneer's preference standard and therefore merit award of preferences; and that the remaining applicants do not meet this standard and therefore do not merit award of preferences.

4. APC was granted a pioneer's preference for its development and demonstration of technologies that facilitate spectrum sharing by PCS facilities and microwave systems at 2 GHz. APC's analysis and testing demonstrated that there exists unused spectrum in the 1850–1990 MHz band sufficient to allow immediate initiation of PCS services without first having to relocate existing microwave operations. Its study changed the focus of attention from relocating fixed microwave operations before initiating PCS to initially implementing PCS while sharing the spectrum with the existing microwave operations. This study, and the transition plan presented in comments submitted by APC, have elements in common with the transition plan adopted in ET Docket No. 92–9 to facilitate making 2 GHz spectrum available for emerging technologies, including PCS. Further, APC developed Frequency Agile Sharing Technology (FAST) and demonstrated that it provides a practical means to transition from fixed services to shared fixed and mobile services in this spectrum.

5. As explained by APC, FAST is a frequency planning and management tool used to predict (and avoid) interference both between private operational fixed service (POFS) and PCS systems, and within a PCS system. The FAST system utilizes theoretical interference analyses verified by signal strength measurements to determine frequency assignments to PCS base stations. This function is accomplished by a Channel Utilization Controller (CUC), which monitors and determines the channels each PCS base station may use. The CUC monitors coverage and interference; analyzes and integrates measured data; integrates supporting data bases; and supports data communications links to each PCS base station. For each PCS base station the CUC calculates theoretical interference values and areas for every POFS station in its data base. Both PCS-to-POFS and POFS-to-PCS interference is calculated. The CUC then compiles a list of available channels for each base station. The theoretical interference analysis is recalculated when PCS and/or POFS systems are changed.

6. APC states that FAST technology can be used with any relatively narrow band PCS system channel architecture employing a channel bandwidth of 5 megahertz or less. In particular, APC states that the FAST system can be used in conjunction with code division multiple access (CDMA), time division multiple access, time division duplexed, and frequency division duplexed systems that use various transmit-receive frequency separations. APC asserts that testing of its FAST/CDMA system verified the ability of its technology to complete PCS calls without causing interference to existing microwave operations.

7. Cox was granted a preference for having developed and demonstrated PCS/cable plant interface technology and equipment that interfaces existing cable plant with new PCS wireless applications, resulting in spectrum-efficient applications for PCS. Cox first proposed using cable systems to provide backbone functions for PCS (instead of using the existing telephone or fixed microwave networks), applied to the Commission for a PCS experimental license, and successfully developed and tested equipment. Through experiments, Cox demonstrated cost-effective integration of PCS and cable networks that makes more efficient use of existing cable plant without impairing existing cable services. Cox designed, developed, and tested multi-backhaul configurations and multi-PCS radio systems with hand-off capability, centralized modulation, and distributed antenna configurations. These capabilities were realized through its design and development work, the key to which is its "cable microcell integrator" that Cox developed to connect PCS handsets to its embedded cable plant.

8. Using the existing cable plant in PCS network design permits economical and rapid deployment of PCS systems and substitution of existing infrastructure for increasingly scarce spectrum. The efforts of Cox advanced PCS system design by demonstrating the feasibility of integrating cable networks with full-featured PCS systems. Its developments potentially permit offering efficient PCS service in a timely, cost efficient manner with no impairment to existing cable services.

9. Omnipoint was granted a preference for its development of 2 GHz equipment that uses advanced techniques that will facilitate continued development and implementation of PCS services and technologies. Omnipoint was the first to produce practical, working 2 GHz equipment for PCS. It engaged in radio frequency engineering and related spread spectrum product design, development, miniaturization, and manufacture of 2 GHz equipment.

10. Omnipoint designed and manufactured equipment that uses direct sequence spread spectrum access techniques in a 5 or 10 megahertz channel. The original work of Omnipoint contributed significantly to the development and testing of PCS services and design concepts that will facilitate initial implementation of PCS in the 2 GHz band on a sharing basis with fixed microwave licensees. Omnipoint has demonstrated that its 2 GHz PCS equipment uses innovative technology, combining spread spectrum and time division techniques. Further, Omnipoint has demonstrated the capability of providing PCS service using its equipment. Finally, the use of Omnipoint's handsets by other parties to develop PCS experimental systems has fostered the development of PCS.

11. By receiving a pioneer's preference, APC, Cox, and Omnipoint, if otherwise qualified, will not be subject to competing license applications in Channel Block A, a 30 megahertz MTA in the 1850–1865 and 1930–1945 MHz bands. APC, Cox, and Omnipoint argued that a 30 megahertz MTA grant was necessary to permit implementation of the systems they proposed.

12. Cablevision Systems Corporation (Cablevision), Southwestern Bell Corporation (SBC), and Fidelity Investments and Cylink Corporation (Fidelity/Cylink) disagreed that a 30 megahertz MTA license should be awarded pioneers. Cablevision contended that a 20 megahertz BTA block would permit the grantees to use the band in which they have conducted experiments, while not conveying a windfall 30 megahertz MTA block that could have a preclusive effect on other licensees. SBC concurred, stating that a 20 megahertz BTA block would be enough spectrum to provide adequate PCS service. Fidelity/Cylink argued that a 10 megahertz BTA block at 2130–2200 MHz would be adequate because such a block would enable the provision of full-featured PCS, as well as many specialized PCS services.

13. The Commission found the arguments of APC, Cox, and Omnipoint persuasive. Each applicant conducted experiments in the 1850–1990 MHz band, not in the 2130–2200 MHz band. An award in the lower band is appropriate to ensure that the grantees can implement the services they have proposed. While the Commission continues to believe that the upper band has the potential to provide a variety of important PCS services, APC, Cox, and Omnipoint have designed their systems and conducted their experiments in the 1850–1990 MHz band. Further, the Commission is not convinced that a 20 megahertz BTA grant would be adequate, given the nature of the systems proposed. Accordingly, the Commission awarded each pioneer a 30 megahertz MTA block in the service area each requested.

14. The Commission instructed the licensing bureau to condition licenses issued as a result of these pioneer's preference grants upon construction of PCS systems that substantially use the design and technologies upon which the preference awards are based and upon each licensee holding its license for a minimum of three years or until the construction requirements applicable to the five-year build-out period specified in Section 99.206 of the Commission's Rules have been satisfied, whichever, is earlier. APC's service area is the MTA that includes Washington, DC and Baltimore, Maryland; Cox's service area is the MTA that includes San Diego, California; and Omnipoint's service area is the MTA that includes northern New Jersey. The Commission noted that both PCS channel blocks and service areas are the subject of petitions for reconsideration and clarification. Should either PCS channel blocks or service areas be amended on reconsideration, the pioneer's preferences will be modified accordingly.

15. Finally, the Commission stated that the 47 pioneer's preference requests that were found not to have met the pioneer's preference standard were denied for a variety of reasons. Some of these requests were incompatible with the rules adopted in the Second Report and Order in this proceeding, some did not demonstrate the feasibility of the proposed technologies, some did not demonstrate innovation, and some did not demonstrate the capabilities or possibilities of specific identifiable PCS technologies or services or show how these technologies or services had been brought to a more advanced or effective state.

16. Accordingly, *it is ordered* that the requests for pioneer's preference filed by American Personal Communications; Cox Enterprises, Inc.; and Omnipoint Communications, Inc. are granted. *It is further ordered* That the relevant licensing bureau shall impose the following conditions on the licenses received by American Personal Communications; Cox Enterprises, Inc.; and Omnipoint Communications, Inc. pursuant to their pioneer's preference awards: (1) Each licensee must build a system that substantially uses the design and technologies upon which its preference award is based; and (2) Each licensee must hold its license for a minimum of three years or until the construction requirements applicable to the five-year build-out period specified in Section 99.206 of the Commission's Rules have been satisfied, whichever is earlier. *It is further ordered* That the requests for pioneer's preference filed by Adelphia Communications Corp.; Advanced MobileComm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc.; American Portable Telecommunications, Inc.; American Telephone and Telegraph; American TeleZone; Ameritech; Associated PCN Corporation; Atlantic Cellular Company, L.P.; Bell Atlantic Personal Communications, Inc.; Broadband Communications Corporation; Cable USA, Inc.; Cablevision Systems Corporation; Cellular Service, Inc.; Comcast PCS Communications, Inc.; Corporate Technology Partners; Freeman Engineering Associates; Grand Broadcasting Corporation; Iowa Network Services, Inc.; Linkatel Communications, Inc.; LiTel Telecommunications Corporation; Nextel Communications, Inc.; Omnipoint Corporation, Oracle Data Publishing, Inc.; and McCaw Cellular Communications, Inc.; Omnipoint Mobile Data Company; Pacific Bell; PacTel Corporation; PageMart, Inc.; Panhandle Telephone Cooperative, Inc.; PCN America, Inc.; PCN Communications, Inc.; PerTel, Inc.; Personal Communications Network Services of New York; Pulson Communications Corporation; Qualcomm Incorporated; Satcom, Inc.; Sharecom-Austin, L.P.; SM Tek, Inc.; Southwestern Bell Personal Communications, Inc.; Spatial Communications; Suite 12 Group; Tele-Communications, Inc.; Tel/Logic Inc.; Telmarc Telecommunications; Time Warner Telecommunications, Inc.; TRX Transportation Telephone Co.; US West NewVector Group, Inc.; Vanguard Cellular Systems, Inc.; and Viacom International, Inc. *are denied.*

List of Subjects in 47 CFR Part 99

Personal Communications Services. Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–4407 Filed 2–25–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 930955–4039; I.D. 092493C]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS implements a regulatory amendment that prohibits the retention of groundfish caught with unauthorized gear in the exclusive economic zone (EEZ) off Alaska. In addition, this action implements a technical amendment that organizes all fishing gear definitions as paragraphs under the single definition of "authorized fishing gear". This action is necessary to prevent fishing with unauthorized gear and associated preemption of fishing grounds and gear conflicts, and undermining prohibited species bycatch measures in the groundfish fishery. It is intended to support the goals and objectives contained in the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska (GOA) and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI).

EFFECTIVE DATE: March 30, 1994.

ADDRESSES: Copies of the environmental assessment/regulatory impact review (EA/RIR) prepared for this regulatory amendment may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fisheries Management Division, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the EEZ of the GOA and the BSAI is managed by the Secretary of Commerce according to the FMP for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

This regulatory action amends 50 CFR 672.7 and 675.7 to prohibit the retention of groundfish caught with other than authorized fishing gear types. Authorized fishing gear are all fishing gear types currently defined at §§ 672.2 and 675.2.

A proposed rule was published in the **Federal Register** on November 12, 1993 (58 FR 59980). A complete description of, and justification for, changes to regulations that prohibit the retention of groundfish caught with other than authorized fishing gear types were discussed in the proposed rule.

Public comment on the proposed rule was invited through December 13, 1993. One letter opposing and one letter supporting the proposed action were received within the comment period and are summarized and responded to below in the "Response to Comment" section.

Upon reviewing the reasons for and the comments on this action, NMFS has determined that this rule is necessary for fishery conservation and management and has approved it.

Response to Comments

Comment 1: Prohibiting fishing gear types not defined in the regulations will stifle gear innovations and development by the industry.

Response: This rule will not stifle gear innovations or the development of new fishing gear by the industry. Gear innovations and development can be accomplished within existing regulations governing experimental fishing at §§ 672.6 and 675.6.

Under an experimental fishing permit, otherwise unauthorized gear could be assessed relative to fishing efficiency, bycatch mortality rates, and the effects on the biological and physical environment. Fishing gear types assessed under this process could be subsequently authorized under future regulatory amendments.

Comment 2: Prohibiting gear types not defined in the regulations is supported because new gear types should be thoroughly tested. However, the proposed rule did not assess and does not prevent the use of imported gear, in particular the use of pair trawls, as an authorized gear type.

Response: The purpose of this action is to limit the fishing gear types employed in the groundfish fisheries off Alaska to those traditionally used, including pair trawls. Any vessels participating in a fishery with pair trawls are subject to observer requirements by §§ 672.27 and 675.25. The use of imported gear would be inconsistent with regulations unless it conforms to the authorized fishing gear definition. NMFS will continue to obtain information from observers about performance of each authorized fishing gear type used in the groundfish fisheries.

Technical Amendment

The rule by technical amendment moves existing definitions of fishing gear types from alphabetic locations at §§ 672.2 and 675.2 and reorganizes them under a new definition, *Authorized fishing gear.* Although the final rule does not change existing definitions from the proposed rule, it redesignates the fishing gear definitions by removing them from their alphabetical order and placing them as paragraphs under this new definition. Three definitions, *Trawl, Non-trawl,* and *Longline* are modified to provide consistency in the fishing gear definitions in the GOA and BSAI regulations.

Classification

This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: February 22, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, the definitions for *Hook-and-line, Jig, Longline, Longline Pot, Nonpelagic trawl, Pelagic trawl, Pot-and-line,* and *Trawl* are removed and a new definition for *Authorized fishing gear* is added in alphabetical order to read as follows:

§ 672.2 Definitions.

* * * * *

Authorized fishing gear means hook-and-line, jig, longline, longline pot, nonpelagic trawl, non-trawl, pelagic trawl, pot-and-line, and trawl gear; defined as follows:

(1) *Hook-and-line* means a stationary, buoyed, and anchored line with hooks attached, or the taking of fish by means of such a device;

(2) *Jig* means a single non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device;

(3) *Longline* means a stationary, buoyed, and anchored line with hooks or pots (other than king or Tanner crab pots) attached, or the taking of fish by means of such a device;

(4) *Longline pot* means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device;

(5) *Nonpelagic trawl* means a trawl other than a pelagic trawl;

(6) *Non-trawl gear* means hook-and-line, jig, longline, and pot-and-line gear;

(7) *Pelagic trawl* means a trawl that:

(i) Has no discs, bobbins, or rollers;

(ii) Has no chafe protection gear attached to the foot rope or fishing line;

(iii) Except for the small mesh allowed under paragraph (7)(ix) of this definition:

(A) Has no mesh tied to the fishing line, head rope, and breast lines with less than 20 inches (50.8 cm) between knots, and has no stretched mesh size of less than 60 inches (152.4 cm) aft from all points on the fishing line, head rope, and breast lines and extending past the fishing circle for a distance equal to or greater than one half the vessel's length overall; or

(B) Has no parallel lines spaced closer than 64 inches (162.6 cm), from all points on the fishing line, head rope, and breast lines and extending aft to a section of mesh, with no stretched mesh size of less than 60 inches (152.4 cm), extending aft for a distance equal to or greater than one half the vessel's length overall;

(iv) Has no stretched mesh size less than 15 inches (38.1 cm) aft of the mesh described in paragraph (7)(iii) of this definition for a distance equal to or greater than one half the vessel's length overall;

(v) Contains no configuration intended to reduce the stretched mesh sizes described in paragraphs (7) (iii) and (iv) of this definition;

(vi) Has no flotation other than floats capable of providing up to 200 pounds (90.7 kg) of buoyancy to accommodate the use of a net-sounder device;

(vii) Has no more than one fishing line and one foot rope for a total of no more than two weighted lines on the bottom of the trawl between the wing tip and the fishing circle;

(viii) Has no metallic component except for connectors (e.g., hammerlocks or swivels) or net-sounder device aft of the fishing circle and forward of any mesh greater than 5.5 inches (14.0 cm) stretched measure;

(ix) May have small mesh within 32 feet (9.8 m) of the center of the head rope as needed for attaching instrumentation (e.g., net-sounder device); and

(x) May have weights on the wing tips;

(8) *Pot-and-line* means a stationary, buoyed line with a single pot attached, or the taking of fish by means of such a device; and

(9) *Trawl* means a conical-shaped net that is towed through the water for catching fish. The net accumulates its catch in the closed, small end (usually called the cod end). This definition includes, but is not limited to, Danish and Scottish seines and otter trawls.

* * * * *

3. In § 672.7, paragraph (n) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(n) Retain groundfish taken with other than Authorized fishing gear as defined at § 672.2, except that groundfish incidentally taken by pot gear by a vessel while participating in an open crab season governed by the State of Alaska may be retained for use as unprocessed bait on board that vessel.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. In § 675.2, the definitions for *Hook-and-line, Jig, Longline, Longline pot, Nonpelagic trawl, Non-trawl gear, Pelagic trawl,* and *Trawl* are removed, and the definition for *Authorized fishing gear* is added in alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Authorized fishing gear means fishing gear types defined as "authorized fishing gear" at § 672.2 of this chapter.

* * * * *

6. In § 675.7, paragraph (o) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(o) Retain groundfish taken with other than *Authorized fishing gear* defined at § 675.2, except that groundfish incidentally taken by pot gear by a vessel while participating in an open crab season governed by the State of Alaska may be retained for use as unprocessed bait on board that vessel.

[FR Doc. 94–4442 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 39
Monday, February 28, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Fees for Official Pesticide Residue Testing

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is proposing to establish a new testing service under the United States Grain Standards Act (USGSA) for pesticide residues in wheat. The new service will be provided, upon request, using gas chromatography/mass spectrometry. The cost of the testing will be recovered by fees charged to the applicant. Testing will be conducted at the USDA–FGIS Technical Center, Kansas City, Missouri.

DATES: Comments must be received on or before March 30, 1994.

ADDRESSES: Written comments must be submitted to George Wollam, USDA, FGIS, Room 0624 South Building, P.O. Box 96454, Washington, DC 20090–6454; FAX (202) 720–4628.

All comments received will be made available for public inspection in Room 0624 USDA South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Department is issuing this rule in conformance with Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

David R. Galliart, Acting Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Most users of the official inspection and weighing services and those persons who perform those services do not meet the requirements of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information Collection Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in part 800 have been previously approved by OMB under control number 0580–0013.

Background

Since the early 1980s, FGIS has provided official service under the Agricultural Marketing Act (AMA) to test grain and processed grain products for the residue of three pesticides, carbon tetrachloride, methylbromide, and ethylene dibromide. This service has been available upon request from FGIS' Commodity Testing Laboratory in Beltsville, MD.

FGIS is now proposing to expand its pesticide residue testing program to include testing wheat for 29 additional pesticides under the authority of the United States Grain Standards Act. The service will be performed on a request basis; it will not be required for either domestic or export shipments. All samples will be tested at the Kansas City Technical Center. A minimum of 500 grams of wheat will be required for testing. The residues (routine compounds) that will be certified are as follows: Aldrin, Azinphos-methyl, Alpha-BHC, Beta-BHC, Delta-BHC, Carbofuran, Chlorpyrifos, Chlorothalonil, Chlorpyrifos Methyl, P,P'-DDD, P,P'-DDE, P,P'-DDT, Diclofop-methyl, Dieldrin, Dimethoate, Endosulfan, Endrin, Esfenvalerate, Fenitrothion, Fenthion, Folpet, Lindane, Malathion, Methidathion, Methoxychlor, Parathion, Parathion-methyl, Pirimiphos-methyl, and Triallate. These compounds will be analyzed by gas chromatography/mass spectrometry.

Laboratory analytical results will be provided to the applicant as soon as practicable. Generally the testing requires a minimum of 48 hours.

The proposed fees will be set forth in § 800.71(a), Schedule A. The proposed fee is $200 for each sample tested during a regular workday and $300 for each sample tested during a non-regular workday. The proposed fees are intended to cover, as nearly as practicable, the FGIS operating cost including related supervisory and administrative costs. Testing for additional residues (special compounds) within FGIS capabilities may be requested at a proposed rate of $100 per hour during a regular workday and $150 per hour during a nonregular workday. The testing fee does not include charges for sampling. Sampling service fees, if required, will be assessed in accordance with the sampling rates in § 800.71(a), Schedule A. Testing of other grains will be provided as a service at a later date.

Major importers of U.S. wheat such as Japan, China, Mexico, and Korea have indicated a strong interest in having U.S. grain tested for the presence of specific pesticide residues. FGIS is proposing to offer certification of these specific pesticide residue levels for export and domestic wheat. The anticipated volume of requests for this service is 500 samples per year or 10 per week. This represents a generated income of approximately $100,000 per year which will cover the costs of providing the service.

Proposed Action

FGIS proposes to revise § 800.71(a), Schedule A, to establish new fees for testing pesticide residues.

List of Subjects in 7 CFR Part 800

Administrative practices and procedures, Grain.

For reasons set out in the preamble, 7 CFR part 800 is proposed to be amended as follows:

PART 800—GENERAL PROVISIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*).

2. In § 800.71(a), Schedule A, is revised to read as follows:

(a) * * *

SCHEDULE A.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES, PERFORMED IN THE UNITED STATES[1]

Inspection & weighing service (bulk or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(1) Original inspection and official weighing:[2]		
(i) Contract (per hour per service representative)	$31.50	$43.10
(ii) Noncontract (per hour per service representative)	41.90	57.00
(2) Reinspection, appeal inspection, Board appeal inspection, and review of weighing services:[3,4]		
(i) Grading service:		
(A) Grade and factors (per sample)	61.10	79.50
(B) Protein test (per sample)	15.30	19.90
(C) Factor determination (per factor)	30.60	39.75
(D) Vomitoxin Test (per test) Qualitative	35.00	44.00
Quantitative	40.00	50.00
(ii) Sampling services (per hour per service representative)	61.10	79.50
(iii) Review of weighing service (per hour per service representative)	61.10	79.50
(3) Extra copies of certificates (per copy)	3.00	3.00
(4) Official track scale testing service	44.00	59.90
(5) Pesticide Residue Testing:[5]		
(A) Routine Compounds (per sample)	200.00	300.00
(B) Special Compounds (per hour per service representative)	100.00	150.00

[1] Official inspection and weighing services include, but are not limited to: grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

[2] For vomitoxin tests, a charge of $7.50 per qualitative test and a charge of $12.00 per quantitative test will be assessed in addition to the applicable hourly rate for original inspection service.

[3] Fees for reinspection and appeal inspection services performed at locations where FGIS is providing original inspection service shall be assessed at the applicable contract or noncontract hourly rate as the original inspection, except that for vomitoxin tests, a charge of $7.50 per qualitative test and a charge of $12.00 per quantitative test will be assessed in addition to the applicable hourly rate. If additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

[4] If at the request of the Service a file sample is located and forwarded by an agency for an official appeal, the agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

[5] Testing fees are applicable to any level of service (original inspection, reinspection, appeal inspection, or Board appeal inspection) and do not include a sampling service fee which, if applicable will be assessed separately in accordance with the fees in this schedule.

* * * * *

Dated: January 31, 1994.

David R. Galliart,

Acting Administrator.

[FR Doc. 94–4421 Filed 2–25–94; 8:45 am]

BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Part 982

[Docket No. AO–205–A7; FV94–982–1]

Filberts/Hazelnuts Grown in Oregon and Washington; Hearing on Proposed Further Amendment of Marketing Agreement and Order No. 982, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 982 (order). The order regulates the handling of filberts/hazelnuts grown in Oregon and Washington. The purpose of the hearing is to receive evidence on proposals to amend provisions of the order. The proposed amendments would make changes in order provisions regarding: Volume control; nomination and membership of the Filbert/Hazelnut Marketing Board (Board); collecting assessments; and the administration and operation of the program. The proposed amendments were submitted by the Board, the agency responsible for local administration of the order, to make the order more consistent with current industry conditions and needs. The Fruit and Vegetable Division, Agricultural Marketing Service (AMS), proposes other conforming and necessary changes.

DATES: The hearing will begin at 9 a.m. in Newberg, Oregon, on March 8, 1994, and if necessary, it will continue the next day.

ADDRESSES: The hearing will take place at the Shiloh Inn, 501 Sitka Avenue in Newberg, Oregon.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., room 369, Portland, OR 97204; telephone (503) 326–2724, FAX (503) 326–7440; or Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2524–S, Washington, DC 20250–0200; telephone: (202) 720–6862, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This administrative action is taken pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This action also is governed by the provisions of §§ 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) seeks to ensure that

within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small business. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The Board proposes several amendments to the order's volume control provisions. The Board recommends an amendment that would expand the primary (domestic) market by adding Hawaii to the distribution area that currently is the continental United States (including Alaska) (§ 982.16). In addition, the Board proposes an amendment that would allow the Board, with the approval of the Secretary of Agriculture, to make future changes in the primary market's distribution area (§ 982.16). The Board proposes another amendment designed to provide the Board with additional flexibility to release up to 15 percent of the average volume acquired by the trade for the primary market for the preceding three years' rather than the mandatory 15 percent release specified in the current order (§ 982.40). The Board recommends an amendment that would allow the Board to establish identification standards for inspected and certified lots of hazelnuts rather than the current order requirement which specifies seals, stamps, tags or other identification (§ 982.46).

The Board recommends several proposed amendments regarding nomination and Board membership. The Board proposes an amendment to change the length of the term of office to two years from the current one-year period with a corresponding change limiting the consecutive terms to three two-year terms rather than the current six consecutive one-year terms (§ 982.33). A corresponding amendment would establish the qualifications for nominating handler Board members based on the handlers' previous two years' volume handled rather than the previous one year volume handled, as currently required (§ 982.30). Similarly, the Board recommends a conforming change to the qualification period for weighing handler votes to the previous two marketing years rather than the previous one year marketing year (§ 982.32). The Board proposes that a change be made in the voting procedures when calculating handler voting qualifications by changing the minimum weighted volume to one ton rather than the current one percent (§ 982.32). The Board also proposes that a clarification be added to voting procedures to make it clear that eligible handlers vote for only one member and one alternate member (§ 982.32).

The Board recommends several amendments to the administrative procedures and operations of the order's programs. The Board recommends changing the name of the regulated product from "filberts" or "filberts/hazelnuts" to the single name "hazelnuts" (§ 982.4). Another amendment would allow telephone votes taken by the Board to remain unconfirmed until the next Board meeting rather than being confirmed in writing by individual members immediately after the vote (§ 982.37). Also, the Board proposes an amendment to remove the requirement that "verbatim" reports be made of Board proceedings on marketing policy meetings (§ 982.39). One amendment would remove an incorrect word in the current order language which determines handler credit for ungraded product (§ 982.51). The Board has recommended an amendment which would provide that, when the Board establishes bonding rates for handlers who temporarily defer meeting their restricted obligations, the Board would use the estimated value of restricted credits rather than the estimated product value of a handler's deferred restricted obligation (§ 982.54). Further, the Board recommends that defaulted bond payments should be used by the Board to purchase excess restricted credits from handlers rather than purchasing certified merchantable product which has already met restricted obligations (§ 982.54). Also, the Board recommends a corresponding change that such restricted credits should be used by the handlers to liquidate their restricted obligation rather than be disposed of as restricted product (§ 982.54).

The Board proposes two amendments to the assessment provision to allow the Board to accept advance assessment payments (and provide discounts to those handlers who make advanced payments) and borrow money. Advance payments and borrowed moneys would be used only for meeting administrative obligations before current year assessment payments are available (§ 982.61). The Board also proposes a new provision that would allow the Board to accept voluntary contributions from willing individuals. Such contributions would be used only for production research, marketing research and development, and marketing promotion, including paid advertising (new § 982.63).

Finally, the Board proposes that a clarification be added to the exemption provision of the order to make it perfectly clear that mail order sales to destinations outside the area of production are not exempt from order requirements (§ 982.57).

These proposals were submitted by the Board which works with the Department in administering the order. The Fruit and Vegetable Division, AMS, proposes conforming changes to further clarify and assure consistency with existing provisions of the order. The Board's proposed amendments have not received the approval of the Secretary of Agriculture.

The public hearing is held for the purpose of: (1) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (2) determining whether there is a need for the proposed amendments to the order; and (3) determining whether the proposed amendments, or appropriate modifications thereof, will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except designated employees of the Office of General Counsel assigned to represent the Board in this rulemaking proceeding; and the Fruit and Vegetable Division, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals: Proposals Submitted By The Filbert/Hazelnut Marketing Board.

Proposal No. 1

In part 982, all references to "filbert(s)", "filbert(s) (hazelnut(s)" or "filbert(s)/hazelnut(s)" are revised to read "hazelnut(s)".

Revise § 982.4 to read as follows:

§ 982.4 Hazelnuts.

Hazelnuts means hazelnuts or filberts produced in the States of Oregon and Washington from trees of the genus Corylus.

Proposal No. 2

Revise § 982.16 to read as follows:

§ 982.16 Inshell Trade Acquisitions.

Inshell trade acquisitions means the quantity of inshell hazelnuts acquired by the trade from all handlers during a marketing year for distribution in the United States and such other distribution areas as may be recommended by the Board and established by the Secretary.

Proposal No. 3

In § 982.30, revise paragraphs (a) and (b) to read as follows:

§ 982.30 Establishment and membership.

(a) There is hereby established a Hazelnut Marketing Board consisting of 10 members, each of whom shall have an alternate member, to administer the terms and provisions of this part. Each member and alternate shall meet the same eligibility qualifications. The 10 member positions shall be allocated as follows:

(b) * * *

(1) One member shall be nominated by the handler who handled the largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(2) One member shall be nominated by the handler who handled the second largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(3) One member shall be nominated by the handler who handled the third largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

* * * * *

In § 982.32, revise paragraphs (a), (b), (c) and (f) to read as follows:

§ 982.32 Initial members and nomination of successor members.

(a) Members and alternate members of the Board serving immediately prior to the effective date of this amended subpart shall continue to serve on the Board until their respective successors have been selected.

(b) Nominations for successor handler members and alternate members specified in § 982.30(b)(1) through (3) shall be made by the largest, second largest, and third largest handler determined according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each such handler during the two marketing years preceding the marketing year in which nominations are made.

(c) Nominations for successor handler member and alternate member positions specified in § 982.30(b)(4) shall be made by the handlers in that category by mail ballot. All votes cast shall be weighted according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each handler during the two marketing years preceding the marketing year in which nominations are made. If less than one ton is recorded for any such handler, the vote shall be weighted as one ton. Voting will be by position, and each eligible handler can vote for a member and an alternate member. The person receiving the highest number of weighted votes for each position shall be the nominee, for the respective position.

* * * * *

(f) Nominations received in the foregoing manner by the Board for all handler and grower member and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary. If nominations are not made within the time and manner specified in this subpart, the Secretary may, without regard to nominations, select the Board members and alternates on the basis of the representation provided for in this subpart.

* * * * *

In § 982.33, revise paragraph (b) to read as follows:

§ 982.33 Selection and term of office.

* * * * *

(b) *Term of office.* The term of office of Board members and their alternates shall be for two years beginning on July 1 and ending on June 30, but they shall serve until their respective successors are selected and have qualified: *Provided,* That beginning with the 199__–9__ marketing year, no member shall serve more than three consecutive two-year terms as member and no alternate member shall serve more than three consecutive two-year terms as alternate unless specifically exempted by the Secretary. Nomination elections for all Board grower and handler member and alternate positions shall be held every two years.

* * * * *

Proposal No. 4

In § 982.37, revise paragraph (b) to read as follows:

§ 982.37 Procedure.

* * * * *

(b) The Board may vote by mail, telephone, telegraph, or other means of communication: *Provided,* That any votes (except mail votes) so cast shall be confirmed at the next regularly scheduled meeting. When any proposition is submitted for voting by any such method, its adoption shall require 10 concurring votes.

* * * * *

Proposal No. 5

In § 982.39, revise paragraph (i) to read as follows:

§ 982.39 Duties.

* * * * *

(i) To furnish to the Secretary a report of the proceedings of each meeting of the Board held for the purpose of making marketing policy recommendations.

Proposal No. 6

In § 982.40, revise paragraph (c)(2) to read as follows:

§ 982.40 Marketing policy and volume regulation.

* * * * *

(c) * * *

(1) * * * (2) *Interim final and final percentages.* On or before November 15, the Board shall meet to recommend to the Secretary the interim final and final free and restricted percentages, including the portion of the restricted supply that may be shelled or exported. The interim final percentages shall release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. The final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell hazelnuts for desirable carryout. If the trade acquisitions during any or all of these years were abnormal, the Board may use a prior year or years in determining this three-year average. The final free and restricted percentages shall become effective 30 days prior to the end of the marketing year, or earlier as may be recommended by the Board and approved by the Secretary. The recommendations to the Secretary shall include the following:

* * * * *

Proposal No. 7

In § 982.46, revise paragraph (b) to read as follows:

§ 982.46 Inspection and certification.

* * * * *

(b) All hazelnuts so inspected and certified shall be identified as prescribed by the Board. Such identification shall be affixed to the hazelnut containers by the handler under direction and supervision of the Board or the Federal-State Inspection Service, and shall not be removed or altered by any person except as directed by the Board.

* * * * *

Proposal No. 8

Revise § 982.51 by removing the word "percent" at the end of the first sentence of paragraph (a).

Proposal No. 9

In § 982.52, revise paragraph (b) to read as follows:

§ 982.52 Disposition of restricted hazelnuts.

* * * * *

(b) *Export.* Sales of certified merchantable restricted hazelnuts for shipment to destinations outside the United States and such other distribution areas as may be recommended by the Board and established by the Secretary shall be made only by the Board. Any handler desiring to export any part or all of that handler's certified merchantable restricted hazelnuts shall deliver to the Board the certified merchantable restricted hazelnuts to be exported, but the Board shall be obligated to sell in export only such quantities for which it may be able to find satisfactory export outlets. Any hazelnuts so delivered for export which the Board is unable to export shall be returned to the handler delivering them. Sales for export shall be made by the Board only on execution of an agreement to prevent reimportation into the area designated in § 982.16. A handler may be permitted to act as an agent of the Board, upon such terms and conditions as the board may specify, in negotiating export sales, and when so acting shall be entitled to receive a selling commission as authorized by the Board. The proceeds of all export sales, after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose certified merchantable restricted hazelnuts are so sold by the Board.

* * * * *

Proposal No. 10

In § 982.54, revise paragraphs (b), (c), (d), (e) and (f) to read as follows:

§ 982.54 Deferment of restricted obligation.

* * * * *

(b) *Bonding requirement.* Such bond or bonds shall, at all times during their effective period, be in such amounts that the aggregate thereof shall be no less than the total bonding value of the handler's deferred restricted obligation. The bonding value shall be the deferred restricted obligation poundage multiplied by the applicable bonding rate. The cost of such bond or bonds shall be borne by the handler filing same.

(c) *Bonding rate.* Said bonding rate shall be an amount per pound as established by the Board. Such bonding rate shall be based on the estimated value of restricted credits for the current marketing year. Until bonding rates for a marketing year are fixed, the rates in effect for the preceding marketing year shall continue in effect. The Board should make any necessary adjustments once such new rates are fixed.

(d) *Restricted credit purchases.* Any sums collected through default of a handler on the handler's bond shall be used by the Board to purchase restricted credits from handlers, who have such restricted credits in excess of their needs, and are willing to part with them. The Board shall at all times purchase the lowest priced restricted credits offered, and the purchases shall be made from the various handlers as nearly as practicable in proportion to the quantity of their respective offerings of the restricted credits to be purchased.

(e) *Unexpended sums.* Any unexpended sums, which have been collected by the Board through default of a handler on the handler's bond, remaining in the possession of the Board at the end of a marketing year, shall be used to reimburse the Board for its expenses, including administrative and other costs incurred in the collection of such sums, and in the purchase of restricted credits as provided in paragraph (d) of this section.

(f) *Transfer of restricted credit purchases.* Restricted credits purchased as provided for in this section shall be turned over to those handlers who have defaulted on their bonds for liquidation of their restricted obligation. The quantity delivered to each handler shall be that quantity represented by sums collected through default.

* * * * *

Proposal No. 11

In § 982.57, revise paragraph (b) to read as follows:

§ 982.57 Exemptions.

* * * * *

(b) *Sales by growers direct to consumers.* Any hazelnut grower may sell hazelnuts of such grower's own production free of the regulatory and assessment provisions of this part if such grower sells such hazelnuts in the area of production directly to end users at such grower's ranch or orchard or at roadside stands and farmers' markets. The Board, with the approval of the Secretary, may establish such rules, regulations, and safeguards and require such reports, certifications, and other conditions, as are necessary to ensure that such hazelnuts are disposed of only as authorized. Mail order sales to destinations outside the area of production are not considered to be exempt sales under this part.

Proposal No. 12

In § 982.58, revise the last sentence of paragraph (a) to read as follows:

§ 982.58 Research, promotion, and market development.

(a) * * * The expenses of such projects shall be paid from funds collected pursuant to § 982.61, § 982.63, or credited pursuant to paragraph (b) of this section.

* * * * *

Revise § 982.61 by designating the present text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 982.61 Assessments.

(a) * * *

(b) In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the Board may accept the payment of assessments in advance, and may also borrow money for such purpose. Further, payment discounts may be authorized by the Board upon the approval of the Secretary to handlers making such advance assessment payments.

Add a new § 982.63 to read as follows:

§ 982.63 Contributions.

The Board may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 982.58. Furthermore, such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use.

Proposal No. 13

The Fruit and Vegetable Division, Agricultural Marketing Service, proposes to make such changes to the order as may be necessary to conform with any amendment thereto that may result from the hearing.

Dated: February 24, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–4609 Filed 2–25–94; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 34 and 150

RIN 3150–AE07

Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing industrial radiography. The proposed rule would include additional safety requirements to enhance the level of protection of radiographers and the public and would clarify the regulations so that licensees may have a better understanding of what is expected in radiographic operations. The proposed rule includes a number of updated radiography regulations that have been adopted by the Agreement States. The major changes in the proposed rule include requirements for: (1) Two qualified individuals to be present whenever radiography occurs at a temporary jobsite, (2) mandatory certification of radiographers, (3) permanent radiographic installations, and (4) a radiation safety officer. The format of the radiography regulations would be revised to place requirements into descriptive categories.

DATES: Submit comments by May 31, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 am and 4:15 pm on Federal workdays.

Examine comments received, the environmental impact, and the regulatory analysis at: The NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. Nellis or Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555; Telephone: (301) 492–3628 or 492–3886.

SUPPLEMENTARY INFORMATION:

I. Background

Part 34 of Title 10 of the Code of Federal Regulations was first published in 1965 (30 FR 8192) as part of the recodification of parts 30 and 31 for the purpose of simplifying and clarifying the format of the then-current requirements on radiography so that persons subject to byproduct material licensing regulations could conveniently use and understand them. Numerous modifications to the original part 34 have been made since 1965, many of which have been directed toward the safety aspects of field radiography. These modifications include performance requirements on radiography equipment and requirements for the use of alarming ratemeters published in 1990 (55 FR 843; January 10, 1993).

There are approximately 200 NRC radiography licensees with an additional 500 Agreement State licensees. Radiography licensees often conduct business under both NRC and Agreement State jurisdiction.

The NRC has not initiated an overall revision of part 34 in many years. However, a number of Agreement States have updated their radiography regulations. The decision to develop an overall revision to 10 CFR part 34 was made with the intent of establishing new safety requirements for radiography licensees and clarifying the regulation so that licensees will have a better understanding of what is expected in radiographic operations. The format of the radiography regulations would be revised to place requirements into descriptive categories that better describe the type of requirements found in the subpart.

The NRC solicited recommendations on radiography issues at the 1991 Agreement States' meeting in Sacramento, CA, as well as from NRC regional offices, radiography equipment manufacturers, and radiography licensees. Public comments were solicited on the issue of radiographer certification at the May 19, 1991, annual meeting of the Conference of Radiation Control Program Directors (CRCPD), Inc. in Wichita, Kansas, and a public workshop on radiographer certification was held May 27–28, 1992, in Mobile, Alabama. A separate workshop was held on November 18, 1992, in Dallas, Texas, to discuss recommendations received from the Agreement States and licensees on revision of the radiography regulations. The transcripts of these meetings, which are available for inspection and copying in the NRC Public Document Room, were reviewed

in further developing the proposed revision. The NRC utilized part E of the "Suggested State Regulations for Control of Radiation" developed by the CRCPD, part 31 of the Texas Regulations for Control of Radiation, Chapter 5 of the Louisiana regulations, and the Canadian "Atomic Energy Control Regulations," that apply to radiography in developing this proposed revision of part 34.

II. Petition for Rulemaking

A petition was received on October 15, 1992, from the International Union of Operating Engineers (IUOE), Local No. 2, requesting an amendment to the radiography regulations to require a minimum of two radiographic personnel when performing industrial radiography at temporary jobsites. The petition was published in the Federal Register on December 4, 1992 (57 FR 57392). Thirty-eight comment letters were received, 35 were in favor of granting the petition. Resolution of this petition has been addressed in this proposed revision to part 34.

The IUOE petition offered three options for the makeup of the two-person crew: (1) Two radiographers; (2) one radiographer and one radiographer's assistant; and (3) one radiographer and one trainee, with the trainee having completed 40 hours of approved radiation safety training and passed an examination. The petitioners identified a number of problems associated with the use of licensed material by one radiographer at temporary jobsites. These problems included: (1) Difficulty keeping the area under constant surveillance while radiographic operations are ongoing; (2) difficulty in maintaining surveillance when working in trenches; and (3) difficulty in obtaining assistance in the event of an emergency if there is only one individual. The petitioners believe that the suggested change is necessary to ensure a safe working environment.

The comments received raised concerns regarding the combination of a radiographer and a trainee as a two-person team. Many stated that the trainee is an unskilled individual that may or may not achieve radiographer status and spending the time and money for 40 hours training may not be financially feasible for some radiography companies.

This proposed rule, if adopted, would constitute a partial granting of the petition in that it proposes to require, at a minimum, a two-person crew whenever radiographic operations are being conducted outside of a permanent radiographic installation. The NRC has decided not to adopt the term "radiographer trainee," and is proposing that the second person be another qualified radiographer or an individual who has met, at a minimum, the requirements for a radiographer's assistant. The NRC recognizes that, in Agreement States, the training of those individuals designated as trainees would meet the NRC's training requirements for a radiographer's assistant.

The estimated cost of requiring the two-person crew could be significant for licensees who send only one radiographer to a temporary jobsite. However, the current regulation requires direct surveillance of the operation to prevent unauthorized entry into a high radiation area. To comply with this regulation most licensees already must use more than one qualified individual in many situations. For certain circumstances where a licensee could demonstrate that adequate surveillance can be maintained by one radiographer, the Commission could consider granting an exemption through the process described in the proposed § 34.111. The Commission is concerned that this requirement could cause a significant impact on a number of small entities which currently do not use two-person crews, and is soliciting comments on the potential impact. Furthermore, the Commission is interested in receiving proposals for alternatives to the two-person requirement which would achieve comparable enhancements in safety with less of a burden on licensees.

In summary, the Commission believes that by requiring at least two qualified individuals to always be present when radiographic operations are being conducted, there will be a significant increase in assurance that operational safety measures and emergency procedures will be effectively implemented. The expectation is that violations involving failures to perform adequate radiation surveys of radiographic exposure devices and the surrounding area, failures to adequately post and monitor the restricted area, and failures to lock and secure the camera when not in use will become less frequent. Furthermore, if an incapacitating injury to a radiographer should occur at a remote location, the presence of a second individual could be an important factor in preventing unnecessary radiation exposures. The Commission is considering amending the Enforcement Policy as a result of this proposed rulemaking to provide, as an example of a Severity Level III violation, the conduct of radiography operations without the required second radiographer or individual with, at least, the qualifications of a radiographer's assistant as provided in the proposed § 34.41.

III. General Discussion of Proposed Rule Changes

The proposed amendments contain requirements which are intended to improve radiography safety. The first major change is a proposal to require, at a minimum, two qualified individuals (two radiographers or a radiographer and an individual who has met, at least, the requirements to be a radiographer's assistant) to be present any time radiographic operations occur outside of a permanent radiographic installation. This issue has already been addressed under Section II. Petition for Rulemaking.

On March 19, 1991 (56 FR 11504), the NRC published a final rule which provided for a voluntary third-party radiographer certification program through the American Society for Nondestructive Testing (ASNT), as discussed further in Section IV. Several Agreement States have adopted mandatory radiographer state administered examination programs. The promulgation of these programs, as well as other changes in their radiography regulations, have contributed to an overall improvement in safety and a decrease in serious overexposures in these Agreement States.

The proposed rule would recognize other certifying organizations who meet the requirements outlined in Appendix A of the proposed rule. Independent certifying organizations would be required to meet all of the requirements listed in Appendix A, while Agreement States that wish to become certifying entities would only be required to meet the requirements listed in part II and III of the Appendix. The NRC plans to publish annually in the Federal Register an updated list of certifying entities and to provide the list with license application forms. The NRC also plans to investigate the feasibility of establishing a toll-free telephone number whereby licensees could obtain information on approved certifying entities.

Another issue involves the definition of a permanent radiographic installation. The proposed rule changes the definition of a "permanent radiographic installation" to mean an enclosed shielded room, cell, or vault in which radiography is performed. The terms "designed or intended for radiography" and "regularly performed" have been removed from the definition to reduce any ambiguity as to what is intended. Under the existing rule, if a licensee has a room, cell, or vault that meets the definition of a "permanent radiographic installation", then it must meet the special safety requirements of § 34.33. The proposed rule adds two additional requirements: (1) To perform a daily check of the visible and audible signals, and (2) to list all permanent facilities on the license. Under the proposed rule, radiography can only be performed in one of two ways: (1) In a permanent radiographic installation with a qualified radiographer, or (2) at any other location with at least two qualified individuals. The special safety requirements of § 34.33 would not apply to the use of a shielded room at a temporary jobsite, although licensees would be permitted to submit a license amendment requesting approval to use a shielded room which meets the requirements of § 34.33 as a permanent radiographic installation.

The proposed rule includes requirements specifying the qualifications and duties of the Radiation Safety Officer (RSO). The RSO is the key licensee individual charged with the responsibility to ensure that the requirements in the license are followed. These requirements have been based on similar commitments previously included in specific license conditions on a case-by-case basis. The proposed rule would require additional special training for RSOs. The Commission is considering permitting existing RSOs to obtain the additional training within 2 years from the effective date of the rule and is specifically requesting comment on this proposed requirement.

IV. An Independent Certifying Entity (ASNT)

The current ASNT program for certifying industrial radiographers was approved by its Board of Directors in March 1990 and offers certification for either isotope or x-ray users. The NRC staff has extensively reviewed this program, which includes a written examination developed by the State of Texas.

The application to become a certified radiographer requires documentation of 40 hours of classroom training in radiation safety topics specified by ASNT including those topics listed in the proposed § 34.43(f), documentation of 520 hours of direct hands-on experience with radiography sources and devices under the control of an NRC or Agreement State licensee, and proof of successful completion of a practical examination on safety procedures administered by an ASNT-recognized institution. Recognized institutions, generally the candidates' employers, have been licensed by NRC or an Agreement State for the use of radiography sources.

After ASNT's approval of an application, a candidate radiographer takes the written examination. The examination is administered by ASNT or the Conference of Radiation Control Program Directors, Inc. (CRCPD) and subsequently sent to the State of Texas for grading. The results of the examination are forwarded to ASNT. The written examination covers the fundamental radiation safety principles outlined in 10 CFR part 34, pertinent Federal and State regulations, basic radiographic equipment operation, general operating and emergency procedures, radiation detection instrumentation, and radiation safety procedures applicable to industrial radiography. In addition, candidates are required to sign a pledge that they will abide by the ASNT Rules of Conduct. On successful completion of the required examinations and other requirements, a certified individual is provided with a wallet card identifying him/her as an ASNT-certified radiographer.

ASNT certification is valid for 3 years, unless suspended or revoked for cause. Renewal of certification may be accomplished either with or without reexamination. A candidate for renewal without reexamination must document continuous active full-time employment in radiography for at least 6 of the last 12 months. In addition, the candidate must document at least 8 hours, each year, of classroom refresher training covering basic radiation safety principles, equipment operations, emergency procedures, new safety regulations, license requirements, and other pertinent information. If these criteria are not met, the candidate must retake the written examination.

The ASNT Rules of Conduct require certified individuals to comply with NRC and Agreement State regulations and the employer's procedures for radiation safety, routine and emergency operations, and to act in a professional manner in matters pertaining to industrial radiography or to the ASNT certification.

The certification program also contains complaint and hearing procedures. For example, written allegations of unauthorized practice by an ASNT-certified individual are reviewed by the ASNT Ethics Subcommittee. In some cases a formal hearing may be held. If the ASNT Ethics Subcommittee determines that an unauthorized practice has been committed, the subcommittee may take one of the following actions:

1. Revoke the individual's certification for a minimum of 1 year.
2. Suspend the individual's certification for 30 to 180 days.
3. Formally reprimand the individual.

More detailed information on the ASNT certification program is available from the American Society for Nondestructive Testing, Inc., 1711 Arlingate Plaza, P.O. Box 28518, Columbus, Ohio 43228–0518.

V. Discussion of the Proposed Rule

Table of Contents

The new Table of Contents contains eight subparts. The organization is as follows:

Subpart A—General Provisions
Subpart B—Specific Licensing Provisions
Subpart C—Equipment
Subpart D—Radiation Safety Requirements
Subpart E—Recordkeeping Requirements
Subpart F—Notifications
Subpart G—Exemptions
Subpart H—Violations
Appendix A

This organization follows the same general format used in 10 CFR part 39 concerning radiation safety requirements for well logging.

Subpart A—General Provisions

This subpart covers items of a general nature, such as listing definitions and OMB approvals. It also describes the purpose and scope of the rule.

Section 34.1, Purpose and scope, is basically unchanged from the existing regulation. Other NRC regulations that apply to radiography licenses are referenced in this section.

Section 34.3, Definitions, contains the following new terms: ALARA, Annual safety review, Becquerel, Certifying entity, Collimator, Control (drive) cable, Field station, Gray, Independent certifying organization, Radiographer certification, Radiation Safety Officer, Sievert, S-tube, and Temporary jobsite. These definitions were added to define terms used in requirements not previously addressed in Part 34. The term ALARA, which means as low as reasonably achievable, has been added to describe a key element of the revised part 20, "Standards for Protection Against Radiation," that licensees must implement by January 1994. The term Annual safety review was added to describe this activity in the proposed rule. The terms Becquerel, Gray, and Sievert were added to define the metric units used in all new or revised regulations. The terms Certifying entity, Independent certifying organization, and Radiographer certification were added to describe terms associated with revised requirements for verification of

radiographer training. The terms Collimator and Control (drive) cable were added to the proposed rule to describe pieces of equipment that is often used in conducting radiography operations. The term S-tube was added to describe this component of a radiographic exposure for which there are new requirements in the proposed rule. The terms Field station and Temporary jobsite were added to clarify the meaning of these terms in the proposed rule. The term Field station is being used to designate those locations where radiography equipment is stored and from which equipment is dispatched. The term Temporary jobsite is being used to describe locations not authorized on the license where radiography is conducted. The term Radiation Safety Officer (RSO) was added to describe the role of this individual in the proposed rule.

The terms Associated equipment, Control tube, Exposure head, Field examination, Projection sheath, Radiographic Operations, Shielded position, and Source assembly, while used in the existing regulation, were not previously defined. Both licensees and Agreement State representatives requested clarification of these terms. Changing the definition of radiographer's assistant was discussed at the November 1992 workshop in Dallas, Texas. Some Agreement States use the term "trainee" to refer to a radiographer's assistant and require training similar to that required of a radiographer. The NRC has decided to retain the term radiographer's assistant and has proposed upgrading the training requirements to provide additional assurance that radiographers' assistants are sufficiently knowledgeable of NRC regulations. Although the NRC is not adopting the term "trainee," the proposed rule has been written to provide the flexibility for the second person to have training beyond that of a radiographer's assistant. This position could then equally be filled by a "trainee."

The definition of a permanent radiographic installation was modified to remove ambiguities in the previous definition. The definitions of storage area and storage container were modified to remove references to transportation. Specific transportation requirements are addressed in § 34.35.

Section 34.5, Interpretations, is standard regulatory language to state that only the General Counsel of the NRC has the authority to provide interpretations of the regulations which will be binding on the Commission.

Section 34.8, Information collection requirements: OMB approval, is unchanged from the current regulation, except for changing the section numbers to conform to the new format of the proposed rule and to list any new requirements that require OMB approval. The Commission has submitted the proposed rule for OMB clearance. Final OMB clearance will be obtained before publication of a final rule.

Subpart B—Specific Licensing Provisions

This proposed subpart provides the basic requirements for submittal of a license application. The sections in this proposed subpart are basically unchanged from those in the current subpart A of part 34.

Section 34.11, Application for a specific license, is worded the same as § 34.3 in the current part 34.

Section 34.13, Specific license for radiography, has several changes from § 34.11 in the current part 34. A proposed § 34.13(c) would specify requirements for establishing procedures to verify the certification status of radiographers. The requirement for verifying an individual's certification would only apply to previously certified radiographers whom a licensee might hire. A licensee would already know an individual's status if the individual is employed by the licensee at the time of certification. However, the licensee would be required to ensure that all radiographers are certified.

Section 34.13(e) proposes a reduction in the frequency of field inspections of radiographers and radiographer's assistants from quarterly to annually for individuals regularly conducting radiographic operations. For individuals who have not performed radiographic operations for more than six months, an inspection of job performance would be required at the time they next participate in a radiographic operation. This reduction is possible due primarily to the proposed two-person rule, adoption of mandatory certification for radiographers, and upgraded radiographer assistants training which would reduce the need for inspection of job performance. The basic requirements for conducting the field inspections have been relocated to § 34.43(d) to more accurately reflect its role in the training program. In addition, a requirement for conducting annual safety reviews has also been added in § 34.13(b)(1) and § 34.43(c) to clarify the intent of the current § 34.11(b) which requires periodic training. Section 34.13(g) is proposed to require the licensee to designate an individual on the license to fulfill the duties of the RSO. The qualifications and duties of this individual are specified in § 34.42.

Section 34.13(i) is a new paragraph which, as proposed, would require a list and description of all permanent radiographic installations and all field stations to be included in the license application.

Section 34.13(j) is a new paragraph which, as proposed, would permit licensees to have the option to use certified radiographers before the proposed rule is adopted in final form and becomes effective.

Subpart C—Equipment

This proposed subpart describes the requirements for radiographic equipment performance and use. Some of the requirements in this proposed subpart are changed from the current part 34 as described below.

Section 34.20, Performance requirements for radiography equipment, is slightly changed from § 34.20 of the current rule. Section 34.20(b)(3) is revised to prohibit modification of any exposure device. The proposed rule was modified to remove any ambiguity regarding permission to modify safety components. The term Source assembly was added to § 34.20 (c) and (e) to make clear that it is one of the pieces of equipment that must meet the requirements of § 34.20. Section 34.20(f) is added to require labeling of all associated equipment acquired after January 10, 1996, to identify that the components have met the requirements of this section.

Section 34.21, Limits on levels of radiation for radiographic exposure devices, storage containers, and source changers, is basically unchanged from § 34.21 of the current rule with the following exceptions. Metric equivalents to the values previously cited have been included. While it is recognized that radiation exposure instruments currently use units of roentgens to measure radioactivity, the rule has been modified to use the terms millisieverts and millirems. Rather than making the transition from roentgens to coulombs per kilogram (in air), the terms millisieverts and millirems were chosen because a quality factor of 1 is appropriate in dealing with gamma-ray emitting radiography sources. Under the proposed rule measurements taken in roentgens may continue to be recorded in terms of roentgens, provided the limits described in the rule, expressed in millisieverts or millirems, are not exceeded.

Section 34.23, Locking and relocation of radiographic exposure devices, storage containers, and source changers, is slightly changed from § 34.22 of the current rule, as described below. Section 34.23(a) describes locking of radiographic exposure devices. A requirement to remove the key of any keyed-lock is proposed. Should the key remain in the radiographic exposure device, there is an increased likelihood of the accidental or intentional removal of the sealed source when the radiographic device is unattended. The word "manually" is added to clarify what is meant by securing the source assembly for radiographic exposure devices manufactured before January 10, 1992. Section 34.23(b) is added which specifies requirements for ensuring that the sealed source is in the shielded position before moving the device and associated equipment because a number of overexposures have occurred while radiographic devices were being moved from one location to another.

Section 34.25, Radiation survey instruments, replaces § 34.24 in the current rule and has been updated to reflect current calibration standards for different types of survey meters. This is to specify requirements to address the variety of survey instruments currently available. An additional requirement to perform an operability check before use is proposed. While this is routinely part of all survey instrument specifications, a failure to determine whether an instrument was operable before use has been a contributing factor in overexposures during radiographic operations.

In § 34.27, Leak testing and replacement of sealed sources, the words "repair, tagging, opening, and modification" of sealed sources have been removed because these activities are only approved for individuals specifically licensed to do so. It was never intended that radiographers would be permitted to perform these activities without special authorization from the Commission or an Agreement State. Section 34.31 was modified to include a specific prohibition on the opening, repair, or modification of sealed sources. Most of the language in the proposed rule is the same as § 34.25 of the existing rule. However, the organization has been modified for purposes of clarification. The requirement that performance of a source exchange or a leak test must be done by persons approved by the Commission has been modified to include Agreement States. Recordkeeping requirements have been moved to § 34.67.

Section 34.27(f) is proposed to require surveys for depleted uranium (DU) contamination in the "S" tube of radiographic devices at least once every 12 months. Depleted uranium is used as a shielding material in most radiographic devices and replaces the lead shielding that was used in older models. The presence of DU contamination in the "S" tube may be an indication that the control cable has worn a groove through the "S" tube into the DU shielding. This condition could cause binding of the control cable in the groove with the resultant inability to retract the source, and could result in unwarranted exposures. Recordkeeping requirements may be found in § 34.67.

Section 34.29, Quarterly inventory, is basically unchanged from the existing regulation with the exception of moving all recordkeeping requirements to § 34.69.

Section 34.31, Inspection and maintenance of radiographic exposure devices, storage containers, associated equipment, and source changers, includes several proposed changes from § 34.28 in the current rule. The term associated equipment has been included in the proposed rule, and includes various items used for specific tasks which may not be supplied with the radiographic device. Experience has shown that defects in associated equipment can have an effect on safety. Therefore, associated equipment must be included in an inspection and maintenance program. Section 34.31(a) has been revised to clarify the intent of the daily visual check and the required actions if defects are found. In § 34.31(b), the term routine maintenance is now used to clarify that licensees are not required to perform all maintenance. Many equipment repairs may require returning the device to the manufacturer. Language has been added to specify that defective equipment must be removed from service until repaired and that a record of the defect, as well as corrective actions taken, must be made. While this appears obvious, there have been numerous instances where the use of defective equipment continued and overexposures of personnel occurred as a direct result of the defects. Recordkeeping requirements have been moved to § 34.73. The records required to be kept would now be specified in the rule, and include: Date of check, individual performing check, equipment involved, any defects found, and repairs made.

Section 34.33, Permanent radiographic installations, is basically unchanged from the existing requirements in part 34, with the exceptions noted below. Section 34.33(a) has been revised to clarify which entrance controls are required by incorporating the appropriate language from 10 CFR 20.1601 into part 34. Section 34.33(b) is revised to require an alarm system check at the beginning of each day of use. This is to be performed by checking the warning light and audible alarm with the source exposed before using the room each day. A defective alarm would require repair before radiographic operations could resume. This requirement is included because there have been instances where failures in alarm systems have resulted in personnel overexposures upon entry into a high radiation area.

Section 34.35, Labels, storage, and transportation precautions, is a proposed new section that would place requirements that specify labeling and security precautions for radioactive material storage and transportation in part 34. Section 34.23 of the current rule describes storage precautions for exposure devices and storage containers but does not address transportation or labeling requirements. In § 34.35 of the proposed rule, labeling requirements for source changers and storage containers are specified. The proposed rule contains specific requirements to lock and physically secure transport packages. The proposed rule would also require licensees to store licensed material in a manner which minimizes the danger from explosions or fire. The requirement for a Quality Assurance (QA) program, as described in § 71.105, has been added to the proposed rule. While radiography licensees have always had to comply with § 71.105, there have been numerous cases where radiography licensees were unaware of this requirement and, therefore, failed to comply. The addition of requirements addressing labeling and transportation is necessary because in the past personnel and public exposures have occurred from the failure to properly safeguard radioactive material during storage and transportation.

Subpart D—Radiation Safety Requirements

This subpart describes basic radiation safety requirements for radiographic operations and includes training, safety procedures, personnel monitoring and surveys. New requirements describing the duties of the radiation safety officer are proposed.

Section 34.41, Conducting radiographic operations, would be added to address the practice of conducting radiography at sites where the special safety features of a shielded facility are not available. The proposed requirement specifies that, as a minimum, either two radiographers or a radiographer and an individual who has met the requirements to be a radiographer's assistant must be present

any time radiographic operations occur outside a permanent installation. The basis for this proposed requirement is to ensure that, in the absence of the safety features outlined in § 34.33, there will be a significant increase in assurance that operational safety measures will be implemented effectively. The expectation is that violations involving failures to perform adequate radiation surveys of radiographic exposure devices and the surrounding area, failures to adequately post and monitor the restricted area, and failures to lock and secure the camera when not in use will become less frequent. Furthermore, if an incapacitating injury to a radiographer should occur at a remote location, the presence of a second individual could be an important factor in preventing unnecessary radiation exposures. Section 34.41(b) is proposed to require that radiographic operations conducted at locations listed on the license be conducted in a permanent radiographic installation. If licensees would need to perform radiography outside of a permanent facility due to some unique circumstances Commission authorization would be required, and the requirements of § 34.41(a) would need to be met.

Section 34.42, Radiation Safety Officer (RSO), lists the qualifications and duties of the RSO. This section would be added to place in the regulations the requirements for this key individual. Previously, these requirements were referenced in regulatory guides and included as license conditions on a case-by-case basis, but not specified in the regulations. The NRC believes that the RSO is the key individual for ensuring safe operations. The qualifications listed for the RSO in the proposed rule include: (1) Completion of the training required for a radiographer as described in part 34; and (2) 2000 hours of documented experience in industrial radiography with at least 40 hours of formal classroom training with respect to the establishment and maintenance of radiation protection programs. It is anticipated that most existing RSOs already meet these requirements. It is proposed that licensees would have two years from the effective date of the rule to meet this 40 hour training requirement for existing RSOs. A key duty of the RSO is to ensure the safe conduct of operations and to stop unsafe operations and institute corrective actions. Other duties of the RSO in the proposed rule include overseeing procedure implementation and employee training, and monitoring radiation surveys, leak tests, and personnel monitoring results.

Section 34.43, Training, contains several new requirements. Section 34.43(a) has been revised to require radiographers to be certified by a certifying entity meeting the criteria specified in Appendix A of the proposed rule. To be recognized as a certifying entity, an independent organization meeting the criteria specified in part I of appendix A would have to apply as specified in § 34.43(a)(2). Certifying programs would be periodically reviewed by the NRC to ensure that the conditions of approval are being met. A list of approved certifying entities would be made available to licensees on request by contacting the appropriate regional office listed in appendix D to 10 CFR part 20, and would be published annually in the Federal Register. Under the proposed rule licensees would have 2 years to implement the proposed change. The change in the verification of training requirements was included in the proposed rule to provide assurance of the quality of radiographers' training in the safe handling of radioactive material. NRC and Agreement States must reciprocally recognize valid radiographer certifications issued by either an independent certifying entity approved by the NRC or an Agreement State certification program meeting the requirements of appendix A, parts II and III, of the proposed rule. Also included in this section is training in §§ 30.7, 30.9, and 30.10, applicable sections of 10 CFR part 71, and some instructions in applicable Department of Transportation (DOT) regulations as referenced in 10 CFR part 71 in addition to other parts of NRC regulations.

Section 34.43(b), which lists training requirements for radiographers' assistants, has been revised to require training in §§ 30.7, 30.9, 30.10, and parts 19, 20, 34, 71, and instructions in applicable DOT regulations as referenced in 10 CFR part 71, in addition to the licensee's operating and emergency procedures. These changes are to ensure that radiographers and radiographers' assistants are knowledgeable of the safety requirements applicable to handling radioactive material in the conduct of radiography. In § 34.43(b)(3) the option of providing an oral test has been omitted. The proposed rule would only allow a written test to be given. Section 34.43(c) describes a proposed requirement to conduct annual safety reviews of radiographers and radiographers' assistants. In the current rule, periodic training is required but required topics to be addressed are not included. Because a number of violations involving personnel overexposures have resulted from licensees' failures to provide adequate training, the proposed amendment for annual safety reviews includes training on revised operating and emergency procedures, new equipment, and safety issues.

Section 34.43(d) has been relocated from § 34.11(d), and describes the requirements for routine inspections of job performance for radiographers and radiographers' assistants. The proposed rule reduces the frequency of these inspections from quarterly to annually. The NRC is proposing to reduce the frequency of inspections of job performance for individuals regularly conducting radiographic operations. For individuals who have not performed radiographic operations for more than six months, an inspection of their job performance would be required at the time of their next participation in a radiographic operation. With several of the other requirements proposed in this rulemaking, such as, certification of radiographers, and having at least two individuals at a temporary jobsite, the Commission believes that the frequency of inspection of job performance can be reduced from quarterly to annually.

Proposed § 34.43(e) specifies that recordkeeping requirements can be found in § 34.79. The requirements for records are unchanged from the current part 34 except for the addition of records verifying the certification status of radiographers. Proposed § 34.43(f) contains the subjects currently listed in Appendix A of part 34. Several additional requirements are proposed. These include: Pictures or models of source assemblies; training in storage, control, and disposal of licensed materials; and pertinent Federal regulations, i.e., Department of Transportation. A new § 34.43(g) would be added which would allow licensees to continue to permit uncertified individuals to act as radiographers for a 2-year period after the proposed rule becomes final.

In § 34.45, Operating and emergency procedures, minor changes were made to include procedures for source recovery if the licensee intends to perform emergency source recovery. These were added because many of the steps in a source recovery would be the same in any circumstance and, in the past, a number of personnel overexposures have occurred during emergency source recovery operations because basic radiation protection precautions were overlooked. Additional requirements are proposed for transportation procedures to include placarding of vehicles, and reference to the DOT regulations. A number of violations have resulted from licensees failing to follow DOT regulations in the transportation of radioactive material. Section 34.45(b) is proposed which specifies that the recordkeeping requirements can be found in § 34.81. Sections 34.89 and 34.91 specify that copies of current operating and emergency procedures are to be maintained at field stations, permanent installations, and temporary jobsites, to ensure that adequate documents are available where radiographic operations occur.

Section 34.46, Supervision of radiographers' assistants, is unchanged from § 34.44 of the current rule.

In § 34.47, Personnel monitoring, several changes are proposed. The existing requirement specifies that pocket dosimeters have a range from zero to at least 200 milliroentgens. The proposed rule has dropped the term "at least," to limit the range to be only from 0–200. This is to prevent the use of pocket dosimeters with very high ranges where the users would be unable to properly determine their exposure. Use of pocket dosimeters with a range higher than 200 milliroentgens will be considered on a case-by-case basis. Additional requirements are proposed on the replacement frequency for film and TLDs. The existing regulation does not specify the replacement frequency for film and TLDs. The high intensity sources used in radiography necessitate frequent monitoring. Monthly replacement is judged to be an appropriate frequency to adequately track an individual's exposure. With the new lower limits for occupational dose, less frequent monitoring could result in a worker receiving an overexposure.

Section 34.47(b) addresses the use of pocket dosimeters. A requirement to read dosimeters at the beginning and end of each shift is proposed. This is added to ensure that the dose is correctly estimated. The existing regulation only specifies a daily reading and does not provide sufficient instruction on how licensees should handle any readings which remain on the pocket dosimeter after recharging. Because it is nearly impossible to recharge a pocket dosimeter to zero, licensees must take a reading before and after use and determine the difference to determine the dose accurately. Section 34.47(d) addresses an off-scale pocket dosimeter. The proposed rule would require that, in the case of a pocket dosimeter being off-scale, the individual will not be permitted to work with licensed material until the RSO or a designee of the RSO makes a determination of the worker's radiation exposure. The current rule requires that the worker's film badge or TLD be sent for processing, but does not specify when the individual can return to work. The proposed revision provides the criteria that must be met before permitting the individual to return to work. A provision is included which will permit the individual to return to work when the circumstances are clearly known and justified by the RSO that there was no possibility of overexposure.

Section 34.47(e) is proposed to require that a worker cease work whenever a film badge or TLD is lost or damaged until a replacement is available. This is added to ensure that there is a means to accurately determine the worker's radiation dose.

Section 34.47(g) has a proposed revision to require alarm ratemeters to be capable of alerting the wearer regardless of the environmental conditions. In a recent radiography overexposure incident, a licensee reported that a radiographer who was wearing ear protection due to high workplace noise levels was overexposed because he was unaware that his ratemeter was alarming. For use in high ambient noise areas, ratemeters could be supplied with either a vibrating alarm that could be felt by the wearer or a small speaker built into hearing protectors to meet this requirement. NRC expects its licensees to determine the need for alarm ratemeters that incorporate these additional protective measures.

In § 34.49, Radiation surveys, there are several proposed changes. The existing regulation requires a survey of the circumference of the radiographic exposure device and the guide tube. A number of violations of NRC requirements have occurred due to a failure to comply with the requirement to survey the full circumference of the camera. In reviewing the regulation, the NRC has decided to revise the survey requirements to specify that a survey be conducted of the radiographic exposure device to determine that the sealed source has returned to the shielded position, and specify that the radiographer conduct a survey as he/she approaches the guide tube to exchange film, reposition the collimator, or dismantle equipment. The proposed rule places the responsibility with the licensee for ensuring that an adequate survey is conducted. In the majority of cases, a survey of the radiographic exposure device's ports should be adequate to make this determination. A proposed requirement to survey storage areas when radioactive material is initially placed in storage, during each quarterly inventory, and whenever changes occur which could increase radiation levels, is added.

Section 34.51, Surveillance, is basically unchanged from § 34.41 of the current rule. References to part 20 have been updated to reflect the proposed revisions in § 34.33.

Section 34.53, Posting, is basically unchanged from § 34.42 of the current rule except to incorporate current references to part 20.

Subpart E—Recordkeeping Requirements

This subpart does not appear in the current part 34. This subpart is proposed to place all recordkeeping and notification requirements in one location. Most of the recordkeeping requirements are unchanged from those contained in the existing part 34. Proposed changes are discussed below.

Section 34.61, Specific license for radiography, requires the licensee to maintain a copy of the license until it is terminated by the Commission.

Section 34.63, Records of receipt and transfer of sealed sources, is added to provide a record showing the disposition of sources.

Section 34.65, Records of radiation survey instruments, is proposed as currently written in Section 34.24. Licensees would be required to maintain calibration records for radiation survey instruments for 3 years after the record is made.

Section 34.67, Records of leak testing and replacement of sealed sources is proposed as currently written in § 34.25(c) and requires licensees to maintain records of leak tests for 3 years after the record is made.

Section 34.69, Records of quarterly inventory is proposed as currently written § 34.26 and requires licensees to maintain records of quarterly inventories for 3 years after the record is made.

Section 34.71, Utilization logs, is proposed much as currently written in § 34.27. This section would require licensees to maintain utilization logs for 3 years after the record is made. The proposed rule has added several additional pieces of information to the logs including the serial number of the device in which the sealed source is located, the radiographer's signature, and the dates the device is removed and returned to storage. This information is necessary in order to verify location of sources.

Section 34.73, Records of inspection and maintenance of radiographic exposure devices, storage containers,

associated equipment, and source changers, is proposed much as currently written in § 34.28(b). This section requires licensees to maintain inspection and maintenance records for 3 years after the record is made. The proposed rule would specify the information that must be included in the inspection records: Date of check, name of inspector, equipment inspected, any defects found, and repairs made.

Section 34.75, Records of alarm system checks at permanent radiographic installations, is proposed as currently written in § 34.29(c) and requires licensees to maintain records of alarm system checks for 3 years after the record is made.

Section 34.79, Records of training, is proposed as currently written in § 34.31(c) with proposed additional requirements for maintaining records of radiographer certification and annual safety reviews. This paragraph would require licensees to maintain records verifying radiographer certification status. For annual safety reviews, the records would include copies of tests, dates administered, names of instructors and attendees, and the topics covered. Under the proposed rule, records of the annual inspections would include a list of items checked, and any non-compliances observed by the RSO.

Section 34.81, Copies of operating and emergency procedures, is proposed as currently written in § 34.32 and requires licensees to maintain copies of emergency and operating procedures until the Commission terminates the license.

Section 34.83, Records of personnel monitoring, is proposed as currently written in § 34.33(b), and requires licensees to maintain records of alarm ratemeter calibrations, pocket dosimeter readings, and operability checks for 3 years from the date the record was made, and to maintain records of film badge or TLD reports until the Commission terminates the license.

Section 34.85, Records of radiation surveys, is proposed as currently written in § 34.43(d) and requires records of the exposure device surveys for 3 years from the date the record was made.

Section 34.87, Form of records, is proposed as currently written in § 34.4 and specifies how records must be maintained, including permitting records to be stored in electronic media.

Section 34.89, Documents and records required at field stations and permanent installations, would be added to list documents and records required at field stations and permanent installations. This section is necessary to ensure that licensees have available sufficient records to demonstrate compliance with NRC regulations. Field stations and permanent installations may be far removed from the home office. Therefore, records necessary to conduct operations safely should be readily available. These records include a copy of the current license, copies of pertinent regulations, copies of operating and emergency procedures, instrument calibration records, leak test results, inventory records, utilization logs, training and survey records. These records are those required for licensees to safely handle radioactive material, and are a subset of the records required at a licensee's normal place of business.

Section 34.91, Documents and records required at temporary jobsites and use or storage locations exceeding 180 days, would be added to list documents and records required at temporary jobsites and locations where radioactive material will be in use or storage for more than 180 days. This section is necessary to ensure that licensees have available sufficient records to demonstrate compliance with NRC regulations and those records necessary to maintain safe operations. The records listed are a smaller subset of the records required for a field station or permanent installation. These records include copies of pertinent regulations, evidence of latest instrument calibrations, latest survey records, shipping papers, and NRC license or Agreement State license if operating under reciprocity. These records are those required for licensees to safely handle radioactive material.

Subpart F—Notifications

This subpart is basically unchanged from § 34.30 with the exception of an additional requirement. Section 34.101(c) would require licensees to notify the appropriate NRC regional office in writing before using or storing radioactive material in one location for more than 180 days. This notification would be required within 30 days of exceeding the 180-day timeframe. This provision would be added to provide the NRC with information in a timely manner to permit inspection of radioactive material at these locations.

Subpart G—Exemptions

This subpart addresses exemptions and is basically the same as § 34.51 in the current part 34 with the exception of minor wording changes to make it consistent with current language used in other parts of the rule. See § 39.91.

Subpart H—Violations

This subpart addresses violations and is basically the same as § 34.61 and § 34.63 in the current part 34 with the exception of minor wording changes to make the sections referenced consistent with the proposed rule.

Appendix A to Part 34

This appendix is new. The requirements in appendix A to the current part 34 have been relocated to § 34.43(f). Part I of the new appendix A provides the proposed requirements for an independent certifying organization, and does not apply to Agreement States choosing to become a certifying entity. Parts II and III of the new appendix A provide the proposed requirements for certification programs and written examinations for a certifying entity, which would include Agreement States. The proposed appendix A would not impose new requirements on NRC's radiography licensees.

NRC is proposing that an independent certifying organization would have to be a national society or association involved in setting national standards of practice for industrial radiography or non-destructive testing to be recognized. Membership in the organization could not be restricted because of race, color, religion, sex, age, national origin or handicap and the organization's certification program would need to be open to nonmembers. The independent certifying organization would need to:

(1) Be incorporated;
(2) Have a permanent full-time staff;
(3) Be nationally recognized;
(4) Have a policy and decision-making review board;
(5) Be governed by written organizational by-laws and policies; and
(6) Have a viable system of financing its operations.

An independent certifying organization would also need to have:

(1) A committee to review and approve certification guidelines and procedures and to advise the organization's staff in implementing its certification program;
(2) A committee to review complaints against certified individuals;
(3) Written procedures describing its certification program; and
(4) An agreement to exchange information about certified individuals with the Commission and the Agreement States.

For a certification program to be acceptable, NRC is proposing that it include provisions requiring individuals to receive training in the topics listed in § 34.43(f), complete a written examination, complete a practical examination or equivalent, and require a minimum period of on-the-job experience. The program would also have to include procedures that ensure due process whenever an individual's certification may need to be revoked, suspended, or restricted for willful or significant failure to comply with his or her employer's operating or emergency procedures, or the Commission's or an Agreement State's regulations.

For the written examination, NRC is proposing that it be: (1) Designed to test knowledge and understanding of the subjects listed in § 34.43(f); (2) written for a ninth-grade reading comprehension level; and (3) scientifically analyzed to ensure that the questions are not biased or misleading.

Agreement State Compatibility

The rule will be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency between Federal and State safety requirements. With regard to basic radiation equipment specifications, standards, and definitions identified as matters of Division 1 level of compatibility, the Agreement States will be expected to adopt, essentially verbatim, the proposed part 34 standards and definitions into their equivalent regulations. However, the NRC also recognizes that certain terms, such as radiographer's assistant, may not be used in present Agreement State regulations. Continued use of alternative terms, such as "trainee" will be considered acceptable so long as the underlying requirements of the position are consistent with those proposed by the Commission. The remainder of the rule will be a Division 2 level of compatibility allowing the Agreement State regulators the flexibility to adopt similar or more stringent requirements based on their radiation protection experience, professional judgments, and community values.

Appendix A of proposed 10 CFR part 34 provides the requirements for certifying entities to be acceptable to NRC. The Commission reserves the right to make this determination and therefore this is a Division 4 item of compatibility. Because it concerns a regulatory function that will be reserved for the Commission pursuant to 10 CFR part 150, the Agreement States will not need to implement this provision of the proposed rulemaking. A new section proposed for part 150 would make clear the Commission's intent to reserve this function and also to reserve the right to set minimum radiographer certification standards.

Agreement States that wish to develop radiographer certification programs would be expected to implement parts II and III of the proposed appendix A. The definitions and the requirements for certification programs and written examinations contained in this rulemaking must be the same for all NRC and Agreement State licensees to maintain consistency. In practice, States that develop certification programs must develop regulatory language and regulations that implement appendix A, parts II and III criteria. States would be permitted to include additional administrative requirements (such as State-issued cards). States that do not develop certification programs would not be expected to implement appendix A. NRC or an Agreement State must reciprocally recognize valid radiographer certifications issued by either an independent certifying entity approved by the NRC or by an Agreement State certification program meeting the requirements of appendix A, parts II and III, of the proposed rule. Agreement States would be expected to submit their proposed program for NRC review and evaluation prior to implementing their certification program.

Implementation

The Commission intends to have different implementation dates for particular requirements of this proposed rule. The proposed requirements would become effective 90 days after publication of the final rule in the **Federal Register**. For the proposed requirements in § 34.41 to use, as a minimum, a two-person crew for radiographic operations not conducted in a permanent facility, licensees would have 1 year from the effective date of the rule to comply. Licensees would be required to affirm that all radiographers have met the certification requirements of 34.43(a)(1) within 2 years from the effective date of the rule. This would allow radiography licensees operating in NRC jurisdiction 2 years to obtain certification for their employees who act as radiographers. This requirement would include radiographers employed by Agreement State licensees operating in non-Agreement States under reciprocity pursuant to 10 CFR 150.20. The Commission notes that the State of Texas currently provides a 90-day grace period for non-Texas licensees operating in that State under reciprocity (TRC 31.90). However, because this proposed rule will be a matter of compatibility, the requirement for mandatory certification would apply to radiography licensees nationwide.

Licensees would have one year from the effective date of the rule to comply with the additional training requirements specified in § 34.43(b). Licensees could consider combining this training with the annual safety review.

For the proposed revision to § 34.47(g) that would require alarm ratemeters be capable of alerting the wearer regardless of environmental conditions, licensees would have 1 year to obtain or modify a sufficient number of additional alarm ratemeters to meet anticipated needs.

For use/storage locations not previously identified on the license (e.g., field stations, permanent radiographic installations, and temporary jobsites exceeding 180 days) licensees must request amendments or notify the NRC, as appropriate, by the effective date of the rule. Few amendment requests are anticipated.

All current RSOs would be granted a two-year extension to meet the proposed additional RSO training requirements specified in § 34.42(a).

The Commission requests that persons commenting on this proposed rulemaking particularly address any hardships that would result if the proposed rule were adopted and also address any hardships that would result if the proposed implementation schedule were adopted. The NRC is particularly interested in suggestions for alternative implementation schedules.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that the rule, if adopted, would not be a major Federal action; therefore, an impact statement is not required. The revision of 10 CFR part 34 should have no environmentally significant impact because radiography only involves the use of sealed sources, and no environmental impact will be involved. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington DC.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average 108 hours per response, including the time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regardihg this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0007 and 3150–0120), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

Regulatory Flexibility Analysis

The NRC has prepared an initial regulatory analysis of the impact of this proposed rule on small entities. A summary of this analysis appears as Appendix A to this document. A copy of the analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Donald O. Nellis or Mary L. Thomas, Division of Regulatory Application, Office of Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301)–492–3785. The NRC is seeking public comment on the initial regulatory flexibility analysis. The NRC is particularly seeking comment from small entities (i.e., small businesses, small organizations, and small jurisdictions under the Regulatory Flexibility Act) as to how the regulations will affect them and how the regulations may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Those small entities which offer comments on how the regulations could be modified to take into account the differing needs of small entities should specifically discuss the following items:

(a) The size of their business and how the proposed regulations would result in a significant economic burden upon them as compared to larger organizations in the same business community.

(b) How the proposed regulations could be modified to take into account their differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the commenter.

(d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individuals or groups.

(e) How the proposed regulations, as modified, would still adequately protect the public health and safety. The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule. The proposed rule does not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 34

Byproduct material, Criminal penalties, Nuclear material, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 150

Criminal penalties, Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 34.

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

1. The authority citation for part 34 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.45 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

2. The existing headings for subparts A and B and each of the existing undesignated center headings are removed.

3. A new heading for subpart A, consisting of §§ 34.1–34.8, is added to read as follows:

Subpart A—General Provisions

4. Section 34.1 is revised to read as follows:

§ 34.1 Purpose and scope.

This part prescribes requirements for the issuance of licenses for the use of sealed sources containing byproduct material and radiation safety requirements for persons using these sealed sources in industrial radiography. The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the requirements and provisions of parts 19, 20, 21, 30, 71, 150, 170, and 171 of this chapter apply to applications and licenses subject to this part. This rule does not apply to medical uses of byproduct material.

§ 34.3 [Removed]

5. Section 34.3 is removed.

6. Section 34.2 is redesignated as § 34.3, and the new § 34.3 is revised to read as follows:

§ 34.3 Definitions.

ALARA (acronym for as low as reasonably achievable) means making every reasonable effort to maintain exposures to radiation as far below the dose limits specified in part 20 as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed materials in the public interest.

Annual safety review means a review conducted or provided by the licensee for its employees on radiation safety aspects of radiography. The review may include, as appropriate, the results of internal inspections, new procedures or equipment, accidents or errors that have been observed, and opportunities for employees to ask safety questions.

Associated equipment means equipment that is used in conjunction with a radiographic exposure device to make radiographic exposures that

drives, guides, or comes in contact with the source, (e.g., guide tube, control tube, control (drive) cable, removable source stop, "J" tube).

Becquerel (Bq) means one disintegration per second.

Certifying entity means an independent certifying organization meeting the requirements in Appendix A of this part or an Agreement State meeting the requirements in Appendix A, parts II and III of this part.

Collimator means a device used to limit the size, shape, and direction of the primary radiation beam.

Control (drive) cable means the cable that is connected to the source assembly and used to drive the source to and from the exposure location.

Control tube means a protective sheath for guiding the control cable. The control tube connects the control drive mechanism to the radiographic exposure device.

Exposure head means a device that locates the gamma radiography sealed source in the selected working position. (An exposure head is also known as a source stop.)

Field examination means a demonstration through practical application of the safety rules and principles in radiography including use of all appropriate equipment and procedures.

Field station means a facility where licensed material may be stored or used and from which equipment is dispatched.

Gray means the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 Joule/kilogram. It is also equal to 100 rads.

Independent certifying organization means an independent organization that meets all of the criteria in Appendix A of this part.

Permanent radiographic installation means an enclosed shielded room, cell, or vault, not located at a temporary jobsite, in which radiography is performed.

Projection sheath (guide tube) means a flexible or rigid tube (i.e., "J" tube) for guiding the source assembly and the attached control cable from the radiographic exposure device to the exposure head or working position.

Radiation Safety Officer means an individual named by the licensee who has knowledge of, responsibility for, and authority to ensure compliance with appropriate radiation protection rules, standards, and practices on behalf of the licensee and who meets the requirements of § 34.42.

Radiographer means any individual who meets the requirements of § 34.43, is in attendance at the site where the sealed source or sources are being used, personally supervises radiographic operations and who is responsible to the licensee for ensuring compliance with the requirements of the Commission's regulations and the conditions of the license.

Radiographer certification means written approval received from a certifying entity stating that an individual has satisfactorily met certain established radiation safety training, testing, and experience criteria.

Radiographer's assistant means any individual, who under the personal supervision of a radiographer, uses radiographic exposure devices, sealed sources or related handling tools, or radiation survey instruments in radiography.

Radiographic exposure device (also called a camera or a projector) means any instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.

Radiographic operations means all activities associated with the presence of radioactive sources in a radiographic exposure device during transport and use of the device, to include surveys to confirm the adequacy of boundaries, setting up equipment and any activity inside restricted area boundaries.

Radiography means the examination of the structure of materials by nondestructive methods, utilizing sealed sources of byproduct materials.

S-tube means a tube (typically made of a hard metal, such as, titanium) through which the radioactive source travels in a radiographic exposure device.

Sealed source means any byproduct material that is encased in a capsule designed to prevent leakage or escape of the byproduct material.

Shielded position means the location within the radiographic exposure device or source changer where the sealed source is secured and restricted from movement. (In this position the radiation exposure will be at a minimum. This position incorporates maximum shielding for the radioactive source.)

Sievert means the SI unit of any of the quantities expressed as dose equivalent. The absorbed dose in grays multiplied by the quality factor is equal to the dose equivalent in Sieverts. For comparison 1 Sv=100 rems.

Source assembly means an assembly that consists of the sealed source and a connector that attaches the source to the control cable. The source assembly may also include a stop ball used to secure the source in the shielded position.

Source changer means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those also used for transporting and storage of sealed sources.

Storage area means any location, facility, or vehicle which is used to store or to secure a radiographic exposure device, a storage container, or a sealed source when it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source.

Storage container means a device in which sealed sources are stored.

Temporary jobsite means a place where radiographic operations are conducted other than the location(s) of use authorized on the license.

§ 34.4 [Removed]

7. Section 34.4 is removed.

8. Section 34.5 is added to read as follows:

§ 34.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

9. Section 34.8 is revised to read as follows:

§ 34.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150–0007.

(b) The approved information collection requirements contained in this part appear in §§ 34.13, 34.20, 34.25, 34.27, 34.29, 34.31, 34.33, 34.35, 35.41, 34.43, 34.45, 34.47, 34.49, 34.61, 34.63, 34.65, 34.67, 34.69, 34.71, 34.73, 34.75, 34.79, 34.81, 34.83, 34.85, 34.87, 34.89, 34.91, 34.101, and Appendix A.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. The information collection requirement and the control number under which it is approved are as follows:

(1) In § 34.11, NRC Form 313 is approved under control number 3150–0120.

(2) [Reserved]

10. A new heading for subpart B, consisting of §§ 34.11–34.13, is added to read as follows:

Subpart B—Specific Licensing Provisions

11. Section 34.11 is revised to read as follows:

§ 34.11 Application for a specific license.

A person may file an application for specific license for use of sealed sources in radiography, in duplicate, on NRC Form 313, "Application for Material License," in accordance with the provisions of § 30.32 of this chapter.

12. Section 34.13 is added to read as follows:

§ 34.13 Specific license for radiography.

The Commission will approve an application for a specific license for the use of licensed material in radiography if the applicant meets the following requirements:

(a) The applicant shall satisfy the general requirements specified in § 30.33 of this chapter for byproduct material, as appropriate, and any special requirements contained in this part.

(b) The applicant shall develop an adequate program for training radiographers and radiographers' assistants that meets the requirements of § 34.43, and submit to the Commission a description of this program which specifies the—

(1) Initial training;

(2) On-the-job training;

(3) Annual safety reviews; and

(4) Means the applicant will use to demonstrate the radiographer's and radiographer's assistant's knowledge and understanding of and ability to comply with the Commission's regulations and licensing requirements and the applicant's operating and emergency procedures.

(c) The applicant shall establish and submit to the Commission a description of its procedures for verifying and documenting the certification status of its radiographers and for ensuring that the certification of individuals acting as radiographers remains valid.

(d) The applicant shall submit to the Commission written operating and emergency procedures as described in § 34.45.

(e) The applicant shall establish and submit to the Commission its program for annual inspections of the job performance of each radiographer and radiographer's assistant as described in § 34.43(d).

(f) The applicant shall submit a description of its overall organizational structure as it applies to the radiation safety responsibilities in radiography, including specified delegations of authority and responsibility.

(g) The applicant shall designate and identify a Radiation Safety Officer responsible for implementing the licensee's radiation safety program. The Radiation Safety Officer shall meet the qualifications and duties described in § 34.42.

(h) If an applicant intends to perform leak testing of sealed sources, the applicant shall identify the manufacturers and the model numbers of the leak test kits to be used. If the applicant intends to analyze its own wipe samples, the applicant shall establish procedures to be followed and submit a description of these procedures to the Commission. The description must include the—

(1) Instruments to be used;

(2) Methods of performing the analysis; and

(3) Pertinent experience of the person who will analyze the wipe samples.

(i) The applicant shall identify the location(s) of, and describe, all field stations and permanent radiographic installations.

(j) From (insert effective date of final rule) to (Insert date 2 years after the final rule is published in the Federal Register):

(1) A license applicant may affirm that all individuals acting as radiographers will be certified in radiation safety by a certifying entity before commencing duties as radiographers. This affirmation is instead of describing its initial training program for radiographers in the subjects outlined in § 34.43(f) and the means used to determine the radiographer's knowledge and understanding of these subjects, and;

(2) A licensee may substitute radiographer certification in place of the description of the means to determine the radiographer's knowledge and understanding of the subjects outlined in § 34.43(f).

(3) After (Insert date 2 years after the final rule is published in the Federal Register), a license applicant and licensee shall comply with the requirement of § 34.43(a)(2).

13. A new heading for subpart C, consisting of §§ 34.20–34.35, is added to read as follows:

Subpart C—Equipment

14. Section 34.20 is revised to read as follows:

§ 34.20 Performance requirements for radiography equipment.

Equipment used in industrial radiographic operations must meet the following minimum criteria:

(a) Each radiographic exposure device and all associated equipment must meet the requirements specified in American National Standard N432–1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," (published as NBS Handbook 136, issued January 1981). This publication has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, Telephone (212) 642–4900. Copies of the document are available for inspection at the Nuclear Regulatory Commission Library, 7920 Norfolk Avenue, Lower Level, Bethesda, Maryland, 20814. A copy of the document is also on file at the Office of the Federal Register, 800 North Capitol Street NW., Washington, DC 20408.

(b) In addition to the requirements specified in paragraph (a) of this section, the following requirements apply to radiographic exposure devices and associated equipment.

(1) Each radiographic exposure device must have attached to it by the user, a durable, legible, clearly visible label bearing the—

(i) Chemical symbol and mass number of the radionuclide in the device;

(ii) Activity and the date on which this activity was last measured;

(iii) Model number and serial number of the sealed source;

(iv) Manufacturer of the sealed source and

(v) Licensee's name, address, and telephone number.

(2) Radiographic exposure devices intended for use as Type B transport containers must meet the applicable requirements of 10 CFR Part 71.

(3) Modification of radiographic exposure devices and associated equipment is prohibited.

(c) In addition to the requirements specified in paragraphs (a) and (b) of this section, the following requirements apply to radiographic exposure devices, source assemblies, and associated equipment that allow the source to be moved out of the device for routine operation.

(1) The coupling between the source assembly and the control cable must be designed in such a manner that the source assembly will not become disconnected if cranked outside the guide tube. The coupling must be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

(2) The device must automatically secure the source assembly when it is cranked back into the fully shielded position within the device. This securing system may only be released by means of a deliberate operation on the exposure device.

(3) The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device must be equipped with safety plugs or covers which must be installed during storage and transportation to protect the source assembly from water, mud, sand or other foreign matter.

(4) Each sealed source or source assembly must have attached to it or engraved on it, a durable, legible, visible label with the words:

"DANGER—RADIOACTIVE".

The label must not interfere with the safe operation of the exposure device or associated equipment.

(5) The guide tube must have passed the crushing tests for the control tube as specified in ANSI N432 and a kinking resistance test that closely approximates the kinking forces likely to be encountered during use.

(6) Guide tubes must be used when moving the source out of the device.

(7) An exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube must be attached to the outermost end of the guide tube during radiographic operations.

(8) The guide tube exposure head connection must be able to withstand the tensile test for control units specified in ANSI N432.

(9) Source changers must provide a system for ensuring that the source will not be accidentally withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly.

(d) All newly manufactured radiographic exposure devices and associated equipment acquired by licensees after January 10, 1992, must comply with the requirements of this section.

(e) All radiographic exposure devices, source assemblies, and associated equipment in use after January 10, 1996, must comply with the requirements of this section.

(f) All associated equipment acquired after January 10, 1996, must be labelled to identify that the components have met the requirements of this section.

15. Section 34.21 is revised to read as follows:

§ 34.21 Limits on levels of radiation for radiographic exposure devices, storage containers, and source changers.

(a) Radiographic exposure devices measuring less than 10 centimeters (4 inches) from the sealed source storage position to any exterior surface of the device must not have a radiation level in excess of 0.5 millisieverts (50 millirems) per hour at 15 centimeters (6 inches) from any exterior surface of the device. Radiographic exposure devices measuring a minimum of 10 centimeters (4 inches) from the sealed source storage position to any exterior surface of the device, and all storage containers for sealed sources or for radiographic exposure devices, must not have a radiation level in excess of 2 millisieverts (200 millirems) per hour at any exterior surface, and 0.1 millisieverts (10 millirems) per hour at 1 meter from any exterior surface. The radiation levels specified are with the sealed source in the shielded (i.e., "off") position.

(b) Paragraph (a) of this section applies to all equipment manufactured before January 10, 1992. After January 10, 1996, radiographic equipment other than storage containers and source changers must meet the requirements of § 34.20. Section 34.21 applies only to storage containers.

§ 34.22 [Removed]

16. Section 34.22 is removed.

17. Section 34.23 is revised to read as follows:

§ 34.23 Locking and relocation of radiographic exposure devices, storage containers and source changers.

(a) Locked radiographic exposure devices and storage containers must be physically secured to prevent tampering.

(1) Each radiographic exposure device must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The exposure device and/or its container must be kept locked (and if a keyed-lock, with the key removed at all times), when not under the direct surveillance of a radiographer or a radiographer's assistant or as otherwise may be authorized in § 34.51. In addition, during radiographic operations the sealed source assembly must be manually secured in the shielded position each time the source is returned to that position, in those exposure devices manufactured before January 10, 1992.

(2) Each sealed source storage container and source changer must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. Storage containers and source changers must be kept locked (and if a keyed-lock, with the key removed at all times) when containing sealed sources except when under the direct surveillance of a radiographer or a radiographer's assistant.

(b) Radiographic exposure devices, source changers, and storage containers, before being moved from one location to another, must have the guide tubes and control cables disconnected, safety plugs or covers applied, locked and physically secured to prevent accidental loss, tampering or removal of licensed material, and must be surveyed to assure that the sealed source is in the shielded position.

§ 34.24 [Removed]

18. Section 34.24 is removed.

19. Section 34.25 is revised to read as follows:

§ 34.25 Radiation survey instruments.

(a) The licensee shall keep sufficient calibrated and operable radiation survey instruments at each location where radioactive material is present to make the radiation surveys required by this part and by part 20 of this chapter. Instrumentation required by this section must be capable of measuring a range from 0.02 millisieverts (2 millirems) per hour through 0.01 Sievert (1 rem) per hour. Survey instruments must be checked for operability before use each day. This may be accomplished by evaluating the instrument response to the previously measured fields at the projection sheath port or the control cable sheath port on a radiographic exposure device.

(b) The licensee shall have each radiation survey instrument required under paragraph (a) of this section calibrated—

(1) At intervals not to exceed 6 months and after instrument servicing, except for battery changes;

(2) For linear scale instruments, at two points located approximately one-third and two-thirds of full-scale on each scale; for logarithmic scale instruments, at midrange of each decade, and at two points of at least one decade; and for digital instruments, at 3 points between 0.02 and 10 mSv (2 and 1000 millirems) per hour; and

(3) So that an accuracy within plus or minus 20 percent of the calibration standard can be demonstrated at each point checked.

(c) The licensee shall maintain records of the results of the instrument calibrations in accordance with § 34.65.

§ 34.26 [Removed]

20. Section 34.26 is removed.

21. Section § 34.27 is revised to read as follows:

§ 34.27 Leak testing and replacement of sealed sources.

(a) The replacement of any sealed source fastened to or contained in a radiographic exposure device and leak testing of any sealed source must be performed only by persons specifically authorized by the Commission or an Agreement State to do so.

(b) Testing and recordkeeping requirements.

(1) Each licensee who uses a sealed source shall have the source tested for leakage at intervals not to exceed 6 months.

(2) The licensee shall maintain records of the leak tests in accordance with § 34.67.

(3) In the absence of a certificate from the transferor that a leak test has been made within the 6 months before the transfer, the sealed source may not be used until tested.

(c) Method of testing. The wipe of a sealed source must be performed using a leak test kit or method approved by the Commission or an Agreement State. The wipe sample must be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 185 Bq (0.005 microcurie) of radioactive material on the test sample and must be performed by a person specifically authorized by the Commission or an Agreement State to perform the analysis.

(d) Any test conducted pursuant to paragraphs (b) and (c) of this section which reveals the presence of 185 Bq (0.005 microcurie) or more of removable radioactive material must be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the equipment involved from use and shall have it decontaminated and repaired or disposed of, in accordance with Commission regulations. A report must be filed with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 5 days of any test with results that exceed the threshold in this subsection, describing the equipment involved, the test results, and the corrective action taken. A copy of the report must be sent to the Administrator of the appropriate Nuclear Regulatory Commission's Regional Office listed in Appendix D of part 20 of this chapter "Standards for Protection Against Radiation."

(e) A sealed source which is not fastened to or contained in a radiographic exposure device must have permanently attached to it a durable tag at least one (1) inch square bearing the prescribed radiation caution symbol in conventional colors, magenta, purple or black on a yellow background, and at least the instructions: "Caution (or Danger)—Radioactive Material—Do Not Handle—Notify Civil Authorities (or Name of Company)."

(f) Each exposure device using depleted uranium (DU) shielding and an "S" tube configuration must be periodically tested for DU contamination. This test can be performed by the licensee using available test kits or method approved by the Commission or an Agreement State, or the exposure device could be returned to the manufacturer for such testing. The analysis must be capable of detecting the presence of 185 Bq (0.005 microcuries) of radioactive material on the test sample and must be performed by a person specifically authorized by the Commission or an Agreement State to perform the analysis. This test must be undertaken at intervals not to exceed 12 months and should such testing reveal the presence of DU contamination, the exposure device must be removed from use and arrangements for repair or proper disposal in a facility licensed under 10 CFR part 61 must be made. A record of the DU leaktest must be made in accordance with § 34.67.

§ 34.28 [Removed]

22. Section 34.28 is removed.

23. Section 34.29 is revised to read as follows:

§ 34.29 Quarterly inventory.

(a) Each licensee shall conduct a quarterly physical inventory to account for all sealed sources received and possessed under this license. (b) The licensee shall maintain records of the quarterly inventory in accordance with § 34.69.

§ 34.30 [Removed]

24. Section 34.30 is removed.

25. Section 34.31 is revised to read as follows:

§ 34.31 Inspection and maintenance of radiographic exposure devices, storage containers, associated equipment, and source changers.

(a) The licensee shall visually check for obvious defects in radiographic exposure devices, storage containers, associated equipment, and source changers before use each day the equipment is used to ensure that the equipment is in good working condition and that required labeling is present. If defects are found, the equipment must be removed from service until repaired, and a record must be made in accordance with § 34.73.

(b) Each licensee shall have a program for inspection and routine maintenance of radiographic exposure devices, source changers, associated equipment and storage containers at intervals not to exceed 3 months or before the first use thereafter to ensure the proper functioning of components important to safety. Records of these inspections and maintenance performed must be made in accordance with § 34.73. If defects are found, the equipment must be removed from service until repaired, and a record must be made in accordance with § 34.73.

(c) The opening, repair, or modification of any sealed source must be performed by persons specifically authorized to do so by the Commission or an Agreement State.

§ 34.32 [Removed]

26. Section 34.32 is removed.

27. Section 34.33 is revised to read as follows:

§ 34.33 Permanent radiographic installations.

(a) Each entrance that is used for personnel access to the high radiation area in a permanent radiographic installation must have either

(1) Entrance controls of the type described in § 20.1601(a)(1) of this chapter; or

(2) Both visible and audible warning signals to warn of the presence of radiation. The visible signal must be actuated by radiation whenever the source is exposed. The audible signal must be actuated when an attempt is made to enter the installation while the source is exposed.

(b) The alarm system must be tested for proper operation at the beginning of each day the installation is used for radiographic operations. The test must include a check of the visible and audible signals by turning on the exposure device before using the room. Entrance control devices must be tested monthly. If a control device or alarm is operating improperly, it must be immediately labeled as defective and repaired before industrial radiographic operations are resumed. Test records must be maintained in accordance with § 34.75.

28. Section 34.35 is added to read as follows:

§ 34.35 Labels, storage, and transportation precautions.

(a) Labels.

(1) The licensee may not use a source changer or container to store licensed material unless the source changer or the container has securely attached to it a durable, legible, and clearly visible label. The label must contain the radiation symbol specified in § 20.1904 of this chapter and the wording

Caution (or Danger) Radioactive Material—Do Not Handle Notify Civil Authorities (or Name of Company)

(2) The licensee may not transport licensed material unless the material is packaged, and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with regulations set out in 10 CFR Part 71, including documentation of the Quality Assurance (QA) program requirements outlined in § 71.105 of this chapter.

(b) Security precautions during storage and transportation.

(1) Locked radiographic exposure devices and storage containers must be physically secured to prevent tampering or removal by unauthorized personnel in accordance with the requirements in § 34.23. The licensee shall store licensed material in a manner which will minimize danger from explosion or fire.

(2) The licensee shall lock and physically secure the transport package containing licensed material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the licensed material from the vehicle.

29. A new heading for subpart D, consisting of §§ 34.41–34.57, is added to read as follows:

Subpart D—Radiation Safety Requirements

30. Section 34.41 is revised to read as follows:

§ 34.41 Conducting radiographic operations.

(a) Whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has at a minimum met the requirements of § 34.43(b). The additional qualified individual(s) shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiography may not be performed if only one qualified individual is present.

(b) All radiographic operations conducted at locations of use authorized on the license must be conducted in a permanent radiographic installation, unless specifically authorized by the Commission.

31. Section 34.42 is revised to read as follows:

§ 34.42 Radiation Safety Officer.

The Radiation Safety Officer (RSO) shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's program.

(a) The RSO's qualifications must include:

(1) Completion of the training and testing requirements of § 34.43(a); and

(2) 2000 hours of documented experience in industrial radiographic operations, with at least 40 hours of formal classroom training with respect to the establishment and maintenance of a radiation protection program.

(b) The specific duties of the RSO include, but are not limited to, the following:

(1) To establish and oversee operating, emergency, and ALARA procedures as required by part 20 of this chapter, and to review them regularly to ensure that the procedures are current and conform with these rules;

(2) To oversee and approve all phases of the training program for radiographic personnel so that appropriate and effective radiation protection practices are taught;

(3) To ensure that required radiation surveys and leak tests are performed and documented in accordance with these rules, including any corrective measures when levels of radiation exceed established limits;

(4) To ensure that personnel monitoring devices are calibrated and used properly by occupationally exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by § 20.2203 of this chapter; and

(5) To ensure that operations are conducted safely and to assume control and have the authority to institute corrective actions including stopping of operations when necessary in emergency situations or unsafe conditions.

32. Section 34.43 is revised to read as follows:

§ 34.43 Training.

(a) The licensee may not permit any individual to act as a radiographer until the individual—

(1) Has been instructed in the subjects outlined in paragraph (f) of this part.

(2) Is certified through a radiographer certification program by a certifying entity in accordance with the criteria specified in Appendix A of this part. An independent organization that would like to be recognized as a certifying entity shall submit its request to the Director, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC. 20555.

(3) Has received copies of and instruction in the requirements described in NRC regulations contained in this part; in §§ 30.7, 30.9, and 30.10 of this chapter; in the applicable sections of parts 19, 20, and 71 of this chapter, in applicable DOT regulations as referenced in 10 CFR part 71, in the NRC license(s) under which the radiographer will perform radiography, and the licensee's operating and emergency procedures;

(4) Has demonstrated understanding of NRC regulations, the licensee's license, and the licensee's operating and emergency procedures by successful completion of a written examination.

(5) Has demonstrated competence in the use of the licensee's radiographic exposure devices, sealed sources, related handling tools, and survey instruments; and

(6) Has demonstrated understanding of the instructions in paragraph (a)(3) and (a)(5) of this section by successful completion of a field examination.

(b) The licensee may not permit any individual to act as a radiographer's assistant until the individual—

(1) Has received copies of and instruction in the requirements described in NRC regulations contained in this part; in §§ 30.7, 30.9, and 30.10 of this chapter; in the applicable sections of parts 19, 20, and 71 of this chapter, in applicable DOT regulations as referenced in 10 CFR part 71, in the NRC license(s) under which the radiographer's assistant will perform radiography, and the licensee's operating and emergency procedures;

(2) Has demonstrated competence to use, under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, related handling tools, and radiation survey instruments that the assistant will use; and

(3) Has demonstrated understanding of the instructions provided under paragraph (b)(1) of this section by successfully completing a written test and a field examination on the subjects covered.

(c) The licensee shall provide annual safety reviews for radiographers and radiographer's assistants at least once during each calendar year.

(d) The licensee shall conduct an annual inspection program of the job

performance of each radiographer and radiographer's assistant to ensure that the Commission's regulations, license requirements, and the applicant's operating and emergency procedures are followed. The inspection program must:

(1) Include observation of the performance of each radiographer and radiographer's assistant during an actual radiographic operation at intervals not to exceed 12 months; and

(2) Provide that, if a radiographer or a radiographer's assistant has not participated in a radiographic operation for more than 6 months since the last inspection, the individual's performance must be observed and recorded when the individual next participates in a radiographic operation.

(e) The licensee shall maintain records of the above training to include certification documents, written and field examinations, annual safety reviews and annual inspections of job performance in accordance with § 34.79.

(f) The licensee shall include the following subjects in the training required in paragraph (a)(1) of this section:

(1) Fundamentals of radiation safety including—

(i) Characteristics of gamma radiation;

(ii) Units of radiation dose and quantity of radioactivity;

(iii) Hazards of exposure to radiation;

(iv) Levels of radiation from licensed material; and

(v) Methods of controlling radiation dose (time, distance, and shielding);

(2) Radiation detection instruments including—

(i) Use, operation, calibration, and limitations of radiation survey instruments;

(ii) Survey techniques; and

(iii) Use of personnel monitoring equipment;

(3) Equipment to be used including—

(i) Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtails).

(ii) Storage, control, and disposal of licensed material; and

(iii) Maintenance of equipment.

(4) The requirements of pertinent Federal regulations; and

(5) Case histories of accidents in radiography.

(g) The licensee may, until (Insert date 2 years after the final rule is published in the **Federal Register**), allow an individual who has not met the certification requirements of paragraph (a)(2) of this section to act as a radiographer after the individual has received training in the subjects outlined in paragraph (f) of this section and demonstrated understanding of those subjects by successful completion of a written examination that was previously submitted to and approved by the Commission.

§ 34.44 [Removed]

34. Section 34.44 is removed.

35. Section 34.45 is added to read as follows:

§ 34.45 Operating and emergency procedures.

(a) Operating and emergency procedures must include, as a minimum, instructions in at least the following:

(1) The handling and use of licensed sealed sources and radiographic exposure devices to be employed such that no person is likely to be exposed to radiation doses in excess of the limits established in part 20 of this chapter "Standards for Protection Against Radiation";

(2) Methods and occasions for conducting radiation surveys;

(3) Methods for controlling access to radiographic areas;

(4) Methods and occasions for locking and securing radiographic exposure devices, storage containers and sealed sources;

(5) Personnel monitoring and the use of personnel monitoring equipment;

(6) Transporting sealed sources to field locations, including packing of radiographic exposure devices and storage containers in the vehicles, placarding of vehicles, when needed, and control of the sealed sources during transportation (refer to 49 CFR parts 171 through 173);

(7) The inspection and maintenance of radiographic exposure devices and storage containers;

(8) Steps that must be taken immediately by radiography personnel in the event a pocket dosimeter is found to be off-scale or an alarm ratemeter alarms;

(9) The procedure(s) for identifying and reporting defects and noncompliance, as required by part 21 of this chapter;

(10) The procedure for notifying proper persons in the event of an accident;

(11) Minimizing exposure of persons in the event of an accident;

(12) Source recovery procedure if licensee will perform source recovery; and

(13) Maintenance of records.

(b) The licensee shall maintain copies of current operating and emergency procedures in accordance with § 34.81.

36. Section 34.46 is added to read as follows:

§ 34.46 Supervision of radiographers' assistants.

Whenever a radiographer's assistant uses radiographic exposure devices, uses sealed sources or related source handling tools, or conducts radiation surveys required by § 34.49(b) to determine that the sealed source has returned to the shielded position after an exposure, the assistant shall be under the personal supervision of a radiographer. The personal supervision must include:

(a) The radiographer's personal presence at the site where the sealed sources are being used;

(b) The ability of the radiographer to give immediate assistance if required; and

(c) The radiographer's watching the assistant's performance of the operations referred to in this section.

37. Section 34.47 is added to read as follows:

§ 34.47 Personnel monitoring.

(a) The licensee may not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each individual wears a direct reading pocket dosimeter, an operating alarm ratemeter, and either a film badge or a thermoluminescent dosimeter (TLD). At permanent radiography installations where other appropriate alarming or warning devices are in routine use, the wearing of an alarming ratemeter is not required.

(1) Pocket dosimeters must have a range from zero to 2 millisieverts (200 millirems) and must be recharged at the start of each shift.

(2) Each film badge and TLD must be assigned to and worn by only one individual.

(3) Film badges and TLDs must be replaced at least monthly.

(4) After replacement, each film badge or TLD must be promptly processed.

(b) Pocket dosimeters must be read and the exposures recorded at the beginning and end of each shift, and records must be maintained in accordance with § 34.83.

(c) Pocket dosimeters must be checked at periods not to exceed 12 months for correct response to radiation, and records must be maintained in accordance with § 34.83. Acceptable dosimeters must read within plus or minus 30 percent of the true radiation exposure.

(d) If an individual's pocket dosimeter is found to be off-scale and the possibility of radiation exposure cannot be ruled out as the cause, the individual's film badge or TLD must be sent immediately for processing. In addition, the individual may not work with licensed material until a determination of the individual's radiation exposure has been made. This determination must be made by the RSO or the RSO's designee. The results of this determination must be included in the records maintained in accordance with § 34.83.

(e) If a film badge or TLD is lost or damaged, the worker shall cease work immediately until a replacement film badge or TLD is provided and the exposure is calculated for the time period from issuance to loss or damage of the film badge or TLD. The results of the calculated exposure and the time period for which the film badge or TLD was lost or damaged must be included in the records maintained in accordance with § 34.83.

(f) Reports received from the film badge or TLD processor must be retained in accordance with § 34.83.

(g) Each alarm ratemeter must—

(1) Be checked to ensure that the alarm functions properly (sounds) before using at the start of each shift;

(2) Be set to give an alarm signal at a preset dose rate of 5 mSv/hr (500 mrem/hr); with an accuracy of plus or minus 20 percent of the true radiation dose rate.

(3) Be adequate to alert the individual regardless of the environmental conditions (e.g., high ambient noise levels).

(4) Require special means to change the preset alarm function; and

(5) Be calibrated at periods not to exceed 12 months for correct response to radiation. The licensee shall maintain records of alarm ratemeter calibrations in accordance with § 34.83.

38. Section 34.49 is added to read as follows:

§ 34.49 Radiation surveys.

The licensee shall:

(a) Conduct surveys with a calibrated and operable radiation survey instrument that meets the requirements of § 34.25.

(b) Conduct an adequate survey of the radiographic exposure device with a radiation survey instrument after each exposure to determine that the sealed source has been returned to its shielded position.

(c) Conduct a survey when approaching the guide tube before exchanging films, repositioning the collimator, or dismantling equipment.

(d) Conduct an adequate survey with a radiation survey instrument any time the source is exchanged and whenever a radiographic exposure device is placed in a storage area (as defined in § 34.3) to ensure that the sealed source is in its shielded position.

(e) Conduct a survey of the storage area to ensure that radiation levels do not exceed the limits specified in 10 CFR 20.1301. These surveys must be performed initially with radioactive material present in the storage location and thereafter at the time of the quarterly inventory and whenever storage conditions change (i.e., increases in radioactive material present or changes in shielding or arrangement of the radioactive material).

(f) Maintain records in accordance with § 34.85.

39. Section 34.51 is revised to read as follows:

§ 34.51 Surveillance.

During each radiographic operation the radiographer or radiographer's assistant shall maintain continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, as defined in part 20 of this chapter, except at permanent radiographic installations where all entryways are locked and the requirements of § 34.33 are met.

40. Section 34.53 is added to read as follows:

§ 34.53 Posting.

Areas in which radiography is being performed must be conspicuously posted as required by § 20.1902(a) and (b) of this chapter. Exceptions listed in § 20.1903 of this chapter do not apply to radiographic operations.

41. A new heading for subpart E, consisting of §§ 34.61–34.91, is added to read as follows:

Subpart E—Recordkeeping Requirements

42. Section 34.61 is revised to read as follows:

§ 34.61 Records of specific license for radiography.

Each licensee shall maintain a copy of its license, license conditions, documents incorporated by reference, and amendments to each of these items until superseded by new documents or until the Commission terminates the license.

43. Section 34.63 is revised to read as follows:

§ 34.63 Records of receipt and transfer of sealed sources.

(a) Each licensee shall maintain records showing the receipts and transfers of sealed sources and retain each record for 3 years after it is made.

(b) These records must include the date, the individual making the record, the radionuclide, number of becquerels (curies), and make, model, and serial number of each sealed source and device, as appropriate.

44. Sections 34.65—34.91 are added to subpart E to read as follows:

§ 34.65 Records of radiation survey instruments.

Each licensee shall maintain records of the calibrations of its radiation survey instruments and retain each record for 3 years after it is made.

§ 34.67 Records of leak testing of sealed sources.

Each licensee shall maintain records of leak test results in units of becquerels (curies) and retain each record for 3 years after it is made.

§ 34.69 Records of quarterly inventory.

(a) Each licensee shall maintain records of the quarterly inventory and retain each record for 3 years after it is made.

(b) The record must include the quantities and kinds of byproduct material (including the model number, the serial number and manufacturer), location of sealed sources, the name of the individual conducting the inventory, and the date of the inventory.

§ 34.71 Utilization logs.

(a) Each licensee shall maintain current utilization logs at the address specified in the license, showing for each sealed source the following information:

(1) A description, including the make, model number, and serial number of the radiographic exposure device or storage container in which the sealed source is located;

(2) The identity and signature of the radiographer to whom assigned; and

(3) The plant or site where used and dates of use, including the dates removed and returned to storage.

(b) The licensee shall retain the logs required by paragraph (a) of this section for 3 years after the log is made.

§ 34.73 Records of inspection and maintenance of radiographic exposure devices, storage containers, associated equipment, and source changers.

(a) Each licensee shall maintain records of defects found in daily checks and quarterly inspections and maintenance of radiographic exposure devices, storage containers, associated equipment, and source changers, and retain each record for 3 years after it is made.

(b) The record must include the date of check, name of inspector, equipment involved, any defects found, and repairs made.

§ 34.75 Records of alarm system and entrance control checks at permanent radiographic installations.

Each licensee shall maintain records of alarm system and entrance control device tests and retain each record for 3 years after it is made.

§ 34.79 Records of training and certification.

Each licensee shall maintain the following records (of training and certification) for 3 years after the record is made:

(a) Records of training of each radiographer and each radiographer's assistant. The record must include radiographer certification documents, certification status verification, copies of written tests, dates of field examinations, and names of individuals conducting the field examinations, and

(b) Records of annual safety reviews and annual inspections for each radiographer and each radiographer's assistant. The records must list the topics discussed during the annual safety review, the dates the annual safety review was conducted, and names of the instructors and attendees. For annual inspections, the records must also include a list showing the items checked and any regulatory non-compliances observed by the RSO.

§ 34.81 Copies of operating and emergency procedures.

Each licensee shall maintain a copy of current operating and emergency procedures until the Commission terminates the license. Superseded material must be retained for 3 years after the change is made.

§ 34.83 Records of personnel monitoring.

Each licensee shall maintain the following exposure records:

(a) Daily pocket dosimeter readings and yearly operability checks for 3 years after the record is made.

(b) Records of alarm ratemeter calibrations for 3 years after the record is made.

(c) Reports received from the film badge or TLD processor until the Commission terminates the license.

(d) Records of estimates of exposures as a result of off-scale pocket dosimeters or lost or damaged film badges or TLDs until the Commission terminates the license.

§ 34.85 Records of radiation surveys.

Each licensee shall maintain a record of each exposure device survey conducted before placing the device in storage in accordance with § 34.49 (d) and (e) for 3 years after the record is made, if that survey is the last one performed in the work day.

§ 34.87 Form of records.

Each record required by this part must be legible throughout the specified retention period. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of reproducing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, must include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

§ 34.89 Documents and records required at field stations and permanent installations.

Each licensee shall maintain copies of the following documents and records sufficient to demonstrate compliance at the field station and permanent installation:

(a) A copy of 10 CFR parts 19, 20, and 34;

(b) The license authorizing the use of licensed material;

(c) Operating and emergency procedures required by § 34.45;

(d) Records of radiation survey instrument calibrations required by § 34.65;

(e) Records of leak test results required by § 34.67;

(f) Quarterly inventory records required by § 34.69;

(g) Utilization records required by § 34.71;

(h) Records of inspection and maintenance required by § 34.73;

(i) For permanent installations, records of alarm system and entrance control checks required by § 34.75;

(j) Training and certification records required by § 34.79;

(k) Survey records required by § 34.85;

(l) Personnel monitoring records as required by § 34.83; and

(m) Records of receipt and transfer of sealed sources required by § 34.63.

§ 34.91 Documents and records required at temporary jobsites and use or storage locations exceeding 180 days.

Each licensee conducting operations at a temporary jobsite shall maintain copies of the following documents and records at the temporary jobsite until the radiographic operation is completed and at any storage location where radioactive material is stored for more than 180 days:

(a) The license authorizing the use of licensed material;

(b) Operating and emergency procedures required by § 34.45;

(c) Evidence of latest calibration of the radiation survey instruments in use at the site required by § 34.65;

(d) Evidence of latest calibrations of alarm ratemeters and operability checks of pocket dosimeters as required by § 34.83;

(e) Latest survey records required by § 34.85;

(f) The shipping papers for the transportation of radioactive materials required by § 71.5 of this chapter; and

(g) When operating under reciprocity pursuant to § 150.20 of this chapter, a copy of the Agreement State license authorizing use of licensed materials.

45. A new subpart F, consisting of § 34.101, is added to read as follows:

Subpart F—Notifications

§ 34.101 Notifications.

(a) In addition to the reporting requirements specified in § 30.50 and under other sections of this chapter, each licensee shall provide a written report to the U.S. Nuclear Regulatory Commission, Division of Industrial and Medical Nuclear Safety, Washington, DC 20555, with a copy to the Director, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

(1) Unintentional disconnection of the source assembly from the control cable;

(2) Inability to retract the source assembly to its fully shielded position and secure it in this position; or

(3) Failure of any component (critical to safe operation of the device) to properly perform its intended function;

(b) The licensee shall include the following information in each report submitted under paragraph (a) of this section, and in each report of overexposure submitted under 10 CFR 20.2203 which involves failure of safety components of radiography equipment:

(1) A description of the equipment problem;

(2) Cause of each incident, if known;

(3) Name of the manufacturer and model number of equipment involved in the incident;

(4) Place, date and time of the incident;

(5) Actions taken to establish normal operations;

(6) Corrective actions taken or planned to prevent recurrence; and

(7) Qualifications of personnel involved in the incident.

(c) The licensee shall notify the appropriate NRC regional office in writing 30 days before conducting radiographic operations or storing radioactive material at any location not listed on the license in excess of 180 days.

46–47. A new subpart G, consisting of § 34.111, is added to read as follows:

Subpart G—Exemptions

§ 34.111 Applications for exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

48–49. A new subpart H, consisting of §§ 34.121–34.123, is added to read as follows:

Subpart H—Violations

§ 34.121 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to these Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act;

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section.

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 34.123 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1952, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under one or more of sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 34 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 34 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 34.1, 34.3, 34.5, 34.8, 34.11, 34.13, 34.111, 34.121, 34.123.

50–52. Appendix A is revised to read as follows:

Appendix A to Part 34—Radiographic Certification

I. Requirements for an Independent Certifying Organization

An independent certifying organization shall:

1. Be an organization such as a society or association, whose members participate in, or have an interest in, the fields of industrial radiography or non-destructive testing;

2. Make its membership available to the general public nationwide that is not restricted because of race, color, religion, sex, age, national origin or handicap;

3. Have a certification program open to nonmembers;

4. Be an incorporated, nationally recognized organization, that is involved in setting national standards of practice within its fields of expertise;

5. Have a permanent full-time staff, a viable system for financing its operations, and a policy- and decision-making review board;

6. Have a set of written organizational by-laws and policies that provide adequate assurance of lack of conflict of interest and a system for monitoring and enforcing those by-laws and policies;

7. Have a committee, whose members can carry out their responsibilities impartially, to review and approve the certification guidelines and procedures, and to advise the organization's staff in implementing the certification program;

8. Have a committee, whose members can carry out their responsibilities impartially, to review complaints against certified individuals and to determine appropriate sanctions;

9. Have written procedures describing all aspects of its certification program, maintain records of the current status of each individual's certification and the administration of its certification program;

10. Have procedures to ensure that certified individuals are provided due process with respect to the administration of its certification program, including the process of becoming certified and any sanctions imposed against certified individuals; and

11. Have procedures to ensure that the individuals proctoring each examination are not employed by the same company or corporation (or a wholly-owned subsidiary of such company or corporation) as any of the examinees;

12. Exchange information about certified individuals with the Commission and other independent certifying organizations and/or Agreement States and allow periodic review of its certification program and related records;

13. Provide a description to the Commission of its procedures for choosing examination sites and for providing an appropriate examination environment.

II. Requirements for Certification Programs

All certification programs must:

1. Require that individuals:

(a) Receive training in the topics set forth in § 34.34(f) of this part, and

(b) Satisfactorily complete a written examination covering these topics;

2. Require applicants for certification to provide documentation that demonstrates that the applicant has:

(a) Received training in the topics set forth in section 34.43(f) to this part;

(b) Satisfactorily completed a minimum period of on-the-job training; and

(c) Has received verification by an Agreement State or a NRC licensee that the applicant has demonstrated the capability of independently working as a radiographer;

3. Include procedures to ensure that all examination questions are protected from disclosure;

4. Include procedures whereby an application or certification would be considered null and void if the applicant or certified individual is prohibited from acting as a radiographer by a regulatory agency at the time of making the application;

5. Provide a certification period of not less than 3 years nor more than 5 years;

6. Include procedures for renewing the certifications and, if the procedures allow renewals without examination, require evidence of recent active full-time employment and annual refresher training;

7. Include procedures whereby an individual's certification may be revoked, suspended, or restricted for willful or significant failure to comply with his or her employer's operating or emergency procedures, or the Commission's or an Agreement State's regulations;

8. Provide for automatic suspension of an individual's certification, based on Commission or Agreement State action prohibiting the individual from acting as a radiographer;

9. Provide for sanctions imposed against certified individuals that are at least as severe as any action taken by the Commission or an Agreement State; and

10. Provide a timely response to inquiries, by telephone or letter, from members of the public, about an individual's certification status.

III. Requirements for Written Examinations

All examinations must be:

1. Designed to test an individual's knowledge and understanding of the topics listed in section 34.43(f) or equivalent Agreement State requirements;

2. Written in a multiple-choice format;

3. Written at a ninth-grade reading comprehension level;

4. Scientifically-analyzed, before use, to ensure that the questions are not biased or misleading, and that the examination of one certifying entity will produce a result equivalent to that of another certifying entity;

5. Tested by at least 50 individuals before being used in an actual examination leading to certification of individuals; and

6. Composed of questions randomly selected from a population of questions that contains ten times as many questions as may be needed for any one examination, to ensure that it is unlikely that an examinee would retake the same examination.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

53. The authority citation for part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

54. A new § 150.15b is added to read as follows:

§ 150.15b Continued Commission authority pertaining to independent certifying organizations.

The Commission reserves the authority to establish minimum standards regarding industrial radiographer certification programs and independent certifying organizations, as described in part 34 of this Chapter, and to identify acceptable certifying entities.

55. In § 150.33, paragraph (b) is revised to read as follows:

§ 150.33 Criminal penalties.

* * * * *

(b) The regulations in part 150 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 150.1, 150.2, 150.3, 150.4, 150.5, 150.7, 150.8, 150.10, 150.11, 150.15, 150.15a, 150.15b, 150.30, 150.31, 150.32, 150.33.

Dated at Rockville, Maryland, this 17th day of February 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Appendix A—Initial Regulatory Flexibility Analysis for Revision of 10 CFR Part 34

The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing industrial radiography. The proposed rule would include additional safety requirements to enhance the level of protection of radiographers and the public and would clarify the regulations so that licensees may have a better understanding of what is expected in radiographic operations. The proposed rule includes a number of updated radiography regulations that have been adopted by many Agreement States. The format of the radiography regulations would be adjusted to place requirements into descriptive categories.

The radiography industry in the United States consists of approximately 700 firms, employing about 20,000 individuals, that perform radioisotope radiography either at fixed locations or at multiple temporary job sites. Of these firms, approximately 200 are NRC licensees employing about 3,400 radiographers with an additional 2,000 radiography supervisors and radiographers' assistants. This estimate is based on 1990 data for the number of individuals monitored for radiation exposure to comply with 10 CFR Part 20. The industry uses an estimated 3,500 radiographic exposure devices that employ either cobalt-60 or iridium-192 radioisotope sources. Roughly one-quarter of the firms conduct radiography at a single location and the other three-quarters work at multiple locations generally referred to as temporary jobsites.

Approximately 90 percent are considered to be "small entities" under the criterion established in Section 605(b) of the Regulatory Flexibility Act of 1980. Most of the radiography licensees are in the business of non-destructive testing in which radiography represents only a part of their total income. A few small firms work only in radiography. Much of the work in the field involves the inspection of welds in bridges, oil, gas, and other pipelines and in the steel framework of commercial buildings under construction so that the success and viability of the industry is closely tied to the economic health of the country. NRC surveys indicated that 76 percent of NRC radiography licensees had annual receipts of over $500,000, and most of the remainder had annual receipts exceeding $250,000.

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), the Commission believes that this rule may, if promulgated, have a significant economic impact on a substantial number of small entities.

The proposed revisions to part 34 are intended to provide additional safety requirements to enhance the level of protection of radiographers and the public and to clarify the regulations so that licensees may have a better understanding of what is expected in radiographic operations. The proposed rule includes a number of radiography regulations which have been adopted by the Agreement States.

The proposed revisions to part 34 can be grouped into major and minor impacts. Of the five major impacts, the proposed requirement to have a second qualified individual at temporary jobsites may have a significant effect on small entities, who would be more likely to use single-person crews. It should be recognized that under the current rule many licensees already need to have, at least, two qualified individuals present at a temporary jobsite to maintain direct surveillance of radiographic operations so as to protect against any unauthorized entry into the restricted area. Therefore, this proposed requirement will only impact those operations where two individuals are not currently required. It was assumed in the draft Regulatory Analysis that approximately 25 percent of NRC licensees who perform radiography at temporary jobsites will need to hire and train additional staff to meet the proposed requirement. Other assumptions used in the draft Regulatory Analysis were that each of these 50 licensees would need to hire 3–4 additional workers, and that the cost of each assistant is $24,000 per year including benefits.

The other major impacts include mandatory certification requirements for radiographers, additional training for radiographers' assistants, a specific requirement for a Radiation Safety Officer (RSO) who meets certain training requirements, requirements for permanent installation alarms, and additional requirements for alarm ratemeters. The estimated costs for all of these changes are significantly less than the costs associated with adopting the two-person rule. The initial costs to certify radiographers is approximately $4080. The initial costs for each licensee to provide an additional eight hours of training for radiographers' assistants is approximately $1,200. The initial costs to provide the additional training required to meet the proposed RSO requirements is $3,700 per RSO. The initial costs to install alarms in permanent installations is estimated to be $3,000. The initial costs to purchase additional upgraded alarm ratemeters is estimated to be $1800. The other proposed revisions which are of a minor nature, would result in initial costs of $700-$800 per licensee.

In addition, the proposed rule includes a reduction in the number of field inspections to be conducted, from quarterly to annual. This reduction would lead to an estimated annual savings to each NRC licensee of approximately $16,000. The proposed rule also includes a reduction in the frequency for radiation survey instrument calibrations from 3 months to 6 months. This reduction would lead to an estimated annual savings to each NRC licensee of approximately $1400.

Of these changes, the costs to adopt the two-person rule may have the most impact on a substantial number of "small entities"; however, the Commission believes that by requiring at least two qualified individuals to always be present when radiographic operations are being conducted, there will be a significant increase in assurance that operational safety measures and emergency procedures will be implemented effectively. The potential for a lowering of the risk of unintended public exposure can be viewed as a potential cost savings to the industry. This proposed rule does not duplicate or conflict with other Federal rules. No other alternative regulatory provisions that would minimize the economic impact on small entities were considered.

[FR Doc. 94–4133 Filed 2–25–94; 8:45 am]
BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–94–4]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials of withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received April 26, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM 1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on February 21, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Rulemaking

Docket No.: 27584.

Petitioner: Mr. Antonio M. DeAngelo.

Regulations Affected: 14 CFR 61.96–61.101.

Description of Rulechange Sought: To repeal the provisions for a recreational pilots license.

Petitioner's Reason for the Request: The petitioner feels the Recreational Pilot's License is not worth the cost; that the Private Pilot's License should be the minimum required; statistics support a lack of pubic support for the Recreational Pilot License; an through the proposed action, one more government control will be eliminated.

Disposition of Petitions

Docket No.: 26729.

Petitioner: Sol Rothkopf.

Sections of the FAR Affected: 14 CFR 91.119(d).

Description of Relief Sought: To require operators of helicopters to maintain at or above 1,500 feet above ground level (AGL) until the helicopter is within 1,500 feet of the landing point and then the helicopter may descend; and on takeoffs, helicopters must be at or above 1,500 feet AGL prior to 1,500 feet from the takeoff point.

Denial, February 2, 1994

[FR Doc. 94–4363 Filed 2–25–94; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 93–NM–126–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes. That action would have required modification of the automatic speed brake control circuit. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has reconsidered its position on this safety issue and has concluded that the proposed modification is unnecessary to provide an acceptable level of safety. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to add a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on September 17, 1993 (58 FR 48616). The proposed rule would have required modification of the automatic speed brake control circuit. That action was prompted by a report of failure of a hydraulic pressure line to a landing gear truck tilt cylinder, which resulted in inadvertent deployment of the automatic speed brake. The proposed actions were intended to prevent inadvertent in-flight operation of the automatic speed brake system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Boeing requests that the proposal be withdrawn. Boeing notes that an AD was not issued when the Boeing service bulletin (referenced in the notice) was released in 1971 because, at that time, neither Boeing nor the FAA considered that there was an unsafe condition addressed. Boeing has carefully examined the scenario of the incident of inadvertent deployment of the automatic speed brake that prompted issuance of the proposal, and finds that the incident did not occur during airline operations, but during a Boeing test flight. Specifically, the incident occurred while the airplane was conducting "touch and go's" (which are not allowed in airline operations), which allowed the landing gear trucks to move out of the fully tilted position and initiated extension of the automatic speed brake. The pilot immediately recognized this and retracted the spoilers manually. (On Boeing Model 747 series airplanes equipped with triple slotted flaps, once the spoilers are retracted, the hydraulic flow redirects to the flaps immediately, and the lift is regained with minimal altitude loss.) Boeing points out that, during this incident, the reported 6-foot loss in altitude occurred when the airplane was at around 100 feet.

Finally, Boeing asserts that the reason for issuance of its service bulletin, containing procedures for installing the modification of the automatic speed

brake control circuit, was not only to add better protection for the circuit, but to minimize the "pitch up" on the ground during landing. If the number four hydraulic system (which powers the inboard spoilers) is inoperative, a "pitch up" would occur with outboard spoilers only. Boeing asserts that the pilot can easily compensate for this condition by using his/her hand and the speed brake levers.

Based upon the information discussed above, Boeing requests that the proposal be withdrawn.

In response to these comments, the FAA acknowledges that issuance of the notice was based on a recommendation of the Systems Review Task Force (SRTF). The SRTF has completed an extensive review process to "* * * determine possible design concepts that will provide alternative means of control of flight critical functions in the event of total loss of all (normal) redundant systems which provide that control * * *" The SRTF's charter was specifically oriented toward identifying alternative means to ensure controllability of airplanes that have lost all normal flight control functions, while maintaining basic airplane structural integrity. The SRTF recommended incorporation of the modification described in Boeing Service Bulletin 27–2066, Revision 1, dated August 20, 1971, which was referenced in the notice.

However, after further study of the Boeing service bulletin and its intent, the FAA has determined that failure to incorporate the modification described in that service bulletin does not degrade the flight safety of the airplane. While the modification adds logic to prevent uncommanded deployment on touchdown for airplanes equipped with auto speed brakes, the effects of such deployment can be readily rectified by manually retracting the spoilers. Although the installation of the proposed modification would add additional protection against inadvertent deployment of the speed brakes and thereby minimize the pitch up on the ground as a result of such deployment, this condition does not cause loss of hydraulics, does not affect airplane symmetry, and does not significantly degrade airplane flight controllability.

Upon further consideration, the FAA has determined that this condition does not present an unsafe condition that would warrant the proposed mandatory corrective action. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 93–NM–126–AD, published in the **Federal Register** on September 17, 1993 (58 FR 48616), is withdrawn.

Issued in Renton, Washington, on February 22, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4449 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–197–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require inspections to detect cracks of certain demountable flange (inboard) wheel subassemblies and of the bolt bosses on certain demountable flange (outboard) wheel subassemblies, and modification or replacement, if necessary. This proposal is prompted by reports of cracks and broken spokes found on certain main wheel assemblies of these airplanes. The actions specified by the proposed AD are intended to prevent loss of a main wheel assembly during takeoff or landing.

DATES: Comments must be received by April 25, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–197–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–197–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–197–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that several operators of Model F28 Mark 0100 series airplanes have reported finding cracks and broken spokes on certain main wheel assemblies, part number 5008131–4. Investigation revealed that the manufacturer of these wheels had discontinued a shot-peening procedure that was part of the manufacturing process prior to April 1991. Subsequently, an improved shot-peening procedure on the mating surfaces of the inboard wheel subassemblies was introduced in October 1992. However, this procedure was not introduced on the outboard wheel subassemblies until February 1993. Consequently, a number of units were produced that are prone to fretting and cracking due to a lack of shot-peening of the assembly mating surfaces and bolt bosses. This condition, if not corrected, could result in loss of a main wheel assembly during takeoff or landing.

Fokker has issued Service Bulletins SBF100–32–070, dated January 18, 1993, and SBF100–32–073, dated September 10, 1993, which reference Aircraft Braking Systems Corporation (ABSC) Service Bulletins Fo100–32–46, dated December 24, 1992, and Fo100–32–48, dated March 10, 1993, as the appropriate sources of service information. The RLD classified these Fokker service bulletins as mandatory and issued Netherlands Airworthiness Directive (BLA) 93–009/3 (A), dated June 1, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

ABSC Service Bulletin Fo100–32–46 describes procedures for eddy current inspections to detect cracks of certain demountable flange (inboard) wheel subassemblies; and, if no cracks are found, modification and subsequent inspections of the subassemblies; and, if cracks are found, replacement of the subassemblies with serviceable parts.

ABSC Service Bulletin Fo100–32–48 describes procedures for eddy current inspections to detect cracks of the bolt bosses of certain demountable flange (outboard) wheel subassemblies; and, if no cracks are found, modification of the subassemblies; and, if cracks are found, replacement of the subassemblies with serviceable parts.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive eddy current inspections to detect cracks of certain demountable flange (inboard) wheel subassemblies and of the bolt bosses of certain demountable flange (outboard) wheel subassemblies, and modification or replacement, if necessary. Replacement of a cracked wheel subassembly terminates certain repetitive inspections required by this AD. The actions would be required to be accomplished in accordance with the ABSC service bulletins described previously.

The FAA estimates that 87 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed inspection and modification, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $66,990, or $770 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 93–NM–197–AD.

Applicability: Model F28 Mark 0100 series airplanes equipped with Aircraft Braking Systems Corporation (ABSC) main wheel assembly, part number 5008131–4, serial numbers APR91–0570 through FEB93–0965 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent loss of a main wheel assembly during takeoff or landing, accomplish the following:

(a) For airplanes equipped with a demountable flange (inboard) wheel subassembly, part number 5008142–4, serial numbers APR91–0570 through OCT92–0858 inclusive, or S–APR91–0097 through S–MAY92–0126 inclusive: Within 100 landings after the effective date of this AD, or at the next tire change, whichever occurs first, perform an eddy current inspection to detect cracks of the wheel subassembly, in accordance with paragraph C. of Section II—Accomplishment Instructions of ABSC Service Bulletin Fo100–32–46, dated December 24, 1992. Repeat this inspection thereafter at intervals not to exceed 500 landings or at each tire change, whichever occurs first.

(1) If no crack is found during any inspection required by paragraph (a) of this AD: Prior to further flight following the third inspection, modify the wheel subassembly in accordance with paragraph D. of Section II—Accomplishments Instructions of the service bulletin. After modification, continue to inspect in accordance with paragraph (a) of this AD. If no crack is found during the first two inspections conducted after modification, no further action is required by this paragraph.

(2) If any crack is found during any inspection required by paragraph (a) of this

AD, prior to further flight, replace the wheel subassembly, part number 5008142–4, with a serviceable part. Such replacement constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(b) For airplanes equipped with a demountable flange (outboard) wheel subassembly, part number 5008140–1, serial numbers APR91–0570 through FEB93–0965 inclusive, or S–MAR91–0002 through S–FEB93–0010 inclusive: Within 100 landings after the effective date of this AD, or at the next tire change, whichever occurs first, perform an eddy current inspection to detect cracks of the bolt bosses of the wheel subassembly, in accordance with paragraph B. of Section II—Accomplishment Instructions of ABSC Service Bulletin Fo100–32–48, dated March 10, 1993. Repeat this inspection thereafter at interals not to exceed 500 landings or at each tire change, whichever occurs first.

(1) If no crack is found during any inspection required by paragraph (b) of this AD: Prior to further flight following the third inspection, modify the wheel subassembly in accordance with paragraph C. of Section II—Accomplishment Instructions of the service bulletin. Such modification constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD.

(2) If any crack is found during any inspection required by paragraph (b) of this AD, prior to further flight, replace the wheel subassembly, part number 5008140–1, with a serviceable part. Such replacement constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD.

(c) After the effective date of this AD, no person shall install any of the following parts on any airplane unless that part has been inspected and modified in accordance with paragraph (a) and/or (b) of this AD, as applicable.

(1) ABSC demountable flange (inboard) wheel subassembly, part number 5008142–4, having serial numbers APR91–0570 through OCT92–0858 inclusive, or S–APR91–0097 through S–MAY92–0126 inclusive;

(2) ABSC demountable flange (outboard) wheel subassembly, part number 5008140–1, having serial numbers APR91–0570 through FEB93–0965 inclusive, or S–MAR91–0002 through S–FEB93–0010 inclusive;

(3) Main wheel assembly, part number 5008131–4, having serial numbers APR91–0570 through FEB 93–0965 inclusive.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 22, 1994.

Darrell M. Pederson,

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1004

RIN 0991–AA73

Health Care Programs: Fraud and Abuse; Revisions to the PRO Sanctions Process

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise and update the procedures governing the imposition and adjudication of program sanctions predicated on recommendations of State Utilization and Quality Control Peer Review Organizations (PROs). These changes are necessitated by statutory revisions addressing health care fraud and abuse issues and the OIG sanctions process. In addition, this proposed rule also sets forth new appeal and reinstatement procedures for practitioners and other persons excluded by the OIG based on a PRO recommendation.

DATES: To assure consideration, public comments must be delivered to the address provided below by April 29, 1994. Comments are available for public inspection March 14, 1994.

ADDRESSES: Address comments to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–73–P, room 5246, 330 Independence Avenue, SW., Washington, DC 20201.

If you prefer, you may deliver your comments to room 5551, 330 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR–73–P. Comments will be available for public inspection in room 5551, 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9 a.m. to 5 p.m., (202) 619–3270.

FOR FURTHER INFORMATION CONTACT:
Joel Schaer, Legislation and Regulations Staff, (202) 619–3270
Joanne Lanahan, Office of Investigations, (410) 965–9609.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Utilization and Quality Control Peer Review Organization (PRO) program was established to ensure that Medicare beneficiaries receive medical care that meets professionally recognized standards. Section 1156 of the Social Security Act (the Act) sets forth specific statutory obligations imposed on practitioners and other persons to furnish necessary services meeting professionally recognized standards. The statute also authorizes the Secretary, based on a PRO's recommendation, to impose sanctions (exclusion from Medicare and any State health care program participation as defined under section 1128 of the Act or a monetary penalty) on those who fail to comply with the statutory obligations.

Under the PRO sanction process, no practitioner or other person is recommended for exclusion or the imposition of a monetary penalty until the PRO provides the opportunity for extensive discussion with the practitioner or other person, and the opportunity to provide additional information. After receipt of a recommendation from a PRO, the Office of Inspector General (OIG) excludes, or imposes a monetary penalty, only after a careful review of all the documentation submitted and a separate determination that the practitioner or other person has violated the statutory obligations to render only medically necessary and appropriate care that meets professionally recognized standards or has failed to provide evidence of medical necessity and quality, and is unwilling or unable to comply with those obligations. A practitioner or other person who is excluded from Medicare and any State health care programs as defined in section 1128(h) of the Act, or assessed a monetary penalty, on the basis of a PRO finding is entitled to administrative and judicial review after the exclusion is imposed or the monetary penalty is assessed.

Recent Statutory Changes

A. Public Law 100–93

Prior to the enactment of Public Law 100–93 (the Medicare and Medicaid Patient and Program Protection Act of 1987), section 1156 of the Act set forth obligations of practitioners and other persons providing care to Medicare patients to provide care that was

medically necessary and appropriate that meets professionally recognized standards of quality, and appropriately documented. It also provided for the exclusion from Medicare of practitioners and other persons who, upon the review and recommendation of a PRO, were found to have violated those obligations. Section 6 of Public Law 100–93 extended those obligations to encompass all health care services for which payment may be made under the Act, and not just Medicare. Further, the exclusion authority was extended to encompass violations occurring in, and exclusions from, Medicaid, the title V Maternal and Child Health Block Grant, and the title XX Social Services Block Grant programs.

B. Public Law 100–203

Section 4095 of Public Law 100–203, the Omnibus Budget Reconciliation Act (OBRA) of 1987, amended section 1156 of the Act to provide that an exclusion of a health care practitioner or other person who practices in a country of less than 70,000 people or in a rural health professional shortage area (HPSA) cannot be effectuated until an opportunity is provided for a preliminary administrative hearing. The purpose of this preliminary hearing is to determine whether the practitioner's or other person's continued program participation, through the conclusion of the administrative proceedings on the merits of the exclusion, would place beneficiaries at serious risk. In accordance with section 1156(b)(5) of the Act, unless the administrative law judge (ALJ) at the preliminary hearing determines that the practitioner or other person will pose a serious risk to Medicare beneficiaries if permitted to continue furnishing such services, the exclusion of a rural practitioner or other person may not be effectuated until they are given an opportunity for an administrative hearing on the merits of the exclusion itself.

C. Public Law 101–508

Section 4205 of Public Law 101–508, OBRA 1990, set forth new statutory requirements with respect to PRO sanction activities. Specifically, the statutory amendments require PROs, if appropriate, to offer a corrective action plan to practitioners and other persons prior to making a finding under section 1156 of the Act; and require the Secretary to consider, in determining whether a practitioner or other person is willing and able to comply with his, her or its obligations, whether the practitioner or other person entered into and successfully completed a corrective action plan prior to the PRO's submission of its recommendation and report to the Secretary.

II. Provisions of the Proposed Rule

A. Inclusion of the OBRA 1990 Provisions Relating to PROs

On January 29, 1992, the OIG published a final rule (57 FR 3298) setting forth amendments to the OIG's exclusion and civil money penalty (CMP) authorities resulting from Public Law 100–93. Specifically, that final rule revised § 1004.130 of the regulations and deleted § 1004.100(g) in its entirety to be consistent with the establishment of a new part 1005—Appeals of exclusions, civil money penalties and assessments—which now governs ALJ hearings and subsequent appeals to the Secretary for all CMP and other OIG sanction cases.

The revisions to 42 CFR part 1004 of that final rule were meant only to conform the regulations to new statutory changes resulting from OBRA 1990, and were not meant to be a comprehensive rewrite of part 1004. This regulation sets forth a more complete and comprehensive rewrite of this part. Among other revisions:

- These proposed regulations would eliminate the current procedural distinction between "substantial" violations and "gross and flagrant" violations. This is an artificially created procedure that has no basis in law or legislative history to provide a distinction between the two types of violations. Experience in processing these cases has shown that the second meeting is just a repeat of the first meeting since the present regulations preclude any new violations identified in the second meeting as serving as the basis for a sanction recommendation. Under these proposed regulations, which are consistent with a recommendation from the Administrative Conference of the United States, an opportunity would be provided for a meeting with the PRO and to provide additional information. The regulations would also provide that any violations of the obligations that are identified during a corrective action plan period would be used to support the PRO's recommendation regarding unwillingness or inability to comply with the statutory obligations.
- These proposed regulations also codify the agreement reached among the American Medical Association, the American Association of Retired Persons, the Health Care Financing Administration, and the Office of Inspector General with regard to PRO physicians involved in the sanctions process. Under this agreement, no physician member of the PRO panel may be in direct competition with, or have a substantial personal bias against, the practitioner or other person being considered for sanction.
- Section 1004.30(e) of these proposed regulations would provide instructions to the PROs on the actions to be taken when a physician relocates after receiving a sanction notice.
- Among the factors considered by the OIG in imposing an exclusion, in addition to the practitioner's or other person's previous sanction record, are any prior problems that such person has had with the Medicare carrier or intermediary. We are now proposing to include as an additional factor any prior problems that any State health care program has had with such practitioner or other person.
- The current language of § 1004.90(b)(1) concerning the OIG's review responsibilities (that would now be designated as § 1004.100(b)(1)) would be modified to state that the OIG will review the PRO report to determine whether the PRO followed the "regulatory requirements of part 1004."
- The existing definition of the term "physician" appearing in § 1004.1 would be deleted in order to conform with the HCFA definition of this term.

B. Preliminary Hearings

These proposed regulations would amend part 1004 by allowing a practitioner or other person in specified rural areas or counties of a specified population to request a preliminary hearing when notified of an exclusion from participation in the Medicare program by the OIG as a result of a PRO recommendation under section 1156(b) of the Act. The preliminary hearing would be solely on the issue of whether such practitioner's or other person's continued participation in the program during the appeal to an ALJ would place program beneficiaries at serious risk.

Criteria for entitlement. Entitlement to such a preliminary hearing would apply to providers or practitioners for whom an exclusion is proposed who practice in a rural Health Professional Shortage Area (HPSA) for their specialty or in a county with a population of less than 70,000. For purposes of this entitlement, a practitioner's or other person's practice is where over 50 percent of his, her or its services are rendered.

Health professional shortage areas are designated by the Secretary and are defined in regulations at 42 CFR 5.2. Since HPSAs are not specifically designated by rural or urban classifications, we are proposing that any HPSA not located in a Metropolitan Statistical Area (MSA) would be

considered a rural HPSA for purposes of these regulations. Both section 1886(d)(2) of the Act and regulations at 42 CFR 412.62(f) use these MSAs as the basis for determining an urban area or rural area for computing Medicare prospective payment rates. Although Public Law 100–203 divided the definition of urban into large urban and other urban areas, it did not change the differentiation between urban and rural. Therefore, we are proposing to classify any HPSA not located in a MSA as rural.

There are seven different HPSA specialty categories. These HPSA specialty categories are described in current regulations at 42 CFR part 5, Appendices A through G, and include primary medical care, dental, psychiatric, vision care, podiatric, pharmacy and veterinary manpower. In determining eligibility for a preliminary hearing, we are proposing to use these categories for all practitioners and other persons to whom they apply. For all practitioners not covered by the specialty categories, we are proposing to use the "primary medical care" specialty category for determining eligibility for a preliminary hearing. This means that any practitioner who practices a specialty other than those identified in 42 CFR part 5 will be regarded as practicing in a rural HPSA only if that area is designated as an HPSA for "primary medical care."

The "primary medical care" category will also be used for all other persons and facilities, e.g., hospitals, with the exception of those "other persons" qualified under the "psychiatric" manpower category.

Information on a county's population size would be obtained by the OIG from the responsible officials of that county.

Timeframes for hearing. The proposed regulations provide that a practitioner's or other person's request for a preliminary hearing must be received within 15 days of receipt of an OIG exclusion notice. Once such a request is received, the preliminary hearing is to be held and a decision rendered on the "serious risk" issue within 45 days. In those cases where the ALJ grants a stay of the exclusion, a full hearing must be held and a decision rendered within six months. These timeframes developed for the ALJs are intended to balance the right of a "rural" practitioner or other person to receive timely due process against the OIG responsibility to ensure that substandard or unnecessary health care services are not provided to program beneficiaries.

C. Sanctions Notification Process

Section 1156(b)(2) of the Act requires reasonable notice to the public of a sanction action being taken against a practitioner or other person based on the PRO's recommendation. Under the current implementing regulations, when a sanction action is taken by the OIG against a practitioner or other person, the OIG is required to notify the general public of such action. This notice to the public specifically identifies: (1) The sanctioned practitioner or other person; (2) the obligation that has been violated by this person; (3) the specific sanction action imposed; and (4) if the sanction is an exclusion, the effective date and duration of this action.

While this public notification process has worked well in most instances, we believe the present publication procedure may not always yield the most effective results of informing affected parties and program beneficiaries of a specific sanction action taken under the program. As a result, we are considering permitting practitioners and other persons to select an alternative method of notification.

These proposed regulations would amend 42 CFR part 1004 to offer sanctioned health care practitioners and other persons the option of informing all their patients directly of a sanction action taken against them. If they select this option and comply with its requirements in a timely fashion, this compliance would constitute public notice and would replace the public notice currently published by the OIG. Among other things, a practitioner or other person opting for this method of notification would be required to certify to the Department that they have undertaken to inform all their patients of the action taken and, in the case of exclusion, that they will notify new patients before furnishing services.

Method of direct notification of patients by practitioner or other person. We considered a variety of methods for practitioners and other persons to notify and inform patients of a sanction action. For example, we considered having the sanctioned party (1) post a sign in his, her or its office; (2) verbally communicate the information to patients when they called for an appointment or came to an office visit; or (3) send written notification to each of his, her or its patients. After evaluating the options, we believe that the first two methods indicated above would not effectively meet the proposed requirement that all existing patients be informed within 30 calendar days since it is unlikely that all of these patients would make an appointment or come for an office visit in the specified period. In addition, the Department would be unable to verify that the proper information had been adequately conveyed to the patients if either of the first two notification methods were selected.

We, therefore, propose that each sanctioned practitioner or other person opting for this alternative notification procedure alert both his, her or its existing patients and all new patients through written notification based on a suggested (non-mandatory) model that will be provided to the sanctioned individual by the OIG. If the sanctioned party is a hospital, the hospital would be required to notify all physicians having privileges at the hospital, as well as post a sign in its emergency room, business office and in all affiliated entities regarding its sanction. (Practitioners and other persons must also notify all new patients orally at the time an appointment is set to provide services, as well as provide written notification to such patients at the time they arrive to see the provider for treatment or services.) We believe that only through this method can the OIG assure that all patients are properly informed of a sanction action.

Certification of notice to patients. If the sanctioned practitioner or other person chooses to use the alternative notification approach, he, she or it would be given 30 calendar days from receipt of the notification from the OIG to return an OIG-prepared certification form stating that: (1) He, she or it has informed each of their existing patients that a sanction has been imposed; (2) if excluded from Federal programs, the program will not pay for items and services ordered, furnished or prescribed by the practitioner or other person and that this ban will remain in effect until the practitioner or other person is reinstated; (3) if excluded, he, she or it will provide this information, prior to providing services, to any new patient seen until he, she or it is reinstated; and (4) he, she or it certifies to the truthfulness and accuracy of the notification and the statements in the certification.

Non-election of the alternative method of notification. If the sanctioned practitioner or other person does not elect this alternative method of notification of informing his, her or its patients and returning the certification form within the proposed 30-day period, the OIG would follow its standard procedure for public notification, which consists of notifying the public directly of the identity of the sanctioned practitioner or other person, the obligation that has been violated, and the effective date and duration of any exclusion.

Failure to comply with alternative method of notification after electing such method. If the sanctioned practitioner or other person elects the alternative method of notification by returning the certification form within the proposed 30-day period, but the OIG receives reliable evidence that such practitioner or other person has not adequately informed his, her or its new and existing patients of the sanction, the OIG would follow its standard procedure for public notification as described above. Once a practitioner or other person has elected the alternative notification option by returning the certification form to the OIG, his, her or its failure to follow through and fully comply with the notification requirements will be considered adversely at the time of his, her or its application for reinstatement.

In order to ensure that patient notification is enforced and provided in a timely manner so that patients are not at risk of receiving poor quality of care, we are soliciting comments on how best to enforce this provision. Under this proposed approach, when the OIG learns through patient complaints or other forms that the practitioner or other person has not fully complied, the IG at that point may additionally consider specific action to remedy the situation, such as pursuing penalties for the filing of a false statement. Comments on this alternative notice process and on whether this enforcement approach is reasonable and effective are specifically invited.

Notification of other entities. Under this proposed revision, as under the current regulations, the OIG would continue its practice of notifying hospitals at which a sanctioned practitioner has privileges, as well as State licensing boards and other entities, of any sanction action taken.

III. Additional Information

A. Regulatory Impact Statement

The Office of Management and Budget has reviewed this proposed rule in accordance with the provisions of Executive Order 12866. As indicated above, the revisions contained in this proposed rule are intended to revise and update administrative procedures governing the imposition and adjudication of program sanctions, based on PRO recommendations, against practitioners and other persons who violate the statute. We believe that the great majority of practitioners and other persons do not engage in such prohibited activities and practices, and that the aggregate economic impact of these provisions should, in effect, be minimal, affecting only those who have engaged in prohibited behavior in violation of statutory intent. As such, these regulations should have no direct effect on the economy or on Federal or State expenditures.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. While some sanctions and penalties may have an impact on small entities, we do not anticipate that a substantial number of these small entities would be significantly affected by this rulemaking. Therefore, since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a number of small business entities, we have not prepared a regulatory flexibility analysis.

B. Response to Comments

Because of the number of comments we normally receive on proposed regulations, we cannot acknowledge or respond to each letter individually. Rather, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble of that rule.

List of Subjects in 42 CFR Part 1004

Administrative practice and procedure, Health facilities, Health professions, Medicare, Peer Review Organizations, Penalties, Reporting and recordkeeping requirements.

Part 1004 would be revised be read as follows:

PART 1004—IMPOSITION OF SANCTIONS ON HEALTH CARE PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES BY A PEER REVIEW ORGANIZATION

Subpart A—General Provisions

Sec.
1004.1 Scope and definitions.

Subpart B—Sanctions Under the PRO Program; General Provisions

1004.10 Statutory obligations of practitioners and other persons.
1004.20 Sanctions.

Subpart C—PRO Responsibilities

1004.30 Basic responsibilities.
1004.40 Action on identification of a violation.
1004.50 Meeting with a practitioner or other person.
1004.60 PRO determination of a violation.
1004.70 PRO action on final determination of a violation.
1004.80 PRO report to the OIG.
1004.90 Basis for recommended sanction.

Subpart D—OIG Responsibilities

1004.100 Acknowledgement and review of report.
1004.110 Notice of sanction.

Subpart E—Effect and Duration of Exclusion

1004.120 Effect of an exclusion on program payments and services.
1004.130 Reinstatement after exclusion.

Subpart F—Appeals

1004.130 Appeal rights.

Authority: 42 U.S.C. 1302 and 1320c–5.

Subpart A—General Provisions

§ 1004.1 Scope and definitions.

(a) *Scope.* This part implements section 1156 of the Act (PROs) by—

(1) Setting forth certain obligations imposed on practitioners and providers of services under Medicare;

(2) Establishing criteria and procedures for the reports required from PROs when there is failure to meet those obligations;

(3) Specifying the policies and procedures for making determinations on violations and imposing sanctions; and

(4) Defining the procedures for appeals by the affected party and the procedures for reinstatements.

(b) *Definitions.* As used in this part, unless the context indicates otherwise—

Dentist is limited to licensed doctors of dental surgery or dental medicine.

Economically means the services are provided at the least expensive, medically appropriate type of setting or level of care available.

Exclusion means that items and services furnished or ordered (or at the medical direction or on the prescription of a physician) by a specified health care practitioner, provider or other person during a specified period are not reimbursed under titles V, XVIII, XIX, or XX of the Social Security Act.

Gross and flagrant violation means a violation of an obligation has occurred in one or more instances which presents an imminent danger to the health, safety or well-being of a program patient or places the program patient unnecessarily in high-risk situations.

Health care service or services means services or items for which payment may be made (in whole or in part) under the Medicare or State health care programs.

Health professional shortage area (HPSA) means an area designated by the Secretary and defined in 42 CFR 5.2.

Metropolitan Statistical Area means an area as defined by the Executive Office of Management and Budget.

Obligation means any of the obligations specified at section 1156(a) of the Act.

Other person means a hospital or other health care facility, an organization or an agency that provides health care services for which payment may be made (in whole or in part) under the Medicare or State health care programs.

Pattern of care means that the care under question has been demonstrated in more than three instances.

Pharmacy professional is a term limited to individuals who are licensed or registered to provide pharmaceutical services.

Podiatric professional is a term limited to licensed doctors of podiatric medicine.

Practice area means the location where over 50 percent of the practitioner's or other person's patients are seen.

Practitioner means a physician or other health care professional licensed under State law to practice his or her profession.

Primary medical care professional is a term limited to (i) licensed doctors of medicine and doctors of osteopathy providing direct patient care who practice in the fields of general or family practice, general internal medicine, pediatrics, obstetrics and gynecology, surgery, and any other specialty that is not accommodated by the remaining specialty HPSA designator, or (ii) those facilities where care and treatment is provided to patients with health problems other than mental disorders.

PRO area means the geographic area subject to review by a particular PRO.

Provider means a hospital or other health care facility, agency, or organization.

Psychiatric professional is a term limited to licensed doctors of medicine who limit their practice to psychiatry or to those facilities where care and treatment is limited to patients with mental disorders.

Rural means any area outside an urban area.

Rural health professional shortage area means any health professional shortage area located outside a Metropolitan Statistical Area.

Sanction means an exclusion or monetary penalty that the Secretary may impose on a practitioner or other person as a result of a recommendation from a PRO.

Serious risk includes situations that may involve the risk of unnecessary treatment, prolonged treatment, lack of treatment, incorrect treatment, medical complication, premature discharge, physiological or anatomical impairment, disability, or death.

State health care program means a State plan approved under title XIX, any program receiving funds under title V or from an allotment to a State under such title, or any program receiving funds under title XX or from an allotment to a State under such title.

Substantial violation in a substantial number of cases means a pattern of providing care that is inappropriate, unnecessary, or does not meet recognized professional standards of care, or is not supported by the necessary documentation of care as required by the PRO.

Urban means a Metropolitan Statistical Area as defined by the Executive Officer of Management and Budget.

Vision care professional is a term limited to licensed doctors of medicine who limit their practice to ophthalmology and to doctors of optometry.

Subpart B—Sanctions Under the PRO Program; General Provisions

§ 1004.10 Statutory obligations of practitioners and other persons.

It is the obligation of any health care practitioner or other person who furnishes or orders health care services that may be reimbursed under the Medicare or State health care programs to ensure, to the extent of his or her or its authority, that those services are—

(a) Provided economically and only when, and to the extent, medically necessary;

(b) Of a quality that meets professionally recognized standards of health care; and

(c) Supported by evidence of medical necessity and quality in the form and fashion and at such time that the reviewing PRO may reasonably require (including copies of the necessary documentation and evidence of compliance with pre-admission or pre-procedure review requirements) to ensure that the practitioner or other person is meeting the obligations imposed by section 1156(a) of the Act.

§ 1004.20 Sanctions.

In addition to any other sanction provided under law, a practitioner or other person may be—

(a) Excluded from participating in programs under titles V, XVIII, XIX, and XX of the Social Security Act; or

(b) In lieu of exclusion and as a condition for continued participation in titles V, XVIII, XIX, and XX of the Act, if the violation involved the provision or ordering (or at the medical direction or the prescription of a physician) of health care services that were medically improper or unnecessary, required to pay an amount not in excess of the cost of the improper or unnecessary services that were furnished or ordered (and prescribed, if appropriate). The practitioner or other person will be required either to pay the monetary assessment within 6 months of the date of notice or have it deducted from any sums the Federal government owes the practitioner or other person.

Subpart C—PRO Responsibilities

§ 1004.30 Basic responsibilities.

(a) The PRO must use its authority or influence to enlist the support of other professional or government agencies to ensure that each practitioner or other person complies with the obligations specified in § 1004.10.

(b) When the PRO identifies situations where the obligations specified in § 1004.10 are violated, it will afford the practitioner or other person reasonable notice and opportunity for discussion and, if appropriate, a suggested method for correcting the situation and a time period for a corrective action in accordance with §§ 1004.40 and 1004.60.

(c) The PRO must submit a report to the OIG after the notice and opportunity provided under paragraph (b) of this section and, if appropriate, the opportunity to enter into and complete a corrective action plan if the PRO determines that the practitioner or other person has—

(1) Failed substantially to comply with any obligation in a substantial number of instances; or

(2) Grossly and flagrantly violated any obligation in one or more instances.

(d) The PRO report to the OIG must comply with the provisions of § 1004.80.

(e) If a practitioner or other person relocates to another PRO area prior to a determination of a violation or sanction recommendation, and the originating PRO—

(1) Is able to make a determination, the originating PRO must, as appropriate, close the case or forward a sanction recommendation to the OIG; or

(2) Cannot make a determination, the originating PRO must forward all documentation regarding the case to the PRO with jurisdiction, and notify the practitioner or other person of this action.

(f) The PRO must deny payment for services or items furnished or ordered (or at the medical direction or on the prescription of an excluded physician) by an excluded practitioner or other person when the PRO identifies the services or items. It must report the findings to the Health Care Financing Administration.

§ 1004.40 Action on identification of a violation.

When a PRO identifies a violation, it must—

(a) Indicate whether the violation is a gross and flagrant violation or is a substantial violation in a substantial number of cases; and

(b) Send the practitioner or other person written notice of the identification of a violation containing the following information—

(1) The obligation(s) involved;

(2) The situation, circumstances or activity that resulted in a violation;

(3) The authority and responsibility of the PRO to report violations of obligations;

(4) A suggested method for correcting the situation and a time period for corrective action, if appropriate;

(5) The sanction that the PRO could recommend to the OIG if the violation continues;

(6) The right of the practitioner or other person to submit to the PRO within 30 days of receipt of the notice additional information or a written request for a meeting with the PRO to review and discuss the finding, or both. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary. The notice will also state that if a meeting is requested—

(i) It will be held within 30 days of receipt by the PRO of the request, but may be extended for good cause;

(ii) The practitioner or other person may have an attorney present; and

(iii) The attorney, if present, will be permitted to make opening and closing remarks, ask clarifying questions at the meeting and assist the practitioner or other person in presenting the testimony of expert witnesses who may appear on the practitioner's or other person's behalf; and

(7) A copy of the material used by the PRO in arriving at its finding.

§ 1004.50 Meeting with a practitioner or other person.

If the practitioner or other person requests a meeting with the PRO—

(a) The PRO panel that meets with the practitioner or other person must consist of a minimum of 3 physicians;

(b) No physician member of the PRO panel may be in direct economic competition with the practitioner or other person being considered for sanction;

(c) The PRO must ensure that no physician member of the PRO panel has a substantial personal bias against the practitioner or other person being considered for sanction;

(d) At least one member of the PRO panel meeting with the practitioner or other person should practice in a similar area, e.g., urban or rural, and at least one member of the panel must be in the same specialty (both requirements could be met by a single individual);

(e) If the practitioner or other person has an attorney present, that attorney will be permitted to make opening and closing remarks, ask clarifying questions and assist the practitioner or other person in presenting the testimony of expert witnesses who may appear on the practitioner's or other person's behalf;

(f) A reviewing physician who recommends to the PRO that a practitioner or other person be sanctioned may not vote on the sanction panel's determination;

(g) The PRO may allow the practitioner or other person 5 working days after the meeting to provide the PRO additional relevant information that may affect its decision; and

(h) A verbatim record must be made of the meeting and must be made available to the practitioner or other person promptly.

§ 1004.60 PRO determination of a violation.

(a) On the basis of any additional information received, the PRO will affirm or modify its finding. If the PRO affirms its findings, it may suggest in writing a method for correcting the situation and a time period for corrective action. This CAP could correspond with, or be a continuation of, a prior CAP or be a new proposal based on additional information received by the PRO. If the issue has been resolved to the PRO's satisfaction, the PRO may modify its initial finding and close the case.

(b) The PRO must give written notice to the practitioner or other person of any action it takes as a result of the additional information received, as specified in § 1004.70.

(c) At least one member of the PRO who is a participant in the finding to recommend to the OIG that a practitioner or other person be sanctioned should practice in a similar area, e.g. urban or rural, and at least one member of the panel must be in the same specialty. Both requirements could be met by a single individual. In addition, no one at the PRO who is a participant in such a finding may be in direct economic competition with, or have a substantial bias against, the practitioner or other person being recommended for sanction.

§ 1004.70 PRO action on final determination of a violation.

If the issue is not resolved to the PRO's satisfaction as specified in § 1004.60(a), the PRO must—

(a) Submit its report and recommendation to the OIG;

(b) Send the affected practitioner or other person a concurrent final notice, with a copy of all the material that is being forwarded to the OIG, advising that—

(1) The PRO recommendation has been submitted to the OIG;

(2) The practitioner or other person has 30 days from receipt of this final notice to submit any additional written material or documentary evidence to the OIG at its headquarters location. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary; and

(3) Due to the 120-day statutory requirement specified in § 1004.100(e), the period for submitting additional information will not be extended and any material received by the OIG after the 30-day period will not be considered; and

(c) Provide notice to the State medical board or to other appropriate licensing boards for other practitioner types when it submits a report and recommendation to the OIG with respect to a physician whom the board is responsible for licensing.

§ 1004.80 PRO report to the OIG.

(a) *Manner of reporting.* If the violation(s) identified by the PRO have not be resolved, it must submit a report and recommendation to the OIG at the field office with jurisdiction.

(b) *Content of report.* The PRO report must include the following information—

(1) Identification of the practitioner or other person and, when applicable, the name of the director, administrator or owner of the entity involved;

(2) The type of health care services involved;

(3) A description of each failure to comply with an obligation, including specific dates, places, circumstances and other relevant facts;

(4) Pertinent documentary evidence;

(5) Copies of written correspondence, including reports of conversations with the practitioner or other person regarding the violation and, if applicable, a copy of the verbatim transcript of the meeting with the practitioner or other person;

(6) The PRO's determination that an obligation under section 1156(a) of the

Act has been violated and that the violation is substantial and has occurred in a substantial number of cases or is gross and flagrant;

(7) A case-by-case analysis and evaluation of any additional information provided by the practitioner or other person in response to the PRO's initial determination;

(8) A copy of the corrective action plan that was developed and documentation of the results of such plan or an explanation of why such a corrective action plan was not appropriate. Any violations identified during the corrective action plan will be used to support the PRO's recommendation regarding inability or unwillingness in accordance with § 1004.80(c)(6) and not as a basis for the sanction;

(9) The number of admissions by the practitioner or other person reviewed by the PRO during the period in which the violation(s) were identified;

(10) The professional qualifications of the PRO's reviewers; and

(11) The PRO's sanction recommendation.

(c) *PRO recommendation.* The PRO must specify in its report—

(1) The sanction recommended;

(2) The amount of the monetary penalty recommended, if applicable;

(3) The period of exclusion recommended, if applicable;

(4) The availability of alternative sources of services in the community with supporting information;

(5) The county or counties in which the practitioner or other person furnishes services; and

(6) A recommendation with supporting documentation as to whether the practitioner or other person is unable or unwilling substantially to comply with the obligation that was violated and the basis for that recommendation.

§ 1004.90 Basis for recommended sanction.

The PRO's specific recommendation must be based on documentation provided to the OIG showing its consideration of—

(a) The type of offense involved;

(b) The severity of the offense;

(c) The deterrent value;

(d) The practitioner's or other person's previous sanction record;

(e) The availability of alternative sources of services in the community; and

(f) Any other factors that the PRO considers relevant, such as the duration of the problem.

Subpart D—OIG Responsibilities

§ 1004.100 Acknowledgement and review of report.

(a) *Acknowledgement.* The OIG will inform the PRO of the date it received the PRO's report and recommendation.

(b) *Review.* The OIG will review the PRO report and recommendation to determine whether—

(1) The PRO has followed the regulatory requirements of part 1004;

(2) A violation has occurred; and

(3) The practitioner or other person has demonstrated an unwillingness or lack of ability substantially to comply with an obligation.

(c) *Rejection of the PRO recommendation.* If the OIG decides that a sanction is not warranted, it will notify the PRO that recommended the sanction, the affected practitioner or other person, and the licensing board informed by the PRO of the sanction recommendation that the recommendation is rejected.

(d) *Decision to sanction.* If the OIG decides that a violation of obligations has occurred, it will determine the appropriate sanction by considering—

(1) The recommendation of the PRO;

(2) The type of offense;

(3) The severity of the offense;

(4 The previous sanction record of the practitioner or other person;

(5) The availability of alternative sources of services in the community;

(6) Any prior problems the Medicare or State health care programs have had with the practitioner or other person;

(7) Whether the practitioner or other person is unable or unwilling to comply substantially with the obligations, including whether he, she or it entered into a corrective action plan prior to the PRO's recommendation and, if so, whether he, she or it successfully completed such corrective action plan; and

(8) Any other matters relevant to the particular case.

(e) *Exclusion sanction.* If the PRO submits a recommendation for exclusion to the OIG, and a determination is not made by the 120th day after actual receipt by the OIG, the exclusion sanction recommended will become effective and the OIG will provide notice in accordance with § 1004.110(f).

(f) *Monetary penalty.* If the PRO recommendation is to assess a monetary penalty, the 120-day provision does not apply and the OIG will provide notice in accordance with § 1004.110(a)–(e).

§ 1004.110 Notice of sanction.

(a) The OIG must notify the practitioner or other person of the adverse determination and of the sanction to be imposed.

(b) The sanction is effective 15 days from the date of receipt of the notice. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary.

(c) The notice must specify—(1) The legal and factual basis for the determination;

(2) The sanction to be imposed:

(3) The effective date and, if appropriate, the duration of the exclusion;

(4) The appeal rights of the practitioner or other person;

(5) The opportunity to provide alternative notification; and

(6) In the case of exclusion, the earliest date on which the OIG will accept a request for reinstatement.

(d) Patient notification: (1)(i) The OIG will provide a sanctioned practitioner or other person an opportunity to elect to inform each of their patients of the sanction action. In order to elect this option, the sanctioned practitioner or other person must, within 30 calendar days from receipt of the OIG notice, inform both new and existing patients through written notification—based on a suggested (non-mandatory) model provided to the sanctioned individual by the OIG—of the sanction and, in the case of an exclusion, its effective date and duration. In addition, the practitioner or other person must notify all new patients orally at the time such prospective patients set an appointment for the provision of services. If the sanctioned party is a hospital, it must notify all physicians having privileges at the hospital, and must post a notice in its emergency room, business office and in all affiliated entities regarding the exclusion. The date of receipt is presumed to be 5 days after the date of the notice, unless there is a reasonable showing to the contrary. Within this time period, the practitioner or other person must also sign and return the certification that the OIG will provide with the notice.

(ii) The certification will provide that the practitioner or other person—

(A) Has informed each of his, her or its patients in writing that the practitioner or other person has been sanctioned, or if a hospital, has informed all physicians having privileges at the hospital that it has been sanctioned;

(B) If excluded from Federal programs, has informed his, her or its existing patients in writing that the programs will not pay for items and services furnished or ordered (or at the medical direction or on the prescription of an excluded physician) by the practitioner or other person until they are reinstated, or if a hospital, has provided this information to all physicians having privileges at that hospital;

(C) If excluded from Federal programs, will provide new patients—or if a hospital, physicians requesting privileges at that hospital—oral information of both the sanction and that the programs will not pay for services provided prior to furnishing or ordering (or in the case of an excluded physician, medically directing or prescribing) services, and written notification at the time of the provision of services;

(D) If excluded from Federal programs and is an entity such as a hospital, will post a notice in its emergency room, business office and in all affiliated entities that the programs will not pay for services provided prior to furnishing or ordering services; and

(E) Certifies to the truthfulness and accuracy of the notification and the statements in the certification.

(2) If the sanctioned practitioner or other person does not inform his or her patients *and* does not return the required certification within the 30-day period, or if the sanctioned practitioner or other person returns the certification within the 30-day period but the OIG obtains reliable evidence that such person nevertheless has not adequately informed new and existing patients of the sanction, the OIG will see that the public is notified directly of the identity of the sanctioned practitioner or other person, the obligation that has been violated, and the effective date and duration of any exclusion.

(3) If the sanctioned practitioner or other person is entitled to a preliminary hearing in accordance with § 1004.140(a) and requests such a preliminary hearing, he, she or it would have 30 days, from the date of receipt of the administrative law judge's (ALJ's) decision that he, she or it poses a risk to program beneficiaries, to provide certification to the OIG in accordance with § 1004.110(d)(1). The date of receipt is presumed to be 5 days after the date of the ALJ's decision, unless there is a reasonable showing to the contrary.

(e) Notice of the sanction is also provided to the following entities as appropriate—

(1) The PRO that originated the sanction report;

(2) PROs in adjacent areas;

(3) State Medicaid fraud control units and State licensing and accreditation bodies;

(4) Appropriate program contractors and State agencies;

(5) Hospitals, including the hospital where the sanctioned individual's case originated and where the individual currently has privileges, if known; skilled nursing facilities, home health agencies, and health maintenance organizations and Federally-funded community health centers where the practitioner or other person works;

(6) Medical societies and other professional organizations; and

(7) Medicare carriers and fiscal intermediaries, health care prepayment plans and other affected agencies and organizations.

(f) If an exclusion sanction is not effected because a decision was not made within 120 days after receipt of the PRO recommendation, notification is as follows—

(1) The OIG notifies the practitioner or other person that the exclusion is effective 20 days from the date of the notice;

(2) Notice of the sanction is also provided as specified in paragraph (e) of this section; and

(3) As soon as possible after the 120th day, the OIG will issue a notice to the practitioner or other person affirming the PRO recommendation or modifying the recommendation based on the OIG's review of the case.

Subpart E—Effect and Duration of Exclusion

§ 1004.120 Effect of an exclusion on program payments and services.

The effect of an exclusion is set forth in § 1001.1901 of this chapter.

§ 1004.130 Reinstatement after exclusion.

A practitioner or other person who has been excluded in accordance with this part may apply for reinstatement at the end of the period of exclusion. The OIG will consider any request for reinstatement in accordance with provisions of §§ 1001.3001 through 1001.3005 of this chapter.

Subpart F—Appeals

§ 1004.140 Appeal rights.

(a) *Right to preliminary hearing.* (1)(i) A practitioner or other person excluded from participation in Medicare and any State health care programs under section 1156 of the Act may request a preliminary hearing if the location where services are rendered to over 50 percent of the practitioners's or other person's patients at the time of the exclusion notice is in a rural HPSA or in a county with a population of less than 70,000.

(ii) Unless the practitioner's or other person's practice meets the definition for psychiatric professional, vision care professional, dental professional, podiatric professional or pharmacy professional, the HPSA used by the OIG for determination of entitlement to a preliminary hearing will be the HPSA list for primary medical care professional.

(iii) Information on the population size of a county in order to determine entitlement to a preliminary hearing will be obtained by the OIG from the responsible officials of that county.

(2)(i) A request for a preliminary hearing must be made in writing and received by the Departmental Appeals Board (DAB) no later than the 15th day after the notice of exclusion is received by a practitioner or other person. The date of receipt of the notice of exclusion by the practitioner or other person is presumed to be 5 days after the date appearing on the notice, unless there is a reasonable showing to the contrary.

(ii) A request for a preliminary hearing will stay the effective date of the exclusion pending a decision of the ALJ at the preliminary hearing, and all the parties informed by the OIG of the exclusion will be notified of the stay.

(iii) A request for a preliminary hearing received after the 15-day period has expired will be treated as a request for a hearing before an ALJ in accordance with paragraph (b) of this section.

(iv) If the practitioner or other person exercises his, her or its right to a preliminary hearing, such a hearing must be held by the ALJ in accordance with paragraph (a)(3)(i) of this section unless the OIG waives it in accordance with paragraph (a)(6)(i) of this section.

(v) The ALJ cannot consolidate the preliminary hearing with a full hearing without the approval of all parties to the hearing.

(3)(i) The preliminary hearing will be conducted by an ALJ of the DAB in a city that the ALJ deems equitable to all parties. The ALJ will conduct the preliminary hearing and render a decision no later than 45 days after receipt of the request for such a hearing by the DAB. Date of receipt by the DAB is presumed to be 5 days after the date on the request for a preliminary hearing, unless there is a reasonable showing to the contrary. A reasonable extension to the 45-day period of up to 15 days may be requested by any party to the preliminary hearing and such a request may be granted upon concurrence by all parties to the preliminary hearing. Such request must be received no later than 15 days prior to the scheduled date of the preliminary hearing.

(ii) The only issue to be heard and decided on at the preliminary hearing is whether the practitioners's or other person's continued participation in the Medicare and State health care programs during the appeal of the exclusion before an ALJ would place program beneficiaries at serious risk.

(iii) In the interest of time, the ALJ may issue an oral decision to be followed by a written decision.

(iv) In those cases where the ALJ has stayed an exclusion after a preliminary hearing, a full hearing must be held and a decision rendered by the ALJ within 6 months. If, for any reason, the request for a full hearing before the ALJ is withdrawn or dismissed, the exclusion for the period that has not been served will be effective 5 days after the notice of the withdrawal or dismissal is received in the OIG headquarters.

(4) The preliminary hearing decision is not appealable or subject to further administrative or judicial review.

(5) A practitioner or other person found at the preliminary hearing not to place program beneficiaries at serious risk, but later determined to have been properly excluded from program participation after a full hearing before an ALJ, is not entitled to have the exclusion stayed further during an appeal to the DAB. Exclusions in such instances will be effective 5 days after receipt of the ALJ decision in the OIG headquarters.

(6)(i) After notice of a timely request for a preliminary hearing, the OIG may determine that the practitioner's or other person's continued program participation during the appeal before the ALJ will not program beneficiaries at serious risk and waive the preliminary hearing. Under these circumstances, the exclusion will be stayed pending the decision of the ALJ after a full hearing. The hearing must be held, and a decision reached, within 6 months.

(ii) If the OIG decides to waive the preliminary hearing, the request for the preliminary hearing will be considered a request for a hearing before the ALJ in accordance with paragraph (b) of this section.

(b) *Right to administrative review.* (1) A practitioner of other person dissatisfied with an OIG determination, or an exclusion that results from a determination not being made within 120 days, is entitled to appeal such sanction in accordance with part 1005 of this chapter.

(2) Due to the 120-day statutory requirement specified in § 1004.100(e), the following limitations apply—

(i) The period of time for submitting additional information will not be extended.

(ii) Any material received by the HHS after the 30-day period allowed will not be considered by the ALJ or the DAB.

(3) The OIG's determination continues in effect unless reversed by a hearing.

(c) *Rights to judicial review.* Any practitioner or other person dissatisfied with a final decision of the Secretary may file a civil action in accordance with the provisions of section 205(g) of the Act.

Dated: October 18, 1993.

Bryan B. Mitchell,

Principal Deputy Inspector General.

Approved: December 2, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–4321 Filed 2–25–94; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–315; RM–8320]

Radio Broadcasting Services; Huntsville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a Notice of Proposed Rule Making issued in response to a request filed by Contemporary Broadcasting, Inc. for the substitution of Channel 278C1 for Channel 278C2 at Huntsville, Missouri. See 59 FR 1366, January 10, 1994. Contemporary Broadcasting, Inc. requested dismissal of the rule making as it has filed an application for Channel 278C1 at Huntsville, Missouri, under the one-step process. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–315, adopted January 24, 1994, and released February 9, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–4460 Filed 2–25–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 659

[Docket No. 92–D]

RIN 2132–AA39

Rail Fixed Guideway Systems; State Safety Oversight

AGENCY: Federal Transit Administration, DOT.

ACTION: Proposed rule; notice of hearing; extension of the comment period.

SUMMARY: On December 9, 1993, the Federal Transit Administration (FTA) Issued a Notice of Proposed Rulemaking (NPRM) for its Rail Fixed Guideway Systems State Safety Oversight program. FTA has decided to hold a public hearing in conjunction with an American Public Transit Association meeting which occurs after the close of the comment period announced in the NPRM. This document accordingly reopens the comment period and announces the public hearing.

DATES: Comments on this proposed rule must be submitted by March 22, 1994. The public hearing will be held at 8 a.m. (EST) on March 8, 1994. For further information see the **SUPPLEMENTARY INFORMATION** section of this preamble.

ADDRESSES: Comments on the NPRM should be sent, in duplicate, to Docket No. 92–D, Docket Clerk, room 9316, Office of the Chief Counsel, Federal Transit Administration, 400 7th Street, SW., Washington, DC 20590. Those wishing the agency to acknowledge receipt of their comments should include a self-addressed stamped postcard with their comments. All comments will be available for review by the public at this address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The public hearing will be held at 8:00 a.m. (EST) on March 8, 1994 at the J. W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004. For further information see the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For program issues: Franz Gimmler, Deputy Associate Administrator for Safety, or Roy Field, Transit Safety Specialist, both of the Office of Safety and Security, Federal Transit Administration, (202) 366–2896 (telephone) or (202) 366–3765 (fax). For legal issues: Nancy Zaczek or Daniel Duff, Office of the Chief Counsel, Federal Transit Administration, (202) 366–4011.

SUPPLEMENTARY INFORMATION:

Introduction

FTA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on December 9, 1993, at 58 FR 64856, concerning the creation of a State oversight agency that would develop certain procedures for overseeing the safety of rail fixed guideway systems. FTA has determined that a public hearing would help in the development of the final rule. FTA accordingly will hold the hearing in conjunction with a conference sponsored by the American Public Transit Association (APTA), which will be attended by State and local transit representatives. The hearing will be held on March 8, 1994. Because of this action, FTA is extending the comment period.

Information on the Public Hearing

The hearing will be held on March 8, 1994, in the Grand Ballroom—Salon D at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue NW., Washington, DC 20004. It will begin at 8 a.m. (EST).

Those interested in providing comments on the NPRM may respond in writing to the docket or participate in the public hearings and are encouraged to do both.

FTA has established the following procedures to facilitate the hearings. Those wishing to participate in the public hearings should contact either Mr. Franz Gimmler or Mr. Roy Field by telephone at (202) 366–2896, by fax at (202) 366–3765, or in writing at the address in the **FOR FURTHER INFORMATION CONTACT** section at least three business days before the hearing is to be held or register with the FTA on the day of the hearing. Those contacting FTA at least three business days before the hearing is scheduled may request a particular time to testify. FTA will try to accommodate those requests.

For those who have not contacted FTA at least three business days in advance, a registration desk will be available at the hearing site on the day of the hearing. Individuals may register beginning one hour before the hearing is scheduled to start. The registration desk will remain open until the hearing begins, after which FTA staff will try to accommodate late registrants. Time permitting, individuals will testify in the order in which they have registered.

Those who request to testify may be given ten minutes to make a statement or present other relevant documents which will be included in the docket. FTA encourages those individuals to submit a written statement which will also be included in the docket.

Those individuals in need of an oral interpreter should inform Mr. Gimmler or Mr. Field of that need also at least three business days before the hearing is to be held. Unless requested three business days before the hearing, an oral interpreter will not be provided.

A hearing officer will preside over the hearing. The hearing officer may make a statement to clarify issues or facilitate discussion during the hearing . Any statements the hearing officer makes during a hearing are not intended to be and should not be construed as a position of the FTA with respect to the NPRM or any future rulemaking.

The hearing will be recorded by a court reporter. A transcript of the hearing will be included in the official rulemaking Docket 92–D and be available for inspection. Any individual interested in a copy of the transcript of a hearing may contact the court reporter directly.

The hearing is designed to solicit public views and information on the NPRM. Therefore, the hearing will be conducted in an informal and nonadversarial manner. However, the hearing officer may ask questions in order to clarify statements made at the hearing. To facilitate comment and get a broad cross-section of views, the FTA may ask some of those who register in advance to participate on a panel during the hearing.

Issued on: February 23, 1994.

Gordon J. Linton,

Administrator.

[FR Doc. 94–4495 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–57–U

Notices

Federal Register

Vol. 59, No. 39

Monday, February 28, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

South Manti Timber Salvage; Manti-La Sal National Forest, Sanpete and Sevier Counties, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to salvage harvest timber and improve productivity of stands of trees in portions of the Muddy Creek, Twelvemile Creek, Sixmile Creek, and Ferron Creek Drainages. The project is located approximately 10 air miles southeast of Manti, Utah.

The entire proposal area involves some 30,000 acres of which approximately 10,000 acres is forested with an Engelmann spruce cover type. A bark beetle epidemic has affected the major portion of this type. the need for the proposal is established by the silvicultural condition of the affected timber stands and forest goals as outlined in the Manti-La Sal National Forest Land and Resource Management Plan.

Six areas that were inventoried as roadless as part of the RARE II evaluation are adjacent to and in some cases overlap the proposal. These areas were released back to full Multiple Use management by the Utah Wilderness Act and were evaluated for a variety of designations in the Forest's analysis during the Forest Land and Resource Plan process which was completed in 1986. The current analysis will document effects that would substantially alter the undeveloped character of these areas.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before March 30, 1994.

ADDRESSES: Send written comments to Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be addressed to Arthur J. Vasten Jr., Project Timber Staff, Manti-La Sal National Forest, phone (801) 637–2817.

SUPPLEMENTARY INFORMATION: This EIS will tier to the final EIS for the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). The Manti-La Sal Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area Direction) to achieve the Desired Future Condition for the area being analyzed, and contains specific management area prescriptions for the entire Forest.

A National forest Management Act Analysis for this proposal was completed in 1993. As a result of that analysis and additional scoping the Manti-La Sal concluded the proposal may have a significant effect on the roadless character of some of the surrounding areas, and because of the scope of the project size it was decided to prepare this EIS. The previous scoping and analysis also identified the following potential issues related to the proposed action:

What will be the effects of the proposal on the habitats, behavior, and local population of certain wildlife species?

What effect will the proposed activities have on the access, quality, and safety of the recreational opportunities of the area?

How will the proposal alter the present visual quality?

What will be the effects of the proposal on cultural resources?

How will potential build up of dead, down, woody, ground fuels be effected by the proposal?

How will the proposal contribute to a healthy, productive forest that will economically provide timber for the market place on a sustainable basis for the present and the future?

What effect will the proposal have on the transportation systems presently serving the area?

What will be the impacts on wetlands, and riparian areas?

What will the impacts be on the water quality and chemistry?

What will be the economics of the proposed action?

How will the proposal affect the roadless character of certain areas?

How will the local economies be affected by the proposal?

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations who may be interested in, or affected by the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register**. Preparation of the EIS will include the following steps:

1. Define the purpose of and need for action.
2. Identify potential issues.
3. Eliminate issues of minor importance or those that have been covered by previous and relevant environmental analysis.
4. Select issues to be analyzed in depth.
5. Identify reasonable alternatives to the proposed action.
6. Describe the affected environment.
7. Identify the potential environmental effects of the alternatives.

Steps 2, 3, and 4 will be completed through the scoping process.

Step 5 will consider a range of alternatives developed from the key issues. One of these will be the "No Action" alternative. Other alternatives will consider various methods, levels and locations of harvest, regeneration, and related road development/improvement in response to issues, and non-timber objectives.

Step 6 will describe the physical attributes of the area to be affected by this proposal, with special attention to the environmental factors that could be adversely affected.

Step 7 will analyze the environmental effects of each alternative. This analysis will be consistent with management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and the effectiveness of these mitigation measures will be disclosed.

The approximate boundary of the area covered for this analysis will be from the southern Forest boundary along White Mountain north along Skyline Drive to the Ferron and Sixmile drainages.

The proposed management activities would be administered by the Sanpete and Ferron Ranger Districts of the Manti-La Sal National Forest in Sanpete and Sevier Counties, Utah.

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process, the next 30 days following publication of this Notice in the **Federal Register**, and (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in June, 1994. At this time the EPA will publish an availability notice of the Draft EIS in the **Federal Register**.

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (See The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the Draft EIS should be as specific as possible. Referring to specific pages or chapters of the Draft EIS is most helpful. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.)

The final EIS is expected to be released September 16, 1994.

The Forest Supervisor for the Manti-La Sal National Forest, who is the responsible official for the EIS, will then make a decision regarding this proposal, after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decisions.

Dated: February 17, 1994.

George A. Morris,

Forest Supervisor, Manti-La Sal National Forest.

[FR Doc. 94–4420 Filed 2–25–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–401–801 A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Notice of Intent To Revoke Orders (in Part)

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews, partial termination of administrative reviews, and notice of intent to revoke order (in part).

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings, cylindrical roller bearings, and spherical plain bearings. The reviews cover 38 manufacturers/exporters and the period May 1, 1992, through April 30, 1993 (the POR). Although we initiated reviews for nine other manufacturers/exporters, we are terminating the reviews because the requests for these reviews were withdrawn in a timely manner. As a result of these reviews, the Department has preliminarily determined the weighted-average dumping margins for the reviewed firms to range from 0.37 percent to 132.25 percent for BBs, from zero to 51.82 percent for CRBs, and from zero to 92.00 percent for SPBs.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; Telephone: (202) 482–4733.

France

Jacqueline Arrowsmith (SNR), Kris Campbell (SNFA), Joseph Hanley (SKF, Rollix Defontaine), David Levy (Hoesch Rothe Erde), Philip Marchal (Franke & Heydrich), or Michael Rill.

Germany

Kris Campbell (FAG), Joseph Hanley (Rollix Defontaine), David Levy (NTN Kugellagerfabrik, INA, Hoesch Rothe Erde), Philip Marchal (SKF, Franke & Heydrich), Charles Riggle (Fichtel & Sachs, GMN), or Michael Rill.

Italy

Charles Riggle (Meter), Joseph Hanley (SKF, FAG), or Michael Rill.

Japan

Carlo Cavagna (Honda, Nachi), William Czajkowski (Takeshita), Michael Diminich (NSK), J. David Dirstine (Koyo), Joseph Fargo (Nankai Seiko), David Levy (NTN), Michael Panfeld (IKS, NPBS), or Richard Rimlinger.

Singapore

Joanna Schlesinger (NMB/Pelmec), or Richard Rimlinger.

Sweden

Philip Marchal (SKF), or Michael Rill.

Thailand

Joanna Schlesinger (NMB/Pelmec), or Richard Rimlinger.

United Kingdom

Jacqueline Arrowsmith (RHP/NSK), Kris Campbell (Barden/FAG), or Michael Rill.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20909) the antidumping duty orders on ball bearings (BBs), cylindrical roller bearings (CRBs) and spherical plain bearings (SPBs) and parts thereof from France, Germany, Italy, Japan, Singapore, Sweden, Thailand and the United Kingdom.

Specifically, these orders cover BBs, CRBs, and SPBs from France, Germany, and Japan; BBs and CRBs from Italy, Sweden, and the U.K.; and BBs from Singapore and Thailand. On June 28, 1993, in accordance with 19 CFR 353.22(c)(1993), we initiated administrative reviews of those orders for the period May 1, 1992, through April 30, 1993 (58 FR 34563). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
France	
Franke & Heydrich KG	BBs
Hoesch Rothe Erde AG	BBs
Rollix Defontaine, S.A	BBs
SKF Compagnie d'Applications Mecaniques, S.A. (SKF)	BBs, CRBs, SPBs
SNFA	BBs, CRBs
SNR Roulements (SNR)	BBs, CRBs
Germany	
FAG Kugelfischer Georg Schaefer KGaA (FAG)	BBs, CRBs, SPBs
Fichtel & Sachs AG	BBs
Franke & Heydrich KG	BBs
Georg Mueller Numberg, AG (GMN)	BBs
Hoesch Rothe Erde AG	BBs
INA Walzlager Schaeffler KG (INA)	BBs, CRBs
NTN Kugellagerfabrik (Deutschland) GmbH (NTN)	BBs,
Rollix Defontaine, S.A	BBs
SKF GmbH	BBs, CRBs, SPBs
Italy	
FAG Italia S.p.A	BBs, CRBs
Meter, S.p.A.	BBs, CRBs
SKF Industrie S.p.A	BBs, CRBs
Japan	
General Bearing Corp	BBs, CRBs, SPBs
Honda Motor Co., Ltd	BBs, CRBs, SPBs
Izumoto Seiko Co., Ltd	BBs
Koyo Seiko Co	BBs, CRBs, SPBs
Nachi-Fujikoshi Corp	BBs, CRBs
Nankai Seiko Co	BBs
Nippon Pillow Block Sales Company, Ltd. (NPBS)	BBs
NSK Ltd	BBs, CRBs, SPBs
NTN Corp	BBs, CRBs, SPBs
Takeshita Seiko Co., Ltd	BBs
Singapore	
NMB Singapore Ltd./Pelmec Ind. (Pte.) Ltd. (NMB/Pelmec)	BBs
Sweden	
SKF Sverige	BBs, CRBs
Thailand	
NMB Thai Ltd./Pelmec Thai Ltd. (NMB/Pelmec)	BBs

Name of firm	Class or kind
United Kingdom	
Barden Corp. (U.K.) Ltd./FAG (U.K.) Ltd. (Barden/FAG)	BBs, CRBs
RHP Bearings/NSK Bearings Europe, Ltd. (RHP/NSK)	BBs, CRBs

Subsequent to the publication of our initiation notice, we received timely withdrawals of review requests for INA (France), SNECMA (France and Italy), Asahi Seiko (Japan), Fujino Iron Works (Japan), Tottori Yamakei Bearing Seisakusho (Japan), and Revolvo (U.K.). Because there were no other requests for review of these companies from any other interested parties, we are terminating the reviews with respect to these companies, in accordance with 19 CFR 353.22(a)(5).

On January 13, 1994, GMN also requested that the Department allow GMN to withdraw its request for review and terminate the review of the order on BBs from Germany with respect to GMN. Although its request to withdraw was submitted well after the deadline for doing so, GMN claimed that the circumstances of the firm's bankruptcy rendered it unable to proceed further with the review. After giving careful consideration to GMN's circumstances, we find that it would be inappropriate to terminate the review. GMN's request to terminate the review was submitted during the verification process, which is an advanced stage of the review process, and at a point at which it had become clear that the company would be unable to complete verification successfully. Furthermore, a domestic interested party objected to termination of the review at that stage. Therefore, we are not terminating the review of GMN.

In addition, we initiated reviews for SST Bearing Corp. (SST), and Peer International (Peer) with respect to subject merchandise from Japan. SST informed us that it neither produced AFBs in Japan nor exported Japanese-produced bearings to the United States. Peer informed us that although it is a reseller of Japanese-made bearings, all of its suppliers had knowledge at the time of sale that the merchandise was destined for the United States. Consequently, Peer is not a reseller as defined in 19 CFR 353.2(s) because its sales cannot be used to calculate the U.S. price. Therefore, we are preliminarily terminating the reviews with respect to SST and Peer. If we obtain any information that contradicts these companies' assertions, we will complete the reviews with respect to these companies

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information available (BIA) is appropriate for certain firms. The Department's regulations provide that we may take into account whether a party refuses to provide information in determining what is the best information available (19 CFR 353.37(b)). For purposes of these reviews and in accordance with past Commerce practice, we have used the most adverse BIA—generally the highest rate for any company for the class or kind of merchandise from the same country from this or any prior segment of the proceeding, including the less-than-fair-value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. When a company substantially cooperated with our requests for information, but failed to provide all information requested in a timely manner or in the form requested, we used as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the class or kind of merchandise from the same country (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39728 (July 26, 1993)).

Because Franke & Heydrich, General Bearing Corp., and SNFA failed to respond to the Department's questionnaire, we have used the highest rate ever found for each relevant class or kind of merchandise and country of origin. Also, because GMN had substantially cooperated with our requests for information, but was unable to complete verification, we used as BIA its highest previous rate, in this case the rate from the LTFV investigation.

Intent to Revoke

The following firms have submitted requests, in accordance with 19 CFR 353.25(b), to revoke the orders covering the indicated merchandise:

Spherical plain bearings from France—SKF
Ball bearings from Germany—NTN Kugellagerfabrik and GMN
Cylindrical roller bearings from Italy—SKF
Spherical plain bearings from Japan—NTN and Honda
Ball bearings from Japan—Honda
Cylindrical roller bearings from Japan—Honda

In accordance with 19 CFR 353.25(a)(2)(iii), these requests were accompanied by certifications from the firms that they had not sold the relevant class or kind of merchandise at less than fair value for a three-year period including this review period, and will not do so in the future. Each of these firms also agreed to its immediate reinstatement in the relevant antidumping orders, as long as it is subject to those orders, if the Department concludes under 19 CFR 353.22(f) that, subsequent to revocation, it sold the subject merchandise at less than fair value.

In the two prior reviews of these orders, we determined that SPBs from France sold by SKF, BBs from Germany sold by NTN Kugellagerfabrik and GMN, CRBs from Italy sold by SKF, and BBs, CRBs, and SPBs from Japan sold by Honda were not sold at less than fair value. In this review, we preliminarily determine that these firms, with the exception of NTN Germany and GMN, have not sold these products at less than fair value, which will satisfy the three-year period of no sales at less than fair value, if these preliminary findings are affirmed in our final results. Therefore, we intend to revoke the orders with respect to the following firms and merchandise:

Spherical plain bearings from France—SKF
Cylindrical roller bearings from Italy—SKF
Spherical plain bearings from Japan—Honda
Ball bearings from Japan—Honda
Cylindrical roller bearings from Japan—Honda

With respect to SPBs from Japan sold by NTN and BBs from Germany sold by NTN and GMN, we have not established that there has been a three-year period of sales at not less than fair value. The final results of the previous administrative review indicated the existence of dumping margins on NTN's sales of SPBs from Japan (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order,

58 FR 39729, July 26, 1993). In addition, we preliminarily determine in this review that there are dumping margins on NTN's sales of BBs from Germany. Therefore, we do not intend to revoke the orders on SPBs from Japan with respect to NTN or on BBs from Germany with respect to NTN.

Concerning GMN, as BIA, (see "Best Information Available" section above), we have preliminarily determined that dumping margins exist on GMN's sales of BBs from Germany during the 1992–93 review period. Furthermore, on February 10, 1994, the company withdrew its request for revocation. Therefore, we do not intend to revoke the order on BBs from Germany with respect to GMN.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), and parts thereof (AFBs), and constitute the following "class or kinds" of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 4016.93.10, 4016.9350, 8482.99.05, 8482.99.35, 8708.70.6060, 8708.93.6000, 8708.99.3100, 8708.99.4000, 8708.99.4960, 8708.5800, 8708.99.8015, 8708.99.8080.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 4016.93.10, 4016.9350, 8482.99.25, 8482.99.6530, 8482.99.6560, 8708.99.4000, 8708.99.4960, 8708.99.8080.

3. *Spherical Plain Bearings and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2,000 ESP sales transactions to the United States for a particular class or kind of merchandise, we reviewed ESP sales which occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included May 31–June 6, 1992; July 26–August 1, 1992; October 18–24, 1992; November 22–28, 1992; February 14–20, 1993; and April 18–24, 1993. We reviewed all PP sales transactions during the POR because there were few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for movement expenses, discounts and rebates.

We made additional deductions from ESP for direct selling expenses, indirect selling expenses, and repacking in the United States.

We made an addition to USP for value-added taxes (VAT) in accordance with section 772(d)(1)(C) of the Tariff Act. In making our adjustment for VAT, we followed the instructions of the United States Court of International Trade (CIT) in *Federal Mogul Corp. and The Torrington Co. v. United States*, Slip Op. 93–194 (CIT October 7, 1993). The Department added to USP the result of multiplying the foreign market tax rate by the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department also adjusted the tax amount calculated for USP and the amount of tax included in foreign market value (FMV). We deducted the portions of the foreign market tax and the USP tax that are the result of expenses that are included in the foreign market price used to calculate foreign market tax and in the United States price used to calculate the USP tax. Because these expenses are later deducted to calculate FMV and USP, these adjustments are necessary to prevent our new methodology for calculating the USP tax from creating dumping margins where no margins would exist if no taxes were levied upon foreign market sales.

With respect to subject merchandise to which value was added in the United States, *e.g.*, parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters, prior to sale to unrelated U.S. customers, we deducted any increased value in accordance with section 772(e)(3) of the Tariff Act.

Those bearings otherwise subject to the order that are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, are not subject to the assessment of antidumping duties. In Roller Chain, Other Than Bicycle, from Japan (48 FR 51801; November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Because the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain. The Department, therefore, did not assess dumping duties on these transactions. We have applied this same principle to these reviews.

Foreign Market Value

The home market was viable for all companies and all classes or kinds of merchandise. The Department used home market prices or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV).

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. When a firm had more than 2,000 home market sales transactions for a particular class or kind of merchandise, we used sales from sample months that corresponded to the sample weeks selected for U.S. sales sampling plus one contemporaneous month prior to the POR and one following the POR. The sample months included March, June, July, October, and November of 1992, and February, April, and June of 1993.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV in administrative reviews. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of each respondent's home market sales on an annual basis. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test.

We first compared each monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (*i.e.*, was within plus or minus 10 percent) from the monthly weighted-average prices. We did this for each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for the home market sales. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, *i.e.*, that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kinds that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and outer diameter, inner diameter, and width.

Home market prices were based on the packed, ex-factory or delivered prices to related or unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in cost attributable to differences in physical characteristics of the merchandise, and differences in packing. We also made adjustments for differences in circumstances of sale in accordance with 19 CFR 353.56. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses. For comparisons to both ESP and PP sales, we adjusted for VAT using the methodology detailed in the "United States Price" section of this notice.

We used sales to related customers only where we determined such sales were made at arm's length, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

Where we found home market sales below the cost of production in the previous administrative review period, we concluded that reasonable grounds exist to believe or suspect that home market sales during the POR were made at prices below the cost of production, and we therefore initiated cost investigations.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales were made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of a particular model were at prices below the cost of production, we found that substantial quantities of such sales were not made and did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent, of the home market sales of a particular model were determined to be below cost, we determined that substantial quantities of such sales were made and excluded the below-cost home market sales from our calculation of FMV provided that these below-cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model from our calculation of FMV and went to CV.

To determine if sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost had occurred for a particular model to the number of months in which the model was sold. If the model was sold in three or fewer months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost of that model in each month. If a model was sold in more than three months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost in at least three of the months in which the model was sold.

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," within the meaning of section 773(b)(2) of the Tariff Act, we were unable to conclude that the costs of production of such sales were recovered within a reasonable period. As a result, we disregarded below-cost sales when the conditions described above were met.

Home market sales of obsolete merchandise and distress sales were not disregarded in our cost analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

With respect to FAG Germany, we disregarded certain sales reported by the company in its home market database. The disregarded sales pertain to two unrelated German resellers of FAG bearings. Although FAG reported that it did not know whether these resellers sold its bearings in Germany or abroad, we preliminarily determine, based on the following information obtained at verification, that FAG, at a minimum, should have known that the two resellers would export its bearings.

At verification, we found that FAG referred, both orally and in its records, to these resellers as "indirect exporters." We learned that one FAG subsidiary sold to one of these resellers from its export price list, rather than from its domestic price list. Finally, we contacted one of the resellers independently and were told that it only sells in export markets and that its suppliers were aware of this.

During verification, we inquired of other German producers/exporters about potential sales to "indirect exporters." We did not obtain conclusive evidence that reported home market sales were in fact export sales. However, if we obtain additional information indicating that other producers reported home market sales that we ultimately conclude were export sales, we will delete these sales from their home market databases.

In accordance with section 773(a)(2) of the Tariff Act, we used constructed value as the basis for FMV when there were no usable sales of such or similar merchandise for comparison.

We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit and packing. To calculate CV we used: (1) actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV in accordance with 19 CFR 353.56, for differences in circumstances of sale. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations. For comparisons involving ESP transactions, we made further deductions for constructed value for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins (in percent) for the period May 1, 1992 through April 30, 1993 to be:

Company	BBs	CRBs	SPBs
France:			
Franke & Heydrich	66.42	(2)	(2)
Hoesch Rothe Erde	(1)	(2)	(2)
Rollix Defontaine	(1)	(2)	(2)
SKF	3.12	(1)	0.00
SNFA	66.42	18.37	(2)
SNR	3.31	2.58	(2)
Germany:			
FAG	17.46	14.24	17.54
Fichtel & Sachs	11.71	(2)	(2)
Franke & Heydrich	132.25	(2)	(2)
GMN	35.43	(2)	(2)
Hoesch Rothe Erde	(1)	(2)	(2)
INA	29.81	9.14	(2)
NTN	9.06	(1)	(1)
Rollix Defontaine	(1)	(2)	(2)
3SKF	28.41	27.45	60.23
Italy:			
FAG	3.08	(1)	
Meter	1.22	(1)	
SKF	3.71	0.00	
Japan:			
General Bearing	106.61	51.82	92.00
Honda	0.37	0.01	0.01
IKS	27.96	(2)	(2)
Koyo	12.19	5.34	(1)
Nachi	28.27	4.33	(2)
Nankai Seiko	1.08	(2)	(2)
NPBS	18.32	(2)	(2)
NSK	27.17	20.42	(1)
NTN	5.09	2.34	0.01
Takeshita	14.58	(2)	(2)
Singapore:			
NMB/Pelmec	4.84		
Sweden:			
SKF	16.00	1.85	
Thailand:			
NMB/Pelmec	0.37		
United Kindgom:			
Barden/FAG	4.86	8.22	
RHP/NSK	16.01	18.40	

[1] No U.S. sales during the review period.
[2] No review requested.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held in accordance with the following schedule and at the indicated locations in the main Commerce building:

Italy—March 28, 1994; 9:00 am; room 1617–M–4
General Issues—March 28, 1994; 1:00 pm; room 4830
Thailand—March 29, 1994; 9:00 am; room 1617–M–1
Singapore—March 29, 1994; 10:30 am; room 1617–M–1
Germany—March 29, 1994; 2:00 pm; room 1617–M–4
Japan—March 30, 1994; 9:00 am; room 1617–M–1
United Kingdom—March 30, 1994; 2:00 pm; room 1617–M–1
France—March 31, 1994; 9:00 am; room 1617–M–4
Sweden—March 31, 1994; 1:00 pm; room 1617–M–4

Issues raised in hearings will be limited to those raised in the respective briefs or written comments, and rebuttal briefs or rebuttals to written comments. Briefs or written comments from interested parties, and rebuttal briefs or rebuttals to written comments, limited to the issues raised in the respective case briefs and comments, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or hearings.

Case	Briefs/comments due	Rebuttals due
General Issues	Mar. 16, 1994	Mar. 23, 1994
Italy	Mar. 16, 1994	Mar. 23, 1994
Thailand	Mar. 17, 1994	Mar. 24, 1994
Singapore	Mar. 17, 1994	Mar. 24, 1994
Germany	Mar. 17, 1994	Mar. 24, 1994
Japan	Mar. 18, 1994	Mar. 25, 1994
U.K.	Mar. 18, 1994	Mar. 25, 1994
France	Mar. 21, 1994	Mar. 28, 1994
Sweden	Mar. 21, 1994	Mar. 28, 1994

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents calculation of duties on an entry-by-entry basis, we will calculate an importer-specific *ad valorem* duty assessment rate for each class or kind of merchandise based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the POR.)

Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the POR. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate made effective by the final results of the most recent administrative reviews of the orders (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729, July 26, 1993). As noted in those previous final results, these rates are the "all others" rates from the relevant LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 C.F.R. 353.22(c)(5)).

Dated: February 18, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4505 Filed 2–25–94; 8:45 am]
BILLING CODE 3510–DS–P

[A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Amendment to Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative reviews.

SUMMARY: On July 26, 1993, the Department of Commerce published the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews covered 41 manufacturers/exporters and the period May 1, 1991 through April 30, 1992. Based on the correction of ministerial errors, we are amending the final results with respect to Japanese ball bearings, cylindrical roller bearings and spherical plain bearings sold by one company.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Philip Marchal or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202)482–4733.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1993, the Department of Commerce (the Department) published in the **Federal Register** the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom (58 FR 39729). The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews covered 41 manufacturers/exporters and the period May 1, 1991 through April 30, 1992.

After publication of our final results, we received timely allegations of ministerial errors from Honda Motor Company concerning the final results for AFBs from Japan sold by Honda.

We agree with one of these allegations and have made the necessary correction. Specifically, Honda had submitted two sets of home market data. Although we had intended in our final results to use only certain portions of each of these datasets, we used the wrong portions in our final results. We have therefore corrected our analysis by using the correct portions of Honda's submitted home market datasets.

Amended Final Results of Reviews

As a result of our corrections of ministerial errors, we have determined the following percentage weighted-average margins to exist for the period May 1, 1991 through April 30, 1992:

Company	BBs	CRBs	SPBs
Honda	0.04	0.16	0.16

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Because these rates for Honda are less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department will require a cash deposit of zero for all entries of the above merchandise from Honda.

These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties

occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: February 15, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4504 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–831]

Initiation of Antidumping Duty Investigation: Fresh Garlic From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Stagner or Diane Mazur, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC, 20230; telephone (202) 482–1673 or 482–3534, respectively.

Initiation of Investigation

The Petition

On January 31, 1994, we received a petition filed in proper form by the member companies of the Fresh Garlic Producers Association (collectively petitioner). In accordance with 19 CFR 353.12, the petitioner alleges that fresh garlic from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petition is filed on behalf of the U.S. industry producing the product subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The products covered by this investigation are all grades of fresh garlic, whether or not chilled or frozen, and include whole garlic, whole garlic that has been separated into constituent cloves (cracked garlic), and peeled garlic (skin removed), whether or not packed in any substance. The differences between the grades are based on color, size, sheathing and level of decay.

Fresh garlic is used principally as a food product and for seasoning. Fresh garlic, whether or not chilled or frozen, is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, and 0710.80.9750 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

United States Price and Foreign Market Value

Petitioner based United States price (USP) on October 1993 invoices from U.S. importers of the subject merchandise from the PRC. In calculating USP, petitioner deducted amounts for the following: U.S. duties, ocean freight, marine insurance, foreign inland freight expenses, brokers' commission, harbor maintenance and U.S. merchandise processing fees, and commissions charged by the U.S. importers.

Petitioner alleges that the PRC is a non-market economy (NME) country within the meaning of section 773(c) of the Act. The Department has determined the PRC to be an NME, within the meaning of section 771(18)(A) of the Act, in previous cases (see e.g., Final Determination of Sales at Less than Fair Value: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the PRC, 58 FR 37908 (July 14, 1993). In accordance with 771(18)(C) of the Act, that determination continues to apply for purposes of this initiation. In the course of this investigation, parties will have the opportunity to address this NME determination and provide relevant information and argument on this issue.

Further, because of the extent of central government control in an NME, the Department considers that a single antidumping margin, should there be one, is appropriate for all exporters from the NME. Only if individual NME exporters are free of central government ownership and can demonstrate an absence of central governmental control with respect to the pricing of exports, both in law and in fact, will they be considered eligible for separate, owner-specific deposit rates. (See Final Determination of Sales at Less Than Fair Value: Helical Spring Lock Washers from the People's Republic of China, 58 FR 48833 (September 20, 1993) for a discussion of the information the Department considers appropriate to warrant calculation of separate rates.)

Petitioner based foreign market value on the PRC's factors of production for producing the subject merchandise. To value the factors of production, petitioner used India as a surrogate country. Petitioner argues that India is a country at a comparable level of economic development as the PRC and India is a significant producer of comparable merchandise pursuant to section 773(c)(4) of the Act. Further, India's garlic production is labor intensive and relies on rudimentary agricultural techniques similar to agricultural methods used in the PRC. For purposes of this initiation, we have accepted India as an appropriate surrogate country selection. There appear to be no other countries with comparable economies to the PRC that produce the subject merchandise. In addition, the Department has used India as an appropriate surrogate country selection in other investigations involving merchandise from the PRC. (See Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China (57 FR 29705, July 6, 1992).

Petitioner first attempted to value the factors of production using Indian information. Where this was not possible, petitioner valued the factors of production using the U.S. industry's costs, where it was determined that this provided a reasonable basis upon which to value certain factors of production. Petitioner valued the factors of production of the subject merchandise in the PRC as follows:

- For material costs (seed and fertilizer), petitioner relied on Indian factors based on its foreign market research, using public information whenever possible.
- For most labor costs (seed cracking, field preparation, planting, weed control, fertilization, irrigation, digging, windrowing and harvesting), petitioner relied on an industry expert's estimate of Chinese factors which was based on the expert's knowledge of the Chinese industry and the expert's own experience with nonmechanized garlic production, using public information whenever possible. Petitioner valued such labor costs on the basis of Indian production experience as developed in its foreign market research. For other labor costs related to hauling, sorting, grading, inspecting, and shrinkage, petitioner relied on the U.S. industry's cost-per-pound for these operations.
- Petitioner added an amount for all other manufacturing costs and related overhead equal to 10 percent of direct material and labor costs.
- Petitioner added an amount for shrinkage loss of 7 percent of the cost of production, based on U.S. experience.
- For selling, general and administrative expenses (SG&A), petitioner used the statutory minimum of ten percent of the cost of production.
- For profit, petitioner used the statutory minimum of eight percent of the cost of manufacture plus SG&A.
- Petitioner added an amount for packing based on the average, actual experience of the U.S. industry.

Based on petitioner's calculations, the dumping margins range from 266.73 to 376.67 percent. For purposes of this initiation, no adjustments were made to petitioner's calculations.

Initiation of Investigation

We have examined the petition on fresh garlic and have found that the petition meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of fresh garlic from the PRC are being, or are likely to be, sold in the United States at less than fair value.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of this action and we have done so.

Preliminary Determination by the ITC

The ITC will determine by March 17, 1994, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of fresh garlic from the PRC. A negative ITC determination will result in a termination of the investigation; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: February 22, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4503 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–604]

Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of scope inquiry.

SUMMARY: We preliminarily determine that subject forgings are within the scope of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished, from Japan. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Maureen Shields at (202) 482–1690 or John Kugelman at (202) 482–5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1993, Koyo Seiko Company Ltd. and Koyo Corporation of U.S.A. (Koyo) requested that the Department of Commerce (the Department) issue a ruling that Koyo's imported forgings, including tower forgings, hot forgings, and cold forgings, be found outside the scope of the antidumping duty order on tapered roller bearings and parts thereof from Japan (52 FR 37352, October 6, 1987). The Department initiated its scope inquiry on September 28, 1993, and granted interested parties an opportunity to comment on whether these forgings fall within the scope of the order. We received comments on November 15, 1993, from the petitioner, the Timken Company, and rebuttal comments from Koyo on November 22, 1993. Due to the significant difficulty presented by this scope inquiry, we have determined that it is appropriate to issue a preliminary determination, in accordance with the Department's regulations (19 CFR 353.29(d)(3) (1993)).

Koyo requested the scope ruling in response to a change in the U.S. Customs classification of Koyo's imported forgings. At the time of the original investigation, Koyo's imported forgings were classified as forgings under the Tariff Schedules of the United States (TSUS) 606.7340. When the Harmonized Tariff Schedule (HTS) replaced the TSUS in 1989 and a specific provision for forgings ceased to exist, Koyo classified its forgings as "semifinished steel" under HTS 7224.90, and later, based on the advice of a Customs port, as "steel articles" under HTS 7326.19. Customs recently examined the subject forgings and informed Koyo that it considers them to be "parts of tapered roller bearings (TRBs)" under HTS 8482.99. Customs generally classifies an article as a "part" of another article if that is its chief or principal use. Based on this general principle, Customs determined that under the HTS Koyo's forged rings should be classified as TRB parts as long as they are chiefly used for incorporation into TRBs. Although Koyo's scope clarification request was prompted at least in part by the action of Customs, neither classification choices made by producers nor classification decisions made by Customs determine the scope of antidumping duty orders. Rather, the scope of antidumping duty orders is determined by the Department at the time of the original investigation and issuance of an order.

In accordance with 19 CFR 353.29(i)(1), in analyzing the scope request in this proceeding, the Department took into account the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department and the International Trade Commission (ITC). The regulations provide that if the Department determines these descriptions are ambiguous, it will further consider the factors provided for under 19 CFR 353.29(i)(2), known commonly as Diversified Products criteria (see *Diversified Products Corp. v. United States*, 572 F. Supp. 883 (CIT 1983)).

Analysis

Koyo makes the forgings at issue from bearing grade steel bar, which is sheared, pierced, and extruded into the shape of the forging. The forgings are not machined in any way prior to exportation.

We note that the term "forgings" covers a broad spectrum of products. The Summaries of Trade and Tariff Information (Schedule 6, Volume 4) identifies two basic types of forgings in its description of the product. Open-die forgings are large shapes produced by hammering or pressing heated ingots, blooms, billets, slabs, or bars on regulation press-and-hammer forging equipment with dies that are flat or slightly shaped. Closed-die or drop forgings are small- or medium-size

shapes forged by using dies accurately formed to the size and shape of the desired finished product. Open-die forgings require machining to acquire the desired dimensions of the finished product. Closed-die forgings require little or no subsequent machining and are generally considered parts for import classification purposes. The forgings at issue have not been categorized as either open-die or closed-die forgings.

The Language of the Petition

The original petition describes the subject merchandise as follows:

> The merchandise covered by this petition is all tapered roller bearings, tapered rollers and other parts thereof (both finished and unfinished) including, but not limited to, single-row, multiple-row (e.g., two-, four-), and thrust bearings and self-contained bearing packages (generally pre-set, pre-sealed, and pre-greased), but only to the extent that such merchandise is not presently covered by an outstanding antidumping duty order or finding in the United States.

In the petition, Timken stressed that it had identified TSUS numbers to the best of its ability, but that it did not intend that products under other classification numbers be excluded from the scope if they fell within the description of the product in the petition. Timken argues that the language of the petition unambiguously includes Koyo's forgings, since the petition requested coverage for all unfinished TRB parts not included in the A–588–054 finding which covers TRBs four inches or less in outside diameter. Timken takes the position that the instant forgings fall under the category of unfinished parts and they should properly have been classified that way. The fact that they were not named specifically in the petition does not imply that Timken did not intend to include them. Timken states that it was impossible for it to name each item that might be considered a TRB part.

Koyo, however, claims that since the petition never mentioned forgings, they were not included. In its ruling request Koyo argues that forgings are outside the scope of the order because they are "precursor materials" that have not yet begun the manufacturing process. Koyo claims that including forgings would be tantamount to including bearing grade steel in the scope of the order.

The Department's position is that the petition clearly includes unfinished TRB parts in its scope. However, the language in the petition is ambiguous with respect to whether forgings are considered unfinished parts.

The Language of the Commerce Department's Determinations

The products covered by the preliminary and final determinations and the order as it was published in 1987 are "tapered roller bearings and parts thereof, currently classified under Tariff Schedules of the United States (TSUS) item numbers 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings, currently classified under TSUS item number 661.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item number 692.32 or elsewhere in the TSUS. Products subject to the outstanding antidumping duty order covering certain tapered roller bearings from Japan (T.D. 76–227, 41 FR 34974) were not included within the scope of this investigation" (see Antidumping Duty Order: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, 52 FR 37352, October 6, 1987). At issue is whether forgings should be considered unfinished parts within the scope of the order.

Timken claims that at the time of the order Koyo's imported forgings should have properly been classified as TRB parts, and that they are clearly included within the scope of the order. Koyo argues that the language of the order unambiguously excludes forgings, since at the time of the investigation Koyo was importing forgings under TSUS 606.7340 as "non-machined steel forgings", a provision not mentioned in the order. Koyo clearly stated in each of the first three administrative reviews that it considered its imported forgings to be outside the scope of the order, and neither the Department nor the petitioner objected. Therefore, Koyo argues that forgings have been considered outside the scope since the order was published.

The Department's position is that, absent the rare case in which there is no narrative description of the subject merchandise, any TSUS or HTS numbers mentioned in the scope of an order are for reference only, and do not limit the scope in any way. The Department's position in this respect is supported by the fact that the scope description for each of the administrative reviews has contained a statement to the effect that the Customs classification numbers are provided for reference purposes only. However, the language used in the order to describe the products is ambiguous with respect to forgings, since forgings are not mentioned and there is no explicit indication of what products are included as unfinished parts. Moreover, while Koyo stated in its review responses that it did not report forgings, it is not apparent from these statements the form the imports took. As was described earlier, the term "forgings" covers a wide range of products. The question this scope inquiry poses for the Department is whether the instant forgings are advanced to the point that the Department considers them TRB parts.

The ITC's Determination

The International Trade Commission's (ITC) questionnaires in the investigation defined unfinished parts as "* * * those that have been shaped sufficiently that they may be used only in the manufacture of tapered roller bearings." (p. 5). Likewise, the ITC considered whether to treat unfinished parts as separate like products in its final determination. It rejected Koyo's request to consider each of the following groups as discrete like products:

> 1. "Precursor materials" (i.e., unfinished forged rings) and "finished bulk parts" (i.e., rollers and cages) of tapered roller bearings;
> 2. Unfinished tapered roller bearing components (i.e.—unfinished outer rings and inner rings);
> 3. Finished tapered roller bearings.

(Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers, from Japan, Inv. No. 731–TA–343 (Final), USITC Pub 2020, September 1987, p. 5). The ITC reasoned that all parts are destined to become complete, finished TRBs and that neither finished nor unfinished parts have commercial value except as components of TRBs. To the extent that the ITC considered the items in this list a single like product, this statement suggests that the ITC considered forged rings to be unfinished parts.

The ITC also states in its final determination that:

> Unfinished bearing components are the cones, cups, and rollers that have been green machined and heat treated, but that require final finishing * * * Green machining is an industry term that relates to the machining operations performed on the raw materials prior to heat treatment for cups, cones, and rollers. (p. A–8)

However, Timken points out that the ITC was discussing cups and cones made from tubing rather than forgings, and argues that the ITC's view that green machining is the first stage in the production process applies only to tubing. Timken claims that, in the bar-based manufacturing process Koyo uses, the first step in production is forging.

This is consistent with an ITC footnote (p. A–8) that the forging process is used instead of green machining, indicating that at least some of the green machining necessary on rings cut from tube steel is not necessary on forgings. Although the ITC considered green machining to be the turning point in Timken's tube-based production process, the distinction is blurred when forgings are used. Since forging can accomplish some of the same results as green machining, the ITC's description of the production process does not necessarily imply that forged rings are outside the scope of the order.

Diversified Products Analysis

While stages of production can be helpful in determining when raw material becomes an unfinished part, the descriptions of the merchandise in the petition and the Department's determinations are ambiguous with respect to the question of whether these forgings are unfinished parts. The ITC's final determination, though not perfectly clear, points toward the conclusion that forgings are within the scope of the order. However, because there is some ambiguity, the Department considered it appropriate to analyze the Diversified Products criteria. The four additional criteria the Department considered in determining if forgings are within the order are listed at 19 CFR 353.29(i)(2): (1) the physical characteristics of the product; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; and (4) the channels of trade.

Physical Characteristics

Timken points out that forgings are similar in size and shape to finished cups and cones. However, Koyo argues that there are dramatic differences between forgings and finished cups and cones. Some forgings are split in two to form both the cup and the cone. In the manufacturing steps that take place during the turning process, between 24% and 30% of the steel is removed from a forging, resulting in a green machined ring with the specific dimensions and tolerance of the finished cup or cone, or inner and outer raceways.

Koyo argues further that the forged rings are most similar to steel tube rings, which undergo the same processes (green machining, heat treatment, polishing, and grinding) before becoming a finished TRB part. Koyo states that "both rings cut from tube and forged rings are intermediate donut-shaped pieces of steel that are first produced from steel bar and later further processed into parts for bearings" (Koyo's letter to the Department, November 22, 1993, p.4). Both parties agree that rings cut from tube are outside the scope of the order, as indicated by Koyo's statement to that effect on page 24 of its letter and Timken's reference to rings cut from tube as raw material (p.23).

However, Timken points out that the forgings in question are a much more processed product than rings cut from tube steel. Forged rings have the approximate shapes of the cups and cones that they will be turned into. Indeed, forging gives them much of the definition that green machining would otherwise give. As a result, the forgings are effectively dedicated to use as TRB parts. Conversely, rings cut from tube steel bear little resemblance to cups or cones. Tube rings lose 50% to 75% of the weight of the ring during green machining, and can only be considered TRB parts after this process takes place. Given the advanced shape that forging gives the components, and the consequent reduction in green machining, the green machining process does not appear determinative in this case. Rather, it is the advanced physical characteristics of the component forgings that are definitive.

The Department preliminarily determines that forged rings are more processed than rings from tube stock, and, as such, are physically distinct from rings cut from tube steel. While some final machining is necessary, the forging process used in this case effectively transforms the metal input into a product sufficiently advanced in state that it is essentially a TRB component. Consequently, an examination of physical characteristics indicates that forgings are included in the scope of the order.

Channels of Trade

The forgings at issue are either produced by Koyo or purchased from steel forgers and sold by Koyo to AKBMC, its related subsidiary. Forgings move through the same channel of trade as unfinished parts, namely, to bearings producers for incorporation into tapered roller or antifriction bearings. Therefore, the Department preliminarily determines that the channels of trade criterion indicates that forgings are within the scope of the order.

Expectations of the Ultimate Purchaser

The forgings in question are imported into the United States for use in the production of TRBs. Timken points out that these forgings have undergone initial processing which renders them dedicated to use in a limited range of part numbers. Timken notes that the bearings producers who purchase these forgings have no expected use other than the production of finished bearings. Koyo submits, however, that finding forgings to be within the scope of the order based on the expectation criterion is comparable to concluding that bearing grade steel is also within the scope, since it too is imported for use in production of TRBs and has almost no alternative uses. Koyo argues further that rings cut from tube steel, which are outside the scope, are also limited to use in a specific range of models.

The Department notes that although the expectations of the purchasers of bearing grade steel and of rings cut from tube steel are the same as those of purchasers of in-scope TRB parts, no one argues that bearing grade steel or rings cut from tube are steel are covered by the order. Moreover, bearing steel might be destined for bearing-related production but it has not been advanced to the point of dedicating it to a TRB component, finished or unfinished. By the same token, it is also possible that some rings cut from tube steel may not necessarily be intended for use in TRBs. However, the forgings in question have been advanced to the point that some use other than a TRB component is highly unlikely. Because the expectation of the parties importing the instant forgings is to make TRBs, the Department's position is that this criterion indicates that forgings are within the scope of the order.

Ultimate Use

Timken points out that forgings are more dedicated to use in TRBs than rings cut from tube steel, since these forgings more closely approximate the dimensions of the finished cup or cone and do not require as extensive a turning process as steel tube rings. Koyo contends that a ring cut from steel tube is as dedicated to use in TRBs as a forging is, because both are made from bearing grade steel, which Koyo claims is too expensive to be used for other purposes. Furthermore, Koyo argues, a steel tube ring and these forgings are equally limited in the range of bearings for which they can be used. However, Koyo uses the overwhelming portion of its imported forgings in the production of TRBs. Koyo suggests that it is possible to use some of the forgings to make both TRB and ball bearing parts (Koyo submitted an example of a ball bearing and a TRB that have inner rings made from the same forged ring), and it is theoretically possible for the manufacturer to use a forging originally intended for use in a TRB to produce a

ball bearing instead, if production needs change after importation. In practice, this possibility is seldom realized because it is not cost efficient to create a forging with multiple uses. Forgings are used to limit the amount of machining that is necessary. The very concept of forging embodies shaping a blank to the degree that it appears dedicated to one product.

The Department preliminarily determines that since the instant forgings appear dedicated to the production of TRBs, these forgings are essentially parts of TRBs. Therefore, the ultimate use criterion indicates that these forgings are within the scope of the order.

Conclusion

Based on our analysis of the comments provided by interested parties on the language of the petition and the determinations of the ITC and the Department, and on the physical characteristics, channels of trade, expectations of the ultimate purchasers, and the ultimate use of the product, in accordance with 19 CFR 353.29(i), we preliminarily determine that such forgings are the same class or kind of merchandise as unfinished TRB parts, and therefore are within the scope of the order on tapered roller bearings and parts thereof from Japan. The Department preliminarily determines these forgings to be within the scope based on the totality of the facts presented above and especially for the following reasons: (1) the ITC clearly includes precursor materials such as forgings within its definition of like product; (2) the physical characteristics, channels of trade, ultimate use of forgings, and expectations of ultimate purchasers indicate that such forgings are within the scope of the order.

We invite interested parties to comment on this preliminary determination no later than March 18, 1994. Rebuttal comments are due no later than March 25, 1994. The Department will consider such comments in reaching its final determination.

This preliminary scope ruling is in accordance with 19 CFR 353.29(d)(3).

Dated: February 18, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–4506 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

National Weather Service, Modernization Transition Committee

Time and Date: March 16, 1994 from 10 a.m.–12 noon and 1–3 p.m.; and March 17, 1994 from 10 a.m.–12 noon and 1–2:30 p.m. The Committee will tour the San Francisco WSFO before the meeting on March 16, and will tour the proposed Monterey WFO and the Naval Research Lab the morning of March 17.

Place: The meeting on March 16, 1994 will be held at the Dunfey San Mateo Hotel, 1770 S. Amphlett Boulevard, San Mateo, CA, 94402 in the Cypress room. The continuation of the meeting on March 17, 1994 will be held at the Fleet Numerical Meteorological and Oceanographic Center, Building 702, 7 Grace Hopper Avenue, Monterey, CA, 93943–5501.

Status: The meeting will be open to the public. Approximately 180 seats will be available on a first-come first-served basis for the public on March 16 and approximately 50 seats will be available on a first-come first-served basis for the March 17 portion of the meeting.

On March 16, 1994 the last hour will be set aside for oral comments from the public and on March 17, 1994, 11 am to 12 noon will be set aside for oral comments from the public. Persons wishing to speak during the public comment period must register on a sign-up sheet as they enter the meeting.

In order to conserve the time for the transaction of Committee business, these periods for oral public comment must be limited. Therefore, it may be necessary to allocate the time available for each speaker and/or limit the number of speakers. Time could be limited to 5 minutes per speaker and the number of speakers to 12 on a first-come first-serve basis. Accordingly, those wishing to comment on the proposed certification of the relocation are strongly encouraged to submit these comments in writing during the 60-day comment period following publication of the proposed certification in the **Federal Register**. It is anticipated that the proposed relocation certification will be published in the **Federal Register** shortly after the Committee completes consideration of this action. This comment period is established by section 706 of the Weather Service Modernization Act and provides the primary opportunity for such comments.

Matters to Be Considered: This meeting will include: (1) A brief on the Certification Package for the proposed relocation of the San Francisco office; (2) a presentation by Jan Null, meteorologist at WSFO San Francisco; (3) a presentation by Norman Hoffmann, Meteorologist-In-Charge of WSFO San Francisco; and (4) a briefing by Chet Hendrickson on a previous office move.

Contact Person for More Information: Mr. Senator Raygor, National Weather Service, Wx211, 1325 East-West Highway, SSMC2, Silver Spring, MD 20910, telephone: (301) 713–0391.

Dated: February 22, 1994.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 94–4403 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 021094C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Receipt of Two Applications (P561 and P770#66) for Scientific Research Permits and Two Applications for Modifications to Scientific Research Permit 818 (P211C).

Notice is hereby given that the U.S. Department of Agriculture (USDA), Washington State Office (P561) and the NMFS Northwest Fisheries Science Center (P770#66) have applied in due form for permits, and the Oregon Department of Fish and Wildlife (ODFW) has applied in due form for two modifications to Permit 818 (211C), to take listed species of Snake River salmon, as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The USDA, Washington State Office requests authorization to take listed juvenile Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) in research activities to determine the presence or absence of those species in various backwater side channels and farm ponds associated with the Tucannon River and Asotin Creek. The purpose of the research is to prepare for habitat restoration in those streams, in coordination with local landowners, state agencies, the Bonneville Power Administration, and affected tribes. The applicant requests this authorization for a duration of two years.

The NMFS Northwest Fisheries Science Center requests authorization to conduct eight scientific research studies involving the take of listed juvenile Snake River spring/summer and fall chinook salmon and juvenile Snake River sockeye salmon (*O. nerka*). The applicant requests this authorization for a duration of one to five years for the different studies.

ODFW requests two modifications to their scientific research Permit 818. The first request is for authorization to install trap boxes on eight diversion screens to enable the collection of information on species composition and migration timing of listed Snake River spring/summer chinook salmon. In addition, these traps would allow the movement of trapped fish to available water when the water supply in the irrigation stream channels is insufficient. The second request is for authorization to take scale samples from adult and juvenile Snake River spring/summer chinook salmon. The applicant requests authorization for both modifications for the duration of the permit, through December 31, 1996.

Written data or views, or requests for a public hearing on an application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in these application summaries are those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above applications are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: February 15, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–4501 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 020994C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of scientific research permit no. 888 (P559).

SUMMARY: Notice is hereby given that Mr. Hiroyuki Suganuma, Ogasawara Marine Center, Byobudani, Chichijima Ogasawara-mura, Tokyo, 100–21, Japan, has been issued a permit to take humpback whales (*Megaptera novoeangliae*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016); and

Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955–8831).

SUPPLEMENTARY INFORMATION: On January 4, 1994, notice was published in the **Federal Register** (59 FR 296) that a request for a scientific research permit to take humpback whales had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1381 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this permit, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act.

Dated: February 18, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–4445 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The Ad Hoc Study Panel on USAF Space Launch Capabilities of the USAF Scientific Advisory Board will meet on 22–23 March 1994 at Edwards AFB, CA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings for the SAB Ad Hoc Study on Assessment of USAF Space Launch Capabilities.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–4498 Filed 2–25–94; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Software Test and Evaluation Panel will meet from 8 a.m. to 5 p.m. on 12–13 Apr 1994 at AFOTEC, Kirtland AFB, NM.

The purpose of these meetings is to receive briefings and to have discussions concerning software test and evaluation. These meetings will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–4648.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 94–4499 Filed 2–25–94; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) General Spring Board Meeting from 8 a.m. to 5 p.m. on 20–21 Apr 1994, at Scott AFB, IL.

The purpose of this meeting is to receive briefings and to have discussions concerning Air Mobility Command and USAF Scientific Advisory Board matters. This meeting will be closed to the public in accordance with section 552b of title 5,

United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–4648.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 94–4500 Filed 2–25–94; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Cooperative Agreement to Urban Energy and Transportation Corporation

AGENCY: U.S. Department of Energy.

ACTION: Notice of non-competitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(A) to Urban Energy and Transportation Corporation (UETC) under Cooperative Agreement Number DE–FC01–94EW54065. Estimated total funding in the amount of $15,000,000 will be provided to obtain local officials' participation and expertise in transportation activities including collection and dissemination of information, conducting regional and national workshops, providing technical assistance, and identification and analyses of issues related to transportation of hazardous materials through large urban areas. This activity will promote better understanding of local views concerning clean-up technologies, emergency management and training issues, and transportation operations and outreach. As a result, this will enable DOE to develop programs that will better meet those local needs.

The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(A) that UETC will provide continued activity which is necessary to the satisfactory completion of an activity presently being funded by DOE, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

The proposed effort is to establish and maintain networks of senior decision-makers from local communities who are responsible for or concerned about technology development, transportation, and emergency issues associated with energy-related facilities.

UETC has a vast array of techniques to accomplish the objectives of the proposed project, including professional techniques in structured meeting design and facilitation, information dissemination through printed products such as newsletters and electronic media, opinion surveys, planning and program evaluation, and public and institutional involvement.

The anticipated period of performance is 60 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Phyllis Morgan, HR–531.22, 1000 Independence Avenue, SW., Washington, DC 20585.

Scott Sheffield,

Director, Headquarters Operations Division B, Office of Placement and Administration.

[FR Doc. 94–4478 Filed 2–25–94; 8:45 am]

BILLING CODE 6450–01–M

Availability of a Study on the Safety of Shipments of Plutonium by Sea

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy, in conjunction with other Federal agencies, has completed a study and submitted it to Congress on February 8, 1994, on the Safety of Shipments of Plutonium by Sea. The study was conducted under the authority vested in the President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, and section 2904 of the Energy Policy Act of 1992, Public Law 102–486. By memorandum dated January 7, 1993, the President authorized the Secretary of Energy, in consultation with the Nuclear Regulatory Commission and with the concurrence of the Secretary of State, the Secretary of Defense, the Secretary of Transportation, the Chairman of the Joint Chiefs of Staff, the Administrator of the Environmental Protection Agency, the Director of the Federal Emergency Management Agency, and the Commandant of the United States Coast Guard to proceed with the study.

ADDRESSES: The study is available at the Public Reading Room (Room 1E–190), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Monday-Friday, 9 a.m.–4 p.m. EST, excluding Federal holidays.

Copies of the study have also been placed in the following reading rooms: U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612; U.S. Department of Energy, Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, CO 80030; U.S. Department of Energy, Public Reading Room, Largo Public Library, 351 East Bay Drive, Largo, FL 34640; U.S. Department of Energy, Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, P.O. Box 1625, Idaho Falls, ID 83402; U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439; U.S. Department of Energy, Public Reading Room, Red Bridge Branch, Mid-Continent Public Library, 11140 Locust Street, Kansas City, MO 64137; U.S. Department of Energy, Albuquerque Operations Office, Public Reading Room, National Atomic Museum, 20358 Wyoming Street, S.E., Kirtland Air Force Base, P.O. Box 5400, Albuquerque, NM 87185; U.S. Department of Energy, Nevada Operations Office, 2753 South Highland Drive, Las Vegas, NV 89109; U.S. Department of Energy, Public Reading Room, Miamisburg Library, 35 South Fifth Street, Miamisburg, OH 45342; U.S. Department of Energy, Public Reading Room, University of South Carolina, Aiken Campus Writing Center, 171 University Parkway, Aiken, SC 29801; U.S. Department of Energy, Oak Ridge Operations Office, Freedom of Information Officer, 200 Administration Road, RM G–209, P.O. Box 2001, Oak Ridge, TN 37831; U.S. Department of Energy, Reading Room, Lynn Library—Learning Center, Amarillo College, 2201 South Washington Street, Amarillo, TX 79109; U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, Room 157, P.O. Box 1970, Mail Stop A1–65, Richland, WA 99352.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Lillian, Deputy Director, Office of Transportation, Emergency Management, and Analytical Services (EM–26), U.S. Department of Energy, Washington, DC 20585, at 301–903–7270.

SUPPLEMENTARY INFORMATION: The subject study represents a review and evaluation of readily available pertinent technical reports which were discussed among the participating agencies during the course of the preparation of the study from October to December 1992. After reviewing the hazards posed by plutonium, applicable transportation safety and physical protection regulations, pertinent research and experience, and contingency plans, the agencies participating in this study conclude that plutonium can be shipped safely by sea.

Public Law 102–486 also requires the preparation and submittal to Congress of an Implementation Plan that describes the plan for implementing the recommendations contained in the study. The Implementation Plan must be submitted to Congress and made available for public viewing 90 days after issuance of the study. Subsequent to enactment of the legislation calling for this study and Implementation Plan, and subsequent to preparation of the study, several individual members of Congress have raised additional concerns relating to the shipment of radioactive materials by sea. These concerns include the safety of shipment of other material proposed to be shipped (e.g., glassified high-level nuclear waste and mixed oxide fuel), as well as the need to evaluate risk assessment elements. These elements are shipping routes, adequacy of the revised International Maritime Organization code for radioactive shipments, the consequences and probability of the "maximum credible accident" in shipping by sea, and the examination of threats of sabotage and terrorism. The participating Federal agencies will address these additional concerns in the Implementation Plan to the extent that they relate to the recommendations in the study. Where certain issues raised do not fall within the framework of the study and Implementation Plan, the agencies will ensure that they are addressed through direct communication with the members of Congress who raised them.

Issued in Washington, DC, on February 18, 1994.

Richard J. Guimond,

Assistant Surgeon General, USPHS, Principal Deputy Assistant Secretary for Environmental Management.

[FR Doc. 94–4342 Filed 2–25–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL94–24–000, et al.]

Consumer Advocate Division of the Public Service Commission of West Virginia, et al.; Electric Rate and Corporate Regulation Filings

February 18, 1994.

Take notice that the following filings have been made with the Commission.

1. Consumer Advocate Division of the Public Service Commission of West Virginia, Maryland People's Counsel and Pennsylvania Office of Consumer Advocate v. Allegheny Generating Company

[Docket No. EL94–24–000]

Take notice that on January 31, 1994, the Consumer Advocate Division of the Public Service Commission of West Virginia (hereinafter, "WV Consumer Advocate"), the Maryland People's Counsel (hereinafter "People's Counsel") and the Pennsylvania Office of Consumer Advocate (hereinafter "POCA") submitted their joint complaint against Allegheny Generating Company (AGC). In their complaint WV Consumer Advocate, People's Counsel, and POCA request that the Commission (1) join this complaint with other proceedings filed concerning AGC's return on equity; (2) adjust AGC's allowed rate of return on equity to no more than 8.53%, effective on and after April 1, 1994; and (3) establish a refund effective date no later than 60 days after the filing of this complaint, or April 1, 1994, and that this complaint be set for hearing at the earliest date.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Seminole Electric Cooperative, Inc. v. Florida Power & Light Company

[Docket No. EL94–28–000]

Take notice that on February 4, 1994, Seminole Electric Cooperative, Inc. (Seminole) tendered for filing a complaint and motion to consolidated against Florida Power & Light Company (FPL).

In its complaint Seminole seeks an order from the Commission to: (1) Find the rate currently charged by FPL for partial requirements services under the Aggregated Billing Partial Service Agreement between FPL and Seminole, designated as FERC Rate Schedule 77, and for full requirements services under the Agreement for Full Requirements Electric Service Cooperative, Inc., are unjust and reasonable, produce excessive revenues from Seminole, and should be reduced consistent herewith; (2) establish a refund-effective date 60 days after the date of filing this complaint; (3) set this matter for hearing; (4) order consolidation of the consideration of the matters raised by this complaint with the ongoing proceedings in Docket Nos. ER93–465–000; and (5) afford Seminole such other relief as may be deemed appropriate.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Public Service Company

[Docket No. EL94–31–000]

Take notice that on February 4, 1994, Southwestern Public Service Company (SPS) tendered for filing a statement as to the Absence of Need for Waiver of Fuel Adjustment Clause Regulations or Alternative Request for Waiver. SPS states that it will illustrate why a waiver of the Commission's fuel adjustment clause (FAC) regulations was unnecessary for SPS to properly include certain costs in the computation of its fuel costs for wholesale FAC billings.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER93–985–000]

Take notice that on February 10, 1994, twenty-nine participants in the New England Power Pool (the Filing Participants) submitted additional information concerning the Thirtieth Amendment to the New England Power Pool (NEPOOL) Agreement (the Amendment), which had been filed with the Commission on September 29, 1993. This submittal responds to the Commission's letter dated January 14, 1994, in the captioned docket requesting additional information concerning the Amendment. In the submittal, the Filing Participants also renew their request that the Commission permit the Amendment to become effective as of September 30, 1993.

The Filing Participants state that this submittal were served upon all of the NEPOOL Participants, persons who have requested intervention in the proceeding, and the electric utility regulators in the six states in which the NEPOOL Participants are located and provide retail service.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4471 Filed 2–25–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–327–000, et al.]

Wisconsin Public Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

February 22, 1994.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corp.

[Docket No. ER94–327–000]

Take notice that on February 14, 1994, Wisconsin Public Service Corporation (the Company) of Green Bay, Wisconsin, filed a proposed Supplement No. 4 to Supplement No. 9 to the Company's Service Agreement with WPPI which relates to WPPI peak shaving for the period January 1, 1996 through October 15, 1997.

WPPI is the only customer currently peak shaving under the Company's W–1 full requirements tariff. WPPI supports the filing and the proposed effective date of January 1, 1996.

The filing does not change the level of the Company's rates. The Company states that it has furnished copies of the filing to WPPI, its other customers who are served under the full requirements tariff, the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corp.

[Docket No. ER94–961–000]

Take notice that the Notice of Filing issued in the above-referenced docket on February 15, 1994 is rescinded.

3. Florida Power Corp.

[Docket No. ER94–961–000]

Take notice that Florida Power Corporation ("Florida Power") on February 8, 1994 tendered for filing a wholesale change in its full requirements, partial requirements and transmission rates.

The rates filed herein reflect a pre-filing settlement agreement between the Company and its wholesale customers that have participated in the Company's recent wholesale rate proceedings. Under that agreement, the rates for all classes of service except transmission service on a 1994 test year basis will increase on March 2, 1994, in the amount of (i) $9.9 million as compared to the 1993 settlement rates pending for approval by the Commission in Docket No. ER93–299–000, or (ii) $7.6 million as compared to the existing rates to be replaced by those 1993 settlement rates. The rates for transmission service on a 1994 test year basis will decrease on March 2, 1994, in the amount of (i) $1.1 million as compared to the 1993 settlement rates pending for approval or (ii) $1.8 million as compared to the existing rates to be replaced by those 1993 settlement rates. The rates for transmission service on a 1994 test year basis will subsequently increase on May 1, 1994, in an amount of $1.0 million as compared with the March 2, 1994 level rates. The settlement rates are extended to all wholesale customers not participating in the pre-filing settlement agreement.

Florida Power requests that the Commission waive the 60 day minimum notice requirement of the Federal Power Act to achieve the March 2, 1994 effective date for the rate changes proposed for that date for (1) the parties to the pre-filing settlement agreement, (2) customers not parties to the pre-filing settlement agreement but consenting to the pre-filing settlement procedures and (3) any other customers who do not oppose the March 2, 1994 requested effective date. Florida Power further requests that the Commission establish an effective date of April 9, 1994, 60 days from the date of the filing, for any customers who oppose the March 2, 1994 effective date. The Company further requests that the rate increases proposed for March 2, 1994, April 9, 1994, if applicable, and May 1, 1994 be permitted to become effective without suspension or, if suspended, that the suspension be for the minimum one day period.

Florida Power states that it has served copies of its filing on the affected customers and the Florida Public Service Commission.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Atlantic City Electric Co.

[Docket No. ER94–970–000]

Take notice that on February 14, 1994, Atlantic City Electric Company (ACE) tendered for filing as an initial rate under Section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between ACE and Delmarva Power & Light Company (DPL) dated February 2, 1994.

ACE states that the Agreement sets forth the terms and conditions for the sale of short-term energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to DPL. ACE requests that the Commission waive its standard notice period and allow this Agreement to become effective on February 14, 1994.

ACE states that a copy of this filing has been sent to DPL and will be furnished to the New Jersey Board of Regulatory Commissioners, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Central Maine Power Co.

[Docket No. ER94–972–000]

Take notice that on February 15, 1994, Central Maine Power Company (CMP), tendered for filing a proposed Power Sales Tariff revision to expand the available market for transactions under the Tariff.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. West Penn Power Co.

[Docket No. ER94–973–000]

Take notice that on February 15, 1994, West Penn Power Company, tendered for filing Addenda adding new delivery points for borderline service provided to Pennsylvania Power & Light Company in accordance with FERC Electric Tariff, First Revised Volume No. 1.

Copies of the filing were served upon the jurisdictional customers and the Pennsylvania Public Utility Commission.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Co.

[Docket No. ER94–975–000]

Take notice that on February 16, 1994, New England Power Company (NEP), tendered fourteen agreements with the Massachusetts Bay Transportation Authority. One agreement concerns the installation and maintenance of metering equipment. The other thirteen agreements are long-term service agreements under NEP's FERC Electric Tariff, Original Volume No. 8.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4469 Filed 2–25–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–211–000, et al.]

Transwestern Pipeline Co., et al.; Natural Gas Certificate Filings

February 18, 1994.

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Co.

[Docket No. CP94–211–000]

Take notice that on February 2, 1994, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–211–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations, for permission and approval to abandon by sale to Enron Oil & Gas Company (Enron) a certain small diameter pipeline, a meter station and related facilities located in Lea County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern states that by the terms of a Purchase and Sale Agreement dated November 1, 1993, it has agreed to sell to Mewbourne, at the net book value of $75,000, the Vaca lateral, which includes approximately 0.71 miles of 4-inch pipeline, one meter station, and related facilities attached to Transwestern's 24-inch West Texas lateral in Lea County, New Mexico. Transwestern submits that no removal or modification to its pipeline facilities will occur as a result of the abandonment and that the facilities to be sold to Enron will be used as part of Enron's existing gathering systems.

Comment date: March 11, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Transwestern Pipeline Co.

[Docket No. CP94–213–000]

Take notice that on February 3, 1994, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–213–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations, for permission and approval to abandon by sale to Mewbourne Oil Company (Mewbourne) certain small diameter pipelines, meter stations and related facilities located in Lipscomb County, Texas and Ellis County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern states that by the terms of two Purchase and Sale Agreements dated January 27, 1994, it has agreed to sell to Mewbourne, at the net book value of $252,950:

1. Approximately five miles of 4- and 6-inch pipelines, two meter stations, and related facilities attached to Transwestern's 12-inch Leedy lateral in Ellis County, Oklahoma, and

2. Approximately six miles of 4-inch pipelines, six meter stations, and related facilities located off the east end of Transwestern's Mammoth Creek lateral in Lipscomb County, Texas.

Transwestern submits that no removal or modification to its pipeline facilities will occur as a result of the abandonment and that the facilities to be sold to Mewbourne will be used as part of Mewbourne's existing gathering systems.

Comment date: March 11, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Co.

[Docket No. CP94–224–000]

Take notice that on February 9, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000 filed an application pursuant to sections 7 (b) and (c) of the Natural Gas Act for: (a) A certificate of public convenience and necessity authorizing the construction and operation of approximately 11.95 miles of various size mainline and branchline looping pipeline; and (b) permission and approval to abandon and a certificate of public convenience and necessity for certain facilities for the modification of nine town border stations (TBS) in the State of Minnesota in order to expand pipeline capacity to provide incremental firm transportation service to Minnegasco, a Division of Arkla, Inc. (Minnegasco) and Great Plains Natural Gas Company (Great Plains), all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Northern proposes to construct the following facilities in order to provide firm transportation service Minnegasco and Great Plains.

(1) Approximately 2.82 miles of 30-inch pipeline at the end of the existing D-Line in a northerly direction parallel to Northern's existing mainline in Steele County, Minnesota. A tie-in to the B and C-Lines would be made at the end of the D-Line extension and the existing D to C regulator setting would be moved to the new tie-over point;

(2) Approximately 1.28 miles of 30-inch pipeline as an extension of Northern's C-Line parallel to Northern's existing mainline and ending with a tap on the B-Line in Washington County, Minnesota;

(3) Approximately 7.85 miles of 8-inch pipeline loop on the Alexandria Branchline in a westerly direction in Morrison County, Minnesota to accommodate a portion of the increased requirements for Minnegasco;

Northern proposes to modify the Clarkfield No. 1 TBS serving Great Plains and 8 TBS' serving Minnegasco as follows:

(1) Install one 3-inch rotary meter run and modify meter piping on Clarkfield No. 1;

(2) Install one 3-inch rotary meter run, modify meter piping, remove 1-inch regulators and install two 2-inch regulators on St. Michael No. 1;

(3) Remove existing meters and install one 3-inch rotary meter run and one 6-inch turbine meter run at Glenwood No. 1;

(4) Remove existing meter, install two 3-inch rotary meters and modify meter piping at St. Bonifacius No. 1;

(5) Remove existing meter and install diaphragm meter at Waconia No. 1B;

(6) Remove existing regulators and install two 2-inch regulators at Waconia No. 1;

(7) Remove existing meters and install one 3-inch and one 4-inch rotary meters at Prior Lake No. 1A;

(8) Replace existing regulators with two 1-inch regulators and modify piping under relief valve at Prior Lake No. 1;

(9) Replace existing regulator valve trim at Mound No. 1.

Northern estimates the cost of these facilities to be $6,065,000 which would be financed with internally generated funds.

Northern proposes to construct the facilities to provide additional capacity on Northern's mainline north between its Owatonna Compressor Station (Owatonna) in Steele County, Minnesota and its North Branch Compressor Station in Chicago County, Minnesota to serve additional market requirements of 19,788 Mcf of natural gas per day requested by Minnegasco and Great Plains during a thirty day open season from November 10, 1993 to December 9, 1993. Northern states that the Alexandria Branchline loop is required to meet Minnegasco's increased requirements served from the branchline. Northern states that the mainline facilities would increase the capacity of the mainline north of Owatonna by 19,288 Mcf of natural gas per day and is required for the 1994–95 heating season. The balance would be transported through existing capacity, it is indicated.

Northern states that Northern has entered into precedent agreements for firm transportation service for the five winter months of November through March with Minnegasco for 18,788 Mcf of natural gas per day and Great Plains for 1,000 Mcf of natural gas per day. Northern states that Northern would provide the firm transportation service for Minnegasco and Great Plains pursuant to Northern's currently effective Rate Schedule TFX for a primary term of ten years.

Comment date: March 11, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. El Paso Natural Gas Co.

[Docket No. CP94–226–000]

Take notice that on February 14, 1994, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP94–226–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue the operation of an existing delivery point, installed under Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA) in Lea County, New Mexico, under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso, it is said, installed the Cabot Hobbs Meter Station under Section 311(a) of the NGPA and has exclusively used it for the transportation and delivery of natural gas under Part 284, Subpart B. El Paso states that the regulatory restriction placed on the operation of a facility installed under Section 311(a) of the NGPA prohibits El Paso's shippers from utilizing this delivery point under any transportation arrangement other than a Subpart B transportation arrangement.

El Paso states further that it now requests authorization to continue the operation of the facility under the Natural Gas Act.

Comment date: April 4, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gas Transmission Corp.

[Docket No. CP94–229–000]

Take notice that on February 14, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–229–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by sale its transmission Line L–2103, together with its rights-of-way and appurtenances, to Ohio Cumberland Gas Company. In connection to the sale, Columbia also requests authorization to abandon 45 points of delivery to Columbia Gas of Ohio, Inc. for service to mainline tap customers, whose service will be continued by Ohio Cumberland, under the authorization issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states that the facilities proposed for abandonment were utilized to move gas to and from Knox Storage Field until the abandonment of Knox. It is stated that the line was then transferred to transmission plant and is currently used to provide service to mainline customers of Columbia Gas of Ohio, Inc. Columbia states that the proposed abandonment will not result in any loss or change of service to existing Columbia customers.

Comment date: April 4, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4470 Filed 2–25–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–233–000]

Chandeleur Pipe Line Co.; Application

February 22, 1994.

Take notice that on February 14, 1994, Chandeleur Pipe Line Company (Chandeleur), P.O. Box 740339, New Orleans, LA 70174, filed in Docket No. CP94–233–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the increase of maximum operating pressures and total system maximum capacity of its pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Chandeleur states that it consists of a 79.9 mile 12-inch mainline, a parallel 82.3 mile 16-inch mainline (which loops the 12-inch line) and an 11.3 mile 12-inch lateral gas supply pipeline. The maximum operating pressure of the 12-inch mainline is 1100 psig. The maximum operating pressure of the 16-inch mainline 1000 psig. The maximum operating pressure of the 12-inch lateral is 1318 psig. The current authorized system capacity is 205,000 Mcf per day, with maximum capacity of 240,000 Mcf per day.

Specifically, Chandeleur requests authorization to increase the maximum operating pressures of both its 12-inch and 16-inch mainlines to 1200 psig. Chandeleur states that it has recently completed a new interconnection with Texas Eastern Transmission Corporation's ("TETCO") 24-inch mainline in offshore Louisiana in OCS Breton Sound Block 42 for the purpose of allowing Chandeleur's shippers to transport gas into TETCO's system, thereby increasing the shippers' delivery options. Chandeleur states that TETCO's maximum operating pressure is 1200 psig. To allow delivery of natural gas from Chandeleur into TETCO's 24-inch mainline when TETCO is operating at maximum pressure, Chandeleur states that its maximum operating pressure must match TETCO's and therefore must be increased to 1200 psig.

Chandeleur states that the requested increase in pressure to 1200 psig is within maximum allowable operating pressures for Chandeleur's pipeline as established by the Department of Transportation.

Chandeleur states that the requested increase in operating pressure and maximum capacity will allow its current and future shippers to increase the amount of gas they can transport to existing markets and to new markets which are not now economically accessible through Chandeleur.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 3, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Chandeleur to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4416 Filed 2–25–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG91–7–000]

Ozark Gas Transmission System; Filing

February 22, 1994.

Take notice that on August 2, 1991, Ozark Gas Transmission System (Ozark) made a filing, under protest, in the above-captioned docket concerning its compliance with Order Nos. 497 et al.[1]

On December 23, 1993, in Order No. 497–E, the Commission confirmed that Ozark is subject to Order Nos. 497 et al. This notice of Ozark's prior compliance filing is being issued in accord with Order No. 497–E.

Ozark states that copies of this filing were served upon all parties on the official service list complied by the Secretary of the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20428, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4417 Filed 2–25–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 22139 (June 14, 1988), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,820 (1988), order on reh'g, Order No. 497–A, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,868 (1989), order extending sunset date, Order No. 497–B, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,908 (1990), order extending sunset date and amending final rule, Order No. 497–C, 57 FR 9 (Jan. 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), reh'g denied, 57 FR 5815 (Feb. 18, 1992), 58 FERC ¶ 61,139 (1992), aff'd in part and remanded in part, Tenneco Gas v. *FERC, 969 F.2d 1187 (DC Cir. 1992); Order No. 497–D, (order on remand and extending sunset date), 57 FR 58,978 (December 4, 1992), III FERC Stat. and Reg. ¶ 30,958 (1992); Order No. 497–E, Order on rehearing and extending sunset date), 59 FR 243 (January 4, 1994), III FERC Stat. and Reg. ¶ 30,987 (December 23, 1993).*

Office of Energy Efficiency and Renewable Energy

Integrated Resource Planning Impact on Utility Systems and Consumers

AGENCY: Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice of inquiry and request for comments.

SUMMARY: The U.S. Department of Energy's (DOE) Integrated Resource Planning (IRP) Program is interested in soliciting the opinions of electric and gas utilities and their trade associations, electricity and gas consumer associations, State regulatory commissions and energy offices, consumer and other public interest groups, and universities, research and consulting firms concerning the likely effects of IRP on utility systems, consumers and small businesses. Responses to this request will assist the DOE in satisfying both its near-term and

longer-term IRP evaluation responsibilities.

DATES: Written comments must be submitted by April 1, 1994 to ensure their consideration.

ADDRESSES: Send comments to Andrew Krantz, Integrated Resource Planning Program, Office of Utility Technologies, U.S. Department of Energy, Forrestal Building, EE–10, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Andrew Krantz of the U.S. Department of Energy at the above address.

SUPPLEMENTARY INFORMATION:

I. EPAct's IRP Reporting Requirements of DOE

The Energy Policy Act of 1992 (EPAct) contains several requirements of DOE to report to the President and Congress on the status and likely impacts of electric and gas IRP development across the nation. These IRP-related reporting requirements can be found in EPAct, Title I—Energy Efficiency, Subtitle B—Utilities, Sections 111(e) and 115(e). The purpose of this notice is to obtain information relevant to the IRP evaluation and small business impact reporting requirements by soliciting the opinions of IRP stakeholders concerning the impact of IRP on electricity costs to consumers, reliability of electric service, dependence on particular energy sources, and small businesses engaged in providing energy services. In the near-term, DOE must satisfy these EPAct requirements which call for DOE to prepare this report to the President and Congress within two years of EPAct's enactment. The report must contain, among other IRP-related items, an evaluation which determines:

- Whether and to what extent IRP (electric only) is likely to result in—
  a. Higher or lower electricity costs to an electric utility's ultimate consumers or to classes or groups of such consumers;
  b. Enhanced or reduced reliability of electric service; and
  c. Increased or decreased dependence on particular energy resources; as well as
- The competitive impact of implementation of energy conservation, energy efficiency, and other DSM programs by utilities (electric and gas) on small businesses engaged in the design, sale, supply, installation, or servicing of similar energy conservation, energy efficiency, or other DSM measures; and whether any unfair, deceptive, or predatory acts exist, or are likely to exist, from implementation of such programs.

The DOE IRP Program will also use responses to this request for providing insight into the direction of the Program's longer-term research agenda related to assessing the national impacts of IRP. Responses to this request will be analyzed and reported by the staff of DOE's Integrated Resource Planning (IRP) Program, which is under the auspices of the Office of Utility Technologies which is under the Office of the Assistant Secretary for Energy Efficiency and Renewable Energy. This summary will characterize what various groups believe to be the likely impacts of electric IRP on the nation.

II. Purpose of Request

The overall legislative intent of Subsection 111 of EPAct is to promote energy efficiency, in particular by encouraging utilities and States to adopt the planning principles of IRP. The legislative intent of the requirements to report the impact of IRP on electricity costs to consumers, reliability of electric service and dependence on particular energy resources is to assess the likely results of IRP implementation against the intended purpose and goals of EPAct's IRP-related provisions. It is also the intent of the provision to determine the competitive impacts of the energy conservation, energy efficiency, and other demand-side management programs of electric and gas utilities on small businesses to ensure that State regulatory commissions are considering the impact which expanded DSM programs may have on small businesses already engaged in similar activities, and are implementing measures to assure that utility actions will not provide utilities with an unfair competitive advantage over such small businesses.

The DOE's IRP Program is responsible for this report. The program views the Federal role in IRP development as a collector of important data, a conduit of the lessons learned by experienced IRP practitioners to new IRP adopters, a developer of new tools and data bases and monitorer of the outcomes of IRP processes around the country. Among the priorities in this effort is the fulfillment of these EPAct reporting requirements concerning the likely impacts of IRP on the nation.

Submitting this report to the President and Congress will be a component of a continuing effort by DOE's IRP Program to monitor and evaluate the impact of IRP on the nation's States, utilities and consumers. The IRP Program views as part of its role to think critically about IRP and its expected benefits. Because DOE implements national energy policies that emphasize IRP as a potential solution to some of the problems affecting the nation's utility energy services, an assessment as to whether and to what extent IRP is providing overall benefit to the nation, as it is practiced, is a necessary and important DOE responsibility.

III. Definitions of IRP

To ensure that all respondents to this notice have a common understanding of DOE's perspective on the role of IRP in utility planning, DOE offers the following to define IRP's scope and parameters and to describe the characteristics which distinguish IRP from traditional planning approaches.

Traditional planning techniques used by utilities once focus only on investing in supply-side resources to satisfy customers' needs. A distinguishing factor of the IRP process is that it includes both supply- and demand-side resources in meeting demands for utility energy services. According to Section 111 of EPAct, IRP for electric utility service is:

> A planning and selection process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its customers at the lowest system cost.

In addition to promoting a mix of alternative resources, IRP infuses the interests of all stakeholders: Utilities, ratepayers, regulators, stockholders, and interest groups. The following explanation of IRP, also taken from EPAct Section 111, reflects the idea that IRP is a process that evaluates the issues raised by different stakeholders.

> The Process [will] take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; [will] take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; [and will] treat demand and supply resources on a consistent and integrated basis.

The DOE approach to IRP for utility and State energy planning is to treat all options—supply, storage, delivery, and demand-side—on a consistent basis using a systems approach without preconceptions or bias for or against any particular option, fuel type, or form of ownership. The following characteristics distinguish IRP from traditional planning techniques.

1. IRP examines the full range of energy and capacity resources including demand-side management programs, transmission and distribution systems, and non-traditional supply alternatives.
2. IRP gives consideration to the full range of economic, environmental, social, and technological factors.
3. IRP facilitates public involvement in utility planning.
4. IRP facilitates consideration of the risks and uncertainties posed by different resource portfolios and by external factors such as fluctuations in energy prices and economic conditions.

IV. Nature of Information Sought

DOE urges those interested in responding to this notice to consider the provided definition of IRP and its characteristics and to consider the following list of questions. DOE is also interested in gauging the evolution of IRP practices around the nation, particularly as those practices apply to the significant changes that are likely to occur in the utility services industry over the next several years. Therefore, DOE urges respondents to also consider each of the following questions and explain how they might answer those questions five years from now. Respondents are asked to please include their underlying assumptions which accompany their opinions on the future status and likely impact of IRP. This information will enhance DOE's ability to accurately interpret the response and compare it to the opinions of other respondents.

- Has the implementation of IRP changed (or is likely to change) the per unit cost as well as the total bill for electricity for consumers from pre-IRP levels? How, if at all, have different consumer classes or groups experienced (or are likely to experience) changes in the cost of their electric service as a result of IRP? Are these changes good or bad and why? What characteristics of IRP are most responsible for the changes in electricity costs which you have cited for the previous questions? What studies, reports, or other information underlie your comments?
- Has the implementation of IRP enhanced or reduced (or is likely to enhance or reduce) the overall reliability of electric service to customers? What, if any, are the IRP characteristics most-responsible (or likely to be most responsible) for a change in the level of electric service reliability since IRP has been implemented? What studies, reports, or other information underlie your comments?
- (Regarding the electric utility or utilities of most immediate concern to you), has the implementation of IRP increased or decreased (or is likely to increase or decrease) a dependence on particular energy resources? How has the implementation of IRP affected (or is likely to affect) the portfolio of resources serving your state (or your service territory)? What characteristics of IRP are most responsible for any changes in such a resource portfolio and why? What studies, reports, or other information underlie your comments?
- What has been (or is likely to be) the competitive impact of utility (electric or gas) energy conservation, energy efficiency, or other demand-side management programs on small businesses providing energy services in your State (or service territory)? What studies, reports, or other information underlie your comments?
- Has IRP had (or is likely to have) an effect on competition within: wholesale markets, retail markets, fuel sources, and technologies? If so, how? Please explain. What studies, reports, or other information underlie your comments?
- [For utilities only] To what extent have IRP principles been incorporated into your business planning practice? Please explain. What studies, reports, or other information underlie your comments?
- Has IRP had (or is likely to have) an effect on the regulatory process and proceedings? If so, how? Please explain. What studies, reports, or other information underlie your comments?
- Has IRP had (or is likely to have) an effect on the level of public involvement with utility planning? If so, how? Please explain. What studies, reports, or other information underlie your comments?
- Has IRP had (or is likely to have) an effect on the environmental performance of the utility(s)? If so, how? Please explain. What studies, reports, or other information underlie your comments?
- Has IRP affected (or is likely to affect) the way in which risk and uncertainty is treated in your business and/or regulatory planning process? If so, how? Please explain. What studies, reports, or other information underlie your comments?
- On net, has IRP been (or is likely to be) a positive or negative force? Please explain. What studies, reports, or other information underlie your comments?

V. DOE Plans for EPAct Report and Future IRP Evaluation Efforts

The staff of DOE's IRP Program will tabulate and summarize public comments received by the due date of April 1, 1994. Depending on the number of responses, the report to the President and Congress will identify areas of agreement and disagreement among respondents by type of stakeholder group (utilities, States, interest groups), and regions of the country, and other key segmentation variables as appropriate.

Issued in Washington, DC, on February 14, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–4477 Filed 2–25–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[Docket No. FE C&E 94–1—Certification Notice—128]

Blackfoot Cogeneration Partners; Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of filing.

SUMMARY: Cogen Power, Inc. on behalf of itself and Blackfoot Cogeneration Partners, has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed self-certifications in acccordance with section 201(d).

Owner & Operator: Blackfoot Cogeneration Partners.

Location: Blackfoot, Idaho.

Plant Configuration: Topping cycle cogeneration.

Capacity: 6.5 megawatts.
Fuel: Natural gas.
Purchasing Utilities: Idaho Power Company.
Expected In-Service Date: January 1, 1997.

Issued in Washington, DC, February 22, 1994.

Anthony J. Como,
Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–4476 Filed 2–25–94; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–62137; FRL–4758–4]

Accredited Training Programs Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: National Directory of AHERA Accredited Courses (NDAAC); notice of availability of new edition.

SUMMARY: Effective February 28, 1994, the EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The February 28, 1994, directory, which supersedes the version released on November 30, 1993, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: EPA AHERA - NDAAC, c/o VISTA Computer Services, 3rd Floor, 6430 Rockledge Drive, Bethesda, Maryland 20817, Telephone: 1–800–462–6706.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW, Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, as amended by the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), contractors who prepare management plans for schools, inspect for asbestos in schools or public and commercial buildings, or design or conduct response actions with respect to friable asbestos-containing materials in schools or public and commercial buildings, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved state accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was published on August 30, 1991. EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

List of Subjects

Environmental protection.

Dated: February 3, 1994.

Mark A. Greenwood,
Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–4049 Filed 2–25–94; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Gen Docket No. 90–7; DA 94–131]

Private Land Mobile Radio Services; Washington, DC Metropolitan Area Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Deputy Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division released this Order amending the Public Safety Radio Plan for the Washington, DC Metropolitan Area (Region 20). As a result of accepting the amendment for the Plan for Region 20, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 7, 1994
Released: February 17, 1994

By the Deputy Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division:

1. The private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Washington, DC Metropolitan Area (Region 20) Public Safety Plan (Plan) on March 26, 1990, 55 FR 13319 (April 10, 1990).

2. By letter dated November 24, 1993, the Region proposed to amend its Plan. The proposed amendment would give the Regional Plan Review Committee authority to reallocate its 13 intraregional interoperability channels, except channel 792, to general pool assignment. The Commission placed the letter on Public Notice for comments due on January 18, 1994, 58 FR 65712 (December 16, 1993). The Commission received one comment from County of Prince William urging the Commission to grant the proposed amendment.

3. We have reviewed the proposed amendment to the Region 20 Plan and, having received no comments to the contrary, conclude it furthers the interests of the eligible entities within the region.

4. Accordingly, *It is ordered*, That the Public Safety Radio Plan for the Washington, DC Metropolitan Area (Region 20) is amended, as set forth in the Region's letter of November 24, 1993. This amendment is effective immediately.

Federal Communications Commission.

Edward R. Jacobs,
Deputy Chief, Land Mobile and Microwave Division.

[FR Doc. 94–4406 Filed 2–25–94; 8:45 am]
BILLING CODE 6712–01–M

[PR Docket No. 93–80; DA 94–132]

Private Land Mobile Radio Services; Hawaii Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Deputy Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division released this Order amending the Public Safety Radio Plan for Hawaii (Region 11). As a result of accepting the amendment for the Plan for Region 11, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 7, 1994;
Released: February 17, 1994.

By the Deputy Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division:

1. The Private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Hawaii (Region 11) Public Safety Plan (Plan) on June 2, 1993, 58 FR 34049 (June 23, 1993).

2. By letter dated November 18, 1993, the Region proposed to amend its Plan. The proposed amendment would revise the current channel allotments. The Commission placed the letter on public notice for comments due on January 18, 1994, 58 FR 65712 (December 16, 1993), and received no comments.

3. We have reviewed the proposed amendment to the Region 11 Plan and, having received no comments to the contrary, conclude it furthers the interests of the eligible entities within the Region.

4. Accordingly, it is ordered, That the Public Safety Radio Plan for Hawaii (Region 11) is amended, as set forth in the Region's letter of November 18, 1993. This Amendment is effective immediately.

Federal Communications Commission.

Edward R. Jacobs,
Deputy Chief, Land Mobile and Microwave Division.

[FR Doc. 94–4405 Filed 2–25–94; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 94–03]

Dorland Management, Inc. v. Nedlloyd Lijnen B.V. D/B/A Nedlloyd Lines; Filing of Complaint and Assignment

Notice is given that a complaint filed by Dorland Management, Inc. ("Complainant") against Nedlloyd Lijnen B.V. d/b/a Nedlloyd Lines ("Respondent") was served February 22, 1994. Complainant alleges that Respondent has violated sections 8(c), 10(b)(3), 10(b)(5) and 10(b)(12) of the Shipping Act of 1984, 46 U.S.C. app. 1707(c) and 1709(b)(3), (5) and (12), by refusing to make available, to complainant, the essential terms of a service contract published by Respondent.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by February 22, 1995, and the final decision of the Commission shall be issued by June 22, 1995.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 94–4410 Filed 2–25–94; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request to approve interview forms for A Descriptive Study of the Head Start Health Component. This study is sponsored by the Administration on Children, Youth and Families of the Administrator for Children and Families (ACYF).

The Administration for Children and Families is requesting any comments by March 25, 1994 in order to have the interviews forms completed during April and May of 1994, prior to the end of the Head Start academic year.

ADDRESSES: Copies of this information may be obtained from Edward E. Saunders of the Office of Information Systems Management, ACF, by calling (202) 205–7921. Written comments and questions regarding the requested approval for information collection should be sent by March 25, 1994 directly to:

Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: A Descriptive Study of the Head Start Health Component

OMB No.: New Request.

Description: The Administration on Children, Youth and Families (ACYF) will conduct A Descriptive Study of the Head Start Health Component. The study, conducted in 80 Head Start centers around the country, will include interviews with 1200 parents who have a 4-year-old child in Head Start, with a review of the Head Start health records of these children. There will also be interviews with the key Head Start staff responsible for administration and implementation of the Health Component.

During Phase I of the study, a Technical Advisory Panel, consisting of experts in the four health domains, assisted in developing the sampling, data collection and analysis plans, as well as the data collection instruments. In Phase II, the research team will collect health screening, examination, referral, treatment and services data for 15 randomly selected four-year-old children at each of the 80 participating Head Start centers, also selected at random from around the country. All data collection must be completed prior to the end of the Head Start academic year. These data will be analyzed to provide a description of how this nationwide sample of programs is implementing the Head Start Health Component.

Number of Respondents: 1560 (1200 parents; 360 staff).

Frequency: One time for all respondents, except for the Head Start program Budget Manager who has an additional questionnaire to complete and mail back at the end of FY 1993.

Average Burden Hours per Response: 0.62 hours/respondent (or 37.2 minutes/respondent).

Burden Hours: 959.9 total hours.

Dated: February 22, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–4461 Filed 2–25–94; 8:45 am]

BILLING CODE 4184–01–M

Agency for Toxic Substances and Disease Registry

[ATSDR–78]

Revised Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), requires that ATSDR and the Environmental Protection Agency (EPA) annually revise the Priority List of Hazardous Substances to include additional substances most commonly found at facilities on the CERCLA National Priorities List (NPL). This announcement provides notice that the agencies have developed and are making available a revised CERCLA Priority List of 275 Hazardous Substances, based on the most recent information available to ATSDR and EPA. This revised priority list includes newly listed substances which have been determined to pose the most significant potential threat to human health at or around NPL hazardous waste sites. Each substance on the priority list is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequent identification of priority data needs.

ADDRESSES: Requests for a copy of the revised Priority List of Hazardous Substances, a copy of the "Supplemental Document for the 1993 Revised Priority List of Hazardous Substances", or comments on this notice should bear the docket control number ATSDR–78, and should be submitted to: ATSDR, Division of Toxicology, Quality Assurance Branch, Mail Stop E–29, 1600 Clifton Rd., NE., Atlanta, GA 30333.

This is an informational notice only, and comments are not being solicited at this time. However, comments will be placed in a publicly accessible docket; therefore, please do not submit confidential business information.

Electronic Availability: The 1993 Revised Priority List is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem dial 202–512–1387 or call 202–512–1530 for disks or paper copies. This file is available in Wordperfect 5.1, Dbase III, and ASCII.

FOR FURTHER INFORMATION CONTACT: Quality Assurance Branch, Division of Toxicology, ATSDR, Atlanta, GA 30333, telephone (404) 639–6308.

SUPPLEMENTARY INFORMATION: CERCLA establishes certain requirements for ATSDR and EPA with regard to hazardous substances which are most commonly found at facilities on the CERCLA NPL. Section 104(i)(2) of CERCLA, as amended (42 U.S.C. 9604(i)(2)), requires that the two agencies prepare a list, in order of priority, of at least 100 hazardous substances that are most commonly found at facilities on the NPL and which, in their sole discretion, are determined to pose the most significant potential threat to human health (see 52 FR 12866, April 17, 1987). CERCLA also requires the agencies to revise the priority list to include 100 or more additional hazardous substances (see 53 FR 41280, October 20, 1988), and to include at least 25 additional hazardous substances in each of the three successive years following the 1988 revision (see 54 FR 43619, October 26, 1989; 55 FR 42067, October 17, 1990; 56 FR 52166, October 17, 1991). CERCLA also requires that ATSDR and EPA shall, not less often than once every year thereafter, revise the list to include additional hazardous substances which are determined to pose the most significant potential threat to human health. Each substance on the CERCLA priority list of hazardous substances is a candidate to become the subject of a toxicological profile prepared by ATSDR and the subsequent identification of priority data needs.

The previous priority lists of hazardous substances were based on the most comprehensive and relevant information available when the lists were developed. More comprehensive sources of information on the frequency of occurrence and the potential for human exposure of substances at NPL sites became available for use in the 1991 priority list with the development of ATSDR's HazDat database; additional information from HazDat has become available for this year's listing activity. In the initial listing activities (1987–1990), new substances were added to the end of the list, without a comparative reranking. A notice announcing the intention of ATSDR and EPA to revise and rerank the priority list of hazardous substances was published on June 27, 1991 (56 FR 29485). In this year's listing activity, as in the previous two years, new candidate substances (substances found at three or more NPL sites) were assigned a toxicity/environmental score (TES) using the EPA Reportable Quantity methodology, and were added to the pool of substances previously considered for the annual list. All substances were then evaluated together for consideration on the priority list.

The approach used to generate the 1991 revised priority list was summarized in the "Revised Priority List of Hazardous Substances" (56 FR 52166, October 17, 1991). Using the same approach, and the same algorithm this year, over 700 candidate substances have been ranked to create the current list of 275 substances.

The additional information used in this year's listing activity was entered into ATSDR's HazDat database since the development of the 1992 Priority List of Hazardous Substances. As with other site-specific information used in the listing activity, this information has been collected from ATSDR Public Health Assessments and from site file data packages used in the development of Public Health Assessments. The new information includes more recent NPL frequency of occurrence data, additional concentration data, and more information on exposure or potential exposure to substances present at NPL sites.

At this time the list includes 275 substances which ATSDR and EPA have determined to pose the most significant potential threat to human health based on the criteria of CERCLA section 104(i)(2) (42 U.S.C. 9604(i)(2)). All candidate substances have been analyzed and ranked with the current algorithm, and may become the subject of toxicological profiles in the future.

The addition of approximately 12,800 contaminant data records (for air, water and soil) to the HazDat database since October 1992 has allowed the agencies to better assess the potential for human exposure to substances at NPL hazardous waste sites. With this additional data, 10 new candidate substances have been added to the list, and 13 substances under consideration last year have moved onto the list. Accordingly, 23 substances have been replaced on the list of the 275 substances. These changes in the order of substances appearing on the CERCLA priority list of hazardous substances will be reflected in the program activities which rely on the list for

future direction. For example, Dicofol moved up significantly (to number 107) on the 1993 list when compared to last year's list. As a result it will be included in the pool of substances that may become the subject of new toxicological profiles in the next fiscal year. Similarly, alpha-Endosulfan (number 33) moved well into the range of those substances to be considered for the development of updated toxicological profiles (CERCLA also requires ATSDR to evaluate new information on profiled substances for potential revision every three years). These changes reflect the dynamic nature of scientific data on substances present at NPL (and other) hazardous waste sites.

This annual evaluation activity and announcement of a revised priority list of hazardous substances fulfills the conditions of CERCLA section 104(i), as amended, which requires ATSDR and EPA to revise the list yearly to include additional hazardous substances. The agencies intend to revise the list of hazardous substances annually thereafter to reflect changes and improvements in data collection and availability. Additional information on the methodology used in the development of the CERCLA Priority List of Hazardous Substances can be found in the **Federal Register** notices mentioned above.

Administrative Record

ATSDR and EPA are establishing a single administrative record entitled ATSDR–78 for materials pertaining to this notice. All materials received as a result of this notice will be included in the public file which is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal legal holidays, at the Agency for Toxic Substances and Disease Registry, #4 Executive Park Drive, Suite 2400, Atlanta, Georgia.

Dated: February 18, 1994.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–4446 Filed 2–25–94; 8:45 am]

BILLING CODE 4163–70–P

Food and Drug Administration

Compressed Medical Gas Industry; Notice of Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

SUMMARY: The Food and Drug Administration's (FDA's), Atlanta District Office, Center for Drug Evaluation and Research, and Office of Small Business, Scientific and Trade Affairs are sponsoring three public workshops on FDA requirements and guidelines that apply to the compressed medical gas industry. These workshops are designed to assist the industry in complying with and conforming to legal requirements or guidelines for manufacturing and repacking medical gases.

DATES: The public workshops will be held on March 21, 1994; March 23, 1994; and on March 25, 1994; 8:30 a.m. to 4 p.m.

ADDRESSES: The public workshops will be held at the following locations:

March 21, 1994: Sheraton Colony Square Hotel, 188 14th St. NE., Atlanta, GA.

March 23, 1994: Radisson Inn-Airport, 5991 Rivers Ave., North Charleston, SC.

March 25, 1994: North Raleigh Hilton, 3415 Wake Forest Rd., Raleigh, NC.

FOR FURTHER INFORMATION CONTACT:

Eric S. Weilage or Dawn Todd, Investigations Branch, Food and Drug Administration, 60 Eighth St. NE., Atlanta, GA 30309, 404–347–3218 or FAX 404–347–1913, or

Jeanne White or Sharon Schneider, Office of Small Business, Scientific and Trade Affairs (HF–51), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776.

Those persons interested in attending any of these workshops should FAX their registration by March 10, 1994, including name, firm name, address, and telephone number to 404–347–1913. There is no registration fee for these workshops, but advance registration is required. Space is limited and all interested parties are encouraged to register early.

SUPPLEMENTARY INFORMATION: FDA's inspectional history of the compressed medical gas industry shows that a high percentage of medical gas firms are unaware of applicable regulations and guidelines or are not operating in compliance with or conformance to applicable requirements or guidelines. These workshops are designed to assist the medical gas industry and are free of charge to attendees.

Dated: February 17, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4411 Filed 2–25–94; 8:45 am]

BILLING CODE 4160–01–F

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part 58 FR 35960, July 2, 1993) is amended to reflect a reorganization within the Center for Devices and Radiological Health (CDRH), Office of Operations, Food and Drug Administration (FDA). FDA proposes to reorganize its Office of Training and Assistance (which will be retitled as the Office of Health and Industry Programs) within CDRH. The Office functions will be revised and now include implementation of the Mammography Quality Standards Act of 1992.

Under section HF–B, Organization:

1. Under the Office of Operations (HFA9), Center for the Devices and Radiological Health (HFW), delete subparagraph *Office of Training and Assistance (HFWG)* in its entirety and insert a new subparagraph *Office of Health and Industry Programs (HFWG)* reading as follows:

Analyzes medical device and radiation-emitting product user-related problems and conduct research applying systems analysis and human factors to problem identification and solution strategies. Implements and evaluates user-related solution strategies.

Conducts and evaluates programs to provide technical and other non-financial assistance to small manufacturers of medical devices to promote their understanding of compliance with the medical device amendments and regulations.

Provides, maintains, and applies expertise in communications technology in support of Center and FDA programs.

Develops and implements strategies for obtaining, analyzing, and incorporating the views and needs of health professionals, lay device users, and industry into the Center policy and decision-making processes as well as in problem analysis, resolution strategy development, implementation, and evaluation processes.

Establishes and operates a program to implement the Mammography Quality Standards Act of 1992.

Under Chapter HF, Section HF–D, *Prior Delegations of Authority.* Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: February 16, 1994.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 94–4459 Filed 2–25–94; 8:45 am]

BILLING CODE 4160–1–M

Videoconferencing Facility; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a videoconferencing facility. The videoconferencing facility was established to improve communications between the agency and interested parties. The facility will be used for a variety of purposes, including meetings, with the public and regulated industries, internal FDA meetings, and training. The facility will be used to supplement face-to-face meetings and allow broader participation in discussions with FDA.

FOR FURTHER INFORMATION CONTACT: Angela M. Youngblood, Center for Drug Evaluation and Research (HFD–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0724.

SUPPLEMENTARY INFORMATION: FDA has established a videoconferencing facility for general use by FDA. The facility, which became operational on June 1, 1993, is located in rm. 13B–37 in the Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. The facility has a capacity for 25 to 30 people and can be used to conduct videoconferences with FDA. The establishment of the facility culminates a 3-year project by FDA and the Pharmaceutical Manufacturers Association to improve communications between the agency and interested parties.

The agency does not intend to restrict the use of the videoconferencing facility to any specific purpose. The facility can be used to expedite meetings with the public and regulated industries, or to facilitate training and internal FDA meetings. In addition to improving communications, FDA believes that the facility may even shorten FDA review times for applications because the facility can be used to facilitate prompt resolution of specific issues. Videoconferencing will also facilitate broader participation by industry staff in FDA meetings and make meetings more productive.

Policies and Procedures for Use

FDA has established videoconferencing as an optional means of communicating with FDA. The decision on whether to conduct a face-to-face meeting or videoconference, or a combination of meetings and videoconferences, must be agreed to by both the agency and the interested party. Use of the videoconferencing facility is not intended to limit, in any way, either face-to-face, telephone, written, or any other type of interaction involving FDA personnel. In fact, videoconferences can be used to supplement face-to-face meetings and enable more persons outside the Rockville, MD area to participate in discussions with FDA.

All existing confidentiality rules that apply to face-to-face meetings also apply to videoconferences. The transmission signal between the videoconferencing sites is conducted through cables and is scrambled to provide security. Ordinarily, there will be no videotaping of videoconferences, but videotaping may be permitted if all parties agree to videotaping before the videoconference is held. FDA will not permit videoconferences to be broadcasted, however, because some information presented at such meetings may be confidential or otherwise protected from disclosure.

All current FDA procedures for conducting meetings will apply to videoconferences. Because some participants may not always be in view of the camera, FDA recommends that each videoconference begin by introducing or identifying all participants.

FDA will schedule videoconferences in response to a specific request. The request should be made to the contact person listed above. FDA recommends that parties request a videoconference at least several weeks in advance, and there is no time limit on how far in advance a videoconference may be scheduled.

Scheduling will be done on a first-come, first-served basis. FDA will consider the geographical location of the parties when scheduling a videoconference; thus, for example, FDA will schedule morning meetings with parties in the Eastern United States, and schedule afternoon meetings with parties in the Western United States. The agency does not intend to establish prereserved blocks of time for parties in the Western United States.

Once a videoconference has been scheduled, the agency will not reschedule the videoconference except in emergencies. This policy is in consideration of the substantial amount of scheduling and preparation involved in setting up a videoconference. Additionally, videoconferencing should be reserved for meetings that are likely to run at least 30 minutes. If a videoconference extends beyond its scheduled time, the videoconference may be extended, provided the facility is still available.

The agenda and all materials planned to be presented during a videoconference should be sent to the Project Management Officer, Consumer Safety Officer, or appropriate official (in nonindustry-related meetings) at least 14 days before the scheduled videoconference. The materials will be used as reference or backup material and will help assure high quality communication.

During the videoconferencing facility's first year of operation, FDA will maintain a log on the use of the facility to determine the demand and variety of uses for the facility and to determine how much use is for internal FDA purposes or for FDA and nongovernmental entities. In addition, FDA will provide a questionnaire to participants to obtain their opinions on the value of the videoconferencing facility.

Persons interested in obtaining information concerning the policies and procedures, which are continuing to evolve at this time, for using FDA's videoconferencing facility, as well as a listing of public videoconferencing rooms, should notify the contact person listed above.

Dated: February 17, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4412 Filed 2–25–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Availability of Training Fellowships Under the Intramural Research Training Award Program

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) announces the availability of training fellowships under the Intramural Research Training Award (IRTA) Program, created pursuant to section 405(b)(1)(C) of the Public Health Service (PHS) Act (42 U.S.C. 284(b)(1)(C)), section 464W of the PHS Act (42 U.S.C. 285q–1), section 472 of the PHS Act (42 U.S.C. 286b–3), and section 485B(b) of the PHS Act (42 U.S.C. 287c(b)). Women and minorities are encouraged to apply.

FOR FURTHER INFORMATION CONTACT: Office of Education, National Institutes of Health, Building 10, room 1C129, 9000 Rockville Pike, Bethesda, Maryland 20892, Telephone (301) 496–2427.

SUPPLEMENTARY INFORMATION: The IRTA Program is designed to provide opportunities for developmental

training and practical research experience in the laboratories of the NIH. Training fellowships are available to postdoctoral scientists at the beginning stages of their professional research careers, and to high school, college, graduate and professional (e.g. medical dental, etc.) school students pursuing studies in academic disciplines related to biomedical research. Candidates must be U.S. citizens, noncitizen nationals of the United States, or individuals lawfully admitted for permanent residence in the U.S. Applicants may not be excluded from consideration for the IRTA Program on the basis of race, color, religion, sex, handicap, age, national origin, political affiliation, or any other nonmerit factor. Subject to the availability of funds, IRTA Fellowship awards are made on the basis of NIH's assessment of the mutuality of research interests, the qualifications of the candidates, and their potential to benefit from the training assignment. Recipient are not Federal employees.

Fellowship awards are granted in the following three categories:

Postdoctoral IRTA Fellowship Awards

Postdoctoral Fellowships are awarded to promising physicians and Ph.D. level investigators, to enhance their research capabilities in the early postdoctoral stage of their careers. Postdoctoral Fellowships may be awarded to individuals with Ph.D., M.D., D.D.S., D.M.D., D.V.M., or equivalent degrees, and five years or less of relevant postdoctoral research experience. Awards are made initially for one or two years, and may be renewed in one-year increments up to a maximum of five years in the Program. Initial stipends range between $25,000 and $30,000 per annum for investigators with less than one year of postdoctoral experience, between $26,500 and $32,000 per annum for investigators with one to two years of postdoctoral experience, between $28,000 and $34,000 per annum for investigators with two to three years of postdoctoral experience, between $29,500 and $36,000 per annuam for investigators with three to four years of postdoctoral experience, and between $31,000 and $38,000 for investigators with four to five years of postdoctoral experience.

Predoctoral IRTA Fellowship Awards

Predoctoral Fellowships are awarded to students enrolled in Ph.D., M.D., D.D.S., D.M.D., D.V.M., or equivalent degree programs at fully accredited U.S. universities. Predoctoral Fellowships are designed to support a period of full-time research training in NIH laboratories, undertaken as an integral part of participants' academic program. Awards are generally granted for the purpose of developing and writing a thesis in an NIH intramural laboratory, although other academically related training may occasionally be supported. For students pursuing a degree for which a thesis is not required (e.g., M.D., D.V.M., etc.), a full-time training program in biomedical research will be designed.

Students must be admitted to graduate or professional school and be a doctoral degree candidate before they can be considered. Normally, most students will have completed their first year of graduate course work before beginning the Program. Written agreement from the school is required. Predoctoral IRTA Fellows are normally expected to devote full-time to their NIH training assignments. IRTA awards are not intended as grants to support academic training and Predoctoral IRTA Fellows are normally expected to pay any university tuition, fees, or other costs themselves.

Predoctoral awards are made initially for one or two years, and may be renewed in one-year increments. The maximum duration is normally three years or until students receive their doctoral degree, whichever comes first. In individual cases, renewals beyond three years may be approved provided the student is making reasonable and acceptable progress towards obtaining the doctoral degree.

Per annum stipends are paid to participants based on their number of years of post-baccalaureate education: $16,000 for one year or less post-baccalaureate education; $17,000 for one to two years post-baccalaureate education; $18,000 for two to three years post-baccalaureate education; $19,000 for three to four years post-baccalaureate education; $20,000 for four to five years post-baccalaureate education; and $21,000 for more than five years post-baccalaureate education.

Summer IRTA Fellowship Awards

Summer IRTA Fellowships are awarded to promising high school, undergraduate, graduate, or professional (e.g., medical, dental, etc.) school students who have a strong interest or are pursuing studies in biomedical disciplines. Research training activities are designed to supplement and give practical meaning to students' academic course work. Students must be at least 16 years old, in good academic standing, and enrolled at least half-time in a degree granting program.

Fellowships begin between May 1 and June 30 of the given year, and must end by September 30. Participants are paid a monthly stipend, based on the amount of education completed at the time the Fellowship begins. Rates are: $800 per month before high school graduation and $900 after graduation; $1,000 after completion of one undergraduate year of college, $1,100 after two years, and $1,200 after three years; and $1,400 with a bachelor's degree and less than one year of graduate education, $1,600 after one graduate year of education, $1,800 after two years, and $2,000 after three years.

How to Apply

Interested persons may apply directly to a specific NIH research institute, to the National Center for Nursing Research, to the National Center for Human Genome Research, to the National Library of Medicine (for postbaccalaureate awards only; awards to prebaccalaureate students are not authorized), or to the Office of Education, Building 10, room 1C129, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, for concurrent referral to all research institutes and other listed organizations which may have possible interest. Interested individuals may apply at any time by submitting the following:

Applicants for Predoctoral and Postdoctoral Fellowship Awards

—Curriculum Vitae
—Bibliography
—Three letters of reference emphasizing research potential
—Applicant's statement of research goals and type and purpose of training desired
—Official copy of graduate or medical school transcripts
—For Predoctoral Fellowship applicants, verification from the university that the applicant is in good academic standing, is enrolled in a doctoral degree program, and that the university agrees to the applicant's participation in the IRTA Program
—For Postdoctoral Fellowship applicants, official copy of the doctoral degree
—Brief summary of doctoral dissertation, if applicable

Applicants for Summer Fellowship Awards

—Curriculum Vitae
—Bibliography (if applicable)
—Two letters of reference from school officials having direct knowledge of the applicant's scientific interest and abilities
—Applicant's statement describing future academic plans, interest in

biomedical sciences, and reasons for seeking an NIH Summer IRTA Fellowship
—Information on honors and achievement (both academic and nonacademic), hobbies and outside interests
—Official school transcript or list of courses, including grade point average
—Verification from the school that the applicant is in good academic standing and is or will be enrolled at least half-time in a degree granting program

This information must be submitted in order to receive due consideration for an award and will be used to determine the eligibility and quality of potential awardees. The requested information will be available only to NIH program officials unless otherwise required by law. The information collection requirements associated with the IRTA Program have been approved by the Office of Management and Budget (OMB) under the requirements of 5 CFR part 1320, and assigned OMB #0925–0299.

Dated: January 17, 1994.

Harold Varmus,

Director, NIH.

[FR Doc. 94–4437 Filed 2–25–94; 8:45 am]

BILLING CODE 4140–01–M

Genome Research Review Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, March 10, 1994, at the Embassy Suites Hotel, 4300 Military Road, Washington, DC.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 10 from 10 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 604, Bethesda, Maryland 20892, (301) 402–0838, will furnish the meeting agenda, roster of committee members and consultants, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Gwen Williams, (301) 402–0838, two weeks in advance of the meeting.

This notice is being published less than the 15 days prior to the meeting due to the difficulty of coordinating schedules.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4439 Filed 2–25–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of National Advisory Board on Medical Rehabilitation Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, April 7–8, 1994, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The two-day meeting will be open to the public from 9 a.m. to 5 p.m. on April 7 and 9 a.m. to adjournment on April 8. Attendance by the public will be limited to space available. The Board will review: (1) Progress achieved by the Center in developing medical rehabilitation research and reports on workshops, conferences, grants, and other activities; (2) progress on peer review of medical rehabilitation research grant applications; (3) appropriation status of the Center; and (4) a plan for establishing centers of excellence in medical rehabilitation research. Reports on medical rehabilitation research being sponsored by a variety of Federal agencies will be given. The meeting will have a specific period of time set aside for public comment on the activities of the Center and medical rehabilitation research.

Ms. Mary Plummer, Committee Management Specialist, NICHD, 6100 Building, room 5E03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

Dated: February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4438 Filed 2–25–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 24 and 25, 1994 in Building 31, Conference room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 24, from 8 a.m. to approximately 9 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 24, from approximately 9 a.m. until recess, and from 9 a.m. until adjournment on March 25, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236 will provide a summary of the meeting and a roster of the committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator in advance of the meeting.

Dr. Deborah P. Beebe, Scientific Review Administrator, Heart, Lung, and Blood Research Review Committee A, Westwood Building, room 555, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7418, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research, National Institutes of Health)

Dated: February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4440 Filed 2–25–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 24 and 25, 1994 in Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 24, from 8 a.m. to approximately 9 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 24, from approximately 9 a.m. until recess, and from 9 a.m. until adjournment on March 25, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236 will provide a summary of the meeting and a roster of the committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodation, should contact the Scientific Review Administrator in advance of the meeting.

Dr. Jeffrey H. Hurst, Scientific Review Administrator, Heart, Lung, and Blood Research Review Committee B, Westwood Building, room 555, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7418, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research, National Institutes of Health)

Dated: February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4441 Filed 2–25–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Community Intervention to Reduce Myocardial Infarction Delay.
Dates of Meeting: March 10–11, 1994.
Time of Meeting: 7:30 p.m.
Place of Meeting: Crystal City Sheraton, Arlington, Virginia.
Agenda: To review and evaluate grant applications.
Contact Person: Dr. C. James Scheirer, 5333 Westbard Avenue, room 548, Bethesda, Maryland 20892, (301) 594–7452.

Name of Panel: NHLBI SEP on Cardiac Valvuloseptal Morphogenesis.
Dates of Meeting: March 15–17, 1994.
Time of Meeting: 7 p.m.
Place of Meeting: Clarion Hotel, Rockville, Maryland.
Agenda: To review and evaluate grant applications.
Contact Person: Dr. Jon Ranhand, 5333 Westbard Avenue, room 554, Bethesda, Maryland 20892, (301) 594–7439.

Name of Panel: NHLBI SEP on the Clinical Investigator Development Award (KO8).
Dates of Meeting: March 23–24, 1994.
Time of Meeting: 8:30 a.m.
Place of Meeting: Holiday Inn, Bethesda, Maryland.
Agenda: To review and evaluate grant applications.
Contact Person: Dr. Lynn M. Amende, 5333 Westbard Avenue, room 648, Bethesda, Maryland 20892, (301) 594–7485.

Name of Panel: NHLBI SEP on RFA for Hemoglobin-Based Oxygen Carriers: Mechanisms of Toxicity.
Dates of Meeting: March 29–30, 1994.
Time of Meeting: 8 p.m.
Place of Meeting: Holiday Inn, Bethesda, Maryland.
Agenda: To review and evaluate grant applications.
Contact Person: Dr. Andre Premen, 5333 Westbard Avenue, room 5A10, Bethesda, Maryland 20892, (301) 594–7481.

This notice is being published less than the fifteen days prior to the meeting due to difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4444 Filed 2–25–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–94–3723; FR 3629–N–01]

Fair Housing Assistance Program: Announcement of Funding Awards for FY 1992

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of those State and local agencies that were certified by the Department as substantially equivalent agencies under 24 CFR part 115, and that received funding under the Department's Fair Housing Assistance Program. The announcement contains the names and addresses of the State and local agencies and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Marcella O. Brown, Director, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban

Development, 451 Seventh Street, Washington, DC 20410–2000. Telephone Number 202–708–0455 (voice/TDD). This is not a toll free number.

SUPPLEMENTARY INFORMATION

I. Background

Under the Fair Housing Act (42 U.S.C. 3600–3619), the Department is authorized to investigate complaints alleging discrimination in housing. Section 810(f) of the Fair Housing Act requires the Department to refer complaints to agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department. The certification standards and procedures are set forth in 24 CFR part 115.

Under the Fair Housing Assistance Program (FHAP), the regulations for which are codified in 24 CFR part 111, the Department may provide assistance to "substantially equivalent" State and local agencies. This assistance is designed to provide support for complaint processing, training, technical assistance, data and information systems, and other fair housing projects. The regulations in 24 CFR part 111 provide for FHAP funding to be announced through a Notice of Funding Availability (NOFA) published in the **Federal Register**.

Although the regulations in part 111 provide for the announcement of the availability of FHAP funding through a NOFA (and 24 CFR part 12 also makes note of the NOFA requirement), FHAP is not a competitive program. FHAP funds are not awarded on the basis of a competition. Accordingly, a waiver of the requirement to make FHAP funding available through a NOFA was requested and granted.

In accordance with the requirements of section 106 of the HUD Reform Act of 1989 (42 U.S.C. 3535(q)(g)), the Secretary, on June 2, 1993, waived the FHAP NOFA requirement set forth in 24 CFR part 12 on the basis that the FHAP is not a competitive program. The Department intends to amend 24 CFR part 12 to reflect the fact that FHAP is not a competitive program.

In accordance with the requirements of section 102(a)(4)(C) of the HUD Reform Act of 1989, the names and addresses of the substantially equivalent agencies which received FHAP funds for FY 1992, on a noncompetitive basis, and the amount of the awards, are set forth in Appendix A to this notice.

Dated: February 14, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

APPENDIX A

REGION I	
Massachusetts Commission Against Discrimination in Housing, One Ashburton Place, Boston, MA 02108, Michael T. Duffy, Chairman	$157,600
Cambridge Human Rights Commission, 57 Inman Street, 2nd Floor, Cambridge, MA 02138, Margot P. Kosberg, Executive Director	13,400
Connecticut Commission on Human Rights and Opportunities, 90 Washington Street, Hartford, CN 06015, Mr. Lewis Martin, Executive Director	58,600
REGION II	
None	
REGION III	
Pennsylvania Human Relations Commission, 101 South 2nd Street, Suite 300, Harrisburg, PA 17101, Homer Floyd, Executive Director	216,900
Virginia Real Estate Board, 3600 West Broad Street, 5th Floor, Richmond, VA 23230–4917, Susan Scovill, Fair Housing Administrator	44,000
West Virginia Human Rights Commission, 1321 Plaza East, Room 106, Charleston, WV 25301, Quewanncoii Stephens, Executive Director	16,700
Charleston Human Rights Commission, 115 Lee Street West, Charleston, WV 25302–1400, William Berkley, Jr. Executive Director	8,900
REGION IV	
Florida Commission on Human Relations, 325 John Knox Road, Bldg F, Suite 240, Tallahassee, FL 32303–4149, Ronald McElrath, Executive Director	129,800
Clearwater Office of Community Relations, P.O. Box 4748, Clearwater, FL 34618, Sally A. Ruby, Director	18,000
Orlando Human Relations Commission, 400 S. Orange Avenue, Room 103, Orlando, FL 32801, Albert Nelson, Director	33,000
Pinellas County Office of Human Rights, 315 Court Street, Clearwater, FL 34616, Leon Russell, Director	52,100
St. Petersburg Human Relations Department, P.O. Box 2842, St. Petersburg, FL 33731, James R. Yates, Director	32,000
Tampa Office of Community, 712 W. Ross Avenue, Tampa, FL 33602, George A. Davis, Director	35,000
Georgia Commission on Equal Opportunity, 710 Cain Towers, Peachtree Center, 229 Peachtree Street, NE, Atlanta, GA 30303, Mustafa A. Aziz, Administrator	65,000
Kentucky Commission on Human Rights, The Heyburn Bldg., 7th Floor, 322 West Broadway, Louisville, KY 40202–0069, Beverly Watts, Executive Director	30,200
Louisville & Jefferson County Human Relations Commission, 200 South 7th Street, Suite 200, Louisville, KY 40202, Gwendolyn M. Young, Executive Director	51,600
North Carolina Human Relations Commission, 121 W. Jones Street, Raleigh, NC 27603, William Barber, Executive Director	103,400
Asheville-Buncombe County Fair Housing Commission, 70 Woodfin Place, Park Place Office Building, Suite 326, Asheville, NC 28801, Marvin E. Vierra, Director	65,000
Charlotte-Mecklenburg Community Relations Committee, 817 E. Trade Street, 2nd Floor, Charlotte, NC 28202, Jack L. Bullard, Director	25,400
Greensboro Human Relations Department, P.O. Box 3136, Greensboro, NC 27402, John E. Shaw, Director	20,600
New Hanover Human Relations Commission, 320 Chestnut Street, Room 409, Administration Building, Wilmington, NC 28401, William Jessup, Director	17,000
Winston-Salem Human Relations P.O. Box 2511, Winston-Salem, NC 27102, Emery L. Rann, III, Director	9,800
South Carolina Human Affairs Commission, P.O. Box 4490, Columbia, SC 29240, Dr. Willis Ham, Commissioner	79,400
Tennessee Human Rights Commission, 530 Church Street, Suite 400, Cornerstone Square Building, Nashville, TN 37243–0745, Dr. Warren Moore, Executive Director	63,400

APPENDIX A—Continued

Knoxville Department of Community Development, P.O. Box 1631 City/County Building, Knoxville, TN 37901, J. Laurens Tullock, Coordinator	33,800
REGION V	
Illinois Department of Human Rights, 100 W. Randolph Street, Chicago, IL 60602, Rose Mary Bombela, Executive Director	89,200
Springfield Department of Human Relations, 227 South 7th Street, Springfield, IL 62701, Carolyn Toney, Director	26,600
Elgin Human Relations Commission, 150 Dexter Court, Elgin, IL 60120, Olufemi Folarin, Director	14,600
Evanston Human Relations Commission, 2100 Ridge Avenue, Evanston, IL 60201, Owen Thomas, Executive Director	5,000
Indiana Civil Rights Commission, 100 North Senate Avenue, Indianapolis, IN 46204, Sandra Leek, Executive Director	92,200
Gary Human Relations Commission, 475 Broadway, Gary, IN 46402, Jonathan Corner, Executive Director	90,400
Ohio Civil Rights Commission, 220 Parsons Avenue, Columbus, OH 43266, Joseph T. Carmichael, Executive Director	180,400
Dayton Human Relations Commission, 40 South Main Street, Dayton, OH 45402, Jerald L. Steed, Director	23,000
Shaker Heights Law Department, 3400 Lee Road, Shaker Heights, OH 44120, Terrence Brennan, Assistant City Attorney	65,000
REGION VI	
Louisiana Department of Justice, P.O. Box 94005, Baton Rouge, LA 70804, Richard P. Ieyoub, Attorney General	65,000
Oklahoma Human Rights Commission, 2101 N. Lincoln Blvd, Room 480, Oklahoma City, OK 73105, Ronald Lee Johnson, Executive Director	71,200
Texas Commission on Human Rights, 8100 Cameron Road, Building B, Suite 525, Austin, TX 78754, William Hale, Executive Director	805,437
City of Dallas, 1500 Marilla, Room 1BN, Dallas, TX 75201, Holly C. Malloy, Director	65,000
REGION VII	
Iowa Civil Rights Commission, 211 East Maple Street, 2nd Floor, c/o Grimes State Office Building, Des Moines, IA 50319, Don Grove, Executive Director	35,000
Dubuque Department of Human Rights, City Hall, 13th and Central, Dubuque, IA 52001, Charles Azebeokhai, Executive Director	11,000
Kansas Commission on Civil Rights, Landon State Office Building, 900 SW Jackson, Suite 851 South, Topeka, KS 66612, Michael J. Brungardt, Executive Director	73,000
Salina Human Relations Department, P.O. Box 736, Salina, KS 67402–0736, W.A. Burnett, Executive Director	20,400
Missouri Commission on Human Rights, 3315 W. Truman, P.O. Box 1129, Jefferson City, MO 65102, Alvin A. Plummer, Executive Director	126,400
Kansas City, Missouri Human Relations, 414 East 12th Street, City Hall, Kansas City, MO 64106, Michael Bates, Executives	55,400
Nebraska Equal Opportunity Commission, P.O. Box 94934, Lincoln, NE 58509, Lawrence R. Myers, Executive Director	31,400
Omaha Human Relations Department, 1819 Farnam Street, Omaha/Douglas Civic Center, Omaha, NE 68183, Diane L. Thomas, Director	26,600
REGION VIII	
Colorado Civil Rights Division, Jack Lang y Marquez, Director, 1560 Broadway, Suite 1050, Denver, CO 80202–5143, 303–894–2997	76,200
Montana Human Rights Division, Anne L. MacIntyre, Administrator, 1236 Sixth Avenue, P.O. Box 1728, Helena, MT 59624, 406–444–2884	77,600
REGION IX	
Arizona Attorney General's Office, 1275 West Washington Street, Phoenix, AZ 85007, Cecil Patterson, Jr. Chief Counsel	65,000
Phoenix Equal Opportunity Department, 550 West Washington Street, Phoenix, AZ 85003, Rose Newsome, Director	34,800
Hawaii Civil Rights Division, 888 Mililani Street, 2nd Floor, Honolulu, HI 96813, Linda Tseu, Executive Director	65,000
REGION X	
King County Office of Civil Rights and Compliance, Manfert Lee, Administrator, King County Courthouse, Room E–224, 516 Third Avenue, Seattle, WA 98104, 206–296–7592	25,400

[FR Doc. 94–4483 Filed 2–25–94; 8:45 am]
BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–020–406A–02]

Area Closures to ORV/Motorized Vehicles

AGENCY: Bureau of Land Management (BLM), Department of the Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given, effective immediately, that the following lands located on the north side of the Snake River and about eight miles down stream of American Falls Dam are closed to ORV/motorized vehicles.

T. 9 S., R. 20 E.,
Section 1: NE¼NE¼, SW¼NE¼, NE¼SW¼, NW¼SW¼
Section 2: SE¼, SE¼, SW¼, SE¼,
T. 8 S., R. 30 E.,
Section 20: SE¼, SE¼, SW¼, SE¼,
Section 29: NE¼NE¼, NW¼, NE¼SW¼, NW¼SE¼.

Approximately 600 acres.

This action follows the Monument Resource Management Plan (MRMP) prescriptions published in January, 1986. The MRMP designates that these areas of the Cedar Fields Special Recreation Management Area, which are also within the Bureau of Reclamation's (BOR) American Falls Natural Resource Area, be designated as to be consistent with BOR's limitations on adjacent lands. Effective by the December 28, 1993 **Federal Register** Notices, the BOR activated the enforcement of the off-road motor vehicle closure of the lands within the American Falls Natural Resource Area.

Exemptions to this order are granted to the following:

Law enforcement patrol and emergency services administratively approved access for actions such as monitoring or research studies.

Other actions would be considered on a case by case basis.

FOR FURTHER INFORMATION CONTACT: Tom Dyer, Snake River Resource Area Manager, Rt. 3, Box 1, Burley, ID 83318, (208) 678–5514. A map showing the location of the closed areas is available from the Burley District BLM Office.

Dated: February 17, 1994.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 94–4418 Filed 2–25–94; 8:45 am]

BILLING CODE 4310–GG–M

Bureau of Land Management

[NV–930–4210–05; N–58491]

Realty Action; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, The Heguy Brothers, a general partnership, has applied for conveyance of the Federal mineral estate described as follows:

Mount Diablo Meridian, Nevada

T. 42 N., R. 57 E.,
Sec. 5, lots 1,3,4, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 6, lot 1;
Sec. 9, S½SW¼;
Sec. 16, N½N½, SE¼NE¼, SW¼NW¼, S½.
T. 43 N., R. 57 E.,
Sec. 31, lots 2–4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 32, SW¼, W½SE¼.

Comprising of 1749.83 acres, more or less.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Resource Area, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or two years from the date of filing of the application, whichever occurs first.

Dated: February 16, 1994.

Rodney Harris,

District Manager.

[FR Doc. 94–4502 Filed 2–25–94; 8:45 am]

BILLING CODE 4310–HC–M

Minerals Management Service

Memorandum of Understanding Establishing Jurisdictional Responsibilities for Offshore Facilities

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The memorandum of understanding (MOU) establishing Federal jurisdictional boundaries for offshore facilities, including pipelines, became effective on February 3, 1994. The MOU divides the responsibilities associated with oil-spill prevention and control, response planning, and response equipment inspection for offshore facilities. The MOU is among the Department of the Interior (DOI), Department of Transportation (DOT), and the Environmental Protection Agency (EPA).

The coast line marks the boundary that determines which agency is responsible for a facility. The MMS of the DOI is responsible for offshore facilities, including pipelines but not deepwater ports, located seaward of the coast line. The EPA is responsible for non-transportation-related offshore facilities located landward of the coast line. The U.S. Coast Guard and the Research and Special Programs Administration of the DOT will handle transportation-related offshore facilities, including pipelines, located landward of the coast line.

Any exceptions to the MOU will be determined on a facility-specific basis, and the affected parties will be notified.

FOR FURTHER INFORMATION CONTACT: Sharon L. Buffington, Engineering and Technology Division; MS–4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: Executive Order (E.O.) 12777 (56 FR 54757) delegated to DOI, DOT, and EPA various responsibilities identified in the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (Public Law 101–380). The E.O. 12777 assigned the responsibilities associated with oil-spill prevention and control, contingency planning, and response equipment inspection for offshore facilities to DOI. However, section 311(a)(11) of the CWA defines "offshore facility" to include facilities of any kind located in, on, or under navigable waters of the United States. By using this definition, the traditional DOI role of regulating facilities in the Outer Continental Shelf is expanded by E.O. 12777 to include inland lakes, rivers, streams, and any other inland waters. Without this MOU, as many as four Federal agencies could have overlapping responsibilities for some coastal facilities.

To avoid any confusion caused by the definition of "offshore facility", MMS coordinated an effort to establish jurisdictional boundaries for oil-spill prevention and control, response planning, and response equipment inspection activities. Pursuant to section 2(i) of E.O. 12777, the Secretary of the Interior redelegated those functions vested in DOI to give EPA non-transportation-related offshore facilities located landward of the coast line and give DOT transportation-related offshore facilities landward of the coast line. The divisions agreed to in the MOU (Appendix A) is more consistent with traditional agency expertise and jurisdiction. This MOU does not include jurisdictional boundaries for oil-spill financial responsibility.

Dated: February 17, 1994.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

Appendix A—Memorandum of Understanding Among the Secretary of the Interior, Secretary of Transportation, and Administrator of the Environmental Protection Agency

Purpose

This Memorandum of Understanding (MOU) establishes the jurisdictional responsibilities for offshore facilities, including pipelines, pursuant to section 311 (j)(1)(c), (j)(5), and (j)(6)(A) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (Public Law 101–380). The Secretary of the Department of the Interior (DOI), Secretary of Department of Transportation (DOT), and Administrator of the Environmental Protection Agency (EPA) agree to the division of responsibilities set forth below for spill prevention and control, response planning, and equipment inspection activities pursuant to those provisions.

Background

Executive Order (E.O.) 12777 (56 FR 54757) delegates to DOI, DOT, and EPA various responsibilities identified in section 311(j) of the CWA. Sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 assigned to DOI spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Section 311(a)(11) defines the term "offshore facility" to include facilities of any kind located in, on, or under navigable waters of the United States. By using this definition, the traditional DOI role of regulating facilities on the Outer Continental Shelf is expanded by E.O. 12777 to include inland lakes, rivers, streams, and any other inland waters.

Responsibilities

Pursuant to section 2(i) of E.O. 12777, DOI redelegates, and EPA and DOT agree to assume, the functions vested in DOI by sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 as set forth below.

For purposes of this MOU, the term "coast line" shall be defined as in the Submerged Lands Act (43 U.S.C. 1301(c)) to mean "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

1. To EPA, DOI redelegates responsibility for non-transportation-related offshore facilities located landward of the coast line.

2. To DOT, DOI redelegates responsibility for transportation-related facilities, including pipelines, located landward of the coast line. The DOT retains jurisdiction for deepwater ports and their associated seaward pipelines, as delegated by E.O. 12777.

3. The DOI retains jurisdiction over facilities, including pipelines, located seaward of the coast line, except for deepwater ports and associated seaward pipelines delegated by E.O. 12777 to DOT.

Effective Date

This MOU is effective on the date of final execution by the indicated signatories.

Limitations

1. The DOI, DOT, and EPA may agree in writing to exceptions to this MOU on a facility-specific basis. Affected parties will receive notification of the exceptions.

2. Nothing in this MOU is intended to replace, supersede, or modify and existing agreements between or among DOI, DOT, or EPA.

Modification and Termination

Any party to this agreement may propose modifications by submitting them in writing to the heads of the other agency/department. No modification may be adopted except with the consent of all parties. All parties shall indicate their consent to or disagreement with any proposed modification within 60 days of receipt. Upon the request of any party, representatives of all parties shall meet for the purpose of considering exceptions or modifications to this agreement. This MOU may be terminated only with the mutual consent of all parties.

Bruce Babbitt,

Secretary of the Interior.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Federico Peña,

Secretary of Transportation.

[FR Doc. 94–4481 Filed 2–25–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Availability of Plan of Operations and Environmental Assessment for Continuing Operation of the Doty-Jackson Unit A Well No. 1; Locin Oil Corporation, Big Thicket National Preserve, Hardin County, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Locin Oil Corporation a Plan of Operations for the Continuing Operation of the Doty-Jackson Unit A Well No. 1 within Big Thicket National Preserve, Hardin County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, room 211, Santa Fee, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Dated: February 16, 1994.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 94–4473 Filed 2–25–94; 8:45 am]

BILLING CODE 4310–70–M

Inventory Completion for Native American Human Remains From Hawaii in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains from Hawaii in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard.

The human remains came to the Peabody Museum as part of 16 collections between 1867 and 1959. There are no associated funerary objects. A detailed inventory and assessment of the human remains has been made by the staff of the Peabody Museum in consultation with representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, the Office of Hawaiian Affairs, and the Kaua'i/Nihau, Maui/Lanai, Molokai, and O'ahu Burial Councils.

The human remains consist of the following:

One cranium (19–5–70/59745) from Nohile sand dunes, Kaua'i County, Kaua'i Island.

Twenty-one crania (36–96–70/N3482–N3502) and eight mandibles (36–96–70/N3503) from dune burials in Kaua'i County.

Twenty-one crania (67–39–70/1115–1135) from southerly shore sand dunes, Kaua'i County.

One cranium (72–20–70/6792) from Kaua'i County.

Two crania (16–8–70/59647 and 59648) from an "ancient burial place", Maui County

Twenty-one crania, two partial crania, and one partial cranium together with fragmentary axial elements (78–45–70/15267–15290) from Maui County.

One skeleton (80–25–70/23518), complete except for fragmentary extremities, from an ancient burial place, Maui County.

Five crania (16–8–70/59641–59645) from the beach beyond Diamond Sand Dunes Hill, Oahu.

Six crania (23–5–70/60363–60368) found during the excavation of a canal in Waikiki, Oahu.

Two almost complete skeletons and fragmentary postcranial remains from five more individuals (23–5–70/60369–60372) found while excavating for a sewer system in Honolulu County, Oahu.

Three partial crania and six crania (36–4–70/N1324–N1332) from lava caves near Honolulu, Oahu.

Four crania and three fragmentary crania (85–7–70/37592–37397a) that, from circumstantial documentary evidence, may come from Oahu.

One cranium, one partial cranium and one partial cranium with two right femurs (86–58–70/61492–61494) from Honolulu, Oahu.

Twenty seven crania (00/N939; 16–8–70/59646; 20–4–70/59931 and 59932; 50–70–70/N7476; 59–27–70/N8615–N8620; 80–25–70/23503–23517), fragmentary appendicular elements (27–5–70/60797), and twenty four mandibles (00/N1013; 80–25–70/23519) are attributed to Hawai'i with no further information. Six of these crania (59–27–70/N8615–N8620) came to the Peabody Museum from the Warren Anatomical Museum.

Based on the above mentioned information, officials of the Museum have determined pursuant to 25 U.S.C. 3001 (2) that there is a relationship of shared group identity which can be reasonably traced between these remains and present-day Native Hawaiian organizations.

This notice has been sent to officials of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization which believes itself to be culturally affiliated with these human remains should contact Mrs. Barbara Isaac, Assistant Director, Peabody Museum of Archaeology and

Ethnology, Harvard University, 11 Divinity Avenue, Cambridge MA 02138, or call (617) 495–2248, before March 30, 1994.

Dated: February 18, 1994.

C. Timothy McKeown,

Acting Departmental Consulting Archeologist,Chief, Archeological Assistance Division.

[FR Doc. 94–4492 Filed 2–25–94; 8:45 am]

BILLING CODE 4310–70–F

Inventory Completion of Native American Human Remains and Funerary Objects From Hawaii in the Control of the U.S. Marine Corps Air Station, Kaneohe Bay

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains and funerary objects from Hawaii in the control of the U.S. Marine Corps Air Station, Kaneohe Bay. The remains are curated in the Bernice Pauahi Bishop Museum, Honolulu, HI.

A detailed inventory and assessment of these human remains and funerary objects has been made for the U.S. Marine Corps by the staff of the Bishop Museum, in consultation with representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs. The latter two organizations qualify as Native Hawaiian organizations as defined in 25 U.S.C. 3001(11).

The human remains and funerary objects represent a minimum of 1582 individuals and 281 funerary objects recovered from the Mokapu Peninsula, U.S. Marine Corps Air Station, Kaneohe Bay, Island of Oahu, and curated at the Bishop Museum. The majority of the remains were recovered during archaeological excavations conducted in 1938–1940 by Gordon T. Bowles (University of Hawaii) and Kenneth P. Emory (Bishop Museum), and in 1957 by Robert N. Bowen (University of Hawaii). The rest of the remains were recovered from inadvertent discoveries and archaeological monitoring of construction activities on the peninsula.

A minimum of 1,544 individuals were recovered from pre-contact (prior to 1778) graves. A number of these individuals were represented by incomplete sets of skeletal remains, and several of the isolated individuals represented secondarily deposited incomplete sets of remains removed from their original context. The pre-contact funerary objects included *kupe'e* (wristlets made of dog teeth), basalt flakes, marine shells, *kukui* (Aleurites moluccana) nuts, and the bones of fish, birds, pigs, dogs, and turtles.

A minimum of 38 individuals were recovered from post-Contact (after 1778) graves during a construction project in 1975. The post-Contact funerary objects included *kupe'e*, and *lei 'opu'u* and *lei niho* (pendants made of calcite, shell, and whale bone), as well as bone and shell buttons, metal fragments, mirror glass, bottle fragments, a metal ring, ivory beads, bone and glass, metal nails, and metal parts of a smoking pipe.

Based on the Bishop Museum report of the results of the inventory and assessment, officials of the U.S. Marine Corps have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these remains and present-day Native Hawaiian organizations. U.S. Marine Corps officials, based on the Bishop Museum report, determined that no lineal descendants of the human remains could be identified.

This notice has been sent to officials of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization which believes itself to be culturally affiliated with these human remains and funerary objects should contact Mr. John Bigay, Planner-in-Charge, Pacific Division, Naval Engineering Facilities Command, Pearl Harbor, HI, 96860–7300, (808) 471–9338, before April 1, 1994.

Dated: February 23, 1994.

C. Timothy McKeown,

Acting Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 94–4491 Filed 2–25–94; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or the Method of Collection

(1) Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

(2) None. Civil Rights Division.

(3) On occasion.

(4) State or local governments. Jurisdictions under the Voting Rights Act are required to obtain preclearance from the Attorney General before instituting changes affecting voting. They must convince the Attorney General that changes are not racially discriminatory. These procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) 5,800 annual responses at 13.2 hours per response.

(6) 76,560 annual burden hours.

(7) Not applicable under section 3504(h).

Public comment on this item is encouraged.

Dated: February 23, 1994.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–4493 Filed 2–25–94; 8:45 am]

BILLING CODE 4410–13–M

Lodging of Consent Decree Pursuant to the Comprehensive, Environmental Response, Compensation, and Liability Act ("CERCLA")

In accordance with Departmental policy, notice is hereby given that three proposed consent decrees in *United States* v. *Lowe*, Civil Action No. H–91–0830, were lodged on February 14, 1993 with the United States District Court for the Southern District of Texas. The consent decrees resolve the liability under CERCLA of defendants Ralph Lowe, Dixie Oil Processors, Tex Tin Corporation, and Lowenco, Inc. for the Dixie Oil Processors Superfund Site in Harris County, Texas.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Lowe*, DOJ Ref. #90–11–2–323.

The proposed consent decrees may be examined at the office of the United States Attorney, 440 Louisiana, Suite 900, Houston, Texas 77002; the Region 6 Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $18.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–4513 Filed 2–25–94; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 83–94]

Privacy Act of 1974, New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Office of Legal Counsel (OLC), proposes to establish a new system of records entitled, "Office of Legal Counsel, Freedom of Information Act and Privacy Act Files (Justice/OLC–003)."

5 U.S.C. 552a(e)(4) and (11) require that the public be provided a 30-day period in which to comment on the routine uses of a new system; the Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that it be given a 60-day period in which to review the system.

Therefore, please submit any comments by March 30, 1994. The public, OMB, and Congress are invited to send written comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division, Room 850 WCTR, Department of Justice, Washington, DC 20530.

In accordance with Privacy Act requirements, the Department of Justice has provided a report on the proposed system to OMB and the Congress.

Dated: February 15, 1994.

Stephen R. Colgate,

Assistant Attorney General for Administration.

(OLC) Office of Legal Counsel Justice/OLC–003

SYSTEM NAME:

Office of Legal Counsel, Freedom of Information Act and Privacy Act Files (Justice/OLC–003).

SYSTEM LOCATION:

U.S. Department of Justice, Office of Legal Counsel, 10th Street and Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, and persons who request access to or correction of records pertaining to themselves contained in Office of Legal Counsel (OLC) systems of records pursuant to the Privacy Act (PA), 5 U.S.C. 552a.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains copies of (1) FOIA/PA requests received by OLC; (2) copies of OLC responses to requesters; (3) copies of document responsive to the requests; (4) copies of documents withheld; (5) internal memoranda and correspondence related to the requests; (6) records relating to administrative appeals and/or litigation; and (7) disclosure accounting records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 *et seq.*; 44 U.S.C. 3301 *et seq.*; 5 U.S.C. 552, 552a.

PURPOSES:

This system is maintained for the purpose of processing access requests, administrative appeals and litigation under the Freedom of Information Act and the Privacy Act and to comply with the reporting requirements of those Acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. A record may be disclosed to a Federal agency that has furnished the record to the Department, in order to permit that agency to make a decision as to access or correction or to consult with that agency as to the propriety of access or correction.

b. A record may be disclosed to any appropriate Federal, State, local, or foreign agency to verify the accuracy of information submitted by an individual who has requested amendment or correction or records.

c. A record may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

d. A record may be disclosed as necessary to respond to inquiries by congressional offices on behalf of individual constituents who are subjects of OLC records.

e. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in file folders in cabinets.

RETRIEVABILITY:

These folders are filed alphabetically according to the name of the requester.

SAFEGUARDS:

These records are stored in cabinets in an office that is occupied during the day and locked at night.

RETENTION AND DISPOSAL:

These records are disposed of in accordance with General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Office of Legal Counsel, United States Department of Justice, 10th Street and Constitution Avenue, NW., Washington DC 20530.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the Supervisory Paralegal Specialist, Office of Legal Counsel, at the address above.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system include (1) the individuals covered by the system and (2) records responsive to FOIA/PA requests.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–4512 Filed 2–25–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation

Notice is hereby given that, on January 24, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new, non-voting members of POSC: Terrasciences, Inc., Houston, TX; X/Open Company Limited, Reading, UNITED KINGDOM; Saudi Arabian Oil Company, Dhahran, SAUDI ARABIA; Agip S.p.A., Milan, ITALY.

No other changes have been made in either the membership or planned activity of POSC. Membership in this group research project remains open, and POSC intends to file additional written notifications disclosing all changes in membership.

On January 14, 1991, POSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991, 56 FR 5021. The last notification was filed with the Department on October 14, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 18, 1993, 58 FR 60860.

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

[FR Doc. 94–4514 Filed 2–25–94; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—Spray Drift Task Force

Notice is hereby given that, on January 19, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Spray Drift Task Force has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, A H Marks & Company, Limited, Yorkshire, ENGLAND, and Rohm & Haas Company, Philadelphia, PA, have become members.

No other changes have been made in either the membership or planned activity of the group research project.

On May 15, 1990, the Spray Drift Task Force filed its original notification pursuant to section 6(a) of the Act. On July 5, 1990, the Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act (55 FR 27701). The last notification was filed with the Department on November 8, 1993. A notice was published in the **Federal Register** on December 17, 1993 (58 FR 66023).

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

[FR Doc. 94–4515 Filed 2–25–94; 8:45 am]

BILLING CODE 4410–01–M

Office of the Attorney General

[AG Order No. 1853–94]

Designation of the National Crime Information Center Under the Brady Handgun Violence Prevention Act

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: Under section 102(a)(1) of the Brady Handgun Violence Prevention Act, Public Law 103–159, Title I, 107 Stat. 1536 (to be codified at 18 U.S.C. 922(s)(2)), the Attorney General is required to designate a national system to be used by law enforcement for criminal history record background checks. Under this section the chief law enforcement officer of the place of residence of a handgun transferee must make a reasonable effort to ascertain within 5 business days whether receipt or possession of a handgun by the prospective transferee would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

This notice by the Attorney General designates the National Crime Information Center (NCIC) as the national system.

EFFECTIVE DATE: This designation is effective on February 24, 1994.

FOR FURTHER INFORMATION CONTACT: Virgil L. Young, Jr., Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation, room 9939, 10th and Pennsylvania Avenues, NW., Washington, DC 20537–9700, (202) 324–5084.

Notice of Designation of the National Crime Information Center

By the authority vested in me as Attorney General under section 102(a)(1) of the Brady Handgun Violence Protection Act, (to be codified at 18 U.S.C. 922(s)(2)), I hereby designate the National Crime Information Center (NCIC) as the national system to be used by law enforcement for crime history record background checks under the interim provisions of the Brady Handgun Violence Prevention Act (the "Act").

The prescribed use of the NCIC under the Act will require two inquiries. One inquiry will be an NCIC Persons inquiry, which will furnish matching records on all fugitives listed in NCIC, including foreign fugitives, as well as those individuals listed in the Bureau of Alcohol, Tobacco, and Firearms Violent Felon File. The second inquiry will be to the Interstate Identification Index, which will furnish automated criminal history records available through NCIC.

Dated: February 24, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–4621 Filed 2–24–94; 4:29 pm]

BILLING CODE 4410–01–M

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Meeting

AGENCY: National Institute for Literacy Advisory Board, National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: March 12, 1994, 9:30 a.m. to 4 p.m.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Sharyn M. Abbott, Acting Executive Officer, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone (202) 632–1500.

SUPPLEMENTARY INFORMATION: The Board is established under section 384 of the Adult Education Act, as amended by title I of Public Law 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships.

The Board will meet in Washington, DC on March 12, 1994 from 9:30 a.m. to 4 p.m. The meeting of the Board is open to the public. The agenda includes discussions of planned program activities. Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006 from 8:30 a.m. to 5 p.m.

Andrew J. Hartman,

Executive Director, National Institute for Literacy.

[FR Doc. 94–4431 Filed 2–25–94; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 10–12, 1994, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on January 21, 1994.

Thursday, March 10, 1994

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:15 a.m.: Advanced Light Water Reactor (ALWR) Policy Issue—Source Term (Open)—The Committee will review and comment on a draft Commission Paper related to the source term to be used for ALWRs. Representatives of the NRC staff will participate.

10:30 a.m.–11:15 a.m.: ABWR Review Regarding the Final Design Approval (FDA) (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the FDA of the ABWR. Representatives of the General Electric Nuclear Energy (GENE) will participate, as appropriate.

11:15 a.m.–12:30 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss matters scheduled for discussion during its meeting with the NRC Commissioners.

2 p.m.–3:30 p.m.: Meeting with the NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, to discuss matters of mutual interest.

4:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on the Final Design Approval for the ABWR, and the proposed source term for ALWRs.

Friday, March 11, 1994

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:30 a.m.: Multiple System Responses Program (MSRP) (Open)—The Committee will review and comment on the status of resolution of issues identified by the MSRP. Representatives of the NRC staff will participate.

9:30 a.m.–10:30 a.m.: Turbine Generator Failure Event at Fermi 2 (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the results of the AIT investigation of the December 25, 1993 turbine generator failure event at Fermi Unit 2.

10:45 a.m.–11:45 a.m.: Loss of Offsite Power and Steam Generator Dryout Event at McGuire (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the results of the AIT investigation of the December 27, 1993 loss of offsite power and steam generator dryout event at McGuire.

11:45 a.m.–12 noon: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

1 p.m.–2:30 p.m.: Revision of the LLNL Probabilistic Seismic Hazard Methodology for the Eastern U.S. (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff on the recent revisions of the LLNL probabilistic seismic hazard methodology for the Eastern United States. Representatives of LLNL and industry will participate, as appropriate.

2:30 p.m.–3:15 p.m.: Future ACRS Activities (Open)—The Committee will discuss topics proposed for consideration during return ACRS meetings.

3:30 p.m.–4:30 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and

internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory Committee, and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

4:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Saturday, March 12, 1994

8:30 a.m.–12 noon: Preparation of ACRS Reports (Open)—The Committee will complete its reports on matters considered during this meeting.

12 noon–12:30 p.m.: ACRS Subcommittee Activities (Open)—The Committee will hear reports and hold discussions regarding the status of ACRS subcommittee activities, including a report of the March 8, 1994 meeting of the ABB-CE Standard Plant Designs Subcommittee.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 30, 1993 (58 FR 51118). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of this advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 7:30 a.m. and 4:15 p.m. EST.

Dated: February 22, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–4451 Filed 2–25–94; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Information Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The objectives of the conference are to give the licensees and the public insight into our approach to safety regulations and to provide a forum for feedback from those in attendance on their concerns about our overall approach, as well as feedback on differences that may exist on technical issues. NRC staff will provide information regarding on-going programs and potential new initiatives as a basis for discussion.

Discussions will proceed from general (i.e., the plenary sessions) to specific (i.e., the breakout sessions), with emphasis on plant operations and the NRC view of these operations based on experience in carrying out its regulatory mission. Four plenary sessions are planned, three of which will be followed by breakout sessions that will include presentations by the NRC staff and industry representatives.

DATES: Conference will be held May 3–4, 1994.

ADDRESSES: The conference will be held at the Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036. Telephone: (202) 347–3000, FAX (202) 466–9083 (Refer to Group NRC–94).

FOR REGISTRATION INFORMATION CONTACT: Lynn Wilson, ES Inc., by facsimile on (202) 835–0118 or by phone on (202) 835–1585.

PARTICIPATION: This conference is open to the general public; however, advance registration is required by April 11, 1994. The following is the preliminary program for the conference:

Tuesday, May 3, 1994—(8:30–5:15)

1. Welcome and Introductory Remarks * * * William T. Russell, Director, Office of Nuclear Reactor Regulation.
2. *Morning Plenary Session:* Regulatory Trends.
3. *Breakout Sessions:*
   1. License Renewal Update.
   2. Fire Protection Issues.
   3. Technical Specifications Improvement.
   4. Steam Generator Issues.
4. *Luncheon Speaker:* Commissioner Kenneth C. Rogers.
5. *Afternoon Plenary Session:* Operational and Regional Issues.
   - Senior Management Review Process.
   - Operation and Maintenance Cost Reduction and Safety.
   - Licensee Self Assessment.
   - Region IV—V Consolidation.
6. *Breakout Sessions:*
   1. Licensee Interim Spent Fuel Storage.
   2. Reactor Pressure Vessel Issues.
   3. Valve Performance Issues.
   4. Experience with the Use of 10 CFR 50.54(x).
7. *Dinner Speaker:* Commissioner Forrest J. Remick.

Wednesday, May 4, 1994—(8:30–4:30)

1. Opening Remarks * * * James L. Milhoan, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations & Research.
2. *Morning Plenary Session:* Implementing Regulatory Review Group Recommendations.
3. *Breakout Sessions:*
   1. Cost Beneficial Licensing Actions Program.
   2. PRA Applications in Reactor Regulation.
   3. ALWR Review and Design Certification.
   4. Graded QA, part 21 Revision and Commercial Grade Dedication.
4. *Luncheon Speaker:* James M. Taylor, Executive Director for Operations.
5. *Breakout Sessions:*
   1. Maintenance Rule Implementation.
   2. Allegations and Protecting Allegers Against Retaliation.
   3. Decommissioning Issues.
   4. Digital I&C Retrofit and 10 CFR 50.59.
6. *Closing Plenary Session:* NRR Executive Team and Regional Administrators.

Note: There will be a question and answer period after each session each day.

Next year's conference is scheduled for May 9–10, 1995, at the Holiday Inn, Crowne Plaza, Rockville, MD.

Dated in Rockville, Maryland this 18th day of February 1994.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Chief, Planning, Program, and Management Support Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4454 Filed 2–25–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co., (Fermi 2); Exemption

I

Detroit Edison Company (the licensee) is the holder of Facility Operating License No. NPF–43 which authorizes operation of the Fermi 2 Nuclear Plant at steady-state reactor power levels not in excess of 3430 megawatts thermal. The Fermi 2 facility is a boiling water reactor located at the licensee's site in Monroe County, Michigan. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Paragraph III.A.6.(b) of Appendix J to 10 CFR part 50 requires, in part, that if two consecutive periodic Type A tests fail to meet the applicable acceptable criteria in III.A.5.(b), a Type A test shall be performed at each refueling shutdown or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria, after which the normal inspection interval specified in III.D may be resumed.

Pursuant to 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations (1) which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

III

By letter dated May 24, 1993, the licensee requested a one-time exemption from the requirements of 10 CFR part 50, Appendix J, III.A.6.(b) identified above, which were in effect due to "As-Found" Type A failure in 1989 and 1992. The licensee has verified that Type C leakage rates were the reason for the "As-Found" failures.

The two "As-Found" Type A failures were caused by the addition of Type C penalties. The licensee indicated that to date all containment deficiencies have been identified during Type C testing and; therefore, it is proposed that Type C testing be relied upon in lieu of the increased frequency Type A test. Fermi 2 has established stringent LLRT [local leak rate test] administrative leak rate acceptance criteria on a per valve basis, based on ASME Code guidance, individual valve test maintenance history, design, function, and service. Test acceptance criteria range from 0.20 scfh [standard cubic feet per hour] to 15.00 scfh. This ensures valve leak tight integrity is maintained from Type A test to Type A test. The licensee indicated that if valves are repaired when they exceed their individual administrative acceptance criteria, and corrective modifications or replacement are implemented, the overall containment integrity will be assured with future integrated leak rate tests (ILRTs) meeting their "As-Found" acceptance criteria. The licensee indicated that the implementation of the proposed Corrective Action Plan and continued Type C leakage testing provide reasonable assurance that the underlying purpose of Appendix J is being met. For details concerning the licensee's corrective actions for the previous Type C valve leakage, see the staff's Safety Evaluation dated February 22, 1994.

Information Notice (IN) No. 85–71, "Containment Integrated Leak Rate Tests," states that if Type B and C local leakage rates constitute an identified contributor to the failure of the "As-Found" Type A test, the licensee may submit a Corrective Action Plan with an alternate leakage test program proposal as an exemption request. If the submittal is approved and an exemption granted, the licensee may implement the corrective action and alternate leakage rate test program in lieu of the required increase in Type A test frequency incurred after the failure of two successive Type A tests.

IV

Accordingly, the Commission concluded that the licensee's Corrective Action Plan and proposed alternative test schedule are acceptable and that a Type A test during refueling outage four (RFO 4) is not necessary. The licensee has identified the problem penetrations that caused previous Type A failures in 1989 and 1992, and has implemented corrective actions to address these problems. There is reasonable assurance that the containment leakage-limiting function will be maintained. The normal Type A test schedule in Section III.D of Appendix J (three tests in 10 years) will require the next Type A test to be performed during RFO 5.

The special circumstances for granting this exemption pursuant to 10 CFR 50.12 have also been identified. As stated in part in 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of Section III.A.6.(b) of Appendix J is to establish an increased testing frequency for Type A tests, where previous testing has demonstrated unsatisfactory performance, in order to provide increased assurance that previous problems have been corrected. After two consecutive tests at the increased testing frequency pass, the normal testing frequency of Section III.D. may be resumed. By verifying that previous Type A test failures were due to Type C leakage and by implementing a Corrective Action Plan to effectively correct previous Type C failure, the licensee has provided additional assurance that containment integrity will be maintained. Consequently, the Commission concludes that the special circumstances of 10 CFR 50.12(a)(2)(ii) exist in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption as described in Section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption.

Therefore, the Commission hereby grants a one-time exemption as described in Section III above from the requirement in 10 CFR part 50, Appendix J, III.A.6.(b) to perform Type A containment ILRTs at an increased test frequency.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (59 FR 6977).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 22nd day of February 1994.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4453 Filed 2–25–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8584]

Kennecott Uranium Co.; Sweetwater Uranium Mill

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of a request to amend Source Material License SUA–1350 to allow for disposal of byproduct material at Kennecott Uranium Company's Sweetwater Uranium Mill.

1. Proposed Action

By letter dated July 21, 1993, Kennecott Uranium Company, holder of Source Material License SUA–1350 for the Sweetwater Uranium Mill, requested an amendment to License Condition No. 10.6 to allow for disposal of byproduct material from U.S. Energy's Green Mountain Ion Exchange Facility, which is being decommissioned.

2. Reason for Request to Amend License

Kennecott Uranium Company's Sweetwater Mill is currently in a standby status. As a result, License Condition No. 10.6 limits disposal in the tailings impoundment to byproduct material in the form of debris generated by routine site maintenance. Kennecott has requested that the license condition be amended to allow for disposal of byproduct material from U.S. Energy Corporation's Green Mountain Ion Exchange Facility. This material is characterized as byproduct material as defined in 10 CFR 40.4.

Upon completion of the NRC staff's review of Kennecott's request, notice of the action to be taken regarding the amendment request will be published in the **Federal Register** with an opportunity to request a hearing, in accordance with Subpart L of 10 CFR 2.

Signed in Denver, Colorado this 15th day of February 1994.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 94–4452 Filed 2–25–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–267]

Public Service Company of Colorado; Fort St. Vrain Nuclear Generating Station

Exemption

I

The Public Service Company of Colorado (PSC or the licensee) is the holder of Possession-Only License (POL) No. DPR–34, which authorizes possession and maintenance of the Fort St. Vrain Nuclear Generating Station (FSV). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission now or hereafter in effect.

FSV is a high-temperature, gas-cooled reactor that is located at the licensee's site in Weld County, Colorado. FSV operated from January 31, 1974, to August 18, 1989. PSC shut down FSV due to control rod drive failures, and subsequently made the shut down permanent due to a discovery of degradation of the steam generator ring headers. On November 5, 1990, PSC submitted a Decommissioning Plan (DP) pursuant to 10 CFR 50.82 that proposed dismantling of FSV. On May 21, 1991, the NRC revised License No. DPR–34 to POL that allows possession but not operation of FSV. The DP was approved by NRC Order dated November 23, 1993. PSC is activately dismantling FSV. In addition, FSV has been defueled and all fuel was transferred to the PSC Independent Spent Fuel Storage Installation (ISFSI) The ISFSI is licensed under 10 CFR part 72.

II

By letter dated February 25, 1993, the licensee requested a reduction in their primary financial coverage and an exemption from participation in the industry retrospective rating plan for secondary level coverage as required in 10 CFR 140.11(a)(4).

III

The justification presented by the licensee for the exemption request is that FSV is not authorized to operate, all nuclear fuel has been removed from the reactor facility and transferred to the ISFSI, and the risk of accidents resulting in a radiological release is now considerably less than during plant operation. The licensee contends that, with all nuclear fuel removed from the reactor facility, the potential accidents as evaluated in the FSV DP only involve events such as fires, electrical power outages, and the dropping of activated or contaminated materials during dismantling. PSC concludes that these events result in doses to an individual located at the emergency planning zone boundary that are orders of magnitude below 10 CFR part 100 guidelines, and are a small fraction of U.S. Environmental Protection Agency's "Protective Action Guidelines." The NRC staff Safety Evaluation of the FSV DP (NRC Decommissioning Order dated November 23, 1992) confirmed the PSC conclusion.

Because the possession-only license and the decommissioning order prohibits operation of FSV, and all spent fuel has been transferred from the reactor, the licensee contended that FSV is outside the ambit of 10 CFR 140.11(a)(4) and that 10 CFR 140.12 applies with its minimum requirement of $4,500,000 for financial protection.

Therefore, the licensee indicated that it believed that reduced financial protection is warranted and that $50,000,000 in primary financial protection provides adequate coverage for liability stemming from any potential accident. PSC also cited the FSV DP to demonstrate that there were no credible accidents associated with FSV that are comparable, in consequence or severity, to the design basis accidents of an operating facility. PSC concluded that the requested $50,000,000 in primary financial protection insurance coverage is adequate for any fire, accident, or other hazardous event that could credibly occur while decommissioning FSV.

PSC concluded that the requirement for secondary insurance only applies to plants licensed to operate and is not applicable to FSV. PSC stated that it should not be unfairly burdened with financial liability at another nuclear facility because potential damages from an accident at FSV are reduced to the extent that it could not benefit from the secondary protection. The NRC staff independently evaluated the legal and technical issues associated with the application of the Price-Anderson Act to permanently shutdown reactors in SECY–93–127, "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," May 10, 1993. In this evaluation, the staff concluded that the NRC has discretionary authority to respond to licensee requests for reduction in the level of primary financial protection and withdrawal from participation in the industry retrospective rating plan. Lastly, the staff concluded that accidents and hazards insured against under Price-Anderson go beyond design basis accidents and beyond those considered "credible" as that term is used in 10 CFR part 100 and in interpreting the

application of that regulation. The Commission issued a Staff Requirements Memorandum (SRM) based on SECY–93–127 on July 13, 1993. In the SRM, the Commission approved the staff's recommendation to permit, through the exemption process, a reduction of primary level coverage to $100,000,000 and a withdrawal from participation in the secondary financial protection layer.

In the exercise of its discretionary authority, the NRC may, so long as a potential hazard exists at a permanently shutdown reactor, require the full amount of primary financial protection and full participation in the industry retrospective rating plan. At such time that the hazard is determined to no longer exist, the NRC may reduce the amount of primary financial protection and permit the licensee to withdraw from participation in the industry retrospective rating plan.

Since the legislative history does not explicitly consider the potential hazards that might exist after termination of operation, the staff generically evaluated the offsite consequences associated with normal and abnormal operations, design basis accidents, and beyond design basis accidents for reactors that have been permanently defueled and shutdown. The staff concluded that, aside from the handling, storage, and transportation of radioactive materials, no reasonably conceivable potential accident exists at FSV that could cause significant offsite damage.

A severe transportation accident could potentially result in local contamination requiring cleanup and offsite liabilities resulting from traffic disruption and loss of use. This type of accident would warrant maintaining some level of liability insurance.

The most significant accident sequence for a permanently defueled and shut down reactor with no fuel onsite involves a fire or the dropping of contaminated or activated components during decommissioning operations.

The NRC staff independently evaluated the legal and technical justifications for the exemption presented by PSC. The NRC recognizes that FSV is: (1) Permanently shutdown; (2) defueled; (3) licensed with "possession only" status under a decommissioning order and an amended license that does not permit fuel at the reactor facility; and (4) actively being dismantled. The staff concurred with the PSC's evaluation of credible accidents at FSV and their minimal associated offsite consequences. The licensee identified need for continuing liability coverage, $50,000,000, was limited to liability stemming from any fire, accident, or other hazardous events. However, coverage needs associated with transportation of radioactive materials or precautionary evacuations were not identified. Although the licensee presented legal views and opinions regarding the applicability of 10 CFR 140.12 versus 10 CFR 140.11(a)(4), the staff did not concur with these legal views and opinions.

The licensee also contended that compliance with existing regulations would result in potential payment of retrospective assessments under the secondary indemnity plan and payments of insurance premiums under the primary financial protection plan. These payments would constitute an "unfair burden" to the licensee and its ratepayers. The staff recognizes that relief from financial protection requirements is warranted because the potential hazards and consequences associated with a permanently shut down reactor with no spent fuel are greatly reduced, and that a permanently shut down reactor does not contribute a level of risk to the participants in the secondary pool proportionate to that of an operating reactor.

The staff, on its own initiative, did consider liability coverage needs associated with decommissioning activities and transportation of radioactive materials. The results of our evaluation, as embodied in the July 13, 1993, SRM, based on SECY–93–127, allow a reduction in the amount of financial protection required of licensees of large nuclear plants that have been prematurely shut down. FSV meets the criterion established in SECY–93–127 for relief from financial protection requirements.

Although the licensee requested a new primary financial protection coverage level of $50,000,000, the staff has also concluded that claims settlement experience at the Three Mile Island Unit 2 (TMI–2) (an accident which did not result in a significant release of radioactivity) provides a reasonable basis for establishing the appropriate level of primary insurance coverage. Because TMI–2 claims have reached $60,000,000 and a large number of TMI–2 claims are still unsettled, the staff concluded that a level of $100,000,000 for primary financial protection coverage is warranted. This level of primary insurance coverage is consistent with the SRM dated July 13, 1993.

IV

The staff, based on its independent evaluation as embodied in the July 13, 1993, SRM on SECY–93–127 "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," has concluded that sufficient bases exist for our approval of relief from the financial protection requirements for the FSV. The staff has also concluded that granting the proposed exemption does not increase the probability or consequences of any accidents or reduce the margin of safety at this facility.

V

Based on Sections III and IV above, the NRC has determined, that pursuant to 10 CFR 140.8, that this exemption is authorized by law and is otherwise in the public interest. Therefore, the NRC grants an exemption from the requirements from 10 CFR 140.11(a)(4) to the extent that primary financial protection in the amount of $100,000,000 shall be maintained and that an exemption from participation in the industry retrospective rating plan (secondary level financial protection) is granted for FSV.

Pursuant to 10 CFR 51.32, the NRC has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (59 FR 6311, dated February 10, 1994).

A copy of the licensee's request for the exemption and supporting documentation dated February 25, 1993, and the NRC staff's Safety Evaluation, included in the exemption, are available for public inspection at the NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20037, and at the Weld Library District—Downtown Branch, 919 7th Street, Greeley, CO 80631.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of February, 1994.

For the Nuclear Regulatory Commission.

John T. Greeves,

Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–4455 Filed 2–25–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of USTR Determination of Violation of Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Affirmative Determination under section 1377 of the Omnibus Trade and Competitiveness Act of 1988

of a Violation of a Trade Agreement by Japan.

SUMMARY: Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) requires the U.S. Trade Representative (USTR) to review annually the operation and effectiveness of each telecommunications trade agreement in force between the United States and another country or countries, and to determine whether any act, policy, or practice of the foreign country that entered into the agreement (1) is not in compliance with the terms of the agreement, or (2) otherwise denies, within the context of the agreement, mutually advantageous market opportunities to U.S. telecommunications products and services.

Pursuant to section 1377, USTR has determined that certain practices of Japan with respect to cellular telephone products and services are not in compliance with Japan's commitments under a June 28, 1989 agreement on third party radio and cellular telecommunications equipment. Section 1377 requires this affirmative determination to be treated as an affirmative determination under section 304(a)(1)(A) of the Trade Act of 1974, as amended (19 U.S.C. 2414(a)(1)(A)). Accordingly, USTR will request the section 301 Committee to recommend what action, if any, should be taken under section 301 (19 U.S.C. 2411). USTR will publish notice of any proposed action and will provide an opportunity for interested persons to present views.

FOR FURTHER INFORMATION CONTACT: Questions concerning this affirmative determination should be directed to David Long, Office of Industry Affairs, (202) 395–6160, or Laura B. Sherman, Office of the General Counsel, (202) 395–3150, Office of the United States Trade Representative, 600 Seventh Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: This determination is the second affirmative determination under section 1377 on this issue. In the first determination, made on April 28, 1989 (54 FR 19624), USTR found that, for the reasons cited below, Japan was not in compliance with agreements on third party radio and cellular telecommunications equipment encompassed in a series of letters and joint communications between the United States and Japan pursuant to the "MOSS" (Market-Oriented Sector-Selective) discussions that took place between 1985 and 1987.

Specifically, USTR found that the Japanese Ministry of Posts and Telecommunications (MPT) had declined to license the operation in the Tokyo and Nagoya area of a cellular telephone system based on U.S. technology. This system was licensed in the rest of Japan, but subscribers to the system could not use their cellular telephones in the Tokyo-Nagoya area, i.e. they could not "roam" into Tokyo-Nagoya. Users of competing Japanese-technology cellular systems could "roam" throughout the country. USTR determined that the failure to approve operation of a U.S. technology-based system in the Tokyo-Nagoya area was inconsistent with the MOSS agreements, in which the Government of Japan committed to take measures with respect to roaming in Tokyo-Nagoya by users of the U.S. technology-based system.

Following that determination, consultations led to the June 28, 1989 third party radio and cellular agreement that is the subject of this determination. In the 1989 agreement, the Government of Japan committed to measures to enable users of the U.S. technology-based system to roam in the Tokyo-Nagoya region. In the agreement, Japan reaffirmed its commitment to the principle of "comparable market access."

In its review of the 1989 agreement, USTR found the following. To install the U.S. technology-based system in the Tokyo-Nagoya region, MPT selected, notwithstanding concerns expressed by USTR and U.S. industry, a company that operates a competing system in the Tokyo-Nagoya area using Japanese technology. This company has substantially delayed installing the U.S. technology-based system in Tokyo. Nearly five years after the 1989 agreement, and nine years after the MOSS discussions began, the new system covers only 40 percent of the Tokyo-Nagoya area. As a result, because users of the U.S. technology-based system still are unable to roam throughout Tokyo-Nagoya, the U.S. technology-based system does not have comparable market access with the Japanese systems, which offer full geographic coverage.

USTR has consulted with other executive agencies and the private sector during this review, and has had discussions with the Japanese Government regarding this agreement on more than seven occasions between July, 1993 and February 15, 1994.

As a result of this review, USTR has determined that MPT's failure to ensure full coverage for the U.S. technology-based system in the Tokyo-Nagoya area nearly five years after the 1989 third party radio and cellular agreement is inconsistent with the terms of that agreement, and denies, within the context of the terms of that agreement, mutually advantageous market opportunities in Japan for telecommunications products and services of the United States.

Irving Williamson,

Chairman, Section 301 Committee.

[FR Doc. 94–4612 Filed 2–25–94; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by the Office of Management and Budget

Agency Clearance Office: John J. Lane, (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Revision: Rule 13h–1 and Form 13H. File No. 270–358.

New: Rule 17a–23 and Form 17A–23. File No. 270–387.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of the following rules and forms under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*).

Proposed Rule 13h–1 and Form 13H provide for the Large Trader Reporting System, and would require that investors and broker-dealers disclose to the Commission information regarding large accounts and transactions.

It is anticipated that approximately 630 broker-dealers and 750 investors will spend a total of 11,454 hours annually complying with Rule 13h–1 and Form 13H.

Proposed rule 17a–23 and Form 17A–23 would establish recordkeeping and reporting requirements for brokers and dealers that operate automated trading systems.

It is anticipated that approximately 60 broker-dealers will spend a total of 6,612 hours annually complying with Rule 17a–23 and Form 17A–23.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Act numbers 3235–0408; new), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 15, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4426 Filed 2–25–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33641; File No. SR–CBOE–93–48]

Self-Regulatory Organizations; Order Approving Proposal Rule Change by the Chicago Board Options Exchange, Inc., Relating to Fines for Position Limit Infractions

February 18, 1994.

On October 25, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to amend paragraph (g)(1) of Exchange Rule 17.50, "Imposition of Fines for Minor Rule Violations," to establish a separate fine schedule for position limit violations which occur in non-CBOE member customer accounts carried by CBOE member firms, including the accounts of non-member broker-dealers.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33291 (December 6, 1993), 58 FR 65207. No comments were received on the proposed rule change.

Currently, paragraph (g)(1) of Exchange Rule 17.50 provides the following fine schedule for persons who violate the position limits established in CBOE Rule 4.11, "Position Limits," and 24.4, "Position Limits for Board-Based Index Options:" (1) A letter of caution plus $1 per contract over 5% of the applicable limit for one to three position limit violations within one calendar year; (2) $1 per contract over the limit for four to six position limit violations within one calendar year; and (3) $5 per contract over the applicable limit for seven or more position limit violations within one calendar year. The CBOE proposes to amend paragraph (g)(1) to establish a separate fine schedule for position limit violations which occur in non-CBOE member customer accounts (*i.e.*, accounts of customers who are not CBOE members) carried by CBOE member firms, including the accounts of non-member broker-dealers. The proposal will increase the number of cumulative infractions that may occur in non-member customer accounts before a fine is triggered. Specifically, under new subparagraph (a), the following fines, which will be imposed on CBOE member firms, will apply to position limit violations occurring in non-member customer accounts: (1) A letter of caution for position limit violations up to 5% in excess of the applicable limit plus $1 per contract above that level for one to six violations within one calendar year; (2) $1 per contract over the applicable limit for seven to 12 position limit violations within one calendar year; and (3) $5 per contract over the applicable limit for 13 or more position limit violations within one calendar year. In calculating the fine thresholds for each CBOE member, all non-member customer account position limit violations occurring within a single calendar year in all of the member's non-member customer accounts will be added together.

In addition, the Exchange proposes to rephrase the current language of subparagraph (b) to indicate more clearly that a letter of caution is given for position limit violations of up to 5% of the applicable limit for one to three position limit violations occurring within a single calendar year, and that a fine of $1 per contract applies to violations exceeding that limit.

The Exchange believes that the proposal accommodates key monitoring-related differences between non-member customer accounts and the accounts of members. The CBOE states that although CBOE members are well positioned generally to prevent, or to detect and promptly correct, position limit infractions in their own accounts or in accounts they carry for CBOE market makers, the CBOE and its member are positioned less effectively to monitor the aggregate trading commitments of non-CBOE broker-dealers or customers and to ensure the prompt correction of position limit violations by such persons. The CBOE states that factors such as customers trading through multiple firms, customers entering into Clearing Member Trade Assignment ("CMTA") agreements,[3] firms having multiple registered representatives, and investment advisors managing several accounts make it more difficult as a practical matter for member firms to prevent, or to detect and correct, a position limit violation by a customer, including a broker-dealer "customer," who is not a CBOE member. As a result, the CBOE believes that the fine tiers suitable with respect to CBOE members' own accounts can be inappropriately strict when applied to firms carrying a number of non-member customer accounts.

The Exchange believes that the proposal will permit the effective enforcement of the Exchange's position limit rules while taking into account compliance and monitoring realities. The CBOE states that situations involving numerous violations and/or substantial overages will continue to be referred to the CBOE's Business Conduct Committee ("BCC") for appropriate sanctions on a case by case basis.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposal is consistent with the section 6(b)(6) requirement that the rules of an exchange provide that its members, and persons associated with its members, be appropriately disciplined for violation of the rules of the exchange. Specifically, the Commission believes that the proposal, in this limited context, should provide the CBOE with a prompt and effective means to enforce compliance with position limits while taking into account the difficulties of CBOE members in detecting and correcting position limit infractions by non-member customers.

The Commission believes that the CBOE's proposal strikes a reasonable balance between the Exchange's need to enforce its position limit rules and its desire to take into consideration the difficulties of CBOE members in detecting position limit violations that occur in non-member customer accounts. Further, the Commission believes that the revised fine schedule will prove sufficient to deter position limit violations. In this regard, by tallying the infractions in all of a member's non-member customer accounts cumulatively for purposes of the fine schedule, the proposal will

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 249.19b–4 (1993).

[3] The CMTA is a process offered by the Options Clearing Corporation ("OCC") which enables an OCC clearing member to have trades executed on its behalf on an exchange without holding exchange membership. In order to participate in this process, the OCC clearing member who has authorized an exchange member to execute trades on its behalf must file a CMTA agreement with the OCC.

require members to continually monitor compliance for position limit violations in non-member customer accounts. In addition, the Commission notes that the CBOE plans to refer cases involving numerous violations and/or substantial overages to the Exchange's BCC, thus providing the Exchange with the flexibility to impose a stricter sanction for more egregious infractions.

The Commission finds that the CBOE's rephrasing of the current language of new subparagraph (b) is consistent with the Act in that it clarifies Exchange Rule 17.50(b), thereby facilitating the enforcement of the rule.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[4] that the proposed rule change (File No. SR–CBOE–93–48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4425 Filed 2–25–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33642; File No. SR–NYSE–93–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating To Initiation of On-Floor Orders in a Stock by Floor Professionals Who Have a Listed Option Position In That Stock

February 18, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 14, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exchange Rule 96 currently prohibits a member registered as a Competitive Trader[1] or Registered Competitive Market Maker ("RCMM")[2] from initiating, while on the Floor of the Exchange, the purchase or sale, for his own account or his member organization's account, of any stock in which he has an option position, or in which he knows his firm has an option position. Rule 96 currently applies to all options, including those traded on a national securities exchange ("listed options"). The proposed rule change would remove the prohibition in Rule 96 as to listed options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 96 was adopted in the mid-1930's after extensive investigations and public hearings by the Commission concerning manipulative practices and "pool" operations involving the use of options. At present, Rule 96 prohibits a member registered as a Competitive Trader or RCMM from initiating, while on the Floor, the purchase or sale, for his own account or his member organization's account, of any stock in which he has an option position, or in which he knows his firm has an option position. Rule 96 does not prohibit a Competitive Trader or RCMM from trading in options; rather, the rule simply provides that such members may not initiate a proprietary trade in a stock on the Floor where they have an option position in the stock. Rule 96 currently applies to all options, including those traded over-the-counter ("OTC options") and listed options.

The purpose of the proposed rule change is to remove the prohibition in Rule 96 as to listed options. Thus, under the proposed rule change, a Competitive Trader or RCMM would be permitted to initiate a proprietary purchase or sale of stock on the Floor where he has a listed option position in that stock, but not where he has an OTC option position in that stock.

The Exchange believes that the proposed rule change is appropriate for three reasons:

(1) By removing a restraint on members' initiating transactions on the Floor, the proposed rule change can be expected to add to the depth and liquidity of the Exchange market.

(2) Listed options are substantially different from the OTC options which Rule 96 was originally intended to regulate, and any regulatory concerns that might arise as to listed options can be addressed by monitoring and surveillance of revised Rule 96.

(3) The proposed rule change will remove a competitive barrier to fair competition, since no other professionals are subject to comparable restrictions.

Enhancement to the Exchange Market

The Exchange established the membership categories of Competitive Trader and RCMM to provide a means whereby members, subject to certain conditions, could add to the quality of the Exchange market by initiating proprietary transactions on the Floor. The current restriction in Rule 96 defeats this purpose in some instances by precluding Floor professionals from initiating such Floor transactions in any stock where they have an option position overlying such stock (or where they know their member organization has such an option position).

The Exchange believes the proposed rule change will further the purposes of Rule 107 by facilitating RCMM participation as dealers on the Exchange. Currently, the prohibition in Rule 96 conflicts with the purposes of Rule 107 by effectively precluding RCMMs from participating as dealers in any stock where they have an option positin in that stock. By deleting the prohibition in Rule 96 as to listed options, the proposed rule change will eliminate this barrier to RCMM dealer participation, thereby permitting RCMMs to add to the depth and liquidity of the Exchange market in situation where they currently may not do so.

In a similar vein, the proposed rule change will facilitate transactions by Competitive Traders on the Floor by permitting them to initiate such transactions in a stock where they have an option position in such stock. This enhanced ability to initiate transactions on the Floor will, as with RCMMs, add to the depth and liquidity of the Exchange market.

Regulatory Concerns

Rule 96 was adopted in the mid-1930's to regulate trading where members have a position in OTC options, not listed options, and the trading abuses in the OTC market that gave rise to Rule 96 are simply not present with respect to today's closely surveilled trading in listed options. The Exchange believes that regulatory concerns as to listed option trading can be addressed by monitoring and surveillance of revised Rule 96.

The Exchange notes that if the prohibition in Rule 96 were to be removed as to listed options, RCMMs and Competitive Traders would remain subject to the restrictions on members' on-Floor proprietary transactions stated in Rules 108 and 112,[3] and thus would not be in any greater position to exploit their alleged time and place advantage over public investors.

Removal of Barrier to Fair Competition

The Exchange notes that off-Floor professionals (including specialists and market makers on regional exchanges) are not subject to any restrictions in effacing off-Floor proprietary trades in a stock where they have an option position (whether a listed or OTC option) in that stock. Thus, off-Floor professional can be said to enjoy a significant competitive advantage over Floor professionals on the Exchange, who are restricted in their on-Floor proprietary transactions in a stock where they have an option position in that stock.

The Exchange acknowledges that a floor professional my initiate an off-Floor order in a stock where he has an option position in that stock. However, a significant reason why Competitive Traders and RCMMs become registered as such is to be able, in the routine conduct of their business, to initiate proprietary trades *on the Floor rather than "upstairs."* Thus, the ability of Floor professionals to initiate off-Floor orders in a stock in which they have an option position is largely meaningless when viewed in the context of the way such professionals routinely conduct their business. The Exchange does not believe that any viewed in the context of the way such professionals routinely conduct their business, when off-Floor professionals are not subject to comparable restrictions in the routine conduct of their business.

SEC Staff Comments on SR–NYSE–76–54

In response to proposed changes to Rules 96, 102, and 105 that were submitted in file No. SR–NYSE–76–54, the SEC staff suggested that the Exchange's proposals be revised so that Floor professionals would be permitted to use listed options only for hedging purposes.[4] Most of the SEC staff's comments were directed specifically at specialists' trading of specialty stock options pursuant to Rule 105.

While Rule 105 permits specialists to use listed options to offset the risks of making markets in stocks in which they are registered, the Exchange does not believe that it would be appropriate to re-structure Rule 96 along the lines of Rule 105. A "hedging limitation" in such a re-structured version of Rule 96 would have the effect of requiring Competitive Traders and RCMMs to use listed options only to offset the risk of loss in stock positions which they acquired as a result of orders in such stocks that were initiated on the Floor. In practice, such a limitation would be even more restrictive than the current regulation, which, as noted above, permits Floor professionals to trade in listed options, but simply precludes them from initiating an order on the Floor in a stock which underlies such option position. The Exchange does not believe that making Rule 96 even more stringent than it is today would serve any valid regulatory purpose.

As noted above, Rule 96 does not prohibit a Competitive Trader or RCMM from trading in options, but provides only that he may not initiate a proprietary order on the Floor in any stock where he has an option position in that stock. The Exchange does not believe that any sort of "reverse hedging limitation" in Rule 96 would make sense because it would mean, in effect, that a Competitive Trader or RCMM could initiate a proprietary trade on the Floor if necessary to hedge an option position. However, the primary dealings of RCMMs and Competitive Traders are in stocks, not the overlying options. In the Exchange's view, a "reverse hedging limitation" in Rule 96 would bear no relation to the practical business dealings of RCMMs and Competitive Traders, and would constitute an unnecessary burden of over-regulation given the minimal potential for trading abuse.

2. Statutory Basis

The statutory bases for the proposed rule change are sections 6(b)(5), 6(b)(8) and 11A(a)(1)(c)(ii) of the Act. By removing the prohibition on Competitive Traders and RCMMs initiating proprietary transactions on the Floor in a stock where they have a listed option position in such stock, and thereby permitting such members to add to the depth and liquidity of the Exchange market in situations where they may not currently do so, the proposed rule change will have the effect of "facilitating transactions in securities" and will "perfect the mechanism of a free and open market," as called for in section 6(b)(5).

To the extent that the proposed rule change permits Floor professionals to initiate transactions on a more equal regulatory footing with other securities professionals, the proposed rule change is designed to eliminate unfair discrimination between brokers or dealers, as called for in section 6(b)(5); to remove a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as called for in section 6(b)(8); and to promote fair competition among brokers and dealers, as called for in section 11A(a)(1)(C)(ii).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

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[4] 15 U.S.C. 72s(b)(2) (1988).

[5] 17 CFR 200.30–3(a)(12) (1993).

[1] A Competitive Trader is a NYSE member who is authorized to initiate proprietary transactions on the Floor of the Exchange but who is not registered as a specialist, odd-lot dealer or Registered Competitive Market Maker. See NYSE Rules 111 & 113(e). Competitive Traders exist pursuant to, and must comply with the requirements of, Section 11(a)(1)(G) of the Act. See also SEC Rule 11a1–1(T). In addition, the NYSE requires that 75 percent of a Competitive Trader's monthly transactions must be stabilizing transactions under the tick-test. See NYSE Rule 112(d).

[2] A RCMM is a NYSE member who is authorized to initiate proprietary transactions on the Floor of the Exchange. See NYSE Rule 107. RCMMs are not subject to the same tick-test as Competitive Traders; however, they must comply with a complex series of rules about the price at which they can trade and the size of those trades. *Id.* Unlike Competitive Traders, RCMMs have an affirmative obligation to maintain a fair and orderly market. See NYSE Rule 104(B)(4).

[3] Under Rule 108, an on-Floor order placed by a member to establish or increase a position in the member's proprietary account is not entitled to priority, or precedence based on size, over an off-Floor order placed by a public customer. On-Floor and off-floor are defined in rule 112; that rule also prohibits frontrunning of block transactions.

[4] The NYSE submitted File No. SR–NYSE–76–54 to the Commission on October 22, 1976. The proposed rule change was noticed for comment in Securities Exchange Act Release 12924 (October 27, 1976), 41 FR 48430 (November 3, 1976). The file, like other options proposals that raised significant regulatory issues, became dormant during the "options moratorium" in order to allow the Commission to complete its Special Study of the Options Markets. Shortly thereafter, the NYSE refiled its proposals to amend Rule 96 (File No. SR–NYSE–82–19) and Rules 102 and 105 (File No. SR–NYSE–82–20). In early 1985, the Commission approved the latter rule filing, thereby permitting NYSE specialists to trade options on their specialty stock but, consistent with the staff's earlier comments, only for hedging purposes. *See* Securities Exchange Act Release No. 21710 (February 4, 1985), 50 FR 5708 (February 11, 1985). The amendments to Rule 96, however, were noticed but never received Commission approval. *See* Securities Exchange Act Release No. 20006 (July 26, 1983), 48 FR 35217 (August 3, 1983). On March 15, 1993, the NYSE withdrew File No. SR–NYSE–82–19 and resubmitted the substance of that proposal as this File No. SR–NYSE–93–17.

necessary or appropriate in furtherance of the purposes of the Act. In fact, the proposed rule change will enhance competition by permitting Floor professionals to initiate proprietary transactions on a more equal regulatory plane with all other securities professionals.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–17 and should be submitted by March 21, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4474 Filed 2–25–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20084; 812–8594]

Bando McGlocklin Capital Corporation; Notice of Application

February 18, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Bando McGlocklin Capital Corporation.

RELEVANT SECTIONS: Exemption requested under sections 6(c), 17(d), and 23(c), and rule 17d–1 from the provisions of sections 17(d), 18(d), and 23, and rule 17d–1.

SUMMARY OF APPLICATION: Applicant, a diversified closed-end registered investment company, seeks a conditional order permitting it to offer key employees of applicant and its subsidiaries deferred equity compensation in the form of stock options.

FILING DATES: The application was filed on September 28, 1993, and amended on January 14, 1994, and February 4, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 15, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 13555 Bishops Court, Brookfield, Wisconsin 53005.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an internally managed, diversified closed-end registered investment company. As of December 31, 1993, applicant had outstanding 3,875,600 shares of common stock. Applicant's common stock is quoted on the NASDAQ National Market System.

2. Before March 26, 1993, applicant was licensed to operate as a small business investment company ("SBIC") under the Small Business Investment Act of 1958, as amended, and provided long-term, primarily variable rate, secured loans to finance the growth, expansion, and modernization of small businesses. Applicant was granted an exemption from various provisions of the Act and the rules thereunder to permit it to create a holding company structure.[1] The purpose of the holding company structure was to allow applicant to expand its business beyond that of an SBIC. Although applicant is no longer an SBIC, it will continue to provide secured loans to finance the growth, expansion, and modernization of small business entities.

3. On March 26, 1993, applicant transferred its SBIC license to Bando McGlocklin Small Business Investment Corporation (the "Subsidiary"), a Wisconsin corporation, under a plan of reorganization under section 351 of the Internal Revenue Code of 1986 (the "Code"). Under the plan, virtually all of applicant's assets were transferred to the Subsidiary; virtually all of applicant's liabilities were assumed by the Subsidiary; and all of the issued and outstanding shares of the Subsidiary's common stock were issued to applicant. Since March 26, 1993, substantially all of applicant's business has been conducted through the Subsidiary.

4. As an internally-managed investment company, applicant employs its own personnel and advisory staff. Applicant currently maintains two incentive stock option plans in accordance with two orders issued to applicant when it was an SBIC.[2]

[1] Investment Company Act Release Nos. 19030 (Oct. 15, 1992) (notice) and 19092 (Nov. 10, 1992) (order).

[2] Investment Company Act Release Nos. 17837 (Nov. 1, 1990) (notice) and 17978 (Nov. 27, 1990) (order) (the "1990 Plan"); and 15909 (Aug. 3, 1987) (notice) and 15958 (Sept. 2, 1987) (order) (the "1987 Plan").

5. To induce key employees to remain in the employ of applicant and its subsidiaries and to increase the incentive and personal interest of such employees in the welfare of applicant and its subsidiaries, applicant's Board of Directors on August 25, 1993, approved the 1993 Incentive Stock Option Plan (the "Plan"). Applicant's shareholders subsequently approved the Plan.

6. The Plan, which is substantially similar to the previous plans, provides for the grant of options to purchase a maximum of 100,000 shares of applicant's common stock. Applicant has agreed not to issue more than 85,672 shares under the Plan, so that the total number of shares that may be issued under all of applicant's incentive stock option plans will not exceed 7.5% of applicant's currently issued and outstanding shares without a subsequent SEC order.

7. Only key employees of applicant and its subsidiaries will be eligible to receive options. The Plan provides that if an option granted under the Plan expires or is terminated unexercised, the shares of common stock covered by that option will again be available for the grant of new options under the Plan. In addition, the Plan provides that not more than 29,985 shares may be issued to one participant through the exercise of options granted under the Plan.

8. Applicant currently has five key employees (its three executive officers, its controller, and its general counsel), who serve in identical capacities with the Subsidiary. Applicant anticipates that options to purchase shares of common stock under the Plan will be granted to applicant's three executive officers when and if the requested order is received. The number and specific terms of the options to be granted to such persons have not yet been determined.

9. Applicant's executive officers not only have the responsibility for making applicant's investments, but also for making all executive and operational decisions. As the executive officers of applicant, their performance directly affects applicant's performance and the value of applicant's common stock. To a lesser extent, the performance of applicant's controller and its general counsel, who participate in operational decisions, but do not make executive decisions, also directly affects the value of applicant's common stock. The performance of applicant's other employees does not directly affect applicant's performance. It therefore would be inconsistent with the purposes of the Plan to grant such employees stock options, since no matter how competently they performed their duties, their performance probably would not affect the value of applicant's common stock.

10. The Plan will be administered by the Compensation Committee of applicant's Board of Directors. The Compensation Committee consists of five directors of applicant, a majority of whose members are not "interested persons" of applicant, as defined in section 2(a)(19). Members of the Compensation Committee may not receive options under the Plan.

11. All of the options to be granted pursuant to the Plan will be incentive stock options within the meaning of section 422 (formerly section 422A) of the Code. As incentive stock options, the following restrictions apply:

(a) The Plan must state the aggregate number of shares that may be issued pursuant to the exercise of options and the class of employees eligible to receive options; the Plan also must be approved by applicant's shareholders.

(b) All options must be granted within ten years of the date the Plan was adopted.

(c) Options may not be exercised more than ten years after the date on which they are granted.

(d) The exercise price of the options may not be less than the fair market value of the underlying stock on the date of grant. In accordance with this provision, options will be granted at the last quoted sale price of the underlying stock on the date of grant or, if there is no sale on such date, the options will be granted at the mean between the closing bid and asked quotations.

(e) Options may not be transferable by an optionee (otherwise than by will or the laws of descent and distribution), and may be exercised during the lifetime of the optionee only by the optionee.

(f) Options may not be granted to persons owning more than 10% of the voting power of the outstanding shares of applicant's common stock at the time the options are granted.

(g) The aggregate fair market value (determined at the time the option is granted) of the stock with respect to which options are exercisable for the first time by an individual in any calendar year may not exceed $100,000.

(h) Stock acquired upon exercise of options may not be sold for two years from the grant date or one year from the exercise date, whichever is later.

(i) Options may be exercised by the optionee only if the optionee was an employee or officer of applicant during the entire period commencing with the grant date and ending three months prior to the exercise date, unless termination of employment is caused by death or disability, in which case the option may be exercised within one year following termination of employment.

12. The Plan does not provide for the grant of stock appreciation rights. The Plan does permit the exercise price of an option to be paid in cash or by tendering previously acquired shares of stock, valued at the fair market value as determined by the Compensation Committee. In placing a fair market value on previously acquired shares of applicant's common stock, applicant will use the same standards as are used in determining the fair market value at the time of the grant of the option.

13. The Compensation Committee may determine in its sole discretion that an adjustment in the number or kind of shares reserved for issuance under the Plan but not yet covered by options or of the stock then subject to options is necessary, or that an adjustment in the option price in each stock option agreement is necessary because of a change in the number or kind of outstanding shares of stock of applicant (or of any stock or other securities into which such shares of stock shall have been changed or for which it shall have been exchanged), whether through reorganization, recapitalization, stock split, combination of shares, merger or consolidation, or any other change in the number or kind of outstanding shares of stock.

14. Applicant also has a profit sharing plan qualified under section 401(a) of the Code, which is intended to provide a source of retirement income for employees. In accordance with the requirements of the Employee Retirement Income Security Act of 1974, as amended, applicant's profit sharing plan does not discriminate in favor of shareholders, officers, and highly compensated employees as to coverage, benefits, contributions, or otherwise. Applicant to date has not contributed the maximum permissible amount in any year. The Plan is not a substitute for a profit-sharing plan qualified under section 401(a), as it is intended to provide incentive compensation and does not establish a source of income for an employee's retirement years.

Applicant's Legal Conclusions

1. Section 18(d) prohibits any registered management investment company from issuing warrants or rights to subscribe to or purchase its securities except those issued ratably to a class of security holders with an exercise period of up to 120 days, or in exchange for warrants in connection with a reorganization. The issuance of stock options by applicant to its employees

would not satisfy these statutory exceptions.

2. The issuance of stock options to applicant's employees also would be prohibited under section 23. Section 23(a) generally prevents a registered closed-end investment company from issuing any of its securities for services or for property other than cash or securities. Because the issuance of stock options by applicant may constitute the issuance of securities for services, absent exemptive relief, it would be prohibited by section 23(a). Section 23(b) prohibits the sale by a closed-end investment company of any stock of which it is the issuer at a price below current net asset value, except with the consent of a majority of its common stockholders at the time of issuance or under certain other enumerated circumstances. If the net asset value of applicant's common stock were to increase following the grant of an option, the option exercise price may be less than the net asset value of a share of applicant's common stock on the date of exercise. Furthermore, section 23(c) generally prohibits the purchase by a registered closed-end investment company of any securities of which it is the issuer. Thus, to the extent that payment for stock options with previously acquired shares of applicant's common stock is considered to be a purchase by applicant of its own securities, section 23(c) would prohibit the transaction.

3. Section 17(d) and rule 17d–1(a) thereunder also prohibit an affiliated person of a registered investment company from participating in, or offering a transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the registered company is a participant unless an order permitting the transaction has been granted by the SEC. Paragraph (c) of rule 17d–1 includes stock option plans in the definition of joint enterprise, joint arrangement or profit-sharing plan prohibited by section 17(d). These provisions therefore may prohibit any stock option plan absent an order from the SEC.

4. Although applicant is engaged primarily in the business of making loans to small businesses, it is no longer an SBIC and therefore is unable to rely on an existing SEC order permitting SBICs to issue stock options to their employees [3] or on rule 17d–1(d)(4). Additionally, both the order and the rule specifically provide that the options granted must be "qualified stock options" under former section 422 of the Code and must conform to the requirements of 13 CFR 805(b) adopted by the Small Business Administration. "Qualified stock options" were eliminated in 1976. Thus, although the incentive stock options provided for in the Plan have many of the same characteristics as qualified stock options under former section 422, they have some minor differences, which are fully described in the application. Applicant is also unable to rely upon a similar order granted to the Association of Publicly Traded Investment Funds [4] because the order does not extend to registered closed-end investment companies that are engaged primarily in the business of making loans to small businesses.

5. Section 6(c) provides that the SEC may grant an exemption from the provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. Rule 17d–1(b) requires the SEC, in passing upon an application regarding a joint enterprise, joint arrangement or profit-sharing plan, to consider whether the participation of the investment company in the transaction is consistent with the policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Section 23(c)(3) requires the SEC to insure that repurchases by closed-end funds of their own securities are on a basis which does not unfairly discriminate against any holders of the class of securities to be purchased.

6. Applicant submits that the limitations on the requested order will provide protection to investors against dilution of their *pro rata* interests that are similar to those the SEC previously has found consistent with the purposes and policies of the Act and even greater than those Congress imposed on stock options to be issued by business development companies. The Plan has been approved by applicant's shareholders, and any options granted under the Plan must be approved by a majority of applicant's directors who are not interested persons of applicant and who cannot participate in the Plan. In addition, the total percentage of shares that could be issued under the Plan, the 1987 Plan, and the 1990 Plan will be limited to 7.5% of the outstanding shares of applicant's common stock.

7. Applicant states that the abuses and adverse effects of investment company stock options would have no applicability to stock options granted under the Plan. The limited stock options that could be granted under the Plan would offer no opportunity for any change in control of applicant or quick sale at a profit. Additionally, the options themselves would not be transferable. Moreover, the existence and nature of the stock options granted by applicant would be fully disclosed in accordance with the standards or guidelines adopted by the Financial Accounting Standards Board for operating companies and the requirements of the SEC, and will be neither so extensive nor so complex as to make the financial statements of applicant or management remuneration more difficult to understand.

8. Applicant's investments (other than investments in idle funds) are in small businesses, the securities of which will not be publicly traded. In addition, all of applicant's investments in small businesses consist of non-convertible secured loans. Under these circumstances, applicant believes that it is difficult to conceive a scenario in which applicant's portfolio investments could create a short-term artificial increase in the price of applicant's stock.

9. Applicant submits that, in the event this application is granted, any adverse impact on investor interests protected by the Act will be minimal, and further, will be more than outweighed by the benefits to investors that will result from permitting applicant to compete for top quality personnel on a more equal footing with its competitors. Applicant competes primarily with banks and other entities that are not investment companies registered under the Act. These organizations are able to offer stock options to employees and have an advantage over applicant in attracting and retaining highly qualified personnel. In order for applicant to compete on a more equal basis with such organizations, it has to have personnel as competent as such organizations, and in order to attract and retain such personnel, applicant must be able to offer comparable compensation packages.

10. For the foregoing reasons, applicant believes that the applicant satisfies the standards for relief set forth in sections 6(c), 17(d), and 23(c) of the Act and rule 17d–1 thereunder.

[3] National Association of Small Business Investment Companies, Investment Company Act Release No. 6523 (May 14, 1971).

[4] Investment Company Act Release Nos. 14541 (May 28, 1985) (notice) and 14594 (June 21, 1985) (order) (permitting the issuance of incentive stock options by member closed-end investment companies with portfolios of marketable securities).

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief will be subject to the following conditions:

1. Applicant's directors, including a majority of the directors who are not interested persons of applicant, will review periodically the potential impact that the grant or exercise of stock options could have on applicant's earnings and net asset value per share, such review to take place prior to any decisions to grant stock options, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review by applicant's directors, and the directors will have the authority to take appropriate steps if necessary to ensure that neither the grant nor the exercise of stock options would have an effect contrary to the interests of investors in these areas. The directors' authority will include, in addition to the authority to prevent or limit the grant of additional stock options, the authority to limit the number of stock options exercised in a given period of time if the directors conclude that the effect on applicant's expenses or earnings would be contrary to the interests of investors or that net asset value per share might be excessively diluted.

2. No more than 85,672 shares will be issued pursuant to the Plan, absent a subsequent exemptive order from the SEC with respect to the remaining 14,328 shares authorized under the Plan.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4422 Filed 2–25–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25990]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

February 18, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 14, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

DQE, Inc. et al. (70–8096)

DQE, Inc. ("DQE"), P.O. Box 68, Pittsburgh, Pennsylvania 15230–0068, and its wholly owned subsidiary company, Duquesne Enterprises, Inc. ("DE"), Grant Building, 330 Grant Street, suite 2420, Pittsburgh, Pennsylvania 15219, both Pennsylvania public-utility holding companies exempt from registration under section 3(a)(1) of the Act pursuant to Rule 2, have filed an application under sections 9(a)(2) and 10 of the Act in connection with the acquisition of Allegheny Development Corporation ("ADC"), a wholly owned subsidiary of DE, that operates an energy services business.

DQE was organized in 1989 for the purpose of becoming a holding company for Duquesne Light Company ("DLC"), an electric utility company, and other energy-related subsidiaries. DLC is engaged in the generation, transmission, distribution and sale of electric energy and serves an area of approximately 800 square miles which includes the City of Pittsburgh. DE's subsidiaries other than ADC are engaged in real estate ventures.

In 1987 a competitive bidding process was initiated by the County of Allegheny, Pennsylvania ("County") for the design, installation and operation of facilities to provide a complete energy services package to the new Midfield Terminal Complex being developed to replace the then existing airline terminal at the Greater Pittsburgh International Airport ("Airport"). DLC was the supplier of electric energy to the Airport at that time. The applicants state that DLC, a utility subject to the jurisdiction of the Pennsylvania Public Utility Commission, was not in a position to submit a competitive bid; however, it was important to participate in the bidding to avoid the loss of a significant DLC customer when the Airport ceased operation. Consequently, ADC then a wholly-owned subsidiary of DLC, submitted a bid to the County and was awarded the contract out of a field of 12 bidders. As a result, ADC became a public utility company within the meaning of the Act.

On July 7, 1989, DLC became a wholly-owned subsidiary of QE by virtue of a merger transaction. ADC was still a wholly-owned subsidiary of DLC. An Energy Services Agreement ("Agreement") dated May 31, 1989 between the County and ADC was entered into on July 27, 1989. In December 1989, DLC distributed all of the stock of ADC to DQE as a dividend and later in December 1989, DQE contributed the ADC stock to the capital of DE.

The Agreement requires ADC to supply all of the electrical and thermal requirements of the Midfield Terminal Complex, including electricity, hot water and chilled water. ADC purchases electricity at tariff rates from DLC and sells a portion to the County at the unit costs specified in the Agreement. The County also is required to pay to ADC an annual fixed charge related to ADC's investment in the facilities. The County is the sole customer for the energy services provided by ADC.

OLS Acquisition Corp., et al. (70–8311)

OLS Acquisition Corporation ("Acquisition Corp.") and OLS Energy-Berkeley ("Berkeley"), One Upper Pond Road, Parsippany, New Jersey 07054, both indirect nonutility subsidiaries of Energy Initiatives, Inc. ("EII"), an indirect subsidiary of General Public Utilities Corporation, a registered holding company, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(a), and 12(b) of the Act and Rule 45 thereunder.

By order dated August 1, 1989 (HCAR No. 24931), the Commission authorized OLS Power Limited Partnership, a Delaware limited partnership and an indirect subsidiary of EII, to, among other things, acquire indirectly through Acquisition Corp. all of the outstanding common stock of OLS-Energy-Chino, a California corporation ("Chino"), OLS Energy-Camarillo, a California corporation ("Camarillo"), and Berkeley.

Berkeley, Chino and Camarillo are each lessees, pursuant to leases ("Leases") with General Electric Capital Corporation or a wholly owned subsidiary (collectively, "GECC") of operating cogeneration facilities ("Facilities") located in California, which are all qualifying facilities under the Public Utility Regulatory Policies Act of 1978. The Leases expire, in the

cases of Chino and Camarillo, on December 31, 2007, and in the case of Berkeley, on August 7, 2007, but may be renewed, subject to certain conditions, for up to 10 years at the lessee's option. Rent payable during such renewal term would be the then fair market rent for the respective Facility, or, for an initial three year renewal term, an amount which has been agreed upon if the renewal option which provides for payment of rent in such agreed upon amount is elected by the lessee.

At the time of the acquisition, Berkeley, Chino and Camarillo each were parties to revolving credit agreements ("Credit Agreement(s)") with FECC that provided for the short-term working capital requirements of their respective Facilities. Berkeley, Chino and Camarillo have issued secured promissory notes to GECC evidencing these borrowings.

After the acquisition, each company was unable to generate sufficient revenue from sales of steam and electricity to pay its operating expenses and rent under its Lease on a current basis. In order to remedy the problem, the OLS Companies ultimately reached agreement with GECC and their host institutions to restructure their Leases and the energy services agreements under which they sell electricity and steam to their host institutions ("Energy Services Agreements").

On August 30, 1991, Chino and Camarillo entered into agreements with GECC and their respective host institutions which, among other things, reduced the rent payable to GECC under their respective Leases, increased the amount each could borrow and reduced the rate of interest payable under their respective Credit Agreements and reduced certain rebates payable to their host institutions under their respective Energy Service Agreements. The amendments to Chino's and Camarillo's Credit Agreements were authorized by orders of the Commission dated February 9, 1990 and December 26, 1990 (HCAR Nos. 25038 and 25230).

Pursuant to authorization granted in five previous orders of the Commission issued from 1990 through 1992, Berkeley has previously amended its Credit Agreement to, among other things, increase the aggregate amount of the borrowings which may be outstanding at any time from $1 million to $1.25 million, extend the time period for borrowings to December 31, 1994, and reduce the rate of interest from 5% over the prime rate, as defined, to 3% over the prime rate.

Pursuant to negotiations with GECC and the University of California at Berkeley ("University"), where the Berkeley Facility is located, Berkeley now proposes to restructure ("Restructure") the Lease with GECC as well as the Energy Services Agreement with the University and related agreements. Berkeley also proposes to further amend the Credit Agreement.

The Restructure contemplates, among other things, that (i) rent payable to GECC under Berkeley's Lease will be reduced, effective December 31, 1993, by approximately $780,000 per year and will be payable quarterly in amounts which track expected revenue, rather than semi-annually in equal payments, and (ii) rebates payable to the University under the Energy Services Agreement will be reduced or deferred to increase the cash retained by Berkeley to pay operating expenses.

As part of the Restructure, Berkeley proposes to borrow, subject to the satisfaction of certain conditions precedent, up to an aggregate amount outstanding of $1 million under a loan facility ("Overhaul Loan Facility") as part of the Berkeley Credit Agreement with GECC. The Overhaul Loan Facility would be used to fund the cost of major repairs, nonroutine maintenance activities and overhauls of its Facility; provided that the initial advance under the Overhaul Loan Facility may be used to pay amounts due fuel suppliers and the operator of the Facility, costs incurred to consummate the Restructure, prepayments of working capital advances and rent under Lease.

Borrowings under the Overhaul Loan Facility may be made from time to time until August 7, 2007, and would bear interest at a rate per annum of 3% in excess of the rate of interest per annum publicly announced by Morgan Guaranty Trust Company as its commercial reference rate, or certain substantially equivalent rates of interest per annum if Morgan Guaranty Trust Company ceases to announce such a rate of interest. Borrowings would be repayable on a fixed amortization schedule over the lesser of three years or the remaining term of Berkeley's restructured Lease (August 7, 2007).

The obligation of GECC to make each loan under the Overhaul Loan Facility would be subject, among other conditions, to the delivery of certain documentation, the absence of a material adverse change in the financial condition of Berkeley, the showing by Berkeley in form and substance satisfactory to GECC that Berkeley will have sufficient cash to repay the loan and the absence of a default under, among other agreements, the amended Lease and the amended Credit Agreement.

Berkeley also proposes to make the following amendments to the Credit Agreement: (1) Provide for the Overhaul Loan Facility with GECC and borrow thereunder from time to time prior to August 7, 2007 in amounts of up to $1 million at any time outstanding and issue to GECC its promissory note evidencing such borrowings; (2) change the aggregate amount of the borrowings which may be outstanding at any time thereunder to the lesser of $1.25 million or $1.5 million less the aggregate face amount of outstanding letters of credit issued under the Credit Agreement; (3) extend until August 7, 2007, which is the end of the term of Berkeley's restructured lease, for borrowings to be made and letters of credit to be outstanding under the Credit Agreement; (4) provide that borrowings under the Credit Agreement may be made only upon the satisfaction of certain conditions precedent, such as certain documentation and the absence of a default under, among other agreements, the amended lease and the amended Credit Agreement; and (5) provide for an origination fee of $2,500 for the issuance of letters of credit in replacement of those presently outstanding under the Credit Agreement, plus an annual fee of 1% per annum of the face amount of any such replacement letter of credit.

Acquisition Corp. also proposes to enter into a pledge agreement with U.S. Trust Company of New York, the owner trustee and lessor or Berkeley's facility under its lease, pledging Berkeley's stock as security for Berkeley's obligations under its amended Credit Agreement and in connection with the Restructure. Outstanding borrowings under the amended Credit Agreement would be required to be repaid in full annually and the amended Credit Agreement would contain certain other mandatory and optional prepayment provisions.

Monongahela Power Company, et al. (70–8349)

Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac Edision"), 10435 Downsville Pike, Hagerstown, Maryland 21740–1766, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601 (collectively, "Applicants"), each an electric utility subsidiary of Allegheny Power System, Inc., a registered holding company, have filed an application-declaration under sections 9(a), 10 and 12(c) of the Act.

Applicants propose, through December 31, 1996, to redeem all of the shares of certain series of their preferred stock, which are eligible for optional redemption at specified premiums over their respective par values, as follows:

Company	Series	Dividend rate	No. of shares	Par value	Current optional redemption price	Date price applicable
Monongahela	G	$8.80	50,000	$100	$104.20	After 5/1/86.
Monongahela	H	7.92	50,000	100	103.52	After 4/1/87.
Monongahela	I	7.92	100,000	100	103.52	After 11/1/88.
Monongahela	J	8.60	150,000	100	103.33	After 12/1/91.
Potomac Edison	F	8.32	50,000	100	103.54	After 5/1/86.
Potomac Edison	G	8.00	100,000	100	103.25	After 5/1/87.
West Penn	G	8.08	100,000	100	103.27	After 7/1/87.
West Penn	H	7.60	100,000	100	103.23	After 6/1/87.
West Penn	I	7.64	100,000	100	103.16	After 11/1/88.
West Penn	J	8.20	200,000	100	103.30	After 12/1/91.

Applicants propose to effect such redemptions by issuing new preferred stock with a lower dividend rate.

Applicants will not enter into the proposed refunding transactions unless, in each instance, the estimated present value savings derived from the net difference between interest payments on the new issue of comparable securities and on the securities to be refunded is, on an after tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after tax interest rate on the securities to be issued.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4424 Filed 2–25–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20085; 811–5960]

Smith Barney Shearson 1990s Fund; Application for Deregistration

February 18, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Smith Barney Shearson 1990s Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on January 14, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 15, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidevit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Mary Key Frech, Staff Attorney, at (202) 272–7648, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On November 21, 1989, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on January 11, 1990, and applicant commenced its initial public offering shortly thereafter.

2. On June 11, 1993, applicant's board of directors approved a plan of reorganization whereby applicant agreed to transfer substantially all of its assets to Smith Barney Shearson Aggressive Growth Fund Inc. (the "Acquiring Fund"), in exchange for shares of beneficial interest of the Acquiring Fund and the assumption by the Acquiring Fund of certain liabilities of applicant. In accordance with rule 17a–8 of the Act, applicant's directors determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.[1]

3. In approving the reorganization, the directors considered various factors, including, (a) the generally similar investment objectives and policies of applicant and the Acquiring Fund, (b) the fact that the funds have the same investment adviser, administrator, custodian, and transfer agent, (c) the significant savings in expenses for application's shareholders, and (d) the fact that the larger asset base of the combined funds should result in further reduction of expenses.

4. Proxy materials soliciting shareholder approval of the reorganization were distributed to applicant's shareholders of record on or about August 18, 1993. Preliminary and definitive copies of the proxy materials were filed with the SEC. Applicant's shareholders approved the reorganization at a special meeting held on October 12, 1993.

5. As of October 15, 1993 (the "Closing Date"), applicant had 2,634,771 and 48,102 shares of Class A and Class B, respectively, outstanding,

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

having a net asset value of $26,604,523 and $482,443, respectively, and a per share net asset value of $10.10 and $10.03, respectively. On the Closing Date, the reorganization was consummated. Applicant transferred all, or substantially all, of its assets and certain stated liabilities to the Acquiring Fund. In exchange, the shareholders of applicant received shares of the Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of their investment in applicant. Holders of Class A shares of applicant received Class A shares of the Acquiring Fund, and holders of Class B shares of applicant received Class B shares of the Acquiring Fund.

6. On the Closing Date, applicant paid a capital gain distribution of $0.5240 per share which, together with all previous such dividends, had the effect of distributing to its shareholders all of its respective investment company taxable income for the taxable year ending on or prior to the Closing Date (computed without regard to any deduction for dividends paid) and all of its respective net capital gain realized in the taxable year ending on or prior to the Closing Date (after reduction for any capital loss carry forward).

7. The expenses in connection with the reorganization consisted of legal, accounting, printing, and administrative expenses totalling approximately $20,000. These expenses were borne by applicant.

8. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-4423 Filed 2-25-94; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of Commercial Space Transportation

Availability of Public Docket 49416

On February 10, 1993, the Department of Transportation's (DOT) Office of Commercial Space Transportation (OCST) conducted a public meeting for the purpose of gathering information relating to the low earth orbit (LEO) space market. Notice of the meeting was published in the **Federal Register** on February 3, 1994 59 FR (5219).

Written submissions provided to OCST at the meeting or in response to the Notice are available for public inspection under Docket No. 49416, in room 4107. DOT Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC. Submissions designated as proprietary or confidential are not available to the public.

For additional information or questions, please contact Linda Strine at 202/366-5770.

Dated: February 17, 1994.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 94-4429 Filed 2-25-94; 8:45 am]

BILLING CODE 4910-62-P

Coast Guard

Privacy Act of 1974; DOT/CG 623 Military Pay and Personnel System

The Department of Transportation, on behalf of the United States Coast Guard, herewith publishes a proposal to amend the system of records DOT/CG 623 Military Pay and Personnel System to add an additional routine use.

Any person or agency may submit written comments on the proposed altered system to Commandant (G-PD-3), ATTN: Mr. David M. Swatloski, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, room 4611. Comments to be considered must be received by March 31, 1994.

If no comments are received, the proposed change will become effective on the above mentioned date. If comments are received, the comments will be considered and where adopted, the document will be republished with the change.

Issued in Washington, DC, February 18, 1994.

Paula R. Ewen,

Chief, Information Requirements Division.

DOT/CG-623

SYSTEM NAME:

Military Pay and Personnel System.

SYSTEM LOCATION:

Department of Transportation (DOT),

a. U.S. Coast Guard (CG), Department of Transportation Computer Center, 400 7th Street, SW., Washington, DC 20590-0001

b. U.S. Coast Guard Pay and Personnel Center, 444 SE Quincy Street, Topeka, KS 66683-3591.

c. U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593-0001.

d. Decentralized data segments are located at the unit maintaining the individual's pay and personnel record and permanent duty unit.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. All Coast Guard military personnel, active duty and reserve.

b. Retired reserve Coast Guard military personnel waiting for pay at age 60.

c. Active duty National Oceanic and Atmospheric Administration (NOAA) officers.

d. Personnel separated from service in all the preceding categories.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records are electronic and/or paper, and may include identifying information, such as name(s), date of birth, home residence, mailing address, social security number, payroll information, and home telephone number. Records reflect:

a. Work experience, educational level achieved, and specialized education or training obtained in and outside of military service.

b. Military duty assignments, ranks held, pay and allowances, personnel actions such as promotions, demotions, or separations.

c. Enrollment or declination of enrollment in insurance programs.

d. Performance evaluation.

e. The individual's desires for future assignments, training requested, and notations by assignment officers.

f. Information for determinations of waivers and remissions of indebtedness to the U.S. Government.

g. Information for the purpose of validating legal requirements for garnishment of wages.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

Title 37 U.S.C. as implemented in GAO Manual for Guidance of Federal Agencies, Title 2 GAO, Title 6 GAO and Title 14 U.S.C. 92(i).

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To the Department of Treasury for the purpose of disbursement of salary, U.S. Savings Bonds, allotments, or travel claim payments.

b. To government agencies to disclose earnings and tax information.

c. To the Department of Defense and Veterans Administration for determinations of benefit eligibility for military members and their dependents.

d. To contractors to manage payment and collection of benefit claims.

e. To the Department of Defense for manpower and readiness planning.

f. To the Comptroller General for the purpose of processing waivers and remissions.

g. To contractors for the purpose of system enhancement, maintenance, and operations.

h. To federal, state, and local agencies for determination of eligibility for benefits connected with the Federal Housing Administration programs.

i. To provide an official of another federal agency information needed in the performance of official duties to reconcile or reconstruct data files in support of functions for which the records were collected and maintained.

j. To an individual's spouse, or person responsible for the care of the individual concerned when the individual to whom the record pertains is mentally incompetent, critically ill or under other legal disability for the purpose of assuring the individual is receiving benefits or compensation they are entitled to receive.

k. To a requesting government agency, organization, or individual the home address and other relevant information on those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from a health hazard while a member of government service.

l. To businesses for the purpose of electronic fund transfers or allotted pay transactions authorized by the individual concerned.

m. To credit agencies and financial institutions for the purpose of processing credit arrangements authorized by the individual concerned.

n. To other government agencies for the purpose of earnings garnishment.

o. To prepare the Officer Register and Reserve Officer Register which is provided to all Coast Guard officers and the Department of Defense.

p. To other federal agencies and collection agencies for the collection of indebtedness and outstanding travel advances to the federal government.

q. The home mailing addresses and telephone numbers of members and their dependent/s to duly appointed Family Ombudsman and personnel within the Coast Guard for the purpose of providing entitlement information to members or their dependents.

See Prefatory Statement of General Routine Uses, 3 and 5 do not apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The storage is on computer disks, magnetic tape microfilm, and paper forms in file folders.

RETRIEVABILITY:

Retrieval from the system is by name or social security number and can be accessed by employees in pay and personnel offices and other pay and personnel employees located elsewhere who have a need for the record in the performance of their duties.

SAFEGUARDS:

Computers provide privacy and access limitations by requiring a user name and password match. Access to decentralized segments are similarly controlled. Only those personnel with a need to have access to the system are given user names and passwords. The magnetic tape backups have limited access in that users must justify the need and obtain tape numbers and volume identifiers from a central source before they are provided data tapes. Paper record and microfilm records are in limited access areas in locking storage cabinets.

RETENTION AND DISPOSAL:

Leave and Earnings Statements, and pay records are microfilmed and retained on site four years, then archived at the Federal Record Center, and destroyed when 50 years old. The official copy of the personnel record is maintained in the Official Officer Service Records, DOT/CG 626 for active duty officers, the Enlisted Personnel Record System, DOT/CG 629 for active duty enlisted personnel or the Official Coast Guard Reserve Service Record, OST/CG 576 for inactive duty reservists. Duplicate magnetic copies of the pay and personnel record are retained at an off site facility for a useful life of seven years. Paper records for waivers and remissions are retained on site six years three months after the determination and then destroyed. Paper records to determine legal sufficiency for garnishment are retained on site six years three months after the member separates from the service or the garnishment is terminated and then destroyed.

SYSTEM MANAGERS AND ADDRESS:

a. All information on Coast Guard members other than b., c., and d. below:

(1) For active duty members of the Coast Guard: Chief, Office of Personnel, Department of Transportation, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593-0001.

(2) For Coast Guard inactive duty reserve members and retired Coast Guard reservists awaiting pay at age 60: Chief, Office of Readiness and Reserve, Department of Transportation, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593-0001.

b. For Coast Guard Waivers and Remissions: Chief, Personnel Services Division (G-PMP), Office of Personnel, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20590-0001.

c. For records used to determine legal sufficiency for garnishment of wages and pay records: Commanding Officer (LGL), U.S. Coast Guard Pay and Personnel Center, 444 SE. Quincy Street, Topeka, KS 66683-3591.

d. For data added to the decentralized data segment the commanding officer, officer-in-charge of the unit handling the individual's pay and personnel record, or Chief, Administrative Services Division for individuals whose records are handled by Coast Guard Headquarters.

e. For NOAA members: National Oceanic and Atmospheric Administration, Commissioned Personnel Division, 11400 Rockville Pike, Rockville, MD 20852.

NOTIFICATION PROCEDURE:

Inquiries should be directed to:

a. For all information on Coast Guard members other than b., c., and d. Below: Department of Transportation, U.S. Coast Guard Headquarters (G-TPS), 2100 2nd Street, SW., Washington, DC 20593-0001.

b. For records used to determine legal sufficiency for garnishment of wages and pay records: Commanding Officer, U.S. Coast Guard Pay and Personnel Center, 444 SE. Quincy Street, Topeka, KS 66683-3591.

c. For data added to the decentralized data segment the commanding officer, officer-in-charge of the unit handling the individual's pay and personnel record, or Chief, Administrative Services Division for individuals whose records are handled by Coast Guard Headquarters. Addresses for the units handling the individual's pay and personnel record are available from the individual's commanding officer.

d. For all information on NOAA members: National Oceanic and Atmospheric Administration, Commissioned Personnel Division, 11400 Rockville Pike, Rockville, MD 20852.

RECORD ACCESS PROCEDURES:

Contact the addressee under notification procedures and specify the exact information you desire. Requests must include the full name and social security number of the individual concerned. Prior written notification of personal visits is required to ensure that the records will be available at the time

of visit. Photographic proof of identity will be required prior to release of records. A military identification card, driver's license or similar document will be considered suitable identification.

CONTESTING RECORD PROCEDURES:

Contact the addressee under notification procedures and specify the exact information or items you are contesting and provide any documentation that justifies your claim. Correspondence contesting records must include the full name and social security number of the individual concerned.

RECORD SOURCE CATEGORIES:

a. The individual's record from the following systems of records:

(1) Official Officer Service Records, DOT/CG 626.

(2) Enlisted Personnel Record System, DOT/CG 629.

(3) Official Coast Guard Reserve Service Record, DOT/CG 676.

b. Information is obtained from the individual, Coast Guard personnel officials, National Oceanic and Atmospheric Administration personnel officials, and the Department of Defense.

[FR Doc. 94–4430 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Acceptance Noise Exposure Maps for Saipan International Airport, Saipan, MP

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Commonwealth Ports Authority for Saipan International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is February 14, 1994.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Engineer/Planner, HNL–621, Federal Aviation Administration, Honolulu Airports District Office, P.O. Box 50244, Honolulu, Hawaii 96850–0001, Telephone (808) 541–1243.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Saipan International Airport are in compliance with applicable requirements of part 150 effective February 14, 1994.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Commonwealth Ports Authority. The specific maps under consideration are Figures 4–1 and 6–2 in the submission. The FAA has determined that these maps for Saipan International Airport are in compliance with applicable requirements. This determination is effective on February 14, 1994. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, room 3E24, 15000 Aviation Boulevard, Hawthorne, California 90261

Federal Aviation Administration, Honolulu Airports District Office, 300 Ala Moana Boulevard, room 7116, Honolulu, Hawaii 96813

Commonwealth Ports Authority, Saipan International Airport, Saipan, MP 96950

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Hawthorne, California, on February 14, 1994.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 94–4462 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., RTCA Technical Management Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for the RTCA Technical Management Committee meeting to be held March 18, starting at 9 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

Order of Business

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approve summary of January 14 meeting; (3) Consider/Approve: (a) Revised Terms of reference and work plan for Special Committee 181, Navigation Standards (b) Revised Terms of Reference for Special Committee 179, Recommendations for the Use of Portable GNSS Receivers (c) Action on a request for a new Special Committee to develop standards for form/fit/function of airport taxi-holding position lights. (Request made by Airline Pilots Association, Air Transport Association, Airports Council International North America, and American Association of Airport Executives); (4) Other business; (5) Date and place of Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 22, 1994.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94–4463 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 162, Aviation Systems Design Guidelines for Open Systems Interconnection; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 162 meeting to be held March 29–31, starting at 9:30 a.m. The meeting will be held at the Stanford Telecom (STEL): Steve VanTrees, Phone: (703) 438–8014.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the summary of the twentieth meeting held May 12–13, 1993. RTCA Paper No. 276–93/SC162–166 (previously distributed); (3) Reports of Related Activities being conducted by other organizations; (5) Review and plan the activity of Working Group 1, "ATN MASPS & Router MOPS."; (6) Plan the activity of Working Group 2, "Rewrite DO–205, Part 1."; (7) Review industry systems management activity; (8) Other business; (9) Date and place of next meeting. (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 15, 1994.

Note: The first day, March 29, the SC–162 plenary will meet. The following two days, March 30–31, will be a working session to begin drafting the Avionics Router MOPS. The meeting will be held at STEL for all three days.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94–4466 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 135 meeting to be held March 10–11, starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the summary of the twenty-first meeting in September 1993; (3) Review changes proposed for Section 21; (4) Review changes proposed for Section 20 (SC135 HIRF WG and EUROCAE WG33); (5) Review changes proposed for Section 22 (AEAL and EUROCAE WG31); (6) Review changes proposed for Section 8; (7) MOPS/TSO Process and DO–160; (8) Review changes proposed for all other sections in sequence; (9) EEHWG review status; (10) Review milestones for D–160/ED–14 revision "D" completion; (11) Other business; (12) Date and place of next meeting. (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the pubic may present a written statement to the committee at any time.

Issued in Washington, DC, on February 15, 1994.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94–4467 Filed 2–24–94; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee, Flight Service Technology Subcommittee; Meeting; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Correction.

SUMMARY: On page 59, No. 31, FR 7292 in the issue of Tuesday, February 15, 1994, make the following correction: The date published for the Research, Engineering and Development Advisory Committee, Flight Service Technology Subcommittee meeting was Tuesday, March 8, 1994, at 9:30 a.m. This should be changed to read Tuesday, March 22, 1994, 9:30 a.m.

Dated: February 22, 1994

Martin T. Pozesky,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 94–4464 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–13–M

Airborne Area Navigation Equipment Using Multi-Sensor Inputs

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and requests comments on a proposed technical standard order (TSO) pertaining to airborne area navigation equipment using multi-sensor inputs. The proposed TSO prescribes the minimum performance standards that airborne area navigation equipment using multi-sensor inputs must meet to be identified with the marking "TSO–C115b."

DATES: Comments must be received on or before April 19, 1994.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division Aircraft Certification Service—File No. TSO–C115b, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT:

Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments must identify the TSO file number. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

This Technical Standard Order (TSO) is being revised to incorporate standards for Global Positioning System (GPS) technology into the standards for multi-sensor navigation systems. In December 1992, TSO–C129 was issued to provide minimum operational standards for GPS navigation equipment. This TSO established requirements on multi-sensor equipment that uses GPS as a navigation source. This revision to TSO–C115a incorporates those criteria in the multi-sensor standard. No new criteria have been established by these changes. This revision incorporates only previously published standards into this TSO.

How to Obtain Copies

A copy of the proposed TSO–C115b may be obtained by contacting "For Further Information Contact." Copies of RTCA Document No. DO–187, "Minimum Operational Performance Standards for Airborne Area Navigation Equipment Using Multi-Sensor Inputs," may be purchased from RTCA, Inc., 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

Issued in Washington, DC, on February 22, 1994.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 94–4465 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Waiver of Compliance; Burlington Northern Railroad Company FRA Waiver Petition Docket Number RST–93–3

Notice is hereby given that the Burlington Northern Railroad Company (BN) has submitted a petition requesting that the use of "Bulldog" Clamps be approved for an additional two years. BN had previously been granted a waiver of the requirements of portions of the Track Safety Standards (49 CFR part 213) to allow the carrier to apply Bulldog Clamps to certain internal rail defects in lieu of conventional rail joint bars on certain BN line segments. See 55 FR 50266 and 56 FR 13515. BN is presently required to remove the clamp within five days of its application to the rail. If the internal defect has not been removed in that time, bolted joint bars have to be applied. In its petition, BN also requests that the five day period be increased to twenty days.

FRA is seeking information and comments from all interested parties and are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it.

All written communications concerning this petition should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–93–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before March 29, 1994 will be considered by FRA before final action is taken. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on February 22, 1994.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 94–4419 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–06–P

Federal Railroad Administration Petition for Waivers of Compliance

In accordance with Title 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waivers of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Southern California Regional Rail Authority (SCAX)

Due to the devastation caused by the January 17 earthquake in the Los Angeles, California area, a transportation emergency now exists. To alleviate this situation SCAX has arranged to lease 25 bi-level passenger cars and 7 power cars from GO Transit of Toronto, Ontario. The SCAX presently operates 94 bi-level cars over Metrolink, a regional rail network which links downtown Los Angeles and surrounding counties. The GO Transit cars are nearly identical to the 94 cars purchased by SCAX.

The SCAX seeks waivers of compliance from certain sections of the Federal Railroad Administration regulations which are described herein.

FRA Docket Number SA–94–2

The SCAX is requesting that it be permitted to operate 25 GO Transit bi-level commuter passenger cars and 7 power cars which do not fully comply with the Railroad Safety Appliance Standards (49 CFR part 231). Section 231.14(b)(2) ("Passenger-train cars without platforms") requires that the top tread of the sill step have a minimum clear depth of 8 inches. Section 231.14(c)(3) requires that the side corner handholds be located specifically in relation to the center line of the coupler. SCAX says that these safety appliances may not be properly configured.

FRA Docket Number RSGM–94–3

The SCAX seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for 25 GO Transit passenger cars and 7 power cars. The glazing material installed in the equipment is manufactured to CSA-D263–1972 (ANSI Z.26.1) standards, laminated safety glass suitable for locomotives and railway cars. The side facing and end facing glazing material is not in compliance with 49 CFR 223.15.

FRA Docket Number RST–94–1

The SCAX is requesting a waiver of compliance from the requirements of § 213.57(b) of the Track Safety Standards (49 CFR part 213). Section 213.57(b) limits the operation of trains on curved track to speeds which produce no more than three 3 inches of underbalance. SCAX requests a waiver to operate their passenger equipment at curving speeds producing no more than four 4 inches of underbalance. SCAX maintains that curving speeds producing 4 inches of underbalance still provides a large measure of safety for passenger train operations.

Due to the transportation emergency existing in the Los Angeles area, FRA has, on a temporary basis, conditionally waived compliance with the relevant portions of the rail safety regulations. FRA has, however, reserved the right to withdraw such approval upon receipt by FRA of public comment raising substantial issues of safety.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comments, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number SA–94–3) and must be submitted in triplicate to the Docket Clerk, Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before March 29, 1994, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on February 22, 1994.

Phil Olekszyk,

Deputy Associate Administrator for Safety

[FR Doc. 94–4415 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 94–17]

Extension of Inchcape Testing Services—Caleb Brett, Inc.'s Customs Gauger Approval to the New Site Located in Deer Park, TX

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Inchcape Testing Services—Caleb Brett, Inc.'s Customs gauger approval to include their new gauging facility, which is located at 2318 Center Street, Suite 308, Deer Park, Texas.

SUMMARY: Inchcape Testing Services—Caleb Brett, Inc., a Customs approved gauger and accredited laboratory under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval to include its new facility in Deer Park, Texas. Specifically, the extension given to the Deer Park site will include the approval to gauge petroleum and petroleum products, organic compounds in bulk and liquid form and animal and vegetable oils.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of gauging reports for certain products from Customs approved gaugers. Inchcape Testing Services—Caleb Brett, Inc., a Customs-approved commercial gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval to its Deer Park, Texas facility. Review of the qualifications of Inchcape Testing Services—Caleb Brett, Inc., Deer Park site shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, DC 20229 (202) 927–1060.

Dated: February 18, 1994.

George D. Heavey,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 94–4509 Filed 2–25–94; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 94–16]

Extension of Camin Cargo Control, Inc.'s, Customs Gauger Approval and Laboratory Accreditation to the Site Located in Ingleside, TX

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Camin Cargo Control, Inc.'s Customs gauger approval and laboratory accreditation to include their Ingleside, Texas facility.

SUMMARY: Camin Cargo Control, Inc., of Linden, New Jersey, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval and laboratory accreditation to include the Ingleside, Texas site. Specifically, the extension given to the Ingleside site will include the approval to gauge petroleum and petroleum products, organic compounds in bulk and liquid form and animal and vegetable oils; and accreditation to perform the following laboratory analyses: API gravity, sediment and water by centrifuge, antiknock index, distillation characteristic, Reid Vapor Pressure, Saybolt Universal Viscosity, sediment by extraction, sulfur percent by weight and lead percent by weight.

SUPPLEMENTARY INFORMATION:

Background

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Camin Cargo Control, Inc., a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval and certain laboratory accreditations to its Ingleside, Texas facility. Review of the qualifications of the Ingleside site shows that the extension is warranted and, accordingly, has been granted.

Approved-Accredited Sites

Camin Cargo Control, Inc., has been approved and/or accredited by the U.S. Customs Service at the following locations: Linden, New Jersey; Thorofare, New Jersey; Everett, Massachusetts; Deer Park, Texas; and Ingleside, Texas.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, DC 20229 at (202) 927–1060.

Dated: February 18, 1994.

George D. Heavey,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 94–4508 Filed 2–25–94; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 94-15]

Extension of Atlantic Petroleum Services, Inc.'s, Customs Gauger Approval and Laboratory Accreditation to the New Laboratory Located in Staten Island, NY

AGENCY: Customs Service, Treasury.

ACTION: Notice of the extension of Atlantic Petroleum Services Inc.'s Customs gauger approval and laboratory accreditations to include their new laboratory facility, which is located at 500 Western Ave. (GATX Terminal), Staten Island, New York.

SUMMARY: Atlantic Petroleum Services, Inc., of Staten Island, New York, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval and laboratory accreditation to include the Staten Island (GATX Terminal), New York laboratory. Specifically, the extension given to the Staten Island site will include the approval to gauge petroleum and petroleum products, organic compounds in bulk and liquid form and animal and vegetable oils; and accreditation to perform the following laboratory analyses: API gravity, sediment and water by centrifuge, antiknock index, distillation characteristics, Reid Vapor Pressure, Saybolt Universal Viscosity, sediment by extraction, sulfur percent by weight and lead percent by weight.

SUPPLEMENTARY INFORMATION:

Background

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Atlantic Petroleum Services, Inc., a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval and certain laboratory accreditation to its Staten Island, New York laboratory facility. Review of the qualifications of the Staten Island laboratory facility shows that the extension is warranted and, accordingly, has been granted.

Approved-Accredited Sites

Atlantic Petroleum Services, Inc., has been approved and/or accredited by the U.S. Customs Service at the following locations: 210 Granite Ave., Mariner's Harbor, New York and 500 Western Ave. (GATX Terminal), Staten Island, New York.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-927-1060).

Dated: February 17, 1994.

George D. Heavey,

Director, Office of Laborotories and Scientific Services.

[FR Doc. 94-4404 Filed 2-25-94; 8:45 am]

BILLING CODE 4820-02-P

Office of Thrift Supervision

[No. 94-13]

Public Disclosure of Reports of Condition

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: The Office of Thrift Supervision (OTS) hereby gives notice that the information collected on the schedule CMR will not be available to the public. Schedule CMR replaced the previous schedule MR. This action is being taken pursuant to section 5(v) of the Home Owners' Loan Act.

FOR FURTHER INFORMATION CONTACT: John C. Price, (Acting) Assistant Director for Policy, (202) 906-5745, or Anthony G. Cornyn, Deputy Assistant Director, Policy, (202) 906-5727, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Pursuant to section 5(v) of the Home Owners' Loan Act, 12 U.S.C. 1464(v), each savings association is required to make reports of condition to the OTS in a form prescribed by OTS. Section 5(v) further requires that such reports and all of the information they contain be available to the public unless the Director determines that public disclosure of a particular item would not protect the safety or soundness of a particular institution or institutions or the Savings Association Insurance Fund, or would not otherwise be in the public interest. If the Director restricts disclosure of any item for savings associations generally, that fact and the reason therefor are to be disclosed in the **Federal Register**.

On August 7, 1990, the OTS gave notice that certain information collected on the Thrift Financial Report (TFR) would not be publicly disclosed.[1] In that notice, OTS specifically discussed maturity/repricing/rate information collected on Schedule MR and used to measure interest rate risk. The agency indicated that it would be premature and misleading to release such information at that time, because it was in the process of expanding and enhancing its collection and analysis of such data. OTS anticipated that after such enhancements were complete, it might be appropriate to disclose this interest-rate-risk related schedule.

Since that time, OTS has issued an interest-rate-risk regulation[2] and has replaced Schedule MR with Schedule CMR. As that regulation and schedule have evolved, it has become apparent to the agency that releasing the information collected on Schedule CMR would not be in the public interest and would be detrimental to the safety and soundness of the thrift industry.

OTS uses the information collected on Schedule CMR to monitor the interest-rate-risk profiles of both individual thrifts and the entire industry. Under the new regulation, however, small (under $300 million in assets), highly capitalized (a risk-based capital ratio in excess of 12 percent) institutions are generally not required to file Schedule CMR. This exemption covers well over half of the industry. OTS exempted these institutions from the filing requirements applicable to other savings associations because it believed that they generally held sufficient capital against potential interest rate risk. OTS encourages these savings associations to voluntarily file Schedule CMR with the agency to enable it to measure the industry's overall interest rate risk more accurately. The OTS can then provide these institutions with an assessment of their interest rate risk.

Making Schedule CMR data publicly available could have several adverse consequences. First, the publication of data from only those required to file Schedule CMR would give a distorted view of the industry's interest rate risk profile because such a large portion of the industry is exempt from filing this schedule of the TFR.

Second, OTS is concerned that if Schedule CMR data from individual institutions were made publicly available, current and potential voluntary filers would be far less likely to file Schedule CMR. In fact, a number of institutions have indicated that they will not file Schedule CMR voluntarily if the information is disclosed publicly. They have indicated that information on Schedule CMR has competitive significance. In particular, these institutions are concerned that disclosure would allow their competitors to gain access to important financial information about their portfolios, pricing strategies, and risk exposures.

If such voluntarily filing thrifts chose not to file Schedule CMR, OTS's ability to measure the interest rate risk of these institutions would be severely hampered. Because understanding and effectively managing interest rate risk has historically been, and remains, of critical importance to a healthy thrift industry, OTS believes it is in the public interest to encourage, not discourage, voluntary reporting of Schedule CMR data by otherwise exempt savings associations.

Finally, if the data from only mandatory filers were made publicly available, such institutions would be competitively disadvantaged in comparison not only to exempt thrifts, but also to commercial banks and state-chartered savings banks, who are not required to file similar data with their regulators.

For these reasons, the OTS has determined not to make publicly available the data of individual institutions reported on Schedule CMR. The agency, however, does intend to make publicly available aggregate CMR data for selected industry peer groups.

Dated: February 22, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94-4428 Filed 2-25-94; 8:45 am]

BILLING CODE 6720-01-P

[1] 55 FR 32168 (Aug. 7, 1990).

[2] 58 FR 45799 (Aug. 31, 1993).

Sunshine Act Meetings

Federal Register
Vol. 59 No. 39
Monday, February 28, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 25, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4653 Filed 2–24–94; 2:52 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 18, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4654 Filed 2–24–94; 2:52 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 11, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4655 Filed 2–24–94; 2:52 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 4, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4656 Filed 2–24–94; 2:52 pm]

BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, March 3, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1994–01: Robert Schramm on behalf of the Western Pistachio Association
Notice of Proposed Rulemaking—National Voter Registration Act
Legislative Recommendations—1994
Public Release of Regulations Agenda Documents (continued from meeting of February 17, 1994)
Administrative Matters

DATE AND TIME: Thursday, March 3, 1994 Executive Session will convene after the open meeting.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

PERSON TO CONTACT FOR INFORMATION: Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–4658 Filed 2–24–94; 2:52 pm]

BILLING CODE 6715–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [59 FR 8682, February 23, 1994].

STATUS Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Thursday, February 17, 1994.

CHANGE IN THE MEETING: Time Change.

The closed meeting scheduled for Wednesday, February 23, 1994 at 4:00 p.m., was changed to Wednesday, February 23, 1994 at 11:30 a.m.

Commissioner Beese, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Ramsey at (202) 272–2100.

Dated: February 23, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4657 Filed 2–24–94; 2:52 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 39
Monday, February 28, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33607; File No. SR–NASD–94–2]

Self–Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Guidelines for Communications to the Public About Variable Life and Annuity Products

Correction

In notice document 94-3426 beginning on page 7279 in the issue of Tuesday, February 15, 1994, the release number should read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33597; File No. SR–DTC–93–10]

Self–Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Foreign Currency Redemption Service

Correction

In notice document 94-3479 beginning on page 7272 in the issue of Tuesday, February 15, 1994, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances; Filing of Petition

Correction

In notice document 93-30747 appearing on page 66072, in the issue of Friday, December 17, 1993, in the second column, under the **SUMMARY**, in the fifth and sixth lines, "and 2,2,4-trimethyl-1,3-pentanediol diisobutyrate" should be deleted.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 47

[T.D. 8497]

RIN 1545-AS06

Vaccine Floor Stocks Tax of 1993

Correction

In rule document 93-28910 beginning on page 62524 in the issue of Monday, November 29, 1993, make the following correction:

§§ 47.1-1T through 47.1-5T [Reserved] [Corrected]

On page 62525, in the second column, the heading "**§§ 47.1-5T [Reserved].**" should read "**§§ 47.1-1T through 47.1-5T [Reserved].**"

BILLING CODE 1505-01-D

Monday
February 28, 1994

Federal Register

Part II

Department of Education

34 CFR Parts 668 and 690
Student Assistance General Provisions and Federal Pell Grant Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 690

RIN 1840–AB85

Student Assistance General Provisions and Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend Subparts A and B of the Student Assistance General Provisions regulations and the Federal Pell Grant Program regulations to reflect changes made by the Higher Education Amendments of 1992 and the Higher Education Technical Amendments of 1993 to the Higher Education Act of 1965, as amended (HEA). These proposed regulations would seek to improve the efficiency of Federal student aid programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education.

DATES: Comments must be received on or before March 30, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Wendy L. Macias, Program Specialist, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, room 4318), Washington, DC 20202–5346.

FOR FURTHER INFORMATION CONTACT: Wendy L. Macias. Telephone (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In order to approve a postsecondary education institution to participate in the student financial assistance programs authorized by Title IV of the HEA (Title IV, HEA programs) and many other Federal programs, the Secretary must determine, in part, that the institution satisfies the statutory definition of an "institution of higher education." Under the HEA and other Federal statutes, one element of that definition requires an eligible institution of higher education to be accredited or preaccredited by an accrediting agency recognized by the Secretary as a reliable authority as to the quality of the education or training provided by the institution. Another element requires an eligible institution to be legally authorized to provide an educational program beyond the secondary level in the State in which it is located. Thus, the statutory definition of an institution of higher education provides the framework for a shared responsibility among accrediting agencies, States, and the Federal government to ensure that the "gate" to the Title IV, HEA programs is opened to only those institutions that provide students with quality education or training worth the time, energy, and money they invest in it. The three "gatekeepers" sharing this responsibility have traditionally been referred to as "the triad." While the concept of a triad of entities responsible for gatekeeping has had a long history, the triad has not always worked as effectively as it should to ensure educational quality, nor has it served as an effective deterrent to abuse by institutions participating in the Title IV, HEA programs. For several years, certain institutions participating in the Title IV, HEA programs have failed to provide students with education or training of an acceptable level of quality; they have also failed to treat students fairly. In addition, they have failed to meet acceptable standards of financial responsibility and administrative capability and to adequately protect Title IV, HEA program funds entrusted to them. The institutions that have engaged in these abusive practices are not restricted to a particular sector of higher education. Rather, the abuses have been found in all types of institutions participating in the Title IV, HEA programs, including those in the private non-profit and public sectors of higher education as well as those in the proprietary sector.

At the same time, gatekeeping functions have not been carried out effectively. For example, some accrediting agencies have not taken sufficient care to ensure the quality of the education or training provided by the institutions or programs they accredit or to protect student interests when they accredit particular institutions or programs. Moreover, some States have also not taken sufficient care to ensure the quality of the education or training provided by the institutions they authorize or license to operate in the State or to protect student interests. Finally, the Federal government's management of its responsibilities to determine eligibility and to certify institutions to participate in the Title IV, HEA programs has not always been adequate to prevent abusive practices at institutions that participate in those programs.

Consequently, in the Higher Education Amendments of 1992, Public Law 102–325, (the Amendments of 1992), Congress provided for a new part H of Title IV entitled "Program Integrity Triad." Under that part, States and accrediting agencies are required to assume major new oversight responsibilities, and States, accrediting associations, and the Secretary are linked to create a stronger and more coordinated evaluation of institutions that participate or wish to participate in the Title IV, HEA programs. The Secretary believes that the most appropriate approach to this coordinated evaluation of institutions by the three components of the triad is a complementary one with each component focusing its evaluation on its obligations within the context of the HEA. Thus, the focus for accrediting agencies is the quality of education or training provided by the institutions or programs they accredit. For States, which already had responsibility for determining that institutions have the legal authority to operate within the State, the HEA added a new focus: reviewing institutions that trigger certain statutory review criteria. The focus of the Secretary's evaluation of institutions is the administrative and financial capacity of those institutions to participate in the Title IV, HEA programs.

The statute allocates legal responsibility among the entities that compose the program integrity triad. While the specific statutory responsibilities for the three triad entities may overlap, when viewed as a whole the triad brings together in a coordinated fashion three different but very important aspects of institutional review. Within this statutory scheme, the Secretary has sought to assure that the gatekeeping system operates as efficiently as possible, with maximum integration among the three triad entities and without unnecessary burden on postsecondary institutions. In order to assist the Secretary in designing a final regulation that achieves these goals, the Secretary specifically requests comment on the following questions:

(1) In several areas, the statute specifically requires each triad entity to evaluate an institution under the same or similar standards. For example, a SPRE and an accrediting agency may establish different standards for evaluating the financial responsibility of an institution or for evaluating the success of an institution's educational program. Thus, a reviewed institution would need to satisfy the SPRE's and the accrediting agency's standards even though those standards address the same areas. How should final regulations be structured to both reduce the burden on institutions and enable the triad entities to carry out effectively their statutory functions?

(2) Should final regulations be more explicit in identifying levels, characteristics, or definitions for any of the assessment or review criteria that a triad entity is expected to consider in its evaluation of an institution?

Subpart 1 of part H creates a new program, the State Postsecondary Review Program, or SPRP, under which State oversight of institutions participating in the Title IV, HEA programs is strengthened. Subpart 2 of part H establishes procedures and criteria under which the Secretary recognizes an accrediting agency as a reliable authority as to the quality of the education or training offered by institutions that the agency accredits. Lastly, subpart 3 specifies the procedures the Secretary uses to determine whether an institution meets the eligibility requirements and has the administrative capacity and financial responsibility to administer the Title IV, HEA programs.

On January 24, 1994, the Secretary published in the **Federal Register** the NPRMs to implement the SPRP provisions in subpart 1 of part H of the HEA (59 FR 3604) and the accrediting agency provisions in subpart 2 of part H of the HEA (59 FR 3578). The Secretary's publication of this NPRM prior to the publication of final regulations implementing the SPRP and accreditation provisions provides the Department of Education an opportunity to coordinate all comments received on the triad.

The provisions of subpart 3 that pertain to the institutional eligibility requirements found in 34 CFR part 600 have been addressed in a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on February 10, 1994, that proposes changes to 34 CFR part 600. This NPRM addresses those provisions of subpart 3 that pertain to subparts A and B of 34 CFR part 668. Subpart A contains definitions applicable to the Title IV, HEA programs. Subpart B contains requirements for initial and continued participation in the programs. In particular, the following provisions in this NPRM address provisions of subpart 3: Proposed §§ 668.15 and 668.16 delineate the standards for the evaluation of an institution's financial responsibility and administrative capability, respectively, as required by section 498(a), (c), and (d) of the HEA. Proposed § 668.15 also codifies the definition of persons who exercise substantial control of an institution found in section 498(e) of the HEA. Proposed § 668.12 addresses the requirements of section 498(b) of the HEA that requires the Secretary to develop a single application form to be used by institutions that wish to apply to participate or to continue to participate in a Title IV, HEA program. Proposed § 668.13 includes the provisions governing the requirement of financial guarantees from owners found in section 498(e) of the HEA, addresses the provision that requires the Secretary to establish a schedule for the expiration of the approval of institutions to participate in the Title IV, HEA programs found in section 498(g) of the HEA, and codifies the provisions governing provisional certification of institutions found in section 498(h) of the HEA. Pursuant to sections 498(g) and (h) of the HEA, proposed § 668.26 delineates the date that an institution's period of participation would end, when the institution's period of participation expires, or the institution's provisional certification is revoked.

The Amendments of 1992 amended the HEA in several areas relating to the participation of institutions in the Title IV, HEA programs. The Student Assistance General Provisions regulations contain requirements that are common to educational institutions that participate in the Title IV, HEA programs. The following list summarizes the major issues in this NPRM.

- Each participating institution is subject to a new statutory definition of an academic year in which a full-time student (with respect to an undergraduate course of study), during a minimum 30-week period, must complete: At institutions that measure program length in credit hours, at least 24 semester or trimester hours or 36 quarter hours; or at institutions that measure program length in clock hours, at least 900 clock hours. Section 668.2 proposes to clarify the terms used in the statutory definition of academic year.
- The statute now mandates the definition of an eligible program for proprietary institutions of higher education and postsecondary vocational institutions, including "short-term" programs (at least 300 but less than 600 clock hours) that would be eligible for the FFEL programs only. The statute requires that these programs must have completion and placement rates of at least 70 percent, measured in accordance with regulations. Section 668.8 proposes methodologies for those measurements. The Secretary eventually may propose a single methodology (based on comments on this NPRM, regulations to implement the Student Right-to-Know Act, and other NPRMs) to be used wherever appropriate in regulations for the Title IV, HEA programs. In accordance with the statute, this NPRM contains further provisions to evaluate the quality of these programs, specifically a requirement proposed by the Secretary that a program may not exceed by more than 50 percent the minimum number of clock hours required by the State for training in the recognized occupation for which the program prepares students, and a requirement that a program be in existence for at least one year before applying for eligibility under these criteria.
- This NPRM proposes to add two new sections to codify procedures with regard to applications to participate initially or to continue to participate in a Title IV, HEA program (proposed § 668.12) and procedures by which the Secretary certifies that an institution meets the standards in subpart B of these regulations and accordingly may participate in a Title IV, HEA program (proposed § 668.13). Proposed § 668.13 also includes proposed procedures whereby the Secretary codifies new statutory provisions governing provisional certification procedures for participation in a Title IV, HEA program. Provisional certification permits the Secretary to allow an institution that otherwise would not qualify to participate in a Title IV, HEA program to participate on a limited basis. The institution is subject to shorter periods of participation than a fully certified institution and does not have the right to the extensive appeal proceedings under subpart G of the Student Assistance General Provisions if the Secretary revokes the institution's provisional certification. Instead, as proposed by the Secretary in this NPRM, the institution would be offered a modified appeal. Further, an institution that is provisionally certified may be monitored more closely to the extent that the Secretary believes the institution warrants a greater degree of oversight.
- Section 668.14 proposes to amend the regulations governing program participation agreements to include numerous new provisions added by the Amendments of 1992 and provisions previously prescribed by the HEA but not specifically spelled out in the regulations. This section also includes provisions proposed by the Secretary. This NPRM proposes to implement statutory requirements regarding disclosure of revenues and expenses for institutions that offer athletically related student aid. This NPRM would also address statutory requirements concerning incentive payments based directly or indirectly on success in securing enrollments or financial aid.

• This NPRM proposes significant changes to § 668.15 (currently § 668.13) the section governing the evaluation of an institution's financial responsibility. The NPRM proposes to strengthen the factors used to evaluate an institution's financial responsibility and to reflect statutory changes, including the provision that requires that any standards developed for the determination of an institution's financial responsibility take into account any differences in accounting principles between for-profit and nonprofit institutions. For example, this NPRM proposes to require a for-profit institution to have a ratio of current assets to current liabilities of 1.25:1 and a nonprofit institution to have a ratio of current assets to current liabilities of 1:1. As the statute requires the establishment of cash reserves sufficient to ensure repayment of any required refunds, the NPRM also proposes to require each institution to maintain a minimum cash reserve of at least 10 percent of the institution's total deferred tuition income at the end of the institution's most recent fiscal year.

• This NPRM proposes, in § 668.16 (currently §§ 668.14 and 668.15) to strengthen and expand the standards of administrative capability for participating institutions, addressing areas previously not regulated or for which there were only guidelines, such as: The maximum time frame allowed in the standards for satisfactory academic progress for completion of a student's educational program and the expansion of standards to include those general areas that will be reviewed by State postsecondary review entities (SPREs). The SPRE review areas are included because these areas may have a significant bearing on an institution's administrative capability and thus should be considered as the Secretary reviews the administrative capability of an institution.

However, the NPRM does solicit comments on whether these additional proposed standards should be implemented across the board or be made applicable only to institutions that meet specific criteria or thresholds, e.g., institutions with short-term programs and institutions with a history of administrative problems. For example, this section of the NPRM includes the proposed requirement that an institution that offers a vocational program of less than two years in length that prepares students to enter recognized occupations must demonstrate that the borrower's increased annual expected earnings, based on completion of the training, will exceed the annual amount of Title IV, HEA program assistance received for the programs.

• The provisions in proposed § 668.17 (currently § 668.15) governing default reduction measures reflect statutory changes made by the Amendments of 1992 and current departmental practices. The provisions in the Technical Amendments of 1993 that address institutional appeals of cohort default rates are not included in this NPRM and will be addressed separately.

• As mandated by statute, all participating institutions are required to implement a fair and equitable refund policy. This statutory provision is similar to the requirement for fair and equitable refunds prescribed by the FFEL program regulations for institutions that participate in the FFEL programs. Section 668.22 proposes to clarify the terms used in the statutory definition of a fair and equitable refund policy. The NPRM also proposes to mandate a refund policy (Appendix A) that an institution must use to calculate a student's refund if the student is not entitled to a *pro rata* refund and an institution's State and accrediting agency do not have specific refund standards. In addition, because of a new statutory provision that specifies the order of return of refunds to the Title IV, HEA programs and other sources of aid without regard to the amount of aid received from State or private sources, this NPRM proposes to remove the fraction that is currently used to determine the portion of the refund attributable to the Title IV, HEA programs and that attributable to other sources of aid.

• In accordance with the statute, institutions will now be required to have compliance audits every year rather than every two years, as required by current regulations. Section 668.23 proposes to allow institutions that do not pose a great financial risk to the Title IV, HEA programs (i.e., institutions that received less than $100,000 in total annual funding under the Title IV, HEA programs or have not had deficiencies identified in their most recently submitted audit reports) to submit audits biennially. Further, under this proposal, an institution would not be required to submit a compliance audit for any year in which the total Title IV, HEA program funds it received were less than $25,000. This section also proposes to extend audit requirements to foreign institutions.

This NPRM also contains a proposed change to the Federal Pell Grant Program regulations. This NPRM proposes to implement section 487(c)(7) of the HEA that provides that an institution may offset the amount of Title IV, HEA program disbursements against liabilities or may receive reimbursement from the Department for those amounts if, in the course of any audit conducted after December 31, 1988, the Department discovers or is informed of any Title IV, HEA program assistance (specifically, Federal Pell Grant Program funds) that an institution has provided to its students in accordance with program requirements, but the institution has not previously received credit or reimbursement for these disbursements. Although this provision relates directly to the Federal Pell Grant Program and is proposed to be included in the Federal Pell Grant Program regulations, it is contained in Part G of the HEA and is subject to the negotiated rulemaking process explained below. Therefore, it has been included in this NPRM instead of the Federal Pell Grant Program NPRM, which was not subject to the negotiated rulemaking process.

Under new section 492 of the HEA, these proposed changes are subject to the negotiated rulemaking process, which includes a requirement for the Secretary to convene regional meetings to obtain public involvement in the development of proposed regulations. Accordingly, issues related to these proposed changes were discussed in meetings held in September 1992 in New York City; San Francisco; Atlanta; and Kansas City, Missouri. At these meetings, the Secretary provided the attendees with a list of issues to be addressed in these proposed regulations. A summary of the responses of the attendees is contained in the Appendix to this preamble.

Groups that attended the regional meetings nominated individuals to participate in the regulation negotiations. The Secretary selected regulation negotiators from the names nominated and chose negotiators to reflect all the groups that participate in the Title IV, HEA programs, such as students, student financial aid administrators, and various types of eligible institutions.

These proposed regulations also address statutory changes required by the Higher Education Technical Amendments of 1993, Public Law 103–208 (the Technical Amendments of 1993). Those areas affected by the Technical Amendments of 1993 are identified in the discussion of regulatory changes. The Secretary notes that the statutory changes required by the Technical Amendments of 1993 are not subject to the negotiated rulemaking process of section 492 of the HEA.

Regulatory Changes

In accordance with section 492(b) of the HEA, the Secretary prepared draft proposed regulations and negotiated the provisions of that draft with negotiators. The great majority of the proposed changes do not reflect consensus reached at the negotiations (as consensus was rarely obtained). The Secretary has identified in the discussion of changes the areas where consensus was reached.

The following discussion reflects proposed significant changes to the existing Student Assistance General Provisions regulations and the Federal Pell Grant Program regulations. Proposed changes are discussed in the order in which they appear in the proposed regulatory text. If a provision applied to more than one section or is included in more than one section, it is discussed the first time it appears with an appropriate reference to its other appearances.

Subpart A—General

Section 668.1 Scope

The Secretary proposes to revise this section to remove vocational school from the list of what the term institution includes, because vocational schools are no longer eligible institutions under the HEA. The Secretary proposes to revise this section to reflect a listing of currently existing Title IV, HEA programs that would be subject to part 668. Programs added to the list would include the National Early Intervention Scholarship and Partnership, Presidential Access Scholarship, and Federal Direct Student Loan programs. The Income Contingent Loan Program, which no longer exists, would be removed from the list. These revisions reflect statutory changes made to the HEA by the Amendments of 1992.

Section 668.2 General Definitions

This section includes definitions proposed in NPRMs published on October 4, 1993 (58 FR 51716), and on February 17, 1994 (in part II) (59 FR 8044). Those definitions are: *designated department official, initiating official, output document, show-couse official,* and *third-party servicer.* The Secretary will not repeat the discussion of those definitions here.

The Secretary proposes to remove the definitions of *Award year, Regular student,* and *State,* because they would be included in 34 CFR part 600, governing institutional eligibility under the HEA. The Secretary proposed to move these definitions to 34 CFR Part 600 in the NPRM published on February 10, 1994 (59 FR 6446).

The Secretary is proposing technical changes to clarify the definitions of the current Title IV, HEA programs and to add definitions of the newly authorized Title IV, HEA programs to conform with statutory changes and for consistency with terminology used in the individual program regulations. The Secretary also proposes to make technical changes in the definitions of *Independent student,* to reflect statutory changes, and *Enrolled, Valid student aid report,* and *Valid institutional student information report* for consistency with other program regulations. The Secretary would move the definition of *Participating institution* from § 668.81 to this section.

The Secretary is proposing to add or amend the following definitions:

Academic Year

Section 481(d)(2) of the HEA provides a definition of *academic year* to be used for all the Title IV, HEA programs. The statute specifies that in an academic year, a full-time student is expected to complete at least twenty-four semester or trimester hours or thirty-six quarter hours at an institution that measures program length in credit hours, or at least nine hundred clock hours at an institution that measures program length in clock hours. The definition delineates not only the minimum amount of work that a full-time student enrolled in an undergraduate educational program is expected to complete during an academic year, but also the minimum period of time over which the work in any educational program must be completed.

The Technical Amendments of 1993 specify that this provision is only applicable with respect to an undergraduate course of study. The Secretary expects that institutions would continue to use their own academic standards, within the framework of current program regulations, to determine the amount of work full-time graduate and professional students are expected to complete over a minimum of thirty weeks of instruction.

The minimum time period specified is thirty weeks of instructional time. The Technical Amendments of 1993 further amended section 481 of the HEA definition of *academic year* to provide that the Secretary may reduce, for good cause on a case-by-case basis, the 30-week minimum to not less than 26 weeks of instructional time in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which it awards an associate or baccalaureate degree. The Secretary has been unable to determine a definition of "good cause" that would justify using this authority. In addition, the Secretary is concerned that regulatory standards for those reductions would encourage many institutions to seek that treatment routinely and this implementation would result in the inequitable treatment of Federal student aid recipients from institution to institution. Further, the Secretary is concerned that widespread implementation would result in increased costs to the Title IV, HEA programs. Therefore, the Secretary has not proposed specific criteria to implement this technical amendment at this time. The Secretary requests comments on a definition of "good cause" and ways of implementing this provision through regulations that address the Secretary's concerns.

The Secretary has determined that the terms used in the definition of *academic year* must be clarified if the definition is to be well-understood and applied consistently. In determining what constitutes the 30-week period, the Secretary would count the period that begins on the first day of classes and ends on the last day of classes or examinations. For example, if an institution's first day of classes begins on a Tuesday, the first week of the academic year would begin on that Tuesday and end the following Monday. The institution would not begin counting with the Sunday preceding the first day of classes.

The Secretary proposes that, for purposes of this definition, a *week* would be a consecutive seven-day period, as opposed to a five-day or six-day *school week* or seven individual days that are spread out over more than one calendar week. This approach would facilitate counting and readily accommodate institutions that start and end on different days of the week.

For purposes of this definition, a *week of instructional time* would be any week in which at least one day of regularly scheduled instruction, examinations, or preparation for examination occurs. The Secretary recognizes that there may be certain weeks during an academic year during which fewer than five days of instruction occur. An institution should not be prohibited from counting those weeks in its 30-week period, provided at least one day of regularly scheduled classes occurs in each of those weeks. Further, this proposal would accommodate innovative educational programs such as those offered only on weekends or condensed schedules. At the same time, the proposal does not open the door to abuse, because regardless of the number of days of study that occur in any week, an

institution must still provide enough instruction for a full-time student to be able to earn the minimum number of credit or clock hours needed to meet the definition. Finally, the Secretary would make clear that an institution cannot count, as instructional time, periods consisting purely of noninstructional activities, such as orientation, counseling, or vacations.

It should be noted that because the statute specifies both the amount of work expected to be completed and the minimum timeframe for an academic year for use in the Title IV, HEA programs, an institution might need to prorate or adjust Title IV, HEA program assistance for its students. For example, if the span of time from the first scheduled class at the beginning of the school year until the last examination at the end of the school year (excluding any weeks that consist exclusively of vacation time and all other activities not directly related to instruction, preparation for examinations or examinations) is twenty-five weeks, the institution would need to make adjustments in accordance with individual program regulations. Because summer sessions generally would not be long enough to constitute the equivalent of a complete semester or quarter, as they are under various current program regulations, Title IV, HEA program funds awarded for summer sessions would need to be adjusted to reflect the lengths of the sessions. A comprehensive discussion of the potential effect of this new definition of academic year on Federal Pell Grant calculations may be found in the NPRM on the Federal Pell Grant Program to be published shortly.

Full-Time Student

The Secretary believes it is necessary to have a definition of *full-time student* that is applicable to all Title IV, HEA programs. A definition of *full-time student* is needed because the definition of *academic year* is based, in part, on the workload of a full-time student, and because the term is used elsewhere for other purposes in part 668. The Secretary has proposed a definition of *full-time student* that would be based on a slightly modified definition found in the Federal Pell Grant and the campus-based program regulations. This definition also would incorporate parts of the definition of full-time student found in the FFEL program regulations.

Generally, the Secretary proposes to define a *full-time student* as an enrolled student who is carrying a full-time academic workload (other than by correspondence) as determined by the institution under a standard applicable to all students enrolled in a particular educational program. In determining a student's workload, an institution would be permitted to include combinations of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. Under this proposal, for an undergraduate student, an institution's minimum standard must equal or exceed: (1) 12 semester hours or 12 quarter hours per academic term in an educational program using a semester, trimester, or quarter system; (2) 24 semester hours or 36 quarter hours per academic year for an educational program using credit hours but not using a semester, trimester, or quarter system (or the prorated equivalent for a program of less than one academic year); or (3) 24 clock hours per week for an educational program using clock hours.

This definition also provides for a method for determining full-time status for students enrolled in an educational program using both credit and clock hours. In order to evaluate the combined workload of the student, an institution could determine full-time status based on the sum of the proportionate workload carried in terms of credit hours and the proportionate workload carried in terms of clock hours.

Further, an undergraduate student could be considered a full-time student if he or she undertakes a series of courses or seminars that equals at least 12 semester hours or 12 quarter hours in a maximum of 18 weeks. For cooperative education programs, an undergraduate student could be considered a full-time student if the work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

The Secretary is particularly interested in establishing a minimum standard for a full-time academic workload for students who receive funds under the FFEL programs. Currently, for the purpose of those programs, an institution determines what a full-time academic workload is for these students. The Secretary recognizes that, because no minimum requirement for an academic workload of a full-time student exists under the FFEL programs, there is the potential for abuse of FFEL program funds through the use of the definition of an academic year. For example, an institution might have educational programs that are measured in credit hours and do not use academic terms. The institution could claim that it offers a full academic year's worth of work over a thirty-week period by giving a full-time student a small amount of instruction, which the institution claims to be equivalent to 24 semester or 36 quarter hours. This situation would result in the receipt of an inordinately large amount of FFEL program funds for the amount of work actually accomplished. The Secretary requests comments on whether, to further address this potential abuse, he should also establish a weekly minimum full-time workload for educational programs that are measured in credit hours but do not use academic terms.

Undergraduate Student

The Secretary proposes to add a definition of *undergraduate student* to this section. Because the proposed definition of a *full-time student* makes reference to an *undergraduate student* and because the term *undergraduate student* is used in other places in part 668, the Secretary believes it is now necessary to define *undergraduate student* in this part. The proposed definition is the definition currently found in the Federal Pell Grant and campus-based program regulations. The Secretary proposes to define an *undergraduate student* as a student enrolled in an undergraduate educational program at an institution who has not earned a baccalaureate or first professional degree. The student would have to be enrolled in an undergraduate educational program that usually does not exceed 4 academic years, or a 4- to 5-academic-year program designed to lead to a first degree. A student enrolled in a program of any other length would be considered an undergraduate student for only the first four academic years of that program.

Section 668.8 Eligible Program

Admission Requirements

These proposed regulations would remove the current provisions in § 668.8(a)(1) (i) through (iv), which govern the educational qualifications of persons admitted into an eligible program. These qualifications are appropriately addressed in 34 CFR 600.4 through 600.6, which govern the types of institutions that may be eligible to apply to participate in HEA programs. The educational qualifications of eligible students under the Title IV, HEA programs are also addressed in § 668.7(a) (3) and (b). Therefore, these provisions are no longer needed for purposes of defining an eligible program. Note that other provisions governing the admission requirements needed for certain educational programs to qualify as an eligible program are discussed further below.

Definitions

These regulations would clarify a number of the terms used to determine an eligible program. Proposed § 668.8(b)(1) would define the *equivalent of an associate degree* as either an associate degree, or the successful completion of at least a two-year program that is acceptable for full credit toward a bachelor's degree and qualifies a student for admission into the third year of a bachelor's degree program. This definition is needed because educational programs offered by a proprietary institution of higher education or a postsecondary vocational institution may qualify as eligible programs depending, in part, on whether the programs admit students with the equivalent of an associate degree (see the discussion on minimum program lengths). The definition is based on the provision in section 1201(a)(3) of the HEA that qualifies institutions offering 2-year transfer programs for institutional eligibility.

For the same reason (that the terms are needed to establish the eligibility of programs offered by proprietary institutions of higher education and postsecondary vocational institutions—see the discussion on minimum program lengths) the Secretary proposes to define *week* and *week of instruction*. For consistency, these terms would be the same as those proposed to be used in § 668.2 for the definition of *academic year*. The terms are discussed in detail there.

It is important to note that short-term programs (those offering less than 600 clock hours) that are eligible under current regulations because they met the definition of *vocational school* that used to be in section 435 of the HEA, will cease to be eligible when the final regulations governing programs become effective, unless those short-term programs are able to satisfy these regulations. Short-term programs that were not offered or were not eligible before July 23, 1992 can only become eligible when final regulations become effective.

Minimum Program Length

The proposed regulations would also add requirements regarding the minimum length of an eligible program. Under section 481(b) of the HEA, a proprietary institution of higher education or a postsecondary vocational institution must, to be eligible, provide an eligible program, as defined in section 481(e) of the HEA. Proposed § 668.8(d) would implement that definition. The proposed definition would supplant the current regulatory definition of a *six-month training program* in 34 CFR 600.2.

Section 481(e) of the HEA provides for three types of eligible programs. The first type of eligible program is one that must provide at least 600 clock hours, 16 semester or trimester hours or 24 quarter hours of instruction offered during a minimum of 15 weeks. The program must provide undergraduate training that prepares a student for gainful employment in a recognized occupation. The program may admit as regular students persons who have not completed the equivalent of an associate degree.

The second type of eligible program is one that must provide at least 300 clock hours, 8 semester hours, or 12 quarter hours of instruction offered during a minimum of 10 weeks. The program must provide training that prepares a student for gainful employment in a recognized occupation and be a graduate or professional program or admit as regular students only persons who have completed the equivalent of an associate degree. For the first time, this type of program may qualify for purposes of all Title IV, HEA programs, not just the FFEL programs, as under current regulations.

The third type of eligible program would qualify for the FFEL programs only. It must provide at least 300 but less than 600 clock hours of instruction offered during a minimum of 10 weeks. The program must provide undergraduate training that prepares a student for gainful employment in a recognized occupation, and admit as regular students some persons who have not completed the equivalent of an associate degree. This type of program must also satisfy regulations of the Secretary governing placement rates, completion rates, and other criteria. These rates and criteria are discussed below.

Qualitative Factors

Section 481(e)(2) of the HEA requires the third type of eligible program to have a verified completion rate of at least 70 percent and a verified placement rate of at least 70 percent in accordance with the Secretary's regulations and to meet other criteria specified by the Secretary in regulations. Proposed § 668.8(e) would implement these provisions. Proposed § 668.8(e)(2) would require an institution to substantiate the calculation of its completion and placement rates by having its independent auditor who prepares its compliance audit report under § 668.23 verify the accuracy of the calculations. The Secretary believes that the auditor's assurance of these calculations would be a reliable independent substantiation. The Secretary also believes it is practical for an auditor to check this information, inasmuch as he or she is already on site to perform the institution's required compliance audit.

Section 668.8 would include formulas in paragraphs (f) and (g) for calculating the appropriate completion and placement rates. The Secretary believes a single methodology is desired, and invites comments in this area. The Secretary notes that an NPRM implementing the Student Right-to-Know provisions in section 485(a) of the HEA, which addressed the calculation of completion or graduation rates, was published in the **Federal Register** on July 10, 1992 (57 FR 30826). The Secretary will be publishing a second NPRM for implementation of the Student Right-to-Know provisions shortly after publication of this NPRM to further address this calculation. The Secretary would also like to know if any proposals relative to the Student Right-to-Know Act regarding graduation and completion rate calculations should be used instead of the methods proposed here. The proposed formulas would be based on the following:

Award Year

All calculations would be based on enrollments, completions, and placements during an award year. Thus, an applicable completion or placement rate would be the rate as it existed at the end of a particular award year.

Calculation of Completion Rate

(1) An institution would base its calculation on the number of regular students who were enrolled in the program during the award year. The rate calculation is based on regular students because those students by definition intend to complete a program. The Secretary believes that inclusion of other students would not provide an accurate picture of the institution's completion rate.

(2) The institution would subtract from the number of regular students the number of those students who, during that award year, withdrew from, dropped out of, or were expelled from the program and were entitled to and actually received in a timely manner in accordance with § 668.22(i)(3) a refund of 100 percent of their tuition and fees (less any permitted administrative fee) under the institution's refund policy. The Secretary believes that the inclusion of students who have received a 100 percent refund at an institution

would unduly penalize the institution because these students would not have participated in the academic component of an institution's program. These students are excluded from the calculation because there would not be a loss of Title IV, HEA program funds to the Department of Education if the institution has refunded all tuition and fees.

(3) The institution would subtract the number of students who were enrolled in the program at the end of that award year.

(4) The institution would determine the number of regular students who, during that award year, received the degree, certificate or other recognized education credential awarded for successfully completing the program.

(5) The institution would divide the number determined in item (4) by the total obtained under item (3) of this section.

This proposed methodology instructs institutions to subtract from the denominator all students who were enrolled in the program at the end of the award year without regard to any time frame established for the completion of the program. In view of the fact that the Secretary is addressing the effect of the expectation that a student complete a program in a reasonable period of time on the calculation of completion rates in the forthcoming NPRM concerning the Student Right-to-Know provisions in section 485(a) of the HEA, the Secretary particularly invites comment on whether that expectation should also be considered in the calculation under this section.

Calculation of Placement Rate

(1) An institution would determine the number of students who, during the award year, received the degree, certificate, or other recognized educational credential awarded for successfully completing the program. The Secretary believes it would not be fair or accurate to include in the placement rate calculation those students who have not yet completed the program.

(2) The institution would subtract from the number of students described in item (1) the number of those students who were employed by the institution either before or after their receipt of the degree, certificate, or other recognized educational credential. The Secretary believes that excluding employees of the institution will help curb abuse by those schools who may hire their own students in order to increase placement rates. The Secretary specifically requests comment on whether there are methods of distinguishing legitimate hiring by an institution of its graduates or students from hiring simply to improve the results of a placement rate calculation.

(3) Of the total obtained under item (2), the institution would determine the number of students who, within 180 days of the day they received their degree, certificate, or other recognized education credential, obtained gainful employment in the recognized occupation for which they were trained or in a related comparable recognized occupation and, on the date of this calculation, are employed or have been employed for at least 13 weeks following receipt of the credential from the institution.

The Secretary believes that only students who have been placed within 180 days should be counted in the calculation. The Secretary proposes 180 days because it is consistent with the maximum period of time that a payment on a student's loan under the FFEL loan program may be deferred. These FFEL deferments include provisions for deferments for periods of unemployment. The Secretary considers this time frame to be adequate and reasonable, and provides ample time for an institution to place a student.

The proposed regulation allows an institution to include in its placement rate a student who is placed in a recognized occupation which is comparable and related to the occupation for which the student has been trained. For instance, if a student were trained as an auto mechanic, he could be included in the placement rate calculation if he were placed as a boat mechanic. However, if a student completed a retail sales management program, he could not be included in the calculation if he were placed as a counterman at a fast food establishment.

To be included in the placement rate, a student must have been employed for at least 13 weeks following graduation from the institution. The Secretary believes that this requirement will help stem abuse by institutions that may arrange to have students hired for short term jobs in order to boost placement rates. The proposed 13-week period is consistent with the period of time a student must be employed to be counted in the calculation of an institution's placement rate under the procedures delineated in current § 668.15(g) for the appeal of an institution's loss of participation due to an unacceptable cohort default rate.

As stated above, for purposes of this calculation, a student has up to 180 days after he or she receives his or her degree, certificate, or other recognized education credential to obtain gainful employment and then must be employed for at least 13 weeks following receipt of the credential from the institution. The Secretary understands that, because of the total length of time allowed for obtaining and maintaining employment, an institution's calculations may not accurately reflect placement results for programs that are offered in the latter half of the award year. The Secretary specifically requests comments on ways to address this issue.

(4) The institution would divide the number of students determined in item (3) of this section by the total obtained under item (2).

The institution must maintain documentation that each student described in item (3) above, obtained gainful employment in an occupation for which he or she was trained or in a related occupation. Examples of satisfactory documentation of a student's gainful employment include, but are not limited to—

- A written statement from the student's employer;
- Signed copies of State or Federal income tax forms; and
- Written evidence of payments of Social Security taxes.

The Secretary believes that requiring institutions to collect this data will help curb abuse by institutions that may overstate their placement rates in order to achieve and maintain eligibility for short-term programs. Furthermore, to further avoid potential abuse, the Secretary proposes that in certifying the accuracy of an institution's placement rate, as required under § 668.8(e)(2), the institution's auditor should review the above types of documentation collected by the institution to verify each student's inclusion in the placement rate calculation.

The statute provides that the Secretary may prescribe other regulations to determine the quality of these programs. Under proposed § 668.8(e)(1)(iii), to be eligible, programs less than 600 clock hours in length may not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares students, as established by the State in which the program is offered, if the State has established such a requirement. For example, if a State requires security guard students to complete only 300 clock hours of training, a security guard program in that state will not be eligible if it exceeds 450 clock hours. The Secretary believes this regulation will help curb abuse of the programs by preventing institutions from providing unnecessary training to students in order to receive additional Title IV, HEA program funds.

Proposed § 668.8(e)(1)(iv) requires that to be eligible, programs less than 600 clock hours must have been in existence for at least one full year. The Secretary believes that this time frame is necessary so programs may demonstrate the appropriate completion and placement rates. Institutions will be required under 34 CFR 600 to apply for eligibility of these programs after the one-year requirement is satisfied.

English as a Second Language

In addition to the elements already in place in the current regulations regarding English as a Second Language (ESL) programs, § 668.8(j)(2) proposes that in order for an ESL program to be eligible, the institution must test each student at the end of the program to substantiate that the student has attained adequate proficiency in written and spoken English to use already existing knowledge, training or skills. The institution will also be required to identify the test it gives to the students and the basis for the judgment that the student has attained the adequate proficiency. This proposal, based on California law, was suggested during the negotiation process as a method to stem abuse by institutions which offer ESL programs. As established by the current regulations, ESL programs which qualify as eligible programs are eligible for purposes of the Federal Pell Grant program only. This provision remains unchanged.

Subpart B—Standards for Participation in the Title IV, HEA Programs

Section 668.12 Application Procedures

The Secretary proposes to add a new § 668.12 to codify the Secretary's current practices with regard to applications to participate or to continue to participate in a Title IV, HEA program. This section also would include proposed procedures whereby the Secretary codifies new statutory provisions governing applications to participate or to continue to participate in a Title IV, HEA program.

Section 498(b) of the HEA requires the Secretary to develop a single application form to be used by an institution that wishes to apply to participate or to continue to participate in a Title IV, HEA program. The statute requires that this form provide for the collection of various information and documentation. First, the form must require an institution to provide sufficient information and documentation to determine that the requirements of institutional eligibility, accreditation, and the capability of the institution are met.

Second, the form must require an institution to describe the relationship between a main campus of an institution and all of its branches. In particular, the form must require an institution to include a description of the student aid processing that is performed by the main campus and that which is performed at its branches. Third, the form must require an institution to describe all third-party servicers of the institution and supply a copy of any contract with a third-party servicer. Finally, the form must require an institution to provide any other information that the Secretary determines will ensure compliance with Title IV, HEA program requirements with respect to eligibility, accreditation, administrative capability and financial responsibility.

Currently, the Department of Education uses a single application form that addresses both institutional eligibility requirements (as found in 34 CFR part 600) and the standards for certification of administrative capability and financial responsibility. In recent years, although institutions filed a single application form, they received separate notifications of action from the Department: an institutional eligibility notice and a certification letter. This created confusion because some institutions misinterpreted the institutional eligibility notice also to be the notice informing the institution that it met the requirements for "certification" and that the institution was now able to participate in a Title IV, HEA program.

In order to reduce confusion, the Secretary is now combining these notices of "institutional eligibility" and "certification", issuing one "Institutional Approval Notice" to an institution that meets the institutional eligibility and certification requirements. The Institutional Approval Notice advises the institution that it is an eligible institution, and is approved to participate in the Title IV, HEA programs listed in the Notice and indicated in the institution's program participation agreement. The effective date of approval, which is specified in the Institutional Approval Notice, is the date that the Secretary signs the institution's program participation agreement.

Under current practice, an institution that wishes to participate in a Title IV, HEA program for the first time must first apply to the Secretary for a certification that the institution meets the standards for participation found in Subpart B of these regulations. A currently participating institution must apply to the Secretary for a certification that the institution continues to meet these standards under a number of conditions.

First, the institution must apply for certification if the Secretary requests the institution to apply. The Secretary reserves the right to require a participating institution to apply at any time if the Secretary is concerned about the institution's continued participation in a Title IV, HEA program. Currently, the Secretary exercises this authority only rarely, and generally when the Secretary receives reliable information that could affect the institution's eligibility under 34 CFR part 600 or the institution's financial responsibility or administrative capability under subpart B of these regulations. For example, if the Secretary receives information that an institution that does not grant degrees has received authorization from its State and accrediting agency to award degrees, the Secretary would require the institution to apply under 34 CFR part 600 to determine whether the institution satisfies the definition for a different type of institution and therefore might be eligible to apply to participate in HEA programs for which the institution earlier was not qualified. At the same time, the Secretary requires the institution to apply for recertification under this subpart. Similarly, if the Secretary receives reliable information that could affect whether an institution meets the factors of financial responsibility in this subpart, the Secretary requires the institution to apply for recertification. The Secretary does not intend to exercise this authority more frequently than under current practice.

Second, a participating institution must apply for certification if the institution wishes to include in its participation a branch campus (as that term would be defined in 34 CFR part 600) or another location that offers 100 percent of an educational program. Adding a branch campus or additional location that offers 100 percent of an educational program can have a great effect on the ability of an institution to continue to participate in the Title IV, HEA programs. The Secretary considers it is appropriate to scrutinize the effect of such an addition. In particular, the Secretary believes it is necessary to examine whether the institution has the financial resources and the administrative capability necessary to support such an addition.

A number of circumstances that could affect an institution's participation in a Title IV, HEA program do not, under the Secretary's current practice, require the institution automatically to apply for

recertification under subpart B of these regulations. Instead, these circumstances require the institution to notify the Secretary, and, if necessary, provide specified information about the circumstances. These circumstances parallel many of those described in 34 CFR part 600 requiring the institution to notify the Secretary of changes that could affect the institution's eligibility. Based on that notification and information, the Secretary determines whether the institution must apply for recertification. If the institution need not apply, the Secretary notifies the institution under the provisions of 34 CFR 600.30 that the institution continues to be eligible and participating. If the Secretary needs further information to make that determination, the Secretary requests additional information from the institution or requires the institution to apply for recertification. These procedures apply to the following circumstances: (1) A change in name, address, or location of the institution or one of the institution's locations; and (2) the inclusion in an institution's participation of a location that offers less than 100 percent but at least 50 percent of an educational program. In making the determination that the institution must apply for approval, the Secretary takes into account the institution's ability to provide adequately education or training at the location, including such factors as the percentage of an educational program offered at the location and the financial and administrative capability of the institution.

Under current practice and under these proposed regulations, a participating institution that wishes to include in its participation a location that offers less than 50 percent of an educational program need not provide any notification or application to the Secretary, unless the Secretary so requests.

Third, a participating institution must apply for certification if the institution wishes to continue to participate in a Title IV, HEA program following a change in ownership that results in a change in control. The regulations governing institutional eligibility (34 CFR part 600) contain the requirements governing institutions that change ownership resulting in a change of control.

New section 498(g) of the HEA requires the Secretary to establish a schedule for the expiration of the approval of institutions to participate in the Title IV, HEA programs. Once this schedule is in place, each program participation agreement will have a specific expiration date. To continue participating in the Title IV, HEA programs beyond the expiration date of its program participation agreement, an institution will need to apply for and be granted approval for continued participation. The Secretary will notify an institution well in advance of the expiration date of the institution's program participation agreement that the institution must apply for and be granted continued participation. If an institution does not apply for or is not granted approval for continued participation by the expiration date of the institution's program participation agreement, the institution's participation in the Title IV, HEA programs would expire on that expiration date. In this case, the Secretary may choose to provisionally certify the institution. Provisional certification will be addressed in more detail later in this discussion.

The proposed regulations would specify that an institution that applies for participation in any Title IV, HEA program must apply on the form prescribed by the Secretary and provide all information and documentation requested by the Secretary. The Secretary would like to clarify that an institution may be asked to supply additional information in support of its application after its initial submission. This does not represent a change from current procedures.

Section 668.13 Certification Procedures

Currently, the Secretary informally refers to the procedures by which the Secretary certifies that an institution meets the standards in subpart B of these regulations and accordingly may participate in a Title IV, HEA program as the "certification procedures." The Secretary proposes to add a new § 668.13 to codify these procedures. This section also would include proposed procedures whereby the Secretary codifies new statutory provisions governing certification and provisional certification procedures for participation in a Title IV, HEA program.

Clearly, an institution may not be certified unless the institution is eligible under the provisions of 34 CFR part 600. Further, this section would make clear that an institution could be certified only if the institution meets all the applicable standards for participation in subpart B of these regulations.

Finally, because the requirement that each time an institution seeks to begin to participate in a Title IV, HEA program the specified individuals must complete "precertification training" provided by or approved by the Secretary is a certification requirement, the Secretary proposes to move this requirement from the current § 668.12 (Institutional participation agreement) to this section. The Secretary proposes to amend this requirement to clarify that an institution subject to this training requirement may not begin participation until the individuals have completed the training. Under current regulations, the Secretary specifies that an institution may request an on-site review (instead of electing to use the precertification training procedures) before beginning its participation.

In accordance with section 498(g) of the HEA, the Secretary proposes to delineate the period for which an institution may participate in a Title IV, HEA program. Generally, this period is the maximum of four years permitted by the HEA; however, the Secretary may specify a shorter period as the Secretary deems necessary.

Section 498(h) of the HEA permits the Secretary to provisionally certify an institution to participate in a Title IV, HEA program in a number of circumstances. Provisional certification permits the Secretary to allow an institution that otherwise would not qualify to participate in a Title IV, HEA program to participate. However, because such an institution cannot meet all the requirements for "full" certification, the institution's participation would be limited. For example, an institution that is provisionally certified could be monitored more closely to the extent that the Secretary believes the institution warrants a greater degree of oversight. Further, in accordance with the statute, an institution that is provisionally certified is subject to shorter periods of participation than a fully certified institution. The Secretary notes that these limitations may vary, within the limits of the statute, to address the specific circumstances of the institution. Finally, under the terms of provisional certification, an institution will not have the right to a formal appeal under subpart G of this part if the Secretary revokes the institution's provisional certification; instead, the Secretary proposes to offer the institution a modified appeal. These limitations are addressed in more detail later in this discussion.

Under section 498(h) of the HEA, the Secretary may provisionally certify an institution that: (1) Applies for initial participation in any Title IV, HEA program; (2) has its administrative capability or financial responsibility determined by the Secretary for the first time; (3) undergoes a change of ownership; (4) seeks to renew its certification and jeopardizes its ability to perform its financial responsibilities by not meeting the factors of financial responsibility or standards of administrative capability in proposed §§ 668.15 and 668.16 (and whose participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification); or (5) is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew recognition of that agency. In addition, the Secretary is proposing to add, to the list of institutions that may be provisionally certified, an institution that allowed its specified period of participation to expire without reapplying and qualifying for participation in time.

The Secretary intends to use provisional certification as a mechanism for monitoring an institution that has not previously participated or one that has changed ownership, until it has time to establish a track record. In keeping with current practice, the Secretary does not intend to certify any initial applicant until it has successfully completed a period of provisional certification. Because many of the requirements for certification cannot be met until an institution has participated in the Title IV, HEA programs for a period of time, an initially participating institution would still have the opportunity to participate while establishing a record that demonstrates compliance with all of the proposed current standards for participation. The Secretary notes that certain factors of financial responsibility and administrative capability, such as requirements governing the appropriate handling of Title IV, HEA program funds and timely submission of required audits and other reports, cannot be judged until an institution has Title IV, HEA program funds to administer. In these cases, instead of certifying that an institution meets all the standards of subpart B, the Secretary certifies that an institution has demonstrated that it meets all the standards it can currently and that it will be able to meet all the standards in subpart B to qualify it for full certification within a period of time specified by the Secretary. Such an institution will receive a modified program participation agreement. For the same reasons, the Secretary also intends to use provisional certification for all institutions that undergo a change of ownership. Provisional certification would permit them to participate in Title IV, HEA programs while demonstrating over time that they can meet the standards for participation under the new ownership.

In addition, the HEA provides that the Secretary may use provisional certification for institutions that are currently participating who will have their financial responsibility and administrative capability determined for the first time. Some institutions have been participating in the Title IV, HEA programs since before the establishment of the financial responsibility and administrative capability standards, and have never undergone a certification review. These institutions may be allowed the time necessary to establish that they can remedy any deficiencies found and meet the standards for participation.

Finally, under the provisions of the Technical Amendments of 1993, the Secretary may provisionally certify a participating institution that is undergoing a certification review if the Secretary believes that the institution is in a financial or administrative position that could jeopardize the institution's ability to perform its financial responsibilities under its program participation agreement. The Secretary may provisionally certify an institution under this provision if the institution's participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification. Thus, the Secretary proposes to use provisional certification as a probationary period for some participating institutions, if the Secretary determines that the institutions are capable of meeting the standards for full certification by the end of that period. For example, the Secretary might find that an institution applying for recertification on its own fails to meet one of the standards in proposed § 668.15. If the Secretary determines that the failure could jeopardize the institution's ability to meet its financial responsibilities, such as the payment of refunds, the Secretary would provisionally certify the institution.

Finally, the Secretary proposes to use provisional certification for institutions that seek a renewal of participation in a Title IV, HEA program after the expiration of a prior period of participation in that program. The Secretary will examine the reasons for the lapse in participation to determine if additional safeguards are necessary for the institution to demonstrate that it is capable of resuming its participation in the Title IV, HEA programs.

The Secretary does not intend to certify an institution provisionally if the institution does not meet the financial responsibility standards, unless the institution provides the Secretary with certain additional financial guarantees of its ability to continue operating. The Secretary believes that additional financial guarantees are necessary in that situation to ensure that funds may be available to repay liabilities or to pay required refunds that could arise under the Title IV, HEA programs. The Secretary generally does not intend to certify an institution provisionally if the institution does not meet the general standards of financial responsibility or the exceptions to the general standards of financial responsibility under proposed § 668.15(d) unless the institution meets three additional conditions. First, the institution would have to demonstrate to the satisfaction of the Secretary that it has sufficient financial and administrative resources to participate in the Title IV, HEA programs under a funding arrangement other than the Department of Educations's standard advance funding arrangement. For example, the institution could be funded through an escrow arrangement where an approved third party controls the institution's access to Title IV, HEA program funds. The Secretary believes that it is necessary for the Department of Education to have the added control over Title IV, HEA program funds provided by an escrow arrangement. Second, the institution would have to submit to the Secretary a letter of credit payable to the Secretary equal to not less than 10 percent of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available; the Secretary believes that 10 percent of an institution's Title IV, HEA program funds is the minimum necessary to ensure repayment of liabilities that may be identified during the institution's period of provisional certification. Further, the Secretary believes that the amount of Title IV, HEA program funds received by an institution during the last complete award year for which figures are available provides the most accurate indication of the amount of Title IV, HEA program funds the institution will use in the next award year. Third, the institution would have to demonstrate that it has met all of its financial obligations during the preceding two award years, including (but not limited to) the payment of required refunds and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary. The Secretary believes that an institution that could meet this

proposed standard has established a track record for meeting its financial obligations.

The Secretary notes that an institution that is applying for initial participation in the Title IV, HEA programs could not satisfy the proposed requirement that the institution submit to the Secretary a letter of credit payable to the Secretary equal to not less than 10 percent of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available because the institution would not have received any Title IV, HEA program funds during the last award year. The Secretary requests comments on a comparable way to determine the amount of a letter of credit for an institution that is applying for initial participation in the Title IV, HEA programs.

The Secretary also would impose additional conditions on any institution that has not been considered financially responsible under proposed § 668.15 at any time within the past five years, or if the institution is not considered financially responsible for one of the following reasons (as delineated in § 668.15(c)(2)): (1) The institution has been limited, suspended, terminated or entered into a settlement agreement to resolve such an action by the Secretary or a guaranty agency within the preceding five years; (2) the institution had an audit finding during its two most recent audits, or a program review finding during its two most recent program reviews, that resulted in the institution's being required to repay an amount greater than five percent of the Title IV, HEA funds that the institution received for any award year covered by the audit or the program review; or (3) the institution failed to address satisfactorily any compliance problems identified in program review or audit reports based upon a final decision of the Secretary.

An institution in these categories could only be provisionally certified if, in addition to meeting whatever conditions the Secretary might reasonably require of a provisionally certified institution, the institution satisfied one of the following conditions. First, the institution, or one or more persons or entities that the Secretary determines to exercise substantial control over the institution, or both, would have to submit to the Secretary financial guarantees in an amount determined by the Secretary to be sufficient to satisfy the institution's potential liabilities arising from the institution's participation in the Title IV, HEA programs. Second, one or more persons or entities that the Secretary determines to exercise substantial control over the institution would have to agree to be jointly or severally liable for any liabilities arising from the institution's participation in the Title IV, HEA programs and any civil and criminal monetary penalties authorized under Title IV of the HEA. The law permits the Secretary to impose these conditions on these institutions; the Secretary is announcing that he would always impose them, because these circumstances are indicative that extra protection is needed for the institution and their students to be permitted to benefit from the use of Title IV, HEA program funds.

Generally, provisional certification may be granted for a period of no longer than three award years. In accordance with section 498(h) of the HEA, an institution that is applying for initial participation may be provisionally certified for a period of no longer than one award year. A participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency may be provisionally certified for no longer than 18 months after the date that the Secretary withdrew that recognition. The Secretary has the authority to specify a shorter period of provisional certification, as necessary.

In accordance with section 498(h) of the HEA, the Secretary may revoke an institution's participation in the Title IV, HEA programs, at any time before the end of a period of provisional certification, if the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement. If the Secretary makes that determination, the Secretary would notify the institution of the determination by mail, unless the Secretary chooses more expeditious means, and revocation would take effect on date that notice is mailed. The institution would have to adhere to the requirements of proposed § 668.26 which describes the consequences of revocation.

Under the terms of the provisional certification, the institution does not have the right to a formal appeal under subpart G of this part before the revocation takes effect. However, the Secretary proposes to allow the institution to submit a written request to reconsider the revocation within 20 days of the institution's receipt of the Secretary's notice, after the revocation takes effect. The institution's request for reconsideration would have to include written evidence that the revocation is unwarranted.

If the Secretary decides that the revocation is unwarranted, the institution's provisional certification would be reinstated in accordance with the time, terms, and conditions set out in the institution's original provisional certification. If, after consideration of the institution's submission, the Secretary denies the institution's request, the institution would not be permitted to reapply for participation in the Title IV, HEA programs before at least 18 months after the revocation or the expiration of any debarment or suspension of the institution, whichever is later. Generally, an institution whose participation has been terminated because the institution's provisional certification was revoked would be able to apply for reinstatement after 18 months. However, a debarment or suspension under E.O. 12549 or the FAR can last 3 or more years. This change would eliminate any doubt that a debarred or suspended institution may apply for reinstatement of the institution's participation during the period of a debarment or suspension. The Secretary will not accept any application by a debarred or suspended institution until the debarment or suspension has expired or been removed.

Section 668.14 Program Participation Agreement.

The Secretary proposes to redesignate § 668.12 as § 668.14. This section includes provisions dealing with third-party servicers that were proposed in the NPRM published on February 17, 1994 (in part II). The Secretary will not repeat the discussion of those provisions here.

Current regulations governing program participation agreements state only the basic terms of participation in the Title IV, HEA programs and the purpose and scope of the agreement between the Secretary and individual institutions. All of the specific provisions of the program participation agreement that are listed in section 487(a) of the HEA are not restated in the regulations. Instead, all the specific statutory provisions are included in the actual agreement signed between the Secretary and individual institutions. The Secretary proposes to revise this section of the regulations to include not only the new provisions of program participation agreements added by the Amendments of 1992, but also those provisions previously prescribed by the HEA but not specifically spelled out in this section. The Secretary will specify which proposed changes have been made to this section as a result of the Amendments of 1992 to distinguish them from the provisions that the Secretary proposes to add that already existed under the HEA, but have not been codified in regulations.

The additional provisions of program participation agreements enumerated in the HEA, as well as other changes the Secretary is proposing in order to clarify what the agreements cover and to reflect new procedures and statutory language, are described below.

By providing a comprehensive list of the provisions of the basic program participation agreement in one section, thus making reference to all the provisions more convenient, the Secretary hopes to facilitate institutions' understanding of their responsibilities with respect to initial and continued participation in the Title IV, HEA programs.

The Secretary proposes to clarify the scope of the program participation agreement. By signing a program participation agreement, an institution indicates it understands that its initial or continued participation in the Title IV, HEA programs is contingent on compliance with the Student Assistance General Provisions regulations, the regulations of the specific Title IV, HEA programs in which the institution participates, and any additional requirements specific to that institution that the Secretary requires the institution to meet. Further, the Secretary proposes to make clear the long-standing practice that the program participation agreement applies to each branch or other additional location of the institution that meets the applicable requirements of the Student Assistance General Provisions, unless the Secretary specifies otherwise.

The Secretary proposes to specify that by entering into a program participation agreement the institution agrees to comply not only with statutory and regulatory requirements, but also with any special arrangement, agreement, or limitation. The proposed expansion of this provision is necessary to make it clear that if it is to participate in a Title IV, HEA program, an institution must adhere not only to those requirements listed in the statute and regulations, but to any conditions of provisional certification, any limitation imposed on the institution to which the institution has agreed, or any other special arrangement that the institution makes pursuant to statutory or regulatory authority under Title IV of the HEA. The Secretary also believes it is necessary to clarify the Secretary's longstanding interpretation that to begin or continue to participate in a Title IV, HEA program, an institution must comply with each requirement applicable to that program, not just selected provisions.

The Secretary proposes to add a clause specifically requiring that institutions that receive Title IV, HEA program funds under an advance payment method must time their requests for funds to meet immediate programs needs. The Secretary finds that this addition is necessary because, in the absence of this specifically stated requirement, too many institutions have drawn down funds in excess of immediate need, thereby adding unnecessarily to the Federal debt by causing the Treasury to incur interest costs on funds given to institutions that were not required to meet immediate needs.

The Amendments of 1992, as clarified by the Technical Amendments of 1993, has removed the requirement that an institution may not request from or charge any student a fee for processing or handling the Federal Student Assistance Report, to conform with other statutory provisions of the Amendments of 1992 that eliminated previous references to that report. The Secretary would remove the corresponding regulatory language from this section, No change has been made to the general requirement that an institution may not request from or charge any student a fee for processing or handling any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance.

In accordance with the HEA, an institution must establish and maintain necessary administrative and fiscal procedures and records to ensure proper and efficient administration of Title IV, HEA program funds that the institution receives from the Secretary or from students. Further, the Amendments of 1992 require that the institution provide, upon request and in a timely manner, information relating to its administrative capability and financial responsibility of the institution to the Secretary, the appropriate State postsecondary review entity designated under Part H of Title IV of the HEA, any applicable guaranty agency under the FFEL programs, and the institution's accrediting agency or agencies. The Secretary proposes to add to this list of agencies the institution's State agency with legal jurisdiction over the institution and, where appropriate, the State agency recognized by the Secretary for the approval of public postsecondary education as an alternative to accreditation or preaccreditation. The Secretary believes that it is important that these agencies also have access to information regarding an institution's financial responsibility and administrative capability.

The HEA requires that an institution must agree to comply with the Secretary's regulations governing financial responsibility and administrative capability. Thus, the Secretary would specify that the institution must agree to comply with proposed-to-be-redesignated §§ 668.15 and 668.16.

The HEA requires that an institution must submit reports, as directed by the Secretary, to the Secretary, or, as appropriate, holders of student loans under the Title IV, HEA programs, containing information required to administer the Title IV, HEA programs. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The HEA requires that an institution may not provide any statement to a student or certification to a lender under the FFEL programs that qualifies a student for loans in excess of the annual and aggregate limits for which the student is eligible for in accordance with statutory requirements. The Secretary proposes to extend this requirement to include unsubsidized Federal Stafford loans.

The HEA requires that an institution must comply with the consumer information requirements in subpart D of these regulations. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The HEA requires that an institution that advertises job placement rates as a means of procuring enrollment must make available to prospective students data necessary to substantiate the truthfulness of the advertisement. In addition, the Amendments of 1992 require that an institution make available to prospective students the relevant State licensing requirements for any job for which an institution's educational program is designed to prepare prospective students. The HEA also requires that an institution must inform all eligible borrowers under the FFEL programs of their eligibility for and the availability of State grant assistance. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

In order to streamline these regulations, the Secretary proposes to list in one place in this section all the certifications that an institution must make to participate in a Title IV, HEA

program. The institution would have to agree in its program participation agreement to provide these certifications. These certifications include the following: (1) That the institution has in operation a drug abuse prevention program accessible to any of the institution's officers, employees, and students; and (2) establishment of a campus security policy and disclosure requirements as required by section 485(f) of the HEA. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The HEA requires that an institution make available to students who receive Title IV, HEA program aid based on their ability to benefit from the training offered a program proven successful in assisting those students to obtain the recognized equivalent of a high school diploma. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The Amendments of 1992 require an institution to agree that it will not deny any form of Federal financial aid to any eligible student solely on the grounds that the student is participating in a program of study abroad approved for credit by the institution. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The Amendments of 1992 require that as a condition for participation any institution seeking to participate for the first time in the Federal Stafford Loan, Federal PLUS, and Federal SLS programs and any institution participating in those loan programs that changes ownership resulting in a change of control or changes its status as a main campus, branch campus, or an additional location, develop and implement for two years a default management plan. The Secretary proposes to allow institutions to develop and implement, or submit if required by the Secretary, a default management plan developed in accordance with the default reduction measures described in appendix D of current regulations to meet this requirement.

The Amendments of 1992 require that an institution must acknowledge the authority of the Secretary, guaranty agencies and lenders as defined in 34 CFR part 682, nationally recognized accrediting agencies, the Secretary of Veterans Affairs, and State postsecondary review entities designated under subpart 1 of part H of Title IV of the HEA, to share with each other any information pertaining to the institution's eligibility for or participation in the Title IV, HEA programs, or any information on fraud and abuse. The Secretary proposes to add to this list of agencies the institution's State agency with legal jurisdiction over the institution and, where appropriate, the State agency recognized by the Secretary for the approval of public postsecondary education as an alternative to accreditation or preaccreditation.

The statutory provision that governs the effect of fraud and criminal conduct by individuals, agencies, or organizations affiliated with an institution was discussed in the NPRM published on February 17, 1994 (in part II) that deals with third-party servicers.

The Amendments of 1992 require that an institution must timely and satisfactorily complete any survey conducted as a part of the Integrated Postsecondary Education Data System (IPEDS), or other Federal data collection effort on postsecondary institutions. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The Amendments of 1992 spell out the requirements imposed on participating institutions that offer athletically related student aid. In order to participate in a Title IV, HEA program, an institution that offers athletically related student aid must compile annually and have audited independently at least every 3 years, data on the revenues derived by the institution from and expenses made by the institution for the institution's intercollegiate athletics activities. This compilation must include data on total revenues and total expenses, revenues and expenses attributable to football, revenues and expenses attributable to men's basketball, revenues and expenses attributable to women's basketball, revenues and expenses attributable to all other men's sports combined, and revenues and expenses attributable to all other women's sports combined. The compilation must also include data on the total revenues and operating expenses of the institution. The institution is required to prepare the compilation within 6 months after the end of the institution's fiscal year. The institution must make the compilation and, where allowable by State law, the required audits, available for inspection by the Secretary and the public.

For purposes of this compilation, the Amendments of 1992 define revenues from intercollegiate athletics activities allocable to a sport to include without limitation gate receipts, broadcast revenues, appearance guarantees and options, concessions, and advertising. Revenues such as student activities fees or alumni contributions not allocable to a sport must be included in the calculation of total revenues only. The Amendments of 1992 define expenses for intercollegiate athletics activities allocable to a sport to include without limitation grants-in-aid, salaries, travel, equipment, and supplies. Expenses such as general and administrative overhead that are not allocable to a sport must be included in the calculation of total expenses only. Generally, the Secretary is proposing to restate the language of the statute in the regulations. However, the Secretary proposes changes to conform with the NCAA's 1989 Financial Audit Guidelines. In addition to the statutory definition of what is included in revenues from intercollegiate athletics activities allocable to a sport, the Secretary proposes to specify that other conference distributions in addition to broadcast revenues would also be included. The Secretary also proposes to specify that revenues such as investment interest income that are not allocable to a sport would be included in the calculation of total revenues only.

The Amendments of 1992 provide that an institution may not impose any penalty on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of a title IV, HEA program loan due to compliance with statutory and regulatory requirements for the Title IV, HEA programs, or delays attributable to the institution. The statute specifies that those prohibited penalties include the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds. The Secretary proposes to clarify that the restriction that institutions may not require a student to borrow additional funds would apply only to funds for which interest or other charges are assessed. Therefore, this provision would not apply to any interest-free loans that the institution might require the student to borrow until other sources of aid are available.

The Amendments of 1992 provide that an institution may not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities. An institution also may not provide such an incentive payment to any persons or entities engaged in making decisions regarding the awarding of student financial assistance. The statute specifies that this requirement does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance. The Secretary proposes to extend this provision to require that institutions also may not contract with entities that improperly provide, any commission, bonus, or other incentive payment as delineated in the statute. The Secretary believes that this provision is necessary to implement more rigid restrictions than were seen in the past on the practices of "commissioned salespersons." The Secretary proposes to repeat the language of the statute with the addition of this change. The Secretary believes it is clear that this statutory requirement places rigid restrictions on the practice of recruitment, admission activities, and the awarding of student financial assistance.

The Secretary is aware that some institutions pay incentives to recruiters or admissions office employees based on the success of those persons in enrolling students, provided that the enrolled students maintain satisfactory progress for and remain enrolled in the institution for a specified period of time. The Secretary considers this practice, which commonly is referred to as an incentive based on "retention," to be an example of an activity that is prohibited by the statute.

During the negotiated rulemaking sessions, the Secretary's negotiator requested further examples of prohibited activities. A non-Federal negotiator offered the following examples that the Secretary believes are not permitted by the statute. (1) An institution might offer payments or gifts to students for referring other prospective students for admission to the institution. (2) An institution might offer payments or gifts to students on the condition that persons whom the students referred to the institution were actually admitted and remained enrolled in the institution for a specified period of time. (3) An institution might present gifts to alumni, such as coffee mugs, sporting events tickets, or contributions in their name for referring students to the institution for admission. (4) An institution might pay bonuses to Directors of Admissions (or other management personnel) based on the number of enrollments received during a particular academic year or the number of students who, after enrolling, remained at the institution until all financial aid had been received. The Secretary specifically requests comments on these examples and others that might serve as useful guidelines in these regulations.

The Amendments of 1992 require that an institution comply with applicable requirements established by all members of the "triad"; i.e., the Secretary, State postsecondary review entities, and nationally recognized accrediting agencies pursuant to part H of title IV of the HEA. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The Amendments of 1992 require that an institution comply with the institutional refund policy established in accordance with § 668.22. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

Finally, in addition to the statutory requirements for program participation agreements, an institution would have to agree to be liable for all improperly spent or unspent funds received under the title IV, HEA programs, including funds administered by a third-party servicer, and refunds that the institution or its servicer may be required to make. This provision was proposed and discussed in the NPRM published on February 17, 1994 (in part II) that deals with third-party servicers.

The Amendments of 1992 and the Technical Amendments of 1993 amended the HEA to require that an institution that has a change in ownership resulting in a change in control reestablish institutional eligibility and undergo a certification review before it may participate in any title IV, HEA programs. Therefore, the Secretary is proposing to remove the provision in current regulations that permitted the new participation agreement of an institution that changed ownership to be effective on the date of the change of ownership. Instead, under the proposed regulations, the program participation agreement of an institution that changes ownership would be effective on the date that the Secretary signs the agreement, just as any other new program participation agreement would.

The Secretary proposes to specify that a program participation agreement expires if the institution's participation ends because: (1) The institution closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students; (2) the institution loses its institutional eligibility under 34 CFR part 600; (3) the institution's period of participation, as specified under § 668.13, expires (that is, the four-year limit on participation, the limits on participation established pursuant to provisional certification, or shorter periods established by the Secretary), or the institution's provisional certification is revoked under § 668.13; (4) the Secretary determines under § 668.13(c) that the institution that is applying for certification has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under § 668.15 or the standards of administrative capability under § 668.16 (in the case of an institution whose participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification); or (5) the Secretary receives a notice from the appropriate SPRE that the institution's participation should be withdrawn.

These provisions would conform to the provisions in proposed § 668.26 governing the end of an institution's participation in a title IV, HEA program. The first of these circumstances listed above is purely a clarification of existing practice. The last three describe circumstances mandated by the change made to the HEA by the Amendments of 1992.

Section 668.15 Factors of Financial Responsibility

The Secretary proposes to redesignate § 668.13 as § 668.15.

This section includes provisions dealing with third-party servicers that were proposed in the NPRM published on February 17, 1994 (in part II). The Secretary will not repeat the discussion of those provisions here. However, this third-party servicer NPRM proposed to apply the general standards of financial responsibility that are proposed in this NPRM to third-party servicers that contract with lenders or guaranty agencies to administer any aspect of the title IV, HEA programs.

General

Section 487 of the HEA requires the Secretary to develop regulations to determine the financial responsibility of an institution as a part of the Secretary's determination that an institution is able to participate in a title IV, HEA program. Section 498 of the HEA mandates some of the standards that the Secretary must use in making a determination of financial responsibility. In general, section 498 of the HEA adopted, with modifications, the standards used by the

Secretary in current § 668.13 of the Student Assistance General Provisions regulations. The Secretary proposes to require an institution to demonstrate that it is financially responsible under the proposed requirements in this section.

General Standards of Financial Responsibility

In paragraph (b) of proposed § 668.15, the Secretary would list general standards of financial responsibility. The first six standards are applicable to all institutions. Section 498(c)(1) of the HEA specifies that an institution's financial responsibility must be determined based on whether the institution is able to provide the services that the institution claims to provide, to provide administrative resources necessary to comply with Title IV, HEA program requirements, and to meet all of the institution's financial obligations, including refunds and liabilities and debts incurred in programs administered by the Secretary These standards were adopted from current regulations and the Secretary proposes to continue to use them unchanged.

The Secretary proposes to add to the list of proposed financial responsibility requirements for all institutions the requirement that an institution be current on any debt service payments. An institution normally has variable costs that fluctuate to meet the demand created by increasing or decreasing volume in those costs such as those for educational supplies and expenses and instructor salaries associated with educating an increasing or decreasing number of students. Debt service represents a fixed cost, such as mortgage or lease payments, to the institution that generally does not fluctuate with that volume. Thus, in a situation in which an institution is experiencing a decline in revenue due to a decrease in new enrollments, debt service would remain unchanged. The institution's flexibility to deal financially with the decline is reduced because management typically is unable to adjust the amount of payment for debt service without the consent of the creditor to whom the debt is owed. This situation places some degree of control outside the institution and beyond the scope of management's ability to deal with a deteriorating situation by reducing costs. Furthermore, a failure to meet debt service payments might precipitate collective action on the part of creditors to place the institution in an involuntary liquidation situation under Federal bankruptcy laws.

Alternatively, a growing institution usually must take on more debt to fund its operations. Should the growth fail to continue, the institution might be unable to service the increasing debt service associated with its expansion. Thus, the Secretary believes an institution's failure to remain current on its debt service payments would be a strong indicator of the institution's inability to meet its financial obligations.

Section 498(c)(5) of the HEA provides that the Secretary must establish requirements for an institution to maintain sufficient cash reserves to ensure repayment of any required refunds. Section 498(c)(5) of the HEA also provides for an exemption to this requirement which is discussed below under exceptions to the general standards of financial responsibility. The Secretary proposes to require an institution to maintain, at all times, a minimum cash reserve of at least 10 percent of the institution's total deferred tuition income at the end of the institution's most recent fiscal year for repayment of refunds. The cash reserve would have to be maintained in a cash reserve account and would have to consist of cash or cash equivalents, as those terms are defined in accordance with generally acceptable accounting principles.

The Secretary believes that it would be unreasonable and unduly burdensome to require an institution to calculate the percentage of its cash reserve on a continual basis. Accordingly, the Secretary would require an institution to determine its total deferred income at the end of the institution's fiscal year and calculate the percentage based on that total. Once that percentage is determined, the institution would have to maintain that amount of cash reserve at all times until a new calculation is performed at the end of the institution's subsequent fiscal year. The calculation would be based on the institution's total deferred tuition income because deferred tuition income is an indicator of the value of services that the institution will provide for the coming year The Secretary requests comment on a comparable way to determine the appropriate level for the cash reserve.

Ten percent of this amount represents roughly the equivalent of a month's worth of an institution's revenue. The Secretary considers this amount a reasonable amount for an institution to have available to pay refunds in the event of the institution's precipitous closure. Generally, under this proposal, an institution would demonstrate its compliance with this provision once a year with the submission of the institution's audited financial statements. However, because an institution would be expected to maintain this cash reserve at all times, the Secretary would reserve the right to evaluate an institution's compliance with the requirement at any time. Finally, the proposal to allow cash equivalents to be included in the cash reserve is consistent with generally accepted accounting principles.

Finally, the Secretary proposes that, in order to be financially responsible, an institution must not have as part of its audit report for its most recently completed fiscal year any of the following. First, the institution's audit would not contain a statement by the accountant acknowledging substantial doubt about the institution's ability to continue operating as a going concern. A "going concern" statement is a professional opinion rendered by an independent certified public accountant, commenting on the institution's unstable financial condition and informing the reader of the possibility that the institution may not survive the coming fiscal year. Although such a "going concern" statement is rarely issued, its presence attests to a concern held by the auditor that the institution's ability to continue operating is uncertain. The Secretary believes that if an auditor, after close examination of the institution's operations, concludes that such a statement is warranted, this is cause for the Department to protect its interest in the Title IV, HEA program funds administered by the institution by requiring the institution to be subject to the appropriate remedies for establishing financial responsibility, or to be subject to provisional certification or the proceedings in subpart G of these regulations.

Second, the institution's audit could not contain a finding of unauthorized use of donor restricted net assets to meet current operating expenses. Unauthorized use of donor restricted net assets is a violation of the restrictions placed on donations by the donor Any donor-restricted funds are placed in an endowment fund to be used for specific purposes, such as providing scholarships. Donor restricted net assets are most commonly found at nonprofit institutions. The Secretary believes that if this money is transferred to current funds or total net assets for current operating expenses, this is not only an indication of extremely impaired cash flow, but also a violation of an institution's responsibility as a fiduciary of Title IV, HEA program funds.

Third, the institution's audit could not contain a disclaimed or adverse opinion by the accountant. A disclaimed or adverse opinion is an indicator that the auditor is unable to perform a complete audit of the institution with the assurance that the audit presents a reliable presentation of the institution's financial condition. An audit submitted with such a disclaimer or limitation would cause the institution's financial report to be rejected by the Secretary. Such a statement in the auditor's report is an indication that the financial statement was not prepared in accordance with generally accepted accounting principles as required in current regulations.

The statute authorizes the Secretary to prescribe criteria for evaluating operating losses, net worth, asset to liabilities ratios and operating fund deficits. The Secretary's goal in developing these proposed regulations is to ensure that institutions are capable to operate as a fiduciary of Federal funds based on a sufficient financial base to properly provide education and meet the institution's financial obligations. The Secretary, therefore, proposes to amend the current factors of financial responsibility section to establish new financial responsibility standards as a means of further refining the above requirements.

The Secretary proposes that, as in the past, failure to meet any one of the factors may result in initiation of an administrative proceeding to limit, suspend, fine or terminate an institution. Because some of these proposed factors are more stringent than those currently found in the regulations, the Secretary recognizes that an institution may need a sufficient period of time to adjust its operations in order to come into compliance with these proposed factors, if they are adopted. Under this proposal, the Secretary may provisionally certify institutions that did not meet these proposed standards to provide them with this additional period of time to comply, provided that the institution shows that it would have met the current standards.

The Technical Amendments of 1993 require the Secretary to take into account an institution's total financial circumstances in making a determination of an institution's financial responsibility. The Secretary believes that these proposed factors evaluate, both directly and indirectly, the overall soundness of an institution's financial condition for the period covered by its audited financial statements and, therefore, take into account an institution's total financial condition as required by the Technical Amendments of 1993.

The Technical Amendments of 1993 require that criteria developed for the determination of an institution's financial responsibility take into account any differences in generally accepted accounting principles, including required financial statements, that are applicable to for-profit and nonprofit institutions. Therefore, in addition to general standards that all institutions would be required to meet, the Secretary has proposed standards applicable specifically to for-profit, nonprofit, and public institutions that the Secretary believes indicate an equal level of financial responsibility. At the suggestion of some of the negotiators, the proposed specific standards of financial responsibility have been organized by type of institution; i.e., for-profit, nonprofit, and public.

Due to differences in legal and reporting entity, mission, and accounting format for nonprofit entities and for profit-seeking entities, there are differing tests of financial responsibility to be applied. Evaluating a nonprofit entity's overall financial condition is more complicated because there is no commonly accepted standard of acceptable financial condition. Generally, a measure of an institution's financial condition is a measure of an institution's solvency, or the ability of an institution to adequately cover its expenditures with revenues. In determining an institution's financial condition, the Secretary believes it is necessary to look at the institution's short-term solvency and long-term solvency, which is the ability of an institution to support an adequate level of services over the long run, withstanding economic disruption and meeting changing demands for services.

With accounting for for-profit entities, analysis of financial statements provides an understanding of an institution's financial condition through comparisons of key financial ratios that measure the institution's ability to remain solvent while continuing to provide educational services at acceptable levels. Examination of financial information from nonprofit entities requires a review of other organizational factors that measure the ability of the institution to provide educational services using a larger and more complex source of funds. It is therefore necessary to differentiate the standards that are applicable to profit-seeking entities from the standards that are applicable to nonprofit entities.

The Secretary will first address the specific standards for for-profit institutions.

The Secretary proposes to require that a for-profit institution have, at the end of its latest fiscal year, a ratio of current assets to current liabilities of at least 1.25:1. One commonly used means of determining whether or not the institution has sufficient short-term solvency is use of the ratio of current assets to current liabilities. For the past fourteen years the Department has used a current assets to current liabilities ratio of at least 1:1 as an indicator of financial responsibility. This means that the institution has current assets at least equal to their current liabilities. In theory, this would indicate that an institution has sufficient resources to handle not only debt service, but also other liabilities for at least the coming fiscal year. The higher the amount of assets, the better the liquidity position of the institution and, therefore, the better the institution will be able to handle unforeseen economic conditions. The Secretary believes that the current 1:1 benchmark offers little or no indication of adequate short-term solvency. A 1.25:1 benchmark has, therefore, been proposed for for-profit institutions. Cash is now required to be a component. The Secretary believes that the proposed increase in current assets will help to ensure that institutions have sufficient resources to provide worthwhile education and training.

The Secretary is proposing a higher ratio of current assets to current liabilities ratio for for-profit institutions than for nonprofit institutions. The Secretary believes that a higher current ratio is necessary for for-profit institutions because they will be less likely, in the event of hampered liquidity, to draw on fund-raising as a source of cash. This rationale is discussed later as part of the discussion of the proposed ratio of current assets to current liabilities for nonprofit institutions.

The Secretary proposes to exclude from the calculation of this ratio for for-profit institutions, uncollateralized loans receivable from owners and related parties. Uncollateralized related party loans are loans that have been made to affiliates, officers, or employees and have not been secured by tangible assets. In accordance with Accounting Research Bulletin 43 (ARB43), chapter 3A, paragraph 6, the concept of current assets contemplates the exclusion from that classification of such resources as "* * * (c) receivables arising from unusual transactions (such as the sale of capital assets, or loans or advances to affiliates, officers, or employees) that are not expected to be received within twelve (12) months". In the event that

certain financial statements present these types of loans on the balance sheet, they will be disregarded by the Secretary in computation of the current ratio.

Further, because the proposed cash reserve requirement may cause a portion of the institution's cash reserves to be classified as a restricted asset, which would, under generally accepted accounting principles, be excluded from classification as current assets, the Secretary's proposal specifies that, for for-profit institutions, the cash reserves may be included in the institution's current assets in calculating the institution's current assets to current liabilities ratio. The Secretary believes that it is appropriate to permit for-profit institutions to treat the cash reserves as current assets because the funds are held for the benefit of the students, and inclusion of those amounts toward demonstrating a 1.25:1 current ratio still leaves the institution with sufficient unrestricted assets to pay all current expenses.

The Secretary proposes that a for-profit institution is financially responsible if it has not had operating losses over both of its two latest fiscal years that cause an operating loss exceeding 10 percent of the institution's previous year's tangible net worth for its latest fiscal year. While it may not be unusual for an institution to record a loss in any fiscal year, this loss is not harmful so long as the loss is not excessive, is not indicative of a deteriorating trend in the institution's financial condition, and the institution otherwise meets the factors substantiating its financial strength. The Secretary proposes to define an operating loss, for purposes of these provisions, as total net income minus extraordinary gains or losses, income or losses from discontinued operations, prior period adjustments, and the cumulative effect of changes in accounting principle, estimate, or reporting entity. The Secretary proposes that the calculation of tangible net worth shall exclude all assets defined as intangible in accordance with generally accepted accounting principles. The Secretary believes this standard will measure whether a profit-seeking entity is operating from current cash flow to the extent possible. The aggregate residual effect of these activities on the organization's individual net assets is represented, along with any interfund transfers that may have taken place during the period.

The Secretary proposes that a for-profit institution is financially responsible if it had, for its latest fiscal year, a positive tangible net worth. The Secretary proposes that, for purposes of this section, a positive tangible net worth occurs when the institution's tangible assets exceed its liabilities. Further, the Secretary proposes that the calculation of tangible net worth shall exclude all assets defined as intangible in accordance with generally accepted accounting principles. In applying this proposed standard, the Secretary could consider the effect of extraordinary gains or losses resulting from unusual and infrequent events, and could take into consideration the cumulative effect of changes in accounting principle, estimate or reporting entity to the extent that such a change results in a more accurate representation of the institution's financial position in accordance with generally accepted accounting principles. For the past fourteen years, the Department has had a standard for net worth that states that an institution is not financially responsible if it has a deficit net worth (i.e., the institution's liabilities exceed its assets.), a measure of long-term solvency. Therefore, an institution with a net worth of zero meets this current requirement. The proposed change from penalizing a deficit net worth to requiring a positive net worth is only a technical change in form that should affect few, if any institutions.

By excluding all assets classified as intangible, all assets such as goodwill, organization costs, and covenants-not-to-compete, which have little market value in the determination of an institution's overall solvency will be eliminated in the calculation of net worth. In purchasing a business, the new owner pays an amount and allocates the market value to individual tangible assets in order to prepare financial statements. After applying the proper market value to the various assets, any residual amount that appears on the institution's balance sheet as goodwill, organization costs, or covenant-not-to-compete, is classified as an intangible asset.

It is the Secretary's intent to identify those institutions that do not have sufficient capital assets. For example, businesses that operate on month-to-month leases with minimum capital actually invested in the business are a potential risk to students, and ultimately to the taxpayers in terms of possible collapse and bailout. In these cases loans to students are often automatically discharged in accordance with provisions in the HEA. Preventing institutions that have no real assets from participating in the programs should enhance the gatekeeping process.

In the case of nonprofit institutions, the Secretary has developed standards in accordance with Statement of Financial Accounting Standards No. 117 (FAS 117) that was issued in June 1993 by the Financial Accounting Standards Board (FASB). FAS 117 altered the reporting format for not-for-profit organizations after the negotiated rulemaking process was already well underway. FAS 117 is effective for annual financial statements issued for fiscal years beginning after December 15, 1994, except for organizations with less than $5 million in total assets and less than $1 million in annual expenses. For those organizations, the Statement is effective for fiscal years beginning after December 15, 1995 with earlier application encouraged.

The Secretary proposes to require a nonprofit institution to prepare a classified statement of financial position in accordance with generally accepted accounting principles to provide the Secretary with the financial information necessary to determine the institution's financial responsibility under these proposed regulations. The Secretary proposes that, alternatively, a nonprofit institution could provide this information as footnotes to the audit. Although FAS 117 does not require a nonprofit institution to submit a classified statement of financial position prior to published implementation dates, it does not prohibit the institution from doing so. The Secretary notes that a financial statement that is not classified is not structured to provide the financial information necessary for the Secretary to determine an institution's compliance with these proposed regulations; however, the information could be included as footnotes to the audit.

The Secretary proposes that a nonprofit institution is not financially responsible if it cannot demonstrate, at the end of its latest fiscal year, a ratio of current assets to current liabilities of at least 1:1. The Secretary proposes to not permit a nonprofit institution to include the cash reserves in the institution's current assets. The Secretary believes that, because the proposed current assets to current liabilities ratio for a nonprofit institution is 1:1, if the institution used designated reserve funds to meet this ratio, there would be no assurance of solvency.

The importance of a higher current ratio for for-profit institutions lies in the fact that they are not as likely to be able to draw on fund raising as a source of cash in the event of hampered liquidity because donors are less likely to contribute funds to a for-profit institution where those contributions would not be tax deductible. Many nonprofit institutions have sufficient support in the community and from friends and alumni who are willing to donate to the institution. The cash intake of for-profit institutions is therefore limited to cash generated through profitability, whereas nonprofit institutions have an additional source of cash. Endowments, even when restricted to functions such as providing scholarships, are awarded and may be taken into cash from operations. Consistent profitable operations result in a better liquidity position for for-profit institutions, whereas consistent profitable operations are not necessary for a nonprofit to remain viable. In addition, it is inherent in a nonprofit institution that its final cash position not reflect a profit. In the nonprofit industry, the financial manager has limited authority. The financial manager may make recommendations, but the ultimate authority lies with the governing board. There is, therefore, less control in the hands of financial managers and a corresponding decrease in their ability to control a liquidity situation.

Lack of liquidity means that the institution is unable to service its current debt. This can lead to the forced sale of long-term investments and assets. To the owners of an institution, a lack of liquidity will mean reduced profitability or it may mean loss of control or loss of the entire capital investment. To creditors of the enterprise, it means slow collection of principal and interest due or even loss of the amounts due them. Students of these institutions can also be affected by a short-term poor financial condition. These effects may take the form of inability of the institution to perform their contract, inability to make refunds due to students or lenders, or the loss of supplier relationships. Suppliers are interested in an institution's liquidity position, and if it is found to be inadequate, it may cease to do business with the institution.

The Secretary proposes that a nonprofit institution is not financially responsible if it has had a decrease in total net assets at the end of its latest fiscal year of such significance that, if continued, would result in a ratio current assets to current liabilities of less than 1:1. Under this proposal, the Secretary could consider the effect of extraordinary gains or losses resulting from unusual and infrequent events, and could take into consideration the cumulative effect of a change in accounting principle, estimate or reporting entity to the extent that such a change results in a more accurate representation of the institution's financial position in accordance with generally accepted accounting principles. For purposes of this proposed analysis, the Secretary could exclude unrealized gains and losses on investments that have been reported as changes in unrestricted net assets. The standard was revised to reflect the changes brought about with the issuance of FASB 117 and in order to provide parity with the for-profit institutions. The concept of net worth, as it applies to profit-seeking entities, does not exist for a not-for-profit entity. Upon implementation of FASB 117, fund accounting will no longer be used for colleges and universities, but these entities will adopt a format that is more similar to the format for-profit entities have been using. The term "fund balance" will no longer apply, but will be replaced by total net assets, divided into unrestricted, temporarily restricted and permanently restricted assets. For institutions not required to implement FAS 117 prior to the effective date of these regulations, the regulations applying to nonprofits currently found in 34 CFR 668.13(c), "the institution shall not have a deficit current unrestricted fund balance", will remain in effect until the institution adopts FAS 117.

The Secretary requests comments on whether the Secretary should determine a nonprofit institution to be financially responsible even if it does not meet these requirements if the institution has an acceptable "bond rating". The Secretary suggests that a type of acceptable bond rating may be a current general obligation or general obligation equivalent debt rating (because such a rating is backed by the full resources of the institution) by a nationally recognized debt rating organization, approved by the Secretary, that is at least investment grade.

The Secretary proposes that a public institution is financially responsible only if the institution has its liabilities backed by the full faith and credit of the State, or by an equivalent government. The Secretary is aware that accounting principles for public institutions differ from those for for-profit and nonprofit institutions. The Secretary solicits comments on other acceptable measures of a public institution's financial responsibility that take the applicable accounting principles into account.

Past Performance of an Institution or Persons Affiliated With An Institution

The Secretary proposes to remove from the factors of financial responsibility the provisions in current § 668.13 (c)(4) and (d)(2) governing the effect on an institution's financial responsibility of criminal conduct and fraud involving Federal funds. Those provisions have been superseded by a similar statutory provision that is addressed in the discussion on proposed § 668.14 governing program participation agreements.

Under proposed § 668.15(c)(2), an institution would not be considered financially responsible, despite meeting all other requirements of this proposed section, if: (1) The institution has been limited, suspended, terminated, or entered into a settlement agreement, to resolve such an action by the Secretary or a guaranty agency within the preceding five years; (2) the institution had an audit finding during its two most recent audits, or a program review finding during its two most recent program reviews, that resulted in the institution's being required to repay an amount greater than five percent of the Title IV, HEA funds that the institution received for any award year covered by the audit or the program review; or (3) the institution failed to address satisfactorily any compliance problems identified in program review or audit reports based upon a final decision of the Secretary.

The consequences of this proposed provision are described more fully earlier in this preamble in the discussion on provisional certification. Essentially, institutions that fall into one of these categories not only would not be considered financially responsible, but could not be provisionally certified without the submission of certain financial guarantees or personal assumptions of liability arising from participation in the Title IV, HEA programs.

Exceptions to the General Standards of Financial Responsibility

The Amendments of 1992, as amended by the Technical Amendments of 1993, provide that the Secretary shall determine an institution to be financially responsible even though it does not meet certain general standards of financial responsibility, under various conditions.

Section 498(c)(5)(B) of the HEA provides that the Secretary shall establish a process whereby an institution is exempt from the cash reserve requirement if the institution is located in, and is legally authorized to operate within, a State that has a tuition recovery fund that ensures that the institution is able to pay all required refunds and the institution contributes to that tuition recovery fund. The Secretary proposes that an institution is exempt from the proposed cash reserve requirement if it meets these conditions;

however, the Secretary proposes to stipulate that a State's tuition recovery fund must be acceptable to the Secretary. The Secretary would like to ensure that a State's tuition recovery fund truly has the resources to ensure payment of all required refunds if necessary. To this end, the Secretary would expect States to provide as much information as possible to demonstrate that their tuition recovery fund can pay all required refunds on behalf of an institution that closed precipitously. The Secretary invites comment on what specific standards should be used to measure the acceptability of a State's tuition recovery fund.

Section 498(c)(3) of the HEA provides that an institution is financially responsible even though it does not meet the other general standards of financial responsibility, under the following circumstances. First, an institution that is not financially responsible under the general standards of financial responsibility (except the cash reserve requirement) is financially responsible if the institution submits to the Secretary third-party financial guarantees, such as performance bonds or letters of credit payable to the Secretary, that equal not less than one-half of the annual potential Title IV, HEA program liabilities of the institution. The Secretary proposes that a letter of credit that is payable to the Secretary and effective for a period of time as determined by the Secretary would be the only acceptable type of third-party guarantee for this requirement. The determination by the Secretary that payment from a third-party guarantee requires that funds become immediately available to make refunds or to reimburse the Secretary for debts incurred in the programs. It has been the Secretary's experience that letters of credit are the only method by which funds do become immediately available; however, the Secretary requests comments on other standard forms of publicly guaranteed security that would provide the same level of security to the Secretary. The Secretary notes that an institution is liable for all mishandled Title IV, HEA program funds that it receives. Further, the Secretary believes that the total Title IV, HEA program funds received by an institution during the last complete award year is the best indicator of the amount of Title IV, HEA program assistance that the institution will receive for the next award year. Therefore, the Secretary proposes to require an institution to submit a letter of credit equal to not less than one-half of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available in order to meet this requirement.

Second, the Technical Amendments of 1993 provide that an institution that is not financially responsible under the general standards of financial responsibility (except the cash reserve requirement) is financially responsible if it establishes to the satisfaction of the Secretary, with the support of a financial statement audited by an independent certified accountant with generally accepted accounting standards, that the institution has sufficient resources to ensure against the precipitous closure of the institution, including the ability to meet all of its financial obligations, including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary. The Secretary proposes to restate the statute, modifying it only to propose to require that the financial statement be submitted in accordance with the proposed requirements for documentation of financial responsibility that will be discussed later.

The Technical Amendments of 1993 further provide that an institution is not required to meet the general standards of financial responsibility (except for the cash reserve requirement) if the institution is an institution that provides a 2-year or 4-year educational program for which the institution awards an associate or baccalaureate degree that demonstrates to the satisfaction of the Secretary that there is not reasonable doubt as to its continued solvency and ability to deliver quality educational services, it is current in its payment of all current liabilities, including student refunds, repayments to the Secretary, payroll, and payment of trade creditors and withholding taxes, and it has substantial equity in school-occupied facilities, the acquisition of which was the direct cause of its failure to meet the current operating ratio requirement. The Secretary proposes to restate the statute without modification.

Documentation of Financial Responsibility

Section 498(c)(4) of the HEA provides that the determination of an institution's financial responsibility be based on an audited and certified financial statement of the institution or, where appropriate, its parent corporation, conducted by a qualified independent organization or person in accordance with standards established by the American Institute of Certified Public Accountants. The statement must be submitted to the Secretary when the institution is applying to begin or continue participation in the Title IV, HEA programs. The statute further provides that the Secretary may require the submission of additional audits if the first submission does not establish compliance with the general standards of financial responsibility. Although audited financial statements should be rendered in a uniform manner, there is some leeway with regards to contents of the statements. The Secretary proposes to require institutions to submit financial statements on an annual basis within four months after the end of the institution's fiscal year. The Secretary believes that four months from the end of an institution's fiscal year is a sufficient period of time for an institution to submit a financial statement. The Secretary also clarifies that, upon request, the institution must provide or otherwise make available the accountant's work papers in order to ensure that all information relevant to preparing an audited financial statement is readily available. Institutions are already required to provide access to such information pursuant to current § 668.23, and the Secretary proposes to reference that access to records in this proposed section. The Secretary proposes that an institution may be granted a filing extension to an institution upon a showing of good cause. The Secretary intends that this extension would be granted on an infrequent basis, as the Secretary believes it is imperative to have the financial information from the institution that most accurately reflects the current financial situation of the institution.

Section 668.16 Standards of Administrative Capability

The Secretary proposes to redesignate § 668.14 as § 668.16.

In matters not governed by specific provisions, section 487(c)(1)(B) of the HEA provides for the establishment of standards of administrative capability for participating institutions that include any matter the Secretary deems necessary for the sound administration of the Title IV, HEA programs. Section 498(d) of the HEA, which was added by the Amendments of 1992, authorizes the Secretary to establish procedures and requirements relating to administrative capability, including the consideration of past performance of institutions or individuals in control of those institutions and maintenance of records. In addition, section 498(d) authorizes the Secretary to establish other reasonable procedures that will contribute to ensuring that institutions will be administratively capable.

Given this framework, the Secretary proposes to strengthen and modify the administrative capability standards in the current regulations by making significant, substantive changes to the administrative standards as well as some technical changes; the significant proposed changes to the current regulations are described below.

The Secretary proposes to clarify the Secretary's current principle that an institution must demonstrate that it is capable of meeting each of the administrative standards in this section to be considered administratively capable. During negotiated rulemaking, alternatives to requiring that institutions meet each administrative standard were discussed. Among the options considered were that the various factors be "weighted," i.e., the Secretary would identify which factors he considered to be the most critical and would incur the greatest penalty if they were not met. Some of the negotiators suggested that the various factors be used only as indicators of capability; that is, the Secretary would be required to review each institution that did not comply with one or more standard to determine the seriousness of noncompliance. However, the negotiators did not reach consensus on an approach. Therefore, the Secretary is proposing that to be fully certified as meeting the standards in this section (as well as the other standards in Subpart B of these regulations) an institution must demonstrate that it is administratively capable by meeting all the administrative standards. An institution that fails to demonstrate compliance with one or two administrative standards could be certified provisionally (see the earlier discussion on provisional certification) if the Secretary were to determine the institution capable of meeting all the standards within a specific time period and that the noncompliance did not necessitate taking a stronger sanction such as a fine, limitation, suspension, or termination proceeding against the institution.

For example, an initial applicant would not be able to demonstrate compliance with all standards prior to participation. However, the Secretary expects such an institution to demonstrate that it is capable of complying with all the standards. Therefore, the Secretary currently provisionally certifies an initial applicant if the Secretary determines that the applicant is capable of meeting the current standards within a specified period of time. The Secretary will continue this practice, using any additional standards proposed in this section if they are adopted in final.

The Secretary proposes to make explicit the requirement that, to be considered administratively capable, an institution must administer all the Title IV, HEA programs in which it participates in accordance with all applicable statutory and regulatory provisions and special arrangements, agreements, and limitations. This expectation has been implicit. However, the Secretary believes it is important to lay out this standard together with all the other administrative standards.

The Secretary proposes to clarify what is meant by a capable individual who is responsible for administering the Title IV, HEA programs. It is important for each institution that is currently participating or seeking to participate in the Title IV, HEA programs to demonstrate that it has staff who are capable of administering the programs properly. While obviously a number of factors should be considered in determining what constitutes "capable," the Secretary believes that one factor that should be addressed in regulations is whether a financial aid administrator has been certified by his or her State to have that capability. This factor would apply in a State that requires financial aid administrators to be certified. The Secretary also proposes to consider whether an individual has successfully completed Title IV, HEA program training that the Secretary has provided or approved. The Secretary is aware that some professional organizations provide high caliber training in various aspects of the administration of the Title IV, HEA programs and wishes to allow for acceptance of that outside training to meet this requirement in the future. The Secretary welcomes comments on what elements and safeguards should be present in an acceptable training program for financial aid administrators. While adequate experience and training are major considerations in evaluating compliance with this standard, the Secretary welcomes suggestions regarding any other appropriate factors that the Department of Education should take into account in determining an individual's capability.

The Secretary proposes to clarify the factors that are considered in determining whether a financial aid office is adequately staffed. The Secretary proposes to specify that in looking at the amount of funds administered by the institution, the Secretary would also consider the number of students who receive any student financial assistance at the institution as it has a direct bearing on whether an office is adequately staffed. The Secretary also proposes to add consideration of the degree of office automation in the financial aid office. While the Secretary has always considered the extent to which financial aid processing is automated in assessing the adequacy of financial aid offices, the Secretary believes it is helpful to acknowledge specifically in the regulations the bearing the degree of office automation has on the staffing levels of financial aid offices.

During the negotiated rulemaking sessions, discussions were held regarding the possible development of specific staffing levels, such as ratios of financial aid staff to the number of financial aid recipients at an institution, for determining the adequacy of the financial aid office of an institution participating in the Title IV, HEA programs for the first time, an institution that undergoes a change of ownership resulting in a change of control, and an institution that has exhibited administrative difficulty with other standards in this section. The Secretary believes that it is not necessary to prescribe specific staffing levels for participating institutions that have not experienced administrative problems. However, the Secretary agreed to solicit comments on the need for an additional method to assess staffing levels of other institutions.

An institution participating in the Title IV, HEA programs for the first time has neither the experience in dealing with large numbers of financial aid recipients nor a record of administering those programs that can be evaluated. During discussions at the negotiated rulemaking session, it was suggested that it might be necessary to prescribe a specific number of staff for the institution's financial aid office that could serve as a guide for determining whether the institution can handle the volume of financial aid applications and funds it expects to receive. This standard would be required until the Secretary is able to judge the institution's actual administration of the programs. Similarly, there is no assurance that an institution that changes ownership will operate with the same staff and procedures and at the same level of funding as was the case under the previous ownership. Thus, that institution's former track record could not be relied upon to predict its continued administrative capability and there might be a need to be able to evaluate the adequacy of current or anticipated staffing levels using specific numbers or ratios, just as the Department would evaluate those of a new participating institution. Finally, if

an institution has documented problems or indicators of trouble in administering the Title IV, HEA programs, these problems could well be caused by inadequate staffing levels in the institution's financial aid office. Requirements for financial aid staff to be maintained at specific levels might need to be imposed upon the institution. To address the problems and administer the Title IV, HEA programs correctly, it is logical to expect an institution to meet minimum staffing levels that might be adopted.

The Secretary solicits comments on other ways of measuring staff adequacy at newly participating institutions, institutions that change ownership resulting in a change of control and participating institutions with documented administrative problems as well as any other categories of institutions that should be subject to requirements for specific staffing levels. The Secretary further invites comment on how such considerations as the size of the institution, and the volume of Title IV, HEA program funds administered by the institution should determine the number or ratio of financial aid staff that the Secretary should prescribe. For example, the Secretary wishes to know whether a reasonable ratio of staff to applicants or recipients can be established, and, if so, what that ratio might be. The Secretary understands the difficulty inherent in strict application of a quantitative formula; nevertheless, concern was expressed at the negotiated rulemaking sessions about having an adequate basis on which to make fair, worthwhile, and consistent judgments of administrative capability. The Secretary recognizes that appropriate staffing levels must include staff not only in the financial aid office but also in the business office or other offices within an institution, and that the use of third-party servicers and office automation have a bearing on those levels. The Secretary asks commenters to address these factors in their recommendations.

The Secretary proposes to require that to be considered administratively capable, an institution have written procedures, or other written information covering, at a minimum, the nature and frequency of communication of information among all the offices that have an impact on the administration of the Title IV, HEA programs and the responsibilities of various offices with respect to the awarding and delivery of Title IV, HEA program funds and reports to the Secretary. The Secretary encourages institutions to have specific written procedures where possible, preferably in procedural manuals, for this purpose. However, the Secretary recognizes that some of the information might be found in catalogs, student or administrative handbooks, or other sources. The Secretary is proposing to add these provisions because audits and program reviews of Title IV, HEA programs administered by institutions have shown that lack of written procedures in these key areas is frequently a contributing factor to a lack of proper controls, resulting in overawards and inadequate accounting of expenditures. To ensure that only eligible students receive funds and in the correct amount, and that borrowers are tracked accurately and timely, it is essential that each institution be clear about how and when pertinent information is transmitted from one office to another. The proposed addition to the regulations includes examples of the types of information to be transmitted. Similarly, it is critical that each office that is responsible for the approval and disbursement or delivery of Title IV, HEA funds have in writing that office's responsibilities and reporting requirements.

The Secretary proposes to clarify what constitutes division of the authorizing and disbursing or delivering functions by adding an example. In the past, there has been virtually no real separation of these duties in some institutions; this situation has presented an opportunity for significant abuse. It is important that two different individuals authorize and disburse or deliver payment, and that an individual performing one of these functions not have control over the work activities of the person or persons performing the other. To guard against collusion, it is also critical that the individuals not be members of the same family or exercise substantial control over the institution through a combined ownership interest in the institution. The terms *substantial control* and *ownership interest* are currently defined in § 668.13. The Secretary considers two individuals to exercise substantial control through a "combined" ownership interest if the individuals hold *together* at least a 25 percent ownership interest in the institution. Thus, an institution would be precluded from having one individual with a 10 percent ownership interest who awards Title IV, HEA program assistance and another individual with a 15 percent ownership interest who disburses the funds. This concept is designed to allow for those employees who participate to a moderate degree in a profit-sharing plan to be employed in one of the capacities described in this provision without having a detrimental impact on the institution's administrative capability. Finally, the Secretary wishes to clarify that, under both current regulations and the proposed regulations, it is acceptable for a check that is to be disbursed or delivered to a student by another office to pass through the office that authorizes payment, as long as the office that authorizes payment does no more than deliver the check to the office responsible for disbursement or delivery to the student.

The Secretary proposes to make explicit that record-keeping is a basic standard of administrative capability. Those new institutions that do not have adequate record-keeping capability would not be approved to participate in the Title IV, HEA programs. The record-keeping capability of participating institutions would be evaluated when the institutions seek renewal of their program participation.

The Secretary proposes to revise the satisfactory progress standards to require that the maximum time frame for completion of an undergraduate program be no longer than 150 percent of the published length of the educational program and that increments of the maximum time frame not exceed the lesser of one academic year or one-half the published length of the educational program. The establishment of the maximum time frame must, as usual, take into account a student's enrollment status. Thus, an institution that offers a four-year degree program (as listed in the institution's catalog) would have to establish a maximum time frame of no more than six years for completion of the program by a full-time student. The time frame could be proportionally longer for a half-time student. The Secretary emphasizes that this requirement would set an upper limit on the period of time for which a student may receive Title IV, HEA program aid. An institution would not be required to expel or otherwise remove a student from the educational program after the expiration of this maximum time frame (unless, of course, the institution has a similar requirement for students who do not receive Title IV, HEA program assistance). The Secretary has a longstanding policy under which 150 percent of the length of an educational program is considered to be a reasonable period in which a serious student should be able to complete the program. The Secretary notes that this proposed time frame is also consistent with proposals made by the NPRM implementing the Student Right-to-Know provisions in section 485(a) of the HEA (57 FR 30826) The Secretary does not believe that Title IV, HEA program aid should be provided beyond the point at which a student can reasonably be expected to complete his or her educational objective.

The Secretary proposes to expand and clarify the requirements for reporting information about possible fraud or illegal misconduct related to the Title IV, HEA programs. The proposed regulations would eliminate the current provision for an institution to refer suspected instances of fraud or other criminal misconduct involving Title IV, HEA program assistance to a State or local law enforcement agency rather than the Office of Inspector General (OIG), if more appropriate. Instead, the proposed regulations would require the institution to notify only the OIG. The proposed regulations would also remove a related requirement—that the institution report to the OIG, for each calendar year, all relevant referrals to State or local law enforcement agencies, as this would no longer be necessary if all referrals were made directly to the OIG. Upon receipt of the information, the OIG will notify and work with the appropriate officials to resolve the issue. The Secretary is proposing to amend this section to streamline the referral process and reduce the burden of reporting information.

Currently, under this provision governing the reporting of instances of suspected fraud and criminal misconduct, institutions are required to report only information regarding applicants for Title IV, HEA program assistance. Another proposed change would expand the reporting requirement with respect to both the types of misconduct to be reported and the individuals and entities involved in the misconduct. In addition to the information currently required, an institution would be required to report information regarding illegal conduct involving the eligibility and funding of the institution and its students through Title IV, HEA programs believed by the institution to have been committed by any employee, third-party servicer, or other agent of the institution that acts in a capacity that involves the administration of the Title IV, HEA programs. This provision would specify that illegal conduct would include possible fraud, misrepresentation, conversion or breach of fiduciary responsibility, or any other illegal conduct. The Secretary believes it is important to investigate any possible illegal misconduct (i.e., misconduct where formal criminal charges have not been brought) in addition to possible criminal misconduct. The intent of this expansion is to specify that institutions should report not only acts that constitute fraud or criminal conduct, but any and all other illegal conduct involving Title IV, HEA programs in which an employee or third-party servicer might have engaged.

In addition to modifying and expanding some of the existing administrative capability standards, and making others explicit, the Secretary proposes to expand the administrative capability standards to include the general areas that SPREs will review when they become operational. The Secretary realizes that the SPRE review standards must be developed in consultation with institutions located in the State and will apply only to those institutions that trigger reviews; therefore, those standards may differ greatly from those proposed here for purposes of evaluating an institution's administrative capability. However, the Secretary believes that these areas of review have a significant bearing on an institution's administrative capability and therefore should be incorporated in the Federal administrative capability standards.

The Secretary's overriding concern is that the Secretary have sufficient information on which to make a determination that a new or currently participating institution is administering or is capable of administering the Title IV, HEA programs efficiently, effectively, and correctly. With this in mind, the Secretary solicits comments on specific ways to quantify these provisions (for example, what a "significant number of students with special needs" is) and whether each of these added requirements should be made applicable to all institutions or whether these provisions should be made applicable only to institutions that meet specific criteria or thresholds, e.g., institutions with short-term programs, a history of high withdrawal rates, high default rates, student complaints, etc.

Specifically, the Secretary is proposing to require institutions that enroll significant numbers of students with special needs to have and implement a plan that provides access to adequate support services for those students. The Secretary believes that an institution that cannot provide adequate peripheral support should not enroll those special-needs students in significant numbers. In evaluating administrative capability, the Secretary has looked historically at withdrawal rates. High withdrawal rates often result in refund and default problems in the FFEL programs. Some institutions have high withdrawal rates because they have recruited students who were not able to complete the program. Student withdrawal for academic reasons has been addressed by changes to the ability-to-benefit provisions: students who do not have a high school diploma or the recognized equivalent now need to pass an independently administered, approved examination. However, other students who have been admitted have had the academic capability to succeed, but have been unable to complete the program because of other factors, such as lack of child care, or changes in child care arrangements, or lack of adequate transportation. Some of the negotiators provided the Secretary with examples of students who could not complete a course of study because of a lack of information about how to access adequate support services, who otherwise may not have enrolled in those programs if accurate information about the restricted availability of those services had been disclosed. For example, if a school enrolls a significant number of students who have small children and, therefore, need someone to look after their children while they are in classes and studying, or students who have no transportation of their own, it is incumbent upon the institution to work with these students to ensure they have access to the ancillary services required in order for them to complete their education or training. The institution may, but need not, actually provide the specific services, such as child care, but must, at a minimum, provide adequate guidance and access to enable their students to overcome barriers to attendance.

The Secretary is proposing that affected institutions have a plan, which they may be asked to submit, to demonstrate that they meet this provision. However, the Secretary is interested in receiving suggestions about other ways to address the problem of institutions that recruit and enroll significant numbers of students who need support services without informing those students about access to the support services. The Secretary solicits comments regarding how to determine what constitutes a "significant number" of students with special needs and what special needs should be included. Further, the Secretary would like to receive proposals for alternate means of addressing this issue.

The Secretary proposes to require each institution to have procedures for receiving, investigating, and resolving student complaints.

The Secretary proposes to require that if the stated objectives of an educational program are to prepare students for gainful employment, the institution

must be able to show that there is a reasonable relationship between the length of the program and entry level requirements for employment. In addition to supporting the length of a program, the institution should be able to substantiate the need for the number of hours of training. The Secretary proposes to consider the relationship between the quantity of training provided in the program and entry-level requirements to be reasonable if the number of clock hours in the program does not exceed by more than 50 percent any State requirement for the minimum number of clock hours necessary to train the student in the occupation for which the program prepares the student. For example, the Secretary is aware of an institution that sought approval of a 600-hour program when the state in which the institution is located requires only 40 hours of training for entry level positions for which the program provided training. The Secretary believes that in situations such as this, the onus is on the institution to demonstrate the value of the longer program. The Secretary believes that the excessive length of programs requires a student to incur additional unnecessary debt.

A corollary requirement is that the need for the training provided is established. Over the past several years, the Secretary has been made aware of many schools that have provided three to six months of training for entry-level jobs, some of which required no external training before employment, as the employers have internal training programs or provide on-the-job training. As a basic tenet of student financial assistance is to enable students who would not otherwise be able to afford needed training or education to enroll in an appropriate program, the Secretary believes that if an institution is administering the Title IV, HEA programs adequately, it can demonstrate that the training it provides is needed. The Secretary solicits suggestions on the most appropriate documentation to show the need for the training.

The Secretary proposes to add to the administrative capability standards the requirement that the institution make information on job availability and state licensing requirements available to students in occupational, professional and vocational educational programs. The Secretary believes that, in order for a prospective occupational, professional or vocational education student and financial aid applicant to make an informed decision about enrollment and use of student financial assistance in a particular program, the applicant must have access to accurate, up-to-date information on the job market for that field, and the availability of specific jobs for which he or she would be adequately prepared after completion of the program. Similarly, the applicant should have access to information on the extent to which the educational or training program addresses state licensing standards, so the informed student can determine, with reasonable assurance, that necessary topics are covered in the program and the extent to which additional information, not necessary for state licensure, is covered. The Secretary notes that this information may be obtained by the institution from other Federal and State sources, such as Employment Service or State occupational coordinating committees. An institution would not be required to produce this information on its own.

The Secretary proposes to include within the administrative capability standards a requirement that the institution have advertising, promotion, and student recruitment practices that accurately reflect the content and objectives of the educational programs offered by the institution. The Secretary believes that to administer the Title IV, HEA programs in a responsible manner, the institution must advertise its programs and the financial assistance available in an accurate manner.

The Secretary proposes to specify that an institution provide all required program and fiscal reports and financial statements in a timely manner. The Secretary believes strongly that adequate, timely submission of accurate reports is an essential element in the proper administration of the Title IV, HEA programs. The failure to meet requirements for submission of reports is an indication that an institution's administrative capability is impaired.

The Secretary proposes to include as a specific administrative standard the requirement that an institution have no outstanding liabilities owed to the Secretary unless the institution has made satisfactory arrangements to repay those liabilities and is honoring those arrangements. The Secretary believes that unless a participating institution demonstrates it has met all its programmatic, contractual, and fiscal obligations in the past, and has taken positive steps to rectify problems and liabilities in the past, there is no reason to presume that the institution has the capability and willingness to administer the Title IV, HEA programs responsibly in the future.

The Secretary proposes to take into account whether significant problems have been identified in final reports and determinations issued by the Secretary, the OIG, accrediting agencies, SPREs, guaranty agencies, and State authorizing agencies and findings in criminal, civil, or administrative proceedings, in addition to financial and compliance audit reports and program review reports, in assessing an institution's administrative capability. The Secretary believes that pertinent information from any of the agencies or proceedings identified is relevant to determining whether an institution is administratively capable. An institution should be considered administratively capable only if there is no evidence of significant problems in those reviews or proceedings.

The Secretary proposes to add to the administrative capability standards, the prohibition against debarments, suspensions, and causes of debarment or suspension under E.O. 12549 and the FAR, 48 CFR subpart 9.4. The Secretary proposes to amend this section to provide that an institution would not be considered administratively capable if (1) cause exists for debarring the institution under 34 CFR 85.305, or for suspending the institution under 34 CFR 85.405, (2) any principal (as that term is used in 34 CFR part 85) of the institution is debarred or suspended, or (3) the institution is an affiliate (as that term is used in 34 CFR part 85) of any person so debarred or suspended. Under these changes, the Secretary would not certify the administrative capability of an institution that fits into any of these categories. The Secretary would not permit such an institution to begin participation in a Title IV, HEA program, and the Secretary would require a participating institution to rectify the problem that adversely affects the institution's administrative capability. A participating institution's inability or unwillingness to rectify the problem would warrant initiation of an emergency action, limitation, suspension, or termination proceeding against the institution under subpart G. The Secretary expects that such a proceeding would be combined with a debarment or suspension proceeding under 34 CFR part 85.

These changes are needed to establish appropriate safeguards to protect the Title IV, HEA programs when serious questions are raised about the honesty and lawfulness of the conduct of an institution's owners, officers, directors, management, employees, or affiliates whose duties involve the administration of or influence over those programs.

The Secretary proposes to require that an institution comply with any standards regarding completion and placement rates and pass rates on State licensing examinations established by the State in which an institution is located as a standard of administrative capability. The Secretary supports the development of appropriate standards by each State, as individual States will be able to address local concerns and conditions in the development of standards. In the absence of such a State standard, the Secretary believes an institution must comply with appropriate standards regarding completion rates, placement rates and pass rates on required State examinations, as established by the Secretary, in consultation with institutions located in the State.

The Secretary proposes to require as a standard for full participation in the Title IV, HEA programs that institutions have default rates that do not exceed 20 percent for the Federal Stafford Loan and Federal SLS programs, and default rates that do not exceed 15 percent for the Federal Perkins Loan program. For the Federal Stafford Loan and Federal SLS programs, a 20 percent trigger is currently used as an indicator of impaired administrative capability. For the Federal Perkins Loan program, the Secretary has used a 20 percent trigger as an indicator of impaired administrative capability. The Secretary is proposing to change this figure to 15 percent for consistency with the statutory requirement of section 461(g) of the HEA that requires an institution with a cohort default rate of 15 percent in the Federal Perkins Loan program to establish a default management plan pursuant to regulations. Under this proposal, institutions applying for participation under a change of ownership or for a renewal of their participation with default rates exceeding these proposed amounts would be provisionally certified for a lack of administrative capability if no other serious administrative capability problems were identified that warranted denying the application. The Secretary notes that, under this proposal, an institution applying for a renewal of participation that has a default rate under the Federal Stafford Loan programs that exceeds 20 percent could submit information demonstrating mitigating circumstances as provided in § 668.15 of current regulations to demonstrate that the institution's default rate is not a basis for denial of full participation. If no other serious administrative capability problems were identified that warrant denying the application for full participation, an institution with default rates over these triggers could receive full participation if it successfully showed that those mitigating circumstances existed.

In addition, the Secretary is proposing that an institution would not be considered administratively capable if it has a withdrawal rate of more than 33 percent. This change from the current regulations, under which the Secretary considers withdrawal rates of more than 33 percent as an indicator of problems in administrative capability, would become, like the other standards in this section, absolute requirements rather than mere indicators. The calculation of this withdrawal rate is currently made using the formula on the application for participation in the Title IV, HEA programs.

The Secretary is proposing these changes to the current default rate and withdrawal rate requirements because the Secretary believes that these rates are appropriate measures of an institution's past administrative performance; an institution that administers the Title IV, HEA programs correctly will, absent mitigating circumstances for its Federal Stafford Loan and Federal SLS programs default rate, have default rates and withdrawal rates below these percentages.

The Secretary understands that some currently participating institutions have rates in excess of these levels. Therefore, the Secretary anticipates that when these institutions next undergo a reevaluation of their institutional eligibility, administrative capability, and financial responsibility, some of them would be determined not to be administratively capable purely for failure to meet these standards, even if they meet all the other financial responsibility and administrative capability standards in these proposed regulations. In those cases, if there are no other significant problems, these institutions could be granted provisional certification so they could continue to participate in the Title IV, HEA programs for a limited time on a limited basis to allow them to bring their default or withdrawal rates or both down to an acceptable level. However, an institution with a high withdrawal rate applying for participation in the Title IV, HEA programs for the first time would not be approved to participate in the Title IV, HEA programs. In addition to these default rates the Secretary plans to establish an appropriate default rate applicable to the FDSL Program and solicits comments on what that should be. For example, comments are requested on whether FDSL Program default rate thresholds should be developed to take into consideration students who are using income contingent repayment.

Section 668.17 Default Reduction Measures

Default Rates

Because of the changes described above in proposed § 668.16 concerning the effect of default and withdrawal rates on an institution's administrative capability, the remaining provisions in current § 668.15 would address default reduction measures for institutions with high Federal Stafford loan and Federal SLS default rates. Therefore, the Secretary proposes to redesignate current § 668.15 as § 668.17 and rename it "Default reduction measures."

The Secretary proposes to clarify that the Secretary notifies an institution of its Federal Stafford loan and Federal SLS cohort default rate if that rate exceeds 20 percent for any fiscal year before the Secretary takes an action against the institution. This change merely reflects the Secretary's current practice.

The Secretary proposes to remove the option to require an institution with a Federal Stafford loan and Federal SLS cohort default rate that exceeds 20 percent for any fiscal year to submit to the Secretary and guaranty agencies the specific information described in current § 668.15(b)(2)(ii) concerning pass rates, job placement rates, and completion rates. These changes are consistent with earlier statutory and regulatory revisions to current § 668.15 and because the Secretary rarely asks institutions to submit this information. The Secretary would reserve the right to request any information the Secretary deems necessary to make a preliminary determination as to the appropriate action to be taken by the Secretary regarding the institution.

Default Management Plan

The Secretary proposes to clarify requirements for implementation of default management plans for institutions with Federal Stafford loan and Federal SLS cohort default rates greater than 20 percent for any fiscal year. The Secretary has required implementation of a default management plan for institutions with cohort default rates greater than 20 percent since the implementation of the default reduction initiative in final regulations published June 5, 1989 (54 FR 24114). In the preamble to the June 5, 1989, final regulations, the Secretary stated that, in accordance with current § 668.15(e), an institution with a default rate over 20 percent could be required to implement a default management plan. The proposed provision specifies that, for an institution with a Federal Stafford loan and Federal SLS cohort

default rates greater than 20 percent or less than or equal to 40 percent for any fiscal year, the institution would have to submit a default management plan that implements the measures described in appendix D to this part. An institution could only implement a default management plan that deviates from the measures in appendix D if the institution submits a justification for the deviation that is approved by the Secretary. An institution with a Federal Stafford loan and Federal SLS cohort default rate that exceeds 40 percent for any fiscal year, and, therefore, is subject to a limitation, suspension, or termination action under subpart G, would have to implement all of the default reduction measures described in appendix D to this part no later than 60 days after the institution receives the Secretary's notification of the institutions cohort default rate. The institution would not be required to submit any written plans to the Secretary or a guaranty agency unless specifically requested to do so by the Secretary or guaranty agency.

End of Participation

Section 435(a)(2) of the HEA provides that an institution's participation in the FFEL programs ends if the Secretary determines that the institution's cohort default rate for each of the three most recent fiscal years for which the Secretary has determined the institution's rate is equal to or greater than the applicable threshold rates. Section 435(a)(2)(B) of the HEA sets the threshold rate for fiscal year 1994 and all subsequent fiscal years at 25 percent. Consistent with current regulations, institutions may appeal such loss of participation by demonstrating that mitigating circumstances as found in current § 668.15 are present.

Currently, an institution may not participate in the FFEL programs beginning eight calendar days after the date the Secretary notifies the institution that its cohort default rate exceeds the specified thresholds. The Secretary proposes to change this provision to require that an institution may not participate in the FFEL program beginning with the date that the institution receives notification from the Secretary that its cohort default rate exceeds the specified thresholds. The Secretary does not believe it is appropriate to continue to allow an institution that has lost its participation due to a high default rate to have the benefit of further Title IV, HEA program funds unless it successfully appeals. The Secretary proposes to make corresponding changes throughout this section.

Appeal Procedures

The Technical Amendments of 1993 amended section 435(a) and (m) of the HEA as those sections relate to institutional appeals of cohort default rates. These amendments are not reflected in this NPRM but will be addressed separately. However, the Secretary proposes to remove the provision that provides that an institution may appeal its loss of participation in the FFEL programs under the provisions of this section on the grounds that the institution has reduced its cohort default rate for each of the two most recent fiscal years for which the Secretary has calculated a cohort default rate for that institution by 50 percent of the amount by which its cohort default rate for the previous year exceeds the applicable threshold percentage specified in this section. This provision is no longer applicable because it was limited to notices of loss of eligibility that were received by an institution in the fiscal year that ended September 30, 1991.

Current regulations allow an institution to appeal its loss of participation in the FFEL programs under the provisions of this section on the grounds that, for any twenty-four month period ending not more than six months prior to the date the institution submits its appeal, two-thirds or more of the institution's students who are enrolled on at least a half-time basis are individuals from disadvantaged economic backgrounds as established by documentary evidence submitted by the institution such as a Pell Grant Index of zero, or an AGI of less than the poverty level, as determined by criteria developed by the Department of Health and Human Services. The Secretary proposes that the term "such as" be eliminated to reflect the current practice; i.e., the institution must establish the grounds for its appeal based only on the information specified in the regulations. The Department would only accept the specific evidence listed in the regulations although the current regulations suggest that other evidence is acceptable. This change reflects the current practice of the Secretary. The Secretary solicits comment on other acceptable forms of acceptable documentation.

Definitions

The Student Loan Reform Act (Pub. L. 103–66) amended the definition of *cohort default rate* to include Federal Consolidation Loans which are used to repay Federal Stafford and Federal SLS loans. The Secretary proposes to amend this section to reflect this change.

Definitions applicable to this section would be revised to reflect changes to the definition of *cohort default rate* in section 435(m) of the HEA. In accordance with the statute, as in the past, for any fiscal year in which 30 or more current and former students at the institution enter repayment on Federal Stafford or Federal SLS program loans received for attendance at the institution, the cohort default rate is the percentage of those current and former students who enter repayment in that fiscal year on Federal Stafford or Federal SLS program loans received for attendance at that institution who default before the end of the following fiscal year. Formerly, for any fiscal year in which fewer than 30 of the institution's current and former students entered repayment on a Federal Stafford or Federal SLS loans received for attendance at the institution, the cohort default rate was the average over the three most recent fiscal years of the rates calculated in the manner described for any fiscal year in which 30 or more current and former students enter repayment on a Federal Stafford or Federal SLS program loan. The HEA now requires that, for any fiscal year in which fewer than 30 of the institution's current and former students enter repayment, the cohort default rate is the percentage of those current and former students who entered repayment on Federal Stafford loans or Federal SLS loans in any of the three most recent fiscal years who default before the end of the fiscal year in which they entered repayment.

The Technical Amendments of 1993 changed section 435(m)(1)(B) of the HEA to make clear that the issue of improper loan servicing is only part of the appeal process and does not relate to the Secretary's initial release of cohort default rates. Thus, in issuing the rates initially, the Secretary is not obligated to consider allegations of improper loan servicing. The Secretary proposes to amend the regulations to reflect this change by removing the requirement that the Secretary must exclude any loans that, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.

Section 435(m) of the HEA requires the addition of the requirement that a Federal SLS loan not be considered to enter repayment until after the borrower has ceased to be enrolled in an educational program leading to a degree or certificate at the eligible institution on at least a half-time basis (as determined by the institution) and ceased to be in a period of forbearance based on that enrollment. Section 435(m) further requires that each eligible lender of a Federal SLS loan to provide the guaranty agency with the information necessary to determine when the loan entered repayment for purposes of this definition and requires the guaranty agency to provide that information to the Secretary.

Section 668.22 Institutional Refunds and Repayments

General

The Amendments of 1992 added section 484B to the HEA to require an institution to have in place, as of July 23, 1992, a fair and equitable institutional refund policy as promulgated in that section. The fair and equitable refund requirements prescribed by law are similar to the fair and equitable refund requirements prescribed by § 682.606 of the FFEL program regulations for institutions that participate in the FFEL programs. The HEA extends this requirement to institutions participating in any Title IV, HEA program and makes various modifications.

Under this fair and equitable refund policy, an institution must make a refund of unearned tuition, fees, room and board, and other charges to a student who received Title IV, HEA program assistance (including PLUS loans received on behalf of the student) if the student does not register for the period of enrollment for which the student was charged or if the student withdraws, drops out, or is expelled from the institution before completing the period of enrollment for which he or she was charged.

The interpretation of the applicability of a fair and equitable refund policy was the subject of extensive discussions among the negotiators. The HEA specifically mandates a refund to any student who received Title IV HEA program assistance. However, at issue during the negotiations was the fairness and equity in having a refund policy for students who receive Title IV, HEA program assistance that is different from the refund policy for those students enrolled in the same educational program who do not receive Title IV, HEA program assistance. Several negotiators felt that requiring institutions to apply the refund requirements found in this proposed section to all students who attend an institution would be an unauthorized intrusion by the Secretary into the administrative decisions of an institution. Many negotiators felt that compliance with a refund requirement that is applicable to all students would be too costly for an institution.

Therefore, the Secretary proposes to define a fair and equitable refund policy only with respect to students who receive Title IV, HEA program assistance. Although the Secretary proposes to limit the scope of this provision to those recipients, under this proposed provision an institution would not be prohibited from adopting these refund requirements for all students.

The Secretary proposes to require that an institution provide a written statement containing its refund policy to prospective students and make its policy known to currently enrolled students. This proposal is based upon requirements currently prescribed by § 682.606 of the FFEL program regulations. The Secretary proposes to expand this FFEL provision to require that the written statement must be clear and conspicuous and must include information on the allocation of refunds and repayments to sources of aid. In keeping with current FFEL program regulations, the Secretary proposes that the written statement include examples of the application of the refund policy. This requirement would be met if the institution informs students in the written statement that examples are available and the institution makes the examples readily available to the student upon request.

As in the current FFEL program regulations, the Secretary proposes to require an institution to provide the written statement to prospective students. Section 668.41(b) of current regulations defines a "prospective student" as an individual who has contacted an institution participating in any Title IV, HEA program for the purpose of requesting information concerning admission to the institution. The Secretary believes that a student is a "prospective student" if he or she is not enrolled in an institution and has not entered into any contractual agreement or incurred a financial obligation to attend an institution. Therefore, the Secretary proposes to require an institution to provide this written statement to a student prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement. If the institution's refund policy changes, the institution would have to ensure that all students are made aware of the new policy and advise the currently enrolled students of any changes that the institution intended to apply to those students for their current enrollment period.

The Secretary believes that some institutions have assessed excessive equipment charges that have increased the total aid received. For example, some students have been charged as much as ten or fifteen times an institution's documented equipment costs for kits students were required to purchase. If the calculation of a refund includes equipment charges with such an extreme price mark-up, the amount of money an institution would be permitted to keep is greatly inflated. To help curb this abuse, the Secretary is proposing to require an institution to publish in its school catalog or other information provided to its students, the cost to the student of required supplies and equipment. Further, the Secretary proposes to require an institution to substantiate to Department officials, upon the request of the Secretary, that the costs are reasonably related to the costs of providing the supplies and equipment to students. This provision would not require the institution to provide this cost substantiation to students, but would permit the Secretary to obtain information regarding the cost of required supplies and equipment to determine whether an abuse in this area is occurring or has occurred. For example, this information may be routinely reviewed during a program review. If the charges for equipment and supplies appear to be unreasonable, the institution would be required to show that its charges were reasonably related to the cost of providing those items. Under this proposal, an institution would not be expected to provide this information to the Secretary as a regularly scheduled submission, but only upon request from the Department of Education.

Fair and Equitable Refund Policy

Section 484B of the HEA defines a fair and equitable refund policy to be one that provides for at least the largest of the amounts provided under:

(1) The requirements of applicable State law;

(2) The specific refund requirements established by the institution's nationally recognized accrediting agency and approved by the Secretary; or

(3) The *pro rata* refund calculation described in the statute for students attending the institution for the first time, except that this *pro rata* refund calculation does not apply for any student whose withdrawal date is after the 60 percent point in time in the period of enrollment for which the student has been charged.

The Secretary intends to clarify that an accrediting agency's refund policy must contain specific standards. Refund "guidelines" developed by an accrediting agency (for example, an accrediting agency refund policy that

only requires an institution to develop its own fair and equitable refund policy) would not be considered to have standards. Obviously, an institution would not be considered to be in compliance with a State's or an approved accrediting agency's refund policy if the institution adopts a refund policy that is merely similar to the State's or accrediting agency's but does not incorporate all the required standards. This policy is consistent with the current provisions of the FFEL program regulations.

The Secretary recognizes that there may be situations where an institution's State and accrediting agency do not have specific refund policies. If a student is not entitled to a *pro rata* refund, no specific standard would then exist under the law to ensure that the student received a fair and equitable refund. Because the Secretary believes that all recipients of Title IV, HEA program assistance should be treated fairly, the Secretary is proposing to require an institution to provide a refund to a student that is the larger of the institution's refund policy or the specific refund standards contained in appendix A to this part if an institution's State and accrediting agency do not have refund standards and the student is not entitled to a *pro rata* refund. The NPRM published on January 24, 1994 to implement the accrediting agency provisions in subpart 2 of part H of the HEA proposes that the Secretary will not recognize an accrediting agency unless the agency has a refund policy that provides for a fair and equitable refund to a student. The Secretary notes that if this provision of the accreditation agency NPRM is adopted in final regulations, there would not be a need for the proposed appendix A requirement once all accrediting agencies have been reviewed and recognized by the Secretary.

The refund policy proposed to be adopted as appendix A is derived from the guidelines developed by the National Association of College and University Business Officers (NACUBO). Currently, under the FFEL program regulations, an institution must follow the guidelines developed by NACUBO and restated in appendix A to the FFEL program regulations (or refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary) if neither an institution's State nor its accrediting agency have refund standards. While the NACUBO standards identify policy standards that institutions should have for the refund of student charges, the Secretary's proposed appendix A establishes policy standards that institutions must have for the refund of student charges. The Secretary has always considered these standards as mandatory for purposes of the FFEL program regulations and is, therefore, making that interpretation clear in these proposed regulations. Further, the Secretary's proposed appendix A to this part would mandate the percentage of tuition charges that must be returned to a student who withdraws from an institution at various intervals during the refund period. In the development of the actual refund calculation for this policy, the Secretary adapted a proportionate calculation that is similar to refund policies used by proprietary institutions. The Secretary believes that this refund schedule provides a fairer allocation of resources between the institution and the Title IV, HEA programs than exists under the shorter refund periods often found at traditional colleges and universities. This proposed refund policy is not normally as generous to the student as the *pro rata* refund policy prescribed by the statute, because the affected students would not be first time students and, therefore, would not be entitled to the full protection of the *pro rata* refund policy. Under the standards in appendix A, a student who submits written notice of withdrawal up to one week before the first day of class would receive a refund of 100 percent of tuition charges. The refund would be reduced to at least 90 percent if the student submits written notice of withdrawal between the end of the 100 percent period and the first 10 percent of the period for which the student was charged. A student would receive at least a 50 percent refund if he or she withdraws between the first 10 percent and the first 25 percent of the period for which the student was charged. Finally, a student would receive at least a 25 percent refund if he or she withdraws between the first 25 percent and the first 50 percent of the period for which the student was charged.

As a part of the refund policy in proposed appendix A, the Secretary would allow an institution to subtract from the refund to a student any charges for equipment (including books and supplies) if there is a separate charge for the equipment and the student actually obtains the equipment but the student fails to return the equipment within 20 days after his or her withdrawal. This provision is discussed further in the explanation on *pro rata* refunds.

An institution must determine whether a student withdrew prior to the 60 percent point in time in the period of enrollment for which the student has been charged when determining whether the *pro rata* refund calculation is applicable to a student. The Secretary proposes to define "the 60 percent point in time in the period of enrollment for which the student has been charged" based upon whether the educational program in which the student is enrolled is measured in credit hours or clock hours. In the case of an educational program that is measured in credit hours, this point would be the point in calendar time when 60 percent of the period of enrollment for which the student has been charged has elapsed. In the case of an educational program that is measured in clock hours, this point would be the point in time when the student completes 60 percent of the clock hours scheduled for the period of enrollment for which the student is charged.

For instance, if the student's period of enrollment in an educational program that is measured in credit hours is scheduled to last 5 months (20 weeks), the 60 percent point of the period is at 12 weeks. However, in the case of a program measured in clock hours, the Secretary believes that it is more accurate to use the number of completed clock hours to determine the percentage of enrollment. For instance, if the student is scheduled to complete 900 clock hours, the 60 percent point of the period of enrollment occurs when the student has completed 540 clock hours. The Secretary wishes to emphasize that the definition of the determination of the 60 percent point in time in the period of enrollment for which the student has been charged is different from the determination of "the portion of the period of period of enrollment for which the student has been charged that remains" that is used to calculate the refund after the institution has determined that the *pro rata* refund calculation is to be used. The proposed definition of the latter term will be discussed later.

In determining the largest refund to a student, the Secretary proposes to require an institution to determine the largest refund for each student. An institution would not be permitted to determine which refund is generally the most generous and use that refund calculation for all students. The Secretary believes that current computer technology enables an institution to automate this determination through the use of computer software.

Pro Rata Refund

The Secretary notes that although the statutory requirements for *pro rata* refunds supersede the *pro rata* regulations found in the FFEL program regulations, institutions have been advised to follow guidance given for implementation of the FFEL program regulations as "safe-harbor" guidance for implementation of the statutory requirements for *pro rata* refunds. The Secretary intends that final regulations for *pro rata* refunds developed as a result of this NPRM and any guidance given for implementation of these regulations will replace the required *pro rata* refund policy for an institution that is required to use a *pro rata* refund policy because the institution has a cohort default rate that exceeds 30 percent under the FFEL programs.

A "*pro rata* refund," as defined in statute, is required for a student attending an institution for the first time, unless another applicable refund is greater. The *pro rata* refund may not be less than that portion of the tuition, fees, room, board, and other charges assessed the student by the institution equal to the portion of the period of enrollment for which the student has been charged that remains on the withdrawal date. The *pro rata* refund is then rounded downward to the nearest 10 percent of that period. The *pro rata* refund is then reduced for any unpaid charges and a reasonable administrative fee. The administrative fee may not exceed the lesser of one hundred dollars or five percent of the tuition, fees, room and board, and other charges assessed the student.

The Secretary proposes to permit institutions to subtract certain amounts of institutional charges from the refund to the student. The Secretary wishes to clarify that these proposed regulations would permit an institution to subtract charges or portion of charges from a *pro rata* refund only if the charges are included in the calculation of the *pro rata* refund.

Under the statute, an institution may subtract any unpaid charges owed to the institution by the student. The Secretary is proposing to define unpaid charges by using the definition for an "unpaid amount of a scheduled cash payment" published in the **Federal Register** on June 8, 1993 (58 FR 32188). Although those final regulations discussed the unpaid amount of a scheduled cash payment as being excluded from the amount the institution may retain for institutional charges, rather than for the purpose of excluding any unpaid balance from the refund to the student, the Secretary believes it is appropriate to adopt the same definition to define these unpaid charges. In accordance with the current regulations, a student's scheduled cash payment would be defined as the amount of institutional charges that is not paid for by financial aid. An institution could count any late disbursements of Title IV aid as financial aid for this purpose (i.e., the amount of the late disbursement would not be included as part of the student's scheduled cash payment.) Any amount of the scheduled cash payment that has not been paid would be the amount of unpaid charges owed by the student. The treatment of unpaid charges for refunds other than *pro rata* refunds is addressed later in this discussion.

The statute also permits an institution to subtract a reasonable administrative fee from the refund owed to a student. This administrative fee must be a real charge and documented as such. An institution may not automatically subtract the lesser of five percent of the tuition, fees, room and board, and other charges assessed the student or one hundred dollars if no such administrative fee actually exists.

The Secretary proposes to add to the list of permitted subtractions from the refund to a student any application fee charged by the institution. The Secretary believes that an application fee is a fee incurred separately from a student's charges for an enrollment period, and therefore, should not be included in the refund to the student.

In addition, for institutions whose students are issued meal credits that can be spent irregularly throughout the enrollment period (e.g., coupons or meal tokens) the Secretary proposes to allow an institution to deduct from the refund owed under this paragraph the portion of "board" charges (i.e., meal tickets) that has been expended by the student that exceeds the portion attributable to the period for which the student attended at the time of withdrawal. For example, if a student withdrew at the 50 percent point in time in the period of enrollment for which the student has been charged but had used 60 percent of the meal tickets, the institution could subtract from the refund to the student the value of the meal tickets attributable to that 10 percent of the period of enrollment that the student did not attend. If a student used less than the attributable value of the meal tickets at the time of his or her withdrawal, an institution would not be permitted to subtract any amount from the refund to the student. An institution would not be permitted to subtract any amount from the refund to the student in cases where students have unlimited use of meal tickets.

The Secretary intends to continue the current policy regarding the inclusion of books, supplies, and other equipment in the *pro rata* refund calculation consistent with guidance given to institutions that were required to use a *pro rata* refund policy because the institution had a default rate that exceeds 30 percent and was required to calculate a *pro rata* refund for a student who received a loan under the FFEL programs. As is currently the case, an institution is required to include the full amount of charges for equipment in the calculation of *pro rata* refund if a separate charge exists for the equipment by the institution or if the institution requires the student to purchase the equipment from a certain vendor. The Secretary believes that by charging students a separate equipment charge or by requiring students to purchase the equipment from a single vendor (for example, a school book store) the equipment charges are being mandated by the institution and should be treated as institutional costs. In effect, the institution is the sole source of the equipment. If an institution does not have a separate charge for equipment and the student has the option of purchasing the equipment from more than one source, the institution would not have to include the equipment charge in the *pro rata* refund calculation. An institution would have to be able to demonstrate that its students have the option of purchasing the equipment from other sources that are easily accessible to the student and that the students are advised that an option is available.

The Secretary proposes to allow an institution to subtract from the refund to a student any charges for equipment (including books and supplies) that a student could have returned for credit but did not do so. Under this provision, there would have to be a separate charge for the equipment, and the student must actually have obtained the equipment but failed to return the equipment within 20 days after his or her withdrawal. This provision was suggested by one of the negotiators and is based upon California law. By consensus of the negotiators, this provision would be extended to situations where the equipment and supplies are sold by an affiliate or related entity of the institution. If the student does not return the equipment, the institution could subtract from the *pro rata* refund owed to the student the documented cost to the institution of equipment issued to the student. The student would be liable for the amount, if any, by which the documented cost for equipment exceeds the amount of the student's *pro rata* refund.

Under this proposal, if some or all of the equipment is not actually received by the student, the institution would have to include in the *pro rata* refund

calculation 100 percent of the amount paid for that portion of the equipment. Further, if an institution gives a student the option to return the equipment, the institution would not be permitted to subtract the cost of the equipment from the refund to the student if the student chooses to return the equipment and does so within 20 days of his or her withdrawal. The Secretary believes that 20 days provides the student with a sufficient period of time to return equipment without delaying the refund to the student.

The Secretary proposes that any equipment returned by a student must be in good condition allowing for reasonable wear and tear. The Secretary notes that there may be restrictions under State laws that prevent an institution from accepting returned equipment due to health and sanitary reasons. Other conditions might also limit the return of equipment. For example, a workbook that has been written in or a damaged text book might not be reusable. The Secretary solicits comments on whether this provision should be expanded to identify other conditions that could affect the institution's ability to reissue equipment.

The Secretary notes that, because an institution must include the charges listed above in the calculation of a *pro rata* refund and is then permitted to subtract the charges or a portion of the charges from this refund, in many cases it appears that an institution could retain more than the actual charge to the student. For example, if an institution that charges a $100 administrative fee calculates a *pro rata* refund to a student, a portion of the $100 charge would be refunded to the student in accordance with the *pro rata* refund formula, and a portion of the charge would be retained by the institution. Yet, in addition, the institution could then be permitted to subtract the full $100 from the refund to the student. The Secretary requests comments on whether it may be more appropriate to require institutions to exclude these charges from the refund calculation entirely rather than subtracting the charge after performing the calculation. The Secretary also requests comment on whether some other means should be adopted to eliminate this potential "double counting" of charges.

For purposes of determining a *pro rata* refund, the Secretary proposes to exclude from the "room charges" that are to be included in the refund calculation, any room charges for off-campus housing that are passed through the institution in their entirety to an entity that is not under the control of, related to, or affiliated with the institution. The Secretary recognizes that an institution may enter into an agreement with an outside agency to provide lodging for students. Under such an arrangement, the institution is merely a conduit that passes the room charges along to the other entity, yet those charges appear as institutional charges on student accounts. In these cases, the independence of the entities and the students' continuing right to occupy the housing after the students withdraw warrant the exclusion of the room charges from the refund calculation.

The Secretary also proposes to exclude from the *pro rata* refund calculation charges for group health insurance that are mandatory for all students in the calculation of a *pro rata* refund so long as the coverage remains in effect for the students throughout the period for which the student was charged. The Secretary notes that the inclusion of these group health insurance charges in the refund calculation could cancel insurance coverage that might otherwise be extended to the student beyond the student's withdrawal date.

The Secretary proposes to define a student attending an institution for the first time as a student who has not previously attended at least one class at the institution. A student who received a refund of 100 percent of his or her tuition and fees (less any permitted administrative fee) under the institution's refund policy for previous attendance at the institution would also be considered a first-time student.

The Secretary believes that a first-time student at an institution is a student who is attending that institution, as opposed to any institution, for the first time. Therefore, if the student has not previously attended at least one class at a specific institution, the Secretary would consider the student to be attending that institution for the first time. If a student transfers to another institution, he or she would count as a first-time student at the new institution, if he or she has not previously attended at least one class at the new institution. If a student attends an institution, withdraws from the institution (and receives less than a 100 percent refund), and then returns to the same institution, the student would not be treated as a first-time student for his or her second period of attendance. The Secretary believes that if a student has previously received a 100 percent refund at an institution, for purposes of this definition, the student should be treated as if he or she had not previously attended the institution.

The Secretary proposes that a student should remain a first-time student until the student withdraws from the institution after attending at least one class, or completes the period of enrollment for which he or she has been charged, whichever occurs first. Therefore, the shortest amount of time a student could remain a first-time student is the period until he or she withdraws after attending one class. The longest amount of time a student could remain a first-time student is the period until his or her completion of the period of enrollment for which he or she has been charged.

The Secretary proposes to adopt for all the Title IV, HEA programs the requirement currently found in the FFEL program regulations that an institution's payment to a lender of the portion of a refund allocable to a Title IV, HEA program cannot be delayed because of a delay in the return of equipment. The provision would apply to the portion of the refund due to any Title IV, HEA program.

In the actual calculation of a refund under the *pro rata* refund provisions of section 484B of the HEA, the amount of the refund is based on "the portion of the period of enrollment for which the student has been charged that remains [after the student stopped attending]." Under the law, "the portion of the period of enrollment for which the student has been charged that remains" in an educational program measured in credit hours is determined by dividing the number of weeks that the student did not complete by the total number of weeks in the program. For a clock-hour program, the determination is made by dividing the number of clock hours not completed by the total number of clock hours. For a correspondence program, the determination is made by dividing the number of lessons not completed by the total number of lessons. The Secretary has merely repeated that language here. The Secretary would like to note that "the portion of the period of enrollment for which the student has been charged that remains" is used to calculate the *pro rata* refund to a student and is distinct from the determination of the 60 percent point in time in the period of enrollment for which the student has been charged that is used to determine whether the *pro rata* refund calculation is applicable. The definition of "the 60 percent point in time in the period of enrollment for which the student has been charged" was discussed earlier in the summary.

Period of Enrollment for Which the Student Has Been Charged

Generally, the Secretary proposes to define "the period of enrollment for which the student has been charged," as the actual period for which an institution charges a student. However, the Secretary proposes to establish a minimum period of enrollment for which the student has been charged to prevent institutions from establishing very short periods to minimize the program charges that would be subject to *pro rata* refunds for first-time students. In the case of an educational program that is measured in credit hours and uses semesters, trimesters, quarters, or other academic terms, the minimum period would be the semester, trimester, quarter, or other academic term. In the case of an educational program that is measured in credit hours and does not use semesters, trimesters, quarters, or other academic terms, or an educational program that is measured in clock hours, the minimum period would be the lesser of the length of the educational program or an academic year. This proposed definition is based on the current policy for the FFEL programs that sets minimum certification periods for loans. This policy was designed partly to prevent institutions from circumventing the refund provisions currently found in § 668.22. The Secretary invites comments on whether other safeguards are needed to prevent institutions from circumventing the *pro rata* refund requirements.

The Secretary notes that there may be institutions that use different periods for categories of charges. For example, an institution may charge by the academic year for tuition, but by the academic term for books and supplies. The Secretary, therefore, proposes that, for purposes of determining refunds under this section, "the period of enrollment for which the student has been charged" is the longest period for which the student is charged. The institution must include any charges assessed the student for that period of enrollment or any portion of that period of enrollment in calculating the refund. In the example above, since the institution charged for the entire academic year for tuition, the institution would have to determine the actual total charge for books and supplies for the academic year in order to determine the refund to the student. If, in the example above, the institution did not charge for books and supplies after the first academic term, the institution would only include the charges for the first academic term when calculating the refund for the academic year.

The Secretary also proposes to use the period of enrollment for which the student has been charged, instead of the payment period concept currently used, to determine the return of refunds and repayments to the Title IV, HEA programs. In doing away with the concept of a payment period for purposes of the calculation of refunds, the Secretary also proposes to do away with the practice of attributing Title IV, HEA program assistance when determining the return of refunds and repayments to the Title IV, HEA programs. The Secretary believes that the premise for the calculation of a *pro rata* refund, (i.e., the refund is to be determined for the percentage of a period of enrollment for which the student has been charged that remains) dictates that the institution should look at the amount of Title IV, HEA program assistance received for that same percentage of the period. The Secretary believes that adopting the use of the period of enrollment for which the student has been charged to determine the return of all refunds and repayments to the Title IV, HEA programs greatly simplifies these determinations.

Overpayments

The Secretary proposes to restructure and revise the current provisions relating to overpayments and the repayments to Title IV, HEA programs of institutional refunds and overpayments. This preamble addresses those areas of these current provisions that have been significantly revised.

No changes are proposed to the procedures by which an institution determines if a student has received an overpayment for noninstitutional costs.

Repayments to Title IV, HEA Programs of Institutional Refunds and Overpayments

The Secretary proposes to remove the fraction that is currently used to determine the portion of the refund that an institution must return to the Title IV, HEA programs. Section 485 of the HEA now specifies the order of return of refunds to the Title IV, HEA programs. Further, the Technical Amendments of 1993 changed section 485 of the HEA to specify that an institution is to return a refund to other sources of student assistance only after the refund has been returned to the Title IV, HEA programs (see the discussion below concerning allocations.) The Secretary proposes to make a conforming change by removing the fraction currently used to determine the portion of an overpayment that an institution must return to the Title IV, HEA programs.

The June 8, 1993, final regulations modified the definition of institutional refund to require an institution to exclude any unpaid charges owed to the institution by a student in determining the amount the institution may retain for institutional charges. These proposed regulations would retain this provision. However, because the HEA now specifies that an institution is permitted to subtract any unpaid charges owed by a student from the calculated refund to the student in calculating a *pro rata* refund, the requirements of the June 8, 1993, final regulations regarding the treatment of unpaid charges have been superseded and are inapplicable only in this case. That is, the institution is not required to exclude any unpaid balance owed to the institution by the student when the institution determines the amount the institution may retain for institutional charges when calculating a *pro rata* refund under section 484B of the HEA. The Secretary notes that the requirements of § 668.22 of the June 8, 1993, final regulations continue to be in effect for all other refunds calculated in accordance with section 484B of the HEA.

The Secretary proposes that if the amount of a refund owed to a student is $25 or less, the institution would not be required to pay the refund. The Secretary believes that the administrative cost to institutions to make refunds of such a small amount may be greater than the refunds themselves. This consideration is of particular concern at institutions that have low tuition charges resulting in small refunds that are administratively burdensome and costly to the institution.

Allocation of Refunds and Overpayments

Section 485 of the HEA specifies the order of return of refunds to the various sources of aid and to the student. A refund owed to a student who received funds under any Title IV, HEA program is to be returned to the Title IV, HEA programs from which the student received aid in the following order until the amounts received by the student from those programs are eliminated. (1) The FFEL programs; (2) The FDSL Program; (3) The Federal Perkins Loan Program; (4) The Federal Pell Grant Program; (5) The FSEOG Program; (6) All other sources of aid; (7) The student. The Secretary proposes to make clear the longstanding policy that, after balances resulting from the FSEOG Program are eliminated, balances on aid

received from all other Title IV, HEA programs must be eliminated before the State and private sources of aid are refunded. For consistency and to reduce administrative burden, the Secretary proposes to apply this order of return to repayment of overpayments also except that, in accordance with current regulations, no amount of a repayment may be allocated to the Federal Stafford Loan, Federal PLUS, and Federal SLS programs.

The Secretary also would make clear that refunds would be returned to eliminate outstanding balances of Title IV, HEA program aid received for the period of enrollment for which the refunds are made. The Secretary does not believe that refunds should be used to eliminate, for example, outstanding balances on loans made for prior years.

Section 485 of the HEA does not specify an order of return for refunds under the FFEL programs. The Secretary proposes a specified order of return for FFEL program funds. Refunds would be returned to eliminate outstanding balances on: (1) Federal SLS loans; (2) unsubsidized Federal Stafford loans; (3) subsidized Federal Stafford loans; and (4) Federal PLUS loans, in that order. The Secretary believes that this order is beneficial to the student and that by mandating the order of return of FFEL program funds, the interest of the student would be protected. The Secretary wishes to clarify that when returning any FFEL program funds, an institution may return the gross amount of a loan (including the guaranty and origination fee) if the institution so chooses, to serve as a deterrent to default on the small remaining amount. This "extra" amount would be used to reduce the next source of aid on the list.

The Secretary wishes to clarify that this order must be used if Title IV, HEA program funds are received, whether they are applied toward institutional charges or disbursed to the student for living expenses. Even if all Title IV, HEA program funds are disbursed to the student for living expenses, if a refund is owed when the student withdraws from the institution, the refund must first be returned to the Title IV, HEA programs from which the student received aid in the order specified.

Financial Aid

No proposed changes are being made to the definition of financial aid.

Refund Dates

The Secretary proposes to apply to all the Title IV, HEA programs the definition (with some revisions) of "withdrawal date" that currently applies to the FFEL programs. Only significant revisions are discussed. The definition of "drop out date" found in the current § 668.22 would be incorporated into this definition. Currently, the FFEL program regulations define the withdrawal date for a student who has not returned to an institution after the expiration of an approved leave of absence as the first day of the leave of absence. The Secretary proposes to use, instead, the last recorded date of class attendance by a student, as documented by the institution. The negotiators reached consensus that it is fair to define the withdrawal date for a student who failed to return from an approved leave of absence in the same way as the withdrawal date is defined for a student who drops out, because the student's period of attendance was only extended on the understanding that he or she would be returning by a specified date. Further, the Secretary proposes to clarify that a student who returns to an institution after the expiration of a leave of absence during an award year or, for the FFEL programs, during a period of enrollment in which the student was granted the leave of absence, the student may not receive additional Title IV, HEA program assistance for coursework that he or she has not completed.

Currently, the FFEL program regulations define the withdrawal date for a student who is enrolled in an educational program that consists predominantly of correspondence courses as 60 days after the due date of a required lesson that the student failed to submit in accordance with the established schedule for lessons. The Secretary believes it is more reasonable to define the withdrawal date in this case as the date of the last submission of a lesson by the student if the student failed to submit the subsequent lesson in accordance with the established schedule for lessons.

The Secretary proposes to add the requirement that a leave of absence may not exceed the length of time between the beginning of the leave of absence and the institution's next period of enrollment, if the institution's next period of enrollment after the start of the leave of absence begins more than thirty days after the beginning of the leave of absence due to a period of nonenrollment (i.e., summer break) that prevents a student from enrolling in any coursework. The Secretary proposes to add this provision to address graduate programs that do not have summer school sessions, thereby preventing students from re-enrolling during this time. As the determination of a student's withdrawal date is necessary to determine when a refund must be paid to a student, the Secretary believes it would be unfair to penalize an institution for failure to pay timely refunds to a student who is deemed to have "withdrawn" only because he or she cannot return to the institution from a leave of absence because classes are not in session. This provision would not additionally limit the length of a student's leave of absence which could be up to sixty days or six months under the specified conditions.

The Secretary notes that this proposed definition of a leave of absence is a departure from current Federal Pell Grant Program policy. Currently, for purposes of the Federal Pell Grant Program, a student who is granted a leave of absence is considered to be no longer enrolled in the institution. The Secretary specifically request comments on the effects of this proposed change on institutional procedures in relation to the Federal Pell Grant Program.

The Secretary proposes to require an institution to pay a refund to a student within a specified period of time. The Secretary believes that 30 days is a sufficient period of time for an institution to complete the administrative procedures necessary for payment of a refund to a student. This requirement would be in addition to other requirements, which would not change, for timely payment of refunds to a lender under the FFEL programs.

Section 668.23 Audits, Records, and Examinations

This section includes provisions dealing with third-party servicers that were proposed in the NPRM published on February 17, 1994 (in part II). The Secretary will not repeat the discussion of those provisions here.

The Secretary proposes to extend the requirements of this section to foreign institutions as that term would be defined in 34 CFR 600.52 of the regulations governing institutional eligibility under the HEA, published in the **Federal Register** on February 10, 1994 (59 FR 6446). Participating institutions, like institutions in the United States, would accordingly be required to have compliance audits performed, be subject to program reviews and other investigations, and maintain records under the provisions of this section. The Secretary believes these steps provide the best means for evaluating a foreign institution's compliance with the requirements for participation in the Title IV, HEA programs.

Section 487(c) of the HEA requires the Secretary to prescribe regulations as may be necessary to provide for a compliance audit of an institution with regard to any funds received under the Title IV, HEA programs on at least an annual basis.

The Secretary notes that, currently, the Department of Education could not properly and effectively review the volume of audits that the Department would receive if every institution submitted an audit report on at least an annual basis. The Secretary is concerned that an effort that extensive could diminish the resources needed to concentrate on timely review of those institutions that pose the greatest financial risk to the government and the taxpayer. The Secretary proposes to exempt from some or all of the audit requirements of this section certain categories of institutions that pose no serious threat to the integrity of the Title IV, HEA programs. The Secretary proposes that an institution, other than an institution that is participating in the Title IV, HEA programs for the first time, have the audit performed at least once every two years if it meets the following conditions: (1) The institution received less than $100,000 in total annual funding under the Title IV, HEA programs for the period covered by the audit; or (2) the institution had no deficiencies identified in the audit report most recently submitted to the Department if that audit report was submitted in a timely fashion. The Secretary bases this amount on the amount that would exempt entities from the audit requirements of the Single Audit Act. The Secretary also believes that an institution that had no deficiencies identified in its most recently submitted audit report will continue to perform at a level that does not warrant as great a degree of oversight. In addition, an institution would not be required to have a compliance audit for any year in which the institution receives less than $25,000 in total annual funding under the Title IV, HEA programs. This proposal would establish in regulations the Secretary's current practice. Institutions that do not handle large amounts of Title IV, HEA program funds do not put a large amount of Title IV, HEA program funds at risk.

The Secretary notes that in spite of these exemptions the Secretary would reserve the right to require an institution to have a compliance audit performed annually from any institution as the Secretary deems necessary. Further, the Secretary proposes to require an institution participating in the Title IV, HEA programs for the first time to have an audit performed at least once a year for the first five years of its participation. The Secretary believes it is important to monitor an institution more closely if the institution has not previously participated in the programs and has not had an opportunity to establish a record of consistent compliance with Title IV, HEA program requirements.

Section 487(c) of the HEA requires that an audit performed in accordance with this section must cover the period since the most recent audit. The Secretary proposes to specify, for clarification, that an institution's first audit for a Title IV, HEA program must cover the institution's activities from the beginning of the institution's participation in that program.

Rather than continuing to specify deadlines in regulations for the submission of audit reports, the Secretary proposes to require an institution to submit its audit to the Department's Inspector General by the deadlines established in the audit guides developed by the Department's Office of Inspector General. Beyond establishing deadlines for the submission of audit reports, these guides will provide for certain extensions beyond establishing deadlines for valid reasons. These guides are developed in consultation with the academic community.

Section 487(c) of the HEA requires the Secretary to make the results of compliance audits available to cognizant guaranty agencies and eligible lenders under the FFEL programs, State agencies, and designated SPREs. The Secretary proposes to add nationally recognized accrediting agencies to this list, because of the role of accrediting agencies in assisting the Secretary with regard to institutional participation in the Title IV, HEA programs. The Secretary proposes to require institutions to provide copies of their audit reports to these entities upon request.

The Secretary proposes to add a requirement that specifies that an institution must establish and maintain, on a current basis, financial and other institutional records necessary to determine the institutional eligibility, financial responsibility, and administrative capability of the institution. The Secretary believes it is essential for the Department to have access to this information when evaluating an institution's compliance with the requirements of the provisions governing the institutional eligibility, financial responsibility, and administrative capability of the institution. Further, an institution needs to maintain this information because, under its program participation agreement, the institution must agree to make the information available to appropriate authorities specified there (see the discussion on proposed § 668.14).

The Secretary proposes to require that all records required under the applicable Title IV, HEA program regulations be retained by the institution for at least five years from the time the record is established unless specific program regulations require that a record be kept for a period of time longer than five years. Five years is the standard period of time that institutions are required to keep most records under the Title IV, HEA programs. The Secretary believes that this is a reasonable period of time to require institutions to maintain most records so that the Department is able to evaluate the past performance of an institution.

Section 668.26 End of an Institution's Participation in the Title IV, HEA Programs

The Secretary proposes to clarify the purpose of the section currently titled "Loss of institutional eligibility to participate in the Title IV, HEA programs" by changing the title to "End of an institution's participation in the Title IV, HEA programs." The Secretary proposes to specify the date on which an institution's participation ends under a variety of circumstances to reflect statutory changes and to make clear existing practice. The Secretary has clarified in these proposed regulations the end of participation date currently used by the Department to be the date that: The institution closes or stops providing educational programs (the Secretary proposes, consistent with provisions proposed to be included in the regulations governing institutional eligibility under the HEA, to specify that this closure must be for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students); the institution loses its institutional eligibility under 34 CFR part 600; the institution's participation is terminated under the proceedings in subpart G of this part; or the institution's program participation agreement is terminated or expires.

The Secretary proposes to specify that an institution's participation ends on the date that an institution's period of participation, as specified under proposed § 668.13 governing certification procedures, expires, or the institution's provisional certification is revoked in accordance with the procedures outlined in that proposed section. This change would be made pursuant to provisions of section 498(g) and (h) of the HEA.

The Secretary proposes to specify that an institution's participation in the

FFEL programs ends on the date that the Secretary has determined that the institution's cohort default rate, for each of the three most recent fiscal years for which the Secretary has determined the institution's rate, is equal to or greater than the threshold rates listed under proposed § 668.17(c)(2). This change simply makes the provisions of proposed § 668.26 consistent with those of proposed § 668.17.

Finally, the Secretary proposes to specify that an institution's participation ends on the date that the Secretary receives a notice from the appropriate SPRE that the institution's participation should be withdrawn. This change is mandated by section 494C(h) of the HEA.

The Secretary proposes to add to the requirements for an institution when the institution's participation in a Title IV, HEA program ends, that the institution shall, if the institution's participation in the NEISP or SSIG Program ended, inform immediately the State in which the institution is located of that fact. Further, notwithstanding the requirements for the treatment of Title IV, HEA program funds found in this section, the institution must follow the instructions of that State concerning the end of that participation. The Secretary also proposes to add that if the institution's participation in all the Title IV, HEA programs end has ended, the institution must inform the Secretary of how the institution will arrange for the collection of any outstanding loans made under the National Defense/Direct Student Loan and ICL programs. These changes are necessary to make the Student Assistance General Provisions regulations consistent with specific program regulations.

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

Section 668.81 Scope and Special Definitions

The Secretary proposes to make technical changes to this section consistent with changes proposed throughout these proposed regulations. The Secretary proposes to clarify in this section that the procedures under this section do not apply in the case of an institution that fails to qualify for provisional certification because the institution does not meet the factors of financial responsibility. In addition, the procedures under this section would not apply in the case of an institution where the institution's period of provisional certification has expired, nor would they apply in the case of an institution that has its provisional certification revoked. These changes are necessary to make the scope of Subpart G of these regulations consistent with provisions in section 498(g) and (h) of the HEA.

Section 690.83 Submission of Reports

Section 487(c)(7) of the HEA provides that, if, in the course of any audit conducted after December 31, 1988 pursuant to the audit requirements of section 487(c) of the HEA and Department regulations implementing those requirements, the Department discovers or is informed of any Title IV, HEA program assistance (specifically, Federal Pell Grant Program funds) that an institution has provided to its students in accordance with program requirements, but the institution has not previously received credit or reimbursement for these disbursements, the institution may offset the amount of those disbursements against liabilities owed under the audit, or if no liabilities arise from the audit, may receive reimbursement from the Department for those amounts.

The HEA requires that the development of NPRMs for implementation of changes made by the Amendments to Parts B (Federal Family Education Loan programs), G (general provisions relating to the student assistance programs) or H (Program Integrity Triad) of Title IV of the HEA, is subject to the negotiated rulemaking process. Although this provision relates directly to the Federal Pell Grant Program, it is contained in Part G of the HEA. Therefore, it has been included in this NPRM instead of the Federal Pell Grant Program NPRM, which was not subject to the negotiated rulemaking process.

The Secretary proposes that, notwithstanding the regulatory requirements for submission of reports, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided Federal Pell Grants in accordance with the Federal Pell Grant Program regulations, but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants. The institution would have to demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report as initially submitted to the Department that was conducted after December 31, 1988. The audit would have to have been timely submitted in accordance with 34 CFR 668.23(c), with respect to grants made during the period of that audit. The Secretary specifies that, in determining whether the institution qualifies for a payment or reduction in accountability, the Secretary would take into account any liabilities of the institution arising from that audit or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental function.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these proposed regulations are small institutions of postsecondary education. These regulations make modifications that reduce potential abuse in the Title IV, HEA programs. These changes will not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 668.8, 668.12, 668.13, 668.14, 668.15, 668.16, 668.17, 668.22, 668.23, 668.26, 690.83 and Appendix A contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

This NPRM contains provisions that would affect postsecondary institutions who wish to participate in the Title IV student financial assistance programs. Annual public reporting and recordkeeping burden contained in the collection of information proposed in these regulations is estimated to be 10,488 hours, including the time for searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and submitting materials.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington D.C. 20503; Attention Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4318, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program; and 84.226 Income Contingent Loan Program)

Dated: February 16, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 668 and 690 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.1 is amended by revising paragraph (b) (2) and (3); removing paragraph (b)(4); and revising paragraph (c) to read as follows:

§ 668.1 Scope.

* * * * *

(b) * * *

(2) A proprietary institution of higher education as defined in 34 CFR 600.5; and

(3) A postsecondary vocational institution as defined in 34 CFR 600.6.

(c) The Title IV, HEA programs include—

(1) The Federal Pell Grant Program (20 U.S.C. 1070a *et seq.*; 34 CFR part 690);

(2) The National Early Intervention Scholarship and Partnership (NEISP) Program (20 U.S.C. 1070a–21 *et seq.*; 34 CFR part 693);

(3) The Presidential Access Scholarship (PAS) Program (20 U.S.C. 1070a–31 *et seq.*; 34 CFR part 691);

(4) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (20 U.S.C. 1070b *et seq.*; 34 CFR part 676);

(5) The State Student Incentive Grant (SSIG) Program (20 U.S.C. 1070c *et seq.*; 34 CFR part 692);

(6) The Federal Stafford Loan Program (20 U.S.C. 1071 *et seq.*; 34 CFR part 682);

(7) The Federal Supplemental Loans for Students (Federal SLS) Program (20 U.S.C. 1078–1; 34 CFR part 682);

(8) The Federal PLUS Program (20 U.S.C. 1078–2; 34 CFR part 682);

(9) The Federal Consolidation Loan Program (20 U.S.C. 1078–3; 34 CFR part 682);

(10) The Federal Work-Study (FWS) Program (42 U.S.C. 2751 *et seq.*; 34 CFR part 675);

(11) The Federal Direct Student Loan (FDSL) Program (20 U.S.C. 1087a *et seq.*; 34 CFR part 685); and

(12) The Federal Perkins Loan Program (20 U.S.C. 1087aa *et seq.*; 34 CFR part 674).

(Authority: 20 U.S.C. 1070 *et seq.*)

3. Section 668.2 is revised to read as follows:

§ 668.2 General definitions.

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as Amended, 34 CFR part 600:

Accredited
Award year
Branch campus
Clock hour
Correspondence course
Educational program
Eligible institution
Federal Family Education Loan (FFEL) programs
Incarcerated student
Institution of higher education
Legally authorized
Nationally recognized accrediting agency
Nonprofit institution
One-year training program
Postsecondary vocational institution
Preaccredited
Proprietary institution of higher education
Recognized equivalent of a high school diploma
Recognized occupation
Regular student
Secretary

State

Telecommunications Course

(b) The following definitions apply to all Title IV, HEA programs:

Academic year: (1) A period that begins on the first day of classes and ends on the last day of classes or examinations and that is a minimum of 30 weeks of instructional time during which a full-time student is expected to complete at least—

(i) Twenty-four semester or trimester hours or 36 quarter hours in an educational program whose length is measured in credit hours; or

(ii) Nine hundred clock hours in an educational program whose length is measured in clock hours.

(2) For purposes of this definition—

(i) A week is a consecutive seven-day period; and

(ii) The Secretary considers a week of instructional time to be any week in which at least one day of regularly

scheduled instruction, examinations, or preparation for examinations occurs. Instructional time does not include periods of orientation, counseling, vacation, or other activity not related to class preparation or examinations.

(Authority: 20 U.S.C. 1088)

Campus-based programs: (1) The Federal Perkins Loan Program (34 CFR part 674);

(2) The Federal Work-Study (FWS) Program (34 CFR part 675); and

(3) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (34 CFR part 676).

Defense loan: A loan made before July 1, 1972, under Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421–429)

Dependent student: Any student who does not qualify as an independent student (see *Independent student*).

Designated department official: An official of the Department of Education to whom the Secretary has delegated responsibilities indicated in this part.

Direct loan: A loan made under Title IV–E of the HEA after June 30, 1972, that does not satisfy the definition of "Federal Perkins loan."

(Authority: 20 U.S.C. 1087aa *et seq.*)

Enrolled: The status of a student who—

(1) Has completed the registration requirements (except for the payment of tuition and fees) at the institution he or she is attending; or

(2) Has been admitted into an educational program offered predominantly by correspondence has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the institution.

Federal Consolidation Loan Program: The loan program authorized by Title IV–B, section 428C, of the HEA that encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers while they were students, under the Federal Insured Student Loan (FISL) Program as defined in 34 CFR part 682, the Federal Stafford Loan, Federal PLUS (as in effect before October 17, 1986), Federal SLS, ALAS (as in effect before October 17, 1986), Federal Direct Student Loan, and Federal Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of Title VII of the Public Health Service Act, for parent Federal PLUS borrowers whose loans were made after October 17, 1986, and for Higher Education Assistance Loans (HEAL) authorized by subpart I of part A of Title VII of the Public Health Services Act.

(Authority: 20 U.S.C. 1078–3)

Federal Direct PLUS loan: A Federal PLUS loan made under the Federal Direct Student Loan Program.

(Authority: 20 U.S.C. 1078–2 and 1087a *et seq.*)

Federal Direct Stafford loan: A Federal Stafford loan made under the Federal Direct Student Loan Program.

(Authority: 20 U.S.C. 1071 *et seq.* and 1087a *et seq.*)

Federal Direct Student loan: A loan made under Title IV–D of the HEA after July 23, 1992.

(Authority: 20 U.S.C. 1087a *et seq.*)

Federal Direct Student Loan (FDSL) Program: The student loan program authorized on July 23, 1992, by Title IV–D of the HEA.

(Authority: 20 U.S.C. 1087a *et seq.*)

Federal Pell Grant Program: The grant program authorized by Title IV–A–1 of the HEA.

(Authority: 20 U.S.C. 1070a)

Federal Perkins loan: A loan made under Title IV–E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV–E of the HEA.

(Authority: 20 U.S.C. 1087aa *et seq.*)

Federal Perkins Loan Program: The student loan program authorized by Title IV–E of the HEA after October 16, 1986.

(Authority: 20 U.S.C. 1087aa–1087ii)

Federal PLUS loan: A loan made under the Federal PLUS Program.

(Authority: 20 U.S.C. 1078–2)

Federal PLUS Program: The loan program authorized by Title IV–B, section 428B, of the HEA, that encourages the making of loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students.

(Authority: 20 U.S.C. 1078–2)

Federal SLS loan: A loan made under the Federal SLS Program.

(Authority: 20 U.S.C. 1078–1)

Federal Stafford loan: A loan made under the Federal Stafford Loan Program.

(Authority: 20 U.S.C. 1071 *et seq.*)

Federal Stafford Loan Program: The loan program authorized by Title IV–B (exclusive of sections 428A, 428B, and 428C) that encourages the making of subsidized Federal Stafford and unsubsidized Federal Stafford loans as defined in 34 CFR part 682 to undergraduate, graduate, and professional students.

(Authority: 20 U.S.C. 1071 *et seq.*)

Federal Supplemental Educational Opportunity Grant (FSEOG) Program: The grant program authorized by Title IV–A–2 of the HEA.

(Authority: 20 U.S.C. 1070b *et seq.*)

Federal Supplemental Loans for Students (Federal SLS) Program: The loan program (formerly called the ALAS Program) authorized by Title IV–B, section 428A, of the HEA that encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(Authority: 20 U.S.C. 1078–1)

Federal Work Study (FWS) Program: The part-time employment program for students authorized by Title IV–C of the HEA.

(Authority: 42 U.S.C. 2751–2756b)

FFELP loan: A loan made under the FFEL Program.

(Authority: 20 U.S.C. 1071 *et seq.*)

Full-time student: An enrolled student who is carrying a full-time academic workload (other than by correspondence) as determined by the institution under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research or special studies that the institution considers sufficient to classify the student as a full-time student. However, for an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in an educational program using a semester, trimester, or quarter system.

(2) 24 semester hours or 36 quarter hours per academic year for an educational program using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an educational program using clock hours.

(4) In an educational program using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

(i) For a program using a semester, trimester, or quarter system—

Number of credit hours per term (12) + *Number of clock hours per week* (24).

(ii) For a program not using a semester, trimester, or quarter system—

Number of semester or trimester hours per academic year (24) + *Number of quarter hours per academic year* (36) + *Number of clock hours per week* (24).

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

HEA: The Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1070 *et seq.*)

Income Contingent Loan (ICL) Program: The student loan program authorized by Title IV–D of the HEA prior to July 23, 1992.

(Authority: 20 U.S.C. 1087a *et seq.*)

Independent student: A student who qualifies as an independent student under section 480(d) of the HEA.

(Authority: 20 U.S.C. 1087vv)

Initiating official: The designated department official authorized to begin an emergency action under § 668.83.

National Defense Student Loan Program: The student loan program authorized by Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421–429)

National Direct Student Loan (NDSL) Program: The student loan program authorized by Title IV–E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa–1087ii)

National Early Intervention Scholarship and Partnership (NEISP) Program: The scholarship program authorized by chapter 2 of subpart 1 of Title IV–A of the HEA.

(Authority: 20 U.S.C. 1070a–21 *et seq.*)

Output document: The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), or other document or automated data generated by the Department of Education's central processing system or Multiple Data Entry processing system as the result of the processing of data provided in a Free Application for Federal Student Aid (FAFSA).

Parent: A student's natural or adoptive mother or father. A parent also includes a student's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the student.

Participating institution: An eligible institution that meets the standards for participation in Title IV, HEA programs in subpart B and has a current program participation agreement with the Secretary.

Payment period: (1) With respect to the Federal Pell Grant and PAS programs, a payment period as defined in 34 CFR 690.2 and 691.2;

(2) With respect to the campus-based programs, a payment period as defined in 34 CFR 674.2, 675.2, and 676.2.

Presidential Access Scholarship (PAS) Program: The scholarship program authorized by chapter 3 of subpart 1 of Title IV–A of the HEA.

(Authority: 20 U.S.C. 1070a–31 *et seq.*)

Show-cause official: The designated department official authorized to conduct a show-cause proceeding for an emergency action under § 668.83.

State Student Incentive Grant (SSIG) Program: The grant program authorized by Title IV–A–3 of the HEA.

(Authority: 20 U.S.C. 1070c *et seq.*)

Third-party servicer: An individual or a State or private, profit or nonprofit organization that enters into a contract with an eligible institution to administer, through either manual or automated processing, any aspect of the institution's participation in any Title IV, HEA program. The Secretary considers administration of participation in a Title IV, HEA program to—

(1) Include performing any function required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation, such as, but not restricted to—

(i) Processing student financial aid applications;

(ii) Performing need analysis;

(iii) Determining student eligibility and related activities;

(iv) Certifying loan applications;

(v) Processing output documents for payment to students;

(vi) Receiving, disbursing, or delivering Title IV, HEA program funds, excluding lock-box processing of loan payments and normal bank electronic fund transfers;

(vii) Conducting activities required by the provisions governing student consumer information services in subpart D of this part;

(viii) Preparing and certifying requests for advance or reimbursement funding;

(ix) Loan servicing and collection;

(x) Preparing and submitting notices and applications required under 34 CFR part 600 and subpart B of this part; and

(xi) Preparing a Fiscal Operations Report and Application to Participate—FISAP;

(2) Exclude the following functions—

(i) Publishing ability-to-benefit tests;

(ii) Performing functions as a Multiple Data Entry Processor (MDE);

(iii) Financial and compliance auditing;

(iv) Mailing of documents prepared by the institution; and

(v) Warehousing of records; and

(3) Notwithstanding the exclusions referred to in paragraph (2) of this definition, include any activity comprised of any function described in paragraph (1) of this definition.

(Authority: 20 U.S.C. 1088)

Undergraduate student: A student enrolled in an undergraduate educational program at an institution who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate educational program that usually does not exceed 4 academic years, or is enrolled in a 4- to 5-academic-year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

U.S. citizen or national: (1) A citizen of the United States; or

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 8 U.S.C. 1101)

Valid institutional student information report (valid ISIR): A valid institutional student information report as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant Program and in 34 CFR 691.2 for purposes of the PAS Program.

Valid student aid report (valid SAR): A valid student aid report (valid SAR) as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant Program and in 34 CFR 691.2 for purposes of the PAS program.

(Authority: 20 U.S.C. 1070 *et seq.*, unless otherwise noted)

4. Section 668.8 is revised to read as follows:

§ 668.8 Eligible program.

(a) *General.* An eligible program is an educational program that—

(1) Is provided by a participating institution; and

(2) Satisfies the other relevant requirements contained in this section.

(b) *Definitions.* For purposes of this section—

(1) The Secretary considers the "equivalent of an associate degree" to be—

(i) An associate degree; or

(ii) The successful completion of at least a two-year program that is acceptable for full credit toward a bachelor's degree and qualifies a student for admission into the third year of a bachelor's degree program;

(2) A "week" is a consecutive seven-day period; and

(3) The Secretary considers a "week of instruction" to be any week in which at least one day of regularly scheduled instruction, examinations, or preparation for examinations occurs. Instruction does not include periods of orientation, counseling, vacation, or other activity not related to class preparation or examinations.

(c) *Institution of higher education.* An eligible program provided by an institution of higher education must—

(1) Lead to an associate, bachelor's, professional, or graduate degree;

(2) Be at least a two-academic-year program that is acceptable for full credit toward a bachelor's degree; or

(3) Be at least a one-academic-year training program that leads to a certificate, degree, or other recognized educational credential and that prepares a student for gainful employment in a recognized occupation.

(d) *Proprietary institution of higher education and postsecondary vocational institution.* An eligible program provided by a proprietary institution of higher education or postsecondary vocational institution—

(1)(i) Must require a minimum of 15 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Must be at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours;

(iii) Must provide undergraduate training that prepares a student for gainful employment in a recognized occupation; and

(iv) May admit as regular students persons who have not completed the equivalent of an associate degree;

(2) Must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours, 8 semester or trimester hours, or 12 quarter hours;

(iii) Provide training that prepares a student for gainful employment in a recognized occupation; and

(iv) (A) Be a graduate or professional program; or

(B) Admit as regular students only persons who have completed the equivalent of an associate degree; or

(3) For purposes of the Federal Stafford Loan, Federal PLUS, and Federal SLS programs only, must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours but less than 600 clock hours;

(iii) Provide undergraduate training that prepares a student for gainful employment in a recognized occupation;

(iv) Admit as regular students some persons who have not completed the equivalent of an associate degree; and

(v) Satisfy the requirements of paragraph (e) of this section.

(e) *Qualitative factors.* (1) An educational program that satisfies the requirements of paragraph (d)(3) (i) through (iv) of this section qualifies as an eligible program only if—

(i) The program has a substantiated completion rate of at least 70 percent, as calculated under paragraph (f) of this section;

(ii) The program has a substantiated placement rate of at least 70 percent, as calculated under paragraph (g) of this section;

(iii) The number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares students, as established by the State in which the program is offered, if the State has established such a requirement; and

(iv) The program has been in existence for at least one year. The Secretary considers an educational program to have been in existence for at least one year only if an institution has been legally authorized to provide, and has continuously provided, the program during the 12 months (except for normal vacation periods and, at the discretion of the Secretary, periods when the institution closes due to a natural disaster that directly affects the institution or the institution's students) preceding the date on which the institution applied for eligibility for that program.

(2) An institution shall substantiate the calculation of its completion and placement rates by having the certified public accountant who prepares its audit report required under § 668.23 certify the accuracy of the institution's calculations. That certification must be included with the institution's audit report and in the documentation submitted to the Secretary in support of the institution's application for eligibility of the program.

(f) *Calculation of completion rate.* An institution shall calculate its completion rate for an educational program for any award year as follows:

(1) Determine the number of regular students who were enrolled in the program during the award year.

(2) Subtract from the number of students determined under paragraph (f)(1) of this section, the number of regular students who, during that award year, withdrew from, dropped out of, or were expelled from the program and were entitled to and actually received, in a timely manner in accordance with § 668.22(i)(3), a refund of 100 percent of their tuition and fees (less any permitted administrative fee) under the institution's refund policy.

(3) Subtract from the total obtained under paragraph (f)(2) of this section the number of students who were enrolled in the program at the end of that award year.

(4) Determine the number of regular students who, during that award year, received the degree, certificate, or other recognized educational credential awarded for successfully completing the program.

(5) Divide the number determined under paragraph (f)(4) of this section by the total obtained under paragraph (f)(3) of this section.

(g) *Calculation of placement rate.* (1) An institution shall calculate its placement rate for an educational program for any award year as follows:

(i) Determine the number of students who, during the award year, received the degree, certificate, or other recognized educational credential awarded for successfully completing the program.

(ii) Subtract from the number determined under paragraph (g)(1)(i) of this section the number of students described in paragraph (g)(1)(i) of this section who were employed by the institution either before or after their receipt of the degree, certificate, or other recognized educational credential.

(iii) Of the total obtained under paragraph (g)(1)(ii) of this section, determine the number of students who, within 180 days of the day they received their degree, certificate, or other recognized educational credential, obtained gainful employment in the recognized occupation for which they were trained or in a related comparable recognized occupation and, on the date of this calculation, are employed or have been employed for at least 13 weeks following receipt of the credential from the institution.

(iv) Divide the number of students determined under paragraph (g)(1)(iii) of this section by the total obtained under paragraph (g)(1)(ii) of this section.

(2) An institution shall document that each student described in paragraph (g)(1)(iii) of this section obtained gainful employment in the recognized occupation for which he or she was trained or in a related comparable recognized occupation. Examples of satisfactory documentation of a student's gainful employment include, but are not limited to—

(i) A written statement from the student's employer;

(ii) Signed copies of State or Federal income tax forms; and

(iii) Written evidence of payments of Social Security taxes.

(h) *Eligibility for Federal Pell Grant and FSEOG programs.* In addition to satisfying other relevant provisions of this section, an educational program qualifies as an eligible program for purposes of the Federal Pell Grant or FSEOG Program only if the educational program is an undergraduate program.

(i) *Flight training.* In addition to satisfying other relevant provisions of this section, for a program of flight training to be an eligible program, it must have a current valid certification from the Federal Aviation Administration.

(j) *English as a second language (ESL).* (1) In addition to satisfying the relevant provisions of this section, an educational program that consists solely of instruction in ESL qualifies as an eligible program if—

(i) The institution admits to the program only students who the institution determines need the ESL instruction to use already existing knowledge, training, or skills; and

(ii) The program leads to a degree, certificate, or other recognized educational credential.

(2) An institution shall test each student at the end of the educational program to substantiate that the student has attained adequate proficiency in written and spoken English to use already existing knowledge, training, or skills. The institution shall identify the test or tests given to the students and the basis for the judgment that the student has attained the adequate proficiency.

(3) An institution shall document its determination that ESL instruction is necessary to enable each student enrolled in its ESL program to use already existing knowledge, training, or skills with regard to the students that it admits to its ESL program under paragraph (j)(1)(i) of this section.

(4) An ESL program that qualifies as an eligible program under this paragraph is eligible for purposes of the Federal Pell Grant Program only.

(k) *Undergraduate educational program in credit hours.* If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for purposes of the Title IV, HEA programs, unless—

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that the institution's degree requires at least two academic years of study.

(l) *Formula.* For purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program with regard to the Title IV, HEA programs—

(1) A semester hour must include at least 30 clock hours of instruction;

(2) A trimester hour must include at least 30 clock hours of instruction; and

(3) A quarter hour must include at least 20 hours of instruction.

(Authority: 20 U.S.C. 1070a, 1070b, 1070c–1070c–2, 1085, 1087aa–1087hh, 1088, 1091, and 1141; 42 U.S.C. 2753)

§§ 668.12–668.16 [Redesignated as §§ 668.14–668.18]

5. Sections 668.12 through 668.16 are redesignated as §§ 668.14 through 668.18, respectively.

6. A new § 668.12 is added to read as follows:

§ 668.12 Application procedures.

(a) *Applications for initial participation.* An institution that wishes to participate in a Title IV, HEA program must first apply to the Secretary for a certification that the institution meets the standards in this subpart.

(b) *Applications for continued participation.* A participating institution must apply to the Secretary for a certification that the institution continues to meet the standards in this subpart upon the request of the Secretary or if the institution wishes to—

(1) Continue to participate in a Title IV, HEA program beyond the scheduled expiration of the institution's current period of participation in the program;

(2) Include in the institution's participation in a Title IV, HEA program—

(i) A branch campus that is not currently included in the institution's participation in the program; or

(ii) Another location that is not currently included in the institution's participation in the program, if—

(A) That location offers 100 percent of an educational program; or

(B) The Secretary requires the institution to apply for certification under paragraph (c) of this section;

(3) Reestablish participation in a Title IV, HEA program following a change in ownership that results in a change in control according to the provisions of 34 CFR part 600.

(c) *Notification and application requirements for additional locations.* (1) A participating institution must notify the Secretary, in writing, if the institution wishes to—

(i) Include in its participation in a Title IV, HEA program a location that is not currently included in the institution's participation in the program and that offers at least 50 percent, but less than 100 percent, of an educational program; or

(ii) Continue to include in its participation in a Title IV, HEA program a location that—

(A) Offers at least 50 percent, but less than 100 percent, of an educational program; and

(B) Has changed its name, location, or address.

(2) The Secretary considers the submission of the required notification under 34 CFR 600.30 with respect to that location to satisfy the notification requirement of this paragraph.

(3) The Secretary may require the institution to apply for a certification that the institution continues to meet the requirements of this subpart.

(d) *Notification and application requirements for changes in name, location, or address.* (1) A participating institution must notify the Secretary, in writing, if the institution wishes to continue to participate in a Title IV, HEA program following a change in name, location or address of the institution or continue to include in the institution's participation—

(i) A branch campus that has changed its name, location, or address; or

(ii) Another location that has changed its name, location, or address if that location offers 100 percent of an educational program.

(2) The Secretary considers the submission of the required notification under 34 CFR 600.30 with respect to that location to satisfy the notification requirement of this paragraph.

(e) *Required forms and information.* An institution that applies for participation under paragraph (a) or (b) of this section must—

(1) Apply on the form prescribed by the Secretary; and

(2) Provide all the information and documentation requested by the Secretary to certify that the institution meets the standards of this subpart.

(Authority: 20 U.S.C. 1099c)

7. A new § 668.13 is added to read as follows:

§ 668.13 Certification procedures.

(a) *Requirements for certification.* The Secretary certifies that an institution meets the standards of this subpart only if—

(1) The institution is an eligible institution;

(2) The institution meets the standards of this subpart;

(3) Each branch campus to be included in the institution's participation meets the applicable standards of this subpart; and

(4)(i) Except as provided in paragraph (a)(4)(ii) of this section, in the case of an institution seeking to participate for the first time in the Federal Pell Grant Program, the campus-based programs, the FDSL Program, or the Federal Stafford Loan, Federal SLS, or Federal PLUS Program, the institution requires the following individuals to complete Title IV, HEA program training provided or approved by the Secretary:

(A) The individual designated by the institution under § 668.16(b)(1).

(B)(*1*) In the case of a for-profit institution, the chief administrator of the institution; or

(*2*) In the case of an institution other than a for-profit institution, the chief administrator of the institution, or another administrative official of the institution designated by the chief administrator.

(ii) If either one of the two individuals who is otherwise required to complete training under paragraph (a)(4)(i) of this section has previously completed Title IV, HEA program training provided or approved by the Secretary, the institution may elect to request an on-site Title IV, HEA program certification review by the Secretary instead of requiring that individual to complete again the Title IV, HEA program training provided or approved by the Secretary.

(iii) An institution may not begin participation in the applicable Title IV, HEA program or programs—

(A) In the case of an institution that requires individuals to complete training in accordance with paragraph (a)(4)(i) of this section, until the individuals complete the required training; or

(B) In the case of an institution that requests an on-site review in accordance with paragraph (a)(4)(ii) of this section, until the Secretary conducts the review and notifies the institution that it is in compliance with Title IV, HEA program requirements.

(b) *Period of participation.* If the Secretary certifies that an institution meets the standards of this subpart, the Secretary also specifies the period for which the institution may participate in a Title IV, HEA program. An institution's period of participation expires four years after the date that the Secretary certifies that the institution meets the standards of this subpart, except that the Secretary may specify a shorter period.

(c) *Provisional certification.* (1) The Secretary may provisionally certify an institution if—

(i) The institution seeks initial participation in a Title IV, HEA program;

(ii) The Secretary is determining for the first time whether the institution meets the factors of financial responsibility under § 668.15 and the standards of administrative capability under § 868.16;

(iii) The institution is an eligible institution that has undergone a change in ownership that results in a change in control according to the provisions of 34 CFR part 600;

(iv) The institution is a participating institution—

(A) That is applying for a certification that the institution meets the standards of this subpart;

(B) That the Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under § 668.15 or the standards of administrative capability under § 668.16; and

(C) Whose participation has been limited or suspended under Subpart G of this part, or voluntarily enters into provisional certification;

(v) The institution seeks a renewal of participation in a Title IV, HEA program after the expiration of a prior period of participation in that program; or

(vi) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency according to the provisions contained in 34 CFR part 603.

(2) If the Secretary provisionally certifies an institution, the Secretary also specifies the period for which the institution may participate in a Title IV, HEA program. Except as provided in paragraphs (c)(3) and (4) of this section, a provisionally certified institution's period of participation expires—

(i) Not later than 12 months from the date on which the Secretary provisionally certified an institution under paragraph (c)(1)(i) of this section;

(ii) Not later than 36 months from the date on which the Secretary provisionally certified an institution under paragraphs (c)(1) (ii), (iii), (iv), or (v) of this section; and

(iii) If the Secretary provisionally certified an institution under paragraph (c)(1)(vi) of this section, not later than 18 months after the date that the Secretary withdrew recognition from the institution's nationally recognized accrediting agency.

(3) Notwithstanding the maximum periods of participation provided for in paragraph (c)(2) of this section, if the Secretary provisionally certifies an institution, the Secretary may specify a shorter period of participation for that institution.

(4) For the purposes of this section, "provisional certification" means that the Secretary certifies that an institution has demonstrated to the Secretary's satisfaction that the institution—

(i) Is capable of meeting the standards of this subpart within a specified period; and

(ii) Is able to meet the institution's responsibilities under its program participation agreement, including compliance with any additional conditions specified in the institution's program participation agreement that the Secretary requires the institution to meet in order for the institution to participate under provisional certification.

(d) *Requirements for provisional certification to participate on a limited basis for institutions that are not financially responsible.* Notwithstanding paragraph (c)(1) of this section, the Secretary does not provisionally certify an institution that—

(1) Fails to meet the general standards of financial responsibility in § 668.15(b), unless the institution—

(i) Demonstrates to the satisfaction of the Secretary that it has sufficient financial and administrative resources to participate in the Title IV, HEA programs under a funding arrangement other than the Department of Education's standard advance funding arrangement;

(ii) Submits to the Secretary a letter of credit payable to the Secretary equal to not less than 10 percent of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available; and

(iii) Demonstrates that it has met all of its financial obligations during the preceding two award years, including (but not limited to) the payment of required refunds and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary; or

(2) Is not financially responsible under § 668.15(c)(2), or has been determined not to be financially responsible under § 668.15 at any time during the five-year period preceding the Secretary's decision to certify the institution provisionally unless—

(i) The institution, or one or more persons or entities that the Secretary determines under the provisions of § 668.15 exercise substantial control over the institution, or both, submit to the Secretary financial guarantees in an amount determined by the Secretary to be sufficient to satisfy the institution's potential liabilities arising from the institution's participation in the Title IV, HEA programs; or

(ii) One or more persons or entities that the Secretary determines under the provisions of § 668.15 exercise substantial control over the institution agree to be jointly or severally liable for any liabilities arising from the institution's participation in the Title IV, HEA programs and civil and criminal monetary penalties authorized under Title IV of the HEA.

(e) *Revocation of provisional certification.* (1) If, before the expiration of a provisionally certified institution's period of participation in a Title IV, HEA program, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may revoke the institution's provisional certification for participation in that program.

(2)(i) If the Secretary revokes the provisional certification of an institution under paragraph (e)(1) of this section, the Secretary sends the institution a notice by registered mail, return receipt requested. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) The revocation takes effect on the date that the Secretary mails the notice to the institution.

(iii) The notice states the basis for the revocation, the consequences of the revocation to the institution, and that the institution may request the Secretary to reconsider the revocation. The consequences of a revocation are described in § 668.26.

(3)(i) An institution may request reconsideration of a revocation under this section by submitting to the Secretary, within 20 days of the institution's receipt of the Secretary's notice, written evidence that the revocation is unwarranted. The institution must file the request with the Secretary by hand-delivery, mail, or facsimile transmission.

(ii) The filing date of the request is the date on which the request is—

(A) Hand-delivered;

(B) Mailed; or

(C) Sent by facsimile transmission.

(iii) Documents filed by facsimile transmission must be transmitted to the Secretary in accordance with instructions provided by the Secretary in the notice of revocation. An institution filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Secretary.

(iv) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(4)(i) The Secretary promptly considers an institution's request for reconsideration of a revocation and notifies the institution, by registered mail, return receipt requested, of the Secretary's final decision. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) If the Secretary determines that the revocation is warranted, the Secretary's notice informs the institution that the institution may apply for reinstatement of participation only after the later of the expiration of—

(A) Eighteen months after the effective date of the revocation; or

(B) A debarment or suspension of the institution under Executive Order 12549 or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(iii) If the Secretary determines that the revocation of the institution's provisional certification is unwarranted, the Secretary's notice informs the institution that the institution's provisional certification is reinstated, effective on the date that the Secretary's original revocation notice was mailed, for a specified period of time.

(5)(i) The mailing date of a notice of revocation or a request for reconsideration of a revocation is the date evidenced on the original receipt of mailing from the U.S. Postal Service.

(ii) The date on which a request for reconsideration of a revocation is submitted is—

(A) If the request was sent by a delivery service other than the U.S. Postal Service, the date evidenced on the original receipt by that service; and

(B) If the request was sent by facsimile transmission, the date that the document is recorded as received by facsimile equipment that receives the transmission.

(Authority: 20 U.S.C. 1099c and E.O. 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 comp., p.235)

8. Newly designated § 668.14 is revised to read as follows:

§ 668.14 Program participation agreement.

(a)(1) An institution may participate in any Title IV, HEA program, other than the SSIG and NEISP programs, only if the institution enters into a written program participation agreement with the Secretary, on a form approved by the Secretary. A program participation agreement conditions the initial and continued participation of an eligible institution in any Title IV, HEA program upon compliance with the provisions of this part, the individual program regulations, and any additional conditions specified in the program participation agreement that the Secretary requires the institution to meet.

(2) An institution's program participation agreement applies to each branch campus and other location of the institution that meets the applicable requirements of this part unless otherwise specified by the Secretary.

(b) By entering into a program participation agreement, an institution agrees that—

(1) It will comply with any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation, including the requirement that the institution will use funds it receives under any Title IV, HEA program and

any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(2) As a fiduciary responsible for administering Federal funds, if the institution is permitted to request funds under a Title IV, HEA program advance payment method, the institution will time its requests for funds under the program to meet the institution's immediate Title IV, HEA program needs;

(3) It will not request from or charge any student a fee for processing or handling any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance;

(4) It will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under the Title IV, HEA programs, together with assurances that the institution will provide, upon request and in a timely manner, information relating to the administrative capability and financial responsibility of the institution to—

(i) The Secretary;

(ii) The State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA for the State or States in which the institution or any of the institution's branch campuses or other locations are located;

(iii) A guaranty agency, as defined in 34 CFR part 682, that guarantees loans made under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs for attendance at the institution or any of the institution's branch campuses or other locations;

(iv) The nationally recognized accrediting agency that accredits or preaccredits the institution or any of the institution's branch campuses, other locations, or educational programs;

(v) The State agency that legally authorizes the institution and any branch campus or other location of the institution to provide postsecondary education; and

(vi) In the case of a public postsecondary vocational educational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, that State agency;

(5) It will comply with the provisions of § 668.15 relating to factors of financial responsibility;

(6) It will comply with the provisions of § 668.16 relating to standards of administrative capability;

(7) It will submit reports to the Secretary and, in the case of an institution participating in the Federal Stafford Loan, Federal PLUS, Federal SLS, or the Federal Perkins Loan Program, to holders of loans made to the institution's students under that program at such times and containing such information as the Secretary may reasonably require to carry out the purpose of the Title IV, HEA programs;

(8) It will not provide any statement to any student or certification to any lender under the Federal Stafford Loan, Federal PLUS, or Federal SLS Program that qualifies the student for a loan or loans in excess of the amount that the student is eligible to borrow in accordance with sections 425(a), 428(a)(2), 428(b)(1) (A) and (B), and 428H of the HEA;

(9) It will comply with the requirements of subpart D of this part concerning institutional and financial assistance information for students and prospective students;

(10) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, it will make available to prospective students, at or before the time that those students apply for enrollment—

(i) The most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements; and

(ii) Relevant State licensing requirements of the State in which the institution is located for any job for which an educational program offered by the institution is designed to prepare those prospective students;

(11) In the case of an institution participating in the Federal Stafford Loan, Federal PLUS, or Federal SLS Program, the institution will inform all eligible borrowers, as defined in 34 CFR Part 682, enrolled in the institution about the availability and eligibility of those borrowers for State grant assistance from the State in which the institution is located, and will inform borrowers from another State of the source for further information concerning State grant assistance from that State;

(12) It will provide the certifications described in paragraph (c) of this section;

(13) In the case of an institution whose students receive financial assistance pursuant to section 484(d) of the HEA, the institution will make available to those students a program proven successful in assisting students in obtaining the recognized equivalent of a high school diploma;

(14) It will not deny any form of Federal financial aid to any eligible student solely on the grounds that the student is participating in a program of study abroad approved for credit by the institution;

(15) In the case of an institution seeking to participate for the first time in the Federal Stafford Loan, Federal PLUS, and Federal SLS programs, the institution has included a default management plan as part of its application under § 668.12 for participation in those programs and will use the plan for at least two years from the date of that application. The Secretary considers the requirements of this paragraph to be satisfied by a default management plan developed in accordance with the default reduction measures described in appendix D of this part;

(16) In the case of an institution that changes ownership that results in a change of control, or that changes its status as a main campus, branch campus, or an additional location, the institution will, to participate in the Federal Stafford Loan, Federal PLUS, and Federal SLS programs, develop a default management plan for approval by the Secretary and implement the plan for at least two years after the change in control or status. The Secretary considers the requirements of this paragraph to be satisfied by a default management plan developed in accordance with the default reduction measures described in appendix D of this part;

(17) The Secretary, guaranty agencies and lenders as defined in 34 CFR part 682, nationally recognized accrediting agencies, the Secretary of Veterans Affairs, State postsecondary review entities designated under subpart 1 of part H of Title IV of the HEA, State agencies recognized under 34 CFR part 603 for the approval of public postsecondary vocational education, and State agencies that legally authorize institutions and branch campuses or other locations of institutions to provide postsecondary education, have the authority to share with each other any information pertaining to the institution's eligibility for or participation in the Title IV, HEA programs or any information on fraud and abuse;

(18) It will not knowingly—(i) Employ in a capacity that involves the administration of the Title IV, HEA programs or the receipt of funds under those programs, an individual who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(ii) Contract with an institution or third-party servicer that has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; or

(iii) Contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been—

(A) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or

(B) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(19) It will complete, in a timely manner and to the satisfaction of the Secretary, surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal collection effort, as designated by the Secretary, regarding data on postsecondary institutions;

(20) In the case of an institution that offers athletically related student aid, it will comply with the provisions of paragraph (d) of this section;

(21) It will not impose any penalty, including, but not limited to, the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds for which interest or other charges are assessed, on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a Title IV, HEA program loan due to compliance with statutory and regulatory requirements of or applicable to the Title IV, HEA programs, or delays attributable to the institution;

(22) It will not provide, nor contract with any entity that provides, any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the awarding of student financial assistance, except that this requirement shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance;

(23) It will meet the requirements established pursuant to Part H of Title IV of the HEA by the Secretary, State postsecondary review entities designated under subpart 1 of Part H of Title IV of the HEA, and nationally recognized accrediting agencies;

(24) It will comply with the institutional refund policy established in § 668.22; and

(25) It is liable for all—(i) Improperly spent or unspent funds received under the Title IV, HEA programs, including any funds administered by a third-party servicer; and

(ii) Refunds that the institution or its servicer may be required to make.

(c) In order to participate in any Title IV, HEA program (other than the SSIG and NEISP programs), the institution must certify that it—

(1) Has in operation a drug abuse prevention program that the institution has determined to be accessible to any officer, employee, or student at the institution; and

(2)(i) Has established a campus security policy in accordance with section 485(f) of the HEA; and

(ii) Has complied with the disclosure requirements of § 668.48 as required by section 485(f) of the HEA.

(d) In order to participate in any Title IV, HEA program (other than the SSIG and NEISP programs), an institution that offers athletically related student aid must—

(1) Cause an annual compilation, independently audited not less often than every 3 years, to be prepared within 6 months after the end of the institution's fiscal year, of—

(i) The revenues derived by the institution from the institution's intercollegiate athletics activities, according to the following categories:

(A) Total revenues.

(B) Revenues from football.

(C) Revenues from men's basketball.

(D) Revenues from women's basketball.

(E) Revenues from all other men's sports combined.

(F) Revenues from all other women's sports combined;

(ii) Expenses made by the institution for the institution's intercollegiate athletics activities, according to the following categories:

(A) Total expenses.

(B) Expenses attributable to football.

(C) Expenses attributable to men's basketball.

(D) Expenses attributable to women's basketball.

(E) Expenses attributable to all other men's sports combined.

(F) Expenses attributable to all other women's sports combined; and

(iii) The total revenues and operating expenses of the institution; and

(2) Make the compilation and, where allowable by State law, the audits, required by paragraph (d)(1) of this section available for inspection by the Secretary and the public.

(e) For the purposes of paragraph (d) of this section—

(1) Revenues from intercollegiate athletics activities allocable to a sport shall include without limitation gate receipts, broadcast revenues and other conference distributions, appearance guarantees and options, concessions, and advertising;

(2) Revenues such as student activities fees, alumni contributions, and investment interest income that are not allocable to a sport shall be included in the calculation of total revenues only;

(3) Expenses for intercollegiate athletics activities allocable to a sport shall include without limitation grants-in-aid, salaries, travel, equipment, and supplies; and

(4) Expenses such as general and administrative overhead that are not allocable to a sport shall be included in the calculation of total expenses only.

(f)(1) A program participation agreement becomes effective on the date that the Secretary signs the agreement.

(2) A new program participation agreement supersedes any prior program participation agreement between the Secretary and the institution.

(g)(1) Except as provided in paragraphs (h) and (i) of this section, the Secretary terminates a program participation agreement through the proceedings in subpart G of this part.

(2) An institution may terminate a program participation agreement.

(3) If the Secretary or the institution terminates a program participation agreement under paragraph (g) of this section, the Secretary establishes the termination date.

(h) An institution's program participation agreement automatically expires on the date that—

(1) The institution changes ownership that results in a change in control as determined by the Secretary under 34 CFR part 600; or

(2) The institution's participation ends under the provisions of § 668.26(a)(1), (2), (4), or (7).

(i) An institution's program participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the participating institution.

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c, and 1141)

9. Newly redesignated § 668.15, is revised to read as follows:

§ 668.15 Factors of financial responsibility.

(a) *General.* To begin and to continue to participate in any Title IV, HEA program, an institution must demonstrate to the Secretary that the institution is financially responsible under the requirements established in this section.

(b) *General standards of financial responsibility.* In general, the Secretary considers an institution to be financially responsible only if it—

(1) Is able to provide the services described in its official publications and statements;

(2) Is able to provide the administrative resources necessary to comply with the requirements of this subpart;

(3) Is able to meet all of its financial obligations, including but not limited to—

(i) Refunds that it is required to make; and

(ii) Repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary;

(4) Is current on any debt service payments;

(5) Maintains, at all times, a minimum cash reserve equal to at least 10 percent of the institution's total deferred tuition income at the end of the institution's most recent fiscal year for repayment of refunds. The cash reserve must be maintained in a cash reserve account, consisting of cash or cash equivalents as defined in accordance with generally accepted accounting principles;

(6) Has not had, as part of the audit report for the institution's most recently completed fiscal year—

(i) A statement by the accountant acknowledging substantial doubt about the institution's ability to continue operation as a going concern;

(ii) A finding of unauthorized use of donor restricted net assets to meet current operating expenses; and

(iii) A disclaimed or adverse opinion by the accountant;

(7) For a for-profit institution—(i) Demonstrates at the end of its latest fiscal year, a ratio of current assets to current liabilities of at least 1.25:1. For purposes of this section, the calculation of this ratio must exclude uncollateralized loans receivable from owners and related parties. Should application of paragraph (b)(5) of this section cause a portion of the institution's cash reserves to be classified as a restricted asset, those cash reserves may be included in current assets in calculating the institution's current ratio;

(ii) Has not had operating losses over both of its two latest fiscal years that causes an operating loss exceeding 10 percent of the institution's previous year's tangible net worth for its latest fiscal year. For purposes of this subsection, an operating loss will be calculated by subtracting from total net income: extraordinary gains or losses; income or losses from discontinued operations; prior period adjustments; and, the cumulative effect of changes in accounting principle, estimate or reporting entity. The calculation of tangible net worth must exclude all assets defined as intangible in accordance with generally accepted accounting principles; and

(iii) Had, for its latest fiscal year, a positive tangible net worth. For purposes of this section, a positive tangible net worth occurs if the institution's tangible assets exceed its liabilities. The calculation of tangible net worth must exclude all assets defined as intangible in accordance with generally accepted accounting principles. In applying this standard, the Secretary may consider the effect of extraordinary gains or losses resulting from unusual and infrequent events, and may take into consideration the cumulative effect of changes in accounting principle, estimate or reporting entity to the extent that such a change results in a more accurate representation of the institution's financial position in accordance with generally accepted accounting principles;

(8) For a nonprofit institution—(i) Prepares a classified statement of financial position in accordance with generally accepted accounting principles or provides the required information as footnotes to the audit;

(ii) Demonstrates at the end of its latest fiscal year, a ratio of current assets to current liabilities of at least 1:1;

(iii) Has not had, at the end of its latest fiscal year, a decrease in total net assets of such significance that, if continued, would result in a ratio of current assets to current liabilities of less than 1:1. The Secretary may consider the effect of extraordinary gains or losses resulting from unusual and infrequent events, and may take into consideration the cumulative effect of a change in accounting principle, estimate or reporting entity to the extent that such a change results in a more accurate representation of the institution's financial position in accordance with generally accepted accounting principles. For purposes of this analysis, the Secretary may exclude unrealized gains and losses on investments that have been reported as changes in unrestricted net assets; and

(9) For a public institution, has its liabilities backed by the full faith and credit of a State, or by an equivalent governmental entity.

(c) *Past performance of an institution or persons affiliated with an institution.* An institution is not financially responsible if—

(1) A person who exercises substantial control over the institution or any member or members of the person's family alone or together—

(i)(A) Exercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a Title IV, HEA program requirement; or

(B) Owes a liability for a violation of a Title IV, HEA program requirement; and

(ii) That person, family member, institution, or servicer is not making payments in accordance with an agreement to repay that liability; or

(2) The institution has—

(i) Been limited, suspended, terminated, or entered into a settlement agreement to resolve a limitation, suspension, or termination action initiated by the Secretary or a guaranty agency (as defined in 34 CFR part 682) within the preceding five years;

(ii) Had—

(A) An audit finding, during its two most recent audits of its conduct of the Title IV, HEA programs, that resulted in the institution's being required to repay an amount greater than five percent of the funds that the institution received under the Title IV, HEA programs for any award year covered by the audit; or

(B) A program review finding, during its two most recent program reviews, of its conduct of the Title IV, HEA programs that resulted in the institution's being required to repay an amount greater than five percent of the funds that the institution received under the Title IV, HEA programs for any award year covered by the program review;

(iii) Been cited during the preceding five years for failure to submit acceptable audit reports required under this part or individual Title IV, HEA program regulations in a timely fashion; or

(iv) Failed to address satisfactorily any compliance problems identified in program review or audit reports based upon a final decision of the Secretary issued pursuant to subpart G or subpart H of this part.

(d) *Exceptions to the general standards of financial responsibility.* (1) An institution is not required to meet the standard in paragraph (b)(5) of this section if the Secretary determines that the institution—

(i) Is located in, and is legally authorized to operate within, a State that has a tuition recovery fund that is acceptable to the Secretary and ensures that the institution is able to pay all required refunds; and

(ii) Contributes to that tuition recovery fund.

(2) The Secretary considers an institution to be financially responsible, even if the institution is not otherwise financially responsible under paragraphs (b) (1) through (4) and (b) (6) through (9) of this section, if the institution—

(i) Submits to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary equal to not less than one-half of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available; or

(ii) Establishes to the satisfaction of the Secretary, with the support of a financial statement submitted in accordance with paragraph (e) of this section, that the institution has sufficient resources to ensure against the precipitous closure of the institution, including the ability to meet all of its financial obligations, including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

(3) An institution is not required to meet the standard in paragraphs (b)(7)(i) and (b)(8)(ii) of this section if the institution is an institution that provides a 2-year or 4-year educational program for which the institution awards an associate or baccalaureate degree that demonstrates to the satisfaction of the Secretary that—

(i) There is not reasonable doubt as to its continued solvency and ability to deliver quality educational services;

(ii) It is current in its payment of all current liabilities, including student refunds, repayments to the Secretary, payroll, and payment of trade creditors and withholding taxes; and

(iii) It has substantial equity in school-occupied facilities, the acquisition of which was the direct cause of its failure to meet the current operating ratio requirement.

(4) The Secretary may determine an institution to be financially responsible even if the institution is not otherwise financially responsible under paragraph (c)(1) of this section if—

(i) The institution notifies the Secretary, in accordance with 34 CFR 600.30, that the person referenced in paragraph (c)(1) of this section exercises substantial control over the institution; and

(ii)(A) The person repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of—

(*1*) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that person or any member or members of that person's family, either alone or in combination with one another;

(*2*) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the person or any member or members of the person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(*3*) Twenty-five percent, if the person or any member of the person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution that owes the liability;

(B) The applicable liability described in paragraph (c)(1) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(C) The institution demonstrates why—

(*1*) The person who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(*2*) The person who exercises substantial control over the institution and each member of that person's family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

(e) *Documentation of financial responsibility.* (1) The Secretary determines whether an institution is financially responsible under this section by evaluating documents submitted by the institution and information obtained from other sources, including outside sources of credit information. To enable the Secretary to make this determination, the institution shall submit to the Secretary for its two latest complete fiscal years, a set of financial statements of the institution, prepared in accordance with generally accepted accounting principles appropriate to that institution as established by the American Institute of Certified Public Accountants, audited by an independent certified public accountant in accordance with generally accepted auditing standards, and accordingly including such tests of the institution's accounting records and such other auditing procedures that the independent auditor considered necessary in the circumstances. The Secretary may also require the institution to submit or otherwise make available the accountant's work papers. If an institution submits audited consolidated financial statements of its parent corporation for the Secretary to use in determining the institution's level of financial responsibility, the consolidated financial statements must be supplemented with consolidating schedules showing the consolidation of each of the parent corporation's subsidiaries (each separate institution participating in the Title IV, HEA programs must be shown separately), intercompany eliminating entries, and derived consolidated totals. The Secretary may also require the institution to submit additional substantive information.

(2) An institution shall submit the documents required in paragraph (e)(1) of this section annually within four months after the end of the institution's fiscal year, unless the Secretary requests a more frequent submission. Upon a showing of good cause, the Secretary may grant a filing extension to an institution.

(f) *Definitions and terms.* For the purposes of this section—

(1)(i) An *ownership interest* is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution, institution's parent corporation, a third-party servicer, or a third-party servicer's parent corporation;

(ii) The term *ownership interest* includes, but is not limited to—

(A) An interest as tenant in common, joint tenant, or tenant by the entireties;

(B) A partnership; and

(C) An interest in a trust;

(iii) The term *ownership interest* does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of—

(A) A mutual fund that is regularly and publicly traded;

(B) An institutional investor; or

(C) A profit-sharing plan, provided that all employees are covered by the plan;

(2) The Secretary generally considers a person to exercise substantial control over an institution or third-party servicer, if the person—

(i) Directly or indirectly holds at least a 25 percent ownership interest in the institution or servicer;

(ii) Holds, together with other members of his or her family, at least a 25 percent ownership interest in the institution or servicer;

(iii) Represents, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 25 percent ownership in the institution or servicer; or

(iv) Is a member of the board of directors, the chief executive officer, or other executive officer of—

(A) The institution or servicer; or

(B) An entity that holds at least a 25 percent ownership interest in the institution or servicer; and

(3) The Secretary considers a member of a person's family to be a parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse.

(Authority: 20 U.S.C. 1094 and 1099c and Section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

10. Newly designated § 668.16 is revised to read as follows:

§ 668.16 Standards of administrative capability.

To begin and to continue to participate in any Title IV, HEA program, an institution shall demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established in this section. The Secretary considers an institution to have that administrative capability if the institution—

(a) Administers the Title IV, HEA programs in accordance with any statutory provisions of or applicable to Title IV of the HEA, any regulatory provisions prescribed under that statutory authority, or any applicable special arrangement, agreement or limitation;

(b)(1) Designates a capable individual to be responsible for administering all the Title IV, HEA programs in which it participates and for coordinating those programs with the institution's other Federal and non-Federal programs of student financial assistance. The Secretary considers an individual to be "capable" under this paragraph if the individual is certified by the State in which the institution is located, if the State requires certification of financial aid administrators. The Secretary may consider other factors in determining whether an individual is capable, including, but not limited to, the individual's successful completion of Title IV, HEA program training provided or approved by the Secretary;

(2) Uses an adequate number of qualified persons to administer the Title IV, HEA programs in which the institution participates. The Secretary considers the following factors to determine whether an institution uses an adequate number of qualified persons—

(i) The number and types of programs in which the institution participates;

(ii) The number of applications evaluated;

(iii) The number of students who receive any student financial assistance at the institution and the amount of funds administered;

(iv) The financial aid delivery system used by the institution; and

(v) The degree of office automation used by the institution in the administration of the Title IV, HEA programs;

(3) Communicates to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by any institutional office that bears on a student's eligibility for Title IV, HEA program assistance; and

(4) Has written procedures for or written information indicating—

(i) The nature and frequency of communication of pertinent information among all the offices that have an impact on the administration of the Title IV, HEA programs. Examples of this information may include information on a student's admissions status, enrollment status, attendance (if applicable), prior or concurrent attendance at another postsecondary institution, satisfactory academic progress, and payment or disbursement status; and

(ii) The responsibilities of the various offices with respect to the approval, disbursement, and delivery of Title IV, HEA program assistance and the preparation and submission of reports to the Secretary;

(c)(1) Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and

(2) Divides the functions of authorizing payments and disbursing or delivering funds so that no office has responsibility for both functions with respect to any particular student aided under the programs. For example, the functions of authorizing payments and disbursing or delivering funds must be divided so that for any particular student aided under the programs, the two functions are carried out by at least two organizationally independent individuals who are not members of the same family, as defined in § 668.15, or who do not together exercise substantial control, as defined in § 668.15, over the institution;

(d) Establishes and maintains records required under this part and the individual Title IV, HEA program regulations;

(e) Establishes, publishes, and applies reasonable standards for measuring whether an otherwise eligible student is maintaining satisfactory progress in his or her educational program. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits or preaccredits the institution, if the institution is accredited or preaccredited, and if the agency has those standards;

(2) For a student enrolled in an eligible program who is to receive assistance under a Title IV, HEA program, are the same as or stricter than the institution's standards for a student enrolled in the same educational program who is not receiving assistance under a Title IV, HEA program;

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum time frame in which a student must complete his or her educational program. The time frame must be—

(A) Based on the student's enrollment status;

(B) For an undergraduate program, no longer than 150 percent of the published length of the educational program; and

(C) Divided into increments, not to exceed the lesser of one academic year or one-half the published length of the educational program.

(iii) A schedule established by the institution designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment to complete his or her educational program within the maximum time frame.

(iv) A determination at the end of each increment by the institution whether the student has successfully completed the appropriate percentage or amount of work according to the established schedule.

(v) Consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution.

(vi) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(vii) Specific procedures under which a student may appeal a determination that the student is not making satisfactory progress.

(viii) Specific procedures for reinstatement of aid; and

(4) Meet or exceed the requirements of § 668.7(c);

(f) Develops and applies an adequate system to identify and resolve discrepancies in the information that the institution receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs. In determining whether the institution's system is adequate, the Secretary considers whether the institution obtains and reviews—

(1) All student aid applications, need analysis documents, Statements of Educational Purpose, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

(2) Any documents, including any copies of State and Federal income tax returns, that are normally collected by the institution to verify information received from the student or other sources; and

(3) Any other information normally available to the institution regarding a student's citizenship, previous educational experience, or other factors relating to the student's eligibility for funds under the Title IV, HEA programs;

(g) Refers to the Office of Inspector General of the Department of Education for investigation—

(1) After conducting the review of an application provided for under paragraph (f) of this section, any information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application. The type of information that an institution must refer is that which is relevant to the eligibility of the applicant for Title IV, HEA program assistance, or the amount of the assistance. Examples of this type of information are—

(i) False claims of independent student status;

(ii) False claims of citizenship;

(iii) Use of false identities;

(iv) Forgery of signatures or certifications; and

(v) False statements of income; and

(2) Any information indicating that any employee, third-party servicer, or other agent of the institution that acts in a capacity that involves the administration of the Title IV, HEA programs, or the receipt of funds under those programs, may have engaged in fraud, misrepresentation, conversion or breach of fiduciary responsibility, or other illegal conduct involving the Title IV, HEA programs. The type of information that an institution must refer is that which is relevant to the eligibility and funding of the institution and its students through the Title IV, HEA programs;

(h) Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding—

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed, delivered, or applied to a student's account; and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, its standards of satisfactory progress, and other conditions that may alter the student's aid package;

(i) Has and implements a plan, designed by the institution for the student population served by the institution, that demonstrates that for an institution that enrolls a significant number of students with special support service needs (including, but not limited to, child care and transportation), the institution has provided these students with information about how to access to appropriate support services that will foster the students' opportunity to complete the educational program;

(j) Has procedures for receiving, investigating, and resolving student complaints;

(k) If the stated objectives of an educational program of the institution are to prepare a student for gainful employment in a recognized occupation—

(1) Demonstrates a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the program is offered, if the State has established such a requirement; and

(2) Establishes the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student;

(l) Makes readily available to students information on—

(1) Market and job availability for occupational, professional, and vocational educational programs offered by the institution; and

(2) The relationship of mandatory and elective course components of occupational, professional, and vocational educational programs to specific licensure standards of the State in which the institution is located in specific occupations;

(m) Has advertising, promotion, and student recruitment practices that accurately reflect the content and objectives of the educational programs offered by the institution;

(n) Has provided all program and fiscal reports and financial statements required for compliance with the provisions of this part and the individual program regulations in a timely manner;

(o) Has no outstanding liabilities owed to the Secretary, unless the institution has made satisfactory arrangements to repay those liabilities and is honoring those arrangements;

(p) Shows no evidence of significant problems identified in—

(1) Reviews of the institution conducted by the Secretary, the Department of Education's Office of Inspector General, nationally recognized accrediting agencies, guaranty agencies as defined in 34 CFR part 682, State postsecondary review entities designated under subpart 1 of part H of Title IV of the HEA, the State agency or official by whose authority the institution is legally authorized to provide postsecondary education, or any other law enforcement agency; or

(2) Any findings made in any criminal, civil, or administrative proceeding;

(q) Is not, and does not have any principal or affiliate of the institution (as those terms are defined in 34 CFR part 85) that is—

(1) Debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(2) Engaging in any activity that is a cause under 34 CFR 85.305 or 85.405 for debarment or suspension under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4;

(r) Complies with any standards established by the State in which the institution is located or, if no standards exist in the State in which the institution is located, by the Secretary regarding completion rates, placement rates, and pass rates on required State examinations;

(s) Has a cohort default rate—

(1) As defined in § 668.17, on loans made under the Federal Stafford Loan and Federal SLS programs to students for attendance at that institution that does not exceed 20 percent; and

(2) As defined in 34 CFR 674.5, on loans made under the Federal Perkins Loan Program to students for attendance at that institution that does not exceed 15 percent;

(t)(1) For an institution that has a common academic year for a majority of its students, does not have more than 33 percent of the regular students who are enrolled on the first day of classes of an academic year withdraw from enrollment at that institution during that academic year; or

(2) For an institution that does not have a common academic year for a majority of its students, does not have more than 33 percent of the regular students who are enrolled on the first day of classes of any eight-month period withdraw during that period; and

(u) Does not otherwise appear to lack the ability to administer the Title IV, HEA programs competently.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c; Section 4 of Pub. L. 95–452, 92 Stat. 1101–1109; E.O. 12549 (3 CFR, 1986 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235)

11. Newly designated § 668.17 is revised to read as follows:

§ 668.17 Default reduction measures.

(a) *Default rates.* If the Federal Stafford loan and Federal SLS cohort default rate for an institution exceeds 20 percent for any fiscal year, the Secretary notifies the institution of that rate and may, after consultation as the Secretary deems appropriate with cognizant guaranty agencies take one or more of the following actions:

(1) Initiate a proceeding under Subpart G of this part to limit, suspend, or terminate the participation of the institution in the Title IV, HEA programs, if—

(i) The institution's Federal Stafford loan and Federal SLS cohort default rate exceeds 40 percent for any fiscal year after 1989 and has not been reduced by an increment of at least 5 percent from its rate for the previous fiscal year (e.g., a 50-percent rate was not reduced to 45 percent or below); or

(ii) The institution's Federal Stafford loan and Federal SLS cohort default rate exceeds—

(A) 60 percent for fiscal year 1989;

(B) 55 percent for fiscal year 1990;

(C) 50 percent for fiscal year 1991;

(D) 45 percent for fiscal year 1992; or

(E) 40 percent for any fiscal year after fiscal year 1992.

(2) To help the Secretary make a preliminary determination as to the appropriate action to be taken by the Secretary regarding the institution, require the institution to submit to the Secretary and one or more guaranty agencies, as defined in 34 CFR 682, any information relating to that determination, as reasonably required by the Secretary, within a time frame specified by the Secretary.

(b) *Default management plan.* If the Federal Stafford loan and Federal SLS cohort default rate for an institution—

(1) Is greater than 20 percent but less than or equal to 40 percent, the institution must submit a default management plan that implements the measures described in appendix D of this part. An institution that wishes to submit a default management plan that deviates from the measures described in appendix D of this part must submit a justification for the deviation that includes a rationale explaining why the measures from which the plan deviates are not appropriate for the institution's specific situation. The institution must implement the default management plan upon notification from the Secretary that the plan has been approved; or

(2) Exceeds 40 percent for any fiscal year, the institution must implement all of the default management reduction measures described in appendix D of this part no later than 60 days after the institution receives the Secretary's notification of the institution's cohort default rate. An institution is not required to submit any written plans to the Secretary or a guaranty agency unless the Secretary or guaranty agency specifically requests the institution to do so.

(c) *End of participation.* (1) Except as provided in paragraph (c)(6) of this section, an institution's participation in the FFEL programs ends if the Secretary determines that the institution's cohort default rate, for each of the three most recent fiscal years for which the Secretary has determined the institution's rate, is equal to or greater than the applicable threshold rates.

(2) For purposes of the determinations made under paragraph (c)(1) of this section, the threshold rates are—

(i) 35 percent for each of fiscal years 1991 and 1992;

(ii) 30 percent for fiscal year 1993; and

(iii) 25 percent for fiscal year 1994 and all subsequent fiscal years.

(3) Except as provided in paragraph (c)(7) of this section, an institution whose participation ends under paragraph (c)(1) of this section may not participate in the FFEL programs beginning with the date that the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section and continuing—

(i) For the remainder of the fiscal year in which the Secretary determines that the institution's participation has ended under paragraph (c)(1) of this section; and

(ii) For the two subsequent fiscal years.

(4) An institution whose participation in the FFEL programs ends under paragraph (c)(1) of this section may not participate in the FFEL programs until the institution—

(i) Receives notification from the Secretary that the notice ending the institution's participation is withdrawn pursuant to paragraph (d)(6) of this section; or

(ii) Following the period described in paragraph (c)(3) of this section, satisfies the Secretary that the institution meets all requirements for participation in the FFEL programs and executes a new agreement with the Secretary for participation in the FFEL programs.

(5) If the Secretary withdraws the notification of an institution's loss of participation pursuant to paragraph (d)(6) of this section, the participation of the institution is restored effective as of the date that the institution received notification from the Secretary of the loss of participation.

(6) Until July 1, 1994, the provisions of paragraph (c)(1) of this section do not apply to a historically black college or university within the meaning of section 322(2) of the HEA, a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(4)), or a Navajo community college under the Navajo Community College Act (25 U.S.C. 640a–640c).

(7)(i) If the Secretary's designated department official receives written notice from an institution whose participation ends under paragraph (c)(1) of this section, within seven calendar days from the date on which the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (d)(2) of this section, that the institution intends to appeal the end of participation under paragraph (d) of this section, the institution may, notwithstanding § 668.26(d) continue to participate in the FFEL programs until no later than the 30th calendar day following the date on which the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section, except as provided in paragraph (c)(7)(ii) of this section.

(ii) If an institution satisfies the conditions in paragraph (c)(7)(i) of this section for participating in the FFEL programs until the 30th calendar day following the date on which the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section, the institution may, notwithstanding § 668.26(d), continue to participate in the FFEL programs after that date, until the Secretary issues a decision on the institution's appeal, if the institution, by the 30th calendar day following the date on which the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section, files an appeal that is complete in all respects in accordance with paragraph (d) of this section. However, the appeal of an institution relying on paragraph (d)(1)(i) of this section is not considered incomplete by virtue of a guaranty agency's not having yet complied with—or having failed to comply with—34 CFR 682.401(b)(14), which requires the agency to respond to an institution's request for verification of data within 15 working days, if the institution submitted that request within 10 working days from the date on which the institution received notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section, and the institution simultaneously submitted a copy of that request to the Secretary's designated Department official. When the institution receives the guaranty agency's response, to complete its appeal, the institution must submit the verified data to the Secretary's designated Department official within five working days in order to continue participating in the FFEL programs until the Secretary issues a decision on the institution's appeal.

(d) *Appeal procedures.* (1) An institution may appeal the loss of participation in the FFEL programs under paragraph (c)(1) of this section by submitting an appeal in writing to the Secretary's designated Department official that is postmarked no later than 30 days after it receives notification of its loss of participation. The institution may appeal on the grounds that—

(i)(A) The calculation of the institution's cohort default rate for any of the three fiscal years relevant to the end of participation is not accurate; and

(B) A recalculation with corrected data verified by the cognizant guaranty agency or agencies would produce a cohort default rate for any of those fiscal years that is below the threshold percentage specified in paragraph (c)(2) of this section;

(ii) The institution meets the following criteria:

(A)(*1*) Fifteen percent or fewer of the institution's students who are enrolled on at least a half-time basis receive Federal Stafford or Federal SLS loans for any twenty-four month period ending not more than six months prior to the date the institution submits its appeal; or

(*2*) For any twenty-four month period ending not more than six months prior to the date the institution submits its appeal, two-thirds or more of the institution's students who are enrolled on at least a half-time basis are individuals from disadvantaged economic backgrounds, as established by documentary evidence submitted by the institution. Such evidence must relate to qualification by those students for an Expected Family Contribution (EFC) (formerly institutions were required to use the Pell Grant index), as defined in 34 CFR 690.2, of zero for the applicable award year or attribution to those students of an adjusted gross income of the student and his or her parents or spouse, if applicable, reported for the applicable award year of less than the poverty level, as determined under criteria established by the Department of Health and Human Services; and

(B)(*1*) Two-thirds or more of the institution's students who were enrolled on a full-time basis in any twenty-four month period ending not more than six months prior to the date the institution submits its appeal completed the educational programs in which they were enrolled. This rate is calculated by comparing the number of students who were classified as full-time at their initial enrollment in the institution, and were originally scheduled, at the time of enrollment, to complete their programs within the relevant twenty-four month period, with the number of these students who received a degree, certificate, or other recognized educational credential from the institution; transferred from the institution to a higher level educational program at another institution for which the prior program provided substantial preparation; or, at the end of the twenty-four month period, remained enrolled and were making satisfactory academic progress toward completion of their educational programs. The calculation does not include students who did not complete their programs because they left the institution to serve in the armed forces; and

(*2*) The institution had a placement rate of two-thirds or more with respect to its former students who received a degree, certificate, or other recognized educational credential from the institution in any twenty-four month period ending not more than six months prior to the date the institution submits its appeal. This rate is calculated by determining the percentage of all those students who, based on evidence submitted by the institution, are on that date employed, or had been employed for at least 13 weeks following receipt of the credential from the institution, in the occupation for which the institution provided training, or are enrolled or had been enrolled for at least 13 weeks following receipt of the credential from the institution, in a higher level educational program at another institution for which the prior educational program provided substantial preparation.

(2) For purposes of paragraph (d)(1)(iii)(A) of this section, a student is originally scheduled, at the time of enrollment, to complete the educational program on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The "amount of time normally required to complete the program" is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the date of enrollment and the anticipated graduation date appearing on the student's loan application, if any, whichever is less.

(3) An appeal submitted under paragraph (d)(1)(i) of this section is considered to be filed in a timely manner if the institution submits a letter of appeal by the 30-day deadline notifying the Secretary's designated department official that it is appealing on this basis, including with that letter a copy of the institution's request to each cognizant guaranty agency for verification of the cohort default rate data, and submits the verified data to the Secretary's designated Department official within five working days of its receipt from the guaranty agency. For purposes of paragraph (d)(4) of this

section, the institution's appeal is not considered complete until the institution submits the verified data to the Secretary's designated Department official.

(4) The Secretary issues a decision on the institution's appeal within 45 days after the institution submits a complete appeal that addresses the applicable criteria in paragraphs (d)(1)(i) through (iii) of this section to the Secretary's designated Department official.

(5) The Secretary's decision is based on the consideration of written material submitted by the institution. No oral hearing is provided.

(6) The Secretary withdraws the notification of loss of participation in the FFEL programs sent to an institution under paragraph (c)(1) of this section, if the Secretary determines that the institution's appeal satisfies one of the grounds specified in paragraphs (d)(1)(i) through (iii) of this section.

(7) (i) An institution that appeals under paragraph (d)(1)(i) of this section must submit a written request to the guaranty agency or agencies that guaranteed the loans used in the calculation of its cohort default rate to verify the data used to calculate its cohort default rate and simultaneously provide a copy of that request to the Secretary's designated Department official.

(ii) The written request must include the names and social security numbers of the borrowers the institution wishes the agency to verify and detailed information on the nature of the suspected inaccuracy in the data the institution is requesting the agency to verify.

(8) An institution must include in its appeal a certification by the institution's chief executive officer that all information provided by the institution in support of its appeal is true and correct.

(9) An institution that appeals on the ground that it meets the criteria contained in paragraph (d)(1)(iii) of this section must include in its appeal the following information:

(i) For purposes of paragraph (d)(1)(iii)(A)(*1*) of this section—

(A) The number of students who were enrolled on at least a half-time basis at the institution in the relevant twenty-four month period; and

(B) The name, address, and social security number of each of the institution's current and former students who received Federal Stafford or Federal SLS loans during that twenty-four month period.

(ii) For purposes of paragraph (d)(1)(iii)(A)(*2*) of this section:

(A) The number of students who were enrolled on at least a half-time basis at the institution in the relevant twenty-four month period; and

(B) The name, address, social security number and Expected Family Contribution (EFC) (formerly institutions were required to use the Pell Grant index), if applicable, of each student from a disadvantaged economic background who was enrolled on at least a half-time basis at the institution in the relevant twenty-four month period and the measure and data used to determine that the student is from a disadvantaged economic background.

(iii) For purposes of paragraph (d)(1)(iii)(B)(*1*) of this section—

(A) The number of students who were enrolled on a full-time basis at the institution in the relevant twenty-four month period;

(B) For each of those former students who received a degree, certificate, or other recognized educational credential from the institution, the student's name, address, and social security number;

(C) For each of those former students who transferred to a higher level educational program at another institution, the name, address, social security number of the student, and the name and address of the institution to which the student transferred and the name of the higher level program; and

(D) For each of those students who remained enrolled and was making satisfactory academic progress toward completion of the educational program, the student's name, address, and social security number.

(iv) For purposes of paragraph (d)(1)(iii)(B)(*2*) of this section—

(A) The number of students who received a degree, certificate, or other recognized educational credential at the institution in the relevant twenty-four month period;

(B) For each of those former students who is employed or had been employed for at least 13 weeks following receipt of a degree, certificate or other credential from the institution, the student's name, address, and social security number, the employer's name and address, the student's job title, and the dates the student was so employed; and

(C) For each of those former students who enrolled in a higher level educational program at another institution for which the appealing institution's educational program provided substantial preparation, the former student's name, address, and social security number, the subsequent institution's name and address, the name of the educational program, and the dates the former student was so enrolled.

(e) *Definitions.* The following definitions apply to this section and § 668.90:

(1)(i)(A) For purposes of the Federal Stafford loan and Federal SLS cohort default rate, except as provided in paragraph (e)(1)(ii) of this section, the term *cohort default rate* means—

(*1*) For any fiscal year in which 30 or more current and former students at the institution enter repayment on Federal Stafford loans or Federal SLS loans (or on the portion of a Federal Consolidation Loan that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on such loans who default before the end of the following fiscal year; and

(*2*) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on Federal Stafford loans or Federal SLS loans (or on the portion of a Federal Consolidation Loan that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on Federal Stafford loans or Federal SLS loans in any of the three most recent fiscal years, who default before the end of the fiscal year immediately following the year in which they entered repayment.

(B) In determining the number of students who default before the end of that following fiscal year, the Secretary includes only loans for which the Secretary or a guaranty agency has paid claims for insurance.

(ii) (A) In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year.

(B) A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(C) Any loan that has been rehabilitated under section 428F of the HEA before the end of that following fiscal year is not considered as in default for purposes of this definition.

(D) For the purposes of this definition, a loan made in accordance with section 428A of the HEA (or a Federal Consolidation Loan a portion of which is used to repay a Federal SLS loan) shall not be considered to enter repayment until after the borrower has ceased to be enrolled in an educational program leading to a degree, certificate, or other recognized educational credential at the participating institution on at least a half-time basis (as determined by the institution) and ceased to be in a period of forbearance based on such enrollment. Each eligible lender of a loan made under section 428A (or a Federal Consolidation Loan a portion of which is used to repay a Federal SLS loan) of the HEA shall provide the guaranty agency with the information necessary to determine when the loan entered repayment for purposes of this definition, and the guaranty agency shall provide that information to the Secretary.

(iii) (A) A cohort default rate of an institution applies to all locations of the institution as the institution exists on the first day of the fiscal year for which the rate is calculated.

(B) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(iv) (A) For an institution that changes its status from that of a location of one institution to that of a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of October 1 of the fiscal year for which a cohort default rate is being calculated.

(B) For an institution that changes its status from that of a free-standing institution to that of a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both the former free-standing institution and the other institution. This cohort default rate applies to the new, consolidated institution and all of its current locations.

(C) For free-standing institutions that merge to form a new, consolidated institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from all of the institutions that are merging. This cohort default rate applies to the new consolidated institution.

(D) For a location of one institution that becomes a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the number of students who default during the applicable fiscal years from both of the institutions in their entirety, not limited solely to the respective locations.

(2) *Fiscal year* means the period from and including October 1 of a calendar year through and including September 30 of the following calendar year.

(i) *Federal SLS Program participation.* An institution loses its participation in the Federal SLS Program if the Secretary determines that the institution's cohort default rate for the most recent fiscal year for which that rate is available is equal to or greater than 30 percent. However, the institution's loss of participation does not apply to a student who is not an undergraduate student or who has received a Federal SLS loan previously for enrollment in the same educational program at the institution (except that previous receipt of a Federal SLS loan shall not qualify a student for a Federal SLS loan with respect to an extension of the duration of that educational program that was effected on or after November 8, 1989).

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

12. Section 668.22 is revised to read as follows:

§ 668.22 Institutional refunds and repayments.

(a) *General.* (1) An institution shall have a fair and equitable refund policy under which the institution makes a refund of unearned tuition, fees, room and board, and other charges to a student who received Title IV, HEA program assistance, or whose parent received a Federal PLUS loan on behalf of the student if the student—

(i) Does not register for the period of enrollment for which the student was charged; or

(ii) Withdraws, drops out, is expelled from the institution or otherwise fails to complete the program on or after his or her first day of class of the period of enrollment for which he or she was charged.

(2) The institution shall provide a clear and conspicuous written statement containing its refund policy, including the allocation of refunds and repayments to sources of aid, together with examples of the application of this policy, to a prospective student prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement. The institution shall make its policy known to currently enrolled students. The institution shall include in its statement the procedures that a student must follow to obtain a refund, but the institution shall return the portion of a refund allocable to the Title IV, HEA programs in accordance with paragraph (f) of this section whether the student follows those procedures or not. If the institution changes its refund policy, the institution shall ensure that all students are made aware of the new policy.

(3) The institution shall publish the costs of required supplies and equipment and shall substantiate to the Secretary upon request that the costs are reasonably related to the cost of providing the supplies and equipment to students.

(b) *Fair and equitable refund policy.* (1) For purposes of paragraph (a) of this section, an institution's refund policy is fair and equitable if the policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law;

(ii) The specific refund standards established by the institution's nationally recognized accrediting agency if those standards are approved by the Secretary;

(iii) The *pro rata* refund calculation described in paragraph (c) of this section, for any student attending the institution for the first time whose withdrawal date is on or before the 60 percent point in time in the period of enrollment for which the student has been charged; or

(iv) For purposes of determining a refund when the *pro rata* refund calculation under paragraph (b)(1)(iii) of this section does not apply, and no standards for refund calculations exist under paragraph (b)(1) (i) and (ii) of this section, the larger of—

(A) The specific refund standards contained in Appendix A to this part; or

(B) The institution's refund policy.

(2) For purposes of paragraph (b)(1)(iii) of this section, "the 60 percent point in time in the period of enrollment for which the student has been charged" is—

(i) In the case of an educational program that is measured in credit hours, the point in calendar time when 60 percent of the period of enrollment for which the student has been charged, as defined in paragraph (d) of this section, has elapsed; and

(ii) In the case of an educational program that is measured in clock hours, the point in time when the student completes 60 percent of the clock hours scheduled for the period of enrollment for which the student is charged as defined in paragraph (d) of this section.

(3) The institution must determine which policy under paragraph (b)(1) of this section provides for the largest refund to that student.

(c) *Pro rata refund.* (1) *Pro rata refund,* as used in this section, means a refund by an institution to a student attending that institution for the first time of not less than that portion of the tuition, fees, room, board, and other charges assessed the student by the institution equal to the portion of the period of enrollment for which the student has been charged that remains on the withdrawal date, rounded downward to the nearest 10 percent of that period, less—

(i) (A) Any unpaid amount of a scheduled cash payment for the period of enrollment for which the student has been charged. A scheduled cash payment is the amount of institutional charges that is not paid for by financial aid for the period of enrollment for which the student has been charged exclusive of—

(*1*) Any amount scheduled to be paid by Title IV, HEA program assistance that the student has been awarded that is payable to the student even though the student has withdrawn; and

(*2*) Late disbursements of loans made under the Federal Stafford Loan, Federal SLS, and Federal PLUS programs in accordance with 34 CFR 682.207(d).

(B) The unpaid amount of a scheduled cash payment is computed by subtracting the amount paid by the student for the period of enrollment for which the student has been charged from the scheduled cash payment for the period of enrollment for which the student has been charged;

(ii) A reasonable administrative fee not to exceed the lesser of—

(A) Five percent of the tuition, fees, room and board, and other charges assessed the student; or

(B) One hundred dollars;

(iii) Any application fee charged by the institution; and

(iv) The portion of "board" charges (i.e., meal tickets) that have been expended by the student that exceed the portion attributable to the period for which the student attended at the time of withdrawal. The institution must include in the refund any unexpended "board" credits.

(2) (i) For purposes of this section, "other charges assessed the student by the institution" include, but are not limited to, charges for any equipment (including books and supplies) issued by an institution to the student. The institution may deduct from the refund owed under this paragraph the documented cost to the institution of equipment issued to the student if the institution specifies in the enrollment agreement a separate charge for equipment which the student actually obtains or if the institution refers the student to a vendor operated by an affiliated or related entity and the student does not return the equipment in good condition, allowing for reasonable wear and tear, within 20 days following the date of the student's withdrawal. The student shall be liable for the amount, if any, by which the documented cost for equipment not returned in good condition exceeds the refund under this paragraph. Equipment is not considered to be returned in good condition if the equipment cannot be reused because of clearly recognized health and sanitary reasons, and this fact is clearly and conspicuously disclosed in the enrollment agreement.

(ii) An institution may not delay its payment of the portion of a refund allocable under this section to a Title IV, HEA program or a lender under 34 CFR 682.607 by reason of the process for return of equipment prescribed in paragraph (c)(4)(i) of this section.

(3) For purposes of this section—

(i) "Room" charges do not include charges that are passed through the institution from an entity that is not under the control of, related to, or affiliated with the institution; and

(ii) "Other charges assessed the student by the institution" do not include fees for group health insurance, if this insurance is required for all students and the purchased coverage remains in effect for the student throughout the period for which the student was charged.

(4) (i) For purposes of this section, a student attending an institution for the first time is a student who—

(A) Has not previously attended at least one class at the institution; or

(B) Received a refund of 100 percent of his or her tuition and fees (less any permitted administrative fee) under the institution's refund policy for previous attendance at the institution.

(ii) A student remains a first-time student until the student either—

(A) Withdraws, drops out, or is expelled from the institution after attending at least one class; or

(B) Completes the period of enrollment for which he or she has been charged.

(5) For purposes of paragraph (c)(1) of this section, "the portion of the period of enrollment for which the student has been charged that remains" is determined—

(i) In the case of an educational program that is measured in credit hours, by dividing the total number of weeks comprising the period of enrollment for which the student has been charged into the number of weeks remaining in that period as of the student's withdrawal date;

(ii) In the case of an educational program that is measured in clock hours, by dividing the total number of clock hours comprising the period of enrollment for which the student has been charged into the number of scheduled clock hours remaining to be completed by the student in that period as of the student's withdrawal date; and

(iii) In the case of an educational program that consists predominantly of correspondence courses, by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the number of lessons not submitted by the student.

(d) *Period of enrollment for which the student has been charged.* (1) For purposes of this section, "the period of enrollment for which the student has been charged," means the actual period for which an institution charges a student, except that the minimum period must be—

(i) In the case of an educational program that is measured in credit hours and uses semesters, trimesters, quarters, or other academic terms, the semester, trimester, quarter or other academic term; or

(ii) In the case of an educational program that is measured in credit hours and does not use semesters, trimesters, quarters, or other academic terms, or an educational program that is measured in clock hours, the lesser of the length of the educational program or an academic year.

(2) If an institution charges by different periods for different charges, the "period of enrollment for which the student has been charged" for purposes of this section is the longest period for which the student is charged. The institution must include any charges assessed the student for the period of enrollment or any portion of that period of enrollment when calculating the refund.

(e) *Overpayments.* (1) An institution shall determine whether a student has received an overpayment for noninstitutional costs for the period of enrollment for which the student has been charged if—

(i) The student officially withdraws, drops out, or is expelled on or after his or her first day of class of that period; and

(ii) The student received Title IV, HEA program assistance other than from the FWS, Federal Stafford Loan, Federal PLUS, or Federal SLS Program for that period.

(2) (i) To determine if the student owes an overpayment, the institution shall subtract the noninstitutional costs that the student incurred for that portion of the period of enrollment for which the student has been charged from the amount of all assistance (other than from the FWS, Federal Stafford Loan, Federal PLUS, or Federal SLS Program) that the institution disbursed to the student.

(ii) Noninstitutional costs may include, but are not limited to, room and board for which the student does not contract with the institution, books, supplies, transportation, and miscellaneous expenses.

(f) *Repayments to Title IV, HEA programs of institutional refunds and overpayments.* (1)(i) An institution shall return a portion of the refund calculated in accordance with paragraph (b) of this section to the Title IV, HEA programs if the student to whom the refund is owed received assistance under any Title IV, HEA program other than the FWS Program.

(ii) The portion of the refund that an institution shall return to the Title IV, HEA programs may not exceed the amount of assistance that the student received under the Title IV, HEA programs other than under the FWS Program for the period of enrollment for which the student has been charged.

(2) For purposes of this section, except for the calculation of a *pro rata* refund required under paragraph (b)(1)(iii) of this section—

(i) An institutional refund means the amount paid for institutional charges for the period of enrollment for which the student has been charged minus the amount that the institution may retain under paragraph (f)(2)(iii) of this section for the portion of the period of enrollment for which the student has been charged that the student was actually enrolled at the institution;

(ii) An institution may not include any unpaid amount of a scheduled cash payment in determining the amount that the institution may retain for institutional charges. A scheduled cash payment is the amount of institutional charges that has not been paid by financial aid for the period of enrollment for which the student has been charged, exclusive of—

(A) Any amount scheduled to be paid by Title IV, HEA program assistance that the student has been awarded that is payable to the student even though the student has withdrawn; and

(B) Late disbursements of loans made under the Federal Stafford, Federal SLS, and Federal PLUS programs in accordance with 34 CFR 682.207(d);

(iii) In determining the amount that the institution may retain for the portion of the period of enrollment for which the student has been charged during which the student was actually enrolled, an institution shall—

(A) Compute the unpaid amount of a scheduled cash payment by subtracting the amount paid by the student for that period of enrollment for which the student has been charged from the scheduled cash payment for the period of enrollment for which the student has been charged; and

(B) Subtract the unpaid amount of the scheduled cash payment from the amount that may be retained by the institution according to the institution's refund policy; and

(iv) An institution shall return the total amount of Title IV, HEA program assistance (other than amounts received from the FWS Program) paid for institutional charges for the period of enrollment for which the student has been charged if the unpaid amount of the student's scheduled cash payment is greater than or equal to the amount that may be retained by the institution under the institution's refund policy.

(3)(i) A student must repay to the institution or to the Title IV, HEA programs a portion of the overpayment as determined according to paragraph (e) of this section. The institution shall make every reasonable effort to contact the student and recover the overpayment in accordance with program regulations (34 CFR parts 673, 674, 675, 676, 690, and 691).

(ii) The portion of the overpayment that the student or the institution (if the institution recovers the overpayment) shall return to the Title IV, HEA programs may not exceed the amount of assistance received under the Title IV, HEA programs other than the FWS, Federal Stafford Loan, Federal PLUS, or Federal SLS Program for the period of enrollment for which the student has been charged.

(iii) Unless otherwise provided for in applicable program regulations—

(A) If the amount of the overpayment is less than $100, the student is considered not to owe an overpayment, and the institution is not required to contact the student or recover the overpayment; and

(B) If the amount of the refund is $25 or less, the institution is not required to pay the refund.

(g) *Allocation of refunds and overpayments.* (1) Except as provided in paragraph (g)(2) of this section, if a student who received Title IV, HEA program assistance (other than assistance under the FWS Program) is owed a refund calculated in accordance with paragraph (b) of this section, or if a student who received Title IV, HEA program assistance (other than assistance under the FWS, Federal Stafford Loan, Federal PLUS, or Federal SLS Program) must repay an overpayment calculated in accordance with paragraph (e) of this section, an institution shall allocate that refund and any overpayment collected from the student in the following order:

(i) To eliminate outstanding balances on Federal SLS loans received by the student for the period of enrollment for which he or she was charged.

(ii) To eliminate outstanding balances on unsubsidized Federal Stafford loans received by the student for the period of enrollment for which he or she was charged.

(iii) To eliminate outstanding balances on subsidized Federal Stafford loans received by the student for the period of enrollment for which he or she was charged.

(iv) To eliminate outstanding balances on Federal PLUS loans received on behalf of the student for the period of enrollment for which he or she was charged.

(v) To eliminate outstanding balances on Federal Direct Stafford loans received by the student for the period of enrollment for which he or she was charged.

(vi) To eliminate outstanding balances on Federal Direct PLUS loans received on behalf of the student for the period of enrollment for which he or she was charged.

(vii) To eliminate outstanding balances on Federal Perkins loans received by the student for the period of enrollment for which he or she was charged.

(viii) To eliminate any amount of Federal Pell Grants awarded to the student for the period of enrollment for which he or she was charged.

(ix) To eliminate any amount of Federal SEOG Program aid awarded to the student for the period of enrollment for which he or she was charged.

(x) To eliminate any amount of other assistance awarded to the student under programs authorized by Title IV of the HEA for the period of enrollment for which he or she was charged.

(xi) To repay required refunds of other Federal, State, private, or institutional student financial assistance received by the student.

(xii) To the student.

(2) The institution must apply the allocation policy described in paragraph (g)(1) of this section consistently to all students who have received Title IV, HEA program assistance and must conform that policy to the following:

(i) No amount of the refund or of the overpayment may be allocated to the FWS Program.

(ii) No amount of overpayment may be allocated to the Federal Stafford Loan, Federal PLUS, or Federal SLS Program.

(iii) The amount of the Title IV, HEA program portion of the refund allocated to the Federal Stafford Loan, Federal PLUS, and Federal SLS programs must be returned to the appropriate borrower's lender by the institution in accordance with program regulations (34 CFR part 682).

(iv) The amount of the Title IV, HEA program portion of the refund allocated to the Title IV, HEA programs other than the FWS, Federal Stafford Loan, Federal PLUS, and Federal SLS programs must be returned to the appropriate program account or accounts by the institution within 30 days of the date that the student officially withdraws or is expelled or the institution determines that a student has unofficially withdrawn.

(v) The amount of the Title IV, HEA program portion of the overpayment allocated to the Title IV, HEA programs other than the FWS, Federal Stafford Loan, Federal PLUS, and Federal SLS programs must be returned to the appropriate program account or accounts within 30 days of the date that the student repays the overpayment.

(h) *Financial aid.* For purposes of this section "financial aid" is assistance that a student has been or will be awarded (including Federal PLUS loans received on the student's behalf) from Federal; State; institutional; or other scholarship, grant, or loan programs.

(i) *Refund dates*—(1) *Withdrawal date.* (i) Except as provided in paragraphs (i)(1) (ii) and (iii) of this section, a student's withdrawal date is the earlier of—

(A) The date that the student notifies an institution of the student's withdrawal, or the date of withdrawal specified by the student, whichever is later; or

(B) If the student drops out of the institution without notifying the institution (does not withdraw officially), the last recorded date of class attendance by the student, as documented by the institution.

(ii) If the student has not returned to the institution at the expiration of a leave of absence approved under paragraph (i)(2) of this section, the student's withdrawal date is the last recorded date of class attendance by the student, as documented by the institution. If the student returns to the institution after the expiration of the leave of absence but during the award year or (for the Federal Stafford Loan, Federal PLUS, and Federal SLS programs) during the period of enrollment in which the student was granted the leave of absence, the student may not receive additional Title IV, HEA program assistance for coursework that he or she has not completed.

(iii) If the student is enrolled in an educational program that consists predominantly of correspondence courses, the student's withdrawal date is normally the date of the last lesson submitted by the student, if the student failed to submit the subsequent lesson in accordance with the schedule for lessons established by the institution. However, if the student establishes in writing, within 60 days of the date of the last lesson that he or she submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the institution may restore that student to "in school" status for purposes of funds received under the Title IV, HEA programs. The institution may not grant the student more than one restoration to "in school" status on this basis.

(2) *Leaves of absence.* A student who has been absent from an institution and has been granted a leave of absence by the institution, in accordance with this paragraph, is not considered to have withdrawn from the institution for purposes of this section. In any twelve-month period, an institution may grant a single leave of absence to a student provided that—

(i) The student has made a written request to be granted a leave of absence;

(ii) The leave of absence involves no additional charges by the institution to the student; and

(iii) The leave of absence does not exceed—

(A) Sixty days;

(B) Six months, under either of the following circumstances:

(*1*) The student's educational program does not consist predominantly of correspondence courses, and the institution's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(*2*) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the institution with a written recommendation from a physician for a leave of absence longer than 60 days; or

(C) The length of time between the beginning of the leave of absence and the institution's next period of enrollment, under the following circumstance: The institution's next period of enrollment after the start of the leave of absence begins more than thirty days after the beginning of the leave of absence, and a corresponding period of nonenrollment (i.e., summer break) prevents a student from enrolling in any coursework.

(3) *Timely payment.* An institution shall pay a refund that is due—

(i) If a student officially withdraws or is expelled, within 30 days after the student's withdrawal date;

(ii) If a student drops out, within 30 days of the earliest of the—

(A) Date on which the institution determines that the student dropped out;

(B) Expiration of the academic term in which the student withdrew; or

(C) Expiration of the period of enrollment for which the student has been charged; or

(iii) If a student does not return to the institution before the expiration of an approved leave of absence under paragraph (i)(2) of this section, within 30 days after the last day of the leave of absence.

(Authority: 20 U.S.C. 1091b, 1092, 1094)

13. Section 668.23 is revised to read as follows:

§ 668.23 Audits, records, and examinations.

(a) An institution or a foreign institution as defined 34 CFR 600.52 that participates in the Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, Federal PLUS, Federal Pell Grant, PAS, or FDSL Program shall comply with the regulations for that program concerning—

(1) Fiscal and accounting systems;

(2) Program and fiscal recordkeeping; and

(3) Record retention.

(b) (1) An institution or a foreign institution as defined 34 CFR 600.52 that participates in any Title IV, HEA program shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution participates, and the appropriate State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA, in the conduct of audits, investigations, and program reviews authorized by law.

(2) A third-party servicer shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, and the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution contracting with the servicer participates, and the State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA, in the conduct of audits, investigations, and program reviews authorized by law.

(3) The institution's or servicer's cooperation must include—

(i) Providing timely access, for examination and copying, to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records;

(ii) Providing reasonable access to personnel associated with the institution's or servicer's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution or servicer shall not—

(A) Refuse to supply any relevant information;

(B) Refuse to permit interviews with those personnel that do not include the presence of the institution's or servicer's management; and

(C) Refuse to permit interviews with those personnel that are not tape recorded by the institution or servicer.

(c)(1)(i) An institution or a foreign institution as defined 34 CFR 600.52 that participates in the FDSL, Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, Federal PLUS, Federal SLS, Federal Pell Grant, or PAS Program shall have performed a financial and compliance audit of its Title IV, HEA programs.

(ii) A third-party servicer that administers funds or determines student eligibility shall have a financial and compliance audit performed of every aspect of the servicer's administration of the participation in the Title IV, HEA programs of each institution with which the servicer has a contract, unless—

(A) The servicer contracts with only one participating institution; and

(B) The audit of that institution's participation involves every aspect of the servicer's administration of that Title IV, HEA program.

(iii) To meet the requirements of paragraph (c)(1)(ii) of this section, a third-party servicer that contracts with more than one participating institution may submit a single financial and compliance audit report that covers every aspect of the servicer's administration of the participation in the Title IV, HEA programs for each institution with which the servicer contracts.

(iv) The audit required under paragraph (c)(1) (i) or (ii) of this section shall be conducted by an independent auditor in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office's (GAO's) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. (This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.)

(2) (i) The institution shall have an audit performed at least once every year.

(ii) The servicer shall have an audit performed at least once every year.

(3) If the institution is participating in the Title IV, HEA programs for the first time, the institution shall have the audit performed at least once every year for the first five years of the institution's participation.

(4) Notwithstanding paragraph (c)(2) of this section—

(i) The institution shall have an audit performed at least once every two years if—

(A) The institution receives less than $100,000 in total annual funding under the Title IV, HEA programs for the period covered by the audit; or

(B) The institution had no deficiencies identified in its most recently submitted audit report and that report was submitted in a timely fashion; and

(ii) The servicer shall have an audit performed at least once every two years if—

(A) The servicer administers less than $1,000,000 under the Title IV, HEA programs for the period covered by the audit; or

(B) The servicer had no material exceptions identified in the servicer's most recently submitted audit report and that report was submitted in a timely fashion.

(5) (i) The institution is not required to have an audit performed for any year in which the institution receives less than $25,000 in total annual funding under the Title IV, HEA programs.

(ii) The servicer is not required to have an audit performed for any year in which the servicer administers less than $250,000 under the Title IV, HEA programs.

(6) (i) The institution's first audit must cover the institution's activities for the entire period of time since the institution began to participate in the Title IV, HEA program for which the audit is performed. Each subsequent audit must cover the institution's activities for the entire period of time since the preceding audit.

(ii) The servicer's first audit must cover the servicer's activities for its first full fiscal year beginning after the effective date of these regulations, and include any period from the effective date to the beginning of the first full fiscal year. Each subsequent audit that the servicer has performed must cover the servicer's activities for the entire period of time since the servicer's preceding audit.

(7) Notwithstanding paragraph (c) (4) and (5) of this section, the Secretary may, as the Secretary deems necessary, request any institution or third-party servicer to have an audit performed on an annual basis.

(8) The institution or servicer, as applicable, shall submit its audit report to the Department of Education's Inspector General in accordance with the deadlines established in audit guides developed by the Department of Education's Office of Inspector General.

(9) The Secretary may require the institution or servicer to provide, upon request, to cognizant guaranty agencies and eligible lenders under the FFEL programs, State agencies, nationally recognized accrediting agencies, and State postsecondary review entities designated under subpart 1 of part H of Title IV of the HEA, the results of any audit conducted under this section.

(d) Procedures for audits are contained in audit guides developed by, and available from, the Department of Education's Office of Inspector General. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations and GAO's Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.

(e) (1) An institution, a foreign institution as defined 34 CFR 600.52, or a third-party servicer that has an audit conducted in accordance with this section shall—

(i) Give the Secretary and the Inspector General access to records or other documents necessary to review the audit; and

(ii) Include in any arrangement with an individual or firm conducting an audit described in this section a requirement that the individual or firm shall give the Secretary and the Inspector General access to records or other documents necessary to review the audit.

(2) A third-party servicer shall give the Secretary and the Inspector General access to records or other documents necessary to review an institution's audit.

(3) An institution shall give the Secretary and the Inspector General access to records or other documents

necessary to review a third-party servicer's audit.

(f) The Secretary considers the audit requirement in paragraph (c) of this section to be satisfied by an audit conducted in accordance with—

(1) The Single Audit Act (Chapter 75 of title 31, United States Code); or

(2) Office of Management and Budget Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

(g) Upon written request, an institution, a foreign institution as defined 34 CFR 600.52, or a third-party servicer shall give the Secretary access to all Title IV, HEA program and fiscal records, including records reflecting transactions with any financial institution with which the institution or servicer deposits or has deposited any Title IV, HEA program funds.

(h)(1) In addition to the records required under the applicable program regulations and this part, for each recipient of Title IV, HEA program assistance, the institution or foreign institution as defined 34 CFR 600.52 shall establish and maintain, on a current basis, records regarding—

(i) The student's admission to, and enrollment status at, the institution;

(ii) The educational program and courses in which the student is enrolled;

(iii) Whether the student is maintaining satisfactory progress in his or her educational program;

(iv) Any refunds due or paid to the student, the Title IV, HEA program or accounts, and the student's lender under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs;

(v) The student's placement by the institution in a job if the institution provides a placement service and the student uses that service;

(vi) The student's prior receipt of financial aid (see § 668.19);

(vii) The verification of student aid application data; and

(viii) Financial and other institutional records necessary to determine the institutional eligibility, financial responsibility, and administrative capability of the institution.

(2)(i) An institution or a foreign institution as defined 34 CFR 600.52 shall establish and maintain records regarding the educational qualifications of each regular student it admits, whether or not the student receives Title IV, HEA program assistance, that are relevant to the institution's admission standards.

(ii) An institution or a foreign institution as defined 34 CFR 600.52 at which only certain educational programs have been determined eligible shall establish and maintain records regarding the admission requirements and educational qualifications of each regular student enrolled in the eligible program or programs, whether the student received Title IV, HEA program assistance or not.

(3) Records required under applicable program regulations and this part shall be—

(i) Systematically organized;

(ii) Readily available for review by the Secretary at the geographical location where the student will receive his or her degree or certificate of program or course completion; and

(iii) Retained by the institution for the longer of at least five years from the time the record is established or the period of time required under the applicable program regulations of this part.

(Authority: 20 U.S.C. 1088, 1094, 1099c, 1141 and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

14. Section 668.26, as proposed to be redesignated in a Notice of Proposed Rulemaking published on February 17, 1994 (59 FR 8061), is revised to read as follows:

§ 668.26 End of an institution's participation in the Title IV, HEA programs.

(a) An institution's participation in a Title IV, HEA program ends on the date that—

(1) The institution closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students;

(2) The institution loses its institutional eligibility under 34 CFR part 600;

(3) The institution's participation is terminated under the proceedings in subpart G of this part;

(4) The institution's period of participation, as specified under § 668.13, expires, or the institution's provisional certification is revoked under § 668.13;

(5) The institution's program participation agreement is terminated or expires under § 668.14;

(6) The institution's participation ends under § 668.17(c); or

(7) The Secretary receives a notice from the appropriate State Postsecondary Review Entity designated under subpart 1 of part H of Title IV of the HEA that the institution's participation should be withdrawn.

(b) If an institution's participation in a Title IV, HEA program ends, the institution shall—

(1) Immediately notify the Secretary of that fact;

(2) Submit to the Secretary within 45 days after the date that the participation ends—

(i) All financial, performance, and other reports required by appropriate Title IV, HEA program regulations; and

(ii) A letter of engagement for an independent audit of all funds that the institution received under that program, the report of which shall be submitted to the Secretary within 45 days after the date of the engagement letter;

(3) Inform the Secretary of the arrangements that the institution has made for the proper retention and storage for a minimum of five years of all records concerning the administration of that program;

(4) If the institution's participation in the Federal Perkins Loan or FDSL Program ended, inform the Secretary of how the institution will provide for the collection of any outstanding loans made under that program;

(5) If the institution's participation in the NEISP or SSIG Program ended—

(i) Inform immediately the State in which the institution is located of that fact; and

(ii) Notwithstanding paragraphs (c) through (e) of this section, follow the instructions of that State concerning the end of that participation;

(6) If the institution's participation in all the Title IV, HEA programs ended, inform the Secretary of how the institution will provide for the collection of any outstanding loans made under the National Defense/Direct Student Loan and ICL programs; and

(7) Continue to distribute refunds according to § 668.22.

(c) If an institution closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students, the institution shall—

(1) Return to the Secretary, or otherwise dispose of under instructions from the Secretary, any unexpended funds that the institution has received under the Title IV, HEA programs for attendance at the institution, less the institution's administrative allowance, if applicable; and

(2) Return to the appropriate lenders any Federal Stafford Loan and Federal SLS program proceeds that the institution has received but not delivered to, or credited to the accounts of, students attending the institution.

(d)(1) An institution may use funds that it has received under the Federal Pell Grant or PAS Program or a campus-based program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to satisfy any unpaid commitment made to a student under that Title IV, HEA program only if—

(i) The institution's participation in that Title IV, HEA program ends during a payment period;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that payment period, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The commitment was made prior to the end of the participation; and

(iv) The commitment was made for attendance during that payment period or a previously completed payment period.

(2) An institution may credit to a student's account or deliver to the student the proceeds of a disbursement of a Federal Stafford or Federal SLS loan to satisfy any unpaid commitment made to the student under the Federal Stafford Loan or Federal SLS Program only if—

(i) The institution's participation in that Title IV, HEA program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The commitment was made prior to the end of the participation; and

(iv) The commitment was made for attendance during that period of enrollment; and

(v) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(3) An institution may use funds that it has received under the FDSL Program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to credit to a student's account or deliver to the student the proceeds of a disbursement of a Federal Direct Student loan only if—

(i) The institution's participation in the FDSL Program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The loan was made for attendance during that period of enrollment; and

(iv) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(e) For the purposes of this section—

(1) A commitment under the Federal Pell Grant and PAS programs occurs when a student is enrolled and attending the institution and has submitted a valid Student Aid Report to the institution or when an institution has received a valid institutional student information report;

(2) A commitment under the campus-based programs occurs when a student is enrolled and attending the institution and has received a notice from the institution of the amount that he or she can expect to receive and how and when that amount will be paid; and

(3) A commitment under the Federal Stafford and Federal SLS programs occurs when the Secretary or a guaranty agency notifies the lender that the loan is guaranteed.

(Authority: 20 U.S.C. 1094, 1099a–3)

15. Section 668.81, as proposed to be amended in a Notice of Proposed Rulemaking published on February 17, 1994 (59 FR 8062), is further amended by removing paragraph (a)(2); redesignating paragraph (a)(1) introductory text as paragraph (a) introductory text; redesignating paragraphs (a)(1)(i) through (iv) as paragraphs (a)(1) through (4), respectively; removing the word "or" after the semi-colon in paragraph (c)(1); revising paragraph (c)(2); adding paragraphs (c)(3) and (4); and revising paragraph (d) to read as follows:

§ 668.81 Scope and special definitions.

* * * * *

(c) * * *

(2) An institution fails to qualify for initial certification or provisional certification to participate in any Title IV, HEA program because the institution does not meet the factors of financial responsibility and standards of administrative capability contained in subpart B of this part;

(3) A participating institution's or a provisionally certified participating institution's period of participation, as specified under § 668.13, has expired; or

(4) A participating institution's provisional certification is revoked under the procedures in § 668.13.

(d) This subpart does not apply to a determination by the Secretary of the system to be used to disburse Title IV, HEA program funds to a participating institution (i.e., advance payments and payments by way of reimbursements).

* * * * *

16. A new Appendix A to Part 668 is added to read as follows:

Appendix A to Part 668—Standards for Acceptable Refund Policies by Participating Institutions

For purposes of § 668.22(b)(1)(iv)(A), the Secretary considers an institution to have a fair and equitable refund policy if the institution uses a policy that meets the minimum requirements of this appendix. These requirements are a modified version of guidelines developed by the National Association of College and University Business Officers. These requirements do not affect an institution's obligation to comply with other Department of Education regulations.

(I) *The governing board of the institution must review and approve the schedule of all institutional charges and refund policies applicable to students.* The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies must receive board attention and approval.

(II) *The institution must seek consumer views in the process of establishing and amending charge and refund structures.* Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is an essential approach for assessing student needs and creating public awareness of institutional requirements.

(III) *The institution must publish a current schedule of all student charges (including the costs of required supplies and equipment), publish a statement of the purpose for such charges and related refund policies, have those statements readily available free of charge to current and prospective students, and substantiate that the costs of required supplies and equipment are reasonably related to the cost of providing the supplies and equipment to the students.* Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment of the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) *The institution must clearly designate all optional charges as "optional" in all published schedules and related materials.* Charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials. Statements accompanying the schedule may include institutional endorsements of the optional program or service. The institution must state clearly in its schedule if a charge is optional for some students but required for others.

(V) *The institution must clearly identify charges and deposits that are nonrefundable*

as "nonrefundable" on all published schedules. Institutions determine on an individual basis which of their charges are refundable or nonrefundable. In general, admission fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g., tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) *The institution must refund housing rental charges, less a deposit, as long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students.* Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) *The institution must refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract.* Subsequent board charges should be refunded on a *pro rata* basis. It is reasonable to make a refund for those goods and services not consumed. The deposit should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) *The institutional refund policy must include the following requirements:*

A. The institution must refund 100 percent of the tuition charges, less an administrative fee that does not exceed the lesser of $100 or 5 percent of the tuition, if the student submits written notice of cancellation on or before one week preceding the first day of classes for the period of enrollment for which the student was charged.

B. The institution must refund at least 90 percent of the tuition charges if the student submits written notice of cancellation between the end of the period of time specified in (VIII) A. and the end of the first 10 percent (in time) of the period of enrollment for which the student was charged.

C. The institution must refund at least 50 percent of the tuition charges if the student submits written notice of cancellation between the end of the first 10 percent (in time) of the period of enrollment for which the student was charged and the end of the first 25 percent (in time) of that period of enrollment.

D. The institution must refund at least 25 percent of the tuition charges if the student submits written notice of cancellation between the end of the first 25 percent (in time) of the period of enrollment for which the student was charged and the end of the first 50 percent (in time) of the period of enrollment.

E. The institution may deduct from the refund owed under this paragraph the documented cost to the institution of equipment issued to the student if the institution specifies in the enrollment agreement a separate charge for equipment that the student actually obtains or if the institution refers the student to a vendor operated by an affiliated or related entity and the student does not return the equipment in good condition, allowing for reasonable wear and tear, within 20 days following the date of the student's withdrawal. The student shall be liable for the amount, if any, by which the documented cost for equipment exceeds the refund under this paragraph. Equipment is not considered to be returned in good condition if the equipment cannot be reused because of clearly recognized health and sanitary reasons, and this fact is clearly and conspicuously disclosed in the enrollment agreement.

(IX) *The institution must assess no penalty charges where the institution, as opposed to the student, is in error.* Penalty charges, such as those involving late registration fees, change-of-schedule fees, and late payment fees, must not be assessed if it is determined that the student is not responsible for the action causing the charges to be levied.

(X) *The institution must advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institution officer.* A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that the request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) *The institution must pay or credit refunds due in accordance with § 668.22(h)(4).*

(XII) *The institution must publicize, as a part of its dissemination of information on charges and refunds, that an appeals process exists for students or parents who believe that individual circumstances warrant exceptions from published policy. The informational materials must include the name, title, and address of the official responsible for handling appeals.* Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

PART 690—FEDERAL PELL GRANT PROGRAM

17. The heading for part 690 is revised to read as set forth above.

18. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a through 1070a–6, unless otherwise noted.

19. Section 690.83 is amended by adding a new paragraph (e) to read as follows:

§ 690.83 Submission of reports.

* * * * *

(e) (1) Notwithstanding paragraphs (a), (b), (c) (1) or (2), or (d) of this section, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided Federal Pell Grants in accordance with this part but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants in accordance with paragraph (e) of this section.

(2) The institution must demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report as initially submitted to the Department that was conducted after December 31, 1988 and timely submitted in accordance with 34 CFR 668.23(c), with respect to grants made during the period of that audit.

(3) In determining whether the institution qualifies for a payment or reduction in accountability, the Secretary takes into account any liabilities of the institution arising from that audit or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

* * * * *

(Authority: 20 U.S.C. 1070a, 1094, 1226a–1)

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix to Preamble

Subparts A and B of the Student Assistance General Provisions Regulations

I. Academic Year

A. Section 481(d)(2) of the HEA provides that an "academic year" must require a minimum of 30 weeks of instruction time in which a student is expected to complete at least 24 semester or trimester hours or 36 quarter hours at an institution that measures program length in credit hours or at least 900 clock hours at an institution that measures program length in clock hours.

Issues that the community was asked to address and the community's views:

1. How should prorations be calculated? For example, if 22 weeks are offered, how does an institution determine the portion of an academic year that applies?

- Prorations of an academic year in educational programs shorter than an academic year should be based solely on the number of credit or clock hours provided, without regard to the number of weeks required. Proration should not be used for educational programs of one academic year or longer. Attempts to prorate the length of an academic year using both weeks and credit or clock hours would be inconsistent and confusing, because credit or clock hours are not always evenly distributed over the calendar length of an educational program. [Kansas City]
- Prorations should be based on the minimum number of clock or credit hours that a full-time student in an eligible program is scheduled to take in an academic year. Prorations should not be based on the number of weeks in the academic year. A minority opposed inclusion of a reference to "eligible program" in this recommendation. [Atlanta]

2. What is a week? How should portions of a week be treated?

- A week should include any week during a portion of which the educational process takes place. [Kansas City]
- A majority of participants recommended that an instructional week be defined in terms of a fixed standard of clock hours of instruction. Thus, for example, if regulations define an instructional week as the completion of 30 clock hours, a student who completes 90 clock hours of instruction in two calendar weeks should be considered to have completed the equivalent of three instructional weeks. [New York]
- A week should be defined as a seven-day period that can begin on any day of the week. The seven-day periods continue for 30 periods of time. [San Francisco]
- A "week" should be defined as either each seven-day period within an enrollment period; or each seven-day period (within an enrollment period) during which any instruction occurred. [Atlanta]

3. What is instructional time? Should periods provided for orientation, testing, and vacation count?

- Instructional time should be measured on the basis of calendar weeks that begin on Monday and end on Sunday. Instructional time should consist of a period of continuous enrollment beginning with the first week of classes and ending with the conclusion of the period of enrollment, including any normally scheduled breaks in the academic calendar. [Kansas City]
- Instructional time should include time spent reading and taking examinations. [New York]
- The interests of students, institutions, and other constituents need to be considered in determining instructional time. Some participants recommended that the determination be left to accrediting agencies. Other participants recommended that the determination be left to the Secretary. [San Francisco]

4. What consideration should be given to programs with condensed class schedules, or to weekend programs?

- Because instructional time should be measured on the basis of periods of continuous enrollment, special consideration for condensed schedules or weekend programs is unnecessary. [Kansas City]
- The interests of students, institutions, and other constituents need to be considered in determining how to treat condensed schedules and weekend programs. Some participants recommended that the determination be left to accrediting agencies. Other participants recommended that the determination be left to the Secretary. [San Francisco]
- Condensed programs that include the equivalent of the workload of a regular academic-year program should be considered to meet the definition of academic year. [Atlanta]

5. How does the new definition affect less-than-full-time students?

- The definition does not affect part-time students. [Kansas City]
- A student who completes fewer than the required minimum number of clock or credit hours during the 30-week period should be considered less-than-full-time. [San Francisco]
- The length of the academic year is irrelevant to determining the enrollment status of students. Enrollment status is determined by the length of time (in terms of credit or clock hours) that a student takes to complete a "program." [Atlanta]

II. Eligible Program

A. Effective July 1, 1993, section 481(b) and (c) of the HEA require a proprietary institution of higher education or a postsecondary vocational institution to provide an eligible program of training that prepares students for gainful employment in a recognized occupation. Section 481(e) of the HEA requires an eligible program to consist of at least 600 clock hours, 16 semester hours, or 24 quarter hours offered during a minimum of 15 weeks, if the program admits students who have not completed the equivalent of an associate degree. An eligible program must consist of at least 300 clock hours, eight semester hours, or 12 quarter hours offered during a minimum of ten weeks, if the program is an undergraduate program requiring the equivalent of an associate degree for admission or if the program is a graduate or professional program.

The Secretary is required to develop regulations to determine the quality of educational programs of less than 600 clock hours. Those regulations must, at a minimum, require those educational programs to have verified completion and placement rates of at least 70 percent. An educational program of more than 300 clock hours and less than 600 clock hours that meets the Secretary's regulations qualifies for eligibility under the Federal Family Education Loan programs even if the educational program is not an undergraduate program requiring the equivalent of an associate degree for admission, and even if the educational program is not a graduate or professional program.

Issues that the community was asked to address and the community's views:

1. What is the equivalent of an associates degree?

- An associates degree should be a degree which meets the degree requirements of any State for an associate degree. [Kansas City]
- An associates degree should represent the completion of any educational program that meets State licensure requirements and that equals at least the length of a typical associate degree program. [Kansas City]
- An associates degree should represent the completion of any educational program leading to a vocational objective if the program is at least 1,800 clock hours, (60 or 48) semester hours, or (90 or 64) quarter hours. (The variation in credit hours depends on whether the negotiators decide to use the number of credits required to earn an associate degree or the number of credits required for completion of at least two academic years.) [Kansas City]
- An associates degree should represent the completion of an educational program that is at least two academic years in length. [Kansas City]
- An associates degree should represent the completion of an educational program leading to licensure in an occupation, if a community college offers an associate degree program for that occupation. [Kansas City]
- An associates degree should be determined by the professional judgment of the Secretary. [Kansas City]
- An associates degree should be determined by an institution's State licensing agency. [Kansas City]
- An associates degree should consist of previous training in the same field of study as that for which the eligible program prepares training. [Kansas City]
- An associates degree should, for occupations with apprenticeship programs, require the completion of five-year apprenticeship programs. [Kansas City]
- An associates degree should represent the completion of the equivalent of two years of successful academic work in a postsecondary environment or a professional license that required a specific period of training and perhaps work experience. [New York]
- An associates degree should represent the completion of the equivalent of at least two academic years of study, subject to compliance with applicable State laws and regulations. [San Francisco]
- An associates degree should represent the completion of 60 semester hours or the equivalent. [Atlanta]

2. What are other measures of "quality" for programs of less than 600 hours?

- An educational program should be considered to satisfy the Secretary's quality measures if a program that prepares students for State licensure in an occupation; a program that prepares students for certification by a nationally recognized professional or industry association; or a program that is approved by a nationally recognized accrediting agency or association. [Kansas City]
- No additional measures should be included. [New York, Atlanta]

3. How should the required job placement and graduation rates be calculated? How often should the rates be calculated?

- The methodology and timing for the calculations should be identical to those

required under the Carl D. Perkins Vocational and Applied Technology Education Act and the Student Right-to-Know and Campus Security Act. [Kansas City]

• Calculation of completion rates should be based on the formula used under the Student Right-to-Know and Campus Security Act, except that the calculation should not include time-specific constraints. [New York]

• Calculation of placement rates should be based on the formula used under the Student Right-to-Know and Campus Security Act, except that only completers should be counted in the denominator. No time frame should be used in the calculation. [New York]

• Regulations should define completion rate, graduation rate, and full-time employment (which should specify a period of time in a job). [San Francisco]

• Calculations should be based over a two-three year period to reflect long-term trends and avert the adverse impact of short-term problems such as those caused by economic conditions. Institutions that fall below the minimum rates ought to be provided appeal procedures. [San Francisco]

• Because there are many State regulations and accrediting agency standards governing this area, institutions should be allowed to follow the most restrictive ones. Institutions following the most restrictive regulations and standards should not be required to maintain multiple sets of documentation demonstrating compliance with a variety of regulations and standards. [San Francisco]

• The cohort for calculation of placement rates should include placement in jobs related to the occupation for which students are trained. [San Francisco]

• In calculating placement rates, students should be counted as employed if they obtain jobs within 180 days of graduation. Students should be counted as employed if they obtain jobs in the field for which they were trained or a related field. Students (such as those in continuing education or in the military) who are not looking for a job should be excluded from the calculation. The calculation should be based on a percentage of graduates. Incarcerated or physically incapacitated students should be excluded from the calculation. [Atlanta]

4. What documentation is required to support the institution's completion and job placement rates?

• Documentation should be identical to that required under the Carl D. Perkins Vocational and Applied Technology Education Act and the Student Right-to-Know and Campus Security Act. [Kansas City]

• Documentation should be any documentation required by the institution's State or accrediting agency. The rates can be verified through required compliance audits. [New York]

Calculations should be included in the Fiscal Operations Report and Application to Participate (FISAP) for the campus-based programs. The time-frame for reporting this data should be relatively short, to ensure that the data is relevant. [San Francisco]

• A student's placement information should be maintained in each student's file. Placement information should be available for the purposes of audits. [San Francisco]

• Institutions should maintain employment records on file to confirm placements. Employment records should not be submitted to the Department of Education. [Atlanta]

III. Program Participation Agreement

A. Section 487(a)(5) requires an institution to provide assurances that the institution will provide, upon request and in a timely fashion, information relating to its administrative capability and financial responsibility to the Secretary, the designated State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA, the appropriate guaranty agency, and accrediting agency or association.

Issues that the community was asked to address and the community's views:

1. How should agencies obtain this information from institutions?

• Other agencies should obtain the information through IPEDS or accrediting agency annual reports. [San Francisco]

• Requests should be made in writing to the Chief Executive Officer and the Chief Financial Officer of the institution. [Kansas City]

2. Should there be a standard information-sharing format?

• There should be a standard information sharing format provided that the institution is allowed to report using its accounting system. [Kansas City]

• There needs to be a standard information sharing format that can be completed readily and corresponds to the institution's fiscal year. [New York]

• The Department should provide a single form that can be used for all agencies. [Atlanta]

B. Section 487(a)(8)(B) requires institutions that advertise job placement rates to make available to prospective students relevant State licensing requirements for any job for which the course of instruction is designed to prepare the student.

Issues that the community was asked to address and the community's views:

1. How often should institutions be required to update licensing data?

• Institutions should update the data whenever State licensing agencies require that updates or regulation must occur. [San Francisco, Kansas City, Atlanta]

• Information always needs to be current. [New York]

2. Should there be a standard format for providing this information to prospective students?

• A typical brochure should be used to convey information to students. [San Francisco]

• There should not be a standard format for providing this information to prospective students. [Kansas City, New York, Atlanta]

• The institution should use the States required format for providing consumer data to students. If the Secretary requires additional information, the information should be consistent with the formats that the institution already uses. [Kansas City]

C. Section 487(a)(13) provides that an institution may not deny Federal financial aid to an eligible student because the student is studying abroad in a program approved for credit by the home institution.

Issues that the community was asked to address and the community's views:

1. Should a consortium agreement be required?

• A consortium agreement should not be required. [Kansas City, San Francisco]

• A consortium agreement should be used for pre-approved work. Institutions need to ensure that two institutions are not giving aid at the same time. [New York]

• A consortium agreement should be required if the student is paying tuition at the home institution and a second institution is involved. Otherwise no consortium agreement should be required. [Atlanta]

2. Does the study-abroad program have to be part of the student's program at the home institution?

• The study abroad program need not be a part of the student's program at the home institution, but must count toward a degree at the institution. [Kansas City]

• The study abroad program should be a part of the student's home program. [San Francisco, Atlanta]

• An institution should not be obligated to enter into an agreement with a student who wants to study abroad. [New York]

3. How should the term "approved for credit" be defined?

• The term "approved for credit" should mean that credits are fully transferable (accepted for credit) into an eligible program offered by the home institution. [Kansas City]

• "Approved for credit" should mean used toward a degree as defined by the institution. [San Francisco]

• "Approved for credit" should mean that it is determined in advance that the credit is accepted at the home institution. [Atlanta]

4. Should a standard format be developed for institutions to report study abroad programs?

• A standard format for institutions to report study abroad programs is not needed. It does not appear that any reporting is required. [Kansas City, New York, San Francisco, Atlanta]

D. Section 487(a)(14)(A) requires a new institution or an institution that undergoes a change of ownership or changes its status as a parent or subordinate institution to develop a Default Management Plan to participate in the FFEL program. The Secretary must approve the plan and the plan must be implemented for two years after the institution is initially certified as an eligible institution or for two years after its change of ownership or status.

Issues that the community was asked to address and the community's views:

1. Should the criteria in Appendix D of current regulations be used as the basis for the Secretary's approval of default plans?

• Unless otherwise required, an institution should use Appendix D or submit any other approved default management plan. [Kansas City, Atlanta]

• If a new institution uses Appendix D, it is subject to things it can't do as a new institution. What is in Appendix D that isn't in the new regulations already? New institutions will certify that they will adopt the stipulated plan they have in place (that has approval from the appropriate State and or accrediting body.) [New York]

2. Should there be other criteria?

• Other criteria should include: a) more follow up once the student leaves the institution; and b) additional cooperation with all partners in the program, i.e., lenders, institutions, and secondary markets. The Department should reassess the method for determining cohort default rate. It is not fair for most institutions. [San Francisco]

• No other criteria is needed. [Atlanta]

E. Section 487(a)(18)(A) requires an institution that offers athletically-related student aid to compile annually data on expenses and revenues of athletic activities and expenses and revenues of the institution.

1. How should the terms "revenues" and "expenses" be defined?

• There should be coordination with NCAA regulations and audit guides. [San Francisco]

• Institutions should be allowed to use the accounting principles and terms they are currently using to define "revenues" and "expenses." [Kansas City]

F. Section 487(a)(19) provides that if a student is unable to meet his or her financial obligation to the institution because of a delay in the disbursement of proceeds of a Title IV, HEA program loan (due to compliance with Title IV requirements or delays attributable to the institution), the institution may not penalize the student in any way, including assessing a late fee; denying the student access to class, the library, or other facilities; or requiring that the student borrow additional funds.

1. How should the term "denial of access to classes" be interpreted?

• "Denial of access" should mean the student is not given access to equipment or supplies. [San Francisco]

2. What should be considered as a condition to meet the definition of a "delay in the delivery of proceeds?"

• This section should not apply to: 1) delays by lenders or guarantors in delivering loan proceeds which are not caused by the necessity of complying with Title IV requirements; and 2) delays attributable to the student's not providing information by known, published, or noticed deadlines, that the institution, lender, or guarantor must have in order to comply with Title IV requirements. (Example, IRS 1040 forms for verification.)

The Secretary should regulate in such a way that it is clear that institutions may charge reasonable interest on unpaid bills where the delay in Title IV delivery is attributed to the student or an agency other than the institution. [Kansas City]

• This section does not address delays for which the student has not met public deadlines or performed all obligations necessary to ensure the delivery of timely aid. [Kansas City]

• If the student does not provide documents, it is not applicable. It should relate only to a 30 day delayed disbursement. [Atlanta]

• No constraints should be put on a student for the delay of that portion of tuition covered by the first-time Stafford loan or in the case of institutional delay. [New York]

• Consideration should be given to the laws of various states since they differ as to when a student must meet his or her financial obligation at an institution. [San Francisco]

3. If a delay is caused by the lender or institution can the guarantee agency take actions that are prohibited under other circumstances?

• No, a guaranty agency should not be allowed to take action if the delay is caused by the lender or institution. [New York]

• G. Section 487(a)(20) prohibits an institution from paying a commission, bonus or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the awarding of student financial assistance.

Issues that the community was asked to address and the community's views:

1. How should the Department determine that an institution is not providing commissions, bonuses, and other incentive payments?

• Compliance should be determined through the audit process. Auditors check employment and payroll records. [San Francisco, Atlanta]

2. If an institution awards merit pay to salaried employees in increments as the student successfully completes portions of the course, graduates, or gets placed in a job, would the institution be in compliance?

• Institutions should be allowed to provide merit incentives to employees as long as it cannot be attached to the enrollment process (i.e., servicing retaining, and placing students after the first day of class at the institution.) [Kansas City]

Salaried employees should be rewarded for retention. Any compensation (non-salaried) for the enrollment of financial aid students is illegal. There appears to be opposition to compensating for the "warm body count" and financial aid packages, but it does seem that the statute allows for a legitimate basis for compensation above base salary for areas such as retention, however defined, and/or completion rates. [New York]

• As the intent appears to be elimination of head count recruitment commissions, bonuses on merit pay may be made as long as they are not made solely as the basis of recruitment of the student. The Department should define who is an employee. [Atlanta]

• The institution would be in compliance if an institution awards merit pay to salaried employees in increments as the student successfully completes portions or the course, graduates, or gets placed in a job. [Kansas City]

IV. Annual Audits

A. The Secretary is authorized to prescribe regulations for institutional and third-party servicer audits. Section 487(c)(1)(A)(i) requires an annual audit of the financial condition of the institution in its entirety and an annual audit of the institution's compliance with the requirements governing the Title IV programs. The institution must make these audits available to cognizant guaranty agencies, eligible lenders, State agencies, and the State review entities designated under subpart 1 of part H of Title IV of the HEA.

Issues that the community was asked to address and the community's views:

1. To what extent, if any, should the annual audit requirement be waived or limited? Should this requirement for annual audits be waived for institutions participating in the Quality Assurance Program?

• Annual financial audit should be waived in all instances except in the case of new institutions, institutions undergoing a change in ownership, institutions with a cohort default rate in excess of 25 percent for one year, and institutions that did not satisfy all factors of financial responsibility in their most recent financial statement issued to the Department. Furthermore, institutions would be required to submit no more than two consecutive annual audits before being considered released from the annual audit requirement.

Annual compliance audit should be waived for all institutions except in the case of new institutions, institutions undergoing a change of ownership, and institutions which have undergone a compliance audit within the past three years which resulted in Title IV liabilities in excess of one percent of Title IV funds disbursed.

A further suggestion was made to truncate the audit requirements if the Secretary continues to require an annual audit. A minority of the group felt that annual audits, both financial and compliance, should be required and not waived. Those institutions that meet quality assurance criteria would be required to submit a short form audit on a biannual basis. [Atlanta]

• No further burden should be placed on institutions than their State already requires or than the IRS requires of them. If someone else wants the audit, the Department should be responsible for distributing them. There should be diminishing filing requirements based upon performance evaluation factors and general longevity of institutions to exempt an institution from an annual audit. A minority suggested that pledged assets be accepted at some level in lieu of a certified annual audit. [New York]

• The annual audit requirement could be waived in certain areas, e.g., the institution could be exempt from the student compliance components but not from a financial audit if the institution is in the quality assurance program. [San Francisco]

• The Department should develop a set of guidelines that would permit exemptions. [Atlanta]

2. How should guaranty agencies, lenders, and other parties request audit information from institutions?

• An audit correction action plan should be sent to guaranty agencies and lenders. Requests should be in writing with explanations of why the request is made. Freedom of Information Act procedures could be used. Requests should be made to the appropriate official on campus. Information may not be given to any third-party without the approval of the institution. [San Francisco]

• Requests should be in writing to the Chief Executive Officer and the Chief Financial Officer. A minority of the group believed that all requests should be made in

writing to the Chief Financial Officer only. [Kansas City]

• Institutions should be notified of any requests for information and when information is released to appropriate agencies. The information should be released only to the parties already listed in the statute. [Kansas City]

• Information should be provided to guaranty agencies, lenders, and other parties upon request. [Atlanta]

B. In matters not governed by specific provisions, section 487(c)(1)(B) provides for the establishment of standards of financial responsibility and administrative capability that include any matter the Secretary deems necessary for the sound administration of the financial aid programs (such as the pertinent actions of any owner, shareholder, or person exercising control over an eligible institution.)

Issues that the community was asked to address and the community's views:

1. What other administrative capability or financial responsibility standards should be considered?

• Agencies other than the Department that are permitted to request the same information should only be allowed to request documents used by the Department. [New York]

• No other standards of financial responsibility should be considered. [Kansas City, San Francisco]

V. Institutional Refund Policy

Section 484B(b)(2) requires that each institution participating in any Title IV, HEA program shall have a fair and equitable refund policy under which the institution refunds unearned tuition, fees, room and board, and other charges, to a student who received Title IV assistance (including Federal PLUS loans received on the student's behalf) for a student who does not register for the period of attendance for which assistance was intended or withdraws or otherwise fails to complete the period of enrollment for which assistance is provided.

An institution's refund policy is considered to be fair and equitable if the policy provides for a refund in an amount of at least the largest of the amounts provided under—

(1) The requirements of applicable State law;

(2) The specific refund standards established by the institution's nationally recognized accrediting agency if those standards are approved by the Secretary;

(3) The *pro rata* refund calculation described in the statute for any student whose withdrawal date is on or before the 60 percent point in time in the period of enrollment for which the student has been charged.

The term "*pro rata* refund," means a refund by the institution to a student attending that institution for the first time of not less than that portion of the tuition, fees, room, board, and other charges assessed the student by the institution equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded downward to the nearest 10 percent of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, and less a reasonable administrative fee not to exceed the lesser of five percent of the tuition, fees, room and board, and other charges assessed the student, or $100.

"The portion of the period of enrollment for which the student has been charged that remains," is determined—

(1) In the case of an educational program that is measured in credit hours, by dividing the total number of weeks comprising the period of enrollment for which the student has been charged into the number of weeks remaining in that period as of the last recorded day of attendance by the student;

(2) In the case of an educational program that is measured in clock hours, by dividing the total number of clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student; and

(3) In the case of a correspondence program, by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the number of lessons not submitted by the student.

Issues that the community was asked to address and the community's views:

1. How should the "60 percent point in time" be determined? Should this be based on scheduled time in the program or actual attendance?

• The "60 percent point in time" should be based on scheduled time in the program, not on actual attendance. [Kansas City, San Francisco, Atlanta]

• In the absence of formal withdrawal by the student, it is up to the institution to devise a mechanism to determine the last date of attendance. [Kansas City]

2. How should the term "student who is attending the institution for the first time" be defined? Should this mean the first time ever or the first time at the institution?

• Only first year, first-time students should be considered "first time." [San Francisco]

• "A student who is attending such institution for the first time" should be defined as the first time ever rather than the first time at an institution. Some attendees favored defining "first time" as the first time at the institution. Pro ration should continue until the student finishes his or her first period of enrollment for which they have been charged, or until the student has withdrawn from that term, class, or program for which they have been charged. If the student re-enters the institution, they would not be considered a first time student. [Kansas City]

• "First-time student" is a student at that particular institution in their first scheduled period of enrollment for which the student has been charged. [New York, Atlanta]

• "First-time student" should be defined as a student enrolled for the first time at the institution in an eligible program. [Atlanta]

• The regulations should not determine a minimum program length to consider a student as attending at a prior institution or current institution. [Kansas City]

• If a student enrolls for any period of time, drops out, then returns, they are not considered enrolled for the first time for the second enrollment period. If standard terms of enrollment are used, the student should be considered first time for the first term of enrollment for which they were charged. If standard terms are not used, the lesser of 60 percent of the first academic year or 60 percent of the program should be used. [Atlanta]

3. How should the term "period of enrollment for which the student has been charged" be defined?

• The term "period of enrollment for which the student has been charged" should be left to the institution to define based on scheduled time. [New York]

• The "period of enrollment for which the student has been charged" should be defined based on full charges for the increment of the enrollment period defined by the institution as the "period for charges." [Kansas City]

• The "period of enrollment for which the student has been charged" should be defined as the length of time for which the student was initially charged. For example, for an institution that charges by semester, the first semester the student was charged is the relevant period of enrollment. [Atlanta]

• The "period of enrollment for which the student has been charged" should be defined as a minimum of one academic term, quarter, or semester or, for clock hour institutions, as a minimum of one-third of an academic year. If the institution charges for a full program, the length of the program should be defined as an academic period. [Kansas City]

• The "period of enrollment for which the student has been charged" should be defined as the length for which a student would be eligible to receive Title IV assistance. [San Francisco]

4. Should the regulations address specific requirements regarding the treatment of equipment or book costs to be included in *pro rata* refund calculations?

• Books and supplies should be excluded from the *pro rata* calculation. Only fees for services rendered over time, e.g., lab fees, should be included. Exclude "up front" fees (application) and books, supplies, and equipment up to a certain dollar amount. There is a difference between a service fee and a purchase of supplies, equipment, and books. Purchases should be excluded. [New York]

• The regulations should state that equipment, books supplies, telephone charges, parking fines, etc. should not be included with *pro rata* requirements. [Kansas City, Atlanta]

• Charges for equipment, instructional materials, etc. should not be included in the calculation for refund purposes if separately charged by the institution. [San Francisco]

• If books and supplies are provided by the institution and the institution has delivered the books and supplies to the student, the books and supplies should be excluded from the *pro rata* refund policy. [Kansas City]

• Certain fees assessed by the institution should be included in the *pro rata* refund where the students do not realize the benefits over the enrollment period to include one time charges, i.e., application fee, orientation charges, testing fees, and deferred payment fees. Other charges assessed by the institution should be excluded from the *pro rata* refund when the student does not realize the benefit over the enrollment period to include fines, penalties, and individual charges (i.e., parking fines, and health center charges.) Books and supplies should not be included in *pro rata* refund unless they are considered a mandatory charge by the institution (i.e, not when the student has the option of buying from the institution or some other source.) [Atlanta]

• If all equipment and books are purchased at one time or issued to the student before he or she terminates his or her enrollment, the cost should be included in the refund. The institution should charge the whole amount which is not returnable. Equipment must be returned and able to be used again. If equipment has not yet been issued, the student would be eligible for a 100 percent refund. [San Francisco]

5. Should the regulations address a time frame for student refunds? Should the regulations have a minimum program length that a student must complete before the student will not be considered to be attending "for the first time?"

• The time frame for all refunds should be uniformly 60 days from the date the institution becomes aware that a student has withdrawn. [San Francisco]

• The regulations should indicate the time frame for issuing student refunds to be the same as current refund requirements- within 60 days of determination that a refund is in order. [Kansas City]

• Refunds should be made 30 days from date of determination. [San Francisco]

• Regulations should not address a time frame for refunds since it is already addressed by the State or accrediting agencies. [Atlanta]

6. Should the regulations address how institutions will account for credit balances? Should these funds be kept in a restrictive account rather than the institution's general operating account?

• The regulations should not address how institutions account for credit balances nor restrictive or general operating accounts. A minority of the group felt that students with a baccalaureate degree should be exempt from the language. [Kansas City]

• The group recommends that regulations remain silent on the method by which institutions account for credit balances. [San Francisco, Atlanta]

• After all returns have been made to the Federal program from which the funds came, there should be a reasonable period of time for the student to request his account balance if there are educational costs outstanding. [San Francisco]

7. Since the statute would imply than an institution is required to calculate all three policies and make the payment on the one most generous, should the institution be allowed to determine which is generally most generous an make that the official refund policy?

• Institutions should be allowed to determine the refund policy that is generally most generous and use that policy. Institutions would define "generally most generous." [Kansas City, San Francisco, Atlanta]

• The Department should issue guidelines for institutions to use in determining which method to use. If the institutions use average costs in awarding and packaging, average costs should be used in refunds. [San Francisco]

• Institutions should not be allowed to determine which refund is "generally most generous." This is inconsistent with the statute. The statute does, however, permit institution to develop an algorithm that integrates the three refund policies and yields the calculation "most generous" to each individual student. The requirements should apply only to the calculation of refunds for students who are recipients of financial aid under Title IV. [Kansas City]

8. How should "fair and equitable" be defined?

• Fair and equitable" should be defined as most generous to the student. [San Francisco]

• It is not necessary to define "fair and equitable" separately from the requirements of the statute and the regulations. The Student Commission addresses adequately the definition of "fair and equitable." [Kansas City, Atlanta]

• The statutory mandates requiring *pro rata* refund should be viewed as a limitation and not as an example for the purposes of Title IV refund only. [Kansas City]

VI. Student Consumerism Requirements

A. Under section 485(a), additional provisions have been added to the list of information an institution must disclose, upon request, to students and prospective students as part of the student consumerism requirements.

The institution's refund policy must identify that refunds will be credited in the following order:

(a) To outstanding balances on Federal Family Education Loans;

(b) To outstanding balances on Federal Direct Loans;

(c) To outstanding balances on Federal Perkins Loans;

(d) To awards under Federal Pell Grants program;

(e) To awards under Federal SEOG program;

(f) To awards under Federal Work Study program;

(g) To other Title IV assistance; and

(h) To the student.

Issues that the community was asked to address and the community's views:

1. Should regulations require institutions to publicize how refunds will be processed and what refunds students are entitled to receive in the event that the institution closes?

• Regulations should require institutions to publicize how refunds will be processed and what funds students are entitled to receive in the event the institution closes. [Kansas City]

• Institutions should not have to publicize how refunds will be processed and what funds students are entitled to receive in the event the institution closes. This is not a consumer information issue. This is information to be disbursed if the institution closes. Information should be available to students upon request. A statement could be put in the catalog that will lead the student to ask relevant questions. The Department should work with State Agencies to develop plans that should be made available to students on request. There is very little probability that certain strong institutions will close. All institutions should not be required to disclose this. [San Francisco, Atlanta]

2. Should consumer information address teachouts or other State or accrediting agency mandated requirements to protect student consumers in the case of school closure?

• Consumer information should not address teachouts or other state or accrediting agency mandated requirements to protect student consumers in the case of institution closure. [Kansas City, Atlanta]

3. Should institutional discretion be permitted when determining the order in which loan funds under the FFEL program are returned?

• Institutional discretion should be permitted when determining the order in which loan funds under the FFEL program are returned. [Kansas City, San Francisco, Atlanta]

4. Should guarantee and origination fees be included in the refund to totally pay off a FFEL program loan?

• Guaranty and origination fees should not be included in the refund to totally payoff an FFEL program loan. [Kansas City]

• Guaranty and origination fees should be included in the refund to totally payoff an FFEL program loan. [Atlanta]

• The full amount should be included in the refund as a deterrent to default on the small remaining amount. This should be done at the institution's discretion. Institutions should not be required to pay back money they have not received, i.e., guaranty and origination fees. Institution should be permitted to include these fees if they choose. [San Francisco]

5. How should the guaranty agencies monitor students to ensure that multiple FFEL funds are treated as one for the purposes of billing and deferments from one lender?

• Guaranty agency monitoring of students to ensure that multiple FFEL funds are treated as one for the purpose of billing and deferments from one lender should be handled under the FFEL program. This is not a consumer information issue. [Kansas City, San Francisco]

• Guaranty agency monitoring of students to ensure that multiple FFEL funds are treated as one for the purpose of billing and deferments from one lender should be done through the National Student Loan Data Bank. Agencies should identify all loans obtained through that agency. [Atlanta]

VII. Institutional Eligibility and Certification Procedures—Part H, Subpart 3

A. Section 498(a), (b), and (f) of the HEA establish application requirements and procedures for the Secretary to use to determine an institution's legal authority to operate within a State, accreditation, financial responsibility, and administrative capability.

Issues that the community was asked to address and the community's views:

1. What information should the Secretary require on the form to supplement the specific information required by the statute?

• Information should include documentation of an institution's accreditation or preaccreditation, degree-granting authority, authority to provide postsecondary education, and State licensure. [Kansas City]

• With one exception, participants were satisfied that information currently collected on the Department's application forms is adequate, and new requirements would needlessly add burden. One participant recommended a separate application for proprietary institutions. [New York]

• Specific categories should be established for different types of institutions and academic functions. Information should include the names and social security numbers of key administrative personnel and board members. [San Francisco]

• Provided that new information required by statute is collected (financial statements, description of student aid processing at the institution, information on main and branch campuses, and information on the institution's third-party servicers), information currently collected is sufficient. However, additional information should be collected on whether an institution's owner has had substantial control over a closed institution that owes refunds to students or lenders. [Atlanta]

2. Should the Audit Guide be revised to require the auditor to verify the information on the application form?

• Participants recommended no changes in the audit guide. [Kansas City, New York, San Francisco, Atlanta]

• A minority of participants indicated that there should be changes, without specifying what changes are needed. [Kansas City]

B. Section 498(c)(1) addresses financial responsibilities and requires an institution to show that it is able to provide promised services, to provide administrative resources necessary to Title IV duties, and the meet all of its financial obligations including refunds and repayments to the Secretary for Title IV liabilities.

Issues that the community was asked to address and the community's views:

1. What information should be required from an institution to permit the Secretary to determine that the institution provides the services described in its official publications and statements?

• No additional information needs to be collected from institutions. [Kansas City, San Francisco]

• If the Secretary needs additional information, the Secretary should be able to collect it from data made available through State and accrediting functions. [Kansas City, New York, Atlanta]

• The best way to obtain information would be through site visits. [New York, Atlanta]

• The Department needs to take action on institutions with failing financial statements, rather than simply collect them. [New York]

• The establishment of uniform financial standards would be difficult, because different standards need to apply to different types of institutions. [New York]

2. What supporting information should be submitted to establish that an institution has the administrative resources to comply with its program responsibilities?

• The financial information concerning each branch campus of an institution should be evaluated, without simply relying on the financial information of an institution as a whole. [New York]

• Employee biographies with social security numbers should be provided. [San Francisco]

3. What level of financial resources are needed to demonstrate that an institution can meet potential refund and repayment obligations, and should institutions be required to set aside funds for these purposes?

• An institution should be able to provide for the payment of refunds that could occur over a 30-day period, but the institution should not be required to set aside funds specifically for this purpose. [Kansas City]

• The statutory provisions for institutions to maintain cash reserves unless they are covered by State tuition recovery plans should be sufficient. [New York]

• No requirements are necessary. The Department should have the discretion to review and establish amounts when necessary. [San Francisco]

C. Section 498(c)(2) requires that, notwithstanding section 498(c)(1), if an institution fails to meet the criteria prescribed by the Secretary with respect to operating losses, net worth, asset-to-liabilities ratios, or operating fund deficits, the institution must provide the Secretary with satisfactory evidence of its financial responsibility in accordance with section 498(c)(3).

Issues that the community was asked to address and the community's views:

1. What standards should be set for each of these criteria?

• One standard should not be applicable to all institutions. [New York]

• Institutions should be allowed to explain their financial statements before decisions in this area are reached. [New York]

• The institutions financial condition should be examined over a certain time period so that decisions regarding its financial responsibility are based on a trend. [New York]

• The Department should particularly consider an institution's statement of cash flow. [New York]

• Ratios that are used to measure stability in the business world should be used. [New York]

• Current standards should be used with Departmental discretion. [San Francisco]

• Standards for these criteria should be: a ratio of assets to liabilities of 1:1, showing a positive net worth, and not having two consecutive years of negative operating cash flow or its equivalent for fund accounting purposes. These should be indicators of financial responsibility, not absolute minimums. The importance of each criteria should be given its proper weight. [Atlanta]

D. Section 498(c)(3) provides that the Secretary may find an institution to be financially responsible, notwithstanding failure under 498(c)(1) and 498(c)(2), if the institution: (1) Provides third-party guarantees of at least one-half of annual potential liabilities, (2) is backed by the full faith and credit of a State or its equivalent, (3) establishes that it is a going concern capable of meeting all its obligations, or (4) has met comparable standards set by the Secretary.

Issues that the community was asked to address and the community's views:

1. What type of third-party guarantees will be acceptable to the Secretary?

• Acceptable third-party guarantees should include bonds, institutional collateral, or a tuition recovery fund. [New York]

• Acceptable third-party guarantees should include performance bonds, letters of credit, or other comparable instruments. [Kansas City, Atlanta]

• Acceptable third-party guarantees should include performance bonds, letters of credit, third-party escrow arrangements, and certificates of deposit. [San Francisco]

2. Under what conditions will each type of instrument be used?

• These measures should be used for institutions that close or institutions that don't properly repay any required refunds. [New York]

• These measures should be used only if the institution can find no other way to prove its financial status. The institution should have an opportunity to negotiate with the Department before the third-party guarantees are imposed. [Kansas City]

• These measures should be used anytime the Secretary determines that the institution is not meeting its financial responsibilities. [San Francisco]

• These measures should be used if an institution fails to satisfy a liability established by the Secretary after an administrative review process. [Atlanta]

3. How does the Secretary determine the amount equal to one-half of the annual potential liabilities of an institution, which is the minimum guarantee amount?

• This should be determined based on the institution's retention or refund history [New York]

• The annual potential liability should be defined as the sum of the difference between charges paid by the student (regardless of the source of payment) and the *pro rata* amounts earned by the institution according to its applicable refund policy. [Atlanta]

• The annual potential liability should be based upon the institution's annual Title IV funds multiplied by one-half of its withdrawal rate. [San Francisco]

4. What standards will be used to determine when guarantees in excess of the minimum amount will be required for an institution that fails to demonstrate financial responsibility?

• Guarantees in excess of the minimum amount should be required if the institution must also have funds to make teach out arrangements. [New York]

• Guarantees in excess of the minimum amount should not be imposed. [Kansas City, Atlanta]

• Guarantees in excess of the minimum amount should be required when the institution cannot meet its current financial obligations. [Atlanta]

5. How can an institution that does not demonstrate financial responsibility otherwise show that it is capable of meeting all of its financial obligations.

• All factors must be analyzed as a whole. [New York]

• The Department should use the process used by accrediting agencies to determine financial responsibility. [New York]

• Institutions should be considered financially responsible if they are on reimbursement. [Kansas City, Atlanta]

• Institutions should be considered financially responsible if they are funded through an escrow arrangement. [San Francisco, Atlanta]

E. Section 498(c)(4) provides that the determination that an institution has met certain standards of financial responsibility will be based on an audited and certified financial statement, done in accordance with standards of the American Institute of Certified Public Accountants. Additional audits may be required.

Issues that the community was asked to address and the community's views:

1. When would the Secretary require additional audits, and what additional items should be required for such audits?

• The Department should be able to request a more detailed audit of a particular segment of the audited financial statement. [New York]

• The Department should take into account the cost of requests for additional information. [New York]

• The Department should be able to request the more frequent submission of audited financial statements in cases of fraud, abuse, or a negative program review finding. For additional submissions requested at the Secretary's discretion, it is suggested that the Secretary be willing to look at something other than a full audited financial statement. [Kansas City]

• At the discretion of the Secretary, additional reports could include CPA prepared *pro forma* statements, cash forecasts, enrollment forecasts, and operating budgets with comparisons of actual to budget. [San Francisco]

• There should be no need for interim reports since they are now required annually. If interim information is requested, it should be unaudited. However, if an institution is seeking relief from a previously imposed fiscal restriction before its next scheduled statement, the interim statement should be audited. [Atlanta]

2. What guidelines and time periods should be set for provisional certification?

• Each institution should be treated on a case-by-case basis subject to the Secretary's discretion. [New York]

• A two-year time period should be used for provisional certification. [New York]

• The time period should not exceed three-years and the institution should have the ability to achieve full certification sooner. [San Francisco]

F. Section 498(c)(5) provides that an institution must maintain sufficient cash reserves to ensure repayment of any required refunds. Institutions that participate in and contribute to a State tuition recovery fund would be exempt from this requirement.

Issues that the community was asked to address and the community's views:

1. What are sufficient cash reserves? How are they measured, what types of funds may be included, and how are they protected from use for other purposes?

• Sufficient cash reserves should be defined as a certain percent of unearned tuition based on the institution's refund history and established only when there is an indication of a problem or high-risk institution. This could be part of provisional certification. [New York]

• Sufficient cash reserves should be defined as 100 percent of any unearned tuition liability from Title IV awards. A minority of the group thought an amount to cover loans where the loan guarantee might be invalidated because of fraud should also be included. Cash reserves should include cash, accounts receivable, and liquid assets that can be converted to cash within 30 days. [Kansas City]

• If the institution has been timely (60 days) in processing refunds for one year, no cash reserves should be required. If the institution has not been timely, an increasing percentage should be reserved based on the total Title IV funds processed by the institution. The regulations should be written to provide incentives for institutions with a good performance record. The Department should take into account whether the refunds were delinquent because of personnel problems as compared to a poor financial position. When an institution is required to reserve cash, any earnings should accrue to the institution. Letters of credit should be permitted as a substitute for a cash reserve. [San Francisco]

• A cash reserve is sufficient if it equals anticipated refund to be paid during a 30 day period based on the average of refunds paid during the preceding 12 month period. Cash reserves are defined as cash and cash equivalents plus other current assets that can be converted to cash within 30 days. Segregation of the cash reserve is not required by law nor is it desirable. [Atlanta]

2. What are the components of a state tuition recovery fund that demonstrates that an institution contributing to the fund will be able to pay refunds?

• If an institution contributes to a State tuition recovery fund they should be exempt automatically from this requirement. [New York]

• The components of a State tuition recovery fund that will demonstrate that an institution contributing to the fund will be able to pay refunds are those tuition recovery components that will pay a lender the required refund and/or pay the student the required refund. [Atlanta]

3. What information must institutions provide to permit the Secretary to determine that an institution will be able to use the tuition recovery fund to pay refunds if the institution itself is unable to do so?

• An institution should provide a letter from the State that confirms that they will be able to use the State tuition recovery fund to pay refunds. [New York]

• An institution should provide a description of the legal structure of the fund and audited financial statements so the Secretary may determine that the institution will be able to use the tuition recovery fund. [San Francisco]

4. Should the Secretary compile and maintain a list of State tuition recovery funds if that meets the requirements that permit an institution's participation in that fund to operate in lieu of its cash reserve requirements?

• The Secretary should compile and maintain a list of State tuition recovery funds that meet the requirements that permit an institution's participation in that fund to operate in lieu of the cash reserve requirements. [New York, San Francisco, Atlanta]

• An institution should provide the name and address of the State tuition recovery fund to confirm that they will be able to use the State tuition recovery fund to pay refunds. [Atlanta]

G. Section 498(d) authorizes the Secretary to establish procedures and standards relating to administrative capability, including the consideration of past performance of institutions or individuals in control of such institutions and maintenance of records.

Issues that the community was asked to address and the community's views:

1. What measures of past performance will be used, and what time periods should be included in the review?

• No other standards of administrative capability or financial responsibility should be considered. There is an inundation of oversight responsibility and the requirements placed on institutions is sufficient. [Kansas City, San Francisco, Atlanta]

• In certain cases, institutional administrators should meet a minimum experience requirement (e.g., five years of prior experience in administration.) [San Francisco]

• School owners, corporate directors and officers, and the chief school administrator should be required to monitor and investigate school compliance, take whatever steps are within the person's authority to effect the correction of non-compliance, and report to the Department, the accrediting agency, and the State licensing agency any non-compliance that has not been corrected. California law requires this. [San Francisco]

• The current § 668.14 and § 668.15 should be used to measure administrative capability with the exception of the withdrawal rates. [Kansas City]

• A minority of the group recommended that the Secretary look into all complaints filed against institutions with the local law enforcement authorities even though the complaint may not warrant pulling of an institution's license or loss of accreditation. [Kansas City]

• The Department should look at the past two audits to see that performance reviews have corrected all the deficiencies as a basis that the institution is administratively capable. This should not be determined arbitrarily, but should be determined by a review. [New York]

• Research data is needed to establish a basis for past performance. Other measures of past performance that should be used: Placement, default and withdrawal rates, past performance reviews and implementation of recommendations, personnel turnover, and faculty/student ratio. [San Francisco]

• Default rates, course completion and withdrawal rates, and job placement rates

must be considered together. These should be triggers that, in certain combinations, should cause more review of administrative capability. Mitigating circumstances must be considered. [New York]

• Standards for default rates, course completion and withdrawal rates, and job placement rates should be applicable to all institutions. No new standards should be set without historical data. [San Francisco]

• Student or consumer complaints against an institution should be taken into consideration if a pattern of legitimate complaints indicate a need for review by an outside entity. [New York]

• There should be no standard measure of an institution's administrative capability with respect to student or consumer complaints against an institution. The Department should review trends and the nature of complaints. [San Francisco]

H. Section 498(g) provides that the Secretary may certify an institution's eligibility for a period not to exceed four years.

Issues that the community was asked to address and the community's views:

1. Should the Secretary adopt rules addressing the length of a period of eligibility and if so what should these standards be?

• The four-year periods of eligibility should be based on award years. [Kansas City]

• Any schedule developed for the review of institutions for this purpose should be published. [New York]

• Regulations and standards in this area are not necessary; the statute is specific enough. [San Francisco]

• In cases where the eligibility process requires a site visit, and the Secretary is unable to perform the site vislt in a timely manner, eligibility should continue beyond the expiration date until the eligibility process is completed. [Atlanta]

I. Section 498(h) provides that the Secretary may provisionally certify an institution for not more than one year for initial certification, or three years under certain conditions. Provisional certification may be withdrawn if the institution is unable to meet its responsibilities. Also, if an accrediting agency's recognition is withdrawn, the Secretary may continue the eligibility of accredited institutions for up to 18 months.

Issues that the community was asked to address and the community's views:

1. What standards should be used to determine whether an institution may be granted provisionally certification?

• An institution could be provisionally certified if it does not meet the third criterion for financial responsibility in section 498(c) of the HEA. [Kansas City]

• For an initial application, the Secretary should rely on the statutory language. [New York]

• An institution should be provisionally certified if it is unable to meet a regulatory standard for a reason beyond the institution's control. [New York]

• The Secretary should use the same standards that are used for determining financial responsibility and administrative capability. [San Francisco]

• An institution that meets all requirements for certification other than the completion of a required site visit should be provisionally certified if the Secretary is unable to conduct the site visit in a timely manner. [Atlanta]

2. What procedures and standards should the Secretary use to decide whether an institution that has received provisional certification is unable to meet its responsibilities?

• Before revoking an institution's participation, the Secretary should conduct proceedings for a hearing, and should provisionally certify an institution until the completion of those proceedings. [New York]

• The Secretary should use the same standards that are used for determining financial responsibility and administrative capability. [San Francisco]

• The Secretary should use the results of audits, audited financial statements, and program reviews to determine whether to certify an institution provisionally and conduct a site visit at the institution. [Atlanta]

3. Under what circumstances should the Secretary continue the eligibility of accredited institutions where their accrediting agency loses its recognition? Should the period of extension be the same for all institutions?

• According to a minority of participants, an institution identified as having administrative capebility problems should be provisionally certified for no more than one year. [Kansas City]

• All institutions should be provisionally certified for 18 months, and the Secretary should ensure that a process is available for such institutions to become accredited by another agency. [San Francisco]

• Eligibility should be continued in all cases and for the same period of time for all institutions. The Secretary should notify an institution promptly of the Secretary's action, the institution should promptly apply for accreditation with another agency and notify the institution of that fact, and the institution should make a good-faith effort to expedite its accreditation. [Atlanta]

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Monday
February 28, 1994

Part III

Department of Housing and Urban Development

Office of Assistant Secretary for Public and Indian Housing

NOFA for Public and Indian Housing Family Investment Centers; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3714; FR–3397–N–01]

NOFA for Public and Indian Housing Family Investment Centers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability.

SUMMARY: This NOFA announces a total of $74 million in funding, including FYs 1993 and 1994 appropriations of $25,000,000 and $25,674,991, respectively, for Family Investment Centers for families living in public and Indian housing. This program provides grants to public housing agencies and Indian housing authorities (collectively HAs) to provide families living in public and Indian housing with better access to education and job opportunities to achieve self-sufficiency and independence. The grants will be of up to three to five years in duration, depending upon the activities undertaken. Regulations on this program will be published in a consolidated rule on resident initiatives that the Department anticipates publishing in early 1994.

In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, ranking factors, and application processing, including how to apply and how selections will be made.

DATES: Application kits will be available beginning March 24, 1994. The application deadline will be 4:30 p.m., local time, on June 22, 1994.

ADDRESSES: An application kit may be obtained from the local HUD Field Office with delegated responsibilities over an applicant public/Indian housing agency (See Appendix for listing), or by calling the HUD Resident Initiatives Clearinghouse toll free number 1–800–955–2232. Telephone requests must include your name, mailing address, or post office address (including zip code), telephone number (including area code), and should refer to document FR–3397–N–01. This NOFA cannot be used as the application.

FOR FURTHER INFORMATION CONTACT: Marcia Y. Martin, Office of Resident Initiatives (ORI), or Dom Nessi, Director, Office of Native American Programs (ONAP), Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone numbers: ORI (202) 708–3611; and ONAP (202) 708–1015 (these are not toll-free numbers). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300 (not a toll free number) for information on the program.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). Information on the estimated public reporting burden was provided for public comment in a separate notice published in the **Federal Register** on February 17, 1994 (59 FR 8012). The Department expects that a control number will be issued by OMB about March 22, 1994, after completion of a 30-day comment period for the paperwork burden notice. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

No person may be subjected to a penalty for failure to comply with the information collection requirements until they have been approved and assigned an OMB control number. The public reporting burden for the collection of information requirements contained in the February 17 notice is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The February 17 notice invites interested persons to submit comments on the paperwork burden proposals to Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

I. Purpose and Substantive Description

A. Authority

Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) provides for the establishment of Family Investment Centers (FIC). Implementing regulations for the program will be promulgated as part of a consolidated rule on resident initiatives, which the Department anticipates publishing next year. This NOFA is being issued in conformity with the statutory requirements before the final rule is in place in order to make funding available as soon as possible.

B. Allocation Amounts

In the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102–389, approved October 6, 1992), Congress appropriated $25 million for Family Investment Centers; an additional $25,674,991 is available for the program through an appropriation in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (Pub. L. 103–124, approved October 28, 1993). These amounts are being combined with excess recaptured funds carried over from FY 1993 to make a total of $75 million available for funding Family Investment Center activities. An additional $10 million may become available pending Secretarial and congressional actions.

Of the $75 million total current funds, $74 million is being made available under this NOFA. The Department intends to use $1 million for purposes of demonstrating ways for families living in public and Indian housing in a neighborhood undergoing a concentrated effort of local revitalization to gain access to education and employment activities to achieve self-sufficiency and independence, by enabling HAs to develop facilities for training and support services. These funds will be used to mobilize public and private resources to expand and improve delivery of services, to provide funding for essential training and support services that cannot otherwise be funded, to improve the capacity of management to assess the training and services needs of eligible families, to coordinate the provision of training and services that meet such needs and to ensure the long-term provision of such training and services. HUD expects that this funding will demonstrate the importance of comprehensive support services in contributing to the local neighborhood revitalization. A separate Notice announcing these funds and soliciting public comment is expected to be published soon in the **Federal Register.**

To ensure that the program is implemented on a broad, nationwide basis, each applicant may submit only one application under this NOFA (published: February 28, 1994. A public housing agency/Indian housing authority (collectively, HAs) may apply to establish one or more Family Investment Centers for more than one public or Indian housing development; however the maximum grant amount per applicant under this NOFA is $1 million.

C. Overview and Policy

The stated purpose of section 22 is:

[T]o provide families living in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence by: (a) developing facilities in or near public housing for training and support services; (b) mobilizing public and private resources to expand and improve the delivery of such services; (c) providing funding for such essential training and support services that cannot otherwise be funded; and (d) improving the capacity of management to assess the training and service needs of families, coordinate the provision of training and services that meet such needs, and ensure the long-term provision of such training and services.

Although Section 22 is phrased in terms of families living in public housing, the program is also available to Indian Housing Authorities (IHAs), because of section 527 of the National Affordable Housing Act (104 Stat. 4216; 42 U.S.C. 1437aa note) (NAHA). Section 527 extends the applicability of many NAHA provisions affecting Title I of the 1937 Act (including section 515, which added Section 22) to housing operated by an IHA.

FIC provides funding to HAs to access educational, housing, or other social service programs to assist public and Indian housing residents toward self-sufficiency. On May 13, 1993, 33 representatives from public/Indian housing authorities, resident organizations, and nonprofit housing agencies were convened to discuss and make suggestions during the design stage of the Family Investment Centers program. The Department envisions that FIC will complement other self-sufficiency activities, such as the Family Self-Sufficiency (FSS) Program (see 58 FR 30858 (May 27, 1993) for the interim rule that currently governs the FSS programs) and the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). As an incentive to become self-sufficient, the earnings of public or Indian Housing families participating in the FIC shall not be treated as income for the purposes of any other program or provision of State or Federal law, including rent assistance (see Section I.F(5) of this NOFA). The FIC is administered by the Department's Office of Resident Initiatives in the Office of Public and Indian Housing, with assistance from a network of Resident Initiatives Coordinators (RICs) in HUD's Regional and Field Offices.

D. Definitions

Eligible Residents means participating residents of a participating HA. If the HA is combining FIC with the Family Self-Sufficiency (FSS) program, the term also means Public Housing FSS and Section 8 families participating in the FSS program.

Secretary means the Secretary of Housing and Urban Development.

Service Coordinator means, for purposes of this NOFA, any person who is responsible for:

(1) Determining the eligibility of families to be served by the FIC;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services on a HA-wide or less than HA-wide basis, and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding under this NOFA;

(5) Monitoring and evaluating the delivery, impact, and effectiveness of any supportive service funded with capital or operating assistance under this program;

(6) Coordinating the development and implementation of the FIC program with other self-sufficiency programs and other education and employment programs; or

(7) Performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

Supportive Services means new or significantly expanded services essential to providing families in public and Indian housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. (HAs applying for funds to provide supportive services must demonstrate that the services will be provided at a higher level than currently provided). Supportive services may include:

(1) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities;

(2) Employment training and counseling (*e.g.*, job training, preparation and counseling, job development and placement, and follow-up assistance after job placement);

(3) Computer skills training;

(4) Education (*e.g.*, remedial education, literacy training, completion of secondary or post-secondary education, and assistance in the attainment of certificates of high school equivalency;

(5) Transportation, as necessary to enable any participating family member to receive available services or to commute to his or her place of employment;

(6) Personal welfare (*e.g.*, substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(7) Supportive Health Care Services (*e.g.*, outreach and referral services); and

(8) Any other services and resources, including case management, that are determined to be appropriate in assisting eligible residents.

Vacant Unit means a dwelling unit that is not under an effective lease to an eligible family. An effective lease is a lease under which an eligible family has a right to possession of the unit and is being charged rent, even if the amount of any utility allowance equals or exceeds the amount of a total tenant payment that is based on income and, as a result, the amount paid by the family to the HA is zero.

E. Eligibility

(1) *Eligible Applicants.* Funding for this program is limited to public and Indian housing authorities. The factors for award reflect that more than half of the points possible are for the provision of supportive services, whether provided by the HA or through partnerships with other social service agencies. Facilities assisted shall be on or near the premises of public or Indian housing. Two or more HAs may apply jointly if they demonstrate that it is feasible to run the program together; however, the maximum grant per application under this NOFA is $1,000,000.

Although the program is intended to benefit public and Indian housing residents, an applicant that is otherwise eligible and is combining FIC activities with FSS activities may use FIC funds to serve both HA residents and section 8 families who are participating in the FSS Program. For all other families using FIC services, costs incurred are to be borne by other resources.

To be eligible under this NOFA, a HA cannot have serious unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings. In addition, the HA must be in compliance with civil rights laws and equal opportunity requirements. A HA will be considered to be in compliance if:

(a) As a result of formal administrative proceedings, there are no outstanding findings of noncompliance

with civil rights laws unless the HA is operating in compliance with HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the HA demonstrates that it is operating in compliance with a court order, or implementing a HUD-approved resident selection and assignment plan or compliance agreement, designed to correct the area(s) of noncompliance;

(c) There is no deferral of Federal funding based upon civil rights violations;

(d) HUD has not deferred application processing by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and HUD's Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) [PHAs only] or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57) [PHAs and IHAs];

(e) There is no pending civil rights suit brought against the HA by the Department of Justice; and

(f) There is no unresolved charge of discrimination against the HA issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

(2) *Eligible Activities.* Program funds may be used for the following activities:

(a) The renovation, conversion, or combination of vacant dwelling units in a HA development to create common areas to accommodate the provision of supportive services;

(b) The renovation of existing common areas in a HA development to accommodate the provision of supportive services;

(c) The renovation of facilities located near the premises of one or more HA developments to accommodate the provision of supportive services;

(d) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the HA or by contract or lease through other appropriate agencies or providers), but only if the HA demonstrates that:

(i) The supportive services are appropriate to improve the access of eligible residents to employment and educational opportunities; and

(ii) The HA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(e) The employment of service coordinators.

(3) *Other Eligibility Related Requirements.* (a) Grants used solely for the activities listed in paragraphs (a), (b), or (c) of Section I.E(2), "Eligible Activities," of this NOFA, shall be completed within three years of the effective date of the grant. Each applicant should submit a description of the renovation or conversion to be conducted, along with a budget and timetable for those activities. Other eligible activities may be funded over a maximum five-year period.

(b) Each applicant must submit a budget, timetable, and list of milestones for the five-year period (following initial receipt of funding), at least, covered by the applicant's description of supportive services. Milestones shall include the number of families to be served, types of services, and dollar amounts to be allocated over the five-year period.

(c) Each applicant must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities funded under this NOFA.

(d) When a grant application is approved, the HA must receive approval from HUD to conduct renovation or conversions. Approval must be provided prior to drawing down funds.

(e) If a renovation is done off-sits, the HA must provide documentation that it has control of the proposed property. Control can be evidenced through a lease agreement, ownership documentation, or other appropriate documentation (see Sections III.B(3) and III.C(15) of this NOFA).

F. Other Program Requirements

(1) *Resident Involvement.* The Department has a longstanding policy of encouraging HAs to promote resident involvement, and to facilitate cooperative partnerships to achieve specific and mutual goals. Therefore, residents must be included in the planning and implementation of this program. The HA shall develop a process that assures that RC/RMC/RO representatives and residents are fully briefed and have an opportunity to comment on the proposed content of the HA's application in response to this NOFA. The HA shall give full consideration to the comments and concerns of the residents. The process shall include:

(a) Informing residents of the selected developments regarding the preparation of the application, and providing for residents to assist in the development of the application, as appropriate.

(b) Once a draft application has been prepared, the HA shall make a copy available for reading in the management office; provide copies of the draft to any resident organization representing the residents of the development(s) involved; and provide adequate opportunity for comment by the residents of the development and their representative organizations prior to making the application final.

(c) Provide to any resident organization representing the development a summary of the resident comments and its response to them, and notify residents of the development(s) that this summary and response are available for reading in the management office.

(d) After HUD approval of a grant, notify residents of the development, and any representative organizations of approval, of the grant; notify the residents of the availability of the HUD approved implementation schedule in the management office for reading; and develop a system to facilitate a regular resident role in all aspects of program implementation.

(2) *Training/Employment/Contracting of HA Residents.* (a) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) requires that programs of direct financial assistance administered by HUD provide, to the greatest extent feasible, opportunities for job training and employment to lower income residents in connection with projects in their neighborhoods. For purposes of training and employment, the HA may offer opportunities to Section 3 residents in the following priority: (i) Residents of the housing development for which the assistance is being provided; (ii) residents who reside within a project area as defined in 24 CFR 135.15 and who reside in developments managed by the HA that is expending the assistance; and (iii) other residents of the Section 3 area. Therefore, at a minimum each HA and each of its contractors and subcontractors receiving funds under this program shall make best efforts to employ HA residents to provide services and renovation or conversion work.

(b) For purposes of the requirements under Section 3, a best effort means that the HA shall:

(1) Attempt to recruit HA residents from the appropriate areas through local advertising media, signs placed at the proposed FIC project site, and community organizations and public or private institutions operating within the development area. The HA shall include in its outreach and marketing efforts, procedures to attract the least likely to apply for this program because it includes construction/renovation type of activities, *i.e.*, low-income

households headed by women and persons with disabilities; and

(2) Determine the qualifications of HA residents when they apply, either on their own or on referral from any source, and employ HA residents if their qualifications are satisfactory and the contractor has openings. If the HA is unable to employ residents determined to be qualified, those residents shall be listed for the first available openings.

(3) *Davis-Bacon Requirements.* All laborers and mechanics employed by contractors or the HA in renovation or conversion (including combining of units) on the premises of the HA development to accommodate the provision of supportive services under this program shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a–5). All architects, technical engineers, draftsmen, and technicians employed with respect to such work shall be paid not less than the wages prevailing in the locality as determined by HUD. These requirements do not apply to volunteers under the conditions set out in 24 CFR part 70.

(4) *Resident Compensation.* Residents employed to provide services funded under this program or described in the application shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employees under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident were not exempt under section 13 of the FLSA;

(b) The State or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

(5) *Treatment of Income.* (a) *1937 Act.* As provided in section 22(i) of the United States Housing Act of 1937 (1937 Act), no service provided to a HA resident under this program may be treated as income for the purpose of any other program or provision of State, Tribal, or Federal law. Program participation shall begin on the first day the resident enters training or begins to receive services. Furthermore, the earnings of and benefits to any HA resident resulting from participation in the FIC program shall not be considered as income in computing the tenant's total annual income that is used to determine the tenant rental payment during:

(i) The period that the resident participates in the program; and

(ii) The period that begins with the commencement of employment of the resident in the first job acquired by the resident after completion of the program that is not funded by assistance under the 1937 Act, and ends on the earlier of:

(*A*) The date the resident ceases to continue employment without good cause; or

(*B*) The expiration of the 18-month period beginning on the date of commencement of employment in the first job not funded by assistance under this program.

(b) *NAHA.* In addition, as provided in section 957 of NAHA, the rent charged to a family whose monthly adjusted income increases as a result of the employment of a member of the family who was previously unemployed may not be increased as a result of the increased monthly adjusted income due to such employment by more than 10 percent in each 12-month period during the 36-month period beginning upon such employment.

(6) *Reports.* Each HA receiving a grant shall submit to HUD an annual progress report, participant evaluation and assessment data and other information, as needed, regarding the effectiveness of FIC in achieving self-sufficiency.

G. Ranking Factors

Each application for grant award will be evaluated if it is submitted as required under Section II.B of this NOFA and meets the eligibility requirements in Section I.E of this NOFA. Applications submitted for funds that include renovation, conversion, or combination of dwelling unit activities will be competitively selected based on the highest scores out of a possible 135 points. Applications submitted for funds solely to implement supportive services will be competitively selected based on the highest scores out of a possible 140 points.

Initially, HUD will distribute funds geographically in order to seek diversity through an appropriate mix of public and Indian housing authorities. Grants will be awarded to the two highest ranked eligible applicants in each funding category per HUD region. In addition, grants will be awarded to the two highest ranked eligible IHA applications in each funding category on a nationwide basis. All of the remaining applications will then be placed in overall nationwide ranking order, with the remaining funds granted in order of rank until all funds are awarded.

HUD will review and evaluate the application as follows, according to whether the application seeks funds for supportive services only or for other activities.

(1) *Conversion/Renovation/Supportive Services Activities* (Maximum 135 points).

Applications for funds for these activities will be scored on the following factors:

(a) Evidence of the need for supportive services by eligible residents [10 points];

(b) The extent to which the envisioned renovation, conversion and combination activities are appropriate to facilitate the provision of FIC services [15 points];

(c) The extent to which each service provider has evidenced that supportive services and other resources will be provided until at least the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA [25 points];

(d) The extent to which the HA has demonstrated that it has partnered with residents in the planning phase for the FIC, and will further include the residents in the implementation phase [15 points];

(e) The extent to which the HA has demonstrated that it will contract with or employ residents to provide services and conduct conversion and renovation activities [15 points];

(f) Certification that the HA is implementing a FSS program. IHAs, without FSS programs, that have established counseling programs such as those found in Mutual Help (MH) may provide similar certification [5 points];

(g) The ability of the HA or designated service provider to provide the supportive services [5 points];

(h) The extent to which the HA has coordinated implementation of the program, including those in target areas such as Weed and Seed, Distressed, etc., with tribal, State, or local social service agencies [10 points]. In assigning points for this factor, HUD shall consider the extent of the involvement of those agencies in the development of the application and their commitment of assistance in the implementation of the FIC. The commitment of these agencies may be demonstrated through evidence of intent to provide direct financial assistance or other resources, such as social services (*i.e.*, counseling and training); the use of public/Indian housing funds available through existing State and local programs; or other commitments.

(i) The extent to which the HA has demonstrated success in modernization activities under the Comprehensive Grant/Comprehensive Improvement

Assistance (CIAP) Programs (see 24 CFR part 968), the extent to which the HA has a good record of maintaining and operating public housing as determined by the Public Housing Management Assessment Plan (PHMAP) (see 24 CFR part 901) [10 points], and has utilized innovative and workable strategies to improve management (e.g., LEAP, which uses highly skilled retired military personnel in key management positions); and

(j) The extent to which the HA has demonstrated that it will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP-eligible activities that result in employment, training, and contracting opportunities for eligible residents [25 points].

(2) *Supportive Services Only* (Maximum 140 points). Applications for funds for these activities will be scored on the following factors:

(a) Evidence of the need for supportive services by eligible residents. [10 points];

(b) Certification that the HA has control of a site to facilitate the provision of supportive services appropriate for the FIC program [10 points];

(c) The extent to which each service provider has evidenced that supportive services and other resources will be provided until at least the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA [25 points];

(d) The extent to which the HA has demonstrated that it has included residents in the planning phase for the FIC, and will further include the residents in the implementation phase [10 points];

(e) The extent to which the HA has demonstrated that it will contract with or employ residents to provide services [15 points];

(f) Certification that the HA is implementing a FSS program. IHAs, without FSS programs, that have established counseling programs such as those found in Mutual Help (MH) may provide similar certification [5 points];

(g) Past experience in obtaining and providing similar services for HA families [15 points];

(h) The ability of the HA or a designated service provider to provide the supportive services [5 points];

(i) The extent to which the HA has a good record of maintaining and operating public housing, as determined by its Public Housing Management Assessment Plan (PHMAP), and has utilized innovative and workable strategies to improve management (e.g., LEAP, which uses highly skilled retired military personnel in key management positions) [10 points];

(j) The extent to which the HA has coordinated implementation of the program, including those in target areas such as Weed and Seed, Distressed, etc., with tribal, State and/or local social service agencies [10 points]. In assigning points for this factor, HUD shall consider the involvement of those agencies in the development of the application and their commitment of assistance in the implementation of the FIC. The commitment of these agencies may be demonstrated through evidence of intent to provide direct financial assistance or other resources, such as social services (*e.g.*, counseling and training); the use of public/Indian housing funds available through existing State and local programs; or other commitments; and

(k) Extent to which the HA has demonstrated that it will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP-eligible activities that result in employment, training, and contracting opportunities for its residents [25 points].

H. Environmental Review

Any environmental impact regarding eligible activities will be addressed through an environmental review of that activity as required by 24 CFR part 50, including the applicable related laws and authorities under section 50.4, to be completed by HUD, to ensure that any environmental impact will be addressed before assistance is provided to the HA. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in this NOFA and grant agreements.

II. Application Submissions Process

A. Application Kit

An application kit is required as the formal submission to apply for funding. The kit includes information and guidance on preparation of a Plan and Budget for activities proposed by the applicant. This process facilitates the execution of the grant for those selected to receive funding. An application may be obtained from the local HUD Field/Indian Offices with delegated responsibilities over an applying HA (See Appendix A for listing), or by calling HUD's Resident Initiatives Clearinghouse toll free number 1–800–955–2232. Requests for application kits must include your name, mailing address or P.O. Box (including zip code), and telephone number (including area code), and should refer to document FR–3397–N–01. Applications may be requested beginning March 24, 1994.

B. Application Submission

The original and two copies of the application must be submitted. The Appendix lists addresses of HUD Field/Indian Offices that will accept the completed application.

The application must be physically received by 4:30 p.m., local time, on June 22, 1994. This application deadline is firm to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their applications to avoid any risk of loss of eligibility brought on by unanticipated delays or other delivery-related problems. Facsimile and telegraphic applications are not authorized and shall not be considered.

III. Checklist of Application Submission Requirements

The Application Kit will contain a checklist of all application submission requirements to complete the application process.

A. Applications for Supportive Services Only must contain the following information:

(1) Name and address (or P.O. Box) of the HA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) SF–424A, Budget Information, Non-Construction Programs, and SF–424B, Assurances, Non-Construction Programs;

(3) A description of the need for supportive services by eligible residents;

(4) A description of the supportive services that are to be provided over at least a 5-year period after the initial receipt of funding under this NOFA, and how the supportive services will enhance education and job opportunities for residents;

(5) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than one year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the one-year commitment;

(6) A description of public or private sources of assistance that can reasonably be expected to fund or provide supportive services, including evidence of any intention to provide assistance expressed by State and local governments, private foundations, and other organizations (including profit and nonprofit organizations);

(7) A description of the plan for continuing operation of the FIC, and the provision of services to families after completion of the later of: (i) Five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(8) A certification from an appropriate service agency (in the case of FSS, the certification may be from the Coordinating Committee) that:

(a) The provision of supportive services is well designed to provide families better access to educational and employment opportunities; and

(b) There is a reasonable likelihood that such services will be funded or provided for the entire five-year period, at least, after the initial receipt of funding under this NOFA.

(9) A description of assistance for which the HA is applying;

(10) A narrative on the location of the FIC facility. Provide the precise location of the facility to be used for FIC, and indicate its accessibility to residents, including distance from the development(s), and transportation necessary to receive services;

(11) Evidence that the HA has control of the FIC site. If the facility is off-site, the HA shall include copies of the negotiated lease and the terms, an option to lease, indicating that the facility is available to the HA for use as a FIC for the period ending the later of: (i) Five years following the initial receipt of funding under this NOFA, or (ii) one year following the completion of activities funded under this NOFA; lease and the terms, an option description of the

(12) A certification that the HA is implementing a FSS program, if applicable. IHAs, without FSS programs, that have established counseling programs such as those found in Mutual Help (MH) should provide similar certification, if applicable;

(13) A certification that funds used to pay for a Service Coordinator are not duplicate expenses from any other program, including FSS;

(14) A description of the resident involvement in the planning and implementation phases of this program;

(15) A description of the services that HA residents will be employed to provide;

(16) Letters of commitment. The letters should identify all commitments for additional resources to be made available to the program from the applicant and other State, local, or private entities. The description shall include, but is not limited to, the commitment source, source committed, availability and use of funds, and other conditions associated with the loan, grant, gift, donation, contribution, etc. Commitments from State or local agencies may include, but are not limited to, vocational, adult, and bilingual education; Job Partnership Training Act (JTPA) and Family Support Act of 1988 job training programs; child care; and social services assistance, counseling or drug addiction services. Commitments may include in-kind contributions, on-site journeymen or equivalent instructors, transportation, or other resources for use by participants of the FIC;

(17) Certification that efforts were made to use or obtain other resources to fund or provide the services proposed;

(18) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program funds for CGP eligible activities that result in employment, training, and contracting opportunities for eligible residents;

(19) A project budget, timetable and narrative;

(20) Certification that FIC funding will not duplicate any other HUD funding, including CGP funding.

(21) Equal Opportunity Requirements. The HA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(Note: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601–3620), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing, do not apply to Indian housing authorities (IHAs) established by exercise of a Tribe's powers of self-government. Title VI and the Fair Housing Act (24 CFR parts 1 and 100) shall not be applicable to the development or operation of projects by such IHAs.)

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(22) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(23) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(24) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL form).

(25) A certification that:

(a) The HA will include in any contract for renovation or conversion (including combining of units) on the premises of the HA development to accommodate the provision of supportive services under this program, a requirement that all laborers and

mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a–5);

(b) The HA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD; and

(c) The HA will pay such wage rates to its own employees engaged in this work.

B. Applications for Renovation/Conversion Activities Only must contain the following information:

(1) Name and address (or P.O. Box) of the HA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) A narrative on the location of the off-site facility. if applicable. Provide the precise location of the FIC facility (street address) and indicate its accessibility to residents, including distance from the development(s), and transportation necessary to receive services;

(3) Evidence that the HA has control of the proposed off-site premises. This shall include copies of the negotiated lease and the terms, an option to lease, indicating that the facility will be available to the HA for use as a FIC for the period ending the later of: (i) Five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(4) A description of services that the HA expects to be provided, to the greatest extent practicable, by HA residents, as described in Section I.F(2) of this NOFA. The Description shall include the position titles and numbers of residents expected to be employed for renovation/conversion activities;

(5) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP eligible activities that result in employment, training, and contracting opportunities for eligible residents;

(6) A project budget, timetable and narrative;

(7) Certification that FIC funding will not duplicate any other HUD funding, including CGP funding.

(8) *Equal Opportunity Requirements.* The HA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(Note: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601–3620), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing, do not apply to Indian housing authorities (IHAs) established by exercise of a Tribe's powers of self-government. Title VI and the Fair Housing Act (24 CFR parts 1 and 100) shall not be applicable to the development or operation of projects by such IHAs.)

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and Title II or the Americans with Disabilities Act of 1009 (42 U.S.C. 12131) and implementing regulation at 28 CFR part 35; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(9) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than one year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the one-year commitment;

(9) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(10) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(11) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF-LLL form).

(12) A certification that:

(a) The HA will include in any contract for renovation or conversion (including combining of units) on the premises of the HA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a-5);

(b) The HA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD; and

(c) The HA will pay such wage rates to its own employees engaged in this work.

C. Applications for Both Supportive Services and Renovation/Conversion Activities must contain the following information:

(1) Name and address (or P.O. Box) of the HA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) SF–424A, Budget Information, Non-Construction Programs, and SF–424B, Assurances, Non-Construction Programs;

(3) A description of assistance for which the HA is applying;

(4) A description of the need for supportive services by eligible residents;

(5) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than one year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the one-year commitment;

(6) A description of the plan for continuing operation of the FIC and the provision of supportive services to families after the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(7) A description of services that the HA expects to be provided, to the greatest extent practicable by HA residents as provided under Section I.F(2) of this NOFA;

(8) A description of the positions and numbers of residents expected to be employed for renovation, conversion, and other eligible activities;

(9) A certification that the HA is implementing a FSS program, if applicable. IHAs, without FSS programs, that have established counseling programs such as those found in Mutual Help (MH) should provide similar certification, if applicable;

(10) A description of the resident involvement in the planning and implementation phases of this program.

(11) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP eligible activities that result in employment, training, and contracting opportunities for eligible residents;

(12) A project budget, timetable, and narrative;

(13) Letters of commitment. Identify all commitments for additional resources to be made available to the program from the applicant and other State, local, or private entities. The description shall include, but is not limited to, the commitment source, source committed, availability and use of funds, and other conditions associated with the loan, grant, gift, donation, contribution, etc. Commitments from State or local agencies may include, but are not limited to, vocational, adult, and bilingual education; JTPA and Family Support Act of 1988 job training programs; child care; and social services assistance, counseling or drug addiction services. Commitments may include in-kind contributions, on-site journeymen or equivalent instructors, transportation, or other resources for use by participants of the FIC.

(14) A narrative on the location of the off-site facility. if applicable. Provide the precise location of the FIC facility (street address) and its accessibility to residents including distance from the development(s), and transportation necessary to receive services;

(15) Evidence that the HA has control of the proposed off-site premises. This shall include copies of the negotiated lease and the terms, an option to lease, indicating that the facility will be available to the HA for use as a FIC for the period ending the later of: (i) Five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(16) Certification that FIC funding will not duplicate any other HUD funding, including CGP funding.

(17) *Equal Opportunity Requirements.* The HA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(Note: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601–3620), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing, do not apply to Indian housing authorities (IHAs) established by exercise of a Tribe's powers of self-government. Title VI and the Fair Housing Act (24 CFR parts 1 and 100) shall not be applicable to the development or operation of projects by such IHAs.)

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and Title II of the Americans with Disabilities Act of 1009 (42 U.S.C. 12131) and implementing regulation at 28 CFR Part 35; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(17) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(18) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(19) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL form).

(20) A certification that:

(a) The HA will include in any contract for renovation or conversion (including combining of units) on the premises of the HA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under

the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a–5);

(b) The HA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD; and

(c) The HA will pay such wage rates to its own employees engaged in this work.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items, such as certifications or assurances, or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to nonsubstantive deficiencies or errors. Deficiencies capable of cure will involve only items not necessary for HUD to assess the merits of an application against the ranking factors specified in this NOFA.

V. Other Matters

A. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth in Section III, Checklist of Application Submission Requirements, of this NOFA, grantees must comply with the following requirements:

(1) *Ineligible contractors.* The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) *Flood insurance.* No building proposed for acquisition, construction, reconstruction, repair, or improvement to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding such hazards, and the grantee ensures that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(3) *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and implementing regulations at 24 CFR parts 35, 965 and 968.

(4) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 with respect to the acceptance and use of assistance by private nonprofit organizations.

(5) *Relocation and Real Property Acquisition.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, apply to the acquisition of real property for an assisted project and the displacement of any person (family, individual, business, nonprofit organization, or farm) as a direct result of acquisition, rehabilitation, or demolition for the project.

B. Environmental Review

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332). The finding of no significant impact is available for public inspection and copying Monday through Friday during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The notice announces the availability of funds to provide families living in public or Indian housing with better access to education and job opportunities to achieve self-sufficiency and independence.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the notice is to provide funding to assist families living in public or Indian housing with better access to education and job opportunities to achieve self-sufficiency and independence, and, thus, could benefit families significantly. However, because the impact on families is beneficial, no further review is considered necessary.

E. Section 102 HUD Reform Act: Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

F. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

G. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD) (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Freedom of Information Act

Applications submitted in response to this NOFA are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether to release information contained in an application in the event a FOIA request is received, and applicant may, through clear earmarking, or otherwise, indicate those portions of its application that it believes should not be disclosed. The applicants's views will be used solely to aid the Department in preparing its response to a FOIA request; however, the Department is required by the FOIA to make an independent evaluation of the information.

HUD suggests that an applicant provide a basis, when possible, for its belief that confidential treatment is appropriate; general assertions or blanket requests for confidentiality, without more information, are of limited value to the Department in making determinations concerning the release of information under FOIA. The Department is required to segregate disclosable information from nondisclosable items, so an applicant should be careful to identify each portion of the application for which confidential treatment is requested.

The Department emphasizes that the presence or absence of comments or earmarking regarding confidential information will have no bearing on the evaluation of applications submitted in response to this solicitation.

I. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act of Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. The Department has determined that an IHA established by an Indian Tribe as a result of the exercise of its sovereign power is not subject to the Byrd Amendment, but an IHA established under State law is subject to those requirements and prohibitions.

Authority: 42 U.S.C. 1437t and 3535(d).

Dated: February 7, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–4413 Filed 2–25–94; 8:45 am]

BILLING CODE 4210–33–P

Monday
February 28, 1994

Federal Register

Part IV

Environmental Protection Agency

40 CFR Part 280
Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 280

[FRL–4842–6]

Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating a rule to amend the financial responsibility requirements for underground storage tanks (USTs) containing petroleum that appear in subpart H of 40 CFR part 280. Specifically, this rule modifies the financial responsibility compliance date under 40 CFR 280.91(e) for one category of UST owners. Under this modification, Federally-recognized Indian tribes that own USTs on Indian lands are required to comply with Federal Financial Responsibility requirements of 40 CFR part 280 subpart H—Financial Responsibility—by December 31, 1998 if those USTs are in compliance with applicable technical requirements for USTs in 40 CFR part 280. Today's rule extends the deadline for certain USTs owned by Indian tribes from the previous date of February 18, 1994. This change will allow EPA, the Bureau of Indian Affairs and Indian tribes additional time to explore options for solving the root problem of lack of funding for past contamination on Indian lands and further assist tribes with future technical requirements, such as tank upgrading. EPA is not changing the financial responsibility deadline for rural petroleum marketers or local governments. A discussion of the Agency rationale behind this decision can be found in section III. C. under "SUPPLEMENTARY INFORMATION".

EFFECTIVE DATE: This rulemaking is effective on February 28, 1994.

ADDRESSES: The public docket for this rule is in room M2616, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Call (202) 260–9720 for an appointment to review docket materials.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free) or (703) 412–9810 in Virginia. For technical questions, contact Sammy Ng in the Office of Underground Storage Tanks at (703) 308–8882.

SUPPLEMENTARY INFORMATION: EPA is today finalizing a rule that would allow certain Federally-recognized Indian tribes that own USTs containing petroleum on Indian lands additional time to comply with the financial responsibility requirements. Specifically, this rule modifies the compliance date under 40 CFR 280.91(e). Under this modification, Indian tribes that own USTs containing petroleum on Indian lands must comply with the financial responsibility requirements by December 31, 1998. To qualify for the 1998 financial responsibility deadline, tribally-owned USTs must be in compliance with the technical requirements for USTs described in 40 CFR part 280. Technical compliance for USTs includes, for example, leak detection and reporting. The technical requirements criterion has been included to protect human health and the environment on Indian lands. EPA is not changing the financial responsibility deadline for rural petroleum marketers or local governments. A discussion of Agency rationale behind this decision can be found in section III C.

The contents of today's preamble are listed in the following outline:

I. Authority
II. Effective Date
III. Background
IV. Final Rule
A. Indian Tribes
B. Implementation of Final Rule
C. Discussion of Options Proposed but Not Finalized for Petroleum Marketers and Local Governments.
V. Economic Impacts
A. Economic Impact Analysis
B. Regulatory Flexibility Analysis
C. Regulatory Impact Analysis
D. Paperwork Reduction Act

I. Authority

These regulations are issued under the authority of sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, and 6991h).

II. Effective Date

This rule will be effective on February 28, 1994, pursuant to 5 U.S.C. 553(d). This rule may be made effective immediately because it extends an existing compliance date and there is good cause to make that extension immediately effective within the meaning of 28 U.S.C. 553(d)(1) and (3).

III. Background

On October 26, 1988, EPA promulgated financial responsibility requirements applicable to owners and operators of underground storage tanks (USTs) containing petroleum (53 FR 43322). To meet the requirements, owners and operators must demonstrate that they can pay for the costs of cleanups and third-party damages resulting from any leaks that may occur. In the final rule, EPA established a phased compliance schedule for owners and operators of petroleum USTs. The principal reason for adopting the phased compliance approach was to provide the time necessary for providers of financial assurance mechanisms (including private insurance companies and states intending to establish state assurance funds) to develop new policies and programs or conform their policies and programs with EPA requirements. See 53 FR 43324.

When devising the phased compliance approach, the Agency wanted to achieve the best balance between the need to demonstrate financial responsibility for UST releases and the time necessary for owners and operators to obtain assurance mechanisms. The Agency attempted to establish compliance dates that were as early as possible, considering the type of assurance different types of facilities were likely to obtain. Petroleum marketers owning or operating 1,000 or more USTs and non-marketers with more than $20 million in tangible net worth were required to comply by January 24, 1989, based primarily on their ability to qualify for self-insurance. Petroleum marketers with 100 to 999 USTs were required to comply by October 26, 1989. These marketers were estimated to be relatively more likely to be able to obtain insurance; some of them were also expected to qualify as self-insurers. Petroleum marketers owning 13 to 99 USTs at more than one facility were originally required to comply by April 26, 1990. However, on May 2, 1990, the Agency published a rule (55 FR 18566) extending this compliance date to April 26, 1991. These marketers were thought to be less likely to be able to obtain insurance than members of the October 26, 1989, compliance group.

Petroleum marketers owning fewer than 13 USTs at more than one facility or owning only one facility with fewer than 100 USTs, as well as non-marketers with less than $20 million in net worth and local governments (including Indian tribes) were originally required to comply by October 26, 1990. This group was expected to rely primarily on state assurance funds for compliance. (State assurance funds provide money for cleanups to owners and operators in their states. Owners and operators in states with assurance funds are deemed to be in compliance with financial responsibility for the amount covered by the fund once the state submits the fund to EPA for approval unless and until EPA disapproves the fund.) On October 31, 1990, EPA extended the compliance deadline for one year for small marketers (with fewer than 13 USTs or fewer than 100 USTs at a single facility) and small non-marketers (with less than $20 million in net worth), otherwise known as Category IV. This extension was based on the need for additional time for state assurance funds to be developed. In addition, EPA extended the compliance deadline for local governments and Indian tribes until one year after publication of a final rule with additional self-insurance mechanisms for local governments to use to demonstrate compliance. This rule was published on February 18, 1993 (58 FR 9026).

On December 23, 1991, EPA once again extended the compliance deadline for the Category IV group (small marketers with fewer than 13 tanks at more than one facility or fewer than 100 tanks at a single facility as well as non-marketers with net worth less than $20 million) to December 31, 1993 (56 FR 66369). EPA based the extension on its understanding that more members of this compliance group than the Agency had originally projected must rely on state assurance funds, rather than on insurance, to demonstrate compliance with the financial responsibility requirements. EPA believed that, in order for owners and operators to rely on state assurance funds as compliance mechanisms, states must have more time to submit their state assurance funds to EPA for approval. Currently, 31 state assurance funds have been approved by EPA and an additional eight state assurance funds have been submitted to EPA for approval. (It is important to note that upon submission of a state assurance fund to the EPA Regional Administrator, the fund is considered to be approved unless and until EPA disapproves it.) Additionally, the extension provided states with more time to develop and implement financial assistance programs (e.g., direct loan programs, loan guarantee programs, grant programs) which help owners and operators (especially small businesses) pay for technical requirements such as tank upgrading. These technical improvements, in turn, help USTs meet insurers' underwriting criteria.

The Agency, however, continued to be concerned about the effects of its regulations on the regulated community. By analyzing the costs of the requirements, EPA found that the affordability of financial responsibility compliance is often tied to early compliance with technical requirements such as tank upgrading, since, for example, private insurance companies may refuse to provide coverage unless they are certain that a site does not pose a high risk of leaking. EPA believed that the costs associated with the technical requirements are an important factor underlying the inability of some small owners and operators to meet the financial responsibility requirements. These costs coupled with the lack of a state assurance fund, grant, or loan program could force some gas stations to close their tanks when the 1993 financial responsibility compliance date fell. EPA believed that tank closure could be particularly problematic when those tanks provide essential services to rural communities.

As a result of this concern about the availability of fuel in rural areas, EPA proposed a December 31, 1998 compliance date for certain petroleum marketers, local governments, and Indian tribes, that meet Federally-determined criteria (58 FR 43770). The objective of the August 17, 1993 proposed rule was to obtain data on whether an additional extension of the financial responsibility requirements was needed, and for whom. The Agency intended to limit any additional extension to, at most, a small sub-group of marketers currently in Category IV, as well as certain local governments and Indian tribes; EPA did not want to change compliance dates for all Category IV marketers or local governments on the belief that most of these tank owners were already in compliance with the financial responsibility requirements due to the existence of state assurance funds and reliance on self-insurance mechanisms. The August 17, 1993 proposed rule included eligibility criteria limiting the proposed 1998 compliance group to rural petroleum marketers that met a hardship criterion of annual profit on gasoline sales of $15,000 or less, rural local governments that use tanks for essential services such as police and fire departments, and Indian tribes. (The definition of rural was obtained from the Farmers Home Administration within the U.S. Department of Agriculture.) In addition, all owners in the new 1998 compliance group would have to ensure that their tanks were in compliance with applicable technical requirements, such as leak detection. The technical compliance criterion was included to protect human health and the environment regardless of a change in the financial responsibility deadline. EPA also stressed the fact that any change in the financial responsibility compliance date would not remove the liability on the part of the owner or operator to clean-up a leak.

Current Financial Responsibility Deadlines

January 24, 1989:
Marketers With 1000 or More Tanks; Non-Marketers With Net Worth Greater Than $20 Million.
October 26, 1989:
Marketers With 100–999 Tanks.
April 26, 1991:
Marketers With 13–99 Tanks at More Than One Facility
December 31, 1993:
Marketers With 1–12 Tanks at More Than One Facility or Fewer Than 100 Tanks at One Site; Non-Marketers With Net Worth Less Than $20 Million.
February 18, 1994:
Local Governments and Indian Tribes

IV. Final Rule

EPA received 58 comments on the August 18, 1993 proposed extension. 34 commenters supported an extension for one or more groups. 21 commenters opposed any extension of the financial responsibility requirements. No commenters objected to an extended compliance deadline for Indian tribes while one commenter supported it. One commenter remained neutral on the subject and two additional comments were received regarding the proposed definition of rural, as defined by the Farmers Home Administration.

Based on EPA analysis of the comments received as well as the rest of the administrative record from the proposal, the Agency is finalizing an extension to 1998 for Federally-recognized Indian tribes that own USTs on Indian lands. No other entity (petroleum marketer or local government) has been included in this 1998 compliance group. A discussion of comments relating to a 1998 compliance deadline for petroleum marketers and local governments can be found in section III C.

A. Indian Tribes

Based on an analysis of the administrative record for this rulemaking and lack of opposition to an extension for tribes, EPA is extending the compliance deadline for Tribally-owned USTs on Indian lands to December 31, 1998 if the USTs meet the technical compliance criterion. The Agency is sensitive to the lack of funding available to help Indian tribes pay for environmental problems and acknowledges that mechanisms used by other owners, such as state assurance funds or private insurance, may be

inaccessible to tribes. The Agency has retained the technical compliance criterion in order to protect human health and the environment on Indian lands and expects that inclusion of this criterion may prompt some owners to come into compliance with the technical requirements in order to qualify for the extension. (Tanks owned by Indian tribes which are out of compliance with applicable technical requirements would not be eligible for the 1998 deadline.)

The additional time will also allow the Agency to work with the Bureau of Indian Affairs (BIA) at the U.S. Department of the Interior to explore options for solving the root problem of lack of funding for past contamination on Indian lands and further assist tribes with future technical requirements, such as tank upgrading.

A compliance date of December 31, 1998 was selected for Indian tribes because this date corresponds with the final technical compliance date for tank upgrading. Tribes unable to comply with the financial responsibility requirements at that time face the more costly technical requirement of upgrading their USTs. At that point, tanks not in technical compliance would be forced to close with or without the financial assurance coverage. Conversely, owners able to meet the technical requirements at that time would be more likely to obtain an affordable assurance mechanism, such as private insurance, since the tanks would be considered an insurable, reasonable risk.

B. Implementation of Final Rule

EPA intends to promulgate regulations that pose the least burden to the affected regulated community while protecting human health and the environment. Therefore, no change in reporting requirements or recordkeeping procedures from the October 26, 1988 rule is incorporated into this rule.

The August 17, 1993 proposed rule included a requirement that UST owners self-certify for an extension and keep a record of the proposed compliance checklist on file for enforcement purposes. Based on a review of the comments and the rest of the administrative record for the proposal, the Agency has decided that this self-certification is unnecessary for implementing this rule and has therefore decided to delete the self-certification and recordkeeping requirement.

C. Discussion of Options Proposed But Not Finalized for Petroleum Marketers and Local Governments

As noted above, EPA received 58 comments on the August, 1993 proposed rule. Of the 34 comments received in support of a 1998 compliance deadline, 17 specifically supported an extension only for petroleum marketers. An additional seven comments were received in support of local governments, four for non-marketers (such as rental car companies, etc.), and one for Indian tribes. Five commenters supported an extension for *all* Category IV firms and local governments regardless of criteria, or not at all, concluding that a limited extension would be unfair to the entities not included in the 1998 compliance group.

Twenty-one commenters were against any additional extension to 1998. Of the 21 comments which disagreed with the proposed extension, eight were provided by state agencies that administer UST regulatory or state fund programs. One commenter was neutral, neither agreeing or disagreeing with the proposed compliance date, and two additional comments addressed only the definition of rural.

Commenters arguing for a 1998 compliance date for certain petroleum marketers and local governments stated that the additional time was needed to keep small businesses open. Several commenters said that compliance with financial responsibility was difficult in states without state assurance funds. In fact, of the commenters supporting a 1998 compliance date for one or more groups, 12 out of 35 were received from a state without a state assurance fund. In addition, some commenters said that insurance was not affordable, particularly when tanks have not been upgraded. Two commenters urged an extended compliance date in two states that plan to adopt a state assurance fund or loan program. One of those commenters felt that a 1996 compliance date would be acceptable since it would correspond to the date the state loan program plans to be operational. Another commenter noted that not all local governments can pass one of the four additional self-insurance mechanisms promulgated in February, 1993, and one additional commenter urged EPA to extend the financial responsibility compliance date for hospitals that use their tanks to fuel emergency generators.

Several commenters arguing against an additional extension to 1998 for local governments and petroleum marketers stated that most of these owners were already in compliance due to state assurance funds. Several commenters also stated that an extension would not be fair to those owners already in compliance with the financial responsibility requirements. Others felt an extended compliance group to 1998 would incorrectly imply that the remaining technical compliance dates would be extended by EPA as well. Other commenters noted that the criteria included in the proposed rule were difficult to implement and would prove burdensome to states with regard to enforcement since different petroleum marketers and local governments would have different compliance dates. Other commenters feared that adoption of a 1998 deadline for certain gas stations and local governments would hurt the environment, since the requirement was necessary to ensure that money would be available to pay for cleanups. One commenter stated that previous compliance date extensions reduced the volume of business available to private insurers trying to create a market for UST insurance, thereby increasing the price. Another commenter echoed that sentiment, saying that previous extensions had stopped private mechanisms, such as insurance, from developing fully. Finally, several commenters state that it was appropriate to exclude non-marketers from any additional extension since sales of petroleum were not crucial to their operations.

Based on a review of the comments and the administrative record, EPA has decided *not* to extend the financial responsibility compliance deadline for petroleum marketers, non-marketers, or local governments. While the Agency acknowledges that some of these owners, especially in those few states without a state assurance fund, may have difficulty complying with the financial responsibility requirements, EPA agrees with commenters that say that most owners and operators are already covered by either state assurance funds, self-insurance mechanisms or private insurance. Agency analysis indicates that compliance may be as high as 98% for local governments with the addition of the four self-assurance mechanisms promulgated in February, 1993. In addition, just 14% of all tanks are in states without legislation creating state assurance funds. The Agency also agrees that another extension hurts EPA credibility with regard to upcoming technical compliance dates and agrees that a later compliance date is unfair to owners and operators already in compliance. In addition, a 1998 compliance deadline for some local governments and petroleum marketers would create an administrative burden for states to implement, since some states would need to change their legislation or regulations in order to adopt the new deadline. EPA also acknowledges the difficulty in trying to define an appropriate subgroup and believes that inclusion of certain marketers and local governments in a new compliance group would create additional confusion in the regulated community.

EPA agrees with commenters who feared that adoption of a 1998 deadline for certain gas stations and local governments might hurt the environment in the event that funds are not available to undertake corrective action. In adopting the phased compliance approach, the Agency wanted to achieve the best balance between the need to demonstrate financial responsibility for UST releases and the ability of different types of tank owners to obtain the assurance mechanisms. In deciding not to extend the compliance deadline for petroleum marketers and local governments, the Agency has decided that, since most marketers and local governments can comply, the balance has to be weighed in favor of demonstrating compliance. On the other hand, the current inability of Indian tribes to demonstrate compliance as explained in section IV.A above led the Agency to reach the opposite decision in that situation.

EPA also received comments with regard to the criteria discussed in the proposed rule applicable to petroleum marketers and local governments. Most commenters supported the use of the Farmers Home Administration definition of rural, but felt that a hardship determination based on profit should be replaced with a measure of yearly throughput of gasoline through an UST system.

V. Economic Impacts

This section provides an estimate of the economic impacts of the proposed rule. Because the proposed rule will not cause an annual impact on the economy of $100 million or more and will not cause an increase in the costs of production or the prices charged by the affected community, a Regulatory Impact Analysis is not required. Instead, EPA has prepared an economic impact analysis to estimate the number of affected facilities that would benefit from this additional flexibility.

A. Economic Impact Analysis

The economic analysis examines the potential economic effects of adopting a new compliance category to 1998 and estimates the number of potentially affected entities.

Overall, approximately 1.3 million USTs are subject to the technical and financial responsibility standards. The number of tribally-owned USTs that could be eligible for the 1998 compliance date numbers approximately 500. These 500 tribally-owned USTs represent approximately 10% of all active tanks on Indian lands. (The remainder of the tanks on Indian lands are owned by private individuals and firms, as opposed to Federally-recognized tribes.) The total number of tanks eligible for the 1998 compliance date would be reduced, however, with the inclusion of the technical compliance criterion.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, when an Agency publishes a notice of rulemaking, for a rule that will have a significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis that considers the effect of the rule on small entities (i.e.: Small businesses, small organizations, and small governmental jurisdictions). EPA believes that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The new compliance deadline to 1998 will provide relief to members of this compliance group by allowing them additional time to comply with the financial responsibility requirements. Accordingly, the Agency has concluded that the law does not require a Regulatory Flexibility Analysis, and certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Regulatory Impact Analysis

1. Executive Order 12866

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to review by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 280

Environmental protection, Administrative practice and procedure, Hazardous materials insurance, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control.

Dated: February 18, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 280 of title 40 of the Code of Federal Regulations is amended as follows:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, and 6991h.

2. Section 280.91 is amended by revising paragraph (e) and adding paragraph (f), to read as follows:

§ 280.91 Compliance dates.

* * * * *

(e) All local government entities (including Indian tribes) not included in paragraph (f) of this section; February 18, 1994.

(f) Indian tribes that own USTs on Indian lands which meet the applicable technical requirements of this part; December 31, 1998.

[FR Doc. 94–4375 Filed 2–25–94; 8:45 am]
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Monday
February 28, 1994

Federal Register

Part V

Department of Education

Dwight D. Eisenhower National Program for Mathematics and Science Education; Notice

DEPARTMENT OF EDUCATION

RIN 1850–ZA00

Dwight D. Eisenhower National Program for Mathematics and Science Education—Model Projects in Encouraging Female and Minority Students in Mathematics and Science; Model Science-Based Professional Development Projects in Environmental Education

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal year 1994.

SUMMARY: The Secretary proposes two priorities for fiscal year 1994 under the Dwight D. Eisenhower National Program for Mathematics and Science Education: Model projects in encouraging female and minority students in mathematics and science, and model science-based professional development projects in environmental education. The Secretary expects projects to generate findings that have wide applicability; accordingly, grantees will be expected to evaluate their activities and disseminate information about them.

DATES: Comments must be received on or before March 30, 1994.

ADDRESSES: All comments concerning this proposed priority should be addressed to Charles Stalford, U.S. Department of Education, 555 New Jersey Avenue NW., room 500F, Washington, DC 20208–5572.

FOR FURTHER INFORMATION CONTACT: Lois Weinberg or Annora Dorsey, U.S. Department of Education, 555 New Jersey Avenue NW., room 500, Washington, DC 20208–5572. Telephone: (202) 219–2175. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The goal of the Eisenhower National Program is to support projects of national significance in elementary and secondary schools in mathematics and science education designed to improve the skills of teachers and the quality of instruction in these areas and to increase the access of students to that instruction. The program is authorized under title II, part A, subpart 1, section 2012 of the Elementary and Secondary Education Act of 1965, as amended.

On November 12, 1993, the Secretary announced in the **Federal Register** (58 FR 60007) a proposed priority for the Eisenhower National Program in model professional development in the use of technology for mathematics and science instruction. Now, after considering the intent of the Senate Report that accompanied the Fiscal Year 1994 Department of Education Appropriations Act, the Secretary has decided to propose two additional priorities, announced herein. These priorities will serve (1) to encourage the interest and attainments of female and minority students in mathematics and science and (2) to improve teacher professional development in environmental education.

The Secretary may subsequently conduct an external study or studies of the effectiveness and lessons learned from projects funded under this program. If he does so, projects will be required to cooperate with the conduct of the study, by sharing their experiences, project evaluations, and data.

Regarding priority 1, the Secretary is concerned that the Nation's schools encourage too few minority and female students to study and pursue careers in the fields of mathematics and science. The Secretary believes that the well-documented underrepresentation of minorities and women in these disciplines represents a waste of human talent that the Nation can ill afford. This priority would therefore support, and learn from, projects that seek to stimulate and sustain the interest and attainments of female and minority children in mathematics and science.

Regarding priority 2, the Secretary believes that environmental education can stimulate students' interest in scientific fields and enhance their understanding of these disciplines. The Secretary also believes that environmental issues are important in their own right and are, therefore, eminently worthy of study. The Secretary finds, however, that environmental education programs of high quality are available in too few of the Nation's schools, in part because American teachers have very limited opportunities to increase their knowledge of environmental issues and to learn the most successful means of providing environmental education. The Secretary proposes, therefore, to support and learn from projects in professional development for teachers in environmental education.

The Secretary draws to the attention of potential applicants responding to priority 2 the National Consortium for Environmental Education and Training (NCEET) at the University of Michigan, an undertaking funded by the Environmental Protection Agency under section 5 of the National Environmental Education Act of 1990. NCEET's primary emphasis is professional development for teachers in environmental education. Potential applicants should consult with NCEET to ensure that their projects are not duplicative of the National Consortium's efforts.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities; nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrently with or following publication of the notice of final priorities.

Applications are not available at this time. However, to have your name placed on a mailing list, please write to: Dwight D. Eisenhower National Program for Mathematics and Science Education, 555 New Jersey Avenue NW., Washington, DC 20208–5572, or FAX your request to: Eisenhower Program: 202–219–2106.

Absolute Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. Each application shall respond to only one of the two priorities, although an applicant could submit more than one application to respond to more than one priority. The Secretary funds under this competition only applications that meet one of these absolute priorities:

Proposed Priority 1—Encouraging Female and Minority Students in Mathematics and Science

The Secretary will support model projects designed to stimulate and sustain the interest and attainments of female and minority children in mathematics and science.

Each project must:

(a) Make use of research and the experience of projects that have achieved success in the area of the priority.

(b) Collaborate in the planning and operation of the project with the State science teachers' association and/or the State mathematics teachers' association and with at least one other party such as a school, an educational institution, a local or state educational agency, a national education organization, a science-technology center, or a private sector party; with these other parties, develop plans for continuing project activities after Federal support has ended.

(c) Evaluate lessons learned from the project and use them to improve activities on a continuing basis.

(d) Disseminate lessons learned to interested parties. Dissemination must begin while the project is in progress and use electronic as well as other forms of communication.

(e) In the case of projects serving elementary and middle schools, increase teachers' own mastery of mathematics and science in order to increase their confidence and skill in teaching these subjects (including skills in providing hands-on learning).

(f) Involve parents and community members as role models and/or mentors for female and minority children.

Proposed Priority 2—Science-Based Teacher Professional Development in Environmental Education

The Secretary will support model science-based professional development projects designed to improve student achievement in environmental education.

Each project must:

(a) Make use of research and the experience of projects that have achieved success in the area of the priority.

(b) Collaborate in the planning and operation of the project with at least two other parties such as schools, educational institutions, local or state educational agencies, national education organizations, science-technology centers, or private sector parties; with these other parties, develop plans for continuing project activities after Federal support has ended.

(c) Evaluate lessons learned from the project and use them to improve activities on a continuing basis.

(d) Disseminate lessons learned to interested parties. Dissemination must begin while the project is in progress and use electronic as well as other forms of communication.

(e) Use environmental education as a means to enhance students' interest, literacy, and achievement in science.

(f) Increase teachers' own mastery of environmental issues, including related scientific issues.

(g) Train teachers to develop varied learning experiences for students in environmental education that include field components and the study of individual themes, such as ecosystems (e.g., wetlands), the water cycle, and global climate change; enable teachers to pilot-test these varied learning experiences with students.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 500, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR part 755.

Program Authority: 20 U.S.C. 2992.

Dated: January 14, 1994.

(Catalog of Federal Domestic Assistance Number 84.168, Dwight D. Eisenhower National Program for Mathematics and Science Education)

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 94–4427 Filed 2–25–94; 8:45 am]

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	Jan. 1, 1993
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

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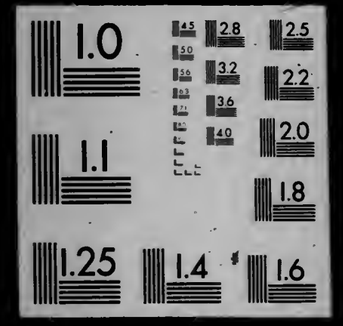
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